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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1487

RIN 0551–AA63

Technical Assistance for Specialty Crops Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes the interim rule which implemented the Commodity Credit Corporation's Technical Assistance for Specialty Crops program to help open, retain, and expand markets for U.S. specialty crops.

DATES: This rule is effective August 18, 2003. *Applicability date:* This rule does not apply to projects approved prior to the effective date.

FOR FURTHER INFORMATION CONTACT: Marketing Operations Staff, Foreign Agricultural Service, Room 4932–S, Stop 1042, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–1042, or telephone: (202) 720–4327.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule is issued in conformance with Executive Order 12866. It has been determined significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. This rule would have preemptive effect with respect to any State or local laws, regulations or policies which conflict with such provisions or which otherwise impede their full implementation; does not have retroactive effect; and does not require administrative proceedings before suit may be filed.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. *See* the notice related to 7 CFR part 3014, subpart V, published at 48 FR 29115 (June 24, 1983).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the Commodity Credit Corporation is not required by any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

The Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act of 1995

In accordance with provisions of the Paperwork Reduction Act of 1995, the Foreign Agricultural Service submitted an information collection package to the Office of Management and Budget (OMB control number 0551–0038) to support an interim rule published in the **Federal Register** on September 10, 2002, (67 FR 57326–57329) which implemented the Technical Assistance for Specialty Crops program. Copies of the information collection may be obtained from Kimberly Chisley, the Agency Information Collection Coordinator, on (202) 720–2568 or by e-mail to *Kimberly.Chisley@fas.usda.gov.*

Government Paperwork Elimination Act

The Foreign Agricultural Service is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. Accordingly, applications for participation in the Technical Assistance for Specialty Crops program may be submitted online, and requests for reimbursement as well as all payments to participants will be handled electronically.

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Background

The Commodity Credit Corporation (CCC) will periodically publicly announce that proposals may be submitted for participation in the Technical Assistance for Specialty Crops (TASC) program, which is administered by personnel of the Foreign Agricultural Service (FAS). On May 13, 2002, the President signed the Farm Security and Rural Investment Act of 2002. Section 3205 of that Act directs the Secretary of Agriculture to establish an export assistance program to address barriers that prohibit or threaten the export of U.S. specialty crops. The statute directs the Secretary to make available $2,000,000 of CCC resources for the TASC program in each of fiscal years 2002 through 2007. The TASC program is designed to assist U.S. organizations by providing funding for projects which address sanitary, phytosanitary, and technical barriers that prohibit or threaten the export of U.S. specialty crops. For the purpose of this rule, U.S. specialty crops include all cultivated plants, or the products thereof, produced in the U.S., except wheat, feed grains, oilseeds, cotton, rice, peanuts, sugar, and tobacco.

Summary and Analysis of Comments

On September 10, 2002, the CCC published an interim rule in the **Federal Register** (67 FR 57326–57329) implementing the TASC program. That rule also requested that interested parties submit comments on the rule by November 12, 2002. The FAS received one comment on the interim rule.

Comment: To be more effective in addressing sudden and unpredictable technical barriers to trade, access to TASC program funds should not be

limited to once per year. Rather, TASC program funding should be made available as the need arises, perhaps by utilizing a quick-response mechanism.

Response: The agency agrees with this comment and has included language in § 1487.5 to provide for the establishment of a formal quick-response process. The periodic announcements indicating that the CCC will be accepting applications also will provide the details of the various application options that are available.

In addition to the language that was incorporated in § 1487.5 in response to the public comment, this final rule adds a new provision in § 1487.6(a)(8) to complement § 1487.2 and clearly indicate that the TASC program is intended to benefit the represented industry rather than a specific company or brand. This final rule also includes other minor organizational, administrative and editorial changes so as to improve the clarity and consistency of the regulations.

Effective Date

This rule is effective August 18, 2003 but does not apply to projects approved prior to the effective date.

List of Subjects in 7 CFR Part 1487

Agricultural commodities, Exports, Specialty crops.

■ In consideration of the foregoing, the interim rule published at 67 FR 57326–57329, September 10, 2002, adding 7 CFR part 1487 is adopted as final with the following changes:

PART 1487—TECHNICAL ASSISTANCE FOR SPECIALTY CROPS

■ 1. The authority citation for 7 CFR part 1487 continues to read as follows:

Authority: Sec. 3205 of Pub. L. 107–171.

■ 2. Section 1487.1 is amended by adding the following new definitions in alphabetical order:

§ 1487.1 What special definitions apply to the TASC program?

* * * * *

Eligible Organization—Any U.S. organization, including, but not limited to, U.S. government agencies, State government agencies, non-profit trade associations, universities, agricultural cooperatives, and private companies.

* * * * *

Participant—An entity which has entered into a TASC agreement with the CCC.

* * * * *

■ 3. Section 1487.5 is amended as follows:

a. By revising paragraphs (a) and (b)(2)(ii);

b. By redesignating paragraphs (b)(2l)(iii) through (b)(2)(vii) as paragraphs (b)(2)(iv) through (b)(2)(viii); and

c. By adding a new paragraph (b)(2)(iii).

The revision and addition read as follows:

§ 1487.5 What is the process for submitting proposals?

(a) *General.* Periodically the CCC will inform the public of the process by which interested eligible organizations may submit proposals for TASC program funding. This announcement will, among other things, include information on any deadlines for submitting proposals and the address of the office to which the proposals should be sent. The CCC also may announce the availability of a Quick Response Fund within the TASC program. Proposals submitted under any form of quick response process may be submitted at any time during the year but must meet the basic requirements of the program and any specific requirements of that particular process. Organizations interested in participating in the TASC program may submit their proposals electronically or in paper copy. Although no specific format is required, a sample format for proposals is available from the address provided in this rule.

(b) * * *

(2) * * *

(ii) The amount of funding requested and a justification for why federal funding is needed;

(iii) Beginning and ending dates for the proposed project;

* * * * *

■ 4. Section 1487.6 is amended as follows:

a. By removing paragraph (a)(7);

b. By redesignating paragraph (a)(1) as paragraph (a)(7);

c. By redesignating paragraphs (a)(2) through (a)(6) as paragraphs (a)(1) through (a)(5);

d. By redesignating paragraph (a)(8) as paragraph (a)(6);

e. By revising newly redesignated paragraph (a)(2); and

f. By adding a new paragraph (a)(8).

The revision and addition read as follows:

§ 1487.6 How are proposals evaluated?

(a) * * *

(2) The potential trade impact of the proposed project on market retention, market access, and market expansion, including the potential for expanding commercial sales in the targeted market;

* * * * *

(8) In cases where the CCC receives multiple proposals from different applicants which address essentially the same barrier, the nature of the applicant organization will be taken into consideration, with a greater weight given to those organizations with the broadest base of producer representation.

* * * * *

■ 5. Section 1487.7 is revised to read as follows:

§ 1487.7 How are agreements formalized?

Following the approval of a proposal, the CCC will enter into a written agreement with the organization that submitted the proposal. This program agreement will incorporate the proposal as approved by the FAS, include a maximum dollar amount that may be reimbursed (the funding level), and identify terms and conditions under which the CCC will reimburse certain costs of the project. Program agreements also will outline any specific responsibilities of the participant, including, but not limited to, the timely and effective implementation of program activities and the submission of a written report(s), on no less than an annual basis, which evaluates the TASC project using the performance measures presented in the approved proposal.

■ 6. Section 1487.8 is removed.

■ 7. Section 1487.9 is redesignated as 1487.8 and revised to read as follows:

§ 1487.8 How are payments made?

(a) *Reimbursement.* (1) Following the implementation of a project for which the CCC has agreed to provide funding, a participant may submit claims for reimbursement of eligible expenses to the extent that the CCC has agreed to pay such expenses. Any changes to approved activities must be approved in writing by the FAS before any reimbursable expenses associated with the change can be incurred. A participant will be reimbursed after the CCC reviews the claim and determines that it is complete.

(2) All claims for reimbursement must be received no later than 90 calendar days following the expiration or termination date of the program agreement. For program agreements which extend beyond twelve months, all claims for reimbursement must be received no later than 90 calendar days following the next anniversary of the effective date of the agreement.

(3) Participants shall maintain complete records of all program expenditures, identified by TASC agreement number, program year, country or region, activity number and cost category. Such records shall be accompanied by original documentation which supports the expenditure and shall be made available to the FAS upon request.

(4) Participants shall maintain all records and documents relating to TASC projects, including the original documentation which supports reimbursement claims, for a period of three calendar years following the expiration or termination date of the program agreement. Such records and documents will be subject to verification by the FAS Compliance Review Staff and shall be made available upon request to authorized officials of the U.S. Government. The FAS may deny a claim for reimbursement if the claim is not supported by acceptable documentation.

(5) In the event that a reimbursement claim is overpaid or is disallowed after payment already has been made, the participant shall return the overpayment amount or the disallowed amount to the CCC within 30 days after realizing the overpayment or receiving notification of the overpayment or disallowed amount.

(b) *Advances.* Participants may request advances of funds, not to exceed 85 percent of the funding approved in any given program year. All advanced funds must be either fully expended or the balance returned by check made payable to the CCC no later than the 90th calendar day following the date of disbursement of the advance to the participant. Upon the expenditure of advance funds, participants must submit reimbursement claims to offset the advance charged to them.

(c) *Interest.* Participants shall deposit and maintain advanced funds in insured, interest-bearing accounts. Interest earned on outstanding advances must be returned by check made payable to the CCC at the time the advance is either fully expended or itself returned.

Dated: July 11, 2003.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 03–18266 Filed 7–17–03; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 53

[Docket No. 02–048–2]

RIN 0579–AB46

Low Pathogenic Avian Influenza; Payment of Indemnity

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with several changes, an interim rule that amended our general indemnity regulations by allowing the Department to pay indemnity to contract growers and owners for poultry destroyed because of low pathogenic avian influenza associated with a disease situation in Virginia. As amended by this document, payments may also be made for poultry destroyed because of low pathogenic avian influenza associated with a disease situation in Texas. Also, subject to available funding, the Department may pay up to 75 percent of eligible total losses with contract growers being compensated at 100 percent of their losses and the remaining amount being paid to the owner of the flock. Additionally, this document makes eligible for compensation losses due to eggs and semen that were destroyed because of low pathogenic avian influenza associated with the disease situations in Virginia and Texas. These actions are necessary to provide appropriate compensation for losses incurred due to this disease.

EFFECTIVE DATE: July 18, 2003.

FOR FURTHER INFORMATION CONTACT: Dr. Cheryl Hall, Staff Veterinarian, National Center for Animal Health Programs, Certification and Control Team, VS, APHIS, 4700 River Road Unit 46, Riverdale, MD 20737–1231; (301) 734–4924.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (the Department) administers regulations at 9 CFR part 53 (referred to below as the regulations) that provide for the payment of indemnity to owners of animals and materials that are required to be destroyed because of foot-and-mouth disease, pleuropneumonia, rinderpest, exotic Newcastle disease, highly pathogenic avian influenza, infectious salmon anemia, or any other communicable disease of livestock or poultry that, in the opinion of the Secretary of Agriculture, constitutes an emergency and threatens the U.S. livestock or poultry population. Payment for animals destroyed is to be based on the fair market value of the animals.

Payment of Indemnity

Section 53.2 of the regulations authorizes the APHIS Administrator to cooperate with a State in the control and eradication of disease. In an interim rule published in the **Federal Register** on November 4, 2002, and made effective December 9, 2002 (67 FR 67089–67096, Docket No. 02–048–1), we amended the regulations to allow the Department to pay indemnity to contract growers and owners for poultry destroyed because of low pathogenic avian influenza (LPAI) associated with a disease situation in Virginia. We provided that, subject to available funding, the Department may pay all eligible losses of contract growers and up to 50 percent of eligible losses of owners, minus any amount paid to the contract grower of a flock. Additionally, we provided that value of poultry destroyed due to the disease may be determined after destruction and disposal of the poultry, and required, except in limited situations, a waiting period of 7 days following cleaning and disinfection before premises that contained poultry affected by the disease may be restocked.

We solicited comments concerning the interim rule for 30 days ending December 4, 2002. We received 41 comments by that date. They were from poultry and egg producers, poultry federations, a farm bureau federation, a State Department of Agriculture, Federal and State congressional officials, and other members of the public. We have carefully considered all of the comments we received. They are discussed below by topic.

Recommendation That Indemnity Be Paid for a Disease Situation in Texas

In April 2002, birds in a poultry operation in Texas were identified as being affected with the LPAI H5 virus. The disease was subsequently identified in another poultry operation in Texas. All of the affected flocks were depopulated. A number of commenters recommended that indemnity be paid to producers of poultry in Texas for losses incurred from the occurrence of LPAI in that State. Some of the commenters stated that the disease situation in Texas was not as widespread as in Virginia only because Texas producers had been voluntarily taking part in a testing

program, and that those producers should not be denied indemnity for losses simply because they took part in an effective program. The commenters stated that not compensating Texas producers would serve as a disincentive to take part in ongoing surveillance programs in the future.

We recognize the proactive efforts of producers and animal health officials in Texas to contain and eradicate LPAI when it occurred in that State in 2002, and we recognize the effects on producers of the LPAI situation in Texas. In this final rule, we are amending the provisions in part 53 to allow the Administrator to pay claims for eligible losses incurred by owners and contract growers related to the 2002 disease situation in Texas associated with the H5 virus. We will apply those payment conditions that we are applying to the disease situation in Virginia to the disease situation in Texas.

Flock Owners in North Carolina

Several commenters requested similarly that compensation be paid to producers in North Carolina for losses due to LPAI.

Our interim rule provided that the Department would pay compensation for birds in States other than Virginia if those birds were depopulated because of being epidemiologically linked to the situation in Virginia. Compensation has been paid for flocks in North Carolina epidemiologically linked to the situation in Virginia.

Percentage of Value Used for Compensation

Several commenters requested that poultry owners be compensated at a rate higher than 80 percent of the value of poultry destroyed minus the amount paid to contract growers.

In this final rule, we are providing that, subject to available funding, the Department may pay up to 75 percent of eligible total losses with contract growers being compensated at 100 percent of their eligible losses and the remaining amount being paid to the owner of the flock.

Payment for Eggs and Semen

Several commenters requested that compensation be paid for destroyed eggs from affected premises, including destroyed hatching eggs that had been moved to a hatchery after the disease was detected on the premises but before the poultry from that premises were destroyed.

We agree with the commenters that such losses should be eligible for compensation. Additionally, semen collected from or used in affected flocks poses a risk of transmitting the LPAI virus and should be destroyed as part of the eradication process. Therefore, we are providing in this final rule that compensation will be paid for eggs, as well as any poultry semen, destroyed because of LPAI associated with the disease situations in Virginia and Texas.

Miscellaneous Items

One commenter expressed concern that the interim rule did not provide for payment for certain items other than poultry on affected premises. The commenter requested indemnity for feed and containers destroyed on affected premises. Additionally, the commenter requested compensation for custom-printed supplies that would not be used again because the destruction of birds and eggs would make it impossible to resume business operations. Other commenters requested compensation for feed used to sustain poultry from the time the disease was diagnosed on a premises until the time of depopulation and for poultry litter that could not be sold and moved from a quarantined premises.

We are making no changes based on the comments. Under the interim rule, growers were compensated fully for production losses and owners were compensated in part for poultry destroyed because of LPAI. With regard to feed and other materials destroyed, it has historically not been the Department's policy to compensate for such materials that were not required to be destroyed by the Department, such as in the Virginia and Texas outbreaks, where actions to control and eradicate the disease were initiated by the States. Any decision to no longer use supplies that were not contaminated by the disease was a voluntary business decision by the entity involved. The issue of compensating for feed used to sustain poultry is further inapplicable because, for those poultry that were allowed to move to slaughtering establishments (controlled slaughter), owners recouped the cost of feed for the poultry. In cases where affected poultry did not go to controlled slaughter, the poultry were required to be destroyed within 24 hours of diagnosis. Litter in the affected area was permitted to be moved from the area after meeting requirements to ensure that it was not contaminated by the LPAI agent.

The LPAI Compensation Plan

The interim rule based payments on the age (in weeks) of birds destroyed. Several commenters requested that the indemnification value of breeder flocks be calculated as of the date that the flock was diagnosed positive for LPAI, because, following that date, hatching eggs produced by the flock could not be moved from the premises. One commenter requested that, at the minimum, the value of a breeding bird be calculated as of the last full week of age of the bird before depopulation. For instance, it was requested that, if a flock was 44 weeks and 5 days old when depopulated, we consider the age of that flock to be only 44 weeks. One commenter recommended that the per-bird value in the LPAI compensation plan be prorated to the day of the bird's age.

We are making no changes based on the comments. We decided to be consistent with the method used to determine age, whether the birds were meat birds or breeding birds. We rounded up or down in standard fashion according to how old in days beyond a full week a bird was (*e.g.*, a bird 1 week and 2 days old will be considered 1 week old; a bird 1 week and 5 days old will be considered 2 weeks old). Although meat birds and replacement breeders gain in value as they age, breeder birds lose value as they age. An attempt to consider birds in all cases to be only as old as the last full week would have provided overcompensation to some owners and undercompensation to others. Calculation of compensation of a large number of birds based on days of age would delay payments and increase taxpayer expense to process the claims, and, on the average, using daily values would not change the overall payment made.

Several commenters stated that, practically speaking, the LPAI compensation plan bases payments to contract growers of breeder poultry on production records from one flock, whereas payments to growers of meat birds are based on an average of three to seven flocks. The commenters requested that a three-flock average be used to determine compensation for losses of breeder poultry.

We would find it acceptable to use a three-flock average for breeder birds. If companies provide APHIS with breeder data for the past three flocks, then all three flocks can be used in estimating flock productivity.

One commenter recommended that, in calculating a broiler breeder producer's projected flock income for the purposes of compensation, the previous three-flock income average be divided by the capitalized number of hens, and that the resulting payment per unit be multiplied by the capitalized number of hens in the LPAI-affected flock.

We would find the method described by the commenter an acceptable method of calculating projected flock income, provided documentation is provided to support the numbers provided.

One commenter asked whether any payment would be due a producer of broiler breeder birds if the age of the LPAI-affected flock was older than the average age of previous flocks.

It is not clear to us what the commenter means. Payment will be calculated for contract growers based on the amount they received for previous flocks. Contract growers will be compensated at 100 percent of their eligible losses, minus any compensation they already received from the owner. One possible but unlikely scenario the commenter may be referring to would be based on the fact that producers of breeding eggs often receive payment during the production cycle. Thus, it is possible, if the depopulated flock had much greater productivity and lasted in production longer than previous flocks, for the payment already received from the owner to be greater than the average amount received from previous flocks. If such a situation occurred, then no additional compensation would be paid to the producer, because the producer would have already received payment equal to previous flocks.

Several commenters stated that, under the interim rule, compensation would not be paid for male birds in broiler breeder flocks associated with the Virginia disease situation. The commenters requested that payment be made for such male birds disposed of due to the disease.

The compensation plan for Virginia does take into account losses for male birds in broiler breeder flocks; however, that may not be immediately apparent. The per bird compensation value for breeder broilers is shown in Table 1 of that compensation plan. (The compensation plan can be accessed as an appendix to the full economic analysis of the interim rule at *http://www.aphis.usda.gov/ppd/rad/avianecon.html.*) An explanation of how to apply that value is set out in the compensation plan under the heading "Female Breeder Birds (in lay), Table Egg Birds (in lay)." *See* section XXVI, which states, "Per bird compensation values for broiler breeders include the cost of males, thus bird count should be of hens only." In other words, the value given the hens takes into account the value of male birds in the flock.

Growers Who Cease Business

One poultry owner stated that, in cases where a contract grower is ruled ineligible for payment because the grower did not adhere to the cleaning and disinfection requirements of the interim rule due to cessation of business, the poultry owner should nonetheless be compensated the total amount the owner is eligible to receive.

In such a case, the owner would receive compensation for the total eligible losses. However, based on the information available to us, all growers have chosen to clean and disinfect affected premises.

Requests for Additional Compensation

Several commenters requested that compensation be paid for income and production losses associated with delays in restocking a premises or neighboring premises after an LPAI test-positive flock had been depopulated and disposed of.

We are making no changes based on the comments. It has traditionally been the policy of the Department not to pay for "downtime."

Several commenters requested that compensation be paid for the cost of cleaning and disinfecting affected premises.

We are making no changes based on the comments. We consider the amounts that will be paid in accordance with the interim rule, as amended by this final rule, to be equitable compensation for losses incurred.

Several commenters requested that compensation be paid for reduced income to producers whose flocks tested negative, but who, as a precautionary measure due to detection of the disease in premises in the area, sent the flocks to slaughter earlier and at less value than they would have normally.

We recognize that some producers whose flocks were not affected chose to send their birds to slaughter due to detection of the disease in the area. However, APHIS, by law, may compensate only for birds and materials destroyed because they are considered to be infected with or exposed to the disease.

Payment for Poultry Linked to the Situation

One commenter requested confirmation that compensation would be paid for losses incurred from the destruction of poultry in States other than Virginia that were epidemiologically linked to the Virginia situation.

The commenter is correct in concluding that compensation will be paid for poultry in States other than Virginia that were destroyed because of an epidemiological link to the situation in Virginia.

Opposition to the Interim Rule

One commenter opposed the payment of indemnity under the interim rule, stating that losses due to disease are normal costs of doing business for any livestock industry.

We are making no changes based on this comment. In the event of a potentially serious disease situation, it is important to have a rapid, coordinated response by the public and private sectors in the early stages of the situation. The purpose of compensation is to remove possible sources of delay in eradicating the disease, such as grower and owner reluctance to report incidences of the diseases because of uncertainty about whether they will be compensated for losses.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule, with the changes discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule are under review by the Office of Management and Budget under OMB control number 0579–0208.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the **Federal Register.** The interim rule adopted as final by this rule was effective on December 9, 2002. This rule expands and increases the compensation to be paid for losses associated with an LPAI situation in Virginia and allows compensation to be paid for losses associated with an LPAI

program, and that those producers should not be denied indemnity for losses simply because they took part in an effective program. The commenters stated that not compensating Texas producers would serve as a disincentive to take part in ongoing surveillance programs in the future.

We recognize the proactive efforts of producers and animal health officials in Texas to contain and eradicate LPAI when it occurred in that State in 2002, and we recognize the effects on producers of the LPAI situation in Texas. In this final rule, we are amending the provisions in part 53 to allow the Administrator to pay claims for eligible losses incurred by owners and contract growers related to the 2002 disease situation in Texas associated with the H5 virus. We will apply those payment conditions that we are applying to the disease situation in Virginia to the disease situation in Texas.

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Percentage of Value Used for Compensation

Several commenters requested that poultry owners be compensated at a rate higher than 50 percent of the value of poultry destroyed minus the amount paid to contract growers.

In this final rule, we are providing that, subject to available funding, the Department may pay up to 75 percent of eligible total losses with contract growers being compensated at 100 percent of their eligible losses and the remaining amount being paid to the owner of the flock.

Payment for Eggs and Semen

Several commenters requested that compensation be paid for destroyed eggs from affected premises, including destroyed hatching eggs that had been moved to a hatchery after the disease was detected on the premises but before the poultry from that premises were destroyed.

We agree with the commenters that such losses should be eligible for compensation. Additionally, semen collected from or used in affected flocks poses a risk of transmitting the LPAI virus and should be destroyed as part of the eradication process. Therefore, we are providing in this final rule that compensation will be paid for eggs, as well as any poultry semen, destroyed because of LPAI associated with the disease situations in Virginia and Texas.

Miscellaneous Items

One commenter expressed concern that the interim rule did not provide for payment for certain items other than poultry on affected premises. The commenter requested indemnity for feed and containers destroyed on affected premises. Additionally, the commenter requested compensation for custom-printed supplies that would not be used again because the destruction of birds and eggs would make it impossible to resume business operations. Other commenters requested compensation for feed used to sustain poultry from the time the disease was diagnosed on a premises until the time of depopulation and for poultry litter that could not be sold and moved from a quarantined premises.

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We are making no changes based on the comments. We decided to be consistent with the method used to determine age, whether the birds were meat birds or breeding birds. We rounded up or down in standard fashion according to how old in days beyond a full week a bird was (*e.g.*, a bird 1 week and 2 days old will be considered 1 week old; a bird 1 week and 5 days old will be considered 2 weeks old). Although meat birds and replacement breeders gain in value as they age, breeder birds lose value as they age. An attempt to consider birds in all cases to be only as old as the last full week would have provided overcompensation to some owners and undercompensation to others. Calculation of compensation of a large number of birds based on days of age would delay payments and increase taxpayer expense to process the claims, and, on the average, using daily values would not change the overall payment made.

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We would find it acceptable to use a three-flock average for breeder birds. If companies provide APHIS with breeder data for the past three flocks, then all three flocks can be used in estimating flock productivity.

One commenter recommended that, in calculating a broiler breeder producer's projected flock income for the purposes of compensation, the previous three-flock income average be divided by the capitalized number of hens, and that the resulting payment per unit be multiplied by the capitalized number of hens in the LPAI-affected flock.

We would find the method described by the commenter an acceptable method of calculating projected flock income, provided documentation is provided to support the numbers provided.

One commenter asked whether any payment would be due a producer of broiler breeder birds if the age of the LPAI-affected flock was older than the average age of previous flocks.

It is not clear to us what the commenter means. Payment will be calculated for contract growers based on the amount they received for previous flocks. Contract growers will be compensated at 100 percent of their eligible losses, minus any compensation they already received from the owner. One possible but unlikely scenario the commenter may be referring to would be based on the fact that producers of breeding eggs often receive payment during the production cycle. Thus, it is possible, if the depopulated flock had much greater productivity and lasted in production longer than previous flocks, for the payment already received from the owner to be greater than the average amount received from previous flocks. If such a situation occurred, then no additional compensation would be paid to the producer, because the producer would have already received payment equal to previous flocks.

Several commenters stated that, under the interim rule, compensation would not be paid for male birds in broiler breeder flocks associated with the Virginia disease situation. The commenters requested that payment be made for such male birds disposed of due to the disease.

The compensation plan for Virginia does take into account losses for male birds in broiler breeder flocks; however, that may not be immediately apparent. The per bird compensation value for breeder broilers is shown in Table 1 of that compensation plan. (The compensation plan can be accessed as an appendix to the full economic analysis of the interim rule at *http://www.aphis.usda.gov/ppd/rad/avianecon.html*.) An explanation of how to apply that value is set out in the compensation plan under the heading "Female Breeder Birds (in lay), Table Egg Birds (in lay)." *See* section XXVI, which states, "Per bird compensation values for broiler breeders include the cost of males, thus bird count should be of hens only." In other words, the value given the hens takes into account the value of male birds in the flock.

Growers Who Cease Business

One poultry owner stated that, in cases where a contract grower is ruled ineligible for payment because the grower did not adhere to the cleaning and disinfection requirements of the interim rule due to cessation of business, the poultry owner should nonetheless be compensated the total amount the owner is eligible to receive.

In such a case, the owner would receive compensation for the total eligible losses. However, based on the information available to us, all growers have chosen to clean and disinfect affected premises.

Requests for Additional Compensation

Several commenters requested that compensation be paid for income and production losses associated with delays in restocking a premises or neighboring premises after an LPAI test-positive flock had been depopulated and disposed of.

We are making no changes based on the comments. It has traditionally been the policy of the Department not to pay for "downtime."

Several commenters requested that compensation be paid for the cost of cleaning and disinfecting affected premises.

We are making no changes based on the comments. We consider the amounts that will be paid in accordance with the interim rule, as amended by this final rule, to be equitable compensation for losses incurred.

Several commenters requested that compensation be paid for reduced income to producers whose flocks tested negative, but who, as a precautionary measure due to detection of the disease in premises in the area, sent the flocks to slaughter earlier and at less value than they would have normally.

We recognize that some producers whose flocks were not affected chose to send their birds to slaughter due to detection of the disease in the area. However, APHIS, by law, may compensate only for birds and materials destroyed because they are considered to be infected with or exposed to the disease.

Payment for Poultry Linked to the Situation

One commenter requested confirmation that compensation would be paid for losses incurred from the destruction of poultry in States other than Virginia that were epidemiologically linked to the Virginia situation.

The commenter is correct in concluding that compensation will be paid for poultry in States other than Virginia that were destroyed because of an epidemiological link to the situation in Virginia.

Opposition to the Interim Rule

One commenter opposed the payment of indemnity under the interim rule, stating that losses due to disease are normal costs of doing business for any livestock industry.

We are making no changes based on this comment. In the event of a potentially serious disease situation, it is important to have a rapid, coordinated response by the public and private sectors in the early stages of the situation. The purpose of compensation is to remove possible sources of delay in eradicating the disease, such as grower and owner reluctance to report incidences of the diseases because of uncertainty about whether they will be compensated for losses.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule, with the changes discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule are under review by the Office of Management and Budget under OMB control number 0579–0208.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the **Federal Register**. The interim rule adopted as final by this rule was effective on December 9, 2002. This rule expands and increases the compensation to be paid for losses associated with an LPAI situation in Virginia and allows compensation to be paid for losses associated with an LPAI

situation in Texas. Immediate action is warranted to expedite compensation of persons who incurred eligible losses due to the disease situations.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

Below is the economic analysis of the changes in indemnity contained in this document with regard to LPAI in Virginia and Texas. Our November 4, 2002, interim rule included a summary of an initial regulatory flexibility analysis and cost-benefit analysis of the potential economic effects of the interim rule regarding the LPAI situation in Virginia. The full economic analysis for the interim rule, along with addendum for this final rule (the compensation plan for Texas), are available for review at *http://www.aphis.usda.gov/ppd/rad/avianecon.html*. This final economic analysis affirms the information contained in the economic analysis for the interim rule, with the changes discussed below.

As amended by this document, subject to available funding, the Department may pay up to 75 percent of eligible total losses associated with LPAI outbreaks in Virginia and Texas, with contract growers being compensated at 100 percent of their eligible losses and the remaining amount being paid to the owner of the flock. However, total payments may not exceed 75 percent of all eligible costs. Additionally, this document makes eligible for compensation those losses incurred because of eggs and semen that were destroyed because of low pathogenic avian influenza associated with the disease situations in Virginia and Texas. These actions are necessary to provide appropriate compensation for losses incurred due to this disease.

The interim rule provided for compensation of all eligible losses of contract growers and eligible losses of owners related to the LPAI situation in Virginia, up to 50 percent of the value of affected poultry. However, the interim rule, as does this final rule, provided that payments to owners would be net payments after payments to growers were subtracted. Changes in this final rule will have the effect of more fully compensating poultry owners for losses associated with the LPAI situations in Virginia and Texas.

Disease Situation in Virginia

The economic analysis accompanying the interim rule estimated a total of $50.99 million in compensation due to the LPAI situation in Virginia, with $37.1 million going to owners and $13.9 million going to growers, based on the assumption that compensation would be paid for 4.7 million birds depopulated. Fewer birds (3.7 million) were actually depopulated and eligible for compensation than had originally been predicted. Additionally, although the interim rule provided that total Federal payments would be reduced by any amounts paid by slaughtering establishments for birds sent to slaughter, the original compensation estimate did not assume that any such payments would occur. However, approximately $9 million was realized by the companies at controlled slaughter. Consequently, eligible losses were reduced by this amount and this reduction is reflected in the final rule.

The numbers in Table 1, below, reflect more up-to-date and accurate information on numbers of birds depopulated and average payout per bird. Total payments due to the disease situation in Virginia are expected to be close to $52.4 million—which includes compensation for destroyed eggs ($1.6 million) and disposal costs ($7.7 million)—with approximately $47.8 million of the total going to owners and approximately $4.6 million going to growers. This information was current as of January 28, 2003. No substantial changes were expected after this date, although a few small claims could still be presented for payment.

TABLE 1.—DISEASE SITUATION RELATED TO VIRGINIA

	Number of birds depopulated	Number of birds sent to controlled slaughter	Average per bird compensation value (based on average payout values to date)**	Total compensation
Chicken broilers (meat birds)	586,363	210,000	$1.12	$656,727
Chicken broiler breeders	533,715	0	12.00	6,404,580
Table egg layers	83,600	0	4.61	385,396
Turkey breeders*	171,990	140,300	58.70	22,836,456
Turkey meat birds	2,328,321	625,680	5.50	12,805,766
Total birds	3,703,989	975,980		43,088,924
Eggs destroyed				1,634,372
Disposal				7,656,597
Total				52,379,893

*The only birds sent to controlled slaughter for which compensation was paid were turkey breeders. For breeder birds, USDA pays the difference between slaughter price and estimated bird value. Compensation is not paid for turkey or chicken meat birds sent to controlled slaughter.
** Dollar amounts are based on a 75 percent compensation rate.

Under the final rule, growers continue to be compensated for 100 percent of their losses. However, the total dollar amount expected to be paid to growers is less than had originally been anticipated. A number of factors are responsible for the lower total payment to growers.

First, fewer grower farms were eligible for compensation. A significant number of meat birds went to controlled slaughter, plus fewer farms had contract growers than were initially assumed. In the original analysis, we assumed that every farm had a contract grower, but, in reality, this assumption holds true only for meat flocks. Breeder flocks, especially the more valuable turkey breeders, tend to be raised on company farms. Only 20 percent of turkey breeders were raised on grower farms.

Second, the average actual per-bird payout to growers was less than estimated. Actual per-bird payout to growers depends on the age of the flock in weeks and also historical payout records.

Third, a few contract growers refused, for religious reasons, to accept payments from the Federal Government.

Disease Situation in Texas

The LPAI situation in Texas differed from that in Virginia. Only two operations were affected in Texas. One was a single-site table egg producer; the other was a collection site for spent breeding hens obtained from commercial broiler breeders for subsequent sale to urban live bird markets. Birds owned by two poultry owners from the second operation were depopulated. Therefore, a total of three owners were directly affected in the Texas situation.

As shown in Table 2, below, 238,838 birds were destroyed from the table egg operation. Using a compensation rate of 75 percent, compensation for those birds will total close to $430,000. With the addition of payment for disposal costs at a 75 percent rate, payments for this operation will total approximately $443,000. From the operation with the spent birds, the first party had 5,770 birds depopulated. The second party had 1,429 birds depopulated. Neither party incurred disposal costs. Total compensation for the spent bird operation will be approximately $10,800. Total compensation due to the LPAI situation in Texas will be approximately $453,800.

TABLE 2.—DISEASE SITUATION IN TEXAS

	Number of birds depopulated	Number of birds sent to controlled slaughter	Average per bird compensation value*	Total compensation
First Operation:				
Table egg layers	238,838	0	$1.80	$429,658
Disposal				13,365
Second Operation:				
First party (Spent birds)	5,770	0	1.50	8,665
Second party (Spent birds)	1,429	0	1.50	2,144
Total				453,822

*Dollar amounts are based on a 75 percent compensation rate.

Regulatory Flexibility Analysis—Potential Effect on Small Entities

To the extent that the interim and final rules contribute to the elimination of LPAI in Virginia and Texas, all affected entities should benefit over the long term. In the short term, however, the economic effects will vary.

In Virginia, five or six poultry companies/integrators who owned the affected poultry and 197 contract grower farm/flocks in the Shenandoah Valley of Virginia will be affected by the November 2002 interim rule and this final rule. Three contract grower operations outside the Shenandoah Valley will also be affected. In addition, other entities not yet identified may be directly or indirectly affected by the disease event and/or the final rule. The poultry companies/integrators that own the birds are all large, vertically integrated concerns that do not meet the Small Business Administration (SBA) small-entity criteria. It is unclear at this time exactly how many contract growers will qualify for consideration as small entities. The SBA defines small poultry operations as those earning gross per-farm receipts of no more than $750,000 annually.[1]

In Texas, the two owners of spent birds are most likely small entities. It is unclear whether the table egg producer is a small entity. In any case, all three parties will benefit from the compensation payments provided by this rule.

[1] Small Business Administration, *http://www.SBA.gov/size*. This includes small broiler operations (112320), small turkey operations (112330), small hatchery operations (112340), and other small poultry operations (112390).

List of Subjects in 9 CFR Part 53

Animal diseases, Indemnity payments, Livestock, Poultry and poultry products.

■ Accordingly, the interim rule amending 9 CFR part 53 that was published at 67 FR 67089–67096 on November 4, 2002, is adopted as a final rule with the following changes:

PART 53—FOOT-AND-MOUTH DISEASE, PLEUROPNEUMONIA, RINDERPEST, AND CERTAIN OTHER COMMUNICABLE DISEASES OF LIVESTOCK OR POULTRY

■ 1. The authority citation for part 53 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 2. In § 53.4, paragraphs (a) and (b) are revised to read as follows:

§ 53.4 Destruction of animals.

(a) Except as provided in paragraph (b) of this section, animals infected with or exposed to disease shall be killed promptly after appraisal and disposed of by burial or burning, unless otherwise specifically provided by the Administrator, at his or her discretion. In the case of animals depopulated due to infectious salmon anemia, salvageable fish may be sold for rendering, processing, or any other purpose approved by the Administrator. In the case of poultry depopulated because of low pathogenic avian influenza related to the 2002 disease situations in Virginia and Texas associated with the H5 or H7 virus, poultry may be slaughtered and sold. The proceeds gained from the sale of the fish or poultry will be subtracted from any payment from APHIS for which the producer or owner is eligible under § 53.2(b) or § 53.11.

(b) In the case of low pathogenic avian influenza related to the 2002 disease situations in Virginia and Texas associated with the H5 or H7 virus, the value of poultry depopulated because of the disease may be calculated following destruction and disposal of the poultry, based on the number, type, and age of the animals destroyed.

* * * * *

■ 3. Section 53.7 is revised to read as follows:

§ 53.7 Disinfection of premises, conveyances, and materials.

All premises, including barns, corrals, stockyards and pens, and all cars, vessels, aircraft, and other conveyances, and the materials thereon, shall be cleaned and disinfected under supervision of an APHIS employee whenever necessary for the control and eradication of disease. Expenses incurred in connection with such cleaning and disinfection shall be shared according to the agreement

reached under § 53.2 with the State in which the work is done. In the case of low pathogenic avian influenza related to the 2002 disease situations in Virginia and Texas associated with the H5 or H7 virus, premises may not be restocked with poultry until at least 7 days following such cleaning and disinfection, unless the Administrator determines that a shorter or longer period of time is adequate or necessary to protect new poultry against infection.

■ 4. In § 53.8, paragraphs (b) and (c) are revised to read as follows:

§ 53.8 Presentation of claims.

* * * * *

(b) In the case of claims made under § 53.11, claims for compensation for losses from poultry, eggs, and poultry semen destroyed or to be destroyed must be presented to APHIS, through the inspector in charge, on a form approved by the Administrator. The claim must specify the number, type, and age of the poultry; the number and type of eggs; and the type and amount of semen, as applicable.

(c) To be considered by the Department, claims made under § 53.11 must be submitted to APHIS within 90 days after December 9, 2002, or the destruction of poultry, whichever is later, except that claims made for eggs or poultry semen, and claims made for other eligible losses associated with the disease situation in Texas, must be submitted to APHIS within 90 days after July 18, 2003 or the destruction of the eggs, semen, or poultry, whichever is later.

* * * * *

■ 5. Section 53.11 is amended by revising the introductory text and paragraph (b) to read as follows:

§ 53.11 Payments arising from low pathogenic avian influenza; conditions for payment.

In the case of low pathogenic avian influenza related to the 2002 disease situations in Virginia and Texas associated with the H5 or H7 virus, the Administrator may pay claims, subject to available funding, as follows:

* * * * *

(b) *For owners.* The Administrator, in accordance with § 53.4, may pay an owner up to 75 percent of the value of the poultry, eggs, and semen destroyed plus 75 percent of the costs of destruction and disposal of the poultry, eggs, and semen, in accordance with the LPAI compensation plan, minus the amount paid in accordance with paragraph (a) of this section to the contract grower of the poultry.

* * * * *

Done in Washington, DC, this 14th day of July, 2003.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 03–18253 Filed 7–17–03; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AH20

List of Approved Spent Fuel Storage Casks: NAC–MPC Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations revising the NAC International, Inc., Multipurpose Canister cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 3 to Certificate of Compliance (CoC) Number 1025. This amendment incorporates changes in support of the Yankee Nuclear Power Station (Yankee Rowe) fuel loading campaign and makes corrections to the Connecticut Yankee technical specifications. Specifically, the amendment incorporates fuel enrichment tolerances; incorporates fuel assemblies with up to 20 damaged fuel rods, recaged assemblies, the Yankee Rowe damaged fuel can, and assembly weights up to 432 kilograms (kg) [950 pounds (lb)]; revises the average surface dose rate limits for the concrete cask; incorporates administrative changes in the American Society of Mechanical Engineers (ASME) Code Alternatives; corrects the Connecticut Yankee tables for fuel assembly limits and intact fuel assembly characteristics; and incorporates editorial and administrative changes in the CoC.

DATES: The final rule is effective October 1, 2003, unless significant adverse comments are received by August 18, 2003. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH20) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public, in their entirety, on the NRC rulemaking website. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking website at *http://ruleforum.llnl.gov*. Address questions about our rulemaking website to Carol Gallagher (301) 415–5905; email *cag@nrc.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays (telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking website at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*. An electronic copy of the proposed CoC and Technical Specifications (TS) and the preliminary safety evaluation report (SER) can be found under ADAMS Accession Nos. ML031330790, ML031340571, and ML031330792, respectively.

CoC No. 1025, the revised TS, the underlying SER for Amendment No. 3, and the Environmental Assessment, are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, email *jmm2@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, telephone (301) 415–6219, e-mail *jmm2@nrc.gov*, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that "[t]he Secretary (of the Department of Energy (DOE)) shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the (Nuclear Regulatory) Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the NWPA states, in part, that "[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor."

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR part 72 entitled, "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181; July 18, 1990). This rule also established a new subpart L within 10 CFR part 72, entitled "Approval of Spent Fuel Storage Casks" containing procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on March 9, 2000 (65 FR 12444), that approved the NAC-Multipurpose Canister (NAC–MPC) cask design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance Number (CoC No.) 1025.

Discussion

On April 18, 2002, and as supplemented May 15, 2002, July 17, 2002, October 3, 2002, and January 17, 2003, NAC International, Inc. (NAC) submitted an application to the NRC to amend CoC No. 1025 to incorporate changes in support of the Yankee Nuclear Power Station (Yankee Rowe) fuel loading campaign and make corrections to the Connecticut Yankee TS. The amendment specifically incorporates fuel enrichment tolerances, 432-kg (950-lb) fuel assemblies, damaged fuel, damaged fuel cans, and recaged fuel for Yankee Rowe. For Connecticut Yankee, the amendment corrects the tables for fuel assembly limits and intact fuel assembly characteristics. The amendment also incorporates editorial and administrative changes in the CoC.

No other changes to the NAC–MPC cask system design were requested in this application. The NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that an acceptable safety margin is maintained. In addition, the NRC staff has determined that there is still reasonable assurance that public health and safety and the environment will be adequately protected.

This direct final rule revises the NAC–MPC cask design listing in § 72.214 by adding Amendment No. 3 to CoC No. 1025. The amended TS are identified in the NRC staff's SER for Amendment No. 3.

The amended NAC–MPC cask system, when used in accordance with the conditions specified in the CoC, the TS, and NRC regulations, will meet the requirements of part 72; thus, adequate protection of public health and safety will continue to be ensured.

Discussion of Amendments by Section

Section 72.214 List of Approved Spent Fuel Storage Casks

Certificate No. 1025 is revised by adding the effective date of Amendment No. 3.

Procedural Background

This rule is limited to the changes contained in Amendment No. 3 to CoC No. 1025 and does not include other aspects of the NAC–MPC cask system design. The NRC is using the "direct final rule procedure" to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on October 1, 2003. However, if the NRC receives significant adverse comments by August 18, 2003, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action. However, if the NRC receives significant adverse comments by August 18, 2003, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC would revise the NAC–MPC cask system design listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this

rule is classified as Compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA) or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled "Plain Language in Government Writing," directed that the Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in subpart A of 10 CFR part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule would amend the CoC for the NAC–MPC cask system within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. The amendment will modify the present cask system design to incorporate changes in support of the Yankee Nuclear Power Station (Yankee Rowe) fuel loading campaign and make corrections to the Connecticut Yankee technical specifications. Specifically, the amendment incorporates fuel enrichment tolerances; incorporates fuel assemblies with up to 20 damaged fuel rods, recaged assemblies, the Yankee Rowe damaged fuel can, and assembly weights up to 432 kg (950 lb); revises the average surface dose rate limits for the concrete cask; incorporates administrative changes in the ASME Code Alternatives; corrects the Connecticut Yankee tables for fuel assembly limits and intact fuel assembly characteristics; and incorporates editorial and administrative changes to the CoC. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the environmental assessment and finding of no significant impact are available from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, email *jmm2@nrc.gov*.

Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On March 9, 2000 (65 FR 12444), the NRC issued an amendment to part 72 that approved the NAC–MPC cask design by adding it to the list of NRC-approved cask designs in § 72.214. On April 18, 2002, and as supplemented May 15, 2002, July 17, 2002, October 3, 2002, and January 17, 2003, NAC International, Inc., submitted an application to the NRC to amend CoC No. 1025 to incorporate changes in support of the Yankee Rowe fuel loading campaign and make corrections to the Connecticut Yankee TS. Specifically, the amendment incorporates fuel enrichment tolerances; incorporates fuel assemblies with up to 20 damaged fuel rods, recaged assemblies, the Yankee Rowe damaged fuel can, and assembly weights up to 432 kg (950 lb); revises the average surface dose rate limits for the concrete cask; incorporates administrative changes in the ASME Code Alternatives; corrects the Connecticut Yankee tables for fuel assembly limits and intact fuel assembly characteristics; and incorporates editorial and administrative changes in the CoC.

The alternative to this action is to withhold approval of this amended cask system design and issue an exemption to each general license. This alternative would cost both the NRC and the utilities more time and money because each utility would have to pursue an exemption.

Approval of the direct final rule will eliminate this problem and is consistent with previous NRC actions. Further, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and NAC International, Inc. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects In 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OFSPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

■ 1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C.10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance 1025 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1025.

Initial Certificate Effective Date: April 10, 2000.

Amendment Number 1 Effective Date: November 13, 2001.

Amendment Number 2 Effective Date: May 29, 2002.

Amendment Number 3 Effective Date: October 1, 2003.

SAR Submitted by: NAC International, Inc.

SAR Title: Final Safety Analysis Report for the NAC-Multipurpose Canister System (NAC–MPC System).

Docket Number: 72–1025.

Certificate Expiration Date: April 10, 2020.

Model Number: NAC–MPC.

* * * * *

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 7th day of July, 2003.

William D. Travers,

Executive Director for Operations.

[FR Doc. 03–18260 Filed 7–17–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–395–AD; Amendment 39–13228; AD 2003–14–09]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that currently requires repetitive detailed inspections to detect cracked, corroded, or stained collar fittings on both inboard trailing edge flaps; and follow-on corrective actions, if necessary. This amendment expands the applicability in the existing AD, and adds repetitive inspections for discrepancies of the collar fittings, torque tube, and splined bushings on both inboard trailing edge flaps; and follow-on and corrective actions, if necessary. The actions specified by this AD are intended to prevent failure of the collar fittings, which could result in separation of the inboard trailing edge flap and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective August 22, 2003.

The incorporation by reference of Boeing Alert Service Bulletin 767–57A0066, Revision 3, including Appendices A and B, dated December 19, 2001, is approved by the Director of the Federal Register as of August 22, 2003.

The incorporation by reference of Boeing Alert Service Bulletin 767–57A0066, Revision 1, dated August 6, 1998, as listed in the regulations, was approved previously by the Director of the Federal Register as of November 12, 1998 (63 FR 57577, October 28, 1998).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6441; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–22–12, amendment 39–10859 (63 FR 57577, October 28, 1998), which is applicable to certain Boeing Model 767 series airplanes, was published in the **Federal Register** on January 3, 2003 (68 FR 324). The action proposed to continue to require repetitive detailed inspections to detect cracked, corroded, or stained collar fittings on both inboard trailing edge flaps; and follow-on corrective actions, if necessary. The new action proposed to expand the applicability in the existing AD, and would add repetitive inspections for discrepancies of the collar fittings, torque tube, and splined bushings on both inboard trailing edge flaps; and follow-on and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received. One commenter concurs with the contents of the proposed AD.

Request Credit for Previously Accomplished Inspections

One commenter asks for credit for accomplishment of the inspections required by paragraphs (c) and (f) of the proposed AD before the effective date of the AD. The commenter states that the information specified in paragraph (f) provides instructions for operators that have done paragraph (c) for an initial inspection and follow-on actions if the corrosion inhibiting compound (CIC) Titanine JC5A has been used, or if the type of CIC that was used is unknown. The commenter states that there are no guidelines for inspection of airplanes on which BMS 3–27 CIC was used. The commenter adds that airplanes on which the inspections were done in accordance with Part 3 of the referenced service bulletin should meet the inspection requirements, provided that BMS 3–27 CIC was used and the repetitive inspections are being done in lieu of the terminating action.

We agree with the commenter for the reasons provided. We have added a new paragraph (g) to this final rule (and reordered subsequent paragraphs accordingly) to give credit for the inspections required by paragraphs (c) and (f) of the final rule done before the effective date of the AD, under the conditions set forth by the commenter.

Request To Change Paragraph (a)(2)

One commenter asks that paragraph (a)(2) of the proposed AD be changed to add the option of installing a serviceable collar fitting. The commenter states that a serviceable collar fitting is crack- and corrosion-free, and provides the same level of safety as a new collar fitting.

We agree with the commenter as allowing the option of installing a serviceable collar fitting to paragraph (a)(2) of this final rule would be a relieving action for operators. Therefore, paragraph (a)(2) of the final rule has been changed accordingly.

Request To Clarify or Remove Paragraph (f)

One commenter asks that paragraph (f) of the proposed AD be changed for clarification, or removed from the proposed AD. The commenter states that it is not clear which "inspections" paragraph (f) is referencing, and the commenter reiterates the contents of that paragraph. The commenter does not understand what the inspection required by paragraph (a) of the proposed AD is for, or why Revision 2 of the referenced service bulletin is singled out. Nor does the commenter understand what the most recent inspection is. The commenter asks if the inspection specified is the spline or the collar fitting inspection. The commenter adds that if the inspection is the spline inspection, it will cause an undue burden on the operator because 22 airplanes will be required to have their flaps removed within 90 days.

The same commenter recommends that paragraph (f) be removed from the proposed AD because it appears to be applicable to any airplane on which paragraph (c) of the proposed AD has not been previously complied with, and paragraph (c) requires the spline inspection. The commenter adds that, until the spline inspection is done, the 120-day collar fitting inspections are being done and any discrepancies will be found before failure occurs.

We agree that paragraph (f) of the proposed AD needs clarification; however, we do not agree that it should be removed. We have rewritten paragraph (f) of the final rule for clarity and defined the type of inspection required. Revision 2 of the service bulletin is "singled out" because it recommended using CIC Titanine JC5A, which does not provide adequate corrosion protection for the joints specified, and Revision 3 recommends refinishing those joints with CIC BMS 3–27 or BMS 3–38, which does provide adequate corrosion protection. The definition of "the most recent inspection," as specified in paragraph (f) of the proposed AD, is the last spline inspection completed as of the effective date of the AD. In addition, we have added sub-paragraphs (f)(1) and (f)(2) to this final rule to add an optional inspection, which would extend the compliance time for the current inspection to 6 years and adds the option of doing either the Part 1 (which is not as extensive as Part 3) or the Part 3 inspection within 3 years after the most recent inspection done in accordance with Revision 2 of the service bulletin, or within 90 days after the effective date of this AD. This change matches the compliance time recommended in Revision 3 of the referenced service bulletin, and also alleviates any undue burden to operators caused by the compliance time specified in the proposed AD.

Request To Change Cost Impact

One commenter estimates the tasks generated by the inspections specified in the proposed AD would require 128 work hours per airplane at an overall cost of $985,600. The commenter states that the proposed AD specifies 2 work hours for the current inspections and 2 work hours for the new inspections. The commenter notes that these estimates are substantially lower than the actual cost impact. The commenter also states that there is no cost specified for the spline rework or replacement.

We agree that access to the area under the inboard trailing edge flaps is not a task normally accomplished during routine maintenance, as the flaps are never removed during such maintenance, so the work hours required for access and close up should be added. We have changed the work hours for the spline inspection specified in the Cost Impact section in this final rule from 2 to 127 work hours (we estimate an additional 125 work hours). We also have reduced the number of airplanes specified in this section as it has changed since issuance of the proposed AD. We do not agree that the work hours for the spline rework or replacement should be added to the final rule as this is an on-condition action that would be done only if discrepancies are found. No change to the final rule is necessary in this regard.

Request for Editorial Changes

One commenter asks for the following editorial changes to the proposed AD:

- Change the service bulletin reference in paragraph (a)(3) of the proposed AD from "Part 4" to "Figure 4." The commenter states that Part 4 provides spline rework instructions, and Figure 4 provides instructions for the external corrosion removal for the collar fitting.

We agree with the commenter, as we inadvertently referenced "Part 4" instead of "Figure 4" in paragraph (a)(3) of the proposed AD. We have changed paragraph (a)(3) of this final rule accordingly.

- Change paragraph (a)(4)(ii) of the proposed AD to reference Part 3 of the service bulletin as follows "* * * before further flight, repair the corrosion in accordance with Part 3 and Part 4 of the Accomplishment Instructions of Revision 3 of the service bulletin * * *" The commenter states that Part 3 provides procedures for spline component removal and an inspection required before accomplishing the rework in Part 4 of the service bulletin.

We agree with the commenter that paragraph (a)(4)(ii) of the proposed AD, which would require accomplishment of Part 2 and repair of any corrosion in accordance with Part 4, should be clarified. Part 2 of the service bulletin specifies doing Part 3 and Part 4 if corrosion of the collar fittings and torque tube is found. We have changed paragraph (a)(4)(ii) of this final rule accordingly.

- Change paragraph (d) of the proposed AD to add, "* * * refinish and reassemble the parts in accordance with the service bulletin."

We agree with the commenter that paragraph (d) of the proposed AD should be changed. We have changed paragraph (d) of this final rule, for clarification and consistency, to state, "* * * refinish and reassemble the parts with liberal coatings of corrosion-inhibiting compound (CIC) BMS 3–27 or BMS 3–38, in accordance with the service bulletin."

- Change paragraph (h) of the proposed AD to explicitly specify line numbers 704, 719, and 720, and change the end of the last sentence, for clarification, to read, at the time specified in paragraph (g) of this AD." The commenter states that this change is necessary for clarification of the applicability and compliance time specified in this paragraph. The commenter notes that paragraph (h) of the proposed AD is applicable only to those three airplanes which were assembled with BMS 3–27, not the MIL–G–23827 grease, after the proposed AD was issued. The commenter adds that without this change operators may be confused as to the applicability and the exact compliance time.

We agree with the commenter that paragraph (i) of the final rule (paragraph (h) of the proposed AD) should be changed, for the reasons specified. Paragraph (i) of this final rule has been changed to specify line numbers 704, 719, and 720, and to add, "at the time specified in paragraph (h) of this AD" (paragraph (g) of the proposed AD) at the end of the last sentence, for clarity.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 691 airplanes of the affected design in the worldwide fleet. The FAA estimates that 293 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 98–22–12 take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be $120 per airplane, per inspection cycle.

The new inspections and refinishing that are required by this AD action will take approximately 127 work hours (including access and close up) per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspections and refinishing required by this AD on U.S. operators is estimated to be $2,232,660, or $7,620 per airplane, per cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–10859 (63 FR 57577, October 28, 1998), and by adding a new airworthiness directive (AD), amendment 39–13228, to read as follows:

2003–14–09 Boeing: Amendment 39–13228. Docket 2001 NM–395–AD. Supersedes AD 98–22–12, Amendment 39–10859.

Applicability: Model 767 series airplanes, line numbers 1 through 749 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (k)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the collar fittings on the inboard trailing edge flaps, which could result in separation of the flap and consequent reduced controllability of the airplane, accomplish the following:

Restatement of Requirements of AD 98–22–12

Detailed Inspections/Corrective Actions

(a) For airplanes having line numbers 1 through 721 inclusive, except as provided by paragraphs (c) and (e) of this AD: Within 8 years since the date of manufacture of the airplane, or within 90 days after November 12, 1998 (the effective date of AD 98–22–12, amendment 39–10859), whichever occurs later: perform a detailed inspection of the collar fittings of both inboard trailing edge flaps to detect cracks, corrosion, or staining, in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–57A0066, Revision 1, dated August 6, 1998; or Revision 3, including Appendices A and B, dated December 19, 2001. As of the effective date of this AD, only Revision 3 shall be used.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by

the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If no cracked, corroded, or stained collar fitting is found, repeat the detailed inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 120 days until accomplishment of paragraph (d) or (e) of this AD, as applicable.

(2) If any cracked collar fitting is found, prior to further flight, install a new or serviceable collar fitting in accordance with Part 2 of the Accomplishment Instructions of the alert service bulletin.

(3) If any corroded collar fitting is found, prior to further flight, repair the corrosion in accordance with Figure 4 of the Accomplishment Instructions of Revision 3 of the service bulletin; or in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

(4) If any stained collar fitting is found, accomplish the requirements of paragraphs (a)(4)(i) and (a)(4)(ii) of this AD at the compliance times specified.

(i) Repeat the detailed inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 45 days; and

(ii) Within 18 months after finding the stained collar fitting, accomplish Part 2 of the Accomplishment Instructions of the alert service bulletin. If any corroded collar fitting is found, before further flight, repair the corrosion in accordance with Part 3 and Part 4 of the Accomplishment Instructions of Revision 3 of the service bulletin; or in accordance with a method approved by the Manager, Seattle ACO.

New Requirements of This AD

Detailed Inspection

(b) For airplane line number 723: Within 8 years since the date of manufacture of the airplane, or within 90 days after the effective date of this AD, whichever is later; do a detailed inspection of the collar fittings of both inboard trailing edge flaps to detect cracks, corrosion, or staining, as specified in paragraph (a) of this AD, in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–57A0066, Revision 3, including Appendices A and B, dated December 19, 2001. Then do the applicable actions specified in paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD.

Repetitive Inspections/Follow-On and Corrective Actions

(c) For airplanes having line numbers 1 through 703 inclusive, 705 through 715 inclusive, 717, 718, 721, and 723; and for the right-hand side of the airplane on line number 716: Within 10 years since the date of manufacture of the airplane, or within 4 years after the effective date of this AD, whichever is later; do a spline inspection of the collar fittings, torque tube, and splined bushings for discrepancies (including cracks, fractures, corrosion, corrosion pits, and light wear), in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–57A0066, Revision 3, including Appendices A and B, dated December 19, 2001. Accomplishment of the inspections required by this paragraph, before the initial inspection required by paragraph (a) of this AD, meets the inspection requirements in paragraph (a) of this AD.

(d) If no discrepancy is found during any inspection required by paragraph (c) or (h) of this AD, before further flight, refinish and reassemble the parts with liberal coatings of corrosion-inhibiting compound (CIC) BMS 3–27 or BMS 3–38, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–57A0066, Revision 3, including Appendices A and B, dated December 19, 2001; and repeat the inspection every 24,000 flight cycles or 12 years, whichever is first. Accomplishment of this paragraph terminates the repetitive inspections required by paragraph (a) of this AD.

(e) If any discrepancy is found during any inspection required by paragraph (c) or (h) of this AD, before further flight, do the actions specified in either paragraph (e)(1) or (e)(2) of this AD in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–57A0066, Revision 3, including Appendices A and B, dated December 19, 2001. Accomplishment of this paragraph terminates the repetitive inspections required by paragraph (a) of this AD.

(1) Replace the affected part with a new part, and reassemble the joint with liberal coatings of CIC BMS 3–27 or BMS 3–38, in accordance with the Accomplishment Instructions of the service bulletin. Repeat the applicable inspection specified in paragraph (c) or (h) of this AD every 24,000 flight cycles or 12 years, whichever is first.

(2) Rework the affected part, and reassemble the joint with liberal coatings of CIC BMS 3–27 or BMS 3–38, in accordance with the Accomplishment Instructions of the service bulletin. Repeat the applicable inspection specified in paragraph (c) or (h) of this AD, as specified in paragraph (e)(2)(i), (e)(2)(ii), or (e)(2)(iii) of this AD, as applicable.

(i) If five or fewer spline lengths are reworked per Figure 8 of the service bulletin, repeat the inspection every 24,000 flight cycles or 12 years, whichever is first.

(ii) If more than five spline lengths, but fewer than or equal to the maximum number of spline lengths allowed per Figure 8 of the service bulletin are reworked, repeat the inspection every 12,000 flight cycles or 6 years, whichever is first.

(iii) If more than the maximum number of spline lengths allowed per Figure 8 of the service bulletin are reworked, before further flight, replace the splined component and repeat the inspection every 24,000 flight cycles or 12 years, whichever is first.

Additional Inspections for Airplanes Inspected per Revision 2 of the Service Bulletin

(f) For any airplane on which the spline inspection was done in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–57A0066, Revision 2, dated February 18, 1999; and on which the CIC Titanine JC5A was used, or the maintenance records are inconclusive of the type of CIC used: Do the applicable inspection specified in Part 1 or Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–57A0066, Revision 3, including Appendices A and B, dated December 19, 2001; at the applicable time specified in paragraph (f)(1) or (f)(2) of this AD.

(1) Within 3 years after the last spline inspection done in accordance with Revision 2 of the service bulletin, or within 90 days after the effective date of this AD, whichever is later, do the applicable inspection specified in either Part 1 or Part 3 of Revision 3 of the service bulletin. Before further flight after accomplishment of the Part 1 inspection, do the applicable follow-on actions specified in paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD. Before further flight after accomplishment of the Part 3 inspection, do the applicable follow-on actions specified in paragraphs (d) and (e) of this AD.

(2) Within 6 years after the last spline inspection done in accordance with Revision 2 of the service bulletin, do the spline inspection specified in Part 3 of Revision 3 of the service bulletin, unless already accomplished per paragraph (f)(1) of this AD. Before further flight after accomplishment of the inspection, do the applicable follow-on actions specified in paragraphs (d) and (e) of this AD.

Credit for Previously Accomplished Inspections

(g) Accomplishment of the spline inspection of the collar fittings, torque tube, and splined bushings per Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–57A0066, Revision 2, dated February 18, 1999; and on which the maintenance records are conclusive that CIC Titanine JC5A was not used, is considered acceptable for the initial inspections required by paragraphs (c) and (h) of this AD.

Airplanes Assembled With BMS 3–27

(h) For airplanes having line numbers 704, 719, 720, 722, and 724 through 749 inclusive; and for the left-hand side of the airplane on line number 716: Within 12 years since the date of manufacture of the airplane, or within 24,000 flight cycles after the effective date of this AD, whichever is first; do a spline inspection of the collar fittings, torque tube, and splined bushings for discrepancies (including cracks, fractures, corrosion, corrosion pits, and light wear). Do the inspection in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–57A0066, Revision 3, including Appendices A and B, dated December 19, 2001; then, before further flight, do the applicable actions specified in either paragraph (d) or (e) of this AD.

(i) For airplanes having line numbers 704, 719, and 720: If the initial inspection required by paragraph (a) of this AD has not been done as of the effective date of this AD, operators may do the inspection required by paragraph (h) of this AD in lieu of the inspection required by paragraph (a) of this AD, at the time specified in paragraph (h) of this AD.

Use of Titanine JC5A Prohibited

(j) As of the effective date of this AD, no person shall use the CIC Titanine JC5A on the collar fittings, torque tube, and splined bushings on any airplane.

Alternative Methods of Compliance

(k)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 98–22–12, Amendment 39–10859, are not considered to be approved as alternative methods of compliance with this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(l) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(m) Unless otherwise provided in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 767–57A0066, Revision 1, dated August 6, 1998; or Boeing Alert Service Bulletin 767–57A0066, Revision 3, including Appendices A and B, dated December 19, 2001.

(1) The incorporation by reference of Boeing Alert Service Bulletin 767–57A0066, Revision 3, including Appendices A and B, dated December 19, 2001, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin 767–57A0066, Revision 1, dated August 6, 1998, as listed in the regulations, was approved previously by the Director of the Federal Register as of November 12, 1998 (63 FR 57577, October 28, 1998).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(n) This amendment becomes effective on August 22, 2003.

Issued in Renton, Washington, on July 7, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–17692 Filed 7–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–401–AD; Amendment 39–13233; AD 2003–14–14]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR72 series airplanes, that requires installing brackets and ramps under floor panels between frames 23C and 23D and installing wire bundles on the ramps. The actions specified by this AD are intended to prevent chafing damage to the electrical wire cables, which could lead to an electrical short circuit and potential for a fire under the floor panels. This action is intended to address the identified unsafe condition.

DATES: Effective August 22, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 22, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR72 series airplanes was published in the **Federal Register** on April 11, 2003 (68 FR 17755). That action proposed to require installing brackets and ramps under floor panels between frames 23C and 23D and installing wire bundles on the ramps.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Cost Impact

After the proposed AD was issued, we reviewed the figures we use to calculate the labor rate to do the required actions. To account for various inflationary costs in the airline industry, we find it appropriate to increase the labor rate used in these calculations from $60 to $65 per work hour. The economic impact information below has been revised to reflect this increase in the specified hourly labor rate.

The FAA estimates that 65 Aerospatiale Model ATR 72 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Required parts will cost approximately $1,844 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $145,210, or $2,234 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–14–14 Aerospatiale: Amendment 39–13233. Docket 2001–NM–401–AD.

Applicability: Model ATR72 series airplanes, certificated in any category; except those airplanes on which modification 5297 has been accomplished in production, or on which Avions de Transport Regional (ATR) Service Bulletin ATR72–92–1006, dated September 28, 2001, has been accomplished in service.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing damage to the electrical wire cables, which could lead to an electrical short circuit and potential for a fire under the floor panels, accomplish the following:

Installation

(a) Within 12 months after the effective date of this AD, perform the actions specified in paragraphs (a)(1) and (a)(2) of this AD, per the Accomplishment Instructions of Avions de Transport Regional (ATR) Service Bulletin ATR72–92–1006, dated September 28, 2001.

(1) Install brackets and ramps under floor panels between frames 23C and 23D.

(2) Install wire bundles on the ramps.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Avions de Transport Regional Service Bulletin ATR72–92–1006, dated September 28, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 2001–505–059(B), dated October 17, 2001.

Effective Date

(e) This amendment becomes effective on August 22, 2003.

Issued in Renton, Washington, on July 8, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–17774 Filed 7–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–280–AD; Amendment 39–13232; AD 2003–14–13]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42 Series Airplanes and Model ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42–200, –300, –320, and –500 series airplanes; and Model ATR72 series airplanes; that requires replacement of a certain Automatic Takeoff Power Control System (ATPCS) test selector switch with a different test selector switch. This action is necessary to prevent shorting of a contact in the ATPCS test selector switch due to abnormal wear of contact surfaces, which could result in dual engine power drop with associated loss of both alternating current wild and main hydraulic power during ground maneuvers, and consequent reduced controllability of the airplane and increased flightcrew workload. This action is intended to address the identified unsafe condition.

DATES: Effective August 22, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 22, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42–200, –300, –320, and –500 series airplanes; and Model ATR72 series airplanes; was published in the **Federal Register** on April 1, 2003 (68 FR 15682). That action proposed to require replacement of a certain Automatic Takeoff Power Control System (ATPCS) test selector switch with a different test selector switch.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Change to Labor Rate

After the proposed AD was issued, we reviewed the figures we use to calculate the labor rate to do the required actions. To account for various inflationary costs in the airline industry, we find it appropriate to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

Cost Impact

The FAA estimates that 133 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required replacement, and that the average labor rate is $65 per work hour. Required parts will cost approximately $536 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $105,868, or $796 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–14–13 Aerospatiale: Amendment 39–13232. Docket 2001–NM–280–AD.

Applicability: Model ATR42–200, –300, –320, and –500 series airplanes; and Model ATR72 series airplanes; certificated in any category; equipped with IPP JANCO Automatic Takeoff Power Control System (ATPCS) test selector switch, part number (P/N) ACE 0002; except those airplanes having received modification 5162 in production and on which no replacement of the ATPCS test selector switch has been performed afterwards.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent shorting of a contact in the ATPCS test selector switch due to abnormal wear of contact surfaces, which could result in dual engine power drop with associated loss of both alternating current wild and main hydraulic power during ground maneuvers, and consequent reduced controllability of the airplane and increased flightcrew workload, accomplish the following:

Replacement

(a) Within 5 years after the effective date of this AD, replace the IPP JANCO ATPCS test selector switch having P/N ACE 0002 on panel 114VU (FIN 22KF) with an IEC Electronique test selector switch having P/N 097–037–00, per Avions de Transport Regional Service Letter ATR42–61–5012 (for Model ATR42 series airplanes) or ATR72–61–6008 (for Model ATR72 series airplanes), both dated April 23, 2002; as applicable.

Parts Installation

(b) As of the effective date of this AD, no person shall install an IPP JANCO ATPCS test selector switch, P/N ACE 0002, on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who

may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Avions de Transport Regional Service Letter ATR42–61–5012, dated April 23, 2002; or Avions de Transport Regional Service Letter ATR72–61–6008, dated April 23, 2002; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directives 2001–214–084(B) and 2001–215–057(B), both dated May 30, 2001.

Effective Date

(f) This amendment becomes effective on August 22, 2003.

Issued in Renton, Washington, on July 8, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–17773 Filed 7–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–50–AD; Amendment 39–13236; AD 2003–14–17]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, that requires the installation of protective tape on the fire and overheat control unit located in the flight compartment. The actions specified by this AD are intended to prevent fluid contamination inside the fire and overheat control unit, which could result in a false fire alarm and consequent emergency landing. This action is intended to address the identified unsafe condition.

DATES: Effective August 22, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 22, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7512; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–2B19 series airplanes was published in the **Federal Register** on August 23, 2001 (66 FR 44326). That action proposed to require the installation of protective tape on the fire and overheat control unit located in the flight compartment.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

Request To Credit Work Done per Prior Service Bulletin Version

Bombardier Alert Service Bulletin A601R–26–017, Revision "A," dated September 8, 2000, was cited in the proposed AD as the appropriate source of service information for the proposed actions. One commenter, an operator, requests that the proposed AD be revised to consider accomplishment of the actions specified in the original issue of the service bulletin (dated August 4, 2000) to also be acceptable for compliance with the requirements of the AD. The commenter reports that all of its 97 airplanes have been modified in accordance with the original issue of the service bulletin.

The FAA agrees. Both the original issue and Revision "A" of the service bulletin specify installing protective tape on the external cover of the fire and overheat control unit located in the flight compartment; the original issue of the service bulletin included an action for specifically installing protective tape over the connectors. The connectors were later determined to be adequately sealed to prevent liquid ingress to the control unit; Revision "A" was then issued to remove the action of taping the connectors. However, taping the connectors does not degrade the level of safety, so airplanes modified with the additional protective tape would also be in full compliance with the requirements of this AD. The final rule has been revised to add new paragraph (b), which provides credit for actions done in accordance with the original issue of the service bulletin.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the proposed AD regarding that material.

Change to Airplane Identification

The identity of the affected airplanes has been changed in this final rule to more accurately reflect the listing on the type certificate data sheet for affected airplanes.

Cost Impact

The FAA estimates that 160 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $9,600, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–14–17 Bombardier, Inc. (Formerly Canadair): Amendment 39–13236. Docket 2001–NM–50–AD.

Applicability: Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, as listed in Bombardier Alert Service Bulletin A601R–26–017, Revision 'A,' dated September 8, 2000; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fluid contamination inside the fire and overheat control unit, which could result in a false fire alarm and consequent emergency landing, accomplish the following:

Installation of Protective Tape

(a) Within 250 flight hours or 30 days after the effective date of this AD, whichever occurs first, install protective tape on the external cover of the fire and overheat control unit located in the flight compartment per Bombardier Alert Service Bulletin A601R–26–017, Revision 'A,' dated September 8, 2000.

(b) Installation of protective tape on the external cover of the fire and overheat control in the flight compartment, done before the effective date of this AD per Bombardier Alert Service Bulletin A601R–26–017, dated August 4, 2000, is acceptable for compliance with the requirements of this AD.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, New York Aircraft Certification Office (ACO), FAA is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(d) Unless otherwise provided in this AD: The actions must be done in accordance with Bombardier Alert Service Bulletin A601R–26–017, Revision 'A,' dated September 8, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note: The subject of this AD is addressed in Canadian airworthiness directive CF–2000–35, dated December 14, 2000.

Effective Date

(e) This amendment becomes effective on August 22, 2003.

Issued in Renton, Washington, on July 9, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–17816 Filed 7–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–391–AD; Amendment 39–13241; AD 2003–14–22]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes. This AD requires modification of the No. 3 electrical equipment panel behind the avionics rack, and modification of the No. 2 propeller de-ice timer. This action is necessary to prevent incorrect altitude information transmitted by the Mode S transponder and simultaneous loss of the Traffic Alert and Collision Avoidance System (TCAS), and increasing the possibility of an air traffic conflict. This action is intended to address the identified unsafe condition.

DATES: Effective August 22, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 22, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Douglas G. Wagner, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7506; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes was published in the **Federal Register** on May 23, 2003 (68 FR 28177). That action proposed to require modification of the No. 3 electrical equipment panel behind the avionics rack, and modification of the No. 2 propeller de-ice timer.

Interested persons have been afforded an opportunity to participate in the making of this amendment. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Revised Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

We estimate that 197 airplanes of U.S. registry will be affected by this proposed AD.

It will take about 4 work hours per airplane to modify the No. 3 electrical equipment panel behind the avionics rack, at an average labor rate of $65 per work hour. The cost for required parts will be minimal. Based on these figures, the cost impact of this modification on U.S. operators is estimated to be $51,220, or $260 per airplane.

It will take about 2 work hours per airplane to modify the No. 2 propeller de-ice timer, at an average labor rate of $65 per work hour. The cost for required parts will be minimal. Based on these figures, the cost impact of this modification on U.S. operators is estimated to be $25,610, or $130 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–14–22 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–13241. Docket 2001–NM–391–AD.

Applicability: Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes; certificated in any category; having serial numbers 003 through 559 inclusive.

Compliance: Required as indicated, unless accomplished previously.

To prevent incorrect altitude information transmitted by the Mode S transponder and simultaneous loss of the Traffic Alert and Collision Avoidance System (TCAS), and increasing the possibility of an air traffic conflict, accomplish the following:

Modifications

(a) Within 6 months after the effective date of this AD, accomplish the actions specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Modify the No. 3 electrical equipment panel behind the avionics rack (including changing the spacer lengths for the installation of the propeller timer units and the main harness run, and securing the wiring and harness in close proximity by installing 5 tie wraps to avoid fouling conditions) per Bombardier Service Bulletin 8–34–200, dated June 26, 2001.

(2) Modify the No, 2 propeller de-ice timer (including replacing the existing spacers that support the timer with shorter spacers) per Bombardier Service Bulletin 8–30–36, dated July 13, 2000.

Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, New York Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(c) The actions must be done in accordance with Bombardier Service Bulletin 8–30–36, dated July 13, 2000; and Bombardier Service Bulletin 8–34–200, dated June 26, 2001; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note: The subject of this AD is addressed in Canadian airworthiness directive CF–2001–38, dated October 11, 2001.

Effective Date

(d) This amendment becomes effective on August 22, 2003.

Issued in Renton, Washington, on July 11, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–18083 Filed 7–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–205–AD; Amendment 39–13229; AD 2003–14–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767–200 and –300 series airplanes. This action requires modification of the wire bundles of the video control center (VCC) of the passenger address and entertainment system, and an operational test if necessary. This action is necessary to prevent chafing of the wire bundles of the VCC against the rudder and/or elevator control cables, which could result in arcing of the wires in the wire bundles and severing of the cables. Severed cables, if combined with an engine-out during takeoff, or a high crosswind during takeoff or landing, could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective August 4, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 4, 2003.

Comments for inclusion in the Rules Docket must be received on or before September 16, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–205–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–205–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Barbara Mudrovich, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6477; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: During post-delivery modifications of certain Boeing Model 767–200 and –300 series airplanes, the manufacturer found that the rudder cables and the First Officer's elevator control cables may come in contact with the video control center (VCC) wires, which could result in possible chafing and subsequent arcing of the wires in the wire bundles and severing of the cables. Severed cables, if combined with an engine-out during takeoff, or a high crosswind during takeoff or landing, could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

We have reviewed and approved the following Boeing alert service bulletins:

Service bulletin	Revision level	Date	Model
767–23A0147, including Appendix A	Original	April 6, 2000	767–300
767–23A0154	Original	March 15, 2001	767–300
767–23A0155, including Appendix A	Original	March 29, 2001	767–300
767–23A0156, including Appendix A	Original	April 19, 2001	767–200, –300
767–23A0157	Original	May 3, 2001	767–300

These service bulletins describe procedures for modification of the wire bundles of the VCC of the passenger address and entertainment system. The modification includes, but is not limited to, installation of a wiring shroud and associated hardware between the VCC master control unit wiring and the flight control cables; re-routing of the VCC wire bundles above the flight control pulley box; and replacement of existing clamps with new clamps; as applicable. Service bulletins 767–23A0154 and 767–23A0157 also describe procedures for an operational test after accomplishment of the modification. Accomplishment of the actions specified in the applicable service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design that may be registered in the United States at some time in the future, this AD is being issued to prevent chafing of the wire bundles of the VCC against the rudder and/or elevator control cables, which could result in arcing of the wires in the wire bundles and severing of the cables. Severed cables, if combined with an engine-out during takeoff, or a high crosswind during takeoff or landing, could result in reduced controllability of the airplane. This AD requires modification of the wire bundles of the VCC of the passenger address and entertainment system. The actions are required to be accomplished in accordance with the applicable service bulletin described previously, except as discussed below.

Difference Between the Service Bulletins and This AD

Although the service bulletins recommend accomplishing the specified actions at the earliest maintenance opportunity when manpower and materials are available, we have determined that such an imprecise compliance time would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the modification (2 work hours). In light of all of these factors, we find a 6-month compliance time for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD; however, this AD identifies the office authorized to approve alternative methods of compliance.

Revised Labor Rate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 2 work hours to accomplish the required modification, at an average labor rate of $65 per work hour. Parts cost would be between $64 and $915 per airplane. Based on these figures, the cost impact of the modification required by this AD would be between $194 and $1,045 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–205–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–14–10 Boeing: Amendment 39–13229. Docket 2002–NM–205–AD.

Applicability: This AD applies to the airplanes listed in Table 1 of this AD, certificated in any category:

TABLE 1.—APPLICABILITY

Model—	As listed in—
767–200, –300 series airplanes	Boeing Alert Service Bulletin 767–23A0156, dated April 19, 2001.
767–300 series airplanes	Boeing Alert Service Bulletins 767–23A0147, dated April 6, 2000; 767–23A0154, dated March 15, 2001; 767–23A0155, dated March 29, 2001; and 767–23A0157, dated May 3, 2001.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the wire bundles of the video control center (VCC) against the rudder and/or elevator control cables, accomplish the following:

Modification

(a) Within 6 months after the effective date of this AD: Modify the wire bundles of the VCC of the passenger address and entertainment system, and do an operational test if applicable, per the Accomplishment Instructions of the applicable Boeing alert service bulletin listed in Table 2 of this AD, as follows:

TABLE 2.—SERVICE BULLETINS

Model	Service bulletin	Revision level	Date
767–300	767–23A0147, including Appendix A	Original	April 6, 2000.
767–300	767–23A0154	Original	March 15, 2001.
767–300	767–23A0155, including Appendix A	Original	March 29, 2001.
767–200, –300	767–23A0156, including Appendix A	Original	April 300 19, 2001.
767–300	767–23A0157	Original	May 3, 2001.

Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(c) The actions shall be done in accordance with the applicable Boeing alert service bulletin listed in Table 3 of this AD, as follows:

TABLE 3.—SERVICE BULLETINS

Service bulletin	Date
767–23A0147, including Appendix A.	April 6, 2000.
767–23A0154	March 15, 2001.
767–23A0155, including Appendix A.	March 29, 2001.
767–23A0156, including Appendix A.	April 19, 2001.
767–23A0157	May 3, 2001.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(d) This amendment becomes effective on August 4, 2003.

Issued in Renton, Washington, on July 7, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–17693 Filed 7–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Parts 50 and 80

[Docket Number 010828220–3161–02]

RIN 0607–AA24

Amendments to Age Search Procedures

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of final rulemaking.

SUMMARY: The Bureau of the Census (Census Bureau) is issuing this final rule to clarify and revise the general information requirements pertaining to its Age Search Program. The Census Bureau is making these clarifications to ensure that there are no misunderstandings about the program requirements as a result of ambiguous language. The intent of the Census Bureau in taking these actions is to clarify and revise processing requirements and legal restrictions.

EFFECTIVE DATE: August 18, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Grice, Assistant Division Chief (Processing), National Processing Center, U.S. Census Bureau, 1201 East 10th Street, Room 247, Building 66, Jeffersonville, IN 47132, by telephone on (812) 218–3579, or by fax on (812) 218–3293.

SUPPLEMENTARY INFORMATION:

Background

The age and citizenship searching service is a self-supporting operation of the Census Bureau in accordance with Title 31, United States Code, Section 9701. Under this statute, all expenses incurred in the retrieval of personal information from decennial census records and the preparation of census transcripts are covered by fees paid by individuals who request this service. The Age Search census transcript provides proof of age to qualify individuals for social security or other retirements benefits, proof of citizenship to obtain passports, proof of family relationships for rights of inheritance, or to satisfy other situations where a birth certificate is required but not available. Census records also are considered a valuable tool for genealogical research. The 1910 through 2000 censuses in custody of the Census Bureau are confidential and protected from disclosure by Title 13, United States Code.

On September 17, 2001 (66 FR 48013), the Census Bureau published in the

Federal Register a notice of proposed rulemaking and request for comment on the subject. The Census Bureau did not receive any public comments.

Program Requirements

In order to clarify and update the general rules applying to the Age Search Program, the Census Bureau is making the following four amendments to Title 15, Code of Federal Regulations (CFR), parts 50 and 80:

- Amend Section 50.1 to change the time frame from 120 days to 90 days for submitting any required additional information after completing an initial, unsuccessful search. This change is consistent with current policy on the issue.
- Amend Section 50.5 to update the note following the chart on the fee structure. The Census Bureau has not had a fee increase since 1993.
- Amend Section 80.1 to clarify the procedures for releasing census information. This change is consistent with current policy on the issue.
- Amend Section 80.1 to reflect the current address.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published with the proposed rule. No comments were received regarding the economic impact of this rule. As a result, no final regulatory flexibility analysis was prepared.

Executive Orders

This rule has been determined to be not significant for purposes of Executive Order 12866. This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

Paperwork Reduction Act

This notice contains a collection of information requirements subject to the Paperwork Reduction Act. The Form BC–600, referenced in the amended language for section 80.1, has been cleared under OMB control number 0607–0117.

List of Subjects

15 CFR Part 50

Census data, Population census, Statistics.

15 CFR Part 80

Census data, Population census, Statistics.

■ For reasons set out in the preamble, 15 CFR parts 50 and 80 are amended as follows:

PART 50—SPECIAL SERVICES AND STUDIES BY THE BUREAU OF THE CENSUS

■ 1. The authority citation for 15 CFR part 50 continues to read as follows:

Authority: Sec. 3, 49 Stat. 293, as amended; and 15 U.S.C. 192a. Interprets or applies Sec. 1, 40 Stat. 1256, as amended; Sec. 1, 49 Stat. 292; Sec. 8, 60 Stat. 1013, as amended; 15 U.S.C. 192, 189a; and 13 U.S.C. 8.

■ 2. Amend § 50.1 by revising paragraph (d) to read as follows:

§ 50.1 General.

* * * * *

(d) If a search is unsuccessful and additional information for a further search is requested by the Census Bureau, such information must be received within 90 days of the request or the case will be considered closed. Additional information received after 90 days must be accompanied by a new fee and will be considered a new request.

■ 3. Amend § 50.5 by revising the following note on the chart to read as follows:

§ 50.5 Fee structure for age search and citizenship information.

* * * * *

Note.—The $10.00 for each full schedule requested is in addition to the $40.00 transcript fee.

PART 80—FURNISHING PERSONAL CENSUS DATA FROM CENSUS OF POPULATION SCHEDULES

■ 1. The authority citation for 15 CFR part 80 continues to read as follows:

Authority: Sec. 1, Pub. L. 83–1158, and 68 Stat. 1013 (13 U.S.C. 8).

■ 2. Amend § 80.1 by revising paragraphs (c) and (g) to read as follows:

§ 80.1 General requirements.

* * * * *

(c) Requests for information from decennial census of population records (herein "Census Information") should be made available on Form BC–600, which is available from offices at the Census Bureau in Suitland, Maryland 20233, and Jeffersonville, Indiana 47131; all county courthouses; Social Security Administration field offices; post offices; and Immigration and Naturalization Service offices. A letter request—without Form BC–600—will be accepted only if it contains the information necessary to complete a Form BC–600. No application will be processed without payment of the required fee as set forth in 15 CFR 50.5.

* * * * *

(g) Census information will not be furnished to another person unless the person to whom the information relates authorizes such release in the space provided on the Form BC–600.

Dated: July 14, 2003.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 03–18264 Filed 7–17–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 101

[CBP Dec. 03—08]

Expansion of the Port Limits of Portland, ME

AGENCY: Customs and Border Protection, Homeland Security.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations pertaining to the field organization of Customs by extending the geographical limits of the port of entry of Portland, Maine, to include the City of Auburn, Maine. This change is being made to provide better service to carriers, importers, and the general public.

EFFECTIVE DATE: August 18, 2003.

FOR FURTHER INFORMATION CONTACT: John P. Wagner, Office of Field Operations, (202) 927–3825.

SUPPLEMENTARY INFORMATION:

Background

A Notice of Proposed Rulemaking was published in the **Federal Register** (68 FR 1172) on January 9, 2003, which proposed to amend § 101.3(b)(1), Customs Regulations (19 CFR 101.3(b)(1)), to extend the geographical limits of the port of entry of Portland, Maine, to include the City of Auburn in order to provide better service to carriers, importers, and the general public. The proposal was made in order to include the City of Auburn within the port limits to facilitate the clearance of international cargo at the Auburn Intermodal Facility ("AIF"). AIF is a rail/truck intermodal facility with a high cube, doublestack intermodal terminal.

Analysis of Comments

Three comments were received in response to the proposal. All three comments strongly supported the inclusion of the City of Auburn in the port of Portland, Maine, for the purposes of international trade facilitation and of expanded economic development in the Auburn area.

According to the comments, the AIF will afford the Bureau of Customs and Border Protection (CBP) great flexibility in protecting our borders against terrorist activities when conducting examinations and clearance of cargo entering the United States. The expansion of the port of Portland will also help to eliminate needless truck traffic on the highway system by allowing examinations and clearance closest to the point of entry. Trucks will no longer need to travel further in bound to be examined. These benefits are in addition to the economic boost which is expected to occur as a result of the port expansion.

Conclusion

CBP believes that the expansion of the port of Portland, Maine, to include the City of Auburn is a positive step in the facilitation of the processing of international cargo. Accordingly, CBP has decided to proceed with the proposed expansion.

New Port Limits

The port limits of the port of entry of Portland, Maine, are expanded to include the City of Auburn. The territory included in the port of Portland is as follows:

Portland, Maine and the territory embracing the municipalities of Auburn, South Portland, Falmouth, and Cape Elizabeth, in the State of Maine, and Peak, Long, Cliff, Cushing and Diamond Islands, in the State of Maine.

Authority

This change is being made under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66 and 1624.

Regulatory Flexibility Act and Executive Order 12866

CBP establishes, expands and consolidates CBP ports of entry throughout the United States to accommodate the volume of CBP-related activity in various parts of the country. Although a notice was issued for public comment on this subject matter, because this document relates to agency management and organization, it is not subject to the notice and procedure requirements of 5 U.S.C. 553. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C.601 *et. seq.*). Agency organization matters such as this port expansion are not subject to Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies).

Amendment to the Regulations

■ For the reasons set forth above, 19 CFR part 101 of the Customs Regulations is amended as set forth below.

PART 101—GENERAL PROVISIONS

■ 1. The general authority citation for part 101 and the specific authority citation for § 101.3 continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 2, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1623, 1624, and 1646a. Sections 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b.

* * * * *

■ 2. In the list of ports in § 101.3(b)(1), under the state of Maine, the "Limits of port" column adjacent to "Portland" in the "Ports of entry" column is amended by removing the citation "E.O. 9297, Feb. 1, 1943 (8 FR 1479)" and by adding in its place "CBP Dec. 03–08".

Robert C. Bonner,

Commissioner, Customs and Border Protection.

Dated: July 14, 2003.

Tom Ridge,

Secretary, Department of Homeland Security.

[FR Doc. 03–18172 Filed 7–17–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Parts 101 and 122

[CBP Dec. 03–09]

Customs and Border Protection Field Organization; Fargo, ND

AGENCY: Customs and Border Protection, Homeland Security.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations pertaining to the field organization of Customs and Border Protection (CBP) by establishing a new port of entry at Fargo, North Dakota. The new port of entry includes Hector International Airport, located in the city of Fargo, Cass County, North Dakota, which is currently operated as a user-fee airport; and a portion of Clay County in Minnesota. This change will assist CBP in its continuing efforts to provide better service to carriers, importers, and the general public.

EFFECTIVE DATE: August 18, 2003.

FOR FURTHER INFORMATION CONTACT: Richard L. Balaban, Mission Support, Office of Field Operations, Bureau of Customs and Border Protection, (202) 927–0031.

SUPPLEMENTARY INFORMATION:

Background

As part of its continuing efforts to provide better service to carriers, importers, and the general public, on December 2, 2002, Customs (then under the Department of the Treasury) published a document in the **Federal Register** (67 FR 71510) that proposed to amend parts 101 and 122 of the Customs Regulations (19 CFR parts 101 and 122) to establish a port of entry at Fargo, North Dakota, to include Hector International Airport, located in the city of Fargo, Cass County, North Dakota, which is currently operated as a user-fee airport, and, accordingly, to remove Hector International Airport as a user-fee airport. As well as including Hector International Airport, the port limits of Fargo were also proposed to include a portion of Clay County in Minnesota. The proposed change of status for Hector International Airport from a user-fee airport to being included within the boundaries of a port of entry would subject the airport to the passenger processing fee provided for at 19 U.S.C. 58c(a)(5)(B).

The proposal to establish Fargo, North Dakota as a port of entry was based on Customs analysis of the following information:

1. Fargo is serviced by three modes of transportation:
   (a) rail (the Burlington Northern Santa Fe railroad);
   (b) air (at Hector International Airport, two passenger carriers (Northwest and United Express) and five courier-delivery carriers (Air Bourne Express, Corporate Express, DHL, FED EX, and UPS)); and
   (c) highway (two U.S. interstate highways: I–29 and I–94);
2. The Fargo, North Dakota area has a population of approximately 175,000, with the potential to increase even further;
3. Regarding the five actual or potential workload criteria:

(a) Hector International Airport had 2,911 international air passengers for FY 2001, an increase of 61% over FY 2000;

(b) Hector International Airport had 151 formal consumption entries for FY 2001, with no single company accounting for more than half of the projected entries; and

(c) Hector International Airport had 814 scheduled international aircraft arrivals for FY 2001, an increase of 65% over FY 2000.

Customs believed that significant benefits would be provided to the North Dakota business community by creating a port of entry at Fargo and that the cost of providing the services of one full-time and one part-time Customs official would be minimal to the Federal Government.

Conditional Status

Based on the information above and the level and pace of development in the Fargo area, Customs believed that there was sufficient justification for the establishment of Fargo, North Dakota, as a port of entry on a conditional basis.

In the Notice, Customs stated that if it is decided to create a port of entry at Fargo and to terminate Hector International Airport's designation as a user-fee airport, Customs will notify the airport of that determination in accordance with the provisions of 19 CFR 122.15(c). However, it was also noted that the proposal relied on potential, rather than actual, workload figures. Therefore, even if the proposed port of entry designation were adopted as a final rule, Customs would review the actual workload generated within the new port of entry in one year. If that review indicated that the actual workload was below the port of entry criteria established in T.D. 82–37, as revised by T.D. 86–14, procedures may be instituted to revoke the port of entry status. In such case, the airport could reapply to become a user-fee airport under the provisions of 19 U.S.C. 58b.

The public comment period for the proposed amendments closed January 31, 2003.

On March 1, 2003, the U.S. Customs Service was transferred from the Department of the Treasury to the Department of Homeland Security, and was redesignated as the Bureau of Customs and Border Protection (CBP).

Discussion of Comments

One comment was received that was favorable to the establishment of Fargo as a port of entry.

Comment

The commenter requested that, should Customs (now CBP) revoke the port of entry status of Fargo after the one-year conditional status period, Hector International Airport's status should automatically be reverted back to a user-fee airport. The commenter stated that it was concerned that there could be a lapse in Customs services if the reapplication language contained in the Notice was strictly followed. The commenter further stated that Customs and the airport authority could coordinate any transition procedures.

CBP Response

CBP concurs with this comment. Accordingly, the terms and conditions in the Memorandum of Agreement between CBP and the airport authority will provide for the procedure by which the airport may again be designated as a user fee airport, should its status as a port of entry be terminated.

Comment

The same commenter stated that the description of the proposed port of entry limits needed to be adjusted to include more of the Fargo-area community in North Dakota and less of the Clay County area in Minnesota. According to the commenter, the revised geographical limits for the new Fargo port of entry would more accurately reflect the area served by Fargo's processing facilities and Customs personnel. Accordingly, the commenter stated that the port of limit boundaries be established as follows:

Eastern boundary—The proposed Eastern boundary of the port of entry in Clay County, Minnesota, needs to be moved west from Clay County highway 11 to a north-south line represented by Clay County Road 78 south of U.S. 10 and Clay County Road 90 north of U.S. 10;

Southern boundary—The proposed Southern boundary of the port of entry in both North Dakota and Minnesota needs to be extended south from U.S. Interstate 94 to an east-west line that is in accordance with 64th Avenue South in Fargo, North Dakota; and

Western boundary—The proposed Western boundary of the port of entry in Cass County, North Dakota, needs to be extended west from U.S. Interstate 29 in Fargo to a north-south line represented by 25th Street south of the intersection of U.S. Interstate 29 and U.S. 10 and 26th Street north of the intersection of U.S. Interstate 29 and U.S. 10 in West Fargo.

CBP Response

CBP concurs with this comment. Accordingly, the description of the geographical limits of the port of entry is revised as stated by the commenter.

Conclusion

After further review and consideration of this matter, CBP has determined that a port of entry will be established at Fargo—with the geographical limits of the port of entry modified as discussed in this document—and that Hector International Airport, because it is within the limits of this port of entry, will no longer be designated as a user-fee airport. This document amends the Customs Regulations to reflect this determination. It is noted that the designation of Fargo as a port of entry is on a conditional basis for one year. If, after a year, it is determined that Fargo does not merit port of entry status, a new document will be prepared for the **Federal Register** removing Fargo's designation.

Limits of Port of Entry Limits

The description of the geographical limits of the Fargo port of entry is as follows:

In Cass County, North Dakota:

Northern boundary, Cass County highway 20,

Southern boundary, an east-west line in accordance with 64th Avenue South in Fargo, North Dakota, and

Western boundary, a north-south line represented by 25th Street south of the intersection of U.S. Interstate 29 and U.S. 10 and 26th Street north of the intersection of U.S. Interstate 29 and U.S. 10 in West Fargo.

In Clay County, Minnesota:

Northern boundary, Clay County highway 22.

Southern boundary, an east-west line in accordance with 64th Avenue South in Fargo, Cass County, North Dakota, and

Eastern boundary, a north-south line represented by Clay County Road 78 south of U.S. 10 and Clay County Road 90 north of U.S. 10.

Authority

This amendment is promulgated pursuant to Customs authority under 5 U.S.C. 301 and 19 U.S.C. 2, 66, and 1624.

Inapplicability of the Regulatory Flexibility Act and Executive Order 12866

Although Customs solicited public comments, no notice and public procedure was required pursuant to 5 U.S.C. 553 because this matter relates to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, matters involving agency management and organization are not subject to Executive Order 12866.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Office of Regulations and Rulings, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Customs ports of entry, Exports, Imports, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Shipments, User fee facilities.

119 CFR Part 122

Administrative practice and procedure, Air carriers, Aircraft, Airports, Air transportation, Commercial aircraft, Customs duties and inspection, Freight, Imports, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

Amendments to the Regulations

■ For the reasons stated above, parts 101 and 122 of the Customs Regulations (19 CFR parts 101 and 122) are amended as set forth below:

PART 101—GENERAL PROVISIONS

■ 1. The general authority citation for part 101 and specific authority citation for § 101.3 continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a; Sections 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

* * * * *

■ 2. In § 101.3, the list of ports in paragraph (b)(1) is amended by adding, in alphabetical order, under the State of North Dakota, "Fargo" in the "Ports of entry" column and "CBP Dec. 03–" in the adjacent "Limits of port" column.

PART 122—AIR COMMERCE REGULATIONS

■ 3. The general authority citation for part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a;

* * * * *

■ 4. In § 122.15, the list of user fee airports in paragraph (b) is amended by removing "Fargo, North Dakota" in the column headed "Location" and, on the same line, by removing "Hector International Airport" in the column headed "Name".

Dated: July 14, 2003.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

Tom Ridge,

Secretary, Department of Homeland Security.

[FR Doc. 03–18174 Filed 7–17–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Change of Sponsor; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of June 10, 2003 (68 FR 34533). The document amended the animal drug regulations to reflect a change of sponsor for two approved new animal drug applications (NADAs) from Anthony Products Co. to Cross Vetpharm Group Ltd. The document was published with an error. This document corrects that error.

EFFECTIVE DATE: July 18, 2003.

FOR FURTHER INFORMATION CONTACT: Joyce A. Strong, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In the FR Doc. 03–14547, appearing on page 34533 in the **Federal Register** of Tuesday, June 10, 2003, the following correction is made:

§ 522.1696b [Corrected]

■ 1. On page 34534, in the second column, the last line in the amendatory language for § 522.1696b *Penicillin G procaine aqueous suspension* is corrected to read "010515, 053501, 059130, and 61623".

Dated: July 7, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–18161 Filed 7–17–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 556 and 558

New Animal Drugs; Laidlomycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Alpharma Inc. The supplemental NADA provides for the establishment of a tolerance for residues of laidlomycin in cattle liver. The previously established acceptable daily intake (ADI) for total residues of laidlomycin is also being codified.

DATES: This rule is effective July 18, 2003.

FOR FURTHER INFORMATION CONTACT: Eric S. Dubbin, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0232, e-mail: *edubbin@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Alpharma Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed a supplement to NADA 141–025 for use of CATTLYST (laidlomycin propionate potassium) Type A medicated articles used to formulate Type C medicated feeds for cattle. The supplemental NADA provides for the establishment of a tolerance for residues of laidlomycin in cattle livers. FDA is also taking this opportunity to codify the previously established ADI for total residues of laidlomycin. The supplemental NADA is approved as of May 12, 2003, and parts 556 and 558 (21 CFR parts 556 and 558) are amended by adding new § 556.346 and by revising § 558.305. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or

cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 556

Animal drugs, Foods.

21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 556 and 558 are amended as follows:

PART 556–TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

■ 1. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

■ 2. Section 556.346 is added to read as follows:

§ 556.346 Laidlomycin.

(a) *Acceptable daily intake (ADI).* The ADI for total residues of laidlomycin is 7.5 micrograms per kilogram of body weight per day.

(b) *Tolerance.* The tolerance for parent laidlomycin (the marker residue) in the liver (the target tissue) of cattle is 0.2 part per million (ppm).

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 4. Section 558.305 is amended by redesignating paragraphs (c) and (d) as paragraphs (d) and (e); and by adding new paragraph (c) to read as follows:

§ 558.305 Laidlomycin.

* * * * *

(c) *Tolerances.* See § 556.346 of this chapter.

* * * * *

Dated: July 7, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–18162 Filed 7–17–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9080]

RIN 1545–BC47

Reduction of Tax Attributes Due to Discharge of Indebtedness

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations relating to the reduction of tax attributes under sections 108 and 1017 of the Internal Revenue Code. These temporary regulations affect taxpayers that exclude discharge of indebtedness income from gross income under section 108. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These temporary regulations are effective July 17, 2003.

Applicability Date: These temporary regulations apply to discharges of indebtedness occurring after July 17, 2003..

FOR FURTHER INFORMATION CONTACT: Theresa M. Kolish (202) 622–7930 of the Office of the Associate Chief Counsel (Corporate) (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The Debt Discharge Rules

Pursuant to section 61(a)(12), gross income includes income from the discharge of indebtedness (COD income). Section 108(a)(1), which reflects the amendments enacted in the Bankruptcy Tax Act of 1980, Public Law 96–589, section 2, 94 Stat. 3389 (1980) (1980–2 C.B. 607), however, provides that, where the discharge occurs in a title 11 case, where the taxpayer is insolvent, or where the indebtedness is "qualified farm indebtedness" or "qualified real property business indebtedness," gross income does not include any amount that otherwise would be includible in gross income by reason of that discharge (in whole or in part) of the indebtedness of the taxpayer.

Although section 108(a) excludes COD income from gross income under those circumstances, section 108(b) requires the reduction of certain tax attributes in an amount that reflects the amount excluded from gross income, thereby generally deferring, rather than permanently eliminating, the inclusion of COD income. Section 108(b)(2) requires the reduction of the following tax attributes of the taxpayer in the following order: (A) Net operating losses; (B) general business credits; (C) minimum tax credits; (D) capital loss carryovers; (E) adjusted basis of property; (F) passive activity losses and credit carryovers; and (G) foreign tax credit carryovers. Section 108(b)(4)(A) provides that the reductions are made after the determination of the tax imposed for the taxable year of the discharge. Section 108(b)(4)(B) provides that the reductions of net operating losses and capital loss carryovers are made first in the loss for the taxable year of the discharge and then in the carryovers to such taxable year in the order of the taxable years from which each such carryover arose. If the excluded COD income exceeds the sum of the taxpayer's tax attributes, the excess is disregarded such that it does not result in income or have other tax consequences. *See* H.R. Rep. No. 96–833, at 11 (1980).

Instead of reducing tax attributes in the order set forth in section 108(b)(2), a taxpayer may elect under section 108(b)(5) to reduce first the adjusted bases of depreciable property to the extent of the excluded COD income. The amount to which the election applies is limited to the aggregate adjusted basis of the depreciable property held by the taxpayer as of the beginning of the taxable year following the taxable year in which the discharge occurs. If the adjusted bases of depreciable property are insufficient to offset the entire amount of excluded COD income, the taxpayer must then reduce any remaining tax attributes in the order set forth in section 108(b)(2). Congress intended the election under section 108(b)(5) to allow debtors, including debtors in bankruptcy, to account for a debt discharge amount in a manner most favorable to their tax situations. *See* S. Rep. No. 96–1035, at 10 (1980); H.R. Rep. No. 96–833, at 9 (1980).

Section 1017(a) provides that when any portion of COD income excluded from gross income under section 108(a) is to be applied to reduce basis, then such portion shall be applied to reduce the basis of any property held by the taxpayer at the beginning of the taxable year following the taxable year in which the discharge occurs. Section 1017(b)(1) provides that the amount of reduction under section 1017(a), and the particular properties the bases of which are to be reduced, shall be determined under regulations.

The Reorganization Rules

Section 368(a)(1) defines a reorganization to include certain types of asset acquisitions. Under section 361, a corporation that is a party to a reorganization recognizes neither gain nor loss when it exchanges property, in pursuance of the plan of reorganization, solely for stock or securities in another corporation that is a party to the reorganization. If the corporation receives in the exchange not only stock or securities permitted to be received without the recognition of gain, but also other property or money, then the corporation may be required to recognize gain. Under section 362(b), if property is acquired by a corporation in connection with a reorganization, then the basis is the same as it would be in the hands of the transferor, increased by the amount of gain recognized to the transferor on such transfer.

Section 332(a) provides that a corporation recognizes no gain or loss on the receipt of property distributed in complete liquidation of another corporation. Section 337(a) provides that a liquidating corporation recognizes no gain or loss on the distribution to the 80-percent distributee of any property in a complete liquidation to which section 332 applies. Under section 334(b)(1), if property is received by a corporate distributee in a distribution in a complete liquidation to which section 332 applies, the basis of such property in the hands of such distributee is the same as it would be in the hands of the transferor. However, in any case in which gain or loss is recognized by the liquidating corporation with respect to such property, the basis of such property in the hands of such distributee is the fair market value of the property at the time of the distribution.

Section 381 provides that a corporation that acquires the assets of another corporation in a distribution to which section 332 applies or in a transfer to which section 361 applies (but only if the transfer is in connection with certain reorganizations described in sections 368(a)(1)(A), (C), (D), (F), or (G)) shall succeed to, and take into account, as of the close of the day of distribution or transfer, the items described in section 381(c) of the distributor or transferor corporation, subject to certain conditions and limitations. Among those items described in section 381(c) are net operating loss carryovers, capital loss carryovers, general business credits, and minimum tax credits. With respect to net operating loss carryovers and capital loss carryovers, the regulations under section 381 reflect that the acquiring corporation succeeds to only those carryovers that remain after the application of sections 172 and 1212 and their carryforward and carryback provisions. *See* §§ 1.381(c)(1)–1; 1.381(c)(3)–1. Furthermore, those regulations provide that the acquiring corporation succeeds to only those general business credits that remain unused by the transferor corporation after computing its taxable income for the year of the transfer. *See* § 1.381(c)(23)–1. Section 381(b)(1) provides that, except in the case of an acquisition in connection with a reorganization described in section 368(a)(1)(F), the taxable year of the distributor or transferor corporation ends on the date of distribution or transfer.

Interaction Between Debt Discharge and Reorganization Rules

Questions have arisen regarding the application of the attribute reduction rules of sections 108 and 1017 when a transaction described in section 381(a) ends a taxable year in which the transferor excludes COD income from gross income. If section 108(b)(4)(A) and section 1017 were interpreted to require attribute reduction to occur after the close of the taxable year of discharge and after the transfer of assets and carryover of items described in section 381(c), then arguably no attributes described in section 108(b)(2) would be available for reduction.

Explanation of Provisions

The IRS and Treasury Department believe that the rule of section 108(b)(4)(A) prescribes an ordering of calculations. First, section 108(b)(4)(A) requires a determination of the taxpayer's tax for the taxable year of discharge in order to identify the amounts, if any, of the tax attributes described in section 108(b)(2) that remain available for reduction. Second, section 108(b)(4)(A) requires the reduction of those attributes. This ordering rule affords the taxpayer the use of certain of its tax attributes described in section 108(b)(2), including any losses carried forward to the taxable year of discharge, for purposes of determining its tax for the taxable year of discharge, before subjecting those attributes to reduction.

Similarly, the IRS and Treasury believe that the rule of section 1017 prescribes an ordering of calculations. The Bankruptcy Tax Act of 1980 reflects that Congress enacted the rule of section 1017 "to avoid interaction between basis reduction and reduction of other attributes." S. Rep. No. 96–1035, at 14 (1980); H. Rep. No. 96–833, at 11 (1980). Without this rule, a circular calculation could be required. The taxpayer's net operating loss for the year of the discharge of indebtedness might be based in part on the amount of cost recovery deductions allowed to the taxpayer. The amount of cost recovery deductions, however, would depend on the taxpayer's basis in its depreciable or amortizable property at the end of the year. Because net operating losses are reduced by excluded COD income prior to the reduction of asset basis absent an election under section 108(b)(5), the amount of basis required to be reduced would depend on the amount of net operating losses. Reducing the basis of property held by the taxpayer at the beginning of the taxable year following the taxable year in which the discharge occurs avoids this circularity.

The position that sections 108 and 1017 require the reduction of attributes, including the basis of transferred assets, in cases where the debtor's taxable year ends with a transfer of assets in a transaction described in section 381 is consistent with the policies underlying sections 108 and 1017 and the corporate reorganization provisions, including "deferring, but eventually collecting within a reasonable period, tax on ordinary income realized from debt discharge." S. Rep. No. 96–1035, at 10 (1980). For example, assume that a debt of corporation X is discharged in a title 11 case. X's attributes described in section 108(b)(2) consist solely of basis in property. As part of a plan of reorganization, X transfers all of its assets to a newly formed corporation, Y. Under section 368(a)(3)(C), even though the transaction also qualifies as a reorganization under section 368(a)(1)(F), the transaction is treated as qualifying as a reorganization only under section 368(a)(1)(G). If sections 108 and 1017 were interpreted to not require a reduction of the bases of the property transferred, X would permanently exclude from gross income the COD income, notwithstanding that X underwent nothing more than a mere change in identity, form, or place of organization. Accordingly, consistent with the legislative history of the Bankruptcy Tax Act of 1980, the IRS and Treasury Department believe that the basis reduction rules of sections 108 and 1017 apply to property of a debtor transferred in a transaction described in section 381(a).

The legislative history of the Bankruptcy Tax Act of 1980 reflects that Congress specifically anticipated that amounts that carry over in a transaction described in section 381, including the

basis of transferred property, are to be adjusted under the rules of sections 108 and 1017 to account for excluded COD income. *See* H.R. Rep. No. 96–833, at 32–34 (1980). The legislative history states:

> Assume that Corporation A is in a bankruptcy case commenced after October 1, 1979. Immediately prior to a transfer under a plan of reorganization, A's assets have an adjusted basis of $75,000 and a fair market value of $100,000. A has a net operating loss carryover of $200,000. A has outstanding bonds of $100,000 (on which there is no accrued but unpaid interest) and trade debts of $100,000.
>
> Under the plan of reorganization, A is to transfer all its assets to Corporation B in exchange for $100,000 of B stock. Corporation A will distribute the stock, in exchange for their claims against A, one-half to the security holders and one-half to the trade creditors. A's shareholders will receive nothing.
>
> The transaction would qualify as a reorganization under new section 368(a)(1)(G) of the Code, since all the creditors are here treated as proprietors for continuity of interest purposes. Thus, A would recognize no gain or loss on the transfer of its assets to B (sec. 361). B's basis in the assets would be $75,000 (sec. 362), and B would succeed to A's net operating loss carryover (sec. 381).
>
> Under the bill, * * * [o]n the distribution of B stock to A's trade creditors, A excludes from gross income the debt discharge amount of $50,000—*i.e.*, the difference between the $100,000 debt held by non-security creditors and the $50,000 worth of stock given for such debt. A may elect to reduce the basis of its depreciable assets transferred to B by all or part of the $50,000 debt discharge amount; to the extent the election is not made, the debt discharge amount reduces A's net operating loss carryover by the remainder of the debt discharge amount.

H.R. Rep. No. 96–833, at 34 (1980). The treatment of the net operating loss and basis in the legislative history demonstrates that, in a transaction described in section 381, the transferor's attributes, including the basis of transferred property, that carry over to the transferee are reduced.

Accordingly, these temporary regulations clarify that, in the case of a transaction described in section 381(a) that ends a year in which the distributor or transferor corporation excludes COD income from gross income under section 108(a), any tax attributes to which the acquiring corporation succeeds and the basis of property acquired by the acquiring corporation in the transaction shall reflect the reductions required by sections 108 and 1017. For this purpose, all attributes listed in section 108(b)(2) of the distributor or transferor corporation immediately prior to the transaction described in section 381(a), including the basis of property, but after the determination of tax for the year of the discharge, are available for reduction under section 108(b)(2).

These temporary regulations also clarify that the tax attributes subject to reduction under section 108(b)(2) that are carryovers to the taxable year of the discharge, or that may be carried back to taxable years preceding the year of the discharge, are first taken into account by the taxpayer for the taxable year of the discharge or the preceding years, as the case may be, before such attributes are reduced pursuant to section 108(b)(2).

These temporary regulations apply to discharges of indebtedness occurring after July 17, 2003.

Special Analyses

It has been determined that these temporary regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these temporary regulations, and, because no preceding notice of proposed rulemaking is required for these temporary regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these temporary regulations is Theresa M. Kolish, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding the following entry in numerical order to read as follows:

> **Authority:** 26 U.S.C. 7805 * * *
>
> Section 1.108–7T also issued under 26 U.S.C. 108. * * *

■ **Par. 2.** Section 1.108–7T is added to read as follows:

§ 1.108–7T Reduction of attributes (temporary).

(a) *In general.* (1) If a taxpayer excludes discharge of indebtedness income (COD income) from gross income under section 108(a)(1)(A), (B), or (C), then the amount excluded shall be applied to reduce the following tax attributes of the taxpayer in the following order:

(i) Net operating losses.
(ii) General business credits.
(iii) Minimum tax credits.
(iv) Capital loss carryovers.
(v) Basis of property.
(vi) Passive activity loss and credit carryovers.
(vii) Foreign tax credit carryovers.

(2) The taxpayer may elect under section 108(b)(5), however, to reduce first the basis of depreciable property to the extent of the excluded COD income. If the basis of depreciable property is insufficient to offset the entire amount of the excluded COD income, the taxpayer must then reduce any remaining tax attributes in the order specified in section 108(b)(2). If the excluded COD income exceeds the sum of the taxpayer's tax attributes, the excess is permanently excluded from the taxpayer's gross income. For rules relating to basis reductions required by sections 108(b)(2)(E) and 108(b)(5), *see* sections 1017 and 1.1017–1. For rules relating to the time and manner for making an election under section 108(b)(5), *see* § 1.108–4.

(b) *Carryovers and carrybacks.* The tax attributes subject to reduction under section 108(b)(2) and paragraph (a)(1) of this section that are carryovers to the taxable year of the discharge, or that may be carried back to taxable years preceding the year of the discharge, are taken into account by the taxpayer for the taxable year of the discharge or the preceding years, as the case may be, before such attributes are reduced pursuant to section 108(b)(2) and paragraph (a)(1) of this section.

(c) *Transactions to which section 381 applies.* In the case of a transaction described in section 381(a) that ends a taxable year in which the distributor or transferor corporation excludes COD income under section 108(a), any tax attributes to which the acquiring corporation succeeds and the basis of property acquired by the acquiring corporation in the transaction shall reflect the reductions required by section 108(b). For this purpose, all attributes listed in section 108(b)(2) of the distributor or transferor corporation immediately prior to the transaction described in section 381(a), but after the determination of tax for the year of the discharge, including basis of property, shall be available for reduction under section 108(b)(2).

(d) *Examples.* The following examples illustrate the application of this section:

Example 1. (i) *Facts.* In Year 4, X, a corporation in a title 11 case, is entitled under section 108(a)(1)(A) to exclude from gross income $100,000 of COD income. For Year 4, X has gross income in the amount of $50,000. In each of Years 1 and 2, X had no taxable income or loss. In Year 3, X had a net operating loss of $100,000, the use of which when carried over to Year 4 is not subject to any restrictions other than those of section 172.

(ii) *Analysis.* Pursuant to paragraph (b) of this section, X takes into account the net operating loss carryover from Year 3 in computing its taxable income for Year 4 before any portion of the COD income excluded under section 108(a)(1)(A) is applied to reduce tax attributes. Thus, the amount of the net operating loss carryover that is reduced under section 108(b)(2) and paragraph (a) of this section is $50,000.

Example 2. (i) *Facts.* The facts are the same as in *Example 1*, except that in Year 4 X sustains a net operating loss in the amount of $100,000. In addition, in each of Years 2 and 3, X reported taxable income in the amount of $25,000.

(ii) *Analysis.* Pursuant to paragraph (b) of this section and section 172, the net operating loss sustained in Year 4 is carried back to Years 2 and 3 before any portion of the COD income excluded under section 108(a)(1)(A) is applied to reduce tax attributes. Thus, the amount of the net operating loss that is reduced under section 108(b)(2) and paragraph (a) of this section is $50,000.

Example 3. (i) *Facts.* In Year 2, X, a corporation in a title 11 case, has outstanding trade debts of $200,000 and a depreciable asset that has an adjusted basis of $75,000 and a fair market value of $100,000. X has no other assets or liabilities. X has a net operating loss of $80,000 that is carried over to Year 2 but has no general business credit, minimum tax credit, or capital loss carryovers. Under a plan of reorganization, X transfers its asset to Corporation Y in exchange for Y stock with a value of $100,000. X distributes the Y stock to its trade creditors in exchange for release of their claims against X. X's shareholders receive nothing in the transaction. The transaction qualifies as a reorganization under section 368(a)(1)(G) that satisfies the requirements of section 354(a)(1)(A) and (B). For Year 2, X has gross income of $10,000 (without regard to any income from the discharge of indebtedness) and is allowed a depreciation deduction of $10,000 in respect of the asset. In addition, it generates no general business credits.

(ii) *Analysis.* On the distribution of Y stock to X's trade creditors, under section 108(a)(1)(A), X is entitled to exclude from gross income the debt discharge amount of $100,000. (Under section 108(e)(8), X is treated as satisfying $100,000 of the debt owed the trade creditors for $100,000, the fair market value of the Y stock transferred to those creditors.) In Year 2, X has no taxable income or loss because its gross income is exactly offset by the depreciation deduction. As a result of the depreciation deduction, X's basis in the asset is reduced by $10,000 to $65,000. Pursuant to paragraph (c) of this section, the amount of X's net operating loss to which Y succeeds pursuant to section 381 and the basis of X's property transferred to Y must take into account the reductions required by section 108(b). Pursuant to paragraph (a) of this section, X's net operating loss carryover in the amount of $80,000 is reduced by $80,000 of the COD income excluded under section 108(a)(1). In addition, X's basis in the asset is reduced by $20,000, the extent to which the COD income excluded under section 108(a)(1) did not reduce the net operating loss. Accordingly, as a result of the reorganization, there is no net operating loss to which Y succeeds under section 381. Pursuant to section 361, X recognizes no gain or loss on the transfer of its property to Y. Pursuant to section 362(b), Y's basis in the asset acquired from X is $45,000.

Example 4. (i) *Facts.* The facts are the same as in *Example 3*, except that X elects under section 108(b)(5) to reduce first the basis of its depreciable asset.

(ii) *Analysis.* As in *Example 3*, on the distribution of Y stock to X's trade creditors, under section 108(a)(1)(A), X is entitled to exclude from gross income the debt discharge amount of $100,000. In addition, in Year 2, X has no taxable income or loss because its gross income is exactly offset by the depreciation deduction. As a result of the depreciation deduction, X's basis in the asset is reduced by $10,000 to $65,000. Pursuant to paragraph (c) of this section, the amount of X's net operating loss to which Y succeeds pursuant to section 381 and the basis of X's property transferred to Y must take into account the reductions required by section 108(b). As a result of the election under section 108(b)(5), X's basis in the asset is reduced by $65,000 to $0. In addition, X's net operating loss is reduced by $35,000, the extent to which the amount excluded from income under section 108(a)(1)(A) does not reduce X's asset basis. Accordingly, as a result of the reorganization, Y succeeds to X's net operating loss in the amount of $45,000 under section 381. Pursuant to section 361, X recognizes no gain or loss on the transfer of its property to Y. Pursuant to section 362(b), Y's basis in the asset acquired from X is $0.

(e) *Effective date.* This section applies to discharges of indebtedness occurring after July 17, 2003.

■ **Par. 3.** Section 1.1017–1 is amended by adding paragraph (b)(4) to read as follows:

§ 1.1017–1 Basis reductions following a discharge of indebtedness.

* * * * *

(b) * * *

(4) For further guidance, *see* § 1.1017–1T(b)(4).

* * * * * *

■ **Par. 4.** Section 1.1017–1T is added to read as follows:

§ 1.1017–1T Basis reductions following a discharge of indebtedness (temporary).

(a) Through (b)(3) [Reserved]. For further guidance, *see* § 1.1017–1(a) through (b)(3).

(4) *Transactions to which section 381 applies.* In the case of a transaction described in section 381(a) that ends a taxable year in which the distributor or transferor corporation excludes COD income from gross income under section 108(a), the basis of property acquired by the acquiring corporation in the transaction shall reflect the reductions required by section 1017 and this section. For this purpose, the basis of property of the distributor or transferor corporation immediately prior to the transaction described in section 381(a), but after the determination of tax for the year of the discharge, shall be available for reduction under section 108(b)(2). *See* § 1.108–7T. This paragraph (b)(4) applies to discharges of indebtedness occurring after July 17, 2003.

(c) Through (i) [Reserved]. For further guidance, *see* § 1.1017–1(c) through (i).

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

Approved: July 9, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–18145 Filed 7–17–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 20 and 25

[TD 9077]

RIN 1545–AY91

Net Gift Treatment Under Section 2519

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating both to the amount treated as a transfer under section 2519 of the Internal Revenue Code when there is a right to recover gift tax under section 2207A(b) and to the related gift and estate tax consequences if the right to recover the gift tax is not exercised. The final regulations will affect donee spouses who make lifetime dispositions of all or part of a qualifying income interest in qualified terminable interest property.

EFFECTIVE DATE: These regulations are effective July 18, 2003.

FOR FURTHER INFORMATION CONTACT: DeAnn K. Malone, (202) 622–7830 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On July 22, 2002, the IRS and the Treasury Department published in the **Federal Register** (67 FR 47755) a notice of proposed rulemaking (REG–123345–01) relating to the amount treated as a transfer under section 2519 of the Internal Revenue Code when there is a right to recover gift tax under section 2207A(b) and the related gift tax consequences if the right to recover the gift tax is not exercised. Written comments responding to the notice were received. No public hearing was requested or held. This document adopts final regulations with respect to the notice of proposed rulemaking. The principal comments received and revisions in response to those comments are discussed below.

Explanation of Provisions

Under the proposed regulations, any delay in the exercise of the right of recovery was treated as an interest-free loan with the resulting Federal tax consequences. One commentator suggested that the regulations be revised to provide a thirty-day safe harbor to ease the administrative burden to taxpayers and to avoid complex loan calculations. Accordingly, the commentator suggested that section 7872 would not apply if the transferor received reimbursement of the amount of gift tax within thirty days after paying the tax.

Whether a transaction involves a below-market loan subject to section 7872 depends on all the facts and circumstances of the particular case. Section 1.7872–5T(b)(14) of the Temporary Income Tax Regulations exempts from the application of section 7872 loans the interest arrangements of which the taxpayer is able to show have no significant effect on any Federal tax liability of the lender or the borrower, as described in § 1.7872–5T(c)(3). Section 1.7872–5T(c)(3) provides that whether a loan is without significant effect is determined according to all of the facts and circumstances. Among the factors to be considered are: (1) Whether items of income and deduction generated by the loan offset each other; (2) the amount of such items; (3) the cost to the taxpayer of complying with the provisions of section 7872 if the section were applied; and (4) any non-tax reasons for deciding to structure the transaction as a below-market loan rather than a loan with interest at a rate equal to or greater than the applicable Federal rate and a payment by the lender to the borrower. The Treasury Department and the IRS believe that, in most cases, a reasonable delay in the exercise of the right of recovery will result in a loan without significant tax effect under the facts and circumstances test in § 1.7872–5T(c)(3). Accordingly, these final regulations do not create an additional safe harbor for a payment received within thirty days of payment of the tax.

The final regulations have been revised to more completely describe the interrelation of section 2207A and section 7872. Specifically, the final regulations provide that a delay in the exercise of the right of recovery (that is, the request for and receipt of the amount of the tax) will be treated as a below-market loan if the loan does not provide for the payment of sufficient interest. Depending on the facts and circumstances as described in § 1.7872–5T(c)(3), a loan arising from the delay may be a loan exempt from the application of section 7872 because it is a loan the interest arrangements of which do not have a significant effect on any Federal tax liability of the lender or the borrower. The estate tax regulations under section 2207A are revised to be consistent with the gift tax regulations.

In response to a comment, the final regulations clarify that the enforceability of the right of recovery is determined under applicable law.

Commentators requested simplification of the method of determining when a right to recovery is no longer enforceable. One commentator suggested adopting a three-year period for determining whether or not the right of recovery is enforceable, and thus whether the gift is complete for gift tax purposes if the right of recovery is not exercised. The final regulations instead provide that the transferor may waive the right of recovery thus causing the gift from the transferor to the donee to be complete upon the later of the date of the waiver or the date of the payment of the Federal gift tax. The Treasury Department and the IRS believe that the waiver allows for the certainty requested by the commentators, and is more efficient for a taxpayer who will not exercise the right of recovery because the gift of the unrecovered tax can be completed simultaneously with the lifetime disposition of the qualifying income interest.

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the proposed regulations preceding this final rule were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is DeAnn K. Malone, Office of the Chief Counsel, IRS. Other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 20 and 25 are amended as follows:

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

■ **Paragraph 1.** The authority citation for part 20 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

■ **Par. 2.** Section 20.2207A–1 is amended by removing the last two sentences of paragraph (a)(2) and adding three new sentences in their place to read as follows:

§ 20.2207A–1 Right of recovery of estate taxes in the case of certain marital deduction property.

(a) * * *

(2) * * * The transfer is considered made when the right of recovery is no longer enforceable under applicable law. A delay in the exercise of the right of recovery without payment of sufficient interest is a below-market loan. Section 1.7872–5T of the Temporary Income Tax regulations describes factors that are used to determine, based on the facts and circumstances of a particular case, whether a loan otherwise subject to imputation under section 7872 (relating to the treatment of below-market loans) is exempted from its provisions.

* * * * *

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

■ **Par. 3.** The authority citation for part 25 continues to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

■ **Par. 4.** Section 25.2207A–1 is amended by adding the text of paragraph (b) to read as follows:

§ 25.2207A–1 Right of recovery of gift taxes in the case of certain marital deduction property.

* * * * *

(b) *Failure of a person to exercise the right of recovery.* (1) The failure of a person to exercise a right of recovery provided by section 2207A(b) upon a lifetime transfer subject to section 2519 is treated as a transfer for Federal gift tax purposes of the unrecovered amounts to the person(s) from whom the recovery could have been obtained. *See* § 25.2511–1. The transfer is considered to be made when the right to recovery is no longer enforceable under applicable law and is treated as a gift even if recovery is impossible. A delay in the exercise of the right of recovery without payment of sufficient interest is a below-market loan. Section 1.7872–5T of this chapter describes factors that are used to determine, based on the facts and circumstances of a particular case, whether a loan otherwise subject to imputation under section 7872 (relating to the treatment of below-market loans) is exempted from its provisions.

(2) The transferor subject to section 2519 may execute a written waiver of the right of recovery arising under section 2207A before that right of recovery becomes unenforceable. If a waiver is executed, the transfer of the unrecovered amounts by the transferor is considered to be made on the later of—

(i) The date of the valid and irrevocable waiver rendering the right of recovery no longer enforceable; or

(ii) The date of the payment of the tax by the transferor.

* * * * *

■ **Par. 5.** Section 25.2519–1 is amended as follows:

■ 1. Paragraph (c)(1) is amended by adding a sentence to the end of the paragraph.

■ 2. The paragraph heading for paragraph (c)(4) is revised and the text of paragraph (c)(4) is added.

■ 3. Paragraph (g) introductory text is revised.

The additions and revisions read as follows:

§ 25.2519–1 Dispositions of certain life estates.

* * * * *

(c) * * * (1) * * * See paragraph (c)(4) of this section for the effect of gift tax that the donee spouse is entitled to recover under section 2207A.

* * * * *

(4) *Effect of gift tax entitled to be recovered under section 2207A on the amount of the transfer.* The amount treated as a transfer under paragraph (c)(1) of this section is further reduced by the amount the donee spouse is entitled to recover under section 2207A(b) (relating to the right to recover gift tax attributable to the remainder interest). If the donee spouse is entitled to recover gift tax under section 2207A(b), the amount of gift tax recoverable and the value of the remainder interest treated as transferred under section 2519 are determined by using the same interrelated computation applicable for other transfers in which the transferee assumes the gift tax liability. The gift tax consequences of failing to exercise the right of recovery are determined separately under § 25.2207A–1(b).

* * * * *

(g) *Examples.* The following examples illustrate the application of paragraphs (a) through (f) of this section. Except as provided otherwise in the examples, assume that the decedent, D, was survived by spouse, S, that in each example the section 2503(b) exclusion has already been fully utilized for each year with respect to the donee in question, that section 2503(e) is not applicable to the amount deemed transferred, and that the gift taxes on the amount treated as transferred under paragraph (c) are offset by S's unified credit. The examples are as follows:

* * * * *

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

Approved: July 9, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 03–18018 Filed 7–17–03; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 2, 26, 62, 64, 95, 100, 120, and 165

46 CFR Parts 7 and 28

[USCG–2001–9044]

RIN 1625–AA30

Territorial Seas, Navigable Waters, and Jurisdiction

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: This rule conforms the Coast Guard's definitions of jurisdictional terms to existing law. We have made these changes so that our regulatory definitions will reflect statutory changes and Presidential proclamations affecting our jurisdiction. These changes are intended to clarify how the Coast Guard interprets its jurisdiction to enforce treaties, laws, and regulations of the United States.

DATES: This final rule is effective August 18, 2003.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2001–9044 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Alex Weller, Office of Maritime and International Law, U.S. Coast Guard, telephone 202–267–0097. If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Regulatory History

On October 22, 1975, we published a rule in the **Federal Register** entitled "Jurisdiction and Navigable Waters" that established general duties and jurisdiction regulations in part 2 of Title 33 of the Code of Federal Regulations (33 CFR part 2) (40 FR 49326). Most of those regulations have not changed since 1975.

In an effort to conform the Coast Guard's definitions of jurisdictional

terms to existing law, we published a notice of proposed rulemaking (NPRM) on August 14, 2002, entitled "Territorial Seas, Navigable Waters, and Jurisdiction" (67 FR 52906)(USCG–2001–9044, under former DOT RIN 2115–AG13). And on September 18, 2002, we published a correction to that proposed rule noting that we did not intend to omit the contents of a footnote in our proposed revision of 33 CFR part 2 (67 FR 58752). No public hearing was requested and none was held.

A little more than 3 months after we published our NPRM, the Maritime Transportation Security Act of 2002 (MTSA) was enacted (Pub. L. 107–295, 116 Stat. 2064). The MTSA extended the territorial seas jurisdiction from 3 to 12 nautical miles for two domestic statutes by amending section 1 of title XIII of the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 ("Magnuson Act"), 50 U.S.C. 195, and section 4(b) of the Vessel Bridge-to-Bridge Radiotelephone Act (33 U.S.C. 1203(b)).

On the same date the MTSA was enacted, November 25, 2002, the Homeland Security Act of 2002 (HLSA) (Pub. L. 107-296, 116 Stat. 2135) was also enacted. The HLSA established the Department of Homeland Security (DHS) and directed the transfer of the Coast Guard from the Department of Transportation to DHS.

Regulatory amendments reflecting these recent MTSA, non-discretionary changes in jurisdiction and revisions to reflect our move to DHS under the HLSA, concern only interpretations, agency organization, and rules of agency procedure, and thus, under 5 U.S.C. 553(b)(A), are exempt from the rulemaking notice requirement. Therefore, we have included these MTSA and HLSA changes in this final rule. All changes in the rule based on the recent passage of MTSA and HLSA are described below in the *Discussion of Comments and Changes* section.

Background and Purpose

This rule changes definitions of jurisdictional terms, primarily in 33 CFR part 2, to reflect current statutes and other legal authorities on which these definitions are based. In the preamble of our NPRM, we discussed various legal authorities on which we based the proposed changes to our jurisdictional regulations (67 FR 52906–52908, August 14, 2002). The Coast Guard uses the definitions for these jurisdictional terms—*e.g.*, "internal waters," "inland waters," "navigable waters," "territorial sea," "exclusive economic zone," "high seas," and "waters subject to the jurisdiction of the United States"—to enforce treaties, laws, and regulations of the United States.

Discussion of Comments and Changes

We received three letters commenting on the proposed rule. And, in response, we have incorporated changes in the final rule. The final rule also reflects changes from the proposed rule based on the November 25, 2002 enactment of the MTSA and HLSA.

Navigable Waters

One commentator wrote that our proposed definition of "navigable waters" differed from the U.S. Environmental Protection Agency's (EPA's) definition in 40 CFR part 110 (specifically in 40 CFR 110.1) and that with respect to the Federal Water Pollution Control Act Amendments, known as the Clean Water Act, EPA has the primary federal responsibility to define this jurisdictional term. We agree that EPA has the primary federal responsibility to define this term with respect to the Clean Water Act.

After conferring with the EPA, we have decided not to revise the text in 33 CFR 2.05–25, as we proposed. Instead, all we have revised in that section is: (1) The section number itself—to § 2.36—to conform to the renumbering of sections in 33 CFR part 2, and (2) we removed the footnote. As we explained in our September 18, 2002, correction (67 FR 58752), the contents of that footnote have been moved to the note for § 2.5, Specific definitions control. Also, because we had included references to paragraph (b) of our proposed § 2.36 in §§ 2.38, 62.3, 64.06, and 100.05, we have had to change those four references to paragraph (a) to reflect the corresponding § 2.36 language in the final rule.

The EPA, jointly with the Army Corps of Engineers (ACOE), has already issued an "Advanced Notice of Proposed Rulemaking on the Clean Water Act Regulatory Definition of 'Waters of the United States'" (68 FR 1991, January 15, 2003). As we did in our NPRM, the EPA and ACOE's ANPRM discusses the U.S. Supreme Court's decision, *Solid Waste Agency of Northern Cook County* v. *U.S. Army Corps of Engineers*, 531 U.S. 159 (2001)(*SWANCC*), interpreting "waters of the United States" and "navigable waters" as used in the Clean Water Act. To ensure that our definitions are consonant with the EPA's and ACOE's, we will await the results of their rulemaking before amending our corresponding definitions in redesignated § 2.36. In the meantime, it should be understood that we are not taking a position in this rulemaking on the definitions of those terms in the *SWANCC* case.

High Seas

We received two comments expressing concern that our definition of "high seas" in proposed § 2.32(d) would include the exclusive economic zones of both the United States and other nations and that this might undermine the doctrine that U.S. statutes are presumed not to apply outside of U.S. territory unless Congress expresses a clear statement of extraterritorial application. In response to these comments, the Coast Guard conferred with the Department of State, U.S. Navy, and other federal agencies, and has revised both § 2.32(c) and (d) to read:

(c) For the purposes of 14 U.S.C. 89(a), and 33 U.S.C. 1471 *et. seq.*, *high seas* includes the exclusive economic zones of the United States and other nations, as well as those waters that are seaward of territorial seas of the United States and other nations.

(d) Under customary international law as reflected in the 1982 United Nations Convention on the Law of the Sea and without prejudice to high seas freedoms that may be exercised within exclusive economic zones pursuant to article 58 of the United Nations Convention on the Law of the Sea, and unless the context clearly requires otherwise (*e.g.*, The International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, including annexes thereto), *high seas* means all waters that are not the exclusive economic zone (as defined in 2.30), territorial sea (as defined in 2.22), or internal waters of the United States or any other nation.

We also received a comment that we are not required to include the Great Lakes as a discrete part of our "high seas" definition in § 2.32(a). We agree and have deleted the reference to the Great Lakes in that paragraph dealing with special maritime and territorial jurisdiction under 18 U.S.C. 7.

Exclusive Economic Zone

In conferring with the Department of State about the proposed rule, it was suggested that we insert the word "including" after the "United States" in proposed § 2.30 to match language in the President's Exclusive Economic Zone Proclamation 5030 of March 10, 1983 (97 Stat. 1557) and that we make certain other textual changes. We agree, and have made those revisions. Specifically, we have deleted a reference to the Covenant and the United Nations Trusteeship Agreement, and added reference to Guam, American Samoa, the U.S. Virgin Islands, and any other territory or possession over which the United States exercises sovereignty. Finally, we have clarified the rights of

the United States and all other nations in the waters of the exclusive economic zone (EEZ) as stated in Presidential Proclamation 5030.

Vessel Bridge-to-Bridge Radiotelephone Act

We have revised 33 CFR 2.22(a)(i) and 26.02, and 46 CFR 7.5 to reflect the MTSA's extension of the application of the Vessel Bridge-to-Bridge Radiotelephone Act, 33 U.S.C. 1201–1208, to all waters of the United States territorial sea described in Presidential Proclamation 5928. Specifically, to reflect MTSA's sec. 321 amendment of 33 U.S.C. 1203(b), we added the Vessel Bridge-to-Bridge Radiotelephone Act to statutes listed in our territorial seas definition in 33 CFR 2.22(a)(1); changed the reference to the territorial sea definition in 33 CFR 26.02 from § 2.22(a)(2) to § 2.22(a)(1); and in 46 CFR 7.5, Rules for establishing boundary lines, we changed the "3 miles" territorial sea reference to "12 nautical miles".

Magnuson Act

When we drafted our proposed rule, the Magnuson Act, which amended the Act of June 15, 1917, applied in the United States territorial sea out to a seaward limit of 3 nautical miles. Sec. 104 of the MTSA expanded the Act of June 15, 1917's reach to 12 nautical miles. We added the Act of June 15, 1917, as amended, to 33 CFR 2.22(a)(i), and revised paragraph (c) in 33 CFR 165.9, Geographical application of limited and controlled access areas and regulated navigation areas, to reflect that now both the terms "navigable waters of the United States" in the Ports and Waterways Safety Act, as amended (33 U.S.C. 1221–1232), and "territorial waters of the United States" in the Magnuson Act have the same seaward limit—12 miles.

Authority Citations

The authority citations for CFR parts in the final rule differ from those in our proposed rule. These differences reflect recent jurisdictional changes created by the MTSA and organizational changes caused by the HLSA. Also, we have converted the U.S. Code citation for the Ports and Waterways Safety Act, as amended, from "(33 U.S.C. 1221 *et seq.*)" to the more specific "(33 U.S.C. 1221–1232)." This helps clarify that regulations in 33 CFR part 100, for example, issued under authority of 33 U.S.C. 1233, are not issued under the authority of the PWSA.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary because we are merely conforming our jurisdictional definitions to reflect authority given to the Coast Guard by current statues and Presidential proclamations.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

We are merely conforming our jurisdictional definitions to statutory authority and presidential proclamations. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking by providing the phone number and address of Alex Weller to address questions concerning provisions of the rulemaking.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the

Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(a), of the Instruction, from further environmental documentation. Where a statute does not mandate a change, we will revise the existing language to maintain the status quo for geographical scope. These changes should also be categorically excluded. The Coast Guard believes that merely updating the regulations to reflect movement of the boundary of the territorial sea from 3 nautical miles to 12 nautical miles from shore will not have any impact on the environment. An "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 2

Administrative practice and procedure, Law enforcement.

33 CFR Part 26

Communications equipment, Marine safety, Radio, Telephone, Vessels.

33 CFR Part 62

Navigation (water).

33 CFR Part 64

Navigation (water), Reporting and recordkeeping requirements.

33 CFR Part 95

Alcohol abuse, Drug abuse, Marine safety, Penalties.

33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

33 CFR Part 120

Passenger vessels, Reporting and recordkeeping requirements, Security measures.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

46 CFR Part 7

Law Enforcement, Vessels.

46 CFR Part 28

Fire prevention, Fishing vessels, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

■ For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR parts 2, 26, 62, 64, 95, 100, 120, and 165 and 46 CFR parts 7 and 28 as follows:

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

PART 2—JURISDICTION

■ 1. Revise part 2 to read as follows:

PART 2—JURISDICTION

Subpart A—General

Sec.
2.1 Purpose.
2.5 Specific definitions control.

Subpart B—Jurisdictional Terms

2.20 Territorial sea baseline.
2.22 Territorial sea.
2.24 Internal waters.
2.26 Inland waters.
2.28 Contiguous zone.
2.30 Exclusive Economic Zone.
2.32 High seas.
2.34 Waters subject to tidal influence; waters subject to the ebb and flow of the tide; mean high water.
2.36 Navigable waters of the United States, navigable waters, territorial waters.
2.38 Waters subject to the jurisdiction of the United States; waters over which the United States has jurisdiction.

Subpart C—Availability of Jurisdictional Decisions

2.40 Maintenance of decisions.
2.45 Decisions subject to change or modification and availability of lists and charts.

Authority: 14 U.S.C. 633, 33 U.S.C. 1222, 80 Stat. 931 (49 U.S.C. 108); Pub. L. 107–296, 116 Stat. 2135, 2249; Department of Homeland Security Delegation No. 0170.

PART 2—JURISDICTION

Subpart A—General

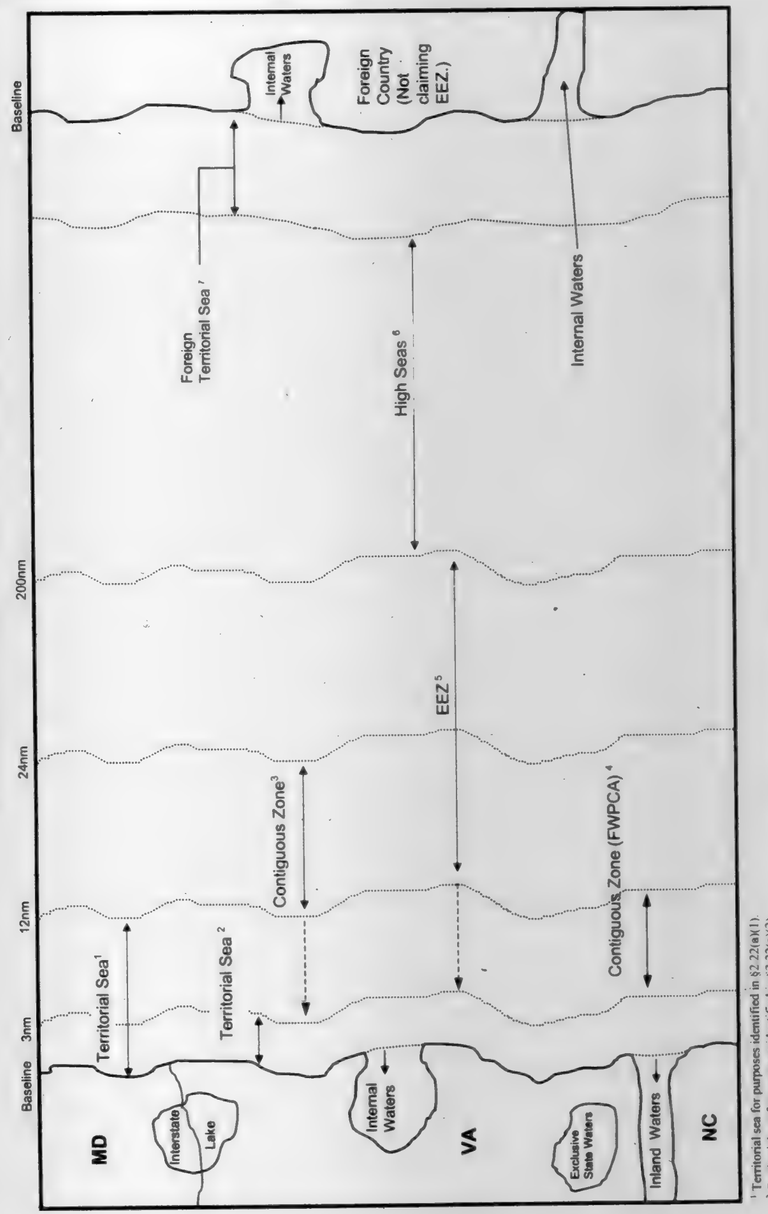
§ 2.1 Purpose

(a) The purpose of this part is to define terms the Coast Guard uses in regulations, policies, and procedures, to determine whether it has jurisdiction on certain waters in cases where specific jurisdictional definitions are not otherwise provided.

(b) Figure 2.1 is a visual aid to assist you in understanding this part.

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FIGURE 2.1. JURISDICTIONAL AREAS



[1] Territorial sea for purposes identified in §2.22(a)(1).
[2] Territorial sea for purposes identified in §2.22(a)(2).
[3] Contiguous zone as described in §2.28(b), varies with territorial sea width for particular purpose involved
[4] Contiguous zone as described in §2.28(a), for Federal Water Pollution Control Act purposes
[5] Exclusive Economic Zone (EEZ) is measured from the seaward limit of the territorial sea, as variously defined in §2.22(a), to a distance of 200 nautical miles from the baseline. The inner (shoreward) boundary of the EEZ will vary for particular purposes
[6] High seas as defined in §2.32(d) When a nation has not proclaimed an EEZ, the high seas begin at the seaward edge of their territorial sea
[7] The U.S. recognizes territorial sea claims of other nations up to a maximum distance of 12 nautical miles from the baseline

BILLING CODE 4910–15–C

§ 2.5 Specific definitions control.

In cases where a particular statute, regulation, policy or procedure provides a specific jurisdictional definition that differs from the definitions contained in this part, the former definition controls.

Note to § 2.5: For example, the definition of "inland waters" in the Inland Navigational Rules Act of 1980 (33 U.S.C. 2003(o)) would control the interpretation of inland navigation rules created under that Act and the "inland waters" definition in 46 CFR 10.103 would control regulations in 46 CFR part 10. Also, in various laws administered and enforced by the Coast Guard, the terms "State" and "United States" are defined to include some or all of the territories and possessions of the United States. The definitions in §§ 2.36 and 2.38 should be considered as supplementary to these statutory definitions and not as interpretive of them.

Subpart B—Jurisdictional Terms

§ 2.20 Territorial sea baseline.

Territorial sea baseline means the line defining the shoreward extent of the territorial sea of the United States drawn according to the principles, as recognized by the United States, of the Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. 1606, and the 1982 United Nations Convention on the Law of the Sea (UNCLOS), 21 I.L.M. 1261. Normally, the territorial sea baseline is the mean low water line along the coast of the United States.

Note to § 2.20: Charts depicting the territorial sea baseline are available for examination in accordance with § 1.10–5 of this chapter.

§ 2.22 Territorial sea.

(a) With respect to the United States, the following apply—

(1) *Territorial sea* means the waters, 12 nautical miles wide, adjacent to the coast of the United States and seaward of the territorial sea baseline, for—

(i) Statutes included within subtitle II, title 46, U.S.C., the Ports and Waterways Safety Act, as amended (33 U.S.C. 1221–1232); the Act of June 15, 1917, as amended (50 U.S.C. 191–195); and the Vessel Bridge-to-Bridge Radiotelephone Act (33 U.S.C. 1201–1208), and any regulations issued under the authority of these statutes.

(ii) Purposes of criminal jurisdiction pursuant to Title 18, United States Code.

(iii) The special maritime and territorial jurisdiction as defined in 18 U.S.C. 7.

(iv) Interpreting international law.

(v) Any other treaty, statute, or regulation, or amendment thereto, interpreted by the Coast Guard as incorporating the definition of territorial sea as being 12 nautical miles wide, adjacent to the coast of the United States and seaward of the territorial sea baseline.

(2) Unless otherwise specified in paragraph (a)(1) of this section, *territorial sea* means the waters, 3 nautical miles wide, adjacent to the coast of the United States and seaward of the territorial sea baseline.

(3) In cases where regulations are promulgated under the authority of statutes covered by both paragraphs (a)(1) and (a)(2) of this section, the Coast Guard may use the definition of territorial sea in paragraph (a)(1) of this section.

(b) With respect to any other nation, *territorial sea* means the waters adjacent to its coast that have a width and baseline recognized by the United States.

§ 2.24 Internal waters.

(a) With respect to the United States, *internal waters* means the waters shoreward of the territorial sea baseline.

(b) With respect to any other nation, *internal waters* means the waters shoreward of its territorial sea baseline, as recognized by the United States.

§ 2.26 Inland waters.

Inland waters means the waters shoreward of the territorial sea baseline.

§ 2.28 Contiguous zone.

(a) For the purposes of the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*), *contiguous zone* means the zone, 9 nautical miles wide, adjacent to and seaward of the territorial sea, as defined in § 2.22(a)(2), that was declared to exist in Department of State Public Notice 358 of June 1, 1972 and that extends from 3 nautical miles to 12 nautical miles as measured from the territorial sea baseline.

(b) For all other purposes, *contiguous zone* means all waters within the area adjacent to and seaward of the territorial sea, as defined in § 2.22(a), and extending to 24 nautical miles from the territorial sea baseline, but in no case extending within the territorial sea of another nation, as declared in Presidential Proclamation 7219 of September 2, 1999 (113 Stat. 2136).

§ 2.30 Exclusive Economic Zone.

(a) With respect to the United States, including the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the United States Virgin Islands, and any other territory or possession over which the United States exercises sovereignty, *exclusive economic zone* means the zone seaward of and adjacent to the territorial sea, as defined in § 2.22(a), including the contiguous zone, and extending 200 nautical miles from the territorial sea baseline (except where otherwise limited by treaty or other agreement recognized by the United States) in which the United States has the sovereign rights and jurisdiction and all nations have the high seas freedoms mentioned in Presidential Proclamation 5030 of March 10, 1983.

(b) Under customary international law as reflected in Article 56 of the 1982 United Nations Convention on the Law of the Sea, and with respect to other nations, *exclusive economic zone* means the waters seaward of and adjacent to the territorial sea, not extending beyond 200 nautical miles from the territorial sea baseline, as recognized by the United States.

§ 2.32 High seas.

(a) For purposes of special maritime and territorial jurisdiction of the United States as defined in 18 U.S.C. 7, *high seas* means all waters seaward of the territorial sea baseline.

(b) For the purposes of section 2 of the Act of February 19, 1895, as amended (33 U.S.C. 151) and the Inland Navigational Rules Act of 1980 (33 U.S.C. Chapter 34), *high seas* means the waters seaward of any lines established under these statutes, including the lines described in part 80 of this chapter and 46 CFR part 7.

(c) For the purposes of 14 U.S.C. 89(a), and 33 U.S.C. 1471 *et. seq.*, *high seas* includes the exclusive economic zones of the United States and other nations, as well as those waters that are seaward of territorial seas of the United States and other nations.

(d) Under customary international law as reflected in the 1982 United Nations Convention on the Law of the Sea and without prejudice to high seas freedoms that may be exercised within exclusive economic zones pursuant to article 58 of the United Nations Convention on the Law of the Sea, and unless the context clearly requires otherwise (*e.g.*, The International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, including annexes thereto), *high seas* means all waters that are not the exclusive economic zone (as defined in §2.30), territorial sea (as defined in §2.22), or internal waters of the United States or any other nation.

§ 2.34 Waters subject to tidal influence; waters subject to the ebb and flow of the tide; mean high water.

(a) *Waters subject to tidal influence and waters subject to the ebb and flow of the tide* are waters below mean high water. These terms do not include waters above mean high water caused by flood flows, storms, high winds, seismic waves, or other non-lunar phenomena.

(b) *Mean high water* is the average of the height of the diurnal high water at a particular location measured over a lunar cycle of 19 years.

§ 2.36 Navigable waters of the United States, navigable waters, and territorial waters.

(a) Except as provided in paragraph (b) of this section, *navigable waters of the United States, navigable waters,* and *territorial waters* mean, except where Congress has designated them not to be navigable waters of the United States:

(1) Territorial seas of the United States;

(2) Internal waters of the United States that are subject to tidal influence; and

(3) Internal waters of the United States not subject to tidal influence that:

(i) Are or have been used, or are or have been susceptible for use, by themselves or in connection with other waters, as highways for substantial interstate or foreign commerce, notwithstanding natural or man-made obstructions that require portage, or

(ii) A governmental or non-governmental body, having expertise in waterway improvement, determines to be capable of improvement at a reasonable cost (a favorable balance between cost and need) to provide, by themselves or in connection with other waters, as highways for substantial interstate or foreign commerce.

(b) *Navigable waters of the United States* and *navigable waters,* as used in sections 311 and 312 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1321 and 1322, mean:

(1) Navigable waters of the United States as defined in paragraph (a) of this section and all waters within the United States tributary thereto; and

(2) Other waters over which the Federal Government may exercise Constitutional authority.

§ 2.38 Waters subject to the jurisdiction of the United States; waters over which the United States has jurisdiction.

Waters subject to the jurisdiction of the United States and *waters over which the United States has jurisdiction* mean the following waters—

(a) Navigable waters of the United States, as defined in § 2.36(a).

(b) Waters, other than those under paragraph (a) of this section, that are located on lands for which the United States has acquired title or controls and—

(1) Has accepted jurisdiction according to 40 U.S.C. 255; or

(2) Has retained concurrent or exclusive jurisdiction from the date that the State in which the lands are located entered the Union.

(c) Waters made subject to the jurisdiction of the United States by operation of the international agreements and statutes relating to the former Trust Territory of the Pacific Islands, and waters within the territories and possessions of the United States.

Subpart C—Availability of Jurisdictional Decisions

§ 2.40 Maintenance of decisions.

(a) From time to time, the Coast Guard makes navigability determinations of specific waterways, or portions thereof, in order to determine its jurisdiction on those waterways. Copies of these determinations are maintained by the District Commander in whose district the waterway is located.

(b) If the district includes portions of the territorial sea, charts reflecting Coast Guard decisions as to the location of the territorial sea baseline for the purposes of Coast Guard jurisdiction are maintained by the District Commander in whose district the portion of the territorial sea is located.

§ 2.45 Decisions subject to change or modification and availability of lists and charts.

The determinations referred to in § 2.40 are subject to change or modification. The determinations are made for Coast Guard use at the request of Coast Guard officials. Determinations made or subsequently changed are available to the public under § 1.10–5(b) of this chapter. Inquiries concerning whether a determination has been made for specific waters, for the purposes of Coast Guard jurisdiction, should be directed to the District Commander of the district in which the waters are located.

PART 26—VESSEL BRIDGE-TO-BRIDGE RADIOTELEPHONE REGULATIONS

■ 2. The authority citation for part 26 is revised to read as follows:

Authority: 14 U.S.C. 2, 33 U.S.C. 1201–1208; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170. Rule 1, International Regulations for the Prevention of Collisions at Sea.

■ 3. In § 26.02, add, in alphabetical order, the definition of "territorial sea" to read as follows:

§ 26.02 Definitions.

* * * * *

Territorial sea means all waters as defined in § 2.22(a)(1) of this chapter.

* * * * *

PART 62—UNITED STATES AIDS TO NAVIGATION SYSTEM

■ 4. The authority citation for part 62 is revised to read as follows:

Authority: 14 U.S.C. 85; 33 U.S.C. 1222, 1233; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.

■ 5. In § 62.3, revise paragraph (g) to read as follows:

§ 62.3 Definition of terms.

* * * * *

(g) *Navigable waters of the United States.* The term navigable waters of the United States is defined in § 2.36(a) of this chapter.

PART 64—MARKING OF STRUCTURES, SUNKEN VESSELS AND OTHER OBSTRUCTIONS

■ 6. The authority citation for part 64 is revised to read as follows:

Authority: 14 U.S.C. 633; 33 U.S.C. 409, 1231; 42 U.S.C. 9118; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.

■ 7. In § 64.06, add, in alphabetical order, a definition of "navigable waters of the United States" to read as follows:

§ 64.06 Definition of terms.

* * * * *

Navigable waters of the United States means those waters described in § 2.36(a) of this chapter, specifically including the waters described in § 2.22(a)(2) of this chapter.

* * * * *

PART 95—OPERATING A VESSEL WHILE UNDER THE INFLUENCE OF ALCOHOL OR A DANGEROUS DRUG

■ 8. The authority citation for part 95 is revised to read as follows:

Authority: 33 U.S.C. 2071; 46 U.S.C. 2302; Department of Homeland Security Delegation No. 0170.

■ 9. In § 95.010, add, in alphabetical order, a definition of "waters subject to the jurisdiction of the United States" to read as follows:

§ 95.010 Definition of terms as used in this part.

* * * * *

Waters subject to the jurisdiction of the United States means those waters described in § 2.38 of this chapter.

PART 100—MARINE EVENTS

■ 10. The authority citation for part 100 is revised to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.

■ 11. In § 100.05, add paragraph (e) to read as follows:

§ 100.05 Definition of terms used in this part.

* * * * *

(e) *Navigable waters of the United States* means those waters described in § 2.36(a) of this chapter, specifically including the waters described in § 2.22(a)(2) of this chapter.

PART 120—SECURITY OF PASSENGER VESSELS

■ 12. The authority citation for part 120 is revised to read as follows:

Authority: 33 U.S.C. 1231; Department of Homeland Security Delegation No. 0170.

■ 13. In § 120.110, revise the definitions of "high seas" to read as follows:

§ 120.110 Definitions.

* * * * *

High seas means the waters defined in § 2.32(d) of this chapter.

* * * * *

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 14. The authority citation for part 165 is revised to read as follows:

Authority: 33 U.S.C. 1226, 1231; 50 U.S.C. 191, 195; 46 U.S.C. Chapter 701; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.

■ 15. Add § 165.9 to read as follows:

§ 165.9 Geographic application of limited and controlled access areas and regulated navigation areas.

(a) *General.* The geographic application of the limited and controlled access areas and regulated navigation areas in this part are determined based on the statutory authority under which each is created.

(b) *Safety zones and regulated navigation areas.* These zones and areas are created under the authority of the Ports and Waterways Safety Act, 33 U.S.C. 1221–1232. Safety zones established under 33 U.S.C. 1226 and regulated navigation areas may be established in waters subject to the jurisdiction of the United States as defined in § 2.38 of this chapter, including the territorial sea to a seaward limit of 12 nautical miles from the baseline.

(c) *Security zones.* These zones have two sources of authority—the Ports and Waterways Safety Act, 33 U.S.C. 1221–1232, and the Act of June 15, 1917, as amended by both the Magnuson Act of August 9, 1950 ("Magnuson Act"), 50 U.S.C. 191–195, and sec. 104 the Maritime Transportation Security Act of 2002 (Pub. L. 107–295, 116 Stat. 2064). Security zones established under either 33 U.S.C. 1226 or 50 U.S.C. 191 may be established in waters subject to the jurisdiction of the United States as defined in § 2.38 of this chapter, including the territorial sea to a seaward limit of 12 nautical miles from the baseline.

(d) *Naval vessel protection zones.* These zones are issued under the authority of 14 U.S.C. 91 and 633 and may be established in waters subject to the jurisdiction of the United States as defined in § 2.38 of this chapter, including the territorial sea to a seaward limit of 3 nautical miles from the baseline.

TITLE 46—SHIPPING

PART 7—BOUNDARY LINES

■ 16. The authority citation for part 7 is revised to read as follows:

Authority: 14 U.S.C. 633; 33 U.S.C. 151, 1222; Department of Homeland Security Delegation No. 0170.

§ 7.5 [Amended]

■ 17. In § 7.5(a), remove the distance "3 miles" and add, in its place, the distance "12 nautical miles".

■ 18. Revise § 7.105 to read as follows:

§ 7.105 Marquesas Keys, FL to Rio Grande, TX.

A line drawn from Marquesas Keys, Florida at approximate position latitude 24°47.5′ N, longitude 82°11.2′ W; along the 12-mile line which marks the seaward limits of the territorial sea (as defined in 33 CFR 2.22(a)(1)) to Rio Grande, Texas at approximate position latitude 25°58.6′ N, longitude 96°55.5′ W.

PART 28—REQUIREMENTS FOR COMMERCIAL FISHING INDUSTRY VESSELS

■ 19. The authority citation for part 28 is revised to read as follows:

Authority: 46 U.S.C. 3316, 4502, 4505, 4506, 6104, 10603; Department of Homeland Security Delegation No. 0170.

■ 20. In § 28.50, revise the definitions of "boundary lines" and "coastline", to read as follows:

§ 28.50 Definition of terms used in this part.

* * * * *

Boundary lines means the lines described in part 7 of this chapter. In general, they follow the trend of the seaward high water shorelines and cross entrances to small bays, inlets, and rivers. In some areas, they are along the 12-mile line that marks the seaward limits of the territorial sea and, in other areas, they come ashore.

* * * * *

Coastline means the territorial sea baseline as defined in 33 CFR 2.20.

* * * * *

Dated: May 28, 2003.

Calvin M. Lederer,

Acting Chief Counsel, U.S. Coast Guard.

[FR Doc. 03–18135 Filed 7–17–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AL36

Presumption of Service Connection for Cirrhosis of the Liver in Former Prisoners of War

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning presumptive service connection for certain diseases by adding cirrhosis of the liver to the list of diseases for which entitlement to service connection is presumed for former prisoners of war (POWs). The intended effect is to make it easier for former POWs to obtain compensation benefits for cirrhosis based on scientific and medical research showing a higher risk of death from cirrhosis in former WWII POWs than in the general population.

DATES: Effective Date: July 18, 2003.

FOR FURTHER INFORMATION CONTACT: Beth McCoy, Consultant, Regulations Staff, Compensation and Pension Service (211A), Veterans Benefits Administration, Department of Veterans Affairs, 111 W. Huron St; Buffalo, NY 14202, (716) 551–4842.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on February 10, 2003 (68 FR 6679), we proposed to amend the VA adjudication regulations to add cirrhosis of the liver to the list of diseases for which entitlement to service connection is presumed for former POWs under 38 CFR 3.309(c).

We asked interested persons to submit comments on or before April 11, 2003. We received no comments. Based on the rationale set forth in the proposed rule, we are adopting the proposed rule as a final rule without change.

Administrative Procedures Act

Because this rule solely provides for a new benefit it is not subject to the effective date provisions of 5 U.S.C. 553.

Paperwork Reduction Act of 1995

This rule contains no provisions constituting collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this amendment will not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule will have no such effect on State, local, or tribal governments, or the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 64.109.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: July 2, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set forth in the preamble, VA amends 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.309 [Amended]

■ 2. Section 3.309(c) is amended by adding "Cirrhosis of the liver." following "Peripheral neuropathy except where directly related to infectious causes." and before the explanatory note.

[FR Doc. 03–18233 Filed 7–17–03; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0045, FRL–7528–3]

RIN 2060–AK53

National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: On February 18, 2003, the EPA promulgated amendments to the national emission standards for hazardous air pollutants (NESHAP) for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills, as a direct final rule with a parallel proposal. We indicated in that action that we would withdraw any part of the rule on which we received adverse comment. We received timely adverse comment on certain provisions of the direct final rule, but our withdrawal notice was not printed in the **Federal Register** before the May 19, 2003 effective date of the provisions. This action amends the subpart MM rule by deleting the provisions which were the subject of adverse comment. We are also amending portions of the subpart MM rule added by the February 18, 2003 direct final rule to correct a typographical error and a cross-referencing error.

DATES: These amendments are effective July 18, 2003.

ADDRESSES: Docket number OAR–2002–0045, containing supporting information used in the development of this notice, is available for public viewing at the EPA Docket Center (Air Docket), EPA West, Room B–108, 1301 Constitution Avenue, NW, Washington, DC 20460. The Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Telander, Minerals and Inorganic Chemicals Group, Emission Standards Division (C504–05), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–5427, facsimile number (919) 541–5600, electronic mail (e-mail) address *telander.jeff@epa.gov*.

SUPPLEMENTARY INFORMATION: *Docket.* The EPA has established an official public docket for this action under Docket ID No. OAR–2002–0045. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, Room 108, 1301 Constitution Ave., NW, Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744. The telephone number for the Air Docket is (202) 566–1742.

Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www/epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov.edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above. Once in the system, select "search," then key in the

appropriate docket identification number.

Background. On February 18, 2003, we published a direct final rule (68 FR 7706) and a parallel proposal (68 FR 7735) amending the NESHAP for chemical recovery combustion sources at kraft, soda, sulfite, and stand-alone semichemical pulp mills (40 CFR part 63, subpart MM). The amendments clarified and consolidated the monitoring and testing requirements and added a site-specific alternative standard for one pulp mill. We stated in the preamble to the direct final rule and parallel proposal that if we received significant adverse comment by March 20, 2003 on one or more distinct provisions in the direct final rule, we would withdraw those provisions. We subsequently received timely adverse comments on seven of the amendments:

- 40 CFR 63.864(a) through (c), related to a site-specific monitoring plan;
- 40 CFR 63.864(d)(1) and (2), related to monitoring specifications for continuous opacity monitoring systems;
- 40 CFR 63.864(e)(1) through (9), related to monitoring specifications for continuous parameter monitoring systems;
- 40 CFR 63.864(f), related to flow monitoring provisions;
- 40 CFR 63.864(h) and (i), related to data availability restrictions;
- 40 CFR 63.864(j)(5), related to requirements for establishing the operating range for monitoring parameters; and
- 40 CFR 63.864(j)(6), related to an operation and maintenance log for the period between the compliance date and performance test date.

We prepared an action withdrawing these amendments, but the Office of the Federal Register was unable to publish it before May 19, 2003 (the direct final rule's effective date). The final rule amends the subpart MM rule by deleting the provisions which were the subject of adverse comment, consistent with our originally stated intention. If we again address these issues related to monitoring, we will do so by acting on the proposed rule (68 FR 7735) after considering the comments received. We will not institute a second comment period.

We are also amending portions of the subpart MM rule added by the direct final rule to make two technical corrections to inadvertent errors in rule language. The first is a correction to a typographical error affecting one term in Equation 1 of 40 CFR 63.865(a)(1). The second is a correction to a cross-referencing error in 40 CFR 63.687(a)(3).

The Administrative Procedure Act, in 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment. With respect to the amendment deleting the provisions related to monitoring, we are amending the rule to carry out our stated intention of not allowing provisions of the direct final rule to take effect if they were the subject of adverse comment. There has already been notice and opportunity for comment on this action, and, under these circumstances, opportunity for further comment is unnecessary. Moreover, failure to amend the rule by deleting the provisions on which EPA received adverse comment would be contrary to public expectation based on EPA's express promise. There may in fact be detrimental reliance on EPA's promise, further supporting EPA's finding that there is good cause for immediate revision of the rule. The other changes to the rule are minor, noncontroversial technical corrections, which do not substantively change the rule's requirements. Thus, notice and opportunity for public comment on these technical corrections is also unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

Section 553(d) allows an agency, upon a finding of good cause, to make a rule effective immediately. Because today's amendments delete regulatory language that was the subject of adverse comment, do not add any requirements necessitating additional time for compliance, and otherwise do not substantively change the requirements of the rule, we find good cause to make these amendments effective immediately.

Statutory and Executive Order Review

Under Executive Order 12866 (58 FR 51736, October 4, 1993), this action is not a "significant regulatory action" and is, therefore, not subject to review by the Office of Management and Budget. Because EPA has made a "good cause" finding that this action is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of the UMRA. This action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant.

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA is not proposing/adopting any voluntary consensus standards in this action.

This action does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing these amendments, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of these amendments in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. These amendments do not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that, before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the Congressional Review Act if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of July 18, 2003. The EPA will submit a report containing the rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: July 7, 2003.

Jeffrey R. Holmstead,

Assistant Administrator for Air and Radiation.

■ For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[Amended]

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart MM—[AMENDED]

■ 2. Section 63.864 is amended by removing and reserving paragraphs (a) through (c), (d)(1) and (2), (e)(1) through (9), (f), (h), (i), and (j)(5) and (6).

■ 3. Section 63.865 is amended by revising paragraph (a)(1) to read as follows:

§ 63.865 Performance test requirements and test methods.

* * * * *

(a) * * *

(1) Determine the overall PM emission limit for the chemical recovery system at the mill using Equation 1 of this section as follows:

$$EL_{PM} = \frac{\left[\left(C_{ref,RF}\right)\left(Q_{RFtot}\right)+\left(C_{ref,LK}\right)\left(Q_{LKtot}\right)\right]\left(FI\right)}{\left(BLS_{tot}\right)} + ERI_{ref,SDT}$$

Where:

EL_{PM} = Overall PM emission limit for all existing process units in the chemical recovery system at the kraft or soda pulp mill, kg/Mg (lb/ton) of black liquor solids fired;

$C_{ref,\ RF}$ = Reference concentration of 0.10 g/dscm (0.044 gr/dscf) corrected to 8 percent oxygen for existing kraft or soda recovery furnaces;

Q_{RFtot} = Sum of the average volumetric gas flow rates measured during the performance test and corrected to 8 percent oxygen for all existing recovery furnaces in the chemical recovery system at the kraft or soda pulp mill, dry standard cubic meters per minute (dscm/min) (dry standard cubic feet per minute (dscf/min));

$C_{ref,\ LK}$ = Reference concentration of 0.15 g/dscm (0.064 gr/dscf) corrected to 10 percent oxygen for existing kraft or soda lime kilns;

QLK_{tot} = Sum of the average volumetric gas flow rates measured during the performance test and corrected to 10 percent oxygen for all existing lime kilns in the chemical recovery system at the kraft or soda pulp mill, dscm/min (dscf/min);

F1 = Conversion factor, 1.44 minutes·kilogram/day·gram (min·kg/d·g) (0.206 minutes·pound/day·grain (min·lb/d·gr));

BLS_{tot} = Sum of the average black liquor solids firing rates of all existing recovery furnaces in the chemical recovery system at the kraft or soda pulp mill measured during the performance test, megagrams per day (Mg/d) (tons per day (ton/d)) of black liquor solids fired; and

$ERI_{ref,\ SDT}$ = Reference emission rate of 0.10 kg/Mg (0.20 lb/ton) of black liquor solids fired for existing kraft or soda smelt dissolving tanks.

* * * * *

■ 4. Section 63.867 is amended by revising paragraph (a)(3) to read as follows:

§ 63.867 Reporting requirements.

(a) * * *

(3) In addition to the requirements in subpart A of this part, the owner or operator of the hog fuel dryer at Weyerhaeuser Paper Company's Cosmopolis, Washington, facility (Emission Unit no. HD–14) must include analysis and supporting documentation demonstrating conformance with EPA guidance and specifications for bag leak detection systems in § 63.864(e)(12) in the Notification of Compliance Status.

* * * * *

[FR Doc. 03–18001 Filed 7–17–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7530–9]

Georgia: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Georgia has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this authorization during the comment period, the decision to authorize Georgia's changes to their hazardous waste program will take effect. If we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This Final authorization will become effective on September 16, 2003 unless EPA receives adverse written comment by August 18, 2003. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Send written comments to Narindar M. Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960; (404) 562–8440. We must receive your comments by August 18, 2003. You can view and copy Georgia's application from 8 a.m. to 4:30 p.m. at The Georgia Department of Natural Resources, Environmental Protection Division, 2 Martin Luther King, Jr. Drive, Suite 1154 East, Atlanta, Georgia 30334–4910, and from 8:30 a.m. to 3:45 p.m. EPA Region 4, Library, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Phone number (404) 562-8190, Patricia Strougal, Librarian.

FOR FURTHER INFORMATION CONTACT: Narindar M. Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960; (404) 562–8440.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Georgia's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Georgia Final authorization to operate its hazardous waste program with the changes described in the authorization application. Georgia has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Georgia, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Georgia subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Georgia has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses or reports
- Enforce RCRA requirements and suspend or revoke permits
- Take enforcement actions regardless of whether the State has taken its own actions

This action does not impose additional requirements on the regulated community because the regulations for which Georgia is being authorized by today's action are already effective, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What Has Georgia Previously Been Authorized for?

Georgia initially received Final authorization on August 7, 1984, effective August 21, 1984 (49 FR 31417), to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on July 7, 1986, effective September 18, 1986 (51 FR 24549), July 28, 1988, effective September 26, 1988 (53 FR 28383), July 24, 1990, effective September 24, 1990 (55 FR 30000), February 12, 1991, effective April 15, 1991 (56 FR 5656), May 11, 1992, effective July 10, 1992 (57 FR 20055), November 25, 1992, effective January 25, 1993 (57 FR 55466), February 26, 1993, effective April 27, 1993 (58 FR 11539), November 16, 1993, effective January 18, 1994 (58 FR 60388), April 26, 1994, effective June 27, 1994 (59 FR 21664), May 10, 1995, effective July 10, 1995 (60 FR 24790), August 30, 1995, effective October 30, 1995 (60 FR 45069), March 7, 1996, effective May 6, 1996 (61 FR 9108), September 18, 1998, effective November 17, 1998 (63 FR 49852), October 14, 1999, effective December 13, 1999 (64 FR 55629), November 28, 2000, effective March 30, 2001 (66 FR 8090), July 16, 2002, effective September 16, 2002 (67 FR 46600), and November 19, 2002, effective January 21, 2003 (67 FR 69690).

G. What Changes Are We Authorizing With Today's Action?

On March 31, 2003, Georgia submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. Georgia's revision consists of provisions promulgated July 1, 2000 through June 30, 2001, otherwise known as RCRA Cluster XI. The Georgia Board of Natural Resources adopted RCRA Cluster XI rules on January 23, 2002, effective February 25, 2002, and December 4, 2002, effective December 30, 2002. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Georgia's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant Georgia Final authorization for the following program changes:

Description of Federal requirement	*Federal Register*	Analogous State authority [1]
Checklist 188, NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors; Technical Corrections Hazardous Air Pollutant Standards; Technical Corrections.	65 FR 42292–42302, 7/10/2000 ..... amended, 66 FR 24270–24272, 5/14/01 amended, 66 FR 35087–35107, 7/3/2001	Rule 391–3–11–.07(1). Rule 391–3–11–.22(7)(d). Rule 391–3–11–.10(2).[2]
Checklist 189, Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Chlorinated Aliphatics Production Wastes; Land Disposal Restrictions for Newly Identified Wastes; and CERCLA Hazardous Substance Designation and Reportable Quantities.	65 FR 67068–67133, 11/8/2000	Rule 391–3–11–.07(1). Rule 391–3–11–.16.
Checklist 190, Deferral of Phase IV—Standards for PCBs as a Constituent Subject to Treatment in Soil. Land Disposal Restrictions Phase IV—Deferral for PCBs in Soil.	65 FR 81373–81381, 12/26/2000	Rule 391–3–11–.16.
Checklist 191, Storage, Treatment, Transportation, and Disposal of Mixed Waste. Mixed Waste Rule.	66 FR 27218–27266, 5/16/2001	Rule 391–3–11–.10(3).
Checklist 192 A and B, Hazardous Waste Identification Rule (HWIR): Revisions to the Mixture and Derived-From Rules.	66 FR 27266–27297, 5/16/2001.	
A. Mixture and Derived from Rules Revisions.		Rule 391–3–11–.07(1).
B. Land Disposal Restrictions Corrections		Rule 391–3–11–.16.
Checklist 193, Change of Official EPA Mailing Address; Additional Technical Amendments and Corrections..	66 FR 34374–34376, 6/28/2001	Rule 391–3–11–.02(1).

[1] The Georgia Provisions are from the Georgia Hazardous Waste Management Regulations effective February 25, 2002.
[2] Rule effective December 30, 2002.

H. Where Are the Revised State Rules Different From the Federal Rules?

There are no State requirements in this program revision considered to be more stringent or broader in scope than the Federal requirements.

I. Who Handles Permits After the Authorization Takes Effect?

Georgia will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until they expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Georgia is not yet authorized.

J. What Is Codification and Is EPA Codifying Georgia's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart L for this authorization of Georgia's program changes until a later date.

K. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not

make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indians' lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 2, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 03–18297 Filed 7–17–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2112; MB Docket No. 03–47; RM–10592]

Radio Broadcasting Services; Orange, VA, Midlothian, VA, Reidsville, NC and South Hill, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Piedmont Communications, Inc., licensee of FM Station WJMA, Orange, Virginia, and Old Belt Broadcasting Corporation, licensee of FM Station WKSK, South Hill, Virginia, deletes Orange, Virginia, Channel 255A, from the FM Table of Allotments, allots Channel 255B1 at Midlothian, Virginia, as the community's first local FM service, and modifies the license of FM Station WJMA to specify operation on Channel 255B1 at Midlothian. The order further substitutes Channel 270A for Channel 255B3 at South Hill, Virginia, and substitutes Channel 271C0 for Channel 271C at Reidsville, North Carolina. Channel 255B1 can be allotted to Midlothian, Virginia, in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.7 km (7.9 miles) northwest of Midlothian. The coordinates for Channel 255B1 at Midlothian, Virginia, are 37–30–21 North Latitude and 77–38–58 West Longitude. Channel 270A can be allotted to South Hill, Virginia, in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.4 km (7.7 miles) northwest of South Hill. The coordinates for Channel 270A at South Hill, Virginia, are 36–43–35 North Latitude and 78–07–45 West Longitude. Channel 271C0 can be substituted for Channel 271C at Reidsville, North Carolina, at the existing licensed coordinates for FM Station WJMH.

DATES: Effective August 18, 2003.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03–47, adopted July 1, 2003, and released July 3, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by removing Channel 271C and by adding Channel 271C0 at Reidsville.

■ 3. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by removing Orange, Channel 255A; by adding Midlothian, Channel 255B1; by removing Channel 255C3 and by adding Channel 270A at South Hill.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–18229 Filed 7–17–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2106; MB Docket No. 03–89, RM–10689]

Radio Broadcasting Services; Okeechobee, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of George S. Kalman, allots Channel 291A to Okeechobee, Florida, as the community's first local aural transmission service. *See* 68 FR 18180, April 15, 2003. Channel 291A can be allotted to Okeechobee, in compliance with the Commission's minimum distance separation requirements, provided there is a site restriction of 13 kilometers (8.1 miles) northwest of the community. The reference coordinates for Channel 291A at Okeechobee are 27–20–30 North Latitude and 80–54–08 West Longitude. A filing window for Channel 291A at Okeechobee, Florida, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective August 18, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03–89, adopted July 1, 2003, and released July 3, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

■ 1.The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2.Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Okeechobee, Channel 291A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–18230 Filed 7–17–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2107; MB Docket No. 03–79, RM–10673]

Radio Broadcasting Services; Ridgecrest, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Dana J. Puopolo, allots Channel 252A to Ridgecrest, California, as the community's third FM commercial service. *See* 68 FR 17593, April 10, 2003. Channel 252A can be allotted to Ridgecrest, in compliance with the Commission's minimum distance separation requirements, provided there is a site restriction of 12.5 kilometers (7.7 miles) west of the community. The reference coordinates for Channel 252A at Ridgecrest are 35–39–19 North Latitude and 117–48–06 West Longitude. A filing window for Channel 252A at Ridgecrest, California, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective August 18, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03–79, adopted July 1, 2003, and released July 3, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 Twelfth Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 252A at Ridgecrest.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–18250 Filed 7–17–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2105; MB Docket No. 03–86 RM–10685]

Radio Broadcasting Services; George West, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission allots Channel 250A at George West, Texas, in response to a petition filed by Charles Crawford. *See* 68 FR 18178 (April 15, 2003). Channel 250A can be allotted at George West, Texas, with a site restriction 12 kilometers (7.4 miles) southwest of the community at coordinates 28–14–07 and 98–09–43. Although Mexican concurrence has been requested for the allotment of Channel 250A at George West, notification has not been received. Therefore, operation with the facilities specified for George West herein is subject to modification, suspension or termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement or if specifically objected to by Mexico. With this action, this proceeding is terminated. A filing window for channel 250A at George West will not be opened at this time. Instead, the issue of opening this allotment for auction will be addressed by the Commission in a subsequent order.

DATES: Effective August 18, 2003.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report

and Order, MB Docket No. 03–86, adopted July 1, 2003, and released July 3, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 250A at George West.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–18251 Filed 7–17–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[ET Docket No. 98–206; RM–9147; RM–9245; FCC 03–152]

Commission's Rules To Permit Operation of NGSO FSS Systems Co-Frequency With GSO and Terrestrial Systems in the Ku-Band Frequency Range

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document we revise our service area definition and build out requirement for the Multichannel Video Distribution and Data Service (MVDDS) in the 12.2–12.7 GHz band (12 GHz band). Specifically, we adopt Designated Market Areas (DMAs) as the service area definition for MVDDS. We also conclude that a five-year substantial service build out requirement is more appropriate for the MVDDS. We believe that these actions will better facilitate the delivery of advanced wireless services in the 12 GHz band and promote expeditious deployment of such services to a wide range of populations, including unserved and underserved communities.

DATES: Effective September 16, 2003.

ADDRESSES: Federal Communications Commission 445 12th Street, SW., TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jennifer Burton, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau at (202) 418–0680, email *jburton@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's *Third Report and Order*, FCC 03–152, adopted on June 25, 2003, and released on July 7, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

1. In the *Third R&O*, we revise our service area definition and build out requirement for the Multichannel Video Distribution and Data Service (MVDDS) in the 12.2–12.7 GHz band (12 GHz band). In the *Second Further Notice of Proposed Rule Making (Second Further Notice)*, 68 FR 19486, (April 21, 2003), in this proceeding, we sought further comment on the most appropriate service area definition for the geographic licensing of MVDDS. In this connection, we sought comment on whether use of the DMAs defined by Nielsen Media Research (Nielsen) will facilitate delivery of advanced wireless services, such as video and data broadband services, to a wide range of populations, including those areas that are unserved and underserved. In addition, we sought comment on whether we should modify the MVDDS build out requirement as a means to foster expeditious deployment of advanced wireless services to these communities as well.

2. Upon consideration of the record in this proceeding, including but not limited to the comments filed in response to the *Second Further Notice*, we adopt DMAs as the service area definition for MVDDS. We also conclude that a five-year substantial service build out requirement is more appropriate for the MVDDS. We believe that these actions will better facilitate the delivery of advanced wireless services in the 12 GHz band and promote expeditious deployment of such services to a wide range of populations, including unserved and underserved communities.

Procedural Matters

Final Regulatory Flexibility Analysis

3. The Final Regulatory Flexibility Analysis, required by section 603 of the Regulatory Flexibility Act, as amended by the Congressional Review Act, Public Law No. 104–121 (1996).

Paperwork Reduction Act

4. The *Third R&O* contains modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public and other Federal agencies are invited to comment on the modified information collection(s) contained in this proceeding.

Final Regulatory Flexibility Analysis

5. As required by the Regulatory Flexibility Act (RFA), we incorporated an Initial Regulatory Flexibility Analysis (IRFA) in the *Second Further Notice of Proposed Rule Making*. In view of the fact that we have adopted a further rule amendment in the *Third Report and Order*, we have included this Final Regulatory Flexibility Analysis (FRFA). This present FRFA conforms to the RFA.

Need for, and Objectives of the Third Report and Order

6. In the *Third Report and Order*, we revisit the geographic licensing plan adopted in the *Second Report and Order*, 67 FR 63279, (October 11, 2002), and adopt a revised licensing framework for MVDDS. In the *Second Report and Order*, the Commission adopted a service area definition for MVDDS on the basis of Component Economic Areas (CEAs). Based on the previously-established record in this proceeding, differing responsive comments to the January 20, 2003 *Auction PN* received from Northpoint Technology, Ltd. (Northpoint) and MDS America on the issue of service area designations, and on subsequent discussions between Commission staff and Nielsen representatives concerning the use of its DMAs, we revisited the service area designation. We are persuaded to adopt a service area definition for MVDDS on the basis of DMAs instead of CEAs. We believe that licensing MVDDS on the basis of DMAs may place wireless competitors on the same economic footing as cable systems, which generally have a royalty-free statutory copyright license to retransmit local television programming within the DMA of the station being rebroadcast. In addition, we believe that the use of DMAs may be administratively easier for licensees due to the close nexus between the television viewer market areas as determined by the DMA delineation and the proposed use of the service (the delivery of television programming).

7. We also took the opportunity to explore whether the current build out requirement sufficiently promotes expeditious deployment of service. We believe that reducing the build out period from ten years to five years will ensure effective use of the spectrum and a faster deployment of service to the public.

Summary of Significant Issues Raised by Public Comments in Response to the FRFA

8. We received no comments in response to the IRFA in the *Second Further Notice*.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

9. The RFA directs agencies to provide a description of, and, where feasible an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

10. *Small Multichannel Video Programming Distributors (MVPDs).* The SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. We address below each service individually to provide a more precise estimate of small entities.

11. *Cable Services.* The Commission has developed, with SBA's approval, a definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide. In 1996, the Commission estimated that 1,439 cable operators qualified as small cable companies. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to merge with other cable operators. Consequently, using this definition, we estimate that the decisions and rules may affect fewer than 1,439 small entity cable system operators.

12. The Communications Act defines a small cable system operator as "a cable operator that, directly or through an affiliate, serves in the aggregate less than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we deem an operator serving fewer than 617,000 subscribers to be a small operator under the Communications Act definition, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals approximately 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

13. DBS Service. DBS falls within the SBA definition of Cable and Other Program Distribution (NAICS 513220). As noted, this definition provides that a small entity has $12.5 million or less in annual receipts. The operational licensees of DBS services in the United States are governed by Part 100 of the Commission's Rules. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees meeting this definition that could be impacted by these rules. DBS service requires a great investment of capital for operation, and we acknowledge that there are entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as a small business by the SBA, if independently owned and operated.

14. *Auxiliary, Special Broadcast and other program distribution services.* This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radio stations (NAICS 513112), and television broadcasting (NAICS 513120). These definitions provide, respectively, that a small entity is one with either $6 million or less in annual receipts or $12 million in annual receipts. The numbers of these stations are very small. The Commission does not collect financial information on these auxiliary broadcast facilities. The Commission, however, continues to believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most of these types of services are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (as noted, either $6 million for a radio station or $12 million for a TV station). Furthermore, they do not meet the SBA's definition of a "small business concern" because they are not independently owned and operated.

15. *Private Operational Fixed Service.* Incumbent microwave services in the 12.2–12.7 GHz bands include common carrier, private operational fixed (POF), and broadcast auxiliary service (BAS) services. Presently, there are approximately 22,015 common carrier licensees, and approximately 61,670 POF licensees and broadcast auxiliary radio licensees in the microwave service. Inasmuch as the Commission has not yet defined a small business

with respect to these incumbent microwave services, we utilized the SBA's definition applicable to cellular and other wireless telecommunications companies (NAICS 513322); *i.e.*, an entity with no more than 1,500 persons. We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

16. The rules set forth in the *Third Report and Order* will affect all entities that intend to provide terrestrial MVDDS operations in the 12.2–12.7 GHz band.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

17. The *Third Report and Order* modifies the reporting, recordkeeping or other compliance requirements previously adopted in this proceeding. We are changing the service area designation from CEAs to DMAs, resulting in a change in the number and definition of the service areas. In addition, we are changing the build out period from ten years to five years, resulting in compliance with these rules in half the time. However, we believe that these rule changes will not have a burdensome result, especially in light of our finding that small businesses will benefit from the new service area designation and because the record indicates that interested parties will have no difficulty complying with the new five year build out.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

18. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

19. Regarding our revisiting the service area issue to utilize DMAs in the *Third Report and Order* in lieu of the CEA service area designation adopted in the *Second Report and Order*, we do not anticipate any adverse impact on small entities. We believe that the use of DMAs better comports with the proposed service and that this decision will place wireless competitors to cable services on the same economic footing as cable systems, which generally have a royalty-free statutory copyright license to retransmit local TV programming within the DMA of the station being rebroadcast.

20. We also revisited the build out requirement to establish a five-year construction period in the *Third Report and Order*, in lieu of the ten-year construction period established in the *Second Report and Order*. We do not anticipate any adverse impact on small entities. We determined that the revised time frame was necessary in order to promote timely service to the public, and that those interested in providing service will have ample time to modify their business plans prior to a competitive bidding procedure.

Report to Congress

21. The Commission will send a copy of the *Third Report and Order*, including this FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Third Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clauses

22. Pursuant to the authority contained in sections 4(i), 7(a), 301, 303(c), 303(f), 303(g), 303(r), 308, and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 301, 303(c), 303(f), 303(g), 303(r), 308, 309(j), the *Third Report and Order* is adopted.

23. Part 101 of the Commission's Rules is amended as specified in rule changes, effective September 16, 2003. This action is taken pursuant to sections 4(i), 303(c), 303(f), 303(g), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(f), 303(g), 303(r) and 309(j).

List of Subjects in 47 CFR Part 101

FCC equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble the FCC amends 47 CFR part 101 as follows:

PART 101—FIXED MICROWAVE SERVICES

■ 1. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

■ 2. Section 101.1401 is revised to read as follows:

§ 101.1401 Service areas.

Multichannel Video Distribution and Data Service (MVDDS) is licensed on the basis of Designated Market Areas (DMAs). The 214 DMA service areas are based on the 210 Designated Market Areas delineated by Nielsen Media Research and published in its publication entitled U.S. Television Household Estimates, September 2002, plus four FCC-defined DMA-like service areas.

(a) Alaska—Balance of State (all geographic areas of Alaska not included in Nielsen's three DMAs for the state: Anchorage, Fairbanks, and Juneau);

(b) Guam and the Northern Mariana Islands;

(c) Puerto Rico and the United States Virgin Islands; and

(d) American Samoa.

■ 3. Section 101.1413 is amended by revising paragraph (b) introductory text to read as follows:

§ 101.1413 License term and renewal expectancy.

* * * * *

(b) Application of a renewal expectancy is based on a showing of substantial service at the end of five years into the license period and ten years into the license period. The substantial service requirement is defined as a service that is sound, favorable, and substantially above a level of mediocre service which might minimally warrant renewal. At the end of five years into the license term and ten years into the license period, the Commission will consider factors such as:

* * * * *

■ 4. Section 101.1421 is amended by revising paragraphs (b) and (c) to read as follows:

§ 101.1421 Coordination of adjacent area MVDDS stations and incumbent public safety POFS stations.

* * * * *

(b) Harmful interference to public safety stations, co-channel MVDDS stations operating in adjacent geographic areas, and stations operating on adjacent channels to MVDDS stations is prohibited. In areas where the DMAs are in close proximity, careful consideration should be given to power requirements and to the location, height, and radiation pattern of the transmitting and receiving antennas. Licensees are expected to cooperate fully in attempting to resolve problems of potential interference before bringing the matter to the attention of the Commission.

(c) Licensees shall coordinate their facilities whenever the facilities have optical line-of-sight into other licensees' areas or are within the same geographic area. Licensees are encouraged to develop operational agreements with relevant licensees in the adjacent geographic areas. Incumbent public safety POFS licensee(s) shall retain exclusive rights to its channel(s) within the relevant geographical areas and must be protected in accordance with the procedures in § 101.103 of this part. A list of public safety incumbents is attached as Appendix I to the Memorandum Opinion and Order and Second Report and Order, Docket 98–206 released May 23, 2002. Please check with the Commission for any updates to that list.

[FR Doc. 03–18221 Filed 7–17–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 030509119–3168–02; I.D. 032603D]

RIN 0648–AQ99

Magnuson-Stevens Act Provisions; Fishing Capacity Reduction Program; Pacific Coast Groundfish Fishery; California, Washington, and Oregon Fisheries for Coastal Dungeness Crab and Pink Shrimp

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final notice of proposed fishing capacity reduction program.

SUMMARY: NMFS issues this final notice about a voluntary fishing capacity reduction program in the Pacific Coast groundfish fishery. After a successful referendum, harvesters accepted to participate would be paid to surrender their fishing permits and restrict their vessels. A loan, which would be repaid by fishermen remaining in the fishery, will finance the majority of the program's cost. The program will invite bids from owners of groundfish trawl permits (except those harvesting whiting and processing it at sea) that are willing to surrender their fishing privileges, score the bids in a reverse auction against the value of bidders' harvests, and then conduct a referendum regarding repayment of the loan. If the referendum is successful, accepted bidders must relinquish their California, Oregon, and Washington fishing licenses for coastal Dungeness crab and pink shrimp. Accepted bidders must also surrender their Federal groundfish permits, as well as all other Federal fishing licenses, fishery permits, area and species endorsements, and any other fishery privileges issued to vessels named in their bids (or to persons on the basis of their operation or ownership of those vessels). The fishing vessels involved will never again be eligible to fish. If the referendum is not successful, bidders are excused from all such obligations. The groundfish program aims to increase the remaining harvesters' productivity, help financially stabilize the fishery, and help conserve and manage its fish. This notice also contains the groundfish program's invitation to bid and bidding document.

DATES: The final notice is effective July 18, 2003.

ADDRESSES: Copies of the environmental assessment and regulatory impact review are available from NMFS upon request from Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3282. Comments involving the reporting burden estimates or any other aspects of the collection of information requirements should be sent both to Michael L. Grable at the above address and to the National Oceanic and Atmospheric Administration Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Comments sent by Internet or e-mail will not be accepted.

FOR FURTHER INFORMATION CONTACT: Michael L. Grable, (301) 713–2390.

SUPPLEMENTARY INFORMATION:

I. General

Enacted on February 20, 2003, Section 212 of Division B, Title II, of Pub. L. 108–7 (section 212) authorizes a fishing capacity reduction program (program) for that portion of the limited entry trawl fishery under the Pacific Coast Groundfish Fishery Management Plan whose permits, excluding those registered to whiting catcher-processors, are endorsed for trawl gear operation (reduction fishery). The program's objective is to reduce the number of vessels and permits endorsed for the operation of groundfish trawl gear. Vessels that catch and process whiting at sea are ineligible to participate. The program also involves corollary fishing capacity reduction in the California, Oregon, and Washington fisheries for coastal Dungeness crab and pink shrimp (fee-share fisheries). Sections 1111 and 1112 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1279f and 1279g) (Title XI) authorize loans for financing the cost of fishing capacity reduction programs (reduction loans).

The program has two appropriations. A $10 million appropriation, authorized by section 501(b) of Division N, Title V, of Public Law 108–7, directly funds part of the program's cost. The second, a $0.5 million appropriation, included in Pub. L. 107–206, funds the Federal Credit Reform Act cost of authorizing a $36 million reduction loan.

Section 212 supersedes some of the provisions of both the fishing capacity reduction framework regulations (50 CFR 600.1000 *et seq.*) and the Magnuson-Stevens Act fishing capacity reduction provisions (16 U.S.C. 1861a(b)–(e)).

When fishing capacity reduction is undertaken pursuant to the Magnuson-Stevens Act provisions, NMFS implements each reduction program by adding an implementing section to the framework regulations. Section 212, however, renders some of the Magnuson-Stevens Act provisions and the framework regulations inapplicable. Among other things, the groundfish program applies to more than one fishery. Section 212 also requires NMFS to implement the groundfish program by publishing a notification and an invitation to bid in the **Federal Register** rather than by promulgating additional regulations. In addition, section 212 supersedes one provision of Title XI, by extending the reduction loan's term to 30 years.

II. Reduction Cost

The amount paid to harvesters in exchange for relinquishing their fishery privileges (reduction cost) may equal, but may not exceed, $46 million. A $10 million appropriation will fund part of the reduction, and future harvesters will finance any remainder.

III. Summary of Comments

NMFS received comments from nine entities. Comments from both individuals and organizations represent the views of many parties. Most of the comments supported fishing capacity reduction in the reduction fishery, although some comments disagreed

with some aspects of the proposed notice.

Comment 1: Three comments suggested that NMFS offer flat permit-relinquishment payments to groundfish reduction permit owners who own no reduction vessel.

Response: This was not specifically contemplated in the statute and therefore NMFS does not have the authority to implement such a payment scheme.

Comment 2: Three comments suggested that NMFS allow entities that own reduction vessels to be co-bidders with other entities that own groundfish reduction permits but not reduction vessels.

Response: NMFS agrees and has expanded the definition of bidder to allow co-bidder participation. A bid can include multiple parties owning or holding the different reduction components required for a bid.

Comment 3: One comment requested that NMFS change "Dungeness crab" to "ocean Dungeness crab" to ensure that Dungeness crab inside Puget Sound is excluded from this program.

Response: NMFS agrees that Puget Sound Dungeness crab should be excluded as a fee-share fishery and has added the term "coastal" to clarify the Dungeness crab eligible for this program. This term is intended to encompass California, Oregon, and Washington state's description of Dungeness crab fisheries and permit systems outside of Puget Sound.

Comment 4: Two comments requested that NMFS remove the provisions requiring relinquishment of fee-share reduction permits not registered to reduction vessels.

Response: NMFS agrees and has clarified the language to require that only fee-share permits registered to a reduction vessel be relinquished.

Comment 5: Two comments state that NMFS' request for information regarding catch history as a requirement of the bid is unnecessary because such information on how fishermen got their permits is irrelevant.

Response: NMFS agrees and has made the appropriate revisions.

Comment 6: One comment suggested clarifying that relinquishing Federal permits other than the groundfish reduction permit is restricted to Federal permits registered to the reduction vessel.

Response: NMFS agrees and has made the appropriate revision.

Comment 7: One comment suggests that bid scoring should include the average landings values of only those fee-share fisheries that match the bidder's fee-share reduction permits.

Response: NMFS agrees and has clarified that such values should correspond to the bidder's fee-share reduction permits.

Comment 8: Two comments requested that NMFS allow bidders to document alternative landings values higher than those in the official fish-ticket databases.

Response: In order to provide a fair opportunity for all bidders to document their landings, NMFS determined the best evidence of landings is the official fish-ticket databases.

Comment 9: One comment suggested that in situations involving bids with identical scores, where accepting both would exceed funding levels, NMFS should accept the bid with the lowest value first rather than the bid first received.

Response: NMFS agrees that the process for accepting bids with identical scores should be revised. However, to be consistent with the purposes of the Program, where there is not sufficient reduction funding to accept all bids, NMFS will accept the bid that removes the greatest amount of capacity without exceeding funding limits. If both bids remove the same amount of capacity, the bid received first will be accepted.

Comment 10: One comment suggested that NMFS delay notifying bidders that bids have been accepted until after a successful referendum.

Response: NMFS agrees and will notify accepted bidders after the referendum.

Comment 11: One comment suggested that NMFS clarify that the loan sub-amount calculation's dividend is derived from the bid-scoring period landing values of the accepted bidders.

Response: NMFS agrees and has changed the notice accordingly.

Comment 12: One comment suggests that NMFS establish a specific time for every accepted bidder to stop fishing, as opposed to the proposed notice and addenda provisions that each accepted bidder must stop fishing upon receipt of NMFS' request for payment instructions. The suggestion is that fishing cease 30 days after the certification of referendum results.

Response: NMFS agrees that this provision should be modified so that all accepted bidders will cease fishing at the same time. The provision has been revised so that the bidder must have stopped fishing and must have retrieved all fishing gear previously deployed from the reduction vessel 30 days after the publication of the reduction payment tender notice.

Comment 13: Two comments suggest that NMFS revise the notice and addenda language which holds accepted bidders accountable for the actions of new owners to whom accepted bidders may, after buyback, transfer reduction vessels.

Response: NMFS agrees that accepted bidders cannot be held responsible for the future actions of unrelated third parties to whom they transfer these vessels. Any violations by the new owners will be addressed under existing statutory authority.

Comment 14: One comment questioned if "inside waters" fishing count for bid scoring purposes.

Response: All landings, including in inside waters, associated with the management of federal groundfish and with state coastal fisheries for pink shrimp and Dungeness crab will be used for bid scoring purposes.

Comment 15: One commenter questioned if accepted bidders may fish a reduction vessel in "inside waters" or sell the vessel to Mexico or Alaska.

Response: A reduction vessel may not be fished anywhere. It may not be sold into any foreign registry or operation but can be sold to an Alaska resident, although it cannot fish there or anywhere else.

Comment 16: One comment asked NMFS to establish the "basic trawl permit price without a past harvest".

Response: Congress established a bidding formula, which requires past harvest revenues.

Comment 17: One comment asked if NMFS buys back only his permit, if he could fish his reduction vessel in inside waters.

Response: This capacity reduction program compensates fishermen for relinquishing not only the reduction permits but the fishery endorsement of the reduction vessel. Therefore, the reduction vessel cannot fish anywhere. If the reduction vessel is a state registered vessel, it must be scrapped.

Comment 18: One comment asked what to do with a reduction vessel.

Response: The owner of a reduction vessel may do whatever he chooses with a reduction vessel as long as he does not fish with the reduction vessel or move it into a foreign registry or operation, except for non-Federally registered vessels which must be scrapped.

Comment 19: One comment suggested that a reduction vessel be saleable into a foreign fishery because this is most beneficial to the buyback.

Response: The authorizing statute prohibits such a sale.

Comment 20: One comment asked if a reduction vessel can be used for tendering and for the definition of "fishing".

Response: The definition of "fishing" is contained in the Magnuson-Stevens Act and would preclude a reduction vessel from tendering.

Comment 21: One comment asked if income from NMFS fisheries research charters can be included in landings for bid scoring.

Response: Yes, but only the income from the sale of the groundfish recorded on fish tickets.

Comment 22: One comment asked what happens to fish in deployed gear at the time of tender, when fishing must cease.

Response: Any fish caught within the 30 day time period may be legally retained and sold. After that date, the gear should have been pulled up and no longer fishing.

Comment 23: One comment implies that coastal Dungeness crab and pink shrimp gear should be included in the capacity reduction program.

Response: No statutory authority exists to buy back fishing gear.

Comment 24: One comment implies that accepted bidders should be prevented from using their reduction payments to buy existing coastal Dungeness crab or pink shrimp permits and crab or shrimp gear and leasing them to vessels already in these fisheries.

Response: No statutory authority exists to make this change.

Comment 25: One comment implies that the existence of latent permits in coastal Dungeness crab and pink shrimp fisheries exacerbates problems described in comments (23) and (24).

Response: Latent permits in these fisheries is an issue that should be addressed by state fisheries managers.

Comment 26: One comment implies that accepted bidders should, themselves, be prevented from ever fishing again.

Response: No statutory authority exists to make this change.

Comment 27: One comment suggested that all reduction vessels should be scrapped.

Response: The authorizing statute allows for retention of the reduction vessel as long as the fishery endorsement is cancelled. This affords more capacity removal from the targeted fisheries at less cost.

Comment 28: One comment stated that neither the notice nor its addenda indicate whether a reduction vessel which has a multi-year NMFS trawl-survey charter can continue with the charter after the buyback.

Response: The vessel's fishery endorsement will have been withdrawn and therefore the vessel can no longer fish. However, NMFS will work internally to ensure that any fishermen who is bought out will not be subject to a Governmental action for breach of contract based on inability to fish due to the buyback.

Comment 29: One comment stated that NMFS lacks legal authority regarding the coastal Dungeness crab and pink shrimp fisheries noting that they are managed by the respective states.

Response: NMFS acknowledges that these are state-managed fisheries and will work with the states to implement this voluntary program as directed by the authorizing legislation to revoke the fee-share fishery reduction permits. Nevertheless, this does not affect fee payment and collection.

Comment 30: One comment questioned NMFS' legal authority regarding processors of trawl groundfish noting that there are no Federal requirements for permits or reporting groundfish landings.

Response: The Fishery Management Plan for Pacific Coast Groundfish incorporates by reference state requirements to record landings on state fish tickets.

Comment 31: One comment stated that Congress intended for NMFS to follow existing practices for fee collection.

Response: The authorizing legislation provides an option for the U.S. may enter into agreements with California, Oregon, and Washington to collect the fees that repay the reduction loan. Unless and until NMFS arranges to do so, however, fish sellers will pay the fees and fish buyers will collect the fees in accordance with the framework regulations.

Comment 32: One comment states that the volume and size of fish buyers dictates special circumstances to avoid an administrative nightmare for NMFS.

Response: NMFS believes that the fee collection system currently in place should be adequate.

Comment 33: One comment strongly suggests that NMFS enter into fee collection arrangements with the States.

Response: Because of specific statutory time constraints, NMFS must defer this matter's resolution until after the buyback, at which time we will explore optional state fee collection.

Comment 34: One comment states that the program's Environmental Assessment and Regulatory Impact Review (EA/RIR) does not estimate how many small businesses may be required to participate in the fee collection process.

Response: Section 3.6 or the EA/RIR discusses the processing sector by reviewing data on the 1,780 purchasers of fish from West coast harvesters during 2000. Fish buyers are categorized according to "large" and "small" buyers based on the amount of fish purchased. However, available analyses on the diversity and size of the processing sector as well as state participation in the fee collection process precludes NMFS from developing definitive estimates of processor involvement. According to SBA (See Section 6.6), a "large" processor is a processor with more than 500 employees. NMFS does not have complete data on processing employment by processing site or by company. (Some companies control several sites). However, based on available descriptions of companies and ownership, NMFS believes that almost all of the processors on the West Coast would be considered "small" under the SBA definition. Sections 3.6 and 6.6 of the EA/RIR will be revised accordingly.

Comment 35: One comment questioned the analysis undertaken in Section 4.2 of the EA/RIR to show the remaining fishermen the benefit of the program will outweigh the program costs passed on to them.

Response: The program is statutorily mandated but participation is voluntary. It is difficult to quantify the effects of a capacity reduction program before it occurs due to many unknown variables. However, the success of a fishing capacity reduction program depends upon certain assumptions such as the number of fish after a reduction remaining constant, preventing new capacity from replacing retired capacity, and fish prices remaining constant. If these assumptions are true then revenue for the remaining participants after fee payment would likely increase. A majority of those voting in the referendum would need to support it in order for the industry fee system to be approved.

Comment 36: One comment asserted that the analysis in Section 4.8 of the EA/RIR repeats an untrue assumption that removing permits from the coastal Dungeness crab and pink shrimp fisheries will benefit fishermen by increasing access to a greater portion of management quotas and trip limits.

Response: The appropriate sections of the EA/RIR will be clarified to reflect that trip limits and quotas are not used in the management of coastal Dungeness Crab and Pink Shrimp. However, NMFS maintains that in general terms, these fisheries would benefit because fewer fishermen would remain fishing for the same amount of fish. In addition: if the Buyback Program provides conservation benefits to the groundfish fish stocks, current groundfish bycatch restrictions on the non-groundfish fisheries, particularly the Pink Shrimp fisheries may be relaxed. However, the

commenter raises valid issues in noting that benefits to non-groundfish fee share fisheries may be limited by the extent that latent capacity is activated, purchased capacity is replace through the issuance of new state permits, or effort is increased as the result of buyback program. The Commenter estimates that at least 100 of the the Oregon Dungeness Crab fishery permits are latent permits. As described in the EA/RIR, the Oregon Pink shrimp fishery has a requirement that if the number of active permits falls below 150, a lottery is to be held to return the number of issued permits to 150. Currently, there are 186 Oregon permits issued. Therefore, depending on the state fishery, the benefits will be hard to assess until it is known what permits are to be purchased and how the States are to respond to the statutory language that states: "It is the sense of Congress that the States of Washington, Oregon, and California should revoke all relinquishment permits in each of the fee-share fisheries immediately after the reduction payment, and otherwise to implement appropriate State fisheries management and conservation provisions in each of the fee-share fisheries that establishes a program that meets the requirements of 16 U.S.C. 141861a(b)(1)(B) as if it were applicable to fee-share fisheries."

IV. Summary of Revisions

The following sections of this final notice revise the proposed notice.

(1) The term co-bidder has been added to include third parties who own and/or hold reduction components and will participate in the bidding with the qualifying bidder.

(2) Bid-scoring includes the average landings values of only those fee-share fisheries that match the bidder's fee-share reduction permits included in the bid.

(3) For identical bid scores where there is not sufficient reduction funding to accept both, NMFS will accept the bid that removes the greatest amount of capacity without exceeding funding limits or if both bids remove identical amounts of capacity, the first received.

(4) Notification of accepted bidders will occur after the referendum.

(5) Accepted bidders must have stopped fishing and must have retrieved all fishing gear previously deployed from the reduction vessel 30 days after NMFS publishes the reduction payment tender notice in the **Federal Register**.

V. Program Summary

NMFS will mail to each "permit owner" (as 50 CFR 660.302 defines the term "permit owner") of a groundfish permit endorsed for trawl gear operation (other than those issued to whiting catcher-processors) an advance notice that NMFS will formally invite bids for capacity reduction by mailing them a bidding package. Such notice and the bidding package will be mailed to the permit owner at the owner's permit address of record.

The bidding package will contain, among other things, an invitation to bid and a bidding document. The invitation to bid will specify the terms and conditions under which bids are made and accepted. If the Secretary formally accepts a bid, the bidding document, in conjunction with the invitation to bid, will constitute a reduction contract between the bidder and the United States.

No bidder may bid before receiving the bidding package. Bidders must submit bids on provided forms and in strict conformance with the requirements of the invitation to bid. NMFS will reject any nonconforming bids.

The invitation to bid and bidding document will be similar to the pro forma invitation to bid and bidding document (*see* addenda to this notification). What follows is a general summary of the relevant provisions.

To submit a bid, bidders must mail or otherwise deliver their bids to NMFS at the address specified in the invitation to bid. Each bidder is responsible for ensuring that NMFS receives his or her bid before the specified bid closing date. NMFS will reject any bid that arrives after the bid closing date; such a bid will be deemed unresponsive to the invitation to bid. All terms and conditions of the invitation to bid or the bidding document are final at the time NMFS mails the bidding package. Thereafter, NMFS will not alter or negotiate any term or condition.

Each bid must specify:

(a) The exact bid price (also referenced as Reduction Payment),

(b) The reduction vessel the bidder proposes to remove from fishing (reduction vessel),

(c) The groundfish reduction permit,

(d) Any other Federal permits registered to or used on the reduction vessel,

(e) All California, Oregon, or Washington issued permits for coastal Dungeness crab or pink shrimp registered to or used on the reduction vessel (fee-share reduction permits).

Parties other than the qualifying groundfish permit owner who hold or own the other different components required for a bid may be co-bidders. Between them, bidders or co-bidders must own or hold all required bid components. The groundfish reduction permit must be registered for use on the reduction vessel. The bidder must also include in the bid all Federal fishery licenses, fishery permits, area and species endorsements, and any other fishing privileges issued to a reduction vessel or to the bidder co-bidder on the basis of its operation or ownership of the reduction vessel.

By completing and submitting a bidding document to NMFS, each bidder makes an irrevocable offer to the United States. No bidder, once having submitted a bid to NMFS, is entitled to withdraw or in any way amend the bid.

Each bidder must offer to relinquish all of his or her Federal permits and any state permits for pink shrimp or coastal Dungeness crab. Additionally, each person submitting a bid must offer to relinquish the reduction vessel's legal authority to participate in any fishery, by offering to permanently:

(a) Allow imposition of title restrictions that remove the reduction vessel's fisheries endorsement,

(b) Relinquish eligibility for any present or future U.S. Government approval under section (9)(c)(2) of the Shipping Act, 1916 (46 U.S.C. App. 808(c)(2)) for placement of the reduction vessel under foreign registry or operation under the authority of a foreign country, and

(c) Relinquish any other present or future reduction vessel fishing privilege or fishery eligibility claim of any kind, including any based on the reduction vessel's catch history.

If a reduction vessel is registered only under state jurisdiction (*i.e.*, it is not Federally documented), it must be scrapped.

After bidding, the bidder must continue to hold all reduction permits and own the reduction vessel until: NMFS notifies the bidder that NMFS rejects the bid, the bid expires without NMFS having accepted or rejected it, NMFS notifies the bidder that a reduction contract between the bidder and the United States no longer exists, or NMFS tenders reduction payment to the bidder and the bidder relinquishes all reduction permits and the reduction vessel's fishing privileges.

NMFS will determine which bids it accepts by using a reverse auction. Upon receipt of each bid, NMFS will determine a bid score by dividing each bid amount by the average annual total ex-vessel dollar value of the Pacific groundfish, coastal Dungeness crab, and pink shrimp landed by the bidder's reduction vessel that corresponds to the bidder's fee-share reduction permits. NMFS will average the three highest total annual revenues from groundfish, coastal Dungeness crab, and pink shrimp during 1998, 1999, 2000, or 2001.

NMFS will accept the responsive bid with the lowest bid score and then successively accept each additional responsive bid with the next lowest bid score until either there are no more bids to accept or acceptance of the bid with the next lowest bid score would cause the reduction cost to exceed the maximum reduction cost. If any two or more bid scores are exactly the same and there is not sufficient reduction funding to accept both, NMFS will accept the bid that removes the greatest amount of capacity, or in the event more that one such bid removes the same amount of capacity, the bid it received first.

NMFS will accept or reject each bid but will notify bidders accordingly only after a successful referendum occurs. NMFS' acceptance of a bid offer will form a fully binding reduction contract between the bidder (and any co-bidders) and the United States. Each party's obligation to perform in accordance with the terms and conditions of any reduction contract will, however, be subject to a successful fee referendum.

After bids are formally accepted, NMFS will establish up to seven reduction loan sub-amounts, one for the reduction fishery and one for each of the fee share fisheries. A reduction sub-amount is a fishery's share of the reduction loan and is in proportion to the fishery's share of the total ex-vessel dollar value of the groundfish, coastal Dungeness crab, and pink shrimp which all reduction vessels landed during the four-year period from 1998 through 2001. Post-reduction fees from each of these fisheries will repay its respective reduction loan sub-amount.

Specifically, NMFS will calculate each reduction loan sub-amount as follows. NMFS will separately add the total ex-vessel values of the accepted bidders landings, for the four-year period from 1998 through 2001, for the reduction fishery (*i.e.*, groundfish trawl fishery) and the fee-share fisheries (the three coastal Dungeness crab fisheries and the three pink shrimp fisheries). Then NMFS will divide each of the seven totals by the aggregate value of all of the landings from all seven fisheries to derive seven quotients. NMFS will then multiply the reduction loan amount by each of the quotients to determine the loan sub-amount that each of these fisheries must repay.

NMFS will conduct the referendum as soon as practicable. The referendum's sole purpose will be to determine whether the voters who cast referendum ballots authorize the fee required to repay the reduction loan.

NMFS will mail referendum information, voting instructions, and a referendum ballot(s) to the permit owner of each groundfish permit in the reduction fishery and to the person who is the holder of record of each state-issued pink shrimp or coastal Dungeness crab permit (collectively, eligible voters). NMFS will include information about the following bid acceptance results:

(a) The program's reduction cost,

(b) The seven reduction loan sub-amounts,

(c) The number of permits that will be relinquished,

(e) The number of reduction vessels, and

(f) The total ex-vessel dollar values of reduction vessel landings in the reduction fishery and in each of the six fee-share fisheries, during each year from 1998 through 2001.

NMFS will mail eligible voters a separate referendum ballot for each groundfish permit they own and every pink shrimp or coastal Dungeness crab permit they hold. In other words, eligible voters will have one ballot for every such permit they hold.

Immediately after the deadline for NMFS' receipt of ballots, NMFS will tally votes, fishery by fishery, and multiply each tally by the quotients used in calculating the reduction loan sub-amounts. The products of this multiplication will be the vote tallies for the respective fisheries weighted in proportion to each fishery's reduction loan sub-amount.

If the weighted total of approving votes is greater than the weighted total of disapproving votes, the referendum is successful. The referendum is unsuccessful if the weighted total of disapproving votes is the same as or exceeds the weighted total of approving votes. NMFS will mail each eligible voter a notice about the referendum's outcome. If the referendum is successful, NMFS will mail to each bidder a bid acceptance or rejection notice.

If the referendum is unsuccessful, the fee will not be approved; and NMFS will mail a notice to each bidder that neither the bidder nor the United States has any further obligation under any reduction contract.

If the referendum is successful, NMFS will request, from each accepted bidder, specific and written payment instructions for disbursing the reduction payment. Within thirty days after the publication in the **Federal Register** of the reduction payment tender notice (which notifies the bidder that NMFS intends to pay the bidder and needs payment instructions), the bidder must have stopped fishing and must retrieve all fishing gear previously deployed from the reduction vessel. The bidder must also certify that they have complied with the requirements of the reduction contract.

NMFS will:

(a) Revoke all groundfish permits and all other federal reduction permits,

(b) Notify California, Oregon, and Washington that accepted bidders have relinquished their fee-share reduction permits,

(c) Request the Secretary under whom the U.S. Coast Guard operates to revoke the fisheries endorsements of all Federally-documented reduction vessels, and

(d) Request the Secretary under whom the U.S. Maritime Administration operates to make all Federally-documented reduction vessels permanently ineligible for any present or future U.S. Government approval under section (9)(c)(2) of the Shipping Act, 1916 (46 U.S.C. App. 808(c)(2)) for placement of a reduction vessel under foreign registry or operation under the authority of a foreign country.

These reduction vessel revocations and restrictions run with the vessels' titles and apply to all subsequent owners.

The bidder must immediately scrap any state-registered reduction vessel and allow NMFS to observe and certify the scrapping.

After receiving a bidder's payment instructions and certification of compliance, NMFS will disburse the reduction payment unless NMFS has reason to believe that the bidder has not performed in accordance with his or her reduction contract duties and obligations. NMFS will disburse reduction payments only to accepted bidders, unless they explicitly instruct NMFS to do otherwise. If a reduction vessel needs to be scrapped, NMFS will withhold funds sufficient to cover the cost of such scrapping until its completion.

VI. Program Process

The following table outlines, in chronological order, the program's process:

STEP	ACTION
One	NMFS publishes a final notice in the **Federal Register**, together with the final draft of the invitation to bid and bidding document.
Two	NMFS mails each permit owner of a groundfish trawl permit (other than those issued to whiting catcher-processors) a notice that NMFS will subsequently mail him or her a bidding package.
Three	NMFS formally invites each qualified bidder to bid by mailing to him or her a bidding package that also informs him or her that a referendum will occur after NMFS has accepted bids.
Four	NMFS mails a notice to persons holding any fee-share fishery permit(other than those to whom NMFS sent the mailing in step three) that NMFS has invited bids. The notice will also state that NMFS will, without further notice, mail him or her a referendum ballot(s) and voting instructions after NMFS has accepted bids.
Five	Bidders submit bids.
Six	NMFS receives bids until the bid closing date.
Seven	NMFS scores and tallies the bids.
Eight	NMFS mails to each person eligible to vote in the referendum a ballot(s) and voting instructions.
Nine	The referendum occurs.
Ten	NMFS receives votes until the vote receipt deadline and afterwards tallies the votes.
Eleven (A)	If the referendum fails: (a) NMFS mails to each eligible voter a notice that the referendum is unsuccessful, and (b) NMFS mails to each bidder a notice that the reduction bids are without force and/or effect.
Eleven (B)	If the referendum is successful: (a) NMFS mails to each bidder a notice that the referendum is successful, the bid is either accepted or rejected, and reminds accepted bidders that he or she must perform the reduction contract duties and obligations, (b) NMFS mails to each person who voted a notice indicating that the referendum was successful, (c) NMFS publishes a reduction payment tender notification in the **Federal Register**, (d) NMFS tenders reduction payments to each accepted bidder by requesting the bidder's written payment instructions, (e) Accepted bidders relinquish their reduction permits and reduction vessel fishing privileges, and (f) Accepted bidders certify their compliance with their contractual obligations
Twelve	NMFS disburses reduction payments upon its receipt of payment instructions and certification of compliance.
Thirteen	NMFS undertakes a separate rulemaking about fee payment and collection.
Fourteen	NMFS establishes fee amounts.
Fifteen	(a) NMFS mails fish sellers and fish buyers a reduction loan fee payment and collection notice. (b) Fish sellers begin paying the fees, and fish buyers begin collecting and disbursing the fees to NMFS, and (c) NMFS receives collected-fee disbursements from fish buyers.

VII. Reduction Loan

The reduction loan's repayment maturity will be 30 years. Its principal amount will be the total of all reduction payments made under this program, less $10 million. NMFS will determine the reduction loan's interest rate in accordance with the framework regulations at 50 CFR 600.1012.

VIII. Fee Payment and Collection

Section 212 provides that the United States may enter into agreements with California, Oregon, and Washington to collect the fees that repay the reduction loan. Unless and until NMFS arranges to do so, however, fish sellers will pay the fees and fish buyers will collect, deposit, disburse, record, and report on the fees in accordance with the applicable portions of the framework regulations and the Magnuson-Stevens Act.

NMFS will establish any fee rates necessary for fish sellers to repay the reduction loan sub-amount applicable to the reduction fishery and to each of the six fee-share fisheries. NMFS will undertake a separate rulemaking to do this. The fee rates may not exceed five percent of the delivery value of fee fish from each of these fisheries, but will be less if NMFS determines that smaller percentages are sufficient to amortize the respective reduction loan sub-amounts over the 30-year reduction loan's term.

IX. Invitation To Bid and Bidding Document

The addenda to this notification are sample pro forma invitation to bid and bidding document.

Classification

The Assistant Administrator for Fisheries, NMFS, determined that this action is consistent with Public Law 107–206, Public Law 108–7, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws.

In compliance with the National Environmental Policy Act, NMFS prepared an environmental assessment for this action. The assessment discusses the program's impact on the natural and human environment. NMFS will send the assessment to anyone who requests NMFS to do so (*see* **ADDRESSES**).

The Office of Management and Budget has determined that this notice is significant under Executive Order 12866. NMFS has prepared a Regulatory Impact Review (RIR) for this action (*see* **ADDRESSES**).

NMFS believes any Federalism implications arising from this notice are highly unlikely, however, consultations with the States of Washington, Oregon, and California are ongoing.

This notice contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The Office of Management and Budget (OMB) has approved these information collections under OMB control number 0648–0376. NMFS estimates that the public reporting burden for these requirements will average 4 hours for submitting a bid, 4 hours for voting in a referendum, and 1 hour for advice (if any) about a conflict on a vessel ownership or permit claim. Persons affected by this action would also be subject to other collection-of-information requirements referred to in this action and also approved under 0648–0376. These requirements and their associated response times are 10 minutes for completing and filing a fish ticket, 2 hours for submitting a monthly fish buyer report, 4 hours for submitting an annual fish buyer report, and 2 hours for making a fish buyer/fish seller report when one party fails to either pay or collect the fee.

These response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to both NMFS and OMB (*see* **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, and no person is subject to a penalty for failure to comply with, an information collection subject to the requirements of the PRA unless that information collection displays a currently valid OMB control number.

NMFS has determined that this notice will not significantly affect the coastal zone of any state with an approved coastal zone management program. This determination has been submitted for review by the States of Washington, Oregon, and California.

Authority: Pub. L. 107–206, Pub. L. 108–7, 16 U.S.C. 1861a (b–e), and 50 CFR 600.1000 *et seq.*

Dated: July 15, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

BILLING CODE 3510–22–P

[These addenda will not be codified in the Code of Federal Regulations.]

ADDENDUM 1-INVITATION TO BID: FISHING CAPACITY REDUCTION PROGRAM FOR THE PACIFIC COAST GROUNDFISH FISHERY

I. Invitation:

The United States of America, acting by and through the Secretary of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Financial Services Division (referred to herein as "NMFS"), does hereby extend an invitation to those holding limited entry fishing permits endorsed for the operation of trawl gear and issued under the Federal Pacific Coast Groundfish Fishery Management Plan, other than those issued for vessels harvesting and processing whiting in the catcher-processors sector (as defined under section 660.323(a)(4)(A) of title 50, Code of Federal Regulations), to submit bids for the West (Pacific) Coast Groundfish Fishing Capacity Reduction Program (Program), in response to this invitation.

After a successful industry referendum, and in exchange for the payments specified in their respective bids, those accepted for participation shall relinquish their abovementioned groundfish trawl permits, other than permits for whiting catcher-processors, (herein referenced as "groundfish reduction permit"); relinquish all permits for pink shrimp or coastal Dungeness crab issued by the States of Washington, Oregon or California and registered to the reduction vessel (herein referenced collectively as "fee-share reduction permits"); relinquish any of their Federal permits or privileges issued on the basis of their operation or ownership of the vessel or vessels named in their respective bids (hereinafter known as the reduction vessel); scrap the reduction vessel or allow the revocation of fishing endorsements and the restriction of title of the reduction vessel; and relinquish any other present or future rights, entitlements, privileges, fishing permits or harvest authorizations derived, in whole or in part, from the use or ownership of the reduction vessels or from any harvests made under any permit, license or other harvest authorization. Those participating shall do so voluntarily.

II. Eligible Parties:

NMFS invites, as qualified bidders, all those who possess groundfish reduction permits to submit bids for capacity reduction. All those submitting bids must be able to relinquish such groundfish reduction permits, fee-share reduction permits, other Federal permits associated with the reduction vessel, as well as relinquish or surrender any claim to any future harvest privileges stemming from such permits. In addition, bidders must be able to agree to scrap their reduction vessels or agree to title restrictions that permanently revoke their vessels' legal authority to fish. Although only qualified bidders may submit bids in response to this invitation, all persons holding permits for any reduction fishery or fee-share fishery may vote in the abovementioned referendum. Each such person will have one vote for every permit he or she holds.

The qualifying bidder owning the groundfish reduction permit can include as co-bidders other parties owning or holding the different components required for a bid and submitting one bid as co-bidders. The bidder or co-bidders must both own the reduction vessel and the groundfish reduction permit and be the registered holder of all other reduction permits.

III. Bid Submissions:

To submit a bid, you must complete the section of the "Fishing Capacity Reduction Bid and Terms of Agreement for Capacity Reduction" entitled "Fishing Capacity Bid Submission" (also referenced herein as "bidding document") by providing the requested information, entering the dollar amount of the desired reduction payment, and signing where indicated. Upon completion, send this bidding document to the address found below.

A bid may not be submitted on any form other than the bidding document that NMFS mailed to you.

Complete and submit the bidding document only if it is your intention to create an irrevocable offer to the United States to permanently relinquish your groundfish reduction permit, fee-share reduction permits, and other Federal permits associated with your reduction vessel, as well as allow either the scrapping (at your expense) or the revocation of your reduction vessel's legal authority to fish anywhere in the world.

NMFS will not accept bids that fail to reflect the terms and conditions set forth in this invitation to bid, although NMFS may, at its option, contact a bidder in an attempt to correct deficiencies. The submission of any bid containing false information may subject the bidder to substantial penalties as described in the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §1801 et seq., and other applicable law.

IV. Required Bid Contents

Bidder. The term bidder is used to include both a qualifying bidder owning a groundfish reduction permit and bidding alone, as well as a qualified bidder bidding together with co-bidders who own other reduction components.

Groundfish reduction permit. You must identify and offer your groundfish reduction permit. At the time of bidding, you must be the permit owner, as that term is defined in 50 C.F.R. 660.302, of such groundfish reduction permit.

Reduction Vessel. You must identify the vessel for whose operation your groundfish reduction permit is registered at the time you bid. You must be, at the time you bid, the owner of record of the reduction vessel.

If, at the time of reduction payment tender, your reduction vessel is not documented under Federal law, you must immediately scrap the reduction vessel at your own expense and afford NMFS full opportunity to observe and confirm such scrapping.

Reduction Vessel's Fishing Privileges. You must offer to relinquish the reduction vessel's legal authority to fish anywhere in the world by agreeing to restrictions that remove: (1) fisheries trade endorsement, pursuant to 46 U.S.C. §12108; (2) any qualification for any present or future U.S. Government approval for placing the vessel under foreign registry or operating under the authority of a foreign country, pursuant to section (9)(c)(2) of the Shipping Act, 1916 (46 U.S.C. App. §808(c)(2)); and (3) any other privilege, right or entitlement that allows your reduction vessel to fish anywhere else in the world.

The abovementioned restrictions shall run with the reduction vessel's title, such that you or any future owners may never use the reduction vessel for fishing. After reduction payment tender, the reduction vessel may only operate under United States flag. If you continue to own your reduction vessel and it is ever re-flagged or ever again used for fishing after reduction payment tender, the reduction vessel is subject to being scrapped at your expense.

Fee-share Reduction Permit. Your bidding document must identify and include each fee-share reduction permit (if any) that the official permit records of California, Oregon, or Washington indicate that you held on May 28, 2003 and which was registered to your bid's reduction vessel on such date.

Other reduction permit. Your bidding document must identify and include any and all other Federal permits associated with the reduction vessel (if any) that NMFS' permit records show you held on May 28, 2003, and which was registered to your reduction vessel on such date or, if such permit was not then so registered, which was used based on the ownership or operation of the reduction vessel.

V. Bidding Document Completion

In the bidding document entitled, "Fishing Capacity Reduction Bid and Terms of Agreement for Capacity Reduction," you must:

(1) State your name, business address of record, telephone number, and (if available) electronic mail address;

(2) State your bid amount in U.S. dollars;

(3) Identify, by groundfish permit number, your bid's groundfish reduction permit and include an exact photocopy of this permit (which NMFS issued);

(4) If your bid's reduction vessel is Federally documented, identify it by vessel name and official number and include an exact photocopy of the vessel's official document (which the National Vessel Documentation Center issued);

(5) If your bid's reduction vessel is not Federally documented, identify it by vessel name and state registration or other identification number and include an exact photocopy of whatever official vessel registration, identification, or other documentation the controlling authority issued;

(6) Identify, by permit number, each of your fee-share reduction permits that the appropriate state fishery management authority issued, and include an exact photocopy of each of them;

(7) Identify, by permit number, each of your other Federal permits associated with the reduction vessel and include an exact photocopy of each of them (which NMFS issued);

(8) Identify any liens or security interests on any item specified in your bid;

(9) Make certain statements, declarations, and affirmations with respect to your reduction fishing interest and provide any other information that the bidding document may require;

(10) Sign the bidding document. In circumstances where there are co-bidders, each co-bidder must also sign the bidding document; and

(11) Acknowledge your signature of the bidding document before a notary public.

In the event that you are submitting a bid on behalf of another person or entity, include proof that you are authorized to bind such person or entity. For instance, if you are signing for a corporation, include a photocopy of your corporate by-laws, articles of incorporation, board resolution, or other document indicating that you are authorized to submit a bid and thereby bind the corporation. If necessary, please consult your legal advisor for assistance.

Your signature and submission of the bidding document constitutes an irrevocable offer, consistent with the bidding document's terms and conditions, to the United States.

VI. Bidding Procedures:

Bidding Package Mailing Date. Prior to the Bidding Opening Date, NMFS will mail a bidding package to each groundfish reduction permit owner. The mailing will include, among other things, this document, a bidding document, and further instructions for completing your bid and submitting it to NMFS. You may not submit a bid until after you have received your bidding package.

Bidding Opening Date. The bidding opening date is *[BIDDING OPENING DATE TO BE LATER DETERMINED AND INSERTED HERE]*. You should not submit your bid before this date.

Bidding Closing Date. The bidding closing date is *[BIDDING CLOSING DATE TO BE LATER DETERMINED AND INSERTED HERE]*. You must mail or otherwise deliver your bid so that NMFS physically receives it on or before this date. NMFS will stamp your bid

with the date and time NMFS first receives your bid. Your bid will be rejected if its stamped date and time is later than the bidding closing date.

Bid Expiration Date. The bid expiration date is *[BID EXPIRATION DATE TO BE LATER DETERMINED AND INSERTED HERE]*. Your bid will expire on this date unless NMFS notifies you that NMFS has accepted your bid by mailing its written acceptance notice to you at your address of record.

Delivering Your Bid. You must mail or otherwise deliver your bid to NMFS. You may choose to use U.S. mail, deliver it by an express mail service, or deliver it in person. However, you solely bear any risk associated with your method of delivery. NMFS is not responsible for mail or deliveries that are lost or misdirected. NMFS will deem your bid to be "submitted" only when NMFS receives your bid.

All bids must be addressed and delivered to:

Michael L. Grable
Chief, Financial Services Division
National Marine Fisheries Service
National Oceanic and Atmospheric Administration
Room 13100
1315 East-West Highway
Silver Spring, MD 20910

Bid Scoring and Acceptance.

NMFS will determine a bid score by dividing each bid amount by the average annual total ex-vessel dollar value of the Pacific groundfish, coastal Dungeness crab, and pink shrimp landed by the bidder's reduction vessel that corresponds to the bidder's fee-share reduction permits. NMFS will average the three highest total annual revenues from groundfish, coastal Dungeness crab, and pink shrimp during 1998, 1999, 2000, or 2001.

NMFS will determine which responsive bids it will formally accept by using a reverse auction in which NMFS first accepts the responsive bid with the lowest bid score and successively accepts each additional responsive bid with the next lowest bid score until either there are no more responsive bids to accept or acceptance of the last responsive bid with the next lowest bid score would cause the reduction cost to exceed the maximum reduction cost. If any two or more bid scores are exactly the same and there is not sufficient reduction funding to accept both, NMFS will accept the bid that removes the greatest amount of capacity, or, if more than one such bid removes the same amount of capacity, the bid it receives first.

After a successful referendum, NMFS will mail each bidder, at their address of record, either a bid acceptance notice or a bid rejection notice.

NMFS's formal acceptance of your bid will create a binding contract between you and the United States (referred to herein as "reduction contract"). In case of a breach of a

reduction contract provision, the reduction contract may be specifically enforced, as provided by applicable law.

If NMFS accepts your bid, NMFS will not transfer any groundfish reduction permit or other reduction permit in your bid to any other person unless, and until, the reduction contract is no longer in effect and such permits no longer need to be relinquished.

Bid Rejection. You must complete the bidding document in strict compliance with the requirements in this invitation to bid. NMFS will, regardless of bid scores, reject any bid that is unresponsive to, or does not fully accord with, this invitation to bid and other applicable law. NMFS will reject a bid that:

(1) Is incomplete or inaccurate;

(2) Is submitted on a document other than the bidding document;

(3) Specifies a qualified bidder that is not the owner of the required groundfish reduction permit;

(4) Specifies a qualified bidder that is not the holder of record of any required fee-share reduction permit(s) or other reduction permit(s);

(5) Specifies a qualified bidder that is not the owner of record of the required reduction vessel;

(6) Fails to include an element the groundfish program requires;

(7) Attempts to revise, alter, or negotiate any provision of the bidding document or of the bidding package;

(8) Is late; or

(9) Is otherwise not responsive to the bidding package and consistent with applicable law.

VII. Other Program Rules:

All bid scorings, rankings, rejections, and acceptances shall constitute final agency action at the time NMFS acts.

Once you deliver your bid to NMFS, your bid is irrevocable. You may not alter, rescind, or substitute any aspect of your bid and your bid will remain in effect until the bid expiration date.

If an industry referendum approves the industry fee system, the United States will tender reduction payment by requesting written payment instructions from you. The United States shall, thereafter, accordingly disburse reduction payments equal to the bid amount

specified in each bid once you have certified your compliance with your contractual duties and obligations.

You must hold, own, or retain all of your reduction fishing interest, as included or specified in your bid, and remain fully and legally entitled to offer the same until:

(1) The bid expires;

(2) NMFS notifies you that NMFS rejects the bid;

(3) NMFS notifies you that a reduction contract does not exist; or

(4) NMFS tenders reduction payment and you comply with your reduction contract obligations.

You are directed to review the documents included in the bidding package, including this Invitation to Bid and the bidding document entitled "Fishing Capacity Reduction Bid and Terms of Agreement for Capacity Reduction", as well as the applicable law, for specific terms and conditions affecting this bid. Bidders are solely responsible for being aware of and understanding the full legal effects and implications of a bid submission. NMFS strongly suggests that you review these documents with your legal advisor.

ADDENDUM 2-FISHING CAPACITY REDUCTION BID and TERMS OF AGREEMENT FOR CAPACITY REDUCTION

THIS AGREEMENT, entered by and between the Person(s) named in the portion of this document entitled "Fishing Capacity Reduction Bid Signature" as the Qualified Bidder (herein referenced as "Bidder") and the United States of America, acting by and through the Secretary of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS), Financial Services Division (referenced herein as the "Secretary"). This agreement becomes final upon signature of the Secretary.

WITNESSETH:

Whereas, the Secretary has sent an Invitation to Bid for the Fishing Capacity Reduction Program (Program) to those holding limited entry fishing permits issued under the Federal Pacific Coast Groundfish Fishery Management Plan (Groundfish FMP) endorsed for the operation of trawl gear (other than whiting catcher-processors);

Whereas, such Program is carried out pursuant to authority found in Division B, Title II, § 212 of Pub. Law 108-7; Division N, Title V, § 501(b) of Pub. Law 108-7; § 212 of Pub. Law 107-206; as well as authority found in 16 U.S.C. §1861a (b)-(e) and other applicable law;

Whereas, in accordance with such authority, a notification was published in the Federal Register announcing Program requirements;

Whereas, the Secretary has promulgated framework regulations generally applicable to all fishing capacity reduction programs, portions of which are applicable to this Program, and such framework regulations are found at 50 CFR §600.1000 et seq.;

Whereas, the key terms, "Reduction Fishery" and "Fee-Share Fishery" are statutorily defined for this Program;

Whereas, such Program can only remove fishing capacity after an industry referendum approves an industry fee system;

Whereas, this Document will be submitted by the bidder in direct response to such aforementioned Invitation To Bid and is expressly subject to requirements in such Invitation To Bid and the requirements of the aforementioned regulations and other applicable law;

Whereas, the Groundfish Program's express objective is to permanently reduce harvesting capacity in the reduction fishery and the fee-share fisheries; and

Whereas, it is the expressed sense of Congress that the States of Washington, Oregon, and California should revoke and render void all state permits relinquished as a part of this program immediately after disbursement of reduction payment.

NOW, THEREFORE, for good and valuable consideration and the premises and covenants hereinafter set forth, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Incorporation of Recitals. The foregoing recitals are true and correct and are expressly incorporated herein by this reference.

2. Incorporation of Invitation to Bid. The requirements of the Invitation to Bid are expressly incorporated herein by this reference.

3. Bidding Document. By completing the portion of this Document entitled the "Fishing Capacity Reduction Bid Submission" and submitting this Document to the Secretary in the manner the Invitation to Bid describes, the bidder hereby, irrevocably offers to relinquish its Federal fishing permit(s), as well as all of its coastal Dungeness crab permit(s) and pink shrimp permit(s) issued by the States of Washington, Oregon, or California and registered to the reduction vessel; offers to permanently remove its reduction vessel from fishing by either scrapping or allowing the placement of title restrictions; and offers to relinquish any other of the bidder's right, entitlement, fishery permit, fishery license, area and species endorsement, and any other fishery privilege or harvest authorization, if any, derived, in whole or in part, from either the use or ownership of its Reduction Vessel. (Such items offered shall be collectively referenced herein as "Reduction Fishing Interest".) If any deficiencies in a bid are discovered, prior to rejection, NMFS may, at its sole discretion, contact the bidder in an attempt to correct a bid deficiency.

4. Groundfish Reduction Permit. The bidder will specify, as a Groundfish Reduction Permit, a valid limited entry permit endorsed for the operation of groundfish trawl gear under the Pacific Coast Groundfish Fishery Management Plan. Such specification shall not include any permits registered to vessels harvesting and processing whiting in the catcher-processors sector, as defined in §660.323(a)(4)(A) of title 50, Code of Federal Regulations. The bidder acknowledges that it offers such Groundfish Reduction Permit for permanent revocation.

5. Fee-Share Reduction Permits. The bidder will specify any and all of its coastal Dungeness crab permit(s) and pink shrimp permits(s) for fisheries in the States of Washington, Oregon, or California (herein referenced, collectively, as "Fee-Share Reduction Permits") that have been registered to the bidder's Reduction Vessel. The bidder acknowledges that it offers to permanently relinquish the aforementioned Fee-Share Reduction Permits with the expectation that the issuing authorities will ultimately revoke them or otherwise permanently render them invalid.

6. Other Reduction Permits. The bidder will specify any and all Federal fishery permits, licenses, area and species endorsements, harvest authorizations, or fishery privileges which the bidder holds and which were, other than the Groundfish Reduction Permit, (herein referenced as "Other Reduction Permits") issued to either

the Reduction Vessel or to persons on the basis of their operation or ownership of that Reduction Vessel. The bidder will offer to relinquish, offer to surrender, or offer for revocation any such permits, licenses, endorsements, authorizations, or privileges, as well as any present or future claims of eligibility for any fishery based upon such permits, licenses, endorsements, authorizations, privileges or histories.

7. Reduction Permit(s) Held by Bidder. The bidder shall not specify in any bid any Groundfish Reduction Permit, Fee-Share Reduction Permit, or Other Reduction Permit for which the bidder is not the person to whom any such permit is issued according to NMFS' official permit records or the official permit records of California, Oregon, or Washington.

8. Reduction Vessel. The bidder will specify a Reduction Vessel. The Reduction Vessel must exist, i.e., neither be lost nor destroyed. The bidder shall only specify a Reduction Vessel for which it is the owner of record. If the bidder should specify a Reduction Vessel that lacks Federal documentation, the bidder shall offer to scrap such vessel at the bidder's expense.

9. Reduction Vessel Fishing Privileges. In the event that the bidder specifies a Federally documented vessel as a Reduction Vessel, the bidder will offer to impose or allow title restrictions that have the effect of permanently revoking or relinquishing such Reduction Vessel's legal ability to fish anywhere in the world. Such items subject to revocation or relinquishment (herein referenced collectively as "Reduction Vessel Fishing Privileges") are as follows: Reduction Vessel's fisheries trade endorsement under 46 U.S.C. §12108; the Reduction Vessel's eligibility for the approval required under section 9(c)(2) of the Shipping Act, 1916 (46 U.S.C. App. §808(c)(2)), for the placement of a vessel under foreign flag or registry, as well as its operation under the authority of a foreign country; and the Reduction Vessel's ability to fish under U.S. flag outside the U.S. Exclusive Economic Zone or anywhere else in the world.

10. Reduction Payment. The bidder will specify a dollar amount (herein referenced as "Reduction Payment") in exchange for which it is willing to surrender, relinquish, restrict, or allow the revocation of such items, including, but not necessarily limited to, the aforementioned Groundfish Reduction Permit, Fee-Share Reduction Permits, Other Reduction Permits, and Reduction Vessel Fishing Privileges. In the event that the bidder specifies a non-Federally documented vessel as a reduction vessel, the bidder must also be willing to scrap such vessel (in addition to surrendering, relinquishing, restricting, or allowing the revocation of such items detailed above) in exchange for such specified dollar amount.

11. Additional Elements. The bidder shall include with its bid an exact photocopy of each Reduction Vessel's official registration or vessel documentation (e.g. that issued by the U.S. Coast Guard's National Vessel Documentation Center (NVDC) for Federally documented vessels), and an exact photocopy of each Groundfish Reduction Permit, Fee-Share Reduction Permit, and Other Reduction Permit.

12. Use of Official Permit Databases. The Secretary shall use the appropriate official permit database to determine the bidder's address of record, verify the bidder's

eligibility to bid, determine the record holder of the bid's various specified Permits, and verify that every Groundfish Reduction Permit, Fee-Share Reduction Permit, or Other Reduction Permit associated with a specified Reduction Vessel is included in the bid.

13. Use of NVDC. The bidder acknowledges that the Secretary will use the records of the NVDC to determine the owner of record for a Federally documented Reduction Vessel and the appropriate State records to determine the owner of record of a non Federally documented vessel.

14. Bidder to Ensure Accurate Records. The bidder, to the best of its ability, will ensure that the records of the relevant permitting authorities and the NVDC are accurate and correct.

15. Bid Submissions are Irrevocable. The parties hereto acknowledge as the essence hereof that the bidder voluntarily submits to the United States a firm and irrevocable bid specifying a Reduction Payment for which the bidder is willing to relinquish, restrict, or allow the revocation of the Reduction Fishing Interest. Upon submission of a bid, the bidder hereby waives any privilege or right to change, modify, alter, rescind or cancel such bid. The Parties further agree that the time marked on the bid by NMFS upon the receipt thereof, pursuant to the terms of the Invitation to Bid, shall constitute the time of bid submission.

16. Bidder Retains Bid Elements. After submitting a bid, the bidder shall continue to hold, own, or retain each Groundfish Reduction Permit, Fee-Share Reduction Permit, Other Reduction Permit, Reduction Vessel and any other aspect of the Reduction Fishing Interest specified in this Document until such time as the bid expires, the bid is rejected, the bid or bidder is determined ineligible for participation, the Reduction Payment is tendered and the bidder complies with its obligations under the Reduction Contract, or the bidder's performance is otherwise excused by the Secretary.

17. Bid Rejection. A bid that fails to provide all of the required information or is deemed in any way unresponsive or not in conformance with the Invitation to Bid or applicable law will be deemed ineligible for consideration and will be rejected, unless the defect is corrected prior to the close of the Bid Submission Period.

18. Notarized Signatures of All Parties Required. A bid that fails to contain the notarized signatures of all parties will be deemed ineligible for consideration and will be rejected.

19. Rejections Constitute Final Agency Action. Rejections are conclusive and constitute final agency action as of the date of rejection.

20. Effect of Bid Submission. By submitting a bid, which constitutes an irrevocable offer, that conforms to the requirements, as stated within the Invitation to Bid and herein, the bidder is entitled to have the Secretary consider its bid for acceptance.

21. Acceptance by Reverse Auction. In accordance with applicable requirements, such as those stated in this Document, the Invitation to Bid, and applicable law, the Secretary shall accept bids using a reverse auction. If the referendum is successful, the Secretary shall formally notify the bidder if its bid is accepted or rejected.

22. Reduction Contract Formed. The bidder acknowledges that the formal acceptance of a bid by the Secretary shall form a binding contract. Such binding contract constitutes a Reduction Contract. The terms of such Reduction Contract are contained in this Document and also incorporate the requirements of the Invitation to bid by reference exactly as if they had been fully and exactly stated within this Document.

23. Reduction Contract Binding. Upon such acceptance, the Reduction Contract will become enforceable against and binding on the parties. The Parties will abide by the terms and conditions of the resultant Reduction Contract unless the Secretary provides the bidder with written notice indicating that the bidder is excused from the performance of any or all such terms and conditions.

24. Reduction Contract Subject to Federal Law. Any Reduction Contract so formed will be subject to applicable Federal law.

25. Notice to Creditors. Upon notice of bid acceptance, the bidder agrees to notify creditors or other parties with interests in the Reduction Vessels or Groundfish Reduction Permits, Fee-Share Reduction Permits, or Other Reduction Permits that it has entered into a Reduction Contract.

26. Industry Referendum. Referendum approval of the industry fee system is an occurrence over which neither the bidder nor the Secretary has control.

27. Referendum Results. After an Industry Referendum, the Secretary shall inform the bidder of the results of such referendum.

28. Unsuccessful Referendum Excuses Performance. An unsuccessful referendum, wherein the weighted total of disapproving votes is the same as or exceeds the weighted total of approving votes, excuses the parties hereto from their obligations to perform their duties under any Reduction Contract formed by acceptance of this bid. In the event of such occurrence, the United States need not tender Reduction Payment nor does the bidder need to relinquish, transfer, restrict or allow the revocation of any element named below in the section entitled "Fishing Capacity Bid Submission."

29. Expiration of Reduction Contract. In the event that the aforementioned Referendum is unsuccessful, any reduction Contract or outstanding bid shall expire and be of no further force or effect.

30. Bidder Responsibilities upon Successful Referendum. Upon notice of a successful Industry Referendum, the bidder shall immediately become ready to relinquish, restrict, or allow the revocation of, as appropriate, all Groundfish Reduction Permits, Fee-Share Reduction Permits, Other Reduction Permits, or Reduction Vessel

Fishing Interests.

31. Written Payment Instructions. After a successful Industry Referendum, the Secretary shall request and the bidder shall give NMFS written payment instructions for Reduction Payment disbursement.

32. Request for Payment Instructions Constitutes Tender. Such aforementioned request for written payment instructions constitutes tender of Reduction Payment, as such is specified in 50 C.F.R. 1011.

33. Bidder Responsibilities upon Tender. Upon such aforementioned tender of Reduction Payment, the bidder shall immediately relinquish, restrict, or allow the revocation of, as appropriate, its Groundfish Reduction Permit, Fee-Share Reduction Permit(s), Other Reduction Permit(s), and Reduction Vessel Fishing Interest. The bidder must return its Groundfish Reduction Permit and Other Reduction Permits (if any) to NMFS. Thirty days after the publication of the reduction payment tender notice in the Federal Register, the bidder shall forever cease all fishing for any species with the Reduction Vessel and immediately retrieve all of its fixed fishing gear deployed in any fishery. The bidder shall certify compliance with its duties and obligations under the Reduction Contract and shall include such certification with the aforementioned payment instructions.

34. Reduction Vessel Lacking Federal Documentation. Upon Reduction Payment tender, the bidder shall immediately scrap any vessel that it specified as a Reduction Vessel that is documented solely under state law or otherwise lacks documentation under Federal law. Such vessel shall be scrapped at the bidder's expense. The bidder shall allow NMFS, its agents, or its appointees reasonable opportunity to observe and confirm such scrapping. The bidder shall conclude such scrapping within a reasonable time.

35. Future Harvest Privilege Extinguished. Upon Reduction Payment tender, the bidder shall waive, surrender, relinquish, withdraw, or extinguish by other means any other claim derived, in whole or in part, either from the use or ownership of the Reduction Vessel or from any harvests made under any permit, license or other harvest authorization, as specified below, that could ever qualify the bidder for any future limited access fishing license, fishing permit, and harvest authorization.

36. Post Tender Use of Federally Documented Reduction Vessel. After Reduction Payment tender, the bidder may continue to use a Federally documented Reduction Vessel for any legal purpose except fishing and can transfer the vessel, subject to all restrictions imposed by the Reduction Contract and applicable law, to a new owner. The bidder or any subsequent owner shall only operate such Reduction Vessel under the United States flag. In the event the bidder fails to abide by such restrictions, the bidder acknowledges and agrees to allow the United States to pursue any and all remedies available to it, including seizing the Reduction Vessel and scrapping it at the expense of the bidder.

37. Secretary's Actions upon Tender. Contemporaneously with tendering Reduction Payment, without regard to any party's refusal or failure to perform its duties and

obligations under a Reduction Contract, the Secretary will permanently render void the bidder's Groundfish Reduction Permit and any Other Reduction Permits, notify the relevant states that the bidder has relinquished its Fee-Share Reduction Permits, notify the NVDC in order to revoke the Reduction Vessel's fisheries trade endorsements, notify the U.S. Maritime Administration in order to make the Reduction Vessel ineligible for the approval of requests to place it under foreign registry or operate under a foreign country's authority; note in the appropriate NMFS records that any harvests made under any permit, license or other harvest authorization that could ever qualify the bidder for any future limited access fishing license, fishing permit, and harvest authorization accrued on the Reduction Vessel will never again be available to anyone for any fisheries purpose; and implement any other restrictions imposed by applicable law.

38. Material Disputes to be Identified. Members of the public shall be able to advise NMFS in writing of any material dispute with regard to any aspect of any bid, up until NMFS receives such aforementioned payment instructions. Such a material dispute shall neither relieve the bidder of any duties or obligations under any Reduction Contract nor shall it affect the United States' right to enforce performance of the terms and conditions of any Reduction Contract.

39. Reduction Payment Disbursement. Once the bidder's payment instructions and certification of compliance are received, the United States shall disburse to the bidder the amount specified as a Reduction Payment as soon as practicable, unless such disbursement is otherwise excused. Any Reduction Payment disbursement shall be in strict accordance with the bidder's payment instructions. Unless bidder's payment instructions direct NMFS to the contrary, the United States shall disburse the whole of the Reduction Payment to the bidder. If the bidder bid with co-bidders, payment instructions must be signed or approved by all parties.

40. Reduction Payment Withheld for Scrapping or for Other Reasons. In the event that a Reduction Vessel must be scrapped, the Secretary shall withhold from disbursement an amount sufficient to scrap such vessel. The Secretary shall withhold such sum until the vessel is completely scrapped. The Secretary may confirm, if the Secretary so chooses, that the vessel has been scrapped before disbursing any amount withheld. If the Secretary has reason to believe that the bidder has failed to comply with any of the terms and conditions as stated herein, the Secretary shall withhold disbursement until such time as the bidder performs in accordance with the terms and conditions of the Reduction Contract.

41. Bidder Assistance with Restriction. The bidder shall, upon the United States' request, furnish such additional documents, undertakings, assurances, or take such other actions as may be reasonably required to enable the United States to restrict, invalidate, or revoke any component of the bid's Reduction Fishing Interest in accordance with the terms and conditions of a Reduction Contract or requirements of applicable law.

42. Recordation of Restrictions. Upon revocation of all the Reduction Vessel Fishing Privileges, the bidder shall ensure that such revocation is recorded with the Reduction Vessel's title, such that the Reduction Vessel, regardless of its

subsequent ownership, may never again fish for any species anywhere in the world under any conditions. Such term "fishing" includes the full range of activities defined in 16 U.S.C. §1802.

43. Lack of State Revocation Notwithstanding. In the event that California, Oregon, or Washington should fail to permanently revoke any Fee-Share Reduction Permit, the bidder will nevertheless be permanently barred from ever exercising any fishing privilege or claim associated with any such Fee-Share Reduction Permit. Moreover, the bidder will neither transfer nor allow any other person to exercise any fishing privilege or claim associated with any such Fee-Share Reduction Permit.

44. Reduction Element Omission. In the event that the Secretary accepts a bid wherein the bidder failed, for any reason, to specify and designate any Groundfish Reduction Permit, Fee-Share Reduction Permit, Other Reduction Permit, or Reduction Vessel that should have been specified in this Document, any requirements or terms and conditions that should have otherwise applied to such omitted item shall nevertheless still be applicable. Upon discovery by either or both parties, the bidder shall act in accordance with Program requirements.

45. Remedy for Breach. As money damages may not be a sufficient remedy for breach of the terms and conditions as set forth in this Document, the Parties explicitly agree and authorize specific performance, in addition to any money damages, as a remedy for any breach of Reduction Contract terms. In the event of breach by the bidder, the Secretary will take any reasonable action he deems necessary to carry out the Program's purpose as set forth above.

46. Waiver of Data Confidentiality. The bidder consents to the public release of any information the bidder may provide pursuant to Program requirements, including any information provided as a part of this bid or any other means, so long as the Secretary finds that the release of such information is necessary to achieve this Program's stated goals. The bidder shall and hereby explicitly waives any claim of confidentiality otherwise afforded to financial, catch, or harvest data, as well as trade secrets, fishing histories, or other personal information, otherwise protected from release under 16 U.S.C. §1881a(b) or any other law. In the event such information is released, the bidder shall and hereby does forever fully and unconditionally release and hold harmless the United States and its officers, agents, employees, representatives, of and from any and all claims, demands, debts, damages, duties, causes of action, actions and suits whatsoever, in law or equity, on account of any act, failure to act, or event arising from, out of, or in any way related to, the release of any information associated with this Program.

47. Oral Agreements Invalid. This Document and the Invitation to Bid contain the final terms of any Reduction Contract between the bidder and the United States. They represent the entire and exclusive agreement between the parties. All parties hereto forever waive all right to sue, or otherwise counterclaim against each other based on any claim of past, present, or future oral agreement between the parties.

48. Severable Provisions. The provisions of this contract are severable and, in the event any portion thereof is held to be void, invalid, non-binding, or otherwise

unenforceable, the remaining portion thereof shall remain fully valid, binding, and enforceable against all parties hereto.

49. Disputes. Any and all disputes arising in connection with the Fishing Capacity Reduction Program, including, but not limited to, the Invitation to Bid, this bid or any Reduction Contract shall in all respects be governed by the Federal laws of the United States, and the bidders and all other parties to the Reduction Contract irrevocably submit themselves to the jurisdiction of the Federal courts of the United States and/or to any other Federal administrative body authorized to adjudicate such disputes, as set forth under applicable law.

50. Fishing Capacity Reduction Bid Submission.

I. Completion and submission. The bidder must fully, faithfully, and accurately complete this portion of this Document and thereafter submit this full Document to NMFS in accordance with the Invitation to Bid. If inserting any of the required information below requires more space than this Document provides, attach an addendum to this Document which includes and identifies any such information.

II. Bidder information.

(a) Bidder's name. This must be the full and exact legal name of record of each person, partnership, or corporation who is bidding.

In each case, the qualified Bidder is the owner of record, at the time of bidding, of the groundfish reduction permit. If the qualified Bidder is also the owner or record, at the time of bidding, of all other required reduction components, the qualified bidder is the sole Bidder. If, however, the owner of record, at the time of bidding, of any other required reduction component is not exactly the same as the qualified Bidder, then such owner of record is a co-Bidder, and the qualifying Bidder and each co-Bidder bid together and are jointly the collective Bidder.

Insert the name of the qualified Bidder and of each co-Bidder (if there is any co-Bidder), and check the appropriate box for each name listed.

Bidder Name(s)	Check One Box For Each Name Listed				
	Qualified Bidder	Co-Bidder(s), If Any, Number:			
		i	ii	ii	iv

(b) Bidder's address of record. Insert the full and exact address of record for the qualified Bidder and for each co-Bidder (if there is any co-Bidder), and check the appropriate box for each address listed.

Bidder Address(s)	Check One Box For Each Address Listed				
	Qualified Bidder	Co-Bidder(s), If Any, Number:			
		i	ii	ii	iv

(c) Bidder's business telephone number. Insert the full and exact business telephone number of the qualified Bidder and of each co-Bidder (if there is any co-Bidder), and check the appropriate box for each number listed.

Bidder Telephone Number(s)	Check One Box For Each Number Listed				
	Qualified Bidder	Co-Bidder(s), If Any, Number:			
		i	ii	ii	iv

(d) Bidder's electronic mail address (if available). Insert the full and exact electronic mail address of the qualified Bidder and of each co-Bidder (if there is any co-Bidder), and check the appropriate box for each address listed.

Bidder Electronic Mail Address(s), If Available	Check One Box For Each Address Listed				
	Qualified Bidder	Co-Bidder(s), if any, Number:			
		i	ii	ii	iv

III. Groundfish Reduction Permit number. Insert the full and exact permit number of the Bid's Groundfish Reduction Permit. Enclose with this Document an exact photocopy of such permit.

IV. Other Reduction Permit(s), if any. Insert the full and exact permit number(s) and fishery(s) for each of the Bid's Other Reduction Permits, and check the box corresponding with each such permit's ownership. Enclose with this document an exact photocopy of each such permit.

Permit Number(s) and Fishery(s) For Each of Bid's Other Reduction Permits, If Any	Check One Box For Each Permit Listed				
	Qualified Bidder	Co-Bidder(s), If Any, Number:			
		i	ii	ii	iv

V. Fee-Share Reduction Permit(s), if any. Insert the full and exact permit number(s), fishery(s), and issuing state(s) for each of the Bid's Fee-Share Reduction Permits, and check the box corresponding with each such permit's ownership. Enclose with this Document an exact photocopy of each such permit.

Permit Number(s), Fishery(s), and Issuing States For Each of Bid's Fee-Share Reduction Permits, If Any	Check One Box For Each Permit Listed				
	Qualified Bidder	Co-Bidder(s), If Any, Number:			
		i	ii	ii	iv

VI. Reduction Vessel. Insert the full and exact official name and official number for the Bid's reduction vessel, and check the appropriate box. Enclose with this Document an exact photocopy of such vessel's official document (if the vessel is federally documented) or other official form of registration (if the vessel is state registered) .

Official Name and Number For Bid's Reduction Vessel	Check One Box For The Vessel Listed				
	Qualified Bidder	Co-Bidder(s), If Any, Number:			
		i	ii	ii	iv

VII. Insert, in U.S. dollars, the bid's full and exact amount, both in words and in numbers.

Reduction Payment In U.S. Dollars	
In Words	In Numbers

VIII. Bid signature.

In compliance with applicable law, this Document and the Invitation to Bid, the Bidder submits the above written Reduction Payment as an irrevocable offer to the United States for the permanent revocation and surrender of the Groundfish Reduction Permit, any Fee-Share Reduction Permit(s), any Other Reduction Permits, and the Reduction Vessel's Fishing Privileges, all as identified in this bid or as required under applicable law.

The Bidder acknowledges that the United State's acceptance of this bid and tender of the Reduction Payment to the Bidder in the amount written above (less any sum withheld for scrapping any Reduction Vessel lacking Federal documentation) will, among other things, permanently render the Reduction Vessel ineligible for any fisheries worldwide, including, but not limited to, fishing on the high seas or in the jurisdiction of any foreign country while operating under United States flag, and will impose or create other legal and contractual restrictions and obligations that restrict or revoke the complete Reduction Fishing Interest, as well as revoke or restrict any other fishery privileges or claims associated with the Reduction Vessel, Groundfish Reduction Permit, any Fee-Share Reduction Permit, or any Other Reduction Permit, as more fully set forth in the Invitation to Bid and applicable law.

By completing the sections above and signing below, the Bidder acknowledges that the Bidder has fully and completely reviewed this Document and the Invitation to Bid. The Bidder attests and warrants that the Bidder is fully able to enter into a Reduction Contract. Any person or entity completing the sections above and signing below on behalf of another person or entity, attests and warrants that such person or entity has express, written permission or grant of authority to bind such other person or entity to the terms and conditions of a Reduction Contract. The Bidder expressly represents to the United States that the Bidder fully understands the consequences of a bid submission, pledges to abide by the terms and conditions of any Reduction Contract, and is aware of and consents to any and all remedies available upon the breach of any Reduction Contract or submission of a bid that fails to conform with applicable law. The Bidder expressly warrants and attests that all information included herein is accurate.

IN WITNESS WHEREOF, the Bidder has executed this Document, either as a qualified Bidder bidding alone or as a qualified Bidder and one or more co-Bidders, if any, jointly bidding together, in accordance with the requirements as specified above, on the date written below. This agreement constitutes a Reduction Contract as of the date the United States signs this Document.

The qualified Bidder and each co-Bidder, if any, must each sign this Document below and

insert: his/her name, title, the name of the Bidder on behalf of whom he/she is signing, and the date of signature. A notary public must complete the following certification and acknowledgment section for each signature.

(a) Qualified Bidder's signature and certification/acknowledgment.

Signature	
Printed Name	
Title (If Signing of Behalf Of A Corporation or Partnership)	
Qualified Bidder's Name	
Date of Signature	

State of: County of:

I certify that I know or have satisfactory evidence that_____is the person who appeared before me and said person acknowledged that he/she signed this Fishing Capacity Reduction Bid And Terms of Agreement for Capacity Reduction and on oath stated that he/she was authorized to execute such document and acknowledged it to be the free and voluntary act of his/hers for the uses and purposes mentioned in such document.

Notary Public's Signature: Dated:

My appointment Expires:

(b) Co-Bidder Number (i)'s, if any, signature and certification/acknowledgment.

Signature	
Printed Name	
Title (If Signing of Behalf Of A Corporation or Partnership)	
Co-Bidder Number (i)'s Name	
Date of Signature	

State of: County of:

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me and said person acknowledged that he/she signed this Fishing Capacity Reduction Bid And Terms of Agreement for Capacity Reduction and on oath stated that he/she was authorized to execute such document and acknowledged it to be the free and voluntary act of his/hers for the uses and purposes mentioned in such document.

Notary Public's Signature: Dated:

My appointment Expires:

(c) Co-Bidder Number (ii)'s, if any, signature and certification/acknowledgment.

Signature	
Printed Name	
Title (If Signing of Behalf Of A Corporation or Partnership)	
Co-Bidder Number (ii)'s Name	
Date of Signature	

State of: County of:

I certify that I know or have satisfactory evidence that_____is the person who appeared before me and said person acknowledged that he/she signed this Fishing Capacity Reduction Bid And Terms of Agreement for Capacity Reduction and on oath stated that he/she was authorized to execute such document and acknowledged it to be the free and voluntary act of his/hers for the uses and purposes mentioned in such document.

Notary Public's Signature: Dated:

My appointment Expires:

(d) Co-Bidder Number (iii)'s, if any, signature and certification/acknowledgment.

Signature	
Printed Name	
Title (If Signing of Behalf Of A Corporation or Partnership)	
Co-Bidder Number (iii)'s Name	
Date of Signature	

State of: County of:

I certify that I know or have satisfactory evidence that_____ is the person who appeared before me and said person acknowledged that he/she signed this Fishing Capacity Reduction Bid And Terms of Agreement for Capacity Reduction and on oath stated that he/she was authorized to execute such document and acknowledged it to be the free and voluntary act of his/hers for the uses and purposes mentioned in such document.

Notary Public's Signature: Dated:

My appointment Expires:

(e) Co-Bidder Number (iv)'s, if any, signature and certification/acknowledgment.

Signature	
Printed Name	
Title (If Signing of Behalf Of A Corporation or Partnership)	
Co-Bidder Number (iv)'s Name	
Date of Signature	

State of: County of:

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me and said person acknowledged that he/she signed this Fishing Capacity Reduction Bid And Terms of Agreement for Capacity Reduction and on oath stated that he/she was authorized to execute such document and acknowledged it to be the free and voluntary act of his/hers for the uses and purposes mentioned in such document.

Notary Public's Signature: Dated:

My appointment Expires:
(f) United States of America's signature.

United States of America,
Acting by and through the Secretary of Commerce,
National Atmospheric Administration,
National Marine Fisheries Service,
Financial Services Division

By: Dated:
Chief, Financial Services Division

[FR Doc. 03–18344 Filed 7–17–03; 8:45 am]
BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 021209300–3048–02; I.D. 071103A]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; End of the Primary Season and Resumption of Trip Limits for the Shore-based Fishery for Pacific Whiting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces the end of the 2003 primary season for the shore-based fishery for Pacific whiting (whiting) at 12 noon, local time (l.t.), July 14, 2003, because the allocation is projected to be reached. This action is intended to keep the harvest of whiting at the 2003 allocation levels.

DATES: Effective from 12 noon, l.t., July 14, 2003, until the effective date of the publication containing the 2004 specification and management measures for the Pacific Coast groundfish fishery, which will be published in the **Federal Register**, unless modified, superseded or rescinded. Comments will be accepted through August 4, 2003.

ADDRESSES: Submit comments to D. Robert Lohn, Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; or Rod Mcinnis, Acting Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Becky Renko at 206–526–6110.

SUPPLEMENTARY INFORMATION: This action is authorized by regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California. On March 7, 2003 (68 FR 11182), the levels of allowable biological catch (ABC), the optimum yield (OY), and the commercial OY (the OY minus the tribal allocation) for U.S. harvests of whiting were announced in the **Federal Register**. For 2003, the whiting OY is 148,200 mt (mt) and the commercial OY is 121,200 mt. Regulations at 50 CFR 660.323(a)(4) divide the commercial OY into separate allocations for the catcher/processor, mothership, and shore-based sectors of the whiting fishery. On June 16, 2003, the whiting sector allocations which were originally published on March 7, 2003 (68 FR 11182), were corrected (68 FR 35575). The 2003 allocations are 41,208 mt (34 percent) for the catcher/processor sector; 29,088 mt (24 percent) for the mothership sector; and 50,904 mt (42 percent) for the shore-based sector. When each sector's allocation is reached, the primary season for that sector is ended.

The shore-based sector is composed of vessels that harvest whiting for delivery to land-based processors. The regulations at 50 CFR 660.323(a)(3)(i) describe the primary season for the shore-based sector as the period when the large-scale target fishery is conducted (when trip limits under § 660.323(b) are not in effect). Before and after the primary seasons, per-trip limits are in effect for whiting.

The best available information on July 11, 2003, indicated that 34,314 mt had been taken through July 5, 2003, and that the 50,904 mt shore-based allocation would be reached by 12 noon, l.t., July 14, 2002. This **Federal Register** action announces the date that the primary season for the shore-based sector ends and that per-trip limits are reinstated. A 10,000–lb (4,536–kg) trip limit will be in place after the primary season unless otherwise announced in the **Federal Register**. Per-trip limits are intended to accommodate small bait and fresh fish markets, and bycatch in other fisheries. To minimize incidental catch of chinook salmon by vessels fishing shoreward of the 100–fm (183–m) contour in the Eureka, CA area, at any time during a fishing trip, a limit of 10,000 lb (4,536 kg) of whiting is in effect year round, except when landings of whiting are prohibited.

NMFS Action

For the reasons stated above and in accordance with the regulations at 50 CFR 660.323(a)(4)(iii)(C), NMFS herein announces:

Effective 12 noon, l.t., July 14, 2003, no more than 10,000 lb (4,536 kg) of whiting may be taken and retained, possessed, or landed by a catcher vessel participating in the shore-based sector of the whiting fishery, unless otherwise announced in the **Federal Register**. If a vessel fishes shoreward of the 100–fm (183–m) contour in the Eureka, CA area (43° N. lat. - 40°30′ N. lat.) at any time during a fishing trip, the 10,000–lb (4,536–kg) trip limit applies, as announced in the annual management measures at paragraph IV, B(3)(c)(ii), except when the whiting fishery is closed.

Classification

This action is authorized by the regulations implementing the FMP. The determination to take this action is based on the most recent data available. The Assistant Administrator for fisheries, NMFS, finds good cause to waive the requirement to provide prior notice and opportunity for comment on this action pursuant to 5 U.S.C. 553(b)(B) because providing prior notice and opportunity would be impracticable. It would be impracticable because, if this closure were delayed in order to provide notice and comment, the fishery would be expected to greatly exceed the sector allocation. A delay to provide a cooling off period also would be expected to cause the fishery to exceed its allocation. Therefore, good cause also exists to waive the 30-day delay in effectiveness requirement of 5 U.S.C. 553(d)(3). The aggregate data upon which the determination is based are available for public inspection at the Office of the Regional Administrator (see **ADDRESSES**) during business hours. This action is taken under the authority of 50 CFR 660.323(a)(4)(iii)(C) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 14, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–18164 Filed 7–14–03; 4:20 pm]
BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 138
Friday, July 18, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 868

RIN 0580–AA84

Fees for Processed Commodity Analytical Services

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS), a program of the Grain Inspection, Packers and Stockyards Administration (GIPSA), is proposing to increase fees for the analytical testing of processed commodities and remove certain tests from the fee schedule for services that are no longer requested. These tests apply only to official processed commodity testing services performed under the Agricultural Marketing Act of 1946. These changes are needed to generate revenue sufficient to cover, as nearly as practicable, rising fixed costs and the 4.1 percent January 2003 Federal pay increase.

GIPSA anticipates that the increase in user fees will generate approximately $135,000 in additional revenue.

DATES: Written comments must be filed before September 16, 2003.

ADDRESSES: Interested persons are invited to submit comments concerning this proposal. Written comments must be submitted to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604, or faxed to (202) 690–2755. Comments may also be sent by e-mail to: *H.Tess.Butler@usda.gov*.

All comments received will be made available for public inspection in the above office during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: Steven Tanner, Director, Technical Services Division, at his e-mail address: *Steven.N.Tanner@usda.gov* or telephone him at (816) 891–0401.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, Regulatory Flexibility Act, and the Paperwork Reduction Act

This rule has been determined to be nonsignificant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by Office of Management and Budget (OMB).

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act, Donna Reifschneider, Administrator, GIPSA, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

GIPSA regularly reviews its user-fee-financed programs to determine if the fees are adequate. Additionally, GIPSA has and will continue to seek out cost saving opportunities and implement appropriate changes to reduce costs. Such actions can provide alternatives to new or increased fees. However, even with these efforts, GIPSA has determined that its existing fee schedule will not generate sufficient revenues to cover program costs for providing processed commodity testing services. Further revenue losses are projected if adjustments to the existing fee schedule are not made. In FY 2002, GIPSA's operating costs for the processed commodity testing program were $233,707 with revenue of $104,380 that resulted in a negative margin of $129,327.

GIPSA has reviewed the financial position of the processed commodity testing program and concluded that $135,000 in additional yearly revenue is needed to fully recover operating costs. This is based on projected program costs of approximately of $240,000 a year and an estimated testing workload of approximately 1,700 samples per year. These changes are needed to generate revenue sufficient to cover, as nearly as practicable, operational costs resulting from a steep decline in requests for services and the associated loss of revenue and increased operational costs resulting from the mandated 4.1 percent January 2003 Federal pay increase. In Fiscal Year 1999, the number of samples tested was 16,377, with a revenue of $1,475,579; in FY 2000, 12,872 samples and $1,212,215; in FY 2001, 3,620 samples and $219,033 in revenue; in FY 2002, 1,755 samples and $104,380 in revenue.

The proposed rule will increase the fees charged to businesses for voluntary processed commodity analytical services and generate approximately $135,000 in additional revenue. Some of these businesses, which consist of processors and shippers of products such as wheat flour, vegetable oil, and corn meal, may meet the criteria for small entities established by the Small Business Administration criteria for small businesses. Even so, the new fees should not significantly affect those entities. It is estimated that there will be approximately nine entities effected. Further, those entities are under no obligation to use GIPSA services and, therefore, any decision on their part to discontinue the use of this service should not prevent them from marketing their products. Due to the decline in demand of the processed commodity analytical testing services, GIPSA will conduct another analysis of the demand for this program's services, including all costs and revenues generated specific to the program, one year after operating under the proposed fee increase.

There will be no additional reporting or record keeping requirements imposed by this action. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 35), the information collection and recordkeeping requirements in Part 868 have been previously approved by OMB under control number 0580–0012. GIPSA has not identified any other Federal rules which may duplicate, overlap, or conflict with this rule.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. This action will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Proposed Action

The Agricultural Marketing Act (AMA) of 1946 (7 U.S.C. 1621, *et seq.*) authorizes GIPSA to provide official processed commodity testing services and to collect reasonable fees for performing these services. Section 203(h) of the AMA (7 U.S.C. 1622(h)) provides for the establishment and collection of fees that are reasonable and, as nearly as practicable, cover the costs of the services rendered. These fees cover the GIPSA administrative and supervisory costs for the performance of official testing services, including personnel compensation and benefits, travel, rent, communication, utilities, contractual services, supplies, and equipment.

The processed commodity testing fees were last amended on April 4, 2001, and became effective May 4, 2001 (66 FR 17775). These fees were to cover, as nearly as practicable, the level of operating costs as projected for FY 2001 and FY 2002, respectively. GIPSA continually monitors its cost, revenue, and operating reserve levels to ensure that there are sufficient resources for operations. Further, GIPSA has implemented cost-saving measures in the processed commodity program in an effort to provide more cost-effective services. The cost containment measures included a reduction in full-time commodity testing laboratory personnel and increased cross utilization of personnel from other GIPSA programs.

GIPSA regularly reviews its user-fee-financed programs to determine if the fees are adequate and continues to seek out cost saving opportunities and implement appropriate changes to reduce costs. Such actions can provide alternatives to fee increases. However, even with these efforts, GIPSA's existing fee schedule will not generate sufficient revenues to cover program costs. Using the most recent data available, GIPSA's FY 2002 operating costs for this program were $233,707 with revenue of $104,380 that resulted in a negative margin of $129,327.

GIPSA has reviewed the financial position of its processed commodity testing program. Based on this review, GIPSA has concluded that it needs to generate $135,000 in additional yearly revenue to recover program costs. These changes are needed to generate revenue sufficient to cover, as nearly as practicable, operational costs resulting from a steep decline in requests for services and the associated loss of revenue and increased operational costs resulting from the 4.1 percent January 2003 Federal pay increase. Therefore, GIPSA proposes to revise section 868.90, paragraph (d), Table 2—Fees for Laboratory Test Services, to: (1) Increase the fees for laboratory testing services. These laboratory tests are: Ash, Brix, Calcium, Carotenoid Color, Cold test (oil), Color test (syrups), Cooking tests (pasta), Crude fat, Crude fiber, Falling number, Free fatty acid, Insoluble impurities (oils and shortenings), Iron enrichment, Lovibond color, Moisture, Moisture and volatile matter, Peroxide Value, Popping ratio, Protein, Sanitation (light filth), Sieve test, Smoke point, Solid fat index, Visual exam, Vomitoxin (Qualitative—Test Kit), and Vomitoxin (Quantitative—Test Kit); (2) establish new fees for new testing services: Aflatoxin (Quantitative—HPLC), Aflatoxin (Quantitative—Test Kit), Aflatoxin (Qualitative Test Kit) and Oxidative stability index (OSI); (3) eliminate references and fees for testing services that are no longer requested on a routine basis. These tests are: Alpha monoglycerides, Aflatoxin test (other than TLC or minicolumn method), Aflatoxin (TLC), Aflatoxin (Minicolumn method), Bacteria, count, Baking tests (cookies), Bostwick (cooked), Bostwick (uncooked/cook test/dispersibility), Dough handling (baking), E. coli, Fat (acid hydrolysis), Fat-Stability (A.O.M), Flash point (open and closed cup), Hydrogen ion activity—pH, Iodine number/value, Linolenic acid (Fatty acid profile), Lipid phosphorus, Margarine (nonfat solids), Moisture Average(crackers), Performance test (prepared bakery mix), Phosphorus, Popcorn kernels (total defects), Potassium bromate, Rope spore count, Salmonella, Salt or Sodium content, Specific volume (bread), Staphylococcus aureus, Texture, Tilletia controversa kuhn (TCK)(Qualitative), Tilletia controversa kuhn (TCK)(Quantitative), Unsaponifiable (matter), Urease activity, Visual exam (hop pellet), Visual exam (insoluble impurities, oils and shortenings), Visual exam (pasta), Visual exam (processed grain products), Visual exam (total foreign material other than cereal grains), Vitamin enrichment, Vomitoxin (TLC), Water activity, and Wiley melting point.

Due to the decline in demand of the processed commodity analytical testing services, GIPSA will conduct another analysis of the demand for this program's services, including all costs and revenues generated specific to the program, one year after operating under the proposed fee increase.

List of Subjects in 7 CFR Part 868

Administrative practice and procedure, Agricultural commodities.

For reasons set out in the preamble, 7 CFR Part 868 is proposed to be amended as follows:

PART 868—GENERAL REGULATIONS AND STANDARDS FOR CERTAIN AGRICULTURAL COMMODITIES

1. The authority citation for part 868 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621, *et seq.*)

2. Section 868.90, paragraph (d) is revised to read as follows:

§ 868.90 Fees for certain Federal inspection services.

* * * * *

(d) Laboratory tests referenced in table 2 of this section will be charged at the applicable laboratory fee when performed at field locations other than at the applicant's facility.

TABLE 2.—FEES FOR LABORATORY TEST SERVICES [1]

Laboratory tests	Fees
(1) Aflatoxin (Quantitative—HPLC)	$182.00
(2) Aflatoxin (Quantitative—Test Kit)	87.00
(3) Aflatoxin (Qualitative—Test Kit)	47.00
(4) Appearance and odor	7.00
(5) Ash	17.00
(6) Brix	16.00
(7) Calcium	27.00
(8) Carotenoid Color	27.00
(9) Cold test (oil)	20.00
(10) Color test (syrups)	13.00
(11) Cooking tests (pasta)	13.00
(12) Crude fat	20.00
(13) Crude fiber	27.00

TABLE 2.—FEES FOR LABORATORY TEST SERVICES [1]—Continued

Laboratory tests	Fees
(14) Falling number	24.00
(15) Free fatty acid	24.00
(16) Insoluble impurities (oils and shortenings)	9.00
(17) Iron enrichment	30.00
(18) Lovibond color	20.00
(19) Moisture	13.00
(20) Moisture and volatile matter	17.00
(21) Oxidative stability index (OSI)	54.00
(22) Peroxide Value	27.00
(23) Popping ratio	38.00
(24) Protein	16.00
(25) Sanitation (light filth)	47.00
(26) Sieve test	11.00
(27) Smoke Point	43.00
(28) Solid fat index	168.00
(29) Visual exam	22.00
(30) Vomitoxin (Qualitative—Test Kit)	61.00
(31) Vomitoxin (Quantitative—Test Kit)	81.00
(32) Other laboratory analytical services (per hour per service representative)	67.00

[1] When laboratory tests/services are provided for GIPSA by a private laboratory, the applicant will be assessed a fee, which, as nearly as practicable, covers the costs to GIPSA for the service provided.

Dated: July 15, 2003.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–18265 Filed 7–17–03; 8:45 am]

BILLING CODE 3410–EN–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AH–20

List of Approved Spent Fuel Storage Casks: NAC–MPC Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations revising the NAC International, Inc., Multipurpose Canister cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 3 to the Certificate of Compliance (CoC). This amendment would incorporate changes in support of the Yankee Nuclear Power Station (Yankee Rowe) fuel loading campaign and make corrections to the Connecticut Yankee technical specifications. Specifically, the amendment would incorporate fuel enrichment tolerances; incorporate fuel assemblies with up to 20 damaged fuel rods, recaged assemblies, the Yankee Rowe damaged fuel can, and assembly weights up to 432 kilograms (950 pounds); revise the average surface dose rate limits for the concrete cask; incorporate administrative changes in the American Society of Mechanical Engineers (ASME) Code Alternatives; correct the Connecticut Yankee tables for fuel assembly limits and intact fuel assembly characteristics; and incorporate editorial and administrative changes in the CoC.

DATES: Comments on the proposed rule must be received on or before August 18, 2003.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH20) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public, in their entirety, on the NRC rulemaking website. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking website at *http://ruleforum.llnl.gov*. Address questions about our rulemaking website to Carol Gallagher (301) 415–5905; email *cag@nrc.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays (telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking website at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to pdr@nrc.gov. An electronic copy of the proposed Certificate of Compliance (CoC), Technical Specifications (TS), and preliminary safety evaluation report (SER) can be found under ADAMS Accession Nos. ML031330790, ML031340571, and ML031330792, respectively.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, telephone (301) 415–6219, e-mail, *jmm2@nrc.gov* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule published in the final rules section of this **Federal Register**.

Procedural Background

This rule is limited to the changes contained in Amendment 3 to CoC No. 1025 and does not include other aspects of the NAC–MPC cask system design. The NRC is using the "direct final rule procedure" to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The direct final rule will become effective on October 1, 2003. However, if the NRC receives significant adverse comments by August 18, 2003, then the NRC will publish a document that withdraws the direct final rule and will subsequently address the comments received in a final rule. The NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or technical specifications.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C.10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1025 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1025.

Initial Certificate Effective Date: April 10, 2000.

Amendment Number 1 Effective Date: November 13, 2001.

Amendment Number 2 Effective Date: May 29, 2002.

Amendment Number 3 Effective Date: October 1, 2003.

SAR Submitted by: NAC International, Inc.

SAR Title: Final Safety Analysis Report for the NAC-Multipurpose Canister System (NAC–MPC System).

Docket Number: 72–1025.

Certificate Expiration Date: April 10, 2020.

Model Number: NAC–MPC.

* * * * *

Dated at Rockville, Maryland, this 7th day of July, 2003.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 03–18262 Filed 7–17–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–31–AD]

RIN 2120–AA64

Airworthiness Directives; Air Cruisers Company Emergency Evacuation Slide/Raft System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for a certain Air Cruisers Company Emergency Evacuation Slide/Raft System. That AD currently requires a one-time unpacking and subsequent repacking of the slide/raft systems, identified by basic part number (P/N) with dash numbers, and serial numbers (SNs) listed in the AD, and mandates repacking of all other slide/raft systems of the same design at the next required normal maintenance schedule of the slide/raft system. This proposed AD contains the same requirements but replaces the specific slide/raft system P/N dash numbers with the word "-series", reduces the number of affected slide/raft systems to the SNs identified in paragraph (g) of this proposed AD, and eliminates mandating the utilization of the applicable Folding Procedures for subsequent repacking of all slide/raft systems of the same design during the normal scheduled maintenance. This proposed AD is prompted by recent information received that Air Cruisers Company has made modifications which have added new dash numbers to the slide/raft system basic P/N. This has affected some of the SN slide/raft systems listed in the AD. The actions specified in this proposed AD are intended to prevent failure of the slide/raft to properly inflate, which could impede the emergency evacuation of passengers in the event of an airplane emergency.

DATES: We must receive any comments on this proposed AD by September 16, 2003.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–31–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov*.

You may get the service information identified in this proposed AD from Air Cruisers Company, Technical Publications Department, PO Box 180, Belmar, NJ 07719–0180; telephone: (732) 681–3527, fax: (732) 280–8212.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Leung Lee, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 10 Fifth Street, 3rd floor, Valley Stream, NY 11581–1200; telephone (516) 256–7509; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 99–NE–31–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You may get more information about plain language at *http://www.plainlanguage.gov*.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Discussion

On January 22, 2003, the FAA issued AD 2003–03–11, Amendment 39–13035 (68 FR 4897, January 31, 2003). That AD requires a one-time unpacking and subsequent repacking of the slideraft system, identified by basic P/N with dash numbers and SNs. That AD also mandates repacking of all other slide/raft systems of the same design at the next required normal maintenance schedule of the slide/raft system. That AD was prompted by reports of separation of the lower aspirator during a number of deployments. That condition, if not corrected, could result in failure of the slide/raft to properly inflate, which could result in the inability to evacuate the passenger cabin in the event of an airplane emergency.

Actions Since AD 2003–03–11 Was Issued

Since that AD was issued, we became aware that the manufacturer has modified some slide/raft systems which has added some new dash numbers to the basic P/N of 62774. This proposed AD contains the same requirements as AD 2003–03–11, but replaces the specific slide/raft system P/N dash numbers with the word "-series". In addition, the number of affected slide/raft systems is now reduced to the SNs identified in paragraph (g) of this proposed AD. Also, this proposed AD eliminates mandating the utilization of the applicable Folding Procedures for subsequent repacking of all slide/raft systems of the same design during the normal scheduled maintenance.

Relevant Service Information

We have reviewed and approved the technical contents of Air Cruisers Company Service Bulletin (SB) 777–107–25–06, dated February 19, 1999, that identifies improperly packed slide/rafts by SN, and references slide/raft folding procedure P–12054, and P–12064.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing this AD, which would require a one-time unpacking and repacking of P/N 62774-series slide/raft systems, identified by SNs. The proposed AD would require that these actions be done per the service information described previously.

Changes to 14 CFR Part 39—Effect on the Proposed AD

On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

There are approximately 388 slide/raft systems of the affected design in the worldwide fleet. We estimate that 74 slide/raft systems installed on airplanes of U.S. registry would be affected by this proposed AD. We also estimate that it would take approximately 5 work hours per slide/raft system to perform the repacking, and that the average labor rate is $60 per work hour. Based on these figures, the total cost of the proposed AD to U.S. operators is estimated to be $22,200.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 99–NE–31–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–13035, (68 FR 4897, January 31, 2003), and by adding the following new airworthiness directive:

Air Cruisers Company: Docket No. 99–NE–31–AD. Supersedes AD 2003–03–11, Amendment 39–13035.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by September 16, 2003.

Affected ADs

(b) This AD supersedes AD 2003–03–11, Amendment 39–13035.

Applicability

(c) This AD applies to all dash numbers of Air Cruisers Company Emergency Evacuation Slide/Raft System, part number (P/N) 62774. These Emergency Evacuation Slide/Raft Systems are installed on, but not limited to Boeing 777–200 and –300 series airplanes.

Unsafe Condition

(d) This AD is prompted by recent information received that Air Cruisers Company has made modifications which have added new dash numbers to the slide/raft system basic P/N. This has affected some of the SN slide/raft systems listed in AD 2003–03–11. In addition, this AD is prompted by the requirement to reduce the number of affected slide/raft systems to only the SNs identified in paragraph (g) of this AD. We are issuing this AD to prevent failure of the slide/raft to properly inflate, which could impede the emergency evacuation of passengers in the event of an airplane emergency.

Compliance

(e) If you have not already performed the actions required by this AD, you must perform the actions within the compliance times specified in this AD.

Repacking

(f) For slide/raft systems that have a SN listed in Table 1 of this AD, do the following: Table 1 follows:

TABLE 1.—AFFECTED SLIDE/RAFT SNS

0203	0207	0220	0234	0235	0239	0241	0245	0250	0255
0267	0277	0280	0302	0305	0306	0310	0312	0316	0318
0320	0330	0332	0333	0335	0339	0342	0343	0344	0345
0348	0349	0350	0351	0354	0355	0356	0358	0364	0365
0366	0368	0369	0372	0373	0374	0376	0378	0379	0380
0381	0384	0385	0388	0389	0390	0391	0392	0394	0395
0396	0397	0398	0399	0402	0403	0404	0406	0408	0409
0411	0413	0415	0417	0418	0419	0420	0421	0422	0423
0425	0426	0427	0428	0429	0430	0431	0433	0438	0443
0445	0455	0456							

(1) For slide/raft systems currently installed on airplanes, repack the slide/raft system within 2 months after the effective date of this AD in accordance with the Accomplishment Instructions described in Air Cruisers Company SB 777–107–25–06, dated February 19, 1999, and the applicable Air Cruisers Company Folding Procedure P–12054 (for left-hand slide/rafts), Revision F, dated March 12, 1999, or Procedure P–12064 (for right-hand slide/rafts), Revision F, dated March 12, 1999.

(2) For uninstalled slide/raft systems, repack before installation, in accordance with the Accomplishment Instructions described in Air Cruisers Company SB 777–107–25–06, dated February 19, 1999, and the applicable Air Cruisers Company Folding Procedure P–12054 (for left-hand slide/rafts), Revision F, dated March 12, 1999, or Procedure P–12064 (for right-hand slide/rafts), Revision F, dated March 12, 1999.

(g) For slide/raft systems SN 0558 and lower that are not included in Table 1 of this AD, repack the slide/raft systems in accordance with the applicable Air Cruisers Company Folding Procedure P–12054 (for left-hand slide/rafts), Revision F, dated March 12, 1999, or Procedure P–12064 (for right-hand slide/rafts), Revision F, dated March 12, 1999, at the next required normal maintenance schedule of the slide/raft system, but no later than 18 months after the effective date of this AD.

Credit for Previous Repacking

(h) Slide/raft systems with a SN listed in Table 1 or identified in paragraph (g) of this AD that have already been repacked in accordance with Air Cruisers Company Folding Procedures P–12054, Revision F, dated March 12, 1999, or P–12064, Revision F, dated March 12, 1999, as applicable, are considered in compliance with the requirements of paragraph (f) or (g) of this AD.

(i) Slide/raft systems with a SN listed in Table 1 or identified in paragraph (g) of this AD that were repacked under AD 2003–11–03 are considered in compliance with the requirements of paragraph (f) or (g) of this AD.

Alternative Methods of Compliance (AMOCs)

(j) You must request AMOCs as specified in 14 CFR 39.19. All AMOCs must be approved by the Manager, New York Aircraft Certification Office, FAA.

Material Incorporated by Reference

(k) The repacking must be done in accordance with the following Air Cruisers Company service bulletin (SB) and Folding Procedures:

Document No.	Pages	Revision	Date
SB 777–107–25–06 Total pages: 3	All	Original	February 19, 1999.
P–12054 Total pages: 158	All	F	March 12, 1999.
P–12064 Total pages: 156	All	F	March 12, 1999.

Related Information

(l) None.

Issued in Burlington, Massachusetts, on July 14, 2003.

Robert E. Guyotte,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–18243 Filed 7–17–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 101

Extension of Port Limits of Chicago, IL

AGENCY: Customs and Border Protection; Homeland Security.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations pertaining to the field organization of the Bureau of Customs and Border Protection (CBP) by extending the geographical limits of the port of Chicago, Illinois. The change is being proposed as part of CBP's continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public.

DATES: Comments must be received on or before September 16, 2003.

ADDRESSES: Written comments must be submitted to the Bureau of Customs and Border Protection, Office of Regulations and Rulings, (Attention: Regulations Branch), 1300 Pennsylvania Avenue NW., Washington, DC 20229. Submitted comments may be inspected at the CBP, 799 9th Street, NW., Washington, DC during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: Lorraine Henderson, Office of Field Operations, (202) 927–1424.

SUPPLEMENTARY INFORMATION:

Background

In order to facilitate the clearance of international freight at an intermodal facility in the City of Elwood, Illinois, CBP is proposing to amend § 101.3(b)(1) by extending the port limits of the port limits of the port of Chicago, to include certain parts of the City of Elwood, Illinois, as described below. The proposed extension of the port limits to include the specified territory will provide better service to importers and the rail transportation industry in central Illinois.

Current Port Limits of Chicago, Illinois

The current port limits of Chicago, Illinois, are described as follows in Treasury Decision (T.D.) 71–121 of May 3, 1971:

Beginning at the point where the northern limits of Cook County, Illinois, intersect Lake Michigan, thence westerly along the Cook County-Lake County Line to the point where State Highway Fifty-Three (52) intersects this Line, thence in a southerly direction along State Highway Fifty-Three (53) to the point where this highway intersects the Dupage County-Will County Line, thence in a general easterly and southerly direction along the northern and eastern limits of Will County, Illinois, to the point where the Will County-Cook County Line intersects the Illinois-Indiana State Line, thence northerly along the Illinois-Indiana State Line to the point near Dyer, Indiana, where U.S. Route Thirty (30) intersects this Line, thence easterly along U.S. Route Thirty (30) to a point where this highway and Indiana State Highway Forty-Nine (49) intersect, thence in a northerly direction along Indiana State Highway Forty-Nine (49) to the place where the highway meets Lake Michigan.

Proposed Port Limits of Chicago, Illinois

CBP proposes to extend the port limits of the port of Chicago, Illinois, to include additional territory in the City of Elwood, Illinois so that the description of the port limits would read as follows:

Beginning at the point where the northern limits of Cook County, Illinois, intersect Lake Michigan, thence westerly along the Cook County-Lake County Line to the point where Illinois Highway Fifty-Three (53) intersects this Line, thence in a southerly direction along Illinois State Highway Fifty-Three (53) to the point where this highway intersects Interstate Highway Fifty-Five (55), thence southwesterly along Interstate Highway Fifty-Five (55) to the point where this highway intersects the north bank of the Kankakee River, thence southeasterly to the point where the Kankakee River intersects State Highway Fifty-Three (53), thence northeasterly to the point where this highway intersects Interstate Highway Eighty (80), thence easterly to the point where this highway intersects the Cook County-Will County Line, thence in a general easterly and southerly direction along the northern and eastern limits of Will County, Illinois, to the point where the Will County-Cook County Line intersects the Illinois-Indiana State Line, thence northerly along the Illinois-Indiana State Line to the point near Dyer, Indiana, where U.S. Route Thirty (30) intersects this Line, thence easterly along U.S. Route Thirty (30) to the point where this highway and the Indiana State Highway Forty-Nine (49) intersect, thence in a northerly direction along Indiana State Highway Forty-Nine (49) to a place where this highway meets Lake Michigan.

Authority

This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66 and 1624.

Comments

Before adopting this proposal, consideration will be given to any written comments that are timely submitted to CBP. All such comments received from the public pursuant to this notice of proposed rulemaking will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)) during regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, Customs and Border Protection, Department of Homeland Security, 799 9th Street, NW., Washington, DC.

Regulatory Flexibility Act and Executive Order 12866

CBP establishes, expands and consolidates CBP ports of entry throughout the United States to accommodate the volume of CBP-related activity in various parts of the country. Thus, although this document is being issued with notice for public comment, because it relates to agency management and organization it is not subject to the notice and public procedure requirements of 5 U.S.C. 553. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Agency organization matters such as this proposed port extension are exempt from consideration under Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other offices participated in its development.

Dated: July 14, 2003.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

Tom Ridge,

Secretary, Department of Homeland Security.

[FR Doc. 03–18173 Filed 7–17–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1000

[Docket No. FR–4676–N–10]

Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee; Meeting

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of negotiated rulemaking committee meeting.

SUMMARY: This document announces a meeting of the Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee. The purpose of the Committee is to discuss and negotiate a proposed rule that would change the regulations for the Indian Housing Block Grant (IHBG) program allocation formula, and other regulatory issues that arise out of the allocation or reallocation of IHBG funds.

DATES: The committee meeting will be held on Monday, August 18, 2003, Tuesday, August 19, 2003, Wednesday, August 20, 2003, and Thursday, August 21, 2003. The committee meeting will begin at approximately 9 a.m. on Monday, August 18, 2003, and is scheduled to adjourn at 3 p.m. on Thursday, August 21, 2003.

ADDRESSES: The meeting will take place at the J.W. Marriott Hotel, 1331 Pennsylvania Avenue, Washington, DC 20004; telephone (202) 393–2000 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs, Room 4126, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–5000, telephone, (202) 401–7914 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

HUD has established the Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee for the purposes of discussing and negotiating a proposed rule that would change the regulations for the Indian Housing Block Grant (IHBG) program allocation formula, and other IHBG program regulations that arise out of the allocation or reallocation of IHBG funds.

The IHBG program was established under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA). NAHASDA reorganized housing assistance to Native Americans by eliminating and consolidating a number of HUD assistance programs in a single block grant program. In addition, NAHASDA provides federal assistance for Indian tribes in a manner that recognizes the right of Indian self-determination and tribal self-government. Following the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570), HUD and its tribal partners negotiated the March 12, 1998 (63 FR 12349) final rule, which created a new 24 CFR part 1000 containing the IHBG program regulations.

II. Negotiated Rulemaking Committee Meeting

This document announces a meeting of the Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee. The committee meeting will take place as described in the **DATES** and **ADDRESSES** section of this document. The agenda planned for the meeting includes work group sessions and the discussion of work group progress reports by the full committee. The meeting will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may be allowed to make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION** section of this document.

Dated: July 11, 2003.

Rodger J. Boyd,

Deputy Assistant Secretary for Native American Programs.

[FR Doc. 03–18182 Filed 7–17–03; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Chapter I

No Child Left Behind Negotiated Rulemaking Committee

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Membership of the No Child Left Behind Negotiated Rulemaking Committee.

SUMMARY: The Secretary of the Interior has established an advisory Committee to develop recommendations for proposed rules for Indian education under six sections of The No Child Left Behind Act of 2001. On May 5, 2003, the Secretary published the proposed membership for the No Child Left Behind Negotiated Rulemaking Committee and requested comments. Following review of the comments, the Secretary has named the members of the Committee.

SUPPLEMENTARY INFORMATION: The No Child Left Behind Negotiated Rulemaking Committee is an advisory committee formed under the No Child Left Behind Act of 2001 (Pub. L. 107–110), the Negotiated Rulemaking Act, and the Federal Advisory Committee Act. The purpose of the Committee is to negotiate and reach consensus on recommendations for proposed rules for Indian education under six sections of The No Child Left Behind Act of 2001. For more information on negotiated rulemaking under The No Child Left Behind Act, *see* **Federal Register** notices that we published on December 10, 2002 (67 FR 75828) and May 5, 2003 (68 FR 23631), or our Web site at *http//www.oiep.bia.edu* under "Negotiated Rulemaking."

The Secretary proposed 19 tribal Committee members and 6 Federal Committee members. Following selection of the tribal Committee members as proposed in the May 5, 2003, **Federal Register** notice, one of the proposed tribal Committee members, David Germany, Mississippi Band of Choctaw, was unable to serve. The Secretary has replaced Mr. Germany with Vanessa Girard, Education Planner, Gila River Indian Community. In response to the **Federal Register** notice of proposed membership of the Committee, the Secretary received 8 comments, including 6 additional nominations for Committee membership. The Secretary found that the membership of the Committee adequately represented the tribes with bureau-funded schools and the interests

previously identified. Therefore the Secretary did not select any of the new nominations for the Committee.

The Secretary has selected the following tribal representatives for the No Child Left Behind Negotiated Rulemaking Committee:

Nominee	Tribal affiliation	Educational affiliation
Greg Anderson	Muscogee (Creek) Nation	Administrator, Creek Nation-Eufaula Dormitory.
Lorraine Begay	Navajo Nation	Director, Business Services, Greasewood Springs Community School, Inc.
Pauleen Billie	Navajo Nation	Executive Director, Navajo Area School Board Association.
Faye Blue Eyes	Navajo Nation	Director, Support Services, Shiprock Alternative Schools, Inc.
Roger Bordeaux	Potowatomi Nation	Superintendent, Tiospa Zina Tribal School.
Deborah Bordeaux	Oglala Sioux Tribe	Principal, Loneman School.
Doyce Cannon	Eastern Band of Cherokee Indians	Director of Education, Cherokee Central Schools.
Mary Helen Creamer	Navajo Nation	Program Manager, Tribal Education Department.
Laverne Dallas	Hopi Tribe	President, Hopi School Board.
Zachary Ducheneaux	Cheyenne River Sioux Tribe	District 6 Representative, Cheyenne River Sioux Tribal Council.
Gus Keene, Jr.	Navajo Nation	Director, Education Services, Ramah Navajo School Board.
Dolores McKenny	Navajo Nation	Program Manager, Navajo Education Center, North Central Association.
Wayne Newell	Pasamaquoddy Tribe	Director, Culture and Bilingual Education.
Tony Pivec	Cherokee Nation	Superintendent, Sequoyah High School.
Mark Sorenson	Navajo Nation	Executive Director, Little Singer Community School.
Terry Yellow Fat	Standing Rock Sioux Tribe	Superintendent, Standing Rock Community School.
Wayne Waddoups	Shoshone-Bannock	Superintendent, Shoshone Bannock School District # 512.
Vanessa Girard	Gila River Indian Community	Education Planner, Gila River Indian Community.
Linda Warner	Comanche Nation	Past Chief Executive Officer, Indian Community School of Milwaukee.

In addition, the Secretary has selected the following Federal representatives for the No Child Left Behind Negotiated Rulemaking Committee:

Name	Affiliation
Theresa Rosier	Office of the Assistant Secretary-Indian Affairs.
Sharon Wells	Special Assistant Deputy Director, School Operations, BIA.
Edith Blackwell	Associate Solicitor, Division of Indian Affairs, Office of the Solicitor.
Bruce Steele	Principal, Polacca Day School, BIA–OIEP–Hopi Agency.
Michael Rossetti	Counselor to the Secretary of the Interior.
Larry Byers	Principal, Chemawa School, BIA–OIEP.

Dated: July 10, 2003.

Aurene M. Martin,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 03–18220 Filed 7–17–03; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–113112–03]

RIN 1545–BB98

Reduction of Tax Attributes Due to Discharge of Indebtedness

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the reduction of tax attributes under sections 108 and 1017 of the Internal Revenue Code. The temporary regulations affect taxpayers that exclude discharge of indebtedness income from gross income under section 108. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments must be received by October 16, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–113112–03), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:RU (REG–113112–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically, via the IRS Internet site at: *http://www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Theresa M. Kolish ((202) 622–7930) of the Office of the Associate Chief Counsel (Corporate) (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to sections 108 and 1017. The temporary regulations will affect taxpayers that exclude discharge of indebtedness income from gross income under section 108. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Theresa M. Kolish, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding the following entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.108–7 also issued under 26 U.S.C. 108. * * *

Par. 2. Section 1.108–7 is added to read as follows:

§ 1.108–7 Reduction of attributes.

[The text of the proposed § 1.108–7 is the same as the text for § 1.108–7T published elsewhere in this issue of the **Federal Register**].

Par. 3. Section 1.1017–1 is amended by adding paragraph (b)(4) to read as follows:

§ 1.1017–1 Basis reductions following a discharge of indebtedness.

* * * * *

(b) * * *

(4) [The text of the proposed § 1.1017–1(b)(4) is the same as the text for § 1.1017–1T(b)(4) published elsewhere in this issue of the **Federal Register**].

* * * * *

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 03–18146 Filed 7–17–03; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA–62, GA–64–200314; FRL–7530–2]

Approval and Promulgation of Implementation Plans; Georgia: Approval of Revisions to the State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On January 31, 2003, the Georgia Environmental Protection Division (GAEPD) submitted revisions to the "Gasoline Marketing Rule," provided in Georgia's Rules for Air Quality Control, Chapter 391–3–1–.02(2)(bbb) (the Georgia Fuel Rule) to EPA. The revisions, which are in response to concerns regarding adequate gasoline supply, address the Georgia Fuel Rule's gasoline sulfur requirements, which would have been effective April 1, 2003, and associated reporting and testing requirements. On June 19, 2003, the GAEPD submitted a subsequent revision to the Georgia Fuel Rule to amend the effective date for the gasoline sulfur requirements to September 16, 2003, from the effective date cited in the previous State rule revision. In this action, EPA is proposing to approve both of GAEPD's requests for a revision to the gasoline sulfur requirement for the period of April 1, 2003, through December 31, 2003.

DATES: Written comments must be received on or before August 18, 2003.

ADDRESSES: Comments may be submitted by mail to: Scott M. Martin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in [Part (I)(B)(1)(i) through (iii)] of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Scott M. Martin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9036. Mr. Martin can also be reached via electronic mail at *martin.scott@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under GA–62, GA–64–200314. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the contact listed in the For Further Information Contact section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30 excluding federal holidays.

2. Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354, telephone (404) 363–7000.

3. Electronic Access. You may access this **Federal Register** document electronically through the Regulation.gov web site located at

http://www.regulations.gov where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking" "GA–62, GA–64–200314" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *martin.scott@epa.gov*. Please include the text "Public comment on proposed rulemaking" "GA–62, GA–64–200314" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulation.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov*, then select Environmental Protection Agency at the top of the page and use the go button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Scott M. Martin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Please include the text "Public comment on proposed rulemaking" "GA–60, GA–61–200332" in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Scott M. Martin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division 12th floor, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30 excluding federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

On October 28, 1999, the State of Georgia, through the GAEPD, submitted an attainment demonstration for the 1-hour ozone national ambient air quality standard (NAAQS) for the Atlanta nonattainment area for inclusion into the Georgia state implementation plan (SIP). This submittal included a version of the low-sulfur/low-Reid Vapor Pressure (RVP) fuel regulations that was subsequently amended by the State, and that was submitted by the State to EPA in revised form in subsequent SIP revisions dated July 31, 2000, and August 21, 2001.

Additionally, on May 31, 2000, in support of its request for SIP approval of the State fuel regulations, GAEPD submitted a demonstration that, in accordance with section 211(c)(4)(C) of the Clean Air Act (CAA or the "Act") as amended in 1990, the fuel control is necessary to achieve the NAAQS implemented by the applicable SIP. On November 9, 2001, the GAEPD submitted an updated "necessity" demonstration which reflected the revised motor vehicle emissions budget, the request for an attainment date extension from 2003 to 2004, and the revised Partnership for a Smog Free Georgia emissions calculations. The extension for the attainment date from 2003 to 2004 resulted from a delay in implementation for the NO_X SIP Call Rule (63 FR 57356). In the 2003 attainment demonstration, Georgia relied heavily on the benefits achieved through the NO_X SIP Call measures. Originally, the Georgia Fuel Rule was developed with an attainment date of 2003 as a consideration. However, when the attainment date was extended to 2004, the GAEPD opted not to revise its Georgia Fuel Rule.

The Georgia "necessity" demonstration submittals contained data and analyses to support a finding under section 211(c)(4)(C) that the State's low-sulfur and low-RVP requirements are necessary for the Atlanta nonattainment area to achieve the ozone NAAQS. On December 11, 2001 (66 FR 63982), EPA published a notice of proposed rulemaking (NPR) to approve the Georgia Fuel Rule into the SIP. That NPR provided a detailed description of this action and EPA's rationale for proposed approval. The public comment period for this action ended on January 25, 2002. No comments, adverse or otherwise, were received on EPA's proposal. EPA finalized this approval action on February 22, 2002 (67 FR 8200). The effective date for this Federal approval was March 25, 2002.

On January 31, 2003, the GAEPD submitted revisions to the Georgia Fuel Rule to EPA to revise the effective date for the 30 parts per million (ppm) sulfur requirement from April 1, 2003, to January 1, 2004. The revisions, made in response to concerns regarding adequate gasoline supply, also address associated reporting and testing requirements. On June 19, 2003, the GAEPD submitted a subsequent revision for the Georgia Fuel Rule to revise the effective date of the Georgia Fuel Rule 30 ppm sulfur requirement from January 1, 2004, to September 16, 2003.

Clean Air Act Requirements

The SIP submittal, including the rule revision for Georgia's low-sulfur/low-RVP fuel control program, meets the requirements outlined in section 110 and Part D of Title I of the CAA amendments and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). The first revision to the rule was formally adopted by the GAEPD Board on January 29, 2003, and became State effective on February 20, 2003. The second revision to the rule was formally adopted by the GAEPD Board on May 28, 2003, and became State effective on June 24, 2003.

These rule changes are within the scope of the "necessity" demonstration under section 211(c)(4)(C) of the Act because the changes do not affect the finding made at the time of the original SIP approval regarding the availability of non-fuel measures to bring about timely attainment. This fuel program, as currently modified, adds an intermediate level of sulfur control to a fuel program that now includes three levels of sulfur control instead of two. This additional level of sulfur control would not have affected the evaluation of potential non-fuel measures and their availability to achieve attainment as compared to the fuel program's contribution to the same attainment date.

III. Analysis of State's Submittal

On January 31, 2003, the GAEPD submitted revisions to the Georgia Fuel Rule to EPA. The purpose of these revisions is to address the Georgia Fuel Rule's 2003 gasoline sulfur requirements, beginning April 1, 2003, through December 31, 2003, in response to concerns regarding adequate gasoline supply, and to revise associated reporting and testing requirements. Subsequently, the GAEPD submitted further revisions to the fuel rule on June 19, 2003, to reflect the revised effective date of the sulfur content annual average of 30 ppm (by weight) and per-gallon cap of 150 ppm from January 1, 2004, to September 16, 2003.

The requirements and compliance dates associated with this rule revision are below:

Product	Producer or importer sampling	Effective date	Downstream sampling	Effective date
April 1 through September 15, 2003				
Sulfur quarterly average	90 ppm	April 1	N/A	N/A.
Sulfur per gallon cap	200 ppm	April 1	230 ppm	June 1.
RVP	7.0 psi	June 1	7.3 psi	June 1–Sept 15.
September 16, 2003 and beyond				
Sulfur annual average	30 ppm	September 16, 2003	N/A	N/A.
Sulfur per gallon cap	150 ppm	September 16, 2003	230 ppm	(Thru March 31st).
			175 ppm	June 1.
Seasonal sulfur per gallon cap	80 ppm	June 1–Sept 15	95 ppm	June 1–Sept 15.
RVP	7.0 psi	June 1–Sept. 15	7.3 psi	June 1–Sept 15.

Additional revisions for this rule are described below:

Paragraph (iv) is being amended to clarify the beginning and ending dates, June 1 through September 15, for the

seasonal sulfur control which becomes effective June 1, 2004.

Paragraph 4 is being amended to remove conflicting annual reporting language and to clarify the content and due date of quarterly reports required from each producer and importer.

Paragraph 5 (iii) is being amended to revise the terminal-level sampling requirements for 2003 and beyond for consistency with the above described changes.

EPA is proposing to approve these revisions to the Georgia Fuel Rule, as requested by the GAEPD, because these revisions meet the requirements of the CAA as amended in 1990. Starting September 16, 2003, the sulfur content requirements will revert back to the annual average of 30 ppm (by weight) and the per-gallon cap of 150 ppm. EPA approved an attainment demonstration for Atlanta with an attainment date for the 1-hour ozone NAAQS of November 15, 2004. However, due to a challenge to EPA's approval of the attainment demonstration for metro Atlanta before the United States 11th Circuit Court of Appeals, EPA's approval was vacated on June 16, 2008. Atlanta's attainment date has reverted to the previously applicable date of 1999. Under the CAA, EPA is required to make a finding as to whether Atlanta attained the 1-hour ozone NAAQS on November 15, 1999. If EPA finds that Atlanta did not attain the 1-hour standard in 1999, Atlanta will be reclassified to a severe nonattainment area by operation of law. As a severe area, Atlanta's attainment date will be as expeditiously as practicable but no later than November 15, 2005. It is unknown at this time if Atlanta's severe area attainment date will be November 15, 2004, or November 15, 2005, however, under either scenario these revisions will not interfere with the Atlanta area's ability to attain the 1-hour ozone NAAQS. This rule revision will not cause a delay for either a 2004 or 2005 attainment date since the original 30 ppm sulfur level will be in effect starting September 16, 2003, well before the November 15, 2004, or November 15, 2005, attainment date.

Tier 2 Credit

EPA notes that refineries producing low sulfur gasoline with sulfur levels below a refinery's baseline established under EPA's Tier 2 Gasoline Sulfur Control Program prior to the start of this program in 2004 may generate sulfur credits and/or allotments which can provide economic benefits to the refinery. These sulfur credits and allotments may be used to allow the refinery to produce gasoline with slightly higher sulfur levels in future years, or they may be sold to other refiners. A refinery that meets the original April 1, 2003, requirement for supplying Georgia low sulfur gasoline may be eligible for more sulfur credits under EPA's Tier 2 Gasoline Sulfur Control Program than a refinery which meets the revised April 1, 2003, requirement for supplying Georgia low sulfur gasoline. Furthermore, such a refinery may also be eligible for sulfur allotments since allotments may be generated in 2003 by refineries that produce gasoline with an average sulfur level that is less than or equal to 60 ppm. For more information about EPA's Tier 2 Gasoline Sulfur Control Program, *see* EPA's rulemaking, Control of Air Pollution From New Motor Vehicles: Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements, dated February 10, 2000, (65 FR 6698).

IV. Proposed Action

EPA is proposing to approve the revisions to the Georgia SIP described above because they are consistent with EPA guidance and the CAA, as amended in 1990. EPA acknowledges that some companies, notably BP/Amoco and Chevron, stated in commenting upon the Georgia rule change that they had made the necessary investments and were prepared to meet the earlier April 1, 2003, deadline for supplying complying fuel. For example, Chevron worked pro-actively with the State of Mississippi and EPA Region 4 to develop an expedited permitting schedule to allow the necessary changes to their Pascagoula, MS, refinery in a good faith effort to meet the original rule deadlines. Although quantitative estimates are not available, today's proposed action will inevitably to some degree disadvantage companies who made these investments with an eye to meeting the original deadline as opposed to those companies which delayed making the necessary investments. EPA commends these companies for their commitment to environmental protection and, in keeping with EPA's policy and practice of encouraging early reductions, will be looking for ways to provide incentives for companies who comply ahead of regulatory deadlines.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant, as stated in the previous paragraph.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 9, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 03–18153 Filed 7–17–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[PA189–4300; FRL–7530–7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Liberty Borough PM_{10} Nonattainment Area to Attainment and Approval of the Associated Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a request from the Commonwealth of Pennsylvania to redesignate the Liberty Borough area of Allegheny County, Pennsylvania (the Liberty Borough area) from nonattainment to attainment for the national ambient air quality standard (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 microns (PM_{10}). The EPA is also proposing to approve a maintenance plan for the Liberty Borough area. Both the redesignation and maintenance plan were submitted by the Pennsylvania Department of Environmental Protection (PADEP) on behalf of the Allegheny County Health Department (ACHD). Approval of the maintenance plan, as a revision to the Pennsylvania State Implementation Plan (SIP), would put a plan in place for maintaining the PM_{10} standard for the next ten years in the Liberty Borough area. This action is being taken in accordance with the Clean Air Act (CAA).

DATES: Comments must be received on or before August 18, 2003.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba A. Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21 U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *morris.makeba@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in part V of the Supplementary Information section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; and Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT: Ruth E. Knapp, (215) 814–2191, or by e-mail at *knapp.ruth@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used we mean EPA.

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Introduction

Under the CAA, EPA may redesignate nonattainment areas to attainment if sufficient data are available to warrant such changes and the area meets the criteria contained in section 107(d)(3)(E). This includes full approval of a maintenance plan for the area. EPA may approve a maintenance plan which meets the requirements of section 175A. On October 28, 2002, the PADEP, on behalf of the ACHD, submitted a redesignation request and maintenance plan for the Liberty Borough moderate PM_{10} nonattainment area. EPA is proposing to redesignate the Liberty Borough area from nonattainment to attainment of the PM_{10} NAAQS. We are also proposing to approve the maintenance plan required under section 175A maintenance plan. Once approved the maintenance plan will become part of the Pennsylvania SIP for this area.

I. When Was This Area Designated Nonattainment for PM_{10}?

On November 15, 1990, the CAA amendments were enacted. Pursuant to section 107(d)(4)(B), the Liberty Borough area in Allegheny County, Pennsylvania was designated nonattainment by operation of law. The nonattainment designation and classification as a moderate PM_{10} area was codified in 40 CFR part 81 on November 6, 1991 (56 FR 56694).

II. What Are the Geographic Boundaries of the PM_{10} Nonattainment Area?

The Liberty Borough nonattainment area is comprised of the municipalities of Liberty Borough, the Borough of Lincoln, Port Vue Borough, the Borough of Glassport and the City of Clairton.

III. What Are the Criteria for Redesignation?

Section 107(d)(3)(E) of the CAA specifies five requirements that must be met to redesignate an area from nonattainment to attainment as follows:

(1) The area has attained the applicable NAAQS;

(2) The area has a fully approved SIP under section 110(k);

(3) The air quality improvement is permanent and enforceable;

(4) The area has a fully approved maintenance plan pursuant to section 175A ; and

(5) The area has met all relevant requirements under section 110 and part D of the Act.

IV. Does the Area Meet the Criteria for Redesignation?

The EPA has reviewed the redesignation request submitted by PADEP, on behalf of the ACHD, for the Liberty Borough nonattainment area and finds that the request meets the five requirements of section 107(d)(3)(E).

A. The Data Shows Attainment of the PM_{10} NAAQS in the Liberty Borough Area

The ACHD and PADEP have quality-assured PM_{10} ambient air monitoring data showing that the Liberty Borough Area has met the PM_{10} NAAQS. Four monitoring sites have been operating in the nonattainment area since 1992. Most of the sites are located downwind of major industrial sources. The Lincoln site is located downwind of U.S. Steel Clairton Works; the Glassport site is located downwind and east of the U.S. Steel Irvin Works; the Liberty site is located near the center of the nonattainment area; the Clairton site is located southwest of U.S. Steel Clairton Works. The redesignation request is based upon the three most recent years of quality-assured PM_{10} air monitoring data (1998 -2000) available during preparation of the October 28, 2002 submittal. The PM_{10} NAAQS includes both a daily and an annual standard. An area is attaining the daily and annual NAAQS if there are no violations, as determined in accordance with 40 CFR part 50.6 and Appendix K, based upon three complete consecutive calendar years of quality-assured monitoring data. The daily standard is met if the expected frequency of values above 150 ug/m^3 is 1.0 or less. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the Aerometric Information Retrieval System (AIRS). Subsequently the data was reported into EPA's new ambient air quality data system known as the Air Quality Subsystem (AQS).

The submittal included PM_{10} monitoring data from 1992 through 2000. The redesignation request is based on the most recent data from 1998 through 2000. This data has been quality-assured and recorded in AQS. During the 1998 to 2000 time period, there were no actual exceedances of the daily standard, and the average annual number of expected exceedances is less than 1.0 for that same time period. The complete quality-assured data in AQS from 2001 also shows that no exceedances were recorded. With regard to 2002, there have been no exceedances recorded. Therefore, the area has attained and continues to attain the daily NAAQS. During 1998 through 2002, the maximum annual average recorded at these sites was 41 ug/m^3. As the annual standard of 50 ug/m^3 is based on the average annual mean over three years, the area has attained and continues to attain the annual PM_{10} standard. Because the area has attained the daily and annual NAAQS based upon the most recent three years of quality-assured data available during preparation of the October 28, 2002 submittal, and continues to attain the NAAQS, the first criterion of section 107(d)(3)(E) has been satisfied. The ACHD and PADEP have committed to continue monitoring in this area in accordance with 40 CFR part 58.

B. There Is a Fully Approved SIP Under Section 110(k) of the CAA

1. Section 110 Requirements

On January 6, 1994, the PADEP submitted an attainment plan to EPA consisting of an attainment demonstration and control measures for the Liberty Borough area. On April 11, 1995 (60 FR 18385), EPA proposed to approve the January 1994 attainment plan submittal as well as two SIP revisions related to PM_{10} that had been previously submitted by the Commonwealth. After EPA's April 11, 1995 proposal to approve the attainment plan was published in the **Federal Register**, the PADEP reported that the PM_{10} NAAQS had been exceeded twice in March of 1995. These exceedances raised concerns about the attainment demonstration. Therefore, while EPA did take final action to approve the control measures portion of the attainment plan on June 12, 1996 (61 FR 29664), EPA took no action on the modeled attainment demonstration portion of the attainment plan at that time. Contingency measures for the Liberty Borough area were formally submitted to EPA on July 12, 1995. On September 8, 1998, EPA fully approved the attainment demonstration and contingency measures for the Liberty Borough area (63 FR 47434) and made a formal finding that the area had attained the PM_{10} NAAQS (63 FR 47493).

Therefore, the PM_{10} SIP for the Liberty Borough area has been fully approved by EPA as meeting all the requirements of section 110(a)(2)(I) of the Act, including the requirements of part D (relating to nonattainment).

2. Part D Requirements

Part D contains general provisions that apply to all nonattainment plans and certain sections that apply to specific criteria pollutants. Before EPA may redesignate the Liberty Borough PM_{10} nonattainment area to attainment, the SIP must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it is subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas. EPA designated the Liberty Borough area as a moderate PM_{10} nonattainment area on November 6, 1991 (codified at 40 CFR part 81.339). Therefore, to be redesignated to attainment, the Commonwealth must meet the applicable requirements of subpart 1 of part D of the CAA, specifically sections 172(c) and 176. Section 189(a) of subpart 4 of the CAA also must be met.

a. Subparts 1 and 4 of Part D—Sections 172(c) and 189(a)—Subpart 1 of part D addresses nonattainment areas in general and subpart 4 addresses PM_{10} nonattainment areas specifically. All the relevant SIP requirements under sections 172(c) and 189(a) for Reasonably Available Control Measures; an emissions inventory; contingency measures; and an attainment demonstration were met by Pennsylvania and approved on June 12, 1996 (61 FR 29664) and September 8, 1998 (63 FR 47434). The Federal requirements for new source review (NSR) in nonattainment areas are contained in section 172(c)(5). EPA guidance indicates the permitting requirements of the part D NSR program for new major sources and major modifications shall be replaced by the prevention of significant deterioration (PSD) program's permitting requirements when an area has reached attainment and been redesignated, provided that the PSD program will be fully effective immediately upon redesignation. The ACHD was originally delegated the authority to implement and enforce the provisions of 40 CFR 52.21, on behalf of EPA, on December 14, 1983 (48 FR 55625). The ACHD adopted the PSD requirements promulgated in 40 CFR 52.21, incorporating them by reference in its regulations as provided in Article XXI, section 2102.07. On March 26, 2003, EPA renewed the ACHD's existing delegation to implement and enforce the provisions of 40 CFR 52.21 as well as any future revisions to these regulations (68 FR 14617). Therefore, the permitting requirements of the PSD program will become fully effective in the Liberty Borough area immediately upon redesignation to attainment.

b. Subpart 1 of Part D—Section 176 Conformity Provisions—The Liberty Borough area was not required to have a transportation conformity budget for PM_{10}. It was determined that the significant causes of nonattainment in this area were emissions from steel and coke facilities in the area and not from mobile sources. The PM_{10} emissions from public roads are less than 3% of the attainment emissions inventory for the Liberty Borough area. Because the PM_{10} violations had been caused by industrial stationary sources and motor vehicles were not an important contributor to the nonattainment problem, for conformity purposes no additional quantitative analysis for transportation related PM_{10} impacts is required. While Section 176 provides that a State's conformity revisions must be consistent with Federal Conformity regulations promulgated by EPA, given the nature of the area's former nonattainment problem, it is reasonable to interpret those conformity requirements as not applying for purposes of evaluating the redesignation request.

C. The Improvement in Air Quality Is Due to Permanent and Enforceable Measures

In order to redesignate an area, EPA must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions. The Commonwealth's approved 1994 PM_{10} SIP for the Liberty Borough area identified measures to bring the area into attainment. These measures included emission standards and operating restrictions for various sources of PM_{10} especially steel and coke facilities. Included among the facilities that were required to implement additional controls are U.S. Steel Clairton Works (formerly USX), U.S. Steel Irvin Works, Aristech (Koppers) Chemical, and the Glassport Transportation Center. Additional emission limitations were also imposed for the coke ovens and coke oven gases at U.S. Steel Clairton Works, Irvin Works, the Edgar Thompson Works as well as LTV Steel.

In addition to the emission reductions discussed above, other reductions have occurred since the attainment demonstration inventory was prepared and the modeled demonstration of attainment performed. The following sources of PM_{10} emissions have shutdown: U.S. Steel Clairton Boilers 13 & 14; Duquesne Light (Orion Power), Philips (all boilers/processors); LTV Steel, Hazelwood (all boilers/processors); and McGraw Edison, Canonsburg (all boilers/processes). The additional emission reductions resulting from these shutdowns are permanent and enforceable given that any reactivation of these facilities would be subject to applicable new source review requirements.

The October 28, 2002 redesignation request demonstrates that actual enforceable emission reductions are responsible for the air quality improvement in the Liberty Borough area. EPA finds that the emission reductions due to the SIP-approved control measures and emission limitations imposed by the 1994 attainment plan and the emission reductions due to permanent and enforceable shutdowns have reduced the ambient levels of PM_{10} such that the Liberty Borough area attained the NAAQS and continues to attain the NAAQS.

D. The Maintenance Plan Satisfies Section 175A

Section 175A of the Act sets forth the necessary elements of a maintenance plan needed for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the EPA approves a redesignation to attainment. Eight years after the redesignation, a revised maintenance plan must be submitted which demonstrates attainment for the 10 years following the initial 10-year period. To address potential future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems. Under section 175A(d) contingency provisions must include a requirement that the State will implement all control measures that were in the SIP prior to redesignation as an attainment area.

EPA is proposing to approve the maintenance plan for the Liberty Borough nonattainment area because EPA finds that the submittal meets the requirements of section 175A. The details of the maintenance plan requirements and how the submittal meets these requirements are detailed in the following paragraphs. A maintenance plan must contain the following elements:

(1) An emissions inventory reflective of PM_{10} emissions in the monitored attainment years;

(2) A maintenance demonstration which is expected to provide adequate assurance of maintenance over the initial 10-year period;

(3) A commitment to continue monitoring in the area;

(4) A method for verifying continued attainment; and

(5) A contingency plan with specific indicators or triggers for implementation of the plan.

1. Maintenance Plan Requirements

a. Emissions Inventory—The maintenance plan includes the1994 emission inventory used to perform the modeling demonstration of attainment and updates that inventory for 1999. Emissions declined between 1994 and 1999 in the Liberty Borough area due to the previously described shutdowns. Any future increases in emissions and/or significant changes to the stack configurations/parameters from those modeled in the attainment demonstration due to new or modifying stationary sources would be subject to new source review requirements including a demonstration that the NAAQS is protected.

b. Maintenance Demonstration—Steel and coke facilities were the main cause of nonattainment in the area. The attainment demonstration was based upon maximum allowable emission levels for stationary sources impacting the nonattainment area. The PM_{10} emissions from public roads were less than 3% of the emission inventory therefore no conformity budget is in place for Allegheny County. Population has steadily decreased in the county since 1990 and this decline is expected to continue through 2020. Therefore, other sources of emissions related to population are expected to decline. Employment in manufacturing is expected to decrease significantly between 2002–2020. As a result of these factors, PM_{10} emissions are expected to remain below the emission levels used to demonstrate attainment for the next 10 years and the area is expected to maintain the PM_{10} NAAQS for the next 10 years. Moreover, as noted previously, any future increases in emissions and/or significant changes to the stack configurations/parameters from those modeled in the attainment demonstration due to new or modifying stationary sources would be subject to new source review requirements including a demonstration that the NAAQS is protected.

c. Commitment to Continue Monitoring Air Quality—The

maintenance plan includes commitments to continue to operate and maintain the network of ambient PM_{10} monitoring stations in the Liberty Borough area in accordance with provisions of 40 CFR part 58 to demonstrate ongoing attainment with the PM_{10} NAAQS.

d. Verification of Continued Attainment—In addition to reviewing monitoring data in the Liberty Borough area to verify continued attainment, the ACHD will continue to examine the air quality impact of any new major sources or modifications through its PSD program to insure protection of the NAAQS. Furthermore, the air quality impacts of new minor sources or modifications resulting in any increases in emissions and/or significant changes to the stack configurations/parameters from those modeled in the attainment demonstration would be evaluated to assure protection and maintenance of the NAAQS in the area.

e. Contingency Plan—The contingency measures for the Liberty Borough area will be triggered upon a violation of the PM_{10} standard, and the ACHD will notify effected sources within 60 days of a violation that contingency measures must be implemented. The same contingency measures that were approved on September 8, 1998 (63 FR 47434) for the attainment demonstration are being used as contingency measures for the maintenance plan. These measures require that procedures to capture pushing emissions from the coke batteries at U.S. Steel Clairton Works be improved (except for emissions from Battery B which is equipped with a coke-side shed). The measures must be implemented at the batteries within 30 days after receiving notification from ACHD that the measures were triggered.

2. Commitment To Submit Subsequent Maintenance Plan Revisions

A new maintenance plan must be submitted to EPA, as a SIP revision, within eight years of the redesignation of the nonattainment area, as required by section 175(A)(b). This subsequent maintenance plan must provide for the maintenance of the PM_{10} NAAQS for a period of 10 years after the expiration of the initial 10 year maintenance period.

E. The Submittal Meets the Applicable Requirements of Section 110 and Part D

General SIP elements are delineated in section 110(a)(2) of Title I, part A. These requirements include but are not limited to the following: submittal of a SIP that has been adopted by the state after reasonable notice and public hearing, provisions for establishment and operation of appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality, implementation of a permit program, provisions for part C, Prevention of Significant Deterioration (PSD), and part D, New Source Review (NSR) permit programs, criteria for stationary source emission control measures, monitoring and reporting, and provisions for public and local agency participation. For the purposes of redesignation, the Pennsylvania SIP was reviewed to ensure that all requirements under the amended CAA were satisfied through approved SIP provisions for the Liberty Borough area. EPA has concluded that the Commonwealth's SIP for the Liberty Borough nonattainment area satisfies all of the Section 110 SIP requirements. As discussed previously in section IV. B. 2. of this document, all applicable part D requirements have been satisfied.

V. Proposed Action

EPA review of the redesignation request and maintenance plan for the Liberty Borough moderate PM_{10} nonattainment area submitted on October 28, 2002 by the PADEP, on behalf of the ACHD, indicates that all requirements for approval have been satisfied. EPA is, therefore, proposing to redesignate the Liberty Borough area from nonattainment to attainment of the PM_{10} NAAQS. We are also proposing to approve the maintenance plan required under section 175A as a revision to the Pennsylvania SIP for this area. EPA has prepared a Technical Support Document (TSD) in support of this proposed rulemaking. Copies are available, upon request, from the person identified in the **FOR FURTHER INFORMATION CONTACT** section. EPA is soliciting public comment on the issues discussed in this document. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting either electronic or written comments. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number PA189–4300 in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

A. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

1. *E-mail.* Comments may be sent by electronic mail (e-mail) to *morris.makeba@epa.gov*, attention PA189–4300. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

2. *Regulations.gov.* Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov*, then select "Environmental Protection Agency" at the top of the page and use the "go" button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

3. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the **ADDRESSES** section of this document. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

B. *By Mail.* Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document. For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper,

will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

Submittal of CBI Comments

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

Considerations When Preparing Comments to EPA

You may find the following suggestions helpful for preparing your comments:

(1) Explain your views as clearly as possible.

(2) Describe any assumptions that you used.

(3) Provide any technical information and/or data you used that support your views.

(4) If you estimate potential burden or costs, explain how you arrived at your estimate.

(5) Provide specific examples to illustrate your concerns.

(6) Offer alternatives.

(7) Make sure to submit your comments by the comment period deadline identified.

(8) To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and Federal Register citation related to your comments.

VI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order.

This proposed rule to Liberty Borough PM_{10} nonattainment area to attainment and to approve the maintenance plan does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 11, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 03–18294 Filed 7–17–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7531–1]

Georgia: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Georgia has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Georgia. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by August 18, 2003.

ADDRESSES: Send written comments to Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960; (404) 562–8440. You can examine copies of the materials submitted by Georgia during normal business hours at the following locations: EPA Region 4 Library, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960, Phone number: (404) 562–8190, Kathy Piselli, Librarian; or The Georgia Department of Natural Resources Environmental Protection Division, 2, Martin Luther King, Jr., Drive, Suite 1154 East, Atlanta Georgia 30334-4910, Phone number: 404–656–7802.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960; (404) 562–8440.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: July 2, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 03–18296 Filed 7–17–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2186, MB Docket No. 03–156, RM–10721]

Digital Television Broadcast Service; Laredo, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Eagle Creek Broadcasting of Laredo, LLC, requesting the substitution of DTV channel 31 for DTV channel 14 at Laredo, Texas. DTV Channel 31 can be allotted to Laredo at reference coordinates 27–31–19 N. and 99–31–19 W. with a power of 200, a height above average terrain HAAT of 262 meters. Since the community of Laredo is located within 275 kilometers of the U.S.-Mexican border, concurrence from the Mexican government must be obtained for this allotment.

DATES: Comments must be filed on or before August 28, 2003, and reply comments on or before September 15, 2003.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in broadcast allotment proceedings). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dennis P. Corbett, Leventhal Senter & Lerman PLLC, 2000 K Street, NW., Suite 600, Washington, DC 20006–1809 (Counsel for Eagle Creek Broadcasting of Laredo, LLC).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–156, adopted July 2, 2003, and released July 7, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Texas is amended by removing DTV channel 14 and adding DTV channel 31 at Laredo.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–18148 Filed 7–17–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2104; MB Docket No. 03–153, RM–10727; MB Docket No. 03–154, RM–10736; MB Docket No. 03–155, RM–10735]

Radio Broadcasting Services; Bangs, TX, De Beque, CO, Montauk, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes three new allotments in Bangs, Texas, De Beque, Colorado, and Montauk, New York. The Audio Division requests comment on a petition filed by Charles Crawford proposing the allotment of Channel 250C3 at Bangs, Texas, as the community's first local aural transmission service. Channel 250C3 can be allotted to Bangs in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.9 kilometers (7.4 miles) west to avoid a short-spacing to the license sites of Station KATX, Channel 249A, Eastland, Texas and Station KBFB, Channel 250C, Dallas, Texas. The reference coordinates for Channel 250C3 at Bangs are 31–41–32 North Latitude and 99–15–17 West Longitude. *See* Supplementary Information, *infra*.

DATES: Comments must be filed on or before August 25, 2003, and reply comments on or before September 9, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, TX 75205, Dan J. Alpert, Esq, c/o Garfield-Mesa County Line Broadcasters, 2120 N. 21st Road, Arlington, VA 22201, and Dana J. Puopolo, 2134 Oak Street, Unit C, Santa Monica, CA 90405.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 03–153, 03–154, 03–155, adopted July 1, 2003 and released July 3, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW, Room CY-A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

The Audio Division requests comments on a petition filed by Garfield-Mesa County Line Broadcasters proposing the allotment of Channel 275C3 at De Beque, CO, as the community's first local aural transmission service. Channel 275C3 can be allotted to De Beque in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.1 kilometers (4.4 miles) northwest to avoid a short-spacing to the license site of Station KPRU, Channel 277C2, Delta, CO. The reference coordinates for Channel 275C3 at De Beque are 39–22–36 North Latitude and 108–16–33 West Longitude.

The Audio Division requests comments on a petition filed by Dana J. Puopolo proposing the allotment of Channel 261A at Montauk, New York, as the community's third local aural transmission service. Channel 261A can be allotted to Montauk in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.7 kilometers (4.2 miles) east to avoid a short-spacing to the license site of Station WEZN–FM, Channel 260B, Bridgeport, Connecticut. The reference coordinates for Channel 261A at Montauk are 41–03–13 North Latitude and 71–52–43 West Longitude.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding De Beque, Channel 275C3.

3. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Channel 261A at Montauk.

4. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Bangs, Channel 250C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–18231 Filed 7–17–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2093; MB Docket No. 03–143, RM–10726; MB Docket No. 03–144, RM–10733; MB Docket No. 03–145, RM–10730; MB Docket No. 03–146, RM–10728]

Radio Broadcasting Services; Cove, AR, Gunnison, CO, Ridgecrest, CA, Robert Lee, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes four new allotments in Cove, Arkansas, Gunnison, Colorado, Ridgecrest, California, and Robert Lee, Texas. The Audio Division requests comment on a petition filed by Charles Crawford proposing the allotment of Channel 232A at Cove, Arkansas, as the community's first local aural transmission service. Channel 232A can be allotted to Cove in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.9 kilometers (9.2 miles) southwest to avoid a short-spacing to the license site of Station KOLX, Channel 233C2, Barling, AR. The reference coordinates for Channel 232A at Cove are 34–22–17 North Latitude and 94–33–12 West Longitude. *See* Supplementary Information, *infra*.

DATES: Comments must be filed on or before August 22, 2003, and reply comments on or before September 8, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, TX 75205, Dana J. Puopolo, 2134 Oak Street, Unit C, Santa Monica, CA 90405; Linda A. Davidson, 2134 Oak Street, Unit C, Santa Monica, CA 90405, and Katherine Pyeatt, 6655 Aintree Circle, Dallas, TX 75214.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 03–143, 03–144, 03–145, 03–146, adopted June 30, 2003 and released July 1, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

The Audio Division requests comments on a petition filed by Dana J. Puopolo proposing the allotment of Channel 299C3 at Gunnison, CO, as the community's fourth local aural transmission service. Channel 299C3 can be allotted to Gunnison in compliance with the Commission's minimum distance separation requirements with a site restriction of 19.5 kilometers (12.1 miles) northeast to avoid a short-spacing to the license site of Station KBKL, Channel 300C, Grand Junction, CO. The reference coordinates for Channel 299C3 at Gunnison are 38–40–48 North Latitude and 106–46–48 West Longitude.

The Audio Division requests comments on a petition filed by Linda D. Davidson proposing the allotment of Channel 229A at Ridgecrest, CA, as the community's third FM local aural transmission service. Channel 229A can be allotted to Ridgecrest in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The reference coordinates for Channel 229A at Ridgecrest are 35–37–30 North Latitude and 117–40–12 West Longitude.

The Audio Division requests comments on a petition filed by Katherine Pyeatt proposing the allotment of Channel 289A at Robert Lee, Texas, as the community's first local aural transmission service. Channel 289A can be allotted to Robert Lee in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.3 kilometers (8.9 miles) north to avoid a short-spacing to the vacant allotment site of Channel 289C1, Ozona, Texas. The coordinates for Channel 289A at Robert Lee are 32–00–56 North Latitude and 100–26–20 West Longitude. Since Robert Lee is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been requested. Provisions of the Regulatory Flexibility Act I of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Cove, Channel 232A.

3. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 229A at Ridgecrest.

4. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Channel 299C3 at Gunnison.

5. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Robert Lee, Channel 289A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–18227 Filed 7–17–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2092; MB Docket No. 03–147, RM–10722; MB Docket No. 03–148, RM–10724 MB Docket No. 03–149, RM–10725]

Radio Broadcasting Services; Barstow, CA; Grapeland, TX; Newcastle, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes three allotments to Barstow, CA; Grapeland, TX; and Newcastle, TX. The Audio Division requests comments on a petition filed by Linda A. Davidson proposing the allotment of Channel 267A at Barstow, California, as the community's third local FM transmission service. Channel 267A can be allotted to Barstow in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 267A are 34–53–55 North Latitude and 117–01–19 West Longitude. Since Barstow is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been requested. *See* Supplementary Information, *infra*.

DATES: Comments must be filed on or before August 22, 2003, and reply comments on or before September 8, 2003.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Linda A. Davidson, 2134 Oak Street, Unit C, Santa Monica, California 90405, Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205, and Robert Fabian, 4 Hickory Crossing Lane, Argyle, Texas 76226.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–147; MB Docket No. 03–148; and MB Docket No. 03–149; adopted June 30, 2003, and released July 1, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Quatex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

The Audio Division requests comments on a petition filed by Charles Crawford proposing the allotment of Channel 263A at Newcasle, Texas, as the community's first local aural transmission service. Channel 263A can be allotted to Newcastle in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.6 kilometers (2.2 miles) northeast to avoid a short-spacing to the licensed site of Station KHYS(FM), Channel 264C1 at Abilene, Texas. The coordinates for Channel 263A at Newcastle are 33–13–10 North Latitude and 98–43–01 West Longitude.

The Audio Division requests comments on a petition filed by Robert Fabian proposing the allotment of Channel 280A at Grapeland, Texas, as the community's second local FM transmission service. Channel 280A can be allotted to Grapeland in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.4 kilometers (7.0 miles) northeast to avoid short-spacings to the licensed sites of Station KJCS(FM), Channel 277C2, Nacogdoches, Texas, Station KXCS(FM), Channel 280C2, Cameron, Texas, and Station KKUS(FM), Channel 281C2, Tyler, Texas. The coordinates for Channel 280A at Grapeland, Texas are 31–32–45 North Latitude and 95–22–42 West Longitude.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 267A at Barstow.

3. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 280A at Grapeland; and by adding Newcastle, Channel 263A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Divison, Media Bureau.

[FR Doc. 03–18228 Filed 7–17–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2094; MB Docket No. 03–95, RM–10662]

Radio Broadcasting Services; Clarendon, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: The Audio Division dismisses a Petition for Rule Making filed by Maurice Salsa, requesting the allotment of Channel 237A at Clarendon, Texas, as that community's second local aural transmission service. *See* 68 FR 18179, April 15, 2003. Maurice Salsa, or no other party, filed comments in support of the allotment of Channel 237A to Clarendon, Texas. It is the Commission's policy to refrain from making a new allotment to a community absent a *bona fide* expression of interest.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03–95, adopted June 30, 2003, and released July 1, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision. may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–18226 Filed 7–17–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2091; MB Docket No. 03–141; RM–10703]

Radio Broadcasting Services; Corona de Tucson and Sierra Vista, Arizona

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comment on a petition for rulemaking filed on behalf of Cochise Broadcasting, LLC, licensee of Station KKYZ(FM), Sierra Vista, Arizona, requesting the substitution of Channel 267C3 for Channel 269A at Sierra Vista, reallotment of Channel 267C3 from Sierra Vista to Corona de Tucson, Arizona and modification of the license of Station KKYZ(FM) to specify the new community. Channel 267C3 can be allotted at Corona de Tucson at a site 7.7 kilometers (4.8 miles) east of the community at coordinates NL 31–57–24 and WL 110–41–40. While this site is short-spaced to Channels 267B in Agua Prieta, Sonora, Mexico, and 266B, Sasabe, Sonora, Mexico, Petitioner has

pledged to protect those channels using contour protection in accordance with the US/Mexican Treaty. Concurrence of the Mexican government will also be requested for this allotment.

DATES: Comments must be filed on or before August 25, 2003, and reply comments on or before September 9, 2003.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–382, adopted July 1, 2003 and released July 3, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CYA257, 445 Twelfth Street, SW., Washington, DC This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Corona de Tucson, Channel 267C3 and removing Channel 269A at Sierra Vista.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–18248 Filed 7–17–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2090; MB Docket No. 03–142; RM–10539]

Radio Broadcasting Services; Glen Arbor, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by WKJF Radio, Inc., licensee of Station WKJF-FM, Cadillac, Michigan, proposing the deletion of Channel 227A at Glen Arbor, Michigan. The removal of Channel 227A at Glen Arbor will allow Station WKJF-FM to relocate its transmitter. Any party filing an expression of interest in retention of Channel 227A at Glen Arbor will be required to provide evidence of site availability demonstrating that it has obtained assurances from the owner of its proposed site that it will be able to buy or lease the location specified in comments. Failure to provide the requested information will result in a rejection of the expression of interest.

DATES: Comments must be filed on or before August 22, 2003, and reply comments on or before September 8, 2003.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel as follows: Dennis J. Kelly, Law Office of Dennis J. Kelly, Post Office Box 41177, Washington, DC 20018.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–142, adopted June 30, 2003, and released July 1, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 227A at Glen Arbor.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–18249 Filed 7–17–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI50

Endangered and Threatened Wildlife and Plants; Listing the Plant Lepidium papilliferum (Slickspot Peppergrass)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; 6-month extension of the deadline for final determination and reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 6-month extension of the deadline for a final determination of whether to list *Lepidium papilliferum* (slickspot peppergrass) and reopening of the comment period on the proposed rule to list the species. We are taking this action because there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the proposed listing rule, making it necessary for us to solicit additional information by reopening the public comment period. Comments previously submitted need not be resubmitted as they already have been incorporated into the public record and will be fully considered in the final rule.

DATES: We will accept comments and information pertaining to the proposed rule through August 18, 2003. Comments must be received by 5:00 p.m. on the closing date. Any comments that are received after the closing date may not be considered in the final decision on this action. The date for submitting our final determination on the proposed listing to the **Federal Register** is extended to January 15, 2004.

ADDRESSES: Copies of the draft proposal are available on the Internet at: *http://endangered.fws.gov//frpubs/02fedreg.htm* or by writing to the Supervisor, U.S. Fish and Wildlife Service, Snake River Basin Office, 1387 S. Vinnell Way, Room 368, Boise, ID 83709.

If you wish to comment, you may submit written comments and information to the Supervisor at the address above. You may also send comments by electronic mail (e-mail) to: *fw1srbocomment@fws.gov*. See the Public Comments Solicited section below for file format and other information about electronic filing.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Supervisor, Snake River Fish and Wildlife Office, 1387 S. Vinnell Way, Room 368, Boise, ID 83709 (telephone 208/378–5243; facsimile 208/378–5262).

SUPPLEMENTARY INFORMATION:

Background

Lepidium papilliferum is a herbaceous annual or biennial plant that occurs in sagebrush-steppe habitats. This species is found along the Snake River Plain and Owyhee Plateau in Ada, Canyon, Gem, Elmore, Payette, and Owyhee Counties, Idaho. *Lepidium papilliferum* is threatened by a variety of activities including urbanization, gravel mining, irrigated agriculture, habitat degradation due to cattle and sheep grazing, fire and fire rehabilitation activities, and continued invasion of habitat by non-native plant species. For further information regarding background biological information, previous Federal actions, factors affecting the species, and conservation measures available to *Lepidium papilliferum*, please refer to our proposed rule to list the species, which was published on July 15, 2002 (67 FR 46441).

Previous Federal Action

On April 9, 2001, we received a petition dated April 4, 2001, from the Committee for Idaho's High Desert, the Western Watersheds Project, The Wilderness Society, and the Idaho Conservation League (Petitioners) requesting emergency listing of *Lepidium papilliferum* as threatened or endangered. We responded to the Petitioners with a letter dated April 27, 2001, stating that the species was already identified as a candidate, and we do not publish petition findings on candidate species since we have already determined that their listing is warranted (Service, *in litt.* 2001). We also stated that our initial review of their petition did not indicate an emergency action was warranted.

On November 6, 2001, the Petitioners filed a complaint for our failure to emergency list *Lepidium papilliferum* as threatened or endangered, and our failure to proceed with a proposed rule to list the species as endangered or threatened on a non-emergency basis (*Committee for Idaho's High Desert and Western Watersheds Project* v. *Anne Badgley, et al.* (Case No. CV 01–1641–AS)). On April 2, 2002, based on a settlement agreement with the Petitioners, the court signed an order requiring us to submit for publication in the **Federal Register** a proposal to list the species by July 15, 2002, and a final determination or finding by July 15, 2003.

On July 15, 2002, we published a proposed rule to list *Lepidium papilliferum* as an endangered species (67 FR 46441). During the initial public comment period, which closed on September 13, 2002, we published legal notices in local Idaho newspapers and held hearings. On September 25, 2002, we reopened the comment period for an additional 60 days to allow additional time for all interested parties to submit written comments on the proposal (67 FR 60206). The second comment period closed on November 25, 2002.

Independent Scientific Review

In accordance with our July 1, 1994, Interagency Cooperative Policy on Peer Review (59 FR 34270), we requested the expert opinion of 12 independent scientists regarding the pertinent scientific or commercial data and assumptions concerning biological and ecological information used in the proposed rule. The purpose of such a review is to ensure that the listing decision is based on scientifically sound data, assumptions and analyses, including input of appropriate experts and specialists. The 12 reviewers we asked to review the proposed rule were selected based on their expertise on L. papilliferum natural history and ecology. We requested that they review the proposed rule and provide any relevant scientific data relating to taxonomy, distribution, population status, or the supporting biological and ecological data used in our analyses of the listing factors.

Six of the 12 scientific reviewers provided comment to us. One did so as part of the official comments of the U.S. Air Force. Five peer reviewers supported the sufficiency and the accuracy of the available data relevant to the proposed rule and one, through the U.S. Air Force comments, did not. The U.S. Air Force comments, dated September 11, 2002, were a compilation of reviews conducted by five Ph.D. scientists and one research agronomist. It was, by far, the most detailed and comprehensive review of the proposed rule conducted by any of the peer reviewers. The areas of substantial disagreement among the reviewers that were raised by the U.S. Air Force comments center around the sufficiency or accuracy of data used to represent population status and trends of *L. papilliferum*, and the likelihood of threats causing further declines of the species.

For example, the available scientific data on population status and trends since 1994 shows an increase from 38 to 75 in the number of known element occurrences (specific geographical location containing a species of concern) of *L. papilliferum*. The total area of all combined existing element occurrences within the known range of this species has nearly doubled since 1994. The total acreage of slickspots known to be occupied by *L. papilliferum* within the 20,500-acre area across the range of the species is not known. While the data also shows that 13 occurrences have become extinct since 1911 and 5 previously reported

collection areas have not been recently affirmed, there is substantial disagreement over whether or not the available data is sufficient to indicate a continuing trend of decline toward extinction. Furthermore, since annual population numbers are known to vary widely within element occurrences of *L. papilliferum*, there is substantial disagreement over whether or not the monitoring data collected since 1995 is sufficient to support either an increasing or a decreasing population trend.

A second example involves the threats to *L. papilliferum* caused by the conversion and degradation of the sagebrush-steppe ecosystem from agricultural conversion, urbanization, invasion of non-native plants, increased wildfire frequency, and livestock grazing. The impacts described in the proposed rule that are associated with these threats include extirpation of populations due to habitat conversion and wildfire, competition from non-native annual grasses that invade after fires, negative impacts from fire rehabilitation, and trampling by cattle while grazing. While there are reported and documented examples of these impacts occurring, there is substantial disagreement among the scientific reviewers about the number of reported observations being sufficient to conclude an overall negative impact to the species is likely to occur. This disagreement extends to important conclusions concerning the interaction of inherently vulnerable characteristics such as rarity of individuals and limited and isolated habitat types, as compared to the biological resiliency of *L. papilliferum*.

Six-Month Extension

In accordance with section 4(b)(6)(B)(i) of the Act, the 6-month extension of the deadline for our final determination on whether to list *L. papilliferum* will be used to solicit and evaluate additional data to further address the sufficiency or accuracy of the available data. During this time, we will employ additional techniques for organizing the data for further analysis and evaluation of the status of the species and the risks it faces.

In addition to soliciting data and conducting further analyses to address the disagreement in the sufficiency and accuracy of the available data, during the 6-month extension period the Service plans to draft a Conservation Agreement for *L. papilliferum* in coordination with the State of Idaho and other affected and interested parties. The Service believes that finalization and implementation of this agreement would have immediate benefit to the conservation of the species. The Service and the participating parties would be able to implement, through this agreement, a number of immediate conservation measures, and would therefore be able to bring protection to the species much more quickly than the conservation measures associated with section 7 consultations of the Act initiated upon the species listing and the recovery process. In addition, the conservation agreement would provide *L. papilliferum* with some protections the Service would not be able to obtain through the Act's legal requirements. Specifically, the conservation agreement would provide for some protections for the peppergrass, specifically with private land owners, which are not required pursuant to the Act.

Furthermore, during this 6-month extension the Service will work with the U.S. Air Force to update their Integrated Natural Resource Management Plan (INRMP) to further address the conservation needs of *Lepidium papilliferum*.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Previously submitted written comments on this proposal need not be resubmitted. If you submit comments by e-mail, please submit them in ASCII file format and avoid the use of special characters and encryption. Please include "Attn: RIN 1018–AI50" and your name and return address in your e-mail message. If you do not receive a confirmation from our system that we have received your e-mail message, contact us directly by calling our Snake River Basin Fish and Wildlife Office at telephone number 208/378–5243. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Snake River Basin Fish and Wildlife Office (see **ADDRESSES**).

In making any final decision on the proposed action, we will take into consideration the comments and any additional information we receive, and such communications may lead to a final regulation that differs from the proposal.

Author

The primary author of this notice is Jeff Foss, U.S. Fish and Wildlife Service, Supervisor, Snake River Fish and Wildlife Office, Boise, ID.

Authority

The authority of this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 15, 2003.

Marshall P. Jones,

Acting Director, Fish and Wildlife Service.

[FR Doc. 03–18402 Filed 7–16–03; 12:56 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 070703B]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Assistant Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Black Sea Bass Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to recommend that an EFP be issued that would allow three vessels to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would allow for exemptions from the minimum fish size requirement for the retention of undersized fish for data collection purposes. The EFP would allow this exemption for approximately 250 lb (114 kg) of undersized (juvenile) black sea bass (*Centropristis striata*) for the remainder of the 2003 fishing year. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this document must be received on or before August 4, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on VIMS Black Sea Bass Population Biology EFP Proposal." Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Brian Hooker, Fishery Management Specialist, phone 978–281–9220.

SUPPLEMENTARY INFORMATION: The Virginia Institute of Marine Science (VIMS) submitted an application for an EFP on June 23, 2003, with final revisions received June 24, 2003. The experimental fishing application requests authorization to allow the collection of undersized (juvenile) black sea bass for research into the reproductive biology and population dynamics of black sea bass. The VIMS researchers propose to enlist three fishing vessels to retain 25–50 lb (12–23 kg) of undersized black sea bass each month during the participation period (August 1–December 31, 2003). This would result in a maximum retention of 250 lb (114 kg) of under-sized black sea bass for the 2003 fishing year. The collections would take place using handline and fish pot fishing gear under the normal fishing operations of the participating vessels. The collections would take place off the coasts of Virginia and North Carolina in 30-minute squares 11, 12, 15, 16, 19, 20, 25, and 26. The participating vessels would be required to comply with applicable state landing laws and report all landings on the Federal Fishing Vessel Trip Report.

Based on the results of this EFP, this action may lead to future rulemaking.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 14, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–18339 Filed 7–17–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 071003B]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit (EFP)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a proposal for an EFP to conduct experimental fishing; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject EFP application contains all of the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Atlantic Sea Scallop and Northeast Multispecies Fishery Management Plans (FMPs). However, consideration of comments on the proposal is required and further review and consultation may be necessary before a final determination is made that the activity will have no significant impacts on the human environment, and that the issuance of EFPs is warranted. NMFS is reviewing analyses prepared in an Environmental Assessment to help make final determinations. Therefore, NMFS announces that the Regional Administrator has made a preliminary decision to issue the EFP that would allow one federally permitted fishing vessel to conduct fishing operations otherwise restricted by the regulations governing the Atlantic sea scallop and Northeast multispecies fisheries. The EFP would allow the federally permitted vessel to compare a standard scallop dredge using a 6–inch (15.2–cm) twine top to a standard scallop dredge using various modified 10–inch (25.4–cm) twine tops in order to estimate finfish bycatch reduction in the modified dredge. The EFP is necessary to exempt the vessel from days-at-sea (DAS), scallop gear, and multispecies closed area restrictions. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before 5:00 p.m., Eastern Standard Time, August 4, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930–2298. Mark the outside of the envelope "Comments on Scallop Dredge EFP Proposal." Comments may also be sent via facsimile (fax) to (978) 281–9135. A copy of the proposal and the Draft Environmental Assessment are available from the Northeast Regional Office at the address stated above.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fisheries Management Specialist, 978–281–9221.

SUPPLEMENTARY INFORMATION: Ronald Smolowitz, Coonamessett Farm, Inc., submitted an application to conduct an experimental fishery to test experimental 10–inch (25.4–cm) twine top configurations on standard scallop dredges outside of scallop DAS and within Georges Bank including Closed Area I, II, and the Nantucket Lightship Closed Area. The experiment would be a continuation and expansion of experiments with similar gear that Coonamessett Farm, Inc., has conducted in the past.

The experiment is being proposed to expand the level of information and data that Mr. Smolowitz has collected on the experimental scallop dredge and to conduct the experimental fishing in areas where both scallops and finfish species are in high abundance relative to other areas. The standard scallop dredge will be used to test various combination modified 10–inch (25.4–cm) twine tops to reduce finfish bycatch. Prior experimental fishing has tested 10–inch (25.4–cm) twine tops along with other gear modifications. These tests demonstrated a reduction of the bycatch of yellowtail flounder by 40 percent, skate by 40 percent, and winter flounder by 50 percent, compared to a standard dredge with 10–inch (25.4–cm) twine top mesh. Comparisons of a standard dredge with modified 10–inch (25.4–cm) twine tops and a standard dredge with 6–inch (15.2–cm) twine top mesh would allow the researcher to distinguish the overall effectiveness of the modified dredge from the

effectiveness of the 10–inch (25.4–cm) twine top.

The proposed experiment would be conducted as soon as possible following approval of the EFP, if the final decision is to grant the EFP. The participating vessel would be authorized to take four trips in Georges Bank, including Closed Area I, II or the Nantucket Lightship Closed Area. Conducting the trips in both closed and open areas would allow the gear to be tested in areas of both extremely high and moderate scallop and finfish abundance. The information gathered from this experiment could be used in the consideration in future management actions under the Atlantic Sea Scallop FMP. The participating vessel would be allowed to retain up to 15,000 lb (6,804 kg) of scallops and the regulated amount of incidental catch of other species (e.g., 300 lb (136 kg) of regulated multispecies and monkfish) per trip. The EFP would allow exemptions from the following regulations for Fisheries of the Northeastern United States (50 CFR part 648): DAS notification requirements specified at § 648.10(b)(1)(i); scallop dredge twine top restrictions specified at § 648.51(b)(4)(iv); scallop DAS restrictions specified at § 648.53; and Northeast multispecies Closed Area I, II, and Nantucket Lightship Closed Area restrictions specified at § 648.81(b)(1) and (c)(1).

The participating vessel would land approximately 60,000 lb (27,216 kg) of scallops, 1,200 lb (544 kg) of Northeast multispecies, and 1,200 lb (544 kg) of monkfish. Minimal amounts of other legally retained bycatch species, such as skates, may be landed. The catch of scallops in excess of the 15,000–lb (6,804–kg) per trip allowance may occur in closed areas due to very high concentrations of scallops. This would result in some scallop discard, but discard survival rates of scallops is expected to be high. Discards of other species caught during experimental fishing is expected to be about 40,000 lb (18 mt) of flounder species and skates, 35,000 lb (16 mt) of monkfish, and 4,400 lb (2 mt) of other species. For comparison, the total allowed catch in the 2000 Georges Bank Sea Scallop Exemption Program (the same portions of Closed Area II and the Nantucket Lightship Closed Area are proposed for access in the experiment) for yellowtail flounder was 725 mt with no catch limits on other species. Although information on the survival of finfish discards is lacking, not all discarded fish would die. Based on the analyses of the proposed action, the relative impact of the expected catch overall during the proposed experiment does not appear to be significant. The increase in DAS (exempting one vessel from DAS restrictions for a total of 40 DAS) is approximately 0.14–percent of the overall DAS used in the scallop fishery on an annual basis.

Based on the results of this EFP, this action may lead to future rulemaking.

Dated: July 14, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–18341 Filed 7–17–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 071403A]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit (EFP)

AGENCY: Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS)

ACTION: Notification of a proposal for an EFP to conduct experimental fishing; request for comments.

SUMMARY: The Assistant Regional Administrator, Northeast Region, NMFS has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Assistant Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue an EFP. Therefore, NMFS announces that the Regional Administrator proposes to issue an EFP that would allow one vessel to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the northeastern United States. The EFP would allow the vessel to fish outside the regulated fishing season for shrimp, which occurred in 2003 between January 15- February 27. The proposed experiment would test a semi-pelagic shrimp trawl using 180–ft (54.6–m) bridles, and small mesh (50 mm), with the codend left open. All experimental work would be monitored by University of New Hampshire (UNH) personnel.Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received at the appropriate address or fax number (see **ADDRESSES**) on or before August 4, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, NE Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on UNH Semi-Pelagic Shrimp Trawl EFP Proposal." Comments may also be sent via fax to (978) 281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Heather Sagar, Fisheries Management Specialist, 978–281–9341, or e-mail *heather.sagar@noaa.gov*.

SUPPLEMENTARY INFORMATION: An initial application from UNH for an EFP was received on June 16, 2003, and the application was completed on July 1, 2003. The proposed study would test a semi-pelagic shrimp trawl net with small mesh (50 mm) and up to 180–ft (54.6–m) bridles, which would be designed in such a way as to reduce seabed impact when trawling for shrimp in the Gulf of Maine. The bridles would not be in contact with the seabed and, therefore, are not expected to adversely affect benthic organisms, demersal species, or the seabed itself. The codend would be left open throughout testing and no fish, therefore, would be retained. The proposed study would take place off the coast of Seabrook, NH, west of 70 W. long., excluding closed areas. One commercial vessel would fish a maximum 4 days, making approximately 6 tows per day, for a total of 24 tows for this study. Tow length would be approximately 1 hour. The participating vessel would be required to notify NMFS prior to commencing an experimental fishing trip. The final phase of the experiment would be data analysis and reporting, including an acoustic monitoring analysis and video analysis. A final report containing the results of the study would be provided to NMFS no later than 6 months following completion of the study.

The EFP would allow this vessel to fish outside the regulated fishing season for shrimp, which occurred in 2003 between January 15–February 27.

Based on the results of this EFP, this action may lead to future rulemaking.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 14, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–18342 Filed 7–17–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 070703A]

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent (NOI) to prepare an environmental impact statement (EIS); request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) announces its intention to prepare, in cooperation with NMFS, an EIS in accordance with the National Environmental Policy Act to assess potential effects on the human environment of alternative measures for managing the Atlantic mackerel, squid, and butterfish fisheries pursuant to the Magnuson-Stevens Fishery Conservation and Management Act. The Council intends to develop Framework 4 to the Atlantic Mackerel, Squid and Butterfish Fishery Management Plan (FMP) to address the issue of expiration of the moratorium on entry to the commercial *Illex* squid fishery. This notification announces a public process for determining the impact on the human environment of measures proposed in Framework 4 relating to possible extension or expiration of the *Illex* moratorium. The intended effect of this notification is to alert the interested public of the development of the Draft EIS (DEIS) for this framework action and to provide for public participation.

DATES: Written comments on the intent to prepare an EIS must be received no later than 5 p.m., local time, on August 18, 2003.

ADDRESSES: Written comments on the intent to prepare the EIS and requests for other information related to the development of Framework 4 should be directed to Mr. Daniel T. Furlong, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New St., Dover, DE 19904. Comments may also be sent via facsimile (FAX) to (302) 674–5399. Comments will not be accepted if submitted by e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, 302–674–2331.

SUPPLEMENTARY INFORMATION: Prior to the 1980s, the fishery for *Illex illecebrosus*, (short finned squid) in the U.S. Exclusive Economic Zone (EEZ) was prosecuted primarily by foreign distant water fleets. With the implementation of the Atlantic Mackerel, Squid, and Butterfish FMP in 1982 and its subsequent amendments, the fishery became increasingly utilized by the domestic fishery. While the domestic fishery was undergoing development, new biological data became available which indicated that Illex is an annual species that resulted in smaller (or lower) revised estimates of the sustainable yield for the species.

In the 1990s, the simultaneous growth of the domestic squid fisheries and reduction in the estimate of sustainable yield resulted in the *Illex* fishery moving toward full capitalization and exploitation. As a result, a limited entry program became necessary and was implemented by a final rule for Amendment 5 to the FMP (62 FR 28638, May 27, 1997). However, due to concerns that capacity might be insufficient to fully exploit the annual quota for this fishery, a 5-year sunset provision was placed on the Illex moratorium when it was implemented in Amendment 5. Due to this sunset provision, the moratorium on entry to the *Illex* fishery was set to expire in July 2002, but was extended for one year by a final rule that implemented Framework 2 to the FMP (67 FR 44392, July 2, 2002). An additional one-year extension of the moratorium was implemented by a final rule that implemented Framework 3 (68 FR 31988, May 29, 2003). The Council is currently developing a DEIS through the development of Amendment 9 to the FMP. In addition to the limited access issue in the *Illex* fishery, the Council is also addressing a number of complex issues in Amendment 9 including those related to gear impacts on essential fish habitat, bycatch reduction, permitting of the Northwest Atlantic Fisheries Organization vessels to transit the U.S. EEZ, and the definition of overfishing for *Loligo* squid. The original NOI to develop a DEIS for Amendment 9 was published on November 29, 2001, (66 FR 56574) and the Council held the initial scoping meeting on December 12, 2001, in Atlantic City, NJ. The Council continued the development of Amendment 9 in 2002–2003 and submitted the DEIS for NMFS approval for public hearings in April 2003. NMFS identified a number of deficiencies in the DEIS for Amendment 9 at the March 19, 2003, Council meeting held in New York City, NY. As a result of those deficiencies, the Council was unable to adopt the DEIS for Amendment 9. At its June 25, 2003, meeting in Philadelphia, PA, the Council concluded that delays in development of the DEIS for Amendment 9 could result in a hiatus in the *Illex* limited access program if the moratorium for the *Illex* fishery expired before the final rule for Amendment 9 is implemented. Therefore, the Council decided to develop Framework 4, the sole purpose of which is to extend the moratorium on entry to the *Illex* fishery while the Council addresses this issue in Amendment 9 to the FMP. The Council concluded that new public scoping meetings are not necessary for this DEIS because this issue was considered during the original December 12, 2001, scoping meeting based on the original NOI. Applicable comments from that meeting will be considered along with the written comments received on this notification, in the preparation of the DEIS for Framework 4.

The Council is considering the following alternatives for this framework action: (1) Extend the moratorium on entry to the *Illex* fishery for an additional 5 years (preferred alternative), (2) extend the moratorium on entry to the *Illex* fishery for an additional 2 years, (3) no action, and (4) extend the moratorium on entry to the *Illex* fishery without a sunset provision.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 14, 2003.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–18343 Filed 7–17–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 138

Friday, July 18, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Division; Notice of Proposed Changes to Section IV of the Oregon Field Office Technical Guide (FOTG)

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in the Oregon NRCS Field Office Technical Guide for review and comment.

SUMMARY: It is the intention of NRCS in Oregon to issue revised conservation practice standards in section IV of the FOTG. The revised standards include: 342, Critical Area Planting; 484, Mulching; 595, Pest Management; 633, Waste Utilization.

DATES: Comments will be received for a 30-day period commencing with the date of this publication.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Russell Hatz, Leader for Technology, Natural Resources Conservation Service (NRCS), 101 SW Main, Suite 1300, Portland, OR 97204; telephone number (503) 414–3235; fax number (503) 414–3103. Copies of these standards will be made available upon written request to the address shown above. You may submit electronic requests and comments to *russ.hatz@or.usda.gov*.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Oregon will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Oregon regarding disposition of those comments and a final determination of change will be made.

Dated: July 14, 2003.

Bob Graham,

State Conservationist.

[FR Doc. 03–18346 Filed 7–17–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV03–930–4NC]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin, Marketing Order No. 930.

DATES: Comments on this notice must be received by September 16, 2003.

Additional Information or Comments: Contact Valerie L. Emmer-Scott, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Tel: (202) 205–2829, Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov*.

Small businesses may request information on this notice by contacting Jay Guerber, Regulatory Fairness Representative, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491; Fax: (202) 720–8938, or E-mail: *jay.guerber@usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin, Marketing Order No. 930.

OMB Number: 0581–0177.

Expiration Date of Approval: February 29, 2004.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674) industries enter into marketing order programs. The Secretary of Agriculture is authorized to oversee the order operations and issue regulations recommended by a committee of representatives from each commodity industry.

The information collection requirements in this request are essential to carry out the intent of the AMAA, and to administer the program, which has operated since 1996.

The tart cherry marketing order regulates the handling of tart cherries in the states of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The order authorizes volume regulations that provide for a reserve pool in times of heavy cherry supplies. Other major marketing order provisions not currently in use include minimum grade and size regulations and authorization for market research and development projects, including paid advertising.

The order, and rules and regulations issued thereunder, authorize the Cherry Industry Administrative Board (Board), the agency responsible for local administration of the order, to require handlers and growers to submit certain information. Much of this information is compiled in aggregate and provided to the industry to assist in carrying out marketing decisions.

The Board has developed forms as a means for persons to file required information with the Board relating to tart cherry inventories, shipments, diversions, and other information needed to effectively carry out the requirements of the order, and their use is necessary to fulfill the intent of the AMAA. Since this order regulates canned and frozen forms of tart cherries, reporting requirements will be in effect all year. A USDA form is used to allow growers to vote on amendments or continuance of the marketing order. In addition, tart cherry growers and handlers who are nominated by their peers to serve as representatives on the Board must file nomination forms with the Secretary. Formal rulemaking amendments to the order must be approved in grower referenda conducted by the Secretary. In addition, USDA may conduct a referendum to determine industry support for continuation of the order. Finally, handlers are asked to sign an agreement to indicate their willingness to comply with the provisions of the order if the order is amended. These forms are included in this request.

The forms covered under this information collection require the minimum information necessary to effectively carry out the requirements of the order, and their use is necessary to fulfill the intent of the AMAA as expressed in the order, and the rules and regulations issued under the order.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarter's staff, and authorized employees of the Board. Authorized Board employees and the industry are the primary users of the information, and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .183 hours per response.

Respondents: Tart cherry growers and for-profit businesses handling fresh and processed tart cherries produced in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

Estimated Number of Respondents: 943.

Estimated Number of Responses per Respondent: 4.93.

Estimated Total Annual Burden on Respondents: 852 hours.

Comments: Comments are invited on: (1) Whether the proposed collection of the information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–0177 and the Tart Cherry Marketing Order No. 930, and be mailed to Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Washington, DC 20250–0237; Telephone: (202) 205–2829; Fax: (202) 720–8938; or E-mail: *moab.docketclerk@usda.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be available for public inspection in the Office of the Docket Clerk during regular USDA business hours at 14th and Independence Ave., SW., Washington, DC, room 2525–S.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: July 14, 2003.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 03–18193 Filed 7–17–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Announcement of the Quality Samples Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: The Commodity Credit Corporation is extending the time for submission of proposals for the Fiscal Year 2003 Quality Samples Program.

DATES: Proposals will be accepted until 5 p.m. Eastern Daylight Time, August 18, 2003.

FOR FURTHER INFORMATION CONTACT: Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, Room 4932–S, STOP 1042, 1400 Independence Ave., SW., Washington, DC 20250–1042, (202) 720–4327.

SUPPLEMENTARY INFORMATION:

Introduction

On January 17, 2003, the Commodity Credit Corporation (CCC) announced in the **Federal Register** (68 FR 2487) that proposals were being accepted for participation in the Fiscal Year (FY) 2003 Quality Samples Program (QSP). Based on its review of the proposals, CCC allocated approximately $1.4 million in funding in July 2003. Because approximately $1.1 million of the FY 2003 funds remain unallocated, CCC announces that it is extending the time period for submission of proposals to participate in the FY 2003 QSP.

The QSP is designed to encourage the development and expansion of export markets for U.S. agricultural commodities by assisting U.S. entities in providing commodity samples to potential foreign importers to promote a better understanding and appreciation for the high quality of U.S. agricultural commodities. All proposals will be reviewed against the evaluation criteria contained herein and funds will be awarded on a competitive basis. Financial assistance will be made available on a reimbursement basis. The QSP is administered by the Foreign Agricultural Service (FAS).

Under the QSP, CCC enters into agreements with those entities whose proposals have been accepted. The QSP agreement between CCC and the participant will include the maximum amount of CCC funds that may be used to reimburse specific activity costs that have been approved by CCC and paid by the QSP participant. QSP participants will be responsible for procuring (or arranging for the procurement of) commodity samples, exporting the samples, and providing the technical assistance necessary to facilitate successful use of the samples by importers. Participants that are funded under this announcement may seek reimbursement for the sample purchase price and the costs of transporting the samples domestically to the port of export and then to the foreign port of entry. Transportation costs from the foreign port, or point of entry to the final destination will not be eligible for reimbursement. CCC will not reimburse the costs incidental to purchasing and transporting samples, for example, inspection or documentation fees. Although providing technical assistance is required for all projects, CCC will not reimburse the costs of providing technical assistance. A QSP participant will be reimbursed after CCC reviews its reimbursement claim and determines that the claim is complete.

QSP agreements are subject to review and verification by the Foreign Agricultural Service's Compliance Review Staff. Upon request, a QSP participant shall provide to CCC the original documents which support the participant's reimbursement claims.

CCC may deny a claim for reimbursement if the claim is not supported by adequate documentation. Cash advances will not be made available to any QSP participant.

This notice supersedes any prior notices concerning the QSP.

Authority

The QSP is authorized under section 5(f) of the CCC Charter Act, 15 U.S.C. 714c(f).

Available Funds

$1.1 million of cost-share assistance may be obligated under this announcement.

General Scope of QSP Projects

QSP projects are the activities undertaken by a QSP participant to provide an appropriate sample of a U.S. agricultural commodity to a foreign importer, or a group of foreign importers, in a given market. The purpose of the project is to provide information to an appropriate target audience regarding the attributes, characteristics, and proper use of the U.S. commodity. A QSP project addresses a single market/commodity combination. As a general matter, QSP projects should conform to the following guidelines:

- Projects should benefit the represented U.S. industry and not a specific company or brand;
- Projects should develop a new market for a U.S. product, promote a new U.S. product, or promote a new use for a U.S. product, rather than promote the substitution of one established U.S. product for another;
- Sample commodities provided under a QSP project must be in sufficient supply and available on a commercial basis;
- Each QSP project must either subject the commodity sample to further processing or substantial transformation in the importing country, or the sample must be used in technical seminars designed to demonstrate to an appropriate target audience the proper preparation or use of the sample in the creation of an end product;
- Samples provided in a QSP project shall not be directly used as part of a retail promotion or supplied directly to consumers. However, the end product, that is, the product resulting from further processing, substantial transformation, or a technical seminar, may be provided to end use consumers to demonstrate to importers consumer preference for that end product; and
- Samples shall be in quantities less than a typical commercial sale and limited to the amount sufficient to achieve the project goal (*e.g.*, not more than a full commercial mill run in the destination country).

QSP projects shall target foreign importers and target audiences who:

- Have not previously purchased the U.S. commodity which will be transported under the QSP;
- Are unfamiliar with the variety, quality attribute, or end-use characteristic of the U.S. commodity which will be transported under the QSP;
- Have been unsuccessful in previous attempts to import, process, and market the U.S. commodity which will be transported under the QSP (*e.g.*, because of improper specification, blending, or formulation; or sanitary or phytosanitary (SPS) issues);
- Are interested in testing or demonstrating the benefits of the U.S. commodity which will be transported under the QSP; or
- Need technical assistance in processing or using the U.S. commodity which will be transported under the QSP.

Under this announcement, the number of projects per participant will not be limited. However, individual projects will be limited to $75,000 of QSP reimbursement. Projects comprised of technical preparation seminars, that is, projects that do not include further processing or substantial transformation, will be limited to $15,000 of QSP reimbursement because these projects require smaller samples.

Proposal Process

In order to be considered for participation in the QSP, interested parties should submit proposals to FAS as described in this notice. QSP proposals must contain complete information about the proposed projects. Applicants should follow the application procedures contained in this notice.

Entities interested in participating in the QSP are not required to submit proposals in any specific format; however, FAS recommends that proposals contain, at a minimum, the following:

(a) Organizational information, including:

- Organization's name, address, Chief Executive Officer (or designee), and Federal Tax Identification Number (TIN);
- Type of organization;
- Name, telephone number, fax number, and e-mail address of the primary contact person;
- A description of the organization and its membership;
- A description of the organization's prior export promotion experience; and
- A description of the organization's experience in implementing an appropriate trade/technical assistance component;

(b) Market information, including:

- An assessment of the market;
- A long-term strategy in the market; and
- U.S. export value/volume and market share (historic and goals) for 1999–2004;

(c) Project information, including:

- A brief project title;
- Amount of funding requested;
- A brief description of the specific market development trade constraint or opportunity to be addressed by the project, performance measures for the years 2003–2005 which will be used to measure the effectiveness of the project, a benchmark performance measure for 2002, the viability of long-term sales to this market, the goals of the project, and the expected benefits to the represented industry;
- A description of the activities planned to address the constraint or opportunity, including how the sample will be used in the end-use performance trial, the attributes of the sample to be demonstrated and their end-use benefit, and details of the trade/technical servicing component (including who will provide and who will fund this component);
- A sample description (*i.e.*, commodity, quantity, quality, type, and grade), including a justification for selecting a sample with such characteristics (this justification should explain in detail why the project could not be effective with a smaller sample);
- An itemized list of all estimated costs associated with the project for which reimbursement will be sought; and
- The importer's role in the project regarding handling and processing the commodity sample;

(d) Information indicating all funding sources and amounts to be contributed by each entity that will supplement implementation of the proposed project. This may include the organization that submitted the proposal, private industry entities, host governments, foreign third parties, CCC, FAS, or other Federal agencies. Contributed resources may include cash, goods, and services.

Review Process

Proposals will be evaluated by the applicable FAS commodity division. The divisions will review each proposal against the factors described below.

The purpose of this review is to identify meritorious proposals, recommend an appropriate funding level for each proposal based upon these factors, and submit the proposals and funding recommendations to the Deputy Administrator, Commodity and Marketing Programs.

FAS will use the following criteria in evaluating proposals:

- The ability of the organization to provide an experienced staff with the requisite technical and trade experience to execute the proposal;
- The extent to which the proposal is targeted to a market in which the United States is generally competitive;
- The potential for expanding commercial sales in the proposed market;
- The nature of the specific market constraint or opportunity involved and how well it is addressed by the proposal;
- The extent to which the importer's contribution, in terms of handling and processing, enhances the potential outcome of the project;
- The amount of reimbursement requested and the organization's willingness to contribute resources, including cash and goods and services of the U.S. industry and foreign third parties; and
- How well the proposed technical assistance component assures that performance trials will effectively demonstrate the intended end-use benefit.

Highest priority for funding under this announcement will be given to meritorious proposals which target countries which meet either of the following criteria:

- Per capita income less than $9,265 (the ceiling on upper middle income economies as determined by the World Bank [World Development Indicators 2001]); and population greater than 1 million. Proposals may address suitable regional groupings, for example, the islands of the Caribbean Basin; or
- U.S. market share of imports of the commodity identified in the proposal of 10 percent or less.

Agreements

Following approval of a proposal, CCC will enter into an agreement with the organization that submitted the proposal. Agreements will incorporate the details of each project as approved by FAS. Each agreement will identify terms and conditions pursuant to which CCC will reimburse certain costs of each project. Agreements will also outline the responsibilities of the participant, including, but not limited to, procurement (or arranging for procurement) of the commodity sample at a fair market price, arranging for transportation of the commodity sample within the time limit specified in the agreement (organizations should endeavor to ship commodities within 6 months of effective date of agreement), compliance with cargo preference requirements (shipment on United States flag vessels, as required), compliance with the Fly America Act requirements (shipment on United States air carriers, as required), timely and effective implementation of technical assistance, and submission of a written evaluation report within 90 days of expiration of the agreement. Evaluation reports should address all performance measures which were presented in the proposal.

Closing Date for Proposals

To be considered for participation in the QSP, interested parties should submit, via a commercial delivery service (including FedEx, DHL, etc.), proposals to: Director, Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, Room 4932–S, Stop 1042, 14th and Independence Avenue, SW., Washington, DC 20250–1042. All proposals must be received by 5 p.m. Eastern Daylight Time, August 18, 2003.

Dated: July 11, 2003.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service and Vice President, Commodity Credit Corporation.

[FR Doc. 03–18268 Filed 7–17–03; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Announcement of the 2003/2004 Technical Assistance for Specialty Crops Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: Commodity Credit Corporation has published elsewhere in this issue a final rule establishing the "Technical Assistance for Specialty Crops" program to help open, retain, and expand markets for U.S. specialty crops.

DATES: Proposals will be accepted between July 18, 2003 and 5 p.m. Eastern Daylight Time, August 18, 2003. Proposals will be reviewed, and funding decisions will be made, as proposals are received.

FOR FURTHER INFORMATION CONTACT: Marketing Operations Staff, Foreign Agricultural Service, Room 4932–S, Stop 1042, U.S. Department of Agriculture, 1400 Independence Ave., SW., Washington, DC 20250–1042, or telephone: (202) 720–4327.

SUPPLEMENTARY INFORMATION: To be considered for participation in the Technical Assistance for Specialty Crops (TASC) program, interested parties should submit, via a commercial delivery service (including FedEx, DHL, etc.), proposals to: Director, Marketing Operations Staff, Foreign Agricultural Service, U.S. Department of Agriculture, Room 4932–S, Stop 1042, 14th and Independence Avenue, SW., Washington, DC 20250–1042. All proposals must be received by 5 p.m. Eastern Daylight Time, August 18, 2003. Although entities interested in participating in the TASC program are not required to submit proposals in any specific format, all proposals must contain complete information about the proposed projects as described in the final rule, published elsewhere in this issue, that establishes the program.

Dated: July 11, 2003.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 03–18267 Filed 7–17–03; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Notice of Request for Revision and Extension of Currently Approved Information Collection—Emergency Farm Loan Program

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intent of Farm Service Agency (FSA) to request an extension of currently approved information collections used in support of FSA's Emergency Loan Program.

DATES: Comments on this notice must be received on or before September 16, 2003 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Janet Downs, Senior Loan Officer, USDA, Farm Service Agency, Loan Making Division, 1400 Independence Avenue, SW., Stop 0522, Washington, DC 20250–0522; Telephone (202) 720–0599; e-mail: *janet_downs@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: 7 CFR 764, Emergency Farm Loans.

OMB Control Number: 0560–0159.

Expiration Date of Approval: 01/31/2004.

Type of Request: Extension of Currently Approved Information Collection.

Abstract: The information collected under control number 0560–0159 is needed for FSA to effectively administer the Emergency Loan Program in accordance with the requirements of 7 CFR 764 as authorized by the Consolidated Farm and Rural Development Act (CONACT). The collected information is submitted to the Agency loan official by loan applicants and commercial lenders for use in making program eligibility and financial feasibility determinations as required by the CONACT.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .77 hours per response.

Respondents: Individual farmers and commercial lenders.

Estimated Number of Respondents: 4,961.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 3,816.

Comments are sought on these requirements including: (a) If the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility, (b) the accuracy of the Agency's estimate of burden including the validity of the methodology and assumptions used, (c) ways to enhance the quality, utility and clarity of the information being collected, and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

These comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Janet Downs, USDA, FSA, Farm Loan Programs, Loan Making Division, 1400 Independence Avenue, SW., Stop 0522, Washington, DC 20250–0522. Copies of the information collection may be obtained from Janet Downs at the above address. Comments regarding paperwork burden will be summarized and included in the request for OMB approval of the information collection. All comments will also become a matter of public record.

Signed in Washington, DC on July 10, 2003.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 03–18194 Filed 7–17–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request; Performance Reporting System, Management Evaluation, Data Analysis, and Corrective Action

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on a proposed information collection. The proposed collection would be a reinstatement of a collection which has expired. The expired collection was previously approved under OMB No. 0584–0010.

DATES: Written comments must be submitted on or before September 16, 2003.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Edward Speshock, Senior Program Analyst, State Administration Branch, Food Stamp Program, Food and Nutrition Service, U. S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection form and instruction should be directed to Edward Speshock, (703) 305–2383.

SUPPLEMENTARY INFORMATION:

Title: Performance Reporting System, Management Evaluation, Data Analysis, and Corrective Action.

OMB Number: 0584–0010.

Expiration Date: Reinstatement requested.

Type of Request: Reinstatement, with change, to a previously approved collection for which approval has expired.

Abstract: The purpose of the Performance Reporting System (PRS) is to ensure that each State agency and project area is operating the Food Stamp Program in accordance with the requirements of the Food Stamp Act of 1977 (the Act) (7 U.S.C. 2011, *et seq.*), as amended, and corresponding program regulations. Under Section 11 of the Act (7 U.S.C. 2020), State agencies must maintain necessary records to ascertain that the Food Stamp Program is operating in compliance with the Act and regulations and must make these records available to the Food and Nutrition Service (FNS) for inspection and audit.

Management Evaluation (ME) Review Schedules—Unless the State receives approval for an alternative Management Evaluation review schedule, each State agency is required, under 7 CFR part 275, to submit one review schedule every one, two, or three years, depending on the project area make-up of the State.

Data Analysis—Under 7 CFR part 275, each State must establish a system for analysis and evaluation of all data available to the State. Data analysis and evaluation is an ongoing process that facilitates the development of effective and prompt corrective action.

Corrective Action Plans—Under 7 CFR part 275, State agencies must prepare a corrective action plan (CAP) addressing identified deficiencies. The State agencies must develop a system for monitoring and evaluating corrective action and submit CAP updates, as necessary.

Affected Public: State agencies.

Estimated Number of Respondents: 52 State agencies, Guam and the Virgin Islands.

Number of responses per respondent: 1.0.

Estimated total annual responses: 54.

Hours per response: 7.5.

Number of record keepers: 405.

Estimated annual hours per record keepers: 54.

Estimated annual record keeping burden: 27 hours.

Total annual reporting and record keeping burdens: 432.

Dated: July 11, 2003.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 03–18240 Filed 7–17–03; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Dixie National Forest, Utah, Duck Creek Fuels Treatment Analysis

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The USDA Forest Service will prepare an Environmental Impact Statement (EIS) to implement fuels treatments in the Duck Creek area, within the Cedar City Ranger District, Dixie National Forest, Utah. A Notice of Intent for this project was published in the **Federal Register** May 23, 2002. This Notice of Intent is a revision to change the dates of the EIS and minor corrections of acreages. The agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people may become aware of how they can participate in the process and contribute to the final decision.

DATES: Comments concerning the scope of the analysis must be received within thirty days after publication of this Notice Of Intent in the **Federal Register.** The draft environmental impact statement is expected in September, 2003. The final environmental impact statement is expected in December, 2003.

ADDRESSES: Send written comments to: Duck Creek Fuels Treatment Analysis Coordinator, Cedar City Ranger District, Dixie National Forest, 1789 Wedgewood, Cedar City, Utah 84720.

FOR FURTHER INFORMATION CONTACT: Duck Creek Fuels Treatment Analysis Coordinator, Cedar City Ranger District, Dixie National Forest, 1789 Wedgewood, P.O. Box 627, Cedar City, Utah 84720.

SUPPLEMENTARY INFORMATION: The proposed treatments will implement direction in the National Fire Plan, a USDA/USDI effort to reduce impacts of wildfires on people and resources. In August, 2000 President Clinton directed the Secretaries of Agriculture and Interior to reduce the impacts of wildland fires on rural communities. The Secretaries subsequently developed the National Fire Plan. This direction was followed by congressionally-approved plans that funded "hazardous fuel reduction" near urban interface areas.

The National Fire Plan directs Federal agencies within USDA/USDI to engage states and local communities in reducing forest fuels, using a variety of fuel reduction treatments (mechanical, prescribed fire and intensive manual treatment). Hazardous fuel reduction is a critical investment necessary to reduce fire risk and fire suppression costs into the future and is focused on areas near communities and interface areas that the States have judged to be in harm's way of a wildfire.

The analysis area of 25,741 acres of National Forest System lands is located thirty miles east of Cedar City, Utah. The analysis area includes six tracts of private lands which are surrounded by National Forest lands. The tracts are subdivided into residential lots and contain an estimated 1,900 homes and 10 businesses. The specific subdivisions are as follows:

Subdivision	Legal location (approximate) Salt Lake Base Meridian
1. Meadow View Heights.	T38S R7W Sec 6.
2. Mirror Lake	T38S R7W Sec 5, 8.
3. Movie Ranch	T38S R7W Sec 7.
4. Movie Ranch South.	T38S R7W Sec 7.
5. Color Country	T38S R7W Sec 8, 17.
6. Timber Trails	T38S R7W Sec 7, 17, 18.
7. Ponderosa Villa	T38S R7W Sec 16.
8. Strawberry Valley	T38S R7W Sec 20, 21.
9. Swains Creek	T38S R7W Sec 26, 2.
10. Blackman Hill	T38S R7W Sec 26, 27.
11. Harris Springs	T38S R7W Sec 26.
12. Swains Creek Pines.	T38S R7W Sec 33, 34.
13. Ponderosa Ranch	T38S R7W Sec 24; T38S R6W Sec 19.
14. Zion View Mtn Estates.	T38S R8W Sec 2.
15. Duck Creek Pines	T38S R7W Sec 7.

The private lands were designated an "urban interface community at risk from wildfires on National Forest lands" by the Chief of the Forest Service (**Federal Register** / Vol. 66, No. 160 / Friday, August 17, 2001 / Notices). This designation meant that Federal funds from the National Fire Plan could be spent to reduce fuels on National Forest lands adjacent to the private lands.

Historic prevention and suppression of wildfire has resulted in ever-increasing accumulations of forest fuels. These buildups of forest fuels increase the risk of high intensity fires to the National Forest and to large private subdivisions within the forest boundary. The extensive development and high recreation use have also increased the threat of human-caused fires. A high intensity fire occurring within this area would cause significant damage to property and natural resources. Reducing the risk of wildfires in these areas would provide the best opportunity to protect National Forest lands and adjacent private properties. The Forest Service has determined that the fuels treatment objectives will be met without harvesting trees over nine inches in diameter.

Purpose and Need for Action. The purpose of this project is to modify existing, high fuel loads that influence fire behavior in National Forest lands adjacent to private lands in the Duck Creek area. There is a need to reduce minute, hour, ten-hour and hundred-hour fuels adjacent to private property and in the defensible fire space zone. There is a need to change the structure and composition of the fuels throughout the project area, especially in aspen-dominated sites. There is a need to change the characteristics of the residual trees by removing ladder fuels from the ground to eight feet high. Changing these fuels characteristics and reducing the fuel loads would help reduce the risk of property damage and allow sufficient time for firefighters to directly attack and control a wildfire before housing and other developments are threatened or destroyed. The fuel elements that need to be treated are as follows:

Element 1—Ground Fuels Reduction. Current fuel loads adjacent to private lands range from 20–50 tons per acre. The desired condition of the area immediately surrounding the subdivisions, Defensible Fire Space (DFS), is to have fuel loads reduced to 5–10 tons per acre, a level that would not sustain a high intensity wildfire.

The current fuel loads range from 20–50 tons per acre in the general forest area outside of the DFS. Reducing the fuel loads in the general forest area to 10–15 tons per acre would slow the spread of fire and would reduce the potential for a fire to spread into the crowns of the trees.

Element 2—Ladder Fuels Reduction. Lower branches and small trees currently extend from the ground upward, creating the ladder a fire would climb to reach higher crowns. Ladder fuels have increased dramatically as ponderosa pine trees with small crowns and few lower branches have been replaced by fir and spruce that have large crowns and branches extending to the ground. Fire suppression has also resulted in a dense understory of young

trees that contribute to the fire ladder. The desired condition within the DFS is to effectively prevent a ground fire from climbing into upper tree crowns.

Element 3—Retention of Fire Tolerant Species. Aspen is naturally regenerated by wildfire, and therefore is considered a fire-tolerant species. Aspen stands within the watershed are being encroached upon by tree species such as spruce and fir, which are fire intolerant species. Stands with a high density of aspen act as natural firebreaks or areas where fire activity is slowed. Aspen is a short-lived species that requires disturbance in order to regenerate; without disturbance, these stands will eventually be taken over by conifers, eliminating the aspen from the area. Conifer encroachment increases fire susceptibility and fire behavior within these stands. Maintaining aspen stands would help slow the spread of fires that may occur. The desired condition is to regenerate and maintain aspen stands.

Proposed Action: The Forest Service proposes to treat fuels in timber stands located in Kane County, Utah, Salt Lake Base Meridian, T38S R8W, T38S R7W, T39S R8W, T39S R7W and T38S R6W. The specific fuels treatments are as follows:

1. *Defensible fire space treatments.* Establish a defensible fire space (DFS) in National Forest lands from 500′–2000′ wide immediately surrounding private lands with subdivisions. The area to be treated in the DFS is approximately 2,724 acres. To reduce the risk of a wildfire reaching or spreading through tree crowns within the DFS, intensive fuels removal treatments will be conducted by cutting all conifer trees under nine inches in diameter and pruning limbs under eight feet high on conifer trees to reduce ladder fuels. Limbs, existing ground fuels and slash will be disposed of by piling/burning or chipping.

2. *Mixed conifer treatments.* Reduce fuel loads and favor the establishment of ponderosa pine on approximately 7,352 acres of mixed conifer stands in National Forest lands south and west of the private subdivisions. Mixed conifer stands have major components of ponderosa pine, white fir and Douglas-fir with minor components of subalpine fir, Engelmann spruce and Colorado blue spruce. Fuel loads will be reduced by cutting white fir, Douglas-fir, subalpine fir, Engelmann spruce and Colorado blue spruce trees under nine inches in diameter. Limbs, existing ground fuels and slash will be disposed of by piling/burning or chipping.

3. *Spruce/fir treatments.* Reduce fuel loads on approximately 947 acres of spruce/fir conifer stands in National Forest lands south and west of the private subdivisions. Spruce/fir stands have major components of Engelmann spruce and subalpine fir with minor components of ponderosa pine, Colorado blue spruce, Douglas-fir and white fir. Fuel loads will be reduced by cutting subalpine fir, white fir and Douglas-fir under nine inches in diameter. Engelmann spruce, Colorado blue spruce and ponderosa pine trees under nine inches in diameter will be retained in this area in order to maintain a spruce component into the future. Limbs, existing ground fuels and slash will be disposed of by piling/burning or chipping.

4. *Aspen treatments.* Regenerate and maintain stands dominated by aspen in approximately 2,366 acres of National Forest lands south and west of the private subdivisions by cutting Engelmann spruce, Colorado blue spruce, subalpine fir and white fir trees under nine inches in diameter and underburning fuels. Slash will be pulled away from mature (over 18″ diameter) ponderosa pine and Douglas-fir trees to provide partial protection from prescribed fire. Aspen, a short-lived species that acts to slow the spread of wildfire, requires periodic disturbance to induce new growth. Underburning will result in stimulating and regenerating the aspen. A prescribed fire plan will be developed prior to underburning. The plan will outline appropriate burning conditions and fire control methods to be implemented to insure the prescribed fire is confined to the area to be treated.

Fuels and slash piling may be done by machine, except where Forest Plan standards for soils or slope dictate otherwise. Piles will be burned. The transportation system required to treat or remove fuels is in place. No new roads would be constructed with this project. Riparian areas along perennial streams would be protected with a 300-foot no-treatment buffer along the edges. Riparian areas along ephemeral streams would be thinned, but piling and burning would occur at least 50 feet away from the channel. No treatment would occur within 100 feet of springs in order to protect water sources, soils that are wet and sensitive to compaction, and riparian habitat. The project will be implemented in accordance with direction in the Dixie National Forest Land and Resource Management Plan.

Possible Alternatives: Three or more alternatives will be considered in the analysis.

No action. Under this alternative, the proposed fuels treatments will not be completed. The current forest fuels conditions would not be substantially changed and natural processes would continue. This alternative will be fully evaluated and described.

Proposed Action (as described above).

Additional Alternatives—Additional alternatives may be developed in response to issues and resource conditions evaluated through the analysis.

Responsible Official: The responsible official for this EIS and the Record of Decision is: Robert A. Russell, Forest Supervisor, Dixie National Forest, 1789 Wedgewood, PO Box 627, Cedar City, Utah 84720–0627; FAX: (435) 865–3791.

Nature of Decision To Be Made: The Responsible Official will decide whether forest fuels treatment would be conducted to reduce risks from wildfires to the National Forest and to private lands held within the National Forest; and, if so, what extent and types of treatments should be done.

Scoping Process: Public participation was initiated through scoping in October, 2001. A scoping notice was sent to 2,796 individuals and organizations who are potentially affected parties and those currently on the Dixie National Forest mailing list that have expressed interest in natural resource projects. Two public meetings were held (October 27, November 1). Comments and issues were received in response to these public contacts.

Scoping will continue. Public participation is especially important during scoping and review of the draft EIS. Individuals, organizations, federal, state, and local agencies who are interested in or affected by the decision are invited to participate in the scoping process. This information will be used in the preparation of the draft EIS.

Preliminary Issues. The following issues were identified through public scoping and internal resource analyses:

1. The proposed fuels treatments would reduce travel corridors for big game (*e.g.* elk and deer) and birds and small mammals (*e.g.* turkey, grouse, red squirrels and flying squirrels) by substantially fragmenting habitat throughout the project area.

2. The proposed fuels treatments would remove understory trees and limbs, which are used by juvenile goshawks within nest areas and flammulated owls as roosting habitat.

3. The proposed fuels treatments would create openings in the forest and increase sight distance from the homes within the subdivision into the forest. This would change the visuals/aesthetics of the area by reducing or eliminating the "vegetative screening" that many residents value.

4. Older stands of aspen would be regenerated and replaced by younger stands of aspen, reducing and/or changing the aesthetic value of these stands. Older trees with large, white boles would be replaced by thickets of seedlings and saplings in the short term. Fall color viewing would also be impacted.

5. The proposed fuels treatments would remove young trees and seedlings from the spruce/fir stands, resulting in the eventual loss of the timber stand due to lack of regeneration.

6. The proposed fuels treatments are too costly to implement.

7. The proposed fuels treatment would reduce or eliminate understory vegetation that serves as a barrier to off-road motorized vehicles, especially by ATV's (All Terrain Vehicles).

Comments Requested. Comments will continue to be received and considered throughout the analysis process. Comments received in response to this notice and through scoping, including names and addresses of those who comment, will be considered part of the public record of this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The draft EIS is expected to be filed with the EPA (Environmental Protection Agency) and to be available for public review. At that time the EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period for the draft environmental impact statement will be forty-five days from the date the EPA's notice of availability appears in the **Federal Register**. Comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (Reviewers may wish to refer to the *Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act* at 40 CFR 1503.3 in addressing these points).

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could have been raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp.1334. 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at the time it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns about the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

In the final EIS, the Forest Service is required to respond to substantive comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. The Responsible Official will document the decision and rationale for the decision in a Record of Decision. The final EIS is scheduled for completion in January, 2003. The decision will be subject to review under Forest Service Appeal Regulations.

Dated: July 8, 2003.

Robert A. Russell,

Forest Supervisor, Dixie National Forest.

[FR Doc. 03–18176 Filed 7–17–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Indiana

AGENCY: Natural Resources Conservation Service (NRCS).

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Indiana for review and comment.

SUMMARY: It is the intention of NRCS in Indiana to issue three revised conservation practice standards in Section IV of the FOTG. The revised standards are: Critical Area Planting (342), Structure for Water Control (587), and Terrace (600). These practices may be used in conservation systems that treat highly erodible land and/or wetlands.

DATES: Comments will be received for a 30-day period commencing with this date of publication.

ADDRESSES: Address all requests and comments to Jane E. Hardisty, State Conservationist, Natural Resources Conservation Service (NRCS), 6013 Lakeside Blvd., Indianapolis, Indiana 46278. Copies of this standard will be made available upon written request. You may submit your electronic requests and comments to *darrell.brown@in.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Jane E. Hardisty, 317–290–3200.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that after enactment of the law, revisions made to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Indiana will receive comments relative to the proposed

changes. Following that period, a determination will be made by the NRCS in Indiana regarding disposition of those comments and a final determination of changes will be made.

Dated: July 7, 2003.

Jane E. Hardisty,

State Conservationist, Indianapolis, Indiana.

[FR Doc. 03–18347 Filed 7–17–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Broadband Pilot Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Utilities Service (RUS) is announcing the process by which Fiscal Year 2003 funding of its pilot grant program for the provision of broadband transmission service in rural America will be made available. For Fiscal Year 2003, $10 million in grants will be made available through the further funding of the national competition announced on July 8, 2002, to provide broadband transmission service on a "community-oriented connectivity" basis. The community-oriented connectivity approach targets rural, economically-challenged communities and offers a means for the deployment of broadband transmission services to rural schools, libraries, education centers, health care providers, law enforcement agencies, public safety organizations as well as residents and businesses. This all-encompassing connectivity concept will give small, rural communities a chance to benefit from the advanced technologies that are necessary to foster economic growth, provide quality education and health care opportunities, and increase and enhance public safety efforts.

DATES: Successful grant applicants will be notified no later than September 15, 2003.

FOR FURTHER INFORMATION CONTACT: Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1590, Room 4056, Washington, DC 20250–1590. Telephone number (202) 720–9554, facsimile (202) 720–0810.

SUPPLEMENTARY INFORMATION: On July 8, 2002, RUS published a Notice of Funds Availability (NOFA) in the **Federal Register** at 67 FR 45079 announcing its "community-oriented connectivity" pilot grant program for the provision of broadband transmission service in rural America. Twenty million dollars in grant authority was made available to deploy broadband infrastructure to extremely rural, lower income communities on a "community-oriented connectivity" basis. The "community-oriented connectivity" concept integrates the deployment of broadband infrastructure with the practical, everyday uses and applications of the facilities. This broadband access is intended to promote economic development and provide enhanced educational and health care opportunities. RUS provided financial assistance to eligible entities that were proposing to deploy broadband transmission service in rural communities where such service did not currently exist and who would connect the critical community facilities including the local schools, libraries, hospitals, police, fire, and rescue services and who would operate a community center that provides free and open access to residents.

In response to this NOFA, RUS received more than 300 applications totaling more than $185 million in funding requests. As part of a national competition, RUS reviewed the applications for eligibility and scored the applications according to the rurality of the project, the economic need of the project service area, and the community benefits to be derived from the proposed service. On May 16, 2003, Secretary of Agriculture, Ann Veneman, announced the 40 highest scoring grants totaling $20,184,642. This announcement fully utilized RUS' 2002 appropriation.

Due to the overwhelming response to the July 8, 2002, NOFA, RUS has eligible applications on hand totaling more than the $10 million appropriation received for Fiscal Year 2003. To eliminate the need for fully eligible applicants to resubmit applications for Fiscal Year 2003, RUS will utilize its 2003 appropriation by funding eligible projects submitted in accordance with the July 8, 2002 NOFA. Announcement of the 2003 appropriation grant awards will be made no later than September 15, 2003.

Dated: June 25, 2003.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 03–18191 Filed 7–17–03; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Public Television Station Digital Transition Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of funds availability.

SUMMARY: The Rural Utilities Service (RUS) announces a new grant program to finance the conversion of television services from analog to digital broadcasting for public television stations serving rural areas. For Fiscal Year 2003, $15 million in grants will be made available through a national competition to enable public television stations which serve substantial rural populations to continue serving their coverage areas.

DATES: Applications for grants will be accepted as of the date of this notice through September 16, 2003. All applications must be delivered to RUS or bear postmark no later than September 16, 2003. Comments regarding the information collection requirements under the Paperwork Reduction Act must be received on or before September 16, 2003, to be assured of consideration.

ADDRESSES: Applications shall be submitted to Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, USDA, STOP 1590, 1400 Independence Avenue, SW., Washington, DC 20250–1590.

FOR FURTHER INFORMATION CONTACT: Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, STOP 1590, 1400 Independence Avenue, SW., Washington, DC 20250–1590, Telephone (202) 720–9554, Facsimile (202) 720–0810.

SUPPLEMENTARY INFORMATION:

Information Collection and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), RUS invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB). These requirements are pending emergency clearance by OMB.

Comments on this notice must be received by September 16, 2003.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 1522, Room 4034 South Building, Washington, DC 20250–1522.

Title: Public Television Station Digital Transition Grant Program.

Type of Request: New collection.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 21 hours per response.

Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 1.12.

Estimated Total Annual Burden on Respondents: 1,168 hours.

Copies of this information collection can be obtained from Michele Brooks, Program Development and Regulatory Analysis, at (202) 690–1078.

All responses to this information collection and recordkeeping notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

General Information

As part of the nation's evolution to digital television, the Federal Communications Commission has ordered all television broadcasters to initiate the broadcast of a digital television signal by May 1, 2003, and to cease analog television broadcasts on December 31, 2006. About half of the nation's 357 public television stations did not meet the deadline to initiate digital broadcasting, and have received extensions to as late as May 1, 2004, to do so.

The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Bill, 2003, authorized $51,941,000 for the Distance Learning and Telemedicine program. The Committee Recommendations specify that of the funds provided for Distance Learning and Telemedicine, $15,000,000 should be made available in grants for public broadcasting systems to meet this goal. The Committee further recognizes that these stations will have considerable financial difficulty in meeting that deadline.

Public television stations rely largely on community financial support to operate. In many rural areas the cost of the transition to digital broadcasting may exceed community resources. Since rural communities depend on public television stations for services ranging from educational course content in their schools to local news, weather, and agricultural reports, any disruption of public television broadcasting would be detrimental.

Initiating a digital broadcast requires the installation of a new antenna, transmitter or translator, and new digital program management facilities consisting of processing and storage systems. Public television stations use a combination of transmitters and translators to serve the rural public. If the public television station is to perform program origination functions, as most do, digital cameras, editing and mastering systems are required. A new studio-to-tower site communications link may be required to transport the digital broadcast signal to each transmitter and translator. The capability to broadcast some programming in a high definition television format is inherent in the digital television standard, and this can require additional facilities at the studio. These are the new components of the digital transition.

In designing the national competition for the distribution of these grant funds, priority is given to public television stations serving the areas that would be most unable to fund the digital transition without a grant. The largest sources of funding for public television stations are public membership and business contributions. In rural areas, lower population density reduces the field of membership, and rural areas have fewer businesses per capita than urban and suburban areas. Therefore, rurality is a primary predictor of the need for grant funding for a public television station's digital transition. In addition, some rural areas have per capita income levels that are lower than the national average, and public television stations covering these areas in particular are likely to have difficulty funding the digital transition. As a result, the consideration of the per capita income of a public television station's coverage area is a secondary predictor of the need for grant funding. Finally, some public television stations may have, or may meet in their communities, critical needs, and a third scoring factor for critical need will account for conditions that make these public television stations less likely to accomplish the digital transition without a grant.

Definitions

As used in this notice:

Consortium means a combination or group of public television stations.

Digital television, or DTV, means a new television system which will replace the current analog system, which was designed by and is referred to as the National Television Standards Committee, or NTSC, system. The standard for digital television was adopted by the Federal Communications Commission on December 24, 1996, after being developed by the Advanced Television Standards Committee, or ATSC.

Digital television coverage area means the geographic area that will be covered by a public television station after its digital transition. This shall be defined using the Irregular Terrain Model (Longley-Rice model) developed by and available from the National Telecommunications and Information Administration at *http://elbert.its.bldrdoc.gov/itm.html.* For translators only, an applicant may define the digital television coverage area using an alternative means, which must be explained fully in the application and is subject to acceptance by the RUS.

Digital transition means a conversion from analog television broadcasting to digital television broadcasting. To perform the digital transition according to Federal Communications Commission rules, a broadcaster must initiate digital television broadcasting while continuing to operate analog television broadcasting, to enable viewers time to acquire digital television reception capability, and subsequently discontinue analog television broadcasting.

Distance learning means a digital public television broadcast from one area, whether rural or not, to a school, library, home, or other end-user site located in a rural area, for the purpose of providing educational and cultural programming.

High definition television, or HDTV, means an enhanced television service which is authorized by the Federal Communications Commission as part of the digital television standard.

Public television station means a television broadcast station, which (1)(A) under the rules and regulations of the Federal Communications Commission in effect on November 2, 1978, is eligible to be licensed as a

noncommercial educational broadcast station and which is owned and operated by a public agency or nonprofit private foundation, corporation, or association, or (B) is owned and operated by a municipality and which transmits only noncommercial programs for education purposes, and which (2) qualifies for Federal funding under section 396(k) of the Public Broadcasting Act of 1967. Public television station facilities, for the purposes of this Notice, include associated television translators and studio-to-transmitter/translator communications links.

Rural area means any area of the United States that is not in an urban area.

Rural Utilities Service, or RUS, is an agency of the United States Department of Agriculture which will administer the Public Television Station Digital Transition Grant Program.

Total project cost means the estimated sum of expenditures necessary for a public television station to perform the digital transition for all of the rural population in its digital television coverage area. This would include RUS grant funds requested, and funding contributions for this purpose from other organizations, including the Federal government.

Urban area means any area of the United States included within the boundaries of any incorporated or unincorporated city, village, or borough having a population in excess of 20,000 inhabitants.

Applicant Eligibility

Eligibility for grants is limited to public television stations that serve a rural area, and consortia of public television stations, where each public television station in the consortium serves a rural area. Public television stations which serve urban areas in addition to a rural area are eligible to apply for grants under this Notice.

Eligible Projects

Grants shall be made to enable applicants to perform digital transitions of television broadcasting serving rural areas. Grant funds may be used to acquire, by purchase or lease, and install, facilities and software necessary to the digital transition. Grant funds may also be used for associated engineering and environmental studies necessary to this implementation. When facilities are acquired by lease, up to three years' lease costs shall be eligible for grant funding.

Maximum Amounts of Grants

Grants shall be limited in amount to $2 million where the applicant is an individual public television station. Where the applicant is a consortium of public television stations, the grant limit is the total of $2 million for the first station plus $1 million for each additional public television station in the consortium, up to a maximum of $5 million. Only one grant will be made to a public television station or consortium.

Eligible Purposes of Grants

(a) Digital transmitters and translators, including all facilities required to initiate DTV broadcasting. All broadcast facilities acquired with grant funds shall be capable of delivering DTV programming and HDTV programming, at both the interim and final channel and power authorizations.

(b) To be an eligible grant purpose, an expenditure must be made after the application deadline specified elsewhere in this Notice. Expenditures made prior to this deadline are not eligible for funding.

(c) Facilities for which other grant funding has been approved are not eligible for funding under this program.

Ineligible Purposes

Grant funds shall not be used to fund ongoing operations or for facilities that will not be owned by the applicant, except for leased facilities as provided above. Costs of salaries, wages, and employee benefits of public television station personnel are not eligible for funding under this program.

Scoring Criteria for the Grant Competition

Grants will be tested for applicant and project eligibility, and all applications found to be eligible will be scored. Each grant will be scored in three categories: the *rurality* of the applicant's digital television coverage area, the average *per capita income* of the applicant's digital television coverage area, and *critical need*.

(a) Rurality is a measure of the rural character of the applicant's digital television coverage area. Points are scored through a two-step evaluation, as follows:

(1) If the total population in the applicant's digital television coverage area is less than 100,000, the application receives 50 points;

(2) If the total population in the applicant's digital television coverage area is 100,000 or more, points are scored based on the applicant's rural ratio. The rural ratio is the ratio of the rural population covered by a public television station's digital television coverage area to the total population covered by the station's digital television coverage area. Applicants shall calculate the rural ratio by subtracting the populations of all urban areas within the digital television coverage area from the total population of the digital television coverage area, and dividing the total covered population into the covered rural population. The result is rounded to the nearest whole percentage point. The score is computed as follows:

(A) If the rural ratio is 50% or less, the application receives zero (0) points.

(B) If the rural ratio is 51% to 57%, the application receives ten (10) points.

(C) If the rural ratio is 58% to 65%, the application receives twenty (20) points.

(D) If the rural ratio is 66% to 74%, the application receives thirty-five (35) points.

(E) If the rural ratio is over 74%, the application receives fifty (50) points.

(b) Per capita income (PCI) is a measure of the relative average earnings of the population in the applicant's digital television coverage area. Applicants must use the per capita personal income by county, as determined by the Bureau of Economic Analysis, U.S. Department of Commerce, at *http://www.bea.doc.gov/bea/regional/reis/*. The applicant shall compute the weighted average PCI for its digital television coverage area by averaging the PCIs for all counties within its digital television coverage area. The ratio of the applicant's average PCI to the National Average Per Capita Income (NAPCI) is scored as follows:

(1) If the PCI/NAPCI ratio is 80% or greater, the application receives zero (0) points.

(2) If the PCI/NAPCI ratio is 70% to 79%, the application receives ten (10) points.

(3) If the PCI/NAPCI ratio is 60% to 69%, the application receives twenty (20) points.

(4) If the PCI/NAPCI ratio is less than 60%, the application receives thirty-five (35) points.

(c) Critical need is a measure of the special difficulty an applicant may experience performing the digital transition, and the dependence the applicant's rural communities have on its services. This scoring category is intended to account for factors not covered by other categories. Up to fifteen (15) points may be scored where an applicant demonstrates, to the satisfaction of the RUS, that it cannot make the digital transition without a grant from RUS, and that rural education and other community service needs will go unmet as a result. An applicant should identify special characteristics unique to its digital television coverage area and its service relationship with its viewers, such as:

(1) Geographic or coverage characteristics of the public television station's digital television coverage area that make the digital transition unusually expensive;

(2) A severe lack of specialized human resources (such as teachers) for which digital educational television will compensate;

(3) Geographic isolation of communities which will be overcome with public television station services;

(4) Non-traditional community needs (such as adult vocational retraining) that may be met only with digital public television station broadcast capabilities;

(5) Economic conditions that place the applicant at a disadvantage in raising local funding, but which are not reflected to the per capita income levels scored above; and

(6) Historical events that have placed the public television station in severe financial stress.

The Grant Application

The grant application shall include the following:

(a) An application for federal assistance, Standard Form 424.

(b) An executive summary, not to exceed two pages, describing the public television station, its service area and offerings, its current digital transition status, and the proposed project.

(c) Evidence of the applicant's eligibility to apply under this Notice.

(d) A spreadsheet showing the total project cost, with a breakdown of items sufficient to enable RUS to determine item eligibility.

(e) A map or maps, showing the digital television coverage area for all of the applicant's transmitters and translators.

(f) The applicant's estimated rurality score, supported by a worksheet showing the population of its digital television coverage area, the derivation of the urban and rural components of that population, and a map showing the digital television coverage area and all urban areas within its boundaries. Supporting information shall list the sources of all population and coverage area information, and if the application includes computations made by a consultant or other organization outside the public television station, shall state the details of that collaboration.

(g) The applicant's estimated per capita income ratio, supported by a worksheet showing the averaging of the PCIs for all counties served.

(h) If applicable, a presentation not to exceed two pages demonstrating critical need.

(i) Evidence that the Federal Communications Commission has authorized the initiation of digital broadcasting at each of the applicant's transmitter and translator sites. In the event that a Federal Communications Commission construction permit has not been issued for one or more sites, the RUS may include those sites in the grant, and make advance of funds for that site conditional upon the submission of a construction permit.

(j) Compliance with other Federal statutes. The applicant must provide evidence of compliance with other Federal statutes and regulations, including, but not limited to the following:

(1) Executive Order (E.O.) 11246, Equal Employment Opportunity, as amended by E.O. 11375 and as supplemented by regulations contained in 41 CFR part 60;

(2) Architectural barriers;

(3) Flood hazard area precautions;

(4) Assistance and Real Property Acquisition Policies Act of 1970;

(5) Drug-Free Workplace Act of 1998 (41 U.S.C. 701);

(6) E.O.s 12549 and 12689, Debarment and Suspension; and

(7) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).

(k) Environmental impact and historic preservation. The applicant must provide details of the digital transition's impact on the environment and historic preservation, and comply with 7 CFR part 1794, which contains RUS' policies and procedures for implementing a variety of federal statutes, regulations, and executive orders generally pertaining to the protection of the quality of the human environment. The application shall contain a separate section entitled "Environmental Impact of the Digital Transition." This shall include the Environmental Questionnaire/Certification, which is available from RUS, on which the applicant describes the impact of its digital transition. *Submission of the Environmental Questionnaire/Certification does not constitute compliance with 7 CFR part 1794.*

Grant Documents

The terms and conditions of grants shall be set forth in grant documents prepared by RUS. The documents shall require the applicant to own all facilities financed by the grant. Among other matters, RUS may prescribe conditions to the advance of funds that address the construction of the project and the delivery of distance learning services to rural areas.

Dated: July 11, 2003.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 03–18192 Filed 7–17–03; 8:45 am]

BILLING CODE 3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: August 17, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On May 2, and May 9, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 FR 23441, and 24919) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-

O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

(End of Certification)

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Custodial Services, Bureau of Engraving and Printing, Landover Warehouse Facility, Landover, Maryland
NPA: Davis Memorial Goodwill Industries, Washington, DC
Contract Activity: Bureau of Engraving and Printing, Washington, DC
Service Type/Location: Grounds Maintenance, Douglas Recreation Center, Garrison, North Dakota
NPA: MVW Services, Inc., Minot, North Dakota
Contract Activity: U.S. Army Corps of Engineers-Omaha, Omaha, Nebraska
Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center, Flint, Michigan
NPA: Michigan Community Services, Inc., Swartz Creek, Michigan
Contract Activity: Headquarters, 88th Regional Support Command, Fort Snelling, Minnesota

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 03–18387 Filed 7–17–03; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a product previously furnished by such agencies.

Comments Must Be Received on or Before: August 17, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

(End of Certification)

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Remanufactured Ink Jet Cartridge (50% of the Government Requirement)

7510–01–443–2122

7510–01–443–2123

NPA: Work Transition Services, San Bruno, California
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, NY

Services

Service Type/Location: Janitorial/Custodial, National Personnel Records Center, St. Louis, Missouri
NPA: Challenge Unlimited, Inc., Alton, Illinois
Contract Activity: GSA, Service Contracts (6PEF–C), Kansas City, Missouri
Service Type/Location: Mailroom Operation, Internal Revenue Service Mailrooms, ServiceSource, Arlington, Virginia (Prime Contractor) and at the following locations for the Nonprofit Agencies identified: Internal Revenue Service Mailroom, Alliance Tower, Houston, Texas
NPA: Lighthouse for the Blind of Houston, Houston, Texas; Internal Revenue Service Mailroom, Atlanta SE, Atlanta, Georgia
NPA: Bobby Dodd Institute, Inc., Atlanta, Georgia; Internal Revenue Service Mailroom, Baltimore, Maryland
NPA: Blind Industries & Services of Maryland, Baltimore, Maryland; Internal Revenue Service Mailroom, Boston, Massachusetts
NPA: Work, Incorporated, North Quincy, Massachusetts; Internal Revenue Service Mailroom, Buffalo, New York
NPA: Phoenix Frontier, Inc., Buffalo, New York; Internal Revenue Service Mailroom, Cincinnati, Ohio
NPA: Ohio Valley Goodwill Industries Rehabilitation Center, Inc., Cincinnati, Ohio; Internal Revenue Service Mailroom, Detroit, Michigan; Internal Revenue Service Mailroom Computing Center, Detroit, MI
NPA: Jewish Vocational Service and Community Workshop, Southfield, Michigan; Internal Revenue Service Mailroom, Headquarters, Washington, DC and New Carrollton, Maryland (Contractor Owned & Operated)
NPA: ServiceSource, Inc., Alexandria, Virginia
NPA: Columbia Lighthouse for the Blind, Washington, DC; Internal Revenue Service Mailroom, Denver, Colorado
NPA: Bayaud Industries, Inc., Denver, Colorado; Internal Revenue Service Mailroom, Greensboro, North Carolina
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina; Internal Revenue Service Mailroom, Hartford, Connecticut
NPA: Easter Seals Greater Hartford Rehabilitation Center, Inc., Windsor, Connecticut; Internal Revenue Service Mailroom, Indianapolis, Indiana
NPA: GW Commercial Services, Inc., Indianapolis, Indiana; Internal Revenue Service Mailroom, Laguna Niguel, California

NPA: Landmark Services, Inc., Santa Ana, California; Internal Revenue Service Mailroom, Los Angeles, California
NPA: Goodwill Industries of Southern California, Los Angeles, California; Internal Revenue Service Mailroom, North Florida; Internal Revenue Service Mailroom, Modis Building, Jacksonville, Florida
NPA: CCAR Services, Inc., Green Cove Springs, Florida; Internal Revenue Service Mailroom, Nashville, Tennessee
NPA: Goodwill Government Services, Inc., Nashville, Tennessee; Internal Revenue Service Mailroom, New Orleans, Louisiana
NPA: The Lighthouse for the Blind in New Orleans, New Orleans, Louisiana; Internal Revenue Service Mailroom, Oakland, California; Internal Revenue Service Mailroom, San Francisco, California
NPA: Pacific Coast Community Services, Truckee, California; Internal Revenue Service Mailroom, Oklahoma City, Oklahoma
NPA: The Oklahoma League for the Blind, Oklahoma City, Oklahoma; Internal Revenue Service Mailroom, Philadelphia, Pennsylvania
NPA: Horizon House, Inc., Philadelphia, Pennsylvania; Internal Revenue Service Mailroom, Phoenix, Arizona
NPA: Goodwill Community Services, Inc., Phoenix, Arizona; Internal Revenue Service Mailroom, South Florida, Plantation, Florida
NPA: ServiceSource, Inc., Alexandria, Virginia; Internal Revenue Service Mailroom, Richmond, Virginia
NPA: Goodwill Services, Inc.; Richmond, Virginia; Internal Revenue Service Mailroom, Riverside, Chicago, Illinois
NPA: Jewish Vocational Service and Employment Center, Chicago, Illinois; Internal Revenue Service Mailroom, Springfield, New Jersey
NPA: New Jersey Association for the Deaf-Blind, Inc, Somerset, New Jersey; Internal Revenue Service Mailroom, St. Louis, Missouri
NPA: MGI Services Corporation, St. Louis, Missouri; Internal Revenue Service Mailroom, St. Paul, Minnesota
NPA: Tasks Unlimited, Inc., Minneapolis, Minnesota
Contract Activity: U.S. Treasury, IRS Headquarters, Oxon Hill, Maryland
Service Type/Location: Reproduction and Courier Service; Naval Facilities Engineering Command, Chesapeake, Washington, DC
NPA: Sheltered Occupational Center of Northern Virginia, Inc., Arlington, Virginia
Contract Activity: Naval Facilities Engineering Command, Chesapeake, Washington, DC

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action will result in authorizing small entities to furnish the product to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product proposed for deletion from the Procurement List.

(End of Certification)

The following product is proposed for deletion from the Procurement List:

Product

Product/NSN: Scraper and Squeegee
7920–00–045–2556
NPA: L.C. Industries For The Blind, Inc., Durham, North Carolina
Contract Activity: GSA, Southwest Supply Center, Fort Worth, Texas

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 03–18336 Filed 7–17–03; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Notice to Announce Secretary Evans, Oil and Gas Business Development Mission to Russia, September 21–25, 2003; Correction

AGENCY: Department of Commerce.

SUMMARY: The Department of Commerce published a document in the **Federal Register** of July 15, 2003, concerning notice to announce DOC Secretary Evans, Oil and Gas Business Development Mission to Russia, September 21–25, 2003. The document contained incorrect Web site addresses.

FOR FURTHER INFORMATION CONTACT: Molly Costa, 202–482–0692.

Correction

In the **Federal Register** of July 15, 2003, in FR Doc. 03–17807 (Vol. 68, No. 135), on page 41782, in the second column, correct the two references to mission Web sites to: *http://www.commerce.gov/russiamission2003.*

Dated: July 15, 2003.
Molly Costa,
Industry Sector Manager, U.S. and Foreign Commercial Service.
[FR Doc. 03–18276 Filed 7–17–03; 8:45 am]
BILLING CODE 3510–DR–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 34–2003]

Foreign-Trade Zone 39—Dallas/Fort Worth, TX; Application for Subzone Maxtor Corporation (Data Storage Products) Coppell, TX

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Dallas/Fort Worth International Airport Board, grantee of FTZ 39, requesting special-purpose subzone status for the assembly and warehousing facilities of Maxtor Corporation (Maxtor), located in Coppell, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 2, 2003.

The Maxtor facility (18 acres, 245 employees) is located at 611 South Royal Lane, Coppell, Texas. The facility will be used for the assembly and distribution of internal and external hard disk drive kits, retail kits and accessory kits (HTS 8471.70 and 8471.80, duty-free). Components and materials sourced from abroad (representing 97% of all parts used in the assembly process) include: external and internal drives, electrical power supplies, electrical power cables, hard disk drive controller cards, data cables, printed circuit boards, cabling, plastic covers, UV resin, brackets, tape, HDD screws, software, acrylic plates and packaging (HTS 3919.10, 3926.90, 4819.40, 4821.10, 4901.99, 7318.15, 7326.90, 8471.70, 8471.80, 8473.30, 8504.40, 8524.31, 8524.91, 8544.41, 8544.51, duty rate ranges from duty-free to 8.6%).

FTZ procedures would exempt Maxtor from Customs duty payments on the foreign components used in export production. Some 6 percent of the plant's shipments are exported. On its domestic sales, Maxtor would be able to choose the duty rates during Customs entry procedures that apply to the assembled data storage kits (duty-free) for the foreign components noted above. The request indicates that the savings from FTZ procedures would help

improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW, Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW, Washington, DC 20230. The closing period for their receipt is September 16, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 1, 2003.

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the U.S. Department of Commerce Export Assistance Center, 711 Houston Street, Fort Worth, Texas 76102.

Dated: July 9, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–18322 Filed 7–17–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–987]

Notice of Initiation of Antidumping Duty Investigation: Tetrahydrofurfuryl Alcohol from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of an Antidumping Duty Investigation.

EFFECTIVE DATE: July 18, 2003.

FOR FURTHER INFORMATION CONTACT: Robert Bolling at (202) 482–3434 or Laurel LaCivita at (202) 482–4243, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

INITIATION OF INVESTIGATION:

The Petition

On June 23, 2003, the Department of Commerce ("the Department") received a petition filed in proper form by Penn Specialty Chemicals, Inc. ("petitioner"). On July 7, 2003, July 10, 2003 and July 11, 2003, the Department received amendments to the petition filed in proper form by the petitioner.

In accordance with section 732(b)(1) of the Tariff Act of 1930 ("the Act"), the petitioner alleges that imports of tetrahydrofurfuryl alcohol ("THFA") from the People's Republic of China ("the PRC") are, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that imports from the PRC are materially injuring, or are threatening to materially injure, an industry in the United States.

The Department finds that the petitioner filed this petition on behalf of the domestic industry because it is an interested party as defined in sections 771(9)(c) and 771(9)(D) of the Act and has demonstrated sufficient industry support with respect to the antidumping investigation that they are requesting the Department to initiate. *See infra,* "Determination of Industry Support for the Petition."

Scope of the Investigation

For the purpose of this investigation, the product covered is tetrahydrofurfuryl alcohol ($C_5H_{10}O_2$). THFA, a primary alcohol, is a clear, water white to pale yellow liquid. THFA is a member of the heterocyclic compounds known as furans and is miscible with water and soluble in many common organic solvents. THFA is currently classified in the Harmonized Tariff Schedules of the United States ("HTSUS") under subheading 2932.13.00.00. Although the HTS subheadings are provided for convenience and for the purposes of the U.S. Bureau of Customs and Border Protection ("Customs"), the Department's written description of the merchandise under review is dispositive.

As discussed in the preamble to the Department's regulations (*Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 calendar days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

Based on our analysis of the information presented by the petitioner, we have determined that there is a single domestic like product, THFA, which is defined in the "Scope of the Investigation" section above, and we have analyzed industry support in terms of this domestic like product.

In its initial petition and subsequent submissions, the petitioner states that it comprises 100 percent of U.S. THFA production. Based on all available information, we agree that the petitioner comprises 100 percent of the domestic THFA production.

Our review of the data provided in the petition and other information readily available to the Department indicates that the petitioner has established industry support representing 100 percent of the total production of the domestic like product, requiring no further action by the Department pursuant to section 732(c)(4)(D) of the Act. In addition, the Department received no opposition to the petition from domestic producers of the like product. Therefore, the domestic producer (or workers) who supports the petition accounts for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) of the Act are met. Furthermore, the domestic producer who supports the petition accounts for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. Thus, the requirements of section 732(c)(4)(A)(ii) of the Act also are met. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

[1] *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (Ct. Int'l Trade 2001), *citing Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 642-44 (Ct. Int'l Trade 1988).

Period of Investigation

The anticipated period of investigation ("POI") is October 1, 2002, through March 31, 2003.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate this investigation. The sources of data for the deductions and adjustments relating to U.S. and foreign market prices, constructed value ("CV"), and factors of production are discussed in greater detail in the *Initiation Checklist*. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate.

Regarding an investigation involving a non-market economy ("NME") country, the Department presumes, based on the extent of central government control in an NME, that a single dumping margin, should there be one, is appropriate for all NME exporters in the given country. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of a country's NME status and the granting of separate rates to individual exporters. *See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586–87 (May 2, 1994).

Export Price

The petitioner based export price ("EP") on price quotes from Chinese exporters of THFA to unaffiliated purchasers in the United States. The petitioner calculated net U.S. price by deducting foreign inland freight, domestic inland insurance, ocean freight, and brokerage and handling. Petitioner alleged that India was the appropriate surrogate country (see discussion below) and calculated the adjustments to the EP using the surrogate values recorded in the memoranda to the file from Drew Jackson to Howard Smith, *Surrogate Values Used for the Preliminary Results of the Administrative Review of Potassium Permanganate from the People's Republic of China: January 1, 2001 through December 31, 2001* dated January 31, 2003 ("*Surrogate Value Memorandum I*"), and *Surrogate Values Used for the Preliminary Results of the Administrative Review of Potassium Permanganate from the People's Republic of China: January 1, 1999 through December 31, 1999* dated January 30, 2002 ("*Surrogate Value Memorandum II*").

We adjusted petitioner's calculation of the surrogate values used to calculate foreign inland freight, domestic inland insurance, ocean freight, and brokerage and handling for inflation. Petitioner used the unadjusted surrogate values recorded in the Department's surrogate value memoranda for potassium permanganate, but did not account for inflation from the date of the source data to the POI. Therefore, we went back to the original source data for each adjustment and inflated the reported price to the POI using the website of the Office of the Economic Adviser to the Government of India, Ministry of Commerce and Industry, *http://www.eaindustry.nic.in*. We then converted all unit prices expressed in rupees per metric tons to dollars per pound.

The petitioner provided price quotes for the subject merchandise which we determined were sufficient for initiation purposes. In addition, petitioner provided average unit values ("AUVs") calculated from U.S. import statistics as a second basis to estimate dumping margins. However, since these AUVs were calculated using information from a basket category HTS number, we did not use these average unit values calculated from U.S. import statistics as a basis of estimated dumping margins. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate. For our complete analysis of EP, *see* the *Initiation Checklist*.

Normal Value

The petitioner asserts that the PRC is an NME country, and notes that in all previous investigations the Department has determined that the PRC is an NME. *See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000). The PRC will be treated as an NME unless and until its NME status is revoked. *See* section 771(18)(C)(i) of the Act. Because the PRC's status as an NME remains in effect, the petitioner's estimated the dumping margin using a NME methodology.

For normal value ("NV"), the petitioner based the factors of production ("FOP"), as defined by section 773(c)(3) of Act, on the consumption rates for furfuryl alcohol ("FA") reported in *Technical Progress in Furfuryl Alcohol Production*, by Ma Bao-Qi and Chen Fan-Geng of Xian

Petroleum College ("*Xian Report*"), Xian, and on its own experience. Petitioner contends that consumption rates for the Chinese THFA industry are not reasonably available, and that FA is an intermediate product and feedstock in the production process for THFA. Therefore, petitioner used the factor values included in the *Xian Report* for the production of FA and its own experience as the basis of factor values for the production steps required to convert FA to THFA. As a result, petitioner contends that information provided in the *Xian Report*, and petitioner's own production experience, is the only information reasonably available to petitioner concerning THFA production in China. Thus, when information from the *Xian Report* was not available, petitioner assumed that producers in the PRC use the same inputs in the same quantities as the petitioner. Based on the information provided by the petitioner, we believe that the petitioner's FOP methodology represents information reasonably available to the petitioner and is appropriate for purposes of initiating this investigation.

The petitioner asserts that India is the most appropriate surrogate country for the PRC, claiming that India is: i) a market economy, and, ii) at a level of economic development comparable to the PRC in terms of per capita GNP. Petitioner asserts that China is the only other country known to produce THFA. Therefore, none of the potential surrogate countries, including India, are significant producers of the subject merchandise. Petitioners note however, that India is a significant producer of furfural and FA which are intermediate products and feedstocks in the production process for THFA and based on the information provided by the petitioner, we believe that the petitioner's use of India as a surrogate country is appropriate for the purpose of initiating this investigation.

In accordance with section 773(c)(4) of the Act, petitioner valued FOP, where possible, on reasonably available, public surrogate data from India. Petitioner valued furfural, hydrogen and nitrogen based on Indian import values, as published in the 2000 and 2001 *Monthly Statistics of Foreign Trade of India*, and inflated based on the Indian wholesale price index ("WPI"). Petitioner was not able to obtain publicly available data for the furfural-to-FA and the FA-to-THFA catalysts, and therefore, used imports into the United States from India for HTS 3815.90.40.00 (furfural-to-FA catalyst) and HTS 3815.11.00.00 (FA-to-THFA catalyst) as reported in the World Trade Atlas. The Department is not using Indian import values into the United States because India maintains broadly available, non-industry specific export subsidies. It is the Department's policy, based on our earlier determinations and legislative history, to reject such factor input values, whether they are market economy purchases or import statistics into a surrogate country, on the basis that we have found that the existence of these subsidies provide sufficient reason to believe or suspect that export prices from those countries are distorted. Therefore, we set the surrogate values for these factors to zero. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Ball Bearings and Parts Thereof from the People's Republic of China*, 68 FR 10685 (March 6, 2003) and accompanying Issues and Decision Memorandum. *See* Attachment IV of the *Initiation Checklist*.

Petitioner valued labor using the regression-based wage rate for the PRC provided by the Department, in accordance with section 351.408(c)(3) of the Department's regulations. Petitioner valued maintenance supplies based on its own experience. However, the Department has determined that maintenance expenses should be classified as and included in overhead expenses in the calculation of normal value based on the factors of production. *See Persulfates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 64 FR 69494 (December 13, 1999). Therefore, in order to eliminate the possibility of double counting overhead expenses which are otherwise included in our analysis, we have set the value of maintenance supplies to zero. Petitioner valued steam produced from coal, water, electricity, factory overhead, SG&A and profit using the *Surrogate Values Memorandum I*. We revised petitioner's factor value calculation for water to take into account inflation from the time period of the original source documentation to the POI. The petitioner inflated these figures to the current POI using the WPI reported on the Indian Office of Economic Advisor website, *www.eaindustry.nic.in*, for chemicals and chemical products.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of THFA from the PRC are being, or are likely to be, sold at less than fair value. As a result of a comparison of EP to NV, petitioner's calculated estimated dumping margins, as adjusted by the Department, range from 159.26 to 200.00 percent.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than fair value.

The petitioner contends that the industry's injured condition is evident in the declining trends in financial performance, production volume, capacity utilization rates, U.S. shipments, domestic prices, market share, reduced profitability, capital expenditures and research, and development expenditures. The allegations of injury and causation are supported by relevant evidence including affidavits of company officials, U.S. Census Bureau import statistics, lost sales, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See Initiation Checklist*.

Initiation of Antidumping Investigation

Based upon our examination of the petition on THFA, we have found that it meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of THFA from the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended pursuant to section 733(b)(1)(A) of the Act, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the government of the PRC. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition, as provided for under 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine no later than August 7, 2003, whether there is a reasonable indication that imports of THFA from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

July 14, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Grant Aldonas, Under Secretary.

[FR Doc. 03–18321 Filed 7–17–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 063003B]

Marine Mammals; File No. 881–1709

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Jo-Ann Mellish, Ph.D., University of Alaska Fairbanks and Alaska SeaLife Center, 301 Railway Avenue, P.O. Box 1329, Seward, Alaska 99664, has been issued a permit take tissue samples from harbor seals (*Phoca vitulina*) and northern fur seals (*Callorhinus ursinus*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On May 1, 2003, notice was published in the **Federal Register** (84 FR 23286) that a request for a scientific research permit to take the species identified above had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The permit authorizes the collection and receipt of an unlimited number of tissue samples (including, but not limited to, teeth/bone, blubber, muscle, blood, skin, vibrissae, placenta, fetus, reproductive tracts, stomach and intestinal tracts, heart, liver, lungs, kidney and other vital organs) taken from carcasses of harbor seals and northern fur seals that were killed during legal subsistence hunts in Alaska. The purposes of the research are to determine contaminant loads in tissues to study whether exposure to contaminants may be a contributing factor to poor survival and reproduction of these species, and to determine steroid hormone levels in the tissues of these species to develop methods to study the reproductive rate and population structure of marine mammals. Tissues collected from subsistence hunts and from stranded animals may be exported (and re-imported) to Canada for analyses and to other countries world-wide for future opportunistic research is also authorized. The permit has been issued for a five-year period.

Dated: July 11, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–18338 Filed 7–17–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070903A]

Marine Mammals; File No. 1049–1718

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for new permit.

SUMMARY: Notice is hereby given that Kate M. Wynne, University of Alaska Fairbanks, School of Fisheries and Ocean Sciences, 118 Trident Way, Kodiak, Alaska 99615 has applied in due form for a permit to take humpback whales (*Megaptera novaeangliae*), killer whales (*Orcinus orca*), sperm whales (*Physeter macrocephalus*), fin whales (*Balaenoptera physalis*), sei whales (*Balaenoptera borealis*), minke whales (*Balaenoptera acutorostrata*), gray whales (*Eschrichtius robustus*), harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*), harbor seals (*Phoca vitulina*), Pacific white-sided dolphins (*Lagenorhynchus obliquidens*), Northern fur seals (*Callorhinus ursinus*), and Steller sea lions (*Eumetopias jubatus*) for the purposes of scientific research.

ADDRESSES: The permit application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910, (301)713–2289; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, (907)586–7221.

FOR FURTHER INFORMATION CONTACT: Jill Lewandowski or Gene Nitta, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant requests a five-year scientific research permit to: (1) develop long term sighting histories of individual humpback whales to assess stock structure, life history parameters, feeding behaviors, social behaviors of feeding populations, and population estimates; (2) collect and compare data on killer whale predation in southeastern Alaska, the Gulf of Alaska and Aleutian Islands; and (3) collect data to assess the distribution, abundance, and foraging ecology of fin whales in the Gulf of Alaska. All research will take place in Alaskan waters.

Specifically, the applicant is requesting takes by close approach for photo-identification, behavioral observation, passive acoustic recording, biopsy sampling and incidental harassment. In addition, the applicant is requesting authorization to collect and/or export dead parts from the following prey species during killer whale predation studies: humpback, gray, minke, sei, fin and sperm whales; harbor and Dall's porpoise; Pacific white-sided dolphins; Northern fur and harbor seals; and Steller sea lions.

Written comments or requests for a public hearing on these applications should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 14, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–18340 Filed 7–17–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Marine Sanctuary Program Policy on Permit Applications for Artificial Reef Development

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim-final policy; Notice of availability; request for comments.

SUMMARY: The National Marine Sanctuary Program (NMSP) has developed a policy and permitting guidelines for applications to establish artificial reefs within National Marine Sanctuaries. The policy is being used on an interim-final basis during the public comment period. The NMSP is requesting comments on the interim-final policy and permitting guidelines.

DATES: This notice is effective as an interim-final policy as of July 18, 2003. Comments on the interim-final policy will be accepted until September 16, 2003.

ADDRESSES: You can download a copy of the interim-final policy from the NMSP's Web site at *http://www.sanctuaries.nos.noaa.gov/library/library.html*. You may submit comments by sending an e-mail to *artificial.reefs@noaa.gov*. You may also request a copy of the NMSP's interim-final policy on artificial reefs and submit written comments on the policy by contacting Debra Malek, National Marine Sanctuary Program, 1305 East West Highway (N/ORM6), 11th floor, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Debra Malek at (301) 713–3125.

SUPPLEMENTARY INFORMATION:

Background

The National Marine Sanctuary Program (NMSP) manages a system of thirteen National Marine Sanctuaries (NMSs or Sanctuaries) that protect special, nationally significant, areas of the marine environment under the authority of the National Marine Sanctuaries Act (NMSA; 16 U.S.C. 14312 *et seq.*). Sanctuaries protect a variety of marine areas including coral reefs, mangrove forests, and seagrass beds in the Florida Keys National Marine Sanctuary; deep-sea canyons, kelp beds, and hardbottom habitats in the Monterey Bay National Marine Sanctuary; and historic shipwrecks in the Thunder Bay National Marine Sanctuary and Underwater Preserve.

In the last few years the NMSP has experienced an increased number of permit applications to establish artificial reefs inside NMS boundaries, particularly the Florida Keys National Marine Sanctuary. Because NMSP regulations generally prohibit placing structures on the seafloor, any individual who wishes to establish an artificial reef inside a NMS must first get approval from the NMSP through the onsite sanctuary manager.

To ensure that applications to establish artificial reefs in sancturaries are reviewed consistently and in a manner that adheres to the NMSA and NMSP regulations (15 CFR part 922), the NMSP has developed permitting guidelines specific for such applications. The NMSP's intends to apply the guidelines when considering such requests. The guidelines build on lessons learned from past experience permitting artificial reef development within sanctuaries, and applies knowledge from other sources of information. It is intended to guide decision makers as they review proposals for artificial reefs in sanctuaries. It clarifies how decision making criteria contained in NMSP regulations will be applied specifically to permit applications for artificial reef development.

Because the policy and associated permitting guidelines do not place any new requirements on permit applicants or the general public, the NMSP feels it is appropriate to begin applying the policy and guidelines immediately. The NMSP is, however, interested in receiving public comments on the policy and the associated permitting guidelines.

Richard W. Spinrad,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 03–18345 Filed 7–17–03; 8:45 am]

BILLING CODE 3510–NK–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, August 1, 2003.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–18452 Filed 7–16–03; 1:30 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, August 8, 2003.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–18453 Filed 7–16–03; 1:03 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, August 15, 2003.

PLACE: 1152 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–18454 Filed 7–16–03; 1:03 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commision.

TIME AND DATE: 11 a.m., Friday, August 22, 2003.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–18455 Filed 7–16–03; 1:03 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commision.

TIME AND DATE: 11 a.m., Friday, August 29, 2003.

PLACE: 1155 21st St., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–18456 Filed 7–16–03; 1:03 pm]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request—Follow-Up Activities for Product-Related Injuries

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Commission announces that it has submitted to the Office of Management and Budget a request for an extension of the existing approval of collections of information conducted during follow-up activities for product-related injuries.

DATES: Written comments must be received on or before August 18, 2003.

ADDRESSES: Written comments should be captioned "Product-Related Injuries" and mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CPSC, 725 17th Street, NW., Washington, DC 20503. Copies of comments also may be: mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland, telephone (301) 504–0800; telefacsimilied to (301) 504–0127; or e-mailed to *cpsc-os@cpsc.gov*.

FOR FURTHER INFORMATION OR A COPY CONTACT: Linda Glatz, Consumer Product Safety Commission, Washington, DC 20207; 301–504–7671 or by e-mail to *lglatz@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

1. Background

Section 5(a) of the Consumer Product Safety Act (15 U.S.C. 2054(a)) requires the Commission to collect information related to the cause and prevention of death, injury, and illness associated with consumer products, and to conduct continuing studies and investigations of deaths, injuries, diseases, and economic losses resulting from accidents involving consumer products. The Commission uses this information to support rulemaking proceedings, development and improvement of voluntary standards, information and education programs, and administrative and judicial proceedings to remove unsafe products from the marketplace and consumers' homes.

Persons who have been involved with, or who have witnessed, incidents associated with consumer products are an important source of information about deaths, injuries, and illnesses resulting from such incidents. From consumer complaints, newspaper accounts, death certificates, hospital emergency room reports, and other sources, the Commission selects a limited number of accidents for investigation. These investigations may involve face-to-face or telephone interviews with accident victims, witnesses, or other persons having relevant knowledge. The Commission also receives information about product-related injuries from persons who provide written information by using forms displayed on the Commission's Internet Web site or printed in the *Consumer Product Safety Review* and other Commission publications.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35)(PRA), the Commission obtained the approval of the Office of Management and Budget (OMB) for this collection of information (OMB control No. 3041–0029). The current approval expires July 31, 2003. The extension is requested for a period of three years from the date of approval.

In the **Federal Register** of May 5, 2003 (68 FR 23704), the Consumer Product Safety Commission published a notice, required by the PRA, to announce the agency's intention to seek extension of approval of this collection of information. No comments were received in response to this notice.

2. Additional Details About the Request for Approval of a Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Follow-Up Activities for Product-Related Injuries.

Type of request: Extension of approval.

Frequency of collection: One time for each respondent.

General description of respondents: Persons who have been involved in, have witnessed, or otherwise have knowledge of incidents associated with consumer products.

Estimated number of respondents: 14,100 total annually; 500 for face-to-face interviews; 3,200 telephone

interviews; 5,200 hotline interviews; and 5,200 persons submitting a form.

Estimated annual average number of hours per respondent: 20 min. for each telephone interview; 5.0 hours for each on-site interview; 12 min. to fill out a form; 10 min. for each Hotline interview.

Estimated total annual number of hours for all respondents: 5,472.

3. Comments to OMB on This Request for Extension

Comments on this request for extension of approval of the collection of information should be submitted by August 18, 2003 to the addresses given at the beginning of this notice.

Copies of the request for extension of the information collection and supporting documentation are available from Linda Glatz, Management and Program Analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–7671, e-mail *lglatz@cpsc.gov*.

Dated: July 11, 2003.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 03–18169 Filed 7–17–03; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Petition Requesting Labeling of Weightlifting Bench Press Benches To Reduce or Prevent Deaths Due to Asphyxia/Anoxia (Petition No. CP 03–3)

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Commission has received a petition (CP 03–3) requesting that the Commission require labeling of weightlifting bench press benches to reduce or prevent deaths from asphyxia/anoxia due to being trapped beneath a bench press barbell. The Commission solicits written comments concerning the petition.

DATES: The Office of the Secretary must receive comments on the petition by September 16, 2003.

ADDRESSES: Comments on the petition, preferably in five copies, should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–0800, or delivered to the Office of the Secretary, Room 501, 4330 East-West Highway, Bethesda, Maryland 20814. Comments may also be filed by facsimile to (301) 504–0127 or by email to *cpsc–os@cpsc.gov*. Comments should be captioned "Petition CP 03–3, Petition for Labeling of Bench Press Benches." A copy of the petition is available for inspection at the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland. The petition is also available on the CPSC Web site at *http://www.cpsc.gov*.

FOR FURTHER INFORMATION CONTACT: Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–6833, e-mail *rhammond@cpsc.gov*.

SUPPLEMENTARY INFORMATION: The Commission has received correspondence from V. Patteson Lombardi, Ph.D., requesting that the Commission require a warning label on both uprights of all "manufactured, publicly available" weightlifting bench press benches. The petitioner asserts that the labeling is necessary to reduce or eliminate deaths due to asphyxia/anoxia caused by being trapped under a bench press barbell. The petitioner provides information concerning a number of deaths he states involve such incidents.

The Commission is docketing the correspondence as a petition under provisions of the Consumer Product Safety Act, 15 U.S.C. 2051–2084.

Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800. The petition is available on the CPSC Web site at *http://www.cpsc.gov*. A copy of the petition is also available for inspection from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland.

Dated: July 10, 2003.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 03–18170 Filed 7–17–03; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Final Environmental Assessment (EA) and Draft Finding of No Significant Impact (FNSI) for the Base Realignment and Closure 95 Disposal and Reuse of Excess Property, Fort Dix, NJ

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with Public Law 101–510 (as amended), the Defense Base Closure and Realignment Act of 1990, the Defense Base Closure and Realignment Commission recommended the disposal and reuse of excess property at Fort Dix.

The EA evaluates the environmental impacts of the disposal of surplus property made available by the realignment of Fort Dix. Approximately 35 acres of surplus property would be conveyed to the State of New Jersey. Alternatives examined in this EA include no action, unencumbered disposal of the property and encumbered disposal of the property. Encumbered disposal refers to transfer or conveyance of property having restrictions on subsequent use as a result of any Army-imposed or legal restraint. Under the no action alternative, the Army would not dispose of the excess or surplus property but would maintain it indefinitely in accordance with current leases and permits.

DATES: Comments must be submitted on or before August 18, 2003.

ADDRESSES: Copies of the Final EA and Draft FNSI may be obtained by writing to Mr. Don Conlon, U.S. Army Corps of Engineers—Mobile District, Environmental Resources Branch, 109 St. Joseph St., Mobile, Alabama 36628–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Conlon via phone at (334) 690–2609 or by fax at (334) 690–2605.

SUPPLEMENTARY INFORMATION: While disposal of surplus property at Fort Dix is the Army's primary action, the EA also analyzes the potential environmental effects of redevelopment and reuse as a secondary impact by means of evaluating intensity-based reuse scenarios. The Army's preferred alternative for disposal of surplus real property at Fort Dix is encumbered disposal, with encumbrances pertaining to use restrictions, asbestos-containing material, lead-based paint, and utility dependencies.

A Notice of Intent declaring the Army's intent to prepare an EA for the disposal and reuse of surplus Fort Dix property was published in the **Federal Register** (60 FR 49264, September 22, 1995).

The EA and Draft FNSI are available for review at the Corps of Engineers, Mobile District.

Dated: July 14, 2003.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA(I&E).

[FR Doc. 03–18242 Filed 7–17–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR03–5–000]

Chevron Products Company, Complainant, v. SFPP, L.P., Respondent; Errata Notice

July 11, 2003.

On July 3, 2003, the Commission issued a Notice of Complaint (68 FR 41116) in the above-captioned proceeding. This Notice is corrected as follows:

(1) In the first line of the first paragraph the correct filing date of the complaint is July 2, 2003.

(2) The correct Comment Date is July 22, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18218 Filed 7–17–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–331–000]

EnergyNorth Natural Gas, Inc.; Notice of Application

July 14, 2003.

Take notice that on July 3, 2003, EnergyNorth Natural Gas, Inc. (EnergyNorth), 1260 Elm Street, Manchester, New Hampshire 03105, a subsidiary of KeySpan Corporation, filed in Docket No. CP03–331–0000, an application pursuant to section 7(f) of the Natural Gas Act (NGA) for a service area determination, a declaration that EnergyNorth qualifies as a local distribution company (LDC) and a waiver of the regulatory requirements under the NGA and the Natural Gas Policy Act (NGPA), all as more fully set forth in the application. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

EnergyNorth requests a service area determination to include its service area in New Hampshire as well as that of Colonial Gas Company (Colonial), also a subsidiary of KeySpan, across the state border in Massachusetts. EnergyNorth requests the expanded service area, in order to periodically access a new source of gas supply from Colonial. EnergyNorth states that the enlarged service area would enable it to enlarge, extend and interconnect its distribution facilities with those of Colonial without losing its status as a local distribution customer. EnergyNorth proposes to construct and operate interconnecting facilities consisting of a meter and 1,285 feet of 4-inch diameter distribution pipeline to connect its facilities with those of Colonial. EnergyNorth states that it meets the four criteria for a service area determination, that it is a local distribution company (LDC) serving customers within a single state, that it makes only incidental sales for resale, that its operations are regulated by the appropriate state authority, that it does not have an extensive distribution system and that its operations do not have a significant impact on neighboring distribution companies. EnergyNorth asserts that the service area determination would ensure against disruptions to EnergyNorth's customers in the event of decreases in pressure and would enhance the reliability of EnergyNorth's system. EnergyNorth explains that the proposed service area determination would not change EnergyNorth's services or operations. EnergyNorth also requests a declaration that it qualifies as an LDC for the purposes of section 311 of the NGPA and a waiver of all reporting and accounting requirements applicable to natural gas companies under the NGA and the NGPA.

Any questions regarding this amendment should be directed to Thomas O'Neill at (617)723–5512, or Kenneth T. Maloney at (202)223–8890.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: August 4, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18309 Filed 7–17–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–104–000]

FPL Energy Seabrook, LLC and Florida Power & Light Company; Notice of Filing

July 14, 2003.

Take notice that on July 7, 2003, FPL Energy Seabrook, LLC and Florida Power & Light Company tendered for filing with the Federal Energy Regulatory Commission (Commission), pursuant to section 203 of the Federal Power Act, a request for authorization to engage in an intra-corporate transfer of jurisdictional facilities whereby FPL Energy Seabrook, LLC will transfer its undivided interest in the interconnecting transmission facilities for Seabrook Station to its affiliate Florida Power & Light Company.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: July 28, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18311 Filed 7–17–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–105–000]

PacifiCorp and PPM Energy, Inc.; Notice of Filing

July 14, 2003.

Take notice that on July 8, 2003, PacifiCorp (PacifiCorp) and PPM Energy, Inc. (PPM Energy) (collectively Applicants) filed with the Federal Energy Regulatory Commission (Commission) an application, pursuant to section 203 of the Federal Power Act and part 33 of the Commission's Regulations, for an order disclaiming jurisdiction or, in the alternative, for an order authorizing an intracorporate reorganization whereby NA General Partnership (NAGP) will be merged into PacifiCorp Holdings, Inc. (PHI). As a result of the reorganization, NAGP will be removed from the chain of ownership between Scottish Power and Applicants. The separate existence of NAGP shall cease and PHI shall continue to exist as the surviving entity. Applicants will remain indirect subsidiaries of Scottish Power and direct subsidiaries of PHI. Applicants filed no Section 205 rate proceeding in this application, and state that the transaction will change only Applicants' internal upstream corporate structure, and will have no impact on competition, rates or regulation. Applicants request that the Commission disclaim jurisdiction over or approve the transaction as early as practicable.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: July 29, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18312 Filed 7–17–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–209–000]

Pinnacle West Energy Corporation Complainant, v. Nevada Power Company, Respondent; Notice of Complaint

July 11, 2003.

Take notice that on July 10, 2003, Pinnacle West Energy Corporation (Pinnacle West) tendered for filing with the Federal Energy Regulatory Commission (Commission), a Complaint Requesting Fast Track Processing against Nevada Power Company (Nevada Power) pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e and 825e, and Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206.

Pinnacle West alleges that Nevada Power has refused to honor Pinnacle West's request, pursuant to Section 17.7 of Nevada Power's Open-Access Transmission Tariff (OATT), to defer the commencement date of Pinnacle West's transmission service under Nevada Power's OATT.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date below. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The

Commission strongly encourages electronic filings.

Comment Date: July 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18217 Filed 7–17–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–35–000, *et al.*,]

Tennessee Gas Pipeline Company, Northern Natural Gas Company, Standards for Business Practices of Interstate Natural Gas Pipelines; Notice of Redocketing of Filings

July 14, 2003.

Take notice that on June 16, 2003, the North American Energy Standards Board (NAESB) filed its Progress Report on Pipeline Capacity Creditworthiness Standards Development that was docketed in Docket No. RM96–1–000. All subsequent comments relating to this report, including those filed in Docket Nos. GT02–35–000 and GT02–38-000, are being docketed in Docket No. RM96–1–000. These include: North American Energy Standards Board Progress Report on Pipeline Capacity Creditworthiness Standards Development (filed May 23, 2003); the Comments of EnCana Marketing (USA) Inc. (filed June 24, 2003); Supplement to North American Energy Standards Board Progress Report on Pipeline Capacity Creditworthiness Standards Development (filed June 25, 2003); Motion to Intervene and Preliminary Comments of Midland Cogeneration Venture, LP (June 27, 2003); and Comments of the KeySpan Delivery Companies (filed July 3, 2003).

These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link, under Docket No. RM96–1–00. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18315 Filed 7–17–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–328–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

July 14, 2003.

Take notice that on June 26, 2003, Transcontinental Gas Pipe Line Corporation (Transco), filed in Docket No. CP03–328–000 an application, in abbreviated form, pursuant to section 7(b) of the Natural Gas Act, as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission, for an order permitting and approving abandonment of a transportation and exchange service provided to The Brooklyn Union Gas Company (Brooklyn Union) and Dominion Transmission, Inc (DTI) under Transco's Rate Schedule X–99 and a transportation service provided to Brooklyn Union, as more fully set forth in the application which is on file with the Commission and open to public inspection.

In such application, Transco states that it entered into an interruptible transportation and exchange agreement with BrooklynUnion and DTI, on July 1, 1975, under which Transco transports gas on an interruptible basis for Brooklyn Union, now doing business as KeySpan Energy Delivery New York, on an interruptible basis and exchanges gas with DTI, successor to Consolidated Gas SupplyCorporation, under Rate Schedule X–99. Transco further states that it entered into an interruptible transportation agreement with Brooklyn Union on February 14, 1983, under which Transco transports gas, on an interruptible basis, for Brooklyn Union under Rate Schedule X–248.

In the instant application, Transco states that it seeks authorization to abandon both the transportation and exchange agreement with Brooklyn Union and DTI and the transportation agreement with Brooklyn Union, effective on the date of the Commission's order authorizing the abandonments, pursuant to BrooklynUnion's and DTI's election to terminate their service agreements.

Transco states that the Primary Term of the service agreement under Rate Schedule X–99 ended on September 24, 1976. Transco further states that by letter dated January 9, 2001, Brooklyn Union and DTI provided Transco sufficient notice to terminate the subject agreement under Rate Schedule X–99 as of the date of the Commission's order authorizing the abandonment of service. Transco indicates that the Primary Term of the service agreement under Rate Schedule X–248 ended on January 21, 1983. Transco explains that, by letter dated April 28, 2003, Brooklyn Union provided Transco sufficient notice to terminate the subject service agreement under Rate Schedule X–248 as of the date of the Commission's order authorizing the abandonment of service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal EnergyRegulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions and protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission'sWeb site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERCOnline Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: August 4, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18307 Filed 7–17–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–72–000]

Whiting Leasing LLC; Errata Notice

July 14, 2003.

On May 29, 2003, the Commission issued a Notice of Application for Commission Determination of Exempt Wholesale Generator Status in the above-captioned proceeding, 68 FR 33,390. The name of the applicant was incorrectly listed as Whiting Clean Energy, Inc. The correct name of the applicant is Whiting Leasing LLC. We

have incorporated this correction to this Errata Notice.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18313 Filed 7–17–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP03–33–000, CP03–35–000 and CP03–79–000]

Wyckoff Gas Storage Company, LLC; Notice of Public Meeting

July 14, 2003.

The staff of the Federal Energy Regulatory Commission will conduct a meeting with Wyckoff Gas Storage Company, LLC (Wyckoff) and any other interested persons to discuss a new proposal by Wyckoff to file an application for an exemption under section 7(c) of the Natural Gas Act to drill two confirmation wells at the location of its proposed Storage Project in Steuben County, New York.

Wyckoff's application for a certificate to construction and operate the Storage Project is pending in Docket No. CP03–33–000, *et al.* Wyckoff will seek exemption authority to drill the two confirmation wells for purposes of conducting various geologic tests to confirm the commercial feasability of developing its Storage Project in the target reservoirs. It proposes to ask the Commission to grant such authorization by the end of August 2003 so that it can commence drilling operations the first week of September 2003.

All interested parties may attend. Interested parties can meet staff and Wyckoff's representatives on July 21, 2003, at 10:00 a.m., in Room No. 62–26, at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

For further information, please contact the Office of External Affairs at (202) 208–1088.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18308 Filed 7–17–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–101–000, et al.]

Eagle Energy Partners, Inc., et al.; Electric Rate and Corporate Filings

July 10, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

[Docket No. EC03–101–000

1. Eagle Energy Partners, Inc., Eagle Energy Partners I, L.P.

Take notice that on July 3, 2003, Eagle Energy Partners, Inc. (Eagle Inc.) and Eagle Energy Partners I, L.P. (Eagle L.P.) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 203 of the Federal Power Act for authorization of the transfer of Eagle Inc.''s Rate Schedule FERC No. 1 to Eagle L.P.

Comment Date: July 24, 2003.

[Docket Nos. EC03–102–000 and ER03–1016–000]

2. The Cincinnati Gas & Electric Company, The Dayton Power and Light Company, Columbus and Southern Ohio Electric Company

Take notice that on July 1, 2003, The Cincinnati Gas & Electric Company (CG&E), The Dayton Power and Light Company (Dayton) and Columbus and Southern Ohio Electric Company (Columbus) jointly submitted certain joint transmission ownership agreements and amendments thereto, by and among CG&E, Dayton, and Columbus pursuant to sections 205 and 203 of the Federal Power Act.

Comment Date: July 22, 2003.

[Docket Nos. EC03–103–000 and ER03–1026–000]

3. PG&E Dispersed Generating Company, LLC

Take notice that on July 2, 2003, PG&E Dispersed Generating Company, LLC (PG&E Dispersed Gen) filed with the Federal Energy Regulatory Commission (Commission) an application for disposition of jurisdictional facilities under section 203 of the Federal Power Act. PG&E Dispersed Gen requests Commission approval to sell to American Municipal Power-Ohio, Inc. step-up transformers and interconnecting transmission lines associated with three natural-gas fired peaking combustion turbine generating facilities, each with a maximum nominal rated capacity of 49.5 MW, located in Ohio. PG&E Dispersed Gen states that it has also notified the Commission of its intention to terminate a related wholesale power sales contract with PG&E Energy Trading-Power, L.P., Service Agreement No. 1 under FERC Electric Tariff, Original Volume No. 1, effective date November 1, 2001 in Docket No. ER02–449, in connection with the proposed asset sale to AMP-Ohio. PG&E Dispersed Gen has requested a shortened comment period of two weeks.

Comment Date: July 23, 2003.

[Docket No. ER02–2014–012]

4. Entergy Services, Inc.,

Take notice that on July 7, 2003, Entergy Services, Inc., on behalf of the Entergy Operating Companies, Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively Entergy), filed a compliance filing in response to three Commission Orders (103 FERC ¶ 61,270, 103 FERC ¶ 61.271, 104 FERC ¶ 61,011) related to Entergy's Generator Operating Limits procedures. Entergy states that the compliance filing implements revisions to Attachment Q to the Entergy Open Access Transmission Tariff that were required by these orders.

Comment Date: July 28, 2003.

[Docket No. ER02–2330–016]

5. New England Power Pool and ISO New England Inc.

Take notice that on July 7, 2003, the New England Power Pool (NEPOOL) Participants Committee and ISO New England Inc. (ISO-NE) submitted for filing information related to transmission upgrades for Southwest Connecticut to receive socialized cost treatment, and an appropriate percentage of the costs of each project to be socialized, as well as additional explanation for the use of Real-Time Load Obligation Deviations to allocate Operating Reserve Charges in compliance with the Commission's Order, 103 FERC ¶ 61,304.

The NEPOOL Participants Committee and ISO-NE state that copies of these materials were sent to all persons identified on the service lists in the captioned proceedings, the NEPOOL Participants and the six New England state governors and regulatory commissions.

Comment Date: July 28, 2003.

[Docket No. ER03–386–004]

6. Southern Company Services, Inc.

Take notice that on July 7, 2003, Southern Company Services, Inc. (SCS), on behalf of Georgia Power Company,

made a compliance filing in accordance with the June 4, 2003, Federal Energy Regulatory Commission's Order, 103 FERC ¶ 61,279.

Comment Date: July 28, 2003.

[Docket Nos. ER03–608–003, ER00–2019–010 and ER01–819–005]

7. California Independent System Operator Corporation

Take notice that on July 7, 2003, the California Independent System Operator Corporation (ISO) tendered for filing in compliance with the Commission's Order of May 30, 2003, 103 FERC ¶ 61,260, (Order) in which the Commission acted on an amendment (Amendment No. 49) to the ISO Tariff. In the Order (at P25), the Commission required that the ISO submit a report identifying the Scheduling Coordinators who are not in compliance with the metering requirement as described in the ISO Tariff, the reasons for the non-compliance, and the anticipated date of compliance.

The ISO states it has served copies of this filing on the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, the Participating Transmission Owners under the ISO Tariff, all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff, and to all parties not among the foregoing on the restricted service list. The ISO also states that this filing will be posted on the ISO's Web site.

Comment Date: July 28, 2003.

[Docket Nos. ER03–932–001 and ER03–296–003]

8. Flying Cloud Power Partners, LLC

Take notice that on July 7, 2003, Flying Cloud Power Partners, LLC (Flying Cloud) and Heartland Wind LLC (Heartland Wind) amended its Notice of Change in Status for Approval of Market-Based Rate Authority, and Filing of Code of Conduct and Conforming Changes to Market-Based Rate Schedule filed with the Federal Energy Regulatory Commission on June 5, 2003. Flying Cloud and Hartland Wind state that the amendment reflects changes to the Rate Schedule to conform to Commission precedent and practice regarding affiliate transactions (*see* 101 FERC ¶ 61,331). Flying Cloud and Heartland Wind request a waiver of the 60-day notice and 120-day prefiling requirements under 18 CFR 35.3.

Comment Date: July 28, 2003.

[Docket No. ER03–960–001]

9. PG Power Sales One, L.L.C.

Take notice that on July 7, 2003, PG Power Sales One, L.L.C. (PG Power) tendered for filing an amendment to the Notice of Cancellation filed on June 16, 2003 in Docket No. ER03–960–000. PG Power states that it is proposing to amend the June 16, 2003 filing to remove the Notice of Cancellation submitted for PG Power. PG Power explains that it is proposing to void the Notice of Cancellation of its market-based tariff because it will continue to engage in the sale of electricity at wholesale and the previous Notice of Cancellation was erroneously filed.

Comment Date: July 28, 2003.

[Docket No. ER03–1035–000]

10. International Falls Power Company

Take notice that on July 7, 2003, International Falls Power Company (IFPC) filed with the Commission a Notice of Termination of IFPC's market-based rate tariff. IFPC requests waiver of the Commission's prior notice requirements so that the termination may be effective July 15, 2003.

Comment Date: July 28, 2003.

[Docket No. ER03–1036–000]

11. PJM Interconnection, L.L.C.

Take notice that on July 3, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing a revised interconnection service agreement and an interim interconnection service agreement that PJM has executed between ConocoPhillips Company and PPL Holtwood, L.L.C., respectively, and a Notice of Cancellation for an agreement that has been superseded.

PJM requests a waiver of the Commission's 60-day notice requirement to permit an effective date of June 4, 2003 for the agreements. PJM states that copies of this filing were served upon the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: July 24, 2003.

[Docket No. ER03–1037–000]

12. Entergy Services, Inc.

Take notice that on July 3, 2003, Entergy Services, Inc., (Entergy Services) on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., tendered for filing an Amendment to the Service Agreement for Network Integration Transmission Service and Network Operating Agreement between Entergy Services and the City of North Little Rock, Arkansas.

Comment Date: July 24, 2003.

[Docket No. ER03–1038–000]

13. Florida Power & Light Company

Take notice that on July 7, 2003, Florida Power & Light Company (FPL) tendered for filing with the Federal Energy Regulatory Commission pursuant to section 205 of the Federal Power Act an executed Interconnection and Operating Agreement between FPL and FPL Energy Seabrook, LLC (FPLE Seabrook) that sets forth the terms and conditions governing the interconnection of FPLE Seabrook's generating facility to FPL's 345 kV substation.

Comment Date: July 28, 2003.

[Docket No. ER03–1039–000

14. Ampro Energy Wholesale, Inc.

Take notice that on July 7, 2003, Ampro Energy Wholesale, Inc. (AmPro Wholesale) petitioned the Commission for acceptance of AmPro Wholesale Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

AmPro Wholesale states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. AmPro Wholesale also states that it is not in the business of generating or transmitting electric power.

Comment Date: July 28, 2003.

[Docket No. ER03–1040–000]

15. Trident Energy Marketing, Inc.

Take notice that on July 7, 2003, Trident Energy Marketing, Inc., submitted for filing a Notice of Cancellation of its market-based rate tariff and a request for relief of the EQR filing requirements.

Comment Date: July 28, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number

field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Secretary.

Magalie R. Salas,

Secretary.

[FR Doc. 03–16216 Filed 7–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–11–002, et al.]

Wisvest-Connecticut, LLC, et al.; Electric Rate and Corporate Filings

July 11, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

[Docket No. EL03–11–002]

1. Wisvest-Connecticut, LLC v. ISO New England Inc.

Take notice that on July 7, 2003, the New England Power Pool (NEPOOL) Participants Committee and ISO New England Inc. (ISO-NE) submitted for filing changes to NEPOOL Market Rule and Procedure No. 11 in compliance with the Commission's order in Wisvest Connecticut, LLC v. ISO New England, Inc., 103 FERC § 61,302 (2003).

The NEPOOL Participants Committee and ISO-NE state that copies of these materials were sent to all persons identified on the service lists in the captioned proceedings, the NEPOOL Participants and the six New England state governors and regulatory commissions.

Comment Date: August 6, 2003.

[Docket No. ER03–949–001]

2. Commonwealth Edison Company

Take notice that on July 8, 2003, Commonwealth Edison Company (ComEd), tendered for filing a proposed amendment to its FERC Electric Service Tariff, Second Revised Vol. No. 5. ComEd states that the proposed changes eliminate from Schedule C the reference to use of power flow models "updated by MAIN." ComEd also states that the proposed change simply identifies the power flow models as "updated."

ComEd states that the change is necessary because as PJM takes over determining Available Transfer Capability (ATC), a preliminary phase leading to ComEd's integration into PJM, the power flow models used to determine ATC in some instances may not be updated by MAIN.

ComEd asserts that instead, PJM increasingly will be performing the updates of the power flow models. ComEd states that the models will be the same ones used before integration into PJM, but they will be updated by PJM rather than MAIN as the integration proceeds.

ComEd states that copies of the filing were served upon the public utility's jurisdictional customers, the Illinois Commerce Commission, and interveners in this docket.

Comment Date: July 29, 2003.

[Docket No. ER03–1041–000]

3. Southern Company Services, Inc.

Take notice that on July 8, 2003, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia PowerCompany, Gulf Power Company, Mississippi Power Company, and SavannahElectric and Power Company (collectively Southern Companies), filed a Notice of Cancellation of Service Schedule A and Service Schedule GES of the Interchange Contract dated February 25, 1982 between Gulf States Utilities Company and Southern Companies (Southern Operating Companies' First Revised Rate Schedule FERC No. 59). SCS states that the cancellations were made pursuant to a bilateral amendment to the Interchange Contract.

Comment Date: July 29, 2003.

[Docket No. ER03–1042–000]

4. Midwest Independent Transmission System Operator, Inc.

Take notice that on July 8, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to section 205 of the Federal Power Act and Section 35.12 of the Commission's regulations, 18 CFR 35.12 , submitted for filing an unexecuted Interconnection and Operating Agreement among American Transmission Company LLC , Edison Sault Electric Company and the Midwest ISO.

Midwest ISO states that a copy of this filing was served on American Transmission Company LLC and Edison Sault Electric Company.

Comment Date: July 29, 2003.

[Docket No. ER03–1043–000]

5. Southern Company Services, Inc.

Take notice that on July 8, 2003, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, filed a Notice of Cancellation of the portions of the Interconnection Agreement dated May 5, 1980 between Alabama Electric Cooperative, Inc. and Alabama Power Company (Alabama Power Company's Rate Schedule FERC No. 145) that pertain to the supply of emergency service. SCS states that this cancellation was made pursuant to a bilateral amendment to the Interconnection Agreement.

Comment Date: July 29, 2003.

[Docket No. ER03–1044–000]

6. Midwest Independent Transmission System Operator, Inc.

Take notice that on July 8, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to section 205 of the Federal Power Act and Section 35.12 of the Commission's regulations, 18 CFR 35.12, submitted for filing an unexecuted Interconnection and Operating Agreement among American Transmission Company LLC, Wisconsin Electric Power Company d/b/a We Energies, and Midwest ISO.

Midwest ISO states that a copy of this filing was served on American Transmission Company LLC and Wisconsin Electric Power Company d/b/a We Energies.

Comment Date: July 29, 2003.

[Docket No. ER03–1045–000]

7. Southern Company Services, Inc.

Take notice that on July 8, 2003, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies), filed a revised Interim Agreement for Network Integration Transmission Service and Complementary Services between the Southeastern Power Administration (SEPA) and SCS, as agent for Southern Companies (Rate Schedule FERC No. 400). SCS states that the revised Interim Agreement provides that SEPA may allocate additional capacity and energy to certain of its customers and Southern Companies will schedule those additional resources to those customers.

Comment Date: July 29, 2003.

[Docket No. ER03–1046–000]

8. California Independent System

Take notice that on July 8, 2003, the California Independent System Operator Corporation (ISO) submitted an amendment (Amendment No. 54) to the ISO Tariff. The ISO states that the proposed Tariff changes and clarifications in Amendment No. 54 further the Real Time Imbalance Energy Market design elements in Phase 1 of the ISO's Comprehensive Market Design 2002 (MD02) initiative and complement the market design changes that were implemented on October 30, 2002 as part of MD02 Phase 1A. The ISO states that copies of Amendment No. 54 has been served upon the Public Utilities Commission of California, the California Energy Commission, the California Electricity Oversight Board, all entitles with effective ISO Scheduling Coordinator agreements, and all parties in the proceeding in Docket No. ER02–1656–000.

Comment Date: July 29, 2003.

[Docket No. ER03–1048–000]

9. Midwest Independent Transmission System Operator, Inc.

Take notice that on July 8, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to section 205 of the Federal Power Act and Section 35.12 of the Commission's regulations, 18 CFR 35.12, submitted for filing an unexecuted Interconnection and Operating Agreement among American Transmission Company LLC, Wisconsin Public Service Corporation and the Midwest ISO.

Midwest ISO states that a copy of this filing was served on American Transmission Company LLC and Wisconsin Public Service Corporation.

Comment Date: July 29, 2003.

[Docket No. ER03–1052–000]

10. The Green Power Connection

Take notice that on July 8, 2003, The Green Power Connection pursuant to Federal Power Act, 18 CFR 35.15 and 131.53, submitted for filing a Notice of Cancellation of its FERC market-based electric tariff filed in Docket No. ER97–3888.

The Green Power Connection states that copies of this filing have not been served on any party because it has not engaged in any sales of electric power or entered into any power or related contracts with any purchasers.

Comment Date: July 29, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18314 Filed 7–17–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF03–4–000]

Weaver's Cove Energy L.L.C. and Mill River Pipeline L.L.C.; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Weaver's Cove LNG Project, Request for Comments on Environmental Issues, and Notice of Joint Public Scoping Meeting

July 11, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of Weaver's Cove Energy L.L.C.'s and Mill River Pipeline L.L.C."s (collectively referred to as Weaver's Cove) proposed Weaver's Cove LNG Project in Fall River, Massachusetts. The proposed facilities would consist of liquefied natural gas (LNG) import terminal, storage, and vaporization facilities and one or more interconnecting pipeline. The Commission will use the EIS in its decision-making process to determine whether or not to authorize the project.

The Weaver's Cove LNG Project is in the preliminary design stage. At this time no formal application has been filed with the FERC. For this project, the FERC staff is initiating its National Environmental Policy Act (NEPA) review prior to receiving the application. The purpose of the NEPA Pre-filing Process is to involve interested stakeholders early in project planning and to identify and resolve issues before an application is filed with the FERC. A docket number (PF03–4–000) has been established to place information filed by Weaver's Cove and related documents issued by the Commission, into the public record.[1] Once a formal application is filed with the FERC, a new docket number will be established.

On May 2, 2003, the FERC staff participated in an interagency meeting in Fall River, Massachusetts to discuss the project and the environmental review process with Weaver's Cove and other key Federal and state agencies. These agencies included: the U.S. Army Corps of Engineers; the U.S. Coast Guard; the Massachusetts Department of Environmental Protection, Energy Facilities Siting Board, and Executive Office of Environmental Affairs; and the Rhode Island Coastal Resources Management Council and Department of Environmental Management. With this notice, we[2] are asking these and other Federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EIS. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies which would like to request cooperating status should follow the instructions for filing comments described later in this notice.

This notice is being sent to residences within 0.5 mile of the proposed LNG terminal site; landowners along the various pipeline routes under consideration; Federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; and local libraries and newspapers. We encourage government representatives to notify their constituents of this planned project and encourage them to comment on their areas of concern.

[1] To view information in the docket, follow the instructions for using the FERRIS link at the end of this notice.

[2] "We," "us," and "our" refer to the environmental staff of the Office of Energy Projects.

Some affected landowners may be contacted by a project representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. If so, the company should seek to negotiate a mutually acceptable agreement. In the event that the project is certificated by the Commission, that approval conveys the right of eminent domain for securing easements for the pipeline. Therefore, if easement negotiations fail to produce an agreement, the company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" is attached to this notice as appendix 1.[3] This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Weaver's Cove proposes to construct and operate an LNG import terminal and natural gas pipeline to import LNG and deliver an average of 400 million British thermal units per day (MMBtu/d), and a peak of 800 MMBtu/d to markets in the northeastern United States. The facilities would consist of:

- A pier and unloading facilities capable of receiving LNG tankers with a capacity of up to 145,000 cubic meters;
- One LNG storage tank with an capacity of 200,000 cubic meters (4.4 billion cubic feet of gas equivalent);
- Vaporization equipment and ancillary facilities;
- Truck loading facilities to deliver LNG to other facilities in the northeastern United States; and
- Two 24-inch-diameter pipelines, between 3 and 7 miles long, to interconnect with the Algonquin Gas Transmission Company pipeline system.[4]

A map depicting the proposed terminal site and the various pipeline routes under consideration is provided in appendix 2.[5]

Weaver's Cove is requesting approval to begin construction of the LNG facilities in the Fall of 2004. The approximate duration of construction of the terminal facilities would be 3 years. The duration of pipeline construction would be approximately 4 months. Weaver's Cove proposes to place the project in service in the Fall of 2007.

Land Requirements

The proposed LNG terminal would be on a 68-acre site zoned for industrial use on the Taunton River in Fall River, Massachusetts. The site has been formerly used as an oil refinery and a marine import terminal for petroleum products. The riverfront areas of the site are in a Designated Port Area as defined by the Massachusetts Coastal Zone Management plan.

The project would also require maintenance and improvement dredging of approximately 7 miles of the Taunton River Federal Navigation Channel and a turning basin to enable the LNG tankers to access the proposed site. The dredging would occur in Massachusetts and Rhode Island. The total volume of dredging is anticipated to be about 2,100,000 cubic yards. The dredged material would be disposed of in uplands at the terminal site or, if unsuitable for upland disposal, by either confined aquatic disposal cell, confined disposal, or ocean disposal methods.

The EIS Process

NEPA requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity, or an import authorization under Section 3 of the Natural Gas Act. NEPA also requires us to discover and address issues and concerns the public may have about proposals. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues and reasonable alternatives. By this notice, we are requesting agency and public comments on the scope of the issues to be analyzed and presented in the EIS. All scoping comments received will be considered during the preparation of the EIS. To ensure your comments are considered, please carefully follow the instructions in the public participation section of this notice.

Our independent analysis of the issues will be included in a draft EIS. The draft EIS will be mailed to Federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; affected landowners; other interested parties; local libraries and newspapers; and the Commission's official service list for this proceeding. A 45-day comment period will be allotted for review of the draft EIS. We will consider all comments on the draft EIS and revise the document, as necessary, before issuing a final EIS. In addition, we will consider all comments on the final EIS before we make our recommendations to the Commission.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations and routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of your comments for the attention of Gas Branch 1; and
- Reference Docket No. PF03–4–000 on the original and both copies.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. Therefore, the Commission encourages electronic filing of comments. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments you will need to create an account by clicking on "Login to File" and then "New User Account." You will be asked to select the type of filing you are making. This filing is considered a "Comment on Filing."

Public Scoping Meeting

In addition to or in lieu of sending written comments, we invite you to attend a public scoping meeting that we will conduct in conjunction with the Massachusetts Executive Office of Environmental Affairs. The location and time for this meeting is listed below:

July 29, 2003, 6 pm, Venus de Milo Restaurant, 75 GAR Highway, Swansea, Massachusetts 02777, (508) 678–3901

The public scoping meeting is designed to provide Federal, state, and local agencies, interested groups, affected landowners, and the general public with more detailed information and another opportunity to offer comments on the proposed project. Interested groups and individuals are encouraged to attend the meeting and to present comments on the environmental issues they believe should be addressed in the EIS. A transcript of the meeting will be made so that your comments will be accurately recorded.

Availability of Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208 FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*). Using the "FERRIS" link, select "General Search" from the FERRIS menu, enter the selected date range and "Docket Number" (*i.e.*, PF03–4–000), and follow the instructions. Searches may also be done using the phrase "Weaver's Cove" in the "Text Search" field. For assistance with access to FERRIS, the helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

In addition, the Commission now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to *http://www.ferc.gov/esubscribenow.htm*.

Finally, Weaver's Cove is in the process of establishing an Internet Web site for this project at *http://www.weaverscoveenergy.com*. The Web site will be available by July 31, 2003 and will include a description of the project, an overview map of the terminal site and pipeline routes, and a link for the public to submit comments on the project. Weaver's Cove will continue to update its Web site with information about the project, and will always accept comments.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18219 Filed 7–17–03; 8:45 am]

BILLING CODE 6717–01–P

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's Internet Web site (*http://www.ferc.gov*) at the "FERRIS" link or from the Commission's Public Reference and Files Maintenance Branch at (202) 502–8371. For instructions on connecting to FERRIS refer to the last page of this notice.

[4] Weaver's Cove has not yet identified its preferred route for the sendout pipelines. Three alternatives, all predominantly along existing rights-of-way, are currently under consideration.

[5] Requests for detailed maps of the facilities may be made to the company directly. Call or e-mail: local 508–678–5700, toll free 1–800–633–5700, or info@weaverscove.com (Web site will be available by July 31, 2003). Be as specific as you can about the location(s) of your area(s) of interest.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI03–4–000]

Renotice of Declaration of Intention and Soliciting Comments, Motions to Intervene, and Protests

July 14, 2003.

On July 2, 2003, the Commission issued a "Notice of Declaration of Intention and Soliciting Comments, Motions to Intervene, and Protests." In paragraph "f" at the end of the second line, it reads "Range 2 East." It should read Range 3 East. The comment date is now changed from August 4, 2003 in the July 2 Notice to August 13, 2003. For these reasons, this application is being renoticed.

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI03–4–000.

c. *Date Filed:* June 19, 2003.

d. *Applicant:* Scott Watterson.

e. *Name of Project:* Watterson Hydroelectric Project.

f. *Location:* The Watterson Hydroelectric Project would be located on Arbuckle Stream, in Morgan County near Morgan, Utah, at Section 18, Township 5 North, Range 3 East, Salt Lake Base and Meridian. The project will not occupy Federal lands.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Mr. Kenneth E. Gardner, P.E., P.L.S., Gardner Engineering, 5875 S. Adams Ave Parkway, Suite 200, Ogden, Utah 84405, telephone (801) 476–0202, Fax: (801) 476–0066; E-mail: *ken@gardnerengineering.net*.

i. *FERC Contact:* Any questions on this notice should be addressed to Patricia Gillis (202) 502–8735, or E-mail address: *patricia.gillis@ferc.gov*.

j. *Deadline for filing comments and/or motions:* August 13, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. Any questions, please contact the Secretary's Office. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov*.

Please include the docket number (DI03–4–000) on any comments or motions filed.

k. *Description of Project:* The proposed run-of-river Watterson Hydroelectric Project would consist of: (1) A diversion structure using a 2-foot-by-2-foot hydroscreen; (2) a 6-inch-diameter, 3,100-foot-long pipeline; (3) a Pelton-wheel turbine with a rated capacity of 12 kW, and an inverter which will store the power in batteries; and (4) appurtenant facilities. The project will not be connected to the local utility or any other power company, or transmission grid.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Web at *http://www.ferc.gov* using the "FERRIS" link, select "Docket#" and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments,

protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant.

If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18310 Filed 7–17–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Request, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

July 14, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–2194–020.

c. *Date filed:* June 30, 2003.

d. *Applicant:* FPL Energy Maine Hydro, LLC.

e. *Name of Project:* Bar Mills Hydroelectric Project.

f. *Location:* On the Saco River, in the towns of Buxton and Hollis, York County, Maine. This project would not use federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. F. Allen Wiley, Vice President, FPL Energy Maine Hydro LLC, 160 Capitol Street, Augusta, Maine 04330, (207) 623-8413.

i. *FERC Contact:* Blake Condo, *blake.condo@ferc.gov* (202) 502–8914.

j. *Cooperating Agencies:* We are asking Federal, state, and local agencies and Indian tribes with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request the cooperating status should follow the instructions for filing comments described in item k below.

k. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form an factual basis for complete analysis of the application on its merit, the resource agency, Indian tribe, or person must file a request for a study with the Commission no later than 60 days after the application filing and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* August 29, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filing. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link. After logging into the e-Filing system, select "Comment on Filing" from the Filing Type Selection screen and continue with the filing process."

m. The application is not ready for environmental analysis at this time.

n. Project Description: The Bar Mills Hydroelectric Project consists of the following existing facilities: (1) The 400-foot-long by 25-foot-high dam, with 6.75 foot-high flashboards, and a 90 to 200 foot wide by 725 foot long power canal; (2) the 5.3 mile long impoundment, which has a surface area of 263 acres at the normal full pond elevation of 148.5 feet above mean sea level; (3) a powerhouse containing two generating units with total installed generating capacity of 4.0 megawatts (MW); (4) appurtenant facilities. The dam and existing project facilities are owned by FPL Energy Maine Hydro LLC.

o. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "FERRIS" link-select "Docket #" and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676 or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

p. You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

q. With this notice, we are initiating consultation with the MAINE STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

r. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate. The Commission staff proposes to issue one environmental assessment rather than issue a draft and final EA. Comments, terms and conditions, recommendations, prescriptions, and reply comments, if any, will be addressed in an EA issued in early 2005.

Issue Acceptance or Deficiency Letter October 2003.

Issue Scoping Document March 2004.

Notice that application is ready for environmental analysisJune 2004.

Notice of the availability of the EA December 2004.

Ready for Commission decision on the applicationFebruary 2005.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18316 Filed 7–17–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

July 14, 2003.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision.

Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of prohibited and exempt communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Exempt:

Docket No.	Date filed	Presenter or requester
1. P–11659–000	7–8–03	Rob Klosowski.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18317 Filed 7–17–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7530–6]

EPA Science Advisory Board Staff Office; Request for Nomination of Members for the EPA Science Advisory Board (SAB), Clean Air Scientific Advisory Committee (CASAC), and the Advisory Council on Clean Air Compliance Analysis (COUNCIL)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency's Science Advisory Board (SAB) Staff Office is soliciting nominations for Members to serve on the EPA Science Advisory Board (SAB), the Clean Air Scientific Advisory Committee (CASAC), and the Advisory Council on Clean Air Compliance Analysis (COUNCIL). Individuals responding to this annual request for nominations will be considered for membership vacancies on these three Congressionally mandated Federal advisory committees. This process supplements other efforts to identify qualified candidates.

DATES: Nominations should be submitted in time to arrive no later than August 18, 2003.

FOR FURTHER INFORMATION CONTACT: To submit a hard copy of the form noted below (for those unable to submit the information in electronic form), please contact Ms. Diana Pozun, U.S. EPA Science Advisory Board Staff Office (Mail Code 1400A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (FedEx/Courier address: U.S. EPA SAB, Suite 6450, 1200 Pennsylvania Avenue, NW., Washington DC 20004), (202) 564–4544 (tel.), (202) 501–0323 (fax), or via email at *pozun.diana@epa.gov*.

For further information concerning this nomination process, please contact Mr. Robert Flaak, Acting Deputy Director for Management, U.S. EPA Science Advisory Board Staff Office, (202) 564–4546 (tel.), or via email at: *flaak.robert@epa.gov*.

SUPPLEMENTARY INFORMATION:

Background—The SAB (42 U.S.C. 4365), CASAC (42 U.S.C. 7409) and COUNCIL (42 U.S.C. 7612) are chartered Federal Advisory Committees that report directly to the EPA Administrator. The mission of these Federal advisory committees, as established by statute, is to provide independent scientific and technical peer review advice, consultation, and recommendations to the EPA Administrator on the technical bases for EPA actions. Additional information about these Federal Advisory Committee can be obtained on the SAB Web site (*http://www.epa.sab/gov*).

Members serve as Special Government Employees (SGEs) (40 CFR part 3, subpart F, or EPA Ethics Advisory 88–6 dated 7/6/88) and receive compensation, in addition to reimbursement at the Federal government rate for travel and per diem expenses while serving on the SAB, CASAC, and COUNCIL. SGEs are subject to certain ethical standards common to all Federal employees. In particular, prior to their appointment, SGEs are required to complete an information package, including a Confidential Financial Disclosure Report.

Expertise Sought—As part of the annual membership drive, the EPA SAB Staff Office is seeking nominations for nationally and internationally recognized non-Federal scientists, engineers, economists, and social scientists with demonstrated research and applied scientific experience and expertise in various disciplinary areas that address ecological and/or environmental/public health challenges, a multitude of stressors (*e.g.*, physical, biological and chemical agents and mixtures) impacting environmental media (*e.g.*, air, water, land), monitoring and characterizing sources of pollution, assessing risk to ecosystem and/or human health, prevention and risk management technologies, risk communication, environmental data quality, assessing environmental social economic values and cost-benefit analyses.

The selected experts will be appointed by the EPA Administrator to

serve on the CASAC, COUNCIL, the SAB Executive Committee, and/or the SAB's standing committees (*e.g.*, Drinking Water Committee, Ecological Processes and Effects Committee, Environmental Economics Advisory Committee, Environmental Engineering Committee, Environmental Health Committee, Integrated Human Exposure Committee, Radiation Advisory Committee, and Research Strategies Advisory Committee).

How to Apply—Any interested person or organization may nominate qualified persons to serve on the SAB. Individuals may self-nominate. Nominees should be qualified by scientific education, training, and experience to evaluate scientific, engineering and/or economics information on issues referred to and addressed by the SAB. Successful candidates have distinguished themselves professionally and should be available to invest the time and effort to advance the cause of the supporting the use of good science through the efforts of the SAB. Nominations should be submitted in electronic format (which is preferred over hard copy) through the *Form for Nominating Individuals to Panels of the EPA Science Advisory Board* provided on the SAB Web site. The form can be accessed through a link on the blue navigational bar on the SAB Web site, *http://www.epa.gov/sab/*. To be considered, all nominations should include the information requested on that form.

The nominating form requests contact information about the person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's resume; and a general biosketch of the nominee indicating education, expertise, past research, recent service on other advisory committees or with professional associations, and recent grant and/or contract support.

Anyone who has any question concerning any aspect of the nomination process may contact Mr Robert Flaak as indicated above in this FR notice. Anyone who is unable to submit nominations through the SAB Web site should contact Ms. Diana Pozun as indicated above in this FR notice. Non-electronic submissions must follow the same format and contain the same information as the electronic form.

The EPA Science Advisory Board Staff Office will acknowledge receipt of nominations. From the nominees identified by respondents to this **Federal Register** notice and through other sources, the SAB Staff Office will develop a list of recommended candidates to submit to the EPA Administrator for selection as Members.

The EPA SAB seeks the inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the issues facing the Agency. Specific criteria to be used in evaluating potential Members include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) absence of financial conflicts of interest; (c) scientific credibility and impartiality; (d) availability and willingness to serve; and (e) ability to work constructively and effectively in committees.

Those candidates ultimately chosen to serve as Members will be appointed as Special Government Employees. As a result, they will all be required to fill-out the "Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency" (EPA Form 3110–48). This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities as a Special Government Employee and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address: *http://www.epa.gov/sab/pdf/epaform3110-48.pdf*. This form should not be submitted as part of a nomination.

Dated: July 10, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–18157 Filed 7–17–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6642–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*

Weekly receipt of Environmental Impact Statements

Filed July 07, 2003 Through July 11, 2003

Pursuant to 40 CFR 1506.9.

EIS No. 030317, Final EIS, AFS, MI, Interior Wetlands Project, Timber Harvest, White Pine Trees Pruning, Growth System Adjustment, Wildlife Openings Creation and Maintenance and Transportation System Improvements, Hiawatha National Forest, Eastside Administrative Unit, Chippewa County, MI, Wait Period Ends: August 18, 2003, Contact: Martha Sjogren (906) 643–7900. Ext. 133. This document is available on the Internet at: (*http://www.fs.fed.us/r9/hiawatha*).

EIS No. 030318, Draft Supplement, AFS, NM, Agua/Caballos Timber Sale, Harvesting Timber and Managing Existing Vegetation, To Review New Information, Carson National Forest, EL Rito Ranger District, Taos County, NM, Comment Period Ends: September 2, 2003, Contact: Kurt Winchester (505) 581–4554. This document is available on the Internet at: *http://www.fs.fed.us/r3/carson/htm1_main/list_planning.htm1*.

EIS No. 030319, Final EIS, AFS, ID, Upper Bear Timber Sale Project, Fuel Reduction, Forest Vegetation and Roads Management, Payette National Forest, Council Ranger District, Adams County, ID, Wait Period End: August 18, 2003, Contact: Mary Farnsworth (208) 253–0100.

EIS No. 030320, Draft EIS, AFS, UT, North Rich Cattle Allotment, Proposes to Authorize Grazing, Implementation, Logan District, Wasatch-Cache National Forest, Cache and Rich Counties, UT, Comment Period Ends: September 2, 2003, Contact: Evelyn Sibbernsen (435) 755–3621.

EIS No. 030321, Draft EIS, AFS, NM, Bluewater Ecosystem Management Project, Proposes to Initiate Vegetation Treatments to Restore Ponderosa Pine and Pinon-Juniper Stands to a Desired Condition, Cibola National Forest, Mt. Taylor Ranger District, McKinley and Cibola Counties, NM, Comment Period Ends: September 2, 2003, Contact: Chuck Hagerdon (505) 287–8833.

EIS No. 030322, Draft EIS, NRC, SC, Generic—License Renewal of Nuclear Plants, Virgil C. Summer Nuclear Station, Supplement 15, Fairfield County, SC, Comment Period Ends: September 2, 2003, Contact: Gregory F. Suber (301) 415–1124.

EIS No. 030323, Draft EIS, IBR, CA, Programmatic EIS—Environmental Water Account Project, To Provide Water Management Strategy that Protects the At-Risk Native Delta-Dependent Fish Species and Improve Water Supply, CALFED Bay-Delta Program's, Endangered Species Act Section 7 and U.S. Corps Section 10 Permits, CA, Comment Period Ends: September 9, 2003, Contact: Ms. Sammie Cervantes (916) 978–5104.

EIS No. 030324, Final Supplement, COE, FL, Upper St. Johns River Basin and Related Areas, Central and Southern Florida Flood Control Project, Proposed Modifications to Project Features North of the Fellsmere Grade, To Preserve and Enhance Floodplain and Aquatic Habitats, Brevard County, FL, Wait Period Ends: August 18, 2003, Contact: Esteban Jimenez (904) 232–3442.

EIS No. 030325, Final EIS, AFS, CO, Missionary Ridge Burned Area Timber Salvage Project, Timber Harvesting, San Juan National Forest north of Durango, LaPlata County, CO, Wait Period Ends: August 18, 2003, Contact: David Dallison (970) 385–1253. This document is available on the Internet at: *http://www.fs.fed.us/r2/sanjuan/reading_room/planning and_nepa/nepa1.htm*.

EIS No. 030326, Final EIS, USN, NC, SC, VA, Introduction of F/A 18 E/F (Super Hornet) Aircraft, Replacing the F–14 (TOMCAT) and F/A–18 C/D (Hornet) Aircraft, Homebasing and Operation, Possible Homebase sites include Naval Air Station (NAS) Oceana, VA; Marine Corps Air Station (MCAS) Beaufort, SC and MCAS Cherry Point, Wait Period Ends: August 18, 2003, Contact: Fred Pierson (757) 322–4935.

EIS No. 030327, Draft EIS, FRC, CT, Housatonic River Hydroelectric Project, Application to Relicense Existing Licenses for Housatonic Project No. 2576–022 and the Falls Village Project No. 2597–019, Housatonic River Basin, Fairfield, New Haven and Litchfield Counties, CT, Comment Period Ends: September 2, 2003, Contact: Jack Duckworth (202) 502–6392. This document is available on the Internet at: *http://www.ferc.gov*.

EIS No. 030328, Draft EIS, NPS, MD, VA, PA, DC Chesapeake Bay Special Resource Study (SRS), To Conserve and Restore Chesapeake Bay, New Unit of the National Park System, MD, VA, PA, and DC. Comment Period Ends: September 17, 2003, Contact: Jonathan Doherty (410) 267–5725. This document is available on the Internet at: *http://www.chesapeakestudy.org*.

EIS No. 030329, Final EIS, AFS, ID, Middle Little Salmon Vegetation Management Project, Timber Stands Current Condition Improvements, Payette National Forest, New Meadows Ranger District, Adam County, ID, Wait Period Ends: August 18, 2003, Contact: Sylvia Clark (208) 347–0300. This document is available on the Internet at: *http://www.fs.fed.us/r4/payette/main.htm1*.

Amended Notices

EIS No. 030233, Draft EIS, FHW, PA, Woodhaven Road Project, To Relieve Congestion on Byberry Road between the Roosevelt Boulevard and Huntingdon Pike, Philadelphia, Bucks and Montgomery Counties, PA, Comment Period Ends: August 11, 2003, Contact: James A Cheatham (717) 221–3461. Revision of FR Notice Published on 5/23/2003: CEQ Comment Period Ending 7/11/2003 has been Extended to 8/11/2003.

EIS No. 030289, Final Supplement, COE, TX, OK, Red River Chloride Control Project, Authorization to Reduce the Natural Occurring Levels of Chloride in the Wichita River Only Portion, North, Middle and South Forks, Wichita River and Red River, Implementation, Tulsa District, Wichita County, TX, Wait Period Ends: July 28, 2003, Contact: David L. Combs (918) 669–7660. Revision of FR Notice Published on 6/27/2003: Correction to the Title.

Dated: July 15, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities

[FR Doc. 03–18289 Filed 7–17–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6642–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 4, 2003 (68 FR 16511).

Draft EISs

ERP No. D–AFS–K65249–CA Rating EC2, Stream Fire Restoration Project, Implementation, Plumas National Forest, Mt. Hough Ranger District, Plumas County, CA.

Summary: EPA expressed environmental concern that the output guidelines developed for Alternative C may be inconsistent with the overall management strategy embodied in the Sierra Nevada Forest Plan Amendment. EPA also expressed concern that the Forest Service has not identified road decommissioning opportunities as part of Alternatives B and C.

ERP No. D–AFS–L65423–ID Rating NS, Big Bend Ridge Vegetation Management Project and Timber Sale, Provision of Forest Products on a Sustained Yield Basis, Caribou-Targhee National Forest, Ashton/Island Park Ranger District, Fremont County, ID.

Summary: EPA Region 10 used a screening tool to conduct a limited review of this action. Based upon this screen, EPA does not foresee having any environmental objections to the proposed action. Therefore, EPA will not be conducting a detailed review.

ERP No. D–FHW–G40173–TX Rating EC2, Grand Parkway/TX–99 Improvement Project, I–10 to US 290, Funding, Right-of-Way Grant and U.S. Army COE Section 404 Permit Issuance, Harris County, TX.

Summary: EPA has environmental concerns with the DEIS and proposed action, specifically relating to air quality impacts and conformity issues. EPA is also concerned with jurisdictional wetland delineations and mitigation, particularly the applicants interpretation of Galveston District Corps of Engineers policy as well as recent SWANC decisions.

Final EISs

ERP No. F–AFS–J65338–UT Uinta National Forest Revised Land and Resource Management Plan, Implementation, Juab, Sanpete, Tooele, Utah and Wasatch Counties, UT.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–L39057–OR Rimrock Ecosystem Restoration Project, Promotion of Healthy and Sustainable Watershed Conditions, Implementation, Umatilla National Forest, Heppner Ranger District, Grant, Morrow and Wheeler Counties, OR.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–DOE–L09815–00 Fish and Wildlife Implementation Plan, Policy Directions for Fish and Wildlife Mitigation and Recovery, Implementation and Funding, Pacific Northwest, AZ, CA, ID, MT, NV, NM, OR, UT, WY and British Columbia.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–NRC–E05099–FL Generic EIS—License Renewal of Nuclear Plants for the St. Lucie Units 1 and 2, Supplement 11, NUREG–1437,

Implementation, Hutchinson Island, St. Lucie County, FL.

Summary: EPA has environmental concerns about some aspects of the project, but notes that the EIS indicates that the plant will continue radiological monitoring of effluents and the appropriate storage and disposition of radioactive waste during the license renewal period.

ERP No. F–USN–K52004–CA Advanced Amphibious Assault Vehicle (AAAV) Development, Replacement and Establishment, Implementation, Del Mar Basin Area of Marine Corps Base (MCB) Camp Pendelton, San Diego County, CA

Summary: No formal comment letter was sent to the preparing agency.

Dated: July 15, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–18290 Filed 7–17–03; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7529–3]

Science Advisory Board Staff Office; Notification of a Public Meeting Concerning Public Involvement in EPA Science Advisory Board (SAB) Activities and Announcement of a Public Comment Period on a Proposal to Reorganize the SAB

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office is inviting members of the public to attend a public meeting as part of its continued effort to be more effective in obtaining public input in the SAB activities. The SAB Staff Office is also announcing a three-week public comment period on a proposal to reorganize the SAB.

DATES: The public meeting will take place on August 5, 2003, 10 a.m. to 3 p.m., Eastern Daylight Time. Written comments on the proposed reorganization of the SAB may be submitted to Mr. Fred Butterfield at the address identified in the section **FOR FURTHER INFORMATION CONTACT** no later than August 18, 2003.

ADDRESSES: Information about the meeting location will be announced on the SAB Web site, *http://www.epa/sab* one week before the meeting and also may be obtained by contacting Ms. Delores Darden as listed in the section **FOR FURTHER INFORMATION CONTACT** below. The meeting will take place in the Washington, DC Metropolitan area.

FOR FURTHER INFORMATION CONTACT: For information about the public meeting and the agenda, please contact Mr. Robert Flaak, telephone/voice mail at (202) 564–4546, or via e-mail at *flaak.robert@epa.gov*. Members of the public who have questions about, want to request a paper copy of the proposed reorganization, or would like to submit comments on the reorganization proposal should contact Mr. Fred Butterfield, telephone/voice mail at (202) 564–4561, via e-mail at *butterfield.fred@epa.gov*, or at the mailing address indicated below. Members of the public who have logistical questions about the meeting described in this notice may contact Ms. Delores Darden, telephone/voice mail at 202–564–2282, via fax at: (202) 501–0582, via e-mail at *darden.delores@epa.gov*, or at the following mailing address: EPA Science Advisory Board, U.S. Environmental Protection Agency (1400A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (FedEx/Courier address: U.S. EPA SAB, Suite 6450, 1200 Pennsylvania Avenue, NW., Washington, DC 20004). General information concerning the SAB can be found on the EPA Web site at: *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Summary Information and Background Related to the Public Meeting

This public meeting is the second in a series of semiannual meetings that the EPA SAB Staff Office plans to hold with the public as part of its efforts to enhance effective public input as it continues to improve SAB policies and procedures. A description of the background for Staff Office meetings on public involvement in SAB activities can be found in the **Federal Register** notice published on September 5, 2002 (67 FR 56831–56832). At the August 5, 2003 meeting, the SAB Staff Office will provide a general update and take public comments on its planned efforts to improve policies and procedures at the SAB. One area of focus for discussions will be plans for developing a draft "Guide to Effective Public Participation in SAB Meetings and Report Development." The Staff Office will also address questions from the public concerning the proposal for reorganizing the SAB and hear public comments on the proposal.

Summary Information and Background Related to the Proposed Reorganization of the SAB

The SAB Staff Office is seeking public comments on a proposed organization of the SAB. The SAB Staff Office has worked extensively with the Reorganization Sub-Committee of the SAB Executive Committee and other EPA offices to develop this proposal. Background information on previous efforts to solicit public input concerning prospective SAB structural reorganization can be found in the **Federal Register** notice published on November 26, 2002 (67 FR 70729–70730). The Staff Office will consider public comments and consult with the SAB in making its final recommendations on the proposed reorganization to the EPA Administrator. The proposed SAB reorganization is available through the "Recent Additions" link on the EPA SAB Web site or can be obtained from Mr. Butterfield (for addresses see the **FOR FURTHER INFORMATION CONTACT** section above.)

The proposed reorganization is intended to enhance the ability of the SAB to carry out its critical mission more effectively. The Staff Office has identified three specific questions for public comment.

(a) Does the proposed reorganization appear to more effectively support the SAB mission in improving the way science is developed and used in environmental decision-making within EPA through its advisory role and peer review function, and does it appear to be flexible enough to support the SAB's mission in meeting future environmental challenges?

(b) Does the proposed reorganization appear to meet the SAB's goal of strengthening the independence of the SAB peer-review process and enhancing the quality of its peer review reports?

(c) If the proposed reorganization is approved, are there any major considerations that the SAB Staff Office should be aware of in planning for and implementing the proposed reorganization, especially in regard to facilitating effective public involvement in SAB processes?

Written comments on the proposed reorganization will be accepted until the date specified above. Written comments should be provided either in hard copy with original signature or electronic copy (acceptable file formats: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format), and may be sent to Mr. Butterfield at the mailing or e-mailing addresses provided above.

Dated: July 11, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–18156 Filed 7–17–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0245; FRL–7317–8]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2003–0245, must be received on or before August 18, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Marilyn Mautz, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6785; e-mail address: *mautz.marilyn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0245. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-

mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0245. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0245. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0245.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0245. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing an active ingredient not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing an Active Ingredient Not Included in Any Previously Registered Products

1. *File symbol*: 3125–LGA. *Applicant*: Bayer CropScience, P.O. Box 12014, 2 T.W. Alexander Dr., Research Triangle Park, NC 27709. *Product name*: Thiacloprid Technical. *Type of product*: Insecticide. *Active ingredient*: Thiacloprid ([3-[(6-chloro-3-pyridinyl)methyl]-2-thiazolidinylidene]cyanamide) at 97%. *Proposed classification/Use*: None. For the formulation of insecticides.

2. *File symbol*: 3125–LGI. *Applicant*: Bayer CropScience. *Product name*: Calypso 70 WG. *Type of product*: Insecticide. *Active ingredient*: Thiacloprid at 70%. *Proposed classification/Use*: None. For insect control on cotton and pome fruits.

3. *File symbol*: 3125–LGT. *Applicant*: Bayer CropScience. *Product name*: Calypso 4 Flowable. *Type of product*: Insecticide. *Active ingredient*: Thiacloprid at 40.4%. *Proposed classification/Use*: None. For insect control on cotton and pome fruits.

4. *File symbol*: 66330–GI. *Applicant*: Arvesta Coporation, 100 First Street, Suite 1700, San Francisco, CA 94105. *Product name*: Kanemite 15 SC. *Type of product*: Insecticide. *Active ingredient*: Acequinocyl (3-dodecyl-1,4-dihydro-1,4-dioxo-2-naphthyl-acetate) at 15.8%. *Proposed classification/Use*: None. For insect control on ornamental plants; almonds; pistachios; citrus fruits; pome fruits; and strawberries.

5. *File symbol*: 66330–GO. *Applicant*: Arvesta Corporation. *Product name*: Acequinocyl Technical. *Type of product*: Insecticide. *Active ingredient*: Acequinocyl) at 96.8%. *Proposed classification/Use*: None. For the formulation of insecticides.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: July 9, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 03–18304 Filed 7–17–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0197; FRL–7311–4]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits (EUPs) to the following pesticide applicants. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: For additional information contact the designated contact person for the EUP listed in Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0197. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

C. Contact Persons

For additional information contact the designated contact person for the EUP listed in the table below:

Contact person	Telephone number/e-mail address	Mailing address	EUP number
Dani Daniel	(703) 305–5409; daniel.dani@epa.gov	Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., Washington, DC 20460	100–EUP–110
John Hebert	(703) 308–6249; hebert.john@epa.gov	Do.	71715–EUP–2
Dan Kenny	(703) 305–7546; kenny.dan@epa.gov	Do.	352–EUP–167
Susan L. Stanton	(703) 305–5218; stanton.susan@epa.gov	Do.	70341–EUP–2 70341–EUP–3
Joseph Tavano	(703) 305–6411; tavano.joseph@epa.gov	Do.	100–EUP–112 100–EUP–113

II. EUPs

EPA has issued the following EUPs:

1. *100–EUP–110.* Amendment. Syngenta Crop Protection, Inc., P.O. Box 18300, Greenboro, NC 27419–8300. In the **Federal Register** of February 15, 2002 (67 FR 7163) (FRL–6823–5), EPA issued an EUP for thiamethoxam to Syngenta Crop Protection, Inc. The original issuance allowed 120.8 pounds of the insecticide thiamethoxam to be used on 1,230 sq. ft. around 615 structures over a period of 3 years to evaluate the control of termites and other nuisance pests in the States of Alabama, Arizona, California, Florida, Georgia, Hawaii, Kentucky, Louisiana, Mississippi, Nebraska, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia. This amendment will allow for additional use sites, lower the count to 128 structures on 2,000 sq. ft. using 160 pounds of the insecticide. The program is now authorized in the States of Alabama, Arkansas, Arizona, California, Florida, Georgia, Hawaii, Indiana, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Nebraska, New Jersey, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, and Virginia. The EUP is effective from April 30, 2002 to October 30, 2005.

2. *100–EUP–112.* Issuance. Syngenta Crop Protection, 410 Swing Road, Greensboro, NC 27419–8300. This EUP allows the use of 74 pounds active ingredient of the insecticide Lufenuron around 125 structures to be used as an outdoor in-ground termite bait. The program is authorized in the States of Alabama, Arizona, Arkansas, California, Florida, Georgia, Hawaii, Indiana, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Nebraska, Nevada, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Texas, and Virginia. The EUP is effective from April 3, 2003 to April 3, 2006.

3. *100–EUP–113.* Issuance. Syngenta Crop Protection, 410 Swing Road, Greensboro, NC 27419–8300. This EUP allows the use of 1 pound active ingredient of the insecticide Lufenuron around 25 structures to be used as an above ground termite bait. The program is authorized only in the States of Arizona, California, Florida, Georgia, Hawaii, Louisiana, Ohio, South Carolina, and Texas. The EUP is effective from May 7, 2003 to May 7, 2006.

4. *352–EUP–167.* Issuance. E. I. Dupont de Nemours and Company, P.O. Box 30, Newark, DE 19714. This EUP allows the use of 450 pounds of the insecticide Dupont Avaunt, containing 135 pounds of the active ingredient indoxacarb on 300 acres of peaches to evaluate the control of the Oriental fruit moth and plum curculio. The program is authorized only in the States of Georgia, Michigan, New Jersey, Pennsylvania, South Carolina, and West Virginia. The EUP is effective from May 2, 2003 to May 2, 2005.

5. *70341–EUP–2.* Issuance. IPM Technologies, Inc., 4134 North Vancouver Avenue #105, Portland, OR 97217. This EUP allows the use of 300 pounds of the insecticide Last Call PLR, containing 18 pounds of the active ingredient permethrin and 4.8 pounds of a pheromone blend on 68 acres of apples to evaluate the control of Pandemis leafroller moth. The program is authorized only in the State of Washington. The EUP is effective from May 15, 2003 to May 14, 2004.

6. *70341–EUP–3.* Issuance. IPM Technologies, Inc., 4134 North Vancouver Avenue #105, Portland, OR 97217. This EUP allows the use of 300 pounds of the insecticide Last Call OBLR, containing 18 pounds of the active ingredient permethrin and 4.8 pounds of a pheromone blend on 68 acres of apples to evaluate the control of Oblique banded leafroller moth. The program is authorized only in the State of Washington. The EUP is effective from May 15, 2003 to May 14, 2004.

7. *71715–EUP–2.* Issuance. Tonnie L. C. Casey, Kamehameha Schools, 78–6831 Alii Drive, Suite 232, Kailua-Kona, HI 96740. This EUP allows the use of 16,000 pounds of the rodenticide Eaton's Bait Pellet Rodenticide with Fish Flavorizer, containing 80 pounds of the active ingredient diphacinone on 800 acres of forested ranchland to evaluate the control of invasive rodents and mongooses. The program is authorized only in the State of Hawaii. The EUP is effective from May 6, 2003 to May 6, 2004.

Authority: 7 U.S.C. 136c.

List of Subjects

Environmental protection, Experimental use permits.

Dated: July 1, 2003.

Debra Edwards

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 03–18318 Filed 7–17–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0027; FRL–7189–8]

National Advisory Committee for Acute Exposure Guideline Levels (AEGLs) for Hazardous Substances; Proposed AEGL Values

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) is developing AEGLs on an ongoing basis to provide Federal, State, and local agencies with information on short-term exposures to hazardous chemicals. This notice provides AEGL values and executive summaries for 10 chemicals for public review and comment. Comments are welcome on both the AEGL values in this notice and the technical support documents placed in the public version of the official docket for these 10 chemicals.

DATES: Comments, identified by docket ID number OPPT–2002–0027, must be received on or before August 18, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

For technical information contact: Paul S. Tobin, Designated Federal Officer (DFO), Office of Pollution Prevention and Toxics (7406M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8557; e-mail address: *tobin.paul@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the general public to provide an opportunity for review and comment on "Proposed" AEGL values and their supporting scientific rationale. This action may be of particular interest to anyone who may be affected if the AEGL values are adopted by government agencies for emergency planning, prevention, or response programs, such as EPA's Risk Management Program under the Clean Air Act and Amendments Section 112r. It is possible that other Federal agencies besides EPA, as well as State and local agencies and private organizations, may adopt the AEGL values for their programs. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0027. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution

Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPPT–2002–0027. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2002–0027. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2002–0027. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside

of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS) provided notice in the **Federal Register** of October 31, 1995 (60 FR 55376) (FRL–4987–3) of the establishment of the NAC/AEGL Committee with the stated charter objective as "the efficient and effective development of AEGLs and the preparation of supplementary qualitative information on the hazardous substances for federal, state, and local agencies and organizations in the private sector concerned with [chemical] emergency planning, prevention, and response." The NAC/AEGL Committee is a discretionary Federal advisory committee formed with the intent to develop AEGLs for chemicals through the combined efforts of stakeholder members from both the public and private sectors in a cost-effective approach that avoids duplication of efforts and provides uniform values, while employing the most scientifically sound methods available. An initial priority list of 85 chemicals for AEGL development was published in the **Federal Register** of May 21, 1997 (62 FR 27734) (FRL–5718–9). This list is intended for expansion and modification as priorities of the stakeholder member organizations are further developed. While the development of AEGLs for chemicals are currently not statutorily based, at lease one rulemaking references their planned adoption. The Clean Air Act and Amendments Section 112(r) Risk Management Program states, "EPA recognizes potential limitations associated with the Emergency Response Planning Guidelines and Level of Concern and is working with other agencies to develop AEGLs. When these values have been developed and peer-reviewed, EPA intends to adopt them, through rulemaking, as the toxic endpoint for substances under this rule (see 61 FR 31685)." It is believed that other Federal and State agencies and private organizations will also adopt AEGLs for chemical emergency programs in the future.

B. Characterization of the AEGLs

The AEGLs represent threshold exposure limits for the general public and are applicable to emergency exposure periods ranging from 10 minutes to 8 hours. AEGL-2 and AEGL-3 levels, and AEGL-1 levels as appropriate, will be developed for each of five exposure periods (10 and 30 minutes, 1 hour, 4 hours, and 8 hours) and will be distinguished by varying degrees of severity of toxic effects. It is believed that the recommended exposure levels are applicable to the general population including infants and children, and other individuals who may be sensitive and susceptible. The AEGLs have been defined as follows:

AEGL-1 is the airborne concentration (expressed as parts per million (ppm) or milligram/meter cubed (mg/m3) of a substance above which it is predicted that the general population, including susceptible individuals, could experience notable discomfort, irritation, or certain asymptomatic, non-sensory effects. However, the effects are not disabling and are transient and reversible upon cessation of exposure.

AEGL-2 is the airborne concentration (expressed as ppm or mg/m3) of a substance above which it is predicted that the general population, including susceptible individuals, could experience irreversible or other serious, long-lasting adverse health effects, or an impaired ability to escape.

AEGL-3 is the airborne concentration (expressed as ppm or mg/m3) of a substance above which it is predicted that the general population, including susceptible individuals, could experience life-threatening health effects or death.

Airborne concentrations below the AEGL-1 represent exposure levels that could produce mild and progressively increasing odor, taste, and sensory irritation, or certain non-symptomatic, non-sensory effects. With increasing airborne concentrations above each AEGL level, there is a progressive increase in the likelihood of occurrence and the severity of effects described for each corresponding AEGL level. Although the AEGL values represent threshold levels for the general public, including sensitive subpopulations, it is recognized that certain individuals, subject to unique or idiosyncratic responses, could experience the effects described at concentrations below the corresponding AEGL level.

C. Development of the AEGLs

The NAC/AEGL Committee develops the AEGL values on a chemical-by-chemical basis. Relevant data and information are gathered from all known sources including published scientific literature, State and Federal agency publications, private industry, public data bases, and individual experts in both the public and private sectors. All key data and information are summarized for the NAC/AEGL Committee in draft form by Oak Ridge National Laboratories together with "draft" AEGL values prepared in conjunction with NAC/AEGL Committee members. Both the "draft" AEGLs and "draft" technical support documents are reviewed and revised as necessary by the NAC/AEGL Committee members prior to formal NAC/AEGL Committee meetings. Following deliberations on the AEGL values and the relevant data and information for each chemical, the NAC/AEGL Committee attempts to reach a consensus. Once the NAC/AEGL Committee reaches a consensus, the values are considered "Proposed" AEGLs. The Proposed AEGL values and the accompanying scientific rationale for their development are the subject of this notice.

The NAC/AEGL Committee publishes proposed AEGL values and the accompanying scientific rationale for their development for 10 hazardous substances. These values represent the sixth set of exposure levels proposed and published by the NAC/AEGL Committee EPA published the first "Proposed" AEGLs for 12 chemicals from the initial priority list in the **Federal Register** of October 30, 1997 (62 FR 58840–58851) (FRL–5737–3); for 10 chemicals in the **Federal Register** of March 15, 2000 (65 FR 14186–14196) (FRL–6492–4); for 14 chemicals in the **Federal Register** of June 23, 2000 (65 FR 39263–39277) (FRL–659–2); for 7 chemicals in the **Federal Register** of December 13, 2000 (65 FR 77866–77874) (FRL–6752–5) for 18 chemicals in the **Federal Register** of May 2, 2001 (66 FR 21940–21964) (FRL–6776–3); and for 8 chemicals in the **Federal Register** of February 15, 2002 (67 FR 7164–7176) (FRL–6815–8) in order to provide an opportunity for public review and comment. In developing the proposed AEGL values, the Committee has followed the methodology guidance Guidelines for Developing Community Emergency Exposure Levels for Hazardous Substances, published by the National Research Council of the National Academy of Sciences (NAS) in 1993. The term Community Emergency Exposure Levels (CEELS) is synonymous with AEGLs in every way. The NAC/AEGL Committee has adopted the term Acute Exposure Guideline Levels to better connote the broad application of the values to the population defined by the NAS and addressed by the NAC/AEGL Committee. The NAC/AEGL Committee invites public comment on the proposed AEGL values and the scientific rationale used as the basis for their development.

Following public review and comment, the NAC/AEGL Committee will reconvene to consider relevant comments, data, and information that may have an impact on the NAC/AEGL Committee's position and will again seek consensus for the establishment of Interim AEGL values. Although the Interim AEGL values will be available to Federal, State, and local agencies and to organizations in the private sector as biological reference values, it is intended to have them reviewed by a subcommittee of the NAS. The NAS subcommittee will serve as a peer review of the Interim AEGLs and as the final arbiter in the resolution of issues regarding the AEGL values, and the data and basic methodology used for setting AEGLs. Following concurrence, "Final" AEGL values will be published under the auspices of the NAS.

D. Use of Human Data

The NAC/AEGL Program is working to ensure that emergency responders and risk managers in this country and abroad are armed with vital information they need to protect the public and themselves from harm in the event of chemical accidents or homeland security emergencies. Because of the serious nature of chemical emergency situations, it is essential that involved personnel have access to the most comprehensive and realistic assessments of human health hazards posed by released chemicals. Under estimation of human health hazard would not be protective, while over estimation might suggest a larger than necessary response zone. The Department of Army and Federal Emergency Management Agency Chemical Stockpile Emergency Preparedness Program (CSEPP), for example, has adopted, as outlined in CSEPP Policy Paper Number 20, AEGLs for sulfur mustard and nerve agents for use in CSEPP community emergency planning and response activities "to prevent or minimize exposures above AEGL-2, above which some temporary but potentially escape-impairing effects could occur." Thus, with the application of the procedures discussed in this unit, the AEGL Program recognizes the importance of considering all available domestic and international test data, both animal and human, to determine threshold levels of harm for a range of exposure scenarios critical to those at the front line in defending public health.

The process for development of AEGL values incorporates essential scientific and ethical considerations posed by the possible use of research with human subjects. All human studies that were used as key or supporting evidence to derive AEGL values were judged acceptable for use according to ethical considerations detailed in the Standing Operating Procedures for Developing Acute Exposure Guideline Levels for Hazardous Substances, Subcommittee on Acute Exposure Guideline Levels, National Research Council, *National Academy Press*, 2001, p. 53. The SOP states "The NAC/AEGL Committee is dependent upon existing clinical, epidemiologic, and case report studies published in the literature for data on humans. Many of these studies do not necessarily follow current guidelines on ethical standards that require effective, documented, informed consent from participating human subjects. Further, recent studies that followed such guidelines may not include that fact in the publication. Although human data may be important in deriving AEGL values that protect the general public, utmost care must be exercised to ensure first of all that such data have been developed in accordance with ethical standards. No data on humans known to be obtained through force, coercion, misrepresentation, or any other such means will be used in the development of AEGLs. The NAC/AEGL Committee will use its best judgment to determine whether the human studies were ethically conducted and whether the human subjects were likely to have provided their informed consent. Additionally, human data from epidemiologic studies and chemical accidents may be used. However, in all instances described here, only human data, documents, and records will be used from sources that are publicly available or if the information is recorded by the investigator in such a manner that subjects cannot be identified directly or indirectly. These restrictions on the use of human data are consistent with the 'Common Rule' published in the Code of Federal Regulations (Protection of Human Subjects, 40 CFR 26, 2000)." Additionally, EPA has recently asked the NAC/AEGL Committee to add an explicit documentation step early in the AEGL development process that the studies proposed for consideration have been consistent with the Program's Standing Operating Procedures (SOPs).

III. List of Chemicals

On behalf of the NAC/AEGL Committee, EPA is providing an opportunity for public comment on the AEGLs for the 10 chemicals identified in Table 1 of this unit.

A. Proposed AEGL Chemical Table

TABLE 1.—10 CHEMICALS FOR PROPOSED AEGLS

CAS No.	Chemical name
75–86–5	Acetone cyanohydrin
7664–41–7	Ammonia
7726–95–6	Bromine
79–11–8	Chloroacetic acid
7782–41–4	Fluorine
70892–10–3	Jet Fuel 8
78–93–3	Methyl ethyl ketone
10025–87–3	Phosphorus oxychloride
7719–12–2	Phosphorus trichloride

TABLE 1.—10 CHEMICALS FOR PROPOSED AEGLS—Continued

CAS No.	Chemical name
1330–20–7	Xylenes

B. Executive Summaries

The following are executive summaries from the chemical specific technical support documents (which may be obtained as described in Unit I.B. and III.) that support the NAC/AEGL Committee's development of AEGL values for each chemical substance. This information provides the following information: A general description of each chemical, including its properties and principle uses; a summary of the rationale supporting the AEGL-1, 2, and 3 concentration levels; a summary table of the AEGL values; and a listing of key references that were used to develop the AEGL values. More extensive toxicological information and additional references for each chemical may be found in the complete technical suppport documents. Risk managers may be interested to review the complete technical support document for a chemical when deciding issues related to use of the AEGL values within various programs.

1. *Acetone cyanohydrin*—i. *Description.* Acetone cyanohydrin is a colorless to yellowish liquid with a characteristic bitter almond odor due to the presence of free HCN. The major use of acetone cyanohydrin is in the production of α-methacrylic acid and its esters; the latter are used for the production of plexiglass. Further uses of acetone cyanohydrin are in the production of acrylic esters, polyacrylic plastics, and synthetic resins as well as in the manufacture of insecticides, pharmaceuticals, fragances, and perfumes. Acetone cyanohydrin decomposes spontaneously to acetone and hydrogen cyanide; this process is catalyzed by heat and contact with water (especially under alkaline conditions).

Fatal cases and life-threatening poisonings in workers have been described after accidental inhalation, skin contact, and oral uptake. Initial symptoms following mild exposure to acetone cyanohydrin are predominantly cardiac palpitation, headache, weakness, dizziness, nausea, vomiting, and nose, eye, throat, and skin irritation. The systemic toxicity of acetone cyanohydrin is caused by free cyanide ions and is primarily due to complex formation with the iron moiety in the tissue enzyme ferri cytochrome c oxidase or cytochrome a_3. The blockage of the electron transport system of mitochondria results in inhibition of oxygen utilization and causes tissue hypoxia and cellular and tissue destruction.

Four studies exposed rats repeatedly to acetone cyanohydrin concentrations of about 10, 30, and 60 ppm for 6 hours/day, 5 days/week for a total of 4 weeks (Monsanto Co., 1986a; using groups of 10 male and 10 female rats), 10 weeks (Monsanto Co., 1982b; using groups of 15 male rats) and 14 weeks (Monsanto Co., 1986b; using groups of 15 male and 15 female rats) or for 6 hours/day for 21 days (Monsanto Co., 1982c; using groups of 15 female rats). Death was observed at 60 ppm after the first exposure in 3 animals of the Monsanto Co. (1986a) study, but not in subsequent exposures or in the other studies at a similar exposure concentration. Preceding death, respiratory distress, prostration, convulsions, and tremors were observed. In all studies, exposure to 60 and 30 ppm caused signs of irritation (red nasal discharge, clear nasal discharge, perioral wetness, encrustations) during the first and subsequent weeks of exposure. At 10 ppm, red nasal discharge was not observed in one study (Monsanto Co., 1986a); its incidence was not increased compared to control group in two studies (Monsanto Co., 1982b; 1982c) and increased compared to the control group in the fourth study (Monsanto Co., 1986b). No other effects were reported in these four studies.

The AEGL-1 was based on a repeated exposure study in rats in which a concentration of 9.2 ppm for 6 hours/day, 5 days/week for 4 weeks did not result in red nasal discharge (Monsanto Co., 1986a). An uncertainty factor of 3 was applied for interspecies variability because the lowest-observed-effect-level (LOEL) for irritation in humans exposed to cyanide at the workplace is about 6–10 ppm cyanide (El Ghawabi et al., 1975), which is a factor of about 3 below the irritation threshold of acetone cyanohydrin in rats (about 30 ppm) and because a multiple exposure study was used for the derivation of AEGL values. An uncertainty factor of 3 was applied for intraspecies variability because decomposition of acetone cyanohydrin does not involve enzyme-catalyzed steps and the binding to evolutionary conservative iron-containing proteins/enzymes, i.e., the target protein cytochrome c oxidase, is unlikely to differ substantially between individuals. A modifying factor of 2 was applied due to the lack of more adequate and supporting data for the derivation of AEGL-1 values. The exposure duration-specific values were derived by time scaling according to the dose-response regression equation $C^n \times t = k$, using the default of n = 3 for shorter exposure periods and n = 1 for longer exposure periods, due to the lack of suitable experimental data for deriving the concentration exponent. For the 10-minute AEGL-1 the 30-minute value was applied because the derivation of AEGL values was based on a long experimental exposure period and no supporting studies using short-exposure periods were available for characterizing the concentration-time-response relationship.

The AEGL-2 was based on a repeated exposure study in rats in which a concentration of 29.9 ppm for 6 hours/day, 5 days/week for 4 weeks did not result in respiratory distress (red nasal discharge as a sign of irritation was observed during the first and subsequent weeks of exposure) (Monsanto Co., 1986a). An uncertainty factor of 3 was applied for interspecies variability because repeated exposure of humans at the workplace to cyanide concentrations only about 3-fold lower than the lethality threshold of about 60 ppm acetone cyanohydrin in rats did not lead to life-threatening or irreversible health effects and because a multiple exposure study was used for the derivation of AEGL values. An uncertainty factor of 3 was applied for intraspecies variability because decomposition of acetone cyanohydrin does not involve enzyme-catalyzed steps and the binding to evolutionary conservative iron-containing proteins/enzymes, i.e., the target protein cytochrome c oxidase, is unlikely to differ substantially between individuals. The exposure duration-specific values were derived by time scaling according to the dose-response regression equation $C^n \times t = k$, using the default of n = 3 for shorter exposure periods and n = 1 for longer exposure periods, due to the lack of suitable experimental data for deriving the concentration exponent. For the 10-minute AEGL-2 the 30-minute value was applied because the derivation of AEGL values was based on a long experimental exposure period and no supporting studies using short-exposure periods were available for characterizing the concentration-time-response relationship.

For the derivation of AEGL-3 values, it was taken into account that:

a. Acetone cyanohydrin decomposes spontaneously into hydrogen cyanide and acetone,

b. The decomposition of acetone cyanohydrin is accelerated by heat and water,

c. The systemic toxic effects of acetone cyanohydrin are caused by free cyanide ions, and

d. Hydrogen cyanide has a far higher vapor pressure than acetone cyanohydrin.

From these facts it was concluded that with every exposure to acetone cyanohydrin a concomitant exposure to hydrogen cyanide will occur. It therefore seemed reasonable to apply the AEGL-3 values (on a ppm basis) derived for hydrogen cyanide to acetone cyanohydrin. This procedure is supported by a close similarity of acetone cyanohydrin and hydrogen cyanide regarding lethal effects in rats exposed for 6 hours.

The proposed AEGL values are listed in Table 2 of this unit.

TABLE 2.—SUMMARY TABLE OF PROPOSED AEGL VALUES FOR ACETONE CYANOHYDRIN[A]

Classification	10-minutes	30-minutes	1-hour	4-hours	8-hours	Endpoint (Reference)
AEGL-1 (Nondisabling)	1.1 ppm (3.9 mg/m^3)	1.1 ppm (3.9 mg/m^3)	0.84 ppm (2.9 mg/m^3)	0.53 ppm (1.9 mg/m^3)	0.35 ppm (1.2 mg/m^3)	No red nasal discharge in rats (Monsanto Co., 1986a)
AEGL-2 (Disabling)	6.8 ppm (24 mg/m^3)	6.8 ppm (24 mg/m^3)	5.4 ppm (19 mg/m^3)	3.4 ppm (12 mg/m^3)	2.2 ppm (7.7 mg/m^3)	No respiratory distress in rats (Monsanto Co., 1986a)
AEGL-3 (Lethal)	27 ppm (95 mg/m^3)	21 ppm (74 mg/m^3)	15 ppm (53 mg/m^3)	8.6 ppm (30 mg/m^3)	6.6 ppm (23 mg/m^3)	Application of AEGL-3 values for hydrogen cyanide

[A] Cutaneous absorption may occur; direct skin contact with the liquid should be avoided; fatal intoxications have been reported upon skin contact.

ii. *References.* a. El Ghawabi A.; M. Gaafar; A. El Saharta; S.H. Ahmed; K.K. Malash; and R. Fares. 1975. Chronic cyanide exposure: a clinical radioisotope and laboratory study. *British Journal of Industrial Medicine.* 32:215–219.

b. Monsanto Co. 1982b. Male fertility study of Sprague-Dawley rats exposed by inhalation route to acetone cyanohydrin. Monsanto Co. Report No. ML-82-144. Monsanto Co., St. Louis, MO, USA.

c. Monsanto Co. 1982c. Female fertility study of Sprague-Dawley rats exposed by inhalation route to acetone cyanohydrin. Monsanto Co. Report No. ML-82-125. Monsanto Co., St. Louis, MO, USA.

d. Monsanto Co. 1986a. One-month inhalation toxicity of acetone cyanohydrin in male and female Sprague-Dawley rats with cover letter dated 04-25-86. Report No. BN-81-178. Monsanto Co., St. Louis, MO, USA.

e. Monsanto Co. 1986b. Three-month inhalation toxicity of acetone cyanohydrin in male and female Sprague-Dawley rats with cover letter dated 04-25-86. Report No. ML-82-143. Monsanto Co., St. Louis, MO, USA.

2. *Ammonia*—i. *Description.* Ammonia is a colorless, corrosive, alkaline gas that has a very pungent odor. The odor detection level ranges from 5–53 ppm. Ammonia is used as a compressed gas and in aqueous solutions. It also is used as a household cleaning product, in fertilizers, and as a refrigerant. Exposures to ammonia occur as a result of accidents during highway and railway transportation, by releases at manufacturing facilities, and from farming accidents.

Ammonia is very soluble in water. Because of its exothermic properties, ammonia forms ammonium hydroxide and produces heat when it contacts moist surfaces, such as mucous membranes. The corrosive and exothermic properties of ammonia can result in immediate damage (severe irritation and burns) to eyes, skin, and mucous membranes of the oral cavity and respiratory tract. In addition, ammonia is effectively scrubbed in the nasopharyngeal region of the respiratory tract because of its high solubility in water.

The data for deriving AEGL values were obtained primarily from case studies of accident victims, experimental studies in humans, and experimental studies on lethality and irritation in animals. The case studies were of limited use for quantitative evaluation, but the experimental studies in humans and animals contained quantitative data that would be used for deriving AEGL values.

No reliable quantitative lethality data were available for humans dying as a result of exposure to ammonia. One case study reported the death of an individual exposed to a high but unknown concentrations of ammonia. Other case studies also contained no exposure estimates, but showed that high concentrations of ammonia cause severe damage to the respiratory tract, particularly in the tracheobronchial and pulmonary regions. Death, however, is most likely to occur when damage causes pulmonary edema. Non-lethal, irreversible, or long-term effects occur when damage progresses to the tracheobronchial region, manifested by reduced performance on pulmonary function tests, bronchitis, bronchiolitis, emphysema, and bronchiectasis. Nondisabling, reversible effects are manifested by irritation to the eyes, throat, and nasopharyngeal region of the respiratory tract. The odor of ammonia is detected by humans at concentrations >5 ppm; the odor is highly penetrating at 50 ppm (10 minutes). Experimental studies on human volunteers, showed that slight irritation may occur at 30 ppm (10 minutes), moderate irritation to the eyes, nose, throat, and chest occurs at 50 ppm (10 minutes to 2 hours), moderate to highly intense irritation occurs at 80 ppm (30 minutes to 2 hours), highly intense irritation occurs at 110 ppm (30 minutes to 2 hours), unbearable irritation occurs at 140 ppm (30 minutes to 2 hours), and excessive lacrimation and irritation at 500 ppm. In addition, some subjects were able to breathe 140 ppm for up to 2 hours or 500 ppm for 30 minutes without suffering long-lasting effects. Reflex glottis closure, a response to irritant vapors, occurred at 570 ppm for 21- to 30-year-old subjects, 1,000 ppm for 60-year-old subjects, and 1,790 ppm for 86- to 90-year-old subjects.

Acute lethality studies in animals showed that the LC_{50} values for rats ranged from 40,300 ppm for a 10-minute exposure to 7,338 and 16,600 ppm for 60-minute exposures. For the mouse, LC_{50} values were 21,430 ppm for a 30-minute exposure (almost all animals died in less than 13 minutes), 10,096 ppm for a 10-minute exposure, and 4,230 and 4,837 ppm for 60-minute

exposures. Comparative data for the same exposure duration show that mice are more sensitive than rats to the acute toxic effects of ammonia (10 minute LC_{50} values for mice and rats, are 10,096 ppm and 40,300 ppm, respectively). The lowest lethal concentrations reported was 1,000 ppm for the cat. However, cats were exposed via an endotracheal tube, which probably exacerbated the effects in the tracheobronchial region by bypassing the scrubbing action of the nasopharyngeal region. Rats exposed by inhalation to lethal concentrations of ammonia, showed signs of dyspnea, irritation to the eyes and nose, and hemorrhage in the lungs. Mice exposed to lethal concentrations of ammonia showed signs of irritation to the eyes and nose, along with tremors, ataxia, convulsions, seizures, and pathologic lesions in the alveoli. Cats exposed to the lowest lethal concentration showed evidence of severe airway damage, bronchopneumonia, bronchitis, bronchiolitis, and emphysema. Toxic effects at non-lethal concentrations in mice and rats consisted of mild effects on respiratory epithelium of the nasal cavity (mice and rats), reduction in the respiratory rate (mice), and evidence of eye irritation (rat). The RD_{50} (concentration causing a 50% reduction in respiratory rate) for the mouse was 300 ppm for a 30-minute exposure.

The AEGL values for the three toxicity levels (nondisabling, disabling, and lethal) were derived from both human and animal data. The odor of ammonia is detected by humans at concentrations ranging from 5 to 53 ppm and data showed that it is irritating to the upper respiratory tract of humans at 30 ppm. The AEGL-1 value of 25 ppm is based the concentration slightly below the lowest concentration showing irritation in humans. An intraspecies uncertainty factor of 1 was applied, because 25 ppm is below the concentration causing irritation; however, if irritation did occur, it would be mild or only slightly noticeable, confined to the nasal cavity and eyes (ammonia is efficiently scrubbed), and would not be expected to affect asthmatic or other sensitive individuals to a greater degree than nonasthmatic individuals. Atopic and nonatopic subjects did not respond differently to a nasal exposure to ammonia. The AEGL-1 values are based on human data; therefore, an interspecies uncertainty factor is not applicable. Because upper respiratory tract irritation at low ammonia concentrations is not expected to change or become more severe with duration of exposure, except for adaptation, the same value of 25 ppm is applied to all AEGL-1 exposure durations.

The AEGL-2 values were based on a study of nonexpert human subjects who had no previous exposure to ammonia and were not familiar with effects of ammonia. At least one of eight subjects reported nuisance or offensive irritation to the eyes and throat during exposure to 110 ppm of ammonia for 1 hour (Verberk, 1977). The effects reported were less serious than those described in the AEGL-2 definition, no residual effects were reported after termination of exposure, and pulmonary function was not affected by exposure. At the next highest concentration, some of the subjects reported the effects to be unbearable and left the chamber between 30 minutes and 1 hour. Their responses suggest that this concentration would impair escape. An intraspecies uncertainty factor of 1 was used for deriving the AEGL 2 values because the responses of the non-expert group ranged from just perceptible to offensive, but the AEGL-2 value was based on the response of the most sensitive individuals. The reported effects from this group involved primarily the upper respiratory tract and eyes and is unlikely to affect asthmatics differently from the most sensitive non-expert individuals. In addition, atopic subjects responded similarly to non-atopic subjects to a brief nasal exposure to ammonia, and exercising subjects showed only a small equivocal decrease in pulmonary function. The equation $C^n H t = k$, where n = 2, was used to extrapolate to 5-, 10-, and 30-minute exposure durations. This equation was based on mouse and rat lethality data. The same AEGL-2 values were established for 1-, 4-, and 8-hour exposures, because the responses of the subjects exposed to 110 ppm of ammonia were similar after 1- and 2-hour exposures.

The AEGL-3 values were based on LC_{01} values of 3,317 and 3,374 ppm derived by probit analysis of mouse lethality data reported by Kapeghian et al. (1982) and MacEwen and Vernot (1972), respectively. An uncertainty factor of 3 was applied to account for intraspecies variability because at high concentrations of ammonia, severe irritation is elicited immediately upon contact with the eyes and mucous membranes of the respiratory tract and the severity of effects such as pulmonary edema and damage to the tracheobronchial region would be similar in asthmatics and non-asthmatics. There is no reason to apply a larger uncertainty factor to protect individuals with asthma because the severe damage to the respiratory tract would have a greater and longer-lasting consequence than that of asthma. Another reason for not applying a larger intraspecies uncertainty factor to protect children is the evidence from one study showing that a child recovered from an accidental exposure to ammonia, whereas the mother carrying the child suffered severe permanent damage to the lungs. An interspecies uncertainty factor or 1 was applied to the mouse data, because the mouse was the most sensitive species among mammals. In addition, applying a larger uncertainty factor would result in a 30-minute AEGL-3 value less than the 500 ppm that human can tolerate for 30 minutes without lethal or long-term consequences. The equation, $C^n H t = k$ (where n = 2) based on mouse lethality data, was used to extrapolate to different exposure durations

The proposed AEGL values are listed in Table 3 of this unit.

TABLE 3.—SUMMARY OF PROPOSED AEGL VALUES FOR AMMONIA [PPM (MG/M^3)]

Classification	Exposure duration						Endpoint (Reference)
	5-minutes	10-minutes	30-minutes	1-hour	4-hours	8-hours	
AEGL-1 (Nondisabling)	25 (17)	25 (17)	25 (17)	25 (17)	25 (17)	25 (17)	No-observed-adverse-effect-level (NOAEL) for irritation (MacEwen et al., 1970); Verberk, 1977
AEGL-2 (Disabling)	380 (266)	270 (189)	160 (112)	110 (77)	110 (77)	110 (77)	Irritation: Eyes and throat; urge to cough (Verberk, 1977)

TABLE 3.—SUMMARY OF PROPOSED AEGL VALUES FOR AMMONIA [PPM (MG/M^3)]—Continued

Classification	Exposure duration						Endpoint (Reference)
	5-minutes	10-minutes	30-minutes	1-hour	4-hours	8-hours	
AEGL-3 (Lethal)	3,800 (2,657)	2,700 (1,890)	1,600 (1,119)	1,100 (769)	550 (385)	390 (273)	Lethality (Kapeghian et al., 1982; MacEwen and Vernot, 1972)

ii. *References*. a. Kapeghian, J.C.; Mincer, H.H.; and Hones, A.B., et al. 1982. Acute inhalation toxicity of ammonia in mice. *Bulletin of Environmental Contamination and Toxicology*. 29:371–378.

b. MacEwen, J.D.; Theodore, J; and Vernot, E.H. 1970. Human exposure to EEL concentrations of monomethylhydrazine, AMRL-TR-70-102, Paper No 23. *Proceedings of the 1st Annual Conference on Environmental Toxicology*. September 9–11, 1970. Wright-Patterson AFB, OH. pp. 355–363.

c. MacEwen, J.D. and Vernot, E.H. 1972. Toxic Hazards Research Unit Annual Technical Report: 1972. SysteMed Report No. W-72003, AMRL-TR-72-62. Sponsor: Aerospace Medical Research Laboratory, Wright-Patterson AFB, OH. AD-755-358.

d. Verberk, M.M. 1977. Effects of ammonia on volunteers. *International Archives of Occupational and Environmental Health*. 39:73–81.

3. *Bromine*—i. *Description*. The halogen bromine (Br_2) is a dark reddish-brown volatile liquid at room temperature. Its oxidizing potential lies between that of chlorine and iodine. Bromine is used as a water disinfectant, for bleaching fibers and silk, and in the manufacture of medicinal bromine compounds, dyestuffs, flame retardants, agricultural chemicals, inorganic bromide drilling fluids, and gasoline additives.

Bromine is a skin, eye, and respiratory tract irritant. Inhalation causes respiratory tract irritation and pulmonary edema. Although accidental human exposures have occurred, concentrations were either not reported or were judged unreliable. Aside from old and anecdotal information, the data base is limited to one study with human subjects and two lethality studies with the mouse as the test species. One of the lethality studies (Bitron and Aharonson 1978) provided data sufficient for derivation of the relationship between concentrations that result in lethality (LC_{50} values) and exposure duration: $C^{2.2} x t = k$.

The AEGL-1 was based on exposures of 20 healthy human volunteers to concentrations of 0.1 to 1.0 ppm for at least 30 minutes (Rupp and Henschler 1967). Eye irritation, but not nose or throat irritation, occurred during a 30-minute exposure to 0.1 ppm. At concentrations $0.5 ppm, there was a stinging and burning sensation of the conjunctiva. The 30-minute 0.1 ppm was chosen as the basis for the AEGL-1. The 0.1 ppm concentration was divided by an intraspecies uncertainty factor of 3 to protect susceptible individuals. An intraspecies uncertainty factor of 3 was considered sufficient because workers have been occupationally exposed to 1 ppm with no symptoms other than "excess irritation" (Elkins 1959). Furthermore, effects at this low concentration appear to be limited to the eyes and upper respiratory tract; there was no penetration to the lower respiratory tract. The resulting 30-minute AEGL-1 value of 0.03 ppm was time-scaled to the other AEGL exposure durations using the $C^{2.2} x t = k$ relationship derived from the mouse lethality study.

The AEGL-2 was based on the concentration of 1 ppm for 30 minutes which the volunteers in the above study (Rupp and Henschler 1967) found irritating (stinging and burning sensation of the conjunctiva; nose and throat irritation). The 30-minute 1 ppm value was divided by an intraspecies uncertainty factor of 3 to protect susceptible individuals and time scaled to the other AEGL-2 exposure durations using the concentration-exposure duration relationship from the mouse lethality study of $C^{2.2} x t = k$. An intraspecies uncertainty factor of 3 was considered sufficient as the symptoms may be below those defining an AEGL-2. However, no reliable studies with exposures to higher concentrations were located.

Both lethality studies with the mouse described the inhalation toxicity of chlorine and bromine. However, both studies reported lower LC_{50} values for chlorine than those reported in more recent well-conducted studies. Nevertheless, the study that reported the lower lethal concentrations for chlorine was used for derivation of the AEGL-3 values for bromine (Schlagbauer and Henschler 1967). The data in this study showed a clear concentration-response relationship; the exposure duration was 30 minutes. Using probit analysis, a 30-minute LC_{50} value of 204 ppm and a 30-minute LC_{01} of 116 ppm were calculated. The 30-minute LC_{01} of 116 ppm was used as the basis for calculation of AEGL-3 values. The 116 ppm LC_{01} was divided by a combined uncertainty factor of 10 (3 for interspecies differences [the mouse was the most sensitive species for lethal effects in tests with other halogens] and 3 for intraspecies differences [at high concentrations bromine is corrosive to the mucous membranes of the respiratory system; effects are not expected to differ greatly among individuals]) and scaled across time using the relationship $C^{2.2} x t = k$, derived from the same study.

The proposed AEGL values are listed in Table 4 of this unit.

TABLE 4.—SUMMARY OF PROPOSED AEGL VALUES FOR BROMINE [PPM (MG/M^3)]

Classification	10-minutes	30-minutes	1-hour	4-hours	8-hours	Endpoint (Reference)
AEGL-1 (Nondisabling)	0.055 (0.36)	0.033 (0.22)	0.024 (0.16)	0.013 (0.09)	0.0095 (0.06)	Rupp and Henschler 1967
AEGL-2 (Disabling)	0.55 (3.6)	0.33 (2.1)	0.24 (1.6)	0.13 (0.85)	0.095 (0.62)	Rupp and Henschler 1967

TABLE 4.—SUMMARY OF PROPOSED AEGL VALUES FOR BROMINE [PPM (MG/M³)]—Continued

Classification	10-minutes	30-minutes	1-hour	4-hours	8-hours	Endpoint (Reference)
AEGL-3 (Lethal)	19 (124)	12 (78)	8.5 (55)	4.5 (29)	3.2 (21)	Schlagbauer and Henschler 1967

ii. *References*. a. Bitron, M.D. and E.F. Aharonson. 1978. Delayed mortality of mice following inhalation of acute doses of CH_2, SO_2, Cl_2, and Br_2. *American Industrial Hygiene Association Journal*. 39:129–138.

b. Elkins, H.B. 1959. Inorganic compounds: Bromine. *Chemistry of Industrial Toxicology*. John Wiley & Sons, New York. p. 89.

c. Rupp, H. and D. Henschler. 1967. Effects of low chlorine and bromine concentrations in man. *Internationales Archiv fuer Gewerbepathologie und Gewerbehygiene*. 23:79–90.

d. Schlagbauer, M. and D. Henschler. 1967. Inhalation toxicity of chlorine and bromine with single and repeated exposures. *Internationales Archiv fuer Gewerbepathologie und Gewerbehygiene*. 23:91–98.

4. *Chloroacetic acid*—i. *Description*. Monochloroacetic acid (MCAA) is a colorless crystalline material, which is highly soluble in water and soluble in organic solvents. Its vapor pressure at room temperature is moderate with reported values between 0.2 hPa (crystalline substance) and 10 hPa (solution in water). MCAA has a pungent odor.

MCAA is produced by chlorination of acetic acid or hydrolysis of trichloroethene using sulfuric acid. The world production capacity was estimated at 362,500 tons/year in 1987. MCAA or its sodium-salt, sodium monochloroacetate, are used primarily in the industrial production of carboxymethylcellulose, herbicides, thioglycolic acid as well as in the production plastics, pharmaceuticals, flavors, cosmetics, and other organic chemicals.

MCAA is an acid (pK_a 2.85) and therefore can cause eye and skin irritation upon contact with a diluted MCAA solution and skin corrosion and conjunctival burns upon contact with more concentrated solutions. The systemic toxicity of MCAA is caused by inhibition of enzymes of the glycolytic pathway and the tricarboxylic acid cycle. This metabolic blockage damages organs with a high energy-demand, such as heart, central nervous system (CNS), and muscles, and leads to metabolic acidosis due to the accumulation of lactic acid and citric acid in the body.

No studies are available reporting severe toxic effects in humans after inhalation exposure to MCAA. Mortality was reported in a child after oral uptake of 5–6 ml of an 80% MCAA solution (Rogers, 1995). Several lethal accidents have been reported, in which workers were dermally exposed to hot, liquid MCAA. An inadequately described study reported an irritation threshold of 1.48 ppm (Maksimov and Dubinina, 1974); no respiratory tract irritation, effects on lung function parameters or irritation of skin and mucous membranes were reported for >33 workers potentially exposed to MCAA concentrations between <0.13 ppm for 3 hours and 0.31 ppm for 7 hours (Clariant GmbH, 2000).

The only animal study reporting lethal effects after inhalation exposure was an inadequately described study in which a LC_{50} of 46.8 ppm for 4 hours was reported for rats (Maksimov and Dubinina, 1974). Several studies report lethal effects after oral exposure with LD_{50} values mostly between 50–200 mg/kilogram (kg) for rats, mice and guinea pigs. In a single inhalation experiment on rats, eye squint and slight lethargy were observed during exposure to an analytical concentration of 66 ppm for 1 hour (Dow Chemical Co., 1987). In an inadequately reported study, an irritation threshold in rats of 6.16 ppm and a no-observed-effect-level (NOEL) for histological changes in the respiratory tract in rats and guinea pigs of 1.5 ppm after 4 months have been reported (Maksimov and Dubinina, 1974).

No relevant studies of adequate quality were available for the derivation of the AEGL-1. Therefore, due to insufficient data, AEGL-1 values were not derived.

The AEGL-2 was based on a single inhalation study in rats (Dow Chemical Co., 1987) in which eye squint and lethargy were observed in rats exposure to 66 ppm for 1 hour. A total uncertainty factor of 10 was used. A factor of 3 was applied for interspecies variability because the effect level was considered below that of an AEGL-2 and because the available data do not point at a large interspecies variability for more severe (lethal) effects. A factor of 3 was applied for intraspecies variability because a higher factor was not considered adequate on the basis of a comparison with human data for oral exposure. The other exposure duration-specific values were derived by time scaling according to the dose-response regression equation $C^n \times t = k$, using the default of n = 3 for shorter exposure periods and n=1 for longer exposure periods, due to the lack of suitable experimental data for deriving the concentration exponent.

No relevant studies of adequate quality were available for the derivation of the AEGL-3 value. Therefore, due to insufficient data and the uncertainties of a route-to-route extrapolation, AEGL-3 values were not derived.

The proposed AEGL values are listed in Table 5 of this unit.

TABLE 5.—SUMMARY OF PROPOSED AEGL VALUES FOR MONOCHLOROACETIC ACID [A]

Classification	10-minutes	30-minutes	1-hour	4-hours	8-hours	Endpoint (Reference)
AEGL-1 (Nondisabling)	Insufficient data (I.D.)	I.D.	I.D.	I.D.	I.D.	I.D.
AEGL-2 (Disabling)	12 ppm (47 mg/m³)	8.3 ppm (33 mg/m³)	6.6 ppm (26 mg/m³)	1.7 ppm (6.7 mg/m³)	0.83 ppm (3.3 mg/m³)	Eye squint and lethargy in rats (Dow Chemical Co., 1987)
AEGL-3 (Lethal)	I.D.	I.D.	I.D.	I.D.	I.D.	I.D.

[a] Skin contact with molten MCAA or MCAA solutions should be avoided; dermal penetration is rapid and fatal intoxications have been observed when 10% or more of the body surface was involved.

ii. *References*. a. Clariant GmbH, 2000. Unpublished. Letter of Dr. Kreiling dated 23.08.2000. Dow Chemical Co., 1987. Monochloroacetic acid: an acute vapor inhalation limit study with Fischer 344 rats. Unpublished Report, Dow Chemical Company, Midland, USA.

b. Maksimov, G.G. and O.N. Dubinina, 1974. Materials of experimental substantiation of maximally permissible concentration of monochloroacetic acid in the air of production area. *Gigiena Truda i Professional nye Zabolevarija*. 9:32–35.

c. Rogers D.R. 1995. Accidental fatal monochloroacetic acid poisoning. *American Journal of Forensic Medicine and Pathology*. 16:115–116.

5. *Fluorine*—i. *Description*. Fluorine is a reactive, highly irritating and corrosive gas used in the nuclear energy industry, as an oxidizer of liquid rocket fuels, and in the manufacture of various fluorides and fluorocarbons. Fluorine is a severe irritant to the eyes, mucous membranes, lungs, and skin; the eyes and the respiratory tract are the target organ/tissues of an acute inhalation exposure. Death is due to pulmonary edema. Data on irritant effects in humans and lethal and sublethal effects in five species of mammals (dog, rat, mouse, guinea pig, and rabbit) were available for development of AEGL values.

Regression analyses of the concentration-exposure durations (for the fixed endpoint of mortality) for all of the animal species reported in the key study (Keplinger and Suissa 1968) determined that the relationship between concentration and time is $C^n \times t = k$, where n = approximately 2 (actual value of n for the most sensitive species in irritation and lethality studies, the mouse, is 1.77). This concentration exposure duration relationship was applied both the AEGL-2 and AEGL-3 levels because the irritant and corrosive action of fluorine on the respiratory tissues differs by only a matter of degree for these AEGL levels:

a. Respiratory irritation with edema resulting in mild, reversible lung congestion, and

b. Severe respiratory irritation resulting in severe lung congestion. Although the data base for fluorine is small, the data from the key study, augmented with data from several other studies, were considered adequate for derivation of the three AEGL classifications for four time periods.

The AEGL-1 was based on the observation that human volunteers could tolerate exposure to 10 ppm for 15 minutes without irritant effects (Keplinger and Suissa 1968). Although this value is below the definition of an AEGL-1 (notable discomfort), it provides the longest exposure duration for which no irritation in humans was reported. An intraspecies uncertainty factor of 3 was applied because fluorine is highly corrosive to the tissues of the respiratory tract and effects are not expected to vary greatly among individuals, including susceptible individuals. Although no data on asthmatics were found, the uncertainty factor of 3 was considered adequate to protect this sensitive subpopulation because the value was a NOAEL and because shorter-term, repeated exposures produced no substantially greater effects in healthy individuals. The value is supported by a second study in which volunteers "tolerated" exposure to 10 ppm for an undefined period of time. Furthermore, occupational exposure concentrations for healthy adults have ranged up to 17 ppm, albeit for short, undefined periods of time (Lyon 1962). A modifying factor of 2 was applied based on a limited data base. The resulting value of 1.7 ppm was used across all AEGL-1 exposure durations because at mildly irritating concentrations there is accommodation to irritating gases. As noted, this value is supported by limited workplace monitoring data: Workers exposed to fluorine at average yearly concentrations up to 1.2 ppm (range, 0.0–17 ppm) over a 4-year period reported fewer incidences of respiratory complaints or diseases than a similar group of nonexposed workers (Lyon 1962). The workers are assumed to encompass a small range of sensitivity; the additional intraspecies uncertainty factor of 3 was considered sufficient to protect sensitive individuals.

Mild lung congestion was selected as the threshold for irreversible, long-lasting effects as defined by the AEGL-2. The AEGL-2 was based on an animal study in which mild lung congestion was observed in mice at 67 ppm for 30 minutes and 30 ppm for 60 minutes (Keplinger and Suissa 1968). Effects were slightly less serious in three other species. Although concentrations causing irritant effects or lethality for three other species for the same time periods suggested similar species sensitivity, the mouse data, because of slightly lower values, were chosen as the basis for developing the AEGL-2 and AEGL-3. Because similar sensitivity was observed among five species in the key study, no uncertainty factor for interspecies variability was applied. Fluorine is a highly corrosive gas that reacts directly with the tissues of the respiratory tract, with no pharmacokinetic component involved in the toxicity; therefore, there is likely to be little difference among individuals in response to fluorine at concentrations that define the AEGL-2. The 30- and 60-minute values for the mouse were divided by an intraspecies uncertainty factor of 3 to protect sensitive individuals, since effects are not likely to differ greatly among individuals, and by a modifying factor of 2, based on a limited data base. The 30-minute value was used for the 10- and 30-minute AEGL-2 and the 60-minute value was used for the 60-minute AEGL-2. The 4-hour AEGL-2 value was scaled from the 60-minute value based on the $C^{1.77} \times t = k$ relationship. The value of n was derived from regression analysis of the mouse lethality data in the key study. The 8-hour-AEGL-2 value was set equal to the 4-hour value because at low concentrations the hygroscopic fluorine would react with and/or be scrubbed by the nasal passages and because at low concentrations there is accommodation to irritant gases. The 10- and 3-minute AEGL-2 values are supported by studies in which human volunteers found short-term exposures to 15–25 ppm irritating to the eyes, nose, and throat (Rickey 1959; Keplinger and Suissa 1968).

The AEGL-3 values were derived from the highest exposures that resulted in no deaths in five species over four exposure durations (13 tests) for up to 45 days post exposure, but did produce severe lung congestion in the mouse (Keplinger and Suissa 1968). Severe lung congestion in the sensitive mouse was considered the threshold for lethality as defined by the AEGL-3. For the mouse, the 60-minute value was 75 ppm. Because of the similar species sensitivity in the key study, based on both irritant effects and lethality, no uncertainty factor for interspecies variability was applied. The values were divided by an uncertainty factor of 3 to protect sensitive individuals (fluorine is a highly reactive, corrosive gas whose effect on respiratory tract tissues is not expected to differ greatly among individuals) and by a modifying factor of 2, based on a limited data base. Using the 60-minute value of 75 ppm, AEGL-3 values for the other exposure times were calculated based on the $C^{1.77} \times t = k$ relationship. The value of n was derived from regression analysis of the mouse lethality data in the key study. The 8-hour value was set equal to the 4-hour value because fluorine would react with or be scrubbed by the nasal passages at fairly low concentrations. The safety of setting the 8-hour value equal to the 4-hour value is supported by another study in which a 7-hour experimental exposure concentrations

resulting in an overall 60% mortality for four species (Eriksen 1945; Stokinger 1949) is higher than the extrapolated 7-hour values for the mouse and rat based on the Keplinger and Suissa study.

The proposed AEGL values are listed in Table 6 of this unit.

TABLE 6.—SUMMARY OF PROPOSED AEGL VALUES FOR FLUORINE [PPM (MG/M³)]

Classification	10-minutes	30-minutes	1-hour	4-hours	8-hours	Endpoint (Reference)
AEGL-1[a, b] (Nondisabling)	1.7 (2.6)	1.7 (2.6)	1.7 (2.6)	1.7 (2.6)	1.7 (2.6)	No irritant effects—humans (Keplinger and Suissa 1968)
AEGL-2 (Disabling)	20 (31)	11 (17)	5.0 (7.8)	2.3 (3.6)	2.3 (3.6)	Mild lung congestion—mice (Keplinger and Suissa 1968)
AEGL-3[c] (Lethal)	36 (56)	19 (29)	13 (20)	5.7 (8.8)	5.7 (8.8)	Severe lung congestion—mice (Keplinger and Suissa 1968)

[a]The characteristic, pungent odor of fluorine will be noticeable at this concentration.
[b]The same value was used across all time periods because at low concentrations there is accommodation to irritant gases.
[c]30-Minute and 1-hour values are based on separate data points.

ii. *References.* a. Eriksen, N. 1945. A Study of the Lethal Effect of the Inhalation of Gaseous Fluorine (F_2) at Concentrations from 100 ppm to 10,000 ppm. DOE/EV/03490-T3, United States Atomic Energy Commission. Pharmacology Report 435. University of Rochester, Rochester, NY.

b. Keplinger, M.L. and L.W. Suissa. 1968. Toxicity of fluorine short-term inhalation. *American Industrial Hygiene Association Journal.* 29:10–18.

c. Lyon, J.S. 1962. Observations on personnel working with fluorine at a gaseous diffusion plant. *Journal of Occupational Medicine.* 4:199–201.

d. Rickey, R.P. 1959. *Decontamination of Large Liquid Fluorine Spills.* AFFTC-TR-59-31, U.S. Air Force, Air Research and Development Command, Air Force Flight Test Center, Edwards Air Force Base, CA; AD-228–033, Defense Technical Information Center, Ft. Belvoir, VA.

e. Stokinger, H.E. 1949. Toxicity following inhalation of fluorine and hydrogen fluoride, Chapter 17. *Pharmacology and Toxicology of Uranium Compounds.* C. Voegtlin and H.C. Hodge, eds. McGraw-Hill Book Company, New York.

6. *Jet Fuel 8—i. Description.* Jet propellant (JP) fuels, used in military and civilian aircraft, are complex mixtures of aliphatic and aromatic hydrocarbons made by blending various distillate stocks of petroleum. The primary military fuel for land-based military aircraft is JP-8; JP-5 was developed by the U.S. Navy for shipboard service. The composition of these two fuels is basically that of kerosene (with additives) and they have similar chemical and physical characteristics. Worldwide, approximately 60 billion gallons of military JP-8 and the equivalent commercial Jet A and Jet A-1 are consumed on an annual basis. The military jet fuels contain additives that are not contained in commercial jet fuels. Civilian and military personnel may be exposed to jet fuels during fuel production, aircraft fueling operations, aircraft maintenance operations, and accidental spills or pipeline leaks.

Although several jet fuels are discussed in this document (JP-4, JP-5, JP-7, and JP-8), the discussion focuses on the toxicity of JP-8 with some attention to the chemically similar JP-5. These two fuels have a similar composition and appear to have similar toxicities. Monitoring data indicate that exposures to JP-4 which has a higher vapor pressure than JP-8 and JP-5 were higher than to the presently used JP-8 and JP-5. Data were located on acute sensory and systemic effects of JP-8 and JP-5 to mice and rats; subchronic studies addressed systemic effects, particularly effects on the lungs. For all fuels, tests of eye irritation were generally negative, whereas mild skin irritation occurred for some fuels. Several short-term and repeated exposure studies addressed the particular issue of the toxicity of aerosols. Exposure to aerosols of jet fuels induces more toxic effects than exposure to vapors, with the lungs and immune system identified as the target organs. Animal studies also addressed neurotoxicity, developmental/reproductive effects, and carcinogenicity. These fuels are generally not considered genotoxic or carcinogenic and, in a preliminary study, JP-8 failed to cause spermatotoxic effects in humans. A nephropathy and resulting carcinogenic effect, unique to male rats exposed to hydrocarbons, is not relevant to humans. No information relevant to time scaling was available.

The AEGL-1 is based on the sensory irritation study of Whitman et al. (2001), specifically the RD_{50} (the concentration that reduces the respiratory rate by 50%) for JP-8 of 2,876 mg/m³ vapor plus aerosol. The RD_{50} test is a standard test for estimating sensory irritancy of airborne chemicals [ASTM E981–84). In the key study, male Swiss-Webster mice were exposed for 30 minutes to 681; 1,090; 1,837; or 3,565 mg/m³. JP-8 is not a primary irritant and reductions in the respiratory rate did not occur within 10 minutes at the lower concentrations. However, reductions in the respiratory rate within the 30-minute exposure durations were concentration-dependent and allowed calculation of an RD_{50}. Based on the correlation between RD_{50} data and sensory irritancy levels for numerous chemicals, a 0.1-fold reduction of the RD_{50} results in a concentration that elicits some sensory irritation in humans but that can be tolerated for hours to days (Alarie 1981). Using this reasoning, the resulting concentration of 290 mg/m³ can be tolerated over all AEGL-1 exposure durations. The 290 mg/m³ value is supported by the lack of adverse health effects in animal studies with repeated exposures to 1,000 mg/m³ of JP-8 vapor (continuous exposures up to 90 days) (Mattie et al. 1991; Briggs 2001; Rossi et al. 2001). Dividing the 1,000 mg/m³ value by an interspecies uncertainty factor of 1 (no species differences were observed in multiple studies with rats and mice and the exposures were repeated) and an intraspecies uncertainty factor of 3 (to account for potential differences in human susceptibilities to sensory irritation) results in 330 mg/m³, a value similar to that derived from the RD_{50} study. The repeated nature of the support studies also supports the use of a single value for all exposure durations.

The AEGL-2 is based on several studies with rodents (rats and mice) that indicate that exposure to 1,100 mg/m³ of JP-8 would not elicit adverse health effects but may be the threshold for such effects. The shorter-term studies (30 minutes to 4 hours) with exposures to 3,430–5,000 mg/m³ of JP-8 or JP-5 in the vapor/aerosol form (MacEwen and Vernot 1985; Wolfe et al. 1996; Whitman et al. 2001) with support from the studies using repeated exposures to 1,000 mg/m³ (Mattie et al. 1991; Briggs 2001; Rossi et al. 2001) were used as the basis for the AEGL-2. No uncertainty factors were applied to the 1,000 mg/m³ concentration because there were no adverse effects and the exposures were repeated for up to 90 days. The higher concentrations of JP-8, 3430 and 4,440 mg/m³, and of JP-5, 5,000 mg/m³, were divided by an interspecies factor of 1 (there were no species differences) and by an intraspecies uncertainty factor of 3 to protect potentially sensitive individuals. An intraspecies uncertainty factor of 3 is considered adequate because the thresholds for both sensory irritation and central nervous system depression to solvents do not generally differ by more than 3-fold. The resulting value is 1,100 mg/m³ (1,100–1,700 mg/m³), approximately the same concentration as in the no-adverse-effect repeated exposure studies. No information was available for time scaling. Central nervous system depression is a concentration-related effect. Therefore, the 1,100 mg/m³ value was used for the 4-hour and shorter time period. But, because the exposures to 1,000 mg/m³ were repeated for up to 90 days, the 1,100 mg/m³ value can also be used for the longest AEGL exposure duration of 8 hours. The fact that the exposures in most of these studies, especially at the higher concentrations, were to both the vapor and the more toxic aerosol supports the appropriateness of the derived value.

It should be noted that, because of its relatively low vapor pressure, JP-8 might not attain a sustained vapor concentration high enough to cause death. In a laboratory study reported by Wolfe et al. (1996), the highest vapor concentration of JP-8 that could be attained was 3,430 mg/m³. The highest vapor/aerosol concentration that could be attained was 4,440 mg/m³. The highest vapor/aerosol attainable under ambient concentrations has been estimated at 700 mg/m³. However, higher concentrations might be attained in closed spaces at high temperatures. A concentration of 500 mg/m³ is assumed to be the upper bound for a stable cloud of inhalable dust (and aerosols). Based on the likelihood that lethal concentrations of JP-8 cannot be sustained under ambient conditions, an AEGL-3 was not determined.

The proposed AEGL values are listed in Table 7 of this unit.

TABLE 7.—SUMMARY OF PROPOSED AEGL VALUES FOR JP-8 (MG/M³)[A, B]

Classification	10-minutes	30-minutes	1-hour	4-hours	8-hours	Endpoint (Reference)
AEGL-1 (Nondisabling)	290	290	290	290	290	Slight sensory irritation in humans (mouse RD_{50} test) (Whitman et al. 2001)
AEGL-2 (Disabling)	1,100	1,100	1,100	1,100	1,100	No clinical signs during repeated exposures to 1,000 mg/m³— rats and mice (Mattie et al. 1991; Briggs 2001; Rossi et al. 2001); sensory irritation at >3,430 mg/m³— rats and mice (Wolfe et al. 1996; Whitman et al. 2001)
AEGL-3 (Lethal)	Not determined	Not determined	Not determined	Not determined	Not determined	[c]No data

[a] The values apply to JP-8 vapor or vapor/aerosol and not to the pure aerosol.
[b] The values apply to JP-8 vapor and not to JP-8+100.
[c] A lethal concentration was not attained in the available toxicity studies; the low vapor pressure of JP-8 may preclude attainment of a lethal concentration.

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7. *Methyl ethyl ketone—i. Description.* Methyl ethyl ketone (MEK) is a volatile solvent with a sweet/sharp acetone-like odor. MEK is widely used as a solvent in common household products such as inks, paints, cleaning fluids, varnishes, and glues. In most industrial applications it is used as a component of a mixture of organic solvents. It has also been detected in a wide variety of

natural products and may be a minor product of normal mammalian metabolism. In 1999, U.S. production capacity was 675 million pounds.

The inhalation toxicity of MEK is low. Low concentrations are only mildly irritating. At high concentrations MEK causes a narcotic effect on the central nervous system as evidenced by neurobehavioral effects in animals. MEK is not teratogenic, but at high concentrations is mildly fetotoxic to rats and mice. Data on human exposures were available from clinical studies and workplace monitoring. Animal studies with a variety of species (baboon, rat, mouse, and guinea pig) addressed irritation, neurotoxicity, developmental toxicity, chronic toxicity/carcinogenicity, and lethality. Exposure durations ranged from acute to chronic. Genotoxicity was also addressed.

Two studies with human volunteers exposed to 100, 200, or 350 ppm were evaluated for the AEGL-1; the exposure times were 5 minutes (Nelson et al. 1943) and 4 hours (Dick et al. 1992). Although a concentration of 200 ppm was judged unobjectionable in both studies, slight nose and throat irritation were noted at 100 ppm in the Nelson et al. (1943) study. Therefore, 100 ppm was selected as the threshold for sensory irritation. The safety of this value is supported by numerous clinical studies in which volunteers were routinely exposed to 200–400 ppm for up to 4 hours without reports of irritation or changes in neurobehavioral parameters. Because this is a threshold value and slight irritation should not increase in intensity with time, an intraspecies uncertainty factor of 1 was applied. Because accommodation to slight irritation occurs, the 100 ppm concentration was used across all AEGL-1 exposure durations. Furthermore, MEK is rapidly metabolized and will not accumulate in the blood or in the body which further supports using the same value for all the time intervals.

The AEGL-2 was based on the chronic study of Cavender et al. (1983) in which rats were exposed to 5,000 ppm for 5 days/week for 90 days. No lesions were reported in this study, but the concentration is close to the threshold for neurotoxicity as evidenced by somnolence in another repeated exposure study in which rats were exposed to 6,000 ppm for several weeks (Altenkirch et al. 1978). Because this was a no-effect repeated-exposure study, no interspecies uncertainty factor was applied. Because the threshold for narcosis differs by no more than 2- to 3-fold among the general population, an intraspecies uncertainty factor of 3 was applied to protect sensitive individuals. Because the threshold for narcosis is concentration dependent, the resulting 1,700 ppm concentration was applied across all AEGL-2 exposure durations.

The AEGL-3 values were based on two different studies. The 10- and 30-minute values were based on a study with mice in which a 30-minute exposure to 31,426 ppm was projected to reduce the respiratory rate by 50%; there were no deaths at the highest tested concentration of 26,416 ppm (Hansen et al. 1992). Because a 30-minute exposure of rats to 3 times this concentration (92,239 ppm) also resulted in no deaths (Klimisch 1988), the 31,426 ppm value was adjusted by an interspecies uncertainty factor of 1. Because the threshold for narcosis differs by no more than 2- to 3-fold among the general population, an intraspecies uncertainty factor of 3 was applied to protect sensitive individuals. The resulting value of 10,000 ppm was used for the 10-minute and 30-minute AEGL-3 exposure durations. The longer-term values were based on an MLE_{01} of 7,500 ppm calculated by Fowles et al. (1999) from a 4-hour study with rats exposed to several concentrations for 4 hours (La Belle and Brieger 1955). In this study the 4-hour LC_{50} was 11,700 ppm and the highest concentration resulting in no deaths was 7,850 ppm for 4 hours. The 7,500 ppm concentration was divided by an intraspecies uncertainty factor of 3. The resulting value of 2,500 ppm was used for both the 4-hour and 8-hour AEGL-3 values because MEK would reach equilibrium in the body prior to this time period. The 4-hour 2,500 ppm value was time scaled to the 1 hour time using the default n value of 3 for scaling to shorter time intervals.

The proposed AEGL values are listed in Table 8 of this unit.

TABLE 8.—SUMMARY OF PROPOSED AEGL VALUES FOR METHYL ETHYL KETONE [PPM (MG/M³)]

Classification	10-minutes	30-minutes	1-hour	4-hours	8-hours	Endpoint (Reference)
AEGL-1 (Nondisabling)	100 (293)	100 (293)	100 (293)	100 (293)	100 (293)	Threshold for sensory irritation in humans (Nelson et al. 1943)
AEGL-2 (Disabling)	1,700 (4,980)	1,700 (4,980)	1,700 (4,980)	1,700 (4,980)	1,700 (4,980)	Threshold for narcosis— rats (Cavender et al. 1983)
AEGL-3(Lethal)	10,000[a,b] (29,300)	10,000 (29,300)	4,000[c] (11,720)	2,500 (7,325)	2,500 (7,325)	Threshold for lethality— mouse (Hansen et al. 1992; La Belle and Brieger 1955)

[a]Based on Hansen et al. (1992).
[b]This value is more than one-half of the lower explosive limit of 18,000 ppm.
[c]Based on La Belle and Brieger (1955).

ii. *References.*

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b. Cavender, F.L; H.W. Casey; H. Salem; J.A. Swenberg; and E.J. Gralla. 1983. A 90-day vapor inhalation toxicity study of methyl ethyl ketone. *Fundamental and Applied Toxicology.* 3:264–270.

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h. Nelson, K.W.; J.F. Ege, Jr.; M. Ross; L.E. Woodman; and L. Silverman. 1943. Sensory response to certain industrial solvent vapors. *Journal of Industrial Hygiene and Toxicology.* 25:282–285.

8. *Phosphorus oxychloride*—i. *Description.* Phosphorus oxychloride (CAS No. 10025–87–3), a colorless fuming liquid with a pungent odor, is stable to above 300° C but is highly reactive with water yielding phosphoric acid and hydrogen chloride. It is used in the manufacture of plasticizers, hydraulic fluids, gasoline additives, fire retarding agents, and in the manufacture of alkyl and aryl orthophosphate triesters.

Information regarding exposure of humans to phosphorus oxychloride are limited to qualitative reports that indicate notable dermal, ocular, pharyngeal and pulmonary irritation following acute and subchronic (intermittent) exposures. Most reports lacked exposure terms although one report of occupational exposures indicated that air concentrations of phosphorus oxychloride ranged from 1.6 to 11.2 ppm. The effects often persisted after cessation of exposure, especially in those individuals experiencing more severe effects. Neither odor detection data nor lethality data are available for humans.

Quantitative data in animals are limited to reports of lethality. These data include a 4-hour LC_{50} for rata (44.4 ppm) and guinea pigs (52.5 ppm), and an unverified 4-hour LC_{50} of 32 ppm for rats. A 5–15 minute exposure of rats and guinea pigs to 0.96 ppm phosphorus oxychloride was noted as a "threshold response" in a Russian report. A brief report from industry indicated immediate adverse responses (at 2 minutes) and death (18 minutes) following exposure to a very high concentration (25,462 ppm). The available studies affirm the extreme irritation properties of phosphorus oxychloride, although the exposures described also resulted in lethality. No information was available regarding reproductive/developmental toxicity, genotoxicity, or carcinogenicity.

There are no definitive data regarding the metabolism or precise mechanism of action of phosphorus oxychloride toxicity. Based upon the limited human and animal toxicity data, and the chemical properties of phosphorus oxychloride, it may be assumed that the primary effect involves damage to epithelial tissue and, for respiratory effects, subsequent pulmonary edema. The lethal potency of phosphorus oxychloride, however, does not appear to be explained simply by the activity of its degradation products (phosphoric acid and hydrogen chloride).

In the absence of odor detection data and quantitative data pertaining to effects consistent with AEGL-1 definition, AEGL-1 values were not developed.

Exposure-response data pertaining to AEGL-2 level effects were unavailable and, therefore no AEGL-2 values were developed. Because of the lack of exposure-response data for any effects, estimating AEGL-2 values by a reduction in AEGL-3 values was considered tenuous and difficult to justify.

AEGL-3 values were developed using an estimate of the lethality threshold based upon the 4-hour LC_{50} of 48.4 ppm in rats that was reported by Weeks et al. (1964). Although exposure-response data were unavailable, the lethality threshold was estimated a one third of the 4-hour LC_{50} (i.e., 48.4 ppm/3 = 16.1 ppm). Due to uncertainties regarding species variability in the lethal response to phosphorus oxychloride and the lack of lethality data in humans, an order-of-magnitude uncertainty adjustment was applied for interspecies variability. Contact irritation resulting in damage to epithelial tissue appears to be involved in the toxic response to phosphorus oxychloride. It is likely that this response is a function of the extreme reactivity of phosphorus oxychloride with tissues (e.g., pulmonary epithelium) and not likely to vary greatly among individuals. The uncertainty adjustment for intraspecies variability, therefore, was limited to 3. The concentration exposure time relationship for many irritant and systemically acting vapors and gases may be described by $C^n \times t = k$, where the exponent, n, ranges from 0.8 to 3.5. In the absence of an empirically derived exponent (n), and to obtain conservative and protective AEGL values, temporal scaling was performed using n = 3 when extrapolating to shorter time points and n = 1 when extrapolating to longer time points using the $C^n \times t = k$ equation.

The range of interspecies variability remains uncertain due to limited animal data and the absence of quantitative exposure-response data for humans. The absence of exposure-response data for non-lethal effects in animals or humans is a significant data deficiency.

The proposed AEGL values are listed in Table 9 of this unit.

TABLE 9.—SUMMARY OF PROPOSED AEGL VALUES FOR PHOSPHORUS OXYCHLORIDE

Classification	10-minutes	30-minutes	1-hour	4-hours	8-hours	Endpoint (Reference)
AEGL-1 (Nondisabling)	NR	NR	NR	NR	NR	Data unavailable for development
AEGL-2 (Disabling)	NR	NR	NR	NR	NR	Data unavailable for development
AEGL-3 (Lethal)	1.1 ppm (6.9 mg/m³)	1.1 ppm (6.9 mg/m³)	0.85 ppm (5.3 mg/m³)	0.54 ppm (3.4 mg/m³)	0.27 ppm (1.7 mg/m³)	Weeks et al., (1964). Estimate of lethality threshold in rats (16.1 ppm) based upon 3-fold reduction in 4-hour LC_{50} of 48.4 ppm.

NR: Not recommended. Numeric values for AEGL-1and AEGL-2 are not recommended due to the lack of available data Absence of AEGL-1 and AEGL-2 values does not imply that exposure below the AEGL-3 is without effect.

ii. *References.*

Weeks, M.H.; Mussleman, N.P.; Yevich, P.P.; Jacobson, K.H.; and Oberst, F.W. 1964. Acute vapor toxicity of phosphorus oxychloride, phosphorus trichloride and methyl phosphonic dichloride. *Industrial Hygiene Journal.* 25:470–475.

9. *Phosphorus trichloride*—i. *Description.* Phosphorus trichloride (CAS No. 007719–12–2) is a colorless, clear fuming liquid with a pungent, irritating odor. In the presence of water, the chemical decomposes rapidly in a highly exothermic reaction to phosphonic acid, hydrogen chloride, and pyrophosphonic acids.

No acute lethality data are available in humans. Qualitative data regarding human exposures indicate signs and symptoms of exposure consistent with a highly irritating chemical; ocular and dermal irritation, respiratory tract irritation, shortness of breath, and nausea.

Lethality data in animals are available for rats, cats, and guinea pigs. Cursory studies conducted nearly 100 years ago in Germany provided preliminary data on lethal and nonlethal effects in cats and guinea pigs following various treatment regimens with inhaled phosphorus trichloride. Although results of the studies indicated the respiratory tract to a be a critical target, the methods and results of these studies were not verifiable. Weeks et al. (1964) reported 4-hour LC_{50} values of 104.5 ppm and 50.1 ppm for rats and guinea pigs, respectively. An unpublished study by Hazleton Laboratories (1983) identified a NOAEL of 3.4 ppm and a LOAEL (histopathologic changes in the respiratory tract) of 11 ppm following repeated exposure (6 hours/day, 5 days/week for 4 weeks) of rats. There are no data regarding reproductive/developmental toxicity, genotoxicity, or carcinogenicity of phosphorus trichloride. Definitive data regarding the mechanism of action of phosphorus trichloride are unavailable. Decomposition products (hydrogen chloride, phosphonic acid, and pyrophosphonic acids) are responsible, at least in part, for the contact irritation reported by humans, and the irritation and tissue damage observed in animal species.

The concentration-time relationship for may irritant and systemically acting vapors and gases may be described by $C^n \times t = k$, where the exponent n ranges from 0.8 to 3.5. Due to the limited toxicity data for this chemical, an empirical derivation of n was not possible. In the absence of an empirically derived exponent (n), and to obtain conservative and protective AEGL values, temporal scaling was performed using n = 3 when extrapolating to shorter time points and n = 1 when extrapolating to longer time points using the $C^n \times t = k$ equation. For 10-minute AEGL-3 values were set at equivalence to the 30-minute values due to uncertainties in extrapolating from the experimental exposure durations of 4 hours and greater.

Quantitative data consistent with AEGL-1 effects were unavailable. Occupational exposures of humans to 1.8–3.6 ppm for 2–6 hours and exposure of rats to 3.4 ppm for 6 hours/day, 5 days/week for 4 weeks were without notable effect. These data can be considered a NOAEL for AEGL-1 effects. Because they were derived from controlled experiments, the AEGL-1 values were based upon the Hazleton Laboratories (1983) report. These data as well as the AEGL-1 values are supported by the human experience data reported by Sassi (1952). The interspecies uncertainty factor was limited to 3 because of the concordance of the animal data with the human experience and because the most sensitive species tested (guinea pig) was only about 2-fold more sensitive. The intraspecies uncertainty factor was limited to 3 because primary effects of phosphorus trichloride (irritation and subsequent tissue damage) appear to be due, in part, to hydrogen chloride and phosphonic acid resulting from chemical dissociation. Additional reduction of the AEGL-1 values would be inconsistent with available human and animal data .

Information consistent with AEGL-2 effects were limited to an occupational exposure report and a multiple exposure study with rats. For occupational exposures, there was notable irritation following 2–6 hours of exposure to approximately 14–27 ppm phosphorus trichloride and more severe but reversible irritation following exposures of 1–8 weeks. Reports providing qualitative information but no exposure terms affirmed the potential for respiratory tract irritation following acute exposures to phosphorus trichloride. Data for rats showed upper respiratory tract involvement following multiple exposures over 4 weeks to 11 ppm but not to 3.4 ppm (Hazleton Laboratories, 1983). For development of AEGL-2 values, the 11 ppm exposure in rats was considered a NOAEL for AEGL-2 effects. Uncertainty factor application was the same as for the AEGL-1 tier.

AEGL-3 values were developed based upon a 3-fold reduction of the 4-hour LC_{50} (Weeks et al., 1964) as an estimate of the lethality threshold (50.1 ppm/3 = 16.7 ppm). A total uncertainty factor adjustment of 10 was used to develop the AEGL-3 values. Animal data indicated some variability in the toxic response to phosphorus trichloride with guinea pigs being the more sensitive among the species tested. Therefore, uncertainty adjustment regarding interspecies variability was limited to 3. To account for intraspecies variability, a factor of 3 was applied. The uncertainty of intraspecies variability was limited to 3 because primary effects of phosphorus trichloride (irritation and subsequent tissue damage) appear to be due, in part, to hydrogen chloride and phosphonic acid resulting from chemical dissociation. The total uncertainty factor of 10 may be justified by human exposure data showing that repeated 2 to 6-hour exposures of up to 27 ppm were without life-threatening consequences. Furthermore, the results of the Hazleton Laboratories (1983) study showed no fatalities in rats following multiple 6-hour exposures to 11 ppm.

The proposed AEGL values are listed in Table 10 of this unit.

TABLE 10.—SUMMARY OF PROPOSED AEGL VALUES FOR PHOSPHORUS TRICHLORIDE

Classification	10-minutes	30-minutes	1-hour	4-hours	8-hours	Endpoint (Reference)
AEGL-1 (Nondisabling)	0.78 ppm	0.78 ppm	0.62 ppm	0.39 ppm	0.26 ppm	NOAEL of 3.4 ppm in rats exposed 6 hours/day, 5 days/week for 4 weeks (Hazleton Laboratories, 1983)
AEGL-2 (Disabling)	2.5 ppm	2.5 ppm	2.0 ppm	1.3 ppm	0.83 ppm	NOAEL for AEGL-2 tier effects; based upon respiratory tract histopathology in rats exposed 6 hours/day, 5 days/week for 4 weeks (Hazleton Laboratories, 1983)

TABLE 10.—SUMMARY OF PROPOSED AEGL VALUES FOR PHOSPHORUS TRICHLORIDE—Continued

Classification	10-minutes	30-minutes	1-hour	4-hours	8-hours	Endpoint (Reference)
AEGL-3 (Lethal)	7.0 ppm	7.0 ppm	5.6 ppm	3.5 ppm	1.8 ppm	Estimated lethality threshold based upon 3-fold reduction of guinea pig 4-hour LC_{50} (50.1 ppm/3 = 16.7 ppm) (Weeks et al., 1964)[a]

[a]Based upon animal data, lethality may be delayed.

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10. *Xylenes—i. Description.* Xylene is found in a number of consumer products, including solvents, paints, or coatings, and as a blend in gasoline. Mixed xylenes are comprised of 3 isomers: M-xylene, o-xylene, and p-xylene, with the m-isomer predominating. Ethyl benzene is also present in the technical product formulation. Absorbed xylene is rapidly metabolized and is excreted almost exclusively in the urine as methylhippuric acid isomers in humans and as methylhippuric acid isomers and toluic acid glucuronides in animals. In both humans and animals, xylene causes irritation and effects the central nervous system following acute inhalation exposure. No consistent developmental or reproductive effects were observed in the studies found in the available literature. Commercial xylene and all 3 isomers have generally tested negative for genotoxicity. Xylenes are currently not classifiable as to its carcinogenicity by the International Agency on Research for Cancer (IARC) or the EPA because of inadequate evidence.

The AEGL-1 is based upon slight eye irritation noted during a 30-minute exposure to 400 ppm mixed xylenes (Hastings et al., 1986). An interspecies uncertainty factor was not applied because the key study used human data. An intraspecies uncertainty factor of 3 was applied because the toxic effect (slight irritation) was less severe than that defined for the AEGL-1 tier (notable discomfort). The resulting value of 130 ppm is supported by several other studies, including: A 150 ppm p-xylene exposure resulting in eye irritation in a contact lens wearer (Hake et al., 1981); a 15-minute exposure to 230 ppm mixed xylenes resulting in mild eye irritation and dizziness in one individual; and a 3-hour exposure to 200 ppm m- or p-xylene (Ogata et al., 1970), a 4-hour exposure to 200 ppm m-xylene (Savolainen et al., 1981), and a 5.5 hour exposure to 200 ppm m-xylene (Laine et al., 1993) all representing no-effect levels.

The AEGL-2 is based upon poor coordination resulting when rats were exposed to 1,300 ppm mixed xylenes for 4 hours (Carpenter et al., 1975). This concentration represents the threshold for reversible equilibrium disturbances. This concentration and endpoint are consistent with the preponderance of available data for 4-hour exposures in rats: The EC_{50} for decreased rotarod performance was 1982 ppm (Korsak et al., 1993); the minimum narcotic concentrations for m-, o-, and p-xylene ranged from 1,940–2,180 ppm (Molnár et al., 1986); and exposure to 1,600 ppm p-xylene resulted in hyperactivity, fine tremor, and unsteadiness (Bushnell, 1989), induced flavor aversion (Bushnell and Peele, 1988), and caused changes in the flash evoked potential suggestive of increased arousal (Dyer et al., 1988). In dogs, exposure to 1,200 ppm for 4 hours represented a threshold for eye irritation (Carpenter et al., 1975). An interspecies uncertainty factor of 1 was applied because rats receive a greater systemic dose of inhaled xylene as compared to humans. An intraspecies uncertainty factor of 3 was applied because the minimum alveolar concentration (MAC) for volatile anesthetics should not vary by more than a factor of 2–3-fold among humans. A 3-fold factor is also adequate to account for moderate physical activity during exposure, which would result in greater uptake of the chemical.

The AEGL-3 derivation is based upon prostration occurring in all 10 rats exposed for 4 hours to 2,800 ppm mixed xylenes, with recovery occurring within 1 hour of exposure (Carpenter et al., 1975). Although coordination initially remained poor, it returned to normal the following day. This concentration also represents a no-effect level for lethality. An interspecies uncertainty factor of 1 was applied because rats receive a greater systemic dose of inhaled xylene as compared to humans. An intraspecies uncertainty factor of 3 was applied because the MAC for volatile anesthetics should not vary by more than a factor of 2–3-fold among humans. A 3-fold factor is also adequate to account for moderate physical activity during exposure, which would result in greater uptake of the chemical.

The two primary effects of concern for xylene are those of irritation and central nervous system effects. Irritation is considered a threshold effect and therefore should not vary over time. The AEGL-1 value based on irritation is therefore not scaled across time, but rather the threshold value is applied to all times.

Data indicate that once steady state is reached, concentration, not duration, is the prime determinant in xylene-induced central nervous system toxicity. Pharmacokinetic modeling in both humans and rats indicate that venous blood concentrations rapidly increase during the first 15 minutes of exposure, followed by minimal increases in blood concentrations with continuing exposure (i.e., increases follow a hyperbolic curve). Likewise, available human data indicate that once the initial increase in blood xylene concentration is reached, blood concentrations level off with increasing exposure duration. Conversely, available human and animal data demonstrate that increasing exposure concentrations correlate with increases in venous blood xylene concentrations. Therefore, the AEGL 2- and -3 values are set equal across time once steady state is approached (starting at approximately 1 hour), while pharmacokinetic modeling was used to extrapolate to exposure durations of 10- and 30-minutes.

The AEGL values should be protective of human health. The AEGL-1 values are consistent with other human studies, and represent a value consistent with exposure concentrations that might result in mild eye irritation. The AEGL-2 levels are protective, especially when considering numerous human studies investigating the effects of exposure to

200 ppm xylene with 20-minute peak exposures to 400 ppm, in some cases additionally combining peak exposures with physical exercise resulting in greater uptake of the chemical, and finding only minimal central nervous system effects. The difficultly in defining an AEGL-2 level for xylene comes from its "all-or-nothing" continuum of toxicity: Toxicity ranges from mild irritation to narcosis, with little happening in between. The AEGL-3 levels represent the threshold for narcosis, and are protective as supported by human data demonstrating that exposure to 690 ppm for 15 minutes resulted in lightheadedness/dizziness and a 30 minute exposure to 700 ppm resulted in nausea, vomiting, dizziness, or vertigo.

The proposed AEGL values are listed in Table 11 of this unit.

TABLE 11.—SUMMARY OF PROPOSED AEGL VALUES FOR XYLENES [PPM (MG/M^3)]

Classification	10-minutes	30-minutes	1-hour	4-hours	8-hours	Endpoint (Reference)
AEGL-1 (Nondisabling)	130 (560)	130 (560)	130 (560)	130 (560)	130 (560)	Eye irritation in human volunteers exposed to 400 ppm mixed xylenes for 30 minutes (Hastings et al., 1986)
AEGL-2 (Disabling)	990 (4,300)	480 (2,100)	430 (1,900)	430 (1,900)	430 (1,900)	Rats exposed to 1,300 ppm mixed xylenes for 4 hours exhibited poor coordination (Carpenter et al., 1975)
AEGL-3 (Lethal)	2,100 (9,100)	1,000 (4,300)	930 (4,000)	930 (4,000)	930 (4,000)	Rats exposed to 2,800 ppm for 4 hours exhibited prostration followed by a full recovery (Carpenter et al., 1975)

ii. *References.* a. Bushnell, P.J. 1989. Behavioral effects of acute p-xylene inhalation in rats: Autoshaping, motor activity, and reversal learning. *Neurotoxicology and Teratology.* 10:569–577.

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d. Dyer, R.S.; Bercegeay, M.S.; and Mayo, L.M. 1988. Acute exposures to p-xylene and toluene alter visual information processing. *Neurotoxicology and Teratology.* 10:147–153.

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k. Savolainen, K.; Riihimäki, V.; Laine, A.; and Kekoni, J. 1981. Short-term exposure of human subjects to m-xylene and 1,1,1-trichloroethane. *International Archives of Occupational Environmental Health.* 49:89–98.

IV. Next Steps

The NAC/AEGL Committee plans to publish "Proposed" AEGL values for five-exposure periods for other chemicals on the priority list of 85 in groups of approximately 10 to 20 chemicals in future **Federal Register** notices during the calendar year 2003.

The NAC/AEGL Committee will review and consider all public comments received on this notice, with revisions to the "Proposed" AEGL values as appropriate. The resulting AEGL values will be established as "Interim" AEGLs and will be forwarded to the National Research Council, National Academy of Sciences (NRC/NAS), for review and comment. The "Final" AEGLs will be published under the auspices of the NRC/NAS following concurrence on the values and the scientific rationale used in their development.

List of Subjects

Environmental protection, Hazardous chemicals, Worker protection.

Dated: July 7, 2003.

Susan B. Hazen,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 03–18306 Filed 7–17–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7530–1]

Notice of Proposed Prospective Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act, Sand Creek Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

Notification is hereby given that a Proposed Prospective Purchaser Agreement (PPA) associated with the Sand Creek Superfund Site located in Commerce City, Colorado was executed by the United States Department of Justice on June 3, 2003. This Agreement is subject to final approval after the comment period. The Prospective Purchaser Agreement would resolve certain potential EPA claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), against NDSC, LLC., the prospective purchaser (the purchaser). The settlement would require the purchaser to provide EPA and the State of Colorado an irrevocable right of access, cash payments to EPA (90%) and the State of Colorado (10%) in the total amount of $290,000.00, and the grant of an environmental covenant, under Colorado law, that will place land use controls on the purchased properties consistent with the response actions conducted by EPA and the State of Colorado on these properties. The purchasers will use the Site property in conjunction with their landscaping business operations.

For thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the proposed settlement. The Agency's response to any comments received will be available for public inspection at the Superfund Records Center at the U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Denver, Colorado, 80202.

Availability: The proposed agreement is available for public inspection at the U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Denver, Colorado, 80202. A copy of the proposed Agreement may be obtained from Maureen O'Reilly, Enforcement Specialist, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, ENF–T, Denver, Colorado, 80202. Comments should be sent to Maureen O'Reilly at the address above and should reference the "Sand Creek Superfund Site Prospective Purchaser Agreement, EPA Docket No. CERCLA–08–2003–0008".

FOR FURTHER INFORMATION CONTACT: Richard Sisk, Enforcement Attorney, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, ENF–L, Denver, Colorado, 80202, (303) 312–6638.

Dated: June 27, 2003.

It is so agreed:

Robert E. Roberts,

Regional Administrator, U.S. Environmental Protection Agency Region 8.

[FR Doc. 03–18159 Filed 7–17–03; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7529–8]

Proposed CERCLA Section 122(h)(1) Administrative Agreement for Recovery of Response Costs for the Radiation Technology, Inc. Superfund Site, Rockaway Township, Morris County, NJ

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given by the U.S. Environmental Protection Agency ("EPA"), Region II, of a proposed administrative agreement pursuant to section 122(h) of CERCLA, 42 U.S.C. 9622(h), for recovery of response costs concerning the Radiation Technology, Inc. Superfund Site ("Site") located in Rockaway Township, Morris County, New Jersey. The settlement requires the settling parties, Sterigenics East Corporation and Ion Beam Applications, Inc., the current lessees of a 15-acre parcel of property located on the approximately 280-acre Site, to pay $200,000 in reimbursement of EPA's response costs at the Site. The settlement includes a covenant not to sue the settling parties pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), in exchange for settling parties' payment of monies. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement.

EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate that the proposed settlement is inappropriate, improper or inadequate. EPA's response to any comments received will be available for public inspection at EPA Region II, 290 Broadway, New York, New York 10007–1866.

DATES: Comments must be submitted on or before August 18, 2003.

ADDRESSES: The proposed settlement is available for public inspection at EPA Region II offices at 290 Broadway, New York, New York 10007–1866.

Comments should reference the Radiation Technology, Inc. Superfund Site located in Rockaway Township, Morris County, New Jersey, Index No. CERCLA 02–2003–2006. To request a copy of the proposed settlement agreement, please contact the individual identified below.

FOR FURTHER INFORMATION CONTACT: Frances M. Zizila, Assistant Regional Counsel, New Jersey Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007–1866. Telephone: (212) 637–3135.

Dated: July 9, 2003.

William McCabe,

Acting Director, Emergency & Remedial Response Division.

[FR Doc. 03–18158 Filed 7–17–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0035; FRL–7319–1]

Approval of Test Marketing Exemption for a Certain New Chemical

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–03–0004. The test marketing conditions are described in the TME application and in this notice.

DATES: Approval of this TME is effective July 9, 2003.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara

Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Virginia Lee, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–0883; e-mail address: *Lee.Virginia@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed in particular to the chemical manufacturer and/or importer who submitted the TME to EPA. This action may, however, be of interest to the public in general. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0035. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. What is the Agency's Authority for Taking this Action?

Section 5(h)(1) of TSCA and 40 CFR 720.38 authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes, if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

III. What Action is the Agency Taking?

EPA approves the above-referenced TME. EPA has determined that test marketing the new chemical substance, under the conditions set out in the TME application and in this notice, will not present any unreasonable risk of injury to health or the environment.

IV. What Restrictions Apply to this TME?

The test market time period, production volume, number of customers, and use must not exceed specifications in the application and this notice. All other conditions and restrictions described in the application and in this notice must also be met.

TME–03–0004.

Date of Receipt: June 2, 2003.

Notice of Receipt: June 25, 2003 (Volume 68 FR 37820) (FRL–7315–1).

Applicant: PPG Industries, Inc.

Chemical: Urethane acrylate.

Use: Component of photoresist coating.

Production Volume: 40,104 kg/yr.

Number of Customers: One.

Test Marketing Period: 365 days, commencing on first day of commercial manufacture.

The following additional restrictions apply to this TME. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME. In addition, the applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substance produced and the date of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substance.

V. What was EPA's Risk Assessment for this TME?

EPA identified no significant health or environmental concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to human health or the environment.

VI. Can EPA Change Its Decision on this TME in the Future?

Yes. The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention cast significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to human health or the environment.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: July 9, 2003.

Linda Gerber,

Chief, New Chemicals Prenotice Management Branch, Office of Pollution Prevention and Toxics.

[FR Doc. 03–18305 Filed 7–17–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 4, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Daniel A. Hamann, Omaha, Nebraska; Esther Hamann Brabec, Omaha, Nebraska; and Julie Hamann Bunderson, Elkhorn, Nebraska, both acting in concert and each individually to acquire voting shares of Great Western Bancorporation, Inc., Omaha, Nebraska, and thereby indirectly acquire voting shares of Great Western Bank, Watertown, South Dakota, and Great Western Bank, Clive, Iowa.

2. Harry S. Coin, Moline, Illinois; to acquire voting shares of Ambank Holdings, Inc., Rock Island, Illinois, and thereby indirectly acquire voting shares of American Bank and Trust Company, National Association, Davenport, Iowa.

Board of Governors of the Federal Reserve System, July 14, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–18215 Filed 7–17–03; 8:45 am]

BILLING CODE 6210-01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 1, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Daniel A. Hamann, Omaha, Nebraska; Esther Hamann Brabec, Omaha, Nebraska; and Julie Hamann Bunderson, Elkhorn, Nebraska, both acting in concert and each individually to acquire voting shares of Great Western Bancorporation, Inc., Omaha, Nebraska, and thereby indirectly acquire voting shares of Great Western Bank, Watertown, South Dakota, and Great Western Bank, Clive, Iowa.

2. Harry S. Coin, Moline, Illinois; to acquire voting shares of Ambank Holdings, Inc., Rock Island, Illinois, and thereby indirectly acquire voting shares of American Bank and Trust Company, National Association, Davenport, Iowa.

Board of Governors of the Federal Reserve System, July 14, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–18215 Filed 7–17–03; 8:45 am]

BILLING CODE 6210-01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 11, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Farbod S. Zohouri, Flowery Branch, Georgia; to acquire voting shares of Texico Bancshares Corporation, Texico, Illinois, and thereby indirectly acquire Texico State Bank, Texico, Illinois.

Board of Governors of the Federal Reserve System, July 15, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–18320 Filed 7–17–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 13, 2003.

A. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice

1. East Dubuque Bancshares, Inc., Dubuque, Iowa; to become a bank holding company when its subsidiary, East Dubuque Savings Bank, East Dubuque, Illinois, converts from a federal savings bank to a state chartered bank.

B. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Heritage Oaks Bancorp, Paso Robles, California; to acquire 100 percent of the voting shares of Hacienda Bank, Santa Maria, California.

Board of Governors of the Federal Reserve System, July 14, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–18214 Filed 7–17–03; 8:45 am]

BILLING CODE 6210–01–S

President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Southwest Bancorp, Inc., Stillwater, Oklahoma; to acquire 100 percent of the voting shares of SNB Bank of Wichita, Wichita, Kansas (in organization), and thereby engage in operating a savings association, pursuant to section 225.28(b)(4) of Regulation Y.

Board of Governors of the Federal Reserve System, July 15, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.03–18319 Filed 7–17–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–52–03]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: Resources and Services Database on CDC National Prevention Information Network (OMB Control No. 0920–0255)—Reinstatement with change—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC). CDC is requesting OMB approval to reinstate, with change, the data collection for the Resources and Services Database for the CDC National Prevention Information Network (formerly known as the National AIDS Clearinghouse). This request is for a three-year reinstatement of clearance.

NCHSTP has the primary responsibility within the CDC and the U.S. Public Health Service for the prevention and control of HIV infection, sexually transmitted diseases (STDs), and tuberculosis (TB), including community-based HIV prevention activities and syphilis and TB elimination programs. To support NCHSTP's mission and to link Americans to prevention, education, and care services, the CDC National Prevention Information Network (NPIN) serves as the U.S. reference, referral, and distribution service for information on HIV/AIDS, STDs, and TB. NPIN is a critical member of the network of government agencies, community organizations, businesses, health professionals, educators, and human services providers that educate the American public about the grave threat to public health posed by HIV/AIDS, STDs, and TB, and provides services for persons infected with human immunodeficiency virus (HIV).

Established in 1988, the NPIN Resources and Services Database contains entries on approximately 19,000 organizations and is the most comprehensive listing of HIV/AIDS, STD and TB resources and services available throughout the country. This database describes national, state and local organizations that provide services related to HIV/AIDS, STDs, and TB such as counseling and testing, prevention, education and support services. The NPIN reference staff rely on the Resources and Services Database to respond to nearly 63,000 requests each year for information or referral from community based organizations, state and local health departments, and health professionals working in HIV/AIDS, STD and TB prevention. The CDC National AIDS and STD Hotline staff also use the NPIN Resources and Services Database to refer approximately one million callers yearly to local programs for information, services, and treatment. The American public can also access the NPIN Resources and Services database through the NPIN Web site. More than 12 million visits by the public to the Web site are recorded annually.

To accomplish CDC's goal of continuing efforts to maintain an up-to-date, comprehensive database, NPIN plans each year to add 100 newly identified organizations and to verify those organizations currently described in the NPIN Resources and Services Database each year. NPIN staff learn about new organizations through exhibiting at health and professional meetings, searching the Internet, and perusing newsletter announcements and press releases. Once a new organization is identified as providing HIV/AIDS, STD or TB-related services, NPIN staff will mail the Resource Organization Questionnaire along with a cover letter. The purpose of the questionnaire is to gather information about the HIV/AIDS, STD or TB-related services available from the organization, what geographic area the organization serves, and the target audiences for these services. Each organization will also receive a stamped, self-addressed envelope for the return of the questionnaire. Organizations with access to the Internet, will be given the option to complete and submit an electronic version of the questionnaire by visiting the CDC NPIN Web site. If NPIN receives no response to the initial mailing of the questionnaire, a follow-up telephone call will be made to the organization requesting them to complete and return the questionnaire.

As part of the verification process for the Resources and Services Database, 40 percent of the organizations will receive a copy of their current database entry by electronic mail, including a cover letter and a list of instructions. The remaining 60 percent will receive a telephone call to review their database record. The annual burden for this data collection is 3,858 hours.

Survey	Number of respondents	Number of responses/ respondent	Avg. burden/ response (in hours)
Questionnaire Resource Organization	100	1	30/60
Questionnaire Telephone Follow-up	33	1	15/60
Email Verification	7,600	1	15/60
Telephone verification	11,400	1	10/60

Dated: July 11, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–18222 Filed 7–17–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–54–03]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: Importation and Transport of Etiologic Agents (42 CFR 71.54 and Part 72) (OMB Control No. 0920–0199)—Revision—Office of the Director (OD), Centers for Disease Control and Prevention (CDC). The importation of etiological agents, hosts, and vectors of human disease are regulated by 42 CFR 71.54 and requires that the importation of such materials must be accompanied by a permit issued by the CDC. To carry out this provision, CDC has developed two forms for application for permit. One form is used to apply for a permit to import or distribute after importation, etiologic agents. A second form is used to apply for a permit to import or distribute after import, live bats. The second form is a new form for this information collection.

Interstate transportation of etiologic agents are regulated by 42 CFR Part 72. This regulation establishes minimal packaging requirements for all viable micro-organisms, illustrates the appropriate shipping label, and provides reporting instructions regarding damaged packages and failure to receive a shipment.

This request is for the information collection requirements contained in 42 CFR 71.54, 72.3(e), 72.3(f), and 72.4 which relate to the importation and transportation of etiologic agents. Respondents include laboratory facilities such as those operated by government agencies, universities, research institutions, and commercial entities. The only cost to respondents is their time to complete the application for permit to import form and report problems with shipment of etiologic agents.

CFR section	Number of respondents	Number of responses per respondent	Avg. burden per response (in hrs.)
72.54 Application Permit for Etiologic Agents	2,340	1	20/60
72.54 Application Permit for Live Bats	60	1	20/60
72.3(e) Damaged Package	50	1	5/60
72.3(f) Shipping Requirement	200	10	12/60
72.4 Failure to Receive	2	1	12/60

Dated: July 11, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

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BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–98]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Evaluation of an intervention to increase colorectal cancer screening in primary care clinics—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and brief description of the proposed project: Colorectal cancer is the second leading cause of cancer-related deaths in the United States. Routine colorectal cancer screening is recommended for all men and women age 50 years and older. Many screening tests are widely available (*e.g.*, fecal occult blood test, flexible sigmoidoscopy, colonoscopy), and all have been shown to be effective in reducing colorectal cancer mortality. Despite their effectiveness, colorectal cancer screening by any modality remains low. Some reasons attributed to the low screening rates include limited public awareness of colorectal cancer and the benefits of screening, failure of health care providers to recommend screening to patients, and inefficient surveillance and support systems in many health care settings. The purpose of this project is to evaluate a multi-component intervention to increase colorectal cancer screening among average-risk men and women in primary care clinics.

The proposed study will consist of three tasks. In Task 1, 196 primary care

clinicians will complete a survey assessing demographics; opinions about preventive services; colorectal cancer screening training and practices; colorectal cancer screening beliefs, facilitators, and barriers; and satisfaction with colorectal cancer screening. The survey will be administered to clinicians pre- and post-intervention. In Task 2, 196 clinic support staff will complete a survey assessing demographics; work-related duties; opinions about preventive services; colorectal cancer screening training and practices; colorectal cancer screening beliefs, facilitators, and barriers; and satisfaction with colorectal cancer screening. The survey will be administered to clinic support staff pre- and post-intervention. In Task 3, clinic patients will complete a survey assessing demographics; health status; previous colorectal cancer screening and other preventive services received; colorectal cancer knowledge and opinions about colorectal cancer and colorectal cancer screening; and social support.

The survey will be administered to 4,396 patients pre-intervention (consisting of 3,276 patients surveyed only at baseline and 1,120 patients surveyed at baseline and follow-up) and 4,200 patients post-intervention (consisting of 1,120 patients surveyed at baseline and follow-up and 3,080 patients surveyed only at follow-up). There are no costs to the respondents.

Respondents	No. of respondents	No. of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Clinicians	196	2	30/60	196
Clinic support staff	196	2	25/60	163
Patients surveyed only at baseline	3276	1	20/60	1,092
Patients surveyed at baseline and follow-up	1120	2	20/60	747
Patients surveyed only at follow-up	3080	1	20/60	1,027
Total				3,225

Dated: July 14, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–18224 Filed 7–17–03; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–97]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Exposure to Volatile Organic Compounds in Drinking Water and Specific Birth Defects and Childhood Cancers at United States Marine Corps Base Camp Lejeune, North Carolina—New—The Agency for Toxic Substances and Disease Registry (ATSDR).

ATSDR is mandated pursuant to the 1980 Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and its 1986 Amendments, the Superfund Amendments and Re-authorization Act (SARA), to prevent or mitigate adverse human health effects and diminished quality of life resulting from exposure to hazardous substances in the environment. ATSDR plans activities to address these issues which include conducting health studies at sites on the Environmental Protection Agency's (EPA) National Priorities List (NPL) to determine whether and to what degree exposure to hazardous substances at these sites are harmful to human health.

The United States Marine Corps Base Camp Lejeune, North Carolina, is one of the federal facilities on EPA's National Priorities List. In 1982, periodic sampling of drinking water sources began at Camp Lejeune to comply with regulations of the national Safe Drinking Water Act. The sample results showed that the drinking water supplied to some of the base housing units was contaminated with volatile organic compounds (VOCs). The specific chemicals of concern were trichloroethylene (TCE), tetrachloroethylene (or perchloroethylene) (PCE), dichloroethylene, and methylene chloride. These chemicals are used as solvents to clean machinery and weapons and in dry cleaning operations. A 1997 ATSDR public health assessment (PHA) of the base recommended that an epidemiological study be considered to determine if mothers exposed to VOCs in drinking water during their pregnancies were at higher risk of giving birth to a child with health problems such as a birth defect or a childhood cancer. ATSDR's initial response to the PHA recommendation was to conduct a study at Camp Lejeune to evaluate whether mothers who were exposed to the contaminated drinking water during pregnancy were at higher risk of having a child which was "small for gestational age" (*i.e.*, an infant weighing less than the 10th percentile based on published sex-specific growth curves). This study was completed in 1998 and found an association between mothers' exposures to the contaminated drinking water during pregnancy and small for gestational age infants. The association between birth defects and drinking water contaminated with TCE or PCE could not be reasonably evaluated in the 1998 study because of extreme under-ascertainment of cases using data from birth certificates.

In response to the PHA recommendation, ATSDR began the multi-step process of determining the appropriateness of conducting an epidemiological study of specific childhood cancers and birth defects at Camp Lejeune. Based on the scientific literature, ATSDR decided to focus on specific childhood cancers and birth defects: Childhood leukemia, childhood non-Hodgkin's lymphoma, spina bifida, anencephaly, cleft lip and cleft palate. ATSDR conducted a survey in 1999–2002 (OMB No. 0923–0023) to identify all cases of the specific birth defects and childhood cancers. About an 80 percent participation rate was achieved among the approximately 16,000 to 17,000 births that occurred among women who were pregnant while living at Camp Lejeune during the study period 1968–1985. These years were chosen because 1968 is the first year that birth certificates were computerized in North Carolina, and 1985 is the last year that VOC contamination was detected at the base. All of the participants who took part in the Camp Lejeune Survey in 1999–2002 gave permission to be contacted for future studies. Additionally, many survey participants have telephoned ATSDR to request the results of the survey and inquire about future studies.

The overall objective of the proposed case-control study is to examine whether there is an association between maternal exposures during pregnancy to TCE and PCE in drinking water at Camp Lejeune during the period of 1968–1985 and the risk of specific birth defects (spina bifida, anencephaly, cleft lip and cleft palate) and childhood cancers (childhood leukemia and Non-Hodgkin's Lymphoma) in offspring.

ATSDR is in the process of verifying that the child had the birth defect or childhood cancer reported by the parents in the survey. The parents of the children with possible birth defects or childhood cancers of concern were contacted and asked to sign a medical records release form so that ATSDR could gain access to the medical records for their children. If the child had reached 18 years of age, he or she was contacted and asked to sign a medical records release form.

Once the review of medical records is complete, the final step is to conduct an epidemiological study that includes all the cases of birth defects and childhood cancers of concern. The study will also include a control sample of children who did not have a birth defect or a childhood cancer and whose mothers lived at Camp Lejeune during their pregnancy over the period 1968–1985. The study plans to enroll 100 cases and 500 controls over the course of one year. The epidemiological study will require the computer modeling of the drinking water system at Camp Lejeune over the period 1968–1985 in order to determine as accurately as possible which mothers were exposed to the VOCs in the drinking water during their pregnancy and which mothers were not exposed during their pregnancy.

To reduce the amount of time required by the respondents, Computer Assisted Telephone Interviews (CATI) will be conducted. Following completion of all respondent interviews, the data will be tabulated and analyzed (the case group will be compared with the control group). Because only a very small number of studies have looked at the risk of birth defects and childhood cancers among children born to mothers exposed during pregnancy to VOCs in drinking water, the proposed study will aid in developing or contributing to generalizable knowledge.

Other than their time to participate, there is no cost to the respondents.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Cases	100	1	45/60	75
Controls	500	1	45/60	375
Total				450

Dated: July 14, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–18225 Filed 7–17–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03158]

Cooperative Agreement for Plague Clinical Trials With The Uganda Virus Research Institute; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2003 funds for a cooperative agreement program to evaluate the effectiveness and safety of Gentamicin and other antibiotics for the treatment of human plague, to evaluate newly available rapid dipstick tests for diagnosis of human plague, and to develop a long-term collaboration between the CDC and Uganda Health Authorities in the area of plague research and prevention. The Catalog of Federal Domestic Assistance number for this program is 93.283.

B. Eligible Applicant

Assistance will be provided only to the Uganda Virus Research Institute. No other applications are solicited. UVRI is the most appropriate and qualified agency to conduct the activities specified under this cooperative agreement for the following reasons:

- CDC Uganda is located at the UVRI facility.
- UVRI is a government agency within the Uganda Ministry of Health. It is the principal agency tasked with surveillance, research, and control of infectious diseases such as plague.
- UVRI is responsible for carrying out all national surveillance and prevention programs for plague, as well as organizing community awareness programs, health education, and education of medical professionals on plague.
- UVRI has established collaborations with the District Health Authorities, individual physicians and healthcare workers in plague-endemic areas. They currently maintain a laboratory facility in the West Nile Region of Uganda, which is endemic for plague.
- UVRI is the only organization that has the existing laboratory capacity to carry out large-scale national public health interventions and to conduct plague research. They have the required

field experience and demonstrated capacity in areas directly related to all principal objectives of this proposed program: (1) Identification of cases of plague through clinic-based surveillance in areas with a high incidence of plague; (2) systematically evaluate optimal treatment regimens while ensuring patient safety; (3) evaluate the performance of newly available rapid tests for the diagnosis of plague under field conditions, and (4) confirm the diagnosis of suspected plague using state of the art laboratory techniques.

• UVRI has a history of successful collaborations with CDC on large and complicated health research projects, particularly in the areas of HIV/AIDS and vector-borne infectious diseases over the years.

C. Funding

Approximately $150,000 is available in FY 2003 to fund this award. It is expected that the award will begin on or before August 1, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone: 770–488–2700.

For technical questions about this program, contact: Jacob Kool, MD, Ph.D., Division of Vector-Borne Infectious Diseases, National Center for Infectious Diseases, Centers for Disease Control and Prevention, Rampart Road (Foothills Campus), Fort Collins, CO 80521, Telephone: 970–266–3540, E-mail: *jkool@cdc.gov*.

Dated: July 11, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–18241 Filed 7–17–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04015]

Effective Strategies to Reduce Motor Vehicle Injuries Among American Indians/Alaska Natives; Notice of Availability of Funds

Application Deadline: October 16, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under 391, 317 and 301 of the Public Health Service Act [42 U.S.C. 280b, 247b, and 241]. The Catalog of Federal Domestic Assistance number is 93.136.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2004 funds for a cooperative agreement program to develop, implement, and evaluate community-based interventions with demonstrated effectiveness to reduce motor vehicle-related injuries among American Indians and Alaska Natives (also referred to as Native Americans). This program addresses the "Healthy People 2010" focus area of Injury and Violence Prevention.

The purpose of the program is to design/tailor, implement, and evaluate Native American community-based interventions with demonstrated effectiveness for preventing motor vehicle injuries within the following areas: (1) Strategies to reduce alcohol-impaired driving among high risk groups; (2) strategies to increase safety belt use among low-use groups; and (3) strategies to increase the use of child safety seats and booster seats among low use groups. (see Attachment 1 for additional background)

In addition, the program should gather information on the process of implementing and evaluating these strategies, including any challenges and barriers for tribes. An overriding intent of this funding is to assist tribes in designing/tailoring (as well as implementing and evaluating) these evidence-based effective strategies in programs, which take into consideration the unique culture of American Indians and Alaska Natives.

Note: Attachments are posted with the Program Announcement at the CDC web site, Internet address: *http://www.cdc.gov*. Click on "Funding," then "Grants and Cooperative Agreements'.

This project will fund the formation of coalitions of tribal health departments, tribal injury prevention programs, law enforcement, and tribal transportation and traffic safety agencies. These coalitions will work with other community groups, organizations, state agencies, and the Indian Health Service (IHS) to design/tailor, implement, and evaluate at least two selected interventions. Collaborations may include schools, youth organizations, safety advocates, local media, health care providers, academic researchers, IHS staff, state traffic safety agencies and social service agencies, among others.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the National Center for Injury Prevention and Control (NCIPC): (1) Increase the capacity of injury prevention and control programs to address the prevention of injuries and violence; and (2) monitor and detect fatal and non-fatal injuries. In addition applicants should address the following research priorities in transportation safety from the NCIPC Research Agenda: (1) Evaluate strategies to implement known, effective interventions to reduce alcohol-impaired driving and test the effectiveness of new, innovative strategies; (2) develop and evaluate interventions that address the proper and consistent use of measures to protect child occupants in motor vehicles; and (3) develop and evaluate interventions to increase the use of occupant protection devices, such as seat belts, in high-risk and hard-to-reach populations.

The CDC report, "Motor-Vehicle Occupant Injury: Strategies for increasing use of child safety seats, increasing use of safety belts, and reducing alcohol-impaired driving: a report on recommendations of the Task Force on Community Preventive Services," may be useful in understanding these effective strategies and in preparing applications. The report can be found on the CDC Web site at: *www.cdc.gov/mmwr/pdf/rr/5007*.

C. Eligible Applicants

Any federally recognized American Indian/Alaska Native tribe or tribal organization is eligible to apply for these cooperative agreements. Applicants may include tribal injury prevention programs, tribal health departments, groups of tribes, and others. Tribes and tribal organizations must have a minimum population size of 2,500 people, or serve 2,500 American Indian or Alaska Native people in order to be eligible to apply.

The 2,500 minimum population size is needed in order to be able to demonstrate effectiveness of the program. A signed and dated tribal council resolution in support of the tribal motor vehicle injury prevention program is required. For the Navajo Nation, where getting a tribal resolution signed is often difficult, signed resolutions from a local governing body, such as a Chapter House, will be acceptable for the intent to participate. Those tribes that cannot get a resolution signed in time to meet the deadline should submit a draft of the resolution in the appendix. A signed resolution from the tribe will be required prior to award if selected.

American Indians/Alaska Natives have the highest motor vehicle-related death rates of all racial and ethnic groups (Web-based Injury Statistics Query and Reporting System (WISQARS, NCIPC, CDC)), with rates two-three times greater than rates for all other Americans (Indian Health Focus, Injuries 1998–99; Indian Health Service, 2002). These funds are targeted to American Indians/Alaska Natives in order to help reduce this disparity.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $186,000 is available in FY 2004 to fund three awards. It is expected that the average award will be about $62,000. It is expected that the awards will begin on or about January 2004, and will be made for a 12-month budget period within a project period of up to four years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

The intent of this funding is not to support existing activities. The recipient should provide evidence that there is an unmet need in their community for these interventions. This can be done by describing the target groups for the selected interventions and documenting the size of the problem. Examples of approved funding uses include police overtime pay for sobriety checkpoints and enhanced enforcement, media and awareness activities, evaluation consultants, salary for a project coordinator, etc.

Recipient Financial Participation

Matching funds are not required for this program.

Funding Preferences

Applicants will be expected to implement and evaluate at least two community-based interventions with demonstrated effectiveness during the four-year project period. Preference will be given to applicants who propose implementing one or more community-based interventions from the list below. This list contains interventions that have strong evidence of effectiveness according to "The Guide to Community Preventive Services" *(www.thecommunityguide.org)* (*see* Attachment 2). If applicants propose strategies that are not on the list below, then they must summarize and cite the evidence of effectiveness (*see* Attachment 2):

1. Sobriety checkpoints to reduce alcohol-impaired driving. Key components of the intervention: officer training in appropriate practices; implement or increase the frequency of sobriety checkpoints (or roving patrols if checkpoints are not feasible); develop a strategy for publicizing checkpoints through media such as news stories and/or paid media.

2. Efforts to lower blood alcohol concentrations among drivers (*e.g.*, .08 blood alcohol content (BAC) or below). Key components: Publicize the BAC limit and work with tribal (or Bureau of Indian Affairs) police to communicate the importance of the law and ensure active enforcement.

3. Efforts to enforce lower blood alcohol content (*e.g.*, .02 BAC) for young drivers. Key components: Publicize the BAC limit, importance of a low BAC for young drivers to prevent crashes, and enforcement efforts in local media; work with tribal (or Bureau of Indian Affairs) police to actively enforce the law.

4. Efforts to enforce existing safety belt and child occupant restraint laws. Key components: Work with local police to understand the importance of enforcing the use of occupant restraints, and the effectiveness of safety belts and child restraints in preventing injuries during a crash.

5. Enhanced enforcement campaigns (such as Click It or Ticket-style campaigns) to increase safety belt use or child occupant restraint use. Key components of the intervention include: implement or increase the frequency of citations for violations of the law; implement or increase safety belt or child occupant restraint checkpoints (or roving patrols if checkpoints are not feasible); develop a strategy for publicizing the enhanced enforcement efforts through earned media (*e.g.*, news stories) and/or paid media.

6. Distribution and education programs to increase child safety seat and booster seat use. Key components of the intervention include: distribution of child safety seats and/or booster seats among low use groups, and education on appropriate use.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed in 1. Recipient Activities, and CDC will be responsible for the activities listed in 2. CDC Activities.

1. Recipient Activities

a. Develop a motor vehicle injury prevention program in the recipient's tribal health department to enhance opportunities for the motor vehicle injury prevention program to collaborate with other tribal public health programs. If this is not practical, then state the reason why the tribal motor vehicle program will not be located in the health department.

b. Provide a coordinator who has the authority, responsibility, and expertise to conduct and manage the tribal motor vehicle injury prevention program.

c. Establish the coalition or advisory group that will help tailor, implement, and evaluate the selected interventions. This group may consist of public and private individuals, medical staff, Emergency Management Service staff, injury prevention experts, academic researchers, organizations, State and Federal agencies. At a minimum, the coalition must include the recipient tribal health department or organization, local highway safety department representative, local law enforcement, IHS Injury Prevention Specialists (state reason if not available), and others interested in traffic safety. Applicants are encouraged to work with existing programs, such as "Safe Communities," or with coalitions such as "SAFE KIDS."

d. At least one of the intervention choices should include working with local police departments to conduct enforcement activities regarding occupant restraint use, or alcohol-impaired driving.

e. Collect or obtain and analyze baseline data that will guide the planning process and serve as the pre-intervention measures of effectiveness (*e.g.*, number of alcohol-related crashes; number of impaired driving arrests and convictions; conduct observational

surveys to determine safety belt use, booster seat use, or child restraint use).

f. If the recipient proposes to implement enhanced enforcement campaigns to increase safety belt use or child safety seat use, the recipient must first determine baseline use rates for safety belts, child safety seats, or booster seats. At a minimum, a comparison of observed use rates determined from observational surveys in the intervention communities before and after implementation of the intervention activities will be necessary for evaluation purposes. The recipient would also need to determine baseline police citations given before and during the enhanced enforcement activities.

g. If the recipient proposes to implement sobriety checkpoints to reduce alcohol-impaired driving, the recipient must first determine rates of alcohol-impaired driving using appropriate survey methods before implementation of the intervention. Acceptable methods include direct assessment of driver BAC levels in roadside surveys; determining the number of single-vehicle nighttime fatal crashes; or determining all nighttime fatal crashes before the checkpoint campaign.

h. Analyze existing data to define the magnitude of the motor vehicle injury problem within the Native American target population, including those at greatest risk. Potential data sources include hospital discharge data, clinic and emergency department data, police reports, and State Department of Transportation reports.

i. Develop a detailed plan for the tailoring of the intervention for their community, implementation, and evaluation of the selected evidence-based interventions to reduce motor vehicle-related injuries. This would include specific process, impact, and outcome objectives and action steps to accomplish each. Obtain approval for the plan from the coalition, and present the plan to CDC for approval.

j. Implement, sustain, and rigorously evaluate the selected interventions.

k. Attend and participate in conference calls and technical assistance and planning meetings coordinated by the CDC for all tribal cooperative agreement recipients (one meeting per year in Atlanta; two days per meeting).

l. Submit required reports on time.

m. The first year of the cooperative agreement will include several activities: establishing the coalition; collecting and analyzing baseline data (e.g., alcohol-related crashes, driving under the influence (DUI) arrests and convictions, conducting observational surveys of safety belt use); evaluating perceptions of stakeholders regarding barriers to implementation and perceived benefits of the intervention; and developing a detailed plan for implementing and evaluating two or more interventions.

n. Noncompetitive continuation funding will be available for the second year, contingent upon successful progress in year one, and a detailed budget for implementing and evaluating the selected interventions. Years two-four will be dedicated to implementing, sustaining, and evaluating the selected interventions. The evaluation should include information regarding any barriers that were encountered in implementing the interventions.

2. CDC Activities

a. Provide technical assistance, training, and guidance in the design/tailoring, implementation, and evaluation of the selected interventions. This will be done early in the first year of funding with CDC conducting an initial training and planning meeting with all grantees.

b. Review, provide feedback, and approve plans for the design/tailoring, implementation, and evaluation of the selected interventions.

c. Conduct regular conference calls and annual site visits to provide training, technical assistance, and monitoring of the tribal motor vehicle injury program.

d. Assist in developing a research protocol for annual Institutional Review Board (IRB) review by all cooperating institutions participating in the project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the project, including analyses, is completed.

e. Assist in ensuring human subjects assurances are in place as needed.

f. Assist in analysis and dissemination of results including the preparation of manuscripts, as needed.

g. Organize an annual grantee meeting to provide technical assistance, training, facilitate communication, and assist with program planning and evaluation.

F. Content

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 20 pages, double-spaced, printed on one side of standard size 8.5-inch × 11-inch paper with consecutively numbered pages, with 1.5 inch-left, 1 inch-top, bottom, and right margins, and unreduced 12-point font. The applicant should provide a detailed description of first-year activities and briefly describe future year objectives and activities for years two, three, and four.

The narrative should consist of, at minimum:

1. Applicant's Organization History, Description and Capacity
2. Applicant's Plan for Designing/Tailoring, Implementing, and Evaluating the Selected Interventions
3. Applicant's Management and Staffing
4. A Plan for Collaboration
5. Measures of Effectiveness
6. First Year Budget

G. Submission and Deadline

Application Forms

Submit the signed original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time October 16, 2003. Submit the application to: Technical Information Management-PA# 04015, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation. Examples include: conducting observational surveys before and after the intervention to determine any change in occupant restraint use and over time; changes in citations and convictions given for not using seat belts or child safety seats pre-intervention, post-intervention, and over time; changes in citations and convictions given for DUI pre-intervention, post-intervention, and over time; changes in alcohol-related crashes or single vehicle nighttime fatal crashes pre-intervention, post-intervention, and over time.

An independent review group appointed by CDC will evaluate each application individually against the following criteria:

1. Applicant's Plan for Designing/Tailoring, Implementing, and Evaluating the Selected Interventions (35 points)

The extent to which the applicant's work plan and timetable includes:

a. The identification of representatives to be named as members of the coalition, including a description of the areas of expertise covered by each; the specific roles and responsibilities of each in implementing this cooperative agreement; etc.

b. A reasonable and complete schedule/timeline for implementing all first year activities with action steps and persons responsible. A brief description of future year objectives and activities for years two through four.

c. Plans for collecting or obtaining and analyzing baseline (pre-intervention) and follow-up data for the measures of effectiveness.

d. A description of the process used in selecting the interventions to be implemented.

e. A description of the process to be used in preparing the detailed plan for implementing and evaluating the selected interventions.

f. Evidence of a partnership with an academic institution or expert evaluation consultant to provide expertise and technical assistance in the design and implementation of the evaluation plan. Evaluation is important to these cooperative agreements, so it is recommended that approximately 15 percent of project resources be devoted to evaluation activities. Letters of support or agreement should be included in the appendix.

g. Initial plans to evaluate the interventions including measures of effectiveness that will demonstrate the accomplishment of the identified objectives of the cooperative agreement. Measures should be objective/quantifiable and measure the intended outcome. Describe how the academic institution or evaluation consultant will be involved in the evaluation activities.

h. Plans to train and support staff regarding the responsibilities of this cooperative agreement and the availability of staff and facilities to carry out this cooperative agreement.

2. Applicant Organization History, Description and Capacity (25 points)

The extent to which the applicant has documented:

a. A description of the target population to be served, and proof of a minimum reservation or tribal population size of 2,500.

b. An overview of the tribe's motor vehicle injury problem.

c. An inventory of existing tribal traffic safety laws for seat belt use, child restraint use, and alcohol impaired driving.

d. Their history and current capacity to provide a leadership function in convening and facilitating the work of the coalition.

e. Evidence of prior experience in designing/tailoring, implementing, and where possible, evaluating community-based interventions. This evidence will be stronger if some type of documentation is included such as publications from journal articles or technical reports in the appendix of the application.

f. The description of positive progress in any related past or current injury prevention activities or programs. Evidence of access to the target populations.

g. Their organizational capacity to meet the objectives of the cooperative agreement.

h. The extent to which the applicant has shown tribal or organizational support for the proposed motor vehicle injury prevention program.

3. Applicant's Management and Staffing (20 points)

The extent to which the applicant has included:

a. Their management operation, structure and/or organization. An organizational chart of the applicant's organization should be included as an appendix. Additionally, the applicant should include within their management plan the specific role and mechanisms to be established to ensure effective coordination, communication and shared decision making among the involved agencies/organizations.

b. A staffing plan for the project, noting existing staff as well as additional staffing needs. The responsibilities of individual staff members including the level of effort and allocation of time for each project activity by staff position should be included. The specific staff positions within the other involved tribal or local agencies, both in-kind and funded, should be described.

c. Resumes and/or position descriptions (*i.e.* for current staff, in-kind, and proposed positions to be funded under this cooperative agreement) should be included as an appendix. This should include the use of consultants, as appropriate.

d. A continuation plan in the event that key staff leave the project, how new staff will be smoothly integrated into the project, and assurances that resources will be available when needed for this project.

4. Collaboration (20 Points)

The extent to which the applicant demonstrates:

a. Experience with working with community leaders, tribal health boards, tribal councils, local police departments, and community-level groups.

b. Evidence of effective and well-defined collaborative relationships within the performing organization and among the coalition members that will ensure implementation of the proposed activities. Model collaborations should include at least a tribal Health Department or organization, local law enforcement, IHS Injury Prevention staff, and a tribal traffic safety agency (if available). Letters of support from these collaborating organizations describing the specific commitments and

responsibilities that will be undertaken by the coalition members and community organizations should be included in the appendix.

5. Proposed Budget Justification (Reviewed, but not scored)

The extent to which the applicant's budget includes funds to participate in the CDC required meetings (at least one person, such as the Project Coordinator, must attend one meeting per year in Atlanta to last for two days). The applicant should provide a detailed budget request and complete line-item justification of all proposed operating expenses consistent with the stated activities under this program announcement. Applicants should be precise about the purpose of each budget item and should itemize calculations wherever appropriate. The use of budget guidance posted on the CDC website with this announcement is encouraged.

6. Measures of Effectiveness (Reviewed, but not scored)

The extent to which the applicant has provided appropriate measures of effectiveness.

7. Human Subjects (Reviewed, but not scored)

The extent to which the applicant adequately addresses the requirements of Title 45 CFR part 46 for the protection of human subjects. Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:
   a. Current Budget Period Activities Objectives.
   b. Current Budget Period Financial Progress.
   c. New Budget Period Program Proposed Activity Objectives.
   d. Detailed Line-Item Budget and Justification.
   e. Additional Requested Information.
2. Financial status report, no more than 90 days after the end of the budget period.
3. Final financial and performance reports, no more than 90 days after the end of the project period. Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment III of the program announcement, as posted on the CDC Web site.

AR–1 Human Subjects Requirements
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC web site, Internet address: *http://www.cdc.gov*. Click on "Funding," then "Grants and Cooperative Agreements".

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Nancy Pillar, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: 770–488–2721, e-mail address: *nfp6@cdc.gov*.

For program technical assistance, contact: David Wallace, MSEH, Technical Adviser, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway NE, MS K–63, Atlanta, GA 30341–3724, Telephone number: 770–488–4712, e-mail address: *dwallace2@cdc.gov*.

Dated: July 2, 2003.

Edward Schultz,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–18239 Filed 7–17–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03189]

Blindness and Vision Loss Prevention Program; Notice of Availability of Funds

Application Deadline: August 18, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) and 317(k)(2) of the Public Health Service Act, 317H of the Public Health Service Act 42 U.S.C. 247 (b)(9), and section 301(a) of the Public Health Service Act, 42 U.S.C. 241(a) and 247b(k)(2), as amended. The Catalog of Federal Domestic Assistance number is 93.988.

B. Purpose

The Centers for Disease Control and Prevention (CDC), announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program for a Blindness and Vision Loss Prevention Program. This program addresses the "Healthy People 2010" focus area of Diabetes and Vision.

The purpose of this program is to develop, deliver, and evaluate a program of comprehensive vision screening, outreach and referral, public education, and surveillance of vision problems. This program is intended to serve persons at risk of blindness and vision loss including persons with diabetes, the elderly, racial and ethnic minorities, and children. This program is also intended to increase awareness nationwide of the need for routine eye examinations, screenings for vision loss, and the need for action to preserve and protect eyesight by developing a national model prevention program to: (a) Raise awareness of the risks of vision loss and eye disease; (b) recognize the early signs of eye disease; (c) identify appropriate and effective prevention practices; (d) implement screenings and eye examinations in target populations; (e) locate and identify where to find services for prevention, treatment, and rehabilitation; and (f) develop and maintain a national database which defines the extent of eye disease and vision loss.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Chronic Disease Prevention and Health Promotion: Increase the capacity of state diabetes control programs to address the prevention of diabetes and its complications at the community level.

C. Eligible Applicants

Private, non-profit, health organizations with a national scope, that provide a comprehensive eye disease prevention program addressing diabetic retinopathy, glaucoma, cataracts, and age-related macular degeneration are eligible. The organization must provide proof of 501(c)(3) non-profit status and must have the ability to receive, manage, and account for federal funds.

Note: Public Law 104–65 states that an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of Federal funds constituting an award, grant, loan or any other form.

D. Funding

Availability of Funds

Approximately $875,000 is available in FY 2003 to fund one award. It is expected that the award will be made on or about September 15, 2003 and will be made for a 12-month budget period with a project period of up to five years. The Funding estimate may vary depending on availability of funds.

Continuation awards in subsequent years will be based upon the availability of funds and satisfactory progress as evidenced by required reports and achievement of the objectives set forth under "Program Requirements".

Use of Funds

Cooperative agreement funds may be used to expand, enhance, or complement existing activities to accomplish the objectives of this program. Funds may be used to pay for, but are not limited to, the following: staffing, consultants, contractors, grants to affiliates, materials and supplies, equipment, travel, and other associated expenses to implement and evaluate intervention activities such as screenings for vision and risk assessment for eye disease, public outreach, referrals to health professions for follow-up, public education, professional education, and the collection of representative data to define the problem and evaluate the program.

Funding under this program announcement may not be used to: (1) Support direct patient care services, individual health services, or the treatment of diabetes; (2) duplicate existing efforts the federal system has established for outpatient diabetes education reimbursement for the Medicare population through the Diabetes Education Program Recognition administered by the Centers for Medicaid and Medicare Services (CMS); or (3) supplant existing funding.

Recipient Financial Participation

Matching funds, that is, a specific percentage of program costs that must be contributed by the recipient in order to be eligible for this announcement, are not required. Applicants are encouraged, however, to identify financial and in-kind contributions from their own organizations and partners to support and sustain the activities of this program.

E. Program Requirements

The recipient funded under this program announcement will utilize, complement, and expand existing program activities and capabilities, but should not duplicate such activities. In conducting activities to achieve the purpose of this program announcement, the applicant will be responsible for the activities listed in 1. Recipient Activities, and CDC will be responsible for the activities listed in 2. CDC Activities:

1. Recipient Activities

The organization must demonstrate a national capacity through an affiliate organizational structure that has established organizational units at the state level. The organization must have demonstrated ability to acquire, implement, and manage a national database sufficient to describe the causes of blindness and vision loss.

(a) Leadership and Management

Establish and maintain an effective national leadership structure, an overall management structure that relies upon state-level affiliates to carry out the program activities, and an organization which is based upon a strategic plan. The overall management plan of the organization should include effective accountability of funds, plans for managing federal funds, and plans for disbursement of funds to affiliates. The management plan should also include strategies to collaborate with other similar national organizations and how the efforts of these other organizations will support the overall program.

(b) Screening

Build upon and expand existing screening activities to include children, the elderly, and other target populations such as racial and ethnic minorities disparately affected by vision loss. Screenings must be comprehensive, that is, you must screen for diabetic retinopathy, glaucoma, cataracts, and age-related macular degeneration. Screenings should be community-based, involve other vision partners, and should be evaluated in terms of numbers screened, findings, and referrals. (No personally identifiable data shall be collected or maintained by the recipient of this program cooperative agreement).

The screening activity must also include appropriate training and certification of the screeners to assure the highest standards of competency are provided to the public.

(c) Outreach for Treatment and Rehabilitation

Implement and/or expand the screening activity with a comprehensive referral program to assure that persons identified with vision disorders will receive appropriate referrals to professionals for necessary follow-up, care and treatment. Such a referral program should include identification of appropriate services prior to screenings, appropriate education of the screened persons (or parents or guardians) of the results of the screening, appropriate education of the screened persons (or parents or guardians) regarding the community services available, and follow-up with referral and treatment services to determine the number of persons identified as at-risk from the screenings that are taking advantage of referral services. The referral program should also determine the outcome of the referral to determine the types of treatment utilized to serve the patient. (No personally identifiable data shall be collected or maintained by the recipient of this cooperative agreement).

(d) Public Health Assessment

Conduct an assessment of the current level of programs and services provided by the public health sector to determine program areas which are complementary, or duplicative, and where gaps in services exist. Assessments should be conducted in selected States and communities to gather representative data regarding the current capacity of public health to collaborate with national vision organizations in a comprehensive blindness and vision loss prevention program. The assessments should, at a minimum, include identification of all the public health programs with an element of screening or education, the level of resources devoted, funding sources, evaluation methods (if any), responsible organizations, gaps in services, and areas for collaboration. (No more than nine states and/or

communities may receive such an assessment).

(e) Public Education

Design, expand, and implement programs to educate the public regarding the importance of periodic eye examinations, the symptoms of vision problems, the risk factors associated with vision loss, and the availability of services locally. Education campaigns should be conducted periodically targeting high-risk populations, the elderly, and other populations deemed to need the education. The messages should be designed for the target population and should be culturally relevant.

(f) Professional Education

Conduct various education campaigns designed to reach vision professionals and primary care physicians with information regarding vision loss problems, services available, professional standards and standards of care, and where to acquire additional information. Professional education campaigns may utilize Web sites, conferences, workshops, symposia, printed material, professional journals, and other appropriate literature. Professional education should also include the latest information on vision screening and diagnostic procedures as well as progress in other areas of the Blindness and Vision Loss Prevention Program.

(g) Program Evaluation and Surveillance

Describe how existing program evaluation and surveillance activities will be expanded to determine the prevalence and numbers of persons with blindness, vision loss, and other related causes. Implement or expand data collection activities to determine the numbers of people receiving appropriate eye examinations, the types of examinations, and actions taken to prevent or treat vision loss. Program evaluation and surveillance activities should not initiate new data collection but should utilize existing data sources. Program evaluation strategies should include numbers of persons reached by the program, estimated number of persons affected by blindness and vision loss, and numbers of persons with blindness and vision loss under treatment for the disease. (No personally identifiable data may be collected with these cooperative agreement funds).

Surveillance activities should identify existing data sources and how they can be utilized for the purposes of this program. Evaluation activities should include design of new program measures and future data sources, with an emphasis evaluating program performance measures consistent with long-term program objectives.

2. CDC Activities

(a) Assist as needed, in the development of a national evaluation framework that includes measurement methods, surveillance instruments for future use, data standards and definitions, and a structure for evaluating the effectiveness of program services.

(b) Provide assistance as required to develop a CDC technical advisory committee to guide program services, share information in professional settings, and ensure collaboration among relevant programs within CDC.

(c) Provide the expertise, staff, and evidence-based resources of CDC programs to assist and enhance the work of the funded organization.

(d) Support the recipient's activities by providing scientific and public health consultation and assistance in the development of activities under Recipient Activities. This includes providing technical assistance, training, and support to the funded organization in the areas of program standards, evaluation, surveillance, and service delivery through public health structures.

(e) Assist with the public health assessment in state and local health agencies to identify gaps in services and to encourage and support opportunities for collaboration and coordination.

F. Content

Letter of Intent (LOI)

A letter of intent is requested (not required) from potential applicants for the purpose of planning the competitive review of applications. The narrative should be no more than one page, single-spaced, and printed on one side. The letter of intent should identify the program announcement, the applicant organization, document proof of the applicant's non-profit status, 501(c)(3) status, and the extent to which the organization meets the eligibility requirements.

Application

The program announcement title and number must appear in the application. Utilize the information in the Program Requirements, Other Requirements, Evaluation Criteria, and this section to develop the application content. Applications will be evaluated on the criteria listed. The content requirements as well as the evaluation criteria should be followed closely. Applications should be no more than 35 pages double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font. In addition to the application forms, the application must contain the following in this order:

1. *A Table of Contents with page numbers for each of the sections.*

2. *A description of the background and need for the program.*

Data that describes the problem of blindness and vision loss in the United States, as well as any social or economic data which further defines the problems should be included. Historical and other relevant information should be provided which demonstrates the applicant's understanding of the problem and how to address it. A description of the applicant organizational structure, including financial and programmatic capabilities, as well as an inventory of current organizational activities related to this announcement. The affiliate structure should also be described and how the organization achieves its mission through the affiliates. A description of the proposed staff, including attached resumes or job descriptions for a full-time project coordinator and other key staff, the qualifications and responsibilities of each staff member and the percent of time each are committing to the program should also be included.

3. *A detailed work plan for:*

(a) Screening; (b) Outreach for treatment and rehabilitation; (c) Public Health Assessment; (d) Public and Professional education; and (e) Program Evaluation and Surveillance. The work plans should be time-phased, and should include one-year and five-year program objectives including an implementation plan.

4. *A budget and budget justification.*

Provide a budget and budget justification including allocation to program areas, budgeted amounts by categories (personnel, fringe benefits, travel, equipment, supplies, contractual, and other direct costs), allocations to affiliates, and a description of the funding mechanisms and timelines that will be used to disperse funds. The budget should be detailed for one year but should include a proposed summary budget for subsequent years (four additional years). Financial contributions should be included where appropriate.

5. *Appendices.*

Supporting materials including letters of support, organizational background and history, data to describe blindness and vision loss, and strategic plans should be included in the appendices section of the application.

G. Submission and Deadline

LOI Submission

A letter of intent is requested by August 1, 2003. Submit the LOI to: Regina Hardy, Division of Diabetes Translation, CDC National Center for Chronic Disease Prevention and Health Promotion, 4770 Buford Highway, NE., Mailstop K–10, Atlanta, GA 30341.

Application Forms

Submit the signed original and two copies of the PHS 5161 Form. Forms are available at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*. If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, please contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Applications forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time, August 18, 2003. Submit the application to: Technical Information Management—PA 03189, CDC Procurement and Grants Office, 2920 Brandywine Rd., Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Applications sent by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline. Any application that does not meet the above criteria will not be eligible for competition, and will be returned to the applicant. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goal stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

An independent objective review group appointed by CDC will evaluate each application against the following criteria:

1. Work Plan (40 points)

The degree to which the applicant describes a plan that is time-phased, feasible and measurable. The work plan must be specific and meet the expectations in the Program Requirements and Application Content sections of this program announcement. The degree to which the plans reflect and build upon existing capabilities and assets, and utilize the capacity of the affiliates. The extent to which the plan includes efforts to sustain the program long-term. The extent to which the application describes plans to collaborate with CDC in developing an evaluation framework and performance measures. The extent to which appropriate data sources are available to define the problems of blindness and vision loss and plans to acquire additional data sources. The extent to which the application provides clear definitive plans to make the program nationwide in scope.

2. Program Leadership and Management (25 points)

The extent to which the organizational structure is designed to implement the proposed work plan including leadership and decision-making processes. The extent to which the proposed staffing will have the appropriate qualifications and experience to implement the proposed work plan. The extent to which the applicant describes clearly defined roles for program staff and the roles of the affiliates.

The extent to which the application demonstrates a capacity to guide and support their affiliates.

3. Background and Need (25 points)

The extent to which the problem of blindness and vision loss is described and supported by institutional data. The extent to which the application identifies the strengths and weakness of the current prevention programs in the United States. The extent to which the application identifies potential collaborators and the strengths they offer to the program. The extent to which the applicant has the necessary organizational capabilities to deliver the services of the program including database development and management. The extent of the applicant's ability to train and certify screeners and screening activities. The extent to which the application demonstrates a history and evidence of delivering vision loss and blindness program services.

4. Budget and Budget Narrative (10 points)

The extent to which the budget appears reasonable and consistent with the proposed activities and intent of the program.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original and two copies of:

1. Interim progress report will be due April 1, 2004 containing a brief description of the program accomplishments/narrative and progress made in the first six months of the program; reasons for not achieving proposed objectives and activities; progress in allocating and dispersing the budget; and details for changes in the program for the remainder of the time for which funds are provided.

2. An annual progress report summarizing the past year's accomplishments, and a financial status report, no more than 90 days after the end of the budget period.

3. Final financial, performance, and evaluation reports, no more than 90 days after the end of the five-year project period (depending upon availability of funds).

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following requirements are applicable to this program. For a complete description of each, *see* Attachment I of the program announcement as posted on the CDC Web site.

AR–7 Executive Order 12372 Review
AR–8 Public Health Systems Reporting Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

J. Where To Obtain Additional Information

This, and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements".

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Rd., Atlanta, GA 30341–2700, Telephone: 770–488–2700.

For business management and budget assistance, contact: Ann Gatwood, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2895, E-mail address: *glg4@cdc.gov*.

For program technical assistance, contact: Jinan Saaddine, Division of Diabetes Translation, CDC National Center for Chronic Disease Prevention and Health Promotion, 4770 Buford Highway, NE., Mailstop K–10, Atlanta, GA 30341, E-mail: *JSaaddine@cdc.gov*, Telephone: (770) 488–1274.

Dated: July 14, 2003.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–18235 Filed 7–17–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Docket No. 2003N–0311

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Device User Fee and Modernization Act Small Business Qualification Certification (Form FDA 3602)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. The proposed collection of information will permit an applicant to certify that it qualifies as a "small business" within the meaning of the Medical Device User Fee and Modernization Act (MDUFMA), will help the applicant organize the information FDA needs to verify each certification, and will collect contact information to facilitate rapid resolution of any questions FDA may have concerning information the applicant has provided. In the **Federal Register** of March 26, 2003 (68 FR 14664), FDA published a notice announcing OMB's approval of this collection of information (OMB control number 0910–0508). Since this was an emergency approval that expires on October 31, 2003, FDA is following the normal PRA clearance procedures by issuing this notice.

DATES: Submit written or electronic comments on the collection of information September 16, 2003.

ADDRESSES: Submit electronic comments on the collection of information via the Internet at: *http://www.fda.gov/dockets/edockethome*. Submit written comments on the collection of information to the Divsion of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane., rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

MDUFMA Small Business Qualification Certification (Form FDA 3602) — (OMB Control Number 0910–0508)—Extension

MDUFMA amends the Federal Food, Drug, and Cosmetic Act to provide for user fees for certain medical device applications. The initial fees (for fiscal year (FY) 2003) are set by statute; FDA will publish a **Federal Register** notice by August 1, 2003, announcing the fees for FY 2004. To avoid harming small businesses, MDUFMA provides for reduced or waived fees for applicants who qualify as a "small business." This means there are two levels of fees, a standard fee, and a reduced or waived small business fee.

Presently, a "small business" is an applicant who reported no more than $30 million "gross receipts or sales" on its Federal income tax return for the most recent tax year; the applicant must count the "gross receipts or sales" of all of its affiliates, partners, or parent firms when calculating whether it meets the $30 million threshold. An applicant must pay the full standard fee unless it provides evidence demonstrating to FDA that it meets the "small business" criteria. The evidence required by MDUFMA is a copy of the most recent Federal income tax return of the applicant, and any affiliate, partner, or parent firm. FDA will review these materials and decide whether an applicant is a "small business" within the meaning of MDUFMA.

Form FDA 3602 will be available in a forthcoming guidance document, "MDUFMA Small Business Qualification Worksheet and Certification." This guidance will describe the criteria FDA will use to decide whether an entity qualifies as a MDUFMA small business and will help prospective applicants understand what they need to do to meet the small business criteria for FY 2004 and subsequent fiscal years. FDA will publish this guidance by August 1, 2003.

Respondents will be businesses or other for-profit organizations. FDA estimates the burden of this information collection as follows:

TABLE 1. — ESTIMATED ANNUAL REPORTING BURDEN[1]

FDA Form Number	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
3602	3,000	1	3,000	1	3,000

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA based these estimates on conversations with industry, trade association representatives, and from internal FDA estimates. This represents FDA's estimate on the number of small businesses that will submit a premarket notification, a premarket application, a premarket report, a panel track supplement, efficacy supplement, 180-day supplement, or a real time supplement to FDA during a single fiscal year from FY 2004 through 2007.

Dated: July 11, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–18160 Filed 7–17–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

2004 National Survey on Drug Use and Health—(OMB No. 0930–0110, Revision)—The National Survey on Drug Use and Health (NSDUH), formerly the National Household Survey on Drug Abuse (NHSDA), is a survey of the civilian, noninstitutionalized population of the United States 12 years old and older. The data are used to determine the prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, ONDCP, Federal government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources.

As with all NSDUH/NHSDA surveys conducted since 1999, the sample size of the survey for 2004 will be sufficient to permit prevalence estimates for each of the fifty states and the District of Columbia. For the 2004 survey, additional questions in the following substantive areas are planned: adult mental health treatment (three additional questions to obtain more detail on unmet mental health treatment need, and on alternative mental health treatment received); drug treatment (four questions on age at first treatment for alcohol and/or drug use); prior substance use (expanded 2003's prior marijuana and cigarette use module to collect information on age at last use for each core substance respondent reported last using over 30 days); depression (separate modules for adolescents and adults based on adaptations of existing modules used in the National Comorbidity Survey). The following questions are planned to be deleted from the 2004 survey: speciality cigarettes (questions about clove and hidi use); amount paid for cigarettes in the past 30 days; and youth access to cigarettes. Three to four years of data have been collected on these questions, which may be included again in future surveys as the need arises. The total annual burden estimate is shown below:

	Number of respondents	Responses per respondent	Average burden per response (hr.)	Total burden (hrs)
Household Screening	182,250	1	0.083	15,127
Interview	67,500	1	1.0	67,500
Screening Verification	5,559	1	0.067	372
Interview Verification	10,125	1	0.067	678
Total	182,250			83,677

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Herron Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: July 11, 2003.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 03–18238 Filed 7–17–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2002–14134]

Port Pelican LLC Deepwater Port License Application

AGENCY: Coast Guard, DHS, and Maritime Administration, DOT.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The U.S. Coast Guard (USCG) and the U.S. Maritime Administration (MARAD) will hold a public hearing to receive information relevant to the issuance or denial of the requisite federal license for the proposed Port Pelican LLC Deepwater Port project. The proposed Port Pelican LLC Deepwater Port would be located in the Gulf of Mexico, approximately 36 miles south southwest of Fresh Water City, Louisiana, in the Outer Continental Shelf (OCS) Lease Block Vermilion 140. We encourage interested individuals and organizations to attend the public hearing and submit comments. We also seek comments from anyone unable to attend the public hearing. In conjunction with the public hearing, the USCG and MARAD will also hold an informational open house regarding the proposed Port Pelican LLC Deepwater Port project.

DATES: The public hearing will be held on Monday, August 18, 2003, 3 p.m. to 6 p.m., in New Orleans, Louisiana. The informational open house will be held on Monday, August 18, 2003, 1 p.m. to 3 p.m., in New Orleans, Louisiana. The public hearing may be adjourned as early as 5 p.m. if there is no significant attendance or participation during the first two hours. The public hearing will continue beyond 6 p.m. if necessary to ensure all individuals present at that time who wish to comment have an opportunity to do so.

Comments intended for inclusion in the public docket [USCG–2002–14134] must reach the Docket Management Facility on or before October 2, 2003.

ADDRESSES: The public hearing and informational open house will be held at the following location: New Orleans Marriott, 555 Canal Street, New Orleans, LA 70130, (504) 581–1000.

You may submit comments identified by Coast Guard docket number USCG–2002–14134 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Web site: *http://dms.dot.gov.*

(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) Fax: (202) 493–2251.

(4) Delivery: Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

(5) Federal eRulemaking Portal: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For further information concerning this notice, the Port Pelican LLC Deepwater Port license application, or the public hearing or informational open house, contact Commander Mark Prescott, U.S. Coast Guard at (202) 267–0225 or *mprescott@comdt.uscg.mil.* For questions on viewing or submitting material to the docket, call Ms. Dorothy Beard, Chief of Dockets, Department of Transportation, at (202) 366–5149.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

Whether or not you attend the public hearing or informational open house, we encourage you to submit written comments and related materials. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number (USCG–2002–14134), indicate your specific concern, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number USCG–2002–14134. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Public Hearing/Informational Open House

The Coast Guard and the Maritime Administration will hold a public hearing from 3 p.m. to 6 p.m. on Monday, August 18, 2003 at the New Orleans Marriott, 555 Canal Street, New Orleans, Louisiana. An informational open house will be held prior to the public meeting from 1 p.m. to 3 p.m. at the same location. We invite the public and representatives of interested agencies to attend and provide comments on the proposed license application. If you plan to attend the public hearing or informational open house and need special assistance, such as sign language interpretation or other reasonable accommodations, contact the U.S. Coast Guard as indicated in **FOR FURTHER INFORMATION CONTACT.**

Proposed Deepwater Port Background Information

The proposed Port Pelican LLC Deepwater Port would deliver natural gas to the United States Gulf Coast using existing gas supply and gathering systems in the Gulf of Mexico and southern Louisiana. Gas would then be delivered to shippers using the national pipeline grid through interconnections with major interstate and intrastate pipelines.

The project would consist of two concrete gravity based structure (GBS) units fixed to the seabed, which would include integral liquefied natural gas (LNG) storage tanks, support deck mounted LNG receiving and vaporization equipment and utilities, berthing accommodations for LNG carriers, facilities for delivery of natural gas to a pipeline transportation system, and personnel accommodations.

A 42-inch diameter offshore Pelican Interconnector Pipeline (PIPL), 37 nautical miles in length, would be constructed as part of the project. The PIPL would transport gas from the terminal to a point near the Tiger Shoal Platform "A" where it would connect to the Henry Hub. The Henry Hub would deliver the gas to the onshore U.S. gas pipeline network.

License Application Background Information

The Port Pelican LLC Deepwater Port license application was submitted to the Secretary of Transportation on November 25, 2002. The license application calls for construction of the Port Pelican Deepwater Port in an area situated in the Gulf of Mexico, approximately 36 miles south southwest of Fresh Water City, Louisiana, in OCS Lease Block Vermilion 140. Additional information concerning the contents of the application can be found online at *http://dms.dot.gov* under docket number USCG–2002–14134, or in the notice of application published in the **Federal Register** at 67 FR 79234 (Dec. 27, 2002). This public hearing is being held pursuant to 33 U.S.C. 1504(g) to receive information relevant to the issuance or denial of the requisite federal license for the proposed Port Pelican LLC Deepwater Port project.

Procedural

Any person who wishes may appear and speak or present evidence at this public hearing. Persons planning to speak at the hearing should contact the U.S. Coast Guard as indicated in **FOR FURTHER INFORMATION CONTACT**, any time prior to the hearing, indicating the approximate amount of time required. Written statements and exhibits may be submitted in place of or in addition to oral statements and will be made a part of the hearing record. Written statements and exhibits may be delivered before or during the hearing, or they may be submitted for up to 45 days following the date of the hearing to the Docket Management Facility listed under **ADDRESSES.**

Dated: July 14, 2003.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security, and Environmental Protection, U.S. Coast Guard.

Raymond R. Barberisi,

Director, Office of Ports and Domestic Shipping, U.S. Maritime Administration.

[FR Doc. 03–18292 Filed 7–17–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–43]

Notice of Submission of Proposed Information Collection to OMB: Application for the Transfer of Physical Assets

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Department is requesting an extension of approval to collect the subject information from prospective purchasers of properties with HUD-insured or HUD-held mortgages. The information must be submitted to HUD prior to conveying the title to ensure the transfer of physical assets does not place the property in physical, financial, or managerial jeopardy by the transfer.

DATES: *Comments Due Date:* July 18, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0275) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Application for the Transfer of Physical Assets.

OMB Approval Number: 2502–0275.

Form Numbers: HUD–92266.

Description of the Need for the Information and its Proposed Use: Prospective purchasers of properties with HUD-insured or HUD-held mortgages must submit information to HUD prior to conveying the title to ensure the transfer of physical assets does not place the property in physical, financial, or managerial jeopardy by the transfer.

Respondents: Business or other for-profit, Not-for-profit institutions.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden:	350	350		92		32,200

Total Estimated Burden Hours: 32,200

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 9, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–18180 Filed 7–17–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–44]

Notice of Submission of Proposed Information Collection to OMB: Management Certifications and Management Entity Profile

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Department is requesting approval to continue collecting information from owners of multifamily housing projects with fully-insured or HUD-held mortgages and subsidized, non-insured projects. Those owners must provide data for HUD's approval of management agents/entities.

DATES: *Comments Due Date:* August 18, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0305) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Management Certifications and Management Entity Profile.

OMB Approval Number: 2502–0305.

Form Numbers: HUD–9832, HUD–29839A, HUD–9839B, HUD–9839C.

Description of the Need for the Information and its Proposed Use: Owners of insured and assisted multifamily housing projects are required by HUD administrative guidelines to submit certain data for review and approval of a new management agent.

Respondents: Business or other for-profit, Not-for-profit institutions.

Frequency of Submission: On occasion of proposed new management agent.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden:	3,600	10,800		0.40		4,350

Total Estimated Burden Hours: 4,350.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 11, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–18181 Filed 7–17–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–29]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Steward B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Shirley Kramer, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Coast Guard:* Ms. Teresa Sheinberg, U.S. Coast Guard, Room 6109, 2100 Second Street., SW., Washington, DC 20593–0001; (202) 267–6142; *Energy:* Mr. Andy Duran, Department of Energy, Office of Engineering & Construction Management, ME–90, Washington, DC 20585; (202) 586–4548; *GSA:* Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0052; *Interior:* Ms. Linda Tribby, Acquisition and Property Management, Department of the Interior, 1849 C Street, NW., MS5512, Washington, DC 20240; (202) 219–0728; *Navy:* Mr. Charles C. Cooks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: July 10, 2003.

Mark R. Johnson,

Deputy Director, Office of Special Needs Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report for 7/18/03

Suitable/Available Properties

Buildings (by States)

Indiana

Paulsen U.S. Army Reserve Ctr
800 East Crystal
N. Judson Co: Starke IN 46366—
Landholding Agency: GSA
Property Number: 54200330001
Status: Surplus
Comment: 13,114 sq. ft., presence of asbestos/lead paint, most recent use—office/training/vehicle maint. and repair
GSA Number: 1–D–IN–597

Unsuitable Properties

Building (by State)

California

Bldg. 56
Naval Air Station
Lemoore Co: CA
Landholding Agency: Navy
Property Number: 77200330001
Status: Excess
Reasons: Secured Area; Extensive deterioration

Structure 63
Naval Air Station
Lemoore Co: CA
Landholding Agency: Navy
Property Number: 77200330002
Status: Excess
Reason: Secured Area

Structure 64
Naval Air Station
Lemoore Co: CA
Landholding Agency: Navy
Property Number: 77200330003
Status: Excess
Reason: Secured Area

Structure 65
Naval Air Station
Lemoore Co: CA
Landholding Agency: Navy
Property Number: 77200330004
Status: Excess
Reasons: Secured Area

Bldg. 70
Naval Air Station
Lemoore Co: CA
Landholding Agency: Navy
Property Number: 77200330005
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. 75
Naval Air Station
Lemoore Co: CA
Landholding Agency: Navy
Property Number: 77200330006
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. 776
Naval Air Station
Lemoore Co: CA
Landholding Agency: Navy
Property Number: 77200330007
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. 818
Naval Air Station
Lemoore Co: CA
Landholding Agency: Navy
Property Number: 77200330008
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. 827

Naval Air Station
Lemoore Co: CA
Landholding Agency: Navy
Property Number: 77200330009
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. 931
Naval Air Station
Lemoore Co: CA
Landholding Agency: Navy
Property Number: 77200330010
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. 935
Naval Air Station
Lemoore Co: CA
Landholding Agency: Navy
Property Number: 77200330011
Status: Excess
Reasons: Secured Area; Extensive deterioration

Colorado

Bldg. 574
National Park
Old Glacier Creek
Rocky Mountain Co: Larimer CO 80517–
Landholding Agency: Interior
Property Number: 61200330001
Status: Unutilized
Reasons: Extensive deterioration

Bldg. B–777
National Park
Conservation Camp
Rocky Mountain Co: Grand CO 80447–
Landholding Agency: Interior
Property Number: 61200330002
Status: Unutilized
Reasons: Not accessible; Extensive deterioration

Bldg. B–781
National Park
Conservation Camp
Rocky Mountain Co: Grand CO 80447–
Landholding Agency: Interior
Property Number: 61200330003
Status: Unutilized
Reasons: Not accessible; Extensive deterioration

Bldg. B–852
National Park
Conservation Camp
Rocky Mountain Co: Grand CO 80447–
Landholding Agency: Interior
Property Number: 61200330004
Status: Unutilized
Reason: Not accessible

Wales Bldg. B–816
National Park
Rocky Mountain Co: Grand CO 80447–
Landholding Agency: Interior
Property Number: 61200330005
Status: Unutilized
Reason: Extensive deterioration

Wales Bldg. B–817
National Park
Rocky Mountain Co: Grand CO 80447–
Landholding Agency: Interior
Property Number: 61200330006
Status: Unutilized
Reason: Extensive deterioration

Wales Bldg. B–818
National Park
Rocky Mountain Co: Grand CO 80447–
Landholding Agency: Interior
Property Number: 61200330007
Status: Unutilized
Reason: Extensive deterioration

Maryland

Bloody Pt Bar Lighthouse
Chesapeake Bay
Kent Co: MD
Landholding Agency: GSA
Property Number: 54200330002
Status: Excess
Reason: Not accessible
GSA Number: 4–U–MD–0612

Bldg. 503A
Naval Air Station
Patuxent River Co: MD
Landholding Agency: Navy
Property Number: 77200330012
Status: Excess
Reason: Extensive deterioration

Massachusetts

Kennedy Barn/Garage
National Seashore
Eastham Co: Barnestable MA 02642–
Landholding Agency: Interior
Property Number: 61200330011
Status: Unutilized
Reason: Extensive deterioration

Nevada

31 Bldgs./Facilities
Nellis AFB
Tonopah Test Range
Tonopah Co: Nye NV 89049–
Landholding Agency: Energy
Property Number: 41200330003
Status: Unutilized
Reason: Secured Area

New Jersey

Bldg. 260
Coast Guard Training Center
Cape May Co: NJ 08204–
Landholding Agency: Coast Guard
Property Number: 88200330001
Status: Excess
Reasons: Secured Area; Extensive deterioration

Structure U02
Coast Guard Training Center
Cape May Co: NJ 08204–
Landholding Agency: Coast Guard
Property Number: 88200330002
Status: Excess
Reason: Secured Area

New York

Bldg. 208
Brookhaven National Lab
Upton Co: Suffolk NY 11973–
Landholding Agency: Energy
Property Number: 41200330001
Status: Unutilized
Reason: Extensive deterioration

Bldg. 209
Brookhaven National Lab
Upton Co: Suffolk NY 11973–
Landholding Agency: Energy
Property Number: 41200330002
Status: Unutilized
Reason: Extensive deterioration

Pennsylvania

Bldg. 106
Naval Support Activity
Mechanicsburg Co: Cumberland PA 17055–0788
Landholding Agency: Navy
Property Number: 77200330013
Status: Excess
Reason: Extensive deterioration

Bldg. 906
Naval Support Activity
Mechanicsburg Co: Cumberland PA 17055–0788
Landholding Agency: Navy
Property Number: 77200330014
Status: Excess
Reason: Extensive deterioration

Tennessee

Clinton Property
Stones River National Battlefield
Murfreesboro Co: Rutherford TN 37129–
Landholding Agency: Interior
Property Number: 61200330012
Status: Excess
Reason: Extensive deterioration

Smith Property
Stones River National Battlefield
Murfreesboro Co: Rutherford TN 37129–
Landholding Agency: Interior
Property Number: 61200330013
Status: Excess
Reason: Extensive deterioration

Virginia

Church Street Quarters (204)
Colonial National Park
Yorktown Co: York VA 23690–
Landholding Agency: Interior
Property Number: 61200330008
Status: Excess
Reason: Extensive deterioration

Church Street Quarters (205)
Colonial National Park
Yorktown Co: York VA 23690–
Landholding Agency: Interior
Property Number: 61200330009
Status: Excess
Reason: Extensive deterioration

Nelson Property
Colonial National Park
Yorktown Co: York VA 23690–
Landholding Agency: Interior
Property Number: 61200330010
Status: Excess
Reason: Extensive deterioration

Unsuitable Properties

Buildings (by State)

Virginia

Bldg. CG–2 (0S01)
USCG CAMSLANT
Chesapeake Co: VA
Landholding Agency: Coast Guard
Property Number: 88200330003
Status: Unutilized
Reason: Secured Area

Bldg. CG–6 (0S02)
USCG CAMSLANT
Chesapeake Co: VA
Landholding Agency: Coast Guard
Property Number: 88200330004
Status: Unutilized
Reason: Secured Area

Bldg. (0V02)
USCG CAMSLANT
Chesapeake Co: VA
Landholding Agency: Coast Guard
Property Number: 88200330005
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. (0V03)
USCG CAMSLANT
Chesapeake Co: VA
Landholding Agency: Coast Guard
Property Number: 88200330006
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Washington

Barn
Heart K Ranch
Near Thorp Co: Kittitas WA 98946–
Landholding Agency: Interior
Property Number: 61200330014
Status: Unutilized
Reason: Extensive deterioration

Garage/Shop
Heart K Ranch
Near Thorp Co: Kittitas WA 98946–
Landholding Agency: Interior
Property Number: 61200330015
Status: Unutilized
Reason: Extensive deterioration

1-Stall Garage
Heart K Ranch
Near Thorp Co: Kittitas WA 98946–
Landholding Agency: Interior
Property Number: 61200330016
Status: Unutilized
Reason: Extensive deterioration

Residence
Heart K Ranch
Near Thorp Co: Kittitas WA 98946–
Landholding Agency: Interior
Property Number: 61200330017
Status: Unutilized
Reason: Extensive deterioration

Storage
Heart K Ranch
Near Thorp Co: Kittitas WA 98946–
Landholding Agency: Interior
Property Number: 61200330018
Status: Unutilized
Reason: Extensive deterioration

Residence No. 50
1807 Rest Haven Road
Yakima Co: WA 98901–
Landholding Agency: Interior
Property Number: 61200330019
Status: Unutilized
Reason: Extensive deterioration

Cow Barn
1807 Rest Haven Road
Yakima Co: WA 98901–
Landholding Agency: Interior
Property Number: 61200330020
Status: Unutilized
Reason: Extensive deterioration

Chicken Coop
1807 Rest Haven Road
Yakima Co: WA 98901–
Landholding Agency: Interior
Property Number: 61200330021
Status: Unutilized
Reason: Extensive deterioration

[FR Doc. 03–17856 Filed 7–17–03; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–09]

Delegation of Authority to the Office of Policy Development and Research for Administration of HUD's Higher Education Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: Through this notice, the Secretary of HUD delegates to the Assistant Secretary for Policy Development and Research the authority to administer HUD's higher education programs. These programs are the Community Development Work Study program, the Community Outreach Partnership Center program, the Historically Black Colleges and Universities program, the Hispanic-Serving Institutions Assisting Communities program, the Alaskan Native/Native Hawaiian Institutions Assisting Communities program, and the Tribal Colleges and Universities program.

EFFECTIVE DATE: July 9, 2003.

FOR FURTHER INFORMATION CONTACT: Christopher D. Lord, Deputy Assistant Secretary for Policy Development and Research, 451 Seventh Street, SW., Room 8108, Washington, DC 20410–6000, telephone (202) 708–3896. Persons with hearing or speech impairments may call HUD's TTY number at (202) 708–1455 or the Federal Information Relay Service's TTY number at (800) 877–8339. Other than the "800", the telephone and TTY numbers listed are not toll-free.

Section A. Authority Delegated

The Secretary of HUD delegates to the Assistant Secretary for Policy Development and Research the authority to administer the following programs, including the authority to issue and waive regulations for these programs:

1. The Community Development Work Study program, section 107(c) of Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5307(c));

2. The Community Outreach Partnership Center program, within the Community Outreach Partnership Act of 1992 (42 U.S.C. 5307 note), and section 107 of the Housing Development Act of 1974 (42 U.S.C. 5307(b)(3));

3. The Historically Black Colleges and Universities program, under section 107(b)(3) of the Housing and Community Development Act of 1974 (42 U.S.C. 5307(b)(3));

4. The Hispanic-Serving Institutions Assisting Communities program, under the Fiscal Year (FY) 2002 HUD Appropriations Act (Public Law 107–73, 115 Stat. 651, approved November 26, 2001);

5. The Alaskan Native/Native Hawaiian Institutions Assisting Communities program, under the FY 2002 HUD Appropriations Act (Public Law 107–73, 115 Stat. 651, approved November 26, 2001);

6. The Tribal Colleges and Universities program, under the FY 2002 HUD Appropriations Act (Public Law 107–73, 115 Stat. 651, approved November 26, 2001).

Section B. Authority to Redelegate

Subject to the authority excepted in Section C, the authority granted in Section A may be further redelegated in accordance with a written redelegation of authority.

Section C. Authority Excepted

The authority granted under Section A does not include the authority to sue and be sued. The redelegation authority granted under Section B does not include the authority to issue or waive regulations.

Section D. Delegations Revoked

This delegation supersedes and revokes all prior delegations from the Secretary concerning the authority to administer the six programs listed in this delegation.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 9, 2003.

Mel Martinez,

Secretary.

[FR Doc. 03–18183 Filed 7–17–03; 8:45 am]
BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–10]

Delegation of Authority for Rural Housing and Economic Development Grants Awarded to Indian Tribes and Tribal Entities

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: In this notice, the Secretary delegates to the Assistant Secretary for Public and Indian Housing the authority to administer Rural Housing and Economic Development (RHED) grants awarded to Indian tribes and tribal

entities by HUD's Office of Community Planning and Development.

EFFECTIVE DATE: July 9, 2003.

FOR FURTHER INFORMATION CONTACT: Edward Fagan, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4126, Washington DC 20410–5000; telephone (202) 401–7914. (This is not a toll-free number.) For those needing assistance, this number may be accessed through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Rural Housing and Economic Development (RHED) program provides funding to Indian tribes, state housing finance agencies, state community and/or economic development agencies, local rural nonprofits, and community development corporations to support innovative housing and economic development activities in rural areas. The program is authorized in annual HUD appropriations acts and was originally authorized in the Fiscal Year (FY) 1998 HUD Appropriation Act (Pub. L. 105–65, 111 Stat. 1344, 1357, approved Oct. 27, 1997). The RHED program is administered by the Assistant Secretary for Community Planning and Development. Because the Office of Native American Programs is in the Office of Public and Indian Housing, the authority for management of RHED grants awarded to Indian tribes and tribal entities by the Office of Community Planning and Development is delegated to the Assistant Secretary for Public and Indian Housing as follows:

Section A. Authority Delegated

The Secretary of HUD delegates to the Assistant Secretary for Public and Indian Housing the authority to administer RHED grants awarded to Indian tribes and tribal entities.

Section B. Authority Excepted

The authority delegated under Section A does not include the authority to sue and be sued, or the authority to issue or waive regulations for the RHED program.

Section C. Authority to Redelegate

The authority delegated under Section A may be further redelegated to employees of the Department through written redelegations of authority.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 9, 2003.

Mel Martinez,

Secretary.

[FR Doc. 03–18184 Filed 7–17–03; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–14]

Delegation of Authority for Native Hawaiian Housing Block Grant Program

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: In this notice, the Secretary delegates to the Assistant Secretary for Public and Indian Housing the authority to administer the Native Hawaiian Housing Block Grant program.

EFFECTIVE DATE: July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Sherone Ivey, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4126, Washington DC 20410–5000; telephone (202) 401–7914. (This is not a toll-free number.) For those needing assistance, this number may be accessed through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Native Hawaiian Housing Block Grant (NHHBG) program was created by section 203 of Title II of the Omnibus Indian Advancement Act (Public Law 106–568, 114 Stat. 2876, approved December 27, 2000) and section 513 of the American Homeownership and Economic Opportunity Act of 2000 (Public Law 106–569, 114 Stat. 2969, approved December 27, 2000), which amended the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) by adding a new Title VIII. The objective of the NHHBG program is to provide housing block grants to fund affordable housing activities for native Hawaiians.

This notice delegates the authority to administer the NHHBG program to the Assistant Secretary for Public and Indian Housing.

Section A. Authority Delegated

The Secretary of HUD delegates to the Assistant Secretary for Public and Indian Housing the authority to administer the NHHBG program, including the authority to issue and waive regulations.

Section B. Authority Excepted

The authority delegated in Section A does not include the authority to sue and be sued.

Section C. Authority to Redelegate

The authority delegated in Section A may be redelegated to employees of the Department through written redelegations of authority, except for the authority to issue and waive regulations.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 7, 2003.

Mel Martinez,

Secretary.

[FR Doc. 03–18185 Filed 7–17–03; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–15]

Delegation of Authority for the Section 184 Indian Housing Loan Guarantee Program

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: In this notice, the Secretary delegates the authority to administer the Section 184 Indian Housing Loan Guarantee program to the Assistant Secretary for Public and Indian Housing.

EFFECTIVE DATE: July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Edward Fagan, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4126, Washington, DC 20410–5000; telephone (202) 401–7914. (This is not a toll-free number.) For those needing assistance, this number may be accessed through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Section 184 Indian Housing Loan Guarantee program is authorized by Section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13a). The purpose of this program is to provide Indian families, Indian housing authorities, and Indian tribes with access to sources of private financing.

This notice delegates the authority to administer the Section 184 Indian Housing Loan Guarantee program to the Assistant Secretary for Public and Indian Housing.

Section A. Authority Delegated

The Secretary of HUD delegates to the Assistant Secretary for Public and Indian Housing the authority to administer the Section 184 Indian Housing Loan Guarantee program under Section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13a), including the authority to issue and waive regulations.

Section B. Authority Excepted

The authority delegated under Section A does not include the power to sue and be sued.

Section C. Authority to Redelegate

The authority delegated in Section A may be redelegated to employees of the Department through written delegations of authority, except for the authority to issue and waive regulations.

Section D. Authority Revoked

All prior delegations of authority concerning the Section 184 Indian Housing Loan Guarantee program are revoked, including but not limited to, the delegation of authority published on September 26, 1994 (59 FR 491234).

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 7, 2003.

Mel Martinez,

Secretary.

[FR Doc. 03–18186 Filed 7–17–03; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–17]

Delegation of Authority With Respect to the Section 184A Loan Guarantee Program for Native Hawaiian Housing

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: In this notice, the Secretary delegates the authority to administer the Section 184A Loan Guarantee Program for Native Hawaiian Housing to the Assistant Secretary for Public and Indian Housing.

EFFECTIVE DATE: July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Sherone Ivey, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4126, Washington DC 20410–5000; telephone (202) 401–7914. (This is not a toll-free number.) For those needing assistance, this number may be accessed through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Section 184A Loan Guarantee Program for Native Hawaiian Housing is authorized by Section 184A of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13b). The purpose of the program is to provide Native Hawaiian families with greater access to private mortgage resources through federal loan guarantees to lenders. This notice delegates the authority to administer the Section 184A Loan Guarantee Program for Native Hawaiian Housing to the Assistant Secretary for Public and Indian Housing.

Section A. Authority Delegated

The Secretary of HUD delegates to the Assistant Secretary for Public and Indian Housing the authority to administer the Section 184A Loan Guarantee Program for Native Hawaiian Housing under Section 184A of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13b), including the authority to issue and waive regulations.

Section B. Authority Excepted

The authority delegated under Section A does not include the power to sue and be sued.

Section C. Authority to Redelegate

The authority delegated in Section A may be redelegated to employees of the Department in accordance with a written redelegation of authority, except the authority to issue or waive regulations.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 7, 2003.

Mel Martinez,

Secretary.

[FR Doc. 03–18187 Filed 7–17–03; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR 120 5882 CD99; 3–0195]

Notice of Public Meeting, Coos Bay Resource Advisory Committee Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Bureau of Land Management (BLM) Coos Bay District Resource Advisory Committee (RAC) Meeting as identified in Section 205(f)(2) of the Secure Rural Schools and Community Self-Determination Act of 2000, Public Law 106–393 (the Act).

SUMMARY: The BLM Coos Bay District RAC will be meeting on August 15, 2003 from 9 a.m. until 4 p.m. at the BLM Coos Bay District Office. The Coos Bay District Office is located at 1300 Airport Lane in North Bend, Oregon. The purpose of this meeting will be for the RAC to review and recommend project proposals for funding.

FOR FURTHER INFORMATION CONTACT: Sue Richardson, District Manager, at (541) 756–0100 or Glenn Harkleroad, District Restoration Coordinator, at (541) 751–4361 or *glenn_harkleroad@or.blm.gov*. The mailing address for the BLM Coos Bay District Office is 1300 Airport Lane, North Bend, Oregon 97459.

SUPPLEMENTARY INFORMATION: Additional information about the Coos Bay RAC agenda can be found at *http://www.or.blm.gov/coosbay*. A meeting agenda will be posted at this site as the meeting date nears.

Sue E. Richardson,

Coos Bay District Manager.

[FR Doc. 03–18335 Filed 7–17–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–BJ: GP03–0199]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands were officially filed in the Oregon State Office, Portland, Oregon, on March 17, 2003.

Willamette Meridian

Washington

T. 23 N., R. 13 W., accepted February 10, 2003
T. 30 N., R. 30 E., accepted February 10, 2003

The plats of survey of the following described lands were officially filed in the Oregon State Office, Portland, Oregon, May 5, 2003.

Oregon

T. 34 S., R. 7 W., accepted March 21, 2003
T. 15 S., R. 6 W., accepted April 18, 2003
T. 33 S., R. 11 W., accepted April 29, 2003
T. 33 S., R. 10 W., accepted April 29, 2003
T. 34 S., R. 11 W., accepted April 29, 2003
T. 37 S., R. 2 E., accepted April 29, 2003

A copy of the plats may be obtained from the Public Room at the Oregon

State Office, Bureau of Land Management, 333 SW 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the State Director, Bureau of Land Management, Portland, Oregon.

For further information contact: Chief, Branch of Cadastral Survey, Bureau of Land Management, (333 SW 1st Avenue) P.O. Box 2965, Portland, Oregon 97208.

Dated: June 17, 2003.

Robert D. DeViney, Jr.,

Branch of Realty and Records Services.

[FR Doc. 03–18115 Filed 7–17–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Statements; Availability: Biscayne National Park, Florida.

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of the Record of Decision for the Final General Management Plan Amendment/ Environmental Impact Statement, Biscayne National Park, Miami, Florida.

SUMMARY: Pursuant to section 102 (2) (c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of the Record of Decision for the Final General Management Plan Amendment/ Environmental Impact Statement for Biscayne National Park. On June 11, 2003, the Director, Southeast Region, approved the Record of Decision for the Final General Management Plan Amendment and Environmental Impact Statement for Biscayne National Park. The purpose of the Record of Decision (ROD) is to document the NPS selection of the preferred alternative for the Final General Management Plan Amendment and Environmental Impact Statement. The plan is designed to create a strategy for preserving and managing the seven structures collectively known as "Stiltsville" that are built on pilings in the northern reaches of Biscayne Bay.

Under Alternative A, the selected alternative, a non-profit organization would be created along with an appropriate agreement with the NPS and other groups for the management and use of the Stiltsville structures. The Stiltsville organization would rehabilitate the buildings to support education and interpretation opportunities. Under this alternative, Stiltsville also may serve as a visitor and interpretive center, research facilities, an artist-in-residence dwelling, meeting space, and a satellite park office that will provide for NPS presence in the northern portion of the park.

The full ROD includes a statement of the decision made, synopses of other alternatives considered, the rationale for the decision, a description of the environmentally preferred alternative, a determination of non-impairment of park resources and values, a listing of measures to minimize environmental harm, an overview of public involvement in the decision-making process, and a statement regarding section 7 of the Endangered Species Act.

Basis for Decision

In reaching its decision to select the preferred alternative, the NPS considered the purposes for which Biscayne National Park was established, and other laws and policies that apply to lands and waters in the park, such as the NPS Organic Act, National Environmental Policy Act, and the NPS Management Policies. The NPS also carefully considered public comments received during the planning process.

To develop a preliminary preferred alternative, the NPS evaluated three action alternatives that were reviewed by the public as well as the required no-action alternative.

DATES: The Record of Decision for the Final General Management Plan Amendment and Environmental Impact Statement for Biscayne National Park was signed by the Director, Southeast Region for the NPS on June 11, 2003.

ADDRESSES: Copies of the Record of Decision are available from the Superintendent, Biscayne National Park, PO Box 1369, Homestead, Florida 33090–1369. Copies can also be obtained from: Division of Planning and Compliance, Southeast Regional Office, National Park Service, Attention: David Libman, 100 Alabama Street, 1924 Building, Atlanta, Georgia 30303, Telephone: 404–562–3124, ext. 685.

FOR FURTHER INFORMATION CONTACT: Superintendent, Biscayne National Park, 305–230–1144, ext. 3002.

SUPPLEMENTARY INFORMATION: A copy of the Record of Decision on the Final General Management Plan Amendment for Biscayne National Park can be obtained via the Internet by visiting the NPS Web site at *http://www.planning.den.nps.gov/* or by calling 404–562–3124, ext. 685.

Dated: June 11, 2003.

William W. Schenk,

Regional Director, Southeast Region.

[FR Doc. 03–18205 Filed 7–17–03; 8:45 am]

BILLING CODE 4310–LG–P

DEPARTMENT OF THE INTERIOR

National Park Service;

Statue of Liberty NM and Ellis Island, New York and New Jersey; Notice of Availability of Draft Environmental Impact Statement; Correction

SUMMARY: The Department published a notice in the **Federal Register** of June 25, 2003, concerning the availability of the Draft Environmental Impact Statement (DEIS) for Ellis Island. The notice contained an incorrect date.

FOR FURTHER INFORMATION CONTACT: Thomas Dyer (212) 825–8950.

Correction

In the **Federal Register** of June 25, 2003, Volume 68, Number 122, Page 37862, the last paragraph, first sentence regarding the last date for receipt of written comments should read:

Written comments may be sent to the Superintendent until September 12, 2003.

Dated: July 2, 2003.

Cynthia R. Garrett,

Acting Superintendent, Statue of Liberty NM and Ellis Island, Northeast Region, National Park Service.

[FR Doc. 03–18204 Filed 7–17–03; 8:45 am]

BILLING CODE 4310–GE–P

DEPARTMENT OF THE INTERIOR

National Park Service

Announcement of Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Aniakchak National Monument Park Subsistence Resource Commission will be held at Port Heiden, Alaska. The purpose of the meeting will be to continue work on National Park Service subsistence hunting program recommendations including other related subsistence management issues. The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed.

The Subsistence Resource Commissions are authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96–487, and operation in accordance with the provisions of the Federal Advisory Committee Act.

DATES: The meeting will be on September 22 and 23, 2003, from 9 a.m. to 4 p.m. at the Port Heiden Community Center, Port Heiden, Alaska.

In accordance with 41 CFR 102–3.150, we may provide less than 15 days notice in the **Federal Register** to convene the Commission prior to the September 29, 2003, Bristol Bay Regional Council meeting.

FOR FURTHER INFORMATION CONTACT: Mary McBurney, Subsistence Manager at (907) 257–2633.

SUPPLEMENTARY INFORMATION: Notice of this meeting will be published in local newspapers and announced on local radio stations prior to the meeting dates. Locations and dates may need to be changed based on weather or local circumstances. The following agenda items will be discussed:

1. Call to order (SRC Chair).
2. Roll Call and Confirmation of Quorum.
3. SRC Chair and Superintendent's Welcome and Introductions.
4. Review Commission Purpose and Status of Membership.
5. Review and Adopt Agenda.
6. Review and adopt minutes from last meeting.
7. Superintendent's Report.
8. Update SRC Chair's Workshop—October 21, 2003.
9. Update—Review Federal Subsistence Board Wildlife Proposals.
10. Update—Review Federal Subsistence Board Fisheries Proposals.
11. Develop comments for Federal Subsistence Board Proposals.
12. Review Status of Subsistence Hunting Program Recommendations.
13. Public and agency comments.
14. Set time and place of next SRC meeting.
15. Adjournment.

Draft minutes of the meeting will be available for public inspection approximately six weeks after the meeting from: Superintendent, Aniakchak National Monument and Preserve, PO Box 4230, University Drive #311, Anchorage, AK 99508. Telephone (907) 271–3751.

Marcia Blaszak,

Deputy Regional Director, Alaska.

[FR Doc. 03–18201 Filed 7–17–03; 8:45 am]

BILLING CODE 4312–H7–P

DEPARTMENT OF THE INTERIOR

National Park Service

Cape Cod National Seashore, South Wellfleet, MA; Cape Cod National Seashore Advisory Commission Two Hundred Forty-Third Meeting; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10, that a meeting of the Cape Cod National Seashore Advisory Commission will be held on September 26, 2003.

The Commission was reestablishment pursuant to Public Law 87–126 as amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet at 1 p.m. at Headquarters, Marconi Station, Wellfleet, Massachusetts for the regular business meeting to discuss the following:

1. Adoption of Agenda.
2. Approval of minutes of previous meeting (May 30, 2003).
3. Reports of Officers.
4. Reports of Subcommittees, Nickerson Fellowship Subcommittee.
5. Superintendent's Report, Salt Pond Visitor Center, Mary Chase Salt Marsh Project, Highlands Center, UMass/NPS Outer Cape Study, Zoning, Penniman House, Dune Shack Update, News from Washington.
6. Old Business, Invasive Species.
7. New Business.
8. Date and agenda for next meeting.
9. Public comment and.
10. Adjournment.

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members.

Interested persons may make oral/ written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: June 26, 2003.

Maria Burks,

Superintendent.

[FR Doc. 03–18195 Filed 7–17–03; 8:45 am]

BILLING CODE 4310–WV–M

DEPARTMENT OF THE INTERIOR

National Park Service

Announcement of Denali National Park Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Denali National Park Subsistence Resource Commission will be held at Cantwell, Alaska. The purpose of the meeting will be to continue work on National Park Service subsistence hunting program recommendations including other related subsistence management issues. The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed.

The Subsistence Resource Commission is authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96–487, and operates in accordance with the provisions of the Federal Advisory Committee Act.

DATES: The meeting will on August 20, 2003, 9 a.m. to 5 p.m., at the Community Hall, Cantwell, Alaska.

In accordance with 41 CFR 102–3.150, we may provide less than 15 days notice in the **Federal Register** to convene the Commission prior to the October 7, 2003, South-central Regional Advisory Council meeting.

FOR FURTHER INFORMATION CONTACT: Hollis Twitchell, Subsistence and Cultural Resources Manager at (907) 683–9544 or (907) 455–0673.

SUPPLEMENTARY INFORMATION: Notice of this meeting will be published in local newspapers and announced on local radio stations prior to the meeting dates. Locations and dates may need to be changed based on weather or local circumstances. The following agenda items will be discussed:

1. Call to order (SRC Chair).
2. Roll Call and Confirmation of Quorum.
3. SRC Chair and Superintendent's Welcome and Introductions.
4. Review and adopt minutes from last meeting.
5. Additions and corrections to draft agenda.
6. Public and other agency comments.

7. Denali Backcountry Management Plan.
8. Cantwell Resident Zone Hunting Plan Recommendation.
9. North Access Studies.
10. Federal Subsistence Board.
    a. Review actions taken on Wildlife Proposals " May 2003.
    b. Call for Wildlife Proposals for 2004 "2005.
    c. Federal Fisheries Proposals—update.
    d. Customary Trade
11. Alaska Board Game actions.
12. Subsistence Community Use Profiles and Traditional Knowledge studies.
13. Closing public and agency comments.
14. Set time and place of next Denali National Park SRC meeting.
15. Adjournment.

Draft minutes of the meeting will be available for public inspection approximately six weeks after the meeting from: Superintendent, Denali National Park and Preserve, P.O. Box 9, Denali Park, AK 99755.

Marcia Blaszak,

Deputy Regional Director, Alaska.

[FR Doc. 03–18202 Filed 7–17–03; 8:45 am]

BILLING CODE 4312–H7–P

DEPARTMENT OF THE INTERIOR

National Park Service

Kaloko-Honokohau National Historical Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Na Hoapili O Kaloko Honokohau, Kaloko-Honokohau National Historical Park Advisory Commission will be held at 9 a.m., August 8, 2003 at Kaloko-Honokohau National Historical Park Headquarters, 73–4786 Kanalani St. Suite 14, Kailua-Kona, Hawaii.

The agenda will include Finalized Location of Canoe Halau, Preliminary Plans for Live-In Education Center, and Educational Programs of the Live-In Education Center.

The meeting is open to the public. Minutes will be recorded for documentation and transcribed for dissemination. Minutes for the meeting will be available to the public after approval of the full Advisory Commission. Transcripts will be available after 30 days of the meeting.

For copies of the minutes, contact Kaloko-Honokohau National Historical Park at (808) 329–6881.

Dated: June 11, 2003.

Geraldine K. Bell,

Superintendent, Kaloko-Honokohau National Historical Park.

[FR Doc. 03–18196 Filed 7–17–03; 8:45 am]

BILLING CODE 4312–GH–M

DEPARTMENT OF THE INTERIOR

National Park Service

Announcement of Lake Clark National Park Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Lake Clark National Park Subsistence Resource Commission will be held at Nondalton, Alaska. The purpose of the meeting will be to continue work on National Park Service subsistence hunting program recommendations including other related subsistence management issues. The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed.

The Subsistence Resource Commission is authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96–487, and operates in accordance with the provisions of the Federal Advisory Committee Act.

DATES: The meeting will on September 25, 2003, 10 a.m. to 4 p.m., at the Nondalton Community Hall, Nondalton, Alaska.

In accordance with 41 CFR 102–3.150, we may provide less than 15 days notice in the **Federal Register** to convene the Commission prior to the September 29, 2003, Bristol Bay Regional Council meeting.

FOR FURTHER INFORMATION CONTACT: Mary McBurney, Subsistence Manager at (907) 257–2633.

SUPPLEMENTARY INFORMATION: Notice of this meeting will be published in local newspapers and announced on local radio stations prior to the meeting dates. Locations and dates may need to be changed based on weather or local circumstances.

The following agenda items will be discussed:

1. Call to order (SRC Chair).
2. Roll Call and Confirmation of Quorum.
3. SRC Chair and Superintendent's Welcome and Introductions.
4. Review Commission Purpose and Status of Membership.
5. Review and Adopt Agenda.
6. Review and adopt minutes from last meeting.
7. Superintendent's Report.
8. Update SRC Chairs Workshop—October 21, 2003.
9. Update—Review Federal Subsistence Board—Wildlife Proposals.
10. Update—Review Federal Subsistence Board—on Fisheries Proposals.
11. Develop Subsistence Hunting Program Recommendations
12. Public and agency comments.
13. Set time and place of next SRC meeting.
14. Adjournment.

Draft minutes of the meeting will be available for public inspection approximately six weeks after the meeting from: Superintendent, Lake Clark National Park and Preserve, PO Box 4230, University Drive #311, Anchorage, AK 99508.

Marcia Blaszak,

Deputy Regional Director, Alaska.

[FR Doc. 03–18199 Filed 7–17–03; 8:45 am]

BILLING CODE 4312–HT–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Historic Landmarks Survey; Notice of Draft Additional Documentation for San Luis de Apalache National Historic Landmark, Leon County, FL

The National Historic Landmarks Survey solicits comments on draft additional documentation that has been prepared for San Luis de Apalache National Historic Landmark. The additional documentation presents findings from recent research and provides a more detailed history of the site than was included in the original landmark nomination form. In addition, the additional documentation proposes to change the name of the landmark. When the property was designated a landmark on October 9, 1960, the proper name was unknown. Research has since determined that the property was known as San Luis de Talimali, which the additional documentation proposes to make the official name.

The draft additional documentation for San Luis de Apalache National Historic Landmark is available on the National Historic Landmarks Survey Web site at: *http://www.cr.nps.gov/nhl/sanluis.pdf.*

Comments on the proposed draft additional documentation will be received for 45 days from the date of this notice. Please send written comments to Carol D. Shull, Chief, National Historic Landmarks Survey, National Register, History and Education, National Park Service, 1849 C Street, NW., (2280), Washington, DC 20240, Attention: Daniel Vivian (phone: 202–354–2252; fax: 202–371–2229; e-mail: *dan_vivian@nps.gov*).

Carol D. Shull,

Chief, National Historic Landmarks Survey, National Register, History and Education.

[FR Doc. 03–18198 Filed 7–17–03; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 21, 2003.

Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW, 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by August 2, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

FLORIDA

Indian River County

Jungle Trail, Bet. Old Winter Bch Rd. and FL A–1–A on Orchid Island, Orchid, 03000700

Palm Beach County

Osborne School, (Florida's Historic Black Public Schools MPS) 1718 S. Douglas St., Lake Worth, 03000701

Volusia County

DeLeon Springs Colored School, (Florida's Historic Black Public Schools MPS) 330 E. Retta St., DeLeon Springs, 03000702

Orange City Colored School, (Florida's Historic Black Public Schools MPS) 200 E. Blue Springs Ave., Orange City, 03000703

GEORGIA

Bleckley County

Cochran Municipal Building and School, Jct. of Dykes St. and Second St., Cochran, 03000704

KANSAS

Barton County

Wolf Park Band Shell, Lots 12 and 13, Block 2, 200 Blk of N. Main, Ellinwood, 03000706

Douglas County

Vinland Presbyterian Church, 697 E. 1725 Rd., Baldwin, 03000707

KENTUCKY

Allen County

Big Spring School—Oliver Farmstead, 3293 and 3109 Big Springs Rd., Settle, 03000712

Clinton County

Noland, Jesse, House, RR1 KY 969, Albany, 03000711

Fulton County

Fulton Downtown Historic District, Park of Carr, Commercial, Lake, Main and Walnut Sts., Fulton, 03000710

Jefferson County

Howard—Hardy House, 429 S. Second St., Louisville, 03000709

Ohio County

Rosine General Store and Barn, 8205 Blue Moon of KY—US 62, Rosine, 03000708

LOUISIANA

Tangipahoa Parish

Tangipahoa School, Jct. of Jackson and Tarpley Sts., Tangipahoa, 03000705

MISSOURI

Barry County

Cassbille Ranger Station Historic District, (Mark Twain National Forest MPS) MO 248, Cassville, 03000716

Douglas County

Ava Ranger Station Historic District, (Mark Twain National Forest MPS) MO 5S, Ava, 03000714

Phelps County

Rolla Ranger Station Historic District, (Mark Twain National Forest MPS) Bridge School Road and Kingshighway, Rolla, 03000717

Shannon County

Winona Ranger Station Historic District, (Mark Twain National Forest MPS) Rte 1, MO 19N, Winona, 03000715

Texas County

Houston Ranger Station Historic District, (Mark Twain National Forest MPS) 104 MO 63S, Houston, 03000713

NEW YORK

Wyoming County

Letchworth State Park, Genesee River Gorge Bet. Portageville and Mt. Morris, Genesse Falls, 03000718

OHIO

Lawrence County

Miller—Knight House, 2 Township Rd. 1046, Miller, 03000720

Summit County

Main—Market Historic District, 15–47 N. Main St., 1–39 S. Main St., 39–168 E. Market St., 18–42 N. High St., 70 Broadway St., Akron, 03000719

PENNSYLVANIA

Luzerne County

St. John the Evangelist Roman Catholic Church and School Building, 419 N. Main St., Wilkes-Barre, 03000721

Montgomery County

Jefferson Elementary School, Beech and Warren Sts., Pottstown, 03000723

Philadelphia County

Class and Nachod Brewery, 1801–1823 N. 10th St., Philadelphia, 03000724

General Stores and Mold Loft Building—Harriman Yard of the Merchant Shipbuilding Corporation, 1414 Radcliffe St., Bristol Borough, 03000722

N. Sneilenburg Company Department Store Warehouse, 1825–1851 N. 10th St., Philadelphia, 03000725

TENNESSEE

Davidson County

West End High School, 3529 West End Ave., Nashville, 03000726

TEXAS

Hunt County

Mayo Hall, Monroe and Stonewall Sts., Commerce, 03000727

A request for REMOVAL has been made for the following resource:

KENTUCKY

Hart County

Battle of Munfordville, (Boundary Increase) (Munfordville MRA), Mostly W of U.S. 31W near Munfordville, Munfordville vicinity, 01001254

[FR Doc. 03–18206 Filed 7–17–03; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 28, 2003. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW, 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW, 8th floor, Washington

DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by August 2, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

DISTRICT OF COLUMBIA

District of Columbia

Chevy Chase Arcade, 5520 Connecticut Ave., Washington, 03000730

Square 1500, 4020, 4860, 4872, 4874, Massachusetts Ave., and 4301 49th St. NW, Washington, 03000731

FLORIDA

Indian River County

Old Town Sebastian Historic District East, Main and Washington Sts., Riverside Dr., FEC Railroad, Sebastian, 03000728

Pinellas County

Kenwood Historic District, Roughly bounded by 9th Ave. N, 19th St. N, 1st Ave. N, 31st St. N, 5th Ave N, and 34th St. N, St. Petersburg, 03000729

MINNESOTA

Cook County

Cascade River Wayside, (Federal Relief Construction in Minnesota MPS) 2481 MN 61, Cascade River State Park, 03000733

Fillmore County

Preston Overlook, (Federal Relief Construction in Minnesota MPS) On MN 52, Preston, 03000732

NEW MEXICO

Dona Ana County

Phillips Chapel CME Church, 638 N. Tornillo St., Las Cruces, 03000735

Otero County

Alamogordo Woman's Club, (New Mexico Federation of Women's Club Buildings in New Mexico MPS) SE corner of 12th St. and Indiana Ave., Alamogordo, 03000734

UTAH

Cache County

Elite Hall, 98 W. Main St., Hyrum, 03000736

VERMONT

Orange County

Brock Hill Schoolhouse, (Educational Resources of Vermont MPS) North Rd., Newbury, 03000738

Windham County

Park Farm, (Agricultural Resources of Vermont MPS) 26 Woodchuck Hill Rd., Grafton, 03000737

VIRGINIA

Alexandria Independent City

Orange and Alexandria Railroad Hooff's Run Bridge, Jamieson Ave. at Hooff's Run, Alexandria (Independent City), 03000740

Fairfax County

Washington's, George, Gristmill, 5512 Mount Vernon Memorial Hwy., Lorton, 03000739

Suffolk Independent City East Suffolk Complex, 231 S. 7th St., Suffolk (Independent City), 03000743

[FR Doc. 03–18207 Filed 7–17–03; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA. The human remains and associated funerary objects were removed from six sites in Kern County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

An assessment of the human remains, and catalog records and associated documents relevant to the human remains, was made by Phoebe A. Hearst Museum of Anthropology professional staff in consultation with representatives of the Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Table Mountain Rancheria of California; Tule River Indian Tribe of the Tule River Reservation, California; and Tuolumne Band of Me-Wuk Rancheria of California.

In 1922, human remains representing at least 26 individuals were removed from burials at site CA-Ker-37, a mound site located on the shoreline of former Goose Lake, Kern County, CA, by A. Steinberger of McFarland, CA. The human remains were donated to the Phoebe A. Hearst Museum of Anthropology in the same year. No known individuals were identified. No associated funerary objects are present.

In 1924, human remains representing at least 16 individuals were removed from burials at site CA-Ker-37, Kern County, CA, by E.W. Gifford, and donated to the Phoebe A. Hearst Museum of Anthropology in the same year. No known individuals were identified. The 117 associated funerary objects are 6 textile bag fragments and 111 olivella and clam shell beads.

Characteristics of the associated funerary objects and nonfunerary objects removed from site CA-Ker-37 indicate that the burials date to the Protohistoric period, the 200-year period prior to European contact in the mid-1700s, and to the Historic period.

In 1932, human remains representing at least five individuals, were removed from burials at site CA-Ker-39, a mound site located on the shoreline of former Buena Vista Lake, Kern County, CA, by Mr. and Mrs. W.D. Strong and W.R. Wedel, and were donated to the Phoebe A. Hearst Museum of Anthropology by W.R. Wedel in the same year. Two of the individuals are represented by hair. No known individuals were identified. The six associated funerary objects are one textile fragment and five shell beads.

Characteristics of the associated funerary objects and nonfunerary objects removed from site CA-Ker-39 indicate that the burials date to the Protohistoric period, the 200-year period prior to European contact in the mid-1700s.

In 1933, human remains representing one individual were removed from a burial at site CA-Ker-40, a mound site located on the shoreline of former Buena Vista Lake, Kern County, CA, by W.D. Strong, and were donated to the Phoebe A, Hearst Museum of Anthropology in the same year. No known individual was identified. The human remains consist of hair adhering to the single associated funerary object, a fragment of brown cloth.

In 1948, human remains representing one individual were removed from a burial at site CA-Ker-40, Kern County, CA, by H.S. Riddell and F.A. Riddell, and were donated to the Phoebe A. Hearst Museum of Anthropology in the same year. No known individuals were identified. The two associated funerary objects are stones.

Characteristics of the nonfunerary objects removed from site CA-Ker-40 indicate that the burials date to the Protohistoric period, the 200-year period prior to European contact in the mid-1700s.

In 1924, human remains representing at least four individuals were removed from burials at site CA-Ker-50, a burial site in Elk Hills, near the shoreline of former Buena Vista Lake, Kern County, CA, by W.D. Strong, who donated these human remains to the Phoebe A. Hearst Museum of Anthropology in the same year. No known individuals were identified. The 51 associated funerary objects are fragments of the matting in which the human remains were wrapped at the time of burial, 1 lot of pinkish powder, 2 abalone ornaments, 33 shell beads, 4 bone tubes, 7 projectile points, and 3 projectile point fragments.

Characteristics of the associated funerary objects and nonfunerary objects removed from site CA-Ker-50 indicate that this burial site was in use during the Protohistoric period, the 200-year period immediately prior to European contact in the mid-1700s.

In 1899, human remains representing at least nine individuals were removed from burials at site CA-Ker-53, a habitation and burial site near Buttonwillow, Kern County, CA, by P.M. Jones, who donated the human remains to the Museum of Paleontology, University of California, Berkeley in the same year. Some time prior to 1902, the Museum of Paleontology transferred the human remains to the Phoebe A. Hearst Museum of Anthropology. No known individuals were identified. No associated funerary objects are present.

Characteristics of other objects removed from site CA-Ker-53 indicate that this settlement was inhabited during the Protohistoric period, the 200-year period immediately prior to European contact in the mid-1700s.

In 1949, human remains representing at least 15 individuals were removed from burials at site CA-Ker-74, located on high ground a few miles southeast of the former shoreline of Tulare Lake, Kern County, CA, by members of the California Archaeological Survey, and were donated to the Phoebe A. Hearst Museum of Anthropology in the same year. No known individuals were identified. The 49 associated funerary objects are 35 shell beads, 12 glass beads, and 2 abalone pendants.

Characteristics of the associated funerary objects of Euroamerican origin indicate that the settlement was inhabited between approximately 1810 and 1860.

The burial contexts identify the human remains removed from sites in Kern County, CA, as being Native American. Linguistic evidence indicates that this region of California was inhabited by Native American Yokuts speakers. Archeological research suggests that these burial and habitation sites date to a relatively late time period. Consultation with present-day Yokuts groups documents an oral history of continued habitation of an area encompassing Kern County, CA, that includes the Protohistoric and Historic periods. Historical sources corroborate oral history. Modern descendants of Yokuts speakers are the Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Table Mountain Rancheria of California; Tule River Indian Tribe of the Tule River Reservation, California; and Tuolumne Band of Me-Wuk Rancheria of California.

Officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of at least 77 individuals of Native American ancestry. Officials of the Phoebe A. Hearst Museum of Anthropology also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 226 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Table Mountain Rancheria of California; Tule River Indian Tribe of the Tule River Reservation, California; and Tuolumne Band of Me-Wuk Rancheria of California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact C. Richard Hitchcock, NAGPRA Coordinator, Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA 94720, telephone (510) 642-6096, before August 18, 2003. Repatriation of the human remains and associated funerary objects to the Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Table Mountain Rancheria of California; Tule River Indian Tribe of the Tule River Reservation, California; and Tuolumne Band of Me-Wuk Rancheria of California may proceed after that date if no additional claimants come forward.

The Phoebe A. Hearst Museum of Anthropology is responsible for notifying the Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Table Mountain Rancheria of California; Tule River Indian Tribe of the Tule River Reservation, California; and Tuolumne Band of Me-Wuk Rancheria of California that this notice has been published.

Dated: June 12, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–18208 Filed 7–17–01; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: San Diego State University, San Diego, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of San Diego State University, San Diego, CA. The human remains were removed from two sites in San Diego County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by San Diego State University professional staff in consultation with representatives of the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Capitan Grande Band of Diegueno Mission Indians of California; Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation,

California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of Diegueno Mission Indians of California; Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California; and Kumeyaay Cultural Repatriation Committee, authorized NAGPRA representative for the above tribes.

In 1965, human remains representing a minimum of one individual were removed from an area located near the Carlton Hills Estates (SDSU-0102, 1965-3) in Santee, CA, during salvage surface collections. No known individual was identified. No associated funerary objects are present.

Between 1977 and 1978, human remains representing a minimum of one individual were removed from the Woodward site (SDSU-0015, CA-SDI-5216) in Rancho Santa Fe, CA, during excavations conducted by RECON, an environmental cultural resource management firm in San Diego. No known individual was identified. No associated funerary objects are present. The individuals have been identified as Native American based on consultation evidence and their geographic origin within the historically documented territory of the Kumeyaay Indians. The Kumeyaay Indians are represented by the present-day Indian tribes that are members of the Kumeyaay Cultural Repatriation Committee.

Officials of San Diego State University have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of a minimum of two individuals of Native American ancestry. Officials of San Diego State University also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Capitan Grande Band of Diegueno Mission Indians of California; Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of Diegueno Mission Indians of California; Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California. The Kumeyaay Cultural Repatriation Committee is the authorized NAGPRA representative for the above tribes.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Lynn Gamble, Ph.D., Director, Collections Management Program, San Diego State University, 5500 Campanile Drive, San Diego, CA 92182-4443, telephone (619) 594-2305, before August 18, 2003. Repatriation of the human remains to the Kumeyaay Cultural Repatriation Committee on behalf of the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Capitan Grande Band of Diegueno Mission Indians of California; Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of Diegueno Mission Indians of California; Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California; and Kumeyaay Cultural Repatriation Committee that this notice has been published.

Dated: June 19, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–18209 Filed 7–17–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Battle Creek Salmon and Steelhead Restoration Project, Tehama and Shasta Counties, CA

AGENCIES: Bureau of Reclamation, Interior. Federal Energy Regulatory Commission, Energy.

ACTION: Notice of Availability of the Draft Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) and notice of public workshop and notice of public hearing.

SUMMARY: The Bureau of Reclamation (Reclamation), the lead Federal agency; the Federal Energy Regulatory Commission (FERC), a cooperating Federal agency; and the State Water Resources Control Board (SWRCB), the lead State agency, have made available for public review and comment the Draft EIS/EIR for the Battle Creek Salmon and Steelhead Restoration Project (Restoration Project). The proposed CALFED-supported Restoration Project would restore approximately 42 miles of habitat in Battle Creek and an additional 6 miles of habitat in its tributaries, while minimizing the loss of clean and renewable energy produced by the Battle Creek Hydroelectric Project (Hydroelectric Project), owned and operated by Pacific Gas and Electric Company (PG&E).

DATES: Submit written comments on the Draft EIS/EIR on or before September 16, 2003 to both Ms. Mary Marshall and Mr. Jim Canaday at the addresses below.

A public workshop will be held on Wednesday, July 23, 2003, from 6 p.m. to 8 p.m. at the address below to discuss the purpose and content of the Draft EIS/EIR.

As part of the National Environmental Policy Act (NEPA), a public hearing will be held on Tuesday, August 12, 2003, from 6 p.m. to 8 p.m. at the address below. The purpose of the NEPA public hearing is to provide the public an opportunity to orally comment on the Draft EIS/EIR. Written comments will also be accepted at the public hearing. Note that this public hearing is separate from and not associated with any SWRCB hearings.

ADDRESSES: The public workshop and public hearing will be held at the Manton Joint Union Elementary School, 31345 Forward Road, Manton, California.

Written comments on the Draft EIS/EIR should be addressed to both, Ms. Mary Marshall, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825 and Mr. Jim Canaday, State Water Resources Control Board, 1001 I Street, Sacramento, CA 95814.

Copies of the Draft EIS/EIR may be requested from Ms. Sammie Cervantes at 2800 Cottage Way, Sacramento, CA 95825, or by calling (916) 978–5104, TDD (916) 978–5608, or *scervantes@mp.usbr.gov*. *See* **SUPPLEMENTARY INFORMATION** section for locations where copies of the Draft EIS/EIR are available for public review.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Marshall, Reclamation, at (916) 978–5248, TDD (916) 978–5608, e-mail: *mmarshall@mp.usbr.gov* or Mr. Jim Canaday, SWRCB, at (916) 341–5308, e-mail: *jcanaday@waterrights.swrcb.ca.gov*.

SUPPLEMENTARY INFORMATION: Habitat restoration would enable safe passage for naturally produced salmonids and would facilitate their growth and recovery within the Sacramento River and its tributaries. These salmonids include the Central Valley spring-run chinook salmon, State and Federally listed as threatened; the Sacramento River winter-run chinook salmon, State and Federally listed as endangered; and the Central Valley steelhead, Federally listed as threatened.

The Restoration Project would be accomplished through the modification of Hydroelectric Project facilities and operations, including instream flow releases. The Federal Power Act establishes with FERC the exclusive authority to license nonfederal water-power projects on navigable waterways and Federal lands. PG&E is required to file an application with FERC for an amendment to PG&E's existing license to operate the hydropower facilities on Battle Creek that would be affected by implementation of the proposed Restoration Project. PG&E will make available for public review and comment its Draft License Amendment Application at the same time as the Draft EIR/EIS. FERC intends to adopt the EIS to fulfill its NEPA requirements as part of its review of PG&E's amendment application. FERC will ensure that proposed changes in the Hydroelectric Project comply with NEPA prior to issuing the license amendment.

FERC licensing actions in California, including new licenses, license amendments that potentially effect water quality or designated beneficial uses, and project relicensing, require Federal Clean Water Act Section 401 water quality certification from the SWRCB. SWRCB involvement in Clean Water Act Section 401 certification is subject to compliance with the California Environmental Quality Act.

The Draft EIS/EIR discusses the project purpose and need, project description, project background, and related projects. The Draft EIS/EIR addresses the impacts of project construction and operation on fisheries, botanical, wetland and wildlife resources, hydrology, power generation and economics, water quality, groundwater, land use, socioeconomics, geology and soils, aesthetics and visual resources, transportation, noise, air quality, public health and safety, public services and utilities, recreation, cultural resources, environmental justice, and Indian trust assets.

Copies of the Draft EIS/EIR are available for public review at the following locations:

- Tehama County Library, 645 Madison, Red Bluff, CA, 96080, (530) 527–0604.
- Bureau of Reclamation, Red Bluff Field Office, 22500 Altube Avenue, Red Bluff CA, 96080, (530) 529–3890.
- Shasta County Library, 1855 Shasta Street, Redding, CA, 96001, (530) 225–5769.
- Susanville Library, Lassen County, 1618 Main Street, Susanville CA 96130, (530) 251–8127.
- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225, (303) 445–2072.
- Bureau of Reclamation, Office of Public Affairs, 2800 Cottage Way, Sacramento, CA 95825–1898, (916) 978–5100.
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street NW., Main Interior Building, Washington, DC 20240–0001.

Comments, including names and home addresses of respondents, will be made available for public review. Individual respondents may request that their home address be withheld from public disclosure, which will be honored to the extent allowable by law. There may be circumstances in which respondents' identity may also be withheld from public disclosure, as allowable by law. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comment. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public disclosure in their entirety.

Dated: May 14, 2003.

John F. Davis,

Deputy Regional Director, Mid-Pacific Region, Bureau of Reclamation.

Dated: May 7, 2003.

Joseph D. Morgan,

Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission.

[FR Doc. 03–18291 Filed 7–17–03; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–1039–1041 (Preliminary)]

Certain Wax and Wax/Resin Thermal Transfer Ribbons From France, Japan, and Korea

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines[2], pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Marcia E. Miller dissenting.

industry in the United States is materially injured by reason of imports from France, Japan, and Korea of certain wax and wax/resin thermal transfer ribbons, provided for in heading 3702 and subheadings 3921.90.40 and 9612.10.90 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On May 30, 2003, a petition was filed with the Commission and Commerce by IIMAK International Imaging Materials, Inc., Amherst, NY, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of certain wax and wax/resin thermal transfer ribbons from France, Japan, and Korea. Accordingly, effective May 30, 2003, the Commission instituted antidumping duty investigations Nos. 731–TA–1039–1041 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 10, 2003 (68 FR 34642). The conference was held in Washington, DC, on June 20, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on July 14, 2003. The views of the Commission are contained in USITC Publication 3613 (July 2003), entitled *Certain Wax and Wax/Resin Thermal Transfer Ribbons From France, Japan, and Korea: Investigations Nos. 731–TA–1039–1041 (Preliminary).*

Issued: July 14, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–18237 Filed 7–17–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–03–023]

Sunshine Act Meeting

AGENCY: United States International Trade Commission.

TIME AND DATE: July 23, 2003 at 2 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 701–TA–431 (Final) (DRAMs and DRAM Modules from Korea)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before August 4, 2003.).
5. Inv. No. 731–TA–1012 (Final) (Certain Frozen Fish Fillets from Vietnam)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before August 6, 2003.).
6. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: July 15, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–18427 Filed 7–16–03; 11:00 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Evidence

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Evidence.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Evidence will hold a one-day meeting. The meeting will be open to public observation but not participation.

DATES: November 13, 2003.

Time: 8:30 a.m. to 5 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Judicial Conference Center, One Columbus Circle, NE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: July 14, 2003.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 03–18273 Filed 7–17–03; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States, Committee on Rules of Practice and Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Committee on Rules of Practice and Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: January 15–16, 2004.

Time: 8:30 a.m. to 5 p.m.

ADDRESSES: Hermosa Inn, 5532 North Palo Cristi Road, Scottsdale, AZ.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: July 14, 2003.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 03–18274 Filed 7–17–03; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Bankruptcy Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Bankruptcy Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Bankruptcy Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: March 25–26, 2004.

Time: 8:30 a.m. to 5 p.m.

ADDRESSES: Ritz Carlton, 4750 Amelia Island Parkway, Amelia Island, FL.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: July 14, 2003.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 03–18275 Filed 7–17–03; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Bankruptcy Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Bankruptcy Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Bankruptcy Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: September 18–19, 2003.

Time: 8:30 a.m. to 5 p.m.

ADDRESSES: Dolce Skamania Lodge, 1131 Skamania Lodge Way, Stevenson, WA.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: July 14, 2003.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 03–18270 Filed 7–17–03; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Civil Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: October 2–3, 2003.

Time: 8:30 a.m. to 5 p.m.

ADDRESSES: Hyatt Regency Sacramento at Capitol Park, 1209 L Street, Sacramento, CA.

FOR FURTHER INFORMATION CONTACT: John K. Rabieji, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: July 14, 2003.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 03–18271 Filed 7–17–03; 8:45 am]

BILLING CODE 2210–55–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Criminal Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Criminal Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: October 15–16, 2003.

Time: 8:30 a.m. to 5 p.m.

ADDRESSES: Salishan Lodge, 7760 N. Highway 101, Gleneden Beach, OR.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: July 14, 2003.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 03–18272 Filed 7–17–03; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF LABOR

Office of the Secretary

Combating HIV/AIDS in Ugandan Workplaces Through Community/Faith-Based Organizations

AGENCY: Bureau of International Labor Affairs, Department of Labor.

ACTION: Notice of availability of funds and solicitation for cooperative agreement application (SGA 03–11).

SUMMARY: This notice contains all of the necessary information and forms needed to apply for grant funding. The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), announces the availability of funds to be granted by cooperative agreement (hereafter referred to as "grant") to one or more qualifying organizations. USDOL will award up to U.S. $1 million through one or more grants to an organization or to an eligible "intermediary" organization or organizations to develop and implement a project to stem the spread of HIV/AIDS infection in Uganda, focusing on workers in the workplace and surrounding communities. Eligible "intermediaries" are defined as those non-profit, community, and/or faith-based organizations with established working relationships to grassroots faith-based and community organizations in Uganda working in the field of HIV/AIDS. The intermediary is expected to sub-contract a substantial portion of its award to eligible local grassroots organizations in Uganda, in support of mitigating HIV/AIDS through prevention education. It is expected that the intermediary organization will serve as a mentor of the sub-contracted local organizations to strengthen their capacity to address HIV/AIDS among workers in Uganda. Through their collaboration, the intermediaries will achieve the following objectives: (a) Increase knowledge of HIV/AIDS prevention methods among Ugandan men and women as a first step to changing sexual behavior; (b) strengthen capacity among local organizations to identify HIV/AIDS issues, develop effective strategies to mitigate the impact of HIV/AIDS, and provide education and supportive services to implement such strategies; and (c) improve the capacity of sub-contracted

local community and faith-based organizations to sustain their activities through the provision of training in the areas of business development, administration, and finance.

DATES: The closing date for receipt of applications is Friday, August 22, 2003. Applications must be received by 4:45 p.m. (Eastern Time) at the address below.

ADDRESSES: Application forms will not be mailed. They are published as part of this **Federal Register** notice and in the **Federal Register**, which may be obtained from your nearest U.S. Government office or public library or online at *http://www.archives.gov/federal_register/index.html*. Applications must be delivered to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Attention: Lisa Harvey, Reference: SGA 03–11, Washington, DC 20210.

Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, etc., will be accepted; the applicant, however, bears the responsibility for timely submission. Applications that do not meet the conditions set forth in this notice will not be honored. No exceptions to the mailing and delivery requirements set forth in this notice will be granted.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey, e-mail address: *harvey.lisa@dol.gov*, tel: (202) 693–4570 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: USDOL/ILAB carries out a worldwide International Cooperation Program that helps ensure that the greatest possible number of workers benefit from a more open world economy. The three major initiatives of the International Cooperation Program are:

Improving Economic Opportunity and Income Security for Workers (EOIS)—Under the EOIS initiative, USDOL works to strengthen developing countries' abilities to build and institutionalize social safety net policies and programs needed to improve working conditions and foster economic growth. Projects under this initiative aim to increase employment among targeted groups, improve workplace safety and health, and increase access to social insurance.

Protecting the Basic Rights of Workers (PBRW)—Under the PBRW initiative, USDOL works to implement the fundamental principles embodied in the International Labor Organization's (ILO) Declaration on Fundamental Principles and Rights at Work, specifically working towards strengthening the right to freedom of association and collective bargaining, eliminating forced or compulsory labor, and eliminating employment discrimination.

International HIV/AIDS Workplace-based Education Program (IHWEP)—Under the IHWEP initiative, USDOL works to reduce the rate of HIV/AIDS infection through workplace-based prevention and education programs and to improve the workplace environment for workers living with HIV/AIDS. The IHWEP program also works to build the capacity of the tripartite partners to address the long-term impact of HIV/AIDS on labor markets and economic development.

USDOL/ILAB manages its projects in partnership with stakeholders representing the government, employers, workers, and other organizations.

I. Authority

ILAB is authorized to award and administer this program by the Consolidated Appropriations Resolution, 2003, Pub. L. 108–7, 117 Stat. 11 (2003).

Legal rules that apply to faith-based organizations that receive government funds: The government is prohibited from directly funding religious activity*. These grants may not be used for religious instruction, worship, prayer, proselytizing or other inherently religious practices. Neutral, non-religious criteria that neither favor nor disfavor religion must be employed in the selection of grant recipients.

*The term "direct" funding is used to describe Federal funds that are provided directly by a governmental entity or an intermediate organization, as opposed to funds that an organization receives as the result of the genuine and independent private choice of a beneficiary. In other contexts, the term "direct" funding may be used to refer to those funds that an organization receives directly from the Federal government (also known as "discretionary" funding), as opposed to funding that it receives from a State or local government (also known as "indirect" or "block grant" funding). In this SGA, the term "direct" has the former meaning.

II. Application Process

A. Eligible Applicants

For the purposes of this announcement, "intermediaries" are defined as those non-profit, community, and/or faith-based organizations with existing connections to Ugandan-based, grassroots, faith-based, and/or community organizations working in the field of HIV/AIDS prevention and mitigation. These intermediary organizations must possess strong financial and grant management skills and the ability to mentor and strengthen the capacity of Ugandan non-governmental organizations (NGOs) to effectively respond to HIV/AIDS in Uganda. The intermediary is expected to issue sub-contracts to non-profit grassroots organizations which:

- Have social services as a major part of their mission;
- Have a total annual operating budget of $150,000 or less; and
- Possess or have the capacity to adopt sufficient administrative and financial controls to ensure proper management of the sub-contracted funds.

The U.S. Department of Labor will determine whether Ugandan NGOs have met the criteria and are eligible to be sub-contracted under this grant.

The Ministry of Labor will serve as the primary government contact for the project in Uganda. However, the Grantee may also elect to work with other government agencies that are addressing HIV/AIDS. Partnerships of more than one organization are also eligible to apply for these funds, although in such a case a lead organization must be identified. The capabilities of applicants, partners, and co-applicants to perform necessary aspects of this solicitation will be determined according to the criteria identified in Section XI. All applicants are requested to complete the Survey on Ensuring Equal Opportunity for Applicants (OMB No. 1225–0083) (see Appendix A).

Please note that to be eligible, grant applicants classified under the Internal Revenue Code as a 501(c)(4) entity (*see* 26 U.S.C. 501(c)(4)), may not engage in lobbying activities. According to the Lobbying Disclosure Act of 1995, as amended by 2 U.S.C. 1611, an organization, as described in section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant, or loan.

B. Submission of Applications

One (1) blue ink-signed original, complete application in English plus two (2) copies of the application must be submitted to the U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW, Room N–5416, Washington, DC 20210, no later than 4:45 p.m. Eastern Time on the established due date. To aid with review of applications, Applicants may submit three (3) additional paper copies of the application (five total). Applicants who do not provide additional copies will not be penalized.

The application must consist of two (2) separate parts. Part I of the application must contain the Standard Form (SF) 424, "Application for Federal Assistance" and sections A–F of the Budget Information Form SF 424A (*see* Appendix A). These forms are also available at *http://www.whitehouse.gov/omb/grants*. Part II must contain a technical proposal that demonstrates capabilities in accordance with the statement of work (Section III) and the selection criteria (Section XI). The application should include the name, address, telephone and fax numbers, and e-mail address (if applicable) of a key contact person at the applicant's organization in case questions should arise.

To be considered responsive to this solicitation the application must consist of the above-mentioned separate sections not to exceed 25 single-sided (8½″ × 11″ or A4), double-spaced, 12-point font, typed pages for which a response is submitted. Major sections and sub-sections of the application should be divided and clearly identified (*e.g.*, with tab dividers), and all pages shall be numbered. Applicants are required to propose that a project address ALL of the project objectives identified in the Statement of Work in Section III. Any applications that do not conform to these standards may be deemed non-responsive to this solicitation and may not be evaluated. The application must include a table of contents and an abstract summarizing the application in not more than two (2) pages. Standard forms, attachments, resumes, exhibits, letters of support, and the abstract are not counted towards the page limit. If an applicant exceeds the stated page limit, the review panel has the discretion to deduct 10 points, in accordance with the rating process specified in the "Rating Criteria and Selection" section of this SGA.

The individual signing the SF 424 on behalf of the applicant must be authorized to bind the applicant.

C. Acceptable Methods of Submission

The grant application package must be received at the designated place by the date and time specified, or it will not be considered. Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, etc., will be accepted; the applicant, however, bears the responsibility for timely submission. Applications that do not meet the conditions set forth in this notice will not be honored. No exceptions to the mailing, delivery, and hand-delivery conditions set forth in this notice will be granted.

Any application received at the Office of Procurement Services after 4:45 pm Eastern Time on Friday, August 22, 2003 will not be considered unless it is received before the award is made and:

- It was sent by registered or certified mail no later than the fifth calendar day before the closing date; or
- It was sent by U.S. Postal Service Express Mail/Next Day Service from the post office to the addressee no later than 5:00 pm at the place of mailing two (2) working days (excluding weekends and Federal holidays), prior to the closing date; or
- It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail/Next Day Service from the post office to the addressee is the date entered by the Post Office receiving clerk on the "Express Mail/ Next Day Service—Post Office to Addressee" label and the postmark on the envelope or wrapper on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Service Center on the application wrapper or other documentary evidence or receipt maintained by that office.

All applicants are advised that U.S. mail delivery in the Washington, DC area has been slow and erratic due to concerns involving anthrax contamination. Applicants must take this into consideration when preparing to meet the application deadline. It is recommended that you confirm receipt of your application with your delivery service.

D. Funding Levels

Up to U.S. $1 million is available for this project, and USDOL reserves the right to award more than one grant. USDOL may award one or more grants to one or more organizations or to a partnership of more than one organization. The award of any sub-contract will be subject to USDOL approval (*see* Section IV).

E. Program Duration

The duration of the project funded by this SGA is up to four (4) years. The start date of program activities will be negotiated upon award of the grant, which will take place no later than September 30, 2003.

III. Statement of Work

USDOL is seeking qualified organizations that will implement, in partnership with USDOL, a project to assist in stemming the spread of HIV/AIDS/STI/TB infections among workers in Uganda through partnerships between U.S. organizations and local, community and/or faith-based organizations in Uganda that will develop and implement effective prevention strategies. Specific project objectives are identified in Section III.C. USDOL encourages applicants to be creative in proposing innovative and cost-effective interventions that will produce a demonstrable and sustainable impact.

Proposals should demonstrate organizations' capabilities to implement projects in accordance with the Statement of Work and the rating criteria (Section XI). Funds will be provided by grant to qualifying organizations. The grant will be actively managed by USDOL/ILAB to assure achievement of the stated project objectives. The award of any sub-contract will be subject to USDOL policies and approval (*see* Section IV).

Note: Selection of an organization as a Grantee does not constitute approval of the grant application as submitted. Before the actual grant is awarded, USDOL may enter into negotiations about such items as program components, funding levels, and administrative systems in place to support grant implementation. If the negotiations do not result in a mutually acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline

to fund the application. Award is also contingent upon signature of a letter of agreement between USDOL and relevant ministries in target countries.

A. Background and Problem Statement

1. International HIV/AIDS Pandemic

According to the International Labor Organization (ILO), over 42 million people around the world are infected with HIV. At least 26 million are workers aged 15 to 49, who are in the prime of their working lives. Typically, half of people living with HIV/AIDS (PLWHA) become infected before they turn 25 years old, acquiring AIDS and dying by the time they turn 35, leaving behind a generation of children to be raised by grandparents or by older siblings, many of whom are barely adults themselves. Although HIV/AIDS was initially viewed strictly as a health crisis, it is now acknowledged to have a severe impact on the economic and social development of affected countries. Health authorities, therefore, have recognized that a multi-sectoral approach is necessary to fully address the HIV/AIDS crisis.

Recent studies by the ILO regarding the impact of HIV/AIDS on the workforce warn of the catastrophic consequences of HIV/AIDS/STI for workers and employers worldwide. These studies project a severe decline in the size and quality of the workforce in a number of countries over the next 20 years. According to the ILO, the most affected countries in sub-Saharan Africa with prevalence rates of up to 33 percent of the adult population could lose 29–35 percent of their total workforce by the year 2020. In the case of countries with HIV/AIDS prevalence rates higher than 10 percent of the adult population, the labor force in the year 2020 will be an estimated 10–22 percent smaller than if HIV/AIDS did not exist. HIV/AIDS targets the most productive age group, hampering economic development and the workplace environment as well as workers and their families.

2. Stigma and Discrimination

Compounding the negative impact of the spread of HIV/AIDS is the fact the disease is accompanied by significant stigma and discrimination, and these factors often inhibit prevention efforts. In many cases, the discrimination and social stigmatization which greet individuals' real or perceived HIV status creates a climate of fear and denial, discouraging people from choosing responsible behavior changes, from being tested to learn one's HIV status to seeking appropriate treatment. One fundamental precept of an effective prevention program, therefore, is the inclusion of an anti-stigma/discrimination component. Given the nature and importance of addressing these issues, faith-based efforts that seek the involvement of the broad community may be uniquely positioned to address issues of stigma and discrimination.

3. Impact on Workers and Families

In sub-Saharan Africa, where the epidemic is most advanced, skilled personnel have been lost and youth have not been able to replace their skills and experience, in part because of a lack of access to work and educational opportunities. Many women are expected to care for sick relatives and are therefore unable to maintain their jobs or work in the family's agricultural fields. Many children, particularly girls, are expected to stay home and take care of sick relatives, or to supplement the family income, rather than attend school. Some children and/or youth have been orphaned and have resorted to child labor to sustain themselves and their siblings. The pressure on affected families exacerbates already-existing problems such as poverty levels and child labor.

4. Engagement of Faith-Based And Community Organizations

On January 29, 2001, President George W. Bush issued Executive Order 13198, creating the Office for Faith-Based and Community Initiatives (FBCI) in the White House and corresponding centers for FBCI in the Departments of Labor (DOL), Health and Human Services (HHS), Housing and Urban Development (HUD), Education (ED), and Justice (DOJ). President Bush has charged these centers to identify statutory, regulatory, and bureaucratic barriers that stand in the way of effective faith-based and community initiatives, and to ensure—consistent with the law—that these organizations have an equal opportunity to compete for Federal funding and other support.

As USAID Assistant Administrator for Global Health E. Anne Peterson has stated, "USAID's HIV/AIDS programs now focus on promoting abstinence and delaying the onset of sexual activity, and when appropriate, the use of condoms." As a result, the Administration is promoting internationally a balanced "ABC" approach toward HIV/AIDS prevention ("Abstinence, Be Faithful/Behavior Change, and, if necessary, use a Condom"). This approach is based largely upon success in Uganda with this method, which has included the participation of many faith-based organizations. Applicants should indicate how they will build upon this experience.

Faith-based and/or community-based organizations often present strong credentials to partner in our efforts to combat the spread of HIV/AIDS infections. Faith-based and community-based organizations often are trusted institutions in developing countries around the world. These organizations are often home to a large number of volunteers who bring not only the power of personal relationships to the provision of social service but also a sustained allegiance to the well-being and self-sufficiency of the participants they serve. Through this Grant, USDOL will strive to leverage these programs, resources and committed staff to effectively address HIV/AIDS in Uganda.

B. Objectives

The Grantee(s) will implement, in partnership with USDOL, a project designed to meet the following objectives:

- To promote the "ABC" method and other effective methods of HIV/AIDS prevention among workers in the workplace and in surrounding communities, in partnership with qualifying Ugandan community and/or faith-based organizations;
- To strengthen the capacity of qualifying Ugandan community and/or faith-based organizations to assess HIV/AIDS issues and to develop and implement effective strategies to combat HIV/AIDS; and
- To strengthen the financial and administrative systems of qualifying Ugandan community and/or faith-based organizations to diversify their funding sources, and to enhance their capacity to manage their resources efficiently, in order to sustain the vital services they provide to Ugandan communities.

C. Type of Work to Be Performed/Activities

The selected Grantee(s) will be responsible for developing a strategy for successfully achieving the stated objectives of the project, addressing the problems identified in the Background and Problem Statement, developing and implementing the major tasks to be accomplished as part of that strategy, tracking and reporting on progress in achieving the stated objectives, and providing any necessary related services.

D. Expected Outcomes/Project Outputs

By the end of the grant period, the project will have:

- Increased the number of Ugandan men and women educated and trained in the "ABC" method and other effective methods of HIV/AIDS prevention.
- Strengthened the capacity of one or more Ugandan community, grassroots, and/or faith-based organizations to combat HIV/AIDS.
- Created a sustainable partnership between U.S-based and Ugandan community, grassroots, and/or faith-based organizations working in the areas of HIV/AIDS prevention and mitigation.

The selected Grantee(s) will be responsible for identifying and producing outputs/results/deliverables that will support achievement of these expected outcomes.

E. Deliverables

Following the award of the grant, the Grantee(s) shall collaborate with USDOL/ILAB to:

- Develop a Project Document (including a project budget) that will set the technical parameters and provide guidance to the project. It should include all information and be prepared according to the standardized format outlined by USDOL. While the Applicant's original proposal will serve as the basis of the Project Document, in every case USDOL has found it advantageous to visit the field and reach consensus on the project strategy with host country counterparts in order to further inform the project design. USDOL must receive a draft of the Project Document 45 days after returning from travel to the relevant area(s). The Project Document must be finalized no later than 30 days after receipt of USDOL comments on the draft.
- Establish a Workplan identifying major project activities, deadlines for their completion, and person(s) responsible for completing these activities (within 60 days after the Project Document is finalized).
- Set project indicators, including indicators that support ILAB's Government Performance and Results Act (GPRA) goal, "Improve living standards and conditions of work for workers in developing and transition countries." (within 90 days of finalizing the Project Document).
- Create a Performance Monitoring Plan (PMP) to establish the data needed to measure achievement of project indicators and the methods for collection and reporting. It should include all information and be prepared according to the standardized format outlined by USDOL (within 90 days of finalizing the Project Document).
- Develop spotlight stories that highlight activities and illuminate best practices being undertaken by sub-contractors (on an annual basis).
- Present innovative models addressing the project objectives (at the halfway point and conclusion of the project).

The Grantee(s) must submit copies of all required documents to USDOL by the specified due dates. Other documents that may be produced are to be submitted by mutually agreed-upon deadlines. The Project Document, Workplan, project indicators, PMP, and data collection system are subject to final approval by the Grant Officer's Technical Representative (GOTR) responsible for monitoring the grant.

F. Special Program Requirements

1. USDOL Responsibilities

Following the award of the grant(s), USDOL shall:

- Provide the Grantee(s) with programmatic support to help ensure effective implementation of the project, including training and consultation in USDOL/ILAB management, monitoring, and evaluation systems and standard operating procedures.
- Provide advice and consultation to Grantee(s) on specific program criteria.
- If, based upon the responses to this solicitation and subsequent to the award, USDOL determines that it is necessary, travel to the field with the Grantee(s) and other technical experts for a project design mission before finalizing the project design and the Project Document. USDOL will procure the services of technical experts if it determines that such expertise is necessary for the project design mission.
- Fund at least two project evaluations—a mid-term evaluation at approximately the midpoint of the grant period and a final evaluation approximately two months prior to the end of the grant period. USDOL/ILAB—in consultation with the Grantee(s)—will be responsible for drafting and finalizing all evaluation Terms of Reference (TOR), procuring the services of an independent evaluator (who will write the evaluation report), and providing at least one representative from USDOL/ILAB to participate on the evaluation team, when appropriate. USDOL/ILAB may choose to perform additional evaluations as appropriate.
- Have the right, at all reasonable times, to review all documents pertaining to the project, participate on field missions (including monitoring and evaluation missions), and to discuss administrative and technical issues pertaining to the project with the Grantee.

2. Grantee Responsibilities

Following the award of the grant(s), the Grantee(s) shall:

- Establish the institutional and management systems and means necessary to provide and monitor the delivery of services and to distribute wages and material effectively.
- If USDOL determines that it is necessary, travel to the field with USDOL and other technical experts for a project design mission before finalizing the project design and the Project Document. The Grantee(s) shall bear the financial costs for having its representative(s) participate on the project design mission.
- Assist in project evaluations, including reviewing and providing comments on the evaluation Terms of Reference (TORs) drafted by USDOL and evaluation reports written by the lead evaluator. If invited to participate on an evaluation mission by USDOL, the Grantee(s) shall bear the financial costs for having a representative of the Grantee(s) participate on an evaluation team (*e.g.*, travel, *per diem*).
- Submit trip reports to USDOL within fourteen (14) calendar days of project-related travel. If the Grantee travels with a USDOL staff member, the Grantee will submit a draft trip report to the staff member within fourteen (14) calendar days of project-related travel for comments. The format for the trip report will be provided by USDOL.
- Inform USDOL/ILAB at least one (1) month prior to scheduling any major public events or ceremonies regarding the project.
- Submit to USDOL all media-related and educational materials developed by it or its sub-contractors under this Grant(s), including relevant press releases, for use in this project before they are reproduced, published, or used. The Grantee(s) must consult with USDOL to ensure that materials are compatible with USDOL materials relating to its International Cooperation Program. USDOL considers brochures, pamphlets, videotapes, slide-tape shows, curricula, and any other training materials used in the project to be educational materials. USDOL will review materials for technical accuracy. USDOL will also review training curricula and purchased training materials for accuracy before they are used. The Grantee(s) must obtain prior approval from the Grant Officer for all materials developed or purchased under this grant. All materials produced by Grantee(s) must be provided to USDOL in digital format for possible publication.

IV. Key Personnel and Sub-Contractors

USDOL considers the following job position(s) to be "key personnel" in this project:

- Project Director.
- Ugandan-based Project Coordinator.

The Grant Officer must approve candidates for all key personnel positions: USDOL's Grant Officer's Technical Representative (GOTR) shall review candidates' qualifications and provide recommendations to the Grant Officer regarding the selection of candidates for all key personnel positions. The Grantee(s) shall submit résumés, *curricula vitae*, and other relevant information to the GOTR and receive approval from the Grant Officer before extending an offer of employment and before the nominated individual conducts any activities.

Key personnel may only be changed with the approval of the Grant Officer. The Grantee(s) shall not substitute or replace key personnel unless new personnel are at least equal in qualifications to those personnel who are replaced. If a need to find new key personnel arises, the Grantee(s) shall notify the GOTR as soon as the need becomes known. If the Grant Officer is unable to approve the personnel change, he/she reserves the right to terminate the grant.

Organizations may apply for funding in partnership with other organizations, but in such a case, a lead organization must be identified. Use of sub-contractors is subject to Federal laws and regulations, including OMB circulars requiring free and open competition for procurement transactions.

The Grant Officer must approve all sub-contractors. USDOL's Grant Officer's Technical Representative (GOTR) shall review candidates' qualifications and provide recommendations to the Grant Officer regarding the selection of candidates for all sub-contractors. The lead organization shall submit a list of previous projects implemented by the proposed sub-contractor, along with a description of qualifications, resumes, *curricula vitae*, and other relevant information to the GOTR and receive approval from the Grant Officer before extending a sub-contract. The lead organization shall not substitute or replace sub-contractors unless new sub-contractors are at least equal in qualifications to those that are replaced. Sub-contractors may only be changed with the approval of the Grant Officer. If a need to find new sub-contractors arises, the lead organization shall notify the GOTR as soon as the need becomes known.

Note: Except as specifically provided, USDOL/ILAB acceptance of a proposal and an award of federal funds to sponsor any program(s) does not provide a waiver of any grant requirement and/or procedures. For example, if an application identifies a specific sub-contractor to provide the services, the USDOL/ILAB award does not provide the justification or basis to sole-source the procurement, *i.e.*, to avoid competition.

V. Reporting Requirements

All reports (*see* Appendix B) are due no later than 30 days after the end of a fiscal quarter and shall be submitted in English. USDOL/ILAB and the Grantee(s) should work together to resolve any issues within 30 days of receipt of a report.

A. Financial Reports

The Grantee(s) shall submit financial reports on a quarterly basis. The first reporting period shall end on the last day of the fiscal quarter (December 31, March 31, June 30, or September 30) during which the grant was signed.

The Grantee(s) shall use Standard Form (SF) 269A, *Financial Status Report*, to report the status of the funds, at the project level, during the grant period. A final SF269A shall be submitted no later than 90 days following completion of the grant period.

If the Grantee(s) uses the U.S. Department of Health and Human Services Payment Management System (HHS PMS), they must also send USDOL copies of the PSC 272 that it submits to HHS, on the same schedule. Otherwise, the Grantee(s) shall submit Standard Form (SF) 272, *Federal Cash Transactions Report*, on the same schedule as the SF269A.

Financial reports are due within 30 days of the end of the reporting period (*i.e.*, by April 30, July 30, October 30, and January 30).

B. Technical Reporting Requirements

After signing the agreement, the Grantee(s) shall submit progress reports to USDOL/ILAB at the end of each fiscal quarter. The first reporting period shall end on the last day of the fiscal quarter (December 31, March 31, June 30, or September 30) during which the Grant was signed. Between reporting dates, the Grantee(s) shall also immediately inform USDOL/ILAB of significant developments and/or problems affecting the organization's ability to accomplish work.

The Grantee(s) shall submit two types of progress reports according to the standardized format used by USDOL/ILAB:

1. Status Reports

Status Reports compare actual and planned activities during the reporting period, which consists of one quarter (January–March and July–September). Its purpose is to provide an update on the Workplan, problems/solutions, major achievements, or modifications. The Status Report should be brief and include an attached project Workplan indicating the status of Workplan activities: "completed," "on schedule," "delayed," "cancelled." The body of report should provide a summary explanation of any deviation from the Workplan and recommended actions.

Two Status Reports are due per year within 30 days of the end of the reporting period (*i.e.*, by April 30 and October 30).

2. Technical Progress Reports

Technical Progress Reports provide information on how the project is progressing in achieving its stated objectives. Technical Progress Reports will be based on the project's stated objectives, indicators, and Performance Monitoring Plan (PMP) and will provide both quantitative and qualitative information and a narrative assessment of performance for the preceding six-month period (January–June and July–December). Data measuring achievement of the project's indicators will be attached to the narrative, which will provide a composite overview of progress, trends, problems, new proposals, lessons learned, and expenditures. The body of the Technical Progress Report should be 2–3 pages in length, stressing major points related to strategy.

Two Technical Progress Reports are due per year within 30 days of the end of the reporting period (*i.e.*, by July 30 and January 30).

C. Instructions for Submitting Reports

All reports shall cite the assigned grant number. The Grantee(s) shall submit one hard copy of all financial reports to each of the following persons:

Lawrence Kuss, Grant Officer, Procurement Services Center, U.S. Department of Labor, 200 Constitution Ave., NW, Room N–5416, Washington, DC 20210

Celeste Helm, Grant Officer's Technical Representative, Office of Foreign Relations, U.S. Department of Labor, 200 Constitution Ave., NW, Room S–5303, Washington, DC 20210

Gene Contee, Accountant, Financial Management Services Center, U.S. Department of Labor, 200 Constitution Ave., NW, Room S–5526, Washington, DC 20210

The Grantee(s) shall submit one hard copy of all technical reports to each of the following persons:

Lawrence Kuss, Grant Officer, Procurement Services Center, U.S. Department of Labor, 200 Constitution Ave., NW, Room N–5416, Washington, DC 20210.

Celeste Helm, Grant Officer's Technical Representative, Office of Foreign Relations, U.S. Department of Labor, 200 Constitution Ave., NW, Room S–5303, Washington, DC 20210

VI. Travel Procedures

The Grantee(s) shall submit a quarterly travel plan to the GOTR. The plan shall include the following information for all individuals traveling for the Grantee(s) to support activities covered by this grant:

- Name of the person(s) who will be traveling
- Destination(s)
- Dates of travel
- Purpose of travel—what they will be doing and why

The Grantee(s) should submit the quarterly travel plan no later than four weeks prior to the start of each subsequent fiscal quarter (*e.g.*, By May 31, the GOTR should have travel plans for all Grantee travel occurring July 1 through September 30). For a trip beginning later than four weeks from the time the plan is submitted, dates should reflect a "best guess" (rather than simply listing "To Be Determined"). The dates should, however, be finalized no later than 4 weeks prior to departure.

All travelers should submit finalized travel details to the GOTR no later than 4 weeks prior to the desired departure date. If any major holiday occurs during those 4 weeks, travelers should submit finalized details earlier.

Individuals are not permitted to travel until USDOL/ILAB has received country clearance from the State Department (via e-mail or cable) or has received written authorization (including by e-mail) from the GOTR. This also applies to expatriates living abroad who go on personal or home leave: although they do not need clearance to enter the U.S., they do need clearance to re-enter the country in which they are stationed.

While travelers may cancel trips at any time, USDOL/ILAB will not permit any amendments to a clearance cable (*e.g.*, for changes in dates of travel, or changes in the identified traveler) less than four weeks prior to the desired date of departure, except in dire emergencies, as determined by the GOTR.

VII. Acknowledgment of USDOL Funding

A. Acknowledgement on Printed Materials

In all circumstances, the following shall be displayed on printed materials: "Preparation of this item was funded by the United States Department of Labor under Grant No. [insert the appropriate Grant number]."

When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all Grantees receiving Federal funds must clearly state:

- The percentage of the total costs of the program or project, which will be financed with Federal money;
- The dollar amount of Federal funds for the project or program; and
- The percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

B. Use of the USDOL Logo

In consultation with ILAB, the Grantee(s) will acknowledge USDOL's role in one of the following ways:

- The USDOL logo may be applied to USDOL-funded material prepared for world-wide distribution, including posters, videos, pamphlets, research documents, national survey results, impact evaluations, best practice reports, and other publications of global interest. The Grantee(s) must consult with USDOL on whether the logo may be used on any such items prior to final draft or final preparation for distribution. In no event shall the USDOL logo be placed on any item until USDOL has given the Grantee written permission to use the logo on the item.
- All documents should include the following notice: "This document does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government."

VIII. Administrative Requirements

A. General

Grantees, which may include faith-based organizations, will be subject to applicable Federal laws (including provisions of appropriations law) and the applicable Office of Management and Budget (OMB) Circulars. Determinations of allowable costs will be made in accordance with the applicable Federal cost principles, *e.g.*, Non-Profit Organizations—OMB Circular A–122. The grant(s) awarded under this SGA will be subject to the following administrative standards and provisions, if applicable:

- 29 CFR Part 36—Federal Standards for Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.
- 29 CFR Part 93—New Restrictions on Lobbying.
- 29 CFR Part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations, and with Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments and International Organizations.
- 29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.
- 29 CFR Part 98—Federal Standards for Government wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).
- 29 CRF Part 99—Federal Standards for Audits of States, Local Governments, and Non-Profit Organizations.

B. Sub-Contracts

Sub-contracts must be awarded in accordance with 29 CFR 95.40–48.

C. Encumbrance of Grant Funds

Grant funds may not be encumbered/obligated by the Grantee(s) before or after the period of performance. Encumbrances/obligations outstanding as of the end of the grant period may be liquidated (paid out) after the end of the grant period. Such encumbrances/obligations may involve only commitments for which a need existed during the grant period and which are supported by approved contracts, purchase orders, requisitions, invoices, bills, or other evidence of liability consistent with the Grantee's purchasing procedures and incurred within the grant period. All encumbrances/ obligations incurred during the grant period must be liquidated within 90 days after the end of the grant period, if practicable.

D. Site Visits

USDOL, through its authorized representatives, has the right, at all reasonable times, to make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. If USDOL makes any site visit on the premises of the Grantee or a sub-contractor(s) under this grant, the Grantee must provide and must require its sub-contractors to provide all

reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All site visits and evaluations will be performed so as not to unduly delay the work.

IX. Grant Closeout Procedures

A. Definitions

1. Grant Closeout

The closeout of a grant is the process by which a Federal grantor agency determines that all applicable administrative actions and all required work of the grant have been completed by the grantee and the grantor.

2. Date of Completion

The date when all work under a grant is completed or the date in the grant award document, or any supplement or amendment thereto, on which Federal assistance ends, whichever comes first.

3. Disallowed Costs

Disallowed costs are those charges to a grant that the grantor agency or its representative determines to not be allowed in accordance with the applicable Federal Cost Principles or other conditions contained in the grant.

B. Close-out Procedures

Grants shall be closed out in accordance with the following procedures:

- Upon request, the Grantor shall make prompt payments to a Grantee for allowable reimbursable costs under the grant being closed out.
- The Grantee shall immediately refund to the Grantor any balance of unobligated (unencumbered) cash advanced to the Grantee that is not authorized for retention by the Grantee for use on other grants.
- Within 90 days after completion of the grant, the Grantee shall submit all financial, performance and other reports required by the Grant Officer to close out the grant. The Grant Officer may authorize extensions when requested by the grantee.
- The Grant Officer shall make a settlement for any upward or downward adjustments to the Federal share of costs after these reports are received.
- In the case of grants that include matching/in-kind contributions, the Grantee is legally required to provide the total amount of matching/in-kind contributions indicated on the face sheet of the agreement, as amended. Failure to provide this level of matching/in-kind contribution shall result in the disallowance of all or part of otherwise allowable Federal share costs, equal to the total matching/in-kind share committed to, less the share actually provided.
- The Grantee shall account for any property acquired with grant funds, or received from the Government in accordance with the provisions of 29 CFR part 95.
- In the event that a final audit has not been performed prior to the closeout of the grant, the Grantor shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

X. Measuring the Performance of the Grantee

The performance of the Grantee will be assessed based on the timely completion of one or more deliverables that will be due to USDOL at the end of each quarter of the Grant. These deliverables should reflect the outcomes of the project that are expected to help achieve the project's objective(s). Applicants are requested to include in their proposal a project implementation plan and approach to monitor the performance of the project throughout the period of the grant. The implementation plan is to consist of a quarterly schedule of activities and list of deliverables that would be completed by the contractor each quarter. The defined list and schedule of deliverables is viewed by USDOL as a key component of the technical proposal.

XI. Review and Selection of Applications for Award

USDOL will screen all applications to determine whether all required elements are present and clearly identifiable. A Technical Panel will objectively rate each complete application against the criteria described in this announcement. The panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to select one or more Grantees on the basis of the initial proposal submission, or the Grant Officer may establish a competitive or technically acceptable range for the purpose of selecting qualified applicants. If deemed appropriate, following the Grant Officer's call for the preparation and receipt of final revisions of proposals, the evaluation process described above will be repeated to consider such revisions. The Grant Officer will make a final selection determination based on what is most advantageous to the Government, considering factors such as panel findings, geographic presence of the applicants, and the best value to the government, cost, and other factors. The Grant Officer's determination for award under this SGA is final.

A. The Review Process

The criteria below will serve as the basis upon which submitted applications will be evaluated. Technical aspects of the application will constitute 100 points of the total evaluation. Up to five (5) additional points will be given for leveraging non-Federal resources.

In order to assist USDOL in assessing the efficient and effective allocation of project funding, the Applicant shall submit a project budget that clearly details the costs for performing all of the requirements presented in this solicitation, including producing all deliverables, reporting on implementation and progress, and monitoring progress. Applicants are reminded to budget for compliance with the administrative requirements set forth (copies of all regulations referenced in this SGA are available at no cost, on-line, at *http://www.dol.gov*). This includes the costs of performing activities such as travel to Washington, DC to meet with USDOL/ILAB, financial audit, project closeout, document preparation (*e.g.*, progress reports, project document), and ensuring compliance with procurement and property standards. The Project Budget should identify administrative costs separately from programmatic costs. In addition to the costs identified previously, administrative costs include indirect costs from the costs pool and the cost of activities, materials (*e.g.*, project car), and personnel (*e.g.*, administrative assistants, office drivers) that support the management and administration of the project but do not provide direct services to project beneficiaries.

The technical panel will review grant applicants against the criteria listed below on the basis of 100 points.

B. Technical Approach—45 points

- The extent to which the application sets forth a clear and supportable course of action to increase knowledge among Ugandan workers of effective HIV/AIDS prevention practices through: (a) Strategically focused HIV/AIDS prevention education applying the "ABC" and other methods to high-risk groups, (b) partnering with qualified Ugandan community and/or faith-based organizations working in the area of HIV/AIDS prevention to increase their resource base and reach, and (c) mentoring and strengthening the capacity of qualified Ugandan community and/or faith-based organizations to develop and implement sustainable and effective HIV/AIDS prevention strategies. The Applicant will be evaluated on the clear identification and description of the specific strategy(s) the Applicant proposes to use, its effectiveness, and attainability of project objectives by the end of the grant period. (10 points)
- Demonstrated familiarity with the major issues related to the components being addressed (*e.g.*, general project context, key problems and/or needs in the relevant country/area, the specific problem(s) and/or need(s) that will be addressed by this project(s), and relevant constraints). The Applicant will be evaluated on the thorough and accurate assessment of the implementing environment and the problems that exist and clear identification of the specific problem(s) the Applicant proposes to address. (5 points)
- A monitoring and evaluation plan for measuring project performance that includes challenging but realistic targets and measurable, verifiable project indicators that measure achievement of project objectives and performance in project implementation. (5 points)
- A description of the applicant's approach to expending funds in the most cost-effective method possible in order to achieve the project objectives. The applicant should refer to its submitted budget in explaining how the budgeted funds will be utilized cost-effectively. In order to assist USDOL in assessing the efficient and effective allocation of project funding, the Applicant shall submit, at minimum, supporting budget information indicating how the Applicant arrived at estimating the costs of the following items/activities: salaries and benefits for all key personnel, 2–3 key activities proposed by the Applicant under its project design, and closing the project and meeting all USDOL close-out requirements, as stated in this SGA. The Applicant will be evaluated based on the clear identification of all project costs and efficient and effective allocation of funding. The project budget should clearly demonstrate that the total amount and distribution of funds is sufficient to cover the cost of all major project activities identified by the Applicant in its proposal, management of the project, monitoring and evaluation, and project close-out and that the distribution of funds maximizes the provision of goods and/or services to project beneficiaries. This section will be evaluated in accordance with applicable Federal laws and regulations. The budget must comply with Federal cost principles (which can be found in the applicable OMB Circulars) and with ILAB budget requirements contained in the application instructions in Section III of this solicitation. (10 points)
- Use of existing expertise from the recipient country in order to reduce costs and further develop local capacity. (5 points)
- Inclusion of a sustainability strategy that ensures that project improvements will continue after the project ends. (5 points)
- Submission of a schedule of quarterly deliverables that will serve to determine the level of performance of the contractor. The identification of deliverables that are presented in the proposal should be objective, verifiable, and demonstrate progress in achieving project objectives. (5 points)

C. Institutional Qualifications/Past Performance—25 points

- Prior experience working in the area of HIV/AIDS prevention education and/or workplace-based programs in developing countries, especially in Uganda. The application shall include information as an attachment (which will not count towards the page limit) regarding previous grants, contracts, or grants, including (a) the organization for which the work was done, (b) a contact person in that organization with his/her current phone number, (c) the dollar value of the grant, contract, or Grant for the project(s), (d) the time frame and professional effort, either directly by key personnel, by consultants, or under contractual arrangements involved in the project(s), (e) a brief summary of the work performed; and (f) a brief summary of accomplishments. (10 points)
- Clear organizational structure and management plan, illustrating experience with carrying out participatory development activities with organizations (*i.e.*, government ministries, employer organizations, worker organizations, community organizations) and maintaining positive and effective relationships with partners. (10 points)
- Demonstration of strong financial management and internal control systems. (5 points)

D. Experience of Personnel—30 points

- Key personnel with prior experience directly related to the proposed work, including technical and language qualifications, professional competence, relevant academic background, and demonstrated experience. Applicants shall submit a résumé for each key personnel proposed, which includes the individual's current employment status and previous work experience, including position title, duties performed, dates in position, employing organizations, and educational background. Duties must be clearly defined in terms of role performed (*i.e.*, manager, team leader, consultant). Résumés shall be included as attachments, which do not count against the page limitation. (20 points)
- Clear management plan demonstrating the staffing requirements and other resources needed to implement the approach. (10 points)

E. Leveraging of Grant Funding—5 points

USDOL will award up to five (5) additional rating points to applications that include non-Federal resources that significantly expand the size and scope of project-related activities. These programs will not be financed by the project, but can complement and enhance project objectives. To be eligible for the additional points, the applicant must list the resource(s), the nature, and possible activities anticipated and any partnerships, linkages, or coordination of activities, cooperative funding, etc.

F. Suggested Outline for Technical Proposal

This outline is provided as a guideline. Organizations may elect a format of their choosing, subject to the requirements of this announcement.

1. Executive Summary

2. Program Description

Goal and Objectives, Background, Technical Approach and Implementation Timetable (Proposed Intervention), Experience of Personnel, Identification of Deliverables and Quarterly Schedule of their submission to determine contractor performance, Staffing Pattern and Project Management Organizational Chart, Leveraging of non-Federal Resources.

3. Attachments

Summaries of other relevant organizational experiences, Resumes of key personnel and signed letters of commitment to the project.

Successful proposals submitted in response to this SGA will be incorporated into the text of the grant with the selected applicant(s).

Signed at Washington, DC, this 14th day of July, 2003.

Lawrence J. Kuss,

Grant Officer.

BILLING CODE 4510–28–P

APPENDIX A

Standard Government Forms

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application: ☐ Construction ☐ Non-Construction

Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address *(give city, county, State, and zip code)*:

Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*:

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ 0.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: – "New" means a new assistance award. – "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. – "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF-424 (Rev. 7-97) Back

OMB Approval No. 0348-0044

BUDGET INFORMATION - Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		Total (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1.		$	$	$	$	$ 0.00
2.						0.00
3.						0.00
4.						0.00
5. Totals		$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$ 0.00
b. Fringe Benefits					0.00
c. Travel					0.00
d. Equipment					0.00
e. Supplies					0.00
f. Contractual					0.00
g. Construction					0.00
h. Other					0.00
i. Total Direct Charges *(sum of 6a-6h)*	0.00			0.00	0.00
j. Indirect Charges					0.00
k. TOTALS *(sum of 6i and 6j)*	$ 0.00	$	$	$ 0.00	$ 0.00
7. Program Income	$	$	$	$	$ 0.00

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Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

Previous Edition Usable

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$ 0.00
9.				0.00
10.				0.00
11.				0.00
12. TOTAL *(sum of lines 8-11)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ 0.00	$	$	$	$
14. Non-Federal	0.00				
15. TOTAL *(sum of lines 13 and 14)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION F - OTHER BUDGET INFORMATION

21. Direct Charges:

22. Indirect Charges:

23. Remarks:

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Standard Form 424A (Rev. 7-97) Page 2

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

SURVEY ON ENSURING EQUAL OPPORTUNITY FOR APPLICANTS

Federal Agency Use Only

OMB No. 1225-0083 Exp. 02/28/2006

NOTE: Please place survey form directly behind the Standard Application for Federal Assistance (SF 424) fact sheet.

Purpose: This form is for applicants that are private nonprofit organizations (not including private universities). Please complete it to assist the federal government in ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for federal funding. Information provided on this form will not be considered in any way in making funding decisions and will not be included in the federal grants database.

1. Does the applicant have 501(c)(3) status?

   ❑ Yes ❑ No

2. How many full-time equivalent employees does the applicant have? *(Check only one box).*

   ❑ 3 or Fewer ❑ 15-50
   ❑ 4-5 ❑ 51-100
   ❑ 6-14 ❑ over 100

3. What is the size of the applicant's annual budget? *(Check only one box.)*

   ❑ Less Than $150,000
   ❑ $150,000 - $299,999
   ❑ $300,000 - $499,999
   ❑ $500,000 - $999,999
   ❑ $1,000,000 - $4,999,999
   ❑ $5,000,000 or more

4. Is the applicant a faith-based/religious organization?

   ❑ Yes ❑ No

5. Is the applicant a non-religious community-based organization?

   ❑ Yes ❑ No

6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?

   ❑ Yes ❑ No

7. Has the applicant ever received a government grant or contract (Federal, State, or local)?

   ❑ Yes ❑ No

8. Is the applicant a local affiliate of a national organization?

   ❑ Yes ❑ No

Survey Instructions on Ensuring Equal Opportunity for Applicants

1. 501(c)(3) status is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1225-0083**. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** Departmental Clearance Officer, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-1301, Washington, D.C. 20210. **If you have comments or concerns regarding the status of your individual submission of this form, write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

APPENDIX B

Progress Report Forms

U.S. Department of Labor
Bureau of International Labor Affairs/Office of Foreign Relations

STATUS REPORT FORMAT

PROJECT #:	**COUNTRY/PROJECT NAME:**	
FUNDING:	**PROJECT DURATION:**	**EVALUATION DATES:** Mid-term: Final:
DATE SUBMITTED:	**REPORTING PERIOD:**	**CONTACT:**

PROJECT OBJECTIVES:

Development Objective:

Immediate Objective(s):

Sub Immediate Objective(s):

I. WOKRPLAN STATUS

(Attach Workplan indicating status of components – "completed," "on schedule," "delayed," "Cancelled" as an annex.)

[Summarize any Workplan variance and recommended actions]

II. PROBLEMS, PROPOSED SOLUTIONS, ACTIONS TAKEN OR REQUIRED

Problems **Proposed Solutions** **Actions Taken/Required**

III. NEW PROPOSALS (activities, staffing, funding, etc.)

U.S. Department of Labor
Bureau of International Labor Affairs/Office of Foreign Relations

TECHNICAL PROGRESS REPORT FORMAT

PROJECT #:	**COUNTRY/PROJECT NAME:**	
FUNDING:	**PROJECT DURATION:**	**EVALUATION DATES:** Mid-term: Final:
DATE SUBMITTED:	**REPORTING PERIOD:**	**CONTACT:**

PROJECT OBJECTIVES:

Development Objective:

Immediate Objective(s):

Sub Immediate Objective(s):

I. OVERALL PROGRESS

[*Attach Data Tracking Table and any reporting against the Performance Monitoring Plan (PMP) as an annex.*]

II. MAJOR TRENDS

III. PROBLEMS, PROPOSED SOLUTIONS, ACTIONS TAKEN OR REQUIRED

Problems **Proposed Solutions** **Actions Taken/Required**

IV. NEW PROPOSALS (activities, staffing, funding, etc.)

V. LESSONS LEARNED

VI. EXPENDITURES VS. BUDGET

Budget Line Item	Total Budget Amt.	For the Reporting Period			Cumulative (over the life of the project)	
		Planned Expenditures	Actual Expenditures	Balance	Total Expenditures	Balance
	$	$	$	$	$	$
	$	$	$	$	$	$
	$	$	$	$	$	$
	$	$	$	$	$	$
	$	$	$	$	$	$
	$	$	$	$	$	$

[FR Doc. 03–18255 Filed 7–17–03; 8:45 am]
BILLING CODE 4510–28–C

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; Request for Information Concerning Labor Rights in Australia and Its Laws Governing Exploitative Child Labor

AGENCIES: Office of the Secretary, Labor; Office of the United States Trade Representative, and Department of State.

ACTION: Request for public comments.

SUMMARY: This notice is a request for public comments to assist the Secretary of Labor, the United States Trade Representative, and the Secretary of State in preparing reports regarding labor rights in Australia and describing the extent to which Australia has in effect laws governing exploitative child labor. The Trade Act of 2002 requires reports on these issues and others when the President intends to use trade promotion authority procedures in connection with legislation approving and implementing a trade agreement. On November 13, 2002, in accordance with section 2104(a)(1) of the Trade Act of 2002, the United States Trade Representative (USTR), Ambassador Robert B. Zoellick, notified the Congress of the President's intent to enter into trade negotiations with Australia. The interagency Trade Policy Staff Committee (TPSC) invited the public to provide written comments and/or oral testimony at a public hearing conducted on January 15, 2003, to assist USTR in formulating positions and proposals with respect to all aspects of the negotiations (67 FR 76431) (Dec 12, 2002). The first round of the U.S.–Australia FTA negotiations took place March 17–21 in Canberra, Australia, and a second round took place in Honolulu, Hawaii, May 19–23. A third round is scheduled for July, with negotiations expected to be completed by the end of 2003. An agreement resulting from these negotiations will be subject to trade promotion authority procedures. The President assigned the functions of preparing reports regarding labor rights and the existence of laws governing exploitative child labor to the Secretary of Labor, in consultation with the Secretary of State and the United States Trade Representative. The Secretary of Labor further assigned these functions to the Secretary of State and the United States Trade Representative.

DATES: Public comments should be received no later than 5 p.m. September 2, 2003.

ADDRESSES: Persons submitting comments are strongly advised to make such submissions by electronic mail to the following address: *FRFTAAustralia@dol.gov*. Submissions by facsimile may be sent to: Betsy White at the Office of International Economic Affairs, Bureau of International Labor Affairs, (202) 693–4851.

FOR FURTHER INFORMATION CONTACT: For procedural questions regarding the submissions, please contact Betsy White, Office of International Economic Affairs, Bureau of International Labor Affairs, at (202) 693–4919, facsimile (202) 693–4851. These are not toll-free numbers. Substantive questions concerning the labor rights report and/or the report on Australia's laws governing exploitative child labor should be addressed to Jorge Perez-Lopez, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–4883.

SUPPLEMENTARY INFORMATION:

I. Background

The Trade Act of 2002 (Pub. L. 107–210) (the Trade Act) sets forth special procedures (Trade Promotion Authority) for approval and implementation of Agreements subject to meeting conditions and requirements in the Act. Division B of the Trade Act, entitled the Bipartisan Trade Promotion Authority Act of 2002. The Trade Act includes negotiating objectives and a listing of priorities for the President to promote in order to "address and maintain United States competitiveness in the global economy" in pursuing future trade agreements 19 U.S.C. 3802(a)–(c). The President delegated several of the functions in section 3802(c) to the Secretary of Labor. (E.O. 13277). These include the functions set forth in section 2102(c)(8), which requires that the President "in connection with any trade negotiations entered into under this Act, submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a meaningful labor rights report of the country, or countries, with respect to which the President is negotiating" and the function in section 2102(c)(9), which requires that the President "with respect to any trade agreement which the President seeks to implement under trade authorities procedures, submit to the Congress a report describing the extent to which the country or countries that are parties to the agreement have in effect laws governing exploitative child labor." The notification letters to the Congress regarding the President's intent to enter into trade negotiations with Australia can be found on the USTR Web site at *http://www.ustr.gov/releases/2002/11/2002–11–13-australia-hastert.PDF* and *http://www.ustr.gov/releases/2002/11/2002–11–13-australia-byrd.PDF*.

II. Information Sought

Interested parties are invited to submit written information as specified below to be taken into account in drafting the required reports. Materials submitted should be confined to the specific topics of the reports. In particular, agencies are seeking written submissions on the following topics:

1. Australia's labor laws, including laws governing exploitative child labor, and Australia's implementation and enforcement of such laws and regulations;
2. The situation in Australia with respect to core labor standards;
3. Steps taken by Australia to comply with International Labor Organization Convention 182 on the worst forms of child labor; and
4. The nature and extent, if any, of exploitative child labor in Australia.

Section 2113(6) of the Trade Act defines "core labor standards" as:

(A) The right of association;
(B) The right to organize and bargain collectively;
(C) A prohibition on the use of any form of forced or compulsory labor;
(D) A minimum age for the employment of children; and
(E) Acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

III. Requirements for Submissions

This document is a request for facts or opinions submitted in response to a general solicitation of comments from the public. To ensure prompt and full consideration of submissions, we strongly recommend that interested persons submit comments by electronic mail to the following e-mail address: *FRFTAAustralia@dol.gov*. Persons making submissions by e-mail should use the following subject line: "Australia: Labor Rights and Child Labor Reports." Documents should be submitted in WordPerfect, MSWord, or text (.TXT) format. Supporting documentation submitted as spreadsheets is acceptable in Quattro Pro or Excel format. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover

letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files. Written comments will be placed in a file open to public inspection at the Department of Labor, Room S–5317, 200 Constitution Avenue, NW., Washington DC and in the USTR Reading Room in Room 3 of the annex of the Office of the USTR, 1724 F Street, NW., Washington, DC 20508. An appointment to review the file at the Department of Labor may be made by contacting Betsy White at (202) 693–4919. An appointment to review the file at USTR may be made by calling (202) 395–6186. The USTR Reading Room is generally open to the public from 10 a.m.–12 noon and 1–4 p.m. Monday through Friday. Appointments must be scheduled at least 48 hours in advance.

Signed at Washington, DC, this 9th of July, 2003.

Arnold Levine,

Associate Deputy Under Secretary for International Affairs.

[FR Doc. 03–18254 Filed 7–17–03; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amend. 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time to be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume cause procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

None

Volume IV

None

Volume V

None

Volume VI

None

Volume VII

None

General Wage Determination Publication

General Wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents; U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 10th day of July, 2003.

Carl Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–17974 Filed 7–17–03; 8:45 am]

BILLING CODE 4510–27–M

MISSISSIPPI RIVER COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Mississippi River Commission.

TIME AND DATE: 9 a.m., August 11, 2003.

PLACE: On board MISSISSIPPI V at Lambert's Landing, St. Paul, MN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the St. Paul District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 1:30 p.m., August 14, 2003.

PLACE: On board MISSISSIPPI V at City Front, Hannibal, MO.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Rock Island District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9 a.m., August 15, 2003.

PLACE: On board MISSISSIPPI V at Riverfront, St. Louis, MO.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the St. Louis District and; (3) Presentations by local organizations and members of the public giving views or comment on any issue affecting the programs or projects of the Commission and the Corps of Engineers.

TIME AND DATE: 9 a.m., August 18, 2003.

PLACE: On board MISSISSIPPI V at River Park, Tiptonville, TN.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or of the Commission and the Corps of Engineers.

TIME AND DATE: 9 a.m., August 19, 2003.

PLACE: On board MISSISSIPPI V at Tom Sawyer Park, West Memphis, AR.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Memphis District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or of the Commission and the Corps of Engineers.

TIME AND DATE: 9 a.m., August 20, 2003.

PLACE: On board MISSISSIPPI V at Tennis Court Boat Ramp, Mayersville, MS.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the Vicksburg District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or of the Commission and the Corps of Engineers.

TIME AND DATE: 9 a.m., August 22, 2003.

PLACE: On board MISSISSIPPI V at Port Commission Dock, Morgan City, LA.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Summary report by President of the Commission on national and regional issues affecting the U.S. Army Corps of Engineers and Commission programs and projects on the Mississippi River and its tributaries; (2) District Commander's overview of current project issues within the New Orleans District; and (3) Presentations by local organizations and members of the public giving views or comments on any issue affecting the programs or of the Commission and the Corps of Engineers.

CONTACT PERSON FOR MORE INFORMATION: Mr. Stephen Gambrell, telephone 601–634–5766.

Timothy S. Gambrell,

Acting Secretary, Mississippi River Commission.

[FR Doc. 03–18440 Filed 7–16–03; 11:56 am]

BILLING CODE 3710–GX–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 30–36239–ML; ASLBP No. 03–814–01–ML]

CFC Logistics, Inc.; Designation of Presiding Officer

Pursuant to delegation by the Commission, see 37 FR 28710 (Dec. 29, 1972), and the Commission's regulations, see 10 CFR 2.1201, 2.1207, notice is hereby given that (1) a single member of the Atomic Safety and Licensing Board Panel is designated as Presiding Officer to rule on petitions for leave to intervene and/or requests for hearing; and (2) upon making the requisite findings in accordance with 10 CFR 2.1205(h), the Presiding Officer will conduct an adjudicatory hearing in the following proceeding: CFC Logistics, Inc., Quakertown, Pennsylvania (Materials License).

The hearing will be conducted pursuant to 10 CFR Part 2, Subpart L, of the Commission's Regulations, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." This proceeding concerns a June 23, 2003

hearing request submitted by twenty-two residents of Milford Township, Pennsylvania, regarding a February 19, 2003 materials license application by CFC Logistics, Inc., to use cobalt-60 in the irradiation of a wide range of materials, including food, cosmetic, and pharmaceutical products, at a facility located in Quakertown, Pennsylvania.

The Presiding Officer in this proceeding is Administrative Judge Michael C. Farrar. Pursuant to the provisions of 10 CFR 2.722, 2.1209, Administrative Judge Charles N. Kelber has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents, and other materials shall be filed with Judges Farrar and Kelber in accordance with 10 CFR 2.1203. Their addresses are:

Administrative Judge Michael C. Farrar, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001;

Dr. Charles N. Kelber, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Issued at Rockville, Maryland, this 14th day of July 2003.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 03–18263 Filed 7–17–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste Meeting on Planning and Procedures; Notice of Meeting

The ACNW will hold a Planning and Procedures meeting on July 29, 2003, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, July 29, 2003—8 a.m.–9 a.m.

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Howard J. Larson (Telephone: 301/415–6805) between 7:30 a.m. and 4:15 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: July 11, 2003.

Sher Bahadur,

Associate Director for Technical, Support, ACRS/ACNW.

[FR Doc. 03–18261 Filed 7–17–03; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Payment of Premiums

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request extension of OMB approval of revised collection of information.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") intends to request that the Office of Management and Budget ("OMB") extend approval, under the Paperwork Reduction Act, of the collection of information under its regulation on Payment of Premiums (29 CFR part 4007) (OMB control number 1212–0009; expires January 31, 2005). The collection of information also includes a certification of compliance with requirements to provide certain notices to participants under the PBGC's regulation on Disclosure to Participants (29 CFR part 4011). The PBGC is revising the collection of information to provide for electronic filing of premium information and payments. The PBGC intends to create an electronic facility, "My Plan Administration Account" ("MyPAA"), on its Web site at www.pbgc.gov, through which plan administrators and other plan professionals will be able to prepare and submit premium filings. This notice informs the public of the PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by September 16, 2003.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at that address during normal business hours. Comments also may be submitted electronically through the PBGC's Web site at *www.pbgc.gov/paperwork*, or by fax to 202–326–4112. The PBGC will make all comments available on its Web site at www.pbgc.gov.

Copies of the collection of information may be obtained without charge by writing to the PBGC's Communications and Public Affairs Department at Suite 240 at the above address or by visiting that office or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) The premium payment and participant notice regulations and the premium forms and instructions for 2003 and prior years can be accessed on the PBGC's Web site at *www.pbgc.gov*.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Staff Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Section 4007 of Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA") requires the Pension Benefit Guaranty Corporation ("PBGC") to collect premiums from pension plans covered under Title IV pension insurance programs. Pursuant to ERISA section 4007, the PBGC has issued its regulation on Payment of Premiums (29 CFR part 4007). Section 4007.3 of the premium payment regulation requires plans, in connection with the payment of premiums, to file forms prescribed by the PBGC, and § 4007.10 requires plans to retain and make available to the PBGC records supporting or validating the computation of premiums paid.

The PBGC has prescribed a series of premium forms: Form 1–ES, Form 1–EZ, and Form 1 and (for single-employer plans only) Schedule A to Form 1. Form 1–ES is issued, with instructions, in the PBGC's Estimated Premium Payment Package. Form 1–EZ, Form 1, and Schedule A are issued, with instructions, in the PBGC's Annual Premium Payment Package.

Premium forms are needed to report the computation, determine the amount, and record the payment of PBGC premiums. The submission of forms and retention and submission of records are needed to enable the PBGC to perform premium audits. The plan administrator of each pension plan covered by Title IV of ERISA is required to file one or more premium forms each year. The PBGC uses the information on the premium forms to identify the plans paying premiums; to verify whether plans are paying the correct amounts; and to help the PBGC determine the magnitude of its exposure in the event of plan termination. That information and the retained records are used for audit purposes.

In addition, section 4011 of ERISA and the PBGC's regulation on Disclosure to Participants (29 CFR part 4011) require plan administrators of certain underfunded single-employer pension plans to provide an annual notice to plan participants and beneficiaries of the plans' funding status and the limits on the Pension Benefit Guaranty Corporation's guarantee of plan benefits. In general, the participant notice requirement applies (subject to certain exemptions) to plans that must pay a variable-rate premium. In order to monitor compliance with part 4011, single-employer plan administrators must indicate on their premium filings whether the participant notice requirements have been complied with.

The collection of information under the regulation on Payment of Premiums, including Form 1–ES, Form 1–EZ, Form 1, and Schedule A to Form 1, and related instructions has been approved by OMB under control number 1212–0009. The collection of information also includes the certification of compliance with the participant notice requirements (but not the participant notices themselves).

The PBGC is revising the collection of information to provide for electronic filing of premium information and payments. As part of the PBGC's ongoing implementation of the Government Paperwork Elimination Act (GPEA), the PBGC is creating an application, "My Plan Administration Account" ("MyPAA") on its Web site at *www.pbgc.gov*, through which plan administrators and other plan professionals will be able to prepare and submit premium filings. Initially, MyPAA will be available for a limited number of plans. As the PBGC gains experience, it intends to make MyPAA available for all plans.

The PBGC intends to request that OMB extend its approval of this collection of information, as revised, for three years from the date of approval. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The PBGC estimates that it will receive responses annually from about 31,162 plan administrators and that the total annual burden of the collection of information will be about 2,140 hours and $8,135,400. (These estimates include paper and electronic filings.)

The PBGC is soliciting public comments to—

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Issued in Washington, DC, this 15th day of July, 2003.

Stuart A. Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 03–18330 Filed 7–17–03; 8:45 am]

BILLING CODE 7708–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Locating and Paying Participants

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") intends to request that the Office of Management and Budget ("OMB") extend its approval (with modifications) of a collection of information under the Paperwork Reduction Act. The purpose of the information collection is to enable the PBGC to pay benefits to participants and beneficiaries in plans covered by the PBGC insurance program. The PBGC intends to create an electronic facility, My Pension Benefit Account ("My PBA"), on its Web site at *www.pbgc.gov*, through which plan participants will be able to conduct electronic transactions with the PBGC. This notice informs the public of the PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by September 16, 2003.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at that address during normal business hours. Comments also may be submitted electronically through the PBGC's Web site at *www.pbgc.gov/paperwork*, or by fax to 202–326–4112. The PBGC will make all comments available on its Web site at *www.pbgc.gov*.

Copies of the collection of information may be obtained without charge by writing to the PBGC's Communications and Public Affairs Department at Suite 240 at the above address or by visiting that office or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC intends to request that OMB extend its approval (with modifications) of a collection of information needed to pay participants and beneficiaries who may be entitled to pension benefits under a defined benefit plan that has terminated. The collection consists of information participants and beneficiaries are asked to provide in connection with an application for benefits. In addition, in some instances, as part of a search for participants and beneficiaries who may be entitled to benefits, the PBGC requests individuals to provide identifying information that the individual would provide as part of an initial contact with the PBGC. All

requested information is needed to enable the PBGC to determine benefit entitlements and to make appropriate payments. The collection also includes pages on the PBGC's Web site at *www.pbgc.gov*, that, for certain large plans, provide respondents with specific information about their pension plan and enable them to obtain a rough estimate of their benefit, either by using an online benefit estimate calculator or by completing an online form and submitting it to the PBGC to compute an estimate.

As part of the PBGC's ongoing implementation of the Government Paperwork Elimination Act (GPEA), the PBGC is creating an application, My PBA, on its Web site at *www.pbgc.gov*, through which plan participants will be able to conduct electronic transactions with the PBGC. My PBA will feature a variety of transactions, including applying for pension benefits, designating a beneficiary, granting a power of attorney, electing monthly payments, electing to withhold income tax from periodic payments, changing contact information, and applying for electronic direct deposit. Initially, My PBA will be available for a limited number of trusteed plans. As the PBGC gains experience, it intends to make My PBA available for all trusteed plans.

The existing collection of information under the regulation was approved under control number 1212–0055 (expires April 30, 2006). The PBGC intends to request that OMB extend its approval (with modifications) for three years from the date of approval. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The PBGC estimates that 134,950 benefit application or information forms will be filed annually by individuals entitled to benefits from the PBGC and that the associated burden is 76,200 hours (an average of about one-half hour per response) and $49,931.50 (an average of $.37 per response). The PBGC further estimates that 5,500 individuals annually will provide the PBGC with identifying information as part of an initial contact and that the associated burden is 1,500 hours (an average of about one-quarter hour per response) and $1,100 (an average of $.20 per response). Thus, the total estimated annual burden associated with this collection of information is 77,700 hours and $51,041.50. (These estimates include paper and electronic filings.)

The PBGC is soliciting public comments to—

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Issued at Washington, DC, this 15th day of July, 2003.

Stuart A. Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 03–18331 Filed 7–17–03; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services Washington, DC 20549.

Extension:

Rule 11a–3 [17 CFR 270.11a–3]—SEC File No. 270–321, OMB Control No. 3235–0358.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520], the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

Rule 11a–3 under the Investment Company Act of 1940 [17 CFR 270.11a–3] is an exemptive rule that permits open-end investment companies ("funds"), other than insurance company separate accounts, and funds' principal underwriters, to make certain exchange offers to fund shareholders and shareholders of other funds in the same group of investment companies. The rule requires a fund, among other things, (i) to disclose in its prospectus and advertising literature the amount of any administrative or redemption fee imposed on an exchange transaction, (ii) if the fund imposes an administrative fee on exchange transactions, other than a nominal one, to maintain and preserve records with respect to the actual costs incurred in connection with exchanges for at least six years, and (iii) give the fund's shareholders a sixty day notice of a termination of an exchange offer or any material amendment to the terms of an exchange offer (unless the only material effect of an amendment is to reduce or eliminate an administrative fee, sales load or redemption fee payable at the time of an exchange).

The rule's requirements are designed to protect investors against abuses associated with exchange offers, provide fund shareholders with information necessary to evaluate exchange offers and certain material changes in the terms of exchange offers, and enable the Commission staff to monitor funds' use of administrative fees charged in connection with exchange transactions.

There are approximately 3,075 funds registered with the Commission as of December 31, 2002. The staff estimates that one-quarter of these funds imposes a non-nominal administrative fee on exchange transactions, and that the recordkeeping requirement of the rule requires approximately one hour annually of clerical time (at an estimated $16 per hour) per fund, for a total of 768.75 hours for all funds (at a total annual cost of $12,300). The staff estimates that one-quarter of the 3,075 funds terminates an exchange offer or makes a material change to its terms once each year, and that the notice requirement of the rule requires approximately one hour of professional time (at an estimated $60 per hour) and two hours of clerical time (at an estimated $16 per hour) per fund, for a total of approximately 2306.25 hours for all funds (at a total annual cost of $70,725). The burdens associated with the disclosure requirement of the rule are accounted for in the burdens associated with the Form N–1A registration statement for funds.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

The rule provides that if a fund imposes an administrative fee in connection with exchanges that is reasonably intended to cover the costs incurred in processing the exchanges, the fund must maintain and preserve records of any determination of the costs incurred in connection with exchanges for a period of not less than six years, the first two years in an easily accessible place. Keeping these records is necessary for any fund that wishes to obtain the benefit of relying on the rule. Although these records are subject to inspection by the Commission, they are not made public.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 7, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–18188 Filed 7–17–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–26098; File No. 812–12921]

Integrity Life Insurance Company, et al.; Notice of Application

July 14, 2003.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") granting exemptions from the provisions of sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder.

Applicants: Integrity Life Insurance Company ("Integrity"), National Integrity Life Insurance Company ("National Integrity," together with "Integrity", the "Companies"), Separate Account I of Integrity Life Insurance Company, Separate Account I of National Integrity Life Insurance Company (together with Separate Account I of Integrity Life Insurance Company, the "Account"), and Touchstone Securities, Inc. ("Touchstone").

Summary of Application: Applicants seek an order of exemption pursuant to section 6(c) of the Act to the extent necessary to permit the recapture, under specified circumstances, of credits applied to contributions made under certain flexible premium variable annuity contracts that the Companies will issue through the Accounts (the "Contracts"), as well as other contracts that the Companies may issue in the future through their existing or future separate accounts ("Other Accounts") that are substantially similar to the Contracts in all material respects ("Future Contracts"). Applicants also request that the order being sought extend to any other National Association of Securities Dealers, Inc. ("NASD") member broker-dealer controlling or controlled by, or under common control or affiliated with, Touchstone, whether existing or created in the future, that serves as distributor or principal underwriter for the Contracts or Future ("Affiliated Broker-Dealers").

Filing Date: The application was filed on January 21, 2003 and amended and restated on July 11, 2003.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received SEC by 5:30 p.m. on August 13, 2003, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants c/o G. Stephen Wastek, Esq., Assistant General Counsel, Integrity Life Insurance Company, 515 West Market Street, Louisville, Kentucky 40202.

FOR FURTHER INFORMATION CONTACT: Alison White, Senior Counsel, or Lorna J. MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102 ((202) 942–8090).

Applicants' Representations

1. Integrity is a stock life insurance company organized under the laws of Ohio. It is authorized to sell life insurance and annuities in 47 states and the District of Columbia. Integrity is a subsidiary of Western and Southern Life Insurance Company ("Western and Southern"), a mutual life insurance company organized under the laws of Ohio.

2. National Integrity is a stock life insurance company organized under the laws of New York. It is authorized to sell life insurance and annuities in 4 states and the District of Columbia. National Integrity is a direct subsidiary of Integrity and an indirect subsidiary of Western and Southern.

3. Separate Account I of Integrity Life Insurance Company was established in 1986 as a separate account under Ohio law for the purpose of funding variable annuity contracts issued by Integrity. It is a segregated asset account of Integrity and is registered with the Commission as a unit investment trust under the Act.

4. Separate Account I of National Integrity Life Insurance Company was established in 1986 as a separate account under New York law for the purpose of funding variable annuity contracts issued by National Integrity. It is a segregated asset account of National Integrity and is registered with the Commission as a unit investment trust under the Act.

5. The Accounts will fund the variable benefits available under the Contracts. Each Company's offering of the Contracts is registered under the Securities Act of 1933. That portion of the assets of the Accounts that is equal to the reserves and other Contract liabilities with respect to the Accounts is not chargeable with liabilities arising out of any other business of the Companies. Any income, gains or losses, realized or unrealized, from assets allocated to the Accounts are, in accordance with the Contracts, credited to or charged against the Accounts, without regard to other income, gains or losses of the Companies.

6. Touchstone is the principal underwriter of the Contracts. Touchstone is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the NASD. The Contracts are sold by registered representatives of broker-dealers that have entered into distribution agreements with Touchstone. Touchstone is a wholly owned subsidiary of Western and Southern.

7. The minimum initial contribution is $20,000. An owner may make

additional contributions of at least $100 at any time. The Companies may limit total contributions to $1,000,000 if the owner is under age 76 and to $250,000 if the owner is age 76 or older.

8. The Companies will credit an extra amount to the Contracts equal to a maximum of 8% of a contribution made within the first twelve months of issuance (the "Credit"). Currently the Credit is 5%. The minimum Credit that may be offered is 4%. The Companies will allocate the Credit pro rata among the investment options in the same proportion as the corresponding contribution. The Companies will fund the Credit from their general account assets.

9. The Credit is not part of the amount an owner will receive if he or she exercises the free look provision. Credits applied within twelve months of the date of receipt of due proof of death will be recaptured and are not included in the amount payable as a death benefit. Similarly, all or part of a Credit applied within twelve months of a withdrawal made pursuant to a withdrawal charge waiver (due to, for example, unemployment, terminal illness, nursing home care, or disability) will be recaptured in the same proportion as the withdrawal bears to the value of the Contract (for example, if 50% of account value is withdrawn, 50% of the Credit will be recaptured). In addition, Integrity will recapture all or part of a Credit if the owner annuitizes within the first five years of the date of issuance. Regardless of whether or not the Credit is vested, all gains or losses attributable to such Credit are part of the owner's account value and are immediately vested.

10. The free look period is the 10-day period (or longer if required by state law) during which an owner may return a Contract after it has been delivered and receive a full refund of the account value, less any Credit applied. Unless the law requires that the full amount of the contribution be refunded, less any withdrawals, the owners bears the investment risk from the time of purchase until he or she returns the Contract and the refund amount may be more or less than the contributions the owner made. The Credit will not be part of the amount an owner will be paid if the free look provision is exercised.

11. The Contracts provide for a standard death benefit and an optional death benefit. Integrity's Contract also provides for an enhanced earnings benefit rider. Any Credit applied within twelve months of the date of receipt of due proof of death will be recaptured and will not be included in the death benefit paid under the Contracts. The Credit will be recaptured whether or not the owner's spouse elects to continue the Contract. However, recapture of the Credit will never cause the amount of the death benefit to decrease below the amount of the owner's total contributions minus the amount of any withdrawals.

12. An owner may make withdrawals from the Contracts at any time before annuitization. Withdrawals in excess of the 10% annual free withdrawal amount are subject to a withdrawal charge during the first nine years after a contribution is made. Under certain circumstances, the withdrawal charge may be waived. Under the Contract issued by Integrity, the withdrawal charge may be waived for withdrawals made due to unemployment, terminal illness, or nursing home care. Under the Contract issued by National Integrity, the withdrawal charge may be waived for withdrawals made due to disability, terminal illness, or nursing home care.

13. In those cases, where the withdrawal charge is waived, any Credit applied within twelve months of such a withdrawal will be recaptured in the same proportion as the amount of the withdrawal in excess of the 10% annual free withdrawal bears to the account value. For example, if 50% of account value is withdrawn, 10% of which falls within the annual free withdrawal amount, only 40% of the Credit will be recaptured; however, if the entire annual free withdrawal amount has previously been withdrawn, 50% of the Credit will be recaptured. There will be no recapture if a withdrawal charge is imposed or in connection with amounts withdrawn that fall within the 10% annual free withdrawal.

14. In the case of the Contract issued by Integrity, if an owner annuitizes during the first five years after issuance, the Credit will be recaptured according to the following schedule:

Contract Year	Percentage of Credit Recaptured
1	100
2	90
3	80
4	70
5	60

Annuitization does not trigger recapture of the Credit under National Integrity's Contract.

15. Owners of the Contracts may allocate their contributions among sixty-three investment options, sixty variable investment options and three fixed investment options. Each subaccount of the Accounts is a variable investment option that will invest in shares of a corresponding portfolio of Fidelity's Variable Insurance Product Funds, Franklin Templeton Variable Insurance Products Trust, Janus Aspen Series, J.P. Morgan Series Trust II, MFS Variable Insurance Trust, Putnam Variable Trust Funds, Scudder Variable Insurance Trust, Touchstone Variable Series Trust, or Van Kampen Life Portfolios.

16. The Companies, at a later date, may decide to create additional subaccounts to invest in any additional funding options as may now or in the future be available. The Companies, from time to time, also may combine or eliminate subaccounts or transfer assets to and from subaccounts.

17. The Contracts provide for a death benefit, various death benefit options, annuity benefits, and annuity payout options, as well as transfer privileges, dollar cost averaging, asset allocation and rebalancing, and other features. The Contracts assess the following charges: (a) A withdrawal charge as a percentage of contributions withdrawn declining from 9% in contribution year 1 to 0% in contribution year 10; (b) an annual maintenance fee of $40 for Contracts with account value of $75,000 or less; (c) an annual administrative fee of .15%; (d) a mortality and expense risk charge of 1.52% in the first nine years after issuance and 1.00% thereafter; (e) a transfer charge of $20 after the first twelve transfers during a Contract year; (f) any applicable death benefit option charge; and (g) any applicable state premium tax. In addition, assets invested in the subaccounts are charged with the annual operating expenses of the underlying portfolios.

18. Applicants seek exemption pursuant to section 6(c) from sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder to the extent deemed necessary to permit the Companies to recapture part or all of a Credit in the following instances: (a) When an owner exercises the Contracts' free look provision; (b) when a death benefit is payable and the date of receipt of due proof of death is within twelve months of a Credit being applied; (c) when a withdrawal is made within twelve months of a Credit being applied under circumstances when the withdrawal charge is waived; or (d) in the case of Integrity only, when the Contract is annuitized during the first five years after issuance.

Applicants' Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request that the Commission pursuant to section 6(c) of the Act grant the exemptions requested below with respect to the Contracts and any Future Contracts issued by the Companies, funded by the Accounts or Other Accounts, and underwritten or distributed by Touchstone or Affiliated Broker-Dealers. Applicants undertake that Future Contracts will be substantially similar to the Contracts in all material respects. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants represent that is not administratively feasible to track a Credit in the Accounts after the Credit is applied. Accordingly, the asset-based charges applicable to the Accounts will be assessed against the entire amount held in the Accounts, including the Credit, during the recapture periods. As a result, during such periods, the aggregate asset-based charges assessed against an owner's account value will be higher than those that would be charged if the owner's account value did not include the Credit. The account value includes all assets in the Accounts and the fixed accounts, including any Credit.

3. Subsection (i) of section 27 of the Act provides that section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless such contract is a redeemable security. Section 2(a)(32) defines "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his or her proportionate share of the issuer's current net assets, or the cash equivalent thereof.

4. Applicants submit that the recapture of the Credit in the circumstances set forth in this application would not deprive an owner of his or her proportionate share of the issuer's current net assets. An owner's interest in the Credit allocated to his or her account value is not fully vested until the sixth Contract year for Contracts issued by Integrity and the third Contract year for Contracts issued by National Integrity. Until the right to recapture has expired and any applicable Credit is vested, the Companies retain the right and interest in the Credit, although not in the earnings attributable to that amount. Thus, when the Companies recapture any Credit, they are merely retrieving their own assets, and the owner has not been deprived of a proportionate share of the applicable Accounts' assets because his or her interest in the Credit has not vested.

5. In addition, Applicants state that permitting an owner to retain a Credit under a Contract upon the exercise of the free look provision would not only be unfair, but would also encourage individuals to purchase a Contract with no intention of keeping it and to return it for a quick profit. Furthermore, the recapture of any Credit applied to contributions made within the first twelve months after issuance is designed to provide the Companies with a measure of protection against anti-selection. The anti-selection risk is that an owner can collect a Credit shortly before death, a free withdrawal, or annuitization, thereby leaving the Companies little time to recover the cost of the Credit. As noted earlier, the amount recaptured equals the Credits provided by the Companies from their general account assets, and any gain would remain part of the owner's account value.

6. Applicants represent that the Credit will be attractive to and in the interest of investors because it will permit owners to put up to 108% of their contributions to work for them in the selected investment options. In addition, the owner will retain any earnings attributable to the Credit, as well as the principal amount of the Credit once vested.

7. Applicants further submit that the recapture of any Credit only applies in relation to the risk of anti-selection against the Companies. Anti-selection can generally be described as a risk that owners obtain an undue advantage. This undue advantage is based on elements of fairness to the Companies and the actuarial and other factors taken into account in designing the Contracts and Future Contracts. The Companies provide the Credit from their general account assets on a guaranteed basis. Thus, they undertake a financial obligation that contemplates the retention of the Contracts and Future Contracts by their owners over an extended period, consistent with the long-term nature of retirement planning. The Companies generally expect to recover their costs, including the amount of the Credit, over an anticipated duration while a Contract or Future Contract is in force. The right to recapture Credits applied to contributions made within the first twelve months after issuance protects the Companies against the risk that an owner will purchase a Contract or Future Contract or make larger or additional contributions with the knowledge that the contingency that triggers payment of a benefit is likely or about to occur. With respect to refunds paid upon the return of the Contracts or Future Contracts within the free look period, the amount payable by the Companies must be reduced by the amount of the Credit. Otherwise, investors could purchase a Contract or Future Contract for the sole purpose of exercising the free look provision and making a quick profit.

8. Applicants submit that the provisions for recapture of Credits under the Contracts and Future Contracts do not violate sections 2(a)(32) and 27(i)(2)(A) of the Act. Sections 26(e) and 27(i) were added to the Act to implement the purposes of the National Securities Markets Improvement Act of 1996 and Congressional intent. The application of a Credit to contributions made under the Contracts should not raise any questions as to the Companies' compliance with the provisions of section 27(i). However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from section 2(a)(32) and 27(i)(2)(A), to the extent deemed necessary, to permit the recapture of any Credit under the circumstances described in this application without the loss of relief from section 27 provided by section 27(i).

9. Rule 22c–1 under the Act prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

10. The Companies' recapture of a Credit might arguably be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current

accumulation unit value of the Accounts. Applicants contend, however, that the recapture of the Credit does not violate Rule 22c–1. To effect a recapture of a Credit, the Companies will redeem interests in a Contract at a price determined on the basis of the current accumulation unit value of the subaccounts to which the owner's account value is allocated. The amount recaptured will equal the amount of the Credit paid out of the Companies' general account assets. Although the owner will be entitled to retain any investment gain attributable to the Credit, the amount of that gain will be determined on the basis of the current accumulation unit values of the applicable subaccounts. Thus, no dilution will occur upon the recapture of the Credit. Applicants also submit that the second harm that Rule 22c–1 was designed to address, namely speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Credit. Because neither of the harms that Rule 22c–1 was meant to address is found in the recapture of the Credit, Rule 22c–1 should not apply. However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from the provisions of Rule 22c–1 to the extent deemed necessary to permit them to recapture the Credit under the Contracts and Future Contracts.

Conclusion

Applicants submit that their request for an order that applies to the Accounts and any Other Accounts established by the Companies, in connection with the issuance of the Contracts and Future Contracts, is appropriate in the public interest. Applicants state that such an order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Applicants state that investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the Act that has not already been addressed in this application. Applicants submit that having Applicants file additional applications would impair Applicants' ability to take advantage of business opportunities as they arise. Further, Applicants state that if Applicants were required repeatedly to seek exemptive relief with respect to the same issues addressed in this application, investors would not receive any benefit or additional protection thereby.

Applicants submit, based on the grounds summarized above, that their exemptive requests meet the standards set out in section 6(c), namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–18189 Filed 7–17–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of July 21, 2003: Closed Meetings will be held on Tuesday, July 22, 2003 at 2 p.m. and Thursday, July 24, 2003 at 3 p.m., and an Open Meeting will be held on Thursday, July 24, 2003 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

The subject matter of the Closed Meeting scheduled for Tuesday, July 22, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions;

Formal order of investigation; and

Opinions.

The subject matter of the Open Meeting scheduled for Thursday, July 24, 2003 will be:

1. The Commission will hear oral argument on an appeal by Robert M. Fuller, a former Chairman of the Board of Directors and Executive Vice-President for Investor Relations of Vista 2000, Inc. ("Vista"), from an administrative law judge's initial decision.

The law judge found that Fuller caused Vista to violate Section 17(a) of the Securities Act of 1933, sections 10(b) and 13(a) of the Securities Exchange Act of 1934, and Exchange Act Rules 10b–5, 13a–1, and 12b–20. The law judge ordered Fuller to cease and desist from committing or causing any violations or future violations of these provisions.

The Commission will consider the following issues:

a. Whether Fuller caused Vista to commit the alleged violations; and

b. If so, whether the imposition of a cease-and-desist order is appropriate and in the public interest.

The subject matter of the Closed Meeting scheduled for Thursday, July 24, 2003 will be: Post-argument discussion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact the Office of the Secretary at (202) 942–7070.

Dated: July 15, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–18395 Filed 7–15–03; 4:48 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48172; File No. SR–Amex–2003–34]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the American Stock Exchange LLC, Relating to Indications, Openings and Re-Openings

July 14, 2003.

On April 23, 2003, the American Stock Exchange LLC ("Amex" or "Exchange"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to codify and revise the Exchange's policies regarding tape indications and re-openings in stocks that are subject to a trading halt (other than "circuit breaker" or "equipment changeover" halts). Notice of the proposed rule change was published for comment in the **Federal Register** on May 12, 2003.[3] No comments were received on the proposed rule change.

In 1997, the Commission approved the Exchange's policies regarding indications, openings and re-openings.[4] To make them more accessible to members and member organizations, the Exchange has proposed to codify these policies as new Rule 119. The Exchange would also update its rules on re-opening trading in a stock after a post-opening trading halt to conform them to those of the New York Stock Exchange ("NYSE"). The Exchange's current policy on re-openings requires a minimum of 10 minutes to elapse between the first price indication and the re-opening, and a minimum of five minutes to elapse after the last indication, provided in all cases that the minimum 10 minutes has elapsed since the first indication. The Exchange proposes to shorten these minimum time periods to five minutes after the first indication, and three minutes after the last indication, provided that a minimum of five minutes has elapsed since the first price indication.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] Specifically, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,[6] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. The Commission notes that Amex's codification of the previously approved policies will result in greater transparency of Exchange procedures. Further, the Commission notes that Amex's proposal to shorten the minimum time periods that must elapse between indications and re-openings would conform Amex's procedures to those in effect at the NYSE,[7] which the Commission believes strike a reasonable balance between preserving the price discovery process and providing timely opportunities for investors to participate in the market.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–Amex–2003–34) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–18259 Filed 7–17–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Release No. 34–47796 (May 5, 2003), 68 FR 25400.

[4] *See* Release No. 34–38549 (April 28, 1997), 62 FR 24519 (1997).

[5] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] *See* NYSE Rule 123D(1); Release No. 34–47104 (December 30, 2002), 68 FR 597 (January 6, 2003).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48169; File No. SR–MSRB–2003–04]

Self-Regulatory Organizations; Order Granting Approval of a Proposed Rule Change by the Municipal Securities Rulemaking Board To Require Dealers To Establish Anti-Money Laundering Compliance Programs

Date: July 11, 2003.

On May 22, 2003, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities & Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change (File No. SR–MSRB–2003–04) (the "proposed rule change"). The MSRB's rule change establishes Rule G–41, on anti-money laundering compliance.

The Commission published the proposed rule change for notice and comment in the **Federal Register** on June 9, 2003.[3] The Commission received one comment letter on the proposed rule change.[4] This order approves the proposed rule change.

I. Description of the Proposed Rule Change

The MSRB filed a proposed rule change, Rule G–41, on anti-money laundering compliance in response to the passage of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 ("USA PATRIOT Act").[5] Section 352, of the USA PATRIOT Act, requires financial institutions, including broker/dealers, to establish and implement anti-money laundering compliance programs designed to ensure ongoing compliance with the requirements of the Bank Secrecy Act ("BSA"),[6] and the regulations promulgated thereunder, by April 24, 2002. The MSRB proposed Rule G–41 to ensure that all brokers, dealers and municipal securities dealers ("dealers")[7] that effect transactions in municipal securities, and in particular those that only effect transactions in municipal securities ("sole municipal dealers"), are aware of, and in compliance with, anti-money laundering program requirements. The proposed rule change requires that all dealers establish and implement anti-money laundering programs that are in compliance with the rules and regulations of either its registered securities association (*i.e.*, NASD) or its appropriate banking regulator governing the establishment and maintenance of anti-money laundering programs.[8]

II. Summary of Comments

The Commission received one comment letter relating to the proposed rule change.[9] The comment letter expresses its general support for the proposed rule, but requests at least a five-month delay for mandatory compliance with the rule's "Customer Identification Program" ("CIP").[10] According to the comment letter, T. Rowe believes that timely compliance with the CIP is "extremely burdensome" for broker and dealers involved with the distribution of college savings plans "to efficiently implement all of the operational and informational technology related changes the rule demands."[11] T. Rowe requested the delay to "minimize the disruption of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Release No. 34–47969 (June 3, 2003), 68 FR 34450.

[4] Letter from Henry H. Hopkins, Chief legal Counsel, Regina M. Pizzonia, Associate Counsel, T. Rowe Price Associates, Inc. ("T. Rowe"), to Jonathan G. Katz, Secretary, Commission, dated June 27, 2003.

[5] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107–56, 115 Stat. 272 (2001).

[6] 31 U.S.C. 5311, *et seq.*

[7] The term "dealer" is used herein as shorthand for "broker," "dealer" or "municipal securities dealer," as those terms are defined in the Act. The use of the term does not imply that the entity is necessarily taking a principal position in a municipal security.

[8] *See* Release No 34–47969; *see also* Release No. 34–46739 (Oct. 29, 2002) 67 FR 67432 (Nov. 5, 2002); 31 CFR 103.120(b).

[9] *See* T. Rowe letter.

[10] *Id* at 1.

[11] *Id* at 2.

services to our account holders" and that it believed that college savings plan, "pose a low threat as a money laundering vehicle".[12] For these and other reasons expressed in the letter, T. Rowe believes that a five-month compliance delay, specifically in relation to brokers and dealers who distribute the college saving plan, would not threaten the government's anti-terrorism goals.[13]

III. Discussion and Commission Findings

Section 19(b) of the Act[14] requires the Commission to approve the proposed rule change filed by the MSRB if the Commission finds that the proposed rule change consistent with the requirements of the Act and the rules and regulations thereunder. After careful review of the proposed rule change and the related comments, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, which govern the MSRB.[15] The language of section 15B(b)(2)(C) of the Act requires that the MSRB's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in the regulating, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and in general, to protect investors and the public interest.[16] The commission believes that the MSRB's proposed rule change meets this statutory threshold.

Since the passage of the USA PATRIOT Act, the Commission has worked with self-regulatory organizations to coordinate rules requiring programs designed to help identify and prevent money laundering abuses that jeopardize the integrity of the U.S. capital markets. Title III of the USA PATRIOT Act, also known as the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 ("AML Act"). Imposes certain obligations on financial institutions and the dealer community. Section 352 of the AML Act requires financial institutions to establish certain minimum anti-money laundering standards. Furthermore, section 352 requires dealers to develop and implement a written anti-money laundering compliance program by April 24, 2002.[17] The Commission notes that the provisions of the USA PATRIOT Act are mandates of federal law. As a result, MSRB members should have already established anti-money laundering compliance programs.

The Commission believes that Rule G–41 will facilitate compliance with the federal government's anti-terrorism goals. The purpose of Rule G–41 is to ensure that all brokers, dealers and municipal securities dealers who effect transactions in municipal securities, especially sole municipal securities dealers, are aware of their obligations under section 352 and know where to look for guidance concerning appropriate anti-money laundering programs. Moreover, the Commission notes that Rule G–41 will provide clarification to dealers and examiners of the rules and regulations with which dealers who effect transactions in municipal securities must comply concerning anti-money laundering compliance programs.

IV. Conclusion

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (File No. SR–MSRB–2003–04) be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–18190 Filed 7–17–03; 8:45 am]

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[12] *Id* at 3.

[13] *Id* at 2.

[14] 15 U.S.C. 78s(b).

[15] Additionally, in approving this rule the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[16] 15 U.S.C. 780–4(b)(2)(C).

[17] *See* 31 U.S.C. 5318(h) (amended by section 352 of the AML Act).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3526]

State of Indiana

As a result of the President's major disaster declaration on July 11, 2003, and subsequent amendment also on July 11, I find that Adams, Allen, Benton, Blackford, Boone, Carroll, Cass, Clinton, Delaware, Fountain, Grant, Hamilton, Hancock, Henry, Howard, Huntington, Jasper, Jay, Kosciusko, Madison, Marion, Miami, Montgomery, Noble, Pulaski, Randolph, Tippecanoe, Tipton, Wabash, Warren, Wayne, Wells, White, and Whitley Counties in the State of Indiana constitute a disaster area due to damages caused by severe storms, tornadoes, and flooding occurring on July 4, 2003 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 9, 2003 and for economic injury until the close of business on April 12, 2004 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: DeKalb, Elkhart, Fayette, Fulton, Hendricks, Johnson, LaGrange, Lake, LaPorte, Marshall, Morgan, Newton, Parke, Porter, Putnam, Rush, Shelby, Starke, Steuben, Union, and Vermillion in the State of Indiana; Iroquois and Vermilion Counties in the State of Illinois; Darke, Defiance, Mercer, Paulding, Preble, and Van Wert Counties in the State of Ohio.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.625
Homeowners without credit available elsewhere	2.812
Businesses with credit available elsewhere	5.906
Businesses and non-profit organizations without credit available elsewhere	2.953
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	2.953

The number assigned to this disaster for physical damage is 352611. For economic injury, the numbers are 9W2900 for Indiana; 9W3000 for Illinois; and 9W3100 for Ohio.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 14, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–18328 Filed 7–17–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3520]

Commonwealth of Kentucky; Amendment #1

In accordance with the notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective June 27, 2003, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on June 14, 2003 and continuing through June 27, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is September 2, 2003, and for economic injury the deadline is April 2, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 14, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–18326 Filed 7–17–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3512]

State of West Virginia; Amendment #3

In accordance with the notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective July 10, 2003, the above numbered declaration is hereby amended to include Nicholas County in the State of West Virginia as a disaster area due to damages caused by severe storms, flooding, and landslides that occurred June 11, 2003 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Braxton, Greenbrier, and Webster Counties in the State of West Virginia.

All other counties contiguous to the above named primary county have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 20, 2003, and for economic injury the deadline is March 22, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 14, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–18329 Filed 7–17–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 4402]

30-Day Notice of Proposed Information Collection: Form DS–3052, Nonimmigrant V Visa Application; OMB Control #1405–0128

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Extension of Currently Approved Collection.

Originating Office: Bureau of Consular Affairs, Department of State (CA/VO).

Title of Information Collection: Nonimmigrant V Visa Application.

Frequency: Once per respondent.

Form Number: DS–3052.

Respondents: Nonimmigrant visa applicants applying for a V visa.

Estimated Number of Respondents: 100,000 per year.

Average Hours Per Response: 1 hour.

Total Estimated Burden: 100,000 hours per year.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Brendan Mullarkey of the Office of Visa Services, U.S. Department of State, 2401 E St. NW., RM L–703, Washington, DC 20520, who may be reached on 202–663–1163. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: June 30, 2003.

Janice L. Jacobs,

Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 03–18278 Filed 7–17–03; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4403]

FY 2004 Refugee Admissions Program Notice of Meeting

There will be a meeting on the President's FY 2004 Refugee Admissions Program on Wednesday, July 30, 2003, from approximately 2 p.m. to 5 p.m. The meeting will be held at the Refugee Processing Center, 1401 Wilson Boulevard, Suite 700, Arlington, Virginia. The meeting's purpose is to hear the views of attendees on the appropriate size and scope of the FY 2004 Refugee Admissions Program.

Seating is limited. Persons wishing to attend this meeting must notify the Bureau of Population, Refugees, and Admissions at (202) 663–1056 by 5 p.m. (EDT) Wednesday, July 23, 2003, to arrange for admission. Persons wishing to present oral comments at the open portion of the meeting, or to submit written comments for the Committee's consideration, must provide them in writing by 5 p.m. (EDT), July 23, 2003. All comments may be faxed to (703) 907–7284.

Information about the Refugee Admissions Program may be found at *http://www.state.gov/g/prm/*.

Dated: July 10, 2003.

Arthur E. Dewey,

Assistant Secretary, Bureau of Population, Refugees, and Migration, Department of State.

[FR Doc. 03–18277 Filed 7–17–03; 8:45 am]

BILLING CODE 4710–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

High Density Airports; Notice of Reagan National Airport Lottery Allocation Procedure

AGENCY: Federal Aviation Administration

ACTION: Notice of clarification.

SUMMARY: This action clarifies the FAA notice of a lottery for the allocation of a limited number of air carrier and commuter slots, published in the **Federal Register** on July 9, 2003, by providing the applicable definition of a "limited incumbent" carrier for purposes of the upcoming slot lottery at Washington Reagan National Airport on July 31, 2003.

DATES: Effective immediately.

FOR FURTHER INFORMATION CONTACT: Lorelei Peter, Operations and Air Traffic Law Branch, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone number 202–267–3134.

SUPPLEMENTARY INFORMATION:

Background

On July 9, 2003, the FAA published in the **Federal Register** a notice of lottery and allocation procedures for slots at Washington Reagan National Airport (DCA) (68 FR 41037). In this notice the FAA stated that Title 49 of the United States Code (U.S.C.) 41714(h)(5)(A) amends the regulatory definition of a limited incumbent carrier to a carrier that holds or operates fewer than 20 lots and includes slot exemptions in the term "slots."

The FAA has further reviewed this matter and clarifies that the definitions set forth in 49 U.S.C. 41714(h) apply to sections 41714–41718 and 41734(h) only. Therefore, the regulatory definitions of a "new entrant" carrier and a "limited incumbent" carrier, as set forth respectively in 14 CFR 93.213(a)(1) and 93.213(a)(5) are applicable for purposes of the lottery at DCA.

Issued in July 15th, 2003 in Washington, DC.

Andrew S. Steinberg,

Chief Counsel.

[FR Doc. 03–18401 Filed 7–16–03; 11:02 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003 15662]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel BEAU GESTE.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15662 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 18, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15662. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel BEAU GESTE is:

Intended Use: "Passengers for hire."

Geographic Region: "All five Great Lakes."

Dated: July 14, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–18286 Filed 7–17–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003 15665]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel CINNAMON TEAL.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15665 at *http://www.dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 18, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15665. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://www.dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel CINNAMON TEAL is:

Intended Use: "Seasonal sailing charters."

Geographic Region: "Maine to Florida."

Dated: July 14, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–18283 Filed 7–17–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003 15667]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel GOLDEN DAYS.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15667 at *http://www.dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 18, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15667. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://www.dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel GOLDEN DAYS is:

Intended Use: "Coastwise Term Charters (Pleasure Cruises)."

Georgraphic Region: "U.S. East Coast, Florida to Maine".

Dated: July 14, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–18282 Filed 7–17–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003 15668]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel HORIZON.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15668 at *http://www.dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 18, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15668. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://www.dmses.dot.gov/submit/*. All

comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel HORIZON is:

Intended Use: "Recreational yacht charters of 12 passengers or less".

Geographic Region: "Newport, RI to Miami, FL".

Dated: July 14, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–18281 Filed 7–17–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003 15673]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel JACQUELINE.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15673 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 18, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15673. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel JACQUELINE is:

Intended Use: "sailing charters, typically one to seven days."

Geographic Region: "East Coast of the United States and the Gulf of Mexico."

Dated: July 14, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–18288 Filed 7–17–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003 15669]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel JOHN A.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15669 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 18, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15669. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel JOHN A. is:

Intended Use: "Sailing Charters".

Geographic Region: "Miami to Key West."

Dated: July 14, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–18280 Filed 7–17–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003 15664]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel LADY SHARON GALE.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15664 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 18, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15664. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel LADY SHARON GALE is:

Intended Use: "Chartering boat for pleasure and fishing".

Geographic Region: "Maine to the Florida Keys."

Dated: July 14, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–18284 Filed 7–17–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003 15674]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MAGNOLIA.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15674 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 18, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15674. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830, Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MAGNOLIA is:

Intended Use: "Recreational Charter."

Geographic Region: "The U.S. Gulf Coast and the East Coast, including Texas, Louisiana, Florida, Georgia, South Carolina, North Carolina, Virginia, Maryland, Delaware, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, and Maine. Also, the Great Lakes Region. My base of operations is New York, New York."

Dated: July 14,2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–18287 Filed 7–17–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003 15663]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel OUR JEWEL.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15663 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 18, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15663. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel OUR JEWEL is:

Intended Use: "Charters/Passengers for hire."

Geographic Region: "United States East Coast including Florida."

Dated: July 14, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–18285 Filed 7–17–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003 15670]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel THE FURRY FIVE.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15670 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 18, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15670. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel THE FURRY FIVE is:

Intended Use: Recreation/fishing/pleasure charter.

Geographic Region: Florida.

Dated: July 14, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–18279 Filed 7–17–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34352]

RailAmerica, Inc., et al.—Continuance in Control Exemption—San Luis & Rio Grande Railroad Company

RailAmerica, Inc. (RailAmerica), Palm Beach Rail Holding, Inc. (Palm Beach), and RailAmerica Transportation Corp. (RTC) (collectively, applicants) have filed a verified notice of exemption to continue in control of San Luis & Rio Grande Railroad Company (SLRG), upon SLRG becoming a Class III rail carrier.

The transaction was expected to be consummated on or after June 30, 2003.

This transaction is related to the concurrently filed verified notice of exemption in STB Finance Docket No. 34350, *San Luis & Rio Grande Railroad Company—Acquisition and Operation Exemption—Union Pacific Railroad Company*, wherein SLRG seek to acquire and operate 149.38 miles of rail line currently owned by Union Pacific Railroad Company.

RailAmerica currently controls one Class II railroad and 33 Class III railroads. RailAmerica directly controls Palm Beach, which in turn directly controls RTC. RTC directly controls SLRG.

Applicants state that: (1) The railroads do not connect with each other or any railroad in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a Class I carrier.

Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Because the transaction involves at least one Class II and one or more Class III rail carriers, the exemption is subject to the labor protection requirements of 49 U.S.C. 11326(b).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34352, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Louis E. Gitomer, Esq., Of Counsel, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: July 11, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–18334 Filed 7–17–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34350]

San Luis & Rio Grande Railroad Company—Acquisition and Operation Exemption—Union Pacific Railroad Company

San Luis & Rio Grande Railroad Company (SLRG), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate two lines of the Union Pacific Railroad Company (UP), as follows: (1) The Alamosa Subdivision from milepost 299.30 near Derrick, CO, to milepost 180.0 near Walsenburg, CO;[1] and (2) the Antonito Subdivision from the point where the two subdivisions connect at milepost 251.7 in Alamosa, CO, to milepost 281.78 in Antonito, CO, a total distance of 149.38 miles. In addition, UP will grant SLRG approximately 5 miles of incidental trackage rights in the vicinity of Walsenburg from milepost 180.0 to milepost 175.0.

SLRG certifies that its projected annual revenues will not exceed those that would qualify it as a Class III rail carrier and that its annual revenues are not projected to exceed $5 million.[2]

The transaction was scheduled to be consummated on or after June 30, 2003.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34350, must be filed with the Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Louis E. Gitomer, Esq., Of Counsel, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: July 11, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–18333 Filed 7–17–03; 8:45 am]

BILLING CODE 4915–00–P

[1] SLRG states that the beginning portion of the Alamosa Subdivision, from milepost 299.30 to milepost 270.0 at or near Monte Vista, is currently inactive.

[2] This proceeding is related to STB Finance Docket No. 34352, *RailAmerica, Inc., et al.—Continuance in Control Exemption—San Luis & Rio Grande Railroad Company*, wherein RailAmerica, Inc., Palm Beach Rail Holding, Inc., and RailAmerica Transportation Corp. have concurrently filed a notice of exemption to continue in control of SLRG, upon SLRG becoming a Class III rail carrier.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–490X]

Greenville County Economic Development Corporation—Discontinuance of Service Exemption—In Greenville County, SC

The Greenville County Economic Development Corporation (GCEDC) has filed a verified notice of exemption under 49 CFR part 1152, Subpart F-*Exempt Abandonments and Discontinuances of Service* to discontinue service over 11.8 miles of railroad, known as the Greenville and Northern Railroad Line, extending from milepost 0.0, in Greenville, to milepost 11.8, at the northern limits of Traveler's Rest, in Greenville County, SC (line).[1] The line traverses United States Postal Service Zip Codes 29601, 29609, 29611, 29613, 29617, and 29690.

GCEDC has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.[2]

As a condition to this exemption, any employee adversely affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August

[1] South Carolina Central Railroad Company, Inc., d/b/a Carolina Piedmont Division was authorized to abandon the portion of the line between milepost 0.0 and milepost 2.0, in *South Carolina Central Railroad Company, Inc., d/b/a Carolina Piedmont Division—Abandonment Exemption—in Greenville County, SC*, STB Docket No. AB–312 (Sub-No. 2X) (STB served Apr. 1, 1998); however, it appears that the abandonment was never consummated.

[2] As discussed below, GCEDC has complied with or is exempt from these requirements.

17, 2003,[3] unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA for continued rail service under 49 CFR 1152.27(c)(2),[4] must be filed by July 28, 2003.[5] Petitions to reopen must be filed by August 7, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to GCEDC's representative: Phyllis Henderson, President, Greenville County Economic Development Corporation, 301 University Ridge, Suite 2400, Greenville, SC 29601.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: July 14, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–18332 Filed 7–17–03; 8:45 am]

BILLING CODE 4915–00–P

[3] Under 49 CFR 1152.50(d)(3), the earliest the exemption could become effective is 50 days after the verified notice of exemption was filed. In this case, notice was filed on June 30, 2003, and GCEDC proposed consummating the discontinuance of service on or about July 14, 2003. In a letter filed on July 8, 2003, Counsel for GCEDC acknowledged that the discontinuance of service could not be consummated until 50 days after the filing of the verified notice, or on August 17, 2003.

[4] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

[5] Because this is a discontinuance of service proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Additionally, this proceeding is exempt from environmental and historic reporting requirements. GCEDC only intends to discontinue service over the line and to facilitate possible future operations in the event it is successful in securing funds to repair the line. Because GCEDC's discontinuance of service will merely result in the cessation of service over the line, this proceeding is exempt from the reporting requirements listed above and no environmental documentation will be prepared. *See* 49 CFR 1105.6(c)(2) and 1105.8(a) and (b).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 11, 2003.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW, Washington, DC 20220.

DATES: Written comments should be received on or before August 18, 2003 to be assured of consideration.

Departmental Offices/Community Development Financial Institutions (CDFI) Fund

OMB Number: 1559–0016.
Form Number: CDFI 0020.
Type of Review: Reinstatement.
Title: New Markets Tax Credit (NMTC) Program Allocation Application.
Description: The purpose of the NMTC is to provide an incentive to investors in the form of a tax credit, which is expected to stimulate investment in private capital that will facilitate economic and community development in low-income communities.
Respondents: Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.
Estimated Number of Respondents: 350.
Estimated Burden Hours Per Respondent: 100 hours.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 31,500 hours.
Clearance Officer: Lois K. Holland, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220, (202) 622–1563.
OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–18245 Filed 7–17–03; 8:45 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 8, 2003.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before August 18, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0314.
Form Number: IRS Forms 6466 and 6467.
Type of Review: Extension.
Title: Form 6466: Transmittal of Forms W–4 Reported Magnetically/ Electronically; and
Form 6467: Transmittal of Forms W–4 Reported Magnetically/ Electronically (Continuation).
Description: Under regulation section 31.3402(f)(2)–1(g), employers are required to submit certain withholding certificates (Form W–4) to the IRS. Transmittal Form 6466 and the continuation sheet, Form 6467, are submitted by an employer, or authorized agent of the employer, who will be reporting submissions of Form W–4 on magnetic/electronic media.
Respondents: Business of other for-profit, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Respondent:
Form 6466—18 min.
Form 6467—20 min.
Frequency of Response: Quarterly.
Estimated Total Reporting Burden: 133 hours.
OMB Number: 1545–0410.
Notice Number: Notice 1027.
Type of Review: Extension.
Title: How to Prepare Media Label for Form W–4.
Description: 26 U.S.C. 3402 requires all employers making payment of wages to deduct (withhold) tax upon such payments. Employers are further required under regulation section 31.3402(f)–1(g) to submit certain withholding certificates (Form W–4) to IRS. Notice 1027 is sent to employers who prefer to file this information on magnetic tape.
Respondents: Business of other for-profit, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.
Estimated Number of Respondents: 400.

Estimated Burden Hours Per Respondent: 5 minutes.
Frequency of Response: Quarterly.
Estimated Total Reporting Burden: 33 hours.
OMB Number: 1545–0998.
Form Number: IRS Form 8615.
Type of Review: Extension.
Title: Tax for Children Under Age 14 Who Have Investment Income of More Than $1,500.
Description: Under section 1(g), children under age 14 who have unearned income may be taxed on part of that income at their parent's tax rate. Form 8615 is used to see if any of the child's unearned income is taxed at the parent's rate and, if so, to figure the child's tax on his or her unearned income and earned income, if any.
Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 331,128.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—26 min.
Learning about the law or the form—11 min.
Preparing the form—42 min.
Copying, assembling, and sending the form to the IRS—20 min.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 552,984 hours.
OMB Number: 1545–1190.
Form Number: IRS Form 8824.
Type of Review: Revision.
Title: Like-Kind Exchanges.
Description: Form 8824 is used by individuals, partnerships, and other entities to report the exchange of business or investment property, and the deferral of gains from such transactions under section 1031. It is also used to report the deferral of gain under section 1043 by members of the executive branch of the Federal government.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 200,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping— 1 hr., 38 min.
Learning about the law or the form—27 min.
Preparing the form—59 min.
Copying, assembling, and sending the form to the IRS—33 min.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 505,862 hours.
OMB Number: 1545–1432.
Form Number: None.
Type of Review: Revision.
Title: The Voluntary Customer Surveys to Implement E.O. 12862 Coordinated by the Corporate Planning and Performance Division on Behalf of All IRS Operations Functions.
Description: This is a generic clearance for an undefined number of customer satisfaction and opinion surveys and focus group interviews to be conducted over the next three years. Surveys and focus groups conducted under the generic clearance are used by the Internal Revenue Service to determine levels of customer satisfaction as well as determining issues that contribute to customer burden. This information will be used to make quality improvements to products and services.
Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.
Estimated Number of Respondents: 372,359.
Estimated Burden Hours Per Respondent: Various.
Frequency of Response: Other (Varies).
Estimated Total Reporting Burden: 50,000 hours.
OMB Number: 1545–1543.
Revenue Procedure Number: Revenue Procedure 97–29.
Type of Review: Extension.
Title: Model Amendments and Prototype Program for SIMPLE IRAs.
Description: The revenue procedure provides guidance to drafters of prototype SIMPLE IRAs on obtaining opinion letters, and provides permissive amendments to sponsors of nonSIMPLE IRAs.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 3,205.
Estimated Burden Hours Per Respondent: 8 hours, 4 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 25,870 hours.
OMB Number: 1545–1774.
Regulation Project Numbers: REG–152524–02, REG–123305–02, and REG–102740–02 NPRM and Temporary.
Type of Review: Extension.
Title:
REG–152524–02 NPRM and Temporary: Guidance under section 1502; Amendment of Waiver of Loss Carryovers from Separate Return Limitation Years;
REG–123305–02 (formerly REG–102305–02) NPRM and Temporary;
REG–102740–02 NPRM and Temporary: Loss Limitation Rules.
Description: The information is necessary to allow the taxpayer to make certain elections to determine the amount of allowable loss under § 1.337(d)–2T, § 1.1502–20 as currently in effect or under § 1.1502–20 as modified; to allow the taxpayer to waive loss carryovers up to the amount of the § 1.1502–20(g) election; and to ensure that loss is not disallowed under § 1.337(d)–2T and basis is not reduced under § 1.337(d)–2T to the extent the taxpayer establishes that the loss or basis is not attributable to the recognition of built in gain on the disposition of an asset. With respect to § 1.1502–20T, the information also is necessary to allow the common parent of the selling group to reapportion a separate, subgroup or consolidated section 382 limitation when the acquiring group amends its § 1.1502–32(b)(4) election. Furthermore, regarding § 1.1502–32(b)(4), the information also is necessary to allow the taxpayer that acquired a subsidiary of a consolidated group to amend its election under § 1.1502–32(b)(4), so that the acquiring group can use the acquired subsidiary's losses to offset its income.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 15,200.
Estimated Burden Hours Per Respondent: 2 hours.
Frequency of Response: Other (once per transaction).
Estimated Total Reporting Burden: 30,400 hours.
Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–18246 Filed 7–17–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 11, 2003.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this

information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 18, 2003 to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0004.
Form Number: TTB F 5030.6.
Type of Review: Extension.
Title: Authorization to Furnish Financial Information and Certificate of Compliance.
Description: The *Right to Financial Privacy Act of 1978* limits access to records held by financial institutions and provides for certain procedures to gain access to the information. TTB F 5030.6 serves as both a customer authorization for TTB to receive information and as the required certification to the financial institution.
Respondents: Business of other for-profit.
Estimated Number of Respondents: 2,000.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 500 hours.

OMB Number: 1513–0009.
Form Number: TTB F 5120.25 and TTB 5120.36.
Type of Review: Extension.
Title: Application to Establish and Operate Wine Premises (F 5120.25); and Wine Bond (5120.36).
Description: TTB F 5120.25 is the form used to establish the qualifications of an applicant applying to establish and operate wine premises. The applicant certifies the intention to produce and/or store a specified amount of wine and take certain precautions to protect it from unauthorized use. TTB F 5120.36, Wine Bond, is the form used by the proprietor and a surety company as a contract to ensure the payment of wine excise tax.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 1,720
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 810 hours.

OMB Number: 1513–0010.
Form Number: TTB F 5120.9.
Type of Review: Extension.
Title: Bonded Wineries—Formula and Process for Wine, Letterhead, Application and Notices Relating to Formula Wine.
Description: TTB F 5120.9 is used to determine the classification of wine for labeling and consumer protection. The form describes the person filing, type of product to be made and restrictions to the labeling and manufacture. The form is also used to audit a product.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 600.
Estimated Burden Hours Per Respondent: 2 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,200 hours.

OMB Number: 1513–0014.
Form Number: TTB F 5000.8.
Type of Review: Extension.
Title: Power of Attorney.
Description: TTB F 5000.8 delegates the authority to a specific individual to sign documents on behalf of an applicant or principal. 26 U.S.C. 6061 authorizes that individuals signing returns, statements or other documents required to be filed by industry member under the provisions of the Internal Revenue Code (IRC) or the Federal Alcohol Administration (FAA) Act, are to have that authority on file with TTB.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 5,000.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 3,000 hours.

OMB Number: 1513–0016.
Form Number: TTB F 1582 (5120.24).
Type of Review: Extension.
Title: Drawback on Wines Exported.
Description: When proprietors export wines that have been produced, packaged, manufactured, or bottled in the U.S., they file a claim for drawback or refund for the taxes that have already been paid on the wine. This form notifies TTB that the wine was in fact exported and helps to protect the revenue and prevent fraudulent claims.
Respondents: Individuals or households, Business of other for-profit.
Estimated Number of Respondents: 900.
Estimated Burden Hours Per Respondent: 1 hour, 7 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 2,025 hours.

OMB Number: 1513–0028.
Form Numbers: TTB F 5150.22 and TTB F 5150.25.
Type of Review: Extension.
Title: Application for an Alcohol User Permit (5150.22); and, Industrial Alcohol Bond (5150.25).
Description: TTB F 5150.22 is used to determine the eligibility of the applicant to engage in certain operations and the extent of the operations for the production and distribution of specially denatured spirits (alcohol/rum). This form identifies the location of the premises and establishes whether the premises will be in conformity with the Federal laws and regulations. TTFB F 5150.25 provides notification that sufficient bond coverage has been obtained prior to the issuance of a permit.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 738.
Estimated Burden Hours Per Respondent: 2 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,476 hours.

OMB Number: 1513–0047.
Form Number: TTB F 5110.40.
Recordkeeping Requirement ID Number: TTB REC 5110/01.
Type of Review: Extension.
Title: Distilled Spirits Records and Monthly Report of Production Operations.
Description: The information collected is used to account for proprietor's tax liability, adequacy of bond coverage and protection of the revenue. The information also provides data to analyze trends in the industry, ad plan efficient allocation of field resources, audit plant operations, and compilation of statistics for government economic analysis.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 150.
Estimated Burden Hours Per Respondent: 2 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 3,600 hours.

OMB Number: 1513–0048.
Form Number: TTB F 5110.41.
Type of Review: Extension.
Title: Miscellaneous Requests and Notices for Distilled Spirits Plants.
Description: The information provided by the applicants assists in determining eligibility and providing for registration. These eligibility requirements are for persons who wish to establish distilled spirits plant operations. However, both statutes and regulations allow variances from regulations, and this information gives data to permit a variance.

Respondents: Business or other for-profit.
Estimated Number of Respondents: 328.
Estimated Burden Hours Per Respondent: 2 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,620 hours.

OMB Number: 1513–0057.
Recordkeeping Requirement ID Number: TTB REC 5120/2.
Type of Review: Extension.
Title: Letterhead Applications and Notices Relating to Wine.
Description: Letterhead applications and notices relating to wine are required to ensure that the intended activity will not jeopardize the revenue or defraud consumers.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 1,650.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 825 hours.

OMB Number: 1513–0060.
Recordkeeping Requirement ID Number: TTB REC 5150/4.
Type of Review: Extension.
Title: Letterhead Applications and Notices Relating to Tax-Free Alcohol.
Description: Tax-free alcohol is used for non-beverage purposes in scientific research and medicinal uses by educational organizations, hospitals, laboratories, etc. Permits/Applications control authorized uses and flow. TTB REC 5150/4 is designed to protect revenue and public safety.
Respondents: Not-for-profit institutions, Federal Government, State, Local or Tribal Government.
Estimated Number of Respondents: 4,444.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 2,222 hours.

OMB Number: 1513–0063.
Recordkeeping Requirement ID Number: TTB REC 5150/8.
Type of Review: Extension.
Title: Stills: Notices, Registration, and Records.
Description: The information is used to account for and regulate the distillation of distilled spirits to protect the revenue and to provide for identification of distillers.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 10.
Estimated Burden Hours Per Respondent: 2 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 21 hours.

OMB Number: 1513–0066.
Recordkeeping Requirement ID Number: TTB REC 5170/3.
Type of Review: Extension.
Title: Stills: Retail Liquor Dealers Records of Receipts of Alcoholic Beverages and Commercial Invoices.
Description: Audit trail records show amounts purchased and from whom; complete financial audit trail established at distilled spirits plant. Tax revenue will be protected. The collection of information is contained in 27 CFR 194.234.
Respondents: Business or other for-profit, State, Local or Tribal Government.
Estimated Number of Recordkeepers: 455,000.
Estimated Burden Hours Per Recordkeeper: 1 hour.
Estimated Total Recordkeeping Burden: 1 hour.

OMB Number: 1513–0067.
Recordkeeping Requirement ID Number: TTB REC 5170/6.
Type of Review: Extension.
Title: Wholesale Dealers Applications, Letterheads, and Notice Relating to Operations (Variations in Format or Preparation of Records.
Description: To ascertain that revenue is not placed in jeopardy. Tax revenue will be protected. (Affects wholesale liquor dealers.)
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 1,029.
Estimated Burden Hours Per Recordkeeper: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 515 hours.

OMB Number: 1513–0074.
Recordkeeping Requirement ID Number: TTB REC 5620/2.
Type of Review: Extension.
Title: Airlines Withdrawing Stock from Customs Custody.
Description: Airlines may withdraw tax exempt distilled spirits, wine, and beer from Customs custody for foreign flights. Required record shows amount of spirits and wine withdrawn and flight identification; also has Customs certification; enables TTB to verify that tax is not due; allows spirits and wines to be traced and maintains accountability. Tax revenue will be protected. The collection of information is contained in 27 CFR 253.280 and 252.281.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 25.
Estimated Burden Hours Per Recordkeeper: 100 hours.
Frequency of Response: On occasion.
Estimated Total Recordkceping Burden: 2,500 hours.

OMB Number: 1513–0088.
Recordkeeping Requirement ID Number: TB REC 5000/24.
Type of Review: Extension.
Title: Alcohol, Tobacco Tax ad Trade Tax Returns, Claims and Related Documents.
Description: TTB is responsible for the collection of the excise taxes on firearms, ammunition, distilled spirits, wine, beer, cigars, cigarettes, chewing tobacco, snuff, cigarette papers, tubes and pipe tobacco. Alcohol, tobacco and ammunition excise taxes, plus alcohol, tobacco and firearms special occupational taxes are required to be collected on the basis of a return.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.
Estimated Number of Recordkeepers: 503,921.
Estimated Burden Hours Per Recordkeeper: 1 hour.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 503.921 hours.

OMB Number: 1513–0089.
Recordkeeping Requirement ID Number: TTB REC 5530/3.
Type of Review: Extension.
Title: Liquors and Articles from Puerto Rico or the Virgin Islands.
Description: Information collection requirements for persons bringing non-beverage products into the United States from Puerto Rico and the Virgin Islands and is necessary for the verification of claims for drawback of distilled spirits excise taxes paid on such products.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 20.
Estimated Burden Hours Per Respondent: 6 hours.
Frequency of Response: Quarterly.
Estimated Total Reporting Burden: 120 hours.

OMB Number: 1513–0097.
Form Number: None.
Type of Review: Extension.
Title: Notices Relating to Payment of Firearms and Ammunition Excise Tax.
Description: Excise taxes are collected on the sale or use of firearms and ammunition by firearms or ammunition manufacturers, importers or producers. Taxpayers who elect to pay excise taxes

by electronic fund transfer must furnish a written notice upon election and discontinuance. Tax revenue will be protected.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 10.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1 hour.

OMB Number: 1512–0100.

Form Number: None.

Type of Review: Extension.

Title: Applications, Notices, and Relative to Importation and Exportation of Distilled Spirits, Wine and Beer, including Puerto Rico and Virgin Islands

Description: Beverage alcohol, industrial alcohol, beer wine are taxed when imported. The taxes on these commodities coming from the Virgin Islands and Puerto Rico are largely returned to these insular possessions. Exports are mainly tax-free. These sections ensure that proper taxes are collected and returns according to law.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 20.

Estimated Burden Hours Per Recordkeeper: 9 hours.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 180 hours.

OMB Number: 1513–0104.

Recordkeeping Requirement ID Number: TTB REC 5120/11.

Type of Review: Extension.

Title: Information Collected in Support of Small Producer's Wine Tax Credit.

Description: TTB collects this information to ensure proper tax credit. The information is used by taxpayers in preparing their returns and by TTB to verify tax computation. Recordkeepers are wine producers who want to transfer their credit to warehouse operators and the transferees who take such credit.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 280.

Estimated Burden Hours Per Recordkeeper: 1 hour.

Estimated Total Recordkeeping Burden: hours.

OMB Number: 1513–0105.

Form Number: TTB F 5000.28T.

Type of Review: Extension.

Title: 2000 Floor Stocks Tax Return (Cigarettes) and Recordkeeping Requirements

Description: All persons who hold for sale any cigarettes on January 1, 2000, must take an inventory. A floor stocks tax has been imposed on cigarettes. The recordkeeping and the tax return for this tax are prescribed by TTB.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 100.

Estimated Burden Hours Per Recordkeeper: 1 hour.

Frequency of Response: Other (one-time).

Estimated Total Recordkeeping Burden: 1 hour.

Clearance Officer: Jacqueline White (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–18247 Filed 7–17–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Allocation Availability (NOAA) Inviting Applications for the New Markets Tax Credit Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of allocation availability (NOAA) inviting applications for the New Markets Tax Credit Program.

SUMMARY: Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of 2000 (the Act), as enacted by section 1(a)(7) of the Consolidated Appropriations Act, 2001 (Pub. L. 106–554, December 21, 2000), amended the Internal Revenue Code (IRC) by adding IRC section 45D, New Markets Tax Credit. section 45D requires the Secretary of the Treasury (Secretary) to establish a program that will provide an incentive to investors in the form of a tax credit over seven years, which is expected to stimulate the provision of private investment capital that, in turn, will facilitate economic and community development in low-income communities. Section 121(f) of the Act, among other things, requires the Secretary to issue guidance on how entities may apply to receive allocations of New Markets Tax Credits (NMTCs), the competitive procedure through which such allocations will be made, and the actions that will be taken to ensure that proper allocations are made to appropriate entities. The Secretary delegated such authority to the Under Secretary (Domestic Finance), who in turn delegated such authority to the Director of the Community Development Financial Institutions Fund (the Fund).

In March 2003, in the inaugural round of the NMTC Program, the Fund issued Notices of Allocation to qualified community development entities (CDEs) authorizing such entities to issue to their investors up to $2.5 billion in equity as to which NMTCs may be claimed. In this second round of the NMTC Program, the Fund may allocate to CDEs the authority to issue to their investors up to the aggregate amount of $3.5 billion in equity as to which NMTCs may be claimed (the authority will include the aggregated amounts of $1.5 billion for calendar year 2003 and $2.0 billion for calendar year 2004, as permitted under IRC sections 45D(f)(1) and 45D(f)(3)). The Fund reserves the right to allocate said authority to any, all or none of the entities that submit an application in response to this NOAA, and in amounts determined by the Fund.

This NOAA provides guidance for the application for and allocation of NMTCs for the second round of the NMTC Program and should be read in conjunction with: (i) Guidance published by the Fund on how an entity may apply to become certified as a CDE (66 FR 65806, December 20, 2001); (ii) the temporary regulations issued by the Internal Revenue Service (26 CFR 1.45D–1T, published on December 26, 2001) and related guidance, including Notice 2002–64, 2002–41 I.R.B. 690, Rev. Rul. 2003–20, 2003–7 I.R.B. 465, Notice 2003–9, 2003–5 I.R.B. 369; and (iii) the application and related materials for this second NMTC Program allocation round. All such materials may be found on the Fund's Web site at *http://www.cdfifund.gov.* The Fund strongly encourages applicants to review these documents. Capitalized terms used but not defined in this NOAA shall have the respective meanings assigned to them in the allocation application, the Act or the IRS temporary regulations.

Through this NOAA, the Fund encourages all entities proposing to make Qualified Low-Income Community Investments to apply for an allocation of NMTCs.

Applications and Dates

Electronic Applications: Simultaneous with the publication of this NOAA, the Fund has made the NMTC Program allocation application available on its Web site at *http://www.cdfifund.gov.* The application is currently available in a read-only format. However, applicants are expected to submit completed applications electronically to the Fund using a web-based application. Submission of an electronic application will facilitate the processing and review of applications and the selection of Allocatees; further, it will assist the Fund in the implementation of electronic reporting requirements for Allocatees. Please note that the Office of Management and Budget is currently reviewing the application form for final approval in accordance with the requirements of the Paperwork Reduction Act. The Fund anticipates that the final and approved form of the Web-based application will be available on the Fund's Web site commencing no later than August 22, 2003.

Applicants will need access to Internet Explorer 5.5 or higher or Netscape Navigator 6.0 or higher, Windows 98 or higher (or other system compatible with the above Explorer and Netscape software) and optimally at least a 56Kbps Internet connection in order to meet the electronic application submission requirements. Electronic applications must be submitted solely by using the format made available at the Fund's Web site for the NMTC Program. The Fund's electronic application system will only permit the submission of applications in which all required questions and tables are fully completed.

The deadline for receipt of electronic applications is 5 p.m. ET on September 30, 2003. Electronic applications cannot be transmitted or received after 5 p.m. ET on September 30, 2003. Each applicant that submits an electronic application by the deadline must submit an original signature page and all attachments not later than 5 p.m. ET on October 7, 2003. If the original signature page is not received by this date and time, the application will be rejected and returned to the sender. If the required attachments are not received by this date and time, they will not be considered and will be returned to the sender. The signature page and attachments must be sent by mail to the address listed below. Please see the application instructions, provided in the electronic application, for further details. Additional deadlines (if any) relating to the submission of general supporting documentation will be further detailed in the electronic application.

Paper Applications: If an applicant is unable to submit an electronic application, it must submit to the Fund a request for a paper application using the NMTC Paper Application Submission Form, and the request must be received by the Fund by September 15, 2003. The NMTC Paper Application Submission Form may be obtained from the Fund's Web site at *http://www.cdfifund.gov* or the form may be requested by e-mail at *cdfihelp@cdfi.treas.gov* or by calling the Fund's NMTC Program help desk at (202) 622–7373. The completed NMTC Paper Application Submission Form should be directed to the Fund's Chief Financial Officer and must be sent by facsimile to (202) 622–8911.

The deadline for receipt of a paper application, including the requisite original signature page and all attachments, at the designated location is 5 p.m. ET on September 30, 2003. Paper applications received after that date and time will not be accepted for consideration and will be returned to the sender. Applications sent by facsimile or by e-mail will not be accepted.

ADDRESSES: Paper applications and the signature page and attachments for electronic applications must be sent-to: CDFI Fund Grants Management & Compliance Manager, NMTC Program, Bureau of Public Debt—Franchising, 200 Third Street, PCB, Room 10, Parkersburg, WV 26101–5312. The telephone number to be used in conjunction with overnight mailings to this address is (304) 480–5450. Paper applications and the signature page or attachments for electronic applications will not be accepted at the Fund's offices in Washington, DC. Paper applications and signature pages or attachments for electronic applications received in the Fund's offices will be rejected and returned to the sender. Except for the signature page and attachments, electronic applications must be submitted solely by using the Fund's Web site and must be sent in accordance with the submission instructions provided in the electronic application form.

FOR FURTHER INFORMATION CONTACT: The Fund will provide programmatic and information technology support related to the allocation application between the hours of 9 a.m. and 5 p.m. ET through September 26, 2003. The Fund will not respond to phone calls or e-mails concerning the application that are received after 5 p.m. ET on September 26, 2003, until after the allocation application deadline of September 30, 2003. Programmatic support can be obtained by calling (202) 622–7373 or through e-mail by sending questions or requests for programmatic assistance to *cdfihelp@cdfi.treas.gov.* Information technology support can be obtained by calling (202) 622–2455 or through e-mail by sending questions or requests for information technology assistance to *ithelpdesk@cdfi.treas.gov.*

Applications and other information regarding the Fund and its programs may be obtained from the Fund's Web site at *http://www.cdfifund.gov.* The Fund will post on its Web site responses to questions of general applicability regarding the NMTC Program. If you have any general questions about the NMTC Program, contact Matthew Josephs, the Fund's Acting NMTC Program Manager. The Acting NMTC Program Manager may be reached by e-mail at *cdfihelp@cdfi.treas.gov,* by telephone at (202) 622–7373, by facsimile at (202) 622–8911, or by mail at CDFI Fund, 601 13th Street, NW, Suite 200 South, Washington, DC 20005. For questions regarding the tax aspects of the NMTC Program, contact Branch Five, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS, by telephone at (202) 622–3040, by facsimile at (202) 622–4753, or by mail at 1111 Constitution Avenue, NW, Attn: CC:PSI:5, Washington, DC 20224. These are not toll free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

By providing an incentive in the form of a tax credit over seven years, NMTCs are intended to stimulate the provision of $15 billion of private investment capital in CDEs that, in turn, will make investments in low-income urban and rural communities, thus facilitating economic and community development. The goal is to address limitations of financial markets by facilitating the flow of equity capital into areas not being adequately served by conventional lenders and investors. This goal can be achieved, for example, by deploying investments in products or services that: (a) Provide services to creditworthy borrowers or investees not served by conventional sources of capital; (b) provide a catalyst for large-scale, self-generating flows of investments (for example, the increased provision of critical public services); or (c) serve borrowers or investees who may present greater risks than would be assumed by conventional providers of capital in

order to generate benefits distributed broadly throughout the community.

Through the NMTC Program, an entity may apply to the Fund to be certified as a CDE. Nonprofit entities and for-profit entities may be certified as CDEs by the Fund. Both for-profit and non-profit entities may apply to the Fund for an allocation of NMTCs, but only CDEs that are for-profit entities are eligible to issue Qualified Equity Investments with respect to which investors will be entitled to claim NMTCs. A taxpayer that makes a Qualified Equity Investment in a CDE that has received a NMTC Allocation from the Fund may claim a five percent tax credit on the investment amount as of the date on which the investment is initially made and on each of the next two anniversary dates and a six percent tax credit for each of the next four anniversary dates.

In this NOAA, the Fund addresses specifically how an entity may apply to receive an allocation of NMTCs, the competitive procedure through which NMTC Allocations will be made, and the actions that will be taken to ensure that proper allocations are made to appropriate entities. Applicants should consult the temporary regulations and related guidance issued by the IRS for the NMTC Program to obtain guidance on tax issues related to the NMTC Program.

II. Eligibility

IRC section 45D specifies certain eligibility requirements that each applicant must meet to be eligible to apply for an allocation of NMTCs. The following sets forth additional detail and certain additional dates that relate to the submission of applications under this NOAA:

(1) CDE Certification: For purposes of this NOAA, the Fund will not consider an application for an allocation of NMTCs unless: (a) The applicant is certified as a CDE at the time the Fund receives its NMTC Program allocation application; or (b) the Fund receives from the applicant an application for certification as a CDE no later than 5 p.m. ET on August 29, 2003. The Fund will not provide allocations of NMTCs to applicants that are not certified as CDEs. Applicants for certification may obtain a CDE certification application through the Fund's Web site at *http://www.cdfifund.gov*. Applications for CDE certification must be submitted as instructed in the application form.

If an applicant that has already been certified as a CDE wishes to change its designated CDE service area, it must submit its request for such a change; said request must be received by the Fund by no later than 5 p.m. ET on September 30, 2003. The CDE service area change request must be sent from the applicant's authorized representative and include the applicable CDE control number, the revised service area designation, and an updated accountability chart that reflects representation from low-income communities in the revised service area. The service area change request must be sent by e-mail to *cdfihelp@cdfi.treas.gov* or by facsimile to (202) 622–8911.

(2) Entities that Have Received NMTC Allocations in the Prior NMTC Program Allocation Round: Applicants are hereby notified that success in a prior round of the NMTC Program or any of the Fund's other programs is not a predictor of success under this NOAA. A prior Allocatee of the NMTC Program is not eligible to receive a NMTC Allocation pursuant to this NOAA unless the Allocatee can demonstrate via the Fund's allocation tracking system that, as of February 17, 2004, it has issued and the Allocatee has received cash from its investors for 50 percent of its Qualified Equity Investments relating to its prior NMTC Allocation. Further, an entity is not eligible to receive a NMTC Allocation pursuant to this NOAA if another entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund), has not, as of February 17, 2004, issued and received cash from its investors for 50 percent of its Qualified Equity Investments relating to a prior NMTC Allocation. For purposes of this section of the NOAA, the Fund will only count as "issued" those Qualified Equity Investments that have been recorded in the Fund's allocation tracking system by February 17, 2004. Allocatees and their Subsidiary transferees, if any, are advised to access the Fund's allocation tracking system to record each Qualified Equity Investment that they issue to an investor in exchange for cash.

(3) Entities that Have Received Awards from the Fund in Prior Award Rounds of Other Fund Programs: Prior awardees of any component of the Fund's Community Development Financial Institutions (CDFI) Program, the Bank Enterprise Award (BEA) Program, or any other Fund program are eligible to apply under this NOAA, except as follows:

(a) The Fund will not consider an application submitted by an applicant that is a prior Fund awardee under any Fund program or component of the CDFI Program if the applicant has a balance of undisbursed funds under said prior award(s), as of the application deadline of this NOAA. Further, an entity is not eligible to apply for a NMTC Allocation pursuant to this NOAA if another entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund), is a prior Fund awardee under any Fund program or component of the CDFI Program, and has a balance of undisbursed funds under said prior award(s), as of the application deadline of this NOAA. For the purposes of this section, undisbursed funds are defined as: (i) In the case of prior BEA Program awards, any balance of award funds greater than $5,000 that remains undisbursed more than three (3) years after the BEA Program awardee executes an award agreement with the Fund, and (ii) in the case of prior CDFI Program or other Fund program awards, any balance of award funds greater than $5,000 that remains undisbursed more than one (1) year after the CDFI Program or other Fund program awardee executes an assistance agreement with the Fund; and

(b) The Fund will not consider an application submitted by an applicant that is a prior Fund awardee under any Fund program or component of the CDFI Program if the applicant has failed to meet its reporting requirements, set forth in a previously executed assistance or award agreement(s), or has been debarred from applying under any Fund program, as of the application deadline of this NOAA. Further, an entity is not eligible to apply for a NMTC Allocation pursuant to this NOAA if another entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund), is a prior Fund awardee under any Fund program or component of the CDFI Program, and has failed to meet its reporting requirements, set forth in a previously executed assistance or award agreement(s), or has been debarred from applying under any Fund program, as of the application deadline of this NOAA.

Accordingly, applicants that are prior awardees under any other Fund program are advised to:

(i) Submit all required reports by the deadlines specified in the assistance or award agreements governing said prior awards and to comply with all requirements found therein;

(ii) Contact the appropriate Program Operations representative of the Fund to ensure that all necessary actions are underway for the disbursement of any outstanding balances of said prior awards; and

(iii) Confirm that any entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant, and is a prior Fund awardee, has submitted all required reports to the Fund and is taking all necessary actions for the disbursement of any outstanding balances of any prior Fund awards.

(4) Entities that Propose to Transfer NMTCs to Subsidiaries: Both for-profit and non-profit CDEs may apply to the Fund for allocations of NMTCs, but only a for-profit CDE is permitted to provide NMTCs to its investors. A non-profit applicant wishing to apply for a NMTC Allocation must demonstrate, prior to entering into an Allocation Agreement with the Fund, that: (1) It controls one or more Subsidiaries that are for-profit entities; and (2) it intends to transfer the full amount of any NMTC Allocation it receives to said Subsidiary. The Subsidiary transferee must: (i) Submit a CDE certification application to the Fund within 30 days after the non-profit applicant receives a Notice of Allocation from the Fund; and (ii) must be certified as a CDE prior to entering into an Allocation Agreement with the Fund. The NMTC Allocation transfer must be pre-approved by the Fund, in its sole discretion, and will be a condition of the Allocation Agreement. A for-profit applicant that receives a NMTC Allocation may transfer such NMTC Allocation to its for-profit Subsidiary or Subsidiaries, provided that said Subsidiary transferees have been certified as CDEs and such transfer is pre-approved by the Fund, in its sole discretion, which transfer will be a condition of the Allocation Agreement.

An applicant wishing to transfer all or a portion of its NMTC Allocation to a Subsidiary is not required to create the Subsidiary prior to submitting a NMTC allocation application to the Fund. Rather, the Fund will require each applicant to indicate, in its NMTC allocation application, whether it intends to transfer all or a portion of its NMTC Allocation to a Subsidiary and its timeline for doing so. As stated above, in no circumstance will the Fund authorize such a transfer until the Fund has certified the Subsidiary transferee as a CDE.

(5) Entities that Propose to Submit Applications Together With Affiliates: If an applicant and its Affiliates wish to submit allocation applications, they must do so collectively, in one application; an applicant and its Affiliates may not submit separate allocation applications.

(6) Entities Created as a Series of Funds: An applicant whose business structure consists of an entity with a series of funds may apply for CDE certification and an allocation of NMTCs as a single entity, or as multiple entities. If such an applicant represents that it is properly classified for Federal tax purposes as a single partnership or corporation, it may apply for CDE certification as a single entity. If an applicant represents that it is properly classified for Federal tax purposes as multiple partnerships or corporations, then it may submit a single application on behalf of the entire series of funds, and each fund must be separately certified as a CDE. Applicants should note, however, that receipt of CDE certification as a single entity or as multiple entities is not a determination that an applicant and its related funds are properly classified as a single entity or as multiple entities for Federal tax purposes. Regardless of whether the series of funds applies as a single partnership or corporation or as multiple partnerships or corporations, an applicant may not transfer any NMTC Allocations it receives to one or more of its funds unless the transfer is pre-approved by the Fund, in its sole discretion, which will be a condition of the Allocation Agreement.

(7) Entities that are BEA Program Awardees: An insured depository institution investor (and its Affiliates and Subsidiaries) may not receive a NMTC Allocation in addition to a BEA Program award for the same investment in a CDE. Likewise, an insured depository institution investor (and its Affiliates and Subsidiaries) may not receive a BEA Program award in addition to a NMTC Allocation for the same investment in a CDE.

III. Application Packet

An applicant under this NOAA must submit all of the materials described in the application, which is available at the Fund's Web site at *http://www.cdfifund.gov*. An application must include a valid and current Employer Identification Number (EIN) issued by the Internal Revenue Service and assigned to the applicant and, if applicable, its Controlling Entity; electronic applications without a valid EIN are incomplete and cannot be transmitted to the Fund; paper applications submitted without a valid EIN will be rejected as incomplete and returned to the sender. For more information on obtaining an EIN, please contact the Internal Revenue Service at (800) 829–4933 or *http://www.irs.gov*. An applicant may not submit more than one application. In addition, an applicant and its Affiliates must collectively submit only one allocation application; an applicant and its Affiliates may not submit separate allocation applications.

IV. Evaluation

Eligibility and Completeness Review: All applications for NMTC Allocations will be reviewed for eligibility and completeness. The Fund may consult with the IRS on the eligibility requirements under section 45D. Once the application has been determined to be eligible and complete, the Fund will conduct the substantive review of each application in accordance with the criteria and procedures described generally in this NOAA and the allocation application.

Application Evaluation: In the first part of the substantive review, each Fund reviewer will evaluate the following application elements based on a 100-point, plus 10-priority point, scale (for a total of 110 points):

(1) Business Strategy (25-point maximum plus up to 5 points for each of the two statutory priority items). In assessing an applicant's business strategy, reviewers will consider, among other things: the applicant's products, services and investment criteria; the prior performance of the applicant or its Controlling Entity, particularly as it relates to making similar kinds of investments as those it proposes to make with the proceeds of Qualified Equity Investments; the applicant's prior performance in providing capital or technical assistance to disadvantaged businesses or communities; the projected level of the applicant's pipeline of potential investments; and the extent to which the applicant intends to make Qualified Low-Income Community Investments in one or more businesses in which persons unrelated to the entity hold a majority equity interest.

Under the business strategy criterion, an applicant will generally score well to the extent that it will deploy debt or investment capital in products or services which: (a) Are designed to meet the needs of underserved markets; (b) are flexible or non-traditional in form; and (c) focus on customers or partners that typically lack access to conventional sources of capital. An applicant will also score well to the extent that it: (i) Has a track record of successfully providing products and services similar to those it intends to use with the proceeds of Qualified Equity Investments; (ii) has identified, or has a process for identifying, potential transactions; (iii) demonstrates a likelihood of issuing Qualified Equity Investments and making the related Qualified Low-Income Community Investments in a time period that is

significantly shorter than the time period permitted by the Act; and (iv) in the case of an applicant proposing to purchase loans from CDEs, the applicant will require the CDE selling such loans to re-invest the proceeds of the loan sale to provide additional products and services to low-income communities.

In addition, as provided by IRC section 45D(f)(2), the Fund will ascribe additional points to entities that meet either or both of the statutory priorities. First, the Fund will give up to five (5) additional points to any applicant that has a record of having successfully provided capital or technical assistance to disadvantaged businesses or communities. Second, the Fund will give five (5) additional points to any applicant that intends to satisfy the requirement of IRC section 45D(b)(1)(B) by making Qualified Low-Income Community Investments in one or more businesses in which persons unrelated to an applicant (within the meaning of IRC section 267(b) or IRC section 707(b)(1)) hold the majority equity interest. Applicants may earn points for either or both statutory priorities. Thus, applicants that meet the requirements of both priority categories can receive up to a total of ten (10) additional points. A record of having successfully provided capital or technical assistance to disadvantaged businesses or communities may be demonstrated either by the past actions of an applicant itself or by its Controlling Entity (*e.g.*, where a new CDE is established by a nonprofit corporation with a history of providing assistance to disadvantaged communities). An applicant that receives additional points for intending to make investments in unrelated businesses and is awarded a NMTC Allocation must meet the requirements of IRC section 45D(b)(1)(B) by investing substantially all of the proceeds from the aggregate amount of its Qualified Equity Investments in unrelated businesses.

(2) Capitalization Strategy (25-point maximum). In assessing an applicant's capitalization strategy, reviewers will consider, among other things: The extent to which the applicant has secured investments, commitments to invest, or indications of interest in investments from investors, commensurate with its requested amount of tax credit allocations; the applicant's strategy for identifying additional investors, if necessary, including the applicant's (or its Controlling Entity's) prior performance with raising equity from investors, particularly for-profit investors; the extent to which the applicant identifies how existing investors will leverage their investments in Low-Income Communities or how new investors will be brought into such investments; the extent to which the applicant intends to invest the proceeds from the aggregate amount of its Qualified Equity Investments at a level that exceeds the requirements of IRC section 45D(b)(1)(B), including the extent to which the applicant has identified the financial resources outside of the NMTC investments necessary to support its operations or finance its activities; and the applicant's timeline for utilizing an NMTC Allocation.

An applicant will generally score well under this section to the extent that: (a) It has secured investor commitments, or has a reasonable strategy for obtaining such commitments; (b) its request for allocations is commensurate with both the level of Qualified Equity Investments it is likely to raise and its expected investment strategy to deploy funds raised with NMTCs; (c) it is likely to leverage other sources of funding in addition to NMTC investor dollars; (d) it intends to invest the proceeds from the aggregate amount of its Qualified Equity Investments at a level that exceeds the requirements of IRC section 45D(b)(1)(B). In the case of an applicant proposing to raise investor funds from organizations that also will identify or originate transactions for the applicant or from affiliated entities, said applicant will score well to the extent that it will offer products with more favorable rates or terms than those currently offered by the investor and/or will target its activities to areas of greater economic distress than those currently targeted by the investor.

(3) Management Capacity (25-point maximum). In assessing an applicant's management capacity, reviewers will consider, among other things, the qualifications of the applicant's principals, its board members, its management team, and other essential staff or contractors, with specific focus on: Experience in deploying capital or technical assistance, including activities similar to those described in the applicant's business strategy; experience in raising capital; asset management and risk management experience; experience with fulfilling compliance requirements of other governmental programs, including other tax programs; and the applicant's (or its Controlling Entity's) financial health. Reviewers will also consider the extent to which an applicant has protocols in place to ensure ongoing compliance with NMTC Program requirements, and the level of involvement of community representatives and other stakeholders in the design, implementation or monitoring of an applicant's business plan and strategy.

An applicant will generally score well under this section to the extent that its management team or other essential personnel have experience in: (a) Deploying capital or technical assistance in Low-Income Communities, particularly those likely to be served by the applicant with the proceeds of Qualified Equity Investments; (b) raising capital, particularly from for-profit investors; (c) asset and risk management; and (d) fulfilling government compliance requirements, particularly tax program compliance. An applicant will also score well to the extent it has policies and systems in place to ensure ongoing compliance with NMTC Program requirements, and to the extent that Low-Income Community stakeholders play an active role in designing or implementing its business plan.

(4) Community Impact (25-point maximum). In assessing the impact on communities expected to result from the applicant's proposed investments, reviewers will consider, among other things, the degree to which the applicant is likely to achieve significant and measurable community development and economic impacts in its Low-Income Communities, and whether the applicant is working in particularly economically distressed markets and/or in concert with Federal, state or local government or community economic development initiatives (*e.g.*, Empowerment Zones, Enterprise Communities, and Renewal Communities).

An applicant will generally score well under this section to the extent that: (a) It articulates how its strategy is likely to produce significant and measurable community development and economic impacts that would not be achieved without NMTCs; and (b) it is working in particularly economically distressed or otherwise underserved communities and/or in concert with other Federal, state or local government or community economic development initiatives.

Determination of Highly Qualified Applicants: Fund reviewers will evaluate and score each application in the first part of the review process. An applicant must exceed a minimum overall aggregate base score threshold (the sum of the total scores provided by the reviewers, minus priority points) *and* exceed a minimum aggregate section score threshold (minus priority points) in each of the four application sections (Business Strategy, Capitalization Strategy, Management Capacity, and Community Impact) in order to advance from the first part of the substantive review process. If, in the case of a particular application, a reviewer's total base score or section score(s) (in one or more of the four application sections), varies significantly from the median of the reviewers' total base scores or section scores for such application, the Fund may, in its sole discretion, obtain the comments and recommendations of an additional reviewer to determine whether the anomalous score should be replaced with the score of the additional reviewer.

The Fund will consider the applicant's total score (inclusive of priority points) from each reviewer and will award allocations to the most highly qualified applicants; provided, however, that: (1) The Fund has not decided at this time on a maximum allocation amount per applicant and the Fund, in its sole discretion, reserves the right to set such a maximum award amount if the Fund deems it appropriate; and (2) the Fund, in its sole discretion, reserves the right to reject an application that receives scores that are not at or above the minimum scoring range required for a total base score or for any one or more of the four application evaluation criteria outlined above and detailed more fully in the application materials.

As a part of the substantive review process, the Fund may permit reviewer(s) to make telephone calls to applicants for the sole purpose of obtaining, clarifying or confirming application information. In no event shall such contact be construed to permit an applicant to change any element of its application. Reviewers will not contact applicants without the prior approval of the Fund. At this point in the process, an applicant may be required to submit additional information about its application in order to assist the Fund with its final evaluation process. Such requests must be responded to within the time parameters set by the Fund. The selecting official(s) will make a final allocation determination based on an applicant's file, including without limitation, eligibility under section 45D, the reviewers' scores and the amount of allocation authority available.

In the case of an applicant that has previously received financial or technical assistance from the Fund under the CDFI Program, the Fund will consider the applicant's level of success in meeting the terms, conditions and other requirements contained in its prior or existing assistance agreement(s) with the Fund. In the case of an applicant that has previously received an NMTC Allocation from the Fund under the NMTC Program, the Fund will consider the applicant's level of success in meeting the terms, conditions and other requirements contained in its prior or existing Allocation Agreement(s) with the Fund and its demonstrated need for additional allocations. The Fund reserves the right to reject any NMTC allocation application in the case of a prior Fund awardee, if such applicant has failed to comply with the terms, conditions, and other requirements of the prior or existing assistance or award agreement(s) with the Fund. The Fund reserves the right to reject any NMTC allocation application in the case of a prior Fund Allocatee, if such applicant has failed to comply with the terms, conditions, and other requirements of its prior or existing Allocation Agreement(s) with the Fund. Further, if an entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund) is a prior Fund awardee or Allocatee, the Fund will consider such entity's level of success in meeting the terms, conditions and other requirements of its prior assistance agreement, award agreement, and/or Allocation Agreement requirements with the Fund. The Fund reserves the right to reject any NMTC allocation application in the case of any applicant, if an entity that Controls the applicant, is Controlled by the applicant or shares common management officials with the applicant (as determined by the Fund), has failed to meet the terms, conditions and other requirements of any prior or existing assistance agreement, award agreement or Allocation Agreement with the Fund.

The Fund's allocation award decisions are final, with no right to appeal such decisions.

In the case of applicants or their Affiliates that are regulated by the Federal government, the Fund's selecting official(s) reserve(s) the right to consult with and take into consideration the views of the appropriate Federal banking and other regulatory agencies. In the case of applicants or their Affiliates that are also Small Business Investment Companies, Specialized Small Business Investment Companies or New Markets Venture Capital Companies, the Fund reserves the right to consult with and take into consideration the views of the Small Business Administration.

The Fund reserves the right to conduct additional due diligence, as determined reasonable and appropriate by the Fund, in its sole discretion, related to the applicant and its officers, directors, owners, partners and key employees.

The Fund further reserves the right to change these evaluation procedures, if the Fund deems it appropriate; if said procedural changes materially affect the Fund's award decisions, the Fund will provide information regarding the procedural changes through the Fund's Web site.

V. Notice of Allocation

The Fund will signify its selection of an applicant as an Allocatee by delivering a signed Notice of Allocation to the applicant. The Notice of Allocation will contain the general terms and conditions underlying the Fund's provision of an NMTC Allocation including, but not limited to, the requirement that an Allocatee and the Fund enter into an Allocation Agreement. The applicant must execute the Notice of Allocation and return it to the Fund. By executing a Notice of Allocation, the Allocatee agrees that, if prior to entering into an Allocation Agreement with the Fund, information comes to the attention of the Fund that either adversely affects the Allocatee's eligibility for an award, or adversely affects the Fund's evaluation of the Allocatee's application, or indicates fraud or mismanagement on the part of the Allocatee, the Fund may, in its discretion and without advance notice to the Allocatee, terminate the Notice of Allocation or take such other actions as it deems appropriate. Moreover, by executing a Notice of Allocation, an Allocatee agrees that, if prior to entering into an Allocation Agreement with the Fund, the Fund determines that the Allocatee is not in compliance with the terms of any prior assistance agreement, award agreement, and/or Allocation Agreement entered into with the Fund, the Fund may, in its discretion and without advance notice to the Allocatee, either terminate the Notice of Allocation or take such other actions as it deems appropriate. The Fund will rescind its award if the Allocatee fails to return the Notice of Allocation, signed by the authorized representative of the Allocatee, along with any other requested documentation, within the deadline set by the Fund.

VI. Allocation Agreement

Each applicant that is selected to receive a NMTC Allocation (including the applicant's Subsidiary transferees) must enter into an Allocation Agreement with the Fund. The Allocation Agreement will set forth certain required terms and conditions of the NMTC Allocation which may include, but not be limited to, the

following: (i) The amount of the awarded NMTC Allocation; (ii) the approved uses of the awarded NMTC Allocation (e.g., loans to or equity investments in Qualified Active Low-Income Businesses or loans to or equity investments in other CDEs); (iii) the approved service area(s) in which the proceeds of Qualified Equity Investments may be used; (iv) the time period by which the applicant may obtain Qualified Equity Investments from investors; and (v) reporting requirements for all applicants receiving NMTC Allocations. If an applicant has represented in its NMTC allocation application that it intends to invest substantially all of the proceeds from its investors in businesses in which persons unrelated to the applicant hold a majority equity interest, the Allocation Agreement will contain a covenant whereby said applicant agrees that it will invest substantially all of said proceeds in businesses in which persons unrelated to the applicant hold a majority equity interest.

In addition to entering into an Allocation Agreement, each applicant selected to receive a NMTC Allocation must furnish to the Fund an opinion from its legal counsel, the content of which will be further specified in the Allocation Agreement, to include, among other matters, an opinion that an applicant (and its Subsidiary transferees, if any): (i) Is duly formed and in good standing in the jurisdiction in which it was formed and/or operates; (ii) has the authority to enter into the Allocation Agreement and undertake the activities that are specified therein; (iii) has no pending or threatened litigation that would materially affect its ability to enter into and carry out the activities specified in the Allocation Agreement; and (iv) is not in default of its articles of incorporation, bylaws or other organizational documents, or any agreements with the Federal government.

VII. Monitoring

The Fund will collect information, on at least an annual basis, from all applicants that are awarded NMTC Allocations and/or are recipients of Qualified Low-Income Community Investments, including such audited financial statements and opinions of counsel as the Fund deems necessary or desirable, in its sole discretion. The Fund will use such information to monitor each Allocatee's compliance with the provisions of its Allocation Agreement and to assess the impact of the NMTC Program in Low-Income Communities. The Fund may also provide such information to the IRS in a manner consistent with IRC section 6103 so that the IRS may determine, among other things, whether the Allocatee has used substantially all of the proceeds of each Qualified Equity Investment raised through its NMTC Allocation to make Qualified Low-Income Community Investments. The Allocation Agreement shall further describe the Allocatee's reporting requirements.

The Fund reserves the right, in accordance with applicable Federal law and if authorized, to charge allocation reservation and/or compliance monitoring fees to all entities receiving NMTC Allocations. Prior to imposing any such fee, the Fund will publish additional information concerning the nature and amount of the fee.

VIII. Information Session

In connection with this NOAA, the Fund will broadcast a video teleconference information session on August 6, 2003, from 1 pm to 5 pm ET. Registration is required, as the video teleconference information session will be broadcast to secured federal facilities. The video teleconference information session will be produced in Washington, DC, and will be downlinked via satellite to local Department of Housing and Urban Development offices in certain cities. For further information on the video teleconference information session, locations, or to register, please visit the Fund's Web site at *http://www.cdfifund.gov* or call the Fund at (202) 622–8401.

Authority: 26 U.S.C. 45D; 31 U.S.C. 321; 26 CFR 1.45D–1T.

Dated: July 14, 2003.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

[FR Doc. 03–18213 Filed 7–17–03; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—Commercial Casualty Insurance Company of North Carolina

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This Supplement No. 23 to the Treasury Department Circular 570; 2002 Revision, published July 1, 2002 at 67 FR 44294.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6696.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective June 30, 2003.

The Company was last listed as an acceptable surety on Federal bonds at 67 FR 44303, July 1, 2002.

With respect to any bonds, including continuous bonds, currently in force with above listed Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, in no event, should bonds that are continuous in nature be renewed.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570*. A hard copy may be purchased from the Government Printing office (GPO), Subscription Service, Washington, DC, (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04067–1.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: June 30, 2003.

Judith R. Tillman,

Assistant Commissioner, Financial Operations.

[FR Doc. 03–18179 Filed 7–17–03; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form W–4S

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form W–4S, Request for Federal Income Tax Withholding From Sick Pay.

DATES: Written comments should be received on or before September 16, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Request for Federal Income Tax withholding From Sick Pay.

OMB Number: 1545–0717.

Form Number: W–4S.

Abstract: Section 3402(o) of the Internal Revenue Code allows income tax withholding on sick pay payments made by third parties upon request of the payee. The information is used by payers to determine how much to withhold from each sick pay payment.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 500,000.

Estimated Time Per Respondent: 1 hr., 32 min.

Estimated Total Annual Burden Hours: 765,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 15, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–18323 Filed 7–17–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 1099–PATR

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–PATR, Taxable Distributions Received From Cooperatives.

DATES: Written comments should be received on or before September 16, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or through then Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Taxable Distributions Received From Cooperatives

OMB Number: 1545–0118.

Form Number: 1099–PATR.

Abstract: Form 1099–PATR is used to report patronage dividends paid by cooperatives in accordance with Internal Revenue Code section 6044. The information is used by IRS to verify reporting compliance on the part of the recipient.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for profit organizations.

Estimated Number of Responses: 1,961,131.

Estimated Time Per Response: 15 min.

Estimated Total Annual Burden Hours: 509,895.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 15, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–18324 Filed 7–17–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Capital Asset Realignment for Enhanced Services (CARES) Commission; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Pub. L. 92–463 (Federal Advisory Committee Act) that the Capital Asset Realignment for Enhanced Services (CARES) Commission will meet on August 6–7, 2003, at the Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202. The meeting will begin at 8:30 a.m. each day and end at 5 p.m. on August 6 and at 12:30 p.m. on August 7. The meeting is open to the public.

The purpose of the Commission is to conduct an external assessment of VA's capital asset needs. The Commission will consider recommendations prepared by VA's Under Secretary for Health, and veterans service organizations, individual veterans, Congress, medical school affiliates, VA employees, local government entities, community groups and others. Following its assessment, the Commission will make specific recommendations to the Secretary of Veterans Affairs regarding the realignment and allocation of capital assets necessary to meet the demands for veterans health care services over the next 20 years.

The August meeting is the fifth public meeting of the Commission. On the morning of August 6, the Commission will decide whether the CARES projection Model is a reasonable model for the purpose for which it was used. During the rest of the meeting, the Commission will be briefed on the Draft National Plan.

No time will be allocated at these meetings for receiving oral presentations from the public. However, interested persons may attend and/or file statements with the Commission. Written statements may be filed either before the meeting or within 10 days after the meeting and addressed to: Department of Veterans Affairs, CARES Commission (00CARES), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing addition information should contact Mr. Richard E. Larson, Executive Director, CARES Commission, at (202) 501–2000.

Dated: July 10, 2003.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–18234 Filed 7–17–03; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974, as Amended; Computer Matching Program Between the Department of Veterans Affairs and the Internal Revenue Service, Department of the Treasury

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Computer Matching Program.

Notice is hereby given that the Department of Veterans Affairs (VA) and the Internal Revenue Service (IRS) propose to conduct a computer matching program. The purpose of the program is to locate taxpayers who owe delinquent debts to the Federal Government as a result of their participation in benefit programs administered by VA. Once located, VA will pursue collection of debts through voluntary payments. If such payments are not forthcoming, VA may seek involuntary collection under the provisions of the Debt Collection Act of 1982, as amended.

The legal authority for undertaking this matching program is contained in the Internal Revenue Code at 26 U.S.C. 6103(m)(2)(A). VA and IRS have concluded an agreement to conduct the matching program pursuant to provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a(o)). IRS will act as the source (*i.e.*, matching) agency. VA will provide a tape extract to IRS that contains the Name Control (the first four characters of the surname) and social security number (SSN) of each record subject. IRS will compare the tape extract against its database of taxpayers who have filed Federal individual income tax returns, establishing "hits" (*i.e.*, individuals common to both tapes) on the basis of matched SSNs and Name Controls. For each hit, IRS will disclose to VA the following information: Name Control, SSN, and latest street address, post office box or other address furnished by the taxpayer.

Records to be Matched: The systems of records maintained by the respective agencies from which records will be disclosed for the purpose of this computer match are as follows:

CADE IRS: Individual Master File (IMF), Treasury/IRS 24.030, containing millions of records of taxpayers who have filed Federal individual income tax returns. A full description of the system of records was last published at 66 FR 63784 (December 10, 2001).

VA: Accounts Receivable Records-VA (88VA244) containing records of approximately 200,000 debtors. Disclosure will be made under routine use No. 18 of that system, a full description of which was last published at 63 FR 16864 on April 6, 1998.

The matching program is expected to begin on or about August 18, 2003, and continue in effect for 18 months. The agreement governing the matching program and, thus, the matching program, may be extended an additional 12 months with the respective approval of the Data Integrity Boards of both the Department of Veterans Affairs and the Department of the Treasury. Such extension must occur within three months prior to expiration of the 18-month period set forth above and under the terms set forth in 5 U.S.C. 552a(o)(2)(D).

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to conduct the matching program to the Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1064, Washington, DC 20420. All relevant material received before August 18, 2003, will be considered. All written comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Mark Gottsacker, Debt Management Center (389/00A), Department of Veterans Affairs, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111, (612) 970–5703.

SUPPLEMENTARY INFORMATION: This information is required by the Privacy Act of 1974, as amended (5 U.S.C. 552a(e)(12)). A copy of this notice has been provided to both Houses of Congress and to the Office of Management and Budget.

Approved: July 2, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 03–18232 Filed 7–17–03; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 68, No. 138

Friday, July 18, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Education Facilities Replacement Construction Priority List as of FY 2003

Correction

In notice document 03–17343 beginning on page 40996 in the issue of Wednesday, July 9, 2003, make the following correction:

On page 40997, in the third column, under the heading **Education Facilities Replacement Construction Priority List as of FY 2003**, add the following entry in numerical order:

"4. Isleta Elementary School".

[FR Doc. C3–17343 Filed 7–17–03; 8:45 am]

BILLING CODE 1505–01–D

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings

Correction

In notice document 03–17695 appearing on page 41404 in the issue of Friday, July 11, 2003, make the following correction:

On page 41404, second column, under the paragraph titled **AGENCY HOLDING MEETING:**, insert "**DATE AND TIME:** July 16, 2003: 3 p.m.–4 p.m., Open Session."

[FR Doc. C3–17695 Filed 7–17–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

48 CFR Chapter 10

RIN 1505–AA89

Department of the Treasury Acquisition Regulation

Correction

In rule document 03–16918 beginning on page 39854 in the issue of Thursday, July 3, 2003 make the following corrections:

PART 1005 [Corrected]

1. On page 39856, in the second column, in the table of contents, "1005.202 Definitions." should read "1005.202 Exceptions.".

§1005.202 [Corrected]

2. On the same page, in the same column, under **Subpart 1005.2—Synopses of Proposed Contract Actions**, the section heading should read as set forth above.

[FR Doc. C3–16918 Filed 7–17–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
July 18, 2003

Part II

Department of Labor

Department of Housing and Urban Development

Ending Chronic Homelessness Through Employment and Housing; Notice

DEPARTMENT OF LABOR

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[SGA 03–15]

Ending Chronic Homelessness Through Employment and Housing

A WorkFORCE (Working for Freedom, Opportunity and Real Choice through Community Employment) action cooperative agreement sponsored by the Office of Disability Employment Policy, the Employment and Training Administration, and the Veterans Employment and Training Service of the U.S. Department of Labor (DOL), in combination with a permanent housing grant sponsored by the Office of Special Needs, U.S. Department of Housing and Urban Development (HUD).

AGENCIES: Office of Disability Employment Policy, U.S. Department of Labor; and Office of Special Needs, U.S. Department of Housing and Urban Development.

ACTION: Notice of availability of funds; solicitation for both cooperative agreement and grant applications. (SGA 03–15)

This notice contains all of the necessary information and forms needed to apply for both the DOL Cooperative Agreement funding and the HUD permanent housing grants, in combination. (SGA 03–15)

SUMMARY: The U.S. Department of Labor (DOL), Office of Disability Employment Policy (ODEP), in cooperation with the Employment and Training Administration (ETA) and the Veterans Employment and Training Service (VETS), announces the availability of $2.5 million to award up to 4 Cooperative Agreements: Ending Chronic Homelessness through Employment and Housing Cooperative Agreements, ranging from approximately $500,000 to $625,000, per award, designed to increase and improve employment opportunities for persons who are chronically homeless. In partnership with this DOL award, HUD announces the availability of $10 million for permanent housing grants from recaptured McKinney Act monies. These funds will be used to supplement each DOL Cooperative Agreement effort with a HUD grant award, ranging from approximately $2–3 million per award, to support permanent housing for individuals who are "chronically homeless" served through the DOL Cooperative Agreement. This inter-agency effort supports the President's goal of ending chronic homelessness in ten years by creating innovative approaches to providing housing and economic self-sufficiency for this population.

A person who is "chronically homeless" is an unaccompanied homeless individual with a disabling condition who has either been continuously homeless for a year or more, OR has had at least four (4) episodes of homelessness in the past three (3) years. In order to be considered chronically homeless, a person must have been sleeping in a place not meant for human habitation (*e.g.*, living on the streets) and/or in an emergency homeless shelter. A disabling condition is defined as a diagnosable substance use disorder, serious mental illness, developmental disability, or chronic physical illness or disability including the co-occurrence of two or more of these conditions. A disabling condition limits an individual's ability to work or perform one or more activities of daily living.

Applicants for this program must, through a partnership evidenced with an executed Memorandum of Agreement (MOA), apply for both the DOL Cooperative Agreement and the HUD permanent housing grant award. Funding will be awarded, as this funding effort is meant to be a collaborative project combining a customized employment initiative with permanent housing services. The goal of these awards is to enable persons who are "chronically homeless" to achieve employment, permanent housing, and self-sufficiency. These agreements will begin or expand the delivery and implementation of "customized employment" strategies for people who are "chronically homeless" so that they may live, work, and fully participate in their communities. (See part VII, Section 1 for Glossary of Applicable Terms.)

The purpose of the DOL Cooperative Agreements and the HUD grants is to bring together the respective expertise and capabilities of both the local workforce development system (One-Stop Career Centers and their partners) and the local permanent housing service organizations, to develop and document the increased employment outcomes anticipated when these organizations combine their efforts to respond to the employment and housing needs of persons who are chronically homeless. The DOL Cooperative Agreements will be funded for a one-year period and may be renewed for a period up to four additional years, at varying funding levels (see Section IV) depending upon the availability of funds and the efficacy of the project activities. The HUD grants (McKinney-Vento Act funds) will provide funding for three (3) or five (5) years, determined by the application filed. The Supportive Housing Program (SHP) carries a term of three (3) years, and the Shelter Plus Care Program (S+C) is a five-year (5) term. The HUD permanent housing grants may only be used to provide new permanent housing resources for those persons who are chronically homeless and have expressed interest in pursuing employment outcomes.

The DOL Cooperative Agreement anticipates substantial involvement between ODEP and the awardees during the performance of the project to share expertise in the implementation of a customized employment model. Involvement will include collaboration or participation by ODEP in the management of the project throughout the period of the award. The ODEP will be involved in decisions involving strategic planning (including the plan to provide customized employment strategies), allocation of resources, release of public information materials, and analysis and implementation of evaluation findings.

The applications will be evaluated by DOL and HUD using the criteria set forth in Part VII, in conjunction with considerations by the Grant Officer delineated in Part IX of this Solicitation for Cooperative Agreement Application. DOL Cooperative Agreements will be matched by the HUD grants offered in this Solicitation, pursuant to the criteria set forth in Part VII as well as the requirements outlined in the HUD Application package.

ELIGIBILITY: Eligible applicants for the DOL Cooperative Agreements are Local Workforce Investment Boards (Local Boards) or, if appropriate, the WIA Cooperative Agreement recipient or fiscal agent for the local area on behalf of the local board under the Workforce Investment Act, that meet the following requirements: 1. Submit documentation that their locality includes at least 150 persons who are currently chronically homeless, as defined herein; and, 2. Demonstrate that they have partnership(s) with: (i) The applicant for the HUD grant, and (ii) other public and private entities, especially homeless serving organizations, consistent with the proposed activities of the Cooperative Agreement.

Eligible applicants for the HUD grant within this initiative are described in the HUD Eligible Applicants and Activities Chart. See Part VII, Section III, Part A.

DATES: Applications will be accepted commencing July 18, 2003. The closing date for receipt of the joint applications by DOL under this announcement is August 20, 2003. Applications must be received by 4:45 p.m. (ET) at the address below. No exceptions to the mailing and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will be considered non-responsive.

ADDRESSES: Joint applications shall be mailed to: U.S. Department of Labor, Procurement Services Center, Attention: Cassandra Willis, Reference SGA 03–15, Room N–5416, 200 Constitution Avenue, NW, Washington, DC 20210. Telefascimile (FAX) applications will not be accepted. Applicants are advised that mail in the Washington area may be delayed due to mail decontamination procedures and may wish to take this information into consideration when preparing to meet the application deadline.

FOR FURTHER INFORMATION CONTACT: For information on the DOL Cooperative Agreement and related items contact Cassandra Willis, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free number), prior to the closing deadline. For technical questions relating to the HUD grant contact: John Garrity, U.S. Department of Housing and Urban Development, telephone (202) 708–4300. Persons who are deaf or hard of hearing may contact either Cassandra Willis or John Garrity, via the Federal Relay Service, (800) 877–8339. Please note that registrations for the Solicitation Information Conference Call discussed below must be made by contacting ODEP as indicated in the following section, not Ms. Willis or Mr. Garrity. Applications, announcements, or forms will not be mailed. The **Federal Register** may be obtained from your nearest government office or library. This announcement and the award notifications will also be published on the Internet on the ODEP's online Home Page at: *http://www.dol.gov/odep*. Information will also be posted on the HUD Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm* and on *www.fedgrants.gov*.

Solicitation Information Conference Call: A Solicitation Information Conference Call will be held at 2:00 p.m. (ET), Monday, July 28, 2003. The purpose of this conference call is to provide interested parties an overview of this Cooperative Agreement program and an opportunity to ask questions concerning this solicitation. A transcript of the conference will be made available on the ODEP Web site, *www.dol.gov/odep* shortly following the conference. Individuals who wish to participate in this conference call must register by contacting ODEP at (202) 693–7880, no later than 4:45 p.m. (ET) on Friday, July 25, 2003. Please ask to register for the Ending Chronic Homelessness SGA Conference Call. Registrations should be made as soon as possible. At the time of registration, call-in information will be provided.

SUPPLEMENTARY INFORMATION:

Part I. Delivery of Applications

Late Applications. Any application received after the exact date and time specified for receipt at the office designated in this notice will be considered non-responsive, unless it is received before awards are made and it: (a) Is determined that its late receipt was caused by DOL error after timely delivery to the Department of Labor; (b) was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (*e.g.*, an application submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been post marked by the 15th of that month); or (c) was sent by the U.S. Postal Service Express Mail Next Day Service to addressee not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of applications. The term "working days" excludes weekends and Federal holidays. "Post marked" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service.

Withdrawal of Applications. Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt of the proposal.

Hand-Delivered Proposals. It is preferred that applications be mailed at least five days prior to the closing date. To be considered for funding, hand-delivered applications must be received by 4:45 p.m. (ET) on August 18, 2003, at the specified address. Failure to adhere to the above instructions will be basis for a determination of non-responsiveness. Overnight express mail from carriers other than the U.S. Postal Service will be considered hand-delivered applications and must be received by the above specified date and time.

Part II. Authorities

DOL Cooperative Agreements: Consolidated Appropriations Resolution, 2003, Pub. L. 108–7, 117 Stat. 11 (2003); Consolidated Appropriations Act, 2001, Pub. L. 106–554, 114 Stat. 2763 (2000); 29 U.S.C. 557b.

HUD Grants: McKinney-Vento Homeless Assistance Act, 42 U.S.C. 1130.

The Supportive Housing Program is authorized by Title IV, Subtitle C, of the Stewart B. McKinney-Vento Homeless Assistance Act (McKinney-Vento Act), 42 U.S.C. 11381. Funds made available under this section of the SGA (Solicitation for Grant Applications) for the Supportive Housing Program are subject to the program regulations at 24 CFR part 583. The funds are also subject to the requirements of this SGA.

The Shelter Plus Care program is authorized by Title IV, Subtitle F, of the McKinney-Vento Act, 42 U.S.C. 11403. Funds made available under this section of the SGA for the Shelter Plus Care program are subject to the program regulations at 24 CFR part 582. The funds are also subject to the requirements of this SGA.

Part III. Background

The Olmstead Decision

In Olmstead v. L.C. ex rel. Zimring, 527 U.S. 58 (1999) (the "Olmstead decision"), the Supreme Court construed Title II of the Americans with Disabilities Act (ADA) to require states to place qualified individuals with mental disabilities in community settings, rather than in institutions whenever treatment professionals determine that such placement is appropriate, the affected persons do not oppose such placement, and the state can reasonably accommodate the placement, taking into account the resources available to the state and the needs of others with disabilities. The Department of Justice regulations implementing Title II of the ADA require public entities to administer their services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities. See 28 CFR 35.130(d).

In Olmstead, the Supreme Court stated that institutional placements of people with disabilities who can live in, and benefit from, community settings perpetuates the unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life. The Supreme Court stated that "recognition that unjustified institutional isolation of persons with

disabilities is a form of discrimination reflects two evident judgments. First, institutional placement of persons who can handle, and benefit from, community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life. Second, confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment." Olmstead, 527 U.S. at 600–01 (emphasis added)(citations omitted). This decision affects not only all persons in institutions and segregated settings, but also people with disabilities who are at-risk of institutionalization, including people with disabilities on waiting lists to receive community-based services and supports.

On June 18, 2001, President George W. Bush issued Executive Order 13217-Community-Based Alternatives for Individuals with Disabilities (the Olmstead Executive Order), in which he extended application of the Supreme Court's Olmstead decision to all Americans with disabilities, and called upon selected federal agencies, including the U.S. Department of Labor, to help support governors in their implementation of the Olmstead decision.

In March 2002, the U.S. Secretary of Health and Human Services, Tommy G. Thompson, submitted a report to President Bush, titled Delivering on the Promise, on behalf of the Departments of Labor (DOL), Justice (DOJ), Education (ED), Health and Human Services (HHS), Housing and Urban Development (HUD), Transportation (DOT), Veterans Affairs (VA), the Social Security Administration (SSA), and the Office of Personnel Management (OPM). This report detailed actions being planned by the aforementioned agencies to eliminate barriers and promote community integration. See *http://www.hhs.gov/newfreedom/final*. In this report, the DOL and other federal agencies noted that successful planning and implementation efforts regarding the Olmstead decision must include competitive employment and employment-related supports.

ODEP Actions to Date

For the past two years (federal Fiscal Years 2001 and 2002) ODEP has funded two types of employment demonstration grants ("Customized Employment" and "WorkFORCE Action") for persons with significant disabilities. The distinguishing characteristic of these grants has been the application of a philosophy of "customizing employment" services, with enhanced coordination of these customized services with multiple community and state partners, especially One-Stop Career Centers. Documenting and supporting these demonstration grants with technical assistance on "customized employment" strategies has been the responsibility of ODEP's National Center for Workforce Development for Adults with Disabilities (with access online at www.onestops.info and by telephone through the toll-free number 1–888–886–9898).

As a result of these and other customized employment efforts, improved employment outcomes for persons with disabilities are being realized. These promising results offer the possibility of increased employment outcomes for all organizations serving the employment needs of persons who are chronically homeless. In view of this potential, DOL is soliciting Cooperative Agreement applications from eligible organizations to demonstrate the expanded potential of "customized employment" strategies for persons who are chronically homeless.

It is worth noting that the term "customized employment" as a philosophy espoused in this SGA, along with its associated strategies (see definition for "customized employment" in Section VII), is not without precedent for groups serving the employment needs of persons who are chronically homeless. The principle of "individualizing" or "customizing" employment services, based upon the person's individual needs, interest, and abilities is central to individual development planning approaches, which have long been recognized as necessary and advantageous when responding to the employment needs of persons who are chronically homeless. An added advantage of the "customized employment" approach, as defined in this SGA, is to increase the number and variety of employment strategies and options made available through the workforce development system in cooperation with organizations serving homeless people. In addition, these service strategies are also customized for the employer. This SGA attempts to bring the workforce development system and organizations serving persons who are chronically homeless into a closer alignment with effective disability-related employment methods and expertise.

Many strategies exist for creating and expanding competitive employment opportunities for persons who are chronically homeless. Many effective strategies have emerged through decades of research and demonstration projects, and through other public and private activities promoting increased choice and self-determination for people with disabilities. These include multiple "customized" employment approaches such as supported employment and supported entrepreneurship; individualized job development; job carving and restructuring; use of personal agents (including individuals with disabilities and family members); development of micro-boards, micro-enterprises, cooperatives, and small businesses; and the use of personal budgets and other forms of individualized funding that provide choice and control to the person and promote self-determination.

ETA has supported demonstration efforts under the Job Training for the Homeless Demonstration Program, authorized under Section 731 of the Stewart B. McKinney Homeless Assistance Act of 1987. The effort focused on a wide spectrum of housing options and supportive services that are needed by homeless individuals to be successful in completing training and securing and retaining employment. Evaluations of these efforts revealed successful strategies on how those services can be provided directly by employment and training agencies or arranged through linkages with public or private service providers. Most importantly, that effort revealed that neither housing nor employment services alone would help the homeless become self-sufficient; the two in combination are essential for their full reintegration back into the community.

ETA also administers Work Incentive Grants designed to provide seed monies to support the development of the One-Stop Career Center infrastructure with an objective of achieving model, seamless and comprehensive services for people with disabilities. These grants incorporate multi-program and cross-agency coordination at the state and local level and provide for increasing staff capacity to ensure access to multiple services and supports needed for successful entry or reentry into the workforce.

VETS has supported various homeless veterans grant programs and initiatives. The Homeless Veterans' Reintegration Program (HVRP) was the first nationwide Federal program that focused on placing homeless veterans into jobs. Historically, VETS has held annual grant competitions for urban and non-urban grants. These grants have provided valuable information on approaches that work in the different environments. The HVRP program is designed to be flexible in addressing the universal as well as local or regional problems barring homeless veterans from the workforce. VETS, in a joint effort with ODEP and ETA, will continue to seek applicants that have established links with federal, state and local resources for assisting homeless veterans, and applicants that provide personalized or customized services in their approach for employment and retention of persons who are homeless or at-risk of homelessness.

HUD has homeless assistance programs designed to provide permanent housing, including the Supportive Housing Program (SHP) and the Shelter Plus Care Program. These programs can be used to help persons who are chronically homeless transition from homelessness to living as independently as possible.

This SGA provides an opportunity for both HUD and DOL to combine their respective resources and expertise in a combined approach to provide employment and housing services to people who are chronically homeless so that they can live independently as self-sufficient members of their community.

This Ending Chronic Homelessness through Employment and Housing SGA supports the President's New Freedom Initiative. The New Freedom Initiative is designed to increase the number of people with disabilities who enter, re-enter, and/or remain in the workforce. By emphasizing the need to increase the capacity of federally-supported employment and training programs to serve persons who are chronically homeless, this SGA will further the New Freedom Initiative's goals of increased integration of Americans with disabilities into the workforce.

Recently, the Federal Government's Interagency Council on Homelessness (*http://www.ich.gov*) has begun an expanded effort to end chronic homelessness. This SGA supports this initiative by increasing the involvement of the workforce development system in partnership with key disability and homeless serving organizations to meet the customized employment needs of persons who are chronically homeless.

In addition, the DOL Cooperative Agreements will support implementation of coordinated workforce development envisioned under the WIA. The WIA established comprehensive reform of existing federal job training programs, consolidating multiple programs into a unified system and bringing multiple federal programs together as required partners in the One-Stop delivery system established under the WIA. The One-Stop Centers, which comprise the heart of this system, are in a position to expand employment opportunities for persons who are disabled and chronically homeless, by helping to ensure that the workforce system is accessible both physically and programmatically. To accomplish this, however, additional state and local organizations must be involved, including community-based providers of customized employment services. Additional partners necessary to the success of this endeavor for persons who are chronically homeless may include, but are not limited to, the organizations listed in Part VII, Section 2.

In response to these considerations, and in view of the potential resources described above, both DOL and HUD offer these Ending Chronic Homelessness through Employment and Housing—WorkFORCE (Working for Freedom, Opportunity and Real Choice through Community Employment) Action Cooperative Agreements to develop and/or expand the capacity of the workforce development system to provide individually determined "customized employment" strategies, in partnership with housing organizations serving people who are chronically homeless.

The ODEP and its partners strongly recognize the need for technical assistance to provide support, training, dissemination, information on effective practices, etc. to the grantees under the Ending Chronic Homelessness through Employment and Housing initiative. This demonstration Cooperative Agreement and grant initiative needs technical assistance and cross-expertise to bring together the workforce development system with the homeless serving community to provide employment and permanent housing for persons who are chronically homeless. Accordingly, a National technical assistance effort on Ending Chronic Homelessness through Employment and Housing is planned, to: 1. Provide awardees with ongoing support and technical assistance; 2. Compile and disseminate to other interested parties what is learned through these Cooperative Agreements to other interested parties; and, 3. Inform the policy development process of the Administration regarding the advantages of combining the provisioning of employment and permanent housing services for persons who are chronically homeless.

Part IV. Funding Availability and Period of Performance

The DOL anticipates awarding up to 4 Cooperative Agreements, ranging from approximately $500,000 to $625,000 per year, totaling $2.5 million, to develop demonstration programs to increase and improve employment opportunities for people who are chronically homeless. In conjunction with the DOL Cooperative Agreements, HUD grants, totaling $10 million, will be issued to the top-scoring applications (as described in Part VII and the HUD grant application section) to support new permanent housing units for chronically homeless persons. The goal of these DOL Cooperative Agreements is to enable people who are chronically homeless to achieve employment, permanent housing, and self-sufficiency. These demonstration programs will begin or expand the delivery and implementation of "customized employment" strategies for people who are chronically homeless so that they may live, work, and fully participate in their communities.

Each DOL Cooperative Agreement award will be for one year, with four additional option years possible, depending upon the availability of funds and the efficacy of Cooperative Agreement activities, established by independent reviews conducted by the ODEP or its designees. It is envisioned that if DOL funding continues for the full five years, its funding for years four and five will be at successively lower rates, with funding during year four at 80 percent of the third year funds, and funding during year five at 60 percent of the third year funds. This decreased funding strategy is designed to encourage program sustainability in the community, beyond the federally funded Cooperative Agreement period. Awardees are expected to use this Cooperative Agreement to leverage and develop other public and private resources to ensure long-term sustainability. This funding strategy applies only to DOL funds. The DOL funds (the customized employment funds) may be used in a flexible manner so long as the requirements delineated in this Cooperative Agreement are met.

Approximately four (4) grant awards will be made by HUD for terms of three (3) or five (5) years, depending on the program being used (see Program descriptions below). At the end of these terms, eligible projects seeking renewal can apply through their local Continuum of Care to replace the loss of non-renewable funding from HUD through this process and, if selected, can be funded for additional years.

The HUD grants (the housing funds) must only be used to secure new permanent housing units for those persons who are chronically homeless served through the DOL Cooperative Agreement and who indicate a

willingness to accept the employment supports designed under the customized employment portion of this award. While their participation in the customized employment portion of this award is not a mandatory outcome for all, it should be an established intention for all who receive permanent housing supports under these funds. Proposals will be judged on plans to establish this interest and participation, including expected employment results.

Each permanent supportive housing project must be classified under one of the program components described below. Eligible activities under this SGA for the HUD permanent housing grants are limited to rental assistance, acquisition, minor rehabilitation (e.g. reconfiguring a doorway for handicap accessibility), leasing, operating costs, and administrative costs. Minor rehabilitation costs may not exceed $3,000 per unit. The employment-related resources being made available by DOL and resources from other sources can be used to provide supportive services. Applicants may also request up to 5% of each Supportive Housing Program project award for administrative costs, such as accounting for the use of the grant funds, preparing HUD reports, obtaining audits, and other costs associated with administering the grant. New construction and major rehabilitation are not eligible for funding. (See the HUD Eligible Applicants Chart for further details on eligible activities.)

HUD applicants must match housing funds provided for acquisition and minor rehabilitation with an equal amount of funds from other sources. For operating costs, housing funds can pay for no more than 75% of the total operating budget and applicants must provide the remaining 25% of the operating costs. For S+C, applicants must match rental assistance provided through this initiative on a dollar for dollar basis with supportive services.

Applicants for HUD assistance can choose to request funds for either the Supportive Housing Program or the Shelter Plus Care Program. The Supportive Housing Program has two eligible components from which to choose for this competition: Permanent Housing for Persons with Disabilities and Safe Havens. These two Supportive Housing Program components, Permanent Housing for Persons with Disabilities and Safe Havens, as well as the Shelter Plus Care Program are described below:

Supportive Housing Program

1. Permanent Housing for Persons with Disabilities. Permanent Housing projects provide long-term housing and supportive services (provided with other non-SHP funds) that are designed to enable chronically homeless persons with disabilities to live as independently as possible. Permanent housing can be provided at one site or in scattered sites. Further, Permanent Housing may be tenant-based, meaning that the tenant can choose the housing. This approach focuses on identification and engagement through assertive outreach to individuals, immediate placement in permanent housing, and availability of appropriate supportive services.

2. Safe Havens (that have the characteristics of a Permanent Housing Project, *i.e.*, have a lease agreement with the client). Safe Havens are projects targeted to hard-to-reach homeless persons who have severe mental illness and are on the streets. The goal of a Safe Haven is to serve as a small, highly supportive environment where an individual can feel at ease, out of danger, and subject to limited service demands. Tenants can move directly into housing with few explicit services required. It is hoped that after a period of stabilization in a Safe Haven, residents will be more willing to participate in services and referrals and will eventually be ready to move to more traditional forms of housing. Safe Havens may serve as an entry point to the service system and provide access to basic services such as good food, clothing, bathing facilities, telephones, storage space, and a mailing address. The specific criteria that must be exhibited by a Safe Haven are:

- A lease agreement with the client,
- No limit on length of stay,
- Provision of 24-hour residence,
- Provision of private or semiprivate accommodations,
- Overnight occupancy limited to 25 persons.

Shelter Plus Care Program

The Shelter Plus Care Program (either tenant-, sponsor-, or project-based without rehabilitation) gives applicants flexibility in devising appropriate housing and supportive services for homeless persons with disabilities through rental assistance. Assisted units may be of any type, from group homes to apartments. Participants in S+C units receive supportive services and rental assistance provided through the S+C program must be matched in the aggregate on a dollar for dollar basis by the recipient with supportive services.

Part V. Eligible Applicants and Required Partnerships

DOL Eligible Applicants: For the DOL Cooperative Agreement awards, eligible applicants are Local Workforce Investment Boards (Local Boards), or, if appropriate, the WIA grant recipient or fiscal agent for the local area on behalf of the Local Board under the Workforce Investment Act. Eligible applicants must be able to document that their locality has at least 150 persons who are chronically homeless. In order to be determined eligible, the Local Board must enter into partnerships with organizations serving people who are chronically homeless, consistent with the proposed activities of this Cooperative Agreement. To be determined eligible, applicants may not utilize certificates authorized under Section 14(c) of the Fair Labor Standards Act in their implementation of project activities and must utilize only individually determined customized employment strategies in securing employment for the target population.

HUD Eligible Applicants: Eligible applicants for the HUD grant within this initiative are described in the HUD Eligible Applicants and Activities Chart. See Part VII, Section III, Part A. Applicants must be a part of their local Continuum of Care and must certify to this relationship. Eligible applicants must be able to document that their locality has at least 150 persons who are chronically homeless. In order to be determined eligible, the HUD eligible applicant must enter into a partnership with their Local Workforce Investment Board, as described above, who is making an application for the DOL Cooperative Agreement being offered within this Solicitation.

DOL and HUD Required Partnerships: The purpose of the Ending Chronically Homelessness through Employment and Housing Cooperative Agreements is to demonstrate the employment potential of persons who are chronically homeless through techniques designed to accomplish community employment in non-stereotypical integrated settings, utilizing "customized employment" strategies. These efforts must include the involvement of many key partners, especially those providing housing services to persons who are chronically homeless as well as those providing or capable of providing customized employment services to persons with disabilities. Applicants must demonstrate that subcontractors will provide the necessary supportive services to address the needs of the chronically homeless including coordinating and integrating the project with other mainstream health and social services for which homeless populations may be eligible.

In order to ensure a coordination of effort between these two awards, proposals shall demonstrate that a strong partnership commitment has been made between the two respective eligible applicants (for the DOL Cooperative Agreement award and for the HUD permanent housing grant). While these two awards (DOL Cooperative Agreement and HUD grant), are from separate funding sources, their potential can only be realized through this coordination of effort. Failure to clearly document, through a Memorandum of Agreement, this coordination of effort will yield a proposal "non-responsive" and disqualified from any further consideration.

In addition, the DOL Cooperative Agreement applicant must submit a letter signed by their state's governor, or his or her designee, for overall implementation of the Olmstead decision, that the proposed Cooperative Agreement activities will be regarded as a demonstration program playing a role in the state's employment implementation effort(s) under the Olmstead decision. Moreover, this letter should describe how the lessons learned under this Cooperative Agreement will be utilized to benefit other communities throughout the state, and thereby provide expanded customized community employment options for other homeless people with disabilities who are covered under the Olmstead decision and Executive Order.

Part VI. Format Requirements for Cooperative Agreement and Grant Application

General Requirements: All applications will be submitted to DOL. There are separate application requirements for the DOL Cooperative Agreement and the HUD grant, however, the Executive Summary—Project Synopsis and Part VII, Section 2 (Collaboration Requirements) will provide an opportunity to explain the applicants' collaborative program design. Applicants must submit one (1) paper copy with an original signature, and two (2) additional paper copies of the signed proposal. To aid with the review of applications, DOL also encourages applicants to submit an electronic copy of their proposal on disc or CD using Microsoft Word. Applicants who do not provide an electronic copy *will not* be penalized. The Application must be double-spaced with standard one-inch margins (top, bottom, and sides) on 8 ½ × 11 papers, and be presented on single-sided, and numbered pages. A font size of at least twelve (12) pitch is required throughout. Applications that fail to meet these requirements will be considered non-responsive.

DOL Cooperative Agreement Requirements:

The three required sections of the application are:

Section I—Project Financial Plan
Section II—Executive Summary—Project Synopsis
Section III—Project Narrative (including Attachments, not to exceed fifty (50) pages)

Mandatory requirements for each section are provided as follows in this application package. Applications that fail to meet the stated mandatory requirements of each section will be considered non-responsive.

Mandatory Application Requirements

- Section I. Project Financial Plan (Budget)—[The Project Financial Plan will not count against the application page limits.] Section I of the application must include the following three required parts:

(1) Completed "SF 424—Application for Federal Assistance."
(See Appendix A of this SGA for required form)

(2) Completed SF 424 A—Budget Information Form by line item for all costs required to implement the project design effectively.
(See Appendix A of this SGA for required forms)

(3) DOL Budget Narrative and Justification that provides sufficient information to support the reasonableness of the costs included in the budget in relation to the service strategy and planned outcomes, including continuous improvement activities.

The DOL Cooperative Agreement application must include one SF–424 (**Note:** the HUD Grant Application must include its own HUD–424) with the original signatures of the legal entity applying for Cooperative Agreement funding and two additional copies. Applicants shall indicate on the SF–424 the organization's IRS Status, if applicable. Under the Lobbying Disclosure Act of 1995, Section 18 (29 U.S.C. 1611), an organization described in Section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities will not be eligible for the receipt of federal funds constituting an award, Cooperative Agreement, or loan. See 2 U.S.C. 1611; 26 U.S.C. 501(c)(4). For item 10 of the SF–424, the Catalog of Federal Domestic Assistance (CFDA) number for the program is 17.720.

The DOL Budget Narrative and Justification must describe all costs associated with implementing the project that are to be covered with Cooperative Agreement funds. Awardees must support the travel and associated costs of sending at least one representative to the annual ODEP Policy Conference for its grantees, to be held in Washington, DC at a time and place to be determined. Awardees must comply with the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," (also known as the "Common Rule or OMB Circular A–102") codified at 29 CFR part 97, or "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations" (also known as the "Common Rule" or OMB Circular A–110), codified at 29 CFR part 95 and must comply with the applicable OMB cost principles circulars, as identified in 29 CFR 95.27 and 29 CFR 97.22(b).

In addition, the DOL budget must include on a separate page a detailed cost analysis of each line item. Justification for administrative costs must be provided. Approval of a budget by DOL is not the same as the approval of actual costs. The individual signing the SF 424 on behalf of the applicant must represent and be able to legally bind the responsible financial and administrative entity for a Cooperative Agreement should that application result in an award. The applicant must also include the Assurances and Certifications Signature Page (Appendix A).

- Section II. Executive Summary—Project Synopsis [The Executive Summary is limited to no more than two single-spaced, single-sided pages on 8½ x 11 papers with standard margins throughout]. Each application shall include a project synopsis that identifies the following:

(1) The applicant;
(2) The amount of funds requested separately for the DOL portion (employment program) and the HUD portion (permanent housing program);
(3) The planned period of performance for both employment and housing portions;
(4) The list of partners, as appropriate;
(5) An overview of how the applicant will identify the population to be served (including the estimated number and types of persons who are chronically homeless), the conditions such individuals are currently experiencing, and methods that will be used to

promote community customized employment and permanent housing, including "customized employment" strategies listed in this SGA; and

(6) An overview of the plan for sustainability once federal funding ceases.

• Section III. Project Narrative—The DOL Cooperative Agreement Project Narrative plus attachments are limited to no more than fifty (50), 8½ × 11 pages, double-spaced with standard one-inch margins (top, bottom, and sides), and must be presented on single-sided, numbered pages. [**Note:** The Financial Plan, the Executive Summary, and the Appendices, including required letters of cooperation, Memorandum of Understanding, *etc.*, are not included in the fifty page limit]. The requirements for the project narrative are described below under Part VII—Statement of Work.

The "Collaboration" application proposal (partnering DOL and HUD eligible applications), as defined in Part VII, Section 2, should be clearly labeled as such and included in the joint application package (combined DOL Cooperative Agreement and HUD grant applications) submitted to Cassandra Willis, at the location and due date indicated in this Solicitation. The "Collaboration" proposal is subject to the conditions outlined for the DOL Cooperative Agreement proposal (formatting, numbers of copies, *etc.*), and may not exceed fifteen (15) pages. The required Memorandum of Agreement and possible letters of support do not count against the fifteen-page limitation for this section. In addition, no separate budget is necessary for this section. Both the DOL Cooperative Agreement and HUD grant budgets may be sources for any needed budget allocations for this part, if consistent with their respective terms and conditions.

All text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs must be double-spaced (no more than three lines per vertical inch); and, if using a proportional computer font, must be in at least a 12-point font, and must have an average character density no greater than 18 characters per inch (if using a non-proportional font or a typewriter, must not be more than 12 characters per inch). Applications that fail to meet these requirements will be considered non-responsive.

The HUD grant application requirements, including all necessary forms and directions, are outlined in detail, in Part VII, Section 4, "HUD Grant Requirements."

Part VII. Government Requirements/ Terms/Statement of Work [Project Narrative]

Glossary of Applicable Terms

For purposes of this solicitation, the terms applicable to both the DOL Cooperative Agreements and the HUD permanent housing grant awards are as follows:

• *Customized Employment:* individualizing the employment relationship between employees and employers in ways that meet the needs of both. It is based on an individualized determination of strengths, needs, and interests of the person with a disability and simultaneously employing strategies designed to meet the specific needs of the employer. It may include approaches such as supported employment; supported entrepreneurship; individualized job development; job carving and restructuring; use of personal agents (including individuals with disabilities and family members); development of micro-boards, micro-enterprises, cooperatives and small businesses; and use of personal budgets and other forms of individualized funding that provide choice and control to the person and promote self-determination. These and other job development or restructuring strategies result in job responsibilities being customized and individually negotiated to fit the needs of individuals with disabilities. Customized employment assumes the provision of reasonable accommodations and supports necessary for the individual to perform the functions of a job that is individually negotiated and developed.

• *Eligible Target Population:* a person who is "chronically homeless" is an unaccompanied homeless individual with a disabling condition who has either been continuously homeless for a year or more, OR has had at least four (4) episodes of homelessness in the past three (3) years. In order to be considered chronically homeless, a person must have been sleeping in a place not meant for human habitation (*e.g.*, living on the streets) and/or in an emergency homeless shelter. A disabling condition is defined as a diagnosable substance use disorder, serious mental illness, developmental disability, or chronic physical illness or disability including the co-occurrence of two or more of these conditions. A disabling condition limits an individual's ability to work or perform one or more activities of daily living. (In order to receive housing assistance through the HUD grants, program participants must meet the McKinney-Vento Act definition of disability for SHP and persons with disabilities for S+C.)

• *Homeless Persons:* include only persons sleeping in a place not meant for human habitation (*e.g.*, on the streets) or in an emergency homeless shelter.

Rating Criteria

Section I. Collaboration Requirements (30 Points)

The purpose of the Collaborative Effort criteria is to determine the level of cooperation between the employment services providers and the permanent housing providers applying for these funds. The partners in this Cooperative Agreement should explain how their services will be seamlessly coordinated for the population to be served. The application must describe the outreach plan in place to bring the target population into the project and, in turn, how the applicants will ensure that they receive housing, employment services, and other necessary support (*e.g.*, transportation, mental health, substance abuse, health, *etc.*) services. Applicants should include the following in their narrative:

A. Statement of Need/Significance of the Project (10 Points)

The purpose of the Statement of Need criteria is to establish the overall status and issues of persons who are chronically homeless in the area to be served; the need for the type of project proposed by the applicant in the area to be served; to identify strengths and deficiencies in community services that will be addressed by the applicant's proposal; to identify the overall scope of the proposal's objectives and design; to present the applicant's need for the federal resources; to demonstrate significance of the proposed project; and to demonstrate the current and proposed partnerships and collaborative efforts to develop or identify effective new strategies, practices, and/or innovations. The narrative in this section should:

(a) Describe the characteristics of the target population to be serviced by this initiative.

(b) Give a preliminary estimate of the number of persons experiencing chronic homelessness in the target community and describe the method by which this estimate was derived.

(c) Describe the employment, permanent housing, service, and treatment needs of the target population.

B. Collaborative Effort (10 Points)

The purpose of the Collaborative Effort criteria is to determine the level of cooperation between the employment services providers and the permanent housing providers applying for these funds. The partners in this Cooperative Agreement should explain how their services will be seamlessly coordinated for the population to be served. The narrative in this section should:

(a) List the entities participating in this initiative that will provide the employment services and permanent housing.

(b) Describe how the employment services will be linked to permanent housing so that the target population will be sustained in that housing.

(c) Identify how the DOL and HUD funds are proportionate to each other and how the proposed project is cost-effective.

(d) Describe the other resources that will be leveraged during this initiative, either cash or in-kind contributions, including the value of each contribution. These leveraging funds should address the match requirements for the HUD funds and any additional supportive services needed by the population to be served.

(e) Describe the outreach plan in place to bring the target population into the project.

Sample agencies that could be involved as partners in the design and implementation include:

• Disabled Veterans' Outreach Program Specialist and Local Veterans' Employment Representatives located at local employment service offices;

• Programs serving persons who are chronically homeless, including the Continuum of Care agency or service provider in the designated jurisdiction;

• Employment and training agencies;

• Department of Veterans Affairs Homeless Programs;

• Chambers of Commerce;

• State agencies for substance abuse, vocational rehabilitation, education, Medicaid, mental retardation, mental health, public health, and Temporary Assistance for Needy Families (TANF);

• Faith-based and community organizations;

• State Developmental Disability Councils and University Centers for Excellence in Developmental Disabilities;

• Small Business Development Centers;

• Independent Living programs;

• Post-secondary institutions, benefits counseling, and assistance programs;

• Lending and financial institutions, whose expertise, services, and/or funds could contribute to employment services and supports needed to secure competitive, customized community employment outcomes for the target group;

• Community rehabilitation providers; family members, consumers, employers, and any other key agencies or constituencies needed to offer a comprehensive service delivery model.

C. Memorandum of Agreement (10 Points)

Each application package must contain a Memorandum of Agreement, signed by the DOL Cooperative Agreement and HUD grant applicants participating in this initiative. The Memorandum of Agreement must include the following:

(a) Parties—Identify by position and title lead person binding each organization to this MOA.

(b) Term of Agreement—Indicate time frame for this agreement and the agreed to mechanisms and assurances for continuing cooperation if option years are funded under the terms of the DOL Cooperative Agreement.

(c) Purpose—Describe the agreed upon intent of this cooperative effort.

(d) Guiding Principles—Describe the common values and shared goals that bring together the parties in this MOA.

(e) Responsibilities—Clearly define each party's duties in a way which demonstrates how these two efforts will complement and support each other.

(f) Implementation and Evaluation—Outline the key tasks necessary for accomplishing the activities outlined in this MOA, including agreements to cooperate with mutual and combined evaluation efforts.

While the primary partners of this Agreement must include the eligible applicants submitting the linked proposals for both the DOL customized employment Cooperative Agreement and the HUD permanent housing grant award, other key partners may be identified and included.

The MOA will be evaluated on how clearly it reflects a binding agreement to cooperate in attaining the joint goals of the DOL Cooperative Agreement and the HUD grant and on the efficacy of the mechanisms described to accomplish that cooperative effort.

Letters of Commitment. Applicants may include letters of support if they provide specific commitments. Letters of commitment for related support services may also be included. Such letters can increase an applicant's score for the DOL Section by showing that the commitments in the text of the proposal are substantiated. Form letters will not be considered. See also Part V for additional requirements relating to cooperation.

Section II. DOL Cooperative Agreement Requirements (35 Points)

The purpose of the Ending Chronic Homelessness through Employment and Housing Cooperative Agreements is to demonstrate the employment potential of persons who are chronically homeless, utilizing "customized employment" strategies to accomplish employment in non-stereotypical integrated settings. These Cooperative Agreement funds may not be used to support sub-minimum wage employment. These efforts must include the involvement of many key partners, including those organizations serving people who are chronically homeless.

ODEP will be directly involved in the awardee's strategic planning (including the plan to provide customized employment strategies), allocation of resources, release of public information materials, and analysis and implementation of evaluation findings.

Within these various activities, ODEP will provide the following: 1. Expertise related to the implementation of customized employment strategies; 2. Information on disability-specific practices and resources, as well as information and analysis to inform the Administration's policy development; and 3. Technical assistance on the interrelationship among disability employment efforts, the workforce development system, and organizations serving the homeless community (Continuum of Care).

In addition, this program is subject to the provisions of the Jobs for Veterans Act, Pub. L. 107–288, which provides priority of service to veterans and certain of their spouses in all Department of Labor-funded job training programs. Please note that, to obtain priority of service, a veteran must meet that program's eligibility requirements. Comprehensive policy guidance on implementation of the Jobs for Veterans Act is being developed and will be issued in the near future.

The Project Narrative, or Section III of the Cooperative Agreement application, should provide complete information on how the applicant will address the following DOL priorities for Fiscal Year 2003:

(1) Increase the availability of skill training, employment opportunities, and career advancement for persons who are chronically homeless; and

(2) Develop comprehensive One-Stop Centers, which are welcoming and valued providers of choice by customers who are chronically homeless seeking workforce assistance by ensuring availability of staff trained on homeless issues.

In addition, proposals will be rated based upon the quality of the applicant's response in addressing the four criteria (A–D) described below in terms of a comprehensive strategic approach that addresses the various considerations noted in this SGA. The criteria below MUST be addressed and the applicant's capabilities or potential with regard to each item described.

The ODEP, however, does not expect the applicant to fully incorporate, unless otherwise noted, every individual sub-part listed in each lettered (A–D) criteria below as part of their strategy and proposal design. The ODEP recognizes that the needs and requirements of each state and community may be different, and therefore, some of the options identified may be more relevant than others in a particular state. The narrative in this section should include narrative descriptions for the following six criteria:

A. Project Design and Project Management (15 Points)

Under this section, the applicant must describe the project design and its management plan. The proposed project design must address the proposed design for the Ending Chronic Homelessness through Employment and Housing Cooperative Agreement including its response to the requirements outlined in Part V (Eligible Applicants and Required Partnerships) of this Solicitation.

In addition, the project design must address the movement of individuals into integrated community employment opportunities; coordination with the state's lead agency implementing the Olmstead decision as well as their state's overall Olmstead plan, describing how the project will contribute to the development of their state's plan and implementation strategy related to employment; and integration of customized employment strategies with the state's employment programs and services, including existing services available through the One-Stop Centers, the state and local Workforce Investment Boards, and their partners. Additional considerations under this section are to:

(a) Coordinate efforts with existing homeless services, veterans organizations and employment programs for people with disabilities;

(b) Develop customized employment opportunities in a variety of occupations and industries based on the strengths, needs, and desires of persons who are chronically homeless, including self-employment and entrepreneurship where appropriate. Services and supports must be organized in ways that provide informed choice and promote self-determination;

(c) Establish employer involvement, track and respond to customer service and satisfaction for both persons who are chronically homeless and employers, and provide services, including follow-up services, to ensure job retention and career development;

(d) Collaborate with community-based and faith-based and community organizations in their state in order to expand opportunities for customized employment for the target population. This includes facilitating the availability and use of customized employment strategies by such organizations as well as facilitating the organizations' registration as eligible training providers with their local One-Stop Career Centers;

(e) Educate relevant stakeholders and systems personnel about changes needed to increase customized community employment outcomes for persons who are chronically homeless;

(f) Consider the usefulness of increasing the availability of personal agents and job development personnel offering customized services through customer-controlled approaches that result in customized employment. One possible area of focus could include demonstrating the effectiveness of paying family members and/or other individuals with disabilities to serve as personal agents when selected by the individual with a disability to assist in negotiating and implementing employment plans and services;

(g) Incorporate use of funds leveraged across several systems available to people with disabilities through personal budgets and other forms of self-directed accounts.

Applicants must provide a detailed management plan which identifies the critical activities, time frames, and responsibilities for effectively implementing the project, including the evaluation process for assuring successful implementation of Cooperative Agreement objectives. The management plan will be evaluated to determine whether the applicant has developed an adequate management plan to effectively carry out the objectives and scope of the proposed project on time and within budget, to describe the predicted outcomes resulting from activities funded under this SGA, and to identify the "methods of evaluation" that will be used by the applicant to determine success.

B. Staff Capacity (5 Points)

The applicant must describe the proposed staffing of the DOL Cooperative Agreement project, including the key personnel and the roles each will play and the responsibilities each will assume. The applicant must also identify how it will ensure that trained staff with adequate knowledge of diverse disabilities, knowledge of/experience with diverse customized employment strategies, and employment-related experience for the target population will be available to manage and provide employment-related services. The staffing plan should:

(a) Summarize the qualifications, including relevant education, training, and experience of both key project personnel and project consultants or subcontractors, including their qualifications, relevant training, and experience. Attach copies of resumes in the Appendices.

(b) Describe the experience in serving persons who are chronically homeless and in providing customized employment services.

(c) Describe the extent to which the time commitments of the project director and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

C. Evaluation and Continuous Improvement Strategies (10 Points)

The proposal must demonstrate how the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable; the extent to which performance feedback and continuous improvement are integral to the design of the proposed project; and the extent to which the applicant encourages involvement of people with disabilities and their families, experts and organizations, and other relevant stakeholders in project activities that lead to stronger evaluation and continuous improvement strategies. The proposal will be evaluated on:

(a) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population and other identified needs and the quality of the applicant's plans for recruiting and retaining the target population;

(b) The extent to which the design of the proposed project provides clear understanding of, and experience with, utilization of customized employment strategies for increasing employment, choice, and earnings of persons who are chronically homeless;

(c) The extent to which the proposed project will be coordinated, including demonstrated support from the state governor or designated agency implementing the Olmstead decision and commitment from key organizations, employers, and agencies;

(d) The extent to which the design of the project will facilitate an increase in the number of faith-based and community organizations that register as eligible training providers or as providers of supplemental and supportive services with their local One-Stop Center;

(e) The extent to which the management plans for project implementation is likely to achieve the objectives of the proposed project on time and within budget; and

(f) The extent to which the proposed project design features innovative strategies to implement customized employment and choice.

D. Documenting and Reporting (5 Points)

Applicants should outline their strategy for documenting and reporting the activities undertaken during the life of the Cooperative Agreement for ODEP's future use in working with other grantees and constituencies. In evaluating this section ODEP considers the following factors to be of particular importance and must be addressed:

(a) The extent to which the project will provide information to other programs about effective strategies suitable for replication or testing in other settings;

(b) The extent to which the methods of documentation and reporting include the objective use of performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data; and

(c) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

Section III—HUD Grant Application Requirements (35 Points)

General: This Section contains information on the two programs for which you can apply. They are the Supportive Housing and the Shelter Plus Care programs. The purpose of the housing section of this SGA and application is to provide specific guidance on accessing financial resources for the provision of housing for chronically homeless persons when proposed as part of homeless assistance projects in which housing is directly linked to needed employment services funded through other components of this application or through other sources. Applicants may request funding for only ONE of the following three types of projects—Permanent Housing for Persons with Disabilities, Safe Havens, or Shelter Plus Care.

The Supportive Housing Program (SHP) [detailed in Section 4. Part I] promotes the development of supportive housing and services that help homeless persons transition from homelessness to living as independently as possible. Each project submitted under SHP must be classified as one of the program components described below. For this application and SGA, only two components of SHP are eligible for funding and all SHP projects must be for a three (3) year grant term.

(1) Permanent Housing for Persons with Disabilities (PH) is long-term housing for this population. It is community-based housing and supportive services as described above, designed to enable homeless persons with disabilities to live as independently as possible in a permanent setting. Permanent housing can be provided in one structure or several structures at one site or in multiple structures at scattered sites. All PH for Persons with Disabilities projects must comply with the program size limitations, as described in Section 424(c) of the Stewart B. McKinney-Vento Homeless Assistance Act, as amended.

(2) Safe Haven (SH) projects must meet the following criteria: (1) Have no limit on length of stay; (2) serve hard-to-reach homeless persons who have severe mental illness, are on the streets, and have been unable or unwilling to participate in supportive services; (3) provide 24-hour residence for an unspecified duration; (4) provide private or semiprivate accommodations; and (5) have overnight occupancy limited to 25 persons.

For many persons with mental illness who have been living on the streets, the transition to self-sufficiency is best made in stages, starting with a small, highly supportive environment where an individual can feel at ease, out of danger, and subject to no immediate service demands. Safe Havens do not require participation in services and referrals as a condition of occupancy. Rather, it is hoped that after a period of stabilization in a Safe Haven, residents will be more willing to participate in services and referrals, and will eventually be ready to move to more traditional forms of housing. Also, Safe Havens must have a lease agreement with each client.

The Shelter Plus Care (S+C) Program [detailed in Section 4. Part II] components were created by statute and designed to give applicants flexibility in devising appropriate housing and supportive services for homeless persons with disabilities. Assisted units may be of any type from group settings to apartments. You may design a program that has participants first living in a group setting with intensive supportive services, then moving to another setting but retaining the rental assistance during the term of the grant, as long as they stay within a S+C unit. The components that may be applied for are: tenant-based rental assistance, sponsor-based rental assistance and project-based rental assistance without rehabilitation. For this SGA, all Shelter Plus Care projects will be for a five (5) year grant term.

A. Match

Applicants must match Supportive Housing Program funds provided for acquisition and minor rehabilitation (new construction, major rehabilitation, and supportive services are not eligible activities under this SGA) with an equal amount of funds from other sources. For operating costs, since by law SHP can pay no more than 75 percent of the total operating budget for supportive housing, applicants must provide at least 25 percent of the total annual operating costs. The cash source may be the applicant, the Federal Government, state and local governments, or private resources. In-kind contributions are not eligible as a match under SHP.

Applicants must match rental assistance provided through the Shelter Plus Care Program on a dollar for dollar basis with supportive services.

B. Statutory and Regulatory Requirements

An applicant selected for funding as a result of the competition will be required to coordinate and integrate the homeless project with other mainstream health, social services, and employment programs for which homeless populations may be eligible, including Medicaid, State Children's Health Insurance Program, Temporary Assistance for Needy Families, Food Stamps, and services funded through the Mental Health Block Grant and Substance Abuse Block Grant, Workforce Investment Act, Welfare-to-Work grant program, SSI, SSDI, and Healthcare for Homeless Veterans Program. In addition, as a condition for award, any governmental entity serving as an applicant must agree to develop and implement, to the maximum extent practicable and where appropriate, policies and protocols for the discharge of persons from publicly funded institutions or systems of care (such as health care facilities, foster care or other youth facilities, or correction programs and institutions) in order to prevent such discharge from immediately resulting in homelessness for such

persons. This condition for award is intended to emphasize that states and units of general local government are primarily responsible for the care of these individuals, and to forestall attempts to use scarce McKinney-Vento Act funds to assist such persons in lieu of state and local resources.

C. Special Provisions Applicable to This Notice

(a) Only new SHP and S+C projects, including expansions of HUD-funded existing projects, will be funded.

(b) Any project submitted under this SGA must be coordinated with the Continuum of Care plan for its region and must submit a certification of consistency with the applicable Continuum of Care plan.

(c) Only the following components of the SHP will be funded under this SGA: Permanent Housing and Safe Havens.

(d) Only tenant-, sponsor-, and project-based without rehabilitation components of S+C projects will be funded.

(e) The term of all proposed SHP projects must be three (3) years. The term of all proposed S+C projects must be five (5) years.

(f) New construction and substantial rehabilitation activities will not be eligible SHP activities under this notice. Minor rehabilitation activities, such as those required to remove lead-based paint or conform a unit to ADA standards, are eligible. All other activities eligible under the SHP program are eligible for purposes of this SGA.

(g) Applicants are asked to use approaches that can rapidly move chronically homeless persons into housing with necessary supportive services.

D. Other Program-Specific Requirements

Where an applicant for Supportive Housing Program funding is a state or unit of general local government that utilizes one or more nonprofit organizations to administer the homeless assistance project(s), administrative funds provided as part of the SHP grant must be passed on to the non-profit organization(s) in proportion to the administrative burden borne by them for the SHP project(s). States or units of general local government that pass on at least 50 percent of the administrative funds made available under the grant will be considered as having met this requirement. (Note: This requirement does not apply to the S+C Program, since paying the costs associated with the administration of these grants is ineligible by regulation. For the S+C program, administrative costs associated with the administration of rental assistance are eligible, but are capped at eight (8) percent of the total grant award).

E. Timeliness Standards

As an applicant, you are expected to initiate your approved projects promptly in accordance with the instructions of this announcement. In addition, if you fail to satisfy the following timeliness standards being established specifically for funding awarded under this collaborative SGA, the awarded funding may be withdrawn in whole or in part:

1. Supportive Housing Program

(a) Your award may be withdrawn if you do not demonstrate site control within three (3) months of the date of your grant award letter.

(b) Your award may be terminated if the following additional timeliness standards are not met:

- You must complete any minor rehabilitation activities permitted under the terms of your SHP award within nine (9) months of the date of the grant award letter.
- You must begin all activities that may proceed independent of minor rehabilitation activities within six (6) months of the date of the grant award letter.

2. Shelter Plus Care Program Components

Your award may be terminated if you do not meet the following timeliness standard:

- For Tenant-Based Rental Assistance, for Sponsor-Based Rental Assistance, and for Project-Based without Rehabilitation Rental Assistance, you must begin providing the rental assistance to at least a majority of the awarded units within six (6) months of the date of the grant award letter.

F. Action on Selected Applications

Selected applicants, including those conditionally selected, will be notified in writing. As necessary, conditionally selected applicants will subsequently be requested to submit additional project information, which may include documentation to show the project is financially feasible; documentation of firm commitments for cash match; documentation showing site control; information necessary for the performance of an environmental review, where applicable; and such other documentation as specified in writing to the applicant that confirms or clarifies information provided in the application. Conditionally selected applicants will be notified of the deadline for submission of such information. If a conditionally selected applicant is unable to meet any conditions for fund award within the specified time frame, those funds may be withdrawn and instead used to select the next highest ranked application(s) from the competition for which there are sufficient funds available.

G. Required Materials

The application provides the application materials, including the HUD–424 and certifications that must be used in applying for homeless assistance under this notice. In addition to the required narratives, the items that you must submit as part of the application for funding are the following:

(a) HUD–424
(b) Applicant Certification
(c) Consolidated Plan Certification
(d) Certification of Consistency with the Continuum of Care
(e) Special Projects Certifications-Discharge Policy and Mainstream Programs
(f) Disclosure of Lobbying Activities (only complete this form if applicant organization engages in lobbying activities)
(g) Applicant /Recipient Disclosure/ Update Report

H. Certification Requirements

The application also contains certifications that the applicant will comply with fair housing and civil rights requirements and other federal requirements, and (where applicable) that the proposed activities are consistent with the HUD-approved Consolidated Plan of the applicable state or unit of general local government, including the Analysis of Impediments to Fair Housing Choice and the Action Plan to address these impediments. Projects funded under this SGA will also coordinate with the regional Continuum of Care process and will provide a certification of consistency with the applicable Continuum of Care plan, if any. Projects funded under this SGA shall operate in a fashion that does not deprive any individual of any right protected by the Fair Housing Act (42 U.S.C. 3601–19), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 109 of the Housing and Community Development Act of 1974 (42 U.S.C. 5301) or the Age Discrimination Act of 1974 (42 U.S.C. 6101).

I. Corrections to Deficient Applications

After the application due date, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information you, the applicant, may want to provide. HUD may contact you to clarify an item in your application or to correct technical deficiencies. HUD may not seek clarification of items or responses that improve the substantive quality of your response to any rating factors. In order not to unreasonably exclude applications from being rated and ranked, HUD may contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants. Examples of curable (correctable) technical deficiencies include failure to submit the proper certifications or failure to submit an application that contains an original signature by an authorized official. In each case, HUD will notify you in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile or by USPS, return receipt requested. Clarifications or corrections of technical deficiencies in accordance with the information provided by HUD must be submitted within 14 calendar days of the date of receipt of the HUD notification. (If the due date falls on a Saturday, Sunday, or federal holiday, your correction must be received by HUD on the next day that is not a Saturday, Sunday or federal holiday.) If the deficiency is not corrected within this time period, HUD will reject the application as incomplete, and it will not be considered for funding.

J. Environmental Requirements

All assistance is subject to the National Environmental Policy Act and applicable related Federal environmental authorities. Section 208 of Public Law 106–377 (114 Stat. 1441, approved October 27, 2000) amended Section 443 of the Stewart B. McKinney-Vento Homeless Assistance Act to provide that for purposes of environmental review, projects shall be treated as assistance for special projects that are subject to Section 305(c) of the Multifamily Housing Property Disposition Reform Act of 1994, and shall be subject to HUD's regulations implementing that section. The effect of this provision is that environmental reviews for project activities are to be completed by responsible entities (states or units of general local government) in accordance with 24 CFR Part 58, whether or not the applicant is itself a state or a unit of general local government. Applicants (such as PHAs or nonprofit organizations) that are not states or units of general local government must request the unit of general local government to perform the environmental review. This statutory provision supersedes those portions of 24 CFR 582.230 and 583.230 that provide for automatic HUD environmental review in the case of applications from such entities. With this exception, conditional selection of projects is subject to the environmental review requirements of 24 CFR 582.230 and 583.230 as applicable. Recipients may not commit or expend any assistance or nonfederal funds on project activities (other than those listed in 24 CFR 58.22(c), 58.34 or 58.35(b)) until HUD has approved a Request for Release of Funds and environmental certification from the responsible entity. The expenditure or commitment of assistance or nonfederal funds for such activities prior to this HUD approval may result in the denial of assistance for the project under consideration.

K. Local Resident Employment

To the extent that any housing assistance funded through this collaborative SGA is used for housing rehabilitation (including reduction and abatement of lead-based paint hazards, but excluding routine maintenance, repair, and replacement), it is subject to Section 3 of the Housing and Urban Development Act of 1968, and the implementing regulations at 24 CFR part 135. Section 3, as amended, requires that economic opportunities generated by certain financial assistance for housing and community development programs shall, to the greatest extent feasible, be given to low- and very low-income persons, particularly those who are recipients of government assistance for housing, and to businesses that provide economic opportunities for these persons.

L. Relocation

The SHP and S+C programs are subject to the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA). These requirements are explained in HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition. Any person or family that moves, even temporarily, as a direct result of acquisition, rehabilitation, or demolition for a project that is assisted through one of these programs (whether or not HUD funded the acquisition, rehabilitation, or demolition) is entitled to relocation assistance. Displacement that results from leasing a unit in a structure may also trigger relocation requirements. Relocation assistance can be expensive. To avoid unnecessary costs, it is important to provide occupants with timely information notices, including a general information notice to be sent at the time the application is submitted to HUD. HUD Handbook 1378 contains guide form information notices. The HUD field office can provide a copy of the handbook and copies of appropriate information booklets to be provided to occupants. Accordingly, if the site is occupied, the applicant should contact the HUD field office in the planning stage to obtain advice, including help in estimating the cost of required relocation assistance.

M. Compliance With Fair Housing and Civil Rights Laws

As threshold items in this SGA:

(a) All applicants and their sub-recipients must comply with all Fair Housing and Civil Rights laws, statutes, regulations, and Executive Orders as enumerated in 24 CFR 5.105(a).

(b) If you, the applicant:

(i) Have been charged with a systemic violation of the Fair Housing Act alleging ongoing discrimination;

(ii) Are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an on-going pattern or practice of discrimination; or,

(iii) Have received a letter of non-compliance findings, identifying on-going or systemic noncompliance, under Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act, or section 109 of the Housing and Community Development Act, and if the charge, lawsuit, or letter of findings has not been resolved to HUD's satisfaction before the application deadline stated in this NOFA, you may not apply for assistance under this NOFA. HUD will not rate and rank your application.

HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken to address allegations of on-going discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings. Examples of actions that may be taken prior to the application deadline to resolve the charge, lawsuit, or letter of findings, include but are not limited to:

(a) A voluntary compliance agreement signed by all parties in response to the letter of findings;

(b) A HUD-approved conciliation agreement signed by all parties;

(c) A consent order or consent decree; or

(d) A judicial ruling or a HUD Administrative Law Judge's decision

that exonerates the respondent of any allegations of discrimination.

N. Conducting Business in Accordance With Core Values and Ethical Standards

Entities subject to 24 CFR parts 84 and 85 (most non-profit organizations and state, local and tribal governments or government agencies or instrumentalities who receive federal awards of financial assistance) are required to develop and maintain a written code of conduct (see Sec. 84.42 and 85.36(b)(3)). Consistent with regulations governing specific programs, your code of conduct must: prohibit real and apparent conflicts of interest that may arise among officers, employees, or agents; prohibit the solicitation and acceptance of gifts or gratuities by your officers, employees, and agents for their personal benefit in excess of minimal value; and, outline administrative and disciplinary actions available to remedy violations of such standards. If awarded assistance under this SGA, you will be required, prior to entering into an agreement with HUD, to submit a copy of your code of conduct and describe the methods you will use to ensure that all officers, employees, and agents of your organization are aware of your code of conduct. Failure to meet the requirement for a code of conduct will prohibit you from receiving an award of funds from HUD.

O. Delinquent Federal Debts

Consistent with the purpose and intent of 31 U.S.C. 3720B and 28 U.S.C. 3201(e), no award of federal funds shall be made to an applicant who has an outstanding delinquent federal debt until: (a) The delinquent account is paid in full; (b) a negotiated repayment schedule is established and at least one payment is received; or (c) other arrangements satisfactory to the Department of Housing and Urban Development are made prior to the deadline submission date.

P. Pre-Award Accounting System Surveys

HUD may arrange for a pre-award survey of the applicant's financial management system in cases where the recommended applicant has no prior federal support, the program area has reason to question whether the applicant's financial management system meets federal financial management standards, or the applicant is considered a high risk based upon past performance or financial management findings. HUD will not make an award to any applicant who does not have a financial management system that meets federal standards.

Q. Participation in HUD-Sponsored Program Evaluation

As a condition of the receipt of financial assistance under this SGA all successful applicants will be required to cooperate with all HUD staff or contractors performing HUD-funded research and evaluation studies.

R. HUD Reform Act

(A) Section 102 of the HUD Reform Act, Documentation and Public Access Requirements. Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (HUD Reform Act) and the regulations codified in 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published a notice that also provides information on the implementation of Section 102 (57 FR 1942). The documentation, public access, and disclosure requirements of Section 102 apply to assistance awarded under this SGA as follows:

(1) Documentation, public access, and disclosure requirements. HUD will ensure that documentation and other information regarding each application submitted pursuant to this SGA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations (24 CFR part 15).

(2) HUD Form 2880. HUD will also make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this SGA. Update reports (also reported on HUD Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than three years. All reports, both applicant disclosures and updates, will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations (24 CFR part 5).

(3) Publication of Recipients of HUD Funding. HUD's regulations at 24 CFR part 4 provide that HUD will publish a notice in the **Federal Register** to notify the public of all decisions made by the Department to provide:

(i) Assistance subject to Section 102(a) of the HUD Reform Act; and/or

(ii) Assistance provided through grants or Cooperative Agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

(4) Debriefing. Beginning 30 days after the awards for assistance are publicly announced and for at least 120 days after awards for assistance are publicly announced, HUD will provide a debriefing to any applicant requesting one on their application. All debriefing requests must be made in writing or by email by the authorized official whose signature appears on the HUD–424 or his or her successor in office, and submitted to the person or organization identified as the Contact under the section entitled "Further Information and Technical Assistance." Information provided during a debriefing will include, at a minimum, the final score you received for each rating factor, final evaluator comments for each rating factor, and the final assessment indicating the basis upon which assistance was provided or denied.

(B) Section 103 of the HUD Reform Act. HUD's regulations implementing Section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified in 24 CFR part 4, subpart B, section 4.26(2)(c) et. seq. and 4.28 apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Ethics Law Division at 202–708–3815. (This is not a toll-free number.) HUD employees who have specific program questions should contact the appropriate field office counsel or Headquarters counsel for the program to which the question pertains.

S. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with the HUD regulations at 24 CFR part 50 that implement Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Regulations Division, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

T. Glossary of Terms for the HUD Application

Applicant. An applicant is an entity that applies to HUD for funds. In order to be an applicant, you must submit an HUD 424. If selected for funding, the applicant becomes the grantee and is responsible for the overall management of the grant, including drawing grant funds and distributing them to project sponsors. The applicant may also be a project sponsor.

Applicant Certification. The form, required by law, in which an applicant certifies that it will adhere to certain statutory requirements, such as the Civil Rights Act of 1964.

Consolidated Plan. A long-term housing and community development plan developed by State and local governments and approved by HUD. The Consolidated Plan contains information on homeless populations. The plan also contains both narratives and maps, the latter developed by localities using software provided by HUD.

Consolidated Plan Certification. The form, required by law, in which a state or local official certifies that the proposed activities or projects are consistent with the jurisdiction's Consolidated Plan and, if the applicant is a State or unit of local government, that the jurisdiction is following its Consolidated Plan.

Homeless Person. A person sleeping in a place not meant for human habitation or in an emergency shelter. The programs covered by this application are not for populations who are at risk of becoming homeless.

Private Nonprofit Status (includes faith-based and community-based organizations). Private nonprofit status is documented by submitting either: (a) A copy of the Internal Revenue Service (IRS) ruling providing tax-exempt status under Section 501(c)(3) of the IRS Code; (b) documentation showing that the applicant is a certified United Way agency; or (c) a certification from a designated official of the organization that no part of the net earnings of the organization inures to the benefit of any member, founder, contributor, or individual; that the organization has a voluntary board; that the organization practices nondiscrimination in the provision of assistance; and that the organization has a functioning accounting system that provides for each of the following (mention each in the certification):

(a) Accurate, current and complete disclosure of the financial results of each federally sponsored project.

(b) Records that identify adequately the source and application of funds for federally sponsored activities.

(c) Effective control over and accountability for all funds, property and other assets.

(d) Comparison of outlays with budget amounts.

(e) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the use of the funds for program purposes.

(f) Written procedures for determining the reasonableness, allocability and allowability of costs.

(g) Accounting records including cost accounting records that are supported by source documentation.

Public Non-profit Status. Public nonprofit status is documented for community mental health centers by including a letter or other document from an authorized official stating that the organization is a public nonprofit organization.

Project Sponsor. The primary organization responsible for carrying out the proposed project activities. A project sponsor does not submit an HUD 424, unless it is also the applicant.

HUD 424. The information sheet required to be submitted by applicants requesting Federal Assistance.

Section III. HUD Grant Application Requirements

Part A. Supportive Housing Program (SHP) Application

General Information

Eligible and Ineligible Activities and Limitations. There are five activities that can be funded under SHP under this SGA and application for chronic homelessness. They are: acquisition, minor rehabilitation, leasing, operating costs, and administrative costs. Specific activities that are not eligible under the program components include:

(a) Support for permanent housing for non-disabled persons.

(b) Rehabilitation of a structure owned by a primarily religious organization, except in accordance with the requirements of 24 CFR 583.150(b)(2).

(c) Rehabilitation of a structure prior to an executed grant agreement with HUD. Acquisition and rehabilitation that exceeds statutory funding limitations. (See section I of this Section for the specific limits.)

(d) Homeless prevention activities.

HUD ELIGIBLE APPLICANTS AND ACTIVITIES CHART

Elements	Supportive housing	Shelter plus care
Authorizing Legislation	Subtitle C of Title IV of the McKinney-Vento Homeless Assistance Act.	Subtitle F of Title IV of the McKinney-Vento Homeless Assistance Act.
Implementing Regulations	24 CFR part 583	24 CFR part 582.
Eligible Applicant(s)	• States • Units of general local government • Special purpose units of government such as Public housing agencies (PHAs) • Private non-profit organizations • CMHCs that are public non-profit organizations	• States • Units of general local government • PHAs
Eligible Components	• Permanent Housing for Persons with Disabilities • Safe havens	• Tenant-based • Sponsor-based • Project-based without Rehabilitation
Eligible Activities [1]	• Rehabilitation • Leasing • Operating Costs	• Rental assistance
Eligible Populations	• Chronically Homeless Persons	• Chronically Homeless Persons

HUD ELIGIBLE APPLICANTS AND ACTIVITIES CHART—Continued

Elements	Supportive housing	Shelter plus care
Term of Assistance	3 years	5 years.

[1] Homeless prevention activities are statutorily ineligible under these programs. Persons at risk of homelessness are statutorily ineligible for assistance under these programs.

Section III. HUD Grant Application Requirements

Part A. Supportive Housing Program (SHP) Application

1. Project Narrative

The Project Narrative is a description of your proposed project. Please respond to the items in this section according to the SHP program you propose to carry out, using the numbering below.

Project summary. Please provide the following:

(a) Applicant and sponsor names.

(b) Program component.

(c) Total SHP request.

(d) Activities for which you are requesting funds.

(e) The type of housing (*e.g.*, apartments) proposed.

(f) The population(s) to be served.

(c) Chronically homeless population to be served. Briefly describe the following:

(a) Their characteristics and need for housing and supportive services.

(b) Where they will come from (*e.g.*, streets and emergency shelters).

(c) The outreach plan to bring them into the project.

Project (Housing) Quality

Up to 12 points will be awarded based on the extent to which your application demonstrates how the housing is appropriate to the needs of the persons to be served and the innovative quality of the project.

(a) Describe how the TYPE (*e.g.* apartments) and SCALE (*e.g.* number of units, number of persons per unit) of the proposed housing will fit the needs of the participants.

(b) Describe how the basic COMMUNITY AMENITIES (*e.g.* medical facilities, grocery store, recreation facilities, schools, etc.) will readily be accessible to your clients.

(c) Describe how the housing will be ACCESSIBLE to persons with disabilities in accordance with applicable laws.

(d) Describe how services and treatment will be LINKED to permanent housing so that the target population will be sustained in that housing.

(e) For the permanent housing for persons with disabilities component where more than 16 persons will reside in a structure: Describe what local market conditions necessitate the development of a project of this size and how the housing will be integrated into the neighborhood.

Applicant Capacity

Up to 12 points will be awarded based on the experience and performance of the applicant/sponsor involved in carrying out the project.

(a) Describe the project applicant's/sponsor's experience specifically in providing housing for the chronically homeless.

(b) Describe the applicant's/sponsor's past experiences working with other community partners on the employment and training needs of homeless individuals.

(c) Describe the project applicant's/sponsor's performance in administering housing activities, especially in serving the population to be assisted by this project.

Timeliness

Up to 11 points will be awarded based on the demonstrated ability of the applicant and project sponsor to execute the program in a timely manner.

(a) Describe the applicant's and project sponsor's ability to achieve rapid project start-up based on site control, permitting, minor rehabilitation, and rehab and occupancy schedules.

(b) Describe the applicant's and project sponsor's ability to outreach to the target population and swiftly bring them into the program and occupy all units committed in the application.

Section III. HUD Grant Application Requirements

Part A. Supportive Housing Program (SHP) Application

2. Project Information (please type or print)

[To be completed by applicants requesting SHP funding.]

Project Name:	
Project Address (street, city, state, & zip):	
Project Sponsor's Name:	Proj. Congressional District(s):
Sponsor's Address (street, city, state, & zip):	
Authorized Representative of Project Sponsor (name, title, phone number, & fax):	

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Section III. HUD Grant Application Requirements

Part A. Supportive Housing Program (SHP) Application

3. Program Component/Types

Please check the box that best classifies the project for which you are requesting funding. Check only one box. The components/types are:

☐ Permanent Housing for Persons with Disabilities

☐ Safe Havens

Section III. HUD Grant Application Requirements

Part A. Supportive Housing Program (SHP) Application

4. Existing Facilities and/or Activities Serving Homeless Persons (To be completed for new projects)

Will your proposed project use an existing homeless facility or incorporate activities that you are currently providing?

☐ Yes (Check one or more of the activities below that describe your proposed project, and proceed to section E.)

☐ No (Skip to section E.)

Facilities that you are currently operating and activities you are currently undertaking to serve homeless persons may only receive funding for the three purposes listed below. SHP funds cannot be used to fund ongoing activities. My project will:

☐ Increase the number of homeless persons served.

☐ Bring existing facilities up to a level that meets State and local government health and safety standards. If this box is checked, you must describe what standards the facility is not meeting, and why it does not meet the standards you described.

Section III. HUD Grant Application Requirements

Part A. Supportive Housing Program (SHP) Application

5. Number of Beds and Participants

This is composed of two charts:

Chart 1 is for recording the number of beds/bedrooms in the project.

Chart 2 is for recording the number of participants to be served.

Complete Chart 1 and Chart 2 based on the following instructions:

1. In the first column, please enter the requested information for all items at a point in time (a given night). You should only fill out this column if you checked "Yes" in section D. If you checked "No" in section D enter "N/A" in this column.

2. In the second column, enter the new number of beds and persons served at a point in time if this project is funded.

3. In the third column, enter the projected level (columns 1 and 2 added together) that your project will attain at a point in time.

4. In the fourth column, enter the number of persons to be served over the grant term.

Chart 1: Beds

Beds	Current Level (if applicable)	New Effort or Change in Effort	Projected Level (col.1+ col. 2)	No. Projected To Be Served Over the Grant Term
Number of Bedrooms				
Number of beds				

Chart 2: Participants

Participants	Current Level (if applicable)	New Effort or change in Effort	Projected Level (col.1+col. 2)	No. Projected to be served over the Grant Term
Number of families with children				
Of persons in families with children a. number of disabled				
b. number of other adults				
c. number of children				
Of single individuals not in families				
a. number of disabled individuals				
b. number of other individuals				

Note that, if your project is funded, you will be held responsible for achieving the numbers you enter in Section E.

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Section III. HUD Grant Application Requirements

Part A. Supportive Housing Program (SHP) Application

6. Operations Budget

Complete the Chart on the following page for your new project's total operations budget. In the first column, the operating cost activity is given. You must enter the quantity (if applicable) for each operating item that will be paid for using SHP funds. Add any other eligible operating costs not listed on the chart that will be paid for using SHP funding. For staff positions, please include the job title, salary, percent of time allocated for the position, and fringe benefits. Please ensure that the total SHP dollars requested match the amount you entered in the "SHP Total Request" column on Line 5, Operations, in your Project Budget in Section I.

In the second column, enter the amount of SHP funding requested for each eligible operating cost that will be needed in your project.

Operating costs are those costs associated with the day-to-day operation of supportive housing. Operating costs support the function and the operation of the housing project. Examples of SHP eligible operating costs include utilities, maintenance, security and salaries of staff not delivering services, such as the project manager or executive director, and indirect operating costs that meet the standards of OMB Circulars A–87 and A–122.

If requesting SHP operating funds, only the portion of the costs directly related to the operation of the housing project is eligible. For example, if a project sponsor's executive director will spend 10% of his/her time providing management to the housing project, then (up to) 10% of his/her salary can be charged as an SHP operating expense. As another example, in cases of shared utilities, SHP operating funds may pay only for the portion of the utilities associated with the housing project based on the square footage of the project's space. If the housing project occupies 25% of the building's space, then (up to) 25% of the monthly utility bill can be paid for using SHP operating funds.

(a) SHP operating funds may not be used to pay for the following costs:

(b) Operating costs of a supportive services only facility;

(c) Administrative expenses such as audits and preparing HUD reports;

(d) Rent of space for supportive housing and/or supportive services (see Real Property Leasing);

(e) The payment of principal and interest on a loan for a facility currently being used as supportive housing and/or for the delivery of services; and

(f) Depreciation, because it does not constitute an incurred cost that requires a cash outlay.

SHP funds can be used to pay up to 75% of the total operations budget for the housing project. This means that the project sponsor must make a cash payment for 25% of the project's operating budget annually.

Example:

Operating costs	SHP dollars requested (3 years)
Utilities	32,000
Maintenance Engineer (salary, % time, fringe benefits) $40,000/annually .20 × .15 fringe benefits × 3 years = $18,400	27,600

Chart: Operating Costs

Identify the day-to-day costs of operating supportive housing that will be paid for using SHP funding during the term of the project.

Operating costs	SHP dollars requested (3 years)
Maintenance, Repair	
Staff (position, salary, % of time, fringe benefits)	
Utilities	
Equipment (lease/buy)	
Supplies (quantity)	
Insurance	
Furnishing (quantity)	
Relocation (no. of persons)	
Food (perishable/non-perishable)	
Other operating costs (please specify**)	
Other operating costs (please specify**)	
Other operating costs (please specify**)	
Total SHP Dollars Requested*	
Total Operating Costs Budget***	

*Total SHP dollars requested must equal the amount shown in the "SHP Total Request" column, Line 5, of the Project Budget portion of Section I.

**If not specified, the costs will be removed from the budget.

***The total operating costs entered here must equal the amount shown in the "Total Budget" column, Line 5 of the Project Budget portion of Section I.

Section III. HUD Grant Application Requirements

Part A. Supportive Housing Program (SHP) Application

7. Leasing

SHP funds may be used to lease space for supportive housing. If you are requesting SHP leasing funds, fill out the appropriate table(s) that follows. Housing space may be in the form of scattered-site leased units, or within a structure. The structures to be leased may be structures currently configured for, or structures to be converted to provide, supportive housing. Under no circumstances may SHP leasing funds be used to lease units or structures owned by the project sponsor, the selectee, or their parent organizations. This includes organizations that are members of a general partnership where the general partnership owns the structure.

A. Leased Unit(s) for Housing

If you propose to lease units in more than one metropolitan or non-metropolitan area, fill in the appropriate number of tables for each area with a different FMR or actual rent.

- Please reproduce this Section as needed to accommodate projects using more than one FMR or actual rent.
- Enter the number of unit(s) by the bedroom size to be leased and the lower of the actual rent or the FMR as published in the **Federal Register** on September 30, 2002. (FMRs may be found using this Web site: *http://www.huduser.org/datasets/fmr.html*) The space to be leased may be scattered-site (*e.g.*, one-bedroom apartments in five different apartment complexes) or contained within a structure (*e.g.*, a group home with six bedrooms).
- Multiply the number of units by the FMR or actual rent, whichever is lower, by the length of the grant (# of units × FMR or actual rent × months based on grant term) and enter the result in the total column.
- Please note that the FMR for a single room occupancy (SRO) unit is equal to 75% (0.75) of the 0-bedroom FMR. The FMRs for unit sizes larger than 4-bedrooms are calculated by adding 15% to the 4-bedroom FMR for each extra bedroom. For example, the FMR for a 5-bedroom unit is 1.15 times the 4-bedroom FMR, and the FMR for a 6-bedroom unit is 1.30 times the 4-bedroom FMR.
- If your project has been approved for exception rents, use those amounts when completing these charts and submit your approval letter with this document.
- Chart A should be filled out only if you will lease individual units or structures that are currently configured for housing and, therefore, an FMR or actual rent can be used. If you have negotiated an actual rent(s) that is lower than the FMR, please use that amount instead of the FMR. The actual rent may not exceed the FMR.

Chart A:

Name of metropolitan or non-metropolitan FMR area:

Address (indicate if scattered site):

Size of units	No. of units	FMR or actual rent	No. of months	Total
1. SRO	X			
2. 0 bdrm	X			
3. 1 bdrm	X			
4. 2 bdrm	X			
5. 3 bdrm	X			
6. 4 bdrm	X			
7. 5 bdrm	X			
8. 6 bdrm	X			
9. Other	X			
10. Totals				$

B. Leased Structure(s) for Housing

If you will lease a structure or portion of a structure for housing, fill out Chart B below using a monthly leasing cost that is comparable to and no more than the rents being charged for similar space in the area. This applies to structures already configured for housing and for those that will be converted. If your project has more than one structure, reproduce Chart B and fill it out starting with structure 2.

- Multiply the monthly leasing costs by the number of months requested for funding and enter the result in the total column.
- Chart B should be filled out only if you will lease a structure or portion of a structure for which an FMR is not applicable.

Chart B:
Address:

Structure	Monthly leasing cost	Number of months	Total
	$	=	$

Section III. HUD Grant Application Requirements

Part A. Supportive Housing Program (SHP) Application

8. Homeless Veterans

Are veterans among the homeless subpopulations your project will specifically target and intends to serve?

☐ Yes ☐ No

If your answer to the first question is yes, are veterans the primary target population of your proposed project?

☐ Yes ☐ No

When developing your budget(s), please keep in mind that each structure can receive the maximum amount of funds according to the following per-structure limits:

- For acquisition and/or rehabilitation, the SHP request for these activities combined is limited by law to between $200,000 and $400,000 depending on whether the structure is in a HUD-identified high-cost area for acquisition and rehabilitation. Contact your local HUD Field Office to determine if your project is in a high-cost area, and, if so, which of the following percentages or limits apply:
- 100% to 119%, the limit is $200,000
- 120% to 139%, the limit is $250,000
- 140% to 159%, the limit is $300,000
- 160% to 174%, the limit is $350,000
- 175% and up, the limit is $400,000
- If you request funds for acquisition and/or rehabilitation, the law requires that you match the requested amount with an equal amount of cash for the activities. Documentation of matching funds is not required in this application; however, you will be asked to submit it at a later date.

Project Budget (complete all 3 columns)

- Enter the amount of SHP funds requested by line item in the "SHP Total Request" column. You may request funding for three years. The three-year term will be the same for leasing, and operations. In the "Applicant Cash" column, enter the amount of other cash that will be contributed to the project. This amount plus the SHP request must equal the "Total Budget" amount for the project, as shown in the last column.
- If your project contains one structure or no structures this is the only budget you need to fill out. If your project contains multiple structures, please add up the SHP structure budgets on the next page and enter those totals below.
- HUD will review this chart in relation to the proposed activities and the number of persons to be served to determine whether the project is cost-effective (which is a threshold criterion).
- Applicants requesting funds for acquisition and/or rehabilitation must comply with Section 423 of the Stewart B. McKinney-Vento Homeless Assistance Act, as amended.

The grant term for all projects is for 3 years.

Section III. HUD Grant Application Requirements

Part A. Supportive Housing Program (SHP) Application

9. Budget

This section consists of two budgets—a project budget and a structure budget. Please refer to the budgets for specific instructions. The project budget is to be used for all projects.

Complete the Project Budget

Proposed Activities	SHP Request	Applicant Cash	Total Budget (Col. 1 + Col. 2)
1. Acquisition			
2. Rehabilitation			
3. Subtotal (lines 1 and 2)	*		
4. Real Property Leasing (three years)			
5. Operations (three years)	**		
6. SHP Request (subtotal lines 3 through 5)		[redacted]	
7. Administrative Costs (up to 5% of line 6)	***		
8. Total SHP Request (total lines 6 and 7)			

By law, SHP funds can be no more than 50% of the total acquisition, rehabilitation, and new construction budget.

****By law, SHP can pay no more than 75% of the total operating budget.***

*****Applicants may request up to 5% of each project award for administrative costs, such as accounting for the use of the grant funds, preparing HUD reports, obtaining audits, and other costs associated with administering the grant. State and local government applicants and project sponsors must work together to determine the plan for distributing administrative funds between applicant and project sponsor (if different). Please refer to the HUD Section II of the NOFA. If selected for funding, all applicants will be required to submit a plan for distributing administrative funds as part of the technical submission.***

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Structure Budget for Projects With More Than One Structure

If your project contains only one structure or no structures, please fill out only the project budget on the previous page. If, however, your project contains more than one structure, fill out the information requested below for the number of structures your project proposes. Do not fill out structure budgets for scattered site leasing projects unless SHP funds for rehabilitation are being requested. For each structure budget, enter the amount of SHP funds requested by line item in the first column. For leasing and operations, the amounts you enter should be for three years, which is the SHP grant term. The term will be the same for leasing and operations. In the second column, enter the total cost for each line item, which is the SHP request plus all other funds needed to pay for each line item. For your convenience, four structure budgets are provided below. You may reproduce this page if your project will have five or more structures; however, please attach the additional structure budgets to this page and label them appropriately starting with Structure E. Enter administrative costs only on the Project Budget.

Structure A

Structure Address:

City, State, ZIP:

	SHP Request	Total Budget
1. Acquisition		
2. Rehabilitation		
3. Real Property Leasing		
4. Operations		
5. Total		

Structure B

Structure Address:

City, State, ZIP:

	SHP Request	Total Budget
1. Acquisition		
2. Rehabilitation		
3. Real Property Leasing		
4. Operations		
5. Total		

Structure C

Structure Address:

City, State, ZIP:

	SHP Request	Total Budget
1. Acquisition		
2. Rehabilitation		
3. Real Property Leasing		
4. Operations		
5. Total		

Structure D

Structure Address:

City, State, ZIP:

	SHP Request	Total Budget
1. Acquisition		
2. Rehabilitation		
3. Real Property Leasing		
4. Operations		
5. Total		

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Section III. HUD Grant Application Requirements

Part A. Supportive Housing Program (SHP) Application

10. Additional Information

HUD needs the following information to respond to public inquiries about program benefit. Your responses will not affect in any way the scoring of your submission.

1. Which of the following subpopulations will your project serve? (Check all that apply)

☐ Severely Mentally Ill
☐ Chronic Substance Abusers
☐ Dually Diagnosed
☐ AIDS or Related Diseases

2. Will the proposed project be located in a rural area? (A project is considered to be in a rural area when the project will be primarily operated either (1) in an area outside of a Metropolitan Area, or (2) in an area outside of the urbanized areas within a Metropolitan Area.)

☐ Yes
☐ No

3. Is the sponsor of the project a religious organization, or a religiously affiliated or motivated organization? (Note: This characterization of religious is broader than the standards used for defining a religious organization as "primarily religious" for purposes of applying HUD's church/state limitations. For example, while the YMCA is often not considered "primarily religious" under applicable church/state rules, it would likely be classified as a religiously motivated entity.)

☐ Yes
☐ No

4. Will the proposed project be located in, or make use of, surplus military buildings or properties that are located on a military base that is covered by the provisions of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994?

☐ Yes
☐ No

If "yes," please provide the name of the military installation: _____

Section III. HUD Grant Application Requirements

Part B. Shelter Plus Care Program (S+C) Application

General

This Section is for Shelter Plus Care projects. Eligible applicants for this program are States, units of local government and Public Housing Authorities.

Program Components

Shelter Plus Care (S+C) components were created by statute and designed to give applicants flexibility in devising appropriate housing and supportive services for homeless persons with disabilities. Assisted units may be of any type, from apartments to SRO-type units. You may design a program that has participants' first living in a group setting with intensive supportive services, then moving to another setting but retaining the rental assistance during the term of the grant, as long as they stay within a S+C unit.

Participants in S+C units receive supportive services. These services may be provided by the applicant, funded by the applicant but provided by a third party, or both funded and provided by a third party. Rental assistance provided through the S+C program must be matched in the aggregate on a dollar for dollar basis by the recipient with supportive services.

Tenant-based Rental Assistance (TRA) provides rental assistance that permits participants to choose their own housing. Participants retain the rental assistance even if they move. To help you provide supportive services or for purposes of controlling housing costs, you may require participants to live in a particular structure for the first year of assistance or to live in a particular area for the entire rental assistance period.

Sponsor-based Rental Assistance (SRA) provides rental assistance through contract(s) between the grant recipient and nonprofit organization(s), called a sponsor. The nonprofit organization may be a private nonprofit organization or a community mental health center established as a public nonprofit organization. The assisted units must be owned or leased by the sponsor. After a grant is awarded, should the sponsor lose its capacity to own or lease the assisted units, the grantee must identify an alternate sponsor in order to continue to serve the original number of persons proposed to be served.

Project-based Rental Assistance (PRA) without Rehabilitation provides rental assistance through a contract with a building owner(s). An applicant must enter into a contract with the building owner(s) for the full five-year period of assistance. The building owner must agree to accept eligible S+C participants to live in an assisted unit for this time period. Only minor (up to $3,000 per unit) rehabilitation is eligible under this component.

Persons With Disabilities

To be eligible to participate in a Shelter Plus Care funded project, a person must be both homeless and disabled.

Persons with disabilities are those who have a disability that:

- Is expected to be of long-continued and indefinite duration;
- Substantially impedes his or her ability to live independently; and
- Is such a nature that the disability could be improved by more suitable housing conditions. The disability may be a physical, mental, or emotional impairment, including an impairment due solely to alcohol or drug abuse.

The S+C Program specifically targets several disabilities. These targeted disabilities are:

- Serious mental illness
- Chronic alcohol and/or other drug abuse
- AIDS or related diseases

The disability may also be developmental. A severe, chronic developmental disability is characterized as

- Being caused by mental or physical impairment;
- Manifested before the person is 22 years old;
- Likely to continue indefinitely;
- Reflecting a need for a combination and sequence of special, inter-disciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated; and
- Resulting in substantial functional limitations in at least three of the following areas: Self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency.

Section III. HUD Grant Application Requirements

Part B. Shelter Plus Care Program (S+C) Application

1. Project Narrative

This section is a description of your proposed project. Please respond to all of the items in this section. A project may include no more than one component and may be carried out by no more than one project sponsor.

1. Project summary. Please provide the following:
a. Names of applicant and sponsor (if appropriate)
b. Program component
c. Total S+C request
d. The type of housing and number of units proposed
e. The population to be served.
2. Homeless population to be served. Briefly describe the following:
a. Their characteristics and needs for housing and supportive services.
b. Where they will come from (streets and emergency shelters).

c. The outreach proposed to bring them into the project.

3. Project (Housing) Quality

Up to 12 points will be awarded based on the extent to which your application demonstrates how the housing is appropriate to the needs of the persons to be served.

a. Describe how the TYPE (*e.g.* apartments, group home) and SCALE (*e.g.* number of units, number of persons per unit) of the proposed housing will fit the needs of the participants.

b. Describe how the basic COMMUNITY AMENITIES (*e.g.* medical facilities, grocery store, recreation facilities, schools, etc.) will readily be accessible to your clients.

c. Describe how the housing will be ACCESSIBLE to persons with disabilities in accordance with applicable laws.

d. Describe how services and treatment will be LINKED to permanent housing so that the target population will be sustained in that housing.

4. Applicant Capacity

Up to 12 points will be awarded based on the experience of all organizations involved in carrying out the project.

a. Describe the project applicant's experience specifically in providing housing, especially for the population to be assisted by this project.

b. Describe the project applicant's performance in administering housing activities, especially in serving the population to be assisted by this project.

5. Timeliness

Up to 11 points will be awarded based on the demonstrated ability of the applicant and project sponsor to execute the program in a timely manner.

a. Describe the applicant's and project sponsor's ability to achieve rapid project start-up based on site control, permitting, minor rehabilitation, and occupancy and rehab schedules.

b. Describe the applicant's and project sponsor's ability to outreach to the target population and swiftly bring them into the program and occupy all units committed in the application.

[To be completed only by applicants requesting Shelter Plus Care funding.]

Section III. HUD Grant Application Requirements

Part B. Shelter Plus Care Program (S+C) Application

2. Component Selection

Select the S+C component that describes your project (check only one box)

☐ TRA ☐ SRA
☐ PRA without Rehab

Section III. HUD Grant Application Requirements

Part B. Shelter Plus Care Program (S+C) Application

3. Project Information (please type or print)

Project Name:	
Project Address (street, city, state, & zip):	
Project Sponsor's Name (for SRA projects):	Project Congressional District(s):
Sponsor's Address (street, city, state, & zip) (for SRA projects):	
Authorized Representative of Project Sponsor (name, title, phone number, & fax) (for SRA projects):	

Section III. HUD Grant Application Requirements

Part B. Shelter Plus Care Program (S+C) Application

4. Targeted Disabilities

In each category shown in the chart below, estimate, when the program is fully operational, the number of proposed participants expected to receive rental assistance at a point in time. Include each participant only once, in either Part 1 or Part 2. Part 1 should only include persons with disabilities who will not have family members living with them. Do not double count.

Part 1: Individual Participants not in Families Persons with:	Number of Participants
Serious Mental Illness	
Chronic Substance Abuse Problems	
Both Serious Mental Illness & Chronic Substance Abuse Problems	
AIDS or Related Diseases	
Other Disabilities (specify)	
(a) Total Participants: (not in families)	
Part 2: Participants in Families Persons with:	
Serious Mental Illness	
Chronic Substance Abuse Problems	
Both Serious Mental Illness & Chronic Substance Abuse Problems	
AIDS or Related Diseases	
Other Disabilities (specify)	
(b) Total Participants: (in families)	
(c) Number of other Family Members Living with Participants	
Total Persons Served from Parts 1 and 2 [(a) + (b) +(c)]	

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Section III. HUD Grant Application Requirements

Part B. Shelter Plus Care Program (S+C) Application

5. Major Milestones

Please complete the chart by entering the number of months planned from grant execution to the following milestones:

First unit occupied	Supportive services begin	Last unit occupied
months	months	months

Section III. HUD Grant Application Requirements

Part B. Shelter Plus Care Program (S+C) Application

6. Budget

Fill out the information requested for the S+C component you are requesting funding for. Make certain that only one component (TRA, SRA, PRA without rehab) budget is completed in this section.

Requested subsidy cannot exceed current FMR unless an Exception Rent approval letter is attached.

6.1. Tenant-based Rental Assistance (TRA) Project Budget

Applicants requesting TRA must complete the chart below showing the number of units expected to be used in your program. Multiply the applicable existing fair market rents (FMRs) as published in the **Federal Register** (FR)

on September 30, 2002, by the number of units of a given size by 60 months. [Please be advised that the actual FMRs used in calculating your grant will be those in effect at the time the grants are approved which may be higher than those found in the September 30, 2002, FR Notice.] The SRO FMR should be rounded to the nearest whole number before multiplying by the number of units and the number of months. The FMR for each single room occupancy SRO unit is equal to 75 percent of the 0-bedroom FMR.

Complete a separate chart for each jurisdiction that has a different FMR.

Name of metropolitan or non-metropolitan area for the FMR used:

Dwelling United	Number of units	×	FMR $	×	Number of months	=	Total amount requested $
SRO					60		
0 Bedroom					60		
One Bedroom					60		
Two Bedroom					60		
Three Bedroom					60		
Four Bedroom					60		
Other: (specify)					60		
Total TRA Assistance							$

6.2. Sponsor-based Rental Assistance (SRA) Project Budget

A. Non-profit Status: Non-profit organizations must attach to this section one of the following:

- Private non-profit organizations must submit a copy of their IRS ruling, providing tax-exempt status under Section 501 C (3) of the IRS Code of 1986, as amended, or documentation of nonprofit status as described in the Glossary on page 4.
- Public non-profit community mental health centers must attach a letter or other document acceptable to HUD from an authorized official stating that the organization is a public nonprofit organization.

B. Housing Description. Complete the chart below indicating the address of the specific structure(s) to be used, the number of units by bedroom size in each, and whether it is or will be owned or leased by the nonprofit entity.

Address (street, city, state & ZIP)	Number of units by size							Owned/Leased (check one)	
	SRO	0	1	2	3	4	4		

Reminder: You may only have one sponsor per project.

C. Grant Amount. In the following chart, show the number of units by size expected to be owned or leased by the sponsor. Multiply the applicable existing FMRs as published in the **Federal Register** (FR) on September 30, 2002, by the number of units of a given size by 60 months. [Please be advised that the actual FMRs used in calculating your grant will be those in effect at the time the grants are approved which may be higher than those found in the September 30, 2002, FR Notice.]

The SRO FMR should be rounded to the nearest whole number before multiplying by the number of units and the number of months. The FMR for each SRO unit is equal to 75 percent of the 0-bedroom FMR. Complete a separate chart for each jurisdiction that has a different FMR.

Name of metropolitan or non-metropolitan area for the FMR used:

Dwelling units	Number of units	×	FMR $	×	Number of months	=	Total amount requested $
SRO					60		
0 Bedroom					60		
One Bedroom					60		
Two Bedroom					60		

Dwelling units	Number of units	×	FMR $	×	Number of months	=	Total amount requested $
Three Bedroom					60		.
Four Bedroom					60		.
Other: (specify)					60		.
Total SRA Assistance ..							$.

6.3. Project-based Rental Assistance (PRA) Project Budget

A. Site. In the chart below, indicate the address of the property to be assisted.
Address: (street, city, state and ZIP) ____

B. Grant Amount. For each property, complete a separate copy of the appropriate chart below showing the number of units by size, expected to be assisted at this property. Multiply the applicable existing FMRs as published in the **Federal Register** (FR) on September 30, 2002, by the number of units of a given size by the number of months. [Please be advised that the actual FMRs used in calculating your grant will be those in effect at the time the grants are approved which may be higher than those found in the September 30, 2002, FR Notice.] The SRO FMR should be rounded to the nearest whole number before multiplying by the number of units and the number of months. The FMR for each SRO unit is equal to 75 percent of the 0-bedroom FMR.

CHART 1. PRA UNITS WITHOUT REHABILITATION

Name of metropolitan or non-metropolitan area for the FMR used:

Dwelling units	Number of units	×	FMR $	×	Number of months	=	Total amount requested $
SRO					60		.
0 Bedroom					60		.
One Bedroom					60		.
Two Bedroom					60		.
Three Bedroom					60		.
Four Bedroom					60		.
Other: (specify)					60		.
Total PRA without Rehab $.							$.

Section III. HUD Grant Application Requirements

Part B. Shelter Plus Care Program (S+C) Application

7. Homeless Veterans

Are veterans among the homeless subpopulation(s) your project will specifically target and intend to serve?
☐ Yes ☐ No
If your answer to the first question is yes, are veterans the primary target population of your proposed project?
☐ Yes ☐ No

Section III. HUD Grant Application Requirements

Part B. Shelter Plus Care Program (S+C) Application

8. Additional Information

HUD needs the following information to respond to public inquiries about program benefit. Your responses will not affect in any way the scoring of your submission.

Which of the following subpopulations will your project serve? (Check all that apply)
☐ Severely Mentally Ill
☐ Chronic Substance Abusers
☐ Dually Diagnosed
☐ AIDS or Related Diseases

Will the proposed project be located in a rural area? (A project is considered to be in a rural area when the project will be primarily operated either (1) in an area outside of a Metropolitan Area, or (2) in an area outside of the urbanized areas within a Metropolitan Area.)
☐ Yes
☐ No

Is the sponsor of the project a religious organization, or a religiously affiliated or motivated organization? (Note: This characterization of religious is broader than the standards used for defining a religious organization as "primarily religious" for purposes of applying HUD's church/state limitations. For example, while the YMCA is often not considered "primarily religious" under applicable church/state rules, it would likely be classified as a religiously motivated entity.)
☐ Yes
☐ No

Will the proposed project be located in, or make use of, surplus military buildings or properties that are located on a military base that is covered by the provisions of the Base Closure Community Redevelopment and Homeless Assistance Act of 1994?
☐ Yes
☐ No
If "yes," please provide the name of the military installation: _____

Additional stipulations for HUD applicants follow:

Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on federal and federally-funded Construction Contracts. Compliance with HUD regulations at 24 CFR 5.108 implementing Executive Order 13202 is a condition of receipt of assistance under this SGA.

Procurement of Recovered Materials. State agencies and agencies of a political subdivision of a state, including PHAs, that are using assistance under this SGA for procurement, and any person contracting with such an agency with respect to work performed under an assisted contract, must comply with the requirements of Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. In accordance with Section 6002, these agencies and persons must procure items designated in guidelines of the Environmental Protection Agency at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the quantity acquired in the preceding fiscal year exceeded $10,000; must procure solid waste management services in a manner that maximizes energy and resource recovery; and must have established an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines."

PART VIII. Monitoring and Reporting

DOL Monitoring: The ODEP is responsible for ensuring the effective implementation of each competitive Cooperative Agreement project in accordance with the provisions of this announcement and the terms of the Cooperative Agreement award document. Applicants should assume that ODEP staff, or their designees (*i.e.*, VETS, ETA, or HUD), will conduct on-site project reviews periodically. Reviews will focus on timely project implementation, performance in meeting the Cooperative Agreement's programmatic goals and objectives, expenditures of Cooperative Agreement funds on allowable activities, integration and coordination with other resources and service providers in the local area, project management, and administration of project activities. The Ending Homelessness through Employment and Housing Cooperative Agreements may be subject to other additional reviews, at the discretion of the ODEP.

DOL Reporting: In addition to the combined HUD and DOL Annual Performance Report cited at the end of this Section, DOL Cooperative Agreement awardees will be required to submit to DOL quarterly financial and narrative progress reports for those quarters other than the one that coincides with the HUD and DOL Annual Performance Report. Also, all awardees will be expected to provide demographic and other types of information on persons who are chronically homeless securing employment through use of "customized employment" strategies (including information on veteran status, types of jobs, wages, and benefits secured by specific homeless individuals with disabilities) and other areas addressed through the linkages and networks facilitated by project activities.

Awardees will be required to submit periodic financial and participation reports. Specifically, the following reports will be required:

A. Quarterly reports: The quarterly report is estimated to take ten hours to complete. The form for the Quarterly Report will be provided by the ODEP. The ODEP will work with the awardee to help refine the requirements of the report, which will, among other things, include measures of ongoing analysis for continuous improvement and customer satisfaction. Quarterly reports will be due for the 1st, 2nd & 3rd quarters of each year only (Note that the HUD and DOL Annual Performance Report required at the end of this section replaces the 4th quarter report).

B. Standard Form 269: Financial Status Report Form (FSR) will be Completed on a quarterly basis, using the on-line electronic reporting system.

C. *Final Project Report:* The final report will include an assessment of project performance and outcomes achieved. The final report is estimated to take 20 hours. This report will be submitted in hard copy and on electronic disk using a format and following instructions, which will be provided by the DOL. An outline of the final report is due to ODEP 45 days before termination of the Cooperative Agreement with a draft of the final report due to the ODEP 30 days before the termination of the Cooperative Agreement. The final report is due to the DOL within 30 days following the termination of the Cooperative Agreement.

All awardees must agree to cooperate with an independent evaluation to be conducted by ODEP. ODEP will arrange for and conduct this independent evaluation of the outcomes, impacts, and accomplishments of each funded project. Awardees must agree to make available records on all parts of project activity, including participant employment and wage data, and to provide access to personnel, as specified by the evaluator(s), under the direction of the ODEP. This independent evaluation is separate from the ongoing evaluation for continuous improvement required of the awardee for project implementation. The ODEP's evaluation of the Ending Homelessness through Employment and Housing Cooperative Agreements includes a process evaluation that includes extensive information pertaining to achievements under the Cooperative Agreement, summary information, number of people with disabilities receiving services, number of people employed through the One-Stop system and other sources.

Under support provided by the ETA, it is planned that a complimentary technical assistance effort will be undertaken. Awardees are expected to cooperate with this planned technical assistance initiative. Awardees must also agree to work with ODEP's other various technical assistance efforts in order to freely share with others what is learned about delivering customized employment services to the persons who are chronically homeless. Awardees must agree to collaborate with other research institutes, centers, studies, and evaluations that are supported by DOL, HUD, and other relevant federal agencies, as appropriate. Finally, awardees must agree to actively utilize the programs sponsored by the ODEP, including the Job Accommodation Network, (www.jan.wvu.edu), and the Employer Assistance Referral Network (www.earnworks.com).

HUD Monitoring and Reporting

HUD grantees will be required to complete the Annual Performance Report and will be monitored by their nearest HUD field office.

DOL and HUD Performance Reporting

With the assistance of the technical assistance providers, DOL and HUD grantees will produce a combined annual narrative report to:

1. Document lessons learned—Grantees should discuss the successes and challenges during the grant year regarding a. collaborative interagency efforts, b. new service delivery models; and c. working with the chronically homeless population; 2. Report success rates of program participants regarding a. completion of employment preparation, b. achievement of employment, c. increase in earned

income, and d. sustaining of housing over time.

Part IX. Review Process and Evaluation Criteria

Applications will be reviewed by representatives from DOL and HUD in a comprehensive review process. First, representatives at DOL and HUD will separately score DOL and HUD sections, respectively, to determine a score for each agency's section. Next, an interdepartmental team will review the Collaborative Approach and will score this section jointly, according to the criteria set forth in this SGA. The scores from the agency-specific and the reviews of the Collaborative section will be totaled, and the applications will be ranked by score from highest to lowest nationally. In order to ensure maximum geographic diversity in the awards, the federal departments reserve the right to make selections out of rank order to provide for geographic distribution of funds.

The maximum total score for any applicant under this SGA is 100 points. These points are divided between the HUD and DOL sections and the Collaboration section. The HUD and DOL sections are worth a total of 70 points. Within these 100 points, HUD's portion is worth 35 points and the DOL section is worth 35 points. If an application is deficient in either the HUD or DOL section, the entire application will be disqualified. Deficiency is defined as scoring below 40 percent of the allotted points for either agency's section.

DOL Cooperative Agreement applications will be reviewed for compliance with the requirements of this notice. DOL's panel results are advisory in nature and not binding on the DOL Grant Officer. DOL may elect to award Cooperative Agreements with or without discussion with the offeror. In situations without discussions, an award will be based on the offeror's signature on the SF–424, which constitutes a binding offer. The DOL Grant Officer may consider any information that is available and will make final award decisions based on what is most advantageous to the government, considering such factors as:

- Panel findings;
- Geographic distribution of the competitive applications;
- Assuring a variety of program designs; and
- Availability of funds

Part X. Administrative Provisions

A. Administrative Standards and Provisions

Grantees are strongly encouraged to read these regulations before submitting a proposal. The Cooperative Agreements awarded under this SGA shall be subject to the following as applicable:

- 29 CFR Part 95—Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and With Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments, and International Organizations;
- 29 CFR Part 96—Audit Requirements for Grants, Contracts, and Other Agreements;
- 29 CFR Part 97—Uniform Administrative Requirement for Grants and Cooperative Agreements to State and Local Governments.

B. Allowable Costs

Determinations of allowable costs shall be made in accordance with the following applicable federal cost principles:

- State and Local Government—OMB Circular A–87
- Nonprofit Organizations—OMB Circular A–122
- Profit-Making Commercial Firms—48 CFR part 31

Profit will not be considered an allowable cost in any case.

C. Cooperative Agreement Assurances

As a condition of the award, the applicant must certify that it will comply fully with the nondiscrimination and equal opportunity provisions of the following laws:

- 29 CFR Part 31—Nondiscrimination in Federally-assisted programs of the Department of Labor, effectuation of Title VI of the Civil Rights Act of 1964;
- 29 CFR Part 32—Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Assistance (Implementing section 504 of the Rehabilitation Act, 29 U.S.C. 794);
- 29 CFR Part 36—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance (Implementing title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et. seq.*); and
- 29 CFR Part 37—Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998 (WIA), (Implementing Section 188 of the Workforce Investment Act, 29 U.S.C. 2938).

The applicant must include assurances and certifications that it will comply with these laws in its Cooperative Agreement application. The assurances and certifications are attached as Appendices A, B.

Signed at Washington, DC this 11th day of July, 2003.

Lawrence J. Kuss,

DOL Grant Officer.

Signed at Washington, DC this 11th day of July, 2003.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development, U.S. Department of Housing and Urban Development.

Appendix A. DOL forms/certifications

- Application for Federal Assistance, Form SF 424
- Budget Information Sheet, Form SF 424A
- Assurances and Certifications Signature Page
- Survey on Ensuring Equal Opportunity

Appendix B. HUD forms/certifications

- HUD–424
- Applicant Certification
- Consolidated Plan Certification
- Certification of Consistency with the Continuum of Care
- Special Projects Certifications-Discharge Policy and Mainstream Programs
- Disclosure of Lobbying Activities (only complete this form if applicant organization engages in lobbying activities)
- Applicant/Recipient Disclosure/Update Report

BILLING CODE 4510–CX–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED: July 10, 2003		Applicant Identifier
3. DATE RECEIVED BY STATE		State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY		Federal Identifier

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address *(give city, county, State, and zip code)*:

Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*:

7. TYPE OF APPLICANT: *(enter appropriate letter in box)*

A. State · H. Independent School Dist.
B. County · I. State Controlled Institution of Higher Learning
C. Municipal · J. Private University
D. Township · K. Indian Tribe
E. Interstate · L. Individual
F. Intermunicipal · M. Profit Organization
G. Special District · N. Other (Specify) _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es)

A. Increase Award · B. Decrease Award · C. Increase Duration
D. Decrease Duration · Other *(specify)*:

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT: Start Date · Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant · b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ 0 .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Appendix A

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: – "New" means a new assistance award. – "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. – "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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OMB Approval No. 0348-0044

BUDGET INFORMATION - Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$ 0.00
2.						0.00
3.						0.00
4.						0.00
5. Totals		$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
	$	$	$	$	$ 0.00
a. Personnel					0.00
b. Fringe Benefits					0.00
c. Travel					0.00
d. Equipment					0.00
e. Supplies					0.00
f. Contractual					0.00
g. Construction					0.00
h. Other					0.00
i. Total Direct Charges (*sum of 6a-6h*)		0.00	0.00	0.00	0.00
j. Indirect Charges					0.00
k. TOTALS (*sum of 6i and 6j*)	$	0.00	0.00	0.00	$ 0.00
7. Program Income	$				$ 0.00

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$ 0.00
9.				0.00
10.				0.00
11.				0.00
12. TOTAL *(sum of lines 8-11)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ 0.00	$	$	$	$
14. Non-Federal	0.00				
15. TOTAL *(sum of lines 13 and 14)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION F - OTHER BUDGET INFORMATION

21. Direct Charges:

22. Indirect Charges:

23. Remarks:

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Appendix A

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program

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Appendix A

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

Appendix A

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

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Appendix A

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

Survey on Ensuring Equal Opportunity FOR APPLICANTS

Federal Agency Use Only

OMB No. 1225-0083 Exp. 02/28/2006

NOTE: Please place survey form directly behind the Standard Application for Federal Assistance (SF 424) fact sheet.

Purpose: This form is for applicants that are private nonprofit organizations (not including private universities). Please complete it to assist the federal government in ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for federal funding. Information provided on this form will not be considered in any way in making funding decisions and will not be included in the federal grants database.

1. Does the applicant have 501(c)(3) status?

❑ Yes ❑ No

2. How many full-time equivalent employees does the applicant have? *(Check only one box).*

❑ 3 or Fewer ❑ 15-50
❑ 4-5 ❑ 51-100
❑ 6-14 ❑ over 100

3. What is the size of the applicant's annual budget? *(Check only one box.)*

❑ Less Than $150,000
❑ $150,000 - $299,999
❑ $300,000 - $499,999
❑ $500,000 - $999,999
❑ $1,000,000 - $4,999,999
❑ $5,000,000 or more

4. Is the applicant a faith-based/religious organization?

❑ Yes ❑ No

5. Is the applicant a non-religious community-based organization?

❑ Yes ❑ No

6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?

❑ Yes ❑ No

7. Has the applicant ever received a government grant or contract (Federal, State, or local)?

❑ Yes ❑ No

8. Is the applicant a local affiliate of a national organization?

❑ Yes ❑ No

Survey Instructions on Ensuring Equal Opportunity for Applicants

1. 501(c) (3) statuses is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1225-0083**. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** Departmental Clearance Officer, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-1301, Washington, D.C. 20210. **If you have comments or concerns regarding the status of your individual submission of this form, write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Appendix A

Application for Federal Assistance

U.S. Department of Housing and Urban Development

OMB Approval No.2501-0017 (exp. 03/31/2005)

1. Type of Submission ☐ Application ☐ Preapplication

2. Date Submitted | 4. HUD Application Number

3. Date and Time Received by HUD | 5. Existing Grant Number

6. Applicant Identification Number

7. Applicant's Legal Name | 8. Organizational Unit

9. Address (give city, county, State, and zip code)
A. Address:
B. City:
C. County:
D. State:
E. Zip Code:

10. Name,title,telephone number,fax number, and e-mail of the person to be contacted on matters involving this application (including area codes)
A. Name:
B. Title:
C. Phone:
D. Fax:
E. E-mail:

11. Employer Identification Number (EIN) or SSN

12. Type of Applicant (enter appropriate letter in box)
A. State | I. University or College
B. County | J. Indian Tribe
C. Municipal | K. Tribally Designated Housing Entity (TDHE)
D. Township | L. Individual
E. Interstate | M. Profit Organization
F. Intermunicipal | N. Non-profit
G. Special District | O. Public Housing Authority
H. Independent School District | P. Other (Specify)

13. Type of Application
☐ New ☐ Continuation ☐ Renewal ☐ Revision
If Revision, enter appropriate letters in box(es) ☐ ☐
A. Increase Amount B. Decrease Amount C. Increase Duration
D. Decrease Duration E. Other (Specify)

14. Name of Federal Agency
U.S. Department of Housing and Urban Development

15. Catalog of Federal Domestic Assistance (CFDA) Number 14 ---
Title:
Component Title:

16. Descriptive Title of Applicant's Program

17. Areas affected by Program (boroughs, cities, counties, States, Indian Reservation, etc.)

18a. Proposed Program start date	18b. Proposed Program end date	19a. Congressional Districts of Applicant	19b. Congressional Districts of Program

20. Estimated Funding: **Applicant must complete the Funding Matrix on Page 2.**

21. Is Application subject to review by State Executive Order 12372 Process?
A. Yes ☐ This preapplication/application was made available to the State Executive Order 12372 Process for review on: Date_____
B. No ☐ Program is not covered by E.O. 12372
☐ Program has not been selected by State for review.

22. Is the Applicant delinquent on any Federal debt? ☐ No
☐ Yes If "Yes," explain below or attach an explanation.

Previous versions of HUD-424 and 424-M are obsolete

Page 1 of 2

form **HUD-424** (01/2003)
ref. OMB Circular A-102

Appendix B

Funding Matrix

The applicant must provide the funding matrix shown below, listing each program for which HUD funding is being requested, and complete the certifications.

Grant Program*	HUD Share	Applicant Match	Other HUD Funds	Other Federal Share	State Share	Local/Tribal Share	Other	Program Income	Total
									0.00
									0.00
									0.00
									0.00
									0.00
Grand Totals	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

* For FHIPs, show both initiative and component

Certifications

I certify, to the best of my knowledge and belief, that no Federal appropriated funds have been paid, or will be paid, by or on behalf of the applicant, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding of this Federal grant or its extension, renewal, amendment or modification. If funds other than Federal appropriated funds have or will be paid for influencing or attempting to influence the persons listed above, I shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying. I certify that I shall require all sub awards at all tiers (including sub-grants and contracts) to similarly certify and disclose accordingly.

Federally recognized Indian Tribes and tribally designated housing entities (TDHEs) established by Federally-recognized Indian tribes as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but State-recognized Indian tribes and TDHEs established under State law are not excluded from the statute's coverage.

This application incorporates the Assurances and Certifications (HUD-424B) attached to this application or renews and incorporates for the funding you are seeking the Assurances and Certifications currently on file with HUD. To the best of my knowledge and belief, all information in this application is true and correct and constitutes material representation of fact upon which HUD may rely in awarding the agreement.

23. Signature of Authorized Official	Name (printed)
Title	Date (mm/dd/yyyy)

Previous versions of HUD-424 and 424-M are obsolete.

form **HUD-424** (01/2003)
ref. OMB Circular A-102

Applicant Certification

(These certified statements are required by law.)

A. For the Supportive Housing (SHP), Shelter Plus Care (S+C), and Single Room Occupancy (SRO) programs:

1. Fair Housing and Equal Opportunity.

It will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)) and regulations pursuant thereto (Title 24 CFR part I), which state that no person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance, and will immediately take any measures necessary to effectuate this agreement. With reference to the real property and structure(s) thereon which are provided or improved with the aid of Federal financial assistance extended to the applicant, this assurance shall obligate the applicant, or in the case of any transfer, transferee, for the period during which the real property and structure(s) are used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

It will comply with the Fair Housing Act (42 U.S.C. 3601-19), as amended, and with implementing regulations at 24 CFR part 100, which prohibit discrimination in housing on the basis of race, color, religion, sex, disability, familial status or national origin.

It will comply with Executive Order 11063 on Equal Opportunity in Housing and with implementing regulations at 24 CFR Part 107 which prohibit discrimination because of race, color, creed, sex or national origin in housing and related facilities provided with Federal financial assistance.

It will comply with Executive Order 11246 and all regulations pursuant thereto (41 CFR Chapter 60-1), which state that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of Federal contracts and shall take affirmative action to ensure equal employment opportunity. The applicant will incorporate, or cause to be incorporated, into any contract for construction work as defined in Section 130.5 of HUD regulations the equal opportunity clause required by Section 130.15(b) of the HUD regulations.

It will comply with Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701(u)), and regulations pursuant thereto (24 CFR Part 135), which require that to the greatest extent feasible opportunities for training and employment be given to lower-income residents of the project and contracts for work in connection with the project be awarded in substantial part to persons residing in the area of the project.

It will comply with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, and with implementing regulations at 24 CFR Part 8, which prohibit discrimination based on disability in Federally-assisted and conducted programs and activities.

It will comply with the Age Discrimination Act of 1975 (42 U.S.C. 6101-07), as amended, and implementing regulations at 24 CFR Part 146, which prohibit discrimination because of age in projects and activities receiving Federal financial assistance.

It will comply with Executive Orders 11625, 12432, and 12138, which state that program participants shall take affirmative action to encourage participation by businesses owned and operated by members of minority groups and women.

If persons of any particular race, color, religion, sex, age, national origin, familial status, or disability who may qualify for assistance are unlikely to be reached, it will establish additional procedures to ensure that interested persons can obtain information concerning the assistance.

It will comply with the reasonable modification and accommodation requirements and, as appropriate, the accessibility requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973, as amended.

Additional for S+C:
If applicant has established a preference for targeted populations of disabled persons pursuant to 24 CFR 582.330(a), it will comply with this section's nondiscrimination requirements within the designated population.

2. Drug – Free Workplace.
It will provide drug-free workplaces in accordance with the Drug-Free Workplace Act of 1988 (41 U.S.C. 701) by:

(a) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
(b) establishing an ongoing drug-free awareness program to inform employees about:
  (1) the dangers of drug abuse in the workplace;
  (2) the grantees policy of maintaining a drug-free workplace;
  (3) any available drug counseling, rehabilitation, and employee assistance programs; and

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(4) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) abide by the terms of the statement; and

(2) notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 , as amended; or

(2) requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;

(g) making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f);

(h) providing the street address, city, county, state and zip code for the site or sites where the performance of work in connection with the grant will take place. For some applicants who have functions carried out by employees in several departments or offices, more than one location may need to be specified. It is further recognized that States and other applicants who become grantees may add or change sites as a result of changes to program activities during the course of grant-funded activities. Grantees, in such cases, are required to advise the HUD Field Office by submitting a revised Place of Performance form. The period covered by the certification extends until all funds under the specific grant have been expended.

3. Anti-Lobbying.

(a) No Federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(b) If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.

(c) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and of more than $100,000 for each such failure.

4. Debarment.

It and its principals (see 24 CFR 24.105(p)):

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions (see 24 CFR 24.110) by any Federal department or agency;

(b) have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicated for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in (b) of this certification; and

(d) have not within a three-year period preceding this application/proposal had one or more public

transactions (Federal, State or local) terminated for cause or default.

5. Uniform Act.

It will comply with the Uniform Relocation and Real Property Acquisition Policies Act of 1970 (as amended), and the implementing regulations at: 24 CFR 583.310 for SHP, 24 CFR 582.335 for S+C, and 24 CFR 882.810 for SRO.

B. For SHP Only.

1. Maintenance of Effort.

It will comply with the maintenance of effort requirements described at 24 CFR 583.150(a).

2. 20-Year Operation Rule.

For applicants receiving assistance for acquisition, rehabilitation or new construction: The project will be operated for no less than 20 years from the date of initial occupancy or the date of initial service provision for the purpose specified in the application.

3. 1-Year Operation Rule.

For applicants receiving assistance for supportive services, leasing, or operating costs but not receiving assistance for acquisition, rehabilitation, or new construction: The project will be operated for the purpose specified in the application for any year for which such assistance is provided.

4. Environmental Rule.

(a) If the applicant is a State or other governmental entity with general governmental powers (see 24 CFR 583.5), it assumes all the environmental review responsibility that would otherwise be performed by HUD as the responsible Federal official under the National Environmental Policy Act (42 U.S.C. 4321) (NEPA) and related environmental laws and authorities listed in 24 CFR part 58, including acceptance of jurisdiction of the Federal courts, and will assess the environmental effects of each application for assistance in accordance with the provisions of NEPA and 24 CFR part 58.

(b) If the applicant is a private nonprofit organization or a governmental entity with special or limited purpose powers, it will (i) not enter into a contract for, or otherwise commit HUD or local funds for, acquisition, rehabilitation, conversion, lease, repair, or construction of property to provide housing under the program, prior to HUD's completion of an environmental review in accordance with 24 CFR Part 50 and HUD's approval of the application; (ii) supply HUD with information necessary for HUD to perform any applicable environmental review when requested under 24 CFR 583.225(a); and (iii) carry out mitigating measures required by HUD or ensure that alternate sites are utilized.

C. For S+C Only.

1. Maintenance of Effort.

It will comply with the maintenance of effort requirements described at 24 CFR 582.115(d).

2. Supportive Services.

It will make available supportive services appropriate to the needs of the population served and equal in value to the aggregate amount of rental assistance funded by HUD for the full term of the rental assistance and that it will fund the supportive services itself if the planned resources do not become available for any reason.

3. Components: Standards, Definitions, and $3,000 Minimum.

(a) For the SRO component only, the proposed site meets HUD's site and neighborhood standards (24 CFR 882.803(b)(4), and meets the regulatory definition of single room occupancy housing (24 CFR 882.802).

(b) For the SRO and PRA with rehabilitation components, the rehabilitation costs will meet the per unit rehabilitation minimum of $3,000.

4. Environmental Rule.

(a) If the applicant is not a PHA, it assumes all the environmental review responsibility that would otherwise be performed by HUD as the responsible Federal official under the National Environmental Policy Act (42 U.S.C. 4321)(NEPA) and related environmental laws and authorities listed in 24 CFR Part 58, including acceptance of jurisdiction of the Federal courts, and will assess the environmental effects of each application for assistance in accordance with the provisions of NEPA and 24 CFR Part 58.

(b) If the applicant is a PHA, it will (i) not enter into a contract for, or otherwise commit HUD or local funds for, acquisition, rehabilitation, conversion, lease, repair, or construction of property to provide housing under the program, prior to HUD's completion of an environmental review in accordance with 24 CFR Part 50 and HUD's approval of the application; (ii) supply HUD with information necessary for HUD to perform any applicable environmental review when requested under 24 CFR 583.225(a); and (iii) carry out mitigating measures required by HUD or ensure that alternate sites are utilized.

D. For SRO Only.

1. Standards, Definitions, and $3,000 Minimum.

The proposed site meets HUD's site and neighborhood standards (24 CFR 882.803(b)(4)), meets the regulatory definition of single room occupancy housing (24 CFR 882.802), and the rehabilitation costs will met the per unit rehabilitation minimum of $3,000.

2. Environmental Rule.

It will comply with the environmental review requirement for the SRO Program at 24 CFR 882.804(d).

E. For SHP and SRO

1. Nonprofit Board of Directors.

For private nonprofit applicants, members of its Board of Directors serve in a voluntary capacity and receive no compensation, other than reimbursement for expenses, for their services.

F. For SHP and S+C.

1. Lead-Based Paint.

It will comply with the requirements of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4821-4846, and implementing regulations at 24 CFR Part 35.

G. For S+C and SRO.

1. PHA Qualification.

For PHA applicants, that it qualifies as a Public Housing Agency as specified in 24 CFR 882.102 and is legally qualified and authorized to carry out the proposed project(s).

H. Explanation.

Where the applicant is unable to certify to any of the statements in this certification, such applicant shall attach an explanation behind this page.

Signature of Authorized Certifying Official:	Date:
Title:	
Applicant:	For PHA Applicants Only: (PHA Number)

Consolidated Plan Certification

HUD requires applicants to obtain Consolidated Plan Certification for each proposed project.

A. Completing the Consolidated Plan Certification

Except as stated below, all projects must have a Consolidated Plan (which is hereafter called the Plan) certification from the applicable State or local government official responsible for submitting the appropriate Plan. The following instructions indicate the requirement for certification by applicant type for each program.

Insular Areas (America Samoa, Guam, Northern Mariana Islands, U.S. Virgin Islands) are not required to have a Plan or Abbreviated Plan, and therefore applications submitted from these jurisdictions do not require a certification of consistency with a Plan.

An applicant that is **a private nonprofit organization, a community mental health organization that is a public nonprofit organization** must provide a certification from each jurisdiction in which a project will be located. If the local jurisdiction in which the project will be located does not have a Plan or an Abbreviated Plan, then a certification from the State must be submitted. For example, if an application contained projects in jurisdiction A have a Plan and jurisdiction B not having a Plan, then the applicant would have to submit a certification from jurisdiction A and a certification from the State for jurisdiction B.

Non-State applicants proposing activities which will occur in more than one jurisdiction, only need to obtain a certification from the jurisdiction in which the program is administered if they are proposing Scattered-Site Leasing where a participant selects the specific rental unit for which rental assistance will be used. For other forms of leasing, submit a certification from each jurisdiction where units are located.

State government applicants must submit a certification from both the State and the applicable local jurisdiction(s) where the proposed project will be located.

B. Completing the Location Section

Facility-Based. If the project involves acquisition, rehabilitation, or leasing (except scattered-site leasing of rental housing units), enter the city and county in which the site is located.

Scattered-Site Leasing. Follow (1) or (2) depending on whether the project sponsor or the participant selects the units.

(1) If the project involves scattered-site leasing of rental housing units where the project sponsor will select and lease the units, identify each city and county in which the rental units will be located.

(2) If the project involves scattered-site leasing of rental housing units where the participant will select the rental units, enter the city and county in which the organization that will be administering the rental assistance is located.

Please consult your local HUD Field Office for assistance in identifying jurisdictions with a Plan and the official authorized to provide certification. **For each required certification, use the exact language as stated on the form.** HUD recommends completing the form itself and submitting it as the certification, rather than retyping it.

U. S. Department of Housing and Urban Development

Certification of Consistency with the Consolidated Plan

I certify that the proposed activities/projects in the application are consistent with the jurisdiction's current, approved Consolidated Plan. As a unit of local government (Local Workforce Investment Board or LWIB), our jurisdiction is following its currently approved Consolidated Plan.

(Type or clearly print the following information)

Applicant Name: _____

Project Name: _____

Location of the Project: _____

_____

_____

Name of the Federal Program to which the Applicant is applying: _____

Name of Certifying Jurisdiction: _____

Certifying Official Of the Jurisdiction Name: _____

Title: _____

Signature: _____

Date: _____

Appendix B

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U. S. Department of Housing and Urban Development

Certification of Consistency with the Continuum of Care

I certify that the proposed project, as identified below, is consistent with the Continuum of Care (CoC) plan covering the jurisdiction in which the project will be carried out. In addition, I certify that the proposed project will fill an existing gap in the community's inventory of housing for homeless persons or families in the community.

(Type or clearly print the following information)

Applicant Name: _____

Project Name: _____

Location of the Project: _____

_____

_____

Name of the Federal Program to which the Applicant is applying: _____

Name of Certifying Continuum of Care Jurisdiction: _____

Certifying Official for the Continuum of Care

Name: _____

Title: _____

Signature: _____

Date: _____

Appendix B

Special Project Certification

Discharge Policy

Required of all State and local government applicants. Submit this certification along with the HUD form SF 424. (You may submit a single certification covering all of your projects.)

I hereby certify that as a condition for any funding received as a result of this competition, our government agrees to develop and implement, to the maximum extent practicable and where appropriate, policies and protocols for the discharge of persons from publicly funded institutions or systems of care (such as health care facilities, foster care or other youth facilities, or correction programs and institutions) in order to prevent such discharge from immediately resulting in homelessness for such persons. I understand that this condition for award is intended to emphasize that States and units of general local government are primarily responsible for the care of these individuals, and that McKinney-Vento Act funds are not be to used to assist such persons in place of State and local resources.

Authorized signature of applicant
(required only for applicants that are States or units of general local government)

Position Title

Date

Special Project Certification

Coordination and Integration of Mainstream Programs

All applicants must certify the following regarding their project(s) and submit this certification along with form SF 424 as part of their application.

I hereby certify that if our organization's project(s) (are) selected for funding as a result of this competition, we will coordinate and integrate our homeless project with other mainstream health, social services, and employment programs for which homeless populations may be eligible, including Medicaid, Children's Health Insurance Program, Temporary Assistance for Needy Families, Food Stamps, SSI, Workforce Investment Act and Veterans Health Care programs.

Authorized signature of applicant
(***required for all applicants***)

Position Title

Date

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

Approved by OMB
0348-0046

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*: 4c	**Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

Applicant/Recipient Disclosure/Update Report

U.S. Department of Housing and Urban Development

OMB Approval No. 2510-0011 (exp. 06/30/2003)

Instructions. (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 2.)

Applicant/Recipient Information Indicate whether this is an Initial Report ☐ or an Update Report ☐

1. Applicant/Recipient Name, Address, and Phone (include area code):	2. Social Security Number or Employer ID Number:
( ) -	- -
3. HUD Program Name	4. Amount of HUD Assistance Requested/Received

5. State the name and location (street address, City and State) of the project or activity:

Part I Threshold Determinations

1. Are you applying for assistance for a specific project or activity? These terms do not include formula grants, such as public housing operating subsidy or CDBG block grants. (For further information see 24 CFR Sec. 4.3). ☐ Yes ☐ No

2. Have you received or do you expect to receive assistance within the jurisdiction of the Department (HUD), involving the project or activity in this application, in excess of $200,000 during this fiscal year (Oct. 1 - Sep. 30)? For further information, see 24 CFR Sec. 4.9 ☐ Yes ☐ No.

If you answered "No" to either question 1 or 2, **Stop!** You do not need to complete the remainder of this form. *However*, you must sign the certification at the end of the report.

Part II Other Government Assistance Provided or Requested / Expected Sources and Use of Funds.

Such assistance includes, but is not limited to, any grant, loan, subsidy, guarantee, insurance, payment, credit, or tax benefit.

Department/State/Local Agency Name and Address	Type of Assistance	Amount Requested/Provided	Expected Uses of the Funds

(Note: Use Additional pages if necessary.)

Part III Interested Parties. You must disclose:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

Alphabetical list of all persons with a reportable financial interest in the project or activity (For individuals, give the last name first)	Social Security No. or Employee ID No.	Type of Participation in Project/Activity	Financial Interest in Project/Activity ($ and %)

(Note: Use Additional pages if necessary.)

Certification

Warning: If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosures of information, including intentional non-disclosure, is subject to civil money penalty not to exceed $10,000 for each violation.

I certify that this information is true and complete.

Signature:	Date: (mm/dd/yyyy)
X	

Form **HUD-2880** (3/99)

Public reporting burden for this collection of information is estimated to average 2.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless that collection displays a valid OMB control number.

Privacy Act Statement. Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is optional. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b); (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, will be made available in accordance with the Freedom of Information Act (5 U.S.C. §552) and HUD's implementing regulations at 24 CFR Part 15. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR §4.38.

Note: This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

Instructions

Overview.

A. Coverage. You must complete this report if:

(1) You are applying for assistance from HUD for a specific project or activity and you have received, or expect to receive, assistance from HUD in excess of $200,000 during the during the fiscal year;

(2) You are updating a prior report as discussed below; or

(3) You are submitting an application for assistance to an entity other than HUD, a State or local government if the application is required by statute or regulation to be submitted to HUD for approval or for any other purpose.

B. Update reports (filed by "Recipients" of HUD Assistance): General. All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

Line-by-Line Instructions.

Applicant/Recipient information.

All applicants for HUD competitive assistance, must complete the information required in blocks 1-5 of form HUD-2880:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered.
2. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.
3. Applicants enter the HUD program name under which the assistance is being requested.
4. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.
5. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

Part I. Threshold Determinations - Applicants Only

Part I contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

If the answer to ***either*** questions 1 or 2 is No, the applicant need not complete Parts II and III of the report, but must sign the certification at the end of the form.

Part II. Other Government Assistance and Expected Sources and Uses of Funds.

A. Other Government Assistance. This Part is to be completed by both applicants and recipients for assistance and recipients filing update reports. Applicants and recipients must report any other government assistance involved in the project or activity for which assistance is sought. Applicants and recipients must report any other government assistance involved in the project or activity. Other government assistance is defined in note 4 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the assistance will be forthcoming.

Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

The following information must be provided:

1. Enter the name and address, city, State, and zip code of the government agency making the assistance available.
2. State the type of other government assistance (e.g., loan, grant, loan insurance).
3. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).
4. Uses of funds. Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, elevators, exterior masonry, etc.

B. Non-Government Assistance. Note that the applicant and recipient disclosure report must specify all expected sources and uses of funds - both from HUD ***and any other source*** - that have been or are to be, made available for the project or activity. Non-government sources of

Form **HUD-2880** (3/99)

funds typically include (but are not limited to) foundations and private contributors.

Part III. Interested Parties.

This Part is to be completed by both applicants and recipients filing update reports. Applicants must provide information on:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

Note: A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses. If the person is an entity, the listing must include the full name and address of the entity as well as the CEO. Please list all names alphabetically.
2. Entry of the Social Security Number (SSN) or Employee Identification Number (EIN), as appropriate, for each person listed is optional.
3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).
4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

Note that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

Notes:

1. All citations are to 24 CFR Part 4, which was published in the Federal Register. [April 1, 1996, at 63 Fed. Reg. 14448.]
2. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Fed. Acquisition Regulation (FAR) (48 CFR Chapter 1).
3. See 24 CFR §4.9 for detailed guidance on how the threshold is calculated.
4. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
5. For the purpose of this form and 24 CFR Part 4, "person" means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

Form **HUD-2880** (3/99)

Appendix B

[FR Doc. 03–18046 Filed 7–17–03; 8:45 am]
BILLING CODE 4510–CX–C

Federal Register

Friday,
July 18, 2003

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121 and 129
Flightdeck Security on Large Cargo Airplanes; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 129

[Docket No.: FAA–2003–15653; Amendment Nos. 121–287 and 129–37]

RIN 2120–AH96

Flightdeck Security on Large Cargo Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action provides an alternative means of compliance to operators of all-cargo airplanes that are required to have a reinforced security flightdeck door. This rule allows those operators to either install reinforced doors or adopt enhanced security procedures approved by the Transportation Security Administration.

DATES: This rule is effective on August 18, 2003. Comments must be received by September 16, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15653 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Joe Keenan, Program Management Branch (AFS–200) Flight Standards Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–9579; facsimile (202) 267–5229, e-mail *joe.keenan@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

This final rule is being adopted without prior notice and prior public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979), however, provide that, to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments relating to environmental, energy, federalism, or international trade impacts that might result from this amendment also are invited. Comments must include the regulatory docket or amendment number and must be submitted in duplicate to the address above. All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the public docket. The docket is available for public inspection before and after the comment closing date.

The FAA will consider all comments received on or before the closing date for comments. Late filed comments will be considered to the extent practicable. This final rule may be amended in light of the comments received.

Commenters who want the FAA to acknowledge receipt of their comments submitted in response to this final rule must include a preaddressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. FAA–2003–." The postcard will be date-stamped by the FAA and mailed to the commenter.

Comments that you may consider to be of a sensitive security nature should not be sent to the docket management system. Send those comments to the FAA, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591.

Availability of Final Rule

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through the Office of Rulemaking's Web page at *http://www2.faa.gov/avr/arm/nprm.cfm?nav=nprm* or the **Federal Register**'s Web page at *http://www.gpoaccess.gov/fr/index.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this final rule.

What Is the Small Business Regulatory Enforcement Fairness Act?

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at *http://www.faa.gov/avr/arm/sbrefa.htm*, or by e-mailing us at *9–AWA–SBREFA@faa.gov*.

Background

What Rule Changes Are You Making?

We are issuing a rule that allows an alternative means of compliance with a current FAA regulation. This rule allows operators of large cargo airplanes to either install reinforced flightdeck doors or adopt enhanced security procedures approved by the Transportation Security Administration.

Isn't Airplane Security the Responsibility of an Agency Other Than the FAA?

Yes, the Aviation and Transportation Security Act (ATSA) enacted by Congress on November 19, 2001, transferred airplane security to the Transportation Security Administration (TSA). The safety of the physical airplane structure and the operational rules of airplanes are still the responsibility of the FAA. We work with the TSA when our interests overlap to further our missions of safety and security. We coordinated this rule change closely with the TSA. The TSA has significantly contributed to this rule and supports the rule change.

How Many Rules Are Affected by This Change?

This change has significant effects on two rules. First, Title 14 Code of Federal Regulations (14 CFR), 121.313(j), which applies to the operation of U.S. transport category all-cargo airplanes, is amended to permit operators to adopt a TSA approved security program in lieu of installing reinforced doors. The second rule, 14 CFR 129.28(c), applies to the operation of transport category all-cargo airplanes by foreign operators within the United States. This amendment permits foreign operators to adopt a TSA approved security program in lieu of installing reinforced doors.

Why Were the Old Rules Adopted?

The former rules were adopted in response to the terrorist attacks against the United States on September 11, 2001, and the ATSA enacted by Congress on November 19, 2001. The terrorist acts demonstrated a need to improve design as well as operational and procedural security of the flightdeck.

What Are the Flightdeck and the Flightdeck Door?

The flightdeck, or cockpit, is that area where the pilots fly the airplane. The flightdeck door is what separates the pilots from the passengers on passenger airplanes. On passenger airplanes, there are operating rules that require a door between the flightdeck and the passenger compartment. These rules do not require that cargo airplanes have a flightdeck door. Some cargo airplanes have flightdeck doors and many do not.

Traditionally, the door merely served as a privacy door to assure that the pilots were able to concentrate on flying the airplane. As discussed in the original reinforced door rulemakings, efforts were underway prior to the September 11, 2001, attacks to develop standards for a stronger door. The attacks led to the immediate adoption of those standards and the requirement for installation of stronger doors.

What Did the Old Rules Require?

On January 15, 2002, parts 25 and 121 were amended to set new standards for flightdeck doors (Amendments 25–106 and 121–288; 67 FR 2118; Docket No. FAA–2002–11032). Section 25.795 was amended to set standards for reinforcing flightdeck doors. The new standards require them to resist forcible intrusion and ballistic penetration.

Section 121.313(f) was amended to mandate installation of the reinforced doors on certain airplanes not later than April 9, 2003. The affected airplanes included transport category all-cargo airplanes operated under part 121 which had flightdeck doors installed on or after January 15, 2002.

On June 21, 2002, part 129 was amended to apply similar standards to foreign operators operating into the United States (Amendment 129–33; 67 FR 42450; Docket No. FAA–2002–12504). Section 129.28 requires installation of the reinforced door not later than April 9, 2003. The affected airplanes include transport category all-cargo airplanes operated under part 129 which had flightdeck doors installed on or after June 21, 2002.

On December 23, 2002, the FAA issued amendment No. 129–36 as a result of input received from a public hearing held on July 30, 2002, and comments received as a result of the rulemaking. Amendment 129–36 clarifies the applicability of the part 129 regulation for foreign operators.

In effect, section 355 of the Consolidated Appropriations Resolution, Pub. L. 108–007, postponed the compliance date for this section as to all-cargo aircraft until October 1, 2003. We have changed the cargo portion of the rule to replace the April 9, 2003, compliance date with October 1, 2003, to correspond to the Congressional action.

What Has Happened Since the Old Rules Were Adopted?

The old rule was an FAA response to the potential security threat to cargo airplanes. Because of the urgency of the response, there was little time for receiving and evaluating a broad range of inputs on the issues and alternatives. But with time, and with additional input from knowledgeable parties, the FAA has identified several elements that convince us that a change is needed. Over the last year, the FAA has received information from parties through comments responding to several rulemakings, as well as petitions for exemption and a petition for rulemaking.

Public Comments on Prior Reinforced Flightdeck Door Rulemakings

As discussed above, the FAA has had two rulemaking actions that established reinforced door requirements. We received public comments on both rules. The following discussion is limited to those comments related to this specific rule change. The FAA will respond to the other comments in a separate document that will be published later in the **Federal Register**.

Part 121

Three pilot groups (Air Line Pilots Association International (ALPA), FedEx Pilots Association, and the Coalition of Airline Pilots Association (CAPA)), a public safety group (Aviation Policy Institute), and one individual suggested expanding the reinforced door requirement to all cargo airplanes. This would require installation of reinforced doors on cargo airplanes that do not already have any door. The principal arguments of those parties were centered on increased flightdeck security. Those commenters expressed concerns about the qualification, screening, and identification of the people authorized to ride on the subject airplanes.

ALPA stated that meetings with safety representatives from many of the cargo airlines revealed it is potentially easier for an intruder to gain access to cargo airplanes because of limited ground security procedures, less secure ramp areas, and less scrutiny of persons carried on board cargo flights. ALPA stated that flight attendant and passenger intervention have been discussed as a strategy to defeat the attempts of an intruder to commandeer a passenger airplane. But cargo operators lack the potential benefit of flight attendant or passenger intervention.

Additionally, three commenters proposed enhancement of flightdeck security beyond that provided by the reinforced doors, suggesting the use of dual doors (FedEx Pilots Association) and reinforcing the bulkheads between the flightdeck and other airplane areas (ALPA and the CAPA).

Three operators and the Cargo Airline Association (CAA) and the Air Transport Association opposed the installation of the reinforced flightdeck doors in airplanes operated for the carriage of cargo. Those comments included two comments that the application of the reinforced flightdeck doors was impractical for the types of airplanes involved and the installation of doors would compromise emergency egress. They also stated it would be difficult to address issues, such as the rapid decompression, when retrofitting flightdeck doors to airplanes in which no door had been previously installed. Six commenters were opposed to the installation of flightdeck doors on cargo airplanes based upon economic considerations, including cost of the doors, installation costs, and lost revenues while airplanes were out of service for modifications. Further, two commenters indicated that the costs should be borne by the government.

The CAA represents 13 all-cargo operators, including the largest operators. In its comments, the CAA argued that the ATSA did not require that cargo airplanes be equipped with the reinforced flightdeck door. Therefore, the FAA rule was procedurally deficient because there was inadequate justification for adopting the rule without prior public comment. The CAA also argued that the unique nature of cargo operations would

allow a screening program to provide the same level of security as a retrofit flightdeck door.

Part 129

Seven of the 32 commenters to Amendment 129–33 addressed all-cargo operations. Except for the following three comments, commenters raised similar issues described in the discussion of part 121 above. One commenter stated that of all the various types of operators serving the U.S., cargo operators, particularly those that operate on a charter basis, pose the least risk of having their aircraft used as weapons by terrorists. The commenter contends that cargo charter operations do not publish a schedule for services and it would be difficult to know in advance when or where the airplane would be operated.

Another commenter explained that crewmembers leave the flightdeck on a regular basis to visit the galley or lavatory and to perform in-flight duties. There is no flight attendant to ensure the area is clear and secure before a flight crewmember leaves. Also, in the event of an intrusion when a flightcrew member is absent from the flightdeck, a reinforced door will prevent reentry to assist other flightcrew members. This commenter also states that this rule will place it at a competitive disadvantage compared to operators whose fleets are designed and operated with no doors.

At the public meeting, one foreign cargo operator explained that he might not know until 3 hours before a flight which airplane would be used on flights to or from the U.S. The operator believed it would be much more efficient and effective to establish security procedures controlling who has access to the airplanes rather than modifying the doors.

Requests for Exemptions

Since January 30, 2002, 11 cargo operators have filed exemption requests from the reinforced door requirements. Two sought relief from the requirement for internal locking devices on existing doors (Special Federal Aviation Regulation (SFAR) 92), three sought relief from part 121, and six sought relief from part 129. In supporting the need for an exemption, requesters cited economic burden caused by the need to make modifications to their airplanes. In several instances, operators indicated that they have a small fleet of airplanes and engineering and design costs would be borne by them alone. The requesters also identified a safety concern with the requirements to close and lock the flightdeck doors. The safety concern is the lack of adequate emergency exits available to persons on either side of a locked reinforced door. Also, four operators indicated their security measures for allowing riders on their cargo airplanes are strict and would compensate for not reinforcing the door.

Petition for Rulemaking

Atlas Air submitted a petition for rulemaking that requested the FAA allow cargo carriers to adopt enhanced security plans in lieu of the reinforced flightdeck doors. Most of the issues raised by Atlas were also raised by commenters on the prior reinforced flightdeck rulemakings discussed above. Atlas supported its request with the following points:

- The original rule was premised on the inadequacy of then existing security procedures
- The FAA has since issued detailed procedures for access to cargo airplane flightdecks
- The TSA has since issued additional security requirements that cover certain cargo airplanes
- Reinforced doors are necessary on passenger but superfluous on cargo airplanes
- Cargo operations do not depend on riders
- The number of persons on cargo airplanes is quite small
- Pilots of cargo airplanes are more willing to exclude suspicious persons
- Cargo operators can impose more screening without disrupting schedules
- Access to cargo airplanes is tightly controlled by practice and regulation
- A reinforced door is less effective on a cargo airplane since a terrorist may have an unfettered opportunity to penetrate it
- Keeping terrorists off cargo airplanes is a better alternative
- Cargo doors are expensive and resources could be better utilized elsewhere
- Cost of reinforced doors is much higher than the FAA estimates
- Money is better spent on security procedures keeping terrorists off cargo airplanes
- Passenger airplanes are a higher priority for reinforced doors than cargo airplanes
- Congress is urging a review of reinforced door requirements for cargo airplanes
- ATSA mandated reinforced doors on passenger airplanes, not cargo airplanes
- Two proposed bills before Congress would require reexamination of the issue

Why Are the Changes Better Than the Old Rule?

This rule provides an alternative means of compliance for operators. It allows them to meet the security needs for their particular operation through security procedures rather than doors. This option will be available through the security expertise of the TSA. As the economic analysis later in this rule reflects, many operators have airplanes both with and without flightdeck doors. If they adopt security procedures for the airplanes with the doors, they must apply those same procedures to airplanes without doors. By providing the option, operators can decide where to concentrate their limited economic resources. Also, nothing in this rule prevents operators from using both doors and security procedures if they choose.

What Factors Influenced the Decision To Change the Rule?

Viability of Enhanced Security Procedures

In acting quickly to establish current standards, the FAA included cargo airplanes with doors in the same security category with passenger carrying airplanes. At the time, security procedures for riders on cargo airplanes had not been enhanced. With a diverse population flying on commercial passenger airplanes, a reinforced door to the flightdeck is essential. In comparison, cargo operations transport far fewer riders, those riders are authorized by the company, and cargo operators have greater discretion in deciding who rides on the airplane. Security procedures can be adapted to fit the needs of cargo operations making the reinforced door less significant in terms of airplane security.

Safety Issues Unique to Cargo Designs

People behind the locked doors on passenger airplanes have multiple exits from the plane. Cargo riders may not. On several models of cargo airplanes, some exits are blocked by cargo or by airplane modifications. Often, modifications of cargo airplanes result in emergency exits being on the other side of the flightdeck door. As a result, rider safety may be significantly compromised if a locked door blocks access to the exits. Without a better security option, the FAA originally concluded that this safety concern was outweighed by the security concern with highjacking. However, since enhanced security procedures are now a viable option, the safety of occupants in an emergency evacuation takes on a higher priority.

Differences in Locations of Persons on Flightdeck of Cargo and Passenger Airplanes

The number and variety of persons who frequently ride on the flightdeck of cargo airplanes are different from those who ride on passenger airplane flightdecks. Under current screening procedures, persons may have access to the flightdeck on cargo airplanes without having undergone the same level of screening used on passenger airplanes. These persons may be in front of the door or behind it. As one commenter pointed out, locking a reinforced door could result in a "bad" person being in front of the door, while preventing a "good" person seated behind the door from assisting the pilots. This may render reinforced doors less valuable on cargo airplanes.

Need for Tools and Equipment

Cargo operators carry diverse cargo, such as animals and dangerous goods. This requires them to carry persons who need specialized tools and equipment during the flight. This necessary equipment is prohibited on passenger flights. Also, on passenger flights, crewmembers, Federal Air Marshals, and passengers can intervene to inhibit efforts to penetrate the reinforced doors. On cargo operations, the limited number of riders means a terrorist might have time and equipment to defeat the protection offered by the doors.

The Cost of the Doors

The original analysis of reinforced door costs was made before designs had been proposed and approved. The FAA has learned that the door will cost substantially more than originally estimated. Instead of $17,000, nearly all doors will cost at least $50,000, and some as much as $210,000. This cost would be acceptable if it were the only alternative to preventing highjackings. But, with the enhanced security procedures now available, it is incumbent on the FAA to allow operators to select the option that best fits their needs.

What Comments Do You Believe Support This Rule Change?

As discussed above, the petition of Atlas Air contained many suggestions and comments that were common to comments received on the original rules. As should be obvious from the rationale explained in the preceding answer, we found many of their points to be persuasive and thus supportive of this rule change.

What Comments Do You Believe Would Not Support This Rule Change?

Many comments were received supporting the original rule. In particular, pilots and organizations representing pilots believed that the reinforced door was a valuable step toward assuring the safety of the flightcrew and ultimately the airplanes. These commenters urged additional steps for cargo airplanes, to include expanding the rule to require installation of reinforced doors on all cargo airplanes. This would require installation of reinforced doors on those cargo airplanes that have not had doors. This option will be discussed later.

We expect that these commenters would not favor this rule change and would see it as a lessening of security. We expect to receive comments on this during the comment period. At this point, we are confident that the plans that will be approved by the TSA will be comparable to the security provided by the doors. As discussed above, we believe the change will be better than the reinforced doors in some respects.

Were There Comments Submitted on the Original Rules That Were Not Considered in This Rule Change?

Yes. Some comments dealt with issues other than cargo airplanes. Some comments on cargo airplanes were not relevant to this rule change. We will respond to these comments in a separate document that will be published later in the **Federal Register**.

What Other Options Were Considered?

Maintaining the Status Quo

We considered this option but decided that the status quo was no longer justified. When the rule was originally adopted, there was no alternative that would provide security for the flightdeck. As discussed previously, this is no longer the case and security procedures can provide a viable security alternative. Operators should have the option of selecting which alternative to use to meet the security goal.

Expanding the Reinforced Door Rule to All Cargo Airplanes

As mentioned previously, this was an option originally supported by pilots and pilot organizations. Whether this is still the case in light of changes since adoption of the original rule will be revealed during the comment period on this rule.

We do not believe that this expansion is either practical or necessary. Many cargo airplanes have no door between the pilot area and aft portions of the flightdeck. On some airplanes, there is existing structure that would readily support a new door. On many other airplanes, however, there is no structure to which a door could be fitted. We have spent over a year administering the current reinforced door rule. We have learned that simply replacing existing doors can be expensive and time-consuming, particularly in design development and approval. Undertaking a retrofit requirement for all cargo airplanes could not be done in the time frame relevant to this rule.

Further, since we have identified security procedures as a valid alternative to a reinforced door in cargo operations, there is currently no justification for the substantial cost involved in retrofit.

As discussed in the next question and answer, responsibility for aviation security and threat assessment resides with the TSA. If the TSA decides that the threat warrants expansion of the reinforced door requirement, the FAA will assist them in developing relevant rules and standards.

Expanding Cargo Security Requirements to All Cargo Operations

The old rule, and this new rule change, cover only those cargo airplanes that had doors. With the transfer of security responsibility, the TSA assumed responsibility for developing and imposing security requirements on all aviation operations. As a result, the FAA no longer has the authority to unilaterally establish security requirements applicable to all cargo operators.

Several operators, including Atlas Air, suggested that expansion of security programs to the entire air cargo industry would be beneficial. The FAA and TSA agree with those comments. The TSA will commence a separate rulemaking on this subject. We hope this expansion will be, in part, a consequence of this rule change. The FAA supports this expansion and will assist the TSA in implementing any changes it deems appropriate.

Eliminating the Ability of Cargo Carriers To Carry Supernumeraries

We considered reducing the ability of cargo operators to carry supernumeraries. Under 14 CFR 121.547 and 121.583, supernumeraries are persons who may be on board but who are not essential to the actual operation of the airplane. Limiting the carriage of supernumeraries would have a crippling effect on many cargo operations. Although not in the passenger carrying business, cargo operators need to carry riders who can handle cargo either

during the flight or at remote destinations where trained support is not available. They often carry additional pilots for long flights and mechanics to service the airplane at remote locations. These concerns were identified in the petitions for exemption mentioned earlier. As a result, we conclude this is not a viable option for protecting the flightdeck of cargo airplanes.

Supernumeraries were partially addressed by the original rule changes that accompanied the reinforced door requirements. In the original rules, we modified § 121.547 and added § 129.28(d) to limit the number of persons authorized on the flightdeck and required additional approvals for such access.

Case-by-Case Exemptions Allowing Security Programs in Lieu of Reinforced Doors

We considered requiring individual exemption applications from cargo operators instead of a rule change. This has been the process for dealing with problems raised under SFAR 92 with its requirement for internal locking devices on flightdeck doors. This has not been efficient, even for the relatively small number of SFAR exemptions.

We anticipate that most, if not all, cargo operators would file exemption requests should we adopt this option instead of a rule change. Dealing with exemption requests would be inefficient and lead to lengthy delays and uncertainty, even if most petitioners raised the same issues. Our immediate adoption of this rule seeks to avoid uncertainty. Also, just as the operators wish to focus their resources on addressing security, we want to use our resources on matters other than individual exemption requests.

Does This Rule Establish Specific Security Requirements?

This rule does not require specific security procedures. Rather, a carrier may choose to adopt a security program rather then harden its doors. Security programs may vary from operator to operator because airplanes used, routes and missions flown, and persons carried are not uniform. Instead of establishing specific criteria for a security program, this rule provides flexibility to the operator and the TSA to meet specific needs and threats.

Who Will Approve New Security Procedures?

The TSA is the agency with approval authority for security programs and procedures related to alternative compliance with this rule. Operators who have principal security inspectors should work with them in preparing programs and procedures.

Is This an Airplane Security Issue or an Economic Issue?

Implementation of any security measure carries with it some costs. The subsequent economic analysis discusses the relative costs of installing reinforced doors versus adopting a security program. Adopting the security program option will cost operators less than installing the reinforced doors. If this were not the case, operators would opt for the doors instead of the security program. But this rule is not just about money. As discussed previously, reinforced doors are not as effective a security measure on cargo airplanes as on passenger airplanes. On many cargo designs, reinforced doors raise safety issues that do not exist on passenger airplanes. Although cost is an issue, it is not the deciding factor in adopting this rule. Security is paramount.

Will Cargo Airplanes Be Less Secure if Reinforced Doors Are Not Required?

Airplanes would be less secure if the requirement were dropped without any compensating action. The compensating action expected in this rule is development and implementation of alternative security plans to control who enters cargo aircraft. This will compensate for the lack of doors by keeping potential terrorist's out of the airplane.

As explained above, this rule does not itself establish the criteria for the new program. That program will come from the TSA.

Most importantly, when a security plan is developed, it can be used by all cargo operators, not just those with doors. The result will be greater security for all cargo operations, not just those with existing doors.

Also as discussed above, we believe that the reinforced doors produce vulnerabilities both from a safety and security standpoint that are not present in passenger carrying operations. Providing an alternative to installing reinforced doors reduces those risks.

What Airplanes or Operations Will Be Affected by This Rule Change?

This rule will affect both U.S. and foreign operators. For foreign operators, this rule also clarifies the coverage of the rule.

For U.S. certificated operators, only those operations conducted under part 121, utilizing transport category airplanes, for the sole purpose of the carriage of cargo, will be affected. And those operations are only affected if they had a flightdeck door installed on or after January 15, 2002. Those all-cargo operators electing to achieve compliance through a TSA approved security program must apply the security program to the operator's entire fleet of aircraft, not just those with doors. There will be no change for those cargo operators who elect to install the reinforced flightdeck door.

Foreign operators conducting cargo operations under § 129.1(a) are covered when they are operating airplanes with a payload capacity greater than 7,500 pounds and with a flightdeck door installed on or after June 21, 2002. Those all-cargo operators electing to achieve compliance through a TSA approved security program must apply the security program to the operator's entire fleet of aircraft, not just those with doors. There will be no change for those cargo operators who elect to install the reinforced flightdeck door. In addition, nothing precludes a foreign all-cargo air carrier from implementing a TSA security program in addition to reinforcing its flightdeck doors.

Why Does the Rule Have a June 21, 2002, Threshold Date for Foreign Operators and a January 15, 2002, Threshold Date for U.S. Operators?

Section 129.28(a)(2) establishes a compliance threshold date of June 21, 2002. Section 121.313(j)(2) establishes a compliance threshold date of January 15, 2002. These threshold dates identify the airplanes that must comply with the rule, and maintains the applicability of the requirement even if operators remove the non-reinforced doors after that date. If an airplane had a non-reinforced door in place (installed) on the threshold date, or if one is installed on the airplane after that date, then the rule requires that such a door be replaced with a reinforced door. Without the threshold date, operators could avoid compliance with the rule by removing the non-reinforced doors. The threshold dates correspond with the issue dates of the original rules imposing the reinforced door requirement on operators. The dates differ because the original rules were not issued at the same time.

How Will Compliance Be Monitored?

The FAA is working with the TSA to establish procedures to share information and monitor compliance with various aspects of aircraft security. This is a new relationship and details on specific aspects of the cooperative monitoring effort are not currently in place. We expect, however, that the TSA approval of programs under this rule will occur in cooperation with the FAA and the FAA will receive information on approved programs either directly from the TSA or through reporting requirements placed on operators. A formal process for either of these alternatives will be established to assure compliance by affected operators.

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. sections 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation.)

In conducting these analyses, the FAA has determined this rule (1) has benefits which justify its costs; (2) is a "significant regulatory action" as defined in section 3(f) of Executive Order 12866 and is "significant" as defined in DOT's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; (4) will have little effect on international trade; and (5) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. The FAA has placed these analyses in the docket and summarizes them below.

How Many Operators and Airplanes Are Affected by the Rule?

The FAA determined that 46 U.S. air cargo carriers with 1,132 transport category cargo airplanes operate under part 121. Brokers and leasing companies currently hold 125 turbojet cargo airplanes that could be operated under part 121. Thus, 1,257 cargo airplanes could be affected by this rule. The FAA determined that 540 of these airplanes have a flightdeck door, while 26 air cargo carriers operate at least one airplane with a flightdeck door. Of these 26 air cargo operators, 3 are likely to be large operators (more than 50 airplanes), 9 are likely to be medium sized operators (between 10 and 50 airplanes), and 14 are likely to be small operators (fewer than 10 airplanes).

What Are the Uncertainties Affecting the Potential Costs of This Rule?

The cost of a security program could be significantly reduced if the air cargo carrier does not transport any people other than its own employees. To avoid underestimating the potential total cost, the FAA assumed that every affected air cargo operator will occasionally transport people other than their employees. Further, the TSA has not finalized its requirements. This regulatory evaluation does not assume that the TSA will require the screening of cargo. The next question identifies some assumptions about the content of the potential security program. We have not included the potential costs of screening air cargo itself in the estimated costs of these security programs.

What Are the Bases for the Estimated Costs of a Security Program?

For the purpose of this economic analysis, we have assumed, for cost purposes only, that the following types of costs might be incurred. Actual costs may vary between programs sought by operators and approved by the TSA. Further, the TSA may choose to require certain components of a security plan that will differ from the assumptions included in the FAA cost analysis. The FAA assumes that air cargo carriers will incur costs from reviewing their employee employment files, performing employee background checks, developing procedures to perform security clearances on non-employee passengers, and applying to the TSA for approval in creating their programs. They will incur similar annual costs in operating the program.

How Much Will It Cost To Establish and Operate a Security Program?

The FAA estimates that establishing a security program will cost, on *average*, about $250,000 for a large air cargo airline, about $75,000 for a medium sized air cargo airline, and about $20,000 for a small air cargo airline. The annual cost to operate a security program will average about $120,000 at a large air cargo airline, about $40,000 at a medium sized air cargo airline, and about $10,000 at a small air cargo airline. Thus, if all of the affected air cargo carriers chose to establish security programs, the total first-year cost will be $1.705 million. However, several air cargo operators have voluntarily developed personnel security programs that include some or most of the activities envisioned by the FAA in its cost estimates. Thus, those air cargo operators have already made many of these expenditures and their estimated costs will be lower than those projected. Nevertheless, in order to ensure that the costs are not underestimated, the FAA assumed that no air cargo operator has such a program. Using an anticipated 5.3 percent growth rate of the air cargo industry, the annual costs of operating security programs for 10 years would be $10.265 million. Thus, it will cost air cargo operators a total of $12.330 million, which has a present value of $9.217 million using the 7 percent discount rate required by the Office of Management and Budget.

How Much Will It Cost To Install Reinforced Flightdeck Security Doors?

The FAA calculated that installing reinforced doors on the 540 cargo airplanes would cost air cargo operators $66.5 million in 2003.

TABLE 1.—AVERAGE COST PER AIRPLANE TO INSTALL A REINFORCED DOOR BY TYPE OF AIRPLANE

Type of airplane	Door kit cost	Numbers of labor hours to install	Total labor costs	Number of days out-of-service	Lost net revenue per day	Total lost net revenue	Total costs to install
727	$65,000	96	$7,680	2	$20,500	$41,000	$113,680
737	50,000	96	7,680	2	4,500	9,000	66,680
747/100/200/300	210,000	172	13,760	4	24,500	98,000	321,760
747/400	51,500	96	7,680	2	24,500	49,000	112,020
757	50,000	96	7,680	2	20,500	41,000	98,680
767	50,000	96	7,680	2	20,500	41,000	98,680
DC–10	50,000	96	7,680	2	24,500	49,000	106,680

TABLE 1.—AVERAGE COST PER AIRPLANE TO INSTALL A REINFORCED DOOR BY TYPE OF AIRPLANE—Continued

Type of airplane	Door kit cost	Numbers of labor hours to install	Total labor costs	Number of days out-of-service	Lost net revenue per day	Total lost net revenue	Total costs to install
DC–8	42,000	72	5,760	2	20,500	41,000	88,760
DC–9	42,000	72	5,760	1.5	4,500	6,750	54,530
MD–10/11	45,000	96	7,680	2	24,500	49,000	101,680
A–300	50,000	192	15,360	4	20,500	82,000	147,360
A–300–600	50,000	192	15,360	4	20,500	82,000	147,360
A–310	50,000	192	15,360	4	20,500	82,000	147,360

Are There Any Other Costs That Would Be Associated With These Reinforced Doors?

Reinforced flightdeck security doors have electronic systems that would need to be periodically inspected, maintained, and possibly repaired. It would take 8 additional maintenance labor hours every year for these tasks, and the average annual materials costs are minimal. These increased maintenance costs would total 4.4 million between 2004 and 2013, which has a present value of 3.0 million.

Reinforced flightdeck security doors and associated doorway strengthening materials would add weight to the airplane, which would increase fuel consumption. The FAA estimated that the installed door would add 120 pounds to a large cargo airplane, 90 pounds to a medium sized cargo airplane, and 75 pounds to a small cargo airplane. Each additional pound increases annual fuel consumption by 12.25 gallons for a large cargo airplane, 19.1 gallons for a medium sized cargo airplane, and 5.75 gallons for a small cargo airplane. Using a price of $0.80 per gallon, the annual additional fuel cost would be $700,000 in 2004, increasing to $1.1 million in 2013. These additional fuel costs would total $9.5 million between 2004 and 2013, which has a present value of $6.7 million.

What, Then, Are the Total Costs of Installing These Doors?

As shown in Table 2, the total costs of installing reinforced security flightdeck doors would be about $80.450 million, which has a present value of about $76.225 million. Of particular note is that the biggest expenditure of $66.5 million would occur in 2003, the first year.

TABLE 2.—TOTAL AND PRESENT VALUES IN 2003 OF COSTS TO INSTALL REINFORCED SECURITY DOORS IN CARGO AIRPLANES THAT CURRENTLY HAVE FLIGHTDECK DOORS

[In millions of dollars]

Cost to retrofit doors	Increased maintenance cost (2004–2013)	Present value increased maintenance	Increased fuel costs (2004–2013)	Present value increased fuel cost	Total cost	Present value total cost
$66.499	$4.406	$3.007	$9.542	$6.722	$80.447	$76.228

What Is the Net Economic Impact of This Rule?

If all air cargo operators affected by the final rule chose to develop a TSA-approved security program instead of installing reinforced flightdeck security doors, they would save about $68.117 million between 2003 and 2013, which has a present value of $67.011 million. More importantly, they would save $64.704 million by April 9, 2003. It should be noted that to the extent that several air cargo operators have voluntarily developed these programs, the cost savings have been underestimated. Further, an individual operator has the option to install the reinforced flightdeck security door if it would be financially advantageous. Thus, the FAA determined that this rule provides substantial cost savings to affected air cargo operators.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This action provides equal regulatory relief to all air cargo carriers. Therefore, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. The FAA assessed the potential effect of this rulemaking and determined that it provides equal regulatory relief to both U.S. (under part 121) and foreign air cargo carriers (under part 129). Therefore, the FAA determined that this rule will have a minimal effect on international trade.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

What Other Assessments Has the FAA Conducted?

Paperwork Reduction Act

There are no current or new requirements for information collection associated with this amendment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. We have determined that the final rule is not a major regulatory action under the provisions of the EPCA.

Plain English

Executive Order 12866 (58 FR 51735, October. 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make this final rule easier to understand, including answers to questions such as the following:

- Are the requirements in the regulations clearly stated?
- Do the regulations contain technical language or jargon that interferes with their clarity?
- Would the regulations be easier to understand if they were divided into more (but shorter) sections?
- Is the question and answer format helpful in understanding the regulations?

Please send your comments to the address specified in the **ADDRESSES** section.

What Urgency Requires Immediate Adoption of These Changes?

Under current rules, operators should have installed reinforced doors by April 9, 2003, or the airplane could not be operated after that date. However, the 2003 Consolidated Appropriations Resolution mentioned previously effectively postponed the compliance date for all-cargo aircraft. Absent additional action by Congress, this legislative provision will expire on September 30, 2003. As a result, effective October 1, 2003, cargo operators will have to have installed doors on the affected aircraft or not operate those aircraft.

We have changed the April 9, 2003, date to October 2003, to correspond with the Congressional action. Time is of the essence to operators. The doors are expensive and there is a significant lead-time required to order and install the doors. Cargo operators need to know immediately that there is an alternative to installation of reinforced doors.

Additionally, operators need time to evaluate the requirements of the TSA security procedures, and determine if they can adopt a new security program before the deadline. Delaying the rule for notice and comment would create uncertainty for operators, and frustrate the purpose of the rule.

Further, the FAA received a large number of public comments on this subject through the other rulemakings discussed in this document. We considered those comments in developing this rule.

Sections 553(b)(3)(B) and 553(d)(3) of the Administrative Procedures Act (APA) (5 U.S.C. sections 553(b)(3)(B) and 553(d)(3)) authorize agencies to dispense with certain notice procedures for rules when they find "good cause" to do so. Under section 553(b)(3)(B), the requirements of notice and opportunity for comment do not apply when the agency, for good cause, finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." In the context of the APA, impracticable means that, if notice and comment procedures were followed, they would defeat the purpose of the rule. As explained above, the delay associated with notice and comment would negate the security option as a viable alternative to the reinforced door requirement.

For the reasons discussed previously in this document, the FAA finds that notice and public comment on this final rule are impracticable, unnecessary, and contrary to the public interest. This final rule must be adopted promptly to create the certainty and the time needed by cargo operators to meet the airplane security requirements.

Lists of Subjects

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 129

Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR parts 121 and 129 as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 45101–45105, 46105.

■ 2. Sections 121.313(j)(1) and (2) are revised to read as follows:

§ 121.313 Miscellaneous equipment.

* * * * *

(j) * * *

(1) After April 9, 2003, for airplanes required by paragraph (f) of this section to have a door between the passenger and pilot or crew rest compartments,

(i) Each such door must meet the requirements of § 25.795(a)(1) and (2) in effect on January 15, 2002; and

(ii) Each operator must establish methods to enable a flight attendant to enter the pilot compartment in the event that a flightcrew member becomes incapacitated. Any associated signal or confirmation system must be operable by each flightcrew member from that flightcrew member's duty station.

(2) After October 1, 2003, for transport category, all-cargo airplanes that had a door installed between the pilot compartment and any other occupied compartment on or after January 15, 2002, each such door must meet the requirements of § 25.795(a)(1) and (2) in effect on January 15, 2002; or the operator must implement a security program approved by the Transportation Security Administration (TSA) for the operation of all airplanes in that operator's fleet.

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S. REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

■ 3. The authority citation for part 129 continues to read as follows:

Authority: 49 U.S.C. 1372, 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901–44904, 44906, 44912, 46105, Pub. L. 107–71 séc. 104.49 U.S.C.

■ 4. Sections 129.28(c)(1), (2), and (3) are revised to read as follows:

§ 129.28 Flightdeck security.

* * * * *

(c) * * *

(1) Except for a newly manufactured airplane on a non-revenue delivery flight, no foreign air carrier covered by § 129.1(a) may operate:

(i) After April 9, 2003, a passenger carrying transport category airplane within the United States, except on overflights, unless the airplane's flightdeck door installation meets the requirements of paragraphs (c)(2) and (c)(3) of this section or an alternative standard found acceptable to the Administrator.

(ii) After October 1, 2003, a transport category all-cargo airplane that had a door installed between the pilot compartment and any other occupied compartment on or after June 21, 2002, within the United States, except on overflights, unless the airplane's flightdeck door installation meets the requirements of paragraphs (c)(2) and (c)(3) of this section or an alternative standard found acceptable to the Administrator; or the operator must implement a security program approved by the Transportation Security Administration (TSA) for the operation of all airplanes in that operator's fleet.

(2) The door must resist forcible intrusion by unauthorized persons and be capable of withstanding impacts of 300 joules (221.3 foot-pounds) at the critical locations on the door, as well as a 1,113-newton (250 pounds) constant tensile load on the knob or handle, and

(3) The door must resist penetration by small arms fire and fragmentation devices to a level equivalent to Level IIIa of the National Institute of Justice Standard (NIJ) 0101.04.

* * * * *

Issued in Washington, DC, on July 11, 2003.

Marion C. Blakey,

Administrator.

[FR Doc. 03–18075 Filed 7–17–03; 8:45 am]

BILLING CODE 4910–13–P



Federal Register

Friday,
July 18, 2003

Part IV

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone: Phaseout of Chlorobromomethane Production and Consumption; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7529–4]

RIN 2060–AJ27

Protection of Stratospheric Ozone: Phaseout of Chlorobromomethane Production and Consumption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In accordance with the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Protocol), EPA is adding chlorobromomethane (CBM) to the list of substances subject to production and consumption controls under the Clean Air Act (CAA) and EPA's implementing regulations. Today's action creates a new Group (Group VIII) of class I substances for CBM, and designates the value of CBM's "ozone depleting potential" (ODP) as 0.12. In accordance with the Protocol, today's action will phase out CBM production and consumption upon publication of this rule with permitted exemptions. Today's action also restricts trade in CBM with countries who are not Parties to the Beijing Amendments to the Protocol. EPA received no comments on the Notice of Proposed Rulemaking (NPRM) during the comment period between October 29, 2002 and November 29, 2002.

DATES: This rule is effective on August 18, 2003.

ADDRESSES: Materials relevant to this rulemaking are contained in Public Docket No. A–92–13, Section XII. The docket is located at U.S. Environmental Protection Agency, EPA West (Air Docket), 1301 Constitution Avenue, NW., Room: B108, Mail Code 6102T, Washington, DC 20004. The materials may be inspected from 8 am until 5:30 pm, Monday through Friday. The telephone number is (202) 566–1742. The fax number is (202) 566–1741. The docket may charge a reasonable fee for copying docket materials.

FOR FURTHER INFORMATION CONTACT: The Stratospheric Ozone Information Hotline at 1–800–296–1996, or Jabeen Akhtar, U.S. Environmental Protection Agency, Global Programs Division (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC, 20460, (202) 564–3514; *akhtar.jabeen@epa.gov*. You may also visit the Ozone Depletion Web site of EPA's Global Programs Division at *http://www.epa.gov/ozone/index.html* for further information about EPA's Ozone Protection regulations, the science of ozone depletion, and other topics.

SUPPLEMENTARY INFORMATION: This document concerns amendments to the production and import controls for ozone-depleting substances (ODS). The amendment concerns the addition of a new controlled substance, chlorobromomethane (CBM), to the list of substances already subject to controls related to production, import, export, destruction, transhipment, essential uses, and feedstock uses.

The regulated categories that may be affected by this action include:

Category	SIC	NAICS	Examples of potentially regulated entities
1. Industrial organic chemicals, NEC	2869	325199	Producers, importers, or exporters of CBM.
2. Pharmaceutical preparations	2834	325412	Transformers of CBM.
3. Pesticides and agricultural chemicals, NEC	2879	32532	Transformers of CBM.
4. Chemicals and allied products, NEC	5169	42269	Lab suppliers of CBM.
5. Testing laboratories, except veterinary testing labs	8734	54138	Lab users of CBM.
6. Medical and diagnostic laboratories	8071	6215	Lab users of CBM.
7. Research and development in the physical, engineering and life sciences	8731 and 8733	54171	Lab users of CBM.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be affected. To determine whether your facility, company, business organization, etc., could be regulated by this action, you should carefully examine the applicability criteria in § 82.1(b) of Title 40 of the Code of Federal Regulations (CFR). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

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J. Congressional Review Act

I. What Is the Scientific and Legal Background for Regulations To Phase Out Ozone-Depleting Substances?

In response to the body of evidence linking chlorofluorocarbons (CFCs) and other chlorinated and brominated compounds to ozone depletion, the international community reached agreement in 1987 on a landmark treaty. This treaty, the Montreal Protocol on Substances that Deplete the Ozone Layer ("Montreal Protocol" or "Protocol") was signed by the United States and ratified on April 4, 1988. The Protocol establishes controls on the production and consumption of ozone depleting chemicals.

In the context of the regulatory program, the use of the term consumption may be misleading. Consumption does not mean the "use" of a controlled substance, but rather is defined as the formula: consumption = production + imports − exports, of controlled substances (Article 1 of the Protocol and section 601 of the CAA).

The Clean Air Act Amendments of 1990 direct the EPA to issue regulations to implement the provisions of the Protocol within the United States. Accordingly, EPA developed a scheme of production and consumption controls relative to substances addressed by the Protocol. The current regulatory requirements of the Stratospheric Ozone Protection Program implement the provisions of the Protocol and the Clean Air Act (CAA) by limiting the production and consumption of ozone-depleting substances. These regulatory requirements are codified at subpart A to part 82 of Volume 40 of the Code of Federal Regulations (40 CFR part 82, subpart A). As the control measures of the Protocol have been amended or adjusted, and in consideration of other factors, subpart A has also been amended. For example, following the amendments to the Protocol made at the Fourth Meeting of the Parties in Copenhagen in 1992, a number of changes to the control provisions of subpart A to 40 CFR part 82 were made, including an accelerated phaseout of ODS production and consumption. EPA published a final regulation in December of 1993, implementing the United States' obligation under the Copenhagen amendments (58 FR 65018). Other regulations amending Subpart A include those published on December 20, 1994 (59 FR 65478), May 10, 1995 (60 FR 24970), August 4, 1998 (63 FR 41625), and October 5, 1998 (64 FR 53290).

Although the regulations phased out the production and consumption of class I, Group II substances (halons) on January 1, 1994, and all other class I controlled substances (except methyl bromide) on January 1, 1996, a very limited number of exemptions exist, consistent with U.S. obligations under the Protocol. The regulations allow for the manufacture of phased-out class I controlled substances, provided the substances are either transformed, or destroyed (40 CFR 82.4(b)). They also allow limited manufacture if the substances are (1) exported to countries operating under Article 5 of the Protocol or (2) produced for essential uses as authorized by the Protocol and the regulations.

Limited exceptions to the ban on the import of phased-out class I controlled substances also exist if the substances are: (1) Previously used, (2) imported for essential uses as authorized by the Protocol and 40 CFR part 82, subpart A, (3) imported for destruction or transformation only, or (4) a transhipment (*i.e.*, from one foreign country through the U.S., to another foreign country) or a heel (a small amount of controlled substance remaining in a container after discharge) (40 CFR 82.4(d), 82.13(g)(2)).

II. What Chemicals Are Addressed by Today's Action and How Are They Used?

Today's action will affect only one chemical, chlorobromomethane (CBM).[1] CBM is a chemical compound found in trace quantities in the atmosphere with both natural and man-made sources. The Parties to the Montreal Protocol designated the ozone-depleting potential of CBM as 0.12. This value is consistent with an examination of scientific investigations on this topic, which concluded that an appropriate range for the ODP of CBM is 0.07—0.15 (See 64 FR 22985, 4/18/99).

The uses of CBM are described in the NPRM published in the **Federal Register** on October 29, 2002 (67 FR 65916).

III. What Are the Elements of the International Agreement To Regulate CBM?

The NPRM (67 FR 65916, 10/29/02) discussed the Parties' preliminary consideration of CBM as an ozone depleting substance as well as the provisions adopted at the Parties' meeting in Beijing in 1999.

IV. What Are the New U.S. Requirements Imposed by Today's Action?

A. Legal Authority

Several provisions of the CAA provide the legal authority for today's action. Section 602(a) provides EPA with the general authority to list Class I substances. Section 602(a) requires EPA to add to the list of Class I substances those substances that it finds cause or contribute significantly to harmful effects on the stratospheric ozone layer. Section 602(a) also requires the listing of new substances, pursuant to subsection 602(c), that have an ozone-depleting potential of 0.2 or greater. Section 602(c) requires that the Administrator place newly added Class I substances, to the extent consistent with the Montreal Protocol, either into an existing Group or a new Group. Whenever EPA adds a substance to the Class I list, EPA is also required by section 602(e) to assign a numerical value representing the substance's ozone-depleting potential (ODP). Section 602(e) requires this ODP numerical value to be consistent with the Montreal Protocol if such ODP is specified by the Montreal Protocol.

Those substances listed as a Class I (or Class II) substance are then subject to the monitoring and reporting requirements as set forth and implemented under section 603. Section 603(b) requires that on a quarterly basis, or other such basis as EPA may prescribe, a report be filed with EPA regarding the amount of substance(s) produced, imported, and exported during the preceding reporting period.

Section 604 sets forth the general phase-out schedule of Class I substances and exceptions to the phase-out. Section 604(a) requires EPA to promulgate regulations implementing the phase-out schedule for Class I substances set forth in the CAA. The section 604 phaseout date for most Class I substances is January 1, 2000; however, under section 602(d), EPA may establish a later phaseout date for a newly listed substance if the section 604 phaseout date is unattainable, considering when the substance is listed.

Section 614(b) requires that Title VI of the CAA be "construed, interpreted, and applied as a supplement to the terms and conditions of the Montreal Protocol, * * *, and shall not be construed, interpreted, or applied to abrogate the responsibilities of the United States to implement fully the provisions of the Montreal Protocol." Section 614(b) requires that in the case of any conflict "between any provision of this title and any provision of the Montreal Protocol, the more stringent provision shall govern." Thus, today's actions list CBM and put in place the phaseout controls consistent with the Montreal Protocol.

B. Specific Elements of Today's Action

EPA received no comments in response to the actions proposed in the NPRM (67 FR 65916, 10/29/02). Therefore, EPA is finalizing these actions as they were proposed.

The effective date for all of today's actions will be 30 days from the date of publication of today's rule in the

[1] The terms chlorobromomethane and bromochloromethane are synonymous. They both refer to the chemical, CH_2BrCl. Both terms can be found in industry, scientific, and regulatory documents.

Federal Register. Under section 604(b) of the CAA, unless otherwise stated, the phaseout date for Class I substances is January 1, 2000. However, pursuant to section 602(d), EPA may establish a later phaseout date for a newly listed substance if the section 604(b) date is unattainable. Because the January 1, 2000 phaseout date is in the past, it is unattainable. Therefore, EPA is establishing a later phaseout date linked to the publication date of the final rule.

Today's effective date takes into consideration that the Beijing Amendments entered-into-force under the Protocol on February 25, 2002, for Parties that have ratified the amendment package. The U.S. Senate gave their advice and consent to the ratification of the Beijing Amendment package on October 9, 2002, but the U.S. must still officially deposit its instrument of ratification with the United Nations. Ninety days following the date the U.S. officially deposits the instrument of ratification for the Beijing Amendment package, the U.S. assumes obligations to comply with the provisions of the Beijing Amendment. Thus, EPA needs to have put in place (prior to the deposit of the instrument of ratification) final regulatory programs that will implement and ensure U.S. compliance with the provisions of the Beijing Amendment package.

1. Listing CBM and Controls

Today's action creates a new Group (Group VIII) of class I substances, places CBM in this new Group, and assigns CBM an ODP of 0.12. Today's action establishes a full ban on CBM production and import. This ban does not apply to the production or import of CBM that is subsequently transformed or destroyed, or to imports of transhipments or heels (see section I). There are no interim phasedown levels; that is, production and import are unrestricted until 30 days after publication of this rule.

Today's action does not allow production for the "basic domestic needs" of Article 5 countries for reasons described in section III B of the NPRM (67 FR 65916, 10/29/02).

If there is a need for CBM for laboratory and analytical uses after the phaseout, a framework exists to allow the inclusion of CBM in the production and import exemption for laboratory and analytical uses, described in greater detail in section IV.B.3 of this Preamble.

2. Ban on Trade with Non-Parties

Today's action also prohibits CBM import from and export to a foreign state that is not a Party to the 1999 Beijing Amendments to the Protocol. In accordance with previously established provisions under the Protocol, current EPA regulations (60 FR 24970; 40 CFR 82.4(l)) prohibit certain class I controlled substances from export to or import from foreign states not Parties to the Montreal Protocol or specific amendment packages to the Protocol (*e.g.*, the London Amendments). With today's action, EPA is adding a new subparagraph, § 82.4(l)(5) regarding a CBM trade ban that will become effective 30 days after the date of publication of today's rule in the **Federal Register**.

A list of Parties that have ratified the Montreal Protocol and successive amendments to the Protocol is published as Annex 1 in appendix C to subpart A with today's final action. For the purposes of the trade ban in today's action, companies should refer to appendix C to subpart A of part 82 to identify nations that have not yet ratified the Beijing Amendments. CBM imports from or exports to these nations that have not ratified the Beijing Amendments are prohibited. EPA will publish notices on a periodic basis to update this list (appendix C) to reflect when Parties ratify the Montreal Protocol and its amendments. For additional information on countries that have ratified the Protocol and its amendments, visit the website of the United Nations Environment Program (UNEP) Ozone Secretariat at www.unep.org/ozone/ and look for the "Status of Ratification."

3. Laboratory Essential Use Exemption

Article 21 of the Montreal Protocol allows for the possibility of "essential use" exemptions from the phaseout established for CBM. The Parties have set up a framework for exempting phased out ozone-depleting substances for laboratory and analytical uses under the context of the essential use exemption. EPA has also provided a *de minimis* exemption for essential laboratory uses of class I ODSs. The criteria identifying exempt applications are specified in appendix G to 40 CFR part 82, subpart A.

The existing framework for exempting laboratory and analytical uses is found in the criteria listed in appendix G of subpart A of 40 CFR part 82. Entities wishing to use the exemption for laboratory and analytical uses for CBM should refer to this criteria, which include purity standards, containment requirements, and recycling and disposal requirements for the substance. No prior approval is needed to use the exemption for continued production and import of CBM, as long as the criteria listed in appendix G of subpart A of 40 CFR part 82 are met and the recordkeeping and reporting requirements specified in 40 CFR 82.13 (v) to (z) of subpart A, which are summarized later in this Preamble, are followed. For further information about the essential use exemption, you may refer to the NPRM (67 FR 65916, 10/29/02).

On February 11, 2002, EPA extended the exemption for laboratory and analytical uses through the year 2005, while eliminating the following uses, consistent with Decision XI/15: (a) Testing of oil, grease and total petroleum hydrocarbons in water; (b) Testing of tar in road-paving materials; and (c) Forensic finger-printing (67 FR 6352). However, it should be noted that the Parties to the Montreal Protocol have not extended the global laboratory and analytical essential-use exemption indefinitely. This issue is further discussed at 66 FR 14767 (3/13/01).

4. Process Agents

Controlled substances produced or imported as process agents are listed in table A of Decision X/14 of the Meetings of the Parties to the Montreal Protocol. Parties may propose additions to the list of controlled substances designated as process agents by sending a detailed proposal to the Ozone Secretariat, which will forward them to the Technology and Economic Assessment Panel (TEAP). The Panel will then investigate the proposed change and make a recommendation to the Parties whether or not the proposed use should be added to the list by decision of the Parties.

In advance of publication of the NPRM (67 FR 65916, 10/29/02), EPA received a letter from one stakeholder requesting that their use of CBM as a solvent in the process of producing a polymer additive be considered a process agent use. Based on information in this letter, EPA determined this company's use of CBM to be exempt from restrictions on controlled substances in 40 CFR part 82, subpart A. EPA submitted a request to the Parties to the Protocol to add this use of CBM to the list of process agents in Table A of Decision X/14 and to change the emissions limit for the United States in Table B to reflect this addition. The TEAP considered this U.S. request regarding the process agent use of CBM and recommended to the Parties its inclusion in Table A of Decision X/14. The Parties are expected to act on the U.S. request during their meeting in the fall of 2003.

5. Recordkeeping and Reporting Requirements

With the designation of CBM as a class I ODS, existing recordkeeping and reporting requirements in 40 CFR 82.13 will apply to production, importation, destruction, transformation, transhipments, export, or essential uses of CBM. Potentially affected parties are urged to consult the relevant regulatory paragraphs in 40 CFR 82.13, subpart A. In addition, guidance and reporting forms for these requirements are available from EPA's Stratospheric Ozone Hotline ((800) 296–1996).

(a) Producers

Entities that produce CBM, as for other class I controlled substances, must submit a report to the EPA Administrator within 120 days of publication of this rule, describing in detail how daily production quantities are measured and recorded, including how fugitive losses are accounted for and the estimated percent efficiency of the production process. These entities must also maintain detailed records pertaining to (i) the quantity of controlled substances produced at each facility and the purposes for which they are produced, used, and sold, with certain written verifications; (ii) quantities of other chemicals produced within each facility and quantities of inputs used in the production of controlled substances; and (iii) shipments of controlled substances produced at each facility. These entities must, in addition, submit a quarterly report identifying quarterly production amounts and amounts sold, transferred, or exported (and specifying amounts transformed or destroyed by the producer or recipient), with appropriate verifications; and a list of the essential-use (including laboratory essential use) allowance holders from whom orders were placed and the quantity of essential-use controlled substances requested and produced, with appropriate verifications. See 40 CFR part 82, subpart A (§ 82.13) for the complete reporting and recordkeeping requirements.

(b) Importers

According to EPA's existing requirements for ODSs, a person may import a used class I controlled substance if they comply with the petition process described in 40 CFR 82.4(j), 40 CFR 82.13(g)(2), and (3), and the revisions to this process published in a final rule in the **Federal Register** on December 31, 2002 (67 FR 79861), entitled "Protection of Stratospheric Ozone: Additional Reconsideration of Petition Criteria and Incorporation of Montreal Protocol Decisions." Under the Protocol and the CAA, the import of "used controlled substances" does not count against a country's obligation to completely phase out import. Therefore, with the listing of CBM as a class I controlled substance, an importer of used, recycled, or reclaimed CBM is subject to the requirements specified in these sections. Specifically, importers of used, recycled, or reclaimed controlled substances and transshipments would need to fulfill the import petition process.

The revised petition process for Class I substances (67 FR 79861, 12/31/02) now requires that for each individual shipment of greater than five lbs, at least 40 working days before the shipment leaves the foreign port of export, the importer must submit to EPA a petition including the identity and quantity of the controlled substance; information pertaining to the source, foreign owner, and exporter of the controlled substance, information regarding the previous use and identity of any domestic or foreign reclaimer; information on the equipment from which the substance was recovered at each source, information on import port of entry, vessel, and dates of shipment; the intended use of the controlled substance, an export license from the appropriate government agency in the country of export, and certification of the accuracy of the information included in the petition.

Entities that import CBM are also subject to the standard recordkeeping and reporting requirements for importers of class I substances. These include the requirement to maintain detailed records of the quantity of each controlled substance, including information and documentation pertaining to the amounts that may be in mixtures, that are used, recycled or reclaimed, that are for use or sold for use in processing resulting in their transformation or destruction, and that are imported for essential uses; and including documentation and/or certification relating to port of entry, country from which the substance was imported, bill of lading, the U.S. customs entry form, and intended use of the imported substance. Such entities must also submit to EPA a quarterly report summarizing the records described above and including certifications regarding the intended use of controlled substances (*e.g.*, transformation, destruction, essential uses). In the case of imports of used (including recycled or reclaimed) controlled substances, or heels of controlled substances, bills of lading or invoices must be labeled, indicating that the controlled substance is used, recycled, reclaimed, or a heel, as appropriate. See 40 CFR part 82, subpart A (§ 82.13) for complete reporting and recordkeeping requirements.

(c) Exporters

Exporters of CBM, as for other class I controlled substances, must submit information within 45 days after the end of the control period, including the names and addresses of the exporter and the recipient of the exports, the type and quantity of the controlled substances exported, percentage which is used, recycled, or reclaimed, date/port of export, amount exported to Article 5 countries, and documentation or certification relating to purchaser's or importer's intent to transform or destroy the controlled substance. Exporters of class I controlled substances must also label, in the case of exports of used (including recycled or reclaimed) controlled substance, bills of lading or invoices, indicating that the controlled substance is used, recycled, or reclaimed. *See* 40 CFR part 82, subpart A (§ 82.13) for the complete reporting and recordkeeping requirements.

(d) Destroyers

Entities that destroy CBM, as with other class I controlled substances, must submit a one-time report stating the destruction unit's efficiency and the methods used to determine destruction efficiency and to record the volume destroyed. Changes to these methods must be reported within 60 days of the change. The report must also include names of other regulations applicable to the destruction process. Such entities must also provide the producer or importer from whom they purchased or received the controlled substances with a verification that controlled substances will be used in processes that result in their destruction. Destroyers of class I controlled substances must also report the names and quantities of class I controlled substances destroyed for each control period within 45 days of the end of the control period. *See* 40 CFR part 82, subpart A (§ 82.13) for the complete reporting and recordkeeping requirements.

(e) Transformers

Entities that transform CBM, as for other class I controlled substances, must provide the producer or importer of the controlled substances the IRS certification that the controlled substances are to be used in processes resulting in their transformation, and report the names and quantities of class I controlled substances transformed for each control period within 45 days of

the end of the control period. *See* 40 CFR part 82, subpart A (§ 82.13) for the complete reporting and recordkeeping requirements.

(f) Transhipments and Heels

Entities that bring back a container with a heel of CBM to the United States must report quarterly the amount brought into the United States, certifying that the residual amount in each shipment is less than 10% of the volume of the container and will remain in the container and be included in a future shipment, be recovered and transformed or destroyed, or be recovered for a non-emissive use. They must also report on the final disposition of each shipment within 45 days of the end of the control period. Entities that transship a controlled substance must maintain records that indicate that the controlled substance shipment originated in a foreign country destined for another foreign country, and does not enter interstate commerce with the United States.

(g) Laboratory Essential Uses

CBM that is to be used in laboratory applications is exempted from the ban in the same manner that all other Class I ODSs are exempted for laboratory uses. Laboratory distributors who sell CBM under this exemption are subject to the reporting requirements outlined in 40 CFR part 82, subpart A (§ 82.13). These reporting requirements are as follows: Laboratory distributors/suppliers must report quarterly the quantity received of each class I controlled substance from each producer or importer. Distributors must also keep on record certifications from customers who purchase CBM (or any Class I ODS) stating that the CBM will only be used in laboratory applications defined in 40 CFR part 82, subpart A (§ 82.13), appendix G. (Laboratory customers purchasing a controlled substance under the global laboratory essential-use exemption must provide the producer, importer or distributor with a one-time-per-year certification for each controlled substance that the substance will only be used for laboratory applications and not be resold or used in manufacturing). Distributors must report quarterly the quantity of the controlled substance purchased by each laboratory customer. If the controlled substances are only sold as reference standards for calibrating laboratory analytical equipment, the distributor may write a letter to the EPA Administrator requesting permission to submit these reports annually rather than quarterly. See 40 CFR part 82, subpart A (§ 82.13) for complete reporting and recordkeeping requirements.

V. What Other Stratospheric Protection Regulations Will Relate to CBM Following Today's Action?

A regulation originally published on February 11, 1993 (58 FR 8136) and amended at 60 FR 4020 (January 19, 1995) establishes requirements pertaining to labeling of products containing or made with ozone-depleting substances. The text of that regulation (as well as Fact Sheets about it) can be found at the following Web site: *http://www.epa.gov/ozone/title6/labeling/labeling.html*. The labeling requirements apply to products manufactured with, containers of, and products containing specific ozone-depleting substances pursuant to section 611 of the CAA. Specifically, the regulations require products that are manufactured with a process using a class I substance; products containing a class I substance; and containers of a class I or class II (hydrochlorofluorocarbons (HCFCs)) substance or mixture to bear a "clearly legible and conspicuous" warning statement. Manufacturers, distributors, wholesalers, and retailers of products manufactured with, containers of, and products containing CBM are therefore required to comply with the labeling requirements which would become applicable to CBM one year after its final listing as a class I ODS; See 40 CFR part 82, subpart E.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a "significant" regulatory action as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) (OMB Control Number 2060–0170) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1432.22) and a copy may be obtained from Susan Auby by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, by email at *auby.susan @epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*.

As explained in EPA's ICR document, EPA's Office of Air and Radiation is revising the previously approved information collection by the same title.[2] Today's action imposes new recordkeeping and reporting requirements associated with the production, import, export, recycling, destruction, transhipment, and feedstock use of CBM. Specifically, producers, importers, and exporters will be required to submit to EPA quarterly reports of the quantity of CBM in each of their transactions; they will also be required to report the quantity of CBM transformed or destroyed. Producers, importers, and exporters of CBM must also maintain records such as Customs entry forms, bills of lading, sales records, and canceled checks to support their quarterly reports. The quarterly reports may be faxed or mailed to EPA, where they will be handled as confidential business information. EPA will store the submitted information in a computerized database designed to track production, import, and export balances and transfer activities. EPA is currently exploring the possibility of having reports filed and submitted to the Agency over a secure Web site. If and when electronic reporting would occur, EPA would change its guidance document and its ICR to indicate a change in burden hours. EPA will use the information to ensure that the U.S. maintains compliance with the Protocol requirements and to report annually to United Nations Environment Programme the U.S. activity in CBM. EPA will store the submitted information in a computer system designed to track production, import, and export balances and transfer activities. EPA estimates that the information collection will involve approximately 133 respondents: 2 producers, 2 exporters, 8 importers, 100 laboratory certifiers, 8 transformers and destroyers, 6 essential use allowance holders, 2 laboratory suppliers, and 5 laboratory suppliers (reference standards). The total annual industry burden and cost are estimated at 2,580 hours and $201,350, of which $3,000 are annual operating and maintenance (O&M) costs.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. Comments were requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. No comments were received.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's rule on small entities, small entities are defined as: (1) A small business that is identified by the North American Industry Classification System (NAICS) code, in the Table below; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The size standards described in this section apply to all Small Business Administration (SBA) programs unless otherwise specified. The size standards themselves are expressed either in number of employees or annual receipts in millions of dollars, unless otherwise specified. The number of employees or annual receipts indicates the maximum allowed for a concern and its affiliates to be considered small.

Category	SIC code	NAICS code	SIC small business size standard (in number of employees or millions of dollars)
1. Industrial organic chemicals, NEC	2869	325199	1,000
2. Pharmaceutical preparations	2834	325412	750
3. Pesticides and agricultural chemicals, NEC	2879	32532	500
4. Chemicals and allied products, NEC	5169	42269	100
5. Testing laboratories, except veterinary testing labs	8734	54138	$5.0
6. Medical and diagnostic laboratories	8071	6215	$5.0
7. Research and development in the physical, engineering and life sciences	8731 and 8733	54171	$5.0

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. The only small entities that will be impacted by the recordkeeping and reporting requirements of this rule are laboratories. We have determined that about 100 laboratories (only a portion of which are owned by small entities) will experience an annual estimated impact of $7,688 due to the reporting and recordkeeping requirements described in 40 CFR part 82, subpart A (§ 82.13).

In addition to the recordkeeping and reporting requirements, today's action bans the production and import of CBM. There are only 2 known producers of CBM in the United States. These are large, multinational corporations and not small entities. In addition, informal discussions with these producers indicate that virtually all of their CBM production is for customers who transform CBM; this production is not subject to the CBM phaseout implemented by today's action.

Regarding import, EPA records indicate that during the years 1995–1999 (the years for which data were available), 22 companies had imported CBM during one or more years. Of these, 16 had imported CBM in only one of the 5 years of record. Informal discussions with the primary importer (responsible for 77% of the imported CBM) indicate that 80–85% of their imports are for transformation. Thus, the impacts of today's action on CBM importers will also be limited (providing that import is from countries that are Parties to or in compliance with the Beijing Amendments).

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. Laboratories will only be required to certify purchases of CBM one time per year, in which they must indicate their use of CBM will only be used for laboratory or analytical purposes and identify the specific use to which the substance will be put. This requirement

[2] On March 5, 2001, the Office of Management and Budget (OMB) approved EPA's request for the extension of approval of this ICR. The request for extension was submitted by EPA on November 29, 2000. With that approval, OMB stated that it "understands that EPA is in the process of developing several rules that would result in revisions to this collection * * * EPA will need to revise this collection as part of those rulemaking processes." This ICR revision is one such revision.

is to ensure proper use of exempted production and import and allow the U.S. to report specific information to the Montreal Protocol under Annex II of Decision VI/9. EPA received no comment on the NPRM (67 FR 65916, 10/29/02) regarding impact on laboratories.

EPA conducted outreach to consult with and notified the potentially affected community of today's action. EPA sent letters on February 28, 2001, and again on April 25, 2000, to all importers for which addresses could be found, as well as other identified entities that may be impacted by this rule, notifying them of EPA's anticipated implementation of the 1999 Beijing Amendments to the Montreal Protocol, including the ban on production and import, and new recordkeeping and reporting requirements. EPA received no adverse concern by any recipient of the letters.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector.

Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's ban on production and import is expected to have minimal economic impact because production and import for feedstock uses (which represent the majority of current production and import uses) are exempt from the ban. Furthermore, CBM use has been largely curtailed by prior environmental and safety regulations in the fire protection, explosion suppression, and solvent sectors. Therefore the ban of CBM is not expected to significantly affect the regulated community.

Based upon research and information available to EPA at this time, EPA understands that the regulated community directly impacted by today's action is restricted in size. Potentially regulated entities include entities that produce, export, or import CBM; entities that use CBM in a process that results in its transformation or destruction; entities that are laboratory suppliers of CBM; and entities with laboratory uses of CBM. For all of these entities, there would be new recordkeeping and reporting requirements imposed by today's action, but these are estimated to be minimal (approximately a total for the industry of $200,000 per year; see VII.B. for explanation of this estimate).

Thus, today's rule is not subject to the requirements of sections 202 or 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, we are not required to develop a plan with regard to small governments under section 203.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule will not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

Today's rule is expected to primarily affect private sector entities that either produce, import, export, transform, or use or supply CBM for laboratory purposes. EPA is not aware of any current uses of CBM by public sector entities. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175.

Today's rule is expected to primarily affect private sector entities that either produce, import, export, transform, or use or supply CBM for laboratory purposes. EPA is not aware of any current uses of CBM by tribal governments or their communities. Thus, Executive Order 13175 does not apply to this rule.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicited additional comment on this rule from tribal officials. No comments were received.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This rule implements an obligation of the United States to implement fully the provisions of the Montreal Protocol and is not directly based on health or safety risks.

H. Executive Order 13211: Action That Significanty Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use," (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective October 16, 2003.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Exports, Government procurement, Imports, Labeling, Reporting and recordkeeping requirements .

Dated: July 11, 2003.

Christine Todd Whitman,

Acting Administrator.

■ For reasons set out in the preamble, 40 CFR part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart A—Production and Consumption Controls

■ 2. Section 82.3 is amended by:
■ a. Adding in alphabetical order the definition of Beijing Amendments.
■ b. Revising the last sentence in the definition of Controlled substances.

The revision and addition read as follows:

§ 82.3 Definitions.

* * * * *

Beijing Amendments means the Montreal Protocol, as amended at the Eleventh Meeting of the Parties to the Montreal Protocol in Beijing in 1999.

* * * * *

Controlled substance * * * Class I substances are further divided into eight groups, Group I, Group II, Group III, Group IV, Group V, Group VI, Group VII, and Group VIII, as set forth in appendix A to this subpart.

* * * * *

■ 3. Section 82.4 is amended by:
■ a. Revising the first sentence of paragraph (b),
■ b. Revising the first sentence of paragraph (d),
■ c. Adding paragraph (l)(5).

The revisions and addition read as follows:

§ 82.4 Prohibitions.

* * * * *

(b) Effective January 1, 1996, for any class I, Group I, Group II, Group III, Group IV, Group V, or Group VII controlled substances, and effective January 1, 2005, for any class I, Group VI controlled substance, and effective August 18, 2003, for any class I, Group VIII controlled substance, no person may produce, at any time in any control period, (except that are transformed or destroyed domestically or by a person of another Party) in excess of the amount of conferred unexpended essential-use allowances or exemptions under this section, or the amount of unexpended Article 5 allowances as allocated under § 82.9 for that substance held by that person under the authority of this subpart at that time for that control period. ***

* * * * *

(d) Effective January 1, 1996, for any class I, Group I, Group II, Group III, Group IV, Group V, or Group VII controlled substances, and effective January 1, 2005, for any class I, Group VI controlled substance, and effective August 18, 2003, for any class I, Group VIII controlled substance, no person may import (except for transhipments or heels), at any time in any control period, (except for controlled substances that are transformed or destroyed) in excess of the amount of unexpended essential-use allowances or exemptions as allocated under this section for that substance held by that person under the authority of this subpart at that time for that control period. * * *

* * * * *

(l) * * *

(5) Import or export any quantity of a controlled substance listed in Class I, Group VIII, in appendix A to this subpart, from or to any foreign state not Party to the Beijing Amendments (as noted in appendix C, Annex 1, to this subpart), unless that foreign state is complying with the Beijing Amendments (as noted in appendix C, Annex 2, to this subpart).

* * * * *

■ 4. Section 82.13 is amended by:
■ a. Revising paragraph (a).
■ b. Revising paragraph (f)(1) introductory text.

The revisions read as follows:

§ 82.13 Recordkeeping and reporting requirements.

(a) Unless otherwise specified, the recordkeeping and reporting requirements set forth in this section take effect on January 1, 1995. For class I, Group VIII controlled substances, the recordkeeping and reporting requirements set forth in this section take effect on August 18, 2003.

* * * * *

(f) * * *

(1) Within 120 days of May 10, 1995, or within 120 days of the date that a producer first produces a class I controlled substance, whichever is later, and within 120 days of July 18, 2003 for class I, Group VIII controlled substances, every producer who has not already done so must submit to the Administrator a report describing:

* * * * *

■ 5. Appendix A to subpart A is amended by adding paragraph H to read as follows:

Appendix A to Subpart A of Part 82—Class 1 Controlled Substances

Class 1 controlled substances	ODP
* * * * *	
H. Group VIII:	
CH2BrCl (Chlorobromomethane	0.12

■ 6. Appendix C to subpart A is revised to read as follows:

Appendix C to Subpart A of Part 82—Parties to the Montreal Protocol, and Nations Complying With, But Not Parties to, the Protocol

Annex 1 to Appendix C of Subpart A—Parties to the Montreal Protocol (as of April 11, 2003)

The check mark [✓] means the particular country ratified the Protocol or the specific Amendment package. Amendment packages are identified by the name of the city where the amendment package was negotiated and agreed. Updated lists of Parties to the Protocol and the Amendments can be located at: *www.unep.org/ozone/ratif.shtml.*

Foreign State	Montreal protocol	London amendment	Copenhagen amendments	Montreal amendments	Beijing amendments
Albania	✓				
Algeria	✓	✓	✓		
Angola	✓				
Antigua and Barbuda	✓	✓	✓	✓	
Argentina	✓	✓	✓	✓	
Armenia	✓				
Australia	✓	✓	✓	✓	
Austria	✓	✓	✓	✓	
Azerbaijan	✓	✓	✓	✓	
Bahamas	✓	✓	✓		
Bahrain	✓	✓	✓	✓	
Bangladesh	✓	✓	✓	✓	
Barbados	✓	✓	✓	✓	✓
Belarus	✓	✓			
Belgium	✓	✓	✓		
Belize	✓	✓	✓		
Benin	✓	✓	✓		
Bolivia	✓	✓	✓	✓	
Bosnia and Herzegovina	✓				
Botswana	✓	✓	✓		
Brazil	✓	✓	✓		
Brunei Darussalam	✓				
Bulgaria	✓	✓	✓	✓	✓
Burkina Faso	✓	✓	✓	✓	✓
Burundi	✓	✓	✓	✓	✓
Cambodia	✓				
Cameroon	✓	✓	✓		
Canada	✓	✓	✓	✓	✓
Cape Verde	✓	✓	✓	✓	
Central African Republic	✓				
Chad	✓	✓	✓	✓	
Chile	✓	✓	✓	✓	✓
China	✓	✓			
Colombia	✓	✓	✓		
Comoros	✓	✓	✓	✓	✓
Congo	✓	✓	✓	✓	✓
Congo, Democratic Republic of	✓	✓	✓		
Costa Rica	✓	✓	✓		
Cote d'Ivoire	✓	✓			
Croatia	✓	✓	✓	✓	✓
Cuba	✓	✓	✓		
Cyprus	✓	✓			
Czech Republic	✓	✓	✓	✓	✓
Denmark	✓	✓	✓		
Djibouti	✓	✓	✓	✓	
Dominica	✓	✓			
Dominican Republic	✓	✓	✓		
Ecuador	✓	✓	✓		
Egypt	✓	✓	✓	✓	
El Salvador	✓	✓	✓	✓	
Equatorial Guinea					
Estonia	✓	✓	✓	✓	

Foreign State	Montreal protocol	London amendment	Copenhagen amendments	Montreal amendments	Beijing amendments
Ethiopia	✓				
European Community	✓	✓	✓	✓	✓
Federated States of Micronesia	✓	✓	✓	✓	✓
Fiji	✓	✓	✓		
Finland	✓	✓	✓	✓	✓
France	✓	✓	✓		
Gabon	✓	✓	✓	✓	✓
Gambia	✓	✓			
Georgia	✓	✓	✓	✓	
Germany	✓	✓	✓	✓	✓
Ghana	✓	✓	✓		
Greece	✓	✓	✓		
Grenada	✓	✓	✓	✓	
Guatemala	✓	✓	✓	✓	✓
Guinea	✓	✓			
Guinea Bissau	✓	✓	✓	✓	✓
Guyana	✓	✓	✓	✓	
Haiti	✓	✓	✓	✓	
Honduras	✓	✓	✓		
Hungary	✓	✓	✓	✓	✓
Iceland	✓	✓	✓	✓	
India	✓	✓	✓	✓	✓
Indonesia	✓	✓	✓		
Iran, Islamic	✓	✓	✓	✓	
Ireland	✓	✓	✓		
Israel	✓	✓	✓		
Italy	✓	✓	✓	✓	
Jamaica	✓	✓	✓		
Japan	✓	✓	✓	✓	✓
Jordan	✓	✓	✓	✓	✓
Kazakhstan	✓	✓			
Kenya	✓	✓	✓	✓	
Kiribati	✓				
Korea, Democratic People's Republic of	✓	✓	✓	✓	✓
Korea, Republic of	✓	✓	✓	✓	
Kuwait	✓	✓	✓		
Kyrgyzstan	✓				
Lao, People's Democratic Republic	✓				
Latvia	✓	✓	✓	✓	
Lebanon	✓	✓	✓	✓	
Lesotho	✓				
Liberia	✓	✓	✓		
Libyan Arab Jamahiriya	✓	✓			
Liechtenstein	✓	✓	✓		
Lithuania	✓	✓	✓		
Luxembourg	✓	✓	✓	✓	✓
Madagascar	✓	✓	✓	✓	✓
Malawi	✓	✓	✓		
Malaysia	✓	✓	✓	✓	✓
Maldives	✓	✓	✓	✓	✓
Mali	✓	✓	✓	✓	
Malta	✓	✓			
Marshall Islands	✓	✓	✓	✓	
Mauritania	✓				
Mauritius	✓	✓	✓	✓	✓
Mexico	✓	✓	✓		
Moldova	✓	✓	✓		
Monaco	✓	✓	✓	✓	✓
Mongolia	✓	✓	✓	✓	
Morocco	✓	✓	✓		
Mozambique	✓	✓	✓		
Myanmar	✓	✓			
Namibia	✓	✓			
Nauru	✓				
Nepal	✓	✓			
Netherlands	✓	✓	✓	✓	✓
New Zealand	✓	✓	✓	✓	✓
Nicaragua	✓	✓	✓		
Niger	✓	✓	✓	✓	
Nigeria	✓	✓	✓	✓	
Norway	✓	✓	✓	✓	✓
Oman	✓	✓	✓		
Pakistan	✓	✓	✓		

Foreign State	Montreal protocol	London amendment	Copenhagen amendments	Montreal amendments	Beijing amendments
Palau	✓	✓	✓	✓	✓
Panama	✓	✓	✓	✓	✓
Papua New Guinea	✓	✓			
Paraguay	✓	✓	✓	✓	
Peru	✓	✓	✓		
Philippines	✓	✓	✓		
Poland	✓	✓	✓	✓	
Portugal	✓	✓	✓		
Qatar	✓	✓	✓		
Romania	✓	✓	✓	✓	
Russian Federation	✓	✓			
Rwanda	✓				
Saint Kitts & Nevis	✓	✓	✓	✓	
Saint Lucia	✓	✓	✓	✓	✓
Saint Vincent and the Grenadines	✓	✓	✓		
Samoa	✓	✓	✓	✓	✓
Sao Tome and Principe	✓	✓	✓	✓	✓
Saudi Arabia	✓	✓	✓		
Senegal	✓	✓	✓	✓	
Seychelles	✓	✓	✓	✓	✓
Sierra Leone	✓	✓	✓	✓	✓
Singapore	✓	✓	✓	✓	✓
Slovakia	✓	✓	✓	✓	✓
Slovenia	✓	✓	✓	✓	
Solomon Island	✓	✓	✓	✓	✓
Somalia	✓	✓	✓	✓	
South Africa	✓	✓	✓	✓	✓
Spain	✓	✓	✓		
Sri Lanka	✓	✓	✓	✓	✓
Sudan	✓	✓	✓	✓	✓
Suriname	✓				
Swaziland	✓				
Sweden	✓	✓	✓	✓	✓
Switzerland	✓	✓	✓	✓	✓
Syrian Arab Republic	✓	✓	✓	✓	
Tajikistan	✓	✓			
Tanzania, United Republic of	✓	✓	✓	✓	✓
Thailand	✓	✓	✓		
The Former Yugoslav Republic of Macedonia	✓	✓	✓	✓	✓
Togo	✓	✓	✓	✓	✓
Tonga	✓				
Trinidad and Tobago	✓	✓	✓	✓	
Tunisia	✓	✓	✓		
Turkey	✓	✓	✓		
Turkmenistan	✓	✓			
Tuvalu	✓	✓	✓	✓	
Uganda	✓	✓	✓	✓	
Ukraine	✓	✓	✓		
United Arab Emirates	✓				
United Kingdom	✓	✓	✓	✓	✓
United States of America	✓	✓	✓	✓	
Uruguay	✓	✓	✓		
Uzbekistan	✓	✓	✓		
Vanuatu	✓	✓	✓	✓	
Venezuela	✓	✓	✓		
Viet Nam	✓	✓	✓	✓	
Yemen	✓	✓	✓		
Yugoslavia	✓			✓	
Zambia	✓	✓			
Zimbabwe	✓	✓	✓		

Annex 2 to Appendix C of Subpart A—Nations Complying With, But Not Parties to, the Protocol [Reserved]

■ 7. Appendix F to subpart A is amended by:

■ a. Removing entries F and G,

■ b. Under A. Class I: by adding entries 6, 7, and 8.

The additions read as follows:

Appendix F to Subpart A—Listing of Ozone Depleting Chemicals

Controlled substance	ODP	AT L	CLP	BLP
A. Class I				
6. Group VI:				
CH3Br-Bromomethane (Methyl Bromide)	0.7		[Reserved]	
7. Group VII:				
$CHFBr_2$-	1.00		[Reserved]	
CHF_2Br-(HBFC–22B1)	0.74		[Reserved]	
CH_2FBr	0.73		[Reserved]	
C_2HFBr_4	0.3–0.8		[Reserved]	
$C_2HF_2Br_3$	0.5–1.8		[Reserved]	
$C_2HF_3Br_2$	0.4–16		[Reserved]	
C_2HF_4Br	0.7–1.2		[Reserved]	
$C_2H_2FBr_3$	0.1–1.1		[Reserved]	
$C_2H_2F_2Br_2$	0.2–1.5		[Reserved]	
$C_2H_2F_3Br$	0.7–1.6		[Reserved]	
$C_2H_3FBr_2$	0.1–1.7		[Reserved]	
$C_2H_3F_2Br$	0.2–1.1		[Reserved]	
C_2H_4FBr	0.07–0.1		[Reserved]	
C_3HFBr_6	0.3–1.5		[Reserved]	
$C_3HF_2Br_5$	0.2–1.9		[Reserved]	
$C_3HF_3Br_4$	0.3–1.8		[Reserved]	
$C_3HF_4Br_3$	0.5–2.2		[Reserved]	
$C_3HF_5Br_2$	0.9–2.0		[Reserved]	
C_3HF_6Br	0.7–3.3		[Reserved]	
$C_3H_2FBr_5$	0.1–1.9		[Reserved]	
$C_3H_2F_2Br_4$	0.2–2.1		[Reserved]	
$C_3H_2F_3Br_3$	0.2–5.6		[Reserved]	
$C_3H_2F_4Br_2$	0.3–7.5		[Reserved]	
$C_3H_2F_5Br$	0.9–1.4		[Reserved]	
$C_3H_3FBR_4$	0.08–1.9		[Reserved]	
$C_3H_3F_2Br_3$	0.1–3.1		[Reserved]	
$C_3H_3F_3Br_2$	0.1–2.5		[Reserved]	
$C_3H_3F_4Br$	0.3–4.4		[Reserved]	
$C_3H_4FBr_3$	0.03–0.3		[Reserved]	
$C_3H_4F_2Br_2$	0.1–1.0		[Reserved]	
$C_3H_4F_3Br$	0.07–0.8		[Reserved]	
$C_3H_5FBr_2$	0.04–0.4		[Reserved]	
$C_3H_5F_2Br$	0.07–0.8		[Reserved]	
C_3H_6FB	0.02–0.7		[Reserved]	
8. Group VIII:				
CH_2BrCl (Chlorobromomethane)	0.12		[Reserved]	

[FR Doc. 03–18154 Filed 7–17–03; 8:45 am]

BILLING CODE 6560–50–U

Federal Register

Friday,
July 18, 2003

Part V

Environmental Protection Agency

Announcement of Regulatory Determinations for Priority Contaminants on the Drinking Water Contaminant Candidate List; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7529–2]

Announcement of Regulatory Determinations for Priority Contaminants on the Drinking Water Contaminant Candidate List

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Safe Drinking Water Act (SDWA), as amended in 1996, directs the United States Environmental Protection Agency (EPA) to publish a list of contaminants (referred to as the Contaminant Candidate List, or CCL) to assist in priority-setting efforts for the Agency's drinking water program. SDWA also directs the Agency to select five or more contaminants every five years from the current CCL and determine whether or not to regulate these contaminants with a National Primary Drinking Water Regulation (NPDWR).

On June 3, 2002, EPA published preliminary regulatory determinations for nine contaminants together with the determination process, rationale, and supporting technical information for each contaminant to seek comment from the public (67 FR 38222). The nine contaminants include three inorganic compounds (IOCs) (manganese, sodium, and sulfate); three synthetic organic compounds (SOCs) (aldrin, dieldrin, and metribuzin); two volatile organic compounds (VOCs) (hexachlorobutadiene and naphthalene); and one microbial contaminant, *Acanthamoeba*. EPA's preliminary determination was that no regulatory action was appropriate for any of the nine contaminants.

EPA received 15 comments from individuals or organizations on the preliminary regulatory determinations for the nine contaminants. The Agency has reviewed these comments and, after careful consideration, decided that no regulatory action is appropriate, at this time, for the nine CCL contaminants published in the June 2002 notice. Regulation of the nine contaminants would not present a meaningful opportunity for health risk reduction for persons served by public water systems (PWSs).

Today's action describes the statutory requirements for the CCL, the analysis EPA used to make the regulatory determinations, a summary of relevant public comments with the Agency's responses, a summary of the nine CCL contaminants, and the Agency's findings for each contaminant.

ADDRESSES: The official public docket for this action is located at EPA's West Building, Room B–102, 1301 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For copies of, and general information about this document or information about the nine contaminants discussed in this action, contact the Safe Drinking Water Hotline. Callers within the United States may reach the Hotline at (800) 426–4791 or its local number (703) 412–3330. The Hotline is open Monday through Friday, excluding Federal holidays, from 9 a.m. to 5:30 p.m., Eastern Time. For technical inquiries contact: Thomas Carpenter (202) 564–4885, e-mail: *carpenter.thomas@epa.gov* or Harriet Colbert, (202) 564–4698, e-mail: *colbert.harriet@epa.gov*.

SUPPLEMENTARY INFORMATION

I. General Information

A. Does This Notice Apply to My Public Water System?

Today's action does not impose any requirements on anyone. Instead, it notifies interested parties of EPA's responses to comments received on EPA's preliminary determination and of EPA's final determination not to regulate nine CCL contaminants.

B. How Can I Get Copies of Related Information?

1. Docket. EPA has established an official public docket for this action under Docket ID No. OW–2002–0021. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.B.1. Once in the system, select "search," then key in the appropriate docket identification number.

Abbreviations and Acronyms Used in This Action

ATSDR Agency for Toxic Substances and Disease Registry
AWQC Ambient Water Quality Criteria
CASRN Chemical Abstract Services Registry Number
CCL Contaminant Candidate List
CWS Community Water Supply
EPA U.S. Environmental Protection Agency
FDA U.S. Food and Drug Administration
FR Federal Register
g gram
HRL Health reference level
IOC Inorganic compound
kg Kilogram
L Liter
MCL Maximum contaminant level
MCLG Maximum contaminant level goal mg milligram
MTBE Methyl-t-butyl ether
NDWAC National Drinking Water Advisory Council
NIRS National Inorganic and Radionuclide Survey
NPDWR National Primary Drinking Water Regulation
NRC National Research Council
OPP Office of Pesticides Program
ORD Office of Research and Development
PWS Public Water System
RSC Relative Source Contribution
SAB Science Advisory Board
SDWA Safe Drinking Water Act
SOC Synthetic organic compound
TRI Toxic Release Inventory
UCM Unregulated Contaminant Monitoring
USEPA United States Environmental Protection Agency
USGS United States Geological Survey
VOC Volatile organic compound

II. Background

A. What Is the Statutory Requirement for the Contaminant Candidate List?

SDWA, as amended in 1996, directs EPA to publish a list of contaminants (referred to as the Contaminant Candidate List, or CCL) to assist the Agency in priority-setting efforts. The CCL is a list of contaminants which are not subject to any proposed or promulgated NPDWRs, are known or anticipated to occur in PWSs, and may require regulation under SDWA.

The first CCL was developed with considerable input from the scientific community and stakeholders. EPA published a draft CCL requesting public comment on October 6, 1997 (62 FR 52193, USEPA 1997). The first final CCL was published on March 2, 1998 (63 FR 10273, USEPA 1998). The SDWA requires that a new CCL be published every five years. EPA is currently preparing the next CCL. The March 1998 CCL contained 60 contaminants, including 50 chemicals or chemical groups and 10 microbiological contaminants or microbial groups. Many of these contaminants lacked some of the information necessary to support a regulatory determination and were identified in the March 1998 CCL notice (USEPA 1998) as having data needs. The 60 CCL contaminants were divided into categories to represent research and data needs associated with each contaminant. The categories were: (1) Regulatory determination priorities; (2) health effects research priorities; (3) treatment research priorities; (4) analytical methods research priorities; and (5) occurrence priorities.

In 1998, 20 of the 60 contaminants were classified as regulatory determination priorities because EPA believed that, at that time, there was sufficient data for these contaminants to evaluate both exposure and risk to public health and to support a determination of whether or not to proceed to promulgation of a NPDWR. Since the March 1998 CCL, EPA found that there was insufficient information, in the Agency's judgement, to support a regulatory determination for 12 of the 20 priority contaminants. In addition, the CCL-contaminant, sodium, was reclassified and added to the list of regulatory determination priorities as a means of reassessing the current guidance level for sodium. Thus, EPA is now presenting regulatory determinations for nine priority contaminants that have sufficient information to support a regulatory determination at this time.

The Agency however, continues to conduct research and/or to collect occurrence information on the remaining 51 CCL contaminants. EPA has been aggressively conducting research to fill in the data gaps and recognizes that stakeholders may have a particular interest in the timing of future regulatory determinations for other contaminants on the CCL. Stakeholders may be concerned that regulatory determinations for such contaminants should not necessarily wait until the end of the next regulatory determination cycle. In this regard, it is important to recognize that the Agency is not precluded from monitoring, conducting research, developing guidance, or regulating contaminants not included on the CCL as necessary and appropriate (see SDWA sections 1412(b)(1)(B)(ii)(III) and 1412(b)(1)(F)), or from taking action on CCL contaminants when information becomes available. Thus, some regulatory determinations may be made before the end of the next regulatory determination cycle (*i.e.*, August 2006).

B. What Contaminants Did EPA Consider for Regulation?

EPA published preliminary regulatory determinations in the June 3, 2002, edition of the **Federal Register** (67 FR 38222, USEPA 2002a) for nine priority contaminants that have sufficient information to support a regulatory determination at this time. The nine contaminants include three IOCs (manganese, sodium, and sulfate); three SOCs (aldrin, dieldrin, and metribuzin); two VOCs (hexachlorobutadiene and naphthalene); and one microbial contaminant, Acanthamoeba. Information for each of the nine CCL contaminants is available in the EPA Fact Sheet (USEPA 2002b), in the Health Effects Support Documents or Drinking Water Advisories for each of the nine CCL contaminants (2003a–h), and in the regulatory determination support documents (USEPA 2001a–g). This information is available at the Water Docket (No. OW–2002–021) and is also available on EPA's Safe Drinking Water Regulatory Determination website at *http://www.epa.gov/safewater/ccl/cclregdetermine.html*. Brief descriptions of each of the nine CCL contaminants considered for regulatory determinations are included in section V of this notice.

III. What Analyses Did EPA Use To Make the Regulatory Determinations?

The precepts for guiding EPA in making regulatory determinations for a drinking water contaminant are included in Section 1412(b)(1)(A) of SDWA. This section of SDWA requires EPA to consider the following three evaluation criteria prior to making a regulatory decision: (1) Potential adverse health effects from the contaminant; (2) occurrence of the contaminant in PWSs with a frequency and at levels of public health concern; and (3) whether regulation of the contaminant would present a meaningful opportunity for health risk reduction for persons served by PWSs.

EPA developed a comprehensive approach for making regulatory determinations with significant expert input and recommendations suggested by the National Research Council (NRC), National Drinking Water Advisory Council (NDWAC), and stakeholders. The regulatory determination approach is largely based on the NDWAC recommendations. For each of the nine contaminants, EPA evaluated the best available peer reviewed data on health effects, and approximately seven million analytical data points on contaminant occurrence. For those contaminants with adequate monitoring methods, as well as health effects and occurrence data, EPA applied an approach in making regulatory determinations that followed the NDWAC recommendations and complies with the SDWA requirements under Section 1412(b)(1)(A). In June 2002, EPA consulted with the Science Advisory Board (SAB) Drinking Water Committee and requested its review and comment on whether the protocol EPA developed, based on the NDWAC recommendations, was consistently applied and appropriately documented. The SAB provided verbal feedback regarding the use of the NRC and NDWAC recommendations in EPA's decision criteria for making its regulatory determinations, as well as its interest in remaining involved in future regulatory determinations. SAB recommended that the Agency provide a transparent and clear explanation of the process for making regulatory determinations. In today's announcement and in the documentation supporting this announcement, the Agency has taken the SAB recommendation into consideration in explaining the evaluation process used to make today's regulatory determinations.

EPA characterized the human health effects that may result from exposure to a contaminant found in drinking water. Based on this characterization, EPA estimated a health reference level (HRL) or benchmark value for each contaminant. EPA has prepared Health Effects Support Documents or Drinking Water Advisories (USEPA 2002c and 2003a–g) for each contaminant, which are available at the EPA Water Docket and on-line at *http://www.epa.gov/edocket/*. The support documents address the following: Exposure from drinking water and other media; toxicokinetics; hazard identification; dose-response assessment; and an overall characterization of risk from drinking water.

Using the Agency's Unregulated Contaminant Monitoring (UCM) program data and National Inorganic and Radionuclide Survey (NIRS) data, EPA estimated the number of PWSs and the population served by the PWSs at the benchmark values, and the

geographic distribution, using a large amount of State occurrence data that are generally indicative of national occurrence. The UCM data form part of the Agency's basis for its estimates of national occurrence since these data provide occurrence information for several unregulated contaminants. The NIRS data provide a statistically representative sample of the national occurrence of many other unregulated and regulated inorganic contaminants in ground water community water supplies (CWSs).

EPA also employed other State drinking water data, use and environmental release information (*e.g.*, EPA's Toxic Release Inventory (TRI), academic and private sector publications), as well as ambient water quality data (*i.e.*, source water existing in surface waters and aquifers before extraction and treatment as drinking water), to augment the UCM drinking water data and to evaluate the likelihood of contaminant occurrence. EPA included, when available, data from the U.S. Geological Survey's (USGS) National Water Quality Assessment program.

A detailed discussion of the data collected and analyses for each contaminant can be found in the respective regulatory determination support document. The regulatory determination support documents (USEPA 2001a–g) are available in the EPA Water Docket.

The underlying data and analysis supporting the findings used by the Agency to make the regulatory determinations are summarized in the June 2002 notice (USEPA 2002a).

IV. Summary of Public Comments and the Agency's Responses on the CCL Regulatory Determination Process

The comment period on the June 3, 2002, notice ended on August 2, 2002. EPA received 15 comments on the preliminary regulatory determinations for the nine CCL contaminants published by EPA in the June 2002 notice (USEPA 2002a). Four comments were received from water systems and related associations, seven from industry groups, two from environmental advocacy groups, one from a State agency and one from a State-related association. Although most commenters generally approved of EPA's determination not to regulate any new contaminants at this time, some commenters expressed concerns about the process associated with EPA's regulatory determinations for these nine contaminants, as well as with CCL activities not specifically related to the preliminary determinations.

A majority of the comments were focused on five over-arching topic areas:

1. Some commenters expressed concern over the transparency of the CCL decision-making process.
2. Several industry groups expressed a concern that the health effects assessments were too conservative.
3. Several commenters expressed concern with EPA's progress in filling research gaps related to the CCL and encouraged EPA to publicly track research needs and progress on remaining CCL contaminants.
4. The majority of commenters generally approved of EPA's determination not to regulate any new contaminants at this time. However, one commenter questioned the appropriateness of EPA's decisions not to regulate any of the nine priority contaminants.
5. Several comments were received regarding contaminants on the CCL for which draft regulatory determinations were not included in the June 2002 notice, including perchlorate and methyl-t-butyl ether (MTBE).

A complete copy of the public comments and the Agency's responses are included in the Docket for today's action. The remainder of this section discusses the five key topic areas identified by commenters in response to the June 2002 CCL regulatory determination notice (USEPA 2002a).

1. Lack of Transparency of Regulatory Determination Approach

Comment Summary: Several commenters expressed a concern about the "lack of transparency" in the regulatory determination approach used by the Agency for the June 2002 notice. Most of those commenters suggested that EPA did not provide an adequate explanation for the reduction in the number of the priority contaminants from twenty to nine since the publication of the first CCL in March 1998 (USEPA 1998). These commenters suggested that the Agency needs to provide better justification regarding the reasons for excluding the twelve contaminants listed in the March 1998 CCL from the regulatory determination process.

Several commenters suggested that this regulatory determination process approach does not provide for enough participation from outside groups for the development of non-regulatory strategies. These commenters suggested that the Agency should allow for more meaningful public involvement in the regulatory determination process. One commenter stated that, given the Agency's analysis of occurrence and health effects data over several years, the 60-day comment period was not adequate to allow "detailed analysis by interested stakeholders."

Other commenters, however, observed that the CCL regulatory determination approach taken by EPA was "reliably consistent" with the basic charge of the SDWA and the NDWAC workgroup recommendations. Several commenters noted that, by EPA following the protocol recommended by the NDWAC Work Group, stakeholders were assured that the Agency used the "best-available, peer-reviewed science" in these determinations.

Agency Response: EPA developed a consistent regulatory determination approach for evaluating CCL contaminants that followed NDWAC's recommended protocol for health effects and occurrence analysis. The regulatory determination approach for each contaminant on the list included an evaluation of the adequacy of current analytical and treatment methods, the best available peer-reviewed data on health effects, and an occurrence data set of about seven million contaminant occurrence data points.

By using this approach, EPA determined that, at the time of the June 2002 notice (USEPA 2002a) of preliminary regulatory determinations there was not sufficient information to support a regulatory determination on twelve of the twenty priority contaminants. As noted previously, the CCL-contaminant, sodium, was moved to the list of regulatory determination priorities to allow an update of the Agency's position on the issue of sodium in drinking water.

The NDWAC, which is comprised of representatives from the general public, State and local agencies, and private groups concerned with drinking water safety, was convened to provide input during the regulatory determination process. Throughout the regulatory determination process, EPA's approach has been to maintain a strong partnership with stakeholders and involve them to the maximum extent possible, thereby helping to ensure that stakeholders understand the regulatory determination process and provide valuable input.

The Agency agrees that a meaningful opportunity for discussions with stakeholders is an important component of the CCL Regulatory Determination process. The Agency utilized a variety of mechanisms to involve stakeholders in the process. These included two broad-based stakeholder meetings, one in November 1999 and one in July 2002. Members of the public also were invited to attend the three sessions of the NDWAC Work Group in the Spring/

Summer of 2000, which focused on protocol recommendations to the Agency. In addition, EPA representatives delivered presentations at a variety of meetings held by other organizations. Moreover, EPA did ask for and considered comments made on the sodium and sulfate Drinking Water Advisories during the comment period on the June 2002 notice (USEPA 2002a).

The Agency believes the 60-day public comment period for the June 2002 notice (USEPA 2002a) was sufficient. The Agency took steps to facilitate public review of its preliminary decisions, as well as supporting documentation. In addition to the July 2002 stakeholder meeting, these steps included making key materials available on the Agency's website and providing hard copies of materials upon request.

2. Health Effects Assessments

Comment Summary: Some commenters suggested that EPA's analysis of adverse health effects and calculation of the HRLs were too conservative. On the other hand, one commenter questioned how the Agency's analysis underlying the regulatory determination approach incorporated appropriate safety factors and exposure assessments relative to children's health concerns.

Commenters recommended that EPA use the revised Office of Water methodology for deriving ambient water quality criteria (AWQC), (USEPA 2000), in an effort to protect human health in the final health effects support documents. According to the comments, this revised methodology establishes five different consumption rates and body weight classifications as a means to make the human health exposure assessments. One commenter specified that EPA needs to use more accurate consumption data for sodium rather than simply incorporating U.S. Food and Drug Administration (FDA) assertions.

Agency Response: EPA believes it is appropriate to use a conservative approach to assessing the health effects of an unregulated contaminant in the context of a determination of whether it should be considered for NPDWR regulation. In order to determine whether to propose an NPDWR for an unregulated contaminant, SDWA requires EPA to determine whether the contaminant "may have an adverse effect on the health of the persons," Section 1412(b)(1)(A)(i), which is a very broad criterion. As a result, EPA believes that a conservative health effects analysis is appropriate.

The HRL used by EPA in these determinations is a conservative health-based value and is different depending on whether a contaminant is considered a carcinogen or a noncarcinogen. For carcinogens, a 10–6 risk was chosen as the HRL since the maximum contaminant level goal (MCLG) for such contaminants will generally be zero. For noncarcinogens, the reference dose and a 20 percent relative source contribution (RSC) factor was used in conjunction with a 70 kilogram (kg) adult body weight and a 2 liter (L) water intake for the HRL calculation. EPA uses these standard regulatory assumptions for determining the MCLG of a noncarcinogen that lacks specific data on the RSC. EPA used best available peer reviewed data and analyses in evaluating adverse health effects. Accordingly, EPA disagrees with those commenters that felt that EPA was too conservative in establishing the HRL. EPA followed practices and policies that are similar to those used to establish an NPDWR and that are consistent with the SDWA section 1412(b)(1)(A)(i) criterion. If such a conservative approach does not result in EPA deciding to initiate a regulatory process for a contaminant, the Agency may decide to use a non-regulatory approach in addressing the issue, such as issuing a Drinking Water Advisory.

Children's health issues were considered in making regulatory determinations for each of the nine contaminants included in this final notice. The details of the individual assessments are included in the Health Effects Support Documents or Drinking Water Advisories for each contaminant. These documents are available for review at the EPA Water Docket and on-line at *http://www.epa.gov/edocket/*.

The AWQC (USEPA 2000) methodology continues to recommend the use of 70 kg for adult body weight and 2 liters per day for water intake for risk calculations. These are the same parameters used by EPA to derive an MCLG. EPA believes that its current methodology, based on adult exposures, for the derivation of MCLGs, and for making regulatory determinations under SDWA section 1412, remains generally appropriate. EPA has not yet determined a protocol for making a regulatory determination for a chemical for which an infant's or a particular childhood age grouping's body weight and drinking water intake would be the basis of a regulatory action. A decision for such a contaminant would be made on the basis of the toxicity and exposure data, and could utilize the age groupings and body weight information from the AWQC human health methodology if it were appropriate.

EPA did not use FDA's sodium consumption data of 4 to 6 grams/day (g/day) in establishing a benchmark value for sodium. EPA decided to use a benchmark value for sodium instead of an HRL because sodium lacks suitable dose-response data and there is considerable controversy regarding the role of sodium in the etiology of hypertension. EPA derived the benchmark value for sodium of 120 mg/L in drinking water from the National Institutes of Health, National Academy of Sciences, American Heart Association, and the U.S. Department of Agriculture recommended daily dietary intake of 2.4 g/day.

3. EPA Research Agenda

Comment Summary: Several commenters expressed concern that, in their view, there is a lack of progress by EPA in filling research gaps related to the CCL. In particular, commenters focused on high visibility contaminants, such as the microbiological contaminants, MTBE, and other "emerging contaminants." Commenters also stressed the need to establish a vehicle for publicly tracking research needs and progress made in research areas.

Agency Response: Before EPA can determine whether to regulate contaminants, additional data on health, treatment technologies, and analytical methods, are needed for contaminants on the Research Priorities portion of the CCL, and occurrence data is needed for contaminants on the Occurrence Data Needs portion of the CCL. The remaining 51 CCL contaminants for which decisions are not being made today do not have sufficient data to support a regulatory determination. The Agency considers obtaining this data to be the priority of its research and occurrence monitoring programs. The Agency continues to actively conduct research and/or to collect occurrence information on these 51 CCL contaminants and other emerging contaminants. Because these research issues are broader than those that EPA can address alone, it is anticipated that other entities will be involved in conducting much of the needed research to support this process. For example, EPA already is jointly undertaking research efforts, and encourages stakeholders, through close and regular consultation, to be partners in filling many of the research gaps. The EPA continues to identify and develop new collaborations to conduct research and gather the additional data to characterize occurrence and adverse

health effects to support future regulatory determinations of CCL contaminants. EPA is also engaged with our stakeholders in a NDWAC work group to refine the CCL listing process to address emerging contaminants for future efforts.

EPA agrees with the comment concerning the importance of establishing a vehicle that will allow stakeholders to track the status of drinking water research projects. EPA is committed to providing a means for stakeholders to track research needs and progress made in research areas, and is developing a web-based research inventory that is expected to be available to the public in 2003. This website will serve as a repository of information on drinking water research projects currently funded or performed by the EPA.

4. Criticism of Regulatory Decisions Made

Comment Summary: One commenter expressed concern that EPA's decision not to regulate any of the nine priority contaminants was not appropriate. A comment submitted and co-signed by 22 environmental organizations disagreed with the regulatory determinations for four contaminants, hexachlorobutadiene, manganese, sodium and sulfate. The commenters believe that EPA's monitoring data presented in the June 2002 notice shows that over 22,000 people were exposed to hexachlorobutadiene at concentrations above the HRL. The commenters assert that although EPA says manganese has low toxicity, EPA finds that nearly 3% of the population exceeded EPA's HRL. The commenters also disagreed with the Agency determination that regulation is not warranted because food sources of sodium are a more significant contribution to sodium in the diet than drinking water. The commenters also assert that EPA should regulate sulfate because EPA's monitoring data shows that millions of Americans are likely to have sulfate levels above the HRL in their drinking water, which puts infants and other subpopulations at risk.

Agency Response: The preliminary regulatory determinations on whether or not to regulate the nine priority contaminants were based on the three SDWA statutory requirements, and the contaminants were evaluated in terms of national significance. EPA's assessment of the health effects and national occurrence were discussed in detail in the June 2002 notice. EPA disagrees that each of the contaminants identified by the commenters should be regulated. The rationale supporting the regulatory determination is provided below.

EPA found that hexachlorobutadiene occurs in systems, but not at a frequency or level of public health concern. The commenter has misinterpreted the monitoring data presented in the June 2002 notice. The number 22,736 in the notice refers to the number of reporting PWSs in the monitoring data set and does not reflect the number of people exposed to hexachlorobutadiene concentrations above the HRL. The June 2002 notice states that 0.02% (4 out of 22,736) reporting systems detected hexachlorobutadiene above the HRL affecting 0.005% (3,350 out of the 67 million) of the population served by these systems (67 FR 38235). Because of this low frequency, EPA believes it is most appropriate at this time to address occurrence of hexachlorobutadiene at the State level rather than at the national level.

EPA disagrees with the commenter's criticism of the decision not to regulate manganese. Manganese is an essential trace element needed for the normal healthy growth and function of animals as well as human beings. Therefore, the decision whether or not to regulate manganese needs to balance the concern for the potential toxic effects from high oral exposure with the concern for adverse effects from manganese deficiency. In 2001, the Institute of Medicine (IOM) set an adequate level for manganese at 2.3 mg/day for men and 1.8 mg/day for woman.

Furthermore, in 2001, the IOM set a tolerable upper intake level for manganese at 11 mg/day. While 3% of the population may be exposed to manganese at levels above the 0.30 mg/L HRL for drinking water, this level is well below the IOM tolerable level. For example, assuming a daily intake of 2 liters of drinking water with manganese at the HRL of 0.30 mg/L, the daily intake of manganese from drinking water at the HRL would only expose a person to 0.6 mg/day. This value is well below IOM's 11 mg/L adequate level for manganese and represents only 5.5% of IOM's upper limit for manganese. Public drinking water accounts for a relatively small proportion of a person's manganese intake, even at the HRL. Therefore, the Agency concludes that regulation of drinking water for manganese does not provide a meaningful opportunity to reduce the risk of adverse health effects. The commenter is referred to the *CCL Preliminary Regulatory Determination Support Document for Manganese* (EPA 815–R–01–013) for a more detailed discussion of this issue.

EPA disagrees with the commenter's criticism of the decision not to regulate sodium. Because sodium in drinking water is a very small contributor to daily dietary intake and because the levels at which sodium intake can contribute to increasing the blood pressure of individuals with normal blood pressures is not clearly established, EPA does not believe that a NPDWR for sodium presents a meaningful opportunity for public health protection at this time.

EPA disagrees with the commenter's criticism of the decision not to regulate sulfate. EPA used current data (Round 2 of the UCM program) that indicate that about 1.8% of the reporting systems serving approximately 2 million people from a 20-state cross section of the unregulated contaminant monitoring study exceeded 500 mg/L. Although additional data from six states had very similar results, EPA found that the weight of evidence suggests that the adverse health effect is generally mild, of short duration, and generally occurs at concentrations considerably greater than 500 mg/L, except in very limited circumstances when contaminants that exacerbate the effects of sulfate are also present in the water. Therefore, EPA has made the determination not to regulate sulfate with a NPDWR at this time because regulation would not present a meaningful opportunity for health risk reduction for persons served by public drinking water systems. However, EPA prepared a Drinking Water Advisory to provide guidance to communities that may be exposed to drinking water with high sulfate concentrations. This advisory contains information of use to sensitive sub-populations, such as infants and travelers.

5. Stakeholder's Highest Priority for Future Regulatory Determinations

Comment Summary: Commenters encouraged EPA to be aggressive and consider an expedited regulatory determination for several CCL contaminants including MTBE and perchlorate.

Agency Response: For this regulatory determination, EPA developed a comprehensive evaluation approach based on the recommendations from NRC and NDWAC. As explained in the June 2002 notice (USEPA 2002a), this evaluation satisfies the three SDWA requirements under section 1412(b)(1)(A)(i)–(iii). For each of the contaminants, the Agency evaluated the adequacy of current analytical and treatment methods, the best available peer-reviewed data on health effects, and an occurrence data set of approximately seven million analytical data points. At this time, EPA does not believe adequate data exists in these key areas to make a regulatory determination either for perchlorate or MTBE. EPA is gathering information to fill the data gaps for these contaminants.

With respect to perchlorate, EPA is gathering national occurrence data on perchlorate in drinking water through the Unregulated Contaminant Monitoring (UCM) Rule. The Agency is also completing a rigorous peer review of health effects studies and is developing a final toxicity review and risk characterization. As part of this effort, EPA has asked the National Academy of Sciences to review science issues related to the 2002 draft EPA risk assessment for perchlorate. In addition, the Agency is funding research studies on treatability of perchlorate for PWSs. Some of the technology currently in use at hazardous waste sites is being evaluated for the feasibility of using it in water treatment at community water systems. At the same time, EPA is seeking to improve the analytical method sensitivity that would allow concentrations of perchlorate to be quantified at lower levels than are presently possible. The Agency is moving concurrently in each of these areas to meet data and research needs as quickly as possible. When the necessary information is collected, we plan to move forward with a regulatory determination. In this regard, it should be emphasized that where EPA determines there is sufficient information on this or any other unregulated contaminant, the Agency is prepared to act in advance of the next five year regulatory determination cycle.

Regarding MTBE, on-going activities will provide the Agency with improved health effects and occurrence data. At this time, EPA is preparing its revised risk assessment for MTBE for peer review. The Agency established the 1997 Drinking Water Advisory for MTBE at 20–40 micrograms per liter (µg/L, or parts per billion, ppb) to avoid unacceptable taste and odor and provide a protective margin of exposure for adverse health effects. The 20–40 ppb level was not based on the possible cancer risks. As a result of the UCM Rule, data from PWSs required to monitor for MTBE will be available in the middle of 2004.

V. Summary of the Agency's Findings on the Nine CCL Contaminants

A. Acanthamoeba

Description: Acanthamoeba is a free-living protozoa commonly found in water, soil, and air. Species of this microbe have been isolated worldwide from brackish and sea water, tap water, bottled water, airborne dust, swimming pools, hot springs, thermal effluents of power plants, ocean sediments, vegetables, and hot tubs. *Acanthamoeba* species have been associated with human infections affecting the eye, lung, brain, and skin. *Acanthamoeba* has been recovered from the nose and throat of humans with impaired respiratory function and from apparently healthy persons, suggesting that the amoeba is commonly inhaled.

Agency Findings: After reviewing the best available public health and occurrence information, EPA has made the determination not to regulate *Acanthamoeba* with a NPDWR at this time, because regulation would not present a meaningful opportunity for health risk reduction for the people served by public drinking water systems (PWSs). As noted in the June 2002 notice (USEPA 2002a), EPA has no national monitoring data to indicate occurrence of *Acanthamoeba* cysts in drinking water, and filtration practices commonly used to treat drinking water remove *Acanthamoeba* cysts.

A complete review of EPA's analysis of the health effects, occurrence, and exposure for *Acanthamoeba* were presented in the June 2002 notice (USEPA 2002a) and in the health effects support document for *Acanthamoeba* (USEPA 2003h). EPA intends to release a guidance document for *Acanthamoeba* that will be directed mainly to contact lens wearers and will address the risks of *Acanthamoeba* eye infection associated with improper care of contact lenses.

B. Aldrin and Dieldrin

Description: Aldrin and dieldrin (Chemical Abstract Services Registry Number (CASRN) 309–00–2 and 60–57–1, respectively) are the common names of two structurally similar insecticides. They are discussed together because aldrin readily changes to dieldrin in the body and in the environment, and they cause similar adverse health effects. From 1950–1970, aldrin and dieldrin were popular pesticides used for crops, such as corn and cotton. Because of concerns about damage to the environment and the potential harm to human health, EPA banned most uses of aldrin and dieldrin in 1974, except for the control of termites, and banned all uses outright since 1987. According to the Agency for Toxic Substances and Disease Registry (ATSDR), aldrin and dieldrin have not been produced in the United States since 1974 (ATSDR 1993).

Agency Findings: After reviewing the best available public health and occurrence information, EPA has made the determination not to regulate aldrin or dieldrin with a NPDWR at this time, because regulation would not present a meaningful opportunity for health risk reduction for the people served by PWSs. EPA recognizes that aldrin and dieldrin are probable human carcinogens, but the chemicals have been banned for most uses since 1974, and have a low frequency and low level of occurrence in drinking water supplies.

A complete review of EPA's analysis of the health effects, occurrence, and exposure for aldrin and dieldrin were presented in the June 2002 notice (USEPA 2002a) and in the regulatory determination (USEPA 2001a) and health effects (USEPA 2003a) support documents for aldrin and dieldrin.

C. Hexachlorobutadiene

Description: Hexachlorobutadiene (CASRN 87–68–3) is a VOC that is relatively insoluble in water (solubility of 2–2.55 mg/L). Hexachlorobutadiene is mainly used to make rubber compounds. It is also used in gyroscopes, as a heat transfer liquid, as a hydraulic fluid, as a solvent, and to make lubricants. It has never been manufactured as a commercial product in the United States, however, it is imported and significant quantities of the chemical are generated in the United States as a waste by-product from the chlorination of hydrocarbons.

Most exposure to hexachlorobutadiene comes from breathing contaminated air in the workplace environment. People living near hazardous waste sites containing hexachlorobutadiene may be exposed to it by breathing air or by drinking contaminated water.

Agency Findings: After reviewing the best available public health and occurrence information, EPA has made the determination not to regulate hexachlorobutadiene with a NPDWR at this time, because it would not present a meaningful opportunity for health risk reduction for persons served by PWSs. Hexachlorobutadiene occurs in PWSs, but not at a frequency or level of public health concern.

A complete review of EPA's analysis of the health effects, occurrence, and exposure for hexachlorobutadiene were presented in the June 2002 notice (USEPA 2002a) and in the regulatory determination (USEPA 2001b) and health effects (USEPA 2003b) support documents for hexachlorobutadiene.

D. Manganese

Description: Manganese (CASRN 7439–96–5) is a naturally occurring element found at low levels in soil, water, and food. It is an essential trace element for humans and all animal species. It constitutes approximately 0.1

percent of the earth's crust, however, it does not occur in the environment in its pure metal form, but is ubiquitous as a component of more than 100 minerals including many silicates, carbonates, sulfides, oxides, phosphates, and borates (ATSDR 2000).

Manganese is generally considered to have low toxicity when ingested orally. The major source of manganese intake in humans (with the exception of possible occupational exposure) is dietary ingestion; manganese is a nutrient and is not considered to be very toxic when ingested with food. Reports of adverse effects following oral exposure are rare.

Agency Findings: After reviewing the best available public health and occurrence information, EPA has made the determination not to regulate manganese with a NPDWR at this time, because it would not present a meaningful opportunity for health risk reduction for persons served by PWSs. Manganese is generally not considered to be very toxic when ingested with the diet and drinking water accounts for a relatively small proportion of manganese intake.

A complete review of EPA's analysis of the health effects, occurrence, and exposure for manganese were presented in the June 2002 notice (USEPA 2002a) and in the regulatory determination (USEPA 2001c) and health effects (USEPA 2003c) support documents for manganese. EPA is developing a Drinking Water Advisory for manganese to provide guidance to communities that might be exposed to elevated concentrations of manganese in their drinking water.

E. Metribuzin

Description: Metribuzin (CASRN 21087–64–9) is a pesticide that does not volatilize readily, yet is relatively soluble in water. It is relatively persistent in the environment and degrades primarily through exposure to sunlight. Metribuzin is used as an herbicide on soybeans, potatoes, alfalfa, sugar cane, lentils, asparagus, tomatoes, carrots, peas, barley, wheat, range grasses, and Christmas trees. Metribuzin has limited non-agricultural utility. Metribuzin is not classifiable as a human carcinogen, but there may be effects on the liver and body weight from chronic exposure to high doses.

Agency Findings: After reviewing the best available public health and occurrence information, EPA has made the determination not to regulate metribuzin with a NPDWR at this time, because it would not present a meaningful opportunity for health risk reduction for persons served by PWSs. Metribuzin is not known to occur in PWSs at levels of public health concern. National monitoring data indicate that metribuzin is infrequently detected in public water supplies.

A complete review of EPA's analysis of the health effects, occurrence, and exposure for metribuzin were presented in the June 2002 notice (USEPA 2002a) and in the regulatory determination (USEPA 2001d) and health effects (USEPA 2003d) support documents for metribuzin.

F. Naphthalene

Description: Naphthalene (CASRN 91–20–3) is a VOC that is naturally present in fossil fuels, such as petroleum and coal, and is formed when wood or tobacco are burned. Naphthalene is produced in commercial quantities from either coal tar or petroleum. Most naphthalene use (60%) is as an intermediary in the production of phthalate plasticizers, resins, phthaleins, dyes, pharmaceuticals, and insect repellents. Crystalline naphthalene is used as a moth repellent and as a solid block deodorizer for diaper pails and toilets.

The major source of human exposure to naphthalene is through the use of moth-balls containing naphthalene. This exposure can be from breathing the vapors or handling the mothballs. People also may be exposed by breathing tobacco smoke and air near industries that use or produce naphthalene. Usually naphthalene is not found in water because it evaporates or biodegrades quickly. When it is found in water, it is usually at levels lower than 0.01 mg/L (ATSDR 1995).

Agency Findings: After reviewing the best available public health and occurrence information, EPA has made the determination not to regulate naphthalene with a NPDWR at this time, because it would not present a meaningful opportunity for health risk reduction for persons served by PWSs. Naphthalene is not known to occur in PWSs at levels of public health concern. National monitoring data indicate that naphthalene is infrequently detected in public water supplies.

A complete review of EPA's analysis of the health effects, occurrence, and exposure for naphthalene were presented in the June 2002 notice (USEPA 2002a) and in the regulatory determination (USEPA 2001e) and health effects (USEPA 2003e) support documents for naphthalene.

G. Sodium

Description: Sodium (CASRN 7440–23–5) is the sixth most abundant element on earth and is widely distributed in soils, plants, water, and foods. Ground water typically contains higher concentrations of minerals including sodium salts than do surface waters. In addition to naturally occurring sources of sodium, sodium compounds are used in deicing roads, as water treatment chemicals, and in domestic water softeners. Sewage effluents can also contribute significant quantities of sodium to water.

Sodium is an essential trace element, and adequate levels of sodium are required for good health. Food is the main source of daily human exposure to sodium, primarily in the form of sodium chloride (table salt). Most of the sodium in our diet is added during food processing and preparation.

Agency Findings: After reviewing the best available public health and occurrence information, EPA has made the determination not to regulate sodium with a NPDWR at this time, because it would not present a meaningful opportunity for health risk reduction for persons served by PWSs. The contribution of drinking water to daily sodium intake is very small when compared to the total dietary intake. Short-term excursions beyond the benchmark values pose no adverse health risk for most individuals, including the majority of persons with hypertension. Sodium in drinking water is a very small contributor to daily dietary intake and the levels at which sodium intake can contribute to increasing the blood pressure of individuals with normal blood pressures are not clearly established. The Agency currently does, however, require monitoring for sodium at the entry point to the distribution system and that results be reported annually to public health officials for surface water systems, and every three years for ground water systems (as defined in 40 CFR 141.41). The water supplier must report sodium test results to local and State public health officials, unless this responsibility is assumed by the State. This requirement is intended to provide the public health community with information on sodium levels in drinking water to be used in counseling patients and is the most direct route for gaining the attention of the affected population.

A complete review of EPA's analysis of the health effects, occurrence, and exposure for sodium were presented in the June 2002 notice (USEPA 2002a) as well as in the regulatory determination (USEPA 2001f) support document for sodium. EPA is issuing a final Drinking Water Advisory for sodium concurrent with today's action (USEPA 2003f). The sodium advisory provides guidance to communities that might be exposed to elevated concentrations of sodium chloride or other sodium salts in their drinking water. This sodium advisory also provides appropriate cautions for individuals on low-sodium or sodium-restricted diets.

H. Sulfate

Description: Sulfate (SO_4^{-2}, CASRN 14808–79–8) exists in a variety of inorganic salts. Sulfate salts such as sodium, potassium, and magnesium are very water soluble and are often found in natural waters. Sulfate salts of metals such as barium, iron, or lead have very low water solubility. Sulfate is found in soil, sediments, and rocks and occurs in the environment as a result of both natural processes and human activities. Sulfate compounds are used for a variety of commercial and industrial purposes.

Sulfate may enter surface or ground water as a result of discharge or disposal of sulfate-containing wastes. In addition, sulfur oxides produced during the combustion of fossil fuels are transformed to sulfuric acid in the atmosphere. Through precipitation (acid rain), sulfuric acid can enter surface waters, lowering the pH and raising sulfate levels.

Sulfate is present in the diet. A number of food additives are sulfate salts and most (such as copper sulfate and zinc sulfate) are approved for use as nutritional supplements.

Sulfate may have adverse health affects on persons, primarily through its laxative effect following high-level, acute exposures. The adverse health effect from ingesting high levels of sulfate is increased water in the fecal matter (diarrhea), possibly contributing to dehydration. Because local populations usually acclimate to high sulfate levels, the impact is primarily on infants, transient populations (*e.g.*, business travelers, visitors, and vacationers), and new residents.

Agency Finding: After reviewing the best available public health and occurrence information, EPA has made the determination not to regulate sulfate with a NPDWR at this time, because it would not present a meaningful opportunity for health risk reduction for persons served by PWSs. Although sulfate occurs in many PWSs nationally, the weight of evidence suggests that the adverse health effect is generally mild, of short duration, and generally occurs at concentrations considerably greater than 500 mg/L, except in very limited circumstances when sulfate co-occurs with magnesium and high total dissolved solids, which exacerbate its laxative effects. EPA is issuing a final Drinking Water Advisory to provide guidance to communities that may be exposed to drinking water with high sulfate concentrations.

A complete review of EPA's analysis of the health effects, occurrence, and exposure for sulfate were presented in the June 2002 notice (USEPA 2002a) as well as in the regulatory determination (USEPA 2001g) support document for sulfate. EPA will issue a final Drinking Water Advisory for sulfate concurrent with today's action (USEPA 2003g). The advisory for sulfate provides guidance to communities that may be exposed to drinking water contaminated with high sulfate concentrations. This advisory contains information of use to sensitive sub-populations, such as infants and travelers.

VI. How Will EPA Address the Data Needs of the Remaining 51 CCL Contaminants?

The Agency continues to conduct research and/or to collect occurrence information on the remaining CCL contaminants. EPA has been conducting research to fill identified data gaps. The Agency will take action as appropriate when information becomes available and will not necessarily wait until the end of the next regulatory determination cycle before making other regulatory determinations.

To support decisions on CCL contaminants, the Agency is required to evaluate when and where these contaminants occur, the extent of exposure, and their risk to public health. EPA must also determine if regulating the contaminant presents a meaningful opportunity for reducing public health risk. Contaminants deemed ready for regulatory determination, which include those that are the subject of today's decisions, are determined to have sufficient data to support a decision as to whether or not to regulate based on evaluation of both exposure and risk to public health.

The remaining 51 CCL contaminants for which decisions are not being made today do not have sufficient data to support regulatory decisions. The Agency continues to conduct research and/or collect occurrence information on these remaining contaminants. The research issues are broader than those that EPA can address alone. It is anticipated that other entities will be involved in conducting much of the needed research to support this process. EPA continues to identify and develop new collaborations to conduct research and gather the additional data to characterize occurrence and adverse health effects to support future regulatory determinations of CCL contaminants. EPA is also engaged with our stakeholders in a NDWAC work group to refine the CCL listing process to address emerging contaminants for future efforts

EPA is committed to providing a means for our stakeholders to track progress of research on remaining CCL contaminants. The Agency is currently developing a web-based system that will be available to the public in 2003. This website will serve as a repository of information on drinking water research projects currently funded or performed by EPA.

VII. References

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USEPA, 2003g. *Drinking Water Advisory: Consumer Acceptability Advice and Health Effects Analysis on Sulfate*. EPA 822 R–03–007.
USEPA, 2003h. *Health Effects Support Document for Acanthamoeba*. EPA 822 R–03–012.

Dated: July 11, 2003.

Linda J. Fisher,

Acting Administrator.

[FR Doc. 03–18151 Filed 7–17–03; 8:45 am]

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Federal Register

Friday,
July 18, 2003

Part VI

Environmental Protection Agency

National Primary Drinking Water Regulations; Announcement of Completion of EPA's Review of Existing Drinking Water Standards; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7529–1]

RIN 2040–AD67

National Primary Drinking Water Regulations; Announcement of Completion of EPA's Review of Existing Drinking Water Standards

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Safe Drinking Water Act (SDWA) requires the United States Environmental Protection Agency (EPA) to conduct a periodic review of existing National Primary Drinking Water Regulations (NPDWRs). EPA has completed its review of 69 NPDWRs that were established prior to 1997, including 68 chemical NPDWRs and the Total Coliform Rule (TCR). The intended purpose of the review was to identify those NPDWRs for which current health risk assessments, changes in technology, and/or other factors, provide a health or technological basis to support a regulatory revision that will maintain or improve public health protection.

EPA published its protocol for the review of NPDWRs and its preliminary revise/not revise decisions for the 69 NPDWRs in the April 17, 2002, edition of the **Federal Register** (67 FR 19030 (USEPA, 2002g)) in order to seek comment from the public. Today's action briefly describes the major comments, other new information, and EPA's current revise/not revise decisions for the 69 NPDWRs.

ADDRESSES: The official public docket for this action is located at EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Contact: Ken Rotert, (202) 564–5280, e-mail: *rotert.kenneth@epa.gov* for inquiries regarding the TCR. For all other technical inquiries contact: Judy Lebowich, (202) 564–4884, e-mail: *lebowich.judy@epa.gov*, or Wynne Miller, (202) 564–4887, e-mail: *miller.wynne@epa.gov*. General information may also be obtained from the EPA Safe Drinking Water Hotline. Callers within the United States may reach the Hotline at (800) 426–4791. The Hotline is open Monday through Friday, excluding Federal holidays, from 9 a.m. to 5:30 p.m. Eastern Time.

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I. General Information

A. Does This Notice Apply to My Public Water System?

This action itself does not impose any requirements on anyone. Instead, it notifies interested parties of the availability of EPA's responses to comments received on EPA's Six-Year Review protocol and the Agency's current revise/not revise decisions for 69 NPDWRs.

B. How Can I Get Copies of Related Information?

1. Docket

EPA has established an official public docket for this action under Docket ID No. OW–2002–0012. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

2. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.B.1. Once in the system, select "search," then key in the appropriate docket identification number.

Abbreviations and Acronyms Used in This Action

BAT—best available technology
CBI—confidential business information
CCL—contaminant candidate list
CFR—Code of Federal Regulations
CMR—Chemical Monitoring Reform
DACT—diaminochlorotriazine
DEA—desethyl atrazine
DEHA—di(2-ethylhexyl)adipate
DEHP—di(2-ethylhexyl)phthalate
DIA—desisopropyl atrazine
EPA—United States Environmental Protection Agency

EPA/DC—EPA Docket Center
FQPA—Food Quality Protection Act
FR—**Federal Register**
IOC—inorganic chemical
IRED—interim reregistration eligibility decision
IRIS—Integrated Risk Information System
LCCA—Lead Contamination Control Act of 1988
LCR—Lead and Copper Rule
MCL—maximum contaminant level
MCLG—maximum contaminant level goal
MDL—method detection limit
mg/kg/day—milligram(s) per kilogram of body weight per day
mg/L—milligram(s) per liter
MYP—multi-year plan
NAS—National Academy of Sciences
NCOD—National Contaminant Occurrence Database
NDWAC—National Drinking Water Advisory Council
NPDWR—National Primary Drinking Water Regulation
NRC—National Research Council
NTP—National Toxicology Program
NTNCWS—non-transient non-community water system
Occurrence Methodology Document—Occurrence Estimation Methodology and Occurrence Findings Report for the Six-Year Review of Existing National Primary Drinking Water Regulations
Occurrence Summary Document—Occurrence Summary and Use Support Document for the Six-Year Review of Existing National Primary Drinking Water Regulations
OPP—Office of Pesticide Programs
OW—Office of Water
PE—performance evaluation
PHS—Public Health Service
PQL—practical quantitation level
Protocol Document—EPA Protocol for Review of Existing National Primary Drinking Water Regulations
RED—reregistration eligibility decision
RfD—reference dose
ROS—regression on ordered statistics
RSC—relative source contribution
SAB—Science Advisory Board
SAP—Science Advisory Panel
SDWA—Safe Drinking Water Act
SOC—synthetic organic chemical
TCR—Total Coliform Rule
TMDLs—total maximum daily loads
Treatment Feasibility Document—Water Treatment Technology Feasibility Support Document for Chemical Contaminants; In Support of EPA Six-Year Review of National Primary Drinking Water Regulations
TT—treatment technique
VOC—volatile organic chemical
WQP—water quality parameter
WS—water supply

II. Background

A. What Is the Statutory Requirement for the Six-Year Review?

Under the Safe Drinking Water Act (SDWA), as amended in 1996, EPA must periodically review existing National Primary Drinking Water Regulations (NPDWRs) and, if appropriate, revise them. Section 1412(b)(9) of SDWA states:

> The Administrator shall, not less often than every 6 years, review and revise, as appropriate, each national primary drinking water regulation promulgated under this title. Any revision of a national primary drinking water regulation shall be promulgated in accordance with this section, except that each revision shall maintain, or provide for greater, protection of the health of persons.

B. What Has the Agency Done To Address the Statutory Requirement?

The Agency developed a systematic process, or protocol, for the review of existing NPDWRs in accordance with the SDWA requirements and applied the protocol to the review of the NPDWRs for total coliforms and 68 inorganic and organic chemicals published prior to the SDWA 1996 Amendments (*i.e.*, pre-1997 NPDWRs). In the April 17, 2002, **Federal Register**, EPA provided:

- A description of the review protocol;
- A detailed discussion of how the protocol was applied in assessing each of the 69 pre-1997 NPDWRs;
- The preliminary results of each of the technical reviews, and the preliminary decision for each NPDWR; and
- A request for the public to comment on any aspect of the Agency's protocol and preliminary decisions.

Please refer to the April 17, 2002, **Federal Register** for the detailed discussion of EPA's revise/not revise decisions for each of the 69 NPDWRs. Today's action briefly summarizes the major public comments, other new information, and EPA's current revise/not revise decisions for the 69 NPDWRs. Today's action only discusses in detail those decisions or rationales that were affected by public comments or other new information that has become available since April 2002.

In June 2002, EPA consulted with the Science Advisory Board (SAB) Drinking Water Committee and requested their review and comment on whether the protocol EPA developed based on the National Drinking Water Advisory Council (NDWAC) recommendations was consistently applied and appropriately documented. The SAB provided verbal feedback regarding the transparency and clarity of EPA's decision criteria for making its revise/not revise decisions under the current review. EPA has revised this protocol document to better explain how the decision criteria were applied and will also take the SAB comments into consideration when planning for the next review cycle.

III. EPA's Current Revise/Not Revise Decisions for the 69 Pre-1997 NPDWRs

EPA received comments from 44 commenters on its preliminary revise/not revise decisions in the April 17, 2002, **Federal Register**. The Agency responded to these comments in the "Public Comment and Response Summary for the Six-Year Review of National Primary Drinking Water Regulations" (USEPA, 2003e), which is available in the Water Docket in the EPA Docket Center and at the EPA Dockets Web site *http://www.epa.gov/epadocket/*. Other technical support documents [1] for the decisions discussed in today's action are also available in the Water Docket and at the EPA Dockets Web site *http://www.epa.gov/epadocket/* and the Safewater Web site *http://www.epa.gov/safewater/*.

Based on the Agency's preliminary review, as well as the public comments received and other new information, EPA believes that it is appropriate to revise the Total Coliform Rule (TCR). The Agency also believes that it is not appropriate to revise the 68 chemical NPDWRs at this time. However, for the reasons discussed in sections IV.B.7, IV.B.13, and IV.B.14 of today's action, the Agency has modified the basis of its not revise findings for 1,1-dichloroethylene, lead, and lindane, respectively. Table III–1 reflects the Agency's current revise/not revise decisions for the 69 NPDWRs. As indicated in Table III–1, EPA's decision not to revise an NPDWR at this time is based on one of the following reasons:

- Health risk assessment is in process: As of December 31, 2002, the Agency is currently conducting, or has scheduled, a detailed review of current health effects information. Because the results of the assessment are not yet available, or were not available in time for consideration under the 1996–2002 review cycle, the Agency does not believe it is appropriate to revise the NPDWR at this time. In these cases, EPA will consider the results of the updated

[1] These include: (1) EPA's overall protocol for the review of NPDWRs (USEPA, 2003c); (2) health effects (USEPA, 2003f); (3) analytical methods feasibility (USEPA, 2003a); (4) treatment technology (USEPA, 2003g); (5) consideration of other regulatory revisions (USEPA, 2003b); (6) occurrence and exposure (USEPA, 2003d; USEPA, 2002f); (7) and economic considerations (USEPA, 2002c).

health risk assessment during the 2002–2008 review cycle. If the results of the health risk assessment indicate a compelling reason to reconsider the maximum contaminant level goal (MCLG), EPA may decide to accelerate the review schedule for that contaminant's NPDWR.

• NPDWR remains appropriate after data/information review: The outcome of the review indicates that the current regulatory requirements remain appropriate, and therefore, no regulatory revisions are warranted. Any new information available to the Agency either supports the current regulatory requirements or does not justify a revision.

• New information, but no revision appropriate at this time because:

—Low priority: In EPA's judgment, any resulting revisions to the NPDWR would not provide a meaningful opportunity for health risk reduction or result in meaningful cost-savings to public water systems and their customers. These revisions are a low priority activity for the Agency and, thus, are not appropriate for revision at this time because of one or more of the following considerations: competing workload priorities; the administrative costs associated with rulemaking; and the burden on States and the regulated community to implement any regulatory change that resulted.

—Information gaps: Although results of the review support consideration of a possible revision, the available data are insufficient to support a definitive regulatory decision at this time.

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Table III-1: Current Revise/Not Revise Decisions for the 68 Chemical NPDWRs and the TCR

Not Appropriate for Revision at this Time	Risk assessment in process [1]: chemical currently undergoing an EPA health risk assessment; includes the three initiated as a result of this review (34 NPDWRs)		Acrylamide Alachlor Antimony Asbestos Atrazine Benzo[a]pyrene Cadmium Carbofuran Carbon tetrachloride Copper Cyanide 2,4-D (2,4-Dichlorophenoxyacetic acid) 1,2-Dichlorobenzene 1,4-Dichlorobenzene 1,2-Dichloroethane Di(2-ethylhexyl)adipate Di(2-ethylhexyl)phthalate Diquat Endothall Ethylbenzene Ethylene dibromide Glyphosate Methoxychlor Pentachlorophenol Polychlorinated biphenyls Simazine Styrene 2,3,7,8-TCDD (Dioxin) Tetrachloroethylene Thallium Toluene 1,1,1-Trichloroethane Trichloroethylene Xylenes
	NPDWR remains appropriate after data/information review (16 NPDWRs)		Barium Dalapon cis-1,2-Dichloroethylene trans-1,2-Dichloroethylene Dinoseb Endrin Epichlorohydrin Hexachlorocyclopentadiene Mercury Monochlorobenzene Nitrate Nitrite Selenium 2,4,5-TP (Silvex) 1,2,4-Trichlorobenzene Vinyl chloride
	New information, but no revision appropriate because:	Low priority (14 NPDWRs)	Benzene Beryllium Chlordane 1,2-Dibromo-3-chloropropane 1,1-Dichloroethylene 1,2-Dichloropropane Heptachlor Heptachlor epoxide Hexachlorobenzene Lindane Oxamyl Picloram Toxaphene 1,1,2-Trichloroethane
		Information gaps (4 NPDWRs)	Chromium Dichloromethane Fluoride Lead
Candidate for Revision	Based on review of "other regulatory revisions" (1 NPDWR)		Total Coliform Rule (TCR)

[1] As of December 31, 2002, the Agency is currently conducting, or has scheduled, a detailed review of current health effects information.

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IV. Summary of Major Comments and New Information and the Agency's Response

This section summarizes the major public comments, including the Agency's response, and other new information, and explains any modifications to EPA's preliminary revise/not revise decisions. For a more detailed summary of the comments and the Agency's response, please refer to the document: "Public Comment and Response Summary for the Six-Year Review of National Primary Drinking Water Regulation" (USEPA, 2003e).

A. What Did Commenters Say Regarding the Reasonableness and Appropriateness of EPA's Six-Year Review Approach?

1. Overall Approach and Decision Criteria

a. Adequacy of the Review. Commenters generally agreed that EPA had identified the appropriate key elements of the review. However, some commenters stated that the Agency could have done more in some areas (*e.g.*, implementation) and a few commenters expressed the opinion that the Agency's review process contains weaknesses, or was not applied appropriately, because it did not identify any chemical NPDWRs for revision at this time.

EPA Response: The Agency believes that its basic review protocol and decision rationale are reasonable and appropriate. Even though EPA's application of the protocol did not identify any chemical NPDWRs for revision at this time, that is not a reason to reject or modify the protocol. The review did result in the initiation of health risk assessments for three contaminants and efforts to address data gaps/research needs for several other contaminants. Health risk assessments are underway for approximately half of the chemical contaminants addressed in today's action. The Agency expects most of these assessments to be completed within the next few years. When completed, these assessments will support further analysis that may result in different revise/not revise decisions as part of the ongoing Six-Year Review process.

b. Criteria for Deciding that an MCLG/MCL Revision is Appropriate and Definition of "Significant" and "Negligible." While some commenters agreed, others disagreed with the Agency's consideration of estimated changes in occurrence levels and available economic information whenever a health or technological basis exists to revise a standard. For example, some commenters felt that EPA should revise the MCLG and, as appropriate, the maximum contaminant level (MCL), whenever a health basis exists, regardless of other considerations. A few commenters criticized the Agency for not defining what it considers "significant" and "negligible" gains in public health protection and/or cost-savings in terms of regulatory revision.

EPA Response: Section 1412(b)(9) of SDWA, as amended in 1996, provides the Administrator with broad discretion to determine when a revision to an NPDWR is appropriate. As a part of this determination, the Agency believes it is reasonable to consider whether a potential revision is likely to provide a meaningful opportunity for health risk reduction. This criterion is consistent with the statutory provisions governing the regulatory determination process under section 1412(b)(1)(A) for contaminants not currently regulated. EPA also believes it is reasonable to consider the extent of potential cost-savings for public water systems and their customers when determining whether revisions that potentially would result in a relaxed standard (*i.e.*, where a health basis exists for a less stringent standard) or streamlined implementation are appropriate. These considerations allow the Administrator to better prioritize efforts that are most likely to result in a meaningful opportunity for health risk reduction or cost-savings to public water systems and their customers. Revisions that do not satisfy at least one of these criteria are a low priority activity for the Agency, and thus are not appropriate at this time because of one or more of the following considerations:

- Competing workload priorities;
- The administrative costs associated with rulemaking; and
- The burden on States and the regulated community to implement any regulatory change that resulted.

EPA believes that the determination of whether the impact of a potential revision is "significant" or "negligible" is a matter of judgment that depends on a number of variables, not all of which are amenable to precise definition. However, EPA recognizes that the use of "negligible/significant" terminology may imply more precision and quantitation in the determination than is possible. The Agency also understands that the use of the term "negligible" may imply to some that the Agency is belittling small gains in health risk reduction. This is not the Agency's intent. Accordingly, in today's action, the Agency has explained its rationale more clearly in terms of the criteria noted in the previous paragraph.

c. Authority to Relax an Existing Standard and Deregulation of Low/Non-Occurring Contaminants. Some commenters argued that the Agency should never consider relaxing a standard because doing so, by definition, would lessen the level of public health protection. Other commenters encouraged the Agency to actively consider deregulating contaminants that have low occurrence or do not appear to be occurring in finished water or, at a minimum, to further reduce the frequency of monitoring for these contaminants.

EPA Response: EPA disagrees with those commenters who oppose relaxing a standard for any reason. The legislative history of the SDWA Amendments of 1996 makes clear that Congress envisioned the possibility that a relaxed standard might be appropriate under circumstances that would not result in a lessening of the level of public health protection. In its discussion of potential revisions to an existing drinking water standard, Senate Report Number 104–169 (available electronically at *http://thomas.loc.gov/*) states:

> Amendments made by the bill require that any future standard issued for a contaminant already regulated must maintain or provide for greater protection of the health of persons. Generally, this will preclude the promulgation of a revised standard for a contaminant that is less stringent than the standard already in place. However, there are circumstances under which a standard may be relaxed. The maximum contaminant level goal for a contaminant is set at a level at which there is no adverse effect on the health of persons with an adequate margin of safety. New scientific information may cause the MCLG to be revised and in some cases these revisions may be to less stringent levels. This may lead to a revision of the maximum contaminant level since it need be no more stringent than the MCLG. New information may also allow for a smaller margin of safety because it narrows the range of uncertainty for estimates of health risks. Finally, some substances which have been regulated as carcinogens for ingestion in drinking water may be reclassified (as asbestos has been in the most recent revision) or assigned a threshold for the effect based on new scientific information. In each of these cases, EPA may issue a revised standard for a contaminant that is less stringent than the one it replaces.
>
> (S. Rep.104–169, 104th Cong., 1st Sess. (1995) at 38)

However, because section 1412(b)(9) of SDWA requires that any revision to an existing NPDWR maintain or improve the level of public health protection, EPA believes that a clear, technically-based demonstration regarding the absence of potential risk is necessary to deregulate a contaminant. EPA does not believe it is appropriate to deregulate any currently regulated contaminant at this time because the Agency is not able to make a determination, pursuant to section 1412(b)(9) of SDWA, that there would be no lessening of public health protection if the contaminant were deregulated. The Agency disagrees that evaluation of finished water data is sufficient to consider deregulation of low or non-occurring contaminants. The apparent low or non-occurrence of these contaminants in finished water may be the result of effective treatment processes in place rather than the lack of occurrence in source water.

EPA believes that the existing waiver provisions in the SDWA regulations give States sufficient flexibility to reduce or potentially eliminate monitoring of a chemical contaminant, where appropriate. States that have primacy for the drinking water regulations are responsible for their waiver programs and can grant waivers if a particular pesticide or herbicide has not been previously used, manufactured, stored, transported, or disposed in the area, a system's source water is not susceptible to contamination from the chemical, or the State has determined the system is not vulnerable. The State can grant waivers for individual contaminants, a group of contaminants, or issue an area-wide waiver (*see* 40 CFR 141.23 (b) and (c), and 141.24 (f) and (h)). In addition, States can adopt alternative monitoring strategies as long as the approach is as stringent as the Federal requirements (USEPA, 1997b).

2. Health Effects Technical Review

a. Contaminants Undergoing Health Risk Assessments. A few commenters raised issues with respect to the 36 chemical contaminants for which health risk assessments were underway when EPA published its preliminary revise/not revise decisions in the April 17, 2002, **Federal Register**. In particular, these commenters wanted to know the process that EPA plans to follow to review each NPDWR once the risk assessment is completed, including when that review would occur and when an accelerated review would be appropriate.

EPA Response: Between April and August 2002, the Agency completed health risk assessments for 2 of the 36 contaminants: 1,1-dichloroethylene and lindane. The results of those assessments and the impact on the Agency's revise/not revise decisions are discussed in sections IV.B.7 and IV.B.14, respectively, of today's action. NPDWRs for the remaining contaminants for which health risk assessments are in process will be reviewed as a part of the 2002–2008 review cycle. However, if in the Agency's judgment, a compelling reason exists to revisit the "not revise" decision sooner, EPA may accelerate the review cycle for that NPDWR. In reviewing these regulations, EPA expects to apply an approach consistent with the protocol used for the current review. That is, the Agency will consider the same key elements and apply the same basic decision tree for making a revise/not revise decision. The key elements of the review include health effects technical review, technology review, other regulatory revisions review, and, if appropriate, occurrence/exposure analyses and consideration of available economic information (see 67 FR 19030 at 19038, April 17, 2002 (USEPA, 2002g)).

b. Other Issues Related to the Health Effects Technical Review. One commenter stated that the Agency risk assessments underestimate risk because absorption of chemicals through the skin, lung, and nose is not "adequately" taken into account. Another commenter encouraged the Agency to evaluate the literature for potential reproductive and developmental effects for chemicals with zero MCLGs since risk management strategies, such as monitoring frequency or treatment requirements, may be affected by such information.

EPA Response: EPA disagrees that the Agency underestimates risk when deriving MCLGs. The Agency takes multiple routes of exposure into account by including a relative source contribution (RSC) in its calculation of an MCLG value. The RSC compares exposure from air, food, and drinking water and uses the data in allocating a portion of the total exposure to drinking water. When exposure data for the chemical are not available, EPA assumes that the RSC from drinking water is 20 percent of the total exposure. This allows 80 percent of the total exposure to come from sources other than drinking water, such as exposure from food, inhalation, or dermal contact.

EPA recognizes the possibility that some chemicals with zero MCLGs may also be of reproductive and/or developmental concern. EPA is investigating these endpoints and their potential impact on monitoring frequency or treatment requirements. However, the Agency does not believe the analysis can be completed during the current review cycle without significantly delaying the current revise/not revise decisions. To the extent possible, EPA will consider the results of this analysis and any additional information during subsequent Six-Year Reviews.

3. Analytical Methods Feasibility Technical Review

Commenters generally supported the Agency's approach of using Performance Evaluation (PE) Water Supply (WS) data and the 10 times method detection limit (MDL) multiplier to evaluate possible changes in analytical feasibility for several of the contaminants under this Six-Year Review. A few commenters agreed that the WS data are a valuable source of information for evaluating interlaboratory performance and for developing practical quantitation levels (PQLs). However, the same commenters questioned whether the approach of using PE WS data will be possible for future reviews since the Agency's laboratory certification program that once collected this information has been externalized to private providers. These commenters questioned whether the externalized or privatized data would be sufficient for the determination and/or re-evaluation of PQLs. In addition, at least one commenter suggested that it may be appropriate (in the next Six-Year Review) to re-evaluate the policy of basing the PQL on only EPA Regional and State laboratory results, and recommended that the Agency include commercial and large utility laboratory results. According to the commenter, these laboratories (commercial and large utility) have demonstrated "significant innovation in method development and improved quantitation."

EPA Response: EPA agrees that the WS studies have been a valuable source of information for determining PQLs. At this time, the Agency has not determined whether the privatized data will be sufficient for the purposes mentioned by the commenter. In addition, the Agency has not yet determined how best to gather data to determine and/or reassess PQLs for future reviews. The Agency is in the process of evaluating acceptable options. The policy for determining the most appropriate methodology for calculating PQLs for drinking water contaminants is outside the scope of the Six-Year Review.

4. Review of Treatment Technologies and Related Issues

Commenters suggested that, while EPA's review of existing NPDWRs was generally consistent with the NDWAC recommendations to EPA (NDWAC, 2000), the Agency's review of treatment

technologies which support the regulations should be expanded. Specifically, commenters recommended that EPA review all treatment technique (TT) requirements and allow for changing or expanding these TT requirements where new information warrants such a change.

EPA Response: EPA continues to believe its approach to reviewing TT requirements is appropriate. The "EPA Protocol for the Review of Existing NPDWRs" (Protocol Document) discusses when it is appropriate for the Agency to consider revisions to TT-type regulations (see sections II.C and III.B of the Protocol documents) (USEPA, 2002d; USEPA, 2003c). The Agency discussed the review of the four chemical treatment technique NPDWRs (*i.e.*, acrylamide, copper, epichlorohydrin, and lead) in both the draft and final "Water Treatment Technology Feasibility Support Document for Chemical Contaminants; In Support of EPA Six-Year Review of National Primary Drinking Water Regulations" (Treatment Feasibility Documents) (USEPA, 2002b; USEPA, 2003g). The Agency has no specific information that provides a basis for revisions to TT requirements at this time. However, EPA believes that research data in a number of treatment-related areas may be useful in future reviews of NPDWRs. The Agency is committed to working with stakeholders to identify and prioritize treatment-related research needs, and to work with EPA's research partners to address the highest priority needs.

5. Review of Implementation-Related Issues

While several commenters felt overall that EPA's Six-Year Review protocol was reasonable and appropriate, they encouraged EPA to consider implementation-related modifications (*i.e.*, "other regulatory revisions") as a reason to revise a rule, even if there were no basis to revise the MCLG and/or MCL/TT requirements.

EPA Response: Implementation-related issues are the primary reason for the Agency's decision to revise the TCR at this time (67 FR 19030 at 19085, April 17, 2002 (USEPA, 2002g)), so it is clear that EPA considered implemented-related issues in its review. The Protocol Document (USEPA, 2002d; USEPA, 2003c) identifies the conditions under which the Agency will consider implementation-related revisions. EPA continues to believe these criteria are appropriate. During the current review, none of the identified potential implementation-related revisions pertaining to the chemical NPDWRs, in EPA's judgment, met the stated criteria for reasons documented in EPA's final document, "Consideration of Other Regulatory Revisions for Chemical Contaminants in Support of the Six-Year Review of National Primary Drinking Water Regulations" (USEPA, 2003b).

6. Review of Occurrence and Exposure

a. Occurrence Database Concerns. A few commenters asked for information regarding next steps for the National Contaminant Occurrence Database (NCOD). Another commenter pointed out that States have been willing to assist EPA by providing occurrence data beyond what is required of them. However, the commenter raised concerns that he/she felt EPA needs to address to facilitate further data sharing.

Some commenters expressed concern about the completeness and representativeness of the 16-State data set used for the Six-Year Review. One commenter suggested that the Agency should have issued an Information Collection Request to obtain more complete data for the Six-Year Review analysis.

EPA Response: The Agency is updating the NCOD to provide sample data that have been quality checked and used in various EPA analyses. This update to NCOD includes unregulated occurrence data collected prior to 1999 as well as the latest Unregulated Contaminant Monitoring Rule data (64 FR 50556, September 17, 1999 (USEPA, 1999b)) reported by laboratories for public water systems required to report results. It also includes the data used for the Six-Year Review of regulated contaminants. EPA appreciates that some States are willing to share their full compliance monitoring records with the Agency, even though it is not required. The Agency and the States are continuing to work together to establish a protocol for data sharing, including safeguards to prevent misuse and misinterpretation of data.

The 16-State cross-section data set compiled for occurrence analyses for the Six-Year Review is the largest compliance monitoring data set for drinking water assembled by EPA to date. The design and construction of the 16-State cross-section data set was based on the fact that contaminant occurrence varies spatially (geographically) due to differing patterns of population, land use, chemical use, geology, hydrology, and climate. The detailed description of the "pollution-potential" and geographic diversity considerations, and the derived balanced cross-section of States (that was developed to be collectively indicative of national occurrence) is included in the "Occurrence Estimation Methodology and Occurrence Findings Report for the Six-Year Review of Existing National Primary Drinking Water Regulations" (Occurrence Methodology Document) (USEPA, 2003d). EPA selected its 16-State cross-section to be as representative as possible of national contaminant occurrence. In EPA's judgment, these States provide a reasonable cross-section of agricultural and industrial pollution potential, as described in the Occurrence Methodology Document, and also provide geographic coverage of the United States. Therefore, EPA believes that the data assembled from these States is the most representative data currently available of national contaminant occurrence.

The Agency did receive occurrence data from States other than those in its 16-State cross-section. However, many State data sets contained incomplete records (*e.g.*, no water type or population records specified) or had other quality problems. Therefore, they were not included in the analyzed data set.

b. *Occurrence Analysis Methodology.* One commenter noted that while the occurrence estimation methodology has several strengths, it also has a number of flaws. The commenter was concerned about the large proportion of non-detected observations in the occurrence data, and the difficulty of verifying the assumptions made by the Agency. The commenter agreed that EPA's occurrence analysis may represent a "decent" estimate given the limitations of the data. The commenter also noted that the occurrence estimation methodology is premised on "subjective decisions or qualitative observations * * * rather than documented, statistically-based quantitative ones" and would like to have seen alternate approaches used to provide confirmation of the estimates. In addition, the commenter questioned why the Agency used "modeled data sets to test the model rather than a standard statistical strategy of basing the model on a portion of the data set and using the remainder to test the model."

One commenter stated that the Stage 2 analysis (Bayesian analysis) was poorly described and that this conflicts with the transparency requirements of the 1996 SDWA Amendments. In addition, the commenter asked EPA to clarify how the occurrence data from other survey efforts, which are summarized in "Occurrence Summary and Use Support Document for the Six-Year Review of Existing National Primary Drinking Water Regulations" (Occurrence Summary Document) (USEPA, 2002f), were used to inform the modeling effort.

EPA Response: EPA's occurrence model development work was significantly revised to reflect peer review comments prior to the March 2002 Occurrence Methodology Document (USEPA, 2002e) and the April 17, 2002, **Federal Register**. The additional work involved the development of a detailed simulation study to evaluate the Bayesian model. EPA evaluated the performance of the Bayesian estimator and an alternative occurrence estimation approach, the Regression on Ordered Statistics (ROS) method, against synthetic data (*i.e.*, data developed with known national contaminant occurrence distributions). This simulation study also enabled an explicit evaluation of the validity of the assumption of a log-normal distribution of the data.

The simulation study was conducted using varying conditions of a correctly and incorrectly specified model, and synthetic data sets developed with high and low amounts of non-detected data. The study findings indicated that the Bayesian estimator performed well at estimating the distributions of contaminant concentration means (especially in the upper tails), performed better than the alternate approach (*i.e.*, the ROS method), and accurately estimated the uncertainty of the distributional estimates. The Agency believes that this analysis supports the validity of EPA's analytical approach. The Bayesian model was tested against the ROS approach because the ROS method is an accepted drinking water contaminant occurrence estimation approach and was used to estimate occurrence for the recent arsenic rule. These findings were all included and described in the Six-Year Review's Occurrence Methodology Document.

EPA has attempted to make its occurrence analysis as clear as possible. In response to the concerns raised by the peer reviewers, a less technical description of the occurrence estimation methodology, aimed at the general reader, was added to the main body of the document. A detailed description of the analysis, intended for readers with technical expertise, including the complete computer code used for model analysis, was incorporated into an appendix of the document. EPA agrees that its estimation methodology is complex, but also believes that it is as transparent as possible while still providing a technically accurate description of the Agency's analysis. The use of simple national occurrence (statistical) assessments is not possible at this time because there is no national database with a complete collection of regulated contaminant occurrence data. Thus, there is no ideal basis for comparison of national occurrence studies (*i.e.*, the true system contaminant means and national distributions of contaminant occurrence are not, and cannot, be known). The validation approach suggested by the commenter (*i.e.*, basing the model on a portion of the data set and using the remainder to test the model) is intended for a regression-type of model using observed system means to develop a model for system-specific predictions. This approach is not possible for the six-year occurrence assessments, since, to the best of EPA's knowledge, data on the true individual system contaminant mean concentrations and national distributions are not available.

Regarding the other survey studies included in the Occurrence Summary Document, few, if any, provide the quantitative analytical results and national, representative coverage that would enable direct comparison to, or inclusion in, the Six-Year Review estimation analyses conducted with the 16-State cross-section occurrence data.

c. Other Issues Related to the Occurrence Technical Review. One commenter stated that the Agency's current approach to estimate occurrence, employing a conservative methodology and making conservative simplifying assumptions in the absence of definitive data, was appropriate. On the other hand, the commenter argued that it was not appropriate for the Agency to conduct as massive a data collection and analysis project as was undertaken without clear quantitative objectives for the analysis identified a priori. The commenter noted that it was not apparent from either the April 17, 2002, **Federal Register** or the Occurrence Methodology Document (USEPA, 2002e) that the Agency undertook an effort to set performance objectives for the occurrence estimation.

The commenter felt that the Occurrence Methodology Document does not allow the reader to determine if the data are well apportioned among the categories for which results are reported. They also noted that they were unable to find indications in the support document that such an analysis was undertaken in preparation for constructing the Bayesian model. The commenter stated that the support document does not include actual numeric counts or ranges of detected values and suggested that it would be useful to have this information by contaminant, State, system size category, and water type, as well as an explicit count of non-detects by this same matrix.

EPA Response: There are several general approaches when undertaking and designing studies that require large amounts of data. As the commenter states, a priori data quality objectives are part of one research approach where study objectives (including technical statistical performance measures) are set, determinations are made on how to meet those objectives, and then the study is designed and implemented accordingly. This ideal was not practical for the national occurrence study conducted for the Six-Year Review because EPA did not have the resources to generate original data, and was thus dependent on the data that could be obtained from the States. The approach taken by the Six-Year Review was to gather a large amount of data that, in aggregate, was expected to be indicative of national contaminant occurrence, develop an occurrence estimation model that built upon what has been learned from recent regulatory development work, and then evaluate how good the resulting model estimates are.

As discussed in section IV.A.6.b of today's action, the true national distributions of contaminant occurrence cannot be known. The 16-State national cross-section data set used for the Six-Year Review is the largest compliance monitoring database for drinking water compiled by EPA to date. The database represents approximately 37 percent of the total number of public water systems and 43 percent of the total population served by public water systems in the United States. External peer reviews assessed the approach for developing the national cross-section and its "representativeness" separately under the Chemical Monitoring Reform (CMR) project (in 1998/1999) (USEPA, 1999c) and the Six-Year Review project (USEPA, 2002e), and provided generally favorable comments.

The data management and cross-section development have been described in detail in the support documents for the CMR and the Six-Year Review. Further tabulations of the data have been generated and presented, as the commenter requested, in the final Occurrence Methodology Document (USEPA, 2003d). This information includes the numbers and percentages of analytical detections and non-detections for each contaminant in each of the system size and source water type categories. Generally, because of the large amount of data and the manner in which the Bayesian model handles data, the distribution of observations across the various categories does not significantly affect EPA's estimates. The

number of analytical records differed by contaminant. EPA evaluated 27,648 to 93,062 analytical records for the individual inorganic chemicals, 32,606 to 121,327 records for the synthetic organic chemicals, and 123,229 to 201,235 records for the volatile organic chemicals. Most importantly, the Stage 2 occurrence model also quantifies the uncertainty of the estimates in the different categories of system size and source water type. Hence, the statistical significance of differences in occurrence between the categories can be easily assessed. However, the Agency believes it is more appropriate to consider the universe of potentially affected systems within the 16-State cross-section, rather than individual system categories, when making its revise/not revise decisions as part of the Six-Year Review process.

7. Consideration of Available Economic Information

Some commenters stated that, while the Agency's review of NPDWRs was generally consistent with NDWAC recommendations to EPA (NDWAC, 2000), it is not clear how the Agency took economic factors into account.

EPA Response: An EPA memorandum, dated March 18, 2002, describes the Agency's qualitative evaluation of economic factors (USEPA, 2002c). This memorandum was cited in the April 17, 2002, **Federal Register** and is available in the docket for the Six-Year Review (Docket No. OW–2002–0012). It notes that detailed economic analyses were not deemed by the Agency to be necessary to support its decisions of whether or not to revise a particular NPDWR. Rather, a qualitative assessment, based on the extent of occurrence of a contaminant at the MCL, as well as at alternative levels, was undertaken to inform the Agency's judgment about whether possible changes to an MCL offered a meaningful opportunity for health risk reduction and/or cost-savings to public water systems and their customers. EPA has conducted this assessment for 15 of the chemical NPDWRs for which the Agency had determined that a potential health or technological basis may exist for considering a revision to the MCLG/MCL.[2] EPA compared the estimated occurrence and exposure values at the current MCL and at potentially revised regulatory level(s). For 14 of these chemical NPDWRs, the Agency's assessment showed that the differences were small. In EPA's judgment, these differences are unlikely to provide a meaningful opportunity for health risk reduction or cost-savings to public water systems and their customers. After consideration of these factors, EPA decided that any revision would be a low priority activity for the Agency, and, thus, not appropriate to revise at this time because of: Competing workload priorities; the administrative costs associated with rule making; and the burden on States and the regulated community to implement any regulatory change that resulted. In the case of dichloromethane, the Agency did not have sufficient data to recalculate the PQL to support any potential regulatory revision and thus placed it in the data gaps category.[3]

B. What Comments or New Information Did EPA Receive on Chemical Contaminant-Specific Issues?

1. Alachlor

One commenter stated that the Office of Pesticide Programs (OPP) found that the chloroacetanilide pesticides (acetochlor, alachlor, and butachlor) should be considered as a group of chemicals having a common mechanism of toxicity due to their ability to cause nasal turbinate tumors. The commenter believes EPA therefore should adopt a strong total chloroacetanilide pesticide standard that would strengthen the current standards.

EPA Response: Butachlor and acetochlor do not presently have an NPDWR and thus, are not included in the Six-Year Review. However, acetochlor is included on the Contaminant Candidate List (CCL) and may in the future be considered as a candidate for regulation. Alachlor is a regulated drinking water contaminant and is included in the Six-Year Review. It is currently undergoing a risk assessment and, therefore, the Agency believes that revision of the NPDWR is not appropriate at this time.

If the Agency decides to regulate either acetochlor or butachlor in the future, EPA may consider regulating them as a group, including alachlor, following a cumulative risk assessment process for pesticides that have a common mechanism of toxicity. It would be premature to propose a total chloroacetanilide pesticide standard until a cumulative risk assessment is completed because this analysis could impact the Agency's evaluation of specific members of this group, or the group as a whole.

2. Antimony

a. Health Effects. A number of commenters have suggested that the current MCLG and MCL of 0.006 milligrams per liter (mg/L) for antimony need to be revised. Some of the reasons given were:

- The study used to derive the current MCLG (Schroeder *et al.*,1970) is not consistent with current good laboratory practice guidelines and there are several newer studies of antimony toxicity that should be considered in deriving a new reference dose (RfD).
- Animals used in the Schroeder *et al.*, 1970 study had a viral infection. To compensate for this infection, adjustments were made to the size of the animal groups in an attempt to salvage the data.
- The antimony compound used in the Schroeder *et al.*, 1970 study was potassium antimony tartrate, the most water soluble and toxic form of antimony. Antimony found in drinking water is likely to be in the form of less toxic trivalent and pentavalent antimony species. Therefore, basing the MCLG on the most toxic species of antimony (potassium antimony tartrate) is likely to overestimate the risk posed by antimony in drinking water.

EPA Response: EPA agrees that the MCLG and MCL for antimony may need to be re-evaluated. EPA is in the process of developing a new health risk assessment for antimony, taking into consideration new studies that have become available on the toxicity of antimony. EPA expects to complete the health risk assessment for antimony in the 2003–2004 time frame (68 FR 5870, February 5, 2003 (USEPA, 2003h)). As a result of the ongoing health risk assessment, a revision to the antimony standard is not appropriate at this time, and antimony will be re-evaluated as part of the next Six-Year Review process.

b. Treatment and Implementation Issues. Several commenters questioned the appropriateness of the antimony MCL, and the effectiveness of using the EPA-designated best available technologies (BATs) to meet the antimony MCL. A few small systems in Utah have levels of antimony in water at or above the MCL value of 0.006 mg/L. These systems were granted exemptions contingent upon testing and installation of treatment by March 2004.

These systems are investigating treatment options for the removal of antimony from their source water. Commenters submitted supporting data documenting the results of their testing and cost analyses. According to commenters, on-site testing indicated that the designated BATs (*i.e.*, reverse osmosis and coagulation/filtration) and most of the other tested treatments were ineffective and/or prohibitively expensive due to: raw water quality concerns; water conservation needs; current costs for water production; and other concerns, such as waste water management. However, commenters did identify treatment options that may be feasible, but these may require further investigation prior to full scale use.

EPA Response: As discussed in the April 17, 2002, **Federal Register** and as noted in the previous response in section IV.B.2.a, EPA does not believe it is appropriate to consider revisions to the NPDWR for antimony at this time because of the ongoing health risk assessment (67 FR 19030 at 19051 (USEPA, 2002g)).

When EPA initially promulgated the antimony NPDWR in 1992, the Agency estimated that 200 public water systems would be affected (USEPA, 1992). EPA recognizes that implementation of this standard may present challenges for a few localities. Although the use of the designated BATs for antimony may not be appropriate in some cases, as long as systems comply with the MCL, they are not limited to these technologies.

EPA believes that the treatment data generated by the commenters may be valuable and may provide insight into potential alternative treatment technologies. The Agency has revised the document, "Water Treatment Technology Feasibility Support Document for Chemical Contaminants; In support of EPA Six-Year Review of National Primary Drinking Water Regulations" (Treatment Feasibility Document) (USEPA, 2003g) to refer to these preliminary test data as they may be applicable to the development of potential new treatment technologies for the removal of antimony and other contaminants.

3. Atrazine

a. Health Effects. Several commenters addressed the EPA decision not to consider revision of the MCL for atrazine at this time. Some of these commenters stated that EPA should use the risk assessment, released by OPP in May 2002, as a basis for reconsidering the atrazine NPDWR. One of the commenters noted that the 2002 risk assessment is based on reproductive and developmental endpoints which represents a change from the toxicity endpoint that formed the basis of the current MCLG. Two commenters stated that the MCL for atrazine should be revised upward because of the results of the 2002 OPP risk assessment in which the RfD increased and the cancer classification changed from "possible human carcinogen" to "not likely to be a human carcinogen." The commenters stated that the change in the cancer assessment implies elimination of the additional 10-fold risk management factor used in 1991 to derive the MCLG/MCL for atrazine. Another commenter stated that atrazine should be regulated using a non-linear approach which recognizes that there is a level at which no known health effects occur and that these findings must be part of the new MCL.

Conversely, another commenter stated that there is substantial new evidence from epidemiological and occupational studies that atrazine poses a serious cancer risk, and that it is an endocrine disruptor at low levels. The commenter believes EPA should adopt a revised atrazine and total triazine standard lower than (*i.e.*, more stringent than) the current 0.003 mg/L standard for atrazine.

A commenter also urged the Agency to:

- Provide a definitive timetable for review of the standard;
- Outline a preliminary scope for its review of the standard; and
- State the underlying premise for the scope of the review.

Other commenters stated that the existing NPDWR only regulates the parent compound atrazine, and that a revised NPDWR should include the chloro-metabolite degradants (*i.e.*, diaminochlorotriazine (DACT), desethyl atrazine (DEA), and desisopropyl atrazine (DIA)). These commenters believe that inclusion of the chloro-metabolites would strengthen compliance monitoring programs for public water systems under SDWA and thereby strengthen public health protection. They stated that a regulation for atrazine and the chloro-metabolites should be developed and promulgated within the next 12 to 18 months. Another commenter stated that since the Agency has found that atrazine, simazine, propazine, and the degradants DACT, DEA, and DIA have a common mechanism of toxicity, these should be regulated in a total triazine regulation.

EPA Response: EPA does not believe it is appropriate to consider revisions to the NPDWR for atrazine at this time because the revised risk assessment has not been finalized. For purposes of the Six-Year Review protocol, EPA considers a risk assessment final when an Interim Reregistration Eligibility Decision (IRED), Reregistration Eligibility Decision (RED), and/or IRIS assessments are complete.[4] Even though an IRED for atrazine was signed on January 31, 2003, an amended IRED is scheduled to be released in October 2003 which will include a Scientific Advisory Panel (SAP) peer review of new data related to health effects. Based upon the outcome of the SAP review, the October 2003 IRED may include additional information that could impact a revise/not revise decision. Therefore, EPA does not believe it is appropriate to consider possible revisions to the NPDWR at this time.

In reviewing the atrazine regulation, EPA will apply an approach consistent with the protocol used for the current review. The Agency will consider the same key elements (*i.e.*, health effects review, technology review, other regulatory revisions review, and, if appropriate, occurrence/exposure analyses and consideration of available economic information) and apply the same basic decision tree for making a revise/not revise decision.

To address the issue of regulating the triazines as a group, the Agency is evaluating the unregulated triazines as part of the CCL process. When the risk assessment is completed for atrazine, the Agency will consider whether or not there are compelling reasons for considering a revision to the atrazine regulation or to wait until the risk assessment for the triazines, which considers issues of cumulative risk, is finalized. EPA will use the CCL regulatory determination process in deciding whether the triazines should be regulated as a group.

b. Costs of Treatment. Commenters stated that the costs associated with not revising the MCL are great. These commenters are concerned that State agencies will be required to develop total maximum daily loads (TMDLs) based on 303(d)[5] listings resulting from

[2] These 15 chemical NPDWRs are: Benzene; beryllium; chlordane; 1,2-dibromo-3-chloropropane dichloromethane; 1,1-dichloroethylene; 1,2-dichloropropane; heptachlor; heptachlor, epoxide; hexachlorobenzene; lindane; oxamyl; picloram; toxaphene; and 1,1,2-trichloroethane.

[3] The other three NPDWRs in the data gaps category, chromium, fluorida, and lead, were placed there for reasons other than occurrence and economic considerations. Chrominum is in the data gaps category because of the studies being conducted by the National Toxicology Program studies. Fluoride is in the data gaps category pending a National Academy of Sciences update of the health risk assessment and review of the RSC assumptions. Lead is in the data gaps category based on consideration of public comments (see section IV.B.13 of today's action).

[4] The IRED is an intermediate decision for an individual pesticide that does not take into account cumulative risk issues for pesticides with a common mode of action. The RED does include cumulative risk. If an IRIS assessment is also in process when the IRED or RED is signed, EPA will make a case-by-case decision on whether to wait for the IRIS assessment before considering possible revisions to the NPDWR.

[5] Section 303(d) of the Clean Water Act and the implementing regulations (40 CFR 130.7) require States to develop TMDLs for waters where required point and nonpoint source pollution controls are not stringent enough to attain or maintain compliance with State water quality standards after the application of technology-based and other

Continued

an outdated MCL which creates a burden on State and local government, its citizens, and diverts limited resources away from programs that provide real benefits. Some commenters also stated that the treatment costs to hundreds of community water systems are considerable. One commenter also stated that these are real dollars that would otherwise be available for emergency services, education, nutrition programs, and other vital programs that are the responsibilities of local and State agencies.

EPA Response: As stated in the previous response in section IV.B.3.a, EPA does not believe it is appropriate to revise the NPDWR for atrazine at this time because the risk assessment is not yet final. If EPA decides to revise the NPDWR for atrazine, economic factors, including feasibility and an assessment of costs and benefits, will be taken into consideration for the drinking water program.

4. Beryllium

Two commenters believed that the current drinking water standard for beryllium is more stringent than necessary for the protection of public health and felt that EPA should adopt a higher value for the beryllium standard. These commenters disagreed with EPA on the use of an uncertainty factor of 300 in deriving the 1998 RfD. The commenters stated the use of uncertainty factors of 3 for database uncertainty, 10 for extrapolating data from a dog study to humans, and 10 for intraspecies variation is inappropriate. The commenters stated that EPA has the authority to raise the current drinking water standards for beryllium based on new information that allows for a smaller margin of safety than the one used by EPA. The commenter felt that the current standard for beryllium is "lower than necessary to protect the public from beryllium toxicity and results in clean-up standards that are lower than naturally occurring level of beryllium in water sources and soils." This commenter also expressed concern that the local application of the Federal drinking water standard to private wells in some cases caused undue concerns among users of those wells.

EPA Response: One of the purposes of the Six-Year Review is to determine if the MCL of a chemical should be changed based on a revised RfD or cancer classification. Analytical methods and treatment technologies are considered, as well as occurrence in public water systems. The RfD for beryllium was revised in 1998 based on extensive Agency internal and external reviews, and is unlikely to be revised in the absence of new data. The 1998 assessment also provided separate cancer classification for inhalation and oral exposures (USEPA, 1998). In the revised assessment, the carcinogenicity of beryllium by the inhalation route was described as "likely," while that by the oral route of exposure "cannot be determined." As discussed in the April 17, 2002, **Federal Register**, the Agency considered the occurrence of beryllium at both potentially higher and lower regulatory levels. EPA concluded that a revision to the NPDWR would not result in a meaningful opportunity for health risk reduction or cost-savings to public water systems and their customers. As a result, revision of this NPDWR is a low priority action for the Agency and is not appropriate at this time.

The goal of drinking water standards is to protect public health. Therefore, it does not matter whether the source of contamination is naturally-occurring or man-made. While EPA appreciates the information on private wells, the SDWA requirements do not apply to private wells (*i.e.*, wells that are not part of a "public water system"). The costs and benefits of a drinking water standard are assessed only with regard to the impacts on public water systems and their customers.

5. Carbofuran

Some commenters mentioned that the Agency concluded that N-methyl carbamates, including carbofuran, should be considered as a class because they have a common mechanism of toxicity. Therefore, they believe EPA should issue a stronger standard for total N-methyl carbamates, including carbofuran, which would be more stringent than the current carbofuran standard of 0.04 mg/L.

EPA Response: EPA is re-evaluating the toxicity of carbofuran. However, a final assessment has not been issued by EPA. The Agency considers N-methyl carbamate pesticides as a group of chemicals having a common mechanism of toxicity due to their ability to inhibit acetylcholinesterase. However, it is not appropriate to revise the NPDWR for carbofuran at this time because the Agency has not yet completed the final health risk assessment for carbofuran or the other N-methyl carbamates.

6. Chromium

One commenter requested that EPA move quickly in making a revise/not revise determination once the new data on chromium become available from the National Toxicology Program (NTP) studies of the health effects of chromium VI.

EPA Response: The NTP studies that the commenter refers to should be available before the end of the next Six-Year Review cycle. Meanwhile, EPA is continuing to follow the progress of NTP in conducting subchronic and chronic studies of chromium VI.[6] NTP made the data from the subchronic portion of the study available to the public in June 2002 (NTP, 2002). A peer review meeting was held at NTP on July 24, 2002. EPA will examine the peer review report covering the subchronic data once it becomes available. Once the subchronic and chronic studies are completed, the health effects data will be evaluated with regard to their impact on the present RfD and cancer assessment, and integrated with the occurrence and analytical method data before making a new revise/not revise decision.

7. 1,1-Dichloroethylene

In the April 17, 2002, **Federal Register**, the Agency preliminarily placed 1,1-dichloroethylene in the no revision category because a health risk assessment was pending at the time of publication. Since the publication of the April 17, 2002, **Federal Register**, the Agency has finalized the risk assessment for 1,1-dichloroethylene. The remaining paragraphs in this section include a brief background discussion about the original promulgation of the 1,1-dichloroethylene NPDWR, the results of the appropriate six-year technical reviews and the Agency's revise/not revise decision.

a. Background. EPA published the current NPDWR for 1,1-dichloroethylene on July 8, 1987 (52 FR 25690 (USEPA, 1987)). The NPDWR established an MCLG and an MCL of 0.007 mg/L. The Agency based the MCLG on an RfD of 0.009 milligram per kilogram of body weight per day (mg/kg/day) and a cancer classification of C, possible human carcinogen.

b. Technical Reviews. EPA updated the risk assessment for 1,1-dichloroethylene on August 13, 2002 (USEPA, 2002i). The new risk assessment established an RfD of 0.046 mg/kg/day, based on the same toxicological study as that of the MCLG, but using an uncertainty factor of 100 instead of 1,000, and using benchmark dose modeling for the dose-response analysis. Under the 1986 cancer guidelines (51 FR 33992, September 24, 1986 (USEPA, 1986)), 1,1-dichloroethylene was assigned to Group C, possible human carcinogen. Under the draft revised "Guidelines for Carcinogen Risk Assessment" (USEPA, 1999a), the data for 1,1-dichloroethylene were considered inadequate for an assessment of human carcinogenic potential by the oral route.

Based on the change in RfD for 1,1-dichloroethylene, using a 20 percent RSC and a 10-fold risk management factor for possible carcinogenicity, EPA used 0.03 mg/L as a level for evaluating the occurrence data. Without the use of the 10-fold risk management factor, EPA also used 0.3 mg/L as a level for evaluating the occurrence data.

Analytical or treatment feasibility do not pose any limitations for the current MCL and would not be a limiting factor at the 0.03 mg/L or the 0.3 mg/L level (USEPA, 2002a; USEPA, 2003g). The Agency's review of possible "other regulatory revisions" did not identify any issues that are specific to 1,1-dichloroethylene (USEPA, 2003b).

EPA evaluated the results of the occurrence and exposure analyses for 1,1-dichloroethylene to determine whether possible changes to the standard would be likely to result in a meaningful opportunity for cost-savings to public water systems and their customers (USEPA, 2003d). Table IV–1 shows the results of the detailed occurrence and exposure analysis based on the 16-State cross-section for the current MCL (0.007 mg/L), and for two higher levels (0.03 mg/L and 0.3 mg/L). Based on the detailed analysis, it appears that 1,1-dichloroethylene is unlikely to occur at concentrations above 0.007 mg/L in the States used for the cross-section.

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required controls. A TMDL establishes the maximum amount of a pollutant that may be introduced into a waterbody while still ensuring attainment and maintenance of water quality standards.

[6] Since NTP is posting its progress on its internet site *http://ntp-server.niehs.nih.gov/htdocs/Studies/HexChromium/hexchromiumpg.html*, EPA and the public will be able to evaluate the new data relative to the existing EPA assessment for chromium VI as it is released.

Table IV-1: 1,1-Dichloroethylene Occurrence[1]

Level (in mg/L)	16-State Cross-Section - Total Systems with Data	Estimated # of Systems > Level Evaluated (credible intervals)[3,6]	Estimated % of Systems > Level Evaluated (credible intervals)[3]
Systems[2]			
Upper Level Evaluated (without 10-fold risk management factor)[4] 0.3	19,101	0 (0-0)	0.000% (0.000% - 0.000%)
Lower Level Evaluated (with 10-fold risk management factor)[5] 0.03	19,101	0 (0-0)	0.000% (0.000% - 0.000%)
Current MCL 0.007	19,101	3 (1-6)	0.0144% (0.00518% - 0.0311%)
Population Served by Systems[2]			
Level (in mg/L)	**16-State Cross-Section - Total Population Served by Systems with Data**	**Estimated Population Served by Systems > Level Evaluated (credible intervals)[3]**	**Estimated % of Population Served by Systems > Level Evaluated (credible intervals)[3]**
Upper Level Evaluated (without 10-fold risk management factor)[4] 0.3	106,607,600	0 (0-0)	0.000% (0.000% - 0.000%)
Lower Level Evaluated (with 10-fold risk management factor)[5] 0.03	106,607,600	0 (0-0)	0.000% (0.000% - 0.000%)
Current MCL 0.007	106,607,600	14,400 (0 - 136,900)	0.0135% (0.0000328% - 0.128%)

Notes:

[1] Results are based on the number and percent of systems (and the corresponding population served by those systems) with estimated mean concentrations above the specified level of evaluation.

[2] All percentages are shown to three significant figures. All system values are rounded to the nearest whole system. All population values are rounded to the nearest hundred.

[3] "Credible intervals" are generated to quantify the uncertainty around each estimated probability in the Bayesian analysis of the occurrence data. For further explanation of credible intervals and the Bayesian analysis, please see "Occurrence Estimation Methodology and Occurrence Findings Report for the Six-Year Review of Existing National Primary Drinking Water Regulations" (USEPA, 2003d).

[4] Based on the change in the RfD and a 20 percent RSC.

[5] Based on the change in the RfD, a 20 percent RSC, and a risk management factor of 10.

[6] This value does not necessarily reflect the number of systems out of compliance with the current MCL, because these data were collected over the 1993-1997 time period, and because the value represents the estimated mean value over that time period, not the running quarterly average on which compliance is based.

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The results of the detailed occurrence and exposure analysis indicate that less than 0.02 percent of the 19,101 systems sampled in the 16-State cross-section, and less than 0.02 percent of the population served by those 19,101 systems might be affected if EPA were to consider levels as high as 0.03 mg/L to 0.3 mg/L. The current BATs and small system compliance technology for 1,1-dichloroethylene have other beneficial effects (*e.g.*, reduction of other co-occurring contaminants, or other common impurities) in addition to 1,1-dichloroethylene removal. Therefore, if EPA were to consider any of these higher levels, the Agency does not know how many of these public water systems that are currently treating to comply with the current MCL of 0.007 mg/L would be likely to discontinue treatment that is already in place (USEPA, 2002c; USEPA, 2003g).

c. Current Decision. Although there are new health effects data that might support calculation of a less stringent standard for 1,1-dichloroethylene, EPA does not believe a revision to the NPDWR for 1,1-dichloroethylene is appropriate at this time. In making this decision, the Agency considered whether any potential revision to the 1,1-dichloroethylene NPDWR is likely to provide a meaningful opportunity for cost-savings to public water systems and their customers. After consideration of this factor, EPA has decided that any revision to 1,1-dichloroethylene would be a low priority activity for the Agency, and, thus, is not appropriate to revise at this time because of:

- Competing workload priorities;
- The administrative costs associated with rulemaking; and
- The burden on States and the regulated community to implement any regulatory change that resulted.

8. Dichloromethane

One commenter stated that it may be difficult to lower the PQL for dichloromethane below the range of 0.001 to 0.002 mg/L since it is required in a number of EPA methods and therefore is a common laboratory contaminant. Because it is a common laboratory contaminant, the commenter stated that using the MDL for 524.2 and 502.2 does not constitute a reasonable basis for assuming that the PQL can be lower. The commenter stated that none of the existing WS studies had spike samples this low and, in addition, the occurrence data may have been compromised due to laboratory contamination.

EPA Response: The basis for EPA indicating that a lower PQL "may exist" was due to the fact that laboratories had greater than 95 percent laboratory passing rates using a +/ − 40 percent acceptance window at "known" spike concentrations close to current MCL of 0.005 mg/L. If laboratory contamination due to dichloromethane were a problem, such high passing rates at this value would not be expected. The MDLs for 524.2 and 502.2 were only used with the 10 times MDL multiplier to estimate what the lower value could be. However, EPA does agree that, at this time, the Agency does not have sufficient data to recalculate the PQL for dichloromethane and for this reason, the Agency placed it in the data gap category.

Regarding the occurrence issue, EPA has no data to suggest that high occurrence values were due to false positives from laboratory contamination and the Agency is proceeding on the assumption that State data are accurate unless there is information to the contrary. If laboratory contamination due to dichloromethane does exist, laboratories should be able to identify and discern a contamination issue if they are running laboratory blanks.

9. Di(2-ethylhexyl)adipate (DEHA)

One commenter submitted detailed comments regarding di(2-ethylhexyl)adipate (DEHA). The commenter believed that EPA should consider removing the regulation for DEHA and provided the following reasons:

- The regulation of DEHA in drinking water does not provide any meaningful reduction in the health risk to humans because it is unlikely to cause adverse effects to humans, including reproductive effects, except at very high doses which cannot be attained in drinking water, due to the low water solubility of DEHA.
- The weight of evidence indicates that the peroxisome proliferation mechanism of DEHA rodent carcinogenicity is not relevant to humans. Thus, the MCLG for DEHA should not include an additional 10-fold risk management factor for possible carcinogenicity.
- The legislative history of the 1996 SDWA indicates that Congress envisioned circumstances where relaxation of an MCL would provide the same level of health protection as the existing regulation. Accordingly, if DEHA cannot be deregulated, the commenter believes the MCLG and MCL should be increased.

EPA Response: DEHA was regulated in 1992. Since that time, new studies have become available on the toxicity of DEHA and its metabolites. For this reason, EPA decided to initiate a new health risk assessment of DEHA (67 FR 1212, January 9, 2002 (USEPA, 2002a)). The assessment will include examination of the studies on which the current NPDWR is based, as well as an evaluation of the data provided by this commenter and new studies that have become available since DEHA was regulated. This health risk assessment is planned for completion in the 2003–2004 time frame (68 FR 5870, February 5, 2003 (USEPA, 2003h)) and is expected to include development of an RfD for non-cancer health effects, as well as an assessment of potential carcinogenicity from oral exposure. At this time, it is premature to predict the outcome of the Agency's assessment. Thus, as discussed in section IV.A.2.a of today's action, the Agency believes that revision to the NPDWR for DEHA is not appropriate at this time. EPA will determine in the future if revision of the MCLG/MCL is warranted. Any revision to the MCLG/MCL will also take into consideration all the new information, including the water solubility of DEHA under various environmental conditions.

As stated by the commenter, the legislative history of the 1996 SDWA Amendments supports EPA's interpretation that the Agency could increase an MCLG and MCL as long as the relaxed standard does not lessen the level of public health protection. However, EPA does not believe, at the present time, that it can demonstrate that deregulating DEHA would maintain the current level of public health protection (see section IV.A.1.c of today's action).

10. Di(2-ethylhexyl)phthalate (DEHP)

The same commenter who submitted comments on DEHA also submitted detailed comments regarding di(2-ethylhexyl)phthalate (DEHP). The commenter felt that EPA should consider removing the regulation for DEHP for a variety of reasons, including the following:

- The regulation of DEHP in drinking water does not provide any meaningful reduction in the health risk to humans.
- The weight of the evidence indicates that the mode of action through which DEHP causes cancer in rodents is not relevant to humans and, thus, the MCLG for DEHP should not be zero. Any MCLG for DEHP should be based on a threshold endpoint and not on cancer. The commenter cited the February 2000 International Agency for Research on Cancer reclassification of DEHP from Group 2B (possibly carcinogenic to humans) to Group 3 (not classifiable as to its carcinogenicity to humans) as justification for recommending that EPA also reconsider its cancer classification.

• The solubility of DEHP in drinking water is well below any concentrations that would pose a risk to humans.
• If DEHP were to be considered for regulation under the statutory requirements of the 1996 SDWA, it would not be regulated.
• The legislative history of the 1996 SDWA indicates that Congress envisioned circumstances where relaxation of an MCL would provide the same level of health protection as the existing regulation. Accordingly, the commenter believes consideration should be given to increasing the MCLG for DEHP based on the new health effects data.
• Reproductive effects from DEHP as observed in rodents do not appear to be relevant for primates and the doses that are associated with effects in animals are well above those that would be experienced for humans exposed through drinking water because of solubility limitations. The commenter also highlighted the findings of the NTP Center for the Evaluation of Risk to Human Reproduction that there was "minimal concern for reproductive or developmental toxicity for the general population, based on estimates of total exposure to DEHP."

EPA Response: Revision of the NPDWR for DEHP is not appropriate at this time because an Agency health risk assessment is currently in process. The assessment is anticipated to be completed in the 2003–2004 time frame (68 FR 5870, February 5, 2003 (USEPA, 2003h)). Advances in understanding differences between the primate and rodent response to DEHP and the body of toxicological data that have become available in the past decade motivated the Agency's re-examination of DEHP and will be fully considered in the reassessment.

Once the Agency assessment is completed, EPA will consider the findings and will determine if there is a compelling reason to review the DEHP NPDWR prior to the next Six-Year Review cycle. As discussed in sections IV.A.1.b and IV.A.2.a of today's action, "revise" versus "not revise" decisions under the Six-Year Review take into consideration occurrence, advances in analytical methods, treatment technologies, available economic information, and other factors.

As stated by the commenter, the legislative history of the 1996 SDWA Amendments supports EPA's interpretation that the Agency could increase an MCLG and MCL as long as the relaxed standard does not lessen the level of public health protection. However, EPA does not believe, at the present time, that it can demonstrate that deregulating DEHP would maintain the current level of public health protection (see section IV.A.1.c of today's action).

11. Fluoride

EPA received three comments on the Agency's decision to place fluoride in the data gap category while the National Academy of Sciences (NAS) examines the toxicological and RSC data published over the last decade. Two of the commenters supported EPA's decision. One of these requested that the NAS concentrate its review on all of the data on the toxicology of fluoride and not just data on the critical skeletal effects. A third commenter requested that EPA not lower the MCL for fluoride from 4 mg/L to 2 mg/L and supported the 1986 EPA decision that dental fluorosis is a cosmetic effect rather than an adverse health effect. The commenter stated that the Public Health Service (PHS) recommended fluoridation level to be used at schools is 3 mg/L. The commenter also stated that if EPA were to lower the MCL, then schools that are currently fluoridating might have a conflict with the PHS recommendations and the EPA MCL.

EPA Response: The National Research Council (NRC) of the NAS has agreed to review the toxicological data on fluoride that have been published since it completed the 1993 study of "Health Effects of Ingested Fluoride" (NRC, 1993), and to examine the data on relative fluoride exposure from drinking water compared to fluoride exposure from the diet and fluoride-containing dental products. Although the Agency indicated in the April 17, 2002, **Federal Register** that new data on bone effects were a reason for initiating the data review (because bone effects were the basis of the present MCLG), the NAS review will look at the new toxicological data for all endpoints. It is anticipated that the NAS review will take about two years to complete. Because of this pending review, revision of the NPDWR for fluoride is not appropriate at this time.

It is therefore premature to make any judgment regarding the NAS findings and whether or not they may lead to a consideration of a change in the MCL. However, PHS recommendations for school fluoridation programs are designed to provide the benefits of fluoridation without increasing the risk for dental fluorosis. The PHS recommends school water fluoridation only if:
• The school has its own source of water;
• The school is not connected to a community water system;
• More than 25 percent of students are not served by a public water system that provides water at levels adequate to protect against dental caries; and
• The students served are kindergarten age or greater.

12. Glyphosate

Two commenters made the statement that, despite continued use of glyphosate in pesticide applications, available data and the Agency's occurrence analysis, which includes a prediction of frequency of occurrence at levels below detection, indicate that glyphosate is not observed in compliance monitoring. One of these commenters stated that the occurrence appeared to be rare (less than 0.1 percent) at concentrations 1,000 times lower than the MCL. In addition, according to the commenters, the cost of analyzing for glyphosate is expensive, since it is a single analyte analysis. Accordingly, the commenters wanted EPA to reconsider the glyphosate standard taking costs and benefits into account. The commenters felt that the data may indicate that a glyphosate standard is inappropriate and does not result in any additional public health protection. Therefore, the commenters recommended EPA pursue data gaps that the Agency would need to fill in order to demonstrate that eliminating the glyphosate standard would not lower public health protection.

EPA Response: EPA is conducting an Agency risk assessment for glyphosate that will update the 1993 OPP assessment. As a part of this process, EPA is considering all the data that have been published or submitted to EPA since the completion of the RED in 1993 (USEPA, 1993). Accordingly, revision of the glyphosate NPDWR is not appropriate at this time due to the pending Agency assessment.

EPA recognizes that some utilities feel that the analysis of glyphosate in drinking water is expensive and that this should be taken into consideration with respect to cost and benefits. This will be considered when EPA evaluates glyphosate in the next review cycle (unless there is a compelling reason to evaluate glyphosate on an accelerated schedule). For the reasons stated in section IV.A.1.c of today's action, EPA does not believe it is appropriate to consider deregulation of glyphosate at this time.

13. Lead and Copper

a. Research Needs. Three commenters acknowledged the Agency's January 2000 revisions to the Lead and Copper Rule (LCR) but stated that the Agency should continue to consider how to make the LCR easier to implement. In particular, they recommended that the following three LCR-related research areas be incorporated into EPA's overall research strategy:

1. How well LCR monitoring results correlate to actual exposure and the effectiveness of the rule in protecting public health.
2. Whether there is a correlation between water quality at indoor and outdoor taps.
3. What effect the ban on lead in fixtures has had on lead levels and whether changes need to be made based on this ban.

The commenters explained their rationale for recommending that the Agency determine if a correlation could be established between indoor and outdoor water quality. They stated that a major weakness of the LCR is that sample integrity may be compromised by allowing customers to collect water samples. If the Agency could establish such a correlation, the LCR could be revised to allow water system operators to collect samples from outdoor taps; thereby removing the need for customer-collected sampling.

EPA Response: EPA recognizes that the LCR is a challenging rule that requires difficult solutions to implement, but continues to believe that the public health objective addressed by the rule is as important and essential today as it was when the rule was first promulgated. Since the Agency promulgated the revisions to the LCR in January 2000 (65 FR 1950, January 12, 2000 (USEPA, 2000)), the Agency has received no significant new information that would support a revision. However, the Agency recognizes that more research would be useful to obtain additional information that could be utilized to address some of the issues associated with the implementation of this rule. For this reason, EPA has revised its rationale for not revising the NPDWR for lead and placed it in the data gaps category. Although the Agency continues to believe that the NPDWR for copper belongs in the risk assessment in process category at the present time, EPA will also consider copper-related risk management and implementation issues as a part of any LCR-related research plans. The Agency is committed to working with stakeholders to support and coordinate identification and prioritization of LCR-related research needs. Until this research is completed, EPA believes it is premature to consider revisions to the LCR; as a result, revision of the LCR is not appropriate at this time.

The Agency believes that understanding the possible correlation between monitoring results and actual rates of exposure and public health protection is a valid issue. However, EPA recognized during the initial regulatory development of the LCR that a significant effort would be necessary to provide a statistically valid number and frequency of samples for an exposure assessment. The Agency thus adopted an alternative approach which specified a monitoring scheme that sought to "* * * assure that systems are performing 'optimal corrosion control' in part by requiring systems to conduct comprehensive tap sampling at homes specifically targeted for their potential to contain elevated levels of lead and copper" (56 FR 26460 at 26514, June 7, 1991 (USEPA, 1991b)). One issue in assessing exposure reduction resulting from the LCR is a determination of an exposure baseline. EPA does not have a lot of data against which to measure changes in exposure that have occurred as a result of rule implementation. For these reasons, EPA believes that there is still insufficient information to change the basic monitoring approach adopted in the original rule, but recognizes that additional research may be useful.

Research on whether a correlation exists between the water quality at indoor taps and water quality at outdoor taps is a very complex issue. Several variables potentially affect whether a reliable correlation exists between indoor and outdoor taps. These variables include: standing time within the system; contact time with the building plumbing; and the content of the interior plumbing. These variables, coupled with the fact that lead levels from building-to-building can be highly site-specific, make a correlation between indoor and outdoor taps difficult to establish. EPA continues to believe that focusing on the point of delivery to the customer most closely links the data collected to the water quality consumed by the customer.

EPA recognizes the commenter's concerns regarding the integrity of samples collected by drinking water customers. To date, however, the Agency has not been able to identify an acceptable alternative to monitoring at the consumer's tap that can produce results equivalent to those obtained at the point of consumption in terms of ensuring adequate public health protection.

Regarding the commenter's third recommendation, EPA will consider this research need as part of the Agency's overall drinking water research planning process.

b. Relaxing the Monitoring Requirements. Three commenters recommended that water systems be allowed to conduct water quality parameter (WQP) monitoring in lieu of continued lead and copper tap monitoring. One of these commenters added that this should be allowed once the system has demonstrated that it does not have a lead problem. This commenter also stated that the new requirements to use lead-free solder and plumbing fixtures should preclude problems with lead. Two commenters noted the difficulty that water systems are having maintaining their current sampling pool because homeowners no longer want to participate in the LCR monitoring program. One of these commenters recommended using WQP results to ensure corrosion control treatment is being adequately maintained and to stop lead and copper monitoring after three to five years. The commenter added that once the system ceases lead and copper monitoring, it can use public education to supplement continuing corrosion control, and can use coupons to demonstrate that corrosion rates meet accepted standards.

EPA Response: While EPA is sensitive to the difficulties associated with the monitoring requirements of the LCR, the Agency is also concerned about the implications of reduced or discontinued monitoring. Significant treatment changes or water chemistry disturbances (such as new water sources, major pH/coagulation changes, disinfectant changes, or seasonal water/treatment changes) can influence the effectiveness of corrosion control, which in turn will require appropriate adjustments of treatment. Current regulations require water systems to continue monitoring lead and copper levels to assure that water quality changes adversely affecting the presence of these contaminants in the drinking water are detected and to assure that appropriate adjustments to maintain optimal corrosion control are made. Proper process control, including water quality and corrosion inhibitor residual concentration monitoring in the distribution system, is the key to making any corrosion control or other treatment work, and assure the continuation of proper water quality. However, EPA recognizes that some changes might be justified in the future based on new, scientifically valid, information and/or research. EPA is considering aspects such as the implications of simultaneous treatment modifications on water quality, including lead and copper control, in its research planning. EPA is not yet able to determine whether the outcome of such research will provide a basis for modifications to the LCR treatment or monitoring

requirements. As stated in the response in section IV.B.13.a. of today's action, EPA has placed the LCR in the data gaps category pending the completion of future research.

c. Corrosion Control Treatment Strategy. Two commenters noted concerns regarding the lead and copper corrosion control strategy. One commenter indicated that the LCR should be revised to allow systems to change corrosion control strategies. The commenter stated that considerable development of the corrosion control market has occurred since systems made their initial assessments and implemented corrosion control programs. The commenter felt that currently, the "LCR locks utilities into a given control strategy," when in some instances limited pilot work and ongoing WQP monitoring would allow a system to re-assesses its treatment and implement an alternative corrosion control inhibitor.

The second commenter indicated that the current corrosion control strategies are marginally effective at preventing particulate lead and copper from entering the water supply. The commenter recommended that EPA consider methods for mitigating the release of insoluble components from plumbing fixtures.

EPA Response: The Agency disagrees that the LCR locks utilities into a given control strategy, but feels it is necessary to demonstrate a sound basis for re-assessing and implementing an alternative treatment strategy in the context of the existing regulation. EPA notes that the current regulation provides some flexibility to both States and water systems in the choice of a corrosion control strategy. For example, in response to its own initiative, a request by a water system or other interested party, a State may modify its determination of the optimal corrosion control treatment, among those listed in the Federal regulation, or may modify optimal WQPs if the State determines such changes are necessary to ensure that the system continues to optimize corrosion control treatment (40 CFR 141.82(h)).

The Agency believes that the existing requirements to notify the State when changing a corrosion control strategy remain necessary and appropriate. After they have optimized corrosion control, water systems must notify the State of any treatment changes[7] within 60 days of the change (40 CFR 141.90(a)(3)). The Agency encourages water systems to notify the State prior to making any changes thus allowing the Primacy Agency to review the changes to reduce the potential for detrimental side-effects. In the Agency's experience, changes in treatment, such as (but not restricted to) replacement of high pH treatment with corrosion inhibitor, changes in coagulant and coagulation conditions, changes in disinfection, installation of membrane processes, or introduction of chemically different waters into the distribution system provide potential for detrimental side-effects. Water treatment changes, therefore, should only be done with the greatest care and pilot investigations. While changes to treatment can be made under the existing regulation, systems should conduct additional monitoring (*e.g.*, of lead, copper, and WQPs) until the new treatment is fully implemented and stabilized.

EPA also recognizes that the current LCR may limit flexibility to some extent, particularly in the adoption of new or emerging technologies. The original rule attempted to balance this concern with the need to provide strong public health protection by ensuring that only control strategies of proven effectiveness are adopted. The Agency does not have an adequate basis to revise the treatment requirements at this time but will continue to monitor new developments, including emerging technology. The Agency may consider revisions to the LCR prior to the end of the next Six-Year Review cycle if the Agency receives new, scientifically-valid, information that provides a basis for achieving significant improvement in public health protection or significant cost-savings to utilities and their customers while maintaining current public health protection.

EPA has always recognized that the release of insoluble particulate material containing lead and copper can be an issue in some water systems. While more research may be of interest to improve optimization of corrosion control approaches with respect to this source, EPA expects that evaluations and pilot studies by water systems should include testing and consideration of the relative effectiveness of different treatments towards particulate release in systems for which it is important.

d. Lead Levels in School Drinking Water. One commenter was concerned that the data on lead levels that was analyzed under the Six-Year Review of NPDWR standards may not indicate actual lead contamination of drinking water sources. As an example, the commenter noted that even though Baltimore City is in compliance for lead levels, ⅓ of Baltimore schools are using alternative sources of drinking water due to lead contamination. The commenter expressed concern that since data obtained from schools, such as the data from Baltimore, was not considered in the evaluation of lead contamination in drinking water, the most vulnerable population may not be protected from exposure to lead. The commenter stated that it is time for the Agency to reassess how lead levels are evaluated.

EPA Response: The LCR is designed to address system-wide problems with lead and copper contamination. The rule does not specifically target particular structures, such as schools, but rather contains a monitoring protocol designed to ensure that the overall levels of lead and copper system-wide are minimized. Once optimal treatment is implemented, any remaining problems with elevated lead levels in schools may be due to plumbing, coolers, or other materials in the building. These potential sources of lead in schools are of concern and for this reason are explicitly addressed under the provisions of the Lead Contamination Control Act of 1988 (LCCA) (sections 1461 to 1465 of SDWA). The LCCA directed EPA to publish a guidance manual and testing protocol to assist States and schools in identifying sources and determining the extent of lead contamination in school drinking water and, if necessary, in remedying such contamination. In January 1989, the Agency published and distributed the guidance manual, "Lead in School's Drinking Water," to States and schools (USEPA, 1989). In 1994, the Agency updated and revised the guidance manual entitled "Lead in Drinking Water in Schools and Non-residential Buildings" (USEPA, 1994). A copy of this manual may be obtained from the Safewater website *http://www.epa.gov/safewater/consumer/leadinschools.html*. In addition, the LCCA imposed a ban on the manufacture and sale of water coolers that are not lead free. The LCCA requirements are independent of the NPDWRs and therefore are not addressed under the Six-Year Review process. However, the Agency is continuing to work with schools and States to address problems dealing with lead in school drinking water.

14. Lindane (γ-hexachlorocyclohexane)

In the April 17, 2002, **Federal Register,** the Agency preliminarily placed lindane in the no revision category because a health risk assessment was pending at the time of publication. One commenter stated that the RED risk assessment for lindane, issued after publication of the April 17, 2002, **Federal Register,** should be considered in the Agency's review of the NPDWR and expressed concerns regarding the existing regulation. The commenter stated that the current NPDWR is based on an RfD developed in 1988 on the basis of adverse kidney effects and should be revised (USEPA, 1988). The kidney effects were determined to occur through a pathway that is not relevant to human health risk assessment. The commenter stated that the new OPP toxicological assessment has resulted in a significant change to the quantitative dose-response assessment for lindane and that there are no data gaps or uncertainties which would prevent a revision of the NPDWR for lindane at this time.

EPA Response: Since the publication of the April 17, 2002, **Federal Register** and receipt of the comment regarding lindane, the Agency has finalized the risk assessment for lindane and signed the RED on July 31, 2002. The remaining paragraphs in this section include a brief background discussion about the original promulgation of the lindane NPDWR, the results of the appropriate six-year technical reviews and the Agency's revise/not revise decision.

a. Background. EPA published the current NPDWR for lindane on January 30, 1991 (56 FR 3526 (USEPA, 1991a)). The NPDWR established an MCLG and an MCL of 0.0002 mg/L. The Agency based the MCLG on an RfD of 0.0003 mg/kg/day and a cancer classification of C, possible human carcinogen.

b. Technical Reviews. EPA updated the risk assessment on July 31, 2002 (USEPA, 2002h). The new risk assessment established an RfD of 0.0047 mg/kg/day. The Food Quality Protection Act (FQPA) of 1996 provides for an additional safety factor of up to 10-fold, if necessary, in assessing the risks to infants and children to take into account the potential for pre- and post-natal toxicity, and the completeness of the toxicity and exposure databases. This is referred to as the FQPA safety factor. The Agency concluded that an FQPA safety factor of three was required for lindane since there is evidence for increased susceptibility of the young demonstrated in a developmental neurotoxicity and two-generation reproductive toxicity study in rats. The rationale for using an FQPA safety factor of three is detailed in the RED.

In accordance with the 1999 EPA Draft "Guidelines for Carcinogen Risk Assessment" (USEPA, 1999a), the Agency classified lindane as "suggestive evidence of carcinogenicity, but not sufficient to assess human carcinogenic potential." Based on the RfD for lindane of 0.0047 mg/kg/day, the application of the additional FQPA safety factor of three to this RfD, a 20 percent RSC, and a 10-fold risk management factor of suggested evidence of carcinogenicity, EPA used 0.001 mg/L as a level for evaluating the occurrence data.

Analytical or treatment feasibility do not pose any limitations for the current MCL and would not be a limiting factor at the 0.001 mg/L level (USEPA, 2003a; USEPA 2003g). The Agency's review of possible "other regulatory revisions" did not identify any issues that are specific to lindane (USEPA, 2003b).

EPA evaluated the results of the occurrence and exposure analyses for lindane to determine whether possible changes to the standard would be likely to result in a meaningful opportunity for cost-savings to public water systems and their customers (USEPA, 2003d). Table IV–2 shows the results of the detailed occurrence and exposure analysis based on the 16-State cross-section for concentrations of 0.0002 mg/L (the current MCL), and for 0.001 mg/L. Based on the detailed analysis, it appears that lindane is unlikely to occur at concentrations above 0.0002 mg/L in the States used for the cross-section.

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[7] Treatment changes are categorized as changes to any water quality treatment process, including (but not restricted to) disenfection, disinfection by-product removal, and corrosion control.

Table IV-2: Lindane Occurrence[1]

Systems[2]			
Level (in mg/L)	**16-State Cross-Section - Total Systems with Data**	**Estimated # of Systems > Level Evaluated (credible intervals)[3,4]**	**Estimated % of Systems > Level Evaluated (credible intervals)[3]**
Level Evaluated 0.001	16,098	0 (0-0)	0.000% (0.000% - 0.000%)
Current MCL 0.0002	16,098	0 (0-0)	0.000% (0.000% - 0.000%)
Population Served by Systems[2]			
Level (in mg/L)	**16-State Cross-Section - Total Population Served by Systems with Data**	**Estimated Population Served by Systems > Level Evaluated (credible intervals)[3]**	**Estimated % of Population Served by Systems > Level Evaluated (credible intervals)[3]**
Level Evaluated 0.001	99,942,600	0 (0-0)	0.000% (0.000% - 0.000%)
Current MCL 0.0002	99,942,600	0 (0-0)	0.000% (0.000% - 0.000%)

Notes:

[1] Results are based on the number and percent of systems (and the corresponding population served by those systems) with estimated mean concentrations above the specified level of evaluation.

[2] All percentages are shown to three significant figures. All system values are rounded to the nearest whole system. All population values are rounded to the nearest hundred.

[3] "Credible intervals" are generated to quantify the uncertainty around each estimated probability in the Bayesian analysis of the occurrence data. For further explanation of credible intervals and the Bayesian analysis, please see "Occurrence Estimation Methodology and Occurrence Findings Report for the Six-Year Review of Existing National Primary Drinking Water Regulations" (USEPA, 2003d).

[4] This value does not necessarily reflect the number of systems out of compliance with the current MCL, because these data were collected over the 1993-1997 time period, and because the value represents the estimated mean value over that time period, not the running quarterly average on which compliance is based.

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The results of the detailed occurrence and exposure analysis indicate that few, if any, of the 16,098 systems sampled in the 16-State cross-section might be affected if EPA were to consider levels as high as 0.001 mg/L. The current BATs and small system compliance technology for lindane have other beneficial effects (*e.g.*, reduction of other co-occurring contaminants, or other common impurities) in addition to lindane removal. Therefore, if EPA were to consider a higher level, the Agency does not know how many of these public water systems that are currently treating to comply with the current MCL of 0.0002 mg/L would be likely to discontinue any treatment that is already in place (USEPA, 2002c; USEPA, 2003g).

c. *Current Decision.* Although there are new health effects data that might support calculation of a less stringent standard for lindane, EPA does not believe a revision to the NPDWR for lindane is appropriate at this time. In making this decision, the Agency considered whether any potential revision to the lindane NPDWR is likely to provide a meaningful opportunity for cost-savings to public water systems and their customers. After consideration of this factor, EPA has decided that any revision to lindane would be a low priority activity for the Agency, and, thus, is not appropriate to revise at this time because of:

- Competing workload priorities;
- The administrative costs associated with rulemaking; and
- The burden on States and the regulated community to implement any regulatory change that resulted.

15. Simazine

One commenter agreed that simazine should be addressed after the risk assessment is completed in 2003 or 2004. The commenter requested that the Office of Water (OW) work closely with the OPP on the risk assessment at that time. The commenter also recommended that OW address the revision of the existing simazine NPDWR before the next review cycle year, scheduled for 2008. The commenter believes the extensive mammalian toxicology database, submitted as part of the Triazine Special Review, can be used in this process.

EPA Response: OW has been coordinating with OPP for the revision of the atrazine and simazine risk assessments. Once the simazine risk assessment is completed, EPA will determine whether a compelling reason exists to consider review of the simazine NPDWR on an accelerated schedule.

C. What Comments Did EPA Receive Regarding the Review of Implementation-Related Issues for Chemical NPDWRs?

Several commenters recommended that EPA ensure consistent application of rules by making rules more consistent with respect to monitoring frequency, triggers for increased monitoring, criteria for returning to routine monitoring, and criteria for reducing sample requirements. In addition, commenters suggested that the Agency review possible ways for reducing the reporting burden on States, which could free up State resources currently used to implement rules.

One commenter was concerned about monitoring and reporting issues in conjunction with CMR. The commenter felt that EPA should not miss an opportunity to relieve some of the unnecessary confusion that the monitoring requirements of Phase II and V have created. This confusion includes issues such as; what a detection is and what the monitoring requirements are for systems in States without a waiver program. EPA was encouraged to provide this consistency as much as possible, including using the standard monitoring framework to allow States and water systems to more easily understand rule requirements and reduce the need for States to update their data management systems.

One commenter said EPA should ensure consistent application of rules by determining whether or not chronic contaminants should be regulated at non-transient non-community water systems (NTNCWSs), and review existing NPDWRs to ensure that rules are applied consistently. Another commenter recommended that the compliance language for the synthetic organic chemicals (SOCs) and volatile organic chemicals (VOCs) in the Final Arsenic Rule (66 FR 6975, January 22, 2001 (USEPA, 2001)) be adopted for the inorganic chemicals (IOCs), and that systems not be considered in violation of the MCL until it has completed one year of quarterly samples.

EPA Response: The Agency agrees that consistency across regulations is desirable to the extent that it does not jeopardize public health protection or the environment.

As part of the Advanced Notice of Proposed Rulemaking for CMR (62 FR 36100, July 3, 1997 (USEPA, 1997a)), EPA considered some of the issues raised by the commenters. However, during the comment period for the CMR, stakeholders generally indicated that the existing monitoring framework was sufficient. Most State commenters indicated that it would be too burdensome to adopt CMR. As a result, the Agency decided to take no further action on the CMR. However, the Agency established a standardized monitoring framework which applies to all of the regulated chemical and radiological contaminants (except lead and copper). The new chemical and radiological rules that EPA has promulgated (*e.g.*, arsenic and radionuclides) are coordinated with the standardized monitoring framework. The Agency made special efforts to ensure that the reduced monitoring periods are in line with the 3-year compliance periods in the standardized monitoring framework.

To assist States with understanding rule requirements, the Agency conducted a series of Phase II/V training in 2001. The training provided information to help States make informed decisions about reducing quarterly monitoring requirements. With respect to reduced monitoring, States currently have the flexibility to reduce the frequency of monitoring and/or to waive sampling requirements for any given contaminant after minimum criteria are met to demonstrate that the system is reliably and consistently below the MCL and/or not vulnerable to contamination.

NTNCWSs are traditionally regulated for chronic contaminants. However, through an alternative mechanism, the Agency is currently evaluating risk and exposure as they pertain to NTNCWS monitoring requirements. This review will not be completed in time for this Six-Year Review process. Until all the issues have been identified and specific options have been formulated, it will not be clear if a revision to regulations is indicated.

EPA intends to consistently implement compliance determination provisions for IOCs, SOCs, and VOCs for all NTNCWSs and community water systems, as described in the preamble to the Final Arsenic Rule (66 FR 6975 at 6990, January 22, 2001 (USEPA, 2001)). The rule makes compliance determinations based on a running annual average. The clarifications to compliance determinations for SOCs, IOCs, and VOCs are based on the average of the initial MCL exceedance and any subsequent State-required confirmation samples. States have the flexibility to require confirmation samples and more frequent monitoring, in addition to required quarterly samples. The average of the exceedance and confirmation sample constitutes the first quarterly sample. Compliance with the MCL is based on the average of the first quarterly sample and three

additional samples over a period of one year, unless any one quarterly sample would cause the running annual average to exceed the MCL. Then the system is out of compliance immediately.

D. What Comments Did EPA Receive on the Total Coliform Rule?

Several commenters addressed the TCR. Several commenters raised several issues relating to monitoring. Some contended that routine monitoring should be focused on critical locations in the distribution system, rather than on the current requirement to monitor all parts of the distribution system. They also urged EPA to allow the use of dedicated sampling taps. Some commenters argued for allowing a finished water storage reservoir as a routine monitoring site. Two commenters urged EPA to focus on E. coli as the measure of water quality in the distribution system, rather than on total coliforms. In addition to routine monitoring, a few commenters addressed the topic of repeat samples after a total coliform-positive sample. One commenter, for example, urged EPA to eliminate the requirement to take upstream and downstream repeat samples after a total coliform-positive sample. Environmental groups urged EPA to strengthen the TCR and other rules that protect against pathogens, and exhorted EPA not to ease the TCR burden such that public health is compromised.

EPA Response: EPA's announcement in the April 17, 2002, **Federal Register** was only intended to discuss the Agency's intent to begin the process for revising the TCR. EPA will consider the commenters' suggestions as part of the revision process. As stated in the April 17, 2002, **Federal Register**, the Agency plans to consider revisions to the TCR with new requirements for ensuring the integrity of distribution systems. The Agency remains committed to obtaining input from stakeholders as part of the rule development process. EPA agrees with the comment that public health should not be compromised, and will consider only those revisions that will assure public health protection.

E. What Comments Did EPA Receive on Research Needs?

Commenters found that EPA's information on potential research resulting from the review of NPDWRs would be better represented by a summary of research needs that were identified by the Agency. Commenters felt that this summary is important to inform future regulatory decisions. Commenters also suggested additional research needs that had not been identified by EPA in its preliminary review.

EPA Response: EPA agrees that the identification of research needs is an important component of the review of NPDWRs. Research findings may support future reviews and/or revisions to NPDWRs.

The Agency is considering research needs that it identified as part of the review as well as those suggested by commenters. EPA will continue to identify areas where data are lacking. Dialogue with industry and other groups, including those that sponsor or conduct research on priority areas, would be beneficial to the drinking water program. Collaboration in sponsoring studies can provide multiple benefits.

There are two research needs associated with the Six-Year Review that are being addressed through mechanisms external to EPA. The National Research Council of the National Academy of Sciences is conducting an assessment of recent data on fluoride health effects. In addition, the National Toxicology Program is conducting a study on chromium VI toxicity. Both of these research efforts are discussed in the April 17, 2002, **Federal Register** announcement of EPA's preliminary revise/not revise decisions. The current review identified several general and specific areas of potential research related to treatment. The treatment-related research areas are briefly discussed in the Treatment Feasibility Document (USEPA, 2003g).

EPA is currently in the process of examining whether specific research needs exist within each of the Six-Year Review areas of regulatory consideration (*i.e.*, health effects, analytical methods, treatment, implementation, and occurrence/exposure). Some of the research needs identified during the Six-Year Review effort will be discussed in the context of the Multi-Year Plan (MYP) for drinking water. The MYP describes the EPA Office of Research and Development's fiscal year 2003 to 2010 research program to support the regulatory development activities of the EPA Office of Water. EPA plans to make this document available to the public in 2003.

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Dated: July 11, 2003.

Linda J. Fisher,

Acting Administrator.

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Federal Register

Friday,
July 18, 2003

Part VII

Department of Transportation

Federal Aviation Administration

14 CFR Parts 121, 125 and 135
Digital Flight Data Recorder Requirements—Changes to Recording Specifications and Additional Exceptions; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125 and 135

[Docket No.: FAA–2003–15682; Amendment Nos. 121–288, 125–42, 135–84]

RIN 2120–AH81

Digital Flight Data Recorder Requirements—Changes to Recording Specifications and Additional Exceptions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the flight data recorder regulations by expanding the recording specifications of certain data parameters for specified airplanes, and by adding aircraft models to the lists of aircraft excepted from the 1997 regulations. In addition, this rule corrects specifications in an operating rule appendix that were inadvertently omitted in previous actions. These changes are necessary to allow the continued operation of certain aircraft that are unable to meet the existing recorder criteria using installed equipment. The changes are also necessary for certain aircraft for which the cost to retrofit under 1997 regulatory changes would be cost prohibitive.

DATES: This final rule is effective August 18, 2003.

FOR FURTHER INFORMATION CONTACT: Gary Davis, Flight Standards Service, Air Transportation Division, AFS–201A, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8166; facsimile (202) 267–5229, e-mail *gary.davis@faa.gov*.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm*; or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at *http://www.faa.gov/avr/arm/sbrefa.htm*, or by e-mailing us at *9-AWA-SBREFA@faa.gov*.

Background

In response to a series of recommendations issued by the National Transportation Safety Board (NTSB), the FAA revised and updated parts 121, 125 and 135 of Title 14, Code of Federal Regulations (14 CFR) in 1997 to require that flight data recorders on U.S. registered airplanes be upgraded to record additional parameters of data (62 FR 38362, July 17, 1997). The exact number of parameters required depends on the age of the airplane; airplanes manufactured after August 19, 2002, must record 88 parameters of flight data.

Prior to the 1997 rule, the specifications for flight data recorders (the range, accuracy, sampling intervals, and resolution required for each parameter) were found in appendix B to part 121. As part of the 1997 rule upgrade, a new appendix M to part 121 was created, which includes the newly required parameters and new specifications for some of the existing parameters. The standards of appendix M were based in part on the specifications found in the European Organization for Civil Aviation Equipment (EUROCAE)'s Document ED–55, Minimum Operational Performance Specifications (MOPS) for Flight Data Recorder Systems. Appendix M requires increased range, accuracy, sampling interval, and resolution requirements, and reflects the performance expected of newer technologies. The same changes were made to appendix E to part 125 (appendix E), and appendix F to part 135 (appendix F) to apply to airplanes operating under those parts. Discussion of changes made to appendix M in this document also apply to appendices E and F.

Actions Following the 1997 Rulemaking

Airbus Industries. Following the adoption of the 1997 regulations, Airbus Industries (Airbus) notified the FAA that, in order to comply with the new requirements of appendix M to part 121, several of its airplane models would have to undergo major equipment retrofits, a circumstance the 1997 rule explicitly tried to avoid. Airbus stated that although the DFDR's in its airplanes recorded the required parameters, some of the resolution and sampling intervals for certain parameters differed slightly from those required by appendix M. The FAA found that while Airbus had noted these differences in its comment to the NPRM proposing the 1997 regulations, its comment was not fully addressed in the preamble to the final rule.

After consulting with the NTSB, the FAA determined that the Airbus differences were acceptable as an alternative. The FAA determined the most appropriate way to accommodate the differences was to add footnotes to specific parameters of appendix M noting the Airbus airplanes affected and the different specifications. Footnote changes for Airbus airplanes were adopted in 1999, 2000, and 2002.

Corrections to appendix F to part 135. When the regulations were modified to accommodate Airbus airplanes, and during the adoption of other recent changes affecting all airplanes, the same changes should have been made to appendix M to part 121, appendix E to part 125, and appendix F to part 135 to reflect the fact that affected aircraft may operate under any of these three parts. On at least two occasions the amendments to appendix F were inadvertently omitted. Accordingly, this amendment incorporates all of the corresponding changes to appendix F that were not made previously. These changes are considered conforming changes to appendix F that are in the nature of a correction. The FAA is not specifically requesting comment on these changes, although any operator that finds itself adversely affected by these changes to appendix F may submit this information to the person listed under the **FOR FURTHER INFORMATION CONTACT** heading.

SFAR 89

On May 31, 2001, the Boeing Company (Boeing) petitioned the FAA for exemptions for three of its airplane models that did not meet the resolution requirements of appendix M for certain parameters, and for an exemption to the August 20, 2001, compliance date. Boeing requested that operators of its airplanes be allowed to continue operating without meeting the resolution requirements of appendix M, or that appendix M be revised to reflect the current recording capabilities of the affected airplanes.

After reviewing the petition, the FAA determined that it could not issue an exemption from an operating rule to a manufacturer on behalf of the operators of its affected airplanes. Further, the FAA found that the issues raised in Boeing's petition were complex and could not be resolved before the August 20 compliance date. The FAA found that additional time was needed to gather the technical and cost information necessary to make an informed decision and implement a solution.

In order to prevent the grounding of non-compliant airplanes, the FAA issued Special Federal Aviation Regulation Number 89 (SFAR 89)—Suspension of Certain Flight Data Recorder Requirements, on August 15, 2001 (66 FR 44270, August 22, 2001). The SFAR, published as a final rule with request for comments, provides temporary relief by suspending the resolution recording requirements for certain parameters on specified airplanes operating under part 121, part 125, or part 135, until August 18, 2003.

In memos dated June 25 and 27, 2001, Dassault Aviation (Dassault) notified the FAA that two of its model airplanes could not comply with DFDR resolution requirements. Dassault stated that, as configured with the current flight data acquisition unit and bus assembly, affected airplanes did not meet the resolution requirements of the regulation. Dassault indicated development of a new data acquisition unit to meet the resolution requirements of appendix M would be expensive, and requested relief similar to that previously granted to Airbus. Similar to the Boeing request, the FAA determined that there was not enough time to gather the information necessary to resolve these issues before the August 20, 2001, compliance date. The FAA included temporary relief for operators of affected Dassault airplanes in SFAR 89, and maintained that relief upon receiving a specific petition for rulemaking from Dassault on October 11, 2002.

Anticipating that there might be other airplanes with similar DFDR resolution issues that had not yet become evident, the FAA included a provision in SFAR 89 that provides relief to operators of other airplanes that might not meet the resolution recording requirements. Operators of those airplanes were required to notify the FAA of the situation and provide requested information in order to take advantage of the relief provided in the SFAR. Several operators of affected Boeing airplanes contacted the FAA to indicate that they were making use of the SFAR relief, but no other noncompliant aircraft models have been reported or identified.

Disposition of Comments to SFAR 89

Five comments were received in response to SFAR 89. Four of the five comments fully support the SFAR and urge the FAA to adopt a solution that would prevent the retrofit of currently installed equipment. The NTSB commented in favor of the SFAR as well, but also questioned some definitions and conclusions presented in the original Boeing petition. All of the comments addressed the problem on Boeing airplanes.

In a comment supplementing its original petition, Boeing stresses that the relief from the resolution requirements provided in SFAR 89 do not compromise the integrity of the DFDR signal and "should not hinder any accident or incident investigation." Boeing's comment includes detailed technical information illustrating the difference between the requirements of appendix M and the existing resolution recorded by affected Boeing airplanes. In specific instances, Boeing notes, the differences between the requirements and the actual resolution are negligible, such as 9/10,000 of an inch of movement on the aileron trailing edge.

Boeing estimates that it would cost $38 million to redesign the components and modify the data frames in the 534 airplanes currently affected by the regulations, and the redesign and retrofit would take up to 3 years to complete. Boeing requests that the relief provided in the SFAR be made a permanent part of part 121 appendix M.

The Air Transport Association (ATA) submitted two comments on behalf of its member airlines. The first comment, dated September 21, 2001, supports the SFAR and recommends that the relief provided by the SFAR be made permanent for affected Boeing airplanes. Citing the parameters that were changed for specific Airbus airplanes, the ATA states that there is no justification for forcing further changes on Boeing airplanes because they already meet the intended purpose of the rule. The ATA attached comments from two of its members—Airborne Express and American Airlines—which also support adoption of a permanent change to the rule.

In a comment dated October 16, 2001, the ATA forwarded comments from Delta Airlines who also urges permanent adoption of the SFAR specifications for Boeing airplanes. The ATA and two of its members each expressed concern that a retrofit of the affected airplanes would be costly without providing any discernible improvement in the quality of recorded data.

United Parcel Service (UPS) supports permanent relief for Boeing 767 model airplanes. In its comment, UPS notes that the NTSB has found the varied resolution acceptable, and that the FAA had set the precedent for such action by amending the regulations for Airbus airplanes. The UPS comment includes specific technical information for the 767 model airplane. UPS states that permanent relief will allow it to continue operating 32 Boeing 767 model airplanes without incurring additional modification costs, and suggests that the change be adopted in the form of a footnote, similar to those used for Airbus airplanes.

Airbus submitted a comment supporting the FAA's action to provide relief by suspending the resolution requirements. Most of the Airbus comment, however, addresses the relationship between the operating rules and the certification rules of part 25, and the steps required for certification. Airbus's comment is directed at some of the information provided in the initial Boeing petition that was not adopted as part of the SFAR. This includes a Boeing statement that if its definition of resolution were adopted, there would be no need for a list of specific resolution requirements in the regulations. Airbus recognizes that this topic is outside the scope of the SFAR, but indicates that the FAA should not simply accept Boeing's suggested changes, and instead should take a harmonized approach to adoption of working definitions for DFDR systems and specifications.

The National Transportation Safety Board (NTSB) concurs with the intent of the SFAR to provide temporary relief while reviewing the comments. The NTSB states that since the SFAR resulted from the May 2001 Boeing petition, the NTSB's comments address the specifics of the Boeing petition rather than the SFAR language itself.

The NTSB notes that the Boeing petition includes a number of requests

for changes to the regulations addressing flight data recorders that are not relevant to the action providing relief for resolution requirements on certain Boeing airplanes.

The NTSB states that resolution is critical to the quality of digital flight data. If coarser resolution is allowed, data quality could be reduced to an unacceptable level and would more easily be subject to misinterpretation. The NTSB concludes that explicit resolution requirements should remain in the regulations.

The NTSB also notes that for many parameters, the resolution requirement is expressed as a percentage of the full range of travel of the control surface being measured, rather than the actual range of travel, since the latter differs widely between aircraft models. The NTSB notes that when the total range of motion is short, the percentages make the regulation more stringent. In such cases, the NTSB concludes, "The minimum resolution for a given parameter should be evaluated to determine if regulatory relief could be granted and the accuracy requirements maintained." Using that criterion, the NTSB concludes it has no objection to the specific resolution relief requested by Boeing (with the exception of vertical acceleration in the Boeing 717 model airplane).

The NTSB comment goes on to give its position regarding each of the 11 specific changes requested in the Boeing petition.

FAA Response

The FAA agrees with Airbus that the issue of a new resolution definition is beyond the scope of the rulemaking. The FAA will continue to consider the broader issues outlined in the Boeing request, but will not change the current format of the regulation or adopt definitions that affect virtually all airplanes operating today. Any changes the FAA may choose to propose would be accomplished only after input from the industry.

In its original petition, Boeing requested that the amendments affecting its aircraft be codified as footnotes to the affected parameters. Based on discussions with Boeing technical representatives and NTSB, the FAA is amending the affected appendices by making appropriate changes requested by Boeing, except for the change to parameter 5 (vertical acceleration).

Boeing was asked to submit additional data to the FAA in order to clarify questions and concerns raised in the original petition and the NTSB comment. Boeing submitted the requested data and the new information was reviewed in a June 26, 2002, meeting between FAA personnel and NTSB representatives. In the meeting, NTSB agreed that global changes for the following parameters under appendix M of part 121 were acceptable: 12a, 14a, 16, 23, and 26. An amendment to footnote 12 to coordinate with changes to parameter 23 was also accepted during the meeting. The NTSB does not support a global change to the appendix concerning parameter 5. Instead, the NTSB agrees with the insertion of a footnote into each affected appendix providing the necessary relief for the Boeing B–717 airplane.

Boeing submitted another petition on October 18, 2002, seeking changes to three additional parameters. The requested changes would affect parameters 9, 87, and 88 for Boeing 737 and 777 airplanes. FAA personnel later discussed the request with NTSB representatives and the changes were found to be acceptable. The additional petition is consistent with a request by the FAA for information regarding airplane models that could not meet the resolution requirements, but were not included in the relief granted in SFAR 89.

No comments were received concerning Dassault's request to amend the resolution recording requirements for parameters 5 and 26 for two of its airplane models. Therefore, the FAA is revising footnotes 9 and 14 in each affected appendix to accommodate Dassault's requested relief from the existing requirement.

If the rule is not changed, operators of certain Boeing and Dassault airplanes would be required to complete costly retrofits. The incremental differences in the measurements obtained are considered insignificant. By incorporating global changes and footnotes into this rule, retrofits will not be necessary, and it is accepted that accident investigations will not be compromised. Therefore, the FAA has determined that retrofitting to meet the higher standards is unnecessary. Accordingly, the FAA is amending the resolution recording requirements for parameters 9, 12a, 14a, 16, 19, 23, 87, 88, and adding revised footnotes to parameters 5 and 26 of appendix M of part 121, appendix E of part 125, and appendix F of part 135. This rule also makes a correction to footnote 11 to add a missing decimal point. The revision of the recording requirements for parameters 9 and 19 will remove the need for the footnotes (9 and 14) in the current regulation. Rather than renumber each footnote in this rule, we are using footnotes 9 and 14 to apply the specific changes requested for the B–717 and Dassault airplanes. Therefore, footnotes 9 and 14 will be revised to apply to parameters 5 and 26 respectively.

Exceptions to DFDR Requirements

When the FAA developed the 1997 DFDR regulations, we recognized that the costs of retrofitting some older aircraft models would be prohibitive and would likely force the aircraft out of service. The regulations incorporated an exceptions paragraph into each of the operating rule parts; these paragraphs list specific aircraft models that are not subject to the 1997 upgrade requirements. These aircraft must continue to comply with the flight data recorder regulations previously in effect for their operation. The FAA also noted in the final rule that operators that found other models of aircraft appropriate for exception status could petition the FAA for inclusion of the aircraft model in the exceptions paragraph. In general, the FAA bases exception status on the age of the aircraft, the number of aircraft still in operation, and the expected cost of DFDR upgrades.

Since the 1997 rule was promulgated, the FAA has received a number of requests for exception status. After reviewing information submitted, most of the models were granted exemptions to continue operating without the upgrades until the operating rules were changed. No opposing comments were received when the exemption requests were published. Accordingly, this rulemaking includes those additions to the lists of excepted aircraft. While these aircraft are excepted from upgrade requirements, most are still covered under other current sections and as such, all installed equipment must continue to be used and maintained according to the regulation. The sections that are being amended to include additional excepted aircraft are Sections 121.344(l)(2), 121.344a(f), 125.226(l)(2), and 135.152(k).

Paperwork Reduction Act

There are no current or new requirements for information collection associated with this amendment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Economic Evaluation, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation.).

Regulations that are expected to have minimal impact are not required to be analyzed as described above. The Department of Transportation Order 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the proposal does not warrant a full Evaluation, a statement to that effect and the basis for it is included in the proposed regulation. The FAA has determined that there are no costs associated with this final rule. Instead, this rule relieves operators of Boeing and other aircraft from a cost that would have been inadvertently imposed on them in the adoption of the 1997 regulations. This cost would have been imposed on Boeing beginning on August 20, 2002. Without exemption relief, other operators would have been affected at various times depending on the date of manufacture and type of equipment. This change effectuates the original intent of the 1997 regulations.

In conducting these analyses, the FAA has determined this rule (1) has benefits which justify its costs; (2) is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866 and is not "significant" as defined in DOT's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; (4) will have little effect on international trade; and (5) does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector.

The purpose of this rule is to eliminate the necessity to incorporate unnecessary changes into an existing type of aircraft that already meets the requirements of the rule except for minor variations in the resolution-recording requirement or because of age and remaining service life it is impractical to install the new DFDR's. The FAA has determined that allowing the continued resolution recording at a slightly different value will not impact safety or the collection of accident investigation data nor will excepting certain older aircraft from the rules have a negative impact on safety. This rule relieves air carriers from a costly retrofit with no reduction in safety.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) directs the FAA to fit regulatory requirements to the scale of the business, organizations, and governmental jurisdictions subject to the regulation. We are required to determine whether a proposed or final action will have a "significant economic impact on a substantial number of small entities" as they are defined in the Act. If we find that the action will have a significant impact, we must do a "regulatory flexibility analysis."

This final rule will relieve unnecessary costs to operators of certain aircraft. Therefore, the FAA expects this rule to impose no cost on small entities. Consequently, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rulemaking and has determined that it will reduce costs to U.S. operators of certain airplanes but will have a minimal effect on international trade.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. We have determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 125

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 135

Air taxis, Aircraft, Aviation safety, Reporting and record keeping requirements.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 46105.

■ 2. Section 121.344(l)(2) is revised to read as follows:

§ 121.344 Digital flight data recorders for transport category airplanes.

* * * * *

(l) * * *

(2) British Aerospace 1–11, General Dynamics Convair 580, General Dynamics Convair 600, General Dynamics Convair 640, deHavilland Aircraft Company Ltd. DHC–7, Fairchild Industries FH 227, Fokker F–27 (except Mark 50), F–28 Mark 1000 and Mark 4000, Gulfstream Aerospace G–159, Jetstream 4100, Lockheed Aircraft Corporation Electra 10–A, Lockheed Aircraft Corporation Electra 10–B, Lockheed Aircraft Corporation Electra 10–E, Lockheed Aircraft Corporation Electra L–188, Lockheed Martin Model 382 (L–100) Hercules, Maryland Air Industries, Inc. F27, Mitsubishi Heavy Industries, Ltd. YS–11, Short Bros. Limited SD3–30, Short Bros. Limited SD3–60.

■ 3. Section 121.344a(f) is revised to read as follows:

§ 121.344a Digital flight data recorders for 10–19 seat airplanes.

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(f) For airplanes that were manufactured before August 18, 1997, the following airplane types need not comply with this section, but must continue to comply with applicable paragraphs of § 135.152 of this chapter, as appropriate: Beech Aircraft–99 Series, Beech Aircraft 1300, Beech Aircraft 1900C, Construcciones Aeronauticas, S.A. (CASA) C–212, deHavilland DHC–6, Dornier 228, HS–748, Embraer EMB 110, Jetstream 3101, Jetstream 3201, Fairchild Aircraft SA–226, Fairchild Metro SA–227.

■ 4. Appendix M to part 121 is amended to revise item numbers 5, 9, 12a, 14a, 16, 19, 23, 26, 87 and 88 and footnotes 5, 9, 11, 12 and 14 to read as follows:

Appendix M to Part 121—Airplane Flight Recorder Specifications

The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second.

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
5. Normal acceleration (vertical) [9].	−3g to +6g	±1% of max range excluding datum error of ±5%.	0.125	0.004g.	
9. Thrust/power on each engine—primary flight crew reference.	Full range forward	±2%	1 (per engine)	0.3% of full range.	Sufficient parameters (*e.g.* EPR, N1 or Torque, NP) as appropriate to the particular engine being recorded to determine power in forward and reverse thrust, including potential overspeed condition.
12a. Pitch control(s) (non fly-by-wire systems).	Full range	±2% Unless higher accuracy uniquely required.	0.5 or 0.25 for airplanes operated under §121.344(f).	0.5% of full range.	For airplanes that have a flight control break away capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5 or 0.25, as applicable.
14a. Yaw control position(s) (non-fly-by-wire) [5].	Full range	±2° Unless higher accuracy uniquely required.	0.5	0.3% of full range.	For airplanes that have a flight control break away capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5.
16. Lateral control surface(s) position [7].	Full range	±2° Unless higher accuracy uniquely required.	0.5 or 0.25 for airplanes operated under § 121.344(f).	0.3% of full range.	A suitable combination of surface position sensors is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5 or 0.25.
19. Pitch trime surface position.	Full range	±3° Unless higher accuracy uniquely required.	1	0.6% of full range.	
23. Ground spoiler position or brake selection [12].	Full range or each position (discrete).	±2° Unless higher accuracy uniquely required.	1 or 0.5 for airplanes operated under § 121.344(f).	0.5% of full range.	

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
26. Radio Altitude [14].	−20 ft to 2,500 ft	±2 ft or ±3% whichever is greater below 500 ft and ±5% above 500 ft.	1	1 ft +5% above 500 ft.	For autoland/category 3 operations. Each radio altimeter should be recorded, but arranged so that at least one is recorded each second.
87. Ground spoiler position and speed brake selection.	Full range or discrete	±5%	0.5	0.3% of full range.	
88. All cockpit flight control input forces (control wheel, control column, rudder pedal).	Full range control wheel ±70 lb control column ±85 rudder pedal ±165.	±5%	1	0.3% full range	For fly-by-wire flight control systems, where flight control surface position is a function of the displacement of the control input device only, it is not necessary to record this parameter. For airplanes that have a flight control break away) capability that allows either pilot to operate the control independently, record both control force inputs. The control force inputs may be sampled alternately once per 2 seconds to produce the sampling interval of 1.

[5] For A330/A340 series airplanes, resolution = 1.18% (0.703°>0.120°).

[7] For A330/A340 series airplanes, aileron resolution = 0.704% (0.352°>0.100°). For A330/A340 series airplanes, spoiler resolution = 1.406% (0.703°>0.100°).

[9] For B–717 series airplanes, resolution = .005g. For Dassault F900C/F900EX airplanes, resolution = .007g.

[11] For A330/A340 series airplanes, resolution = 1.05% (0.250°>0.120°). For A300 B2/B4 series airplanes, resolution = 0.92% (0.230°>0.125°).
[12] For A330/A340 series airplanes, spoiler resolution = 1.406% (0.703°>0.100°).

[14] For Dassault F900C/F900EX airplanes, Radio altitude resolution = 1.25 ft.

■ 5.–6. Special Federal Aviation Regulation No. 89 (SFAR 89)—Suspension of Certain Flight Recorder Requirements is removed on the date this rule becomes effective.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 7. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

■ 8. Section 125.226(l)(2) is revised to read as follows:

§ 125.226 Digital flight data recorders.

* * * * *

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(2) British Aerospace 1–11, General Dynamics Convair 580, General Dynamics Convair 600, General Dynamics Convair 640, deHavilland Aircraft Company Ltd. DHC–7, Fairchild Industries FH 227, Fokker F–27 (except Mark 50), F–28 Mark 1000 and Mark 4000, Gulfstream Aerospace G–159, Jetstream 4100, Lockheed Aircraft Corporation Electra 10–A, Lockheed Aircraft Corporation Electra 10–B, Lockheed Aircraft Corporation Electra 10–E, Lockheed Aircraft Corporation Electra L–188, Lockheed Martin Model 382 (L–100) Hercules, Maryland Air Industries, Inc. F27, Mitsubishi Heavy Industries, Ltd. YS–11, Short Bros. Limited SD3–30, Short Bros. Limited SD3–60.

■ 9. Appendix E to part 125 is amended to revise item numbers 5, 9, 12a, 14a, 16, 19, 23, 26, 87 and 88 and footnotes 5, 9, 11, 12 and 14 to read as follows:

Appendix E to Part 125—Airplane Flight Recorder Specifications

The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second.

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
5. Normal Acceleration (Vertical) [9].	−3g to +6g	±1% of max range excluding datum error of ±5%.	0.125	0.004g.	
9. Thrust/Power on each engine—primary flight crew reference.	Full Range Forward	±2%	1 (per engine)	0.3% of full range.	Sufficient parameters (*e.g.* EPR, N1 or Torque, NP) as appropriate to the particular engine being recorded to determine power in forward and reverse thrust, including potential overspeed condition.

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
12a. Pitch Control(s) position (non-fly-by-wire systems).	Full Range	±2% Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under § 121.344(f).	0.5% of full range.	For airplanes that have a flight control break away capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5 or 0.25, as applicable.
14a. Yaw Control position(s) (non-fly-by-wire) [5].	Full Range	±2° Unless Higher Accuracy Uniquely Required.	0.5	0.3% of full range.	For airplanes that have a flight control break away capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5.
16. Lateral Control Surface(s) Position [7].	Full Range	±2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under § 121.344(f).	0.3% of full range.	A suitable combination of surface position sensors is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5 or 0.25.
19. Pitch Trim Surface Position.	Full Range	±3° Unless Higher Accuracy Uniquely Required.	1	0.6% of full range	
23. Ground Spoiler Position or Speed Brake Selection [12].	Full Range or Each Position (discrete).	±2° Unless Higher Accuracy Uniquely Required.	1 or 0.5 for airplanes operated under § 121.344(f).	0.5% of full range	
26. Radio Altitude [14]	−20 ft to 2,500 ft	±2 ft or ±3% Whichever is Greater Below 500 ft and ±5% above 500 ft.	1	1 ft +5% Above 500 ft.	For autoland/category 3 operations. Each radio altimeter should be recorded, but arranged so that at least one is recorded each second.
87. Ground spoiler position and speed brake selection.	Full Range or Discrete	±5%	0.5	0.3% of full range	
88. All cockpit flight control input forces (control wheel, control column, rudder pedal).	Full Range Control Wheel ±70 lbs Control Column ±85 lb Rudder pedal ±165 lbs.	±5%	1	0.3% of full range	For fly-by-wire flight control systems, where flight control surface position is a function of the displacement of the control input device only, it is not necessary to record this parameter. For airplanes that have a flight control break away capability that allows either pilot to operate the control independently, record both control force inputs. The control force inputs may be sampled alternately once per 2 seconds to produce the sampling interval of 1.

[5] For A330/A340 series airplanes, resolution = 1.18% (0.703°>0.120°).

[7] For A330/A340 series airplanes, aileron resolution = 0.704% (0.352°>0.100°). For A330/A340 series airplanes, spoiler resolution = 1.406% (0.703°>0.100°).

[9] For B–717 series airplanes, resolution = .005g. For Dassault F900C/F900EX airplanes, resolution = .007g.

[11] For A330/A340 series airplanes, resolution = 1.05% (0.250°>0.120°). For A330 B2/B4 series airplanes, resolution = 0.92% (0.230°>0.125°).

[12] For A330/A340 series airplanes, spoiler resolution = 1.406% (0.703°>0.100°).

[14] For Dassault F900C/F900EX airplanes, Radio Altitude resolution = 1.25 ft.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 10.–11. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 44113, 44101, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

■ 12. Section 135.152(k) is revised to read as follows:

§ 135.152 Flight recorders.

* * * * *

(k) For aircraft manufactured before August 18, 1997, the following aircraft types need not comply with this section: Bell 212, Bell 214ST, Bell 412, Bell 412SP, Boeing Chinook (BV–234), Boeing/Kawasaki Vertol 107 (BV/KV–107–II), deHavilland DHC–6, Eurocopter Puma 330J, Sikorsky 58, Sikorsky 61N, Sikorsky 76A.

■ 13. Appendix F to part 135 is amended to revise item numbers 1, 5, 7, 9, 12a, 12b, 13b, 14a, 15, 16, 17, 19, 20, 21, 23, 24, 26, 37, 42, 57, 87 and 88 and adding footnotes 1 through 17 to read as follows:

Appendix F to Part 135—Airplane Flight Recorder Specifications

The recorded values must meet the designated range, resolution, and accuracy requirements during dynamic and static conditions. All data recorded must be correlated in time to within one second.

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
1. Time or Relative Time Counts [1].	24 Hrs, 0 to 4095	±0.125% Per Hour	4	1 sec	UTC time preferred when available. Counter increments each 4 seconds of system operation.
5. Normal Acceleration (Vertical) [9].	−3g to +6g	±1% of max range excluding datum error of ±5%.	0.125	0.004g	
7. Roll Attitude [2]	±180°	±2°	1 or 0.5 0.5 airplanes operated under § 135.152(j).	0.5°	A sampling rate of 0.5 is recommended.
9. Thrust/Power on each engine—primary flight crew reference.	Full Range Forward	±2%	1 (per engine)	0.3% of full range.	"COM041"Sufficient parameters (e.g. EPR, N1 or Torque, NP) as appropriate to the particular engine being recorded to determine power in forward and reverse thrust, including potential overspeed condition.
12a. Pitch Control(s) position (non-fly-by-wire systems).	Full Range	±2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under § 135.152(j).	0.5% of full range.	For airplanes that have a flight control break away capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5 or 0.25, as applicable.
12b. Pitch Control(s) position (fly-by-wire systems) [3].	Full Range	±2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under § 135.152(j).	0.2% of full range	
13b. Lateral Control position(s) (fly-by-wire) [4].	Full Range	±2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under § 135.152(j).		
14a. Yaw Control position(s) (non-fly-by-wire) [5].	Full Range	±2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under § 135.152(j).	0.3% of full range	For airplanes that have a flight control break away capability that allows either pilot to operate the controls independently, record both control inputs. The control inputs may be sampled alternately once per second to produce the sampling interval of 0.5.
15. Pitch Control Surface(s) Position [6].	Full Range	±2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under § 135.152(j).	0.2% of full range.	For airplanes fitted with multiple or split surfaces, a suitable combination of inputs is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5 or 0.25.
16. Lateral Control Surface(s) Position [7].	Full Range	±2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under § 135.152(j).	0.2% of full range.	A suitable combination of surface position sensors is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5 or 0.25.

Parameters	Range	Accuracy (sensor input)	Seconds per sampling interval	Resolution	Remarks
17. Yaw Control Surface(s) Position [8].	Full Range	±2° Unless Higher Accuracy Uniquely Required.	0.5	0.2% of full range.	For airplanes with multiple or split surfaces, a suitable combination of surface position sensors is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5.
19. Pitch Trim Surface Position.	Full Range	±3° Unless Higher Accuracy Uniquely Required.	1	0.6% of full range	
20. Trailing Edge Flap or Cockpit Control Selection [10].	Full Range or Each Position (discrete).	±3° or as Pilot's Indicator.	2	0.5% of full range.	Flap position and cockpit control may each be sampled alternately at 4 second intervals, to give a data point every 2 seconds.
21. Leading Edge Flap or Cockpit Control Selection [11].	Full Range or Each Discrete Position.	±3° or as Pilot's Indicator and sufficient to determine each discrete position.	2	0.5% of full range.	Left and right sides, of flap position and cockpit control may each be sampled at 4 second intervals, so as to give a data point to every 2 seconds.
23. Ground Spoiler Position or Speed Brake Selection [12].	Full Range or Each Position (discrete).	±2° Unless Higher Accuracy Uniquely Required.	1 or 0.5 for airplanes operated under §135.152(j).	0.5% of full range	
24. Outside Air Temperature or Total Air Temperature [13].	−50° C to +90° C	±2° C	2	0.3° C	
26. Radio Altitude [14]	−20 ft to 2,500 ft	±2 ft or ±3% Whichever is Greater Below 500 ft and ± 5% Above 500 ft.	1	1 ft +5% above 500 ft.	For autoland/category 3 operations. Each radio altimeter should be recorded, but arranged so that at least one is recorded each second.
37. Drift Angle [15]	As installed	As installed	4	0.1°	
42. Throttle/power lever position [16].	Full Range	±2%	1 for each lever	2% of full range	For airplanes with non-mechanically linked cockpit engine controls.
57. Thrust comand [17]	Full Range	±2%	2	2% of full range	
87. Ground spoiler position and speed brake selection.	Full Range or Discrete	±5%	0.5	0.3% of full range	
88. All cockpit flight control input forces (control wheel, control column, rudder pedal).	Full Range Control Wheel ±70 lbs Control Column ±85 lb Rudder pedal ±165 lbs.	±5%	1	0.3% of full range.	For fly-by-wire flight control systems, where control surface position is a function of the displacement of the control input device only, it is not necessary to record this parameter. For airplanes that have a flight control break away capability that allows either pilot to operate the control independently, record both control force inputs. The control force inputs may be sampled alternately once per 2 seconds to produce the sampling interval of 1.

[1] For A300 B2/B4 airplanes, resolution = 6 seconds.
[2] For A330/A340 series airplanes, resolution = 0.703°.
[3] For A318/A319/A320/A321 series airplanes, resolution = 0.275% (0.088°>0.064°). For A330/A340 series airplanes, resolution = 2.20% (0.703°>0.064°).
[4] For A318/A319/A320/A321 series airplanes, resolution = 0.22% (0.088°>0.080°). For A330/A340 series airplanes, resolution = 1.76% (0.703°>0.080°).
[5] For A330/A340 series airplanes, resolution = 1.18% (0.703°>0.120°).
[6] For A330/A340 series airplanes, resolution = 0.783% (0.352°>0.090°).
[7] For A330/A340 series airplanes, aileron resolution = 0.704% (0.352°>0.100°). For A330/A340 series airplanes, spoiler resolution = 1.406% (0.703°>0.100°).
[8] For A330/A340 series airplanes, resolution = 0.30% (0.176°>0.12°). For A330/A340 series airplanes, seconds per sampling interval = 1.
[9] For B–717 series airplanes, resolution = .005g. For Dassault F900C/F900EX airplanes, resolution = .007g.
[10] For A330/A340 series airplanes, resolution = 1.05% (0.250°>0.120°).
[11] For A330/A340 series airplanes, resolution = 1.05% (0.250°>0.120°). For A300 B2/B4 series airplanes, resolution = 0.92% (0.230°>0.125°).
[12] For A330/A340 series airplanes, spoiler resolution = 1.406% (0.703°>0.100°).
[13] For A330/A340 series airplanes, resolution = 0.5° C.
[14] For Dassault F900C/F900EX airplanes, Radio Altitude resolution = 1.25 ft.
[15] For A330/A340 series airplanes, resolution = 0.352 degrees.
[16] For A318/A319/A320/A321 series airplanes, resolution = 4.32%. For A330/A340 series airplanes, resolution is 3.27% of full range for throttle lever angle (TLA); for reverse thrust, reverse throttle lever angle (RLA) resolution is nonlinear over the active reverse thrust range, which is 51.54 degrees to 96.14 degrees. The resolved element is 2.8 degrees uniformly over the entire active reverse thrust range, or 2.9% of the full range value of 96.14 degrees.
[17] For A318/A319/A320/A321 series airplanes, with IAE engines, resolution = 2.58%.

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Marion C. Blakey,

Administrator.

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H.R. 825/P.L. 108–46

To redesignate the facility of the United States Postal Service located at 7401 West 100th Place in Bridgeview, Illinois, as the "Michael J. Healy Post Office Building". (July 14, 2003; 117 Stat. 847)

H.R. 917/P.L. 108–47

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H.R. 981/P.L. 108–49

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H.R. 985/P.L. 108–50

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H.R. 1055/P.L. 108–51

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H.R. 1465/P.L. 108–53

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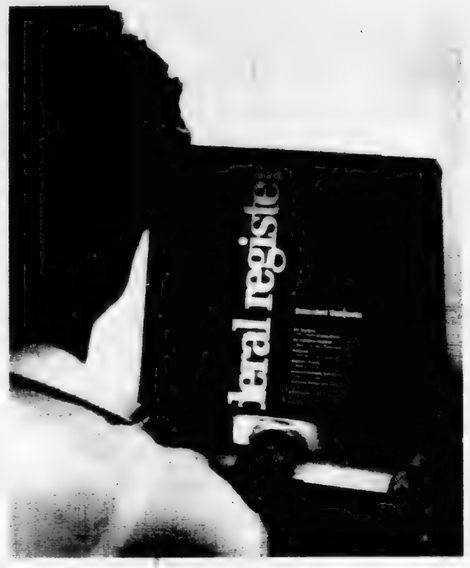
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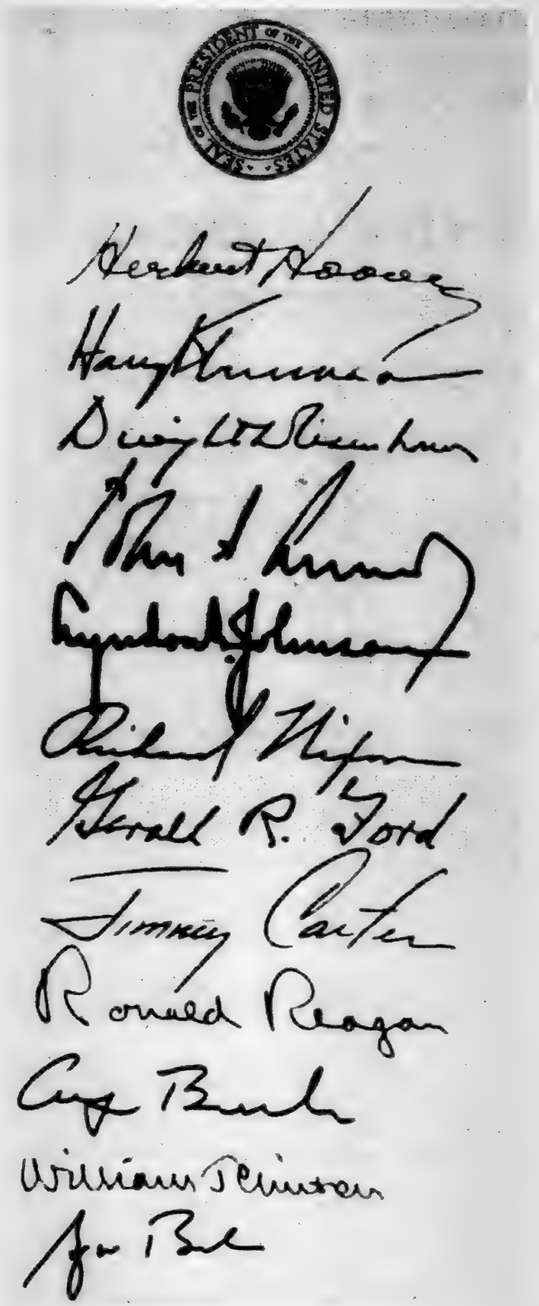
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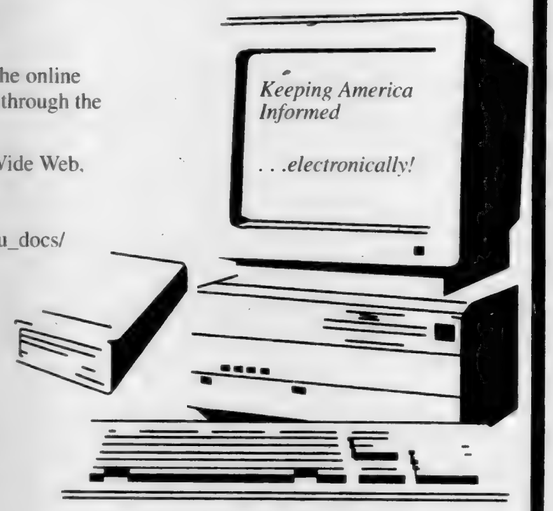
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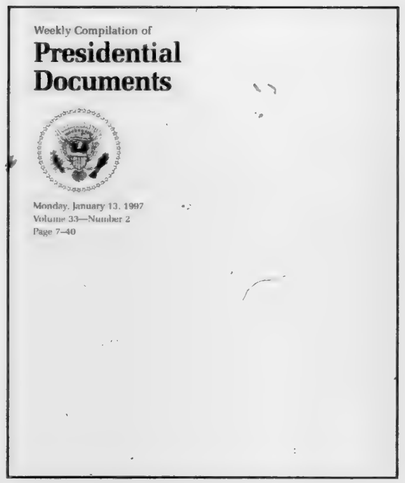
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV03–989–6 IFR]

Raisins Produced From Grapes Grown in California; Revision of Varietal Types

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises the list of varietal types of raisins specified under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is locally administered by the Raisin Administrative Committee (RAC). The order provides authority for volume and quality regulations that are applied according to varietal type of raisin. This action combines the Oleate and Related Seedless varietal type (Oleates) with the Natural (sun-dried) Seedless varietal type (Naturals), and makes conforming changes to the order's volume and quality regulations. This action addresses changing cultural practices in the California raisin industry.

DATES: Effective July 22, 2003. Comments must be received by September 19, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule revises the list of varietal types of raisins specified under the order. The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the RAC. The order provides authority for volume and quality regulations that are applied according to varietal type of raisin. This action combines the Oleate varietal type with the Natural varietal type, and makes conforming changes to the order's volume and quality regulations. This action was unanimously recommended by the RAC at a meeting on May 15, 2003, and addresses changing cultural practices in the California raisin industry.

Varietal Types

The order provides authority for quality and volume regulations that are applied according to varietal type of raisin. Section 989.10 of the order defines the term varietal type to mean raisins generally recognized as possessing characteristics differing from other raisins in a degree sufficient to make necessary or desirable separate identification and classification. That section includes a list of eight varietal types, and provides authority for the RAC, with the approval of USDA, to change this list. A description of these varietal types, along with additional varietal types, may be found in § 989.110 of the order's administrative rules and regulations. There are currently 10 different varietal types of raisins listed in this section.

Paragraph (a) in § 989.110 currently defines the Natural varietal type to include all sun-dried seedless raisins that possess characteristics similar to Natural Thompson Seedless (NTS) raisins which, for the purpose of

expediting drying, have not been dipped in or sprayed with water, with or without soda, oil or other chemicals prior to or during the drying process. Naturals are the predominant varietal type of California raisin, comprising about 90 percent of California's raisin production.

Paragraph (c) in § 989.110 defines the Oleate varietal type to include all raisins produced by sun-drying or artificial dehydration of seedless grapes which, in order to expedite drying, are dipped in or sprayed with water with soda, oil, Ethyl Oleate, Methyl Oleate or any other chemicals either while such grapes are on the vine or after they have been removed from the vine.

Cultural practices are evolving in the raisin industry in an effort to reduce production and harvest costs. Traditionally, most California raisins have been made by hand-picking grapes from the vine and drying them in the sun on trays laid on the ground. The process is labor intensive and expensive. Thus, in an effort to reduce costs, some growers have switched to sun-drying their grapes on the vine, and then mechanically harvesting them ("dried on the vine" or DOV). A drying agent such as Oleate may be applied to the grapes on the vine to hasten the drying process.

Additionally, there is concern that Oleate could be applied to sun-dried Natural raisins, and that the raisins could be represented as Oleates to circumvent the volume regulations that are typically in effect for Naturals. With the exception of the 1998–99 crop year, volume regulation has been in place for Naturals every year since 1983–84. (The raisin crop year (season) runs from August 1 through July 31.) For the 1992–93 through the 1999–2000 seasons, average acquisitions of Oleates were 441.38 tons. For the 2000–01 and 2001–02 seasons, Oleate acquisitions were 3,669 and 6,495 tons, respectively. Volume regulation was in place for the beginning of the 2001–02 season for Oleates, but was lifted in November 2001 due to no acquisitions up to that time. Once volume regulation was lifted, Oleates were acquired. For the 2002–03 season, the RAC recommended final volume regulation percentages for Oleates in January 2003. However, by the week ending February 1, 2003, Oleate acquisitions were at 2,121 tons, and far below the 5,268-ton trade demand. Because the supply of Oleates was well below demand, volume regulation was lifted in mid-February 2003. Since that time, 2002–03 Oleate acquisitions have increased to 6,217 tons through the week ending April 26, 2003. Based on this data, and the fact that most raisins are typically acquired much earlier in the crop year, the RAC is concerned that Oleate could be sprayed on bins of Naturals and that the raisins could be represented as Oleates to circumvent volume regulation.

These different types of Oleate-treated grapes/raisins are difficult to distinguish from non-Oleate treated raisins. At its May 15, 2003 meeting, the RAC recommended eliminating the Oleate varietal type, and revising the Natural varietal type to include Oleates. Specifically, Naturals will include all sun-dried raisins possessing similar identifiable characteristics as raisins produced from Natural Thompson Seedless grapes, or similar grape varieties, whether dried on trays or on the vine, with or without application of a drying agent that is a food-grade additive, such as, soda, oil, Ethyl Oleate, or Methyl Oleate prior to, during, or after the drying process. The Committee recommended using "accepted food-grade drying agent" in the definition rather than "drying agent that is a food-grade additive". USDA changed the Committee's recommendation so it conforms more closely to accepted U.S. Food and Drug Administration terminology. Soda was also added to the examples of drying agents because soda has been used by the industry for this purpose in past years. Accordingly, paragraph (c) in § 989.110 regarding Oleates is removed, and paragraph (a) regarding Naturals is revised to include Oleates.

Industry members considered the merits of revising the definition for Dipped Seedless raisins. Dipped Seedless includes all raisins produced by artificial dehydration of seedless grapes that possess the characteristics similar to Thompson Seedless grapes which, in order to expedite drying, have been dipped in or sprayed with water only after such grapes have been removed from the vine. The current Oleate definition includes raisins produced by artificially dehydrating grapes with the application of a drying agent to the grapes. The question was raised regarding how raisins made from artificially dehydrated Oleate-treated grapes would be classified if sun-dried Oleates are included with Naturals. Industry members concluded that no such raisins are currently produced. Accordingly, the definition of Dipped Seedless raisins will not be revised to include artificially dehydrated Oleate-treated grapes.

Volume Regulation and Reserve Pool Requirements

The order provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in a reserve pool (reserve) for the account of the RAC. Reserve raisins are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the RAC to handlers for free use or to replace part of the free tonnage they exported; carried over as a hedge against a short crop the following year; or may be disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. Net proceeds from sales of reserve raisins are ultimately distributed to producers.

Section 989.66 of the order specifies general requirements for reserve tonnage. Reserve tonnage acquired by handlers from producers and reserve tonnage transferred to a handler from the RAC must be held by the handler for the account of the RAC. Reserve tonnage must be stored separate and apart from other raisins and identified according to rules and procedures specified by the RAC and approved by the Secretary. Handlers may, under the direction and supervision of the RAC, substitute for any reserve tonnage raisins a like quantity of standard raisins of the same varietal type and of the same or more recent year's production.

Section 989.166 of the order's administrative rules and regulations specifies additional requirements for reserve raisins. Paragraph (a)(1) of that section prescribes identification, delivery, and transfer requirements for Natural reserve raisins. Specifically, lots of Natural reserve raisins that have been dipped in or sprayed with water, with or without chemicals, prior to or during the drying process, for purposes other than to expedite drying, or that have been produced from seedless varieties of grapes other than Thompson Seedless, must be identified by the Inspection Service affixing to one container on each pallet or to each bin in each lot, a prenumbered RAC control card which must remain affixed until the raisins are processed or disposed of as natural condition raisins. Additionally, such reserve raisins cannot be delivered to the RAC nor transferred to another handler without approval of the RAC or the receiving handler.

The current language in § 989.166(a)(1) regarding chemicals applied to Naturals for purposes other than to expedite drying was added to the regulations in 1984 and refers to MP–11, a fungicide. The language regarding Naturals produced from grapes other than Thompson Seedless was added in 1991. In these respective instances, some handlers had indicated that they would not pack MP–11 raisins nor raisins made from grapes other than Thompson Seedless. In both cases, the RAC determined that these categories of Naturals should be considered as Naturals for volume and quality control purposes, but that additional requirements should be in place regarding identification, delivery, and transfers of reserve raisins.

As the RAC considered the merits of combining Oleates with Naturals, some handlers indicated that they would not pack Naturals treated with a drying agent such as Oleate. Thus, at its May 2003 meeting, the RAC recommended revising § 989.166(a)(1) to include reserve Naturals treated with drying agents. Such reserve raisins will have to be tagged and identified accordingly, and cannot be delivered to the RAC nor transferred to another handler without the approval of the RAC or the receiving handler. Handlers with only Oleate-treated reserve could substitute non-Oleate treated free tonnage Naturals if necessary. The RAC also recommended adding in this section authority for the RAC to specify additional categories of Naturals that have been produced using other cultural practices and that will be subject to these additional requirements. Any such additions will be made with USDA approval. This will give the RAC flexibility to address changing cultural practices regarding different categories of Naturals in the future. Section 989.166(a) will be revised accordingly.

Another concern regarding this issue is the impact of volume regulation on handlers that may have built up a market for Oleate-treated raisins. There is concern that volume regulation would contribute to handlers losing this market. However, pursuant to § 989.66(b)(3), handlers of Oleate-treated Naturals will have the flexibility to substitute free tonnage Naturals that will be acceptable to the RAC. Thus, handlers could substitute non-Oleate treated free tonnage Naturals for their Oleate-treated reserve raisins, and use their Oleate-treated fruit to meet their market needs.

Quality Requirements

This rule also revises the quality requirements specified in the order's regulations to remove references to Oleates. Specifically, this rule revises: The incoming quality requirements; the table of factors for converting between natural condition and processed weight; and the outgoing quality requirements. The details of these changes are discussed below.

Incoming Quality Requirements

Section 989.58(a) of the order provides authority for quality control regulations whereby natural condition raisins that are delivered from producers to handlers must meet certain incoming quality requirements. Section 989.701 of the order's regulations specifies minimum grade and condition standards for natural condition raisins for each varietal type. Paragraph (b) of that section currently specifies requirements for three varietal types of raisins—Dipped Seedless, Oleate, and Other-Seedless Sulfured. Specifically, such raisins must have been prepared from sound, wholesome, matured grapes properly dried and cured, and shall: (1) Be fairly free from damage by sugaring, mechanical injury, sunburn, or other similar injury; (2) have a normal characteristic flavor and odor of properly prepared raisins; (3) contain no more than 5 percent, by weight, of substandard raisins (raisins that show development less than that characteristic of raisins prepared from fairly well-matured grapes), and also contain at least 50 percent well-matured or reasonably well-matured raisins; (4) not exceed 14 percent moisture; and (5) be of such quality and condition as can be expected to withstand storage as provided in the order and that when processed in accordance with good commercial practice will meet the minimum standards for processed raisins established by the RAC. This rule revises this paragraph to remove reference to the Oleate varietal type.

Paragraph (a) of § 989.701 specifies incoming quality requirements for Naturals, Monukka and Other Seedless raisins. This rule combines Oleates with the Natural varietal type. Thus, the incoming quality requirements specified in § 989.701(a) will apply to Oleates. With the exception of the moisture requirement, the specifications in paragraphs (a) and (b) of § 989.701 are identical. Paragraph (a) specifies that Naturals, Monukkas, and Other Seedless raisins cannot exceed 16 percent moisture. The RAC's recommendation includes Oleates meeting a less restrictive moisture tolerance of 16 percent as opposed to the 14 percent currently required for Oleates.

Weight Dockage System

Section 989.58(a) also contains authority for handlers to acquire natural condition raisins that fall outside the tolerance established for maturity, which includes substandard raisins, under a weight dockage system. Handler acquisitions of raisins and payments to producers are adjusted according to the percentage of substandard raisins in a lot, or the percentage of raisins that fall below certain levels of maturity. Section 989.210(a) of the order's regulations lists the varietal types of raisins that may be acquired pursuant to a weight dockage system. Sections 989.212 and 989.213 contain tables with dockage factors applicable to lots of raisins that fall outside the tolerances for substandard raisins and maturity, respectively, specified in § 989.701. The substandard and maturity dockage factors are identical for Oleates and Naturals. This rule simply removes all references to Oleates contained in §§ 989.210(a), 989.212, and 989.213. This rule also removes paragraph (e) in § 989.213 that was applicable only to the 1998–99 crop year and is thus obsolete.

Raisin Weight Conversion Table

Section 989.601 of the order's regulations specifies a list of conversion factors for raisin weights. The factors are used to convert the net weight of reconditioned raisins acquired by handlers as packed raisins to a natural condition weight. The net weight of the raisins after the completion of processing is divided by the applicable factor to obtain the natural condition weight. If the adjusted weight exceeds the original weight, the original weight is used. This rule removes the reference to Oleates and its 0.92 conversion factor. Additionally, the table specifies a conversion factor for Naturals of 0.92. Thus, combining Oleates with the Natural varietal type results in no change to the conversion factor. Section 989.601 is revised accordingly.

Outgoing Quality Requirements

Section 989.59 of the order provides authority for quality control regulations for raisins subsequent to their acquisition by handlers (outgoing requirements). Section 989.702 of the order's regulations specifies minimum grade standards for packed raisins. Paragraph (a) of that section specifies identical requirements for four varietal types of raisins—Natural, Dipped Seedless, Oleate, and Other-Seedless Sulfured. Since the outgoing requirements for Naturals and Oleates are identical, this rule removes the reference to Oleates from paragraph (a).

Accordingly, Naturals must meet the requirements of U.S. Grade C as defined in the United States Standards for Grades of Processed Raisins (§§ 52.1841 through 52.1858) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1622 through 1624). At least 70

percent, by weight, of the raisins in a lot must be well-matured or reasonably well-matured. With respect to select-sized and mixed-sized lots, the raisins must at least meet the U.S. Grade B tolerances for pieces of stem, and underdeveloped and substandard raisins, and small (midget) sized raisins must meet the U.S. Grade C tolerances for those factors.

Reporting Requirements

All raisin handlers are currently required to submit various reports to the RAC where the data collected is segregated by varietal type of raisin. These reports include: (1) Weekly Report of Standard Raisin Acquisitions (RAC–1); (2) Weekly Report of Standard Raisins Received for Memorandum Receipt or Warehousing (RAC–3); (3) Monthly Report of Free Tonnage Raisin Disposition (RAC–20); (4) Weekly Off-Grade Summary (RAC–30); (5) Inventory of Free Tonnage Standard Quality Raisins On Hand (RAC–50); and (6) Inventory of Off-Grade Raisins On Hand (RAC–51). This rule requires that these forms be revised to remove the columns for Oleates. The current total annual reporting burden for these six forms is 660 hours. This rule will not change this burden on handlers.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), these information collection requirements have been previously approved by the Office of Management and Budget (OMB) under OMB Control Number 0581–0178.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

The order provides authority for volume and quality regulations that are applied according to varietal type of raisin. This rule combines the Oleate varietal type with the Natural varietal type, and makes conforming changes to the order's volume and quality regulations. Pursuant to § 989.10 of the order, § 989.110 of the regulations is revised to remove the Oleate varietal type, and to include sun-dried raisins that may or may not be treated with Oleate or similar food-grade drying agent in the definition of the Natural varietal type. Pursuant to § 989.66, § 989.166(a)(1) is revised to add identification, delivery, and transfer requirements for Naturals treated with Oleate, or similar drying agents. Finally, pursuant to §§ 989.58 and 989.59, the order's quality regulations are revised to remove references to Oleates as follows: incoming quality requirements specified in §§ 989.210, 989.212, 989.213, and 989.701; a table of factors for converting between natural condition and processed weight specified in § 989.601; and outgoing quality requirements specified in § 989.702.

Regarding the impact of this action on affected entities, this rule helps ensure that sun-dried Natural Thompson raisins or raisins produced from similar grape varieties will be subject to the same volume regulation percentages. Concerns about circumventing volume regulation by representing Naturals as Oleates will be addressed. If volume regulation were in effect, handlers who have a market for Oleate-treated raisins will have the opportunity to substitute free tonnage non-Oleate treated Naturals for their reserve Oleates to meet their market needs.

The RAC considered several alternatives to this action. In the spring of 2002, the RAC recommended, and USDA approved, conducting a research study to determine if it is possible to distinguish whether Oleate or a similar agent was applied to a grape as opposed to a raisin. This would assist in determining if Oleate or a similar drying agent was being applied to raisins to circumvent volume regulation. Preliminary information indicates that distinguishing if Oleate or similar drying agent were applied to grapes or raisins may not be possible. There were also some discussions on establishing color specifications to differentiate between non-Oleate Naturals, Oleate-treated Naturals, and DOV. However, the general consensus is that raisins darken with time so that color specifications would be very difficult to apply. Further, there were discussions about requiring producers to file a declaration with the RAC prior to the beginning of the crop year regarding the use of Oleate or similar agent. However, such a producer declaration could not be required.

Regarding the impact of this action on reporting requirements under the order, all raisin handlers are currently required to submit various reports to the RAC where the data collected is segregated by varietal type of raisin. As previously listed, these reports include: (1) Weekly Report of Standard Raisin Acquisitions (RAC–1); (2) Weekly Report of Standard Raisins Received for Memorandum Receipt or Warehousing (RAC–3); (3) Monthly Report of Free Tonnage Raisin Disposition (RAC–20); (4) Weekly Off-Grade Summary (RAC–30); (5) Inventory of Free Tonnage Standard Quality Raisins On Hand (RAC–50); and (6) Inventory of Off-Grade Raisins On Hand (RAC–51). This rule requires that these forms be revised to remove the columns for Oleates. The current total annual burden for these six forms is 660 hours. This rule will not change this burden on handlers.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements referenced above have been approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

Additionally, except for applicable section 8e import regulations, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. However, as previously stated, Natural raisins must at least meet U.S. Grade C as defined in the United States Standards for Grades of Processed Raisins (§§ 52.1841 through 52.1858) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1622 through 1624).

Further, this action was reviewed at several industry meetings as follows—the RAC's Industry Solutions Subcommittee on April 21, 2003, the Administrative Issues Subcommittee on April 23, 2003, work group meetings on April 29 and May 12, 2003, and an Administrative Issues Subcommittee and a RAC meeting on May 15, 2003. All of these meetings where this action was deliberated were public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations. Finally, interested persons are invited to submit information on the regulatory and informational impact of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Comments are invited concerning this rule. A 60-day comment period is provided to allow interested persons to respond to this rule. All written comments received will be considered before a final decision is made on this matter.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule needs to be implemented as soon as possible because the 2003–04 crop year begins August 1, 2003; (2) the RAC unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (3) a 60-day comment period is provided and all comments received will be considered in finalizing this rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section § 989.110 is amended by:

■ a. Revising paragraph (a);

■ b. Removing paragraph (c); and

■ c. Redesignating paragraphs (d) through (j) as paragraphs (c) through (i).

The revised text reads as follows:

§ 989.110 Varietal types.

* * * * *

(a) Natural (sun-dried) Seedless includes all sun-dried seedless raisins possessing similar identifiable characteristics as raisins produced from Thompson Seedless grapes or similar grape varieties, whether dried on trays or on the vine, with or without the application of a drying agent that is a food-grade additive such as, soda, oil, Ethyl Oleate, or Methyl Oleate prior to, during, or after the drying process.

* * * * *

■ 3. In § 989.166, paragraph (a)(1) is revised to read as follows:

§ 989.166 Reserve tonnage generally.

(a) * * * (1) *Natural (sun-dried) Seedless.* Handlers who acquire any lot of natural condition Natural (sun-dried) Seedless raisins which have been dipped in or sprayed with water, with or without chemicals, prior to or during the drying process, for purposes other than to expedite drying, or that have been produced from seedless varieties of grapes other than Thompson Seedless (*i.e.*, Fiesta, Emerald Seedless, Perlette, Delight, and other similar grape varieties), or that have been treated with Oleate or similar drying agents, or such other Natural (sun-dried) Seedless raisins that have been produced using other cultural practices as recommended by the Committee with the approval of the Secretary, may set aside such raisins to satisfy their reserve pool obligation: *Provided,* That such raisins shall be identified by the Inspection Service affixing to one container on each pallet or to each bin in each lot, a prenumbered RAC control card (to be furnished by the Committee) which shall remain affixed until raisins are processed or disposed of as natural condition raisins: and *Provided further,* That such raisins shall not be delivered to the Committee or transferred to another handler without approval of the Committee or the receiving handler.

* * * * *

§ 989.210 [Amended]

■ 4. In § 989.210, the first sentence in paragraph (a) is amended to remove the words "Oleate and Related Seedless,".

§ 989.212 [Amended]

■ 5. In § 989.212, the first sentence in paragraph (a) and the heading in paragraph (b) are amended to remove the words "Oleate and Related Seedless,".

§ 989.213 [Amended]

■ 6. Section 989.213 is amended by:

■ a. Removing the words "Oleate and Related Seedless," in the first sentence in paragraph (a) and the introductory text in paragraphs (b), (c), and (d).

■ b. Removing paragraph (e) and the note immediately following it.

§ 989.601 [Amended]

■ 7. In § 989.601, the table is revised to read as follows:

§ 989.601 Conversion factors for raisin weight.

* * * * *

Varietal type	Conversion factor
Natural (sun-dried) Seedless	0.92
Golden Seedless, Dipped Seedless, Other Seedless, and Other Seedless-Sulfured	0.95
Muscats (including raisins with seeds):	
Seeded	0.80
Unseeded	0.92
Sultana	0.92
Zante Currant	0.91

§ 989.701 [Amended]

■ 8. In § 989.701, the first sentence in paragraph (b) is amended by removing the words "Oleate and Related Seedless,".

§ 989.702 [Amended]

■ 9. In § 989.702, the paragraph heading and the first sentence in paragraph (a) are amended by removing the words "Oleate and Related Seedless,".

Dated: July 16, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–18448 Filed 7–16–03; 5:08 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–55–AD; Amendment 39–13234; AD 2003–14–15]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–200C, 747–300, 747–400, 747–400D, 747–400F, and 747SR Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires inspections for cracking of the forward end clevis lugs of the flap track, and replacement of the flap track with a new flap track if necessary. That AD also currently provides for an optional modification of the forward end clevis lugs, which terminates the required inspections. This amendment expands the applicability of the existing AD, and requires new repetitive inspections for evidence of rotation or migration of the bushings or cracking of the lugs of the forward end clevis of the flap tracks that support the wing trailing edge flaps, corrective actions if necessary, and eventual accomplishment of a terminating action. These actions are necessary to prevent cracking and fracture of the forward end clevis of the flap track, which could result in reduced structural capability of the flap and reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective August 25, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 25, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary Oltman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6443; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 90–24–09, amendment 39–6815 (55 FR 48228, November 20, 1990), which is applicable to certain Boeing Model 747 series airplanes, was published in the **Federal Register** on December 2, 2002 (67 FR 71497). The action proposed to continue to require inspections for cracking of the forward end clevis lugs of the flap track, and replacement of the flap track with a new flap track if necessary. The action also provided for an optional modification of the forward end clevis lugs, which would terminate the required inspections. The action proposed to expand the applicability of the existing AD, require new repetitive inspections for evidence of rotation or migration of the bushings or cracking of the lugs of the forward end clevis of the flap tracks that support the wing trailing edge flaps, and require corrective actions if necessary. The action also proposed to require eventual accomplishment of a terminating action.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. The FAA has given due consideration to the single comment received.

Request To Clarify Corrective Action

One commenter notes that the procedures for the Terminating Action in part 2 of Boeing Service Bulletin 747–57–2307, Revision 1, dated January 17, 2002, include a magnetic particle inspection of the clevis bore of a machined flap track assembly. The commenter points out that no corrective action is specified if a crack is found, though the commenter assumes that the flap track must be replaced. The commenter states that both the service bulletin and proposed AD should specify a corrective action.

We partially agree with the commenter. We note that, where the service bulletin specifies a magnetic particle inspection, the service bulletin refers to Boeing Standard Overhaul Practices Manual 20–20–01, Class A, Critical, for information pertaining to the inspection. We note that the acceptance criteria in that document do not allow cracking. Thus, a cracked flap track may not be used and must be replaced with a new flap track.

However, we agree that we could clarify the need to replace the existing flap track with a new flap track if any cracking is found during the magnetic particle inspection that is included in the procedures for the terminating action required by this AD. Therefore, we have revised paragraph (h) of this final rule to specify that, if a crack is found during any inspection required by paragraph (d), (i), or (j) of this AD (or paragraph (e), (f), or (g)(2)(i) of this AD, as specified in paragraph (h) of the proposed AD), the cracked flap track must be replaced with a new flap track before further flight.

Explanation of Editorial Change

We have revised paragraph (f) of this AD to make it clear that accomplishment of the terminating modification in paragraph (d) or (i) of this AD ends the repetitive inspections required by paragraph (f) of this AD.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Explanation of Change to Cost Impact

After the proposed AD was issued, we reviewed the figures we use to calculate the labor rate to do the required actions. To account for various inflationary costs in the airline industry, we find it appropriate to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

Cost Impact

There are approximately 1,002 Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–200C, 747–300, 747–400, 747–400D, 747–400F, and 747SR series airplanes of the affected design in the worldwide fleet. The FAA estimates that 219 airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 90–24–09 take approximately 2 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions is estimated to be $130 per airplane, per inspection cycle.

The new inspections that are required by this AD take approximately 2 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the new inspections on U.S. operators is estimated to be $28,470, or $130 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–6815 (55 FR 48228, November 20, 1990), and by adding a new airworthiness directive (AD), amendment 39–13234, to read as follows:

2003–14–15 Boeing: Amendment 39–13234. Docket 2002–NM–55–AD. Supersedes AD 90–24–09, Amendment 39–6815.

Applicability: Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–200C, 747–300, 747–400, 747–400D, 747–400F, and 747SR series airplanes; as listed in Boeing Service Bulletin 747–57–2307, Revision 1, dated January 17, 2002; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (k)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking and fracture of the forward end clevis of the flap track, which could result in reduced structural capability of the flap and reduced controllability of the airplane, accomplish the following:

Restatement of Requirements of AD 90–24–09

Initial Inspection

(a) For airplanes listed in Boeing Service Bulletin 747–57–2231, Revision 2, dated September 27, 1990: Perform a detailed inspection of the forward end clevis lugs of the flap tracks for evidence of cracking, according to Boeing Service Bulletin 747–57–2231, Revision 2, dated September 27, 1990, and according to the following schedule:

(1) For airplanes listed in Group 1 in the service bulletin: Perform the inspection at flap track positions 1 through 8 within the next 30 days after December 5, 1990 (the effective date of AD 90–24–09, amendment 39–6815).

(2) For airplanes listed in Group 2 in the service bulletin: Perform the inspection at flap track positions 1, 2, 7, and 8 prior to the later of the following:

(i) Prior to the accumulation of 30,000 flight hours or 8 years after airplane delivery, whichever occurs first; or

(ii) Within 120 days after December 5, 1990.

(3) For airplanes listed in Group 3 in the service bulletin: Perform the inspection at flap track positions 1 through 8 prior to the later of the following:

(i) Prior to the accumulation of 30,000 flight hours or 8 years after airplane delivery, whichever occurs first; or

(ii) Within 120 days after December 5, 1990.

Flap Track Replacement

(b) If cracking is found during any inspection required by paragraph (a) of this AD, replace the flap track prior to further flight, according to Boeing Service Bulletin 747–57–2231, Revision 2, dated September 27, 1990.

Repetitive Inspections

(c) If no cracking is found during any inspection required by paragraph (a) of this AD, repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 300 flight cycles for Group 1 airplanes, and 1,200 flight cycles for Group 2 and Group 3 airplanes, until paragraph (d), (e), or (i) of this AD has been done.

Optional Terminating Action

(d) For airplanes listed in Boeing Service Bulletin 747–57–2231, Revision 2, dated September 27, 1990: Accomplishment of the modification of the forward end clevis lugs of the flap tracks as specified in Boeing Service Bulletin 747–57–2231, Revision 2, dated September 27, 1990, constitutes terminating action for the requirements of paragraphs (a), (c), (e), and (i) of this AD.

New Requirements of this AD

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Detailed Inspections

(e) At the applicable compliance time specified in paragraph (e)(1) or (e)(2) of this AD, perform detailed inspections for evidence of rotation or migration of the bushings (including cracked or missing sealant around the bushing flange, or a gap between the bushing flange and the lug face)

or cracking of the lugs of the forward end clevis of the flap tracks that support the wing trailing edge flaps, according to Part 1 of the Work Instructions in Boeing Service Bulletin 747–57–2307, Revision 1, dated January 17, 2002.

(1) For airplanes inspected before the effective date of this AD according to paragraph (a) of this AD: Do the inspection in paragraph (e) of this AD at the time specified in paragraph (e)(1)(i) or (e)(1)(ii) of this AD, as applicable. Doing this inspection terminates the requirements of paragraph (c) of this AD.

(i) For airplanes listed in Group 1 of Boeing Service Bulletin 747–57–2231, Revision 2: Inspect within 300 flight cycles after the most recent inspection per paragraph (a) or (c) of this AD.

(ii) For airplanes listed in Group 2 or 3 of Boeing Service Bulletin 747–57–2231, Revision 2: Inspect within 1,200 flight cycles after the most recent inspection per paragraph (a) or (c) of this AD.

(2) For airplanes not inspected before the effective date of this AD according to paragraph (a) of this AD: Do the inspection in paragraph (e) of this AD at the time specified in paragraph (e)(2)(i) or (e)(2)(ii) of this AD, whichever occurs later. This terminates the requirement to do paragraph (a) of this AD.

(i) Within 8 years after the earlier of the date of issuance of the original Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness, or before the accumulation of 30,000 total flight hours, whichever occurs first.

(ii) Within 300 flight cycles or 120 days after the effective date of this AD, whichever occurs first.

Repetitive Inspections

(f) If no evidence of migration or rotation of the bushings or cracking of the lugs is found during the inspection required by paragraph (e) of this AD: Repeat the inspections at the applicable repetitive interval specified in Figure 1 of Boeing Service Bulletin 747–57–2307, Revision 1, dated January 17, 2002, until the terminating modification of paragraph (d) or (i) of this AD has been done.

Corrective Actions and Repetitive Inspections

(g) If evidence of migration or rotation of the bushings is found during any inspection required by paragraph (e) or (f) of this AD, but no cracking is found: Do paragraph (g)(1) or (g)(2) of this AD, as applicable, according to Boeing Service Bulletin 747–57–2307, Revision 1, dated January 17, 2002.

(1) For airplanes listed in Group 1 in the service bulletin and flap track numbers 3 and 6 on airplanes listed in Group 2 of the service bulletin: Before further flight, do the terminating modification in paragraph (i) of this AD, as specified in paragraph (i)(2) of this AD.

(2) For airplanes other than those identified in paragraph (g)(1) of this AD: Before further flight, apply corrosion-inhibiting compound according to the service bulletin, and do paragraphs (g)(2)(i) and (g)(2)(ii) of this AD at the intervals specified in those paragraphs, until paragraph (d) or (i) of this AD is done. Do paragraph (i) of this AD at the applicable time specified in paragraph (i)(2) of this AD.

(i) Repeat the inspections in paragraph (e) of this AD at the intervals specified in Figure 1 of the service bulletin.

(ii) Apply corrosion-inhibiting compound according to the service bulletin at intervals not to exceed 200 flight cycles.

Replacement of Flap Track

(h) If any cracking is found during any inspection required by paragraph (d), (e), (f), (g)(2)(i), (i), or (j) of this AD: Before further flight, replace the cracked flap track with a new flap track, according to Boeing Service Bulletin 747–57–2307, Revision 1, dated January 17, 2002. Replacement with a new flap track having a part number listed in the "New Part Number" column of the table under paragraph 2.E. of the service bulletin constitutes terminating action for the requirements of this AD for the replaced track.

Terminating Modification

(i) At the applicable time specified in paragraph (i)(1) or (i)(2) of this AD: Do all actions (including but not limited to machining, performing magnetic particle inspections, and applying cadmium plating to the clevis bore and bushing) associated with replacing the bushings of the forward end clevis with new bushings with a higher interference fit on flap tracks 1, 2, 3, 4, 5, 6, 7, and 8; as applicable; according to Boeing Service Bulletin 747–57–2307, Revision 1, dated January 17, 2002. This replacement terminates the requirements of this AD.

(1) If no evidence of migration or rotation of the bushings or cracking of the lugs is found during any inspection required by paragraph (e) or (f) of this AD: Do the replacement within 8 years after the effective date of this AD.

(2) If any evidence of bushing migration or rotation is found during any inspection required by paragraph (e) or (f) of this AD: Do the replacement at the applicable time specified in Figure 1 of the service bulletin.

Credit for Actions According to Previous Revision of Service Bulletin

(j) Inspections, corrective actions, and terminating action done before the effective date of this AD according to Boeing Service Bulletin 747–57–2307, dated July 29, 1999, are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance

(k)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously according to AD 90–24–09, amendment 39–6815, are approved as alternative methods of compliance with paragraphs (a), (b), (c), and (d) of this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(l) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(m) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Service Bulletin 747–57–2231, Revision 2, dated September 27, 1990; and Boeing Service Bulletin 747–57–2307, Revision 1, dated January 17, 2002; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(n) This amendment becomes effective on August 25, 2003.

Issued in Renton, Washington, on July 8, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–17772 Filed 7–18–03; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–326–AD; Amendment 39–13235; AD 2003–14–16]

RIN 2120–AA64

Airworthiness Directives; Lockheed Model 382G Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Lockheed Model 382G series airplanes, that requires repetitive general visual inspections of certain bearings located in the emergency exit door for evidence of excessive wear; and repair of certain bearings, which would terminate the repetitive inspections. This action is necessary to prevent failure of the latch mechanism, which could result in the inability to open the emergency exit door in an emergency. This action is intended to address the identified unsafe condition.

DATES: Effective August 25, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 25, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Lockheed Martin Corporation/ Lockheed Martin Aeronautics Company, Airworthiness Office, Dept. 6A0M , Zone 0252, Column P–58, 86 S. Cobb Drive, Marietta, Georgia 30063. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Herderich, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6082; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Lockheed Model 382G series airplanes was published in the **Federal Register** on April 29, 2003 (68 FR 22644). That action proposed to require repetitive general visual inspections of certain bearings located in the emergency exit door for evidence of excessive wear; and repair of certain bearings, which would terminate the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Change in Labor Rate

After the proposed AD was issued, we reviewed the figures we use to calculate the labor rate to do the required actions. To account for various inflationary costs in the airline industry, we find it appropriate to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

Cost Impact

There are approximately 10 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1 airplane of U.S. registry will be affected by this AD, that it will take approximately 16 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on the single U.S. operator is estimated to be $1,040.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–14–16 Lockheed: Amendment 39–13235. Docket 2000–NM–326–AD.

Applicability: Model 382G series airplanes, as listed in Hercules Service Bulletin 382–52–9, dated July 5, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the latch mechanism located inside the emergency exit door, which could result in the inability to open the door in an emergency, accomplish the following:

Inspection

(a) Within 30 days after the effective date of this AD: Perform a general visual inspection of bearings having part numbers (P/N) 3326653–1 and 3326653–2 for evidence of a groove greater than 0.060 inch deep. Perform the inspection per paragraph 2.A. of the Accomplishment Instructions specified in Hercules Service Bulletin 382–52–9, dated July 5, 2000.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If evidence of a groove greater than 0.060-inch deep is not found: Repeat the inspection at 30-day intervals until accomplishment of the terminating action required by paragraph (b) of this AD.

(2) If evidence of a groove greater than 0.060-inch deep is found: Before further flight, repair the bearings per paragraph (b) of this AD.

Repair

(b) Within 90 days after the effective date of this AD: Repair bearings having P/N 3326653–1 and P/N 3326653–2 per paragraph 2.B. of the Accomplishment Instructions specified in Hercules Service Bulletin 382–52–9, dated July 5, 2000. Accomplishment of this repair terminates the requirements of paragraph (a) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Hercules Service Bulletin 382–52–9, dated July 5, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Lockheed Martin Corporation/Lockheed Martin Aeronautics Company, Airworthiness Office, Dept. 6A0M , Zone 0252, Column P–58, 86 S. Cobb Drive, Marietta, Georgia 30063. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on August 25, 2003.

Issued in Renton, Washington, on July 8, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–17771 Filed 7–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–39–AD; Amendment 39–13237; AD 2003–14–18]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Model S76A, B, and C Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Sikorsky Aircraft Corporation (Sikorsky) model helicopters that requires removing non-conforming main landing gear brake discs (discs) and replacing them with different part-numbered airworthy discs. It also requires revising the Rotorcraft Flight Manual (RFM) to adjust takeoff and landing distances until the discs are replaced. This amendment is prompted by the manufacture of some discs using inferior materials. The actions specified by this AD are intended to prevent reduced braking performance and subsequent loss of control of the helicopter.

DATES: Effective August 25, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 25, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Tech Support, 6900 Main Street, Stratford, Connecticut 06614, phone (203) 386–3001, fax (203) 386–5983. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7155, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for Sikorsky Model S76A, B, and C helicopters was published in the **Federal Register** on February 7, 2003 (68 FR 6382). That action proposed to require, within 60 days, determining if discs, part number (P/N) 5014067, are installed. If so, replacing them with discs, P/N 5007672, and re-identifying brake assembly, P/N 5007555 and P/N 5007555–1, as brake assembly P/N 5007555–3, and brake assembly, P/N 5007555–2, as brake assembly, P/N 5007555–4, was proposed to be required within 90 days. The action also proposed to require revising the RFM to adjust the Category A rejected takeoff distance, the Category A landing distance, and the Category B landing distance by multiplying the distance by 1.67 to obtain the corrected distance until the discs are replaced.

Sikorsky has issued Alert Service Bulletin (ASB) No. 76–32–27, dated April 30, 2002, which contains Aircraft Braking Systems Corporation ASB S76–32–A24, dated April 10, 2002; and Sikorsky Aircraft Corporation ASB No. 76–32–28, dated May 17, 2002, which contains Aircraft Braking Systems Corporation ASB S76–32–A25, dated May 15, 2002. The ASBs describe procedures for replacing any non-conforming discs, reidentifying brake assemblies, and revising takeoff and landing distances in the RFM until the discs are replaced.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

The one commenter, the manufacturer, states that the AD should state that a manufacturer's warranty exists. The commenter states that the service information issued by Aircraft Braking Systems Corporation states that the replacement discs, P/N 5007672, are available at no cost to the owners or operators. The FAA agrees, and that information is added to the economic impact paragraph of the AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

The FAA estimates that 180 helicopters of U.S. registry will be affected by this AD, that it will take approximately 0.5 work hour per helicopter to determine if non-conforming discs are installed, and 1.25 work hours per helicopter to remove, replace and re-identify any non-conforming discs. The average labor rate is $60 per work hour. Required parts will cost approximately $1,902 per disc, and there are two discs per helicopter. The Aircraft Braking Systems Corporation ASB's state that "operators should contact their usual supply source for replacement of 5014067 Rotating Discs with free of charge 5007672 Rotating Discs on an exchange basis." Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $703,620 ($18,900 assuming brake discs are provided free of charge) to replace the discs throughout the fleet.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–14–18 Sikorsky Aircraft Corporation: Amendment 39–13237. Docket No. 2002–SW–39–AD.

Applicability: Model S76A, B, and C helicopters, with main landing gear brake assembly (brake assembly), part number (P/N) 5007555, 5007555–1, or 5007555–2 installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced braking performance and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 60 days, determine if a main landing gear brake disc (disc), part number (P/N) 5014067, is installed in the braking assembly in accordance with:

(1) Section III—Accomplishment Instructions, paragraph 1.A. through 1.D., of Aircraft Braking Systems Corporation Alert Service Bulletin S76–32–A24, dated April 10, 2002 (ASB A24) for braking assembly, P/N 5007555 and P/N 5007555–1, and

(2) Section III—Accomplishment Instructions, paragraph 1.A. and 1.B., of Aircraft Braking Systems Corporation Alert Service Bulletin S76–32–A25, dated May 15, 2002 (ASB A25), for braking assembly, P/N 5007555–2.

(b) If disc, P/N 5014067, is installed, within 90 days, remove that disc and replace it with disc, P/N 5007672, and re-identify:

(1) Brake assembly, P/N 5007555 and P/N 5007555–1, as brake assembly, P/N 5007555–3, in accordance with the conversion of brake assembly instructions on page 6 of ASB A24, and

(2) Brake assembly, P/N 5007555–2, as brake assembly, P/N 5007555–4, in accordance with the conversion of brake assembly instructions on page 6 of ASB A25.

Note 2: Sikorsky Aircraft Corporation ASB No. 76–32–27, dated April 30, 2002, contains Aircraft Braking Systems Corporation ASB S76–32–A24, dated April 10, 2002, and Sikorsky Aircraft Corporation ASB No. 76–32–28, dated May 17, 2002, contains Aircraft Braking Systems Corporation ASB S76–32–A25, dated May 15, 2002.

(c) Until all installed discs, P/N 5014067, on the helicopter are replaced with disc, P/N 5007672, and all brake assemblies are re-identified in accordance with paragraph (b) of this AD, before further flight, increase the Category A—Rejected Takeoff Distance, the Category A—Landing Distance, and the Category B—Landing Distance as stated in the current Rotorcraft Flight Manual (RFM) by multiplying these rejected takeoff and landing distances by a factor of 1.67.

Note 3: There are temporary revisions to the RFM available from the helicopter manufacturer that documents increased rejected takeoff and landing distances.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office, Engine and Propeller Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Boston Aircraft Certification Office.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Boston Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) Identifying, removing and replacing the discs shall be done in accordance with Aircraft Braking Systems Corporation Alert Service Bulletin No. S76–32–A24, dated April 10, 2002, and Aircraft Braking Systems Corporation Alert Service Bulletin S76–32–A25, dated May 15, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Tech Support, 6900 Main Street, Stratford, Connecticut 06614, phone (203) 386–3001, fax (203) 386–5983. Copies may be inspected at the FAA, Office of the Regional Counsel,

Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on August 25, 2003.

Issued in Fort Worth, Texas, on July 8, 2003.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–17946 Filed 7–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–04–AD; Amendment 39–13239; AD 2003–14–20]

RIN 2120–AA64

Airworthiness Directives; AeroSpace Technologies of Australia Pty Ltd. Models N22B and N24A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 82–12–06, which applies to certain AeroSpace Technologies of Australia Pty Ltd. (ASTA) Models N22B and N24A airplanes. AD 82–12–06 currently requires repetitive visual inspections of all rudder control lever shaft assemblies for cracks and discrepancies, and, if cracks or discrepancies are found, it requires replacement with new or serviceable rudder control shafts, and a check of the fit of all rod end bearings in lever shafts. AD 82–12–06 also allows you to inspect all lever shafts by magnetic particle inspection or dye penetrant methods as terminating action for the repetitive visual inspections. This AD is the result of recent reports of failures of the upper control lever torque shaft due to fatigue loading on the affected airplanes, including those that included the terminating actions. This AD requires more detailed repetitive inspections (than there are in AD 82–12–06) of the upper and lower rudder pedal torque shafts and a one-time inspection for discrepancies in the thickness of the lever shaft side plates with appropriate follow-up action. The actions specified by this AD are intended to detect and correct cracks in the rudder control lever torque shafts and discrepancies in the thickness of the lever shaft side plates, which could result in failure of the rudder control lever torque shaft. Such failure could lead to reduced controllability of the airplane.

DATES: This AD becomes effective on September 8, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of September 8, 2003.

ADDRESSES: You may get the service information referenced in this AD from Nomad Operations, Aerospace Support Division, Boeing Australia, PO Box 767, Brisbane, QLD 4000 Australia; telephone 61 7 3306 3366; facsimile 61 7 3306 3111. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–04–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ron Atmur, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5224; facsimile (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Discussion

Has FAA taken any action to this point? Reports of cracking and other discrepancies on rudder control lever shaft assemblies on certain ASTA Models N22B and N24A airplanes caused us to issue AD 82–12–06, Amendment 39–4399. AD 82–12–06 currently requires the following on certain ASTA Models N22B and N24A airplanes:

—Repetitively inspecting visually all rudder control lever shafts for cracking;

—If cracks are found, before further flight, replacing with new or serviceable rudder control shafts;

—Checking for clearance of the fit of all rod end bearings in lever shafts; and

—Discontinuing the repetitive visual inspections when lever shafts are inspected either by magnetic particle inspection or dye penetrant methods.

What has happened since AD 82–12–06 to initiate this proposed action? The Civil Aviation Safety Authority (CASA), which is the airworthiness authority for Australia, recently notified FAA of the need to change AD 82–12–06. The CASA reports failures of the rudder control lever shaft. All the failures have occurred during ground operations and nosewheel steering/rudder loads are now considered the primary cause of the failure.

Some of the failures occurred on airplanes where the terminating action of AD 82–12–06 was incorporated.

What is the potential impact if FAA took no action? This condition, if not detected and corrected, could result in failure of the rudder control lever torque shaft. Such failure could lead to reduced controllability of the airplane.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain ASTA Models N22B and N24A. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 29, 2003 (68 FR 22636). The NPRM proposed to require you to repetitively inspect, using either dye penetrant or magnetic particle methods and measurements, rudder control lever shafts for cracks; inspect (one-time) all lever shaft side plates by measuring the thickness; and if cracks or discrepancies in thickness are found, replace unserviceable parts with new or serviceable parts.

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What is FAA's final determination on this issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—do not add any additional burden upon the public than was already proposed in the NPRM.

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 10 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the initial inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
12 workhours × $60 per hour = $720	Not Applicable	$720	10 × $720 = $7,200.

We estimate the following costs to accomplish any necessary repetitive inspections:

Labor cost	Parts cost	Total cost per airplane
2 workhours × $60 per hour = $120	Not Applicable	$120

We estimate the following costs to accomplish any necessary lever shaft replacements that would be required based on the results of the proposed inspections. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
12 workhours × $60 per hour = $720	$930	$720 + $930 = $1,650.

We estimate the following costs to accomplish any necessary lever shaft side plate replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
12 workhours × $60 per hour = $720	$930	$720 + $930 = $1,650.

Regulatory Impact

Does this AD impact various entities? The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 82–12–06, Amendment 39–4399, and by adding a new AD to read as follows:

2003–14–20 Aerospace Technologies of Australia PTY LTD.: Amendment 39–13239; Docket No. 2003–CE–04–AD; Supersedes AD 82–12–06, Amendment 39–4399.

(a) *What airplanes are affected by this AD?* This AD affects Models N22B and N24A airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct cracks in the rudder control lever torque shafts and discrepancies in the thickness of the lever shaft side plates, which could result in failure of the rudder control lever torque shaft. Such failure could lead to reduced controllability of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the rudder control lever shafts, part numbers (P/N) 2/N–45–1102, 1/N–45–1103, and 1/N–45–1104 (or FAA-approved equivalent part numbers) for cracks. Use dye penetrant while the shaft is installed; or either dye penetrant inspection or magnetic particle methods if the shaft is removed.	Within the next 100 hours time-in-service (TIS) after September 8, 2003 (the effective date of this AD), unless already accomplished.	In accordance with Nomad Alert Service Bulletin ANMD–27–51, dated September 13, 2002, and the applicable maintenance manual.
(2) Inspect all lever shaft side plates on P/Ns 2/N–45–1102, 1/N–45–1103, and 1/N–45–1104 (or FAA-approved equivalent part numbers) by measuring the thickness for discrepancies.	Within the next 100 hours TIS after September 8, 2003 (the effective date of this AD), unless already accomplished.	In accordance with Nomad Alert Service Bulletin ANMD–27–51, dated September 13, 2002, and the applicable maintenance manual.
(3) Visually inspect all rudder control lever shafts P/Ns 2/N–45–1102, 1/N–45–1103, and 1/N–45–1104 (or FAA-approved equivalent part numbers) for cracks.	Repetitively inspect at intervals not to exceed 100 hours TIS after the inspection required in paragraph (d)(1) of this AD.	In accordance with Nomad Alert Service Bulletin ANMD–27–51, dated September 13, 2002, and the applicable maintenance manual.
(4) If damage is found during any inspection required by this AD. (i) For lever shafts found with crack damage, replace with new or serviceable items (ii) For discrepancies in the thickness of lever shaft side plates, obtain a repair scheme from the manufacturer through FAA at the address specified in paragraph (e) of this AD and incorporate this repair scheme (iii) Repairable and nonrepairable damage is defined in the service information	Prior to further flight after any inspection required by this AD.	In accordance with Nomad Alert Service Bulletin ANMD–27–51, dated September 13, 2002, and the applicable maintenance manual.

(e) *Can I comply with this AD in any other way?*

(1) To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.13. Send these requests to the Manager, Los Angeles Aircraft Certification Office. For information on any already approved alternative methods of compliance, contact Ron Atmur, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5224; facsimile (562) 627–5210.

(2) Alternative methods of compliance approved in accordance with AD 82–12–06, which is superseded by this AD, are not approved as alternative methods of compliance with this AD.

(f) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Nomad Alert Service Bulletin ANMD–27–51, dated September 13, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Nomad Operations, Aerospace Support Division, Boeing Australia, PO Box 767, Brisbane, QLD 4000 Australia; telephone 61 7 3306 3366; facsimile 61 7 3306 3111. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 82–12–06, Amendment 39–4399.

Note: The subject of this AD is addressed in Australian AD GAF–N22/44, dated November 14, 2002.

(h) *When does this amendment become effective?* This amendment becomes effective on September 8, 2003.

Issued in Kansas City, Missouri, on July 10, 2003.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–17945 Filed 7–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–165–AD; Amendment 39–13225; AD 2003–14–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error that appeared in airworthiness directive (AD) 2003–14–06 that was published in the **Federal Register** on July 9, 2003 (68 FR 40759). The typographical error resulted in an incorrect AD number in one location of the document. This AD is applicable to certain Boeing Model 737–200, –200C, –300, –400, and –500 series airplanes. This AD requires repetitive inspections for cracking of certain lap splices, and corrective action if necessary.

DATES: Effective July 14, 2003.

FOR FURTHER INFORMATION CONTACT: Duong Tran, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6452; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 2003–14–06, amendment 39–13225, applicable to certain Boeing Model 737–200, –200C, –300, –400, and –500 series airplanes, was published in the **Federal Register** on July 9, 2003 (68 FR 40759). That AD requires repetitive inspections for cracking of certain lap splices, and corrective action if necessary.

As published, the AD number appears as "2003–14–60" in the Product Identification line in the regulatory text of the AD. The correct AD number is 2003–14–06. The number is referenced correctly throughout the remainder of the document.

Since no other part of the regulatory information has been changed, the final rule is not being republished in the **Federal Register**.

The effective date of this AD remains July 14, 2003.

§ 39.13 [Corrected]

■ On page 40761, in the first column, the Product Identification line of AD 2003–14–06 is corrected to read as follows:

* * * * *

2003–14–06 Boeing: Amendment 39–13225. Docket 2003–NM–165–AD.

* * * * *

Issued in Renton, Washington, on July 15, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–18421 Filed 7–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–56–AD; Amendment 39–13231; AD 2003–14–12]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA330F, G, and J; AS332C, L, and L1; SA341G; SA342J; AS350B, BA, B1, B2, B3, and D; AS355E, F, F1, F2 and N; SA–365C, C1, and C2; SA–365N and N1; and AS–365N2 and N3 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter France (ECF) model helicopters that requires determining whether specified main or tail rotor (rotor) parts are installed and, if so, updating and recording the correct hours time-in-service (TIS) or cycles of each part. If the hours TIS or cycles of any rotor part exceed its life limit, this AD also requires replacing that part with an airworthy part within 50 hours TIS. This amendment is prompted by the need to correct the Equipment Log Card (FME) to accurately reflect the total hours TIS and cycles of certain repaired or overhauled rotor parts. The actions specified by this AD are intended to prevent failure of a life limited rotor part, loss of a rotor, and subsequent loss of control of the helicopter.

DATES: Effective August 25, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 25, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the specified model helicopters was published in the **Federal Register** on March 14, 2003 (68 FR 12318). That action proposed to require determining whether specified rotor parts are installed and, if so, updating and recording the correct hours TIS or cycles of each part. If the hours TIS or cycles of any rotor part exceed its life limit, this AD would also require replacing that part with an airworthy part within 50 hours TIS.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on ECF Model SA330F, G, and J; AS332C, L, and L1; SA341G; SA342J; AS350B, BA, B1, B2, B3, and D; AS355E, F, F1, F2 and N; SA–365C, C1, and C2; SA–365N and N1; and AS–365 N2 and N3 helicopters. The DGAC advises of the discovery of a discrepancy in the computer program used to carry over the number of operating hours of parts following repair or overhaul, which is the cause of incorrect completion of FMEs.

ECF has issued the following Alert Telexes for the helicopter model series specified: Nos. 65.110 for SA330, 62.00.58 for AS332, 65.60 for SA341 and SA342, 62.00.25 for AS350, 62.00.27 for AS355, 65.41 for SA–365C, and 62.00.19 for AS–365N, all dated August 13, 2002. These alert telexes specify correcting the FME to list the correct total number of operating hours and cycles for specified parts installed on dynamic components. After correcting the FME, if the parts have exceeded their life limit, the alert telexes specify removing or monitoring the parts. The DGAC classified these alert telexes as mandatory and issued AD No. 2002–452(A), dated September 4, 2002, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other helicopters of the same type designs registered in the United States. Therefore, the AD requires, within 10 hours TIS, determining whether the specified rotor part and serial numbers are installed by reference to the FME and, if installed, correcting the hours TIS and cycles. If a part exceeds its life limit, the AD requires replacing the part within 50 hours TIS. The actions would be required for the parts listed in the appendix of the alert telexes described previously.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

The FAA estimates that this AD will affect 760 helicopters of U.S. registry, and the required actions will take approximately 1 work hour to determine the part and serial number and 8 hours to replace each affected part on 38 helicopters (5 percent of the total affected helicopters). The average labor rate is $60 per work hour. Required parts will cost approximately $64,560 depending on which part will be replaced. Based on these figures, we estimate the total cost impact of the AD on U.S. operators will be $2,517,120.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–14–12 Eurocopter France: Amendment 39–13231. Docket No. 2002–SW–56–AD.

Applicability: Model SA330F, G, and J; AS332C, L, and L1; SA341G; SA342J; AS350B, BA, B1, B2, B3, and D; AS355E, F, F1, F2, and N; SA–365C, C1, and C2; SA–365N and N1; and AS–365N2 and N3 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a life-limited, main or tail rotor (rotor) part, loss of a rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 hours time-in-service (TIS), determine by reference to the equipment log card (FME) whether any rotor part and serial number specified in Table 1, paragraph 3, of the Appendix of each of the following Eurocopter France (ECF) Alert Telexes for the specified helicopter model series is installed: Nos. 65.110 for SA330, 62.00.58 for AS332, 65.60 for SA341 and SA342, 62.00.25 for AS350, 62.00.27 for AS355, 65.41 for SA–365C, and 62.00.19 for SA365N and AS–365, all dated August 13, 2002.

(1) If none of the parts are installed, no further action is required.

(2) For each affected part listed in Table 1, paragraph 3, of the Appendix of each applicable ECF Alert Telex specified in paragraph (a) of this AD, add the hours TIS and cycles to the hours TIS and cycles recorded on the FME. If a part exceeds its life limit in TIS or cycles, replace the part with an airworthy part within 50 hours TIS.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Safety Management Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Safety Management Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Safety Management Group.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) Determine the rotor part and serial number for the specified helicopter model series in accordance with Table 1, paragraph 3, of the Appendix of the applicable Eurocopter Alert Telex No. 65.110 for SA330, 62.00.58 for AS332, 65.60 for SA341 and SA342, 62.00.25 for AS350, 62.00.27 for AS355, 65.41 for SA–365C, and 62.00.19 for SA365N and AS–365, all dated August 13, 2002. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on August 25, 2003.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD No. 2002–452(A), dated September 4, 2002.

Issued in Fort Worth, Texas, on July 1, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–17948 Filed 7–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–369–AD; Amendment 39–13240; AD 2003–14–21]

RIN 2120–AA64

Airworthiness Directives; Lockheed Martin Models L–1011 Airplanes and Rolls-Royce plc RB211 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) that is applicable to Lockheed Martin L–1011–385 series airplanes. That AD currently requires modifications of the engine turbine cooling air overheat monitoring panel at the flight engineer/second officer's console, pilot's caution and warning light panel on the main instrument panel, and the installation of a high speed gearbox (HSGB) overheat detector system into the monitoring system for the engine turbine air temperature. This amendment requires the same modifications. In addition, this amendment adds Lockheed Martin L–1011–385 series airplanes with RB211–22B–02 series engines to the applicability, requires installation of a revised engine front bearing housing assembly, installation of a revised speed probe loom electrical support assembly, and installation of a low pressure (LP) compressor shaft extreme axial movement detector system. Also, this amendment requires additional modifications to the engine turbine cooling air overheat monitoring panel at the flight engineer/second officer's console, pilot's caution and warning light panel on the main instrument panel. The actions specified by this AD are intended to prevent undetected fires originating within the HSGB from breaching the HSGB case, which could result in engine damage and increased difficulty in extinguishing a fire, and to prevent undetected LP compressor shaft location bearing failure, which could result in LP compressor and turbine shaft assembly failure, turbine overspeed, and possible uncontained engine failure.

DATES: Effective August August 25, 2003. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 25, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Rolls-Royce plc, PO Box 31, Derby, England, DE248BJ; telephone: 011–44–1332–242–424; fax: 011–44–1332–245–418 and Lockheed Martin & Logistics Center, 120 Orion Street, Greenville, South Carolina 29605. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7176; fax: (781) 238–7199, and Robert A. Bosak, Aerospace Engineer, Atlanta Aircraft Certification Office, One Crown Center, Suite 475, 1895 Phoenix Blvd., Atlanta, GA 39348, telephone: (770) 703–6094; fax: (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–17–10 R1, Amendment 39–12378 (66 FR 44030 August 22, 2001), which is applicable to Lockheed Martin Models L–1011 airplanes and Rolls-Royce plc RB211 series turbofan engines was published in the **Federal Register** on March 11, 2003 (68 FR 11476). That action proposed to require:

- Modifications of the engine turbine cooling air panel at the flight engineer/second officer's console, pilot's caution and warning light panel on the main instrument panel.
- Installation of an engine turbine air temperature monitoring system.
- Installation of a revised engine front bearing housing assembly.
- Installation of speed probe loom electrical support assembly part number (P/N) FW15212, if applicable.
- Installation of an LP compressor shaft extreme axial movement detector system. The actions would be required to be done in accordance with RR service bulletin (SB) RB.211–72–6149, Revision 9, dated November 24, 1999, RR SB RB.211–72–C178, Revision 1, dated March 9, 2001, RR SB RB.211–77–C144, Revision 1, dated February 13, 2002, RR mandatory service bulletin RB.211–71–E047, dated August 2, 2002, Lockheed Martin SB 093–77–059, Revision 2, dated April 11, 2002, and Lockheed Martin SB 093–77–060, dated April 11, 2002.

These actions must be done so that the installation of the HSGB overheat detector system and installation of the LP compressor shaft extreme axial movement detector system into the engine turbine cooling air overheat monitoring system are complete.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. The comments received are all from Lockheed Martin. Due consideration has been given to the comments received.

Clarifications of Modification Description in the Summary

Lockheed Martin requests that the second sentence of the proposal summary be changed to read "That AD currently requires modifications of the engine turbine cooling air overheat monitoring panel at the flight engineer/second officer's console, pilot's caution and warning light panel on the main instrument panel, and the installation of a high speed gearbox (HSGB) overheat detector system into the monitoring system for the engine turbine air temperature." The commenter states that this change clarifies that the modification adds the HSGB overheat detection system in series with the engine turbine cooling air overheat monitoring system. The sentence as-written in the proposal incorrectly states to require installation of an engine turbine air temperature monitoring system.

The FAA agrees and has changed the summary in the final rule accordingly.

Lockheed Martin also requests that the fourth sentence of the proposal summary be changed to read "Also, this proposal would require additional modifications to the engine turbine cooling air overheat monitoring panel at the flight engineer/second officer's console and the pilot's caution and warning light panel on the main instrument panel." The commenter states that this change clarifies which two panels are to be modified.

The FAA agrees and has changed the summary in the final rule accordingly.

Clarification of Modification Description in the Discussion

Lockheed Martin requests that the first sentence of the proposal discussion be changed to read "On August 15, 2001, the FAA issued airworthiness directive (AD) 2000–17–10 R1, Amendment 39–12378 (66 FR 44030 August 22, 2001), to require modifications of the engine turbine cooling air panel at the flight engineer/second officer's console, pilot's caution and warning light panel on the main instrument panel, and the installation of an HSGB overheat detector system into the engine turbine cooling air overheat monitoring system." The commenter states that this change clarifies that the modification adds the HSGB overheat detection system in series with the engine turbine cooling air overheat monitoring system. The sentence as-written in the proposal incorrectly states to require installation of an engine turbine air temperature monitoring system.

The FAA agrees and has changed the summary, which is where this information appears in the final rule, accordingly.

Request To Delete Model RB211–524B–B–02 From Discussion and Applicability

Lockheed Martin requests that model RB211–524B–B–02 engines be deleted from the proposal discussion and from the proposal applicability. The commenter states that model RB211–524B–B–02 engines are not FAA-approved for installation on Lockheed L–1011 model airplanes.

The FAA does not agree. The model RB211–524B–B–02 engine is not currently approved for installation in the Lockheed L–1011 model airplane. However, this model may be in service on other airplanes and therefore the requirements of paragraph (b) of this AD would also be applicable for those installations. Please note that the CAA ADs and the Rolls-Royce service bulletins referenced in this AD apply to the model RB211–524B–B–02 engine as well as those engine models installed on the Lockheed L–1011 model airplane. Based on this, no change is made to the final rule.

Change Description of Method Used To Detect Pending Failure

Lockheed Martin requests that the last sentence in the second paragraph of the proposal discussion be changed to read "The manufacturer states that the method used to detect pending failure of the LP compressor shaft location bearing is to monitor the airborne vibration monitoring system on the flight engineer/second officer's console." The commenter states that the engine vibration monitoring system successfully detected LP location bearing failures.

The FAA does not agree. The vibration monitoring system has detected imminent failures of LP compressor shaft location bearing failures in the past. However, bearing and shaft failures have occurred, suggesting that flight crew reaction time due to workload or other circumstances have rendered vibration monitoring only partially effective. Therefore, no change is made to the final rule.

Clarification of Actions in Discussion

Lockheed Martin requests that the second sentence in the third paragraph of the proposal discussion be changed to read "Those actions must be done so that the installation of the HSGB overheat detector system and installation of the LP compressor shaft extreme axial movement detector system into the engine turbine cooling air overheat monitoring system are complete." Lockheed Martin states that this change clarifies that the modification adds the HSGB overheat detection system in series with the engine turbine cooling air overheat monitoring system. The sentence as-written in the proposal incorrectly states to require installation of an engine turbine air temperature monitoring system.

The FAA agrees and has changed the supplementary information paragraph, which is where this information appears in the final rule, accordingly.

Clarification of Service Bulletin (SB) Lockheed Martin SB 093–77–059 Description

Lockheed Martin requests that the fifth service bulletin listed under Manufacturer's Service Information in the proposal be changed to read "Lockheed Martin SB 093–77–059, Revision 2, dated April 11, 2002, which introduces modifications to the airplane instrument panels and consoles, necessary for compatibility with the installation of the HSGB overheat detector system and installation of the LP compressor shaft extreme axial movement detector system into the engine turbine cooling air overheat monitoring system." The commenter states that this change clarifies that the modification adds the HSGB overheat detection system in series with the engine turbine cooling air overheat monitoring system. The sentence as-written in the proposal incorrectly states to require installation of an engine turbine air temperature monitoring system.

The FAA agrees. However, because SB 093–77–060, Revision 1, dated June 30, 2003, replaces SB 093–77–059 in its entirety, all references to SB 093–77–059 are deleted from the final rule.

Clarification of Lockheed Martin SB 093–77–060 Description

Lockheed Martin requests that the sixth service bulletin listed under Manufacturer's Service Information in the proposal be changed to read "Lockheed Martin SB 093–77–060, dated April 11, 2002, which introduces modifications to the airplane instrument panels and consoles, necessary for compatibility with the installation of Lockheed Martin SB 093–77–059 and the LP compressor shaft extreme axial movement detector system into the engine turbine cooling air overheat monitoring system." The commenter states that this change is needed to clarify that the modification is necessary for compatibility with SB 093–77–059 and the LP compressor shaft extreme axial movement detector system into the engine turbine cooling air overheat monitoring system.

The FAA agrees. However, because SB 093–77–060, Revision 1, dated June 30, 2003, replaces SB 093–77–059 in its entirety, all references to SB 093–77–059 are deleted from the final rule.

Clarification of First Requirement Listed in the Proposal

Lockheed Martin requests that the first requirement listed in the proposal under proposed requirements of this AD, be changed to read: "Modifications of the engine turbine cooling air overheat monitoring panel at the flight engineer/second officer's console, pilot's caution and warning light panel on the main instrument panel." The commenter states that this change is needed to clarify that the panel is the engine turbine cooling air overheat monitoring panel.

The FAA agrees and has changed the summary, which is where this information appears in the final rule, accordingly.

Clarification of Second Requirement Listed in the Proposal

Lockheed Martin requests that the second requirement listed in the proposal under proposed requirements of this AD, be changed to read "Installation of an HSGB overheat detector system." The commenter states that the existing second proposed requirement is referencing a system that already exists on the airplane.

The FAA agrees and has changed the summary, which is where this information appears in the final rule, accordingly.

Changes to Economic Analysis

Lockheed Martin requests that the economic analysis be changed to reflect that instead of one engine requiring a speed probe loom electrical support assembly part number FW15212, ten engines require this part, and to reflect that the total cost of the AD to U.S. operators is estimated to be $19,996,560.

The FAA agrees and has made these changes in the economic analysis in the AD.

Delete Compliance Paragraph (a)(2)

Lockheed Martin requests that paragraph (a)(2) be deleted from the AD. The commenter states that Lockheed Martin SB 093–77–059 will be reconfigured when complying with Lockheed Martin SB 093–77–060.

The FAA agrees. SB 093–77–060, Revision 1, dated June 30, 2003, replaces SB 093–77–059 in its entirety, and therefore, paragraph (a)(2) is not required. Paragraph (a)(2) has been deleted and the following substeps have been relettered in the final rule.

Change Wording in Compliance Paragraph (a)(5)

Lockheed Martin requests that proposal paragraph (a)(5) be changed to read: "Modify airplane instrument panels and consoles with the installation of the engine failure indicators, failure lenses, and marker, in accordance with Lockheed Martin SB 093–77–060, dated April 11, 2002. The commenter states that this change provides clarity on how the panels and consoles are modified.

The FAA agrees and has changed the affected paragraph by referencing SB 093–77–060, Revision 1, dated June 30, 2003.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously.

Economic Analysis

There are approximately 492 engines and 164 airplanes of the affected design in the worldwide fleet. The FAA estimates that 270 engines installed on 90 airplanes of U.S. registry would be affected by this AD. The FAA estimates that it would take approximately 40 work hours per engine to accomplish the actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $58,956 per engine. The FAA estimates that it would cost approximately $37,920 per airplane to do the airframe panel modifications. In addition, ten airplanes of U.S. registry would require speed probe loom electrical support assemblies P/N FW15212 installed on all three engines, at an estimated cost of $588 per engine. Based on these figures, the total cost of the AD to U.S. operators is estimated to be $19,996,560.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing Amendment 39–12378, 66 FR 44030 August 22, 2001), and by adding a new airworthiness directive:

2003–14–21 Lockheed Martin and Rolls-Royce plc: Amendment 39–13240. Docket No. 2000–NM–369–AD. Supersedes AD 2000–17–10 R1, Amendment 39–12378.

Applicability: This airworthiness directive (AD) is applicable to Lockheed Martin models L–1011–385–1, L–1011–385–1–14, L–1011–385–1–15, and L–1011–385–3 airplanes and Rolls-Royce plc (RR) RB211–22B–02, RB211–524B–02, RB211–524B–B–02, RB211–524B3–02, RB211–524B4–02, and RB211–524B4–D–02 series turbofan engines.

Compliance: Compliance with this AD is required as indicated, unless already done.

To prevent undetected fires originating within the high speed gearbox (HSGB) from breaching the HSGB case, which could result in engine damage and increased difficulty in extinguishing a fire, and to prevent undetected low pressure (LP) compressor shaft location bearing failure, which could result in LP compressor and turbine shaft assembly failure, turbine overspeed, and possible uncontained engine failure, do the following:

Requirements for All Applicable Airplanes and Engines

(a) Incorporate the following service bulletins concurrently or before accomplishing the requirements of RR Mandatory Service Bulletin (MSB) RB.211–72–C963, dated December 4, 2001, or RR MSB RB.211–72–C863, dated February 15, 2002, whichever is applicable, as specified in paragraphs (b) through (d) of this AD:

(1) Install a new design engine front bearing housing assembly in accordance with RR SB RB.211–72–6149, Revision 9, dated November 24, 1999.

(2) Install a revised gearbox breather assembly in accordance with RR SB RB.211–72–C178, Revision 1, dated March 9, 2001.

(3) Install overheat detectors in the gearbox breather duct assembly, in accordance with RR SB RB.211–77–C144, Revision 1, dated February 13, 2002.

(4) Modify airplane instrument panels and consoles with the installation of the engine failure indicators, failure lenses, and marker, in accordance with Lockheed Martin SB 093–77–060, Revision 1, dated June 30, 2003.

RB211–524B–02 and RB211–524B–B–02 Engines

(b) Within three months after the effective date of this AD, for RB211–524B–02 and RB211–524B–B–02 engines, do the following:

(1) Install an LP compressor shaft extreme axial movement detector system in accordance with RR MSB RB.211–72–C963, dated December 4, 2001.

(2) Replace existing speed probe loom electrical support assembly, located on the engine front bearing housing assembly, with speed probe loom electrical support assembly P/N FW15212, in accordance with 3.A. Accomplishment Instructions of RR MSB RB.211–71–E047, dated August 2, 2002.

RB211–22B–02 Engines

(c) Within three years after the effective date of this AD, for RB211–22B–02 engines, install an LP compressor shaft extreme axial movement detector system in accordance with RR MSB RB.211–72–C863, dated February 15, 2002.

RB211–524B3–02, RB211–524B4–02, and RB211–524B4–D–02 Engines

(d) Within four years after the effective date of this AD, for RB211–524B3–02, RB211–524B4–02, and RB211–524B4–D–02 engines, install an LP compressor shaft extreme axial movement detector system in accordance with RR MSB RB.211–72–C963, dated December 4, 2001.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO) for engines or Manager, Atlanta Aircraft Certification Office (ACO) for airplanes. Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO, or Manager, ACO.

Note 1: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO or ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Note 2: The subject of this AD is addressed in CAA airworthiness directive AD 006–12–2001, AD 003–08–2002, and AD 006–02–2002.

Documents That Have Been Incorporated by Reference

(g) The actions in this AD must be done in accordance with the following Rolls-Royce plc service bulletins and Lockheed Martin service bulletin:

Document No.	Pages	Revision	Date
RB.211–72–6149 Total pages: 72	All	9	Nov. 24, 1999.
RB.211–77–C144 Total pages: 57	All	1	Feb. 13, 2002.
RB.211–72–C963 Total pages: 75	All	Original	Dec. 4, 2001.
RB.211–71–E047	All	Original	Aug. 2, 2002.

Document No.	Pages	Revision	Date
Total pages: 6			
RB.211–72–C863	All	Original	Feb. 15, 2002.
Total pages: 75			
Lockheed Martin			
093–77–060	1	1	Jun. 30, 2003.
	2–4	Original	Apr. 11, 2002.
	5	1	Jun. 30, 2003.
	6–10	Original	Apr. 11, 2002.
Total pages: 10			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce plc, PO Box 31, Derby, England, DE248BJ; telephone: 011–44–1332–242–424; fax: 011–44–1332–245–418 and Lockheed Martin & Logistics Center, 120 Orion Street, Greenville, South Carolina 29605. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on August 25, 2003.

Issued in Burlington, Massachusetts, on July 10, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–17949 Filed 7–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–13013; Airspace Docket No. 02–ANM–10]

RIN 2120–AA66

Revision of Legal Descriptions of Multiple Federal Airways in the Vicinity of Farmington, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the legal descriptions of eight Federal airways and seven jet routes that have the "Farmington, NM, very high frequency omnidirectional range/tactical air navigation (VORTAC)" included as part of their route structure. Currently, the Farmington VORTAC and the Four Corners Regional Airport, NM, share the same location identifier. The fact that the VORTAC and the airport are not co-located has led to confusion among users. To eliminate this confusion, the Farmington VORTAC will be renamed the "Rattlesnake VORTAC." All airways with "Farmington VORTAC" included in their legal descriptions will be amended, concurrent with the effective date of this final rule, to reflect the name change.

EFFECTIVE DATE: 0901 UTC, October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 (part 71) by amending the legal descriptions of eight Federal airways and seven jet routes that have "Farmington VORTAC" included as part of their route structure. Currently, the Farmington, NM, VORTAC and the Four Corners Regional Airport, NM, share the same location identifier. The fact that the VORTAC and the airport are not co-located has led to confusion among users. To eliminate this confusion, the Farmington VORTAC will be renamed the "Rattlesnake VORTAC." All airways with "Farmington VORTAC" included in their legal descriptions will be amended to reflect the name change. The name change of the VORTAC will coincide with the effective date of this rulemaking action.

Since this action merely involves editorial changes in the legal description of eight Federal airways and seven jet routes, and does not involve a change in the dimensions or operating requirements of that airspace, notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Jet routes and domestic VOR Federal airways are published in paragraphs 2004 and 6010(a), respectively, of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The jet routes and airways listed in this document will be published subsequently in the order.

Environmental Review

There are no changes to the lateral limits. Therefore, the FAA has determined that this action is not subject to environmental assessments and procedures in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts, and the National Environmental Policy Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

J–10 [Revised]

From Los Angeles, CA; via INT Los Angeles 083° and Twentynine Palms, CA, 269° radials; Twentynine Palms; INT of Twentynine Palms 075° and Drake, AZ, 262° radials; Drake; Rattlesnake, NM, Blue Mesa, CO; Falcon, CO; North Platte, NE; Wolbach, NE; Des Moines, IA; to Iowa City, IA.

* * * * *

J–15 [Revised]

From Humble, TX, via INT Humble 269° and Junction, TX, 112° radials; Junction; Wink, TX; Chisum, NM; Corona, NM; Albuquerque, NM; Rattlesnake, NM; Grand Junction, CO; Wasatch, UT; Twin Falls, ID; Boise, ID; Kimberly, OR; INT Kimberly 288° and Battle Ground, WA, 136° radials; to Battle Ground.

* * * * *

J–44 [Revised]

From Phoenix, AZ; via Winslow, AZ, Rattlesnake, NM; Alamosa, CO; INT Alamosa 015° and Falcon, CO, 209° radials; Falcon; McCook, NE; to Lincoln, NE.

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J–58 [Revised]

From Oakland, CA, via Manteca, CA; Coaldale, NV; Wilson Creek, NV; Milford, UT; Rattlesnake, NM; Las Vegas, NM; Panhandle, TX; Wichita Falls, TX; Ranger, TX; Alexandria, LA; Harvey; LA.

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J–64 [Revised]

From Los Angeles, CA, via INT Los Angeles 083° and Hector, CA, 226° radials; Hector; Peach Springs, AZ; Tuba City, AZ; Rattlesnake, NM; Pueblo, CO; Hill City, KS; Pawnee City, NE; Lamoni, IA; Bradford, IL; via the INT of the Bradford 089° and the Fort Wayne, IN, 280° radials; Fort Wayne; Ellwood City, PA; Ravine, PA; to Robbinsville, NJ.

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J–110 [Revised]

From Oakland, CA, via Salinas, CA; Clovis, CA; Boulder City, NV; Rattlesnake, NM; Alamosa, CO; Garden City, KS; Butler, MO; St. Louis, MO; Brickyard, IN; Bellaire, OH; to Coyle, NJ.

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J–161 [Revised]

From Zuni, NM, to Rattlesnake, NM.

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V–68 [Revised]

From Montrose, CO; Cones, CO; Dove Creek, CO; Cortez, CO; Rattlesnake, NM; INT Rattlesnake 128° and Albuquerque, NM, 345° radials; Albuquerque, via INT Albuquerque 120° and Corona, NM, 311° radials; Corona; 41 miles 85 MSL, Chisum, NM; Hobbs, NM; Midland, TX; San Angelo, TX; Junction, TX; Center Point, TX; San Antonio, TX; INT San Antonio 064° and Industry, TX, 267° radials; Industry; INT Industry 101° and Hobby, TX, 290° radials to Hobby.

* * * * *

V–95 [Revised]

From Gila Bend, AZ, via INT Gila Bend 096° and Phoenix, AZ, 197° radials; Phoenix; 49 miles, 40 miles 95 MSL; Winslow, AZ; 66 miles, 39 miles 125 MSL; Rattlesnake, NM; Durango, CO; Blue Mesa, CO; INT Blue Mesa 081° and Falcon, CO, 208° radials; to Falcon.

* * * * *

V–187 [Revised]

From Socorro, NM, via INT Socorro 015° and Albuquerque, NM, 160° radials; Albuquerque; Rattlesnake, NM; 50 miles, 62 miles, 115 MSL, Grand Junction, CO; 75 miles, 50 miles, 112 MSL, Rock Springs, WY; 20 miles, 37 miles, 95 MSL, INT Rock Springs 026° and Riverton, WY, 180° radials; Riverton; Boysen Reservoir, WY; 9 miles, 78 miles, 105 MSL, Billings, MT; INT Billings 317° and Great Falls, MT, 122° radials; Great Falls; Missoula, MT; Nez Perce, ID; Pasco, WA; INT Pasco 321° and Ellensburg, WA, 107° radials; Ellensburg; INT Ellensburg 274° and McChord, WA, 096° radials; McChord; INT McChord 275° and Olympia, WA, 031° radials; Olympia; to Astoria, OR.

* * * * *

V–210 [Revised]

From Los Angeles, CA, INT Los Angeles 083° and Pomona, CA, 240° radials; Pomona; INT Daggett, CA, 229° and Hector, CA, 263° radials; Hector; Goffs, CA; 13 miles, 23 miles 71 MSL, 85 MSL, Peach Springs, AZ; Grand Canyon, AZ; Tuba City, AZ; 10 miles 90 MSL, 91 miles 105 MSL, Rattlesnake, NM; Alamosa, CO; INT Alamosa 074° and Lamar, CO, 250° radials; 40 miles, 51 miles, 65 MSL, Lamar; 13 miles, 79 miles, 55 MSL, Liberal, KS; INT Liberal 137° and Will Rogers, OK, 284° radials; Will Rogers; INT Will Rogers 113° and Okmulgee, OK, 238° radials; Okmulgee. From Brickyard, IN, Muncie, IN; Rosewood, OH; Tiverton, OH; Briggs, OH; INT Briggs 044° and Akron, OH, 088° radials; INT Akron 088° and Youngstown, OH, 116° radials; INT Youngstown 116° and Clarion, PA, 222° radials; Revloc, PA; INT Revloc 096° and Harrisburg, PA, 285° radials; Harrisburg; Lancaster, PA; INT Lancaster 095° and Yardley, PA, 255° radials; to Yardley.

* * * * *

V–361 [Revised]

From Rattlesnake, NM, via Montrose, CO; INT Montrose 025° and Red Table, CO, 224° radials; Red Table; Kremmling, CO; via INT Kremmling 059° and Cheyenne, WY, 216° radials; to Cheyenne.

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V–368 [Revised]

From Alamosa, CO; INT Rattlesnake, NM, 086° and Alamosa 232° radials; to Rattlesnake, NM.

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V–391 [Revised]

From Rattlesnake, NM; via Cortez, CO; via Dove Creek, CO; via Grand Junction, CO; via Vernal, UT; to Rock Springs, WY.

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V–421 [Revised]

From Zuni, NM, via Gallup, NM; Rattlesnake, NM; Durango, CO; Blue Mesa, CO; Red Table, CO; Kremmling, CO; Robert, CO; INT Robert 340° and Hayden, CO, 055° radials.

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Issued in Washington, DC, July 10, 2003.

Paul Gallant,

Acting Manager, Airspace and Rules Division

[FR Doc. 03–18382 Filed 7–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2003–15478; Airspace Docket No. 03–AWP–6]

RIN 2120–AA66

Amendment to Restricted Area 4809, Tonopah; NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action adds "FAA, Los Angeles Air Route Traffic Control Center (ARTCC)" as the controlling agency for Restricted Area 4809 (R–4809), Tonopah, NV. Additionally, this action changes the using agency of R–4809 from the "Department of Energy (DOE), Albuquerque Operations Office, NM," to the "U.S. Air Force (USAF), Headquarters Air Warfare Center, Nellis Air Force Base (AFB), NV." These changes will facilitate the FAA's "Joint-Use Concept" of managing airspace areas in a more dynamic manner. This action does not change any boundaries, times of designation, or activities conducted in the restricted airspace area.

EFFECTIVE DATE: 0901 UTC, October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

In April 2002, the DOE signed an agreement transferring responsibility for the daily use of R–4809 to the USAF. On May 14, 2003, the USAF submitted a request to add the Los Angeles ARTCC as the controlling agency of R–4809, and to change the area's using agency from the DOE to the USAF.

The Rule

This action responds to the above agreement and requested changes. Specifically, this action adds "FAA, Los Angeles ARTCC," as the controlling agency for R–4809, and changes the using agency from the "DOE, Albuquerque Operations Office, NM," to the "USAF, Headquarters Air Warfare Center, Nellis AFB, NV." These changes will designate R–4809 as a joint-use area, and make the airspace accessible to nonparticipating aircraft. This action does not change any boundaries, times of designation, or activities conducted in the restricted airspace area.

Section 73.48 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8K, dated September 26, 2002.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.48 [Amended]

■ 2. § 73.48 is amended as follows:

* * * * *

R–4809, NV [Amended]

By removing "Using agency. DOE, Albuquerque Operations Office, NM," and substituting "Using agency. USAF, Headquarters Air Warfare Center, Nellis AFB, NV."

By adding "Controlling agency. FAA, Los Angeles ARTCC."

* * * * *

Issued in Washington, DC, on July 10, 2003.

Paul Gallant,

Acting Manager, Airspace and Rules Division.

[FR Doc. 03–18381 Filed 7–18–03; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

RIN 3038–AB39

Performance Data and Disclosure for Commodity Trading Advisors

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is adopting regulations establishing a core principle for commodity trading advisors ("CTAs") with regard to performance disclosures concerning partially-funded accounts. The core principle specifies that such disclosure must be offered in a manner that is balanced and is not in violation of the antifraud provisions of the Commodity Exchange Act (the "Act") or the Commission's regulations thereunder.

EFFECTIVE DATE: August 20, 2003.

FOR FURTHER INFORMATION CONTACT: Kevin P. Walek, Assistant Director, telephone: (202) 418–5463 or Eileen Chotiner, Futures Trading Specialist, telephone: (202) 418–5467, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. E-mail: *kwalek@cftc.gov* or *echotiner@cftc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On March 13, 2003, the Commission published in the **Federal Register** [1] proposed rule amendments regarding the computation and presentation of rate of return information and other disclosures concerning past performance of accounts over which the CTA has had trading authority. In that release, the Commission also sought comment on whether a core principle should replace detailed performance requirements.

The Commission received thirteen comments on the proposal. The commenters included one industry association,[2] one CTA,[3] one bar association,[4] one consumer organization,[5] one accounting firm,[6] the National Futures Association ("NFA"), and seven members of the public.[7] The industry and bar associations, NFA, and the CTA supported the amendments, particularly the use of nominal account size as the basis for computing rates of return. The seven members of the public and the consumer organization submitted comments expressing concern over the use of nominal account size rather than actual funds as the basis for presentation of a CTA's past performance. Commenters who addressed the core principle approach indicated that specific standards for performance presentation should exist in an area in which continuity and comparability are important, although several indicated that additional flexibility in the application of those standards would be welcome. These comments are discussed more fully below.

[1] 68 FR 12001 (Mar. 13, 2003).

[2] Managed Funds Association ("MFA").

[3] John Henry & Company, Inc.

[4] Association of the Bar of the City of New York, Committee on Futures Regulation.

[5] Consumer Federation of America ("CFA").

[6] Arthur F. Bell, Jr., & Associates, LLC.

[7] One of these commenters, Paul H. Bjarnason, Jr., is an accountant and former Commission employee. Six commenters, Elizabeth M. Buckman, Bonnie Kayser, James S. Finucane, Christine E. Schoen, Laura M. Stephens, and Ray Weaver, submitted identical letters.

II. Final Rules

A. Use of Nominal Account Size and Other Detailed Performance Requirements in the Proposal

The key component of the Commission's rule proposal is the use of nominal account size, rather than actual funds, as the basis for CTAs' computation of rates of return. The consumer organization and members of the public noted that investors look at actual funds when making investment decisions, and expressed concern that performance based on nominal account size would reduce the appearance of volatility of the CTA's trading program. Commenters who supported use of nominal account size noted that it is the amount both the CTA and the client consider to be the account size. They also pointed out that use of actual funds can result in widely divergent return figures for similarly traded accounts; exaggerates positive and negative rates of return; and measures the cash management strategies of clients rather than the performance of the CTA.

The Commission has not found persuasive the comments opposing use of nominal account size rather than actual funds as the basis for computing CTA rates of return. Some commenters and press reports appear to have misunderstood the intent of past performance reporting under Commission rules—to present to prospective clients information on how the trading program, which the CTA is offering, has performed. The amount of actual funds in a client's account is determined by the client and its FCM, not the CTA, and does not affect the CTA's trading decisions based on nominal account size. Use of nominal account size would permit CTAs to present to prospective clients composite performance results that will be consistent for the accounts within the program, even if those accounts have widely divergent amounts of actual funds supporting the same level of trading. The alternatives—either blending all accounts, regardless of the variation in funding levels, into a single actual funds-based table, or presenting multiple performance tables to address each individual funding level—could be less informative and potentially more confusing to prospective clients.

The Commission similarly does not agree that disclosure of the volatility and risk of a CTA's trading program will be reduced if the nominal account size is used. As NFA noted in its comment letter, the proposed use of nominal account size would not understate either volatility or risk, as the dollar amount of any profit or loss will be the same for accounts with the same nominal account size, regardless of the funding level. Further, whatever incentive a CTA may have to make its losses appear smaller would be offset by the fact that calculating rate of return on a larger nominal account size would reduce the appearance of profits as well.

B. Adoption of a Core Principle

In seeking comment on the desirability of implementing a core principle in the proposing release, the Commission cited Congressional intent as expressed in the Commodity Futures Modernization Act of 2000 ("CFMA").[8] Section 125 of the CFMA required the Commission to conduct a study of the Act and the Commission's rules and orders governing the conduct of registrants under the Act, identifying, among other things, Commission rules that could be replaced with core principles.[9] While commenters participating in the study expressed concerns regarding replacement of regulations with core principles in certain contexts, they did identify a number of areas where existing rules could be modified or eliminated.[10] Several commenters on the current proposal noted that the flexibility offered by a core principle might not adequately address the need for a standard method of calculating performance that will enable continuity and comparability in the presentation of CTAs' rates of return. The Commission believes, however, that a core principle adopted by the Commission would not preclude the development of more explicit guidance or performance standards by the Commission, self-regulatory organizations, and/or an independent organization, as one commenter suggested, that is otherwise consistent with the core principle.[11] The Commission understands that NFA plans in the near future to adopt specific rules regarding presentation of partially funded accounts that would apply to all member CTAs,[12] and that would be consistent with the rules proposed by the Commission.[13] Although the Commission agrees that nominal account size is an appropriate basis for calculating performance results, the Commission encourages NFA, in the development of guidance carrying out a core principle approach, to consider whether or not these nominal account performance results can be supplemented with other performance measures or statistics that enable customers with accounts that are not fully funded to generally gauge performance results for these types of accounts. The Commission further notes that CTAs presenting partially funded account performance in accordance with the detailed requirements in its March 2003 rule proposal [14] will be considered to be in compliance with the core principle.

After evaluating the comments received on both the detailed proposed amendments and the alternative of a core principle described in the proposal, the Commission has determined not to adopt the detailed proposed rules, but rather to amend Commission Rule 4.35(a) [15] so as to permit CTAs to comply with a core principle with respect to the performance of partially-funded accounts. While the Commission is fully supportive of the content and approach of its detailed rule proposal of March 2003, the history of discourse on this issue suggests that any prescriptive rule adopted by the Commission could soon be inconsistent with evolving industry developments and practices in this area. The flexibility of a core principle, rather than a single set of rigid requirements, would ensure that core Commission regulatory concerns are complied with without impeding legitimate business needs. The Commission believes that this approach is consistent with the objective of the CFMA that the Commission, when

[8] Pub. L. 106–554, 114 Stat. 2763 (2000) (codified as amended in scattered sections of 7 U.S.C.).

[9] A copy of the study may be viewed on the Commission's Web site at: www.cftc.gov/files/opa/opaintermediarystudy.pdf.

[10] Report on the Study of the Commodity Exchange Act and the Commission's Rules and Orders Governing the Conduct of Registrants Under the Act, p. 25. In certain areas, commenters mentioned concerns with regard to the practicability and legal certainty of core principles.

[11] For example, the Association for Investment Management Research ("AIMR"), an international nonprofit organization of investment practitioners and educators, has developed voluntary standards for presentation of investment performance that are used by many investment managers and advisers. AIMR's Investment Performance Council recently issued an invitation to comment on proposed guidance regarding leverage and derivatives to be added to its Global Investment Performance Standards (GIPS). Neither the existing GIPS standards nor the proposed guidance directly addresses the partial funding issue that is the subject of the core principle adopted herein. As standards such as AIMR's evolve to address this issue, they may provide additional guidance to persons or organizations seeking to comply with this core principle or seeking to develop best practices in this area.

[12] With exceptions not otherwise pertinent here, a CTA that conducts futures business with the public and is required to register with the Commission must be a member of NFA, pursuant to NFA Bylaw 1101.

[13] Any rules adopted by NFA would be submitted to the Commission according to the review process for rules of a registered futures association provided in Section 17(j) of the Act.

[14] *See* note 1.

[15] Commission rules referred to herein may be found at 17 CFR Ch. I (2002).

appropriate, permit the industry flexibility in the manner it complies with certain regulatory mandates. Moreover, a core principle regarding the presentation of past performance of partially funded accounts is consistent with the approach governing use of promotional material by CTAs and commodity pool operators ("CPOs").[16] In addition, as noted in the proposing release, a core principle approach would also be consistent with Federal securities laws applicable to investment advisers, who generally may present past performance in any manner that does not run afoul of general anti-fraud provisions.[17]

The core principle requires that the disclosure must be presented in a manner that is balanced and is not in violation of the antifraud provisions of the Commodity Exchange Act (the "Act") or the Commission's regulations thereunder.[18] Each of these two requirements must be complied with in order for the core principle to be met. First, the presentation must not violate the antifraud provisions of the Commodity Exchange Act. For example, a materially misleading disclosure would violate those provisions,[19] and thus would violate this core principle. In addition, the presentation must be balanced. For example, a presentation that emphasizes past gains and minimizes past losses would fail to meet this requirement, and thus would violate the core principle.[20]

Although a few commenters expressed concern that a core principle might impede the Commission's enforcement efforts, or limit them to "the most egregious cases," the Commission believes that the adoption of a core principle based on existing antifraud provisions, which also requires balance, in no way diminishes its current ability to address improper disclosure, nor its ability to address violations of that core principle consistent with its current authority to enforce the antifraud provision of the Act. The SEC has successfully brought actions under its anti-fraud authority against those who have used misleading performance presentations,[21] and NFA has successfully disciplined members who have used unbalanced promotional material.[22]

In addition to the amendment to Rule 4.35, the Commission is also adopting the definition of a "partially-funded account" and a conforming amendment to Rule 4.25 regarding the presentation of a CTA's partially-funded account performance in a commodity pool disclosure document.

The rule amendments being adopted herein relate solely to partially-funded accounts. In that regard, Advisory 93–13,[23] which the proposing release stated would be superseded by the adoption of the proposed rule amendments, will remain in effect until such time as the Commission and/or an appropriate self-regulatory organization adopts further guidance on the presentation of partially funded accounts. Other issues noted in the proposal published March 13, 2003, regarding performance presentation generally, such as changes in the calculation of drawdown figures and application of the Commission's 1991 Advisory concerning additions and withdrawals,[24] will be addressed in a subsequent **Federal Register** release.

III. Other Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires that agencies, in promulgating rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the Regulatory Flexibility Act.[25] The Commission previously has determined that registered CPOs are not small entities for the purpose of the Regulatory Flexibility Act.[26] With respect to CTAs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs would be considered to be small entities for purposes of the Regulatory Flexibility Act and, if so, to analyze the economic impact on them of any such rule at that time.[27] The Commission has previously determined that disclosure requirements governing CTAs do not have a significant economic impact on a substantial number of small entities.[28] Moreover, the amendments being adopted herein do not impose additional requirements on CTAs, but rather offer CTAs an alternative means by which to comply with existing Commission rules. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that these regulations will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 ("PRA")[29] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. These rule amendments do not require a new collection of information on the part of any entities subject to the rule amendments. Accordingly, for purposes of the PRA, the Commission certifies that these rule amendments will not impose any new reporting or recordkeeping requirements.

C. Cost-Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, Section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The Commission is considering the costs and benefits of these rules in light of the specific provisions of Section 15(a) of the Act:

1. Protection of Parket Participants and the Public

The amendments being adopted herein are not expected to result in less protection of market participants or the public. Rather, the amendments provide the opportunity for a more meaningful and accurate disclosure, as demanded by marketplace forces. Moreover, the Commission, along with NFA, will continue to monitor the presentation of performance by CTAs and take action wherever necessary.

2. Efficiency and Competition

The amendments are expected to increase efficiency by providing a CTA with increased flexibility for providing past performance. With this flexibility, a CTA will be better able to respond to changes in the industry and demands from the marketplace with regard to the disclosure of the CTA's past performance.

3. Financial Integrity of Futures Markets and Price Discovery

The amendments should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity or price discovery function of the commodity futures and options markets.

4. Sound Risk Management Practices

The amendments should have no effect on sound risk management practices.

5. Other Public Interest Considerations

The amendments being adopted herein provide more flexibility for CTAs in being able to present past performance in a manner that more accurately represents the trading results of their systems, while maintaining adequate safeguards so as to protect prospective clients from misleading or fraudulent solicitations.

After considering these factors, the Commission has determined to issue the amended rules.

List of Subjects in 17 CFR Part 4

Advertising, Commodity Futures, Customer Protection, Reporting and recordkeeping.

■ For the reasons discussed in the foregoing, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

■ 1. The authority citation for Part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 6(c), 6b, 6c, 6l, 6m, 6n, 6o, 12a and 23.

■ 2. Section 4.10 is amended by adding paragraph (m) to read as follows:

§ 4.10 Definitions.

* * * * *

(m) *Partially-funded account* means a client participation in the program of a commodity trading advisor in which the amount of funds in the client's commodity interest account over which such commodity trading advisor has trading authority is less than the account'size that establishes the client's level of trading in a commodity trading advisor's program.

■ 3. Section 4.25 is amended by adding paragraph (a)(1)(ii)(H) to read as follows:

§ 4.25 Performance disclosures.

* * * * *

(a) * * *

(1) * * *

(ii) * * *

(H) Partially-funded accounts directed by a commodity trading advisor may be presented in accordance with § 4.35(a)(7).

* * * * *

■ 4. Section 4.35 is amended as follows:

■ a. By redesignating paragraphs (a)(7) and (a)(8) as (a)(8) and (a)(9) respectively;

■ b. And adding new paragraph (a)(7) to read as follows:

§ 4.35 Performance disclosures.

* * * * *

(a)(7) *Performance of partially-funded accounts.* Notwithstanding the foregoing, a commodity trading advisor will be deemed in compliance with this § 4.35(a) concerning the performance of partially-funded accounts if the commodity trading advisor presents the performance of such accounts in a manner that is balanced and is not in violation of the antifraud provisions of the Commodity Exchange Act or the Commission's regulations thereunder.

* * * * *

Issued in Washington, DC, on July 15, 2003 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–18413 Filed 7–18–03; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Meloxicam

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Boehringer Ingelheim Vetmedica, Inc. The NADA provides for use of meloxicam oral suspension for the control of pain and inflammation associated with osteoarthritis in dogs.

DATES: This rule is effective July 21, 2003.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540, e-mail: mberson@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Boehringer Ingelheim Vetmedica, Inc., 2621 North Belt Highway, St. Joseph, MO 64506–2002, filed NADA 141–213 that provides for use of METACAM (meloxicam) Oral Suspension for the control of pain and inflammation associated with osteoarthritis in dogs. The NADA is approved as of April 15, 2003, and the regulations are amended in 21 CFR part 520 by adding new § 520.1350 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR part 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management

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[16] Commission Rule 4.41 reiterates the anti-fraud provisions of Section 4o of the Act. NFA has promulgated its Compliance Rule 2–29 and issued interpretive notices, which provide more detailed guidance on the preparation and use of promotional material.

[17] *See* the Investment Advisers Act of 1940 section 206(4) (15 U.S.C. 80b–6(4)) and Securities and Exchange Commission Rule 275.206(4)–1(a)(5) (17 CFR 275.206(4)–(1)(a)(5). The SEC's general antifraud approach to performance disclosure, which is analogous to the core principle approach adopted herein, has not impeded the SEC's ability to bring enforcement actions for inappropriate disclosure. For a more complete discussion regarding the use of past performance by investment advisers for soliciting clients, *see* Robert J. Zutz, *Compliance Review*, Schwab Institutional. Vol. 10, Issue 8, Aug. 2001.

[18] 7 U.S.C. 1 *et seq.* (2000); 17 CFR Ch. I (2002). Antifraud provisions under the Act and regulations include Sections 4b, 4o, and Regulations 1.1, 4.41, 30.9, 32.9 and 33.10.

[19] *See, e.g., In re Slusser*, [1998–1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,701 at 48,311 (CFTC July 19, 1999), *aff'd in part and rev'd in part on other grounds sub nom. Slusser* v. *CFTC*, 210 F.3d 783, 784 (7th Cir. 2000).

[20] *See also* National Futures Association Compliance Rule 2–29(b)(3) (prohibiting the use of promotional material that "mentions the possibility of profit unless accompanied by an equally prominent statement of the risk of loss.") NFA has issued guidance interpreting this rule, *see, e.g.*, NFA Interpretive Notices ¶ 9003.

[21] *See, e.g., In Re F.X.C. Investors Corp. and Francis X. Curzio* 79 SEC 276 (2002) (Distribution of misleading performance information violates section 206(4) of Investment Advisers Act and SEC Rule 275.206(4)–1(a)(5)).

[22] *See, e.g., Minogue Investment Company, Inc.* (NFA Case No. 98–App–006); *Vision Limited Partnership* (NFA Case No. 00–BCC–005).

[23] CFTC Advisory 93–13, 58 FR 8226 (February 12, 1993).

[24] CFTC Advisory, "Adjustments for Additions and Withdrawals to Computation of Rate of Return in Performance Records of Commodity Pool Operators and Commodity Trading Advisors," 56 FR 8109 (Feb. 27, 1991).

[25] 47 FR 18618–18621 (Apr. 30, 1982).

[26] 47 FR 18619–18620.

[27] 47 FR 18618–18620.

[28] *See* 60 FR 38146, 38181 (July 25, 1995) and 48 FR 35248 (Aug. 3, 1983).

[29] 44 U.S.C. 3501 *et seq.*

Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning April 15, 2003.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 520.1350 is added to read as follows:

§ 520.1350 Meloxicam.

(a) *Specifications.* Each milliliter of suspension contains 0.5 or 1.5 milligrams (mg) meloxicam.

(b) *Sponsor.* See No. 000010 in § 510.600(c) of this chapter for uses as in paragraph (c) of this section.

(c) *Conditions of use in dogs*—(1) *Amount.* Administer orally 0.2 mg/kilogram (kg) body weight on the first day of treatment. For all treatment after day 1, administer 0.1 mg/kg body weight once daily.

(2) *Indications for use.* For the control of pain and inflammation associated with osteoarthritis.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: July 8, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–18354 Filed 7–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

New Animal Drugs; Oxytetracycline Hydrochloride Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Cross Vetpharm Group Ltd. The supplemental ANADA provides for a new pouch size of oxytetracycline hydrochloride soluble powder used to make medicated drinking water for swine.

DATES: This rule is effective July 21, 2003.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: *lluther@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Cross Vetpharm Group Ltd., Broomhill Rd., Tallaght, Dublin 24, Ireland, filed a supplement to ANADA 200–144 that provides for a new pouch size of TETROXY (oxytetracycline HCl) Soluble Powder used to make medicated drinking water for administration to swine. The supplemental application is approved as of April 21, 2003, and the regulations are amended in 21 CFR 520.1660d to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.1660d [Amended]

■ 2. Section 520.1660d *Oxytetracycline hydrochloride soluble powder* is amended in paragraph (a)(9) by removing "and 19.75 oz" and by adding in its place ", 19.75 oz, and 3.91 lb".

Dated: July 8, 2003.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–18351 Filed 7–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Injectable or Implantable Dosage Form New Animal Drugs; Euthanasia Solution; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Schering-Plough Animal Health Corp. and a supplemental abbreviated new animal drug application (ANADA) filed by Delmarva Laboratories, Inc. The supplemental applications add environmental warning statements to product labeling.

DATES: This rule is effective July 21, 2003.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0159; e-mail: *msharar@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Schering-Plough Animal Health Corp., 1095 Morris Ave., Union, NJ 07083, filed a supplement to NADA 119–807 for BEUTHANASIA–D–SPECIAL Solution and Delmarva Laboratories, Inc., 1500 Huguenot Rd., suite 106, Midlothian, VA 23113, filed a supplement to ANADA 200–071 for EUTHASOL Solution. The supplemental applications provide for the addition of environmental warning statements to product labeling. The supplemental applications are approved as of May 2, 2003, and the regulations are amended in § 522.900 (21 CFR 522.900) to reflect the approvals.

In addition, the agency has found that the regulations do not reflect the 1996 change of sponsorship (61 FR 5505, February 13, 1996) of NADA 128–967 for REPOSE Euthanasia Solution from Syntex Animal Health, Division of Syntex Agri-business, Inc., to Fort Dodge Animal Health, Division of Wyeth. At this time, § 522.900 is revised to reflect that change of sponsorship and a current format.

The agency has determined under 21 CFR 25.33(d)(1) that these actions are of a type that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither environmental assessments nor environmental impact statements are required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 522.900 is revised to read as follows:

§ 522.900 Euthanasia solution.

(a) *Specifications.* Each milliliter (mL) of solution contains:

(1) 390 milligrams (mg) of pentobarbital sodium and 50 mg phenytoin sodium.

(2) 400 mg secobarbital sodium and 25 mg dibucaine hydrochloride.

(b) *Sponsors.* See sponsors in § 510.600(c) of this chapter:

(1) Nos. 000061 and 059079 for use of product described in paragraph (a)(1) of this section.

(2) No. 000856 for use of product described in paragraph (a)(2) of this section.

(c) *Special considerations.* Product labeling shall bear the following warning statements:

"ENVIRONMENTAL HAZARD: This product is toxic to wildlife. Birds and mammals feeding on treated animals may be killed. Euthanized animals must be properly disposed of by deep burial, incineration, or other method in compliance with state and local laws, to prevent consumption of carcass material by scavenging wildlife."

(d) *Conditions of use in dogs*—(1) *Indications for use.* For humane, painless, and rapid euthanasia.

(2) *Amount.* One mL per 10 pounds of body weight.

(3) *Limitations.* Do not use in animals intended for food. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: July 7, 2003.

Clifford Johnson,

Director, Office of Surveillance and Compliance, Center for Veterinary Medicine.

[FR Doc. 03–18352 Filed 7–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Gentamicin Sulfate, Betamethasone Valerate, Clotrimazole Ointment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Phoenix Scientific, Inc. The ANADA provides for the use of gentamicin sulfate, betamethasone valerate, and clotrimazole ointment for the treatment of canine otitis externa.

DATES: This rule is effective July 21, 2003.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: *lluther@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Phoenix Scientific, Inc., 3915 South 48th St. Terrace, St. Joseph, MO 64503, filed ANADA 200–287 that provides for use of gentamicin sulfate, United States Pharmacopeia (USP); betamethasone valerate, USP; and clotrimazole, USP; (GBC) Ointment for the treatment of canine otitis externa associated with yeast (*Malassezia pachydermatis,* formerly *Pityrosporum canis*) and/or bacteria susceptible to gentamicin. Phoenix Scientific's GBC Ointment is approved as a generic copy of Schering-Plough Animal Health's OTOMAX Ointment approved under NADA 140–896. The ANADA is approved as of March 28, 2003, and the regulations are amended in § 524.1044g (21 CFR 524.1044g) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, § 524.1044g is being amended to reflect the supplemental approval of several additional container sizes under NADA 140–896 and ANADA 200–229, which were not codified, and to reflect a current format.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 524

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner

of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 524.1044g is amended by revising paragraphs (b) and (c) to read as follows:

§ 524.1044g Gentamicin sulfate, betamethasone valerate, clotrimazole ointment.

* * * * *

(b) *Sponsors.* See sponsors in § 510.600(c) of this chapter for uses as in paragraph (c) of this section.

(1) No. 000061 for use of 7.5- or 15-gram (g) tubes, 12.5-, 30-, or 215-g bottles.

(2) No. 051259 for use of 7.5- or 15-g tubes, 10-, or 25-g bottles.

(3) No. 059130 for use of 10- or 215-g bottles.

(c) *Conditions of use in dogs*—(1) *Amount.* Instill ointment twice daily into the ear canal. Therapy should continue for 7 consecutive days.

(i) From 7.5- or 15-g tubes, 10-, 12.5-, 25-, or 30-g bottles: 4 drops for dogs weighing less than 30 pounds (lb) or 8 drops for dogs weighing 30 lb or more.

(ii) From 215-g bottles: 2 drops for dogs weighing less than 30 lb or 4 drops for dogs weighing 30 lb or more.

(2) *Indications for use.* For the treatment of canine otitis externa associated with yeast (*Malassezia pachydermatis*, formerly *Pityrosporum canis*) and/or bacteria susceptible to gentamicin.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: July 3, 2003.

Andrew J. Beaulieu,

Associate Director, Center for Veterinary Medicine.

[FR Doc. 03–18153 Filed 7–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9081]

RIN 1545–BC33

Prohibited Allocations of Securities in an S Corporation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations concerning requirements for employee stock ownership plans (ESOPs) holding stock of Subchapter S corporations. The temporary regulations provide guidance on identifying disqualified persons and determining whether a plan year is a nonallocation year under Section 409(p) and on the definition of synthetic equity under section 409(p)(5). These temporary regulations would generally affect plan sponsors of, and participants in, ESOPs holding stock of Subchapter S corporations. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective July 21, 2003.

Applicability Date: These temporary regulations are applicable with respect to plan years ending after October 20, 2003.

FOR FURTHER INFORMATION CONTACT: John T. Ricotta at (202) 622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 4975(e)(7) provides that an ESOP is a defined contribution plan that is designed to invest primarily in qualifying employer securities and that is either a stock bonus plan which is qualified, or a stock bonus plan and money purchase pension plan both of which are qualified, under section 401(a). Section 4975(e)(7) authorizes the Secretary to issue regulations imposing additional requirements for ESOPs (*see* § 54.4975–11 of the Excise Tax Regulations). A plan is not treated as an ESOP under the Code unless it meets the following requirements, to the extent applicable: Section 409(h) (relating to participants' right to receive employer securities; put options); section 409(o) (relating to participants' distribution rights and payment requirements); section 409(n) (relating to securities received in transactions to which section 1042 applies); section 409(p) (relating to prohibited allocations of securities in an S corporation); section 664(g) (relating to qualified gratuitous transfers of qualified employer securities); and section 409(e) (relating to participants' voting rights if the employer has a registration-type class of securities). As authorized by section 4975(e)(7), additional requirements are imposed under § 54.4975–11.

Section 1361(b)(1)(D) provides that a Subchapter S corporation (S corporation) may not have more than one class of stock. Section 1361(b)(1)(B) provides that an S corporation may not have as a shareholder a person that is not an estate, a trust described in section 1361(c)(2), an organization described in section 1361(c)(6), or an individual. In 1996, section 1361(c)(6) was amended to permit a qualified plan under section 401(a) to be a shareholder in an S corporation. Section 1316(a) of the Small Business Job Protection Act of 1996 (SBJPA) (110 Stat. 1755) (1996).

Section 511(a)(1) imposes a tax on the unrelated business taxable income (as defined in section 512(a)) of organizations described in section 511(a)(2), which include plans that qualify under section 401(a). Section 512(e)(1) provides that if an organization described in section 1361(c)(6) holds stock in an S corporation, the interest is treated as an interest in an unrelated trade or business and, notwithstanding the organization's general tax-exempt status, all items of income, loss, or deduction taken into account under section 1366(a) and any gain or loss on the disposition of the stock in the S corporation are taken into account in computing the unrelated business taxable income of the organization. In 1997, section 512(e) was amended to provide that section 512(e) does not apply to employer securities (within the meaning of section 409(l)) held by an ESOP described in section 4975(e)(7). Section 1523 of the Taxpayer Relief Act of 1997 (TRA '97) (111 Stat. 788) (1997). Accordingly, S corporation income allocable to stock held by an ESOP is not subject to regular income or unrelated business income tax, but S corporation income allocable to stock held by any other qualified plan or tax-exempt entity under section 501(c)(3) is subject to the unrelated business income tax under section 511.

Congress became aware that the tax exemption for earnings on S corporation stock held by an ESOP may lead to inappropriate tax deferral or avoidance in some cases. In order to address these concerns, Congress enacted section 409(p) as part of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) (115 Stat. 38) (2001). Section 409(p) is intended to limit the tax benefits of ESOPs maintained by S corporations unless the ESOP provides meaningful benefits to rank-and-file employees. As explained in the legislative history:

> The Committee continues to believe that S corporations should be able to encourage employee ownership through an ESOP. The Committee does not believe, however, that ESOPs should be used by S corporation owners to obtain inappropriate tax deferral or avoidance.
>
> Specifically, the Committee believes that the tax deferral opportunities provided by an S corporation ESOP should be limited to those situations in which there is broad-based employee coverage under the ESOP and the ESOP benefits rank-and-file employees as well as highly compensated employees and historical owners.

H.R. Rep. No. 107–51, part 1, at 100 (2001).

Section 409(p)(1) requires an ESOP holding employer securities consisting of stock in an S corporation to provide that no portion of the assets of the plan attributable to (or allocable in lieu of) such employer securities may, during a nonallocation year, accrue (or be allocated directly or indirectly under any plan of the employer meeting the requirements of section 401(a)) for the benefit of any disqualified person, as defined in section 409(p).[1]

Section 409(p)(3)(A) provides that a "nonallocation year" includes any plan year during which the ownership of the S corporation is so concentrated among disqualified persons that they own at least 50 percent of its shares. Section 409(p)(3)(B) provides that, in determining the shares owned by an individual for purposes of section 409(p)(3)(A), the attribution rules of section 318(a) apply, with certain exceptions, and the individual is treated as owning his or her deemed-owned ESOP shares.

Under section 409(p)(4)(C)(i), the term *deemed-owned shares* includes, with respect to any person, the stock in the S corporation constituting employer securities of an ESOP which is allocated to that person under the ESOP, and that person's share of the stock in the S corporation which is held by the ESOP but which is not allocated to participants under the ESOP. Suspense account stock is deemed to be allocated to participants in the same proportion as the most recent plan allocation.

Section 409(p)(4) provides, in general, that whether someone is a "disqualified person" depends on a person's ownership of deemed-owned shares of S corporation stock held by an ESOP (deemed-owned ESOP shares). Section 409(p)(4) provides, in general, that a "disqualified person" means any person whose deemed-owned ESOP shares are at least 10 percent of the number of deemed-owned ESOP or for whom the aggregate number of deemed-owned ESOP shares of such person and the members of such person's family is at least 20 percent of the number of deemed-owned ESOP shares.

The determination of whether someone is a disqualified person and whether a plan year is a nonallocation year is made without regard to "synthetic equity" attributable to that person and is also made separately taking into account synthetic equity. Synthetic equity is a general classification unique to section 409(p). The provisions relating to synthetic equity do not modify the rules relating to S corporations, *e.g.*, the circumstances in which options or similar interests are treated as creating a second class of stock. H.R. Conf. Rep. No. 107–84, at 102 n.52. Under section 409(p)(6)(C), synthetic equity is defined as:

> any stock option, warrant, restricted stock, deferred issuance stock right, or similar interest or right that gives the holder the right to acquire or receive stock of the S corporation in the future. Except to the extent provided in regulations, synthetic equity also includes a stock appreciation right, phantom stock unit, or similar right to a future cash payment based on the value of such stock or appreciation in such value.

Under the rules for the treatment of synthetic equity at section 409(p)(5), if a person owns synthetic equity in an S corporation, then the shares of stock in such corporation on which such synthetic equity is based are generally treated as outstanding stock in such corporation, and as deemed-owned shares of such person, if such treatment of synthetic equity results either in the treatment of any person as a disqualified person or the treatment of any year as a nonallocation year. Accordingly, if a person is treated as a disqualified person or a year is treated as a nonallocation year without regard to synthetic equity, then the inclusion of synthetic equity as outstanding stock does not cause the person to fail to be treated as a disqualified person or the year to fail to be treated as a nonallocation year.

Section 409(p)(7)(A) authorizes the Secretary to prescribe such regulations as may be necessary to carry out the purposes of section 409(p). As indicated by the legislative history above, section 409(p) is intended to limit the tax benefits of ESOPs maintained by S corporations unless the ESOP provides meaningful benefits to rank-and-file employees. *See* H.R. Rep. No. 107–51, part 1, at 100 (2001). Section 409(p)(7)(B) provides that the Secretary may, by regulation or other guidance of general applicability, provide that a nonallocation year occurs in any case in which the principal purpose of the ownership structure of an S corporation constitutes an avoidance or evasion of section 409(p). "For example, this might apply if more than 10 independent businesses are combined in an S corporation owned by an ESOP in order to take advantage of the income tax treatment of S corporations owned by an ESOP." H.R. Conf. Rep. No. 107–84, at 277 (2001).

Under section 656 of EGTRRA, section 409(p) is effective for plan years ending after March 14, 2001, except for those ESOPs eligible for a delayed effective date applicable to certain ESOPs that were established on or before March 14, 2001. *See* Rev. Rul. 2003–6, 2003–3 I.R.B. 286.

Section 4979A imposes a 50 percent excise tax in certain cases, including an allocation of employer securities that is prohibited by section 409(p), the ownership of any synthetic equity by a disqualified person during a nonallocation year, and the occurrence of the first nonallocation year of an ESOP, as described in section 4979A(e)(2)(C).

Explanation of Provisions

Overview

Section 409(p) was enacted to address concerns about ownership structures involving S corporations and ESOPs that concentrate the benefits of the ESOP in a small number of persons. Under the statute as amended, an ESOP is still permitted to hold S corporation stock, provided that the ESOP benefits a sufficiently broad-based group of employees.

These temporary regulations reflect the statutory language under section 409(p)(1) prohibiting an accrual or allocation in a nonallocation year, but do not provide additional guidance on what constitutes a prohibited accrual or allocation. It is expected that this issue will be addressed in additional regulations.

An ESOP has a nonallocation year for any plan year during which, at any time,

[1] This definition is different from the definition of disqualified person for purposes of section 4975.

disqualified persons hold at least 50 percent of the outstanding shares of stock in the S corporation or 50 percent of the outstanding shares of stock and synthetic equity in the S corporation. These temporary regulations provide guidance on the rules applicable for this purpose. In addition, pursuant to section 409(p)(7)(B), these temporary regulations authorize the Commissioner to provide that a nonallocation year exists in any year in which the principal purpose of the ownership structure is avoidance or evasion of section 409(p). These temporary regulations also provide guidance on identification of disqualified persons.

Synthetic Equity

As discussed above, disqualified persons and nonallocation years are identified both with and without synthetic equity. Section 409(p) defines synthetic equity very broadly. Synthetic equity includes restricted stock, rights to acquire stock in the corporation, such as stock options or warrants, and other similar interests. It also includes payments denominated in share value, including a phantom stock unit, stock appreciation right, or similar interest.

In addition, under these temporary regulations, synthetic equity includes two other categories of interests or payments: Nonqualified deferred compensation (even though it is neither payable in, nor calculated by reference to, stock in the S corporation) and rights to acquire interests in certain related entities. In each case, treatment of these interests as synthetic equity is necessary to carry out the Congressional purpose of section 409(p) of limiting the tax deferral opportunities provided by an S corporation ESOP to those situations in which the benefits of the ESOP ownership are available, at a minimum, to a broad group of rank-and-file employees who have the opportunity to be the primary beneficiaries of the growth of the business through the ESOP. Unless these interests are treated as synthetic equity, the benefits associated with ownership of an interest in an S Corporation by means of the ESOP could be concentrated in a small group, and diverted away from the rank-and-file employees, through use of these interests. In this respect, these interests have the same effect as stock appreciation rights payable in cash, which are explicitly included in synthetic equity by statute.

Nonqualified Deferred Compensation as Synthetic Equity

Since the addition of section 409(p), arrangements have been promoted to taxpayers in which an S corporation that is either entirely or substantially owned by an ESOP is used to shelter the income of an active business while the profits of the business are primarily provided for certain management employees of the business through various obligations to make future payments to the employees. Typically in these arrangements, the obligation to make future payments to the management employees suppresses the value of the company's stock that is allocated to rank-and-file employees through the ESOP, depriving them of the opportunity to be the primary beneficiaries of the growth of the business through the ESOP.

For example, under some of these arrangements, the owners of the operating company establish a management company and the operating company agrees to pay management fees equal to substantially all (or most) of the profits of the operating company. The management company agrees to provide future compensation to certain executives or other employees of the operating company or the management company in an amount equal to substantially all of the profits of the management company. Finally, the management company elects to be treated as an S corporation and transfers all, or a substantial portion, of its stock to an ESOP established to cover rank-and-file employees. Under this arrangement, the operating company claims a deduction for the fees paid to the management corporation. The management corporation in turn retains these fees to satisfy its obligations to pay future compensation. Although the stock of the management corporation is owned by the ESOP, the ownership interest held for rank-and-file employees through the ESOP has a substantially reduced value. Rather than being a mechanism for the transfer of not only ownership, but also the rights associated with ownership, to the employees of the S corporation, the ESOP is used as part of a structure designed to shelter profits that will be paid as future compensation for a small group of executives or management employees.

These temporary regulations treat nonqualified deferred compensation provided by the S corporation or certain related entities as synthetic equity, including deferred compensation that is neither payable in stock of the S corporation nor calculated by reference to stock of the S corporation. S Corporations that do not maintain ESOPs typically do not provide nonqualified deferred compensation to owners. By treating nonqualified deferred compensation provided by the S corporation (or certain related entities) as synthetic equity, these temporary regulations address ownership structures that are designed to avoid or evade section 409(p) and provide guidance allowing individuals to determine when these interests result in a failure to comply with section 409(p). Nonqualified deferred compensation is appropriately characterized as synthetic equity because it functions similarly to other forms of synthetic equity by diverting value away from shareholders, thereby reducing the value of the S corporation and diminishing the ESOP's interest in the value that, absent the nonqualified deferred compensation, would be reflected in the shares of the S corporation held by the ESOP. This effect occurs even if the nonqualified deferred compensation is a fixed dollar amount, and even if such deferred compensation is not payable in stock of the S corporation or measured by reference to that stock (directly, such as a stock appreciation right payable in cash, or less directly, such as percentage of the future profits of the S corporation).

Right To Acquire Assets as Synthetic Equity

Under these temporary regulations, rights to acquire stock or other similar interests in a related entity are treated as synthetic equity if the ownership of such interests in the related entity is the only significant asset of the S corporation and the S corporation is the only significant holder of stock (or other similar interests) of the related entity. For this purpose, related entities are entities in which the S corporation holds an interest and with respect to which income is passed through to the S corporation. These rights are properly treated as synthetic equity because they provide the holders of these rights with an opportunity to benefit from the S corporation ESOP structure that is comparable to the opportunity provided through synthetic equity issued directly by the S corporation. Taking rights to acquire stock or other similar interests in a related entity into account as synthetic equity provides a method for identifying situations in which the interests in the S corporation (and its assets) have, directly or indirectly, become concentrated in a manner that should result in a nonallocation year under section 409(p).

These temporary regulations provide that synthetic equity does not include rights to acquire goods or services at fair market value in the ordinary course of business. The temporary regulations do not address, at this time, rights to acquire other assets of the S Corporation or assets of the related entity or other related entities. This absence should not be interpreted as a conclusion that a right to acquire these other assets cannot be synthetic equity. It may be appropriate to treat the right to acquire assets of the S Corporation, other than its interest in a related entity (such as its ownership of a manufacturing plant), as synthetic equity. It may also be appropriate to treat rights to acquire assets held by the related entity as synthetic equity.

The temporary regulations also do not address rights to acquire interests in related entities if the ownership of such interests in the related entity is not the only significant asset of the S corporation or the S corporation is not the only significant holder of stock (or other similar interests) of the related entity. Rights to acquire interests in other related entities is reserved because, for example, it may be appropriate in cases in which a related entity is not the only significant asset of the S Corporation to treat as synthetic equity only a portion of the value of the rights to acquire stock or other similar interests in the related entity.

The IRS and Treasury intend to issue additional regulations providing guidance on the definition of synthetic equity on a number of issues, including issues identified as reserved in these temporary regulations. For example, the IRS and Treasury intend to issue additional guidance relating to rights to acquire interests in other related entities and rights to acquire assets of an S corporation or related entity. The additional regulations are expected to address the treatment of these interests, including how any such interests treated as synthetic equity should be converted into shares of synthetic equity in the S corporation and whether such conversion should take into account the extent to which income of the related entity is allocated to a shareholder that is subject to regular income tax or unrelated trade or business income tax. These items are reserved in order to allow for additional consideration of these issues, including consideration of comments on the proposed regulations accompanying these regulations. The additional regulations are expected to be issued in conjunction with guidance on prohibited accruals or allocations to disqualified persons in a nonallocation year, which is also identified as reserved in these temporary regulations.

In the meantime, these temporary regulations provide an anti-abuse provision treating acquisition rights as synthetic equity in certain situations. Specifically, this treatment applies to an option or right to acquire assets of the S corporation, or a related person, that is part of a structure that provides rights to the holder comparable to the rights provided by arrangements identified as synthetic equity under these temporary regulations and in which the principal purpose of the structure is the avoidance or evasion of section 409(p). In addition, the temporary regulations delegate authority to the Commissioner to provide, through revenue rulings, notices and other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter), that synthetic equity includes a right to acquire stock or other similar interests in a related entity in cases in which the S corporation's interest in the related entity is not the only significant asset of the S corporation or the S corporation is not the only significant owner of the related entity.

Rights To Acquire Shares of Stock That Are Issued and Outstanding

The definition of synthetic equity provides that rights to acquire shares in an S corporation with respect to shares that are, at all times during the period when such rights are effective, both issued and outstanding and held by persons other than the ESOP, S corporation, or a related entity are not synthetic equity. These arrangements include, for example, rights of first refusal held by one shareholder in the S corporation with respect to the shares of another taxable shareholder (*i.e.*, shares held outside the tax-exempt structure created by the ESOP). However, in certain limited cases, a disqualified person who has the right to acquire such issued and outstanding stock is treated as owning the stock if such treatment results in a nonallocation year.

Conversion of Synthetic Equity

Synthetic equity that is determined by reference to shares of S corporation stock is treated as the corresponding number of shares of stock. Synthetic equity that is determined by reference to shares of stock (or similar interests) in a related entity is converted into an equivalent number of shares of stock of the S corporation with the same aggregate value as the number of shares of stock (or similar interests) of the related entity (with such value determined without regard to any lapse restriction as defined at § 1.83–3(i)). The value of any other synthetic equity interest, such as fixed dollar nonqualified deferred compensation, is converted into an equivalent number of shares of stock in the S corporation based on the present value of the interest or right to nonqualified deferred compensation (with such value determined without regard to any lapse restriction as defined at § 1.83–3(i)) and the fair market value of the S corporation shares on the determination date (with both values determined as of any reasonable date during the plan year).

Identification of Disqualified Persons

Under these temporary regulations, a person is a disqualified person based either on deemed-owned ESOP shares or deemed-owned ESOP shares combined with synthetic equity. Whether there is a nonallocation year is then determined by taking into account the holdings of all disqualified persons, first based only on outstanding shares of stock of the corporation and then based on outstanding shares of stock and synthetic equity of the corporation. In accordance with the last sentence of section 409(p)(5), synthetic equity cannot result in a person who is treated as a disqualified person for a year, or a year that is treated as a nonallocation year, not being so treated. In addition, these temporary regulations provide that, in any year in which the Commissioner provides that a nonallocation year occurs because the principal purpose of the ownership structure of the S corporation is an avoidance or evasion of section 409(p), the Commissioner may also treat any individual as a disqualified person.

As a result of the provisions of these temporary regulations relating to synthetic equity, employees who benefit from nonqualified deferred compensation arrangements or who hold rights to acquire interests in certain related entities will be treated as owning synthetic equity and may be treated as disqualified persons. As a result, certain plan years of the ESOP may be treated as nonallocation years. This result will not occur unless the aggregate interest held by disqualified persons—through synthetic equity, direct share ownership, and deemed-owned ESOP shares—constitutes at least half of the value of the outstanding stock and synthetic equity of the S corporation.

Effective Date

In the case of an ESOP holding stock in an S corporation that is eligible for the delayed effective date under section 656(d)(2) of EGTRRA applicable to certain ESOPs established on or before March 14, 2001, these temporary regulations do not apply until plan years beginning on or after January 1, 2005. For an ESOP to which the delayed effective date is not applicable, these temporary regulations are applicable with respect to plan years ending after

October 20, 2003. The temporary regulations permit S corporations to avoid having nonqualified deferred compensation treated as synthetic equity under paragraph (f)(2)(iv) of these temporary regulations by distributing the deferred compensation by July 21, 2004.

Request for Comments in Proposed Regulations and Future Guidance

See the preamble of the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**, which asks for comments with respect to issues raised by S corporation ESOPs.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

Drafting Information

The principal author of these regulations is John T. Ricotta of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.409(p)–1T is also issued under 26 U.S.C. 409(p)(7). * * *

■ 2. Section 1.409(p)–1T is added to read as follows:

§ 1.409(p)–1T Prohibited allocation of securities in an S corporation (temporary).

(a) *Organization of this section.* Sections 409(p) and 4979A apply if a nonallocation year occurs in an employee stock ownership plan (ESOP), as defined in section 4975(e)(7), that holds shares of stock of a Subchapter S corporation (S corporation) that are employer securities as defined in section 409(l). Paragraph (b) of this section sets forth the general rule under section 409(p)(1) and (2) prohibiting an allocation to a disqualified person in a nonallocation year. Paragraph (c) of this section sets forth rules under section 409(p)(3), (5), and (7) for determining whether a year is a nonallocation year, generally based on whether disqualified persons own at least 50 percent of the shares of the S corporation, either taking into account only the outstanding shares of the S corporation (including shares held by the ESOP) or taking into account both the outstanding shares and synthetic equity of the S corporation. Paragraphs (d), (e), and (f) of this section contain definitions of a disqualified person under section 409(p)(4) and (5), deemed-owned ESOP shares under section 409(p)(4)(C), and synthetic equity under section 409(p)(6)(C).

(b) *Prohibited accruals in a nonallocation year*—(1) *General rule.* An ESOP holding employer securities consisting of stock in an S corporation must provide that no portion of the assets of the plan attributable to (or allocable in lieu of) such employer securities may, during a nonallocation year, accrue (or be allocated directly or indirectly under any plan of the employer meeting the requirements of section 401(a)) for the benefit of any disqualified person.

(2) *Additional rules.* [Reserved.]

(c) *Nonallocation year*—(1) *Definition generally.* A *nonallocation year* means a plan year of an ESOP during which, at any time, the ESOP holds any employer securities that are shares of an S corporation and either—

(i) Disqualified persons own at least 50 percent of the number of outstanding shares of stock in the S corporation (including deemed-owned ESOP shares), or

(ii) Disqualified persons own at least 50 percent of the aggregate number of outstanding shares of stock (including deemed-owned ESOP shares) and synthetic equity in the S corporation.

(2) *Attribution rules.* For purposes of this paragraph (c), the rules of section 318(a) apply to determine ownership of shares in the S corporation (including deemed-owned ESOP shares) and synthetic equity. However, for this purpose, section 318(a)(4) (relating to options to acquire stock) is disregarded and, in applying section 318(a)(1), the members of an individual's family include members of the individual's family under paragraph (d)(2) of this section. In addition, an individual is treated as owning deemed-owned ESOP shares of that individual notwithstanding the employee trust exception in section 318(a)(2)(B)(i). If the attribution rules in paragraph (b)(1) of this section apply, those rules must be followed before applying the rules in this paragraph (c)(2).

(3) *Special rule for avoidance or evasion.* Under section 409(p)(7)(B), the Commissioner, in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(B) of this chapter), may provide that a nonallocation year occurs in any case in which the principal purpose of the ownership structure of an S corporation constitutes an avoidance or evasion of section 409(p). For any year that is a nonallocation year under this paragraph (c)(3), the Commissioner may treat any person as a disqualified person.

(4) *Special rule for certain stock rights.* (i) For purposes of paragraph (c)(1) of this section, a person is treated as owning stock that the person has a right to acquire if, at all times during the period when such rights are effective, the stock that the person has the right to acquire is both issued and outstanding and is held by persons other than the ESOP, the S corporation, or a related entity (as defined in paragraph (f)(2)(iii)(A)(*4*) of this section).

(ii) This paragraph (c)(4) applies only if treating persons as owning the shares described in paragraph (c)(4)(i) results in a nonallocation year. This paragraph (c)(4) does not apply to a right that, under § 1.1361–1(l)(2)(iii) or (l)(4)(iii)(C), would not be taken into account in determining if an S corporation has a second class of stock, and does not apply for purposes of determining ownership of deemed-owned ESOP shares or whether an interest constitutes synthetic equity (see the last sentence of paragraph (f)(2)(i)).

(d) *Disqualified persons*—(1) *General rule.* A *disqualified person* is any person for whom—

(i) The number of such person's deemed-owned ESOP shares is at least 10 percent of the number of deemed-owned ESOP shares of the S corporation;

(ii) The aggregate number of such person's deemed-owned ESOP shares and synthetic equity shares is at least 10 percent of the aggregate number of deemed-owned ESOP and synthetic equity shares of the S corporation;

(iii) The aggregate number of deemed-owned ESOP shares of such person and of the members of such person's family is at least 20 percent of the number of deemed-owned ESOP shares of the S corporation; or

(iv) The aggregate number of deemed-owned ESOP shares and synthetic equity shares of such person and of the members of such person's family is at least 20 percent of the aggregate number of deemed-owned ESOP and synthetic equity shares of the S corporation.

(2) *Treatment of family members; definition.* (i) Each member of the family of any person who is a disqualified person under paragraph (d)(1)(iii) or (iv) of this section is a disqualified person. *Member of the family* means, with respect to an individual—

(A) The spouse of the individual;

(B) An ancestor or lineal descendant of the individual or the individual's spouse;

(C) A brother or sister of the individual or of the individual's spouse and any lineal descendant of the brother or sister; and

(D) The spouse of any individual described in paragraph (d)(2)(ii) or (iii) of this section.

(ii) A spouse of an individual who is legally separated from such individual under a decree of divorce or separate maintenance is not treated as such individual's spouse for purposes of this paragraph (d)(2).

(3) *Special rule for certain nonallocation years.* See paragraph (c)(3) of this section (relating to avoidance or evasion of section 409(p)) for a special rule permitting any person to be treated as a disqualified person in certain nonallocation years.

(e) *Deemed-owned ESOP shares.* A person is treated as owning his or her deemed-owned ESOP shares. *Deemed-owned ESOP shares* mean, with respect to any person—

(1) Any shares of stock in the S corporation constituting employer securities that are allocated to such person's account under the ESOP; and

(2) Such person's share of the stock in the S corporation that is held by the ESOP but is not allocated to the account of any participant or beneficiary (with such person's share to be determined in the same proportion as the most recent stock allocation under the ESOP).

(f) *Synthetic equity*—(1) *Ownership of synthetic equity.* For purposes of section 409(p) and this section, synthetic equity is treated as owned by a person in the same manner as stock is treated as owned by a person, directly or under the rules of section 318(a)(2) and (3). *Synthetic equity* means the rights described in paragraph (f)(2) of this section.

(2) *Synthetic equity*—(i) *Rights to acquire stock of the S corporation. Synthetic equity* includes any stock option, warrant, restricted stock, deferred issuance stock right, stock appreciation right payable in stock, or similar interest or right that gives the holder the right to acquire or receive stock of the S corporation in the future. Rights to acquire stock in an S corporation with respect to stock that is, at all times during the period when such rights are effective, both issued and outstanding and held by persons other than the ESOP, the S corporation, or a related entity, are not synthetic equity (but see paragraph (c)(4) of this section).

(ii) *Special rule for certain stock rights. Synthetic equity* also includes a right to a future payment (payable in cash or any other form other than stock of the S corporation) from an S corporation that is based on the value of the stock of the S corporation or appreciation in such value, such as a stock appreciation right with respect to stock of an S corporation that is payable in cash or a phantom stock unit with respect to stock of an S corporation that is payable in cash.

(iii) *Rights to acquire assets of an S corporation or related entity*—(A) *Rights to acquire interests in a related entity*—(*1*) *Treatment as synthetic equity. Synthetic equity* includes a right to acquire stock or other similar interests in a related entity that is described in this paragraph (f)(2)(iii)(A).

(*2*) Significant interests. *Synthetic equity* includes a right to acquire stock or other similar interests in a related entity if such interests in the related entity are the only significant asset of the S corporation and the S corporation is the only significant owner of the related entity. Whether an asset is the only significant asset of the S corporation or the S corporation is the only significant owner of the related entity depends on the relevant facts and circumstances.

(*3*) *Rights to acquire interests in other related entities.* [Reserved]

(*4*) *Related entity.* For purposes of this section, *related entity* means any entity in which the S corporation holds an interest and which is a partnership, a trust, an eligible entity that is disregarded as an entity that is separate from its owner under § 301.7701–3 of this chapter or a Qualified Subchapter S Subsidiary under section 1361(b)(3).

(B) *Rights to acquire assets of an S corporation or related entity other than rights to acquire stock or similar interests in a related entity*—(*1*) *General rule.* [Reserved]

(*2*) *Exception for rights to acquire goods or services in ordinary course of business. Synthetic equity* does not include rights to acquire goods or services at fair market value in the ordinary course of business.

(C) *Authority to provide guidance.* The Commissioner, in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(B) of this chapter), may provide that *synthetic equity* includes a right to acquire stock or other similar interests in a related entity in cases in which such interests in the related entity are not the only significant asset of the S corporation or the S corporation is not the only significant owner of the related entity if necessary to carry out the purposes of section 409(p).

(D) *Synthetic equity includes comparable rights.* An option or right to acquire assets of the S corporation or another person is treated as synthetic equity if such option or right is part of a structure that provides rights to the holder comparable to the rights provided by arrangements identified as synthetic equity under this paragraph (f)(2)(iii) and the principal purpose of the structure is the avoidance or evasion of section 409(p).

(iv) *Special rule for nonqualified deferred compensation. Synthetic equity* also includes any remuneration for services rendered to the S corporation, or a related entity, to which section 404(a)(5) applies (including remuneration for which a deduction would be permitted under section 404(a)(5) if separate accounts were maintained), any right to receive property (to which section 83 applies) in a future year for the performance of services to an S corporation, or related entity, and any transfer of property (to which section 83 applies) in connection with the performance of services to an S corporation, or a related entity, to the extent that the property is not substantially vested within the meaning of § 1.83–3(i) by the end of the plan year in which transferred. *Synthetic equity* also includes any other remuneration for services rendered to the S corporation, or a related entity, under a plan, or method or arrangement, deferring the receipt of compensation to a date that is after the 15th day of the 3rd calendar month after the end of the entity's taxable year in which the related services are rendered, other than a plan that is an eligible retirement plan within the meaning of section 402(c)(7)(B).

(3) *No overlap among shares of deemed-owned ESOP shares or synthetic equity.* Synthetic equity under this paragraph (f) does not include shares that are deemed-owned ESOP shares. In addition, synthetic equity under a specific subparagraph of this paragraph (f) does not include anything that is synthetic equity under a preceding subparagraph of this paragraph (f).

(4) *Number of synthetic shares*— (i) *Synthetic equity determined by reference to S corporation shares.* In the case of synthetic equity that is determined by reference to shares of stock of the S corporation, the person who is entitled to the synthetic equity is treated as owning the corresponding number of shares of stock. For example, if a corporation grants an employee of an S corporation an option to purchase 100 shares of the corporation's stock, the employee is the deemed owner of 100 synthetic equity shares of the stock of the corporation.

(ii) *Synthetic equity determined by reference to shares in a related entity.* In the case of synthetic equity that is determined by reference to shares of stock (or similar interests) in a related entity, the person who is entitled to the synthetic equity is treated as owning shares of stock of the S corporation with the same aggregate value as the number of shares of stock (or similar interests) of the related entity (with such value determined without regard to any lapse restriction as defined at § 1.83–3(i)).

(iii) *Other synthetic equity.* In the case of any other synthetic equity, the person who is entitled to the synthetic equity is treated as owning a number of shares of stock in the S corporation equal to the present value of the synthetic equity (with such value determined without regard to any lapse restriction as defined at § 1.83–3(i)) divided by the fair market value of a share of the S corporation's stock as of the same date. For purposes of this paragraph (f)(4)(iii), the number of shares of S corporation is permitted to be determined as of the first day of the ESOP's plan year, or any other reasonable determination date or dates during a plan year that is consistently used by the corporation for this purpose for all persons. The number of shares of synthetic equity treated as owned for any period from a determination date through the date immediately preceding the next following determination date is the number of shares treated as owned on the first day of that period.

(g) *Examples.* The rules of this section are illustrated by the following examples:

Example 1. (i) *Facts.* Corporation X is a calendar year S corporation that maintains an ESOP. X has a single class of common stock, of which there are a total of 1,200 shares outstanding. X has no synthetic equity. In 2006, individual A, who is not an employee of X (and is not related to any employee of X), owns 100 shares directly, individual B owns 100 shares directly, and the remaining 1,000 shares are owned by an ESOP maintained by X for its employees. The ESOP's 1,000 shares are allocated to the accounts of individuals who are employees of X (none of whom are related), as set forth in columns 1 and 2 in the following table:

1—Shareholders	2—Deemed-owned ESOP shares (total of 1,000)	3—Percentage deemed-owned ESOP shares	4—Disqualified person
B	33	33	Yes.
C	145	14.5	Yes.
D	75	7.5	No.
E	30	3	No.
F	20	2	No.
Other participants	400 (none exceed 10 shares)	1 or less	No

(ii) *Conclusion with respect to disqualified persons.* As shown in column 4 in the table above, individuals B and C are disqualified persons for 2006 under paragraph (d)(1) of this section because each owns at least 10% of X's deemed-owned ESOP shares.

(iii) *Conclusion with respect to nonallocation year.* However, 2006 is not a nonallocation year under section 409(p) because disqualified persons do not own at least 50% of X's outstanding shares (the 100 shares owned directly by B, B's 330 deemed-owned ESOP shares, plus C's 145 deemed-owned directly by B, B's 330 deemed owned ESOP shares, plus C's 145 deemed-owned ESOP shares equal only 47.9% of the 1,200 outstanding shares of X).

Example 2. (i) *Facts.* The facts are the same as in *Example 1*, except that, as shown in column 4 of the table below, individual E has an option to acquire 500 shares of the common stock of X from X:

1—Shareholders	2—Deemed-Owned ESOP shares (total of 1,000)	3—Percentage deemed-owned ESOP shares	4—Synthetic equity (500)	5—Percentage deemed-owned ESOP plus Synthetic equity shares (total of 1,500)	6—Disqualified person
B	330	33		22	Yes (cols. 3 and 5).
C	145	14.5		9.7	Yes (col. 3).
D	75	7.5		5	No.
E	30	3	500	35.3	Yes (col. 5).
F	20	2		1.3	No.
Other participants	400 (none exceed 10 shares).	1 or less		under 1	No.

(ii) *Conclusion with respect to disqualified persons.* E's option constitutes 500 shares of synthetic equity. Accordingly, as shown in column 6 in the table above, individuals B, C, and E are disqualified persons for 2006 because each owns at least 10% of X's deemed-owned ESOP shares or X's total deemed-owned ESOP and synthetic equity shares.

(iii) *Conclusion with respect to nonallocation year.* The 100 shares owned directly by B, B's 330 deemed-owned ESOP shares, C's 145 deemed-owned ESOP shares, E's 30 deemed-owned ESOP shares, plus E's 500 synthetic equity shares equals 65% of the 1,700 outstanding and synthetic equity shares of X. Thus, 2006 is a nonallocation year for X's ESOP under section 409(p) because disqualified persons own at least 50% of X's total shares of outstanding stock and synthetic equity. In addition, independent of the preceding conclusion, 2006 would be a nonallocation year because disqualified persons own at least 50% of X's outstanding shares because the 100 shares owned directly by B, B's 330 deemed-owned ESOP shares, C's 145 deemed-owned ESOP shares, plus E's 30 deemed-owned ESOP shares equals 50.4% of the 1,200 outstanding shares of X.

(h) *Effective date*—(1) *General effective dates.* Except as provided in paragraph (h)(2) of this section, section 409(p) applies for plan years ending after March 14, 2001 and this section applies for plan years ending after October 20, 2003, except that paragraph (f)(2)(iv) of this section is disregarded with respect to nonqualified deferred compensation that is distributed on or before July 21, 2004.

(2) *Certain ESOPs established on or before March 14, 2001.* If an ESOP holding stock in an S corporation was established on or before March 14, 2001 and the election under section 1362(a) with respect to that S Corporation was in effect on March 14, 2001,

Robert E. Wenzel,

Deputy Commissioner of Services and Enforcement.

Approved: July 9, 2003.

Pamela F. Olson,

Assistant Secretary of (Tax Policy).

[FR Doc. 03–18210 Filed 7–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AL41

Increase in Rates Payable Under the Montgomery GI Bill—Selected Reserve

AGENCIES: Department of Defense, Department of Homeland Security (Coast Guard), and Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: By statute, the monthly rates of basic educational assistance payable to reservists under the Montgomery GI Bill—Selected Reserve must be adjusted each fiscal year. In accordance with the statutory formula, the regulations governing rates of basic educational assistance payable under the Montgomery GI Bill—Selected Reserve for Fiscal Year 2003 (October 1, 2002, through September 30, 2003) are changed to show a 1.5% increase in these rates.

DATES: *Effective Date:* This final rule is effective July 21, 2003.

Applicability Date: The changes in rates are applied retroactively to conform to statutory requirements. For more information concerning the dates of application, see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Lynn M. Cossette, Education Adviser, Education Service (225C), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7294.

SUPPLEMENTARY INFORMATION: Under the formula mandated by 10 U.S.C. 16131(b) for Fiscal Year 2003, the rates of basic educational assistance under the Montgomery GI Bill—Selected Reserve payable to students pursuing a program of education full time, three-quarter time, and half time must be increased by 1.5%, which is the percentage by which the total of the monthly Consumer Price Index-W for July 1, 2001, through June 30, 2002, exceeds the total of the monthly Consumer Price Index-W for July 1, 2000, through June 30, 2001.

10 U.S.C. 16131(b) requires that full-time, three-quarter time, and half-time rates be increased as noted above. In addition, 10 U.S.C. 16131(d) requires that monthly rates payable to reservists in apprenticeship or other on-the-job training must be set at a given percentage of the full-time rate. Hence, there is a 1.5% raise for such training as well.

10 U.S.C. 16131(b) also requires that the Department of Veterans Affairs (VA) pay reservists training less than half time at an appropriately reduced rate. Since payment for less than half-time training became available under the Montgomery GI Bill—Selected Reserve in Fiscal Year 1990, VA has paid less than half-time students at 25% of the full-time rate. Changes are made consistent with the authority and formula described in this paragraph.

A nonsubstantive correction is made in 38 CFR 21.7636 to designate the table as paragraph (a)(2)(i).

The changes set forth in this final rule are effective from the date of publication, but the changes in rates are applied from October 1, 2002, in accordance with the applicable statutory provisions discussed above.

Administrative Procedure Act

Substantive changes made by this final rule merely reflect statutory requirements and adjustments made based on previously established formulas. Accordingly, there is a basis for dispensing with prior notice and comment and delayed effective date provisions of 5 U.S.C. 552 and 553.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The initial and final regulatory flexibility analyses requirements of sections 603 and 604 of the Regulatory Flexibility Act, 5 U.S.C. 601–612, are not applicable to this rule, because a notice of proposed rulemaking is not required for this rule. Even so, the Secretary of Defense, the Commandant of the Coast Guard, and the Secretary of Veterans Affairs hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act. This final rule directly affects only individuals and does not directly affect small entities. Therefore, this final rule is also exempt pursuant to 5 U.S.C. 605(b) from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Catalog of Federal Domestic Assistance Program Numbers

There is no Catalog of Federal Domestic Assistance number for the program affected by this final rule.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health programs, Loan programs-education, Loan

programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: February 20, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

Sally Brice-O'Hara,

Rear Admiral, U.S. Coast Guard, Acting Assistant Commandant for Human Resources.

Charles S. Abell,

Principal Deputy Under Secretary of Defense (Personnel and Readiness).

■ For the reasons set out above, 38 CFR part 21, subpart L, is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart L—Educational Assistance for Members of the Selected Reserve

■ 1. The authority citation for part 21, subpart L, continues to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), ch. 36, unless otherwise noted.

■ 2. Section 21.7636 is amended by:

■ a. Revising paragraphs (a)(1) and (a)(2)(i) introductory text and table.

■ b. In paragraph (a)(3), removing "September 30, 2001, and before October 1, 2002," and adding, in its place, "September 30, 2002, and before October 1, 2003,".

The revisions read as follows:

§ 21.7636 Rates of payment.

(a) *Monthly rate of educational assistance.* (1) Except as otherwise provided in this section or in § 21.7639, the monthly rate of educational assistance payable for training that occurs after September 30, 2002, and before October 1, 2003, to a reservist pursuing a program of education is the rate stated in this table:

Training	Monthly rate
Full time	$276.00
¾ time	207.00
½ time	137.00
¼ time	69.00

(2)(i) The monthly rate of basic educational assistance payable to a reservist for apprenticeship or other on-the-job training full time that occurs after September 30, 2002, and before October 1, 2003, is the rate stated in this table:

Training period	Monthly rate
First six months of pursuit of training	$207.00
Second six months of pursuit of training	151.80
Remaining pursuit of training	96.60

* * * * *

[FR Doc. 03–18435 Filed 7–18–03; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN157–1a; FRL–7517–5]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a State Implementation Plan (SIP) revision submitted by the Indiana Department of Environmental Management (IDEM) on January 7, 2003. The revised SIP pertains to certain miscellaneous metal coating operations and the control of gasoline Reid vapor pressure in Clark and Floyd Counties, Indiana. The purpose of this action is to approve amendments to the applicable Indiana rules, assuring that certain controls in the two counties remain in effect even after the counties' redesignation to attainment. In addition, EPA is approving minor changes to the rules, which are administrative in nature and intended to enhance the rules' clarity.

DATES: This rule is effective on September 19, 2003, unless EPA receives adverse written comments by August 20, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of this SIP revision request are available for public inspection during normal business hours at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Francisco J. Acevedo at (312) 886–6061 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone: (312) 886–6061, E-Mail: *acevedo.francisco@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, the term "me" refers to the reader of this rulemaking and the terms "we," "us," or "our" refer to the EPA.

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I. Background

A. What Is a SIP?

Section 110 of the Clean Air Act (Act or CAA) requires states to develop air pollution control regulations and strategies to ensure that state air quality meets the national ambient air quality standards established by the EPA. Each state must submit the regulations and emission control strategies to the EPA for approval and promulgation into the federally enforceable SIP.

Each federally-approved SIP protects air quality primarily by addressing air pollution at its points of origin. The SIPs can be and generally are extensive, containing many state regulations or other enforceable documents and supporting information, such as emission inventories, monitoring documentation, and modeling attainment demonstrations.

B. What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the federally enforceable SIP, states must formally adopt the regulations and emission control strategies consistent with state and federal requirements. This process generally includes public notice, public hearings, public comment periods, and formal adoption by state-authorized rulemaking bodies.

Once a state has adopted a rule, regulation, or emissions control strategy it submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed federal action on the state submission. If we receive adverse comments we address them prior to any final federal action (we generally address them in a final rulemaking action).

The EPA incorporates into the federally approved SIP all state regulations and supporting information it has approved under section 110 of the Act. Records of such SIP actions are maintained in 40 CFR part 52, titled "Approval and Promulgation of Implementation Plans." The actual state regulations the EPA has approved are not reproduced in their entirety in the Code of Federal Regulations (CFR), but are "incorporated by reference," which means that EPA has approved a given state regulation (or rule) with a specific effective date.

C. What Does Federal Approval of a State Rule Mean to Me?

Enforcement of a state rule before and after it is incorporated into a federally approved SIP is primarily a state responsibility. After the rule is federally approved as part of the SIP, however, it becomes enforceable by the EPA, which can then take enforcement actions against violators. The CAA also offers citizens legal recourse to address SIP violations, as provided in section 304 of the Act.

D. What Is the Purpose of Indiana's Miscellaneous Metal Coating Operations and Control of Gasoline Reid Vapor Pressure Requirements?

326 Indiana Administrative Code (IAC) 8–2–9 contains Indiana's miscellaneous metal coating operation requirements, and establishes limitations on the amount of volatile organic compounds that may be discharged into the atmosphere for facilities engaged in the surface coating of miscellaneous metal parts and products. The Indiana Air Pollution Control Board originally adopted these requirements and submitted them to EPA for federal approval on October 23, 1990. EPA incorporated these requirements into Indiana's federally enforceable ozone SIP as part of the State's stationary source control strategy in partial satisfaction of the requirements of the CAA.

326 IAC 13–3 contains Indiana's gasoline Reid vapor pressure requirements, and limits the Reid vapor pressure level of gasoline during the summer ozone season in Clark and Floyd Counties to seven and eight-tenths (7.8) pound per square inch per gallon.

Lower Reid vapor pressure gasoline is a fuel control measure that is used during the summer ozone season to reduce emissions of volatile organic compounds from motor vehicles. Fuel with a lower volatility achieves emissions reductions in ozone precursors by reducing aromatic hydrocarbon emissions from gasoline and thereby reducing its ability to evaporate as quickly. The Indiana Air Pollution Control Board adopted this requirement on July 6, 1995; EPA incorporated it into Indiana's enforceable ozone SIP on February 9, 1996 (61 FR 4895).

E. Why Is Indiana Making Changes to These Rules?

Section 182(a) of the Act requires States with ozone nonattainment areas classified as "marginal" or above to submit SIP revisions to reduce volatile organic compound emissions. Initially, EPA had designated Clark and Floyd Counties as "moderate" for ozone. On October 9, 2001, EPA announced that Clark and Floyd Counties had monitored attainment of the national air quality standard for ozone and had met all applicable requirements of the Act. As a result, EPA approved Indiana's request to redesignate the area to attainment of the ozone standard (See 66 FR 53665).

Because of the change in Clark and Floyd Counties' attainment status, Indiana revisited a number of rules to clarify that certain requirements would continue to apply even after the change in classification. The purpose of today's action is to approve amendments to those Indiana rules which assure that certain controls in the two counties remain in effect even after the counties' redesignation to attainment.

F. What Public Review Opportunities Did Indiana Provide for This Rule?

Indiana held public hearings on this rule on June 5, 2002 and August 7, 2002, in Indianapolis, Indiana. The Indiana Air Pollution Control Board adopted final rules on August 7, 2002. The rule revisions became effective December 15, 2002, and were formally submitted to EPA on January 7, 2003, as a revision to the Indiana SIP for ozone.

II. Evaluation of the Rule

A. What Are the Changes to the State's Miscellaneous Metal Coating Operations and Control of Gasoline Reid Vapor Pressure Requirements?

Indiana's amendments to 326 IAC 8–2–9 (Miscellaneous metal coating operations) and 326 IAC 13–3–1 (Applicability, Control of gasoline Reid vapor pressure) are not a substantive change to the rules, but rather are intended to ensure that certain existing requirements stay in place in Clark and Floyd even though the area has been redesignated to attainment for ozone.

Indiana amended 326 IAC 8–2–9, Miscellaneous metal coating operations, to add language concerning the application of coating in Clark or Floyd County to assure controls in the two counties remained in effect after the counties were redesignated to attainment. Indiana amended 326 IAC 13–3–1, Control of gasoline Reid vapor pressure applicability, to delete the reference to Clark and Floyd Counties being in an ozone nonattainment area. The rest of the changes to the rule are administrative in nature and are intended to enhance the clarity of the rule.

B. Is This Rule Approvable?

Our review of the material submitted indicates that the changes made to Indiana's Miscellaneous metal coatings operations (326 IAC 8–2–9) and Control of gasoline Reid vapor pressure (326 IAC 13–3–1) should assure that certain existing VOC requirements remain in effect. These rule revisions are, therefore, approvable.

III. EPA Rulemaking Action

We are approving, through direct final rulemaking, revisions to Indiana's Miscellaneous metal coatings operations and Control of gasoline Reid vapor pressure requirements. The purpose of this action is to approve amendments to these Indiana rules which assure controls in Clark and Floyd Counties remain in effect, even after the counties' redesignation to attainment. We are publishing this action without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the SIP revision should adverse written comments be filed. This action will be effective without further notice unless we receive relevant adverse written comment by August 20, 2003. Should we receive such comments, we will publish a final rule informing the public that this action

will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, this action will be effective on September 19, 2003.

IV. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 19, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hazardous air pollutants Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 9, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-*et seq.*

Subpart P—Indiana

■ 2. Section 52.770, is amended by adding paragraph (c)(162) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(162) On January 7, 2003 the Indiana Department of Environmental Management submitted a State Implementation Plan (SIP) revision amending certain provisions of Indiana's 326 IAC 8–2–9 (Miscellaneous metal coating operations) and 326 IAC 13–3–1 (Applicability, Control of gasoline Reid vapor pressure).

(i) Incorporation by reference.

(A) 326 Indiana Administrative Code 8–2–9; and 13–3–1 adopted August 7, 2002, effective December 15, 2002.

(ii) Additional materials.

(A) January 7, 2003 letter and enclosures from the Indiana Department of Environmental Management (IDEM) Commissioner to the Regional Administrator of the United States Environmental Protection Agency (EPA) submitting Indiana's revisions to the ozone SIP.

[FR Doc. 03–18298 Filed 7–18–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NY60–257a, FRL–7519–8]

Approval and Promulgation of Implementation Plans; Reasonably Available Control Technology for Oxides of Nitrogen for Specific Sources in the State of New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is announcing approval of a revision to the State Implementation Plan (SIP) for ozone submitted by the State of New York. This revision consists of a source-specific reasonably available control technology (RACT) determination for controlling oxides of nitrogen (NO_X) from eighteen units at three facilities owned by Tenneco Gas Corporation in New York. This direct final rule approves the source-specific RACT determination that was made by New York in accordance with provisions of its regulation. The intended effect of this rulemaking is to approve source-specific emission limitations required by the Clean Air Act.

DATES: This direct final rule is effective on September 19, 2003 without further notice, unless EPA receives adverse comment by August 20, 2003. If an adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866. Electronic comments could be sent either to *Werner.Raymond@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. Go directly to *http://www.regulations.gov*, then select "Environmental Protection Agency" at the top of the page and use the "go" button. Please follow the on-line instructions for submitting comments. Copies of the State submittals are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. New York Department of Environmental Conservation, Division of Air Resources, 625 Broadway, 2nd Floor, Albany, New York 12233. Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102T), 1301 Constitution Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Anthony (Ted) Gardella (*Gardella.Anthony@epa.gov*) or Richard Ruvo (*Ruvo.Richard@epa.gov*), Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION: The following table of contents describes the format for the Supplementary Information section:

I. What Action Is EPA Taking Today?
II. What Is EPA's Finding on the State Submittal?
III. What Are the Clean Air Act Requirements for NO_X RACT?
IV. What Are New York's Regulatory Requirements for NO_X RACT?
A. EPA Approval of New York's NO_X RACT Regulation
B. Case-by-Case NO_X RACT Determinations
V. What Is EPA's Analysis of the State Submittal?
VI. What is EPA's Conclusion?
VII. Statutory and Executive Order Reviews

I. What Action Is EPA Taking Today?

EPA is approving a revision to New York's ozone SIP submitted on November 20, 1996 as supplemented on February 24, 1997. The SIP revision addresses specific sources that were submitted by New York in response to the Clean Air Act (CAA) requirement that states require Reasonably Available Control Technology (RACT) at all major stationary sources of NO_X. The SIP revision consists of a source-specific NO_X RACT determination for controlling oxides of nitrogen (NO_X) from eighteen gas-fired reciprocating engines, located at three compressor stations in New York State, that are owned/operated by Tenneco Gas Corporation (also known as Tenneco Gas Pipeline Company and Tennessee Gas Pipeline Company).

II. What Are EPA's Findings of Each State Submittal?

The following is a summary of EPA's finding for a source-specific SIP revision for the Tenneco Gas Corporation's eighteen stationary internal combustion engines at three facilities. Tenneco Gas sought approval of, and New York agreed to, NO_X RACT emission limits higher than that which are established in Subpart 227–2. It should be noted that EPA is only acting on the permitted emission rates and conditions of approval related to emissions of NO_X; action is not being taken on any other pollutants which may be permitted by New York with regard to these sources.

Tenneco Gas Corporation (Tenneco Gas Pipeline Company or Tennessee Gas Pipeline Company)

Tenneco Gas operates six 1400-horsepower reciprocating engines at the Hamburg (Eden) Compressor Station in Erie County, six 1400-horsepower engines at the Nassau (Chatham) Compressor Station in Columbia County, and five 1400-horsepower and one 3500-horsepower engine (Worthington model ML–12) at the West Winfield Station in Herkimer County. All 18 units are gas-fired reciprocating lean-burn internal combustion engines. The facility's RACT analysis concluded, and New York agreed, that RACT for the seventeen 1400-horsepower engines (Worthington model UTC–165) is low emission combustion, consisting of a pre-combustion chamber with modified turbochargers, whereas RACT for the one 3500-horsepower engine (Worthington ML–12) is timing controls, new air-to-fuel ratio controls and modifications of the turbochargers. The alternative NO_X emission limit for each of the seventeen 1400-horsepower engines is 7.0 grams per horsepower-hour and for the one 3500-horsepower engine is 13.3 grams per horsepower-hour.

III. What Are the Clean Air Act Requirements for NO_X RACT?

The CAA required certain states to develop RACT regulations for major stationary sources of NO_X and to provide for the implementation of the required measures as soon as practicable but no later than May 31, 1995. Under the CAA, the definition of major stationary source is based on the tons per year (tpy) air pollution a source emits and the quality of the air in the area of the source. In ozone transport regions, attainment/unclassified areas as well as marginal and moderate ozone nonattainment areas, a major stationary source for NO_X is considered to be one which emits or has the potential to emit 100 tpy or more of NO_X and is subject to the requirements of a moderate nonattainment area. New York is within the Northeast ozone transport region

established by section 184(a) of the Act. New York has defined a major stationary source of NO_X as a source which has the potential to emit 25 tpy in the New York City and lower Orange County metropolitan areas and 100 tpy in the rest of the State. Consequently, all major stationary sources of NO_X within the State of New York are required to implement RACT no later than May 31, 1995. For detailed information on the CAA requirements for NO_X RACT see the Technical Support Document prepared for today's action.

IV. What Are New York's Regulatory Requirements for NO_X RACT?

A. EPA Approval of New York's NO_X RACT Regulation

On January 20, 1994, New York submitted to EPA for approval, as a revision to the SIP, 6 NYCRR Subpart 227–2, the State's NO_X RACT plan entitled "Reasonably Available Control Technology For Oxides of Nitrogen (NO_X RACT)—Stationary Combustion Installations." Subpart 227–2 provides the NO_X RACT requirements for combustion sources in New York and it became effective 30-days after being adopted on January 19, 1994. On April 29, 1999, New York submitted amendments to Subpart 227–2 as part of the State's NO_X Budget Trading Program (Part 227–3) SIP revision. On April 28, 2000, the EPA final approval action on the two SIP revisions for Subpart 227–2 was published in the **Federal Register** (65 FR 24875).

On April 3, 2000, New York submitted to EPA for approval additional amendments to Subpart 227–2 as part of the State's NO_X Budget Trading Program SIP revision (Part 204). On May 22, 2001, the EPA final approval action on the April 2000 submittal was published in the **Federal Register** (66 FR 28059).

B. Case-by-Case NO_X RACT Determinations

Provisions within Subpart 227–2 establish a procedure for a case-by-case determination of what represents RACT for an item of equipment or source operation. This procedure is applicable in two situations: (1) If the major NO_X facility contains any source operation or item of equipment of a category not specifically regulated in Subpart 227–2, or (2) if the owner or operator of a source operation or item of equipment of a category that is regulated in Subpart 227–2 seeks approval of an alternative maximum allowable emission limit.

Subpart 227–2 requires the owners and/or operators of the affected facility to submit either a RACT proposal if they are not covered by specific emission limitations or a request for an alternative maximum allowable emission limit if they are covered by specific emission limitations. For each situation, the owners/operators must include a technical and economic feasibility analysis of the possible alternative control measures. RACT determinations for an alternative maximum allowable emission limit must consider alternative control strategies (*i.e.*, system wide averaging and fuel switching) in addition to considering control technologies (*e.g.*, low NO_X burners). In either case, Subpart 227–2 provides for New York to establish emission limits based upon a RACT determination specific to the facility. The resulting alternative maximum allowable emission limit must be submitted to EPA for approval as a SIP revision.

V. What Is EPA's Analysis of the State Submittal?

The source specific SIP revision that is the subject of this action was adopted by New York in August 1995 and February 1997, and found by EPA to be administratively and technically complete. The SIP revision was a request by New York for EPA approval of alternative emission limits in accordance with provisions of Subpart 227–2 for stationary combustion sources. Prior to adoption, New York published its proposed RACT determinations in the State's "Environmental Notice Bulletin" and provided 30 days for public comment and an opportunity to request a public hearing. There were no requests for public hearings and New York reviewed and responded to all comments made. New York determined that the alternative maximum allowable emission limits proposed by the owner conform with the applicable provisions of Subpart 227–2. New York has issued to the owner a revised permit to construct/certificate to operate and/or special permit conditions incorporating approved permit conditions which are fully enforceable by the State and which contain conditions consistent with Subpart 227–2. These permitted documents are identified in the "Incorporation by reference" section at the end of this rulemaking.

EPA has determined that the NO_X emission limits identified in New York's approved permits to construct/certificates to operate and/or special permit conditions represent RACT for each source identified in this action. The permit conditions include emission limits, work practice standards, testing, monitoring, and record keeping/reporting requirements. These permit conditions are consistent with the NO_X RACT requirements specified in Subpart 227–2 and conform to EPA's NO_X RACT guidance. Therefore, EPA is approving the source-specific SIP revision submitted by New York dated November 20, 1996, as supplemented on February 24, 1997.

EPA's evaluation of the RACT submittal is detailed in a document entitled "Technical Support Document-NO_X RACT Source Specific SIP Revisions-State of New York." A copy of that document is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

VI. What Is EPA's Conclusion?

The EPA is approving the source-specific compliance plans described above as RACT for the control of NO_X emissions from the eighteen sources located at three facilities identified in the this source-specific SIP revision. Please note that if EPA receives an adverse comment on an amendment, paragraph, or specific source addressed in this direct final rule and if the provision that relates to the adverse comment may be severed from the remainder of the rule, EPA may sever the provision and adopt as final those provisions of the rule that are not the subject of the adverse comment.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the same source-specific SIP revision should adverse comments be filed. This final rule will be effective September 19, 2003 without further notice unless the Agency receives relevant adverse comments by August 20, 2003.

If the EPA receives adverse comments, then EPA will publish a notice withdrawing the final rule or the portion to be severed from the final rule and informing the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 19, 2003 and no further action will be taken on the proposed rule.

VII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization; procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 19, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: June 17, 2003.

Jane M. Kenny,

Regional Administrator, Region 2.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart HH—New York

■ 2. Section 52.1670 is amended by adding new paragraph (c)(102) to read as follows:

§ 52.1670 Identification of plan.

* * * * *

(c) * * *

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(102) Revisions to the State Implementation Plan submitted by the New York State Department of Environmental Conservation on November 20, 1996 as supplemented on February 24, 1997.

(i) Incorporation by reference:

(A) Permits to Construct/Certificates to Operate: The following facilities have been issued permits to construct/certificates to operate and/or special permit conditions by New York State and such permits and/or certificates are incorporated for the purpose of establishing NO_X emission limits consistent with Subpart 227–2:

(*1*) Tenneco Gas Corporation's (also known as Tenneco Gas Pipeline Company and Tennessee Gas Pipeline Company) eighteen gas-fired reciprocating internal combustion engines, Erie, Columbia, and Herkimer Counties; Compressor Station #229 at Eden, NY: permits to construct and certificates to operate dated August 22, 1995 for emission points 0001A through 0006A; Compressor Station #254 at Chatham, NY: permits to construct and certificates to operate dated October 4, 1995 with attached Special Conditions dated September 15, 1995 for emission points 00001 through 00006; Compressor Station #245 at West Winfield, NY: Special (Permit) Conditions attached to New York State's letter dated February 24, 1997 for emission points 00001 through 00006.

(*2*) [Reserved]

(ii) Additional information—Documentation and information to support NO_X RACT alternative emission limits in two letters addressed to EPA from New York State Department of Environmental Conservation and dated as follows:

(*1*) November 20, 1996 letter to Ms. Kathleen C. Callahan, Director of the Division of Environmental Planning and Protection from Deputy Commissioner David Sterman providing a SIP revision for Tenneco Gas Pipeline Company.

(*2*) February 24, 1997 letter to Ronald Borsellino, Chief of the Air Programs Branch from Donald H. Spencer, P.E., providing supplemental information for Tenneco Gas Pipeline Company's Compressor Station #245.

[FR Doc. 03–18301 Filed 7–18–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 21, 22, 24, 27, 73, 80, 90, 95 and 101

[WT Docket No. 97–82; FCC 03–98]

Competitive Bidding Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission addresses five petitions for reconsideration filed in response to the Commission's Part 1 *Order on Reconsideration of the Third Report and Order, and Fifth Report and Order*. The Commission also adopts several minor modifications and revisions to certain part 1 general competitive bidding rules to provide specific guidance to auction participants and to streamline the competitive bidding regulations.

DATES: Effective September 19, 2003.

FOR FURTHER INFORMATION CONTACT: Regina Martin, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660.

SUPPLEMENTARY INFORMATION: This is a summary of the *Second Order on Reconsideration of the Third Report and Order, and Order on Reconsideration of the Fifth Report and Order*, adopted on April 22, 2003 and released on May 8, 2003. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

I. Overview

1. In the *Second Order on Reconsideration of the Third Report and Order, and Order on Reconsideration of the Fifth Report and Order*, the Commission addresses five petitions for reconsideration filed in response to the Commission's *Order on Reconsideration of the Part 1 Third Report and Order*, 65 FR 52401 (August 29, 2000), and *Fifth Report and Order*, 65 FR 52323 (August 29, 2000), which clarified and amended the general competitive bidding rules for all auctionable services.

2. Specifically, in the *Order on Reconsideration of the Part 1 Fifth Report and Order*, the Commission:

- Clarifies that in calculating an applicant's gross revenues under the controlling interest standard, the personal net worth, including personal income, of its officers and directors will not be attributed to the applicant. To the extent that the officers and directors of the applicant are controlling interest holders of other entities, the Commission will attribute the gross revenues of those entities to the applicant.
- Establishes a narrow exemption for the officers and directors of a rural telephone cooperative so that the gross revenues of the affiliates of a rural telephone cooperative's officers and directors need not be attributed to the applicant. Specifically, the gross revenues of the affiliates of an applicant's officers and directors will not be attributed if either the applicant or a controlling interest, as the case may be, meets *all* of the following conditions: (i) The applicant (or the controlling interest) is validly organized as a cooperative pursuant to state law; (ii) the applicant (or the controlling interest) is a "rural telephone company" as defined by the Communications Act; and (iii) the applicant (or the controlling interest) is eligible for tax-exempt status under the Internal Revenue Code. However, the exemption will not apply if the gross revenues or other financial and management resources of the affiliates of the applicant's officers and directors (or the controlling interest's officers and directors) are available to the applicant.
- Declines to revise the controlling interest standard to exclude entities operating under control group structures.
- Modifies the Commission's part 1 default payment rule, § 1.2104(g)(2), to incorporate the combinatorial bidding default rule adopted in the *700 MHz Second Memorandum Opinion and Order*.
- Revises the part 1 rules to make certain conforming edits in the following areas: (i) License default; (ii) definition of consortium; (iii) women- and minority-owned businesses; (iv) clarification of the attribution rule; (v) ownership disclosure requirements; and (vi) short-form disclosure requirements for small or very small business consortiums. Additionally, technical edits are made to Commission rules that refer to service-specific competitive bidding rules that have been removed, revised, or modified.

3. In the *Second Order on Reconsideration of the Part 1 Third Report and Order*, the Commission:

- Dismisses a repetitive challenge to modifications to the installment payment rules adopted in the *Part 1 Third Report and Order*, 63 FR 770 (January 7, 1998) and the *Order on Reconsideration of the Part 1 Third Report and Order*.
- Reorganizes § 1.2112(a) to move the requirement that each application fully disclose all "real party or parties in interest" into § 1.2112(a)(1). The Commission also conforms § 1.2112(a)(1) to the disclosure requirements as set forth in § 1.919(e) to ensure a complete disclosure of the identity and relationship of those persons or entities directly or indirectly owning or controlling (or both) the applicant.

II. Order on Reconsideration of the Part 1 Fifth Report and Order

A. Controlling Interest Standard

4. In the *Part 1 Fifth Report and Order*, 65 FR 52323 (August 29, 2000), the Commission adopted as its general attribution rule a controlling interest standard, § 1.2110(c)(2), to be used for determining which applicants are eligible for small business status. The attribution rule is significant because, among other things, it is used to determine which applicants qualify as small businesses and therefore, may apply for bidding credits if they are available in a particular service.

5. Under the controlling interest standard, the Commission attributes to the applicant the gross revenues of the applicant, its controlling interests, the applicant's affiliates, and the affiliates of the applicant's controlling interests, in assessing whether the applicant is eligible for the Commission's small business provisions. Section 1.2110(c)(2)(i) defines a controlling interest as including "individuals or entities with either *de jure* or *de facto* control." Thus, there may be more than one "controlling interest" whose gross revenues must be counted. The premise of this rule is that all parties that control an applicant or have the power to control an applicant, and such parties' affiliates, will have their gross revenues counted and attributed to the applicant in determining the applicant's eligibility for small business status or for any other size-based status using a gross revenue threshold.

Attribution of Officers and Directors

Personal Net Worth of Officers and Directors.

6. Generally, the Commission has excluded personal net worth, including personal income and assets, from attribution for purposes of eligibility for small business provisions. In making this determination, the Commission has stated that attribution of personal net worth was not necessary because most wealthy individuals are likely to have their wealth tied to the ownership of other businesses. The Commission finds this rationale equally applicable here. Accordingly, for purposes of the controlling interest standard, the Commission clarifies that in calculating an applicant's gross revenues under § 1.2110, the personal net worth, including personal income and assets, of its officers and directors will *not* be attributed to the applicant. This clarification is consistent with the Commission's decisions in several service-specific rulemakings. For instance, in using the controlling interest standard to determine the eligibility of applicants in the 929–931 MHz Paging Service ("Auction No. 26") for small business bidding credits, the Commission made clear that the personal net worth, including personal income, of controlling interests was not attributable to the applicant.

7. Personal income of officers and directors, however, is distinguishable from the gross revenues received by any business entities such individuals may control. For example, if an officer or director were to operate a separate business, the gross revenues derived from that separate business would be attributed to the applicant, although any personal income from such separate business would not be attributed. Further, if an officer or director of an applicant were an affiliate of another entity through any ownership interest or other means of affiliation, the gross revenues of such entity would be attributed to the applicant, whereas any income derived directly by an officer or director from that entity would be considered personal income and not attributed to the applicant. Finally, applicants are reminded that by operation of the Commission's rules all affiliates of controlling interests are attributable to the applicant. Thus, although the Commission does not attribute to the applicant the personal income of its officers and directors, to the extent that the officers and directors are controlling interest holders of other entities, the Commission attributes the gross revenues of those entities to the applicant.

Application of Attribution Rule to the Officers and Directors of a Rural Telephone Cooperative.

8. The Commission grants Rural Telecommunications Group's ("RTG") request to exclude from attribution the gross revenues of entities controlled by a rural telephone cooperative's officers and directors, by providing a narrow exemption only available where the gross revenues of the affiliates of a rural telephone cooperative's officers and directors would otherwise be attributable based solely on their status as officers and directors of the rural telephone cooperative applicant or as officers and directors of a rural telephone cooperative that controls the applicant. However, if an officer or director of a rural telephone cooperative is considered a controlling interest of the applicant under another section of the controlling interest attribution rule, this exemption does not apply. For example, if an officer or director of the rural telephone cooperative manages its operations pursuant to a management agreement and either has authority to make certain decisions regarding the services offered by the applicant, or significantly influences such decisions, the gross revenues of other entities controlled by the officer or director would be attributed to the rural telephone cooperative. The Commission denies Neoworld's suggestion to broadly exempt officers and directors from the controlling interest standard where an applicant institutes a contractual mechanism in an effort to insulate officers and directors from involvement in an applicant's telecommunications activities.

Limited Exemption for Rural Telephone Cooperatives.

9. In light of the unique nature of rural telephone cooperatives, an exemption from the requirement that the gross revenues of entities controlled by a rural telephone cooperative's officers and directors are attributed to the applicant would not undermine the purpose of the controlling interest attribution rule. The attribution rules are intended to eliminate incentives for entities to create small business "fronts" that would enable large firms to secure a benefit to which they are not entitled, *i.e.*, small business bidding credits. The Commission agrees with the commenters' explanation that the key differences between rural cooperatives and other structures make it highly unlikely that rural telephone cooperatives would be able to participate in the types of sham transactions the rule is designed to protect against. For example, ownership and control of the cooperative remain in the hands of patrons of the cooperative (*i.e.*, telephone subscribers), rather than in non-patron equity investors as is often the case with traditional corporations or other business forms. Additionally, unlike traditional corporations or other business forms, the outside business interests of individual officers and directors of rural telephone cooperatives are not financial and management resources available to the cooperative. Further, because of the democratic structure of cooperatives, the patrons of each cooperative control the cooperative. Finally, members contribute equity to, and control, the capital of the cooperative, as opposed to outside investors. In light of these factors, grant of RTG's petition does not undermine the purpose of the controlling interest attribution rule.

10. Accordingly, based upon the comments received, the Commission adopts a narrow exemption for the officers and directors of a rural telephone cooperative so that the gross revenues of the affiliates of a rural telephone cooperative's officers and directors need not be attributed to the applicant. In the Commission's experience, rural telephone cooperatives frequently create wholly owned subsidiaries, or similar entities, to participate in Commission auctions. Accordingly, this exemption for the applicant's officers and directors would also extend to situations where the applicant is not a rural telephone cooperative but is controlled by an eligible rural telephone cooperative. For example, X is a rural telephone cooperative that satisfies all the elements of the exemption. X creates a subsidiary Y. Y's officers and directors are controlling interests solely based upon their status as officers and directors—*i.e.*, solely pursuant to § 1.2110(c)(2)(ii)(F). Y has no other controlling interests. Then, for purposes of determining eligibility for small business provisions, the gross revenues of the affiliates of X's officers and directors and affiliates of Y's officers and directors are not attributed to Y. If, however, Y has another controlling interest (other than Y's officers and directors and X's officers and directors) that is not an eligible rural telephone cooperative or controlled by an eligible

rural telephone cooperative, then the exemption does not apply to Y's officers and directors or such controlling interest's officers or directors. However, the gross revenues of the affiliates of X's officers and directors would not be attributed to Y. Specifically, the gross revenues of the affiliates of an applicant's officers and directors will not be attributed if either the applicant or a controlling interest, as the case may be, meets all of the following conditions: (i) The applicant (or the controlling interest) is validly organized as a cooperative pursuant to state law;[1] (ii) the applicant (or the controlling interest) is a "rural telephone company" as defined by the Communications Act;[2] and (iii) the applicant (or the controlling interest) is eligible for tax-exempt status under the Internal Revenue Code. 26 U.S.C. 1381(a)(2)(C); 26 U.S.C.A. 501(c)(12). However, the exemption will not apply if the gross revenues or other financial and management resources of the affiliates of the applicant's officers and directors (or the controlling interest's officers and directors) are available to the applicant. Further, the mere presence of an eligible rural telephone cooperative as a controlling interest will not ensure that the exemption is wholly applicable to the applicant. Thus, where an applicant is not an eligible rural telephone cooperative, if the applicant has a controlling interest (other than the applicant's officers and directors or the eligible rural telephone cooperative's officers and directors) that is not an eligible rural telephone cooperative, or controlled by an eligible rural telephone cooperative, the exemption will not apply to the applicant's officers and directors or such controlling interest's officers and directors. However, in that situation, the gross revenues of the affiliates of the eligible rural telephone cooperative's officers and directors would not be attributed to the applicant. The exemption the Commission creates is appropriate because where the eligible rural cooperative ultimately controls the applicant, the gating criterion of the cooperative structure precludes the applicant from being a sham entity.

11. The exemption the Commission adopts is tailored to the factual assertions and policy arguments provided by commenters. The test the Commission adopts will ensure that the Commission's general assumptions regarding cooperatives hold true with respect to each applicant seeking to avail itself of this exemption. Thus, for example, the Commission is limiting this exemption only to those rural telephone cooperatives that are eligible for Federal tax-exempt status (*i.e.*, those that derive 85% or more of their income from subscribers). Adopting such an objective factor, as well as the other objective factors, will ensure that such exemption would be used only by *bona fide* community-based cooperatives, not sham entities. The Commission believes that this action will increase the number of rural telephone cooperatives that are eligible for small business status (and the corresponding bidding credits). Such a result will enhance the ability of rural telephone cooperatives to participate in spectrum auctions. This, in turn, will promote the deployment of advanced telecommunications services in rural areas as Congress mandated in section 309(j).

12. Accordingly, the Commission incorporates this exemption into the controlling interest standard contained in § 1.2110. If an applicant uses this exemption, its certification on its short-form application (FCC Form 175) that it "is qualified as a designated entity under § 1.2110" constitutes a certification that it is eligible for this narrow exemption. In addition, in the long-form application (FCC Form 601) and in the application for assignment or transfer of control (FCC Form 603), applicants seeking to use this exemption will be required to establish eligibility for this exemption based on the factors listed.

13. Consistent with the policy objectives underlying the Commission's decision, the Commission grants three pending waiver requests filed by rural telephone cooperative applicants in Auction No. 44. Specifically, three winning bidders that are rural telephone cooperatives (or wholly-owned by rural telephone cooperatives) filed substantively identical requests for waiver of § 1.2110(c)(2)(ii)(F). *See* Applications to Participate in an FCC Auction (FCC 175) of Cable and Communications Corporation, Northeast Nebraska Telephone Company, and Poka Lambro Telecommunications, Ltd. (initially filed May 8, 2002) (respectively, the "C&C Application, Northeast Application, and Poka Lambro Application"). Short form applications for Auction No. 44, including the instant applications, may be viewed on the Commission's auctions Web site. *See https://auctionfiling.fcc.gov/form175/index.htm.* In connection with their demonstrations of eligibility for designated entity bidding credits, these applicants argued that the gross revenues of the affiliates of the cooperative's officers and directors should not be attributed to the cooperative. They note that the outside business interests of the cooperative's officers and directors "have no impact on the cooperative's ability to raise capital or compete for FCC licenses" due to the cooperative structure under which they are organized. The Commission believes that waiver of the requirement that the gross revenues of entities controlled by a rural telephone cooperative's officers and directors are to be attributed to the applicant would be consistent with its decision to adopt an exemption for rural telephone cooperatives and would promote the development of additional wireless services in their particular rural communities. Accordingly, consistent with the Commission's decision, it grants these waivers conditioned upon the submission to the Commission of information demonstrating the applicant's compliance with the factors adopted herein.

14. The Commission denies Neoworld's suggestion to broadly exempt officers and directors from the controlling interest standard where an applicant institutes a contractual mechanism to insulate officers and directors from involvement in an applicant's telecommunications activities. Generally, § 1.2110(c)(2)(ii)(F) reflects the corporate reality that business decisions and corporate policy are established by a corporation's board of directors and officers. Providing a broad exemption for officers and directors of an applicant would ultimately underestimate the role of officers and directors in an organization; thereby potentially providing large businesses with a significant monetary benefit reserved only for eligible small businesses. Such a result is contrary to the Commission's intent when adopting the controlling interest rule. As the Commission noted in the *Part 1 Fifth Report and Order*, the Commission adopted the attribution rules to ensure that small business bidding credits are extended only to *bona fide* small businesses. Further, adoption of Neoworld's drastic revision to the Commission's rules would essentially require the Commission to conduct a case-by-case review of the specific insulating mechanism employed to ensure that the arrangements are legitimate and are not sham transactions. In contrast, the exemption the Commission adopts for rural telephone cooperatives does not require such a case-by-case analysis. The cooperative's structure coupled with the factors identified serves as gating criteria obviating a need for such a case-by-case analysis.

Application of Controlling Interest Standard to Control Group Structures.

15. TeleCorp, Tritel, Poplar, and Summit ("Petitioners") request that the Commission revise the controlling interest standard to exclude entities operating under the Commission's previously adopted control group structure. Petitioners state that they are concerned that the controlling interest standard could be interpreted to provide that officers and directors are always considered to have a controlling interest even under a control group structure. Petitioners argue that a literal reading of the rule could be used to expand the definition of affiliates so that greater gross revenues and assets would be attributed on that basis alone. Specifically, Petitioners request that newly established affiliates of existing restricted C/F block licensees that were structured so as to establish their eligibility under a control group attribution rule be able to utilize the same structure used by the existing restricted C/F block licensee to establish their eligibility. The Petitioners did not indicate the context of their request, *i.e.*, whether they sought to use the control group attribution rule solely to determine eligibility to hold a restricted C/F block license, or also to determine if an unjust enrichment payment would be owed upon transfer of control or assignment of such a license.

16. To the extent Petitioners are seeking a modification to the Commission's rule, the Commission denies their petitions for reconsideration and affirms the Commission's decision in the *Part 1 Fifth Report and Order* to consider officers and directors as controlling interests in a licensee or applicant. However, to avoid similar questions in the future, the Commission restates the application of the attribution rules with respect to eligibility to hold restricted C/F block licenses. Generally, if an applicant does not hold a restricted C/F block license under the former control group rules it must use the controlling interest attribution rule to determine eligibility to hold restricted C/F block licenses, whether through auctions or through assignment or transfer of control. However, with respect to the acquisition of restricted C/F block licenses through assignment or transfer of control, wholly-owned subsidiaries and commonly controlled affiliates (whether newly formed or in existence prior to the adoption of the controlling interest attribution rule) that establish their eligibility directly through an existing restricted C/F block licensee, will be eligible to hold a C/F block restricted license to the same extent as the existing restricted C/F block licensees. Thus, in the context of an application to assign or transfer a restricted C/F block license, the eligibility of an existing restricted C/F block licensee (that obtained its license under the former control group rules) and its wholly owned subsidiaries and commonly controlled affiliates to hold such licenses (as opposed to eligibility for small business provisions such as bidding credits) may be determined without application of the controlling interest attribution rule. For example, X creates a wholly-owned subsidiary Y. X also has a commonly controlled affiliate Z. X obtained its restricted C/F block licenses under the former control group rules. W, an unrelated party, also obtained its restricted C/F block licenses under the former control group rules. W seeks to assign its restricted C/F block licenses to Y and Z. Because X, Y, and Z are commonly controlled, Y and Z may establish their eligibility to hold restricted C/F block licenses through X without application of the controlling interest attribution standard. Further, X, Y, and Z will continue to be eligible to hold restricted C/F block licenses provided they comply with the requirements of § 24.709. *See TeleCorp Order*, 16 FCC Rcd at 3725–26, ¶¶ 23–41. Significantly, X, Y, and Z can only exceed the total assets test by permissible growth pursuant to § 24.709(a)(2). *Id.* at ¶ 29. This explanation does not alter the determination that, as stated in the *Part 1 Fifth Report and Order*, for all future C/F block auctions, all applicants will be subject to the attribution rules in effect at the time of filing their short-form applications.

17. For purposes of determining an assignee's or transferee's eligibility for benefits offered to small businesses, such as bidding credits and installment financing, and the application of the unjust enrichment provisions, all applicants will be subject to the attribution rules in effect at the time of filing their applications for assignment or transfer of control. The Commission has previously determined that the fact that an existing restricted C/F block licensee may choose to retain a control group structure does not exempt it from attributing the gross revenues of its affiliates, including the gross revenues of other entities controlled by its officers and directors, to the licensee for purposes of determining eligibility for small business provisions, such as bidding credits and installment financing.

B. Calculation of Default Payments in Combinatorial Bidding

18. The Commission incorporates into the part 1 general competitive bidding rules the combinatorial bidding default rule adopted in the *700 MHz Second Memorandum Opinion and Order*, 66 FR 10374 (February 15, 2001). The Commission adopts this provision because the effects of default in a combinatorial bidding auction are so detrimental to the integrity of the auctions system that they require a strong deterrent against insincere bidding and strategic default. As a commenter noted, in response to the *Auction No. 31 Combinatorial Bidding Comment Public Notice*, 65 FR 35636 (June 5, 2000), "[d]efault in a combinatorial auction has more far reaching consequences than does default in an auction of single items. In particular, a default in a combinatorial auction could affect the award of many other licenses and [could] be used strategically to do so." Comments of Alekansdar Pekec and Michael H. Rothkopf, "Making the FCC's First Combinatorial Auction Work Well" (filed June 9, 2000) at section 6. Thus, the rule as adopted in the *700 MHz Second Memorandum Opinion and Order* is necessary to adequately discourage defaults, deter frivolous or insincere bidding, and generally protect the integrity of the auction process. The rule will be used to calculate default

[1] A cooperative is defined pursuant to state law not federal law. Accordingly, the Commission requires that a rural telephone cooperative be validly organized as a cooperative under state law. *See e.g.*, New Mexico Cooperation Act, N.M. Stat. Ann. § 53–4–1 (Michie 1978); Colo. Rev. Stat. Ann. § 7–56–103 (West 2002).

[2] 47 U.S.C. 153(37). The term "rural telephone company" is defined in 47 U.S.C. 153(37) and in 47 CFR 1.2110(c)(4) and 51.5. Since passage of the Telecommunications Act of 1996, the Commission generally has used the statutory definition to determine which local exchange carriers can be classified as rural telephone companies. The statutory definition uses a range of standards, including the population of a jurisdiction and the number of access lines serving communities of various sizes. Specifically, section 153(37) states:

The term "rural telephone company" means a local exchange carrier operating entity to the extent that such entity—

(A) provides common carrier service to any local exchange carrier study area that does not include either—

(i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or

(ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;

(B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or

(D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996. 47 U.S.C. 153(37).

payments for all auctions where a combinatorial bidding design is employed. Although the Commission adopts a new combinatorial bidding default rule, the competitive bidding rules are otherwise applicable. Thus, for example, the winning bid for a package creates the same obligation for the whole package as does a winning bid for a single license in the context of simultaneous multiple round auction without combinatorial bidding.

19. For convenience sake, the Commission provides the following explanation of the application of the rule. This substantially reiterates the explanation provided in the 700 MHz *Second Memorandum Opinion and Order*.

(i) Where a defaulting bidder held winning bids on individual licenses (*i.e.*, not as part of a package), and in a subsequent auction the licenses are also won individually, the deficiency portion will be calculated by subtracting the subsequent winning bid from the defaulted bid. 47 CFR 1.2104(g)(3)(i)(a) as adopted herein. The deficiency portion for such bids will be calculated on a license-by-license basis (*i.e.*, in the event of defaults on multiple bids, the differences between the amounts originally bid and the amounts subsequently bid will not be aggregated to determine a net amount owed). *Id.* For example, if a bidder defaults on two bids, one for License A for $100 and one for License B for $150, and in a subsequent auction, the licenses are won as License A for $150 and License B for $120, the default payment would be calculated separately for License A (by comparing the original bid ($100) to the amounts subsequently bid ($150), yielding no deficiency but an additional 25% payment)) and License B (by comparing the original bid ($150) to the amount subsequently bid for License B ($120), yielding a deficiency of $30, plus an additional 25% payment)). If the subsequent winning bid(s) exceed the defaulted bid(s), no deficiency portion will be assessed. Even in the absence of a deficiency portion, however, an additional 25% payment will be due. *Id.*

(ii) Where a defaulting bidder won licenses in package(s), and in a subsequent auction the licenses are won either (a) in the same package(s), or (b) in smaller packages or as individual licenses that correlate to the defaulted package(s), the deficiency portion will be determined on a package-by-package basis. 47 CFR 1.2104(g)(3)(i)(b) as adopted herein. In the event a defaulting bidder defaults on more than one such bid, the differences between the amount originally bid and the amounts(s) subsequently bid will not be aggregated to determine a net amount owed. *Id.* For example, if a bidder defaults on Package ABC (*i.e.*, a package consisting of Licenses A, B and C) with a bid of $900 and Package DE with a bid of $600, and in a subsequent auction, the licenses are won as License A for $200, Package BC for $600, and Package DE for $700, the default payment would be calculated separately for Package ABC (by comparing the original bid ($900) to the amounts subsequently bid for License A and Package BC ($200 and $600, which equals $800, yielding a $100 deficiency plus the additional payment)) and Package DE (by comparing the original bid ($600) to the amount subsequently bid for Package DE ($700, yielding no deficiency, but an additional 25% payment)). Thus, in this situation, the deficiency portion will be calculated in a manner analogous to where the licenses are sold individually. However, with regard to each individual package, where the licenses are subsequently sold individually or as part of smaller packages, the amounts received in the subsequent auction will be aggregated in order to determine any deficiency.

(iii) Where a defaulting bidder or bidders won licenses either individually or as part of packages, and in a subsequent auction the licenses are won as larger packages or different packages (not including the situation described in preceding paragraph), the deficiency portion will be calculated by subtracting the aggregate amount originally bid for the licenses from the aggregate amount bid in the subsequent auction for the licenses. 47 CFR 1.2104(g)(3)(i)(c) as adopted herein. For example, if a bidder defaults on Package AB with a bid of $200 and Package CD with a bid of $300, and in a subsequent auction the licenses are sold as Package AC for $250 and Package BD for $250, the default payment would be calculated by aggregating the amounts originally bid ($200 plus $300 equals $500) to the amounts subsequently bid ($250 plus $250 equals $500) to determine the deficiency amount ($500 less $500 equals $0); the additional payment , would be based on either the original aggregate amount or the subsequent aggregate amount, whichever is less (in this case, they are the same, $500). Thus, in this situation, the deficiency portion will not be calculated on a bid-by-bid basis.

(iv) If, in a situation requiring that bids be aggregated in order to determine the deficiency portion of the default payments for bids, there are multiple defaulting bidders, the default payment (both the deficiency portion and the additional 25% payment portion) will be allocated to the defaulting bidders in proportion to the their share of the aggregated default bids. 47 CFR 1.2104(g)(3)(i)(d) as adopted herein. For example, if Bidder 1 defaults on Package ABC for $200, and Bidder 2 defaults on Package DE for $400, and in a subsequent auction the licenses are won in Package AB for $150 and Package CDE for $350, Bidder 1 would be liable for 1/3 of the default payment and Bidder 2 would be responsible for 2/3. The total default payment would be equal to the difference between the total of the original bids ($600) and the total of the subsequent amounts bid ($500) plus an additional amount of 25% of the total of the subsequent amounts bid. The total default payment therefore would equal $100 ($600–$500) plus 25 percent of $500 ($125), for a total default payment of $225.

(v) In the event that a bidding credit applies to any applicable bids(s), the deficiency portion of the default payment will be assessed using the lesser of the difference between gross bids and the difference between net bids. 47 CFR 1.2104(g)(3) as adopted herein. (In the event that a bidder does not have a bidding credit, the bidder's gross bid and net bid are the same). In other words, the Commission will compare (i) the sum of the gross defaulted bid(s) minus the gross subsequent winning bid(s) and (ii) the sum of the net defaulted bid(s) minus the net subsequent winning bid(s). The Commission will use the lesser of (i) and (ii) to calculate the deficiency portion of the default payment.

(vi) The default payment consists of the deficiency portion and an additional 25% payment. *Id.* The additional payment will be 25% of the lesser of the subsequent winning bids(s) and the defaulted bid(s). 47 CFR 1.2104(g)(3)(ii) as adopted herein. The Commission will use the same gross or net bid(s) that were used to calculate the deficiency portion when assessing the additional 25% payment. *Id.* That is, the Commission will compare the defaulted and subsequent bid(s) according to the methods described for calculation of the deficiency portion of the default payment when determining whether the defaulted bid(s) or the subsequent winning bid(s) is the lesser amount. *Id.* Should there be no difference between the gross or net bid(s) for purposes of assessing the deficiency portion, the Commission will assess the additional 25% payment using the lesser of the gross or net bid(s).

20. Finally, the Commission will maintain its practice of assessing an interim default payment with a slight modification. Specifically, in the case of combinatorial bidding defaults, the Commission will assess a 25% interim default payment pending assessment of the final default payment after a subsequent auction. This procedure is appropriate because even under the most favorable set of circumstances for the defaulting bidder, *i.e.*, where the bid price for the package at the subsequent auction exceeds defaulted bid, the final default payment would be 25% of the defaulted bid.

C. Licenses Subject to Auction After Default in Combinatorial Bidding Auctions

21. When the Commission adopted the default rules, it stated, as a general rule, that in the event of default by a winning bidder, the best course of action would be to offer licenses for the spectrum in a subsequent auction. Currently, under the Commission's part 1 auction rules, if a bidder defaults on a bid (or bids), the Commission may offer the license(s) for the spectrum in a new auction or it may also offer the license(s) to the other highest bidders. In the *700 MHz Second Memorandum Opinion and Order*, the Commission determined that for combinatorial bidding in the Upper 700 MHz band if a bidder defaults on a package bid, the Commission would auction the licenses making up the package on which the party defaulted, and only those licenses. This would occur even if, under the combinatorial bidding procedures, a different set of packages would have won had the defaulting bidder not bid. As the Commission explained in that *700 MHz Second Memorandum Opinion and Order*, any other result would be extremely problematic in the context of combinatorial bidding. The Commission sees no reason to change this decision now. Accordingly, in all future combinatorial bidding auctions, the Commission will not offer the package or licenses to the next highest bidder and will instead auction the license(s) for the spectrum in a new auction.

D. Conforming Edits to Competitive Bidding Rules

22. The Commission revises or removes service-specific and/or part 1 competitive bidding rules in the following areas: (i) License default; (ii) definition of consortium; (iii) women- and minority-owned businesses; (iv) clarification of the attribution rule; (v) ownership disclosure requirements; and (vi) short-form disclosure requirements for small or very small business consortiums. Also, technical edits are made to Commission rules that refer to service-specific competitive bidding rules that have been removed, revised, or modified.

23. *License default.* Section 1.2109, among other things, provides the conditions upon which a winning bidder will be deemed to have defaulted. Specifically, § 1.2109(b) states, in pertinent part, that "[i]f a winning bidder withdraws its bid * * * the bidder will be deemed to have defaulted, its application will be dismissed, and it will be liable for the default payment specified in § 1.2104(g)(2)." However, § 1.2109(c) states, in pertinent part, that "[a] winning bidder who is found unqualified to be a licensee * * * will be deemed to have defaulted and will be liable for the payment set forth in § 1.2104(g)(2)." The language regarding the dismissal of an application was inadvertently omitted from § 1.2109(c). Thus, the Commission revises § 1.2109(c) to add dismissal language to conform to § 1.2109(b).

24. *Definition of consortium.* The Commission's service-specific competitive bidding rules for several services define the terms "small business consortium" and "very small business consortium." However, neither of these terms are defined in the Commission's part 1 rules. To streamline the Commission's rules and eliminate redundancies, the Commission incorporates a definition of the term "consortium" into the part 1 rules. This definition is taken almost verbatim from the service-specific definitions. Accordingly, the Commission deletes the definitions of small and very small business consortium in the service-specific competitive bidding rules.

25. Further, the Commission has generally defined a "small or very small business consortium" as a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition of a small or very small business as defined on a service-specific basis. In the *Part 1 Third Report and Order*, the Commission, in clarifying the part 1 definition of affiliate, determined that a "consortium" for purposes of determining status as a designated entity will not be treated as a "joint venture" under the Commission's attribution standards. In that Order, however, the Commission failed to also revise the part 1 definition of a "small or very small business consortium." Thus, the Commission revises the part 1 rules to exclude the term "joint venture" from the definition of "consortium."

26. *Clarification of the attribution rules:* In the *Part 1 Fifth Report and Order*, the Commission established a controlling interest standard for attributing to an applicant the gross revenues of the applicant, its affiliates, its controlling interest, and the affiliates of the applicant's controlling interests in determining which applicants qualify as small businesses. In doing so the Commission amended the part 1 competitive bidding rules to incorporate new rules adopting the controlling interest standard. Specifically, § 1.2110(c)(2)(ii)(F) provides, in pertinent part, that "[o]fficers and directors of an entity shall be considered to have a controlling interest in the entity." Under the controlling interest standard, however, a controlling interest includes individuals or entities, or groups of individuals or entities, that have control of the applicant under the principles of either *de jure* or *de facto* control. Therefore, the Commission revises § 1.2110(c)(ii)(F) to read, in pertinent part, that "[o]fficers and directors of an applicant shall be considered to have a controlling interest in the applicant."

27. Additionally, the Commission makes slight modifications to § 1.2110(b)(1)(i) to provide further guidance to applicants. Specifically, the term "their affiliates" in § 1.2110(b)(1)(i) includes both affiliates of the applicant and affiliates of the applicant's controlling interests.

28. *Disclosure requirements for small businesses.* Section 1.2112(a) of the Commission's rules formerly required all applications to participate in competitive bidding or for a license, authorization, assignment, or transfer of control to disclose certain information pertaining to controlling interests including "a list of names, addresses, and citizenship of all controlling interests of the applicants, as set forth in § 1.2110." In the *Part 1 Fifth Report and Order*, the Commission determined that only applicants claiming small business status would be required to disclose controlling interest information under § 1.2112. Accordingly, the controlling interest disclosure requirements from § 1.2112(a) were moved to § 1.2112(b) which applies to entities claiming eligibility for small business provisions. At the same time, § 1.2112(b) was divided into two parts: Paragraph (b)(1), applying to short-form applications; and paragraph (b)(2), applying to long-form applications. The controlling interest language from § 1.2112(a), however, was inadvertently only carried over to paragraph (b)(1) instead of in both paragraphs (b)(1) and (b)(2). In addition, in dividing § 1.2112(b) into two sections, the Commission failed to specifically mention applications for an assignment

or transfer of control. Accordingly, the Commission makes conforming edits to § 1.2112(b) to correct these inadvertent errors to fully implement its intent that all applicants claiming small business status, including those filing applications for a license, authorization, assignment, or transfer of control as well as those filing short-form applications, are required to disclose the controlling interest information.

29. Section 1.2112(b)(1)(i) requires an applicant to list, as part of the disclosure obligations, the "names, addresses, and citizenship of all officers, directors, and other controlling interests of the applicant." However, in addition to these disclosures, certain service-specific rules also require the applicant to disclose the same information for affiliates and small and very small business consortium. Section 1.2112(b)(1)(i) does not require the applicant to disclose this additional information. The Commission removes the service-specific short-form disclosure requirements and revises subsection 1.2112(b)(1)(i) to add affiliate and small or very small business consortium language as part of the short-form disclosure obligations.

30. Additionally, the Commission revises § 1.2112(b)(1)(ii) to comport with the Commission's previous correction made to § 1.2112(a)(6) in the *Part 1 Erratum*. Specifically, the Commission revises § 1.2112(b)(1)(ii) to require applicants claiming eligibility for small business provisions to list any *FCC-regulated entity* (instead of the current requirement to list any FCC-licensed entity) or applicant for an FCC license in which any controlling interest of the applicant owns a 10 percent or greater interest or a total of 10 percent or more of any class of stock, warrants, options or debt securities. This revision is consistent with the Commission's intent, as stated in the *Part 1 Fifth Report and Order*, to require that FCC-regulated entities be reported when there is a connection between such entity and the applicant at issue through a common owner.

31. *Women- and minority-owned businesses.* The Commission's rules set forth certain provisions applicable to designated entities—small businesses, businesses owned by members of minority groups and/or women, and rural telephone companies. In particular, § 1.2110(c)(3) of the part 1 general competitive bidding rules defines and provides the eligibility criteria for businesses owned by members of minority groups and/or women. However, § 24.720 (c), (d), and (i)(2) also define women- and minority-owned businesses and qualifying minority and/or woman investor. In light of the Commission's ongoing efforts to eliminate from the Code of Federal Regulations service-specific competitive bidding rules that are either repetitive with or have been superseded by the part 1 general competitive bidding rules, the Commission removes § 24.720 (c), (d), and (i)(2). The Commission's action is technical in nature and does not substantively affect the status of women- and minority-owed businesses.

III. Second Order on Reconsideration of the Third Report and Order

A. Installment Grace Periods and Imposition of Late Payment Fees

32. NextWave urges the Commission to restore the original installment payment rules as adopted in the *Competitive Bidding Second Report and Order*, 59 FR 22980 (May 4, 1994). This Order does not address the petitions for reconsideration challenging the Commission's statement that § 1.2104(g)(2) does not apply to licensees who default on their installment payments, *see Order on Reconsideration of the Part 1 Third Report and Order*, 66 FR 51594 (October 10, 2001). The Commission received three petitions for reconsideration on this point. NextWave Petition, TeleCorp/Tritel/Poplar/Summit Petition, and MetroPCS Petition. The Commission will address this point in a subsequent order. In its petition, NextWave again relies upon the arguments that the modifications to the rules constitute impermissible retroactive rulemaking, that the changes were unreasonable and not consistent with commercial practices, and that contract-based theories precluded the Commission from modifying the installment payment rules. These arguments were previously the subject of reconsideration and fully considered and rejected in the *Order on Reconsideration of the Part 1 Third Report and Order. Part 1 Fifth Report and Order; Compare* NextWave Petition, filed September 28, 2000, in response to the *Order on Reconsideration of the Part 1 Third Report and Order* with NextWave Petition, filed February 17, 1998, in response to the *Part 1 Third Report and Order*. Additionally, as also noted, the Court of Appeals for the District of Columbia Circuit has substantially addressed and rejected these arguments in the context of a challenge to the application of the revised installment payment rules to the 218–219 MHz Service licensees. In light of these circumstances, the Commission declines to grant reconsideration.

33. The Commission does not grant reconsideration for the purpose of allowing a petitioner to reiterate arguments already presented. This is particularly true where a petitioner advances arguments that the Commission previously considered and rejected in a prior order on reconsideration. If this were not the case, the Commission would be involved in a never-ending process of review that would frustrate the Commission's ability to conduct business in an orderly fashion. However, the Commission will entertain a petition for reconsideration if it is based on new evidence or changed circumstances or if the reconsideration is in the public interest. In this instance, NextWave's arguments were previously raised and fully addressed in the *Order on Reconsideration of the Part 1 Third Report and Order*. NextWave did not plead or otherwise establish new facts, changed circumstances, or new public interest considerations that would merit review of its request for reconsideration. Thus, the Commission dismisses NextWave's arguments here as repetitious.

B. Ownership Disclosure Requirements

34. The Commission reorders § 1.2112 to move the requirement that each application for competitive bidding, or for a license, authorization, assignment or transfer for control fully disclose all "real party or parties in interest" from § 1.2112(a) to § 1.2112(a)(1). At the same time, the Commission conforms § 1.2112(a)(1) to the disclosure requirements as set forth in § 1.919(e) to ensure that applicants include a complete disclosure of the identity and relationship of those persons or entities directly or indirectly owning or controlling (or both) the applicant. The Commission also reminds applicants that, if the information disclosed pursuant to § 1.2112(a) changes while the application is pending, § 1.65 of the Commission's rules requires that additional or corrected information be submitted. These rule revisions are consistent with the Commission's efforts to provide specific guidance to applicants, to provide transparency at all stages in the competitive bidding and licensing process; and, finally to ensure that the Commission, the public, and interested parties, are aware of the real party or parties in interest before the Commission acts on a pending application.

IV. Procedural Matters and Ordering Clauses

A. Regulatory Flexibility Analysis

35. As required by the Regulatory Flexibility Act, 5 U.S.C. 604, the Commission prepared a Supplemental Final Regulatory Flexibility Analysis for the *Order on Reconsideration of the Part 1 Fifth Report and Order*. The Commission also prepared a second Supplemental Final Regulatory Flexibility Analysis for the *Second Order on Reconsideration of the Part 1 Third Report and Order*.

B. Paperwork Reduction Act Analysis

36. This *Second Order on Reconsideration of the Part 1 Third Report and Order, and Order on Reconsideration of the Part 1 Fifth Report and Order* contains new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It was submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public and other Federal agencies are invited to comment on the new or modified collection(s) contained in this proceeding.

V. Supplemental Final Regulatory Flexibility Analysis (Order on Reconsideration of the Part 1 Fifth Report and Order)

37. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), a Final Regulatory Flexibility Analysis (FRFA) was incorporated into the report and order section of the *Part 1 Fifth Report and Order* in WT Docket No. 97–82. The Commission received four petitions for reconsideration, two comments, two reply comments, and *ex parte* filings from three parties in response to the *Part 1 Fifth Report and Order*. This present supplemental FRFA (SFRA) conforms to the RFA.

A. Need for, and Objectives of, the Order on Reconsideration of the Part 1 Fifth Report and Order

38. In August 2000, the Commission released the most recent comprehensive order in the part 1 proceeding, the *Order on Reconsideration of the Part 1 Third Report and Order, Part 1 Fifth Report and Order, and Part 1 Fourth Further Notice of Proposed Rule Making*, which clarified and amended the general competitive bidding rules for all auctionable services. Most significantly, in the *Part 1 Fifth Report and Order*, the Commission adopted, as its general attribution rule, a controlling interest standard to be used for determining which applicants are eligible for small business status.

39. The Commission received petitions for reconsideration from several parties in response to the *Part 1 Fifth Report and Order*. Petitioners request reconsideration of certain aspects of the new controlling interest standard, § 1.2110(c)(2), by which the Commission attributes to the applicant the gross revenues of the applicant, its controlling interests, the applicant's affiliates, and the affiliates of the applicant's controlling interests, in assessing whether the applicant is eligible for the Commission's small business provisions. Specifically, petitioners request reconsideration of the attribution of the personal net worth of an applicant's officers and directors to the applicant, application of the controlling interest attribution rule as applied to the officers and directors of rural telephone cooperatives, and application of the controlling interest standard to entities operating under the former control group rules. In the *Order on Reconsideration of the Part 1 Fifth Report and Order* the Commission resolves the petitions for reconsideration filed in response to the *Part 1 Fifth Report and Order*.

40. First, the Commission clarifies that in calculating an applicant's gross revenues under the controlling interest standard, the personal net worth, including personal income and assets, of its officers and directors will not be attributed to the applicant. To the extent that the officers and directors of the applicant are controlling interest holders of other entities, the Commission will attribute the gross revenues of those entities to the applicant. Second, based upon the comments received, the Commission adopts a narrow exemption for the officers and directors of a rural telephone cooperative so that the gross revenues of the affiliates of a rural telephone cooperative's officers and directors need not be attributed to the applicant. Specifically, the gross revenues of the affiliates of an applicant's officers and directors will not be attributed if either the applicant or a controlling interest, as the case may be, meets *all* of the following conditions: (i) The applicant (or the controlling interest) is validly organized as a cooperative pursuant to state law; (ii) the applicant (or the controlling interest) is a "rural telephone company" as defined by the Communications Act; and (iii) the applicant (or the controlling interest) is eligible for tax-exempt status under the Internal Revenue Code. However, the exemption will not apply if the gross revenues or other financial and management resources of the affiliates of the applicant's officers and directors (or the controlling interest's officers and directors) are available to the applicant. Third, the Commission declines to revise the controlling interest standard to exclude entities operating under control group structures. At the same time, the Commission restates the application of the attribution rules with respect to eligibility to hold restricted C/F block licenses.

41. Lastly, on its own motion, the Commission also modifies the part 1 default payment rule, § 1.2104(g)(2), to incorporate the combinatorial bidding default rule adopted in the *700 MHz Second Memorandum Opinion and Order*. The Commission also makes certain ministerial conforming amendments and rule revisions to the part 1 general competitive bidding rules, and portions of the service-specific competitive bidding rules, to conform to the new rule revisions in part 1 in the following areas: (i) License default; (ii) definition of consortium; (iii) women- and minority-owned businesses; (iv) clarification of the attribution rule; (v) ownership disclosure requirements; and (vi) short-form disclosure requirements for small or very small business consortiums. Finally, technical edits are made to Commission rules that refer to service-specific competitive bidding rules that have been removed or revised.

B. Summary of Significant Issues Raised by Public Comments in Response to the FRFA Contained in the Order on Reconsideration of the Part 1 Third Report and Order

42. No petitions for reconsideration or comments were filed directly in response to the FRFA. However, the Commission did receive petitions for reconsideration and comments on issues affecting small businesses. As previously noted, in this SFRFA, petitioners request reconsideration of certain aspects of the new controlling interest standard, to be used for determining which applicants are eligible for small business status. Most notably, under the controlling interest standard, officers and directors of any applicant will be considered to have a controlling interest in the applicant. Thus, in calculating an applicant's gross revenues, the gross revenues of other entities controlled by such officers and directors must be included. Specifically, RTG seeks an exemption for rural telephone cooperatives from the requirement that the gross revenues of entities controlled by a rural telephone cooperative's officers and directors are to be attributed to the applicant. NTCA

and PVT reiterate points made by RTG. However, Neoworld seeks to extend RTG's proposal. In particular, Neoworld proposes that the Commission adopt a test under which an officer or director would not be considered to be a controlling interest if the applicant can demonstrate that it has developed insulating mechanisms to prevent such a director from being materially involved directly or indirectly in the management or telecommunications activities of the licensee.

43. Furthermore, TeleCorp, Tritel, Poplar, and Summit ("Petitioners") request that the Commission revise the controlling interest standard to exclude entities operating under the Commission's previously adopted control group structure. Petitioners are concerned that a literal reading of the rule could be used to expand the definition of affiliates so that greater gross revenues and assets would be attributed to an applicant on that basis alone. Specifically, Petitioners request that newly established affiliates of existing restricted C/F block licensees that were structured so as to establish their eligibility under a control group attribution rule be able to utilize the same structure used by the existing restricted C/F block licensee to establish their eligibility. Additionally, Petitioners request that the Commission clarify that the controlling interest standard excludes from attribution the personal assets and revenues of individuals.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

44. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small organization," "small business," and "small governmental jurisdiction." The term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (i) Is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any additional criteria established by the SBA.

45. The rule modifications and clarifications adopted in the *Order on Reconsideration of the Part 1 Fifth Report and Order* are of general applicability to all services and do not apply on a service-specific basis. Therefore, this SFRFA provides a general analysis of the impact of the revised part 1 rule on small businesses rather than a service by service analysis. Accordingly, the revised rules will apply to all entities that apply to participate in Commission auctions, including both small and large entities. The number of entities that may apply to participate in future Commission auctions is unknown. The number of small businesses that have participated in prior auctions has varied. In all of the Commission's auctions held to date except for the auctions for broadcast licenses, 1,752 out of a total of 2,235 qualified bidders have been small businesses as that term has been defined under rules adopted by the Commission for specific services. Given these statistics, the Commission expects that, in the future, a large percentage of participants in its auctions program generally will continue to be small businesses; although there may not be a large percentage in every auction.

D. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements

46. All license applicants, as contemplated by the actions the Commission takes in the *Order on Reconsideration of the Part 1 Fifth Report and Order*, are subject to the reporting and recordkeeping requirements of the competitive bidding rules. These requirements apply in the same way to both large and small entities. Furthermore, applicants are required to apply for spectrum auctions by filing a short-form application (FCC Form 175) prior to the auction. Applicants are also required to file a long-form application (FCC Form 601) at the conclusion of the auction. Specifically, entities seeking status as a small business must disclose on their FCC Form 175s, FCC Form 601s, and on their application for assignment or transfer of control (FCC Form 603), separately and in the aggregate, the gross revenues of the applicant (or licensee), its affiliates, its controlling interests and affiliates of the applicant's controlling interests for each of the previous three years.

47. As a result of the actions taken in the *Order on Reconsideration of the Part 1 Fifth Report and Order*, for purposes of the controlling interest standard, in calculating the gross revenues of any applicant under § 1.2110, the personal net worth of its officers and directors will not be attributed to the applicant. However, auction applicants will be required to disclose the gross revenues received by any business entities such individuals may control. All affiliates of controlling interests are attributable to the applicant. Additionally, in the FCC Form 601, rural telephone cooperative auction applicants, or those controlled by rural telephone cooperatives, seeking an exemption from the requirement that the gross revenues of entities controlled by an applicant's officers and directors are attributed to the applicant must establish eligibility for this exemption based upon the four factors listed.

E. Steps Taken To Minimize the Economic Impact on Small Entities, and Significant Alternatives Considered

48. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (iii) the use of performance, rather than design, standards; and (iv) an exemption from coverage of the rule or any part thereof for small entities. The Commission has considered the economic impact on small entities of the following modifications and clarifications adopted in the *Order on Reconsideration of the Part 1 Fifth Report and Order* and has taken steps to minimize the burdens on small entities.

49. *Personal net worth of officers and directors.* The Commission clarifies that, for purposes of the controlling interest standard, in calculating an applicant's gross revenues under § 1.2110, the controlling interest standard, the personal net worth, including personal income and assets, of its officers and directors will not be attributed to the applicant. The Commission concludes that attribution of personal net worth is not necessary because most wealthy individuals are likely to have their wealth tied to the ownership of other businesses. Although the Commission does not attribute to the applicant the personal net worth of its officers and directors, to the extent that the officers and directors are affiliates of other entities, the Commission attributes the gross revenues of those entities to the applicant. Therefore, this will ensure that small business bidding credits are extended only to *bona fide* small businesses despite the personal net worth of wealthy individuals. An alternative action that would eliminate consideration of the gross revenues of such affiliates would provide an opportunity for large businesses to receive a significant monetary benefit reserved only for eligible small businesses.

50. *Application of attribution rule to rural telephone cooperatives.* The Commission adopts a narrow exemption for the officers and directors of a rural telephone cooperative so that the gross revenues of the affiliates of a rural telephone cooperative's officers and directors need not be attributed to the applicant. This exemption for the applicant's officers and directors extends to situations where the applicant is not a rural telephone cooperative but is controlled by an eligible rural telephone cooperative. Specifically, the gross revenues of the affiliates of an applicant's officers and directors will not be attributed if either the applicant or a controlling interest, as the case may be, meets *all* of the following conditions: (i) The applicant (or the controlling interest) is validly organized as a cooperative pursuant to state law; (ii) the applicant (or the controlling interest) is a "rural telephone company" as defined by the Communications Act; and (iii) the applicant (or the controlling interest) is eligible for tax-exempt status under the Internal Revenue Code. However, the exemption will not apply if the gross revenues or other financial and management resources of the affiliates of the applicant's officers and directors (or the controlling interest's officers and directors) are available to the applicant.

51. The Commission limits this exemption to only those rural telephone cooperatives that are eligible for Federal tax-exempt status, which will ensure that such exemption would be used only by *bona fide* community-based cooperatives, not sham entities. The Commission believes that this action will increase the number of rural telephone cooperatives that are eligible for small business status (and the corresponding bidding credits). Such a result will enhance the ability of rural telephone cooperatives to participate in spectrum auctions. This, in turn, will promote the deployment of advanced telecommunications services in rural areas as Congress mandated in section 309(j). At the same time, the Commission concludes that an across-the-board change to § 1.2110(c)(2)(ii)(F), as proposed as an alternative by Neoworld, to broadly exempt officers and directors from the controlling interest standard where an applicant institutes a contractual mechanism to insulate officers and directors from involvement in an applicant's telecommunications activities, is not warranted. Such a drastic revision to the Commission's rules would require additional scrutiny on the Commission's part to ensure that such contractual arrangements are legitimate and are not sham transactions that could undercut the basis of the attribution rule.

52. *Application of controlling interest standard to control group structures.* The Commission affirms its decision in the *Part 1 Fifth Report and Order* to consider officers and directors as controlling interests in a licensee or applicant. However, to avoid similar questions in the future, the Commission takes this opportunity, in the *Order on Reconsideration of the Part 1 Fifth Report and Order*, to clarify the application of the attribution rules with respect to eligibility to hold restricted C/F block licenses. Generally, if an applicant does not hold a restricted C/F block license under the former control group rules it must use the controlling interest attribution rule to determine eligibility to hold restricted C/F block licenses, whether through auctions or through assignment or transfer of control.

53. However, with respect to the acquisition of restricted C/F block licenses through assignment or transfer of control, wholly-owned subsidiaries and commonly controlled affiliates (whether newly formed or in existence prior to the adoption of the controlling interest attribution rule) that establish their eligibility directly through an existing restricted C/F block licensee, will be eligible to hold a C/F block restricted license to the same extent as the existing restricted C/F block licensees. Thus, in the context of an application to assign or transfer a restricted C/F block license, the eligibility of an existing restricted C/F block licensee (that obtained its license under the former control group rules) and its wholly owned subsidiaries and commonly controlled affiliates to hold such licenses (as opposed to eligibility for small business provisions) may be determined without application of the controlling interest attribution rule. For all future C/F block auctions, however, pursuant to the Commission's determination in the *Part 1 Fifth Report and Order*, all applicants will be subject to the attribution rules in effect at the time of filing their short-form applications. This decision will prevent large firms from illegitimately seeking small business status. A less restrictive alternative would frustrate the Commission's achievement of its goal of preventing large firms from gaining benefits only reserved for smaller entities.

54. *Conforming edits to the Part 1 competitive bidding rules.* The Commission, on its own motion, makes certain ministerial conforming amendments and rule revisions to the part 1 general competitive bidding rules and portions of the service-specific competitive bidding rules to conform to the new rule revisions in part 1. These rule revisions are consistent with the Commission's efforts to provide specific guidance to future auction participants and to streamline the competitive bidding regulations by eliminating certain service-specific rules.

F. Report to Congress

55. The Commission will send a copy of the *Second Order on Reconsideration of the Third Report and Order, and Order on Reconsideration of the Fifth Report and Order*, including this SFRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Second Order on Reconsideration of the Third Report and Order, and Order on Reconsideration of the Fifth Report and Order*, including this SFRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

VI. Second Supplemental Final Regulatory Flexibility Analysis (Second Order on Reconsideration of the Part 1 Third Report and Order)

56. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), a Supplementary Final Regulatory Flexibility Analysis (SFRFA) was incorporated into the report and order section of the *Order on Reconsideration of the Part 1 Third Report and Order* in WT Docket No. 97–82. The Commission received three petitions for reconsideration and one reply comment in response to the *Order on Reconsideration of the Part 1 Third Report and Order*. This present second SFRFA conforms to the RFA.

A. Need for, and Objectives of, the Order on Reconsideration of the Part 1 Fifth Report and Order

57. In August 2000, the Commission released the most recent comprehensive order in the Part 1 proceeding, the *Order on Reconsideration of the Part 1 Third Report and Order, Part 1 Fifth Report and Order, and Part 1 Fourth Further Notice of Proposed Rule Making*, which clarified and amended the general competitive bidding rules for all auctionable services. The Commission received petitions for reconsideration from several parties in response to the *Order on Reconsideration of the Part 1 Third Report and Order*. Specifically, the Commission received a petition for reconsideration, filed by NextWave, of the Commission's installment payment rules. In this *Second Order on*

Reconsideration of the Part 1 Third Report and Order, the Commission dismisses as repetitive NextWave's second challenge to modifications to the installment payment rules adopted in the 1997 *Part 1 Third Report and Order*. In addition, the Commission, on its own motion, makes certain conforming rule revisions to the part 1 general competitive bidding rules to clarify the requirement that applicants fully disclose the real party or parties in interest.

B. Summary of Significant Issues Raised by Public Comments in Response to the FRFA Contained in the Order on Reconsideration of the Part 1 Third Report and Order

58. No petitions for reconsideration or comments were filed directly in response to the FRFA or on issues affecting small businesses.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

59. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small organization," "small business," and "small governmental jurisdiction." The term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (i) is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any additional criteria established by the SBA.

60. The rule revision adopted in this *Second Order on Reconsideration of the Part 1 Third Report and Order* rule is of general applicability to all services and does not apply on a service-specific basis. Therefore, this SFRFA provides a general analysis of the impact of the revised part 1 rule on small businesses rather than a service by service analysis. Accordingly, this rule revision will apply to all entities that apply to participate in Commission auctions, including both large and small entities. The number of entities that may apply to participate in future Commission auctions is unknown. The number of small businesses that have participated in prior auctions has varied. In all of the Commission's auctions held to date except for the auctions for broadcast licenses, 1,752 out of a total of 2,235 qualified bidders have been small businesses as that term has been defined under rules adopted by the Commission for specific services. Given these statistics, the Commission expects that, in the future, a large percentage of participants in its auctions program generally will continue to be small businesses; although there may not be a large percentage in every auction.

D. Description of the Projected Reporting, Record-keeping, and Other Compliance Requirements

61. All license applicants, as contemplated by the actions the Commission takes take in this *Second Order on Reconsideration of the Part 1 Third Report and Order*, are subject to the reporting and record-keeping requirements of the competitive bidding rules. These requirements apply in the same way to both large and small entities. Applicants are required to apply for spectrum auctions by filing a short-form application (FCC Form 175) prior to the auction. Applicants are also required to file a long-form application (FCC Form 601) at the conclusion of the auction. Specifically, entities seeking status as a small business must disclose on their FCC Form 175s, FCC Form 601s, and on their application for assignment or transfer of control (FCC Form 603), separately and in the aggregate, the gross revenues of the applicant (or licensee), its affiliates, its controlling interests and affiliates of the applicant's controlling interests for each of the previous three years.

62. As a result of the actions taken in the *Second Order on Reconsideration of the Part 1 Third Report and Order*, all applicants, as part of the Commission's ownership disclosure requirements, are required to fully disclose all "real party or parties in interest" including a complete disclosure of the identity and relationship of those persons or entities directly or indirectly owning or controlling (or both) the applicant.

E. Steps Taken To Minimize the Economic Impact on Small Entities, and Significant Alternatives Considered

63. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (iii) the use of performance, rather than design, standards; and (iv) an exemption from coverage of the rule or any part thereof for small entities.

64. The Commission has considered the economic impact on small entities of the reorganizing § 1.2112(a) and making other conforming revisions to this rule as adopted in this *Second Order on Reconsideration of the Part 1 Third Report and Order* and has taken steps to minimize the burdens on small entities.

65. *Ownership disclosure requirements.* In the *Order on Reconsideration of the Part 1 Third Report and Order*, the Commission revised § 1.2112(a) which requires each application for competitive bidding (*i.e.*, short-form application), or for a license, authorization, assignment or transfer for control to disclose fully the real party or parties in interest. Specifically, the Commission deleted unnecessary language, clarified certain sections, and reordered the disclosure requirements in order to provide applicants with a clearer understanding of the information that must be disclosed. Although the reorganization has generally resulted in greater clarity for applicants, the Commission is concerned that the current structure of the rule may be construed by some applicants as allowing them to provide less than a full disclosure of all the real parties in interest.

66. Accordingly, the Commission reorders § 1.2112 to move the requirement that an applicant to fully disclose all "real party or parties in interest" in the applicant or application from § 1.2112(a) to § 1.2112(a)(1). At the same time, the Commission conforms § 1.2112(a)(1) to the disclosure requirements as set forth in § 1.919(e) to ensure that applicants include a complete disclosure of the identity and relationship of those persons or entities directly or indirectly owning or controlling (or both) the applicant to a section of the rule. This rule revision is preferred over a revision that would require disclosure of less information, because it is decidedly more consistent with the Commission's efforts to provide specific guidance to applicants, to provide transparency at all stages in the competitive bidding and licensing process; and, finally to ensure that the Commission, the public, and interested parties, are aware of the real party or parties in interest before the Commission acts on an application.

F. Report to Congress

67. The Commission will send a copy of the *Second Order on Reconsideration of the Third Report and Order, and Order on Reconsideration of the Fifth Report and Order*, including this second SFRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Second Order on Reconsideration of the Third Report and Order, and Order on Reconsideration of the Fifth Report and Order*, including this second SFRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

VII. Ordering Clauses

68. It is ordered that, pursuant to the authority granted in sections 4(i), 5(b), 5(c)(1), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 155(b), 155(c)(1), 303(r), and 309(j), the *Second Order on Recon* are hereby adopted and parts 1, 21, 22, 24, 27, 73, 80, 90, 95 and 101 of the Commission's rules are amended as set forth, and become effective September 19, 2003.

69. It is further ordered that the Consumer Information Bureau, Reference Information Center, shall send a copy of the *Second Order on Recon*, including the Supplemental Final Regulatory Flexibility Analyses to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Parts 1, 21, 22, 24 and 27

Communications common carriers.

47 CFR Parts 73, 80, 90, 95 and 101

Communications equipment.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Parts 1, 21, 22, 24, 27, 73, 80, 90, 95 and 101 as follows:

PART 1—PRACTICE AND PROCEDURE

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

■ 2. Amend § 1.913 by revising paragraphs (a)(2) and (b)(2) to read as follows:

§ 1.913 Application forms; electronic and manual filing.

(a) * * *

* * * * *

(2) *FCC Form 602, Wireless Radio Services Ownership Form.* FCC Form 602 is used by applicants and licensees in auctionable services to provide and update ownership information as required by §§ 1.919, 1.948, 1.2112, and any other section that requires the submission of such information.

* * * * *

(b) * * *

* * * * *

(2) Any associated documents (*see* § 1.2112) submitted with an application must be uploaded as attachments to the application whenever possible. The attachment should be uploaded via ULS in Adobe Acrobat Portable Document Format (PDF) whenever possible.

* * * * *

■ 3. Amend § 1.919 by revising paragraphs (a), (b) introductory text, and (e) to read as follows:

§ 1.919 Ownership information.

(a) Applicants or licensees in Wireless Radio Services that are subject to the ownership reporting requirements of § 1.2112 shall use FCC Form 602 to provide all ownership information required by the chapter.

(b) Any applicant or licensee that is subject to the ownership reporting requirements of § 1.2112 shall file an FCC Form 602, or file an updated form if the ownership information on a previously filed FCC Form 602 is not current, at the time it submits:

* * * * *

(e) Applicants or licensees in Wireless Radio Services that are not subject to the ownership reporting requirements of § 1.2112 are not required to file FCC Form 602. However, such applicants and licensees may be required by the rules applicable to such services to disclose the real party (or parties) in interest to the application, including (as required) a complete disclosure of the identity and relationship of those persons or entities directly or indirectly owning or controlling (or both) the applicant or licensee.

■ 4. Amend § 1.948 by revising paragraph (c) introductory text to read as follows:

§ 1.948 Assignment of authorization or transfer of control, notification of consummation.

* * * * *

(c) *Application required.* In the case of an assignment of authorization or transfer of control, the assignor must file an application for approval of the assignment on FCC Form 603. If the assignee or transferee is subject to the ownership reporting requirements of § 1.2112, the assignee or transferee must also file an updated FCC Form 602 or certify that a current FCC Form 602 is on file.

* * * * *

■ 5. Amend § 1.2103 by revising paragraph (a)(4) to read as follows:

§ 1.2103 Competitive bidding design options.

(a) * * *

* * * * * *

(4) Combinatorial (package) bidding auctions.

* * * * *

■ 6. Amend § 1.2104 by adding paragraph (g)(3) to read as follows:

§ 1.2104 Competitive bidding mechanisms.

* * * * *

(g) * * *

(3) *Default or disqualification in combinatorial bidding auctions after close of auction.* A bidder assumes a binding obligation to pay its full bid amount upon acceptance of the high bid at the close of an auction. When the Commission conducts a combinatorial bidding auction pursuant to § 1.2103 (a)(4), if a high bidder defaults or is disqualified after close of a combinatorial bidding auction, the defaulting bidder will be subject to a default payment. The default payment consists of a deficiency portion and an additional payment. The deficiency portion of the default payment shall be calculated as set forth in § 1.2104(g)(3)(i). The additional payment shall be calculated as set forth in § 1.2104(g)(3)(ii).

(i) *Deficiency payment.* The deficiency portion of the default payment shall be calculated as set forth. In the case that any of the relevant bids are subject to bidding credits, the default payment will be adjusted in an analogous manner to that used in § 1.2104(g)(1).

(A) Where a defaulting bidder won licenses individually (*i.e.*, not as part of a package), and in a subsequent auction the licenses are also won individually, the deficiency portion will be calculated on a license-by-license basis (*i.e.*, the differences between the amounts originally bid and the amounts subsequently bid will not be aggregated to determine a net amount owed). If the subsequent winning bid(s) exceed the defaulted bid(s), no deficiency portion will be assessed. Even in the absence of a deficiency portion, however, an additional 25% payment will be due.

(B) Where a defaulting bidder won licenses in a package(s), and in a subsequent auction the licenses are won either in the same package(s), or in smaller packages or as individual licenses that correlate to the defaulted package(s), the deficiency portion will be determined on a package-by-package basis, and the differences between the amount originally bid and the amount(s) subsequently bid will not be aggregated to determine a net amount owed. Thus,

in this situation, the deficiency portion will be calculated in an analogous manner to that used in § 1.2104(g)(2). However, with regard to each individual package, where the licenses are subsequently sold individually or as part of smaller packages, the amounts received in the subsequent auction will be aggregated in order to determine any deficiency.

(C) Where a defaulting bidder or bidders won licenses either individually or as part of packages, and in a subsequent auction the licenses are won as larger packages or different packages (not including the situation described in paragraph (b) of this section), the deficiency portion will be calculated by subtracting the aggregate amount originally bid for the licenses from the aggregate amount bid in the subsequent auction for the licenses.

(D) When in the situation described in paragraph (c) of this section, there are multiple defaulting bidders, the default payment (both the deficiency portion and the additional amount portion) will be allocated to the defaulting bidders in proportion to the amount they originally bid.

Example: Bidder 1 defaults on Package ABC for $200, and Bidder 2 defaults on Package DE for $400, and in a subsequent auction the licenses are won in Package AB for $150 and Package CDE for $350. Bidder 1 would be liable for ⅓ of the default payment and Bidder 2 would be responsible for ⅔. The total default payment would be equal to the difference between the total of the original bids ($600) and the total of the subsequent amounts bid ($500) plus an additional amount of 25 percent of the total of the subsequent amounts bid. The total default payment therefore would equal $100 ($600-$500) plus 25 percent of $500 ($125), for a total default payment of $225.

(ii) *Additional payment.* If a high bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to the payment in paragraph (g)(3)(i) of this section plus an additional payment equal to 25 percent of the subsequent winning bid(s) or the defaulting bid(s), whichever is less. In the case that either the subsequent winning bid(s) or the defaulting bid(s) is subject to bidding credits, the additional payment will be calculated in an analogous manner to that used in § 1.2104(g)(2). In calculating the additional payment to determine whether the defaulted bid(s) or the subsequent winning bid(s) is the lesser amount, the defaulted and subsequent bid(s) will be compared according to the rules set forth in paragraphs (g)(3)(i)(A) through (g)(3)(i)(D) of this section for calculation of the deficiency portion of the default payment.

* * * * *

■ 7. Amend § 1.2109 by revising paragraphs (b) and (c) to read as follows:

§ 1.2109 License grant, denial, default, and disqualification.

* * * * *

(b) If a winning bidder withdraws its bid after the Commission has declared competitive bidding closed or fails to remit the required down payment within ten (10) business days after the Commission has declared competitive bidding closed, the bidder will be deemed to have defaulted, its application will be dismissed, and it will be liable for the default payment specified in §§ 1.2104(g)(2) or 1.2104(g)(3), whichever is applicable. In such event, the Commission, at its discretion, may either re-auction the license(s) to existing or new applicants or offer it to the other highest bidders (in descending order) at their final bids. If the license(s) is offered to the other highest bidders (in descending order), the down payment obligations set forth in § 1.2107(b) will apply. However, in combinatorial bidding auctions, the Commission will only re-auction the license(s) to existing or new applicants. The Commission will not offer the package or licenses to the next highest bidder.

(c) A winning bidder who is found unqualified to be a licensee, fails to remit the balance of its winning bid in a timely manner, or defaults or is disqualified for any reason after having made the required down payment, will be deemed to have defaulted, its application will be dismissed, and it will be liable for the payment set forth in §§ 1.2104(g)(2) or 1.2104(g)(3), whichever is applicable. In such event, the Commission may either re-auction the license(s) to existing or new applicants or offer it to the other highest bidders (in descending order) at their final bids. However, in combinatorial bidding auctions, the Commission will only re-auction the license(s) to existing or new applicants. The Commission will not offer the package or licenses to the next highest bidder.

* * * * *

■ 8. Amend § 1.2110 by revising paragraphs (b)(1)(i), (b)(1)(ii), (b)(3)(i) and (c)(2)(ii)(F), and adding new paragraphs (b)(3)(iii) and (c)(6) to read as follows:

§ 1.2110 Designated entities.

* * * * *

(b) * * *

(1) * * *

(i) The gross revenues of the applicant (or licensee), its affiliates, its controlling interests, and the affiliates of the applicant's controlling interests shall be attributed to the applicant and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for status as a small business, very small business, or entrepreneur, as those terms are defined in the service-specific rules. An applicant seeking status as a small business, very small business, or entrepreneur, as those terms are defined in the service-specific rules, must disclose on its short- and long-form applications, separately and in the aggregate, the gross revenues of the applicant (or licensee), its affiliates, its controlling interests, and the affiliates of the applicant's controlling interests for each of the previous three years.

(ii) If applicable, pursuant to § 24.709 of this chapter, the total assets of the applicant (or licensee), its affiliates, its controlling interests and affiliates of the applicant's controlling interests shall be attributed to the applicant and considered on a cumulative basis and aggregated for purposes of determining whether the applicant (or licensee) is eligible for status as an entrepreneur. An applicant seeking status as an entrepreneur must disclose on its short- and long-form applications, separately and in the aggregate, the gross revenues of the applicant (or licensee), its affiliates, its controlling interests and affiliates of the applicant's controlling interests for each of the previous two years.

* * * * *

(3) * * *

(i) *Consortium.* Where an applicant (or licensee) is a consortium of small businesses, very small businesses, or entrepreneurs, as those terms are defined in the service-specific rules, the gross revenues of each consortium member shall not be aggregated. Each consortium member must constitute a separate and distinct legal entity to qualify.

* * * * *

(iii) *Rural telephone cooperatives.* (A) An applicant will be exempt from § 1.2110(c)(2)(ii)(F) for the purpose of attribution in § 1.2110(b)(1), if the applicant or a controlling interest in the applicant, as the case may be, meets all of the following conditions:

(*1*) the applicant (or the controlling interest) is organized as a cooperative pursuant to state law;

(*2*) the applicant (or the controlling interest) is a "rural telephone company" as defined by the Communications Act; and

(*3*) the applicant (or the controlling interest) is eligible for tax-exempt status under the Internal Revenue Code. The applicant will not be exempt from § 1.2110(c)(2)(ii)(F) for the purpose of attribution in § 1.2110(b)(1) if the gross revenues or other financial and management resources of the affiliates of the applicant's officers and directors (or the controlling interest's officers and directors) are available to the applicant.

(B) However, if the applicant is not an eligible rural telephone cooperative under paragraph (a) of this section, and the applicant has a controlling interest other than the applicant's officers and directors or an eligible rural telephone cooperative's officers and directors, paragraph (a) of this section applies with respect to the applicant's officers and directors and such controlling interest's officers and directors only when such controlling interest is either:

(*1*) An eligible rural telephone cooperative under paragraph (a) of this section or

(*2*) controlled by an eligible rural telephone cooperative under paragraph (a) of this section.

(c) * * *

* * * * * *

(2) * * *

(ii) * * *

(F) Officers and directors of the applicant shall be considered to have a controlling interest in the applicant. The officers and directors of an entity that controls a licensee or applicant shall be considered to have a controlling interest in the licensee or applicant. The personal net worth, including personal income of the officers and directors of an applicant, is not attributed to the applicant. To the extent that the officers and directors of an applicant are affiliates of other entities, the gross revenues of the other entities are attributed to the applicant.

* * * * *

(6) *Consortium.* A consortium of small businesses, very small businesses, or entrepreneurs is a conglomerate organization composed of two or more entities, each of which individually satisfies the definition of a small business, very small business, or entrepreneur, as those terms are defined in the service-specific rules. Each individual member must constitute a separate and distinct legal entity to qualify.

* * * * *

■ 9. Revise § 1.2112 to read as follows:

§ 1.2112 Ownership disclosure requirements for applications.

(a) Each application to participate in competitive bidding (*i.e.*, short-form application (*see* 47 CFR 1.2105)), or for a license, authorization, assignment, or transfer of control shall fully disclose the following:

(1) List the real party or parties in interest in the applicant or application, including a complete disclosure of the identity and relationship of those persons or entities directly or indirectly owning or controlling (or both) the applicant;

(2) List the name, address, and citizenship of any party holding 10 percent or more of stock in the applicant, whether voting or nonvoting, common or preferred, including the specific amount of the interest or percentage held;

(3) List, in the case of a limited partnership, the name, address and citizenship of each limited partner whose interest in the applicant is 10 percent or greater (as calculated according to the percentage of equity paid in or the percentage of distribution of profits and losses);

(4) List, in the case of a general partnership, the name, address and citizenship of each partner, and the share or interest participation in the partnership;

(5) List, in the case of a limited liability company, the name, address, and citizenship of each of its members whose interest in the applicant is 10 percent or greater;

(6) List all parties holding indirect ownership interests in the applicant as determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain, that equals 10 percent or more of the applicant, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated and reported as if it were a 100 percent interest; and

(7) List any FCC-regulated entity or applicant for an FCC license, in which the applicant or any of the parties identified in paragraphs (a)(1) through (a)(5) of this section, owns 10 percent or more of stock, whether voting or nonvoting, common or preferred. This list must include a description of each such entity's principal business and a description of each such entity's relationship to the applicant (*e.g.*, Company A owns 10 percent of Company B (the applicant) and 10 percent of Company C, then Companies A and C must be listed on Company B's application, where C is an FCC licensee and/or license applicant).

(b) *Designated entity status.* In addition to the information required under paragraph (a) of this section, each applicant claiming eligibility for small business provisions shall disclose the following:

(1) On its application to participate in competitive bidding (*i.e.*, short-form application (see 47 CFR 1.2105)):

(i) List the names, addresses, and citizenship of all officers, directors, affiliates, and other controlling interests of the applicant, as described in § 1.2110, and, if a consortium of small businesses or consortium of very small businesses, the members of the conglomerate organization;

(ii) List any FCC-regulated entity or applicant for an FCC license, in which any controlling interest of the applicant owns a 10 percent or greater interest or a total of 10 percent or more of any class of stock, warrants, options or debt securities. This list must include a description of each such entity's principal business and a description of each such entity's relationship to the applicant; and

(iii) List separately and in the aggregate the gross revenues, computed in accordance with § 1.2110, for each of the following: The applicant, its affiliates, its controlling interests, and affiliates of its controlling interests; and if a consortium of small businesses, the members comprising the consortium.

(2) As an exhibit to its application for a license, authorization, assignment, or transfer of control:

(i) List the names, addresses, and citizenship of all officers, directors, and other controlling interests of the applicant, as described in § 1.2110;

(ii) List any FCC-regulated entity or applicant for an FCC license, in which any controlling interest of the applicant owns a 10 percent or greater interest or a total of 10 percent or more of any class of stock, warrants, options or debt securities. This list must include a description of each such entity's principal business and a description of each such entity's relationship to the applicant;

(iii) List and summarize all agreements or instruments (with appropriate references to specific provisions in the text of such agreements and instruments) that support the applicant's eligibility as a small business under the applicable designated entity provisions, including the establishment of *de facto* or *de jure* control; such agreements and instruments include articles of incorporation and bylaws, shareholder agreements, voting or other trust agreements, franchise agreements, and any other relevant agreements (including letters of intent), oral or written;

(iv) List and summarize any investor protection agreements, including rights of first refusal, supermajority clauses, options, veto rights, and rights to hire and fire employees and to appoint members to boards of directors or management committees;

(v) List separately and in the aggregate the gross revenues, computed in accordance with § 1.2110, for each of the following: the applicant, its affiliates, its controlling interests, and affiliates of its controlling interests; and if a consortium of small businesses, the members comprising the consortium; and

(vi) List and summarize, if seeking the exemption for rural telephone cooperatives pursuant to § 1.2110, all documentation to establish eligibility pursuant to the four factors listed under § 1.2110(b)(3)(iii).

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

■ 10. The authority citation for part 21 continues to read as follows:

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 403, 404, 410, 602, 48 Stat. as amended, 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 602; 47 U.S.C. 552, 554.

■ 11. Amend § 21.930 by revising paragraph (d)(2)(i) to read as follows:

§ 21.930 Five-year build-out requirements.

* * * * *

(d) * * *

(2) * * *

(i) The competitive bidding procedures set forth in §§ 21.950 through 21.960 shall be followed by applicants seeking authority to provide MDS service to the unserved partitioned area.

* * * * *

■ 12. Revise § 21.954 to read as follows:

§ 21.954 Submission of upfront payments.

Applicants who are small businesses eligible for reduced upfront payments will be required to submit an upfront payment amount in accordance with § 21.960(d).

■ 13. Amend § 21.956 by revising paragraphs (b)(2) and (b)(3) to read as follows:

§ 21.956 Filing of long-from applications or statements of intention.

* * * * *

(b) * * *

(2) An exhibit detailing the terms and conditions and parties involved in any bidding consortia, joint venture, partnership or other agreement or arrangement the winning bidder had entered into relating to the competitive bidding process prior to the time bidding was completed (*see* 47 CFR 1.2107(d) of this chapter);

(3) An exhibit complying with §§ 1.2110(j) of this chapter and 21.960(f), if the winning bidder submitting the long-form application or statement of intention claims status as a designated entity.

* * * * *

■ 14. Amend § 21.960 by redesignating paragraphs (a), (b), (c), (d), (e), and (f) as paragraphs (b), (c), (d), (e), (f), and (g), and adding new paragraph (a) to read as follows:

§ 21.960 Designated entity provisions for MDS.

(a) *Eligibility for small business provisions.* A small business is an entity that together with its affiliates has average annual gross revenues that are not more than $40 million for the preceding three calendar years.

* * * * *

§ 21.961 [Removed and Reserved]

■ 15. Remove and reserve § 21.961.

PART 22—PUBLIC MOBILE SERVICES

■ 16. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 222, 303, 309, and 332.

■ 17. Revise § 22.217 to read as follows:

§ 22.217 Bidding credit for small businesses.

A winning bidder that qualifies as a small business, as defined in § 22.223(b)(1), or a consortium of small businesses may use a bidding credit of thirty-five (35) percent to lower the cost of its winning bid. A winning bidder that qualifies as a small business, as defined in § 22.223(b)(2), or consortium of small businesses may use a bidding credit of twenty-five (25) percent to lower the cost of its winning bid.

■ 18. Revise § 22.223 to read as follows:

§ 22.223 Designated entities.

(a) *Scope.* The definitions in this section apply to §§ 22.201 through 22.227, unless otherwise specified in those sections.

(b) A small business is an entity that either:

(1) Together with its affiliates and controlling interests has average gross revenues that are not more than $3 million for the preceding three years; or

(2) Together with its affiliates and controlling interests has average gross revenues that are not more than $15 million for the preceding three years.

■ 19. Amend § 22.225 by removing paragraph (a), redesignating paragraphs (b) and (c) as paragraphs (a) and (b), and revising newly redesignated paragraph (b) to read as follows:

§ 22.225 Records maintenance and definitions.

* * * * *

(b) *Definition.* The term small business used in this section is defined in § 22.223.

■ 20. Amend § 22.229 by removing paragraphs (a)(4) and (a)(5) and revising paragraph (b) to read as follows:

§ 22.229 Designated entities.

* * * * *

(b) *Bidding credits.* A winning bidder that qualifies as a very small business, as defined in this section, or a consortium of very small businesses may use the bidding credit specified in § 1.2110(f)(2)(i) of this chapter. A winning bidder that qualifies as a small business, as defined in this section, or a consortium of small businesses may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as an entrepreneur, as defined in this section, or a consortium of entrepreneurs may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter.

PART 24—PERSONAL COMMUNICATIONS SERVICES

■ 21. The authority citation continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 302, 303, 309, and 332.

■ 22. Amend § 24.321 by removing paragraph (a)(3) and revising paragraphs (b) and (c) to read as follows:

§ 24.321 Designated entities.

* * * * *

(b) *Bidding credits.* After August 7, 2000, a winning bidder that qualifies as a small business, as defined in this section, or a consortium of small businesses may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter. A winning bidder that qualifies as a very small business, as defined in this section, or a consortium of very small businesses may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter.

(c) *Installment payments.* Small businesses that are winning bidders on any regional license prior to August 7, 2000 will be eligible to pay the full amount of their winning bids in installments over the term of the license pursuant to the terms set forth in § 1.2110(g) of this chapter.

■ 23. Amend § 24.709 by removing pargraph (c)(1)(ii)(B), redesignating paragraphs (c)(1)(ii)(C), (c)(1)(ii)(D), (c)(1)(ii)(E) and (c)(1)(ii)(F) as (c)(1)(ii)(B), (c)(1)(ii)(C), (c)(1)(ii)(D) and (c)(1)(ii)(E), and revising paragraphs

(b)(1)(v)(A)(*3*) introductory text, (b)(1)(v)(A)(*3*)(*iv*), (b)(1)(vi)(A)(*3*) introductory text, (b)(1)(vi)(A)(*3*)(*iv*), newly redesignated paragraphs (c)(1)(ii)(C), (c)(1)(ii)(E)(*1*), (c)(*1*)(ii)(E)(*2*) and paragraphs (c)(3) and (d) to read as follows:

§ 24.709 Eligibility for licenses for frequency Blocks C or F.

* * * * *

(b) * * *

(1) * * *

(v) * * *

(A) * * *

(*3*) The remaining 10 percent of the applicant's (or licensee's) total equity may be owned, either unconditionally or in the form of stock options, by any of the following entities, which may not comply with § 24.720(g)(1):

* * * * *

(*iv*) Qualifying investors, as specified in § 24.720(g)(3).

* * * * *

(vi) * * *

(A) * * *

(*3*) The remaining 20.1 percent of the applicant's (or licensee's) total equity may be owned by qualifying investors, either unconditionally or in the form of stock options not subject to the restrictions of paragraph (b)(1)(vi)(A)(*1*) of this section, or by any of the following entities which may not comply with § 24.720(g)(1):

* * * * *

(*iv*) Qualifying investors, as specified in § 24.720(g)(3).

* * * * *

(c) * * *

(1) * * *

(ii) * *

(C) The identity of each affiliate of the applicant and each affiliate of individuals or entities identified pursuant to paragraphs (C)(1)(ii)(A) and (c)(1)(ii)(B) of this section;

* * * * *

(E) * * *

(*1*) A certified statement that such applicant complies with the requirements of the definition of publicly traded corporation with widely disbursed voting power set forth in § 24.720(f);

(*2*) The identity of each *affiliate* of the applicant.

* * * * *

(3) *Records maintenance.* All applicants, including those that are winning bidders, shall maintain at their principal place of business an updated file of ownership, revenue and asset information, including those documents referenced in paragraphs (c)(2)(ii) and (c)(2)(iii) of this section and any other documents necessary to establish eligibility under this section and any other documents necessary to establish eligibility under this section or under the definition of small business. Licensees (and their successors in interest) shall maintain such files for the term of the license. Applicants that do not obtain the license(s) for which they applied shall maintain such files until the grant of such license(s) is final, or one year from the date of the filing of their short-form application (Form 175), whichever is earlier.

(d) *Definitions.* The terms control group, existing investor, institutional investor, nonattributable equity, preexisting entity, publicly traded corporation with widely dispersed voting power, qualifying investor, and small business used in this section are defined in § 24.720.

§ 24.711 [Amended]

■ 24. Amend § 24.711 by replacing the reference to "section 1.2110(o)" in paragraph (a) with "section 1.2110(n)".

■ 25. Amend § 24.712 by revising paragraphs (a) and (b) to read as follows:

§ 24.712 Bidding credits for licenses won for frequency Block C.

(a) Except with respect to licenses won in closed bidding in auctions that begin after March 23, 1999, a winning bidder that qualifies as a small business, as defined in § 24.720(b)(1), or a consortium of small businesses may use a bidding credit of fifteen percent, as specified in § 1.2110(f)(2)(iii) of this chapter, to lower the cost of its winning bid.

(b) Except with respect to licenses won in closed bidding in auctions that begin after March 23, 1999, a winning bidder that qualifies as a very small business, as defined in § 24.720(b)(2), or a consortium of very small businesses may use a bidding credit of twenty-five percent as specified in § 1.2110(f)(2)(ii) of this chapter, to lower the cost of its winning bid.

* * * * *

§ 24.714 [Amended]

■ 26. Amend § 24.714 by replacing the reference to "The Bureau" in paragraph (c)(2)(iii) with "The Commission".

§ 24.716 [Amended]

■ 27. Amend § 24.716 by replacing all references to "section 1.2110(o)" in paragraphs (a) and (b) with "section 1.2110(n)".

■ 28. Revise § 24.717 to read as follows:

§ 24.717 Bidding credits for licenses for frequency Block F.

(a) Except with respect to licenses won in closed bidding in auctions that begin after March 23, 1999, a winning bidder that qualifies as a small business, as defined in § 24.720(b)(1), or a consortium of small businesses may use a bidding credit of fifteen percent, as specified in § 1.2110(f)(2)(iii) of this chapter, to lower the cost of its winning bid.

(b) Except with respect to licenses won in closed bidding in auctions that begin after March 23, 1999, a winning bidder that qualifies as a very small business, as defined in § 24.720(b)(2), or a consortium of very small businesses may use a bidding credit of twenty-five percent as specified in § 1.2110(f)(2)(ii) of this chapter, to lower the cost of its winning bid.

■ 29. Amend § 24.720 by removing paragraphs (b)(3) and (b)(4), redesignating paragraphs (e), (f), (g), (h), (i), and (j) as paragraphs (c), (d), (e), (f), (g), and (h), redesignating the Note to Paragraph (j) as the Note to Paragraph (h) and revising paragraph (b) introductory text and newly redesignated paragraph (g) to read as follows:

§ 24.720 Definitions.

* * * * *

(b) *Small and very small business.*

* * *

* * * * *

(g) *Qualifying investor.* (1) A qualifying investor is a person who is (or holds an interest in) a member of the applicant's (or licensee's) control group and whose gross revenues and total assets, when aggregated with those of all other attributable investors and affiliates, do not exceed the gross revenues and total assets limits specified in § 24.709(a), or, in the case of an applicant (or licensee) that is a small business, do not exceed the gross revenues limit specified in paragraph (b) of this section.

(2) For purposes of assessing compliance with the minimum equity requirements of § 24.709(b)(1)(v) and (b)(1)(vi), where such equity interests are not held directly in the applicant, interests held by qualifying investors shall be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain.

(3) For purposes of § 24.709(b)(1)(v)(A)(3) and (b)(1)(vi)(A)(3), a qualifying investor is a person who is (or holds an interest in) a member of the applicant's (or licensee's) control group and whose gross revenues and total assets do not exceed the gross revenues and total assets limits specified in § 24.709(a).

* * * * *

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

■ 30. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

■ 31. Amend § 27.210 by revising paragraph (b) to read as follows:

§ 27.210 Definitions.

* * * * *

(b) *Small and very small business.* (1) A *small business* is an entity that, together with its affiliates and controlling interests, has average annual gross revenues that are not more than $40 million for the preceding three years.

(2) *A very small business* is an entity that, together with its affiliates and controlling interests, has average annual gross revenues that are not more than $15 million for the preceding three years.

■ 32. Revise § 27.501 to read as follows:

§ 27.501 746–764 MHz and 776–794 MHz bands subject to competitive bidding.

Mutually exclusive initial applications for licenses in the 746–764 MHz and 776–794 MHz bands are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

§ 27.502 [Amended]

■ 33. Amend § 27.502 by removing paragraph (c).

■ 34. Amend § 27.702 by removing paragraph (a)(4) and revising paragraph (b) to read as follows:

§ 27.702 Designated entities.

* * * * *

(b) *Bidding credits.* A winning bidder that qualifies as an entrepreneur, as defined in this section, or a consortium of entrepreneurs may use the bidding credit specified in § 1.2110(f)(2)(i) of this chapter. A winning bidder that qualifies as a very small business, as defined in this section, or a consortium of very small businesses may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as a small business, as defined in this section, or a consortium of small businesses may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter.

■ 35. Amend § 27.807 by removing paragraphs (a)(3) and (a)(4) and revising paragraph (b) to read as follows:

§ 27.807 Designated entities.

* * * * *

(b) *Bidding credits.* A winning bidder that qualifies as a very small business, as defined in this section, or a consortium of very small businesses may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as a small business, as defined in this section, or a consortium of small businesses may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter.

36. Amend § 27.906 by removing paragraphs (a)(3) and (a)(4), and revising paragraph (b) to read as follows:

§ 27.906 Designated entities.

* * * * *

(b) *Bidding credits.* A winning bidder that qualifies as a very small business, as defined in this section, or a consortium of very small businesses may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as a small business, as defined in this section, or a consortium of small businesses may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter.

37. Amend § 27.1006 by removing paragraphs (a)(3) and (a)(4), and revising paragraph (b) to read as follows:

§ 27.1006 Designated entities.

* * * * *

(b) *Bidding credits.* A winning bidder that qualifies as a very small business, as defined in this section, or a consortium of very small businesses may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as a small business, as defined in this section, or a consortium of small businesses may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter.

PART 73—RADIO BROADCAST SERVICES

■ 38. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

■ 39. Amend § 73.5005 by revising paragraph (a) to read as follows:

§ 73.5005 Filing of long-form applications.

(a) Within thirty (30) days following the close of bidding and notification to the winning bidders, each winning bidder must submit an appropriate long-form application (FCC Form 301, FCC Form 346, FCC Form 349 or FCC Form 330) for each construction permit or license for which it was the high bidder. Long-form applications filed by winning bidders shall include the exhibits required by § 1.2107(d) of this chapter (concerning any bidding consortia or joint bidding arrangements); § 1.2110(j) of this chapter (concerning designated entity status, if applicable); and § 1.2112 of this chapter (concerning disclosure of ownership and real party in interest information, and, if applicable, disclosure of gross revenue information for small business applicants);

* * * * *

■ 40. Amend § 73.5009 by revising paragraph (b) to read as follows:

§ 73.5009 Assignment or transfer of control.

* * * * *

(b) The ownership disclosure requirements found at § 1.2112(a) of this chapter shall not apply to an applicant seeking consent to assign or transfer control of a broadcast construction permit or license awarded by competitive bidding.

PART 80—STATIONS IN THE MARITIME SERVICES

■ 41. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

■ 42. Amend § 80.1252 by removing paragraph (b)(3) and revising paragraphs (a) and (c) to read as follows:

§ 80.1252 Designated entities.

(a) This section addresses certain issues concerning designated entities in maritime communications services subject to competitive bidding.

* * * * *

(c) A winning bidder that qualifies as a small business, as defined in § 80.1252(b)(1), or consortium of small businesses may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as a very small business, as defined in § 80.1252(b(2), or consortium of very small businesses may use the bidding credit specified in § 1.2110(f)(2)(i) of this chapter.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 43. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 44. Revise § 90.810 to read as follows:

§ 90.810 Bidding credits for small businesses.

A winning bidder that qualifies as a small business, as defined in § 90.814(b)(1), or a consortium of small businesses may use a bidding credit of 15 percent to lower the cost of its winning bid on any of the blocks identified in § 90.617(d), Table 4B. A winning bidder that qualifies as a small business, as defined in § 90.814(b)(2), or a consortium of small businesses may use a bidding credit of 10 percent to lower the cost of its winning bid on any of the blocks identified in § 90.617(d), Table 4B.

§ 90.813 [Amended]

■ 45. Amend § 90.813 by replacing the reference to "The Bureau" in paragraph (c)(2)(ii) with "The Commission."

■ 46. Amend § 90.814 by revising paragraph (b) to read as follows:

§ 90.814 Definitions.

(b) A small business is an entity that either:

(1) Together with its affiliates, persons or entities that hold attributable interests in such entity, and their affiliates, has average gross revenues that are not more than $3 million for the preceding three years; or

(2) Together with its affiliates, persons or entities that hold attributable interests in such entity, and their affiliates, has average gross revenues that are not more than $15 million for the preceding three years.

■ 47. Revise § 90.815 to read as follows:

§ 90.815 Records maintenance and definitions.

(a) *Records maintenance.* All winning bidders qualifying as small businesses, shall maintain at their principal place of business an updated file of ownership, revenue and asset information, including any documents necessary to establish eligibility as a small business, pursuant to § 90.814, and/or a consortium of small businesses. Licensees (and their successors in interest) shall maintain such files for the term of the license.

(b) *Definitions.* The term *small business* used in this section is defined in § 90.814.

■ 48. Amend § 90.901 by revising the section heading to read as follows:

§ 90.901 800 MHz SMR spectrum subject to competitive bidding.

* * * * *

■ 49. Revise § 90.910 to read as follows:

§ 90.910 Bidding credits.

A winning bidder that qualifies as a very small business, as defined in § 90.912(b)(2), or a consortium of very small businesses may use a bidding credit of 35 percent to lower the cost of its winning bid on Spectrum Blocks A through V. A winning bidder that qualifies as a small business, as defined in § 90.912(b)(1), or a consortium of small businesses may use a bidding credit of 25 percent to lower the cost of its winning bid on Spectrum Blocks A through V.

■ 50. Amend § 90.912 by removing paragraphs (b)(3) and (b)(4), and revising paragraph (b) introductory text to read as follows:

§ 90.912 Definitions.

* * * * *

(b) *Small and very small businesses.*

* * *

* * * * *

■ 51. Revise § 90.913 to read as follows:

§ 90.913 Record maintenance and definitions.

(a) *Records maintenance.* All winning bidders qualifying as small or very small businesses, shall maintain at their principal place of business an updated file of ownership, revenue and asset information, including any document necessary to establish eligibility as a small or very small business, as defined in § 90.912, and/or consortium of small businesses (or consortium of very small businesses). Licensees (and their successors in interest) shall maintain such files for the term of the license.

(b) *Definitions.* The terms *small and very small business* used in this section are defined in § 90.912.

■ 52. Revise § 90.1017 to read as follows:

§ 90.1017 Bidding credits for small businesses and very small businesses.

A winning bidder that qualifies as a small business, as defined in § 90.1021(b)(1), or a consortium of small businesses may use a bidding credit of 25 percent to lower the cost of its winning bid. A winning bidder that qualifies as a very small business, as defined in § 90.1021(b)(2), or a consortium of very small businesses may use a bidding credit of 35 percent to lower the cost of its winning bid.

■ 53. Amend § 90.1021 by removing paragraph (b)(3) and revising (b) introductory text to read as follows:

§ 90.1021 Definitions concerning competitive bidding process.

* * * * *

(b) *Small and very small business.*

* * *

* * * * *

■ 54. Revise § 90.1023 to read as follows:

§ 90.1023 Records maintenance and definitions.

(a) *Records maintenance.* All winning bidders qualifying as small or very small businesses shall maintain at their principal place of business an updated file of ownership, revenue, and asset information, including any documents necessary to establish eligibility as a small business or very small business, as defined in § 90.1021, and/or consortium of small businesses (or consortium of very small businesses). Licensees (and their successors-in-interest) shall maintain such files for the term of the license. Applicants that do not obtain the license(s) for which they applied shall maintain such files until the grant of such license(s) is final, or one year from the date of the filing of their short-form application (FCC Form 175), whichever is earlier.

(b) *Definitions.* The terms small and very small business used in this section are defined in § 90.1021.

■ 55. Amend § 90.1103 by removing paragraphs (b)(3) and revising paragraphs (a) and (c) to read as follows:

§ 90.1103 Designated entities.

(a) This section addresses certain issues concerning designated entities in the Location and Monitoring Service (LMS) subject to competitive bidding.

* * * * *

(c) A winning bidder that qualifies as a small business, as defined in paragraph (b)(1) of this section, or a consortium of small businesses may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as a very small businesses, as defined in paragraph (b)(2) of this section, or a consortium of very small businesses may use the bidding credit specified in § 1.2110(f)(2)(i) of this chapter.

PART 95—PERSONAL RADIO SERVICE

■ 56. The authority citation for part 95 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

■ 57. Amend § 95.816 by removing paragraph (c)(3) and revising paragraph (d) to read as follows:

§ 95.816 Competitive bidding proceedings.

* * * * *

(d) *Bidding credits.* A winning bidder that qualifies as a small business, as defined in this subsection, or a consortium of small businesses may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as a very .

small business, as defined in this section, or a consortium of very small businesses may use the bidding credit specified in accordance with § 1.2110(f)(2)(i) of this chapter.

* * * * *

PART 101—FIXED MICROWAVE SERVICES

■ 58. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

■ 59. Amend § 101.538 by removing paragraphs (a)(4) and (a)(5) and revising paragraph (b) to read as follows:

§ 101.538 Designated entities.

* * * * *

(b) *Bidding credits.* A winning bidder that qualifies as a very small business, as defined in this section, or a consortium of very small businesses may use the bidding credit specified in § 1.2110(f)(2)(i) of this chapter. A winning bidder that qualifies as a small business, as defined in this section, or a consortium of small businesses may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as an entrepreneur, as defined in this section, or a consortium of entrepreneurs may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter.

■ 60. Revise § 101.1107 to read as follows:

§ 101.1107 Bidding credits for very small businesses, small businesses and entrepreneurs.

(a) A winning bidder that qualifies as a very small business, as defined in § 101.1112, or a consortium of very small businesses may use a bidding credit of 45 percent to lower the cost of its winning bid.

(b) A winning bidder that qualifies as a small business, as defined in § 101.1112, or a consortium of small businesses may use a bidding credit of 35 percent to lower the cost of its winning bid.

(c) A winning bidder that qualifies as an entrepreneur, as defined in § 101.1112, or a consortium of entrepreneurs may use a bidding credit of 25 percent to lower the cost of its winning bid.

(d) The bidding credits referenced in paragraphs (a), (b) and (c) of this section are not cumulative.

■ 61. Revise § 101.1109 to read as follows:

§ 101.1109 Records maintenance.

All winning bidders qualifying as very small businesses, small businesses or entrepreneurs shall maintain at their principal place of business an updated file of ownership, revenue, and asset information, including any document necessary to establish eligibility as a very small business, small business or entrepreneur. Licensees (and their successors-in-interest) shall maintain such files for the term of the license. Applicants that do not obtain the license(s) for which they applied shall maintain such files until the grant of such license(s) is final, or one year from the date of the filing of their short-form application (FCC Form 175), whichever is earlier.

§ 101.1112 [Amended]

■ 62. Amend § 101.1112 by removing paragraphs (e) and (f).

■ 63. Amend § 101.1209 by revising paragraph (b) to read as follows:

§ 101.1209 Definitions.

* * * * *

(b) *Small business and very small business.* (1) A small business is an entity that together with its affiliates and persons or entities that hold attributable interests in such entity and their affiliates, has average gross revenues that are not more than $40 million for the preceding three years.

(2) A very small business is an entity that together with its affiliates and persons or entities that hold attributable interests in such entity and their affiliates, has average gross revenues that are not more than $15 million for the preceding three years.

■ 64. Amend § 101.1429 by removing paragraphs (a)(4) and (a)(5) and revising paragraph (b) to read as follows:

§ 101.1429 Designated entities.

* * * * *

(b) *Bidding credits.* A winning bidder that qualifies as a very small business, as defined in this section, or a consortium of very small businesses may use the bidding credit specified in § 1.2110(f)(2)(i) of this chapter. A winning bidder that qualifies as a small business, as defined in this section, or a consortium of small businesses may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter. A winning bidder that qualifies as an entrepreneur, as defined in this section, or a consortium of entrepreneurs may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter.

[FR Doc. 03–18430 Filed 7–18–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 21

[WT Docket No. 03–66; RM–10586; WT Docket No. 03–67; MM Docket No. 97–217; WT Docket No. 02–68; RM–9718; FCC 03–169]

Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule; reinstatement.

SUMMARY: This item modifies a Final rule to delete the request for comment on how the Commission should handle pending applications for extension of time to construct Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS) stations. In light of representations that many entities have developed plans in the near future to deploy high-speed wireless broadband systems under our existing rules, the Commission now believes that acting on applications for extension of time to construct will facilitate continued deployment of broadband services and promote innovation and investment. This item also reinstates the Commission's rules and clarifies that MDS Basic Trading Area authorization holders need not comply with the build out requirements contained in the Commission's rules pending publication of a *Report and Order* in this proceeding.

DATES: Effective July 21, 2003, § 21.930 which was suspended on June 10, 2003 (68 FR 34560) is reinstated.

FOR FURTHER INFORMATION CONTACT: Charles Oliver and John J. Schauble, Chief, Policy and Rules Branch, Public Safety and Private Wireless Division at (202) 418–0680, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's Order, FCC 03–169, adopted on July 10, 2003, and released on July 10, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

1. On April 2, 2003, the Commission released a *Memorandum Opinion and Order (MO&O)*, 68 FR 34547, June 10, 2003, in this proceeding. Pursuant to § 1.108 of the Commission's rules, on our own motion, we issue this limited reconsideration of the *MO&O* by (1) replacing paragraph 201 (which addresses applications for extension of time to construct) with the language set forth herein, and (2) clarifying our action with respect to § 21.930 of the Commission's rules, which sets forth the build-out requirements for Multipoint Distribution Service (MDS) Basic Trading Authorization (BTA) holders.

2. *Pending Applications for Extension of Time to Construct.* With respect to pending applications for extensions of time to construct, we take this action in light of information that has come to our attention since the adoption and release of the *MO&O*. Specifically, in connection with petitions for reconsideration of our decision to impose a freeze on the filing of applications for new MDS and Instructional Television Fixed Service (ITFS) stations, as well as major changes to such stations, entities have represented to us that they have developed plans in the near future to deploy high-speed wireless broadband systems under our existing rules. For example, WCA estimates that approximately thirty wireless broadband operators plan to deploy systems in approximately eighty markets in the next twelve months. In light of this information, we are concerned that our decision to seek comment on how to treat pending applications for extensions of time to construct MDS and ITFS stations may hinder the deployment of MDS and ITFS systems aimed at providing broadband services. As noted in the *NPRM/MO&O*, one of our primary goals in this proceeding is to "present a significant opportunity to provide alternatives for the provision of broadband services to consumers in urban, suburban and rural areas and to improve opportunities for distance learning and telemedicine services." Under those circumstances, we believe that it would be in the public interest to be able to act on those pending applications for extension of time to construct prior to the completion of this proceeding. We believe that acting on such applications will facilitate continued deployment of broadband services and promote innovation and investment therein. As a result, we are no longer seeking comment in the *MO&O* on the treatment of pending applications for extensions of time to construct MDS and ITFS stations.

3. Accordingly, we delete paragraph 201 of the *MO&O* and replace it with the following language:

4. *Extension/Suspension of current performance requirements for site-based licensees.* Moreover, we also believe that it is in the public interest to suspend the construction deadline for ITFS and MDS site-based licensees and permittees that have unexpired licenses or permits that have not expired as of the release date of the *MO&O* and that have made a timely filed extension request. We emphasize that the suspension of this construction deadline for site-based licensees does not affect the requirement for such licensees to timely file a renewal application. We stress that all site-based licensees are required to timely file renewal applications or face cancellation of their licenses regardless of the pendency of this proceeding.

5. We note that we are not modifying our decision to hold in abeyance the construction build-out requirements for site-based incumbents that have licenses or permits that had not expired as of the release date of the *MO&O*. Furthermore, we continue to seek comment on whether we should change criteria for granting extension of time requests prospectively.

6. *MDS BTA Build-Out Rule.* In the *MO&O*, we "suspended" the August 16, 2003 construction deadline for MDS BTA authorization holders contained in § 21.930 of the Commission's Rules. Upon further reflection, we believe that our use of the term "suspend" did not accurately reflect our intent in this matter. Our intent was to relieve MDS BTA authorization holders of the obligation to meet the build out deadline contained in § 21.930 pending the release of a *Report and Order* in this proceeding. In order to more accurately reflect our intention, we are reinstating § 21.930 of the Commission's Rules, but stating that MDS BTA authorization holders do not have to meet the build out obligations contained in that rule pending the release of a *Report and Order* in this proceeding. We continue to seek comment on how much additional time MDS BTA authorization holders should receive to meet their build out obligations after a *Report and Order* is issued in this proceeding.

7. The actions contained herein have not changed our Initial Regulatory Flexibility Analysis (IRFA), which was set forth in the *MO&O*. Thus, no supplemental IRFA is necessary. In addition, the action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA) and found to impose no new or modified reporting and/or recordkeeping requirements or burdens on the public.

8. Pursuant to section 4(i) of the Communications Act of 1934, 47 U.S.C. 154(i), and § 1.108 of the Commission's Rules, 47 CFR 1.108, that the *Memorandum Opinion and Order*, FCC 03–56, is modified as set forth herein.

9. Pursuant to section 4(i) of the Communications Act of 1934, 47 U.S.C. 154(i), that § 21.930 of the Commission's Rules, 47 CFR 21.930, is reinstated.

10. Pursuant to section 4(i) of the Communications Act of 1934, 47 U.S.C. 154(i), and § 21.930 of the Commission's Rules, 47 CFR 21.930, that MDS BTA authorization holders need not comply with the build out requirements contained in § 21.930 of the Commission's rules pending the publishing of a *Report and Order* in this proceeding.

List of Subjects in 47 CFR Part 21

Communications common carriers, Communications equipment, Radio and Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–18429 Filed 7–18–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Dockets 99–200, 96–98 and 95–116; FCC 03–126]

Numbering Resource Optimization; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Telephone Number Portability

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission continues efforts to maximize the efficiency with which numbering resources in the North American Numbering Plan (NANP) are used. The Commission addresses issues on which we sought comment in *Numbering Resource Optimization Third Order on Reconsideration*. These actions will further promote our competition policies, promote the efficient and effective use of finite numbering resources and increase the

effectiveness of our numbering resource optimization measures.

DATES: Effective August 20, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Slipakoff, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7705.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fourth Report and Order in CC Docket No. 99–200 and CC Docket No. 95–116, released on June 18, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC, 20554.

I. Introduction

1. In this order, the Commission continues efforts to maximize the efficiency with which numbering resources in the NANP are used. The Commission addresses the issues on which it sought comment in *Numbering Resource Optimization Third Order on Reconsideration*, 67 FR 16347 (April 5, 2002). Specifically, the Commission reaffirms that carriers need only deploy LNP in switches within the 100 largest MSAs for which another carrier has made a specific request for the provision of LNP. The Commission also delegates authority to the state commissions to require carriers operating within the largest 100 MSAs that have not received a specific request for LNP from another carrier to provide LNP, under certain circumstances and on a case-by-case basis. The Commission also concludes that all carriers, except those specifically exempted, are required to participate in thousands-block number pooling in accordance with the national rollout schedule, regardless of whether they are required to provide LNP, including covered commercial mobile radio service (CMRS) providers that are not required to deploy LNP until November 24, 2003. The Commission specifically exempts rural telephone companies and Tier III CMRS providers that have not received a request to provide LNP from the pooling requirement. The Commission also exempts from the pooling requirement carriers that are the only service provider receiving numbering resources in a given rate center. Regarding MSAs, the Commission reaffirms its findings that the 100 largest MSAs include those MSAs identified in the 1990 U.S. Census reports as well as those areas included on any subsequent U.S. Census report of the 100 largest MSAs. Although the Commission declines to expand the list of the 100 largest MSAs to include areas in Consolidated Metropolitan Statistical Areas (CMSAs) that would not otherwise be included in the 100 largest MSAs, the Commission delegates to state commissions the authority to determine whether to require carriers to participate in pooling in such areas. The Commission also finds AT&T's petition for reconsideration of the Commission's decision to permit incumbent local exchange carriers (LECs) to recover the extraordinary costs of thousands-block number pooling through access charges to be untimely and without merit. These actions will further promote our competition policies, promote the efficient and effective use of finite numbering resources and increase the effectiveness of our numbering resource optimization measures.

II. Discussion

2. *Number Portability.* The Commission reaffirms the Commission's decision in the *Number Portability First Order on Reconsideration*, 62 FR 18280 (April 15, 1997), that all local exchange carriers and covered CMRS carriers in the 100 largest MSAs are required to provide LNP upon receipt of a specific request for the provision of LNP by another carrier.

3. The Commission reemphasizes its view that LNP is still an important tool for enhancing competition, promoting numbering resource optimization, and giving consumers greater choices. The Commission believes, however, that the current requirements are sufficient to meet these important statutory goals. The Commission finds these requirements to be reasonable and efficient because they allow carriers to target their resources where the greatest need for number portability exists. They also limit expenditures in areas where there are relatively few competing service providers. The Commission finds that maintaining the current LNP requirement appropriately balances the policies and rationale supporting LNP without requiring expenditure of significant resources to deploy LNP in areas where competitors have not requested portability. Furthermore, maintaining the current requirement will not impose new burdens on small carriers operating in the 100 largest MSAs.

4. If it is true, as WorldCom's comments anticipate, that there will be new demand for LNP created by the implementation of LNP by covered CMRS providers, even where wireline competitive LECs have not yet entered the market, potential competitors can make the appropriate requests for LNP in areas they intend to serve. Carriers, including covered CMRS providers by November 24, 2003, are required to make number portability available within specified time-frames after a specific request by another telecommunication carriers in the areas in which the requesting carrier is operating or plans to operate. Requesting telecommunications carriers must specifically request portability, identify the discrete geographic area covered by the request, and provide a tentative date by which the carrier expects to utilize number portability to port prospective customers.

5. The implementation of pooling was one of the primary considerations for extending LNP to all carriers operating in the 100 largest MSAs. Initially, the Commission linked the pooling requirement to LNP because it was widely accepted that carriers without LNP capability could not participate in pooling. The Commission has since found, and the industry has confirmed, that full LNP capability is not necessary for participation in pooling. Rather, the underlying architecture, Location Routing Number (LRN), is necessary for such participation. Upon reexamination, the Commission remains convinced that it is reasonable to require LNP only in areas where competition dictates its demand, especially since the Commission now knows that pooling can be implemented without full LNP capability. Thus, the Commission finds that requiring LNP capability for all carriers in the 100 largest MSAs only when there has been a specific request will not have any significant negative effects on pooling.

6. The Commission also delegates authority to the state commissions to require carriers to provide LNP under certain circumstances and on a case-by-case basis. Thus, states may require carriers operating within the largest 100 MSAs to provide LNP, even if such carriers have not received a specific request for LNP from another carrier, if doing so would be in the public interest because there is evidence of meaningful consumer demand for LNP. Although the Commission finds that it is not necessary to expand the LNP requirement to all carriers in the 100 largest MSAs regardless of whether they have received a request for LNP, the Commission agrees with the California Commission that state commissions should have the discretion, under certain circumstances, to extend the LNP requirements to carriers in the 100 largest MSAs that would not otherwise be required to implement LNP. This delegation will allow the state commissions the flexibility to accommodate specific demand for LNP by consumers in a manner that promotes our numbering resource optimization goals, competition, and the public interest.

7. State commissions exercising this delegated authority must find that LNP would serve the public interest because there is actual, meaningful consumer demand, as evidenced by consumer requests, for LNP in specified areas within the largest 100 MSAs. State commissions also must find that consumer demand and numbering resource optimization considerations justify the cost of providing LNP in the specified areas, including impacts on small and rural telephone companies. Because there is little incentive for states to require LNP in areas where there is little or no consumer demand, and requiring LNP in such cases would be costly for the carriers and, in turn, costly, for the consumers, the Commission is confident that the state commissions will carefully consider the consumer demand for LNP when utilizing this delegated authority.

8. *Thousands-Block Number Pooling.* The Commission adopts its tentative conclusion that all carriers, including covered CMRS providers, should be required to participate in thousands-block number pooling, regardless of whether they are required to provide number portability, in accordance with the national rollout schedule. Because carriers can participate in pooling once they deploy the LRN architecture, thousands-block number pooling need not be linked to a carrier's ability to provide number portability. The Commission, therefore, required all carriers operating within the 100 largest MSAs, except those specifically exempted, to participate in pooling in areas where pooling has been or will be implemented in accordance with the national rollout schedule. In addition, the Commission directs the NANPA to cease assignment of NXX codes to carriers after they are required to participate in pooling. Carriers required to participate in pooling must request and receive numbering resources from the national Pooling Administrator (PA).

9. Pooling is essential to extending the life of the NANP by making the assignment and use of central office codes more efficient. As previously found, delaying the implementation of national pooling until all carriers are required to be LNP capable would needlessly prolong the inefficiencies resulting from the NXX number allocation system. The Commission continues to believe that thousands-block number pooling will provide the greatest benefits when participation is maximized. In addition, the Commission continues to believe that the industry and consumers are best served by national numbering resource optimization standards implemented consistently and in a competitively neutral manner across the nation. Expanding pooling to all carriers in the 100 largest MSAs furthers the Commission's numbering resource optimization goals by allowing telephone numbers to be assigned to carriers in smaller blocks in areas where the demand for numbering resources have proven to be the greatest.

10. Generally, the Commission believes that the inclusion of rural and other small carriers operating within the largest 100 MSAs in the pooling requirement is very important to furthering its goals of slowing the pace of area code and NANP exhaust. Because most, if not all, of these carriers have a small customer base, thousands-block number pooling allows these carriers to obtain numbering resources in quantities that better reflect their actual needs; *i.e.*, 1,000 blocks rather than 10,000 blocks. This results in fewer stranded numbers and thus better utilization rates. Nevertheless, the Commission recognizes that the costs associated with implementing thousands-block number pooling without having first implemented LNP can be particularly burdensome to rural and small carriers. Several commenters therefore suggest it is necessary to create an exemption from pooling for these carriers.

11. Several commenters state that many rural carriers do not operate in competitive markets. The Commission knows that pooling is most effective in areas where competition exists, because it allows multiple service providers to more effectively share limited resources. Where there is less competition, and therefore fewer carriers requiring numbering resources, pooling has less impact on numbering resource exhaust. Because many rural and other small carriers operate in areas where they are the only or one of a few service providers, they are less likely to require multiple NXX codes or blocks of numbers in a manner that will drive premature area code exhaust. The Commission therefore finds that a limited exemption for these carriers is warranted.

12. The Commission is also mindful of the concerns raised by some commenters regarding the costs to rural and small carriers associated with the implementation of thousands-block number pooling. Although the specific costs of implementing pooling for rural carriers are unknown at this time, the Commission knows that these costs may ultimately result in increased customer costs. The Commission believes, therefore, that the added benefits to be gained by requiring certain carriers that have not received a request for LNP to participate in pooling do not outweigh the potential burden, specifically the cost associated with pooling, on such carriers. The Commission therefore exempts from the pooling requirement rural telephone companies, as defined in the Communications Act of 1934, as amended, that have not received a request to provide LNP. The Commission also exempts Tier III wireless carriers, as defined in the *E911 Stay Order*, that have not received a request to deploy LNP. Once an exempted rural telephone company or Tier III wireless carrier has received a request to provide LNP, however, that carrier must participate in pooling. State commissions may petition the Commission for authority to require these exempted carriers to implement pooling in areas within the largest 100 MSAs if they can demonstrate that participation in pooling will further its numbering resource optimization goals.

13. In addition, because the Commission finds that pooling has less impact on numbering resource exhaust where there is no competition, the Commission declines to impose pooling costs on carriers that are not required to provide LNP operating in areas where there are no competing service providers. The Commission therefore exempts carriers operating in rate centers within the largest 100 MSAs, where they are the only service provider receiving numbering resources, from the pooling requirement in those rate centers. Once such a carrier receives a request to provide LNP, however, the carrier must then also participate in pooling in areas where it is deployed.

14. *100 Largest MSAs.* The Commission reaffirms its finding that the 100 largest MSAs include those MSAs identified in the 1990 U.S. Census reports and all subsequent U.S. Census updates of the 100 largest MSAs. The Commission declines, however, to expand the list of the 100 largest MSAs to include areas in CMSAs that would not otherwise be included on the list of the 100 largest MSAs. Nevertheless, the Commission delegates to the state commissions the authority to determine whether pooling should be extended to areas included in CMSAs that otherwise would not be included as one of the 100 largest MSAs. In doing so, the Commission aims to focus pooling efforts on the nation's most densely populated areas so as to slow the further proliferation of area codes.

15. The Commission has focused on pooling efforts in the largest MSAs because those are the areas most likely to have competitive markets that would benefit from pooling. Conversely, the Commission has not required carriers to participate in pooling in less populous areas because the full benefits of pooling are less likely to be realized in areas without sufficient competition. Several commenters point out, however, that many nearby or adjoining areas within a CMSA have similar demographics to the original MSA and believe it appropriate to include CMSAs in the MSA list regardless of whether they would otherwise be included on the list of the 100 largest MSAs. The Commission finds insufficient evidence in the record to determine if these expanded areas have sufficient competition to justify extension of the MSA list, and therefore decline to determine which, if any, of these localities should be included on the MSA list. Rather, the Commission finds that the state commissions are better positioned to assess local conditions and determine whether to extend pooling to these areas. In making this determination, states should consider such factors as the number of competing service providers in the extended areas, whether the inclusion of such areas would further the Commission's competition and numbering resource optimization goals, population trends in the extended areas, and customer use patterns and volumes. Accordingly, the Commission delegates to state commissions the authority to determine whether to extend pooling to areas within CMSAs that otherwise would not be included on the list of the largest 100 MSAs. State commissions may not, however, require exempted carriers to participate in pooling in these extended areas.

16. *Untimely Petition for Reconsideration and Motions.* On May 6, 2002, AT&T filed a petition for reconsideration of the *Numbering Resource Optimization Third Order on Reconsideration*, requesting that the Commission reconsider its decision to permit incumbent LECs to recover the extraordinary costs of thousands-block number pooling through access charges. The Commission denies AT&T's petition as untimely filed. The Commissions nevertheless briefly discusses the merits of AT&T's petition on its own motion. Because the Commission finds that no new issues have been raised that were not addressed in the *Numbering Resource Optimization Third Report and Order*, the Commission declines to reconsider its prior findings regarding pooling cost recovery.

17. A petition for reconsideration in a rulemaking proceeding must be filed within 30 days after public notice of the Commission's action. The Commission's rules provide that public notice in a rulemaking proceeding occurs upon publication of the document, or a summary thereof, in the **Federal Register**. In the *Numbering Resource Optimization Third Report and Order*, the Commission established the appropriate cost recovery mechanism for thousands-block number pooling, and that issue was not reopened in the *Numbering Resource Optimization Third Order on Reconsideration. The Numbering Resource Optimization Third Report and Order* was published in the **Federal Register** on February 12, 2002, 67 FR 6431; and, therefore, petitions for reconsideration were due by March 14, 2002. As noted, AT&T did not file its petition until May 6, 2002. The Commission therefore finds that AT&T's petition for reconsideration was untimely filed, and dismisses it accordingly.

18. Acknowledging that its petition may be untimely, AT&T also argues that the effect of the *Numbering Resource Optimization Third Report and Order* was not readily apparent at the reconsideration deadline for that order and asks the Commission to reconsider its decision on its own motion. Notwithstanding its dismissal of AT&T's petition as untimely, the Commission briefly addresses the merits of AT&T's arguments and concludes that no change in pooling cost recovery should be made.

19. In the *Numbering Resource Optimization Third Report and Order*, the Commission determined that incumbent LECs subject to rate of return or price cap regulation may recover their extraordinary carrier-specific costs directly related to thousands-block number pooling implementation through existing cost recovery mechanisms. The Commission concluded that, because thousands-block number pooling had been mandated as a national numbering resource optimization strategy, permitting recovery of the extraordinary costs of number pooling in access charges is appropriate.

20. AT&T argues that carriers should bear their own carrier-specific pooling costs, and that allowing recovery of pooling costs through access charges inappropriately allows incumbent LECs to shift their costs to interexchange carriers (IXCs). In the *Numbering Resource Optimization Third Report and Order*, the Commission considered this argument and found that numbering administration is inherently access-related, explaining that without numbers, the provision of which is a basic telephone network function, IXCs would be unable to route subscriber calls. Pooling is an enhancement of ordinary numbering administration, and access charges are the means by which access customers share in the costs of operating and maintaining the telephone network. Accordingly, the Commission concluded that it is appropriate for IXCs and other access customers to share in the costs of thousands-block number pooling. AT&T also argues that permitting incumbent LECs to recover pooling costs in access charges is an impermissible subsidy in violation of section 254(e) of the Act. In the *Numbering Resource Optimization Third Report and Order*, the Commission addressed this claim by finding that, because access charges are intended to recover a portion of telephone network costs, permitting recovery of the extraordinary costs of number pooling in access charges is neither an implicit or explicit subsidy.

21. AT&T further argues that this pooling cost recovery mechanism is not competitively neutral, in violation of section 251(e) of the Act. To the contrary, the Commission concluded in the *Numbering Resource Optimization Third Report and Order* that pooling, as a numbering resource optimization strategy, is a part of numbering administration, and that access charges are intended to recover a portion of telephone network costs, which include number administration costs. Thus, permitting recovery of the extraordinary costs of thousands-block number pooling through access charges is consistent with the statutory mandate of competitive neutrality. AT&T also suggests that the Commission's decision to permit thousands-block number pooling cost recovery through access charges is inconsistent with the *Numbering Resource Optimization First Report and Order* and with the Commission's decision not to allow recovery of LNP costs through access charges. The Commission finds that the decision to allow recovery of thousands-block number pooling costs through access charges is fully consistent with the Commission's decisions in prior orders. In the *Numbering Resource Optimization First Report and Order*, the Commission adopted the same competitively neutral cost recovery framework for thousands-block number pooling that it adopted for LNP, but it also found that the determination of the appropriate cost recovery mechanism (*i.e.*, recovery through access or, alternatively, end-user charge) would be decided in a future order after further comment. In the *Numbering Resource Optimization Third Report and Order*, the Commission followed the reasoning of the *LNP Third Report and Order* to conclude that unlike LNP, thousands-block number pooling is access related, and thus recovery of pooling costs through access charges is competitively neutral. AT&T otherwise raises no new evidence or arguments not already considered by the Commission. Accordingly, the Commission declines to reconsider its prior order.

22. Finally, the Commission grants the motion of the California PUC to accept its late filed comments. On its own motion, the Commission also accepts the late filed reply comments of the Texas PUC.

III. Procedural Matters

A. Final Regulatory Flexibility Analysis

23. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Third Order on Reconsideration in CC Docket No. 99–200, Third Further Notice of Proposed Rulemaking in CC Docket No. 99–200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 95–116 (Further Notice). The Commission sought written public comment on the proposals in the Further Notice, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

1. Need for, and Objectives of, the Fourth Report and Order

24. In the Further Notice, we sought public comment on whether we should again extend the local number portability (LNP) requirements to all carriers in the 100 largest Metropolitan Statistical Areas (MSAs), regardless of whether they receive a request to provide LNP. We also sought comment on whether all carriers in the 100 largest MSAs should be required to participate in thousands-block number pooling regardless of whether they are required to be LNP capable. Finally, we sought comment on whether all MSAs included in the consolidated metropolitan statistical areas (CMSAs) should be included on the Commission's list of the 100 largest MSAs.

25. With this Fourth Report and Order in CC Docket No. 99–200 and Fourth Report and Order in CC Docket No. 95–116, we continue efforts to maximize the efficiency with which numbering resources in the North American Numbering Plan (NANP) are used. We also attempt to continue the implementation of telephone number portability and thousands-block number pooling with the minimum regulatory and administrative burden on telecommunications carriers. In particular, we reaffirm that carriers need only deploy LNP in switches within the 100 largest MSAs for which another carrier has made a specific request for the provision of LNP. We also delegate authority to the state commissions to require carriers operating within the largest 100 MSAs that have not received a specific request for LNP from another carrier to provide LNP, under certain circumstances and on a case-by-case basis. We also conclude that all carriers, except those specifically exempted, are required to participate in thousands-block number pooling in accordance with the national rollout schedule, regardless of whether they are required to provide LNP including covered commercial mobile radio service (CMRS) providers that are not required to deploy LNP until November 24, 2003. We specifically exempt rural telephone companies and Tier III CMRS providers that have not received a request to provide LNP from the pooling requirement. We also exempt from the pooling requirement carriers that are the only service provider receiving numbering resources in the rate center. We also find AT&T's petition for reconsideration of the Commission's decision to permit incumbent local exchange carriers (LECs) to recover the extraordinary costs of thousands-block number pooling through access charges to be untimely and without merit.

2. Summary of Significant Issues Raised by Public Comments in Response to the IFRA

26. No comments specifically addressed the IFRA. Commenters, however, responded to several issues addressed in the *Further Notice of Proposed Rulemaking* that concern small entities. Generally, commenters from the state commissions support extending the LNP requirement to all carriers in the 100 largest MSAs, regardless of whether there has been a request. Most commenters agree that all carriers in the 100 largest MSAs should be required to participate in thousands-block number pooling regardless of whether they are LNP capable. Several of these commenters suggest that thousands-block number pooling should be as expansive as possible in order to promote efficient and effective numbering resource optimization. Other commenters suggested that an exemption should be established for small carriers.

3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

27. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." The term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities. Under the Small Business Act, a "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

28. The most reliable source of information regarding the total number of certain common carriers and related providers nationwide, as well as the number of commercial wireless entities, appears to be data the Commission publishes bi-annually in its Trends in Telephone Service Report. According to data in the most recent report, there are 5,679 interstate carriers. These carriers include, inter alia, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone service, providers of telephone exchange service, and resellers.

29. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

30. Wired Telecommunications Carriers. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which

consists of all such companies having 1500 or fewer employees. According to Census Bureau data for 1997, there were 2,225 wired telecommunications carriers that had 1,500 or fewer employees. Of this total, 2,201 firms had 999 or fewer employees, and 24 firms had employment of 1,000 employees or more. Thus, we estimate that no more than 2,225 wired telecommunication carriers are small businesses that may be affected by the regulations.

31. Local Exchange Carriers. Neither the Commission nor the SBA has developed a definition specifically for small LECs. The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. According to the Trends in Telephone Service data, 1,329 incumbent carriers reported that they were engaged in the provision of local exchange services. Of these 1,329 companies, an estimated 1,024 have 1,500 or fewer employees and an estimated 305 have more than 1,500 employees (alone or in combination with affiliates). Consequently, we estimate that no more than 1,024 providers of local exchange service are small businesses that may be affected by the regulations.

32. Interexchange Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for Wired Telecommunications Carriers. According to the Trends in Telephone Service data, 229 carriers reported that they were engaged in the provision of interexchange services. Of these 229 companies, 181 have 1,500 or fewer employees and 48 have more than 1,500 employees (alone or in combination with affiliates). Consequently, we estimate that no more than 181 small entity IXCs may be affected by the regulations.

33. Competitive Access Providers (CAPs). Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to CAPs. The closest applicable definition under the SBA rules is for Wired Telecommunications Carrier. According to the Trends in Telephone Service data, 532 CAPs and competitive LECs and 55 other LECs reported that they were engaged in the provision of competitive local exchange services. Of these 587 companies, 411 CAPs and competitive LECs and 53 other LECs have 1,500 or fewer employees and 121 CAPs and competitive LECs and 2 other LECs have more than 1,500 employees (alone or in combination with affiliates). Consequently, we estimate that no more than 411 small entity CAPs and 53 other LECs may be affected by the regulations.

34. Resellers (including debit card providers). Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is for Wired Telecommunications Carriers. According to the Trends in Telephone Service data, 576 toll resellers and 134 local resellers reported that they were engaged in the resale of telephone service. Of these 710 companies, 669 have 1,500 or fewer employees and 41 have more than 1,500 employees (alone or in combination with affiliates). Consequently, we estimate that no more than 669 small entity resellers may be affected by the regulations.

35. Wireless Telephony including Cellular, Personal Communications Service (PCS) and Specialized Mobile Radio (SMR) Telephony Carriers. Wireless telephony includes cellular, PCS or SMR service providers. The SBA has developed a definition of small entities applicable to cellular licensees that consists of all such companies having 1,500 or fewer employees. According to the Trends in Telephone Service data, 858 carriers reported that they were engaged in the provision of wireless telephony. Of these 858 companies, 291 wireless telephony providers have 1,500 or fewer employees and 567 wireless telephony providers have more than 1,500 employees (alone or in combination with affiliates). Consequently, we estimate that no more than 291 small carriers providing wireless telephony services may be affected by the regulations.

36. Paging Service. The SBA has developed a definition of small entities applicable to providers of paging services that consists of all such companies having 1,500 or fewer employees. According to the Trends in Telephone Service data, 576 companies reported that they were engaged in the provision of paging service. Of these 1,434 companies, 557 paging companies have 1,500 or fewer employees and 19 paging companies have more than 1,500 employees (alone or in combination with affiliates). Consequently, we estimate that no more than 291 small carriers providing paging services may be affected by the regulations.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

37. The requirements discussed herein should not require additional reporting, recordkeeping or compliance requirements for service providers. In this *Report and Order*, we are not mandating new recordkeeping and compliance requirements. Rather, we are affirming, clarifying or reducing requirements.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

38. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

39. In this *Fourth Report and Order*, we decline to extend local number portability requirements to carriers operating in the 100 largest MSAs that have not yet received a request to deploy local number portability from a competing carrier. By maintaining our current local number portability requirement, we will not impose new burdens on small carriers operating in the 100 largest MSAs. We believe that the costs associated with the alternative of requiring all carriers, including small entities, to deploy local number portability in the absence of a request would outweigh any number optimization benefit.

40. In addition, we exempt rural telephone companies and Tier III CMRS carriers from the pooling requirement until they are required to implement LNP. We also exempt from the pooling requirement carriers operating in rate centers where they are the only service provider receiving numbering resources. Once such a carrier receives a request to provide LNP, the carrier must then also participate in pooling in areas where it is deployed. If, however, a state believes that a carrier that qualifies for this exemption should participate in pooling to further our numbering resource optimization goals, the state commission may petition the Commission for authority to require such carriers to implement pooling.

41. Report to Congress: The Commission will send a copy of this *Fourth Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of this *Fourth Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of this *Fourth Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

IV. Ordering Clauses

42. Pursuant to the authority contained in sections 1, 3, 4, 201–205, 251 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201–205, and 251, this *Fourth Report and Order* is hereby adopted and part 52 of the Commission's rules are amended and adopted as set forth in Appendix A of the *Fourth Report and Order*.

43. Pursuant to the authority contained in sections 1, 2, 3, 4, 251(e), 254(e), and 405 of the Communications Act of 1934, as amended, 47 U.S.C 151, 152, 153, 154, 251(e), 254(e), and 405, and § 1.429 of the Commission's rules, 47 CFR 1.429, the petition for reconsideration filed by AT&T on May 6, 2002 is denied.

44. Pursuant to the authority contained in Sections 1, 3, 4, 201–205, 251 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201–205, and 251, this fourth further notice of proposed rulemaking is hereby adopted.

45. The amendments to §§ 52.20 through 52.31 of the Commission's rules as set forth in the rule changes are adopted, effective August 20, 2003. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no new or modified reporting and/or recordkeeping requirements or burdens on the public.

46. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Fourth Report and Order in CC Docket No. 99–200 and CC Docket No. 95–116, and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 99–200, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of Small Business Administration.

List of Subjects in 47 CFR Part 52

Communications common carriers, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reason discussed in the preamble, the Federal Communications Commission amends 47 CFR part 52 as follows:

PART 52—NUMBERING

■ 1. The authority citation for part 52 continues to read as follows:

Authority: Sections 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. 151, 152, 154, 155 unless otherwise noted. Interpret or apply secs. 3, 4, 201–05, 207–09, 218, 225–7, 251–2, 271 and 332, 48 Stat. 1070, as amended. 1077; 47 U.S.C. 153, 154, 201–205, 207–09, 218, 225–7, 251–2, 271 and 332 unless otherwise noted.

■ 2. Section 52.20 is amended by revising paragraph (b) to read as follows:

§ 52.20 Thousands-block number pooling.

* * * * *

(b) *General requirements.* Pursuant to the Commission's adoption of thousands-block number pooling as a mandatory nationwide numbering resource optimization strategy, all carriers, except those exempted by the Commission, must participate in thousands-block number pooling where it is implemented and in accordance with the national thousands-block number pooling framework and implementation schedule established by the Commission.

* * * * *

■ 3. Section 52.21 is amended by removing paragraph (r), redesignating paragraphs (a) through (q) as paragraphs (b) through (r), and by adding a new paragraph (a) to read as follows:

§ 52.21 Definitions.

* * * * *

(a) The term *100 largest MSAs* includes the 100 largest MSAs as identified in the 1990 U.S. Census reports, as set forth in the Appendix to this part, as well as those areas identified as one of the largest 100 MSAs on subsequent updates to the U.S. Census reports.

* * * * *

■ 4. Section 52.23 is amended by revising paragraph (b)(1) to read as follows:

§ 52.23 Deployment of long-term database methods for number portability by LECs.

* * * * *

(b)(1) All LECs must provide a long-term database method for number portability in the 100 largest Metropolitan Statistical Areas (MSAs), as defined in § 52.21(k), in switches for which another carrier has made a specific request for the provision of number portability, subject to paragraph (b)(2) of this section.

* * * * *

■ 5. Section 52.31 is amended by revising paragraphs (a) introductory text, (a)(1)(ii), and (a)(1)(iv) introductory text to read as follows:

§ 52.31 Deployment of long-term database methods for number portability by CMRS providers.

(a) By November 24, 2003, all covered CMRS providers must provide a long-term database method for number portability, including the ability to support roaming, in the 100 largest MSAs, as defined in § 52.21(k), in compliance with the performance criteria set forth in section 52.23(a) of this part, in switches for which another carrier has made a specific request for the provision of number portability, subject to paragraph (a)(1) of this section. A licensee may have more than one CMRS system, but only the systems that satisfy the definition of covered CMRS are required to provide number portability.

(1) * * *

(ii) Carries requesting deployment in the 100 largest MSAs by November 24, 2003 must submit requests by February 24, 2003.

* * * * *

(iv) After November 24, 2003, a covered CMRS provider must deploy number portability in additional switches serving the 100 largest MSAs upon request within the following time frames:

* * * * *

[FR Doc. 03–18366 Filed 7–18–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Docket No. 95–116; FCC 97–74]

Telephone Numbering Portability

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: On March 11, 1997, the Commission released a First Memorandum Opinion and Order on Reconsideration in CC Docket No. 95–116; FCC 97–74 (Order). In that Order the Commission concludes that Query on Release (QOR) is not an acceptable long-term number portability method. Second, the Commission extends the completion deadlines in the implementation schedule for wireline carriers by three months for Phase I and by 45 days for Phase II. A summary of the Order was published in the **Federal Register.** In that summary, the Commission stated that the modified rules would become effective May 15, 1997. Information collections, however, which are subject to approval by the

Office of Management and Budget (OMB), shall become effective upon approval by OMB, but no sooner than September 12, 1997. A document announcing the information collections approval by OMB will be published in the **Federal Register** at a later date. This document announces the effective date of the amendments to our rules for numbering that contained information collection requirements..

DATES: Sections 52.23 and 52.31 and the Appendix to Part 52, published at 62 FR 18280, April 15, 1997, were approved by the Office of Management and Budget (OMB) on August 9, 1997. The OMB approval of the information collection requirements contained in these rules was announced in the **Federal Register** on August 28, 1997. OMB approved the collections on August 9, 1997, however, the rules that contained information collections should not have become effective no sooner than September 12, 1997. Therefore, the rules became effective on September 12, 1997.

FOR FURTHER INFORMATION CONTACT: Pam Slipakoff, Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION: On March 11, 1997, the Commission released a First Memorandum Opinion and Order on Reconsideration in CC Docket No. 95–116; FCC 97–74 (Order). In that Order the Commission concludes, first, that Query on Release (QOR) is not an acceptable long-term number portability method. Second, the Commission extends the completion deadlines in the implementation schedule for wireline carriers by three months for Phase I and by 45 days for Phase II, clarifies the requirements imposed there under, concludes that LECs need only provide number portability within the 100 largest MSAs in switches for which another carrier has made a specific request for portability, and addresses issues raised by rural LECs and certain other parties. Finally, the Commission affirms and clarifies its implementation schedule for wireless carriers. A summary of the Order was published in the **Federal Register.** See 62 FR 18280, April 15, 1997. In that summary, the Commission stated that the modified rules would become effective May 15, 1997. Information collections, however, which are subject to approval by the Office of Management and Budget (OMB), shall become effective upon approval by OMB, but no sooner than September 12, 1997. A document announcing the information collections approval by OMB will be published in the **Federal Register** at a later date. On August 9, 1997, OMB approved the information collections. See OMB No. 3060–0742. The rule amendments adopted by the Commission in the Order took effect May 15, 1997. The OMB approval of the information collection requirements was announced in the **Federal Register** on August 28, 1997, however, the effected rules took effect on September 12, 1997.

List of Subjects in 47 CFR Part 52

Communications common carriers, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–18365 Filed 7–18–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 94–129; FCC 03–42]

Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers.

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of certain sections of the Commission's rules regarding unauthorized changes of consumers' preferred telecommunications service providers. Certain sections of the rules contained information collection requirements that required the approval of the Office of Management and Budget ("OMB") before they could become effective. Those sections have been approved by OMB.

DATES: The amendments to 47 CFR sections 64.1120(c)(3)(iii), 64.1130(j), 64.1150(b), 64.1160(g), 64.1170(g), 64.1180, to the requirements concerning local exchange carrier verification of in-bound carrier changes, and to certifications to exempt carriers from the drop-off requirement, released by the Commission on March 17, 2003, and a summary of which was published at 68 FR 19152, April 18, 2003, will become effective on July 21, 2003.

FOR FURTHER INFORMATION CONTACT: Perlesta Hollingsworth of the Policy Division, Consumer & Governmental Affairs Bureau at (202) 418–7383, TTY (202) 202 418–7365 (tty).

SUPPLEMENTARY INFORMATION: On March 17, 2003, the Commission released the Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking (Order). The Order revised and clarified certain rules to implement section 258 of the Communications Act. The rules and requirements implementing section 258 can be found primarily at 47 CFR Part 64. The modifications and additions adopted in the Order will improve the carrier change process for consumers and carriers, while making it more difficult for unscrupulous carriers to perpetrate slams. The Commission released the Order on March 17, 2003. In addition, a summary of the Order was published in the **Federal Register** at 68 FR 19152, April 18, 2003. On July 1, 2003, the Commission received approval for the information collection requirements, Implementation of Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, OMB Control Number 3060–0787, contained in the Order pursuant to the "emergency processing" provisions of the Paperwork Reduction Act of 1995 (5 CFR 1320.13). Questions concerning OMB control numbers and expiration dates should be directed to Les Smith, Federal Communications Commission, (202) 418–0217 or via the Internet to *leslie.smith@fcc.gov*.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–18428 Filed 7–18–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 20, 21, and 92

RIN 1018–AI84

Migratory Bird Subsistence Harvest in Alaska; Spring/Summer Subsistence Harvest Regulations for Migratory Birds in Alaska During the 2003 Subsistence Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) is establishing spring/summer migratory bird subsistence harvest regulations in Alaska for the 2003 subsistence season. This rule establishes regulations that prescribe frameworks, or outer limits, for dates when harvesting of birds may occur, species that can be taken, and methods and means excluded from use. These regulations were developed under a new co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives. They are not intended to be a complete, all-inclusive set of regulations, but are intended to provide an initial framework to legalize customary and traditional subsistence uses of migratory birds in Alaska. The rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are subject to annual public review. Certain provisions in this rulemaking expire on August 31, 2003, for the spring/summer subsistence harvest of migratory birds in Alaska. In subsequent years, seasons will open after April 1 and will close prior to September 1.

DATES: This rule is effective July 21, 2003, except for §§ 92.31 through 92.33, which are effective July 21, 2003 until August 31, 2003.

ADDRESSES: The administrative record for this rule may be viewed at the office of the Regional Director, Alaska Region, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503.

FOR FURTHER INFORMATION CONTACT: Fred Armstrong, (907) 786–3887 or Donna Dewhurst, (907) 786–3499, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503.

SUPPLEMENTARY INFORMATION:

What Events Led to This Action?

In 1916, the United States and Great Britain (on behalf of Canada) signed the Convention for the Protection of Migratory Birds in Canada and the United States (Canada Treaty). The treaty prohibited commercial hunting for, and specified a closed season on the taking of, migratory game birds between March 10 and September 1 of each year. In 1936, the United States and Mexico signed the Convention for the Protection of Migratory Birds and Game Mammals (Mexico Treaty). The Mexico treaty prohibited the taking of wild ducks between March 10 and September 1. Neither treaty allowed adequately for the traditional harvest of migratory birds by northern peoples during the spring and summer months. This harvest, which had occurred for centuries, was necessary to the subsistence way of life in the north and thus continued despite the closed season.

The Canada treaty and the Mexico treaty, as well as migratory bird treaties with Japan (1972) and Russia (1976), have been implemented in the United States through the Migratory Bird Treaty Act (MBTA). The courts have ruled that the MBTA prohibits the Federal Government from permitting any harvest of migratory birds that is inconsistent with the terms of any of the migratory bird treaties. The more restrictive terms of the Canada and Mexico treaties thus prevented the Federal Government from permitting the traditional subsistence harvest of migratory birds during spring and summer in Alaska. To remedy this situation, the United States negotiated Protocols amending both the Canada and Mexico treaties to allow for spring/summer subsistence harvest of migratory birds by indigenous inhabitants of identified subsistence harvest areas in Alaska. The U.S. Senate approved the amendments to both treaties in 1997.

What Will the Amended Treaty Accomplish?

The major goals of the amended treaty with Canada are to allow for traditional subsistence harvest and to improve conservation of migratory birds by allowing effective regulation of this harvest. The amended treaty with Canada allows permanent residents of villages within subsistence harvest areas, regardless of race, to continue harvesting migratory birds between March 10 and September 1 as they have done for thousands of years. The Letter of Submittal of May 20, 1996, from the Department of State to the White House that officially accompanied the treaty protocol explains that lands north and west of the Alaska Range and within the Alaska Peninsula, Kodiak Archipelago, and the Aleutian Islands generally qualify as subsistence harvest areas. Treaty language provides for further refinement of this determination by management bodies.

The Letter of Submittal places limitations on who is eligible to harvest and where they can harvest migratory birds. Anchorage, the Matanuska-Susitna and Fairbanks North Star Boroughs, the Kenai Peninsula roaded area, the Gulf of Alaska roaded area, and Southeast Alaska generally do not qualify as subsistence harvest areas. Limited exceptions may be made so that some individual communities within these excluded areas may qualify for designation as subsistence harvest areas for specific purposes. For example, future regulations could allow some villages in Southeast Alaska to collect gull eggs.

The amended treaty with Canada calls for creation of management bodies to ensure an effective and meaningful role for Alaska's indigenous inhabitants in the conservation of migratory birds. According to the Letter of Submittal, management bodies are to include Alaska Native, Federal, and State of Alaska representatives as equals. Together they will develop recommendations for, among other things: seasons and bag limits, methods and means of take, law enforcement policies, population and harvest monitoring, education programs, research and use of traditional knowledge, and habitat protection. The management bodies will involve village councils to the maximum extent possible in all aspects of management.

The management bodies will submit relevant recommendations to the Service and to the Flyway Councils. Restrictions in harvest levels for the purpose of conservation will be shared equitably by users in Alaska and users in other States, taking into account nutritional needs of subsistence users in Alaska. The treaty amendments are not intended to cause significant increases in the take of migratory birds relative to their continental population sizes. In addition, the amendments are not intended to create a preference in favor of any group of users in the United States or to modify any preference that may exist, nor do they create any private rights of action under U.S. law.

What Has the Service Accomplished Since Ratification of the Amended Treaty?

In 1998, we began a public involvement process to determine how to structure management bodies in order to provide the most effective and efficient involvement for subsistence users. We began by publishing a notice in the September 17, 1998, **Federal Register** (63 FR 49707) stating that we intended to establish management bodies to implement the spring and summer subsistence harvest. The Service, the Alaska Department of Fish and Game, and the Native Migratory Bird Working Group held public forums to provide information regarding the amended treaties and to listen to the needs of subsistence users. The Native Migratory Bird Working Group was a consortium of Alaska Natives formed by the Rural Alaska Community Action Program to represent Alaska Native subsistence hunters of migratory birds during the treaty negotiations. We held forums in Nome, Kotzebue, Fort Yukon, Allakaket, Naknek, Bethel, Dillingham, Barrow, and Copper Center. We led additional briefings and discussions at

the annual meeting of the Association of Village Council Presidents in Hooper Bay and for the Central Council of Tlingit & Haida Indian Tribes in Juneau. Staff members from National Wildlife Refuges in Alaska also conducted public meetings in the villages within their refuge areas and discussed the amended treaties at those meetings.

On July 1, 1999, we published in the **Federal Register** (64 FR 35674) a notice of availability of an options document, entitled "Forming management bodies to implement legal spring and summer migratory bird subsistence hunting in Alaska." This document described four possible models for establishing management bodies and was released to the public for review and comment. We mailed copies of the document to approximately 1,350 individuals and organizations, including all tribal councils and municipal governments in Alaska, Native regional corporations and their associated nonprofit organizations, the Alaska Department of Fish and Game, Federal land management agencies, representatives of the four Flyway Councils, conservation and other affected organizations, and interested businesses and individuals. We distributed an additional 600 copies at public meetings held in Alaska to discuss the four models. We also made the document available on the Service web page.

During the public comment period, we received 60 written comments addressing the formation of management bodies. Of those 60 comments, 26 were from tribal governments, 20 from individuals, 10 from nongovernmental organizations, 2 from the Federal Government, 1 from the State of Alaska, and 1 from the Native Migratory Bird Working Group. In addition to the 60 written comments, 9 of the 10 Federal Subsistence Regional Advisory Councils passed resolutions regarding the four models presented.

On March 28, 2000, we published in the **Federal Register** (65 FR 16405) the Notice of Decision, "Establishment of Management Bodies in Alaska To Develop Recommendations Related to the Spring/Summer Subsistence Harvest of Migratory Birds." This notice described the establishment and organization of management bodies.

Based on the wide range of views expressed on the options document, the decision incorporated key aspects of two of the models. The decision established one statewide management body consisting of 1 Federal member, 1 State member, and 7–12 Alaska Native members, with each component serving as equals. Decisions and recommendations of this management body will be by consensus wherever possible; however, if a vote becomes necessary, each component, Federal, State, and Native, will have one vote. This body will set a framework for annual regulations for spring and summer subsistence harvest of migratory birds.

The Alaska Regional Director of the Service divided Alaska into 12 geographic regions based on common subsistence resource use patterns and the 12 Alaska Native Regional Corporation boundaries under the Alaska Native Claims Settlement Act. Despite using the Alaska Native Regional Corporation boundaries, we are not working directly with the Regional Corporations in this program, and are instead working with the Alaska Native nonprofit groups and local governments in those corresponding regions. Eleven regional bodies have elected to participate in the statewide management body at this time. Out of all of the regions represented in the statewide management body, only eight regions actually represent included areas (50 CFR 92.5). These eight eligible regions submitted proposals to open harvest in 2003.

In April 2000, we met with the Alaska Department of Fish and Game and the Native Migratory Bird Working Group to discuss bylaws for the statewide management body. At that meeting, participants decided to name the statewide management body the "Alaska Migratory Bird Co-management Council." On October 30, 2000, the Co-management Council convened for the first time to establish organizational guidelines and to begin development of recommendations for regulations. On December 17, 2001, the Co-management Council met to refine organizational procedures and to discuss Alaska Frameworks/Guidelines for development of regulations for the first harvest season.

Over the winter of 2001–02, the regional management bodies submitted recommendations for regulating the harvest within their regions. Recommendations were received only from the eight regions with communities included in the 2003 proposed harvest. The other four regions did not send in recommendations. On May 14, 2002, the Co-management Council met to make final recommendations on harvest dates and methods and means of harvest for the 2003 season as necessary to protect the migratory bird resource. The Co-management Council sent recommendations to the four Flyway Councils for comments, and presentations were made at July 2002 meetings of the Pacific and Central Flyway Councils. The Co-management Council's harvest recommendations were initially presented to the Service Regulations Committee (SRC) on August 31, 2002, with final SRC action on October 24, 2002.

On April 8, 2002, we published in the **Federal Register** (67 FR 16709) a proposed rule to establish procedures for implementing a spring/summer migratory bird subsistence harvest in Alaska. The proposed rule provided for a public comment period of 46 days. We mailed copies of the proposed rule to more than 1,200 individuals and organizations that were on the project mailing list. We conducted two public meetings in Anchorage where people could ask questions or provide formal comment.

By the close of the public comment period on May 24, 2002, we had received written responses from 11 entities. Four of the responses were from individuals, five from organizations, one from the Alaska Legislature, and one from the Alaska Department of Fish and Game. On August 16, 2002, we published in the **Federal Register** (67 FR 53511) a final rule at 50 CFR part 92, which established procedures for incorporating subsistence management into the continental migratory bird management program. These procedural regulations establish an annual procedure to develop harvest guidelines for implementation of a spring/summer migratory bird subsistence harvest.

On February 10, 2003, we published a proposed rule in the **Federal Register** (68 FR 6697) to establish annual spring/summer subsistence migratory bird harvest regulations for Alaska, starting with the 2003 season. By the close of the public comment period on March 12, 2003, we had received written responses from 30 entities. Seven of the responses were from individuals, 20 from organizations, 2 from regional Flyway Councils and 1 from the Alaska Department of Fish and Game.

This is the first year that we are prescribing annual frameworks, or outer limits, for dates when subsistence harvest of birds may occur, the list of species that may be taken, methods and means excluded from use, etc. These frameworks are not intended to be a complete, all-inclusive set of regulations, but are intended to provide an initial framework to legalize customary and traditional subsistence uses of migratory birds in Alaska during the spring and summer. This rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are subject to annual establishment and public review and because the season is closed unless opened. This rule establishes regulations for reorganization of the regional areas, harvest seasons, a list of subsistence species, emergency closure authority, and methods and means related to taking of migratory birds for subsistence uses in Alaska during the spring/summer of 2003. We have also made nonsubstantive changes to 50 CFR parts 20 and 21 that were necessitated by the creation of 50 CFR part 92.

How Did the Service Meet the International Aspects of the Migratory Bird Treaties?

The Service's authority arises from the four international treaties implemented by the Migratory Bird Treaty Act. Formerly, the 1916 Convention between the United States and Great Britain on behalf of Canada and the 1936 treaty with the United Mexican States contained language that precluded most spring/summer subsistence harvest of migratory birds in Alaska. Both of these treaties have now been amended to allow the U.S. government to implement subsistence harvests during the closed season by indigenous inhabitants of identified subsistence harvest areas in Alaska. Specifically, the Protocol with Canada, Article II of the Treaty was revised to allow migratory birds and their eggs to be harvested by the indigenous inhabitants of the State of Alaska, regardless of the closed season provisions in Article II.

Although the Protocol with the United Mexican States was amended to allow for the taking of wild ducks by indigenous inhabitants of Alaska, the hunting season limitation specified in Article II Part C was not altered. Therefore, the length of the Alaskan spring/summer subsistence harvest of migratory birds cannot exceed the period specified within the Mexican convention, which is 4 months. Historically, we have interpreted this restriction as 124 days. Therefore, to be consistent with the Mexican Treaty, subsistence harvest between March 11 and September 1 must be limited to 124 days. The above interpretation of season length came late in this initial regulatory process. The Co-management Council had developed season recommendations without being aware of a 124-day season limitation; therefore, the Service has elected to open the season as soon as this rule is published and allow the "Closed Season Policy" (53 FR 16877, May 12, 1988) to remain in effect until this rule takes effect. Under the "Closed Season Policy," the emphasis is to protect those species for which there is greatest conservation concern. Following publication of this rule, the "Closed Season Policy" will no longer be in effect. Certain provisions in this final rule will govern the spring/summer subsistence harvest from the effective date of this rule through August 31, 2003. The regulations in 50 CFR part 20 will apply to all migratory bird harvests by all people in Alaska from September 1, 2003, to March 11, 2004.

The 1974 Migratory Bird Treaty with Japan provides for "taking of migratory birds by Eskimos, Indians, and Indigenous peoples of the Trust Territory of the Pacific Islands for their own food and clothing." The Japan Treaty further stipulates that "Open seasons for harvesting migratory birds may be decided by each Contracting Party respectively. Such harvesting seasons shall be set so as to avoid their principal nesting seasons and to maintain their populations in optimum numbers." In conformance with this provision, the Service developed a provision that would allow the traditional subsistence harvesting of eggs while also providing protection during the most critical part of the production period. Using ducks and geese as the initial model (with applications later considered for seabirds), a 30-day closed period targets the last 2 weeks of the incubation period and the first 2 weeks of the brood-rearing period. This concept still permits an opportunity for traditional egg harvesting during the early period after egg laying, but protects the later developing eggs and newly hatched young. To determine the best protective closure periods for their harvest regions based on mean nest initiation and egg laying dates, regional management bodies within the Co-management Council worked with the Service's Division of Migratory Bird Management in Anchorage, Alaska. Closures in some regions were geographically subdivided to provide the best protection, while other regions were provided separate closures for waterfowl and seabirds (primarily murres).

In this rule, the Yukon-Kuskokwim Delta region requested flexibility to set and announce the annual mid-season principal nesting closure period, based on local information, such as timing of snow melt and initiation of nesting. Thus, the closure period in the Yukon-Kuskokwim Delta region will be announced by the Alaska Regional Director or his or her designee, after consultation with biologists in the field, local subsistence users, and the region's Waterfowl Conservation Committee. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations and posted in village post offices and stores.

How Will the Service Ensure That This New Legalized Subsistence Harvest Will Not Raise Overall Migratory Bird Harvest?

The Preamble of the Protocol amending the Canada Treaty states one of its goals is to allow a traditional subsistence hunt while also improving conservation of migratory birds through effective regulation of this hunt. In addition, the Preamble notes that, by sanctioning a traditional subsistence hunt, the Parties do not intend to cause significant increases in the take of migratory birds, relative to their continental population sizes, compared to the take that is presently occurring. Any such increase in take as a result of the types of hunting provided for in the Protocol would be inconsistent with the Convention. If the new subsistence harvest regulations result in increased harvest, management strategies will be implemented to ensure maintenance of continental populations.

Eligibility to harvest under these new regulations is limited to permanent residents, regardless of race, in villages located within the Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands, and in areas north and west of the Alaska Range (50 CFR 92.5). These geographical restrictions open the initial spring/summer subsistence migratory bird harvest to only about 13% of Alaska residents. High-population areas such as Anchorage, the Matanuska-Susitna and Fairbanks North Star boroughs; the Kenai Peninsula roaded area; the Gulf of Alaska roaded area; and Southeast Alaska are currently excluded from the eligible subsistence harvest areas. The eligible subsistence harvest areas were determined by a history of customary and traditional use of migratory birds during the spring and summer as provided in the Protocol amending the Canada Treaty. Adoption of annual harvest regulations will legalize the spring/summer subsistence harvest, but is not intended to initiate or somehow increase it, since subsistence harvest has a long history of prior use in these regions. In addition, some regions, such as Bristol Bay and the Northwest Arctic, indicated that local interest in harvesting birds is declining due to increased commercial availability of alternative foods.

Alaska Natives have longstanding conservation ethics and traditions that are passed from generation to generation through the teachings of elders. These

customary and traditional teachings have provided for the perpetuation of migratory birds prior to the ratification of the Canada and Mexico treaty amendments and will continue to do so following the opening of the legal subsistence season. Ultimately it is these components of Native Alaskan culture, rather than regulations, that will provide the more restrictive limits on the harvest of migratory birds.

We have long recognized that a legal and equitable harvest opportunity should be provided during traditional harvesting periods within a regulated framework that ensures conservation of the resource. Without regulating this ongoing activity, populations of the most heavily harvested species, principally waterfowl, could experience declines, and the recovery of depressed populations would be more difficult. Legalizing the subsistence harvest could make any documentation of the take easier and any reporting more accurate. In addition, the regulations will become part of the comprehensive, continental system of migratory bird management, thus integrating subsistence uses with other uses for the first time. Further, the Alaska subsistence migratory bird harvest is presently thought to constitute only approximately 2–3% of the aggregate national migratory bird harvest.

Under the prior "Closed Season Policy" (53 FR 16877, May 12, 1988), it was the position of the Service to emphasize enforcement of restrictions on species of greatest conservation concern. Since its implementation, information on the "Closed Season Policy" has been broadly distributed in Alaska. We believe it is reasonable to assume that most subsistence users were aware of the policy and continued their traditional harvest of non-protected migratory bird species, so few new subsistence users should be attracted by legalizing their customary and traditional harvests. Indications are that subsistence harvests of migratory birds have, in the past, been generally underreported because of fear of prosecution. Legalization of the harvest could make people more comfortable about reporting take. This could lead to more accurate reporting and ultimately help in regulation setting and bird conservation.

Subsistence harvest has been monitored for the past 14 years through the use of annual household surveys in the most heavily used subsistence harvest areas (e.g., Yukon-Kuskokwim Delta).

Continuation of this monitoring would enable tracking of any significant changes or trends in levels of harvest and user participation after legalization of the harvest. The harvest survey forms that we used to collect information previously were not approved by the Office of Management and Budget (OMB). In the March 3, 2003, **Federal Register** (68 FR 10024), we published a notice of intent to submit the Alaska Subsistence Household Survey information collection forms to OMB for approval under the Paperwork Reduction Act, with a subsequent 60-day public comment period. We will not conduct or sponsor these surveys until we obtain OMB approval of this information collection. If OMB approves the forms, we intend to begin a Statewide program to gather information that would provide a more comprehensive view of the overall subsistence harvest and more species-specific harvest data, especially on shorebirds.

How Did the Service Come Up With the Methods and Means Prohibitions?

The Co-Management Council in general adopted the existing methods and means prohibitions that occur in the Federal (50 CFR part 20) and Alaska (5AAC92.100) migratory bird hunting regulations. Some exceptions were made to allow the continuation of customary and traditional spring harvest methods. For example, an exception was made to allow use of live birds as decoys for the harvest of auklets on Diomede Island.

Why Are No Daily Harvest Limits Proposed Under These Subsistence Regulations?

The concept of harvest or bag limits is difficult to apply to the traditional subsistence harvest. A subsistence harvest involves opportunistic use of resources when they are available or abundant, usually for short periods such as bird migration stopovers. Also, subsistence hunting traditionally is often not for individual purposes, meaning hunters are taking birds to be shared within the community, among several families. Historically, local survival depended on sharing, which is a cultural value broadly taught and practiced both within and between communities. Often these designated village hunters are proficient in the techniques necessary to take specific species, for example, hunting murres from breeding areas along seacliff ledges. A restrictive daily limit for individual subsistence hunters would significantly constrain customary and traditional practices and limit opportunistic seasonal harvest opportunities within the Alaska subsistence communities.

The Co-management Council does recognize that setting harvest limits may become necessary, especially within local areas and individual species. However, we did not design these initial 2003 harvest regulations to be a complete, all-inclusive set of regulations, but intended for them to provide an initial framework to formally recognize and provide opportunities for the customary and traditional subsistence uses of migratory birds in Alaska. Within these initial frameworks, the first step in limiting the overall subsistence harvest was to establish a closed species list that included regional restrictions. Establishing a 30-day closed period during the breeding season also limited the harvest impacts. The eventual need to further adjust levels of harvest take, either regionally or overall, is recognized and will be dealt with by the Co-management Council on the basis of recommendations by the Council's Technical Committee on a species-by-species basis. These decisions will likely be based on bird population status and past subsistence harvest data. Concepts such as community harvest limits and/or designated hunters may be considered to accommodate customary and traditional subsistence harvest methods.

How Did the Service Come Up With the List of Birds Open to Harvest?

The Service believed that it was necessary to develop a list of bird species that would be open to subsistence harvest during the spring/summer season. The original list was compiled from subsistence harvest data, with several species added based on their presence in Alaska without written records of subsistence take. The original intent was for the list to be reviewed by the regional management bodies as a check list. The list was adopted by the Co-management Council as part of the guidelines for the 2003 season. Most of the regions adopted the list as written; however, two regions created their own lists. One regional representative explained that it would take much more time than was available for his region to reduce the list and that, once a bird was removed, returning it to the list would be more difficult later. Going with the original list was viewed as protecting hunters from prosecution for the rare take of an unlisted bird. To understand this rationale, one must be aware that subsistence hunting is generally opportunistic and does not usually target individual species. Native language names for birds often group closely related species, with no separate names for species within these groups.

Also, preferences for individual species differ greatly between villages and individual hunters. As a result, regions are hesitant to remove birds from the list until they are certain the species are not taken for subsistence use. The list therefore contains some species that are taken infrequently and opportunistically, but this is still part of the subsistence tradition. The Co-Management Council initially decided to call this list "potentially harvested birds" versus "traditionally harvested birds" because a detailed written documentation of the customary and traditional use patterns for the species listed had not yet been conducted. However, this terminology was leading to some confusion, so the Service renamed the list "subsistence birds" to cover the birds open to harvest in 2003.

The "customary and traditional use" of a wildlife species has been defined in Federal regulations (50 CFR 100.4) as a long-established, consistent pattern of use, incorporating beliefs and customs that have been transmitted from generation to generation. Much of the customary and traditional use information has not been documented in written form, but exists in the form of oral histories from elders, traditional stories, harvest methods taught to children, and traditional knowledge of the birds' natural history shared within a village or region. The only available empirical evidence of customary and traditional use of the harvested bird species comes from Alaska subsistence migratory bird harvest surveys, conducted by Service personnel and contractors and transferred to a computerized database. Because of difficulties in bird species identification, shorebird harvest information has been lumped into "large shorebird" and "small shorebird" categories. In reality, Alaska subsistence harvests are also conducted in this manner, generally with no targeting or even recognition of individual shorebird species in most cases. In addition, red-faced cormorants, trumpeter swans, Aleutian terns, whiskered auklets, short-eared owls, and others have not been targeted in subsistence harvest questionnaires, so little or no numerical harvest data exists. Available summaries of subsistence harvest data include Page and Wolf 1997; Trost and Drut 2001, 2002; Wentworth 1998; Wentworth and Wong 2001; and Wong and Wentworth 2001.

What Are Birds of Conservation Concern and How Do They Apply to Subsistence Harvest?

Birds of Conservation Concern (BCC) 2002 (FWS 2002) is the latest document in a continuing effort by the Service to assess and prioritize bird species for conservation purposes (FWS 1982, 1987, 1995; and U.S. Department of the Interior 1990) and was published in the February 6, 2003, **Federal Register** (68 FR 6179). It identifies bird species at risk because of inherently small populations or restricted ranges, severe population declines, or imminent threats, and thus in need of increased conservation attention to maintain or stabilize populations. The legal authority for this effort is the Fish and Wildlife Conservation Act (FWCA) of 1980, as amended. The 1988 amendment (Public Law 100–653, Title VIII) to the FWCA requires the Secretary of the Interior (16 U.S.C. 2901—2912), through the Service, to "identify species, subspecies, and populations of all migratory nongame birds that, without additional conservation actions, are likely to become candidates for listing under the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531—1543)."

In actuality, and fortunately, few of the species on the BCC lists are in such a precarious state that they will have to be considered for listing as endangered or threatened in the near future. Our goal is to implement preventive management measures that will serve to keep these species off the endangered species list. Proactive conservation clearly is more cost-effective than the extensive recovery efforts required once a species is federally listed under the ESA. The BCC lists are intended to stimulate coordinated and collaborative proactive conservation actions (including research, monitoring, and management) among Federal, State, and private partners. By focusing attention on these highest priority species, the Service hopes to promote greater study and protection of the habitats and ecological communities upon which these species depend, thereby ensuring the future of healthy avian populations and communities (for more detailed information on the exact criteria used to select species for consideration and inclusion on the BCC lists, *see* FWS 2002).

Of the 108 species for which the Service proposes to establish regulations allowing subsistence hunting in Alaska, 22 are on BCC lists at one or more scales (*e.g.*, National, FWS Regions, or Bird Conservation Regions-Alaska). The Service considers one additional species (Trumpeter Swan) to be "sensitive" because of its small population size and limited breeding distribution in Alaska. Of the 22 species on BCC lists, 14 are technically considered "gamebirds" (as defined by bilateral migratory bird conventions with Canada and Mexico), although frameworks allowing sport hunting seasons have never been established for any of them in the 85-year history of the Migratory Bird Treaty Act.

The following 23 species are birds of conservation concern or are considered sensitive for other reasons.

Family Gaviidae

Red-throated Loon (*Gavia stellata*).
Yellow-billed Loon (*Gavia adamsii*).

Family Phalacrocoracidae

Red-faced Cormorant (*Phalacrocorax urile*).

Family Anatidae

Trumpeter Swan (*Cygnus buccinator*).

Family Charadriidae

American Golden-Plover (*Pluvialis dominicus*).
Pacific Golden-Plover (*Pluvialis fulva*).

Family Haematopodidae

Black Oystercatcher (*Haematopus bachmani*).

Family Scolopacidae

Solitary Sandpiper (*Tringa solitaria*).
Upland Sandpiper (*Bartramia longicauda*).
Whimbrel (*Numenius phaeopus*).
Bristle-thighed Curlew (*Numenius tahitiensis*).
Hudsonian Godwit (*Limosa haemastica*).
Bar-tailed Godwit (*Limosa lapponica*).
Marbled Godwit (*Limosa fedoa*).
Black Turnstone (*Arenaria melanocephala*).
Red Knot (*Calidris canutus*).
Dunlin (*Calidris alpina*).
Buff-breasted Sandpiper (*Tryngites subruficollis*).

Family Laridae

Red-legged Kittiwake (*Rissa brevirostris*).
Arctic Tern (*Sterna paradisaea*).
Aleutian Tern (*Sterna aleutica*).

Family Alcidae

Whiskered Auklet (*Aethia pygmaea*).

Family Strigidae

Short-eared Owl (*Asio flammeus*).

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Summary of Public Involvement

On February 10, 2003, we published in the **Federal Register** (68 FR 6697) a proposed rule to establish spring/summer migratory bird subsistence harvest regulations in Alaska for the 2003 subsistence season. The proposed rule provided for a public comment period of 30 days. We mailed copies of the proposed rule to more than 60 individuals and organizations that were determined to be direct stakeholders in this process. We established an internet homepage posting the proposed rule and related historical documents. We issued a press release and radio public service announcement expressing the request for public comments and the pertinent deadlines for such comments, which was faxed to 26 members of the statewide media. We presented the proposed rule and related materials at public meetings conducted by Federal Subsistence Regional Advisory Councils in Kotzebue, Barrow, Kodiak, Dillingham, Unalakleet, Chevak, and Nenana, Alaska, requesting further written public comments. By the close of the public comment period on March 12, 2003, we had received written responses from 30 entities. Seven of the responses were from individuals, 20 from organizations, 2 from regional Flyway Councils, and 1 from the Alaska Department of Fish and Game.

Response to Public Comments

Most sections of the proposed rule were addressed by commenters. This discussion addresses comments section by section beginning with those of a general nature.

General Comments

Two respondents requested that groups other than government agencies and Native groups be represented on the Co-management Council, specifically mentioning Audubon and Ducks Unlimited.

Service Response: An extensive public process took place July 1999 through March 2000, during which the composition of the statewide management body, the Co-management Council, was decided. The Co-management Council's composition has been established by regulation (67 FR 53511) and is not being reconsidered in this rule. All Co-management Council meetings are public, and any interested parties can participate and testify.

Two respondents requested that the regulations in the proposed rule be cross-referenced with Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) subsistence regulations, such as by adding the guidance "* * * consistent with sound management principles, and the conservation of healthy populations of fish and wildlife * * *," adding emergency closure authority, and adding the words "non-wasteful subsistence."

Service Response: Development of the spring/summer subsistence migratory bird harvest regulations is guided solely by amendments to the international migratory bird treaties, and not by ANILCA legislation. Cross-referencing guiding principles and management objectives would only serve to further confuse the two very separate programs. However, in the final rule, we have added an emergency closure authority to ensure prompt corrective actions on conservation concerns, similar to that used in both part 20 and part 100.

One individual referenced the Administrative Procedure Act and how it is stated within the proposed rule "The Department of the Interior's policy is, whenever practicable, to afford the public opportunity to participate in the rulemaking process" and how this sounds like the Department is doing the public some kind of favor, when by law it is required. The individual further cites mandates within the Administrative Procedure Act and how it spells out public notice procedures.

Service Response: This language does not appear in the final rule, but we will take this into consideration when drafting other **Federal Register** documents. See the Public Involvement Section under Supplementary Information for a summary of the Service's efforts to seek public involvement under the Administrative Procedure Act.

One respondent stated that more funds are needed to adequately monitor spring and summer subsistence harvest of migratory birds as well as to promote the effective and meaningful role for Alaska's indigenous inhabitants in the conservation of migratory birds through the participation in the Co-management Council and its related meetings.

Service Response: Funding levels to support the efforts of the Co-management Council, which include harvest monitoring and Native participation, are provided by Congress annually and are not dictated by Federal regulations.

One respondent brought up the issue of the Migratory Bird Hunting and Conservation Stamp Act and how it would require subsistence hunters to purchase a Federal Migratory Bird Hunting and Conservation Stamp. One of the major goals of the amended migratory bird treaty with Canada was to allow for traditional subsistence harvests, and acquiring a hunting license or duck stamp is not customary and traditional. This respondent expressed the need to modify the Duck Stamp Act to exempt subsistence hunters from the requirement.

Service Response: The only way to change the requirement to possess a Federal Migratory Bird Hunting and Conservation Stamp is if the Migratory Bird Hunting and Conservation Stamp Act is modified by Congress.

One individual requested that the introductory information be corrected to reflect that there is evidence that the needs of northern peoples to harvest migratory birds in the spring and summer were considered at the time of the original treaty with Canada. The individual noted the participation of E.W. Nelson, who helped establish the original Yukon Delta Reservation in 1909 and was the principal negotiator for the 1916 treaty.

Service Response: We have changed the introductory language to read: "Neither treaty allowed adequately for the traditional harvest of migratory birds by northern peoples. . ."

Two commenters suggested that subsistence area migratory bird management plans should be required for each subsistence harvest region, complete with sustainable population and habitat protection goals, and a reporting requirement. The person further suggested using the Yukon-Kuskokwim Delta Goose Management Plan as a model.

Service Response: The Co-Management Council is tasked to develop management plans as needed and requested. No immediate plans exist to write management plans for each region. The Co-management Council has directed a working group to review and update, if necessary, the Emperor Goose Management Plan.

Two commenters suggested that the cooperation of Native subsistence hunting groups should be sought in establishing sanctuaries for migrating or nesting birds when concentrated or particularly vulnerable to disturbance or over-harvest.

Service Response: These subsistence harvest regulations do not dictate Federal or State land management practices such as designating sanctuaries; however, any concerning individual or party can petition to close a specific area to the spring/summer subsistence migratory bird harvest.

One individual stated that the proposed regulations are a ridiculous extension of the initial concept of legalizing a small traditional harvest for sustenance, primarily by Native people.

Service Response: The Federal Government is obligated to implement the amendments to the international migratory bird treaties. The executive branch does not have the authority to change the treaties; that responsibility lies with Congress and the treaty participants.

Two commenters suggested that the Service should be required to publish jointly with the Co-management Council an annual harvest report complete with details of what is working and not working and what corrective actions need to be taken.

Service Response: Subsistence harvest survey data is collected with reports published annually summarizing the data on a regional basis. This Alaska subsistence harvest data is also available in the annual Service's Pacific Flyway Data Book.

One individual complained that the statement "Alaska Natives have longstanding conservation ethics" is not substantiated or explained in the rule document. The individual stated that the complete elimination of the rich deltas' goose populations surrounding Kotzebue and Norton sounds and the historical lack of interest in restoration of nesting geese there does not suggest any form of good management either now or in the past.

Service Response: Although there have been declines in the populations of nesting geese in the deltas surrounding Kotzebue and Norton Sounds and subsistence is one source of goose mortality in these regions, it has not been identified as a major cause of the population declines. The Native communities of these regions are now actively participating in the Co-Management Council and recovery efforts. Development of this new subsistence harvest program has involved active participation by 11 regional Native organizations.

One individual commented that the statement of subsistence take constituting 2–3% of the national migratory bird take is misleading, and for some species groups such as seabirds and shorebirds, the subsistence take may equal 90–100% of the national harvest.

Service Response: We believe the 2–3% quoted is valid when the entire migratory bird harvest is considered, and did not see the need to break this down per species group, since it is well documented that harvests for some species groups do not exist outside Alaska.

Two commenters specifically supported the 30-day harvest closure for breeding birds.

Service Response: None needed.

Two commenters suggested that the Co-management Council should organize "Migratory Bird Conservation Committees" in each subsistence area that would include subsistence harvesters, government representatives, and the local conservation organizations. One of the functions of these committees would be to organize subsistence hunters in migratory bird population surveys and censuses in close cooperation with the Service.

Service Response: We would like to clarify that local migratory bird conservation committees already exist in the form of regional management bodies or partners, with 11 actively contributing to the Co-management Council.

Two commenters requested increased public education efforts and enforcement of harvest regulations, especially in communities shared by nonconsumptive users such as birdwatchers. One commenter cited a June 2002 incident in Barrow, in which a group that was watching pectoral sandpipers saw a truck with two individuals pull up and begin shooting at a bird with a high-powered rifle. The individuals from the truck had no means to retrieve the bird (no boots for wading). The group also watched the same individuals shooting at birds between the shore and pack ice.

Service Response: Once this initial phase of regulation development is completed, we plan to launch an extensive education and outreach campaign targeting the communities within the subsistence harvest areas. Outreach efforts will focus on educating all residents of the new regulations and emphasize regulatory protection of those migratory bird species of the greatest conservation concern.

Three respondents supported the proposed regulations for subsistence harvest in Alaska as permitted under the revised Migratory Bird Treaty. They commended the Service's efforts to improve frameworks for regulation of these harvests and for improving information on subsistence use of these resources.

Service Response: None needed.

One commenter complained that the 30-day public comment period was not sufficient time to collect harvest information for the 23 bird species on the Birds of Conservation Concern list. The commenter argued that rushing the process will further erode the existing credibility of the meaningful role indigenous inhabitants have in development of these regulations. The commenter requested that the Secretary of the Interior grant a 90-day extension on the public comment period for the proposed rule.

Service Response: We were not able to grant this requested extension, because we need to publish final regulations as close as possible to the requested April 2 start date of the 2003 harvest season. The future plan is to merge into the "late season" waterfowl regulatory cycle for Service Regulation Committee meetings and subsequent publication in the **Federal Register**. Under this cycle, we would publish the next Proposed

Rule late this coming fall, which should allow for a 60-day comment period.

Why Are No Daily Harvest Limits Proposed Under These Subsistence Regulations?

Three commenters questioned the assumption that no increase in subsistence harvest is anticipated following adoption of the spring-summer season regulations, since all rural residents, not just Alaska Natives, will be included in the harvests. The cumulative effect of adding these hunters who did not traditionally participate in the subsistence harvest has been underestimated. While another individual was concerned that, since harvest reporting will not be conducted this first year, no scientific evaluation of whether the harvest has increased or is having a detrimental effect, is possible. Also, the harvest reporting done on the Yukon-Kuskokwim Delta missed many other rural communities in interior Alaska.

Service Response: Upon OMB approval of the survey forms, we are planning to expand the harvest monitoring to a Statewide effort with a statistical model for stratifying the survey area. We hope that this effort will provide a means to monitor and report any significant increases in harvest activity. The regulations were intended to be a foundation for the spring/summer subsistence harvest of migratory birds in Alaska. If conservation concerns arise such that future harvest restrictions have to be imposed, the Co-management Council will act accordingly.

Four respondents expressed concern about the lack of harvest limits presented in these regulations. One individual recognized the difficulty in applying bag or harvest limits to traditional subsistence harvests, but stated that limits will be necessary to ensure that Statewide cumulative harvests of species are not excessive. The respondents also recognized that if bag limits are not incorporated in the 2003 regulations, the Co-management Council will need to move in this direction in the future. In addition, if species on the Birds of Conservation Concern list and/or Audubon Watchlist are included in the 2003 harvest, then small bag limits should be set immediately. Two commenters specifically mentioned sea ducks as an area of special concern with regard to lack of bag limits. Another commenter suggested using proxy hunting as administered by the State of Alaska as an example of formatting harvest limits to allow for sharing among communities.

Service Response: These initial 2003 harvest regulations are designed to provide an initial framework and the first steps taken to limit the subsistence harvest. These steps will include establishing a closed species list and a 30-day closed period during the breeding season. In the future, concepts such as community harvest limits, proxy hunting, and/or designated hunters will likely be considered to accommodate customary and traditional subsistence harvest methods, if further species-specific harvest limits are needed.

One commenter was supportive of there being no harvest limits, because they do not fit with customary and traditional practices. Frequently a person goes hunting and returns with food for extended families, so harvest or bag limits would not be suitable or appropriate for the North Slope region.

Service Response: The Co-management Council agrees with this assessment of the situation and is not recommending harvest limits to be set for this initial 2003 season, but may consider them when specifically requested or needed for a localized area or species of conservation concern.

How Did the Service Come Up With the List of Birds Open to Harvest?

One respondent suggested that some Native language names for birds, group closely related species, and there may or may not be separate names for species within these groups. In a 1958 UAF paper titled "On the Naming of Birds by Eskimos," Lawrence Irving documents different Inupiaq names for all the locally-occurring species of loons, scoters, shorebirds, and even the two species of scaup. Thus, in this region, this degree of differentiation was reflected in the language.

Service Response: In developing the subsistence harvest survey collection forms, we have found that some confusion does exist concerning local Native names for specific bird species, just as it does when common names are used for international species. In some cases, neighboring local regions use different Native names for the same species. When at all possible, we have given all known extant Native names for a species in our education materials.

One commenter suggested that the existing wording referencing availability of empirical evidence is inaccurate. As stated, "the only available empirical evidence of customary and traditional use of the harvested bird species comes from Alaska subsistence migratory bird surveys, conducted by Service personnel and contractors and transferred to a computerized database." The commenter noted that, to the contrary, there is ample information in the ethnographic literature documenting bird harvest and use practices from most regions of the State. There is a considerable amount of archaeological literature describing pre-contact harvest patterns, including species of birds harvested as well as implements used for bird harvest. Also, a large body of contemporary and traditional knowledge exists among subsistence users themselves.

Service Response: We agree that additional information is available from both contemporary and archaeological sources, yet we disagree that this available information is able to provide numerical summaries of bird harvest down to the species level.

One commenter expressed concern over the apparent absence of any internal review process by the Service's migratory bird specialists and urged that an intra-agency review process be involved in developing the Final Rule.

Service Response: The Co-management Council can only make recommendations to the Service as far as regulations development, with all final decisions made by the Service Regulations Committee. Prior to the Service Regulations Committee finalizing any new regulations, there is an extensive, two-part internal review process in which the Service's migratory bird management division and its biologists are extensively involved.

Section 20.22 Closed Seasons

One commenter stated that this amendment implies that subsistence hunting under part 92 occurs during closed seasons, when, in fact, part 92 establishes open seasons. The commenter suggested that the section should read: "* * * during the closed season established in this part except as provided in * * * "

Service Response: We concur and have made the recommended wording change.

Section 92.30 General Overview of Regulations

One respondent recommended revising text to read: "The Co-management Council will review and, as necessary, recommend modifications to these regulations * * * working within the schedule of the Federal late season migratory game bird hunting regulations."

Service Response: We concur and have made the recommended wording change.

Section 20.132 Subsistence Use in Alaska

One commenter suggested that removal of this section eliminates authorized fall and winter harvests of snowy owls and cormorants for food or clothing that have been in place for many years. The commenter did not believe there had been adequate public notice of this proposed action; it has not been substantively considered by the Co-management Council and was not part of the widely distributed package of recommended subsistence regulations. The commenter recommended that the Service retain § 20.132(b) until such time as fall and winter subsistence needs can be assessed and there is adequate involvement of the Alaska public and Co-management Council.

Service Response: The commenter has identified an oversight potentially restricting the winter subsistence harvest of snowy owls and cormorants in Alaska with this action. We modified the section to retain subsection (b) while making it effective only from September 1 through April 1 in the final rule.

Section 92.5 Who Is Eligible To Participate?

Five respondents, all representing separate Kodiak area organizations, expressed an urgent need to close the Kodiak road system starting in the 2003 season. The primary and most common concern expressed was the likelihood of overharvesting, primarily by user groups that do not demonstrate customary and traditional uses of migratory birds and will have easy access to this resource. Other concerns brought up were the potential conflicts between consumptive and nonconsumptive users that could negatively affect the local tourism industry, and subsistence harvesting posing a public safety concern in regard to hunting within a populated area.

Service Response: On the basis of public testimony and written comments received, we are closing to harvest a buffer zone around the Kodiak Island road system under § 92.33(e). The conservation concern is the nontraditional access posed by the road system in a region where the migratory bird hunting is traditionally done by boat in marine waters. Acts of civil disobedience with respect to other hunting regulations and road access have been documented. Closing the road system to the spring and summer subsistence migratory bird harvest will help ensure no local increases in harvest occur in implementation of the new regulations. Offshore islands and waters will remain open to harvest.

One commenter requested that all road systems, such as Kodiak and Nome, should be closed to subsistence harvests, with the primary concern being the conflicts between consumptive and nonconsumptive users along roads frequented by tourists, birdwatchers, and others. The issue of the Nome road system was only brought up by one commenter, and has not been supported by the regional management body, nor mentioned in any other public comments.

Service Response: We are taking no action on restricting harvest along the Nome road system for the 2003 regulations; however, the issue may be revisited by petition for a rule change in the future, should the need arise.

One respondent requested exclusion of the community of Tok, most of whose residents have no customary and traditional history of bird harvesting in the spring/summer. The respondent explained that legalizing the harvest will significantly increase the level of take of waterfowl and owls in the Upper Tanana Valley, especially if no harvest limits are imposed.

Service Response: There is a petition process to exclude a community from subsistence bird harvesting. Petitions are accepted annually and acted upon by the Co-management Council and subsequently by the Service Regulations Committee for the upcoming season. In addition, we added an emergency closure provision in § 92.21, so that if a significant increase is documented for waterfowl and owls in this or any other region, an emergency closure can be requested and implemented.

Five respondents questioned the definition of "indigenous inhabitant" used in the regulations. One of the commenters stated that the current definition is erroneous, immoral, and unjust and could result in an increased harvest of birds during the spring and summer. The second commenter stated that the regulations should only apply to residents of the proposed area whose families have a tradition of harvesting migratory birds in the area. The third commenter charged that this loophole, which includes populations of recent rural immigrants and their invited relatives, will cast suspicion on the whole program, and that the Native community should define the term "indigenous." The commenter added that the Service should consider the impact of immigrants into the included villages when stating that it is not the intent of these regulations to increase the harvest. Also, the Native community itself is increasing, adding many new hunters to increase the take. Another individual commented that the phrase "permanent inhabitants" is not defined, thus allowing participation by anyone with a rural ZIP Code, regardless of cultural heritage, local tenure, annual income, or subsistence need. Still another commenter added that if hunting pressure needs to be limited, the harvest should be returned to its original intent.

Service Response: The term "indigenous inhabitant" was defined in Congress' ratification of the Treaty amendments, which are binding on the Service. Defining the term as the commenters requests would misconstrue Congress' explicit intent in ratifying the Treaty amendments.

One respondent expressed strong concern that the Secretary of the Interior lacks the legal authority to open the spring/summer hunt to non-Native village residents, despite Alaska's former U.S. Senator's desire for this to be accomplished through amendments to the Canada and Mexico Migratory Bird Treaties.

Service Response: Same as above.

Section 92.20 Methods and Means

Two commenters requested that subsistence hunters age 16 and younger should be required to be accompanied by an adult both in the interest of safety and to avoid abuse of the subsistence privilege. In addition, they suggested that young hunters should be encouraged to obtain a firearms safety certificate before being allowed to hunt.

Service Response: We intend to encourage participation in the State's hunter safety program by subsistence hunters of all ages through our program's long-term education and outreach efforts.

Two individuals expressed concern because rifles, especially .22 caliber, are not a currently prohibited method. One of the commenters explained that allowing these types of weapons creates a situation in which male youths with .22 caliber rifles can have an open season on all birds with little regard for salvage of edible meat. The commenter added that people lacking identification skills will likely shoot anything that flies, and that lack of identification and marksman skills could cause wounding losses from rifle use to be substantial.

Service Response: The issue of use of small caliber rifles was discussed by the Co-management Council, and it was recommended that we do not prohibit their use. It was also stated that small caliber rifles are traditional tools for subsistence use and that they are most commonly used to dispatch wounded or crippled birds. Outreach and educational efforts of the Co-management Council will be focusing

on improving the hunter identification of individual bird species at both long and short distances.

One respondent requested that we prohibit the use of air boats and personal watercraft (*e.g.* jet skis) for spring/summer migratory bird hunting on the Tetlin Refuge, at least in the Scotty/Desper drainage and other sensitive areas in the region. The respondent explained that use of air boats and jet skis is already established in the area, and that use during the fall sport season on lakes accessible from the Alaska Highway has been an increasing issue. The use of air boats or personal watercraft is extremely disturbing to nesting and brood rearing waterfowl and other species, and has the potential to alter and damage critical habitat. Abuses will occur and law enforcement will be extremely difficult. In addition, use of air boat or personal water craft is not customary and traditional for harvesting migratory birds in the spring and summer.

Service Response: We concur and have added a regional prohibition on the use of air boats and jet skis under § 92.20.

One commenter brought up the concern that it has not been made clear what licenses or permits are going to be required, and that education and outreach have not been allocated to inform the subsistence users about the new regulations. The commenter requested that the Secretary of the Interior initiate a discretionary enforcement policy to continue for 2 years after the Final Rule is published and provide adequate funding to the regions to coordinate outreach and education efforts.

Service Response: We concur that we did not make general hunter requirements explicit and have clarified that by modifying the Final Rule to make § 20.2 (a), (b), (c), and (d) applicable to persons hunting under part 92. Under separate Federal regulations (16 U.S.C. 718a), Federal migratory bird stamps are required for hunters 16 years of age and older for taking migratory bird waterfowl. We also concur that additional education and outreach are needed.

One commenter from the Yukon-Kuskokwim Delta explained that village residents should be allowed to take waterfowl from a boat under power, especially for waterfowl frequenting the river. Village residents should also be allowed to use a boat under power to hunt bay ducks like scaup and scoters, which are easier to take from a moving boat. The same commenter added that they assumed if something was not listed specifically as prohibited under this section, then it is allowed, such as traditional methods like use of bird nets or bolos.

Service Response: The current regulations do not prohibit hunting from a boat under power, but do prohibit using a boat to drive or concentrate birds. In addition, the use of bird nets or bolos are not prohibited harvest methods at this time.

One respondent requested that regulations be added to prohibit subsistence hunters from commercially guiding other subsistence hunters, especially in regard to sea ducks.

Service Response: Commercial guiding is governed by State regulations, so no action is being taken under these Federal regulations.

One commenter requested that it be made clear that the sale or trade of migratory birds and their parts taken under this Part is prohibited.

Service Response: We concur. This is already addressed under § 92.6 of the Procedural Regulations.

Section 92.32 Subsistence Migratory Bird Species

Because of the wide-ranging views and comments we received on this subject, we have responded to the concerns of the public at the end of this summary of public comments (§ 92.32).

Two commenters requested that any species appearing on the BCC list be removed from those open to subsistence harvest in 2003, because they may be threatened. One of these commenters further suggested that the harvest should be limited to bird species for which population levels and harvest levels are known and can be monitored, and that birds with little population information should be protected from harvest. The other commenter suggested allowing an incidental/accidental harvest (less than 1% of the population) of birds taken resulting from hunter misidentification. They also stated that if these BCC birds are allowed to be harvested, then a massive educational campaign should be launched to promote conservation of these species by redirecting harvest efforts to the more viable species.

Two commenters deferred to the expertise of the Service and the Co-management Council on evaluating the effects of the subsistence harvest on the 23 species in question.

One individual was alarmed and concerned over the number of nongame species included in this hunt, especially without written records of past subsistence harvest. They recommended that the following taxonomic families be removed from the harvest list: Gaviidae (loons), Podicipedidae (grebes), Charadriidae (plovers), Haematopodidae (oystercatchers), and Scolopacidae (sandpipers), as well as the following species: all terns, red-legged kittiwakes, ivory gulls, whiskered auklets, and all owls except snowy owls. The commenter further questioned why the Service would bother identifying species of conservation concern only to foster the hunting of the same species.

One commenter requested that 13 of the 23 species be deleted from the subsistence harvest list because of their presence on the Alaska Audubon Watchlist. These species include: red-throated and yellow-billed loons, red-faced cormorants, Pacific golden plovers, black oystercatchers, bristle-thighed curlews, Hudsonian and marbled godwits, black turnstones, buff-breasted sandpipers, red-legged kittiwakes, Aleutian terns, and whiskered auklets. The recommendation was for the Service to take a precautionary approach and protect these species from harvest until it can be demonstrated that a subsistence harvest would not jeopardize existing population levels.

Two individuals requested that all 23 species of conservation concern should be removed from harvest because all races of residents are allowed to hunt. One commenter added that allowing these species to be taken would be a breach of faith with generations of conservationists that have struggled to make a place for large edible birds in our world. The second commenter explained that any additional harvest for some populations that have undergone a decline over recent years, such as mid-continental white-fronted geese in northwest Alaska, should not be taken lightly. And that with virtually no constraints in place under the proposed regulations, both Natives and non-Natives will take full advantage of birds that congregate at open water during spring migration, regardless of actual need for sustenance.

One respondent expressed concern that a long list of migratory birds is being institutionalized into regulations in the absence of past population or harvest information. They also stated that no species of conservation concern should be allowed for harvest except under strict controls in special cases. Also, the Service should be required to publish such a list annually and seek Native involvement in recovery efforts.

One commenter from the Yukon-Kuskokwim Delta was against removing birds from the harvest list because the idea of limiting species hunted to what is considered game birds is contrary to the treaty that says the hunt will be customary and traditional. There have been times that all hunters in a village died from influenza, diphtheria, small pox, and tuberculosis. During these times, it was necessary for women and children to take nongame birds. This led to a continued use as a way to remember the past. There is no large take of these birds. Only a few elders may take them these days and this will likely not expand to any level of concern. In most cases the birds listed are taken more often by gulls than by humans. The Native people of western Alaska have always hunted birds in the spring. "When the ice is rotten and you can't go after sea mammals or fish, God has provided birds that fly to us."

One respondent from the Seward Peninsula/Norton Sound area stated that they traditionally harvest 16 of the 23 species of concern; and that, they would not support removing any of these species from the harvest list until ample time is given to document evidence of traditional and current harvest.

Two commenters requested that all 22 species on the BCC list, as well as an additional 5 species (Aleutian Canada geese, common and king eiders, long-tailed ducks, and black scoters) should be removed from the subsistence harvest. These additional five species are on the Alaska Audubon Watchlist.

Two commenters requested that the lists of birds open to harvest should be smaller and more area specific, with a clear distinction between those species that can be hunted and those whose eggs may be gathered. The commenter recognized the importance of subsistence harvest traditions, and felt that those who have traditionally harvested are in the best position to identify the most important species and incorporate this information on a regional or local basis into the harvest species list.

One commenter mentioned that legalizing the take of birds on the BCC and overlapping Audubon Alaska Watchlist sets back years of conservation efforts. At least 19 of the BCC birds overlap with the Watchlist because they are undergoing population declines, have small breeding populations, and/or have a very limited breeding distribution. Special consideration should be given to these species, especially since subsistence-caused declines may lead to costly management actions, litigation, or other undesirable results.

One commenter from the Kotzebue region supports removal of the seabird species listed as birds of conservation concern. People don't hunt seabirds in this area, and the other species in question are only taken when there is no other food source, or if an elder asks for it. The BCC seabird species are not considered everyday food, but from time to time an elder craves certain foods, often associated with a particular season. The commenter expressed that the declines noted in these particular birds are more caused by natural predators such as jaegers ("wolves of the sky"), bears, and foxes. The commenter suggests that predator control would allow these species to increase.

One respondent was frustrated because the Service has belatedly introduced concerns for 23 of the species proposed for spring and summer hunting. Despite repeated requests over the past 2 years, the Service is only now explicitly identifying which species are of concern in this regulatory process. The Co-management Council was not accorded an opportunity to thoughtfully review these species and reasons for concern because the full list was not declared and no substantive briefing material was provided for most species. This precluded effective dialogue with subsistence users and regional co-management committees, and recommendations from the Co-management Council. An even more important problem, considering the current national review of these regulations, is the incomplete and inadequate information in the **Federal Register** or other documents on the basis for concerns about these 23 species. The Service especially solicits public opinions on whether they should be hunted. Presumably, the most valuable comments will come from agencies, public interest groups, and individuals that evaluate the status of bird populations in relation to current and future harvests. However, readers do not have access to available source documents that will provide information necessary to form sound opinions, raising concern that commenters will simply "vote" yes or no based on subjective assumptions or their dispositions on subsistence or hunting in general.

The same commenter further adds that in the Supplemental Information, it states that 22 of these species are on regional or national lists of Birds of Conservation Concern (BCC). The Service published the long-awaited "Birds of Conservation Concern 2002" in December. Essentially, this document only contains BCC lists by national and regional categories, a description of criteria that were used for listing, and references to some of the source documents on which listings were based. In some cases, there are no formal source documents—the listings were based on consultations with experts and regional staff. In other cases, the reader has to find and consult a wide array of documents, ranging from field survey reports and regional summaries to continental conservation plans by the major bird initiatives (Partners in Flight, U.S. Shorebird Conservation Plan, North American Waterbird Conservation Plan) and regional step-down plans. This referencing approach does not provide reasonable public access to salient information on the status of populations from which the public can assess potential effects of subsistence hunting. Given the disparate level of available information, data, and details associated with these species of concern, together with the insufficient compilation and synthesis of materials, the commenter strongly recommended that the Service develop a summary that includes an objective analysis of these species, along with the strengths and weaknesses of available supporting data. In the development of these comments, the respondent not only encountered difficulty finding status information on the 23 highlighted species, but also found that the quality of information was often poor and subjective. The Supplemental Information says that the 22 BCC species proposed for hunting were listed because they are "at risk due to inherently small populations or restricted ranges, severe population declines, or imminent threats," yet the respondent found no estimates of population size or speculations on orders of magnitude; little or no reliable information on population trends; and poor information on size and changes in seasonal ranges. The descriptions of perceived threats to populations were particularly vague, subjective, and in some cases prejudicial (*e.g.*, degradation of winter habitat, exposure to contaminants, and seasonal occurrence in foreign countries). In most cases, there was little evidence that threats were imminent or substantial for the species. The respondent rarely found specific information from which to determine whether the population, range, or threat criteria for BCC species were met. While the respondent recognized that inadequate information could be reason enough for pursuing conservation actions, they preferred to have more definitive information with which to make this assessment. To this end, the respondent recommended that the Service develop strategies and timelines for obtaining information with which to make responsible decisions concerning subsistence harvests of species of concern.

Loons—Two commenters requested that all loon species be removed from

the subsistence harvest because of identification problems between red-throated and yellow-billed loons and common, Pacific, and arctic loons.

One commenter requested that all loons be removed from the harvest list because, even if there may not be a biological reason to do so now, in 20 years there will be, and by then the users will say "we have done this for a long time" so it is better for us to stop it now. The commenter added that most places are trying to save loons while the Service is allowing a certain few to harvest them.

Red-throated Loons—One commenter stated that a few people in the Aleutian/Pribilof Islands gather these eggs, but likely have little or no effect on the population of these species, and recommended that an accurate account of the harvest be made to support the stance that it is minor relative to the overall population.

One commenter supported red-throated loons' being left on the harvest list, citing that subsistence harvests on the North Slope are never large and loons figure prominently in several of their dances and legends. Aerial breeding pair surveys on the North Slope show that the red-throated loon population is increasing.

One commenter requested that red-throated loons be removed from harvest until their population is stabilized, citing a more than 50% decline in the last 20 years, according to the Audubon Alaska Watchlist.

Yellow-billed Loons—One commenter stated that a few people in the Aleutian/Pribilof Islands gather these eggs, but likely have little or no effect on the population of these species, and recommended that an accurate account of the harvest be made to support the stance that it is minor relative to the overall population.

One commenter supported yellow-billed loons' being left on the harvest list, citing that subsistence harvests on the North Slope are never large and loons figure prominently in several Native dances and legends. Aerial breeding pair surveys on the North Slope show that the yellow-billed loon population is currently stable.

Trumpeter Swans—One commenter provided a detailed statement justifying why Trumpeter Swans should be removed from the list of birds open to harvest in 2003. Cited was the ongoing 70-year effort to restore the population in North America and how the population had only grown to 18,000 by the end of the 20th century. Concern was expressed that trumpeters could be subject to population reductions if taken or regularly disturbed during the nesting and brood rearing period, because of certain breeding behavior characteristics, such as the way they pair, select, and defend nesting territories, and their inability to renest successfully at high latitudes. Trumpeters have shown their best population growth in Alaska, but the people in this area are increasing rapidly and do not have a long-established, consistent pattern of use of these birds. In addition, threats on the wintering grounds in the lower 48 states such as urban sprawl, agricultural development, and lead poisoning threaten the overall security of the population, warranting protection of these birds from subsistence harvest in Alaska.

One respondent recognized trumpeter swans as a subsistence resource, but did not support a spring and summer open season at this time. The principal concerns expressed were: (1) Insufficient information on the extent of recent subsistence harvest; (2) the current lack of regulations limiting harvest quantity by qualified hunters; and (3) the potential for overharvest of this small population with low productivity.

One individual requested that trumpeter swans be protected from harvest with the justification that it has already been proved that it is not the grace of God but the grace of man that has allowed a tiny population to increase and repopulate the nesting territories where spring hunting will be allowed.

Aleutian Canada Geese—One respondent expressed that if the prohibition on taking Aleutian Canada Geese is ever extended to the Yukon-Kuskokwim Delta, it would be very difficult for hunters to distinguish this species from other subspecies.

King eiders—One individual requested that king eiders be restricted in the harvest, stating that North American numbers have been in a steady decline for the past several years. There is so much concern that Senator Ted Stevens just appropriated $100,000 to study the decline of king eiders on the North Slope. To help protect the remaining numbers, there needs to be a restricted take on the North Slope, particularly in the Barrow region.

Canvasbacks—One individual requested that a one bird or no bird limit be placed on canvasbacks in the subsistence hunt, stating that all people should share in the conservation of this great bird.

Shorebirds—One respondent from the Yukon-Kuskokwim Delta explained that young boys have traditionally hunted many of the smaller birds on the subsistence harvest list, especially shorebirds such as sandpipers, plovers, curlews, and godwits. It is known that these boys bring their catch to their grandmothers to cook and eat, which has been done for generations. Elders in the villages in the past harvested many of these shorebird species for subsistence foods, especially when these birds are migrating along the shoreline in flocks.

Black Oystercatchers—One commenter stated that a few people in the Aleutian/Pribilof Islands gather these eggs, but likely have little or no effect on the population of this species, and recommended that an accurate account of the harvest be made to support the stance that it is minor relative to the overall population. In addition, 10 subsistence hunter testimonials were received from the Aleutian/Pribilof region stating that some people do gather black oystercatcher eggs, but that the limited take likely has little to no effect on the population. On the other hand, one commenter expressed special local concern for this species because of its small population (2,500), limited range, and vulnerability to disturbance at coastal breeding sites and from oil spills. The Kodiak Archipelago is home to the largest concentration of black oystercatchers and should be afforded special protection from both hunting and egg gathering. Further cited was the oystercatcher's low reproductive rate, inability to re-nest, and vulnerability to egg gathering.

Red-legged Kittiwakes—Sixteen hunter testimonials were received stating that this species is customarily and traditionally harvested in the Pribilof Islands (primarily St. George Island), with minimum impacts to the population. This harvest is done with no waste and there is no reason to close or restrict the harvest. These hunters recommended an accurate count of the birds and eggs taken be maintained to support the stance that the take is very minor in relation to the overall species population. One St. George hunter specified that he takes less than 60 kittiwakes per season, consisting of a mix of black-legged and red-legged kittiwakes, and shares these birds with another household. Interviews of 11 kittiwakes hunters indicated that they take an average of 37 red-legged kittiwakes each per season. To demonstrate the customary and traditional nature of these hunts, one commenter from St. George explained, "I've been involved with red-legged kittiwake hunts since I was 6 years old. I was a gatherer for my grandfather; he shot the birds on the wing and I gathered them up from where they had fallen. I did this for him until I was 10 years old and the following year I started hunting by myself and have done so ever since. I hunt the same areas as my grandfather did and spend no more time in the hunts than we did 44 years ago, which indicates to me that the abundance has not changed very much or not at all."

Arctic and Aleutian Terns—One commenter requested that both species be protected from the subsistence harvest and that they be treated together since they nest commonly in mixed colonies, and eggs from the two species are not readily distinguishable. Decreases in the arctic tern population are widely reported but poorly documented in arctic regions; however, large declines have occurred in Greenland where a traditional harvest is unregulated. In Alaska, recent declines have been reported from the Gulf of Alaska and coastal sites along the Beaufort Sea, while waterfowl surveys of the North Slope and Yukon-Kuskokwim Delta have shown increases. Perennial harvesting of adults could have serious impacts on local populations. The 30-day closures may provide some protection for the eggs, but they are probably set too late to provide adequate protection in the Aleutians and Kodiak.

Owls—One commenter expressed concern that the residents of Tok may dramatically affect local owl populations with the subsistence harvest. The commenter sites a Service management plan for Alaska's raptors that states, "with few exceptions, we are woefully ignorant and lack sufficient information to make management decisions or assess population status of raptors based on scientific data." The commenter requested that all owl species be removed from harvest except in areas where their customary and traditional use has been documented and shown not to impact Statewide population levels.

One commenter requested that all owls be removed from the harvest list because, even if there may not be a biological reason to do so now, in 20 years there will be, and by then the users will say "we have done this for a long time," so it is best to stop it now. The commenter added that most places are trying to save owls while the Service is allowing a certain few to harvest them.

1. What Measurable Impacts Do You Think a Limited Subsistence Harvest Would Have on Populations of These Species?

Two respondents answered that for any species with very small populations, any harvest added to normal mortality could be significant. The Service would be ill-advised to authorize harvest of species with populations this small, particularly given that birds harvested in the spring/summer have survived the prior winter and in many cases are likely breeders. Specifically in regard to shorebirds, the commenter responded that biology has not been studied with respect to the ability of populations to sustain harvests.

One individual responded that the Service lacks the ability to determine the impact of hunting on these species.

In regard to arctic terns, one commenter responded that the killing of adults could have serious impacts on local populations.

2. Which Bird Species Are More Important in Terms of Food Value and/or Customary and Traditional Uses?

One commenter claimed not to have found evidence that harvesting arctic terns has particular cultural significance, nor did the commenter find evidence that harvesting occurs in ways that minimize impacts.

One individual stated that these birds are not important species in the hunt for food, but if hunting them were legal, that would encourage a try at taking them.

3. Apart From Their Designation as "Birds of Conservation Concern," Are There Particular Reasons Why Subsistence Harvest Should Be Restricted or Closed for Any of These Species?

Two respondents answered that there is the potential for adverse public reaction if it becomes widely known that species that are rare, vulnerable, or declining are being harvested, particularly if such hunts are sanctioned by management authorities. In addition, some of these species are charismatic such as puffins, loons, terns, and owls, which only increases the sensitivity of such decisions. Populations of species that are open for harvest must be sufficiently large to justify any harvest.

One individual responded that these are all species trying to find a place in a world dominated by man and whose population levels are substantially lower than when they were first described.

4. In the Event that Subsistence Hunting were Allowed for Some or All of These Species, Do You Believe that Certain Conditions Should be Imposed to Ensure that the Population Statuses of these Species are Maintained or Improved? If so, What Would you Recommend?

One commenter expressed that this would be like putting the cart before the horse, because as subsistence hunters, nothing is wasted and there is no overhunting even if an abundance of birds present themselves during the hunt.

One individual responded that with the exception of Trumpeter swans, the Service lacks the ability to determine if the population of any of these birds is being maintained or improved.

One respondent suggested that subsistence users should participate in a registration system to provide a means to follow up with harvest surveys and more accurately determine the composition and levels of subsistence harvests.

One respondent suggested that harvest quotas and bag limits should be required in each subsistence harvest area to avoid overharvests.

Service Response: Subsistence hunting of migratory birds was authorized by recent amendments to the migratory bird treaties with Canada and Mexico. A proposed rule was developed after extensive consultation with the interested parties in Alaska through the newly formed Co-management Council and other interested constituencies. Comments have been received and reviewed regarding this proposal. The main issue to emerge during development was the number and species of migratory birds to be included in the list of birds open to subsistence harvest for the coming year. The Service highlighted 23 species of birds in the proposed rule for public comment, including 22 species that also occur on the Service's list of Birds of Conservation Concern (BCC), and the Trumpeter Swan.

Based on the comments received and internal Service analysis, we have decided to remove the following species from the list of species open to subsistence take for the reasons stated:

Yellow-billed Loon: Yellow-billed Loons have a limited distribution in Alaska and are found primarily along the Arctic Coastal Plain. The highest density of breeding Yellow-billed Loons are found within the National Petroleum Reserve. Yellow-billed Loons have a low relative abundance, and the Alaska population is estimated to be about 2,500 birds. Threats to Yellow-billed

Loons include oil and gas development, oil pollution, contaminants, gill-net fisheries, and overharvest. The Service is in the process of completing a Status Assessment for this species.

Trumpeter Swan: This species was significantly reduced and extirpated from much of its range during the 19th Century. The current world population is between 20,000 and 25,000, approximately 90% of which summer and nest in Alaska. The population is increasing and active efforts are underway to restore breeding populations to parts of the former range. However, in recent years, significant losses caused by lead poisoning have been documented in that portion of the winter range associated with Alaskan breeding Trumpeter Swans.

Pacific Golden-plover: The Pacific Golden-plover is of primary importance within the Alaska Region because of its small population size, 16,000 birds, and because its North American breeding range is restricted to Alaska (Johnson and Connors 1996). This species occurs only in western Alaska. Like the American Golden-plover, the species is especially susceptible to hunting because of its high visibility and tendency to remain near humans when they enter its territory.

American Golden-plover: The American Golden-plover is listed as a species of moderate concern in the Alaska Shorebird Plan (ASWG 2000) and of high concern within the U.S. Shorebird Conservation Plan (Brown *et al.* 2001). This ranking reflects a population decline and high threats to the species on nonbreeding areas. We believe its removal from the list is appropriate due to possible misidentification problems with the Pacific Golden-plover mentioned above.

Bristle-thighed Curlew: This species is of interest because it nests only in Alaska in 2 relatively small, disjunct regions, the Andreafsky Wilderness near the north Yukon Delta and the central Seward Peninsula. The total breeding population is among the smallest of all shorebirds and estimated at 3,200 pairs (Handel *et al.* 1990). Numerous lines of evidence suggest the population is being affected by anthropogenic factors on areas outside the nesting grounds (Marks and Redmond 1994, Gill 1998). The Bristle-thighed Curlew is listed as a species of high concern within the U.S. and Alaska Shorebird Conservation Plans. This ranking reflects a very low population size and restricted breeding range.

Hudsonian Godwit: Alaska is important to this species because as much as 30% of the population may breed in the region (McCaffery 1996; McCaffery and Harwood in press). Recent findings suggest Alaska birds may warrant subspecies status (Haig *et al.* 1997). The Hudsonian Godwit is listed as a species of high concern within the U.S. and Alaska Shorebird Conservation Plans. This ranking reflects a low population size, threats on nonbreeding areas, and restricted breeding and non-breeding distributions.

Marbled Godwit: Alaska hosts a small (probably <3,000 birds), highly disjunct breeding population of sufficiently different morphology to warrant subspecies (*Limosa fedoa beringiae*) designation (Gibson and Kessel 1989). The Marbled Godwit is listed as a species of high concern within the U.S. and Alaska Shorebird Conservation Plans. This ranking reflects a declining population and threats on breeding and nonbreeding areas.

Buff-breasted Sandpiper: The regional importance of this species is based on the high proportion of breeding birds in the State and the marked decline in the population, which is now thought to number less than 15,000 birds (Lanctot and Laredo 1994, R. Lanctot, pers. comm.). The Buff-breasted Sandpiper is listed as a species of high concern within the U.S. and Alaska Shorebird Conservation Plans. This ranking reflects a declining and extremely low population size, threats on nonbreeding areas, and a restricted nonbreeding range.

Whimbrel: The Whimbrel is of primary importance in the Alaska Region because the majority of a subspecies (*Numenius phaeopus rufiventris*) breeds in Alaska (Gibson and Kessel 1997; Engelmoer and Roselaar 1998). The species population is estimated at about 60,000 birds, of which as many as 40,000 occur in Alaska. The Whimbrel is listed as a species of high concern within the U.S. and Alaska Shorebird Conservation Plans. This ranking reflects a declining and low population size. The Service's determination is based primarily on the fact that this species overlaps the distribution of the Bristle-thighed Curlew and we believe it will be difficult, if not impossible, for subsistence hunters to distinguish between the 2 species.

Harvest of these 9 species will not be authorized in 2003. Harvest will be allowed on the other 15 species of birds listed in the proposed rule as being of conservation concern, as well as 2 species recommended by the State of Alaska, the Northern Hawk-owl and Wandering Tattler. However, these species will be given additional consideration by Co-management Council for over the coming year. We intend the Co-management Council to focus its attention on determining the importance of the harvest of these species for subsistence purposes, as well as any information on status that would be useful in future deliberations. In the case of the Bar-tailed Godwit, which we understand is an important species in the subsistence harvest, we are concerned about incidental take of 2 similar species-Hudsonian and Marbled Godwits-for which no harvest will be authorized. The Co-management Council should address actions that have, or can be, taken to minimize incidental take of the Hudsonian and Marbled godwits in the event that the Bar-tailed Godwit remains on the list submitted to the Service for consideration of subsistence harvest in future years.

Section 92.33 Region-specific regulations

One commenter from the North Slope requested that the season for the Northern Unit should be amended to include a specific season for king and common eiders: open April 2–June 6, and July 7—August 31, and closed June 7—July 6. This change will allow for customary and traditional eider harvest practices.

Service Response: We concur with this request and have added this season under § 92.33 (g)(2) in the Final Rule.

One respondent recommended the following changes in the regulations: Aleutian/Pribilofs Region, Section (2): clarify that Unalaska is included in the Central Unit (*e.g.*, "* * * to and including Unalaska"). Section (3): clarify that Attu is in the Western Unit.

Service Response: We have not made the requested changes regarding geographical boundaries. These regulations do not have distinct geographic boundaries for harvest areas, but instead define included community subsistence harvest areas. For example, the village of Nuiqsut could hunt on both sides of the Colville River; however if its members hunt as far east as the Arctic National Wildlife Refuge, it would have to follow the Eastern Unit season dates.

One commenter representing a Yukon-Kuskokwim village suggested that the nesting closure period for the Yukon-Kuskokwim region be simplified to parallel the Bristol Bay region: June 15–July 15.

Service Response: The Co-management Council struggled to set up a flexible system to adjust the dates of the 30-day harvest closure around annual seasonal variations, to be determined by the Alaska Regional Director or his designee, after consultation with local subsistence users and the region's Waterfowl Conservation Committee. Simplifying the closure dates to those requested would eliminate the flexibility and local consultation benefits of the current regulations.

Statutory Authority

We derive our authority to issue these regulations from the four migratory bird treaties with Canada, Mexico, Japan, and Russia, and from the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703 *et seq.*), which implements these treaties. Specifically, these regulations are issued pursuant to 16 U.S.C. 712 (1), which authorizes the Secretary of the Interior, in accordance with these four treaties, to "issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds."

Effective Date

Under the Administrative Procedure Act, our normal practice is to publish rules with a 30-day delay in effective date. But in this case, we are using the "good cause" exemption under 5 U.S.C. 553 (d)(3) to make this rule effective immediately upon publication in order to ensure conservation of the resource for the upcoming spring/summer subsistence harvest. The rule needs to be made effective immediately for the following reason. The Service-Regulations Committee approved the April 2, 2003, harvest start date at a phone conference on March 31, 2003, and publication of this rule well after April 2 has delayed the actual commencement of the legal harvest season. We need to open the harvest as close as possible to the original agreed-upon date. The expediency of the publication of this first set of annual regulations will ensure prompt follow-through on the process to start the first legally recognized spring/summer subsistence migratory bird harvest season in Alaska.

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this document is not a significant rule subject to OMB review under Executive Order 12866.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. This rule is administrative, technical, and procedural in nature, establishing the procedures for implementing spring and summer subsistence harvest of migratory birds as provided for in the amended Canada and Mexican Treaties. The rule does not provide for new or additional hunting opportunities and therefore will have minimal economic or environmental impact.

This rule benefits those participants who engage in the subsistence harvest of migratory birds in Alaska in two identifiable ways: First, participants receive the consumptive value of the birds harvested, and second, participants get the cultural benefit associated with the maintenance of a subsistence economy and way of life. The Service can estimate the consumptive value for birds harvested under this rule but does not have a dollar value for the cultural benefit of maintaining a subsistence economy and way of life.

The economic value derived from the consumption of the harvested migratory birds has been estimated using the results of a paper by Robert J. Wolfe titled "Subsistence Food Harvests in Rural Alaska, and Food Safety Issues" (August 13, 1996). Using data from Wolfe's paper and applying it to the areas that will be included in this process, a maximum economic value of $6 million is determined. This is the estimated economic benefit of the consumptive part of this rule for participants in subsistence hunting. The cultural benefits of maintaining a subsistence economy and way of life can be of considerable value to the participants, and these benefits are not included in this figure.

b. This rule will not create inconsistencies with other agencies' actions. We are the Federal agency responsible for the management of migratory birds, coordinating with the State of Alaska's Department of Fish and Game on management programs within Alaska. The State of Alaska is a member of the Alaska Migratory Bird Co-management Council.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The rule does not affect entitlement programs.

d. This rule will not raise novel legal or policy issues. The subsistence harvest regulations will go through the same National regulatory process as the existing migratory bird hunting regulations in 50 CFR part 20.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A regulatory flexibility analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. The rule legalizes a pre-existing subsistence activity, and the resources harvested will be consumed by the harvesters or persons within their local community.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, as discussed in the Executive Order 12866 section above.

a. This rule does not have an annual effect on the economy of $100 million or more. It will legalize and regulate a traditional subsistence activity. It will not result in a substantial increase in subsistence harvest or a significant change in harvesting patterns.

The commodities being regulated under this rule are migratory birds. This rule deals with legalizing the subsistence harvest of migratory birds and, as such, does not involve commodities traded in the marketplace. A small economic benefit from this rule derives from the sale of equipment and ammunition to carry out subsistence hunting. Most, if not all, businesses that sell hunting equipment in rural Alaska would qualify as small businesses. The Service has no reason to believe that this rule will lead to a disproportionate distribution of benefits.

b. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rule does not deal with traded commodities and, therefore, does not have an impact on prices for consumers.

c. This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule deals with the harvesting of wildlife for personal consumption. It does not regulate the marketplace in any way to generate effects on the economy or the ability of businesses to compete.

Unfunded Mandates Reform Act

We have determined and certify pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities. A statement containing the information required by this Act is therefore not necessary.

Participation on regional management bodies and the Co-management Council will require travel expenses for some Alaska Native organizations and local governments. In addition they will assume some expenses related to coordinating involvement of village councils in the regulatory process. Total coordination and travel expenses for all Alaska Native organizations are estimated to be less than $300,000 per year. In the Notice of Decision, 65 FR 16405, March 28, 2000, we identified 12 partner organizations to be responsible for administering the regional programs. When possible, we will make annual grant agreements available to the partner organizations to help offset their expenses. The Alaska Department of Fish and Game will incur expenses for travel to the Co-management Council meetings and to meetings of the regional management bodies. In addition, the State of Alaska will be required to provide technical staff support to each of the regional management bodies and to the Co-management Council. Expenses for the State's involvement may exceed $100,000 per year, but should not exceed $150,000 per year.

Paperwork Reduction Act

This rule has been examined under the Paperwork Reduction Act of 1995 and has been found to contain no information collection requirements. We are, however, beginning the process to request OMB approval of associated voluntary annual household surveys used to determine levels of subsistence take. In the March 3, 2003, **Federal Register**, we published a notice of intent to submit the Alaska Subsistence Harvest Survey Information Collection Forms to OMB for approval (68 FR 10024) under the Paperwork Reduction Act, with a 60-day public comment period. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Federalism Effects

As discussed in the Executive Order 12866 and Unfunded Mandates Reform Act sections above, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 13132. We worked with the State of Alaska on development of these regulations.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of section 3 of the Order.

Takings Implication Assessment

This rule is not specific to particular land ownership, but applies to the harvesting of migratory bird resources throughout Alaska. Therefore, in accordance with Executive Order 12630, this rule does not have significant takings implications.

Government-to-Government Relations With Native American Tribal Governments

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951), and Executive Order 13175, 65 FR 67249 (November 6, 2000), concerning consultation and coordination with Indian Tribal Governments, we have consulted with Alaska tribes, evaluated the rule for possible effects on tribes or trust resources and have determined that there are no significant effects. This rule establishes procedures by which the individual tribes in Alaska will be able to become significantly involved in the annual regulatory process for spring and summer subsistence harvesting of migratory birds and their eggs. The rule will legalize the subsistence harvest for tribal members, as well as for other indigenous inhabitants.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of the Act" (and) shall "insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *" Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion that concluded that the regulations are not likely to adversely affect any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final rule reflects such modifications. Our biological opinions resulting from the section 7 consultation are public documents available for public inspection at the address indicated under the caption **ADDRESSES.**

National Environmental Policy Act Consideration

The annual regulations and options were considered in the Environmental Assessment, "Managing Migratory Bird Subsistence Hunting in Alaska: Hunting Regulations for the First Legal Spring/Summer Harvest in 2003" issued August 7, 2002, modified, with a Finding of No Significant Impact issued May 7, 2003. Copies are available from the address indicated under the caption **ADDRESSES.**

Energy Supply, Distribution or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule only allows for traditional subsistence harvest and improves conservation of migratory birds by allowing effective regulation of this harvest, it is not a significant regulatory action under Executive Order 12866. Consequently it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not significant energy action under Executive Order 13211 and no Statement of Energy Effects is required.

List of Subjects

50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

50 CFR Part 92

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Subsistence, Treaties, Wildlife.

■ For the reasons set out in the preamble, we are amending title 50, chapter I, subchapters B and F, of the Code of Federal Regulations as follows:

PART 20—[AMENDED]

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712 and 742 a–j; Pub. L. 106–108.

■ 2. Amend § 20.2 by adding paragraph (e) to read as follows:

§ 20.2 Relation to other provisions.

* * * * *

(e) *Migratory bird subsistence harvest in Alaska.* The provisions of this part, except for paragraphs (a) through (d) of this section, are not applicable to the regulations governing the migratory bird subsistence harvest in Alaska (part 92 of this subchapter) unless specifically referenced in part 92 of subchapter G of this chapter.

■ 3. Revise § 20.22 to read as follows:

§ 20.22 Closed seasons.

No person may take migratory game birds during the closed season established in this part except as provided in parts 21 and 92 of this chapter.

■ 4. Revise § 20.132 to read as follows:

§ 20.132 Subsistence use in Alaska.

In Alaska, any person may, for subsistence purposes, take, possess, and transport, in any manner, from September 1 through April 1, snowy owls and cormorants for food and their skins for clothing, but birds and their parts may not be sold or offered for sale.

PART 21—[AMENDED]

■ 5. The authority citation for part 21 continues to read as follows:

Authority: Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)); Pub. L. 106–108.

■ 6. Revise § 21.11 to read as follows:

§ 21.11 General permit requirements.

No person may take, possess, import, export, transport, sell, purchase, barter, or offer for sale, purchase, or barter, any migratory bird, or the parts, nests, or eggs of such bird except as may be permitted under the terms of a valid permit issued pursuant to the provisions of this part and part 13 of this chapter, or as permitted by regulations in this part, or part 20 of this subchapter (the hunting regulations), or part 92 of subchapter G of this chapter (the Alaska subsistence harvest regulations). Birds taken or possessed under this part in "included areas" of Alaska as defined in § 92.5(a) are subject to this part and not to part 92 of subchapter G of this chapter.

PART 92—[AMENDED]

■ 7. The authority for part 92 continues to read as follows:

Authority: 16 U.S.C. 703–712.

Subpart A—General Provisions

■ 8. In subpart A amend § 92.4 by revising the definition for "Migratory bird" to read as follows:

§ 92.4 Definitions.

* * * * *

Migratory bird, for the purposes of this part, means the same as defined in § 10.12 of subchapter B of this chapter. Species eligible to harvest are listed in § 92.32.

* * * * *

■ 9. In subpart A amend § 92.5 by revising paragraphs (b) and (d) to read as follows:

§ 92.5 Who is eligible to participate?

* * * * *

(b) *Excluded areas.* Village areas located in Anchorage, the Matanuska-Susitna or Fairbanks North Star Boroughs, the Kenai Peninsula roaded area, the Gulf of Alaska roaded area, or Southeast Alaska generally do not qualify for a spring or summer harvest. Communities located within one of these areas may petition the Co-management Council through their designated regional management body for designation as a spring and summer subsistence harvest area. The petition must state how the community meets the criteria identified in paragraph (c) of this section. The Co-management Council will consider each petition and will submit to the Service any recommendations to designate a community as a spring and summer subsistence harvest area. The Service will publish any approved new designations of communities as spring and summer subsistence harvest areas in subpart D of this part. All areas outside Alaska are ineligible.

* * * * *

(d) *Participation by permanent residents of excluded areas.* Immediate family members who are permanent residents of excluded areas may participate in the customary spring and summer subsistence harvest in a village's subsistence harvest area with the permission of the village council, where it is appropriate to assist indigenous inhabitants in meeting their nutritional and other essential needs or for the teaching of cultural knowledge to or by their immediate family members. Eligibility for participation will be developed and recommended by the Co-management Council and adopted or amended by regulations published in subpart D of this part.

■ 10. In subpart A revise § 92.6 to read as follows:

§ 92.6 Use and possession of migratory birds.

Harvest and possession of migratory birds must be done using nonwasteful taking. You may not take birds for purposes other than human consumption. You may not sell, offer for sale, purchase, or offer to purchase migratory birds, their parts, or their eggs taken under this part. Nonedible by-products of migratory birds taken for food may be used for other noncommercial purposes only by individuals qualified to possess those birds. You may possess migratory birds, their parts, and their eggs, taken under this part, only if you are an eligible person as determined in § 92.5.

Subpart B—Program Structure

■ 11. In subpart B amend § 92.10 by revising paragraph (b)(1) to read as follows:

§ 92.10 Alaska Migratory Bird Co-management Council.

* * * * *

(b) * * *

(1) The Federal and State governments will each seat one representative. The Federal representative will be appointed by the Alaska Regional Director of the U.S. Fish and Wildlife Service, and the State representative will be appointed by the Commissioner of the Alaska Department of Fish and Game. Regional partner organizations may seat 1 representative from each of the 12 regions identified in § 92.11(a).

* * * * *

■ 12. In subpart B, amend § 92.11 by revising paragraph (a) and the introductory text of paragraph (b) to read as follows:

§ 92.11 Regional management areas.

(a) *Regions identified.* To allow for maximum participation by residents of subsistence eligible areas, the Alaska Regional Director of the Service established 12 geographic regions based on common subsistence resource use patterns and the 12 Alaska Native regional corporation boundaries established under the Alaska Native Claims Settlement Act. Despite using the Alaska Native regional corporation boundaries, we are not working directly

with the regional corporations in this program and are instead working with the Alaska Native nonprofit groups and local governments in those corresponding regions. You may obtain records and maps delineating the boundaries of the 12 regions from the U.S. Department of the Interior, Bureau of Land Management, Alaska State Office, 222 West 7th Ave., No. 13, Anchorage, AK 99513. The regions are identified as follows:

(1) Aleutian/Pribilof Islands;
(2) Kodiak Archipelago;
(3) Bristol Bay;
(4) Yukon/Kuskokwim Delta;
(5) Bering Strait/Norton Sound;
(6) Northwest Arctic;
(7) North Slope;
(8) Interior;
(9) Southeast;
(10) Gulf of Alaska;
(11) Upper Copper River; and
(12) Cook Inlet.

(b) *Regional partnerships.* The U.S. Fish and Wildlife Service will establish partner agreements with at least 1 partner organization in each of the 12 regions. The partner organization identified must be willing and able to coordinate the regional program on behalf of all subsistence hunters within that region. A regional partner will:

* * * * *

Subpart C—General Regulations Governing Subsistence Harvest

■ 13. In subpart C, add §§ 92.20 and 92.21 to read as follows:

§ 92.20 Methods and means.

You may not use the following devices and methods to harvest migratory birds:

(a) Swivel guns, shotguns larger than 10 gauge, punt guns, battery guns, machine guns, fish hooks, poisons, drugs, explosives, or stupefying substances;

(b) Shooting from a sinkbox or any other type of low-floating device that affords the hunter a means of concealment beneath the surface of the water;

(c) Hunting from any type of aircraft;

(d) Taking waterfowl and other species using live birds as decoys, except for auklets on Diomede Island (Use of live birds as decoys is a customary and traditional means of harvesting auklets on Diomede Island.);

(e) Hunting with the aid of recorded bird calls;

(f) Using any type of vehicle, aircraft, or boat for the purpose of concentrating, driving, rallying, or stirring up of any migratory bird, except boats may be used to position a hunter;

(g) The possession or use of lead or other toxic shot while hunting all migratory birds (Approved nontoxic shot types are listed in § 20.21(j) of subchapter B.);

(h) Shooting while on or across any road or highway; or

(g) Using an air boat or jet ski for hunting or transporting hunters (Interior Region only).

§ 92.21 Emergency closures.

(a) The Regional Director, after consultation with the Co-management Council, may close or temporarily suspend any regulation established under subparts C or D of this part:

(1) Upon finding that a continuation of the regulation would pose an imminent threat to the conservation of any endangered or threatened species or other migratory bird population; and

(2) Upon issuance of local public notice by such means as publication in local newspapers of general circulation, posting of the areas affected, notifying the State wildlife conservation agency, and announcement on the internet and local radio and television.

(b) The Service will also announce any such closure or temporary suspension by publication of a notice in the **Federal Register** simultaneously with the local public notice referred to in paragraph (a)(2) of this section. However, in the event that publishing a **Federal Register** notice simultaneously with the local public notice is impractical, we will publish in the **Federal Register** as soon as possible after the steps outlined in paragraph (a) of this section are taken.

(c) Any closure or temporary suspension under this section will be effective on the date of publication of the **Federal Register** notice; or if such notice is not published simultaneously with the notification methods described in paragraph (a) of this section, then on the date and at the time specified in the local notification to the public given under paragraph (a)(2) of this section. Every notice of closure or temporary suspension will include the date and time of the closing, the area or areas affected, and the species affected. In the case of a temporary suspension, the date and time when the harvest may be resumed will also be provided by local notification to the public and by publication in the **Federal Register** as provided for in paragraphs (a) and (b) of this section.

Subpart D—Annual Regulations Governing Subsistence Harvest

■ 14. In subpart D, amend § 92.30 by adding an introductory paragraph to read as follows:

§ 92.30 General overview of the regulations.

These regulations establish a spring/summer migratory bird subsistence harvest in Alaska. The regulations list migratory bird species that are authorized for harvest, species that are not authorized for harvest, season dates, and dates for a 30-day closure to protect nesting birds. The Co-management Council will review and, if necessary, recommend modifications to these harvest regulations on an annual basis, working within the schedule of the Federal late-season regulations for migratory game bird hunting.

* * * * *

■ 15. In Subpart D, add §§ 92.31 through 92.33 to read as follows:

§ 92.31 Migratory bird species not authorized for subsistence harvest.

(a) You may not harvest birds or gather eggs from the following species:

(1) Spectacled Eider, *Somateria fischeri.*

(2) Steller's Eider, *Polysticta stelleri.*

(3) Emperor Goose, *Chen canagica.*

(4) Aleutian Canada Goose, *Branta canadensis leucopareia*—Semidi Islands only.

(b) In addition, you may not gather eggs from the following species:

(1) Cackling Canada Goose, *Branta canadensis minima.*

(2) Black Brant, *Branta bernicla nigricans*—in the Yukon/Kuskokwim Delta and North Slope regions only.

§ 92.32 Subsistence migratory bird species.

You may harvest birds or gather eggs from the following species, listed in taxonomic order, within all included regions. When birds are listed only to the species level, all subspecies existing in Alaska are open to harvest.

(a) Family Gaviidae.

(1) Red-throated Loon (*Gavia stellata*).
(2) Arctic Loon (*Gavia arctica*).
(3) Pacific Loon (*Gavia pacifica*).
(4) Common Loon (*Gavia immer*).

(b) Family Podicipedidae.

(1) Horned Grebe (*Podiceps auritus*).
(2) Red-necked Grebe (*Podiceps grisegena*).

(c) Family Procellariidae.

(1) Northern Fulmar (*Fulmarus glacialis*).
(2) [Reserved].

(d) Family Phalacrocoracidae.

(1) Double-crested Cormorant (*Phalacrocorax auritus*).
(2) Red-faced Cormorant (*Phalacrocorax urile*).

(3) Pelagic Cormorant (*Phalacrocorax pelagicus*).

(e) Family Anatidae.

(1) Greater White-fronted Goose (*Anser albifrons*).
(2) Snow Goose (*Chen caerulescens*).
(3) Lesser Canada Goose (*Branta canadensis parvipes*).
(4) Taverner's Canada Goose (*Branta canadensis taverneri*).
(5) Aleutian Canada Goose (*Branta canadensis leucopareia*)—except in the Semidi Islands.
(6) Cackling Canada Goose (*Branta canadensis minima*)—except no egg gathering is permitted.
(7) Black Brant (*Branta bernicla nigricans*)—except no egg gathering is permitted in the Yukon/Kuskokwim Delta and the North Slope regions.
(8) Tundra Swan (*Cygnus columbianus*).
(9) Gadwall (*Anas strepera*).
(10) Eurasian Wigeon (*Anas penelope*).
(11) American Wigeon (*Anas americana*).
(12) Mallard (*Anas platyrhynchos*).
(13) Blue-winged Teal (*Anas discors*).
(14) Northern Shoveler (*Anas clypeata*).
(15) Northern Pintail (*Anas acuta*).
(16) Green-winged Teal (*Anas crecca*).
(17) Canvasback (*Aythya valisineria*).
(18) Redhead (*Aythya americana*).
(19) Ring-necked Duck (*Aythya collaris*).
(20) Greater Scaup (*Aythya marila*).
(21) Lesser Scaup (*Aythya affinis*).
(22) King Eider (*Somateria spectabilis*).
(23) Common Eider (*Somateria mollissima*).
(24) Harlequin Duck (*Histrionicus histrionicus*).
(25) Surf Scoter (*Melanitta perspicillata*).
(26) White-winged Scoter (*Melanitta fusca*).
(27) Black Scoter (*Melanitta nigra*).
(28) Long-tailed Duck (*Clangula hyemalis*).
(29) Bufflehead (*Bucephala albeola*).
(30) Common Goldeneye (*Bucephala clangula*).
(31) Barrow's Goldeneye (*Bucephala islandica*).
(32) Hooded Merganser (*Lophodytes cucullatus*).
(33) Common Merganser (*Mergus merganser*).
(34) Red-breasted Merganser (*Mergus serrator*).

(f) Family Gruidae.

(1) Sandhill Crane (*Grus canadensis*).
(2) [Reserved].

(g) Family Charadriidae.

(1) Black-bellied Plover (*Pluvialis squatarola*).
(2) Common Ringed Plover (*Charadrius hiaticula*).

(h) Family Haematopodidae.

(1) Black Oystercatcher (*Haematopus bachmani*).
(2) [Reserved].

(i) Family Scolopacidae.

(1) Greater Yellowlegs (*Tringa melanoleuca*).
(2) Lesser Yellowlegs (*Tringa flavipes*).
(3) Solitary Sandpiper (*Tringa solitaria*).
(4) Wandering Tattler (*Heteroscelus incanus*).
(5) Spotted Sandpiper (*Actitis macularia*).
(6) Upland Sandpiper (*Bartramia longicauda*).
(7) Bar-tailed Godwit (*Limosa lapponica*).
(8) Ruddy Turnstone (*Arenaria interpres*).
(9) Black Turnstone (*Arenaria melanocephala*).
(10) Red Knot (*Calidris canutus*).
(11) Semipalmated Sandpiper (*Calidris pusilla*).
(12) Western Sandpiper (*Calidris mauri*).
(13) Least Sandpiper (*Calidris minutilla*).
(14) Baird's Sandpiper (*Calidris bairdii*).
(15) Sharp-tailed Sandpiper (*Calidris acuminata*).
(16) Dunlin (*Calidris alpina*).
(17) Long-billed Dowitcher (*Limnodromus scolopaceus*).
(18) Common Snipe (*Gallinago gallinago*).
(19) Red-necked phalarope (*Phalaropus lobatus*).
(20) Red phalarope (*Phalaropus fulicaria*).

(j) Family Laridae.

(1) Pomarine Jaeger (*Stercorarius pomarinus*).
(2) Parasitic Jaeger (*Stercorarius parasiticus*).
(3) Long-tailed Jaeger (*Stercorarius longicaudus*).
(4) Bonaparte's Gull (*Larus philadelphia*).
(5) Mew Gull (*Larus canus*).
(6) Herring Gull (*Larus argentatus*).
(7) Slaty-backed Gull (*Larus schistisagus*).
(8) Glaucous-winged Gull (*Larus glaucescens*).
(9) Glaucous Gull (*Larus hyperboreus*).
(10) Sabine's Gull (*Xema sabini*).
(11) Black-legged Kittiwake (*Rissa tridactyla*).
(12) Red-legged Kittiwake (*Rissa brevirostris*).
(13) Ivory Gull (*Pagophila eburnea*).
(14) Arctic Tern (*Sterna paradisaea*).
(15) Aleutian Tern (*Sterna aleutica*).

(k) Family Alcidae.

(1) Common Murre (*Uria aalge*).
(2) Thick-billed Murre (*Uria lomvia*).
(3) Black Guillemot (*Cepphus grylle*).
(4) Pigeon Guillemot (*Cepphus columba*).
(5) Cassin's Auklet (*Ptychoramphus aleuticus*).
(6) Parakeet Auklet (*Aethia psittacula*).
(7) Least Auklet (*Aethia pusilla*).
(8) Whiskered Auklet (*Aethia pygmaea*).
(9) Crested Auklet (*Aethia cristatella*).
(10) Rhinoceros Auklet (*Cerorhinca monocerata*).
(11) Horned Puffin (*Fratercula corniculata*).
(12) Tufted Puffin (*Fratercula cirrhata*).

(l) Family Strigidae.

(1) Great Horned Owl (*Bubo virginianus*).
(2) Snowy Owl (*Nyctea scandiaca*).
(3) Northern Hawk Owl (*Surnia ulula*).
(4) Short-eared Owl (*Asio flammeus*).

§ 92.33 Region-specific regulations.

The season dates for the 2003 season for eight subsistence regions are as follows:

(a) Aleutian/Pribilof Islands Region.
(1) Northern Unit (Pribilof Islands):
(i) Season: April 2–June 30.
(ii) Closure: July 1–August 31.
(2) Central Unit (Aleut Region's eastern boundary on the Alaska Peninsula westwards to and including Unalaska Island):
(i) Season: April 2–June 15 and July 16–August 31.
(ii) Closure: June 16–July 15.
(3) Western Unit (Umnak Island west to and including Attu Island):
(i) Season: April 2–July 15 and August 16–August 31.
(ii) Closure: July 16–August 15.
(b) Yukon/Kuskokwim Delta Region.
(1) Season: April 2–August 31.
(2) Closure: 30-day closure dates to be announced by the Alaska Regional Director or his designee, after consultation with local subsistence users and the region's Waterfowl Conservation Committee. This 30-day period will occur between June 1 and August 15 of each year. A press release announcing the actual closure dates will be forwarded to regional newspapers

and radio and television stations and posted in village post offices and stores.

(c) Bristol Bay Region.

(1) Season: April 2–June 14 and July 16–August 31.

(2) Closure: June 15–July 15.

(d) Bering Strait/Norton Sound Region.

(1) Stebbins/St. Michael Area (Point Romanof to Canal Point):

(i) Season: April 15–June 14 and July 16–August 31.

(ii) Closure: June 15–July 15.

(2) Remainder of the region:

(i) Season: April 2–June 14 and July 16–August 31 for waterfowl; April 2–July 19 and August 21–August 31 for all other birds.

(ii) Closure: June 15–July 15 for waterfowl; July 20–August 20 for all other birds.

(e) Kodiak Archipelago Region, except the Kodiak Island roaded area is closed to the harvesting of migratory birds and their eggs. The closed area is depicted on a map and consists of all lands and water east of a line extending from Crag Point in the north to the west end of Saltery Cove in the south and all lands and water south of a line extending from Termination Point along the north side of Cascade Lake extending to Anton Larson Bay. Offshore islands and waters adjacent to the closed area will remain open to harvest.

(1) Season: April 2–June 20 and July 22–August 31, egg gathering: May 1–June 20.

(2) Closure: June 21–July 21.

(f) Northwest Arctic Region.

(1) Season: April 2–August 31 (in general); waterfowl egg gathering May 20–June 9; seabird egg gathering July 3–July 12; molting/non-nesting waterfowl July 1–July 31.

(2) Closure: June 10–August 14, except for the taking of seabird eggs and molting/non-nesting waterfowl as provided in paragraph (f)(1) of this section.

(g) North Slope Region.

(1) Southern Unit (Pt. Hope to Wainwright, along the Chuckchi coast, south and east to Atqasuk and Anaktuvuk Pass):

(i) Season: April 2–June 29 and July 30–August 31 for seabirds; April 2–June 19 and July 20–August 31 for all other birds.

(ii) Closure: June 30–July 29 for seabirds; June 20–July 19 for all other birds.

(2) Northern Unit (Barrow to Nuiqsut):

(i) Season: April 6–June 6 and July 7–August 31 for king and common eiders and April 2–June 15 and July 16–August 31 for all other birds.

(ii) Closure: June 7–July 6 for king and common eiders and June 16–July 15 for all other birds.

(3) Eastern Unit (Communities east of Nuiqsut):

(i) Season: April 2–June 19 and July 20–August 31.

(ii) Closure: June 20–July 19.

(h) Interior Region.

(1) Season: April 2–June 14 and July 16–August 31; egg gathering May 1–June 14.

(2) Closure: June 15–July 15.

Dated: June 16, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–18097 Filed 7–18–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307 3037–02; I.D. 071503C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Aleutian District of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2003 total allowable catch (TAC) of Pacific ocean perch in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 16, 2003, through 2400 hrs, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2003 TAC of Pacific ocean perch for the Western Aleutian District was established as 5,411 metric tons (mt) by the final 2003 harvest specifications for groundfish in the BSAI (68 FR 9907, March 3, 2003).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2003 TAC for Pacific ocean perch in the Western Aleutian District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 5,111 mt, and is setting aside the remaining 300 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Aleutian District of the BSAI.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the 2003 TAC for Pacific ocean perch in the Western Aleutian District, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 15, 2003.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–18487 Filed 7–16–03; 4:12 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 139
Monday, July 21, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV03–948–3 PR]

Irish Potatoes Grown in Colorado; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the Area No. 2 Colorado Potato Administrative Committee (Committee) for the 2003–2004 and subsequent fiscal periods from $0.0035 to $0.0051 per hundredweight of potatoes handled. The Committee locally administers the marketing order which regulates the handling of potatoes grown in Colorado. Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins September 1 and ends August 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by August 20, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR part 948), regulating the handling of potatoes grown in Colorado, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Colorado potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable potatoes beginning on September 1, 2003, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 2003–2004 and subsequent fiscal periods from $0.0035 to $0.0051 per hundredweight of potatoes.

The Colorado potato marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Colorado potatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2001–2002 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 15, 2003, and recommended 2003–2004 expenditures of $85,695 and an assessment rate of $0.0051 per hundredweight of potatoes. In comparison, last year's budgeted expenditures were $74,643. The assessment rate of $0.0051 is $0.0016 higher than the rate currently in effect. The higher assessment rate is necessary to offset an increase in salaries and operation expenses.

The major expenditures recommended by the Committee for the 2003–2004 fiscal period include $54,520

for salaries, $9,925 for office expenses, and $7,300 for building maintenance. Budgeted expenses for these items in 2002–2003 were $41,703, $9,700, and $7,650, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Colorado potatoes. Colorado potato shipments for the year are estimated at 17,000,000 hundredweight which should provide $86,700 in assessment income. Income derived from handler assessments should be adequate to cover budgeted expenses. Funds in the reserve (estimated at $14,025 as of August 31, 2003) would be kept within the maximum permitted by the order (approximately two fiscal periods' expenses; § 948.78).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2003–2004 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 90 handlers of Colorado Area No. 2 potatoes subject to regulation under the order and approximately 230 producers of potatoes in the regulated production area. Small agricultural firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000.

During the 2001–2002 fiscal period, 14,805,719 hundredweight of Colorado Area No. 2 potatoes were inspected under the order and sold into the fresh market. Based on an estimated average f.o.b. price of $11.75 per hundredweight, the Committee estimates that 79, or about 88 percent of the Area No. 2 handlers, had annual receipts of less than $5,000,000.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for Colorado fall potatoes for the 2001–2002 fiscal period was $9.65 per hundredweight. The average annual producer revenue for the 230 Colorado Area No. 2 potato producers is therefore calculated to be approximately $621,196. In view of the foregoing, the majority of the Colorado Area No. 2 potato producers and handlers may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2003–2004 and subsequent fiscal periods from $0.0035 to $0.0051 per hundredweight of potatoes. The Committee recommended 2003–2004 expenditures of $85,695 and an assessment rate of $0.0051 per hundredweight. The proposed assessment rate is $0.0016 higher than the current rate. The quantity of assessable Area No. 2 Colorado potatoes for the 2003–2004 fiscal period is estimated at 17,000,000 hundredweight. Thus, the $0.0051 rate should provide $86,700 in assessment income and be adequate to meet this fiscal period's expenses.

The major expenditures recommended by the Committee for the 2003–2004 fiscal period include $54,520 for salaries, $9,925 for office expenses, and $7,300 for building maintenance. Budgeted expenses for these items in 2002–2003 were $41,703, $9,700, and $7,650, respectively.

The higher assessment rate is necessary to offset an increase in salaries and operation expenses.

The Committee discussed alternatives to this rule, including alternative expenditure levels. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the program with adequate reserves.

The assessment rate of $0.0051 per hundredweight of assessable potatoes was determined by dividing the total recommended budget by the quantity of assessable potatoes, estimated at 17,000,000 hundredweight for the 2003–2004 fiscal period. This is approximately $1,005 above the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the producer price for the 2003–2004 fiscal period could range between $2.95 and $9.65 per hundredweight of Colorado fall potatoes. Therefore, the estimated assessment revenue for the 2003–2004 fiscal period as a percentage of total producer revenue could range between 0.05 and 0.17 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Area No. 2 Colorado potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 15, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Colorado Area No. 2 potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2003–2004 fiscal period begins on September 1, 2003, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable potatoes handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay for expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is proposed to be amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 948.216 is revised to read as follows:

§ 948.216 Assessment rate.

On and after September 1, 2003, an assessment rate of $0.0051 per hundredweight is established for Colorado Area No. 2 potatoes.

Dated: July 16, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–18447 Filed 7–18–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–47–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW4000 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to supersede an existing airworthiness directive (AD), that is applicable to Pratt & Whitney (PW) model PW4050, PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062, PW4152, PW4156, PW4156A, PW4158, PW4160, PW4460, PW4462, and PW4650 turbofan engines. That AD currently requires interim actions to address engine takeoff power loss events until the high-pressure-compressor (HPC) case is redesigned and available for incorporation on the PW4000 engines. That amendment also requires on-wing Testing-21 to engines installed on Boeing 747 and MD–11 airplanes, and the installation of a new Ring Case Configuration (RCC) rear HPC on PW 4000 series engines installed in the Boeing fleet as terminating action to the requirements of that AD. This proposal is prompted by the development of an RCC rear HPC for PW4000 series turbofan engines installed in the Airbus fleet. The actions specified by this proposed AD are intended to prevent engine takeoff power losses due to HPC surge.

DATES: Comments must be received by August 25, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–47–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this proposed AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108, telephone (860) 565–6600; fax (860) 565–4503. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7133; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NE–47–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–47–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On May 28, 2003, the FAA issued AD 2003–11–18, Amendment 39–13177 (68 FR 33844, June 6, 2003), which supersedes AD 2002–21–10. AD 2003–11–18 was published as an interim action to address engine takeoff power loss events until the HPC case could be redesigned and available for incorporation on the PW4000 engines. That action also added on-wing Testing-21 to engines installed on Boeing 747 and MD–11 airplanes, and required the installation of a new RCC rear HPC on engines installed in the Boeing fleet as terminating action to the requirements of that AD. That AD was prompted by the development of an RCC rear HPC for PW4000 series turbofan engines installed in the Boeing fleet. The actions

specified by that AD are intended to prevent engine takeoff power losses due to HPC surge.

Since that AD was issued, PW developed an RCC rear HPC for PW4000 series turbofan engines installed in the Airbus fleet. This proposal mandates the same actions as AD 2003–11–18 (with some modifications based on AMOC approvals) and incorporates the RRC rear HPC as terminating action for the Airbus fleet.

Manufacturer's Service Information

For AD 2003–11–18, the FAA reviewed and approved the technical contents of the following PW service information:

- Service Bulletin (SB) PW4ENG 72–755, dated February 28, 2003.
- Internal Engineering Notice (IEN) 02KCW13, dated October 14, 2002.
- IEN 02KCW13A, dated October 14, 2002.
- IEN 02KCW13C, dated July 25, 2002.
- IEN 02KCW13D, dated July 29, 2002.
- IEN 02KCW13E, dated November 21, 2002.
- IEN 02KCW13F, dated October 14, 2002.
- IEN 02KCW13H, dated December 9, 2002.
- SB PW4ENG72–714, Revision 1, dated November 8, 2001.
- SB PW4ENG72–749, dated June 17, 2002.
- IEN 96KC973D, dated October 12, 2001.
- Temporary Revision (TR) TR 71–0018, dated November 14, 2001.
- TR 71–0026, dated November 14, 2001.
- TR 71 71–0035, dated November 14, 2001.
- Cleaning, Inspection, and Repair (CIR) procedure CIR 51A357, Section 72–35–68, Inspection/Check–04, Indexes 8–11, dated September 15, 2001.
- CIR 51A357, Section 72–35–68, Repair 16, dated June 15, 1996.
- PW4000 PW engine manual (EM) 50A443, 71–00–00, TESTING–21, dated March 15, 2002.
- PW4000 PW EM 50A822, 71–00–00, TESTING–21, dated March 15, 2002.
- PW4000 PW EM 50A605, 71–00–00, TESTING–21, dated March 15, 2002.

Since the issuance of AD 2003–11–18, PW has issued the following service information which have also been reviewed and approved by the FAA.

- SB PW4ENG 72–756, dated July 7, 2003.
- SB PW4ENG 72–759, dated July 7, 2003.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other PW4000 series turbofan engines of this same type design, the proposed AD would supersede AD 2003–11–18 to require the same actions as that AD, and additionally require the installation of a new RCC rear HPC on engines installed in the Airbus fleet as terminating action to the AD. The actions are required to be done in accordance with the service bulletins described previously.

Economic Analysis

There are approximately 2,300 engines of the affected design in the worldwide fleet. The FAA estimates that 550 engines installed on Boeing aircraft and 100 engines installed on Airbus aircraft of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 183 work hours per engine to perform the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $119,500 per engine. Based on these figures, the total average annual cost impact of the proposed AD to U.S. operators is estimated to be $13,950,500.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–13177, (68 FR 33844), June 7, 2003), and by adding a new airworthiness directive:

Pratt & Whitney: Docket No. 2000–NE–47–AD. Supersedes AD 2003–11–18, Amendment 39–13177.

Applicability

This airworthiness directive (AD) is applicable to: Pratt & Whitney (PW) model PW4050, PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062, PW4152, PW4156, PW4156A, PW4158, PW4160, PW4460, PW4462, and PW4650 turbofan engines. These engines are installed on, but not limited to, certain models of Airbus Industrie A300, Airbus Industrie A310, Boeing 747, Boeing 767, and McDonnell Douglas MD–11 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified; altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (w) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with ~~this AD~~ is required as indicated, unless already done.

To prevent engine takeoff power losses due to high-pressure-compressor (HPC) surges, do the following:

(a) When complying with this AD, determine the configuration of each engine on each airplane using the following Table 1:

TABLE 1.—ENGINE CONFIGURATION LISTING

Configuration	Configuration designator	Description
(1) Phase 1 without high pressure turbine (HPT) 1st turbine vane cut back stator (1TVCB).	A	Engines that did not incorporate the Phase 3 configuration at the time they were originally manufactured, or have not been converted to Phase 3 configuration; and have not incorporated HPT 1TVCB using any Revision of service bulletin (SB) PW4ENG 72–514.
(2) Phase 1 with 1TVCB	B	Same as Configuration A except that HPT 1TVCB has been incorporated using any Revision of SB PW4ENG 72–514.
(3) Phase 3, 2nd Run	C	Engines that incorporated the Phase 3 configuration at the time they were originally manufactured, or have been converted to the Phase 3 configuration during service; and that have had at least one HPC overhaul since new.
(4) Phase 3, 1st Run	D	Same as Configuration C except that the engine has not had an HPC overhaul since new, except those engines that are defined as Configuration Designator G.
(5) HPC Cutback Stator Configuration Engines.	E	Engines that currently incorporate any Revision of SBs PW4ENG 72–706, PW4ENG 72–704, or PW4ENG 72–711.
(6) Engines that have passed Testing-21.	F	Engines which have successfully passed Testing-21 performed in accordance with paragraph (i) or (j) of this AD. Once an engine has passed a Testing-21, it will remain a Configuration F engine until the HPC is overhauled, or is replaced with a new or overhauled HPC, or the HPC is retrofitted to Configuration I.
(7) Phase 3, 1st Run Subpopulation Engines. These engines are identified by mode and serial numbers (SNs) as follows:. PW4152: SN 724942 through SN 724944 inclusive; PW4158: SN 728518 through SN 728533 inclusive; PW4052, PW4056, PW4060, PW4060A, PW4060C, PW4062: SN 727732 through SN 728000 inclusive and SN 729001 through SN 729010 inclusive; PW4460, PW4462: SN 733813 through SN 733840 inclusive.	G	Engines that incorporated the Phase 3 configuration and did not incorporate Haynes material HPC inner case rear hook at the time they were originally manufactured, that were built from August 29, 1997 up to the incorporation of the HPC inner rear case with Haynes material rear hook at the original engine manufacturer and have not had an HPC overhaul since new.
(8) Engines from Configuration G that have passed Testing-21.	H	Engines that have successfully passed Testing-21 performed in accordance with paragraph (i) or (j) of this AD. Once an engine has passed a Testing-21, it will remain a Configuration H engine until the HPC is overhauled, or is replaced with a new or overhauled HPC, or the HPC is retrofitted to Configuration I.
(9) Engines installed on Boeing or Airbus airplanes with a build standard that incorporates a ring case configuration (RCC) rear HPC.	I	Engines that have incorporated PW SB PW4ENG 72–755, Revision 2, dated May 23, 2003, or PW SB PW4ENG 72–756, dated July 7, 2003, or PW SB PW4ENG 72–759, dated July 7, 2003, or have been manufactured with an RCC read HPC.

Configuration E Engines Installed on Boeing 747, 767, and MD–11 Airplanes

(b) For Configuration E engines, do the following:

(1) Before further flight, limit the number of engines with Configuration E as described in Table 1 of this AD, to one on each airplane.

(2) Remove all engines with Configuration E from service before accumulating 1,300 cycles-since-new (CSN) or cycles-since-conversion (CSC) to Configuration E, whichever is later.

Configuration G and H Engines Installed on Boeing 747, 767, MD–11, and Airbus A300 and A310 Airplanes

(c) For Configuration G and H engines installed on Boeing 747 and 767, MD–11, and Airbus A300 and A310 airplanes, except as provided in paragraph (b) of this AD:

(1) Before further flight, remove from service engines that exceed the CSN or cycles-since-Testing-21 (CST) limits listed in the following Table 2, or perform on-wing Testing-21 on MD–11 or Boeing 747 airplanes in accordance with paragraph (i)(3) or (j)(3) of this AD, respectively. Thereafter, ensure that no Configuration G or H engines exceed the HPC CSN or CST limits listed In Table 2 of this AD.

TABLE 2.—CONFIGURATION G AND H LIMITS

Configuration designator	B747 PW4056	B767 PW4052	B767 PW4056	B767 PW4060 PW4060A PW4060C PW4062	MD–11 PW4460 PW4462	A300/310 PW4152 PW4156A PW4158
G	1,700 CSN 600 CST	3,000 CSN 600 CST	2,100 CSN 600 CST	1,350 CSN 600 CST	1,150 CSN 600 CST	2,800 CSN 600 CST
H						

(2) Prior to return to service and installed on Boeing 767 or 747 or Airbus A300 or A310 airplanes, Configuration G and H engines must meet the requirements of paragraph (j) of this AD.

(3) Prior to return to service and installed on McDonnell Douglas MD–11 airplanes, Configuration G or H engines must meet the requirements of paragraph (i) of this AD.

Engines Installed on Boeing 767 and MD–11 Airplanes

(d) For engines installed on Boeing 767 and MD–11 airplanes, except as provided in paragraph (b) and (c) of this AD:

(1) Before further flight, limit the number of engines that exceed the HPC CSN, HPC cycles-since-overhaul (CSO), or HPC CST limits in Table 3 of this AD, to no more than one engine per airplane. Thereafter, ensure that no more than one engine per airplane exceeds the HPC CSN, CSO, or CST limit in Table 3 of this AD.

(2) Prior to return to service and installed on MD–11 airplanes, engines must meet the requirements of paragraph (i) of this AD.

(3) Prior to return to service and installed on Boeing 767 airplanes, engines must meet the requirements of paragraph (j) of this AD.

Engines Installed on Boeing 747 Airplanes

(e) Except as provided in paragraph (b) and (c) of this AD, before further flight, and thereafter, manage the engine configurations installed on Boeing 747 airplanes as follows:

(1) Limit the number of Configuration A, B, C, or E engines that exceed the HPC CSN or HPC CSO limits listed in Table 3 of this AD, to not more than one engine per airplane. Table 3 follows:

TABLE 3.—ENGINE LIMITS FOR BOEING AIRPLANES

Configuration designator	B747 PW4056	B767 PW4052	B767 PW4056	B767 PW4060 PW4060A PW4060C PW4062	MD–11 PW4460 PW4462
A	1,400 CSN or CSO	3,000 CSN or CSO	1,600 CSN or CSO	900 CSN or CSO	800 CSN or CSO
B	2,100 CSN or CSO	4,400 CSN or CSO	2,800 CSN or CSO	2,000 CSN or CSO	1,200 CSN or CSO
C	2,100 CSO	4,400 CSO	2,800 CSO	2,000 CSO	1,300 CSO
D	2,600 CSN	4,400 CSN	3,000 CSN	2,200 CSN	2,000 CSN
E	750 CSN or CSO	750 CSN or CSO	750 CSN or CSO	750 CSN or CSO	750 CSN or CSO
F	800 CST	800 CST	800 CST	800 CST	800 CST

(2) The single Configuration A, B, C, or E engine per airplane that exceeds the HPC CSN or CSO limits listed in Table 3 of this AD, must be limited to 2,600 HPC CSN or CSO for Configuration A, B, or C engines, or 1,300 HPC CSN or CSC to Configuration E, whichever is later, for Configuration E engines.

(3) Remove from service or perform on-wing Testing-21 in accordance with paragraph (j)(3) of this AD for Configuration D engines, before accumulating 2,600 CSN.

(4) Remove from service or perform on-wing Testing-21 in accordance with paragraph (j)(3) of this AD for Configuration F engines, before accumulating 800 CST.

(5) Prior to return to service and installed on Boeing airplanes, Configuration A, B, C, D, and F engines must meet the requirements of paragraph (j) of this AD.

Engines Installed on Airbus A300 and A310 Airplanes

(f) For Airbus operators that began operation of their A300 fleet after the effective date of this AD, use paragraphs (f)(7) through (f)(9) of this AD to determine which Airbus A300 PW4158 engine category 1 or 3 limits of the following Table 4 of this AD apply to your engine fleet. For Airbus operators that have been in operation before the effective date of this AD, use your PW4158 engine category classification previously determined for your fleet and continue to apply the A300 PW 4158 Category limits in Table 4 of this AD, to your fleet.

TABLE 4.—ENGINE LIMITS FOR AIRBUS AIRPLANES

Configuration designator	A300 PW4158 Category 1, and A310 PW4156 and PW4156A	A300 PW4158 Category 2, and 310 PW4152	A300 PW4158 Category 3
A	900 CSN or CSO	1,850 CSN or CSO	500 CSN or CSO
B	2,200 CSN or CSO	4,400 CSN or CSO	1,600 CSN or CSO
C	2,200 CSO	4,400 CSO	1,600 CSO
D	4,400 CSN	4,400 CSN	4,400 CSN
E	Not Applicable	Not Applicable	Not Applicable
F	800 CST	800 CST	800 CST

(1) Determine the number of Group 3 takeoff surges experienced by engines in your fleet before April 13, 2001. Count surge events for engines that had an HPC overhaul and incorporated either SB PW 4ENG 72–484 or SB PW4ENG 72–575 at the time of overhaul. Do not count surge events for engines that did not have the HPC overhauled (*i.e.* 1st run engine) or had the HPC overhauled but did not incorporate either SB PW4ENG 72–484 or SB PW4ENG 72–575. *See* paragraph (v)(5) of this AD for a definition of a Group 3 takeoff surge.

(2) Determine the number of cumulative HPC CSO accrued by engines in your fleet before April 13, 2001. Count HPC CSO for engines that had an HPC overhaul and incorporated either SB PW4ENG 72–484 or SB PW4ENG 72–575 at the time of overhaul. Do not count HPC CSO accrued on your engines while operating outside your fleet.

(3) Calculate the surge rate by dividing the number of Group 3 takeoff surges determined in paragraph (f)(1) of this AD, by the number of cumulative HPC CSO determined in paragraph (f)(2) of this AD, and then multiply by 1,000.

(4) If the surge rate calculated in paragraph (f)(3) of this AD is less than 0.005, go to paragraph (f)(5) of this AD. If the surge rate calculated in paragraph (f)(3) of this AD is greater than or equal to 0.005, go to paragraph (f)(6) of this AD.

(5) If the cumulative HPC CSO determined in paragraph (f)(2) of this AD is greater than or equal to 200,000 cycles, use A300 PW4158 Category 2 limits of Table 4 of this AD. If less than 200,000 cycles, go to paragraph (f)(7) of this AD.

(6) If the surge rate calculated in paragraph (f)(3) of this AD is greater than 0.035, use A300 PW 4158 Category 3 limits of Table 4 of this AD. If less than or equal to 0.035, go to paragraph (f)(7) of this AD.

(7) Determine the percent of takeoffs with greater than a 1.45 Takeoff engine pressure ratio (EPR) data for engines operating in your fleet. Count takeoffs from a random sample of at least 700 airplane takeoffs that have occurred over at least a 3-month time period, for a period beginning no earlier than 23 months prior to the effective date of this AD. See paragraph (v)(6) of this AD for definition of Takeoff EPR data.

(8) If there is insufficient data to satisfy the criteria of paragraph (f)(7) of this AD, use A300 PW4158 Category 3 limits of Table 4 of this AD.

(9) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (f)(7) of this AD is greater than 31%, use A300 PW 4158 Category 3 limits listed in Table 4 of this AD. If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (f)(7) of this AD is less than or equal to 31%, use A300 PW 4158 Category 1 limits listed in Table 4 of this AD.

(g) For engines installed on Airbus A300 or A310 airplanes, except as provided in paragraph (c) of this AD, before further flight, limit the number of engines that exceed the CSN, CSO, or CST limits listed in Table 4 of this AD, to no more than one engine per airplane. Thereafter, ensure that no more than one engine per airplane exceeds the HPC CSN, CSO, or CST limits listed in Table 4 of this AD. *See* paragraph (j) of this AD for return to service requirements.

(h) For Airbus A300 PW4158 engine operators, except those operators whose engine fleets are determined to be Category 3 classification based on surge rate in accordance with paragraph (f)(6) of this AD, re-evaluate your fleet category within 6 months from the last evaluation, and thereafter, at intervals not to exceed 6 months, using the following criteria:

(1) For operators whose engine fleets are initially classified as Category 1 or 3 in accordance with paragraph (f) of this AD, determine the percent of takeoffs with greater than a 1.45 Takeoff EPR data for engines operating in your fleet. Count takeoffs from a sample of at least 200 takeoffs that occurred over the most recent six month time period since the last categorization was determined, or the total number of takeoffs accumulated over 6 months if less than 200 takeoffs. *See* paragraph (v)(6) of this AD for definition of takeoff EPR data.

(i) If there is insufficient data to satisfy the criteria of paragraph (h)(1) of this AD, use A300 PW4158 Category 3 limits listed in Table 4 of this AD.

(ii) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (h)(1) of this AD is greater than 31%, use A300 PW4158 Category 3 limits listed in Table 4 of this AD.

(iii) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (h)(1) of this AD is less than or equal to 31%, use A300 PW4158 Category 1 limits listed in Table 4 of this AD.

(2) For operators whose engine fleets are initially classified as Category 2 in accordance with paragraph (f) of this AD, determine the percent of takeoffs with greater than a 1.45 Takeoff EPR data for engines operating in your fleet. Count takeoffs from a sample of at least 200 takeoffs that occurred over the most recent six month time period since the last categorization was determined, or the total number of takeoffs accumulated over 6 months if less than 200 takeoffs. *See* paragraph (v)(6) of this AD for definition of takeoff EPR data.

(i) If there is insufficient data to satisfy the criteria of paragraph (h)(2) of this AD, use A300 PW4158 Category 3 limits listed in Table 4 of this AD.

(ii) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (h)(2) of this AD is greater than 37%, use A300 PW4158 Category 3 limits listed in Table 4 of this AD.

(iii) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (h)(2) of this AD is greater than or equal to 21% and less than or equal to 37%, use A300 PW4158 Category 1 limits listed in Table 4 of this AD.

(iv) If the percentage of takeoffs with greater than a 1.45 Takeoff EPR data determined in paragraph (h)(2) of this AD is less than 21%, use A300 PW4158 Category 2 limits listed in Table 4 of this AD.

Return to Service Requirements for Engines To Be Installed on McDonnell Douglas MD–11 Airplanes

(i) Engines removed from service in accordance with paragraph (c) or (d), of this AD may be returned to service and installed on McDonnell Douglas MD–11 airplanes under the following conditions:

(1) After passing a cool-engine fuel spike stability test (Testing-21) that has been done in accordance with PW4000 EM 50A822, 71–00–00, TESTING–21, dated March 15, 2002, except for engines with Configuration E, or engines that have experienced a Group 3 takeoff surge; or

(2) Engines tested before the effective date of this AD, in accordance with PW4000 EM 50A822, 71–00–00, TESTING–21, dated November 14, 2001; or PW4000 EM 50A822, Temporary Revision No. 71–0018, dated November 14, 2001; or PW Internal Engineering Notice (IEN) 96KC973D, dated October 12, 2001, meet the requirements of TESTING–21; or

(3) After passing an on-wing Testing–21 on PW4460 and PW4462 engines installed on McDonnell Douglas MD–11 airplanes that have been done in accordance with Major IEN 02KCW13H, dated December 9, 2002, or done prior to the approval of Major IEN 02KCW13H, dated December 9, 2002, in accordance with Minor IEN 02KCW13F, dated October 14, 2002, except for engines with Configuration E, or engines that have experienced a Group 3 takeoff surge; or

(4) The engine HPC was replaced with an HPC that is new from production with no time in service; or

(5) The engine HPC has been overhauled, or the engine HPC replaced with an overhauled HPC with zero cycles since overhaul; or

(6) An engine that is either below or exceeds the limits of Table 3 or Table 4 of this AD may be removed and installed on another airplane without Testing-21, as long as the requirements of paragraph (c) or (d) of this AD are met at the time of engine installation.

Return to Service Requirements for Engines To Be Installed on Boeing or Airbus Airplanes

(j) Engines removed from service in accordance with paragraph (c), (d), (e), or (g) of this AD may be returned to service and installed on Boeing 747, 767, or Airbus A300 orA310 airplanes under the following conditions:

(1) After passing a cool-engine fuel spike stability test (Testing-21) that has been done in accordance with Pw4000 Engine Manual (EM) 50A605, 71–00–00, Testing-21, dated June 15, 2003, or PW4000 EM 50A443, 71–00–00, Testing-21, dated March 15, 2002, except for engines configured with Configuration E, or engines that have experienced a Group 3 takeoff surge; or

(2) Engines tested before the effective date of this AD, in accordance with PW4000 EM 50A605, 71–00–00, Testing-21, dated March 15, 2002; PW4000 EM 50A443, 71–00–00, Testing-21, dated November 14, 2001; or PW4000 EM 50A443, Temporary Revision No. 71–0026, dated November 14, 2001; or PW IEN 96KC973D, dated October 12, 2001; or PW4000 EM 50A605, Temporary Revision No. 71–0035, dated November 14, 2001 meet the requirements of Testing-21; or

(3) For PW4056 engines installed on Boeing 747 airplanes, after successfully completing on-wing Testing-21 in accordance with Major IEN 02KCW13E, dated November 21, 2002; or if done prior to the approval of Major IEN 02KCW13E, dated November 21, 2002; in accordance with Minor IENs 02KCW13 dated October 14, 2002; 02KCW13A, dated October 14, 2002; 02KCW13C, dated July 25, 2002; or 02KCW13D, July 29, 2002; except for engines configured with Configuration E, or engines that have experienced a Group 3 takeoff surge; or

(4) An engine that is either below or exceeds the limits of Table 3 or Table 4 of this AD may be removed and installed on another airplane without Testing-21, as long as the requirements of paragraph (c), (d), (e), or (g) of this AD are met at the time of engine installation.

(5) An engine that has incorporated the RCC rear HPC in accordance with PW SB PW4ENG 72–755, Revision 2, dated May 23, 2003, for engines installed in Boeing airplanes; or PW4ENG 72–756, dated July 7, 2003; or PW4ENG 72–759, dated July 7, 2003 for engines installed in Airbus airplanes. Completing these SBs changes the engine configuration to Configuration I.

Phase 0 or Phase 1, FB2T or FB2B Fan Blade Configurations

(k) For Configuration A, B, C, D, E, F, G, and H engines with Phase 0 or Phase 1, FB2T or FB2B fan blade configurations complying with the requirements of AD 2001–09–05, (66 FR 22908, May 5, 2001); AD 2001–09–10, (66 FR 21853, May 2, 2001); or AD 2001–01–10, (66 FR 6449, January 22, 2001); do the following:

(1) Operators complying with the ADs listed in paragraph (k) of this AD using the weight restriction compliance method, must perform Testing-21 in accordance with paragraph (i) or (j) of this AD whenever any quantity of fan blades are replaced with new fan blades, overhauled fan blades, or with fan blades having the leading edges recontoured after the effective date of this AD, if during the shop visit the HPC is not overhauled and separation of a major engine flange, located between "A" flange and "T" flange, does not occur.

(2) If an operator changes from the weight restriction compliance method to the fan blade leading edge recontouring method after the effective date of this AD, Testing-21 in

accordance with paragraph (i) or (j) of this AD is required each time fan blade leading edge recontouring is done, if the fan blades accumulate more than 450 cycles since new or since fan blade overhaul, or since the last time the fan blade leading edges were recontoured.

Minimum Build Standard for Engines Installed on McDonnell Douglas MD–11 Airplanes

(l) Use the following minimum build standards for engines to be returned to service and installed on McDonnell Douglas MD–11 airplanes:

(1) After the effective date of this AD, do not install an engine with HPC and HPT modules where the CSO of the HPC is 1,500 cycles or greater than the CSN or CSO of the HPT.

(2) For any engine that undergoes an HPC overhaul after the effective date of this AD:

(i) Inspect the HPC mid hook and rear hook of the HPC inner case for wear in accordance with PW Clean, Inspect and Repair (CIR) Manual PN 51A357, Section 72–35–68 Inspection/Check-04, Indexes 8–11, dated December 15, 2002; or March 15, 2002; or September 15, 2001. If the HPC rear hook is worn beyond serviceable limits, replace the HPC inner case rear hook with an improved durability hook in accordance with PW SB PW4ENG 72–714, Revision 1, dated November 8, 2001; or Revision 2, dated February 28, 2003; or Chromalloy Florida Repair Procedure 00 CFL–039–0, dated December 27, 2000. If the HPC inner case mid hook is worn beyond serviceable limits, repair the HPC inner case mid hook in accordance with PW SB PW4ENG 72–749, dated June 17, 2002; or Revision 1, dated January 8, 2003; or Chromalloy Florida Repair Procedure 02 CFL–024–0, dated September 15, 2002.

(ii) After the effective date of this AD, any engine that undergoes an HPC overhaul may not be returned to service unless it meets the build standard of PW SB PW4ENG 72–484, PW4ENG 72–486, PW4ENG 72–514, and PW4ENG 72–575. Engines that incorporate the Phase 3 configuration already meet the build standard defined by PW SB PW4ENG 72–514.

(3) After the effective date of this AD, any engine that undergoes separation of the HPC and HPT modules must not be installed on an airplane unless it meets the build standard of PW SB PW4ENG 72–514. Engines that incorporate the Phase 3 configuration already meet the build standard defined by PW SB PW4ENG 72–514.

Minimum Build Standard for Engines Installed on Boeing and Airbus Airplanes

(m) For engines inducted into the shop after July 7, 2003 for Boeing 747 and 767 airplanes; and after the effective date of this AD for Airbus airplanes:

(1) Any Segmented Case Configuration (SCC) HPC module that is disassembled to a level that fully separates the HPC rear case assembly at H flange from the HPC module may not be returned to service unless the RCC rear HPC is incorporated in accordance with PW SB PW4ENG 72–755, Revision 2, dated May 23, 2003, for engines installed on Boeing airplanes; or PW SB PW4ENG72–756, dated July 7, 2003, or PW SB PW4ENG72–759, dated July 7, 2003, for engines installed on Airbus airplanes.

(2) Any engine with a SCC HPC module that is not disassembled in accordance with paragraph (m)(1) of this AD, must meet the following minimum build standard:

(i) Do not install an engine with SCC HPC and HPT modules where the CSO of the HPC is 1,500 cycles or more than the CSN or CSO of the HPT.

(ii) Any engine that undergoes separation of the SCC HPC and HPT modules must not be installed on an airplane unless it meets the build standard defined by PW SB PW4ENG 72–514. Engines that incorporate the Phase 3 configuration meet the build standard defined by PW SB PW4ENG 72–514.

Stability Testing Requirements for Engines To Be Installed on McDonnell Douglas MD–11 Airplanes

(n) For engines to be installed on McDonnell Douglas MD–11 airplanes, after the effective date of this AD, Testing-21 must be performed in accordance with paragraph (i) of this AD, before an engine can be returned to service after having undergone maintenance in the shop, except under any of the following conditions:

(1) The engine HPC was overhauled, or replaced with an overhauled HPC with zero cycles since overhaul; or the engine HPC was replaced with an HPC that is new from production with no time in service, or

(2) Engine maintenance intended to maintain the airworthiness of the engine between planned shop visits, that requires separation of a major engine flange located between "A" flange and "T" flange, that results in the engine being reassembled with all gas path-related components remaining in the as-removed condition, or

(3) Engines with an HPC having zero CSN or CSO, or engines that successfully passed Testing-21 with zero CST; and are split at Flange E for transportation reasons as specified in the applicable Storage/Transport section of the applicable Engine Manual.

Stability Testing Requirements for Engines To Be Installed on Boeing or Airbus Airplanes

(o) For engines to be installed on Boeing 767, 747, or Airbus A300, or A310 airplanes, after the effective date of this AD, Testing-21 must be performed in accordance with paragraph (j) of this AD, before an engine can be returned to service after having undergone maintenance in the shop, except under any of the following conditions:

(1) Engine HPC has incorporated the RCC rear HPC in accordance with PW SB PW4ENG 72–755, Revision 2, dated May 23, 2003, for engines installed on Boeing airplanes; or PW SB PW4ENG72–756, dated July 7, 2003; or PW SB PW4ENG72–759, dated July 7, 2003; for engines installed on Airbus airplanes. Incorporation of any of these SBs changes the engine configuration to Configuration I; or

(2) Engine maintenance intended to maintain the airworthiness of the engine between planned shop visits, that requires separation of a major engine flange located between "A" flange and "T" flange, that results in the engine being reassembled with all gas path-related components remaining in the as-removed condition; or

(3) Engines that successfully passed Testing-21 with zero CST, and are split at Flange E for transportation reasons as specified in the applicable Storage/Transport section of the applicable EM.

Thrust Rating Changes, Installation Changes, and Engine Transfers for Non-Configuration I Engines

(p) When a thrust rating change has been made by using the Electronic Engine Control (EEC) programming plug, or an installation change has been made during an HPC overhaul, use the lowest cyclic limit of Table 3 or Table 4 of this AD, associated with any engine thrust rating change or with any installation change made during this period. See paragraph (v)(2) for definition of HPC overhaul period.

(q) When a PW4158 engine is transferred to another PW4158 engine operator whose engine fleet has a different category, use the lowest cyclic limit in Table 4 of this AD that was used or will be used during the affected HPC overhaul period.

(r) When a PW4158 engine operator whose engine fleet changes category in accordance with paragraph (h) of this AD, use the lowest cyclic limits in Table 4 of this AD that were used or will be used during the affected HPC overhaul period.

(s) Engines with an HPC having zero CSN or CSO at the time of thrust rating change, or installation change, or engine transfer between PW4158 engine operators, or subsequent change in operator engine fleet category in accordance with paragraph (h) of this AD in the direction of lower to higher Table 4 limits of this AD, are exempt from the lowest cyclic limit requirement in paragraphs (p), (q), and (r) of this AD.

Engines That Surge

(t) For engines that experience a surge, and after troubleshooting procedures are completed for airplane-level surge during forward or reverse thrust, do the following:

(1) For engines that experience a Group 3 takeoff surge, remove the engine from service before further flight and

(i) For engines that will be installed on McDonnell Douglas MD–11 airplanes, perform an HPC overhaul; or

(ii) For engines that will be installed on Boeing 747 or 767 airplanes, incorporate the RRC rear HPC in accordance with PW SB PW4ENG 72–755, Revision 2, dated May 23, 2003; or

(iii) For engines that will be installed on Airbus A300 or A310 airplanes, incorporate the RRC rear HPC in accordance with PW SB PW4ENG72–756, dated July 7, 2003, or PW SB PW4ENG72–759, dated July 7, 2003.

(2) For any engine that experiences a forward or reverse thrust surge at EPR's greater than 1.25 that is not a Group 3 takeoff surge, do the following:

(i) For Configuration A, B, C, D, F, G, and H engines, remove engine from service within 25 CIS or before further flight if airplane-level troubleshooting procedures require immediate engine removal, and perform Testing-21 in accordance with paragraph (i) or (j) of this AD, as applicable.

(ii) For Configuration E engines, remove engine from service within 25 CIS or before further flight if airplane-level troubleshooting procedures require immediate engine removal.

(3) Paragraphs (t)(1) and (t)(2) of this AD are not applicable to engines that incorporate the RCC rear HPC in accordance with PW SB PW4ENG 72–755, Revision 2, dated May 23, 2003; or PW SB PW4ENG72–756, dated July 7, 2003; or PW SB PW4ENG72–759, dated July 7, 2003.

Terminating Action for Boeing and Airbus Airplanes

(u) For Boeing and Airbus operators with PW4000 engines installed on Boeing 747, 767, or Airbus A300 or A310 airplanes, modify the engine HPC assembly by incorporating the RCC rear HPC in accordance with PW SB PW4ENG 72–755, Revision 2, dated May 23, 2003, for engines installed on Boeing airplanes; or PW SB PW4ENG72–756, dated July 7, 2003, or PW SB PW4ENG72–759, dated July 7, 2003, for engines installed on Airbus airplanes, as follows:

(1) For engines installed on Boeing 767 airplanes, manage the engine configuration installed on the airplanes in your fleet as follows:

(i) By May 31, 2006 and thereafter, ensure that at least one Configuration I engine is installed on the airplane.

(ii) After May 31, 2006, the non-Configuration I engine (SCC HPC module) installed on the airplane must have incorporated the Haynes material in the HPC inner case rear hook during the original engine build or during an HPC overhaul in accordance with PW4ENG 72–714, dated June 27, 2000; or Revision 1, dated November 8, 2001; or Revision 2, dated February 28, 2003; or SB PW4ENG 72–749, dated June 17, 2002; or Revision 1, dated January 8, 2003; or Chromalloy Florida Repair procedure 00CFL–039–0, dated December 27, 2000.

(2) For engines installed on Boeing 747 airplanes, manage the engine configuration installed on the airplanes in your fleet as follows:

(i) By January 31, 2007 and thereafter, ensure that no more than one non-Configuration I engine is installed on the airplane.

(ii) After January 31, 2007, the non-Configuration I engine (SCC HPC module) installed on the airplane must have incorporated the Haynes-material in the HPC inner case rear hook during the original build or during an HPC overhaul in accordance with SB PW4ENG 72–714, dated June 27, 2000; or Revision 1, dated November 8, 2001; or Revision 2, dated February 28, 2003; or SB PW4ENG 72–749, dated June 17, 2002; or Revision 1, dated January 8, 2003; or Chromalloy Florida Repair procedure 00CFL–039–0, dated December 27, 2000.

(3) For engines installed on Airbus A300 or A310 airplanes, manage the engine configuration installed on the airplanes in your fleet as follows:

(i) By August 31, 2006 and thereafter, ensure that at least one Configuration I engine is installed on the airplane.

(ii) After August 31, 2007, the non-Configuration I engine installed on the airplane must have incorporated the Haynes-material in the HPC inner case rear hook during the original build or during an HPC overhaul in accordance with SB PW4ENG 72–714, dated June 27, 2000; or Revision 1, dated November 8, 2001; or Revision 2, dated February 28, 2003; or SB PW4ENG 72–749, dated June 17, 2002; or Revision 1, dated January 8, 2003; or Chromalloy Florida Repair procedure 00CFL–039–0, dated December 27, 2000.

(4) Prior to June 30, 2009, or whenever the HPC module is disassembled to a level that fully separates the HPC rear case assembly at H flange from the HPC module, whichever occurs first, incorporate the RCC rear HPC as follows:

(i) For engines that will be installed on Boeing airplanes, inaccordance with PW SB PW4ENG 72–755, Revision 2, dated May 23, 2003; or

(ii) For engines that will be installed on Airbus airplanes, in accordance with PW SB PW4ENG72–756, dated July 7, 2003, or PW SB PW4ENG72–759, dated July 7, 2003.

(iii) Engines incorporating the RCC rear HPC are Configuration I engines. *See* paragraph (v)(7) of this AD for definition of HPC rear case assembly.

(5) Incorporation of the RCC rear HPC constitutes terminating action to the Testing-21 requirements as specified in paragraph (o) of this AD, and engine stagger limit requirements as specified in paragraphs (c), (d), (e) and (g) of this AD for engines installed on Boeing or Airbus airplanes.

Note 2: Terminating action to this AD for engines installed on McDonnell Douglas MD–11 airplanes is pending RCC rear HPC certification to 14 CFR part 25. Once approved, this AD will be superseded to add terminating action requirements for the McDonnell Douglas fleet.

Definitions

(v) For the purposes of this AD, the following definitions apply:

(1) An HPC overhaul is defined as restoration of the HPC stages 5 through 15 blade tip clearances to the limits specified in the applicable fits and clearances section of the engine manual.

(2) An HPC overhaul period is defined as the time period between HPC overhauls.

(3) An HPT overhaul is defined as restoration of the HPT stage 1 and 2 blade tip clearances to the limits specified in the applicable fits and clearances section of the engine manual.

(4) A Phase 3 engine is identified by a (−3) suffix after the engine model number on the data plate if incorporated at original manufacture, or a "CN" suffix after the engine serial number if the engine was converted using PW SBs PW4ENG 72–490, PW4ENG 72–504, or PW4ENG 72–572 after original manufacture.

(5) A Group 3 takeoff surge is defined as the occurrence of any of the following engine symptoms that usually occur in combination during an attempted airplane takeoff operation (either at reduced, derated or full rated takeoff power setting) after takeoff power set, which can be attributed to no specific and correctable fault condition after completing airplane-level surge during forward thrust troubleshooting procedures:

(i) Engine noises, including rumblings and loud "bang(s)."

(ii) Unstable engine parameters (EPR, N1, N2, and fuel flow) at a fixed thrust setting.

(iii) Exhaust gas temperature (EGT) increase.

(iv) Flames from the inlet, the exhaust, or both.

(6) Takeoff EPR data is defined as Maximum Takeoff EPR if takeoff with Takeoff-Go-Around (TOGA) is selected, or Flex Takeoff EPR if takeoff with Flex Takeoff (FLXTO) is selected. Maximum Takeoff EPR or Flex Takeoff EPR may be recorded using any of the following methods:

(i) Manually recorded by the flight crew read from the Takeoff EPR power management table during flight preparation (*see* Aircraft Flight Manual (AFM) chapter 5.02.00 and 6.02.01, or Flight Crew Operation Manual (FCOM) chapter 2.09.20) and then adjusted by adding 0.010 to the EPR value recorded; or

(ii) Automatically recorded during Takeoff at 0.18 Mach Number (Mn) (between 0.15 and 0.20 Mn is acceptable) using an aircraft automatic data recording system and then adjusted by subtracting 0.010 from the EPR value recorded; or

(iii) Automatically recorded during takeoff at maximum EGT, which typically occurs at 0.25–0.30 Mn, using an aircraft automatic data recording system.

(7) HPC rear case assembly is defined as the HPC rear case with heat shields and other minor detail parts installed within the HPC rear case, but not including the HPC rear segmented stators.

Alternative Methods of Compliance

(w) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the ECO.

Special Flight Permits

(x) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Testing-21 Reports

(y) Within 60 days of test date, report the results of the cool-engine fuel spike stability assessment tests (Testing-21) and on-wing Testing-21 to the ANE–142 Branch Manager, Engine Certification Office, 12 New England Executive Park, Burlington, MA 01803–5299, or by electronic mail to *9-ane-surge-ad-*

reporting@faa.gov. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056. Be sure to include the following information:

(1) Engine serial number.

(2) Engine configuration designation per Table 1 of this AD.

(3) Date of the cool-engine fuel spike stability test or on-wing Testing-21, as applicable.

(4) HPC Serial Number, and HPC time and cycles-since-new and since-compressor-overhaul at the time of the test.

(5) Results of the test (Pass or Fail).

Issued in Burlington, Massachusetts, on July 14, 2003.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–18244 Filed 7–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–297–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727–100 and –200; 737–100, –200, –200C, –300, –400 and –500; and 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 727–100 and −200; 737–100, −200, −200C, −300, −400 and −500; and 747 series airplanes. This proposal would require, among other things, preparation of the electrical bonding faying surfaces on the forward and aft surfaces of the rear spars of the fuel tanks of the left and right wings, a one-time measurement of the electrical bonding resistances, and follow-on actions. This action is necessary to ensure adequate electrical bonding between the penetration fittings of the hydraulic heat exchanger and the rear spars of the fuel tanks. Inadequate electrical bonding, in the event of a lightning strike, could cause electrical arcing and ignition of fuel vapor in the wing fuel tank, which could result in a fuel tank explosion. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 4, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–297–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–297–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6501; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received. Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–297–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–297–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received data from the manufacturer indicating that, during an electrical bonding and grounding test of wing fuel tank penetrations on certain Boeing Model 747 series airplanes, it was found that the penetration fittings of the hydraulic heat exchanger were not electrically bonded to the rear spars. Inadequate electrical bonding, in the event of a lightning strike, could cause electrical arcing and ignition of fuel vapor in the wing fuel tank, which could result in a fuel tank explosion.

The electrical bonding condition of the penetration fittings of the hydraulic heat exchanger on certain Model 727 and 737 series airplanes may be the same as those on the affected Model 747 series airplanes. Therefore, these models may be subject to this same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved the following Boeing alert service bulletins:

Service bulletin	Revision level	Date	Model
727–29A0067	Original	June 7, 2001	727–100 and –200 series airplanes.
737–29A1096	Original	June 7, 2001	737–100, –200, –200C, –300, –400 and –500 series airplanes.
747–29A2104	Original	July 19, 2001	747 series airplanes.

These service bulletins describe procedures for preparation of the electrical bonding faying surfaces on the forward and aft surfaces of the rear spars of the fuel tanks of the left and right wings, a one-time measurement of the electrical bonding resistances between the penetration fittings of the hydraulic heat exchanger and the surfaces of the rear spars and between the heat exchanger tube and the lower wing stringer surfaces, and follow-on actions. The procedures to follow before preparation of the faying surfaces include depressurizing the hydraulic systems, draining the fuel from the fuel tanks of the left and right wings, disconnecting the inlet and outlet tubes of the heat exchangers, and removing the heat exchangers. The preparation of the faying surfaces is done by sanding the surface areas down to bare metal and applying alodine protective coating on the surfaces and re-installing the heat exchangers. The follow-on actions involve applying fillet sealant and protective finishes around the penetration fittings, servicing and pressurizing the hydraulic systems and examining for signs of hydraulic fluid leakage, and servicing the fuel tank and examining for signs of fuel leakage. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

The service bulletins reference Boeing 727, 737, and 747 Airplane Maintenance Manuals, Standard Wiring Practices Manuals, and Standard Overhaul Practices Manuals for the leak check and repair instructions if any discrepancy is found.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Difference Between the Service Bulletins and This Proposed AD

Although the service bulletins recommend accomplishing the specified actions at the earliest opportunity when manpower, materials, and facilities are available, we have determined that such an imprecise compliance time would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the required actions (between 44 and 68 work hours). In light of all of these factors, we find a 5-year compliance time for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 5,085 airplanes of the affected design in the worldwide fleet. We estimate that 2,251 airplanes of U.S. registry would be affected by this proposed AD. The following table shows the estimated cost impact to do the proposed actions for airplanes affected by this proposed AD. The average labor rate is $60 per work hour. The estimated maximum total cost for all airplanes affected by this proposed AD is $6,302,640.

Model	Number of U.S.-registered airplanes	Work hours (estimated)	Labor cost (estimated)	Maximum fleet cost (estimated)
727	910	44	$2,640	$2,402,400
737	1,091	44	2,640	2,880,240
747	250	68	4,080	1,020,000

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2001–NM–297–AD.

Applicability: This AD applies to the airplanes listed in Table 1 of this AD, certificated in any category:

TABLE 1.—APPLICABILITY

Model—	As listed in—
727–100 and –200 series airplanes	Boeing Alert Service Bulletin 727–29A0067, dated June 7, 2001.
737–100, –200, –200C, –300, –400 and –500 series airplanes	Boeing Alert Service Bulletin 737–29A1096, dated June 7, 2001.
747 series airplanes	Boeing Alert Service Bulletin 747–29A2104, dated July 19, 2001.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure adequate electrical bonding between the penetration fittings of the hydraulic heat exchanger and the rear spars of the fuel tanks of the left and right wings, accomplish the following:

Prepare Electrical Bonding Faying Surfaces/ Measure Electrical Bonding

(a) Within 5 years after the effective date of this AD: Prepare the electrical bonding faying surfaces on the forward and aft surfaces of the rear spars of the fuel tanks of the left and right wings, and do a one-time measurement of the electrical bonding resistances between the penetration fittings of the hydraulic heat exchanger and the rear spars, and between the heat exchanger tube and the lower wing stringer surfaces, per the Accomplishment Instructions of the applicable Boeing alert service bulletin listed in Table 2 of this AD. The procedures include the following: Depressurize the hydraulic systems; drain the fuel from the fuel tanks; disconnect the inlet and outlet tubes of the heat exchangers and remove the heat exchangers; prepare the faying surface by sanding the surface areas down to bare metal and apply alodine protective coating on the surfaces, and re-install the heat exchangers. Before further flight, do the corrective action for any incorrect bonding resistance per the Accomplishment Instructions of the applicable service bulletin listed in Table 2 of this AD, as follows:

TABLE 2.—SERVICE BULLETINS

Model	Service bulletin	Revision level	Date
727–100 and –200	727–29A0067	Original	June 7, 2001.
737–100, –200, –200C, –300, –400 and –500	737–29A1096	Original	June 7, 2001.
747	747–29A2104	Original	July 19, 2001.

Follow-On Actions

(b) Before further flight after accomplishment of paragraph (a) of this AD: Apply fillet sealant and protective finishes around the penetration fittings of the hydraulic heat exchanger per the Accomplishment Instructions of the applicable Boeing alert service bulletin listed in Table 2 of this AD (per Figure 4 of Boeing Alert Service Bulletin 727–29A0067, per Figure 4 Boeing Alert Service Bulletin 747–29A2104, or per Figure 8 of Boeing Alert Service Bulletin 737–29A1096, as applicable); then service and pressurize the hydraulic systems and examine for signs of hydraulic fluid leakage; and service the fuel tank and examine for signs of fuel leakage per the Accomplishment Instructions of the applicable service bulletin listed in Table 2 of this AD. Repair any leaks found before further flight, per the applicable service bulletin listed in Table 2 of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 15, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–18418 Filed 7–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–372–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes. This proposal would require an inspection to detect chafing or damage to the electrical wire harnesses in the left- and right-hand wing fuel tanks, applicable corrective action(s) if necessary, and installation of harnesses. For certain airplanes, this proposal also would require modifying the collector tank walls. This action is necessary to prevent chafing damage to the electrical wire harnesses in the left and right wing fuel tanks, which could cause misleading data and erroneous fuel pump cautions to be displayed to the flightcrew, and could result in electrical arcing with consequent increased potential for fire or explosion in the fuel tank. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 20, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–372–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–372–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Rosanne Ryburn, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2139; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–372–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–372–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB 2000 series airplanes. The LFV advises that an operator reported a damaged fuel tank harness, which resulted in an "R FUEL PUMP FAULT" caution. Inspection of the fuel tank wire harnesses revealed evidence of chafing due to the proximity of the wire harnesses to the openings in the metal collector tank walls. Chafing of the wire harness against the collector tank walls could expose the electric wiring in the harness to the collector tank wall. This condition, if not corrected, could cause misleading data and erroneous fuel pump cautions to be displayed to the flightcrew, and could result in electrical arcing with consequent increased potential for fire or explosion in the fuel tank.

Explanation of Relevant Service Information

Saab has issued Service Bulletin SAAB 2000–28–012, dated October 1, 2001, which describes procedures for a detailed inspection to detect chafing or damage to the electrical wire harnesses in the left- and right-hand wing fuel tanks; and applicable corrective action(s) if necessary. The corrective actions include:

- Adding and sealing a new piece of shrinkable tubing to repair a chafed/ damaged area;
- Performing additional inspections; and
- Installing a new harness.

For certain airplanes, the service bulletin also describes procedures for modifying the collector tank walls. The modification includes:

- Increasing the cut out in the forward upper wall of the collector tanks;
- Removing all burrs and debris; breaking all sharp edges; applying alodine to the new edges; and
- Applying new part numbers to the doors.

In addition, the service bulletin describes procedures for installation of harnesses, which includes:

- Installing additional harness clamps;
- Cleaning the attaching surfaces;
- Installing new O-rings; and
- Applying primer and sealant.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive 1–168, dated October 1, 2001, in order to assure the continued airworthiness of these airplanes in Sweden. The Swedish airworthiness directive contains a typographical error in that it references Saab Service Bulletin "SAAB 200–28–012" instead of Saab Service Bulletin "SAAB 2000–28–012."

FAA's Conclusions

This airplane model is manufactured in Sweden and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are

certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Swedish Airworthiness Directive

The proposed AD would differ from the parallel Swedish airworthiness directive in that, if it is not possible to repair the chafed and/or opened area with a new piece of Viton shrinkable tubing, the proposed AD instructs operators to install a new electrical wire harness before further flight. The Swedish airworthiness directive instructs operators to return the damaged harness to Saab for repair. The FAA has notified the LFV of this difference in the proposed AD.

Cost Impact

The FAA estimates that 3 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 80 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $455 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $15,765, or $5,255 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

SAAB Aircraft AB: Docket 2001–NM–372–AD.

Applicability: Model SAAB 2000 series airplanes, serial numbers SAAB 2000–004 through –063 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing damage to the electrical wire harnesses in the left- and right-hand wing fuel tanks, which could cause misleading data and erroneous fuel pump cautions to be displayed to the flightcrew, and could result in electrical arcing with consequent increased potential for fire or explosion in the fuel tank, accomplish the following:

Inspection

(a) *For all airplanes:* Within 18 months after the effective date of this AD, do a detailed inspection to detect chafing or damage to the electrical wire harnesses in the left- and right-hand wing fuel tanks, per the Accomplishment Instructions of Saab Service Bulletin SAAB 2000–28–012, dated October 1, 2001.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Chafing or Damage: Corrective Actions

(b) If any chafing or damage is detected during the inspection required by paragraph (a) of this AD: Before further flight, do the applicable corrective action(s) (*e.g.*, adding and sealing a new piece of Viton shrinkable tubing to repair a chafed/damaged area; and additional inspection) per paragraphs 2.C.(2)(b) and 2.C.(2)(c) of the Accomplishment Instructions of Saab Service Bulletin SAAB 2000–28–012, dated October 1, 2001; except as provided by paragraph (c) of this AD.

(c) For cases where it is not possible to repair the chafed and/or opened area with a new piece of Viton shrinkable tubing: Before further flight, install a new electrical wire harness per paragraph 2.E.(1) of the Accomplishment Instructions of Saab Service Bulletin SAAB 2000–28–012, dated October 1, 2001.

Modification (for Certain Airplanes)

(d) For airplanes having serial numbers SAAB 2000–007 through –063 inclusive: Within 18 months after the effective date of this AD, modify the collector tank walls by accomplishing all the actions specified in paragraph 2.D. of the Accomplishment Instructions of Saab Service Bulletin SAAB 2000–28–012, dated October 1, 2001.

Installation

(e) *For all airplanes:* Within 18 months after the effective date of this AD, install new electrical wire harnesses by accomplishing all the actions specified in paragraph 2.E. of the Accomplishment Instructions of Saab Service Bulletin SAAB 2000–28–012, dated October 1, 2001.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Swedish airworthiness directive 1–168, dated October 1, 2001.

Issued in Renton, Washington, on July 15, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–18419 Filed 7–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–150–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, and –200C Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 737–100, –200, and –200C series airplanes, that currently requires repetitive inspections to detect discrepancies in the upper and lower skins of the fuselage lap joint, and repair if necessary. This action would add new inspections, reduce the repetitive inspection intervals for certain airplanes, and mandate a terminating modification. The actions specified by the proposed AD are intended to detect and correct discrepancies in the upper and lower skins of the fuselage lap joint and circumferential joint, which could result in sudden fracture and failure of a lap joint or circumferential joint and rapid decompression of the airplane fuselage.

DATES: Comments must be received by September 4, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–150–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002-NM–150-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Duong Tran, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6452; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–150–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–150–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On August 18, 2000, the FAA issued AD 2000–17–04, amendment 39–11878 (65 FR 51750, August 25, 2000), applicable to certain Boeing Model 737–100, –200, and –200C series airplanes, to require repetitive inspections to detect discrepancies in the upper and lower skins of the fuselage lap joint, and repair if necessary. That action was prompted by a report indicating in-flight rapid decompression of a Boeing Model 737 series airplane. The requirements of that AD are intended to detect and correct such discrepancies, which could result in sudden fracture and failure of a lap joint and rapid decompression of the airplane fuselage.

Actions Since Issuance of Previous Rule

In the preamble to AD 2000–17–04, we indicated that the actions required by that AD were considered "interim action" and that the manufacturer was developing a modification to address the unsafe condition. The manufacturer now has developed such a modification, and we have determined that further rulemaking action is indeed necessary; this proposed AD follows from that determination.

Additionally, we have determined that the inspections for cracking as specified in paragraph (a) of the existing AD do not provide the crack detection necessary to support the compliance time for the repetitive inspection intervals. Therefore, we are proposing to reduce the compliance time for the

repetitive inspections for airplanes with more than 70,000 total flight cycles.

Also, since the issuance of AD 2000–17–04, we have received damage reports on 75 percent of the airplanes on which the inspections required by that AD had been done, and almost half of the reports indicated that damage was found. The reports indicate that 18 airplanes had cracking damage on the upper and lower rows of the lap joint, and 19 airplanes had corrosion damage with some of the corrosion extending the entire length of the lap joint. On one airplane, a 25-inch section of the lap joint was very corroded. Other corrosion damage of the lap joints, which was due to improper repairs, was also reported. Skin corrosion of the circumferential joints was also found. Such conditions, if not detected and corrected, could result in sudden fracture and failure of a lap joint or circumferential joint and rapid decompression of the airplane fuselage.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletin 737–53A1224, Revision 1, dated March 14, 2002, which describes procedures for inspections (eddy current, nondestructive test, and detailed) to detect discrepancies (*i.e.*, cracks, pillowing, corrosion, delamination, or loose or missing fasteners) in the upper and lower skins of the fuselage lap joint and circumferential joint, and repair of any discrepancies. The service bulletin also describes procedures for a terminating modification, which includes removal of the upper and lower skins along the full length of the three-row lap joint and repair of the production joint. To ensure that the lap joint repair is structurally sound, the service bulletin describes procedures to inspect to find any additional existing skin damage and repair damage (corrosion, cracking, excessive blendouts, disbonding). The terminating modification involves repair of the entire length of all lap joints between body stations 259.5 and 1016. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2000–17–04 to continue to require inspections to detect discrepancies in the upper and lower skins of the fuselage lap joint, and repair if necessary. This new action would add new inspections, reduce the repetitive inspection intervals for certain airplanes, and mandate a terminating modification. The actions would be required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

Difference Between Alert Service Bulletin and This AD

Although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD; therefore, paragraph (d) and Note 1 of AD 2000–17–04 are not included in this proposed AD. However, this proposed AD identifies the office authorized to approve alternative methods of compliance.

Cost Impact

There are approximately 291 airplanes of the affected design in the worldwide fleet. The FAA estimates that 60 airplanes of U.S. registry would be affected by this proposed AD.

The inspections that are currently required by AD 2000–17–04 take approximately 575 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspections on U.S. operators is estimated to be $2,070,000, or $34,500 per airplane.

The new inspections that are proposed in this AD action would take approximately 341 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspections on U.S. operators is estimated to be $1,227,600, or $20,460 per airplane.

The terminating modification that is proposed in this AD action would take approximately 15,000 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed modification on U.S. operators is estimated to be $54,000,000, or $900,000 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11878 (65 FR 51750, August 25, 2000), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2002–NM–150–AD. Supersedes AD 2000–17–04, Amendment 39–11878.

Applicability: Model 737–100, -200, and -200C series airplanes; line numbers 1 through 291 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct discrepancies in the upper and lower skins of the fuselage lap joint and circumferential joint, which could result in sudden fracture and failure of a lap joint or circumferential joint and rapid decompression of the airplane fuselage, accomplish the following:

Requirements of AD 2000–17–04

Initial and Repetitive Inspections

(a) Perform the applicable (initial and repetitive) inspections as specified in Figures 1 through 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1224, dated August 17, 2000, to detect discrepancies (*i.e.*, cracks, pillowing, corrosion, delamination, or loose or missing fasteners) in the upper and lower skins of the fuselage lap joint. Perform the inspections at the applicable times specified in Tables 1 and 2 of Section 1.E. "Compliance" of the alert service bulletin, in accordance with the alert service bulletin; except that where Table 1 specifies a compliance time of "airplane flight cycles at time of service bulletin release," this AD requires a compliance time of "airplane flight cycles as of September 11, 2000 (the effective date of AD 2000–17–04, amendment 39–11878)."

Repair

(b) Prior to further flight: Repair any discrepancies detected during any inspection required by paragraph (a) of this AD in accordance with Boeing Alert Service Bulletin 737–53A1224, dated August 17, 2000; repair any discrepancies detected during any inspection required by paragraph (c) of this AD in accordance with Boeing Alert Service Bulletin 737–53A1224, Revision 1, dated March 14, 2002. If any discrepancy is detected and the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repairs, prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings.

New Requirements of This AD

Compliance Times

(c) Where the compliance times in Section 1.E. "Compliance" of Boeing Alert Service Bulletin 737–53A1224, Revision 1, dated March 14, 2002, specify a compliance time interval calculated "from release of service bulletin," this AD requires compliance within the interval specified in the service bulletin "after the effective date of this AD." In addition, where the compliance time for the initial and repetitive inspections in Tables 1 through 3 of Section 1.E. "Compliance" of the service bulletin specifies "airplane flight cycles at time of service bulletin release," this AD requires a compliance time of "airplane flight cycles as of the effective date of this AD."

Initial and Repetitive Inspections

(d) Except as provided by paragraph (e) of this AD: Perform the applicable (initial and repetitive) inspections as specified in Figures 1 through 9 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1224, Revision 1, dated March 14, 2002, to detect discrepancies (*i.e.*, cracks, pillowing, corrosion, delamination, or loose or missing fasteners) in the upper and lower skins of the fuselage lap joint and circumferential joint. Perform the inspections at the applicable times specified in Tables 1 and 2 of Section 1.E. "Compliance" of the alert service bulletin, in accordance with the alert service bulletin, until accomplishment of paragraph (f) of this AD. Accomplishment of this paragraph terminates the inspections required by paragraph (a) of this AD.

(e) For airplanes that have accumulated more than 70,000 total flight cycles as of the effective date of this AD: Do the first repeat inspection at the earlier of the times specified in paragraph (e)(1) or (e)(2) of this AD, and repeat the inspection thereafter at intervals not to exceed 1,000 flight cycles.

(1) Within 2,000 flight cycles after the last inspection done per AD 2000–17–04.

(2) Within 1,000 flight cycles after the last inspection done per AD 2000–17–04, or within 500 flight cycles after the effective date of this AD, whichever is later.

Terminating Modification

(f) Perform the modification of the skin of all fuselage lap joints between body stations 259.5 and 1016 per Part IV of the Work Instructions of Boeing Alert Service Bulletin 737–53A1224, Revision 1, dated March 14, 2002; at the applicable times specified in Table 3 of Section 1.E. "Compliance" of the alert service bulletin; in accordance with the alert service bulletin. Accomplishment of this paragraph terminates the repetitive inspection requirements of this AD.

Alternative Methods of Compliance

(g)(1) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, is authorized to approve alternative methods of compliance (AMOC) for this AD.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings.

Issued in Renton, Washington, on July 15, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–18420 Filed 7–18–03; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–138499–02]

RIN 1545–BB05

Changes in Use Under Section 168(i)(5)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the depreciation of property subject to section 168 of the Internal Revenue Code (MACRS property). Specifically, these proposed regulations provide guidance on how to depreciate MACRS property for which the use changes in the hands of the same taxpayer. The proposed regulations reflect changes to the law made by the Tax Reform Act of 1986. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by October 20, 2003. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for Wednesday, December 3, 2003, at 10 a.m., must be received by November 12, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–138499–02), room 5226, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:RU (REG–138499–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically, via the IRS Internet site at: *http://www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Sara Logan, (202) 622–3110; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Treena Garrett, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR part 1 to provide regulations under section 168(i)(5) of the Internal Revenue Code (Code). In addition, these proposed amendments provide change-in-use rules for assets in a general asset account under section 168(i)(4). Sections 168(i)(4) and 168(i)(5) were amended by section 201 of the Tax Reform Act of 1986 (Public Law 99–514, 100 Stat. 2121).

Explanation of Provisions

Scope

The proposed regulations provide the rules for determining the annual depreciation allowance under section 168 for property for which the use changes in the hands of the taxpayer. Changes in use include a conversion of personal use property to a business or income-producing use, a conversion of MACRS property to personal use, or a change in use of MACRS property that results in a different recovery period, depreciation method, or both.

Conversion to Business or Personal Use

The proposed regulations provide that personal use property converted to business or income-producing use is treated as being placed in service by the taxpayer on the date of the conversion. Thus, the property is depreciated by using the applicable depreciation method, recovery period, and convention prescribed under section 168 for the property beginning in the taxable year the change of use ("year of change") occurs. The depreciable basis of the property for the year of change is the lesser of its fair market value or adjusted depreciable basis at the time of the conversion.

A conversion of MACRS property from business or income-producing use to personal use is treated as a disposition of the property. Depreciation for the year of change is computed by taking into account the applicable convention. No gain, loss, or depreciation recapture is recognized upon the conversion. See Rev. Rul. 69–487 (1969–2 C.B. 165).

MACRS Property

Use Changes After Placed-In-Service Year

The proposed regulations provide rules for MACRS property if a taxpayer changes the use of the property after the property's placed-in-service year but the property continues to be MACRS property in the hands of the taxpayer.

In general, the proposed regulations provide that a change in the use of MACRS property occurs when the primary use of the MACRS property in the taxable year is different from its primary use in the immediately preceding taxable year. A change in the use of MACRS property also occurs when a taxpayer begins or ceases to use MACRS property predominantly outside the United States, when the property changes to tax-exempt bond financed property, or when the property changes to or from tax-exempt use property or imported property covered by an Executive order, during the taxable year. If a change in the use of MACRS property has occurred, the depreciation allowance for the MACRS property for the year of change is determined as though the change in the use of the MACRS property occurred on the first day of the year of change. The IRS and Treasury Department believe that this rule will help to simplify the computation of depreciation allowances in the year of change and subsequent taxable years. The IRS and Treasury Department invite comments on this rule and on a potential alternative rule that would treat a change in the use of MACRS property as occurring on the first day of the month in which the use changes and would allocate the depreciation allowance for that MACRS property for the year of change based on the number of full months of the old use and of the new use of the MACRS property during the year of change.

The proposed regulations also provide rules for determining the applicable depreciation method, recovery period, and convention used to determine the depreciation allowances for the MACRS property for the year of change and subsequent taxable years. If a change in the use of MACRS property results in a shorter recovery period and/or a more accelerated depreciation method (for example, MACRS property ceases to be used predominantly outside the United States), the adjusted depreciable basis of the property as of the beginning of the year of change is depreciated over the shorter recovery period and/or by the more accelerated depreciation method beginning with the year of change as though the MACRS property is first placed in service in the year of change. Under certain circumstances, this rule may adversely affect taxpayers. For example, under this rule, if a change in the use of MACRS property results in a shorter recovery period, a taxpayer must depreciate that MACRS property over the new shorter recovery period even if the remaining portion of the original longer recovery period is less than the new shorter recovery period. To avoid this adverse effect, the proposed regulations allow a taxpayer to elect to continue to depreciate the MACRS property for which the new recovery period is shorter or a more accelerated method is allowed as though the change in use had not occurred.

If a change in the use of MACRS property results in a longer recovery period and/or slower depreciation method (for example, MACRS property begins to be used predominantly outside the United States), the adjusted depreciable basis of the property is depreciated over the longer recovery period and/or by the slower depreciation method beginning with the year of change as though the taxpayer originally placed the MACRS property in service with the longer recovery period and/or slower depreciation method. Accordingly, the adjusted depreciable basis of the MACRS property as of the beginning of the year of change is depreciated over the remaining portion of the new, longer recovery period as of the beginning of the year of change.

For MACRS property depreciated under the optional depreciation tables in Rev. Proc. 87–57 (1987–2 C.B. 687) before the change in use, the taxpayer may continue to depreciate the property under the tables after the change in use. However, the taxpayer is not required to do so. If the taxpayer desires to use the optional depreciation tables after a change in the use instead of the formulas (for example, *see* section 6 of Rev. Proc. 87–57 (1987–2 C.B. at 692)), the proposed regulations provide guidance on choosing the applicable optional depreciation table. If the change in use results in a longer recovery period and/or a slower depreciation method, the proposed regulations also provide guidance on how to modify the calculation involved to compute the depreciation allowances beginning in the year of change.

If a change in the use of MACRS property results in a shorter recovery period and/or more accelerated depreciation method, the taxpayer may use the optional depreciation table that corresponds to the applicable depreciation method, recovery period, and convention, determined as though the property is placed in service in the year of change. Taxpayers should be aware that using this table will result in less depreciation than using the formulas, because the convention is factored into the optional depreciation tables, and taken into account in determining depreciation in the year of change. However, if the formulas are used, the convention is not taken into account in the year of change. The IRS and Treasury Department invite comments on this matter.

Use Changes During Placed-In-Service Year

The proposed regulations provide rules for MACRS property if a change in the use occurs during the taxable year the property is placed-in-service and the property continues to be MACRS property in the hands of the taxpayer. If the use of MACRS property changes during its placed-in-service year, the depreciation allowance generally is determined by the primary use of the property during that taxable year. However, in determining whether MACRS property is used within or outside the United States during the placed-in-service year, the predominant use, instead of the primary use, of the MACRS property governs. Further, in determining whether MACRS property is tax-exempt use property or imported property covered by an Executive order during the placed-in-service year, the use of the property at the end of the placed-in-service year governs. Moreover, MACRS property is tax-exempt bond financed property during the placed-in-service year if a tax-exempt bond for the MACRS property is issued during that year.

General Asset Accounts

Finally, the proposed regulations amend the final regulations under section 168(i)(4) (TD 8566, 59 FR 51369 (1994)) for property accounted for in a general asset account for which the use changes, resulting in a different recovery period and/or depreciation method. While this change in use does not cause or permit the revocation of the election to account for the property in a general asset account, the property generally is removed from its existing general asset account and placed in a separate general asset account. Because this rule would require taxpayers to track each property in a general asset account, the IRS and Treasury Department request comments on whether the IRS and Treasury should adopt a rule that disregards any change in the use of any MACRS property accounted for in a general asset account, except for a conversion to personal use.

Proposed Effective Date

These regulations are proposed to be applicable for any changes in the use of MACRS property in taxable years ending on or after the date of publication of the final regulations in the **Federal Register**. For any changes in use of MACRS property after December 31, 1986, in taxable years ending before the date of publication of the final regulations in the **Federal Register**, the IRS will allow any reasonable method of depreciating the property under section 168 in the year of change and the subsequent taxable years that is consistently applied to the MACRS property that changed use in the hands of the taxpayer.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to these regulations. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for December 3, 2003, beginning at 10 a.m., in room number 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by November 12, 2003. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Sara Logan, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.168(i)–1 also issued under 26 U.S.C. 168(i)(4).

§ 1.168(i)–4 also issued under 26 U.S.C. 168(i)(5).

2. Sections 1.168(a)–1 and 1.168(b)–1 are added to read as follows:

§ 1.168(a)–1 Modified accelerated cost recovery system.

Section 168 determines the depreciation allowance for tangible property that is of a character subject to the allowance for depreciation provided in section 167(a) and that is placed in service after December 31, 1986 (or after July 31, 1986, if the taxpayer made an election under section 203(a)(1)(B) of the Tax Reform Act of 1986; 100 Stat. 2143). Except for property excluded from the application of section 168 as a result of section 168(f) or as a result of a transitional rule, the provisions of section 168 are mandatory for all eligible property. The allowance for depreciation under section 168 constitutes the amount of depreciation allowable under section 167(a). The determination of whether tangible property is property of a character subject to the allowance for depreciation is made under section 167 and the regulations thereunder. This section is effective as of the date of publication of the final regulations in the **Federal Register**.

§ 1.168(b)–1 Definitions.

(a) *Definitions.* For purposes of section 168 and the regulations thereunder, the following definitions apply:

(1) *Depreciable property* is property that is of a character subject to the allowance for depreciation as determined under section 167 and the regulations thereunder.

(2) *MACRS property* is tangible, depreciable property that is placed in service after December 31, 1986 (or after July 31, 1986, if the taxpayer made an election under section 203(a)(1)(B) of the Tax Reform Act of 1986; 100 Stat. 2143), and subject to section 168, except for property excluded from the application of section 168 as a result of section 168(f) or as a result of a transitional rule.

(3) *Unadjusted depreciable basis* is the basis of property for purposes of section 1011 without regard to any adjustments described in section 1016(a)(2) and (3). This basis reflects the reduction in basis for the percentage of the taxpayer's use of property for the taxable year other than in the taxpayer's trade or business (or for the production of income), for any portion of the basis the taxpayer properly elects to treat as an expense under section 179, and for any adjustments to basis provided by other provisions of the Internal Revenue Code and the regulations thereunder (other than section 1016(a)(2) and (3)) (for example, a reduction in basis by the amount of the disabled access credit pursuant to section 44(d)(7)). For property subject to a lease, *see* section 167(c)(2).

(4) *Adjusted depreciable basis* is the unadjusted depreciable basis of the property less the adjustments described in section 1016(a)(2) and (3).

(b) *Effective date.* This section applies as of the date of publication of the final regulations in the **Federal Register**.

3. Section 1.168(i)–0 is amended by revising the entry for § 1.168(i)–1(h)(2) to read as follows:

§ 1.168(i)–0 Table of contents for the general asset account rules.

* * * * *

§ 1.168(i)–1

* * * * *

(h) * * *

(2) Change in use results in a different recovery period and/or depreciation method.

* * * * *

4. Section 1.168(i)–1 is amended by:

1. Revising paragraph (b)(1).

2. Amending paragraph (c)(2)(ii) by:

a. Removing the language "and" from the end of paragraph (c)(2)(ii)(C).

b. Removing the period "." from the end of paragraph (c)(2)(ii)(D) and adding "; and" in its place.

c. Adding paragraph (c)(2)(ii)(E).

3. Removing the language "(h)(1) (conversion to personal use)" from paragraphs (d)(2) and (i) and adding "(h) (changes in use)" in its place.

4. Removing the language "the change in use occurs and" from the last sentence of paragraph (h)(1) and adding "the change in use occurs (the year of change) and" in its place.

5. Revising paragraph (h)(2).

6. Removing the language "(h)(1)" from paragraph (j) and adding "(h)" in its place.

7. Removing the language "(h)(1)" from paragraph (k)(1) and adding "(h)" in its place.

8. Revising paragraph (l).

The addition and revisions read as follows:

§ 1.168(i)–1 General asset accounts.

* * * * *

(b) * * *

(1) *Unadjusted depreciable basis* is the basis of an asset for purposes of section 1011 without regard to any adjustments described in section 1016(a)(2) and (3). This basis reflects the reduction in basis for the percentage of the taxpayer's use of property for the taxable year other than in the taxpayer's trade or business (or for the production of income), for any portion of the basis the taxpayer properly elects to treat as an expense under section 179, and for any adjustments to basis provided by other provisions of the Internal Revenue Code and the regulations thereunder (other than section 1016(a)(2) and (3)) (for example, a reduction in basis by the amount of the disabled access credit pursuant to section 44(d)(7)). For property subject to a lease, *see* section 167(c)(2).

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(E) Assets subject to paragraph (h)(2)(iii)(A) of this section (change in use results in a shorter recovery period and/or a more accelerated depreciation method) for which the depreciation allowance for the year of change is not determined by using an optional depreciation table must be grouped into a separate general asset account.

* * * * *

(h) * * *

(2) *Change in use results in a different recovery period and/or depreciation method*—(i) *No effect on general asset account election.* A change in the use described in § 1.168(i)–4(d) (change in use results in a different recovery period and/or depreciation method) of an asset in a general asset account shall not cause or permit the revocation of the election made under this section.

(ii) *Asset is removed from the general asset account.* Upon a change in the use described in § 1.168(i)–4(d), the taxpayer must remove the asset from the general asset account as of the first day of the year of change and must make the adjustments to the general asset account described in paragraphs (e)(3)(iii)(C)(*2*) through (*4*) of this section. If, however, the result of the change in use is described in § 1.168(i)–4(d)(3) (change in use results in a shorter recovery period and/or a more accelerated depreciation method) and the taxpayer elects to treat the asset as though the change in use had not occurred pursuant to § 1.168(i)–4(d)(3)(ii), no adjustment is made to the general asset account upon the change in use.

(iii) *New general asset account is established*—(A) *Change in use results in a shorter recovery period and/or a more accelerated depreciation method.* If the result of the change in use is described in § 1.168(i)–4(d)(3) (change in use results in a shorter recovery period and/or a more accelerated depreciation method) and adjustments to the general asset account are made pursuant to paragraph (h)(2)(ii) of this section, the taxpayer must establish a new general asset account for the asset in the year of change in accordance with the rules in paragraph (c) of this section, except that the adjusted depreciable basis of the asset as of the first day of the year of change is included in the general asset account. For purposes of paragraph (c)(2) of this section, the applicable depreciation method, recovery period, and convention are determined under § 1.168(i)–4(d)(3)(i).

(B) *Change in use results in a longer recovery period and/or a slower depreciation method.* If the result of the change in use is described in § 1.168(i)–4(d)(4) (change in use results in a longer recovery period and/or a slower depreciation method), the taxpayer must establish a separate general asset account for the asset in the year of change in accordance with the rules in paragraph (c) of this section, except that the unadjusted depreciable basis of the asset, and the greater of the depreciation of the asset allowed or allowable in accordance with section 1016(a)(2), as of the first day of the year of change are included in the newly established general asset account. Consequently, this general asset account as of the first day of the year of change will have a beginning balance for both the unadjusted depreciable basis and the depreciation reserve of the general asset account. For purposes of paragraph (c)(2) of this section, the applicable depreciation method, recovery period, and convention are determined under § 1.168(i)–4(d)(*4*)(ii).

* * * * *

(l) *Effective date*—(1) *In general.* Except as provided in paragraph (l)(2) of this section, this section applies to depreciable assets placed in service in taxable years ending on or after October 11, 1994. For depreciable assets placed in service after December 31, 1986, in taxable years ending before October 11, 1994, the Internal Revenue Service will allow any reasonable method that is consistently applied to the taxpayer's general asset accounts.

(2) *Exceptions*—(i) *In general.* Paragraphs (c)(2)(ii)(E) and (h)(2) of this section apply to any changes in the use of depreciable assets pursuant to § 1.168(i)–4(d) in taxable years ending on or after the date of publication of the final regulations in the **Federal Register**. For any changes in the use of depreciable assets as described in § 1.168(i)–4(d) after December 31, 1986, in taxable years ending before the date of publication of the final regulations in the **Federal Register**, the Internal Revenue Service will allow any reasonable method that is consistently applied to the taxpayer's general asset accounts.

(ii) *Change in method of accounting.* If a taxpayer adopted a method of accounting for general asset account treatment due to a change in the use of depreciable assets and the method is not in accordance with the method of accounting provided in paragraphs (c)(2)(ii)(E) and (h)(2) of this section, a change to the method of accounting provided in paragraphs (c)(2)(ii)(E) and (h)(2) of this section is a change in method of accounting to which the provisions of sections 446(e) and 481 apply. For any taxable year ending on or after the date of publication of the final regulations in the **Federal Register**, a taxpayer changing its method of accounting in accordance with this paragraph (l)(2)(ii) must follow the applicable administrative procedures issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's automatic consent to a change in method of accounting (for further guidance, for example, *see* Rev. Proc. 2002–9 (2002–1 C.B. 327) and § 601.601(d)(2)(ii)(*b*) of this chapter). Because this change does not change the adjusted depreciable basis of the asset, the method change is made on a cut-off basis and, therefore, no adjustment under section 481(a) is required or allowed.

5. Section 1.168(i)–4 is added to read as follows:

§ 1.168(i)–4 Changes in use.

(a) *Scope.* This section provides the rules for determining the depreciation allowance for MACRS property for which the use changes in the hands of the same taxpayer. The allowance for depreciation under this section constitutes the amount of depreciation allowable under section 167(a) for the year of change and any subsequent taxable year. For purposes of this section, the year of change is the taxable year in which a change in the use occurs.

(b) *Conversion to business or income-producing use*—(1) *Depreciation deduction allowable.* This paragraph (b) applies to property that is converted from personal use to use in a taxpayer's trade or business, or for the production of income, during a taxable year. This conversion includes property that was previously used by the taxpayer for personal purposes, including real property (other than land) that is acquired before 1987 and converted from personal use to business or income-producing use after 1986, and depreciable property that was previously used by a tax-exempt entity before it changed to a taxable entity. Upon a conversion to business or income-producing use, the depreciation allowance for the year of change and any subsequent taxable year is determined as though the property is placed in service by the taxpayer on the date on which the conversion occurs. Thus, the taxpayer may choose any applicable depreciation method, recovery period, and convention prescribed under section 168 for the property in the year of change, consistent with any election made under section 168 by the taxpayer for that year (*see*, for example, section 168(b)(5)). The depreciable basis of the property for the year of change is the lesser of its fair market value or its adjusted depreciable basis, as applicable, at the time of the conversion to business or income-producing use.

(2) *Example.* The application of this paragraph (b) is illustrated by the following example:

Example. A, a calendar-year taxpayer, purchases a house in 1985 that she occupies as her principal residence. In February 2003, *A* ceases to occupy the house and converts it to residential rental property. At the time of the conversion to residential rental property, the house's fair market value (excluding land) is $130,000 and adjusted depreciable basis attributable to the house (excluding land) is $150,000. Pursuant to this paragraph (b), *A* is considered to have placed in service residential rental property in February 2003 with a depreciable basis of $130,000. *A* depreciates the residential rental property under the general depreciation system by using the straight-line method, a 27.5-year recovery period, and the mid-month convention. This property is not eligible for the additional first year depreciation deduction provided by section 168(k) or section 1400L(b). Thus, the depreciation allowance for the house for 2003 is $4,137, after taking into account the mid-month convention ($130,000 adjusted depreciable basis multiplied by the applicable depreciation rate of 3.636% (1/27.5)) multiplied by the mid-month convention fraction of 10.5/12). The amount of depreciation computed under section 168, however, may be limited under other provisions of the Internal Revenue Code, such as, section 280A.

(c) *Conversion to personal use.* The conversion of MACRS property from business or income-producing use to personal use during a taxable year is treated as a disposition of the property in that taxable year. The depreciation allowance for MACRS property for the year of change in which the property is treated as being disposed of is determined by first multiplying the adjusted depreciable basis of the property as of the first day of the year of change by the applicable depreciation rate for that taxable year (for further guidance, for example, see section 6 of Rev. Proc. 87–57 (1987–2 C. B. 687, 692), and § 601.601(d)(2)(ii)(*b*) of this chapter). This amount is then multiplied by a fraction, the numerator of which is the number of months (including fractions of months) the property is deemed to be placed in service during the year of change (taking into account the applicable convention) and the denominator of which is 12. No depreciation deduction is allowable for MACRS property placed in service and disposed of in the same taxable year. Upon the conversion to personal use, no gain, loss, or depreciation recapture under section 1245 or section 1250 is recognized. However, the provisions of section 1245 or section 1250 apply to any disposition of the converted property by the taxpayer at a later date.

(d) *Change in use results in a different recovery period and/or depreciation method*—(1) *In general.* This paragraph (d) applies to a change in the use of MACRS property during a taxable year subsequent to the placed-in-service year, if the property continues to be MACRS property owned by the same taxpayer and, as a result of the change in use, has a different recovery period, a different depreciation method, or both. For example, this paragraph (d) applies to MACRS property that—

(i) Begins or ceases to be used predominantly outside the United States;

(ii) Results in a reclassification of the property under section 168(e) due to a change in the use of the property; or

(iii) Begins or ceases to be tax-exempt use property (as defined in section 168(h)).

(2) *Determination of change in use*—(i) *In general.* Except as provided in paragraph (d)(2)(ii) of this section, a change in the use of MACRS property occurs when the primary use of the MACRS property in the taxable year is different from its primary use in the immediately preceding taxable year. The primary use of MACRS property may be determined in any reasonable manner that is consistently applied to the taxpayer's MACRS property.

(ii) *Alternative depreciation system property*—(A) *Property used within or outside the United States.* A change in the use of MACRS property occurs when a taxpayer begins or ceases to use MACRS property predominantly outside the United States during the taxable year. The determination of whether MACRS property is used predominantly outside the United States is made in accordance with the test in § 1.48–1(g)(1)(i) for determining predominant use.

(B) *Tax-exempt bond financed property.* A change in the use of MACRS property occurs when the property changes to tax-exempt bond financed property, as described in section 168(g)(1)(C) and (g)(5), during the taxable year. For purposes of this paragraph (d), MACRS property changes to tax-exempt bond financed property when a tax-exempt bond is first issued after the MACRS property is placed in service. MACRS property continues to be tax-exempt bond financed property in the hands of the taxpayer even if the tax-exempt bond (including any refunding issue) is no longer outstanding or is redeemed.

(C) *Other mandatory alternative depreciation system property.* A change in the use of MACRS property occurs when the property changes to, or changes from, property described in section 168(g)(1)(B) (tax-exempt use property) or (D) (imported property covered by an Executive order) during the taxable year.

(iii) *Change in use deemed to occur on first day of year.* If a change in the use of MACRS property occurs under this paragraph (d)(2), the depreciation allowance for that MACRS property for the year of change is determined as though the use of the MACRS property changed on the first day of the year of change.

(3) *Change in use results in a shorter recovery period and/or a more accelerated depreciation method*—(i) *Treated as placed in service in year of change*—(A) *In general.* If the change in use results in the MACRS property changing to a shorter recovery period and/or a depreciation method that is more accelerated than the method used for the MACRS property before the change in use, the depreciation allowances beginning in the year of change are determined as though the MACRS property is placed in service by the taxpayer in the year of the change in use.

(B) *Computation of depreciation allowance.* The depreciation allowances for the MACRS property for any 12-month taxable year beginning with the year of change are determined by multiplying the adjusted depreciable basis of the MACRS property as of the first day of each taxable year by the applicable depreciation rate for each taxable year. In determining the applicable depreciation rate for the year of change and subsequent taxable years, the taxpayer may choose any applicable depreciation method and recovery period prescribed under section 168 for the MACRS property in the year of change, consistent with any election made under section 168 by the taxpayer for that year (*see,* for example, section 168(b)(5)). If there is a change in the use of MACRS property, the applicable convention that applies to the MACRS property is the same as the convention that applied before the change in the use of the MACRS property. However, the depreciation allowance for the year of change for the MACRS property is determined without applying the applicable convention, unless the MACRS property is disposed of during the year of change. *See* paragraph (d)(5) of this section for the rules relating to the computation of the depreciation allowance under the optional depreciation tables. If the year of change or any subsequent taxable year is less than 12 months, the depreciation allowance determined under this paragraph (d)(3)(i) must be adjusted for a short taxable year (for further guidance, for example, *see* Rev. Proc. 89–15 (1989–1 C.B. 816) and § 601.601(d)(2)(ii)(*b*) of this chapter).

(C) *Special rules.* MACRS property affected by this paragraph (d)(3)(i) is not eligible in the year of change for the election provided under section 168(f)(1), 179, or 1400L(f), or for the additional first-year depreciation deduction provided in section 168(k) or 1400L(b). For purposes of determining whether the mid-quarter convention applies to other MACRS property placed in service during the year of change, the unadjusted depreciable basis or the adjusted depreciable basis of MACRS property affected by this paragraph (d)(3)(i) is not taken into account.

(ii) *Option to disregard change in use.* In lieu of applying paragraph (d)(3)(i) of this section, the taxpayer may elect to determine the depreciation allowance as though the change in use had not occurred. The taxpayer elects this option by claiming on the taxpayer's timely filed (including extensions) income tax return for the year of change the depreciation allowance for the property as though the change in use had not occurred. *See* paragraph (g)(2) of this section for the manner for revoking this election.

(4) *Change in use results in a longer recovery period and/or a slower depreciation method*—(i) *Treated as originally placed in service with longer recovery period and/or slower depreciation method.* If the change in use results in a longer recovery period and/or a depreciation method for the MACRS property that is less accelerated than the method used for the MACRS property before the change in use, the depreciation allowances beginning with the year of change are determined as though the MACRS property had been originally placed in service by the taxpayer with the longer recovery period and/or the slower depreciation method.

(ii) *Computation of the depreciation allowance.* The depreciation allowances for the MACRS property for any 12-month taxable year beginning with the year of change are determined by multiplying the adjusted depreciable basis of the MACRS property as of the first day of each taxable year by the applicable depreciation rate for each taxable year. If there is a change in the use of MACRS property, the applicable convention that applies to the MACRS property is the same as the convention that applied before the change in the use of the MACRS property. If the year of change or any subsequent taxable year is less than 12 months, the depreciation allowance determined under this paragraph (d)(4)(ii) must be adjusted for a short taxable year (for further guidance, for example, *see* Rev. Proc. 89–15 (1989–1 C.B. 816) and § 601.601(d)(2)(ii)(*b*) of this chapter). *See* paragraph (d)(5) of this section for the rules relating to the computation of the depreciation allowance under the optional depreciation tables. In determining the applicable depreciation rate for the year of change and any subsequent taxable year—

(A) The applicable depreciation method is the depreciation method that would apply in the year of change and any subsequent taxable year for the MACRS property had the taxpayer used the longer recovery period and/or the slower depreciation method in the placed-in-service year of the property. If the 200- or 150-percent declining balance method would have applied in the placed-in-service year but the method would have switched to the straight line method in the year of change or any prior taxable year, the applicable depreciation method beginning with the year of change is the straight line method; and

(B) The applicable recovery period is either—

(*1*) The longer recovery period resulting from the change in use if the applicable depreciation method is the 200- or 150-percent declining balance method (as determined under paragraph (d)(4)(ii)(A) of this section) unless the recovery period did not change as a result of the change in use, in which case the applicable recovery period is the same recovery period that applied before the change in use; or

(*2*) The number of years remaining as of the beginning of each taxable year (taking into account the applicable convention) had the taxpayer used the longer recovery period in the placed-in-service year of the property if the applicable depreciation method is the straight line method (as determined under paragraph (d)(4)(ii)(A) of this section) unless the recovery period did not change as a result of the change in use, in which case the applicable recovery period is the number of years remaining as of the beginning of each taxable year (taking into account the applicable convention) based on the recovery period that applied before the change in use.

(5) *Using optional depreciation tables*—(i) *Taxpayer not bound by prior use of table.* If a taxpayer used an optional depreciation table for the MACRS property before a change in the use, the taxpayer is not bound to use the appropriate new table for that MACRS property after the change in use (for further guidance, for example, *see* section 8 of Rev. Proc. 87–57 (1987–2 C.B. 687, 693) and § 601.601(d)(2)(ii)(*b*) of this chapter). If the taxpayer chooses not to continue to use the optional depreciation table, the depreciation allowances for the MACRS property beginning in the year of change are determined under paragraph (d)(3)(i) or (4) of this section, as applicable.

(ii) *Taxpayer chooses to use optional depreciation table after change in use.* If the taxpayer chooses to continue to use an optional depreciation table for the MACRS property after a change in the use, the depreciation allowances for the MACRS property for any 12-month taxable year beginning with the year of change are determined as follows:

(A) *Change in use results in a shorter recovery period and/or a more accelerated depreciation method.* If the change in use results in a shorter recovery period and/or a more accelerated depreciation method (as described in paragraph (d)(3)(i) of this section), the depreciation allowances for the MACRS property for any 12-month taxable year beginning with the year of change are determined by multiplying the adjusted depreciable basis of the MACRS property as of the first day of the year of change by the annual depreciation rate for each recovery year (expressed as a decimal equivalent) specified in the appropriate optional depreciation table. The appropriate optional depreciation table for the MACRS property is based on the depreciation system, depreciation method, recovery period, and convention applicable to the MACRS property in the year of change as determined under paragraph (d)(3)(i) of this section. The depreciation allowance for the year of change for the MACRS property is determined by taking into account the applicable convention (which is already factored into the optional depreciation tables). If the year of change or any subsequent taxable year is less than 12 months, the depreciation allowance determined under this paragraph (d)(5)(ii)(A) must be adjusted for a short taxable year (for further guidance, for example, *see* Rev. Proc. 89–15 (1989–1 C.B. 816) and § 601.601(d)(2)(ii)(*b*) of this chapter).

(B) *Change in use results in a longer recovery period and/or a slower depreciation method*—(*1*) *Determination of the appropriate optional depreciation table.* If the change in use results in a longer recovery period and/or a slower depreciation method (as described in paragraph (d)(4)(i) of this section), the depreciation allowances for the MACRS property for any 12-month taxable year beginning with the year of change are determined by choosing the optional depreciation table that corresponds to the depreciation system, depreciation method, recovery period, and convention that would have applied to the MACRS property in the placed-in-service year had that property been originally placed in service by the taxpayer with the longer recovery period and/or the slower depreciation method. If there is a change in the use of MACRS property, the applicable convention that applies to the MACRS property is the same as the convention that applied before the change in the use of the MACRS property. If the year of change or any subsequent taxable year is less than 12 months, the depreciation allowance determined under this paragraph (d)(5)(ii)(B) must be adjusted for a short taxable year (for further guidance, for example, *see* Rev. Proc. 89–15 (1989–1 C.B. 816) and § 601.601(d)(2)(ii)(*b*) of this chapter).

(*2*) *Computation of the depreciation allowance.* The depreciation allowances for the MACRS property for any 12-month taxable year beginning with the year of change are computed by first determining the appropriate recovery year in the table identified under paragraph (d)(5)(ii)(B)(*1*) of this section. The appropriate recovery year for the year of change is the year that corresponds to the year of change. For example, if the recovery year for the year of change would have been Year 4 in the table that applied before the change in the use of the MACRS property, then the recovery year for the year of change is Year 4 in the table identified under paragraph (d)(5)(ii)(B)(*1*) of this section. Next, the annual depreciation rate (expressed as a decimal equivalent) for each recovery year is multiplied by a transaction coefficient. The transaction coefficient is the formula $(1/(1-x))$ where x equals the sum of the annual depreciation rates from the table identified under paragraph (d)(5)(ii)(B)(*1*) of this section (expressed as a decimal equivalent) for the taxable years beginning with the placed-in-service year of the MACRS property through the taxable year immediately prior to the year of change. The product of the annual depreciation rate and the transaction coefficient is multiplied by the adjusted depreciable basis of the MACRS property as of the beginning of the year of change.

(6) *Examples.* The application of this paragraph (d) is illustrated by the following examples:

Example 1. Change in use results in a shorter recovery period and/or a more accelerated depreciation method and optional depreciation table is not used—(i) *X,* a calendar-year corporation, places in service in 1998 equipment at a cost of $100,000 and uses this equipment from 1998 through 2002 primarily in its *A* business. *X* depreciates the equipment for 1998 through 2002 under the general depreciation system as 7-year property by using the 200-percent declining balance method (which switched to the straight-line method in 2002), a 7-year recovery period, and a half-year convention. Beginning in 2003, *X* primarily uses the equipment in its *B* business. As a result, the classification of the equipment under section 168(e) changes from 7-year property to 5-year property and the recovery period of the equipment under the general depreciation

system changes from 7 years to 5 years. The depreciation method does not change. On January 1, 2003, the adjusted depreciable basis of the equipment is $22,311. *X* depreciates its 5-year recovery property placed in service in 2003 under the general depreciation system by using the 200-percent declining balance method and a 5-year recovery period. *X* does not use the optional depreciation tables.

(ii) Under paragraph (d)(3)(i) of this section, *X*'s allowable depreciation deduction for the equipment for 2003 and subsequent taxable years is determined as though *X* placed the equipment in service in 2003 for use primarily in its *B* business. The depreciable basis of the equipment as of January 1, 2003, is $22,311 (the adjusted depreciable basis at January 1, 2003). Because *X* does not use the optional depreciation tables, the depreciation allowance for 2003 (the deemed placed-in-service year) for this equipment only is computed without taking into account the half-year convention. This equipment is not eligible for the additional first year depreciation deduction provided by section 168(k) or section 1400L(b). Thus, *X*'s allowable depreciation deduction for the equipment for 2003 is $8,924 ($22,311 adjusted depreciable basis at January 1, 2003, multiplied by the applicable depreciation rate of 40% (200/5)). *X*'s allowable depreciation deduction for the equipment for 2004 is $5,355 ($13,387 adjusted depreciable basis at January 1, 2004 multiplied by the applicable depreciation rate of 40% (200/5)).

(iii) Alternatively, under paragraph (d)(3)(ii) of this section, *X* may elect to disregard the change in use and, as a result, may continue to treat the equipment as though it is used primarily in its *A* business. If the election is made, *X*'s allowable depreciation deduction for the equipment for 2003 is $8,924 ($22,311 adjusted depreciable basis at January 1, 2003, multiplied by the applicable depreciation rate of 40% (1/2.5 years remaining at January 1, 2003)). *X*'s allowable depreciation deduction for the equipment for 2004 is $8,925 ($13,387 adjusted depreciable basis at January 1, 2004 multiplied by the applicable depreciation rate of 66.67% (1/1.5 years remaining at January 1, 2004)).

Example 2. Change in use results in a shorter recovery period and/or a more accelerated depreciation method and optional depreciation table is used—(i) Same facts as in *Example 1*, except that *X* used the optional depreciation tables for computing depreciation for 1998 through 2002. Pursuant to paragraph (d)(5) of this section, *X* chooses to continue to use the optional depreciation table for the equipment. *X* does not make the election provided in paragraph (d)(3)(ii) of this section to disregard the change in use.

(ii) In accordance with paragraph (d)(5)(ii)(A) of this section, *X* must first identify the appropriate optional depreciation table for the equipment. This table is table 1 in Rev. Proc. 87–57 because the equipment will be depreciated in the year of change (2003) under the general depreciation system using the 200-percent declining balance method, a 5-year recovery period, and the half-year convention (which is the convention that applied to the equipment in 1998). This equipment is not eligible for the additional first year depreciation deduction provided by section 168(k) or section 1400L(b). For 2003, *X* multiplies its adjusted depreciable basis in the equipment as of January 1, 2003, of $22,311, by the annual depreciation rate in table 1 for recovery year 1 for a 5-year recovery period (.20), to determine the depreciation allowance of $4,462. For 2004, *X* multiplies its adjusted depreciable basis in the equipment as of January 1, 2003, of $22,311, by the annual depreciation rate in table 1 for recovery year 2 for a 5-year recovery period (.32), to determine the depreciation allowance of $7,140.

Example 3. Change in use results in a longer recovery period and/or a slower depreciation method—(i) *Y*, a calendar-year corporation, places in service in January 2001, equipment at a cost of $100,000 and uses this equipment in 2001 and 2002 only within the United States. *Y* depreciates the equipment for 2001 and 2002 under the general depreciation system by using the 200-percent declining balance method, a 5-year recovery period, and a half-year convention. Beginning in 2003, *Y* uses the equipment predominantly outside the United States. As a result of this change in use, the equipment is subject to the alternative depreciation system beginning in 2003. Under the alternative depreciation system, the equipment is depreciated by using the straight-line method and a 9-year recovery period. The adjusted depreciable basis of the equipment at January 1, 2003, is $48,000.

(ii) Pursuant to paragraph (d)(4) of this section, *Y*'s allowable depreciation deduction for 2003 and subsequent taxable years is determined as though the equipment had been placed in service in January 2001, as property used predominantly outside the United States. In determining the applicable depreciation rate for 2003, the applicable depreciation method is the straight-line method and the applicable recovery period is 7.5 years, which is the number of years remaining at January 1, 2003, for property placed in service in 2001 with a 9-year recovery period (taking into account the half-year convention). Thus, the depreciation allowance for 2003 is $6,398 ($48,000 adjusted depreciable basis at January 1, 2003, multiplied by the applicable depreciation rate of 13.33% (1/7.5 years)). The depreciation allowance for 2004 is $6,398 ($41,602 adjusted depreciable basis at January 1, 2004, multiplied by the applicable depreciation rate of 15.38% (1/6.5 years remaining at January 1, 2004)).

Example 4. Change in use results in a longer recovery period and/or a slower depreciation method and optional depreciation table is used—(i) Same facts as in Example 3, except that *Y* used the optional depreciation tables for computing depreciation in 2001 and 2002. Pursuant to paragraph (d)(5) of this section, *Y* chooses to continue to use the optional depreciation table for the equipment.

(ii) In accordance with paragraph (d)(5)(ii)(B) of this section, *Y* must first determine the appropriate optional depreciation table for the equipment pursuant to paragraph (d)(5)(ii)(B)(*1*) of this section. This table is table 8 in Rev. Proc. 87–57, which corresponds to the alternative depreciation system, the straight-line method, a 9-year recovery period, and the half-year convention (because *Y* depreciated 5-year property in 2001 using a half-year convention). Next, *Y* must determine the appropriate recovery year in table 8. Because the year of change is 2003, the depreciation allowance for the equipment for 2003 is determined using recovery year 3 of table 8. For 2003, *Y* multiplies its adjusted depreciable basis in the equipment as of January 1, 2003, of $48,000, by the product of the annual depreciation rate in table 8 for recovery year 3 for a 9-year recovery period (.1111) and the transaction coefficient [1/(1-(.0556+.1111)), which equals 1.200], to determine the depreciation allowance of $6,399. For 2004, *Y* multiplies its adjusted depreciable basis in the equipment as of January 1, 2003, of $48,000, by the product of the annual depreciation rate in table 8 for recovery year 4 for a 9-year recovery period (.1111) and the transaction coefficient (1.200), to determine the depreciation allowance of $6,399.

(e) *Change in the use of MACRS property during the placed-in-service year*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, if a change in the use of MACRS property occurs during the placed-in-service year and the property continues to be MACRS property owned by the same taxpayer, the depreciation allowance for that property for the placed-in-service year is determined by its primary use during that year. The primary use of MACRS property may be determined in any reasonable manner that is consistently applied to the taxpayer's MACRS property. For purposes of this paragraph (e), the determination of whether the mid-quarter convention applies to any MACRS property placed in service during the year of change is made in accordance with § 1.168(d)–1.

(2) *Alternative depreciation system property*—(i) *Property used within and outside the United States.* The depreciation allowance for the placed-in-service year for MACRS property that is used within and outside the United States is determined by its predominant use during that year. The determination of whether MACRS property is used predominantly outside the United States during the placed-in-service year shall be made in accordance with the test in § 1.48–1(g)(1)(i) for determining predominant use.

(ii) *Tax-exempt bond financed property.* The depreciation allowance for the placed-in-service year for MACRS property that changes to tax-exempt bond financed property, as described in section 168(g)(1)(C) and (g)(5), during that taxable year is determined under the alternative depreciation system. For purposes of this paragraph (e), MACRS property changes to tax-exempt bond financed property when a tax-exempt bond is first issued after the MACRS property is placed in service. MACRS property continues to be tax-exempt bond financed property in the hands of the taxpayer even if the tax-exempt bond (including any refunding issue) is not outstanding at, or is redeemed by, the end of the placed-in-service year.

(iii) *Other mandatory alternative depreciation system property.* The depreciation allowance for the placed-in-service year for MACRS property that changes to, or changes from, property described in section 168(g)(1)(B) (tax-exempt use property) or (D) (imported property covered by an Executive Order) during that taxable year is determined under—

(A) The alternative depreciation system if the MACRS property is described in section 168(g)(1)(B) or (D) at the end of the placed-in-service year; or

(B) The general depreciation system if the MACRS property is not described in section 168(g)(1)(B) or (D) at the end of the placed-in-service year.

(3) *Examples.* The application of this paragraph (e) is illustrated by the following examples:

Example 1. (i) *Z*, a utility and calendar-year corporation, places in service on January 1, 2003, equipment at a cost of $100,000. *Z* uses this equipment in its combustion turbine production plant for 4 months and then uses the equipment in its steam production plant for the remainder of 2003. *Z*'s combustion turbine production plant assets are classified as 15-year property and are depreciated by *Z* under the general depreciation system using a 15-year recovery period and the 150-percent declining balance method of depreciation. *Z*'s steam production plant assets are classified as 20-year property and are depreciated by *Z* under the general depreciation system using a 20-year recovery period and the 150-percent declining balance method of depreciation. *Z* uses the optional depreciation tables. The equipment is qualified property for purposes of section 168(k)(1).

(ii) Pursuant to this paragraph (e), *Z* must determine depreciation based on the primary use of the equipment during the placed-in-service year. *Z* has consistently determined the primary use of all of its MACRS property by comparing the number of full months in the taxable year during which a MACRS property is used in one manner with the number of full months in that taxable year during which that MACRS property is used in another manner. Applying this approach, *Z* determines the depreciation allowance for the equipment for 2003 is based on the equipment being classified as 20-year property because the equipment was used by *Z* in its steam production plant for 8 months in 2003. If the half-year convention applies in 2003, the appropriate optional depreciation table is table 1 in Rev. Proc. 87–57, which is the table for MACRS property subject to the general depreciation system, the 150-percent declining balance method, a 20-year recovery period, and the half-year convention. Thus, the depreciation allowance for the equipment for 2003 is $32,625, which is the total of $30,000 for the additional 30-percent first-year depreciation deduction allowable (the unadjusted depreciable basis of $100,000 multiplied by .30), plus $2,625 for the 2003 depreciation allowance on the remaining basis of $70,000 [(the unadjusted depreciable basis of $100,000 less the additional first-year depreciation deduction of $30,000) multiplied by the annual depreciation rate of .0375 in table 1 for recovery year 1 for a 20-year recovery period].

Example 2. T, a calendar year corporation, places in service on January 1, 2003, several computers at a total cost of $100,000. *T* uses these computers within the United States for 3 months in 2003 and then moves and uses the computers outside the United States for the remainder of 2003. Pursuant to § 1.48–1(g)(1)(i), the computers are considered as used predominantly outside the United States in 2003. As a result, for 2003, the computers are required to be depreciated under the alternative depreciation system of section 168(g) with a recovery period of 5 years pursuant to section 168(g)(3)(C). *T* uses the optional depreciation tables. If the half-year convention applies in 2003, the appropriate optional depreciation table is table 8 in Rev. Proc. 87–57, which is the table for MACRS property subject to the alternative depreciation system, the straight-line method, a 5-year recovery period, and the half-year convention. Thus, the depreciation allowance for the computers for 2003 is $10,000, which is equal to the unadjusted depreciable basis of $100,000 multiplied by the annual depreciation rate of .10 in table 8 for recovery year 1 for a 5-year recovery period. Because the computers are required to be depreciated under the alternative depreciation system in their placed-in-service year, the computers are not eligible for the additional first year depreciation deduction provided by section 168(k).

(f) *No change in accounting method.* A change in computing the depreciation allowance in the year of change for property subject to this section results from a change in underlying facts and, thus, is not a change in method of accounting under section 446(e).

(g) *Effective date*—(1) *In general.* This section applies to changes in the use of MACRS property in taxable years ending on or after the date of publication of the final regulations in the **Federal Register**. For changes in the use of MACRS property after December 31, 1986, in taxable years ending before the date of publication of the final regulations in the **Federal Register**, the Internal Revenue Service will allow any reasonable method of depreciating the property under section 168 in the year of change and the subsequent taxable years that is consistently applied to any property that changed use in the hands of the taxpayer.

(2) *Change in method of accounting*—(i) *In general.* If a taxpayer adopted a method of accounting for depreciation due to a change in the use of MACRS property and the method is not in accordance with the method of accounting for depreciation provided in this section, a change to the method of accounting for depreciation provided in this section is a change in method of accounting to which the provisions of sections 446(e) and 481 and the regulations thereunder apply. Also, a revocation of the election provided in paragraph (d)(3)(ii) of this section to disregard a change in the use is a change in method of accounting to which the provisions of sections 446(e) and 481 and the regulations thereunder apply.

(ii) *Automatic consent to change method of accounting.* For any taxable year ending on or after the date of publication of the final regulations in the **Federal Register**, a taxpayer changing its method of accounting in accordance with this paragraph (g)(2) must follow the applicable administrative procedures issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's automatic consent to a change in method of accounting (for further guidance, for example, *see* Rev. Proc. 2002–9 (2002–1 C.B. 327) and § 601.601(d)(2)(ii)(*b*) of this chapter). Any change in method of accounting made under this paragraph (g)(2) must be made using an adjustment under section 481(a).

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–162625–02]

RIN 1545–BB73

Real Estate Mortgage Investment Conduits; Application of Section 446 With Respect To Inducement Fees

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the

proper timing and source of income from fees received to induce the acquisition of noneconomic residual interests in Real Estate Mortgage Investment Conduits (REMICs). The proposed regulations would apply to taxpayers who receive inducement fees in connection with becoming the holder of a noneconomic REMIC residual interest. This document also provides notice of a public hearing on the proposed regulations.

DATES: Written or electronic comments must be received by October 20, 2003. Outlines of topics to be discussed at the public hearing scheduled for November 18, 2003, at 10 a.m. must be received by October 28, 2003.

ADDRESSES: Send submissions to CC:PA:RU (REG–162625–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:RU (REG–162625–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments via the IRS Internet site at: *http://www.irs.gov/regs*. The public hearing will be held in the IRS Auditorium, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, John W. Rogers III at (202) 622–3950; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Treena Garrett, at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 446(b) (relating to general rules for methods of accounting), 860C (relating to other definitions and special rules applicable to REMICs), and 863(a) (relating to special rules for determining source) of the Internal Revenue Code of 1986 (Code). The proposed regulations prescribe certain accounting rules for taking an inducement fee into income over a period that is related to the period during which the applicable REMIC is expected to generate taxable income or net loss allocable to the holder of the noneconomic residual interest. The proposed regulations set forth two safe harbor methods of accounting for inducement fees. The proposed regulations also contain a rule clarifying that an inducement fee is income from sources within the United States.

Explanation of Provisions

Final regulations governing REMICs, issued in 1992, contain rules governing the transfer of noneconomic residual interests. Those regulations do not, however, contain rules that address the transferee's treatment of the fee received to induce the acquisition of a REMIC noneconomic residual interest.

An inducement fee is paid to a transferee of a noneconomic residual interest because, under sections 860C(a)(1) and 860E(a)(1) of the Code, the holder of a REMIC residual interest must take into account the REMIC's taxable income or net loss. The holder of a noneconomic residual interest will receive insufficient distributions to cover the resulting tax liabilities, and a transferee will, therefore, require an inducement fee to become the holder of the noneconomic residual interest.

In its earlier years, a REMIC typically accrues more taxable interest income than deductible interest expense. As a result, in its earliest years, the REMIC will have net income (generally referred to as phantom income) taxable to the residual holder. This phenomenon generally will reverse, resulting in REMIC net loss (phantom loss) in later years.

Following release of the final REMIC regulations, the IRS and the Treasury Department received requests for guidance on the proper method of accounting to be used by taxpayers for inducement fee income. The proposed regulations provide rules relating to the proper timing and source of income from an inducement fee received in connection with becoming the holder of a noneconomic residual interest in a REMIC.

The proposed regulations provide that, to clearly reflect income, an inducement fee must be included in income over a period that is reasonably related to the period during which the applicable REMIC is expected to generate taxable income or net loss allocable to the holder of the noneconomic residual interest. The proposed regulations provide that an inducement fee generally may not be taken into account in a single tax year.

The proposed regulations set forth two safe harbor methods of accounting for inducement fees. These safe harbor methods are:

(1) A book method, under which an inducement fee is recognized for federal income tax purposes in the same amounts and over the same period in which that inducement fee is included in income by the taxpayer for financial reporting purposes, provided that the period is not shorter than the period over which the applicable REMIC is expected to generate taxable income; and

(2) A method under which the inducement fee is recognized for federal income tax purposes ratably over the remaining anticipated weighted average life of the REMIC determined as of the time the noneconomic residual interest is transferred to the taxpayer. This method is based on rules in the final REMIC regulations for taking into account a REMIC sponsor's unrecognized gain or loss on a REMIC residual interest upon the formation of a REMIC.

Additionally, the proposed regulations contain a rule that applies if a holder of a residual interest sells or otherwise disposes of the residual interest. Under this rule, the holder must take into account, at the time of the sale or other disposition, any unrecognized portion of the inducement fee for that residual interest. Transactions to which section 381(c)(4) applies are excluded from this rule because section 381 and the regulations thereunder provide for the carryover of tax attributes, including methods of accounting. The IRS and the Treasury Department considered excluding other non-recognition transactions, such as contributions under sections 351 or 721. These other transactions, however, do not provide for the carryover of tax attributes. The proposed regulations, therefore, do not permit continued deferral of the unrecognized portion of an inducement fee following these other transactions.

The proposed regulations also contain a rule clarifying that an inducement fee is income from sources within the United States.

The IRS and the Treasury Department request comments on other possible safe harbor methods of accounting for these inducement fees. In particular, comments are requested on whether a safe harbor method that recognizes inducement fees proportionally to the anticipated future financing costs for funding the net tax liabilities of the noneconomic residual interest would be of general use to taxpayers and, if so, what factors should be used under that safe harbor method for determining a taxpayer's anticipated future financing costs.

The proposed regulations state that the treatment of inducement fees is a method of accounting that must be applied consistently to all inducement fees received in connection with noneconomic REMIC residual interests. Thus, if a taxpayer uses a safe harbor method, the taxpayer must use that same safe harbor method for all inducement fees received in connection with any noneconomic REMIC residual interests held by the taxpayer.

The proposed regulations regarding the timing for inclusion of inducement fees in income, if finalized as proposed, would apply for taxable years ending on or after publication of the final regulations in the **Federal Register**. The IRS and the Treasury Department request comments with respect to whether the applicability of the regulations should be limited to transactions arising on or after the effective date of these regulations and whether some delay in the effective date of these regulations is warranted.

The proposed regulations clarifying the source of inducement fees, if finalized as proposed, would apply for taxable years ending on or after publication of the final regulations in the **Federal Register**.

A taxpayer may not change its method of accounting for inducement fees without securing the prior consent of the Commissioner. The Commissioner may prescribe terms and conditions necessary to obtain the Commissioner's consent to effect a change in method of accounting and to prevent amounts from being duplicated or omitted. *See* sections 446 and 481; § 1.446–1(e)(3). The terms and conditions that may be prescribed by the Commissioner may include terms and conditions that require the change in method of accounting to be effected on a cut-off basis or with an adjustment under section 481(a). The IRS and the Treasury Department request comments on how best to effect any change in method of accounting necessitated by these regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed rules and how they may be made easier to understand. The IRS and the Treasury Department also specifically request comments on the safe harbor methods provided in the regulations and suggestions for other possible safe harbor methods of accounting for these inducement fees. All comments will be available for public inspection and copying.

A public hearing has been scheduled for November 18, 2003, beginning at 10 a.m. in the IRS Auditorium, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by October 28, 2003. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are John W. Rogers III, Office of Associate Chief Counsel (Financial Institutions & Products), and Courtney L. Shepardson, Office of Division Counsel (Large and Midsize Business). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.446–6 also issued under 26 U.S.C 446 and 26 U.S.C. 860G * * *

Par. 2. Section 1.446–6 is added to read as follows:

§ 1.446–6 REMIC inducement fees.

(a) *Purpose.* This section provides specific timing rules for the clear reflection of income from an inducement fee received in connection with becoming the holder of a noneconomic REMIC residual interest. An inducement fee must be included in income over a period reasonably related to the period during which the applicable REMIC is expected to generate taxable income or net loss allocable to the holder of the noneconomic residual interest.

(b) *Definitions.* For purposes of this section—(1) *Applicable REMIC.* The applicable REMIC is the REMIC that issued the noneconomic residual interest with respect to which the inducement fee is paid.

(2) *Inducement fee.* An inducement fee is the amount paid to induce a person to become the holder of a noneconomic residual interest in an applicable REMIC.

(3) *Noneconomic residual interest.* A REMIC residual interest is a noneconomic residual interest if it is a noneconomic residual interest within the meaning of § 1.860E–1(c)(2).

(4) *Remaining anticipated weighted average life.* The remaining anticipated weighted average life is the anticipated weighted average life determined using the methodology set forth in § 1.860E–1(a)(3)(iv) applied as of the date of acquisition of the noneconomic residual interest.

(5) *REMIC.* The term REMIC has the same meaning in this section as given in § 1.860D–1.

(c) *General rule.* All taxpayers, regardless of their overall method of accounting, must recognize an inducement fee over the remaining expected life of the applicable REMIC in a manner that reasonably reflects, without regard to this paragraph, the after-tax costs and benefits of holding that noneconomic residual interest.

(d) *Special rule on disposition of a residual interest.* If any portion of an

inducement fee received with respect to the acquisition of a noneconomic residual interest in an applicable REMIC has not been recognized in full by the holder as of the time the holder sells, or otherwise disposes of, that residual interest in the applicable REMIC (in a transaction other than a transaction to which section 381(c)(4) applies), then the holder must include the unrecognized portion of the inducement fee in income at that time.

(e) *Safe harbors.* If inducement fees are recognized in accordance with a method described in this paragraph (e), that method complies with the requirements of paragraph (c) of this section.

(1) *The book method.* Under the book method, an inducement fee is recognized in accordance with the method of accounting, and over the same period, that is used by the taxpayer for financial reporting purposes (including consolidated financial statements to shareholders, partners, beneficiaries, other proprietors and for credit purposes), provided that the inducement fee is included in income for financial reporting purposes over a period that is not shorter than the period during which the applicable REMIC is expected to generate taxable income.

(2) *The modified REMIC regulatory method.* Under the modified REMIC regulatory method, the inducement fee is recognized ratably over the remaining anticipated weighted average life of the applicable REMIC as if the inducement fee were unrecognized gain being included in gross income under § 1.860F–2(b)(4)(iii).

(3) *Additional safe harbor methods.* The Commissioner, by revenue ruling or revenue procedure published in the Internal Revenue Bulletin, may provide additional safe harbor methods for recognizing inducement fees on noneconomic REMIC residual interests.

(f) *Method of accounting.* The treatment of inducement fees is a method of accounting to which the provisions of sections 446 and 481 and the regulations thereunder apply. A taxpayer is generally permitted to adopt a method of accounting for inducement fees that satisfies the requirements of paragraph (c) of this section. Once a taxpayer adopts a method of accounting for inducement fees, that method must be applied consistently to all inducement fees received in connection with noneconomic REMIC residual interests and may be changed only with the consent of the Commissioner, as provided by section 446(e) and the regulations and procedures thereunder.

(g) *Effective date.* This section is applicable for taxable years ending on or after the date this document is published as a final regulation in the **Federal Register**.

Par. 3. Section 1.860A–0 is amended by adding an entry in the outline for § 1.860C–1(d) to read as follows:

§ 1.860A–0 Outline of REMIC provisions.

* * * * *

§ 1.860C–1 Taxation of holders of residual interests.

* * * * *

(d) Treatment of REMIC inducement fees.

* * * * *

Par. 4. Section 1.860C–1 is amended by adding paragraph (d) to read as follows:

§ 1.860C–1 Taxation of holders of residual interests.

* * * * *

(d) For rules on the proper accounting for income from inducement fees, *see* § 1.446–6.

Par. 5. Section 1.863–0 is amended by:

1. Adding an entry for § 1.863–1(d).
2. Redesignating the entry for § 1.863–1(e) as § 1.863–1(f).
3. Adding a new entry for § 1.863–1(e).

The additions read as follows:

§ 1.863–0 Table of contents.

* * * * *

§ 1.863–1 Allocation of gross income.

* * * * *

(d) Scholarships, fellowship grants, grants, prizes and awards.

(e) REMIC inducement fees.

* * * * *

Par. 6. Section 1.863–1 is amended as follows:

1. Paragraph (e) is revised.
2. Paragraph (f) is added.

The revision and addition reads as follows:

§ 1.863–1 Allocation of gross income under section 863(a).

* * * * *

(e) *REMIC inducement fees.* An inducement fee (as defined in § 1.446–6(b)(2)) shall be treated as income from sources within the United States.

(f) *Effective dates.* The rules of paragraphs (a), (b) and (c) of this section will apply to taxable years beginning after December 30, 1996. However, taxpayers may apply the rules of paragraphs (a), (b) and (c) of this section for taxable years beginning after July 11, 1995, and on or before December 30, 1996. For years beginning before December 30, 1996, *see* § 1.863–1 (as contained in 26 CFR part 1 revised as of April 1, 1996). *See* paragraph (d)(4) of this section for rules regarding the applicability date of paragraph (d) of this section. Paragraph (e) of this section is applicable for taxable years ending on or after the date this document is published as a final regulation in the **Federal Register**.

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 03–18212 Filed 7–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–129709–03]

RIN 1545–BC34

Prohibited Allocations of Securities in an S Corporation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance on identifying disqualified persons and determining whether a plan year is a nonallocation year under section 409(p) and on the definition of synthetic equity under section 409(p)(5). These proposed regulations would generally affect plan sponsors of, and participants in, ESOPs holding stock of Subchapter S corporations. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by October 20, 2003.

Requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for November 20, 2003, at 10 a.m. must be received by October 30, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–129709–03), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:RU (REG–129709–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at *http://www.irs.gov/regs*. The public hearing will be held in room 6718.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, John Ricotta at 622–6060; concerning submissions of comments, Guy Traynor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 409(p). The temporary regulations contain rules relating to the identification of disqualified persons and determination whether a plan year is a nonallocation year under section 409(p) and the definition of synthetic equity under section 409(p)(5). The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because § 1.409(p)-1 imposes no new collection of information on small entities, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

Comments are requested with respect to issues raised by S corporation ESOPs established by March 14, 2001, that will need to comply with the requirements of section 409(p) beginning in 2005. For these ESOPs, the inclusion of deferred compensation as synthetic equity can be avoided by distributing such deferred compensation before 2005. Some employers may prefer other transition approaches. For example, a preferable transition approach may be to spin off and terminate the portion of a plan benefitting disqualified persons. Comments are requested on whether guidance is needed to address these possible transition approaches.

Comments are also requested on issues that are reserved in the regulations with respect to whether certain interests in an S corporation should be treated as synthetic equity, including the extent to which rights to acquire assets of the S corporation or another person are established for reasonable business purposes and should not be treated as synthetic equity. While comments can be filed as late as October 20, 2003, commentators are encouraged to file comments as early as possible because the IRS and Treasury intend to move forward to address these issues as early as 2003.

Commentators may also wish to comment on section 409(p)-related issues that are not directly raised in the proposed regulations. For example, commentators may wish to comment on the extent to which administrative guidance may be needed on an interim basis to deal with specific structures used to avoid or evade the purpose of section 409(p).

A public hearing has been scheduled for November 20, 2003, at 10 a.m. in room 6718 of the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts at the Constitution Avenue entrance. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by October 30, 2003. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is John Ricotta of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

1. The authority citation for part 1 is amended by an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.409(p)–1 also issued under 26 U.S.C. 409(p)(7)(A). * * *

2. Section 1.409(p)–1 is added to read as follows:

§ 1.409(p)-1 Prohibited allocation of securities in an S corporation.

[The text of proposed § 1.409(p)–1 is the same as the text of § 1.409(p)–1T published elsewhere in this issue of the **Federal Register**].

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 03–18211 Filed 7–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–132483–03]

RIN 1545–BC40

Remedial Actions for Tax-exempt Bonds

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that amend the final regulations that provide certain permitted remedial actions for tax-exempt bonds issued by State and local governments. This document also contains a notice of public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by October 14, 2003.

Outlines of topics to be discussed at the public hearing scheduled for November 4, 2003, at 10 a.m., must be received by October 14, 2003.

ADDRESSES: Send submissions to CC:PA:RU (REG–132483–03), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:RU (REG–132483–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically to the IRS Internet site at *http://www.irs.gov/regs*. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Gary W. Bornholdt, (202) 622–3980; concerning submissions of comments, the hearing, and requests to be placed on the building access list to attend the meeting, Sonya M. Cruse, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 103(a) of the Internal Revenue Code (Code) provides that, generally, interest on any State or local bond is not included in gross income. However, this exclusion does not apply to any private activity bond that is not a qualified bond.

A. Governmental Bonds

Under section 141, a bond is a private activity bond if the bond is issued as part of an issue that meets either (1) the private business use test and the private security or payment test (the private business tests), or (2) the private loan financing test.

The private business use test is met if more than 10 percent of the proceeds of an issue are to be used for any private business use. Section 141(b)(6) defines private business use as use directly or indirectly in a trade or business that is carried on by any person other than a governmental unit.

The private security or payment test is met if the payment of the principal of, or the interest on, more than 10 percent of the proceeds of an issue is directly or indirectly (1) secured by an interest in property used or to be used for a private business use, (2) secured by an interest in payments in respect of such property, or (3) to be derived from payments, whether or not to the issuer, in respect of property, or borrowed money, used or to be used for a private business use.

The private loan financing test is satisfied if more than the lesser of $5 million or 5 percent of the proceeds of an issue are to be used to make or finance loans to persons other than governmental units.

Under § 1.141–2(d) of the Income Tax Regulations, an issue is an issue of private activity bonds if the issuer reasonably expects, as of the issue date, that the issue will meet either the private business tests or the private loan financing test. Under § 1.141–2(d), an issue is also an issue of private activity bonds if the issuer takes a deliberate action, subsequent to the issue date, that causes the conditions of either the private business tests or the private loan financing test to be met.

Section 1.141–12 sets forth certain remedial actions that prevent a deliberate action with respect to property financed by an issue from causing that issue to meet the private business use test or the private loan financing test. Specifically, if an issuer satisfies certain conditions, an issuer may take one of the following three remedial actions to cure a deliberate action. First, the issuer may redeem or defease the nonqualified bonds. However, a defeasance is not a permitted remedial action if the period between the issue date and the first call date of the bonds is more than 10½ years (the 10½ year limitation). Second, if the deliberate action is a disposition of the bond-financed property for which the consideration is exclusively cash, and certain other requirements are met, the issuer may use the cash for an alternative qualifying use. Third, in certain cases, the facility with respect to which the deliberate action occurs may be used in an alternative qualifying manner (for example, the facility may be used for a qualifying purpose by a nongovernmental person or used by a 501(c)(3) organization rather than a governmental person). The second and third types of remedial action may cause a deemed reissuance of the nonqualified bonds (that is, a deemed issuance of new bonds to refund the nonqualified bonds) for certain purposes of the Code.

Section 1.141–12(j) provides that the percentage of outstanding bonds that are nonqualified bonds equals the highest percentage of private business use in any 1-year period commencing with the deliberate action. In addition, § 1.141–12(j) provides that the determination of the bonds of an issue that are treated as the nonqualified bonds must be made on a pro rata basis, except that, for purposes of the remedial action that involves the redemption or defeasance of the nonqualified bonds, an issuer may treat bonds with longer maturities (determined on a bond-by-bond basis) as the nonqualified bonds.

In general, § 1.141–15 provides that § 1.141–12 applies to bonds issued on or after May 16, 1997, that are subject to section 1301 of the Tax Reform Act of 1986. However, issuers may apply the remedial action provisions in § 1.141–12 to any bonds to which § 1.141–12 does not otherwise apply.

B. Qualified 501(c)(3) Bonds

Under section 141(e), a qualified 501(c)(3) bond issued under section 145 may be a qualified bond. Section 145(a) provides that, in general, a qualified 501(c)(3) bond is any private activity bond issued as part of an issue if: (1) All of the property that is to be provided by the net proceeds of the issue is to be owned by a 501(c)(3) organization or a governmental unit; and (2) such bond would not be a private activity bond if section 501(c)(3) organizations were treated as governmental units with respect to their activities that do not constitute unrelated trades or businesses, determined by applying section 513(a). For this purpose, the private business tests are applied by using "5 percent" instead of "10 percent" each place it appears and "net proceeds" for "proceeds" each place it appears. Section 1.145–2 provides, in general, that §§ 1.141–0 through 1.141–15 apply to section 145(a).

C. Exempt Facility Bonds

Under section 141(e), an exempt facility bond issued under section 142 may be a qualified bond. Under section 142(a), an exempt facility bond is any bond issued as part of an issue if 95 percent or more of the net proceeds are to be used to provide certain exempt facilities.

Under § 1.142–2, if less than 95 percent of the net proceeds of an exempt facility bond are actually used to provide an exempt facility, and for no other purpose, the issue will be treated as meeting the use of proceeds requirement of section 142(a) if the issue meets a reasonable expectations test, and the issuer takes the remedial action described § 1.142–2. The reasonable expectations test requires that the issuer must have reasonably expected on the issue date of the bonds that at least 95 percent of the net proceeds of the issue would be used to provide an exempt facility and for no other purpose for the entire term of the bonds (disregarding any redemption provisions). The remedial action provided in § 1.142–2 requires that the issuer redeem or defease the nonqualified bonds of the issue. However, a defeasance is not a permitted remedial action if it does not satisfy the 10½ year limitation on defeasances.

For purposes of § 1.142–2, the nonqualified bonds are a portion of the outstanding bonds in an amount that, if the remaining bonds were issued on the date on which the failure to properly use the proceeds occurs, at least 95 percent of the net proceeds of the remaining bonds would be used to provide an exempt facility. If no proceeds have been spent to provide an exempt facility, all of the outstanding bonds are nonqualified bonds. The nonqualified bonds must be determined on a pro rata basis, except that an issuer may treat bonds with longer maturities (determined on a bond-by-bond basis) as the nonqualified bonds.

In general, § 1.141–16 provides that § 1.142–2 applies to bonds issued on or after May 16, 1997. However, § 1.142–2, together with certain other regulations, may be applied in whole, but not in part, to bonds outstanding on May 16, 1997.

D. Prior Remedial Action Rules

Prior to the release of §§ 1.141–12 and 1.142–2, Rev. Proc. 93–17 (1993–1 C.B. 507), provided remedial action rules. Rev. Proc. 93–17 does not contain the 10½ year limitation on defeasances. The preamble to the regulations that include §§ 1.141–12 and 1.142–2 provides that for actions that occur on or after May 16, 1997, Rev. Proc. 93–17 is obsolete.

Explanation of Provisions

Comments have been received suggesting that the definition of the amount of nonqualified bonds contained in § 1.141–12 be limited to the excess of the actual amount of the private business use or private loans over the permitted amount of private business use or private loans under section 141. The comments note that this approach is consistent with the statutory language of section 141, which permits certain *de minimis* amounts of private business use and private loans without jeopardizing the tax-exempt status of bonds, and with the definition of the amount of nonqualified bonds contained in § 1.142–2.

The comments also suggest simplifying the rules for determining the bonds to be treated as the nonqualified bonds. The comments recommend granting an issuer greater discretion in its selection of bonds, to the extent that the issuer, through such selection, does not effectively extend the remaining weighted average maturity of the bond issue with respect to which the deliberate action occurred.

Finally, the comments request clarification of the remedial action rules applicable to bonds issued prior to May 16, 1997. In particular, the comments request that issuers be permitted to apply §§ 1.141–12 and 1.142–2 to bonds issued before May 16, 1997, without regard to the 10½ year limitation on defeasances contained in those regulations. The comments indicate that it is unfair to require issuers to comply with the 10½ year limitation for bonds issued prior to the release of §§ 1.141–12 and 1.142–2 because issuers could not have known about the limitation when structuring those bonds.

The proposed regulations generally adopt these suggestions.

First, the proposed regulations reduce the amount of outstanding bonds that are nonqualified bonds under § 1.141–12. The proposed regulations provide that the nonqualified bonds are a portion of the outstanding bonds in an amount that, if the remaining bonds were issued on the date on which the deliberate action occurs, the remaining bonds would not satisfy the private business use test or private loan financing test, as applicable. For this purpose, the amount of private business use is the greatest percentage of private business use in any one-year period commencing with the deliberate action.

Second, the proposed regulations amend the provisions of § 1.141–12 relating to redemption or defeasance and the provisions of § 1.142–2 relating to allocations of nonqualified bonds. Under the proposed regulations, allocations of nonqualified bonds must be made on a pro rata basis, except that an issuer may treat any bonds of an issue as the nonqualified bonds so long as (i) the remaining weighted average maturity of the issue, determined as of the date on which the nonqualified bonds are redeemed or defeased (determination date), and excluding from the determination the nonqualified bonds redeemed or defeased by the issuer, is not greater than (ii) the remaining weighted average maturity of the issue, determined as of the determination date, but without regard to the redemption or defeasance of any bonds (including the nonqualified bonds) occurring on the determination date.

Finally, the proposed regulations amend §§ 1.141–15(e) and 1.141–16(c) to provide that for bonds issued before May 16, 1997, issuers may apply §§ 1.141–12 and 1.142–2 without regard to the 10½ year limitation on defeasances contained in those regulations.

Proposed Effective Dates

The proposed regulations that amend §§ 1.141–12 and 1.142–2 will apply to deliberate actions or failures to properly use proceeds, as applicable, that occur on or after the date of publication of final regulations in the **Federal Register**, to the extent § 1.141–12 or 1.142–2, as applicable, applies to the bonds. The proposed regulations that amend §§ 1.141–15(e) and 1.141–16(c) will apply to bonds issued before May 16, 1997, that are subject to §§ 1.141–12 or 1.142–2, as applicable, for purposes of deliberate actions or failures to properly use proceeds, as applicable, that occur on or after April 21, 2003. Issuers may apply the proposed regulations to deliberate actions or failures to properly use proceeds, as applicable, that occur on or after April 21, 2003, and before the date of publication of final regulations in the **Federal Register**, to the extent (1) § 1.141–12 or § 1.142–2, as applicable, applies to the bonds, and (2) with respect to the amendments to § 1.141–15(e) and 1.141–16(c), the bonds were issued before May 16, 1997.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the IRS. The IRS and Treasury request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for November 4, 2003, at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access

restrictions, visitors will not be admitted beyond the lobby more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments by October 14, 2003, and submit an outline of the topics to be discussed and the amount of time to be devoted to each topic by October 14, 2003.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Comments are requested on all aspects of the proposed regulations.

Drafting Information

The principal authors of these regulations are Rebecca L. Harrigal and Gary W. Bornholdt, Office of Associate Chief Counsel (Tax-exempt and Government Entities), IRS, and Bruce M. Serchuk, Office of Tax Policy, Treasury Department. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

2. Section 1.141–0 is amended by adding an entry to the table for § 1.141–16(d) to read as follows:

§ 1.141–0 Table of contents.

* * * * *

§ 1.141–16 Effective dates for qualified private activity bond provisions.

* * * * *

(d) Certain remedial actions.

* * * * *

3. In § 1.141–12, paragraphs (j) and (k) *Example 8* are revised to read as follows:

§ 1.141–12 Remedial actions.

* * * * *

(j) *Nonqualified bonds*—(1) *Amount of nonqualified bonds.* The nonqualified bonds are a portion of the outstanding bonds in an amount that, if the remaining bonds were issued on the date on which the deliberate action occurs, the remaining bonds would not satisfy the private business use test or private loan financing test, as applicable. For this purpose, the amount of private business use is the greatest percentage of private business use in any one-year period commencing with the deliberate action.

(2) *Allocation of nonqualified bonds.* Allocations of nonqualified bonds must be made on a pro rata basis, except that, for purposes of paragraph (d) of this section (relating to redemption or defeasance), an issuer may treat any bonds of an issue as the nonqualified bonds so long as—

(i) The remaining weighted average maturity of the issue, determined as of the date on which the nonqualified bonds are redeemed or defeased (determination date), and excluding from the determination the nonqualified bonds redeemed or defeased by the issuer in accordance with this section, is not greater than

(ii) The remaining weighted average maturity of the issue, determined as of the determination date, but without regard to the redemption or defeasance of any bonds (including the nonqualified bonds) occurring on the determination date.

(k) * * *

Example 8. Compliance after remedial action. In 2000, City G issues bonds with proceeds of $10 million to finance a courthouse. The bonds have a weighted average maturity that does not exceed 120 percent of the reasonably expected economic life of the courthouse. G uses $1 million of the proceeds for a private business use and more than 10 percent of the debt service on the issue is secured by private security or payments. In 2004, in a bona fide and arm's length arrangement, G enters into a management contract with a nongovernmental person that results in private business use of 40 percent of the courthouse per year during the remaining term of the bonds. G immediately redeems the nonqualified bonds, or 44.44 percent of the outstanding bonds. This is the portion of the outstanding bonds that, if the remaining bonds were issued on the date on which the deliberate action occurs, the remaining bonds would not satisfy the private business use test, if the amount of private business use is the greatest percentage of private business use in any one-year period commencing with the deliberate action (50 percent). This percentage is computed by dividing the percentage of the facility used for a government use (50 percent) by the minimum amount of government use required (90 percent), and subtracting the resulting percentage (55.56 percent) from 100 percent (44.44 percent). For purposes of subsequently applying section 141 to the issue, G may continue to use all of the proceeds of the outstanding bonds in the same manner (that is, for the courthouse and the private business use) without causing the issue to meet the private business use test. The issue, however, continues to meet the private security or payment test. The result would be the same if G, instead of redeeming the bonds, established a defeasance escrow for those bonds, provided that the requirement of paragraph (d)(4) of this section was met.

4. Section 1.141–15 is amended as follows:

1. Paragraph (b)(4) is added.
2. Paragraph (e) is revised.

The amendments read as follows:

§ 1.141–15 Effective dates.

* * * * *

(b) *Effective dates.* * * *

(4) *Certain remedial actions.* For bonds subject to § 1.141–12, the provisions of §§ 1.141–12(j) and 1.141–12(k), *Example 8,* apply to deliberate actions that occur on or after the date of publication of final regulations in the **Federal Register** and may be applied by issuers to deliberate actions that occur on or after April 21, 2003 and before the date of publication of final regulations in the **Federal Register**.

* * * * *

(e) *Permissive application of certain sections*—(1) *In general.* Except as otherwise provided in paragraph (b)(4) of this section and this paragraph (e), the following sections may each be applied by issuers to any bonds—

(i) Section 1.141–3(b)(4);

(ii) Section 1.141–3(b)(6); and

(iii) Section 1.141–12.

(2) *Transition rule for pre-effective date bonds.* For purposes of paragraphs (e)(1) and (h) of this section, issuers may apply § 1.141–12 to bonds issued before May 16, 1997, without regard to paragraph (d)(4) thereof with respect to deliberate actions that occur on or after April 21, 2003.

* * * * *

5. Section 1.141–16 is amended by revising paragraph (c) and adding paragraph (d) to read as follows:

§ 1.141–16 Effective dates for qualified private activity bond provisions.

* * * * *

(c) *Permissive application.* The regulations designated in paragraph (a) of this section may be applied by issuers in whole, but not in part, to bonds outstanding on the effective date. For this purpose, issuers may apply § 1.142–2 without regard to paragraph (c)(3) thereof to failures to properly use proceeds that occur on or after April 21, 2003.

(d) *Certain remedial actions.* For bonds subject to § 1.142–2, the provisions of § 1.142–2(e) apply to failures to properly use proceeds that occur on or after the date of publication of final regulations in the **Federal Register** and may be applied by issuers to failures to properly use proceeds that occur on or after April 21, 2003 and before the date of publication of final regulations in the **Federal Register**.

6. Section 1.142–0 is amended by revising the entries to the table for § 1.142–2 paragraph (d), (d)(1) and (d)(2) to read as follows:

§ 1.142–0 Table of contents.

* * * * *

§ 1.142–2 Remedial actions.

* * * * *

(d) * * *

(1) Amount of nonqualified bonds.

(2) Allocation of nonqualified bonds.

* * * * *

7. Section 1.142–2 is amended by revising paragraph (e) to read as follows:

§ 1.142–2 Remedial actions.

* * * * *

(e) *Nonqualified bonds*—(1) *Amount of nonqualified bonds.* The nonqualified bonds are a portion of the outstanding bonds in an amount that, if the remaining bonds were issued on the date on which the failure to properly use the proceeds occurs, at least 95 percent of the net proceeds of the remaining bonds would be used to provide an exempt facility. If no proceeds have been spent to provide an exempt facility, all of the outstanding bonds are nonqualified bonds.

(2) *Allocation of nonqualified bonds.* Allocations of nonqualified bonds must be made on a pro rata basis, except that an issuer may treat any bonds of an issue as the nonqualified bonds so long as—

(i) The remaining weighted average maturity of the issue, determined as of the date on which the nonqualified bonds are redeemed or defeased (determination date), and excluding from the determination the nonqualified bonds redeemed or defeased by the issuer in accordance with this section, is not greater than

(ii) The remaining weighted average maturity of the issue, determined as of the determination date, but without regard to the redemption or defeasance of any bonds (including the nonqualified bonds) occurring on the determination date.

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 03–18327 Filed 7–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

[OH–249–FOR]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendments.

SUMMARY: We are announcing receipt of a proposed amendment to the Ohio regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The program amendment consists of changes to the Ohio Administrative Code (OAC) to incorporate a variety of changes related to the certification of blasters. The amendment is intended to facilitate the certification of blasters in the State's non-coal regulatory program as well as to upgrade the coal surface mining blaster certification program.

DATES: We will accept written comments on this amendment until 4 p.m. (local time), on August 20, 2003. If requested, we will hold a public hearing on the amendment on August 15, 2003. We will accept requests to speak at a hearing until 4 p.m. (local time), on August 5, 2003.

ADDRESSES: You should mail or hand-deliver written comments and requests to speak at the hearing to Mr. George Rieger, at the address listed below.

You may review copies of the Ohio program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting the Appalachian Regional Coordinating Center.

Mr. George Rieger, Field Office Director, Office of Surface Mining Reclamation and Enforcement, Appalachian Regional Coordinating Center, 3 Parkway Center, Pittsburgh, PA 15220, (412) 937–2153.

Mr. Michael Sponsler, Chief, Ohio Department of Natural Resources, Division of Mineral Resources Management, 1855 Fountain Square Court, Columbus, OH 43224, (614) 265–6893.

FOR FURTHER INFORMATION CONTACT: Mr. George Rieger, Telephone: (412) 937–2153. Internet: *grieger@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Ohio Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Ohio program on August 10, 1982. You can find background information on the Ohio program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Ohio program in the August 10, 1982, **Federal Register** (47 FR 34687). You can also find later actions concerning Ohio's program and program amendments at 30 CFR 935.11, 935.15, and 935.16.

II. Description of the Proposed Amendment

By letter dated June 11, 2003, Ohio sent us a proposed amendment to its program (Administrative Record Number OH–2183–00) under SMCRA (30 U.S.C. 1201 *et seq.*). Ohio sent the amendment to include changes made at its own initiative. By electronic mail dated June 18, 2003, Ohio sent us a revised version of the original submittal (Administrative Record Number OH–2183–01)

The provision of the OAC that Ohio proposes to revise is: OAC 1501:13–9–10, concerning training, examination, and certification of blasters. In its original submittal of this amendment, Ohio stated that it has passed legislation extending the requirement for blasting operations to be conducted by a certified blaster to apply to non-coal surface mining as well as coal surface

mining. Therefore, Ohio is now proposing to extend OAC Section 1501:13–9–10 to also apply to non-coal surface mining as well as coal surface mining. Ohio is also proposing other amendments to OAC 1501:13–9–10. The specific amendments to OAC 1501:13–9–10 are identified below.

The regulation at 13–9–10(A), General, is amended at 13–9–10(A)(1) by adding the word "surface" and by adding the phrase "in coal and industrial minerals mines" to the first sentence. As amended, 13–9–10(A)(1) provides as follows:

(1) All surface blasting operations in coal and industrial minerals mines, including surface blasting operations incident to underground mining and blasting operations on coal exploration operations, shall be conducted by a certified blaster who has obtained certification pursuant to the requirements of this rule.

The regulation at 13–9–10(A), General, is amended by adding new 13–9–10(A)(3) to provide as follows:

(3) The chief may grant reciprocity to any blaster who holds a valid certification issued under any state or federal blaster certification program approved by the U.S. Department of the Interior's Office of Surface Mining. However, to obtain certification under this rule, the blaster must apply for and pass an examination on Ohio blasting regulations pertaining to coal and industrial minerals mines, and meet any other requirement deemed necessary by the chief.

The regulation at 13–9–10(B), Training, is amended by deleting the word "coal" immediately before the words "mining operations" in the first sentence. As amended, the sentence provides that "[t]he chief shall conduct workshops, as necessary, to inform blasters of changes in blasting rules and certification procedures, and shall ensure that courses are available to train persons responsible for the use of explosives in mining operations."

The regulation at 13–9–10(B)(7), Training, is amended by adding the words "in coal and non-coal surface mines." As amended, 13–9–10(B)(7) provides as follows: "(7) All federal and state rules applicable to the use of explosives in coal and non-coal surface mines:"

The regulation at 13–9–10(B)(9), Training, is amended by deleting the word "Schedules" and replacing that word with the words "Blast schedules."

The regulation at 13–9–10(B)(14), Training, is amended by deleting the word "Unpredictable" immediately before the word "hazards," and replacing that word with the word "Potential." In addition, a new item at 13–9–10(B)(14)(e) is added to read as follows: "(e) Toxic gases." The word "and" is deleted at the end of subdivision (14)(c), and the word "and" is added at the end of subdivision (14)(d). As amended, 13–9–10(B)(14) provides as follows:

(14) Potential hazards, including:
(a) Lightning;
(b) Stray currents;
(c) Radio waves;
(d) Misfires; and
(e) Toxic gases.

The regulation at 13–9–10(C)(1), concerning minimum training for certification, is amended by adding the words "a minimum of 30 hours of" immediately before the word "training." The word "in" immediately following the word "training" is deleted and replaced with the word "covering." The words "division of reclamation" are deleted and are replaced with the word "chief." As amended, 13–9–10(C)(1) provides as follows:

(1) Received a minimum of 30 hours of training covering all the topics set forth in paragraph (B) of this rule in a course taught under the supervision of the chief, or in a course, or series of courses, deemed equivalent by the chief;

The regulation at 13–9–10(C)(2), concerning experience required for certification, is amended by deleting most of the existing language and adding language to provide as follows:

(2) Worked on a blasting crew or directly supervised a blasting crew for at least two years in mining, excavation, or an equivalent working environment;

The regulation at 13–9–10(C)(3), concerning on-the-job training is new and provides as follows:

(3) Received direction and on-the-job training from a certified blaster;

The regulation at 13–9–10(C)(5) ((C)(4) prior to the addition of new (C)(3)), concerning written examination, is amended by correcting a typographical error. The word "if" is deleted and replaced by the word "of."

The regulation at 13–9–10(D)(1), concerning certification, is amended by deleting the words "or a certifying authority designated by the chief," and replacing those words with the words "or an authorized representative." The phrase "to accept responsibility for blasting operations" is amended to read "to accept responsibility for surface blasting operations in mines." The words "under this rule and rule 1501:13–9–06 of the Administrative Code" are deleted. As amended, 13–9–10(D)(1) provides as follows:

(1) The chief, or an authorized representative, shall certify for three years those persons examined and found to be competent and to have the necessary experience to accept responsibility for surface blasting operations in mines.

The regulation at 13–9–10(D)(2)(b), concerning recertification, is deleted in its entirety and replaced with new language to provide as follows:

(b) Received a minimum of 24 hours of continuing education by attending blasting-related courses, seminars or conferences approved by the chief or an authorized representative, with at least 8 hours obtained from an organization or person other than the blaster's employer or its parent company or explosives supplier.

The regulation at 13–9–10(E)(1), concerning conditions of certification, is amended by adding the word "mine" immediately before the words "permit area." As amended, 13–9–10(E)(1) provides as follows:

(1) A certificate of blaster certification, shall be carried by a blaster, or shall be on file at the mine permit area, during blasting operations.

The regulation at 13–9–10(E)(2), concerning conditions of certification, is amended by deleting the words "division of reclamation" and adding in their place the word "chief." As amended, 13–9–10(E)(2) provides as follows:

(2) Upon request by an authorized representative of the chief or other regulatory authority having jurisdiction over the use of explosives, a blaster shall immediately exhibit his or her certificate to the authorized representative.

The regulation at 13–9–10(E)(5), concerning conditions of certification, is amended by deleting the words "and certifying authority designated by the chief." As amended, 13–9–10(E)(5) provides as follows:

(5) A certified blaster shall take every reasonable precaution to protect his or her certificate from loss, theft, or unauthorized duplication. Any such occurrence shall be reported immediately to the chief.

The regulation at 13–9–10(F)(1), concerning suspension and revocation, is amended by deleting the words "or a certifying authority designated by the chief." As amended, 13–9–10(F)(1) provides as follows:

(1) Following written notice and opportunity for a hearing, the chief may, and upon a finding of willful conduct shall, suspend or revoke the certification of a blaster during the term of the certification, or take other necessary action for any of the following reasons:

The regulation at 13–9–10(F)(1)(b), concerning suspension and revocation, is amended by adding the words "a blasting-related permit condition" immediately following the words "laws or regulations." As amended, 13–9–10(F)(1)(b) provides as follows:

(b) Violation of any provision of State or Federal explosives laws or regulations, a blasting-related permit condition, or any condition of certification;

The regulation at 13–9–10(F)(1)(f), concerning suspension and revocation, is new and provides as follows:

(f) Conducting a blast where flyrock was cast beyond the permit boundary of any mine.

The regulation at 13–9–10(F)(3), concerning suspension and revocation, is amended by deleting the words "or a designated certifying authority," and adding in their place the words "and may work on a blasting crew only under the direct supervision of a certified blaster." As amended, 13–9–10(F)(3) provides as follows:

(3) Upon notice of a suspension or revocation, the blaster shall immediately surrender the suspended or revoked certificate and all copies thereof to the chief, and may work on a blasting crew only under the direct supervision of a certified blaster.

The regulation at 13–9–10(F)(4), concerning suspension and revocation, is amended by deleting the phrase "during the term of the suspension,'; deleting paragraph (4)(a); paragraph (4)(b) becomes (4)(a); paragraph 4(c) becomes paragraph 4(b) and then replacing the word "a" with the word "the" at (4)(b); and adding a new paragraph (4)(c). As amended 13–9–10(F)(4) provides as follows:

(4) To repossess a suspended certificate the blaster must:
(a) Exhibit a pattern of conduct consistent with the acceptance of responsibility for blasting operations;
(b) Pass the written examination administered under paragraph (C) of this rule; and
(c) Meet any other requirements imposed by the chief under the terms of the suspension.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Ohio program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We may not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Appalachian Regional Coordinating Center may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII, Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS NO. OH–249–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Appalachian Regional Coordinating Center at (412) 937–2153.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m. (local time), on August 5, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse

effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The basis for this determination is our decision is on a State regulatory program and does not involve a Federal regulation involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 7, 2003.

Michael K. Robinson,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 03–18468 Filed 7–18–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD09–03–215]

RIN 1625–AA09

Drawbridge Operation Regulations; Milwaukee, Menomonee, and Kinnickinnic Rivers and South Menomonee and Burnham Canals, Milwaukee, WI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise the drawbridge operating regulation for the Canadian Pacific (formerly Chicago, Milwaukee, St. Paul & Pacific) railroad bridge over the Burnham Canal in Milwaukee, WI, allowing the bridge to remain closed to navigation due to infrequent use. This will allow the bridge owners to reduce maintenance and operation costs at a location where there is no known need for drawbridge openings.

DATES: Comments and related material must reach the Coast Guard on or before September 19, 2003.

ADDRESSES: You may mail comments and related material to Commander (obr), Ninth Coast Guard District, 1240 E. 9th Street, room 2019, Cleveland, Ohio, 44199–2060. Commander (obr), Ninth Coast Guard District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Bridge Administration Branch, Ninth Coast Guard District, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Scot Striffler, Bridge Administration Branch, at the address above or phone (216) 902–6084.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD09–03–215], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander (obr), Ninth Coast Guard District, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Canadian Pacific Railway bridge at mile 1.74 over Burnham Canal is a swing type bridge with a vertical clearance of approximately eight feet. In accordance with 33 CFR 117.1093, it is currently required to open for vessels if at least two-hours advance notice is provided prior to passing. Canadian Pacific Railway requested the Coast Guard allow the bridge to be maintained in the closed to navigation position since there have been no requests from vessels to open the bridge since June 13, 1997. There are no active marine facilities along the canal, and the area in Milwaukee Harbor where the bridge is located is part of a city re-development project. The City of Milwaukee Commissioner of Public Works and Commissioner of City Development offices have notified Canadian Pacific Railway in writing that they support this action.

Burnham Canal is a federal waterway. The waterway is reportedly no longer actively maintained by the Corps of Engineers. This rulemaking would allow the bridge to be untended and maintained in the closed to navigation position as per 33 CFR 117.39. However, the Coast Guard will retain the authority, should conditions make such an action necessary, to order the bridge owner to restore the bridge to an operable condition within 12 months of notification from Commander, Ninth Coast Guard District.

In addition to the regulation for the railroad bridge, the current regulation refers to "all other bridges across the Burnham Canal". The only other bridge on the canal that falls within the jurisdiction of the Coast Guard Bridge Administration Program is the Interstate 94 bridge at mile 1.79, which is a fixed bridge, and should not be referred to in the drawbridge regulations. Therefore, the Coast Guard proposes removing this section from 33 CFR 117.1093.

Discussion of Proposed Rule

This proposed rule will allow the railroad bridge to remain closed, as it has been, and still be in compliance with Coast Guard requirements. With no requests to open the bridge since 1997, accordingly there is arguably no need and no known effects on navigation if this bridge is allowed to remain closed. If conditions change and commercial navigation resumes on Burnham Canal, the Coast Guard will require the railroad to restore the bridge to operation within 12 months.

An additional change that would result from this proposed rule is the elimination of a section of a drawbridge regulation that is obsolete. In addition to the Canadian Pacific bridge, only the I–94 bridge crosses Burnham Canal. This is a hi-level fixed bridge that does not require drawbridge regulations.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Our preliminary investigation revealed no need for the bridge to be operable since 1997, with no vessels desiring an opening of the bridge. The owners of the land adjacent to the canal do not currently have plans to use the land for marine or commercial purposes. As stated, if these conditions were to change, then the bridge would be required to be operational again within 12 months of notification from the Coast Guard.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

With no requests to open the bridge since 1997, the Coast Guard is unaware of any entities that may be affected by this proposed rule. If the bridge remains closed, only vessels that require less than eight feet vertical clearance may pass, which potentially could affect some entities. If this condition changes and there is a future need for greater clearances, the Coast Guard will require the bridge to be made operational again.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Bridge Administration Branch, Ninth Coast Guard District, at the address above.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a

State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This action is categorically excluded under paragraph 32(e) as it is for the purpose of revising an operation regulation for this drawbridge. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.1093, revise paragraph (f) to read as follows:

§ 117.1093 Milwaukee, Menomonee, and Kinnickinnic Rivers and South Menomonee and Burnham Canals.

* * * * *

(f) The draw of the Canadian Pacific Railway bridge, mile 1.74 over Burnham Canal, need not be opened for the passage of vessels.

Dated: June 14, 2003.

R.F. Silva,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 03–18379 Filed 7–18–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

The Negotiated Rule Making Advisory Committee for Off-Road Driving Regulations at Fire Island National Seashore

AGENCY: National Park Service, Interior.

ACTION: Notice of meetings of the Negotiated Rule Making Committee.

SUMMARY: Notice is hereby given in accordance with Federal Advisory Committee Act (Pub. L. 92–463, 83 Stat. 770, 5 U.S.C. App 1, section 10), of two upcoming meetings of the Negotiated Rule Making Advisory Committee for Off-Road Driving Regulations at Fire Island National Seashore (36 CFR 7.20).

DATES: The Committee members will meet on: Saturday, August 16 and Friday, August 22, 2003.

ADDRESSES: Saturday meeting, (Aug. 16) will begin at 9 a.m. and will be held at Dowling College, Dowling/Brookhaven Campus, New York.

Friday's meeting, (Aug. 22) will be at 9 a.m. and will be held at the Saltaire Fire House, on Fire Island, N.Y.

FOR FURTHER INFORMATION CONTACT: Dave Spirtes, Fire Island National Seashore, 120 Laurel Street, Patchogue, New York 11772 (631) 289–4810 Ext. 225.

SUPPLEMENTARY INFORMATION:

Meetings will be held for the following reasons:

May 9, 2003—Friday

1. Discussion of Proposed Agenda.
2. Discussion of Progress since last meeting.
3. Review of Proposed Draft Consensus Agreement.
4. Public Participation Period.
5. Adjournment.

May 10, 2003—Saturday

1. Continued Review of Draft Consensus Agreement.
2. Public Participation Period.
3. Vote on Draft Consensus Agreement.
4. Adjournment.

The meeting is open to the public. It is expected that 25 persons will be able to attend the meeting in addition to the Committee members.

The Committee was established pursuant to the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570). The purpose of the Committee is to advise the National Park Service with regard to proposed rulemaking governing off-road vehicle use at Fire Island National Seashore.

Interested persons may make oral/written presentations to the Committee during the business meeting or file written statements. Such presentations may be made to the Committee during the public participation period the day of the meeting, or in writing to the Park Superintendent at least seven days prior to the meeting.

David Spirtes,

Acting Regional Director, Northeast Region.

[FR Doc. 03–18203 Filed 7–18–03; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN157–1b; FRL–7517–6]

Approval and Promulgation of State Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Indiana Department of Environmental Management (IDEM) on January 7, 2003. The revised SIP pertains to certain miscellaneous metal coating operations and the control of gasoline Reid vapor pressure in Clark and Floyd Counties, Indiana. The purpose of this action is to approve amendments to the applicable Indiana rules, assuring that certain controls in the two counties remain in effect even after the counties' redesignation to attainment. In addition, EPA is proposing to approve minor changes to the rules, which are administrative in nature and intended to enhance the rules' clarity. In the Final Rules section of this **Federal Register**, EPA is approving as described herein, the State's SIP revision, as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If we receive no adverse comments in response to that direct final rule we plan to take no further action in relation to this proposed rule. If EPA receives significant adverse comments, in writing, which have not been addressed, we will withdraw the direct final rule and address all public comments received in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document.

DATES: EPA must receive written comments on this proposed rule by August 20, 2003.

ADDRESSES: You should mail written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. You may inspect copies of the State submittal and EPA's analysis of it at: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3299.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us", or "our" are used we mean EPA.

Table of Contents

I. What action is EPA taking today?
II. Where can I find more information about this proposal and the corresponding direct final rule?

I. What Action Is EPA Taking Today?

In this action, we are proposing to approve changes to Indiana's Miscellaneous metal coatings operations and Control of gasoline Reid vapor pressure requirements contained in 326 IAC 8–2–9 and 326 IAC 13–3–1. Our approval makes the changes to the Indiana rules part of the federally enforceable SIP.

II. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register.**

Dated: June 9, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 03–18299 Filed 7–18–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NY60–257b; FRL–7519–9]

Approval and Promulgation of Implementation Plans; Reasonably Available Control Technology for Oxides of Nitrogen for Specific Sources in the State of New York

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a revision to the State Implementation Plan (SIP) for ozone submitted by the State of New York. This revision consists of source-specific reasonably available control technology (RACT) determinations for controlling oxides of nitrogen (NO_X) emissions from eighteen units at three facilities owned by Tenneco Gas Corporation in New York. This rule proposes to approve the source-specific RACT determinations that were made by New York in accordance with provisions of its regulation. In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP submittal, as a direct final rule without prior proposal because the Agency views it as a noncontroversial submittal and anticipates no adverse comments.

A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, the Agency will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before August 20, 2003.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866. Electronic comments could be sent either to *Werner.Raymond@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. Go directly to *http://www.regulations.gov*, then select "Environmental Protection Agency" at the top of the page and use the "go" button. Please follow the on-line instructions for submitting comments.

Copies of the State submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New York Department of Environmental Conservation, Division of Air Resources, 625 Broadway, 2nd Floor, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Anthony (Ted) Gardella (*Gardella.Anthony@epa.gov*) or Richard Ruvo (*Ruvo.Richard@epa.gov*), Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: June 17, 2003.

Jane M. Kenny,

Regional Administrator, Region 2.

[FR Doc. 03–18300 Filed 7–18–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[CC Dockets 99–200, 96–98 and 95–116; FCC 03–126]

Numbering Resource Optimization; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Telephone Number Portability

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission invites comment on whether to extend the thousands-block number pooling exemption established herein to carriers operating in rate centers with two service providers. In light of the Commission's prior finding that pooling provides the greatest benefit when participation is maximized, commenters that support extending the exemption should provide specific information on the number of carriers that would be affected by such an extension, so the Commission can determine how pooling deployment will be affected. Commenters advocating an extension of the current exemption should provide specific, per carrier, pooling cost information to enable the Commission to properly balance the benefits of pooling against the costs to carriers and their customers.

DATES: Comments are due on or before August 20, 2003. Reply comments are due on or before September 4, 2003.

ADDRESSES: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Pam Slipakoff, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7705.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fourth Further Notice of Proposed Rulemaking (FNPRM) in CC Docket No. 99–200 released on June 18, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

I. Further Notice of Proposed Rulemaking

1. In its comments, AT&T Wireless proposes that carriers, regardless of their size, operating in rate centers with fewer than three service providers, be exempt from the pooling requirement. AT&T also suggests that if a state commission believes that significant number optimization benefits could be obtained in rate centers with only two carriers, the state commission could petition the Commission to require those carriers to participate in pooling. In the accompanying Fourth Report and Order, the Commission exempts carriers from the pooling requirement if they are the only carrier in a rate center receiving numbering resources, but there is insufficient evidence in the record to determine whether rate centers with two competing service providers should also be exempt from pooling, as AT&T suggests.

2. The Commission therefore seeks comment on whether to extend the exemption established in the accompanying Fourth Report and Order to carriers operating in rate centers with two service providers. In light of the Commission's prior finding that pooling provides the greatest benefit when participation is maximized, commenters that support extending the exemption should provide specific information on the number of carriers that would be affected by such an extension, so the Commission can determine how pooling deployment will be affected. Commenters advocating an extension of the current exemption should provide specific, per carrier, pooling cost information to enable the Commission to properly balance the benefits of pooling against the costs to carriers and their customers.

II. Procedural Matters

A. Initial Regulatory Flexibility Analysis

3. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Fourth Report and Order in CC Docket No. 99–200, Fourth Further Notice of Proposed Rulemaking (FNPRM) in CC Docket No. 99–200, and Fourth Report and Order in CC Docket No. 95–116. Written public comments are requested on this IFRA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, this FNPRM (or a summary) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Proposed Rules

4. The Commission is issuing this FNPRM to seek comment on a proposal to exempt carriers, regardless of size, from the Commission's pooling requirement if they are in rate centers with only two service providers. We also ask commenters that support extending the exemption to provide specific information on the number of carriers that would be affected by such an extension, so the Commission can determine how pooling deployment will be affected. Commenters advocating an extension of the current exemption should provide specific, per carrier, pooling cost information to enable the Commission to properly balance the benefits of pooling against the costs to carriers and their customers. Thus, we request a cost-benefit analysis showing how the benefits of pooling can be achieved without undue burden on carriers. In doing so, we seek to ensure that the limited numbering resources of the NANP are used efficiently.

2. Legal Basis

5. The authority for actions proposed in this FNPRM may be found in sections 1, 3, 4, 201–205, 251 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201–205, and 251.

3. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

6. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules proposed herein. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."

The term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities. Under the Small Business Act, a "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

7. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be data the Commission publishes bi-annually in its Trends in Telephone Service Report. According to data in the most recent report, there are 5,679 interstate carriers. These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone service, providers of telephone exchange service, and resellers.

8. We have included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted previously, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

9. Local Exchange Carriers and Competitive Access Providers. Neither the Commission nor the SBA has developed a definition specifically for small providers of local exchange services. The closest applicable definition under the SBA rules is for wired telecommunications carriers. This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees. According to the most recent Commission data there are 1,619 local services providers with 1,500 or fewer employees. Because it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Of the 1,619 local service providers, 1,024 are incumbent local exchange carriers, 411 are Competitive Access Providers (CAPs) and competitive LECs, 131 are resellers and 53 are other local exchange carriers. Consequently, we estimate that fewer than 1,619 providers of local exchange service are small entities or small incumbent local exchange carriers that may be affected.

10. Cellular and Wireless Telephony. Neither the Commission nor the SBA has developed a definition of small entities specifically for wireless telephony. The closest definition is the SBA definition for cellular and other wireless telecommunications. Under this definition, a cellular licensee is a small entity if it employs no more than 1,500 employees. According to the most recent Commission data, 580 providers classified themselves as providers of wireless telephony, including cellular telecommunications, Personal Communications Service, and Specialized Mobile Radio (SMR) Telephony Carriers. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 580 wireless telephony carriers that may be affected.

11. Other Wireless Services. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to wireless services other than wireless telephony. The closest applicable definition under the SBA rules is again that of cellular and other wireless telecommunications, under which a service provider is a small entity if it employs no more than 1,500 employees. According to the most recent Commission data, 595 providers classified themselves as paging services, wireless data carriers or other mobile service providers. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireless service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 595 wireless service providers that may be affected.

4. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

12. No new recording, recordkeeping or other compliance requirements are proposed. The proposal, if adopted, would create an exemption from regulation for carriers operating in areas where there are only two competing service providers.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

13. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): "(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."

14. The Commission's action in this FNPRM will benefit certain small entities by exempting them from the pooling requirement under certain circumstances. Specifically, we seek comment on whether carriers, regardless of size, in rate centers with only two service providers should be exempted from thousands-block number pooling. Thus, we seek to further minimize the burden on small carriers.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

15. None.

B. Comment Filing Procedures

16. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before August 20, 2003 and reply comments on or before September 4, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24,121 (1998).

17. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the

comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <get form <your e-mail address>." A sample form and directions will be sent in reply. After filing your comments electronically, please notify Sheryl Todd at *stodd@fcc.gov* that comments have been filed.

18. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

19. In addition, one copy of each pleading must be sent to the Commission's duplicating contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; e-mail: *qualexint@aol.com;* facsimile: (202) 863–2898; phone: (202) 863–2893.

20. Comments in this proceeding will be available on ECFS. They will also be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*. Documents may also be purchased from the Commission's duplicating contractor. Alternative formats (computer diskette, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin, of the Consumer and Governmental Affairs Bureau, at (202) 418–7426 (voice) or (202) 418–7365 (TTY), or at *bmillin@fcc.gov*. This Public Notice can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cib/dro*.

III. Ordering Clauses

21. Pursuant to the authority contained in sections 1, 3, 4, 201–205, 251 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201–205, and 251, this Fourth Report and Order is hereby adopted and part 52 of the Commission's rules are amended and adopted as set forth in the Final rule document (Published elsewhere in this issue).

22. Pursuant to the authority contained in sections 1, 2, 3, 4, 251(e), 254(e), and 405 of the Communications Act of 1934, as amended, 47 U.S.C 151, 152, 153, 154, 251(e), 254(e), and 405, and § 1.429 of the Commission's rules, 47 CFR 1.429, the petition for reconsideration filed by AT&T on May 6, 2002 is denied.

23. It is further ordered that, pursuant to the authority contained in Sections 1, 3, 4, 201–205, 251 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201–205, and 251, this FNPRM of proposed rulemaking is hereby adopted.

24. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Fourth Report and Order in CC Docket No. 99–200 and CC Docket No. 95–116, and Further Notice of Proposed Rulemaking in CC Docket No. 99–200, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of Small Business Administration.

List of Subjects in 47 CFR Part 52

Communications common carriers, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–18364 Filed 7–18–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 071003A]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permit (EFP)

AGENCY: Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS).

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP) and the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks (Highly Migratory Species (HMS) FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Regional Administrator proposes to issue EFPs in response to an application submitted by the East Coast Tuna Association (ECTA) that would allow five purse seine vessels to fish for giant Atlantic bluefin tuna (Thunnus thynnus) in NE multispecies year-round Closed Area I, where use of purse seine gear is currently prohibited. The EFP would exempt these vessels from the gear restrictions for the Georges Bank Regulated Mesh Area. The purpose of the study is to collect information regarding bycatch of, and interactions of purse seine gear with, groundfish species, other species, and marine mammals, and to record contact with the ocean bottom or with any Essential Fish Habitat (EFH). The results of this EFP would allow NMFS and the New England Fishery Management Council (Council) to evaluate the feasibility of allowing purse seine gear in Closed Area I as an exempted gear on a permanent basis. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this document must be received on or before August 5, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on EFP Proposal." Comments may also be sent via facsimile (fax) to (978) 281–9135.

Copies of the draft Environmental Assessment (EA) are available from the Northeast Regional Office at the same address.

FOR FURTHER INFORMATION CONTACT: Douglas W. Christel, Fishery Management Specialist, 978–281–9141.

SUPPLEMENTARY INFORMATION:

Background

The Georges Bank and Southern New England (GB/SNE) NE multispecies year-round closed areas were established under the FMP to provide protection to concentrations of regulated multispecies--particularly cod, haddock, and yellowtail flounder. Consequently, all fishing in these year-round closed areas was prohibited, with a few exceptions. The only exceptions allowing access to the closed areas were fishing activities known to have a very low incidence of NE multispecies bycatch. For example, pelagic midwater trawl gear was determined to have a negligible catch of NE regulated multispecies because the gear fishes well off the ocean floor. As a result, it is an allowed gear in the GB/SNE NE multispecies closed areas.

Purse seine gear is typically used to target pelagic species such as herring, mackerel, and tuna that are concentrated at or near the surface of the ocean. This type of gear is not designed or intended to fish for species at or near the ocean floor, and is typically considered to have very little interaction with bottom-dwelling species such as groundfish.

Observer data from the 1996 tuna purse seine fishery, the last year the fishery carried full-time observers, documented a small catch of NE regulated groundfish, other demersal species, and bottom debris (i.e., sponges and empty shells) in 20 out of 39 observed sets. Out of these 20 sets, only 4 occurred inside Closed Area I, in depths ranging from 28 to 35 fathoms (fm) (51 - 64 meters (m)). In 2000, EFPs were issued to four purse seine vessels to collect information on the interaction between purse seine gear and demersal species and their habitat, specifically in Closed Area I. Data from the five observed trips in Closed Area I from the 2000 tuna purse seine experimental fishery did not show any bycatch of demersal species. These sets occurred in depths ranging from 55 to 86 fm (100 - 157 m). In 2001, EFPs were issued to all five vessels authorized to fish for bluefin tuna with purse seine gear. During this experiment, four trips were made into Closed Area I. On a single trip, one of the participating vessels made three sets inside Closed Area I in depths ranging from 40 to 60 fm (73 - 110 m). Although one basking shark was caught and later released alive, no other interactions with non-target or protected species and no bycatch of NE regulated multispecies occurred during the 2001 experimental fishery. During the 2002 experimental fishery, four of the five purse seine boats issued EFPs made 32 sets in Closed Area I. There was no bycatch of demersal finfish, no interaction with the bottom, and no interaction with either marine mammals or sharks.

A fourth experimental fishery has been requested by ECTA in order to ascertain, definitively, whether there will be any significant interactions between purse seine gear and NE multispecies and EFH. The Council is considering an exemption for tuna purse seine gear within all groundfish closed areas as part of Amendment 13 to the FMP.

Proposed EFP

The proposed EFP would exempt five purse seine vessels fishing for giant Atlantic bluefin tuna under 50 CFR part 635 from the gear restrictions of Closed Area I, as described at 50 CFR 648.81(a). Similar to the 2000, 2001, and 2002 purse seine experimental fisheries in Closed Area I, no more than five vessels would be authorized to participate.

The applicant has requested that the experimental fishery begin on July 15, 2003, and continue through the end of the calendar year on December 31, 2003. However, because of the timing of the application and the length of time required to fully review the application, this EFP, if approved, would be issued as soon as possible, but necessarily after the requested July 15, 2003, date.

The tuna purse seine fishing season is not scheduled to begin until August 15, 2003. However, NMFS is reviewing another request by the ECTA to issue an EFP that would start the tuna purse seine fishing season on July 15, 2003, instead of August 15, 2003. Therefore, the exempted fishery that would allow tuna purse seine vessels into Closed Area I may begin prior to August 15, 2003, contingent upon the approval of the EFP to begin the purse seine fishing season earlier. The EFP would continue in effect until the five vessels have achieved their individual fishing quotas, or the end of the 2003 calendar year, whichever occurs first. Although these individual quotas may be taken prior to December 31, they are typically taken by the middle of October. Because the bluefin tuna fishery takes place throughout the waters off New England, and the concentrations of fish often move between areas, it is likely that the fishery would take place within Closed Area I for only a few weeks, at the most.

Vessel captains would be required to record information on bottom depth, depth of net, mesh size used, location of set, information on any bycatch species, any interactions between the net and the bottom, and any incidental take of marine mammals or protected species. Any NE multispecies that are captured during fishing activities would be required to be discarded after measurement.

EAs that analyzed the impacts of the experimental tuna purse seine fishery on the human environment were prepared for the 2000 and 2001 experimental fisheries. A supplement to the 2001 EA was prepared for the 2002 EFP. These documents concluded that the activities that were conducted under the EFP are consistent with the goals and objectives of the FMP, are consistent with the HMS FMP, and will have no significant environmental impacts. The EAs also considered the impacts of the EFP activities on EFH, marine mammals, and protected species and found that the proposed exempted tuna purse seine fishery would have no significant impact on EFH, marine mammals, or protected species. An EA was prepared for the 2003 experimental fishery, which incorporates the results of the 2001 and 2002 exempted fisheries, addresses the cumulative impacts of the proposed 2003 exempted fishery, and recommends a finding of no significant impact.

NOAA Fisheries believes that one additional EFP will provide the necessary data to determine conclusively that there is minimal interaction between purse seine gear and NE multispecies and EFH. The Regional Administrator, therefore, has made a preliminary determination to issue an Exempted Fishing Permit to ECTA.

If approved, EFPs would be issued to the five participating vessels to exempt them from the restrictions of Closed Area I of the FMP.

Based on the results of this EFP, this action may lead to further rulemaking.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 15, 2003.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–18388 Filed 7–18–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 030714172–3172–01; I.D. 063003A]

RIN 0648–AR33

Atlantic Striped Bass Conservation Act; Atlantic Striped Bass Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance Notice of Proposed Rulemaking (ANPR); request for comments.

SUMMARY: NMFS announces that it is considering potential revisions to the Federal Atlantic striped bass regulations for the U.S. Exclusive Economic Zone (EEZ) in response to recommendations from the Atlantic States Marine Fisheries Commission (Commission) to the Secretary of Commerce (Secretary). The Commission recommended that the Secretary remove the moratorium on the harvest of Atlantic striped bass in the EEZ after a 13–year closure; implement a 28–inch (71.1–cm) minimum size limit for the recreational and commercial Atlantic striped bass fisheries in the EEZ; and allow states the ability to adopt more restrictive rules for fishermen and vessels licensed in their jurisdiction. NMFS is soliciting comments with this notice regarding possible management measures and issues that NMFS should consider relative to these recommendations.

DATES: Written comments must be received at the appropriate address or facsimile (fax) number (see **ADDRESSES**) no later than 5 p.m. Eastern Standard Time on or before August 20, 2003.

ADDRESSES: Written comments must be sent to: Anne Lange, Chief, State-Federal Fisheries Division, Office of Sustainable Fisheries, NMFS, 1315 East West Highway, Room 13317, Silver Spring, MD 20910. Comments may also be sent via fax to (301) 713–0596. Comments submitted via e-mail or Internet will not be accepted.

FOR FURTHER INFORMATION CONTACT: Tom Meyer, Fishery Management Biologist, (301) 713–2334, fax (301) 713–0596.

SUPPLEMENTARY INFORMATION:

Background

This ANPR is promulgated under the Atlantic Striped Bass Conservation Act (Act), Public Law 100–589, reproduced at 16 U.S.C. 1851 note. Section 9 of the Act requires the Secretary to promulgate regulations governing fishing for Atlantic striped bass in the EEZ that the Secretary determines: (1) are consistent with the national standards in Section 301 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1851); (2) are compatible with the fishery management plan for managing Atlantic striped bass and each Federal moratorium in effect on fishing for Atlantic striped bass within the coastal waters of a coastal state; (3) ensure the effectiveness of State regulations on fishing for Atlantic striped bass within the coastal waters of a coastal state; and (4) are sufficient to assure the long-term conservation of Atlantic striped bass populations. In developing the regulations, the Secretary is to consult with the Commission, the appropriate Regional Fishery Management Councils (Councils), and each affected Federal, state and local government entity.

Atlantic Striped Bass management is based on the Commission's Atlantic Striped Bass Interstate Fishery Management Plan (ISFMP), first adopted in 1981. From 1981 - 1994, four ISFMP Amendments were developed that provided a series of management measures that led to the rebuilding of the stocks. In 1995, the Commission declared the Atlantic striped bass population fully restored and implemented Amendment 5 to the ISFMP to perpetuate the stock so as to allow a commercial and recreational harvest consistent with the long-term maintenance of the striped bass stock. Since then the population has expanded to record levels of abundance. To maintain this recovered population, the Commission approved Amendment 6 to the ISFMP (Amendment 6) in February 2003 (copies of Amendment 6 are available via the Commission's website at www.asmfc.org). The Commission believes that the measures contained in Amendment 6 are necessary to prevent the overfishing of the Atlantic striped bass resource while allowing growth in both the commercial and recreational fishery. Development of Amendment 6 took almost four years and involved extensive input from technical and industry advisors, and provided numerous opportunities for the public to comment on the future management of the species.

Amendment 6 incorporates results of the most recent Atlantic striped bass stock assessment, developed by the Atlantic Coast States, the Commission, NMFS, and the U.S. Fish and Wildlife Service (see section 1.2.2 of Amendment 6). In summary, the 2001 stock assessment concluded that the overall abundance of the stock is very high and fishing mortality remains below the target rate. The stock's abundance increased steadily between 1982 and 1997 and since then has remained stable. The fishing mortality rate increased steadily until 1999, but decreased slightly in 2000. Amendment 6 also includes recommendations to the Secretary on the development of complementary measures in the EEZ. Management of Atlantic striped bass in the EEZ was one of the issues that was considered throughout development of Amendment 6.

Recommendation to the Secretary

On April 24, 2003, the Secretary received a letter from the Commission with the following three recommendations for implementation of regulations in the EEZ: (1) Remove the moratorium on the harvest of Atlantic striped bass in the EEZ; (2) implement a 28–inch (71.1 cm) minimum size limit for recreational and commercial Atlantic striped bass fisheries in the EEZ; and (3) allow states the ability to adopt more restrictive rules for fishermen and vessels licensed in their jurisdictions.

In support of its request, the Commission provided a number of reasons to justify opening the EEZ to striped bass fishing. These reasons include:

(1) In 1995, due in part to a closure of the EEZ in 1990 to striped bass harvest, the population of this species was declared fully restored by the Commission. The purpose of closing the EEZ was to protect strong year classes entering the population and to promote rebuilding of the overfished population.

(2) The commercial harvest is controlled by hard quotas; when they are reached the fishery is closed; and overages are taken out of next year's quotas. The Commercial quota will be landed regardless of whether or not the EEZ is opened.

(3) Currently, recreational and commercial catches are occurring in the EEZ and these fish are required to be discarded. Opening the EEZ will convert discarded bycatch of striped bass to landings.

(4) Because of management measures implemented since 1990, the striped bass population has recovered to a point where further examination of whether this fishery should occur in the EEZ is appropriate. There are expectations among a number of fishing industry stakeholders that their past sacrifices would result in future opportunities to harvest striped bass, and therefore, there are potential credibility issues associated with keeping the EEZ closed, especially in light of the current status of the Atlantic striped bass stock.

(5) The recommendation to open the EEZ is part of Amendment 6 which incorporates new management standards to ensure stock conservation including targets and thresholds for both mortality and spawning stock biomass. Fishing mortality is currently below the target level, and spawning stock biomass is 1.5 times the target level.

(6) Amendment 6 includes monitoring requirements and triggers that will allow the Commission to respond quickly to increased mortality.

(7) The bulk of the public comment (greater than 75 percent) received in opposition cited expansion of the commercial fishery as rationale not to open the EEZ. The Commission believes the rationale is incorrect because the commercial fishery is controlled by a hard quota.

The Commission stated that its Atlantic Striped Bass Technical Committee would monitor annually the Atlantic striped bass population, and, if at some point in the future the Commission determines that the Atlantic striped bass population is overfished or that overfishing is occurring, it may recommend further management measures for the EEZ.

NMFS is considering proposed rulemaking to revise the Federal Atlantic striped bass regulations to be compatible with Amendment 6 and is seeking comments on implementation of the Commission's recommendations in the EEZ. After review of comments received from this notice, NMFS will decide whether to initiate a lengthy review and decision-making process, which would include preparation of either an Environmental Impact Statement or an Environmental Assessment, and the development of management measures to revise current Federal regulations for Atlantic striped bass in the EEZ.

Authority: 16 U.S.C. 1851 note.

Dated: July 15, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–18491 Filed 7–18–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 139
Monday, July 21, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of the Research, Education, and Economics Task Force Meeting

AGENCY: Research, Education, and Economics; USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces a meeting of the Research, Education, and Economics Task Force.

DATES: The Research, Education, and Economics Task Force will meet on July 31, 2003.

The public may file written comments before or up to two weeks after the meeting with the contact person.

ADDRESSES: On July 31, the meeting will take place at the Phoenix Park Hotel (TENTATIVE), 20 North Capitol Street, NW., Washington, DC 20001.

Written comments from the public may be sent to the contact person identified in this notice at: The Research, Education, and Economics Task Force; Office of the Under Secretary, Room 214–W, Jamie L. Whitten Building, United States Department of Agriculture, 1400 Independence Ave., SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Kathryn Boots, Executive Director, Research, Education, and Economics Task Force; telephone: (202) 690–0826; fax: (202) 690–2842; or email: *katie.boots@usda.gov*.

SUPPLEMENTARY INFORMATION: On Thursday, July 31, 2003, the Research, Education, and Economics Task Force will hold a general meeting at the Phoenix Park Hotel (TENTATIVE). The Task Force will begin its evaluation of the merits of establishing one or more National Institutes focused on disciplines important to the progress of food and Agricultural science. In the morning there will be welcoming remarks made by the Chairman of the Task Force, Dr. William Danforth, Chancellor Emeritus, Vice Chairman, Board of Trustees, Washington University in St. Louis, as well as the USDA Under Secretary for Research, Education, and Economics (REE), Dr. Joseph J. Jen. Welcoming remarks will be followed by a presentation by Dr. Mary Clutter, Assistant Director, Directorate for Biological Sciences, National Science Foundation (NSF), about how research is conducted at NSF. Dr. Anthony Fauci, Director of the National Institute of Allergy and Infections Diseases, National Institutes of Health (NIH), will follow Dr. Clutter's presentation, with a presentation about how research is conducted at NIH. Following Dr. Fauci's presentation, a representative from each of the four REE Agencies, including the Agricultural Research Service (ARS), the Economic Research Service (ERS), the Cooperative State Research, Education, and Extension Service (CSREES), and the National Agricultural Statistics Service (NASS), will give a brief presentation of how research is conducted in each agency. There will be a working lunch, followed by an afternoon session consisting of a general discussion among Task Force members where they will begin their evaluation of the merits of establishing one or more National Institutes focused on disciplines important to the progress of food and Agricultural science. The Task Force Meeting will adjourn on Thursday, July 31, 2003 around 4 p.m. This meeting is open to the public. Due to a delay, this notice could not be published at least 15 days prior to the meeting date. The meeting will be held as scheduled because of the significant sacrifice rescheduling would require of Task Force members who have adjusted their schedules to accommodate the proposed meeting date.

Written comments for the public record will be welcomed before and up to two weeks following the Task Force meeting (by close of business Thursday, August 14, 2003). All statements will become part of the official record of the Research, Education, and Economics Task Force and will be kept on file for public review in the Office of the Under Secretary for Research, Education, and Economics.

Dated Washington, DC, this 15 day of July 2003.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. 03–18446 Filed 7–18–03; 8:45 am]

BILLING CODE 3401–03–P

DEPARTMENT OF AGRICULTURE

Economic Research Service

Notice of Intent To Seek Approval to Collect Information

AGENCY: Economic Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the Economic Research Service's (ERS) intention to request approval for a new information collection from School Food Authorities, public primary and secondary school administrators, students, and parents of students. The study will collect information on school meal program operations, costs, and outcomes, and on the characteristics of participating schools and both participating and non-participating students.

DATES: Written comments on this notice must be received by September 24, 2003 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Requests for additional information or to comment regarding this notice should be directed to Joanne Guthrie, Food Assistance and Nutrition Research Program, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M Street, NW., Room N2154, Washington, DC 20036–5831; Telephone: 202–694–5373. Submit electronic comments to *jguthrie@ers.usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: Integrated Study of School Meal Costs and Outcomes.

OMB Number: Not yet assigned.

Expiration Date: Three years from date of issuance.

Type of Request: Approval to collect information from School Food Authorities (SFAs), public primary and secondary school administrators, students, and parents of students.

Abstract: USDA's Economic Research Service (ERS) has the responsibility to provide social and economic intelligence on consumer, food marketing, and rural issues, including food security status of the poor; domestic food assistance programs; low-income assistance programs; economic food consumption determinations and trends; consumer demand for food quality, safety, and nutrition; food market competition and coordination; and food safety regulation. In carrying out this overall mission, ERS seeks approval of information gathering activities to conduct an integrated study of school meal costs and outcomes for the National School Lunch Program (NSLP) and School Breakfast Program (SBP).

The integrated study will collect data in five domains: policies and practices of schools and School Food Authorities (SFAs) affecting school meal programs; characteristics of USDA-reimbursable meals as offered, served, and consumed; costs and revenues of providing school meals; student participation and satisfaction; and students' dietary intakes and other student/family outcomes. Data will also be collected on the demographic characteristics of participating SFAs and schools, and on the characteristics of participating and non-participating students and their families.

This study will update national studies of program costs and outcomes that were conducted prior to the School Meal Initiative (SMI) of 1995. It will extend research findings from the School Nutrition Dietary Assessment Study II and the School Meals Initiative Implementation Study and explore, in a nationally representative study, the implications of their findings for program costs and outcomes. In addition, because of its integrated design and data collection, it will allow an unprecedented level of analysis of the relationship among key operating characteristics (such as menu planning systems), costs, and students' participation, consumption and quality of diet.

The sample frame for the study will include public school districts in the 48 contiguous States, the District of Columbia, and, for data to be collected by mail, Alaska and Hawaii. At all levels of sampling for the study, school districts will be elected randomly with probability proportional to size, and the sample will be nationally representative. A preliminary survey will collect data on school district characteristics, menu planning method, program operations, and foodservice costs and revenues. Respondents to the preliminary survey will comprise the sampling frame for the "main study." A multi-level design will be implemented to avoid overburdened individual SFAs with excessive data collection requirement. All SFAs and schools sampled for the main study (Level 1) will be asked to provide data on school meal program operations and information on reimbursable meals offered and served during a randomly assigned school week. A subset of SFAs and schools (Level 2) will be asked to provide detailed information on reported and unreported food service costs. Student and parent interviews will be conducted in a separate subset of SFAs and schools (Level 3) to obtain information on students' dietary intakes and other student/family outcomes.

The study and its data collection methodologies have been designed to minimize respondent between wherever possible without compromising data quality. Responses to all surveys will be voluntary and confidential. to ensure confidentiality, data will be reported only in tabular form, with analysis cells large to prevent identification of individual agencies, schools, or persons. The data will not be used to evaluate individual schools, school districts, or States. All respondents will be notified to these confidentiality assurances by letter (SFA and school respondents) or Informed Consent/Assent Forms (parents and children).

Estimate of Burden: For the preliminary mail survey, burden for the SFA Directors is estimated to be 90 minutes per response. (All burden estimates include time to prepare for and complete surveys of interview.) For all Level 1 sites, the burden estimates per response are as follows: SFA Director mail survey, 77 minutes; Kitchen Manager mail survey, 20 minutes; School Principal mail survey, 25 minutes. For the Level 1-only and Level 3 SFAs, the burden estimates for the self-administered, mail-based Menu Survey are: 330 minutes per SFA director, and 510 minutes per Kitchen Manager. For Level 1 in-person cost interviews, the burden estimates are as follows: SFA Director, 165 minutes; SFA Business Manager, 60 minutes; Kitchen Manager, 30 minutes; School Principal Interview, 55 minutes. For the Level 1 self-administered, mail-based Menu Survey, the burden estimates are: 330 minutes per SFA director and 690 minute per Kitchen Manager. The burden of Level 3 in-person CAPI interviews with students is 40 minutes for younger children and 55 minutes for youth. The burden for in-person CAPI interviews with parents of younger children (interview plus assisting in the child's 24-hour dietary recall) is estimated at 50 minutes; the CATI telephone interview with parents of youth will require 20 minutes. The burden for in-person CAPI second recalls is 25 minutes in school and 30 minutes at home for younger children, and 35 minutes for youth. Parents of younger children will spend 30 minutes on in-person CAPI secondary recall interviews.

Estimated Number of Respondents: SFA directors for Preliminary SFA survey, 2,079; for Level 1 questionnaire, 672; for Level 1 and 3 menu survey, 280; for cost interview and Level 2 menu survey, 392.

Kitchen Managers: For Level 1 questionnaire, 2,016; for Level 1 and 3 menu survey, 840; for cost interview and Level 2 menu survey, 1,176.

School Principals: For Level questionnaire: 2,016; for cost interview, 1,176, SFA Business Managers, 392; Children and Youth, 2,812; Parents, 2,250.

Estimated Total Annual Burden on Respondents: Total of 37,140 hours, including 8,751 hours for SFA Directors; 21,924 hours for Kitchen Manager; 1,918 hours for Principals; 392 hours for SFA Business Managers; 716 hours for younger children; 2,393 hours for youth; and 1,046 hours for parents.

Comments: Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate, automated, electronic, mechanical or other technology. Comments should be sent to the address in the preamble. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

Dated: June 30, 2003.

Susan Offutt,

Administrator, Economic Research Service, USDA.

[FR Doc. 03–18445 Filed 7–18–03; 8:45 am]

BILLING CODE 3410–78–M

DEPARTMENT OF AGRICULTURE

Forest Service

Shasta County Resource Advisory Committee (RAC)

AGENCY: USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: The Shasta County Resource Advisory Committee (RAC) will meet on July 30, 2003, in Anderson, CA. The purpose of the meeting will be to review project proposals, receive reports from working committees, and discuss the future of RAC appointments.

DATES: The meeting will be held on July 30, 2003, from 8 a.m. to noon.

ADDRESSES: The meeting will be held at Sierra Pacific Industries, 19794 Riverside Avenue, Anderson, CA—off Oxyoke Road between Interstate-5 and Highway 273.

FOR FURTHER INFORMATION CONTACT: Rebeca Franco, coordinator, USDA Forest Service, (530) 242–2322. E-mail: *rfranco@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Discussion is limited to Forest Service staff and committee members. However, time will be provided for public input, giving individuals the opportunity to address the committee.

Dated: July 14, 2003.

J. Sharon Heywood,

Forest Supervisor.

[FR Doc. 03–18416 Filed 7–18–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Current Population Survey, October 2003 School Enrollment and Computer Use Supplement.

Form Number(s): None. All interviewing is done in person or over the telephone using laptop computers and an automated survey instrument.

OMB Approval Number: 0607–0464.

Type of Review: Regular submission.

Burden Hours: 11,400.

Number of Respondents: 57,000.

Average Hours Per Response: 12 minutes.

Needs and Uses: The purpose of this request for review is to obtain clearance for the supplemental inquiry concerning school enrollment and computer use to be conducted in conjunction with the October 2003 Current Population Survey (CPS). The school enrollment supplement is the only source of National data on the age distribution and family characteristics of college students and the only source of demographic data on pre-primary school enrollment. As part of the federal government's efforts to collect data and provide timely information to local governments for policy-making decisions, the survey provides National trends in enrollment and progress in school. The Computer Use Supplement will provide a source of National and state level data on the demographic, social, and economic characteristics of Internet users and non-users. The development of statistical profiles of disadvantaged groups will permit public-private partnerships to target assistance to those that are most in need. It will provide information on where users access the Internet (at home, work, school, or other facility), the features used, and the reasons for non-use of the Internet. The data from this supplement will provide policy-relevant information on the U.S. population's access to, and use of, these technologies. Such information is essential for tracking the rapidly changing trends, understanding the nature of the changes, and planning policies and programs that will help make information technologies even more accessible across demographic groups and geographic regions.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182 and Title 29 U.S.C., Sections 1–9.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: July 15, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–18408 Filed 7–18–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Current Industrial Reports (Wave I Mandatory & Voluntary Surveys).

Form Number(s): MQ325B, MQ327D, MA311D, MA325F, MA327C, MA331A, MA331B, MA331E, MA332Q, MA333A, MA333M, MA333N, MA334B, MA335A, MA335F, MA335H and MA335K.

OMB Approval Number: 0607–0392.

Type of Request: Regular submission.

Burden Hours: 9,519.

Number of Respondents: 9,309.

Average Hours Per Response: 54 minutes.

Needs and Uses: The Census Bureau conducts a series of monthly, quarterly, and annual surveys as part of the Current Industrial Reports (CIR) program. The CIR program focuses primarily on the quantity and value of shipments of particular products and occasionally with data on production and inventories; unfilled orders, receipts, stocks and consumption; and comparative data on domestic production, exports, and imports of the products they cover.

Primary users of these data are government agencies, business firms, trade associations, and private research and consulting organizations. The Federal Reserve Board uses CIR data in its monthly index of industrial production as well as its annual revision to the index. The Bureau of Economic Analysis (BEA) and the Bureau of Labor Statistics (BLS) use the CIR data in the estimate of components of gross domestic product (GDP) and the estimate of output for productivity analysis, respectively. Many government agencies, such as the International Trade Commission, Department of Agriculture, Food and Drug Administration, Department of Energy, Federal Aviation Administration, BEA, and International Trade Administration use the data for industrial analysis, projections, and monitoring import penetration. Private business firms and organizations use the data for trend projections, market analysis, product planning, and other economic and business-oriented analysis.

Due to the large number of surveys in the CIR program, for clearance purposes, the CIR surveys are divided into "waves." There are three waves that include the mandatory and voluntary surveys. Mandatory and voluntary surveys historically have been divided into separate clearance requests, making six separate clearances. Each year, one wave (or two clearance requests) is submitted for OMB review. We are now combining the mandatory and voluntary surveys of each wave into one clearance request, reducing the total number of clearance requests from six to three, and the number of OMB submissions annually from two to one. This year we are submitting the mandatory and voluntary surveys contained in Wave I for OMB review.

Also, in this request, we are converting the MA311D, "Confectionery" and MA333N, "Fluid Power Products" from mandatory collections to voluntary. Due to a lack of funding, we are discontinuing M336L, "Truck Trailers" and MQ332E, "Plumbing Fixtures."

Affected Public: Business or other for-profit organizations.

Frequency: Wave I contains surveys that are conducted quarterly and annually.

Respondent's Obligation: Wave I contains both mandatory and voluntary surveys.

Legal Authority: Title 13 U.S.C., Sections 182, 224, and 225.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: July 15, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–18409 Filed 7–18–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Survey of Income and Program Participation (SIPP) Wave 1 of the 2004 Panel

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 19, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Judith H. Eargle, U.S. Census Bureau, FOB 3, Room 3387, Washington, DC 20233–8400, (301) 763–3819.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the SIPP which is a household-based survey designed as a continuous series of national panels. New panels are introduced every few years with each panel usually having durations of one to four years. Respondents are interviewed at 4-month intervals or "waves" over the life of the panel. The survey is molded around a central "core" of labor force and income questions that remain fixed throughout the life of the panel. The core is supplemented with questions designed to address specific needs, such as obtaining information on household members participation in government programs as well as prior labor force patterns of household members. These supplemental questions are included with the core and are referred to as "topical modules."

The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic-policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983 permitting levels of economic well-being and changes in these levels to be measured over time.

The 2004 panel is currently scheduled for 4 years and will include 12 waves of interviewing beginning February 2004. Approximately 62,000 households will be selected for the 2004 panel, of which, 46,000 are expected to be interviewed. We estimate that each household will contain 2.1 people, yielding 96,600 interviews in Wave 1 and subsequent waves. Interviews take 30 minutes on average. Two waves of interviewing will occur in the 2004 SIPP Panel during FY 2004. The total annual burden for 2004 Panel SIPP interviews would be 96,600 hours in FY 2004.

The topical modules for the 2004 Panel Wave 1 collect information about:

- Recipiency History
- Employment History

Wave 1 interviews will be conducted from February 2004 through May 2004.

A 10-minute reinterview of 3,100 people is conducted at each wave to ensure accuracy of responses. Reinterviews would require an additional 1,035 burden hours in FY 2004.

II. Method of Collection

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years with each panel having durations of 1 to 4 years. All household members 15 years old or over are interviewed using regular proxy-respondent rules. During the 2004 panel, respondents are interviewed a total of 12 times (12 waves) at 4-month intervals making the SIPP a longitudinal survey. Sample people (all household

members present at the time of the first interview) who move within the country and reasonably close to a SIPP primary sampling unit will be followed and interviewed at their new address. Individuals 15 years old or older who enter the household after Wave 1 will be interviewed; however, if these individuals move, they are not followed unless they happen to move along with a Wave 1 sample individual.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 96,600 people per wave.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 97,635.

Estimated Annual Cost to the Public: The only cost to respondents is their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for the Office of Management and Budget approval of this information collection. They also will become a matter of public record.

Dated: July 15, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–18405 Filed 7–18–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Quarterly Services Survey

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 19, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to David Lassman, U.S. Census Bureau, Room 2744, FOB 3, Washington, DC 20233–6500, and (301) 763–7202.

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau proposes a new quarterly survey of service industry activity called the Quarterly Services Survey (QSS). The QSS will begin a new economic indicator series which will produce, for selected service industries, quarterly estimates of total operating revenue and the percentage of revenue by class of customer. In addition, we also plan to collect total operating expenses from tax-exempt firms in industries that have a large not-for-profit component. Selected service industries include information, professional scientific and technical services, administrative and support and waste management and remediation services. We plan to expand the QSS to include hospitals and nursing and residential care facilities beginning the first quarter 2005.

We will mail the survey at the end of March 2004 and produce estimates for the fourth quarter 2003 and first quarter 2004. The first public data release will be in September 2004 covering the fourth quarter of 2003 and the first two quarters of 2004. We will release estimates no later than 90 days after the end of the quarter for each quarter thereafter. Our eventual goal, however, will be to reduce this period to 75 days after the end of the calendar quarter.

The data will be collected from all of the largest firms and from a sample of small- and medium-sized businesses selected using a stratified sampling procedure. Each quarter the sample will be updated to reflect the addition of new business births and firms and organizations that have gone out of business.

The Bureau of Economic Analysis will use data gathered in this survey to significantly improve its quarterly Gross Domestic Product (GDP) and GDP by industry estimates. The data will provide the Federal Reserve Board and Council of Economic Advisors with timely information to assess current economic performance. Other government and private stakeholders will also benefit from a better understanding of important cyclical components of our economy.

II. Method of Collection

We will collect this information by mail, fax, and a telephone follow-up.

III. Data

OMB Number: None.

Form Number(s): QS–1(A), QS–1(E), QS–2(A), QS–2(E), QS–3(A), QS–3(E).

Type of Review: Regular submission.

Affected Public: Businesses or other for-profit organizations; not-for-profit institutions, and government hospitals.

Estimated Number of Respondents: 6,000.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Burden Hours: 6,000 hours.

Estimated Total Annual Cost: The cost to the respondents for fiscal year 2004 is estimated to be $130,920 based on the median hourly salary of $21.82 for accountants and auditors. (Occupational Employment Statistics-Bureau of Labor Statistics "2001 National Occupational Employment and Wage Estimates") *http://www.bls.gov/oes/2001/oes132022.htm.*

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 15, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–18406 Filed 7–18–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Coverage Research Follow-up

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(C)(2)(A)).

DATES: Written comments must be submitted on or before September 19, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to Frank Vitrano, U.S. Census Bureau, Building 2, Room 2012, Washington, DC 20233–9200, 301–763–3961.

SUPPLEMENTARY INFORMATION:

I. Abstract

Improved coverage (*See* Definition of Terms) is one of the four major goals for Census 2010. As part of the effort to meet this goal, the Census Bureau is planning a new operation as part of the 2004 Census Test that will be conducted in two sites—Queens, NY, and three rural counties in Georgia (Colquitt, Tift, and Thomas).

The Coverage Research Follow-up Operation (CRFU), which is intended to evaluate the effectiveness of new procedures for improving coverage and reducing duplication, will begin after data capture for the 2004 Census Test has begun. CRFU will gather information regarding the presentation of the residence rules instructions (*See* Definition of Terms) and the usefulness of the coverage questions (*See* Definition of Terms) as presented on the 2004 Census Test questionnaire. In addition, the CRFU results will provide the Census Bureau with the types of possible person duplicates (*e.g.*, cases in which people have the same name but different addresses) that should be contacted in order to resolve residence status. Data from the CRFU operation are intended to help assure that the residence rules instructions and coverage questions are simple and easy to understand.

Approximately 25,000 households will be included in the universe for this operation. Approximately 10,000 households will be chosen based on responses to the 2004 Census Test coverage questions. These households will be drawn both from 2004 Census Test mail returns and the Non-response Follow-up (NRFU—*See Definition of Terms*) returns. In addition, about 15,000 households will be followed-up as a result of computer matching that identifies them as potential duplicates.

II. Method of Collection

After the 2004 Census Test data collection, the Census Bureau plans to evaluate the effectiveness of new procedures for improving coverage and reducing duplication. The two-part CRFU operation will attempt to:

1. Identify potential person and whole-household duplicates (*See Definition of Terms*) from data collected using the 2004 Census questionnaire,
2. Identify coverage problems from the sample of respondents who receive the follow-up questionnaire, and
3. Identify the reasons duplication and coverage problems occurred in the 2004 Census Test.

The Unduplication segment of CRFU will first computer match census data capture files against themselves in order to find potential duplicates. Some of these cases, which are either whole household or partial household duplicates, will be followed-up in the field. The whole household follow-up will be conducted by personal visits since many of these cases are expected to be the result of geocoding problems or form-delivery mix-ups.

Partial household cases will first be interviewed by telephone, and the Census Bureau will use a personal visit to attempt to resolve the "unable to contact" cases. The goal for the partial household cases is to attempt to determine which types can be easily and effectively solved using follow-up techniques.

The follow-up interview will be used to determine where the person or household should be counted using Census bureau residence rules guidelines.

The Coverage section of CRFU consists of a sample of the households that responded "yes" to the undercount or overcount questions (*See Definition of Terms*) as well as a sample of the households that answer "no" to the coverage questions. These households will be contacted either by telephone or personal visit, and the enumerator will conduct an interview using the Coverage Research Followup Questionnaire. The items included in this questionnaire will be probes that are intended to indicate whether respondents understood and properly applied the residence rules instructions included on the 2004 Census Test form (*i.e.*, whether they included all the appropriate persons on their form, and excluded persons who should have been counted elsewhere).

The follow-up questionnaire section of the test will be conducted via telephone or by personal visit beginning in mid-June. Households that refuse to give information over the telephone and households that telephone interviewers are not able to reach will be selected for personal visits. Data gathered as a result of these interviews will be processed at the National Processing Center in Jeffersonville, Indiana.

Definition of Terms

Coverage—How well the Census Bureau counts people and housing units in the census.

Coverage Questions (2004 Census Test)—The undercount coverage question, which is intended to identify people who may have been missed, will ask the respondent if there is anyone other than the individuals already listed who sometimes lives or stays at this address. The overcount coverage question, which is intended to identify people who may have been misreported, asks whether individuals sometimes live or stay at some other place.

Non-response Follow-up (NRFU)—An operation developed to obtain completed questionnaires from housing units for which the Census Bureau did not receive a completed questionnaire in mail census areas (mailout/mailback, update/leave). Enumerators visit addresses to collect the information.

Residence Rules—Rules that respondents and the Census Bureau use to determine where people should be counted. They are meant to insure that everyone is counted once and in the right place. The 2004 Census Test questionnaire will include re-worded instructions to help respondents apply these rules.

Whole-household Duplicates—Everyone living at a specific address is counted more than once.

III. Data

OMB Number: None.

Form Numbers: None.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 25,000.

Estimated Time Per Response: 18 minutes.

Estimated Total Annual Burden Hours: 7,500.

Estimated Total Annual Cost to the Public: There is no cost to respondents except for their time to respond.

Respondent Obligation: Mandatory.

Legal Authority: Title 13 of the United States Code, Sections 141 and 193.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of collected; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 15, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–18407 Filed 7–18–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Processing Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Processing Equipment Technical Advisory Committee will meet on August 7, 2003, 9 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials processing equipment and related technology.

Agenda

Public Session

1. Opening remarks and introductions.
2. Approval of minutes from previous meeting.
3. Presentation of papers or comments by the public.
4. Review of MPETAC 5-axis proposal.
5. Update on jig grinder controls.

Closed Session

6. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A limited number of seats will be available for the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials, the Committee suggests that presenters forward the materials prior to the meeting date to the following address: Ms. Lee Ann Carpenter, OSIES/EA/BIS MS 3876, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on November 30, 2001, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

For more information, contact Lee Ann Carpenter on 202–482–2583.

Dated: July 14, 2003.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 03–18425 Filed 7–18–03; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–827]

Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: : Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On January 13, 2003, the Department of Commerce (the Department) published the preliminary results and rescission in part of the administrative review of the antidumping duty order on pencils from the People's Republic of China (PRC). The merchandise covered by this order is certain cased pencils (pencils). The period of review (POR) is December 1, 2000, through November 30, 2001. Based on our analysis of comments received, these final results differ from the preliminary results. For details regarding these changes, see the section of the notice entitled "Changes Since the Preliminary Results." The final results are listed below in the "Final Results of Review" section.

EFFECTIVE DATE: July 21, 2003.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Crystal Crittenden, Office of AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4474 or (202) 482–0989, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 13, 2003, the Department published the preliminary results and rescission in part of the administrative review of the antidumping duty order on pencils from the PRC. *See Certain Cased Pencils from the People's Republic of China; Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 68 FR 1591 (January 13, 2003) (*Preliminary Results*). We invited parties to comment on our preliminary results of review.

Since the publication of the preliminary results, the following events have occurred. During the months of January and February 2003, we conducted verifications of the questionnaire responses of the exporter/manufacturer Tianjin Custom Wood Processing Co., Ltd. (CalCedar-Tianjin),[1] and the exporter Shandong Rongxin Import & Export Co., Ltd. (Rongxin). We also conducted a verification of Kaiyuan Group Corporation's (Kaiyuan) sales records for the purposes of determining whether to rescind this company's review. On May 7, 2003, the Department extended the time limit for completion of the final results until no later than July 12, 2003. *See Certain Cased Pencils from the People's Republic of China: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review*, 68 FR 24434 (May 7, 2003). Interested parties submitted case briefs and rebuttal briefs on June 5 and June 12, 2003, respectively.

The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

Imports covered by this review are shipments of certain cased pencils of any shape or dimension which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.*, with erasers, etc.) in any fashion, and either sharpened or unsharpened. The pencils subject to this order are classified under item number 9609.10.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Specifically excluded from the scope of this order are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, chalks, and pencils produced under U.S. patent number 6,217,242, from paper infused with scents by the means covered in the above-referenced patent, thereby having odors distinct from those that may emanate from pencils lacking the scent infusion.

Although the HTSUS item number is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Partial Rescission

We initiated a review on the following companies: China First Pencil Co. Ltd. (CFP), Orient International Holding Shanghai Foreign Trade Co., Ltd (SFTC), CalCedar-Tianjin, and Kaiyuan[2]. In the *Preliminary Results*, the Department rescinded the review with respect to CFP, SFTC, and preliminarily rescinded the review with respect to Kaiyuan.

Subsequent to our initiation of the review, we learned that Kaiyuan and Rongxin are different companies which should have been listed separately in the initiation notice. Rongxin, which is owned in part by Kaiyuan, was the exporter of subject merchandise during the POR, while Kaiyuan did not purchase, manufacture or sell subject merchandise during the POR. For this reason, we preliminarily rescinded the review with respect to Kaiyuan.

Since the Department's preliminary results of this review, we verified Kaiyuan's sales records and established that this company did not export subject merchandise to the United States during the POR. Therefore, we are rescinding this review with respect to Kaiyuan in these final results.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (*Decision Memorandum*) from Holly A. Kuga, Acting Deputy Assistant Secretary, Import Administration, to Jeffrey A. May, Acting Assistant Secretary for Import Administration, dated July 14, 2003, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Record Unit, room B-099 of the main Department of Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the International Trade Administration's Web site at **www.ia.ita.doc.gov**. The paper copy and the electronic version of the *Decision Memorandum* are identical in content.

Changes Since the Preliminary Results

Based on our findings at verification, and our analysis of comments received, we made adjustments to the factors of production and surrogate values used to calculate margins in the preliminary results. We have also corrected certain programming and clerical errors in our preliminary results, where applicable. These adjustments are listed below and discussed in detail in the *Decision Memorandum*.

The Department has determined that South Korea, Thailand, Indonesia, and India maintain broadly available, non-industry specific export subsidies which may benefit all exporters to all export markets. Therefore, for the final results of this review, where applicable, we eliminated the quantities and values of imports from these countries from the import statistics used to calculate surrogate values. *See Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China*, 67 FR 6482 (February 12, 2002) and *Final Determination of Sales at Less Than Fair Value: Certain Ball Bearings and Parts Thereof From the People's Republic of China*, 68 FR 10685 (March 6, 2003).

CalCedar-Tianjin

We adjusted the surrogate value for Chinese lindenwood slats to reflect the actual volumes of slat grades CalCedar-Tianjin used in production. *See* Factors of Production Valuation Memorandum dated July 14, 2003. We also accounted for yield loss based on CalCedar-Tianjin's actual loss incurred in cedar slat production. *See Decision Memorandum* at Comment 3. We made minor corrections to the company's data based on findings at verification. *See* CalCedar-Tianjin's Calculation Memorandum. We adjusted freight distances for certain material inputs in accordance with Department practice resulting from *Sigma Corp. V. United States*, 117 F.3d 1401 (Fed. Cir 1997). Finally, we made adjustments to the constructed export prices (CEP) to account for CEP profit, imputed credit

[1] Tianjin Custom Wood Processing Co., Ltd. is wholly-owned by California Cedar Products Company (CalCedar). CalCedar is a privately held U.S. company incorporated in the State of California. Hereinafter we have referred to the entity CalCedar, including its subsidiary Tianjin Custom Wood Processing Co., Ltd., as CalCedar-Tianjin.

[2] We initiated the review on Kaiyuan believing that the names Kaiyuan and Rongxin, refer to the same company.

and inventory carrying costs, which were inadvertently omitted from the Department's margin calculation in the *Preliminary Results*. For further details, *see* CalCedar-Tianjin's Calculation Memorandum.

Rongxin

We adjusted the surrogate value for Chinese linden wood slats to account for yield loss based on Rongxin's actual wood loss incurred during pencil production. *See Decision Memorandum* at Comment 3. We made minor corrections to the company's data based on findings at verification. *See* Rongxin's Calculation Memorandum.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondents for use in our final results. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondents.

Final Results of Review

We determine that the following weighted-average percentage margins exist for the period December 1, 2000 through November 30, 2001:

Exporter/Manufacturer	Margin (percent)
CalCedar-Tianjin	0.00
Rongxin	15.76
PRC Wide-Rate	114.90

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of pencils from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be the rates shown above; (2) for previously reviewed or investigated companies not listed above, that have separate rates, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) the cash deposit rate for all other PRC exporters will be 114.90 percent; and 4) the cash deposit rate for non-PRC exporters will be the rate applicable to the PRC supplier of that exporter.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Assessment

The Department will determine, and the U.S. Bureau of Customs and Border Protection (BCBP) will assess, antidumping duties on all entries of subject merchandise in accordance with these final results. For Rongxin, we have calculated exporter-specific duty assessment rates for subject merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales during the POR to the total quantity of sales examined during the POR. We calculated exporter-specific assessment rates because there was no information on the record which identified the importers of record. For CalCedar-Tianjin, we have calculated an importer-specific duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sale to the total reported entered value of the sale. The Department will issue appropriate assessment instructions directly to the BCBP within 15 days of publication of these final results of review.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with section 751(a)(1) and 771(i) of the Act.

Dated: July 14, 2003.

Jeffrey A. May,

Acting Assistant Secretary.

Appendix Issues in Decision Memorandum

Comments

Comment 1: Whether the Department Should Value Black Graphite Cores Using Eximkey Data or Data From the Monthly Statistics of the Foreign Trade of India

Comment 2: Whether the Department Used the Correct Grade of American Basswood Lumber to Value Rongxin's Pencil Slats

Comment 3: Whether the Department Properly Accounted for Wood Loss

Comment 4: Whether the Department Should Base Rongxin's Dumping Margin on Partial Adverse Facts Available

Comment 5: Ministerial Errors

Comment 6: Whether the Department Overstated CalCedar-Tianjin's Freight Costs

[FR Doc. 03–18473 Filed 7–18–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils from the People's Republic of China: Extension of Time Limit for Preliminary Results of New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 21, 2003.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Paul Stolz, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4162 or (202) 482–4474, respectively.

TIME LIMITS:

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930,as amended (the Act) requires the Department of Commerce (the Department) to issue the preliminary results of a new shipper review within 180 days after the date on which the review is initiated. However, if the Department determines the issues are extraordinarily complicated, section 751(a)(2)(B)(iv) of the Act allows the Department to extend the deadline for the preliminary results to up to 300 days after the date on which the review is initiated.

Background

On February 4, 2003, the Department published a notice of initiation of the new shipper antidumping duty order on certain cased pencils from the People's Republic of China, covering the period December 1, 2001, through November 30, 2002. *See Certain Cased Pencils From the People's Republic of China: Initiation of Antidumping New Shipper Review*, 68 FR 5619 (February 4, 2003). The preliminary results are currently due no later than July 27, 2003.

Extension of Time Limit for Preliminary Results of Review

We determine that the issues in this case are extraordinarily complicated. Therefore, the Department is extending the time limit for completion of the preliminary results by 120 days until no later than November 24, 2003. *See* Decision Memorandum from Tom Futtner, Acting Office Director, Group II, Office IV, to Holly A. Kuga, Acting Deputy Assistant Secretary, Import Administration, dated concurrently with this notice, which is on file in the Central Records Unit, Room B-099 of the Department's main building. We intend to issue the final results no later than 90 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(2)(B) of the Act.

Dated: July 15, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 03–18474 Filed 7–18–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Notice of Final Results of Antidumping Duty New Shipper Review: Freshwater Crawfish Tail Meat From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Commerce.

SUMMARY: On February 19, 2003, the Department published the preliminary results of the new shipper review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (68 FR 7976). The review covers one producer/exporter, Weishan Zhenyu Foodstuff Co., Ltd. (Weishan Zhenyu), and exports of the subject merchandise to the United States during the period September 1, 2001 through February 28, 2002.

Based on our analysis of the record, including factual information developed since the preliminary results, the only changes we have made to the margin calculations for Weishan Zhenyu were for the purpose of updating surrogate values to achieve contemporaneity. These changes had no impact on the margin as calculated. See "Final Results of Review" section below.

EFFECTIVE DATE: July 21, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn or Douglas Kirby, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–3964 or (202) 482–3782, respectively.

SUPPLEMENTARY INFORMATION:

Background

We published the preliminary results of this new shipper review on February 19, 2003. See *Notice of Preliminary Results of Antidumping Duty New Shipper Reviews: Freshwater Crawfish Tail Meat From the People's Republic of China*, 68 FR 7976 (*Preliminary Results*). In the preliminary results, the Department did not address whether the sale made by Weishan Zhenyu in this new shipper review was *bona fide*. At the time of the *Preliminary Results*, we noted that the Department had issued a questionnaire to Weishan Zhenyu's importer, but had not yet received the response. Further, we indicated that we would analyze any information provided by the importer of Weishan Zhenyu's new shipper sale for purposes of the final results of this new shipper review. Consequently, we solicited additional information regarding the totality of circumstances surrounding Weishan Zhenyu's sale, including additional details on the price and quantity, and the details surrounding the business relationship between Weishan Zhenyu and its importer. In the *Preliminary Results*, we invited comments from the parties. We received no comments.

Scope of the Antidumping Duty Order

The product covered by this order is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 1605.40.10.10 and 1605.40.10.90, which are the new HTS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by the U.S. Customs Service (as of March 1, 2003, renamed the U.S. Bureau of Customs and Border Protection) in 2000, and HTS items 0306.19.00.10 and 0306.29.00, which are reserved for fish and crustaceans in general. The HTS subheadings are provided for convenience and Customs purposes only. The written description of the scope of this order is dispositive.

Analysis

In the *Preliminary Results*, we invited comments from the parties. We received no comments. However, the Crawfish Processors Alliance, the Louisiana Department of Agriculture and Forestry, and Commissioner Bob Odom (collectively the "Domestic Interested Parties") provided timely factual information to rebut the importer's May 19 questionnaire response. The information provided in the supplemental questionnaire responses and the Domestic Interested Parties' factual submission is addressed in the *Memorandum to the File through Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, Group III: Freshwater Crawfish Tail Meat from the People's Republic of China: Analysis of Weishan Zhenyu's New Shipper Transaction*, dated July 14, 2003 (*Weishan Zhenyu Memo*), which is on file in the Central Records Unit, room B–099 of the main Commerce Building.

We have now analyzed all of the information provided by interested parties with respect to the question of whether Weishan Zhenyu's sale under review constitutes a *bona fide* sale. As discussed fully in the *Weishan Zhenyu Memo*, we find that, based on the information on the record regarding Weishan Zhenyu's single sale to the U.S., we cannot conclude that the sale was not *bona fide*. However, if, during the conduct of our administrative review or other new shipper reviews of this order, we uncover any information which shows that this was not a legitimate commercial transaction, we may consider whether it is appropriate to initiate a changed circumstances review, or whether it is appropriate to refer the matter to the U.S. Bureau of Customs and Border Protection (BCBP).

Final Results of Review

Based on our analysis of information obtained after the *Preliminary Results* from the importer's questionnaire responses and the Domestic Interested Parties' comments thereon, we have made not made any changes to the margin calculation methodology for Weishan Zhenyu. For factors of production for which more contemporaneous data have become available since the preliminary results, we updated the factor values accordingly. However, these changes had no impact on the margin. Accordingly, we continue to find that a margin of zero percent exists for Weishan Zhenyu for the period September 1, 2001 through February 28, 2002. The Department will issue assessment instructions directly to BCBP.

Assessment of Antidumping Duties

Upon completion of this new shipper review, the Department shall determine, and BCBP shall assess, antidumping duties on all appropriate entries. Since we calculated a margin of zero percent, we will instruct BCBP to liquidate the reviewed entries without regard to antidumping duties. The Department will issue appropriate assessment instructions directly to BCBP within 15 days of publication of the final results of review.

Cash Deposits

Bonding will no longer be permitted to fulfill security requirements for shipments from Weishan Zhenyu of freshwater crawfish tail meat from the PRC entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this notice in the **Federal Register**. Effective upon publication of these final results for this new shipper review, and since we calculated a margin of zero percent, there will be no cash deposit requirement for shipments of freshwater crawfish tail meat that is both produced and exported by Weishan Zhenyu, entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act. However, we will instruct BCBP to continue the suspension of liquidation of entries of freshwater crawfish tail meat that is both produced and exported by Weishan Zhenyu, and entered on or after the date of publication of these final results. For shipments of freshwater crawfish tail meat exported by Weishan Zhenyu, but not produced by Weishan Zhenyu, cash deposits will be required at the PRC-wide rate in effect on the date of entry. The PRC-wide rate is currently 223.01 percent. There are no changes to the rates applicable to any other company under this order.

Notification to Interested Parties

The Department will disclose calculations performed in connection with these final results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This new shipper review and notice are in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: July 14, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary.

[FR Doc. 03–18472 Filed 7–18–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey from the People's Republic of China: Extension of Time Limit for Preliminary Results of New Shipper Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit for Preliminary Results of New Shipper Antidumping Duty Review.

EFFECTIVE DATE: July 21, 2003.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Abdelali Elouaradia at (202) 482–0182 or (202) 482–1374, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

The Department received timely requests from Shanghai Xiuwei International Trading Co., Ltd. (Shanghai Xiuwei) and Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd. (Sichuan Dubao), in accordance with 19 CFR 351.214(c), for new shipper reviews of the antidumping dutyorder on honey from the People's Republic of China (PRC), which has a December annual anniversary month and a June semiannual anniversary month. On January 30, 2003, the Department found that the request for review met all the regulatory requirements set forth in section 351.214(b) of the Department's regulations and initiated this new shipper antidumping review covering the period February 10, 2001, through November 30, 2002. *See Honey from the People's Republic of China: Initiation of New Shipper Antidumping Reviews*, 68 FR 5868 (February 5, 2003). The preliminary results are currently due no later than July 29, 2003.

Extension of Time Limits for Preliminary Results

Section 751(a)(2)(B)(iv) of the Act and section 351.214(i)(1) of the regulations require the Department to issue the preliminary results of a new shipper review within 180 days after the date on which the new shipper review was initiated, and final results of review within 90 days after the date on which the preliminary results were issued. The Department may, however, extend the deadline for completion of the preliminary results of a new shipper review to 300 days if it determines that the case is extraordinarily complicated. The Department has determined that this case is extraordinarily complicated, and the preliminary results of this new shipper review cannot be completed within the statutory time limit of 180 days. Specifically, the Department needs additional time to research the appropriate surrogate values used to value raw honey. Moreover, the Department is also researching whether the sales that form the basis of the review request are bona fide sales. In this regard, the Department has issued supplemental questionnaires requesting additional information about the bona fides of the sales under review. Given the issues in this case, the Department finds that this case is extraordinarily complicated, and cannot be completed within the statutory time limit.

Accordingly, the Department is fully extending the time limit for the completion of the preliminary results by 300 days, to November 26, 2003, in accordance with section 751(a)(2)(B)(iv) of the Act and 351.214(i)(2) of the Department's regulations. The final results will in turn be due 90 days after the date of issuance of the preliminary results, unless extended.

Dated: July 14, 2003.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–18470 Filed 7–18–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Notice of Postponement of Final Results of 2001–2002 Administrative Review: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 21, 2003.

FOR FURTHER INFORMATION CONTACT: Anthony Grasso at (202) 482–3853 or Andrew Smith at 202–482–1276, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively. Further, the Department may extend the time for making a final determination without extending the time for making a preliminary determination, if such final determination is made not later than 300 days after the date on which the preliminary determination is published.

Postponement of Final Results

On July 24, 2002, the Department published a notice of initiation of administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China, covering the period June 1, 2001 to May 31, 2002 (67 FR 48435). On February 14, 2003, the Department published the preliminary results and partial rescission of this administrative review of TRBs from the PRC. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2000–2001 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003) ("*Preliminary Results*"). In the *Preliminary Results* we stated that we would make our final determination for the antidumping duty investigation no later than 120 days after the date of publication of the preliminary results (*i.e.*, June 14, 2003). On June 12, 2003, we extended the time limit for completion of the final results to not later than July 16, 2003 in accordance with section 751(a)(3)(A) of the Act.

Due to the complexity of the issues, the Department concludes that these reviews are extraordinarily complicated. *See* Memorandum from Team to Jeffrey May, "Extension of Time Limit for Final Results," dated, July 16, 2003. Therefore, the Department is extending the time limit for completion of these final results to not later than December 11, 2003, in accordance with section 751(a)(3)(A) of the Act.

This extension is in accordance with section 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: July 15, 2003.

Jeffrey May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–18471 Filed 7–18–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Fire Codes: Request for Proposals for Revision of Codes and Standards

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Fire Protection Association (NFPA) proposes to revise some of its fire safety codes and standards, and requests proposals from the public to amend existing, or begin the process of developing new, NFPA fire safety codes and standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its codes and standards. The publication of this notice of request for proposals by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Interested persons may submit proposals on or before the dates listed with the standards.

ADDRESSES: Casey C. Grant, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269–9101.

FOR FURTHER INFORMATION CONTACT: Casey C. Grant, Secretary, Standards Council, at above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops building, fire, and electrical safety codes and standards. Federal agencies frequently use these codes and standards as the basis for developing federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR part 51.

Request for Proposals

Interested persons may submit proposals, supported by written data, views, or arguments to Casey C. Grant, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02269–9101. Proposals should be submitted on forms available from the NFPA Codes and Standards Administration Office.

Each person must include his or her name and address, identify the document, and give reasons for the proposal. Proposals received before or by 5 p.m. local time on the closing date indicated would be acted on by the Committee. The NFPA will consider any proposal that it receives on or before the date listed with the code or standard.

At a later date, each NFPA Technical Committee will issue a report, which will include a copy of written proposals

that have been received, and an account of their disposition of each proposal by the NFPA Committee as the Report on Proposals. Each person who has submitted a written proposal will receive a copy of the report.

Document No./edition	Title	Proposal closing date
NFPA 1–2003	Uniform Fire Code™	1/5/2004
NFPA 11–2002	Standard for Low-, Medium-, and High-Expansion Foam Systems	8/1/2003
NFPA 11A–1999	Standard for Medium- and High-Expansion Foam Systems	8/1/2003
NFPA 12–2000	Standard on Carbon Dioxide Extinguishing Systems 6/27/2003	NFPA 12
NFPA 13–2002	Standard for the Installation of Sprinkler Systems	11/5/2004
NFPA 13D–2002	Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes.	11/5/2004
NFPA 13E–2000	Recommended Practice for Fire Department Operations in Properties Protected by Sprinkler and Standpipe Systems.	6/27/2003
NFPA 13R–2002	Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height.	11/5/2004
NFPA 15–2001	Standard for Water Spray Fixed Systems for Fire Protection	12/31/2004
NFPA 24–2002	Standard for the Installation of Private Fire Service Mains and Their Appurtenances	11/5/2004
NFPA 35–1999	Standard for the Manufacture of Organic Coatings	8/29/2003
NFPA 55–2003	Standard for the Storage, Use, and Handling of Compressed Gases and Cryogenic Fluids in Portable and Stationary Containers, Cylinders, and Tanks.	6/27/2003
NFPA 59A–2001	Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG)	6/27/2003
NFPA 76–2002	Recommended Practice for the Fire Protection of Telecommunications Facilities	6/27/2003
NFPA 72®–2002	National Fire Alarm Code®	12/31/2004
NFPA 99–2002	Standard for Health Care Facilities	6/27/2003
NFPA 99B–2002	Standard for Hypobaric Facilities	6/27/2003
NFPA 101®–2003	Life Safety Code®	10/17/2003
NFPA 102–1995**	Standard for Grandstands, Folding and Telescopic Seating, Tents, and Membrane Structures	10/17/2003
NFPA 110–2002	Standard for Emergency and Standby Power Systems	6/27/2003
NFPA 111–2001	Standard on Stored Electrical Energy Emergency and Standby Power Systems	6/27/2003
NFPA 225–P*	Model Manufactured Home Installation Standard	8/1/2003
NFPA 284–P*	Standard Test Method for Mattresses for Correctional Occupancies	1/5/2004
NFPA 291–2002	Recommended Practice for Fire Flow Testing and Marking of Hydrants	11/5/2004
NFPA 326–1999	Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair	8/29/2003
NFPA 329–1999	Recommended Practice for Handling Releases of Flammable and CombustibleLiquids and Gases.	8/29/2003
NFPA 501–2000	Standard on Manufactured Housing	8/1/2003
NFPA 501A–2003	Standard for Fire Safety Criteria for Manufactured Home Installations, Sites, and Communities.	8/1/2003
NFPA 1221–2002	Standard for the Installation, Maintenance, and Use of Emergency Services Communications Systems.	1/5/2004
NFPA 520–1999	Standard on Subterranean Spaces	6/28/2002
NFPA 600–2000	Standard on Industrial Fire Brigades	6/27/2003
NFPA 601–2000	Standard for Security Services in Fire Loss Prevention	6/27/2003
NFPA 720–2003	Recommended Practice for the Installation of Household Carbon Monoxide (CO) Warning Equipment.	6/27/2003
NFPA 850–2000	Recommended Practice for Fire Protection for Electric Generating Plants and High Voltage Direct Current Converter Stations.	6/27/2003
NFPA 851–2000	Recommended Practice for Fire Protection for Hydroelectric Generating Plants	6/27/2003
NFPA 909–2001	Code for the Protection of Cultural Resources	6/27/2003
NFPA 914–2001	Code for Fire Protection of Historic Structures	6/27/2003
NFPA 1003–2000	Standard for Airport Fire Fighter Professiona Qualifications	6/27/2003
NFPA 1035–2000	Standard for Professional Qualifications for Public Fire and Life Safety Educator	6/27/2003
NFPA 1192–2002	Standard on Recreational Vehicles	6/27/2003
NFPA 1194–2002	Standard for Recreational Vehicle Parks and Campgrounds	6/27/2003
NFPA 1410–2000	Standard on Training for Initial Emergency Scene Operations	6/27/2003
NFPA 1452–2000	Guide for Training Fire Service Personnel to Conduct Dwelling Fire Safety Surveys	6/27/2003
NFPA 1581–2000	Standard on Fire Department Infection Control Program	6/27/2003
NFPA 1971–2000	Standard on Protective Ensemble For Structural Fire Fighting	10/31/2003
NFPA 1976–2000	Standard on Protective Ensemble for Proximity Fire Fighting	10/31/2003
NFPA 2010–P*	Standard on Aerosol Fire Extinguishing Systems	8/27/2003
NFPA 5000™–2002	Building Construction and Safety Code™	10/17/2003

P* Proposed NEW drafts may be downloaded from NFPA's Web site at *www.nfpa.org/Codes/Drafts.asp*. They are also available from NFPA Codes and Standards Administration, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269–9101.

**NFPA 102–2006 is scheduled to become mainly an extract document, drawing its requirements from NFPA 1, *Uniform Fire Code®*, *NFPA 101®, Life Safety Code®*, and *NFPA 5000™, Building Construction and Safety Code™*. Proposals are especially encouraged on subjects not currently addressed in NFPA 1–2003, NFPA 101–2003, and NFPA 5000–2003.

Dated: July 11, 2003.

Arden L. Bement, Jr.,

Director.

[FR Doc. 03–18486 Filed 7–18–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071503A]

Vessel Monitoring Systems (VMS); Certification of New VMS Unit for Use in Northeast Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of VMS unit certification.

SUMMARY: NMFS announces the approval and certification of the Boatracs FMCT (Fisheries Mobile Communications Transceiver) VMS unit for use in all fisheries in the northeastern United States in which VMS units are required.

DATES: The new FMCT VMS unit can be used effective July 21, 2003.

FOR FURTHER INFORMATION CONTACT: Northeast Office for Law Enforcement, VMS Program, telephone 978–281–9213.

SUPPLEMENTARY INFORMATION: Regulations at 50 CFR 648.9 set forth VMS requirements for fisheries in the northeastern United States that require the use of VMS for fishery monitoring and/or reporting. Specifically, § 648.9(b) lists minimum VMS performance criteria that a VMS unit must meet in order to be certified for use.

NMFS has reviewed all components of the FMCT and other information provided by the vendor and has certified the following unit for use in all Northeast fisheries in which VMS units are required: Boatracs FMCT, available from Boatracs, 1935 Cordell Court, El Cajon, CA 92020–0911, Telephone: (619) 438–6000, 1–800–336–8722.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 15, 2003.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–18490 Filed 7–18–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071503E]

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council), its Executive Committee, and its Demersal Species Committee meeting as a Council Committee of the Whole with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup and Black Sea Bass Board, and Bluefish Board(s), will hold a public meeting.

DATES: The meetings will be held on Monday, August 4, to Thursday, August 7, 2002. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: This meeting will be held at the Wyndham Baltimore Inner Harbor, 101 W. Fayette Street, Baltimore, MD; telephone: 410–752–1100.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: *Monday, August 4, 2003, 1 p.m. - 3 p.m.*–There will be a presentation by NMFS' Office of Sustainable Fisheries

Monday, August 4, 2003, 3 p.m. - 4 p.m.–The Executive Committee will meet. to review congressional correspondence and the status of Council's audits.

Tuesday, August 5, 2003, 8:30 a.m. - 9:30 a.m.–The Council will convene to discuss options concerning Atlantic Mackerel, Squid, and Butterfish Framework 4.

Tuesday, August 5, 2003, 9:30 a.m. - 11 a.m.–There will be a report of the 37th Stock Assessment Review Committee (SARC).

Tuesday, August 5, 2003, 11 a.m. to noon–The Council will discuss Summer, Founder, Scup, and Black Sea Bass Frameworks 3 and 4.

Tuesday, August 5, 2003, 1 p.m. to 4 p.m.–There will be a Council and Public Session on NMFS' Outreach Efforts.

Tuesday, August 5, 2003, 4 p.m. to 5:30 p.m.–The Council will meet jointly with the ASMFC's Bluefish Board regarding 2004 specifications for bluefish.

Tuesday, August 5, 2003 6 p.m. to 8 p.m.–There will be an additional Public Session on NMFS' Outreach Efforts.

Wednesday, August 6, 8:30 a.m. to 5 p.m.–The Council will meet jointly with the ASMFC's Summer Flounder, Scup, and Black Sea Bass Board regarding summer flounder, scup, and black sea bass specifications for 2004.

Thursday, August 7, 9 a.m. to 2 p.m.–Council will meet to receive reports from its committees.

Agenda items for the Council meeting are: On Monday, a presentation by NMFS' regarding Amendment 1 to NMFS' Highly Migratory Species (HMS) Fishery Management Plan (FMP) with particular emphasis on shark management. The Executive Committee will convene to review Congressman Gilchrest's July 8, 2003 letter regarding Individual Fishing Quotas (ITQ), and status of Council's audit (if available) for fiscal years1999, 2000, and 2001. On Tuesday, the Council will review and adopt Atlantic Mackerel, Squid, and Butterfish Framework 4 regarding extending the *Illex* squid moratorium; receive the 37th SARC report on spiny dogfish, surfclams, and *Illex* squid; review and adopt Summer Flounder, Scup, and Black Sea Bass Framework 3 regarding Winter 1 and Winter 2 rollover and April 15 summer period start date; review and adopt Summer Flounder, Scup, and Black Sea Bass Framework 4 regarding transfer of scup at sea. The Council will then receive a report from NMFS' on its Outreach Efforts regarding current NMFS' programs and the agency's future directions and strategies for same. The Council and ASMFC's Bluefish Board will review Monitoring Committee recommendations regarding the 2004 harvest level and commercial management measures, and recommend the 2004 harvest level and commercial management measures for bluefish. On Wednesday, the Council and ASMFC's Summer Flounder, Scup, Black Sea Bass Board(s) will review Monitoring Committee recommendations regarding the 2004 harvest level and commercial management measures, and recommend the 2004 harvest level and commercial management measures for summer flounder, scup, and black sea bass. The Council, on Thursday, will receive and discuss organizational and committee reports including tilefish actions, the New England Council's report, and the South Atlantic Council's report.

Although non-emergency issues not contained in this agenda may come before the Council and ASMFC for discussion, these issues can not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: July 15, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–18489 Filed 7–18–03; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 10:30 a.m., Wednesday, July 30, 2003.

PLACE: 1155 21st St., NW., Washington, DC, Room 9102.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

FOR FURTHER INFORMATION CONTACT: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–18619 Filed 7–17–03; 1:48 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 19, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Department of the Army, Institute for Water Resources, Corps of Engineers Waterborne Commerce Statistics Center, PO Box 61280 (ATTN: Doug Blakemore), New Orleans, LA 70161–1280.

Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports Clearance Officer at (703) 695–5509.

Title, Associated Form, and OMB Number: Vessel Operation Report, ENG Forms 3925, 3925B, 3925C, 3925P, OMB Number 0710–0006.

Needs and Uses: The Corps of Engineers uses ENG Forms 3925, 3925B, 3925C and 3925P as the basic instruments to collect waterborne commerce statistics. These data constitute the sole source for domestic vessel movements of freight and passengers on U.S. navigable waterways and harbors. These data are collected from vessel operating companies. These data are essential to plans for maintaining U.S. navigable waterways. These data are also critical to the enforcement of the "Harbor Maintenance Tax" authorized under section 1402 of Public Law 99–662.

Affected Public: Business or other for profit.

Annual Burden Hours: 43,213.

Number of Respondents: 1,217.

Responses Per Respondent: 1.

Average Burden Per Response: 18 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: The information collected is the basic data from which the Corps of Engineers compiles and published waterborne commerce statistics. The data is used not only to report to Congress, but also to perform cost benefit studies for new projects, rehabilitation projects, and O&M of existing projects. It is also used by other Federal agencies involved in transportation and security. This data collection program is the sole source for domestic navigation statistics.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–18441 Filed 7–18–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent to Prepare a Draft Environmental Impact Statement for the Caño Martín Peña Rehabilitation Project Being Proposed by the Puerto Rico Highway and Transportation Authority

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Puerto Rico Highway and Transportation Authority (PRHTA) is proposing the rehabilitation of Caño Martín Peña (CMP) in the Municipality of San Juan, Puerto Rico. The proposal includes the dredging of CMP, the establishment of conservation strip and greenway on the CMP banks, the construction of a vehicular, pedestrian, and cyclist transportation corridor parallel to CMP and its conservation strips, relocation of approximately 1,100 structures, construction of a sanitary sewer and storm water system and improvements to existing systems, and improvements to the potable water distribution system. Portions of the project would need a permit under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act permits.

FOR FURTHER INFORMATION CONTACT: Edwin E. Muñiz, (787) 729–6905/6944, Chief, Antilles Regulatory Section, U.S. Army Corps of Engineers, 400 Fernández Juncos Avenue, San Juan, PR 00901.

SUPPLEMENTARY INFORMATION: On May 2001, the Planning Division of Jacksonville, Corps of Engineers (Corps), prepared a report titled Dredging of Caño Martín Peña, Project Design Report and Environmental Impact Statement (EIS). This study was performed under the Support for Others Program at the request of the Puerto Rico Department of Natural and Environmental Resources (DNER). This report included a description of the study area's problems, several dredging and disposal alternatives, a detailed design for the sponsor's preferred alternative and a preliminary draft EIS of the recommended project. A partial list of relevant previous studies performed by private firms and governmental agencies in the project area is included in the report. The Project Design Report considered four alternatives that would vary in the size and shape of the channel. According to this report, these alternatives were evaluated on the basis of their construction method and cost, environmental impacts, real estate requirements, impacts to bridges and utilities, disposal of dredged material, project operation and maintenance, tidal flow capacity, and the recreation and navigation potential. These alternatives are as follows:

Alternative 1: Considered dredging a trapezoidal earth channel with a width between 150 to 230 feet and 10 feet depth. It would require the dredging of approximately 550,000 cubic yards of mixed materials from the CMP. The proposed channel dredging would follow the existing CMP channel alignment beginning at San José Lagoon and extends for about 11,600 feet to end west of the Luis Muñoz Rivera Avenue Bridge.

Alternative 2: Considered vertical concrete piles with connecting concrete panel walls with earth bottom with a width between 150 to 230 feet and 10 feet depth. It would require the dredging of approximately 750,000 cubic yards of mixed materials from the CMP. The proposed channel dredging would follow the existing CMP channel alignment beginning at San José Lagoon and extends for about 11,600 feet to end west of the Luis Muñoz Rivera Avenue Bridge.

Alternative 3: Consisted of a very limited channel clean up, cutting a trapezoidal channel section of 70 feet width by 3.5 feet deep and constructing a maintenance access road along the eastern half of CMP. It would require the dredging of about 25,000 cubic yards of mixed materials from the CMP. The proposed channel dredging would follow the existing CMP channel alignment beginning at San José Lagoon and extends for about 11,200 feet to end west of the Luis Muñoz Rivera Avenue Bridge.

Alternative 4: Similar to Alternative 2 with some modifications, this was the recommended alternative. It consisted of a rectangular channel with vertical bulkhead system. This project would require the dredging of approximately 750,000 cubic yards of mixed material along the existing channel between the bridge of Luis Muñoz Rivera Avenue and the San José Lagoon to provide a variable width of between 150 and 230 feet, and a depth of 10 feet. A transition from channel depth of 10 feet to a depth of 6 feet would be provided where the channel reaches San José Lagoon. This alternative requires replacement of existing bridges at Luis Muñoz Rivera and Barbosa Avenues.

All of these alternatives would require the relocation of people, houses, and utilities in the area as well as the acquisition and relocation of some structures along the channel alignment. The no-action alternative was also considered in the project Design Report. The report stated that no-action alternative would lead to further environmental degradation of the San Juan Bay Estuary, to a complete blockage of the channel by garbage and debris accumulation and continued construction of structures on the filled up waterway, and to continue the social stress associated with frequent flooding, deteriorated air and water quality, and life threatening health hazards.

The report also evaluated three alternatives for the disposal of the dredged material, in terms of their proximity to the project area, special handling, transportation requirements, environmental benefits, environmental impacts, and their overall cost. The disposal alternatives were as follows: (1) Ocean disposal; (2) land disposal; (3) and in-bay disposal. The study recommended in-bay disposal to fill two of the largest deep holes located at Los Corozos and San José Lagoons.

The PRHTA is now the lead from the Commonwealth of Puerto Rico for the proposed rehabilitation of CMP in the Municipality of San Juan, PR. The firm Moffatt and Nichol Engineers on behalf of the PRHTA prepared the document titled "Caño Martíin Peña Waterway Improvements" dated December 2002, where the above-mentioned alternatives presented in the document Dredging of Caño Martíin Peña, Project Design Report and Environmental Impact Statement were also reviewed. This document evaluated an additional alternative, it consisted of a rectangular 10 feet deep channel with realignment and vertical steel bulkhead system. The proposed channel width at straight and minor bends sections is 180 feet. The proposed channel alignment follows the existing CMP channel from the Laguna San José to the existing oxbow, crosses the peninsula and ends west of the Luis Muñoz Rivera Avenue Bridge, a distance of approximately 10,500 feet. The recommended alternative in this report is the same as the recommended alternative presented in the report prepared by the Corps in May 2001.

The PRHTA's proposal includes the following elements:

a. Dredging the CMP in the segment between the bridge on Muñoz Rivera Avenue and the San José Lagoon. Approximately 750,000 cubic yards of dredge material would be removed to widen the CMP to a variable width of between 150 and 250 feet, and a depth of 10 feet.

b. Discharge of fill material over open waters and/or wetlands.

c. A conservation strip and greenway at the CMP banks, which will include mangrove mitigation, trails and recreational areas that will allow pedestrians to interact with the CMP.

d. Construction of a vehicular, pedestrian and cyclist transportation corridor parallel to the CMP and its conservation strips.

e. Relocation of approximately 1,100 structures (family homes and small businesses) that would be affected by the proposed project.

f. Construction of a sanitary sewer and storm water system to eliminate the disposal of wastewater into the CMP. Improvements of existing systems to correct the interconnections between storm water and sewer systems.

g. Improvements to the potable water distribution system within the perimeter of influence of the project.

The primary purpose of this project is the environmental restoration of the eastern portion of CMP, which includes restoring the water flow between the San José Lagoon and the San Juan Bay. It would also benefit eight low-income communities surrounding the CMP. However, the proposed action would cause significant impacts, including individual and cumulative effects to the mangroves-wetlands, and aquatic resources, human environment, and type of land use (residential and commercial). The public health or safety could be affected since the sediments to be dredged in the CMP were determined to be polluted. Also, the proposed project could impact cultural resources. No endangered or threatened species are known to exist within the project area.

Pursuant to Section 10 of the Rivers and Harbors Act the Corps has regulatory authority over structures and/or work in or affecting navigable waters of the United States. Under section 404 of the Clean Water Act, the Corps has

regulatory authority to permit the discharge of dredged or fill material into wetlands and other waters of the United States. The guidelines pursuant to Section 404(b) of the act require that impacts to the aquatic environment be avoided and minimized to the extent practicable.

In determining whether to issue a permit, the Corps must consider the 404(b)(1) guidelines, a public interest review and must also comply with other requirements including, but not limited to: The Endangered Species Act; the National Environmental Policy Act; the Coastal Zone Management Act; the Magnunson-Stevens Fishery Conservation Management Act; section 401 of the Clean Water Act; and other applicable Federal laws. Modifying land for new uses may also involve zoning, land use planning, water management, and other regulatory/planning requirements at the local, commonwealth, and Federal level.

Issues. The EIS will consider impacts on protected species, health, conservation, economics, aesthetics, general environmental concerns, wetlands (and other aquatic resources), historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people, and other issues identified through scoping, public involvement, and interagency coordination.

Scooping: The PRHTA has conducted numerous citizen involvement activities and have held several meetings with representatives of concerned Federal, State, and local agencies. At this time, there are no plans for a public scoping meeting, if the Corps holds a public scoping meeting, it will be announced. In addition Federal, state and local agencies, as well as interested private organizations and individuals are strongly encouraged to suggest additional alternatives for consideration and otherwise submit comments on the scope of the draft EIS.

Public Involvement: We invite the participation of affected Federal, state, and local agencies, and other interested private organizations and individuals by submitting written comments to the contact information provided in this notice.

Coordination: The proposed action is being coordinated with a number of Federal, Commonwealth, and local agencies including but not limited to the following: U.S. Fish and Wildlife Service, National Marine Fisheries Service, U.S. Environmental Protection Agency, U.S. Coast Guard, Puerto Rico Department of Natural and Environmental Resources, Puerto Rico Environmental Quality Board, Puerto Rico Planning Board, Puerto Rico State Historic Preservation Office, and other agencies as identified in scoping, public involvement, and agency coordination.

Other Environmental Review and Consultation: The proposed action would involve evaluation for compliance with guidelines pursuant to section 404(b) of the Clean Water Act, public interest review, application for Water Quality Certification pursuant to section 401 of the Clean Water Act, and determination of Coastal Zone Management Act consistency.

Draft EIS Preparation: We estimate that the DEIS will be available to the public on or about January 15, 2004.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–18439 Filed 7–11–03; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 19, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 15, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Annual Performance Report for the Gaining Early Awareness for Undergraduate Programs (GEAR UP) Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 316.

Burden Hours: 11,060.

Abstract: The purpose of this information collection is accountability for program implementation and student outcomes for the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP). The information collected enables the U.S. Department of Education to demonstrate its progress in meeting the GEAR UP performance objectives as reflected in the indicators.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2294. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–18396 Filed 7–18–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 19, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 15, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: National Early Intervention Longitudinal Study (NEILS).

Frequency: Semi-Annually, Annually, Biennially.

Affected Public: Individuals or households; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 634.

Burden Hours: 267.

Abstract: NEILS will provide the first national picture of the experiences and outcomes of infants/toddlers in early intervention. The study will inform special education policy development and support Government Performance and Results Act (GPRA) measurement and Individuals with Disabilities Education Act (IDEA) reauthorization with data from parents, service providers, and teachers of children who received early intervention services.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2310. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–18397 Filed 7–18–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 20, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren_Wittenberg@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 15, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Extension.

Title: Lender's Request for Payment of Interest and Special Allowance—LaRS.

Frequency: Quarterly, Annually.

Affected Public: Businesses or other for-profit; State, local or Tribal Gov't, SEAs or LEAs

Reporting and Recordkeeping Hour Burden:

Responses: 14,184.

Burden Hours: 34,573.

Abstract: The Lender's Request for Payment of Interest and Special Allowance—LaRS (ED Form 799) is used by approximately 3,546 lenders participating in the Title IV, Part B loan programs. The ED Form 799 is used to pay interest and special allowance to holders of the Part B loans; and to capture quarterly data from lender's loan portfolio for financial and budgetary projections.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2273. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivan.Reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–18398 Filed 7–18–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: The Department gives notice that on July 26, 2002, an arbitration panel rendered a decision in the matter of *Illinois Department of Human Services, Office of Rehabilitation Services* v. *U.S. Department of Defense, Department of the Navy (Docket No. R–S/01–02)*. This panel was convened by the U.S. Department of Education, under 20 U.S.C. 107d–1(b), after the Department received a complaint filed by the petitioner, Illinois Department of Human Services, Office of Rehabilitation Services.

SUPPLEMENTARY INFORMATION: Under section 6(c) of the Randolph-Sheppard Act (the Act), 20 U.S.C. 107d–2(c), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

This dispute concerns the alleged improper awarding of a full food service contract to a nonprofit agency under the Javits-Wagner-O'Day Act (JWOD) by the U.S. Department of Defense, Department of the Navy (Navy), in violation of the Act (20 U.S.C. 107 *et seq.*) and the implementing regulations in 34 CFR part 395.

A summary of the facts is as follows: On March 16, 1998, in response to solicitation N00140–98–R–1159, the State licensing agency (SLA) notified the Navy in writing that it wished to operate the full food service contract for the Naval Training Center and Recruitment Training Center in Great Lakes, Illinois. On May 12, 1998, the Navy responded that the contract was being awarded to Goodwill Services, Inc., of Southern Wisconsin under the provisions of JWOD. A **Federal Register** notice, dated May 8, 1998, announced this pending contract award and allowed 30 days for public comment.

The SLA did not submit any comments pursuant to the **Federal Register** notice. Nearly seven months later, on December 28, 1998, the SLA informed the Navy of its concern that the Navy awarded this contract under JWOD and indicated that it was prepared to take the matter to arbitration under the Act. The SLA also informed the Navy, in an opinion dated November 12, 1998, that the General Counsel for the Department of Defense (DOD) advised that the Act is applicable to military dining facilities. As a result, the SLA indicated that arbitration was unnecessary and that it was eager to enter into negotiations with the Navy for a full food service contract at the facility to be operated by a blind vendor in accordance with the Act. On April 6, 1999, the Navy responded that it had no authority to terminate this contract issued pursuant to JWOD.

There was no further communication between the parties until October 10, 2000, when the SLA requested that the Secretary of Education convene a Federal arbitration panel to hear this complaint. A panel was convened and a hearing on this matter was held on April 9 and 10, 2002.

Arbitration Panel Decision

The issues heard by the panel were—(1) Whether the Navy, in accordance with the Act, must grant priority to the SLA for a contract so that full food services at the Great Lakes Naval Training Center may be provided by a licensed blind vendor; (2) whether the Act, which affords licensed blind vendors statutory priority to operate cafeterias and vending stands on Federal property, including that of DOD/Navy, takes precedence over the JWOD Act; (3) whether an arbitration panel convened under the Act has jurisdiction to determine if the Act takes precedence over the JWOD Act; (4) whether a contracting office has authority to issue a competitive procurement for services that are currently on the JWOD procurement list; and (5) whether the SLA waived any right it may have had to challenge the inclusion of the disputed food services on the JWOD procurement list and the subsequent award of a contract for those services to private vendors.

After considering all of the evidence, including the post-hearing briefs submitted by both parties, the majority of the panel ruled that the dispute should be resolved in favor of the Navy under the laches doctrine because of the SLA's delay in filing for Federal arbitration.

The SLA had alleged that the delay in filing the arbitration request of over 18 months since the time of the last communication from the Navy was not unreasonable because the SLA had program responsibilities under both the Act and JWOD and needed to balance the policy needs under both authorities before determining whether to file for Federal arbitration.

However, the panel determined that there was no reasonable cause for delay by the SLA in seeking Federal arbitration under the Act. The panel's decision was based upon the finding that there are strong reasons to require both timely action and finality in resolving arbitration disputes under the Act.

The panel also determined that the SLA's delay in seeking arbitration greatly prejudiced the Navy and the facility and its current contractor and that there was no reasonable cause for the delay. Therefore, the panel concluded that the SLA had waived its right to Federal arbitration and dismissed the complaint without ruling on the merits of the case.

One panel member dissented.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the full text of the arbitration panel decision from Suzette E. Haynes, U.S. Department of Education, 400 Maryland Avenue, SW., room 3232, Mary E. Switzer Building, Washington, DC 20202–2738. Telephone: (202) 205–8536. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–8298.

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Dated: July 15, 2003.

Loretta Petty Chittum,

Acting, Assistant Secretary for Special Education and, Rehabilitative Services.

[FR Doc. 03–18375 Filed 7–18–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Employees Occupational Illness Compensation Program Act of 2000; Revision to List of Covered Facilities

AGENCY: Department of Energy.

ACTION: Notice of revision of listing of covered facilities.

SUMMARY: Periodically, the Department of Energy ("Department" or "DOE") publishes a list of facilities covered under the Energy Employees Occupational Illness Compensation Program Act of 2000 ("Act"), Title 36 of Public Law 106–398. (66 FR 4003; 66 FR 31218). The Act establishes a program to provide compensation to individuals who developed illnesses as a result of their employment in nuclear weapons production-related activities and at certain federally owned facilities in which radioactive materials were used. This notice revises the previous lists and provides additional information about the covered facilities, atomic weapons employers, and beryllium vendors. The original notice provides detailed background information about this matter. Previous lists were published on January 17, 2001, June 11, 2001 and December 27, 2002.

FOR FURTHER INFORMATION CONTACT: Office of Worker Advocacy, 1–877–447–9756.

ADDRESSES: The Department welcomes comments on this list. Individuals who wish to suggest additional facilities for inclusion on the list or indicate why one or more facilities should be removed from the list should provide information to the Department. Comments should be addressed to:

Office of Worker Advocacy (EH–8), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, e-mail: *worker_advocacy@eh.doe.gov*, toll free: 1–877–447–9756, URL: *http://tis.eh.doe.gov/advocacy/*.

SUPPLEMENTARY INFORMATION:

Purpose

The Energy Employees Occupational Illness Compensation Program Act of 2000 ("Act"), Title 36 of Public Law 106–398, establishes a program to provide compensation to individuals who developed illnesses as a result of their employment in nuclear weapons production-related activities and at certain federally owned facilities in which radioactive materials were used. On December 7, 2000, the President issued Executive Order 13179 ("Order") directing the Department of Energy ("Department" or "DOE") to list covered facilities in the **Federal Register.** This notice revises the previous lists and provides additional information about the covered facilities, atomic weapons employers, and beryllium vendors.

Section 2. c. iv of the Order instructs the Department to designate, pursuant to sections 3621(4)(B) and 3622 of the Act, atomic weapons. In addition, section 2. c. vii of the Order instructs the Department to list three types of facilities defined in the Act:

(1) Atomic weapons employer facilities, as defined in section 3621 (4);

(2) Department of Energy facilities, as defined by section 3621 (12); and

(3) Beryllium vendors, as defined by section 3621 (6).

Compensation options and mechanisms are defined differently for each of these facility categories. The atomic weapons employer category includes atomic weapons employer facilities in which the primary work was not related to atomic weapons, and consequently these facilities are not commonly known as atomic weapons facilities. Their inclusion in this list is consistent with the Act, and is not intended as a classification for any other purpose.

The list at the end of this notice represents the Department's best efforts to date to compile a list of facilities under these three categories. This listing includes 362 facilities in 46 jurisdictions. Today's publication of the list includes the designation of 14 additional DOE facilities, including ten Ore Buying Stations. It clarifies one listing, narrows one listing, and changes one AWE to a DOE. Also, for ten facilities previously listed with AWE/DOE dual designations, the DOE designation has been dropped because it was learned that no work occurred at those locations as part of site remediation. Two AWE facilities were dropped entirely, one because it was learned that no radioactivity was used at that location and the other because the type of work, which took place there, was determined not to be covered Atomic Weapons Employer activity.

To assist the public in understanding changes made in this list, the Department has prepared a description of these changes and made it available at the Web site noted. A copy may also be obtained by request to the Office of Worker Advocacy. The Department is continuing its research efforts, and continued revisions to this list should be expected. The public is invited to comment on the list and to provide additional information.

In addition to continuing its research efforts, the Department has developed information dissemination mechanisms

to make facility-specific data available to the public. Information about each listed facility, including the dates and type of work done there, is available by contacting the Office of Worker Advocacy. These descriptions are available in print form and also electronically (via the World Wide Web at *http://tis.eh.doe.gov/advocacy/*).

The list that follows covers facilities under the three categories of employers defined by the Act: atomic weapons employers ("AWE"), Department of Energy facilities ("DOE"), and beryllium vendors ("BE"). Each of the categories has been defined in the original notice and include:

1. Atomic Weapons Employers and Atomic Weapons Employer Facilities

The lines between research, atomic weapons production, and non-weapons production are often difficult to draw. For the purposes of this notice, and as directed by the Act, only those facilities whose work involved radioactive material that was connected to the atomic weapons production chain are included. This includes facilities that received radioactive material that had been used in the production of an atomic weapon, or the "back end" of the production cycle, such as waste handling or reprocessing operations. For the purposes of this listing, the Department considers commercial nuclear fuel fabrication facilities to be covered facilities for those periods when they either supplied radioactive materials to the Department or received radioactive materials that had been used in the Department's production reactors.

Corporate information regarding many of the listed facilities is often not readily available. The Department welcomes comments or additional information regarding facilities that may have supported atomic weapons production that are not on this list, as well as information that clarifies the work done at facilities named below.

2. Department of Energy Facilities

The listing of Department of Energy facilities is only intended for the context of implementing this Act and does not create or imply any new Departmental obligations or ownership at any of the facilities named on this list.

3. Beryllium Vendors and Beryllium Vendor Facilities

Section 3621(6) of the Act defines beryllium vendor as the following:

"(A) Atomics International.

"(B) Brush Wellman, Incorporated, and its predecessor, Brush Beryllium Company.

"(C) General Atomics.

"(D) General Electric Company.

"(E) NGK Metals Corporation and its predecessors, Kawecki-Berylco, Cabot Corporation, BerylCo, and Beryllium Corporation of America.

"(F) Nuclear Materials and Equipment Corporation.

"(G) StarMet Corporation, and its predecessor, Nuclear Metals, Incorporated.

"(H) Wyman Gordan, Incorporated.

"(I) Any other vendor, processor, or producer of beryllium or related products designated as a beryllium vendor for purposes of this title under Section 3622."

The list identifies facilities that processed, produced, or provided beryllium metal for the Department, as defined by the Act.

Jurisdiction and facility name	Location	Facility type	State
AL—Southern Research Institute	Birmingham	AWE	Alabama.
AL—Speedring, Inc	Culman	BE	Alabama.
AL—Tennessee Valley Authority	Muscle Shoals	AWE	Alabama.
AK—Amchitka Nuclear Explosion Site	Amchitka Island	DOE	Alaska.
AK—Project Chariot Site	Cape Thompson	DOE	Alaska.
AZ—Ore Buying Station at Globe	Globe	DOE	Arizona.
CA—Arthur D. Little Co	San Francisco	AWE	California.
CA—Atomics International	Los Angeles County	BE DOE	California.
CA—California Research Corp	Richmond	AWE	California.
CA—Ceradyne, Inc	Costa Mesa	BE	California.
CA—Ceradyne, Inc	Santa Ana	BE	California.
CA—City Tool & Die MFG	Santa Clara	BE	California.
CA—C.L. Hann Industries	San Jose	BE	California.
CA—Dow Chemical Co	Walnut Creek	AWE	California.
CA—EDM Exotics	Hayward	BE	California.
CA—Electro Circuits, Inc	Pasadena	AWE	California.
CA—Electrofusion	Fremont	BE	California.
CA—Energy Technology Engineering Center (ETEC)	Santa Susana, Area IV	DOE	California.
CA—General Atomics	La Jolla	AWE BE DOE	California.
CA—General Electric Vallecitos	Pleasanton	AWE DOE	California.
CA—Hafer Tool	Oakland	BE	California.
CA—Hexcel Products	Berkeley	BE	California.
CA—Hunter Douglas Aluminum Corp	Riverside	AWE	California.
CA—Jerry Carroll Machining	San Carlos	BE	California.
CA—Lab. for Biomedical & Environmental Sciences	Los Angeles	DOE	California.
CA—Lab. for Energy-Related Health Research	Davis	DOE	California.
CA—Lab. of Radiobiology and Environmental Health	San Francisco	DOE	California.
CA—Lawrence Berkeley National Laboratory	Berkeley	DOE	California.
CA—Lawrence Livermore National Laboratory	Livermore	DOE	California.
CA—Lebow	Goleta	BE	California.
CA—Philco-Ford	Newport Beach	BE	California.
CA—Pleasanton Tool & Manufacturing	Pleasanton	BE	California.
CA—Poltech Precision	Fremont	BE	California.
CA—Robin Materials	Mountain View	BE	California.
CA—Ron Witherspoon, Inc	Campbell	BE	California.
CA—Sandia Laboratory, Salton Sea Base	Imperial County	DOE	California.
CA—Sandia National Laboratories—Livermore	Livermore	DOE	California.
CA—Stanford Linear Accelerator	Palo Alto	DOE	California.
CA—Stauffer Metals, Inc	Richmond	AWE	California.
CA—Tapemation	Scotts Valley	BE	California.

Jurisdiction and facility name	Location	Facility type	State
CA—University of California	Berkeley	AWE DOE	California.
CO—Coors Porcelain	Golden	BE	Colorado.
CO—Grand Junction Operations Office	Grand Junction	DOE	Colorado.
CO—Green Sludge Plant	Uraven	DOE	Colorado.
CO—Project Rio Blanco Nuclear Explosion Site	Rifle	DOE	Colorado.
CO—Project Rulison Nuclear Explosion Site	Grand Valley	DOE	Colorado.
CO—Rocky Flats Plant	Golden	DOE	Colorado.
CO—Shattuck Chemical	Denver	AWE	Colorado.
CO—Uranium Mill in Durango	Durango	DOE	Colorado.
CO—University of Denver Research Institute	Denver	AWE BE	Colorado.
CT—American Chain and Cable Co	Bridgeport	AWE	Connecticut.
CT—Anaconda Co	Waterbury	AWE	Connecticut.
CT—Bridgeport Brass Co., Havens Laboratory	Bridgeport	AWE	Connecticut.
CT—Combustion Engineering	Windsor	AWE	Connecticut.
CT—Connecticut Aircraft Nuclear Engine Laboratory	Middletown	BE DOE	Connecticut.
CT—Dorr Corp	Stamford	AWE	Connecticut.
CT—Fenn Machinery	Hartford	AWE	Connecticut.
CT—Machlett Laboratories	Springdale	BE	Connecticut.
CT—New England Lime Co	Canaan	AWE	Connecticut.
CT—Seymour Specialty Wire	Seymour	AWE DOE	Connecticut.
CT—Sperry Products, Inc	Danbury	AWE	Connecticut.
CT—Torrington Co	Torrington	AWE	Connecticut.
DE—Allied Chemical and Dye Corp	North Claymont	AWE	Delaware.
DC—National Bureau of Standards	Washington	AWE	District of Columbia.
DC—Naval Research Laboratory	Washington	AWE DOE	District of Columbia.
FL—American Beryllium Co	Sarasota	BE	Florida.
FL—Armour Fertilizer Works	Bartow	AWE	Florida.
FL—Gardinier, Inc	Tampa	AWE	Florida.
FL—International Minerals and Chemical Corp	Mulberry	AWE	Florida.
FL—Pinellas Plant	Clearwater	DOE	Florida.
FL—University of Florida	Gainesville	AWE	Florida.
FL—Virginia-Carolina Chemical Corp	Nichols	AWE	Florida.
FL—W.R. Grace Co., Agricultural Chemical Div	Ridgewood	AWE	Florida.
HI—Kauai Test Facility	Kauai	DOE	Hawaii.
ID—Argonne National Laboratory—West	Scoville	DOE	Idaho.
ID—Idaho National Engineering Laboratory	Scoville	DOE	Idaho.
ID—Northwest Machining & Manufacturing	Meridian	BE	Idaho.
IL—Allied Chemical Corp. Plant	Metropolis	AWE	Illinois.
IL—American Machine and Metals, Inc	E. Moline	AWE	Illinois.
IL—Argonne National Laboratory—East	Argonne	DOE	Illinois.
IL—Armour Research Foundation	Chicago	AWE	Illinois.
IL—Blockson Chemical Co. (Building 55)	Joliet	AWE	Illinois.
IL—C-B Tool Products Co	Chicago	AWE	Illinois.
IL—Crane Co	Chicago	AWE	Illinois.
IL—ERA Tool and Engineering Co	Chicago	AWE	Illinois.
IL—Fansteel Metallurgical Corp	North Chicago	BE	Illinois.
IL—Fermi National Accelerator Laboratory	Batavia	DOE	Illinois.
IL—Granite City Steel	Granite City	AWE DOE	Illinois.
IL—Great Lakes Carbon Corp	Chicago	AWE	Illinois.
IL—GSA 39th Street Warehouse	Chicago	AWE	Illinois.
IL—International Register	Chicago	AWE	Illinois.
IL—Kaiser Aluminum Corp	Dalton	AWE	Illinois.
IL—Lindsay Light and Chemical Co	W. Chicago	AWE	Illinois.
IL—Dow Chemical (Madison Site)	Madison	AWE	Illinois.
IL—Metallurgical Laboratory	Chicago	AWE BE DOE	Illinois.
IL—Midwest Manufacturing Co	Galesburg	AWE	Illinois.
IL—Museum of Science and Industry	Chicago	AWE	Illinois.
IL—National Guard Armory	Chicago	AWE DOE	Illinois.
IL—Podbeliniac Corp	Chicago	AWE	Illinois.
IL—Precision Extrusion Co	Bensenville	AWE	Illinois.
IL—Quality Hardware and Machine Co	Chicago	AWE	Illinois.
IL—R. Krasburg and Sons Manufacturing Co	Chicago	AWE	Illinois.
IL—Sciaky Brothers, Inc	Chicago	AWE	Illinois.
IL—Swenson Evaporator Co	Chicago	AWE	Illinois.
IL—W.E. Pratt Manufacturing Co	Joliet	AWE	Illinois.
IL—Wyckoff Drawn Steel Co	Chicago	AWE	Illinois.
IN—American Bearing Corp	Indianapolis	AWE	Indiana.
IN—Dana Heavy Water Plant	Dana	DOE	Indiana.
IN—General Electric Plant	Shelbyville	AWE	Indiana.
IN—Joslyn Manufacturing and Supply Co	Ft. Wayne	AWE	Indiana.
IN—Purdue University	Lafayette	AWE	Indiana.
IA—Ames Laboratory	Ames	DOE	Iowa.
IA—Bendix Aviation (Pioneer Division)	Davenport	AWE	Iowa.
IA—Iowa Ordnance Plant	Burlington	DOE	Iowa.

Jurisdiction and facility name	Location	Facility type	State
IA—Titus Metals	Waterloo	AWE	Iowa.
KS—Spencer Chemical Co., Jayhawk Works	Pittsburgh	AWE	Kansas.
KY—Paducah Gaseous Diffusion Plant	Paducah	DOE	Kentucky.
LA—Ethyl Corp	Baton Rouge	BE	Louisiana.
MD—Armco-Rustless Iron & Steel	Baltimore	AWE	Maryland.
MD—W.R. Grace and Company	Curtis Bay	AWE	Maryland.
MA—American Potash & Chemical	West Hanover	AWE	Massachusetts.
MA—C.G. Sargent & Sons	Graniteville	AWE	Massachusetts.
MA—Chapman Valve	Indian Orchard	AWE DOE	Massachusetts.
MA—Edgerton Germeshausen & Grier, Inc	Boston	AWE	Massachusetts.
MA—Fenwal, Inc	Ashland	AWE	Massachusetts.
MA—Franklin Institute	Boston	BE	Massachusetts.
MA—Heald Machine Co	Worcester	AWE	Massachusetts.
MA—La Pointe Machine and Tool Co	Hudson	AWE	Massachusetts.
MA—Massachusetts Institute of Technology	Cambridge	AWE BE	Massachusetts.
MA—Metals and Controls Corp	Attleboro	AWE	Massachusetts.
MA—National Research Corp	Cambridge	AWE	Massachusetts.
MA—Norton Co	Worcester	AWE BE	Massachusetts.
MA—Nuclear Metals, Inc	Concord	AWE BE	Massachusetts.
MA—Reed Rolled Thread Co	Worcester	AWE	Massachusetts.
MA—Shpack Landfill	Norton	AWE	Massachusetts.
MA—Ventron Corporation	Beverly	AWE DOE	Massachusetts.
MA—Watertown Arsenal	Watertown	AWE	Massachusetts.
MA—Winchester Engineering & Analytical Center	Winchester	DOE	Massachusetts.
MA—Woburn Landfill	Woburn	AWE	Massachusetts.
MA—Wyman Gordon Inc	Grayton, North Grafton	BE	Massachusetts.
MI—AC Spark Plug	Flint	AWE BE	Michigan.
MI—Baker-Perkins Co	Saginaw	AWE	Michigan.
MI—Bridgeport Brass Co	Adrian	AWE DOE	Michigan.
MI—Brush Beryllium Co	Detroit	AWE	Michigan.
MI—Carboloy Co	Detroit	AWE	Michigan.
MI—Extruded Metals Co	Grand Rapids	AWE	Michigan.
MI—Gerity-Michigan Corp	Adrian	BE	Michigan.
MI—Mitts & Merrel Co	Saginaw	AWE	Michigan.
MI—Oliver Corp	Battle Creek	AWE	Michigan.
MI—Revere Copper and Brass	Detroit	AWE BE	Michigan.
MI—Speedring Systems, Inc	Detroit	BE	Michigan.
MI—Star Cutter Corp	Farmington	AWE	Michigan.
MI—University of Michigan	Ann Arbor	AWE	Michigan
MI—Wolverine Tube Division	Detroit	AWE BE	Michigan.
MN—Elk River Reactor	Elk River	DOE	Minnesota.
MS—Salmon Nuclear Explosion Site	Hattiesburg	DOE	Mississippi.
MO—Kansas City Plant	Kansas City	DOE	Missouri.
MO—Latty Avenue Properties	Hazelwood	AWE DOE	Missouri.
MO—Mallinckrodt Chemical Co., Destrehan St. Plant	St. Louis	DOE	Missouri.
MO—Medart Co	St. Louis	AWE	Missouri.
MO—Roger Iron Co	Joplin	AWE	Missouri.
MO—St. Louis Airport Storage Site (SLAPS)	St. Louis	AWE	Missouri.
MO—Tyson Valley Powder Farm	St. Louis	AWE	Missouri.
MO—United Nuclear Corp	Hematite	AWE	Missouri.
MO—Weldon Spring Plant	Weldon Spring	DOE	Missouri.
NE—Hallam Sodium Graphite Reactor	Hallam	DOE	Nebraska.
NV—Nevada Test Site	Mercury	DOE	Nevada.
NV—Project Faultless Nuclear Explosion Site	Central Nevada Test Site	DOE	Nevada.
NV—Project Shoal Nuclear Explosion Site	Fallon	DOE	Nevada.
NV—Tonopah Test Range	Tonopah	DOE	Nevada.
NV—Yucca Mountain Site Characterization Project	Yucca Mountain	DOE	Nevada.
NJ—Aluminum Co. of America (Alcoa)	Garwood	AWE	New Jersey.
NJ—American Beddinghaus Corp	Moonachie	AWE	New Jersey.
NJ—Baker and Williams Co	Newark	AWE	New Jersey.
NJ—Bell Telephone Laboratories	Murray Hill	AWE	New Jersey.
NJ—Bloomfield Tool Co	Bloomfield	AWE	New Jersey.
NJ—Bowen Laboratory	North Branch	AWE	New Jersey.
NJ—Callite Tungsten Co	Union City	AWE	New Jersey.
NJ—Chemical Construction Co	Linden	AWE	New Jersey.
NJ—Du Pont Deepwater Works	Deepwater	AWE DOE	New Jersey.
NJ—International Nickel Co., Bayonne Laboratories	Bayonne	AWE	New Jersey.
NJ—J.T. Baker Chemical Co	Philipsburg	AWE	New Jersey.
NJ—Kellex/Pierpont	Jersey City	AWE DOE	New Jersey.
NJ—Maywood Chemical Works	Maywood	AWE	New Jersey.
NJ—Middlesex Municipal Landfill	Middlesex	AWE DOE	New Jersey.
NJ—Middlesex Sampling Plant	Middlesex	DOE	New Jersey.
NJ—National Beryllia	Haskell	BE	New Jersey.
NJ—New Brunswick Laboratory	New Brunswick	DOE	New Jersey.

Jurisdiction and facility name	Location	Facility type	State
NJ—Picatinny Arsenal	Dover	AWE	New Jersey.
NJ—Princeton Plasma Physics Laboratory	Princeton	DOE	New Jersey.
NJ—Rare Earths/W.R. Grace	Wayne	AWE DOE	New Jersey.
NJ—Standard Oil Development Co of NJ	Linden	AWE	New Jersey.
NJ—Stevens Institute of Technology	Hoboken	BE	New Jersey.
NJ—Tube Reducing Co	Wallington	AWE	New Jersey.
NJ—U.S. Pipe and Foundry	Burlington	BE	New Jersey.
NJ—United Lead Co	Middlesex	AWE BE	New Jersey.
NJ—Vitro Corp of America (New Jersey)	West Orange	AWE	New Jersey.
NJ—Westinghouse Electric Corp (New Jersey)	Bloomfield	AWE	New Jersey.
NJ—Wykoff Steel Co	Newark	AWE	New Jersey.
NM—Accurate Machine & Tool	Albuquerque	BE	New Mexico.
NM—Albuquerque Operations Office	Albuquerque	DOE	New Mexico.
NM—Chupadera Mesa	Chupadera Mesa	DOE	New Mexico.
NM—Los Alamos Medical Center	Los Alamos	DOE	New Mexico.
NM—Los Alamos National Laboratory	Los Alamos	DOE	New Mexico.
NM—Lovelace Respiratory Research Institute	Albuquerque	DOE	New Mexico.
NM—Ore Buying Station at Grants	Grants	DOE	New Mexico.
NM—Ore Buying Station at Shiprock	Shiprock	DOE	New Mexico.
NM—Project Gasbuggy Nuclear Explosion Site	Farmington	DOE	New Mexico.
NM—Project Gnome Nuclear Explosion Site	Carlsbad	DOE	New Mexico.
NM—Sandia National Laboratories	Albuquerque	DOE	New Mexico.
NM—South Albuquerque Works	Albuquerque	DOE	New Mexico.
NM—Trinity Nuclear Explosion Site	White Sands Missile Range	DOE	New Mexico.
NM—Waste Isolation Pilot Plant	Carlsbad	DOE	New Mexico.
NY—Allegheny-Ludlum Steel	Watervliet	AWE	New York.
NY—American Machine and Foundry	Brooklyn	AWE	New York.
NY—Ashland Oil	Tonawanda	AWE	New York.
NY—Baker and Williams Warehouses	New York	AWE DOE	New York.
NY—Bethlehem Steel	Lackawanna	AWE	New York.
NY—Bliss & Laughlin Steel	Buffalo	AWE	New York.
NY—Brookhaven National Laboratory	Upton	DOE	New York.
NY—Burns & Roe, Inc	Maspeth	BE	New York.
NY—Carborundum Company	Niagara Falls	AWE	New York.
NY—Colonie Site (National Lead)	Colonie (Albany)	AWE DOE	New York.
NY—Crucible Steel Co	Syracuse	AWE	New York.
NY—Electro Metallurgical	Niagara Falls	DOE	New York.
NY—Environmental Measurements Laboratory	New York	DOE	New York.
NY—Fairchild Hiller Corporation	Farmingdale	BE	New York.
NY—General Astrometals	Yonkers	BE	New York.
NY—Hooker Electrochemical	Niagara Falls	AWE	New York.
NY—International Rare Metals Refinery, Inc	Mt. Kisco	AWE	New York.
NY—Ithaca Gun Co	Ithaca	AWE	New York.
NY—Lake Ontario Ordnance Works	Niagara Falls	DOE	New York.
NY—Ledoux and Co	New York	AWE	New York.
NY—Linde Air Products	Buffalo	AWE	New York.
NY—Linde Ceramics Plant	Tonawanda	AWE DOE	New York.
NY—New York University	New York	AWE	New York.
NY—Peek Street Facility [1]	Schenectady	DOE	New York.
NY—Radium Chemical Co	New York	AWE BE	New York.
NY—Rensselaer Polytechnic Institute	Troy	BE	New York.
NY—Sacandaga Facility [1]	Glenville	DOE	New York.
NY—SAM Laboratories, Columbia University	New York	DOE	New York.
NY—Seaway Industrial Park	Tonawanda	AWE	New York.
NY—Seneca Army Depot	Romulus	AWE	New York.
NY—Separations Process Research Unit (at Knolls Lab.) [1].	Schenectady	DOE	New York.
NY—Simonds Saw and Steel Co	Lockport	AWE	New York.
NY—Staten Island Warehouse	New York	AWE	New York.
NY—Sylvania Corning Nuclear Corp.—Bayside Lab	Bayside	AWE BE	New York.
NY—Sylvania Corning Nuclear Corp.—Hicksville Plant	Hicksville	AWE	New York.
NY—Titanium Alloys Manufacturing	Niagara Falls	AWE	New York.
NY—Trudeau Foundation	Saranac Lake	BE	New York.
NY—University of Rochester Atomic Energy Project	Rochester	DOE	New York.
NY—Utica St. Warehouse	Buffalo	AWE	New York.
NY—West Valley Demonstration Project	West Valley	AWE DOE	New York.
NY—Wolff-Alport Chemical Corp	Brooklyn	AWE	New York.
NC—Beryllium Metals and Chemical Corp	Bessemer City	BE	North Carolina.
NC—University of North Carolina	Chapel Hill	BE	North Carolina.
OH—Ajax Magnethermic Corp	Youngstown	AWE	Ohio.
OH—Alba Craft	Oxford	AWE DOE	Ohio.
OH—Associated Aircraft Tool and Manufacturing Co	Fairfield	AWE DOE	Ohio.
OH—B & T Metals	Columbus	AWE DOE	Ohio.
OH—Baker Brothers	Toledo	AWE DOE	Ohio.

Jurisdiction and facility name	Location	Facility type	State
OH—Battelle Laboratories—King Avenue	Columbus	AWE BE DOE	Ohio.
OH—Battelle Laboratories—West Jefferson	Columbus	AWE DOE	Ohio.
OH—Beryllium Production Plant (Brush Luckey Plant)	Luckey	BE DOE	Ohio.
OH—Brush Beryllium Co. (Cleveland)	Cleveland	AWE BE	Ohio.
OH—Brush Beryllium Co. (Elmore)	Elmore	BE	Ohio.
OH—Brush Beryllium Co. (Lorain)	Lorain	BE	Ohio.
OH—Cincinnati Milling Machine Co	Cincinnati	AWE	Ohio.
OH—Clifton Products Co	Painesville	BE	Ohio.
OH—Copperweld Steel	Warren	AWE	Ohio.
OH—Du Pont-Grasselli Research Laboratory	Cleveland	AWE	Ohio.
OH—Extrusion Plant (Reactive Metals Inc.)	Ashtabula	DOE	Ohio.
OH—Feed Materials Production Center (FMPC)	Fernald	DOE	Ohio.
OH—General Electric Company (Ohio)	Cincinnati/Evendale	AWE BE DOE	Ohio.
OH—Gruen Watch	Norwood	AWE	Ohio.
OH—Harshaw Chemical Co	Cleveland	AWE	Ohio.
OH—Herring-Hall Marvin Safe Co	Hamilton	AWE DOE	Ohio.
OH—Horizons, Inc.	Cleveland	AWE	Ohio.
OH—Kettering Laboratory, University of Cincinnati	Cincinnati	BE	Ohio.
OH—Magnus Brass Co	Cincinnati	AWE	Ohio.
OH—McKinney Tool and Manufacturing Co	Cleveland	AWE	Ohio.
OH—Mitchell Steel Co	Cincinnati	AWE	Ohio.
OH—Monsanto Chemical Co.	Dayton	AWE	Ohio.
OH—Mound Plant	Miamisburg	DOE	Ohio.
OH—Painesville Site (Diamond Magnesium Co.)	Painesville	AWE	Ohio.
OH—Piqua Organic Moderated Reactor	Piqua	DOE	Ohio.
OH—Portsmouth Gaseous Diffusion Plant	Piketon	DOE	Ohio.
OH—R. W. Lebland Machine Tool Co	Cincinnati	AWE	Ohio.
OH—Tech-Art, Inc	Milford	AWE	Ohio.
OH—Tocco Induction Heating Div	Cleveland	AWE	Ohio.
OH—Vulcan Tool Co	Dayton	AWE	Ohio.
OK—Eagle Picher	Quapaw	BE	Oklahoma.
OK—Kerr-McGee	Guthrie	AWE	Oklahoma.
OR—Albany Research Center	Albany	AWE DOE	Oregon.
OR—Wah Chang	Albany	AWE	Oregon.
PA—Aeroprojects, Inc	West Chester	AWE BE	Pennsylvania.
PA—Aliquippa Forge	Aliquippa	AWE DOE	Pennsylvania.
PA—Aluminum Co. of America (Alcoa) (Pennsylvania)	New Kensington	AWE	Pennsylvania.
PA—Beryllium Corp. of America (Hazleton)	Hazleton	BE	Pennsylvania.
PA—Beryllium Corp. of America (Reading)	Reading	BE	Pennsylvania.
PA—Birdsboro Steel & Foundry	Birdsboro	AWE	Pennsylvania.
PA—C.H. Schnoor	Springdale	AWE DOE	Pennsylvania.
PA—Carnegie Institute of Technology	Pittsburgh	AWE	Pennsylvania.
PA—Carpenter Steel Co	Reading	AWE	Pennsylvania.
PA—Chambersburg Engineering Co	Chambersburg	AWE	Pennsylvania.
PA—Foote Mineral Co	East Whiteland Twp	AWE	Pennsylvania.
PA—Frankford Arsenal	Philadelphia	AWE	Pennsylvania.
PA—Heppenstall Co	Pittsburgh	AWE	Pennsylvania.
PA—Jessop Steel Co	Washington	AWE	Pennsylvania.
PA—Koppers Co., Inc	Verona	AWE	Pennsylvania.
PA—Landis Machine Tool Co	Waynesboro	AWE	Pennsylvania.
PA—McDanel Refractory Co	Beaver Falls	BE	Pennsylvania.
PA—Nuclear Materials and Equipment Corp. (NUMEC)	Apollo	AWE BE	Pennsylvania.
PA—Nuclear Materials and Equipment Corp. (NUMEC)	Parks Township	AWE BE	Pennsylvania.
PA—Penn Salt Co	Philadelphia/Wyndmoor	AWE	Pennsylvania.
PA—Philadelphia Naval Yard	Philadelphia	AWE	Pennsylvania.
PA—Shippingport Atomic Power Plant [1]	Shippingport	DOE	Pennsylvania.
PA—Superior Steel Co	Carnegie	AWE	Pennsylvania.
PA—U.S. Steel Co., National Tube Division	McKeesport	AWE	Pennsylvania.
PA—Vitro Manufacturing (Canonsburg)	Canonsburg	AWE BE	Pennsylvania.
PA—Westinghouse Atomic Power Dev. Plant	East Pittsburgh	AWE	Pennsylvania.
PA—Westinghouse Nuclear Fuels Division	Cheswick	AWE	Pennsylvania.
PR—BONUS Reactor Plant	Punta Higuera	DOE	Puerto Rico.
PR—Puerto Rico Nuclear Center	Mayaguez	DOE	Puerto Rico.
RI—C.I. Hayes, Inc	Cranston	AWE	Rhode Island.
SC—Savannah River Site	Aiken	DOE	South Carolina.
SD—Ore Buying Station at Edgemont	Edgemont	DOE	South Dakota.
TN—Clarksville Facility	Clarksville	DOE	Tennessee.
TN—Manufacturing Sciences Corp	Oak Ridge	BE	Tennessee.
TN—Oak Ridge Gaseous Diffusion Plant (K–25)	Oak Ridge	DOE	Tennessee.
TN—Oak Ridge Hospital	Oak Ridge	DOE	Tennessee.
TN—Oak Ridge Institute for Science Education	Oak Ridge	DOE	Tennessee.
TN—Oak Ridge National Laboratory (X–10)	Oak Ridge	DOE	Tennessee.
TN—S–50 Oak Ridge Thermal Diffusion Plant	Oak Ridge	DOE	Tennessee.
TN—Vitro Corporation of America (Tennessee)	Oak Ridge	AWE BE	Tennessee.
TN—W.R. Grace (Tennessee)	Erwin	AWE	Tennessee.
TN—Y–12 Plant	Oak Ridge	DOE	Tennessee.
TX—AMCOT	Ft. Worth	AWE	Texas.
TX—Mathieson Chemical Co	Pasadena	AWE	Texas.
TX—Medina Facility	San Antonio	DOE	Texas.
TX—Pantex Plant	Amarillo	DOE	Texas.
TX—Sutton, Steele and Steele Co	Dallas	AWE	Texas.
TX—Texas City Chemicals, Inc	Texas City	AWE	Texas.
UT—Ore Buying Station at Marysvale	Marysvale	DOE	Utah.
UT—Ore Buying Station at Moab	Moab	DOE	Utah.
UT—Ore Buying Station at Monticello	Monticello	DOE	Utah.
UT—Ore Buying Station at White Canyon	White Canyon	DOE	Utah.
UT—Uranium Mill in Monticello	Monticello	DOE	Utah.
VA—BWXT	Lynchburg	AWE BE	Virginia.
VA—Thomas Jefferson National Accelerator Facility	Newport News	DOE	Virginia.
VA—University of Virginia	Charlottesville	AWE	Virginia.
WA—Hanford	Richland	DOE	Washington.
WA—Pacific Northwest National Laboratory	Richland	DOE	Washington.
WV—Huntington Pilot Plant	Huntington	DOE	West Virginia.
WI—Allis-Chalmers Co	West Allis, Milwaukee	AWE	Wisconsin.
WI—A.O. Smith	Milwaukee	BE	Wisconsin.
WI—Besley-Wells	South Beloit	AWE	Wisconsin.
WI—LaCrosse Boiling Water Reactor	LaCrosse	DOE	Wisconsin.
WI—Ladish Co	Cudahy	BE	Wisconsin.
WY—Ore Buying Station at Crooks Gap	Crooks Gap	DOE	WY.
WY—Ore Buying Station at Riverton	Riverton	DOE	WY.
MR—Pacific Proving Ground [2]	Marshall Islands	DOE	Marshall Islands.

[1] Consistent with the Act, coverage is limited to activities not performed under the responsibility of the Naval Nuclear Propulsion program.
[2] Pacific Proving Ground includes Bikini Atoll, Enewetak Atoll, Johnston (U.S. nuclear weapons testing activities only), and Christmas Island (U.S. nuclear weapons testing activities only).

Issued in Washington, DC July 15, 2003.

Beverly A. Cook,

Assistant Secretary, Office of Environment, Safety and Health.

[FR Doc. 03–18442 Filed 7–18–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, August 7, 2003, 6 p.m. to 9:30 p.m.

ADDRESSES: Jefferson County Airport, Terminal Building, Mount Evans Room, 11755 Airport Way, Broomfield, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO, 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: 1. Presentation and discussion on the draft Long-Term Stewardship Strategy for Rocky Flats.

2. Follow-up discussion on final approved modifications to the Rocky Flats Cleanup Agreement

3. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Public Reading Room located at the Office of the Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operations for the Public Reading Room are 8:30 a.m. to 4:30 p.m., Monday–Friday, except Federal holidays. Minutes will also be made available by writing or calling Deborah French at the address or telephone number listed above. Board meeting minutes are posted on RFCAB's Web site within one month following each meeting at: *http://www.rfcab.org/Minutes.HTML.*

Issued at Washington, DC on July 15, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–18443 Filed 7–18–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Proposed Collection; Comment Request.

SUMMARY: The EIA is soliciting comments on a proposal to request

monthly reporting of natural gas import and export information. This reporting would be in addition to the existing information collection requirements for Form FE–746R, "Import and Export of Natural Gas."

DATES: Comments must be filed by September 19, 2003. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Yvonne Caudillo. To ensure receipt of the comments by the due date, submission by FAX (202–586–4062) or e-mail (*yvonne.caudillo@hq.doe.gov*) is recommended. Ms. Caudillo's mailing address is Office of Fossil Energy, FE–34, Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Ms. Caudillo may be contacted by telephone at (202) 586–4587.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Ms. Caudillo at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) under section 3507(a) of the Paperwork Reduction Act of 1995.

DOE's Office of Fossil Energy (FE) is delegated the authority to regulate natural gas imports and exports under section 3 of the Natural Gas Act of 1938, 15 U.S.C. 717b. In order to carry out its delegated responsibility, FE requires those persons seeking to import or export natural gas to file an application containing basic information about the scope and nature of the proposed import/export activity. Historically FE has collected information on a quarterly basis regarding import and export transactions. That information has been used to ensure compliance with any terms and conditions of authorization. In addition, the data are used to monitor North American natural gas trade, which in turn enables the Federal Government to perform market and regulatory analyses; improve the capability of industry and the Government to respond to any future energy-related supply problems; and keep the general public informed of international natural gas trade.

II. Current Actions

DOE will be requesting a revision of its existing information reporting requirements for imports and exports of natural gas (Form FE–746R). The Department of Energy (DOE) is undertaking an ambitious Natural Gas Data Collection Initiative to improve the way the DOE gathers and disseminates information about the use and origin of natural gas supplies in the U.S. Under this Initiative, DOE plans to collect critical natural gas information (*i.e.*, country of origin, international point of entry/exit, and volume imported/exported) monthly, instead of waiting until the end of each quarter to collect any import/export information. To facilitate timely reporting DOE will establish an Internet-based reporting option for the monthly reporting. Also, DOE will treat all monthly information as confidential.

Over the last decade, demand for natural gas increased significantly and demand is projected to continue increasing. With these increases, there is the possibility of periodic price spikes and market dislocations. In a tight and volatile natural gas market, consumers and producers must have the best information possible regarding the availability of supply and the forces that drive prices in order to make informed decisions about their consumption and production activities.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

C. Can the information be submitted by the due date?

D. Public reporting burden for the monthly reporting of natural gas imports/exports is estimated to average three hours per response. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

E. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

F. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

G. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information To Be Collected

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be collected?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, July 14, 2003.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 03–18444 Filed 7–18–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. NJ03–3–000]

Bonneville Power Administration; Notice of Filing

July 15, 2003.

Take notice that on July 7, 2003, the Bonneville Power Administration (Bonneville) filed a Petition for a Declaratory Order Maintaining Reciprocity Approval of Its Open Access Transmission Tariff (OATT) and an Exemption In Lieu of a Filing Fee with the Federal Energy Regulatory Commission (Commission). Bonneville states that it has revised sections 13.2, 14.2, 17.1 and 18.1 of its OATT to change its procedure for awarding short-term transmission requests. Bonneville explains that these revisions eliminate the right of first refusal to match competing requests for short-term transmission service and adopt a first-come, first-served approach. Bonneville further explains that it has also revised Attachment K to its OATT in accordance with the 2004 Rate Case Settlement. Additionally, Bonneville states that it has refiled its entire OATT to voluntarily adopt the Order No. 614 pagination standards, as applicable.

Bonneville states that the Commission found its OATT to be an acceptable reciprocity transmission tariff, effective October 1, 2001, by Order Granting Petition for Declaratory Order, 94 FERC 61,317 (March 19, 2001) and Order on Tariff Amendment, 96 FERC 62,337 (September 28, 2001). Bonneville further states that it now seeks a declaratory order finding that its OATT, as revised by this filing, continues to maintain its reciprocity status. Bonneville has also requested an expedited approval process, making the changes effective as of August 15, 2003.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: July 28, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18403 Filed 7–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meetings and Soliciting Scoping Comments for an Applicant Prepared Environmental Assessment Using the Alternative Licensing Process

July 15, 2003.

a. *Type of Application:* New License for Major Project.

b. *Project No.:* 2216–058.

c. *Applicant:* New York Power Authority.

d. *Project Name:* Niagara Power Project.

e. *Location:* The existing project is located in Niagara County, New York, on the Niagara River, a 35-mile-long waterway that connects Lake Erie and Lake Ontario and is boundary water between the United States and Canada. There are no Federal lands within the project boundary.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* Keith Silliman, Director, Niagara Relicensing, New York Power Authority, 30 South Pearl Street, Albany, New York 12207–3425, (518) 433–6735.

h. *FERC Contact:* Patti Leppert at (202) 502–6034, or *patricia.leppert@ferc.gov.*

i. *Deadline for Filing Scoping Comments:* October 14, 2003.

All comments and correspondence (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Correspondence should clearly show the following caption on the first page: Scoping Comments, Niagara Power Project, FERC No. 2216–058.

The Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure require that a copy of all documents filed with the Commission be served on each person on the official service list for the project. Furthermore, if comments or documents filed with the Commission relate to the merits of an issue that may affect the responsibilities of a particular resource agency, a copy of the document also must be served on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

j. The existing 2,538-megawatt project consists of: (1) Two 700-foot-long intake structures located on the upper Niagara River about 2.6 miles upstream from the American Falls; (2) two 4.3-mile-long concrete underground water supply conduits, each measuring 46 feet wide by 66.5 feet high; (3) a forebay; (4) the Lewiston Pump-Generating Plant, measuring 975 feet long by 240 feet wide by 160 feet high; (5) the 1,900-acre Lewiston reservoir at a maximum water surface elevation of 658 feet United States Lake Survey Datum; (6) the Robert Moses Niagara Power Plant, including an intake structure, measuring 1,100 feet long by 190 feet wide by 100 feet high; (7) a switch yard; and (8) appurtenant facilities.

k. *Scoping Process:* The New York Power Authority (Power Authority) is utilizing the Commission's Alternative Licensing Process (ALP). Under the ALP, the Power Authority will prepare an Applicant-Prepared Environmental

Assessment (APEA) and license application for the Niagara Power Project. The Power Authority expects to file, with the Commission, the license application and APEA for the Niagara Power Project by August 31, 2005.

The Commission staff intends to prepare an Environmental Assessment (EA) on the project in accordance with the National Environmental Policy Act of 1969 (NEPA). The EA will consider both site-specific and cumulative environmental effects and reasonable alternatives to the proposed action. These scoping meetings will satisfy the scoping requirements, pursuant to NEPA, as amended.

The purpose of this notice is to inform you of the opportunity to participate in the scoping meetings, identified below.

i. *Scoping Meetings:* Information presented at the scoping meetings will: (1) Provide a brief overview of the Niagara Power Project; (2) provide a brief overview of the ALP for relicensing the project; (3) provide a discussion of the issues identified for analysis in the APEA and those not requiring analysis; and (4) solicit comments from the public on Scoping Document 1.

The staff from New York State Department of Environmental Conservation will provide an overview of the State's regulatory process and its role in the relicensing of the Niagara Power Project.

The Commission staff will conduct one agency scoping meeting and one public meeting. The agency scoping meeting will focus on resource agency, Indian Tribes, and non-governmental organizations concerns, while the public scoping meeting is primarily for public input. All interested agencies, Indian Tribes, organizations, and individuals are invited to attend one or both meetings, and assist the staff in identifying the scope of the environmental issues that should and should not be analyzed in the APEA. The location and times of these meetings are as follows:

Agency Scoping Meeting

Date: Wednesday, August 13, 2003.
Time: 2 p.m.
Address: Niagara Falls High School Amphitheater, 4455 Porter Road, Niagara Falls, New York.

Public Scoping Meeting

Date: Wednesday, August 13, 2003.
Time: 7 p.m.
Address: Same as agency scoping meeting.

To help focus the discussions, Scoping Document 1 will be issued in late July 2003, and will be on the Niagara Power Project's relicensing Web site at *http://niagara.nypa.gov*. Scoping Document 1 will also be available in the Public Information File, located at the Niagara Power Project Power Vista, and at the following public libraries: Lewiston Public Library; Niagara Falls Public Library; Lockport Public Library; Buffalo & Erie County Public Library; North Tonawanda Public Library; and Grand Island Public Library.

A copy of Scoping Document 1 will be available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, or toll-free at 1–866–208–3676, or for TTY (202) 502–8659.

You may also register online at *http://www.ferc.gov.esubscribenow.htm* to be notified via e-mail of new filings and issuances related to the Niagara Power Project or other pending projects. For assistance, contact FERC Online Support. ii. *Meeting Procedures:* The scoping meetings will be conducted according to the procedures used at Commission scoping meetings. The meetings will be recorded by a stenographer and will become a part of the formal record of the proceedings on the project.

Interested agencies, Indian Tribes, organizations, and individuals are invited and encouraged to attend and assist in identifying and clarifying the scope of issues that should and should not be analyzed in the APEA. Speaking time allowed for individuals will be determined before each meeting, based on the number of persons wishing to speak and the approximate amount of time available for the meeting. Persons choosing not to speak, but wishing to express an opinion, as well as speakers unable to summarize their positions within the allotted time, may submit written statements for inclusion in the public record.

Written scoping comments may also be mailed to Keith Silliman, Director, Niagara Relicensing, New York Power Authority, 30 South Pearl Street, Albany, New York 12207–3425, by October 14, 2003. For further information, please contact Keith Silliman of NYPA at (518) 433–6735; Patti Leppert of Commission staff, at (202) 502–6034; or Steve Kartalia of Commission staff, at (202) 502–6131.

Magalie R. Salas,
Secretary.
[FR Doc. 03–18404 Filed 7–18–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Los Alamos Site Office Notice of Floodplain and Wetlands Involvement for Two Monitoring Wells at Los Alamos National Laboratory, Los Alamos, NM

AGENCY: National Nuclear Security Administration, Los Alamos Site Office, DOE.

ACTION: Notice of floodplains and wetlands involvement.

SUMMARY: The Los Alamos Site office of the National Nuclear Security Administration (NNSA), United States Department of Energy (DOE) plans to install and operate two groundwater monitoring wells within two separate canyon floodplain locations. Monitoring well CdV–16–1 (i) would be located within Los Alamos National Laboratory (LANL) in Canyon del Valle (see Figure 1), and monitoring well R–2 would be located near the LANL boundary within the Incorporated County of Los Alamos in Pueblo Canyon (see Figure 2). The installation process for the wells will include the placement of small cement pads around the wells, along with a gravel-covered area, and road improvements, culverts and erosion control materials and mechanisms as needed. The wells would be operated and monitored periodically after installation was completed. In accordance with 10 CFR Part 1022, DOE has prepared a floodplain/wetland assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplains.

DATES: Comments are due to the address below no later than August 5, 2003.

ADDRESSES: Written comments should be addressed to: Elizabeth Withers, Department of Energy, National Nuclear Security Administration, Los Alamos Site Office, 528 35th Street, Los Alamos, NM 87544, or submit them to the Mail Room at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Written comments may also be sent electronically to: *ewithers@doeal.gov* or by facsimile to (505) 667–9998.

FOR FURTHER INFORMATION CONTACT: Robert Enz, Department of Energy, National Nuclear Security Administration, Los Alamos Site Office, 528 35th Street, Los Alamos, NM 87544. Telephone (505) 667–7640, facsimile (505) 667–9998.

For Further Information on General DOE Floodplain Environmental Review Requirements, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, EH–42, Department of Energy, 1000 Independence Avenue, SW., Washington DC 20585–0119. Telephone (202) 586–4600 or (800) 472–2756, facsimile (202) 586–7031.

SUPPLEMENTARY INFORMATION: The DOE is installing a network of monitoring wells around and within LANL to characterize the hydrogeological setting of the Pajarito Plateau. These monitoring wells will be installed at varying depths and used to provide information on the groundwater aquifers present and to monitor various characteristics of the aquifers over time. The two subject monitoring wells would be installed in canyon-bottom settings chosen by the New Mexico Environment Department, which is the local regulator for water quality appointed by the Environmental Protection Agency.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR Part 1022), NNSA has prepared a floodplain/wetland assessment for this action, which is available by contacting Elizabeth Withers at the previously identified addresses, phone and facsimile numbers. The floodplain/wetland assessment is available for review at the DOE Reading Room at the Los Alamos Outreach Center, 1619 Central Avenue, Los Alamos, NM 87854; and the DOE Reading Room at the Zimmerman Library, University of New Mexico, Albuquerque, NM 87131. The NNSA will publish a floodplain statement of findings for this project in the **Federal Register** no sooner than August 5, 2003.

Issued in Los Alamos, NM on July 7, 2003.

E. Dennis Martinez,
Acting Manager, Department of Energy, National Nuclear Security Administration, Los Alamos Site Office.
BILLING CODE 6450–01–P

Figure 1 - Location of Monitoring Well Cdv-16-1(i) Relative to the 100-Year Floodplain in Cañon de Valle.

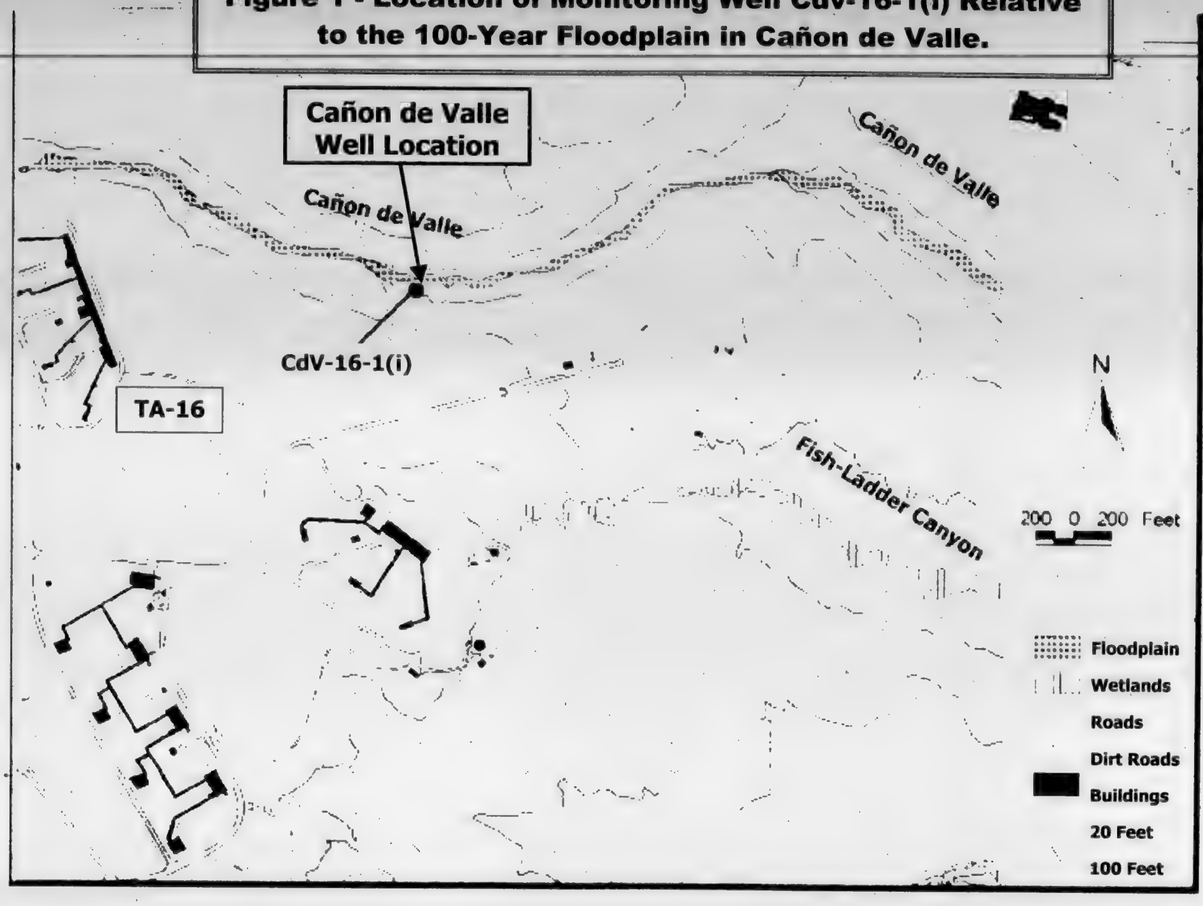
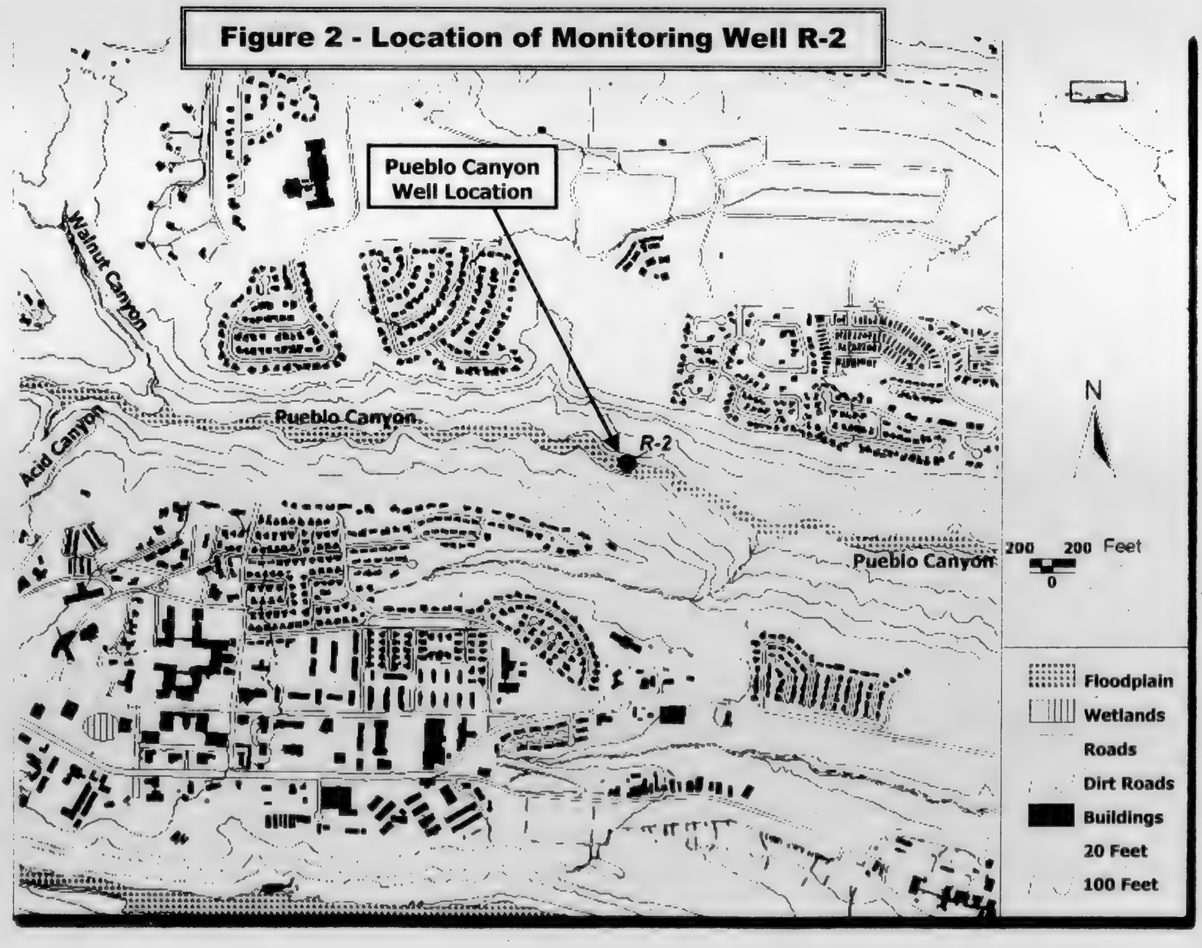


Figure 2 - Location of Monitoring Well R-2



[FR Doc. 03–18099 Filed 7–18–03; 8:45 am]
BILLING CODE 6450–01–C

FEDERAL ACCOUNTING STANDARDS BOARD

Notice of Issuance of Statement of Federal Financial Accounting Standards (SFFAS) No. 25

AGENCY: Federal Accounting Standards Advisory Board.

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board has issued Statement of Federal Financial Accounting Standards (SFFAS) No. 25, *Reclassification of Stewardship Responsibilities and Eliminating the Current Services Assessment.*

The Board approved the Statement in April 2003, and submitted it to FASAB principals for 90-day review, the review period closed on July 17, 2003.

SFFAS No. 25 changes the classification of information about stewardship responsibilities required by SFFAS 5 and 17. Information about "risk assumed” will become required supplementary information (RSI). The Statement of Social Insurance will become a basic financial statement. Other information about social insurance required by SFFAS 17 will be reported as RSI or in a footnote. SFFAS 25 also eliminates the requirement to present certain information about stewardship responsibilities, known as the "current services assessment," previously required by SFFAS 8.

The standards prescribed in SFFAS No. 25 are effective for periods beginning after September 30, 2003. Hard copies of the statement will be mailed to the FASAB mailing list. It is also available on the FASAB Web site at *www.fasab.gov* or by calling 202–512–7350.

FOR FURTHER INFORMATION, CONTACT: Wendy Comes, Executive Director, 441 G St., NW., Mail Stop 6K17V, Washington, DC 20548, or call 202–512–7350.

Authority: Federal Advisory Committee Act. Pub. L. 92–463.

Dated: July 17, 2003.

Wendy M. Comes,

Executive Director.

[FR Doc. 03–18424 Filed 7–18–03; 8:45 am]
BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04005]

Translating Research Into Action for Diabetes; Notice of Availability of Funds

Application Deadline: September 4, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a) and 317(k)(2)of the Public Health Service Act, (42 U.S.C. section 241(a) and 247b(k)(2)), as amended. The Catalog of Federal Domestic Assistance number is 93.283.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2004 funds for a cooperative agreement program for Translating Research Into Action For Diabetes (TRIAD). This program addresses the "Healthy People 2010" focus area of Diabetes.

The purposes of this research program are to:

1. Continue or develop a multi-center study of diabetes within managed care settings examining the effect of managed care structure and organization using a systematic and standardized approach on processes and outcomes of diabetes care using two overarching hypotheses. The hypotheses are (1) Managed care structural factors (*i.e.* the ability to track, risk stratify, and/or manage persons with diabetes; guideline selection and implementation, patient education, experience with managed care, management of referral care, clinician incentives, financial barriers to care, and non-financial barriers to care) influence process of care (clinical process variables and service use process variables, *i.e.* Glycosylated hemoglobin tested/frequency, blood pressure (BP) assessment, lipids tested/frequency, eye exam, foot exam done/foot care recommendations, aspirin prescription, nephropathy assessment, exercise recommendations, smoking cessation counseling); and (2) Managed care structural factors influence long-term outcomes of care (glycosylated hemoglobin levels, lipid levels, BP level, quality of life, satisfaction with care, medical costs, hospitalization, diabetes-related complications).

2. Conduct systematic research aimed at gaining knowledge to improve care for people with diabetes using a standardized protocol across research centers. This protocol shall be designed to assess a diverse community-dwelling (non-institutionalized) population in terms of age (aged 18 or older), gender, race/ethnicity (English and Spanish-speaking), disease severity, geography, and socioeconomic factors.

3. Explore applied research questions aimed at delivering and evaluating primary prevention strategies for diabetes among people at high risk.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP): Help improve the availability, process, effectiveness, cost-effectiveness, and health outcomes of diabetes-related services provided within managed-care settings.

C. Eligible Applicants

Competition is open to colleges, universities, private non-profit and public nonprofit domestic organizations, research institutions, faith-based organizations, and managed care organizations.

Applicants claiming nonprofit status must include evidence of nonprofit status with their application.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501 (c) (4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $3.9 million dollars will be available in FY 2004 to fund approximately six awards. It is expected that the average award will be $550,000, ranging from $400,000 to $700,000. It is expected that the awards will begin on or about February 1, 2004, and will be made for a 12-month budget period within a project period of up to five years. The National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) will collaborate with CDC in support of the enhancement of diabetes prevention and control research through a Memorandum of Understanding (MOU) and funding of approximately $500,000 per year during the five-year project period, and based on the availability of funds. These funds are included in the total availability of funds above.

Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress demonstrated by investigators in attainment of the goals, objectives, and corresponding performance measures as evidenced by required reports, and based on the availability of funds.

Funding Preferences

Preference may be given to applicants previously funded under Program Announcement #98086 ("Translational Research Centers for Diabetes Control Within Managed-Care Settings") because these organizations:

1. Are geographically located across the nation with access to diverse diabetic populations in terms of ethnicity/minority, age, and socio-economic factors.

2. Have proven collaboration in conducting multi-center studies using a common protocol with other managed care organizations and academic institutions.

3. Have demonstrated strategies for reaching target diabetic population and attaining a very high response rate (70 to 80 percent).

4. Have established infrastructure, pool of expertise, experienced personnel, and capacity to track and maintain (with retention rates close to 80 percent) a large diabetic cohort within managed care settings.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

Recipients will be responsible for the following activities:

a. Collaborate with other successful recipients and partners. Participate in the implementation of a multi-center standardized protocol, and in its further development, to include the design of the study, design of instruments, development of methods and procedures for the study, collection of the data, quality control, analysis and interpretation of the data, and dissemination of results.

b. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project that will include longitudinal ascertainment of serious health conditions. The local IRB will review and approve the protocol on an annual basis.

c. Assure and maintain the confidentiality of all study data.

d. Develop standardized and aggregate analytical processes and technical reports or manuscripts for peer-reviewed publications as appropriate.

e. Because the previous program announcement #98086 was designed using a standardized protocol and standardized data collection systems, new applicants must have access to existing data (at baseline, and at least one follow-up data collection within 18 months) collected in a similar standardized and systematic manner on diabetes patients within managed care settings, collected during the previous five years that may be appropriate for inclusion with any of the previously funded centers so that a diabetic cohort may be followed in a uniform manner. Data should have been collected from health plans, provider groups, racial and ethnic minority groups with diabetes, and adults over the age of 18; and may have been assembled through interviews of health plan and provider group leaders, telephone surveys, medical record reviews, and administrative data, and other appropriate sources in order to further the knowledge already gained.

f. Work collaboratively with similar organizations and recipients in a multi-center study using a common protocol to answer the following questions: (1) What is the level of quality of diabetes care and is it changing over time? (2) what is the relationship between structural aspects of care, for example, use of disease management strategies, profit status, management of referral care, guideline implementation (at system, provider, and patient levels) and diabetes quality of care, intermediate outcomes, and long term health (morbidity, mortality, quality of life) and economic outcomes? and (3) what interventions and strategies can improve diabetes quality of care and outcomes?

g. Collaborate in an interactive and ongoing basis with other health organizations, provider groups, community groups, etc., as necessary, to participate in research assessing the existing and changing structures, processes, delivery, and outcomes of care for people with diabetes.

h. Examine the relationship between individual- and area/community-level socioeconomic characteristics of persons with diabetes and their health behaviors, and quality of care (processes and outcomes). These objectives will be accomplished through collaboration with other funded research centers.

i. Identify innovative ways of optimizing the delivery of care and health outcomes; and identify and test strategies to improve care for people with diabetes using rigorous scientific methods and based on knowledge gained from this systematic and collaborative research program.

j. Utilize an existing Steering Committee which will consist of the Principal Investigators of the research study, and who will serve as the governing body for the study.

k. Follow the standardized protocol and manual(s) of operation to be developed by the Steering Committee.

l. Maintain an effective and adequate management and staffing plan with appropriate competencies to gather, analyze, and publish data; and collaborate with other recipients and use standardized systems such as computer assisted telephone systems, hospital record systems, chart review, and administrative data management systems for collecting patient data.

m. Communicate scientifically via publications, abstracts, and presentations, the main and secondary findings pertaining to the goals of the study.

n. Perform joint analysis with aggregate data. Performance will be measured by evidence that the grantee has demonstrated accomplishment of the activities described above in items a through n.

2. CDC Activities

CDC will be responsible for the following activities:

a. Provide assistance on the design of the multi-center study, to include assisting with the development of sampling procedures, design of the instruments, development of methods and procedures for the study, collection of data, analysis and interpretation of data, resolution of data quality issues and dissemination of results.

b. Assist in the development of a standardized research protocol for IRB review by all cooperating institutions participating in the research project.

c. Obtain and maintain Certificates of Confidentiality in the form of 301(d) and assurance of confidentiality 308(d), as appropriate for the study.

d. Collaborate to produce technical reports or manuscripts for peer-reviewed publications as appropriate. Provide assistance for joint analysis with aggregate data.

e. Serve as consultants to the Steering Committee.

f. Participate in research assessing the existing and changing structures, processes, delivery, and outcomes of care for people with diabetes.

g. Provide consultation to examine the relationship between individual and community socioeconomic characteristics of persons with diabetes and diabetes processes and outcomes of care.

h. Collaborate with research centers to identify and test strategies to improve

care for people with diabetes using rigorous scientific methods.

F. Content

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, therefore, it is important to follow them in presenting your program plan. The narrative should be no more than 50 double-spaced pages, printed on one side, with one-inch margins, and unreduced 12-point font.

Beginning October 1, 2003, applicants will be required to have a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge.

Although obtaining a DUNS number is not required for applications submitted in response to announcements with deadlines on or before September 30, 2003, regardless of when the award is made, you are encouraged to obtain a DUNS number now if you believe you will be submitting an application to any Federal agency on or after October 1, 2003. Proactively obtaining a DUNS number at the current time will facilitate the receipt and acceptance of applications after September 2003.

To obtain a DUNS number, access: *http://www.dunandbradstreet.com* or call 1–866–705–5711.

Focus the application content on the planned "Recipient Activities" and describe accomplishments in the Background and Need section of your narrative. Provide supporting documentation such as resumes, job descriptions, and descriptions of collaborators as appropriate. The original and each copy of the application must be submitted unstapled and unbound. Pages should be clearly numbered and a complete index to the application and any appendices should be included.

1. Program Narrative

Under a section entitled Background and Need, describe the extent to which the applicant demonstrates an effective understanding of the burden of diabetes, the problems (structure, process of care, quality of care, endpoints, and outcomes); specific accomplishments of your diabetes research program, unmet needs, a need for the project, and a commitment to its execution. Describe your capacity to conduct a multi-center research study in managed care settings. Provide a detailed plan of activities to be performed in the first year. Briefly address activities for years 2–5.

2. Provide specific references to the following program requirements as described in the Recipient Activities section.

a. Provide evidence of participation and collaboration with other partners in a multi-center study. Provide evidence that the principal investigator has published reports emanating from multi-center investigations using common protocols of the relationship between structural factors and outcomes of diabetes care. Provide evidence of experience with developing and working with a multi-center standardized protocol to include the design of the study, design of instruments, development of methods and procedures for the study, collection of the data, quality control, analysis and interpretation of the data, and dissemination of results. Applicant must provide a copy of an approved protocol (as an attachment to the application) that describes the criteria listed above.

b. Provide evidence that the applicant and principal investigator have experience in the development of a research protocol for IRB review that includes multiple cooperating institutions participating in the research project and that will include longitudinal ascertainment of serious health conditions. Provide evidence that the local IRB will review and approve the protocol on an annual basis. Provide evidence of experience dealing with the challenges and solutions related to collecting data in a standardized manner within a multi-center study. For example, provide a narrative describing methods used to evaluate recruitment, retention, and show data on response rates obtained.

c. Provide evidence that applicant will assure and maintain the confidentiality of all study data.

d. Provide evidence that applicant can develop standardized and aggregate analytical processes and technical reports or manuscripts, from multi-center studies using a common protocol, for peer-reviewed publications as appropriate.

e. Provide evidence that applicant has access to research infrastructure; and provide summaries of existing data collected during the previous five years, linking structural characteristics (for example, use of disease management strategies, profit status, management of referral care, and guideline implementation) with patient level data, including that obtained from surveys, medical record reviews, and administrative health care utilization data access to existing data on diabetes patients within managed care settings, from health plans, provider groups, racial and ethnic minority groups with diabetes, and adults over the age of 18; assembled at a minimum through telephone surveys, medical record reviews, and administrative data, in order to further the knowledge already gained.

f. Provide evidence that applicant can and is willing to work collaboratively with the other recipients to answer the following questions: (1) What is the level of quality of diabetes care and is it changing over time? (2) What is the relationship between structural aspects of care, for example, use of disease management strategies, profit status, management of referral care, guideline implementation (at system, provider, and patient levels) and diabetes quality of care, intermediate outcomes, and long term health (morbidity, mortality, quality of life) and economic outcomes? and, (3) what interventions and strategies can improve diabetes quality of care and outcomes?

g. Provide evidence of applicant's ability to collaborate in an interactive and ongoing basis with other health organizations, provider groups, community groups, *etc.*, as necessary, to participate in research assessing the existing and changing structures, processes, delivery, and outcomes of care for people with diabetes. Provide evidence in the form of multi-center aggregate data wherein key structural factors, processes, and outcomes of care are collected uniformly across research centers.

h. Provide evidence that the applicant has experience in examining the relationship between individual- and area/community-level socioeconomic characteristics of persons with diabetes and their health behaviors, and quality of care (processes and outcomes). These objectives will be accomplished through collaboration with other funded research centers.

i. Provide evidence that the applicant will focus on finding innovative ways of optimizing the delivery of care and health outcomes and will identify and test strategies to improve care for people with diabetes using rigorous scientific methods and based on knowledge gained from this systematic and collaborative research program.

j. Provide evidence that the principal investigator will be willing to utilize an existing Steering Committee which will consist of the Principal Investigators of the research study and who will serve as the governing body for the study.

k. Provide evidence that recipient will follow the standardized protocol and manual(s) of operation to be developed by the Steering Committee.

l. Provide evidence that the applicant will maintain an effective and adequate management and staffing plan, including an experienced and published principal investigator for the project who has experience in the management and oversight of a multi-center study.

m. Provide evidence of collaboration with others, and experience with the use of standardized systems such as computer assisted telephone systems, hospital record systems, chart review, and administrative data management systems for collecting patient data.

n. Provide evidence of applicant's experience and willingness to perform joint analysis with aggregate data from the study.

o. Provide evidence of applicant's willingness to communicate scientifically via publications, abstracts, and presentations, the main and secondary findings pertaining to the goals of the study.

3. Provide a detailed budget and line-item justification for the first year that is consistent with the stated objectives. Applicants are asked to include travel for up to three project staff, including the principal investigator, to attend four Steering Committee Meetings. For panel review purposes, the Program Narrative must be separate from the budget justification and budget summaries.

G. Submission and Deadline

Application Forms

Submit the original and two copies of PHS–398 (OMB Number 0925–0001). Adhere to the instructions on the Errata sheet (posted on the CDC Web site) for specific CDC instructions for the PHS 398 form. Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time. September 4, 2003. Submit the application to: Technical Information Management-PA #04005, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd., Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Applications shall be considered as meeting the deadline if they are received in the CDC Procurement and Grants Office before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

A. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals as stated in the Purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

An independent review group appointed by CDC will evaluate each application against the following criteria (100 points total):

1. The extent to which the applicant addresses the specific Content 1.(a) through 1.(o), below. Total Score 95 points:

(a) Provide evidence of participation and collaboration with other partners in a multi-center study using a common protocol. Provide evidence that the Principal Investigator has published reports emanating from multi-center investigations of the relationship between structural factors and outcomes of diabetes care. Provide evidence of experience in developing and working with multi-center standardized protocol to include the design of the study, design of instruments, development of methods and procedures for the study, collection of the data, quality control, analysis and interpretation of the data, and dissemination of results. Provide copy of an approved standardized, common protocol that includes the criteria listed above, and implemented by the applicant. (10 points)

(b) Provide evidence that applicant and principal investigator have experience in the development of a research protocol for IRB review that includes multiple cooperating institutions participating in the research project that will include longitudinal ascertainment of serious health conditions. Provide evidence that the local IRB will review and approve the protocol on an annual basis. Provide evidence of experience dealing with the challenges and solutions related to collecting data in a standardized manner within a multi-center study. For example, provide a narrative describing methods used to evaluate recruitment, retention, and show data on response rates obtained. (10 points)

(c) Provide evidence that applicant can and will develop standardized and aggregate analytical processes and technical reports or manuscripts, from multi-center studies using a common protocol, for peer-reviewed publications as appropriate. (10 points)

(d) Provide evidence that applicant has access to research infrastructure. Provide summaries of existing data collected during the previous five years, linking structural characteristics (for example, use of disease management strategies, profit status, management of referral care, and guideline implementation) with patient level data (for example, data obtained from surveys, medical record reviews, administrative health care utilization data, existing data on diabetes patients within managed care settings, from health plans, provider groups, racial and ethnic minority groups with diabetes, and adults over the age of 18) assembled at a minimum through telephone surveys, medical record reviews, and administrative data, in order to further the knowledge already gained. (10 points)

(e) Provide evidence that applicant can and is willing to work collaboratively with the other recipients to answer the following questions: (1) What is the level of quality of diabetes care and is it changing over time? (2)

what is the relationship between structural aspects of care, for example, use of disease management strategies, profit status, management of referral care, guideline implementation (at system, provider, and patient levels) and diabetes quality of care, intermediate outcomes, and long term health (morbidity, mortality, quality of life) and economic outcomes? and, (3) what interventions and strategies can improve diabetes quality of care and outcomes? (10 points)

(f) Provide evidence of applicant's ability to collaborate in an interactive and ongoing basis with other health organizations, provider groups, community groups, etc., as necessary, to participate in research assessing the existing and changing structures, processes, delivery, and outcomes of care for people with diabetes. Provide evidence in the form of multi-center aggregate data wherein key structural factors, processes, and outcomes of care are collected uniformly across research centers. (6 points)

(g) Provide evidence that the applicant will maintain an effective and adequate management and staffing plan, including an experienced and published principal investigator for the project who has experience in the management and oversight of a multi-center research study. (5 points)

(h) Provide evidence of collaboration with other organizations and experience with the use of standardized systems such as computer assisted telephone systems, hospital record systems, chart review, and administrative data management systems for collecting patient data. (5 points)

(i) Provide evidence of applicant's experience and willingness to perform joint analysis with aggregate data, collected using a common protocol from the study. (5 points)

(j) Provide evidence of applicant's willingness to communicate scientifically via publications, abstracts, and presentations, the main and secondary findings pertaining to the goals of the study. (5 points)

(k) Provide evidence that applicant will assure and maintain the confidentiality of all study data. (5 points)

(l) Provide evidence that the applicant will follow the standardized protocol and manual(s) of operation to be developed by the Steering Committee. (5 points)

(m) Provide evidence of applicant's ability to examine the relationship between individual and area/community level socioeconomic characteristics of persons with diabetes and their health behaviors, and quality of care (processes and outcomes). These objectives will be accomplished through collaboration with other funded research centers. (3 points)

(n) Provide evidence that the applicant will focus on finding innovative ways of optimizing the delivery of care and health outcomes, and will identify and test strategies to improve care for people with diabetes using rigorous scientific methods based on knowledge gained from this systematic and collaborative research program. (3 points)

(o) Provide evidence that the principal investigator will be willing to utilize an existing Steering Committee which will consist of the Principal Investigators of the research study and who will serve as the governing body for the study. (3 points)

2. Background and Program Need (Total 5 points). The extent to which the applicant demonstrates an effective understanding of the background and burden of diabetes, the problems (structure, process of care, quality of care, endpoints, and outcomes), specific accomplishments of your diabetes research program, unmet needs, a need for the project, and a commitment to its execution.

3. Budget and justification (Reviewed, but not weighted or scored).

Provide a detailed budget and line-item justification for the first year that is consistent with the stated objectives and planned activities. Applicant is asked to include travel for up to three project staff, including the principal investigator, to attend four steering committee meetings. For panel review purposes, the program narrative must be separate from the budget justification and budget summaries.

4. Human Subjects (Reviewed, but not weighted or scored) Does the application adequately address the requirements of title 45 CFR part 46 for the protection of human subjects? The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in any proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with an original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing application, and must contain the following:

a. Current Budget Period Activities/Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activities/Objectives

d. Detailed, Line-Item Budget Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial status report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the program announcement as posted on the CDC web site.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status
AR–22 Research Integrity

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov.*

Click on "Funding" then "Grants and Cooperative Agreements".

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Rd, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Angela Webb, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770) 488–2784, E-mail address: *Awebb@cdc.gov.*

For program technical assistance, contact: Bernice A. Moore, MBA, Division of Diabetes Translation, Epidemiology and Statistics Branch, Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Hwy., NE., MS–K10, Atlanta, GA 30341–3717, Telephone number: (770) 488–1257, E-mail address: *bam0@cdc.gov.*

Dated: July 15, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–18422 Filed 7–18–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Notice of Program Announcement No. ACYF/HS–2003–15]

Fiscal Year 2003 Discretionary Announcement for Head Start Partnerships With Historically Black Colleges and Universities; Availability of Funds and Request for Applications

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

ACTION: Announcement of the availability of funds and request for applications for professional development and training grants for Historically Black Colleges and Universities (HBCUs) in partnership with Head Start and Early Head Start programs to improve services to Head Start and Early Head Start children and families.

The Catalog of Domestic Assistance Number is 93.600.

SUMMARY: The Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF) announces the availability of up to $1,500,000 in funds for Head Start training grants in partnerships with (HBCUs). The purpose is to improve the quality and long-term effectiveness of Head Start and Early Head Start grantees and delegate agencies by forming partnerships between the HBCUs and Head Start and Early Head Start to develop and implement academic and other training models in support of early literacy for Head Start and Early Head Start programs.

CLOSING DATE: The closing date for receipt of applications under this announcement is 4:30 p.m. (Eastern Time) August 20, 2003.

ADDRESSES: Mailed and hand-carried applications will be received at the following address: ACYF Operations Center, Historically Black Colleges and Universities, 1150 Connecticut Avenue, NW., Suite 1100, Washington, DC 20036, Telephone: 1–800–351–2293, E-mail: *HSB@esilsg.org.*

All packages should be clearly labeled as follows: Application for Head Start Partnerships with Historically Black Colleges and Universities (HBCUs). Applicants will receive a confirmation postcard upon receipt of their application package.

FOR FURTHER INFORMATION CONTACT: The Head Start Discretionary Grant Support Team (1–800–351–2293) is available to answer questions concerning application requirements and to refer you to the appropriate contact person in ACYF for programmatic questions. You may e-mail your questions to: *HSB@esilsg.org.* When contacting ACYF directly with programmatic questions send to William F. Wilson, Grants Officer, 330 C Street, SW., Washington, DC 20447, (202) 205–8913, *wwilson@acf.hhs.gov.*

In order to determine the number of expert reviewers that will be necessary, if you plan to submit an application, you are requested to send a post card or call with the following information: the name, address, telephone and fax numbers, and e-mail address of the college/university at least four weeks prior to the submission deadline date to: ACYF Operations Center, Historically Black Colleges and Universities, 1150 Connecticut Avenue, NW., Suite 1100, Washington, DC 20036, Telephone: 1–800–351–2293, E-mail: *HSB@esilsg.org.*

An application kit including copies of the program announcement, necessary application forms and appendices can be obtained by contacting the above address, and/or visiting the ACYF Web site at *http://www.acf.hhs.gov/programs/hsb/grant/fundingopportunities/fundopport.htm.*

Fiscal Year 2002 Discretionary Announcement for Head Start Partnerships With Historically Black Colleges and Universities

A. Table of Contents

This program announcement is divided into five sections:

- Part I contains general information, the history and background for the Whitehouse Initiative on Historically Black Colleges and Universities (HBCUs), including the principles and program description that will guide the development, implementation, operation, and evaluation of the projects.
- Part II contains key program information including a description of competitive categories, description of eligible applicants, project periods, and applicable Head Start regulations.
- Part III contains the requirements for information that must be included in each application.
- Part IV presents the criteria upon which applications will be reviewed and evaluated.
- Part V contains a discussion of the application process.

Part I. Purpose and Background

A. Purpose

Through this announcement, the Administration on Children, Youth and Families (ACYF) is making available up to $1,500,000 annually for each of five years to support Head Start-HBCU Partnerships, which will be awarded through a competitive process this year. These partnerships will be designed to improve the quality and long-term effectiveness of Head Start and Early Head Start grantees by developing academic and other training models in support of early literacy and forming partnerships between the HBCUs and Head Start and Early Head Start grantees and delegate agencies. The institutions of higher education that will be funded under this announcement, together with those HBCUs currently funded under this initiative, will form a consortium to share methods, approaches, experiences, and lessons learned.

B. Background

The overall goal of Head Start is to ensure that children of low-income families who are nearing the end of the preschool period and entering school are ready for school success. In order to accomplish this goal, Head Start provides comprehensive services to these children and their families. Head Start enhances children's physical, intellectual, social, and emotional development. It supports parents in

their efforts to fulfill their parental roles and provides for their involvement in implementing the Head Start program. Another goal of Head Start is to strengthen community supports for families with young children while they are working towards employment and self-sufficiency.

In an attempt to ensure high quality services to children and their families, Head Start has conducted many demonstration projects, provided grantees with training and technical assistance, and given grantees funds to implement their own training efforts. For example, Head Start supported the creation of the Child Development Associate (CDA) credential designed for early childhood development teaching staff, implemented the Head Start Teaching Centers, and developed other innovative projects.

Head Start-HBCU partnerships is closely aligned with the Head Start tradition of creating innovative programs of working with low-income children and their families. Since 1990, Head Start has worked with a number of HBCUs. In 1990, Alabama A & M and LeMoyne-Owen were funded. The University of Maryland-Eastern Shore, North Carolina Central University, Jackson State University, and Texas Southern University were funded in 1992. Thirty-two HBCUs were funded by the partnership grant between FY1997 and FY2001. (*See* Appendix A for a listing of these HBCUs).

In the 1998 reauthorization of the Head Start Act, a key priority of Congress and the Administration was to continue to improve Head Start program quality and accountability. A number of provisions were included in the new law to achieve these goals, including new education performance standards and measures, expansion of program monitoring to incorporate evidence of progress on outcomes-based measures, expanded funding to upgrade program quality and staff compensation, and higher education standards for Head Start teachers. Among these provisions is the requirement that, by September 30, 2003, at least half of all Head Start teachers in center-based programs must have an AA, BA or advanced degree in Early Childhood Education (ECE) or in a related field with preschool teaching experience.

The Head Start Bureau is providing a variety of forms of assistance to local Head Start programs to implement these legislative mandates. For example, to enhance the numbers of teachers with degrees in early childhood education, grantees received $43,000,000 in funding in 1999 and an additional $43,000,000 in 2000 to increase teacher salaries and expand access to higher education courses and degree programs. Currently, Head Start-State Collaboration Offices and training and technical assistance providers help Head Start programs work with higher education institutions on challenges such as linking training obtained in conjunction with the Child Development Associate credential with academic credit and courses leading to AA and BA degrees in early childhood education.

In January 2001, the President signed into law the "No Child Left Behind Act" to make the education of every child in America one of the country's top priorities. The Act seeks to ensure that public schools teach children what they need to know to be successful in life and that they also set high education standards in the classroom. In his 2002 State of the Union address, the President indicated the need to prepare our children to read and succeed in school, including the improvement of Head Start and early childhood development programs. In response to these goals, the White House has developed an early childhood initiative, which is built on raising the bar for Head Start Education methods that create a better learning environment and improved outcomes for children. In his announcement of the Good Start, Grow Smart Early Childhood Initiative in April 2002, the President identified children's early literacy as a key focus for Head Start program improvement. In this initiative, the President presented three areas of focus for Head Start: (1) Strengthening Head Start programs; (2) partnering with states to improve early childhood education, and (3) providing information to teachers, caregivers, and parents. The Head Start Bureau quickly responded to the President's mandate by developing the Strategic Teacher Education Project (STEP) in June 2002. The purpose of Project STEP is to ensure that all Head Start teachers engage in research-based strategies to support children's early literacy and positive social and emotional development, which, in turn, will lead to positive child outcomes and school readiness.

All project applications must address one of the following priority areas:

1. Partnerships to increase the number of center-based teachers with two-year and four-year degrees in early childhood education and

2. Partnerships to increase the competency of Head Start staff in building quality Head Start programs, particularly enhancing language development and social-emotional development, as well as early literacy and assessing child outcomes.

Part II. Program Information and Requirements

A. Statutory Authority

The Head Start Act, as amended, 42 U.S.C. 9801 *et seq.*

B. Eligible Applicants

Historically Black Colleges and Universities (HBCUs) as defined in the amended version of the Higher Education Act of 1965, codified at 20 U.S.C. 1061(2), are institutions established prior to 1964 whose principle mission was, and is, the education of Black Americans, and must satisfy section 322 of the Higher Education Act of 1965, as amended. Institutions which meet the definition of "Part B institution" in section 322 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1061(2), shall be eligible for assistance under this announcement. Faith-based institutions planning to compete under this announcement must also meet the same eligibility criteria as other applicants. HBCUs that are currently funded under the Head Start Partnership with HBCUs and whose funding will end after 2003 (*i.e.*, 2004 and 2005) are not eligible to apply under this announcement. These institutions are listed in Appendix A.

Faith-based institutions are encouraged to submit with their applications the optional survey located under "Grant Manuals and Forms" at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

C. Project Duration

Awards will be made on a competitive basis and will be for a one-year budget period. The total project period will be for five years. Applications for continuation grants funded under these awards beyond the one-year budget period, but within the five-year project period, will be considered on a noncompetitive basis subject to the availability of funds, satisfactory progress of the grantee, and a determination that continued funding is in the best interest of the Government.

D. Federal Share of Project Costs

It is anticipated that up to $1,500,000 in ACF funds will be available annually. The maximum Federal share for each project is not to exceed $150,000 per year per project.

E. Number of Projects To Be Funded

It is anticipated that up to 10 projects will be funded.

F. Matching Requirement

Although there are no matching requirements, applicants are encouraged to provide non-Federal contributions to the project.

Part III. Application Requirements

The following Uniform Project Description (UPD) has been approved by OMB under control number 0970–0139.

A. Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

B. General Instructions

ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant-funded activity should be placed in an appendix. Pages should be numbered and a table of contents should be included for easy reference.

Introduction

Applicants are required to submit a full project description and shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview while the evaluation criteria expand and clarify more program-specific information that is needed.

a. Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

b. Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and or problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated); some of which may be outside the scope of the program announcement.

c. Results or Benefits Expected

Identify the results and benefits to be derived. For example, using a comprehensive review of the current literature, justify how the research questions and the findings will add new knowledge to the field or how it will improve services for children and families.

d. Approach

Outline a plan of action, which describes the scope, and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors, which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the proportion of data collection expected to be completed. When activity or function cannot quantify accomplishments, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data are to be collected maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information" that is conducted or sponsored by ACF. List organizations, cooperating entities, consultants, or other key individuals whom will work on the project along with a short description of the nature of their effort or contribution.

C. Additional Information

Following is a description of additional information that should be placed in the appendix to the application:

a. Staff and Position Data

Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch with acceptable credentials will also be required for new key staff as appointed.

b. Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code, *or* by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation or similar document that clearly establishes non-profit status bearing the seal of the State in which the corporation or association is domiciled *or* a statement from a State taxing body, State attorney general, or other appropriate State official certifying the applicant organization has a non-profit status and none of the net earnings accrue to any private shareholders or individuals *or* any of the items in the subparagraphs immediately above for a State or national organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate. Faith-based institutions are encouraged to submit with their application the optional

survey located under "Grant Manuals and Forms" at *www.acf.hhs.gov/programs/ofs/forms.htm.*

c. Dissemination Plan

Provide a plan for distributing reports and other project outputs to colleagues and the public. Applicants must provide a description of the kind, volume and timing of distribution.

d. Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

D. General Budget Information

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, "Federal resources" refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: First column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

a. Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

b. Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

c. Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. *Travel costs for key staff to attend ACF-sponsored conferences* should be detailed in the budget.

d. Equipment

Description: Costs of tangible, nonexpendable, personal property, having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

However, an applicant may use its own definition of equipment provided that such equipment would at least include all equipment defined above.

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

e. Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information that supports the amount requested.

f. Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

g. Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

h. Total Direct Charges, Total Indirect Charges, Total Project Costs

Self-explanatory.

Part III. Evaluation Criteria and Review Process

A. Evaluation Criteria

In considering how applicants will carry out the responsibilities addressed under this announcement, competing applications for financial assistance will be reviewed and evaluated against the following criteria:

Criterion 1. Approach: (50 points)

The extent to which the application, having met the minimum requirements, designs an acceptable plan of action pertaining to the scope of the project which details how the proposed work will be accomplished. Include a timeline; lists of each organization, consultants, including key individuals who will work on the project along with a short description of the nature of their effort or contribution. Assure the adequacy of time devoted to the project by key staff. The key staff should be qualified and knowledgeable of Head Start. The applicant must fully describe the approach and/or methodology and delineate the relationship of each task to the accomplishment of the proposed objectives. There should be evidence that the planned approach reflects sufficient input from and partnership with the Head Start partners.

The Head Start Bureau is particularly interested in the following:

1. Describe the planning the applicant will conduct during the start-up period to prepare for implementation of the program. Provide assurance that no more than six months will be devoted to planning activities.

2. Indicate how staff will be recruited and selected to participate in the program, including staff from childcare organizations that are collaborating with Head Start grantees and delegate agencies.

3. Clearly describe how the training and coursework will be contextually and culturally relevant to the Head Start and Early Head Start environment and how it will contribute to enhancing the effectiveness of teachers, program quality, and outcomes for Head Start children and families.

4. For academic training proposals, describe efforts by the institution and Head Start partners to make training and coursework accessible to Head Start participants and to support their successful completion of courses, training, and degrees. Include discussion of issues such as timing, scheduling, and location of classes or training; support to enhance the literacy and study skills of participants, and approaches to integrate training in the working environment of the Head Start program. Provide assurance that training/courses are offered at no cost to trainees.

5. For academic training proposals, describe efforts to complement the Federal funds requested in this proposal with other sources to maximize the benefits to Head Start the institution. Include any efforts or plans to assist Head Start staff in accessing sources of financial assistance or to make use of other funding for training and career development of early childhood program staff.

6. Document that the institution currently offers credit courses, and proposes to offer credit courses, particularly in the area of Early Childhood Development/Education.

7. For academic training proposals, describe how CDA training and certification of Head Start and Early Head Start staff, as appropriate, as well as previous coursework and credits will be linked to academic credits and course sequences leading to AA/BA degrees. Applicant should indicate how many Head Start and Early Head Start staff members will be included in this effort.

8. Describe the organizational structure that will support the project objectives. Indicate how joint planning and assessment with the Head Start and Early Head Start grantees will be implemented with timelines and clear lines of responsibility. Indicate how staff positions are assigned and describe their major functions and responsibilities.

9. Describe the role the institution will play in the consortium of HBCUs funded under this initiative.

10. Describe the activities that will continue after the completion of this project that will ensure that the institution will continue to participate in providing educational opportunities for Head Start and Early Head Start staff.

Criterion 2. Results or Benefits Expected: (20 points)

The extent to which the application identifies the results and benefits to be derived; describes the anticipated contribution to policy, practice, theory and/or research; specific benefits should be described for both the institution and the Head Start program.

The Head Start Bureau is particularly interested in the following:

1. Based on the stated program objectives, identify the results and benefits to be derived. Identify the specific results or benefits that could be expected for the Head Start grantees and the institution. Describe how Head Start children benefit from the project.

2. Identify both qualitative and quantitative data the program will collect to measure progress towards the stated results or benefits. Identify how the program will determine the extent to which it has achieved its stated objectives.

3. For academic training proposals, provide a projection of the estimated number of teachers that will earn degrees over the duration of the project based on an analysis of the current levels of credits/courses earned by participants and a proposed sequence of courses.

Criterion 3. Objectives and Need for Assistance: (15 Points)

The extent to which the application identifies relevant physical, economic, social, financial, institutional or other problems requiring a grant; demonstrates the need for assistance; states the principal and subordinate objectives of the project; provides supporting documentation or other testimonies from concerned interests other than the applicant.

The Head Start Bureau is particularly interested in the following:

1. State the objectives for the program. Indicate how these objectives are based on an assessment of community needs and how they relate to Head Start goals. Describe the process used to assess the need for the proposed program including the total number of staff needing training, including preschool and infant/toddler teachers. If an assessment already exists, the applicant should describe the process used and explain any additional consultation as it relates to the development of the proposed program.

2. Specifically identify the population to be served. Indicate the Head Start and Early Head Start grantees that are proposed as participating partners, the numbers and types of staff to be trained, and the proposed areas of training, courses, and/or degrees to be awarded, as appropriate.

3. Describe the development of agreement of the institution and Head Start partnerships and any other consultation related to the development of the proposed initiative. Describe any efforts to frame the proposed initiative within broader state or community efforts to enhance professional and career development for staff in all forms of early childhood and child care programs. Include support letters that document consultation and support from the proposed grantee or delegate agency partners, such as the Regional Head Start Quality Improvement Center (QICs), the Head Start State Collaboration Office, and any existing state level early childhood career development initiative.

Criterion 4. Budget and Budget Justification: (15 Points)

The extent to which the project's costs are reasonable in view of the activities to be carried out and the anticipated outcomes.

Applicable Administrative Regulations

Applicable administrative regulations include 45 CFR part 74, Administration of Grants, for profit agencies, and 45 CFR part 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to States and local Governments.

Post-Award Reporting Requirements

Post-Award Reporting Requirements include submission of quarterly programmatic and budget reports. Program reports must clearly outline status on the accomplishment of stated goals and objectives. Financial reports

must provide status of budget expenditures, as well as identifying any projected savings or shortages.

B. Review Process

Applications received by the due date will be reviewed and scored competitively. Experts in the field, generally persons from outside the Federal government, will use the evaluation criteria listed in Part III of this announcement to review and score the applications. The results of this review are a primary factor in making funding decisions. ACYF may also solicit comments from ACF Regional Office staff and other Federal agencies.

Part IV. Instructions for Submitting Applications

A. Required Forms

Eligible applicants interested in applying for funds must submit a complete application including the required forms included at the end of this program announcement in Appendix A. In order to be considered for a grant under this announcement, an application must be submitted on the Standard Form 424 (approved by the Office of Management and Budget under Control Number 0348–0043). A copy has been provided. Each application must be signed by an individual authorized to act for the applicant and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, Assurances: Non-Construction Programs (approved by the Office of Management and Budget under control number 0348–0040). Applicants must sign and return the Standard Form 424B with their application. Applicants must provide a certification concerning lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification (approved by the Office of Management and Budget under control number 0348–0046).

Applicants must sign and return the certification with their application. Applicants must provide a Uniform Project Description (approved by the Office of Management and Budget under control number 0970–0139, which expires 12/31/03).

Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for award. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must also understand that they will be held accountable for the smoking prohibition included within Pub. L. 103–227, Part C Environmental Tobacco Smoke (also known as The Pro-Children's Act of 1994). A copy of the **Federal Register** notice, which implements the smoking prohibition, is included with the forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

All applicants for research projects must provide a Protection of Human Subjects Assurance as specified in the policy described on the HHS Form 596 (approved by the Office of Management and Budget under control number 0925–0418) in Appendix A. If there is a question regarding the applicability of this assurance, contact the Office for Protection from Research Risks of the National Institutes of Health at (301)–496–7041. Those applying for or currently conducting research projects are further advised of the availability of a Certificate of Confidentiality through the National Institute of Mental Health of the Department of Health and Human Services. To obtain more information and to apply for a Certificate of Confidentiality, contact the Division of Extramural Activities of the National Institute of Mental Health at (301) 443–4673.

B. Application Limits

The narrative of the application should be double-spaced and single-sided on 8 ½" x 11" plain white paper, with 1" margins on all sides. Use only a standard size font no smaller than 12 pitch throughout the proposal. All pages of the narrative of the application (including appendices, resumes, charts, references/footnotes, tables, maps and exhibits) must be sequentially numbered, beginning on the first page after the budget justification, the principal investigator contact information and the Table of Contents. *The length of the application, including the narrative, and excluding the appendices and resumes must not exceed 65 pages.* Anything over 65 pages will be removed and not considered by the reviewers. The project summary should not be counted in the 65 pages. Applicants are requested not to send pamphlets, brochures, or other printed material along with their applications as these pose copying difficulties. These materials, if submitted, will not be included in the review process. In addition, applicants must not submit any additional letters of endorsement beyond any that may be required. Applicants may omit from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget and social security numbers if otherwise required for individuals. The copies may include summary salary information.

Applicants are encouraged to submit curriculum resumes using "Biographical Sketch" forms used by some government agencies.

Please note that applicants that do not meet the requirements in the section on "Eligible Applicants" will not be included in the review process.

C. Checklist for a Complete Application

The checklist below is for your use to ensure that the application package has been properly prepared.

—One original, signed and dated application plus two copies.
—Attachments/Appendices, when included, should be used only to provide supporting documentation such as resumes, and letters of agreement/support.

Front Matter

- Cover Letter.
- Table of Contents.
- Project Abstract.

(1) Application for Federal Assistance (SF 424, REV. 4–92);

(2) Budget information—Non-Construction Programs (SF424A&B REV. 4–92);

(3) Budget Justification, including subcontract agency budgets;

(4) Letter from the Head Start programs certifying that the program is a partner of the institution;

(5) Application Narrative, excluding Appendices and resumes (not to exceed 65 pages);

(6) Proof that the organization is an HBCU;

(7) Assurances Non-Construction Programs;

(8) Certification Regarding Lobbying;

(9) Where appropriate, a completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424, REV. 4–92;

(10) Certification of Protection of Human Subjects.

D. Due Date for the Receipt of Applications

Deadlines: The closing date for the submission of applications is 4:30 p.m. (EDT) on September 19, 2003. Applications received after the closing date will be classified as late and not considered for funding. Applications should be mailed to: ACYF Operations Center, Historically Black Colleges and Universities, 1150 Connecticut Avenue, NW., Suite 1100, Washington, DC 20036, *Telephone:* 1–800–351–2293, *E-mail: HSB@esilsg.org.*

Application for Head Start Discretionary Grants: Head Start Partnerships with Historically Black Colleges and Universities (HBCUs). Applications received after the closing date and time will be classified as late. Applicants will receive a confirmation postcard upon receipt of their application package.

Applications hand carried by applicants, courier services, or by overnight/express mail couriers shall be considered as meeting the announced deadline only if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., at the ACYF Operations Center, 1150 Connecticut Avenue, NW., Suite 1100, Washington, DC between Monday and Friday (excluding Federal holidays). (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACYF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACYF electronically will not be accepted regardless of date or time of submission and time of receipt.

Late applications: Applications, which do not meet the criteria above, are considered late applications. ACF shall notify each late applicant that its application will not be considered.

Extension of deadlines: ACF may extend an application deadline for applicants affected by acts of God such as floods, hurricanes, or when there is widespread disruption of the mails, or when it is anticipated that many applications will come from rural or remote areas. A determination to waive or extend deadline requirements rests with the Chief Grants Management Officer.

E. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, Public Law 104–13, the Department is required to submit to OMB for review and approval any reporting and record keeping requirements in regulations including program announcements. All information collections within this program announcement are approved under the following current valid OMB control number 0970–0139 which expires 12/31/2003.

Public reporting burden for this collection is estimated to average 10 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection of information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

F. Required Notification of the State Single Point of Contact

This program is covered under Executive Order 12372, Intergovernmental Review of Federal Programs, and 45 CFR part 100, Intergovernmental Review of Department of Health and Human Services Program and Activities. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wyoming, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-six jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally recognized Indian Tribes are also exempt from the requirements of E.O. 12372.

All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. The applicant must submit all required materials, if any, to the SPOC and indicate the date of the submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. Applicants must submit any required material to the SPOCs as soon as possible so that the Federal program office can obtain and review SPOC comments as part of the award process. A listing of the SPOC for each participating state and territory with contact and address information is available at *http://whitehouse.gov/omb/grants/spoc.html.*

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the accommodate or explain rule.

When comments are submitted directly to ACF, they should be addressed to: William Wilson, ACYF/Office of Grants Management, 330 C Street, SW., Washington, DC 20447, Attn: Head Start Partnerships with Tribally Controlled Land Grant Colleges and Universities. A list of the Single Points of Contact for each State and Territory can be found on the Web site: *http://www.whitehouse.gov/omb/grants/spoc.html.*

Dated: July 14, 2003.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

Appendix A—HBCUs That Have Received Partnerships Grants

1997 Institutions (Expired 2001)

South Carolina State University
Cheyney University of Pennsylvania
Texas Southern University
North Carolina Central University
Kentucky State University
Howard University
Tennessee State University
Jackson State University

1998 Institutions (Expiring 2003)

Delaware State University
The University of the District of Columbia
University of Maryland—Eastern Shore
Florida A & M University
Shaw University
Norfolk State University
Hampton University

1999 Institutions (Expiring 2003)

Howard University
Southern University and A&M College
Council Trenholm State Technical College
Kentucky State University
Dillard University
Bluefield State College

2000 Institutions (Expiring 2004)

Harris-Stowe State College
Kentucky State University
North Carolina Central University
Southern University and A&M College
Texas Southern University
The University of the District of Columbia
University of Arkansas at Pine Bluff
Bluefield State University

2001 Institutions (Expiring 2005)

Spelman College

Albany State University
Alabama A&M University

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BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF/HS–2003–16]

Fiscal Year 2003 Discretionary Announcement for Head Start—Higher Education Hispanic/Latino Service Partnerships: Availability of Funds and Request for Applications

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), DHHS.

ACTION: Announcement of the availability of funds and request for applications for professional development and training grants for institutions of higher education in partnership with Head Start and Early Head Start programs to improve services to Hispanic/Latino children and their families.

CFDA #: The catalog of Federal Domestic Assistance Number is 93.600.

SUMMARY: The Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF) announces the availability of up to $1,500,000 in funds for institutions of higher education with experience and capability in educating and preparing professionals to work effectively with Hispanic/Latino young children and families, in partnership with Head Start and Early Head Start programs. The purpose is to improve the quality and long-term effectiveness of Head Start and Early Head Start program services to Hispanic/Latino children and their families by developing academic and other training models and forming partnerships between institutions of higher education and Head Start and Early Head Start programs.

DATES: The closing date and time for receipt of application is 4:30 p.m. (Eastern Standard Time), August 18, 2003. Applications received after the closing date and time will be classified as late.

ADDRESSES: Mailed and hand-carried applications will be received at the following address: ACYF Operations Center, Head Start-Higher Education Hispanic/Latino Service Partnerships (HS–HEHLSPs), 1150 Connecticut Avenue, NW., Suite 1100, Washington, DC 20036, *Telephone:* 1–800–351–2293, *E-mail: HSB@esilsg.org.*

All packages should be clearly labeled as follows: Application for Head Start'Higher Education Hispanic/Latino Service Partnerships (HS–HEHLSPs).

FOR FURTHER INFORMATION CONTACT: The Head Start Discretionary Grant Support Team (1–800–351–2293—ACYF) is available to answer questions concerning application requirements. You may e-mail your questions to: *HSB@esilsg.org.* When contacting ACYF directly with programmatic questions send to William Wilson, Grants Officer, 330 C Street, SW., Washington, DC 20447, (202) 205–8913, *wwilson@acf.hhs.gov.*

If you are interested in submitting an application please send a post card or call at least two weeks prior to the submission deadline with the following information: the name, address, telephone and fax numbers, and e-mail address of the principle investigator and the name of the institution. This information will be used to determine the number of expert reviewers needed to evaluate applications. Send the declaration of interest information to: ACYF Operations Center, Head Start-Higher Education Hispanic/Latino Service Partnerships (HS–HEHLSPs), 1150 Connecticut Avenue, NW., Suite 1100, Washington, DC 20036, *Telephone:* 1–800–351–2293. *E-mail: HSB@esilsg.org.*

Copies of the program announcement, necessary application forms and appendices can be obtained by contacting the above address, and/or visiting the ACYF Web site at *http://www.acf.hhs.gov/programs/hsb/grant/fundingopportunities/fundopport.htm.*

Fiscal Year 2003 Discretionary Announcement for Head Start—Higher Education Hispanic/Latino Service Partnerships

Part I. Purpose and Background

A. Purpose

Through this announcement, the Administration on Children, Youth and Families (ACYF) is making available up to $1,500,000 annually for each of five (5) years to support Head Start "Higher Education Hispanic/Latino Service Partnerships (HS–HEHLSPs), which will be awarded through a competitive process. The HS–HEHLSPs initiative was developed in response to the White House Initiative on Hispanic Education. The purpose of HS–HEHLSPs is to improve the quality and long term effectiveness of Head Start and Early Head Start programs by developing academic and other training models through partnerships between institutions of higher education and Head Start/Migrant Head Start/Early Head Start agencies. The institutions of higher education that will be funded under this initiative, together with currently funded HS–HEHLSPs, will form a consortium to share methods, approaches, experiences, and lessons learned. The consortium is a partner of the Head Start National Training and Technical Assistance (T&TA) network in providing assistance to Head Start/Migrant Head Start/Early Head Start grantees. Proposed partnership agreements are expected to be designed to benefit both the institutions of higher education and the participating Head Start/Migrant Head Start/Early Head Start grantees. Moreover, proposed partnerships are expected to reflect the unique training needs of participating Head Start grantees, including the provision of training that is accessible and responsive to trainees.

B. Background

The overall goal of Head Start is to enhance the healthy development and school readiness of children from low-income families. In order to accomplish this goal, Head Start provides comprehensive services to low-income children and their families. Head Start enhances children's physical, intellectual, social, and emotional development. It supports parents in their efforts to fulfill their parental roles and provides for their involvement in implementing the Head Start program.

In an attempt to ensure quality services to low-income children and their families, Head Start has conducted many demonstration projects, provided grantees with training and technical assistance, and given grantees funds to implement their own training efforts. For example, Head Start supported the creation of the Child Development Associate (CDA) credential designed for early childhood development teaching staff. Head Start also implemented the Head Start Partnerships with Historical Black Colleges and Universities (HBCUs), the Head Start Partnerships with Tribally Controlled Land Grant Colleges and Universities (TCUs), and other innovative training and staff development projects.

In the 1998 reauthorization of the Head Start Act, a key priority of Congress and the Administration was to continue to improve Head Start program quality and accountability. A number of provisions were included in the new law to achieve these goals, including new education performance standards and measures, expansion of program

monitoring to incorporate evidence of progress on outcome-based measures, expanded funding to upgrade program quality and staff compensation, and higher education standards for Head Start teachers. Among these provisions is the requirement that, by September 30, 2003, at least half of all Head Start teachers in center-based programs nationwide must have an AA, BA, or advanced degree in Early Childhood Education (ECE), or in a related field with pre-school teaching experience. A degree in a field related to early childhood education means a program of study that includes six or more courses in early childhood education and/or child development. Teachers who have degrees in related fields must also have experience teaching pre-school children.

The Head Start Bureau is providing a variety of forms of assistance to local Head Start programs to implement these new legislative mandates. For example, to support increasing the numbers of teachers with degrees in early childhood education, grantees received $43,000,000 in funding in Fiscal Year 2000 to increase teacher salaries and expand access to higher education courses and degree programs. Additionally, all Head Start grantees are allowed to use a portion of program funds awarded to provide staff development training to all Head Start staff.

In addition to these efforts, Head Start-State Collaboration Offices and training and technical assistance providers will help Head Start programs work with institutions of higher education on challenges such as linking training obtained in conjunction with the Child Development Associate credential with academic credit and courses leading to AA and BA degrees in early childhood education.

In January 2001, the President signed into law the "No Child Left Behind Act" to make the education of every child in America one of the country's top priorities. The Act seeks to ensure that public schools teach children what they need to know to be successful in life and that they also set high standards. In his 2002 State of the Union address, the President indicated the need to prepare our children to read and succeed in school, including the improvement of Head Start and early childhood development programs. In response to these goals, the White House has developed an early childhood initiative, which is built on raising the bar for Head Start Education through researched methods that create a better learning environment and improve outcomes for children. In his announcement of the Good Start, Grow Smart Early Childhood Initiative in April 2002, the President identified children's early literacy as a key focus for Head Start program improvement. In this initiative, the President presented three areas of focus for Head Start: (1) Strengthening Head Start programs; (2) partnering with states to improve early childhood education, and (3) providing information to teachers, caregivers, and parents. The Head Start Bureau quickly responded to the President's mandate by developing the Strategic Teacher Education Project (STEP) in June 2002. The purpose of Project STEP is to ensure that all Head Start teachers engage in research-based strategies to support children's early literacy and positive social and emotional development, which, in turn, will lead to positive child outcomes and school readiness.

Under this announcement, HEHLSPs must form a partnership with one or more Head Start/Migrant Head Start/Early Head Start grantees or delegate agencies, to develop age-appropriate and culturally appropriate curriculums and provide education and/or training to Head Start staff. The partnership agreements must be beneficial to both the HEHLSPs and the participating Head Start grantees.

All project applications must address one of the following priority areas:

1. Partnerships to increase the number of center-based teachers with two-year and four-year degrees in early childhood education, and

2. Partnerships to increase the competency of Head Start staff in building quality Head Start programs, particularly in enhancing language development, early literacy, and social-emotional development, as well as assessing child outcomes. The area of early literacy includes supporting non-English speaking children in making progress in both the home language and English.

Part II. Program Information and Requirements

A. Statutory Authority

The Head Start Act, as amended, 42 U.S.C. 9801 *et seq.*

B. Eligible Applicants

Institutions, including faith-based institutions, of higher education with experience and capability in educating and preparing professionals to work effectively with Hispanic/Latino young children and families are eligible to apply. Institutions that are currently funded under the Head Start-Higher Education Hispanic/Latino Service Partnerships are not eligible to apply under this announcement. These institutions are listed in Appendix A. Faith-based institutions planning to compete under this announcement must meet the same eligibility criteria as other applicants. Private, non-profit institutions are encouraged to submit with their applications the optional survey located under "Grant Manuals & Forms" at *www.acf.hhs.gov/programs/ofs/forms.htm.*

C. Project Duration

This announcement is soliciting applications for project periods of up to five (5) years. Awards, on a competitive basis, will be for a one (1) year budget period. Applications for continuation grants funded under these awards beyond the one-year budget, but within the five-year project period, will be reviewed in subsequent years on a non-competitive basis subject to the availability of funds, satisfactory performance by the grantee, and a determination that continued funding would be in the best interest of the Government.

D. Federal Share of Project Costs

It is anticipated that up to $1,500,000 in ACF funds will be available annually. The maximum Federal-share for each project is not to exceed $150,000 per year per project.

E. Number of Projects To Be Funded

It is anticipated that up to 10 projects will be funded.

F. Matching Requirement

There are no matching funds requirements, however applicants are encouraged to provide non-Federal contributions to the project.

Part III. Application Requirements

The following Uniform Project Description (UPD) has been approved by OMB under control number 0970–0139.

A. Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their

funding recommendations. It is important, therefore, that this information be included in the application.

B. General Instructions

ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant-funded activity should be placed in an appendix. Pages should be numbered and a table of contents should be included for each reference.

Introduction

Applicant shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expand and clarify more program-specific information that is needed.

a. Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

b. Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and or problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

c. Results or Benefits Expected

Identify the results and benefits to be derived. For example, using a comprehensive review of the current literature, justify how the research questions and the findings will add new knowledge to the field or how it will improve services for children and families.

d. Approach

Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the proportion of data collection expected to be completed. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data are to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF. List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

C. Additional Information

Following are requests for additional information that need to be included in the application:

a. Staff and Position Data

Provide a job description for each key position and a biographical sketch for each key person. A biographical sketch will also be required for new key staff as appointed.

b. Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code, *or* by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation or similar document that clearly establishes non-profit status bearing the seal of the State in which the corporation or association is domiciled *or* a statement from a State taxing body, State attorney general, or other appropriate State official certifying the applicant organization has a non-profit status and none of the net earnings accrue to any private shareholders or individuals *or* any of the items in the subparagraphs immediately above for a State or national organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate. Private-non-profit institutions are encouraged to submit with their application the optional survey located under "Grant Manuals and Forms" at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.

c. Dissemination Plan

Provide a plan for distributing reports and other project outputs to colleagues and the public. Applicants must provide a description of the kind, volume and timing of distribution.

d. Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

D. General Budget Information

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, "Federal resources" refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

a. Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, *etc.* Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

b. Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, *etc.*

c. Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. *Travel costs for key staff to attend ACF-sponsored conferences* should be detailed in the budget.

d. Equipment

Description: Costs of tangible, nonexpendable, personal property, having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, an applicant may use its own definition of equipment provided that such equipment would at least include all equipment defined above.

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy that includes the equipment definition.

e. Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information that supports the amount requested.

f. Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (non-contractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

g. Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

h. Total Direct Charges, Total Indirect Charges, Total Project Costs.

Self explanatory.

Part IV. Evaluation Criteria

A. Review Criteria

In considering how applicants will carry out the responsibilities addressed under this announcement, competing applications for financial assistance will be reviewed and evaluated against the following criteria:

Criterion 1. Approach (40 points)

(a) The extent to which the application outlines a sound and realistic plan of action pertaining to the scope of the project which details how the proposed work will be accomplished, including a timeline; lists of each organization, consultants, including the evaluator, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution; and assures the adequacy of time devoted to the project by key staff;

(b) The extent to which the project approach, if successfully carried out, is likely to achieve the proposed project objectives; and

(c) The applicant's ability to fully describe the approach and/or methodology and delineate the relationship of each task to the accomplishment of the proposed objectives. There should be evidence that the planned approach reflects sufficient input from and partnership with Head Start/Migrant Head Start/Early Head Start and the HS–HEHLPSs.

Information provided in response to Part III, Section B. of this announcement will be used to evaluate applicants on this criterion.

The Head Start Bureau is particularly interested in the following aspects of the applications:

1. Describe the planning the applicant will conduct during the start-up period to prepare for implementation of the program. Provide assurance that no more than six months will be devoted to planning activities.

2. Indicate how Head Start staff will be recruited and selected to participate in the program, including staff from other child care organizations that are collaborating with Head Start grantees and delegate agencies and meet Head Start performance standards within a given community.

3. Describe how the training and coursework will be contextually and culturally relevant to the Head Start,

Migrant Head Start and the Early Head Start environment and how it will contribute to enhancing the effectiveness of teachers, staff, program quality and outcomes for Head Start children and families.

4. Describe efforts by the institutions and Head Start partners to make training and/or coursework accessible to Head Start participants and to support their successful completion of courses, training, and degrees. Include a discussion of issues such as the timing, scheduling, and location of classes or training; support to enhance the literacy and study skills of participants; and approaches to integrate HS–HEHLSPs training in the working environment of the Head Start program.

5. Describe efforts to complement the Federal funds requested in this application with other resources to maximize the benefits to Head Start and HS–HEHLSPs participants. Include any efforts or plans to assist Head Start staff in accessing sources of financial assistance or to make use of other funding for training and career development of early childhood program staff. In addition, describe any proposed contributions of funds from local Head Start programs to the partnership. Provide assurance that trainees will not be required to bear any costs of participating in training.

6. In case of academic training, describe how previous CDA training and certification of Head Start staff, as well as previous coursework, credits or AA degrees from 2-year institutions, will be linked to academic credits and course sequences leading to BA degrees.

7. Describe the organizational structure that will support the project objectives. Indicate how joint planning and assessment with the Head Start, Migrant Head Start and Early Head Start grantees will be implemented with timelines and clear lines of responsibility. Indicate how staff positions are assigned and describe their major functions and responsibilities.

8. Describe the activities that will continue after the completion of this project that will ensure that the institutions will continue to participate in providing educational opportunities for Head Start, Migrant Head Start and Early Head Start staff.

9. Include support letters that document consultation and support from the proposed grantee or delegate agency partners, the Head Start State Collaboration Office, and any existing state level early childhood career development initiative.

Criterion 2. Results or Benefits Expected (20 points)

The extent to which the application identifies the results and benefits to be derived; describes the anticipated contribution to policy, practice, theory and/or research; specific benefits should be described for both the HS–HEHLSPs and Head Start/Migrant Head Start/Early Head Start partners.

Information provided in response to Part III, Section B. of this announcement will be used to evaluate applicants on this criterion.

The Head Start Bureau is particularly interested in the following aspects of the applications:

1. Based on the stated program objectives, identify the results and benefits to be derived. Identify the specific results or benefits that could be expected for the Head Start grantee(s) and the institution. Describe how the trainees benefit from the project.

2. Identify both qualitative and quantitative data the applicant will collect to measure progress towards the stated results or benefits. Identify how the program will determine the extent to which it has achieved its stated objectives.

3. To propose academic training, provide a projection of the estimated number of trainees, by category, who will earn degrees over the five year duration of the project based on an analysis of the current levels of credits/courses earned by participants and a proposed sequence of courses.

4. Propose new teaching methods for Head Start teachers and staff for teaching early literacy in the classrooms and enhancing parental skills to encourage children to read and succeed in school.

Criterion 3. Staff and Position Data (20 points)

Key staff should be qualified and knowledgeable of Head Start, Migrant Head Start and Early Head Start. The extent of the demonstrated capacity of the applicant organization, key leaders, managers, and project personnel to:

(1) Provide high quality, relevant, and responsive training to Head Start staff;

(2) Assure participating project staff are competent to plan and deliver appropriate course material to Head Start trainees that is culturally relevant;

(3) Manage the implementation of the training grant in an effective and timely manner; and

(4) Manage successful partnerships that involve sharing resources, staffing, and facilities.

Information provided in response to Part III, Section C. will be used to evaluate applicants on the above criterion.

Criterion 4. Objectives and Need for Assistance (10 Points)

The extent to which the application identifies relevant physical, economic, social, financial, institutional or other problems requiring a grant; demonstrates the need for assistance; and states the principal and subordinate objectives of the project consistent with the purposes of the program announcement.

Information provided in response to Part III, Section A. of this announcement will be used to evaluate applicants on this criterion.

The Head Start Bureau is particularly interested in the following aspects of the applications:

1. State the specific training objectives for the program. Indicate how these objectives are based on an assessment of staff training and program improvement needs of participant Head Start and Early Head Start agencies; how they related to Head Start goals, outcomes and policy priorities, and how they will enhance the quality of Head Start services to Hispanic/Latino children and their families.

2. Describe the process used to assess the needs for the proposed program design. Specifically identify the population to be served in terms of numbers and types of staff to be trained and the proposed areas of training, courses, and/or degrees to be awarded.

3. Describe the development of the HS–HEHLSPs agreement and other consultation related to the development of the proposed initiative. Describe any efforts to frame the proposed initiative within broader state or community efforts to enhance professional and career development for staff in all forms of early care and education programs.

Criterion 5. Budget and Budget Justification (10 Points)

The extent to which the project's costs are reasonable and appropriate in view of the activities to be carried out and the anticipated outcomes. Provide a line item detail for the costs of attendance of project staff to attend ACF-sponsored conferences in Washington, D.C. It is the expectation that applicants should limit budget projections to those costs necessary to build institutional capacity for and execute training and career development partnerships with participating Head Start grantees.

Information provided in response to Part III, Section D. of this announcement will be used to evaluate applicants on this criterion.

Applicable Administrative Regulations

Applicable administrative regulations include 45 CFR part 74, Administration of Grants, for profit agencies: and 45 CFR part 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and local Governments.

Post-Award Reporting Requirements

Post-Award Reporting Requirements include submission of quarterly programmatic and budget reports. Program reports must clearly outline status on the accomplishment of stated goals and objectives. Financial reports must provide status of budget expenditures, as well as identifying any projected savings or shortages.

B. The Review Process

Applications received by the due date will be reviewed and scored competitively. Experts in the field, generally persons from outside the Federal government, will use the evaluation criteria listed in Part IV of this announcement to review and score the applications. The results of this review are a primary factor in making funding decisions.

Part V. The Application Process

A. Required Forms

Eligible applicants interested in applying for funds must submit a complete application including the required forms included at the end of this program announcement in Appendix A. In order to be considered for a grant under this announcement, an application must be submitted on the Standard Form 424 (approved by the Office of Management and Budget under Control Number 0348–0043). A copy has been provided. Each application must be signed by an individual authorized to act for the applicant and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, Assurances: Non-Construction Programs (approved by the Office of Management and Budget under control number 0348–0040). Applicants must sign and return the Standard Form 424B with their application. Applicants must provide a certification concerning lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification (approved by the Office of Management and Budget under control number 0348–0046). Applicants must sign and return the certification with their application. Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for award. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must also understand that they will be held accountable for the smoking prohibition included within Pub. L. 103–227, part C Environmental Tobacco Smoke (also known as The Pro-Children's Act of 1994). A copy of the **Federal Register** notice that implements the smoking prohibition is included with the forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

All applicants for research projects must provide a Protection of Human Subjects Assurance as specified in the policy described on the HHS Form 596 (approved by the Office of Management and Budget under control number 0925–0418) in Appendix A). If there is a question regarding the applicability of this assurance, contact the Office for Protection from Research Risks of the National Institutes of Health at (301) 496–7041. Those applying for or currently conducting research projects are further advised of the availability of a Certificate of Confidentiality through the National Institute of Mental Health of the Department of Health and Human Services. To obtain more information and to apply for a Certificate of Confidentiality, contact the Division of Extramural Activities of the National Institute of Mental Health at (301) 443–4673.

B. Application Limits

The application should be double-spaced and single-sided on 8½" x 11" plain white paper, with 1" margins on all sides. Use only a standard size font no smaller than 12 pitch throughout the proposal. All pages of the application (including appendices, resumes, charts, references/footnotes, tables, maps and exhibits) must be sequentially numbered, beginning on the first page after the budget justification, the principal investigator contact information and the Table of Contents. *The length of the application, starting with page 1 as described above and including appendices and resumes, should not exceed 65 pages;* the project summary should not be counted in the 65 pages. Applicants are requested not to send pamphlets, brochures, or other printed material along with their applications as these pose copying difficulties. These materials, if submitted, will not be included in the review process. In addition, applicants must not submit any additional letters of endorsement beyond any that may be required. Applicants may omit from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget and social security numbers if otherwise required for individuals. The copies may include summary salary information.

Applicants are encouraged to submit curriculum vitae using "Biographical Sketch" forms used by some government agencies.

Please note that applicants that do not comply with the requirements in the section on "Eligible Applicants" will not be included in the review process.

C. Checklist for a Complete Application

The checklist below is for your use to ensure that the application package has been properly prepared.

—One original, signed and dated application plus two copies.

—Attachments/Appendices, when included, should be used only to provide supporting documentation such as resumes, and letters of agreement/support.

Front Matter

- Cover Letter.
- Table of Contents.
- Project Abstract.

(1) Application for Federal Assistance (SF424, Rev, 4–92).

(2) Budget information-non-construction programs (SF424, A&B).

(3) Budget Justification, including subcontract agency budgets.

(4) Letter(s) from the Head Start, Migrant Head Start or Early Head Start Program certifying that the program is a partner of the institution.

(5) Application Narrative and Appendices.

(6) Assurances Non-Construction Program.

(7) Certification Regarding Lobbying.

(8) Where appropriate, a completed Single Point of Contact (SPOC) certification with the date of SPOC contact entered in line 16, page 1 of the SF424, REV. 4–92.

(9) Certification of Protection of Human Subjects.

D. Due Date for the Receipt of Applications

1. *Deadline:* The closing date for the receipt of applications is 4:30 p.m. (EDT) August 20, 2003 at: ACYF Operations Center, 1150 Connecticut Avenue, NW., Suite 1100, Washington, DC 20036, *Telephone:* 1–800–351–2293, *E-mail: HSB@esilsg.org.*

Application for Head Start Discretionary Grants: Head Start-Higher Education Hispanic/Latino Service Partnerships (HS–HEHLSPs). Applicants will receive a confirmation postcard upon receipt of their application package.

Applications hand carried by applicants, applicant couriers, or by overnight/express mail couriers shall be delivered between the hours of 8 a.m. and 5 p.m., Monday–Friday (excluding holidays) at the address above. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.) ACF cannot accommodate transmission of applications by fax or e-mail. Therefore, applications faxed or e-mailed to ACF will not be accepted.

2. *Late applications:* Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

3. *Extension of deadlines:* ACF may extend an application deadline for applicants affected by acts of God such as floods and hurricanes, or where there is widespread disruption of the mail. A determination to waive or extend deadline requirements rests with the Chief Grants Management Officer.

E. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, Public Law 104–13, the Department is required to submit to OMB for review and approval any reporting and record keeping requirements in regulations including program announcements. All information collections within this program announcement are approved under OMB control number 0970–0139 which expires 12/31/2003.

Public reporting burden for this collection is estimated to average 10 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection of information.

An agency may not conduct or sponsor and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

F. Required Notification of the State Single Point of Contact

This program is covered under Executive Order 12372, Intergovernmental Review of Federal Programs, and 45 CFR part 100, Intergovernmental Review of Department of Health and Human Services Program and Activities. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wyoming, Palau, have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-six jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372.

All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. The applicant must submit all required materials, if any, to the SPOC and indicate the date of the submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. Applicants must submit any required material to the SPOCs as soon as possible so that the Federal program office can obtain and review SPOC comments as part of the award process. A listing of the SPOC for each participating state and territory with contact and address information is available at *http://whitehouse.gov/omb/grants/spoc.html.*

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations that may trigger the accommodation or explain rule.

When comments are submitted directly to ACF, they should be addressed to: William Wilson, Head Start Bureau, 330 C Street, SW., Washington, DC 20447, Attn: Head Start-Higher Education Hispanic/Latino Service Partnerships. A list of the Single Points of Contact (SPOCs) for each State and Territory can be found on the following Web site: *http://www.whitehouse.gov/omb/grants/spoc.html.*

Dated: July 10, 2003.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

Appendix A—List of Current Head Start—Higher Education Hispanic/Latino Service Partnerships

FY 2000 Institutions (expiring 2004)	
1. Aims Community College	Colorado.
2. CSU—Bakersfield	California.
3. CSU—Northridge	California.
4. CSU—San Marcos	California.
5. Fresno City College	California.
6. Portland Community College	Oregon.
7. University of Texas-Pan American.	Texas.
FY 2001 Institutions (expiring 2005)	
1. Bronx Community College	New York.
2. Hartnell Community College	California.
3. Michigan State University	Michigan.
4. The University of Texas-San Antonio.	Texas.
5. Yosemite Community College District/Modesto Junior College.	California.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF/HS–2003–17]

Fiscal Year 2003 Discretionary Grant Announcement for Head Start Partnerships With Tribally Controlled Land Grant Colleges and Universities; Availability of Funds and Request for Applications

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), DHHS.

ACTION: Announcement of the availability of funds and request for applications for professional development and training grants Tribally Controlled Land Grant Colleges and Universities (TCU) in partnership with Head Start and Early Head Start programs to improve services to American Indian and Alaska Native children and their families.

The catalog of Federal Domestic Assistance Number is 93.600.

SUMMARY: The Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF), announces the availability of up to $1,500,000 in funds for Tribally Controlled Land Grant Colleges and Universities (TCU) in partnership with Head Start and Early Head Start programs. The purpose is to improve the quality and long-term effectiveness of Head Start and Early Head Start program services to American Indian and Alaska Native children and their families by developing academic and other training models and forming partnerships between the TCUs and Head Start and Early Head Start programs.

CLOSING DATE: The closing time and date for receipt of application is 4:30 p.m. (Eastern Time) on August 20, 2003. Applications received after the closing date and time will be classified as late.

ADDRESSES: Mailed and hand-carried applications will be received at the following address: ACYF Operations Center, Head Start Partnerships with Tribally Controlled Land Grant Colleges/Universities (TCUs), 1150 Connecticut Avenue, NW., Suite 1100, Washington, DC 20036, Telephone: 1–800–351–2293, e-mail: *HSB@esilsg.org.*

Hand delivered, courier or overnight delivery applications are accepted during the normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date. All packages should be clearly labeled as follows: Application for Head Start Partnerships with Tribally Controlled Land Grant Colleges/Universities (TCUs).

FOR FURTHER INFORMATION CONTACT: The Head Start Discretionary Grant Support Team (1–800–351–2293) is available to answer questions concerning application requirements and to refer you to the appropriate contact person in ACYF for programmatic questions. You may e-mail your questions to: e-mail: *HSB@esilsg.org.* When contacting ACYF directly with programmatic questions send to William Wilson, Grants Officer, 330 C Street, SW., Washington, DC 20447, 202–205–8913, *wwilson@acf.hhs.gov.*

If you are interested in submitting an application, please send a post card or call at least four weeks prior to the submission deadline with the following information: The name, address, telephone and fax numbers, and e-mail address of the principal investigator and the name of the institution. This information will be used to determine the number of expert reviewers needed to evaluate applications. Send the declaration of interest information to: ACYF Operations Center, 1150 Connecticut Avenue, NW., Suite 1100, Washington, DC 20036, Telephone: 1–800–351–2293, e-mail: *HSB@esilsg.org.*

Copies of the program announcement, necessary application forms and appendices can be obtained by contacting the above address, and/or visiting the ACYF Web site at *http://www.acf.hhs.gov/programs/hsb/grant/fundingopportunities/fundopport.htm.*

Fiscal Year 2003 Discretionary Announcement for Head Start Partnerships With Tribally Controlled Land Grant Colleges/Universities (TCUs)

Part I. Purpose and Background

A. Purpose

This announcement of financial assistance, to be competitively awarded to Tribally Controlled Land Grant Colleges and Universities (TCUs), is to utilize the capabilities of these institutions of higher education to improve the quality and long-term effectiveness of Head Start and Early Head Start programs. This will be achieved by providing academic training and forming partnerships between the TCUs and Head Start grantees and delegate agencies funded through the American Indian and Alaskan Native Programs Branch (AIANPB) of the Head Start Bureau. The institutions of higher education that will be funded under this announcement, together with those TCUs currently funded under this initiative, will form a consortium to share methods, approaches, experiences, and lessons learned. The consortium is a partner of the Head Start National Training and Technical Assistance (T&TA) network in providing assistance to AIANPB Head Start grantees.

Throughout this announcement, the term Head Start program or Head Start agency refers to both AIANPB funded Head Start and Early Head Start grantees or delegate agencies unless otherwise specifically noted.

B. Background

The overall goal of Head Start is to ensure that children of low-income families nearing the end of the preschool period and entering school are ready for school success. In order to accomplish this goal, Head Start provides comprehensive services to the children and their families. Head Start enhances children's physical, intellectual, social, and emotional development. It supports parents in their efforts to fulfill their parental roles and provides for their involvement in implementing the Head Start program. Another goal of Head Start is to strengthen community supports for families with young children while they are working towards employment and self-sufficiency.

In an attempt to ensure quality services to children and their low-income families Head Start has conducted many demonstration projects, provided grantees with training and technical assistance, and given grantees funds to implement their own training efforts. For example, Head Start supported the creation of the Child Development Associate (CDA) credential designed for early childhood development teaching staff and implemented the Head Start Teaching Centers and other innovative projects.

The Head Start-Tribally Controlled Land Grant Colleges/Universities Partnerships are closely aligned with the Head Start tradition of creating innovative programs and working with low-income children and their families. From 1999 to 2001, ACF awarded grants to 16 TCUs to form partnerships with Head Start programs funded through AIANPB and to provide training and education to Head Start staff members. A list of these 16 institutions can be found in Appendix A. This announcement will fund additional partnerships between AIANPB Head Start programs and TCUs.

In the 1998 reauthorization of the Head Start Act, a key priority of Congress was to continue to improve Head Start program quality and accountability. A number of provisions were included in the new law to achieve these goals, including new education performance standards and measures, expansion of program monitoring to incorporate evidence of progress on outcomes-based measures, expanded funding to upgrade program quality and staff compensation, and higher education standards for Head Start teachers. Among these provisions is the requirement that, by September 30, 2003, at least half of all Head Start teachers in center-based programs must have an AA, BA, or advanced degree in Early Childhood Education (ECE) or in a related field with preschool teaching experience. A degree in a field related to early childhood education means a program of study that includes six or

more courses in early childhood education and/or child development. Teachers who have degrees in related fields must also have experience teaching pre-school children. The Head Start Bureau is providing various forms of assistance to local Head Start programs to implement this teacher qualification legislative mandate. For example, to enhance the numbers of teachers with degrees in early childhood education, grantees have received $43,000,000 in funding in 1999 and an additional $43,000,000 in 2000 to increase teacher salaries and expand access to higher education courses and degree programs. Head Start-State Collaboration Offices and training and technical assistance providers currently help Head Start programs work with higher education institutions on challenges such as linking training obtained in conjunction with the CDA credential with academic credit and courses leading to AA and BA degrees in early childhood education.

In January 2001, the President signed into law the "No Child Left Behind Act" to make the education of every child in America one of the country's top priorities. The Act seeks to ensure that public schools teach children what they need to know to be successful in life and that they also set high education standards in the classroom. In his 2002 State of the Union address, the President indicated the need to prepare our children to read and succeed in school, including the improvement of Head Start and early childhood development programs. In response to these goals, the White House has developed an early childhood initiative, which is built on raising the bar for Head Start Education through researched methods that create a better learning environment and improved outcomes for children. In his announcement of the Good Start, Grow Smart Early Childhood Initiative in April 2002, the President identified children's early literacy as a key focus for Head Start program improvement. In this initiative, the President presented three areas of focus for Head Start: (1) Strengthening Head Start programs; (2) partnering with states to improve early childhood education, and (3) providing information to teachers, caregivers, and parents. The Head Start Bureau quickly responded to the President's mandate by developing the Strategic Teacher Education Project (STEP) in June 2002. The purpose of Project STEP is to ensure that all Head Start teachers engage in research-based strategies to support children's early literacy and positive social and emotional development, which, in turn, will lead to positive child outcomes and school readiness.

Under this announcement, TCUs must form a partnership with one or more AIANPB Head Start grantees, to develop curriculums and provide education and/or training to Head Start teachers. The partnership agreements must be beneficial to both the TCUs and the participating Head Start grantees.

Partnership agreements must provide academic training and credit hours for a specified number of Head Start teachers. Partnership agreements must provide culturally appropriate education for Head Start teachers that would lead to academic degrees. These agreements must help Head Start teachers to provide courses on how to enhance early literacy, how to assess outcomes of Head Start children, and/or how to involve fathers in the lives of their children.

All project applications must address one of the following priority areas:

1. Partnerships to increase the number of center-based teachers with two-year degrees in early childhood education, and

2. Partnerships to increase the competency of Head Start in building quality Head Start programs, particularly in enhancing language development, early literacy and socio-emotional development, as well as assessing child outcomes.

Part II. Program Information

A. Statutory Authority

The Head Start Act, as amended, 42 U.S.C. 9801 *et seq.*

B. Eligible Applicants

Tribally Controlled Land Grant Colleges and Universities are those institutions cited in section 532 of the Equity in Educational Land Grant Status Act of 1994 (7 U.S.C. 301 note), any other institution that qualifies for funding under the Tribally Controlled Community College Assistance Act of 1978, (25 U.S.C. 1801 *et seq.*), and Navajo Community College, Authorized in the Navajo Community College Assistance Act of 1978, Public Law 95–471, title II (25 U.S.C. 640a note). Those TCUs that are not accredited are not eligible to apply under this announcement. TCUs that received the Head Start Partnerships with TCUs grant in 2001 are not eligible to compete under this announcement. These institutions are listed in Appendix A.

C. Project Duration

The length of the project period must not exceed 60 months. This announcement is soliciting applications for project periods up to five years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for five years. Applications for continuation grants funded under these awards beyond the one-year budget period but within the five-year project period will be reviewed in subsequent years on a non-competitive basis, subject to availability of funds, satisfactory progress of the grantee, and a determination that continued funding would be in the best interest of the Government.

D. Federal Share of Project Costs

It is anticipated that up to $1,500,000 in ACF funds will be made available annually. The maximum share for each project is not to exceed $150,000 per year per project.

E. Number of Projects To Be Funded

It is anticipated that up to 10 projects will be funded.

F. Matching Requirement

There are no matching requirements, however applicants are encouraged to provide non-Federal contributions to the project.

Part III. Application Requirements

The following Uniform Project Description (UPD) has been approved by OMB under control number 0970–0139.

A. Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

B. General Instructions

ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix. Pages are to be numbered and included in a table of contents for easy reference.

Introduction

Applicants are required to submit a full project description and shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview while the evaluation criteria expand and clarify more program-specific information that is needed.

a. Project Summary/Abstract

Provide a summary of the project description (a page) with reference to the funding request.

b. Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and or problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

c. Results or Benefits Expected

Identify the results and benefits to be derived. For example, using a comprehensive review of the current literature, justify how the research questions and the findings will add new knowledge to the field or how it will improve services for children and families.

d. Approach

Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the proportion of data collection expected to be completed. When activity or function cannot quantify accomplishments, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data are to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any "collection of information that is conducted or sponsored by ACF." List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

C. Additional Information

Following is a description of additional information that should be placed in the appendix to the application:

a. Staff and Position Data

Provide a job description for each key position and a biographical sketch for each key person appointed. A biographical sketch with acceptable credentials will also be required for new key staff as appointed.

b. Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation or similar document that clearly establishes non-profit status bearing the seal of the State in which the corporation or association is domiciled *or* a statement from a State taxing body, State attorney general, or other appropriate State official certifying the applicant organization has a non-profit status and none of the net earnings accrue to any private shareholders or individuals *or* any of the items in the subparagraphs immediately above for a State or national organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate. Faith-based institutions are encouraged to submit with their application the optional survey located under "Grant Manuals and Forms" at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

c. Dissemination Plan

Provide a plan for distributing reports and other project outputs to colleagues and the public. Applicants must provide a description of the kind, volume and timing of distribution.

d. Budget And Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

D. General Budget Information

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, "Federal resources" refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

a. *Personnel*

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

b. *Fringe Benefits*

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

c. *Travel*

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. *Travel costs for key staff to attend ACF-sponsored conferences* should be detailed in the budget.

d. *Equipment*

Description: Costs of tangible, non-expendable, personal property, having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, an applicant may use its own definition of equipment provided that such equipment would at least include all equipment defined above.

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

e. *Supplies*

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information that supports the amount requested.

f. *Other*

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (non-contractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

g. *Indirect Charges*

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

h. *Total Direct Charges, Total Indirect Charges, Total Project Costs*

Self explanatory.

Part IV. Evaluation Criteria and Review Process

A. Evaluation Criteria

In considering how applicants will carry out the responsibilities addressed under this announcement, competing applications for financial assistance will be reviewed and evaluated against the following criteria:

Criterion 1. Approach: (45 points)

The extent to which the application, having met the minimum requirements, designs an acceptable plan of action pertaining to the scope of the project which details how the proposed work will be accomplished. Include a timeline; lists of each organization, consultants, including key individuals who will work on the project along with a short description of the nature of their effort or contribution. Assure the adequacy of time devoted to the project by key staff. The key staff should be qualified and knowledgeable of Head Start. The applicant must fully describe the approach and/or methodology and delineate the relationship of each task to the accomplishment of the proposed objectives. There should be evidence that the planned approach reflects sufficient input from and partnership with AIANPB funded Head Start programs.

The Head Start Bureau is particularly interested in the following aspects of the approach:

1. Describe the planning the applicant will conduct during the start-up period to prepare for implementation of the program. Provide assurance that no more than six months will be devoted to planning activities.

2. Indicate how staff will be recruited and selected to participate in the program. Clearly describe how the training and/or coursework will be contextually and culturally relevant to the Head Start and Early Head Start environment and how it will contribute to enhancing the effectiveness of teachers, program quality and outcomes for Head Start children and families.

3. Describe efforts by the TCU and Head Start partners to make training and/or coursework accessible to Head Start participants and to support their successful completion of courses, training, and degrees. Include discussion of issues such as timing, scheduling, and location of classes or training; support to enhance the literacy and study skills of participants, and approaches to integrate training in the working environment of the Head Start program. Provide assurance that training/courses are offered at no cost to trainees.

4. Describe efforts to complement the Federal funds requested in this proposal with other sources to maximize the benefits to the TCU. Include any efforts or plans to assist Head Start staff in accessing sources of financial assistance or to make use of other funding for training and career development of early childhood program staff.

5. Document that the TCU currently offers training and/or credit courses, and proposes to offer credit courses in the priority areas.

6. In case of academic training, describe how the staff's CDA training and certification as well as previous coursework and credits will be linked to academic credits and course sequences leading to academic degrees. Applicant should indicate how many Head Start and Early Head Start staff members will be included in this effort.

7. Describe the organizational structure that will support the project objectives. Indicate how joint planning and assessment with the AIANPB Head Start and Early Head Start grantees will be implemented with timelines and clear lines of responsibility. Indicate how project staff positions are assigned and describe their major functions and responsibilities.

8. Describe the role the institution will play in the TCU consortium funded under this initiative, and as a partner in the national training and technical assistance network.

9. Describe the activities that will continue after the completion of this project that will ensure that the TCU will continue to participate in providing educational opportunities for AIANPB Head Start and Early Head Start staff.

Criterion 2. Results or Benefits Expected: (20 points)

The extent to which the application identifies the results and benefits to be derived; describes the anticipated contribution to policy, practice, theory and/or research; specific benefits should be described for both the TCU and AIANPB Head Start program.

The Head Start Bureau is particularly interested in the following:

1. Based on the stated program objectives, identify the results and benefits to be derived. Identify the specific results or benefits that could be expected for the Head Start grantees and the TCU. Describe how Head Start children will benefit from the project.

2. Identify both qualitative and quantitative data the program will collect to measure progress towards the stated results or benefits. Identify how the program will determine the extent to which it has achieved its stated objectives.

3. To propose academic training leading to a college degree, provide a projection of the estimated number of teachers that will earn degrees over the duration of the project based on an analysis of the current levels of credits/courses earned by participants and a proposed sequence of courses.

Criterion 3. Budget and Budget Justification: (15 Points)

The extent to which the project's costs are reasonable in view of the activities to be carried out and the anticipated outcomes.

Applicable Administrative Regulations

Applicable administrative regulations include 45 CFR part 74, Administration of Grants, for profit agencies and 45CFR part 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and local Governments.

Post-Award Reporting Requirements

Post-Award Reporting Requirements include submission of quarterly programmatic and budget reports. Program reports must clearly outline status on the accomplishment of stated goals and objectives. Financial reports must provide status of budget expenditures, as well as identifying any projected savings or shortages.

Criterion 4. Objectives and Need for Assistance: (10 Points)

The extent to which the application identifies relevant physical, economic, social, financial, institutional or other problems requiring a grant; demonstrates the need for assistance; states the principal and subordinate objectives of the project; provides supporting documentation or other testimonies from concerned interests other than the applicant.

The Head Start Bureau is particularly interested in the following:

1. State the objectives for the program. Indicate how these objectives are based on an assessment of community needs and how they relate to Head Start goals. Describe the process used to assess the need for the proposed program including the total number of staff needing training, including preschool and infant/toddler teachers. If an assessment already exists, the applicant should describe the process used and explain any additional consultation as it relates to the development of the proposed program.

2. Specifically identify the population to be served. Indicate the AIANPB Head Start and Early Head Start grantees that are proposed as participating partners, the numbers and types of staff to be trained and the proposed areas of training, courses, and/or degrees to be awarded, as appropriate.

3. Describe the development of institution's agreement with Head Start partnerships and any other consultation related to the development of the proposed initiative. Describe any efforts to frame the proposed initiative within broader state or community efforts to enhance professional and career development for staff in all forms of early childhood and child care programs. Include support letters that document consultation and support from the proposed grantee or delegate agency partners, the Regional Head Start Quality Improvement Center (QICs), the Head Start State Collaboration Office, and any existing state early care and education initiatives.

Criterion 5. Geographic Location: (10 Points)

The extent to which the application gives a precise location of the project and area to be served, including the location of the AIANPB Head Start and Early Head Start grantees.

B. Review Process

Applications received by the due date will be reviewed and scored competitively. Experts in the field, generally persons from outside the Federal government, will use the evaluation criteria listed in part III of this announcement to review and score the applications. The results of this review are a primary factor in making funding decisions. ACYF may also solicit comments from ACF Regional Office staff and other Federal agencies.

Part V. Instructions For Submitting Applications

A. Required Forms

Eligible applicants interested in applying for funds must submit a complete application including the required forms included at the end of this program announcement. In order to be considered for a grant under this announcement, an application must be submitted on the Standard Form 424 (approved by the Office of Management and Budget under Control Number 0348–0043). A copy has been provided. Each application must be signed by an individual authorized to act for the applicant and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, Assurances: Non-Construction Programs (approved by the Office of Management and Budget under control number 0348–0040). Applicants must sign and return the Standard Form 424B with their application. Applicants must provide a certification concerning lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification (approved by the Office of Management and Budget under control number 0348–0046). Applicants must sign and return the certification with their application.

Applicants must make the appropriate certification of their compliance with

the Drug-Free Workplace Act of 1988. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for award. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

Applicants must also understand that they will be held accountable for the smoking prohibition included within Pub. L. 103–227, part C Environmental Tobacco Smoke (also known as The Pro-Children's Act of 1994). A copy of the **Federal Register** notice that implements the smoking prohibition is included with the forms. By signing and submitting the application, applicants are providing the certification and need not mail back the certification with the application.

All applicants for research projects must provide a Protection of Human Subjects Assurance as specified in the policy described on the HHS Form 596 (approved by the Office of Management and Budget under control number 0925–0418). If there is a question regarding the applicability of this assurance, contact the Office for Protection from Research Risks of the National Institutes of Health at (301)–496–7041. Those applying for or currently conducting research projects are further advised of the availability of a Certificate of Confidentiality through the National Institute of Mental Health of the Department of Health and Human Services. To obtain more information and to apply for a Certificate of Confidentiality, contact the Division of Extramural Activities of the National Institute of Mental Health at (301) 443–4673.

B. Application Limits

The narrative of the application should be double-spaced and single-sided on 8½" × 11" plain white paper, with 1" margins on all sides. Use only a standard size font no smaller than 12 pitch throughout the proposal. All pages of the narrative of the application (including appendices, resumes, charts, references/footnotes, tables, maps and exhibits) must be sequentially numbered, beginning on the first page after the budget justification, the principal investigator contact information and the Table of Contents. *The length of the application, including the narrative, and excluding the appendices and resumes must not exceed 65 pages.* Anything over 65 pages will be removed and not considered by the reviewers. The project summary should not be counted in the 65 pages. Applicants are requested not to send pamphlets, brochures, or other printed material along with their applications as these pose copying difficulties. These materials, if submitted, will not be included in the review process. In addition, applicants must not submit any additional letters of endorsement beyond any that may be required. Applicants may omit from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget and social security numbers if otherwise required for individuals. The copies may include summary salary information.

Applicants are encouraged to submit curriculum vitae using "Biographical Sketch" forms used by some government agencies.

Please note that applicants that do not comply with the requirements in the section on "Eligible Applicants" will not be included in the review process.

C. Checklist for a Complete Application

The checklist below is for your use to ensure that the application package has been properly prepared.

—One original, signed and dated application plus two copies.
—Attachments/Appendices, when included, should be used only to provide supporting documentation such as resumes, and letters of agreement/support.

Front Matter:
- Cover Letter
- Table of Contents
- Project Abstract

(1) Application for Federal Assistance (SF 424, REV. 4–92);

(2) Budget information-Non-Construction Programs (SF424A&B REV.4–92);

(3) Budget Justification, including subcontract agency budgets;

(4) Letter from the AIANPB Head Start program certifying that the program is a partner of the TCU;

(5) Application Narrative, excluding Appendices and resumes (not to exceed 65 pages);

(6) Proof that the organization is a TCU.

(7) Assurances Non-Construction Programs;

(8) Certification Regarding Lobbying;

(9) Where appropriate, a completed SPOC certification with the date of SPOC contact entered in line 16, page 1 of the SF 424, REV.4–92;

(10) Certification of Protection of Human Subjects.

D. Due Date for the Receipt of Applications

Deadlines: The closing date for the submission of applications is 4:30 p.m. (EDT) on August 20, 2003. Applications received after the closing date will be classified as late and not considered for funding. Applications should be mailed to: ACYF Operations Center, 1150 Connecticut Avenue, NW., Suite 1100, Washington, DC 20036, Telephone: 1–800–351–2293.

Application for Head Start Discretionary Grants: Head Start Partnerships with Tribally Controlled Land Grant Colleges and Universities (TCUs). Applications received after the closing date and time will be classified as late.

Applications hand carried by applicants, courier services, or by overnight/express mail couriers shall be considered as meeting the announced deadline only if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., at the ACYF Operations Center, 1150 Connecticut Avenue, NW., Suite 1100, Washington, DC 20036, between Monday and Friday (excluding Federal holidays). (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACYF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACYF electronically will not be accepted regardless of date or time of submission and time of receipt.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered.

Extension of deadlines: ACF may extend an application deadline for applicants affected by acts of God such as floods, hurricanes, or when there is widespread disruption of the mail, or when it is anticipated that many applications will come from rural or remote areas. A determination to waive or extend deadline requirements rests with the Chief Grants Management Officer.

E. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, Pub. L. 104–13, the Department is required to submit to OMB for review and approval any reporting and record keeping requirements in regulations including program announcements. All information collections within this program announcement are approved under the following current valid OMB control numbers 0970–0139 which expires 12/31/2003.

Public reporting burden for this collection is estimated to average 10 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection of information.

An agency may not conduct or sponsor and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

F. Required Notification of the State Single Point of Contact

This program is covered under Executive Order 12372, Intergovernmental Review of Federal Programs, and 45 CFR part 100, Intergovernmental Review of Department of Health and Human Services Program and Activities. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wyoming, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-six jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372.

All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. The applicant must submit all required materials, if any, to the SPOC and indicate the date of the submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. Applicants must submit any required material to the SPOCs as soon as possible so that the Federal program office can obtain and review SPOC comments as part of the award process. A listing of the SPOC for each participating state and territory with contact and address information is available at *http://whitehouse.gov/omb/grants/spoc.html.*

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the accommodate or explain rule.

When comments are submitted directly to ACF, they should be addressed to: William Wilson, ACYF/Office of Grants Management, 330 C Street SW, Washington, DC 20447, Attn: Head Start Partnerships with Tribally Controlled Land Grant Colleges and Universities. A list of the Single Points of Contact for each State and Territory can be found on the Web site: *http://www.whitehouse.gov/omb/grants/spoc.html.*

Catalogue of Federal Domestic Assistance 93.600.

Dated: July 10, 2003.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

Appendix A—List of Tribally Controlled Land Grant Colleges/Universities

1999 Institutions (Expiring FY 2003)

1. College of Menominee Nation
2. Fort Peck Community College
3. Leech Lake Community College
4. Northwest Community College
5. Sitting Bull College
6. Stone Child Community College

2000 Institutions (Expiring FY 2003)

1. Bay Mills Community College
2. Blackfeet Community College
3. Dull Knife College
4. Ft. Belknap
5. Little Big Horn College
6. Oglala Lakota
7. SIPI College

2001 Institutions (Expiring FY 2006)

1. Fond du Lac Tribal and Community College
2. Salish Kootenai College
3. Sinte Glaska University

[FR Doc. 03–18167 Filed 7–18–03; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Medical Devices Dispute Resolution Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Medical Devices Dispute Resolution Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on scientific disputes between the Center for Devices and Radiological Health and sponsors, applicants, and manufacturers.

Date and Time: The meeting will be held on August 20, 2003, from 8 a.m. to 6 p.m.

Location: Bethesda Marriott, Congressional Ballroom, 5151 Pooks Hill Rd., Bethesda, MD.

Contact Person: Les Weinstein, Center for Devices and Radiological Health (HFZ-5), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-827-7991, FAX 301-827-2565, lsw@cdrh.fda.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 10232. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote regarding a scientific dispute between the agency and CardioGenesis Corp., related to the approvability of a premarket approval application for the Axcis Percutaneous Myocardial Revascularization (PMR) for late stage medically refractory angina. Background information for the day's topic, including the attendee list, agenda, and questions for the committee, will be posted on the Internet at *http://www.fda.gov/cdrh/panel/index.html* one business day before the meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by August 13, 2003. Oral presentations from the public will be scheduled between approximately 8 a.m. and 8:30 a.m. on August 20, 2003.

Near the end of the committee deliberations, a 30-minute open public session will be conducted for interested persons to address issues specific to the dispute before the committee. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before August 13, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301-594-1283, ext. 113, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 11, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–18350 Filed 7–18–03; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)-443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: AIDS Drug Assistance Program (ADAP): ADAP Monthly Client Utilization and Program Expenditures Report (OMB No. 0915–0219)—Extension

The Division of Service Systems (DSS)/Health Resources and Services Administration (HRSA) collects aggregated information on the number of clients being served by ADAPs, monthly expenditures by State ADAPs, and the purchase price of HIV/AIDS medications. State AIDS Drug Assistance Program (ADAPs), funded under the Title II of the Ryan White Comprehensive AIDS Resource Emergency (CARE) Act, as amended (Part B of Title XXVI of the Public Health Service Act), are designed to provide low income, uninsured, and underinsured individuals with access to HIV/AIDS medication that prevent serious deterioration of health arising from HIV disease, including the prevention and treatment of opportunistic infections.

During the last several years, there has been an increasing need for pharmaceuticals among uninsured and underinsured low income individuals who are HIV positive or diagnosed with AIDS. Due to the increasing demand, DSS/HRSA recognizes the importance of program planning and budget forecasting in order to maximize resources, and proposed to extend the current data collection form to collect relevant client utilization data and program expenditure information from State ADAPs. This data collection effort is designed to allow DSS/HRSA (the funding agency) to continue monitoring nationwide trends in program growth, client utilization, expenditures and to assess the capacity of State ADAPs to maintain client services for clients throughout the fiscal year. The form will improve DSS/HRSA's ability to track the prices of HIV/AIDS drugs in order to ensure that State ADAPs are receiving the best price possible, to identify emerging issues and technical assistance needs and to share information among State ADAPs. It will also assist Title II grantees, State ADAPs, DSS/HRSA staff and policy makers at both the Federal and State level to understand the level of client demand for medications and the resources needed to meet those needs.

This report will collect time-specific date for the number of enrolled clients, the number of new clients, and the number of utilizing clients, the level of funds expended, and the price of HIV/AIDS drugs. A text box is provided to allow State ADAPs to report significant changes to their program, such as projected budget shortfall, program restrictions, client waiting lists, a change in eligibility criteria, or formulary changes. On a quarterly basis, State ADAPs will report the purchase price paid on a select number of HIV pharmaceuticals dispensed by each program. DSS/HRSA will continue to compile summary reports that are distributed back to grantees and State ADAPs on a quarterly basis. The data collected is used to guide program planning, formulate budget recommendations, and monitor State ADAPs, especially monitoring the balance between an individual State ADAPs available resources against the client demand for medications. The burden estimates are as follows:

HRSA forms title II ADAP grantees	Number of respondents	Responses per respondent	Total responses	Hour per responses	Total burden hours
Client and Expenditures	54	12	648	0.75	486
Drug Pricing	54	4	216	0.75	162
Total	54		864		648

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number, 202–395–6974.

Dated: July 11, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–18355 Filed 7–18–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Application for the National Health Service Corps (NHSC) Scholarship Program (OMB No. 0915–0146): Extension

The National Health Service Corps (NHSC) Scholarship Program was established to help alleviate the geographic and specialty and other health practitioners in the United States. Under this program, health professions students are offered scholarships in return for service in a federally designated Health Professional Shortage Area (HPSA). The Scholarship Program provides the NHSC with the health professionals it requires to carry out its mission of providing primary health care to HPSA populations in areas of greatest need. Students are supported who are well qualified to participate in the NHSC Scholarship Program and who want to assist the NHSC in its mission, both during and after their period of obligated service. Scholars are selected for these competitive awards based on the information provided in the application and during the semistructured personal interview that is conducted by a team of two interviewers who use a structured scoring procedure. Awards are made to applicants that demonstrate a high potential for providing quality primary health care services.

The estimated response burden is as follows:

Form	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Application	2,000	1	1	2,000
Interview	1,100	1	1	1,100
Total	3,100			3,100

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number 202–395–6974.

Dated: July 11, 2003.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–18356 Filed 7–18–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The Health Education Assistance Loan (HEAL) Program: Forms—(OMB No. 0915–0043)—Revision

This clearance request is for a revision of the approval for three HEAL forms: the HEAL Repayment Schedule, Fixed and Variable (provides the borrower with cost of a HEAL loan, the number and amount of payments, and the Truth-in-Lending disclosures); and the Lender's Report on HEAL Student Loans Outstanding, Call Report (provides

information on the status of loans outstanding by the number of borrowers whose loan payments are in various stages of the loan cycle, such as student education and repayment, and the corresponding dollar amounts). These forms are needed to provide borrowers with information on the cost of their loan(s) and to determine which lenders may have excessive delinquencies and defaulted loans.

The estimate of burden for the forms are as follows:

Form and number	Number of respondents	Responses per respondent	Total responses	Hours per responses	Total burden hours
Disclosure:					
Repayment Schedule HRSA 502–1,2	15	666	9,990	.5	4995
Reporting:					
Call Report, HRSA 512	20	4	80	.75	60
Total Reporting and Disclosure	20		10,080		5,055

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: July 11, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–18357 Filed 7–18–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; An Evaluation of the National Cancer Institute Science Enrichment Program

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: An Evaluation of the NCI Science Enrichment Program (SEP).

Type of Information Collection Request: Revision (OMB No. 0925–0510, Expiration 9/30/03).

Need and Use of Information Collection: This evaluation is designed to assess the effectiveness of the NCI SEP in meeting its goals of: (1) Encouraging under-represented minority and under-served students who have just completed ninth grade to select careers in science, mathematics, and/or research, and (2) broadening and enriching students' science, research, and sociocultural backgrounds. The program is a 5 to 6-week residential program taking place on two university campuses—University of Kentucky, Lexington and San Diego State University. The evaluation was designed as a controlled, longitudinal study, consisting of SEP students who attend the program and control group students who did not attend the program. The evaluation will provide NCI with valuable information regarding specific components that promote or limit the program's effectiveness, the extent to which the program is implemented as planned, how much the two regional programs vary, and how the program can be improved or made more effective. NCI will use this information to make decisions regarding continuation and expansion of the program.

Frequency of Response: One time.

Affected Public: Individuals or households.

Type of Respondents: High school and college students and parents of high school students participating in the program.

Cost to Respondents: $4,500. The annual reporting burden is as follows:

ESTIMATES OF HOUR BURDEN: BURDEN REQUESTED

Type of respondents	Average #of respondents/Yr.	Frequency of response (follow up)	Average time per response	Average annual hour burden
SEP Participants	600	1	0.5	300
Control Group Students	300	1	0.5	150
Total	900			450

There are not Capitol Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Mr. Frank Jackson, Center to Reduce Cancer Health Disparities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Suite 602, Rockville, MD 20852, or call non-toll-free number (301) 496–8589, or E-mail your request, including your address to: *fj12i@nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of this publication.

Dated: July 14, 2003.

Reesa Nichols,

NCI Project Clearance Liaison.

[FR Doc. 03–18457 Filed 7–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(b)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, The Career Enhancement Award Review.

Date: August 4, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Robert B. Moore, PhD, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7178, MSC 7924, Bethesda, MD 20892, 301/435–0725.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18459 Filed 7–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set-forth in sections 552b(c)(4) and 552(b)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Career Enhancement Award and Continuing Education Training Grant Review.

Date: August 4, 2003.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call)).

Contact Person: Robert B. Moore, PhD, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7178, MSC 7924; Bethesda, MD 20892, 301/435–0725.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18460 Filed 7–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Clinical Training Review Meeting.

Date: August 5, 2003.

Time: 2:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Tracy A. Shahan, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., One Democracy Plaza, Suite 800, Bethesda, MD 20892, (301) 594–4974.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: July 11, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18368 Filed 7–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Brain Injury Mechanisms.

Date: July 21, 2003.

Time: 9 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Intercontinental Mark Hopkins-San Francisco, Number One-Nob Hill, San Francisco, CA 94108.

Contact Person: Joann McConnell, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–5324, *mcconnej@ninds.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Brain Injury Mechanisms.

Date: July 21, 2003.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Intercontinental Mark Hopkins-San Francisco, Number One-Nob Hill, San Francisco, CA 94108.

Contact Person: Joann McConnell, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–5324, *mcconnej@ninds.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, NeuroAIDS Applications.

Date: July 23–24, 2003.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Sofitel Lafayette Square, 806 15th Street, NW., Washington, DC 20005.

Contact Person: Andrea Sawczuk, DDS, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–0660.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Loan Repayment Program.

Date: July 28, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Joann McConnell, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–5324, *mcconnej@ninds.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, ZNS1 AD Study.

Date: July 30, 2003.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Andrea Sawczuk, DDS, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSCA 9529, Bethesda, MD 20892–9529, (301) 496–0660.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Translational Research on Neurological Disorders.

Date: July 30–31, 2003.

Time: 7:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont, 2401 M Street, NW., Washington, DC 20037.

Contact Person: W. Ernest Lyons, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Raul A. Saavedra, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 11, 2003.

Anna Snouffer,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18369 Filed 7–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF AND HUMAN SERVICES

National Institutes of Health

National Institutes of Health Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Environmental Health Sciences Special Emphasis Panel, July 17, 2003, 8 a.m. to July 17, 2003, 4 p.m., NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, 122, Research Triangle Park, NC, 27709 which was published in the **Federal Register** on June 20, 2003, 68 FR 37009.

The date of this telephone conference meeting has been changed to August 19, 2003 and the meeting will start at 9 a.m., not 8 a.m. as previously advertised. The meeting is closed to the public.

Dated: July 11, 2003.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18370 Filed 7–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Unsolicited Program Project Application Review.

Date: August 13, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700 B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Alec Ritchie, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700 B Rockledge Drive, MSC 7616, Bethesda, MD 20892—7616, 301–435–1614, *arichie@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 11, 2003.

Anna Snouffer,

Director, Office of Office of Federal Advisory Committee Policy.

[FR Doc. 03–18371 Filed 7–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Functional Dyspepsia.

Date: July 29, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 751, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600 (301) 594–7798, *muston@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 10, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18372 Filed 7–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel NeuroAIDS Applications.

Date: July 23–24, 2003.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Sofitel Lafayette Square, 806 15th Street, NW., Washington, DC 20005.

Contact Person: Andrea Sawczuk, DDS, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301)–496–0660.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel ZNS1 Ad Study.

Date: July 30, 2003.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Andrea Sawczuk, DDS, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301)–496–0660.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel Translational Research on Neurological Disorders.

Date: July 30–31, 2003.

Time: 7:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont, 2401 M Street, NW., Washington, DC 20037.

Contact Person: W. Ernest Lyons, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/HIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301)–496–4056.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel Fellowship Career and Development Review.

Date: July 31, 2003.

Time: 1. p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Hotel, 515 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Raul A Saavedra, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301)–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 10, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18373 Filed 7–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provision set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., ass amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such a patentable material, and personal information concerning individuals associated with the grant applications, the disclosure in which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Small Grants for New Investigator/NIAMS.

Date: July 17, 2003.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Richard J. Bartlett, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Bldg./Bldg. 45, MSC 6500/Room 5AS–37B, Bethesda, MD 20892, (301) 594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: July 10, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18374 Filed 7–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the National Deafness and Other Communication Disorders Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Deafness and Other Communication Disorders Advisory Council.

Date: September 5, 2003.

Open: 8:30 a.m. to 11:30 a.m.

Agenda: Staff reports on divisional, programmatic and special activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Closed: 11:30 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Craig A. Jordan, PhD, Chief, Scientific Review Branch, NIH/NIDCD/DER, Executive Plaza South, Room 400C, Bethesda, MD 20892–7180, 301–496–8683.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.nidcd.nih.gov/about/councils/ndcdac/ndcdac.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: July 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18458 Filed 7–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, July 17, 2003, 8:30 am to July 18, 2003, 5 pm, The Fairmont Washington, DC., 2401 M Street, NW., Washington, DC 20037 which was published in the **Federal Register** on July 7, 2003, 68 FR 40278–40276.

The meeting will be three days July 16–18, 2003, from 7 pm to 5 pm. The location remains the same. The meeting is closed to the public.

Dated: July 8, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18367 Filed 7–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 20, 2003, 5 p.m. to June 20, 2003, 5:30 p.m., Four Points Sheraton Hotel, 1201 K Street NW., Washington, DC 20005 which was published in the **Federal Register** on June 9, 2003, 68 FR 34406–34408.

The meeting will be held on July 28, 2003, from 10 a.m. to 11 a.m., at the National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20882. The meeting is closed to the public.

Dated: July 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18461 Filed 7–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biomedical Technology Resource Grant.

Date: July 20–22, 2003.

Time: 7 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Amerisuites, 116 Riverside Avenue NE., Medford, MA 02155.

Contact Person: Marcia Steinberg, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7840, Bethesda, MD 20892, (301) 435–1023, *steinberm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Ehrlichia Secretions.

Date: July 24, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cardiopulmonary Resuscitation.

Date: July 29, 2003.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gordon L. Johnson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7802, Bethesda, MD 20892, (301) 435–1212.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts for SSPS.

Date: August 1, 2003.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Karin F. Helmers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm 3166 MSC 7770, Bethesda, MD 20892, (301) 435–1017.

Name of Committee: Center for Scientific Review Special Emphasis Panel Cancer Therapy.

Date: August 4, 2003.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Perkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435–1718. *perkinsp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Clinical Trials—Phase I and II.

Date: August 4, 2003.

Time: 5 p.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Angela Y. Ng, PhD, MBA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, (For courier delivery, use MD 20817), Bethesda, MD 20892, (301) 435–1715, *nga@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Immunology.

Date: August 5, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Calbert A. Laing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, (301) 435–1221, *laingc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cardiac Stem Cells and the Aging Heart.

Date: August 5, 2003.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Anshumali Chaudhari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210.

Name of Committee: Center for Scientific Review Special Emphasis Panel, AIDS Immunology & Pathogenesis.

Date: August 6, 2003.

Time: 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Abraham P. Bautista, MS, MSC, Ph.D., Scientist Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1506, *bautista@csr.nih.gov.*

Name of Committee: Center for Scientific Review Emphasis Panel, T cruzi Organeles.

Date: August 6, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Jean Hickman, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

Name of Committee: Center for Scientific Review Special Emphasis Panel R21 Advanced Biomaterials RFA.

Date: August 7–8, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Daniel F. McDonald, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1215.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SSS–M (58) R21 Tissue Engineering RFA: EB–03–10.

Date: August 7–8, 2003.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Jean D. Sipe, Ph.D., Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4106, MSC 7814, Bethesda, MD 20892–7814, (301) 435–1743, *sipej@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, CNS Autonomic Regulation by Acupuncture.

Date: August 7, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Anshumali Chaudhari, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7802, Bethesda, MD 20892, (301) 435–1210.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Human and Other Primates Population Genetics.

Date: August 7–8, 2003.

Time: 3 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The American Inn, 8130 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: David J. Remondini, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7890, Bethesda, MD 20892, (301) 435–1038, *dir@helix.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bacterial Adhesion.

Date: August 8, 2003.

Time: 9:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Pathogenic Fungals

Date: August 8, 2003.

Time: 1 p.m. to 3 p.m.

Agegnda: To review and evaluate grant applications.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18462 Filed 7–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration of Children and Families

[CFDA No.: 93.566, Refugee Assistance—State Administered Programs]

Refugee Resettlement Program: Proposed Notice of Allocations to States of FY 2003 Funds for Refugee Social Services

AGENCY: Office of Refugee Resettlement (ORR), ACF, HHS.

ACTION: Proposed notice of allocations to States of FY 2003 funds for refugee social services.

SUMMARY: This notice establishes the proposed allocations to States of FY 2003 funds for refugee [1] social services under the Refugee Resettlement Program (RRP). In the final notice, amounts could be adjusted slightly based upon final adjustments in FY 2002 arrivals in some States.

This notice includes $2 million in a set-aside allocation to support programs promoting marriage education, relationship enhancement, divorce reduction activities, or other activities that promote and sustain healthy marriages. Unlike the FY 2002 healthy families' set-aside that provided for a wide-range of activities to enhance families, the FY 2003 set-aside is available for helping refugee couples who choose marriage for themselves to develop the skills and knowledge to develop and sustain healthy marriages. These set-aside funds are for married and non-married refugee couples, where appropriate.

DATES: Comments on this notice must be received by August 20, 2003.

ADDRESSES: Address written comments, in duplicate, to: Kathy Do, Division of Budget, Policy, and Data Analysis (BPDA), Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447. Delays may occur in mail delivery to Federal offices; therefore, a copy of comments should also be faxed to: (202) 401–0981

FOR FURTHER INFORMATION CONTACT: Kathy Do, Division of Budget, Policy & Data Analysis, (202) 401–4579. Email: *kdo@cf.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Amounts for Allocation

The Office of Refugee Resettlement (ORR) has available $ 150,138,714 in FY 2003 refugee social service funds as part of the FY 2003 Department of Health and Human Services Appropriations Act, Title II of Division G of the Consolidated Appropriations Resolufion FY 2003, Pub. L. 108–7.

The FY 2003 Conference Report (Pub. L. 108–10) reads as follows with respect to social services funds:

> The conference agreement appropriates $446,724,000 as proposed by H.R. 246 instead of $442,724,000 as proposed by the Senate. Within this amount, $151,121,000 is provided for Social Services, as proposed in H.R. 246. The Senate bill included $147,121,000 for this purpose.
>
> The conferees recognize the importance of continued educational support to schools with a significant proportion of refugee children, consistent with previous support to schools heavily impacted by large concentrations of refugees, and urges the Office of Refugee Resettlement to support these efforts should funding become available in the Social Services or other accounts.
>
> The agreement also includes $19,000,000 for increased support to communities with large concentrations of refugees whose cultural differences make assimilation especially difficult justifying a more intense level and longer duration of Federal assistance.

After the conference agreement, a further .65 percent reduction was imposed before enactment, reducing the amount for social services to $150,138,714.

ORR proposes to use the $150,138,714 appropriated for FY 2003 social services as follows:

- $71,092,907 will be allocated under the 3-year population formula, as set forth in this notice for the purpose of providing employment services and other needed services to refugees.
- $12,545,807 will be awarded as new and continuation social service discretionary grants under new and prior year competitive grant announcements issued separately from this notice.
- $19,000,000 will be awarded to serve communities most heavily affected by recent Cuban and Haitian entrant and refugee arrivals. These funds will be awarded under a separate announcement.
- $26,000,000 will be awarded through discretionary grants for communities with large concentrations of refugees whose cultural differences make assimilation especially difficult thereby justifying a more intense level and longer duration of Federal assistance. A combination of new and continuation awards will be made through new and prior year separate announcements.
- $14,000,000 will be awarded to address the needs of refugees and communities impacted by recent changes in Federal assistance programs relating to welfare reform. Awards will be made through a separate announcement.
- $7,500,000 will be used to continue educational support to schools with a significant proportion of refugee children, consistent with previous support to schools heavily impacted by large concentrations of refugees. Available surplus funds will be used to raise educational support to $15,000,000.

In addition, we are adding $2 million from FY 2001 unexpended refugee funds for allocation to States to fund programs promoting healthy marriages. Through this set-aside, ORR is looking to promote marriage education, relationship enhancement programs, divorce reduction activities, and/or other activities that promote and sustain healthy marriages. Unlike the FY 2002 healthy families' set-aside that provided for a wide range of activities to enhance families, the FY 2003 set-aside is available exclusively for marriage-building or relationship enhancement activities.

Refugee Social Service Funds

The FY 2003 population figures for the formula social services allocation include refugees, Cuban/Haitian entrants, Amerasians from Viet Nam, and victims of severe forms of trafficking. (A State must, however, have an approved State plan for the Cuban/Haitian Entrant Program or indicate in its refugee program State plan that Cuban/Haitian entrants will be served in order to use funds on behalf of entrants as well as refugees). Data on trafficking victims are taken from the total number of trafficking victim's certification letters issued by ORR. States that have served asylees during the past three years may submit to ORR the asylee-related information listed at the end of this section in order to have their service population estimate adjusted to include those asylees whose asylum was granted within the 36 month period ending September 30, 2002.

The Director is proposing to allocate $71,092,907 to States on the basis of each State's proportion of the national population of refugees who have been in the U.S. three years or less as of October 1, 2002 (including a floor amount for States that have small refugee populations).

The use of the 3-year population base in the allocation formula is required by section 412(c)(1)(B) of the Immigration and Nationality Act (INA) which states that "funds available for a fiscal year for grants and contracts [for social services] * * * shall be allocated among the States based on the total number of refugees (including children and adults) who arrived in the United States not more than 36 months before the beginning of such fiscal year and who are actually residing in each State (taking into account secondary migration) as of the beginning of the fiscal year."

As established in the FY 1992 social services notice published in the **Federal Register** on August 29, 1991, section I, "Allocation Amounts" (56 FR 42745), a variable floor amount for States which have small refugee populations is calculated as follows: If the application of the regular allocation formula yields less than $100,000, then—

(1) A base amount of $75,000 is provided for a State with a population of 50 or fewer refugees who have been in the U.S. 3 years or less; and

(2) For a State with more than 50 refugees who have been in the U.S. 3 years or less: (a) A floor has been calculated consisting of $50,000 plus the regular per capita allocation for refugees above 50 up to a total of $100,000 (in other words, the maximum under the floor formula is $100,000); (b) if this calculation has yielded less than $75,000, a base amount of $75,000 is provided for the State.

Population To Be Served and Allowable Services

Eligibility for refugee social services includes persons who meet all requirements of 45 CFR 400.43 (*see* Footnote 1 for service populations). In addition, persons granted asylum are eligible for refugee benefits and services from the date that asylum was granted (*See* ORR State Letter No. 00–12, effective June 15, 2000). Victims of a severe form of trafficking who have received a certification or eligibility letter from ORR are eligible from the date on the certification letter (*See* ORR State Letter No. 01–13, May 3, 2001, as modified by ORR State Letter No. 02–01, January 4, 2002).

Services to refugees must be provided in accordance with the rules of 45 CFR part 400 Subpart I—Refugee Social Services. Although the allocation formula is based on the 3-year refugee population, States may provide services to refugees who have been in the country up to 60 months (5 years), with the exception of referral and interpreter services and citizenship and naturalization preparation services for which there is no time limitation (45 CFR 400 152(b)).

Under waiver authority at 45 CFR 400.300, the Director of ORR may issue a waiver of the limitation on eligibility for social services contained in 45 CFR 400.152(b). There is no blanket waiver of this provision in effect for FY 2003. States may apply for a waiver of 45 CFR 400.152(b) in writing from the Director of ORR. Each waiver request will be reviewed based on supporting data and information provided. The Director of ORR will approve or disapprove each waiver request as expeditiously as possible.

Allowable social services are those indicated in 45 CFR 400.154 and 400.155. Additional services not included in these sections that the State may wish to provide must be submitted to and approved by the Director of ORR as required under 45 CFR 400.155(h).

The Administration for Children and Families (ACF) is currently supporting several initiatives that promote and encourage healthy marriages and strengthen families. The $2 million set-aside allocation reflects ORR's participation in these initiatives as they relate to supporting healthy marriages and strengthening refugee families. The cultures of most refugee populations are built upon successful and stable family life. ORR believes that refugee married and non-married couples face unique difficulties because of their flight from persecution and long periods of insecurity and that marriage education is social services that can help refugees cope with these difficulties. ORR also believes that there are benefits to marriage that extend to children, adults, and to all society. Thus, ORR is committed to promoting policies and programs that help strengthen marriage as an institution and help refugee parents raise their children in positive and healthy environments.

Many refugee families have endured persecution or torture, trauma, abrupt flight from war, and separation from, or death of, friends and family members. Furthermore, the relationships in refugee families may become strained before arrival because of suffering and

[1] Eligibility for refugee social services include refugees, asylees, Cuban and Haitian entrants, certain Amerasians from Viet Nam who are admitted to the U.S. as immigrants, certain Amerasians from Viet Nam who are U.S. citizens, (45 CFR 400.43), and victims of a severe form of trafficking who receive certification or eligibility letters from ORR. (ORR State Letter #01–13 on the Trafficking Victims Protection Act, dated May 3, 2001). The term "refugee," used in this notice for convenience, is intended to encompass such additional persons who are eligible to participate in refugee program services.

deprivation endemic to the refugee condition. Refugees in the U.S. face many challenges. The pressure of their new American environment may weaken the strong, positive family relationships that refugees have brought with them to the United States.

Family relationships may undergo strain and transformation when refugees resettle in the U.S. Strong authoritarian and sometimes patriarchal family structures may provoke conflicts when members take on new roles as they adapt to American culture. For example, school/parent relationships may differ from those in their home countries and may produce miscommunication and tension; refugee parents may have concerns or object to the range of freedom American youth are afforded; and the physical disciplinary practices between a husband and wife or between parents and children may differ from what is the norm or legal in the U.S. The low wages of entry-level jobs may force both adults to work outside the home, thereby disrupting traditional roles. Typically, low incomes force refugee households to locate in neighborhoods with high crime rates. Poor public transportation adds to time spent away from family members and complicates efforts to access services and participate in community activities. The resulting strain from these difficulties may damage refugee marriages, families, and communities.

Marriage education can help refugee couples strengthen and adjust relationship skills and help them cope with the difficulties of their new American environment with the result of improving the quality of family life. Along with the skills that enable couples to communicate more effectively, manage conflict and work together as a team, marriage education can also teach the benefits that can be obtained from identifying future challenges in their relationships so that these challenges can be successfully negotiated when they arise.

Research reveals that the benefits of healthy marriages are particularly beneficial for children. On average, children raised by parents in healthy marriages are less likely to fail at school, suffer an emotional or behavioral problem requiring psychiatric treatment, be victims of child abuse and neglect, get into trouble with the law, use illicit drugs, smoke cigarettes, abuse alcohol, engage in early and promiscuous sexual activity, grow up in poverty, or attempt suicide. On average children raised by parents in healthy marriages are more likely to have a higher sense of self-esteem, form healthy marriages when they marry, attend college, and are physically healthier.

In summary, under this set-aside ORR seeks to provide opportunities for states to offer to refugees, entrants, asylees, Amerasians, and victims of trafficking programs for strengthening marital and parenting skills within healthy and supportive relationships. ORR also seeks to expand understanding of the refugees' marriage and family difficulties in the resettlement experience and the factors that contribute to successfully meeting the challenges to the marriage relationship. If the issues faced by refugee families are addressed early through marriage education, the problems they encounter may be reduced or prevented and refugee families can work towards achieving the bright future they seek in the U.S.

Services to be rendered should be, to the extent possible, culturally and linguistically compatible to the refugee populations. Permissible marriage promotion activities to ORR-eligible populations include the following:

- Offering marriage education, marriage skills, and relationship skills programs
- Offering marriage education, marriage skills, and relationship skills programs that may include parenting skills, financial management, conflict resolution, and job and career advancement for non-married pregnant women and non-married expectant fathers.
- Offering pre-marital education and marriage skills training or workshops for engaged couples and for couples or individuals interested in marriage.
- Providing marriage enhancement and marriage skills training programs for married couples.
- Creating divorce reduction programs that teach relationship skills.
- Training program staff in why marriage matters, what to expect in marriage, the knowledge and skills necessary to form and sustain a healthy marriage, and examples of marriage education programs and resources.
- Training program participants and clients in why marriage matters, what to expect in marriage, and the knowledge and skills to make a healthy marriage a reality.
- Training qualified participants to be marriage program leaders, facilitators and mentors.
- Creating marriage mentoring programs that use married couples as role models and mentors in at-risk communities.
- Training experienced couples to be mentors as a strategy to assist newly married couples, new parents, stepfamilies or other couples facing special challenges.
- Providing vouchers for registration and materials to program staff and participants who attend marriage education activities. For example, a young woman or man considering marriage could be given vouchers to take a premarital inventory and a marriage education class, workshop, or weekend seminar. Similarly a newlywed couple, expecting their first child, could be given vouchers to attend a marriage education program.
- Providing vouchers for mediation services, marital counseling, or marriage education programs designed for those having serious marital problems, prior to separation or divorce.
- Establishing a resource center or library of books and videos on marriage for staff and clients at program service center offices.
- Developing and using a referral list of local marriage education programs and resources.
- Establishing institutional partnerships and collaboration networks with community mental health agencies, courts, local colleges and universities or the USDA's Extension Service regarding marriage education.
- Sponsoring training events on marriage education for local agencies that serve refugees.
- Hosting events for unmarried couples and weekly or monthly couples' nights with specific activities to encourage participation of couples. Provide child care if possible.
- Hosting a couples' night on a quarterly basis to celebrate marriage anniversaries and to provide brief educational activities that sustain healthy marriages.
- Including a marriage component in parenting programs.
- Gathering baseline data, establishing performance objectives and measures, and evaluating marriage education program activities.
- Providing marital health assessment quizzes and questionnaires with appropriate referrals when warranted.
- Using a marriage protocol to ask about the marital relationship in addition to parenting and other family relationships during intake, assessment, or follow-up interviews.
- Providing programs that help refugee teenagers prepare for healthy dating relationships, develop relationship skills, learn budgeting, and learn the value of marriage.

ORR has assembled a program guide entitled "Web-based Program Planning for Healthy Marriages Grants", which explains marriage education more fully and provides reference material useful for program planners. This guide is available on the ORR Web site under the Programs section at: (*http://www.acf.hhs.gov/programs/orr/programs/marriagegrants.htm*).

The organizations funded by the set-aside amount are expected to have ties to the ethnic communities they serve and to conduct outreach into the community to identify refugee families in need of services. We strongly encourage States to fund, to the extent possible, Mutual Assistance Associations (MAAs), ethnic community-based organizations, and indigenous faith-based organizations with refugee experience to provide family support, outreach, education, orientation, and counseling. ORR defines an MAA as an organization with the following qualifications: (a) The organization is legally incorporated as a nonprofit organization; and (b) not less than 51 percent of the composition of the Board of Directors or governing board of the mutual assistance association is comprised of refugees or former refugees, including both refugee men and women.

States wishing to participate in these marriage enhancing programs must notify ORR within 30 days of the publication date of this notice that they will use the set-aside funds exclusively for the relationship skill-building and marriage enhancement activities described above. States that fail to notify ORR by that date of their intention to establish healthy marriage programs are not eligible the set-aside. Funds listed in the accompanying table for States that do not notify ORR that they will establish marriage enhancement programs will be made available to the States that are willing to establish such programs.

To be eligible for the Healthy Marriage Set-aside funds, States should notify ORR of their intention to use the set-aside funds exclusively to establish healthy marriage program through a brief letter or by E-mail. Correspondence should be directed to Loren Bussert, Division of Budget, Policy, and Data Analysis (DBPDA), Office of Refugee Resettlement, 370 L'Enfant Promenade SW., Washington, DC 20447; or by E-mail at *L.Bussert@acf.hhs.gov*.

Service Priorities

In accordance with in 45 CFR 400.147, States are required to provide social services to refugees in the following order of priority, except in certain individual extreme circumstances: (a) All newly arriving refugees during their first year in the U.S. who apply for services; (b) refugees who are receiving cash assistance; (c) unemployed refugees who are not receiving cash assistance; and (d) employed refugees in need of services to retain employment or to attain economic independence. In order for refugees to move quickly off Temporary Assistance for Needy Families (TANF), States should, to the extent possible, ensure that all newly arriving refugees receive refugee-specific services designed to address the employment barriers that refugees typically face.

ORR encourages States to re-examine the range of services they currently offer to refugees. Those States that have had success in helping refugees achieve early employment may find it to be a good time to expand beyond provision of basic employment services and address the broader needs that refugees have in order to enhance their ability to maintain financial security and to successfully integrate into the community. Other States may need to reassess the delivery of employment services in light of local economic conditions and develop new strategies to better serve the newly arriving refugee groups.

States should also be aware that ORR will make social services formula funds available to pay for social services that are provided to refugees who participate in Wilson/Fish projects which can be administered by public or private non-profit agencies, including community-based organizations. Section 412(e)(7)(A) of the INA provides that:

> The Secretary [of HHS] shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support [social] services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare dependency, and fosters greater coordination among the resettlement agencies and service providers.

This provision is generally known as the Wilson/Fish Amendment. The Department has already issued a separate standing notice in the **Federal Register** with respect to applications for such projects (64 FR 19793 (April 22, 1999).

States are encouraged to consider eligible sub-recipients for formula social service funds to include public or private non-profit agencies including, faith-based, refugee, or community organizations.

As stated earlier, to be eligible for the Healthy Marriage Set-aside, States should notify ORR within 30 days of publication of this notice of proposed allocations through a brief assurance statement in writing or by E-mail that they will use the set-aside funds exclusively for the relationship skills-building and marriage enhancement activities. States that use the set-aside funds will be expected to report on the activities conducted with these funds in the narrative section of the Quarterly Progress Report (QPR).

States that fail to notify ORR within 30 days of publication of this proposed notice of their intention to establish healthy marriage programs are not eligible for the set-aside. Funds listed in the accompanying table for States that do not notify ORR that they will establish marriage enhancement programs will be made available through reallocations to the States that are willing to establish such programs in the Final Notice and distributed in the fourth quarter social services formula awards.

II. (Reserved for Discussion in the Final Notice of Submitted Comments in Response to the Proposed Notice)

III. Allocation Formulas

Of the funds available for FY 2003 for social services, $71,092,907 is proposed to be allocated to States in accordance with the formula specified in A. below.

A. A State's allowable formula allocation is calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—

2. The total number of refugees, Cuban/Haitian entrants, parolees, and Amerasians from Viet Nam, as shown by the ORR Refugee Data System, and victims of severe forms of trafficking as shown by the certification and eligibility letters issued by ORR, who arrived in the United States not more than 3 years prior to the beginning of the fiscal year for which the funds are appropriated. The resulting per capita amount is multiplied by—

3. The number of persons in item 2, above, in the State as of October 1, 2002, adjusted for estimated secondary migration.

The calculation above yields the formula allocation for each State. Minimum allocations for small States are taken into account.

IV. Basis of Population Estimates

The population estimates for the proposed allocation of funds in FY 2003 for the formula social service allocation are based on data on refugee arrivals from the ORR Refugee Arrivals Data System, adjusted as of October 1, 2002, for estimated secondary migration. The data base includes refugees of all nationalities, Amerasians from Viet Nam, and Cuban and Haitian entrants. Data on trafficking victims are taken

from the total number of trafficking victims' certification and eligibility letters issued by ORR.

For Fiscal Year 2003, ORR's formula social service allocations for the States are based on the numbers of refugees, Amerasians, entrants and victims of severe forms of trafficking. The numbers are based upon the arrivals during the preceding three fiscal years: 2000, 2001, and 2002.

The estimates of secondary migration are based on data submitted by all participating States on Form ORR–11 on secondary migrants who have resided in the U.S. for 36 months or less, as of September 30, 2002. The total migration reported by each State is summed by ORR, yielding in- and out-migration figures and a net migration figure for each State. The net migration figure is applied to the State's total arrival figure, resulting in a revised ORR population estimate.

ORR estimates are developed separately for refugees and entrants and then combined into a total estimated 3-year refugee/entrant population for each State. Eligible Amerasians are included in the refugee figures. Havana parolees (HP's) are enumerated in a separate column in Table 1, below, because they are tabulated separately from other entrants. Havana parolee arrivals for all States are based on actual data.

Table 1 (attached) shows the estimated 3-year populations, as of October 1, 2002, of refugees (col. 1), entrants (col. 2), Havana parolees (col. 3), trafficking victims (col. 4), total population, (col. 5), the proposed formula amounts which the population estimates yield (col. 6), the proposed total allocation (col. 7), the proposed amount of set-aside (col. 8), and the proposed final allocation by states (col. 9).

If a State does not agree with ORR's population estimate and wishes ORR to reconsider its numbers, it should submit written evidence to ORR, including a list of refugees identified by name, alien number, date of birth, and date of arrival. Listings of refugees who are not identified by their alien number will not be considered. Such evidence should be submitted separately from comments on the proposed allocation formula no later than 30 days from the date of publication of this notice and should be sent via overnight mail to: Loren Bussert, Division of Budget, Policy and Data Analysis, Office of Refugee Resettlement, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone: (202) 401–4732, or as an Excel spreadsheet or other compatible spreadsheet format as an email attachment to: *lbussert@acf.hhs.gov*.

States which have served asylees during the past three years also may submit the following information in order to have their population estimate adjusted to include those asylees whose asylum was granted within the 36 month period ending September 30, 2002: (1) Alien number, (2) date of birth, and, (3) the date asylum was granted.

A State which has served a victim of a severe form of trafficking who the State believes was residing in a different State at the time that the ORR certification/eligibility letter was issued, should submit the following information in order to have their population estimate adjusted to include these trafficking victims: (1) Alien number, if available; (2) date of birth; (3) certification letter number and, (4) date on certification letter. Victims of a severe form of trafficking who have received a certification or eligibility letter are eligible to the same extent as refugees for benefits and services.

Please submit the above data on asylees and trafficking victims served on *separate* Excel spreadsheets as an email attachment within 30 days of the publication date of this notice to: *lbussert@acf.hhs.gov*.

V. Proposed Allocation Amounts

Funding subsequent to the publication of this notice will be contingent upon the submission and approval of a State annual services plan that is developed on the basis of a local consultative process, as required by 45 CFR 400.11(b)(2) in the ORR regulations.

Table 1, attached, represents the proposed allocation for refugee social services in FY 2003.

VI. Paperwork Reduction Act

This notice does not create any reporting or recordkeeping requirements requiring OMB clearance.

Dated: July 14, 2003.

Nguyen Van Hanh,

Director, Office of Refugee Resettlement.

FY 2003 Proposed Social Services Formula Notice

Table 1.—Estimated Three-Year Refugee/Entrant/Parolee/Trafficking Victim Populations of States Participating in the Refugee Resettlement Program and Estimated Social Service Formula Amounts and Allocations for FY 2003

State	Refugees [1] (1)	Entrants (2)	Havana parolees [2] (3)	Trafficking victims [3] (4)	Total population (5)	Final formula amount (6)	Final allocation (7)	$2 million set-aside (8)	Total final allocation (9)
Alabama	209	1	25	—	235	$75,261	$100,000	$5,000	105,000
Alaska [4]	84	0	0	7	91	29,144	75,000	5,000	80,000
Arizona	5,061	419	2	—	5,482	1,755,664	1,755,664	48,657	1,804,321
Arkansas	[illegible]	[illegible]	0	—	17	5,444	75,000	5,000	80,000
California [4]	22,046	58	125	57	22,286	7,137,310	7,137,310	197,806	7,335,116
Colorado [4]	2,589	4	[illegible]	5	2,604	833,957	833,957	23,113	857,070
Connecticut	2,798	26	22	—	2,846	911,459	911,459	25,261	936,720
Delaware	154	8	0	—	162	51,882	85,869	5,000	90,869
Dist. of Columbia	[illegible]	3	3	1	95	30,425	75,000	5,000	80,000
Florida	12,224	13,677	29,686	23	55,610	17,809,649	17,809,649	493,586	18,303,235
Georgia	6,508	31	119	3	6,661	2,133,251	2,133,251	59,122	2,192,373
Hawaii	15	0	[illegible]	42	57	18,255	75,000	5,000	80,000
Idaho [4]	1,459	3	3	—	1,465	469,181	469,181	13,003	482,184
Illinois	6,255	15	92	2	6,364	2,038,134	2,038,134	56,486	2,094,620
Indiana	1,195	8	13	—	1,216	389,436	389,436	10,793	400,229
Iowa	3,215	0	0	—	3,215	1,029,635	1,029,635	28,536	1,058,171
Kansas	419	5	13	1	438	140,274	140,274	3,888	144,162
Kentucky [4]	2,232	1,052	7	—	3,291	1,053,975	1,053,975	29,210	1,083,185

FY 2003 Proposed Social Services Formula Notice—Continued

Table 1.—Estimated Three-Year Refugee/Entrant/Parolee/Trafficking Victim Populations of States Participating in the Refugee Resettlement Program and Estimated Social Service Formula Amounts and Allocations for FY 2003

State	Refugees [1] (1)	Entrants (2)	Havana parolees [2] (3)	Trafficking victims [3] (4)	Total population (5)	Final formula amount (6)	Final allocation (7)	$2 million set-aside (8)	Total final allocation (9)
Louisiana	583	115	44	—	742	237,633	237,633	6,586	244,219
Maine	1,655	0	0	—	1,655	530,030	530,030	14,690	544,720
Maryland	2,929	7	16	4	2,956	946,688	946,688	26,237	972,925
Massachusetts [4]	4,350	163	18	1	4,532	1,451,418	1,451,418	40,225	1,491,643
Michigan	5,322	796	31	5	6,154	1,970,879	1,970,879	54,622	2,025,501
Minnesota	8,755	6	6	4	8,771	2,808,999	2,808,999	77,850	2,886,849
Mississippi	121	5	7	2	135	43,235	77,222	5,000	82,222
Missouri	5,926	26	19	—	5,971	1,912,271	1,912,271	52,998	1,965,269
Montana	9	0	4	—	13	4,163	75,000	5,000	80,000
Nebraska	1,315	2	0	—	1,317	421,782	421,782	11,689	433,471
Nevada [4]	923	622	36	1	1,582	506,651	506,651	14,042	520,693
New Hampshire	1,331	0	1	2	1,334	427,227	427,227	11,840	439,067
New Jersey	2,294	338	485	5	3,122	999,851	999,851	27,710	1,027,561
New Mexico	314	299	2	—	615	196,960	196,960	5,459	202,419
New York	14,432	1,107	151	10	15,700	5,028,079	5,028,079	139,351	5,167,430
North Carolina	3,431	25	58	1	3,515	1,125,713	1,125,713	31,199	1,156,912
North Dakota [4]	875	0	0	—	875	280,227	280,227	7,766	287,993
Ohio	5,117	3	4	2	5,126	1,641,652	1,641,652	45,498	1,687,150
Oklahoma	283	0	2	—	285	91,274	100,000	5,000	105,000
Oregon	3,204	421	2	—	3,627	1,161,582	1,161,582	32,193	1,193,775
Pennsylvania	5,713	383	44	26	6,166	1,974,722	1,974,722	54,728	2,029,450
Rhode Island	639	4	5	—	648	207,528	207,528	5,752	213,280
South Carolina	199	0	21	—	220	70,457	100,000	5,000	105,000
South Dakota [4]	971	0	0	—	971	310,972	310,972	8,618	319,590
Tennessee	1,933	8	50	—	1,991	637,637	637,637	17,672	655,309
Texas	7,996	957	104	69	9,126	2,922,691	2,922,691	81,001	3,003,692
Utah	2,220	5	0	—	2,225	712,578	712,578	19,749	732,327
Vermont	587	0	0	—	587	187,993	187,993	5,210	193,203
Virginia	3,867	130	41	13	4,051	1,297,373	1,297,373	35,956	1,333,329
Washington	12,765	0	9	11	12,785	4,094,522	4,094,522	113,478	4,208,000
West Virginia	2	0	0	—	2	641	75,000	5,000	80,000
Wisconsin	1,503	4	5	—	1,512	484,233	484,233	13,420	497,653
Wyoming [5]	—	—	—	—	—	—	—	—	—
Total	168,123	20,745	31,281	297	220,446	70,599,997	71,092,907	2,000,000	73,092,907

[1] Includes Amerasian immigrants. Adjusted for secondary migration.
[2] For all years, Havana Parolee arrivals for all States are based on actual data.
[3] Includes all victims of a severe form of trafficking since program inception in March, 2001.
[4] The allocations for Alaska, Colorado, Idaho, Kentucky, Massachusetts, Nevada, North Dakota, South Dakota, Alabama, and for Diego County, California are expected to be awarded to Wilson/Fish projects.
[5] Wyoming no longer participates in the Refugee Resettlement Program.

[FR Doc. 03–18168 Filed 7–18–03; 8:45 am]
BILLING CODE 4184–01–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

[CIS No. 2284–03]

RIN 1650–AB06

Extension of the Designation of Somalia Under Temporary Protected Status Program

AGENCY: Bureau of Citizenship and Immigration Services, Homeland Security.

ACTION: Notice.

SUMMARY: The designation of Somalia under the Temporary Protected Status (TPS) Program will expire on September 17, 2003. This notice extends the Secretary of Homeland Security's designation of Somalia for 12 months until September 17, 2004, and sets forth procedures necessary for nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) with TPS to re-register and to apply for an extension of their employment authorization documentation for the additional 12-month period. Re-registration is limited to persons who registered under the initial designation (which was announced on September 16, 1991) and also timely re-registered under each subsequent extension of the designation, or who registered under the re-designation (which was announced

on September 4, 2001) and also timely re-registered under the extension of the re-designation. Certain nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) who previously have not applied for TPS may be eligible to apply under the late initial registration provisions.

EFFECTIVE DATES: The extension of Somalia's TPS designation is effective September 17, 2003, and will remain in effect until September 17, 2004. The 60-day re-registration period begins July 21, 2003 and will remain in effect until September 19, 2003.

FOR FURTHER INFORMATION CONTACT: Jonathan Mills, Residence and Status Services, Office of Programs and Regulations, Bureau of Citizenship and Immigration Services, Department of Homeland Security, 425 "I" Street, NW., Room 3040, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Authority Does the Secretary of the Department of Homeland Security Have To Extend the Designation of Somalia Under the TPS Program?

On March 1, 2003, the functions of the Immigration and Naturalization Service (Service) transferred from the Department of Justice to the Department of Homeland Security (DHS) pursuant to the Homeland Security Act of 2002, Public Law 107–296. The responsibilities held by the Service for administering the TPS program were transferred to the Bureau of Citizenship and Immigration Services (BCIS).

Under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1254a, the Secretary of DHS, after consultation with appropriate agencies of the Government, is authorized to designate a foreign state or (part thereof) for TPS. The Secretary of DHS may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state).

Section 244(b)(3)(A) of the Act requires the Secretary of DHS to review, at least 60 days before the end of the TPS designation or any extension thereof, the conditions in a foreign state designated under the TPS program to determine whether the conditions for a TPS designation continue to be met and, if so, the length of an extension of TPS. 8 U.S.C. 1254a(b)(3)(A). If the Secretary of DHS determines that the foreign state no longer meets the conditions for TPS designation, he shall terminate the designation, as provided in section 244(b)(3)(B) of the Act. 8 U.S.C. 1254a(b)(3)(B). Finally, if the Secretary of DHS does not determine that a foreign state (or part thereof) no longer meets the conditions for designation at least 60 days before the designation or extension is due to expire, section 244(b)(3)(C) of the Act provides for an automatic extension of TPS for an additional period of 6 months (or, in the discretion of the Secretary of DHS, a period of 12 or 18 months). 8 U.S.C. 1254a(b)(3)(C).

Why Did the Secretary of DHS Decide To Extend the TPS Designation for Somalia?

On September 16, 1991, the Attorney General published a notice in the **Federal Register** designating Somalia under the TPS program based upon ongoing armed conflict occurring within the country. 56 FR 46804. The Attorney General extended this TPS designation annually and re-designated Somalia by publishing a notice on September 4, 2001, determining in each instance that the conditions warranting such designation continued to be met. 67 FR 48950.

Since the date of the last extension, the Departments of Homeland Security and State have continued to review conditions in Somalia. It is determined that a 12-month extension is warranted due to ongoing armed conflict within Somalia that would pose a serious threat to the personal safety of returning nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia). 8 U.S.C. 1254a(b)(1)(A).

The Department of State has observed that, more than seven years after the withdrawal of the United Nations Operation in Somalia (UNOSOM) and twelve years after the fall of Mohammed Said Barre's regime, Somalia still lacks a central authority. DOS Recommendation (June 4, 2003). In July 2000, the president of Djibouti convened a conference that adopted a charter for a three-year Transnational National Government (TNG) for Somalia and selected a 245-member Transitional Assembly. *Id.* In October 2002, virtually all warring factions, the TNG, and civil society held peace talks and agreed to a ceasefire. *Id.*

Despite these developments, real change on the ground has not yet occurred. BCIS Resource Information Center (RIC) Report (May 30, 2003). Many TNG officials have been threatened or killed; an atmosphere of lawlessness continues. DOS Recommendation. *De facto* local governments in the northern part of the country that pre-date the TNG and several local militias have strongly contested the legitimacy of the TNG. *Id.* Fighting has continued throughout the country. *Id.* Hundreds have been killed and injured in clashes between armed factions. RIC Report. Almost the entire country, except the self-declared Republic of Somaliland, has witnessed fighting and serious insecurity. *Id.* Major regions of the country are under the control of bandits and the population is beyond the reach of the rule of law. DOS Recommendation.

In addition, the RIC reports that the humanitarian situation in Somalia remains dire. The ongoing conflict in much of the country has prevented humanitarian relief from reaching some areas where the need is greatest. RIC Report. Some 500,000 people are currently threatened by severe food shortages, 72 percent of the population has no access to health care, and 77 percent lack access to clean, potable water. *Id.* An estimated 400,000 people are displaced within the country. *Id.* As of the end of 2001, approximately 300,000 Somali refugees lived in about two dozen countries. *Id.* The current situations in southern and northeast Somalia continue to pose a significant risk of harm for Somalis who would be returning from the United States. *Id.*

Somalia's institutions are not able to adequately address the demands of a ravaged population, nor would they be able to document or accommodate a large volume of returns. DOS Recommendation. Somalis within the country rely on family connections and collective security for survival. *Id.* New arrivals, outside this network, would be extremely vulnerable. *Id.*

Based upon this review, the Secretary of DHS, after consultation with appropriate Government agencies, finds that the conditions that prompted designation of Somalia under the TPS program continue to be met. 8 U.S.C. 1254a(b)(3)(A). There is an ongoing armed conflict within Somalia and, due to such conflict, requiring the return of aliens who are nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) would pose a serious threat to their personal safety. 8 U.S.C. 1254a(b)(1)(A). On the basis of these findings, the Secretary of DHS concludes that the TPS designation for Somalia should be extended for an additional 12-month period. 8 U.S.C. 1254a(b)(3)(C).

If I Currently Have TPS Through the Somalia TPS Program, Do I Still Re-register for TPS?

Yes. If you already have received TPS benefits through the Somalia TPS program, your benefits will expire on September 17, 2003. Accordingly, individual TPS beneficiaries must comply with the re-registration requirements described below in order to maintain their TPS benefits through September 17, 2004. TPS benefits include temporary protection against removal from the United States, as well as employment authorization, during the TPS designation period and any extension thereof. 8 U.S.C. 1254a(a)(1).

If I Am Currently Registered for TPS, How Do I Re-register for an Extension?

All persons previously granted TPS under the Somalia program who wish to maintain such status must apply for an extension by filing (1) a Form I–821, Application for Temporary Protected Status, without the filing fee; (2) a Form I–765, Application for Employment Authorization; and (3) two identification photographs (1½ inches × 1½ inches). See the chart below to determine whether you must submit the one hundred and twenty dollar ($120) filing fee with Form I–765. Applicants for an extension of TPS benefits do not need to be re-fingerprinted and thus need not pay the $50 fingerprint fee. Children beneficiaries of TPS who have reached the age of fourteen (14) but were not previously fingerprinted must pay the fifty dollar ($50) fingerprint fee with the application for extension.

Applications submitted without the required fee and/or photos will be returned to the applicant. Submit the completed forms and applicable fee, if any, to the BCIS District Office having jurisdiction over your place of residence during the 60-day re-registration period that begins July 21, 2003 and ends September 19, 2003.

If	Then
You are applying for employment authorization until September 17, 2004.	You must complete and file the Form I–765, Application for Employment Authorization, with the $120 fee.
You already have employment authorization or do not require employment authorization.	You must complete and file Form I–765 with no fee.[1]
You are applying for employment authorization and are requesting a fee waiver.	You must complete and file: (1) Form I–765 and (2) a fee waiver request and affidavit (and any other information) in accordance with 8 CFR 244.20.

[1] An applicant who does not seek employment authorization documentation does not need to submit the $120 fee, but must still complete and submit Form I–765 for data gathering purposes.

If My Application for TPS Is Still Pending, How Can I Renew My Employment Authorization Document?

If your application for TPS is still pending and you wish to receive or renew your employment authorization document, you must file with the BCIS District Office having jurisdiction over your place of residence (1) a Form I–821 without the filing fee, (2) a Form I–765, and (3) two identification photographs (1½ inches x 1½ inches). See the chart above to determine whether you must submit the one hundred and twenty ($120) filing fee with Form I–765. An application submitted without the required filing fee or photos will be returned to the applicant.

How Does An Application for TPS Affect My Application for Asylum or Other Immigration Benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit, and vise versa. Denial of an application for asylum or any other immigration benefit does not affect an applicant's TPS eligibility, although the grounds for denying one form of relief may also be grounds for denying TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS. 8 U.S.C. 1158(b)(2)(A)(ii); 8 U.S.C. 1254a(c)(2)(B)(ii).

Does This Extension Allow Nationals of Somalia (or Aliens Having no Nationality Who Last Habitually Resided in Somalia) Who Entered the United States After September 4, 2001, To File for TPS?

No. This is a notice of an extension of TPS, not a notice of re-designation of Somalia under the TPS program. An extension of TPS does not change the required dates of continuous residence and continuous physical presence in the United States. This extension does not expand TPS availability to those who are not already TPS class members. To be eligible for benefits under this extension, nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) must have resided continuously in the United States since September 4, 2001, and have been continuously physically present in the United States since September 4, 2001.

What Is Late Initial Registration?

Some persons may be eligible for late initial registration under 8 U.S.C. 1254a(c)(1)(A) and 8 CFR 244.2(f)(2). To apply for late initial registration an applicant must:

(1) Be a national of Somalia (or alien who has no nationality and who last habitually resided in Somalia);

(2) Have been continuously physically present in the United States since September 4, 2001;

(3) Have continuously resided in the United States since September 4, 2001; and

(4) Be both admissible as an immigrant, except as provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that during the registration period from September 4, 2001, through September 17, 2002, he or she:

(1) Was a nonimmigrant or had been granted voluntary departure status or any relief from removal;

(2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal or change of status pending or subject to further review or appeal;

(3) Was a parolee or had a pending request for reparole; or

(4) Was the spouse or child of an alien currently eligible to be a TPS registrant.

An applicant for late initial registration must file an application for late registration no later than 60 days after the expiration or termination of the conditions described above. 8 CFR 244.2(g).

What Happens When This Extension of TPS Expires on September 17, 2004?

At least 60 days before this extension of TPS expires on September 17, 2004, the Secretary of DHS will review conditions in Somalia and determine whether the conditions for designation under the TPS program continue to be met at that time, or whether the TPS designation should be terminated. Notice of that determination, including the basis for the determination, will be published in the **Federal Register**.

If the TPS designation is extended at that time, an alien who has received TPS benefits must re-register under the extension in order to maintain TPS benefits. If, however, the Secretary of DHS terminates the TPS designation, TPS beneficiaries will maintain the immigration status they had before TPS (unless that status had since expired or been terminated) or any other status they may have acquired while registered for TPS. Accordingly, if an alien had no lawful immigration status prior to receiving TPS and did not obtain any status during the TPS period, he or she will revert to that unlawful status upon termination of the TPS designation.

Notice of Extension of Designation of Somalia Under the TPS Program

By the authority vested in me as Secretary of DHS under sections 244(b)(1)(B), (b)(3)(A), and (b)(3)(C) of the Act, I have consulted with the appropriate government agencies and determine that the conditions that prompted designation of Somalia for TPS continue to be met. 8 U.S.C. 1254a(b)(3)(A). Accordingly, I order as follows:

(1) The designation of Somalia under section 244(b) of the Act is extended for an additional 12-month period from September 17, 2003, to September 17, 2004. 8 U.S.C. 1254a(b)(3)(C).

(2) There are approximately 360 nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) who have been granted TPS and who are eligible for re-registration.

(3) To maintain TPS, a national of Somalia (or an alien having no nationality who last habitually resided in Somalia) who received TPS during the initial designation period must re-register for TPS during the 60-day re-registration period from July 21, 2003 until September 19, 2003.

(4) To re-register, the applicant must file: (1) Form I–821, Application for Temporary Protected Status; (2) Form I–765, Application for Employment Authorization; and (3) two identification photographs (1½ inches by 1½ inches). Applications submitted without the required fee and/or photos will be returned to the applicant. There is no fee for filing the Form I–821 for re-registration. If the applicant requests employment authorization, he or she must submit one hundred and twenty dollars ($120) or a properly documented fee waiver request, pursuant to 8 CFR 244.20, with the Form I–765. An applicant who does not request employment authorization must nonetheless file Form I–765 along with Form I–821, but is not required to submit the fee. The fifty-dollar ($50) fingerprint fee is required only for children beneficiaries of TPS who have reached the age of 14 but were not previously fingerprinted. Failure to re-register without good cause will result in the withdrawal of TPS. 8 CFR 244.17(c). Some persons who had not previously applied for TPS may be eligible for late initial registration under 8 CFR 244.2.

(5) At least 60 days before this extension terminates on September 17, 2004, the Secretary will review the designation of Somalia under the TPS program and determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the basis for the determination, will be published in the **Federal Register**. 8 U.S.C. 1254a(b)(3)(A).

(6) Information concerning the extension of designation of Somalia under the TPS program will be available at local BCIS offices upon publication of this notice and on the BCIS Web site at *http://www.bcis.gov*.

Dated: July 16, 2003.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 03–18566 Filed 7–17–03; 12:39 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–15531]

Great Lakes Pilotage Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Great Lakes Pilotage Advisory Committee (GLPAC). GLPAC advises the Coast Guard on matters related to regulations and policies on the pilotage of vessels on the Great Lakes.

DATES: Application forms must reach us on or before September 19, 2003.

ADDRESSES: You may request an application form and waiver by writing to Commandant (G–MW), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001; by calling (202) 267–6164; by faxing (202) 267–4700; or by e-mailing *Jshort@comdt.uscg.mil*. Send your completed application, a short resume, and the signed waiver (if you are applying for the second member position described in the **SUPPLEMENTARY INFORMATION** section of this notice) to the above street address or by fax to (202) 267–4700. This notice and the application and waiver forms are available on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Margie Hegy, Executive Director of GLPAC, at (202) 267–0415, fax (202) 267–4700.

SUPPLEMENTARY INFORMATION: The Great Lakes Pilotage Advisory Committee (GLPAC) is a Federal advisory committee under 5 U.S.C. App. 2; Pub. L. 92–463, 86 Stat. 770 (1972). It advises the Secretary of the Department of Homeland Security, via the Commandant of the Coast Guard, on the rules and regulations that govern the registration of pilots, the operating requirements for U.S. registered pilots, pilot training policies, and the policies and regulations that establish rates charges and conditions for pilotage services.

GLPAC meets at least twice a year at various locations in the continental United States. It may also meet for extraordinary purposes. Subcommittees or working groups may be designated to consider specific problems and will meet as required.

We will consider applications for two positions. The first position represents the interests of vessel operators who contract for pilotage services on the Great Lakes. In addition to representing the interests of this specific segment of the Great Lakes marine industry, you must have five years of practical experience in maritime operations.

The second vacant position has never been filled and is unique in that the member is required to have a background in finance or accounting, and the requirement for five years of practical experience in maritime operations that the other six GLPAC members must meet is waived for this position. In addition, applicants who do not live or work in the Great Lakes community are specifically encouraged to apply.

All applications for the second position only will be reviewed and discussed by the other six Committee members, as the candidate for this position must be recommended for appointment by a unanimous vote of the other members of the Committee. This discussion will occur in a public forum; however, information of a personal nature that would invade the privacy of the applicant, including his or her name, will be blacked out before the applications are made available to the public. Applicants will be asked to sign a waiver to allow discussion of their application at a public meeting of GLPAC.

Each member serves for a term of three years. A few members may serve consecutive terms. All members serve without compensation from the Federal Government, although travel reimbursement and per diem will be provided.

In support of the policy of the Department of Homeland Security on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

Dated: July 14, 2003.

T.H. Gilmour,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 03–18376 Filed 7–18–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–15530]

Navigation Safety Advisory Council; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Navigation Safety Advisory Council (NAVSAC). NAVSAC advises the Coast Guard on the prevention of vessel collisions, rammings, and groundings; Inland Rules of the Road; International Rules of the Road; navigation regulations and equipment; routing measures; marine information; diving safety; and aids to navigation systems.

DATES: Application forms must reach us on or before September 15, 2003.

ADDRESSES: You may request an application form by writing to Commandant (G–MW), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001; by calling (202) 267–6164; by faxing (202) 267–4700; or by e-mail *Jshort@comdt.uscg.mil*. Send your completed application form and a short resume to the above street address. This notice and the application form are available on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Margie Hegy, Executive Director of NAVSAC at (202) 267–0415, fax (202) 267–4700.

SUPPLEMENTARY INFORMATION: The Navigation Safety Advisory Council (NAVSAC) is a Federal advisory committee under 5 U.S.C. App. 2; Pub. L. 92–463, 86 Stat. 770 (1972). It advises the Secretary of Homeland Security, via the Commandant of the Coast Guard, on the prevention of vessel collisions, rammings, and groundings; Inland Rules of the Road; International Rules of the Road; navigation regulations and equipment; routing measures; marine information; diving safety; and aids to navigation systems.

NAVSAC meets at least twice a year at various locations in the continental United States. It may also meet for extraordinary purposes. Its subcommittees and working groups may meet to consider specific problems as required.

We will consider applications for 21 positions. To be considered for membership, all applicants, including individuals who applied previously, must submit current applications and a brief resume. However, if Congressional letters of reference supporting an earlier application were submitted within the last two years, they do not need to be updated. These letters of reference will be considered as part of an updated application.

To be eligible for membership on NAVSAC, you should have experience in the above mentioned subject areas. To assure balanced representation of subject matter expertise, members are chosen, insofar as practical, from the following groups: (1) Recognized experts and leaders in organizations having an active interest in the Rules of the Road and vessel and port safety; (2) representatives of owners and operators of vessels, professional mariners, recreational boaters, and the recreational boating industry; (3) individuals with an interest in maritime law; and (4) Federal and State officials with responsibility for vessel and port safety. In addition, memberships will be geographically balanced. Seven members will be appointed to serve one-year terms; seven to serve two-year terms; and the remaining seven will serve for a term of three years. Thereafter, one-third of the memberships will expire annually on June 30 and members will be appointed or reappointed to serve three-year terms. A few members may serve consecutive terms. All members serve without compensation from the Federal Government, although travel reimbursement and per diem may be provided.

In support of the policy of the Department of Homeland Security on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

Dated: July 14, 2003.

T.H. Gilmour,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 03–18377 Filed 7–18–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice and request for comments.

SUMMARY: The Emergency Preparedness and Response Directorate (EP&R), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed continuing information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments on information collected and maintained on students attending National Fire Academy (NFA) and Emergency Management Institute (EMI) courses.

SUPPLEMENTARY INFORMATION: Public Law 93–498, Federal Fire Prevention and Control Act, as amended, (15 U.S.C. 2201 *et seq.*) established the National Fire Academy (NFA) to "advance the professional development of fire service personnel and of other persons engaged in fire prevention and control activities * * *" and authorizes the Superintendent, NFA, to "conduct courses and programs of training and education * * *" Public Law 93–288, Robert T. Stafford Disaster Relief and Emergency Assistance Act, (42 U.S.C. 5121–5206) authorizes the President to establish "a program of disaster preparedness that utilizes services of all appropriate agencies and includes * * * (2) training and exercises * * *." Under the authorities of Executive Order 12127 and 12148, as amended, the Secretary of the Department of Homeland Security, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, is responsible for carrying out the mandates of the public laws mentioned above. The Secretary established the National Emergency Training Center (NETC), located in Emmitsburg, Maryland, which houses both NFA and EMI. The data collection is used to (1) determine eligibility for courses and programs offered by NFA and EMI, (2) provide a consolidated record of all EP&R/FEMA training taken

by a student, (3) provide a transcript which can be used by the student in requesting college credit or continuing education units for courses completed, and (4) to determine eligibility for student stipends.

Collection of Information

Title: General Admissions Application/General Admissions Application Short Form.

Type of Information Collection: Revision of a Currently Approved Collection.

OMB Number: 1660–0007 (formerly under OMB Number 3067–0024, which OMB transferred from FEMA to the Department of Homeland Security effective March 1, 2003).

Form Numbers: FEMA Form 75–5, General Admissions Application (paper and electronic versions); FEMA Form 75–5a, General Admissions Application Short Form paper and electronic versions).

Abstract: Currently EMI, NFA and the NETC Admissions Office are working towards consolidating, or linking databases so that EP&R/FEMA can eventually have a single source for training information. In attempting to accomplish this goal it was determined that specific information needs to be collected by all parties so a unified database can be developed. In the near future, the FEMA Form 75–5 will be available for the public to enroll in EMI and NFA courses electronically. In addition, the EMI Independent Study Program has made a commitment to begin using the new FEMA Form 75–5a (automated) to enroll students in EMI's Independent Study Program. Presently the Independent Study Program uses the OMB approved FEMA Form 95–23 (under OMB control number 1660–0046) to enroll students in this program. It is EP&R/FEMA's intent to replace FEMA Form 95–23 with the FEMA Form 75–5a (automated) form.

Affected Public: Individuals or households, Business or other for-profit, not-for-profit institutions, Federal Government, and State, local or tribal government.

Estimated Total Annual Burden Hours: 27,333.

FEMA forms	Number of respondents (A)	Frequency of response (B)	Hours/Minutes per response (C) (minutes)	Annual burden hours (A x B x C)	Average hourly wage rate	Estimated annual cost
75–5	10,000	1	9	1,500	$33.65	$7,571
75–5a	25,000	1	6	2,500	$22.84	5,710
75–5 (Automated)	20,000	1	10	3,333	$33.65	18,693
75–5a (Automated)	150,000	1	8	20,000	$22.84	60,907
Total	235,000			27,333		$92,881

Estimated Annual Cost to the Respondent: $92,881.

Estimated Annual Cost to the Federal Government: Costs include 50% of the data entry contract ($307,000), 50% of the annual salary cost of three full-time personnel working in the NETC Admissions Office (two GS9's and one GS11) at approximately $72,000, printing at $500 per year. Contract cost for supporting use of the new FEMA Forms 75–5 and 75–5a (automated) is estimated at $198,000, based on 20% of data entry contract ($123,000) and 20% of independent study contract ($75,000). Contract cost of the maintenance contract that includes the Admissions System, is estimated at $150,000, based on 25% of that contract. Total average estimated cost to the Federal Government is $727,500 annually.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Branch, Information Resources Management Division, Information Technology Services Directorate, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Darlyn Vestal, Admissions Specialist, Management, Operations and Support Services, U.S. Fire Administration, (301) 447–1415 for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at facsimile number (202) 646–3347 or email address: *Information.Collections@fema.gov*.

Dated: July 15, 2003.

Edward W. Kernan, Division Director, Information and Resources Management Division, Information Technology Services Directorate.

[FR Doc. 03–18392 Filed 7–18–03; 8:45 am]

BILLING CODE 6718–01–P

DEPARTMENT OF HOMELAND

Transportation Security Administration

Port Security Grant Program; Application Notice Describing the Category of Interest and Establishing the Close Date for Receipt of Applications Under the Port Security Grant Program—Round 3

AGENCY: Transportation Security Administration, Department of Homeland Security.

ACTION: Notice inviting applications for the Port Security Grant Program.

SUMMARY: The purpose of the Port Security Grant Program is to support efforts for port security at critical national seaports in the area of enhanced facility and operational security.

The Port Security Grant Program will fund projects in the Enhanced Facility and Operational Security Category. The Transportation Security Administration (TSA) is coordinating with the Maritime Administration and the U.S. Coast Guard in this effort. Applications may be submitted by critical national seaports/terminals/U.S. passenger vessels as specified in the Request for Applications. Authority for this program is contained in the FY 2002 Supplemental Appropriations Act for Further Recovery From and Response to Terrorist Attacks on the United States, Pub L. 107–206, 116 Stat. 820, *Awards.* Funds appropriated from the Consolidated Appropriations Resolution, 2003, Pub. L. 108–7 and Emergency Wartime Supplemental Appropriations Act, 2003, Pub. L. 108–11 are being awarded under the Port Security Grant Program—Round 2.

DATES: The program announcement (Program Announcement #02MLPA0003) and application forms for the Port Security Grant Program—Round 3 are expected to be available on or about July 21, 2003. Applications must be received on or before 2 p.m. Eastern Daylight Savings Time, August 21, 2003.

ADDRESSES: The Request for Applications, forms and instructions for preparing and submitting an application for the Port Security Grant Program will be available through the Internet at *http://www.portsecuritygrants.dottsa.net/*.

FOR FURTHER INFORMATION CONTACT: Mr. Tony Corio, Transportation Security Administration, Office of Maritime and Land Security, TSA Headquarters West Building, 9th Floor, TSA–8, 601 South 12th Street, Arlington, VA 22202–4220, (571) 227–1233, e-mail: *Tony.Cario@dhs.gov*.

SUPPLEMENTARY INFORMATION: Total anticipated funding available for Port Security Grant Program—Round 3 is $104,000,000. Awards under this program are subject to availability of funds.

Port Security Grant Program—Round 3 Category: Enhanced Facility and Operational Security—including but not limited to facility/terminal/U.S. Passenger vessels, access control, physical security, cargo security and passenger security.

This program has the following prerequisite: Applicants must have completed a security assessment and tie the security enhancements to their assessment in order to submit a grant application. Security assessments must be available for review upon the request of the evaluators.

Dated: July 16, 2003.

Chester Lunner,

Assistant Administrator, Office of Maritime and Land Security, Transportation Security Administration.

[FR Doc. 03–18463 Filed 7–18–03; 8:45 am]

BILLING CODE 4110–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–45]

Notice of Submission of Proposed Information Collection to OMB: Legal Instructions Concerning Applications for Full Insurance Benefits—Assignment of Multifamily Mortgages to the Secretary

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Approval previously granted to collect the subject information has lapsed. HUD is requesting reinstatement of the requirement that Mortgagees of HUD-insured Multi-family loans must submit certain legal documentation (*e.g.* mortgage, mortgage note, security agreement, title insurance policy) to the Department in order to receive mortgage insurance benefits upon assignment of mortgages to HUD.

DATES: *Comments Due Date:* August 20, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2510–0006) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Legal Instructions Concerning Applications for Full Insurance Benefits—Assignment of Multifamily Mortgages to the Secretary.

OMB Approval Number: 2510–0006.

Form Numbers: None.

Description Of The Need For The Information And Its Proposed Use: Mortgagees of HUD-insured multi-family loans may receive mortgage insurance benefits upon assignment of mortgages to HUD. In connection with the assignment, legal documents (*e.g.* mortgage, mortgage note, security agreement, title insurance policy) must be submitted to the Department.

Respondents: Business or other for-profit, State, Local or Tribal Government.

Frequency of Submission: On occasion, When mortgagee applies for insurance benefits.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	359	359		26		9,334

Total Estimated Burden Hours: 9,334.

Status: Reinstatement, without change, of previously approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 14, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–18359 Filed 7–18–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4817–N–10]

Notice of Proposed Information Collection for Public Comment—Capital Fund Obligation Deadline Extension

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 19, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4249, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–0614, extension 4128. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Capital Fund Obligation Deadline Extension.

OMB Control Number: 2577–.

Description of the need for the information and proposed use: Public Housing Agencies (PHAs) submit a request to HUD to extend the obligation deadline for their Capital Fund grant based on statutory criteria. The information contained in the request is used as a basis by HUD to evaluate reasons for delay in obligating the funds in timely manner and grant or reject the requested time extension. Section 9(j)(2), part 1, Capital and Operating Assistance, Pub. L. 105–276—Oct. 21, 1998 is the applicable statute.

Agency form numbers, if applicable: None.

Members of affected public: State or Local Government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Respondents are identified as public housing agencies (PHAs). 20 PHAs × one request per PHA annually, 2.0 hour average per request, 40 total annual burden hours for reporting; 20 requests × .25 hours per request for recordkeeping, 5 total annual burden hours for recordkeeping; total burden hours are 45.

Status of the proposed information collection: New.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 15, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–18360 Filed 7–18–03; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–19]

Revocation and Delegation of Authority Under Title VI of the Civil Rights Act of 1964

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of revocation and delegation of authority.

SUMMARY: The Secretary of HUD is delegating to the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) all authority, with a noted exception, to act as the "responsible Department official" in all matters relating to the carrying out of the requirements of Title VI of the Civil Rights Act of 1964, as this authority is provided in HUD's regulations. In this notice the Secretary delegates to the Assistant Secretary for Public and Indian Housing the authority to approve tenant selection and assignment plans of local housing authorities. The Secretary revokes all prior delegations of this authority made by the Secretary.

EFFECTIVE DATE: July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Karen A. Newton, Deputy Assistant Secretary for Operations and Management, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5128, Washington, DC 20410–0001, telephone (202) 708–0768. (This is not a toll-free number.) Hearing- and speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: By previous delegation (36 FR 8821, May 13, 1971), the Secretary delegated to the Assistant Secretary for Equal Opportunity (now the Assistant Secretary for FHEO) the authority to act as the "responsible Department official" in all matters relating to the carrying out of the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1), as this authority was provided at the time in HUD's regulations in 24 CFR parts 1 and 2, except with respect to the approval of tenant selection and assignment plans of local housing authorities, as provided in 24 CFR 1.4(b)(2)(ii). By the same notice, the authority under 24 CFR 1.4(b)(2)(ii) was delegated to the Assistant Secretary for Housing Management (now the Assistant Secretary for Public and Indian Housing).

The Secretary revokes all prior delegations of this authority, retains the authority under Title VI of the Civil Rights Act of 1964 and the corresponding regulations in 24 CFR part 1, and delegates the authority to act as the "responsible Department official" to the Assistant Secretary for FHEO.

Accordingly, the Secretary delegates authority as follows:

Section A. Authority Delegated

The Secretary of HUD delegates to the Assistant Secretary for FHEO all authority to act as the "responsible Department official" as provided in 24 CFR part 1, "Nondiscrimination in Federally Assisted Programs of the Department of Housing and Urban Development—tenant selection and assignment plans of local housing authorities, as provided in 24 CFR 1.4(b)(2)(ii). The Secretary of HUD delegates to the Assistant Secretary for Public and Indian Housing the authority to approve tenant selection and assignment plans of local housing authorities, as provided in 24 CFR 1.4(b)(2)(ii).

Section B. Authority Revoked

All prior delegations of authority made by the Secretary under Title VI of the Civil Rights Act of 1964, including the delegation of authority published on May 13, 1971 (36 FR 8821), are revoked.

Section C. Authority To Redelegate

The Assistant Secretary for FHEO may redelegate the authority to act as the "responsible Department official" under 24 CFR part 1 to the General Deputy Assistant Secretary for FHEO, to the Deputy Assistant Secretary for Enforcement and Programs, to the Director of Enforcement, and to the FHEO Hub Directors. The Assistant Secretary for FHEO may also authorize successive redelegations. The Assistant Secretary for FHEO may not redelegate the authority to issue or waive regulations.

Authority: Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 7, 2003.

Mel Martinez,

Secretary.

[FR Doc. 03–18361 Filed 7–18–03; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–23]

Delegation of Authority Under Section 504 of the Rehabilitation Act of 1973

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: Through this notice, the Secretary of HUD is delegating to the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) all authority to act as the "responsible civil rights official" and the "reviewing civil rights official" with respect to section 504 of the Rehabilitation Act of 1973. The Secretary revokes all previous delegations of this authority made by the Secretary.

EFFECTIVE DATE: July 9, 2003.

FOR FURTHER INFORMATION CONTACT: Milton Turner, Director, Compliance and Disability Rights Division, Office of Fair Housing and Equal Opportunity, Room 5240, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0001, telephone: (202) 708–2333. (This is not a toll-free number.) Hearing- and speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: In a notice published June 2, 1988 (53 FR 20253), the Secretary delegated to the Assistant Secretary for FHEO the authority to act as the "responsible civil rights official" with respect to section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations in 24 CFR part 8 (the section 504 authority). In the June 2, 1988, notice, the Secretary also delegated to the Assistant Secretary for FHEO the authority to redelegate the section 504 authority "to the Regional Directors of FHEO and to the Director of the Office of Program Compliance, except for the authority to issue a preliminary finding of non-compliance under 24 CFR 8.56(g)(1)." The Secretary delegated to the Under Secretary (now referred to as the Deputy Secretary) the authority to act as "reviewing civil rights official." By notice published December 18, 1989 (54 FR 51804), the Secretary revoked the June 2, 1988, delegation to the Under Secretary and delegated to the Assistant Secretary for FHEO the authority to act as "reviewing civil rights official" with no further authority to redelegate this authority. A notice published March 22, 1991 (56 FR 12302), stated that the remaining delegation of authority to the Assistant Secretary for FHEO had been revoked on June 2, 1988, and therefore, the March 22, 1991, notice delegated to the Assistant Secretary for FHEO the authority to act as "responsible civil rights official" and to redelegate this authority.

Through this notice, the Secretary revokes all prior delegations of section 504 authority, and delegates this authority to the Assistant Secretary for FHEO.

Accordingly, the Secretary delegates authority as follows:

Section A. Authority Delegated

The Secretary of HUD delegates to the Assistant Secretary for FHEO all authority to act as the "responsible civil rights official" and the "reviewing civil rights official" as provided in HUD's regulations in 24 CFR part 8, "Nondiscrimination Based on Handicap in Federally-Assisted Programs and Activities of the Department of Housing and Urban Development."

Section B. Authority Revoked

All prior delegations of section 504 authority made by the Secretary are revoked. These include, but are not limited to, the delegations published on December 18, 1989 (54 FR 51804), and March 22, 1991 (56 FR 12302).

Section C. Authority To Redelegate

The Assistant Secretary for FHEO may not redelegate the authority to issue or to waive regulations. The Assistant Secretary for FHEO may redelegate the authority to act as "responsible civil rights official" under 24 CFR part 8 to the General Deputy Assistant Secretary for FHEO, to the Deputy Assistant Secretary for Enforcement and Programs, to the Director of the Office of Enforcement, and to the FHEO Hub Directors, and may authorize successive redelegations.

The Assistant Secretary for FHEO may redelegate the authority to act as "reviewing civil rights official" to the General Deputy Assistant Secretary for FHEO, to the Deputy Assistant Secretary for Enforcement and Programs, and to the Director of the Office of Enforcement, however, the Director of the Office of Enforcement is only authorized to act as "reviewing civil rights official" for FHEO Hub Directors.

Authority: Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 9, 2003.

Mel Martinez,

Secretary.

[FR Doc. 03–18362 Filed 7–18–03; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–25]

Revocation and Delegation of Authority Under the Age Discrimination Act of 1975

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of revocation and delegation of authority.

SUMMARY: Through this notice, the Secretary of HUD is delegating to the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) authority, with noted exceptions, to act with respect to the Age Discrimination Act of 1975. The Secretary revokes all prior delegations of this authority made by the Secretary.

EFFECTIVE DATE: July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Milton Turner, Director, Compliance and Disability Rights Division, Office of Fair Housing and Equal Opportunity, Room 5240, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0001, telephone: (202) 708–2333. (This is not a toll-free number.) Hearing- and speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Age Discrimination Act of 1975, 42 U.S.C. 6101–6107 (the Act), prohibits any person from being excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving federal financial assistance. The Act does not apply to any age distinction established under authority of any law which provides benefits or establishes criteria for participation on the basis of age or in age-related terms, nor does it apply when an explicit age distinction is necessary to the normal operation of a program or to the achievement of the statutory objective of a program. On November 4, 1980 (45 FR 73454), HUD published a proposed rule to implement regulations for the Act in 24 CFR part 146, captioned "Nondiscrimination on the Basis of Age in HUD Programs or Activities Receiving Federal Financial Assistance." On December 17, 1986 (51 FR 45264), HUD published the final rule implementing the Act with respect to HUD programs and activities. In the regulations, the standards and duties of the Secretary and HUD to prevent and correct incidents of age discrimination are enumerated.

Accordingly, the Secretary delegates authority to ensure compliance and enforcement with the Act as follows:

Section A. Authority Delegated

The Secretary of HUD delegates to the Assistant Secretary for FHEO authority to act with respect to the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and its implementing regulations in 24 CFR part 146. The authority delegated in this notice does not include authority as provided in 24 CFR 146.39, 146.47(a), and 146.49.

Section B. Authority Revoked

The Secretary revokes all prior delegations of authority made by the Secretary with respect to the Age Discrimination Act of 1975 or its implementing regulations, or both.

Section C. Authority To Redelegate

The Assistant Secretary for FHEO may redelegate the authority delegated through this notice, except for the authority to issue regulations or to waive regulations, to the General Deputy Assistant Secretary for FHEO, to the Deputy Assistant Secretary for Enforcement and Programs, to the Director of the Office of Enforcement, and to the FHEO Hub Directors.

Authority: Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 7, 2003.

Mel Martinez,

Secretary.

[FR Doc. 03–18363 Filed 7–18–03; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by August 20, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–073486, 072948, 072945

Applicant: Mitchel Kalmanson, World Wide Exotic Talent Agency, Maitland, FL.

The applicant requests permits to export captive-born tigers (*Panthera tigris*) to worldwide locations for the purpose of enhancement of the species through conservation education. The permit numbers and animals are: 073486, Fuji; 072948, Toshiro; and 072945, Chad. This notification covers activities to be conducted by the applicant over a three-year period and the import of any potential progeny born while overseas.

PRT—072235, 072237, and 72238

Lost Creek Animal Sanctuary, Mound Valley, KS.

The applicant requests permits to export Siberian tigers (*Panthera tigris altaica*) to worldwide locations for the purpose of enhancement of the species through conservation education. The permit numbers and animals are: 072235—Snowflake, 072237—Shania, and 072238—Star. This notification covers activities to be conducted by the applicant over a three-year period and the import of any potential progeny born while overseas.

PRT—073476 and 073477

Carlton & Company.

The applicant requests permits to export Bengal tigers (*Panthera tigris tigris*) to worldwide locations for the purpose of enhancement of the species through conservation education. The permit numbers and animals are: 073476—Madras and 073477—Shena. This notification covers activities to be conducted by the applicant over a three-year period and the import of any potential progeny born while overseas.

PRT–074368

Applicant: Matthew Dick, Pueblo West, CO.

The applicant requests a permit to import the sport hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–074380

Applicant: William Clifton Pullen, Bryceville, FL.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: July 11, 2003.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–18390 Filed 7–18–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for marine mammals and endangered species.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*), or the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

ENDANGERED SPECIES

Permit number	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
064369	San Francisco Zoological Society	68 FR 11872; March 12, 2003	June 27, 2003.
067661	David W. Inouye, University of Maryland	68 FR 20020; April 23, 2003	June 27, 2003.
810465	A.R. Galloway Exotic Ranch	68 FR 22409, April 28, 2003	July 10, 2003.

MARINE MAMMALS

Permit number	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
070362	Kenneth O. Harrison	68 FR 20166, April 24, 2003	June 25, 2003.
070534	Walter Mays Jr.	68 FR 22409, April 28, 2003	June 27, 2003.
070952	Wayne F. Manis	68 FR 25620, May 13, 2003	July 3, 2003.

Dated: July 11, 2003.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–18391 Filed 7–18–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Martin Branch Woodland Safe Harbor Agreement, Covington County, MS

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that Dr. John Lambert (Applicant) has applied to the Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended. The permit application includes a proposed Safe Harbor Agreement (Agreement) for the threatened gopher tortoise (*Gopherus polyphemus*) and the endangered red-cockaded woodpecker (*Picoides borealis*) for a period of 20 years. We (the Service) have made a preliminary determination that the proposed Agreement and permit application are eligible for categorical exclusions under the National Environmental Policy Act of 1969. We explain the basis for this determination in an Environmental Action Statement.

We announce the opening of a 30-day comment period and request comments from the public on the Applicants' enhancement of survival permit application, the accompanying proposed Agreement, and the Environmental Action Statement. All comments we receive, including names and addresses, will become part of the administrative record and may be released to the public. For further information and instructions on reviewing and commenting on this

application, see the **ADDRESSES** section, below.

DATES: Written comments should be received on or before August 20, 2003.

ADDRESSES: You may obtain a copy of the information available by contacting the Service's Regional Safe Harbor Coordinator, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345, or Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, Mississippi 39213. Alternatively, you may set up an appointment to view these documents at either location during normal business hours. Written data or comments should be submitted to the Atlanta, Georgia, Regional Office. Requests for the documentation must be in writing to be processed, and comments must be written to be considered.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Gooch, (telephone: 404/679–7124; facsimile: 404/679–7081), or Mr. Will McDearman (telephone: 601/965–4903 x 16; facsimile: 601/965–4340).

SUPPLEMENTARY INFORMATION:

Background

Under a Safe Harbor Agreement, participating property owners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefitting species listed under the Endangered Species Act. Safe Harbor Agreements encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners they will not be subjected to increased property-use restrictions if their efforts attract listed species to their property or increase the numbers or distribution of listed species already on their property. Application requirements and issuance criteria for enhancement of survival permits through Safe Harbor Agreements are found in 50 CFR 17.22 and 17.32.

We have worked with the Applicant to design and implement conservation measures to benefit the gopher tortoise and red-cockaded woodpecker. Portions of the Applicant's property currently are inhabited by the gopher tortoise. No red-cockaded woodpeckers currently reside on the property. Under the Agreement, the Applicant will restore and enhance habitat by the following actions: (1) Reduce tree density and canopy cover, increase sunlight on the forest floor, and maintain an open pine forest by thinning timber and prescribing frequent fire; (2) Plant and/or naturally regenerate longleaf pine; (3) Grow and maintain trees of sufficient size and quantity for suitable nesting and foraging habitat for one or more groups of red-cockaded woodpeckers.

Consistent with the Safe Harbor Policy and implementing regulations, we propose to issue an enhancement of survival permit to the Applicant. The permit will authorize the incidental take of the gopher tortoise and red-cockaded woodpecker as a result of lawful activities on enrolled lands, as long as baseline conditions are maintained and terms of the Agreement are implemented. Future activities by the Applicant could return these species and habitat to baseline conditions.

We provide this notice pursuant to section 10(c) of the Endangered Species Act and the implementing regulations for the National Environmental Policy Act (40 CFR 1506.6). We will evaluate the proposed Agreement, associated documents, and submitted public comments to determine whether the requirements of section 10(a) of the Endangered Species Act and National Environmental Policy Act regulations are satisfied. Following the end of the 30-day public comment period, we will fully consider all comments received and make our final decision. If we determine that the requirements are met, we will issue an enhancement of survival permit under section 10(a)(1)(A) of the Endangered Species Act to the Applicant in accordance with the terms of the Agreement and specific terms and conditions of the authorizing permit.

Dated: July 3, 2003.

J. Mitch King,

Acting Regional Director.

[FR Doc. 03–18415 Filed 7–18–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1231–00]

Notice of Emergency Closure of Trails and Establishment of Visitor Restrictions for Acquired Land in Barr Canyon and Nichol's Canyon Special Recreation Management Areas, Las Cruces, NM

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Emergency closure of trails and establishment of visitor restrictions.

SUMMARY: Notice is hereby given that effective immediately, the Las Cruces Field Office is implementing the following closure of existing vehicle trails to use by any motorized vehicles and equipment, and establishing visitor restrictions. The closures and restrictions are implemented in order to prevent resource degradation and protect the natural resource values of Barr Canyon (also known as Soledad property), Dona Ana County, and Nichol's Canyon, Grant County, New Mexico. The authority for these emergency closures and restrictions is 43 CFR 8364.1, Closure and Restriction Orders. The following rules will apply to public land users unless authorized by written permit or for administrative use.

1. Public land in T. 23 S., R. 3 E., Section 13, Barr Canyon (also known as Soledad property), Dona Ana County NM, totaling 423 acres.

- Parking is limited to the designated parking areas only. The normal restriction against parking within 300 yards of a manmade water source is waived. Parking along the BLM portion of Soledad Canyon Road is prohibited.
- Vehicle use is limited to the designated roads and parking lot. Vehicle speeds shall not exceed 15 miles per hour.
- The trail system east of the parking lot is limited to non-motorized uses only.
- The Barr Canyon area (also known as Soledad property) is limited to day use only. The entrance gate will be open from 8 a.m. to 5 p.m. daily.
- Campfires, fireworks, and discharge of firearms are prohibited.
- Pets are allowed, but must be leashed and restrained at all times. Livestock must be controlled by bridles, halters, and lead ropes.

2. Public land in T. 19 S., R 19 W., Section 18, Nichol's Canyon, Grant County, NM, totaling 360 acres.

- Vehicle use is limited to designated roads and trails to protect threatened and endangered species habitat, riparian, and other wildlife and recreational values, as well as the wilderness values of the Gila Lower Box Wilderness Study Area.
- Vehicles will be limited to the main road from the northwest to the BLM barn, and to the main road from the south to the bench under the cottonwood trees. Vehicles will be prohibited from the floodplain of the Gila River.

DATES: This closure is effective on the day that this notice is published in the **Federal Register**, and shall remain in effect until rescinded or modified by the authorized officer.

ADDRESSES: BLM, Las Cruces Field Office, 1800 Marquess, Las Cruces, New Mexico 88005

FOR FURTHER INFORMATION CONTACT: Jim Talent, Recreation/Cultural Team Leader at (505) 525–4400 or Mark Hakkila, Natural Resource Specialist, at (505) 525–4341.

SUPPLEMENTARY INFORMATION: Violations of these closures and restrictions are punishable by fines not to exceed $1,000 and/or imprisonment not to exceed 1 year. These actions are taken to prevent impacts to soils, native vegetative resources, wildlife habitat, cultural resources, and scenic values, and to protect public health and safety.

Copies of this closure order and maps showing the location of the routes are available from the Las Cruces Field Office, 1800 Marquess, Las Cruces, NM 88005.

Dated: June 12, 2003.

Amy L. Lueders,

Field Manager, Las Cruces.

[FR Doc. 03–18436 Filed 7–18–03; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Announcement of Wrangell-St. Elias National Park Subsistence Resource Commission (SRC); Meeting

AGENCY: National Park Service, Interior.

ACTION: Announcement of Wrangell-St. Elias National Park Subsistence Resource Commission (SRC) meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Wrangell-St. Elias National Park Subsistence Resource Commissions will be held at Chitina, Alaska. The purpose of the meeting will be to continue work on currently authorized and proposed National Park Service subsistence hunting program recommendations including other related subsistence management issues. The meeting will be open to the public. Any person may file with the Commission a writing statement concerning the matters to be discussed.

The Subsistence Resource Commission is authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Public Law 96–487, and operates in accordance with the provisions of the Federal Advisory Committee Act.

DATES: The meeting dates are:

1. September 25, 2003, 9:30 a.m. to 5 p.m., Chitina Community Hall, Chitina, Alaska.
2. September 26, 2003, 9:30 a.m. to 5 p.m., Chitina Community Hall, Chitina, Alaska.

In accordance with 41 CFR 102–3.150, we may provide less than 15 days notice in the **Federal Register** to convene the Commission prior to the October 7, 2003, South-central Regional Council meeting.

FOR FURTHER INFORMATION CONTACT: Gary Candelaria or Barbara Cellarius, Subsistence, at Wrangell-St. Elias National Park and Preserve, P.O. Box 439, Copper Center, AK 99573, telephone (907) 822–5234.

SUPPLEMENTARY INFORMATION: Notice of this meeting will be published in local newspapers and announced on local radio stations prior to the meetings dates. Locations and dates may need to be changed based on weather or local circumstances.

The agenda for the meeting is as follows:

1. Call to order (SRC Chair).
2. SRC Roll Call and Confirmation of Quorum.
3. SRC Chair and Superintendent's Welcome and Introductions.
4. Review and Adopt Agenda.
5. Review and adopt minutes February 19–20, 2003 meeting.
6. Review Commission Purpose.
7. Status of Membership.
8. Superintendent's Report.
9. Wrangell-St. Elias NP&P Staff Report.
10. Federal Subsistence Board Update.
    a. Review actions taken during May 2003 FSB meeting.
    b. Review new proposals to change Fisheries Regulations.
    c. Update on FSB call for wildlife proposals for the 2004–2005 season.
11. Public and Agency Comments.
12. Work Session (comment on issues, develop new recommendations, prepare letters).
13. Set time and place of next SRC meeting.
14. Adjournment.

Draft minutes of the meeting will be available for public inspection approximately six weeks after the meeting from the Superintendent, Wrangell-St. Elias National Park, at the above address.

Marcia Blaszak,

Deputy Regional Director, Alaska.

[FR Doc. 03–18200 Filed 7–18–03; 8:45 am]

BILLING CODE 4312–HT–M

DEPARTMENT OF THE INTERIOR

National Park Service

Guidlines for Architectural and Engineering Documentation

ACTION: Notice.

SUMMARY: This notice sets forth revisions to the Secretary of the Interior's Guidelines for Architectural and Engineering Documentation. These guidelines are not regulatory and do not set or interpret agency policy. They are intended to provide technical advice on how to produce architectural and engineering documentation.

DATES: Guidelines are effective on Tuesday, April 1, 2003.

FOR FURTHER INFORMATION CONTACT: E. Blaine Cliver, Chief, HABS/HAER/HALS, National Park Service, United States Department of the Interior, Washington, DC 20240–0001 (202–354–2159).

SUPPLEMENTARY INFORMATION: Guidelines are prepared under the authority of section 101(g) and section 110 of the National Historic Preservation Act of 1966, as amended. The revisions contained herein update the Secretary of the Interior's Guidelines for Architectural and Engineering Documentation of September 29, 1983 (**Federal Register**, Vol. 48, No. 190, Thursday, September 29, 1983, pp. 44731–34).

Secretary of the Interior's Guidelines for Architectural and Engineering Documentation

Introduction. The following guidelines provide more specific procedural and technical information on how to produce architectural and engineering documentation and outline one approach to meeting the Secretary of the Interior's Standards. Agencies, organizations or individuals proposing to approach documentation differently may wish to review their plans with the National Park Service.

The Guidelines are organized as follows:

Definitions
Goal of Documentation
Content
Quality
Materials
Presentation
Architectural and Engineering Documentation Prepared for Other Purposes

Definitions. The following definitions are used in conjunction with these guidelines:

Documentation—measured drawings, photographs, histories, or other media that depict historic buildings, sites, structures, objects or landscapes.

Field Photography—photography other than large-format photography (usually 35mm), intended for the purposes of producing documentation.

Field Records—notes of measurements taken, field photographs and other recorded information intended for the purpose of producing documentation.

Large-Format Photographs—photographs taken of historic buildings, sites, structures, objects, or landscapes where the dimensions of the negatives are either 4″ × 5″, 5″ × 7″ or 8″ × 10″ and where the photographs are taken with appropriate means to correct perspective distortion.

Measured Drawings—drawings produced according to HABS/HAER/HALS guidelines depicting existing conditions or other relevant features of historic buildings, sites, structures, objects or landscapes. Measured drawings are usually produced in ink on an archival material, such as Mylar.

Written Data—inventory forms, data sheets, historical reports, or other original, written works of varying lengths that describe a building, site, structure, object, or landscape and highlight its historical, architectural, technological, or cultural significance.

Photocopy—a photograph, with large-format negative, of a photograph or drawings.

Select Existing Drawings—drawings of historic buildings, sites, structures, objects or landscapes, whether original construction or later alteration drawings that portray or depict the historic value or significance.

Sketch Plan—a floor or site plan, usually not to exact scale although often drawn from measurements, where the features are shown in proper relation and proportion to one another.

Goal of Documentation. The Historic American Buildings Survey (HABS), the Historic American Engineering Record (HAER), and the Historic American Landscapes Survey (HALS) are the national historical architectural, engineering and landscape documentation programs of the National Park Service. The goal of HABS/HAER/HALS documentation is to provide architects, engineers, scholars, preservationists, and interested members of the public with comprehensive information on the historical, architectural, technological, or cultural significance of a building, site, structure, object or landscape. Placed on permanent deposit at the Library of Congress, HABS/HAER/HALS documentation serves as a permanent record of the growth and development of the nation's built environment.

HABS/HAER/HALS documentation usually consists of measured drawings, large-format photographs and written data that highlight the significance of a building, site, structure, object or landscape. This documentation acts as a form of insurance against fires and natural disasters by permitting the repair and, if necessary, reconstruction of historic resources damaged by such disasters. It is also used for scholarly research, interpretation, and education, and it often provides the basis for enforcing preservation easement. HABS/HAER/HALS documentation is often the last means of preservation of a property: when a property is to be demolished, documentation provides future researchers access to valuable information that otherwise would be lost.

HABS/HAER/HALS documentation is developed in a number of ways. The National Park Service regularly employs summer teams of student architects, engineers, and historians to develop HABS/HAER/HALS documentation under the supervision of National Park Service professionals. The National Park Service also produces HABS/HAER/HALS documentation in conjunction with restoration or other preservation treatment of historic buildings managed by the National Park Service. Federal agencies, pursuant to section 110(b) of the National Historic Preservation Act, as amended, record those historic properties to be demolished or substantially altered as a result of agency action or assisted action (referred to as mitigation projects). Finally, individuals and organizations prepare documentation to HABS/HAER/HALS standards and donate the documentation to the programs.

The Secretary of the Interior's Standards describe in general terms the fundamental principals of HABS/HAER/HALS documentation. They are supplemented by other material describing more specific guidelines, preferred techniques for architectural photography, and formats for written historical reports. This technical information is found in the procedure manuals for the individual programs.

These guidelines contain useful information on how to produce documentation for other archives, such as state or local archives. The State Historic Preservation Officer (SHPO) or the state library should be consulted regarding archival requirements if the documentation is to become part of its collection. In establishing archives, the important questions of durability and reproducibility should be considered in relation to the purposes of the collection.

Documentation prepared for the HABS/HAER/HALS collections must meet the requirements below. The HABS/HAER/HALS office of the National Park Service reserves the right to refuse documentation that does not meet these requirements.

Content

Standard: Documentation shall adequately explicate and illustrate what is significant or valuable about the historic building, site, structure, object or landscape being documented.

Guideline: Documentation shall meet one of the following requirements for content:

A. Level I

1. Drawings: a full set of measured drawings depicting existing or historic conditions
2. Photographs: photographs with large-format negatives of exterior and interior views; photocopies with large-format negatives of select, existing drawings or historic views that are produced in accordance with the U.S. Copyright Act (as amended)
3. Written data: history and description

B. Level II

1. Drawings: select existing drawings, where available, may be photographed with large-format negatives or photographically reproduced on Mylar in accordance with the U.S. Copyright Act, as amended
2. Photographs: photographs with large-format negatives of exterior and interior views, or historic views where available and produced in accordance with the U.S. Copyright Act, as amended
3. Written data: history and description

C. Level III

1. Drawings: sketch plan
2. Photographs: photographs with large-format negatives of exterior and interior views
3. Written data: short form for historical reports

Commentary. The kind and amount of documentation should be appropriate to the nature and significance of the subject. For example, Level I would be inappropriate for a building that is a minor element of an historic district, notable only for context and scale. A full set of measured drawings for such a minor building would be expensive and would likely add little new insight into the growth and development of the built environment at either the local, regional, or national level. Large-format photography (Level III) would be the more appropriate choice for documenting this type of building.

Similarly, the aspect of the building, site, structure, object or landscape being documented should reflect the subject's overall significance. For example, measured drawings of Dankmar Adler and Louis Sullivan's Auditorium Building in Chicago should indicate not only facades, floor plans and sections, but also the innovative structural and mechanical systems that were incorporated into that building. Large-format photography of Gunston Hall in Fairfax County, Virginia, to take another example, should clearly show William Buckland's hand-carved moldings in the Palladian Room, as well as other views, since Buckland's role in the creation of the building is one of the reasons why Gunston Hall is considered architecturally significant.

HABS/HAER/HALS documentation is usually in the form of measured drawings, photographs, and written data. While the criteria in this section have addressed only these media, documentation need not be limited to them. Other media, such as films of industrial processes, can be—and have been—used to document historic buildings, sites, structures, objects and landscapes. If other media are to be used, the HABS/HAER/HALS office should be contacted before recording.

The selection of the appropriate documentation level will vary from one project to the next. For mitigation documentation projects, this level will be selected by the National Park Service Regional Office and communicated to the agency responsible for completing the documentation. Generally, Level I documentation is required for nationally significant buildings and structures, defined as National Historic Landmarks and the primary historic units of the National Park Service.

On occasion, factors other than significance will dictate the selection of another level of documentation. For example, if a rehabilitation of a property is planned, the owner may wish to have a full set of as-built drawings, even though the property may not merit Level I documentation.

HABS Level I measured drawings usually depict existing conditions through the use of a site plan, floor plans, elevations, sections and construction details. HAER Level I measured drawings will frequently depict original conditions where adequate historical material exists, so as to illustrate manufacturing or engineering processes.

Level II documentation differs from Level I by substituting copies of existing drawings, either original or alteration drawings, for recently executed measured drawings. If this is done, the drawings must meet HABS/HAER/HALS requirements outlined below and be free of copyrights. While existing drawings are rarely as suitable as as-built drawings, they are adequate in many cases for documentation purposes. Only when the desirability of having as-built drawings is clear are Level I measured drawings required in addition to existing drawings. If existing drawings are housed and preserved in an accessible archival collection, their reproduction for HABS/HAER/HALS may not be necessary. In other cases, Level I measured drawings are required in the absence of existing drawings.

Level III documentation requires a sketch plan if it helps to explain the structure, site, or landscape. A short historical report should supplement the photographs by explaining what is not readily visible.

The HABS/HAER/HALS office reserves the right to refuse documentation that does not meet these requirements for content.

Quality

Standard: Documentation shall be prepared accurately from reliable sources with limitations clearly stated to permit independent verification of the information.

Guideline: Documentation shall meet the following requirements for quality:

A. Measured drawings: Measured drawings shall be produced from recorded, accurate measurements. Portions of the building that were not accessible for measurement should not be drawn on the measured drawings but clearly labeled as not accessible or drawn from available construction drawings and other sources. No part of the measured drawings shall be produced from hypothesis or non-measurement related activities. Level I measured drawings shall be accompanied by a set of field notebooks in which the measurements were first recorded. Other drawings prepared for Levels II and III shall include a statement describing where the original drawings are located.

B. Large-format photographs: Large-format photographs shall clearly depict the appearance of the property and areas of significance of the recorded building, site, structure, object or landscape. Each view shall be perspective-corrected and fully captioned.

C. Written data: Written history and description for Levels I and II shall be based on primary sources to the greatest extent possible. For Level III, secondary sources may provide adequate information; if not, primary research will be necessary. A frank assessment of the reliability and limitations of the sources shall be included. Within the written history, statements shall be footnoted as to their sources, where appropriate. The written data shall include a methodology section specifying the name of the researcher, date of research, sources consulted, and the limitations of the project.

Commentary. The quality of architectural documentation cannot be easily prescribed or quantified, but it derives from a process in which thoroughness of research and factual accuracy play a large part, and it acts, for better or worse, as a measure of the integrity and reliability of the information. HABS/HAER/HALS promotes documentation of the highest quality and the principle of independent verification of all factual information.

The HABS/HAER/HALS office reserves the right to refuse documentation that does not meet these requirements for quality.

Materials

Standard: Documentation shall be prepared on materials that are readily reproducible, durable and in standard sizes.

Guideline: The following material requirements shall be met for all levels of documentation:

A. Measured Drawings

Readily Reproducible: Ink on translucent material, such as Mylar.
Durable: Ink on archival media.
Standard Sizes: Three sizes: 19″×24″, 24″×36″ or 34″×44″

B. Large-Format Black & White Photographs

Readily Reproducible: One print per negative.
Durable: Photography processed and stored according to archival standards; negatives on safety film only; prints on fiber paper, such as AZO paper; no resin-coated paper.
Standard Sizes: Three sizes: 4″×5″, 5″×7″ or 8″×10″.

C. Large-Format Color Transparencies

Readily Reproducible: One identical black & white negative and print per color transparency; one duplicate transparency and electrostatic or laser copy per color transparency.
Durable: Photography processed and stored according to archival standards
Standard Sizes: Three sizes: 4″×5″, 5″×7″ or 8″×10″

D. Written History and Description

Readily Reproducible: Clean copy for photocopying
Durable: Archival bond
Standard Sizes: 8½″×11″

E. Field Records

Readily Reproducible: Field notebooks may be photocopied. Photo identification sheet shall accompany 35mm negatives and contact sheets.

Durable: No requirements.

Standard Sizes: Only requirement is that materials can be made to fit into a 9½″×12″ archival file folder.

Commentary. All HABS/HAER/HALS materials are intended for reproduction. Some 20,000 records are reproduced each year by the Library of Congress. Although field records are not generally reproduced, they are intended to serve as supplements to the formal documentation. The basic durability performance standard (that is to say, life expectancy) for HABS/HAER/HALS materials is 500 years. Ink on Mylar is believed to meet this standard, while color photography does not (although color transparencies are acceptable, their life expectancy is considerably shorter—50 years or less). Field records do not meet this standard but are maintained in the HABS/HAER/HALS collections as a courtesy to collections patrons.

The HABS/HAER/HALS office reserves the right to refuse documentation that does not meet these requirements for materials.

Presentation

Standard: Documentation shall be clearly and concisely produced.

Guideline: The following requirements for presentation shall be met for all levels of documentation:

A. Measured Drawings: Level I measured drawings shall be lettered mechanically (i.e., CAD, Leroy or similar) or in a hand-printed equivalent style. Adequate dimensions shall be included on all sheets. Level III sketch plans should be neat and orderly.

B. Large-format photographs: Level I photographs shall include duplicate photographs that include a scale. Level II and III photographs shall include, at a minimum, at least one photograph with a scale, usually of the principal facade.

C. Written history and description: Data shall be typewritten or laser printed on bond, following accepted rules of grammar.

Commentary. The HABS/HAER/HALS office reserves the right to refuse documentation that does not meet these requirements for presentation.

Architectural and Engineering Documentation Prepared for Other Purposes

Where a preservation planning process is initiated, architectural and engineering documentation, like other treatment activities, is undertaken to achieve the goals identified by that process. Documentation is deliberately selected as a treatment for properties evaluated as significant, and the development of the documentation program for a property follows from the planning objectives. Documentation efforts focus on the significant characteristics of the historic subject, as defined in the previously completed evaluation. The selection of a level of documentation techniques (measured drawings, photography, *etc.*) is based on the significance of the subject and the management needs for which the documentation is being performed. For example, the kind and level of documentation required to record a historic property for easement purposes may be less detailed than the kind and level required as mitigation prior to destruction of the property. In the former case, essential documentation might be limited to portions of the property controlled by the easement (exterior facades, for example), while in the latter case, significant interior architectural features and non-visible structural details would also be documented.

HABS/HAER/HALS encourages other archives to use the Secretary of the Interior's Standards and related HABS/HAER/HALS guidelines as a basis for their own documentation guidelines. Levels of documentation and the durability and sizes of the items may vary depending on the intended use of the materials and various storage and preservation considerations. Review of documentary sources and the periodic verification of factual information in the documentation are among the best means of assuring quality. The reliability of the documentation is only strengthened by an accounting of the limitations of the research and physical examination of the property, and by retaining the primary data (field measurements and notebooks) from which the archival record was produced. The long-term usefulness of the documentation is directly related to the quality and durability of the materials (ink, paper, film, *etc.*) used to record the historic resource.

Dated: March 18, 2003.

E. Blaine Cliver,

Chief.

[FR Doc. 03–18197 Filed 7–18–03; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1023 (Final)]

Certain Ceramic Station Post Insulators From Japan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–1023 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Japan of certain ceramic station post insulators.[1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: June 16, 2003.

FOR FURTHER INFORMATION CONTACT: John Cutchin (202–205–3396), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain ceramic station post insulators from Japan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on December 31, 2002, by Lapp Insulator Company LLC, Le Roy, NY; Newell Porcelain Co., Inc., Newell, WV; Victor Insulators, Inc., Victor, NY; and the IUE–CWA, AFL–CIO, Washington, DC.

Participation in the investigation and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on October 16, 2003, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on October 30, 2003, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 21, 2003. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 24, 2003, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is October 23, 2003. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is November 6, 2003; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before November 6, 2003. On November 24, 2003, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 26, 2003, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: July 15, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–18348 Filed 7–18–03; 8:45 am]

BILLING CODE 7020–02–P

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as "station post insulators manufactured of porcelain, of standard strength, high strength, or extra-high strength, solid core or cavity core, single unit or stacked unit, assembled or unassembled, and with or without hardware attached, rated at 115 kilovolts (kV) voltage class and above (550 kilovolt Basic Impulse Insulation Level (BIL) and above), including, but not limited to, those manufactured to meet the following American National Standards Institute, Inc. (ANSI) standard class specifications: T.R.–286, T.R.–287, T.R.–288, T.R.–289, T.R.–291, T.R.–295, T.R.–304, T.R.–308, T.R.–312, T.R.–316, T.R.–362 and T.R.–391. Subject merchandise is classifiable under subheading 8546.20.00 (statistical reporting number 8546.20.0060) of the Harmonized Tariff Schedule of the United States (HTS).

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 303–TA–23, 731–TA–566–570, and 731–TA–641 (Final) (Reconsideration) (Second Remand)]

Ferrosilicon From Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Notice and scheduling of remand proceedings.

SUMMARY: The United States International Trade Commission (Commission) hereby gives notice of the court-ordered remand of its reconsideration proceedings pertaining to countervailing duty Investigation No. 303–TA–23 (Final) concerning ferrosilicon from Venezuela, and antidumping Investigation Nos. 731–TA–566–570 and 731–TA–641 (Final) concerning ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela.

EFFECTIVE DATE: July 14, 2003.

FOR FURTHER INFORMATION CONTACT: Christopher Cassise, Office of Investigations, telephone 202–708–5408, or Marc A. Bernstein, Office of General Counsel, telephone 202–205–3087, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Background

In August 1999 the Commission made negative determinations upon reconsideration in its antidumping and countervailing duty investigations concerning ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela. Ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela, Inv. Nos. 303–TA–23, 731–TA–566–570, 731–TA–641 (Final) (Reconsideration), USITC Pub. 3218 (Aug. 1999). The Commission's determinations were appealed to the U.S. Court of International Trade (CIT). On February 21, 2002, the CIT remanded the matter to the Commission for further proceedings. *Elkem Metals Co.* v. *United States*, 193 F. Supp.2d 1314 (Ct. Int'l Trade 2002). On remand, the Commission conducted further proceedings. In September 2002 it reached negative determinations on remand. Ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela, Inv. Nos. 303–TA–23, 731–TA–566–570, and 731–TA–631 (Final) (Reconsideration) (Remand), USITC Pub. 3531 (Sept. 2002). On March 18, 2003, the CIT issued an opinion concerning the Commission's determinations on remand which affirmed the Commission in part and remanded in part for further proceedings. *Elkem Metals Co.* v. *United States*, slip op. 03–66 (Ct. Int'l Trade June 18, 2003) ("Elkem II").

Written Submissions

The Commission is not reopening the record in the second remand proceeding for submission of new factual information. It will, however, permit the parties to file a written submission addressed to the determination the Commission should reach in its second remand determination in light of Elkem II. Parties should state the factual and legal bases for their position. This submission must be filed with the Commission no later than 14 days after publication of this notice in the **Federal Register**, shall not contain any new factual information, and shall not exceed 20 pages of textual material, double-spaced and single-sided, on stationery measuring 8½ x 11 inches.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain business proprietary information (BPI) must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (Nov. 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Parties are also advised to consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207) for provisions of general applicability concerning written submissions to the Commission.

Participation in the Proceedings

Only those persons who were parties to the previous reconsideration proceedings (*i.e.*, persons listed on the Commission Secretary's service list) may participate as parties in the second remand proceedings.

Public Vote

The Commission will vote on the remand determinations at a public meeting scheduled to be held on Monday, August 18, 2003. The meeting is tentatively scheduled for 11 a.m.

Authority: This action is taken under the authority of title VII of the Tariff Act of 1930 as amended.

Issued: July 15, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–18426 Filed 7–18–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated March 21, 2003 and published in the **Federal Register** on April 9, 2003, (68 FR 17403), Boehringer Ingelheim Chemicals, Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Phenylacetone (8501), a basic class of controlled substances listed in Schedule II.

The firm plans to import Phenylacetone for bulk manufacture of amphetamine.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Boehringer Ingelheim Chemicals, Inc. to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Boehringer Ingelheim Chemicals, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, section 1301.34, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: July 2, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–18477 Filed 7–18–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 14, 2003, and published in the **Federal Register** on April 2, 2003, (68 FR 16088), Cedarburg Pharmaceuticals, LLC, 870 Badget Circle, Grafton, Wisconsin 53204, made application by letter to the Drug Enforcement Administration to be registered as a bulk manufacturer of dihydromorphine (9145), a basic class of controlled substance listed in Schedule I.

The firm plans to use this substance in the conversion process to produce a Schedule II controlled substance, hydromorphone.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Cedarburg Pharmaceuticals, LLC, to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated

Cedarburg Pharmaceuticals, LLC. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed is granted.

Dated: July 3, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–18481 Filed 7–18–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 21, 2003, and published in the **Federal Register** on April 9, 2003, (68 FR 17405), Dade Behring Inc., Route 896 Corporate Boulevard, Building 100, Attn: RA/QA, P.O. Box 6101, Newark, Delaware 19714, made application by letter, to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Ecgonine (9180)	II
Morphine (9300)	II

The firm plans to produce bulk products used for the manufacture or reagents and drug calibrator/controls, DEA exempt products. No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Dade Behring Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Dade Behring Inc. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: July 2, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–18479 Filed 7–18–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(1)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulation (CFR), notice is hereby given that on October 24, 2002, Noramco Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Opium, (raw) (9600)	II
Poppy Straw Concentrate	II

The firm plans to import the listed controlled substances for the bulk manufacture of other controlled substances.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than September 19, 2003.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: July 2, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–18480 Filed 7–18–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 11, 2003, and published in the **Federal Register** on April 2, 2003, (68 FR 16091), Organichem Corporation, 33 Riverside Avenue, Rensselar, New York 12144, made application by renewal to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100)	II
Pentobarbital (2270)	II
Methylphenidate (1724)	II
Meperidine (9230)	II

The firm plans to manufacture bulk products for use internally and for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code,

section 823(a) and determined that the registration of Organichem Corporation to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Organichem Corporation to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed is granted.

Dated: July 3, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–18475 Filed 7–18–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 21, 2003, and published in the **Federal Register** on April 9, 2003, (68 FR 17408), Siegfried (USA) Inc., Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Methadone (9250)	II
Methadone-intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II

The firm plans to manufacture the listed controlled substances for distribution as bulk products to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Siegfried (USA) Inc. to manufacture the listed controlled substance is consistent with the public interest at this time. DEA has investigated Siegfried (USA) Inc. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: July 2, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–18476 Filed 7–18–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated March 21, 2003, and published in the **Federal Register** on April 9, 2003, (68 FR 17405), Syva Company, Dade Behring Inc., Regulatory Affairs Department El–310, 20400 Mariana Avenue, Cupertino, California, 95014, made application by letter to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Ecgonine (9180)	II
Morphine (9300)	II

The firm plans to produce bulk products used for the manufacture of reagents and drug calibrator/controls, DEA exempt products.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Syva Company, Dade Behring Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Syva Company, Dade Behring Inc. to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: July 2, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–18478 Filed 4–18–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Return A—Monthly Return of Offenses Known to the Police and Supplement to Return A—Monthly Return of Offenses Known to the Police.

The Department of Justice (DOJ), Federal Bureau of Investigations, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 93, page 25907 on May 14, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 20, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time,

should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503, or facsimile (202) 395–5806.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Return A—Monthly Return of Offenses Known to the Police and Supplement to Return A—Monthly Return of Offenses Known to the Police.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 4–927A and 4–919; Criminal Justice Services Division, FBI, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Local and State Law Enforcement Agencies. This collection is needed to collect data regarding criminal offenses and their respective clearances throughout the United States. Data is tabulated and published in the annual Crime in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 16,971 agencies with 407,304 responses (including zero reports) at an average of 21 minutes a month devoted to compilation of data for this information collection.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are approximately 142,556 hours annual burden associated with this information collection.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: July 15, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–18358 Filed 7–18–03; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Strengthening Labor Systems In Central America

AGENCY: Bureau of International Labor Affairs, Department of Labor.

ACTION: Notice of availability of funds and solicitation for grant application (SGA 03–20).

SUMMARY: This notice contains all of the necessary information and forms needed to apply for grant funding. The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), announces the availability of funds to be granted by cooperative agreement (hereafter referred to as "grant") to one or more qualifying organizations. USDOL will award up to U.S. $6.75 million through one or more grants to an organization or organizations to improve labor law compliance in the Central American region (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) by strengthening the capacity of labor ministries to enforce national labor laws and increasing knowledge among employers and workers of their responsibilities and rights under such laws. Proposals must be regional in scope and respond to the entire Statement of Work as contained in section III, but applicants will not be penalized for lacking previous experience with regional projects. For example, organizations with experience in only one country will be judged based on the success they achieved in that country and their proposal for how they plan to work successfully throughout the rest of the targeted region. Partnerships between more than one organization are also eligible and encouraged, in particular with qualified, regionally-based organizations in order to build local capacity, although in such a case a lead organization must be identified.

DATES: The closing date for receipt of applications is Friday, August 22, 2003. Applications must be received by 4:45 p.m. (Eastern Time) at the address below.

ADDRESSES: Application forms will not be mailed. They are published as part of this **Federal Register** notice and in the **Federal Register**, which may be obtained from your nearest U.S. Government office or public library or online at *http://www.archives.gov/federal_register/index.html.* Applications must be delivered to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW, Room N–5416, Attention: Lisa Harvey, Reference: SGA 03–20, Washington, DC 20210.

Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, etc., will be accepted; the applicant, however, bears the responsibility for timely submission. Applications that do not meet the conditions set forth in this notice will not be honored. No exceptions to the mailing and delivery requirements set forth in this notice will be granted.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey, e-mail address: *harvey.lisa@dol.gov*, tel: (202) 693–4570 (this is not a toll-free number).

I. Authority

ILAB is authorized to award and administer this program by the Consolidated Appropriations Resolution, 2003, Public Law 108–7, 117 Stat. 11 (2003).

II. Application Process

A. Eligible Applicants

Any commercial, international, educational, or not-for-profit organization (including faith-based organizations) with experience effectively implementing projects in the relevant technical field(s) and working with foreign national government ministries, regional and local government entities, employers and employer organizations, workers and labor organizations, and non-governmental and community-based organizations is eligible for this grant(s). All applicants are requested to complete the Survey on Ensuring Equal Opportunity for Applicants (OMB No. 1225–0083) (see Appendix A). Labor

ministries are the primary government entities that will be involved, but projects may also include ministries for education, social affairs, commerce, finance, and those working with special targeted populations such as youth, women, persons with disabilities or minorities. Partnerships of more than one organization are also eligible and encouraged, in particular with qualified regionally-based organizations to further build local capacity, although in such a case a lead organization must be identified. The capability of an applicant, partners, and co-applicants to perform necessary aspects of this solicitation will be determined under section XI—Review and Selection of Applications for Award.

Please note that to be eligible, grant applicants classified under the Internal Revenue Code as a 501(c)(4) entity (see 26 U.S.C. 501(c)(4)), may not engage in lobbying activities. According to the Lobbying Disclosure Act of 1995, as amended by 2 U.S.C. 1611, an organization, as described in section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant, or loan.

B. Submission of Applications

One (1) blue ink-signed original, complete application in English plus two (2) copies of the application must be submitted to the U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Washington, DC 20210, no later than 4:45 p.m. Eastern Time on the established due date. To aid with review of applications, Applicants may elect to submit three (3) additional paper copies of the application (five total). Applicants who do not provide additional copies will not be penalized.

The application must consist of two (2) separate parts. Part I of the application must contain the Standard Form (SF) 424, "Application for Federal Assistance" and sections A–F of the Budget Information Form SF 424A (see Appendix A). These forms are also available at *http://www.whitehouse.gov/omb/grants*. Part II must contain a technical proposal that demonstrates capabilities in accordance with the statement of work (section III) and the selection criteria (section XI). The application should include the name, address, telephone and fax numbers, and e-mail address (if applicable) of a key contact person at the applicant's organization in case questions should arise.

To be considered responsive to this solicitation, the application must consist of the above-mentioned separate sections not to exceed 45 single-sided (8½" x 11" or A4), double-spaced, 12-point font, typed pages for which a response is submitted. Major sections and subsections of the application should be divided and clearly identified (*e.g.*, with tab dividers), and all pages shall be numbered. Applicants are required to propose that a project address ALL of the project objectives identified in the Statement of Work in section III. Any applications that do not conform to these standards may be deemed non-responsive to this solicitation and may not be evaluated. The application must include a table of contents and an abstract summarizing the application in not more than two (2) pages. Standard forms, attachments, resumes, exhibits, letters of support, and the abstract are not counted towards the page limit. If an applicant exceeds the stated page limit, the review panel has the discretion to deduct 10 points.

Upon completion of negotiations, the individual signing the SF 424 on behalf of the applicant must be authorized to bind the applicant.

C. Acceptable Methods of Submission

The grant application package must be received at the designated place by the date and time specified, or it will not be considered. Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, *etc.*, will be accepted; the applicant, however, bears the responsibility for timely submission. Applications that do not meet the conditions set forth in this notice will not be honored. No exceptions to the mailing, delivery, and hand-delivery conditions set forth in this notice will be granted.

Any application received at the Office of Procurement Services after 4:45 pm Eastern Time on Friday, August 22, 2003 will not be considered unless it is received before the award is made and:

- It was sent by registered or certified mail no later than the fifth calendar day before the closing date; or
- It was sent by U.S. Postal Service Express Mail/Next Day Service from the post office to the addressee no later than 5 pm at the place of mailing two (2) working days (excluding weekends and Federal holidays), prior to the closing date; or
- It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail/Next Day Service from the post office to the addressee is the date entered by the Post Office receiving clerk on the "Express Mail/ Next Day Service—Post Office to Addressee" label and the postmark on the envelope or wrapper on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Service Center on the application wrapper or other documentary evidence or receipt maintained by that office.

All applicants are advised that U.S. mail delivery in the Washington DC area has been slow and erratic due to concerns involving anthrax contamination. Applicants must take this into consideration when preparing to meet the application deadline. It is recommended that you confirm receipt of your application with your delivery service.

D. Funding Levels

Up to U.S. $6.75 million is available for this project, and USDOL reserves the right to award more than one grant. USDOL may award one or more grants to one organization or several, or to a partnership of more than one organization. The award of any sub-contract will be subject to USDOL approval (see section IV).

E. Program Duration

The duration of the project funded by this SGA is up to four (4) years. The start date of program activities will be negotiated upon award of the grant, which will take place no later than September 30, 2003.

III. Statement Of Work

USDOL is seeking qualified organizations that will implement, in partnership with USDOL, a regional project in Central America (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua) to improve compliance with national labor laws by strengthening enforcement systems and increasing knowledge of labor laws among employers and workers. Specific project objectives are identified in section III.C. Applicants should submit proposals that are regional in scope and demonstrate the organization's capabilities to implement a project in accordance with the Statement of Work and the selection criteria. Applicants, however, will not be penalized for lacking previous experience working on regional projects. For example, organizations with experience in only one country will be judged based on the success they achieve in that country and their proposal for working successfully throughout the rest of the targeted region. USDOL encourages applicants to be creative in proposing innovative and cost-effective interventions that will produce a demonstrable and sustainable impact.

Funds will be provided by grant to qualifying organizations. The grant will be actively managed by USDOL/ILAB to assure achievement of the stated project objectives. The award of any sub-contract will be subject to USDOL policies and approval (see section IV).

Note: Selection of an organization as a grantee does not constitute approval of the grant application as submitted. Before the actual grant is awarded, USDOL may enter into negotiations about such items as program components, funding levels, and administrative systems in place to support grant implementation. If the negotiations do not result in an acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline to fund the application. Award is also contingent upon signature of a letter of agreement between USDOL and relevant ministries in target countries.

A. Background and Problem Statement

The United States and five Central American countries (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) are engaged in negotiations toward a comprehensive free trade agreement. In the area of labor, one of the objectives of the United States is to improve labor law compliance in the region by seeking an appropriate commitment from the Central American countries to effectively enforce their laws and to educate employers and workers about their obligations and rights under such laws.

The Central American countries have requested further technical assistance from the U.S. to strengthen the capacity of their labor ministries to enforce labor laws. Among the specific areas identified by the countries for technical assistance are the promotion and dissemination of information on national labor laws and their application throughout the population, particularly among workers and employers; strengthening of labor inspection systems; and developing and strengthening alternative dispute resolution systems.

Among the areas of concern cited in these and other sources and areas in which USDOL hopes to provide assistance, are:

- The need to strengthen effective enforcement of labor laws.
- The need to strengthen promotion of the freedom of association and collective bargaining principles.
- The need to increase knowledge among employers and workers regarding national labor laws.
- The need for the Ministries of Labor to receive sufficient resources from their national budgets to foster improved labor relations.

Assessments of the current status of labor rights and their implementation in southern Africa are available in a variety of sources, among them the annual U.S. Department of State Report on Human Rights Practices; the recommendations of the Committee of Experts of the International Labor Organization's (ILO) Committee on the Application of Conventions and Recommendations; the recommendations of the ILO's Committee on Freedom of Association; and reports of the International Confederation of Free Trade Unions (ICFTU). USDOL/ILAB will post additional background information on its Web site at *http://www.dol.gov/ilab/*.

B. Target Population

Applicants shall target labor ministries, employer organizations and/or individual employers, worker organizations and/or individual adult workers and youth of legal working age.

C. Objectives

The Grantee(s) will implement, in partnership with USDOL, a project whose overarching objective is to improve labor law compliance in Central America through strengthened enforcement systems and increased knowledge of labor laws and their application among employers and workers.

In order to ensure achievement of the project objective, the Grantee(s) will first, in conjunction with USDOL, evaluate countries' political will to address the key areas of concern outlined in the background section. Applicants should provide a plan for how they might approach the evaluation of these areas of concern issues and how this evaluation will shape project activities. In the Central American countries where the Grantee(s), in conjunction with USDOL, have decided according to the evaluation strategy that a country has demonstrated sufficient political will and progress to effectively address those concerns and sustain the impact of technical assistance beyond the life of the project, the Grantee(s) will provide assistance to achieve the following specific project objectives (*i.e.*, "immediate objectives"):

Immediate Objective 1: Increased knowledge among workers and employers of national labor laws and of the available means to access labor ministry services to enforce the rights established by those laws, in particular:

- The right to freedom of association;
- The right to organize and bargain collectively;
- The prohibition of the use of any form of forced or compulsory labor;
- Labor protections for children and young people, including a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and
- Legally-mandated conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

Achievement of this objective may be measured, in part, through an increased number of requests for Labor Ministry assistance as a direct result of the awareness campaign.

Immediate Objective 2: Strengthen labor ministry inspection systems to effectively enforce national labor laws. This may be measured, in part, through (a) The introduction of a civil service and administrative career path and the institutional procedures and mechanisms necessary for its successful sustainability, (b) increased number of labor inspections, (c) improved quality and timeliness of inspectors' reporting, (d) increased corrective actions taken as a result of inspections, and (e) increased performance, motivation, and job satisfaction of labor inspectors.

Immediate Objective 3: Create new or strengthen existing dispute resolution mechanisms within labor ministries (*e.g.*, mediation, arbitration, alternative dispute resolution). This may be

measured in part through: (a) Increased rate of settlement of disputes by the institutions and/or systems receiving project assistance, (b) increased willingness of tripartite partners to support and participate in programs that foster alternative dispute resolution, (c) reduction in the time required to reach a final settlement through the institutions and/or systems receiving project assistance, and (d) increased rate of compliance with settlements reached through the institutions and/or systems receiving project assistance.

Relationship to USDOL Program Strategy: By helping to improve labor law compliance in Central America, the proposed project supports achievement of USDOL's GPRA goal (3.3b), "to improve living standards and conditions of work for workers in developing and transition countries."

D. Type of Work To Be Performed/ Activities

Applicants are responsible for developing a strategy for successfully achieving the above-stated objectives and addressing the problem(s) identified in the Background and Problem Statement, developing and implementing the major tasks and activities to be accomplished as part of that strategy, tracking and reporting on progress in achieving the stated objectives, and providing any necessary services. The Grantee(s) will be responsible for coordinating with other programs in the region, particularly USDOL-funded efforts that are working toward similar objectives, and adapt its Workplan to avoid duplication of activities.

E. Expected Outcomes/Project Outputs

By the end of the grant period, the project will have increased labor law compliance in the five project countries through: (a) An increased knowledge of national laws, legal processes and their application among employers and workers and an increased number of requests to the labor ministry for assistance based on that knowledge, (b) the strengthened capacity of labor ministries to effectively enforce labor laws, and (c) more effective systems to resolve industrial disputes.

Applicants are expected to describe in their technical proposal: (a) The strategy that they will adopt to achieve these outcomes within the stated timeframe and available USDOL funds; and (b) the indicators and system of data collection they will use to measure the achievement of these outcomes (*i.e.*, increased labor law compliance, greater knowledge of national labor laws and their application, and more effective industrial dispute resolution systems), as well as all key outputs of the project.

In developing the strategy, applicants should take into consideration the following issues:

- The level of technical assistance that Central American Ministries of Labor have received in the past five (5) years and continue to receive from bilateral donors and international organizations;
- The need to ensure that the project strategy is consistent with any national strategy to increase labor law compliance.
- The need to sustain project improvements, including retaining the new knowledge and practices of project-trained ministry staff.

The need to engage key tripartite stakeholders of the project—ministries of labor, employer associations, and trade unions—in the design and implementation of the project strategy.

F. Conditions Precedent

Prior to providing any technical assistance to any project country, the level of political commitment of each government to increase labor law compliance must be demonstrated in a clear and measurable way. Past experience has demonstrated that without the political will of the benefiting institutions to provide the necessary resources and support to effect change, no international project or form of assistance will achieve its stated objectives. Accordingly, applicants are requested to provide in their technical proposal a methodology for assessing the political will of the governments of the Central American governments to increase labor law compliance. The methodology should focus on the areas of concern listed in the Background and Problem Statement section (*i.e.*, the need to strengthen effective enforcement of labor laws, the need to strengthen promotion of the freedom of association and collective bargaining principles, the need to increase knowledge among employers and workers regarding national labor laws, the need for the Ministries of Labor to receive sufficient resources from their national budgets to foster improved labor relations). Such information will be utilized by USDOL, in consultation with the Grantee(s), for deciding how to allocate project assistance within the region.

G. Deliverables

Following the award of the grant, the Grantee(s) shall collaborate with USDOL/ILAB to:

- Develop a Project Document (including a project budget) that will set the technical parameters and provide guidance to the project. It should include all information and be prepared according to the standardized format outlined by USDOL. While the Applicant's original proposal will serve as the basis of the Project Document, in every case USDOL has found it advantageous to visit the field and reach consensus on the project strategy with host country counterparts in order to further inform the project design. USDOL must receive a draft of the Project Document 45 days after returning from travel to the relevant area(s). The Project Document must be finalized no later than 30 days after receipt of USDOL comments on the draft.
- Establish a Workplan identifying major project activities, deadlines for their completion, and person(s) responsible for completing these activities (within 60 days after the Project Document is finalized).
- Set project indicators, including indicators that support ILAB's Government Performance and Results Act (GPRA) goal: "Improve living standards and conditions of work for workers in developing and transition countries." (within 90 days of finalizing the Project Document).
- Create a Performance Monitoring Plan (PMP) to establish the data needed to measure achievement of project indicators and the methods for collection and reporting. It should include all information and be prepared according to the standardized format outlined by USDOL (within 90 days of finalizing the Project Document).

The Grantee(s) must submit copies of all required documents to USDOL by the specified due dates. Other documents that may be produced are to be submitted by mutually agreed-upon deadlines. The Project Document, Workplan, project indicators, PMP, and data collection system are subject to final approval by the Grant Officer's Technical Representative (GOTR) responsible for monitoring the grant.

H. Special Program Requirements

1. USDOL Responsibilities

Following the award of the grant(s), USDOL shall:

- Provide the Grantee(s) with programmatic support to help ensure effective implementation of the project, including training and consultation in USDOL/ILAB management, monitoring, and evaluation systems and standard operating procedures.
- Provide advice and consultation to Grantee(s) on specific program criteria.
- If, based upon the responses to this solicitation and subsequent to the award, USDOL determines that it is necessary, travel to the field with the Grantee(s) and other technical experts for a project design mission before finalizing the project design and the Project Document. USDOL will procure the services of technical experts if it determines that such expertise is necessary for the project design mission.
- Fund at least two project evaluations—a mid-term evaluation at approximately the midpoint of the grant period and a final evaluation approximately two months prior to the end of the grant period. USDOL/ILAB—in consultation with the Grantee(s)—will be responsible for drafting and finalizing all evaluation Terms of Reference (TOR), procuring the services of an independent evaluator (who will write the evaluation report), and providing at least one representative from USDOL/ILAB to participate on the evaluation team, when appropriate. USDOL/ILAB may choose to perform additional evaluations as appropriate.
- Have the right, at all reasonable times, to review all documents pertaining to the project, participate on field missions (including monitoring and evaluation missions), and to discuss administrative and technical issues pertaining to the project with the Grantee.

2. Grantee Responsibilities

Following the award of the grant(s), the Grantee(s) shall:

- Establish the institutional and management systems and means necessary to provide and monitor the delivery of services and distribute wages and material effectively.
- If USDOL determines that it is necessary, travel to the field with USDOL and other technical experts for a project design mission before finalizing the project design and the Project Document. The Grantee(s) shall bear the financial costs for having its representative(s) participate on the project design mission.
- Assist in project evaluations, including reviewing and providing comments on the evaluation Terms of Reference (TORs) drafted by USDOL and evaluation reports written by the lead evaluator. If invited to participate on an evaluation mission by USDOL, the Grantee(s) shall bear the financial costs for having a representative of the Grantee(s) participate on an evaluation team (*e.g.*, travel, per diem).
- Submit trip reports to USDOL within fourteen (14) calendar days of project-related travel. If the implementing partner travels with a USDOL staff member, the implementing organization will submit a draft trip report to the staff member within fourteen (14) calendar days of project-related travel for comments. The format for the trip report will be provided by USDOL.
- Inform USDOL/ILAB at least one (1) month prior to scheduling any major public events or ceremonies regarding the project.
- Submit to USDOL all media-related and educational materials developed by it or its sub-contractors under this Grant(s), including relevant press releases, for use in this project before they are reproduced, published, or used. The Grantee(s) must consult with USDOL to ensure that materials are compatible with USDOL materials relating to its International Cooperation Program. USDOL considers brochures, pamphlets, videotapes, slide-tape shows, curricula, and any other training materials used in the project to be educational materials. USDOL will review materials for technical accuracy. USDOL will also review training curricula and purchased training materials for accuracy before they are used. The Grantee(s) must obtain prior approval from the Grant Officer for all materials developed or purchased under this grant. All materials produced by Grantee(s) must be provided to USDOL in digital format for possible publication.

IV. Key Personnel and Sub-Contractors

USDOL considers the "Project Director" or equivalent to be "key personnel" in this project. In addition to the Project Director, other key personnel would be any Country Representatives (staff representing the Grantee in a specific country), and consultants hired to work full-time for at least three months. All key personnel should be fluent in English and Spanish (written and spoken).

USDOL expects all key personnel to work full-time on the project. All key personnel must be fluent in both written and spoken Spanish and English. The Grant Officer must approve candidates for all key personnel positions. USDOL's Grant Officer's Technical Representative (GOTR) shall review candidates' qualifications and provide recommendations to the Grant Officer regarding the selection of candidates for all key personnel positions. The Grantee(s) shall submit résumés, curricula vitae, and other relevant information to the GOTR and receive approval from the Grant Officer before extending an offer of employment and before the nominated individual conducts any activities.

Key personnel may only be changed with the approval of the Grant Officer. The Grantee(s) shall not substitute or replace key personnel unless new personnel are at least equal in qualifications to those personnel who are replaced. If a need to find new key personnel arises, the Grantee(s) shall notify the GOTR as soon as the need becomes known. If the Grant Officer is unable to approve the personnel change, he/she reserves the right to terminate the grant.

Organizations may apply for funding in partnership with other organizations, but in such a case, a lead organization must be identified. Use of sub-contractors is subject to Federal laws and regulations, including OMB circulars requiring free and open competition for procurement transactions.

The Grant Officer must approve all sub-contractors. USDOL's Grant Officer's Technical Representative (GOTR) shall review candidates' qualifications and provide recommendations to the Grant Officer regarding the selection of candidates for all sub-contractors. The lead organization shall submit a list of previous projects implemented by the proposed sub-contractor, along with a description of qualifications, résumés, curricula vitae, and other relevant information to the GOTR and receive approval from the Grant Officer before extending a sub-contract. The lead organization shall not substitute or replace sub-contractors unless new sub-contractors are at least equal in qualifications to those that are replaced. Sub-contractors may only be changed with the approval of the Grant Officer. If a need to find new sub-contractors arises, the lead organization shall notify the GOTR as soon as the need becomes known.

Note: Except as specifically provided, USDOL/ILAB acceptance of a proposal and an award of federal funds to sponsor any program(s) does not provide a waiver of any grant requirement and/or procedures. For example, if an application identifies a specific sub-contractor to provide the services, the USDOL/ILAB award does not provide the justification or basis to sole-source the procurement, *i.e.*, to avoid competition.

V. Reporting Requirements

All reports (see Appendix B) are due no later than 30 days after the end of a fiscal quarter and shall be submitted in English. USDOL/ILAB and the Grantee(s) should work together to resolve any issues within 30 days of receipt of a report.

A. Financial Reports

The Grantee(s) shall submit financial reports on a quarterly basis. The first reporting period shall end on the last day of the fiscal quarter (December 31, March 31, June 30, or September 30) during which the grant was signed.

The Grantee(s) shall use Standard Form (SF) 269A, Financial Status Report, to report the status of the funds, at the project level, during the grant period. A final SF269A shall be submitted no later than 90 days following completion of the grant period.

If the Grantee(s) uses the U.S. Department of Health and Human Services Payment Management System (HHS PMS), they shall also send USDOL copies of the PSC 272 that it submits to HHS, on the same schedule. Otherwise, the Grantee(s) shall submit Standard Form (SF) 272, Federal Cash Transactions Report, on the same schedule as the SF269A.

Financial reports are due within 30 days of the end of the reporting period (*i.e.*, by April 30, July 30, October 30, and January 30).

B. Technical Reporting Requirements

After signing the agreement, the Grantee(s) shall submit progress reports to USDOL/ILAB at the end of each fiscal quarter. The first reporting period shall end on the last day of the fiscal quarter (December 31, March 31, June 30, or September 30) during which the Grant was signed. Between reporting dates, the Grantee(s) shall also immediately inform USDOL/ILAB of significant developments and/or problems affecting the organization's ability to accomplish work.

The Grantee(s) shall submit two types of progress reports according to the standardized format used by USDOL/ILAB:

1. Status Reports

Status Reports compare actual and planned activities during the reporting period, which consists of one quarter (January–March and July–September). Its purpose is to provide an update on the Workplan, problems/solutions, major achievements, or modifications. The Status Report should be brief and include an attached project Workplan indicating the status of Workplan activities: "completed," "on schedule," "delayed," "cancelled." The body of report should provide a summary explanation of any deviation from the Workplan and recommended actions.

Status Reports are due within 30 days of the end of the reporting period (*i.e.*, by April 30 and October 30).

2. Technical Progress Reports

Technical Progress Reports provide information on how the project is progressing in achieving its stated objectives. Technical Progress Reports will be based on the project's stated objectives, indicators, and Performance Monitoring Plan (PMP) and will provide both quantitative and qualitative information and a narrative assessment of performance for the preceding six-month period (January–June and July–December). Data measuring achievement of the project's indicators will be attached to the narrative, which will provide a composite overview of progress, trends, problems, new proposals, lessons learned, and expenditures. The body of the Technical Progress Report should be 2–3 pages in length, stressing major points related to strategy.

Technical Progress Reports are due within 30 days of the end of the reporting period (*i.e.*, by July 30 and January 30).

C. Instructions for Submitting Reports

All reports shall cite the assigned grant number. The Grantee(s) shall submit one hard copy of all financial reports to each of the following persons:

Lawrence Kuss, Grant Officer, Procurement Services Center, U.S. Department of Labor, 200 Constitution Ave., NW., Room N–5416, Washington, DC 20210.

Paula Church, Grant Officer's Technical Representative, Office of Foreign Relations, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–5303, Washington, DC 20210.

Gene Contee, Accountant, Financial Management Services Center, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–5526, Washington, DC 20210.

The Grantee(s) shall submit one hard copy of all technical reports to each of the following persons:

Lawrence Kuss, Grant Officer, Procurement Services Center, U.S. Department of Labor, 200 Constitution Ave., NW., Room N–5416, Washington, DC 20210.

Paula Church, Grant Officer's Technical Representative, Office of Foreign Relations, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–5303, Washington, DC 20210.

VI. Travel Procedures

The Grantee(s) shall submit a quarterly travel plan to the GOTR. The plan shall include the following information for all individuals traveling for the Grantee(s) to support activities covered by this grant:

- Name of the person(s) who will be traveling.
- Destination(s).
- Dates of travel.
- Purpose of travel—what they will be doing and why.

The Grantee(s) should submit the quarterly travel plan no later than four weeks prior to the start of each subsequent fiscal quarter (*e.g.*, By May 31, the GOTR should have travel plans for all Grantee travel occurring July 1 through September 30). For a trip beginning later than four weeks from the time the plan is submitted, dates should reflect a "best guess" (rather than simply listing "To Be Determined"). The dates should, however, be finalized no later than 4 weeks prior to departure.

All travelers should submit finalized travel details to the GOTR no later than 4 weeks prior to the desired departure date. If any major holiday occurs during those 4 weeks, travelers should submit finalized details earlier.

Individuals are not permitted to travel until USDOL/ILAB has received country clearance from the State Department (via e-mail or cable) or has received written authorization (including by e-mail) from the GOTR. This also applies to expatriates living abroad who go on personal or home leave: although they do not need clearance to enter the U.S., they do need clearance to re-enter the country in which they are stationed.

While travelers may cancel trips at any time, USDOL/ILAB will not permit any amendments to a clearance cable (*e.g.*, for changes in dates of travel, or changes in the identified traveler) less than four weeks prior to the desired date of departure, except in dire emergencies, as determined by the GOTR.

VII. Acknowledgment of USDOL Funding

A. Acknowledgement on Printed Materials

In all circumstances, the following shall be displayed on printed materials: "Preparation of this item was funded by the United States Department of Labor under Grant No. [insert the appropriate grant number]."

When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all Grantees receiving Federal funds must clearly state:

- The percentage of the total costs of the program or project, which will be financed with Federal money;
- The dollar amount of Federal funds for the project or program; and
- The percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

B. Use of the USDOL Logo

In consultation with ILAB, the Grantee(s) will acknowledge USDOL's role in one of the following ways:

- The USDOL logo may be applied to USDOL-funded material prepared for world-wide distribution, including posters, videos, pamphlets, research documents, national survey results, impact evaluations, best practice reports, and other publications of global interest. The Grantee(s) must consult with USDOL on whether the logo may be used on any such items prior to final draft or final preparation for distribution. In no event shall the USDOL logo be placed on any item until USDOL has given the Grantee written permission to use the logo on the item.
- All documents should include the following notice: "This document does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government."

VIII. Administrative Requirements

A. General

Grantees, which may include faith-based organizations, will be subject to applicable Federal laws (including provisions of appropriations law) and the applicable Office of Management and Budget (OMB) Circulars. Determinations of allowable costs will be made in accordance with the applicable Federal cost principles, *e.g.*, Non-Profit Organizations—OMB Circular A–122. The grant(s) awarded under this SGA will be subject to the following administrative standards and provisions, if applicable:

- 29 CFR part 36—Federal Standards for Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.
- 29 CFR part 93—New Restrictions on Lobbying.
- 29 CFR part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations, and with Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments and International Organizations.
- 29 CFR part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.
- 29 CFR part 98—Federal Standards for Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).
- 29 CRF part 99—Federal Standards for Audits of States, Local Governments, and Non-Profit Organizations.

B. Sub-contracts

Sub-contracts must be awarded in accordance with 29 CFR 95.40–48. In compliance with Executive Orders 12876 as amended, 13230, 12928, and 13021 as amended, the Grantee(s) is strongly encouraged to provide subcontracting opportunities to Historically Black Colleges and Universities, Hispanic-Serving Institutions and Tribal Colleges and Universities.

C. Encumbrance of Grant Funds

Grant funds may not be encumbered/obligated by the Grantee(s) before or after the period of performance. Encumbrances/obligations outstanding as of the end of the grant period may be liquidated (paid out) after the end of the grant period. Such encumbrances/obligations may involve only commitments for which a need existed during the grant period and which are supported by approved contracts, purchase orders, requisitions, invoices, bills, or other evidence of liability consistent with the Grantee's purchasing procedures and incurred within the grant period. All encumbrances/obligations incurred during the grant period must be liquidated within 90 days after the end of the grant period, if practicable.

D. Site Visits

USDOL, through its authorized representatives, has the right, at all reasonable times, to make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. If USDOL makes any site visit on the premises of the Grantee or a sub-contractor(s) under this grant, the Grantee must provide and must require its sub-contractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All site visits and evaluations will be performed so as not to unduly delay the work.

IX. Grant Closeout Procedures

A. Definitions

1. Grant Closeout

The closeout of a grant is the process by which a Federal grantor agency determines that all applicable administrative actions and all required work of the grant have been completed by the grantee and the grantor.

2. Date of Completion

The date when all work under a grant is completed or the date in the grant award document, or any supplement or amendment thereto, on which Federal assistance ends, whichever comes first.

3. Disallowed Costs

Disallowed costs are those charges to a grant that the grantor agency or its representative determines to not be allowed in accordance with the applicable Federal Cost Principles or other conditions contained in the grant.

B. Close-out Procedures

Grants shall be closed out in accordance with the following procedures:

- Upon request, the Grantor shall make prompt payments to a Grantee for allowable reimbursable costs under the grant being closed out.
- The Grantee shall immediately refund to the Grantor any balance of unobligated (unencumbered) cash advanced to the Grantee that is not authorized for retention by the Grantee for use on other grants.
- Within 90 days after completion of the grant, the Grantee shall submit all financial, performance and other reports required by the Grant Officer to close out the grant. The Grant Officer may authorize extensions when requested by the grantee.
- The Grant Officer shall make a settlement for any upward or downward adjustments to the Federal share of costs after these reports are received.
- In the case of grants that include matching/in-kind contributions, the Grantee is legally required to provide the total amount of matching/in-kind contributions indicated on the face sheet of the agreement, as amended. Failure to provide this level of matching/in-kind contribution shall result in the disallowance of all or part of otherwise allowable Federal share costs, equal to the total matching/in-kind share committed to, less the share actually provided.
- The Grantee shall account for any property acquired with grant funds, or received from the Government in accordance with the provisions of 29 CFR part 95.
- In the event that a final audit has not been performed prior to the closeout of the grant, the Grantor shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

X. Measuring the Performance of the Grantee

The performance of the Grantee will be assessed based on the timely completion of one or more deliverables that will be due to USDOL at the end of each quarter of the Grant. These deliverables should reflect the outcomes of the project that are expected to help achieve the project's objective(s). Applicants are requested to include in their proposal a project implementation plan and approach to monitor the performance of the project throughout the period of the grant. The implementation plan is to consist of a quarterly schedule of activities and list of deliverables that would be completed by the contractor each quarter. The defined list and schedule of deliverables is viewed by USDOL as a key component of the technical proposal.

XI. Review and Selection of Applications for Awards

USDOL will screen all applications to determine whether all required elements are present and clearly identifiable. A Technical Panel will objectively rate each complete application against the criteria described in this announcement. The panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to select one or more Grantees on the basis of the initial proposal submission, or the Grant Officer may establish a competitive or technically acceptable range for the purpose of selecting qualified applicants. If deemed appropriate, following the Grant Officer's call for the preparation and receipt of final revisions of proposals, the evaluation process described above will be repeated to consider such revisions. The Grant Officer will make a final selection determination based on what is most advantageous to the Government, considering factors such as panel findings, geographic presence of the applicants, and the best value to the government, cost, and other factors. The Grant Officer's determination for award under this SGA is final.

A. The Review Process

The criteria below will serve as the basis upon which submitted applications will be evaluated. Technical aspects of the application will constitute 100 points of the total evaluation. Up to five (5) additional points will be given for leveraging non-Federal resources.

In order to assist USDOL in assessing the efficient and effective allocation of project funding, the Applicant shall submit a project budget that clearly details the costs for performing all of the requirements presented in this solicitation, including producing all deliverables, reporting on implementation and progress, and monitoring progress. Applicants are reminded to budget for compliance with the administrative requirements set forth (copies of all regulations are referenced in this SGA are available at no cost, on-line, at *http://www.dol.gov*). This includes the costs of performing activities such as travel to Washington, DC to meet with USDOL/ILAB, financial audit, project closeout, document preparation (*e.g.*, progress reports, project document), and ensuring compliance with procurement and property standards. The Project Budget should identify administrative costs separately from programmatic costs. In addition to the costs identified previously, administrative costs include indirect costs from the costs pool and the cost of activities, materials (*e.g.*, project car), and personnel (*e.g.*, administrative assistants, office drivers) that support the management and administration of the project but do not provide direct services to project beneficiaries

The technical panel will review grant applicants against the criteria listed below on the basis of 100 points.

B. Technical Approach—45 points

- The extent to which the application sets forth a clear and supportable course of action to improve labor law compliance in Central America, in particular those laws that address the issues raised in section III of the Statement of Work through: (a) Strengthened capacity of labor ministries to effectively enforce national labor laws, (b) increased knowledge of national labor laws and their application among employers and workers, and (c) strengthened dispute resolution mechanisms within the labor ministries. The Applicant will be evaluated on the clear identification and description of the specific strategy(s) the Applicant proposes to use, its effectiveness, and attainability of project objectives by the end of the grant period. (10 points)
- Demonstrated familiarity with the major issues related to the components being addressed (*e.g.*, general project context, key problems and/or needs in the relevant country/area, the specific problem(s) and/or need(s) that will be addressed by this project(s), and relevant constraints). The Applicant will be evaluated on the thorough and accurate assessment of the implementing environment and the problems that exist and clear identification of the specific problem(s) the Applicant proposes to address. (5 points)
- A monitoring and evaluation plan for measuring project performance that includes challenging but realistic targets and measurable, verifiable project indicators that measure achievement of project objectives and performance in project implementation. (5 points)
- A description of the applicant's approach to expending funds in the most cost-effective method possible in order to achieve the project objectives. The applicant should refer to its submitted budget in explaining how the budgeted funds will be utilized cost-effectively. In order to assist USDOL in assessing the efficient and effective allocation of project funding, the Applicant shall submit, at minimum, supporting budget information indicating how the Applicant arrived at estimating the costs of the following items/activities: salaries and benefits for all key personnel, 2–3 key activities proposed by the Applicant under its project design, and closing the project and meeting all USDOL close-out requirements, as stated in this SGA. The Applicant will be evaluated based on the clear identification of all project costs and efficient and effective allocation of funding. The project budget should clearly demonstrate that the total amount and distribution of funds is sufficient to cover the cost of all major project activities identified by the Applicant in its proposal, management of the project, monitoring and evaluation, and project close-out and that the distribution of funds maximizes the provision of goods and/or services to project beneficiaries. This section will be evaluated in accordance with applicable Federal laws and regulations. The budget must comply with Federal cost principles (which can be found in the applicable OMB Circulars) and with ILAB budget requirements contained in the application instructions in Section III of this solicitation. (10 points)
- Use of existing expertise from the recipient country in order to reduce costs and further develop local capacity. (5 points)
- Inclusion of a sustainability strategy that ensures that project improvements will continue after the project ends. (5 points)
- Submission of a schedule of quarterly deliverables that will serve to determine the level of performance of the contractor. The identification of deliverables that are presented in the proposal should be objective, verifiable, and demonstrate progress in achieving project objectives. (5 points)

C. Institutional Qualifications/Past Performance—25 points

- Prior experience in designing and implementing activities in developing countries, especially in Central America, related to strategic planning, outreach and education, capacity building, labor law enforcement, and labor dispute resolution. The application shall include information as an attachment (which will not count towards the page limit) regarding previous grants, contracts, or grants, including (a) The organization for which the work was done, (b) a contact person in that organization with his/her current phone number, (c) the dollar value of the grant, contract, or Grant for the project(s), (d) the time frame and professional effort, either directly by key personnel, by consultants, or under contractual arrangements involved in the project(s), (e) a brief summary of the work performed; and (f) a brief summary of accomplishments. (10 points)
- Clear organizational structure and management plan, illustrating experience with carrying out participatory development activities with organizations (*i.e.*, government ministries, employer organizations, worker organizations, community organizations) and maintaining positive and effective relationships with partners. (10 points)
- Demonstration of strong financial management and internal control systems. (5 points)

D. Experience of Personnel—30 points

- Key personnel with prior experience directly related to the proposed work, including technical and language qualifications, professional competence, relevant academic background, and demonstrated experience. Applicants shall submit a résumé for each key personnel proposed, which includes the individual's current employment status and previous work experience, including position title, duties performed, dates in position, employing organizations, and educational background. Duties must be clearly defined in terms of role performed (*i.e.*, manager, team leader, consultant). Résumés shall be included as attachments, which do not count against the page limitation. (20 points)
- Clear management plan demonstrating the staffing requirements and other resources needed to implement the approach. (10 points)

E. Leveraging of Grant Funding—5 points

USDOL will award up to five (5) additional rating points to applications that include non-Federal resources that significantly expand the size and scope of project-related activities. These programs will not be financed by the project, but can complement and enhance project objectives. To be eligible for the additional points, the applicant must list the resource(s), the nature, and possible activities anticipated and any partnerships, linkages, or coordination of activities, cooperative funding, etc.

F. Suggested Outline for Technical Proposal

This outline is provided as a guideline. Organizations may elect a format of their choosing, subject to the requirements of this announcement.

1. Executive Summary.

2. Program Description: Goal and Objectives, Background, Technical Approach and Implementation Timetable (Proposed Intervention), Experience of Personnel, Identification of Deliverables and Quarterly Schedule of their submission to determine contractor performance, Staffing Pattern and Project Management Organizational Chart, Leveraging of non-Federal Resources.

3. Attachments: Summaries of other relevant organizational experiences, Résumés of key personnel and signed letters of commitment to the project.

Successful proposals submitted in response to this SGA will be incorporated into the text of the grant with the selected applicant(s).

Signed at Washington, DC, this 14th day of July 2003.

Lawrence J. Kuss,

Grant Officer.

BILLING CODE 4510-28-P

APPENDIX A

Standard Government Forms

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

	2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*: ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ 0 .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION - Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		Total (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1.		$ 0.00	$	$	$	$ 0.00
2.						0.00
3.						0.00
4.						0.00
5. Totals		$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
	$	$	$	$	$ 0.00
a. Personnel					0.00
b. Fringe Benefits					0.00
c. Travel					0.00
d. Equipment					0.00
e. Supplies					0.00
f. Contractual					0.00
g. Construction					0.00
h. Other					0.00
i. Total Direct Charges *(sum of 6a-6h)*				0.00	0.00
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$ 0.00	$ 0.00
7. Program Income	$	$	$	$	$ 0.00

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Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$ 0.00
9.				0.00
10.				0.00
11.				0.00
12. TOTAL *(sum of lines 8-11)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ 0.00	$	$	$	$
14. Non-Federal	0.00				
15. TOTAL *(sum of lines 13 and 14)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION F - OTHER BUDGET INFORMATION

21. Direct Charges:

22. Indirect Charges:

23. Remarks:

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Standard Form 424A (Rev. 7-97) Page 2

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

SURVEY ON ENSURING EQUAL OPPORTUNITY FOR APPLICANTS

Federal Agency Use Only

OMB No. 1225-0083 Exp. 02/28/2006

NOTE: Please place survey form directly behind the Standard Application for Federal Assistance (SF 424) fact sheet.

Purpose: This form is for applicants that are private nonprofit organizations (not including private universities). Please complete it to assist the federal government in ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for federal funding. Information provided on this form will not be considered in any way in making funding decisions and will not be included in the federal grants database.

1. Does the applicant have 501(c)(3) status?

   ❑ Yes ❑ No

2. How many full-time equivalent employees does the applicant have? *(Check only one box).*

   ❑ 3 or Fewer ❑ 15-50
   ❑ 4-5 ❑ 51-100
   ❑ 6-14 ❑ over 100

3. What is the size of the applicant's annual budget? *(Check only one box.)*

   ❑ Less Than $150,000
   ❑ $150,000 - $299,999
   ❑ $300,000 - $499,999
   ❑ $500,000 - $999,999
   ❑ $1,000,000 - $4,999,999
   ❑ $5,000,000 or more

4. Is the applicant a faith-based/religious organization?

   ❑ Yes ❑ No

5. Is the applicant a non-religious community-based organization?

   ❑ Yes ❑ No

6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?

   ❑ Yes ❑ No

7. Has the applicant ever received a government grant or contract (Federal, State, or local)?

   ❑ Yes ❑ No

8. Is the applicant a local affiliate of a national organization?

   ❑ Yes ❑ No

Survey Instructions on Ensuring Equal Opportunity for Applicants

1. 501(c)(3) status is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1225-0083**. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** Departmental Clearance Officer, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-1301, Washington, D.C. 20210. **If you have comments or concerns regarding the status of your individual submission of this form, write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

APPENDIX B

Progress Report Forms

U.S. Department of Labor
Bureau of International Labor Affairs/Office of Foreign Relations

STATUS REPORT FORMAT

PROJECT #:	**COUNTRY/PROJECT NAME:**	
FUNDING:	**PROJECT DURATION:**	**EVALUATION DATES:** Mid-term: Final:
DATE SUBMITTED:	**REPORTING PERIOD:**	**CONTACT:**
PROJECT OBJECTIVES: Development Objective: Immediate Objective(s): Sub Immediate Objective(s):		

I. WOKRPLAN STATUS

(Attach Workplan indicating status of components – "completed," "on schedule," "delayed," "Cancelled" as an annex.)

[Summarize any Workplan variance and recommended actions]

II. PROBLEMS, PROPOSED SOLUTIONS, ACTIONS TAKEN OR REQUIRED

Problems	Proposed Solutions	Actions Taken/Required

III. NEW PROPOSALS (activities, staffing, funding, etc.)

U.S. Department of Labor
Bureau of International Labor Affairs/Office of Foreign Relations

TECHNICAL PROGRESS REPORT FORMAT

PROJECT #:	**COUNTRY/PROJECT NAME:**	
FUNDING:	**PROJECT DURATION:**	**EVALUATION DATES:** Mid-term: Final:
DATE SUBMITTED:	**REPORTING PERIOD:**	**CONTACT:**
PROJECT OBJECTIVES: Development Objective: Immediate Objective(s): Sub Immediate Objective(s):		

I. OVERALL PROGRESS

[*Attach Data Tracking Table and any reporting against the Performance Monitoring Plan (PMP) as an annex.*]

II. MAJOR TRENDS

III. PROBLEMS, PROPOSED SOLUTIONS, ACTIONS TAKEN OR REQUIRED

Problems	Proposed Solutions	Actions Taken/Required

IV. NEW PROPOSALS (activities, staffing, funding, etc.)

V. LESSONS LEARNED

VI. EXPENDITURES VS. BUDGET

Budget Line Item	Total Budget Amt.	For the Reporting Period				Cumulative (over the life of the project)	
		Planned Expenditures	Actual Expenditures	Balance		Total Expenditures	Balance
	$	$	$	$		$	$
	$	$	$	$		$	$
	$	$	$	$		$	$
	$	$	$	$		$	$
	$	$	$	$		$	$
	$	$	$	$		$	$

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BILLING CODE 4510–28–C

DEPARTMENT OF LABOR

Office of the Secretary

Strengthening the Capacity of the Moroccan Labor Ministry

AGENCY: Bureau of International Labor Affairs, Department of Labor.

ACTION: Notice of availability of funds and solicitation for grant application (SGA 03–18).

SUMMARY: This notice contains all of the necessary information and forms needed to apply for grant funding. The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), announces the availability of funds to be granted by cooperative agreement (hereafter referred to as "grant") to one or more qualifying organizations. USDOL will award up to U.S. $1.45 million through one or more grants to an organization or organizations to assist the Government of Morocco improve compliance with its labor laws, in particular the principles embodied in the ILO Declaration on Fundamental Principles and Rights at Work, and provide an effective system of transitioning workers to in-demand occupations. Partnerships between more than one organization are eligible and encouraged, in particular with qualified, regionally-based organizations in order to build local capacity, although in such a case a lead organization must be identified.

DATES: The closing date for receipt of applications is Friday, August 22, 2003. Applications must be received by 4:45 p.m. (Eastern Time) at the address below.

ADDRESSES: Application forms will not be mailed. They are published as part of this **Federal Register** notice and in the **Federal Register**, which may be obtained from your nearest U.S. Government office or public library or online at *http://www.archives.gov/federal_register/index.html*. Applications must be delivered to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Attention: Lisa Harvey, Reference: SGA 03–18, Washington, DC 20210.

Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, etc., will be accepted; the applicant, however, bears the responsibility for timely submission. Applications that do not meet the conditions set forth in this notice will not be honored. No exceptions to the mailing and delivery requirements set forth in this notice will be granted.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey, e-mail address: *harvey.lisa@dol.gov*, tel: (202) 693–4570 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The expansion of global trade and investment and the improvement of working conditions and protection of basic worker rights are best understood as mutually reinforcing, and not mutually exclusive objectives. In today's environment of widespread market reforms and economic integration, efficient and fair labor markets are a prerequisite for economic growth, increasing living standards, and promoting employment in the U.S. As political developments, market reforms, and the transition to a global economy bring significant changes to national economies, individual labor market systems need to change accordingly to remain viable and to support their populations. In addition, the inability to manage the development of a relatively open market economy during periods of political and social transition impedes the development of political democracy, social cohesion, and equity.

USDOL/ILAB carries out a worldwide International Cooperation Program that helps address some of these difficulties by working to ensure that the greatest possible number of workers benefit from a more open world economy. The three major initiatives of the International Cooperation Program are:

Improving Economic Opportunity and Income Security for Workers (EOIS)—Under the EOIS initiative, USDOL works to strengthen developing countries' abilities to build and institutionalize social safety net policies and programs needed to improve working conditions and foster economic growth. Projects under this initiative aim to increase employment among targeted groups, improve workplace safety and health, and increase access to social insurance.

Protecting the Basic Rights of Workers (PBRW)—Under the PBRW initiative, USDOL works to implement the fundamental principles embodied in the International Labor Organization's (ILO) Declaration on Fundamental Principles and Rights at Work, specifically working towards strengthening the right to freedom of association and collective bargaining, eliminating forced or compulsory labor, and eliminating employment discrimination.

International HIV/AIDS Workplace-based Education Program (IHWEP)—Under the IHWEP initiative, USDOL works to reduce the rate of HIV/AIDS infection through workplace-based prevention and education programs and to improve the workplace environment for workers living with HIV/AIDS. The IHWEP program also works to build the capacity of the tripartite partners to address the long-term impact of HIV/AIDS on labor markets and economic development.

USDOL/ILAB manages its projects in partnership with stakeholders representing the government, employers, workers, and other organizations.

I. Authority

ILAB is authorized to award and administer this program by the Consolidated Appropriations Resolution, 2003, Public Law 108–7, 117 Stat. 11 (2003).

II. Application Process

A. Eligible Applicants

Any commercial, international, educational, or not-for-profit organization (including faith-based organizations) with experience effectively implementing projects in the relevant technical field(s) and working with foreign national government ministries, regional and local government entities, employers and employer organizations, workers and labor organizations, and non-governmental and community-based organizations is eligible for this grant(s). All applicants are requested to complete the Survey on Ensuring Equal Opportunity for Applicants (OMB No. 1225–0083) (see Appendix A). Labor ministries are the primary government entities that will be involved, but projects may also include ministries for education, social affairs, commerce, finance, and those working with special targeted populations such as youth, women, persons with disabilities or minorities. Partnerships of more than one organization are also eligible and encouraged, in particular with qualified regionally-based organizations to further build local capacity, although in such a case a lead organization must be identified. The capability of an applicant, partners, and co-applicants to perform necessary aspects of this solicitation will be determined under Section XI—Review and Selection of Applications for Award.

Please note that to be eligible, grant applicants classified under the Internal Revenue Code as a 501(c)(4) entity (see 26 U.S.C. 501(c)(4)), may not engage in

lobbying activities. According to the Lobbying Disclosure Act of 1995, as amended by 2 U.S.C. 1611, an organization, as described in section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant, or loan.

B. Submission of Applications

One (1) blue ink-signed original, complete application in English plus two (2) copies of the application must be submitted to the U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Washington, DC 20210, no later than 4:45 p.m. Eastern Time on the established due date. To aid with review of applications, Applicants may elect to submit three (3) additional paper copies of the application (five total). Applicants who do not provide additional copies will not be penalized.

The application must consist of two (2) separate parts. Part I of the application must contain the Standard Form (SF) 424, "Application for Federal Assistance" and sections A–F of the Budget Information Form SF 424A (see Appendix A). These forms are also available at *http://www.whitehouse.gov/omb/grants*. Part II must contain a technical proposal that demonstrates capabilities in accordance with the statement of work (section III) and the selection criteria (section XI). The application should include the name, address, telephone and fax numbers, and e-mail address (if applicable) of a key contact person at the applicant's organization in case questions should arise.

To be considered responsive to this solicitation, the application must consist of the above-mentioned separate sections not to exceed 30 single-sided (8½" x 11" or A4), double-spaced, 12-point font, typed pages for which a response is submitted. Major sections and sub-sections of the application should be divided and clearly identified (*e.g.*, with tab dividers), and all pages shall be numbered. Applicants are required to propose that a project address ALL of the project objectives identified in the Statement of Work in section III. Any applications that do not conform to these standards may be deemed non-responsive to this solicitation and may not be evaluated. The application must include a table of contents and an abstract summarizing the application in not more than two (2) pages. Standard forms, attachments, résumés, exhibits, letters of support, and the abstract are not counted towards the page limit. If an applicant exceeds the stated page limit, the review panel has the discretion to deduct 10 points.

Upon completion of negotiations, the individual signing the SF 424 on behalf of the applicant must be authorized to bind the applicant.

C. Acceptable Methods of Submission

The grant application package must be received at the designated place by the date and time specified, or it will not be considered. Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, etc., will be accepted; the applicant, however, bears the responsibility for timely submission. Applications that do not meet the conditions set forth in this notice will not be honored. No exceptions to the mailing, delivery, and hand-delivery conditions set forth in this notice will be granted.

Any application received at the Office of Procurement Services after 4:45 pm Eastern Time on Friday, August 22, 2003 will not be considered unless it is received before the award is made and:

- It was sent by registered or certified mail no later than the fifth calendar day before the closing date; or
- It was sent by U.S. Postal Service Express Mail/Next Day Service from the post office to the addressee no later than 5 pm at the place of mailing two (2) working days (excluding weekends and Federal holidays), prior to closing date; or
- It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail/Next Day Service from the post office to the addressee is the date entered by the Post Office receiving clerk on the "Express Mail/Next Day Service—Post Office to Addressee" label and the postmark on the envelope or wrapper on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Service Center on the application wrapper or other documentary evidence or receipt maintained by that office.

All applicants are advised that U.S. mail delivery in the Washington DC area has been slow and erratic due to concerns involving anthrax contamination. Applicants must take this into consideration when preparing to meet the application deadline. It is recommended that you confirm receipt of your application with your delivery service.

D. Funding Levels

Up to U.S. $1.45 million is available for this project, and USDOL reserves the right to award more than one grant. USDOL may award one or more grants to one organization or several, or to a partnership of more than one organization. The award of any sub-contract will be subject to USDOL approval (see section IV).

E. Program Duration

The duration of the project funded by this SGA is up to four (4) years. The start date of program activities will be negotiated upon award of the grant, which will take place no later than September 30, 2003.

III. Statement of Work

USDOL is seeking qualified organizations that will implement, in partnership with USDOL, a project to improve labor law compliance in Morocco and the efficient transitioning of workers to in-demand occupations. Specific project objectives are identified in section III.C. USDOL encourages applicants to be creative in proposing innovative and cost-effective interventions that will produce a demonstrable and sustainable impact.

Funds will be provided by grant to qualifying organizations. The grant will be actively managed by USDOL/ILAB to assure achievement of the stated project objectives. The award of any sub-contract will be subject to USDOL policies and approval (see section IV).

Note: Selection of an organization as a grantee does not constitute approval of the grant application as submitted. Before the actual grant is awarded, USDOL may enter into negotiations about such items as program components, funding levels, and administrative systems in place to support grant implementation. If the negotiations do not result in an acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline to fund the application. Award is also contingent upon signature of a letter of agreement between USDOL and relevant ministries in target countries.

A. Background and Problem Statement

Morocco's workforce has undergone and continues to experience many changes in response to its changing relationship with the global economy. In 1994, Morocco joined the World Trade Organization (WTO) and in 2000, Morocco began phasing in an association agreement with the European Union (EU), which will eliminate tariffs on industrial products being traded between Morocco and the EU by 2012. With the adoption of an ambitious privatization program in 1993 and the prospect of a free trade agreement with the U.S. in the near future, Morocco is committed to making its economy more competitive internationally.

Although Morocco creates an estimated 200,000 new jobs annually, this is still not enough to absorb the 300,000 new workers that enter the market each year (The Economist Intelligence Unit Country Profile 2003). The relatively high 2.1 percent growth rate in the population insures that the educational, training and employment infrastructure will be challenged to prepare and place new labor market entrants into in-demand jobs. An International Labor Organization (ILO) study in 2000 of the textile industry indicates that one of the industry's major problems is the workers' generally low skill level. About 52 percent of Moroccans over age 15 are illiterate, and this has a direct negative impact on the ability of Moroccan enterprises to adapt to newer and more competitive methods of production.

Major portions of the Moroccan labor code were drafted in the 1930s and need modernization. The Government recently drafted a new labor code designed to promote greater labor market flexibility and facilitate the transition of workers to in-demand occupations, and better protect workers' rights of association and collective bargaining, but government attempts to pass a new labor code have been unsuccessful thus far. The lack of a new labor code has also frustrated efforts to conceive a public unemployment compensation system and ensure health and accidental insurance benefits to workers. There are some indications that a new code will be enacted shortly.

In assessing the constraints to high levels of labor law compliance in Morocco, USDOL has found that they consist of primarily:

- Weak system of enforcing national labor laws, symptomatic of the absence of a national strategy for improving labor law compliance, a lack of clear policies and procedures for conducting labor inspections, underutilization of data from inspections to better target enforcement and outreach resources, and inadequate training of inspectors;
- Lack of awareness of national labor laws among employers, trade union leaders, and workers; and
- Inadequate systems and knowledge to prevent and resolve industrial disputes efficiently.

Morocco's challenges in effectively assisting in the transition of workers to in-demand jobs are based upon the following principal constraints:

- Lack of reliable information on current employer demands for workers;
- Limited options available for existing workers to be retrained for in-demand occupations;
- Inadequate quality of education and training to effectively prepare individuals for in-demand occupations; and
- Scarcity of incentives for employers to invest in training workers or for workers to seek additional education and training.

Assessments of the current status of labor rights and their implementation in Morocco are available in a variety of sources, among them the annual U.S. Department of State Report on Human Rights Practices; the recommendations of the Committee of Experts of the International Labor Organization's (ILO) Committee on the Application of Conventions and Recommendations; the recommendations of the ILO's Committee on Freedom of Association; and reports of the International Confederation of Free Trade Unions (ICFTU). USDOL/ILAB will post additional background information on its Web site at *http://www.dol.gov/ilab/*.

B. Target Population

Applicants shall target labor ministries, employer organizations and/or individual employers, worker organizations and/or individual workers, tripartite (government, employer, and worker) institutions, and/or educational and training institutions in Morocco as the intended (direct and indirect) beneficiaries of project activities.

C. Objectives

The Grantee(s) will implement, in partnership with USDOL, a project designed to: (a) Improve labor law compliance in Morocco, with particular emphasis on the fundamental principles embodied in the ILO's Declaration on Fundamental Principles and Rights at Work; and (b) efficiently transition workers to in-demand occupations. Given the limited resources available through this solicitation, it is expected that the second objective will be achieved through the demonstration of an approach and/or system to facilitate such transitions.

Contributing to the achievement of these goals are three project objectives ("immediate objectives"):

Immediate Objective 1

Increased knowledge among workers and employers of national labor laws and of the available means to access labor ministry services to enforce the rights established by those laws, in particular:

- The right to freedom of association;
- The right to organize and bargain collectively;
- Prohibition on the use of any form of forced or compulsory labor;
- Labor protections for children and young people, including a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor; and
- Legally mandated conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

Immediate Objective 2

Strengthen the labor inspection system by training the labor inspectors in the areas of acceptable conditions of work, specifically wage and hour and occupational safety and health.

Immediate Objective 3

Create new or strengthen existing dispute resolution mechanisms within the labor ministries (*e.g.*, mediation, arbitration, alternative dispute resolution).

Immediate Objective 4

Pilot test for possible replication on a national basis an effective model for efficiently transitioning workers impacted by economic restructuring and other adjustments to in-demand occupations.

Relationship to USDOL Program Strategy: By helping to improve labor law compliance and the efficient preparation and placement of workers for in-demand jobs in Morocco, the proposed project supports achievement of USDOL's GPRA goal (3.3b) to, "Improve living standards and conditions of work for workers in developing and transition countries."

D. Type of Work To Be Performed/ Activities

The selected Grantee(s) will be responsible for developing a strategy for successfully achieving the stated objectives of the project and addressing the problems identified in the Background and Problem Statement, developing and implementing the major tasks to be accomplished as part of that strategy, tracking and reporting on progress in achieving the stated objectives, and providing any necessary related services.

When developing the strategy and activities, the Applicant should take into consideration the following issues:

- A draft Labor Code has been under discussion by the social partners for over 20 years. Passage of this labor code is expected in the near future.
- The existence of an on-going USDOL–ILO project focusing on industrial relations and social dialogue in Morocco. Coordination between the new project and current project is necessary to avoid duplication of work.
- The recent completion of an USDOL-financed comprehensive needs assessment of the labor administration system that was conducted by the ILO. The assessment is attached as an appendix.
- The importance of Morocco as a strong political and economic ally of the U.S.

E. Expected Outcomes/Project Outputs

By the end of the grant period, the project will have: (a) Improved compliance by employers and workers with national labor laws, in particular those laws which relate to the principles embodied in the ILO Declaration on Fundamental Principles and Rights at Work; and (b) pilot-tested an effective approach to efficiently transition workers to in-demand occupations. Applicants are expected to describe in their technical proposal: (a) The strategy that they will adopt to achieve these outcomes within the stated timeframe and available USDOL funds; and (b) the indicators and system of data collection they will use to measure the achievement of these outcomes.

F. Deliverables

Following the award of the grant, the Grantee(s) shall collaborate with USDOL/ILAB to:

- Develop a Project Document (including a project budget) that will set the technical parameters and provide guidance to the project. It should include all information and be prepared according to the standardized format outlined by USDOL. While the Applicant's original proposal will serve as the basis of the Project Document, in every case USDOL has found it advantageous to visit the field and reach consensus on the project strategy with host country counterparts in order to further inform the project design. USDOL must receive a draft of the Project Document 45 days after returning from travel to the relevant area(s). The Project Document must be finalized no later than 30 days after receipt of USDOL comments on the draft.
- Establish a Workplan identifying major project activities, deadlines for their completion, and person(s) responsible for completing these activities (within 60 days after the Project Document is finalized).
- Set project indicators, including indicators that support ILAB's Government Performance and Results Act (GPRA) goal: "Improve living standards and conditions of work for workers in developing and transition countries." (within 90 days of finalizing the Project Document).
- Create a Performance Monitoring Plan (PMP) to establish the data needed to measure achievement of project indicators and the methods for collection and reporting. It should include all information and be prepared according to the standardized format outlined by USDOL (within 90 days of finalizing the Project Document).

The Grantee(s) must submit copies of all required documents to USDOL by the specified due dates. Other documents that may be produced are to be submitted by mutually agreed-upon deadlines. The Project Document, Workplan, project indicators, PMP, and data collection system are subject to final approval by the Grant Officer's Technical Representative (GOTR) responsible for monitoring the grant.

G. Special Program Requirements

1. USDOL Responsibilities

Following the award of the grant(s), USDOL shall:

- Provide the Grantee(s) with programmatic support to help ensure effective implementation of the project, including training and consultation in USDOL/ILAB management, monitoring, and evaluation systems and standard operating procedures.
- Provide advice and consultation to Grantee(s) on specific program criteria.
- If, based upon the responses to this solicitation and subsequent to the award, USDOL determines that it is necessary, travel to the field with the Grantee(s) and other technical experts for a project design mission before finalizing the project design and the Project Document. USDOL will procure the services of technical experts if it determines that such expertise is necessary for the project design mission.
- Fund at least two project evaluations—a mid-term evaluation at approximately the midpoint of the grant period and a final evaluation approximately two months prior to the end of the grant period. USDOL/ILAB—in consultation with the Grantee(s)—will be responsible for drafting and finalizing all evaluation Terms of Reference (TOR), procuring the services of an independent evaluator (who will write the evaluation report), and providing at least one representative from USDOL/ILAB to participate on the evaluation team, when appropriate. USDOL/ILAB may choose to perform additional evaluations as appropriate.
- Have the right, at all reasonable times, to review all documents pertaining to the project, participate on field missions (including monitoring and evaluation missions), and to discuss administrative and technical issues pertaining to the project with the Grantee.

2. Grantee Responsibilities

Following the award of the grant(s), the Grantee(s) shall:

- Establish the institutional and management systems and means necessary to provide and monitor the delivery of services and distribute wages and material effectively.
- If USDOL determines that it is necessary, travel to the field with USDOL and other technical experts for a project design mission before finalizing the project design and the Project Document. The Grantee(s) shall bear the financial costs for having its representative(s) participate on the project design mission.
- Assist in project evaluations, including reviewing and providing comments on the evaluation Terms of Reference (TORs) drafted by USDOL and evaluation reports written by the lead evaluator. If invited to participate on an evaluation mission by USDOL, the Grantee(s) shall bear the financial costs for having a representative of the Grantee(s) participate on an evaluation team (*e.g.*, travel, per diem).
- Submit trip reports to USDOL within fourteen (14) calendar days of project-related travel. If the implementing partner travels with a USDOL staff member, the implementing organization will submit a draft trip report to the staff member within fourteen (14) calendar days of project-related travel for comments. The format for the trip report will be provided by USDOL.
- Inform USDOL/ILAB at least one (1) month prior to scheduling any major public events or ceremonies regarding the project.
- Submit to USDOL all media-related and educational materials developed by it or its sub-contractors under this Grant(s), including relevant press releases, for use in this project before they are reproduced, published, or used. The Grantee(s) must consult with USDOL to ensure that materials are compatible with USDOL materials relating to its International Cooperation Program. USDOL considers brochures, pamphlets, videotapes, slide-tape shows, curricula, and any other training materials used in the project to be educational materials. USDOL will review materials for technical accuracy. USDOL will also review training curricula and purchased training materials for accuracy before they are used. The Grantee(s) must obtain prior approval from the Grant Officer for all materials developed or purchased under this grant. All materials produced by Grantee(s) must be provided to USDOL in digital format for possible publication.

IV. Key Personnel And Sub-Contractors

USDOL considers the "Project Director" or equivalent to be "key personnel" in this project. Project Directors should be fluent in English and either French or Arabic (written and spoken). USDOL expects all key personnel to work full-time on the project.

The Grant Officer must approve candidates for all key personnel positions. USDOL's Grant Officer's Technical Representative (GOTR) shall review candidates' qualifications and provide recommendations to the Grant Officer regarding the selection of candidates for all key personnel positions. The Grantee(s) shall submit résumés, curricula vitae, and other relevant information to the GOTR and receive approval from the Grant Officer before extending an offer of employment and before the nominated individual conducts any activities.

Key personnel may only be changed with the approval of the Grant Officer. The Grantee(s) shall not substitute or replace key personnel unless new personnel are at least equal in qualifications to those personnel who are replaced. If a need to find new key personnel arises, the Grantee(s) shall notify the GOTR as soon as the need becomes known. If the Grant Officer is unable to approve the personnel change, he/she reserves the right to terminate the grant.

Organizations may apply for funding in partnership with other organizations, but in such a case, a lead organization must be identified. Use of sub-contractors is subject to Federal laws and regulations, including OMB circulars requiring free and open competition for procurement transactions.

The Grant Officer must approve all sub-contractors. USDOL's Grant Officer's Technical Representative (GOTR) shall review candidates' qualifications and provide recommendations to the Grant Officer regarding the selection of candidates for all sub-contractors. The lead organization shall submit a list of previous projects implemented by the proposed sub-contractor, along with a description of qualifications, résumés, curricula vitae, and other relevant information to the GOTR and receive approval from the Grant Officer before extending a sub-contract. The lead organization shall not substitute or replace sub-contractors unless new sub-contractors are at least equal in qualifications to those that are replaced. Sub-contractors may only be changed with the approval of the Grant Officer. If a need to find new sub-contractors arises, the lead organization shall notify the GOTR as soon as the need becomes known.

Note: Except as specifically provided, USDOL/ILAB acceptance of a proposal and an award of federal funds to sponsor any program(s) does not provide a waiver of any grant requirement and/or procedures. For example, if an application identifies a specific sub-contractor to provide the services, the USDOL/ILAB award does not provide the justification or basis to sole-source the procurement, *i.e.*, to avoid competition.

V. Reporting Requirements

All reports (see Appendix B) are due no later than 30 days after the end of a fiscal quarter and shall be submitted in English. USDOL/ILAB and the Grantee(s) should work together to resolve any issues within 30 days of receipt of a report.

A. Financial Reports

The Grantee(s) shall submit financial reports on a quarterly basis. The first reporting period shall end on the last day of the fiscal quarter (December 31, March 31, June 30, or September 30) during which the grant was signed.

The Grantee(s) shall use Standard Form (SF) 269A, Financial Status Report, to report the status of the funds, at the project level, during the grant period. A final SF269A shall be submitted no later than 90 days following completion of the grant period.

If the Grantee(s) uses the U.S. Department of Health and Human Services Payment Management System (HHS PMS), they shall also send USDOL copies of the PSC 272 that it submits to HHS, on the same schedule. Otherwise, the Grantee(s) shall submit Standard Form (SF) 272, Federal Cash Transactions Report, on the same schedule as the SF269A.

Financial reports are due within 30 days of the end of the reporting period (*i.e.*, by April 30, July 30, October 30, and January 30).

B. Technical Reporting Requirements

After signing the agreement, the Grantee(s) shall submit progress reports to USDOL/ILAB at the end of each fiscal quarter. The first reporting period shall end on the last day of the fiscal quarter (December 31, March 31, June 30, or September 30) during which the Grant was signed. Between reporting dates, the Grantee(s) shall also immediately inform USDOL/ILAB of significant developments and/or problems affecting the organization=s ability to accomplish work.

The Grantee(s) shall submit two types of progress reports according to the standardized format used by USDOL/ILAB:

1. Status Reports

Status Reports compare actual and planned activities during the reporting period, which consists of one quarter (January–March and July–September). Its purpose is to provide an update on the Workplan, problems/solutions, major achievements, or modifications. The Status Report should be brief and include an attached project Workplan indicating the status of Workplan activities: "completed," "on schedule," "delayed," "cancelled." The body of report should provide a summary explanation of any deviation from the Workplan and recommended actions.

Status Reports are due within 30 days of the end of the reporting period (*i.e.*, by April 30 and October 30).

2. Technical Progress Reports

Technical Progress Reports provide information on how the project is progressing in achieving its stated objectives. Technical Progress Reports will be based on the project's stated objectives, indicators, and Performance Monitoring Plan (PMP) and will provide both quantitative and qualitative information and a narrative assessment of performance for the preceding six-month period (January–June and July–December). Data measuring achievement of the project's indicators will be attached to the narrative, which will provide a composite overview of progress, trends, problems, new proposals, lessons learned, and expenditures. The body of the Technical Progress Report should be 2–3 pages in length, stressing major points related to strategy.

Technical Progress Reports are due within 30 days of the end of the reporting period (*i.e.*, by July 30 and January 30).

C. Instructions for Submitting Reports

All reports shall cite the assigned grant number. The Grantee(s) shall submit one hard copy of all financial reports to each of the following persons:

Lawrence Kuss, Grant Officer, Procurement Services Center, U.S. Department of Labor, 200 Constitution Ave., NW., Room N–5416, Washington, DC 20210.

Jona Lai, Grant Officer's Technical Representative, Office of Foreign Relations, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–5303, Washington, DC 20210.

Gene Contee, Accountant, Financial Management Services Center, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–5526, Washington, DC 20210.

The Grantee(s) shall submit one hard copy of all technical reports to each of the following persons:

Lawrence Kuss, Grant Officer, Procurement Services Center, U.S. Department of Labor, 200 Constitution Ave., NW., Room N–5416, Washington, DC 20210.

Jona Lai, Grant Officer's Technical Representative, Office of Foreign Relations, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–5303, Washington, DC 20210.

VI. Travel Procedures

The Grantee(s) shall submit a quarterly travel plan to the GOTR. The plan shall include the following information for all individuals traveling for the Grantee(s) to support activities covered by this grant:

- Name of the person(s) who will be traveling.
- Destination(s).
- Dates of travel.
- Purpose of travel—what they will be doing and why.

The Grantee(s) should submit the quarterly travel plan no later than four weeks prior to the start of each subsequent fiscal quarter (*e.g.*, by May 31, the GOTR should have travel plans for all Grantee travel occurring July 1 through September 30). For a trip beginning later than four weeks from the time the plan is submitted, dates should reflect a "best guess" (rather than simply listing "To Be Determined"). The dates should, however, be finalized no later than 4 weeks prior to departure.

All travelers should submit finalized travel details to the GOTR no later than 4 weeks prior to the desired departure date. If any major holiday occurs during those 4 weeks, travelers should submit finalized details earlier.

Individuals are not permitted to travel until USDOL/ILAB has received country clearance from the State Department (via e-mail or cable) or has received written authorization (including by e-mail) from the GOTR. This also applies to expatriates living abroad who go on personal or home leave: Although they do not need clearance to enter the U.S., they do need clearance to re-enter the country in which they are stationed.

While travelers may cancel trips at any time, USDOL/ILAB will not permit any amendments to a clearance cable (*e.g.*, for changes in dates of travel, or changes in the identified traveler) less than four weeks prior to the desired date of departure, except in dire emergencies, as determined by the GOTR.

VII. Acknowledgment of USDOL Funding

A. Acknowledgement on Printed Materials

In all circumstances, the following shall be displayed on printed materials: "Preparation of this item was funded by the United States Department of Labor under Grant No. [insert the appropriate grant number]."

When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all Grantees receiving Federal funds must clearly state:

- The percentage of the total costs of the program or project, which will be financed with Federal money;
- The dollar amount of Federal funds for the project or program; and
- The percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

B. Use of the USDOL Logo

In consultation with ILAB, the Grantee(s) will acknowledge USDOL's role in one of the following ways:

- The USDOL logo may be applied to USDOL-funded material prepared for world-wide distribution, including posters, videos, pamphlets, research documents, national survey results, impact evaluations, best practice reports, and other publications of global interest. The Grantee(s) must consult with USDOL on whether the logo may be used on any such items prior to final draft or final preparation for distribution. In no event shall the USDOL logo be placed on any item until USDOL has given the Grantee written permission to use the logo on the item.
- All documents should include the following notice: "This document does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government."

VIII. Administrative Requirements

A. General

Grantees, which may include faith-based organizations, will be subject to applicable Federal laws (including provisions of appropriations law) and the applicable Office of Management and Budget (OMB) Circulars. Determinations of allowable costs will be made in accordance with the applicable Federal cost principles, *e.g.*, Non-Profit Organizations—OMB Circular A–122. The grant(s) awarded under this SGA will be subject to the following administrative standards and provisions, if applicable:

- 29 CFR part 36—Federal Standards for Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.
- 29 CFR part 93—New Restrictions on Lobbying.
- 29 CFR part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations, and with Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments and International Organizations.
- 29 CFR part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.
- 29 CFR part 98—Federal Standards for Government wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).
- 29 CRF part 99—Federal Standards for Audits of States, Local Governments, and Non-Profit Organizations.

B. Sub-Contracts

Sub-contracts must be awarded in accordance with 29 CFR 95.40–48. In compliance with Executive Orders 12876 as amended, 13230, 12928, and 13021 as amended, the Grantee(s) is strongly encouraged to provide subcontracting opportunities to Historically Black Colleges and Universities, Hispanic-Serving Institutions and Tribal Colleges and Universities.

C. Encumbrance of Grant Funds

Grant funds may not be encumbered/obligated by the Grantee(s) before or after the period of performance. Encumbrances/obligations outstanding as of the end of the grant period may be liquidated (paid out) after the end of the grant period. Such encumbrances/obligations may involve only commitments for which a need existed during the grant period and which are supported by approved contracts, purchase orders, requisitions, invoices, bills, or other evidence of liability consistent with the Grantee's purchasing procedures and incurred within the grant period. All encumbrances/obligations incurred during the grant period must be liquidated within 90 days after the end of the grant period, if practicable.

D. Site Visits

USDOL, through its authorized representatives, has the right, at all reasonable times, to make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. If USDOL makes any site visit on the premises of the Grantee or a sub-contractor(s) under this grant, the Grantee must provide and must require its sub-contractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All site visits and evaluations will be performed so as not to unduly delay the work.

IX. Grant Closeout Procedures

A. Definitions

1. Grant Closeout

The closeout of a grant is the process by which a Federal grantor agency determines that all applicable administrative actions and all required work of the grant have been completed by the grantee and the grantor.

2. Date of Completion

The date when all work under a grant is completed or the date in the grant award document, or any supplement or amendment thereto, on which Federal assistance ends, whichever comes first.

3. Disallowed Costs

Disallowed costs are those charges to a grant that the grantor agency or its representative determines to not be allowed in accordance with the applicable Federal Cost Principles or other conditions contained in the grant.

B. Close-Out Procedures

Grants shall be closed out in accordance with the following procedures:

- Upon request, the Grantor shall make prompt payments to a Grantee for allowable reimbursable costs under the grant being closed out.
- The Grantee shall immediately refund to the Grantor any balance of unobligated (unencumbered) cash advanced to the Grantee that is not authorized for retention by the Grantee for use on other grants.
- Within 90 days after completion of the grant, the Grantee shall submit all financial, performance and other reports required by the Grant Officer to close out the grant. The Grant Officer may authorize extensions when requested by the grantee.
- The Grant Officer shall make a settlement for any upward or downward adjustments to the Federal share of costs after these reports are received.
- In the case of grants that include matching/in-kind contributions, the Grantee is legally required to provide the total amount of matching/in-kind contributions indicated on the face sheet of the agreement, as amended. Failure to provide this level of matching/in-kind contribution shall result in the disallowance of all or part of otherwise allowable Federal share costs, equal to the total matching/in-kind share committed to, less the share actually provided.
- The Grantee shall account for any property acquired with grant funds, or received from the Government in accordance with the provisions of 29 CFR part 95.
- In the event that a final audit has not been performed prior to the closeout of the grant, the Grantor shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

X. Measuring the Performance of the Grantee

The performance of the Grantee will be assessed based on the timely completion of one or more deliverables that will be due to USDOL at the end of each quarter of the Grant. These deliverables should reflect the outcomes of the project that are expected to help achieve the project's objective(s). Applicants are requested to include in their proposal a project implementation plan and approach to monitor the performance of the project throughout the period of the grant. The implementation plan is to consist of a quarterly schedule of activities and list of deliverables that would be completed by the contractor each quarter. The defined list and schedule of deliverables is viewed by USDOL as a key component of the technical proposal.

XI. Review and Selection of Applications for Award

USDOL will screen all applications to determine whether all required elements are present and clearly identifiable. A Technical Panel will objectively rate each complete application against the criteria described in this announcement. The panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to select one or more Grantees on the basis of the initial proposal submission, or the Grant Officer may establish a competitive or technically acceptable range for the purpose of selecting qualified applicants. If deemed appropriate, following the Grant Officer's call for the preparation and receipt of final revisions of proposals, the evaluation process described above will be repeated to consider such revisions. The Grant Officer will make a final selection determination based on what is most advantageous to the Government, considering factors such as panel findings, geographic presence of the applicants, and the best value to the government, cost, and other factors. The Grant Officer's determination for award under this SGA is final.

A. The Review Process

The criteria below will serve as the basis upon which submitted applications will be evaluated. Technical aspects of the application will constitute 100 points of the total evaluation. Up to five (5) additional points will be given for leveraging non-Federal resources.

In order to assist USDOL in assessing the efficient and effective allocation of project funding, the Applicant shall

submit a project budget that clearly details the costs for performing all of the requirements presented in this solicitation, including producing all deliverables, reporting on implementation and progress, and monitoring progress. Applicants are reminded to budget for compliance with the administrative requirements set forth (copies of all regulations are referenced in this SGA are available at no cost, on-line, at *http://www.dol.gov*). This includes the costs of performing activities such as travel to Washington, DC to meet with USDOL/ILAB, financial audit, project closeout, document preparation (e.g., progress reports, project document), and ensuring compliance with procurement and property standards. The Project Budget should identify administrative costs separately from programmatic costs. In addition to the costs identified previously, administrative costs include indirect costs from the costs pool and the cost of activities, materials (*e.g.*, project car), and personnel (*e.g.*, administrative assistants, office drivers) that support the management and administration of the project but do not provide direct services to project beneficiaries.

The technical panel will review grant applicants against the criteria listed below on the basis of 100 points.

B. Technical Approach—45 points

- The extent to which the application sets forth a clear and supportable course of action to: (a) Improve labor law compliance in Morocco, in particular those laws which relate to the principles embodied in the ILO Declaration on Fundamental Principles and Rights at Work; and (b) demonstrate a proven approach to efficiently transition workers to in-demand occupations. The Applicant will be evaluated on the clear identification and description of the specific strategy(s) the Applicant proposes to use, its effectiveness, and attainability of project objectives by the end of the grant period. (10 points)
- Demonstrated familiarity with the major issues related to the components being addressed (*e.g.*, general project context, key problems and/or needs in the relevant country/area, the specific problem(s) and/or need(s) that will be addressed by this project(s), and relevant constraints). The Applicant will be evaluated on the thorough and accurate assessment of the implementing environment and the problems that exist and clear identification of the specific problem(s) the Applicant proposes to address. (5 points)
- A monitoring and evaluation plan for measuring project performance that includes challenging but realistic targets and measurable, verifiable project indicators that measure achievement of project objectives and performance in project implementation. (5 points)
- A description of the applicant's approach to expending funds in the most cost-effective method possible in order to achieve the project objectives. The applicant should refer to its submitted budget in explaining how the budgeted funds will be utilized cost-effectively. In order to assist USDOL in assessing the efficient and effective allocation of project funding, the Applicant shall submit, at minimum, supporting budget information indicating how the Applicant arrived at estimating the costs of the following items/activities: Salaries and benefits for all key personnel, 2–3 key activities proposed by the Applicant under its project design, and closing the project and meeting all USDOL close-out requirements, as stated in this SGA. The Applicant will be evaluated based on the clear identification of all project costs and efficient and effective allocation of funding. The project budget should clearly demonstrate that the total amount and distribution of funds is sufficient to cover the cost of all major project activities identified by the Applicant in its proposal, management of the project, monitoring and evaluation, and project close-out and that the distribution of funds maximizes the provision of goods and/or services to project beneficiaries. This section will be evaluated in accordance with applicable Federal laws and regulations. The budget must comply with Federal cost principles (which can be found in the applicable OMB Circulars) and with ILAB budget requirements contained in the application instructions in Section III of this solicitation. (10 points)
- Use of existing expertise from the recipient country in order to reduce costs and further develop local capacity. (5 points)
- Inclusion of a sustainability strategy that ensures that project improvements will continue after the project ends. (5 points)
- Submission of a schedule of quarterly deliverables that will serve to determine the level of performance of the contractor. The identification of deliverables that are presented in the proposal should be objective, verifiable, and demonstrate progress in achieving project objectives. (5 points)

C. Institutional Qualifications/Past Performance—25 points

- Prior experience in designing and implementing activities in developing countries, especially in Morocco, related to strategic planning, outreach and education, capacity building, labor law enforcement, and responsive workforce development policies, institutions, and systems. The application shall include information as an attachment (which will not count towards the page limit) regarding previous grants, contracts, or grants, including (a) The organization for which the work was done, (b) a contact person in that organization with his/her current phone number, (c) the dollar value of the grant, contract, or Grant for the project(s), (d) the time frame and professional effort, either directly by key personnel, by consultants, or under contractual arrangements involved in the project(s), (e) a brief summary of the work performed; and (f) a brief summary of accomplishments. (10 points)
- Clear organizational structure and management plan, illustrating experience with carrying out participatory development activities with organizations (*i.e.*, government ministries, employer organizations, worker organizations, community organizations) and maintaining positive and effective relationships with partners. (10 points)
- Demonstration of strong financial management and internal control systems. (5 points)

D. Experience of Personnel—30 points

- Key personnel with prior experience directly related to the proposed work, including technical and language qualifications, professional competence, relevant academic background, and demonstrated experience. Applicants shall submit a résumé for each key personnel proposed, which includes the individual's current employment status and previous work experience, including position title, duties performed, dates in position, employing organizations, and educational background. Duties must be clearly defined in terms of role performed (*i.e.*, manager, team leader, consultant). Résumés shall be included as attachments, which do not count against the page limitation. (20 points)
- Clear management plan demonstrating the staffing requirements and other resources needed to implement the approach. (10 points)

E. Leveraging of Grant Funding—5 points

USDOL will award up to five (5) additional rating points to applications that include non-Federal resources that significantly expand the size and scope of project-related activities. These programs will not be financed by the project, but can complement and enhance project objectives. To be eligible for the additional points, the applicant must list the resource(s), the nature, and possible activities anticipated and any partnerships, linkages, or coordination of activities, cooperative funding, etc.

F. Suggested Outline for Technical Proposal

This outline is provided as a guideline. Organizations may elect a format of their choosing, subject to the requirements of this announcement.

1. Executive Summary.
2. Program Description.
   - Goal and Objectives
   - Background.
   - Technical Approach and Implementation Timetable (Proposed Intervention).
   - Experience of Personnel.
   - Identification of Deliverables and Quarterly Schedule of their submission to determine contractor performance.
   - Staffing Pattern and Project Management Organizational Chart.
   - Leveraging of non-Federal Resources.
3. Attachments
   - Summaries of other relevant organizational experiences.
   - Résumés of key personnel and signed letters of commitment to the project.

Successful proposals submitted in response to this SGA will be incorporated into the text of the grant with the selected applicant(s).

Dated: Signed at Washington, DC, this 14th day of July, 2003.

Lawrence J. Kuss,

Grant Officer.

BILLING CODE 4510-28-P

APPENDIX A

Standard Government Forms

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction		2. DATE SUBMITTED	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*: ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT Start Date	Ending Date	**14. CONGRESSIONAL DISTRICTS OF:** a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ 0 .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$ 0.00
2.						0.00
3.						0.00
4.						0.00
5. Totals		$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$ 0.00
b. Fringe Benefits					0.00
c. Travel					0.00
d. Equipment					0.00
e. Supplies					0.00
f. Contractual					0.00
g. Construction					0.00
h. Other					0.00
i. Total Direct Charges *(sum of 6a-6h)*	0.00	0.00	0.00	0.00	0.00
j. Indirect Charges					0.00
k. TOTALS *(sum of 6i and 6j)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00
7. Program Income	$	$	$	$	$ 0.00

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Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$ 0.00
9.				0.00
10.				0.00
11.				0.00
12. TOTAL *(sum of lines 8-11)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ 0.00	$	$	$	$
14. Non-Federal	.0.00				
15. TOTAL *(sum of lines 13 and 14)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION F - OTHER BUDGET INFORMATION

21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

SURVEY ON ENSURING EQUAL OPPORTUNITY FOR APPLICANTS

Federal Agency Use Only

OMB No. 1225-0083 Exp. 02/28/2006

NOTE: Please place survey form directly behind the Standard Application for Federal Assistance (SF 424) fact sheet.

Purpose: This form is for applicants that are private nonprofit organizations (not including private universities). Please complete it to assist the federal government in ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for federal funding. Information provided on this form will not be considered in any way in making funding decisions and will not be included in the federal grants database.

1. Does the applicant have 501(c)(3) status?

❑ Yes ❑ No

2. How many full-time equivalent employees does the applicant have? *(Check only one box).*

❑ 3 or Fewer ❑ 15-50
❑ 4-5 ❑ 51-100
❑ 6-14 ❑ over 100

3. What is the size of the applicant's annual budget? *(Check only one box.)*

❑ Less Than $150,000
❑ $150,000 - $299,999
❑ $300,000 - $499,999
❑ $500,000 - $999,999
❑ $1,000,000 - $4,999,999
❑ $5,000,000 or more

4. Is the applicant a faith-based/religious organization?

❑ Yes ❑ No

5. Is the applicant a non-religious community-based organization?

❑ Yes ❑ No

6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?

❑ Yes ❑ No

7. Has the applicant ever received a government grant or contract (Federal, State, or local)?

❑ Yes ❑ No

8. Is the applicant a local affiliate of a national organization?

❑ Yes ❑ No

Survey Instructions on Ensuring Equal Opportunity for Applicants

1. 501(c)(3) status is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1225-0083**. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** Departmental Clearance Officer, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-1301, Washington, D.C. 20210. **If you have comments or concerns regarding the status of your individual submission of this form, write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

APPENDIX B

Progress Report Forms

U.S. Department of Labor
Bureau of International Labor Affairs/Office of Foreign Relations

STATUS REPORT FORMAT

PROJECT #:	**COUNTRY/PROJECT NAME:**	
FUNDING:	**PROJECT DURATION:**	**EVALUATION DATES:** Mid-term: Final:
DATE SUBMITTED:	**REPORTING PERIOD:**	**CONTACT:**

PROJECT OBJECTIVES:

Development Objective:

Immediate Objective(s):

Sub Immediate Objective(s):

I. WOKRPLAN STATUS

(Attach Workplan indicating status of components – "completed," "on schedule," "delayed," "Cancelled" as an annex.)

[Summarize any Workplan variance and recommended actions]

II. PROBLEMS, PROPOSED SOLUTIONS, ACTIONS TAKEN OR REQUIRED

Problems	Proposed Solutions	Actions Taken/Required

III. NEW PROPOSALS (activities, staffing, funding, etc.)

U.S. Department of Labor
Bureau of International Labor Affairs/Office of Foreign Relations

TECHNICAL PROGRESS REPORT FORMAT

PROJECT #:	**COUNTRY/PROJECT NAME:**	
FUNDING:	**PROJECT DURATION:**	**EVALUATION DATES:** Mid-term: Final:
DATE SUBMITTED:	**REPORTING PERIOD:**	**CONTACT:**
PROJECT OBJECTIVES: Development Objective: Immediate Objective(s): Sub Immediate Objective(s):		

I. OVERALL PROGRESS

[*Attach Data Tracking Table and any reporting against the Performance Monitoring Plan (PMP) as an annex.*]

II. MAJOR TRENDS

III. PROBLEMS, PROPOSED SOLUTIONS, ACTIONS TAKEN OR REQUIRED

Problems	**Proposed Solutions**	**Actions Taken/Required**

IV. NEW PROPOSALS (activities, staffing, funding, etc.)

V. LESSONS LEARNED

VI. EXPENDITURES VS. BUDGET

Budget Line Item	Total Budget Amt.	For the Reporting Period				Cumulative (over the life of the project)	
		Planned Expenditures	Actual Expenditures	Balance		Total Expenditures	Balance
	$	$	$	$		$	$
	$	$	$	$		$	$
	$	$	$	$		$	$
	$	$	$	$		$	$
	$	$	$	$		$	$
	$	$	$	$		$	$

[FR Doc. 03–18256 Filed 7–18–03; 8:45 am]
BILLING CODE 4510–28–C

DEPARTMENT OF LABOR

Office of the Secretary

Strengthening Labor Systems in Southern Africa

AGENCY: Bureau of International Labor Affairs, Department of Labor.

ACTION: Notice of availability of funds and solicitation for grant application (SGA 03–21).

SUMMARY: This notice contains all of the necessary information and forms needed to apply for grant funding. The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), announces the availability of funds to be granted by cooperative agreement (hereafter referred to as "grant") to one or more qualifying organizations. USDOL will award up to U.S. $4.2 million through one or more grants to an organization or organizations to improve labor law compliance in Botswana, Lesotho, Namibia, and Swaziland in order to facilitate their integration into the global economy. Proposals must be regional in scope and respond to the entire Statement of Work as contained in Section III, but applicants will not be penalized for lacking previous experience with regional projects. For example, organizations with experience in only one country will be judged based on the success they achieved in that country and their proposal for how they plan to work successfully throughout the rest of the targeted region. Partnerships between more than one organization are also eligible and encouraged, in particular with qualified, regionally-based organizations in order to build local capacity, although in such a case a lead organization must be identified.

DATES: The closing date for receipt of applications is Friday, August 22, 2003. Applications must be received by 4:45 p.m. (Eastern Time) at the address below.

ADDRESSES: Application forms will not be mailed. They are published as part of this **Federal Register** notice and in the **Federal Register**, which may be obtained from your nearest U.S. Government office or public library or online at *http://www.archives.gov/federal_register/index.html*. Applications must be delivered to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Attention: Lisa Harvey, Reference: SGA 03–21, Washington, DC 20210.

Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, etc., will be accepted; the applicant, however, bears the responsibility for timely submission. Applications that do not meet the conditions set forth in this notice will not be honored. No exceptions to the mailing and delivery requirements set forth in this notice will be granted.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey, e-mail address: *harvey.lisa@dol.gov*, tel: (202) 693–4570 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The expansion of global trade and investment and the improvement of working conditions and protection of basic worker rights are best understood as mutually reinforcing, and not mutually exclusive objectives. In today's environment of widespread market reforms and economic integration, efficient and fair labor markets are a prerequisite for economic growth, increasing living standards, and promoting employment in the U.S. As political developments, market reforms, and the transition to a global economy bring significant changes to national economies, individual labor market systems need to change accordingly to remain viable and to support their populations. In addition, the inability to manage the development of a relatively open market economy during periods of political and social transition impedes the development of political democracy, social cohesion, and equity.

USDOL/ILAB carries out a worldwide International Cooperation Program that helps address some of these difficulties by working to ensure that the greatest possible number of workers benefit from a more open world economy. The three major initiatives of the International Cooperation Program are:

Improving Economic Opportunity and Income Security for Workers (EOIS)—Under the EOIS initiative, USDOL works to strengthen developing countries" abilities to build and institutionalize social safety net policies and programs needed to improve working conditions and foster economic growth. Projects under this initiative aim to increase employment among targeted groups, improve workplace safety and health, and increase access to social insurance.

Protecting the Basic Rights of Workers (PBRW)—Under the PBRW initiative, USDOL works to implement the fundamental principles embodied in the International Labor Organization's (ILO) Declaration on Fundamental Principles and Rights at Work, specifically working towards strengthening the right to freedom of association and collective bargaining, eliminating forced or compulsory labor, and eliminating employment discrimination.

International HIV/AIDS Workplace-based Education Program (IHWEP)—Under the IHWEP initiative, USDOL works to reduce the rate of HIV/AIDS infection through workplace-based prevention and education programs and to improve the workplace environment for workers living with HIV/AIDS. The IHWEP program also works to build the capacity of the tripartite partners to address the long-term impact of HIV/AIDS on labor markets and economic development.

USDOL/ILAB manages its projects in partnership with stakeholders representing the government, employers, workers, and other organizations.

I. Authority

ILAB is authorized to award and administer this program by the Consolidated Appropriations Resolution, 2003, Public Law 108–7, 117 Stat. 11 (2003).

II. Application Process

A. Eligible Applicants

Any commercial, international, educational, or not-for-profit organization (including faith-based organizations) with experience effectively implementing projects in the relevant technical field(s) and working with foreign national government ministries, regional and local government entities, employers and employer organizations, workers and labor organizations, and non-governmental and community-based organizations is eligible for this grant(s). All applicants are requested to complete the Survey on Ensuring Equal Opportunity for Applicants (OMB No. 1225–0083) (see Appendix A). Labor ministries are the primary government entities that will be involved, but projects may also include ministries for education, social affairs, commerce, finance, and those working with special targeted populations such as youth, women, persons with disabilities or minorities. Partnerships of more than one organization are also eligible and encouraged, in particular with qualified regionally-based organizations to further build local capacity, although in such a case a lead organization must be identified. The capability of an applicant, partners, and co-applicants to perform necessary aspects of this solicitation will be determined under Section XI—Review and Selection of Applications for Award.

Please note that to be eligible, grant applicants classified under the Internal Revenue Code as a 501(c)(4) entity (see 26 U.S.C. 501(c)(4)), may not engage in lobbying activities. According to the Lobbying Disclosure Act of 1995, as amended by 2 U.S.C. 1611, an organization, as described in section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant, or loan.

B. Submission of Applications

One (1) blue ink-signed original, complete application in English plus two (2) copies of the application must be submitted to the U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Washington, DC 20210, no later than 4:45 p.m. Eastern Time on the established due date. To aid with review of applications, Applicants may elect to submit three (3) additional paper copies of the application (five total). Applicants who do not provide additional copies will not be penalized.

The application must consist of two (2) separate parts. Part I of the application must contain the Standard Form (SF) 424, "Application for Federal Assistance" and sections A–F of the Budget Information Form SF 424A (see Appendix A). These forms are also available at *http://www.whitehouse.gov/omb/grants*. Part II must contain a technical proposal that demonstrates capabilities in accordance with the statement of work (Section III) and the selection criteria (Section XI). The application should include the name, address, telephone and fax numbers, and e-mail address (if applicable) of a key contact person at the applicant's organization in case questions should arise.

To be considered responsive to this solicitation, the application must consist of the above-mentioned separate sections not to exceed 45 single-sided (8½" x 11" or A4), double-spaced, 12-point font, typed pages for which a response is submitted. Major sections and sub-sections of the application should be divided and clearly identified (*e.g.*, with tab dividers), and all pages shall be numbered. Applicants are required to propose that a project address ALL of the project objectives identified in the Statement of Work in Section III. Any applications that do not conform to these standards may be deemed non-responsive to this solicitation and may not be evaluated. The application must include a table of contents and an abstract summarizing the application in not more than two (2) pages. Standard forms, attachments, résumés, exhibits, letters of support, and the abstract are not counted towards the page limit. If an applicant exceeds the stated page limit, the review panel has the discretion to deduct 10 points.

Upon completion of negotiations, the individual signing the SF 424 on behalf of the applicant must be authorized to bind the applicant.

C. Acceptable Methods of Submission

The grant application package must be received at the designated place by the date and time specified, or it will not be considered. Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, etc., will be accepted; the applicant, however, bears the responsibility for timely submission. Applications that do not meet the conditions set forth in this notice will not be honored. No exceptions to the mailing, delivery, and hand-delivery conditions set forth in this notice will be granted.

Any application received at the Office of Procurement Services after 4:45 p.m. Eastern Time on Friday, August 22, 2003 will not be considered unless it is received before the award is made and:

- It was sent by registered or certified mail no later than the fifth calendar day before the closing date; or
- It was sent by U.S. Postal Service Express Mail/Next Day Service from the post office to the addressee no later than 5:00 p.m. at the place of mailing two (2) working days (excluding weekends and Federal holidays), prior to the closing date; or
- It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the U.S. Department of Labor at the address indicated.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail/Next Day Service from the post office to the addressee is the date entered by the Post Office receiving clerk on the "Express Mail/Next Day Service—Post Office to Addressee" label and the postmark on the envelope or wrapper on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at the U.S. Department of Labor is the date/time stamp of the Procurement Service Center on the application wrapper or other documentary evidence or receipt maintained by that office.

All applicants are advised that U.S. mail delivery in the Washington DC area has been slow and erratic due to concerns involving anthrax contamination. Applicants must take this into consideration when preparing to meet the application deadline. It is recommended that you confirm receipt of your application with your delivery service.

D. Funding Levels

Up to U.S. $4.2 million is available for this project, and USDOL reserves the right to award more than one grant. USDOL may award one or more grants to one organization or several, or to a partnership of more than one organization. The award of any sub-contract will be subject to USDOL approval (*see* Section IV).

E. Program Duration

The duration of the project funded by this SGA is up to four (4) years. The start date of program activities will be negotiated upon award of the grant, which will take place no later than September 30, 2003.

III. Statement of Work

USDOL is seeking qualified organizations that will implement, in partnership with USDOL, a regional project to increase labor law compliance in Botswana, Lesotho, Namibia, and Swaziland by strengthening the capacity of labor ministries to enforce national labor laws and increasing the knowledge and capacity of employers and workers to apply those laws.

Specific project objectives are identified in Section III.C.

Applicants should submit proposals that are regional in scope and demonstrate the organization's capabilities to implement a project in accordance with the Statement of Work and the selection criteria. Applicants, however, will not be penalized for lacking previous experience working on regional projects. For example, organizations with experience in only one country will be judged based on the success they achieve in that country and their proposal for working successfully throughout the rest of the targeted region. USDOL encourages applicants to be creative in proposing innovative and cost-effective interventions that will produce a demonstrable and sustainable impact.

Funds will be provided by grant to qualifying organizations. The grant will be actively managed by USDOL/ILAB to assure achievement of the stated project objectives. The award of any sub-contract will be subject to USDOL policies and approval (see Section IV).

Note: Selection of an organization as a grantee does not constitute approval of the grant application as submitted. Before the actual grant is awarded, USDOL may enter into negotiations about such items as program components, funding levels, and administrative systems in place to support grant implementation. If the negotiations do not result in an acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline to fund the application. Award is also contingent upon signature of a letter of agreement between USDOL and relevant ministries in target countries.

A. Background and Problem Statement

The governments of Botswana, Lesotho, Namibia, and Swaziland are in the process of strengthening national labor law administration and compliance, particularly those laws related to the fundamental principles embodied in the International Labor Organization's (ILO) Declaration on Fundamental Principles and Rights at Work. These basic labor protections are essential to promoting open economies, higher living standards, and a favorable climate for trade and investment. Each of these countries, however, faces several obstacles that could undermine these objectives. These obstacles include:

- The absence of comprehensive national strategies for improving labor law compliance.
- Inadequate policies, training and procedures for carrying out labor inspections.
- Weak institutional linkages between labor ministries, employers and workers/unions.
- Underutilization of data to strategically target inspections to the most problematic employers and sectors.
- Inefficient administrative systems for resolving labor cases in the courts, which lead to a burdensome backlog of cases.
- Lack of capacity of union officials to effectively represent workers and their interests in legal proceedings.
- Lack of awareness among workers of labor protections.

Assessments of the current status of labor rights and their implementation in southern Africa are available in a variety of sources, among them the annual U.S. Department of State *Report on Human Rights Practices*; the recommendations of the Committee of Experts of the International Labor Organization's (ILO) Committee on the Application of Conventions and Recommendations; the recommendations of the ILO's Committee on Freedom of Association; and reports of the International Confederation of Free Trade Unions (ICFTU).

B. Target Population

Applicants shall target labor ministries, employer organizations and/or individual employers, worker organizations and/or individual adult workers and youth of legal working age working in non-hazardous activities, and tripartite (government, employer, and worker) institutions in Botswana, Lesotho, Namibia, and Swaziland as the intended (direct and indirect) beneficiaries of project activities. USDOL will work with the Grantee(s) to determine specific target populations depending on an assessment of countries' political will, capacity to absorb resources, and potential to sustain project activities and project impact.

C. Objectives

The Grantee(s) will implement, in partnership with USDOL, a project designed to increase labor law compliance in Botswana, Lesotho, Namibia, and Swaziland by strengthening the capacity of labor ministries to enforce national labor laws and increasing the knowledge and capacity of employers and workers to apply those laws. Contributing to the achievement of these goals are three project objectives ("immediate objectives"):

Immediate Objective 1: Increased knowledge among workers and employers of national labor laws and of the available means to access labor ministry services to enforce the rights established by those laws, in particular:

- The right to freedom of association;
- The right to organize and bargain collectively;
- The prohibition on the use of any form of forced or compulsory labor;
- Labor protections for children and young people, including a minimum age for the employment of children and the prohibition and elimination of the worst forms of child labor;
- Legally mandated conditions of work with respect to minimum wages, hours of work, and occupational safety and health; and
- The legal processes for protecting and enforcing basic worker rights, from complaint intake to resolution.

Immediate Objective 2: Strengthen labor ministry inspection systems to effectively enforce national labor laws.

Immediate Objective 3: Create new or strengthen existing dispute resolution mechanisms within the labor ministries (*e.g.*, mediation, arbitration, alternative dispute resolution)

Relationship to USDOL Program Strategy: By helping to improve labor law compliance in Botswana, Lesotho, Namibia, and Swaziland, the proposed project supports achievement of USDOL's GPRA goal (3.3b), "to improve living standards and conditions of work for workers in developing and transition countries."

D. Type of Work To Be Performed/ Activities

Applicants are responsible for developing a strategy for successfully achieving the above-stated objectives and addressing the problem(s) identified in the Background and Problem Statement, developing and implementing the major tasks and activities to be accomplished as part of that strategy, tracking and reporting on progress in achieving the stated objectives, and providing any necessary services. USDOL will work with the Grantee(s) to determine the scope of country projects based on an assessment of countries' political will, capacity to absorb resources, and potential to sustain project activities and project impact.

When developing the strategy and activities for each project's objective, the Applicant should take into consideration the need to:

- Work in close collaboration with complementary, on-going projects in the region, such as the ILO *Project to Advance Social Partnership in Promoting Labour Peace in Southern Africa* and the USDOL-funded ILO project, *Strengthening Labour Administration in Southern Africa.*
- Work closely with ministries of labor, employer associations, and trade unions of the project countries to reach consensus on the project strategy.
- Build upon existing tripartite (*i.e.*, government, employer, and worker) institutions and mechanisms that are critical to dialogue among key sectors of civil society and in developing national positions regarding all aspects of labor policy.
- Develop regional activities to facilitate cooperation among neighboring states regarding labor-related matters, exchange information on best practices, and reinforce on-going efforts to harmonize labor standards within Southern Africa.

E. Expected Outcomes/Project Outputs

By the end of the grant period, the project will have increased labor law compliance in the project countries through: (a) A greater knowledge of national laws, legal processes and their application among employers and workers, (b) the strengthened capacity of labor ministries to effectively enforce labor laws, and (c) the implementation of more effective systems to resolve industrial disputes

Applicants are expected to describe in their technical proposal: (a) The strategy that they will adopt to achieve these outcomes within the stated timeframe and available USDOL funds; and (b) the indicators and system of data collection they will use to measure the achievement of these outcomes (*i.e.*, increased labor law compliance, greater knowledge of national labor laws and their application, and more effective industrial dispute resolution systems), as well as all key outputs of the project.

F. Conditions Precedent

Prior to providing any technical assistance to any project country, the level of political commitment of each government to increase labor law compliance must be demonstrated in a clear and measurable way. Past experience has demonstrated that without the political will of the benefiting institutions to provide the necessary resources and support to effect change, no international project or form of assistance will achieve its stated objectives. Accordingly, applicants are requested to provide in their technical proposal a methodology for assessing the political will of the governments of Botswana, Lesotho, Namibia and Swaziland to increase labor law compliance. Such information will be utilized by USDOL, in consultation with the Grantee(s), for deciding how to allocate project assistance.

G. Deliverables

Following the award of the grant, the Grantee(s) shall collaborate with USDOL/ILAB to:

- Develop a Project Document (including a project budget) that will set the technical parameters and provide guidance to the project. It should include all information and be prepared according to the standardized format outlined by USDOL. While the Applicant's original proposal will serve as the basis of the Project Document, in every case USDOL has found it advantageous to visit the field and reach consensus on the project strategy with host country counterparts in order to further inform the project design. USDOL must receive a draft of the Project Document 45 days after returning from travel to the relevant area(s). The Project Document must be finalized no later than 30 days after receipt of USDOL comments on the draft.
- Establish a Workplan identifying major project activities, deadlines for their completion, and person(s) responsible for completing these activities (within 60 days after the Project Document is finalized).
- Set project indicators, including indicators that support ILAB's Government Performance and Results Act (GPRA) goal: "Improve living standards and conditions of work for workers in developing and transition countries." (within 90 days of finalizing the Project Document).
- Create a Performance Monitoring Plan (PMP) to establish the data needed to measure achievement of project indicators and the methods for collection and reporting. It should include all information and be prepared according to the standardized format outlined by USDOL (within 90 days of finalizing the Project Document).

The Grantee(s) must submit copies of all required documents to USDOL by the specified due dates. Other documents that may be produced are to be submitted by mutually agreed-upon deadlines. The Project Document, Workplan, project indicators, PMP, and data collection system are subject to final approval by the Grant Officer's Technical Representative (GOTR) responsible for monitoring the grant.

H. Special Program Requirements

1.USDOL Responsibilities

Following the award of the grant(s), USDOL shall:

- Provide the Grantee(s) with programmatic support to help ensure effective implementation of the project, including training and consultation in USDOL/ILAB management, monitoring, and evaluation systems and standard operating procedures.
- Provide advice and consultation to Grantee(s) on specific program criteria.
- If, based upon the responses to this solicitation and subsequent to the award, USDOL determines that it is necessary, travel to the field with the Grantee(s) and other technical experts for a project design mission before finalizing the project design and the Project Document. USDOL will procure the services of technical experts if it determines that such expertise is necessary for the project design mission.
- Fund at least two project evaluations—a mid-term evaluation at approximately the midpoint of the grant period and a final evaluation approximately two months prior to the end of the grant period. USDOL/ILAB—in consultation with the Grantee(s)—will be responsible for drafting and finalizing all evaluation Terms of Reference (TOR), procuring the services of an independent evaluator (who will write the evaluation report), and providing at least one representative from USDOL/ILAB to participate on the evaluation team, when appropriate. USDOL/ILAB may choose to perform additional evaluations as appropriate.
- Have the right, at all reasonable times, to review all documents pertaining to the project, participate on field missions (including monitoring and evaluation missions), and to discuss administrative and technical issues pertaining to the project with the Grantee.

2. Grantee Responsibilities

Following the award of the grant(s), the Grantee(s) shall:

- Establish the institutional and management systems and means necessary to provide and monitor the delivery of services and distribute wages and material effectively.
- If USDOL determines that it is necessary, travel to the field with USDOL and other technical experts for a project design mission before finalizing the project design and the Project Document. The Grantee(s) shall bear the financial costs for having its representative(s) participate on the project design mission.
- Assist in project evaluations, including reviewing and providing comments on the evaluation Terms of Reference (TORs) drafted by USDOL and evaluation reports written by the lead evaluator. If invited to participate on an evaluation mission by USDOL, the Grantee(s) shall bear the financial

costs for having a representative of the Grantee(s) participate on an evaluation team (*e.g.*, travel, *per diem*).

• Submit trip reports to USDOL within fourteen (14) calendar days of project-related travel. If the implementing partner travels with a USDOL staff member, the implementing organization will submit a draft trip report to the staff member within fourteen (14) calendar days of project-related travel for comments. The format for the trip report will be provided by USDOL.

• Inform USDOL/ILAB at least one (1) month prior to scheduling any major public events or ceremonies regarding the project.

• Submit to USDOL all media-related and educational materials developed by it or its sub-contractors under this Grant(s), including relevant press releases, for use in this project before they are reproduced, published, or used. The Grantee(s) must consult with USDOL to ensure that materials are compatible with USDOL materials relating to its International Cooperation Program. USDOL considers brochures, pamphlets, videotapes, slide-tape shows, curricula, and any other training materials used in the project to be educational materials. USDOL will review materials for technical accuracy. USDOL will also review training curricula and purchased training materials for accuracy before they are used. The Grantee(s) must obtain prior approval from the Grant Officer for all materials developed or purchased under this grant. All materials produced by Grantee(s) must be provided to USDOL in digital format for possible publication.

IV. Key Personnel and Sub-Contractors

USDOL considers the following job position(s) to be "key personnel" in these projects:

• Project Director (at regional and country levels)

• Country Representatives (staff representing the Grantee in a specific country)

• Consultants hired to work full-time for at least three months.

All key personnel should be fluent in spoken and written English.

USDOL expects all key personnel to work full-time on the project. All key personnel must be fluent in both written and spoken English. The Grant Officer must approve candidates for all key personnel positions. USDOL's Grant Officer's Technical Representative (GOTR) shall review candidates' qualifications and provide recommendations to the Grant Officer regarding the selection of candidates for all key personnel positions. The Grantee(s) shall submit résumés, *curricula vitae*, and other relevant information to the GOTR and receive approval from the Grant Officer before extending an offer of employment and before the nominated individual conducts any activities.

Key personnel may only be changed with the approval of the Grant Officer. The Grantee(s) shall not substitute or replace key personnel unless new personnel are at least equal in qualifications to those personnel who are replaced. If a need to find new key personnel arises, the Grantee(s) shall notify the GOTR as soon as the need becomes known. If the Grant Officer is unable to approve the personnel change, he/she reserves the right to terminate the grant.

Organizations may apply for funding in partnership with other organizations, but in such a case, a lead organization must be identified. Use of sub-contractors is subject to Federal laws and regulations, including OMB circulars requiring free and open competition for procurement transactions.

The Grant Officer must approve all sub-contractors. USDOL's Grant Officer's Technical Representative (GOTR) shall review candidates' qualifications and provide recommendations to the Grant Officer regarding the selection of candidates for all sub-contractors. The lead organization shall submit a list of previous projects implemented by the proposed sub-contractor, along with a description of qualifications, résumés, *curricula vitae*, and other relevant information to the GOTR and receive approval from the Grant Officer before extending a sub-contract. The lead organization shall not substitute or replace sub-contractors unless new sub-contractors are at least equal in qualifications to those that are replaced. Sub-contractors may only be changed with the approval of the Grant Officer. If a need to find new sub-contractors arises, the lead organization shall notify the GOTR as soon as the need becomes known.

Note: Except as specifically provided, USDOL/ILAB acceptance of a proposal and an award of federal funds to sponsor any program(s) does not provide a waiver of any grant requirement and/or procedures. For example, if an application identifies a specific sub-contractor to provide the services, the USDOL/ILAB award does not provide the justification or basis to sole-source the procurement, *i.e.*, to avoid competition.

V. Reporting Requirements

All reports (see Appendix B) are due no later than 30 days after the end of a fiscal quarter and shall be submitted in English. USDOL/ILAB and the Grantee(s) should work together to resolve any issues within 30 days of receipt of a report.

A. Financial Reports

The Grantee(s) shall submit financial reports on a quarterly basis. The first reporting period shall end on the last day of the fiscal quarter (December 31, March 31, June 30, or September 30) during which the grant was signed.

The Grantee(s) shall use Standard Form (SF) 269A, *Financial Status Report*, to report the status of the funds, at the project level, during the grant period. A final SF269A shall be submitted no later than 90 days following completion of the grant period.

If the Grantee(s) uses the U.S. Department of Health and Human Services Payment Management System (HHS PMS), they shall also send USDOL copies of the PSC 272 that it submits to HHS, on the same schedule. Otherwise, the Grantee(s) shall submit Standard Form (SF) 272, *Federal Cash Transactions Report*, on the same schedule as the SF269A.

Financial reports are due within 30 days of the end of the reporting period (*i.e.*, by April 30, July 30, October 30, and January 30).

B. Technical Reporting Requirements

After signing the agreement, the Grantee(s) shall submit progress reports to USDOL/ILAB at the end of each fiscal quarter. The first reporting period shall end on the last day of the fiscal quarter (December 31, March 31, June 30, or September 30) during which the Grant was signed. Between reporting dates, the Grantee(s) shall also immediately inform USDOL/ILAB of significant developments and/or problems affecting the organization's ability to accomplish work.

The Grantee(s) shall submit two types of progress reports according to the standardized format used by USDOL/ILAB:

1. Status Reports

Status Reports compare actual and planned activities during the reporting period, which consists of one quarter (January–March and July–September). Its purpose is to provide an update on the Workplan, problems/solutions, major achievements, or modifications. The Status Report should be brief and include an attached project Workplan indicating the status of Workplan activities: "completed," "on schedule," "delayed," "cancelled." The body of the report should provide a summary explanation of any deviation from the Workplan and recommended actions.

Status Reports are due within 30 days of the end of the reporting period (*i.e.*, by April 30 and October 30).

2. Technical Progress Reports

Technical Progress Reports provide information on how the project is progressing in achieving its stated objectives. Technical Progress Reports will be based on the project's stated objectives, indicators, and Performance Monitoring Plan (PMP) and will provide both quantitative and qualitative information and a narrative assessment of performance for the preceding six-month period (January–June and July–December). Data measuring achievement of the project's indicators will be attached to the narrative, which will provide a composite overview of progress, trends, problems, new proposals, lessons learned, and expenditures. The body of the Technical Progress Report should be 2–3 pages in length, stressing major points related to strategy.

Technical Progress Reports are due within 30 days of the end of the reporting period (*i.e.*, by July 30 and January 30).

C. Instructions for Submitting Reports

All reports shall cite the assigned grant number. The Grantee(s) shall submit one hard copy of all financial reports to each of the following persons:

Lawrence Kuss, Grant Officer, Procurement Services Center, U.S. Department of Labor, 200 Constitution Ave., NW., Room N–5416, Washington, DC 20210.

Patrick White, Grant Officer's Technical Representative, Office of Foreign Relations, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–5303, Washington, DC 20210.

Gene Contee, Accountant, Financial Management Services Center, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–5526, Washington, DC 20210.

The Grantee(s) shall submit one hard copy of all technical reports to each of the following persons:

Lawrence Kuss, Grant Officer, Procurement Services Center, U.S. Department of Labor, 200 Constitution Ave., NW., Room N–5416, Washington, DC 20210.

Patrick White, Grant Officer's Technical Representative, Office of Foreign Relations, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–5303, Washington, DC 20210.

VI. Travel Procedures

The Grantee(s) shall submit a quarterly travel plan to the GOTR. The plan shall include the following information for all individuals traveling for the Grantee(s) to support activities covered by this grant:

• Name of the person(s) who will be traveling

• Destination(s)

• Dates of travel

• Purpose of travel—what they will be doing and why

The Grantee(s) should submit the quarterly travel plan no later than four weeks prior to the start of each subsequent fiscal quarter (*e.g.*, By May 31, the GOTR should have travel plans for all Grantee travel occurring July 1 through September 30). For a trip beginning later than four weeks from the time the plan is submitted, dates should reflect a "best guess" (rather than simply listing "To Be Determined"). The dates should, however, be finalized no later than 4 weeks prior to departure.

All travelers should submit finalized travel details to the GOTR no later than 4 weeks prior to the desired departure date. If any major holiday occurs during those 4 weeks, travelers should submit finalized details earlier.

Individuals are not permitted to travel until USDOL/ILAB has received country clearance from the State Department (via e-mail or cable) or has received written authorization (including by e-mail) from the GOTR. This also applies to expatriates living abroad who go on personal or home leave: Although they do not need clearance to enter the U.S., they do need clearance to re-enter the country in which they are stationed.

While travelers may cancel trips at any time, USDOL/ILAB will not permit any amendments to a clearance cable (*e.g.*, for changes in dates of travel, or changes in the identified traveler) less than four weeks prior to the desired date of departure, except in dire emergencies, as determined by the GOTR.

VII. Acknowledgment of USDOL Funding

A. Acknowledgement on Printed Materials

In all circumstances, the following shall be displayed on printed materials: "Preparation of this item was funded by the United States Department of Labor under Grant No. [insert the appropriate grant number]."

When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all Grantees receiving Federal funds must clearly state:

• The percentage of the total costs of the program or project, which will be financed with Federal money;

• The dollar amount of Federal funds for the project or program; and

• The percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

B. Use of the USDOL Logo

In consultation with ILAB, the Grantee(s) will acknowledge USDOL's role in one of the following ways:

• The USDOL logo may be applied to USDOL-funded material prepared for world-wide distribution, including posters, videos, pamphlets, research documents, national survey results, impact evaluations, best practice reports, and other publications of global interest. The Grantee(s) must consult with USDOL on whether the logo may be used on any such items prior to final draft or final preparation for distribution. In no event shall the USDOL logo be placed on any item until USDOL has given the Grantee written permission to use the logo on the item.

• All documents should include the following notice: "This document does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government."

VIII. Administrative Requirements

A. General

Grantees, which may include faith-based organizations, will be subject to applicable Federal laws (including provisions of appropriations law) and the applicable Office of Management and Budget (OMB) Circulars. Determinations of allowable costs will be made in accordance with the applicable Federal cost principles, *e.g.*, Non-Profit Organizations—OMB Circular A–122. The grant(s) awarded under this SGA will be subject to the following administrative standards and provisions, if applicable:

• 29 CFR Part 36—Federal Standards for Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

• 29 CFR Part 93—New Restrictions on Lobbying.

• 29 CFR Part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations, and with Commercial Organizations, Foreign

Governments, Organizations Under the Jurisdiction of Foreign Governments and International Organizations.

• 29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

• 29 CFR Part 98—Federal Standards for Government wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

• 29 CRF Part 99—Federal Standards for Audits of States, Local Governments, and Non-Profit Organizations.

B. Sub-Contracts

Sub-contracts must be awarded in accordance with 29 CFR 95.40–48. In compliance with Executive Orders 12876 as amended, 13230, 12928, and 13021 as amended, the Grantee(s) is strongly encouraged to provide subcontracting opportunities to Historically Black Colleges and Universities, Hispanic-Serving Institutions and Tribal Colleges and Universities.

C. Encumbrance of Grant Funds

Grant funds may not be encumbered/obligated by the Grantee(s) before or after the period of performance. Encumbrances/obligations outstanding as of the end of the grant period may be liquidated (paid out) after the end of the grant period. Such encumbrances/obligations may involve only commitments for which a need existed during the grant period and which are supported by approved contracts, purchase orders, requisitions, invoices, bills, or other evidence of liability consistent with the Grantee's purchasing procedures and incurred within the grant period. All encumbrances/obligations incurred during the grant period must be liquidated within 90 days after the end of the grant period, if practicable.

D. Site Visits

USDOL, through its authorized representatives, has the right, at all reasonable times, to make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. If USDOL makes any site visit on the premises of the Grantee or a sub-contractor(s) under this grant, the Grantee must provide and must require its sub-contractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All site visits and evaluations will be performed so as not to unduly delay the work.

IX. Grant Closeout Procedures

A. Definitions

1. Grant Closeout

The closeout of a grant is the process by which a Federal grantor agency determines that all applicable administrative actions and all required work of the grant have been completed by the grantee and the grantor.

2. Date of Completion

The date when all work under a grant is completed or the date in the grant award document, or any supplement or amendment thereto, on which Federal assistance ends, whichever comes first.

3. Disallowed Costs

Disallowed costs are those charges to a grant that the grantor agency or its representative determines to not be allowed in accordance with the applicable Federal Cost Principles or other conditions contained in the grant.

B. Close-Out Procedures

Grants shall be closed out in accordance with the following procedures:

• Upon request, the Grantor shall make prompt payments to a Grantee for allowable reimbursable costs under the grant being closed out.

• The Grantee shall immediately refund to the Grantor any balance of unobligated (unencumbered) cash advanced to the Grantee that is not authorized for retention by the Grantee for use on other grants.

• Within 90 days after completion of the grant, the Grantee shall submit all financial, performance and other reports required by the Grant Officer to close out the grant. The Grant Officer may authorize extensions when requested by the grantee.

• The Grant Officer shall make a settlement for any upward or downward adjustments to the Federal share of costs after these reports are received.

• In the case of grants that include matching/in-kind contributions, the Grantee is legally required to provide the total amount of matching/in-kind contributions indicated on the face sheet of the agreement, as amended. Failure to provide this level of matching/in-kind contribution shall result in the disallowance of all or part of otherwise allowable Federal share costs, equal to the total matching/in-kind share committed to, less the share actually provided.

• The Grantee shall account for any property acquired with grant funds, or received from the Government in accordance with the provisions of 29 CFR Part 95.

• In the event that a final audit has not been performed prior to the closeout of the grant, the Grantor shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

X. Measuring the Performance of the Grantee

The performance of the Grantee will be assessed based on the timely completion of one or more deliverables that will be due to USDOL at the end of each quarter of the Grant. These deliverables should reflect the outcomes of the project that are expected to help achieve the project's objective(s). Applicants are requested to include in their proposal a project implementation plan and approach to monitor the performance of the project throughout the period of the grant. The implementation plan is to consist of a quarterly schedule of activities and list of deliverables that would be completed by the contractor each quarter. The defined list and schedule of deliverables is viewed by USDOL as a key component of the technical proposal.

XI. Review and Selection of Applications for Award

USDOL will screen all applications to determine whether all required elements are present and clearly identifiable. A Technical Panel will objectively rate each complete application against the criteria described in this announcement. The panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to select one or more Grantees on the basis of the initial proposal submission, or the Grant Officer may establish a competitive or technically acceptable range for the purpose of selecting qualified applicants. If deemed appropriate, following the Grant Officer's call for the preparation and receipt of final revisions of proposals, the evaluation process described above will be repeated to consider such revisions. The Grant Officer will make a final selection determination based on what is most advantageous to the Government, considering factors such as panel findings, geographic presence of the applicants, and the best value to the government, cost, and other factors. The Grant Officer's determination for award under this SGA is final.

A. The Review Process

The criteria below will serve as the basis upon which submitted applications will be evaluated. Technical aspects of the application will constitute 100 points of the total evaluation. Up to five (5) additional points will be given for leveraging non-Federal resources.

In order to assist USDOL in assessing the efficient and effective allocation of project funding, the Applicant shall submit a project budget that clearly details the costs for performing all of the requirements presented in this solicitation, including producing all deliverables, reporting on implementation and progress, and monitoring progress. Applicants are reminded to budget for compliance with the administrative requirements set forth (copies of all regulations are referenced in this SGA are available at no cost, on-line, at *http://www.dol.gov*). This includes the costs of performing activities such as travel to Washington, DC to meet with USDOL/ILAB, financial audit, project closeout, document preparation (*e.g.*, progress reports, project document), and ensuring compliance with procurement and property standards. The Project Budget should identify administrative costs separately from programmatic costs. In addition to the costs identified previously, administrative costs include indirect costs from the costs pool and the cost of activities, materials (*e.g.*, project car), and personnel (*e.g.*, administrative assistants, office drivers) that support the management and administration of the project but do not provide direct services to project beneficiaries.

The technical panel will review grant applicants against the criteria listed below on the basis of 100 points.

B. Technical Approach—45 points

• The extent to which the application sets forth a clear and supportable course of action to improve labor law compliance in Botswana, Lesotho, Namibia, and Swaziland by strengthening the capacity of labor ministries to enforce national labor laws and increasing the knowledge and capacity of employers and workers to apply those laws, including through labor dispute resolution. The Applicant will be evaluated on the clear identification and description of the specific strategy(s) the Applicant proposes to use, its effectiveness, and attainability of project objectives by the end of the grant period. (10 points)

• Demonstrated familiarity with the major issues related to the components being addressed (*e.g.*, general project context, key problems and/or needs in the relevant country/area, the specific problem(s) and/or need(s) that will be addressed by this project(s), and relevant constraints). The Applicant will be evaluated on the thorough and accurate assessment of the implementing environment and the problems that exist and clear identification of the specific problem(s) the Applicant proposes to address. (5 points)

• A monitoring and evaluation plan for measuring project performance that includes challenging but realistic targets and measurable, verifiable project indicators that measure achievement of project objectives and performance in project implementation. (5 points)

• A description of the applicant's approach to expending funds in the most cost-effective method possible in order to achieve the project objectives. The applicant should refer to its submitted budget in explaining how the budgeted funds will be utilized cost-effectively. In order to assist USDOL in assessing the efficient and effective allocation of project funding, the Applicant shall submit, at minimum, supporting budget information indicating how the Applicant arrived at estimating the costs of the following items/activities: Salaries and benefits for all key personnel, 2–3 key activities proposed by the Applicant under its project design, and closing the project and meeting all USDOL close-out requirements, as stated in this SGA. The Applicant will be evaluated based on the clear identification of all project costs and efficient and effective allocation of funding. The project budget should clearly demonstrate that the total amount and distribution of funds is sufficient to cover the cost of all major project activities identified by the Applicant in its proposal, management of the project, monitoring and evaluation, and project close-out and that the distribution of funds maximizes the provision of goods and/or services to project beneficiaries. This section will be evaluated in accordance with applicable Federal laws and regulations. The budget must comply with Federal cost principles (which can be found in the applicable OMB Circulars) and with ILAB budget requirements contained in the application instructions in Section III of this solicitation. (10 points)

• Use of existing expertise from the recipient country in order to reduce costs and further develop local capacity. (5 points)

• Inclusion of a sustainability strategy that ensures that project improvements will continue after the project ends. (5 points)

• Submission of a schedule of quarterly deliverables that will serve to determine the level of performance of the contractor. The identification of deliverables that are presented in the proposal should be objective, verifiable, and demonstrate progress in achieving project objectives. (5 points)

C. Institutional Qualifications/Past Performance—25 points

• Prior experience in designing and implementing activities in developing countries, especially in Southern Africa, related to strategic planning, outreach and education, capacity building, labor law enforcement, and labor dispute resolution. The application shall include information as an attachment (which will not count towards the page limit) regarding previous grants, contracts, or grants, including (a) the organization for which the work was done, (b) a contact person in that organization with his/her current phone number, (c) the dollar value of the grant, contract, or Grant for the project(s), (d) the time frame and professional effort, either directly by key personnel, by consultants, or under contractual arrangements involved in the project(s), (e) a brief summary of the work performed; and (f) a brief summary of accomplishments. (10 points)

• Clear organizational structure and management plan, illustrating experience with carrying out participatory development activities with organizations (*i.e.*, government ministries, employer organizations, worker organizations, community organizations) and maintaining positive and effective relationships with partners. (10 points)

• Demonstration of strong financial management and internal control systems. (5 points)

D. Experience of Personnel—30 points

• Key personnel with prior experience directly related to the proposed work, including technical and language qualifications, professional competence, relevant academic background, and demonstrated experience. Applicants shall submit a résumé for each key personnel proposed, which includes the individual's current employment status and previous work experience, including position title, duties performed, dates in position, employing organizations, and educational background. Duties must be clearly defined in terms of role performed (*i.e.*, manager, team leader, consultant). Résumés shall be included as attachments, which do not count against the page limitation. (20 points)

• Clear management plan demonstrating the staffing requirements and other resources needed to implement the approach. (10 points)

E. Leveraging of Grant Funding—5 points

USDOL will award up to five (5) additional rating points to applications that include non-Federal resources that significantly expand the size and scope of project-related activities. These programs will not be financed by the project, but can complement and enhance project objectives. To be eligible for the additional points, the applicant must list the resource(s), the nature, and possible activities anticipated and any partnerships, linkages, or coordination of activities, cooperative funding, etc.

F. Suggested Outline for Technical Proposal

This outline is provided as a guideline. Organizations may elect a format of their choosing, subject to the requirements of this announcement.

1. Executive Summary
2. Program Description
   - Goal and Objectives
   - Background
   - Technical Approach and Implementation Timetable (Proposed Intervention)
   - Experience of Personnel
   - Identification of Deliverables and Quarterly Schedule of their submission to determine contractor performance
   - Staffing Pattern and Project Management Organizational Chart
   - Leveraging of non-Federal Resources
3. Attachments:
   - Summaries of other relevant organizational experiences
   - Résumés of key personnel and signed letters of commitment to the project

Successful proposals submitted in response to this SGA will be incorporated into the text of the grant with the selected applicant(s).

Signed at Washington, DC, this 14th day of July 2003.

Lawrence J. Kuss,

Grant Officer.

BILLING CODE 4510-28-P

APPENDIX A

Standard Government Forms

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

	2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application: ☐ Construction ☐ Non-Construction; Preapplication: ☐ Construction ☐ Non-Construction	**3. DATE RECEIVED BY STATE**	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code)*:	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*: ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*: _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ 0.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$ 0.00
2.						0.00
3.						0.00
4.						0.00
5. Totals		$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$ 0.00
b. Fringe Benefits					0.00
c. Travel					0.00
d. Equipment					0.00
e. Supplies					0.00
f. Contractual					0.00
g. Construction					0.00
h. Other					0.00
i. Total Direct Charges *(sum of 6a-6h)*	0.00	0.00	0.00	0.00	0.00
j. Indirect Charges					0.00
k. TOTALS *(sum of 6i and 6j)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00
7. Program Income	$	$	$	$	$ 0.00

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Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$ 0.00
9.				0.00
10.				0.00
11.				0.00
12. TOTAL *(sum of lines 8-11)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ 0.00	$	$	$	$
14. Non-Federal	0.00				
15. TOTAL *(sum of lines 13 and 14)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION F - OTHER BUDGET INFORMATION

21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

Authorized for Local Reproduction

Standard Form 424A (Rev. 7-97) Page 2

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

SURVEY ON ENSURING EQUAL OPPORTUNITY FOR APPLICANTS

Federal Agency Use Only

OMB No. 1225-0083 Exp. 02/28/2006

NOTE: Please place survey form directly behind the Standard Application for Federal Assistance (SF 424) fact sheet.

Purpose: This form is for applicants that are private nonprofit organizations (not including private universities). Please complete it to assist the federal government in ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for federal funding. Information provided on this form will not be considered in any way in making funding decisions and will not be included in the federal grants database.

1. Does the applicant have 501(c)(3) status?

   ❑ Yes ❑ No

2. How many full-time equivalent employees does the applicant have? *(Check only one box).*

   ❑ 3 or Fewer ❑ 15-50
   ❑ 4-5 ❑ 51-100
   ❑ 6-14 ❑ over 100

3. What is the size of the applicant's annual budget? *(Check only one box.)*

   ❑ Less Than $150,000
   ❑ $150,000 - $299,999
   ❑ $300,000 - $499,999
   ❑ $500,000 - $999,999
   ❑ $1,000,000 - $4,999,999
   ❑ $5,000,000 or more

4. Is the applicant a faith-based/religious organization?

   ❑ Yes ❑ No

5. Is the applicant a non-religious community-based organization?

   ❑ Yes ❑ No

6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?

   ❑ Yes ❑ No

7. Has the applicant ever received a government grant or contract (Federal, State, or local)?

   ❑ Yes ❑ No

8. Is the applicant a local affiliate of a national organization?

   ❑ Yes ❑ No

Survey Instructions on Ensuring Equal Opportunity for Applicants

1. 501(c)(3) status is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1225-0083. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** Departmental Clearance Officer, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-1301, Washington, D.C. 20210. **If you have comments or concerns regarding the status of your individual submission of this form, write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

APPENDIX B

Progress Report Forms

U.S. Department of Labor
Bureau of International Labor Affairs/Office of Foreign Relations

STATUS REPORT FORMAT

PROJECT #:	**COUNTRY/PROJECT NAME:**	
FUNDING:	**PROJECT DURATION:**	**EVALUATION DATES:** Mid-term: Final:
DATE SUBMITTED:	**REPORTING PERIOD:**	**CONTACT:**
PROJECT OBJECTIVES: Development Objective: Immediate Objective(s): Sub Immediate Objective(s):		

I. WOKRPLAN STATUS

(Attach Workplan indicating status of components – "completed," "on schedule," "delayed," "Cancelled" as an annex.)

[Summarize any Workplan variance and recommended actions]

II. PROBLEMS, PROPOSED SOLUTIONS, ACTIONS TAKEN OR REQUIRED

Problems	Proposed Solutions	Actions Taken/Required

III. NEW PROPOSALS (activities, staffing, funding, etc.)

U.S. Department of Labor
Bureau of International Labor Affairs/Office of Foreign Relations

TECHNICAL PROGRESS REPORT FORMAT

PROJECT #:	**COUNTRY/PROJECT NAME:**	
FUNDING:	**PROJECT DURATION:**	**EVALUATION DATES:** Mid-term: Final:
DATE SUBMITTED:	**REPORTING PERIOD:**	**CONTACT:**
PROJECT OBJECTIVES: Development Objective: Immediate Objective(s): Sub Immediate Objective(s):		

I. OVERALL PROGRESS

[*Attach Data Tracking Table and any reporting against the Performance Monitoring Plan (PMP) as an annex.*]

II. MAJOR TRENDS

III. PROBLEMS, PROPOSED SOLUTIONS, ACTIONS TAKEN OR REQUIRED

Problems	Proposed Solutions	Actions Taken/Required

IV. NEW PROPOSALS (activities, staffing, funding, etc.)

V. LESSONS LEARNED

VI. EXPENDITURES VS. BUDGET

Budget Line Item	Total Budget Amt.	For the Reporting Period				Cumulative (over the life of the project)			
		Planned Expenditures	Actual Expenditures	Balance		Total Expenditures		Balance	
	$	$	$	$		$		$	
	$	$	$	$		$		$	
	$	$	$	$		$		$	
	$	$	$	$		$		$	
	$	$	$	$		$		$	
	$	$	$	$		$		$	

[FR Doc. 03–18258 Filed 7–18–03; 8:45 am]
BILLING CODE 4510–28–C

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before September 4, 2003. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–837–3698 or by e-mail to *records.mgt@nara.gov*. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–3120. e-mail: *records.mgt@nara.gov*.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Army, Agency-wide (N1–AU–03–12, 4 items, 2 temporary items). Records relating to reporting terrorist threats, including reports, report updates, and dissemination data. Also included are electronic copies of records created using electronic mail and word processing that relate to terrorist threats, terrorist attacks, and anti-terrorist activities. This schedule authorizes the agency to apply the proposed disposition instructions to records regardless of medium. Recordkeeping copies of files relating to anti-terrorism programs and terrorist incidents and attacks are proposed for permanent retention.

2. Department of Commerce, Office of the Secretary (N1–40–03–2, 22 items, 18 temporary items). Records of the Office of the General Counsel, including attorney's working files, litigation case files, Freedom of Information Act files, administrative correspondence, contract review case files, legislation case files, and records relating to inventions. Also included are electronic versions of files proposed for disposal as well as electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such files as legal program subject correspondence, legislative histories, and confirmation hearing records.

3. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–02–4, 10 items, 7 temporary items). Records of the Office of Coastal Resource Management, including such files as supporting materials associated with coastal zone management program documents and coastal non-point pollution control program files, records relating to consistency reviews of Federal regulations, and program administrative guidance. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such files as coastal zone management program documents, program change files, and coastal non-point pollution control program files.

4. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–02–5, 18 items, 14 temporary items). Data, documentation, inputs, and outputs associated with the Specimen Database and the Program Funding Database, inputs and outputs associated with the National Benthic Infaunal Database and the Estuarine Living Marine Resource Database, grants working files, and electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are data and system documentation associated with the National Benthic Infaunal Database and the Estuarine Living Marine Resource Database.

5. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–03–8, 6 items, 5 temporary items). Records of the damage assessment and restoration program relating to actions taken to support or implement natural resource restoration activities. Included are copies of restoration post-settlement records, such as grants, contracts, reports, and permit clearances in textual, photographic, and microfilm formats. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention is the official record set of post-settlement administrative records, which includes records documenting determinations made regarding the planning, implementation, and monitoring of individual restoration projects.

6. Department of Defense, National Imagery and Mapping Agency (N1–537–03–16, 2 items, 2 temporary items). Records management surveys and office file plans. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

7. Department of Health and Human Services, Office of the Secretary (N1–468–03–1, 12 items, 6 temporary items). Records of the Secretary's Advisory Committee on Regulatory Reform, including such records as notes on logistical planning for meetings and hearings, subcommittee background information and routine communications, and files relating to the preparation of the committee's final report. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of committee organization and formation documents, meeting agendas, transcripts, testimony, briefings, recommendations, public comments, official publications, notices, and the committee's final report to the Secretary.

8. Environmental Protection Agency, Office of Prevention, Pesticides, and Toxic Substances (N1–412–01–10, 3 items, 3 temporary items). Toxic Substances Control Act tracking and control records pertaining to the handling and use of confidential business information. Also included are electronic copies of records created using electronic mail and word processing.

9. Environmental Protection Agency, Office of Prevention, Pesticides, and Toxic Substances (N1–412–03–13, 4 items, 3 temporary items). Paper and microfilmed copies (excluding recordkeeping copies) of correspondence, documents relating to incidents that have adverse effects, and reports of water contamination. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of these files are proposed for permanent retention.

10. General Accounting Office, Office of General Counsel (N1–411–03–1, 1 temporary item). Documents that identify individuals who have supplied sensitive information to the agency and have been given an assurance of confidentiality.

11. National Archives and Records Administration, Office of Records Services—Washington, DC (N2–26–03–1, 1 temporary item). Records accumulated by the Coast Guard, 1973–1984, consisting of strip charts containing data used to ensure the accuracy of the Omega radio navigation system. Records were previously accessioned into the National Archives but lack historical value.

12. National Archives and Records Administration, Agency-wide (N1–64–03–6, 9 items, 9 temporary items). Records relating to Web site operations such as security logs, search engine logs, reference documentation, and design and testing files. Also included are electronic copies of documents created using electronic mail and word processing.

13. Small Business Administration, Office of Capital Access (N1–309–03–7, 10 items, 10 temporary items). Inputs, outputs, system documentation, and master files of the Investment Division Participating Securities Database, which contains information concerning Small Business Investment Company participating securities. Also included are electronic copies of documents created using electronic mail and word processing.

14. Small Business Administration, Office of Hearings and Appeals (N1–309–03–8, 6 items, 6 temporary items). Master files, outputs, and other records associated with an electronic system used for tracking appeals of decisions made by program offices. Also included are electronic copies of documents created using electronic mail and word processing.

15. Small Business Administration, Office of Business Development (N1–309–03–9, 11 items, 9 temporary items). Records associated with the Certification Tracking System, which is used for tracking applications by firms seeking certification as a Small Disadvantaged Business. Included are inputs, outputs, backups, and electronic copies of documents created using electronic mail and word processing. The master data file and system documentation are proposed for permanent retention.

Dated: July 14, 2003.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 03–18423 Filed 7–18–03; 8:45 am]
BILLING CODE 7515–01–P

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Study of IMLS Funded Digital Collections and Content, Submission for OMB Review; Comment Request

AGENCY: Institute of Museum and Library Services, NFAH.

ACTION: Notice of Requests for New Information Collection Approval.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this proposed form, which applicable supporting documentation, may be obtained by calling the Institute of Museum and Library Services, Director of Public and Legislative Affairs, Mamie Bittner at (202) 606–8339. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–8636.

DATES: Comments must be received by August 20, 2003. The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

ADDRESSES: For a copy of the form contact: Mamie Bittner, Director of Legislative and Public Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW., Room 510, Washington, DC 20506.

SUPPLEMENTARY INFORMATION:

Background

The Institute of Museum and Library Services is an independent Federal grant-making agency authorized by the Museum and Library Services Act; Public Law 104–208. The IMLS provides a variety of grant programs to assist the nation's museums and libraries in improving their operations and enhancing their services to the public. Museums and libraries of all sizes and types may receive support from IMLS programs. In the National Leadership Grant Programs, IMLS funds the digitization of library and museum collections.

This study is determine the feasibility of using the Open Archives Initiative (OAI) Metadata Harvesting Protocol to aggregate and provide integrated item-level search access to the digitization projects funded by the Institute of Museum and Library Services through the National Leadership Grant Program.

Agency: Institute of Museum and Library Services.

Title: Study of IMLS Funded Digital Collections and Content.

OMB Number: none.

Agency Number: 3137.

Frequency: Various.

Affected Public: museums and libraries that created digital collections with IMLS funding.

Number of Respondents: 154 plus 15 interviews.

Estimated Time Per Respondent: various.

Total Burden Hours: 146.25 (over three years).

Total Annualized capital/startup costs: n/a.

Total Annual Costs: $3,123.13.

FOR FURTHER INFORMATON CONTACT: Comments should be sent to office of Information and Regulatory Affairs, Attn: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316.

Dated: July 8, 2003.

Mamie Bittner,

Director Public and Legislative Affairs.

[FR Doc. 03–18438 Filed 7–18–03; 8:45 am]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–08631]

Environmental Assessment and Finding of No Significant Impact Related to Issuance of a License Amendment of U.S. Nuclear Regulatory Commission Byproduct Material License No. 32–14048–04; U.S. Environmental Protection Agency

I. Summary

The U.S. Nuclear Regulatory Commission (NRC) is considering amending Byproduct Material License No. 32–14048–04 to authorize the release of one of the licensee's facilities in Research Triangle Park, North Carolina for unrestricted use and has prepared an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) in support of this action.

The NRC has reviewed the results of the final survey of the Environmental Protection Agency facility in Research Triangle Park, North Carolina, and has performed an in-process inspection and confirmatory survey. The Environmental Protection Agency (EPA) was authorized by NRC from June 6, 1972, to the present to use radioactive materials for research and development purposes at various sites in the Research Triangle Park area in North Carolina. The main isotopes of interest are carbon 14, cadmium 109, natural uranium, and tritium. By letter dated November 11, 1999, the EPA notified the NRC of its plans to vacate the Environmental Research Center (ERC). In January 2001, the EPA published a Final Finding of No Significant Impact and Programmatic Assessment for Remediation and Decontamination of EPA's Research Triangle Park, North Carolina facilities. The EPA has conducted surveys of the facility and determined that the facility meets the license termination criteria in Subpart E of 10 CFR part 20. The NRC staff has evaluated the EPA's request, results of the survey and submitted documentation, has performed an in-process inspection and confirmatory survey, and has developed an EA in accordance with the requirements of 10 CFR part 51. Based on the staff evaluation, the conclusion of the EA is a Finding of No Significant Impact on human health and the environment for the proposed licensing action.

II. Environmental Assessment

Introduction

The EPA has requested release, for unrestricted use, of their building located at 86 T.W. Alexander Drive in Research Triangle Park, North Carolina, as authorized for use by NRC License No. 32–14048–04. This license was issued on June 6, 1972, and amended periodically since that time. NRC-licensed activities performed at the ERC were limited to laboratory procedures typically performed on bench tops and in hoods. No outdoor areas were affected by the use of licensed materials. Licensed activities ceased in February 2003, with the exception of the performance of surveys to determine the final status of the facility which were concluded in May 30, 2003. Based on the licensee's historical knowledge of the sites and the condition of the facility, the licensee determined that only routine decontamination activities, in accordance with licensee radiation safety procedures, were required. The licensee surveyed the facility and provided documentation that the facility meets the license termination criteria specified in Subpart E of 10 CFR part 20, "Radiological Criteria for License Termination." NRC staff performed an in-process inspection and confirmatory survey.

Proposed Action

The proposed action is to amend NRC Radioactive Materials License No. 32–14048–04 to release the ERC located at 86 T.W. Alexander Drive in Research Triangle Park, North Carolina, for unrestricted use. By letter dated June 26, 2003, the EPA provided survey results which demonstrate that the ERC is in compliance with the radiological criteria for license termination in Subpart E of 10 CFR part 20, "Radiological Criteria for License Termination." These results were confirmed during an in-process inspection performed by NRC staff.

Purpose and Need for the Proposed Action

The purpose of the proposed action is to release the ERC located at 86 T.W. Alexander Drive in Research Triangle Park, North Carolina, for unrestricted use and to amend the EPA license to remove this facility as an authorized location of use. This will allow the EPA to discontinue leasing the building. The need for the proposed action is to comply with NRC regulations and the Timeliness Rule. NRC is fulfilling its responsibilities under the Atomic Energy Act to make a decision on a proposed license amendment for release of facilities for unrestricted use that ensures protection of the public health and safety and environment.

Alternatives to the Proposed Action

The only alternative to the proposed action of amending the license and release of the ERC for unrestricted use is no action. The no-action alternative is not acceptable because it will result in violation of NRC's Timeliness Rule (10 CFR 30.36), which requires licensees to decommission their facilities when licensed activities cease. The licensee does not plan to perform any activities with licensed materials at this location. Maintaining the area under a license would reduce options for future use of the property and cause the EPA to continue leasing a building for which it has no more use.

The Affected Environment and Environmental Impacts

The NRC staff has reviewed the survey results provided by the EPA to demonstrate compliance with 10 CFR 20.1402 license termination criteria and the EPA's published EA and FONSI. Based on its review, and on the results of the NRC inspection and confirmatory survey, the staff has determined that the affected environment and environmental impacts associated with the decommissioning of the EPA's ERC are bounded by the impacts evaluated by the "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities" (NUREG–1496). The staff also finds that the proposed decommissioning of the EPA's ERC is in compliance with 10 CFR 20.1402, the radiological criteria for unrestricted use.

The ERC is a multilevel facility constructed of concrete-reinforced steel, with a brick exterior and flat roof. It contains 253,390 net square feet of space and consists of buildings, greenhouses, storage sheds, cooling towers, storage tanks, groundwater monitoring wells, air-conditioning units, parking lots, and property related articles. Radioactive materials were primarily used in laboratories on lab benches and within fume hoods. The ERC is located within a portion of Durham County with covenants in place that specify that only research be conducted within the facilities located therein.

Licensed material has been disposed of or transferred to the licensee's new facility with the one exception of a sea/land cargo box containing packaged radioactive waste containers. The license will not be amended until this container has been transferred to the EPA's new facility. The licensee's documentation indicates that no contamination exists above the limits for unconditional release. All of these activities were performed as authorized by the operating license.

Agencies and Persons Contacted and Sources Used

This EA was prepared by NRC Staff using information provided by the EPA. The North Carolina Department of Environment and Natural Resources (NCDENR) was contacted for comment by the EPA and responded by letter dated January 11, 2000. No opposition to the project was noted. The North Carolina Department of Cultural Resources was also contacted by the EPA and responded by letter dated February 11, 2000, with no comment on the project. According to the National Register Information System and the Durham County Historic Inventory, neither of the subject facilities are registered as historic structures or historical areas, and no areas of historical value appear to exist within a 1-mile radius of the ERC.

Conclusion

Based on its review, the NRC staff has concluded that the proposed action complies with 10 CFR part 20. NRC has prepared this EA in support of the proposed license amendment to release the ERC for unrestricted use. On the basis of the EA, NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined that preparation of an environmental impact statement for the proposed action is not required.

List of Preparers

Orysia Masnyk Bailey, Materials Licensing/Inspection Branch 1, Division of Nuclear Materials Safety, Health Physicist.

List of References

1. NRC License No. 32–14048–04, Docket No. 030–08631 inspection and licensing records.

2. EPA. "Advance Notice of Program Change" Letter dated from J. Morris to NRC dated November 22, 1999.

3. EPA. "Site Characterization/Final Status Report" dated June 26, 2003.

4. Title 10 Code of Federal Regulations Part 20, Subpart E, "Radiological Criteria for License Termination."

5. **Federal Register** Notice, Volume 65, No. 114, page 37186, dated Tuesday, June 13, 2000, "Use of Screening Values to Demonstrate Compliance With The Federal "Rule on Radiological Criteria for License Termination."

6. Booz-Allen & Hamilton. "Finding of No Significant Impact For Remediation And Decontamination Of U.S. Environmental Protection Agency's Research Triangle Park, North Carolina Facilities" dated January 2001. (ML031000189)

7. North Carolina Department of Environment and Natural Resources. "Rare Species, High Quality Communities, and Significant Natural Heritage Areas at Three EPA Sites At Page Road and I–40 and Alexander Drive, RTP, Durham County, North Carolina" Letter from S. Reece Giles to Booz-Allen & Hamilton, dated January 11, 2000.

8. North Carolina Department of Cultural Resources. "Section 106 of the National Historic Preservation Act" Letter from D. Brook to Booz-Allen & Hamilton dated February 11, 2000.

9. NRC Inspection Report No. 32–14048–04/2001–001, March 3–7, 2003. (ML030930159)

III. Finding Of No Significant Impact

Based upon the environmental assessment, the staff concludes that the proposed action will not have a significant impact on the quality of the human environment. Accordingly, the staff has determined that preparation of an environmental impact statement is not warranted.

IV. Further Information

The references listed above are available for public inspection and may also be copied for a fee at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. These documents are also available for public review through ADAMS, the NRC's electronic reading room, at: *http://www.nrc.gov/reading-rm/adams.htlm.* Any questions with respect to this action should be referred to Orysia Masnyk Bailey, Materials Licensing/Inspection Branch 1, Division of Nuclear Materials Safety, U. S. Nuclear Regulatory Commission, Region II, Suite 23T85, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8931. Telephone 404–562–4739.

Dated at Atlanta, Georgia the 7th day of July, 2003.

For The U.S. Nuclear Regulatory Commission.

Douglas M. Collins,

Director, Division of Nuclear Materials Safety, Region II.

[FR Doc. 03–18412 Filed 7–18–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030-35160]

Environmental Assessment and Finding of No Significant Impact Related to Issuance of a License Amendment of U. S. Nuclear Regulatory Commission Byproduct Material License No. 45-25483-01; Richemont North America, Inc.

I. Summary

The U.S. Nuclear Regulatory Commission (NRC) is considering terminating Byproduct Material License No. 45-25483-01 to authorize the release of the licensee's facilities in Winchester, Virginia, for unrestricted use and has prepared an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) in support of this action.

The NRC has reviewed the results of the final survey of the Richemont North America facility in Winchester, Virginia. Richemont North America was authorized by the NRC from August 31, 1999, until the present to use manufactured watch dials and hands containing luminous paint activated with tritium for the manufacture and repair of timepieces. In 2002, Richemont North America ceased operations with licensed materials at the Winchester, Virginia site, and requested that the NRC terminate the license. Richemont North America has conducted surveys of the facility and determined that the facility meets the license termination criteria in Subpart E of 10 CFR part 20. The NRC staff has evaluated Richemont North America's request and the results of the surveys, performed a confirmatory survey, and has developed an EA in accordance with the requirements of 10 CFR part 51. Based on the staff evaluation, the conclusion of the EA is a Finding of No Significant Impact on human health and the environment for the proposed licensing action.

II. Environmental Assessment

Introduction

Richemont North America has requested release, for unrestricted use, of their building located at 202 North Loudoun Street, in Winchester, Virginia, as authorized for use by NRC License No. 45-25483-01. License No. 45-25483-01 was issued on August 31, 1999, and amended periodically since that time. NRC-licensed activities performed at the Winchester, Virginia site were limited to the repair, service and repair of returned timepieces and the receipt and application of timepiece self-luminous parts typically performed on bench tops. No outdoor areas were affected by the use of licensed materials. Licensed activities ceased completely in June 2002 and the licensee requested release of the facilities for unrestricted use. Based on the licensee's historical knowledge of the site and the condition of the facilities, the licensee determined that only routine decontamination activities, in accordance with licensee radiation safety procedures, were required. The licensee surveyed the facility and provided documentation that the facility meets the license termination criteria specified in subpart E of 10 CFR part 20, "Radiological Criteria for License Termination."

The Proposed Action

The proposed action is to terminate NRC Radioactive Materials License No. 45-25483-01 and release the licensee's facilities at 202 North Loudoun Street in Winchester, Virginia, for unrestricted use. By letter dated September 30, 2002, Richemont North America provided survey results which demonstrate that the Winchester, Virginia facility is in compliance with the radiological criteria for license termination in subpart E of 10 CFR part 20, "Radiological Criteria for License Termination."

Purpose and Need for the Proposed Action

The purpose of the proposed action is to release the building located at the 202 North Loudoun Street in Winchester, Virginia, for unrestricted use and to terminate the Richemont North America materials license. This will allow Richemont North America to stop leasing the building. The need for the proposed action is to comply with NRC regulations and the Timeliness Rule. NRC is fulfilling its responsibilities under the Atomic Energy Act to make a decision on a proposed license amendment for release of facilities for unrestricted use that ensures protection of the public health and safety and environment.

Alternatives to the Proposed Action

The only alternative to the proposed action of terminating the license and releasing the Winchester, Virginia facility for unrestricted use is no action. The no-action alternative is not acceptable because it will result in violation of NRC's Timeliness Rule (10 CFR 30.36), which requires licensees to decommission their facilities when licensed activities cease. The licensee does not plan to perform any activities with licensed materials at this location. Maintaining the areas under a license would also reduce options for future use of the property and require Richemont North America to continue leasing office space for which it has no use.

The Affected Environment and Environmental Impacts

Richemont North America leased office space in a Wachovia Bank building in downtown Winchester, Virginia. The building was of brick construction, the offices encompassed the second floor. The building is surrounded by other small business buildings.

The NRC staff has reviewed the surveys performed by Richemont North America to demonstrate compliance with the 10 CFR 20.1402 license termination criteria. Based on its review, the staff has determined that the affected environment and environmental impacts associated with the decommissioning of the Richemont North America facility are bounded by the impacts evaluated by the "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities" (NUREG-1496). The staff also finds that the proposed release for unrestricted use of the Richemont North America facility is in compliance with 10 CFR 20.1402, "Radiological Criteria for Unrestricted Use". The NRC has found no other activities in the area that could result in cumulative impacts.

Agencies and Persons Contacted and Sources Used

This EA was prepared entirely by the NRC staff. The U.S. Fish and Wildlife Service was contacted for comment and responded by letter dated January 16, 2003, with no opposition to the action. The Virginia Department of Historic Resources was also contacted and had no comment.

Conclusion

Based on its review, the NRC staff has concluded that the proposed action complies with 10 CFR part 20. NRC has prepared this EA in support of the proposed license termination to release the Richemont North America facility located at 202 North Loudoun Street in Winchester, Virginia, for unrestricted use. On the basis of the EA, NRC has concluded that the environmental impacts from the proposed action are not expected to be significant and has determined that the preparation of an environmental impact statement for the proposed action is not required.

List of Preparers

Orysia Masnyk Bailey, Materials Licensing/Inspection Branch 1, Division of Nuclear Materials Safety, Health Physicist.

List of References

1. NRC License No. 45-25483-01 inspection and licensing records.
2. Richemont. "Request to terminate license" Letter from J. Brown to NRC dated September 30, 2003. (ML020870095)
3. Title 10 Code of Federal Regulations part 20, subpart E, "Radiological Criteria for License Termination."
4. **Federal Register** notice, Volume 65, No. 114, page 37186, dated Tuesday, June 13, 2000, "Use of Screening Values to Demonstrate Compliance With The Federal Rule on Radiological Criteria for License Termination."
5. U.S. Fish and Wildlife Service. "Richemont North America, Inc. Termination of Byproduct Materials License, #2806, Frederick County, Virginia," Letter from K. Mayne to NRC dated January 16, 2003.
6. NRC. NRC Inspection Report No. 45-25483-01/02-01, dated November 26, 2002. (ML023300524)
7. NRC. NUREG-1757 "Consolidated NMSS Decommissioning Guidance," Final Report dated September 2002.
8. NRC. NUREG-1496 "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities," Final Report dated July 1997.

III. Finding of No Significant Impact

Based upon the environmental assessment, the staff concludes that the proposed action will not have a significant impact on the quality of the human environment. Accordingly, the staff has determined that preparation of an environmental impact statement is not warranted.

IV. Further Information

The references listed above are available for public inspection and may also be copied for a fee at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. These documents are also available for public review through ADAMS, the NRC's electronic reading room, at: *http://www.nrc.gov/reading-rm/adams.html*.

Any questions with respect to this action should be referred to Orysia Masnyk Bailey, Materials Licensing/Inspection Branch 1, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region II, Suite 23T85, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8931. Telephone 404-562-4739.

Dated at Atlanta, Georgia the 7th day of July, 2003.

For the U.S. Nuclear Regulatory Commission.

Douglas M. Collins,

Director, Division of Nuclear Materials Safety, Region II.

[FR Doc. 03-18410 Filed 7-18-03; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030-17451]

Environmental Assessment and Finding of No Significant Impact Related to Issuance of a License Amendment of U.S. Nuclear Regulatory Commission Byproduct Material License No. 52-19336-01; Wittnauer Worldwide, L.P.

I. Summary

The U.S. Nuclear Regulatory Commission (NRC) is considering terminating Byproduct Material License No. 52-19336-01 to authorize the release of the licensee's facilities in Cayey, Puerto Rico, for unrestricted use and has prepared an Environmental Assessment and Finding of No Significant Impact in support of this action.

The NRC has reviewed the results of the final survey of the Wittnauer Worldwide facility in Cayey, Puerto Rico. Wittnauer Worldwide was authorized by the NRC from June 30, 1980, until the present to use manufactured watch dials and hands containing luminous paint activated with tritium for the manufacture and repair of timepieces. In August 2001, Wittnauer Worldwide ceased operations with licensed materials at the Cayey, Puerto Rico site, and requested that the NRC terminate the license. Wittnauer Worldwide has conducted surveys of the facility and determined that the facility meets the license termination criteria in subpart E of 10 CFR part 20. The NRC staff has evaluated Wittnauer Worldwide's request and the results of the survey, and has developed an EA in accordance with the requirements of 10 CFR part 51. Based on the staff evaluation, the conclusion of the EA is a Finding of No Significant Impact on human health and the environment for the proposed licensing action.

II. Environmental Assessment

Introduction

Wittnauer Worldwide has requested release for unrestricted use, of their building located at the Rincon Industrial Park, Road 735, Km. 2.3, in Cayey, Puerto Rico, as authorized for use by NRC License No. 52-19336-01. License No. 52-19336-01 was issued on June 30, 1980, and amended periodically since that time. NRC-licensed activities performed at the Cayey, Puerto Rico site were limited to the repair, service and repair of returned timepieces and the receipt and application of timepiece self-luminous parts typically performed on bench tops. No outdoor areas were affected by the use of licensed materials. Licensed activities ceased completely in August 2001 and the licensee requested release of the facilities for unrestricted use. Based on the licensee's historical knowledge of the site and the condition of the facilities, the licensee determined that only routine decontamination activities, in accordance with licensee radiation safety procedures, were required. The licensee surveyed the facility and provided documentation that the facility meets the license termination criteria specified in subpart E of 10 CFR part 20, "Radiological Criteria for License Termination."

The Proposed Action

The proposed action is to terminate NRC Radioactive Materials License No. 52-19336-01 and release the licensee's facilities in Cayey, Puerto Rico, for unrestricted use. Wittnauer Worldwide's report dated March 2003 provided survey results which demonstrated that the Cayey, Puerto Rico facility is in compliance with the radiological criteria for license termination in Subpart E of 10 CFR part 20, "Radiological Criteria for License Termination."

Purpose and Need for the Proposed Action

The purpose of the proposed action is to release the building located at the Rincon Industrial Park, Road 735, Km. 2.3, in Cayey, Puerto Rico, for unrestricted use and to terminate the Wittnauer Worldwide materials license. This will allow Wittnauer Worldwide to stop leasing the building. The need for the proposed action is to comply with NRC regulations and the Timeliness Rule. NRC is fulfilling its responsibilities under the Atomic Energy Act to make a decision on a proposed license amendment for release of facilities for unrestricted use that ensures protection of the public health and safety and environment.

Alternatives to the Proposed Action

The only alternative to the proposed action of amending the license and releasing the Wittnauer Worldwide building for unrestricted use is no action. The no-action alternative is not acceptable because it will result in violation of NRC's Timeliness Rule (10

CFR 30.36), which requires licensees to decommission their facilities when licensed activities cease. The licensee does not plan to perform any activities with licensed materials at this location. Maintaining the area under a license would reduce options for future use of the property and cause Wittnauer Worldwide to continue leasing a building for which it has no more use.

The Affected Environment and Environmental Impacts

The Wittnauer building is a one story brick building. Work with radioactive materials was done on work benches located within several rooms in the building. Watch parts and finished watches were stored in a safe. The building is located within an industrial park.

The NRC staff has reviewed the surveys performed by Wittnauer Worldwide to demonstrate compliance with the 10 CFR 20.1402 license termination criteria and has performed a confirmatory survey. Based on its review and the results of the confirmatory survey, the staff has determined that the affected environment and environmental impacts associated with the decommissioning of the Wittnauer Worldwide facility are bounded by the impacts evaluated by the "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities" (NUREG–1496). The staff also finds that the proposed release for unrestricted use of the Wittnauer Worldwide facility is in compliance with 10 CFR 20.1402, "Radiological Criteria for Unrestricted Use." The NRC has found no other activities in the area that could result in cumulative impacts.

Agencies and Persons Contacted and Sources Used

This Environmental Assessment was prepared entirely by the NRC staff. The U.S. Fish and Wildlife Service was contacted for comment and responded by letter dated October 16, 2002, with no opposition to the action. The Puerto Rico State Historic Preservation Office was also contacted and responded by letter dated March 11, 2003, with no opposition.

Conclusion

Based on its review, the NRC staff has concluded that the proposed action complies with 10 CFR part 20. NRC has prepared this EA in support of the proposed license termination to release the Wittnauer Worldwide facility located at the Rincon Industrial Park, Road 735, Km. 2.3, in Cayey, Puerto Rico, for unrestricted use. On the basis of the EA, NRC has concluded that the environmental impacts from the proposed action are not expected to be significant and has determined that the preparation of an environmental impact statement for the proposed action is not required.

List of Preparers

Orysia Masnyk Bailey, Materials Licensing/Inspection Branch 1, Division of Nuclear Materials Safety, Health Physicist.

List of References

1. NRC License No. 52–19336–01 inspection and licensing records.
2. Wittnauer. "Termination of License" Letter from F. Pagan to NRC requesting license termination and transmittal of survey results, dated January 2, 2002. (ML020070510)
3. Radiation Safety & Control Services, Inc. "Remediation, Decontamination and Final Status Survey to Support Release of Facilities for Unrestricted Use and License Termination," Final status survey report prepared by Frederick P. Straccia, CHP, dated March 2003.
4. NRC Inspection Report No. 52–19336–01/2003–002, dated April 8, 2003. (ML031060565)
5. Title 10 Code of Federal Regulations part 20, subpart E, "Radiological Criteria for License Termination."
6. **Federal Register** notice, Volume 65, No. 114, page 37186, dated Tuesday, June 13, 2000, "Use of Screening Values to Demonstrate Compliance With The Federal Rule on Radiological Criteria for License Termination."
7. U. S. Fish and Wildlife Service. "Request for comments regarding endangered wildlife, plant, and marine life resources at a site in Puerto Rico" Letter from C. Diaz to NRC, dated October 16, 2002. (ML022950292)
8. Puerto Rico State Historic Preservation Office. "SHPO: 09–26–02–03 Wittnauer Worldwide, L.L.P., Rinco Industrial Park, PR #735, KM 2.3, Cayey, Puerto Rico" Letter from E. Torregrosa de la Rosa to NRC, dated January 24, 2003. (ML030350437)

III. Finding of No Significant Impact

Based upon the environmental assessment, the staff concludes that the proposed action will not have a significant impact on the quality of the human environment. Accordingly, the staff has determined that preparation of an environmental impact statement is not warranted.

IV. Further Information

The references listed above are available for public inspection and may also be copied for a fee at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. These documents are also available for public review through ADAMS, the NRC's electronic reading room, at: *http://www.nrc.gov/reading-rm/adams.htlm.*

Any questions with respect to this action should be referred to Orysia Masnyk Bailey, Materials Licensing/Inspection Branch 1, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region II, Suite 23T85, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8931. Telephone 404–562–4739.

Dated at Atlanta, Georgia the 7th day of July, 2003.

For the U.S. Nuclear Regulatory Commission.

Douglas M. Collins,

Director, Division of Nuclear Materials Safety, Region II.

[FR Doc. 03–18411 Filed 7–18–03; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 144th meeting on July 29–31, 2003, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Tuesday, July 29, 2003, NRC Auditorium, Two White Flint North, Rockville, Maryland

9:30 a.m.–9:40 a.m.: Opening Statement (Open)—The Chairman will open the meeting and turn it over to the Working Group chairman who will state the Workshop objectives and provide a session overview.

Working Group on Performance Confirmation Plans for the Proposed Yucca Mountain High-Level Waste Repository (Open)

The purposes of the working group are (1) To increase ACNW's technical knowledge of plans to develop and conduct performance confirmation (PC) work for the proposed Yucca Mountain repository, (2) to understand NRC staff expectations for performance confirmation, (3) to review examples of performance confirmation work being planned, (4) to identify aspects of performance confirmation that may warrant further study, and (5) to complement the previous working group session on performance assessment.

9:40 a.m.–10:40 a.m.: Keynote Presentation: What Should Be Measured During Performance Confirmation? How Will These Measurements Enhance Confidence by Confirming Predicted Repository Behavior? (Open)—The Committee will hear views on performance confirmation by a distinguished expert.

10:55 a.m.–11:45 a.m.: Introduction to Performance Confirmation (NRC's Expectations Regarding Content of PC Plans in a License Application) (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC's Office of Nuclear Material Safety and Safeguards (NMSS), Division of Waste Management (DWM), regarding the content of Performance Confirmation Plans in a License Application.

11:45 a.m.–12:15 p.m.: Introduction to Performance Confirmation (Open)—The Committee will hear a presentation by a representative from DOE regarding the Performance Confirmation.

1:15 p.m.–2:45 p.m.: Decision Analysis Process Used to Develop a Performance Confirmation Program (Open)—The Committee will hear a presentation by a representative from DOE regarding the decision analysis process used to develop a Performance Confirmation Program.

3 p.m.–4:40 p.m.: Elements of a Performance Confirmation Program—A Presentation of DOE's Selected Program and Its Components (Open)—The Committee will hear a presentation by a representative from DOE regarding the elements of a Performance Confirmation Program.

4:55 p.m.–5:30 p.m.: Documentation and Further Development of the Performance Confirmation Program—A Presentation on Possible Changes in the Next Revision of DOE's PC Plan (Open)—The Committee will hear a presentation by a representative from DOE regarding possible changes in the next revision of DOE's Performance Confirmation Plan.

5:30 p.m.–6 p.m.: Public Comments (Open)—The Committee will hear comments from the public.

Wednesday, July 30, 2003, NRC Auditorium, Two White Flint North, Rockville, Maryland

Working Group on Performance Confirmation Plans for the Proposed Yucca Mountain High-Level Waste Repository (Open) (Continued)

8:30 a.m.–8:35 a.m.: Opening Statement (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–9:30 a.m.: NRC's Risk Insights Initiative and its Impact on Review of Performance Confirmation Plans (Open)—The Committee will hear a presentation by a representative from NRC's NMSS/DWM regarding the risk insights initiative and its impact on review of Performance Confirmation Plans.

9:30 a.m.–10 a.m.: NRC's Acceptance Criteria in the Yucca Mountain Review Plan for Review of Performance Confirmation (Open)—The Committee will hear a presentation by a representative from NRC's NMSS/DWM regarding the acceptance criteria in the Yucca Mountain Review Plan for Review of Performance Confirmation.

10:15 a.m.–12:15 p.m.: Presentations by Representatives of the State of Nevada, several affected Counties, the Las Vegas Paiutes, and the Electric Power Research Institute (Open)—The Committee will hear presentations by and hold discussions with representatives of the State of Nevada, several affected counties, the Las Vegas Paiutes, and EPRI regarding Performance Confirmation.

1:15 p.m.–2 p.m.: Research Perspective on Long-Term Testing for Performance Confirmation—Development of an Integrated Ground-Water Monitoring Strategy (Open)—The Committee will hear a presentation by a representative of the NRC's Office of Nuclear Regulatory Research regarding long-term testing for Performance Confirmation.

2 p.m.–4:55 p.m.: Panel and Committee Discussion Working Group Roundtable (Open)—The Panel and the Committee will further discuss today's topics.

4:55 p.m.–6:15 p.m.: Preparation of ACNW Report (Open)—Discussion of principal points in a proposed ACNW report on the Performance Confirmation Working Group.

Thursday, July 31, 2003, Conference Room 2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Statement (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–9:30 a.m.: Risk-Informed Regulation for NMSS: Status Report and Plan for Future Work (Open)—Briefing by and discussions with representatives of the NRC NMSS Risk Task Group regarding the current status of risk-informed regulation for NMSS and the plan for future work.

9:30 a.m.–10 a.m.: Summer Intern Project (Open)—The ACNW summer intern will update the Committee on the status of her project titled "Assessing Model Uncertainty in Performance Assessment."

11 a.m.–11:45 a.m.: ACNW September Retreat (Open)—Members will finalize plans for the Committee's September retreat which is scheduled during the 145th meeting (September 16–18, 2003).

11:45 a.m.–12:15 p.m.: Committee Visit to Yucca Mountain (Open)—The Committee will finalize plans for the Yucca Mountain Site visit scheduled for the 147th meeting (November 18–20, 2003).

1:15 p.m.–2:30 p.m.: Preparation for Meeting with the NRC Commissioners (Open)—The Committee will discuss proposed topics for the ACNW meeting with the NRC Commissioners which is scheduled for Thursday, October 23, 2003, between 10 a.m. and 12 Noon.

2:30 p.m.–5:45 p.m.: Preparation of ACNW Reports (Open)—The Committee will discuss proposed ACNW reports.

5:45 p.m.–6:00 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 11, 2002 (67 FR 63459). In accordance with these procedures, oral or written statements may be presented by members of the public. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should notify Mr. Howard J. Larson, ACNW (Telephone 301/415–6805), between 7:30 a.m. and 4 p.m. ET, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Howard J. Larson as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Howard J. Larson.

ACNW meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301/415–8066), between 7:30 a.m. and 3:45 p.m. ET, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: July 15, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03–18414 Filed 7–18–03; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Proposed Information Collection Requests

AGENCY: Peace Corps.

ACTION: Notice of public use form review request submission to the Office of Management and Budget (OMB Control Number 0420–0533).

SUMMARY: Pursuant to the paperwork Reduction Act of 1981 (44 USC, Chapter 35), the Peace Corps has submitted to the Office of Management and Budget (OMB) a request for approval of information collections, OMB Control Number 0420–0533, the Peace Corps Crisis Corps Volunteer Application Form. This is a renewal of an active information collection. The initial **Federal Register** notice was published on April 23, 2003, Volume 68, No. 78, p. 20035 for 60 days. Also available at GPO access: *wais.access.gpo.gov*. No comments, inquiries, or responses to the notice were received. A copy of the information collection may be obtained from Mr. Dan Sullivan, Director of the Crisis Corps, Peace Corps, 1111 20th Street, NW., Room 7305, Washington, DC 20526. Mr. Sullivan may be contacted by telephone at 202–692–2250. Comments on the form should also be addressed to the attention of the Desk Officer for the Peace Corps, Office of Management and Budget, NEOB, Washington, DC 20503. Comments should be received on or before August 20, 2003.

The purpose of this information collection is necessary to recruit qualified Volunteers to serve in the Peace Corps' Crisis Corps Program. The information provided in the application is used by Crisis Corps staff to perform initial screening for potential candidates for specific Crisis Corps assignments. The purpose of this notice is to allow for public comment on whether the proposed collection of information is necessary for the proper performance of the functions of the Peace Corps, including whether their information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and the clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Information Collection Abstract

Title: Peace Corps' Crisis Corps Volunteer Application Form.

Need for and Use of This Information: The Peace Corps' Crisis Corps Volunteer Application Form is completed by previous Peace Corps Volunteers; known as Returned Peace Corps Volunteers (RPCVs). The RPCVs apply to serve in the Crisis Corps after successfully completing their Peace Corps service. The Peace Corps' Crisis Corps Application is completed by applicants for Crisis Corps assignments to provide basic information concerning technical and language skills, and availability for Crisis Corps assignments. The application form from the RPCVs is used to perform initial screenings for potential candidates for specific Crisis Corps assignments. The Crisis Corps is an exciting Peace Corps Program that utilizes RPCVs to help communities overseas recover and rebuild in the aftermath of natural disasters and humanitarian crises. There are no other means of obtaining the required data. The Crisis Corps is working toward an electronic application; this version is not available at this time. The Crisis Corps Program fulfills the first and second goals of the Peace Corps as required by Congressional legislation.

Respondents: Returned Peace Corps Volunteers (RPCVs).

Respondents Obligation to Reply: Voluntary.

Burden on the Public:

a. *Annual reporting burden:* 54 hours.

b. *Annual record keeping burden:* 0 hours.

c. *Estimated average burden per response:* 5 minutes.

d. *Frequency of response:* One time.

e. *Estimated number of likely respondents:* 650.

f. *Estimated cost to respondents:* $1.97.

This notice is issued in Washington, DC on July 11, 2003.

Gopal Khanna,

Chief Information Officer.

[FR Doc. 03–18433 Filed 7–18–03; 8:45 am]

BILLING CODE 6051–01–M

PEACE CORPS

Proposed Information Collection Requests

AGENCY: Peace Corps

ACTION: Notice of public use form review request submission to the Office of Management and Budget (OMB Control Number 0420–0001).

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 USC, Chapter 35), the Peace Corps has submitted to the Office of Management and Budget (OMB) a request for approval of an information collection, OMB Control Number 0420–0001, the National Agency Questionnaire for Peace Corps Volunteer Background Investigation. This is a renewal of an active information collection. The initial **Federal Register** notice was published on April 23, 2003, Volume 68, No. 78, p. 20036 for 60 days. Also available at GPO Access: *wais.access.gpo.gov*. No comments, inquiries or responses to the notice were received. A copy of the information collection may be obtained from Ms. Mada McGill, Peace Corps, Volunteer Recruitment and Selection CHOPS, 1111 20th Street, NW., Room 6402, Washington, DC 20526. Ms. McGill may be contacted by telephone at 202–692–1886. Comments on the form should also be addressed to the attention of Desk Officer for the Peace Corps, Office of Management and Budget, NEOB, Washington, DC 20503. Comments should be received on or before August 20, 2003. The purpose of this notice is to allow for public comments on whether the proposed collection of information is necessary for the proper performance of the functions of the Peace Corps, including whether their information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collections information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and the clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology. A copy of the information

Information Collection Abstract

Title: National Agency Questionnaire for Peace Corps Volunteer Background Investigation

Need For and Use of This Information: The National Agency Check Questionnaire for Peace Corps Volunteer Background Investigation is necessary to screen information from Federal sources about Peace Corps applicants who meet the minimum qualifications for service. Information provided by the investigation will be used by the Peace Corps' Office of Placement in order to make a final determination as to an applicant's/trainee's suitability for service. The National Agency Check Questionnaire for Peace Corps Volunteer Background Investigation supports the first goal of the Peace Corps as required by Congressional legislation.

Respondents: Potential Volunteers and Trainees

Respondent's Obligation to Reply: Voluntary.

Burden on the Public:

a. *Annual reporting burden:* 2,500 hours.

b. *Annual record keeping burden:* 1,360 hours.

c. *Estimated average burden per response:* 15 minutes.

d. *Frequency of response:* One time.

e. *Estimated number of likely respondents:* 10,000.

f. *Estimated cost to respondents:* $4.59.

At this time, responses will be returned by mail.

This notice is issued in Washington, DC on July 11, 2003.

Gopal Khanna,

Chief Information Officer.

[FR Doc. 03–18434 Filed 7–18–03; 8:45 am]

BILLING CODE 6051–01–M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17a–25; SEC File No. 270–482; OMB Control No. 3235–0540.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 17a–25 (17 CFR 240.17a–25) requires registered broker-dealers to electronically submit securities transaction information, including identifiers for prime brokerage arrangements, average price accounts, and depository institutions, in a standardized format when requested by the Commission staff. In addition, the rule also requires broker-dealers to submit, and keep current, contact person information for electronic blue sheets ("EBS") requests. The Commission uses the information for enforcement inquiries or investigations and trading reconstructions, as well as for inspections and examinations.

The Commission estimates that it sends approximately 14,000 electronic blue sheet requests per year. Accordingly, the annual aggregate hour burden for electronic and manual response firms is estimated to be 1,820 hours and 525 hours, respectively. In addition, the Commission estimates that it will request 1,400 broker-dealers to supply the contact information identified in Rule 17a–25(c) and estimates the total aggregate burden hours to be 350. Thus, the annual aggregate burden for all respondents to the collection of information requirements of Rule 17a–25 is estimated at 2,695 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the Desk Officer for the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, Room 10102, 450 Fifth Street, NW., Washington, DC 20549 and Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 14, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–18399 Filed 7–18–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rules 17h–1T and 17h–2T; SEC File No. 270–359; OMB Control No. 3235–0410.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below. The Code of Federal Regulation citations to this collection of information are the following rules: 17 CFR 240.17h–1T and 17 CFR 240.17h–2T.

Rule 17h–1T requires a broker-dealer to maintain and preserve records and other information concerning certain entities that are associated with the broker-dealer. This requirement extends to the financial and securities activities of the holding company, affiliates and subsidiaries of the broker-dealer that are reasonably likely to have a material impact on the financial or operational condition of the broker-dealer. Rule 17h–2T requires a broker-dealer to file with the Commission quarterly reports and a cumulative year-end report concerning the information required to be maintained and preserved under Rule 17h–1T.

The collection of information required by Rules 17h–1T and 17h–2T is

necessary to enable the Commission to monitor the activities of a broker-dealer affiliate whose business activities is reasonably likely to have a material impact on the financial and operational condition of the broker-dealer. Without this information, the Commission would be unable to assess the potentially damaging impact of the affiliate's activities on the broker-dealer.

There are currently 166 respondents that must comply with Rules 17h–1T and 17h–2T. Each of these 166 respondents require approximately 10 hours per year, or 2.5 hours per quarter, to maintain the records required under Rule 17h–1T, for an aggregate annual burden of 1,660 hours (166 respondents × 10 hours). In addition, each of these 166 respondents must make five annual responses under Rule 17h–2T. These five responses require approximately 14 hours per respondent per year, or 3.5 hours per quarter, for an aggregate annual burden of 2,324 hours (166 respondents × 14 hours). In addition, there are approximately seven new respondents per year that must draft an organizational chart required under Rule 17h–1T and establish a system for complying with the Rules. The staff estimates that drafting the required organizational chart requires one hour and establishing a system for complying with the Rules requires three hours, thus requiring an aggregate of 28 hours (7 new respondents × 4 hours). Thus, the total compliance burden per year is approximately 4,012 burden hours (1,660 + 2,324 + 28).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: July 7, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–18400 Filed 7–18–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48180; File No. PCAOB–2003–03]

Public Company Accounting Oversight Board; Order Approving Proposed Rules Relating to Registration System

July 16, 2003.

I. Introduction

On May 8, 2003, the Public Company Accounting Oversight Board ("Board" or "PCAOB") filed with the Securities and Exchange Commission ("Commission") proposed rules PCAOB–2003–03 pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 ("Act"). Notice of the proposal was published in the **Federal Register** on June 11, 2003.[1] The Commission received sixteen comment letters. For the reasons discussed below, the Commission is granting approval of the proposed rules.

II. Description

Section 102 of the Act prohibits any person that is not a registered public accounting firm from preparing or issuing an audit report with respect to any "issuer," as that term is defined in the Act, or from participating in preparation or issuance of any such report. In order to enable public accounting firms to comply with this registration requirement, the Board has proposed rules to establish a registration system. The registration system consists of eight rules (PCAOB Rules 2100 through 2106, and 2300), as well as definitions that would appear in Rule 1001, and a registration form (PCAOB Form 1).

Under the Act, the registration requirement is effective 180 days after the date on which the Commission makes its determination under 101(d) of the Act that the Board is capable of carrying out its responsibilities under the Act. The Commission made this determination on April 25, 2003, which means that domestic public accounting firms that wish to prepare or issue, or participate in the preparation or issuance of, audit reports with respect to any issuer must register with the Board by October 22, 2003.[2]

The proposed registration form requires disclosure of information concerning the applicant and its associated accountants, and about the applicant's audit clients that file reports with the Commission. Applicants must pay a fee to cover the costs of processing and reviewing registration applications, the amount of which will be announced by the Board prior to commencing acceptance of registration applications. Within 45 days of receiving an application, the Board must (1) approve the application, (2) issue a written notice of a hearing, or (3) request more information from the prospective registrant.

Although the Board has authority under the Act to exempt, with the approval of the Commission, non-U.S. public accounting firms, in whole or in part, from any of the Board's requirements under the Act, the Board decided that its proposed registration rules would apply to non-U.S. public accounting firms that prepare or furnish audit reports with respect to "issuers" or that play a substantial role in the preparation or furnishing of these reports. In response to concerns expressed by foreign regulators, accounting firms and others about the impact of the Board's proposed rules on non-U.S. accounting firms, the Board made several accommodations prior to submitting its proposed rules to the Commission.

These accommodations include (1) reducing the scope of information required by the registration form, (2) allowing firms to withhold certain information on the form if they can demonstrate that providing the information would conflict with non-U.S. law (by providing an English copy of the non-U.S. law, a legal opinion that submitting the information would violate the law, and an explanation of the applicant's efforts to seek consents or waivers to eliminate the conflict), and (3) allowing non-U.S. firms an additional six months to register with the PCAOB.[3]

Pursuant to the Act, registered public accounting firms must file annual reports with the Board and are subject to the Board's oversight through its inspection, investigation and

[1] Securities Exchange Act Release No. 47990 (June 5, 2003); 68 FR 35016 (June 11, 2003).

[2] As discussed below, the Board's proposal would give foreign public accounting firms an additional 180 days (*i.e.*, until April 19, 2004) to register.

[3] The Board held a public roundtable meeting on March 31, 2003, at which various foreign regulators, accounting firms, and professional organizations, as well as representatives of U.S. institutional investors, discussed the ramifications of the registration of non-U.S. accounting firms.

disciplinary programs. The proposed rules that are approved by this order address only the Board's registration requirements for public accounting firms, and do not address the reporting or other requirements that will be imposed on registered firms or the manner in which the Board will exercise its oversight authority under the Act.

III. Summary of Comment Letters

The Commission received sixteen comment letters regarding the proposed registration system. Eight of these letters were from foreign governments and professional groups, and their comments related primarily to the impact of the proposal on non-U.S. accounting firms.[4] Seven of the letters were from major accounting firms and the SEC Practice Section of the American Institute of Certified Public Accountants ("AICPA/SECPS").[5] and one letter was from the National Association of State Boards of Accountancy ("NASBA")

Most of the letters from foreign governments and professional groups commended the Board on its accommodations for non-U.S. accounting firms, although they continued to express a desire for complete exemption from registration and oversight by the PCAOB. Most commenters in this group were of the view that registration in the United States would be costly, duplicative and burdensome. They expressed concern about the scope of the information requested in the registration form, about their perception that some of the information requested (*e.g.*, general consents to cooperate with Board requests for information) went beyond registration and into the realm of oversight, and about their perception of the burden on small firms of complying with the proposal and the resulting risk of further consolidation in the accounting profession. Several of these commenters expressed concern about the confidentiality of information submitted to the Board. Many commenters in this group requested that the registration requirement be delayed, both to permit firms to complete their registration applications and to give the Board's foreign counterparts time to develop or enhance their own registration and oversight regimes and agree with the Board on ways to reduce the need for PCAOB registration and oversight.

The letters from the AICPA/SECPS and the six largest accounting firms operating in the United States raised concerns about the scope of information requested by the PCAOB's proposed registration form and requested clarification of several issues. Among other things, the commenters in this group expressed concern about the confidentiality of information submitted to the Board, the scope of certain definitions such as "associated person" and "associated entity," the manner of obtaining the Board's proposed relief from submitting information that would violate non-U.S. law, and the differences in SEC and Board requirements for fee disclosure. Several of the commenters in this group noted that the Board's broad requirement that applicants consent to cooperate with any request of the Board for testimony or documents should be subject to established privileges, such as the attorney-client privilege, and constitutional protections against self-incrimination. Commenters also objected to the Board's request for information about legal proceedings, particularly criminal proceedings, which were not related to audits. Many of the commenters in this group suggested that the Board and the Commission permit "provisional" registration in order to avoid disruption in the delivery of audit services. These commenters expressed concern that even if applicants make a good faith effort to comply, they might not be able to obtain all required information (or respond to Board requests for supplemental information) by the October 22, 2003 deadline, and that the Board may have difficulty in processing information by that date, even if it is submitted in time.

The NASBA letter requested that the Board cooperate with state boards of accountancy in their regulatory role, and suggested several ways in which the Board and the Commission might support state regulatory bodies.

IV. Discussion

Title I of the Act assigns the Board the formidable task of designing and implementing a registration and oversight system within a relatively short period of time. The investor protection goals of the Act justify the need for prompt action, but the importance of the Board's task and its potential impact on the public securities markets demand that it be undertaken in a thoughtful and reasoned manner. After careful review of the Board's proposed registration system, the Commission finds that it is consistent with the requirements of the Act and the securities laws and is necessary and appropriate in the public interest and for the protection of investors.[6]

A. Impact on Non-U.S. Accounting Firms

The Board has taken an important step in its mandate under the Act by proposing rules regarding registration of non-U.S. audit firms that prepare, issue, or play a substantial role in the preparation or issuance of, audit reports relating to U.S. public companies. This step has raised concerns in the international community, and the Board has made efforts to address those concerns, through its roundtable meeting in March, through its public comment process and through meetings and discussions with foreign regulators. In response to these concerns, the Board made significant accommodations in its proposal, especially with regard to non-U.S. accounting firms, including changes eliminating the potential conflicts of law raised by the registration system, narrowing the scope of information to be provided, and extending the deadline for foreign firms to register. This approach is similar to the approach the Commission has taken in implementing other provisions of the Act, by allowing for certain accommodations.

The Board has acknowledge that it is still considering the nature of its oversight, especially with respect to foreign public accounting firms. The Commission encourages the Board to continue its reasoned approach when considering its oversight role, especially with respect to non-U.S. firms. In this regard, we applaud the Board's initiative to work with its foreign counterparts to find ways to accomplish the goals of the Act without subjecting foreign firms to unnecessary burdens or conflicting requirements.

We urge the Board to continue its dialogue with oversight bodies outside the United States in order to try to find ways to reduce administrative burdens and coordinate in areas of common programmatic interest, such as annual reporting, inspections and discipline. We encourage the Board to move expeditiously to determine the nature and scope of its oversight over foreign public accounting firms. The

[4] Letters in this group were submitted by the European Commission, the European Federation of Accountants, the Financial Services Agency of Japan, the Institute of Chartered Accountants in England and Wales, the Instut der Wirtschaftsprüfer and the Wirtschaftsprüferkammer (jointly), the Japanese Institute of Certified Public Accounts, the Swiss State Secretariat for Economic Affairs, and the Swiss Institute of Certified Public Accountants and Tax Consultants.

[5] In addition to the letter submitted by the AICPA/SECPS, letters in this group were submitted by BDO Seidman LLP, Deloitte & Touche LLP, Ernst & Young LLP, Grant Thorton LLP, KPMG and PricewaterhouseCoopers.

[6] Section 107(b)(3) of the Act.

Commission is cognizant that many countries have embarked on ambitious reforms with respect to auditor oversight, and that the International Organization of Securities Commissions has issued a statement noting the basics of robust and effective oversight. Given these developments, we are confident that the Board and its foreign counterparts will make progress in developing workable cooperative arrangements.

B. Other Aspects of the Registration System

Many of the comment letters submitted by accounting firms and professional groups related to specific aspects of the registration form. A continuing theme of many of the comment letters was the desire for clarification of certain definitions, rules and registration form line items. It is not surprising that first-time users of a registration form and those seeking to work through a complex registration system would find areas of ambiguity. We believe that some of the issues raised by commenters in this group can be addressed by the PCAOB through formal or informal interpretations and clarifications, and, in this connection, we understand that the Board is considering the publication of "Frequently Asked Questions" and responses. We encourage the Board to use this and other means to assist applicants in complying with the registration rules. We also encourage the Board to review the registration form after the Board has gained more experience with the registration process, to determine whether amendments to the form can be made to make the registration process more efficient.

Finally, with respect to the comments submitted by NASBA, we appreciate the efforts of that organization and its members to work with the PCAOB on the important task of auditor regulation and oversight. We believe that both the Board and state regulatory bodies will benefit from continued close cooperation.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rules are consistent with the requirements of the Act and the securities laws and are necessary and appropriate in the public interest and for the protection of investors.

It is therefore ordered, pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934, that the proposed rules (File No. PCAOB–2002–03) be and hereby are approved.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–18497 Filed 7–18–03; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48176; File No. SR–DTC–2002–19]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change to Establish an Inventory Management System

July 14, 2003.

I. Introduction

On December 19, 2002, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR–DTC–2002–19 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on May 21, 2003.[2] For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

The industry's prolonged discussions of the development of a new matching model that would promote straight through processing ("STP") for institutional transactions identified a series of deficiencies in the current processing systems used in settling those transactions.[3] Industry members, particularly members of the Securities Industry Association's Institutional Trade Processing Committee, pressed DTC to develop a series of capabilities which would permit participants to centrally manage their own settlements as a way of furthering STP in the settlement process itself. A working group under the Settlement Advisory Board of The Depository Trust & Clearing Corporation ("DTCC") assisted in crafting the framework for IMS.

Today, participants control the processing of their institutional deliveries received from a matching utility (such as Omgeo) through DTC's Authorization and Exception system ("ANE"). ANE prevents a delivery from being sent to DTC's processing system without an affirmative authorization from the delivering participant. This affirmative authorization is given either on an item-by-item basis or through a "global" authorization. A participant can submit exceptions to explicitly withhold a delivery from processing. Conversely, deliveries from the National Securities Clearing Corporation's ("NSCC's") Continuous Net Settlement system ("CNS") are automatically processed unless the participant instructs NSCC otherwise via an exemption. Other deliveries, such as Night Deliver Orders ("NDOs"), along with authorized institutional deliveries and CNS deliveries are processed by DTC at predefined times. All of these transactions may recycle (*i.e.*, pend) in the event of a position deficiency or a problem with system controls. Recycles are processed based on one of two recycle options; a "First In First Out" process or a DTC preestablished recycle queue.

Participants generally have sought greater control over the processing of their deliveries than these procedures permit. Therefore, participants have built internal inventory management systems or adopted internal manual procedures that exempt deliveries from automatic processing so that the participants can control the sequence and timing of their deliveries. This has caused the industry to build redundant systems, has increased the number of reclaims, and is contrary to achieving STP.

Implementation of the IMS allows a participant to choose how it wants to authorize its deliveries. The key components of IMS include:

(1) New authorization capabilities (which replace the ANE system) that allow participants to stage transactions for automated settlement;

(2) A new "profiling" system that allows participants greater control over the timing and order of their deliveries using predefined profiles, based on transaction type and asset class, to eliminate today's frequent direct intervention in the settlement process that inhibits STP;

(3) Capabilities permitting the linkage of transactions so particular receive transactions are associated with particular deliveries;[4] and

(4) Controls permitting the retention of failed deliveries for the following settlement day that eliminates participants' need to reinput failed delivery instructions.

Using IMS, a participant can choose to authorize its deliveries either actively or passively. In the active mode, deliveries will not be processed unless an authorization is sent. In the passive mode, deliveries will be immediately authorized upon receipt. Authorizations and exemptions can be on a trade-for-trade basis or a global basis.

To provide flexibility and options, a participant will be able to create authorization profiles for the following asset classes: equity, municipal debt, corporate debt, and money market instruments. Within each asset class, a participant will be able to choose either the active or passive authorization mode as the default for different transaction types.[5] For example, for the asset class equities, a participant could choose to use active mode authorization for matched institutional deliveries and passive mode authorization for CNS deliveries.

All IMS features will be optional. Participants can continue to process their deliveries as they do today if they so wish. Participants will be able to migrate to any or all of the IMS features that they deem valuable. As a result of IMS, participants will be able to centrally manage their own settlements and achieve higher levels of straight through processing.

IMS will be implemented in two phases. Phase I, which includes (1) the new authorization capabilities that replace ANE, (2) the warehousing facility, [6] and (3) the reintroduction of dropped deliveries,[7] is scheduled to begin in July 2003. Phase II, which includes an optional customized delivery and recycle profile,[8] is scheduled to be implemented in December 2003.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[9] The Commission finds that DTC's proposed rule change is consistent with this requirement because it provides for an automated, centrally managed system whereby DTC's participants will have the ability to better manage and control the order and timing of their deliveries. Consequently, the proposed rule change should help reduce the number of late-in-the-day, manual interventions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–2002–19) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–18393 Filed 7–18–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48175; File No. SR–PCX–2003–30]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Changes in Marketing Fees

July 14, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which the PCX has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to expand its marketing fee program to include all options, and also proposes to make other changes to the program as specified below. The text of the proposed rule change is available at the PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of those statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In July 2000, the Exchange adopted a payment-for-order-flow program under which it imposes a fee on market maker transactions in designated equity option issues as set forth in a Schedule of Rates.[3] Under the program, the PCX collects and segregates the fee proceeds by trading post and makes the funds available to Lead Market Makers ("LMMs") for their use in attracting orders in the options traded at the posts. The LMMs use the funds to make payments to broker-dealers for the orders they direct to the PCX. Currently, the LMMs determine the specific terms governing the orders that qualify for payment and the amounts to be paid. The LMMs make their determinations in whatever manner they believe is most likely to be effective in attracting order flow to the PCX in the options traded at the LMMs' assigned posts. The

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 47826 (May 9, 2003), 68 FR 27876.

[3] The present U.S. system has evolved over time in different ways for different instruments, participants, and marketplaces. While the current system has met the needs of the industry well, the result is an intricate web of processing steps that are not standardized and are quite complex and inflexible. Many participants manage their processing with late-cycle interventions such as (a) withholding or "exempting" trades from more automatic processes, subsequently intervening in the system to reintroduce the transaction when they are ready to process it and (b) reversing or "reclaiming" problem transactions before or after settlement has occurred. These practices late in the settlement cycle disrupt automated processing and contribute to the incidence of fails, which creates costs and risks for participants and for the system as a whole.

[4] Such a linkage will permit customers to associate securities they expected to receive with specific securities they expected to deliver so that they no longer need to exempt a delivery until the receive providing the securities for it has been processed. Securities Exchange Act Release No. 48007 (June 10, 2003), 68 FR 35744 (order approving DTC Transaction Look-Ahead Process).

[5] In Phase I, authorization modes can be assigned for the following transaction types: (1) Institutional deliveries from a matching utility; (2) CNS; (3) NDOs; (4) Reintroduced drops; and (5) ACATS auto deliveries.

[6] The IMS warehouse feature will store delivery instructions on its database and will direct these deliveries into the processing system as NDOs that are due to settle on the appropriate settlement day.

[7] "Dropped" deliveries are deliveries from the previous day that were not completed. Under this option, "drops" will be retained and reintroduced into the system for processing on the following day. Participants using this service will have the option of having drops automatically resubmitted or of having the system require a reauthorization of dropped delivery instructions before resubmitting.

[8] DTC will file another proposed rule change for Commission approval before implementing Phase II.

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43290 (September 13, 2000), 65 FR 57213 (September 21, 2000).

Exchange assesses the marketing fee as set forth in a separate Schedule of Rates.

The Exchange seeks to modify its program for all option issues traded on the PCX, except for the Nasdaq-100 Tracking Index ("QQQ"), in the following ways:

Issues Subject to Program: Currently, the PCX's marketing fee program applies only to option issues that the PCX has classified as a top 250 issue. The PCX seeks to expand the program to include all equity option issues traded on the PCX, irrespective of its rank by volume across exchanges.

Transaction Fee: Currently, an LMM may suggest that the Exchange charge a marketing charge at a rate of $0.00, $0.25, $0.50, $0.75 or $1.00 per contract. The PCX proposes to change the fee by assessing a flat $0.60 rate per contract side on all equity options except for the QQQ options.

Scope of Transactions Subject to Program: Currently, the Exchange assesses a payment for order flow fee on all transactions other than market maker-to-market maker transactions. The PCX proposes to modify its program to collect marketing fees on only those transactions of LMMs and market makers involving customer orders from firms that accept payment for directing their orders to the PCX ("payment-accepting firms"). Under this proposal, an LMM will continue to be solely responsible for negotiating payment for order flow arrangements with payment-accepting firms. Although transactions involving firms that do not accept payment for their orders are not subject to the fee, the PCX notes that that LMMs and market makers would have no way of identifying prior to execution whether a particular order is from a payment-accepting firm or from a firm that does not accept payment for its order flow.

Treatment of QQQ Options: The Exchange intends to continue to collect a $1.00 per-contract marketing fee for the QQQ options and to assess this fee on all QQQ transactions except for market maker-to-market maker transactions. The PCX notes that these are the current terms of its marketing fee program with respect to QQQ options.

The Exchange believes that the proposed changes to its marketing fee program are consistent with the Act in that they would serve to enhance the competitiveness of the PCX and its members. Accordingly, the PCX believes that this proposed rule change is consistent with and furthers the objectives of section 6(b)(5) of the Act,[4] which requires the rules of an exchange be designed to remove impediments to, and to perfect the mechanism of, a free and open market and a national market system. The Exchange also believes that the proposal furthers the objectives of section 11A(a)(1) of the Act,[5] which reflects the findings of Congress that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure fair competition among brokers and dealers among exchange markets.

2. Basis

The Exchange believes that this proposal is consistent with section 6(b) of the Act,[6] particularly section 6(b)(4) of the Act,[7] in that it provides for the equitable allocation of reasonable fees among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the PCX, and therefore it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and Rule 19b–4(f)(2) thereunder.[9] At any time within 60 days after the filing of this proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–30 and should be submitted by August 11, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–18394 Filed 7–18–03; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78k–1.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

Office of the Deputy Secretary

[Public Notice—4404]

Removal of the Restriction on the Use of United States Passports for Travel To, In, or Through Iraq

The Deputy Secretary of State has decided to revoke the restriction on the use of U.S. passports for travel to, in, or through Iraq set forth in Public Notice 4283 of February 25, 2003 (68 FR 8791), as amended by Public Notice 4337 of April 16, 2003 (68 FR 18722), as further amended by Public Notice 4366 of May 15, 2003 (68 FR 26371). Effective upon signature of this Public Notice, United States passports are valid for travel to, in or through Iraq.

Conditions in Iraq remain hazardous for U.S. travelers. Persons considering travel to Iraq should consult the travel warnings available on the State Department's Bureau of Consular Affairs Web site, *http://travel.state.gov* prior to finalizing travel plans.

The Public Notice is effective upon signature.

Dated: July 14, 2003.

Richard Armitage,

Deputy Secretary of State, Department of State.

[FR Doc. 03–18466 Filed 7–18–03; 8:45 am]

BILLING CODE 4710–10–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments and Notice of Public Hearing Concerning China's Compliance With WTO Commitments

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments and notice of public hearing concerning China's compliance with its WTO commitments.

SUMMARY: The interagency Trade Policy Staff Committee (TPSC) will convene a public hearing and seek public comment to assist the Office of the United States Trade Representative (USTR) in its preparation of its annual report to the Congress on China's compliance with the commitments that it made in connection with its accession to the World Trade Organization (WTO).

DATES: Persons wishing to testify orally at the hearing must provide written notification of their intention, as well as a copy of their testimony, by noon, Friday, September 5, 2003. Written comments are due by noon, Wednesday, September 10, 2003. A hearing will be held in Washington, DC, on Thursday, September 18, 2003.

ADDRESSES: *Submissions by electronic mail:*

FR0082@ustr.gov (notice of intent to testify and written testimony); and *FR0083@ustr.gov* (written comments).

Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, (202) 395–6143.

The public is strongly encouraged to submit documents electronically rather than by facsimile. (*See* requirements for submissions below.)

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments or participation in the public hearing, contact Gloria Blue, (202) 395–3475. All other questions should be directed to Terrence J. McCartin, Director of Monitoring and Enforcement for China, (202) 395–3900, or David L. Weller, Assistant General Counsel, (202) 395–3581.

SUPPLEMENTARY INFORMATION:

1. Background

China became a member of the WTO on December 11, 2001. In accordance with section 421 of the U.S.-China Relations Act of 2000 (Pub. L. 106–286), USTR is required to submit, by December 11 of each year, a report to Congress on China's compliance with commitments made in connection with its accession to the WTO, including both multilateral commitments and any bilateral commitments made to the United States. In accordance with section 421, and to assist it in preparing this year's report, the TPSC is hereby soliciting public comment. Last year's report is available on USTR's Internet Web site at *http://www.ustr.gov/regions/china-hk-mongolia-taiwan.*

The terms of China's accession to the WTO are contained in the Protocol on the Accession of the People's Republic of China (including its annexes) (Protocol), the Report of the Working Party on the Accession of China (Working Party Report), and the WTO Agreement. The Protocol and Working Party Report can be found on the Department of Commerce Web page, *http://www.mac.doc.gov/China/WTOAccessionPackage.htm,* or on the WTO Web site, *http://www.docsonline.wto.org* (document symbols: WT/L/432, WT/MIN(01)/3, WT/MIN(01)/3/Add.1, WT/MIN(01)/3/Add.2).

2. Public Comment and Hearing

USTR invites written comments and/or oral testimony of interested persons on China's compliance with commitments made in connection with its accession to the WTO, including, but not limited to, commitments in the following areas: (a) Trading rights; (b) import regulation (*e.g.*, tariffs, tariff-rate quotas, quotas, import licenses); (c) export regulation; (d) internal policies affecting trade (*e.g.*, subsidies, standards and technical regulations, sanitary and phytosanitary measures, trade-related investment measures, taxes and charges levied on imports and exports); (e) intellectual property rights (including intellectual property enforcement); (f) services; (g) rule of law issues (*e.g.*, transparency, judicial review, uniform administration of laws and regulations) and status of legal reform; and (h) other WTO commitments. Persons submitting written comments should identify the commitments discussed therein by listing one or more of these categories on the first page of the comments.

Written comments must be received no later than noon, Wednesday, September 10, 2003.

A hearing will be held on Thursday, September 18, 2003, in Room 1, 1724 F Street, NW., Washington, DC 20508. If necessary, the hearing will continue on the next day.

Persons wishing to testify orally at the hearing must provide written notification of their intention by noon, Friday, September 5, 2003. The notification should include: (1) The name, address, and telephone number of the person presenting the testimony; and (2) a short (one or two paragraph) summary of the presentation, including the commitments at issue and, as applicable, the product(s) (with HTSUS numbers), service sector(s), or other subjects to be discussed. A copy of the testimony must accompany the notification. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the TPSC.

All documents should be submitted in accordance with the instructions in section 3 below.

3. Requirements for Submissions

In order to facilitate prompt processing of submissions, USTR strongly urges and prefers electronic (e-mail) submissions in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile.

Persons making submissions by e-mail should use the following subject line: "China WTO" followed by (as appropriate) "Written Comments," "Notice of Testimony," or "Testimony." Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC–", and the file name of the public version should begin with the characters "P–". The "P–" or "BC–" should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments, notices of testimony, and testimony will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked "BUSINESS CONFIDENTIAL" at the top

of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file may be made by calling (202) 395–6186. Appointments must be scheduled at least 48 hours in advance.

General information concerning USTR may be obtained by accessing its Internet Web site: *http://www.ustr.gov.*

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 03–18467 Filed 7–18–03; 8:45 am]

BILLING CODE 3190–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–294]

WTO Dispute Settlement Proceeding Regarding Offsets to Calculated Dumping Margins for Instances of Non-Dumping

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice that on June 12, 2003, the United States received from the European Communities ("EC") a request for consultations under the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement") regarding offsets to calculated dumping margins for instances of non-dumping. The EC asserts that various U.S. statutes, regulations, methodologies and determinations are inconsistent with Articles 1, 2.4, 5.8, 9.3, 9.5, 11, 18.3 and 18.4 of the Agreement on Implementation of Article VI of the General Agreements on Tariffs and Trade 1994 ("AD Agreement"), Articles VI:1 and VI:2 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), and Article XVI:4 of the WTO Agreement. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before August 28, 2003, to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *FR0080@ustr.gov*, with "Dumping Margin Offset" in the subject line, or (ii) by fax to Sandy McKinzy at (202) 395–3640, with a confirmation copy sent electronically to the address above, in accordance with the requirements for submission set out below.

FOR FURTHER INFORMATION CONTACT: William D. Hunter, Associate General Counsel, Office of the United States Trade Representative, (202) 395–3582.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act ("URAA") (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Dispute Settlement Understanding ("DSU"). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the EC

With respect to the measures at issue, the EC's request for consultations refers to the following:

- The Tariff Act of 1930, in particular sections 751, 771(35)(A) and 771(35)(B);
- The implementing regulations of the U.S. Department of Commerce ("DOC"), 19 CFR Part 351, in particular section 351.414(c)(2);
- The methodology of the DOC for determining the dumping margin in investigations on the basis of the comparison of a weighted average normal value with a weighted average export price;
- The methodology of the DOC for determining the dumping margin in reviews;
- The determinations of dumping by the DOC, the determinations of injury by the U.S. International Trade Commission ("ITC"), and the DOC notices for the imposition of the antidumping duty in the following investigations: [1]
- Certain hot-rolled carbon steel from the Netherlands, DOC Case No. A–421–807, ITC Case No. A–903;
- Stainless steel bar from France, DOC Case No. A–427–820, ITC Case No. A–913;
- Stainless steel bar from Germany, DOC Case No. A–428–830, ITC Case No. A–914;
- Stainless steel bar from Italy, DOC Case No. A–475–829, ITC Case No. A–915;
- Stainless steel bar from the United Kingdom, DOC Case No. A–412–822, ITC Case No. A–918; and
- The final results of the administrative reviews by the DOC in the following proceedings: [2]
- Industrial nitrocellulose from France, DOC Case No. A–427–009, 66 FR 54213 (Oct. 26, 2001);
- Industrial nitrocellulose from the United Kingdom, DOC Case No. A–412–803, 67 FR 77747 (Dec. 19, 2002);
- Stainless steel plate in coils from Belgium, DOC Case No. A–423–808, 67 FR 64352 (Oct. 18, 2002);
- Certain pasta from Italy, DOC Case No. A–475–818, 66 FR 300 (Jan. 3, 2002), amended 67 FR 5088 (Feb. 4, 2002);
- Certain pasta from Italy, DOC Case No. A–475–818, 68 FR 6882 (Feb. 11, 2003);
- Stainless steel sheet and strip in coils from Italy, DOC Case No. A–475–824, 67 FR 1715 (Jan. 14, 2002);
- Stainless steel sheet and strip in coils from Italy, DOC Case No. A–475–824, 68 FR 6719 (Feb. 10, 2003);
- Granular polytetrafluoenthylene [*sic*] from Italy, DOC Case No. A–475–703, 67 FR 1960 (Jan. 15, 2002);
- Granular polytetrafluoenthylene [*sic*] from Italy, DOC Case No. A–475–703, 68 FR 2007 (Jan. 15, 2003);
- Stainless steel sheet and strip in coils from France, DOC Case No. A–427–814, 67 FR 6493 (Feb. 12, 2002), amended 67 FR 12522 (March 19, 2002);
- Stainless steel sheet and strip in coils from France, DOC Case No. A–427–814, 67 FR 78773 (Dec. 26, 2002), amended 68 FR 4171 (Jan. 28, 2003);
- Stainless steel sheet and strip in coils from Germany, DOC Case No. A–428–825, 67 FR 7668 (Feb. 20, 2002), amended 67 FR 15178 (March 29, 2002);
- Stainless steel sheet and strip in coils from Germany, DOC Case No. A–428–825, 68 FR 6716 (Feb. 10, 2003);
- Ball bearings from France, DOC Case No. A–427–801, 67 FR 55780 (Aug. 30, 2002);
- Ball bearings from Italy, DOC Case No. A–475–801, 67 FR 55780 (Aug. 30, 2002);
- Ball bearings from the United Kingdom, DOC Case No. A–412–801 (Aug. 30, 2002).

With respect to the claims of WTO-inconsistency, the EC request for consultations refers to the following:

- In new investigations, the comparison of export prices and normal values on a weighted average to weighted average basis without any offset for instances of non-dumping;
- In reviews, the comparison of export prices and normal values on a weighted average to transaction basis and without any offset for instances of non-dumping in circumstances other than those specified in Article 2.4.2. of the AD Agreement;
- The impact of not offsetting calculated dumping margins with instances of non-dumping in the determination of "dumped imports" in the injury investigation;
- The determination of dumping margins above the *de minimis* level as a result of the absence of an offset to calculated dumping margins for instances of nondumping, and the consequent imposition, continuation or collection of an antidumping duty; and
- With respect to the investigations and administrative reviews identified above, the level of the dumping margins determined in the absence of an offset to calculated dumping margins for instances of non-dumping.

Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons submitting comments may either send one copy by fax to Sandy McKinzy at (202) 395–3640, or transmit a copy electronically to *FR0080@ustr.gov*, with "Dumping Margin Offset (DS294)" in the subject line. For documents sent by fax, USTR requests that the submitter provide a confirmation copy electronically. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page of the submission.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page of the submission; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket No. WT/DS–294, Dumping Margin Offset (DS294)) may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 03–18464 Filed 7–18–03; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–296]

WTO Dispute Settlement Proceeding Regarding Countervailing Duty Investigation on Dynamic Random Access Memory Semiconductors (DRAMS) From Korea

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice that on June 30, 2003, the United States received from the Republic of Korea a request for consultations under the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement") regarding the U.S. countervailing duty ("CVD") investigation on dynamic random access memory semiconductors ("DRAMS") from Korea. Korea asserts that existing and future determinations made in this investigation, as well as related U.S. laws and regulations, are inconsistent with Articles 1, 2, 10, 11, 12, 14, 17, 22, and 32.1 of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"), and Articles VI:3 and X:3 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"). USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before August 28, 2003, to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *FR0084@ustr.gov*, with "Korea DRAMS (DS296)" in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395–3640, with a confirmation copy sent electronically to the address above, in accordance with the requirements for submission set out below.

FOR FURTHER INFORMATION CONTACT: William D. Hunter, Associate General Counsel, Office of the United States Trade Representative, (202) 395–3582.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act ("URAA") (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional

[1] For the precise EC description of these determinations and notices, including the dates of publication in the **Federal Register**, *see* Annex I of the EC's consultation request, which is available on the WTO Web site's document distribution facility as document "WT/DS294/1".

[2] For the precise EC description of these final results, see Annex II of the EC's consultation request, which is available on the WTO Web site's document distribution facility as document "WT/DS294/1".

opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Dispute Settlement Understanding ("DSU"). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by Korea

With respect to the measures at issue, Korea's request for consultations refers to the following:

- The affirmative preliminary CVD determination by the U.S. Department of Commerce ("DOC"), 68 FR 16766 (April 7, 2003);
- The affirmative final CVD determination by the DOC, 68 FR 37122 (June 23, 2003);
- The affirmative preliminary injury determination by the U.S. International Trade Commission ("USITC"), 67 FR 79418 (December 27, 2002);
- Any subsequent determinations that may be made during the USITC's injury investigation in *DRAMS and DRAM Modules from Korea* (Inv. No. 701–TA–431); and
- The related laws and regulations, including section 771 of the Tariff Act of 1930 and 19 CFR 351.

With respect to the claims of WTO-inconsistency, Korea's request for consultations refers to the following:

- The DOC failed to demonstrate the existence of a financial contribution by the Government of Korea.
- The DOC failed to examine each separate alleged government measure at issue in the investigation.
- The DOC failed to demonstrate that a benefit was conferred on the respondent Hynix Semiconductor Inc., given available market benchmarks.
- The "creditworthy," "equityworthy," and other analysis required by section 771(5) of the Tariff Act of 1930 and 19 CFR 351.
- Section 771(5) and (5A) of the Tariff Act of 1930 and 19 CFR 351 impose and the DOC applied an improper burden of proof on respondents and, in turn, the DOC did not base its decisions on affirmative, objective, and verifiable evidence.
- The DOC did not base its decision to initiate its CVD investigation on sufficient evidence.
- The DOC conducted various verification meetings over the explicit objection of the Government of Korea.
- The DOC imposed provisional measures based on a flawed analysis of financial contribution, benefit, and other factual and legal issues.
- The DOC failed to provide all relevant information on the matters of fact and law and reasons for its determinations.
- The DOC failed to conduct its investigation and make determinations in accordance with fundamental substantive and procedural requirements.

The consultation request does not refer to any WTO-inconsistent action by the USITC, nor does it refer to any WTO-inconsistencies with respect to those provisions of U.S. laws and regulations dealing with injury determinations in CVD investigations.

Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons submitting comments may either send one copy by fax to Sandy McKinzy at (202) 395–3640, or transmit a copy electronically to *FR0084@ustr.gov*, with "Korea DRAMS (DS296)" in the subject line. For documents sent by fax, USTR requests that the submitter provide a confirmation copy electronically. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page of the submission.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person:

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page of the submission; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket No. WT/DS–296, Korea DRAMS) may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 03–18465 Filed 7–18–03; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–2003–15660]

Notice of Request for Renewal of a Currently Approved Information Collection

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 this notice announces the Department of Transportation's (DOT's) intention to request an extension for a currently approved information collection.

DATES: Comments on this notice must be received by September 19, 2003.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number OST–2003–15660] by any of the following methods:

- *Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington DC, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Regulatory Notes.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Luther Dietrich, Office of the Secretary, Office of Aviation Analysis, X–53, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–1046.

SUPPLEMENTARY INFORMATION:

Title: Air Carrier's Claim for Subsidy and Air Carrier's Report of Departures Flown in Scheduled service.

OMB Control Number: 2106–0044.

Type of Request: Extension for a currently approved information collection.

Abstract: In 14 CFR 271 of its Aviation Economic Regulations, the Department provided that subsidy to air carriers for providing essential air service will be paid to the carriers monthly, and that payments will vary according to the actual amount of service performed during the month. The reports of subsidized air carriers of essential air service performed on the Department's Forms 397, "Air Carrier's Report of Departures Flown in Scheduled Service", and 398, "Air Carrier's Claim for Subsidy," establish the fundamental basis for paying these air carriers on a timely basis. Typically, subsidized air carriers are small businesses and operate only aircraft of limited size over a limited geographical area. The collection permits subsidized air carriers to submit their monthly claims in a concise, orderly, easy-to-process form, without having to devise their own means of submitting support for these claims.

The collection involved here requests only information concerning the subsidy-eligible flights (which generally constitute only a small percentage of the carriers' total operations) of a small number of air carriers. The collection permits the Department to timely pay air carriers for providing essential air service to certain eligible communities that would not otherwise receive scheduled passenger air service.

Respondents: Small air carriers selected by the Department in docketed cases to provide subsidized essential air service.

Estimated Number of Respondents: 21.

Total Annual Responses: 816.

Estimated Total Burden on Respondents: 4,176 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper functioning of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC on July 15, 2003.

Randall D. Bennett,

Director, Office of Aviation Analysis.

[FR Doc. 03–18495 Filed 7–18–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket Nos. OST–03–15138 and OST–03–15139]

Application of Aviation Concepts, Inc. for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (order 2003–7–18).

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Aviation Concepts, Inc., fit, willing, and able, and awarding it certificates of public convenience and necessity to engage in interstate and foreign charter air transportation of persons, property and mail.

DATES: Persons wishing to file objections should do so no later than July 29, 2003.

ADDRESSES: Objections and answers to objections should be filed in Dockets OST–03–15138 and OST–03–15139 and addressed to the Department of Transportation Dockets (SVC–124.1, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Lawyer, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–1064.

Dated: July 14, 2003.

Michael W. Reynolds,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 03–18380 Filed 7–18–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Presque Isle County/Rogers City Airport, Rogers City, Michigan

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the exchange of the airport property. The proposal consists of one parcel totaling approximately 5.28 acres. Current use and present condition is undeveloped vacant land. The land was originally sold to the County from Bradley Reality Company, December 27, 1935. There are no impacts to the airport by allowing the airport to dispose of the property. The proposed land will be exchanged for school district property needed to meet the Object Free Area requirements

for the runway. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before August 20, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Stephanie Swann, Program Manager, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO–613, Metro Airport Center, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone Number: 734–229–2945; FAX Number: 734–229–2950. Documents reflecting this FAA action may be reviewed at this same location or at Presque Isle County/Rogers City Airport, Rogers City, Michigan.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property located in Rogers City, County of Presque Isle, Michigan, and described as follows: Commencing at the east one-quarter corner of section 22, town 35 north, range 5 east, Presque Isle County, state of Michigan, described as: Thence S87°57′57″ W 1342.14 feet to the point of beginning; thence S 01°05′26″ E along the east one-eighth line of said section 1166.49 feet; thence S87°53′41″ W 197.40 feet; thence N01°05′24″ W 1166.73 feet; thence N87°57′57″ E 197.39 feet to the point of beginning. Said parcel contains approximately 5.28 acres.

Issued in Romulus, Michigan on June 2, 2003.

Irene R. Porter,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 03–18385 Filed 7–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 202: Portable Electronic Devices

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 202 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 202: Portable Electronic Devices.

DATES: The meeting will be held on July 22–24, 2003 from 9 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036–5133.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 202 meeting. The agenda will include:

- July 22:
  - Working Groups 1 through 3 meet all day
- July 23:
  - Opening Plenary Session (Welcome and Introductory Remarks, Review Agenda, Review/Approve previous Common Plenary Summary, Review Open Action Items)
  - Report from Program Management Committee on SC–202 recommended revisions to Terms of Reference
  - Review and update of EUROCAE WG58 Activities
  - Review Working Group (WG) Progress and Identify Issues for Resolution (will continue into second day as required)
  - Working Group 1 (PEDs characterization, test, and evaluation)
  - Updated Project Management template information
  - Structure, outline, intended contents of work group's data report
  - Preliminary or summary list of devices type/categorizations
  - Grouped by frequencies used, modulation type, power, etc.
  - Prioritized device categories for Phase 1 document
  - Equipment needs or other support required
  - Working Group 2 (Aircraft test and analysis)
  - Updated Project Management template information
  - Structure, outline, intended contents of work group's data report
  - Plan for aircraft test
  - What has to be determined to be already existing and useable data
  - Needs for airplane availability
  - Equipment needs or other support required
- July 24:
  - Continue Plenary Session
  - Review of Working Group (WG) Progress and Identify Issues for Resolution
  - Working Group 3 (Aircraft systems susceptibility)
  - Updated Project Management template information
  - Structure, outline, intended contents of work group's data report
  - Definition of systems susceptibility presentation format
  - Prioritized list of on-aircraft systems to identify "most critical" victim systems
  - Summary of timeframe for data availability
  - Testing requirements identified, plan for initial susceptibility testing
  - Specific data required from WG1 and WG2 testing or evaluation of existing data
  - Working Group 4 (Risk assessment, practical application, and final documentation)
  - Updated Project Management template information
  - Structure, outline, intended contents of work group's data report
  - First cut or current plan for what guidance, and identify where the gaps are that should be addressed in SC–202 report
  - Preliminary requests for data from other WGs (what data is needed first)
  - Issues identified for resolution by several Working Groups
  - Testing of aircraft receiver false-alarm and missed-detection susceptibilities to Ultra Wide Band emissions as done by NASA and airlines team
  - How to address the intermodulation issue
  - How to address the multiple-PED issue
  - Additional items as identified during working-group report-out
  - Assignment/Review of Future Work
  - Closing Session (Other Business, Date and Place of Next Meeting, Closing Remarks, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 24, 2003.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 03–18383 Filed 7–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 172: Future Air-Ground Communications in the Very High Frequency (VHF) Aeronautical Data Band (118–137 MHz)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 172 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 172: Future Air-Ground Communications in the VHF Aeronautical Data Band (118–137 MHz).

DATES: The meeting will be held July 16–17, 2003 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, SW., Washington, DC 20036; Telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 172 meeting. The agenda will include:

- July 16:
- Opening Plenary Session (Welcome and Introductory Remarks, Review of Agenda, Review Summary of Previous Meeting).
- Convene Working Group-3 (WG–3), resolve final review and comments (FRAC), to draft Change 1 to DO–271A, VHF Digital Link Mode 3 Minimum Operational Performance Standard (MOPS).
- July 17:
- Reconvene WG–3 as necessary to continue with the resolution of FRAC comments to draft Change 1 to DO–271A VDL Mode 3 MOPS.
- Convene WG–2, time permitting, to entertain white papers and actions regarding the development of Version B of the DO–224A, Signal-in-Space Minimum Aviation Communications Including Compatibility with Digital Voice.
- Convene Plenary-Approve draft Change 1 to DO–271A VDL 3 MOPS to forward to RTCA Program Management Committee.
- Review relevant activities:
- International Civil Aviation Organization (ICAO) Aeronautical Mobile; Communications Panel work;
- NEXCOM activities;
- EUROCAE WG–47 status and issues; and
- Others as appropriate.
- Closing Plenary Session (Other Business, Date and Place of Next Meeting, Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC on June 19, 2003.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 03–18384 Filed 7–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Boulder, Broomfield, and Jefferson Counties, CO

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed transportation improvement project in Boulder, Broomfield, and Jefferson Counties, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. Shaun Cutting, Senior Operations Engineer, FHWA, Colorado Division, 555 Zang Street, Room 250, Lakewood, CO, 80228, Telephone: (303) 969–6730 extension 369. Mr. William McDonnell, Project Engineer, Colorado Department of Transportation Region 6, 2000 South Holly Street, Denver, Colorado 80222, Telephone: (303) 757–9914.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Colorado Department of Transportation (CDOT), will prepare an environmental impact statement (EIS) in accordance with the National Environmental Policy Act (NEPA) for an improved connection between the western terminus of the Northwest Parkway in Broomfield County and the SH 58, I–70, or C–470 freeway systems to the south in Jefferson County. This connection is considered necessary to address the need for system linkage, to provide for existing and projected transportation demand, to improve safety, and to enhance modal interrelationships, within the Northwestern Quadrant of the Denver Metropolitan Area:

Alternatives under consideration include but are not limited to (1) taking no action; (2) construction of a new highway alignment; (3) improvement of the existing highway network; (4) improvement of the existing arterial system; (5) transit options; and, (6) expansion to the existing bus system.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public and agency meetings will be held in the project area in January 2004. In addition, public hearings will be held after the publication and issuance of the Draft Environmental Impact Statement and the Final Environmental Impact Statement. Public notice will be given of the time and place of the meetings and hearings. The Draft Environmental Impact Statement and Final Environmental Impact Statement will be available for public and agency review and comment prior to the public hearings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or the Colorado Department of Transportation at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: July 14, 2003.

William C. Jones,

Division Administrator, Lakewood, Colorado.

[FR Doc. 03–18349 Filed 7–18–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–15683]

Notice of Receipt of Petition for Decision That Nonconforming 1982 Triumph TSS Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1982 Triumph TSS motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1982 Triumph TSS motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is August 20, 2003.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing, Inc. of Houston, Texas ("Wallace") (Registered Importer 90–005) has petitioned NHTSA to decide whether 1982 Triumph TSS motorcycles are eligible for importation into the United States. The vehicles which Wallace believes are substantially similar are 1982 Triumph TSS motorcycles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. 1982 Triumph TSS motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Wallace submitted information with its petition intended to demonstrate that non-U.S. certified 1982 Triumph TSS motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1982 Triumph TSS motorcycles are identical to their U.S. counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses*, 111 *Rearview Mirrors*, 116 *Brake Fluid*, 119 *New Pneumatic Tires for Vehicles other than Passenger Cars*, Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars*, and 122 *Motorcycle Brake Systems*.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* replacement of the existing headlamp and rear tail lamp envelope with compliant components, and installation of compliant front amber reflectors and rear red reflectors.

Standard No. 123 *Motorcycle Controls and Displays:* installation of a U.S. model speedometer calibrated in miles per hour.

The petitioner states that when the vehicle has been brought into conformity with all applicable Federal motor vehicle safety standards, a certification label that meets the requirements of 49 CFR part 567 will be affixed to the front of the motorcycle frame.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 14, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–18494 Filed 7–18–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2003–15621; Notice 1]

Accuride Corporation Receipt of Application for Decision of Inconsequential Noncompliance

Accuride Corporation (Accuride) has determined that approximately 1,053 Extra Service Wheels, produced between May 27, 2003, and May 31, 2003, do not meet certain requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 120, "Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Accuride has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports."

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

The noncompliant wheels, produced by Accuride at its Erie, Pennsylvania plant and machined at the Accuride plant in Cuyahoga Falls, Ohio, do not have a "DOT–T" stamp on the rims. The symbol "DOT" and the designation, which indicates the source of the rims', published nominal dimensions, in this case "T" were inadvertently not marked on the wheels.

Accuride believes that the omission of the "DOT–T" marking is inconsequential to safety as the omission in no way affects the performance of the wheel and does not otherwise compromise safety. All other information markings required by FMVSS No. 120 are correctly marked.

Interested persons are invited to submit written views, arguments, and data on the application described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov*. Click on "Help" to obtain instructions for filing the document electronically.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: August 20, 2003.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: July 15, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–18496 Filed 7–18–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 634X)]

CSX Transportation, Inc.—Abandonment Exemption—in Monroe County, IN

On July 1, 2003, CSX Transportation, Inc. (CSXT) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 2.95-mile line of railroad, in CSXT's Western Region, Great Lakes Division, extending from milepost 00Q–219.55 to milepost 00Q–222.50, in Bloomington, Monroe County, IN. The line traverses United States Postal Service Zip Codes 47402 and 47404, and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in CSXT's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by October 17, 2003.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than August 11, 2003. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–55 (Sub-No. 634X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Natalie S. Rosenberg, Counsel, 500 Water Street—J150, Jacksonville, FL 32202. Replies to the CSXT petition are due on or before August 11, 2003.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary), prepared by SEA, will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days after the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://WWW.STB.DOT.GOV*.

Decided: July 14, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–18432 Filed 7–18–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 14, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 20, 2003 to be assured of consideration.

Departmental Offices/Community Development Financial Institutions (CDFI) Fund

OMB Number: 1559–0022.
Form Number: CDFI 0006.
Type of Review: Extension.
Title: Technical Assistance Component, CDFI Program.
Description: The CDFI Fund provides grants to be used to acquire technical assistance to increase the capacity of community development financial institutions (CDFIs) or proposed CDFIs to serve underserved target markets.
Respondents: Not-for-profit institutions, Business or other for-profit.
Estimated Number of Respondents: 80.
Estimated Burden Hours Per Respondent: 55 hours.
Frequency of Response: Other (application submission only).
Estimated Total Reporting Burden: 4,400 hours.
Clearance Officer: Lois K. Holland, (202) 622–1568, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220. *OMB Reviewer:* Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Treasury PRA Clearance Officer.
[FR Doc. 03–18431 Filed 7–18–03; 8:45 am]
BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Form 8830

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8830, Enhanced Oil Recovery Credit.

DATES: Written comments should be received on or before September 19, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Enhanced Oil Recovery Credit.
OMB Number: 1545–1282.
Form Number: 8830.
Abstract: Internal Revenue Code section 43 allows taxpayers to elect a tax credit of 15% of the qualified oil recovery costs paid or incurred during the year. The credit is phased out as the reference price of crude oil for the prior year exceeds $28 per barrel. Form 8830 is used by taxpayers to compute the credit.
Current Actions: There are no changes being made to the form at this time.
Type of Review: Revision of a currently approved collection.
Affected Public: Business or other for-profit organizations, and individuals or households.
Estimated Number of Respondents: 3,623.
Estimated Time Per Response: 9 hours, 16 minutes.
Estimated Total Annual Burden Hours: 33,622.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 15, 2003.

Glenn Kirkland,
IRS Reports Clearance Officer.
[FR Doc. 03–18469 Filed 7–18–03; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8586

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8586, Low-Income Housing Credit.

DATES: Written comments should be received on or before September 19, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, at (202) 622–3179, or *Larnice.Mack@irs.gov*, or Internal Revenue Service, Room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Low-Income Housing Credit.
OMB Number: 1545–0984.
Form Number: 8586.
Abstract: Internal Revenue Code section 42 permits owners of residential rental projects providing low-income housing to claim a tax credit for part of the cost of constructing or rehabilitating such low-income housing. Form 8586 is used by taxpayers to compute the credit and by the IRS to verify that the correct credit has been claimed.
Current Actions: The order of Part II, Tax Liability Limit, was revised for this form. Section 501 of Public Law 106–170 extended the provision that allows individuals to offset the regular tax liability in full for personal credits. Previously filers were allowed to claim credits to the extent that the regular tax liability exceeded the tentative minimum tax. For tax years beginning in 2000 and 2001, personal nonrefundable credits may offset both the regular tax and the minimum tax. Also, the computation was changed in Part II to reflect and to conform to changes that were made to the tax computation on Form 1040. A new line 10 was added to show the sum of the regular tax before credits and the alternative minimum tax.
Type of Review: Revision of a currently approved collection.
Affected Public: Individual or households, and business or other for-profit organizations.
Estimated Number of Response: 168,137.
Estimated Time Per Respondent: 13 hrs., 45 minutes.
Estimated Total Annual Burden Hours: 2,311,884.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 15, 2003.

Glenn Kirkland,
IRS Reports Clearance Officer.
[FR Doc. 03–18482 Filed 7–18–03; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–MISC

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–MISC, Miscellaneous Income.

DATES: Written comments should be received on or before September 19, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Miscellaneous Income.
OMB Number: 1545–0115.
Form Number: 1099–MISC.
Abstract: Form 1099–MISC is used by payers to report payments of $600 or more of rents, prizes and awards, medical and health care payments, nonemployee compensation, and crop insurance proceeds, $10 or more of royalties, any amount of fishing boat proceeds, certain substitute payments, golden parachute payments, and an indication of direct sales of $5,000 or more.
Current Actions: There are no changes being made to the form at this time.
Type of Review: Extension of a currently approved collection.
Affected Public: Business or other for profit organizations, individuals or households, not-for-profit institutions, farms, Federal government, and state, local or tribal governments.
Estimated Number of Respondents: 77,317,951.
Estimated Time Per Recordkeeper: 16 min.
Estimated Total Annual Burden Hours: 21,649,027.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 15, 2003.

Glenn Kirkland,
IRS Reports Clearance Officer.
[FR Doc. 03–18483 Filed 7–18–03; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Fund Availability Under the VA Homeless Providers Grant and Per Diem Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is announcing the availability of funds for applications for assistance under the Life Safety Code grant component of VA's Homeless Providers Grant and Per Diem Program. This Notice contains information concerning the program, application process, and amount of funding available.

DATES: An original completed and collated grant application (plus two completed collated copies) for assistance under the VA's Homeless Providers Grant and Per Diem Program must be received in the Grant and Per Diem Field Office by 4 p.m. Eastern Time on August 20, 2003. Applications may not be sent by facsimile (FAX). In the interest of fairness to all competing applicants, this deadline is firm as to date and hour, and VA will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their material to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

For a Copy of the Application Package: Download directly from VA's Grant and Per Diem Program Web page at *http://www.va.gov/homeless/page.cfm?pg=3* or call the Grant and Per Diem Program at 202–273–8443 or (toll-free) 1–877–332–0334.

For a document relating to the VA Homeless Providers Grant and Per Diem Program, see the interim final rule published in the **Federal Register** on March 19, 2003, Sections 61.0 through 61.82.

Submission of Application: An original completed and collated grant application (plus two copies) must be submitted to the following address: VA Homeless Providers Grant and Per Diem Field Office, 10770 N. 46th Street, Suite C–100, Tampa, Florida 33617. Applications must be received in the Grant and Per Diem Field Office by the application deadline. Applications must arrive as a complete package. Materials arriving separately will not be included in the application package for consideration and may result in the application being rejected or not funded.

FOR FURTHER INFORMATION CONTACT: Victor Harris, VA Homeless Providers Grant and Per Diem Program, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; 202–273–8443 or Tampa Field Office (toll-free) 1–877–332–0334.

SUPPLEMENTARY INFORMATION: This Notice announces the availability of funds for assistance under VA's Homeless Providers Grant and Per Diem Program for eligible capital grantees who received a previous grant under section 3 of the Homeless Veterans Comprehensive Service Act of 1992 (Pub. L. 102–590; 38 U.S.C. 7721 note) for construction, renovation, or acquisition of a facility and may seek a Life Safety Code grant solely for renovations to such facility to comply with the Life Safety Code of the National Fire Protection Association.

Public Law 107–95, the Homeless Veterans Comprehensive Assistance Act of 2001, authorizes this program. Funding applied for under this Notice may be used solely for renovations to such facility to comply with the Life Safety Code of the National Fire Protection Association.

Authority: VA's Homeless Providers Grant and Per Diem Program is authorized by Public Law 107–95, section 5(a)(1) the Homeless Veterans Comprehensive Assistance Act of 2001 codified at 38 U.S.C. 2011, 2012, 2061, 2064 and has been extended through Fiscal Year 2005. The program is implemented by the interim final rule codified at 38 CFR 61.0. The interim final rule was published in the **Federal Register** on March 19, 2003, the regulations can be found in their entirety in 38 CFR §§ 61.0 through 61.82. Funds made available under this Notice are subject to the requirements of those regulations.

Allocation: Approximately $3.5 million is available for the Life Safety Code grant component of this program.

Funding Priorities: None.

Application Requirements: The specific grant application requirements will be specified in the application package. The package includes all required forms and certifications. Selections will be made based on criteria described in the application.

Applicants who are selected will be notified of any additional information needed to confirm or clarify information provided in the application. Applicants will then be notified of the deadline to submit such information. If an applicant is unable to meet any conditions for grant award within the specified time frame, VA reserves the right to not award funds and to use the funds available for other grant and per diem applicants.

Dated: July 14, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 03–18493 Filed 7–18–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of New System of Records—Enterprising Veterans' Information Center—VA (124VA00VE).

SUMMARY: The Privacy Act of 1974, 5 U.S.C. 522a, requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is adding a new system of records entitled "Enterprising Veterans' Information Center—VA" (124VA00VE).

DATES: Comments on the establishment of this new system of records must be received no later than August 20, 2003. If no public comment is received, the new system will become effective August 20, 2003.

ADDRESSES: Written comments concerning the proposed new system of records may be mailed or hand-delivered to the Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420. Comments may also be faxed to (202) 273–9026, or e-mailed to *OGCRegulations@mail.va.gov*. All relevant material received before August 20, 2003 will be considered. Comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call for an appointment.

FOR FURTHER INFORMATION CONTACT: Ms. Gail Wegner (00VE), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. The telephone number is (202) 254–0233.

SUPPLEMENTARY INFORMATION: Public Law 106–50 (Section 604) requires, in pertinent part:

"(b) Identification of Small Business Concerns Owned by Eligible Veterans. Each fiscal year, the Secretary of Veterans Affairs shall, in consultation with the Assistant Secretary of Labor for Veterans' Employment and Training and the Administrator of the Small Business Administration, identify small business concerns owned and controlled by veterans in the United States. The Secretary shall inform each small business concern identified under this paragraph that information on Federal procurement is available from the Administrator."

This new system of records will be used to maintain and access an automated database containing recordings of phone calls coming into the Center for Veterans Enterprise (Center or CVE) and the routing of those calls to the appropriate individuals for action.

The information in this system will be maintained in electronic form. The information in these records will be used within the office for the purpose of supporting the office mission and responding to inquiries coming into the office.

A "Report of Intention to Publish a **Federal Register** Notice of a New System of Records" and an advance copy of the new system notice have been provided to the Chairmen of the House Committee on Government Reform and Oversight and the Senate Committee on Governmental Affairs, and the Director, Office of Management and Budget (OMB), as required by provisions of the Privacy Act, and guidelines issued by OMB (61 FR 6428) (1996).

Approved: July 9, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

124VA00VE

SYSTEM NAME:

Enterprising Veterans' Information Center (EVIC)–VA.

SYSTEM LOCATION:

All system records are maintained at the Center for Veterans Enterprise office in VA Headquarters, Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system shall record the names and numbers of individuals calling the CVE for advice and assistance, as well as any voice messages.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system of records will provide integrated customer service for the Center's telephone and operational business communication needs to include, but not limited to, automated switchboard referral to CVE resource partners and automated electronic mail responses and referrals. It shall record the names and numbers of individuals calling the CVE for advice and assistance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 106–50, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records maintained by the system will be used within the Center for Veterans Enterprise to manage communications from veterans and other individuals seeking assistance from the Center in establishing new businesses or enhancing existing businesses or seeking information on business opportunities for veterans.

COMPATIBILITY OF THE ROUTINE USES:

The Privacy Act permits disclosure of information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which the information is collected. In all of the routine use disclosures described above, either the recipient of the information will use the information in connection with a matter relating to one of VA's programs; to provide a benefit to VA; or because disclosure is required by law.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The EVIC will operate on equipment located at VA's Center for Veterans Enterprise located in Washington, DC. Data backups will reside on appropriate media according to normal system back-up plans recommended by the manufacturer. The system will be managed by the Center for Veterans Enterprise in VA Headquarters, Washington, DC.

RETRIEVABILITY:

Records may be retrieved by calling telephone number, date, name, and other data given by the caller that is stored in the database.

SAFEGUARDS:

The system and all files will be physically located in a locked room within CVE offices. Access to the building is controlled by access card during non-duty hours and by guard service during duty hours. Access to CVE offices is via a receptionist during duty hours and by physical key entry during non-duty hours.

Access to the system is via user-id/password restricted to authorized administrators only. Overall policy, within VA, regarding issuance of user-ids and passwords is formulated in VA by the Office of Information and Technology, Washington, DC.

RETENTION AND DISPOSAL:

Records will be maintained and disposed of in accordance with the records disposal authority approved by the Archivist of the United States, the National Archives and Records Administration, and published in Agency Records Control Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Center for Veterans Enterprise (00VE), 810 Vermont Avenue, NW., Washington, DC 20420.

RECORDS ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records may access the records via the Internet, or submit a written request to the system manager.

CONTESTING RECORD PROCEDURES:

An individual who wishes to contest records maintained under his or her name or other personal identifier may write or call the system manager. VA's rules for accessing records and contesting the contents and appealing initial agency determinations are published in regulations set forth in the Code of Federal Regulations. *See* 38 CFR 1.577, 1.578.

RECORD SOURCE CATEGORIES:

Records contained in EVIC will be created from information provided by persons voluntarily contacting the Center for Veterans Enterprise and by caller-id information supplied via the local telephone carrier.

[FR Doc. 03–18492 Filed 7–18–03; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 68, No. 139
Monday, July 21, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Adminstration

14 CFR Part 39

[Docket No. 2003–CE–23–AD; Amendment 39–13173; AD 2003–11–14]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. Models PA–34–200T, PA–34–220T, PA–44–180, and PA–44–180T Airplanes

Correction

In rule document 03–13650 beginning on page 33356 in the issue of Wednesday, June 4, 2003, make the following correction:

§ 39.13 [Corrected]

On page 33358, in § 39.13(d), in the first column, in the table, under the column heading "Actions", correct (1) to read as follows:

"(1) Visually inspect any installed aircraft heater fuel pump (model 91E92–1 or model 91E93–1) for leakage.".

[FR Doc. C3–13650 Filed 7–18–03; 8:45 am]
BILLING CODE 1505–01–D



Federal Register

Monday,
July 21, 2003

Part II

Department of Education

Office of Special Education and Rehabilitative Services; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2003.

SUMMARY: This notice announces closing dates, priorities, and other information regarding the transmittal of grant applications for FY 2003 competitions under three programs authorized under part D, subpart 2 of the Individuals with Disabilities Education Act, as amended. The three programs are: (1) Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities (4 priorities); (2) Special Education—Technology and Media Services for Individuals with Disabilities (1 priority) and (3) Special Education—Training and Information for Parents of Children with Disabilities (1 priority).

Please note that significant dates for the availability and submission of applications, as well as important fiscal information, are listed in a table at the end of this notice.

Waiver of Rulemaking

It is generally our practice to offer interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the public comment requirements in the Administrative Procedure Act (5 U.S.C. 553) inapplicable to the priorities in this notice.

General Requirements

(a) The projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities (*see* section 606 of IDEA).

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (*see* section 661(f)(1)(A) of IDEA).

(c) The projects funded under these priorities must budget for a two-day Project Directors' meeting in Washington, DC during each year of the project.

(d) In a single application, an applicant must address only one absolute priority in this notice.

(e) If a project maintains a Web site, it must include relevant information and documents in an accessible form.

Page Limit: If you are an applicant, Part III of each application, the application narrative, is where you address the selection criteria that are used by reviewers in evaluating the application. You must limit Part III to the equivalent of no more than the number of pages listed in the table at the end of this notice, using the following standards:

- A "page" is 8.5" × 11" (on one side only) with one-inch margins (top, bottom, and sides).
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I—the cover sheet; Part II—the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography or references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject without consideration or evaluation any application if —

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Project for Electronic Submission of Applications

In Fiscal Year 2003, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The three programs in this announcement: Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities—CFDA 84.326, Technology and Media Services for Individuals with Disabilities—CFDA 84.327, and Training and Information for Parents of Children with Disabilities—CFDA 84.328 are included in the pilot project. If you are an applicant for a grant under any of the three programs in this notice, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Appliyation). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities Program, the Technology and Media Services for Individuals with Disabilities Program, or the Training and Information for Parents of Children with Disabilities Program and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

1. You must be a registered user of e-Application, and have initiated an e-Application for this competition; and
2. (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 and 3:30 p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities Program, the Technology and Media Services for Individuals with Disabilities Program, or the Training and Information for Parents of Children with Disabilities Program at: *http://e-grants.ed.gov.*

We have included additional information about the e-Application pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application packages.

Eligible Applicants: State educational agencies, local educational agencies, institutions of higher education, other public agencies, nonprofit private organizations, for-profit organizations, outlying areas, freely associated States, and Indian tribes or tribal organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) The selection criteria, chosen from the general selection criteria in 34 CFR 75.210. The specific selection criteria for these competitions are included in the application package for these competitions.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priorities

Under 34 CFR 75.105(c)(3) we consider only applications that meet one of the following priorities:

Absolute Priority 1—Absolute Priority 1—The IDEA Partnership Project (84.326A)

Background

In 1998 the Department of Education, Office of Special Education Programs (OSEP), funded four projects to support partnerships among national associations and membership organizations so that they could contribute to the successful implementation of the Individuals with Disabilities Education Act (IDEA) Amendments of 1997 by making available accurate information on the statute, as well as research-based practices for implementing the statute, to their grass-roots constituencies. Partnerships were funded to meet the needs of four audiences: (1) Families and advocates, (2) policymakers, (3) service providers, and (4) local-level administrators.

Over the last four and a half years, these four projects have made considerable progress building trust between the participating organizations and creating an infrastructure by which member organizations within individual projects could collaborate, share information, and develop activities and products to meet the needs of their constituencies. In addition, through the Partnership Projects' Coordinating Committee, cross-partnership collaborations were initiated that allowed the various constituency groups to share their perspectives and to gain insights on the perspectives of others. This cross-stakeholder communication is essential to successfully address the complex challenges associated with the implementation of both IDEA and No Child Left Behind (NCLB).

Priority

The purpose of this priority is to continue, and further focus, the work of the four Partnership Projects by supporting one partnership among national associations and membership organizations representing all four audiences: (1) Families, (2) policymakers, (3) service providers, and (4) local-level administrators. This partnership project must build upon the relationships and infrastructures created by the four previous partnerships, but must focus its work primarily on activities that are relevant across all four audiences. In addition, activities conducted by this project must be designed to move national-level collaborations down to State and local levels.

Like the previous four projects, this single partnership will be funded as a cooperative agreement, and must inform and provide support to its members in understanding IDEA, including Part C, and NCLB. The project must focus on the effect these two statutes have on the respective roles of its members in improving results for children with disabilities. The project must also provide opportunities for members to engage in meaningful dialogue and problem solving designed to improve the integration of regular and special education.

Applicants may not make financial commitments to any associations or membership organizations in designing this application. These commitments will be negotiated during the first month of the award with final approval by OSEP. The project must:

(a) Form a single partnership among national associations and membership organizations from both regular and special education to meet the collective needs of four audiences:

(1) Policymakers (*e.g.*, associations of chief State school officers, State boards of education, local school boards, State directors of special education, mental health, and children with special health care needs programs, deans of education and special education, department chairs at institutions of higher education, superintendents, governors, State legislators);

(2) Service providers, (*e.g.*, associations of regular and special education teachers, community-based

Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities [CFDA Number 84.326]

Purpose of Program: The purpose of this program is to provide technical assistance and information—through such mechanisms as institutes, regional resource centers, clearinghouses, and programs that support States and local entities in building capacity—to (1) improve early intervention, educational, and transitional services and results for children with disabilities and their families; and (2) address systemic-change goals and priorities.

providers, vocational educators, related service providers, paraprofessionals);

(3) Local-level administrators (*e.g.*, associations of elementary, middle, and secondary school principals; regular and special education administrators; and administrators of private schools); and

(4) Families (*e.g.*, associations of parents and family members of students in general, special education students, and infants with disabilities, and disability organizations representing individuals with disabilities).

(b) Through the project director and other relevant staff of the partnership, collaborate with appropriate OSEP and other federally funded researchers and technical assistance providers, including the parent training and information centers. OSEP supports a number of research programs and technical assistance efforts that produce findings, information, instructional approaches, and products that could bear upon the successful implementation of IDEA. The project must also share information with the OSEP-funded Dissemination Center.

(c) Include information in its application on an assessment it has conducted to identify the needs of partners regarding the implementation of IDEA, including Part C.

(d) Establish an advisory panel that includes representation from each of its member organizations.

(e) Report results of the needs assessment described in its application to the advisory panel during the first three months of the award.

(f) Based on the results of the needs assessment, with input from the advisory panel, develop joint annual plans for training, technical assistance, dissemination, and outreach to reach the partners' grass roots constituencies in an efficient and timely manner. The plans, which must be submitted to OSEP for approval, must address:

(1) How partners intend to reach members at both State and local levels;

(2) How partners will implement research-based practices to effectively implement IDEA, including Part C, and NCLB;

(3) How trainers, who are members of partner organizations, will be compensated for their training time;

(4) How partners will use project funds to supplement their ongoing efforts to improve results for children with disabilities; and

(5) How the project will leverage other resources to support planned activities.

(g) Convene the advisory panel, at a minimum, on a semi-annual basis to assess the implementation of the plan.

(h) With input from the advisory panel, develop strategies to address the fragmentation and facilitate the integration of regular and special education. Examples of such strategies could include, but are not limited to, technical assistance activities designed to help States and districts develop seamless accountability systems.

(i) Create opportunities for the project's member organizations to engage in meaningful dialogue and problem solving designed to identify supports and impediments to improved results for children with disabilities. The project must develop strategies to eliminate the impediments.

(j) Prior to developing any new product, whether paper or electronic, submit for approval a proposal describing the content and purpose of the product to OSEP's Dissemination Center for which OSEP plans to fund this year. However, product development is not a primary function of this project.

(k) When OSEP has funded a technical assistance center in the content area of the proposed product, but no product currently exists that will meet the needs of the project's partners, work with that center to ensure that the content of the product is of the highest quality.

(l) Before submitting a new product to OSEP's Dissemination Center for review, have that product thoroughly reviewed by individuals representing each of the four constituency groups represented in the partnership.

(m) Review the new product for technical accuracy and clarity by vetting through an approach determined in consultation with OSEP.

(n) Establish:

(1) A toll free telephone number;

(2) A Web site with links to other information and technical assistance providers;

(3) A database of products and activities; and

(4) Regular information updates to keep partner organizations abreast of new developments in the law.

(o) Employ an information specialist to answer questions and mail materials upon request.

(p) Make all information products accessible electronically and available in alternative formats.

(q) Conduct an evaluation of project activities that is based on clear, measurable performance objectives that include measures of collaboration and, if possible, are clearly linked to improving results.

(r) Conduct OSEP-specified technical assistance to States. This effort may include participation in: (1) Collaborative Web-based technical assistance activities, (2) coordination of and participation in State-to-State communities of practice, or (3) direct technical assistance to OSEP-specified States through partnerships between OSEP and selected States. Staff time and project resources dedicated to provide technical assistance to OSEP-specified States will be negotiated with OSEP as part of the cooperative agreement within 30 days of the project award (OSEP anticipates that technical assistance to OSEP-specified States could average approximately $40,000 per year. Budgets should be developed with this in mind).

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) for continuation awards.

The Secretary will also consider the following:

(a) The recommendation of a review team consisting of experts selected by the Secretary. The team will conduct its review in Washington, DC during the last half of the project's second year. A project must budget for the travel associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project;

(c) The degree to which the project is making a positive contribution—and its strategies are demonstrating the potential for disseminating significant knowledge to State and local constituencies—to improve collaboration and the implementation of IDEA; and

(d) Evidence of the degree to which the project's activities have contributed to changed practice and improved student outcomes.

Competitive Preference

Within this absolute priority, we will give the following competitive preference points under 34 CFR 75.105(c)(2)(i) to applicants that are otherwise eligible for funding under this priority:

Ten points will be awarded to any application that is submitted from a national association or national membership organization.

Therefore, for purposes of this competitive preference applicants can be awarded a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could receive a maximum possible score of 110 points.

Absolute Priority 2—National Center on Dispute Resolution (84.326D)

Background

Alternative dispute resolution processes such as mediation represent a less costly means of resolving complaints than due process hearings, can help minimize adverse effects on a child's progress in school, and are more apt to foster positive relationships between families and educators than would litigation. In 1998 the Office of Special Education Programs (OSEP) funded a technical assistance center on alternative dispute resolution to give States assistance on mediation and other effective dispute resolution procedures that support the Individuals with Disabilities Education Act (IDEA). This priority follows up on the investment in this area to continue the work of the past five years. For further information on the past work in this area go to *http://www.directionservice.org/cadre.*

Priority

This priority will support a cooperative agreement to continue a national technical assistance center to provide technical assistance on all dispute resolution and complaint management procedures.

The Center's activities must include, but are not limited, to the following:

(a) Providing technical assistance on dispute resolution and complaint management procedures to all States, outlying areas, Freely Associated States, the Bureau of Indian Affairs, and localities, as appropriate, as they implement early intervention services under Part C and educational and related services under Part B of the IDEA including, at a minimum, (1) Conducting annual needs assessments, (2) Developing technical assistance agreements for each entity, and (3) Providing focused technical assistance to States as requested by OSEP.

(b) Conducting an annual survey of States to determine the current status of due process hearings and use of mediation and alternative dispute resolution. The project must:

(i) Maintain a database for collecting and analyzing information from States on the use and outcomes of due process hearings, mediation, mediator training, and alternative dispute resolution procedures.

(ii) Analyze the data and develop reports on trends and patterns related to the use of alternative dispute resolution and other topics as requested by OSEP.

(c) Providing technical assistance to States based on needs identified in the annual needs assessments.

(d) Establishing a mechanism for assessing and synthesizing the research base on alternative dispute resolution. A team of researchers must assist the Center in the analysis and synthesis of the current and emerging research on alternative dispute resolution.

(e) Developing informational exchanges about dispute resolution procedures between the Center and other technical assistance and information dissemination systems.

(f) Coordinating with the Parent Technical Assistance Projects to provide technical assistance to all OSEP-funded parent training and information centers and community parent resource centers on dispute resolution procedures. Evidence of coordination and proposed outcomes of the coordination must be reported to the Federal project officer.

(g) Coordinating with the National Dissemination Center, which OSEP expects to fund this year, to ensure timely and accurate dissemination of dispute resolution information. Evidence of coordination and proposed outcomes of the coordination must be reported to the Federal project officer.

(h) Collaborating and communicating with other OSEP-funded projects such as the Regional Resource Centers, the IDEA Partnership Project, Project Forum, the Access Center, the National Early Childhood Technical Assistance Center and other projects as appropriate. Evidence of collaboration and proposed outcomes of the collaboration must be reported to the Federal project officer.

(i) Maintaining a Web site with relevant information available in both English and Spanish and accessible to individuals with disabilities.

(j) Conducting biennial symposia that identify the unique features of alternative dispute resolution procedures, the strengths of the procedures, potential application of the procedures, and related issues as requested by OSEP.

(k) Preparing and disseminating reports and documents on alternative dispute resolution and related topics as requested by OSEP.

(l) Developing partnerships with relevant programs and organizations to assist with long-term implementation of alternative dispute resolution procedures. At a minimum, partners shall include State Improvement grantees, General Supervision Enhancement grantees, and the National Center for Special Education Accountability Monitoring.

The Center must also:

(a) Prior to developing any new product, whether paper or electronic, submit for approval a proposal describing the content and purpose of the product to the document review board of the National Dissemination Center.

(b) Provide OSEP-specified technical assistance to States. This effort may include the following: (1) Collaborative Web-based technical assistance activities, (2) coordination of and participation in State-to-State communities of practice, and (3) direct technical assistance to OSEP-specified States through partnerships between OSEP and selected States. The Center must plan for assistance to three OSEP identified States per year.

Note: Staff time and project resources dedicated to provide technical assistance to OSEP-specified States will be negotiated with OSEP as part of the cooperative agreement within 30 days of the project award (OSEP anticipates that technical assistance to OSEP-specified States could average approximately $40,000 per year. Budgets should be developed with this in mind).

(c) Establish, maintain, and meet at least annually with an advisory group of persons with complementary expertise on alternative dispute resolution procedures to advise the Center on its technical assistance activities.

(d) Fund as project assistants three doctoral students per year who have concentrations in relevant topics such as special education or conflict resolution.

(e) Evaluate annually the impact of the Center's technical assistance system and its components relative to (1) meeting the assessed needs of States and jurisdictions, (2) meeting the needs of parents, and (3) linkages with other technical assistance and information dissemination systems. The Center must report its evaluation findings annually to the Federal project officer.

(f) Maintain communication with the Federal project officer through monthly phone conversations and e-mail communication as needed. The Center must submit annual performance reports and provide additional written materials as needed for the Federal project officer to monitor the Center's work.

(g) In addition to the 2-day Project Directors' meeting listed in the General Requirements section of this notice, budget for an additional annual 2-day project meeting to attend the Research Project Directors' meeting; two 2-day annual planning meetings; and at least eight 2-day trips annually as requested by OSEP such as Department briefings, Department-sponsored conferences, and other events.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the

Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary which review will be conducted during the last half of the project's second year in Washington, DC. Projects must budget for the travel associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center; and

(c) Evidence of the degree to which the Center's activities have contributed to a changed practice and improved student outcomes.

Absolute Priority 3—The National Coordination and Dissemination Center To Improve Strategies for the Recruitment and Retention of Qualified Personnel for Children With Disabilities (84.326P)

Background

The National Commission on Teaching for America's Future (NCTAF) and the No Child Left Behind Act (NCLB) emphasize the importance of well-qualified teachers to ensuring student achievement. NCLB, in fact, defines what is required for a teacher to be "highly qualified" and establishes deadlines for the employment of highly qualified teachers.

State reported data indicate persistent shortages of special education teachers including large numbers of vacant positions or positions filled by teachers who were not fully certified.

The characteristics of children with disabilities have also changed, adding complexity to the task of providing appropriate services. There are more children who have entered life with marked disabilities, who are expected to continue to thrive, and who require interdisciplinary approaches that provide essential support. Additionally, the cultural and linguistic characteristics of the student population have changed significantly.

In 1998, the Office of Special Education and Rehabilitation Services (OSERS) funded the National Clearinghouse on Careers and Professions Related to Early Intervention and Education for Children with Disabilities (Professions Clearinghouse). At one time, clearinghouses took the passive role of providing information to those who requested it, but as national needs changed, a more proactive approach was necessary. The Professions Clearinghouse took the first steps towards this approach by providing technical assistance to several States to help them improve their recruitment and retention plans, and targeting recruitment campaigns toward new populations of potential teachers and related services providers. These technical assistance and support activities need to be extended and additional creative strategies must be designed and implemented so that more highly qualified personnel are available to meet the needs of children with disabilities and their families.

Priority

The purpose of this priority is to fund a cooperative agreement to support a national coordination and dissemination center to enhance the Nation's capacity to recruit, prepare, and retain a highly qualified, diverse work force of early intervention personnel, educators, and related service personnel to improve services and outcomes for infants, toddlers, and children with disabilities. To accomplish this objective, the Center must:

(a) Conduct nationwide outreach activities to encourage individuals, including individuals with disabilities and individuals from diverse cultural and economic backgrounds, to pursue careers in early intervention, special education, and related services, including paraeducators and related services assistants. The Center must develop, implement and maintain comprehensive and coordinated communication campaigns that:

(1) Utilize a wide range of media outlets; and

(2) Are customized to attract individuals from culturally and economically diverse backgrounds, individuals with disabilities, and individuals across a broad age range including mid-career changers.

(b) Assist individuals interested in pursuing a career in early intervention, special education, or related services by helping them to identify positions in high demand and providing information about specific training opportunities appropriate to their needs. The Center must:

(1) Develop and regularly update information on ongoing and emerging areas of personnel need identified by States, LEAs, early intervention service providers, and other entities;

(2) Develop and maintain a comprehensive, up-to-date, easily accessible, database of personnel preparation opportunities available across the country. This database must reflect the full range of preparation opportunities, including both traditional and alternative routes and both professional and paraprofessional programs;

(3) Develop and regularly update information on available trainee financial support including ED-supported financial assistance, Federal loans, and other public and private sources of trainee support; and

(4) Conduct broad-based outreach efforts and establish effective linkages with other information providers to ensure widespread use of the Center services by interested individuals, including individuals with disabilities as well as culturally and linguistically diverse individuals.

(c) Provide assistance to State educational agencies (SEAs), local educational agencies (LEAs), institutions of higher education (IHEs), community colleges (CCs), agencies that administer IDEA Part C programs, and other appropriate entities by disseminating information that will help them to improve the quality of professionals and paraprofessionals who serve infants, toddlers, and children with disabilities, including children with limited English proficiency and children from culturally diverse backgrounds. The Center must:

(1) Synthesize, and disseminate information on research-based approaches to professional preparation and career development for special education, related services, and early intervention personnel with a particular focus on evidence-based mentoring and induction strategies to promote personnel retention. In particular, in collaboration with the Urban Special Education Leadership Collaborative, the Center must coordinate activities with urban districts;

(2) Disseminate information on national and State professional certification and licensure standards, with a particular focus on how standards are changing to reflect research-based knowledge and practice and new legal requirements such as those in the Elementary and Secondary Education Act;

(3) Disseminate information on effective strategies for promoting the credentialing of currently practicing personnel who are less than fully qualified for their positions;

(4) In collaboration with appropriate entities, develop and disseminate guidelines for instituting certification standards for paraeducators where such standards do not yet exist; and,

(5) Develop and disseminate periodic highlights or reviews of pressing issues, trends, and emerging research regarding preparation and career development for early intervention, special education, and related services personnel.

(d) Conduct timely updates of all Center information and databases to ensure that information disseminated is accurate and current.

(e) Establish diverse advisory groups to provide recommendations to the Center relative to the activities or products described above and to ensure that all constituency needs are met.

(f) Employ effective technology and multiple strategies of communication for receiving and disseminating current information and research-based practices including, but not limited to, the establishment and maintenance of an easily accessible, user-friendly Web site that ensures seamless links to and from other relevant data and information sources. The Web site must address early intervention and special education professions, including paraeducators; related services careers, including related services assistants; preparation programs across the country, including alternate route programs; research related to the special education workforce; and surveys and links to research relevant to developing and sustaining a diverse, qualified workforce including individuals with disabilities as well as individuals from culturally and linguistically diverse backgrounds.

(g) Establish and maintain effective communication and collaboration with other OSERS-funded projects, such as the OSEP Regional Resource Centers, the IDEA partnership projects, parent information centers, the Center on Personnel Studies in Special Education (COPSSE), the Center for Early Intervention/Early Childhood Special Education Personnel Preparation, the IRIS Center, and other technical assistance and research projects as appropriate.

(h) Conduct and participate in national and regional meetings including dissemination conferences, topical symposia and other meetings on recruitment and retention of qualified personnel as requested by OSEP.

(i) Contract with a third party evaluator to develop and conduct a comprehensive system for evaluating all aspects of the Center's work. The evaluation design must include both formative evaluation elements to identify strategies for improving the Center's work and summative evaluation elements with clearly measurable outcome and impact data.

(j) Submit for approval, prior to developing any new product, whether paper or electronic, a proposal describing the content and purpose of the product to the document review board of OSEP's Dissemination Center which OSEP expects to fund this year.

(k) Provide OSEP-specified technical assistance to States. This effort may include participation in: (1) Collaborative Web-based technical assistance activities, (2) coordination of and participation in State-to-State communities of practice, and (3) direct technical assistance to OSEP-specified States through partnerships between OSEP and selected States. Staff time and project resources dedicated to provide technical assistance to OSEP-specified States will be negotiated with OSEP as part of the cooperative agreement within 30 days of the project award (OSEP anticipates that technical assistance to OSEP-specified States could average approximately $40,000 per year. Budgets should be developed with this in mind).

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary which review will be conducted during the last half of the project's second year in Washington, DC. Projects must budget for the travel associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center; and

(c) Evidence of the degree to which the Center's activities have contributed to a changed practice and improved student outcomes.

Absolute Priority 4—Federal Resource Center for Special Education (84.326V)

Background

In 1984 the Office of Special Education Programs (OSEP) established the Federal Resource Center for Special Education (FRC) as a mechanism for ensuring the organized and consistent provision of high quality technical assistance by the OSEP-funded Regional Resource Centers (RRCs). The FRC was designed to coordinate the work of RRCs, identify emerging issues and trends in special education, and assist in linking State-identified needs with appropriate technical assistance providers.

Significant challenges are facing State and local educational agencies, such as: the need to meet the high standards established in the No Child Left Behind Act; a changing and more diverse population of children with disabilities; and persistent shortages in qualified and culturally competent personnel to serve these students. The FRC, through coordinating RRC technical assistance activities and initiatives, is designed to assist States to meet these challenges through strengthening their capacity to include all children with disabilities in high quality instruction that improves performance and prepares all children to leave school equipped for a meaningful life.

Priority

This priority provides support for a cooperative agreement for a coordinating technical assistance center, which shall be called the Federal Resource Center (FRC). The purpose of the FRC is to: (1) Serve as a special education technical assistance center to align the work of the six RRCs with OSEP policy and strategic initiatives; (2) enhance each RRC's capacity to promote systems change initiatives in States through the provision of strategic training and professional development; (3) increase the depth and utility of information in ongoing and emerging areas of priority needs as identified by RRCs and OSEP; (4) support the RRCs' efforts to provide ongoing technical assistance to enhance States' participation in OSEP's Continuous Improvement and Focused Monitoring System (CIFMS); (5) ensure that the RRCs operate in a non-duplicative and efficient manner; and (6) assist with the provision of technical assistance and support to the State Improvement Grant (SIG) program.

Specifically, the FRC project must:

(a) Support the RRCs' efforts to promote improved results for children with disabilities in States, especially those with performance challenges identified through the CIFMS, by providing strategic training, professional development, and technical support. This effort must include: (1) Coordination of communities of practice that target State performance improvement areas identified through the CIFMS; and (2) facilitation of RRCs' technical assistance initiatives including the development of State performance measurement systems that use accurate, valid, and reliable data for program improvement and data-based decisionmaking.

(b) Coordinate RRCs' information services functions to ensure the provision of timely, relevant, and accurate information as requested by States and other entities. The Center must: (1) Consolidate the information services function previously maintained by each RRC by establishing centralized information services; and (2) consolidate individual RRC Web sites into a centralized Web site that will

ensure efficiency across the RRCs and avoid duplicative activities. This effort must include up to one year of planning and must be fully implemented within the next two years.

(c) Develop and maintain mechanisms that support coordinated and non-redundant development and delivery of technical assistance by RRCs within the OSEP-funded technical assistance network. This effort must involve: (1) Facilitating current RRC topical workgroups, such as the workgroup on monitoring, to ensure the RRCs develop consistent technical assistance approaches; (2) coordinating with OSEP's Dissemination Center, which OSEP plans to fund this year, on product development and dissemination; and (3) proactively helping RRCs identify potential areas for collaboration with the National Center for Special Education Accountability Monitoring and other technical assistance centers, to support State improvement initiatives.

(d) Maintain and enhance electronic linkages among RRCs. This must include the development, maintenance, and enhancement of listserves; the technical assistance information system (TAIS) of the RRCs; and other electronic mechanisms.

(e) Coordinate the RRCs' professional development, including planning and conducting meetings for training and coordination activities among RRCs.

(f) Provide technical assistance to the SIG program including: (1) Development and maintenance of a Web site; (2) development and maintenance of a listserve; (3) facilitation of information sharing among projects; (4) providing information, upon request, to individual projects; (5) coordination/support for the annual project directors' meeting; and (6) other assistance as determined by the Project Officer.

(g) Provide support for the Annual OSEP Leadership Conference, the Annual Technical Assistance and Dissemination (TA&D) Conference, and other OSEP activities such as task forces and panels.

(h) Promote improved results for children with disabilities by supporting the development of partnerships that link: (1) RRCs with parent organizations, especially the Parent Training and Information Centers (PTIs), the six Regional Parent Technical Assistance Centers, and the National Parent Technical Assistance Center, which OSEP plans to fund this year, in order to improve collaboration and coordination of effort between the RRCs and the PTIs; and (2) Department of Education and other government agency funded technical assistance and dissemination centers.

(i) Regularly inform OSEP staff of the progress of initiatives that involve multiple RRCs.

(j) Submit for approval to the Document Review Board of OSEP's Dissemination Center a proposal describing the content and purpose of any new paper or electronic product before developing the product.

(k) Support OSEP-specified national initiatives by developing models to be used by RRCs for: (1) Development or enhancement of State and/or local operated technical assistance and dissemination (TA&D) structures that support the dissemination of scientifically based research and best practices; (2) development or enhancement of Web-based technical assistance activities; (3) development or enhancement of systems change strategies; and (4) development or enhancement of State-to-State communities of practice.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary which review will be conducted during the last half of the project's second year in Washington, DC. Projects must budget for the travel associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center; and

(c) Evidence of the degree to which the Center's activities have contributed to a changed practice and improved student outcomes.

Special Education—Technology and Media Services for Individuals With Disabilities [CFDA Number 84.327]

Purpose of Program: To: (1) Improve results for children with disabilities by promoting the development, demonstration, and use of technology; (2) support educational media activities designed to be of educational value to children with disabilities; and (3) provide support for some captioning, video description, and cultural activities.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) the selection criteria for this priority are chosen from the EDGAR general selection criteria in 34 CFR 75.210. The specific selection criteria for this competition are included in the application package for this competition.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

Eligible Applicants: State and local educational agencies; IHEs; other public agencies; nonprofit private organizations; outlying areas; Freely Associated States; Indian tribes or tribal organizations; and for-profit organizations.

Priority

Under 34 CFR 75.105(c)(3), we consider only applications that meet the following priority:

Absolute Priority—Research on Educational Captioning (84.327H)

This priority supports innovative research on the use of various approaches to captioning in specific settings such as educational, recreational, or home settings. Research must study the educational effects of captioning on enhancing the reading or literacy skills of deaf and hard of hearing children in kindergarten through grade 12.

Media and technologies explored or used by a project may include, but are not limited to (1) realtime captioning (remote or on-site); (2) voice writing; and (3) media and multi-media technologies such as interactive videodiscs, CD–ROMs, and DVDs.

Projects must—

(a) Identify specific approaches and settings that would be investigated;

(b) Carry out the research within a conceptual framework that provides a basis for the strategies to be studied, the research design, and target population;

(c) Conduct the research in realistic residential, inclusive schools, community, classroom, home, or other settings, as appropriate; and

(d) Conduct the research using methodological procedures that will produce unambiguous findings regarding the effects of approaches and effects of the interaction among particular approaches, groups of children, and settings.

Special Education—Training and Information for Parents of Children With Disabilities [CFDA Number 84.328]

Purpose of Program: The purpose of this program is to ensure that parents of children with disabilities receive training and information to help improve results for their children.

Eligible Applicants: Parent organizations, as defined in section 682(g) of IDEA. In order to demonstrate its eligibility to receive a grant, an entity must demonstrate that it is a parent organization under this section. A parent organization is a private nonprofit organization (other than an institution of higher education) that:

(a) Has a board of directors, the parent and professional members of which are broadly representative of the population to be served and the majority of whom are parents of children with disabilities, that includes individuals with disabilities and individuals working in the fields of special education, related services, and early intervention; or

(b) Has a membership that represents the interests of individuals with disabilities and has established a special governing committee meeting the requirements for a board of directors in paragraph (a) and has a memorandum of understanding between this special governing committee and the board of directors of the organization that clearly outlines the relationship between the board and the committee and the decisionmaking responsibilities and authority of each.

In addition, any parent organization that establishes a special governing committee must demonstrate that the bylaws of its organization allow the governing committee to be responsible for operating the project (consistent with existing fiscal policies of its organization).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 97, 98, and 99; and (b) The selection criteria, chosen from the EDGAR general selection criteria in 34 CFR 75.210. The specific selection criteria for this competition are included in the application package for this competition.

Priority

Under 34 CFR 75.105(c)(3), we consider only applications that meet the following priority:

Absolute Priority—Parent Training and Information Center for Texas—Region 2 (84.328M)

Background

In Fiscal Year 2002, a competition was held for Parent Training and Information Centers that included awards for Texas. All of the awards made for Texas were made for a period of five years except for the award to serve Region 2 of the State. Because of the quality of applications to serve this region, an award was made for only one year. This priority provides for a competition to continue services in Region 2 for an additional 4 years.

Priority

The purpose of this priority is to support a Parent Training and Information Center in Texas—Region 2. A Parent Training and Information Center must—

(a) Provide training and information that meets the training and information needs of parents of children with disabilities in the area served by the Center, particularly underserved parents and parents of children who may be inappropriately identified, including those who are not identified at all;

(b) Assist parents to understand the availability of, and how to effectively use, procedural safeguards under IDEA, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in IDEA;

(c) Serve the parents of infants, toddlers, and children with the full range of disabilities;

(d) Assist parents to—

(1) Better understand the nature of their children's disabilities and their educational and developmental needs;

(2) Communicate effectively with personnel responsible for providing special education, early intervention, and related services;

(3) Participate in decisionmaking processes and the development of individualized education programs and individualized family service plans;

(4) Obtain appropriate information about the range of options, programs, services, and resources available to assist children with disabilities and their families;

(5) Understand the provisions of IDEA for the education of, and the provision of early intervention services to, children with disabilities; and

(6) Participate in school reform activities;

(e) Contract with the State educational agency, if the State elects to contract with the Parent Training and Information Center, for the purpose of meeting with parents who choose not to use the mediation process to encourage the use, and explain the benefits, of mediation consistent with section 615(e)(2)(B) and (D) of IDEA;

(f) Establish cooperative relations with the Community Parent Resource Center or Centers in their State in accordance with section 683(b)(3) of IDEA;

(g) Network with appropriate clearinghouses, including organizations conducting national dissemination activities under section 685(d) of IDEA, and with other national, State, and local organizations and agencies, such as protection and advocacy agencies, that serve parents and families of children with the full range of disabilities;

(h) Annually report to the Assistant Secretary on—

(1) The number of parents to whom the Parent Training and Information Center provided information and training in the most recently concluded fiscal year, and

(2) The effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities; and

(i) If there is more than one parent center in a particular State, coordinate its activities with the other center or centers to ensure the most effective assistance to parents in that State.

An applicant must identify the strategies it will undertake—

(a) To ensure that the needs for training and information for underserved parents of children with disabilities in the areas to be served are effectively met, particularly in underserved areas of the State; and

(b) To work with the community-based organizations, particularly in the underserved areas of the State.

A Parent Training and Information Center that receives assistance under this absolute priority may also conduct the following activities—

(a) Provide information to teachers and other professionals who provide special education and related services to children with disabilities;

(b) Assist students with disabilities to understand their rights and responsibilities on reaching the age of majority, as stated in section 615(m) of IDEA; and

(c) Assist parents of children with disabilities to be informed participants in the development and implementation of the State improvement plan under IDEA.

In addition to the annual Project Directors' meeting included in the "General Requirements" section of this notice, a project's budget must include funds to attend a regional Project Directors' meeting to be held each year of the project.

Current funding levels and number of school age children were factors in determining the funding level for this grant. OSEP identifies the Regions in Texas by using the educational services breakdown operational within the State. Applications for this award will be accepted to fund one parent center in

Region 2 only. Region 2 includes the following counties: Aransas, Atascosa, Bandera, Bee, Boxer, Brezoria, Brooke, Calhoun, Cameron, Chambers, Colorado, Dewitt, Dimmit, Duval, Fort Bond, Frio, Galveston, Gollad, Harris, Hidalgo, Jackson, Jim Hogg, Jim Wells, Karnes, Kenedy, Kerr, Kinney, Kisberg, La Salle, Lavaca, Liberty, Live Oak, Malagorda, Maverik, McMullen, Medina, Nueces, Real, Refugio, San Patricio, Staarr, Uvalde, Victoria, Waller, Webb, Wharton, Wilson, Willsoy, Zapata, and Zavala.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT APPLICATION NOTICE FOR FISCAL YEAR 2003

CFDA number and name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated available funds	Maximum award (per year)*	Project period	Page limit	Estimated number of awards
84.326A The IDEA Partnership Project.	07/21/03	08/20/03	09/19/03	$2,000,000	$2,000,000	Up to 60 mos	70	1
84.326D National Center on Dispute Resolution.	07/21/03	08/20/03	09/19/03	500,000	500,000	Up to 60 mos	70	1
84.326P The National Coordination and Dissemination Center to Improve Strategies for the Recruitment and Retention of Qualified Personnel for Children with Disabilities.	07/21/03	08/20/03	09/19/03	500,000	500,000	Up to 60 mos	70	1
84.326V Federal Resource Center for Special Education.	07/21/03	08/20/03	09/19/03	800,000	800,000	Up to 60 mos	70	1
84.327H Research on Educational Captioning.	07/21/03	08/20/03	09/19/03	360,000	180,000	Up to 36 mos	50	2
84.328M Parent Training and Information Center for Texas—Region 2.	07/21/03	08/20/03	09/19/03	432,085	432,085	Up to 48 mos	50	1

*We will reject any application that proposes a budget exceeding the maximum award for a single budget period of 12 months.
Note: The Department of Education is not bound by any estimates in this notice.

For Applications Contact: If you want an application for any competition in this notice, contact Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, Maryland 20794–1398. Telephone (toll free): 1–877–4ED–Pubs (1–877–433–7827). FAX: 301–470–1244. Individuals who use a telecommunications device for the deaf (TDD) may call (toll free) 1–877–576–7734.

You may also contact Ed Pubs via its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify the competition by the appropriate CFDA number.

FOR FURTHER INFORMATION CONTACT: If you want an additional information about any competition in this notice, contact the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the Grants and Contracts Services Team under **FOR FURTHER INFORMATION CONTACT.** However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Intergovernmental Review

All programs in this notice (except for the Research and Innovation to Improve Services and Results for Children with Disabilities Program) are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. This document provides early notification of our specific plans and actions for these programs.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo/nara/index.html.*

Program Authority: 20 U.S.C. 1405, 1461, 1485, and 1487.

Dated: July 16, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–18485 Filed 7–18–03; 8:45 am]

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Federal Register

Monday,
July 21, 2003

Part III

Environmental Protection Agency

40 CFR Part 136

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Analytical Methods for Biological Pollutants in Ambient Water; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL–7529–7]

RIN 2040–AD71

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Analytical Methods for Biological Pollutants in Ambient Water

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: By today's action, EPA approves test methods for the analysis of Escherichia coli (*E. coli*), enterococci, Cryptosporidium and Giardia in fresh ambient water matrices. In addition, EPA approves test methods for the analysis of enterococci in marine ambient water matrices. The test methods approved in today's rule have been published by the following organizations: EPA, American Public Health Association, American Water Works Association, Water Environment Federation, Association of Official Analytical Chemists International, and American Society for Testing and Materials, or commercial vendors. EPA's approval of these methods will help States, Tribes, communities, and environmental laboratories better assess public health risks from microbiological pollutants.

DATES: This regulation is effective August 20, 2003. The incorporation by reference of these methods is approved by the Director of the Federal Register on August 20, 2003. For judicial review purposes, this final rule is promulgated as of 1 p.m. (Eastern time) on August 4, 2003 as provided at 40 CFR 23.2.

FOR FURTHER INFORMATION CONTACT: Robin K. Oshiro, Engineering and Analysis Division (4303T), Office of Science and Technology, Office of Water, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or call (202) 566–1075 or E-mail at *oshiro.robin@epa.gov*.

SUPPLEMENTARY INFORMATION:

A. Potentially Regulated Entities

EPA Regions, as well as States, Tribes, and Territories authorized to implement the National Pollutant Discharge Elimination System (NPDES) program, issue permits to implement the technology-based and water quality-based requirements of the Clean Water Act (CWA). Forty five States and one Territory are currently authorized to issue NPDES permits. EPA retains permit issuance authority in non-authorized jurisdictions. NPDES permitting authorities make a number of discretionary choices associated with permit writing, including the selection of pollutants to be measured and, in many cases, limited in permits. If EPA has "approved" (*i.e.*, promulgated through rulemaking) standardized testing procedures for a given pollutant, the NPDES permitting authority must specify one of the approved testing procedures or an approved alternate test procedure for the measurements required under the permit. Although EPA is including test methods for four biological pollutants in 40 CFR 136.3, it recommends their use for ambient water quality monitoring only. EPA is not approving these test methods for effluent matrices. Therefore, EPA expects entities operating under an NPDES permit would be affected by the promulgation of these ambient methods only where their permit specifies ambient monitoring requirements for the specified parameters.

EPA developed and recommended ambient recreational water quality criteria for *E. coli* and enterococci bacteria and is considering criteria for Cryptosporidium and Giardia. The States, Territories, and Tribes may adopt these criteria into their water quality standards and may issue water quality-based permits that require monitoring for these pollutants in ambient waters. If the NPDES permitting authority requires ambient water monitoring in the permit for the specified parameters, dischargers could be affected by the standardization of testing procedures in this rulemaking. Generally, the permitting authority requires the use of methods approved at 40 CFR part 136 for compliance with such monitoring requirements. If no approved methods are available at 40 CFR part 136, then the permitting authority has discretion to specify the use of suitable methods.

In addition, when a State, Territory, or authorized Tribe provides certification of Federal licenses under the CWA section 401, approved testing procedures generally must be used where applicable. Categories and entities that may be regulated include:

Category	Examples of potentially regulated entities
State, Territorial and Indian Tribal Governments.	States, Territories, and Tribes authorized to administer the NPDES permitting program.
Municipalities	Publicly-owned treatment works with ambient monitoring requirements for the specified parameters in their NPDES permits.
Industry	Industrial facilities with ambient monitoring requirements for the specified parameters in their NPDES permits.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility or organization is regulated by this action, you should carefully examine the applicability criteria in parts 122 and 136 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OW–2002–0010. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744, and the telephone number for the Water Docket is 202–566–2426.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section B.1.

3. *Copies of Consensus Standards.* Copies of the consensus standards may be obtained from the Docket (see section B.1.). Copies of the consensus standards may also be obtained from the following sources, depending on the standard. Copies of final methods published by American Society for Testing and Materials (ASTM) are available for a nominal cost through ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959. Copies of "Standard Methods" are available for a nominal cost from the American Public Health Association, 1015 Fifteenth Street, NW., Washington, DC 20005. Copies of Association of Official Analytical Chemists International (AOAC) methods are available for a nominal cost from the Association of Official Analytical Chemists International, 481 N. Frederick Ave., Suite 500, Gaithersburg, MD 28077.

I. Statutory Authority

Today's rule is promulgated pursuant to the authority of sections 303(c), 304(a), 304(h), and 501(a) of the Clean Water Act (CWA or "the Act"), 33 U.S.C. 1314(a), 1314(h), 1361(a). Section 303(c) of the Act establishes the basis for the current water quality standards program. This section requires EPA to review and approve or disapprove State-adopted water quality standards. Section 304(a) of the Act requires the EPA Administrator to develop and publish water quality criteria associated with specific ambient water uses. When these criteria are adopted as State water quality standards under section 303(c), they become the enforceable maximum acceptable levels of pollutants in ambient waters. Section 304(h) of the Act requires the EPA Administrator to "promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of this Act or permit applications pursuant to section 402 of this Act." Section 501(a) of the Act authorizes the Administrator to "prescribe such regulations as are necessary to carry out his functions under this Act." EPA publishes CWA analytical method regulations at 40 CFR part 136.

II. Background

A. The Role of Methods for Biological Pollutants

To fulfill the CWA's mandate to maintain "fishable and swimmable" waters, EPA develops ambient water quality criteria based on a scientific assessment of the relationship between pollutant concentrations and environmental and human health effects. Ambient water refers to any fresh, marine, or estuarine surface water used for recreation, propagation of fish, shellfish, or wildlife, agriculture, industry, navigation, or as source water for drinking water facilities. Ambient water quality criteria become enforceable water quality standards when adopted by State, Territorial, Tribal, and local governments and approved by EPA.

For bacterial pollution in ambient water designated for recreational use, EPA has developed water quality criteria for *E. coli* in freshwater and for enterococci in both freshwater and marine waters (51 FR 8012, March 7, 1986). There are a number of zoonotic diseases of concern to humans (diseases transferred from animals to humans) if ambient waters are contaminated with fecal material from non-human animal species. *E. coli* species are a subset of the coliform bacteria group that is part of the normal intestinal flora of humans and animals and are direct indicators of fecal contamination from these sources in water. Enterococci, which include *Enterococcus faecalis* and *Enterococcus faecium*, are enteric bacteria used to indicate fecal contamination and the possible presence of pathogens in water. Based on previous EPA guidance, total and fecal coliform bacteria are included in many water quality standards as indicators of bacterial contamination (EPA, 1976). More recent epidemiological studies (Cabelli 1983, Dufour 1984) described in Ambient Water Quality Criteria for Bacteria—1986 (EPA, 1986a), indicate that *E. coli* and enterococci show a direct correlation with swimming-associated gastrointestinal illness rates, while fecal coliforms do not. As the concentration of *E. coli* and/or enterococci increase(s), the illness rates also increase. Thus, using these indicators as part of the bacterial water quality standards will enhance the protection of human health and the environment.

In addition to bacterial pollution, EPA is concerned about waterborne parasites and developed test methods for *Cryptosporidium* and *Giardia* in freshwater. These waterborne parasites have been found to be the causative agent of human gastroenteritis in some contaminated waters and are responsible for cases of severe and widespread human illness when present in drinking water supplies as a result of contamination of source waters. Because one of the designated uses of some ambient waters may be use of the water body as a drinking water source, EPA may develop ambient water quality criteria for *Cryptosporidium* and *Giardia* in the future. EPA would expect to use the test methods discussed in this action to support these future criteria. By doing so, EPA desires to promote consistency in the methods used for these future criteria to ensure that the data collected are of good quality and are comparable for all freshwater. EPA also wishes to make these methods available for use by the States for general risk assessments.

By today's action, EPA is promulgating test methods for *E. coli*, enterococci, *Cryptosporidium*, and *Giardia* for use in freshwaters, and enterococci for use in marine waters. Promulgation of the bacterial methods supports the use of *E. coli* and enterococci as indicators of fecal contamination in addition to fecal coliform indicators in State, Territorial, Tribal, and local water quality-based monitoring. States may use the test methods for *Cryptosporidium* and *Giardia* for different monitoring purposes, such as evaluating surface water occurrence of these organisms and the associated watershed vulnerability for waterbodies designated as potential drinking water sources.

This rule provides uniform methodology to assist State, Territorial, Tribal, and local implementation of water quality standards, ambient water monitoring programs, and public notification programs to reduce public health risks posed by biological pollutants in ambient water. Today's rule supports several EPA initiatives: The Beaches Environmental Assessment Closure and Health (BEACH) Program, the Beach Action Plan (EPA–600–R–98–079), the Beach Watch Program, the

Beaches Environmental Monitoring for Public Access and Community Tracking (EMPACT) Program (EPA 905–R–98–002), and the Water Quality Criteria and Standards Plan (EPA–822–R–98–003). Additionally, this rule is expected to satisfy requests from governments, regulated entities, and environmental laboratories that EPA publish analytical test procedures that were evaluated through interlaboratory validation for enumerating *E. coli*, enterococci, *Cryptosporidium*, and *Giardia* in ambient waters.

As previously noted, EPA developed water quality criteria for enterococci in both freshwater and in marine waters. Today's action approves methods for measuring enterococci in both freshwater and marine waters. EPA has not developed marine criteria for *E. coli*, *Cryptosporidium*, and *Giardia* because these pollutants do not generally survive in marine conditions. Thus, EPA has not identified any programmatic need to promulgate methods for these pollutants in marine waters.

EPA is aware of the importance of having methods for measuring these pollutants in wastewater effluent. The Agency does not currently have validated methods for use in this matrix and thus was unable to propose any such methods with the methods for ambient waters. The Agency is currently in the process of trying to validate *E. coli* and enterococci methods for use with wastewater effluent and plans to propose them by the end of 2004.

B. Summary of Proposed Rule

EPA published a proposed rule in the **Federal Register** on August 30, 2001 (66 FR 45811) to amend 40 CFR part 136, "Guidelines Establishing Test Procedures for the Analysis of Pollutants," by approving several analytical test procedures for enumerating the bacteria *Escherichia coli (E. coli)* and enterococci and the protozoans *Cryptosporidium* and *Giardia* in ambient water. The proposal described a suite of Most Probable Number (MPN) (*i.e.*, multiple-tube, multiple-well) and membrane filter (MF) methods for enumerating *E. coli* and enterococci bacteria in ambient water, and improved filtration/immunomagnetic separation/fluorescent antibody methods for *Cryptosporidium* and *Giardia* protozoans. These test methods were proposed for use by States, Territories, and Tribes, for use in water quality monitoring programs.

A summary of the major comments to the proposal is presented in Section V.

III. Summary of Final Rule

EPA is approving the use of test methods for *E. coli*, enterococci, *Cryptosporidium*, and *Giardia* for ambient fresh water quality monitoring. In addition, EPA is approving the use of test methods for enterococci for ambient marine water quality monitoring. Although EPA believes that these methods are appropriate for ambient water quality monitoring, the Agency has not determined that these methods are acceptable for application to matrices other than ambient waters.

Today's action promulgates the test methods described in the proposed rule (66 FR 45811, August 30, 2001) for the analysis of *E. coli*, enterococci, *Cryptosporidium*, and *Giardia* in ambient water. For *E. coli*, approved methods include most probable number methods (LTB→EC–MUG, ONPG–MUG) and membrane filtration methods (mENDO→NA–MUG, LES–ENDO→NA–MUG, mFC→NA–MUG, mTEC agar, Modified mTEC agar, MI agar, m-ColiBlue 24 broth). For enterococci, approved methods include most probable number methods (Azide-Dextrose/PSE/BHI, MUG) and membrane filtration methods (mE→EIA agar, mEI agar). For *Cryptosporidium*, EPA approves Methods 1622 and 1623. For *Giardia*, EPA approves Method 1623.

The proposed rule indicated that EPA intended to issue guidance on the assessment of method comparability in conjunction with the final rule. In the record for today's rule, EPA is making available the latest version of the guidance document, EPA *Microbiological Alternate Test Procedure (ATP) Protocol for Drinking Water, Ambient Water, and Wastewater Monitoring Methods, Guidance* (EPA–821–B–03–004). The guidance is a result of the Agency's desire to develop a guidance document to describe the process for seeking EPA approval of alternate test procedures (ATPs) for microbiological methods or new microbiological methods for use in monitoring drinking water, ambient water, and wastewater. Under EPA's ATP program, any person may apply for approval of the use of an ATP or new method to test for a regulated analyte. EPA anticipates that the standardized ATP procedures described in the guidance should generally expedite the approval of ATPs and encourage the development of innovative methods for compliance monitoring under the National Pollution Discharge Elimination System (NPDES) permit program. In addition to the ATP process, the guidance describes the process for conducting side-by-side method comparisons and for conducting quality control (QC) acceptance criteria-based method studies for EPA-designated reference methods with QC acceptance criteria. The guidance document serves as a supplement to the ATP program requirements specified at 40 CFR 136.4, 136.5, and 141.27. The guidance document may be revised in the future based on comments received from persons using the guidance, as appropriate.

IV. Changes From the Proposed Rule

A. Revision of Method Titles

To ensure consistency with other EPA microbiological methods, EPA revised some of the EPA methods' titles and added some method numbers. The technical content of these methods did not change from the versions of the methods included in the proposed rule. Specifically, EPA adopted the following modified titles:

- Method 1103.1: *Escherichia coli (E. coli)* in Water by Membrane Filtration using membrane-Thermotolerant *Escherichia coli* Agar (mTEC)
- Method 1106.1: Enterococci in Water by Membrane Filtration using membrane-Enterococcus-Esculin Iron Agar (mE-EIA)
- Method 1600: Enterococci in Water by Membrane Filtration using membrane-Enterococcus Iron Agar (mEI)
- Method 1603: *Escherichia coli (E. coli)* in Water by Membrane Filtration using Modified Membrane-Thermotolerant *Escherichia coli* Agar (Modified mTEC)
- Method 1604: Total Coliforms and *Escherichia coli* (E. coli) in Water by Membrane Filtration using a Simultaneous Detection Technique (MI Medium)

B. Colisure

EPA included this method in the proposal because it anticipated that new validation data for ambient waters would be provided to the Agency prior to this final rule. EPA requested such data from the manufacturer, but the manufacturer declined to conduct the study. Therefore EPA declines to approve this method and did not include it in today's final rule.

C. Table II Protozoan Test Holding Time

The proposal incorrectly indicated that the maximum sample holding time for the protozoan tests (*Cryptosporidium* and *Giardia*) was 72 hours. This has been changed to the correct holding time of 96 hours, as indicated in the Methods, which were included in the docket for the proposal. The correct holding time of 96 hours is clearly indicated in the Methods and can be found on page 10, section 8.2.1 of the April 2001 versions of Method 1622 and Method 1623.

Although footnote 17 of the proposal inaccurately stated the technique for calculating holding time, the underlying methods themselves described this technique correctly. The footnote has been corrected to indicate that holding time is properly calculated from the time of sample collection to elution for samples shipped to the laboratory in bulk and calculated from the time of sample filtration to elution for samples filtered in the field.

V. Response to Major Comments

EPA encouraged public participation in this rulemaking and requested comments on the methods proposed for *E. coli*, enterococci, *Cryptosporidium*, and *Giardia*. EPA also requested any data that would support comments on specific test methods. Fourteen stakeholders provided comments addressing over 25 issues. These stakeholders included four laboratories, seven regulatory authorities, and three industries/industry groups.

The following sections summarize major comments received on the proposed rule and EPA's response. The complete Response to Comments document can be found in the Docket for today's final rule.

A. E. coli and Enterococci Methods for Wastewater Analysis

Several commenters requested that the methods for *E. coli* and enterococci be approved for the analysis of wastewater samples. Since these methods were not validated in wastewater, they are not approved for use in that matrix. EPA is in the process of validating methods for the analysis of *E. coli* and enterococci in wastewater and plans to propose test methods for these bacterial indicators by the end of 2004.

B. Cryptosporidium and Giardia Methods for Wastewater and Biosolids Analysis

Several comments advocated the use of EPA Method 1622 and 1623 for the analysis of wastewater and biosolids samples; other comments requested that EPA modify and approve the methods for use in those matrices. EPA has not validated these methods for those uses. Thus this final rule applies only to ambient water. If EPA develops water quality criteria for *Cryptosporidium* and *Giardia* at a future time, EPA may validate EPA Methods 1622 and/or 1623 for use in the NPDES Program.

C. Limitations of Determinative Technique of Proposed Cryptosporidium and Giardia Methods and Potential for False Positives

Several comments expressed concern regarding the subjectivity and limitations of the immunofluorescence assay (IFA)-based determination procedure in EPA Methods 1622 and 1623 and the related potential for false positives. EPA acknowledges that IFA relies on analyst training and experience for reliable results. However, EPA Methods 1622 and 1623 provide the analyst with three microscopy tools to aid in the identification of potential target particulates during microscopic examination. The methods provide detailed, progressive criteria for determining whether a particulate is a *Cryptosporidium* oocyst or a *Giardia* cyst based on the use of these tools and include the use of immunomagnetic separation (IMS) as the sample cleanup procedure to minimize the transfer of non-target particulates to the slide. Nonetheless, the inherent technical judgement involved in the determinative step in EPA Methods 1622 and 1623, combined in some cases with interfering materials and/or cross-reactivity of the antibody stain, may still lead to false positives or false negatives. Although other determinative techniques that are currently under development have the promise of providing less-subjective assessments of the presence of *Cryptosporidium* oocysts and *Giardia* cysts in a sample, these techniques are not yet validated and are therefore not yet appropriate for EPA approval for ambient water monitoring. Extensive details on the performance of EPA Methods 1622 and 1623, including inter- and intra-laboratory precision and recovery of the methods at multiple laboratories and on a variety of ambient water types (*i.e.*, validation), are provided in the Results of the Interlaboratory Validation Study of EPA Method 1622 (EPA–821–R–01–027), the Results of the Interlaboratory Validation Study of EPA Method 1623 (EPA–821–R–01–028) and the Implementation and Results of the Information Collection Rule Supplemental Surveys (EPA–815–R–01–003), which were included in the docket for the proposal. Given the robustness of the validation procedure, the Agency is confident that although the IFA technique requires specialized training, overall, the methods will provide for valid *Cryptosporidium* and *Giardia* precision and recovery for use in ambient waters.

D. Application of Performance-Based Measurement System (PBMS) Concept to EPA Methods 1622 and 1623

Several commenters recommended that the performance of alternate antibody reagents be evaluated for EPA Methods 1622 and 1623 using a quantitative PBMS approach. EPA agrees with the comments, and considers the PBMS Tier 2 validation approach described in Methods 1622 and 1623, Section 9, to be appropriate for antibody stains and IMS. However, EPA does not believe that the PBMS Tier 2 validation approach is adequate to assess the comparability of methods with different determinative techniques, such as comparing a polymerase chain reaction (PCR)-based method to an IFA-based method. Use of a different determinative technique is generally considered to be a different method, rather than a modified version of a method because it is usually very difficult to compare methods that use different determinative techniques. For example, the filtration/IMS/IFA technique employed in Methods 1622 and 1623 differs considerably from genetic tests because the former measures the infective form of *Cryptosporidium* and *Giardia*, while the latter measures genetic material (DNA or RNA). Similarly, the membrane filtration method for bacteria differs from an MPN method for bacteria because the former is a direct quantitative method, whereas the latter employs a qualitative statistical index rather than an actual enumeration of the number of organisms present in the sample. An appropriate approach for these comparisons would be to perform side-by-side tests. This approach is outlined in the draft guidance document, EPA Microbiological Alternate Test Procedure (ATP) Protocol for Drinking Water, Ambient Water, and Wastewater Monitoring Methods, Guidance (EPA–821–B–03–004).

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the

economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This action promulgates new test methods for *E. coli*, enterococci, *Cryptosporidium*, and *Giardia* for use in ambient water monitoring programs. If the regulating authority replaces the indicator organism from fecal coliforms to one of the bacterial organisms (*E. coli* or enterococci) and the relevant NPDES permit requires ambient water monitoring, then the permittee would be required to use one of these approved methods for these organisms. Currently, permittees generally are not required to monitor for *Cryptosporidium* or *Giardia* because EPA has not developed water quality criteria for these protozoans. Burden means that the total time, effort, or financial resources expended by persons to generate, maintain, retain or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the U.S. Small Business Administration definitions at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This regulation promulgates testing procedures for the measurement of *E. coli* and enterococci bacteria, and *Cryptosporidium* and *Giardia* protozoa in ambient water. EPA anticipates that the methods will be used by some State regulatory authorities for evaluating attainment of water quality standards or ambient monitoring requirements. EPA NPDES regulations do not require monitoring of ambient water conditions in NPDES permits. In a few instances, ambient water monitoring requirements may be included in an EPA-issued permit where site-specific circumstances warrant. EPA regulations, do however, require NPDES permittees to use EPA-approved test methods for all monitoring data reported to the Agency (40 CFR 122.21). Consequently, to the extent that an NPDES permit requires monitoring and reporting of ambient water for *E. coli*, enterococci, *Cryptosporidium*, or *Giardia*, EPA approval of these test methods arguably may impose costs on NPDES permit holders, including small entities. EPA is unaware, however, of any EPA-issued NPDES permits that currently require monitoring of ambient water for such pollutants. Hence, EPA does not expect approval of these methods to impose any additional costs as a result of their applicability to EPA issued permits. As noted above, EPA's NPDES regulations do not require monitoring of ambient water conditions. Consequently, to the extent that a State requires such monitoring, those requirements are imposed under State, rather than Federal, authority. Because States have the discretion not to require such monitoring, any increased costs to small entities arising from use of the methods approved by EPA today that are imposed as a result of State law are not attributable to this regulation.

Nonetheless, EPA evaluated these potential costs to determine whether EPA approval of the methods will have a significant impact on a substantial number of small entities. As previously noted, States may require ambient water monitoring to evaluate attainment of water quality standards. A few States currently require NPDES permit holders to monitor ambient waters. Thus, some NPDES permittees are already testing ambient water for these parameters. The impact of using EPA approved methods for such dischargers may represent little or no increased burden since, for these permittees, the replacement of fecal coliforms with *E. coli* or enterococci would simply require different methods.

The small entities that might be affected by this rule include small governmental jurisdictions that have publicly-owned treatment works (POTWs) and small businesses with water quality-based discharge permits. The average costs for total and fecal coliform were comparable to those for *E. coli* and enterococci ($35) because the analytical procedures generally employ similar techniques, media, equipment, and require comparable laboratory time and effort. Some States are already using the methods for *E. coli* and enterococci in State ambient water quality monitoring programs. This rule would formalize current practice in those States. Furthermore, EPA expects that any modest potential increase in costs for enterococci analyses will be reduced once the promulgated methods are broadly implemented by environmental laboratories and State water quality monitoring programs.

EPA also reviewed the costs for testing for *Cryptosporidium* and *Giardia*. The costs for Methods 1622 and 1623 analysis of *Cryptosporidium* and *Giardia* range from $400 to $500 for each sample (with matrix spikes being assessed as individual samples) for each method. Because of the relatively high costs, EPA does not anticipate that these test methods will be used for daily or ongoing monitoring, but they may be used for program-specific occurrence assessments.

The purpose of this rule is only to make these methods available to States, Tribes, and municipalities that may want to use them for ambient water monitoring. The costs associated with *Cryptosporidium* and *Giardia* analysis would not be a Federally-mandated cost, but rather would emanate from a State's adoption of ambient monitoring requirements or other identified needs such as evaluation of Best Management Practices (BMPs) or downstream impacts of wastewater treatment plant effluents or other identified needs. The inclusion of these test methods in 40 CFR 136.3 is intended to make these test methods available to States and others for use in water quality monitoring programs. While monitoring for these protozoans may be beneficial since these organisms may be ingested from recreational and source waters, EPA is not establishing any compliance monitoring requirements for these pollutants. Therefore, EPA believes that this rule will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Tribal, and local governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, Tribal, and local governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for the notification of potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate for State, Tribal, and local governments or the private sector that may result in expenditures of $100 million or more for State, Tribal, and local governments, in the aggregate, or the private sector in any one year. This rule makes available testing procedures for *E. coli*, enterococci, *Cryptosporidium*, and *Giardia* that may be used by a State, Territorial, Tribal or local authority for compliance with water quality standards or ambient monitoring requirements when testing is otherwise required by these regulatory authorities. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. As discussed above, under the Regulatory Flexibility Act, the economic impact on small entities is anticipated to be small. It would not significantly affect them because any incremental costs incurred are small, and it would not uniquely affect them because it would affect entities of all sizes depending upon whether testing for these bacteria or protozoa is otherwise required by a regulatory authority. Further, monitoring for small entities is generally expected to be less frequent than monitoring for larger entities. Thus, today's rule also is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule promulgates new analytical methods for conducting analysis of ambient water for enumeration of *E. coli*, enterococci, *Cryptosporidium*, or *Giardia*. EPA does not, however, require use of these methods under this rule. Thus, Executive Order 13132 does not apply to this rule.

Although Executive Order 13132 does not apply to this rule, EPA did consult with representatives of State and local governments in developing the proposed regulation. In fact, it was State representatives who requested that EPA include test methods for these biological pollutants in 40 CFR 136.3 because they want to use EPA approved test methods for ambient water monitoring. EPA included a number of test methods currently being used by States for these pollutants in today's rulemaking. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials. No significant concerns were raised by commenters about these methods.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and the Indian tribes."

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Today's rule promulgates new analytical methods for conducting analysis of

ambient water for enumeration of *E. coli*, enterococci, *Cryptosporidium*, or *Giardia*. EPA does not, however, require use of these methods under this rule. Thus, Executive Order 13175 does not apply to this rule. Moreover, in the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicited comment on the proposed rule from tribal officials. EPA did not receive comments from Tribal officials. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to the Executive Order because it is not "economically significant" as defined in Executive Order 12866. Further, it does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995, ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking involves technical standards. Therefore, the Agency conducted a search to identify potentially applicable voluntary consensus standards. EPA's search of the technical literature revealed several consensus methods appropriate for enumerating *E. coli* and enterococci in ambient waters. Accordingly, methods for *E. coli* and enterococci published by Standard Methods for the Examination of Water and Wastewater, ASTM, and AOAC-International are included for promulgation and are listed in Table IA at the end of this document (*see* footnotes 4, 10, and 11, respectively, for the complete citations). No voluntary consensus standards were found for *Cryptosporidium* or *Giardia*.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on August 20, 2003.

List of Subjects in 40 CFR Part 136

Environmental protection, Incorporation by reference, Reporting and recordkeeping requirements, Water pollution control.

Dated: July 11, 2003.

Linda J. Fisher,

Acting Administrator.

■ For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations, is amended as follows:

PART 136—GUIDELINES ESTABLISHING TEST PROCEDURES FOR THE ANALYSIS OF POLLUTANTS

■ 1. The authority citation for part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a), Pub. L. 95–217, 91 Stat. 1566, *et seq.* (33 U.S.C. 1251, *et seq.*) (The Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977.)

■ 2. Section 136.3 is amended:

■ a. In paragraph (a) by revising Table IA.

■ b. In paragraph (b) by revising references (10), (34), (38) and (39) and adding references (52) through (62).

■ c. In Table II to paragraph (e) by revising entries to the Section labeled "Table IA—Bacteria Tests," to read as follows:

* * * * *

(a) * * *

TABLE IA.—LIST OF APPROVED BIOLOGICAL METHODS

Parameter and units	Method [1]	EPA	Standard methods 18th, 19th, 20th Ed.	ASTM	AOAC	USGS	Other
Bacteria:							
1. Coliform (fecal), number per 100 mL.	Most Probable Number (MPN), 5 tube 3 dilution, or	p. 132 [3]	9221C E [4]				
	Membrane filter (MF) [2], single step.	p. 124 [3]	9222D [4]			B–0050–85 [5]	

TABLE IA.—LIST OF APPROVED BIOLOGICAL METHODS—Continued

Parameter and units	Method [1]	EPA	Standard methods 18th, 19th, 20th Ed.	ASTM	AOAC	USGS	Other
2. Coliform (fecal) in presence of chlorine, number per 100 mL.	MPN, 5 tube, 3 dilution, or	p. 132 [3]	9221C E [4]				
	MF, single step [6] ..	p. 124 [3]	9222D [4]				
3. Coliform (total), number per 100 mL.	MPN, 5 tube, 3 dilution, or	p. 114 [3]	9221B [4]				
	MF [2], single step or two step.	p. 108 [3]	9222B [4]	.....	.....	B–0025–85 [5]	
4. Coliform (total), in presence of chlorine, number per 100 mL.	MPN, 5 tube, 3 dilution, or	p. 114 [3]	9221B [4]				
	MF [2] with enrichment.	p. 111 [3]	9222(B+B.5c) [4]				
5. *E. coli*, number per 100 mL [28].	MPN [7,9,15], multiple tube,.		9221B.1/9221F [4,12,14]				
	multiple tube/multiple well,		9223B [4,13]	.....	991.15 [11]	.....	Colilert® [13,17] Colilert-18® [13,16,17]
	MF [2,6,7,8,9] two step, or		9222B/9222G [4,19]				
		1103.1 [20]	9213D [4]	D5392–93 [10]			
	single step	1603 [21] 1604 [22]					
6. Fecal streptococci, number per 100 mL.	MPN, 5 tube, 3 dilution,	p. 139 [3]	9230B [4]				mColiBue 24 [18]
	MF [2], or	p. 136 [3]	.....	.....	B–0055–85 [5]		
	Plate count	p. 143 [4]					
7. Enterococci, number per 100 mL.	MPN [7, 9] multiple tube.	.....	9230B [4]				
	multiple tube/multiple well.	.....	.....	D6503–99 [10]	.....	.....	Enterolert® [13,23]
	MF [2,6,7,8,9] two step.	1106.1 [24]	9230C [4]	D5259–92 [10]			
	single step, or	1600 [25]					
	Plate count	p. 143 [3]					
Protozoa:							
8. *Cryptosporidium* [28].	Filtration/IMS/FA ..	1622 [26] 1623 [27]					
9. *Giardia* [28] ..	Filtration/IMS/FA ..	1623 [27]					
Aquatic Toxicity:							
10. Toxicity, acute, fresh water organisms, LC50, percent effluent.	*Ceriodaphnia dubia* acute.	2002.0 [29]					
	Daphnia puplex and *Daphnia magna* acute.	2021.0 [29]					

TABLE IA.—LIST OF APPROVED BIOLOGICAL METHODS—Continued

Parameter and units	Method [1]	EPA	Standard methods 18th, 19th, 20th Ed.	ASTM	AOAC	USGS	Other
	Fathead Minnow, *Pimephales promelas*, and Bannerfin shiner, *Cyprinella leedsi*, acute.	2000.0 [29]					
	Rainbow Trout, *Oncorhynchus mykiss*, and brook trout, *Salvelinus fontinalis*, acute.	2019.0 [29]					
11. Toxicity, acute, estuarine and marine organisms of the Atlantic Ocean and Gulf of Mexico, LC50, percent effluent.	Mysid, *Mysidopsis bahia*, acute.	2007.0 [29]					
	Sheepshead Minnow, *Cyprinodon variegatus*, acute.	2004.0 [29]					
	Silverside, *Menidia beryllina*, *Menidia menidia*, and *Menidia peninsulae*, acute.	2006.0 [29]					
12. Toxicity, chronic, fresh water organisms, NOEC or IC25, percent effluent.	Fathead minnow, *Pimephales promelas*, larval survival and growth.	1000.0 [30]					
	Fathead minnow, *Pimephales promelas*, embryo-larval survival and teratogenicity.	1001.0 [30]					
	Daphnia, *Ceriodaphnia dubia*, survival and reproduction.	1002.0 [30]					
	Green alga, *Selenastrum capricornutum*, growth.	1003.0 [30]					
13. Toxicity, chronic, estuarine and marine organisms of the Atlantic Ocean and Gulf of Mexico, NOEC or IC25, percent effluent.	Sheepshead minnow, *Cyprinodon variegatus*, larval survival and growth.	1004.0 [31]					

TABLE IA.—LIST OF APPROVED BIOLOGICAL METHODS—Continued

Parameter and units	Method [1]	EPA	Standard methods 18th, 19th, 20th Ed.	ASTM	AOAC	USGS	Other
	Sheepshead minnow, *Cyprinodon variegatus*, embryo-larval survival and teratogenicity.	1005.0 [31]					
	Inland silverside, *Menidia beryllina*, larval survival and growth.	1006.0 [31]					
	Mysid, *Mysidopsis bahia*, survival, growth, and fecundity.	1007.0 [31]					
	Sea urchin, *Arbacia punctulata*, fertilization.	1008.0 [31]					

Notes to Table IA:

[1] The method must be specified when results are reported.

[2] A 0.45 ???m membrane filter (MF) or other pore size certified by the manufacturer to fully retain organisms to be cultivated and to be free of extractables which could interfere with their growth.

[3] USEPA. 1978. Microbiological Methods for Monitoring the Environment, Water, and Wastes. Environmental Monitoring and Support Laboratory, U.S. Environmental Protection Agency, Cincinnati, Ohio. EPA/600/8–78/017.

[4] APHA. 1998, 1995, 1992. Standard Methods for the Examination of Water and Wastewater. American Public Health Association. 20th, 19th, and 18th Editions. Amer. Publ. Hlth. Assoc., Washington, D.C.

[5] USGS. 1989. U.S. Geological Survey Techniques of Water-Resource Investigations, Book 5, Laboratory Analysis, Chapter A4, Methods for Collection and Analysis of Aquatic Biological and Microbiological Samples, U.S. Geological Survey, U.S. Department of Interior. Reston, Virginia.

[6] Because the MF technique usually yields low and variable recovery from chlorinated wastewaters, the Most Probable Number method will be required to resolve any controversies.

[7] Tests must be conducted to provide organism enumeration (density). Select the appropriate configuration of tubes/filtrations and dilutions/volumes to account for the quality, character, consistency, and anticipated organism density of the water sample.

[8] When the MF method has not been used previously to test ambient waters with high turbidity, large number of noncoliform bacteria, or samples that may contain organisms stressed by chlorine, a parallel test should be conducted with a multiple-tube technique to demonstrate applicability and comparability of results.

[9] To assess the comparability of results obtained with individual methods, it is suggested that side-by-side tests be conducted across seasons of the year with the water samples routinely tested in accordance with the most current Standard Methods for the Examination of Water and Wastewater or EPA alternate test procedure (ATP) guidelines.

[10] ASTM. 2000, 1999, 1996. Annual Book of ASTM Standards—Water and Environmental Technology. Section 11.02. American Society for Testing and Materials. 100 Barr Harbor Drive, West Conshohocken, PA 19428.

[11] AOAC. 1995. Official Methods of Analysis of AOAC International; 16th Edition, Volume I, Chapter 17. Association of Official Analytical Chemists International. 481 North Frederick Avenue, Suite 500, Gaithersburg, Maryland 20877–2417.

[12] The multiple-tube fermentation test is used in 9221B.1. Lactose broth may be used in lieu of lauryl tryptose broth (LTB), if at least 25 parallel tests are conducted between this broth and LTB using the water samples normally tested, and this comparison demonstrates that the false-positive rate and false-negative rate for total coliform using lactose broth is less than 10 percent. No requirement exists to run the completed phase on 10 percent of all total coliform-positive tubes on a seasonal basis.

[13] These tests are collectively known as defined enzyme substrate tests, where, for example, a substrate is used to detect the enzyme βglucuronidase produced by *E. coli*.

[14] After prior enrichment in a presumptive medium for total coliform using 9221B.1, all presumptive tubes or bottles showing any amount of gas, growth or acidity within 48 h ± 3 h of incubation shall be submitted to 9221F. Commercially available EC–MUG media or EC media supplemented in the laboratory with 50 µg/mL of MUG may be used.

[15] Samples shall be enumerated by the multiple-tube or multiple-well procedure. Using multiple-tube procedures, employ an appropriate tube and dilution configuration of the sample as needed and report the Most Probable Number (MPN). Samples tested with Colilert® may be enumerated with the multiple-well procedures, Quanti-Tray® or Quanti-Tray® 2000, and the MPN calculated from the table provided by the manufacturer.

[16] Colilert-18® is an optimized formulation of the Colilert® for the determination of total coliforms and *E. coli* that provides results within 18 h of incubation at 35°C rather than the 24 h required for the Colilert® test and is recommended for marine water samples.

[17] Descriptions of the Colilert®, Colilert-18®, Quanti-Tray®, and Quanti-Tray®/2000 may be obtained from IDEXX Laboratories, Inc., One IDEXX Drive, Westbrook, Maine 04092.

[18] A description of the mColiBlue24" test, Total Coliforms and *E. coli*, is available from Hach Company, 100 Dayton Ave., Ames, IA 50010.

[19] Subject total coliform positive samples determined by 9222B or other membrane filter procedure to 9222G using NA–MUG media.

[20] USEPA. 2002. Method 1103.1: *Escherichia coli* (*E. coli*) In Water By Membrane Filtration Using membrane-Thermotolerant *Escherichia coli* Agar (mTEC). U.S. Environmental Protection Agency, Office of Water, Washington D.C. EPA–821–R–02–020.

[21] USEPA. 2002. Method 1603: *Escherichia coli* (*E. coli*) In Water By Membrane Filtration Using Modified membrane-Thermotolerant *Escherichia coli* Agar (modified mTEC). U.S. Environmental Protection Agency, Office of Water, Washington D.C. EPA–821–R–02–023.

[22] Preparation and use of MI agar with a standard membrane filter procedure is set forth in the article, Brenner *et al.* 1993. "New Medium for the Simultaneous Detection of Total Coliform and *Escherichia coli* in Water." Appl. Environ. Microbiol. 59:3534–3544 and in USEPA. 2002. Method 1604: Total Coliforms and *Escherichia coli* (*E. coli*) in Water by Membrane Filtration by Using a Simultaneous Detection Technique (MI Medium). U.S. Environmental Protection Agency, Office of Water, Washington DC. EPA 821–R–02–024.

[23] A description of the Enterolert® test may be obtained from IDEXX Laboratories, Inc., One IDEXX Drive, Westbrook, Maine 04092.

[24] USEPA. 2002. Method 1106.1: Enterococci In Water By Membrane Filtration Using membrane-Enterococcus-Esculin Iron Agar (mE-EIA). U.S. Environmental Protection Agency, Office of Water, Washington DC. EPA–821–R–02–021.

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[26] Method 1622 uses filtration, concentration, immunomagnetic separation of oocysts from captured material, immunofluorescence assay to determine concentrations, and confirmation through vital dye staining and differential interference contrast microscopy for the detection of *Cryptosporidium*. USEPA. 2001. Method 1622: Cryptosporidium in Water by Filtration/IMS/FA. U.S. Environmental Protection Agency, Office of Water, Washington DC. EPA–821–R–01–026.

[27] Method 1623 uses filtration, concentration, immunomagnetic separation of oocysts and cysts from captured material, immunofluorescence assay to determine concentrations, and confirmation through vital dye staining and differential interference contrast microscopy for the simultaneous detection of *Cryptosporidium* and *Giardia* oocysts and cysts. USEPA. 2001. Method 1623. Cryptosporidium and Giardia in Water by Filtration/IMS/FA. U.S. Environmental Protection Agency, Office of Water, Washington DC. EPA–821–R–01–025.

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TABLE II.—REQUIRED CONTAINERS, PRESERVATION TECHNIQUES, AND HOLDING TIMES

Parameter No./name	Container[1]	Preservation[2,3]	Maximum holding time[4] (hours)
Table IA—Bacteria Tests:			
1–5 Coliform, total, fecal, and *E. coli*	PP, G	Cool, <10°C, 0.008% $Na_2S_2O_3$[5]	6
6 Fecal *streptococci*	PP, G	Cool, <10° 0.008% $Na_2S_2O_3$[5]	6
7 *Enterococci*	PP, G	Cool, <10° 0.008% $Na_2S_2O_3$[5]	6
Table IA—Protozoa Tests:			
8 *Cryptosporidium*	LDPE	0–8°C	96[17]
9 *Giardia*	LDPE	0–8°C	96[17]

[1] Polyethylene (P) or glass (G). For bacteria, plastic sample containers must be made of sterilizable materials (polypropylene [PP] or other autoclavable plastic). For protozoa, plastic sample containers must be made of low-density polyethylene (LDPE).

[2] Sample preservation should be performed immediately upon sample collection. For composite chemical samples, each aliquot should be preserved at the time of collection. When use of an automated sampler makes it impossible to preserve each aliquot, then chemical samples may be preserved by maintaining at 4°C until compositing and sample splitting is completed.

[3] When any sample is to be shipped by common carrier or sent through the United States Mails, it must comply with the Department of Transportation Hazardous Materials Regulations (49 CFR part 172). The person offering such material for transportation is responsible for ensuring such compliance. For the preservation requirements of Table II, the Office of Hazardous Materials, Transportation Bureau, Department of Transportation, has determined that the Hazardous Materials Regulations do not apply to the following materials: Hydrochloric acid (HCl) in water solutions at concentrations of 0.04% by weight or less (pH about 1.96 or greater); Nitric acid (HNO_3) in water solutions of 0.15% by weight or less (pH about 1.62 or greater); Sulfuric acid (H_2SO_4) in water solutions of concentrations of 0.35% by weight or less (pH about 1.15 or greater); and Sodium hydroxide (NaOH) in water solutions at concentrations of 0.080% by weight or less (pH about 12.30 or less).

[4] Samples should be analyzed as soon as possible after collection. The times listed are the maximum times that samples may be held before analyses and still be considered valid. Samples may be held for longer periods only if the permittee, or monitoring laboratory, has data on file to show that for the specific types of samples under study, the analytes are stable for the longer time, and has received a variance from the Regional Administrator under § 136.3(e). Some samples may not be stable for the maximum time period given in the table. A permittee or monitoring laboratory is obligated to hold the samples for a shorter time if knowledge exists to show that this is necessary to maintain sample stability. *See* § 136.3(e) for details. The term "analyze immediately" usually means within 15 minutes or less of sample collection.

[5] Should only be used in the presence of residual chlorine.

* * * * * * * *

[16] Sufficient ice should be placed with the samples in the shipping container to ensure that ice is still present when samples arrive at the laboratory. However, even if ice is present when the samples arrive, it is necessary to immediately measure the temperature of the samples and confirm that the 4°C temperature maximum has not been exceeded. In the isolated cases where it can be documented that this holding temperature can not be met, the permittee can be given the option of on-site testing or can request a variance. The request for a variance should include supportive data which show that the toxicity of the effluent samples is not reduced because of the increased holding temperature.

[17] Holding time is calculated from time of sample collection to elution for samples shipped to the laboratory in bulk and calculated from the time of sample filtration to elution for samples filtered in the field.

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To award a congressional gold medal to Prime Minister Tony Blair. (July 17, 2003; 117 Stat. 862)

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Rules and Regulations

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Tuesday, July 22, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 03–032–2]

Sapote Fruit Fly; Removal of Quarantined Area in Texas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the sapote fruit fly regulations by removing part of Hidalgo County, TX, from the list of quarantined areas and by removing restrictions on the interstate movement of regulated articles from this area. This action is necessary to relieve restrictions that are no longer needed to prevent the spread of the sapote fruit fly into noninfested areas of the United States. We have determined that the sapote fruit fly has been eradicated from this part of Hidalgo County, TX, and that the quarantine and restrictions are no longer necessary. This part of Hidalgo County, TX, was the only area in Texas quarantined for the sapote fruit fly. Therefore, as a result of this action, there are no longer any areas in the continental United States quarantined for the sapote fruit fly.

DATES: This interim rule was effective July 15, 2003. We will consider all comments that we receive on or before September 22, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–032–2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–032–2. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–032–2" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Knight, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The sapote fruit fly (*Anastrepha serpentina*) is a destructive pest of fruits and vegetables, including apples, avocados, grapefruit, mangoes, peaches, pears, and tangerines. This pest can cause serious economic losses by lowering the yield and quality of these fruits and vegetables and, in some cases, by damaging seedlings and young plants. Heavy infestations can result in the complete loss of these crops.

The sapote fruit fly regulations, contained in 7 CFR 301.99 through 301.99–10 (referred to below as the regulations), were established to prevent the spread of the sapote fruit fly into noninfested areas of the United States. The regulations also designate soil and a large number of fruits, nuts, vegetables, and berries as regulated articles.

In an interim rule effective on May 2, 2003, and published in the **Federal Register** on May 8, 2003 (68 FR 24605–24613 Docket No. 03–032–1), we quarantined a portion of Hidalgo County, TX, and restricted the interstate movement of regulated articles from the quarantined areas.

Based on trapping surveys by inspectors of Texas State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, we have determined that the sapote fruit fly has been eradicated from the quarantined portions of this county. The last finding of sapote fruit fly in the Hidalgo County, TX, quarantined area was June 17, 2003.

Since then, no evidence of sapote fruit fly infestation has been found in these areas. Based on our experience, we have determined that sufficient time has passed without finding additional flies or other evidence of infestation to conclude that the sapote fruit fly no longer exists in Hidalgo County, TX. Therefore, we are removing the county from the list of quarantined areas in § 301.99–10. With the removal of Hidalgo County, TX, from that list, there are no longer any areas in the continental United States quarantined for the sapote fruit fly.

Immediate Action

Immediate action is warranted to relieve restrictions that are no longer necessary. A portion of Hidalgo County, TX, was quarantined due to the possibility that the sapote fruit fly could spread from those areas to noninfested areas of the United States. Since we have concluded that the sapote fruit fly no longer exists in this county, immediate action is necessary to remove the quarantine on Hidalgo County, TX, and to relieve the restrictions on the interstate movement of regulated articles from those areas. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register.**

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register.** The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This action amends the sapote fruit fly regulations by removing a portion of Hidalgo County, TX, from the list of quarantined areas.

We expect that the effect of this interim rule will be minimal. Small entities located within the quarantined area that sell regulated articles do so primarily for local intrastate, not interstate, movement, so the effect, if any, of this rule on these entities appears likely to be minimal. In addition, the effect on any small entities that may move regulated articles interstate has been minimized during the quarantine period by the availability of various treatments that allow these small entities, in most cases, to move regulated articles interstate with very little additional cost. Thus, just as the previous interim rule establishing the quarantined area in Hidalgo County, TX, had little effect on the small growers in the area, the lifting of the quarantine in the current interim rule will also have little effect.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.99–3, paragraph (c) is revised to read as follows:

§ 301.99–3 Quarantined areas.

* * * * *

(c) The areas described below are designated as quarantined areas: There are no areas in the continental United States quarantined for the sapote fruit fly.

Done in Washington, DC, this 15th day of July 2003 .

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–18603 Filed 7–21–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02–130–2]

Oriental Fruit Fly; Removal of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Oriental fruit fly regulations by removing portions of Los Angeles and Orange Counties, CA, from the list of quarantined areas and by removing restrictions on the interstate movement of regulated articles from those areas. This action is necessary to relieve restrictions that are no longer needed to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. We have determined that the Oriental fruit fly has been eradicated from those portions of Los Angeles and Orange Counties, CA, and that the quarantine and restrictions are no longer necessary.

DATES: This interim rule is effective July 15, 2003. We will consider all comments that we receive on or before September 22, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–130–2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–130–2. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–130–2" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Knight, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The Oriental fruit fly, *Bactrocera dorsalis* (Hendel), is a destructive pest of citrus and other types of fruit, nuts, vegetables, and berries. The short life cycle of the Oriental fruit fly allows rapid development of serious outbreaks, which can cause severe economic losses. Heavy infestations can cause complete loss of crops.

The Oriental fruit fly regulations, contained in 7 CFR 301.93 through 301.93–10 (referred to below as the regulations), were established to prevent the spread of the Oriental fruit fly into noninfested areas of the United States.

The regulations also designate soil and a large number of fruits, nuts, vegetables, and berries as regulated articles.

In an interim rule effective on January 6, 2003, and published in the **Federal Register** on January 10, 2003 (68 FR 1360–1362 Docket No. 02–130–1), we quarantined portions of Los Angeles and Orange Counties, CA, and restricted the interstate movement of regulated articles from the quarantined areas.

Based on trapping surveys conducted by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, we have determined that the Oriental fruit fly has been eradicated from the quarantined portions of these two counties. The last finding of Oriental fruit fly in the Los Angeles and Orange Counties, CA, quarantined areas was June 4, 2003.

Since then, no evidence of Oriental fruit fly infestation has been found in these areas. Based on our experience, we have determined that sufficient time has passed without finding additional flies or other evidence of infestation to conclude that the Oriental fruit fly no longer exists in Los Angeles or Orange Counties, CA. Therefore, we are removing the entry for these counties from the list of quarantined areas in § 301.93–3(c).

Immediate Action

Immediate action is warranted to relieve restrictions that are no longer necessary. Portions of Los Angeles and Orange Counties, CA, were quarantined due to the possibility that the Oriental fruit fly could spread from those areas to noninfested areas of the United States. Since we have concluded that the Oriental fruit fly no longer exists in those counties, immediate action is necessary to remove the quarantines on Los Angeles and Orange Counties, CA, and to relieve the restrictions on the interstate movement of regulated articles from those areas. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (*see* **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This action amends the Oriental fruit fly regulations by removing a portion of Los Angeles and Orange Counties, CA, from the list of quarantined areas.

County records indicate that within the quarantined portions of Los Angeles and Orange Counties, there are 389 small entities who could be affected by the lifting of the quarantine in this interim rule. These include 351 fruit sellers, 3 growers, 33 nurseries, 1 certified farmers' market, and 1 swapmeet. These 389 entities comprise less than 1 percent of the total number of similar entities operating in the State of California.

We expect that the effect of this interim rule on the small entities referred to above will be minimal. Small entities located within the quarantined area that sell regulated articles do so primarily for local intrastate, not interstate, movement, so the effect, if any, of this rule on these entities appears likely to be minimal. In addition, the effect on any small entities that may move regulated articles interstate has been minimized during the quarantine period by the availability of various treatments that allow these small entities, in most cases, to move regulated articles interstate with very little additional cost. Thus, just as the previous interim rule establishing the quarantined area in Los Angeles and Orange Counties, CA, had little effect on the small growers in the area, the lifting of the quarantine in the current interim rule will also have little effect.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

§ 301.93–3 [Amended]

■ 2. In § 301.93–3, paragraph (c) is amended by removing, under the heading "CALIFORNIA", the entry for Los Angeles and Orange Counties.

Done in Washington, DC, this 15th day of July 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–18602 Filed 7–21–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM258; Special Conditions No. 25–240–SC]

Special Conditions: Boeing Model 747SP Airplane; Aft Lower Lobe Service/Cargo Compartment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for a Boeing Model 747SP airplane modified by JRG Design Inc., Greensboro, North Carolina. This

modified airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification is associated with an aft lower lobe compartment that will serve as both a service compartment and a Class C cargo compartment. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: The effective date of these special conditions is July 2, 2003. Comments must be received on or before August 21, 2003.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM258, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM258.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, FAA, Airframe/Cabin Safety, ANM–115, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2195; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable, because those procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Background

On October 29, 2001, JRG Design Inc. applied for a supplemental type certificate for a Boeing Model 747SP airplane to combine the functions of a service compartment and a Class C cargo compartment in the aft lower lobe compartment. Boeing Model 747SP series airplanes, currently approved under Type Certificate A20WE, are large transport category airplanes with upper and main passenger decks. The airplanes are limited to 400 passengers or fewer, depending on the interior configuration. As part of the type design, certified Class C cargo compartments are installed below the main deck.

JRG Design Inc. proposes to modify the interior of a 747SP airplane for use by a head-of-state. As part of the modification, JRG proposes to include two ladders from the main deck into the aft lower lobe cargo compartment and to use that compartment as a combined service compartment and Class C cargo compartment. The compartment would use materials meeting the flammability standards for Class C cargo compartments and would include smoke detectors. Access would be limited to one trained crewmember and would be allowed during flight, but not during taxi, takeoff or landing or if there were a fire.

As part of the safety enhancement necessary to allow occupancy of the aft lower lobe service/cargo compartment by a crewmember, JRG proposes the installation of warning and emergency equipment, as defined for a lower lobe service compartment in § 25.819. Speakers, warning lights, and buzzers will be installed in the aft lower lobe service/cargo compartment to warn an occupant of turbulent conditions, the presence of smoke or fire, or the need to leave the area. A crew interphone will be provided for communications with the flight deck. In addition, emergency equipment will be provided to that occupant in case of decompression. No seat will be installed in this area, as required by § 25.819(f), because of the reduced height and accessibility of the area.

JRG Design Inc. indicates that the aft lower lobe service/cargo compartment will meet the Class C cargo requirements of § 25.857(c). The compartment will be equipped with an approved built-in fire extinguisher or suppression system which is controllable from the cockpit to eliminate the need to send someone into the compartment to fight a fire. In the event of a fire, the aft lower lobe service/cargo compartment will be evacuated, and the pilot will activate the fire suppression system. A means will be provided to prevent inadvertent access to the compartment when the fire suppression system has been activated.

The existing regulations address separate service areas and Class C cargo compartments but do not address a single compartment that has both uses. The requirements for these compartments are not only different, but also incompatible. For example, the service compartment may be occupied (except during taxi, takeoff, and landing), but the Class C cargo compartment must not be occupied. In addition, fire fighting is dealt with differently in the two compartments. The crew fights a fire in a service compartment, whereas a flooding extinguisher system is used in a Class C cargo compartment.

The concept of a single, multi-use compartment which JRG proposes would be acceptable, if the FAA could be assured that whether the compartment is used as a service compartment or as a Class C cargo compartment, the level of safety would be equivalent to that of a separate service compartment or a separate Class C cargo compartment. Therefore, special conditions that provide an equivalent level of safety are being required; these special conditions pertain to visible and audible warnings, placards and limitations, equipment, evacuation routes, training, and the use of ladders between the main deck and the aft lower lobe service/cargo compartment.

Type Certification Basis

Under the provisions of § 21.101 Amendment 21–69, effective September 16, 1991, JRG Design Inc. must show that the Model 747SP airplane, as modified, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate A20WE or the applicable regulations in effect on the date of application for the change.

The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate A20WE for the Boeing Model 747SP series airplanes include 14 CFR part 25, as amended by Amendments 25–1 through 25–8 and 25–15, 25–17, 25–18, 25–20 and 25–39, with certain exceptions and special conditions as listed in the type certificate data sheet. The U.S. type certification basis for the Boeing Model 747SP series airplane is established in accordance with 14 CFR 21.17 and 21.21 and the type certification application date. The type certification basis is listed in Type Certificate Data Sheet No. A20WE.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for a Boeing Model 747SP series airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 747SP airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2) Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Boeing Model 747SP airplane will incorporate a novel or unusual design feature; specifically, the aft lower lobe compartment will be used as a combined service compartment and Class C cargo compartment.

Discussion

The requirements for lower deck service compartments (in § 25.819) are incompatible with the requirements for cargo compartments (in §§ 25.855, 25.857, and 25.858). For example, to use the fire control system of a Class C cargo compartment, the compartment must be unoccupied, because the means of fire control is to flood the compartment with fire suppressant. The fire control system of a service compartment, however, would not normally utilize a flood-type fire suppressant, since the compartment might be occupied.

The requirements in these special conditions allow the aft lower lobe to be used as a combined service compartment and Class C cargo compartment during flight. To make this concept work, the special conditions require certain visible and audible warnings, placards and limitations, evacuation routes, equipment, and training; the special conditions also establish requirements for use of ladders between the main deck and the aft lower lobe service/cargo compartment.

The applicant has not proposed a means of satisfying regulatory requirements governing occupancy of the aft lower lobe service/cargo compartment during taxi, takeoff, and landing. Therefore, the FAA will specify appropriate limitations for such occupancy.

Special Condition 1—Visible and Audible Warnings

Currently, § 25.819 specifies that a service compartment may be occupied and does not need to be evacuated under certain normal conditions or under certain unsafe conditions (*e.g.*, in the case of fire, the occupant could function as a firefighter). Sections 25.855 and 25.857, however, specify that a Class C cargo compartment must not be occupied, that fire detection must be automatic, and that fire suppression must rely on a total flood system. To maintain the advantages of both a service compartment and a Class C cargo compartment, certain warnings need to be provided.

Special Condition 1a. requires a visible advisory in the cockpit to notify the flightcrew when the aft lower lobe service/cargo compartment is occupied. The potential exists that the aft lower lobe service/cargo compartment may inadvertently be occupied when it should not be, such as during taxi, takeoff or landing or during certain emergencies. Special Condition 1(a) ensures that the flightcrew is aware that the aft lower lobe service/cargo compartment is occupied and that the flightcrew takes appropriate action to evacuate the compartment before flooding it with fire suppressant. There must be a placard or sign nearby which indicates that the light means that the compartment is occupied.

Special Condition 1b. requires an "on/off" visible warning stating "Do Not Enter" (or similar words) to be located outside and on or near the door from the main deck to the aft lower lobe service/cargo compartment. The warning is to be controlled from the flight deck to prevent someone from entering the aft lower lobe service/cargo compartment when it should not be occupied, such as during taxi, takeoff or landing or when smoke or fire has been detected. Opening the door during a fire would degrade the effectiveness of the fire suppressant and allow smoke, flame, and/or fire suppressant into the cabin.

Special Condition 1c. requires a visible and audible warning in the aft lower lobe service/cargo compartment to notify an occupant that he or she must evacuate the compartment. This warning must be one which can be seen and heard from any part of the compartment. The visible and audible warning is to be controlled from the flight deck. Because the aft lower lobe service/cargo compartment may be occupied on the ground or in the air, a warning must be provided to notify an occupant to leave the compartment prior to taxi, takeoff or landing or during certain emergencies (other than fire, which is dealt with under Special Condition 1(e). A visible warning is required, in case the audible warning becomes masked or distorted by engine, equipment, or ground noises.

Special condition 1d. requires a visible and audible warning in the aft lower lobe service/cargo compartment to notify an occupant of the need to use a portable oxygen bottle in the event of decompression. This warning must be one which can be seen and heard from any part of the compartment and must be distinct from other warnings in the compartment to prevent confusion and to elicit correct action. The decompression warning must be automatic (*i.e.*, not require separate crew action) to ensure that an occupant of the aft lower lobe service/cargo compartment does not delay putting on the mask attached to the portable oxygen bottle. This section of the special conditions is partially in lieu of the visible effect provided by the automatic presentation feature required by § 25.1447.

Special Condition 1e. requires a visible and audible warning in the aft lower lobe service/cargo compartment when a fire is detected to notify an occupant that he or she must evacuate the compartment. The warning must be one which can be seen and heard from any part of the compartment and must be distinct from other warnings in the compartment in order to prevent confusion and to elicit the correct actions. The fire or smoke detection warning must be automatic (*i.e.*, not require or depend on separate crew action) to ensure that an occupant of the aft lower lobe service/cargo compartment leaves before the flightdeck crew releases fire suppressant in the compartment.

Special Condition 2—Placards and Limitations

The aft lower lobe service/cargo compartment must be evacuated if a fire occurs. In addition, there must be a way to prevent access into the compartment during taxi, takeoff or landing or in the event of a fire. Placards and limitations are specified for these situations.

Special Condition 2a. requires a placard to be located outside the hatch to the aft lower lobe service/cargo compartment doors, indicating that access is limited to one crewmember trained in evacuation procedures. The accommodations and the availability of only one oxygen bottle necessitate limiting access.

Special Condition 2b. requires placards to be located inside and outside the hatches of the aft lower lobe service/cargo compartment, indicating that the compartment hatch must remain closed, except when someone is entering, occupying, or leaving the compartment. The smoke and fire detection and suppression systems are

to be certified with the hatches closed; therefore, the hatches must remain closed.

Special Condition 2c. requires placards inside and outside the hatches of the aft lower lobe service/cargo compartment, indicating that occupancy of the compartment should be of minimum duration. Because of this limitation, the requirement of § 25.819(f) to provide a seat is unnecessary.

Special Condition 2d. requires a limitation to be placed in the airplane flight manual (AFM) and placards to be posted inside and outside the hatches of the aft lower lobe service/cargo compartment, all stating that the compartment may not be occupied during taxi, takeoff, or landing or during a fire. These placards are being required, because the compartment is not being certified for occupancy during taxi, takeoff, or landing and because the compartment must not be occupied during a fire so that an occupant is not exposed to fire or to fire suppressant. These placards are somewhat redundant, given the warning required under 1(b) and 1(c) but would provide information to an occupant, if the flightcrew failed to activate the warnings of 1(b) and 1(c).

Special Condition 2e. requires that the AFM supplement include the following with respect to the aft lower lobe service/cargo compartment:

- Flightdeck crew instructions for allowing access
- Procedures, including warning and evacuation procedures, for the flightcrew to follow in the event of fire or smoke
- Procedures, including warning and evacuation procedures, for the flightcrew to follow in the event of decompression; and
- Limitations on occupancy during taxi, takeoff, or landing.

This special condition also requires that the weight and balance manual include cargo loading restrictions requiring cargo to be loaded and restrained so as to maintain escape paths. These requirements are to ensure that a single member of the flightcrew could access the cargo compartment safely during flight and exit safely during failure conditions.

Special Condition 2f. Because access is being provided to the aft lower lobe service/cargo compartment, there is concern that during flight, passengers may retrieve hazardous materials or weapons stored in luggage. Access could be prevented by locking the aft lower lobe service/cargo compartment, and that is being specified as one solution (in Special Condition 2(f)(1)). However, this airplane is being designed for use by a head-of-state, it will have limited access, and it will have placards limiting access. Furthermore, there will be notification to the flightcrew when the aft lower lobe service/cargo compartment is occupied (in Special Condition 1(a)). Special Condition 2(f)(2), therefore, would prohibit the airplane from being operated for hire or offered for common carriage.

Special Condition 3—Equipment

In addition to that required by § 25.819, Special Condition 3 requires the following equipment:

Special Condition 3a. requires that a portable oxygen bottle be available at all times and that it be sufficient to supply a member of the flightcrew who is occupying the aft lower lobe service/cargo compartment (except during taxi, takeoff, or landing or during a fire). Because it would not be advisable to provide drop-down masks in a cargo compartment or to store a portable oxygen bottle in the compartment, the FAA is requiring that a portable oxygen bottle be mounted outside each main deck entrance of the aft lower lobe service/cargo compartment. A member of the flightcrew must carry the portable oxygen bottle, when he or she enters the compartment. The supply of oxygen must be compatible with the emergency descent profile following a decompression.

Special Condition 3b. requires supplemental handheld lighting (with locator light) when an occupant is in the aft lower lobe service/cargo compartment and power to the compartment is off, or the emergency escape path lighting is off or lost, or if visibility is poor. At least two flashlights are required. One flashlight would be located adjacent to each emergency exit in the aft lower lobe service/cargo compartment at the foot of the stairs in the compartment. Note that this requirement is in addition to the automatic emergency lighting system required by § 25.819(a).

Special Condition 3c. obviates the need to comply with the requirements of § 25.819(f) for the installation of a forward or aft facing seat for each occupant of the compartment. The compartment's physical constraints, such as the reduced ceiling height and limited accessibility, make the installation of a seat impractical and prohibitive.

Special Condition 4—Evacuation Routes

Special Condition 4 requires, in addition to the two evacuation routes (including an exit) specified by § 25.819(a), procedures to keep the evacuation routes clear. The cargo in the compartment must be restrained to ensure that the crewmember's paths to the exits are clear. Further, all entrances and exits from the aft lower lobe service/cargo compartment must be capable of being closed after exiting. In addition to the concern for cargo blocking the escape paths, there is concern about hazardous quantities of smoke, flames, or fire suppressant entering compartments occupied by passengers or crew and about the loss of fire suppressant from the compartment during a fire. The aft lower lobe service/cargo compartment must be capable of being closed, because after evacuation it must comply with the requirements applicable to the Class C cargo compartment, including §§ 25.855, 25.857, and 25.858.

Special Condition 5—Training

Because the design features required by these special features can fulfill their safety objectives only if crewmembers are properly trained in their use, these special conditions require the applicant to develop the following training materials:

Special Condition 5a. requires training materials about use of the aft lower lobe service/cargo compartment and actions associated with the warnings and placards required by these special conditions.

Special Condition 5b. requires training materials about entering and exiting the aft lower lobe service/cargo compartment, including emergency exiting, (associated with Special Conditions 1(b), 1(c), 1(d), 1(e), 2(a), 2(b), 2(c), 2(d), and 3(b)).

Special Condition 5c. requires training materials about checking the pressure of the portable oxygen bottle prior to entering the aft lower lobe service/cargo compartment (associated with Special Condition 3(a)).

Special Condition 5d. requires training materials about carrying a portable oxygen bottle when entering the aft lower lobe service/cargo compartment (associated with Special Condition 3(a)).

Special Condition 5e. requires training materials about maintaining an exit aisle and access to the evacuation routes from the lower lobe service/cargo compartment (associated with Special Condition 3(c)).

Special Condition 6—Ladders

The ladders between the aft lower lobe service/cargo compartment and the main deck must meet the following requirements:

Special Condition 6a. requires that the ladders consist of a single segment.

Special Condition 6b. requires that the ladders have essentially rectangular treads.

Special Condition 6c requires that general illumination of at least 0.05 foot-candle, when measured along the centerlines of each tread, must be provided.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 747SP airplane. Should JRG Design Inc. apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate A20WE to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1) Amendment 21–69, effective September 16, 1991.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register.** However, the issuance of a supplemental type certificate data sheet for the Boeing Model 747SP, as modified by JRG Design Inc., is imminent. The FAA finds, therefore, that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability, and it affects only the applicant which applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Boeing Model 747SP–68 airplane modified by JRG Design Inc. to include an aft lower lobe compartment configured for use as both a service compartment and a Class C cargo compartment.

1. Visible and Audible Warnings

In addition to the audible warnings about detection of fire or smoke or decompression which are required by § 25.819(c), the following warnings are required:

a. A visible advisory in the cockpit to notify the flightcrew when the aft lower lobe service/cargo compartment is occupied. The advisory light must be accompanied by a placard or message indicating that the compartment is occupied.

b. An (on/off) visible warning stating "Do Not Enter" (or similar words) located outside and on or near the door from the main deck to the aft lower lobe service/cargo compartment. The warning is to be controlled from the flight deck.

c. A visible and audible warning in the aft lower lobe service/cargo compartment to notify an occupant when he or she must evacuate the compartment. The warning must be one which can be seen and heard from any part of the compartment. The warning is to be controlled from the flight deck.

d. A visible and audible warning in the aft lower lobe service/cargo compartment which in the event of decompression warns an occupant of the need to use a portable oxygen bottle. This warning must be one which can be seen and heard from any part of the compartment and must be distinct from other warnings in the compartment. The decompression warning must be automatic (*i.e.*, not require separate crew action), to ensure that an occupant of the aft lower lobe service/cargo compartment does not delay using a portable oxygen bottle. This section of the special condition is partially in lieu of the visible effect provided by the automatic presentation feature required by § 25.1447.

e. A visible and audible warning in the aft lower lobe service/cargo compartment—which in the event of a fire—warns an occupant of the need to evacuate the compartment. This warning must be one which can be seen and heard from any part of the compartment and should be distinct from other warnings in the compartment. The fire or smoke detection warning must be automatic (*i.e.*, not require a separate crew action) to ensure that an occupant of the aft lower lobe service/cargo compartment leaves before the flight deck crew releases fire suppressant.

2. Placards and Limitations

In addition to those required in part 25, the following placards and limitations are required:

a. A placard located outside the hatch to the aft lower lobe service/cargo compartment, indicating that access to the compartment is limited to one crewmember trained in evacuation procedures.

b. A placard located inside and outside the hatches on the aft lower lobe service/cargo compartment, indicating that the compartment hatches must remain closed, except when someone is entering, occupying, or leaving the compartment.

c. In lieu of compliance with § 25.819(f), a placard must be installed inside and outside the hatches on the aft lower lobe service/cargo compartment, indicating that occupancy of the compartment should be of minimum duration.

d. A limitation in the AFM and a placard inside and outside the hatches to the aft lower lobe service/cargo compartment, all stating that (1) the aft lower lobe service/cargo compartment must not be occupied during taxi, takeoff, or landing or during a fire and (2) only authorized personnel are permitted access.

e. Instructions in the AFM regarding permissible occupancy of the compartment; limitations on occupancy of the compartment during taxi, takeoff or landing; procedures for warning occupants of the compartment that smoke or fire has been detected; procedures for fighting a fire in the compartment; procedures for warning occupants of the compartment that decompression has occurred; and cargo loading restrictions in the weight and balance manual.

f. A Limitation in the AFM Supplement stating that:

"Carriage of hazardous material and/or weapons in the aft lower lobe service/cargo compartment is prohibited unless the following conditions are met:

(1) The compartment is locked during flight, and the key remains with the flight crew, or

(2) The airplane is not operated for hire or offered for common carriage. This provision does not preclude the operator from receiving remuneration to the extent consistent with 14 CFR part 125, 14 CFR part 91, and subpart F, as applicable."

3. Equipment

In addition to that required by §§ 25.819 and 25.829(a), the following equipment is required:

a. A portable oxygen bottle must be mounted outside each main deck entrance of the aft lower lobe service/cargo compartment. The portable oxygen bottle must be sufficient to supply a member of the flightcrew who is occupying the aft lower lobe service/cargo compartment and must be carried by the flightcrew member.

b. Flashlights or other supplemental handheld lighting, in addition to the emergency illumination required by

§ 25.829(a). At least two flashlights—each equipped with a locator light—must be provided. One flashlight must be located adjacent to each emergency exit in the aft lower lobe service/cargo compartment at the foot of the stairs in the compartment.

c. The requirement of § 25.819(f) for a forward or aft facing seat for each occupant of the compartment is waived, because the physical constraints of the compartment, such as the reduced height and limited accessibility make the installation of a seat impractical and prohibitive.

4. Evacuation Routes

In addition to the two evacuation routes (including an exit) specified by § 25.819(a), procedures must be established in the AFM Supplement to keep the evacuation routes clear. The cargo in the compartment must be restrained to ensure that the crewmember's paths to the exits are clear. Further, all entrances and exits from the aft lower lobe service/cargo compartment must be capable of being closed after exiting. The aft lower lobe service/cargo compartment must be capable of being closed, because after evacuation it must comply with the requirements applicable to the Class C cargo compartment, including §§ 25.855, 25.857, and 25.858.

5. Training

Training materials which address the following procedures must be provided:

a. Use of the aft lower lobe service/service compartment and actions indicated by the warnings and placards specified herein.

b. Entering and exiting the aft lower lobe service/cargo compartment, including emergency exiting.

c. Checking the pressure of the portable oxygen bottle prior to entering the aft lower lobe service/cargo compartment.

d. Carrying a portable oxygen bottle when entering the aft lower lobe service/cargo compartment.

e. Maintaining an exit aisle and access to evacuation routes from the aft lower lobe service/cargo compartment. Training must address how to keep the evacuation routes clear, *i.e.*, how to restrain cargo in the compartment to ensure that the paths to the exits are clear.

f. A limitation in the AFM Supplement stating that all personnel accessing the aft lower lobe service/cargo compartment must be trained in the procedures listed above.

6. Ladders

The following requirements must be met for ladders between the main deck and the aft lower lobe service/cargo compartment:

a. The ladders must consist of a single segment.

b. The ladders must have essentially rectangular treads.

c. General illumination of at least 0.05 foot-candle, when measured along the centerlines of each ladder tread, must be provided.

Issued in Renton, Washington, on July 2, 2003.

Ali Bahrami,

Assistant Director, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–18625 Filed 7–21–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION (DOT)

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14848; Airspace Docket No. 03–AWP–5]

Establishment of Class E Airspace; Susanville, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class E airspace area at Susanville, CA. The establishment of an Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) at Susanville Municipal Airport, Susanville, CA has made this action necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the RNAV (GPS) RWY 29 and RNAV (GPS)–A SIAPs to Susanville Municipal Airport. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules operations at Susanville Municipal Airport, Susanville, CA.

EFFECTIVE DATE: 0901 UTC September 4, 2003.

FOR FURTHER INFORMATION CONTACT: Jeri Carson, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6611.

SUPPLEMENTARY INFORMATION:

History

On June 9, 2003, the FAA proposed to amend 14 CFR part 71 by modifying the Class E airspace area at Susanville, CA (68 FR 34340). Additional controlled airspace extending upward from 700 feet or more above the surface is needed to contain aircraft executing the RNAV (GPS) RWY 29 and RNAV (GPS)–A SIAPs to Susanville Municipal Airport. This action will provide adequate controlled airspace for aircraft executing the RNAV (GPS) RWY 29 and RNAV (GPS)–A SIAPs to Susanville Municipal Airport, Susanville, CA.

Interested parties were invited to participate in this rulemaking, proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations for airspace extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies the Class E airspace area at Susanville, CA. The establishment of a RNAV (GPS) RWY 29 and RNAV (GPS)–A SIAPs to Susanville Municipal Airport has made this action necessary. The effect of this action will provide adequate airspace for aircraft executing the RNAV (GPS) RWY 29 and RNAV (GPS)–A SIAPs to Susanville Municipal Airport, Susanville, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Susanville, CA [NEW]

Susanville Municipal Airport, CA
(Lat. 40°22′37″ N, long. 120°34′23″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Susanville Municipal Airport and within 2 miles each side of the 134° bearing from the Susanville Municipal Airport extending from the 6.5-mile radius to 10.3 miles southeast of the Susanville Municipal Airport and within 2 miles each side of the 339° bearing from the Susanville Municipal Airport extending from the 6.5-mile radius to 10 miles northwest of the Susanville Municipal Airport.

* * * * *

Issued in Los Angeles, California, on July 8, 2003.

Stephen J. Lloyd,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 03–18518 Filed 7–21–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15256; Airspace Docket No. 03–ACE–49]

Modification of Class E Airspace; Falls City, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Falls City, NE.

EFFECTIVE DATE: 0901 UTC, September 4, 2003.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 30, 2003 (68 FR 32357). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 4, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on July 11, 2003.

Herman J. Lyons, Jr.

Manager, Air Traffic Division Central Region.

[FR Doc. 03–18514 Filed 7–21–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Ivermectin Paste; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Merial, Ltd. The supplemental NADA provides for the addition of several new species of internal parasites to product labeling for ivermectin paste for horses. This action is being taken to ensure accuracy and clarity in the agency's regulations.

DATES: This rule is effective July 22, 2003.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7543, e-mail: mberson@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Merial Ltd., 3239 Satellite Blvd., Bldg. 500, Duluth, GA 30096–4640, filed a supplement to NADA 134–314 for EQVALAN (ivermectin) Paste for Horses. The supplemental application provides for the use of ivermectin paste for the treatment and control of *Craterostomum acuticaudatum*, *Petrovinema poculatum*, and *Coronocyclus* spp., including: *C. coronatus*, and *C. labratus*. Also, the label descriptions of some currently-approved parasite genera are being revised to add included species for which data already exists in the NADA file and to reflect changes in scientific nomenclature. The supplemental NADA is approved as of April 2, 2003, and 21 CFR 520.1192 is amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR part 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval qualifies for 3 years of marketing exclusivity beginning April 2, 2003. This marketing exclusivity only applies to the parasites for which new data were required.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520–ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 520.1192 is amended by revising paragraphs (a) and (b); by redesignating paragraph (d) as paragraph (e); by adding new paragraph (d); by removing the last sentence of newly redesignated paragraphs (e)(1)(iii) and (e)(2)(iii); by redesignating new paragraph (e)(1)(ii) as paragraph (e)(1)(ii)(B); in newly redesignated paragraph (e)(1)(ii)(B) by removing "spp." after "Onchocerca"and by adding in its place "sp."; and by adding new paragraph (e)(1)(ii)(A) to read as follows:

§ 520.1192 Ivermectin paste.

(a) *Specifications.* Each milligram (mg) of paste contains 0.0187 mg (1.87 percent) or 0.00153 mg (0.153 percent) of ivermectin.

(b) *Sponsors.* See sponsors in § 510.600(c) of this chapter for use as in paragraph (e) of this section:

(1) No. 050604 for use of a 1.87-percent paste as in (e)(1)(i), (e)(1)(ii)(A), and (e)(1)(iii) of this section and a 0.153-percent paste for use as in paragraph (e)(2) of this section.

(2) Nos. 051311 and 059130 for use of a 1.87-percent paste for use as in paragraph (e)(1)(i), (e)(1)(ii)(B), and (e)(1)(iii) of this section.

* * * * *

(d) *Special considerations.* See § 500.25 of this chapter.

(e) *Conditions of use*—(1) *Horses*—(i) *Amount.* 200 micrograms per kilogram (91 micrograms per pound) of body weight.

(ii) *Indications for use*—(A) For treatment and control of large strongyles (adults) (*Strongylus vulgaris* (also early forms in blood vessels), *S. edentatus* (also tissue stages), *S. equinus*; *Triodontophorus* spp., including *T. brevicauda* and *T. serratus*; and *Craterostomum acuticaudatum*); small strongyles including those resistant to some benzimidazole class compounds (adults and fourth-stage larvae) (*Coronocyclus* spp., including *C. coronatus, C. labiatus*, and *C. labratus*; *Cyathostomum* spp., including *C. catinatum* and *C. pateratum*; *Cylicocyclus* spp., including *C. insigne, C. leptostomum, C. nassatus*, and *C. brevicapsulatus*; *Cylicodontophorus* spp.; *Cylicostephanus* spp., including *C. calicatus, C. goldi, C. longibursatus*, and *C. minutus*; and *Petrovinema poculatum*); pinworms (adults and fourth-stage larvae) (*Oxyuris equi*); ascarids (adults and third- and fourth-stage larvae) (*Parascaris equorum*); hairworms (adults) (*Trichostrongylus axei*); large-mouth stomach worms (adults) (*Habronema muscae*); bots (oral and gastric stages) (*Gasterophilus* spp., including *G. intestinalis* and *G. nasalis*); lungworms (adults and fourth-stage larvae) (*Dictyocaulus arnfieldi*); intestinal threadworms (adults) (*Strongyloides westeri*); summer sores caused by *Habronema* and *Draschia* spp. cutaneous third-stage larvae; and dermatitis caused by neck threadworm microfilariae, *Onchocerca* sp.

* * * * *

Dated: July 8, 2003.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–18163 Filed 7–21–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 40 and 275

[T.D. TTB–4; ATF Notice No. 962]

RIN 1513–AA18

Elimination of Statistical Classes for Large Cigars (2000R–410P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Final rule (Treasury Decision).

SUMMARY: This final rule removes the eight statistical classes for large cigars prescribed in TTB regulations. Since tobacco manufacturers and importers no longer use these statistical classes to report removals of large cigars subject to tax, this final rule eliminates obsolete regulations.

DATES: The effective date of this final rule is August 21, 2003.

FOR FURTHER INFORMATION CONTACT: Robert Ruhf, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue NW., Washington, DC 20226 (telephone: 202–927–8210 or e-mail: *ttbquestions@ttb.gov*.

SUPPLEMENTARY INFORMATION:

ATF–TTB Transition

Effective January 24, 2003, the Homeland Security Act of 2002 divided the Bureau of Alcohol, Tobacco and Firearms (ATF) into two new agencies, the Alcohol and Tobacco Tax and Trade Bureau (TTB) in the Department of the Treasury and the Bureau of Alcohol, Tobacco, Firearms, and Explosives in the Department of Justice. The taxation of tobacco products remains a Department of the Treasury function and is the responsibility of TTB. References to the former ATF and the new TTB in this document reflect the time frame, before or after January 24, 2003.

Final Rule Background

On November 5, 2002, ATF published a notice of proposed rulemaking in the **Federal Register** (ATF Notice No. 962, 67 FR 67340) to solicit comments about the elimination of obsolete tobacco regulations in 27 CFR parts 40 and 275. These regulations prescribed eight statistical classes for large cigars subject to tax. The first seven classes (Classes A through G) covered large cigars selling for $235.294 or less per thousand, while the eighth class (Class H) covered those selling for more than $235.294 per thousand.

Since January 1, 2001, manufacturers of tobacco products report information about large cigars subject to tax in two statistical classes. Tobacco importers also no longer use these eight statistical classes. The reduction in the number of statistical classes reduces industry's reporting burden, but does not jeopardize our ability to protect the revenue or adversely affect our compilation of tobacco statistics for use by governments and the public.

We did not receive any comments on ATF Notice No. 962. For these reasons and those discussed in the notice, we are issuing this final rule.

Regulatory Requirements

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities. Consequently, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. In accordance with 26 U.S.C. 7805(f), we sent the notice of proposed rulemaking to the Chief Counsel for Advocacy of the Small Business Administration.

Executive Order 12866

We have determined that this rule is not a significant regulatory action as defined by Executive Order 12866.

Therefore, a regulatory assessment is not required.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because it does not impose a collection of information.

Administrative Procedure Act

In accordance with the provisions of 5 U.S.C. 553(d), we made the effective date of this final rule 30 days after its publication in the **Federal Register**.

List of Subjects

27 CFR Part 40

Administrative practice and procedure, Authority delegations, Cigars and cigarettes, Claims, Electronic fund transfers, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Tobacco.

27 CFR Part 275

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Claims, Electronic fund transfer, Customs duties and inspection, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds, Tobacco products, U.S. possessions, Warehouses.

Authority and Issuance

■ Title 27, Code of Federal Regulations, is amended as follows:

PART 40—MANUFACTURE OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

■ **Paragraph 1.** The authority citation for part 40 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 5753, 5761–5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 40.203 [Removed and reserved]

■ **Par. 2.** Section 40.203 is removed and reserved.

PART 275—IMPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

■ **Par 3.** The authority citation for part 275 continues to read as follows:

Authority: 18 U.S.C. 2342; 26 U.S.C. 5701, 5703, 5704, 5705, 5708, 5712, 5713, 5721, 5722, 5723, 5741, 5754, 5761, 5762, 5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 275.37 [Removed and Reserved]

■ **Par. 4.** Section 275.37 is removed and reserved.

Signed: April 11, 2003.

Arthur J. Libertucci,

Administrator.

Approved: June 4, 2003.

Timothy E. Skud,

Deputy Assistant Secretary, (Tax, Trade, and Tariff Policy).

[FR Doc. 03–18564 Filed 7–21–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC89

Oil and Gas and Sulphur Operations in the Outer Continental Shelf Documents Incorporated by Reference—API RP 14F and API RP 14FZ

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: MMS is publishing this final rule to incorporate by reference into our regulations the 4th edition of American Petroleum Institute (API) Recommended Practice (RP) 14F (API RP 14F), "Recommended Practice for Design and Installation of Electrical Systems for Fixed and Floating Offshore Petroleum Facilities for Unclassified and Class I, Division 1 and Division 2 Locations." The updated document, 4th edition, will replace the 3rd edition of API RP 14F, which is already incorporated by reference into MMS regulations. The final rule will also add another document to be incorporated by reference for the first time into our regulations. The new document, API RP 14FZ, 1st edition, is titled "Recommended Practice for Design and Installation of Electrical Systems for Fixed and Floating Offshore Petroleum Facilities for Unclassified and Class I, Zone 0, Zone 1 and Zone 2 Locations." These revisions will ensure that lessees use the best available and safest technologies while operating in the Outer Continental Shelf (OCS).

EFFECTIVE DATE: This rule becomes effective on August 21, 2003. The incorporation by reference of the publication listed in the regulation is approved by the Director of the Federal Register as of August 21, 2003.

FOR FURTHER INFORMATION CONTACT: David Nedorostek, Operations Analysis Branch, at (703) 787–1029.

SUPPLEMENTARY INFORMATION: We use standards, specifications, and recommended practices developed by standard-setting organizations and the oil and gas industry for establishing requirements for activities in the OCS. This practice, known as incorporation by reference, allows us to incorporate the provisions of technical standards into the regulations without increasing the volume of the Code of Federal Regulations. The legal effect of incorporation by reference is that the material is treated as if it were published in the **Federal Register**. This material, like any other properly issued regulation, then has the force and effect of law. We hold operators/lessees accountable for complying with the documents incorporated by reference in our regulations. The regulations, found at 1 CFR part 51, govern how MMS and other Federal agencies incorporate various documents by reference. Agencies can only incorporate by reference through publication in the **Federal Register**. Agencies must also gain approval from the Director of the **Federal Register** for each publication incorporated by reference. Incorporation by reference of a document or publication is limited to the specific edition or to the specific edition and supplement or addendum cited in the regulations.

Both API RP 14F and API RP 14FZ are incorporated by reference at 30 CFR 250.114. The requirements under this section apply only to platforms, artificial islands, fixed structures, and their facilities and not to electrical systems on floating facilities. Electrical systems on floating facilities are regulated by the U. S. Coast Guard (USCG). A Memorandum of Understanding (MOU) between MMS, U.S. Department of the Interior, and USCG, U.S. Department of Transportation, dated December 16, 1998, gave USCG the responsibility for electrical systems on floating facilities. Additionally, according to the MOU, USCG is responsible for aids to navigation, emergency lighting (standby lighting), survival craft, and general alarms, procedures for which, though included in both documents, are not under MMS regulations.

We have reviewed these documents and have determined that the latest editions of both documents should be incorporated into MMS regulations to ensure the use of the best available and

safest technologies. The title of API RP 14F has been changed in the 4th edition to conform with API RP 500, "Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I, Division 1 and Division 2," which is currently incorporated into MMS regulations. Our review shows that the changes between the old (3rd) edition and the new (4th) edition are minor. Most of the changes apply to floating facilities and are, therefore, not part of this rulemaking for the reasons cited above. Also, the 3rd edition is not readily available to affected parties because it is out of print. The oil and gas industry is already building new structures in accordance with the provisions of the 4th edition of this standard. The 4th edition has been revised using an API standard editorial *format.*

Summary of the Changes in the 4th Edition of API RP 14F Pertaining to Platforms, Artificial Islands, Fixed Structures, and Their Facilities

In the 4th edition of 14F, several subsections that were contained in the 3rd edition have been consolidated into one subsection titled "Protection Techniques Related to Equipment Installed in Locations Classified as Division 1 and Division 2." This new subsection includes explosion proof equipment, hermetically sealed devices, intrinsically safe devices, nonincendive equipment, and purged enclosures. No new requirements were imposed.

In the 4th edition of 14F, cable-shielding considerations have been added to the Electrical Distribution Systems section. This allows for the installation of metal clad cables in lieu of sealed conduits for electrical wiring. The use of metal clad cables could result in savings to industry of up to 40 percent over the use of sealed conduits and conventional wiring practices. Both methods of cable shielding provide for equal safety.

Subsections have been added to the 4th edition of 14F to cover advances in technology in battery-powered DC supply systems (uninterruptible power supplies), electric oil-immersion heaters, cathodic protection, and hand-held electronic devices. These four new subsections cover equipment that is now in standard use on OCS structures, but that was not in the early 1990's when the 3rd edition was completed. These new subsections should not impose any new costs on the industry since operators are already using this equipment.

Review of API RP 14FZ

The two recommended practices addressed by this rulemaking are nearly identical. The original version (14F) is to be used with the electrical classification system contained in API RP 500. This system of electrical classification differentiates locations by "Divisions." This document (API RP 500) is already incorporated by reference into the regulations. A similar document, API RP 505, "Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities Classified as Class I, Zone 0, Zone 1, and Zone 2," is also currently incorporated by reference into the regulations. This system classifies hazardous locations by "Zones" based on how long a hazardous vapor is present. The new 14FZ document is to be used with API RP 505. The difference between the two pairs of documents, 14F/500 and 14FZ/505, is that 14F/500 uses two "Divisions" to classify hazardous areas while 14FZ/505 uses three "Zones" to define these classified hazardous areas. The 14F document defines techniques for protection from fires in the Division system. The 14FZ document defines protection techniques in the Zone system for hazardous locations. Both systems provide for safe work environments for personnel. The protection techniques identified for the Division system are not all acceptable for the Zone system and vice versa. The Zone system identifies more protection techniques than the Division system; however, both systems have proven their safety by comparisons of both systems through the National Electrical Code, Factory Mutual, and Underwriters Laboratories. The operator could realize cost savings if the Zone system (14FZ/505) is used in classifying and designing electrical systems.

We are incorporating the new 14FZ to complete the set of documents in the regulations and give lessees a choice in installing electrical systems. The incorporation of 14FZ will not impose any additional costs on the industry since it is nearly identical to RP 14F and may result in cost savings. The operators must use one set of documents or the other to design and install electrical systems on their facilities. The costs for complying with the documents are similar. We are merely giving the industry some flexibility with regard to classifying and installing electrical systems under either the API RP 500 system or the API RP 505 system.

Discussion and Analysis of Comments

The updated document API RP 14F 4th edition and the new document API RP 14FZ were published as a proposed rule on January 14, 2003.

Four organizations submitted comments on the proposed rulemaking. They are the (1) Shell Exploration and Production Company (Shell); (2) Waldemar S. Nelson & Co., Inc.; (3) Offshore Operators Committee (OOC); and (4) Department of Environmental Protection (Florida). All four commenters favor the incorporation of API RP 14F (4th edition) and 14FZ (1st edition).

Shell supports the incorporation of API RP14F and 14FZ into MMS regulations.

Waldemar S. Nelson & Co., Inc., strongly feel that incorporating the latest editions of API RP 14F and 4FZ enhances everyone's goal to provide for safer temporary and permanent electrical installations and more easily understood code wording, as well as enabling MMS rules to more closely reflect the latest code wording and philosophy of the National Electrical Code. All parties gain from this move as design and installation practices become more uniform and more economical without compromising safety. In many cases, safety is enhanced. By keeping up with the latest available technology and materials, offshore electrical installations can be designed to be more corrosion resistant than in the past.

The OOC commends the MMS for incorporating industry standards into its offshore operating regulations to ensure the use of the best available and safest technologies on the OCS. The incorporation of these two documents ensures that MMS regulations remain current with present design and installation requirements and guidelines for electrical systems on offshore production facilities.

The Department of Environmental Protection promotes the incorporation of API RP 14F and 14FZ into MMS regulations.

Procedural Matters

Public Comments Procedure

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by the law. There may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of the comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities.

The rule may have a positive economic impact because of the cost savings from using shielded cables in lieu of sealed conduits. Otherwise, the documents do not contain any significant revisions that will cause lessees or operators to change their business practices. The documents will not require the retrofitting of any facilities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

Regulatory Flexibility (RF) Act

The Department of the Interior (DOI) certifies that this final rule will not have a significant economic effect on a substantial number of small entities as defined under the RF Act (5 U.S.C. 601 *et seq.*). This rule applies to all lessees that operate on the OCS. Small lessees that operate under this rule would fall under the Small Business Administration's (SBA) North American Industry Classification System Codes 211111, Crude Petroleum and Natural Gas Extraction, and 213111, Drilling Oil and Gas Wells. The provisions of this rule will not have a significant economic effect on offshore lessees and operators, including those that are classified as small businesses. The SBA defines small business as having:

- Annual revenues of $5 million or less for exploration service and field service companies.
- Fewer than 500 employees for drilling companies and for companies that extract oil, gas, or natural gas liquids.

The incorporation of API documents into MMS regulations cover electrical installations on offshore structures. The documents to be incorporated by this rule have been used by the industry for many years, and the latest editions represent state-of-the-art industry equipment and practices. The structures currently being built are being constructed according to the requirements in either API RP 14F (4th edition) or API RP 14FZ.

The final rule's purpose is to update one document that is currently incorporated by reference in the regulations and to incorporate by reference a new, nearly identical document into the regulations. The differences between the newer document and the older document are very minor. The updated document consolidates several subsections in a new subsection covering protection techniques. In addition, cable shielding considerations were added to the updated document. This allows for the installation of metal clad cables in lieu of sealed conduits. The use of metal clad cables could result in savings to industry of up to 40 percent over the use of sealed conduits and conventional wiring practices. Other subsections have been added to the updated document to cover advances in technology. New subsections cover equipment that is now in standard use on OCS facilities, but that was not in use in the early 1990's when the older 3rd edition was completed and incorporated into the regulations. These new subsections should not impose any additional costs to industry since operators are already using this new equipment and technology. By incorporating both 14F and 14FZ, which are nearly identical, but utilize different classification systems, we are giving the industry a choice in electrical classification methods.

Under the North American Industry Classification System Code 211111, Crude Petroleum and Natural Gas Extraction, MMS estimates that a total of 1,380 firms drill oil and gas wells onshore and offshore. The group affected by this rule is the approximately 130 companies that are offshore lessees/operators. According to SBA criteria, approximately 90 companies are small businesses (70 percent). As discussed above, this rule imposes no new operational requirements, reporting burdens, or other measures that would increase costs to lessees/operators, large or small. Therefore, this rule has no significant economic impact on small entities.

Comments from the public are important to us. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734–3247. You may comment to the SBA without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the Department of the Interior.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), SBREFA. This rule:

(a) Does not have an annual effect on the economy of $100 million or more. The rule will not cause any significant costs to lessees or operators. The only costs will be the purchase of the new documents and minor revisions to some operating and maintenance procedures. The minor revisions to operating and maintenance procedures may result in some minor costs or may actually result in minor cost savings.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

Paperwork Reduction Act (PRA) of 1995

This regulation does not require an information collection from 10 or more parties, and a submission under the Paperwork Reduction Act is not required. An OMB Form 83–I is not required.

Federalism (Executive Order 13132)

According to Executive Order 13132, the rule does not have significant Federalism effects. This rule will not substantially and directly affect the relationship between the Federal and State governments. This rule will simply update one document and add one document incorporated by reference to ensure that the industry uses the best and safest technologies. This rule does not impose costs on States or localities. Any costs incurred affect only the oil industry and will be minor.

Unfunded Mandate Reform Act (UMRA) of 1995 (Executive Order 12866)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

Takings Implication Assessment (Executive Order 12630)

According to Executive Order 12630, this rule does not have significant Takings implications. A Takings Implication Assessment is not required.

Federalism (Executive Order 13132)

According to Executive Order 13132, this rule does not have Federalism implications. This rule will not substantially or directly affect the relationship between the Federal and State governments because it deals strictly with technical standards that the offshore oil and gas industry must use in designing, fabricating, and installing fixed offshore facilities. This rule will not impose costs on States or localities, nor will it require any action on the part of States or localities.

Civil Justice Reform (Executive Order 12988)

According to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act (NEPA)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA of 1969 is not required.

Consultation and Coordination with Indian Tribal Governments (Executive Order 13175)

In accordance with Executive Order 13175, this rule does not have tribal implications that impose substantial direct compliance costs on Indian tribal governments.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: June 23, 2003.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

■ For the reasons stated in the preamble, MMS amends 30 CFR Part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

■ 2. In § 250.114, paragraph (c) is revised to read as follows:

§ 250.114 How must I install and operate electrical equipment?

* * * * *

(c) You must install all electrical systems according to API RP 14F, Recommended Practice for Design and Installation of Electrical Systems for Fixed and Floating Offshore Petroleum Facilities for Unclassified and Class I, Division 1, and Division 2 Locations (incorporated by reference as specified in § 250.198), or API RP 14FZ, Recommended Practice for Design and Installation of Electrical Systems for Fixed and Floating Offshore Petroleum Facilities for Unclassified and Class I, Zone 0, Zone 1, and Zone 2 Locations (incorporated by reference as specified in § 250.198).

* * * * *

■ 3. In § 250.198, in the table in paragraph (e), the entry for API RP 14F is revised and a new entry for document API RP 14FZ is added in alphanumeric order to read as follows:

§ 250.198 Documents incorporated by reference.

* * * * *

(e) * * *

Title of document	Incorporated by reference at
* * * * *	* *
API RP 14F, Recommended Practice for Design and Installation of Electrical Systems for Fixed and Floating Offshore Petroleum Facilities for Unclassified and Class I, Division 1 and Division 2 Locations, 4th edition, June 1999, API Stock No. G14F04.	§ 250.114(c); § 250.803(b)(9)(v); § 250.1629(b)(4)(v).
API RP 14FZ, Recommended Practice for Design and Installation of Electrical Systems for Fixed and Floating Offshore Petroleum Facilities for Unclassified and Class I, Zone 0, Zone 1 and Zone 2 Locations, 1st edition, September 2001, API Stock No. G14FZ1.	§ 250.114(c); § 250.803(b)(9)(v); § 250.1629(b)(4)(v).
* * * * *	* *

■ 4. In § 250.803, paragraph (b)(9)(v) is revised to read as follows:

§ 250.803 Additional production system requirements.

* * * * *

(9) * * *

(v) Fire- and gas-detection systems must be an approved type, designed and installed according to API RP 14C, API RP 14G, and either API RP 14F or API RP 14FZ (the preceding four documents incorporated by reference as specified in § 250.198).

* * * * *

■ 5. In § 250.1629, paragraph (b)(4)(v) is revised to read as follows:

§ 250.1629 Additional production and fuel gas system requirements.

* * * * *

(4) * * *

(v) Fire- and gas-detection systems must be an approved type, designed and installed according to API RP 14C, API RP 14G, and either API RP 14F or API RP 14FZ (the preceding four documents incorporated by reference as specified in § 250.198).

* * * * *

[FR Doc. 03–18451 Filed 7–21–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[0720–AA75]

TRICARE; Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Special Supplemental Food Program for Women, Infants, and Children Overseas

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Interim final Rule.

SUMMARY: This interim final rule implements section 674 of the National Defense Authorization Act for Fiscal Year 2000. Section 674 directed the Department of Defense to establish a program to provide supplemental food and nutrition education services to members of the armed forces on duty at stations outside the United States (and its territories and possessions) and to eligible civilians serving with, employed by, or accompanying the armed forces to these locations. Congress directed that the Department implement the special supplemental nutrition program for Women, Infants, and Children (WIC) in a manner that provides a benefit that is "similar" to the benefit provided to participants in the Special Supplemental Nutrition Program for Women, Infants and Children administered by the U.S. Department of Agriculture (USDA). Receipt of benefits under both the domestic WIC and the DoD programs is conditioned on applicants meeting specified eligibility criteria, *i.e.*, categorical (pregnant, postpartum, breastfeeding women, infants or children up to age 5), residency, income and nutritional risk. The Department was directed to use the USDA eligibility criteria to the extent practicable. This interim final rule specifies eligibility requirements, describes the benefits available under the program, and provides administrative guidance on program operation. The Department is publishing this rule as an interim final rule in order to meet the statutory directive that the Secretary of Defense prescribe regulations to administer the program. Public comments, however, are invited and will be considered when the rule is published as a final rule.

DATES: This interim final rule is effective the first day of the month after 60 days from publication of the interim final rule. Written comments will be accepted until September 22, 2003.

ADDRESSES: Forward comments to Operations Directorate, TRICARE Management Activity, 5111 Leesburg Pike, Suite 810, Falls Church, VA.

FOR FURTHER INFORMATION CONTACT: Danita F. Hunter, Operations Directorate, TRICARE Management Activity, telephone (703) 681–0039.

SUPPLEMENTARY INFORMATION:

A. Introduction

In the National Defense Authorization Act for Fiscal Year 2000, Congress mandated that the Department establish and fund a program to provide a special supplemental food and nutrition education program to eligible low-income families overseas whose members have been determined to be at nutritional risk. This program is known as the Women, Infants, and Children Overseas (WIC Overseas) program. This interim final rule implements section 674 of this Act.

B. Eligibility

To be eligible for the DoD special supplemental food program, a person must be a member of the armed forces on duty at stations outside the U.S. (and its territories and possessions) or an eligible civilian serving with, employed by, or accompanying the armed forces outside the U.S. (and its territories and possessions). Additionally, the person must be found to be at nutritional risk. Specifically, to be certified as eligible to receive benefits under the program, a person must:

- Meet specified program income guidelines published by the Secretary of Health and Human Services, and
- Meet one of the criteria listed in this regulation as indicative of nutritional risk. Determinations of income eligibility and nutritional risk will be made to the extent practicable using applicable standards used by the USDA in determining eligibility for the domestic Women, Infants, and Children (WIC) program. In determining income eligibility, the Department will use the Department of Health and Human Services income poverty table for the state of Alaska.

C. Scope of Benefit

The purpose of the program is to provide supplemental foods and nutrition education to serve as an adjunct to good health care during critical times of growth and development, in order to prevent the occurrence of health problems, including drug and other substance abuse, and to improve the health status of program participants. The benefit is similar to the benefit provided under the domestic WIC program.

Under the program, eligible participants are provided with drafts (paper food instruments, similar to vouchers) that may be redeemed at specified intervals for food packages. Participants access the food benefit by redeeming drafts at designated commissaries and NEXMARTS overseas. Food packages are prescribed by program staff who choose from a range of available food packages to tailor the benefit to the needs of program participants.

The program also provides nutrition education and counseling services to all participants at specified intervals. Nutrition education sessions are designed to stress the relationship between proper nutrition and good health with special emphasis on the nutritional needs of pregnant, postpartum, and breastfeeding women, infants, and children less than 5 years of age and to achieve a positive change in food habits, resulting in improved nutrition status and the prevention of nutrition-related health problems. Nutrition education promotes breastfeeding as the optimal method of infant nutrition. Nutritional education includes educating women participating in the program about the harmful effects of substance abuse. Nutrition education is an integral element of the WIC Overseas program; however, a participant may not be denied supplemental food benefits for failure to attend or participate in nutrition education activities. Nutrition education sessions are conducted in the context of the ethnic, cultural, and geographical preferences of participants.

D. Financial and Administrative Requirements

The Secretary of Defense will establish a system for verifying appropriate use of the WIC Overseas Program funds. This will include procedures to verify that draft redemption complies with applicable date-to-use, dollar amount, and other relevant criteria.

To leverage available funding to make the WIC Overseas program available to the maximum number of participants, the Secretary of Defense may enter into agreement up to three years in length to procure a particular brand of a food item to provide to Program participants. The agreement would specify the procurement of the competitively selected brand exclusive of other brands of the same or similar food. Competitive selection of the contract brand would conform to competitive contracting procedures specified in title 10, chapter 137, U.S. Code. The agreement would provide for the manufacturer of the contract brand to rebate to the Secretary an amount that is an agreed ratio of the

amounts paid by the Secretary for the procurement of the contract brand. Rebates collected under the agreements will be credited to the appropriation available for carrying out the WIC Overseas program and will be available for the program in the same period as the other sums in the appropriation.

The Secretary will provide for an appeals process that will allow individuals who are denied certification or recertification to appeal those decisions. The process will include a requirement that individuals denied certification or recertification be advised of their right of appeal, the relevant time limits, and the procedures to effect an appeal and will further provide a second level of review to individuals adversely impacted by an appeals decision.

E. Regulatory Procedures

This interim rule will impose additional information collection requirements to the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511). Individuals will be required to apply for certification and periodic recertification to receive benefits.

This rule is being issued as an interim final rule, with comment period, as an exception to our standard practice of soliciting public comments prior to issuance. The Assistant Secretary of Defense (Health Affairs) has determined that following the standard practice in this case would be impracticable, unnecessary, and contrary to public interest. This determination is based on the fact that this change directly implements a statutory entitlement enacted by Congress expressly for this purpose. All public comments are invited and will be carefully considered. We anticipate the issuance of a final rule within 6 months of the end of the comment period.

Executive Order 12866 requires certain regulatory assessments for any "significant regulatory action" defined as one that would result in an annual effect on the economy of $100 million or more, or have other substantial impacts. The Regulatory Flexibility Act (RFA) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This final rule is a significant regulatory action and has been revised by the Office of Management and Budget under Executive Order 12866. The annual cost of this program is estimated to be about $24 million per year, beginning in Fiscal Year 2002. This rule is not economically significant and will not significantly affect a substantial number of small entities. The information collection notice was published on March 21, 2003 (68 FR 13906).

List of Subjects in 32 CFR Part 199

Department of Defense; Food assistance programs; women, infants and children

■ Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301 and 10 U.S.C. chapters 53 and 55.

■ 2. Title 32, CFR part 199 is amended by adding § 199.23 to read as follows:

§ 199.23. Special Supplemental Food Program.

(a) *General provisions.* This section prescribes guidelines and policies for the delivery and administration of the Special Supplemental Food Program for Women, Infants, and Children Overseas (WIC Overseas Program). The purpose of the WIC Overseas Program is to provide supplemental foods and nutrition education, at no cost, to eligible persons and to serve as an adjunct to good health care during critical times of growth and development, in order to prevent the occurrence of health problems, including drug and other substance abuse, and to improve the health status of program participants. The benefit is similar to the benefit provided under the U.S. Department of Agriculture (USDA) administered Women, Infants, and Children (WIC) Program.

(b) *Definitions.* For most definitions applicable to the provisions of this section, refer to § 199.2 of this chapter. The following definitions apply only to this section:

(1) *Applicant.* Pregnant women, breastfeeding women, postpartum women, infants, and children who are applying to receive WIC Overseas benefits, and the breastfed infants of applicant breastfeeding women. This term also includes individuals who are currently participating in the Program but are re-applying because their certification is about to expire.

(2) *Breastfeeding women.* Women up to 1-year postpartum who are breastfeeding their infants. Their eligibility will end on the last day of the month of their infant's first birthday.

(3) *Certification.* The implementation of criteria and procedures to assess and document each applicant's eligibility for the Program.

(4) *Children.* Persons who have had their first birthday but have not yet attained their fifth birthday. Their eligibility will end on the last day of the month of their fifth birthday.

(5) *Competent Professional Authority (CPA).* An individual on the staff of the WIC Overseas office authorized to determine nutritional risk, prescribe supplemental foods, and design nutrition education programs. The following are authorized to serve as a competent professional authority: Physicians, nutritionists, registered nurses, and dieticians may serve as a competent professional authority. Additionally, a CPA may be other persons designated by the regional program manager who meet the definition of CPA prescribed by the USDA as being professionally competent to evaluate nutritional risk. The definition also applies to an individual who is not on the staff of the WIC Overseas office but who is qualified to provide data upon which nutritional risk determinations are made by a competent professional authority on the staff of the local WIC Overseas office.

(6) *Contract brand.* The brand of a particular food item that has been competitively selected by the DoD to be the exclusive supplier of that type of food item to the program.

(7) *Date-to-use.* The date by which the drafts must be used to purchase food items.

(8) *Department.* The Department of Defense (DoD), unless otherwise noted.

(9) *Dependent.* (i) A spouse, or

(ii) An unmarried child who is:

(A) Under 21 years of age; or

(B) Incapable of self-support because of mental or physical incapacity and is in fact dependent on the member for more than 1/2 of the child's support; or

(C) Is under 23 years of age, is enrolled in a full-time course of study in an institution of higher education and is in fact dependent on the member for more than one-half of the child's support.

(10) *Drafts.* Paper food instruments, similar to vouchers, issued in the WIC Overseas offices to program participants. Participants may redeem their drafts at participating commissaries and NEXMARTs for the types and quantities of foods specified on the face of the draft.

(11) *Economic unit.* All individuals contributing to or subsidizing the income of a household, whether they physically reside in that household or not.

(12) *Eligible civilian.* An eligible civilian is a person who is not a member of the armed forces and who is:

(i) A dependent of a member of the armed forces residing with the member outside the United States, whether or not that dependent is command sponsored, or

(ii) An employee of a military department who is a national of the United States and is residing outside the United States in connection with such individual's employment or a dependent of such individual residing with the employee outside the United States; or

(iii) An employee of a Department of Defense contractor who is a national of the United States and is residing outside the United States in connection with such individual's employment or a dependent of such individual residing with the employee outside the United States.

(13) *Family.* A group of related or non-related individuals who are one economic unit.

(14) *Hematological test.* A test of an applicant's or participant's blood as described in 7 CFR 246.7(e).

(15) *Income guidelines.* Income poverty guidelines prescribed by the U.S. Department of Health and Human Services (DHHS). These guidelines are adjusted annually by the DHHS, with each annual adjustment effective July 1 of each year. For purposes of WIC Overseas Program income eligibility determinations, income guidelines shall mean the income guidelines published by the DHHS pertaining to the State of Alaska.

(16) *Infants.* Persons under 1 year of age.

(17) *National of the U.S.* A person who:

(i) Is a citizen of the U.S., or

(ii) Is not a citizen of the United States, but who owes permanent allegiance to the United States, as determined in accordance with the Immigration and Nationality Act.

(18) *NEXMART.* Navy Exchange Market.

(19) *Nutrition education.* Individual or group sessions and the provision of materials designed to improve health status, achieve positive change in dietary habits, and emphasize relationships between nutrition and health, all in keeping with the individual's personal, cultural, and socioeconomic preferences.

(20) *Nutritional risk.* (i) The presence of detrimental or abnormal nutritional conditions detectable by biochemical, physical, developmental or anthropometric data, or

(ii) Other documented nutritionally related medical conditions, or

(iii) Documented evidence of dietary deficiencies that impair or endanger health, or

(iv) Conditions that directly affect the nutritional health of a person, such as alcoholism or drug abuse, or

(v) Conditions that predispose persons to inadequate nutritional patterns, habits of poor nutritional choices or nutritionally related medical conditions.

(21) *Participants.* Pregnant women, breastfeeding women, postpartum women, infants, and children who are receiving supplemental foods or food instruments under the WIC Overseas Program, and the breastfed infants of participant breastfeeding women.

(22) *Postpartum women.* Women up to 6 months after the end of their pregnancy. Their eligibility will end on the last day of the sixth month after their delivery.

(23) *Pregnant women.* Women determined to have one or more embryos or fetuses in utero. Pregnant women are eligible to receive WIC benefits through 6 weeks postpartum, at which time they reapply for the program as postpartum or breastfeeding women.

(24) *Rebate.* The amount of money refunded under cost containment procedures to the Department from the manufacturer of a contract brand food item.

(25) *Regional lead agent.* The designated major military medical center that acts as the regional lead agent, having tri-service responsibility for the development and execution of a single, integrated health care network.

(26) *Supplemental foods.* Foods containing nutrients determined by nutritional research to be lacking in the diets of certain pregnant, breastfeeding, and postpartum women, infants, and children. WIC Overseas may substitute different foods providing the nutritional equivalent of foods prescribed by Domestic WIC programs, as required by 10 U.S.C. 1060a(c)(1)(B).

(27) *Verification.* Verification of drafts is a review before payment out of Defense Health Program funds to determine whether the commissary or NEXMART complied with applicable date-to-use, food specification, and other redemption criteria.

(c) *Certification of eligibility.* (1) To the extent practicable, participants shall be certified as eligible to receive Program benefits according to income and nutritional risk certification guidelines contained in regulations published by the USDA pertaining to the Women, Infants, and Children program required under 7 CFR 246.7(d)(2)(iv)(B). Applicants must meet the following eligibility criteria:

(i) Meet one of the participant type requirements: Be a member of the armed forces on duty overseas; a family member/dependent of a member of the armed forces on duty overseas; a U.S. national employee of a military department serving overseas; a family member of a U.S. national employee of a DoD contractor serving overseas; a family member of a U.S. national employee of a DoD contractor serving overseas;

(ii) Reside in the geographic area serviced by the WIC Overseas office;

(iii) Meet the income criteria specified in this section; and

(iv) Meet the nutrition risk criteria specified in this section.

(2) In terms of income eligibility, the following apply:

(i) The Department of Defense shall use the Alaska income poverty guidelines published by the DHHS for making determinations regarding income eligibility for the Program.

(ii) Program income eligibility guidelines shall be adjusted annually to conform to annual adjustments made by the DHHS.

(iii) For income eligibility, the Program may consider the income of the family during the past 12 months and the family's current rate of income to determine which indicator accurately reflects the family's status.

(iv) A pregnant woman who is ineligible for participation in the Program because she does not meet income criteria shall be deemed eligible if the criteria would be met by increasing the number of individuals in her family (economic unit) by the number of embryos or fetuses in utero.

(v) The Program shall define income according to USDA regulations with regard to the USDA-administered WIC Program. In particular—

(A) A basic allowance for housing is excluded from income as required by section 674 of the National Defense Authorization Act for Fiscal Year 2000.

(B) The value of in-kind housing benefits is excluded from income as required under USDA regulations.

(C) Cost of living allowances for duty outside the continental U.S. (OCONUS) is excluded from income as required under 7 CFR 246.7(d)(2)(iv)(A)(*2*).

(D) Public assistance and welfare payments are included in income.

(3) Participants must be found to be at nutritional risk to be eligible for program benefits.

(i) A Competent Professional Authority (CPA) shall determine if an applicant is at nutritional risk.

(ii) At the request of the program, applicants shall provide, according to

schedules set by the USDA in 7 CFR 246.7(e) (unless deemed impracticable), nutritional risk data as a condition of certification in the Program. Such data includes:

(A) Anthropometric measurements,
(B) The results of hematological tests,
(C) Physical examination,
(D) Dietary information, or
(E) Developmental testing

(iii) A pregnant woman who meets all other eligibility criteria and for whom a nutritional risk assessment cannot immediately be completed will be considered presumptively eligible to participate in the Program for a period up to 60 days.

(iv) Infants under 6 months of age may be deemed to be at nutritional risk if the infant's mother was a Program participant during pregnancy or if medical records document that the mother was at nutritional risk during pregnancy.

(v) Unless otherwise specified herein or in 7 CFR 246.7(e), required nutritional risk data shall be provided to, or obtained by, the WIC Overseas Program office within 90 days of enrollment.

(4) In the event that it is impracticable for the WIC Overseas Program to adhere to the income and nutritional risk eligibility guidelines contained in USDA regulations, the Director, TRICARE Management Activity (TMA) may waive the Department's use of USDA WIC Program eligibility criteria by determining that it is impracticable to use these standards to certify participants in the WIC Overseas Program.

(i) Such determination shall consider relevant practical, administrative, national security, financial factors and existing Department policies and their application to the population served by the WIC Overseas Program.

(ii) Absent a written finding of impracticability described in § 199.23(c)(4), the eligibility criteria for the WIC program, contained in USDA regulations shall apply.

(5) An applicant for the WIC Overseas Program who presents a valid WIC Program Verification of Certification card, which is issued to participants in the domestic WIC Program when they intend to move, shall be considered eligible for participation in the WIC Overseas Program for the duration of the individual's current domestic WIC certification period, as long as he/she is an eligible service/family member or eligible civilian/family member.

(d) *Program benefits.* (1) Drafts. WIC participants shall be issued drafts that may be redeemed for supplemental food prescribed under the program.

(i) Drafts shall at a minimum list the food items to be redeemed and the date-to-use.

(ii) Food items listed on the draft must be approved for use under the Program.

(iii) Drafts generally shall allow for a three-month supply of food items for each participant, unless the participant's nutritional status necessitates more frequent contacts with the WIC Overseas office.

(iv) Participating commissaries and NEXMARTS shall accept the drafts in exchange for approved food items.

(v) Commissary and NEXMART personnel shall be trained on verification and processing of drafts.

(vi) Program guidelines shall provide for training of new participants in how to redeem drafts.

(2) *Supplemental food.* Participants shall redeem drafts for appropriate food packages at intervals determined in accordance with the USDA regulations.

(i) The Director, TMA shall identify to the Defense Commissary Agency (DeCA) and NEXCOM a list of food items approved for the WIC Overseas Program. This list shall be developed in consultation with the USDA and shall include information regarding the appropriate package and/or container sizes and quantities available for participants, as well as the frequency with which food items can be acquired. Additions and/or deletions of food items from this list shall be communicated to the commissaries and NEXMARTS on an ongoing basis.

(ii) A CPA shall prescribe appropriate foods from among the approved list to be included in food packages.

(iii) A CPA shall coordinate documentation of medical need when such documentation is a prerequisite for prescribing certain food items.

(iv) The Director, TMA may authorize changes regarding the supplemental foods to be made available in the WIC Overseas Program when local conditions preclude strict compliance or when such compliance is impracticable.

(3) *Nutrition education.* Nutrition education shall be provided to all participants at intervals prescribed in USDA regulations at 7 CFR 246.11.

(i) The WIC Overseas nutrition education program shall be locally overseen by a CPA based on guidance and materials provided by TMA.

(ii) Nutrition education and its means of delivery shall be tailored to the greatest extent practicable to the specific nutritional, cultural, practical, and other needs of the participant. Participant profiles created during certification may be used in designing appropriate nutrition education. A CPA may develop individual care plans, as necessary, consistent with USDA regulations.

(iii) Nutrition education shall consist of sessions wherein individual participants or groups of participants meet with a CPA in an interactive setting such that participants can ask, and the CPA can answer, questions related to nutrition practices. In addition, nutrition education shall utilize prepared educational materials and/or Internet sites. Both the sessions and the information materials shall be designed to improve health status, achieve positive change in dietary habits, and emphasize relationships between nutrition and health. Individual and group sessions can be accomplished through, among other things, face-to-face meetings, remote tele-videoconferencing, real-time computer-based distance learning, or other means.

(iv) Nutrition education services shall generally be provided to participants twice during each 6-month certification period, unless a different schedule is specified in USDA regulations.

(v) The nutrition education program shall promote breastfeeding as the optimal method of infant nutrition, encourage pregnant participants to breastfeed unless contraindicated for health reasons, and educate all participating women about the harmful effects of substance abuse.

(vi) Individual participants shall not be denied supplemental food due to the failure to attend scheduled nutrition education sessions.

(e) *Financial management.* The Department shall establish procedures to provide for the verification of drafts prior to payment.

(i) Verification may utilize sampling techniques.

(ii) Payment of drafts shall be made out of Defense Health Program funds.

(f) *Rebate agreements.* (1) DoD is authorized to enter into an agreement with a manufacturer of a particular brand of a food item that provides for the exclusive supply to the program of the same or similar types of food items by that manufacturer.

(i) The agreement shall identify a contract brand of food item.

(ii) Under the agreement, the manufacturer shall rebate to the Department an agreed portion of the amounts paid by DoD for the procurement of the contract brand.

(2) The DoD shall use competitive procedures under 10 U.S.C. 137 to select the contract brand.

(3) Amounts rebated shall be credited to the appropriation available for carrying out the program and shall be applied against expenditures for the program in the same period as the other sums in the appropriation.

(g) *Administrative appeals and civil rights.* (1) Applicants who are denied certification or participants that are denied recertification shall be provided with a notice of ineligibility. The notice shall include information on the applicant's right to appeal the determination and instructions on doing so.

(2) Benefits shall not be provided while an appeal is pending when an applicant is denied benefits, a participant's certification has expired or a participant becomes categorically ineligible.

(3) A request for appeal shall be submitted in writing within 5 working days. If the decision is an adverse one it shall include notice to the applicant of his further appeal rights as reflected in paragraph (g)(4)(iii) of this section, and that he/she has 5 working days to effect any such appeal.

(4) Appeal reviews shall be conducted in the first instance by the CPA or team leader in charge of the local WIC Overseas office.

(i) Written notice of a decision shall be provided to the applicant within 5 working days.

(ii) If the appeal is upheld, retroactive benefits shall not be provided.

(iii) At an applicant's request a denied appeal may be forwarded to the regional program manager for review, who will provide a decision on the appeal within 5 working days.

(iv) If the regional program manager denies the appeal, there shall be no further right of appeal.

(5) Complaints about discriminatory treatment shall be handled in accordance with procedures established at each local WIC Overseas site.

(h) *Operations and Administration.* (1) Information collected about WIC Overseas applicants and participants shall be collected, maintained, and disclosed in accordance with applicable laws and regulations.

(2) Information and personnel security requirements shall be consistent with applicable laws and regulations.

Dated: June 27, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–16981 Filed 7–21–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–03–002]

RIN 1625–AA09

Drawbridge Operation Regulations; Shrewsbury River, NJ

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the drawbridge operation regulations governing the operation of the Route 36 Bridge, mile 1.8, across The Shrewsbury River at Highlands, New Jersey. This final rule will synchronize the drawbridge opening schedules for the two moveable bridges across the Shrewsbury River during the boating season. This action is necessary to meet the present needs of navigation.

DATES: This rule is effective August 21, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket (CGD01–03–002) and are available for inspection or copying at the First Coast Guard District, Bridge Administration Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110–3350, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Arca, Project Officer, First Coast Guard District, (212) 668–7165.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 5, 2003, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Shrewsbury River, New Jersey, in the **Federal Register** (68 FR 5858). We received one comment letter in response to the notice of proposed rulemaking. No public hearing was requested and none was held.

Background and Purpose

The Route 36 Bridge, mile 1.8, across the Shrewsbury River at Highlands, New Jersey, has a vertical clearance of 35 feet at mean high water and 39 feet at mean low water.

The existing regulations listed at 33 CFR 117.755(a), require the Route 36 Bridge to open on signal; except that, from May 15 through October 15, 7 a.m. to 8 p.m., the draw need open only at quarter before the hour and quarter after the hour.

The Coast Guard received requests from mariners to change the drawbridge operation regulations that govern the Route 36 Bridge. Presently the two moveable bridges across the Shrewsbury River, the Route 36 Bridge, and the Monmouth County highway bridge, have staggered opening schedules during the boating season. The mariners have asked the Coast Guard to change the opening schedule for the Route 36 Bridge in order to synchronize the bridge opening times for the two moveable bridges during the boating season to help reduce vessel transit delays and enhance boating safety.

The second moveable bridge across the Shrewsbury River, the Monmouth County highway bridge, at mile 4.0, with a vertical clearance of 15 feet at mean high water and 17 feet at mean low water. The existing regulations listed at 33 CFR 117.755(b), require the bridge to open on signal; except that, from May 15 through September 30, on Saturdays, Sundays, and holidays, from 9 a.m. to 7 p.m., the draw need open only on the hour and half hour.

This final rule will synchronize the bridge opening times at the two bridges by requiring the Route 36 Bridge to open on signal from May 15 through October 15, 7 a.m. to 8 p.m., on the hour and half hour only.

Discussion of Comments and Changes

The Coast Guard received one comment letter opposed to the proposed rule change. That comment opposed having synchronous bridge openings at the Route 36 Bridge, mile 1.8, and the Monmouth County highway bridge, at mile 4.0, across the Shrewsbury River in New Jersey.

The objection stated that powerboats would be required to wait for bridge openings creating an unsafe condition on the waterway which would result in hardship for marine businesses in the area.

The Route 36 Bridge, with a vertical clearance of 35 ft above mean high water, passes the vast majority of power vessels without requiring an opening. This rule change, to synchronize both bridges operating schedules, was requested to assist the lower-powered sailboats that cannot transit between the bridges quickly enough to make consecutive bridge openings. The ensuing 20–25 minute wait for sailboats in swift river currents creates a hazardous navigational condition.

The potential for an adverse effect on marine businesses is not supported by the fact that only a few power vessels may have to wait up to 20 minutes for bridge openings.

As a result of the above information the Coast Guard believes this final rule is reasonable and will meet the reasonable needs of navigation; therefore, no changes have been made to this final rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3), of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

This conclusion is based on the fact that the synchronization of the opening times for the moveable bridges across the Shrewsbury River will better meet the present needs of navigation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that the synchronization of the opening times for the moveable bridges across the Shrewsbury River will better meet the present needs of navigation.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. Section 117.755 is amended by revising paragraph (a) to read as follows:

§ 117.755 Shrewsbury River.

(a) The Route 36 Bridge, mile 1.8, at Highlands, New Jersey, shall open on signal; except that, from May 15 through October 15, 7 a.m. to 8 p.m., the draw need open on the hour and half hour only. The owners of the bridge shall provide and keep in good legible condition, two clearance gauges, with figures not less than eight inches high, designed, installed, and maintained according to the provisions of § 118.160 of this chapter.

* * * * *

Dated: July 1, 2003.

Vivien S. Crea,

Rear Admiral, Coast Guard, Commander, First Coast Guard District.

[FR Doc. 03–18525 Filed 7–21–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–03–007]

RIN 1625–AA09

Drawbridge Operation Regulation; Apalachicola River, River Junction, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the existing drawbridge operation regulation for the draw of the CSX Railroad swing bridge across the Apalachicola River, mile 105.9, at River Junction (near Chattahoochee), Florida. The regulation will allow the bridge to be unmanned and remain closed during hours of infrequent traffic with an advance notification requirement to open the bridge.

DATES: This rule is effective August 21, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of the docket and are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, 501 Magazine Street, New Orleans, Louisiana 70130–3396, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. The Bridge Administration Branch maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, at (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Regulatory History

On April 10, 2003, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Apalachicola River, River Junction, Florida in the **Federal Register** (68 FR 17571). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The CSX swing bridge across the Apalachicola River, mile 105.9, presently opens on signal for the passage of vessels. The bridge owner has requested to change the operation regulations to reflect usage of the bridge by mariners. The request was made based upon a documented decrease in the number of requests for openings in the last three years. In 2000, the bridge opened 63 times for the passage of vessels. In 2001, the bridge opened 38 times for the passage of vessels. In the first five months of 2002, the bridge opened 15 times for the passage of vessels. Information gathered regarding the decrease in vessel movements indicates that the closure of a sand and gravel facility above the bridge and a prolonged drought are the main contributing factors. While water elevations may return to their pre-drought levels, there is presently no evidence that the number of requests for bridge openings will increase in the future due to limited industrial development along the waterway. Accordingly, the bridge owner requested to change the operation regulations so that the bridge be allowed to open on signal from 8 a.m. until 4 p.m. Monday through Friday. At all other times, the bridge will open on signal if at least four hours advanced notification is given.

Discussion of Comments and Changes

No comments were received to the NPRM and no changes were made to the proposed regulation.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

This rule allows vessels ample opportunity to transit this waterway during normal weekdays and with minimal notification at all other times.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in the preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not cause an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Paragraph 32(e) excludes the promulgation of operating regulations or procedures for drawbridges from the environmental documentation requirements of the National Environmental Policy Act (NEPA). Since this final rule will alter the normal operating conditions of the drawbridge, it falls within this exclusion. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out in the preamble, the Coast Guard is amending part 117 of title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. § 117.258 is added to read as follows:

§ 117.258 Apalachicola River.

The draw of the CSX Railroad bridge, mile 105.9, at River Junction shall open on signal Monday through Friday from 8 a.m. until 4 p.m. At all other times the bridge will open on signal if at least 4 hours notice is given.

Dated: July 10, 2003.

R.F. Duncan,

Rear Admiral, Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 03–18522 Filed 7–21–03; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–03–039]

RIN 1625–AA09 (Formerly 2115–AE47)

Drawbridge Operation Regulations; Long Island, New York Inland Waterway From East Rockaway Inlet to Shinnecock Canal, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary final rule governing the operation of the Long Beach Bridge, at mile 4.7, across Reynolds Channel, New York. This temporary final rule will allow the bridge to operate only one lift span for openings, on the even hour, 8 a.m. to 4 p.m., daily. Additionally, two five-day bridge closures will also be allowed to occur during this temporary final rule at dates to be announced after September 2003. This action is necessary to facilitate structural repairs at the bridge.

DATES: This temporary final rule is effective from July 1, 2003 through April 30, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket (CGD01–03–039) and are available for inspection or copying at the First Coast Guard District, Bridge Administration Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110–3350, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Schmied, Project Officer, First Coast Guard District, (212) 668–7165.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

The Coast Guard believes making this rule effective in less than thirty days after publication is reasonable because we coordinated this revised temporary operating schedule in advance with the mariners that use this waterway, and the continuation of the bridge repair work is vital in order to assure the continued safe operation of the bridge.

Historically, there are few requests to open this bridge and the bridge will be available to provide single span openings for all but approximately ten days during the effective period of this temporary rule.

Background and Purpose

The Long Beach Bridge has a vertical clearance of 20 feet at mean high water and 24 feet at mean low water. The existing regulations are listed at 33 CFR 117.799(g).

The bridge owner, Nassau County Department of Public Works, asked the Coast Guard to temporarily change the drawbridge operation regulations to facilitate structural repairs at the bridge.

On September 5, 2002, we published a temporary final rule in the **Federal Register** (67 FR 56754). That rule allowed the bridge to open only a single lift span for bridge openings on the even hours 8 a.m. to 4 p.m. after a one-hour notice was given and from 11 p.m. through 5 a.m., the bridge was to remain in the closed position. Additionally, two consecutive, Monday through Friday, five day closures were also scheduled to occur during the rule's effective period. Those closure dates were to be announced in the Local Notice to Mariners.

The Coast Guard was notified by the bridge owner that the effective period for the bridge repairs must be extended to continue until April 30, 2004, in order to complete the project. The requirements published in (67 FR 56754) allowing the bridge to remain closed from 11 p.m. to 5 a.m. daily, and the requirement for mariners to provide a one-hour advance notice for bridge openings will be eliminated during this second temporary final rule.

The two five days closures will still be scheduled to occur sometime after September 2003. The exact dates will be announced in the Local notice to Mariners.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3), of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

This conclusion is based on the fact that there have been few requests to open the bridge historically.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that there have been few requests to open the bridge historically.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. From July 1, 2003 through April 30, 2004, § 117.799 is amended by suspending paragraph (g) and adding a new paragraph (j) to read as follows:

§ 117.799 Long Island, New York Inland Waterway from East Rockaway Inlet to Shinnecock Canal.

* * * * *

(j) The Long Beach Bridge, mile 4.7, across Reynolds Channel, shall open on signal; except that, only one lift span need be opened for vessel traffic, on the even hour, 8 a.m. to 4 p.m., daily. The draw need not open for vessel traffic for two periods of five consecutive days after September 2003 to be announced in the Local Notice to Mariners and in a Broadcast Notice to Mariners.

Dated: July 1, 2003.

Vivien S. Crea,

Rear Admiral, Coast Guard, Commander, First Coast Guard District.

[FR Doc. 03–18521 Filed 7–21–03; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–245]

RIN 1625–AA00

Safety Zone; Selfridge ANGB Air Show, Harrison Twp., MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone during the Selfridge ANGB Air Show on July 24, 25, and 26, 2003. This safety zone is necessary to prevent waterway distractions during the Thunderbird aircraft aerial display, as required by the Federal Aviation Administration. The safety zone is intended to restrict vessel traffic in a portion of the Clinton River during specific periods on the affected dates. Specific closure periods will be announced via Broadcast Notice to Mariners on VHF Channel 16. Only authorized vessels are permitted to enter or remain within the safety zone.

DATES: This rule is effective from 4:30 p.m. on July 24, 2003, until 3 p.m. on July 26, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD09–03–245 and are available for inspection or copying at: U.S. Coast Guard Marine Safety Office Detroit, 110 Mt. Elliott St., Detroit, MI 48207, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Brandon Sullivan, U. S. Coast Guard Marine Safety Office Detroit, at (313) 568–9558.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. In addition, the Federal Aviation Administration requires certain safety precautions be in place prior to particular airshows, this rule ensures some of those precautions are in place.

Background and Purpose

A temporary safety zone is necessary to ensure the safety of recreational watercraft and air show participants from the hazards associated with aerial displays as required by the Federal Aviation Administration. The combination of waterway distractions, and aerial displays, could easily result in serious injuries or fatalities. Establishing a temporary safety zone to control vessel movement through a portion of the Clinton River will help ensure the safety of persons and property at this event and help minimize the associated risk.

The temporary safety zone will encompass all waters approximately 4 miles West of the mouth of the Clinton River from a center point from the West at position 42°35.4′ N, 082°50.3′ W, and extending to the north and south shorelines of the Clinton River; from the East at center point position 42°35.8′ N, 082°49.8′ W to the north and south shorelines of the Clinton River. These coordinates are based upon North American Datum (NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on scene representative. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security. We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This determination is based on the minimal time that vessels will be restricted from the zone, and therefore minor if any impacts to Mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zone is only in effect from 4:30 p.m. to 5:30 p.m. on July 24, 2003, from 4 p.m. to 5 p.m. on July 25, 2003, and from 2 p.m. to 3 p.m. on July 26, 2003. It is expected that effects on vessel traffic will be minimal due to the short duration of the event on each day. The event does not interfere with the commercial shipping lanes. Before the effective period, we will issue maritime advisories widely available to users of the Clinton River by the Ninth Coast Guard District Local Notice to Mariners, and Marine Information Broadcasts. Facsimile broadcasts may also be made.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Detroit (*see* **ADDRESSES**).

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 32(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T09–245 is added to read as follows:

§ 165.T09–245 Safety Zone; Selfridge ANGB Air Show, Harrison Twp, MI.

(a) *Location.* The temporary safety zone will encompass all waters approximately 4 miles West of the mouth of the Clinton River from a center point from the West at position 42°35.4′ N, 082°50.3′ W, and extending to the north and south shorelines of the Clinton River; from the East at center point position 42°35.8′ N, 082°49.8′ W to the north and south shorelines of the Clinton River. These coordinates are based upon North American Datum (NAD 83).

(b) *Enforcement periods.* This rule is effective from 4:30 p.m. on July 24, 2003, until 3 p.m. on July 26, 2003. This section will be enforced from 4:30 p.m. to 5:30 p.m. on July 24, 2003; from 4 p.m. to 5 p.m. on July 25, 2003; and again from 2 p.m. to 3 p.m. on July 26, 2003. Enforcement periods will be announced via Broadcast Notice to Mariners on VHF Channel 16.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on scene representative. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

Dated: July 8, 2003.

S.K. Moon,

Lieutenant Commander, Coast Guard, Acting Captain of the Port Detroit.

[FR Doc. 03–18524 Filed 7–21–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–03–008]

RIN 1625–AA00

Safety and Security Zones; Chesapeake Bay, Maryland and Tributaries

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing moving and fixed safety and security zones on the waters of the Chesapeake Bay and it tributaries for cruise ships and vessels carrying Certain Dangerous Cargo (CDC), Liquefied Natural Gas (LNG), or Liquefied Hazardous Gas (LHG) in the Captain of the Port (COTP) Baltimore zone. These

zones are necessary to provide for the safety and security of these vessels in response to potential terrorist acts. This rule enhances public and maritime safety and security by requiring vessel traffic to maintain a safe distance from these vessels while they are transiting, anchored, or moored in the COTP Baltimore zone.

DATES: This rule is effective on August 21, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–03–008 and are available for inspection or copying at Commander, U. S. Coast Guard Activities, 2401 Hawkins Point Road, Building 70, Port Safety, Security and Waterways Management Branch, Baltimore, Maryland, 21226–1791, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Dulani Woods, at Coast Guard Activities Baltimore, Port Safety, Security and Waterways Management Branch, at telephone number (410) 576–2513 or (410) 576–2693.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 20, 2003, we published a notice of proposed rulemaking (NPRM) entitled "Safety and Security Zones; Chesapeake Bay, Maryland and Tributaries" in the **Federal Register** (68 FR 13649). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. The threat of maritime attacks is real as evidenced by the attack on the USS *Cole* and the subsequent attack in October 2002 against a tank vessel off the coast of Yemen. These threats manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September 11, 2001 attacks and that such aggression continues to endanger the international relations of the United States. See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); Continuation of the National Emergency with Respect to Persons Who Commit, Threaten To Commit, Or Support Terrorism, (67 FR 59447, September 20, 2002). The U.S. Maritime Administration (MARAD) in Advisory 02–07 advised U.S. shipping interests to maintain a heightened state of alert against possible terrorist attacks. MARAD more recently issued Advisory 03–05 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States. The ongoing foreign hostilities have made it prudent for U.S ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide. In this particular rule, to address the aforementioned security and safety concerns, and to take steps to prevent the catastrophic impact that a terrorist attack against certain types of vessels would have on the public interest, the Coast Guard is establishing safety and security zones around these vessels. These safety and security zones prohibit entry into or movement within the specified areas.

This rule establishes safety and security zones around cruise ships and vessels carrying CDC, LNG, or LHG while underway, anchored, or moored in the waters of the Chesapeake Bay and its tributaries. This rule creates these safety and security zones while the above vessels are within navigable waters of the United States in the Captain of the Port (COTP) Baltimore zone, as defined in 33 CFR 3.25–15. While the COTP anticipates some impact on vessel traffic due to this regulation, these safety and security zones are deemed necessary for the protection of life, property, and the safety and security of navigation within the COTP Baltimore zone.

Discussion of Comments and Changes

The Coast Guard received no comments on the proposed rule during the comment period published in the NPRM. No public meeting was requested, and none was held. As a result, no change to the proposed regulatory text was made with the exception of our deletion of a reference to 33 U.S.C. 1226 in the Authority paragraph because we determined that the reference was unnecessary.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This finding is based on the limited size of the zones, the minimal time that vessels will be restricted from the zones, and vessels may transit around the zones. In addition, vessels that may need to enter the zones may request permission on a case-by-case basis from the COTP Baltimore or his designated representatives.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit in a portion of the Chesapeake Bay and its tributaries near a vessel encompassed by the safety and security zones. Because the zones are of limited size and duration, it is expected that there will be minimal disruption to the maritime community. In addition, smaller vessels, which are more likely to be small entities, may transit around the zones and request permission from the COTP Baltimore on a case-by-case basis to enter the zones.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business and you have questions concerning it provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because this rule establishes a safety and security zone. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security No. 0170.1.

■ 2. Add § 165.500 to read as follows:

§ 165.500 Safety/Security Zones; Chesapeake Bay, Maryland.

(a) *Definitions.* (1) Certain Dangerous Cargo (CDC) means a material defined in 33 CFR part 160.

(2) Liquefied Hazardous Gas (LHG) means a material defined in 33 CFR part 127.

(3) Liquefied Natural Gas (LNG) means a material defined in 33 CFR part 127.

(4) Cruise ship means a vessel defined as a "passenger vessel" in 46 U.S.C. 2101 (22).

(b) *Location.* The following areas are a safety/security zone: All waters of the Chesapeake Bay and its tributaries, from surface to bottom, within a 500 yard radius around cruise ships and vessels transporting CDC, LNG, or LHG while transiting, anchored, or moored within the COTP Baltimore zone.

(c) *Regulations.* (1) The COTP will notify the maritime community of affected vessels and the periods during which the safety/security zones will be enforced by providing notice to mariners in accordance with 33 CFR 165.7.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard COTP, Baltimore, Maryland or his designated representative.

(3) Persons desiring to transit the area of the security zone may contact the COTP at telephone number 410–576–2693 or on VHF channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the COTP or his or her designated representative.

(d) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 50 U.S.C. 191.

Dated: July 10, 2003.

Curtis A. Springer,

Captain, Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 03–18523 Filed 7–21–03; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–92–200324(a); FRL–7534–2]

Approval and Promulgation of Implementation Plans Florida: Jacksonville Area Maintenance Plan Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to the State Implementation Plan (SIP) submitted by the Florida Department of Environmental Protection (FDEP) on December 20, 2002. This SIP revision satisfies the requirement of the Clean Air Act (CAA) for the second 10-year update for the Jacksonville area (Duval County) 1-hour ozone maintenance plan.

DATES: This direct final rule is effective September 22, 2003 without further notice, unless EPA receives adverse comment by August 21, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be submitted by mail to: Heidi LeSane, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in (Part (I)(B)(1)(i) though (iii)) of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Heidi LeSane, Air, Pesticides & Toxics Management Division, Air Planning Branch, Regulatory Development Section, Environmental Protection Agency Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Mrs. LeSane's phone number is 404–562–9035. She can also be reached via electronic mail at *lesane.heidi@epa.gov* or Lynorae Benjamin, Air, Pesticides & Toxics Management Division, Air Planning Branch, Air Quality Modeling & Transportation Section, Environmental Protection Agency Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Benjamin's phone number is 404–562–9040. She can also be reached via electronic mail at *benjamin.lynorae@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under FL–92–200324. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 9:00 to 3:30 excluding federal holidays.

2. Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment, at the State Air Agency. Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

3. Electronic Access. You may access this **Federal Register** document electronically through the *Regulations.gov* web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking FL–92–200324" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *lesane.heidi@epa.gov*. Please include the text "Public comment on proposed rulemaking FL–92–200324" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through *Regulations.gov*, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

ii. *Regulations.gov.* Your use of *Regulations.gov* is an alternative method of submitting electronic comments to EPA. Go directly to *Regulations.gov* at *http://www.regulations.gov*, then select Environmental Protection Agency at the top of the page and use the go button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Heidi LeSane, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Please include the text "Public comment on proposed rulemaking FL–92–200324" in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Heidi LeSane, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, 12th floor, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30 excluding federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

The air quality maintenance plan is a requirement of the 1990 Clean Air Act Amendments for nonattainment areas that come into compliance with the national ambient air quality standard (NAAQS). The Jacksonville Area (Duval County) was designated as nonattainment for the 1-hour ozone NAAQS prior to the 1990 Clean Air Act Amendment. However, for the 3-year period, (1987 through 1989), air quality measurements for the Jacksonville Area showed compliance with the 1-hour ozone NAAQS. The area continued to attain the 1-hour ozone standard and the State requested that the EPA redesignate the Jacksonville area attainment for the 1-hour ozone standard on June 23, 1993. Included with this request was a 10-year air quality maintenance plan covering the years 1995 to 2005. This plan was developed in accordance with the appropriate guidelines. The EPA published a **Federal Register** notice approving this plan on January 3, 1995, and it became effective on March 6, 1995 (60 FR 41).

Subsequent revisions to this maintenance plan have been made. The current plan was approved by the EPA on April 24, 2003, and became effective on May 27, 2003 (68 FR 20072) . Up to this point, FDEP has revised the original plan to update emissions inventories reflecting more accurate emission estimates, to define specific Motor Vehicle Emissions Budgets (MVEB), to remove the motor vehicle inspection program (MVIP) credits, and to allocate a portion of the safety margin to the MVEB (66 FR 40137). This SIP revision satisfies the requirement of the Clean Air Act (CAA) for the second 10-year update for the Jacksonville area 1-hour ozone maintenance plan. Changes to the current maintenance plan include revisions to the emissions inventory for both on-road and non-road mobile sources, reflecting improved methodologies contained in the MOBILE6 and NONROAD emission models. New emissions data for both the base year (attainment year) and the projected years (2005 and 2015) are calculated. Also, updated MVEB in support of the transportation conformity process, are defined for volatile organic compounds (VOC) and nitrogen oxides (NO_X) for the county. The updated budgets for 2005 replace previous MVEB contained in the first maintenance plan, which were based on an older emissions estimate using MOBILE5 emission factors for on-road motor vehicles. Additionally, this maintenance plan update provides new MVEB for the year 2015. EPA has determined that the MVEB in the SIP are adequate for transportation conformity purposes. The availability of the SIP with MVEB for 2015 was placed on EPA's adequacy web page on January 7, 2003. No request for this SIP submittal or adverse comments were received by the end of the public comment period on February 7, 2003. In this action, EPA finds the 2015 MVEB adequate for transportation conformity, and is proposing to approve the MVEB for 2005 and 2015. Note, since the 2005 MVEB are replacing existing MVEB, these budgets are not subject to EPA's Adequacy process.

III. Analysis of State's Submittal

On December 20, 2002, the FDEP submitted revisions to Florida State's Implementation Plan for the new ten-

year maintenance plan to provide a 10-year extension to the maintenance plan as required by section 175A(b) of the CAA as amended in 1990. The underlying strategy of the maintenance plan is to maintain compliance with the 1-hour ozone standard by assuring that current and future emissions of VOC and NO_X remain at or below attainment year emission levels. The estimated emissions of ozone precursors (*i.e.*, VOC and NO_X) for the Jacksonville Area during the 1990 ozone season are provided in the following table.

PROJECTED EMISSIONS—VOLATILE ORGANIC COMPOUNDS

[Tons per day]

VOC	Category	1990 base year	2005	2015
Duval	Stationary Point	15.6	7.6	9.1
	Stationary Area	51.3	45.2	52.2
	On-Road Mobile	96.2	33.3	17.9
	Non-Road Mobile	22.5	17.4	14.0
	Biogenic	126.7	126.7	126.7
Total		312.3	230.3	219.9
Safety Margin	Calculated as 1990 base-year minus projected year total.		82	92.4

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[Tons per day]

NO_X	Category	1990 base year	2005	2015
Duval	Stationary Point	101.2	104.8	120.4
	Stationary Area	8.4	2.8	3
	On-Road Mobile	81.0	55.5	22.6
	Non-Road Mobile	28.1	31.3	26.1
	Biogenic	0.3	0.3	0.3
Total		218.9	194.7	172.4
Safety Margin	Calculated as 1990 base-year minus projected year total.		24.2	46.5

Motor Vehicle Emissions Budgets

Section 176(c) of the CAA, 42 U.S.C. 7506(c), states that transportation plans, programs, and projects must conform to an approved implementation plan. Pursuant to 40 CFR part 93, subpart T, the Transportation Conformity Rule, § 51.456(b), a specific emissions budget is defined for VOC and NO_X for the Jacksonville area. The MVEB, based on the on-road mobile sources, are to be used by the local metropolitan planning organizations and transportation authorities to assure that transportation plans, programs, and projects are consistent with, and conform to, the long term maintenance of acceptable air quality in the Jacksonville Area.

The MVEB are defined for the county, for 2005 and 2015, in the state's submittal. The values, for both years, are equal to the 2005 on-road mobile source projected level of emissions plus a buffer of 24 percent. This buffer, which is an allocation from the safety margin, accounts for uncertainty in the projections and is available because of significant reductions of VOC and NO_X that have occurred, and are projected to occur, primarily from mobile sources. The MVEB are constrained in each of the budget years to assure that the total emissions (*i.e.*, all source categories) do not exceed the 1990 attainment year emissions. In no case are the projected total emissions (*i.e.*, all source categories and including the allocation from the safety margin to the on-road mobile source category), for any year, greater than the attainment year emissions totals for either VOC or NO_X. Under 40 CFR 93.101 the term safety margin is the difference between the attainment level (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the air quality health standard. The safety margin credit can be allocated to the transportation sector, however the total emission level must stay below the attainment level. The following table defines the MVEB for Jacksonville Area.

MVEB

[Tons per day]

County	Pollutant	2005	2015
Duval	VOC	41.6	41.6
	NO_X	68.8	68.8

For the year 2005, the safety margin was 82 tpd for VOC and 24.2 tpd for NO_X. After partial allocation of the safety margin to the MVEB, the remaining safety margins are 73.7 tpd for VOC and 10.4 tpd for NO_X. In 2015, the safety margin was 92.4 tpd for VOC and 46.5 tpd for NO_X. After partial allocation of the safety margin to the MVEB, the remaining safety margins are now 68.7 tpd for VOC and 0.3 tpd for NO_X.

IV. Final Action

EPA is approving the aforementioned changes to the State of Florida SIP because they are consistent with the CAA and EPA policy. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective September 22, 2003 without further notice unless the Agency receives adverse comments by August 21, 2003.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 22, 2003 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 22, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 9, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42. U.S.C. 7401 *et seq.*

Subpart K—Florida

■ 2. Section 52.520(e), is amended by revising the entry for "Revision to Maintenance Plan for Jacksonville, Florida Area" to read as follows:

§ 52.520 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED FLORIDA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	Federal Register notice	Explanation
Revision to Maintenance Plan Update for Jacksonville Area, Florida.	December 20, 2002	July 22, 2003	[Insert citation of publication].	

[FR Doc. 03–18500 Filed 7–21–03; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CO–001–0072a; FRL–7522–1]

Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Fort Collins Carbon Monoxide Redesignation to Attainment, Designation of Areas for Air Quality Planning Purposes, and Approval of Related Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On August 9, 2002, the Governor of Colorado submitted a request to redesignate the Fort Collins "moderate" carbon monoxide (CO) nonattainment area to attainment for the CO National Ambient Air Quality Standard (NAAQS). The Governor also submitted a CO maintenance plan. With the maintenance plan, the Governor submitted revisions to Colorado's Regulation No. 11 "Motor Vehicle Emissions Inspection Program", and Colorado's Regulation No. 13 "Oxygenated Fuels Program". In this action, EPA is approving the Fort Collins CO redesignation request, the maintenance plan, and the revisions to Regulation No. 11 and Regulation No. 13.

DATES: This direct final rule is effective on September 22, 2003 without further notice, unless EPA receives adverse comments by August 21, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following offices:

United States Environmental Protection Agency, Region VIII, Air and Radiation Program, 999 18th Street, Suite 300, Denver, Colorado 80202–2466; and,

Air and Radiation Docket and Information Center, United States Environmental Protection Agency, Room B–108, 1301 Constitution Avenue (Mail Code 6102T) NW., Washington, DC 20460.

Copies of the State documents relevant to this action are available for public inspection at: Colorado Air Pollution Control Division, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado, 80246–1530.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, Telephone number: (303) 312–6479.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us", or "our" are used we mean the Environmental Protection Agency.

I. What Is the Purpose of This Action?

In this action, we are approving a change in the legal designation of the Fort Collins area from nonattainment for CO to attainment, we're approving the maintenance plan that is designed to keep the area in attainment for CO for the next 13 years, we're approving changes to the State's Regulation No. 11 for the implementation of motor vehicle emissions inspections, and we're approving changes to the State's Regulation No. 13 for the implementation of the wintertime oxygenated fuels program.

We originally designated Fort Collins as nonattainment for CO under the provisions of the 1977 CAA Amendments (*see* 43 FR 8962, March 3, 1978). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). Under section 107(d)(1)(C) of the Clean Air Act (CAA), we designated the Fort Collins area as nonattainment for CO because the area had been designated as nonattainment before November 15, 1990. Under section 186 of the CAA, Fort Collins was classified as a "moderate" CO nonattainment area with a design value less than or equal to 12.7 parts per million (ppm), and was required to attain the CO NAAQS by December 31, 1995. *See* 56 FR 56694, November 6, 1991. Further information regarding this classification and the accompanying requirements are described in the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990." *See* 57 FR 13498, April 16, 1992.

Under the CAA, we can change designations if acceptable data are available and if certain other requirements are met. *See* CAA section 107(d)(3)(D). Section 107(d)(3)(E) of the CAA provides that the Administrator may not promulgate a redesignation of a nonattainment area to attainment unless:

(i) The Administrator determines that the area has attained the national ambient air quality standard;

(ii) The Administrator has fully approved the applicable implementation plan for the area under CAA section 110(k);

(iii) The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(iv) The Administrator has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and,

(v) the State containing such area has met all requirements applicable to the area under section 110 and part D of the CAA.

Before we can approve the redesignation request, we must decide that all applicable SIP elements have been fully approved. Approval of the applicable SIP elements may occur simultaneously with final approval of the redesignation request. That's why we are also approving the revisions to Regulation No. 11 and Regulation No. 13.

II. What Is the State's Process To Submit These Materials to EPA?

Section 110(k) of the CAA addresses our actions on submissions of revisions to a SIP. The CAA requires States to observe certain procedural requirements in developing SIP revisions for submittal to us. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a State to us.

The Colorado Air Quality Control Commission (AQCC) held a public hearing for the Fort Collins CO redesignation request, the maintenance plan, and the revisions to Regulation No. 11 and Regulation No. 13 on July 18, 2002. The AQCC adopted the redesignation request, maintenance plan, and revisions to Regulation No. 11 and Regulation No. 13 directly after the hearing. These SIP revisions became State effective September 30, 2002, and were submitted by the Governor to us on August 9, 2002.

We have evaluated the Governor's submittal and have concluded that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. As required by section 110(k)(1)(B) of the CAA, we reviewed these SIP materials for conformance with the completeness criteria in 40 CFR part 51, Appendix V and determined that the Governor's submittal was administratively and technically complete. Our completeness determination was sent on October 11, 2002, through a letter from Robert E. Roberts, Regional Administrator, to Governor Bill Owens.

III. EPA's Evaluation of the Fort Collins Redesignation Request and Maintenance Plan

We have reviewed the Fort Collins CO redesignation request and maintenance plan and believe that approval of the request is warranted, consistent with the requirements of CAA section 107(d)(3)(E). The following are descriptions of how the section 107(d)(3)(E) requirements are being addressed.

(a) Redesignation Criterion: The Area Must Have Attained the Carbon Monoxide (CO) NAAQS

Section 107(d)(3)(E)(i) of the CAA states that for an area to be redesignated to attainment, the Administrator must determine that the area has attained the applicable NAAQS. As described in 40 CFR 50.8, the national primary ambient air quality standards for carbon monoxide are 9 parts per million (10 milligrams per cubic meter) for an 8-hour average concentration not to be exceeded more than once per year, and 35 parts per million (40 milligrams per cubic meter) for a 1-hour average concentration not to be exceeded more than once per year. 40 CFR 50.8 continues by stating that the levels of CO in the ambient air shall be measured by a reference method based on 40 CFR part 50, Appendix C and designated in accordance with 40 CFR part 53 or an equivalent method designated in accordance with 40 CFR part 53. Attainment of the CO standards is not a momentary phenomenon based on short-term data. Instead, we consider an area to be in attainment if each of the CO ambient air quality monitors in the area doesn't have more than one exceedance of the relevant CO standard over a one-year period. 40 CFR 50.8 and 40 CFR part 50, Appendix C. If any monitor in the area's CO monitoring network records more than one exceedance of the relevant CO standard during a one-year calendar period, then the area is in violation of the CO NAAQS. In addition, our interpretation of the CAA and EPA national policy [1] has been that an area seeking redesignation to attainment must show attainment of the CO NAAQS for at least a continuous two-year calendar period. In addition, the area must also continue to show attainment through the date that we promulgate the redesignation in the **Federal Register**.

Colorado's CO redesignation request for the Fort Collins area is based on an analysis of quality assured ambient air quality monitoring data that are relevant to the redesignation request. As presented in Part II, Chapter 1, section B of the State's maintenance plan, ambient air quality monitoring data for consecutive calendar years 1992 through 2001 show a measured exceedance rate of the CO NAAQS of 1.0 or less per year, per monitor, in the Fort Collins nonattainment area [2]. All of these data were collected and analyzed as required by EPA (*see* 40 CFR 50.8 and 40 CFR part 50, Appendix C) and have been archived by the State in our Aerometric Information and Retrieval System (AIRS) national database. Further information on CO monitoring is presented in Part II, Chapter 1, section B of the maintenance plan and in the State's Technical Support Document (TSD). We have evaluated the ambient air quality data and have determined that the Fort Collins area has not violated the CO standard and continues to demonstrate attainment.

The Fort Collins nonattainment area has quality-assured data showing no violations of the CO NAAQS for 1992 and 1993 which are the years the State used to support the redesignation request. In addition, data from the most recent consecutive two-calendar-year period (*i.e.*, 2000 and 2001) also show no violations. Therefore, we believe the Fort Collins area has met the first component for redesignation: Demonstration of attainment of the CO NAAQS. We note too that the State of Colorado has also committed, in the maintenance plan, to continue the necessary operation of the CO monitor in compliance with all applicable federal regulations and guidelines.

(b) Redesignation Criterion: The Area Must Have Met All Applicable Requirements Under Section 110 and Part D of the CAA

To be redesignated to attainment, section 107(d)(3)(E)(v) requires that an area must meet all applicable requirements under section 110 and part D of the CAA. We interpret section 107(d)(3)(E)(v) to mean that for a redesignation to be approved by us, the State must meet all requirements that applied to the subject area prior to or at the time of the submission of a complete redesignation request. In our evaluation of a redesignation request, we don't need to consider other requirements of the CAA that became due after the date of the submission of a complete redesignation request.

1. CAA Section 110 Requirements

On December 12, 1983, we approved the Fort Collins CO element revisions to Colorado's SIP as meeting the requirements of section 110(a)(2) of the CAA (*see* 48 FR 55284). In addition, we have analyzed the SIP elements that we are approving as part of this action and we have determined they comply with the relevant requirements of section 110(a)(2).

The Fort Collins CO element of the Colorado SIP, that we approved on December 12, 1983 (48 FR 55284), was based on emission reductions from the Federal Motor Vehicle Control Program (FMVCP), Automobile Inspection and Readjustment Program, Improved Public Transit, and Traffic Flow Improvements. The anticipated date for attaining the 8-hour CO NAAQS was December 31, 1987.

Through a letter dated May 26, 1988, we notified the Governor of Colorado that the Fort Collins area did not attain the CO NAAQS by the end of 1987. This

[1] Refer to EPA's September 4, 1992, John Calcagni policy memoradum entitled "Procedures for Processing requests to Redisignate areas to Attainment."

[2] It is worth noting that the Fort Collins area has never recorded a violtion of the 1-hour CO NAAQS.

letter stated that Colorado was to address deficiencies in the SIP and that the State would also have to address requirements in our forthcoming post-1987 policy for carbon monoxide.

EPA did not finalize its post-1987 policy for carbon monoxide because the Clean Air Act (CAA) was amended on November 15, 1990. Fort Collins was designated nonattainment for CO and was required to attain the CO NAAQS by December 31, 1995. *See* 56 FR 56694, November 6, 1991.

2. Part D Requirements

Before the Fort Collins "moderate" CO nonattainment area may be redesignated to attainment, the State must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, whether classified or nonclassifiable. Subpart 3 of part D contains specific provisions for "moderate" CO nonattainment areas.

The relevant subpart 1 requirements are contained in sections 172(c) and 176. Our General Preamble (*see* 57 FR 13529 to 13532, April 16, 1992) provides EPA's interpretations of the CAA requirements for "moderate" CO areas that are less than or equal to 12.7 ppm.

The General Preamble (*see* 57 FR 13530, *et seq.*) provides that the applicable requirements of CAA section 172 are 172(c)(3) (emissions inventory), 172(c)(5)(new source review permitting program), 172(c)(7)(the section 110(a)(2) air quality monitoring requirements)), and 172(c)(9) (contingency measures). It is also worth noting that we interpreted the requirements of sections 172(c)(2) (reasonable further progress—RFP) and 172(c)(6)(other measures) as being irrelevant to a redesignation request because they only have meaning for an area that is not attaining the standard. *See* EPA's September 4, 1992, John Calcagni memorandum entitled, sbull l11"Procedures for Processing Requests to Redesignate Areas to Attainment", and the General Preamble, 57 FR at 13564, dated April 16, 1992. Finally, the State has not sought to exercise the options that would trigger sections 172(c)(4)(identification of certain emissions increases) and 172(c)(8)(equivalent techniques). Thus, these provisions are also not relevant to this redesignation request.

Regarding the requirements of sections 172(c)(3)(inventory) and 172(c)(9)(contingency measures), please refer to our discussion below of sections 187(a)(1) and 187(a)(3), which are provisions of subpart 3 of Part D of the CAA that address the same requirements as sections 172(c)(3) and 172(c)(9).

For the section 172(c)(5) New Source Review (NSR) requirements, the CAA requires all nonattainment areas to meet several requirements regarding NSR, including provisions to ensure that increased emissions will not result from any new or modified stationary major sources and a general offset rule. The State of Colorado has a fully-approved NSR program (59 FR 42500, August 18, 1994) that meets the requirements of CAA section 172(c)(5). The State also has a fully approved Prevention of Significant Deterioration (PSD) program (59 FR 42500, August 18, 1994) that will apply after our approval of the redesignation to attainment.

For the CAA section 172(c)(7) provisions (compliance with the CAA section 110(a)(2) Air Quality Monitoring Requirements), our interpretations are presented in the General Preamble (57 FR 13535). CO nonattainment areas are to meet the "applicable" air quality monitoring requirements of section 110(a)(2) of the CAA.

Information concerning CO monitoring in Colorado is included in the Monitoring Network Review (MNR) prepared by the State and submitted to EPA. Our personnel have concurred with Colorado's annual network reviews and have agreed that the Fort Collins network remains adequate. In Part II, Chapter 2, section E. of the maintenance plan, the State commits to the continued operation of the existing CO monitor (along with the siting of a second CO monitor), according to all applicable Federal regulations and guidelines, currently and after the Fort Collins area is redesignated to attainment for CO.

Section 176 of the CAA contains requirements related to conformity. Although EPA's regulations (*see* 40 CFR 51.396) require that states adopt transportation conformity provisions in their SIPs for areas designated nonattainment or subject to an EPA-approved maintenance plan, we have decided that a transportation conformity SIP is not an applicable requirement for purposes of evaluating a redesignation request under section 107(d) of the CAA. This decision is reflected in EPA's 1996 approval of the Boston carbon monoxide redesignation. (*See* 61 FR 2918, January 30, 1996.)

The relevant subpart 3 provisions were created when the CAA was amended on November 15, 1990. The new CAA requirements for "moderate" CO areas, such as Fort Collins, required that the SIP be revised to include a 1990 base year emissions inventory (CAA section 187(a)(1)), contingency provisions (CAA section 187(a)(3)), corrections to existing motor vehicle inspection and maintenance (I/M) programs (CAA section 187(a)(4)), periodic emission inventories (CAA section 187(a)(5)), and the implementation of an oxygenated fuels program (CAA section 211(m)(1)). How the State met these requirements and our approvals, are described below:

A. 1990 base year emissions inventory (CAA section 187(a)(1)): The Governor submitted a 1990 base year emissions inventory for Fort Collins on December 31, 1992, with revisions being submitted on March 23, 1995. We approved this 1990 base year CO emissions inventory on December 23, 1996 (see 61 FR 67466).

B. Contingency provisions (CAA section 187(a)(3)): The Governor submitted a contingency measure, enhanced motor vehicle inspection and maintenance, on February 18, 1994. We approved this contingency measure on December 23, 1997 (*see* 62 FR 67006).

C. Corrections to the Fort Collins basic I/M program (CAA section 187(a)(4)): On January 14, 1994, and June 24, 1994, the Governor submitted revisions to the Colorado basic I/M program portion of its SIP which included the program in Fort Collins. We approved these basic I/M program revisions on March 19, 1996 (*see* 61 FR 11149).

D. Periodic emissions inventories (CAA section 187(a)(5)): As the Governor did not submit a complete redesignation request and maintenance plan before September 30, 1995, a periodic emission inventory (for calendar year 1993) was required for Fort Collins. On September 16, 1997, the Governor submitted a SIP revision for a 1993 periodic emission inventory for Fort Collins. We approved this revision on July 15, 1998 (see 63 FR 38087). On May 10, 2000, the Governor submitted a subsequent 1996 periodic emission inventory for Fort Collins. We approved this revision on October 24, 2000 (*see* 65 FR 63546).

E. Oxygenated fuels program implementation (CAA section 211(m)): To address the oxygenated fuels requirements of the CAA, the Governor initially submitted a revision to Colorado's Regulation No. 13 on November 27, 1992. We approved this revision on July 24, 1994 (see 59 FR 37698). Regulation 13 was again revised, to shorten the oxygenated fuels program season, and the Governor submitted further revisions to Regulation No. 13 on September 29, 1995, and December 22, 1995. We approved these revisions on March 10, 1997 (*see* 62 FR 10690).

The most recent changes by the State to Regulation No. 13 to shorten the oxygenated fuels program season, that affected the Fort Collins area, were submitted by the Governor on August 19, 1998, in conjunction with the Colorado Springs CO redesignation to attainment. We approved these revisions on August 25, 1999 (*see* 64 FR 46279).

(c) Redesignation Criterion: The Area Must Have a Fully Approved SIP Under Section 110(k) of the CAA

Section 107(d)(3)(E)(ii) of the CAA states that for an area to be redesignated to attainment, it must be determined that the Administrator has fully approved the applicable implementation plan for the area under section 110(k).

As noted above, EPA previously approved SIP revisions for the Fort Collins CO nonattainment area that were required by the 1990 amendments to the CAA. In this action, we are also approving the maintenance plan and revisions to Colorado's Regulation No. 11 and Regulation No. 13 and the State's commitment to maintain an adequate monitoring network (contained in the maintenance plan.) Thus, with this final rule to approve the Fort Collins redesignation request, maintenance plan, and revisions to Regulation No. 11 and Regulation No. 13, we will have fully approved the Fort Collins CO element of the SIP under section 110(k) of the CAA.

(d) Redesignation Criterion: The Area Must Show That the Improvement in Air Quality Is Due to Permanent and Enforceable Emissions Reductions

Section 107(d)(3)(E)(iii) of the CAA provides that for an area to be redesignated to attainment, the Administrator must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan, implementation of applicable Federal air pollutant control regulations, and other permanent and enforceable reductions.

The CO emissions reductions for Fort Collins, that are further described in Part II, Chapter 1, sections A.3 of the Fort Collins maintenance plan, were achieved primarily through the Federal Motor Vehicle Control Program (FMVCP), a basic motor vehicle inspection and maintenance (I/M) program, oxygenated fuels, and control of wood burning emissions.

In general, the FMVCP provisions require vehicle manufacturers to meet more stringent vehicle emission limitations for new vehicles in future years. These emission limitations are phased in (as a percentage of new vehicles manufactured) over a period of years. As new, lower emitting vehicles replace older, higher emitting vehicles ("fleet turnover"), emission reductions are realized for a particular area such as Fort Collins. For example, EPA promulgated lower hydrocarbon (HC) and CO exhaust emission standards in 1991, known as Tier I standards for new motor vehicles (light-duty vehicles and light-duty trucks) in response to the 1990 CAA amendments. These Tier I emissions standards were phased in with 40% of the 1994 model year fleet, 80% of the 1995 model year fleet, and 100% of the 1996 model year fleet.

As stated in Part II, Chapter 1, section A.3 of the maintenance plan, significant additional emission reductions were realized from Fort Collins's basic I/M program. Colorado's Regulation No. 11, "Motor Vehicle Emissions Inspection Program", contains a full description of the requirements for the Fort Collins I/M program. The program requires biennial inspections of vehicles at independent inspection stations. We note that further improvements to the Fort Collins area's basic I/M program, to meet the requirements of EPA's November 5, 1992, (57 FR 52950) I/M rule, were approved by us into the SIP on March 19, 1996 (61 FR 11149).

Oxygenated fuels are gasolines that are blended with additives that increase the level of oxygen in the fuel and, consequently, reduce CO tailpipe emissions. Colorado's Regulation 13, "Oxygenated Fuels Program", contains the oxygenated fuels provisions for the Fort Collins nonattainment area. Regulation 13 requires all Fort Collins-area gas stations to sell fuels containing a 2.7% minimum oxygen content (by weight) during the wintertime CO high pollution season. The use of oxygenated fuels has significantly reduced CO emissions and contributed to the area's attainment of the CO NAAQS.

Fort Collins has also been implementing the requirements of Colorado's Regulation No. 4 "New Wood Stoves and the use of Certain Woodburning Appliances During High Pollution Days." Regulation No. 4 for Fort Collins requires all new wood burning stoves and fireplace inserts sold to meet both State and Federal emission control standards.

We have evaluated the various State and Federal control measures, the original 1990 base year emission inventory, and the 1993 and 1996 periodic emission inventories, and believe that the improvement in air quality in the Fort Collins nonattainment area has resulted from emission reductions that are permanent and enforceable.

(e) Redesignation Criterion: The Area Must Have a Fully Approved Maintenance Plan Under CAA Section 175A

Section 107(d)(3)(E)(iv) of the CAA provides that for an area to be redesignated to attainment, the Administrator must have fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA.

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The maintenance plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the promulgation of the redesignation, the State must submit a revised maintenance plan that demonstrates continued attainment for the subsequent ten-year period following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for adoption and implementation, that are adequate to assure prompt correction of a violation. In addition, we issued further maintenance plan interpretations in the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (57 FR 13498, April 16, 1992), "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990; Supplemental" (57 FR 18070, April 28, 1992), and the EPA guidance memorandum entitled "Procedures for Processing Requests to Redesignate Areas to Attainment" from John Calcagni, Director, Air Quality Management Division, Office of Air Quality and Planning Standards, to Regional Air Division Directors, dated September 4, 1992 (hereafter the September 4, 1992 Calcagni Memorandum).

In this **Federal Register** action, EPA is approving the maintenance plan for the Fort Collins CO nonattainment area because we believe, as detailed below, that the State's maintenance plan submittal meets the requirements of section 175A and is consistent with our interpretations of the CAA, as reflected in the documents referenced above. Our analysis of the pertinent maintenance plan requirements, with reference to the Governor's August 9, 2002, submittal, is provided as follows:

1. Emissions Inventories—Attainment Year and Projections

EPA's interpretations of the CAA section 175A maintenance plan requirements are generally provided in the General Preamble (see 57 FR 13498, April 16, 1992) and the September 4, 1992, Calcagni Memorandum referenced above. Under our interpretations, areas seeking to redesignate to attainment for CO may demonstrate future maintenance of the CO NAAQS either by showing that future CO emissions will be equal to or less than the attainment year emissions or by providing a modeling demonstration. For the Fort Collins area, the State selected the emissions inventory approach for demonstrating maintenance of the CO NAAQS.

The maintenance plan that the Governor submitted on August 9, 2002, includes comprehensive inventories of CO emissions for the Fort Collins area. These inventories include emissions from stationary point sources, area sources, non-road mobile sources, and on-road mobile sources. The State selected 1992 as the year from which to develop the attainment year inventory and included interim-year projections out to 2015. More detailed descriptions of the 1992 attainment year inventory and the projected inventories are documented in the maintenance plan in Part II, Chapter 2, section A, Table 2 and Table 3, and in the State's TSD. The State's submittal contains detailed emission inventory information that was prepared in accordance with EPA guidance. Summary emission figures from the 1992 attainment year, the interim projected years, and the final maintenance year of 2015 are provided in Table III.–1 below.

TABLE III–1.—SUMMARY OF CO EMISSIONS IN TONS PER DAY FOR FORT COLLINS

	1992	1998	2005	2010	2015
Point Sources	0.7	0.4	0.5	0.6	0.6
Area Sources	13.8	13.9	4.5	4.7	4.8
Non-Road Mobile Sources	9.4	10.5	12.4	14.2	17.0
On-Road Mobile Sources	94.6	80.9	91.3	75.0	71.4
Total	118.4	105.7	108.8	94.5	93.9

2. Demonstration of Maintenance—Projected Inventories

As we noted above, total CO emissions were projected forward by the State for the years 1998, 2005, 2010, and 2015. We note the State's approach for developing the projected inventories follows EPA guidance on projected emissions and we believe they are acceptable.[3] The projected inventories show that CO emissions are not estimated to exceed the 1992 attainment level during the time period 1992 through 2015 and, therefore, the Fort Collins area has satisfactorily demonstrated maintenance.

We note in Table III–1 there are significant reductions projected in years 2005, 2010, and 2015 for area sources. The majority of the area source projected reductions are from the State's estimates for less woodburning in future years. We believe this projection of less woodburning is reasonable in view of the information provided in Attachment 3 of the State's TSD. Attachment 3 is entitled "Outdoor Air Quality Survey, Spring 2002, Report: City of Fort Collins" and includes survey data with special emphasis on woodburning and woodsmoke. Further information on these projected emissions may also be found in the State's TSD.

[3] Use of Actual Emissions in Maintenance Demonstrations for Ozone and Carbon Monoxide (CO) Nonattainment Areas", signed by D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993.

3. Changes to Regulation No. 11 and Regulation No. 13 for the Maintenance Period

As described in Part II, Chapter 2, Section B, of the maintenance plan, as of January 1, 2004, the Basic I/M program (of Regulation No. 11) and the oxygenated fuels program (Regulation No. 13) will not be a part of the Federally enforceable SIP for the Fort Collins area. No CO emission reduction credit for these programs has been taken for the years 2005, 2010, and 2015 in the maintenance demonstration. The mobile source emissions presented in Table III–1 also reflect the elimination of these programs for the Fort Collins area.

The State performed an analysis (Section of the State's TSD entitled Fort Collins Urban Growth Area Carbon Monoxide Maintenance Plan Mobile Source Carbon Monoxide Emissions Inventories") and determined that both the Basic I/M and the oxygenated fuels program could be eliminated for the Fort Collins area without jeopardizing maintenance of the CO NAAQS. This analysis was performed using EPA's MOBILE6 emission factor model and the latest transportation and planning data from the North Front Range Transportation and Air Quality Planning Council's (NFRTAQPC) 2025 transportation plan. The methodology and analysis were reviewed by us and we have determined they are acceptable. The results of the modeling were presented in the revised maintenance plan's "Table 2.", and are also included in our Table III–1 above. Based on our review of the State's analysis, we agree that the Fort Collins area continues to demonstrate maintenance of the CO NAAQS and we approve the elimination of the Basic I/M program and oxygenated fuels program for Larimer County and the Fort Collins area.

4. Monitoring Network and Verification of Continued Attainment

Continued attainment of the CO NAAQS in the Fort Collins area depends, in part, on the State's efforts to track indicators throughout the maintenance period. This requirement is met in two sections of the Fort Collins CO maintenance plan; Part II, Chapter 2, sections E and F.2.

In Part II, Chapter 2, section E the State commits to continue the operation of the CO monitor (in Section E, the State commits to site a second CO monitor) in the Fort Collins area and to annually review this monitoring network and make changes as appropriate.

In Part II, Chapter 2, section F.2, the State commits to track mobile sources' CO emissions (which are the largest component of the inventories) through the ongoing regional transportation planning process that is done by NFRTAQPC in coordination with the Colorado Department of Transportation (CDOT), the Colorado Air Pollution Control Division (APCD), the AQCC, and EPA.

Based on the above, we are approving these commitments as satisfying the relevant requirements and we note that this final rulemaking approval will render the State's commitments federally enforceable.

5. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions. To meet this requirement, the State has identified appropriate contingency measures along with a schedule for the development and implementation of such measures.

As stated in Part II, Chapter 2, section F of the maintenance plan, the contingency measures for the Fort Collins area will be triggered by a violation of the CO NAAQS. (However, the maintenance plan does note that an exceedance of the CO NAAQS may initiate a voluntary, local process by the NFRTAQPC and APCD to identify and evaluate potential contingency measures.)

The APCD, in coordination with the NFRTAQPC and AQCC, will initiate a subcommittee process to begin evaluating potential contingency measures no more than 60 days after being notified by the APCD that a violation of the CO NAAQS has occurred. The subcommittee will present recommendations to the NFRTAQPC and APCD within 120 days of notification and the NFRTAQPC and APCD will present recommended contingency measures to the AQCC within 180 days of notification. The AQCC will then hold a public hearing to consider the contingency measures recommended by the NFRTAQPC and APCD, along with any other contingency measures that the AQCC believes may be appropriate to effectively address the violation of the CO NAAQS. The necessary contingency measures will be adopted and implemented within one year after the violation occurs.

The potential contingency measures are identified in Part II, Chapter 2, section F, of the Fort Collins CO maintenance plan. As required by section 175A(d) of the CAA, these include all measures that were part of the nonattainment area plan that have been removed from the SIP as part of the redesignation—in this case, the Basic I/M program as it appeared in Regulation No. 11 prior to July 18, 2002, with the addition of any on-board diagnostics components as required by Federal law, and the oxygenated fuels program as it appeared in Regulation No. 13 prior to July 18, 2002. In addition, the maintenance plan mentions the following as other possible contingency measures: An enhanced I/M program, transportation control measures, and mandatory woodburning restrictions. The maintenance plan indicates that the State may evaluate other potential strategies to address any future violations in the most appropriate and effective manner possible.

Based on the above, we find that the contingency measures provided in the State's Fort Collins CO maintenance plan are sufficient and meet the requirements of section 175A(d) of the CAA.

6. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, Colorado has committed to submit a revised maintenance plan eight years after our approval of the redesignation. This provision for revising the maintenance plan is contained in Part II, Chapter 2, section G of the Fort Collins CO maintenance plan.

7. Removal of the CAA Section 172(c)(9) Contingency Measure

With the CAA Amendments of 1990, the Fort Collins area was designated nonattainment for CO and classified as "moderate" (see 56 FR 56694, November 6, 1991). As the Fort Collins area was designated nonattainment for CO, the nonattainment plan provisions of CAA section 172 (among other sections of the CAA) applied. Among other requirements, CAA section 172(c)(9) required mandatory contingency measures that were to go automatically into place should the area not attain the CO standard by its prescribed attainment date of December 31, 1995. In response to this requirement, the Governor submitted a SIP revision on February 18, 1994, that included an enhanced I/M program as the identified contingency measure. We approved this contingency measure, as meeting the requirements of section 172(c)(9) of the CAA, on December 23, 1997 (see 62 FR 67006).

As the Fort Collins CO nonattainment area attained the CO standard before December 31, 1995, this contingency measure was never implemented and is no longer necessary. Should the Fort Collins area violate the CO standard after being Federally redesignated to attainment, the contingency measures identified in Part II, Chapter 2, section F, and their implementation mechanism, are considered by us to be sufficient. Therefore, we are removing the identified contingency measure from the SIP that we had previously approved on December 23, 1997 (see 62 FR 67006).

IV. EPA's Evaluation of the Transportation Conformity Requirements

One key provision of our conformity regulation requires a demonstration that emissions from the transportation plan and Transportation Improvement Program are consistent with the emissions budget(s) in the SIP (40 CFR sections 93.118 and 93.124). The emissions budget is defined as the level of mobile source emissions relied upon in the attainment or maintenance demonstration to maintain compliance with the NAAQS in the nonattainment or maintenance area. The rule's requirements and EPA's policy on emissions budgets are found in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62193–96) and in the sections of the rule referenced above.

Part II, Chapter 2, section D and Table 4 of the maintenance plan define the CO motor vehicle emissions budgets in the Fort Collins CO attainment/maintenance area as 99 tons per day for 2005 through 2009, 98 tons per day for 2010 through 2014, and 94 tons per day for 2015 and beyond.

The transportation conformity motor vehicle emissions budgets were derived by taking the difference between the attainment year (1992) total emissions and the projected future years' total emissions. This difference is the "safety margin," part or all of which may be added to projected mobile sources CO emissions to arrive at a motor vehicle emissions budget to be used for transportation conformity purposes. The safety margins, less one ton per day, were added to projected mobile sources CO emissions for 2005, 2010, and 2015. The derivation and determination of safety margins and motor vehicle emissions budgets for the Fort Collins CO maintenance plan is further illustrated in Table IV–1 below and in Part II, Chapter 2, Table 4 of the maintenance plan:

TABLE IV–1: MOBILE SOURCES EMISSIONS, SAFETY MARGINS, AND MOTOR VEHICLE EMISSIONS BUDGETS IN TONS OF CO PER DAY (TPD)

Year	Mobile sources emissions (TPD)	Total emissions (TPD)	Math	Margin of safety (TPD)	Motor vehicle emissions budget (TPD)
1992	95	118	.....	N/A	N/A
2005	91	109	118–109 = 9 9–1 = 8. 91+8 = 99.	8	99
2010	75	94	118–94 = 24 24–1 = 23. 75+23 = 98.	23	98
2015	71	94	118–94 = 24 24–1 = 23. 71+23 = 94.	23	94

NOTE: N/A = Not Applicable.

Our analysis indicates that the above figures are consistent with maintenance of the CO NAAQS throughout the maintenance period. Therefore, we are approving the 99 tons per day for 2005 through 2009, 98 tons per day for 2010 through 2014, and 94 tons per day for 2015 and beyond, CO emissions budgets for the Fort Collins area.

Pursuant to section 93.118(e)(4) of EPA's transportation conformity rule, as amended, EPA must determine the adequacy of submitted mobile source emissions budgets. EPA reviewed the Fort Collins CO budgets for adequacy using the criteria in 40 CFR 93.118(e)(4), and determined that the budgets were adequate for conformity purposes. EPA's adequacy determination was made in a letter to the Colorado APCD on January 15, 2003, and was announced in the **Federal Register** on February 4, 2003 (68 FR 5638). As a result of this adequacy finding, the budgets took effect for conformity determinations in the Fort Collins area on February 19, 2003. However, we are not bound by that determination in acting on the maintenance plan.

In addition to the above, the State has made a commitment regarding transportation conformity, in Part II, Chapter 2, section D of the maintenance plan. Because informal roll-forward analyses, prepared by the State, indicate that the 2015 CO emissions budget may be exceeded by 2030, the State has committed to the re-implementation of the Basic I/M program (with any Federally required on-board diagnostic tests) for the Fort Collins area in 2026. This commitment by the State is included in the maintenance plan for purposes of 40 CFR 93.122(a)(3)(iii), which provides that emissions reduction credit from such programs may be included in the transportation conformity emissions analysis if the maintenance plan contains such a written commitment. We agree with this interpretation of 40 CFR 93.122(a)(3)(iii) and are making this State commitment Federally enforceable with our approval of the Fort Collins CO maintenance plan.

V. EPA's Evaluation of the Regulation No. 11 Revisions

Colorado's Regulation No. 11 is entitled "Motor Vehicle Emissions Inspection Program". In developing the Fort Collins CO maintenance plan, the State evaluated a number of options for revising the current motor vehicle emissions inspection program. The final decision, based on the use of our Mobile6 emission factor model, was to eliminate the Basic I/M program from the Federal SIP beginning on January 1, 2004. A description of the State's process for the evaluation of potential options for Regulation No. 11 is found in Part I, Chapter 2, section B of the Governor's submittal. We note that Part I, Chapter 2 is only for informational purposes and was not submitted as a revision to the SIP. Part II, Chapter 2, is the maintenance plan that we are approving and it reflects the AQCC-adopted revisions, as an amendment to the SIP, to Regulation No. 11. These revisions to Regulation No. 11 were submitted, as a separate revision to the SIP, for our approval in conjunction with redesignation request and maintenance plan.

The revisions adopted by the AQCC on July 18, 2002, and submitted by the Governor on August 9, 2002, remove the Fort Collins area component of the Colorado automobile inspection and maintenance program ("AIR Program") from the Federally-approved SIP, but does not make any change in the State laws implementing the program. This means that the "AIR Program" for the implementation of the Basic I/M program will remain in full force and effect as a State-only program under State laws, but it will not be Federally-enforceable after January 1, 2004. The maintenance plan reflects this change in Regulation No. 11 in that the mobile source CO emissions were calculated without the CO emissions reduction benefit of a Basic I/M program starting in 2004 and continuing through 2015. We note that even with the elimination of the Basic I/M program and the elimination of the Oxygenated Fuels Program, discussed below, for the Fort Collins area beginning on January 1, 2004, the area was still able to meet our requirements to demonstrate maintenance of the CO standard through 2015.

We have reviewed and are approving these State-adopted changes to Regulation No. 11.

VI. EPA's Evaluation of the Regulation No. 13 Revisions

Colorado's Regulation No. 13 is entitled "Oxygenated Fuels Program" (hereafter referred to as Regulation No. 13). The purpose of this regulation is to reduce CO emissions from gasoline powered motor vehicles in the Fort Collins area through the wintertime use of oxygenated gasolines. Section 211(m) of the CAA originally required the State to implement an oxygenated fuels program in the Fort Collins area. Section 211(m) states that the oxygenated fuels program must cover no less than a four month period each year unless EPA approves a shorter period. We can approve a shorter implementation period if a State submits a demonstration that a reduced implementation period will still assure that there will be no exceedances of the CO NAAQS outside of this reduced period. This was done previously when we approved revisions to Regulation No. 13 for the Denver area that shortened the oxygenated fuels season and oxygenate content (*see* 62 FR 10690, March 10, 1997 and 64 FR 46279, August 25, 1999). When an area is redesignated to attainment, the oxygenated fuels program may be further shortened or eliminated entirely as long as the State is able to show the program is not needed to demonstrate maintenance of the CO NAAQS (*see* 65 FR 80779, December 22, 2000).

In developing the Fort Collins CO maintenance plan, the State evaluated options for revising the current oxygenated gasoline program. A description of the State's process for the evaluation of potential options for Regulation No. 13 is found in Part I, Chapter 2, section B of the Governor's August 9, 2002, submittal. We note that Part I, Chapter 2 is only for informational purposes and was not submitted as a revision to the SIP. Part II, Chapter 2, is the maintenance plan that we are approving and it reflects the AQCC-adopted revisions, as an amendment to the SIP, to Regulation No. 13. These revisions to Regulation No. 13 were submitted, as a separate revision to the SIP, for our approval in conjunction with the redesignation request and maintenance plan.

The current EPA-approved oxygenated gasoline program for the Fort Collins area has the following three requirements: (1) The control period is from November 1st through February 7th of each winter season, (2) an oxygen content of at least 2.0% by weight is required from November 1st through November 7th, (3) and an oxygen content of at least 2.7% by weight is required from November 8th through February 7th.

In conjunction with the submittal of the Fort Collins CO maintenance plan, the State of Colorado is seeking EPA's approval of revisions to Regulation No. 13 that would eliminate the oxygenated fuels program for the Fort Collins area beginning on January 1, 2004.

As we discussed above, and as presented in Part II, Chapter 2, Table 2 of the maintenance plan, the removal of the CO emission reductions associated with the implementation of Regulation No. 13 were incorporated by the State into the emission projections, using our Mobile6 emissions model, beginning in 2004 and were projected through the final maintenance year of 2015. Even with the elimination of both Regulation No. 11 and Regulation No. 13 for the Fort Collins area starting in 2004, maintenance of the CO NAAQS was successfully demonstrated.

In addition to the revision noted above for the Fort Collins area, the State made several other minor changes to Regulation No. 13 that were also adopted by the AQCC at the July 18, 2002, public hearing. These changes involved: (1) Section I.D.—the deletion of several out-dated definitions and the addition of necessary definitions for the newly-created Broomfield County, (2) section II. A.—Greeley changes and the addition of Broomfield County, (3) sections II. B and II. C.—the deletion of the previous Denver area's maximum blending requirement, (4) section II. D.—, the removal of the obsolete "Pre-Program Registration Requirements" (dating from 1995) for the Denver area, and (5) section III. G.—changes to the State's "Statement of Basis and Purpose". We note, though, EPA does not Federally approve the State's "Statement of Basis and Purpose."

We have reviewed these changes to Regulation No. 13, that the State adopted on July 18, 2002, and the Governor submitted on August 9, 2002. We are approving these revisions as they are consistent with maintenance of the CO NAAQS for the Fort Collins area and meet the requirements of section 211(m) of the CAA.

VII. Consideration of Section 110(l) of the CAA

Section 110(l) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of a NAAQS or any other applicable requirement of the CAA. As stated above, the Fort Collins area has shown continuous attainment of the CO NAAQS since 1992 and has met the applicable Federal requirements for redesignation to attainment. The maintenance plan and associated SIP revisions to Colorado's Regulation No. 11 and Regulation No. 13 will not interfere with attainment, reasonable further progress, or any other applicable requirement of the CAA.

VIII. Final Action

In this action, EPA is approving the Fort Collins carbon monoxide redesignation request, maintenance plan, and the revisions to Regulation No. 11 and Regulation No. 13.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective September 22, 2003 without further notice unless the Agency receives adverse comments by August 21, 2003.

If EPA receives such comments, then we will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on September 22, 2003 and no further action will be taken on the proposed rule.

Statutory and Executive Order Reviews

(a) Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

(b) Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must approve all "collections of information" by EPA. The act defines collection of information" as a requirement for "answers to identical reporting or recordkeeping requirements imposed on ten or more persons" 44 U.S.C. 3502(3)(A). The Paperwork Reduction Act does not apply as this rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

(c) Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the SIP final approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2). Redesignation of an area to attainment under sections 107(d)(3)(D) and (E) of the Clean Air Act does not impose any new requirements. Redesignation to attainment is an action that affects the legal designation of a geographical area and does not impose any regulatory requirements. Therefore, because the final approval of the redesignation does not create any new requirements, I certify that the final approval of the redesignation request will not have a significant economic impact on a substantial number of small entities.

(d) Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

(e) Executive Order 13132, Federalism

Executive Order 13132, Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. In addition, redesignation of an area to attainment under sections 107(d)(3)(D) and (E) of the Clean Air Act does not impose any new requirements. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

(f) Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

This final rule does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This action does not involve or impose any requirements that affect Indian Tribes. Thus, Executive Order 13175 does not apply to this final rule.

(g) Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

(h) Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211 "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

(i) National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

(j) Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2). This rule will be effective September 22, 2003 unless EPA receives adverse written comments by August 21, 2003.

(k) Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 22, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2) of the Clean Air Act.))

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: June 23, 2003.

Robert E. Roberts,

Regional Administrator, Region VIII.

■ Parts 52 and 81, title 40, chapter I, of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart G—Colorado

■ 2. Section 52.320 is amended by adding paragraph (c)(99) to read as follows:

§ 52.320 Identification of plan.

* * * * *

(c) * * *

(99) On August 9, 2002, the Governor of Colorado submitted SIP revisions to Colorado's Regulation No. 11 "Motor Vehicle Emissions Inspection Program" that eliminate the requirement in the SIP for the implementation of a motor vehicle inspection and maintenance program in Larimer County (which includes the Fort Collins area) after January 1, 2004. On August 9, 2002, the Governor also submitted SIP revisions to Colorado's Regulation No. 13 "Oxygenated Fuels Program" that eliminate the oxygenated fuel requirements for Larimer County (which includes the Fort Collins area) after January 1, 2004, and make changes to sections I.D., II.A., II.B., II.C., II.D., II.E., II.F., II.G., and II.H. On August 9, 2002, the Governor also submitted SIP revisions to Colorado's State Implementation Plan Specific Regulations for Nonattainment and Attainment/Maintenance Areas (Local Elements) that eliminate Clean Air Act section 172(c)(9) carbon monoxide contingency measures for the Fort Collins area. We originally approved these contingency measures on December 23, 1997, and our approval was codified in paragraph (c)(71) of this section.

(i) Incorporation by reference

(A) Regulation No. 11 "Motor Vehicle Emissions Inspection Program", 5 CCR 1001–13, Part A.I, as adopted on July 18, 2002, and effective September 30, 2002.

(B) Regulation No. 13 "Oxygenated Fuels Program", 5 CCR 1001–16, except for section III, as adopted on July 18, 2002, effective September 30, 2002, which supersedes and replaces all prior versions of Regulation No. 13.

■ 3. Section 52.349 is amended by adding paragraph (h) to read as follows:

§ 52.349 Control strategy: Carbon monoxide.

* * * * *

(h) Revisions to the Colorado State Implementation Plan, carbon monoxide NAAQS Redesignation Request and Maintenance Plan for Fort Collins entitled "Carbon Monoxide Redesignation Request and Maintenance Plan for the Fort Collins Area," excluding Part I—Chapter 1 and Part I—Chapter 2, as adopted by the Colorado Air Quality Control Commission on July 18, 2002, State effective September 30, 2002, and submitted by the Governor on August 9, 2002.

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401-*et seq.*

■ 2. In § 81.306, the table entitled "Colorado-Carbon Monoxide" is amended by revising the entry for "Fort Collins Area" to read as follows:

§ 81.306 Colorado.

* * * * *

COLORADO—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Fort Collins Area:				
Larimer County (part)	Sept. 22, 2003	Attainment.		
Fort Collins Urban Growth Area Boundary as adopted by the City of Fort Collins and the Larimer County Commissioners and in effect as of July 30, 1991.				

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 03–18303 Filed 7–21–03; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7530–8]

Texas: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Removal of immediate final rule.

SUMMARY: EPA is removing the immediate final rule, Texas: Final Authorization of State Hazardous Waste Management Program Revisions, published on April 15, 2003, at 68 FR 18126, which authorized changes to Texas' hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA stated in the immediate final rule that if EPA received written comments that opposed this authorization during the comment period, EPA would publish a timely notice of withdrawal in the **Federal Register**. Since EPA did receive comments that opposed this authorization, EPA is removing the immediate final rule. EPA will address these comments in a subsequent final action.

DATES: As of July 22, 2003. EPA removes the immediate final rule published on April 15, 2003, at 68 FR 18126.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533.

SUPPLEMENTARY INFORMATION: EPA's removal of this immediate final rule is based on the Agency receiving written comments that opposed this authorization. The EPA is removing the immediate final rule, Texas: Final Authorization of State Hazardous Waste Management Program Revisions, published on April 15, 2003, at 68 FR 18126, which authorized changes to Texas' hazardous waste rules. EPA stated in the immediate final rule that if EPA received written comments that opposed this authorization during the comment period, EPA would publish a timely notice of withdrawal in the **Federal Register**. The immediate final rule became effective June 16, 2003. However, since EPA received comments that opposed this action, EPA is today removing the immediate final rule. EPA will address the comments received during the comment period in a subsequent final action.

Dated: July 11, 2003.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 03–18293 Filed 7–21–03; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 530

[Docket No. 03–03]

Amendment to Service Contract Regulations

July 17, 2003.

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is amending its regulations on the electronic filing of service contracts for ocean transportation under the Shipping Act of 1984 ("Shipping Act") (46 U.S.C. app. 1701 *et seq.*), as amended by the Ocean Shipping Reform Act of 1998 ("OSRA"), to add a provision which permits persons authorized to transmit electronically service contract filings for vessel-operating common carriers, conferences and agreements, to correct, within 48 hours, an original service contract filing or an amendment that is defective due to electronic transmission errors. The revision allows a "corrected transmission" of the original service contract or amendment submission to be designated as such and filed in the Commission's electronic service contract filing system, SERVCON.

EFFECTIVE DATE: September 8, 2003.

FOR FURTHER INFORMATION CONTACT: Florence A. Carr, Director, Bureau of Trade Analysis, Federal Maritime Commission, 800 North Capitol Street, NW., Room 940, Washington, DC 20573, 202–523–5796, E-mail: *florence@fmc.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Federal Maritime Commission initiated this proceeding by a Notice of Proposed Rulemaking ("NPR") published in the **Federal Register** on April 2, 2003, 68 FR 15978. The NPR solicited comment on the proposed rule from the public. Three comments were received. Comments were submitted by Distribution-Publications, Inc. ("DPI") and Pacific Coast Tariff Bureau ("PCTB"), both tariff publishers. Attorney Howard Levy also filed a comment.

All of the comments were generally supportive of the proposed rule. Both tariff publishers endorsed the scope of errors to be corrected under the rule. The comments of DPI specifically noted that the 48-hour window to correct electronic transmission errors in service contract filings is the right amount of time for the correction process. The comments of PCTB also included a suggestion that the SERVCON system should be altered further to reintroduce the ability of a filer to completely withdraw a filed service contract or amendment that contains erroneous matter.

Discussion

Section 8(c) of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 ("OSRA"), 46 U.S.C. app. 1707(c), and the Commission's current service contract regulations, 46 CFR part 530, subpart A, require service contracts between shippers and ocean common carriers in the foreign commerce of the United States to be filed electronically with the Commission on a confidential basis. Only an "authorized person," as defined in 46 CFR 530.3(c), can access the confidential section of the Commission's electronic service contract filing system, SERVCON, available via the Commission's website. Some carriers use individual employees as the authorized person to file their service contracts; however, the majority of carriers authorize third parties to make their service contract filings. The filings may consist of an original service contract or an amendment to an existing service contract.

Current regulations provide for the amendment, correction, and cancellation of service contract filings (46 CFR 530.10). This final rule will provide filers the ability to correct purely electronic "transmission errors" made when filing either the original service contract or an amendment to a service contract into SERVCON, or errors made in the process of converting the service contract filing into electronic format for submission to the SERVCON system.

Under this final rule only errors resulting from electronic transmission and data conversion for SERVCON format may be corrected. Examples of substantive service contract changes that are not permitted under the new 46 CFR 530.10(d) are: Change of rates; deletion of a port or point to be served or a commodity to be carried under the contract; addition or deletion of a shipper entitled to access the service contract; and modification of the duration or minimum quantity commitment of the contract. This is not an exhaustive list, but instead serves as a specific example for general guidance. These and other similar types of changes should continue to be made as "amendments" under 46 CFR 530.10(b) or, if retroactivity is deemed necessary, by filing a request for permission to correct a clerical or administrative error in the terms of a filed service contract under 46 CFR 530.10(c).

Corrections to an initial filing are allowed within 48 hours from the time and date of receipt recorded in SERVCON (excluding Saturdays, Sundays and legal public holidays). For example, an initial filing received at 5 p.m. on a Friday must be corrected before 5 p.m. the following Tuesday. The SERVCON system currently has and will continue to have the ability to identify such corrected service contract filings. The Bureau of Trade Analysis will monitor the use of the correction process; any abuse of the limited permission in the rule would be considered a violation of the Commission's regulations.

Under this new rule, the SERVCON system will be modified to accept only corrected service contracts that the filer identifies as such and for which the filer provides a description of the changes being made by the correction process. A new field will be added to the online filing system as a checkbox for the filer to identify the submission as a corrected service contract. If the filer fails to use this new checkbox, the contract will be rejected because the SERVCON system will not accept service contracts that have duplicate file names or service contract or amendment numbers. The system also will flag resubmitted contracts and will give a unique internal file name to the corrected transmission for FMC monitoring purposes. A new separate SERVCON field for filers to enter a description of the corrections being made will be provided.

The Commission has determined that it will not add a "withdrawal" function to the final rule as recommended by PCTB. The Commission's previous Automated Tariff Filing and Information ("ATFI") system did have a "withdrawal" function that permitted a filer to withdraw a service contract filing containing erroneous matter on the same date that it was filed and allowed the re-filing of the appropriate copy. That "withdrawal" function was eliminated when the ATFI system was discontinued September 30, 1999. Presumably, filers have been accomplishing any needed "withdrawals" of service contracts by filing an amendment to cancel an unintentionally filed document, which is permitted under 46 CFR 530.10(b). Therefore, even though the final rule does not permit reuse of the service contract number and file name, or the complete withdrawal of an unintended contract filing as suggested by PCTB, the Commission does not believe it is necessary to add a separate "withdrawal" feature to the SERVCON system. The 48-hour window to correct a transmission error contained in the final rule, 46 CFR 530.10(d), adequately provides an opportunity for filers to address erroneous service contract filings. For example, under the final rule the SERVCON system will accept a correction via the Corrected Transmission ("CT") function to allow an erroneous service contract number, organization number, or document file name on an initial contract filing to be corrected.

List of Subjects in 46 CFR Part 530

Freight, Maritime carriers, Reporting and record keeping requirements.

■ For the reasons discussed in the preamble, the Commission is adding a new paragraph (d) in 46 CFR part 530, subpart B, section 530.10, as follows:

PART 530—SERVICE CONTRACTS

■ 1. The authority citation for part 530 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1704, 1705, 1707, 1716.

■ 2. Section 530.10 is amended by revising the section heading; by redesignating paragraphs (d) and (e) as paragraphs (e) and (f) and by adding a new paragraph (d) to read as follows:

§ 530.10 Amendment, correction, cancellation, and electronic transmission errors.

* * * * *

(d) *Electronic transmission errors.* An authorized person who experiences a purely technical electronic transmission error or a data conversion error in transmitting a service contract filing or an amendment thereto is permitted to file a Corrected Transmission ("CT") of that filing within 48 hours of the date and time of receipt recorded in SERVCON (excluding Saturdays, Sundays and legal public holidays). This time-limited permission to correct an initial defective service contract filing is not to be used to make changes in the original service contract rates, terms or conditions that are otherwise provided for in paragraphs 530.10(b) and (c) of this section. The CT tab box in SERVCON must be checked at the time of resubmitting a previously filed service contract, and a description of the corrections made must be stated at the beginning of the corrected service contract in a comment box. Failure to check the CT box and enter a description of the correction will result in the rejection of a file with the same name, since documents with duplicate file names or service contract and amendment numbers are not accepted by SERVCON.

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–18565 Filed 7–21–03; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket Nos. 96–262, 94–1, 99–249, 96–45 FCC 03–139]

Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Assessment of Presubscribed Interexchange Carrier Charges of Public Payphones

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission modified its rules so that payphone lines are no longer subject to the PICC (Presubscribed Interexchange Carrier Charge). This action is necessary because the Commission determined that eliminating the PICC for payphone lines is more consistent with section 276 of the Act. To ensure compliance with the anti-subsidization and anti-discrimination provisions of section 276 of the Act, the Commission determined that payphone line rates should be set according to the cost-based new services test. Because the multi-line business PICC is a subsidy from multi-line business lines to residential and single-line business lines whose subscriber line charge (SLC) rates are capped by the Commission's rules, the PICC is not cost-based and so it does not comply with the new services test. The intended effect of this action is to exempt payphones lines from the PICC.

DATES: Effective October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Aaron Goldschmidt, Wireline Competition Bureau, 202–418–1520.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration, FCC 03–139 in CC

Docket No. 96–262, adopted on June 19, 2003 and released on June 25, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402 Washington, DC 20554. The full text also may be downloaded at *http://www.fcc.gov. Introduction.* On July 21, 2000, One Call Communications, Inc. d/b/a Opticom ("One Call") filed a petition for reconsideration and clarification of the Commission's *CALLS Order. See Access Charge Reform*, CC Docket No. 96–262, Sixth Report and Order in CC Docket Nos. 96–262 and 94–1, Report and Order in CC Docket No. 99–249, Eleventh Report and Order in CC Docket No. 96–45, 65 FR 38684, June 21, 2000. In its petition, One Call sought to apply to payphone lines the common line cost recovery mechanism for single-line business and residential subscriber lines established in the *CALLS Order*, rather than the cost recovery mechanism applicable to multi-line business lines. In this document, the Commission grants One Call's request to reconsider the treatment of payphone lines under the Commission's access charge rules. Specifically, the Commission adopts a rule exempting payphone lines from the PICC, and the Commission denies One Call's request that payphone lines be treated as single-line business lines for purposes of assessment of the SLC.

The PICC for Payphone Lines. The Commission finds that payphone lines should be exempt from the PICC. In furtherance of section 276(a), the Commission has determined that payphone line rates should be set according to the cost-based new services test. *See* 47 U.S.C. 276(a) (1) and the *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket 96–128, Report and Order, 61 FR 52307, October 7, 1996. The multi-line business PICC, however, does not recover the costs of the lines on which it is assessed. Rather, it recovers revenues that would be recovered through charges on residential and single-line business lines, if those charges were not capped. Thus, because the PICC is not cost-based, it does not comply with the new services test.

The Commission notes that, in adopting section 276(b), Congress desired to "promote the widespread deployment of payphone services to the general public." *See* 47 U.S.C. 276(b)(1). The Commission believes that this is consistent with a universal service function that payphones provide to those who cannot otherwise afford telephone service. The Commission concludes that it is bad policy to impose a non-cost-based charge, such as the PICC, on payphone lines because doing so may limit the deployment of payphone services that serve these important functions. Given Congress's stated intent to preserve the availability of payphones, the universal service functions payphones provide, and that the PICC does not reflect costs incurred for the provision of payphone service, the Commission finds it desirable to exempt payphone lines from the PICC. Although the Commission's Order establishes that payphone lines are exempted from the PICC on a going-forward basis, the Commission makes no finding with respect to the application of PICCs to payphone lines prior to the effective date of the Order.

Therefore, price cap LECs that still assess the PICC on multi-line business lines must adjust their rates in their next annual access tariff filings to reflect that the PICC no longer applies to payphone lines. Price cap LECs may recover the revenue previously recovered through assessing the PICC on payphone lines by adjusting their multi-line business PICCs. To the extent the PICC cap prevents such recovery, price cap LECs may recover the revenue shortfall through Carrier Common Line Charges (CCLCs).

The Appropriate SLC for Payphone Lines. The Commission rejects One Call's proposal that payphone lines be treated as single-line business lines for the purpose of assessing the SLC. Although the multi-line business PICC represents a subsidy flowing from multi-line business lines to residential and single-line business lines, the multi-line business SLC is a cost-based charge. The SLCs are the primary method by which incumbent LECs recover their interstate common line costs, and the SLC caps ensure that the SLCs never recover more than the carrier's per-line permitted revenues. *See* 47 CFR 69.152(d), (e) and (k). Moreover, the Commission's rules prevent a LEC from subsidizing one class of customers through the SLCs assessed on another class of customers. *See id.* Thus, the assessment of multi-line business line SLCs on payphone lines does not result in any subsidy to other lines. In addition, to prevent a BOC from overrecovering its costs for a payphone line, the BOC must reduce the monthly per-line charge for payphone lines determined in a state proceeding under the new services test by the amount of the SLC. If the Commission were to treat payphone lines as single-line business lines, however, the amount by which a LEC's per-line revenue requirement exceeds the single-line business line SLC cap, which is lower than the multi-line business SLC cap, would then need to be recovered through increased PICCs on multi-line businesses. This would result in multi-line business lines subsidizing LEC-owned payphone lines in contravention of the mandate of section 276(a) against such subsidization. *See* 47 U.S.C. 276(a)(1).

Final Regulatory Certification. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 5 U.S.C. 601(3). A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). *See* 15 U.S.C. 632.

The *CALLS Order* revised the Commission's system of common line access charges by increasing the residential and single-line business line SLC, while simultaneously eliminating the PICC for these lines. The *CALLS Order* also required annual reductions in traffic sensitive switching and trunking access rates until they reached a specified level. In addition, the *CALLS Order* also established an interstate access universal support mechanism that provides explicit support to replace support that was implicit in interstate access charges.

This document responds to a petition for reconsideration that sought, for payphone lines, the application of the common line cost recovery mechanism for residential and single-line business lines established in the *CALLS Order*, rather than the cost recovery mechanism applicable to multi-line business lines. This document grants the petition insofar as it sought the elimination of the PICC for payphone lines, and denies the request that payphone lines be subject to the SLC applicable to single-line business and residential lines. The rule revision will result in a positive net impact on small entities, in that operator service providers will no longer be assessed the PICC on payphone lines. In addition, because small and rural incumbent price cap LECs will be able to increase their PICCs or common line carrier charges to offset the reduction in the number of lines being assessed the PICC revenue, their overall common line revenues will not be affected. Thus, the Commission expects that the rule revision will have a *de minimis* impact on these affected small entities. Therefore, the Commission certifies that the requirements of the document will not have a significant economic impact on a substantial number of small entities.

The Commission will send a copy of the document, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. *See* 5 U.S.C. 801(a)(1)(A). In addition, the document (or summary thereof) and this final certification will be published in the **Federal Register**, and will be sent to the Chief Counsel for Advocacy of the U.S. Small Business Administration. See 5 U.S.C. 605(b).

Paperwork Reduction Analysis. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995, and it contains no new or modified information collections subject to Office of Management and Budget review.

Ordering Clauses. Accordingly, pursuant to sections 1, 4(i) and (j), 201–209, and 276 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 201–209, and 276, this Order and Order on Reconsideration *is adopted.* One Call's Petition for Reconsideration and Clarification *is granted* to the extent indicated herein and otherwise *is denied.* The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration. The provisions of this Order *shall be effective* on October 1, 2003.

List of Subjects in 47 CFR Part 69

Communications common carriers, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rules Changes

■ For the reasons set forth in the preamble, amend part 69 of title 47 of the Code of Federal Regulations as follows:

■ 1. The authority citation continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

■ 2. Amend § 69.153 by adding paragraph (f) to read as follows:

§ 69.153 Presubscribed interexchange carrier charge (PICC).

* * * * *

(f) The PICC shall not be applicable to any payphone lines.

[FR Doc. 03–18542 Filed 7–21–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 02–113; FCC 03–77]

Broadcast Services; Television Stations Digital Television (DTV) Construction Deadline

AGENCY: Federal Communications Commission.

ACTION: Policy statement.

SUMMARY: In this document, the Commission adopts a policy to be followed when the staff denies a request to extend a television station's digital television (DTV) construction deadline. The intended effect is to alert stations as to the sanctions that will be applied if they fail to meet their DTV deadline.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, Media Bureau, Office of Broadcast Licensing, Video Division, (202) 418–2324.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Report and Order* (*"R&O"*) in MM Docket No. 02–113, FCC 02–150, adopted April 4, 2003, and released April 16, 2003. The complete text of this *R&O* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., CY–B402, Washington, DC 20554. The *R&O* is also available on the Internet at the Commission's Web site: *http://www.fcc.gov.*

Synopsis

1. The Commission has adopted this *R&O* announcing its policy to be followed when requests to extend digital television (DTV) construction deadlines are denied. The Commission announced a set of graduated sanctions that it will impose. Under the first step of its approach, the Commission will deny the request for an unqualified extension and admonish the station for its failure to comply with its DTV construction obligation. The station will be required to submit a report within thirty (30) days outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Absent extraordinary and compelling circumstances, the construction completion date will be no later than six months from the date of admonishment. Sixty (60) days later, the station will be required to submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. If at any time during this six month period, the station fails to demonstrate that it is taking all reasonable steps to complete construction or fails to justify the further delays it has encountered, or the Commission otherwise find that the licensee has acted in bad faith, the Commission will consider the imposition of additional sanctions including proceeding immediately to the second step.

2. Under the second step in the approach, if the station has not come into compliance with the DTV construction rule within the six month period, then, absent extraordinary and compelling circumstances, the Commission will impose further sanctions against the licensee. The Commission will issue a Notice of Apparent Liability for forfeiture to the licensee. It will require that the station report every thirty (30) days on its proposed construction milestones and its efforts to meet those milestones. Once again, failure to adequately demonstrate that the station was taking all reasonable steps towards construction and to justify any additional delays that were encountered, will result in the imposition of additional sanctions.

3. Under the third and final step in the approach, if the station still had failed to come into compliance with the DTV construction rule within an additional six-month period of time (*i.e.*, one year from the date of the formal admonition), then, absent extraordinary and compelling circumstances, the Commission will consider its construction permit for its DTV facilities to have expired and will rescind the station's DTV authorization. The Commission concluded that no hearing was necessary prior to rescinding the station's DTV authorization. The Commission also concluded that it would not make the station's vacant

DTV allotment available. The Commission also announced that the station will be required to surrender its analog authorization at the end of the DTV transition.

Administrative Matters

4. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] and Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Order and Notice of Proposed Rulemaking*, 67 FR 38459, June 4, 2002.[2] The Commission sought written public comment on the proposals in the *Order and Notice of Proposed Rulemaking* including comment on the IRFA. The comments received are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

A. Need for, and Objectives of, the Proposed Rules

5. The Commission adopts these remedial measures to prevent undue delay in the required build out of DTV facilities.

B. Summary of Significant Issues Raised By Public Comments in Response to the IRFA

6. New Life Evangelistic Center, Inc (NLEC) filed comments on the IRFA. NLEC complains that television stations will have to spend millions of dollars to comply with the DTV construction requirement. However, that matter was previously considered in the DTV rulemaking proceeding wherein the Commission adopted the DTV construction requirement and timetable. In the instant proceeding, the Commission only considered what steps to take when a station fails to meet its construction requirement. Therefore, NLEC's comments were not on point.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

7. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[4] The RFA defines the term "small entity" as having the same meaning as "small business," "small organization," and "small governmental jurisdiction."[5] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[6] A "small business" concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[7]

8. The proposals in the *R&O* will affect only full-power television broadcasters. As of September 30, 2001, the Commission had licensed a total of 1,686 full-power television stations.[8] SBA defines television broadcasting establishments that have $12 million or less in annual receipts as a small business.[9] According to Census Bureau data for 1997, there were 906 firms in this category, total, that operated for the entire year.[10] Of this total, 728 firms had annual receipts of under $10 million, and an additional 71 had receipts of $10 million to $24,999,999. Thus, under this size standard, the majority of the firms are considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

9. The *R&O* contains a new reporting requirement. Stations that fail to construct their DTV stations by the requisite deadline and fail to justify an extension of their DTV construction permit will fall into the remedial measures set forth in the document. Among the remedial measures, is the requirement that the station submit periodic reports detailing their efforts to comply with the extended DTV construction deadline. The reports will be filed in letter form with the Secretary's office.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

10. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[11]

11. The *R&O* contains remedial steps for failure of broadcast stations to comply with the DTV construction schedule. These steps are applied only after a station has failed to demonstrate this it qualifies for an extension of its schedule. The Commission's rules and policies already contain flexible measures for allowing stations in smaller markets to seek an extension of their DTV construction deadline. Those measures remain unchanged by the *R&O*.

12. One of the sanctions that may be used is the issuance of a notice of apparent liability for forfeiture to stations that do not comply with their DTV construction obligation. We already take small entity status, including potential inability to pay, into account when assessing the need for, and amount of, monetary forfeitures.[12]

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

13. None.

G. Report to Congress

14. The Commission will send a copy of the *R&O*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[13] In addition, the Commission will send a copy of the *R&O* including this FRFA to the Chief Counsel for Advocacy of the SBA. A copy of the *R&O* and FRFA (or summaries thereof) will also be published in the **Federal Register**.[14]

15. *Authority.* This *R&O* is issued pursuant to authority contained in sections 4(i), 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, and 307, and section 202(h) of the Telecommunications Act of 1996.

16. The Request for Reconsideration filed by Sinclair Broadcast Group, Inc., is denied.

Ordering Clauses

17. Pursuant to the authority contained in sections 1, 2(a), 4(i), 303, 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, and 310, and section 202(h) of the Telecommunications Act of 1996, this *R&O* is adopted.

18. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *R&O*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–18510 Filed 7–21–03; 8:45 am]

BILLING CODE 6712–01–P

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

[2] Remedial Steps For Failure to Comply With Digital Television Construction Schedule, 17 FCC Rcd 9962 (2002) (*Order and Notice of Proposed Rulemaking*).

[3] *See* 5 U.S.C. 604.

[4] 5 U.S.C. 603(b)(3).

[5] *Id.* 601(6).

[6] *Id.* 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 32). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3).

[7] *Id.* 632.

[8] News Release, "Broadcast Station Totals as of September 30, 2001" (released October 30, 2001).

[9] NAICS Code 513120.

[10] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size," Table 4, NAICS code 513120 (issued Oct. 2000).

[11] 5 U.S.C. 603(c).

[12] *See, e.g.*, In the Matter of the Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to incorporate the Forfeiture Guidelines, CI Docket No. 95–6, *Report and Order*, 12 FCC Rcd 17087, 17109 (1997).

[13] *See* 5 U.S.C. 801(a)(1)(A).

[14] *See* 5 U.S.C. 604(b).

DEPARTMENT OF DEFENSE

48 CFR Part 207

[DFARS Case 2002–D036]

Defense Federal Acquisition Regulation Supplement; Buy-to-Budget Acquisition of End Items

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 801 of the National Defense Authorization Act for Fiscal Year 2003. Section 801 authorizes DoD to acquire a higher quantity of an end item than the quantity specified in law, under certain conditions.

DATES: Effective date: July 22, 2003.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before September 22, 2003, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil*. Please cite DFARS Case 2002-D036 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Susan Schneider, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2002–D036.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, (703) 602–0326.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule adds a new subpart at DFARS 207.70 to implement Section 801 of the National Defense Authorization Act for Fiscal Year 2003 (Pub. L. 107–314). Section 801 added 10 U.S.C. 2308, which provides that DoD may acquire a higher quantity of an end item than the quantity specified in a law providing for the funding of the acquisition, if the agency head makes certain findings with regard to the acquisition.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because any additional quantities acquired as a result of this rule must be acquired without additional funding. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002–D036.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 801 of the National Defense Authorization Act for Fiscal Year 2003 (Pub. L. 107–314), which authorizes DoD to acquire a higher quantity of an end item than the quantity specified in law, under certain conditions. Section 801 required issuance of final implementing regulations by April 1, 2003. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 207

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR Part 207 is amended as follows:

■ 1. The authority citation for 48 CFR Part 207 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 207—ACQUISITION PLANNING

■ 2. Subpart 207.70 is added to read as follows:

Subpart 207.70—Buy-to-Budget—Additional Quantities of End Items

Sec.
207.7001 Definition.
207.7002 Authority to acquire additional quantities of end items.
207.7003 Limitation.

Subpart 207.70—Buy-to-Budget—Additional Quantities of End Items

207.7001 Definition.

End item, as used in this subpart, means a production product assembled, completed, and ready for issue or deployment.

207.7002 Authority to acquire additional quantities of end items.

10 U.S.C. 2308 authorizes DoD to use funds available for the acquisition of an end item to acquire a higher quantity of the end item than the quantity specified in a law providing for the funding of that acquisition, if the head of an agency determines that—

(a) The agency has an established requirement for the end item that is expected to remain substantially unchanged throughout the period of the acquisition;

(b) It is possible to acquire the higher quantity of the end item without

additional funding because of production efficiencies or other cost reductions;

(c) The amount of funds used for the acquisition of the higher quantity of the end item will not exceed the amount provided under that law for the acquisition of the end item; and

(d) The amount provided under that law for the acquisition of the end item is sufficient to ensure that each unit of the end item acquired within the higher quantity is fully funded as a complete end item.

207.7003 Limitation.

For noncompetitive acquisitions, the acquisition of additional quantities is limited to not more than 10 percent of the quantity approved in the justification and approval prepared in accordance with FAR part 6 for the acquisition of the end item.

[FR Doc. 03–18449 Filed 7–22–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 217

[DFARS Case 2003–D004]

Defense Federal Acquisition Regulation Supplement; Multiyear Procurement Authority for Environmental Services for Military Installations

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 827 of the National Defense Authorization Act for Fiscal Year 2003. Section 827 authorizes DoD to enter into multiyear contracts for environmental remediation services for military installations.

DATES: *Effective date:* July 22, 2003.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before September 22, 2003, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil*. Please cite DFARS Case 2003-D004 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Mr. Euclides Barrera, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2003–D004.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Mr. Euclides Barrera, (703) 602–0296.

SUPPLEMENTARY INFORMATION:

A. Background

10 U.S.C. 2306c provides authority for DoD to enter into contracts for periods of not more than 5 years for certain services, and for items of supply related to those services, even though funds would otherwise be available for obligation only within the fiscal year for which appropriated. Such contracts are authorized if the head of the agency finds that (1) there will be a continuing requirement for the services consonant with current plans for the proposed contract period; (2) the furnishing of such services will require a substantial initial investment in plant or equipment, or the incurrence of substantial contingent liabilities for the assembly, training, or transportation of a specialized work force; and (3) the use of such a contract will promote the best interests of the United States by encouraging effective competition and promoting economies in operation. 10 U.S.C. 2306c is implemented at DFARS 217.171(a).

Section 827 of the National Defense Authorization Act for Fiscal Year 2003 (Pub. L. 107–314) amended 10 U.S.C. 2306c to add environmental remediation services for military installations to the types of services for which multiyear contracting is authorized. This interim rule amends DFARS 217.171(a), and adds a definition of "military installation" at DFARS 217.103, to implement Section 827.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because application of the rule is limited to contracts for environmental remediation services for military installations. In addition, before using the multiyear contracting authority provided by the rule, the head of the agency must determine that certain conditions exist, to include a determination that use of a multiyear contract will promote the best interests of the United States by encouraging effective competition and promoting economies in operations. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003–D004.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 827 of the National Defense Authorization Act for Fiscal Year 2003 (Pub. L. 107–314), which provides authority for DoD to enter into multiyear contracts for environmental remediation services for military installations. Section 827 became effective upon enactment on December 2, 2002. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 217

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR Part 217 is amended as follows:

■ 1. The authority citation for 48 CFR Part 217 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 217—SPECIAL CONTRACTING METHODS

■ 2. Section 217.103 is revised to read as follows:

217.103 Definitions.

As used in this subpart—

Advance procurement means an exception to the full funding policy that allows acquisition of long lead time items (advance long lead acquisition) or economic order quantities (EOQ) of items (advance EOQ acquisition) in a fiscal year in advance of that in which the related end item is to be acquired. Advance procurements may include materials, parts, components, and effort that must be funded in advance to maintain a planned production schedule.

Military installation means a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department or, in the case of an activity in a foreign country, under the operational control of the Secretary of a military department or the Secretary of Defense (10 U.S.C. 2801(c)(2)).

■ 3. Section 217.171 is amended by adding paragraph (a)(1)(v) to read as follows:

217.171 Multiyear contracts for services.

(a) * * *

(1) * * *

(v) Environmental remediation services for—

(A) An active military installation;

(B) A military installation being closed or realigned under a base closure law as defined in 10 U.S.C. 2667(h)(2); or

(C) A site formerly used by DoD.

* * * * *

[FR Doc. 03–18450 Filed 7–21–03; 8:45 am]

BILLING CODE 5001–08–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1811, 1823, 1851, and 1852

Government-Owned Contractor-Operated Vehicle Fleet Management and Reporting

AGENCY: National Aeronautics and Space Administration

ACTION: Interim rule.

SUMMARY: This interim rule revises the NASA FAR Supplement (NFS) by requiring contractors to collect data and report on usage of Government-owned contractor-operated vehicles, including Interagency Fleet Management System (IFMS) vehicles.

DATES: *Effective Date:* This interim rule is effective July 22, 2003.

Comment Date: Interested parties should submit comments to NASA at the address below on or before September 22, 2003 to be considered in formulation of the final rule.

ADDRESSES: Submit written comments to Patrick Flynn, NASA, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546 or via the Internet at *Patrick.Flynn@nasa.gov*.

FOR FURTHER INFORMATION CONTACT: Patrick Flynn, NASA, Office of Procurement, Contract Management Division (Code HK); (202) 358–0460; e-mail: *Patrick.Flynn@nasa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

In Executive Order 13149, "Greening the Government Through Federal Fleet and Transportation Efficiency", section 505 requires Federal agencies to ensure that all Government-owned contractor-operated vehicles comply with all applicable goals and other requirements of the order. Section 302(c) requires agencies to collect data and report on performance in meeting the goals of the order, in accordance with requirements and guidance from the Department of Energy. In July 2000, the Department of Energy prepared the Guidance Document for Federal Agencies, as required by Executive Order 13149. Section 2–3 requires agencies to report data on Government-owned motor vehicle usage, using DOE's Federal Automotive Statistical Tool (FAST). FAST is accessed through *http://fastweb.inel.gov/*. Information required for FAST reporting must be obtained from contractors who have been authorized to obtain vehicles and related services pursuant to FAR paragraph 11.101(b)(1) and the new NFS 1811.101(b)(1) added under this interim rule.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This interim rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

NASA certifies that this interim rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because fewer than 100 contracts awarded to both large and small businesses are affected.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the changes contain recordkeeping or information collection requirements. The Office of Management and Budget approved this reporting requirement under OMB control number 2700–0106.

D. Determination To Issue an Interim Rule

In accordance with 41 U.S.C. 418(d), NASA has determined that urgent and compelling reasons exist to promulgate this interim rule. The basis for this determination is that contractual reporting requirements contained in this interim rule are needed to ensure consistent reporting and an accurate baseline of Government vehicles beginning October 1, 2003. However, pursuant to Pub. L. 98–577 and FAR 1.501, NASA will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 1801, 1811, 1823, 1851, and 1852

Government Procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

■ Accordingly, 48 CFR Parts 1801, 1811, 1823, 1851, and 1852 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 1801, 1811, 1823, 1851, and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

1801.106 [Amended]

■ 2. Amend the table in paragraph (1) of section 1801.106 by adding in numerical sequence the following NFS Segment and OMB Control Number:

NFS segment	OMB control number
1823.271	2700–0106

PART 1811—DESCRIBING AGENCY NEEDS

■ 3. Amend section 1811.101 by adding paragraph (b)(1) to read as follows:

1811.101 Order of precedence for requirements documents.

* * * * *

(b)(1) Requirements for the use of energy efficient motor vehicles will be established in accordance with NPG 6200.1, "NASA Transportation and General Traffic Management".

* * * * *

PART 1823—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

■ 4. Add sections 1823.270 and 1823.271 to read as follows:

1823.270 Federal fleet and transportation efficiency.

Responsibility, policy and procedures for NASA's implementation of Executive Order 13149, "Greening the Government through Federal Fleet and Transportation Efficiency", including cost-effectiveness, are described in NPG 6200.1, "NASA Transportation and General Traffic Management."

1823.271 NASA Solicitation provision and contract clause.

Insert the clause at 1852.223–76, Federal Automotive Statistical Tool Reporting, in solicitations and contracts requiring contractor operation of Government-owned or -leased motor vehicles, including, but not limited to, interagency fleet management system (IFMS) vehicles authorized in accordance with FAR 51.2.

PART 1851—USE OF GOVERNMENT SOURCES BY CONTRACTORS

■ 5. Revise section 1851.202 to read as follows:

1851.202 Authorization.

(a) In accordance with NPG 6200.1, "NASA Transportation and General Traffic Management", the contracting officer shall obtain concurrence from the Transportation Officer before authorizing a contractor to obtain Government-owned or -leased vehicles and related services.

■ 6. Add section 1851.205 to read as follows:

1851.205 Contract clause.

When the clause at FAR 52.251–2 is included in a solicitation or contract, also include the clause set forth at 1852.223–76.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Add section 1852.223–76 to read as follows:

1852.223–76 Federal Automotive Statistical Tool Reporting.

As prescribed at 1823.271 and 1851.205, insert the following clause:

FEDERAL AUTOMOTIVE STATISTICAL TOOL REPORTING

JULY 2003

If authorized to operate Government-owned or -leased vehicles, including interagency fleet management system (IFMS) vehicles or related services in performance of this contract, the Contractor shall report the data describing vehicle usage required by the Federal Automotive Statistical Tool (FAST) by October 15 of each year. FAST is accessed through *http://fastweb.inel.gov/*.

(End of clause)

[FR Doc. 03–18624 Filed 7–21–03; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 71

[OST Docket No. OST–2002–13361]

RIN 2105–AD17

Standard Time Zone Boundary in the State of North Dakota: Relocation of Sioux County

AGENCY: Department of Transportation (DOT), Office of the Secretary (OST).

ACTION: Final rule.

SUMMARY: At the request of the Chairman of the Board of County Commissioners for Sioux County, ND, DOT is relocating the boundary between mountain time and central time in the State of North Dakota. DOT is moving all of the county east of State Highway 31 into the central time zone.

EFFECTIVE DATE: 2 a.m. MDT Sunday, October 26, 2003, which is the changeover from daylight saving to standard time.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, Room 10424, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9315, or by e-mail at *joanne.petrie@ost.dot.gov*.

SUPPLEMENTARY INFORMATION:

Under the Standard Time Act of 1918, as amended by the Uniform Time Act of 1966 (15 U.S.C. 260–64), the Secretary of Transportation has authority to issue regulations modifying the boundaries between time zones in the United States in order to move an area from one time zone to another. The standard in the statute for such decisions is "regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in interstate or foreign commerce."

Time zone boundaries are set by regulation (49 CFR part 71). Currently, under regulation, the southeastern part of the county around Fort Yates is in the central time zone and the remainder of the county is in the mountain time zone. The area near Fort Yates has the greatest population, is the county seat, and has the greatest concentration of schools, businesses, medical facilities, houses of worship and recreational facilities. Areas to the south and east of the county observe central time. Morton County, which is north of Sioux County, is currently split between central and mountain time. Morton County has asked to be changed to central time and that request is currently pending before the Department. Grant County, which lies to the northwest and Adams County, which lies to the west, both observe mountain time.

The Standing Rock Indian Reservation is geographically located in both North and South Dakota and covers approximately 2.3 million acres. All of Sioux County is part of the reservation. The Standing Rock Sioux observe central time. Under the Uniform Time Act, as amended, the county is currently divided between central and mountain time for federal, state and county purposes.

Request for a Change

In 2000, the Chairman of the Board of County Commissioners for Sioux County asked the Department of Transportation to place the entire county on central time. A DOT representative informed the Standing Rock Sioux of this request by telephone and sent a letter to the Chairman of the Tribal Council. On September 27, 2000, a representative of DOT visited the county and met with a representative of the Standing Rock Sioux Tribal Council to ascertain the Council's views on this request. The Tribal Representative explained that the tribe observed central time, had no plans to change that observance, and had no objection to the request of the Sioux County Board of County Commissioners.

On September 27, 2000, the DOT representative also held an informal public hearing at the Sioux County Courthouse to gather public views on this request. The hearing was widely advertised through local newspapers and radio and television stations. In addition, the public was invited to submit written comments to the Department on this possible change.

In addition to the County Commissioners and staff, one member of the public attended and presented testimony. The County Commissioners explained the inconvenience and confusion that resulted from the current time zone boundary. They outlined

geographic and economic conditions in the area and explained how people and businesses in the county interacted with neighboring areas.

Frank Tomac, a resident living in western Sioux County, concurred with most of the arguments presented by the County Commissioners. He suggested, however, that the time zone boundary be placed at State Highway 31, rather than the western border of the county. Mr. Tomac noted that the western part of the county is rural and very sparsely populated. He noted that there is no road going east to west in this part of the county. Residents must either go into South Dakota or drive a considerable distance into Grant County to get to the eastern part of the county. Because of the proximity with the South Dakota border, Mr. Tomac noted that many of the public services in this area are provided in South Dakota. Other services are provided in Grant County, which is on mountain time. In response to his comments, the Commissioners decided to amend their request.

In a petition dated November 1, 2001, the Chairman of the Board of County Commissioners for Sioux County asked the Department of Transportation to move the central portion of Sioux County, North Dakota, from the mountain time zone to the central time zone. In the petition, the Chairman asked:

"That the U.S. Department of Transportation move the time zone line separating central time and mountain time in Sioux County, North Dakota, west to Highway 31, so that all land in Sioux County east of Highway 31 would be in Central Time and all land west of Highway 31 would remain in Mountain Time.

This request is made for the following reasons:

1. Sioux County is currently one of the few counties in North Dakota that is divided in two as far as time zones go. A small area in the southeast corner of the county, including Fort Yates (the county seat) is already in the central time zone, and the entire rest of the county is in the mountain time zone.

2. That while Fort Yates operates on central time, a large part of the northern area of Sioux County, while technically being in the mountain time zone, already operates incorrectly on central time anyway.

3. That Fort Yates is the county seat and main center of commerce for the entire county, being the only town larger than five hundred people, and moving the entire eastern half of the county, where 95 percent of the population resides, to central time would eliminate confusion.

4. That virtually all television and radio broadcasts come out of Bismarck, ND, which is also on central time.

5. That virtually all supplies bought in Sioux County come out of Bismarck, ND, also.

6. That Sioux County residents regularly travel to Bismarck, ND, for shopping and recreational purposes.

7. That while the voters of Sioux County voted on June 13, 2000, to move Sioux County to the central time zone, the inhabitants of western Sioux County almost unanimously wish to remain on mountain time. This action would facilitate the wishes of all involved."

In response to the Board's action, Mr. Tomac sent written comments reiterating his position and urging the Department to set the boundary at Highway 31. No other written comments have been filed to date in response to our invitation.

Under DOT procedures to change a time zone boundary, the Department will generally begin a rulemaking proceeding if the highest elected officials in the area make a *prima facie* case for the proposed change. DOT determined that the Resolution of the Chairman of the County Commissioners of Sioux County, ND made a *prima facie* case that warranted opening a proceeding to determine whether the change should be made. On September 17, 2002, DOT issued a notice of proposed rulemaking (NPRM) proposing to make the requested change and inviting additional public comment. No comments were filed. We are, therefore, adopting the proposal without change.

As proposed in the NPRM, this change will go into effect during the next changeover from daylight saving time to standard time, which is on October 26, 2003.

Impact on Observance of Daylight Saving Time

This time zone proposal does not directly affect the observance of daylight saving time. Under the Uniform Time Act of 1966, as amended, the standard time of each time zone in the United States is advanced one hour from 2 a.m. on the first Sunday in April until 2:00 a.m. on the last Sunday in October, except in any State that has, by law, exempted itself from this observance.

Regulatory Analysis & Notices

This final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The rule primarily affects the convenience of individuals in scheduling activities. By itself, it imposes no direct costs. Its impact is localized in nature.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations, and governmental jurisdictions with populations of less than 50,000. This rule will primarily affect individuals and their scheduling of activities. Although it will affect some small businesses, not-for-profits and, perhaps, several small governmental jurisdictions, it will not be a substantial number. In addition, the change should have little, if any, economic impact.

Therefore, the Office of the Secretary certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under E.O. 12612 and have determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and E.O. 12875, Enhancing the Intergovernmental Partnership, (58 FR 58093; October 28, 1993) govern the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This final rule would not impose an unfunded mandate.

Taking of Private Property

This final rule would not affect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

This rulemaking is not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act and, therefore, an environmental impact statement is not required.

Consultation and Coordination With Indian Tribal Governments

E.O. 13175 provides that government agencies consult with tribes on issues that impact the Indian community. The Department consulted with the Standing Rock Sioux before issuing the NPRM and during the comment period. We will notify the Tribe of this final rule.

List of Subjects in 49 CFR Part 71

Time zones.

■ For the reasons discussed above, the Office of the Secretary revises Title 49 CFR part 71 to read as follows:

■ 1. The authority citation for part 71 continues to read:

Authority: Secs. 1–4, 40 Stat. 450, as amended; sec. 1, 41 Stat. 1446, as amended; secs. 2–7, 80 Stat. 107, as amended; 100 Stat. 764; Act of Mar. 19, 1918, as amended by the Uniform Time Act of 1966 and Pub. L. 97–449, 15 U.S.C. 260–267; Pub. L. 99–359; Pub. L. 106–564, 15 U.S.C. 263, 114 Stat. 2811; 49 CFR 159(a), unless otherwise noted.

■ 2. Paragraph (a) of § 71.7, Boundary line between central and mountain zones, is revised to read as follows:

§ 71.7 Boundary line between central and mountain zones.

(a) *Montana-North Dakota.* Beginning at the junction of the Montana-North Dakota boundary with the boundary of the United States and Canada southerly along the Montana-North Dakota boundary to the Missouri River; thence southerly and easterly along the middle of that river to the midpoint of the confluence of the Missouri and Yellowstone Rivers; thence southerly and easterly along the middle of the Yellowstone River to the north boundary of T. 150 N., R. 104 W.; thence east to the northwest corner of T. 150 N., R. 102 W.; thence south to the southwest corner of T. 149 N., R. 102 W.; thence east to the northwest corner of T. 148 N., R. 102 W.; thence south to the northwest corner of 147 N., R. 102 W.; thence east to the southwest corner of T. 148 N., R. 101 W., thence south to the middle of the Little Missouri; thence easterly and northerly along the middle of that river to the midpoint of its confluence with the Missouri River; thence southerly and easterly along the middle of the Missouri River to the midpoint of its confluence with the northern land boundary of Oliver County; thence west along the northern county line to the northwest boundary; thence south along the western county line to the southwest boundary; thence east along the southern county line to the northwest corner of T. 140 N., R. 83 W.; thence south to the southwest corner of T. 140 N., R. 82 W.; thence east to the southeast corner of T. 140 N., R. 83 W.; thence south to the middle of the Heart River; thence easterly and northerly along the middle of that river to the southern boundary of T. 139 N., R. 82 W.; thence east to the middle of the Heart River; thence southerly and easterly along the middle of that river to the northeast boundary of Sioux County; thence west and south along the northern boundary of Sioux County to the center of State Highway 31; thence south along the center of State Highway 31 to the state border with South Dakota; thence east along the southern boundary of Sioux County to the middle of the Missouri River.

* * * * *

Issued in Washington, DC, on July 11, 2003.

Norman Y. Mineta,

Secretary.

[FR Doc. 03–18611 Filed 7–21–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 71

[OST Docket No. OST–2001–10287]

RIN 2105–AD03

Relocation of Standard Time Zone Boundary in the State of North Dakota: Morton County

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department of Transportation (DOT) is moving all of Morton County, North Dakota to the central time zone. Prior to this action, the eastern portion of the county was in central time and the western portion was in mountain time. This action is taken in response to a petition filed by the Board of County Commissioners and based on extensive comments made at a public hearing and filed in the docket.

DATES: The effective date of this rule is 2 a.m. MDT Sunday, October 26, 2003.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, Room 10424, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9315 or by e-mail at *joanne.petrie@ost.dot.gov.*

Electronic Access

You can view and download this document by going to the webpage of the Department's Docket Management System (*http://dms.dot.gov/*). On that page, click on "search." On the next page, type in the last five digits of the docket number shown on the first page of this document. Then click on "search." Using a computer modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661 also may download an electronic copy of this document. Internet users may reach the Office of Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at *http://www.access.gpo.gov/nara/index.html.*

SUPPLEMENTARY INFORMATION:

Background

Legal Requirements

Under the Uniform Time Act of 1918, as amended, (15 U.S.C. 260–264), either the Secretary of Transportation or Congress may move a time zone boundary in the United States. The current boundaries are set forth in regulations that are found in 49 CFR part 71.

DOT has issued guidance to communities concerning how to begin a rulemaking proceeding to change a time zone boundary. This guidance, which is non-binding, recommends that the highest governmental body representing the area affirmatively ask DOT to make the change. Depending on the area in question, the highest governmental body may be the town or county representatives, or the Governor or State legislature. We presume that this group represents the views of the community. We do not require that the community conduct a vote or referendum on this issue. We solicit the views of all interested parties, not just individuals and businesses in the affected area.

15 U.S.C. 261 states that the standard for making this decision is "regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in interstate or foreign commerce." In order to determine what decision would support "the convenience of commerce," the Department looks at a wide variety of factors about how the potential change would affect the community and surrounding areas.

Time zone boundaries were originally set up in the late 1800s. Although they were based on geographic considerations (*i.e.*, the sun should be more or less overhead at noon), the exact boundary was set largely based on the convenience of commerce and the needs of the railroads. In addition, geographic boundaries, such as mountains and rivers, also play a role. Therefore, it is reasonable to expect variation in the time zone boundary alignment. In North Dakota, the western time zone boundary between central and mountain time extends to the North Dakota-Montana border in the north of the State near Williston and has largely followed natural boundaries such as Lake Sakakawea and the Missouri River. In recent years, however, there have been a number of requests by counties west of the river to change to central time. DOT changed Oliver County in 1992, and is currently considering requests from Sioux and Mercer Counties to move their time zone boundaries.

Currently, Morton County is one of the few counties in the United States split by a time zone boundary. The eastern portion of the county, which includes the county seat and largest city in the county (Mandan) is on central time. The western portion of the county, which is more rural, is on mountain time. The counties bordering Morton County are split between central and mountain time observance. Oliver County, Burleigh County (which includes the major city in the area, Bismarck), Emmons County, portions of Sioux County, and the Standing Rock Sioux Reservation all observe central time. Grant County, Hettinger County, Stark County, and Mercer County observe mountain time.

History of This Proceeding

In a petition dated April 9, 2001, the Chairman of the Board of County Commissioners for Morton County asked the Department of Transportation to move the western portion of Morton County, North Dakota, from the mountain time zone to the central time zone. In support of the petition, the Chairman noted the following factors:

"The City of Mandan is the largest city in Morton County (with over 66% of the county's population according to the 2000 Census) and operates on Central Time. Virtually all the supplies for the balance of the county come out of Mandan or Bismarck, North Dakota, which is in the central time zone.

Virtually all county residents travel to Mandan or Bismarck for medical services, shopping, entertainment, or to do business with county or state government.

Commercial airline services are based in Bismarck, North Dakota and require county residents to travel there to catch flights to other parts of the United States.

Most all television and radio stations broadcast from Mandan or Bismarck and the only daily newspaper in the area is published in Bismarck, North Dakota which is just across the Missouri River from Mandan.

The County Commissioners put the time issue to a straw vote in the June 13, 2000 Primary Election. Only the five (5) precincts that operated on mountain time voted on the time issue, Yes 625, No 572. There are twelve precincts in the county on central time. The commission held a meeting on the time issue in July 2000 and only one (1) person showed up to request the balance of the county in Mountain Time Zone. March 6, 2001 the commission held another meeting on the time issue based on the people wanting the commission to request the time change for the balance of the county. 46 persons attended the meeting with 28 expressing their opinion favoring to change the entire county to the Central Time Zone and 18 expressing their opinion that they wished to keep the balance of the county in the Mountain Time Zone. Most all the people that attended the meeting were from the precincts voting in the June 13, 2000 Primary Election.

Geographically, Morton County is well suited to be in the Central Time Zone. Oliver County directly north of us operates in Central Time Zone and Mercer County north and west of us is considering changing to Central Time zone."

On August 3, 2001, the Department published a notice of proposed rulemaking (66 FR 40666) announcing the proposed change and inviting public comment. A DOT representative conducted a hearing in New Salem, ND, on August 28, 2001. The hearing was attended by over 100 people and lasted several hours. The DOT representative tried to gauge the position of the attendees by an informal show of hands during the hearing. By show of hands, sixty were in favor of central time and fifty-four people were in favor of mountain time.

The NPRM also invited the public to submit written comments to the docket. There were over seventy submissions to the docket. The submissions included detailed letters, one form letter submitted by twelve people, and short messages expressing a preference for either the central or mountain time zone. We appreciate the time and effort of the people who expressed their opinion at the public meeting and through written comments, and who provided the factual basis upon which to make a decision.

Comments

Those in favor of mountain time noted that, based on the sun, Morton County is appropriately in the mountain time zone. These commenters observed that if the change were made, there would be very late sunrises and sunsets, and that the sun would not be overhead at noon. Several ranchers and farmers stated their belief that mountain time made it easier to do their chores and outdoor activities.

Others stated that they were not confused or inconvenienced by the present observance and had never missed an appointment in their impressively long lives. Some said, "if it ain't broke, don't fix it." A number of people that live in the far west and south of the county noted that they were more tied to neighboring counties on mountain time than areas to the east. Others noted that a change would simply shift the inconvenience of living on a time zone boundary to their neighbors to the west.

A number of parents and grandparents noted the danger of sending children to school on icy or snowy, rural schools before sunrise, and before adequate plowing or road treatment. A few anticipated that later sunsets would interfere with serving dinner and getting young children to sleep.

A number of people expected adverse impacts on education and schools, if the change were made. For example, several discussed local schools' reliance on interactive instructional television and voiced their concern that a change would adversely impact class scheduling. Others discussed school sports events and the potential difficulties in scheduling both students and parents.

Several commenters noted that they use the current time boundary to their advantage. For example, one can schedule early medical appointments in Bismarck and get home before school starts. Others are able to participate in more community or school activities because they work in central time and get home an hour earlier than they would if they also lived in central time. A number of commenters expressed a strong personal preference for mountain

time and said it just worked better for them.

Those in favor of central time had equally articulate, and passionate, reasons for their position. In general, all of these commenters stressed their reliance on services and activities located in Bismarck and Mandan. They noted the county seat is in Mandan and that one needed to go to the central time zone for most county, state, and court services. Many of these commenters noted that they generally go to the central time zone for shops, farm supplies and equipment, medical services (including the major hospital and various clinics), and entertainment. The major daily newspaper and most radio and television stations come from Bismarck. The major airport in the area is in Bismarck.

A number of commenters focused on how the current time observance impacts business. These commenters focused on problems caused by miscommunication, lost time because of different office and lunch hours across time zones, and the need to continually clarify whether appointments are on central or mountain time. One commenter noted that the de facto standard for business in the county is central time. Several ranchers and farmers stated that central time would be more convenient and efficient for their work.

Many commenters noted their personal preference for central time and gave detailed explanations about how a change would make their lives easier and less confusing. Some of these commenters live far west or south in the county, and include ranchers and farmers. Several commenters noted that, for all practical purposes, most people in Morton County already live their lives on central time.

There were several comments that central time would benefit students and schools. One commenter noted that most interactive television programming comes from Bismarck. Others noted that most higher education institutions are in the central zone. One commenter noted that the impact on sport scheduling could be beneficial if a change were made.

The Decision

We find that it would suit the "convenience of commerce" to move the western portion of Morton County from the mountain to the central time zone. Based on the facts presented, the county is very reliant on areas in the central time zone, especially Bismarck and Mandan to provide a majority of goods and services. Having the entire county in one time zone would reduce confusion and would make the boundary more understandable.

Other Issues

A number of commenters suggested that the time zone boundary be moved to the Montana border in order to order to end confusion over time observance in the State. Several noted that the time zone boundary between central and mountain time already extends to the Montana-North Dakota border in the northern part of the State and noted that it works well. This broader request is outside the scope of this present proceeding. In order to consider a change to additional counties, we would need an official request by the County Commissioners of the affected counties, the Governor, or the North Dakota legislature.

A few commenters also asked us to end daylight saving time observance in the State. That issue is also outside the scope of this rulemaking. Under the Uniform Time Act, a State is free to observe, or not observe, daylight saving time. If it chooses to observe, it must begin and end its observance on the federally-mandated dates. Commenters that wish to be exempted from daylight saving time should explore this option with their state representatives.

Regulatory Analysis and Notices

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979.) We expect the economic impact of this rule to be so minimal that a full regulatory analysis is unnecessary. The rule primarily affects the convenience of individuals in scheduling activities. By itself, it imposes no direct costs. Its impact is localized in nature.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule primarily affects individuals and their scheduling of activities. Although it will affect some small businesses, not-for-profits, and perhaps, several small governmental jurisdictions, it will not be a substantial number. In addition, the change should have little, if any, economic impact. I, therefore, certify under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 12612 and have determined that this rule does not have sufficient implications for federalism to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule has no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and Executive Order 12875, enhancing the Intergovernmental Partnership, (58 FR 58093; October 28, 1993) govern the issuance of Federal regulations that may result in the expenditure by State, local, and tribal governments or the private sector of $100 million or more in any one year (adjusted annually for inflation). This rule does not impose such a mandate.

Taking of Private Property

This rule does not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

This rule is not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act and, therefore, an environmental impact statement is not required.

List of Subjects in 49 CFR Part 71

Time zones.

■ For the reasons discussed above, the Office of the Secretary amends Title 49 part 71 to read as follows:

PART 71—[AMENDED]

■ 1. The authority citation for part 71 continues to read:

Authority: Secs. 1–4, 40 Stat. 450, as amended; sec 1, 41 Stat. 1446, as amended; secs. 2–7, 80 Stat. 107, as amended; 100 Stat. 764; Act of Mar. 19, 1918, as amended by the Uniform Time Act of 1966 and Pub. L. 97–449, 15 U.S.C. 260–267; Pub. L. 99–359; Pub. L. 106–564, 15 U.S.C. 263, 114 Stat. 2811; 49 CFR 159(a), unless otherwise noted.

■ 2. Paragraph (a) of § 71.5, *Boundary line between central and mountain zones,* is revised to read as follows:

§ 71.5 Boundary line between eastern and central zones.

(a) Montana-North Dakota. Beginning at the junction of the Montana-North Dakota boundary with the boundary of the United States and Canada southerly along the Montana-North Dakota boundary to the Missouri River; thence southerly and easterly along the middle of that river to the midpoint of the confluence of the Missouri and Yellowstone Rivers; thence southerly and easterly along the middle of the Yellowstone River to the north boundary of T. 150 N., R. 104 W.; thence east to the northwest corner of T. 150 N., R. 102 W.; thence south to the southwest corner of T. 149 N., R. 102 W.; thence east to the northwest corner of T. 148 N., R. 102 W.; thence south to the northwest corner of 147 N., R. 102 W.; thence east to the southwest corner of T. 148 N., R. 101 W., thence south to the middle of the Little Missouri; thence easterly and northerly along the middle of that river to the midpoint of its confluence with the Missouri River; thence southerly and easterly along the middle of the Missouri River to the midpoint of its confluence with the northern land boundary of Oliver County; thence, west along the northern county line to the northwest boundary; thence south along the western county line to the southwest boundary; thence west along the northern county boundary of Morton County; thence south along the western county line and then east and south along the southern county boundary to the intersection with the middle of the Missouri River; thence south and east along the middle of the Missouri River to the northern boundary of T. 130 N., R. 80 W.; thence west to the northwest corner of T. 130 N., R. 80 W.; thence south to the North Dakota-South Dakota boundary; thence easterly along that boundary to the middle of the Missouri River.

* * * * *

Issued in Washington, DC on July 11, 2003.

Norman Y. Mineta,

Secretary.

[FR Doc. 03–18610 Filed 7–21–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[Docket No. NHTSA—03–15366]

Consumer Information Regulations; Uniform Tire Quality Grading Standards; Correction

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Correcting Amendment.

SUMMARY: On June 12, 2003, the National Highway Traffic Safety Administration published a correction to the treadwear testing procedures of the Uniform Tire Quality Grading Standards (UTQGS) (68 FR 35184). The section heading for § 575.104 contains a typographical error.

This document corrects the typographical error in the § 575.104 section heading.

DATES: Effective on July 22, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. George Feygin, Office of Chief Counsel (Telephone: 202–366–2992) (Fax: 202–366–3820), 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On November 15, 1991, the National Highway Traffic Safety Administration (NHTSA) published a final rule amending the treadwear testing procedures of the Uniform Tire Quality Grading Standards (UTQGS) to permit the use of front-wheel drive passenger cars, as well as light trucks, and MPVs (56 FR 57988). Previously, UTQGS specified testing of tires using only rear-wheel drive passenger cars. The effective date of the amendment was December 16, 1991. However, this new language was later inadvertently deleted in an unrelated amendment. The document published on June 12, 2003 corrected NHTSA's inadvertent deletion of that regulatory language. However, the section heading for § 575.104 contained a typographical error. This document corrects the § 575.104 heading.

In FR Doc. 03–14693 published on June 12, 2003 (68 FR 35184) make the following correction. On page 35185, in the first column, the section heading is corrected to read as follows:

§ 575.104 Uniform tire quality grading standards.

Issued: July 16, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–18513 Filed 7–21–03; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 68, No. 140
Tuesday, July 22, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA 2003–15532; Airspace Docket No. 03–ASO–10]

Proposed Establishment of Class D Airspace; Columbus, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class D airspace at Columbus, MS. A federal contract tower with a weather reporting system is being constructed at the Golden Triangle Regional Airport. Therefore, the airport will meet criteria for Class D airspace. Class D surface area airspace is required when the control tower is open to contain Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action would establish Class D airspace extending upward from the surface to and including 2,800 feet MSL within a 4.1-mile radius of the airport.

DATES: Comments must be received on or before August 21, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15532/Airspace Docket No. 03–ASO–10, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, PO Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–15532/Airspace Docket No. 03–ASO–10." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*. Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace at Columbus, MS. Class D airspace designations for airspace areas extending upward from the surface of the earth are published in Paragraph 5000 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO MS D Columbus Golden Triangle, MS [NEW]

Golden Triangle Regional Airport, MS
(Lat. 33°27′01″ N, long. 88°35′29″ W)

That airspace extending upward from the surface to and including 2,800 feet MSL within a 4.1-mile radius of the Golden Triangle Regional Airport; excluding that airspace within the Columbus AFB Class C airspace area. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on July 10, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–18515 Filed 7–21–03; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CO–001–0072b; FRL–7522–2]

Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Fort Collins Carbon Monoxide Redesignation to Attainment, Designation of Areas for Air Quality Planning Purposes, and Approval of Related Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On August 9, 2002, the Governor of Colorado submitted a request to redesignate the Fort Collins "moderate" carbon monoxide (CO) nonattainment area to attainment for the CO National Ambient Air Quality Standard (NAAQS). The Governor also submitted a CO maintenance plan. With the maintenance plan, the Governor submitted revisions to Colorado's Regulation No. 11 "Motor Vehicle Emissions Inspection Program", and Colorado's Regulation No. 13 "Oxygenated Fuels Program". In this action, EPA is proposing approval of the Fort Collins CO redesignation request, the maintenance plan, and the revisions to Regulation No. 11 and Regulation No. 13.

In the Final Rules Section of this **Federal Register**, EPA is approving the redesignation request and maintenance plan for the Fort Collins CO nonattainment area, along with the revisions to Regulation No. 11 and Regulation No.13, as a direct final rule without prior proposal because the Agency views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by August 21, 2003.

ADDRESSES: Written comments may be mailed to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466

Copies of the documents relevant to this action are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday at the following office: United States Environmental Protection Agency, Region VIII, Air Program, 999 18th Street, Suite 300, Denver, Colorado 80202–2466

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, Telephone number (303) 312–6479.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules Section of this **Federal Register**.

Dated: June 23, 2003.

Robert E. Roberts,

Regional Administrator, Region VIII.

[FR Doc. 03–18302 Filed 7–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–92–200324 (b); FRL–7534–1]

Approval and Promulgation of Implementation Plans Florida: Jacksonville Area Maintenance Plan Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to the State Implementation Plan (SIP) submitted by the Florida Department of Environmental Protection (FDEP) on December 20, 2002. This SIP revision satisfies the requirement of the Clean Air Act (CAA) for the second 10-year update for the Jacksonville area (Duval County) 1-hour ozone maintenance plan. In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before August 21, 2003.

ADDRESSES: Comments may be submitted by mail to: Heidi LeSane, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Comments may also be submitted

electronically, or through hand delivery/courier. Please follow the detailed instructions described in the direct final rule, Supplementary Information section [Part (I)(B)(1)(i) though (iii)] which is published in the Rules section of this **Federal Register**

FOR FURTHER INFORMATION CONTACT: Heidi LeSane, Air, Pesticides & Toxics Management Division, Air Planning Branch, Regulatory Development Section, Environmental Protection Agency Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Mrs. LeSane's phone number is 404–562–9035. She can also be reached via electronic mail at *lesane.heidi@epa.gov*; or Lynorae Benjamin, Air, Pesticides & Toxics Management Division, Air Planning Branch, Air Quality Modeling & Transportation Section, Environmental Protection Agency Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Benjamin's phone number is 404–562–9040. She can also be reached via electronic mail at *benjamin.lynorae@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: July 9, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 03–18501 Filed 7–21–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 071603A]

RIN 0648–AR31

Fisheries of the Exclusive Economic Zone Off Alaska; Allocation of Pacific Cod Among Fixed Gear Sectors

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 77 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This amendment would continue to apportion the Bering Sea and Aleutian Islands Management Area (BSAI) Pacific cod total allowable catch (TAC) among the fixed gear sectors. In addition, the amendment would further split the pot sector share of the TAC between pot catcher/processors and pot catcher vessels. Amendment 77 is intended to maintain the stability of the fixed gear Pacific cod fishery. Comments from the public are welcome.

DATES: Comments on Amendment 77 must be submitted by September 22, 2003.

ADDRESSES: Comments on the FMP amendments should be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK, 99802, Attn: Lori Durall, or delivered to room 420 of the Federal Building, 709 West 9th Street, Juneau, AK. Comments may also be sent via facsimile (fax) to 907–586–7557. Comments will not be accepted if submitted via e-mail or Internet. Copies of Amendment 77 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for the amendment may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Nina Mollett, 907–586–7462 or *Nina.Mollett@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each Regional Fishery Management Council submit any FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, immediately publish a notice in the **Federal Register** that the amendment is available for public review and comment.

Amendment 77 was adopted by the Council at its June 2003 meeting. If approved by NMFS, this amendment would replace Amendment 64, which expires on December 31, 2003. Amendment 77 would allocate the 51 percent fixed gear share of the BSAI TAC among its four components as follows:

- 80 percent to catcher/processors using hook-and-line gear;
- 0.3 percent to catcher vessels using hook-and-line gear;
- 15 percent to catcher vessels using pot gear;
- 3.3 percent to pot catcher/processors using pot gear; and
- 1.4 percent to catcher vessels under 60 ft length overall (LOA), using either pots or hook-and-line gear.

This represents a change from the status quo because the existing 18.3 percent allocation to pot vessels would be split between the two sectors of that fleet, 15 percent to pot catcher vessels and 3.3 percent to pot catcher/processor vessels. This division would be based on each sector's historical catch between 1998 and 2001, and reflects the growth in the pot catcher vessel sector in recent years.

Specific provisions for the reallocation of unharvested amounts of these allocations to other vessels using hook-and-line or pot gear would continue to be set forth in regulations.

Public comments are being solicited on the amendment through the end of the comment period stated in this NOA; a proposed rule that would implement the amendment may be published in the **Federal Register** for public comment following NMFS' evaluation under the Magnuson-Stevens Act procedures. Public comments on the proposed rule must be received by the end of the comment period on the amendment in order to be considered in the approval/disapproval decision on the amendment. All comments received by the end of the comment period on the amendment, whether specifically directed to the amendment or to the proposed rule, will be considered in the approval/disapproval decision; comments received after that date will not be considered in the approval/disapproval decision on the amendment. To be considered, comments must be received not just postmarked or otherwise transmitted by close of business on the last day of the comment period specified in this NOA.

Dated: July 17, 2003.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–18617 Filed 7–21–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 140

Tuesday, July 22, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Siuslaw Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siuslaw Resource Advisory Committee will meet in Florence, OR. The purpose of the meeting is to determine how to spend Title II Payments to Counties Funds. The agenda includes: Finalization of FY 2004 projects and a public forum.

DATES: The meeting will be held July 31, 2003 beginning at 9 a.m.

ADDRESSES: The meeting will be held at the Siuslaw Valley Fire and Rescue Station, 2625 Hwy 101, Florence, OR 97439.

FOR FURTHER INFORMATION CONTACT: Linda Stanley, Community Development Specialist, Siuslaw National Forest, 541/750–7210 or write to Forest Supervisor, Siuslaw National Forest, PO Box 1148, Corvallis, OR 97339.

SUPPLEMENTARY INFORMATION: A public input period will begin at 12:15 p.m. The meeting is expected to adjourn at 1 p.m.

Dated: July 16, 2003.

Joni Quarnstrom,

Acting Forest Supervisor.

[FR Doc. 03–18587 Filed 7–21–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Task Force on Agricultural Air Quality

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Task Force on Agricultural Air Quality will meet to continue discussions on critical air quality issues in relation to agriculture. Special emphasis will be placed on obtaining a greater understanding about the relationship between agricultural production and air quality. The meeting is open to the public; a draft agenda of the meeting is attached.

DATES: The meeting will convene Thursday, August 28, 2003, at 8:30 a.m., continue until 5 p.m., and will resume Friday, August 29, 2003, from 8:15 a.m. to 1 p.m. Individuals with written materials, and those who have requests to make oral presentations, should contact the Natural Resources Conservation Service, at the address below, on or before August 19, 2003.

ADDRESSES: The meeting will be held at the Renaissance Tulsa Hotel and Convention Center, 6808 South 107th East Avenue, Tulsa, Oklahoma, telephone: (918) 307–4024. Written material and requests to make oral presentations should be sent to Dr. Beth Sauerhaft, USDA–NRCS, Post Office Box 2890, Room 6158, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Questions or comments should be directed to Dr. Beth Sauerhaft, Designated Federal Official; telephone: (202) 720–8578; fax: (202) 720–2646; e-mail: *Beth.Sauerhaft@usda.gov*.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Additional information about the Task Force on Agricultural Air Quality, including any revised agendas for the August 28 and 29, 2003, meeting that occur after this **Federal Register** Notice is published, may be found on the World Wide Web at *http://fargo.nserl.purdue.edu/faca*.

Draft Agenda of the August 28 and 29, 2003, Meeting of the AAQTF

A. Welcome to Oklahoma
  - Local and NRCS Officials

B. Discussion of May minutes

C. Discussion of National Emissions Inventory of Ammonia from Animal Husbandry

D. Discussion of USDA–NASA opportunities for collaboration

E. EPA update

F. Subcommittee Presentations
  - Emerging Issues Committee
  - Research Committee
  - Policy Committee
  - Education/Technology Transfer Committee

G. US Forest Service Healthy Forest Initiative

H. Invited Speaker

I. Next Meeting, Time/Place

G. Public Input (Time will be reserved before lunch and at the close of each daily session to receive public comment. Individual presentations will be limited to 5 minutes).

Procedural

This meeting is open to the public. At the discretion of the Chair, members of the public may give oral presentations during the meeting. Persons wishing to make oral presentations should notify Beth Sauerhaft no later than August 19, 2003. If a person submitting material would like a copy distributed to each member of the committee in advance of the meeting, that person should submit 30 copies to Beth Sauerhaft no later than August 19, 2003.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Beth Sauerhaft.

USDA prohibits discrimination in its programs and activities on the basis of race, color, national origin, gender, religion, age, sexual orientation, or disability. Additionally, discrimination on the basis of political beliefs and marital or family status is also prohibited by statutes enforced by USDA (not all prohibited bases apply to all programs). Persons with disabilities who require alternate means for communication of program information (braille, large print, audio tape, etc.) should contact the USDA's Target Center at (202) 720–2000 (voice and TDD). The USDA is an equal opportunity provider and employer.

Signed in Washington, DC, on July 10, 2003.

Bruce I. Knight,

Chief, Natural Resources Conservation Service.

[FR Doc. 03–18506 Filed 7–21–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures.

Form Number(s): None.

Agency Approval Number: 0651–0024.

Type of Request: Revision of a currently approved collection.

Burden: 29,856 hours annually.

Number of Respondents: 23,750 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public approximately 1 hour and 20 minutes (1.33 hours) to gather the necessary information, prepare the paper sequence listing, and submit it to the USPTO. The USPTO also estimates that it will take the public approximately 1 hour to prepare and submit a sequence listing on compact disc (CD) and approximately 10 minutes (0.17 hours) to prepare and submit a sequence listing electronically over the Internet.

Needs and Uses: The guidelines for submitting sequence listing data for national and international biotechnology patent applications are outlined in 37 CFR 1.821–1.825 and World Intellectual Property Organization (WIPO) Standard ST.25 (1998). Applicants must submit a copy of the sequence listing in the prescribed standard format and another copy that is in computer-readable form. The sequence listings may be submitted on paper, CD, or electronically over the Internet. The USPTO uses the sequence listings to determine the patentability of associated applications and to support the publication of applications and issued patents. Applicants use sequence data when preparing biotechnology patent applications and may also search sequence listings after publication.

Affected Public: Individuals or households, businesses or other for-profits, not-for-profit institutions, farms, the Federal Government, and state, local, or tribal governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, 703–308–7400, U.S. Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313, Attn: CPK 3 Suite 310; or by e-mail at *susan.brown@uspto.gov*.

Written comments and recommendations for the proposed information collection should be sent on or before August 21, 2003, to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street NW., Washington, DC 20503.

Dated: July 15, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–18585 Filed 7–21–03; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Open Meeting on Department of Defense Directive 1344.7, "Personal Commercial Solicitation on DoD Installations"

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice of opportunity to comment and public meeting.

SUMMARY: The Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)) is announcing the opportunity to provide comment on the existing Department of Defense Directive (DoDD) 1344.7, "Personal Commercial Solicitation on DoD Installations," dated February 13, 1986. The Department will only consider the comments submitted in writing and provided by those in attendance as it completes its review of the Directive.

DATES: August 22nd, 9 a.m.–12 p.m.

ADDRESSES: The meeting will be held at Drew Model School in the Cafeteria/Multipurpose Room, located at 3500 S. 23rd St, Arlington, VA 22206.

FOR FURTHER INFORMATION CONTACT: Colonel Michael A. Pachuta at (703) 602–4994 or Mr. James M. Ellis at (703) 602–5009.

SUPPLEMENTARY INFORMATION: The Department of Defense is in the process of rewriting the existing policy governing "Personal Commercial Solicitation on DoD Installations," and is soliciting comments addressing any potential changes OSD should make to DoDD 1344.7. A copy of the existing Directive may be found at the following Web site address: *http://www.dtic.mil/whs/directives/corres/pdf/d13447wch2_021386/d13447p.pdgf*. We welcome your comments on any aspect of this document. If you recommend adding or deleting any provisions, please explain why succinctly. All oral comments at the public meeting will be limited to 5 minutes per individual/organization represented. Accompany any oral comments with a written summary to be submitted to OUSD(P&R) at the beginning of the meeting.

All written comments must be submitted no later than August 22, 2003 to be considered, and must include full name, address and telephone number of the sender or a knowledgeable point of contact. If possible, please send an electronic version of the comments either on a 3½ inch DOS format floppy disk, or by e-mail to the addresses listed below, in Adobe Acrobat Portable Document Format (PDF) or Microsoft Word. Because of staffing and resource limitations we cannot accept comments by facsimile, and all comments and content are to be limited to 8.5″ wide by 11″ high vertical page orientation. Additionally, if identical/duplicate comment submissions are submitted both electronically and in paper format, each submission should clearly indicate that it is a duplicate submission. In each comment, please specify the section of the existing DoDD 1344.7 to which the comment applies. Written comments can be addressed to either Colonel Michael A. Pachuta *(Michael.pachuta@osd.mil)* or Mr. James M. Ellis *(james.ellis@osd.mil)*, at DUSD (MC&FP), 1745 Jefferson Davis Highway, Suite 302, Arlington, VA 22202.

Dated: July 15, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–18508 Filed 7–21–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Designation of Local Redevelopment Authority or Former Fort Ritchie Military Reservation

AGENCY: Office of Economic Adjustment, DOD

ACTION: Notice.

SUMMARY: This Notice provides the point of contact, address, and telephone number for the Local Redevelopment Authority (LRA) responsible for developing the redevelopment plan for the Fort Ritchie Military Reservation, Cascade, Maryland; and for directing the implementation of such plan. Representatives of state and local governments interested in reuse of the installation should contact the organization listed. The following information will be published in a newspaper of general circulation in the communities in the vicinity of Fort Ritchie.

Installation Name: Fort Ritchie Military Reservation.

LRA Name: PENMAR Development Corporation.

Point of Contact: Mr. Richard Rook, Executive Director.

Address: P.O. Box 699, Cascade, MD 21719.

Phone: (301) 241–4050.

EFFECTIVE DATE: July 22 2003.

FOR FURTHER INFORMATION CONTACT: Director, Office of Economic Adjustment, 400 Army Navy Drive, Suite 200, Arlington, VA 22202, (703) 604–6020.

Dated: July 15, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–18507 Filed 7–21–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Fernald

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Fernald. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, August 14, 2003; 6:30 p.m.–9 p.m.

ADDRESSES: Crosby Senior Center, 8910 Willey Road, Harrison, OH.

FOR FURTHER INFORMATION CONTACT: Doug Sarno, The Perspectives Group, Inc., 1055 North Fairfax Street, Suite 204, Alexandria, VA 22314, at (703) 837–1197, or e-mail *djsarno@theperspectivesgroup.com*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in areas of environmental restoration, waste management, and related activities.

Tentative Agenda

6:30 p.m.—Call to Order

6:30–7 p.m.—Chair's Remarks, Ex Officio Announcements and Updates

7–7:30 p.m—Review and Approve Response to Natural Resource Damages Recommendations

7:30–8 p.m.—Review and Approve Response to Records Letter from Jessie Roberson

8–8:45 p.m.—Results of Multi-Use Educational Facility Strategic Planning

8:45–9 p.m.—Public Comment

9 p.m.—Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board Chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board Chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Office, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to the Fernald Citizens' Advisory Board, % Phoenix Environmental Corporation, MS–76, Post Office Box 538704, Cincinnati, OH 43253–8704, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC, on July 16, 2003.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–18604 Filed 7–21–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–70–001]

Algonquin Gas Transmission Company; Notice of Negotiated Rate Filing

July 16, 2003.

Take notice that on July 8, 2003, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets proposed to be effective October 1, 2003:

First Revised Sheet No. 21B
Sheet Nos. 42–49
Original Sheet No. 50
Original Sheet No. 51
Original Sheet No. 52
Original Sheet No. 53
Sheet Nos. 54–88

Algonquin states that the purpose of this filing is to implement four negotiated rate agreements resulting from its open season and reverse open season (together, G System Open Season) for capacity on Algonquin's G System in southeastern Massachusetts. These tariff sheets reflect Algonquin's negotiated rate transactions with (00)New England Gas Company—Fall River; (ii) New England Gas Company—Rhode Island; (iii) Colonial Gas Company d/b/a Keyspan Energy Delivery New England; and (iv) Calpine Energy Services LP ("Calpine Energy"). Algonquin states that it is also filing a copy of the Capacity Turnback Agreement among Algonquin and Calpine Energy, Dighton Power Associates Limited Partnership, and Tiverton Power Associates Limited Partnership that resulted from the G System reverse open season.

Algonquin requests that the Commission accept this filing by August 8, 2003. In addition, Algonquin requests that the Commission grant waiver of the notice requirement in Section 154.207 of the Commission's regulations, 18 CFR 154.207, and any other waivers of the Commission's regulations to the extent necessary to permit the tariff sheets and the agreements to be made effective as proposed.

Algonquin states that copies of the filing were mailed to all affected customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document.

For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18665 Filed 7–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–243–001]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

July 16, 2003.

Take notice that on July 11, 2003, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of August 15, 2003:

Fourth Revised Sheet No. 320
Second Revised Sheet No. 410
Second Revised Sheet No. 413
Second Revised Sheet No. 415
Second Revised Sheet No. 416

Columbia states that it is making this filing in compliance with an order issued on June 11, 2003 by the Commission in Nicole Gas Production Ltd. in Docket No. RP03–243 (103 FERC ¶ 61,328 (2003)). The tariff sheets in the instant filing are being filed to clarify obligations with respect to the construction and installation of meters and measuring stations and to clarify objections with respect to the responsibility for payment of the cost of the construction and installation of those facilities. Columbia is also adding tariff language that addresses the methodology for determining quantities of gas deliveries when no there is no meter.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: July 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18666 Filed 7–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–371–001]

Destin Pipeline Company, L.L.C.; Notice of Compliance Filing

July 16, 2003.

Take notice that on July 10, 2003, Destin Pipeline Company, L.L.C. (Destin) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the revised tariff sheets as listed on Appendix A attached to the filing, to be effective July 1, 2003..

Destin states that purpose of this filing is to comply with the Commission's Letter Order issued on June 25, 2002, in Docket No. RP03–371–000.

Destin states that copies of this filing are being served on all parties to the proceeding in Docket No. RP03–371–000, affected shippers and applicable state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: July 22, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18669 Filed 7–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–320–060]

Gulf South Pipeline Company, LP; Notice of Compliance Filing

July 16, 2003.

Take notice that on July 11, 2003, Gulf South Pipeline Company, LP (Gulf South) filed with the Federal Energy Regulatory Commission (Commission), an Amendment to the NNS Agreement executed between Gulf South and Willmut Gas & Oil Company to include the MDQ reduction provisions contained in Gulf South's tariff. Gulf South states that this filing is being submitted in compliance with the Commission's order issued on July 2, 2003, 104 FERC ¶61,029 (2003).

Gulf South states that it has served copies of this filing upon all parties on the official service list created by the Secretary for this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: July 23, 2003.

Dated:

Magalie R. Salas,

Secretary.

[FR Doc. 03–18672 Filed 7–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–336–002]

Gulfstream Natural Gas System, L.L.C.; Notice of Negotiated Rate

July 16, 2003.

Take notice that on July 8, 2003, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Original Sheet No. 8H, reflecting an effective date of July 1, 2003.

Gulfstream states that this filing is being made to implement a Park negotiated rate transaction under Rate Schedule PALS pursuant to Section 31 of the General Terms and Conditions of Gulfstream's FERC Gas Tariff. Gulfstream also states that the tariff sheet being filed herewith identifies and describes the negotiated rate agreement, including the exact legal name of the relevant shipper, the negotiated rate, the rate schedule, the contract term, and the Maximum Park Quantity.

Gulfstream states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18668 Filed 7–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–337–006]

Kern River Gas Transmission Company; Notice of Compliance Filing

July 16, 2003.

Take notice that on July 10, 2003, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed below:

Original Sheet No. 8
Sheet No. 9 (Reserved)
Original Sheet No. 69–B
Original Sheet No. 69–C
Original Sheet No. 69–D
Original Sheet No. 69–E
Original Sheet No. 69–F
First Revised Sheet No. 200
First Revised Sheet No. 201
First Revised Sheet No. 202
Original Sheet No. 214
Sheet Nos. 215–299 (Reserved)
Second Revised Sheet No. 305
Original Sheet No. 339
Original Sheet No. 340
Original Sheet No. 341
Original Sheet No. 342
Sheet Nos. 343–349 (Reserved)
Second Revised Sheet No. 402

Kern River states that the purpose of this filing is to comply with the Commission's June 25, 2003 Order in this proceeding (1) by submitting revised tariff sheets pertaining to Kern River's existing segmentation provisions; and (2) by submitting actual tariff sheets to implement Kern River's proposed park and loan service.

Kern River states that it has served a copy of this filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: July 22, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18663 Filed 7–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–089]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

July 16, 2003.

Take notice that on July 11, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing with the Federal Energy Regulatory Commission (Commission), to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Original Sheet No. 26W.31a, to be effective July 1, 2003.

Natural states that the purpose of this filing is to implement an amendment to an existing negotiated rate transaction entered into by Natural and Occidental Energy Marketing, Inc. under Natural's Rate Schedule FTS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: July 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18660 Filed 7–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–1055–000]

Rocky Mountain Natural Gas & Electric, LLC; Notice of Filing

July 16, 2003.

Take notice that on July 7, 2003, Rocky Mountain Natural Gas & Electric LLC tendered for filing a Notice of Cancellation of their market-based rate tariff for electricity.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: July 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18673 Filed 7–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–459–003]

TransColorado Gas Transmission Company; Notice of Compliance Filing

July 16, 2003.

Take notice that on July 9, 2003, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed on Appendix A–1 and A–2, attached to the filing.

TransColorado states that it is filing the above-referenced tariff sheets in compliance with the Commission's Order No. 637 and with the Commission's "Order on Rehearing and Compliance Filing" dated June 9, 2003 in Docket No. RP00–459, *et al.*

TransColorado states that a copy of this filing has been served upon all parties on the official service list for this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: July 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18664 Filed 7–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–546–000]

Transwestern Pipeline Company; Notice of Tariff Filing

July 16, 2003.

Take notice that on July 10, 2003, Transwestern Pipeline Company (Transwestern) tendered for filing a letter in accordance with its FERC Gas Tariff, Second Revised Volume No. 1, to notify the Federal Energy Regulatory Commission (Commission) of changes to the Supply Pooling Points list on Transwestern's Web site.

Transwestern states that in Order 637 Compliance filings, Transwestern received Commission approval for Rate Schedule SP–1 (Supply Pooling Service) by Order dated October 10, 2002. The SP–1 Rate Schedule provides that Transwestern will post on its Web site the list of physical receipt points associated with each supply pooling point and that Transwestern will file with the Commission any additions or deletions to the list of available points of service. Transwestern states that because of operational reasons the list of receipt points submitted in this filing will no longer be included in Transwestern's Supply Pooling Points list on the Transwestern Web site.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 22, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18671 Filed 7–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–440–001

Vector Pipeline L.P.; Notice of Compliance Filing

July 16, 2003.

Take notice that on July 10, 2003, Vector Pipeline L.P. (Vector), tendered for filing as part its FERC Gas Tariff, Original Volume No. 1, Substitute Third Revised Sheet No. 159, with an effective date of July 1, 2003.

Vector states that the filing is being made in compliance with the terms of a letter order issued June 30, 2003 in the captioned docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with ¶385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with ¶154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: July 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18670 Filed 7–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–286–004]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

July 16, 2003.

Take notice that on July 11, 2003, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, the revised tariff sheets specified in Appendix A to the filing, to become effective on August 1, 2003.

Williston Basin states that the filing is being made in compliance with the July 3, 2003 letter order in Docket No. RP03–286–003.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: July 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18667 Filed 7–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2233–006, et al.]

Ameren Services Company, et al.; Electric Rate and Corporate Filings

July 15, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Ameren Services Company, American Transmission Systems, Incorporated, Northern Indiana Public Service Company, National Grid USA, and Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–2233–006]

Take notice that on July 10, 2003, the GridAmerica Participants, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), and the Midwest ISO Transmission Owners (jointly, the Applicants) filed a Supplemental Agreement in compliance with the Commission's May 15, 2003 Order, 103 FERC ¶ 61,178 .

The Applicants have requested waiver of the requirements set forth in 18 CFR 385.2010. The Midwest ISO states it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter.

Comment Date: July 25, 2003.

2. Sierra Pacific Resources Operating Companies, Sierra Pacific Power Company, and Nevada Power Company

[Docket Nos. ER02–2609–003 and ER03–37–003]

Take notice that on July 9, 2003, Sierra Pacific Resources Operating Companies, Sierra Pacific Power Company and Nevada Power Company (together, SPR), filed compliance tariff sheets as required by the Commission Order issued July 1, 2003, in Docket Nos. ER02–2609–000 and ER03–37–000, 104 FERC ¶ 61,003.

Comment Date: July 30, 2003.

3. Virginia Electric and Power Company

[Docket No. ER03–743–001]

Take notice that on July 9, 2003, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing a revised page in a Generator Interconnection and Operating Agreement between Dominion Virginia Power and CPV Cunningham Creek LLC, modifying a definition contained in compliance with the Commission's Order dated June 10, 2003, Virginia Electric and Power Company, 103 FERC ¶ 61,318 (Order).

Dominion Virginia Power requests that the Commission accept the Revised Page to allow it to become effective on April 15, 2003, commensurate with the effective date granted in the Order.

Comment Date: July 30, 2003.

4. AIG Energy Inc.

[Docket No. ER03–770–001]

Take notice that on July 9, 2003, AIG Energy Inc., (AIG) made a compliance filing pursuant Commission's Order issued on June 11, 2003, in Docket No. ER03–770–000. AIG states that the Commission's Order accepted the Notice of Succession and Change in Status filing, conditioned upon AIG, within 30 days of the order, changing the designation of its rate schedule to reflect the name change of the company. Seller's filing reflects this change.

Comment Date: July 30, 2003.

5. DTE East China, LLC and DTE Energy Trading, Inc.

[Docket No. ER03–931–000]

Take notice that on June 30, 2003, DTE East China, LLC and DTE Energy Trading, Inc. (collectively, the Applicants) hereby withdraw their Application for Blanket Authorizations, Certain Waivers, Order Approving Market-Based Rate Tariff and Requests for Expedited Action, filed in Docket No. ER03–931–000, June 5, 2003.

Comment Date: July 25, 2003.

6. Oncor Electric Delivery Company

[Docket No. ER03–1049–000]

Take notice that on July 9, 2003, Oncor Electric Delivery Company (Oncor), tendered for filing, First Revised Sheet Nos. 24, 37–39, 50, 54 for its FERC Electric Tariff, Eighth Revised Volume No. 1, Tariff for Transmission Service. Oncor states that the revisions are to modify its rates for transmission service increase to the Standard Allowance Factor for calculation of a customer's contribution in aid of construction for extension of facilities, and to make other minor clerical modifications.

Oncor states that this filing has been served upon each customer taking service under the tariff and the Public Utility Commission of Texas.

Comment Date: July 30, 2003.

7. Oncor Electric Delivery Company

[Docket No. ER03–1051–000]

Take notice that on July 9, 2003, Oncor Electric Delivery Company (Oncor), tendered for filing First Revised Sheet Nos. 34 and 44 for its FERC Electric Tariff, Third Revised Volume No. 2, Tariff for Transmission Service for Tex-La Electric Cooperative of Texas (Tex-La) to modify its rates for transmission service and to increase to the Standard Allowance Factor for calculation of a customer's contribution in aid of construction for extension of facilities.

Oncor states that this filing has been served upon Tex-La and the Public Utility Commission of Texas.

Comment Date: July 30, 2003.

8. Consolidated Edison Company of New York, Inc.

[Docket No. ER03–1053–000]

Take notice that on July 9, 2003, Consolidated Edison Company of New York, Inc. (Con Edison), requested that the Federal Energy Regulatory Commission discontinue a service agreement for non-firm transmission service pursuant to its Open Access Transmission Tariff to Enron Power Marketing, Inc. (Enron) as the United States Bankruptcy Court has effectively terminated the agreement.

Con Edison states that a copy of this filing has been served by mail to Enron.

Comment Date: July 30, 2003.

9. FirstEnergy Solutions Corp.

[Docket No. ER03–1054–000]

Take notice that on July 9, 2003, FirstEnergy Solutions Corp. (FE Solutions) submitted for filing the following agreements between Generation Services (BGS) and retail electric service customers that are connected to the electric distribution system of Jersey Central Power & Light Company.

(1) BGS–FP Agreement dated February 7, 2003;

(2) BGS–HEP Agreement dated February 7, 2003; and

(3) BGS-Green Energy Program Agreement dated February 24, 2003.

To the extent that these agreements are required to be filed with the Commission, FE Solutions has asked for waiver of the advance notice requirements, the restrictions on sales of power between affiliated entities, and any other applicable requirements, in order to make each of the Supplier Master Agreements effective as of August 1, 2003.

Comment Date: July 30, 2003.

10. Tampa Electric Company

[Docket No. ER03–1057–000]

Take notice that on July 10, 2003, Tampa Electric Company (Tampa Electric) tendered for filing revised rate schedule sheets showing an amendment to Exhibit A to the contract for interchange service between Tampa Electric and Florida Power & Light Company (FPL), and a correction to the language of Service Schedule A under that contract. Tampa Electric states that the amendment reflects a sale by FPL to Tampa Electric of a segment of transmission line that interconnects their respective systems. Tampa Electric also states that it proposes that the revised rate schedule sheets containing the amendment and the correction be made effective on October 11, 2002 and July 10, 2003, respectively.

Tampa Electric states that copies of the filing have been served on FPL and the Florida Public Service Commission.

Comment Date: July 31, 2003.

11. Covanta Hennepin Energy Resource Co., Limited Partnership

[Docket No. ER03–1058–000]

Take notice that on July 10, 2003, Covanta Hennepin Energy Resource Co., Limited Partnership (Hennepin Energy) tendered for filing a Notice of Cancellation of its Rate Schedule FERC No. 1 pursuant to Section 35.15 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 35.15. Rate Schedule FERC No. 1 was filed with the Commission on May 26, 1989 and June 13, 1989 in Docket No. ER89–462–000 and consists of a power purchase agreement (PPA) between Hennepin Energy and Northern States Power Company. Hennepin Energy states that the rate schedule is to be canceled since Hennepin Energy is assigning its interest in the PPA to Hennepin County, Minnesota.

Hennepin Energy requests an effective date of July 10, 2003, for the cancellation. Hennepin Energy also states that copies of the filing were served upon NSP and the Minnesota Public Utilities Commission.

Comment Date: July 31, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18659 Filed 7–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11887–000]

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

July 16, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12424–000.

c. *Date Filed:* December 3, 2002 and Supplemented on March 26, 2003.

d. *Applicant:* The City of Corpus Christi (City).

e. *Name of Project:* City of Corpus Christi Hydroelectric Project.

f. *Location:* The proposed project would be located at the City's existing Wesley E. Seale Dam, on the Nueces River in Nueces County, Texas.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contacts:* David Garcia, City Manager, City of Corpus Christi, 1201 Leopard Street, Corpus Christi, TX 78401, (361) 880–3873. Nancy J. Skancke, Law Offices of GKRSE, 1500 K Street NW., Suite 330, Washington, DC, 20005, (202) 408–5400.

i. *FERC Contact:* Mr. Lynn R. Miles, (202) 502–8763.

j. Deadline for filing motions to intervene, protests and comments: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12424–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Competing Application:* Project No. 12250–000, Date Filed: June 18, 2002, Date Issued: October 7, 2002, Due Date: December 7, 2002.

1. *Description of Project:* The proposed project would consist of: (1) An existing 5,970-foot-long, gated, concrete-gravity Wesley E. Seale Dam, (2) an existing impoundment, Lake Corpus Christi, with a surface area of 18,256 acres and a storage capacity of 257,260 acre-feet at normal maximum water surface elevation 94.0 above mean sea level, (3) two 2.5 MW turbine generating units with a total installed capacity of 5 megawatts, (4) an existing 69 kV transmission line, and (5) appurtenant facilities. The project would have an average annual generation of 5.2 gigawatt hours.

m. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

n. *Competing Applications:* Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30 (b) and 4.36.

o. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and eight copies to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Compliance and Administration, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18661 Filed 7–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, Protests, Recommendations, and Terms and Conditions

July 16, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 12459–000.

c. *Date filed:* June 16, 2003, supplemented June 25, 2003.

d. *Applicant:* Palmdale Water District.

e. *Name of Project:* Palmdale Energy Recovery Facility.

f. *Location:* The project would be located in Los Angeles County, California, on an existing 30-inch-diameter water supply pipeline between the California Aqueduct and Lake Palmdale.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a—825r.

h. *Applicant Contact:* Mr. Matthew Huang, Montgomery Watson Harza, 301 North Lake Avenue, Suite 600, Pasadena, CA 91101, (626) 568–6292.

i. *FERC Contact:* James Hunter, (202) 502–6086.

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

k. *Deadline for filing responsive documents:* The Commission directs, pursuant to section 4.34(b) of the Regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, motions to intervene, protests, recommendations, terms and conditions, and prescriptions concerning the application be filed with the Commission by August 18, 2003. All reply comments must be filed with the Commission by September 2, 2003.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Project:* The proposed project would consist of: (1) An existing 61-foot-long, 32-foot-wide building containing, (2) one generating unit with a total installed capacity of 240 kilowatts, and (3) appurtenant equipment. The average annual energy production would be 900 megawatt hours.

m. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits (P–12459) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov* . For TTY, call (202) 502–8659. A copy may also be obtained from the Applicant Contact.

n. *Development Application:* Any qualified applicant desiring to file a competing application must submit to

the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

o. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Protests or Motions to Intervene:* Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

q. All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing an original and eight copies to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18662 Filed 7–21–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0014; FRL–7534–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Surveys To Determine the Effectiveness of No-Discharge Zones (NDZ) for Vessel Sewage and Marine Sanitation Devices, EPA ICR Number 2107.01

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 21, 2003.

ADDRESSES: Submit your comments, referencing docket ID number OW–2003–0014, to (1) EPA at: online using EDOCKET (our preferred method), by email to *OW-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, EPA West, 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: James Woodley, Oceans and Coastal Protection Division, Office of Water, Environmental Protection Agency, 4504T, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–1287; fax number: (202) 566–1546; e-mail address: *woodley.james@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 27, 2003, (68 FR 14975), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received 20 sets of comments and addressed them in a separate document entitled, "Response to Comments on the March 27, 2003 Proposed Information Collection Request: Surveys to Determine the Effectiveness of No-Discharge Zones for Vessel Sewage and Marine Sanitation Devices." A copy of this document can be viewed or obtained from the public docket. Information pertaining to accessing the materials in the docket is explained below. None of the comments suggested that EPA not conduct the proposed surveys. The comments were from States, a U.S. Territory, non governmental organizations, trade associations, a marine sanitation device (MSD) manufacturer, a laboratory, and private citizens. The vast majority of the comments provided information regarding the potential questions that the surveys should ask. Some provided information regarding the perception of the effectiveness of the current no-discharge zones (NDZs) and MSDs, and additional comments provided recommendations on how EPA should modify the current Vessel Sewage Discharge Program. Lastly, some of the respondents offered their assistance in this effort.

EPA has established a public docket for this ICR under Docket ID No. OW–2003–0014, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public

docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Surveys to Determine the Effectiveness of No-Discharge Zones for Vessel Sewage and Marine Sanitation Devices.

Abstract: This ICR is for a series of surveys to be conducted to determine the effectiveness of NDZs for vessel sewage and MSDs in removing harmful pollutants from the waste stream of the device. This ICR requests approval to collect information from boat owners and operators, marina owners and operators, and State and local government officials regarding the effectiveness of NDZs. It also requests approval to collect information regarding the effectiveness of MSDs in removing harmful pollutants from the waste stream of the device. This information will be gathered from MSD manufacturers and U.S. Coast Guard accepted independent laboratories.

A survey will be developed for boat owners and operators to address the boater's experience with using pump-out or dump facilities in NDZs. The survey will collect general information regarding the respondent's boating activity and will seek information on whether the pump-out or dump facilities were working. It will address whether the boater would use the facilities if they were available, and how often the boaters actually use the facilities. It will also seek information on the boater's knowledge about NDZs. Respondents will be selected from North-Atlantic States, Mid-Atlantic States, South-Atlantic States, California, and the Great Lakes that contain NDZs. Approximately 1,400 respondents from the geographical regions will be selected for response. EPA predicts that completed surveys from about 1,200 boat owners and operators will be received. The information collection will be voluntary and will not include CBI.

A survey will be developed for marina owners and operators located in a particular NDZ to seek general information on the pump-out and dump facilities operations, to address the downtime of these facilities, and their use by boaters. It will seek information regarding the marina owner/operator's knowledge of NDZs. Respondents will be selected from North-Atlantic States, Mid-Atlantic States, South-Atlantic States, California, and the Great Lakes that contain NDZs. Approximately 100 marina owners or operators from the geographical regions will be selected for response. EPA predicts that completed surveys from about 75 marina owners and operators will be received. The information collection will be voluntary and will not include CBI.

A survey will also be developed for State and local government officials to determine if the designation of NDZs has been effective in addressing water quality issues of the particular water body, if boaters were in compliance with NDZ requirements, and the roles and responsibilities associated with the NDZ. Respondents will be selected from North-Atlantic States, Mid-Atlantic States, South-Atlantic States, California, and the Great Lakes that contain NDZs. Approximately 80 respondents from the geographical regions will be selected for response. EPA predicts that about 54 State and local government officials will complete the survey. The information collection will be voluntary and will not include CBI. The information collected from these surveys will be used to assess the overall effectiveness of NDZs for vessel sewage established under Clean Water Act section 312(f)(3) to help determine if modifications to the program are needed.

An additional survey will be developed to review current MSD technology. The information on MSDs that will be requested includes effluent constituents and their concentrations; bacteria eradication processes and suspended solids removal; cost; and installation. This information will be used to help determine the effectiveness of current MSD technologies and will be used to collect information to assist EPA in promulgating regulations implementing Title XIV: Certain Alaskan Cruise Ship Operations. Approximately 60 MSD manufacturers and 8 U.S. Coast Guard accepted independent laboratories will be selected for response. EPA predicts that about 30 MSD manufacturers and 7 U.S. Coast Guard accepted independent laboratories will complete the survey. Responding to the collection of information will be voluntary. Information collected from these entities that may be CBI and is covered by a CBI claim will be treated in accordance with the procedures set forth in 40 CFR part 2, subpart B.

EPA estimates that the respondent total burden and cost associated with this ICR is 474 hours, reflecting $13,053. The Agency burden and cost is estimated at 6,672 hours, reflecting $282,642.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 21 minutes per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Boat owners and operators, Marina owners and operations, State and local government officials, Marine Sanitation Device manufacturers, U.S. Coast Guard accepted independent laboratories.

Estimated Number of Respondents: 1,366.

Frequency of Response: one-time collection.

Estimated Total Annual Hour Burden: 474.

Estimated Total Annual Cost: $13,053, includes $0 annualized capital or O&M costs.

Dated: July 2, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–18613 Filed 7–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7534–4]

State of Wisconsin Prohibition on Marine Discharges of Vessel Sewage Into Waters of Lake Superior; Receipt of Petition and Tentative Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative determination.

SUMMARY: Today's notice announces that, by letter dated June 24, 2003, the United States Environmental Protection Agency has tentatively determined that there is a reasonable availability of adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels on the waters of Lake Superior under the jurisdiction of the State of Wisconsin.

DATES: Comments and views regarding this petition and EPA's tentative determination may be filed on or before August 21, 2003.

FOR FURTHER INFORMATION CONTACT: Irvin J. Dzikowski, United States Environmental Protection Agency, Region 5, Water Division WN–16J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6100.

SUPPLEMENTARY INFORMATION: A petition to the Regional Administrator, EPA, dated February 28, 2003, was received from the Secretary, State of Wisconsin Department of Natural Resources, requesting a determination pursuant to section 312(f)(3) of the Clean Water Act (CWA), 33 U.S.C. 1322(f)(3) and 40 CFR 140.4(a) that there is a reasonable availability of adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels on the waters of Lake Superior under the jurisdiction of the State of Wisconsin. There are 13 waterfront facilities that operate sanitary waste pumpout facilities and or dump stations in the proposed Wisconsin Waters Lake Superior No Discharge Area. In addition to the sanitary waste pumpout facilities, numerous shoreline restroom facilities are available at public boat launches, docks and parks. Commercial vessels use the facilities at the Port of Duluth Superior. On May 18, 2003, the State supplemented its petition with a "Greater Protection and Enhancement Certification." Once the EPA determines that adequate facilities are available, the State of Wisconsin has the authority pursuant to section 312(f)(3) and 40 CFR 140.4(a), to completely prohibit the discharge from all vessels of any sewage, whether treated or not, into the waters of Lake Superior under its jurisdiction. The EPA hereby makes a tentative affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available in the Lake Superior area under the jurisdiction of the State of Wisconsin. A final determination on this matter will be made by the Regional Administrator following the 30 day period for public comment.

Dated: June 24, 2003.

Thomas V. Skinner,

Regional Administrator, Region 5.

[FR Doc. 03–18614 Filed 7–21–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

July 8, 2003.

SUMMARY: The Federal Communications Commissions (FCC), as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 21, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Remedial Measures for Failure to Construct Digital Television Stations (DTV Policy Statement).

Form Number: N/A.

Type of Review: New collection.

Respondents: Business and other for-profit entities; not-for-profit institutions; and individuals or households.

Number of Respondents: 400.

Estimated Time per Response: 0.5 to 1.0 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 210 hours.

Total Annual Costs: $76,000.

Needs and Uses: On April 16, 2003, the FCC released a Report and Order and Memorandum Opinion and Order on Reconsideration, *In the Matter of Remedial Steps for Failure to Comply with Digital Television Construction Schedule,* MM Docket No. 02–113, FCC 03–77, ("R&O"), in which the Commission has adopted a series of remedial measures for stations that fail to construct their digital television (DTV) facilities in a timely fashion and fail to justify an extension of their DTV construction deadline. Stations will be subject to periodic reporting requirements. Under the first step, the Commission will deny the request for an unqualified extension and admonish the station for its failure to comply with its DTV construction obligation. The station must submit a report within thirty days outlining the steps it intends to take to complete construction and the approximate date that it expects to reach each of these construction milestones. Sixty days after its initial report, the station must submit a report detailing its progress on meeting its proposed construction milestones and justifying any delays it has encountered. Under the second step in the approach, if the

station has not come into compliance with the DTV construction rule within a six-month period, then, absent extraordinary and compelling circumstances, the Commission will issue a Notice of Apparent Liability for forfeiture to the licensee and require that the station report every thirty days on its proposed construction milestones and its efforts to meet those milestones. The R&O followed the release of an *Order/Notice of Proposed Rulemaking* adopted May 16, 2002, MM Docket No. 02–113, FCC 02–150, 67 FR 38459, June 4, 2002.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–18511 Filed 7–21–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

[Petition P2–03]

Petition of Sinotrans Container Lines Co., Ltd. (SINOLINES) for a Limited Exemption From Section 9(c) of the Shipping Act of 1984; Notice of Filing

Notice is hereby given that Sinotrans Container Lines Co., Ltd. (SINOLINES) ("Petitioner") has petitioned, pursuant to Section 16 of the Shipping Act of 1984, 46 U.S.C. app. section 1715; and 46 CFR 502.69, for a limited exemption from the tariff publishing requirements of section 9 of the 1984 Act, 46 U.S.C. app section 1708(c). Petitioner seeks an exemption so that it can lawfully reduce rates to meet or exceed the tariff rates of other ocean common carriers on one day's notice.

In order for the Commission to make a thorough evaluation of the Petition, interested persons are requested to submit views or arguments in reply to the Petition no later than August 8, 2003. Replies shall consist of an original and 15 copies, be directed to the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, and be served on Petitioner's counsel; Robert B. Yoshitomi and Christopher J. Jackson, Nixon Peabody LLP, 2040 Main Street, Suite 850, Irvine, CA 92614. It is also requested that a copy of the reply be submitted in electronic form (WordPerfect, Word, or ASCII) on diskette, or e-mailed to *secretary@fmc.gov*. Copies of the petition are available at the Office of the Secretary of the Commission, 800 N. Capitol Street, NW., Room 1046. A copy may also be obtained by sending a request to *secretary@fmc.gov* or by calling (202) 523–5725. Parties participating in this proceeding may elect to receive service of the Commission's issuances in this proceeding through email in lieu of service by U.S. mail. A party opting for electronic service shall advise the Office of the Secretary in writing and provide an email address where service can be made. Such requests may be directed to *secretary@fmc.gov*.

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–18576 Filed 7–21–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Notice

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Notice; correction.

TIME AND DATE: 3 p.m. (EDT); correction July 24, 2003; correction.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

SUMMARY: The Federal Retirement Thrift Investment Board published a notice in the **Federal Register** on Thursday, July 17, 2003, concerning upcoming Board member meeting.

Correction

In the **Federal Register** of Thursday, July 17, 2003, Vol. 68, No. 137, page 42473, in the third column, change the time and date caption to read: 3 p.m. (EDT), July 24, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: July 17, 2003.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 03–18657 Filed 7–17–03; 4:54 am]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Proposed Airborne Exposure Limits for Chemical Warfare Agents H, HD, and HT (Sulfur Mustard)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of proposed worker and general population airborne exposure limits (AELs) for chemical warfare agents H, HD, and HT (sulfur mustard) to protect the health and safety of workers and the public during treatment, transport, or disposal of these agents.

Purpose: CDC presents results of its review of AELs for the chemical warfare agents H, HD and HT (collectively referred to as sulfur mustard, bis(2-chloroethyl)sulfide, CAS 505–60–2).[1] All three compounds are chemically and toxicologically related and therefore will be treated here as a single compound represented by HD. Before finalizing these proposals, CDC requests comments from the public, all interested parties, environmental and health regulators, the Department of Defense (DOD), and other organizations involved in handling or demilitarizing chemical warfare agents. More specifically, CDC seeks scientifically and professionally defensible data or information that would be helpful in this evaluation of the AELs for sulfur mustard.

Preamble: This proposal updates the sulfur mustard AELs recommended by CDC in 1988. In preparing this proposal, CDC found some evolution of the methods used to derive AELs and some additional toxicity data available for consideration. Even though no empirical evidence indicated that the existing AELs for mustard are not protective of health, CDC believed the new methods and information should be examined for potential impacts on the exposure criteria. Considerations and logic used to arrive at the proposed AELs may be requested from the contact listed at the end of this announcement.

When reviewing the methods used to derive AELs, CDC found that the Environmental Protection Agency's (EPA's) traditional "reference concentration" (RfC) method (based on no observed adverse effect level/lowest observed adverse effect level [NOEL/LOAEL] values) and the newer categorical regression, or "CatReg" method, are both undergoing internal review that could result in future variation in the way they are applied and the numeric values ultimately derived. Accordingly, CDC decided that both methods should be examined to help define a range of potential values for the proposed AELs. This announcement summarizes CDC's findings and the resultant AELs being proposed. The proposed values were developed in the context of applying professional judgment and did not rely exclusively on any one method. Accordingly, the proposed AELs reflect realistic risk management provisions associated with chemical demilitarization and do not necessarily apply to other purposes.

[1] HD is distilled sulfur mustard that has been purified by washing and vacuum distillation, whereas Levinstein mustard (H) contains about 30 percent sulfur impurities and has stronger vesicant action. HT consists of 60 percent HD and 40 percent T (related vesicant with lower freezing point and much lower volatility), with reportedly similar characteristics to HD. T is not expected to constitute an airborne vapor hazard.

CDC believes that incorporating risk management into the risk assessment process is necessary and beneficial for the following reasons: Extensive experience has shown that any exposure would be expected to be episodic and acute; extensive air monitoring, engineering, and procedural safeguards have effectively limited exposures; and competing risks would be introduced if existing requirements were significantly changed. Consequently, this proposal is predicated on CDC's understanding of existing demilitarization safeguards and procedures.

Rather than specify an 8-hour time-weighted average, CDC proposes to designate a 5-minute ceiling level that reflects the extensive near-real-time monitoring systems associated with chemical demilitarization activities. Additionally, CDC proposes to recommend a 12-hour general population limit (GPL–12), applicable to both the general population and workers, to confirm that low-level exposure is not occurring. The time duration of the GPL–12 is consistent with the sampling period for existing air monitoring methods and the long work shifts in many demilitarization operations.

CDC recommends a GPL value to allow facility perimeter monitoring levels to be set at a concentration that ensures that carcinogenicity protection goals are met. CDC proposes to change the definition of the GPL to reflect the probable short duration of potential exposures to the general public. Further discussion of this redefinition appears in the available support documentation.

CDC believes this proposal meets the goals of protecting workers and the public at potential airborne concentration levels below those which would result in adverse health effects or irritation for acute exposures, and further protects against risk of cancer from long-term exposure. The criteria proposed in this announcement protect at a risk level below one in one million excess cancers, which is considered to be insignificant.

SUMMARY: CDC's proposals are based on comments by individual scientific experts and interested participants at a public meeting convened by CDC on September 11–12, 2001, in Atlanta, GA; the latest available scientific data and technical reviews; exposure and risk assessment approaches (*e.g.* CatReg and RfC methods); and CDC's understanding of current risk management practices associated with the U.S. Army's chemical agent demilitarization program. As a result of this re-evaluation of the data and the continuing evolution of AEL derivation methods, CDC proposes that the 1988 worker population limit (WPL) of 0.003 mg/m^3, currently an 8-hour time-weighted average (TWA), becomes a 5-minute Ceiling limit value (CEILING–5M); and the GPL of 0.0001 mg/m^3, currently a 72-hour time-weighted average (GPL–72), becomes a 12-hour TWA (GPL–12) and it is adjusted to 0.00002 mg/m^3 to meet carcinogenicity protection levels below thresholds of significant risk (Table 1). CDC also proposes that historical monitoring at the new GPL–12 be implemented where workers are assigned, if reasonable potential exists for mustard exposure. This is to ensure that undetected low-level exposure is not occurring. The proposed Immediately Dangerous to Life or Health (IDLH) value of 0.7 mg/m^3 was derived by CDC/National Institute for Occupational Safety and Health (CDC/NIOSH) in accordance with standard NIOSH protocol.

TABLE 1.—CDC PROPOSED MUSTARD AIRBORNE EXPOSURE LIMITS

[All values expressed as mg/m^3 in air]

Mustard (H, HD, HT) criteria	Existing worker population limit (WPL–8)	Proposed worker daily ceiling limit (CEILING–5M*)	Existing general population limit (GPL–72)	Proposed general population limit (includes workers) (GPL–12*)	Proposed immediately dangerous to life or health (IDLH)
Exposure Level	0.003	**0.003	0.0001	0.00002	0.7‡
Averaging Time	8 hours (TWA)	≤5 minutes	72 hours (TWA)	≤12 hours† (TWA)	≤30 minutes

* Administrative or appropriate personal protective equipment is required if mustard vapor exposure exceeds criteria.

** To be evaluated with a near real-time instrument with a cycle time of not more than 5 minutes.

† To be evaluated with historical air monitoring method with analysis within 72 hours of sampling (applicable to worker and general population to detect low-level excursions of agent). The action level is recommended to be set at the GPL for this criterion.

‡ The 30-minute period is not meant to imply that workers should stay in the work environment any longer than necessary; in fact, they should make every effort should be made to exit immediately. IDLH condition requires highly reliable dermal and respiratory protection providing maximum worker protection.

Although the proposed CEILING–5M is numerically identical to the existing 1988 CDC criteria, the averaging time has been changed to reflect actual operating conditions associated with ongoing demilitarization activities. The averaging time for the GPL similarly has been changed to reflect actual practice. As discussed in the supporting documentation, these changes reduce the potential dose associated with an exposure at each limit.

CDC believes that the proposed limits will protect workers and the public from potential acute and long-term (*e.g.*, carcinogenic) adverse health effects from exposure to H, HD, and HT. Comments are hereby sought to help CDC refine their evaluation prior to issuing final recommended AELs.

DATES: Submit comments on or before October 1, 2003.

ADDRESSES: Comments may be submitted several ways:

1. By mail. Submit your comments to Dr. Paul Joe, Centers for Disease Control and Prevention, 4770 Buford Highway, Mail Stop F–16, Atlanta, Georgia 30341.

2. In person or by courier. Deliver your comments to the address listed above.

3. Electronically. Submit your comments by e-mail to *pbj4@cdc.gov*, or submit a computer disk to the address indicated above. Electronic documents will be accepted in Corel WordPerfect® or Microsoft Word® formats.

For a Copy of CDC's Detailed Proposal: Dr. Paul Joe, Centers for Disease Control and Prevention, 4770 Buford Highway, Mail Stop F–16, Atlanta, GA 30341, Telephone number:

770–488–7091, E-mail address: *pbj4@cdc.gov.*

Dated: July 16, 2003.

Joseph R. Carter,

Associate Director for Management and Operations, Centers for Disease Control and Prevention.

[FR Doc. 03–18601 Filed 7–21–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10091]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. We feel emergency approval is needed to possibly reduce the risk of public harm on beneficiaries by providing them the proper tools needed to get current information with regards to finding a Medicare participating physician who is accepting new patients.

CMS is requesting OMB review and approval of this collection by August 8, 2003, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by July 31, 2003. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Collection Request: New Collection; *Title of Information Collection:* UPIN (UPIN Physician Identification Number) Participating Directory/Accepting New Patients Indicator; *Form No.:* CMS–10091 (OMB# 0938-NEW); *Use:* In November of 2000, CMS launched the Participating Physicians Directory on *http//www.medicare.gov.* This particular directory was created to provide beneficiaries with the names, addresses, and specialties of Medicare participating physicians who have agreed to accept assignment on all Medicare claims and covered services. CMS is adding information from already existing sources; in addition, CMS wants to collect a new data element "Accepting New Patients Indicator" which is essential to a beneficiary's search for a physician. *Frequency:* On occasion; *Affected Public:* Business or other for-profit; *Number of Respondents:* 109,800; *Total Annual Responses:* 10,980; *Total Annual Hours:* 915.

We have submitted a copy of this notice to OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by July 31, 2003: Centers for Medicare and Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850. Fax Number: (410) 786–0262, Attn: Melissa Musotto CMS 10091; and, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Brenda Aguilar, CMS Desk Officer.

Dated: July 10, 2003.

Julie Brown,

Acting, Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–18529 Filed 7–21–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[CMS–1964]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. Emergency approval is needed because this collection's expiration inadvertently lapsed.

CMS is requesting OMB review and approval of this collection by August 8, 2003, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by July 31, 2003. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Collection Request: Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Request for Review of Part B Medicare Claim and Supporting Regulations in 42 CFR Section 405.807; *Form No.:* CMS–1964 (OMB# 0938–0033); *Use:* This form is the preferred manner to enable appellants to request a Part B review by a carrier.; *Frequency:* On occasion; *Affected Public:* Individuals or Households and Not-for-profit institutions; *Number of Respondents:* 6,860,000; *Total Annual Responses:* 6,860,000; *Total Annual Hours:* 1,715,000.

We have submitted a copy of this notice to OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by July 31, 2003: Centers for Medicare and Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850. Fax Number: (410) 786–0262, Attn: Melissa Musotto CMS 10091; and, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Brenda Aguilar, CMS Desk Officer.

Dated: July 10, 2003.

Melissa Musotto,

Acting, Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–18530 Filed 7–21–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0302]

Agency Information Collection Activities; Proposed Collection; Comment Request; Certain Biologics Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements related to certain biologics labeling requirements.

DATES: Submit written or electronic comments on the collection of information by September 22, 2003.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.fda.gov/dockets/ecomments.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

Certain Biologics Labeling

Under the authority of section 351 of the Public Health Services Act (PHS Act) (42 U.S.C. 262), the biologics regulations require a manufacturer of a biological product to submit an application with accompanying information, including labeling information, to FDA for approval to market a product in interstate commerce part 601.2 (21 CFR part 601.2). In addition, any changes to labeling are required to be submitted to FDA for review and approval (§ 601.12). For

biological products, excluding blood and blood components for transfusion, the container and package labeling requirements subject to the PRA are provided in part 610.60 (21 CFR part 610.60) §§ 610.61, and § 610.62. The collections of information under §§ 601.2, 601.12, 610.60, 610.61, and 610.62 are approved under OMB control number 0910–0338 (expires August 31, 2005). In addition to the labeling requirements prescribed in §§ 610.60 through 610.62 or other labeling regulations (e.g., § 809.10), there are additional container and/or package labeling requirements for certain licensed biological products subject to the PRA: §§ 640.70 and 640.74 (21 CFR 640.70 and 640.74) (Source Plasma), § 640.84 (Albumin), § 640.94 (Plasma Protein Fraction), § 660.2 (Antibody to Hepatitis B Surface Antigen), § 660.28 (Blood Grouping Reagent), § 660.35 (Reagent Red Blood Cells), § 660.45 (Hepatitis B Surface Antigen), and § 660.55 (Anti-Human Globulin).

An example of an additional labeling requirement for each of the specific regulations is as follows:

- Section 640.70(a), the total volume or weight of plasma.
- Section 640.74(b)(3) and (4), the name of the manufacturer of the final blood derivative product for whom it was prepared.
- Sections 640.84(a) and (c), and 640.94(a), the osmotic equivalent.
- Section 660.2(c), name of the recommended test method(s).
- Section 660.28(a) and (b), the name of the antibody or antibodies present.
- Section 660.35(a), (c) through (g), and (i) through (m), information regarding washing of cells, percentage of red blood cells in suspension.
- Section 660.45, name of the recommended test method(s).
- Section 660.55(a) and (b), the name of the antibody or antibodies present.

Form FDA 2567 "Transmittal of Labels and Circulars" is used by manufacturers of licensed biological products to submit with labeling (e.g., circulars, package labels, container labels, etc.) and labeling changes for FDA review and approval. Labeling information is submitted to FDA for review in an application, supplement or, when appropriate, an annual report. Form FDA 2567 is approved under OMB control number 0910–0338.

Based on information obtained from CBER's database system, there is an estimated 350 manufacturers of licensed biological products. However, not all manufacturers will have any submissions in a given year and some may have multiple submissions. The total annual responses are based on the estimated number of submissions for a particular product (e.g., license applications and labeling supplements) received annually by FDA. No applications have been received for most of the listed products in the last couple of years, but FDA is using the estimate of one application in the event one is submitted in the future. Based on previous estimates, the rate of submissions is not expected to change significantly in the next few years.

The hours per response is based on past FDA's experience with the various submissions to FDA and includes the time estimated to prepare the various submissions for FDA review and collate the documentation. The burden associated with the additional labeling requirements for submission in a license application is minimal because the majority of the burden is associated with the requirements under §§ 610.60 through 610.62 or other labeling requirements. FDA estimates that it takes between 10 to 40 hours (average 25 hours) to complete a labeling supplement or annual report for submission to FDA.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Type of Submission	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
640.70(a) and 640.74(b)(3) and (4)	application	5	1	5	2	10
	supplement	20	1.5	30	25	750
640.84(a) and (c)	application	1	1	1	1	1
	supplement	3	1.25	4	25	100
640.94(a)	application	1	1	1	1	1
	supplement	1	1	1	25	25
660.2(c)	application	1	1	1	3	3
	supplement	1	1	1	25	25
660.28(a) and (b)	application	1	1	1	6	6
	supplement	1	2	2	25	50
660.35(a)(c) through (a)(g) and 660.35 (a)(i) through (a)(m)	application	1	1	1	6	6
	supplement	1	1	1	25	25
660.45	application	1	1	1	3	3
	supplement	1	1	1	25	25
660.55(a) and (b)	application	1	1	1	6	6
	supplement	1	1	1	25	25
Total						1,061

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: July 15, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–18503 Filed 7–21–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines; Request for Nominations for Voting Members

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is requesting nominations to fill three vacancies on the Advisory Commission on Childhood Vaccines (ACCV). The ACCV was established by Title XXI of the Public Health Service Act (the Act), as enacted by Public Law (Pub. L.) 99–660 and as subsequently amended, and advises the Secretary of Health and Human Services (the Secretary) on issues related to implementation of the National Vaccine Injury Compensation Program (VICP).

DATES: The agency must receive nominations on or before August 21, 2003.

ADDRESSES: All nominations are to be submitted to the Director, Division of Vaccine Injury Compensation, Office of Special Programs, HRSA, Parklawn Building, Room 16C–17, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl A. Lee, Principal Staff Liaison, Policy Analysis Branch, Division of Vaccine Injury Compensation, at (301) 443–2124 or e-mail:*clee@hrsa.gov*.

SUPPLEMENTARY INFORMATION: Under the authorities that established the ACCV, the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463) and Section 2119 of the Act, 42 U.S.C. 300aa–19, as added by Public Law 99–660 and amended, HRSA is requesting nominations for three voting members of the ACCV.

The ACCV advises the Secretary on the implementation of the VICP. The activities of the ACCV include: Recommending changes in the Vaccine Injury Table at its own initiative or as the result of the filing of a petition; advising the Secretary in implementing section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions; surveying Federal, State, and local programs and activities related to gathering information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b); advising the Secretary on the methods of obtaining, compiling, publishing, and using credible data related to the frequency and severity of adverse reactions associated with childhood vaccines; and recommending to the Director of the National Vaccine Program that vaccine safety research be conducted on various vaccine injuries.

The ACCV consists of nine voting members appointed by the Secretary as follows: Three health professionals, who are not employees of the United States Government and have expertise in the health care of children, the epidemiology, etiology and prevention of childhood diseases, and the adverse reactions associated with vaccines, at least two shall be pediatricians; three members from the general public, at least two shall be legal representatives (parents or guardians) of children who have suffered a vaccine-related injury or death; and three attorneys, at least one shall be an attorney whose specialty includes representation of persons who have suffered a vaccine-related injury or death, and one shall be an attorney whose specialty includes representation of vaccine manufacturers. In addition, the Director of the National Institutes of Health, the Assistant Secretary for Health, the Director of the Centers for Disease Control and Prevention, and the Commissioner of the Food and Drug Administration (or the designees of such officials) serve as nonvoting ex officio members.

Specifically, HRSA is requesting nominations for three voting members of the ACCV representing: (1) A pediatrician with special experience in childhood diseases; (2) an attorney whose specialty includes representation of a vaccine manufacturer; and (3) a member from the general public. Nominees will be invited to serve a 3-year term beginning January 1, 2004, and ending December 31, 2006.

Interested persons may nominate one or more qualified persons for membership on the ACCV. Nominations shall state that the nominee is willing to serve as a member of the ACCV and appears to have no conflict of interest that would preclude the ACCV membership. Potential candidates will be asked to provide detailed information concerning consultancies, research grants, or contracts to permit evaluation of possible sources of conflicts of interest. A curriculum vitae or resume should be submitted with the nomination.

The Department of Health and Human Services has special interest in assuring that women, minority groups, and the physically disabled are adequately represented on advisory committees; and therefore, extends particular encouragement to nominations for appropriately qualified female, minority, or physically disabled candidates.

Dated: July 10, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–18567 Filed 7–21–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

[HRSA–03–039]

Fiscal Year 2003 Competitive Application Cycle for the Healthy Communities Access Program (HCAP); CFDA Number 93.252

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds for new awards.

Legislative Authority: The "Health Care Safety Net Amendments of 2002" (Pub. L. 107–251) amended Part D of Title III of the Public Health Service (PHS) Act by inserting a new Subpart V, Section 340, creating the Healthy Communities Access Program (HCAP). Section 340 of the PHS Act (42 U.S.C. 256) authorizes the award of competitive grants to eligible entities to assist in the development of integrated health care delivery systems to serve communities of individuals who are uninsured and/or underinsured.

Purpose: To provide assistance to communities and consortia of health care providers and others they represent to develop or continue activities to strengthen integrated community health care delivery systems that coordinate health care services for individuals who are uninsured or underinsured, and to develop or strengthen activities related to providing coordinated care for individuals with chronic conditions who are uninsured or underinsured.

Eligibility: Tribal, faith-based and community-based organizations are encouraged to apply. For an entity to be eligible to receive a new HCAP award, the following requirements must be met:

1. The applicant entity must represent a consortium whose principal purpose

is to provide a broad range of coordinated health care services to their defined community's uninsured and underinsured populations.

2. The community-wide consortium represented by the applicant entity must include at least one of each of the following providers that serve the stated community, unless such provider does not exist, declines or refuses to participate, or places unreasonable conditions on its participation:

• A Federally qualified health center (as defined in section 1861(aa) of the Social Security Act (42 U.S.C. 1395x(aa));

• A hospital with a low-income utilization rate (as defined in section 1923(b)(3) of the Social Security Act (42 U.S.C. 1396r–4(b)(3)), that is greater than 25 percent;

• A public health department; and

• An interested public or private sector health care provider or an organization that has traditionally served the medically uninsured and underserved.

3. The applicant entity is neither a current nor former Community Access Program (CAP) grantee and is proposing to serve either a service area or target population of uninsured and underinsured individuals that has not been exclusively served by a previous CAP grant.

For an existing CAP grantee to be eligible to receive a completing Continuation HCAP award, the following requirements must be met.

1. The applicant entity must represent a consortium whose principal purpose is to provide a broad range of coordinated health care services to their defined community's uninsured and underinsured populations.

2. The community-wide consortium represented by the applicant entity must include at least one of each of the following providers that serve the stated community, unless such provider does not exist, declines or refuses to participate, or places unreasonable conditions on its participation:

• A Federally qualified health center (as defined in section 1861(aa) of the Social Security Act (42 U.S.C. 1395x(aa));

• A hospital with a low-income utilization rate (as defined in section 1923(b)(3) of the Social Security Act (42 U.S.C. 1396r–4(b)(3)), that is greater than 25 percent;

• A public health department; and

• An interested public or private sector health care provider or an organization that has traditionally served the medically uninsured and underserved.

Existing CAP grantees seeking a 4th year if funding must demonstrate extraordinary circumstances, *i.e.*, an event (or events) outside the control of the eligible entity that has prevented the eligible entity from fulfilling the objectives described by such entity in their approved grant application for the budget period for the preceding fiscal year. The event(s) and impact, or impact alone, of any of the extraordinary circumstances noted below must have occurred during the applicant's budget period (September 1, 2002—August 31, 2003) for the preceding fiscal year. Examples include: Natural disasters or other major disruptions to the security or health of the community served by the applicant that directly and adversely affect the applicant; or significant economic deteriorations in the community served by the applicant that directly and adversely affect the applicant.

DATES: The timelines for application submission and award are as follows:

Application Deadline: August 26, 2003.

Grant Awards Announced: September 28, 2003.

Applications will be considered on time if they are received by 5 p.m. eastern standard time on August 26, 2003 or before the established deadline. Applicants should obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service or request a legibly dated U.S. Postal Service postmark. Private metered postmarks will not be accepted as proof of timely mailing. Applicants sent to any address other than that specified below are subject to being returned. Applicants will receive notification of their application receipt. Applicants should note that HRSA will be accepting grant applications online in the last quarter of the fiscal year (July through September). Please refer to the HRSA grants schedule at *http://www.hrsa.gov/grants.htm* for more information.

How To Request and Submit an Application: To obtain a complete application kit (*i.e.*, application instructions, necessary forms, and application review criteria), call toll free 1–877–HRSA–123 (1–877–477–2123). When contacting the HRSA Grants Application Center (GAC) please refer to the program announcement number HRSA–03–39 and the name of this program.

An original and two copies of the application must be sent to: HRSA Grants Application Center, 901 Russell Avenue, Suite 450, Gaithersburg, Maryland 20879; FAX: 1–877–HRSA–345 (1–877–477–2345); E-mail: *hrsagac@hrsa.gov*.

Application Review and Funding Criteria: Each application received by the deadline will be screened for eligibility. An application will be considered eligible if it meets all of the specific eligibility requirements listed above. Applications that do not meet the eligibility requirements will not be accepted for processing and will be returned. An Objective Review Committee (ORC) will review all eligible applications. The review criteria used by the Objective Review Committee to assess each application (out of 100 points) will include:

• *Community Health Care Delivery System Needs Assessment (maximum 10 points):* Extent to which the applicant clearly defines the service area and target population of uninsured and underinsured individuals for the project and provides a detailed assessment of the current delivery system for the applicant's uninsured and underinsured populations so as to describe the extent of unmet need for a more coordinated system of care.

• *Consortium Organizational and Functional Structure (Maximum 15 Points):* Extent to which the applicant describes the history, membership, functional structure, accountability, and strategies of the applicant's HCAP consortium in terms of its capacity to implement an efficient, higher quality, comprehensive system of care for the stated target population of uninsured and underinsured individuals.

• *Project Work Plan (Maximum 35 Points):* Extent to which the applicant's work plan demonstrates the clarity, feasibility, and scope of proposed activities, goals, and measurable objectives which are consistent and aligned with stated needs and will develop or strengthen an integrated community health care delivery system that provides more efficient, effective, coordinated, and quality care at a lower cost for the stated population of uninsured or underinsured individuals.

• *Program Performance Plan (Maximum 15 Points):* Extent to which the applicant provides an appropriate plan for evaluation of the activities carried out under the grant that ensures monitoring and measurement of progress towards the corresponding goals and objectives as well as the use of evaluation findings to improve program performance and support sustainability.

• *Sustainability Plan (Maximum 15 Points):* Extent to which the applicant provides an appropriate plan for long-term project sustainability and community-reinvestment for HCAP activities through decreasing dependence on Federal funds.

• *Budget (Maximum 10 Points):* Extent to which the applicant presents a detailed, clear and comprehensive budget that is appropriate and reasonable for the scope of proposed activities described in the Project Work Plan and which adequately documents and demonstrate the use of non-Federal contributions to the greatest extent possible for the proposed HCAP project.

Further evaluation/review criteria detail will be listed in the application guidance.

Funding Preference: A funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories or groups of approved applications. There is one preference under this funding opportunity. A preference will be accorded to applicants that demonstrate the greatest extent of unmet need in the community involved for a more coordinated system of care.

Matching or Cost Sharing Requirement: No match or cost sharing required.

Estimated Amount of Available Funds: $35,000,000 for New Awards and $70,000,000 for Competing Continuations.

Estimated Number of Awards: Up to 35 New Awards and 100 Competing Continuations.

Estimated Average Size of Each Award: New awards will range from $800,000 to $900,000 and Competing Continuations will range from $600,000 to $700,000.

Estimated Project Period: Up to three years for new award. For competing continuations, Cap Grantees that received: (1) Their initial funding in fiscal year 2000 are eligible for a one year project period under Extraordinary Circumstances; (2) their initial funding in fiscal year 2001 are eligible for a one year project period under this announcement; and (3) their initial funding in fiscal year 2002 are eligible for up to a two year project period under this announcement.

FOR FURTHER INFORMATION CONTACT: Tracy McClintock, phone number: (301) 594–4300, e-mail:*tmcclintock@hrsa.gov*.

Paperwork Reduction Act: The application for the Healthy Communities Access Program has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB clearance number is 0920–0428.

Public Health System Reporting Requirements: Under these requirements (approved by the Office of Management and Budget under OMB number 0937–0195), a community-based non-governmental applicant must prepare and submit a Public Health System Impact Statement to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date. This statement must include:

1. A copy of the face page of the application (SF 424) and

2. A summary of the project, not to exceed one page, which provides:

a. A description of the population to be served,

b. A summary of the services to be provided, and

c. A description of the coordination planned with the appropriate State and local health agencies.

Executive Order 12372: This program has been determined to be subject to provisions of Executive Order 12372, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The Form PHS 5161 contains a listing of States that have set up a review system and will provide a State Point of Contact (SPOC) in the State for the review. A list of SPOC contacts is also available at *http://www.whitehouse.gov/omb/grants/spoc.html*. Applicants (other than federally-recognized Indian tribal governments) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State.

Except in unusual circumstances, the due date for State process recommendations is at least 60 days from the deadline date established by the Secretary. 45 CFR 100.8(a)(2). In this instance, there are less than 90 days before the end of the 2003 fiscal year (on September 30, 2003). Due to this unusual circumstance, HRSA is establishing a 30-day due date for State process recommendations to assure timely consideration of such recommendations. The HRSA does not guarantee that it will accommodate or explain its responses to State process recommendations received after the due date (*See* "Intergovernmental Review of Federal Programs" Executive Order 12372, and 45 CFR Part 100, for a description of the review process and requirements).

Dated: July 15, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–18632 Filed 7–21–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the Teléconference meeting of the Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Prevention (CSAP) National Advisory Council in July 2003.

The agenda will include the review, discussion, and evaluation of individual grant applications. Therefore the Teleconference meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App.2, 10(d).

A roster of committee members and substantive program information may be obtained from Carol Watkins, Executive Secretary, Rockwall II Building, Suite 900, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–9542.

Committee Name: SAMHSA Center for Substance Abuse Prevention National Advisory Council.

Meeting Dates: Monday, July 21, 2003, 3–5 p.m. (Closed Session).

Meeting Place: Center for Substance Abuse Prevention, 5515 Security Lane, Rockwall II Building, Conference Room I, Room 900, Rockville, Maryland, Telephone (301) 443–0365.

Contact: Carol D. Watkins, Executive Secretary, 5600 Fishers Lane, Rockwall II Building, Suite 900, Rockville, Maryland 20857, Telephone: (301) 443–9542.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: July 16, 2003.

Toian Vaughn,

Executive Secretary/Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–18502 Filed 7–21–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

Agency Information Collection Activities: Comment Request

ACTION: Request OMB emergency approval; petition for nonimmigrant worker: Form I–129.

The Department of Homeland Security, Bureau of Citizenship and Immigration Services (BCIS) has submitted the following information collection request utilizing emergency review procedures to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (1)(2)(iii) of the Paperwork Reduction Act of 1995. The BCIS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Emergency review and approval of this information collection will ensure that the collection may continue. Therefore, OMB approval has been requested by July 18, 2003.

If granted, the emergency approval in only valid for 180 days. All comments and/or questions pertaining to this pending request for emergency approval must be directed to OMB, Office of Information and Regulatory Affairs, 725 17th Street, NW., Suite 10235, Washington, DC 20503; Attention: Department of Homeland Security Desk Officer. Comments regarding the emergency submission of this information collection may also be submitted via facsimile to 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the BCIS requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted for sixty days until September 22, 2003. During the 60-day regular review, all comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Division, Bureau of Immigration and Customs Enforcement, U.S. Department of Homeland Security, Room 4034, 425 I Street, NW., Washington, DC 20536. Written comments and suggestions form the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement of a previously approved information collection.

(2) *Title of the Form/Collection:* Petition for Nonimmigrant Worker.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–129. Bureau of Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as brief abstract:* Primary: Individuals or households. This form is used by an employer to petition for aliens to come to the U.S. temporarily to perform services, labor, training or to request extensions of stay or changes in nonimmigrant status for nonimmigrant workers.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 368,948 responses at 2.75 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,014,607 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Division, Bureau of Immigration and Customs Enforcement, U.S. Department of Homeland Security, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Lewis Oleinick, Department Clearance Officer, United States Department of Homeland Security, Regional Office Building 3, 7th and D Streets, SW., Washington, DC 20530.

Dated: July 16, 2003.

Richard A. Sloan,

Department Clearance Officer, U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement.

[FR Doc. 03–18630 Filed 7–21–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–15649]

National Offshore Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the National Offshore Safety Advisory Committee (NOSAC). NOSAC provides advice and makes recommendations to the Coast Guard on matters affecting the offshore industry.

DATES: Application forms should reach us on or before September 30, 2003.

ADDRESSES: You may request an application form by writing to Commandant (G–MSO–2), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001; by calling 202–267–1181; or by faxing 202–267–4570. A copy of the application form is available from the Coast Guard's Advisory Committee Web page at: *http://www.uscg.mil/hq/g-m/advisory/index.htm* Send your application in written form to the above street address. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Captain D. L. Scott, Executive Director of NOSAC, or James M. Magill, Assistant to the Executive Director, telephone 202 267–1181, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: NOSAC is a Federal advisory committee under 5 U.S.C. App. 2 (Pub. L. 92–463, 86 Stat. 770, as amended). It consists of 14 regular members who have particular knowledge and experience regarding offshore technology, equipment, safety and training and environmental expertise in the exploration or recovery of offshore mineral resources. It provides advice and makes recommendations to the Assistant Commandant for Marine Safety, Security and Environmental Protection on safety, security and rulemaking matters relating to the offshore mineral and energy industries. This advice assists us in formulating the positions of the United States in advance of meetings of the International Maritime Organization.

NOSAC meets twice a year, with one of these meetings being held at Coast Guard Headquarters in Washington, DC. It may also meet for extraordinary purposes. Its subcommittees and working groups may meet to consider specific problems as required.

We will consider applications received in response to this notice for three positions that expire or become vacant in January 2004. Applications should reach us by September 30, 2003, but we will consider applications received later if they arrive before we make our recommendations to the Secretary of Homeland Security.

To be eligible, applicants should have experience in one of the following categories: (1) Offshore operations, (2) diving services, or (3) pipelaying services. Please state on the application form which of the three categories you are applying for. Each member normally serves a term of 3 years or until a replacement is appointed. A few members may serve consecutive terms. All members serve at their own expense and receive no salary, reimbursement of travel expenses, or other compensation from the Federal Government.

In support of the policy of the Coast Guard on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

If you are selected as a member who represents the general public, we will require you to complete a Confidential Financial Disclosure Report (OGE Form 450). We may not release the report or the information in it to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Dated: July 14, 2003.

J.G. Lantz,

Acting Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 03–18520 Filed 7–21–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Information Collection Under the Paperwork Reduction Act; Comment Request

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed collection.

SUMMARY: As required by the Paperwork Reduction Act of 1995, we are renewing the information collection found in the general Probate of Indian Decedents' Estates, Except for Members of the Five Civilized Tribes regulations. The purpose of this data collection is to ensure that Probate regulations are administered for the benefit of individual Indians and any persons having claims against an Indian decedent's estate.

DATES: Comments on this proposed information collection must be received by September 22, 2003.

ADDRESSES: Send comments to Ben Burshia, Bureau of Indian Affairs, Office of Trust Responsibilities, Real Estate Services, 1849 C Street, NW., MS 4512-MIB, Washington, DC 20240. Comments may also be faxed to (202) 219–1065. We cannot accept e-mail comments at this time.

FOR FURTHER INFORMATION CONTACT: Angela D. Pittman, (202) 208–4861.

SUPPLEMENTARY INFORMATION: The information provided through collection requirements is used by the Department of the Interior, BIA, to determine heirs and divide any funds held by the BIA for an Indian decedent and to divide the decedent's trust and restricted real property. The information is particularly used by the Bureau of Indian Affairs in:

(a) Instructing an individual in starting the probate process;

(b) Preparing a probate package for review;

(c) Filing claims;

(d) Disbursing assets; and

(e) Filing appeals for adverse decisions.

Request for Comments

The Bureau of Indian Affairs requests your comments on this collection concerning:

(a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used;

(c) Ways we could enhance the quality, utility and clarity of the information to be collected; and

(d) Ways we could minimize the burden of the collection of the information on the respondents, such as facilitating use of automation for collection techniques or other forms of information technology.

Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section, room 4522, during the hours of 8:30 a.m. to 5 p.m. EST, Monday through Friday except for legal holidays. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comments. We will honor your request according to the requirements of the law. All comments from organizations or representatives will be available for review. We may withhold comments from review for other reasons.

OMB Control Number: 1076–0156.

Type of Review: Renewal.

Title: Probate of Indian Estates, Except for Members of the Five Civilized Tribes, 25 CFR part 15.

Brief Description of Collection: Information is collected through the probate process when BIA learns of decedent's death from a neighbor, friend, or any other interested person by providing copy of decedent's obituary notice from a local newspaper; an affidavit of death prepared by someone who knows about the decedent. BIA also requires other documents to process the probate package. Interested party must inform BIA if any of the documents or information identified are not available.

Respondents: Possible respondents include: Individual tribal members, individual non-Indians, individual tribal member-owned businesses, non-Indian owned businesses, tribal governments, and land owners who are seeking a benefit.

Number of Respondents: 32,589 annually.

Annual hours: 156,407.

Estimated Time per Response: 5 hours.

Frequency of Response: As required.

Dated: July 17, 2003.

Aurene M. Martin,

Assistant Secretary, Indian Affairs.

[FR Doc. 03–18621 Filed 7–21–03; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Tribal—State Gaming Compact Amendments taking effect between the State of Wisconsin and the Lac Courte Oreilles Bank of Lake Superior Chippewa Indians, the Oneida Tribe of Indians, the Menominee Indian Tribe, and the Bad River Bank of Lake Superior Chippewa Indians.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of the approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, is publishing notice that the Amendment to the Gaming Compact of 1991 between the Lac Courte Oreilles Bank of Lake Superior Chippewa Indians and the State of Wisconsin executed on April 29, 2003; the Amendment to the Gaming Compact of 1991 between the Bad River Band of Lake Superior Chippewa Indians and the State of Wisconsin executed on April 25, 2003; the Amendment to the Gaming Compact of 1991 between the Oneida Tribe of Indians and the State of Wisconsin executed on April 28, 2003; and the Amendment to the Gaming Compact of 1992 between the Menominee Indian Tribe and the State of Wisconsin executed on April 29, 2003, are considered approved. By the terms of IGRA, the Amendments to the Compacts are considered approved, but only to the extent that the Amendments are consistent with the provisions of IGRA.

The Amendments expand the scope of gaming activities authorized under the Compact, remove limitations on wager limits, remove limitations on the number of permitted gaming devices, extend the term of the compact to an indefinite term, subject to re-opener clauses, institute an entirely new dispute resolution provision, replace the sovereign immunity provision, and modify the revenue-sharing provision of the Compact.

EFFECTIVE DATES: July 22, 2003.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: July 10, 2003.

Woodrow W. Hopper, Jr.,

Acting Deputy Assistant Secretary—Indian Affairs (Management).

[FR Doc. 03–18631 Filed 7–21–03; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK962–1410–HY–P; F–14846–F2; DYA–10]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Chalkyitsik Native Corporation. The lands are located in T. 20 N., R. 19 E., Fairbanks Meridian, in the vicinity of Chalkyitsik, Alaska, and contain 19,915.87 acres. Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until August 21, 2003 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Christy Favorite, by phone at (907) 271–5656, or by e-mail at *cfavorit@ak.blm.gov.*

Christy Favorite,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 03–18563 Filed 7–21–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–320/350/310–03–1610–DO]

Notice of Intent To Prepare an Environmental Impact Statement and Associated Resource Management Plans for Three Bureau of Land Management Field Offices in Northeast California and Northwest Nevada: The Eagle Lake Field Office; Alturas Field Office; the Surprise Field Office

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) and associated Resource Management Plans (RMP) for three Bureau of Land Management (BLM) field offices in Northeast California and Northwest Nevada: The Eagle Lake Field Office, the Alturas Field Office, and the Surprise Field Office.

SUMMARY: This document provides notice that the BLM intends to prepare an Environmental Impact Statement and associated Resource Management Plans for three BLM Field Offices located in Northeast California and Northwest Nevada: The Eagle Lake Field Office, the Alturas Field Office, and the Surprise Field Office. The three field offices encompass approximately 3 million acres of public lands, with the Eagle Lake Field Office headquartered in Susanville, California, the Alturas Field Office in Alturas, California, and the Surprise Field Office in Cedarville, California. New Resource Management Plans (RMPs) are needed because current management direction for the three million acres of public land managed by the Alturas, Eagle Lake, and Surprise Field Offices is contained in 18 separate land use plans and subsequent amendments. These plans, while providing a broad overview of goals, objectives, and needs associated with public lands, would benefit from updating. The RMPs will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM management policies. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns. The public scoping process will identify planning issues and develop planning criteria.

DATES: This notice initiates the public scoping process. Comments on preliminary issues and suggestions for potential planning criteria can be submitted in writing to the address listed below and will be accepted for 30 days following the publication of this notice in the **Federal Register**. Public meetings will be held throughout the plan scoping and preparation period. In order to ensure local community participation and input, open houses will be held in locations most closely affiliated with the public lands in the planning area. Probable locations include: Cedarville, CA; Alturas, CA; Susanville, CA; Reno, NV; and Redding, CA. These public meetings are scheduled to be held throughout the month of August 2003. Specific dates and meeting locations will be announced by BLM through news releases, direct mailings or other applicable means of public notification within 15 days of the event.

ADDRESSES: Scoping comments should be sent to Jeff Fontana, Public Affairs, Bureau of Land Management, Eagle Lake Field Office, 2950 Riverside Drive, Susanville, California 96130; FAX 530.257.4831. BLM will maintain a record of public documents related to the development of the RMPs at the Eagle Lake Field Office at the address listed above. Comments, including names and street addresses of respondents will be available for public review at the Eagle Lake Field Office in Susanville, California during regular business hours, 8 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays, and may be published as part of the EIS. Individual respondents may request confidentiality. Individuals who wish to withhold their name or street address from public review or from disclosure under the Freedom of Information Act must state this prominently at the beginning of their written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Jeff Fontana, Public Affairs, Bureau of Land Management, Eagle Lake Field Office, 2950 Riverside Drive, Susanville, California 96130, (530) 252–5332.

SUPPLEMENTARY INFORMATION: Preliminary issue areas and management concerns have been identified by BLM personnel in consultation with other agencies, individuals, and organizations and include: Management of special areas, riparian/wetlands health, upland ecosystems health, water quality and quantity, management and protection of sensitive, rare, threatened or endangered species, fire and fuels management, access and transportation management including OHV uses, Native American traditions and practices, social/economic considerations, acquisition/disposal of public lands, mineral extraction and energy development, communication and utility facility locations, and recreation use and visitor safety.

Disciplines involved in the planning process include specialists with expertise in wildlife and fisheries management, forestry, botany and vegetation community ecology, fire/fuels management and ecology, hydrology and watershed management, archeology, lands and realty, minerals and geology, grazing management, recreation management, sociology and economics.

Dated: June 17, 2003.

Timothy J. Burke,

Alturas Field Office Manager.

[FR Doc. 03–18562 Filed 7–21–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–070–1150–PG]

Notice of Public Meeting, Upper Snake River Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Upper Snake River Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held August 27 and 28, 2003 at the office of the BLM Upper Snake River District, 1405 Hollipark Drive, in Idaho Falls, Idaho. The meeting will start August 27 at 2 p.m., with the public comment period beginning at approximately 2:10 p.m. The meeting will adjourn on August 28 at about 5 p.m.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the BLM Upper Snake River District (USRD), which covers south-central and southeast Idaho. At this meeting, topics we plan to discuss include: Updates on major planning projects in the USRD, including coordination of subgroups. A half-day discussion on the Director's Sustaining Working Landscapes policy initiative. Review of RAC feedback on BLM Idaho's statewide Off-Highway initiative. Review of Standards and Guidelines consistency. Other items of interest raised by the Council.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

A final USRD RAC meeting has been planned for November 2003, and will be announced in a future **Federal Register** Notice and through local media.

FOR FURTHER INFORMATION CONTACT: David Howell, RAC Coordinator, Upper Snake River District, 1405 Hollipark Dr., Idaho Falls, ID 83401. Telephone (208) 524–7559.

Dated: July 16, 2003.

David O. Howell,

Public Affairs Specialist.

[FR Doc. 03–18586 Filed 7–21–03; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Public Meeting: Resource Advisory Council to the Lower Snake River District

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S.

Department of the Interior, Bureau of Land Management (BLM) Lower Snake River District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held August 26, 2003, beginning 9 a.m. at the Bureau of Land Management, Idaho State Office in the first floor Ponderosa-Sagebrush Conference Rooms, located at 11387 South Vinnell Way, Boise, Idaho 83703. Public comment periods will be held after each topic on the agenda. The meeting will adjourn at 5 p.m.

FOR FURTHER INFORMATION CONTACT: MJ Byrne, Public Affairs Officer and RAC Coordinator, Lower Snake River District, 3948 Development Ave., Boise, ID 83705, Telephone (208) 384–3393.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in southwestern Idaho. At this meeting, the following topics will be discussed:

- Subcommittee reports on Rangeland Standards and Guidelines, Sage Grouse Habitat Management, OHV and Transportation Management, River Recreation and Resource Management Plans, and Fire and Fuels Management;
- Two Resource Management Plans under development in the District—workshops for Alternatives development;
- Rangeland Standards and Guidelines analysis update;
- District wildfire activity for 2003, and District Fire Management Plan;
- Owyhee Initiative—General Overview and Progress Update;
- RAC Members will discuss what they heard from individuals at community and interest group meetings in August where the Department's Sustaining Working Landscapes Initiative (SWI), was added to agendas by the RAC's Rangeland Standards and Guidelines Subcommittee. The RAC is reserving at least two hours of their afternoon's agenda for all interested stakeholders, including Tribes, and the public, inviting their comments and participation in the discussion regarding SWI policy options and strategy for developing policy;
- Three Field Office Managers and the District Fire Manager provide updates on current activities and issues in their field office and the District.
- Idaho's Noxious Weed Program

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below. Expedited publication is requested to give the public adequate notice.

Dated: July 16, 2003.

Glen M. Secrist,

District Manager.

[FR Doc. 03–18588 Filed 7–21–03; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–320–1110–AE]

Notice of Closure Order for Motorized Vehicle Use, Popcorn Area of Lava Wilderness Study Area, Shasta County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of vehicle closure on Popcorn Campground access road in the Lava Wilderness Study Area, Shasta County, California.

SUMMARY: Notice is hereby given that the BLM route within the Popcorn Area is closed to motorized vehicle use within the Lava Wilderness Study Area (WSA). Approximately three tenths of a mile of road will be closed to all motorized vehicle use. The purpose of this road closure is to protect WSA values, protect sensitive species habitat, reduce vandalism, and improve public safety.

EFFECTIVE DATE: This closure is effective on July 22, 2003, and will remain in effect until this notice is rescinded.

SUPPLEMENTARY INFORMATION: The lands in this closure are located within the Mt. Diablo Meridian, Sections 15 and 22, T. 36 N., R. 5 E. This closure is made under the authority of 43 CFR 8341.2(a) and 8364.1. Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0–7.

FOR FURTHER INFORMATION CONTACT: Claude Singleton at the BLM Alturas Field Office at (530) 233–4666, or by e-mail at *csinglet@ca.blm.gov*.

Dated: April 22, 2003.

Michael P. Dolan,

Acting Alturas Field Office Manager.

[FR Doc. 03–18561 Filed 7–21–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–1610–DO]

Notice of Intent To Prepare a Combined Amendment to the Carson City Field Office Consolidated Resource Management Plan and a Revision to the Naval Air Station Fallon Integrated Natural Resources Management Plan, Known as the Churchill County Plan, and Associated Environmental Impact Statement

AGENCY: Department of the Interior, Bureau of Land Management, Carson City Field Office in partnership with the Department of Defense, U.S. Naval Air Station Fallon, Nevada.

ACTION: Notice of intent to prepare a combined amendment to the Bureau of Land Management (BLM) Carson City Field Office (CCFO) Consolidated Resource Management Plan (CRMP) and a revision to the Naval Air Station Fallon (Navy) Integrated Natural Resources Management Plan (INRMP) and associated Environmental Impact Statement (EIS).

SUMMARY: This document provides notice that the BLM intends to prepare an amendment to the CRMP with an associated EIS for the Carson City Field Office to address energy resources, fire management, off-highway vehicle (OHV) use and designations, and Churchill County open space needs. The Navy intends to revise their INRMP in this plan to address the same issues stated for the BLM and new issues at the Fallon Naval Air Station related to National Security. The planning area is primarily limited to Churchill County, Nevada for all issues with the exception of energy resources, which will be addressed for all lands managed by the CCFO. The BLM and Navy will work collaboratively and cooperatively with interested parties to identify management decisions that are best suited to local, regional, and national needs and concerns.

DATES: This notice initiates the public scoping process. Comments can be submitted in writing to the address listed below and will be accepted throughout the preparation of the Draft CRMP/Draft EIS. All public meetings will be announced through the local news media, newsletters, scoping documents, and the BLM Web site at *http://www.nv.blm.gov/carson* at least 15 days prior to the event. Public meetings will be held throughout the plan scoping and preparation period. In order to ensure the widest range of public participation and input, public open house meetings will be held, at a minimum, in Fallon and Reno, Nevada. Early participation is encouraged and will assist in determining future management of public and Navy lands. In addition to the ongoing public participation process, formal opportunities for public participation will be provided through comment on the draft and final documents.

ADDRESSES: Written comments should be sent to BLM Carson City Field Office, 5665 Morgan Mill Road, Carson City, NV 89701; Fax (775) 885–6147; email address *tknutson@nv.blm.gov*. Comments, including names and addresses of respondents, will be available for public review at the above address during regular business hours (7:30 a.m.–5 p.m.), Monday through Friday, except holidays, and may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. However, we will not consider anonymous comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For additional information, write to the above address or call Gary Ryan (BLM/Navy Liaison, Project Manager) at (775) 426–4011; Terri Knutson (BLM Environmental Planner) at (775) 885–6156; or Chip Kramer (Navy Environmental Coordinator) at (775) 426–3186.

SUPPLEMENTARY INFORMATION: The BLM Carson City Field Office CRMP is a compilation of all Resource Management Plans and Amendments that have been completed for lands managed by the CCFO. Although energy resources are marginally addressed in the CRMP, site-specific suitability or non-suitability analysis is lacking and energy resources other than geothermal and oil and gas are not referenced or analyzed. The Fallon Paiute-Shoshone Tribe has expressed to BLM their concern regarding sacred or religious sites and has requested participation in any land use planning for the area. The Navy has indicated a need to revise their INRMP to address new issues relevant to the base and other Navy-controlled lands. Churchill County is updating their Master Plan to include open space designations and resource preservation. In addition to the BLM lands, Churchill County contains lands managed by the Navy, the Bureau of Reclamation (BOR), the U.S. Fish and Wildlife Service (USFWS), and the Fallon Paiute-Shoshone and Walker River Paiute Tribes. To best serve the needs of all, it was agreed that a joint planning effort addressing overall public needs would be pursued. By combining these efforts several issues such as CCFO and countywide energy development; potential Naval Air Station Fallon expansion; open space preservation; urban interface and fire management; recreational opportunities and impacts; threatened, endangered, and sensitive species protection; and the protection of lands sensitive to the Tribes will be assessed in a coordinated and comprehensive manner. It is expected that this amendment to the BLM Carson City CRMP will also serve as a revision of the Navy INRMP. An EIS will be prepared jointly and a record of decision (ROD) will be signed by both parties. Churchill County and the Fallon Paiute-Shoshone Tribe will be planning partners and formal cooperating agencies for the EIS. Federal, state, and local agencies, Tribal entities, and other individuals or organizations who may be interested in or affected by the decisions to be made in this plan amendment are invited to participate in the scoping process and, if eligible, may request, or be requested by the BLM and Navy, to participate as a cooperating agency.

Dated: June 18, 2003.

John O. Singlaub,

Manager, Carson City Field Office.

[FR Doc. 03–18560 Filed 7–21–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60–Day Notice of Information Collection Under Review: Extension of a currently approved collection; Application and Permit for Importation of Firearms, Ammunition and Implements of War.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until September 22, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Tom Stewart, Chief, Firearms and Explosives Imports Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application and Permit For Importation of Firearms, Ammunition and Implements of War.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the*

collection: Form Number: ATF F 6, Part II (5330.3B). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* Business or other for-profit, Federal Government, State, Local, or Tribal Government. The information collection is needed to determine whether firearms, ammunition and implements of war are eligible for importation into the United States. The information is used to secure authorization to import such articles. The form is used by persons who are members of the United States Armed Forces.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 9,000 respondents will complete a 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are 4,500 annual estimated total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: July 16, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–18580 Filed 7–21–03; 8:45 am]

BILLING CODE 4410–FB–U

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Extension of a Currently Approved Collection Police Corps Service Agreement.

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 66, page 16830 on April 7, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 21, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503, or facsimile (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Police Corps Service Agreement.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: none. The Office of Police Corps Services, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The Police Corps Service Agreement is the written contract between the Office of Police Corps and Law Enforcement Education and Police Corps Participants to complete police corp training, and setting forth the participant's agreement to provide 4 years of law enforcement service at an accredited agency in exchange for scholarship or reimbursement funds for educational purposes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 500 respondents will complete a 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are estimated 250 annual total burden hours associated with this collection.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: July 16, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–18579 Filed 7–21–03; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of July 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production of such firm or subdivision.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

None

In the following case, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A) (I.C.) (Increased imports) and (a) (2)(B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–51,718; LeCroy Corp., Beaverton, OR

TA–W–51,799; Plastech Corp., Amery, WI

TA–W–52,010; Imperial of Morristown, Inc., Morristown, TN

TA–W–51,780; QCR Tech LLC, Madison Heights, MI

TA–W–51,787; Production Pattern Co, Bedford, OH

TA–W–51,859; Memscap, Inc., Formerly JDS Uniphase's, Chronos Mems Business Unit, Research Triangle Park, NC

TA–W–51,870; McKenzie Forest Products, Springfield, OR

TA–W–51,969; Knaack Manufacturing Co., Payson, UT

TA–W–51,989; Coates Screen, East Rutherford, NJ

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–52,142; Covington Needleworks, Mt. Olive, MS

TA–W–52,137; Computer Sciences Corp., Customer Support Services, San Diego, CA

TA–W–52,048; Hamilton Sundstrand Corp., a wholly-owned subsidiary of United Technologies Corp., Long Beach, CA

TA–W–52,131; Motorola, Personal Communications Sector, North America Contact Center, Schaumburg, IL

TA–W–52,147; Furniture Makers Supply, Martinsville, VA

TA–W–52,153; Target.Direct, Westgate Facility, St. Paul, MN

TA–W–52,154; McDonnell Douglas Technical Services, Inc., d/b/a The Aviant Group, Long Beach, CA

TA–W–52,238; PCS Administration (USA), Inc., Northbrook, IL

The investigation revealed that criteria (a)(2)(A)(I.B) (Sales or production, or both, did not decline) and (II.B) (has shifted production to a country not under the free trade agreement with the U.S) have not been met.

TA–W–51,929; LeSportsac, Manufacturing and Distribution Division, Stearns, KY

The investigation revealed that criteria (a)(2)(A)(I.C) (increased imports) and (a)(2)(B) (II.C) (has shifted production to a country not under the free trade agreement with the U.S.) have not been met.

TA–W–51,756; Mattel, Inc., Mt. Laurel, NJ

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

TA–W–52,109; K.C. Holding, Inc., formerly doing business as Crews Manufacturing, Newnan, GA

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA–W–51,321; Rome Cable Corp., a subsidiary of Rome Group, Inc., Rome, NY: March 18, 2002.

TA–W–51,674; Celeste Industries Corp., including workers of ESI, Barrett Temporaries, and A Perfect Job. Com, Easton, MD: May 1, 2002.

TA–W–51,933; Vigorelli Sportswear, including leased workers of Strategic Outsourcing, Inc., McMinnville, TN: May 22, 2002.

TA–W–51,955; Gilmour Manufacturing Co., Somerset, PA: June 4, 2002.

TA–W–51,998; Ameripol Synpol Corp., Port Neches, TX: January 26, 2003.

TA–W–52,046; Sauer-Danfoss Co., Mini Steering Units Div., Sturtevant, WI: June 10, 2002.

TA–W–52,126; Broyhill Furniture Industries, Inc., Plant 55, a wholly owned subsidiary of Furniture Brands International, Inc., Lenoir, NC: June 3, 2002.

TA–W–52,135; Ford Motor Company, Powertrain Operations, Vulcan Forging Plant, Dearborn, MI: June 23, 2002.

TA–W–52,166; Charles Komar and Sons, Oklahoma Div., McAlester, OK: June 19, 2002.

TA–W–52,225; SCI Enclosures LLC, Stanton, KY: May 12, 2002.

TA–W–51,593; Tamaqua Cable Products, Schuylkill Haven, PA: April 16, 2002.

TA–W–51,611; National Steel Corp (NSC), Corporate Headquarters, Mishakawa, IN, A; Granite City Div., Granite City, IL, B; Great Lakes Operations, Ecorse, MI, C; Midwest Operations, Portage, Inc, D; Procoil Corp., Canton, MI, E; Technical Research Center, Trenton, MI, F; National Steel Pellet Co., Keewatin, MN, G; NSL, Inc., Portage, IN, H; TMH, Portage, IN, I; Delray Connecting Railroad, Detroit, MI: April 8, 2002.

TA–W–51,877; Peak Oilfield Service Co. a subsidiary of Nabors Industries and Cook Inlet Region, Inc., Anchorage, AK: December 30, 2001.

TA–W–51,979; OH, Baby Enterprise, Ltd, New York, NY: June 3, 2002.

TA–W–51,990; Waterfront Sportswear, Inc., Fall River, MA: June 5, 2002.

TA–W–52,016; Trio Dyeing and Finishing, Paterson, NJ: May 20, 2002.

TA–W–52,079; Photocircuits Corp., including leased workers of Brookville Staffing and Sigma Staffing, Glen Cove, NY: June 9, 2002.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W–51,904; Primanex Corp., Fremont, CA: May 20, 2002.

TA–W–51,991; Gateway Hosiery Mills, Inc., North Wilkesboro, NC: June 4, 2002.

TA–W–52,014; Robert Bosch Fuel Systems Corp., formerly Diesel Technology Co., a div. of Robert Bosch North America, Kentwood, MI: June 10, 2002.

TA–W–52,091; Precision Dynamics Corp., Belleville, KS: May 23, 2002.

TA–W–52,156; DeLong Sportswear, Inc., Crowell, TX: June 25, 2002.

TA–W–52,165; Endar Corp., a div. of Blyth, Inc., Temecula, CA: June 19, 2002.

TA–W–52,185; State of Alaska Commercial Fisheries Entry Commission Permit #S04T64124J, Ekuk, AK: June 6, 2002.

TA–W–51,866; GE Transportation Systems, Global Signaling LLC, Grain Valley, MO: May 23, 2002.

TA–W–51,890; Continental Tire North America (CTNA), Mayfield, KY: May 27, 2002.

TA–W–51,948; Irwin Industrial Tool Co., a div. of Newell Rubbermaid, Beatrice, NE: June 3, 2002.

TA–W–51,966; Springs Window Fashions, 7200 Stewart Avenue, a div. of Springs Industries, including leased workers of Kelly Services, Inc., & Seek, Inc. Wausau, WI: June 4, 2002.
TA–W–51,981; Emerson Climate Technologies, Flow Controls Div., St. Louis, MO: June 5, 2002
TA–W–52,015; Baxter Healthcare Corp., Mountain Home, AR: June 10, 2002.
TA–W–52,032; Precision Interconnect, a div. of Tyco Healthcare Group, LP, Broomfield, CO: June 12, 2002.
TA–W–51,081; Flex-N-Gate Oklahoma, LLC, Ada, OK: June 2, 2002.
TA–W–52,089; Dixie Industrial Coatings, Inc., Chattanooga, TN: June 9, 2002.
TA–W–52,121; Anvil Knitwear, Inc., a div. of Anvil Holdings, Inc., Hamer, SC: June 17, 2002.
TA–W–52,125; A.O. Smith, Electrical Products Co., EPC, Ripley, TN: June 23, 2002.
TA–W–52,206; Say Cheese, Lewiston, ME: June 26, 2002.
TA–W–52,212; OBG Distribution, LLC, a div. of Oshkosh B'Gosh, Inc., Gainesboro, TN: June 30, 2002.

The following certification has been issued. The requirement of upstream supplier to a trade certified primary firm has been met.

TA–W–51,996; Border Chemical, Inc., Mount Jewett, PA: June 6, 2002.
TA–W–52,013; Shipley Company, LLC, a subsidiary of Rohm & Haas, Spartanburg, SC: May 29, 2002.

I hereby certify that the aforementioned determinations were issued during the months of July 2003. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 14, 2003.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–18547 Filed 7–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of June and July 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production of such firm or subdivision.

Negative Determinations For Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

None

In the following case, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A) (I.C.) (increased imports) and (a) (2)(B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–51,782; Troy Tooling, Inc., Rochester Hills, MI.
TA–W–51,910; Southwest Windpower, Inc., Duluth, MN.
TA–W–51,916; Twin City E.D.M., Inc., Fridley, MN.
TA–W–51,792; Mack Industries, Troy, MI.
TA–W–51,512; Unocal, Kenai Production/Cook Inlet Div., Anchorage, AK.
TA–W–51,400; Credence Corp. Hillsboro, OR.
TA–W–51,675; Aero-Motive Co., a wholly owned subsidiary of Woodhead Industries, Inc., Kalamazoo, MI.
TA–W–51,779; Cordis Endovascular, a wholly owned subsidiary of Johnson and Johnson, Maple Grove, MN.
TA–W–51,815; Sharon Tube Co., Sharon, PA.
TA–W–51,823; OEM Worldwide LLC, Spearfish, SD.
TA–W–51,855; Plexus Corp., Neenah Buildings 1,2,3, Plexus Electronic Assembly Corp., including Manpower and Kelly Services, Neenah, WI.
TA–W–52,059; Brown Foundry, Inc., Swanton, VT.
TA–W–52,092; General Mills Operations, Inc., Bakeries and Food Service Div., including leased workers of Masterson Personnel, Inc., Eden Prairie, MN.
TA–W–51,798 Semitool, Inc., Headquarters, Kalispell, MT; A; San Jose, CA, B; Western Region, Beaverton, OR, C; Central Region, Austin, TX, D; Dallas Office, Dallas, TX, E; Franktown, CO, F; Southwest Office, Temple, AZ, G; Eastern Region, Nashua, NH, H; Williamsburg, VA, I; Orlando, FL, J; Stroudsburg, PA, and K; Montgomery, NY.

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–52,034; Lion Bioscience, a subsidiary of Lion AG, Cleveland, OH.
TA–W–52,097; Symantec Corp., Springfield, OR.
TA–W–52,129; Hewlett-Packard Co., Personal Computing Group, Commercial Solutions Center, HP Services Div., Colorado Springs, CO.
TA–W–52,005; Reliability, Inc., Essex Junction, VT.
TA–W–51,960; Agilent Technologies, Inc., Global Infrastructure Organizations, Palo Alto, CA.
TA–W–51,901; J.J. Mac, Incorporated, d/b/a Rainbeau, San Francisco, CA.
TA–W–51,651; Solectron Global Services, a div. of Solectron Corp., Hillsboro, OR.
TA–W–51,707; Lucent Technologies, Inc., Lucent Worldwide Services, Spokane, WA.
TA–W–51,851 A, B; Northwest Airlines, Inc., Duluth, MN, Minneapolis, MN and Atlanta, GA.
TA–W–51,896; Ademco Distribution, Inc. (ADI), a subsidiary of Honeywell International, Inc., Melville, NY.
TA–W–51,932; Northwest Airlines, Inc., Ground Operations Div., Anchorage, AK.
TA–W–51,963; Nortel Networks, Department R084, Research Triangle Park, NC.

TA–W–52,050 & A; Merrill Corp., St. Paul, MN and Boston, MA.
TA–W–52,086; Stream International, a div. of Solectron Corp., Dallas, TX.

The investigation revealed that criteria (a)(2)(A)(I.B) (Sales or production, or both, did not decline) and (II.B) (has shifted production to a county not under the free trade agreement with the U.S.) have not been met.

TA–W–51,703; Meadwestvaco, Papers Group Div., Escanaba, MI.

The investigation revealed that criteria (a)(2)(A)(I.C) (increased imports) and (a)(2)(B)(II.C) (has shifted production to country not under the free trade agreement with U.S) have not been met.

TA–W–52,087; Advantek, Inc., Minnetonka, MN.
TA–W–51,875; Sony Disc Manufacturing, a div. of Sony Music Entertainment, Inc., Springfield, OR.

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

TA–W–51,900; Manastrip Corp., Manufacturing Div., Rexford, NY.

Affirmative Determinations For Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of section 222 have been met.

TA–W–51,277; Houlton International Corp., Houlton, ME: February 24, 2002.
TA–W–51,607A; Torque—Traction Manufacturing Technologies, Inc., formerly known as Spicer Driveshaft Manufacturing, Inc., a div. of Dana Corp., Lima, OH: April 22, 2002.
TA–W–51,774; Pactiv Corp., Red Bluff, CA: May 2, 2002.
TA–W–51,887; Starline Manufacturing Co., Inc. div. of Chicago Faucets, Milwaukee, WI: May 23, 2002.
TA–W–51,907; Broyhill Furniture Industries, Inc., Taylorsville Upholstery Plant, Taylorsville, NC: May 29, 2002.
TA–W–51,947; Alltrista Consumer Products Co., Strong, ME: May 21, 2002.
TA–W–52,007; American London Norwood, Norwood, MA: May 29, 2002.
TA–W–51,422; Butler Manufacturing Co., Buildings Div., Galesburg, IL: April 3, 2002.
TA–W–51,657; Lucent Technologies, North Andover, MA: May 1, 2002.
TA–W–51,994; Jakel, Inc., Clinton, KY: June 3, 2002.
TA–W–51,999; Thunderbird Mining Co., a subsidiary of Eveleth Mines, LLC, Eveleth, MN: June 5, 2002.
TA–W–52,038; Sonoco Products Co., Baker Div., Granite Falls, NC: June 13, 2002.
TA–W–51,985; United States Pipe & Foundry Co., Inc., d/b/a U.S. Castings, Anniston, AL: June 2, 2002.
TA–W–51,850; American Colloid Co., a div. of Amcol International, Inc., Paris, TN: May 22, 2002.
TA–W–51,795 & A, B; International Seafoods of Alaska, Inc., a/k/a True World Foods-Alaska, Plant 2, Kodiak, AK, Seattle, WA and Astoria, OR: May 2, 2002.
TA–W–51,849; Spencer and Reynolds, Inc., Rancho Cucamonga, CA: May 5, 2002.
TA–W–51,902; River Ltd, Fall River, MA: May 27, 2002.
TA–W–51,931; New Stamco, Inc., New Bremen, OH: May 21, 2002.
TA–W–52,110; Pikeville Apparel Manufacturing, Inc., Pikeville, TN: June 17, 2002.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of section 222 have been met.

TA–W–51,357; Forest City Tool, a div. of Robert Bosch Tool Corp., Hickory, NC: March 20, 2002.
TA–W–51,759; Heidenhain Corp., a wholly owned subsidiary of Heidenhain Holding, Inc., Schaumburg, IL: May 6, 2002.
TA–W–51,846; Legendary Holdings, Inc., Chula Vista, CA: May 13, 2002.
TA–W–51,856; Intalco Aluminum Corp., Ferndale, WA: May 14, 2002.
TA–W–51,872; J and J Wound Management, a div. of Ethicon, Sherman, TX: May 27, 2002.
TA–W–51,961; 3M Co., Filtration Manufacturing Plant, Eagan, MN: May 30, 2002.
TA–W–51,982; General Mills Bakeries & Foodservice, Hillsdale, MI: June 4, 2002.
TA–W–51,992; American Standard, Inc., Paintsville, KY: June 6, 2002.
TA–W–52,009; AGFA Corp., Newark, DE: May 28, 2002.
TA–W–52,026; Neff Motivation, Inc., Greenville, OH: June 12, 2002.
TA–W–52,057; Kasco Corp., St. Louis, MO: June 13, 2002.
TA–W–52,075; Prescolite, Inc., a div. of Hubbell, Inc., El Dorado, AR: June 16, 2002.
TA–W–52,076; Sandicast, Inc., San Diego, CA: June 10, 2002.
TA–W–51,535; International Business Machines Corp. (IBM), IBM Systems Group, Div. 53—Integrated Supply Chain, San Jose, CA: March 15, 2002.
TA–W–51,848; WSW Company of Sharon, Inc., subsidiary of Wormser Co., Rebel Screeners, Inc., Sharon, TN: May 12, 2002.
TA–W–51,893; Ferraz Shawmut, Inc., a subsidiary of Groupe Carbone Lorraine, Newburyport, MA: May 28, 2002.
TA–W–51,914; Tecumseh Products Co., Douglas Operations, Douglas, GA: May 23, 2002.
TA–W–51,935; Corning Cable Systems, Keller, TX: May 23, 2002.
TA–W–51,956; Plexus Corp., Plexus Electronic Assembly Corp., Neenah, WI: June 4, 2002,
TA–W–51,959; Fiskars Brands, Inc., Home Leisure Div., Opelika, AL: May 29, 2002.
TA–W–51,987; EGS Electrical Group, a div. of Appleton Electric, LLC, Columbus, NE: June 6, 2002.
TA–W–52,020; Dura Automotive Systems, G.P., a div. of North American Body and Glass, a part of Dura Automotive Systems, Inc., including leased workers of Job World, Inc., Fulton, KY: June 4, 2002.
TA–W–52,021; Eagle Ottawa, LLC, Rochester Hills, MI: May 16, 2002.
TA–W–52,051; Leviton Manufacturing Co., Southern Devices Div., Morganton, NC: June 17, 2002.
TA–W–52,053; Whispering Pines Sportswear, Manufacturing Division, Pageland, SC: May 17, 2002.
TA–W–52,069; MKS Instruments, Inc., Eto, Inc., Medical Electronics Div., including leased workers of Adecco, Volt and Kelly Services, Colorado Springs, CO: June 17, 2002.
TA–W–52,073; American, Inc., Irwindale, CA: June 2, 2002.
TA–W–52,186; BASF Corp., Fenton, MO: May 18, 2002.
TA–W–51,881 & A; Centis, Inc., Consumer Products Div., Paw Paw, MI and Niles, MI: May 20, 2002.
TA–W–51,908; Lion Ribbon Co., Inc., d/b/a C.M. Offray, Inc., Hagerstown, MD: May 29, 2002.
TA–W–52,033; Images 2, Inc., Lexington, AL: May 23, 2002.
TA–W–52,085; Motorola, Inc., Broadband Communications Sector,

Digital Media Systems (DMS), San Diego, CA: June 5, 2002.
TA–W–52,102, Western Textile Products Co., Healthcare Div., Memphis, TN: June 12, 2002.
TA–W–52,122, Alden Products Co., Brockton, MA: June 10, 2002.
TA–W–52,183, Fishing Vessel (F/V) Kristi Lynn, Petersburg, AK: June 26, 2002.
TA–W–52,193, Planar Systems, Inc., Evergreen El Manufacturing Facility, Beaverton, OR: June 23, 2002.

The following certification has been issued. The requirement of upstream supplier to a trade certified primary firm has been met.

TA–W–52,179; Jim Michel Logging, Inc., Baker City, OR: June 27, 2002.
TA–W–52,111; State of Alaska Commercial Fisheries Entry Commission Permit #S04T59879T, Nuchagak, AK: June 5, 2002.
TA–W–52,063; Fishing Vessel (F/V) Elvagene, Ketchikan, AK: May 28, 2002.

I hereby certify that the aforementioned determinations were issued during the months of June and July 2003. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: July 7, 2003.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–18557 Filed 7–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,068]

Alice Manufacturing Company, Arial Plant, Easley, SC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 18, 2003, in response to a petition filed by a company official on behalf of workers at Alice Manufacturing Company, Arial Plant, Easley, South Carolina (TA–W–52,068).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 3rd day of July, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18553 Filed 7–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,002]

Allister Fabricating, Inc., Lannon, WI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 11, 2003, in response to a worker petition which was filed by a company official on behalf of workers at Allister Fabricating, Inc., Lannon, Wisconsin.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 30th day of June, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18554 Filed 7–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52, 218]

Giddings & Lewis, Fond Du Lac, WI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 2, 2003 in response to a petition filed by a company official on behalf of workers at Giddings & Lewis LLC, Fond du Lac, Wisconsin.

The petitioning group of workers is covered by an active certification issued on August 14, 2001 and which remains in effect (TA–W–38826). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 7th day of July, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18549 Filed 7–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,209]

H. Warshow And Sons, Inc., Milton, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 2, 2003, in response to a worker petition filed by a company official on behalf of workers at H. Warshow and Sons, Inc., Milton, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 7th day of July, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18550 Filed 7–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,070]

Master Gear, South Beloit, IL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 18, 2003, in response to a worker petition filed on behalf of workers at Master Gear, South Beloit, Illinois.

The petitioning group of workers is covered by an earlier petition filed on May 20, 2003 (TA–W–51,840) that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC, this 30th day of June, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18552 Filed 7–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,201]

Meridian Beartrack Company, A Subsidiary of Meridian Gold, Inc., Salmon, ID; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 1, 2003 in response to a petition filed by a company official on behalf of workers at Meridian Beartrack Company, a subsidiary of Meridian Gold Inc., Salmon, Idaho.

The petitioning group of workers is covered by an active certification issued on August 20, 2001 and which remains in effect (TA–W–39,474). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 7th day of July, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18551 Filed 7–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,770 and TA–W–51,770A]

Phantom USA, Inc., Liberty and Siler City, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 15, 2003, in response to a worker petition which was filed by a company official on behalf of workers at Phantom USA, Inc., Liberty, North Carolina (TA–W–51,770) and Phantom USA, Inc., Siler City, North Carolina (TA–W–51,770A).

The petitioner has requested that the petitions be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 1st day of July 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18556 Filed 7–21–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 15, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 1, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 30th day of June 2003.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 06/23/2003 and 06/27/2003]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
52,111	State of Alaska Commercial Fisheries (Comp)	Nuchagak, AK	06/23/2003	06/05/2003
52,112	Hooker Funiture Corporation (Comp)	Kernersville, NC	06/23/2003	06/20/2003
52,113	Georgetown Steel Company, LLC (Comp)	Georgetown, SC	06/23/2003	06/20/2003
52,114	Kalpak USA (Comp)	Hillside, NJ	06/23/2003	06/21/2003
52,115	Penn Iron Works, Inc. (Wkrs)	Sinking Spring, PA	06/23/2003	06/16/2003
52,116	SPI Polyeols, Inc. (USWA)	New Castle, DE	06/23/2003	06/17/2003
52,117	Johnstown America Corp. (Wkrs)	Johnstown, PA	06/23/2003	06/09/2003
52,118	ORC Plastics (Comp)	Lafayette, IN	06/23/2003	06/20/2003
52,119	Tweco Products, Inc. (Comp)	Wichita, KS	06/23/2003	06/23/2003
52,120	Maine Machine Products (Comp)	South Paris, ME	06/23/2003	06/20/2003
52,121	Anvil Knitwear, Inc. (Comp)	Hamer, SC	06/23/2003	06/17/2003
52,122	Alden Products Company (Comp)	Brockton, MA	06/23/2003	06/10/2003
52,123	Honeywell, Inc. (Comp)	Birmingham, AL	06/23/2003	06/16/2003
53,124	New England Joint Board (UNITE)	Willimantic, Ct.	06/23/2003	06/18/2003
52,125	A.O. Smith, EPC (Comp)	Ripley, TN	06/24/2003	06/23/2003
52,126	Broyhill Furniture (Wkrs)	Lenoir, NC	06/24/2003	06/03/2003
52,127	Swag-Nit, Inc. (Comp)	Mt. Holly, NC	06/24/2003	06/23/2003
52,128	Control Engineering Company (Wkrs)	Harbor Springs, MI	06/24/2003	06/16/2003
52,129	Hewlett Packward Corporation (Wkrs)	Colorado Spgs., CO	06/24/2003	06/18/2003

APPENDIX—Continued

[Petitions instituted between 06/23/2003 and 06/27/2003]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
52,130	Sherwin Williams Powder Plant (Wkrs)	Harrisburg, PA	06/24/2003	06/23/2003
52,131	Motorola (Comp)	Schaumburg, IL	06/24/2003	06/24/2003
52,132	Pennsylvania House, Inc. (Comp)	Monroe, NC	06/24/2003	06/23/2003
52,133	Auburn Machinery, Inc. (Comp)	Lewiston, ME	06/25/2003	06/16/2003
52,134	Trico Products Corporation (Comp)	Buffalo, NY	06/25/2003	06/12/2003
52,135	Vulcan Forging (UAW)	Dearborn, MI	06/25/2003	06/23/2003
52,136	Fairchild Semiconductor (Comp)	S. Portland, ME	06/25/2003	06/09/2003
52,137	Computer Science Corp. (Wkrs)	San Diego, CA	06/25/2003	06/04/2003
52,138	Agere Systems (Wkrs)	Breinigsville, PA	06/25/2003	06/21/2003
52,139	Discovery Plastics, Inc. (OR)	Albany, OR	06/25/2003	06/24/2003
52,140	North American Battery Company (Wkrs)	San Diego, CA	06/26/2003	06/17/2003
52,141	Broyhill Furniture (Comp)	Marion, NC	06/26/2003	06/15/2003
52,142	Covington Needleworks (Comp)	Mt. Olive, MS	06/26/2003	06/13/2003
52,143	Larimer and Norton, Inc.	Galeton, PA	06/26/2003	06/19/2003
52,144	Homecrest Industries, Inc. (MN)	Wadena, MN	06/26/2003	06/25/2003
52,145	Phillips Elmet (Wkrs)	Lewistown, ME	06/26/2003	06/11/2003
52,146	Bruce Furniture Industries(Comp)	Bruce, MS	06/26/2003	06/06/2003
52,147	Furniture Makers Supply (Comp)	Martinsville, VA	06/26/2003	06/12/2003
52,148	Coho Resources, Inc. (Wkrs)	Dallas, TX	06/26/2002	06/18/2003
52,149	GE–OEC Medical Systems (Wkrs)	Warsaw, IN	06/26/2003	06/25/2003
52,150	Honeywell (Comp)	Milpitas, CA	06/26/2003	06/18/2003
52,151	Portland General Electric Company (Comp)	Rainier, OR	06/26/2003	06/25/2003
52,152	Multilayer Technology, Inc. (Wkrs)	Roseville, MN	06/26/2003	06/25/2003
52,153	Target Director (Wkrs)	St. Paul, MN	06/26/2003	06/25/2003
52,154	Aviant Group (Wrks)	Mount Clemens, MI	06/26/2003	04/11/2003
52,155	SFO Apparel (Wkrs)	San Francisco, CA	06/26/2003	06/13/2003
52,156	DeLong Sportswear, Inc. (Comp)	Crowell, TX	06/26/2003	06/25/2003
52,157	Trombetta Camdel Corp. (WI)	Menomonee Falls, WI	06/26/2003	06/25/2003
52,158	CDI Corp. Northwest (OR)	Corvallis, OR	06/27/2003	06/26/2003
52,159	Milford Fabricating (MI)	Detroit, MI	06/27/2003	06/20/2003
52,160	AT&T (CA)	Pleasanton, CA	06/27/2003	06/18/2003
52,161	Progressive Screen Engraving, Inc. (Comp)	Wadesboro, NC	06/27/2003	06/26/2003
52,162	Gilgear Company (The)(Wkrs)	Longview, TX	06/27/2003	06/26/2003
52,163	General Mills, Inc. (Comp)	Mebane, NC	06/27/2003	06/26/2003
52,164	Castrol Industrial North America, Inc. (MN)	Duluth, MN	06/27/2003	06/25/2003
52,165	Endar Corporation (Comp)	Temecula, CA	06/27/2003	06/19/2003
52,166	Chas Komar and Sons (Comp)	McAlester, OK	06/27/2003	06/19/2003
52,167	General Mills, Inc. (Wkrs)	Hazelwood, MO	06/27/2003	06/21/2003
52,168	TRW Automotive (Comp)	Queen Creek, AZ	06/27/2003	06/25/2003
52,169	Allsteek, Inc. (Comp)	Milan, TN	06/27/2003	06/18/2003
52,170	Hill-Rom (Comp)	Batesville, IN	06/27/2003	06/25/2003
52,171	Read-Rite Corporation (Ca)	Fremont, CA	06/27/2003	06/19/2003

[FR Doc. 03–18548 Filed 7–21–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,953]

WM Jette And Sons, Inc., Providence, RI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 5, 2003 in response to a worker petition which was filed by a company official on behalf of workers at WM Jette and Sons, Inc., Providence, Rhode Island (TA–W–51,953).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 9th day of July 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18555 Filed 7–21–03; 8:45 am]

BILLING CODE 4510–30–P

LEGAL SERVICES CORPORATION

Freedom of Information Policy—Grant Application Materials and Exemption 4

AGENCY: Legal Services Corporation.

ACTION: Notice of policy change.

SUMMARY: The Legal Services Corporation (LSC) is subject to the Freedom of Information Act (FOIA). Under FOIA and LSC regulations, a requested record may be withheld from disclosure if, inter alia, the record contains trade secrets or commercial or financial information obtained from a person and is privileged or confidential. In the past, LSC policy has been to routinely withhold application materials submitted to LSC as part of the competitive bidding process from public disclosure pursuant to this exemption. For the reasons set forth below, LSC has decided that documents submitted by applicants as part of grant applications (the Proposal Narrative (parts 1 & 2) on original grant applications and the Application Narrative (parts A & B) for grant renewal applications) are generally not entitled to protection from disclosure in response to FOIA requests after grants have been awarded for a given application period. LSC will continue to review each request for this information on a case by case basis to ascertain whether there is anything extraordinary in a given narrative which merits withholding and will continue to provide persons and organizations whose applications have been requested opportunity to seek protection from disclosure of some or all of the documents requested upon an individualized showing of competitive harm. However, LSC's general policy will be to release this information.

It should be noted that, since this policy change is not a "rule, regulation, guideline or instruction," LSC is not required by law to publish this policy notice or seek public comment. LSC is choosing to publish this interpretive policy statement in the **Federal Register** (and has also posted it on the LSC website at *http:;www.lsc.gov*) in furtherance of LSC's interest in and policy of conducting its business in a fair and open manner.[2] LSC invites interested parties to submit written comments on this matter.

Exemption 4 of FOIA is codified at 5 U.S.C. 552(b)(4) and provides that the requirement for disclosure of most public documents "does not apply to matters that are * * * trade secrets and commercial or financial information obtained from a person and privileged or confidential." According to FOIA case law, documents submitted to LSC for competitive bidding qualify as "commercial or financial information obtained from a person."[3] With that threshold met, the relevant analysis upon receipt of a request for competitive grant application documents is whether the information sought is "privileged or confidential."

In evaluating Exemption 4 cases, the D.C. Circuit Court has established two tests for determining whether documents are "privileged or confidential," identifying one test as applicable to documents which are submitted to the relevant agency pursuant to a requirement, and another test for documents which are voluntarily submitted to the relevant agency.[4] Although "required information" and "voluntary information" were never explicitly defined in the cases which articulated these tests, the Department of Justice (DOJ) has concluded that a submitter's voluntary participation in an activity—such as seeking a government contract or applying for a grant or loan—does not govern whether any submission made in connection with that activity is "voluntary." DOJ has recommended that in examining the nature of a submitter's participation in an activity, agencies should focus on whether submission of the relevant information was required of those who chose to participate.

Pursuant to the DOJ guidelines and other federal case law, including federal case law from the District of Columbia,[5] it is clear that the information submitted to LSC by applicants for competitive LSC grants would be considered "required" information, because recipients' receipt of grants is contingent upon the provision of the relevant information to LSC. Consequently, a determination of whether this information is "privileged or confidential" would involve the analysis for "required information" which was first articulated in the case of *National Parks & Conservation Ass'n* v. *Morton*, 498 F.2d 765 (D.C. Cir. 1974), and reiterated in the case of *Critical Mass Energy Project* v. *NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992). According to this test, "commercial or financial

EFFECTIVE DATE: This policy became effective on July 9, 2003.

FOR FURTHER INFORMATION CONTACT: Dawn M. Browning, Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 3333 K Street, NW., Washington, DC 20007–3522; 202/295–1626 (phone); 202/337–6519 (fax); *dbrowning@lsc.gov*.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation (LSC) is not a "department, agency, or instrumentality of the Federal Government." 42 U.S.C. 2996(d). LSC is, however, by the terms of its organic legislation, subject to the Freedom of Information Act (FOIA). Id. LSC has issued regulations [1] governing its basic FOIA procedures. See 45 CFR part 1602.

Under FOIA and LSC regulations, a requested record may be withheld from disclosure if, inter alia, the record contains trade secrets or commercial or financial information obtained from a person and is privileged or confidential. *See* 5 U.S.C. 552(b)(4); 45 CFR 1602.9(a)(3). In the past, LSC policy has been to routinely withhold grant application materials submitted in connection with the competitive bidding process pursuant to this exemption. For the reasons set forth below, LSC has decided that documents submitted by applicants as part of grant applications (the Proposal Narrative (parts 1 & 2) on original grant applications and the Application Narrative (parts A & B) for grant renewal applications) are generally not entitled to protection from disclosure in response to FOIA requests after grants have been awarded for a given application period. LSC will continue to review each request for this information on a case by case basis to ascertain whether there is anything extraordinary in a given narrative which merits withholding and will continue to provide persons and organizations whose applications have been requested opportunity to seek protection from disclosure of some or all of the documents requested upon an individualized showing of competitive

[1] LSC is authorized by Congress to issue regulations as necessary to carry out its mission. *See* 42 U.S.C. 2996(e). Since LSC is not a Federal agency, however, LSC is not subject to the requirements of the Administrative Procedures Act, which governs the rulemaking activities of Federal agencies. Rather, LSC is required to "afford notice and reasonable opportunity for comment to interested parties prior to issuing rules, regulations, and guidelines, and it shall publish in the **Federal Register** at least 30 days prior to their effective date all its rules, regulations, guidelines and instructions." 42 U.S.C. 2999(g).

[2] LSC originally published a notice regarding this change in policy on April 17, 2001 (66 FR 19798) and invited the public to comment prior to effectuation of the change. LSC received one comment opposing the change. The commenter expressed concern that disclosure of the proposal narrative after the close of competition will cause competitive harm by allowing persons to, essentially, copy a successful grant application for later LSC competitions or other grants. For the reasons discussed above, however, LSC believes that the type of information found in the grant narratives does not rise to the level of detail or specificity required by the Exemption 4 case law, such that it is not legally defensible under the FOIA case law for LSC to maintain a presumption against disclosure of proposal narratives. To guard against harm in specific cases, however, as discussed above, LSC will continue to make Exemption 4 determinations related to proposal narratives on a case-by-case basis, allowing submitters the opportunity to explain why their respective proposal narratives should not be released in response to a FOIA request. In fact, the submitter's rights process has recently been formally codified into the Corporation's FOIA regulations. See 68 FR 7433 (Feb. 14, 2003).

[3] The Court of Appeals for D.C. has held that "commercial" and "financial" should be given their "ordinary meanings." *Public Citizen Health Research Group* v. *FDA*, 704, F.2d 1280, 1290 (DC Cir. 1983) (citing *Washington Post Co.* v. *HHS*, 690 F.2d 252, 266 (D.C. Cir. 1982)). Examples of documents which have been accepted as "commercial or financial information" include business sales statistics; research data; technical designs; customer and supplier lists; profit and loss data; overhead and operating costs; and information on financial conditions. See *Landfair* v. *United States Dep't of the Army*, 645 F. Supp. 325, 327 (D.D.C. 1986). The term "person" has been interpreted to include a wide range of entities, including private organizations such as grantees. See *e.g. Nadler* v. *FDIC*, 92 F.3d 93, 95 (2d Cir. 1996) (term 'person' includes "an individual, partnership, corporation, association, or public or private organization other than an agency.")

[4] *See National Parks & Conservation Ass'n* v. *Morton*, 498 F.2d 765 (D.C. Cir. 1974) (articulating test which is now applied to documents submitted pursuant to a requirement), and *Critical Mass Energy Project* v. *NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992) (creating new test to be applied to documents submitted voluntarily).

[5] See, *e.g. Martin Marietta Corp.* v. *Dalton*, 974, F. Supp. 37, 39 (D.D.C. 1997); *McDonnell Douglas Corp.* v. *NASA*, 981 F. Supp. 12, 15 (D.D.C. 1997); *McDonnell Douglas Corp.* v. *NASA*, 895 F. Supp. 319, 325–26 (D.D.C. 1995); *Chemical Waste Management Inc.* v. *Leary*, 1995 WL 115894 (D.D.C. Feb. 28, 1995); *TRIFID Corp.* v. *National Imagery & Mapping Agency*, 10 F. Supp. 2d 1087, 1098–1101 (E.D. Mo. 1998); and *Source One Management* v. *U.S. Dept. of Interior*, No. 92–Z–2101, transcript at 6 (D. Colo. Nov. 10, 1993) (all holding that information submitted in application for government contract was "required" information).

matter is 'confidential' for purposes of Exemption 4 if disclosure of the information is likely to have either of the following effects: (1) To impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive process."

Because of the large amount of money LSC distributes and the substantial reliance of many programs on LSC funds for continuation, it is unlikely that the release of the narratives of applicants in response to FOIA requests will impair LSC's ability to receive applications in the future.[6] Therefore, the next step of the analysis is whether the release of this information would "cause substantial harm to the competitive process."

In the case of *National Parks and Conservation Ass'n* v. *Kleepe*, 547 F.2d 673 (1973), the U.S. Court of Appeals for the DC Circuit articulated general examples of situations that might constitute "substantial competitive harm." One such example would be a situation in which information disclosed pursuant to FOIA would be useful to a competitor in devising means to improve its competitive position at the expense of the business whose information was being released.[7] The court noted that in this circumstance, such disclosure would reveal that business' secrets without providing it with similar access to the books and records of its competitor.[8] "This competitive disadvantage is fundamentally unfair and would be likely to cause harm to the (business) basic position."[9] The court went on to state that:

"the likelihood of substantial harm to (the applicant's) competitive positions * * * (is) virtually axiomatic * * * (where) disclosure would provide competitors with valuable insights into the operational strengths and weaknesses of (an applicant), while the (competitors) could continue in the customary manner of 'playing their cards close to their chest.' "[10]

Because LSC only intends to release information provided in the narrative of the applications after grants have been awarded for a given application period, LSC does not believe the release will cause "substantial competitive harm" to applicants as defined above in most cases.

Although federal courts have identified the disclosure of various types of documents to constitute "substantial competitive harm," the LSC application narratives which LSC proposes to release do not reach the level of detail and specificity of the kinds of documents for which release has been held to constitute this harm. The documents which have been identified by courts as properly cognizable under the competitive harm prong of the National Parks test include: Detailed financial information such as an organization's assets, liabilities, and net worth; a company's actual costs, break-even calculations, profits and profit rates; data describing an organization's workforce which would reveal labor expenses, profit margins and competitive vulnerability; a company's selling prices, purchase activity and freight charges; a company's purchase records, including prices paid for advertising; technical and commercial data; information constituting the "bread and butter" of a manufacturing company; currently unannounced and future products, proprietary technical information, pricing strategy and subcontractor information; raw research data used to support a pharmaceutical drug's safety and effectiveness information regarding an unapproved application to market the drug in a different manner, and sales and distribution data of a drug manufacturer; and technical proposals which are submitted, or could be used, in conjunction with offers on government contracts.[11]

Based on the foregoing analysis, LSC no longer considers it appropriate under FOIA to routinely withhold the information contained in the Proposal Narrative or Application Narrative of LSC competitive grant applications once the grant decisions for a given application period have been made. While, as noted above, LSC will continue to review each request for such documents on a case by case basis and will continue to provide persons and organizations whose applications have been requested the opportunity to seek protection from disclosure some or all of the documents requested, LSC anticipates that it will release this information in most cases.

LSC reserves the right to further amend this policy in the future, as appropriate.

Victor M. Fortuno,

General Counsel and Vice President for Legal Affairs.

[FR Doc. 03-18545 Filed 7-21-03; 8:45 am]

BILLING CODE 7050-01-P

[6] Courts have generally given substantial deference to agency determinations about whether such disclosures would impair the relevant agency's ability to receive applications in the future, noting that (1) Agencies have an incentive not to release information which will impair their ability to receive future applications, and (2) government contracting involves millions of dollars and the release of application information is unlikely to dissuade all potential applicants. *See e.g. Martin Marietta Corp.* v. *Dalton*, 974 F. Supp. 37, 39–40 (D.D.C. 1997); *McDonnell Douglas Corp.* v. *NASA*, 981 F. Supp. 12, 15 (1997); *C.C. Distributors* v. *Kinzinger*, 1995 WL 405445, *4 (D.D.C. 1995); *McDonnell Douglas Corp.* v. *NASA*, 895 F. Supp. 319 (1995); and *Racal-Milgo Gov't Systems, Inc.* v. *Small Business Admin.*, 559 F. Supp. 4, 6 (D.D.C. 1981).

[7] *National Parks and Conservation Ass'n* v. *Kleepe*, 547 F.2d 673, 678, note 18 (1973).

[8] Id.

[9] Id.

[10] Id. at page 684.

[11] Freedom of Information Act Guide & Privacy Act Overview, U.S. Department of Justice Office of Information and Privacy, May 2000 Edition, pages 208–09.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 03–081]

National Environmental Policy Act; Mars Exploration Program

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of intent to conduct scoping and to prepare a Tier 1 environmental impact statement for the Mars Exploration Program.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and NASA's policy and procedures (14 CFR part 1216, subpart 1216.3), NASA intends to conduct scoping and to prepare a Tier 1 Environmental Impact Statement (EIS) for the Mars Exploration Program (MEP). NASA proposes a coordinated MEP that would use robotic orbital, surface, and atmospheric missions to gather scientific data on the Martian environment and that would continue planning for a potential return of Martian surface samples to Earth. Included in the program would be U.S. missions, which may or may not include foreign participation, and foreign missions with U.S. participation. The proposed MEP would include missions where the use of radioisotope heater units and radioisotope power systems are contemplated. One or more of the MEP missions may propose returning samples from the surface of Mars or its atmosphere.

The MEP would be a science-driven, technology-enabled effort to characterize and understand Mars, including its environment, climate and geological history, and biological potential. Utilizing an exploration strategy generally known as "Follow the Water", scientific and engineering measurements of Mars would be carried out using robotic assets at Mars. Central among the questions to be addressed is: "Did life ever arise on Mars?" Life, as is currently understood, cannot exist without liquid water. Following the water means searching for scientific evidence that liquid water was present persistently in the past or is present today. Science experiments and technology demonstrations that provide critical information for the potential human exploration of Mars would also be incorporated through an integrated planning approach.

The overall strategy of the MEP is to generate a continuous flow of information and discoveries from scientific and exploration robotic spacecraft, including orbiters, landers, mobile laboratories (rovers), and atmospheric probes through a Mars-Earth communications network. It is intended that one or more major U.S. missions would be launched at every Mars launch opportunity (approximately every 26 months) through at least the first two decades of the 21st century. Foreign participants with NASA in the MEP may include, but not necessarily limited to, the Agenzia Spaziale Italiana (ASI, the Italian space agency), the Centre National d'Etudes Spatiales (CNES, the French space agency), the Canadian Space Agency (CSA), and the European Space Agency (ESA). Launches would most likely take place from Cape Canaveral Air Force Station in Florida and, although unlikely, from Vandenberg Air Force Base in California.

DATES: Interested parties are invited to submit comments or environmental concerns in writing on or before September 5, 2003, to assure full consideration during the scoping process.

ADDRESSES: Comments should be addressed to Mr. Mark R. Dahl, NASA Headquarters, Code SM, Washington, DC 20546–0001. While hardcopy comments are preferred, comments may be sent by electronic mail to: *mep.nepa@hq.nasa.gov.*

FOR FURTHER INFORMATION CONTACT: Mark R. Dahl, 202–358–4800 or by electronic mail at *mep.nepa@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION: Consistent with the NASA strategic plan, the MEP has established objectives to address the scientific questions associated with the exploration of the planet. These objectives are: (1) Seek evidence of ancient or present life on Mars, (2) understand the current state and evolution of the atmosphere, surface, and interior of Mars, (3) provide scientific support for the planning of potential human exploration of Mars.

The program would implement a series of scientific investigations and experiments, developed and prioritized by the broad planetary science community, that support the objectives of the program. It would include comprehensive Mars data analysis with the full participation and involvement of the space science community. Due to the program's broad scope and public interest, the MEP would place significant importance on education and public outreach.

As a goal, the program would launch at least one spacecraft at each opportunity, providing robotic assets that would enable a near-continuous data return from Mars. Each orbiter mission would include a communications relay capability designed to operate as part of a Mars-Earth communications network. Each mission would be designed to support the ongoing program by validating technologies and providing data and lessons learned to future missions.

Technology developments and improvements over the course of the program would enable a progressive increase in the science data returned from instruments delivered to Mars orbit and to the surface by program spacecraft, enhance the capability to safely and precisely place payloads at any desired location on the surface, and enable full access to the subsurface, surface and atmospheric regions. Technology improvements would also enable extended (one Mars year (1.88 Earth years) or more duration, as a goal) surface science investigations, and support the development of robotic assets to provide a near-continuous data return from the Mars surface. Extended duration missions to the surface are likely to include radioisotope power systems as a baseline.

The MEP missions currently contemplated for launch by 2010 are described below. As new information and techniques become available during the course of the program, the timing, focus and objectives of subsequent MEP missions could be redirected.

- The Mars Exploration Rover (MER) project will launch two identical spacecraft to Mars in 2003. The purpose of this project is to place two rovers on the surface of Mars to remotely conduct geological investigations and characterize a diversity of rocks and soils which may hold clues to past water activity. Because planning for this project began prior to final definition of the MEP, potential environmental impacts of the MER–2003 project have already been discussed in separate NEPA documentation. NASA published a notice of intent to prepare an EIS and to conduct scoping for the MER–2003 project in the **Federal Register** (FR) (66 FR 11184, February 22, 2001). A Draft EIS for the MER–2003 project was made available for public review and comment (67 FR 48894, July 26, 2002), and NASA published its Final EIS (67 FR 75863, December 10, 2002).
- The Mars Reconnaissance Orbiter (MRO) mission will be launched in 2005 to investigate global atmospheric transport processes, conduct globally distributed observations of aqueous sediments and hydrological process indicators, and collect high-resolution imagery of the surface of Mars. ASI is contributing a ground penetrating radar science instrument to MRO. No radioisotope heater units or radioisotope power systems are proposed for this mission. NASA has designated MRO as a routine payload in accordance with the Environmental Assessment (EA) for Launch of NASA Routine Payloads and Finding of No Significant Impact (FONSI) published by NASA (67 FR 41525, June 18, 2002).
- In 2007, the program would launch a continuing series of competitively selected small missions, called Scouts, which could allow the science community to design investigations that augment the objectives of the MEP from new vantage points (*e.g.*, airborne platforms, rovers, networks of landers). The Scout missions currently remaining in competition for the 2007 opportunity have not proposed the use of radioisotope heater units or radioisotope power systems.
- In 2009, the program would launch the Mars Science Laboratory (MSL), which could conduct multi-disciplinary investigations related to biology, climatology, geology, and geochemistry. The MSL could utilize a radioisotope power system to provide continuous electrical power for mobility and extended duration. A separate Tier 2 environmental document for the MSL mission may be prepared. Also in 2009, the program would launch a telecommunications orbiter (Telesat) to provide science data relay capability for multiple Mars missions. No radioisotope heater units or radioisotope power systems are proposed for the Telesat mission.

Missions to Mars in the following decade would be dependant upon the knowledge gained and the discoveries of this decade. NASA, working with the science community, has developed potential paths of scientific inquiry (called pathways) into the next decade.

The pathways include both orbital and landed missions designed to examine the global diversity of the planet, or designed to focus on exploration of surface and shallow subsurface polar ices and sediments, including the return of samples from the surface of Mars. The decision to follow a particular science pathway would be driven by the importance of prior discoveries in the MEP.

NASA plans to address the environmental impacts of the MEP through a two-tiered NEPA process. The Tier 1 EIS will discuss the overall purpose and need for the MEP. Because this Tier 1 EIS is being prepared during the planning stages for the MEP, specific proposed projects and missions within the MEP would only be addressed in terms of a broad, conceptual framework. Those missions within the MEP that do not propose the use of radioisotope heater units or radioisotope power systems would be candidate missions for routine payload designation under the EA and FONSI published by NASA (67 FR 41525, June 18, 2002). Those missions proposed within the MEP that could utilize radioisotope heater units or radioisotope power systems and those missions involving return of Martian samples to Earth would be the subject of separate Tier 2 environmental documentation, using the best available information and analysis directly related to that mission. While detailed analyses and test data for each spacecraft-launch vehicle combination is not yet available, significant safety data and experience from previous programs are available to NASA to enable consideration of whether to continue planning for the use of radioisotope heater units and radioisotope power systems for these proposed missions.

Alternatives to be considered in the Tier 1 EIS will include, but will not necessarily be limited to:

- The proposed MEP, which would include orbital and landed missions, some of which may utilize radioisotopes for heat and power, and may return Martian samples to Earth; and
- The No Action Alternative, by which NASA would not implement a coordinated MEP, but would continue to explore Mars on a less comprehensive, mission-by-mission basis.

The Tier 1 EIS will address the purpose and need for the proposed MEP and the program-level environmental impacts associated with its implementation. The environmental impacts of this program are anticipated to be those associated with the normal launch of the missions, both individually and cumulatively.

Written public input and comments on alternatives, environmental impact issues, and environmental concerns associated with the Mars Exploration Program are hereby requested.

Jeffrey E. Sutton,

Assistant Administrator for Management Systems.

[FR Doc. 03–18504 Filed 7–21–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request approval of a one-time information collection, a survey of small business records centers. The survey information will be used by the NARA policy and technical staff who are conducting a review of our regulation on records center facility standards (36 CFR part 1228, subpart K). The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before September 22, 2003 to be assured of consideration.

ADDRESSES: Comments should be sent to: Regulation Comment Desk (NPOL), Room 4100, National Archives and Records Administration, 8601 Adelphi Rd. College Park, MD 20740–6001; or faxed to 301–837–0319; or electronically mailed to *comments@nara.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Nancy Allard at telephone number 301–837–1477, or fax number 301–837–0319.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In commenting on the accuracy of NARA's estimate of the burden, we also request your comments on the average hourly salary cost for the individuals who would complete the survey. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

In this notice, NARA is soliciting comments concerning the following information collection:

Title: Records Storage Facility Survey.

OMB number: New.

Agency form number: None.

Type of review: Regular.

Affected public: Owners/operators of commercial records storage facilities that are small businesses.

Estimated number of respondents: 263.

Estimated time per response: 15 minutes.

Frequency of response: One-time.

Estimated total annual burden hours: 66 hours.

Abstract: The information collection is a survey of the characteristics of records storage facilities operated by small businesses. Respondents will be a random sample of owners/operators of such facilities. The survey information will be used by the NARA policy and technical staff to evaluate the construction materials, fire protection measures, and storage practices common in small business records centers against the existing standards in the NARA regulation on records center facility standards (36 CFR part 1228, subpart K). The information will be used in a regulatory flexibility analysis of possible alternatives to the existing standards and assessment of the ability of small business to comply with those alternatives.

Dated: July 16, 2003.

Nancy Y. Allard,

NARA Federal Register Liaison.

[FR Doc. 03–18568 Filed 7–21–03; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that four meetings of the Combined Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506 as follows:

Dance: August 4–8, 2003, Room 716 (Creativity and Services to Arts Organizations and Artists categories). This meeting will be closed.

Literature: August 11–13, 2003, Room 714 (Creativity and Services to Arts Organizations and Artists category). A portion of this meeting, from 11 am. to 12 p.m. on August 13th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on August 11th and 12th, and from 9 a.m. to 11 a.m. and 12 p.m. to 4 p.m. on August 13th, will be closed.

Theater: August 5–8, 2003, Room 730 (Creativity category—Panel B). A portion of this meeting, from 3 p.m. to 4:30 p.m. on August 7th, will be open to the public for policy discussion. The remaining portions of this meeting, from 10 a.m. to 6:30 p.m. on August 5th, from 10 a.m. to 7 p.m. on August 6th, from 10 a.m. to 3 p.m. and 4:30 p.m. to 6:30 p.m. on August 7th, and from 10 a.m. to 4:30 p.m. on August 8th, will be closed.

Musical Theater/Theater: August 19–20, 2003, Room 714 (Musical Theater Creativity and Theater Services to Arts Organizations and Artists categories). A portion of this meeting, from 1:30 p.m. to 2:30 p.m. on August 20th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9:30 a.m. to 7 p.m. on August 19th and from 9:30 a.m. to 1:30 p.m. and 2:30 p.m. to 5 p.m. on August 20th, will be closed.

The closed meetings and portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of April 30, 2003, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call (202) 682–5691.

Dated: July 15, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 03–18546 Filed 7–21–03; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–01295]

Notice of Finding of No Significant Impact and Availability of Environmental Assessment for License Amendment of Materials License No. 06–13022–02; University of Connecticut Health Center, Farmington, CT

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to the University of Connecticut Health Center for Materials License No. 06–13022–02, to authorize release of its facility on the Newington Veterans Administration Campus in Newington, Connecticut for unrestricted use and has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

II. EA Summary

The purpose of the proposed action is to allow for the release of the licensee's areas of use within Building No. 5 at the Veterans Administration Medical Center in Newington, Connecticut for unrestricted use. The University of Connecticut Health Center was authorized by NRC from 1970 to use radioactive materials for research and development purposes at the site. On August 7, 2002, the University of Connecticut Health Center requested that NRC release their facilities in Building No. 5 for unrestricted use. The University of Connecticut Health Center has conducted surveys of the facility and determined that the facility meets the license termination criteria in Subpart E of 10 CFR Part 20.

III. Finding of No Significant Impact

The NRC staff has evaluated the University of Connecticut Health Center's request and the results of the surveys, and has prepared the EA (summarized above) in support of the proposed license amendment to release the University of Connecticut Health Center facility in Newington, Connecticut for unrestricted use. On the basis of the EA, the NRC has concluded that the environmental impacts from the proposed action are not expected to be significant and has determined not to prepare an environmental impact statement for the proposed action. As described in the EA, the NRC staff found no significant impacts based on its review of the adequacy of the radiation release criteria and the adequacy of the final status survey to meet NRC's unrestricted release criteria. In reviewing the amendment request the staff also determined that the environmental impacts were enveloped by the generic analysis performed in support of "Radiological Criteria for License Termination" (62 FR 39058).

IV. Further Information

The EA and the documents related to this proposed action, including the application for the license amendment and supporting documentation, are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accession Nos. ML031960106, ML022320664, ML022320354). These documents are also available for inspection and copying for a fee at the Region I Office, 475 Allendale Road, King of Prussia, PA 19406. Any questions with respect to this action should be referred to Penny Lanzisera, Nuclear Materials Safety Branch 1, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406; telephone (610) 337–5169; fax (610) 337–5269.

Dated at King of Prussia, Pennsylvania, this 15th day of July, 2003.

For the Nuclear Regulatory Commission.

Pamela J. Henderson,

Chief Nuclear Materials Safety Branch 1, Division of Nuclear Materials Safety, Region I.

[FR Doc. 03–18544 Filed 7–21–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of July 21, 28, August 4, 11, 18, 25, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 21, 2003

There are no meetings scheduled for the Week of July 21, 2003.

Week of July 28, 2003—Tentative

There are no meetings scheduled for the Week of July 28, 2003.

Week of August 4, 2003—Tentative

There are no meetings scheduled for the Week of August 4, 2003.

Week of August 11, 2003—Tentative

There are no meetings scheduled for the Week of August 11, 2003.

Week of August 18, 2003—Tentative

There are no meetings scheduled for the Week of August 18, 2003.

Week of August 25, 2003—Tentative

Wednesday, August 27, 2003

9:30 a.m.—Briefing on License Renewal Program, Power Update Activities, and High Priority Activities (Public Meeting) (Contact: Ho Nieh, 301–415–1721).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

Additional Information

By a vote of 3–0 on July 16, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Intergovernmental Issues (Closed—Ex. 9)" be held on July 16, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: July 17, 2003.

D.L. Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–18682 Filed 7–18–03; 10:14 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from, June 27, 2003, through July 10, 2003. The last biweekly notice was published on July 8, 2003 (68 FR 40707).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By August 21, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and

any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: June 3, 2003.

Description of amendment request: Pursuant to title 10 of the Code of Federal Regulations (10 CFR), Section 50.90, Duke Energy Corporation requested an amendment to the McGuire Nuclear Station Facility Operating Licenses and Technical Specifications (TS). The proposed change would modify TS 3.6.14 to allow

a pressurizer hatch to be open for up to 6 hours, an increase from the current TS limit of 1-hour. Conforming changes would also be made to the associated Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. Implementation of this amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. Removal of the pressurizer enclosure hatch will not cause an increase in the probability of an accident which has been previously evaluated because the pressurizer enclosure hatch is not an accident initiator.

The consequences of an accident which have been previously evaluated will not be significantly increased by removal of the pressurizer enclosure hatch. As discussed in the analysis contained in the technical justification supporting this amendment request, the new containment compression peak pressure will remain well below the acceptance criteria. Additionally, the long term containment peak pressure will not be adversely affected due to the delay time in melting of the ice. The removal of the pressurizer enclosure hatch itself has been previously evaluated in Modes 1 through 4 in accordance with the analytical process described in NUREG–0612 and the NRC's December 22, 1980 letter regarding the control of heavy loads at nuclear plants. The changes proposed in this license amendment request will have no adverse effect on the procedures used for the handling of heavy loads (pressurizer enclosure hatch) at McGuire nor on the generation of internal missiles as evaluated in Section 3.5 of the McGuire Updated Final Safety Analysis Report.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. Implementation of this amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. No new accident causal mechanisms are created as a result of the NRC approval of this license amendment request. As discussed above, extending the time that the pressurizer hatch is allowed to be open does not create any new or different accidents from those previously evaluated. Removal of the pressurizer enclosure hatch to perform inspections or maintenance inside the pressurizer cavity has been previously evaluated and determined to be acceptable. The analysis contained in the technical justification for this license amendment request provides results which conclude that the containment compression peak pressure, and the long term containment peak pressure are acceptable with the pressurizer enclosure hatch open. This amendment does not impact any plant systems that are accident initiators; therefore, no new accident types are being created.

3. Does this change involve a significant reduction in a margin of safety?

No. Implementation of this amendment would not involve a significant reduction in a margin of safety. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The pressurizer enclosure hatch and its performance have a direct impact on the containment boundary, since peak containment pressure due to an accident could be affected. However, the analysis supporting this amendment request concludes that the containment compression peak pressure and the long term containment peak pressure continue to be acceptable with the increased open time for the hatch. Thus the performance of the fission product barriers will not be significantly impacted by implementation of this amendment and no safety margin will be significantly impacted.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: John A. Nakoski.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: June 30, 2003.

Description of amendment request: The proposed amendment would revise the control room emergency ventilation system (CREVS) surveillance requirement (SR) by modifying an existing SR related to the makeup flow rate to show that it is applicable to the VSF–9 train and by adding a new makeup flow rate SR that is applicable to the 2VSF–9 train.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The purpose of the CREVS is to provide airborne radiological protection for operations from the control room for the design basis loss of coolant accident fission product release and for a fuel handling accident. The proposed change continues to assure that the control room operator will be protected from the dose consequences related to either of these accidents.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change will establish appropriate outside air makeup flow rates for the 2VSF–9 fan unit. This criterion has been evaluated and determined to continue to provide protection to the control room operator in accordance with General Design Criterion 19. The proposed change is not an accident initiator. No modifications to the system are proposed which would create the possibility of a new or different kind of accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change will establish the allowable makeup airflow into the control room when the 2VSF–9 CREVS train is in operation. Calculations have been performed which demonstrate that the proposed flow criteria provides increased protection for the control room operator.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: June 30, 2003.

Description of amendment request: The proposed amendment would: (1) Eliminate credit for the Boraflex neutron absorbing material used for reactivity control in Region 1 of the spent fuel pool (SFP), (2) credit a combination of soluble boron and several defined fuel loading patterns within the storage racks to maintain SFP reactivity within the effective neutron multiplication factor (K_{eff}) limits of 10 CFR 50.68, (3) increase the minimum boron concentration in the SFP to 2000 parts per million (ppm), and (4) reduce the fresh fuel assembly initial enrichment to less than or equal to 4.55 ± 0.05 weight percent uranium-235 (U–235).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The fuel handling accidents described below can be postulated to increase reactivity. However, for these accident conditions, the double contingency principle of ANS [American Nuclear Society] N16.1–1975 is applied. This states that it is unnecessary to assume two unlikely, independent, concurrent events to ensure protection against a criticality accident. Thus, for accident conditions, the presence of soluble boron in the storage pool water can be assumed as a realistic initial condition since its absence would be a second unlikely event.

Three types of drop accidents have been considered: a vertical drop accident, a horizontal drop accident, and an inadvertent drop of an assembly between the outside periphery of the rack and the pool wall.

- A vertical drop directly upon a cell will cause damage to the racks in the active fuel region. The proposed 2000 ppm soluble boron concentration will ensure that K_{eff} does not exceed 0.95.
- A fuel assembly dropped on top of the rack that comes to rest horizontally will not deform the rack structure such that criticality assumptions are invalidated. The rack structure is such that an assembly positioned horizontally on top of the rack results in a minimum separation distance from the upper end of the active fuel region of the stored assemblies. This distance is sufficient to preclude interaction between the dropped assembly and the stored fuel.
- An inadvertent drop of an assembly between the outside periphery of the rack and the pool wall is bounded by the worst case fuel misplacement accident condition.

The fuel assembly misplacement accident was considered for all storage configurations. An assembly with high reactivity is assumed to be placed in a storage location which requires a fuel assembly with a lower reactivity. The presence of soluble boron in the pool water assumed in the analysis has been shown to offset the worst case reactivity effect of a misplaced fuel assembly for any configuration. This soluble boron requirement is less than the proposed 2000 ppm that will be required by the ANO–2 [Arkansas Nuclear One, Unit No. 2] TS [Technical Specifications]. Thus, a five percent subcriticality margin can be easily met for postulated accidents, since any reactivity increase will be much less that the negative worth of the dissolved boron.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change will define several acceptable 2 x 2 loading patterns and acceptable interfaces between the patterns. In addition, the proposed change will credit soluble boron to assure a five percent subcriticality margin is maintained during normal conditions and in the event of a postulated accident. The soluble boron concentration assumed in the analyses for a postulated accident is less than the proposed TS change of 2000 ppm. Thus, a five percent subcriticality margin can easily be met for postulated accidents, since any reactivity increase will be much less than the negative worth of the dissolved boron.

No new or different types of fuel assembly drop scenarios are created by the proposed change. The presence of soluble boron in the SFP water assures a subcriticality margin is maintained in the event of fuel assembly misplacement.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

With the presence of a nominal boron concentration, the fuel storage patterns are designed to assure that fuel assemblies of less than or equal to 4.55 ± 0.05 weight percent U–235 enrichment when loaded in accordance with the proposed loading patterns will be maintained within a subcritical array with a five percent subcritical margin (95% probability at the 95% confidence level). This has been verified by criticality analyses.

Credit for soluble boron in the SFP water is permitted under accident conditions as well as in non-accident conditions. Criticality analyses have been performed to determine the required boron concentration that would ensure a subcriticality margin of at least five percent. By increasing the minimum boron concentration to greater than 2000 ppm, the margin of safety currently defined by taking credit for soluble boron will be maintained.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502

NRC Section Chief: Robert A. Gramm

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: June 30, 2003.

Description of amendment request: The proposed amendment would (1) reorganize the Arkansas Nuclear One, Unit No. 2 (ANO–2) Technical Specifications (TSs) Section 6.0, Administrative Controls, (2) modify the ANO–2 Facility Operating License, and actions and surveillance requirements (SRs) of various other TSs, to support the reorganization of Section 6.0, and (3) modify several actions and SRs that are related to systems that are shared by ANO–2 and Arkansas Nuclear One, Unit No. 1 (ANO–1). These changes are being proposed so that the philosophy and location of the TSs in Section 6.0 reflect the recently approved conversion of the ANO–1 TSs to the Improved Technical Specifications (ITS) and the subsequent amendments to the ANO–1 ITS. This amendment request supersedes the previous application related to the revision of TS Section 6.0 dated January 31, 2002, as supplemented on June 26 and July 18, 2002. The January 31, 2002, application was previously noticed in the **Federal Register** on March 19, 2002 (67 FR 12602).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Administrative Changes

The proposed changes involve reformatting and rewording of the existing TSs. The reformatting and rewording process involves no technical changes to existing requirements. As such, the proposed changes are administrative in nature and do not impact initiators of analyzed events or assumed mitigation of accident or transient events.

Less Restrictive—Administrative Deletion of Requirements

The proposed changes relocate requirements from the TSs to other license basis documents which are under licensee control. The documents containing the relocated requirements will be maintained using the provisions of applicable regulatory requirements.

More Restrictive Changes

The proposed changes provide more stringent requirements for the ANO–2 TSs. These more stringent requirements are not assumed to be initiators of analyzed events and will not alter assumptions relative to mitigation of accident or transient events. The more stringent requirements are imposed to ensure process variables, structures, systems, and components are maintained consistent with the safety analyses and licensing basis and to provide greater consistency with the ANO–1 TS and NUREG 1432.

Less Restrictive Changes

(1) A note will be added that allows three (3) hours to perform the channel functional test on the control room radiation monitors without entering the associated Actions.

The control room area radiation monitor is used to support mitigation of the consequences of an accident; however, it is not considered the initiator of any previously analyzed accident. Also, the addition of the Note to allow time for testing reduces the potential for initiation of a previously analyzed accident due to reduced potential for shutdowns and startups due to incomplete or missed surveillances. As such, the proposed revision to include an allowance for testing does not significantly increase the probability of any accident previously evaluated. This change does not result in any hardware changes, but does allow operation for a limited time with an inoperable monitor for the purposes of testing. Since the capability of the control room area radiation monitor to provide the required information continues to be verified, and the time allowed for inoperability for testing is short, the change will not reduce the capability of required equipment to mitigate the event. Also, the consequences of an event occurring during the proposed operation of the unit during the allowed inoperability for testing are the same as the consequences of an event occurring while operating under the current TS Actions. Therefore, this change does not involve a significant increase in the consequences of any accident previously evaluated.

(2) This change will allow the control room boundary to be opened intermittently under administrative controls, and will allow both trains of the CREVS [control room emergency ventilation system] to be inoperable due to control room boundary inoperability for a period of 24 hours.

Neither CREVS nor the control room boundary is the initiator of any accident analyzed in the SAR [Safety Analysis Report]. Therefore, this change does not result in a significant increase in the probability of an accident previously evaluated.

The CREVS and the control room boundary are intended to provide a habitable environment for the control room operators in the event of an accident that results in the release of radioactivity to the environment. The allowance to open the control room boundary intermittently is acceptable, because of the administrative controls that will be implemented to ensure that the opening can be rapidly closed when the need for control room isolation is indicated, restoring the control room habitability envelope. Allowing both CREVS trains to be inoperable for 24 hours due to an inoperable control room boundary is acceptable because of the low probability of an accident requiring control room isolation during any given 24 hour period, because entry into this condition is expected to be an infrequent occurrence, and because preplanned compensatory measures to protect the control room operators from potential hazards are implemented. Therefore, this change will not result in a significant increase in the probability [consequences] of an accident previously evaluated.

(3) An allowance will be added to allow use of a "simulated" or "actual" test signal when testing the automatic isolation feature of the control room air filtration system.

The phrase "actual or simulated" in reference to the automatic initiation signal, has been added to the system functional test surveillance test description. This does not impose a requirement to create an "actual" signal, nor does it eliminate any restriction on producing an "actual" signal. The proposed change does not affect the procedures governing plant operations and the acceptability of creating these signals; it simply would allow such a signal to be utilized in evaluating the acceptance criteria for the system functional test requirements. Therefore, the change does not involve a significant increase in the probability of an accident previously evaluated. Since the function of the system functional test remains unaffected the change does not involve a significant increase in the consequences of an accident previously evaluated.

(4) An allowance for the diesel fuel storage tanks to contain less than 22,500 gallons of fuel for up to 48 hours as long as the individual volume is greater than 17,446 gallons will be added. The lower value when summed with the contents of the other tank ensures six days of fuel oil is available. During the 48 hours, the diesel generator is capable of performing its intended function. There is a low probability that an event would occur for which the diesel generator would be required during this short period of time when the lower fuel oil volume is allowed.

The AC Sources are used to support mitigation of the consequences of an accident and can be involved in the initiation of the accident analyzed in SAR. Equipment powered by the AC Sources, which may be considered as an initiator, continues to be assured of electrical power. The proposed increased restoration time involves parameters unrelated to initiating the failure of the AC Sources. As such the proposed time allowance for restoration of limited levels of readiness parameter degradation will not increase the probability of any accident previously evaluated. The proposed changes allow additional time for restoration of parameters that have been identified as not immediately affecting the capability of the power source to provide its required safety function. The identified parameters are capable of being replenished during operation of the diesel generators, and the short additional allowable action time continues to provide adequate assurance of operable required equipment. Therefore, this change does not involve a significant increase in the probability of or the consequences of any accident previously evaluated.

(5) Seven days will be allowed to restore the stored diesel fuel oil total particulates to within the required limits prior to declaring the associated diesel inoperable.

The testing of diesel generator fuel oil is not considered an initiator, or a mitigating factor, in any previously evaluated accident. The presence of particulates does not mean failure of the fuel oil to burn properly in the diesel engine. In addition, particulate concentration is unlikely to change significantly between surveillance intervals (31 days). Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(6) An allowance for the person who is satisfying the requirement of the radiation protection staff position and for the person filling the Shift Technical Advisor (STA) position to be vacant for not more than two hours in order to provide for unexpected absences is being added. This is consistent with the allowance permitted for the control room operator as reflected in existing TSs.

This change does not result in any changes in hardware or methods of operation. The change allowing the absence of the STA or the radiation protection technician is not considered in the safety analysis, and cannot initiate or affect the mitigation of an accident in any way. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(7) The STA will be allowed to support the shift crew rather than only the shift supervisor. This provides more flexibility and does not dilute the function of the STA.

This change does not result in any changes in hardware or methods of operation. The change in the support relationship between the STA and the control room staff is not considered in the safety analysis, and cannot initiate or affect the mitigation of an accident in any way. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(8) The Occupational Radiation Exposure Report will be submitted by April 30 of each calendar year instead of prior to March 1.

This change does not result in any changes in hardware or methods of operation. The change in date for submittal of "after the fact" information is not considered in the safety analysis, and cannot initiate or affect the mitigation of an accident in any way. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(9) An allowance is proposed that will revise the high radiation areas to include additional previously approved methods for implementation of alternatives to the "control device" or "alarm signal" requirements of 10 CFR [Part] 20. These alternatives provide adequate control of personnel in high radiation areas as evidenced by NRC issuance of NUREG–1432.

The controls for access to a high radiation area are not considered as initiators, or as a mitigation factor, in any previously evaluated accident. Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(10) An allowance to require periodic testing of stored fuel for the particulates only is proposed.

The testing of diesel generator fuel oil is not considered an initiator or a mitigating factor in any previously evaluated accident. Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(11) The removal of the requirement to notify the Vice President, Operations ANO within 24 hours of violating a safety limit.

Notification of the Vice President, Operations ANO when a safety limit is violated is not considered an initiator or a mitigating factor in any previously evaluated accident. Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(12) The Radioactive Effluent Release Report will be submitted by May 1 of each calendar year instead of prior to March 1.

This change does not result in any changes in hardware or methods of operation. The change in date for submittal of "after the fact" information is not considered in the safety analysis, and cannot initiate or affect the mitigation of an accident in any way. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(13) A change to frequency of the integrated leak tests for each system outside containment that could contain highly radioactive fluids from "at a frequency not to exceed refueling cycle intervals" to "at least once per 18 months."

Performance of the integrated leak tests for each system outside containment that could contain highly radioactive fluids is not an initiator or a mitigating factor in any previously evaluated accident. Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(14) A change that allows a 25% extension of the frequency in accordance with SR 4.0.2 for the integrated leak tests of each system outside containment that could contain highly radioactive fluids.

The extension of the testing frequency, up to 25% of the test interval, is not considered an initiator or a mitigating factor in any previously evaluated accident. Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Administrative Changes

The proposed changes do not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operations. The proposed changes will not impose any different requirements.

Less Restrictive—Administrative Deletion of Requirements

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operations. The proposed changes will not impose any different requirements and adequate control of the information will be maintained.

More Restrictive Changes

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed changes do impose different requirements. However, these changes do not impact the safety analysis and licensing basis.

Less Restrictive Changes

(1) A note will be added that allows three (3) hours to perform the channel functional test on the control room radiation monitors without entering the associated Actions.

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operations. The proposed change will still ensure proper surveillances are required for the equipment considered in the safety analysis. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(2) This change will allow the control room boundary to be opened intermittently under administrative controls, and will allow both trains of the control room ventilation system (CREVS) to be inoperable due to a control room boundary inoperability for a period of 24 hours.

The proposed change does not necessitate a physical alteration of the unit (no new or different type of equipment will be installed) or changes in parameters governing normal unit operation. Prompt and appropriate compensatory actions will still be taken in the event of an accident. Thus, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) An allowance will be added to allow use of a "simulated" or "actual" test signal when testing the automatic isolation feature of the control room air filtration system.

The possibility of a new or different kind of accident from any accident previously evaluated is not created because the proposed change introduces no new mode of plant operation and it does not involve physical modification to the plant.

(4) An allowance for the diesel fuel storage tanks to contain less than 22,500 gallons of fuel for up to 48 hours as long as the individual volume is greater than 17,446 gallons will be added. The lower value when summed with the contents of the other tank ensures six days of fuel oil is available. During the 48 hours, the diesel generator is capable of performing its intended function. There is a low probability that an event would occur for which the diesel generator would be required during this short period of time when the lower fuel oil volume is allowed.

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed change will continue to ensure operable safety equipment is available. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(5) Seven days will be allowed to restore the stored diesel fuel oil total particulates to within the required limits prior to declaring the associated diesel inoperable.

No changes are proposed in the manipulation of the plant structures, systems, or components, or in the design of the plant structures, systems, or components. The presence of particulates does not mean failure of the fuel oil to burn properly in the diesel engine. In addition, particulate concentration is unlikely to change significantly between surveillance intervals (31 days). Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(6) An allowance for the person who is satisfying the requirement of the radiation protection staff position and for the person filling the Shift Technical Advisor (STA) position to be vacant for not more than two hours in order to provide for unexpected absences is proposed. This is consistent with the allowance permitted for the control room operator as reflected in existing TSs.

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed change will impact only the STA and radiation protection staffing positions and does not directly impact the operation of the plant. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(7) The STA will be allowed to support the shift crew rather than only the shift supervisor. This provides more flexibility and does not dilute the function of the STA.

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed change will impact only the support relationship the STA provides the control room staff and does not directly impact the operation of the plant. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(8) The Occupational Radiation Exposure Report will be submitted by April 30 of each calendar year instead of prior to March 1.

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed change will impact only the administrative requirements for submittal of information and does not directly impact the operation of the plant. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(9) An allowance is proposed that will revise the high radiation areas to include additional previously approved methods for implementation of alternates to the "control device" or "alarm signal" requirements of 10 CFR [Part] 20. These alternatives provide adequate control of personnel in high radiation areas as evidenced by NRC issuance of NUREG–1432.

No changes are proposed in the manipulation of the plant structures, systems, or components, or in the design of the plant structures, systems, or components. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(10) An allowance to require periodic testing of stored fuel for the particulates only is proposed.

No changes are proposed in the manipulation of the plant structures, systems, or components, or in the design of the plant structures, systems, or components. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(11) The removal of the requirement to notify the Vice President, Operations ANO within 24 hours of violating a safety limit.

No changes are proposed that result in the manipulation or the design of plant structures, systems, or components. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(12) The Radioactive Effluent Release Report will be submitted by May 1 of each calendar year instead of prior to March 1.

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed change will impact only the administrative requirements for submittal of information and does not directly impact the operation of the plant. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(13) A change to frequency of the integrated leak tests for each system outside containment that could contain highly radioactive fluids from "at a frequency not to exceed refueling cycle intervals" to "at least once per 18 months."

No changes are proposed that result in the manipulation or the design of plant structures, systems, or components. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(14) A change that allows a 25% extension of the frequency in accordance with SR 4.0.2 for the integrated leak tests of each system outside containment that could contain highly radioactive fluids.

No changes are proposed that result in the manipulation or the design of plant structures, systems, or components. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

Administrative Changes

The proposed changes will not reduce the margin of safety because they have no impact on any safety analysis assumptions. The changes are administrative in nature.

Less Restrictive—Administrative Deletion of Requirements

The proposed changes will not reduce a margin of safety because they have no impact on any safety analysis assumptions. In addition, the requirements to be transposed from the TSs to other license basis documents, which are under licensee control, are the same as the existing TSs. The documents containing the relocated requirements will be maintained using the provisions of applicable regulatory requirements.

More Restrictive Changes

The imposition of more stringent requirements prevents a reduction in the margin of plant safety by:

(a) increasing the scope of the specification to include additional plant equipment,

(b) providing additional actions,

(c) decreasing restoration times, or

(d) imposing new surveillances.

The changes are consistent with the safety analysis and licensing basis.

Less Restrictive Changes

(1) A note will be added that allows three (3) hours to perform the channel functional test on the control room radiation monitors without entering the associated Actions.

The margin of safety for the control room area radiation monitor is based on availability and capability of the instrumentation to provide the required information to the operator. The frequency is based on unit operating experience that demonstrates channel failure is rare, and on the use of less formal but more frequent checks of channels during normal operational use of the displays associated with the required channels. Therefore, the availability and capability of the control room area radiation monitor continues to be assured by the proposed Surveillance Requirements and this change does not involve a significant reduction in a margin of safety.

(2) This change will allow the control room boundary to be opened intermittently under administrative controls, and will allow both trains of the control room ventilation system (CREVS) to be inoperable due to control room boundary inoperability for a period of 24 hours.

This change does not involve a significant reduction in a margin of safety since: (1) administrative controls will be in place to ensure that an open control room boundary can be rapidly closed when a need for control room isolation is indicated; and (2) an inoperable control room boundary that renders both trains of CREVS inoperable is an infrequent occurrence, the probability of an accident requiring control room isolation during any given 24 hour period is low, and preplanned compensatory measures to protect the control room operators from potential hazards are implemented.

(3) An allowance will be added to use a simulated or actual test signal when testing the automatic isolation feature of the control room air filtration system.

Use of an actual signal instead of the existing requirement which limits use to a simulated signal, will not affect the performance of the surveillance test. OPERABILITY is adequately demonstrated in either case since the system itself can not discriminate between "actual" or "simulated" signals. Therefore, the change does not involve a significant reduction in a margin of safety.

(4) An allowance for the diesel fuel storage tanks to contain less than 22,500 gallons of fuel for up to 48 hours as long as the individual volume is greater than 17,446 gallons. The lower value when summed with the contents of the other tank ensures six days of fuel oil is available. During the 48 hours, the diesel generator is capable of performing its intended function. There is a low probability that an event would occur for which the diesel generator would be required during this short period of time when the lower fuel oil volume is allowed.

The parameter limits provide substantial margin to the parameter values that would be absolutely necessary for diesel generator operability. When the parameters are less than their limits this margin is reduced. However, the availability of AC Sources continues to be assured since the allowed time for parameters to be less than their limits is short and the allowed levels for the parameters are adequate to provide the immediately needed power availability. Further, the parameters can be restored to within limits during the proposed time provided should they be required. Therefore, this change does not result in a signification reduction in [a] margin of safety.

(5) Seven days will be allowed to restore the stored diesel fuel oil total particulates to within the required limits prior to declaring the associated diesel inoperable.

The proposed change allows the stored diesel fuel oil total particulates to be outside the required limits for seven days before declaring the associated diesel inoperable. The presence of particulates does not mean failure of the fuel oil to burn properly in the diesel engine. In addition, particulate concentration is unlikely to change significantly between surveillance intervals (31 days). The seven day allowance provides an appropriate backstop to ensure the particulate level is restored to within limits in a reasonable time period. Since the diesel is still capable of performing its function the margin to safety is not reduced.

(6) An allowance for the person who is satisfying the requirement of the radiation protection staff position and for the person filling the Shift Technical Advisor (STA) position to be vacant for not more than two hours in order to provide for unexpected absences is proposed. This is consistent with the allowance permitted for the control room operator as reflected in existing TSs.

The margin of safety is not dependent on the presence of the STA or the radiation protection technician. Therefore, this change does not involve a significant reduction in a margin of safety.

(7) The STA will be allowed to support the shift crew rather than only the shift supervisor. This provides more flexibility and does not dilute the function of the STA.

The margin of safety is not dependent upon who the STA supports. Therefore, this change does not involve a significant reduction in a margin of safety.

(8) The Occupational Radiation Exposure Report will be submitted by April 30 of each calendar year instead of prior to March 1.

The margin of safety is not dependent on the submittal of information. Therefore, this change does not involve a significant reduction in a margin of safety.

(9) An allowance is proposed that will revise the high radiation areas to include additional previously approved methods for implementation of alternatives to the "control device" or "alarm signal" requirements of 10 CFR [Part] 20. These alternatives provide adequate control of personnel in high radiation areas as evidenced by NRC issuance of NUREG–1432.

The requirements for control of high radiation areas provide for the use of alternates to the "control device" or "alarm signal" requirements of 10 CFR 20.1601. This change provides such alternative methods for controlling access. These methods and additional administrative requirements have been determined to provide adequate controls to prevent unauthorized and inadvertent access to such areas. Therefore, this change does not involve a significant reduction in a margin of safety.

(10) An allowance to require periodic testing of stored fuel for the particulates only is proposed.

The testing of stored diesel generator fuel oil is revised to require the periodic testing of the stored fuel oil only for particulates (replacing the periodic testing per ASTM–D975) once every 31 days. The change reflects industry-standard acceptable DG fuel oil testing programs. Over the storage life of ANO–2 DG fuel oil, the properties tested by ASTM–D975 are not expected to change and performing these tests once on the new fuel oil provides adequate assurance of the proper initial quality of fuel oil. The periodic testing for particulates monitors a parameter that reflects degradation of fuel oil and can be trended to provide increased confidence that the stored DG fuel oil will support DG operability. Therefore, this change does not involve a significant reduction in a margin of safety.

(11) The removal of the requirement to notify the Vice President, Operations ANO within 24 hours of violating a safety limit.

The margin of safety is not dependent upon notification of the Vice President, Operations ANO upon the violation of a TS safety limit. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

(12) The Radioactive Effluent Release Report will be submitted by May 1 of each calendar year instead of prior to March 1.

The margin of safety is not dependent on the submittal of information. Therefore, this change does not involve a significant reduction in a margin of safety.

(13) A change to frequency of the integrated leak tests for each system outside containment that could contain highly radioactive fluids from "at a frequency not to exceed refueling cycle intervals" to "at least once per 18 months."

The current and proposed frequencies of this test are equivalent for all practical purposes. Therefore, this change does not involve a significant reduction in a margin of safety.

(14) A change that allows a 25% extension of the frequency in accordance with SR 4.0.2 for the integrated leak tests of each system outside containment that could contain highly radioactive fluids.

The proposed allowance allows a possible increase in performance interval. However, the test will still be performed at reasonable intervals to ensure the intent of the surveillance is maintained. Therefore, this change does not involve a significant reduction in a margin of safety.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: May 28, 2003, as supplemented on June 24, 2003

Description of amendment request: **The proposed amendment would revise Technical Specification (TS) Section 3.4.3, "RCS Pressure and Temperature (P/T) Limits," and Section 3.4.12, "Low Temperature Overpressure Protection (LTOP)," to incorporate revised reactor pressure vessel P/T limits and overpressure protection system limits to allow operation up to 20 effective full-power years. Specifically, the proposed amendment would revise TS Figures 3.4.3–1 to 3.4.3–3 and TS Figures 3.4.12–1 to 3.4.12–4.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The probability of occurrence of an accident previously evaluated for Indian Point 3 is not altered by the proposed amendment to the technical specifications (TSs). The accidents remain the same as currently analyzed in Final Safety Analysis Report (FSAR) as a result of changes to the P/T and LTOP limits. The new P/T and LTOP limits were based on the NRC [Nuclear Regulatory Commission] approved, for Indian Point 3, Westinghouse/Combustion Engineering methodology along with American Society of Mechanical Engineers (ASME) Code (Boiler and Pressure Vessel Code) alternatives including Code Case N–640. Code Case N–640 has been accepted for use by the NRC but has not been incorporated into Reg. [Regulatory] Guide 1.147, Rev. 12, at this time. An exemption is being submitted separately for the use of Code Case N–640. The proposed changes do not impact the integrity of the reactor coolant system pressure boundary (RCPB) as a result of this change. In addition there is no increase in the potential for the occurrence of a loss of coolant accident. The probability of any design basis accident is not affected by the change, nor are the consequences of any design basis accident affected by the proposed change. The proposed P/T limit curves and LTOP limits are not considered to be an initiator or contributor to any accident currently evaluated in the Indian Point 3 FSAR. These new limits ensure the long term integrity of the RCPB.

Fracture toughness test data are obtained from material specimens contained in capsules that are periodically withdrawn from the reactor vessel. These data permit determination of the conditions under which the vessel can be operated with adequate safety margins against non-ductile fracture throughout its service life. A new reactor vessel specimen was withdrawn at the most recent refueling outage and will be analyzed over the next year to enhance the database used to predict the fracture toughness requirements using projected neutron fluence calculations. For each analyzed transient and steady state condition, the allowable pressure is determined as a function of reactor coolant temperature considering postulated flaws in the reactor vessel beltline, inlet nozzle, outlet nozzle, and closure head.

The predicted radiation induced ΔRT_{NDT} (shift in reference temperature nil-ductility

transition) was calculated using the respective reactor vessel beltline copper and nickel contents and the neutron fluence applicable to normal plant performance through the remainder of the operating license, using the most up-to-date cross sections methodologies, as documented in the recent Appendix K power uprate report.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to the P/T and the LTOP limits will not create a new accident scenario. The requirements to have P/T and LTOP protection are part of the licensing basis of Indian Point 3. The proposed changes reflect the change in vessel material properties acknowledged and managed by regulation and the best data available in response to NRC Generic Letter 92–01, Revision 1. The approach used meets NRC and ASME regulations and guidelines. The Westinghouse/Combustion Engineering methodology has been approved for use at Indian Point 3 by the NRC. Code Case N–640 has been found acceptable by the NRC to be used at other nuclear plants. By separate letter ENO [Entergy Nuclear Operations, Inc.] is requesting an exemption to use Code Case N–640 because the Code Case has not been incorporated in Regulatory Guide 1.147, Rev. 12, at this time. The adjusted reference temperatures for fracture toughness are consistent with that previously provided to the NRC [* * *] The data analysis for the vessel specimen removed to date, confirm that the vessel materials are responding as predicted.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The existing P/T curves and LTOP limits in the technical specifications are reaching their expiration period for the number of years at effective full power operation. The revision of the P/T limits and curves will ensure that Indian Point 3 continues to operate within margins allowed by 10 CFR 50.60 and the ASME Code. The material properties used in the analysis are based on results established through Westinghouse/Combustion Engineering material reports for copper and nickel content. The material properties were evaluated in parallel using statistical methodology. The results are consistent and for conservative purposes, the more restrictive result is used. The application of Code Case N–640 presents alternative procedures for calculating P/T and LTOP temperatures and pressures in lieu of that established for ASME Section XI, Appendix G–2215. This Code alternative allows certain assumptions to be conservatively reduced. However, the procedures allowed by Code Case N–640 still provide significant conservatism and ensure an adequate margin of safety in the development of P/T operating and pressure test limits to prevent non-ductile fractures.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: Richard J. Laufer.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: August 16, 2002, as supplemented June 6, 2003.

Description of amendment request: The proposed amendment would add a new Technical Specification (TS) requirement to the Pilgrim Nuclear Power Station (Pilgrim) TSs consistent with Technical Specification Task Force (TSTF)–358, Revision 5. TSTF–358 addresses modifications to requirements for missed surveillances consistent with NUREG 1433, Revision 2, "Standard Technical Specification, General Electric Plants, BWR/4" (STS) surveillance requirement (SR) 3.0.3. The proposed amendment to the Pilgrim TSs would be added as TS 4.0.3.

The U.S. Nuclear Regulatory Commission (NRC) staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process (CLIIP). The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the model NSHC determination in its application dated August 16, 2002, as supplemented on June 6, 2003.

In addition, the following statement would be added to the TS definition of Limiting Condition for Operation (LCO): "Failure to meet a Surveillance, whether such failure is experienced during the performance of the Surveillance or between performances of the Surveillance, shall be failure to meet the LCO." The proposed amendment would also make administrative changes to add new TS Sections 3.0, "Limiting Condition for Operation (LCO) Applicability," and 4.0, "Surveillance Requirement (SR) Applicability," into the Pilgrim TSs. New TSs 3.0, 4.0.1, and 4.0.2 would be identified as "Not Used." These changes are proposed to rectify the differences in the format and terminology of the current Pilgrim TSs to the STS. The associated Bases would also be implemented.

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the Code of Federal Regulations (10 CFR), Section 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

[CLIIP Changes]

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

[Additional Changes]

The proposed change involves an addition to clarify the required action when an SR is not met and new TS sections for consistency with the STS. These additions do not involve technical changes to the existing TSs. As such, these changes provide clarity and are administrative in nature and do not affect initiators of analyzed events or assumed mitigation of accident or transient events. Therefore, these changes will not increase the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated.

[CLIIP Changes]

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

[Additional Changes]

The proposed change involves an addition to clarify the required action when a SR is not met and new TS sections for consistency with the STS. The changes do not involve physical alterations to the plant (no new or different type of equipment will be installed) or changes in methods governing normal plant operation. The changes will not impose any new or different requirements or eliminate any existing requirements. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

[CLIIP Changes]

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

[Additional Changes]

The proposed change involves an addition to clarify the required action when a SR is not met and new TS sections for consistency with the STS. These additions do not involve technical changes to the existing TSs. The changes will not reduce a margin of safety because they have no impact on any safety analysis assumptions. Also, since these changes provide clarity and are administrative in nature, no question of safety is involved. Therefore, there will be no reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. M. Fulton, Esquire, Assistant General Counsel, Pilgrim Nuclear Power Station, 600 Rocky Hill Road, Plymouth, Massachusetts, 02360–5599.

NRC Section Chief: James W. Clifford.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: December 4, 2001.

Description of amendment request: The proposed amendment would change Technical Specification (TS) Section 6.9, "Administrative Controls—Reporting Requirements," to eliminate the requirement to submit startup reports to the Nuclear Regulatory Commission. Under the current provisions of TS Section 6.9, the Davis-Besse Nuclear Power Station would be required to submit a startup report within 90 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change is administrative in nature. As such, it does not affect any accident initiators and does not affect containment isolation, plant responses to accidents, or radiological effluents. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change is administrative in nature. As such, it does not introduce any new or indifferent accident initiators. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previous evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change is administrative in nature and does not reduce or adversely affect the capabilities of any plant structures, systems, or components to perform their safety functions. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: June 20, 2003.

Description of amendment request: The proposed amendment would revise the Kewaunee Nuclear Power Plant (KNPP) Technical Specifications (TSs) to allow a one-time extension of the interval between integrated leakage rate tests from 10 years to 15 years.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Proposed Power Level Changes

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No

Probability of Occurrence of an Accident Previously Evaluated—

The proposed change to extend the [integrated leakage rate tests] ILRT interval from 10 to 15 years does not affect any accident initiators or precursors. The containment vessel function is purely mitigative. There is no design basis accident that is initiated by a failure of the containment leakage mitigation function. The extension of the ILRT will not create any adverse interactions with other systems that could result in initiation of a design basis accident. Therefore, the probability of occurrence of an accident previously evaluated is not significantly increased.

Consequences of an Accident Previously Evaluated—

The potential consequences of the proposed change have been quantified by analyzing the changes in risk that would result from extending the ILRT interval from

10 to 15 years. The increase in risk in terms of person rem per year within 50 miles resulting from design basis accidents was estimated to be of a magnitude that NUREG–1493 indicates is imperceptible. NMC has also analyzed the increase in risk in terms of the frequency of large early releases from accidents. The increase in the large early release frequency resulting from the proposed extension was determined to be within the guidelines published in Regulatory Guide 1.174. Additionally, the proposed change maintains defense-in-depth by preserving a reasonable balance among prevention of core damage, prevention of containment failure, and consequence mitigation. NMC has determined that the increase in conditional containment failure probability from reducing the ILRT frequency from 1 test per 10 years to 1 test per 15 years would be small. Continued containment integrity is also assured by the history of successful ILRTs, and that established programs for local leakage rate testing and in-service inspections which are unaffected by the proposed change. Therefore, the consequences of an accident previously analyzed are not significantly increased.

In summary, the probability of occurrence and the consequences of an accident previously evaluated are not significantly increased.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed change to extend the ILRT interval from 10 to 15 years does not create any new or different accident initiators or precursors. The length of the ILRT interval does not affect the manner in which any accident begins. The proposed change does not create any new failure modes for the containment and does not affect the interaction between the containment and any other system. Thus, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The risk-based margins of safety associated with the containment ILRT are those associated with the estimated person-rem per year, the large early release frequency, and the conditional containment failure probability. NMC has quantified the potential effect of the proposed change on these parameters and determined that the effect is not significant. The non-risk-based margins of safety associated with the containment ILRT are those involved with its structural integrity and leak tightness. The proposed change to extend the ILRT interval from 10 to 15 years does not adversely affect either of these attributes. The proposed change only affects the frequency at which these attributes are verified. Therefore, the proposed change does not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John H. O'Neill, Jr., Esq., Shaw Pittman, Potts & Trowbridge, 2300 N. Street, NW, Washington, DC 20037–1128.

NRC Section Chief: L. Raghavan.

Pacific Gas and Electric Company, Docket No. 50–323, Diablo Canyon Nuclear Power Plant, Unit No. 2, San Luis Obispo County, California

Date of amendment requests: June 26, 2003.

Description of amendment requests: The proposed license amendment would update the Diablo Canyon Power Plant (DCPP) Final Safety Analysis Report Update to use a revised steam generator voltage-based repair criteria probability of detection method for DCPP Unit 2 Cycle 12 using plant-specific inspection results.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The use of a revised steam generator (SG) voltage-based repair criteria probability of detection (POD) method, the probability of prior cycle detection (POPCD) method, to determine the beginning of cycle (BOC) indication voltage distribution for the Diablo Canyon Power Plant (DCPP) Unit 2 Cycle 12 operational assessment (OA) does not increase the probability of an accident. Based on industry and plant specific bobbin detection data for outside diameter stress corrosion cracks (ODSCC) within the SG tube support plate (TSP) region, large voltage bobbin indications which individually can challenge structural or leakage integrity can be detected with near 100 percent certainty. Since large voltage ODSCC bobbin indications within the SG TSP can be detected, they will not be left in service, and therefore these indications should not be included in the voltage distribution for the purpose of OAs. POPCD improves the estimate of potentially undetected indications for OAs, but does not directly affect the inspection results. Since large voltage indications are detected, they will not result in an increase in the probability of a steam generator tube rupture (SGTR) accident or an increase in the consequences of a SGTR or main steam line break (MSLB) accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The use of the POPCD method to determine the BOC voltage distribution for the DCPP Unit 2 Cycle 12 OA concerns the SG tubes and can only affect numerical predictions of probabilities for the SGTR accident. Since the SGTR accident is already considered in the Final Safety Analysis Report Update, there [is] no possibility to create a design basis accident that has not been previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The use of the POPCD method to determine the BOC voltage distribution for the DCPP Unit 2 Cycle 12 OA does not involve a significant reduction in a margin of safety. The applicable margin of safety potentially impacted is the Technical Specification 5.6.10, "Steam Generator Tube Inspection Report," projected end-of-cycle leakage for a MSLB accident and the projected end-of-cycle probability of burst. Based on industry and plant specific bobbin detection data for ODSCC within the SG TSP region, large voltage bobbin indications that can individually challenge structural or leakage integrity can be detected with near 100 percent certainty and will not be left in service. Therefore these indications should not be included in the voltage distribution for the purpose of OAs. Since these large voltage indications are detected, they will not result in a significant increase in the actual end-of-cycle leakage for a MSLB accident or the actual end-of-cycle probability of burst. The POPCD approach to probability of detection considers the potential for missing indications that might challenge structural or leakage integrity by applying the POPCD data from successive inspections. If a large indication was missed in one inspection, it would continue to grow until finally detected in a later inspection.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

PPL Susquehanna, LLC, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: July 3, 2003.

Description of amendment request: The proposed amendments would change the Technical Specifications (TSs) 3.8.1 for AC Sources—Operating, to extend, on a one-time basis, the allowable Completion Time for Required Actions associated with one offsite circuit inoperable, from 72 hours to 10 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposal would change the Technical Specifications for AC Sources—Operating, to extend, on a one-time basis, the allowable Completion Times for Required Actions for one offsite circuit inoperable, from 72 hours to 10 days. The proposed change does not involve a significant increase in the probability of an accident previously evaluated because the probability increases are within the guidance provided in Regulatory Guide 1.177.

The consequence[s] of losing offsite power have been evaluated in the FSAR [Final Safety Analysis Report] and the Station Blackout evaluation. Increasing the completion time for one offsite power source from 72 hours to 10 days does not increase the consequences of a LOOP [loss of offsite power] event nor change the evaluation of LOOP events as stated in the FSAR or Station Blackout evaluation.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed nor will there be changes in methods governing normal plant operation).

Allowing the completion time for ST [startup transformer] No. 10 to increase from 72 hours to 10 days is a one-time change that will allow continued operation of Unit 1 while replacing Startup Transformer Number 10. The accident analyses affected by this extension are the LOOP events that are discussed in the FSAR. The potential for the loss of other plant systems or equipment to mitigate the effects of an accident is not altered.

Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change amendment involve a significant reduction in a margin of safety?

Response: No

The proposed change does not involve a significant reduction in [a] margin of safety.

The proposed change allows, on a one-time basis, ST No. 10 to be out of service for 7 days more than is allowed by Technical Specifications. This increase in completion time for ST No. 10 results in a slight decrease in the margin of safety. Implementation of the compensatory measures described in Section 4.0 mitigates the increase in the core damage frequency and large early release frequency during this time, such that the potential impact of extending the completion time is small. Therefore, this one-time exemption will not involve a significant reduction in safety margin.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PPL Services Corporation, 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Section Chief: Richard J. Laufer.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: June 2, 2003.

Description of amendment request: The amendment would increase the value of the minimum fuel oil required in the storage tank for the emergency diesel generators in Technical Specification (TS) 3.8.3, "Diesel Fuel Oil, Lube Oil, and Starting Air." The licensee stated it has implemented the change in the field. This was done because the proposed new value is higher than the current value in the TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since there are no hardware changes. The design of the emergency diesel engine fuel oil storage and transfer system and the function of the onsite standby power sources will be unaffected. The only physical change is to increase the [minimum] volume of fuel oil required to run the emergency diesel generators at their continuous rating for 6 days. This change has already been implemented in the field and is in the conservative direction. The fuel oil storage and transfer system will continue to function in a manner consistent with the plant design basis. All design, material, and construction standards that were applicable prior to this amendment request are maintained.

The probability and consequences of accidents previously evaluated in the FSAR [(Callaway Final Safety Analysis Report)] are not adversely affected because the change to the [minimum] volume of fuel oil required is conservative and is consistent with the safety analysis and licensing basis.

The proposed change will not affect the probability of any event initiators. There will be no degradation in the performance of, or an increase in the number of challenges imposed on, safety-related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation performance.

The proposed change will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the FSAR.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no hardware changes nor are there any changes in the method by which any safety-related plant system performs its safety function. This amendment will not affect the normal method of plant operation or change any operating parameters. The proposed change does not induce a new mechanism that would result in a different kind of accident from those previously analyzed. No performance requirements or response time limits will be affected.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety-related system as a result of this amendment.

This amendment does not alter the performance of the emergency diesel engine fuel oil storage and transfer system in [its] support of the onsite standby power sources.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not eliminate any surveillances or alter the frequency of surveillances required by the Technical Specifications. The minimum volume of fuel oil required for a 6[-]day supply as specified in the TS has already been increased in the conservative direction. The safety analysis limits assumed in the transient and accident analyses are unchanged. None of the acceptance criteria for any accident analysis are changed.

There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on any margin of safety. The radiological dose consequence acceptance criteria listed in the [NRC] Standard Review Plan will continue to be met.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC. 20037

NRC Section Chief: Stephen Dembek .

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: June 6, 2003

Description of amendment request: The amendment would modify several surveillance requirements (SRs) in Technical Specifications (TSs) 3.8.1 and 3.8.4 on alternating current and direct current sources, respectively, for plant operation. The revised SRs would have notes deleted or modified to allow the SRs to be performed, or partially performed, in reactor modes that are currently not allowed by the TSs. The current SRs are not allowed to be performed in Modes 1 and 2. Several of the current SRs also cannot be performed in Modes 3 and 4.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The design of plant equipment is not being modified by the proposed changes. In addition, the DGs [diesel generators] and their associated emergency loads are accident mitigating features. As such, testing of the DGs themselves is not associated with any potential accident-initiating mechanism. Therefore, there will be no significant impact on any accident probabilities by the approval of the requested changes.

The changes include an increase in the online time that a DG under test will be paralleled to the grid (for SRs 3.8.1.10 and 3.8.1.14) or unavailable due to testing (per SR 3.8.1.13). As such, the ability of the tested DG to respond to a design basis accident [(DBA)] could be adversely impacted by the proposed changes. However, the impacts are not considered significant based, in part, on the ability of the remaining DG to mitigate a DBA or provide safe shutdown. With regard to SR 3.8.1.10 and SR 3.8.1.14, experience shows that testing per these SRs typically does not perturb the electrical distribution system. In addition, operating experience and qualitative evaluation of the probability of the DG or bus loads being adversely affected concurrent with or due to a significant grid disturbance, while the DG is being tested, support the conclusion that the proposed changes do not involve any significant increase in the likelihood of a safety-related bus blackout or damage to plant loads.

The SR changes that are consistent with TSTF [Technical Specification Task Force]—283 have been approved by the NRC for submittal by licensees. The on-line tests allowed by the TSTF are only to be performed for the purpose of establishing OPERABILITY. Performance of these SRs during restricted MODES will require an assessment to assure plant safety is maintained or enhanced.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The capability to synchronize a DG to the offsite source (via the associated plant bus) and test the DG in such a configuration is a design feature of the DGs, including the test mode override in response to a safety injection signal. Paralleling the DG for longer periods of time during plant operation may slightly increase the probability of incurring an adverse effect from the offsite source, but this increase in probability is judged to be still quite small and such a possibility is not a new or previously unrecognized consideration.

The proposed changes would not require any new or different accidents to be postulated since no changes are being made to the plant that would introduce any new accident causal mechanisms. This license amendment request does not impact any plant systems that are potential accident initiators; nor does it have any significantly adverse impact on any accident mitigating systems.

Therefore, the proposed change does not create the possibility of a new or different accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant reduction in the margin of safety. The margin of safety is related to the confidence in the ability of the fission product barriers to perform their design [safety] functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The proposed changes do not directly affect these barriers, nor do they involve any significantly adverse impact on the DGs which serve to support these barriers in the event of an accident concurrent with a loss of offsite power. The proposed changes to the testing requirements for the plant DGs do not affect the OPERABILITY requirements for the DGs, as verification of such OPERABILITY will continue to be performed as required (except during different allowed MODES [of operation]). The changes have an insignificant impact on DG availability, as continued verification of OPERABILITY supports the capability of the DGs to perform their required [safety] function of providing emergency power to plant equipment that supports or constitutes the fission product barriers. Only one DG is to be tested at a time, so that the remaining DG will be available to safely shut down the plant if required. Consequently, performance of the fission product barriers will not be impacted by implementation of the proposed amendment.

In addition, the proposed changes involve no changes to [safety] setpoints or limits established or assumed by the accident analys[e]s. On this and the above basis, no safety margins will be impacted.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: June 27, 2003.

Description of amendment request: The amendment would revise the technical specifications (TSs) in two parts. It would: (1) Revise the definition of dose equivalent radioiodine 131 (I–131) by adding the phrase "or those derived from the data provided in International Commission on Radiological Protection Publication 30 (ICRP 30), 'Limits for Intakes of Radionuclides by Workers,' 1979" to the current definition, and (2) increase the maximum allowed closure time of each main feedwater isolation valve (MFIV) from 5 seconds to 15 seconds in Surveillance Requirement 3.7.3.1. A plant modification would replace the electro-hydraulic MFIV actuators with system-medium actuators to improve MFIV reliability and reduce maintenance requirements. The MFIV stroke time would be increased. A plant modification would also replace swing check valves in each auxiliary feedwater (AFW) motor-driven pump discharge line with an automatic recirculation control (ARC) check valve to reduce the potential for vibration and increase AFW flow margin.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

MFIV Actuator Replacement and Increased MFIV Stroke Time

[* * *], the increase in MFIV stroke time does not adversely impact the NSSS [nuclear steam system supplier] design transients evaluated for the Callaway Plant. The increase in MFIV stroke time will result in a slightly longer normal post trip cool down. Although the plant post trip cool down is expected to be slightly longer for the increased MFIV stroke time, the plant response does not significantly deviate from its current evaluated response following a normal reactor trip.

Evaluations assessing the impact of the change in MFIV actuators and the increase in MFIV stroke time on LOCA [loss-of-coolant accident] mass and energy releases; main steamline break mass and energy releases; LOCA and LOCA[-]related transients; non-LOCA transients; LOCA hydraulic forces[;] and steam releases used for radiological consequence calculations were also performed. The increase in isolation time and change in MFIV actuators either do not provide an adverse impact or have no impact. Except for the SGTR [steam generator tube rupture)] with overfill accident, the results presented in the FSAR [Callaway Final Safety Analysis Report] remain valid. The increase in MFIV stroke time was evaluated for impact on the SGTR with overfill accident. [* * *], the results from the re-analysis of the SGTR with overfill accident confirm that there is no significant increase in the probability or consequences of an accident previously evaluated.

The replacement of the existing electro-hydraulic MFIV actuators with system-medium actuators and the increase in MFIV stroke time from 5 seconds to 15 seconds will not result in a significant increase in the probability or consequences of an accident previously evaluated.

MDAFP [Motor Driven Auxiliary Feedwater Pump] ARC Valve and Increased Maximum AFW Flow

The replacement of existing MDAFP discharge check valves with the ARC valves results in increased maximum AFW flow to the steam generators [(SGs)]. In many accident scenarios the increase in AFW flow to the SGs is beneficial to mitigation of the event. The evaluations [* * *] demonstrate that in those accident scenarios where maximum AFW flow is limiting, except for the SGTR with overfill accident, the increase in AFW flow remains bounded by FSAR analyses. The increase in maximum AFW flow was evaluated for impact on the SGTR with overfill accident. [* * *], the results from the re-analysis of the SGTR with overfill accident confirm that there is no significant increase in the probability or consequences of an accident previously evaluated. The AFW system is not the initiator of any accident and there is no possibility of a significant increase in the probability of an accident or malfunction previously evaluated.

Use of the ARC valve is an enhancement and the associated increase in the maximum AFW flow will not result in a significant increase in the probability or consequences of an accident previously evaluated.

Use of Revised Methods in Re-Analysis of SGTR With Overfill

The re[-]analysis of the design basis accident for SGTR with overfill does not significantly increase the probability or consequences of an accident previously evaluated. The re-analysis of an accident is not an initiator [of an accident]. The SGTR accident is classified as an ANS [American Nuclear Society] Condition IV Event, Limiting Faults, and is only postulated and not expected to occur. The re[-]analysis activity being evaluated does not change the ANS classification for this design basis event. The re-analysis does provide dose consequences that are minimal increases to the doses in the Analysis of Record.

However, the doses remain well below regulatory limits. In support of this methodology the proposed TS definition for DOSE EQUIVALENT I–131 will allow the use of ICRP 30 based DCFs [dose conversion factors]. Section 4.1.2 and [* * *] Appendix E of Regulatory Guide 1.195 find acceptable and recommend the [proposed] method revisions.

In summary, using the proposed revised methods for the re-analysis of the SGTR with overfill does not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

MFIV Actuator Replacement and Increased MFIV Stroke Time

The change in MFIV actuators and associated increase in MFIV stroke time will not prevent the main feedwater or auxiliary feedwater systems from performing their safety functions. The proposed increase will not affect the normal method of plant operation. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of the increase. Although the modification does alter the design of the MFIV actuators, it does not prevent the main feedwater or AFW systems from performing their safety functions.

Therefore, the proposed changes do not create a new or different kind of accident from any accident previously evaluated.

MDAFP ARC Valve and Increased Maximum AFW Flow

The new MDAFP ARC valve and associated increase in the maximum AFW flow [* * *] will not prevent the AFW system from performing its safety function. The proposed increase in AFW system flow margin will not effect the normal method of plant operation. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of the increase in AFW system flow margin. Although the modification alters the design of the MDAFP discharge check valves, it does not prevent the AFW system from performing its safety functions.

Therefore, the proposed changes do not create a new or different kind of accident from any accident previously evaluated.

Use of Revised Methods in Re-Analysis of SGTR With Overfill

The revision to the Technical Specifications to allow the use of ICRP 30[-]based DCFs is based on methodologies found acceptable to the NRC and recommended for use as described in Section 4.1.2 of Regulatory Guide 1.195. The re[-]analysis of the design basis accident for SGTR with overfill and the use of recommended analysis methods acceptable to the NRC does not introduce the possibility of a new accident. Accident re-analysis is not an initiator of any accident and no new failure modes are introduced. In summary, there is no increase in the possibility of an accident of a different type.

Therefore, the proposed changes do not create a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

MFIV Actuator Replacement and Increased MFIV Stroke Time

The replacement of the MFIV actuator and the associated increase in the MFIV stroke time does not affect the manner in which safety limits or limiting safety system settings are determined, nor will there be any adverse effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no significant impact on the overpower limit, departure from nucleate boiling ratio limits, heat flux hot channel factor (F_Q), nuclear enthalpy rise hot channel factor (F-delta-H), loss[-]of[-]coolant accident peak cladding temperature (LOCA PCT), peak local power density, or any other margin of safety. The radiological dose consequence acceptance criteria listed in the [NRC] Standard Review Plan will continue to be met.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

MDAFP ARC Valve and Increased Maximum AFW Flow

The use of the MDAFP ARC valve and the associated increase in AFW system flow margin does not affect the manner in which safety limits or limiting safety system settings are determined nor will there be any adverse effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no significant impact on the overpower limit, departure from nucleate boiling ratio limits, heat flux hot channel factor (F_Q), nuclear enthalpy rise hot channel factor (F-delta-H), loss[-]of[-]coolant accident peak cladding temperature (LOCA PCT), peak local power density, or any other margin of safety. The radiological dose

consequence acceptance criteria listed in the Standard Review Plan will continue to be met.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

Use of Revised Methods in Re-Analysis of SGTR With Overfill

Use of revised methods in the re-analysis for the SGTR with overfill accident does not affect the manner in which safety limits or limiting safety system settings are determined nor will there be any adverse effect on those plant systems necessary to assure the accomplishment of protection functions. There is no significant impact on the overpower limit, departure from nucleate boiling ratio limits, heat flux hot channel factor (F_Q), nuclear enthalpy rise hot channel factor (F-delta-H), loss[-]of[-]coolant accident peak cladding temperature (LOCA PCT), peak local power density, or any other margin of safety. The radiological dose consequence acceptance criteria listed in the Standard Review Plan will continue to be met. The re-analysis of the SGTR with overfill confirms that both the thermal-hydraulic and radiological consequences are within the regulatory requirements and does not result in a significant reduction in a margin of safety.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: June 27, 2003.

Description of amendment request: The amendment would revise the Technical Specifications (TSs) to (1) extend the allowed outage time (AOT) or required action completion time (CT) for an inoperable diesel generator (DG) by adding the phrase "*OR* 108 hours once per cycle for each DG" to the completion time for Required Action B.4 in TS 3.8.1, "AC Sources—Operating," and (2) delete the second CT given in certain required actions in TS 3.6.6, "Containment Spray and Cooling Systems"; TS 3.7.5, "Auxiliary Feedwater (AFW) System"; TS 3.8.1; and TS 3.8.9, "Distribution System—Operating," of the TSs. The second part would also delete Example 1.3–3, delete text referring to this example, and re-number the remaining examples in TS 1.3, "Completion Times."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

DG AOT/CT Extension

The proposed change to extend the DG AOT/CT from 72 hours to 108 hours for planned, on-line maintenance does not affect the design of the DGs, the operational characteristics or function of the DGs, the interfaces between the DGs and other plant systems, or the reliability of the DGs. The DGs mitigate the consequences of previously evaluated accidents including loss[-]of[-]offsite power, but as such are not themselves initiators of any previously evaluated accidents. DG allowed outage time is thus not associated with any initiating condition for accidents previously evaluated. The consequences of an accident are independent of the time the DGs are out of service as long as adequate DG availability is assured. The proposed changes will not result in a significant decrease in DG availability, so assumptions regarding DG availability are not impacted. Since the DGs will continue to be capable of performing their accident mitigation function as assumed in the accident analysis, the consequences of accidents previously analyzed are unchanged with respect to the proposed changes.

In addition, to fully evaluate the effect of the proposed DG completion time extension, probablistic risk assessment methods and a deterministic analysis were utilized. The results of the analyses show no significant increase in core damage frequency or large early release frequency.

Elimination of Second Completion Times

Similar to the above change, the changes to eliminate the "second" Completion Times from the affected Technical Specifications [(*i.e.*, the specific TS sections being changed)] do not affect the design, operational characteristics, or intended functions of the equipment addressed by those Technical Specifications. With no direct effects on that equipment (or any other plant equipment or features), allowed equipment outage times are not associated with any initiating condition for any accident previously evaluated, and therefore would not affect the probability of such accidents. Further, eliminating these Completion Times is not expected to have an adverse effect on the availability of the applicable systems or components because equipment availability performance criteria required for conformance to the Maintenance Rule impose an equivalent or acceptable level of control and management of equipment availability regardless of such Completion Times. As noted above, the consequences of evaluated accidents are independent of mitigating equipment allowed outage times as long as adequate availability of the equipment is ensured. Since elimination of the second Completion Times has no significant impact on equipment availability (in light of continued, required conformance to the Maintenance Rule), the consequences of accidents previously evaluated are unchanged.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

None of the proposed changes, *i.e.*, neither the DG AOT extension nor the elimination of [the] second Completion Times, involve a change in the design, configuration, or operational characteristics of the plant. No physical alteration of the plant is involved, as no new or different type of equipment is to be installed. The changes do not alter any assumptions made in the safety analyses, and no alteration in the procedures which ensure that the plant remains within analyzed limits is being proposed. As such, no new failure modes or mechanisms that could cause a new or different kind of accident from any previously evaluated are being introduced.

Therefore, the proposed changes do not create the possibility of a new or different accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed DG AOT extension and elimination of second Completion Times do not alter the manner in which safety limits or limiting safety system settings are determined. The safety analysis acceptance criteria are not impacted by [these] change[s], and the proposed changes will not permit plant operation in a configuration [that is] outside the design basis.

Further, with regard to plant risk, the risk assessment performed for the DG AOT extension determined that the quantifiable increase in plant risk is acceptably small. Likewise, for the elimination of [the] second Completion Times, it may be assumed that this change also involves little or no increase in risk on the basis that required, continued compliance with the Maintenance Rule provides adequate controls for maintaining equipment availability regardless of the second Completion Times [proposed to be eliminated].

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: June 27, 2003.

Description of amendment request: The licensee is proposing to amend the operating license for the Callaway Plant to allow plant modifications in order to facilitate maintenance on the replacement steam generators (SGs) to be installed in Refueling Outage (RO) 14 (Fall 2005). The proposed modifications (1) replace the existing sludge lance platforms with new platforms to provide a larger platform area around each SG, and (2) cut a permanent access opening through the secondary shield wall to improve access to the sludge lance platforms. They are to be done in RO 13 (Spring 2004). Dynamic effects associated with large reactor coolant system (RCS) branch line ruptures are to be excluded using a proposed leak-before-break (LBB) methodology. The amendment would authorize changes to the Callaway licensing basis to be added to the Callaway Final Safety Analysis Report (FSAR). There are no proposed changes to the Technical Specifications. Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Overall protection system performance will remain within the bounds of the previously performed accident analyses. The design of the protection systems will be unaffected. The reactor protection system and engineered safety feature actuation system will continue to function in a manner consistent with the plant design basis. All design, material, and construction standards that were applicable prior to the request are maintained.

Neither the currently intact "C" SG cubicle secondary shield wall, nor the proposed configuration that provides a permanent access opening, create accident initiation mechanisms that would increase the probability of an accident. There will be no change to normal plant operating parameters or accident mitigation performance.

The proposed amendment will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the FSAR.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no changes in the method by which any safety-related plant system performs its safety function. This amendment will not affect the normal method of power operation or change any operating parameters. No performance requirements will be affected, but SG maintenance access will be greatly improved.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety-related system as a result of this amendment.

Presence of a permanent access opening in the "C" loop SG secondary shield wall does not, of itself, create the possibility of a new accident since the secondary shield walls are not used for missile protection and the high-energy line breaks (greater than 10-inches in diameter) that would generate missiles will be removed from the structural design basis after NRC's review and acceptance of the LBB topical reports.

The proposed amendment does not alter the design or performance of the 7300 Process Protection System, Nuclear Instrumentation System, or Solid State Protection System used in the plant protection systems.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, departure from nucleate boiling ratio (DNBR) limits, heat flux hot channel factor (F_Q), nuclear enthalpy rise hot channel factor (FΔH), loss[-]off[-]coolant accident peak cladding temperature (LOCA PCT), or peak local power density. The LBB margins discussed in NUREG–1061 Volume 3 are satisfied. The radiological dose consequence acceptance criteria listed in the [NRC] Standard Review Plan will continue to be met. The secondary shield walls are not fission product barriers. They provide radiation shielding to maintain occupational exposure ALARA [as low as is reasonably achievable] and provide structural support to primary coolant SSCs [structures, systems, and components].

The proposed amendment does not eliminate any surveillances or alter the Frequency of surveillances required by the Technical Specifications. The nominal Reactor Trip System (RTS) and Engineered Safety Features Actuation System (ESFAS) trip setpoints (TS Bases Tables B 3.3.1–1 and B 3.3.2–1), RTS and ESFAS allowable values (TS Tables 3.3.1–1 and 3.3.2–1), and the safety analysis limits assumed in the transient and accident analyses (FSAR Table 15.0–4) are unchanged. None of the acceptance criteria for any accident analysis is changed.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and 2, Louisa County, Virginia

Date of amendment request: March 28, 2002, as supplemented by letters dated May 13, June 19, and November 15, 2002, and May 6, May 9, May 27, and June 11 (2 letters), 2003. This notice supersedes the notice that was published on May 14, 2002 (67 FR 34496).

Description of amendment request: The proposed amendments would permit Virginia Electric and Power Company to replace the existing Westinghouse fuel with Framatome ANP Advanced Mark-BW fuel at North Anna Power Station, Units 1 and 2. This submittal was accompanied by requested exemptions from the requirements of 10 CFR 50.44 and 10 CFR 50.46. These exemptions will be processed separately.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The probability of occurrence or the consequences of an accident previously evaluated is not significantly increased.

The proposed methodology has been generically reviewed and approved for use by the NRC for determining core operating limits prior to its use by Dominion. Analyzed events are assumed to be initiated by the failure of plant structures, systems, or components. The core operating limits developed in accordance with the new methodologies will be bounded by any limitations in the NRC safety evaluation report (SER) for the new methodologies. Application of the topical reports associated with the new methodologies will demonstrate that the integrity of the fuel will be maintained during normal operations and that design requirements will continue to be met. The proposed changes do not involve physical changes to any plant structure, system, or component. Therefore, the

probability of occurrence of any accident previously evaluated is not significantly increased.

The consequences of a previously analyzed accident are dependent on the initial conditions assumed for the analysis, the behavior of the fuel during the analyzed accident, the availability and successful functioning of the equipment assumed to operate in response to the analyzed event, and the setpoints at which these actions are initiated. The proposed changes do not affect the performance of any equipment used to mitigate the consequences of an analyzed accident. As a result, no analysis assumptions are violated and there are no adverse effects on the factors that contribute to offsite or onsite dose resulting from an accident. The proposed changes do not affect setpoints that initiate protective or mitigative actions. The proposed changes ensure that plant structures, systems, and components are maintained consistent with the safety analysis and licensing basis. Based on this evaluation, there is no significant increase in the consequences of a previously analyzed event.

2. The possibility for a new or different type of accident from any accident previously evaluated is not created.

The proposed changes do not involve any physical alteration of plant systems, structures, or components, other than allowing for fuel design in accordance with NRC-approved methodologies. The proposed methodologies continue to meet applicable criteria for LBLOCA [large-break loss-of-coolant accident] and SBLOCA [small-break loss-of-coolant accident] analyses. No new or different equipment is being installed. No installed equipment is being operated in a different manner. There is no alteration to the parameters within which the plant is normally operated or in the setpoints that initiate protective or mitigative actions. As a result, no new failure modes are being introduced. There are no changes in the methods governing normal plant operation, nor are the methods utilized in response to plant transients changed. Therefore, the possibility for a new or different kind of accident from any accident previously evaluated is not created.

3. The margin of safety is not significantly reduced.

The margin of safety is established through the design of the plant structures, systems, and components, through the parameters within which the plant is operated, through the establishment of setpoints for the actuation of equipment relied upon to respond to an event, and through margins contained within safety analyses. The proposed changes in the methodologies used in the LBLOCA and SBLOCA analyses do not impact the condition or performance of structures, systems, setpoints, and components relied upon for accident mitigation. The proposed changes in the analysis methodologies comply with the requirements of 10 CFR 50.46 paragraph (a)(1)(i) (*i.e.*, not exceeding a peak cladding temperature of 2200°F for [SB] LOCA and a high probability that peak cladding temperature will remain below 2200°F for [LB] LOCA). Therefore, the margin of safety as defined in the Bases to the North Anna Units 1 and 2 Technical Specifications is not significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lillian M. Cuoco, Esq., Senior Counsel, Dominion Resources Services, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385.

NRC Section Chief: John A. Nakoski.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: April 15, 2003.

Brief description of amendments: The amendments revise Sections 2.2, "SL [Safety Limits] Violations," for reporting such violations to positions in the plant organization; 5.2.1, "Onsite and Offsite Organization," for the position responsible for overall safe plant operation; and 5.5.1, "Offsite Dose Calculation Manual (ODCM)," to replace the positions of Vice President, Nuclear Production, and Director, Site Chemistry, with other positions in the plant organization. Also, there would be the format change of adding the title of Section 2.2 near the top of TS page 2.0–2.

Date of issuance: June 26, 2003.

Effective date: June 26, 2003, and shall be implemented within 30 days of the date of issuance.

Amendment Nos.: Unit 1–146, Unit 2–146, Unit 3–146.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 27, 2003 (68 FR 28845).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 26, 2003.

No significant hazards consideration comments received: No.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: August 26, 2002, as supplemented by letter dated June 18, 2003.

Brief description of amendments: The amendments revise the Technical Specifications regarding the Diesel Fuel Oil Testing Program.

Date of issuance: July 10, 2003.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 206 & 200.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 29, 2002 (67 FR 66008).

The supplement dated June 18, 2003, provided clarifying information that did not change the scope of the August 26, 2002, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 10, 2003.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: December 12, 2002, as supplemented by letters dated March 27 and April 23, 2003.

Brief description of amendments: The amendments revise the Technical Specifications (TS) regarding the reactor vessel pressure-temperature limit curves and revise the low-temperature overpressure protection limits. The licensee also requested that a change be made to TS Table 3.3.2–1, Footnote (c) to correct what was claimed to be an editorial error. This request was not supported by sufficient information and, accordingly, is denied.

Date of issuance: July 3, 2003.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 214 & 195.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 7, 2003 (68 FR 801).

The supplement dated March 27 and April 23, 2003, provided clarifying information that did not change the scope of the December 12, 2002, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 3, 2003.

No significant hazards consideration comments received: No.

within 90 days from the date of issuance.

Amendment Nos.: 206 & 200.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 29, 2002 (67 FR 66008).

The supplement dated June 18, 2003, provided clarifying information that did not change the scope of the August 26, 2002, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 10, 2003.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: December 12, 2002, as supplemented by letters dated March 27 and April 23, 2003.

Brief description of amendments: The amendments revise the Technical Specifications (TS) regarding the reactor vessel pressure-temperature limit curves and revise the low-temperature overpressure protection limits. The licensee also requested that a change be made to TS Table 3.3.2–1, Footnote (c) to correct what was claimed to be an editorial error. This request was not supported by sufficient information and, accordingly, is denied.

Date of issuance: July 3, 2003.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 214 & 195.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 7, 2003 (68 FR 801).

The supplement dated March 27 and April 23, 2003, provided clarifying information that did not change the scope of the December 12, 2002, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 3, 2003.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: August 26, 2002, as supplemented by letter dated June 18, 2003.

Brief description of amendments: The amendments revise the Technical Specifications regarding the Diesel Fuel Oil Testing Program.

Date of issuance: July 10, 2003.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 215 & 195.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 29, 2002 (67 FR 66008).

The supplement dated August 26, 2002, provided clarifying information that did not change the scope of the June 18, 2003, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 10, 2003.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: March 19, 2003.

Brief description of amendment: The amendment deletes Technical Specification (TS) 5.5.3, "Post Accident Sampling," and License Condition 2(C)(33)(c) from Facility Operating License NPF–29, thereby eliminating the requirement to have and maintain the post-accident sampling system at Grand Gulf Nuclear Station, Unit 1. The amendment also addresses related changes to TS 5.5.2, "Primary Coolant Sources Outside Containment."

Date of issuance: June 30, 2003.

Effective date: As of the date of issuance and shall be implemented within 120 days of issuance.

Amendment No: 158.

Facility Operating License No. NPF–29: The amendment revises the Technical Specifications and deletes License Condition 2(C)(33)(c).

Date of initial notice in ***Federal Register:*** May 13, 2003 (68 FR 25652).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 30, 2003.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: January 13, 2003, supplements dated February 27, March 6, March 14, April 30, June 9, and June 30, 2003.

Brief description of amendment: The proposed amendment would revise the Kewaunee Nuclear Power Plant Facility Operating License and Technical Specifications to increase the licensed rated power by 1.4 percent from 1650 megawatts thermal to 1673 megawatts thermal using measurement uncertainty recapture.

Date of issuance: July 8, 2003.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment No.: 168.

Facility Operating License No. DPR–43: Amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** February 4, 2003 (68 FR 5679).

The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 8, 2003.

No significant hazards consideration comments received: No.

PSEG Nuclear, LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: January 29, 2003.

Brief description of amendments: The amendments revise Salem, Unit No. 1, Technical Specifications (TSs) Section 3/4.7.6, and Salem, Unit No. 2, TSs 3/4.2.2, 3/4.7.6, and Table 3.3–6. These changes are administrative and editorial in nature, and correct errors made during the implementation of previously-approved TS changes.

Date of issuance: June 26, 2003.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment Nos.: 258 and 239.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the TSs.

Date of initial notice in ***Federal Register:*** April 15, 2003 (68 FR 18284).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 26, 2003.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 11th day of July 2003.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–18044 Filed 7–21–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Fire Dynamics Tools (FDTs)—Quantitative Fire Hazard Analysis Methods for the U.S. Nuclear Regulatory Commission Fire Protection Inspection Program, Availability of NUREG

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission is announcing the completion and availability of Draft NUREG–1805, "Fire Dynamics Tools (FDTs)—Quantitative Fire Hazard Analysis Methods for the U.S. Nuclear Regulatory Commission Fire Protection Inspection Program," dated June 30, 2003.

ADDRESSES: Draft NUREG–1805 is available for inspection and copying for a fee at the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland. As of July 8, 2003, you may also electronically access NUREG-series publications and other NRC records at NRC's Public Electronic reading Room at *www.nrc.gov/reading-rm.html*.

A free single copy of Draft NUREG–1805, to the extent of supply, may be requested by writing to Office of the Chief Information Officer, Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Printing and Graphics Branch, Washington, DC 20555–000; facsimile: 301–415–2289; e-mail: *DISTRIBUTION@nrc.gov*.

Some publications in NUREG-series that are posted at NRC's Web site address *www.nrc.gov/NRC/NUREGS/indexnum.html* are updated regularly and may differ from the last printed version.

FOR FURTHER INFORMATION CONTACT: Naeem Iqbal or Mark H. Salley, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: 301–415–3346 or 301–415–2840.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC), Office of Nuclear Reactor Regulation (NRR), Division of Systems Safety and Analysis (DSSA), Plant Systems Branch (SPLB), Fire Protection Engineering and Special Projects Section has developed quantitative methods, known as "Fire Dynamics Tools (FDTs)," to assist regional fire protection inspectors in performing fire hazard analysis (FHA). These methods have been implemented in spreadsheets and taught at the NRC's quarterly regional inspector workshops. The goal of the training is to assist inspectors in calculating the quantitative aspects of a postulated fire and its effects on safe nuclear power plant (NPP) operation. FDTs were developed using state-of-the-art fire dynamics equations and correlations that were pre-programmed and locked into Microsoft Excel® spreadsheets. These FDTs will enable the inspector to perform quick, easy, first-order calculations for the potential fire scenarios using today's state-of-the-art principles of fire dynamics. Each FDTs spreadsheet also contains a list of the physical and thermal properties of the materials commonly encountered in NPPs.

The FDTs are intended to assist fire protection inspectors in performing risk-informed evaluations of credible fires that may cause critical damage to essential safe-shutdown equipment. This is the process required by the new reactor oversight process (ROP) in the NRC's inspection manual. In the new ROP, the NRC is moving toward a more risk-informed, objective, predictable, understandable, and focused regulatory process. Key features of the new program are a risk-informed regulatory framework, risk-informed inspections, a significance determination process (SDP) to evaluate inspection findings, performance indicators, a streamlined assessment process, and more clearly defined actions that the NRC will take for plants based on their performance.

This NUREG addresses the technical bases for FDTs, which were derived from the principles developed primarily in the Society of Fire Protection Engineers (SFPE) Handbook of Fire Protection Engineering, National Fire Protection Association (NFPA) Fire Protection Handbook, and other fire science literature. The subject matter of this NUREG covers many aspects of fire dynamics and contains descriptions of the most important fire processes. A significant number of examples, reference tables, illustrations, and conceptual drawings are presented in this NUREG to expand the inspector's appreciation in visualizing and retaining the material and understanding calculation methods.

The content of the FDTs encompasses fire as a physical phenomenon. As such, the inspector needs a working knowledge of algebra to effectively use the formulae presented in this NUREG and FDTs. Acquired technical knowledge or course background in the sciences will also prove helpful. The information contained in this NUREG is similar to, but includes less theory and detail than, an undergraduate-level university curriculum for fire protection engineering students.

The goal of this NUREG is to develop a common body of knowledge of commercial NPP fire protection and fire science to enable the inspector to acquire the understanding, skills, and abilities necessary to effectively apply principles of fire dynamics to analyze the potential effects of a fire in an NPP. The FDTs will advance the FHA process from a primarily qualitative approach to a more quantitative approach. The development of this NUREG, the FDTs, and the quarterly inspector workshops conducted in 2001–2002 are the NRC's first steps in achieving that goal.

Fire is a complex subject and transfer of its concepts to useful pursuits is a challenge. We hope that this NUREG and the FDTs can make a difference in the NRC's fire protection inspection program, specifically risk-informed fire protection initiatives such as the SDP and risk-informed inspection of associated circuits.

Dated at Rockville, Maryland, this 23 day of June, 2003.

For the Nuclear Regulatory Commission.

John N. Hannon,

Chief, Plant Systems Branch, Division of Systems Safety and Analysis, Office of Nuclear Reactor Regulation.

[FR Doc. 03–18543 Filed 7–21–03; 8:45 am]

BILLING CODE 7590–01–P

Overseas Private Investment Corporation

Agency Report Form Under OMB Review

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency has prepared an information collection request for OMB review and approval and has requested public review and comment on the submission. OPIC published its first **Federal Register** notice on this information collection request on May 16, 2003, in Vol 68, No. 95 FR 26679, at which time a 60-day comment period was announced. This comment period ended July 17, 2003. No comments were received in response to this notice.

This information collection submission has now been submitted to OMB for emergency processing review. Comments are again being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form, OMB control number 3420–0011, under review is summarized below.

DATES: Comments must be received on or before August 21, 2003.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency submitting officer. Comments on the form should be submitted to the OMB reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: Bruce I. Campbell, Records Management Officer, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202/336–8563.

OMB Reviewer: David Rostker, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503; 202/395–3897.

Summary Form Under Review:

Type of Request: Revised form.

Title: Application for Political Risk Investment Insurance.

Form Number: OPIC–52.

Frequency of Use: Once per investor per project.

Type of Respondents: Business or other institution (except farms); individuals.

Standards Industrial Classification Codes: All.

Descriptions of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 7 hours per project.

Number of Responses: 150 per year.

Federal Cost: $28,350.

Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The application is the principle document used by OPIC to determine the investor's and project's eligibility for political risk insurance, assess the environmental impact and the developmental effects of the project, measure the economic effects for the U.S. and the host country economy, and collect information for the insurance underwriting analysis.

Dated: July 17, 2003.

Eli Landy,

Senior Counsel, Administrative Affairs, Department of Legal Affairs.

[FR Doc. 03–18618 Filed 7–21–03; 8:45 am]

BILLING CODE 3210–01–M

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Qualified Domestic Relations Orders Submitted to the PBGC

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") intends to request that the Office of Management and Budget ("OMB") extend approval, under the Paperwork Reduction Act, of an information collection (OMB control number 1212–0054; expires November 30, 2003) relating to model forms contained in the PBGC booklet, *Divorce Orders & PBGC*. The booklet provides guidance on how to submit a proper qualified domestic relations order (a "QDRO") to the PBGC. This notice informs the public of the PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by September 22, 2003.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at that address during normal business hours. Comments also may be submitted electronically through the PBGC's Web site at *http://www.pbgc.gov/paperwork*, or by fax to 202–326–4112. The PBGC will make all comments available on its Web site, *http://www.pbgc.gov*.

Copies of the collection of information may be obtained without charge by writing to the PBGC's Communications and Public Affairs Department at Suite 240 at the above address or by visiting that office or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: James L. Beller, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4020. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4020.)

SUPPLEMENTARY INFORMATION: The PBGC intends to request a three-year extension of the paperwork approval relating to model forms contained in the PBGC booklet, *Divorce Orders & PBGC*. The collection of information has been approved through November 30, 2003, by OMB under control number 1212–0054. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

A defined benefit pension plan that does not have enough money to pay benefits may be terminated if the employer responsible for the plan faces severe financial difficulty, such as bankruptcy, and is unable to maintain the plan. In such an event, the PBGC becomes trustee of the plan and pays benefits, subject to legal limits, to plan participants and beneficiaries.

The benefits of a pension plan participant generally may not be assigned or alienated. Title I of ERISA provides an exception for domestic relations orders that relate to child support, alimony payments, or marital property rights of an alternate payee (a spouse, former spouse, child, or other dependent of a plan participant). The exception applies only if the domestic relations order meets specific legal requirements that make it a qualified domestic relations order.

When the PBGC is trustee of a plan, it reviews submitted domestic relations orders to determine whether the order is qualified before paying benefits to an alternate payee. The requirements for submitting a QDRO are established by statute. The models and the guidance assist parties by making it easier to comply with ERISA's QDRO requirements in plans trusteed by the PBGC; they do not create any additional requirements and result in a reduction of the statutory burden.

The PBGC estimates that it will receive 664 QDROs each year from prospective alternate payees; that the average burden of preparing a QDRO with the assistance of the guidance and

model QDROs in PBGC's booklet will be 1/4 hour of the alternate payee's time and $533 in professional fees if the alternate payee hires an attorney or other professional to prepare the QDRO, or 10 hours of the alternate payee's time if the alternate payee prepares the QDRO without hiring an attorney or other professional; and that the total annual burden will be 234 hours and $350,800.

The PBGC is updating the model QDROs and accompanying guidance. In particular, the revised booklet will reflect that, since the last approval, the PBGC has amended its regulations to make changes in how it pays benefits, including giving participants more choices of annuity benefit forms.

The PBGC is soliciting public comments to—

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Issued in Washington, DC this 16th day of July, 2003.

Stuart Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 03–18623 Filed 7–21–03; 8:45 am]

BILLING CODE 7708–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions, granting authority to make appointments under Schedules A, B and C in the excepted service as required by 5 CFR 6.6 and 213.103.

FOR FURTHER INFORMATION CONTACT: Deborah Grade, Acting Director, Washington Services Branch, Center for Talent Services, Division for Human Products and Services, (202) 606–5027.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedule A, B and C between May 1, 2003 and May 31, 2003. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule A

No Schedule A's for May 2003.

Schedule B

No Schedule B's for May 2003.

Schedule C

The following Schedule C authorities were established during May 2003:

Department of Agriculture

Director for Tobacco Programs to the Deputy Administrator. Effective May 7, 2003.

Confidential Assistant to the Deputy Secretary. Effective May 15, 2003.

Special Assistant to the Director for Intergovernmental Affairs. Effective May 16, 2003.

Department of Commerce

Special Assistant to the Director for the Executive Secretariat. Effective May 9, 2003.

Confidential Assistant to the Director for the Executive Secretariat. Effective May 16, 2003.

Speechwriter to the Director for Speechwriting. Effective May 27, 2003.

Confidential Assistant to the Special Assistant to the Chief of Staff. Effective May 30, 2003.

Senior Counsel to the Under Secretary for Intellectual Property and Director for U.S. Patent and Trademark Office. Effective May 30, 2003.

Department of Defense

Staff Assistant to the Deputy Under Secretary for Defense (Special Plans and Near East/South Asian Affairs). Effective May 2, 2003.

Staff Assistant to the Deputy Under Secretary for Defense (Special Plans and Near East/South Asian Affairs). Effective May 7, 2003.

Administrative Assistant to the Special Assistant to the Secretary of Defense for White House Liaison. Effective May 7, 2003.

Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective May 7, 2003.

Defense Fellow to the Special Assistant to the Secretary and Deputy Secretary for Defense. Effective May 27, 2003.

Department of Education

Confidential Assistant to the Chief of Staff. Effective May 6, 2003.

Confidential Assistant to the Special Assistant (Executive Assistant). Effective May 19, 2003.

Director for White House Liaison to the Chief of Staff. Effective May 23, 2003.

Confidential Assistant to the Deputy Assistant Secretary. Effective May 27, 2003.

Department of Energy

Special Assistant to the Director for Public Affairs. Effective May 2, 2003.

Special Assistant to the Director for Scheduling and Advance. Effective May 5, 2003.

Special Assistant to the Assistant Secretary for International Affairs. Effective May 7, 2003.

Congressional Relations Specialist to the Deputy Administrator for Defense Programs, National Nuclear Security Administration. Effective May 9, 2003.

Special Assistant to the Director for Public Affairs. Effective May 9, 2003.

Director for Climate Change Policy to the Deputy Assistant Secretary for National Energy Policy. Effective May 30, 2003.

Department of Health and Human Services

Special Assistant to the Chief of Staff. Effective May 13, 2003.

Special Assistant to the Assistant Secretary for Aging (Commissioner for Aging). Effective May 14, 2003.

Department of Homeland Security Agency

Deputy Press Secretary to the Assistant Secretary for Public Affairs. Effective May 5, 2003.

Associate Executive Secretary (External Coordination) to the Executive Secretary. Effective May 9, 2003.

Deputy White House Liaison to the White House Liaison. Effective May 13, 2003.

Executive Assistant to the Executive Director for Homeland Security Advisory Council. Effective May 16, 2003.

Advance Representative to the Deputy Chief of Staff (Operations). Effective May 28, 2003.

Department of Housing and Urban Development

Staff Assistant to the Assistant Secretary for Congressional\Intergovernmental Relations. Effective May 13, 2003.

Staff Assistant to the Director for Executive Scheduling and Operations. Effective May 15, 2003.

Legislative Specialist to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective May 22, 2003.

Department of Justice

Attorney Advisor (Special Assistant) to the Assistant Attorney General for the Environment and Natural Resources Division. Effective May 19, 2003.

Counsel to the Assistant Attorney General (Civil Division). Effective May 19, 2003.

Counsel to the Assistant Attorney General (Legal Policy). Effective May 19, 2003.

Department of Labor

Special Assistant to the Executive Assistant to the Secretary. Effective May 8, 2003.

Regional Representative to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective May 13, 2003.

Special Assistant to the Assistant Secretary for Employment Standards. Effective May 22, 2003.

Department of the Navy (DOD)

Confidential Assistant to the Assistant Secretary of the Navy for Research, Development and Acquisition. Effective May 7, 2003.

Department of State

Staff Assistant to the Under Secretary for Management. Effective May 6, 2003.

Senior Advisor to the Assistant Secretary for Near Eastern and South Asian Affairs. Effective May 7, 2003.

Special Assistant to the Assistant Secretary for African Affairs. Effective May 13, 2003.

Staff Assistant to the Assistant Secretary for East Indian and Pacific Affairs. Effective May 16, 2003.

Special Assistant to the Under Secretary for Economic, Business and Agricultural Affairs. Effective May 16, 2003.

Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective May 28, 2003.

Special Advisor to the Assistant Secretary for International Organizational Affairs. Effective May 28, 2003.

Department of Transportation

Counselor to the Assistant Secretary for Aviation and International Affairs. Effective May 2, 2003.

Department of the Treasury

Senior Advisor to the Deputy Assistant Secretary for Management and Budget. Effective May 19, 2003.

Special Assistant to the Deputy Assistant Secretary and Chief Human Capital Officer. Effective May 28, 2003.

Federal Mine Safety and Health Review Commission

Confidential Assistant to the Chairman. Effective May 22, 2003.

National Endowment for the Arts

General Counsel to the Chairman of the National Endowment of the Arts. Effective May 14, 2003.

National Transportation Safety Board

Special Assistant to the Vice Chairman. Effective May 5, 2003.

Confidential Assistant to the Vice Chairman. Effective May 5, 2003.

Office of Management and Budget

Public Affairs Specialist to the Associate Director for Communications. Effective May 13, 2003.

Office of National Drug Control Policy

Associate Deputy Director to the Deputy Director for State and Local Affairs. Effective May 22, 2003.

Office of Personnel Management

Special Assistant to the Director for Communications. Effective May 15, 2003.

Confidential Assistant to the Director for Congressional Affairs. Effective May 23, 2003.

Securities and Exchange Commission

Managing Executive for External Affairs to the Chairman of Security and Exchange Commission. Effective May 2, 2003.

Small Business Administration

Director of Intergovernmental Affairs to the Associate Administrator for Communications and Public Liaison. Effective May 13, 2003.

Director, Executive Secretariat to the Chief of Staff. Effective May 28, 2003.

United States Tax Court

Secretary (Confidential Assistant) to a Chief Judge. Effective May 14, 2003.

Secretary (Confidential Assistant) to a Judge. Effective May 20, 2003.

Secretary (Confidential Assistant) to a Chief Judge. Effective May 20, 2003.

Secretary (Confidential Assistant) to a Chief Judge. Effective May 30, 2003.

United States Trade and Development Agency

Public Affairs Specialist to the Director. Effective May 19, 2003.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–18498 Filed 7–21–03; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26100; 812–12833]

PBHG Funds, et al.; Notice of Application

July 15, 2003.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under (a) section 6(c) of the Investment Company Act of 1940 ("Act") granting an exemption from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting an exemption from section 17(a) of the Act; and (d) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

SUMMARY OF THE APPLICATION: Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility.

APPLICANTS: PBHG Funds, PBHG Insurance Series Fund (collectively, the "Trusts"), and Pilgrim Baxter & Associates, Ltd. ("PBA").

FILING DATES: The application was filed on April 16, 2002, and amended on July 10, 2003. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 11, 2003, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request

notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 1400 Liberty Ridge Drive, Wayne, PA 19087–5593.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel at (202) 942–0634 or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Trusts are registered under the Act as open-end management investment companies and are organized as Delaware business trusts. The Trusts are comprised of multiple series (the "Funds"); each series has separate investment objectives, policies and assets.[1] PBA is registered under the Investment Advisers Act of 1940. Each Fund has entered into an investment advisory agreement with PBA.

2. Some Funds may lend money to banks or other entities by entering into repurchase agreements or purchasing other short-term investments. Other Funds may borrow money from the same or other banks for temporary purposes to satisfy redemption requests or to cover unanticipated cash shortfalls such as a trade "fail" in which cash payment for a security sold by a Fund has been delayed. Currently, the Funds have a credit arrangement with their custodian banks (*i.e.*, overdraft protection) under which the custodian may, but is not obligated to lend money to the Funds to meet the Funds' temporary cash needs. The Funds also have also entered into committed lines of credit with various banks.

3. If the Funds were to borrow money from any bank under their line of credit or under other credit arrangements, the Funds would pay interest on the borrowed cash at a rate which would be higher than the rate that would be earned by other non-borrowing Funds on investments in repurchase agreements and other short-term instruments of the same maturity as the bank loan. Applicants believe this differential represents the bank's profit. Other bank loan arrangements, such as committed lines of credit, require the Funds to pay commitment fees in addition to the interest rate to be paid by the borrowing Fund.

4. Applicants request an order that would permit the Funds to enter into interfund lending agreements ("Interfund Lending Agreements") under which the Funds would lend and borrow money for temporary purposes directly to and from each other through a credit facility ("Interfund Loan"). Applicants believe that the proposed credit facility would reduce the Funds' borrowing costs and enhance their ability to earn higher interest rates on short-term investments. Although the proposed credit facility would reduce the Funds' need to borrow from banks, the Funds would be free to continue committed lines of credit or other borrowing arrangements with banks.

5. Applicants anticipate that the credit facility would provide a borrowing Fund with significant savings when the cash position of the Fund is insufficient to meet temporary cash requirements. This situation could arise when redemptions exceed expected volumes and certain Funds have insufficient cash to satisfy such redemptions. When a Fund liquidates portfolio securities to meet redemption requests, it often does not receive payment in settlement for up to three days (or longer for certain foreign transactions). The credit facility would provide a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities.

6. Applicants also propose using the credit facility when a sale of securities fails due to circumstances such as a delay in the delivery of cash to a Fund's custodian or improper delivery instructions by the broker effecting the transaction. Sales fails may present a cash shortfall if a Fund has purchased securities using the proceeds from the securities sold. When a Fund experiences a cash shortfall due to a sales fail, the custodian typically extends temporary credit to cover the shortfall and the Fund incurs overdraft charges. Under such circumstances, the Fund could fail on its intended purchase due to lack of funds from the previous sale, resulting in additional cost to the Fund, or sell a security on a same day settlement basis, earning a lower return on the investment. Use of the credit facility under these circumstances would enable the Fund to have access to immediate short-term liquidity without incurring custodian overdraft or other charges.

7. While bank borrowings could generally supply needed cash to cover unanticipated redemptions and sales fails, under the proposed credit facility a borrowing Fund would pay lower interest rates than those offered by banks on short-term loans. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements. Thus, applicants believe that the proposed credit facility would benefit both borrowing and lending Funds.

8. The interest rate charged to a Fund on any Interfund Loan ("Interfund Loan Rate") would be the average of the "Repo Rate" and the "Bank Loan Rate," both as defined below. The Repo Rate for any day would be the highest rate available to the Funds from investing in overnight repurchase agreements. The Bank Loan Rate for any day would be calculated by the Credit Facility Committee (as defined below) each day an interfund loan is made according to a formula established by a Fund's board of trustees ("Board") designed to approximate the lowest interest rate at which bank short-term loans would be available to the Funds. The formula would be based upon a publicly available rate (*e.g.*, Federal Funds plus 25 basis points) and would vary with this rate so as to reflect changing bank loan rates. The Board of each Fund would periodically review the continuing appropriateness of using the publicly available rate, as well as the relationship between the Bank Loan Rate and current bank loan rates that would be available to the Funds. The initial formula and any subsequent modifications to the formula would be subject to the approval of the Board.

9. The credit facility would be administered by PBA's fund accounting and legal departments (collectively, the "Credit Facility Committee"). Under the proposed credit facility, the portfolio managers for each participating Fund could provide standing instructions to participate daily as a borrower or lender. The Credit Facility Committee on each business day would collect data on the uninvested cash and borrowing requirements of all participating Funds from the Funds' custodians. Once it determined the aggregate amount of cash available for loans and borrowing demand, the Credit Facility Committee would allocate loans among borrowing Funds without any further communication from portfolio managers. Applicants expect far more available uninvested cash each day than borrowing demand. After the Credit Facility Committee has allocated cash for Interfund Loans, the Credit Facility Committee would invest any remaining cash in accordance with the standing instructions of portfolio managers or return remaining amounts to the Funds.

10. The Credit Facility Committee would allocate borrowing demand and cash available for lending among the Funds on what the Credit Facility Committee believes to be an equitable basis, subject to certain administrative procedures applicable to all Funds, such as the time of filing requests to participate, minimum loan lot sizes, and the need to minimize the number of transactions and associated administrative costs. To reduce transaction costs, each loan normally would be allocated in a manner intended to minimize the number of participants necessary to complete the loan transaction. The method of allocation and related administrative procedures would be approved by each Fund's Board, including a majority of trustees who are not "interested persons" of the Fund, as defined in section 2(a)(19) of the Act ("Independent Trustees"), to ensure both borrowing and lending Funds participate on an equitable basis.

11. PBA and the Credit Facility Committee would (a) Monitor the interest rates charged and other terms and conditions of the Interfund Loans; (b) limit the borrowings and loans entered into by each Fund to ensure that they comply with the Fund's investment policies and limitations; (c) ensure equitable treatment of each Fund; and (d) make quarterly reports to the Board concerning any transactions by the Funds under the credit facility and the interest rates charged.

12. PBA, through the Credit Facility Committee, would administer the credit facility under its existing management or advisory agreement with each Fund and would receive no additional fee for its services. PBA or companies affiliated with it may collect fees in connection with repurchase and lending transactions generally, including transactions through the credit facility, for pricing and record keeping, bookkeeping and accounting services. Fees would be no higher than those applicable for comparable loan transactions.

13. Each Fund's participation in the credit facility is consistent with its organizational documents and its investment policies and limitations. The prospectus or statement of additional information ("SAI") of each Fund discloses the extent to which the respective Fund is able to mortgage or pledge securities to secure permitted borrowings. If the requested order is granted, the SAI for each Fund participating in the credit facility will disclose the existence of the interfund lending arrangements.

14. In connection with the credit facility, applicants request an order under (a) Section 6(c) of the Act granting relief from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting relief from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting relief from sections 17(a)(1) and 17(a)(3) of the Act; and (d) under section 17(d) and rule 17d–1 under the Act to permit certain joint arrangements.

Applicants' Legal Analysis

1. Section 17(a)(3) generally prohibits any affiliated person, or affiliated person of an affiliated person, from borrowing money or other property from a registered investment company. Section 21(b) generally prohibits any registered management company from lending money or other property to any person if that person controls or is under common control with the company. Section 2(a)(3)(C) of the Act defines an "affiliated person" of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be under common control by virtue of having PBA as their common investment advisor.

2. Section 6(c) provides that an exemptive order may be granted where an exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) authorizes the Commission to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Applicants believe that the proposed arrangements satisfy these standards for the reasons discussed below.

3. Applicants submit that sections 17(a)(3) and 21(b) of the Act were intended to prevent a party with strong potential adverse interests to, and some influence over the investment decisions of, a registered investment company from causing or inducing the investment company to engage in lending transactions that unfairly inure to the benefit of such party and that are detrimental to the best interests of the investment company and its shareholders. Applicants assert that the proposed credit facility transactions do not raise these concerns because: (a) PBA would administer the program as a disinterested fiduciary; (b) all Interfund Loans would consist only of uninvested cash reserves that the Funds otherwise would invest in short-term repurchase agreements or other short-term instruments; (c) the Interfund Loans would not involve a greater risk than such other investments; (d) the lending Fund would receive interest at a rate higher than they could obtain through such other investments; and (e) the borrowing Fund would pay interest at a rate lower than otherwise available to them under their bank loan agreements and avoid the up-front commitment fees associated with committed lines of credit. Moreover, applicants believe that the other conditions in the application would effectively preclude the possibility of any Fund obtaining an undue advantage over any other Fund.

4. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or an affiliated person of an affiliated person, from selling any securities or other property to the company. Section 12(d)(1) generally makes it unlawful for a registered investment company to purchase or otherwise acquire any security issued by any other investment company except in accordance with the limitations set forth in that section. Applicants state that the obligation of a borrowing Fund to repay an Interfund Loan may constitute a security under sections 17(a)(1) and 12(d)(1). Section 12(d)(1)(J) provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors. Applicants contend that the standards under sections 6(c), 17(b), and 12(d)(1)(J) are satisfied for all the reasons set forth above in support of their request for relief from sections 17(a)(3) and 21(b) and for the reasons discussed below.

5. Applicants state that section 12(d)(1) was intended to prevent the pyramiding of investment companies in order to avoid imposing on investors additional and duplicative costs and fees attendant upon multiple layers of investment companies. Applicants submit that the proposed credit facility does not involve these abuses. Applicants note that there will be no

[1] Applicants request that the relief apply to any future series of the Trusts and to any other registered open-end management investment company and series thereof that are advised by PBA or a person controlling, controlled by, or under common control with PBA (included in the term "Funds"). All existing Funds that currently intend to rely on the requested order have been named as applicants. Any Fund that relies on the order in the future will comply with the terms and conditions of the application.

duplicative costs or fees to the Funds or shareholders, and that PBA will receive no additional compensation for its services in administering the credit facility. Applicants also note that the purpose of the proposed credit facility is to provide economic benefits for all of the participating Funds and their shareholders.

6. Section 18(f)(1) prohibits open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank; if immediately after the borrowing, there is asset coverage of at least 300 per centum for all borrowings of the company. Under section 18(g) of the Act, the term "senior security" includes any bond, debenture, note or similar obligation or instrument constituting a security and evidencing indebtedness. Applicants request relief from section 18(f)(1) to the limited extent necessary to implement the credit facility (because the lending Funds are not banks).

7. Applicants believe that granting relief under section 6(c) is appropriate because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of the Fund, including combined interfund and bank borrowings, have at least 300% asset coverage. Based on the conditions and safeguards described in the application, applicants also submit that to allow the Funds to borrow from other Funds pursuant to the proposed credit facility is consistent with the purposes and policies of section 18(f)(1).

8. Section 17(d) and rule 17d–1 generally prohibit any affiliated person of a registered investment company, or affiliated persons of an affiliated person, when acting as principal, from effecting any joint transactions in which the company participates unless the transaction is approved by the Commission. Rule 17d–1 provides that in passing upon applications filed under the rule, the Commission will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

9. Applicants submit that the purpose of section 17(d) is to avoid overreaching by and unfair advantage to investment company insiders. Applicants believe that the credit facility is consistent with the provisions, policies, and purposes of the Act in that it offers both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and their shareholders. Applicants note that each Fund would have an equal opportunity to borrow and lend on equal terms consistent with its investment policies and fundamental limitations. Applicants therefore believe that each Fund's participation in the credit facility will be on terms that are no different from or less advantageous than that of other participating Funds.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The interest rates to be charged to the Funds under the credit facility will be the average of the Repo Rate and the Bank Loan Rate.

2. On each business day, the Credit Facility Committee will compare the Bank Loan Rate with the Repo Rate and will make cash available for Interfund Loans only if the Interfund Loan Rate is (a) More favorable to the lending Fund than the Repo Rate, and (b) more favorable to the borrowing Fund than the Bank Loan Rate.

3. If a Fund has outstanding borrowings, any Interfund Loans made to the Fund (a) Will be made at an interest rate equal to or lower than any outstanding bank loan; (b) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral; (c) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days); and (d) will provide that, if an event of default occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the Interfund Lending Agreement entitling the lending Fund to call the Interfund Loan (and exercise all rights with respect to collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the credit facility if its outstanding borrowing from all sources immediately after the interfund borrowing total 10% or less than its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the credit facility on a secured basis only. A Fund may not borrow through the credit facility or from any other source if its total borrowings immediately after the interfund borrowing would be more than 33⅓% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding Interfund Loans exceed 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter (a) Repay all its outstanding Interfund Loans; (b) reduce its outstanding indebtedness to 10% or less of its total assets; or (c) secure each outstanding Interfund Loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition (5) shall no longer be required. Until each Interfund Loan that is outstanding at any time that a Fund's total outstanding borrowings exceeds 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding Interfund Loan at least equal to 102% of the outstanding principal value of the loan.

6. No Fund may lend to another Fund through the credit facility if the loan would cause the lending Fund's aggregate outstanding loans through the credit facility to exceed 15% of its net assets at the time of the loan.

7. A Fund's Interfund Loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of Interfund Loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. Except as set forth in this condition, no Fund may borrow through the credit facility unless the Fund has a policy that prevents the Fund from borrowing for other than temporary or emergency purposes. In the case of a Fund that does not have such a policy, the Fund's borrowings through the credit facility, as measured on the day when the most recent loan was made, will not exceed the greater of 125% of the Fund's total net cash redemptions or 102% of sales fails for the preceding seven calendar days.

10. Each Interfund Loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

11. A Fund's participation in the credit facility must be consistent with its investment policies and limitations and organizational documents.

12. The Credit Facility Committee will calculate total Fund borrowing and lending demand through the credit facility, and allocate loans on an equitable basis among the Funds without the intervention of any portfolio manager of the Funds. The Credit Facility Committee will not solicit cash for the credit facility from any Fund or prospectively publish or disseminate loan demand data to portfolio managers. PBA will invest any amounts remaining after satisfaction of borrowing demand in accordance with the standing instructions from portfolio managers or return remaining amounts to the Funds.

13. The Credit Facility Committee will monitor the interest rates charged and the other terms and conditions of the Interfund Loans and will make a quarterly report to the Board concerning the participation of the Funds in the facility and the terms and other conditions of any extensions of credit under the credit facility.

14. The Board of each Fund, including a majority of the Independent Trustees: (a) Will review no less frequently than quarterly the Fund's participation in the credit facility during the preceding quarter for compliance with the conditions of any order permitting the transactions; (b) will establish the Bank Loan Rate formula used to determine the interest rate on Interfund Loans and review no less frequently than annually the continuing appropriateness of the Bank Loan Rate formula; and (c) will review no less frequently than annually the continuing appropriateness of the Fund's participation in the credit facility.

15. In the event an Interfund Loan is not paid according to its terms and the default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the Interfund Lending Agreement, the Credit Facility Committee will promptly refer the loan for arbitration to an independent arbitrator selected by the Board of the Funds involved in the loan who will serve as arbitrator of disputes concerning Interfund Loans.[2] The arbitrator will resolve any problems promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit at least annually a written report to the Boards setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

16. Each Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transaction under the credit facility occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transaction, including the amount, the maturity and rate of interest on the loan, the rate of interest available at the time on short-term repurchase agreements and bank borrowings, the rate of return available from investments in overnight repurchase agreements and such other information presented to the Board in connection with the review required by conditions 13 and 14.

17. PBA will prepare and submit to the Board for review an initial report describing the operations of the credit facility and the procedures to be implemented to ensure that all Funds are treated fairly. After the commencement of operations of the credit facility, the Credit Facility Committee will report on the operations of the credit facility to the Board quarterly. In addition, for two years following the commencement of the credit facility, the independent public accountants for each Fund shall prepare an annual report that evaluates PBA's assertion that it has established procedures reasonably designed to achieve compliance with the conditions of the order. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 3 and filed pursuant to Item 77Q3 of Form N-SAR. In particular, the report shall address procedures designed to achieve the following objectives: (a) That the Interfund Loan Rate will be higher than the Repo Rate, but lower than the Bank Loan Rate; (b) compliance with the collateral requirements as set forth in the Application; (c) compliance with the percentage limitations on interfund borrowing and lending; (d) allocation of interfund borrowing and lending demand in an equitable manner and in accordance with procedures established by the Board; and (e) that the interest rate on any Interfund Loan does not exceed the interest rate on any third party borrowings of a borrowing Fund at the time of the Interfund Loan. After the final report is filed, the Fund's external auditors, in connection with their Fund audit examinations, will continue to review the operation of the credit facility for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

18. No Fund will participate in the credit facility upon receipt of requisite regulatory approval unless it has fully disclosed in its prospectus or its SAI all material facts about its intended participation.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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[2] If the dispute involves Funds with separate Boards, the Board of each Fund will select an independent arbitrator that is satisfactory to each Fund.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48173; File No. SR–Amex–2003–59]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC To Renumber Commentary .02 to Rule 131 and Amend a Reference Thereto in Commentary .06 to Rule 155

July 14, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 10, 2003, the American Stock Exchange LLC ("Amex" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(3) thereunder,[4] which renders the proposal effective upon filing with the Commission. On June 12, 2003, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(3).

Exchange filed Amendment No. 1 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to renumber Rule 131, Commentary .02, as approved in Release No. 34–47960,[6] as Rule 131, Commentary .03. The text of the proposed rule change is set forth below. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

Types of Orders

Rule 131

* * * * *

Commentary [.02] *.03*

(a) "Market at 4:00 p.m." orders. An order in Portfolio Depositary Receipts or Index Fund Shares that trade on the Exchange until 4:15 p.m. may be designated as "market at 4 p.m." to denote that it is a market order which is to be executed at or as close as practicable to the close of the regular equity trading session on the exchange (normally 4 p.m. Eastern Time).

(b) Where a member is holding simultaneously both buy and sell "market at 4 p.m." orders, and where there is an imbalance between the buy and sell "market at 4 p.m." orders, the member shall, at 4 p.m. or as close as practicable to 4 p.m., execute the imbalance against the prevailing bid or offer on the Exchange, as appropriate. (An imbalance of buy orders would be executed against the offer. An imbalance of sell orders would be executed against the bid.) The member shall then pair off the remaining "market at 4 p.m." orders at the price of the immediately preceding sale described above.

(c) Where the aggregate size of buy "market at 4:00 p.m." orders equals the aggregate size of sell "market at 4:00 p.m." orders in a given security, the buy and sell orders shall be paired off at the midpoint of the then prevailing bid and offer in that security on the Exchange. In the event that that midpoint consists of a number including a fraction of a cent, then the price of the transaction shall be at the next higher one cent increment above the midpoint.

* * * * *

Precedence Accorded to Orders Entrusted to Specialists

Rule 155

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Commentary

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.06 Notwithstanding anything in Commentaries .03 and .04 above to the contrary, "market at 4 p.m." orders entered with the specialist in Portfolio Depositary Receipts and Index Fund Shares (see Rule 131, Commentary [.02] *.03*) shall be executed at one price at 4 p.m. or as close as practicable to 4 p.m. and shall have priority over limit orders priced at the execution price.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 2, 2003, the Commission approved a proposed rule change in Release No. 34–47960 relating to "market at 4 p.m." orders for Exchange Traded Funds that added Commentary .02 to Rule 131 and Commentary .06 to Rule 155.[7] The Exchange proposes to amend Rule 131, Commentary .02 as approved in Release No. 34–47960 to renumber it as Rule 131, Commentary .03. The Exchange also proposes to amend Rule 155, Commentary .06 to change the reference therein from Rule 131, Commentary .02 to Rule 131, Commentary .03. These changes would correct the erroneous numbering of two distinct provisions as Rule 121, Commentary .02, as approved in Release No. 34–47960 and Release No. 34–47658.[8]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b) of the Act,[9] in general, and furthers the objectives of section 6(b)(5)[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action [11]

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act [12] and subparagraph (f)(1) of Rule 19b-4 thereunder [13] because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR-Amex-2003–59 and should be submitted by August 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–P

[5] In Amendment No. 1, the Exchange amended the proposal to replace Exhibit A as originally filed with a revised Exhibit A (i) to correct the text of Rule 131, Commentary .03 (as re-numbered) and (ii) to amend the text of Rule 155, Commentary .06, to change the reference therein from Rule 131, Commentary .02 to Rule 131, Commentary .03. *See* letter dated June 11, 2003, from Claire McGrath, Senior Vice President and Deputy General Counsel, Exchange, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers that the period to commence on June 12, 2003, the date the Exchange filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[6] *See* Securities Exchange Act Release No. 47960 (June 2, 2003), 68 FR 34440 (June 9, 2003) (SR–Amex–2003–17).

[7] *Id.*

[8] *See* Securities Exchange Act Release No. 47658 (April 10, 2003), 68 FR 19041 (April 17, 2003) (SR–Amex–2003–18).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] At the Exchange's request, the Commission corrected the rationale and the citation to the section of the Act pursuant to which the proposed rule change has become immediately effective. Telephone conversation between Michael Cavalier, Associate General Counsel, Exchange, and Ann E. Leddy, Attorney, Division of Market Regulation, Commission (July 9, 2003).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(1).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48174; File No. SR–Amex–2003–56]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC To Reestablish on a Six-Month Pilot Basis the Exchange's Odd-Lot Execution Procedures Applicable to Trading in Nasdaq Securities

July 14, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 2, 2003, the American Stock Exchange LLC ("Amex" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On June 27, 2003, the Exchange amended the proposal.[3] The Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reestablish on a six-month pilot basis paragraph (j) to Amex Rule 118 (Trading in Nasdaq National Market Securities) and Commentary .05 to Rule 205 (Manner of Executing Odd-Lot Orders) to describe odd-lot execution procedures applicable to trading Nasdaq securities. The previous six-month pilot lapsed as of February 3, 2003, due to Amex's failure to request an extension before the previous pilot program expired. Amex is making no substantive changes to the pilot program, other than to reestablish it and extend its operation through December 27, 2003. The text of the proposed rule change is set forth below. Proposed new language is in *italics.*

* * * * *

Trading in Nasdaq National Market Securities

Rule 118. (a) through (i) No change.

(j) Odd-Lot Orders—Odd-lot orders in Nasdaq National Market securities shall be executed in the following manner:

(i) Market and Executable Limit Orders—A market or executable limit order shall receive automatic execution, unless otherwise provided herein, at the price of the qualified national best offer (in the case of an order to buy) or qualified national best bid (in the case of an order to sell) in the security at the time the order has been received at the trading post or through the Amex Order File.

All market and executable limit odd-lot orders entered prior to the opening of trading of Nasdaq National Market securities on the Exchange shall receive automatic execution at the price of the first round-lot or Part of Round Lot (PRL) transaction on the Exchange.

For purposes of this subparagraph (j)(i), the qualified national best bid or offer for a Nasdaq National Market security shall mean the highest bid and lowest offer, respectively, disseminated (A) by the Exchange or (B) by another market center participating in the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis ("Plan"); provided, however, that the bid and offer in another such market center will be considered in determining the qualified national best bid or offer in a stock only if (i) the quotation conforms to the requirements of Rule 127 ("Minimum Price Variations"), (ii) the quotation does not result in a locked or crossed market, (iii) the market center is not experiencing operational or system problems with respect to the dissemination of quotation information, and (iv) the bid or offer is "firm," that is, members of the market center disseminating the bid or offer are not relieved of their obligations with respect to such bid or offer under paragraph (c)(2) of Rule 11Ac1–1 pursuant to the "unusual market" exception of paragraph (b)(3) of Rule 11Ac1–1.

(ii) Limit Orders; Stop Orders; Stop-Limit Orders; Other Order Types—Unless otherwise provided herein, non-executable limit, stop, and stop-limit orders shall be executed in accordance with Rule 205, Parts A (2), A(3), and A(4), respectively. Orders to buy or sell "at the close" shall be filled at the price of the closing round-lot sale on the Exchange. An odd-lot order received prior to the close but not filled either before the close or on the close may be filled after the close in accordance with the provisions of Rule 205, Part C (1).

(iii) Non-Regular Way Trades—Non-regular way trades shall be effected in accordance with the provisions of Rule 205, Part C (2).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter dated June 27, 2003, from Geraldine M. Brindisi, Vice President and Corporate Secretary, Exchange, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, the Amex added language to clarify the proposed rule change.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] The Amex provided the Commission with written notice of its intent to file the proposed rule change on May 27, 2003. The Exchange asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii). For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to have commenced on June 27, 2003, the date the Exchange filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

(iv) Locked and Crossed Market Conditions

(a) For market and executable limit orders entered after the opening, when the national best bid and offer is in a locked market condition (i.e., the bid and offer are the same), odd-lot buy and sell orders will be executed at that locked market price.

(b) Crossed Market Condition—When a crossed market condition exists (i.e., bid higher than offer) and the national best displayed bid is higher than the national best displayed offer by $.05 or less, market and executable limit orders will receive automatic execution at the mean of the bid and offer prices. If the mean is in a subpenny increment, the price of execution would be rounded up to the nearest $.01. When the national best displayed bid is higher than the offer by more than $.05, an odd-lot order will not receive automatic execution and is to be executed manually at the time a crossed market condition no longer exists, in accordance either with subparagraph (i) or (iv)(a) of this paragraph (j), as appropriate.

(v) No odd-lot differential may be charged on any odd-lot orders, except for non-regular way trades effected under Rule 118 (j)(iii).

(vi) Odd-lot orders in Nasdaq National Market securities are permitted to be marked ("short") and are acceptable for all order types, and Rule 7, Commentary .02 shall apply to such orders.

* * * * *

Manner of Executing Odd-Lot Orders

Rule 205

Commentary

.01 through .04 No Change.

.05 Odd-lot orders in Nasdaq National Market securities shall be executed in accordance with Rule 118(j).

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 2, 2002, the Commission approved the Exchange's proposed rule change establishing odd-lot execution procedures with respect to Nasdaq National Market securities pursuant to unlisted trading privileges on a six-month pilot basis.[7] The proposed rule change revised Amex Rule 118 to add paragraph (j) to describe procedures applicable to the execution of odd-lot orders. The Exchange modified its systems in order to provide automatic execution of market and executable limit orders in Nasdaq National Market securities of less than 100 shares in a manner generally consistent with procedures set forth in Amex Rule 205. (Round lot orders (*e.g.*, 100 shares) and Part of Round Lot ("PRL") orders (*e.g.*, 175 shares) are not subject to the automatic execution procedures applicable to odd-lots.) The Exchange's previous pilot program was approved on August 2, 2002 for a six-month period expiring February 3, 2003.[8] The Exchange inadvertently failed to request an extension of the pilot beyond that date, and now proposes to reestablish these procedures on a six-month pilot basis. The Exchange believes that these procedures have operated efficiently and has received no complaints from members or the public regarding odd-lot executions. Therefore, the Exchange is requesting that the program be reestablished on a six-month pilot basis while the Exchange assesses whether to request that the procedures be permanently approved.

Under this program, market and executable odd-lot limit orders to buy (sell) would be executed at the price of the qualified national best offer (bid) at the time the order is received at the trading post or through the Amex Order File ("AOF"). Market and executable limit orders entered before the opening of trading in Nasdaq securities on the Exchange would receive an execution at the price of the first reported round-lot or PRL on the Amex.

For purposes of this provision, the qualified national best bid or offer would be the highest bid and lowest offer disseminated by the Amex or by another market center that is a participant in the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis. The bid or offer of such other market center would be considered in determining the qualified national best bid or offer only if it met the conditions specified in proposed Rule 118(j)(i), including (i) that the quotation conform to Amex Rule 127 (Minimum Price Variations), that is, the bid or offer be in a one cent increment; (ii) that the quotation not result in a locked or crossed market; (iii) that the market center not be experiencing operational or system problems affecting quotation dissemination; and (iv) that members of the other market center disseminating the quotations not be relieved of their obligations with respect to their quotations pursuant to the "unusual market" exception of Commission Rule 11Ac1–1.[9] These exceptions are similar to those applied to execution of odd-lots in Amex-listed securities under Amex Rule 205, Commentary .04.

Procedures for the execution of non-executable limit orders, stop orders, stop limit orders, other order types, orders filled after the close and non-regular way trades would be similar to existing odd-lot execution procedures under Amex Rule 205 A(2)-A(4), B and C. Such orders would be processed manually and would not be automatically executed.

Locked and Crossed Market Conditions

The proposed rule change, as amended, would implement specific procedures for automatically executing market and executable limit odd-lot orders entered after the opening of Amex trading in Nasdaq securities when the national best bid and offer is in a locked market condition (*i.e.*, bid is equal to the offer) or a crossed market condition (*i.e.*, bid is higher than the offer). In the case of a locked market, market orders and executable buy and sell limit orders would be executed at the same price as the locked price. In the case of a crossed market in which the bid is higher than the offer by $.05 or less, market and executable limit orders would be executed at the mean of the crossed bid and offer. If the mean resulted in less than $.01, the execution would be rounded up to the nearest $.01.

Examples:

(1) BBO is $10.04 to $10.00, Market odd lot order to buy or sell arrives, Execute at $10.02

(2) BBO is $10.05 to $10.00, Market odd lot order to buy or sell arrives, Execute at $10.03 ($10.025 is rounded to $10.03)

In the case of a crossed market in which the bid is higher than the offer by more than $.05, an odd-lot order would not be executed automatically, but would be executed manually in accordance with, as appropriate, either proposed Rule 118(j)(i) (*i.e.*, filled at the price of the next uncrossed qualified national bid or offer), or proposed Rule 118(j)(iv)(a) (*i.e.*, at the locked market price, when the national best bid and offer is in a locked market condition).

Commentary .05 to Amex Rule 205 would be added to reference the Rule 118(j) odd-lot procedures.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with the provisions of section 6(b) of the Act,[10] in general, and furthers the objectives of section 6(b)(5)[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change, as amended, does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[12] and Rule 19b-4(f)(6) thereunder.[13] At any time within 60 days of the filing of the proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Amex has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the Exchange to reestablish its odd-lot execution procedures applicable to trading in Nasdaq securities without delay. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[14]

In addition, the Commission requests that the Exchange report any problems or complaints from members and the public regarding odd-lot execution procedures applicable to trading Nasdaq securities, and that the Amex submit any proposal to extend, or permanently approve, the pilot at least two months before the expiration of the six-month pilot.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR-Amex-2003–56 and should be submitted by August 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–18616 Filed 7–21–03; 8:45 am]

BILLING CODE 8010–01–P

[7] *See* Securities Exchange Act Release No. 46304 (August 2, 2002), 67 FR 51903 (August 9, 2002) (SR–Amex–2002–56).

[8] *Id.*

[9] 17 CFR 240.11Ac1–1.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48161A; File No. SR–NASD–2003–57]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto, and Notice of Filing and Order Granting Accelerated Approval To Amendment No. 3 to the Proposed Rule Change Relating to Revisions to the Uniform Application for Securities Industry Registration or Transfer (Form U–4) and Uniform Termination Notice for Securities Industry Registration (Form U–5)

July 16, 2003.

Correction

In Release No. 34–48161, issued on July 10, 2003 ("Approval Order"), an inaccurate reference to Question 14J of the Uniform Application for Securities Industry Registration or Transfer ("Form U4") appeared. The Approval Order's Purpose Section contained the inaccurate reference due to a typographical, non-substantive error on the part of the National Association of Securities Dealers, Inc. ("NASD") in the third amendment to the proposed rule change.[1] Specifically, in footnote 11 of the Approval Order, Question 14J is inaccurately referenced in three instances, rather than Question 14M. The corrected text of footnote 11 of the

[1] *See* letter from Patrice M. Gliniecki, Vice President and Deputy General Counsel, NASD, to Katherine A. England, Assistant Director, Division, Commission (July 1, 2003) ("Amendment No. 3") (The Commission notes that the NASD inadvertently numbered Amendment No. 3 as Amendment No. 1). In Amendment No. 3, the NASD responded to comments submitted by the Association of Registration Management ("ARM") arguing, primarily, that the information being sought by the additional questions being added to the Form U4 was already captured by pre-existing questions on the Form U4 and that the addition of such questions would create a monumental administrative burden for member firms.

Approval Order appears below. Additions are in italics and deletions are in brackets.

* * * * *

Footnote 11:

The CRD system will process such Form U4 filings as follows. If a registered person has a "yes" answer to any question in Questions 14A through [J]*M* in the Disclosure Section of the Form U–4 on or after July 14, the CRD system will require that the firm filing an amended Form U–4 enter a response (by selecting the appropriate "yes" or "no" radio button) to new disclosure Question 14D(2) and also obtain a completed Section 15D. If those questions are not answered, the filing will fail the CRD system completeness check. For the sake of clarity, NASD notes that an amendment to a Form U–4 filing on or after July 14, for the purpose of adding a "yes" answer to Questions 14A through [J]*M*, when previously there had been no "yes" answers, would require the firm filing the amendment to answer new disclosure Question 14D(2) and obtain a completed Section 15D.

If a registered person does not have a "yes" answer to Questions 14A through [J]*M* in the Disclosure Section of the Form U–4, the CRD system will default new disclosure Question 14D(2) with a "no" response for any filings prepared for submission after implementation of the new questions, and the firm will not be required to obtain a completed Section 15D for the purposes of answering Question 14D(2). Form U–4 amendments filed by the firm for such individuals will not fail the completeness check due to these new questions; however, by submitting the filing, firms will be representing that they are filing "no" answers to the new questions, unless they affirmatively change the "no" answer to "yes" before submitting the filing. Similarly, as discussed above, registered persons who have not filed an amended Form U–4 reporting credit union regulatory proceedings within the specified 30-day period will be deemed to have represented that they have not been the subject of any such proceedings.

* * * * *

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–18527 Filed 7–21–03; 8:45 am]

BILLING CODE 8010–01–P

[2] 17 CFR 200.30–2(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3525]

State of Florida

Sarasota County and the contiguous counties of Charlotte, DeSoto, and Manatee in the State of Florida constitute a disaster area due to damages caused by severe storms and flooding that occurred June 19 through June 30, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 15, 2003 and for economic injury until the close of business on April 15, 2004 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.625
Homeowners without credit available elsewhere	2.812
Businesses with credit available elsewhere	5.906
Businesses and non-profit organizations without credit available elsewhere	2.953
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	2.953

The number assigned to this disaster for physical damage is 352511. For economic injury, the number is 9W2800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 15, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–18582 Filed 7–21–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3523]

State of North Carolina

Mecklenburg County and the contiguous counties of Cabarrus, Gaston, Iredell, Lincoln, and Union in the State of North Carolina, and Lancaster and York in the State of South Carolina constitute a disaster area due to damages caused by severe storms and flooding that occurred on June 7–8, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 15, 2003 and for economic injury until the close of business on April 15, 2004 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.625
Homeowners without credit available elsewhere	2.812
Businesses with credit available elsewhere	5.906
Businesses and non-profit organizations without credit available elsewhere	2.953
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	2.953

The numbers assigned to this disaster for physical damage are 352311 for North Carolina and 352411 for South Carolina. For economic damage, the numbers are 9W2600 for North Carolina and 9W2700 for South Carolina.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: July 15, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–18583 Filed 7–21–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3528]

State of Ohio

As a result of the President's major disaster declaration on July 15, 2003, I find that Auglaize, Darke, Logan, Mercer, Shelby, and Van Wert Counties in the State of Ohio constitute a disaster area due to damages caused by severe storms and flooding occurring on July 4, 2003 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 15, 2003 and for economic injury until the close of business on April 15, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Allen, Champaign, Hardin, Miami, Montgomery, Paulding, Preble, Putnam, and Union in the State of Ohio; and Adams, Allen, Jay, Randolph, and Wayne in the State of Indiana.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.625
Homeowners without credit available elsewhere	2.812
Businesses with credit available elsewhere	5.906
Businesses and non-profit organizations without credit available elsewhere	2.953
Others (including non-profit organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	2.953

The number assigned to this disaster for physical damage is 352811. For economic injury, the numbers are 9W4200 for Ohio and 9W4300 for Indiana.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 16, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–18581 Filed 7–21–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3512, Amdt. #4]

State of West Virginia

In accordance with the notice received from the Department of Homeland Security, Federal Emergency Management Agency, effective July 14, 2003, the above numbered declaration is hereby amended to include Monongalia County in the State of West Virginia as a disaster area due to damages caused by severe storms, flooding, and landslides that occurred June 11, 2003, and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Marion, Preston, Taylor, and Wetzel Counties in the State of West Virginia; and Fayette and Greene Counties in the Commonwealth of Pennsylvania.

The economic injury number for Pennsylvania is 9W4000.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 20, 2003, and for economic injury the deadline is March 22, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 15, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–18584 Filed 7–21–03; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Protocol to the Agreement Between the United States and the Netherlands on Social Security; Entry Into Force

AGENCY: Social Security Administration.

ACTION: Notice.

SUMMARY: The Commissioner of Social Security gives notice that on May 1, 2003, a protocol entered into force which amends the Social Security agreement between the United States and the Netherlands that has been in effect since November 1, 1990. The protocol, which was signed on August 30, 2001, was concluded pursuant to requirements in 42 U.S.C. 433.

The protocol updates and clarifies several provisions in the original U.S.-Netherlands Social Security agreement to take account of changes in Dutch law. Its primary purpose, however, is to permit payment of the Netherlands children's allowance while the qualified recipient or the child lives in or visits the United States.

Individuals who wish to obtain copies of the protocol and the revised agreement or want general information about the protocol's provisions may write to the Social Security Administration, Office of International Programs, Post Office Box 17741, Baltimore, Maryland 21235–7741. The Social Security Web site at *http://www.socialsecurity.gov/international* also includes the text of the revised agreement. Anyone who wants information about the Netherlands children's allowance should write to Sociale Verzekeringsbank, Postbus 576, 9700 AN Groningen, The Netherlands.

Dated: July 15, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

[FR Doc. 03–18559 Filed 7–21–03; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF STATE

[Public Notice 4355]

Notice of Meeting; United States International Telecommunication Advisory Committee; Preparations for ITU Development Meetings

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee (ITAC). The purpose of the Committee is to advise the Department on policy, technical and operational issues with respect to international telecommunications development bodies such as the International Telecommunication Union.

The ITAC will meet to prepare for the September 2–11 meeting of the ITU–D, Study Groups 1 and 2, Geneva, Switzerland. Schedule meeting date is Tuesday August 5, 10am–1200 noon at the Department of State in Room 2533–A.

Members of the public will be admitted to the extent that seating is available, and may join in the discussions, subject to the instructions of the Chair. Entrance to the Department of State is controlled. People intending to attend the meeting should send their clearance data by fax to (202) 647–7407 or email to *worsleydm@state.gov* not later than 24 hours before the meeting. Please include the name of the meeting, your name, social security number, date of birth and organizational affiliation. One of the following valid photo identifications will be required for admittance: U.S. driver's license with your picture on it, U.S. passport, or U.S. Government identification. Directions to the meeting location and on which entrance to use may be determined by calling the ITAC Secretariat at 202 647–2592 or e-mail to *worsleydm@state.gov*.

Dated: July 15, 2003.

Doreen McGirr,

Director, Telecommunication Development, Department of State.

[FR Doc. 03–18622 Filed 7–21–03; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF STATE

[Public Notice #4405]

Notice of Meetings: United States International Telecommunication Advisory Committee Preparations for Various Telecommunication Standardization Meetings Second Half of 2003

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee (ITAC). The purpose of the Committee is to advise the Department on policy, technical and operational issues with respect to international telecommunications standardization bodies such as the International Telecommunication Union (ITU).

The ITAC will meet periodically throughout the second half of 2003 to prepare for various ITU Telecommunication Standardization Study Group meetings. Times and locations of these meetings will be announced via the e-mail reflectors (list servers) identified below. People may join these reflectors by sending a message identifying the list they wish to join to *itac@state.gov*.

TSAG Preparations: The ITAC will meet July 31, September 3, September 30 and October 22 to prepare for the November 10–14 meeting of the ITU–T Telecommunication Sector Advisory Group (TSAG). Location and times for these meetings will be announced on the reflector list *itac-t@almsntsa.lmlist.state.gov*.

ITU–T Study Group 2 preparations: The ITAC will meet October 7, 2003 in the Washington, DC area to prepare for the next ITU–T Study Group 2 meeting, which is to be held from October 21–31. Location and time for this ITAC meeting will be announced on the reflector list *sganumberingadhoc@almsntsa.lmlist.state.gov*.

ITU–T Study Group 3 preparations: The ITAC will meet on August 6, September 10, October 8 and October 29 to prepare for the next ITU–T Study Group 3 meeting which is to be held from November 17–21. Location and time for these ITAC meetings will be announced on the reflector list *sga@almsntsa.lmlist.state.gov*.

ITU–T Study Group 9 preparations: The ITAC will meet December 9 to prepare for the next ITU–T Study Group 9 meeting, which is to be held from January 15–24, 2004. Location and time for this ITAC meeting will be announced on the reflector list *sgd@almsntsa.lmlist.state.gov*.

ITU–T Study Group 11 and 15 preparations: The ITAC will meet on August 8, 2003 at the Sheraton Colorado Springs Hotel, 2886 S. Circle Drive, Colorado Springs, Colorado 90906, telephone (719) 576–5900 to prepare for the ITU Study Group 11 meeting to be held September 1–12, 2003 and for the ITU–T Study Group 15 meeting to be held October 21–31, 2003. The U.S. ITAC meeting will begin 30 minutes after closure of the T1A1/T1P1/T1S1 Plenaries. Persons planning to attend the August 8 U.S. ITAC meeting should give their names and organization not later than August 4 to Marcie Geissinger, marciegeissinger@msn.com or (303) 499–2145. The agenda for the August 8, 2003 meeting will be announced on the reflector list *sgb@almsntsa.lmlist.state.gov*.

ITU–T Study Group 15 and 4 preparations: The ITAC will meet on September 19, 2003 at the Marriott Hartford Farmington, 15 Farm Springs Road, Farmington, Connecticut 06032, telephone (860) 678–1000 or (800) 228–9290 to prepare for the ITU–T Study Group 15 meeting to be held from October 21–31, 2003 and the ITU–T Study Group 4 meeting to be held from October 27–November 7, 2003. The ITAC meeting will begin 30 minutes after the closure of the T1X1 Plenary. Persons planning to attend the September 19 U.S. ITAC meeting should give their name and organization not later than September 16 to Marcie Geissinger, *marciegeissinger@msn.com* or at (303) 499–2145. The agenda for the September 19 meeting will be announced on the reflector list *sgb@almsntsa.lmlist.state.gov*.

ITU–T Study Group 12 preparations: The ITAC will meet August 27 to September 8, 2003 via e-mail on the reflector list *sga@almsntsa.lmlist.state.gov* to prepare for the ITU–T Study Group 12 meeting to be held from September 22–30. Originators must post their contributions to the reflector by August 27, 2003; comments on the documents must be posted to the same address by September 2; originators' responses must be posted by September 4, and final action will be posted by the Department of State no later than September 8, 2003. If necessary, this meeting may be continued through a later date via e-mail or conference call, as announced on the reflector.

ITU–T Study Group 17 preparations: The ITAC will meet August 14–27 via e-mail on the reflector list *sgd@almsntsa.lmlist.state.gov* to prepare for the ITU-T Study Group 17 meeting to be held from September 10–19. Originators must post their contributions to the reflector by August 14, 2003; comments on the documents must be posted to the same address by August 21; originators' responses must be posted by August 25, and final action will be posted by the Department of State no later than August 27. If necessary, this meeting may be continued through a later date via e-mail or conference call, as announced on the reflector.

ITU–T Special Study Group preparations: The ITAC will meet October 6–17, 2003 via e-mail on the reflector list "sgd-ssg@almsntsa.lmlist.state.gov" to prepare for the ITU–T Special Study Group (IMT2000 and beyond) meeting to be held from November 17–21, 2003. Originators must post their documents to the reflector by October 6; comments on the documents must be posted to the same address by October 10; originators' responses must be posted by October 15, and final action will be posted by the Department of State no later than October 17. If necessary, this meeting may be continued through a later date via e-mail or conference call, as announced on the reflector.

CITEL PCC I Group Preparations: The ITAC will meet on August 7, 2003, and September 9, 2003 to prepare for the next CITEL PCC I meeting. Location and times for these meetings will be announced on the reflector list *PCCI–CITEL@almsntsa.lmlist.state.gov*.

Members of the public will be admitted to the meetings to the extent that seating is available, and may join in the discussions, subject to the instructions of the Chair. Entrance to the Department of State is controlled; people intending to attend a meeting at the Department of State should send their clearance data by fax to (202) 647–7407 or e-mail to *worsleydm@state.gov* not later than 24 hours before the meeting. Please include the name of the meeting, your name, social security number, date of birth and organizational affiliation. One of the following valid photo identifications will be required for admittance: U.S. driver's license with your picture on it, U.S. passport, or U.S. Government identification. Directions to the meeting location may be obtained by calling the ITAC Secretariat at 202 647–2592 or e-mail to *worsleydm@state.gov*.

Dated: July 17, 2003.

Marian Gordon,

Director, Telecommunication & Information Standardization, Department of State.

[FR Doc. 03–18721 Filed 7–21–03; 8:45 am]

BILLING CODE 4710–45–P

STATE JUSTICE INSTITUTE

Notice of Public Meeting; State Justice Institute Board of Directors Meeting

Date: Saturday, July 26, 2003, 9 a.m.–5 p.m.

Place: El Caribe Room, Ritz Carlton San Juan, 6961 Avenue of the Governors, Carolina, Puerto Rico.

Matters to be Considered: Consideration of proposals submitted for Institute funding and internal Institute business.

Portions Open to the Public: All portions other than personnel matters and Board committee meetings.

Portions Closed to the Public: Discussion of internal personnel matters and Board committee meetings.

Contact Person: David Tevelin, Executive Director, State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314, (703) 684–6100 x214.

David I. Tevelin,

Executive Director.

[FR Doc. 03–18681 Filed 7–18–03; 10:06 am]

BILLING CODE 6820–SC–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Senior Executive Service Performance Review Boards Membership

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Notice of Performance Review Board (PRB) Appointments.

SUMMARY: DOT publishes the names of the persons selected to serve on the various Departmental PRBs as required by 5 U.S.C. 4314(c)(4).

FOR FURTHER INFORMATION CONTACT: Mari Barr Santangelo, Deputy Assistant Secretary for Administration, (202) 366–2332.

SUPPLEMENTARY INFORMATION: The persons named below have been selected to serve on one or more Departmental PRBs.

Issued in Washington, DC, on July 15, 2003.

Mari Barr Santangelo,

Deputy Assistant Secretary for Administration.

Federal Railroad Administration

Jane H. Bachner, Deputy Associate Administrator for Industry and Intermodal Policy, Federal Railroad Administration.

Mark Yachmetz, Associate Administrator for Railroad Development, Federal Railroad Administration.

Margaret Reid, Associate Administrator for Administration and Finance, Federal Railroad Administration.

Christopher W. Strobel, Assistant to the Secretary for Policy, Office of the Secretary.

Judy Kaleta, Senior Counsel for Dispute Resolution, Office of the Secretary.

Delmas Johnson, Associate Administrator for Administration, National Highway Traffic Safety Administration.

Jerry Hawkins, Director, Office of Human Resources, Federal Highway Administration.

Federal Transit Administration

Barbara A. Sisson, Associate Administrator for Research, Demonstration and Innovation, Federal Transit Administration.

Drucella A. Andersen, Deputy Assistant Administrator for Public Affairs, Federal Aviation Administration.

Thomas Herlihy, Assistant General Counsel for Legislation, Office of the Secretary.

Linda J. Washington, Deputy Assistant Secretary for Administration, Office of the Secretary.

Office of the Inspector General

Thomas J. Bondurant, Assistant Inspector General for Investigations, Department of Justice.

Michael Phelps, Deputy Assistant Inspector General for Auditing, Department of Housing and Urban Development.

Judith J. Gordon, Assistant Inspector General for Systems Evaluation, Department of Commerce.

Dennis Duquette, Deputy Inspector General for Audit Services, Department of Health and Human Services.

Adrienne Rish, Assistant Inspector General for Investigations, Agency for International Development.

Joseph R. Willever, Deputy Inspector General, Office of Personnel Management.

Elissa Karpf, Assistant Inspector General for Planning, Analysis, & Results, Environmental Protection Agency.

Gregory S. Seybold, Assistant Inspector General for Investigations, Department of Agriculture.

Carol L. Levy, Assistant Inspector General for Investigations, Defense Criminal Investigative Service.

National Highway Traffice Safety Administration

Marilena Amoni, Associate Administrator for Program Development and Delivery, National Highway Traffic Safety Administration.

Joseph Kanianthra, Associate Administrator for Applied Research, National Highway Traffic Safety Administration.

Noble Bowie, Director, Office of Planning and Consumer Standards, National Highway Traffic Safety Administration.

Susan McLaughlin, Director, Office of Communications and Consumer Information, National Highway Traffic Safety Administration.

Neil Eisner, Assistant General Counsel for Regulation and Enforcement, Office of the Secretary.

Federal Highway Administration

Arthur Hamilton, Associate Administrator for Federal Lands Highway, Federal Highway Administration.

Charles Nottingham, Associate Administrator for Policy, Federal Highway Administration.

Gene Fong, Director of Field Services—East, Federal Highway Administration.

Michael J. Vecchietti, Associate Administrator for Administration, Federal Highway Administration.

Charlotte Adams, Associate Administrator for Planning, Federal Transit Administration.

Kenneth Weinstein, Associate Administrator for Enforcement, National Highway Traffic Safety Administration.

Maritime Administration

Robert B. Ostrom, Chief Counsel, Maritime Administration.

Eileen Roberson, Associate Administrator for Administration, Maritime Administration.

James E. Caponiti, Associate Administrator for National Security, Maritime Administration.

Jean E. McKeever, Associate Administrator for Shipbuilding, Maritime Administration.

Jerry A. Hawkins, Director, Office of Human Resources, Federal Highway Administration.

Office of the Secretary, Bureau of Transportation Statistics

Sean M. Moss, Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary.

William J. Chang, Associate Director for Information Systems, Bureau of Transportation Statistics.

Phyllis F. Scheinberg, Deputy Assistant Secretary for Budget and Programs, Office of the Secretary.

Paul Gretch, Director, Office of International Aviation, Office of the Secretary.

Randall Bennett, Director, Office of Aviation and International Economics, Office of the Secretary.

Roberta D. Gabel, Assistant General Counsel for Environmental, Civil Rights, and General Law, Office of the Secretary.

Patricia A. Prosperi, Director, Office of Transportation and Facilities, Office of the Secretary.

Delmas Johnson, Associate Administrator for Administration, National Highway Traffic Safety Administration.

Jean E. McKeever, Associate Administrator for Shipbuilding, Maritime Administration.

Research and Special Programs Administration

Stacy L. Gerard, Associate Administrator for Pipeline Safety, Research and Special Programs Administration.

Sean M. Moss, Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary.

Patricia A. Prosperi, Director, Office of Transportation and Facilities, Office of the Secretary.

Roberta D. Gabel, Assistant General Counsel for Environmental, Civil Rights, and General Law, Office of the Secretary.

James J. Zok, Associate Administrator for Financial Approvals and Cargo Preference, Maritime Administration.

Federal Motor Carrier Safety Administration

Terry T. Shelton, Director, Office of Information Management, Federal Motor Carrier Safety Administration.

Brian McLaughlin, Senior Associate Administrator for Traffic Injury Control, National Highway Traffic Safety Administration.

Jackie Glassman, Chief Counsel, National Highway Traffic Safety Administration.

Marilena Amoni, Associate Administrator for Program Development and Delivery, National Highway Traffic Safety Administration.

Arthur Hamilton, Associate Administrator for Federal Lands Highway, Federal Highway Administration.

Bruce J. Carlton, Associate Administrator for Policy and International Trade, Maritime Administration.

[FR Doc. 03–18609 Filed 7–21–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–42]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains the dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Vanessa Wilkins, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–8029.

This notice is published pursuant to 14 CFR sections 11.85 and 11.91.

Issued in Washington, DC, on July 17, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2002–12734.

Petitioner: Aerovias Nacionales De Columbia SA.

Section of 14 CFR Affected: 14 CFR part 145.47(b).

Description of Relief Sought/Disposition: To permit Avianca to substitute the calibration standards of the Physikalish-Technische Bundesanstalt, the national standards organization of Germany, for the calibration standards of the U.S. National Institute of Standards and Technology when testing its Hocherl and Hackl GmbH electronic load testing equipment. *Grant, 7/01/2003, Exemption No. 8082.*

Docket No.: FAA–2003–14893.

Petitioner: Mr. Michael Dickerson, Jr.

Section of 14 CFR Affected: 14 CFR part 65.71(a)(2).

Description of Relief Sought/Disposition: To permit the eligibility for a mechanic certificate and associated ratings, even though the petitioner is hearing impaired and unable to speak the English language. *Grant, 6/24/2003, Exemption No. 8079.*

Docket No.: FAA–2003–14797.

Petitioner: Kawasaki Heavy Industries, Ltd.

Section of 14 CFR Affected: 14 CFR part 145.47(b).

Description of Relief Sought/Disposition: To permit Kawasaki to use the measurement standards of the National Research Laboratory of Metrology and the Electrotechnical Laboratory, Japan's national standards organizations, instead of the measurement standards of the U.S. National Institute of Standards and Technology to calibrate its test and inspection equipment. *Grant, 7/01/2003, Exemption No. 8081.*

Docket No.: FAA–2003–14756.

Petitioner: Capitol Wings Airline, Inc.

Section of 14 CFR Affected: 14 CFR part 145.37(b).

Description of Relief Sought/Disposition: To permit Capitol Wings Airline, Inc., doing business as Bergstrom Airmotive, Inc., to qualify for a part 145 repair station certificate without having suitable permanent housing for at least one of the heaviest aircraft within the weight class for the rating it seeks. *Grant, 7/01/2003, Exemption No. 8083.*

[FR Doc. 03–18626 Filed 7–21–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 195: Flight Information Services Communications (FISC)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 195 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 195: Flight Information Services Communications (FISC).

DATES: The meeting will be held August 12–14, 2003, starting at 8:30 a.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street NW., Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 195 meeting. The agenda will include:

- August 12:
- Opening Plenary Session (Welcome and Introductory Remarks, Approxal of Agenda, Approval of Minutes, Review of Action Items)
- Review and Disposition—Final Review and Comment (FRAC) comments on draft DO–267A, Minimum Aviation System Performance Standards, (MASPS) for Flight Information Services—Broadcast (FIS–B) Data Link
- August 13:
- Continue Review and Disposition of FRAC Comments on draft DO–267A
- August 14:
- Continue Review and Disposition of FRAC comments on draft DO–267A
- Approve final draft DO–267A and forward to RTCA Program Management Committee
- Closing Plenary Session (Review Action Items: Discussion of Future Workplan, Other Business, Date and Place of Next Meeting, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 11, 2003.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 03–18629 Filed 7–21–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Use the Revenue From a Passenger Facility Charge (PFC) at Hartsfield Atlanta International Airport, Atlanta GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Hartsfield Atlanta International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 21, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta District Office, Campus Building, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Art Bacon, Aviation Business Manager of the City of Atlanta's Department of Aviation at the following address: Art Bacon, Aviation Business Manager, City of Atlanta, Department of Aviation, P.O. Box 20509, Atlanta, GA 30320–2509.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Atlanta under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Terry Washington, P.E., Program Manager, Atlanta Airports District Office, Campus Building, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747, Telephone Number: 404–305–7143. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at ATL under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 if the Federal Aviation Regulations (14 CFR part 158).

On Tuesday, July 15, 2003, the FAA determined that the application to use the revenue from a PFC submitted by the City of Atlanta was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 14, 2003.

The following is a brief overview of the application.

PFC Application No.: 03–05–U–00–ATL.

Level of the PFC: $3.00.

Charge effective date: May 1, 2005.

Proposed charge expiration date: October 1, 2013.

Total estimated PFC revenue: $353,487,490.

Brief description of proposed project(s): Airport Access Roadway; Consolidated Rental Car Facility (CONRAC) Automated People Mover System.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) when enplaning revenue passengers in limited, irregular, special service operations.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Atlanta's Department of Aviation.

Issued in Atlanta, Georgia on Tuesday, July 15, 2003.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 03–18627 Filed 7–21–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Southwest International Airport, Fort Myers, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Southwest Florida Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 21, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando, Florida 32822–5024.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Debra Lemke, Senior Manager—Governmental Affairs of the Lee County Port Authority at the following address: 16000

Chamberlain Parkway, Suite 8671, Ft. Myers, Florida 33913–8899.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Lee County Port Authority under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Juan C. Brown, Program Manger, Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando, Florida 32822–5024, (407) 812–6331 ext 18. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue a PFC at Southwest Florida International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 14, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by Lee County Port Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 29, 2003.

The following is a brief overview of the application.

PFC Application No.: 03–05–C–00–RSW.

Level of the proposed PFC: $4.50.

Proposed charge effective date: March 1, 2011.

Proposed charge expiration date: April 1, 2017.

Total estimated net PFC revenue: $104,801,531.

Brief description of proposed project(s):

Design and Construction of new Midfield Terminal.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Lee County Port authority.

Issued in Orlando, Florida on July 14, 2003.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 03–18628 Filed 7–21–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Using SAE ARP5526, Aircraft Seat Design Guidance and Clarifications, in Seat Design Approvals

AGENCY: Federal Aviation Administration (DOT).

ACTION: Notice of availability of final policy.

SUMMARY: The FAA announces the availability of the final policy explaining how the Society of Automotive Engineers' (SAE) Aerospace Recommended Practice (ARP) 5526, Aircraft Seat Design Guidance and Clarifications, can be used in seat design approvals.

DATE: The Aircraft Engineering Division and the Transport Airplane Directorate's seat design policy memorandum referencing SAE ARP5526 approval date is June 26, 2003.

FOR FURTHER INFORMATION CONTACT: Hal Jensen, FAA, Aircraft Certification Service, Aircraft Engineering Division, Technical Programs Branch, Room 835, 800 Independence Avenue, SW., Washington DC 20591; telephone: (202) 267–8807; fax: (202) 267–5340; e-mail: *hal.jensen@faa.gov*, or contact Jeff Gardlin, FAA, Transport Airplane Directorate, Transport Standards Staff, Airframe and Cabin Safety Branch, ANM–115, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2136; fax (415) 227–1149; e-mail: *jeff.gardlin@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Recently the SAE published ARP5526, Aircraft Seat Design Guidance and Clarifications. In an effort to streamline the certification of aircraft seats, the Aircraft Engineering Division, in concert with the Transport Airplane Directorate, issued a June 26, 2003, policy memorandum recommending seat suppliers and seat installers use SAE ARP5526 to the maximum extent possible in the design and approval of aircraft seats. SAE ARP5526 provides clarification and documents existing guidance and practice for complying with some of the requirements of the Technical Standard Orders (TSO), and the applicable certification airworthiness requirements for aircraft seat approvals. Note that SAE ARP5526 does not impose additional criteria to show compliance to the aircraft seat TSOs or the applicable certification requirements.

How To Obtain Copies

A copy of the policy memorandum may be obtained via the Internet at, *http://www.airweb.faa.gov/RGL*, or by contacting either person listed in the section titled **FOR FURTHER INFORMATION CONTACT.**

You can buy copies of SAE ARP5526 from SAE World Headquarters, 400 Commonwealth Drive, Warrendale, PA 15096–0001; telephone (877) 606–7323 (United States and Canada only), or (724) 776–4970 (outside the United States and Canada), fax (724) 776–0790. You can also get copies through the SAE Internet Web site at, *http://www.sae.org*.

Issued in Washington, DC, on July 14, 2003.

David W. Hempe,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 03–18516 Filed 7–21–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM–03–115–31]

Conducting Component Level Tests To Demonstrate Compliance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed policy; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed policy on conducting component level tests in order to demonstrate compliance with the requirements of § 25.785(b) and (d).

DATES: Send your comments on or before August 21, 2003.

ADDRESSES: Address your comments to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Jim Cashdollar, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airframe and Cabin Safety Branch, ANM–115, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2785; fax (425) 227–1149; e-mail: *jim.cashdollar@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed policy is available on the Internet at the following address: *http://www.airweb.faa.gov/rgl*. If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

The FAA invites your comments on this proposed policy. We will accept your comments, data, views, or arguments by letter, fax, or e-mail. Send your comments to the person indicated in **FOR FURTHER INFORMATION CONTACT.** Mark your comments, "Comments to Policy Statement No. ANM–03–115–31."

Use the following format when preparing your comments:

- Organize your comments issue-by-issue.
- For each issue, state what specific change you are requesting to the proposed policy.
- Include justification, reasons, or data for each change you are requesting.

We also welcome comments in support of the proposed policy.

We will consider all communications received on or before the closing date for comments. We may change the proposed policy because of the comments received.

Background

The policy memorandum provides FAA certification policy on conducting compliance level tests in order to demonstrate compliance with the requirements of § 25.785(b) and (d). The tests described herein provide a standardized approach by which each potentially injurious item located within the headstrike zone can be assessed for occupant injury potential. These test methods are the product of an Aviation Rulemaking Advisory Committee recommendation and are harmonized with the Joint Aviation Authorities (JAA) and Transport Canada.

Issued in Renton, Washington, on July 7, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–18517 Filed 7–21–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM–03–115–05]

No Smoking Placards and Signs

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of final policy.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of final policy on no-smoking placards.

DATES: This final policy was issued by the Transport Airplane Directorate on July 7, 2003.

FOR FURTHER INFORMATION CONTACT: Michael T. Thompson, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airframe and Cabin Safety Branch, ANM–115, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–1157; fax (425) 227–1149; e-mail: *michael.t.thompson@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion of Comments

A notice of proposed policy as published in the **Federal Register** on March 17, 2003 (68 FR 12735). No comments were received.

Background

The policy further simplifies the certification process pertaining to the requirement for no-smoking placards legible to each occupant seated in compartments where smoking is prohibited. The FAA has determined that a lighted sign can be considered a placard if it is continuously illuminated for the occupants. These signs should illuminate without the cockpit or cabin crew having to turn the signs on, which the airplane's normal electrical power is on or by providing equivalent control of the signs by software. The policy allows the signs to not be operable by the crew by documenting an equivalent safety finding.

The final policy is available on the Internet at the following address: *http://www.airweb.faa.gov/rgl*. If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Renton, Washington, on July 7, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–18519 Filed 7–21–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–03–15687; Notice 1]

Ford Motor Company; Receipt of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 103

We are asking for comments on the application by Ford Motor Company ("Ford") of Dearborn, Michigan, for a temporary exemption from Motor Vehicle Safety Standard (FMVSS) No. 103, Defrosting and Defogging Systems. Ford asserted that compliance would prevent it from selling a motor vehicle whose overall level of safety is at least equal to that of a non-exempted vehicle.

We are publishing this notice of receipt of the application in accordance with our regulations on the subject. This action does not mean that we have made a judgment yet about the merits of the application.

The Motor Vehicle for Which a Temporary Exemption Is Sought

Ford is the manufacturer of the Lincoln Town Car. This motor vehicle is planned to be made available in a "Ballistic Protection Series (BPS)." It will be equipped with a windshield that is 40.68 mm thick, as contrasted with the standard Town Car's windshield of 4.9 mm thickness. The company related that "this thickness and the associated heat transfer properties are engineered to provide protection from impacts by certain rifle rounds * * * Ford does not envision producing more than 300 Town Car BPS Series in any calendar year.

How the Town Car BPS Fails To Comply With FMVSS No. 103

Paragraph S4.2 of FMVSS No. 103 establishes defrosting requirements for passenger car windshields. Ford related that "At this time clearance of the windshield in the time required under FMVSS 103 S4.2 can only be met with the usage of the washer fluid."

Arguments Presented by Ford Demonstrating That the Town Car BPS Provides an Overall Level of Safety at Least Equal to a Non-Exempted Motor Vehicle

To maximize the defroster performance, the special windshield of the BPS is equipped with an embedded electrical grid. Ford's laboratory tests show that the windshield can, in fact, be cleared within the time required by S4.2 "by using both the defroster (including the hot air system and the embedded electrical grid in the windshield) and the windshield washer system." The information provided with the vehicle will advise the vehicle operator to use the combined approach in defrosting the windshield. However, Ford anticipates that these special purpose vehicles are more likely to be garaged than parked in the open, and that the need to operate the defroster system will be minimal.

Arguments Presented by Ford as to Why a Temporary Exemption Would Be in the Public Interest and Consistent With Objectives of Motor Vehicle Safety

The windshield of the Lincoln Town Car BPS differs from those of armored vehicles produced by other manufacturers in that it will provide "a bullet resistant environment against rifle level threats," as contrasted with "handgun level" threats. According to Ford, "Customers, including certain agencies of the U.S. Government, have expressed a need for vehicles with this level of protection for vehicle occupants." Ford argued that its product will enhance the safety "for those individuals that are either government officials or certain other high profile individuals that are at a higher level of risk for terrorist attacks or assassination attempts." Orders have already been placed by the General Services Administration (GSA) on behalf of two government entities. To emphasize the minimal nature of the noncompliance, Ford enclosed a copy of its test report indicating passage of S4.2 using washer fluid, which has been placed in the docket.

How You May Comment on Ford's Application

If you would like to comment on the application, please do so in writing, in duplicate, referring to the docket and notice number, and mail to: Docket Management, National Highway Traffic Safety Administration, room PL–401, 400 Seventh Street, SW, Washington, DC 20590.

We shall consider all comments received before the close of business on the date indicated below. Comments are available for examination in the docket in room PL–401 both before and after that date, between the hours of 10 a.m. and 5 p.m. To the extent possible, we also consider comments filed after the closing date. We will publish our decision on the application, pursuant to the authority indicated below.

Comment closing date: August 21, 2003.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on July 16, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–18512 Filed 7–21–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety, Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before August 21, 2003.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs, Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 75h Street, SW., Washington, DC 20590 or at *http://dms.dot.gov*.

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on July 15, 2003.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials, Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
13262–N		Symmetricom, Inc., Beverly, MA.	49 CFR 172.400(a), 172.500, 173.211(a), 175.3.	To authorize the transportation in commerce of certain cesium devices consisting of an inner cylinder enclosed within an outer stainless steel, welded, hermetically sealed cylinder containing Division 4.3 hazardous materials. (modes 1, 2, 3, 4, 5)
13263–N		Air Products & Chemical, Inc., Allentown, PA.	49 CFR 173.192, 173.201, 173.202, 173.203, 173.226, 173.227, 173.301(f), 173.302(a), 173.304a(a)(2).	To authorize the manufacture, mark, sale and use of non-DOT specification, full removable head salvage cylinders for use in overpacking damaged or leaking packages of pressurized and non-pressurized hazardous materials. (mode 1)
13264–N		Trinity Manufacturing, Inc., Hamlet, NC.	49 CFR 172.101, Col 7, SP B14, 173.244.	To authorize the transportation in commerce of non-DOT specification portable tank mounted in an ISO frame that complies with the IMO Type 5 specification and built to ASME Code for use in transporting chloropicrin, Division 6.1. (modes 1, 3)
13265–N		Aeropres Corporation Shreveport, LA.	49 CFR 173.315	To authorize the transportation in commerce of dimethyl ether, in MC–331 cargo tanks with a minimum design pressure of 175 psig. (mode 1)
13266–N		Luxfer Gas Cylinders Riverside, CA.	49 CFR 173.301(h), 173.302(a), 178.46(a)(4), 178.46(c)(i).	To authorize the manufacture, marking, sale and use of non-DOT specification hoop wrapped composite cylinder conforming to DOT FRP–2 for use in storing medical gases. (mode 1)

NEW EXEMPTIONS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
13268–N		Ciba Speciality Chemicals McIntosh, AL.	49 CFR 177.834(i)(3)	To authorize an alternative attendance requirement of cargo tanks during loading and unloading of various classes of hazardous materials. (mode 1)
13269–N		Brenntag Mid-South, Inc., Henderson, KY.	49 CFR 173.301(f)	To authorize the one-way transportation in commerce of anhydrous amonia in DOT specification cylinders equipped with emergency kits to prevent leakage during transportation. (mode 1)

[FR Doc. 03–18607 Filed 7–21–03; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g., to provide for additional hazardous materials, packaging design changes, additional mode of transportation, *etc.*) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before August 6, 2003.

Address Comments To: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW., Washington, DC or at *http://dms.dot.gov*.

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC on July 15, 2003.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials, Exemptions and Approvals.

Application No.	Docket No.	Applicant	Modification of exemption
7041–M		Albemarle Corporation, Baton Rouge, LA (*See* Footnote 1)	7041
8723–M		Dyno Nobel, Inc., Salt Lake City, UT (*See* Footnote 2)	8723
8815–M		Austin Powder Company, Cleveland, OH (*See* Footnote 3)	8815
10880–M		Austin Powder Company, Cleveland, OH (*See* Footnote 4)	10880
10996–M		Kosdon Enterprises, Ventura, CA (*See* Footnote 5)	10996
11494–M		Atlantic Research Corp. (Auto Products Group), Knoxville, TN (*See* Footnote 6)	11494
12122–M	RSPA–98–4313	Atlantic Research Corp. (Auto Products Group), Knoxville, TN (*See* Footnote 7)	12122
12622–M	RSPA–01–8831	Atlantic Research Corp. (Auto. Products Group), Knoxville, TN (*See* Footnote 8)	12622
12677–M	RSPA–01–9375	Austin Powder Company, Cleveland, OH (*See* Footnote 9)	12677
12698–M	RSPA–01–9652	Integrated Environmental Services, Inc., Atlanta, GA (*See* Footnote 10)	12698

[1] To modify the exemption to authorize the transportation of a Division 4.2 and 4.3 material in non-DOT specification cargo tanks.

[2] To modify the exemption to authorize the transportation of an additional Division 5.1 material in motor vehicles and cargo tanks.

[3] To modify the exemption to authorize transportation by common or contract carrier of certain Division 1.5D explosives in a cement mixer type motor vehicle.

[4] To modify the exemption to authorize transportation by common or contract carrier of certain Division 1.1, 1.4 and 1.5 explosive materials in dedicated loads.

[5] To modify the exemption to authorize the transportation of a Division 1.4S material, when shipped in quantities and packagings authorized by the exemption.

[6] To modify the exemption to authorize the transportation of a Class 9 material in a non-DOT specification cylinder (pressure vessel) for use as a component of an automobile vehicle safety system.

[7] To modify the exemption to authorize transportation of a Class 9 material in a non-DOT specification cylinder (pressure vessel) for use as a component of an automobile vehicle safety system.

[8] To modify the exemption to authorize the transportation of a Class 9 material by contract carrier motor vehicle without the required shipping papers and placarding.

[9] To modify the exemption to authorize transportation by private carriage or contract carrier of certain Division 1.1, 1.4, 1.5, 5.1 and Class 8 materials.

[10] To modify the exemption to authorize transportation of a Class 4 material in a non-DOT specification salvage cylinder for overpacking damaged or leaking cylinders.

[FR Doc. 03–18608 Filed 7–21–03; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34076]

Los Angeles to Pasadena Blue Line Construction Authority d/b/a Los Angeles to Pasadena Metro Construction Authority—Acquisition Exemption—Los Angeles County Metropolitan Transportation Authority

Los Angeles to Pasadena Blue Line Construction Authority d/b/a Los Angeles to Pasadena Metro Construction Authority (Authority),[1] a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to acquire a rail line from the Los Angeles County Metropolitan Transportation Authority (LACMTA).[2] The line consists of 20.0 miles of rail line between milepost 104.2 and milepost 124.2 on the Pasadena Subdivision of The Burlington Northern and Santa Fe Railway Company (BNSF), in Los Angeles County, CA. Authority certifies that its projected revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier.

Authority indicates that it does not intend to conduct freight or commuter rail operations on the rail line,[3] that those operations will be conducted or otherwise provided by third parties,[4] and that all rights and obligations related to both freight and passenger service were reserved to LACMTA.

Authority states in its notice that the transaction was consummated on September 1, 1999, when it acquired the line from LACMTA. However, Authority did not seek regulatory authorization from the Board until the filing of this notice on June 24, 2003. Thus, the exemption became effective on July 1, 2003 (7 days after the notice was filed).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34076, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Charles A. Spitulnik, McLeod, Watkinson & Miller, One Massachusetts Avenue, NW., Suite 800, Washington, DC 20001.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: July 15, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–18578 Filed 7–21–03; 8:45 am]
BILLING CODE 4915–00–P

[1] Authority is a public agency existing under the authority of the laws of the State of California.

[2] LACMTA is the successor in interest to the former Los Angeles County Transportation Commission.

[3] Authority simultaneously filed a motion to dismiss this notice of exemption, arguing that it has purchased only physical assets associated with the line. The motion will be handled in a separate decision.

[4] BNSF will conduct the freight operations and the Southern California Regional Rail Authority will conduct the commuter operations.

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network; Proposed Collection; Comment Request; Money Services Business Survey

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, Financial Crimes Enforcement Network ("FinCEN"), has been engaged in a multi-year education program to disseminate information to the Money Services Business ("MSB") industry regarding regulations that require MSBs to register with FinCEN, and to file Suspicious Activity Reports. MSBs include money transmitters, issuers, sellers, and redeemers of money orders, traveler's checks, and stored value, check cashers, and currency exchangers. FinCEN places a high priority on effective and broad-reaching initiatives to facilitate the education of MSBs and their agents in their responsibilities under the Bank Secrecy Act. FinCEN proposes to conduct a survey that is intended to provide data that can be used to evaluate the success of the MSB education program, and to measure the extent to which the MSB industry's knowledge and understanding of the new regulations has changed since an initial survey was conducted in September, 2001. The survey will consist of questions contained in the September 2001 survey, as well as additional questions designed to gauge perceptions of the MSB education program and its overall effectiveness. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

DATES: Written comments are welcome and must be received on or before September 22, 2003.

ADDRESSES: Written comments should be submitted to: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, PO Box 39, Vienna, Virginia 22183, *Attention:* PRA Comments—MSB Survey. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.treas.gov*, with a caption in the body of the text, "*Attention:* PRA Comments—MSB Survey."

Inspection of comments. Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or requests for copies of the September 2001 survey and the additional questions to be asked in the survey that is the subject of this notice should be directed to: Anna Fotias, Senior Regulatory Compliance Specialist, MSB/Casino/IRS Program Office, FinCEN, at (202) 354–6400; Christine L. Schuetz, Attorney-Advisor, FinCEN, at (703) 905–3590.

SUPPLEMENTARY INFORMATION:

Title: Money Services Business Program Response.

OMB Number: New Collection.

Abstract: Telephone survey to be conducted with business owners and managers in the Money Services Business industry. Survey asks respondents to report on awareness of Bank Secrecy Act recordkeeping and reporting requirements and awareness of anti-money laundering basics, including how to identify suspicious activity.

Type of Review: New information collection.

Affected public: Business or other for-profit institutions.

Frequency: One time.

Estimated number of respondents: 600.

Estimated time per respondent: Fifteen minutes.

Request for Comments:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected: (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: July 10, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 03–18605 Filed 7–21–03; 8:45 am]
BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury is soliciting comments concerning the Alcohol Fuel Plants (AFP) Records, Reports and Notices.

DATES: Written comments should be received on or before September 22, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Alcohol Fuel Plants (AFP) Records, Reports and Notices.

OMB Number: 1513–0052.

Form Number: TTB F 5110.75.

Recordkeeping Requirement ID Number: TTB REC 5110/10.

Abstract: The data for this information collection is necessary to determine what persons are qualified to produce alcohol for fuel purposes and to identify such persons. It is also needed to account for distilled spirits produced, verify its proper disposition, keep registrations current and evaluate permissible variations from prescribed procedures. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 871.

Estimated Total Annual Burden Hours: 871.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 15, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–18569 Filed 7–21–03; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury is soliciting comments concerning the Importer's Records and Reports.

DATES: Written comments should be received on or before September 22, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Importer's Records and Reports.

OMB Number: 1513–0064.

Recordkeeping Requirement ID Number: TTB REC 5170/1.

Abstract: This recordkeeping requirement concerns the records which must be maintained by the importer. The records are used by TTB to verify that operations are being conducted in compliance with the law and to ensure that all taxes and duties have been paid on imported spirits, thus protecting the revenue. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Federal Government.

Estimated Number of Respondents: 500.

Estimated Total Annual Burden Hours: 251.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 15, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–18570 Filed 7–21–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury is soliciting comments concerning the Tobacco Export Warehouse, Records of Operations.

DATES: Written comments should be received on or before September 22, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristi Colon, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Tobacco Export Warehouse, Record of Operations.

OMB Number: 1513–0070.

Recordkeeping Requirement ID Number: TTB REC 5220/1.

Abstract: The records are maintained at the premises of the regulated individual and are routinely used by TTB personnel during field tax compliance examinations to verify that untaxpaid tobacco products are not being diverted to domestic consumption. This ensures that tax revenues are protected. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 221.

Estimated Total Annual Burden Hours: One (1).

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 15, 2003.

William H. Foster.

Chief, Regulations and Procedures Division.

[FR Doc. 03–18571 Filed 7–21–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury is soliciting comments concerning the Applications and Notices, Manufacturers of Nonbeverage Products.

DATES: Written comments should be received on or before September 22, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Applications and Notices, Manufacturers of Nonbeverage Products.

OMB Number: 1513–0072.

Recordkeeping Requirement ID Number: TTB REC 5530/1.

Abstract: The reports are used by TTB district personnel to ensure that the regulated individuals will conduct operations in compliance with the law and regulations. The applications and notices serve to protect the revenue by helping TTB personnel in determining if spirits on which drawback has been claimed have been diverted to beverage use. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it has been submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 640.

Estimated Total Annual Burden Hours: 640.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 15, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–18572 Filed 7–21–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury is soliciting comments concerning the Records of Things of Value to Retailers and Occasional Letter Reports From Industry Members Regarding Information on Sponsorships, Advertisements, Promotions, etc., Under the Federal Alcohol Administration Act.

DATES: Written comments should be received on or before September 22, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION: *Title:* Records of Things of Value to Retailers and Occasional Letter Reports From Industry Members Regarding Information on Sponsorships, Advertisements, Promotions, etc., Under the Federal Alcohol Administration Act.

OMB Number: 1513–0077.

Recordkeeping Requirement ID Number: TTB REC 5190/1.

Abstract: These records and occasional letter reports are used to show compliance with the provisions of the Federal Alcohol Administration Act which prevents wholesalers, producers, or importers from giving things of value to retail liquor dealers, and prohibits industry members from conducting certain types of sponsorships, advertising, promotions, etc. The retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 12,665.

Estimated Total Annual Burden Hours: 51.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 15, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–18573 Filed 7–21–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury is soliciting comments concerning the Application For Extension of Time For Payment of Tax.

DATES: Written comments should be received on or before September 22, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristi Colon, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Application For Extension of Time For Payment of Tax.

OMB Number: 1513–0093.

Form Number: TTB F 5600.38.

Abstract: TTB uses this information to determine if a taxpayer is qualified to extend payment of tax based on circumstances beyond the taxpayer's control. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 12.

Estimated Total Annual Burden Hours: 3.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 15, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–18574 Filed 7–21–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury is soliciting comments concerning the Supporting Data For Nonbeverage Drawback Claims.

DATES: Written comments should be received on or before September 22, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kristy Colon, Regulations and Procedures Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Supporting Data For Nonbeverage Drawback Claims.

OMB Number: 1513–0098.

Form Number: TTB F 5154.2.

Abstract: The form substantiates nonbeverage drawback claims by showing the use of taxpaid distilled spirits to manufacture nonbeverage products. The form is used in TTB district offices which verify that all distilled spirits can be accounted for and that drawback is paid only in the amount for the purposes authorized by law.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 590.

Estimated Total Annual Burden Hours: 3,540.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 15, 2003.

William H. Foster,

Chief, Regulations and Procedures Division.

[FR Doc. 03–18575 Filed 7–21–03; 8:45 am]

BILLING CODE 4810–31–P

Corrections

Federal Register

Vol. 68, No. 140

Tuesday, July 22, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

[OEI–2003–0026; FRL–7521–4]

Toxic Chemical Release Reporting; Alternate Threshold for Low Annual Reportable Amounts; Request for Comment on Renewal Information Collection

Correction

In notice document 03–16584 beginning on page 39071 in the issue of Tuesday, July 1, 2003, make the following correction:

On page 39072, in the first column, under the heading **DATES**, in the third and fourth lines, "July 31, 2003" should read, "September 2, 2003".

[FR Doc. C3–16584 Filed 7–21–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No.FAA–2003–15299; Airspace Docket No. 03–AWP–9]

Modification of Class E Airspace; Window Rock, AZ

Correction

In rule document 03–15526 beginning on page 36743 in the issue of Thursday, June 19, 2003 make the following correction:

§ 71.1 [Corrected]

On page 36744, in § 71.1, in the first column, under the heading "**AWP AZ E5 Window Rock, AZ [Revised]** " in the tenth line, "VARTAC" should read "VORTAC".

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Part II

Department of Housing and Urban Development

Homeless Management Information Systems (HMIS) Data and Technical Standards Notice; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 4848–N–01]

Homeless Management Information Systems (HMIS) Data and Technical Standards Notice

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice states the intent of HUD to implement Homeless Management Information Systems (HMIS).

DATES: *Comment Due Date:* September 22, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to Michael Roanhouse, Office of Special Needs Assistance Programs, Office of the Assistant Secretary for Community Planning and Development, Room 7262, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000. Comments should refer to the above docket number and title.

FOR FURTHER INFORMATION CONTACT: Michael Roanhouse, Office of Special Needs Assistance Programs, Office of the Assistant Secretary for Community Planning and Development, Room 7262, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–7000; telephone (202) 708–1226, ext. 4482 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

1. Introduction

This notice sets forth the Department's intention to implement Homeless Management Information Systems (HMIS). An HMIS is a computerized data collection application designed to capture client-level information over time on the characteristics and service needs of homeless persons. This notice presents background information on Congressional direction on improving homeless data collection and analysis at the local and national levels and specific statutorily based programmatic and planning requirements for addressing homeless needs. The notice also describes the benefits of developing an HMIS for: Homeless persons; local homeless assistance providers; local bodies that plan for and coordinate homeless services, known as Continuums of Care (CoC); and national policy makers. The notice provides detailed guidance on the development of data and technical standards that will allow local CoC to generate consistent reports so that the characteristics of homeless populations across the United States can be determined. The notice also describes how data are to be collected and safeguarded.

This notice is being published as a draft to permit CoC planning bodies, homeless service providers, local and state governments, advocates, and homeless clients an opportunity to review and comment on the proposed standards. The next two sections lay out Congressional direction to HUD on HMIS specifically and then on homelessness-related data collection generally.

It has been determined in concert with the Office of Management and Budget (OMB) that the information collection implicit in this notice requires OMB clearance. For purposes of the OMB clearance, this notice will serve as the 60-day **Federal Register** Notice under the Paperwork Reduction Act of 1995, as amended. The final report based on the public comments received on this draft version will include an estimate of burden for all potential users of the Notice. As an interim step, this draft version sets out below the existing HUD information collection requirements that HMIS will support when fully operational in American communities and the proposed paperwork burden already submitted to OMB for each:

Information collection*	Annual burden hours	Support entire collection	Support part of collection
Annual Performance Report (Competitive Programs)	200,000	X	
Application/Competitive Homeless Programs	203,280		X
Application/HOPWA	28,625		X
Consolidated Plan	549,925		X

Paperwork Reduction Act

The information collection requirements in this notice have been approved by the Office of Management and Budget (OMB) and assigned OMB control numbers 2506–0145, 2106–0112, 2506–0133, and 2506–0117, respectively. In accordance with the Paperwork Reduction Act of 1995 U.S.C. (44 U.S.C. 3501–3520), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

1.1. Congressional Direction on Homeless Management Information Systems

Expressions of Congressional concern for better homeless data collection and analysis at both the local and national levels has resulted in Congressional direction in conference and committee reports over the past several years. The Omnibus Appropriations Act of 2003 (Pub. L. 108–7, approved February 20, 2003), provides money to HUD to implement these responsibilities. The Act appropriated $1,225,000,000 to HUD for Homeless Assistance Grants and specifically provided "[t]hat $11,000,000 of the funds appropriated under this heading shall be available for the national homeless data analysis project." The Conference Report provided guidance as to some of the steps that HUD should take in implementing this project. Specifically, the report stated as follows:

> The conferees are concerned that the Department is not taking the proper steps to determine the extent to which HUD's homeless assistance programs are meeting the needs of chronically homeless people. Therefore, HUD is directed to begin collecting data on the percentage and number of beds and supportive services programs that are serving people who are chronically disabled and/or chronically homeless.
>
> The conferees reiterate the direction and reporting requirement included in the Senate report regarding the collection and analysis of data to assess the effectiveness of the homeless system, and direct that such report also include HUD's timeline for finalizing data requirements for the Homeless Management Information Systems.

The Senate Report referenced above states that:

> The Committee remains supportive of the Department's ongoing work on data collection and analysis within the homeless programs. HUD should continue its collaborative efforts with local jurisdictions to collect an array of data on homelessness in order to analyze patterns of use of assistance, including how people enter and exit the homeless assistance system, and to assess the effectiveness of the homeless assistance system. The Committee directs HUD to take the lead in working with communities toward this end, and to analyze jurisdictional data within one year. The Committee directs HUD to report on the progress of this data collection and analysis effort by no later than May 12, 2003. The Conference Report (H.R. Report 106–988) for Fiscal Year (FY) 2001 HUD.

Appropriations Act (Pub. L. 106–377, approved October 27, 2000), stated:

> The conferees reiterate and endorse language included in the Senate report regarding the need for data and analysis on the extent of homelessness and the effectiveness of McKinney Act programs * * *. The conferees concur with the importance of developing unduplicated counts of the homeless at the local level, as well as taking whatever steps are possible to draw inferences from this data about the extent and nature of homelessness in the nation as a whole.
>
> Likewise, the conferees agree that local jurisdictions should be collecting an array of data on homelessness in order to prevent duplicate counting of homeless persons, and to analyze their patterns of use of assistance, including how they enter and exit the homeless assistance system and the effectiveness of the systems. HUD is directed to take the lead in working with communities toward this end, and to analyze jurisdictional data within three years. Implementation and operation of Management Information Systems (MIS), and collection and analysis of MIS data, have been made eligible uses of Supportive Housing Program funds. The conferees direct HUD to report to the Committees within six months after the date of enactment of this Act on its strategy for achieving this goal, including details on financing, implementation, and maintaining the effort.

Congress directed HUD to take the lead in requiring every jurisdiction to have unduplicated client-level data within three years. The reasons for the emphasis and the specific directives on encouraging these systems were articulated in FY 2001 Senate Report 106–410:

> The Committee believes that HUD must collect data on the extent of homelessness in America as well as the effectiveness of the McKinney homeless assistance programs in addressing this condition. These programs have been in existence for some 15 years and there has never been an overall review or comprehensive analysis on the extent of homelessness or how to address it. The Committee believes that it is essential to develop an unduplicated count of homeless people, and an analysis of their patterns of use of assistance (HUD McKinney homeless assistance as well as other assistance both targeted and not targeted to homeless people), including how they enter and exit the homeless assistance system and the effectiveness of assistance.

Previously, in the FY 1999 HUD Appropriations Act, Congress had directed HUD to collect data from a representative sample of existing local HMIS. Specifically, House Report 105–610 states that HUD should:

> * * * collect, at a minimum, the following data: The unduplicated count of clients served; client characteristics such as age, race, disability status, units [days] and type of housing received (shelter, transitional, permanent); and services rendered. Outcome information such as housing stability, income, and health status should be collected as well.

In the FY 2001 HUD appropriations process, Senate Report 106–410 directed HUD to build on its earlier preliminary work with communities with an advanced HMIS and continue assessing data from these communities:

> * * * to continue on an annual basis to provide a report on a nationally representative sample of jurisdictions whose local MIS data can be aggregated yearly to document the change in demographics of homelessness, demand for homeless assistance, to identify patterns in utilization of assistance, and to demonstrate the effectiveness of assistance.
>
> * * * The Committee instructs HUD to use these funds to contract with experienced academic institutions to analyze data and report to the agency, jurisdictions, providers, and the Committee on findings.

1.2. Statutory Direction to HUD and Other Federal Agencies on Homeless Data Collection

Section 1.1 outlined Congressional direction relating to Homeless Management Information Systems—a subset of the more general Congressional mandates for homeless data collection. HUD, other federal agencies, and the Interagency Council on the Homeless are required under various statutory authorities and Congressional direction to collect extensive information about the nature and extent of homelessness. In addition, individual programs authorized under the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 *et seq.*) require the assessment of homeless needs, the provision of services to address those needs, and reporting on the outcomes of federal assistance in helping homeless people to become more independent. The major Congressional imperatives in HUD's McKinney-Vento Act programs are:

- Assessing the service needs of homeless persons;
- Ensuring that services are directed to meeting those needs;
- Assessing the outcomes of the services in nurturing efforts by homeless persons to become more self-sufficient; and
- Reporting to Congress on the characteristics and effectiveness of federal efforts to address homelessness.

Both individually and as a whole, these provisions provide statutory imperatives for collecting data on homeless individuals and their needs. This section progresses from the most general of the statutory authorities to the most specific programmatic authorities.

Interagency Council on the Homeless

The McKinney-Vento Homeless Assistance Act directs the Interagency Council on the Homeless (ICH) to undertake a number of tasks on interagency coordination, evaluation, and reporting that mandate the collection and dissemination of information on homeless individuals and their needs:

(a) Duties.

The Council shall—

(1) Review all federal activities and programs to assist homeless individuals;

(2) Take such actions as may be necessary to reduce duplication among programs and activities by federal agencies to assist homeless individuals;

(3) Monitor, evaluate, and recommend improvements in programs and activities to assist homeless individuals conducted by federal agencies, state and local governments, and private voluntary organizations;

* * * * *

(5) Collect and disseminate information relating to homeless individuals;

(6) Prepare the annual reports required in subsection (c)(2) of this section; (Section 203(a), McKinney-Vento Homeless Assistance Act).

Each federal agency is required to report to the Council a description of each program to assist homeless individuals and the number of homeless individuals served by the program, impediments to the use of the program by homeless individuals and to obtain services and benefits and efforts by the agency to increase homeless assistance services. The Council, in turn, is required to submit an annual report to the President and Congress that:

(A) Assesses the nature and extent of the problems relating to homelessness and the needs of homeless individuals;

(B) Provides a comprehensive and detailed description of the activities and accomplishments of the Federal Government in resolving the problems and meeting the needs assessed pursuant to subparagraph (A); (Section 203(a), McKinney-Vento Homeless Assistance Act)

In the following excerpt from the 2001 Senate Report on the HUD Appropriations Act, at page 53, Congress further directed the revitalized Council to assess how mainstream programs can prevent homelessness.

The committee also recognizes that homelessness cannot be ended by homeless assistance providers alone—it requires the involvement of a range of federal programs. Accordingly it has included $500,000 for the staffing of the Interagency Council on the Homeless. It instructs the Council specifically to require HUD, HHS, Labor, and VA to quantify the number of their program participants who become homeless, to address ways in which mainstream programs can prevent homelessness among those they serve, and to describe specifically how they provide assistance to people who are homeless * * *

Comprehensive Housing Affordability Strategy/Consolidated Plan

Every jurisdiction that receives funding from certain HUD programs (HOME, Community Development Block Grant, Housing Opportunities for Persons with AIDS, Emergency Shelter Grants) must submit a comprehensive housing strategy that includes a section dealing with homeless needs. Every jurisdiction is required to:

describe the nature and extent of homelessness, including rural homelessness, within the jurisdiction, providing an estimate of the special needs of various categories of persons who are homeless or threatened with homelessness, including tabular presentation of such information; and a description of the jurisdiction's strategy for (A) helping low-income families avoid becoming homeless; (B) addressing the emergency shelter and transitional housing needs of homeless persons (including a brief inventory of facilities and services that meet such needs within that jurisdiction); and (C) helping homeless persons make the transition to permanent housing and independent living. (Section 105(a)(2), Cranston-Gonzalez National Affordable Housing Act (42 U. S. C. 12701 *et seq.*)

The implementing regulations and administrative directions detail how the 50 States, Puerto Rico, the territories, and over 1000 metropolitan cities and urban counties present narratives and data tables on homeless needs, current services, and the plans to address and prevent homelessness.

HUD'S McKinney-Vento Act Program Requirements

The McKinney-Vento Act contains a consistent philosophy and an accompanying set of statutory mandates concerning the framework for assessing homeless needs and addressing them with appropriate services. The McKinney-Vento Act also recognizes the importance of ensuring confidentiality in recordkeeping and public disclosure of information concerning homeless persons seeking domestic violence shelter and services. In addition, all of HUD's McKinney-Vento Act assistance must be consistent with the local jurisdiction's Consolidated Plan.

Emergency Shelter Grant (ESG) Program

Each governmental and nonprofit recipient of Emergency Shelter Grant (ESG) funds is required to certify to HUD that it will undertake certain responsibilities regarding the provision of services, including that:

* * * * *

(3) It will assist homeless individuals in obtaining—

(A) Appropriate supportive services, including permanent housing, medical and mental health treatment, counseling, supervision, and other services essential for achieving independent living; and

(B) Other federal, state, local, and private assistance available for such individuals;

* * * * *

(5) It will develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under this subtitle and that the address or location of any family violence shelter project assisted under this subtitle will, except with written authorization of the person or persons responsible for the operation of such shelter, not be made public;

(6) activities undertaken by the recipient with assistance under this subtitle are consistent with any housing strategy submitted by the grantee in accordance with Section 105 of the Cranston-Gonzalez National Affordable Housing Act (Sections 415(c)(3), (5) and (6), McKinney-Vento Homeless Assistance Act).

Supportive Housing Program

The Supportive Housing Program (SHP) funds transitional and permanent supportive housing and supportive services only projects that require grant recipients to collect specific information from clients concerning their qualification for services, their service needs, and progress toward assisting clients to independent living. HUD requires projects to report on the number and characteristics of clients served and their outcomes.

The statute provides that—

(a) IN GENERAL—To the extent practicable, each project shall provide supportive services for residents of the project and homeless persons using the project, which may be designed by the recipient or participants.

(b) REQUIREMENTS—Supportive services provided in connection with a project shall address the special needs of individuals (such as homeless persons with disabilities and homeless families with children) intended to be served by a project (Section 425 (a) and (b), McKinney-Vento Homeless Assistance Act).

The McKinney-Vento Act requires every project in the Supportive Housing Program to conduct an on-going assessment of client needs for services and their availability for the client. This information is necessary to assess the progress of the project in moving clients to independent living and to report to HUD. In addition, special protections on confidentiality of recordkeeping involving persons provided domestic violence services are specified.

Section 426 of the McKinney-Vento Homeless Assistance Act provides that—

(c) REQUIRED AGREEMENTS—The Secretary may not provide assistance for any project under this subtitle unless the applicant agrees—

(1) To operate the proposed project in accordance with the provisions of this subtitle;

(2) To conduct an ongoing assessment of the supportive services required by homeless individuals served by the project and the availability of such services to such individuals;

(3) To provide such residential supervision as the Secretary determines is necessary to facilitate the adequate provision of supportive services to the residents and users of the project;

(4) To monitor and report to the Secretary on the progress of the project;

(5) To develop and implement procedures to ensure (A) the confidentiality of records pertaining to any individual provided family violence prevention or treatment services through any project assisted through this subtitle, and (B) that the address or location of any family violence shelter project assisted under this subtitle will not be made public, except with written authorization of the person or persons responsible for the operation of such project;

* * * * *

(7) To comply with such other terms and conditions as the Secretary may establish to carry out this subtitle in an effective and efficient manner.

Shelter Plus Care Program

The Shelter Plus Care (SPC) Program funds tenant-, sponsor-, and project-based rental assistance and rental assistance in connection with moderate rehabilitation for single room occupancy units in conjunction with supportive services funded from other sources for homeless persons with disabilities. Specific information is required to establish both the initial disability status of the client to enter the program and to ensure that appropriate supportive services are provided during the full term of the program to address the needs of the client and to meet the match requirement of the program.

* * * * *

Section 454(b) of the McKinney-Vento Homeless Assistance Act provides in part that—

(b) MINIMUM CONTENTS—The Secretary shall require that an application identify the need for the assistance in the community to be served and shall contain at a minimum—

* * * * *

(2) A description of the size and characteristics of the population of eligible persons;

* * * * *

(4) The identity of the proposed service provider or providers * * *;

(5) A description of the supportive services that the applicant proposes to assure will be available for eligible persons;

(6) A description of the resources that are expected to be made available to provide the supportive services required by section 453;

(7) A description of the mechanisms for developing a housing and supportive services plan for each person and for monitoring each person's progress in meeting that plan * * *

The McKinney-Vento Act also requires recipients to provide for ongoing client assessments and provision of needed services. Section 456 states that the Secretary may not approve assistance under this subtitle unless the applicant agrees—

(1) To operate the proposed program in accordance with the provisions of this subtitle;

(2) To conduct an ongoing assessment of the housing assistance and supportive services required by the participants in the program;

(3) To assure the adequate provision of supportive services to the participants in the program.

1.3 The Vision and the Development of a Local HMIS

The development of a local HMIS is about: (1) Bringing the power of computer technology to the day-to-day operations of individual service providers; (2) knitting together service providers in a more coordinated and effective service delivery system for the benefit of homeless clients; and (3) obtaining and reporting critical aggregate information about the characteristics and service needs of homeless persons. While some sophisticated service providers have developed in-house management information systems using technology of the time, many providers have not been able or willing to do so. Even those with working systems have not always been able to keep up with the latest technology. A number of communities have developed computer systems to manage large government programs (*e.g.*, New York, Philadelphia). Others have pioneered systems linking decentralized service providers around a centralized bed-registry (St. Louis) or other services, such as emergency utility assistance (Kansas City) or an information and referral system. In the mid-1990s, HUD and HHS supported a comprehensive planning effort to develop comprehensive intake and assessment software. While the Automated National Client-specific Homeless services Recording (ANCHoR) software developed as a result of that initiative did not meet expectations, much was learned from that effort.

Reflecting experiences at both local and national levels to develop and test first-generation HMIS software, today's most advanced HMIS software combines a number of functionalities to enhance individual service provider operations and to link providers together into a broader CoC data-sharing system. These functionalities include:

Client Profile: Client demographic data obtained at intake and exit.

Client Assessment: Information on clients' needs and goals, as well as case management or treatment plans.

Service Outcomes: Client-level data on services provided, progress, outcomes, and follow-up.

Information and Referral/Resource Directories: Timely data on the network of available services within the Continuum to determine eligibility and provide referrals. Some systems provide documentation and tracking of a referral from one provider to the next and messaging capability.

Operations: Operational functionality that permits staff to manage day-to-day activities, including bed availability, and incident reporting.

Accounting: Traditional accounting tools and special components to record service activity/expenditures against specific grants. Some systems have donor and fundraising elements.

All these functionalities provide local providers and agencies with the ability to generate reports on their internal operations and for various funders. Because each agency agrees to share certain information with the HMIS, there is also the ability to generate reports on the operations of the Continuum of Care system as a whole.

One of HUD's major goals in this HMIS initiative is to help individual homeless service providers access the very best computer technology to assist them in their day-to-day operations and to help increase the effective coordination of services in the Continuum of Care. To this end, HUD has developed several publications to assist local jurisdictions including: Homeless Management Information System Consumer Guide: A Review of Available HMIS Solutions, January 2003; and Homeless Management Information Systems: Implementation Guide, September 2002. These guides can be found at *http://www.hud.gov/offices/cpd/homeless/hmis/guide.*

The Benefits of an HMIS

An HMIS provides significant opportunities to improve access to, and delivery of, services for people experiencing homelessness. An HMIS can accurately describe the scope of homelessness and the effectiveness of efforts to ameliorate it. An HMIS can strengthen community planning and resource allocation.

Homeless Clients

An HMIS offers many benefits to persons seeking and receiving homeless assistance services. Homeless clients can benefit from more effective and streamlined referrals from on-line information and referral and service directories. Clients can benefit from enhanced intra-agency coordination. For example, advanced HMIS software has been developed that both calculates client eligibility for multiple programs and generates ready-to-sign applications for those programs.

If information about clients is shared across providers, these systems can be used to reduce the number of times that clients are required to complete intake forms and assessments. They also allow providers to coordinate and track activities and services more effectively within a locality, streamline the referral process, and improve case management services for homeless clients. Finally, homeless persons benefit from the Continuum of Care's ability to better understand their characteristics and needs as well as the system's effectiveness in responding to homelessness in general and the unique

needs of various homeless subpopulations.

Service Providers

An HMIS offers front-line service staff tools for providing more effective client services through improved referrals, interagency case management, and service coordination. At local discretion, an HMIS can be used as an operational tool to share assessments of client needs, to link clients to needed services from multiple providers, to track the provision of services across providers, and to determine the current location of clients within the service system. Many communities have already used HMIS in this way, and many more are likely to do so. Agency administrators can better manage operational information through ready access to a variety of agency, program, and client reports.

Through funding and technical assistance, HUD intends to help communities develop HMIS to facilitate service delivery.

The Local Continuum of Care

Policy makers and advocates benefit from access to CoC data that describe the extent and nature of homelessness and provide a greater understanding of service usage, effectiveness, and gaps. This information can be used to target limited resources and inform planning and policy decisions. Local CoCs can use HMIS to demonstrate the size and characteristics of their homeless population and current patterns of service use by that population, including access to mainstream services. CoCs can and should use analysis of HMIS data to demonstrate the need for additional resources to public and private funding sources. HMIS data can also be used to understand how to realign housing resources and service delivery within the CoC and how to create the links to mainstream programs that are essential to the prevention of homelessness and to sustaining formerly homeless people in permanent housing. Compared to other commonly used methods for gathering information on homeless persons, notably point-in-time census counts, HMIS present local CoCs with the opportunity to obtain significantly better data about homelessness in their communities and to analyze that information over time.

National Policy Makers

HMIS will also help national policy makers and advocates more effectively address homelessness. Congress has charged HUD with producing an Annual Homeless Assessment Report (AHAR) based on HMIS data. To carry out that responsibility, HUD is developing the national HMIS data and technical standards described in this notice. In addition, HUD will develop a representative sample of 80 jurisdictions and will help those jurisdictions develop their HMIS, collect good quality data, and conduct analysis to support unduplicated counts of homeless service users and their characteristics at the local level. Analysis of HMIS data from the 80-jurisdiction sample will form the core of the AHAR and will enable Congress and HUD to better understand the needs of homeless persons and target federal resources accordingly.

HUD also has responsibility for funding and monitoring several McKinney-Vento Act programs. HMIS will make it possible for HUD to request—and grantees to provide—information for Annual Progress Reports that will enable HUD to report program results to Congress and the American public as required by the Government Performance Results Act and to meet its administrative and program responsibilities.

1.4 Major HMIS Policy Decisions

A National Client—Level HMIS or Annual Progress Report (APR) Database Will Not Be Created

The HMIS initiative will include no federal effort to track homeless people and their identifying information beyond the local level. HUD has no plans to develop a national client-level database with personal identifiers of homeless service users, having concluded that such plans would create serious impediments to provider participation in local HMIS and to client recourse to local services. This consideration was weighed against the advantages of a national database with personal identifiers that could be used to more accurately identify mainstream service use by homeless persons and analyze data on the characteristics of homeless persons nationwide. It was decided that these objectives can be accomplished through analysis of de-identified HMIS data compiled from CoCs across the country.

Certain Data Must Be Collected by CoCs To Obtain an Unduplicated Count of Homeless Persons and To Fulfill Program Requirements

In order to obtain an unduplicated count of homeless persons at the CoC level, a data standard is proposed for all local HMIS that requires homeless clients be asked for personal identifying information, including name, date of birth, and Social Security number, when seeking housing or services. At the time that personal identifying information is collected from each client, he or she must be given an explanation of how the information will be used, how it will be protected, and the advantages of providing accurate information. Standards for notification about the purposes of data collection, non-disclosure, and protection of data are discussed in Part 4 of this notice.

Providers will be required to report the client-level data specified in this notice on a regular basis to a central data storage facility. The CoC will be responsible for aggregating the data and preparing an unduplicated local count of homeless persons. This body must also retain the data for a period of five years adhering to the security provisions set forth in Part 4 of this notice.

In addition to data required for creating unduplicated counts, HUD, other federal agencies, state and local governments, and private funders of homeless services often require certain information to determine eligibility for housing or services or to assess needed services. This eligibility-related information is often statutory and/or regulation-based and is contained in provider agreements. Therefore, some providers are required to obtain certain information from homeless persons as a condition for receiving services. (See HUD's McKinney-Vento Act client-eligibility and assessment program requirements above.) Exceptions to this requirement may occur in outreach programs to the street homeless or other nonresidential-based services such as soup kitchens. In such cases, an intake is often not taken, or even possible, and no information is required to access the service. It is not HUD's intention that clients be denied service if they refuse to supply identifying information.

Sharing of HMIS Data Among Providers Is Encouraged But Not Required

While local providers will be required to report a limited amount of client-level data to a CoC's central data storage facility on a regular basis, sharing of HMIS data among providers within the CoC is not required by HUD and is at the discretion of each CoC. CoCs that share data may choose to share all of the information that is collected about clients or limit that information to a small number of data elements. If the CoC decides to share limited data among providers, it should allow access to at least the name, Social Security number, and birthdate of the persons served in order to determine whether the individual who is applying for services was previously served within the CoC.

Sharing of HMIS information among providers within a CoC allows local providers and clients to obtain maximum benefits from such systems. From an operational perspective, it improves the ability of service provider staff to coordinate and deliver services to homeless clients. From a policy and research perspective, sharing enables the CoC to obtain most efficiently and accurately an unduplicated count of homeless persons at the CoC level, analyze its needs and service patterns, and determine the extent to which mainstream programs are serving homeless persons.

Regardless of whether sharing among providers occurs or not, protected personal identifiers must be encrypted within the HMIS using the highest current standards. Unencrypted data should only be accessible through the local HMIS application at the site. Encryption standards are discussed in Part 4 of this notice.

Special Provisions for Domestic Violence Shelters

Domestic violence shelters and other programs targeting victims of domestic violence play an important role in many CoCs and have received significant funding through local Continuums. Domestic violence victims are also served in many general purpose emergency and transitional facilities funded by HUD. HUD is aware of, and is sensitive to, the data confidentiality and security concerns that many domestic violence shelters have with respect to their participation in a local HMIS. HUD is also aware of a range of provider practices and protocols for collecting intake and other information from clients who are victims of domestic violence.

As mentioned in Section 1.2, the ESG and SHP programs have specific domestic shelter/victims protections. These programs must still aggregate basic demographic and other information to submit to the ESG Integrated Disbursement and Information System (IDIS) and/or the SHP Annual Progress Report. The key to many domestic shelters' participation in existing HMIS hinges on the availability of sophisticated specific HMIS software that addresses data security issues and the protocols for data security, confidentiality, and sharing developed at the local level.

At a minimum, HUD will not expect a domestic violence shelter it funds to participate in a local HMIS where HMIS software or data protocols raise a significant risk to its clients. In addition, providers of homeless assistance services will not be required to report personal identifying information for victims of domestic violence or for people in witness protection programs to a central storage facility given the unique concerns about personal safety for these populations. However, providers will be expected to provide unduplicated project-level data about participant characteristics without personal identifiers.

It should be emphasized that HMIS have the potential for providing valuable data concerning domestic violence victims' needs at the local and national levels. HUD invites continued dialogue with domestic violence shelters and advocates concerning appropriate national data and technology standards to protect domestic violence victims and encourage participation in local HMIS, thus extending HMIS benefits to victims of domestic violence.

1.5 Who Must Participate in Homeless Management Information Systems

Given the benefits of an HMIS for improving housing and service provision at the local level and providing accurate estimates of the homeless population and its needs, all recipients of HUD McKinney-Vento Act program funds are expected to participate in an HMIS. The HUD McKinney-Vento Act programs include Emergency Shelter Grants, Supportive Housing Program, Shelter Plus Care, and Section 8 Moderate Rehabilitation for Single Room Occupancy (SRO). In the FY 2003 funding notices for the Supportive Housing, Shelter Plus Care, and Section 8 SRO Moderate Rehabilitation programs, HUD announced that providing data to an HMIS is a condition of funding for grantees. It is expected that all recipients of Housing Opportunities for Persons with AIDS (HOPWA) funding whose projects intentionally target assistance, conduct outreach, and/or conduct other specialized efforts to serve HOPWA eligible persons who are homeless, should ensure that reporting on assistance to these persons is integrated within the area's HMIS efforts. HOPWA projects that serve homeless persons are expected to, and strongly encouraged to, participate in the area's HMIS.

The annual CoC application requires information about a CoC's progress in developing and implementing its HMIS. This information is used to rank CoCs in order to determine annual program funding. The application questions will be more detailed in the future to make possible an accurate determination of the extent of coverage and stage of implementation of each HMIS.

Recipients of funds under most HUD McKinney-Vento Act programs and HOPWA are required to submit Annual Progress Reports (APRs) to HUD. In the future, much of the information to be included in APRs will be derived from HMIS data. This will be possible since guidelines for reporting to the APR will reflect the data standards set forth in this notice and used in the HMIS. HUD will also be considering the value of automatic submission of aggregate APR data. For ESG and HOPWA grantees and recipients who are covered under the area's Consolidated Plan, performance reporting involves the annual submission of a Comprehensive Annual Performance Evaluation Report (CAPER) along with the use of the Department's Integrated Disbursement and Information System (IDIS). HMIS will also provide a valuable tool to communities to provide the basic data that will be used to inform the performance reports used for these formula programs.

HUD may at some point use an APR driven by HMIS data to measure the performance of both McKinney-Vento Act program grantees and CoC more generally. Should that occur, performance indicators would be developed through a process of consultation with providers of services to homeless persons. Performance indicators would need to be carefully designed to include appropriate adjustments for the characteristics of the population served by a CoC and individual providers and the nature of the services provided. CoC grantees and software developers would be given sufficient time to adopt enhancements to their systems to accommodate these new outcome indicators.

1.6 Staging of Local HMIS Implementation

HUD recognizes that developing and implementing an HMIS is a difficult and time-consuming process and must necessarily be done in stages. A CoC's first priority is to bring on board the emergency shelters and transitional housing programs that receive HUD McKinney-Vento Act funding. However, HUD also encourages CoCs to actively recruit providers that receive HUD funding through sources other than the McKinney-Vento Act. These providers should be included in the HMIS as early as possible.

Other federal agencies that fund McKinney-Vento Act programs have their own data collection and reporting requirements. Key federal agency representatives were invited and participated in consideration of proposed HMIS data elements for this

notice. HUD continues to work with those agencies to maximize standardization of McKinney-Vento Act reporting requirements and to broaden adoption of HMIS-based data.

The inclusion of any other local homeless assistance programs in an HMIS is encouraged, but it is a matter of local choice and will depend on the nature of the local service system. The decision to include other programs may require local HMIS designers to make trade-offs between the desirability of including as many homeless service providers as possible and the feasibility of obtaining high quality data. At the same time, given the benefits of HMIS to clients, service providers, and the larger CoC system, a high degree of coverage is both desirable and advantageous.

As the later standards indicate, HUD does not expect every CoC to implement the widest range of functionality for every homeless shelter and service provider in the short-run. HUD encourages CoCs to focus initially on developing demographic information about homeless clients. However, it should be noted that client assessment and service outcome modules are valuable tools to track client needs and progress. This greater level of data collection will enhance the ability of individual providers and CoCs to document client needs and ensure program requirements are met.

BILLING CODE 4210–29–P

Priority Participation* in HMIS

By Program Type

		Residential				
		Emergency	Transitional	Permanent Supportive Housing	Homeless Prevention	Outreach To Street
McKinney Vento HUD Programs	Supportive Housing	1	1	2	NA	1
	Shelter Plus Care	NA	NA	2	NA	NA
	Section 8 Single Room Occupancy	NA	NA	2	NA	NA
	Emergency Shelter Grants	1	1	NA	3	NA
Other HUD Homeless Programs	Housing Opportunities for Persons with AIDS	1	1	2	NA	1
	Community Development Block Grants	1	1	NA	NA	1
	HOME	NA	1	2	NA	NA
Other Federal Programs	Emergency Food and Shelter (FEMA)	1	1	NA	3	NA
	Runaway and Homeless Youth (HHS)	1	1	NA	NA	1
	Projects for Assistance in Transition from Homelessness (PATH)(HHS)	1	1	NA	NA	1
	Traditional Living for Homeless Youth (HHS)	NA	1	NA	NA	NA
	Family Violence Prevention and Services (HHS)	1	1	NA	NA	1
	Health Center Grants for Homeless Persons (Health Care for the Homeless)(HHS)	NA	NA	NA	NA	1
	Violence Against Women Grants (DOJ)	1	1	NA	NA	1
	VA Homeless Providers Grants and Per Diem	1	1	NA	NA	1
	Non Federally Funded Service Providers	1	1	3	NA	1

*** The Department expects that communities will set priorities for HMIS participation by beginning with activities designated as "1", then "2" and finally "3"**

BILLING CODE 4210–29–C

1.7 Why Uniform Data Standards Are Necessary

Uniform data standards are needed so that CoCs across the country can generate HMIS-based reports with comparable data elements, definitions, and comprehensiveness. The consistency of the HMIS reports will make it possible to compare the characteristics of homeless populations and the services provided both within and across CoCs. The data collection methods specified in the data standards also provide safeguards to the vulnerable populations that are the subjects of an HMIS.

To advise HUD in developing the data standards set forth in Parts 2 and 3 of this notice, HUD assembled a group of experts on August 27 and 28, 2002. The experts included representatives from CoCs with more advanced HMIS systems, experts from federal agencies that collect data on vulnerable populations, researchers on homelessness, advocacy organizations, and providers of technical assistance to communities that have developed HMIS.

Based on the advice provided in those meetings and following further consultations with those experts and other homelessness specialists, HUD has determined that there are three levels of data that may be included in an HMIS: Universal data elements, program-level data elements, and elective data elements. Only the universal and program-level data elements are discussed in the sections of the notice (Parts 2 and 3) that describe data standards.

- Universal data elements are to be collected from all clients served by all programs reporting to the HMIS. These data elements are needed for CoCs to understand the basic dynamics of homelessness on the local level and for HUD to meet the Congressional direction for an unduplicated count of homeless service users at the local level and a description of their characteristics. Any personal identifiers collected in accordance with these standards shall be encrypted and subject to severely restricted access.
- Program-level data elements are elements to be collected from clients served by programs—federal, state, or local—that include an assessment of the client's needs as a basic element in their provision of service. That assessment elicits key information used to plan service delivery (in some cases), determine eligibility for services, track the provision of services, and record outcomes. Program funders may require the collection of certain program-level data elements as part of their annual reporting requirements. Several projects under HUD's McKinney-Vento Act programs, including the Supportive Housing Program, Shelter Plus Care, and Section 8 Moderate Rehabilitation for Single Room Occupancy Dwellings, and for Housing Opportunities for Persons with AIDS (HOPWA), intentionally target assistance, conduct outreach, and/or conduct other specialized efforts to serve HOPWA eligible persons who are homeless. For these projects, program participants should ensure that reporting on assistance to persons who are homeless is integrated within the area's HMIS efforts. HOPWA projects that serve homeless persons are expected to, and encouraged to, participate in the area's HMIS. This is discussed in more detail in Part 3 of this notice.

Program-level data elements include private or sensitive information on topics such as income, physical disabilities, behavioral health status, and whether the client is currently at risk of domestic violence. At the time this information is collected, the client will be told the purpose for which the question is being asked and the way in which the client may benefit from answering the question (for example, by suggesting need or eligibility for a particular service). Local CoCs will have to establish firm policies and procedures to protect against unauthorized disclosure of personal information. This will be discussed in more detail in Part 4 of this notice.

- Elective data elements are any data elements not specified as universal or program-level. Some HMIS, particularly those used directly as a tool in the provision of services, may be very complex. Particular programs (or the entire local CoC) may wish to collect assessment, service tracking, and outcome information in more detail than required by the uniform HMIS standards. For example, with regard to behavioral health, a program may wish to capture significantly more information about a client's psychiatric history or current status than is specified under the program-level data elements. Such elective data elements and response categories are developed at the discretion of each CoC. However, if the CoC or a local provider collects more information than is required by the HMIS data standards, the CoC or provider must be able to transform the more detailed data into the broader data elements and response categories of HMIS data standards.

Furthermore, HMIS are not limited to the topics covered by the data elements in this notice. Local patterns for delivery of services and local decisions on the scope of participation in the HMIS may call for additional data collection modules that are entirely different from the data elements that are the subject of this notice.

The next two parts of the notice set forth the HMIS data standards. Part 2 presents the universal data elements to be collected from all clients. Part 3 presents program-level data elements to be collected from clients in certain types of programs. Recommended data collection guidelines, question wording, and required response categories are provided for each data element, and, when appropriate, there is a discussion of special issues. Part 4 of this notice describes in more detail the standards for data confidentiality and security to which an HMIS will be expected to adhere. Finally, Part 5 addresses technical standards for the creation of data systems.

2. Data Standards for Universal Data Elements

HUD has determined that some data elements should be collected by all agencies serving homeless persons. HUD carefully weighed the reporting burden of the universal data elements against the importance of the information for producing meaningful reports. Of special concern to HUD was the reporting burden for shelters that register large numbers of applicants on a nightly basis, with little time to collect information from each applicant. As a result, the number of universal data elements was kept to a minimum, and the ease of providing the information requested was considered for each element.

The Department is inviting comments on how Homeless Management Information Systems can be used to measure chronic homelessness. At present, the universal data standards will provide information on the month and year a homeless individual left his or her last permanent address. Further, HMIS will generate information on shelter stays and homelessness episodes over time. However, given shelter worker demands and other considerations, a determination of disability is currently outside the scope of what is collected as part of the universal data elements.

The universal data elements include:

- 2.1: Name
- 2.2: Social Security Number
- 2.3: Date of Birth
- 2.4: Ethnicity and Race
- 2.5: Gender
- 2.6: Veteran Status
- 2.7: Residence Prior to Program Entry
- 2.8: Zip Code of Last Permanent Address
- 2.9: Month and Year Person Left Last Permanent Address
- 2.10: Program Entry Date
- 2.11: Program Exit Date
- 2.12: Unique Person Identification Number
- 2.13: Program Identification Number
- 2.14: Program Event Number
- 2.15: Household Identification Number
- 2.16: Children's Questions

Data elements 2.1 through 2.11 require that staff from a homeless assistance agency enter information provided by a client into the HMIS database. For each of these data elements one or more questions and multiple response categories are provided. There is no requirement that the questions appear on the computer screens generated by the HMIS application. At the same time, staff are highly encouraged to use them.

The response categories are required and the HMIS application must include these responses exactly as they are presented in this section. Part 5 of this notice, Technical Standards, discusses approaches for handling missing response categories throughout the HMIS application.

The universal data questions must be asked of each adult who applies for a homeless assistance service. Where a group of persons apply for services together (as a household or family), the intake worker will first ask for information from the household head who is applying for services and then request information from him/her about any children under the age of 18 who are applying for services with the household head. (The children do not need to be present at the time the household head applies for services.) Any other adults (18 years of age or older) who are applying for services with this group of persons will be interviewed separately. One adult should not provide information for another adult.

Because this section follows an interview format, all of the data elements that are asked of an adult are presented first in this section, followed by the data elements that are required for any children (presented in 2.16).

Elements 2.12 to 2.15 are automatically generated by the data collection software, although staff inquiries are essential for the proper generation of these elements.

All protected personal information, including data elements 2.1, 2.2, 2.3, 2.8, 2.10, 2.11, 2.12, and 2.13 will be encrypted using at least 128-bit encryption standards. This will render the data unusable to any casual viewer, as the information will not be able to be unencrypted and viewed except through the local HMIS application. Jurisdictions must have the capacity to unencrypt HMIS data at the local level. HMIS user access to this information will be highly restricted in accordance with Part 4 of this notice.

2.1 Name

Rationale: The first, middle, and last names should be collected to support the unique identification of each person served.

Data Collection Methods: Interview or self-administered form.

When Data Are Collected: Upon initial program entry or as soon as possible thereafter.

Subjects: All adults and children served.

Recommended Interview Questions and Required Response Categories:

Q: "What is your first, middle, and last name?" (legal names only; avoid aliases or nicknames)

_____
(example: John David Doe, Jr.)
88—Don't know
99—Refused

Q: "Have you ever received services under a different name?"

0—No
1—Yes
88—Don't know
99—Refused

If yes:

Q: "What was the other name under which you received services?"

_____

Special Issues: Four fields should be created in the HMIS database to capture suffixes such as "Junior" or "II" in addition to their full first, middle, and last names. Part 5 of this notice discusses how to treat missing information for open-ended questions.

This data standard should be treated as a protected personal identifier and is subject to the security standards for personal identifiers set forth in Part 4 of this notice.

2.2 Social Security Number

Rationale: The Social Security number should be collected to support the unique identification of each person served.

Data Collection Methods: Interview or self-administered form.

When Data Are Collected: Upon initial program entry or as soon as possible thereafter.

Subjects: All adults and children served.

Recommended Interview Questions and Required Response Categories:

Q: "What is your Social Security number?" (use "X" for missing numbers) [If client declines to provide his/her SSN, he/she cannot be declined services on that basis].

___/___/____ ____ (example: 123 45 6789, or 123 45 XXXX)
77—Does not have a Social Security number
88—Don't know
99—Refused

Special Issues: Clients cannot be denied services if they refuse to provide their Social Security number.

Although the HMIS application's data entry form may include hyphens within the SSN to improve readability, one alphanumeric field without hyphens should be created within the HMIS database.

This data standard should be treated as a protected personal identifier, and is subject to the security standards for personal identifiers set forth in Part 4 of this notice.

2.3 Date of Birth

Rationale: The date of birth can be used to calculate the age of persons served at time of program entry or at any point in receiving services. It will also support the unique identification of each person served.

Data Collection Methods: Interview or self-administered form.

When Data Are Collected: Upon initial program entry or as soon as possible thereafter.

Subjects: All adults and children served.

Recommended Interview Questions and Required Response Categories:

Q: "What is your birth date?" (use "X" for missing numbers)

___/___/_____(example: 01/31/2002, or 01/XX/2002)(Month) (Day) (Year)

If complete birth date is not known:

Q: "In what year were you born?"

_____
88—Don't know
99—Refused

Q: "In what month were you born?"

_____
88—Don't know
99—Refused

If neither year nor month of birth is known:

Q: "What is your age?"

_____ years old
88—Don't know
99—Refused

Special Issues: One date-format field for complete birth dates should be created in the HMIS database.

This data standard should be treated as a protected personal identifier, and is subject to the security standards for personal identifiers set forth in Part 4 of this notice.

2.4 Ethnicity and Race

Rationale: Ethnicity and race can be used to count the number of homeless persons who identify themselves as Hispanic and to count the number of homeless persons who identify themselves within five different racial categories. In the October 30, 1997, issue of the **Federal Register** (62 FR 58782), the Office of Management and Budget (OMB) published "Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity." All existing federal recordkeeping and report requirements must be in compliance with these Standards as of January 1, 2003.

Data Collection Methods: Interview or self-administered form. Staff observations should not be used to collect information on ethnicity and race.

When Data Are Collected: Upon initial program entry or as soon as possible thereafter.

Subjects: All adults and children served.

Recommended Interview Questions and Required Response Categories:

Ethnicity

Q: "Are you Hispanic or Latino?"

0—No (Non-Hispanic/Non-Latino)
1—Yes (Hispanic or Latino)
88—Don't know
99—Refused

Race

Q: "What is your race (you may name more than one race)?"

1—American Indian or Alaska Native (A person having origins in any of the original peoples of North and South America—including Central America—and who maintains tribal affiliation or community attachment.)
2—Asian (A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.)
3—Black or African American (A person having origins in any of the black racial groups of Africa. Terms such as "Haitian" or "Negro" can be used in addition to "Black or African American".)
4—Native Hawaiian or Other Pacific Islander (A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.)
5—White (A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.)
88—Don't know
98—Not applicable
99—Refused

Special Issues: The HMIS should treat race as five separate fields to account for multiple race responses. For instance, if a respondent identifies herself as White and Asian, code "5" is recorded in the first data field, "2" is recorded in the second data field, and "98" (Not applicable) in the remaining data fields.

2.5 Gender

Rationale: To create separate counts of homeless men and homeless women served.

Data Collection Methods: Interview, observation, or self-administered form.

When Data Are Collected: Upon initial program entry or as soon as possible thereafter.

Subjects: All adults and children served.

Recommended Interview Questions and Required Response Categories:

Q: "Are you male or female?"

0—Male
1—Female
88—Don't know
99—Refused

Special Issues: The gender questions are meant to capture the self-perceived sexual identity of the person interviewed and the caregiver's perception of the children who are with him/her. If the person replies that he/she is unsure of gender for any member of the household, the interviewer should record "Don't know."

Programs may add a "transgender" category as needed. However, for reporting purposes this category will be represented as "Don't know."

2.6 Veteran Status

Rationale: To determine the number of homeless veterans.

Data Collection Methods: Interview or self-administered form.

When Data Are Collected: Upon initial program entry or as soon as possible thereafter.

Subjects: All adults served.

Recommended Interview Question and Required Response Categories:

Q: "Have you ever served on active duty in the Armed Forces of the United States?"

0—No
1—Yes
88—Don't know
99—Refused

Special Issues: The "Armed Forces" do not include inactive military reserves or the National Guard unless the person has been called up to active duty.

2.7 Residence Prior to Program Entry

Rationale: To identify the type of residence experienced just prior to program admission.

Data Collection Methods: Interview or self-administered form.

When Data Are Collected: Upon initial program entry or as soon as possible thereafter.

Subjects: All adults and, if necessary, children served.

Recommended Interview Questions and Required Response Categories:

Q: "Where did you stay last night?"

1—Emergency shelter
2—Transitional housing for homeless persons
3—Permanent housing for formerly homeless persons
4—Psychiatric facility
5—Substance abuse treatment facility
6—Hospital
7—Jail
8—Prison
9—Hotel or motel
10—Foster care home
11—Own room, apartment, or house
12—Living with someone else (family and friends)
13—A car or other vehicle
14—An abandoned building
15—At a transportation site (bus station, airport, subway station, etc.)
16—Anywhere outside (streets, parks, campgrounds, cardboard boxes, etc.)
17—Other
88—Don't know
99—Refused

Q: "How long did you stay at that place?"

1—Less than one week
2—One to two weeks
3—Three weeks to one month
4—Two to three months
5—Four to six months
6—Seven months to one year
7—More than one year
88—Don't know
99—Refused

Special Issues: This standard does not preclude the collection of residential history information beyond the residence experienced the night prior to program admission.

2.8 Zip Code of Last Permanent Address

Rationale: To identify the former geographic location of persons experiencing homelessness.

Data Collection Methods: Interview or self-administered form.

When Data Are Collected: Upon initial program entry or as soon as possible thereafter.

Subjects: All adults and, if necessary, children served.

Recommended Interview Questions and Required Response Categories:

Q: "What is the zip code of the apartment, room, or house where you last lived for six consecutive months or more?"

_____(5 digits)
88—Don't know
99—Refused

If zip code is unknown, ask:

Q: "What was the street address?"

_____
(Number and Street) (City) (State)

Special Issues: If the last permanent address was institutional (*e.g.*, prison, psychiatric hospital), ask for its address. If a street address is provided, three separate fields for number/street, city, and state should be generated. Use standard state abbreviations for the state data field. Part 5 of this notice discusses how to treat missing information for open-ended questions.

This data standard should be treated as a protected personal identifier and is subject to the security standards for personal identifiers set forth in Part 4 of this notice.

2.9 Month and Year Person Left Last Permanent Address

Rationale: To estimate the amount of time a person has been homeless or unstably housed.

Data Collection Methods: Interview or self-administered form.

When Data Are Collected: Upon initial program entry or as soon as possible thereafter.

Subjects: All adults and, if necessary, children served.

Recommended Interview Question and Required Response Categories:

Q: "What month and year did you leave the last apartment, room, or house where you lived for six months or more?" (use "X" for missing numbers)

___/_____ (example: 01/2002, or XX/2002) (Month) (Year)

88—Don't know
99—Refused

2.10 Program Entry Date

Rationale: To calculate the length of stay in a homeless residential program or the amount of time spent participating in a services-only program.

Data Collection Methods: Recorded by the staff responsible for registering program entrants.

When Data Are Collected: Upon any program entry (whether or not it is an initial program entry).

Subjects: All adults and children served.

Recommended Interview Question and Required Response Categories:

___/___/_____(example: 01/31/2002) (Month) (Day) (Year)

Special Issues: For a shelter visit, this date would represent the first day of residence in a shelter program following residence outside of the shelter or in another program. For example, the first date of service may be the date a person is admitted into a shelter, after residing in an abandoned building or with relatives the night before. It may also represent the first date of residence in a transitional program after transferring from an emergency shelter program. For services, this date may represent the day a service was provided, or the first date of a period of continuous service. For example, if a person receives daily counseling as part of an ongoing treatment program, the first date of service could be the date of enrollment in the treatment program.

Any return to a program one day or more after the last date of utilization must be recorded as a new program entry date.

This data standard should be treated as a protected personal identifier and is subject to the security standards for personal identifiers set forth in Part 4 of this notice.

2.11 Program Exit Date

Rationale: To calculate the length of stay in a homeless residential program or the amount of time spent participating in a services-only program.

Data Collection Methods: Recorded by the staff responsible for monitoring program utilization or conducting exit interviews.

When Data Are Collected: Upon any program exit.

Subjects: All adults and children served.

Recommended Interview Question and Required Response Categories:

___/___/_____(example: 01/31/2002) (Month) (Day) (Year)

Special Issues: For a shelter visit, this date would represent the last day of residence in a shelter program before the day that the client transfers to another residential program or otherwise leaves the shelter. For example, the last date of service would be the last night the person stayed at the shelter prior to moving into permanent or transitional housing, or failing to return to the shelter. For services, this date may represent the day a service was provided or the last date of a period of continuous service. For example, if a person has been receiving daily counseling as part of an ongoing treatment program and either formally terminates their involvement or fails to return for counseling, the last date of service could be the date of termination or date of the last counseling session.

If a client has not utilized a program for one day or more, the last day of utilization must be recorded as the program exit date.

This data standard should be treated as a protected personal identifier and is subject to the security standards for personal identifiers set forth in Part 4 of this notice.

2.12 Unique Person Identification Number

Rationale: Every client receiving homeless assistance services within a CoC is assigned a Personal Identification Number (PIN), which is a permanent and unique number generated by the HMIS application. The PIN is used to obtain an unduplicated count of persons served within a CoC.

Data Collection Methods: Where data are shared across programs in a CoC, staff will determine at intake whether a client has been previously assigned a PIN. To make this determination, the staff enters personal identifying information (Name, Social Security Number, Date of Birth, and Gender) into the HMIS application. The application then searches a CoC's centralized database for matching records. If a match is found and a PIN is retrieved, the same PIN will be assigned to the client. If no matches are found, a new randomly generated PIN is assigned to the client.

Where data are not shared across programs, programs will provide client-level information on a regular basis to the CoC system administrator. The CoC administrative staff are responsible for assigning PINs by searching and matching client records using personal identifying information.

When Data Are Collected: When data are shared across programs, upon program entry or as soon as possible thereafter. When data are not shared across programs, the assignment of PINs occurs after client records are submitted to the CoC system administrator.

Subjects: All adults and children served.

Recommended Interview Question and Required Response Categories:

The following question may facilitate the search for an existing Personal Identification Number:

Q: "Have you ever been served by this [name of facility or program] before?"

0—No
1—Yes
88—Don't know
99—Refused

Special Issues: The PIN is a random number automatically generated by the

HMIS application (see Part 5 of this notice).

This data standard should be treated as a protected personal identifier and is subject to the security standards for personal identifiers set forth in Part 4 of this notice.

2.13 Program Identification Number

Rationale: Program identification numbers will indicate the geographic location of a program, its facility and CoC affiliation, and whether the program is a street outreach, emergency shelter, transitional housing, permanent supportive housing, or services-only type of program.

Data Collection Methods: Selected by staff from a list of programs available within a particular agency or the CoC. Upon selection of a program from the list, the HMIS application will assign the program identification number to the client's record.

When Data Are Collected: Upon any program entry (whether or not it is an initial program entry).

Subjects: All adults and children served.

Special Issues: The program identification number will be constructed in a way that identifies the geographic location of a program, its facility and CoC affiliation, and whether it is a street outreach, emergency shelter, transitional housing, permanent supportive housing, or services-only type of program. On an HMIS data entry screen, program staff may view and select from a listing of programs. The HMIS application then generates the program identification number. For more information, see Part 5 of this notice. This data standard should be treated as a protected personal identifier and is subject to the security standards for personal identifiers set forth in Part 4 of this notice.

2.14 Program Event Number

Rationale: To distinguish the unique episodes of program service utilization.

Data Collection Methods: A Program Event Number is automatically generated for each episode of service by the HMIS application. The number is generated from program entry and exit dates, program identifier numbers, and Personal Identification Numbers.

Subjects: All adults and children served.

Special Issues: This number is necessary for identifying unique episodes of program service utilization. It is particularly useful when a client has received multiple services from a single program or provider on the same day. For example, if a client receives mental health counseling and general medical services from a single provider on the same day, separate program event numbers will be generated for each service. For more information, see Part 5 of this notice.

2.15 Household Identification Number

Rationale: To count the number of households served.

Data Collection Methods: Interview or staff observation that client is participating in a program with other members of a household.

When Data Are Collected: Upon any program entry (whether or not it is an initial program entry) or as soon as possible thereafter. Persons can join a household with members who have already begun a program event, or leave a program although other members of the household remain in the program.

Subjects: All adults and children served.

Recommended Interview Questions and Required Response Categories:

If it is not evident that others are applying for or receiving assistance with the client, then ask:

Q: "Who else is applying for (or receiving) assistance with you?"

Q "What is their first, middle, and last name?" (legal names only; avoid aliases and nicknames)

_____
(example: John David Doe, Jr.)
88—Don't know
99—Refused

Special Issues: A household is a group of persons who together apply for and/or receive a specific homeless assistance service.

A common household identification number should be assigned to each member of the same household. Individuals in a household (adults and/or children) who are not present when the household initially applies for assistance and later join the household should be assigned the same household identification number that links them to the rest of the persons in the household. Part 5 of this notice discusses how to treat missing information for open-ended questions.

See section 2.16 for questions that may be asked about household members under 18 years of age.

2.16 Children's Questions

Recommended Interview Questions and Required Response Categories:

Name

Q. "Do you have any children under 18 years of age with you?"
0—No
1—Yes
88—Don't know
99—Refused

If yes,

Q: "What is (are) the first, middle, and last name(s) of the child(ren) with you?"

_____
(example: Jane Mary Doe)
88—Don't know
99—Refused

Social Security Number

Q: "What is (are) the Social Security number(s) for [name of child]?" (use "X" for missing numbers)

_____ _____ (example: 123 45 6789 or 123 45 XXXX)
77—Does not have a Social Security number
88—Don't know
99—Refused

Date of Birth

Q: "What is the birth date of [name of child]?" (use "X" for missing numbers)

___/___/_____ (example: 01/31/2002 or 01/XX/2002) (Month) (Day) (Year)

If complete birth date(s) is(are) not known:

Q: "What year was [name of child] born in?"

_____
88—Don't know
99—Refused

Q: "What month was [name of child] born in?"

_____
88—Don't know
99—Refused

If neither year nor month of birth is known:

Q: "What is the age of [name of child]?"

_____years old
88—Don't know
99—Refused

Ethnicity

Q: "Is [name of child] Hispanic or Latino?"

0—No (Non-Hispanic/Non-Latino)
1—Yes (Hispanic or Latino)
88—Don't know
99—Refused

Race

Q: "What is the race of [name of child] (you may name more than one race)?"

1—American Indian or Alaska Native (A person having origins in any of the original peoples of North and South America—including Central America—and who maintains tribal affiliation or community attachment.)
2—Asian (A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.)
3—Black or African American (A person having origins in any of the black racial groups of Africa. Terms such as "Haitian" or "Negro" can be used in addition to "Black or African American".)
4—Native Hawaiian or Other Pacific Islander (A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.)
5—White (A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.)
88—Don't know
98—Not applicable
99—Refused

Gender

Q: "Is [name of child] male or female?"

0—Male
1—Female
88—Don't know
99—Refused

Residence Prior to Program Entry

Q: "Where did [name of child] stay last night?"

1—Emergency shelter
2—Transitional housing for homeless persons
3—Permanent housing for formerly homeless persons
4—Psychiatric facility
5—Substance abuse treatment facility
6—Hospital
7—Jail
8—Prison
9—Hotel or motel
10—Foster care home
11—Own room, apartment, or house
12—Living with someone else (family and friends)
13—A car or other vehicle
14—An abandoned building
15—At a transportation site (bus station, airport, subway station, etc.)
16—Anywhere outside (streets, parks, campgrounds, cardboard boxes, etc.)
17—Other

Q: "How long did [name of child] stay at that place?"

1—Less than one week
2—One to two weeks
3—Three weeks to one month
4—Two to three months
5—Four to six months
6—Seven months to one year
7—More than one year
8—Don't know
9—Not applicable
10—Refused

Zip Code of Last Permanent Address

Q: "Was [name of child] living with you at the last place you lived for six consecutive months or more?"

0 —No
1—Yes
88—Don't know
99—Refused

Month and Year Child Left Last Permanent Address

If response to "Was [name of child] living with you at the last place you lived for six consecutive months or more" question is "No," ask:

Q: "What month and year did [name of child] leave the last place where [he or she] lived for six months or more?" (use "X" for missing numbers)

___/___/_____ (example: 01/2002, or XX/2002) (Month) (Year)
88—Don't know
99—Refused

SUMMARY OF UNIVERSAL DATA ELEMENTS

Data standards	Subjects	Protected personal information	Data entry or computer-generated
Name	Adults and Children	Protected	Data Entry.
SSN	Adults and Children	Protected	Data Entry.
Date of Birth	Adults and Children	Protected	Data Entry.
Ethnicity and Race	Adults and Children		Data Entry.
Gender	Adults and Children		Data Entry.
Veteran Status	Adults		Data Entry.
Residence Prior to Program Entry	Adults and Children		Data Entry.
Zip Code of Last Permanent Address.	Adults and Children	Protected	Data Entry.
Month and Year Left Last Permanent Address.	Adults and Children		Data Entry.
Program Entry Date	Adults and Children	Protected	Data Entry.
Program Exit Date	Adults and Children	Protected	Data Entry.
Unique Personal Identification Number.	Adults and Children	Protected	Computer-Generated.
Program Identification Number	Adults and Children	Protected	Computer-Generated.
Program Event Number	Adults and Children		Computer-Generated.
Household Identifier Number	Adults and Children		Computer-Generated.

3. Data Standards for Program-Level Data Elements

Program-level data elements are to be collected from all clients served by some types of programs. These are programs that include as a basic element in their provision of service an assessment of the client's needs. That assessment elicits key information used to plan service delivery, determine eligibility for services (in some cases), track the provision of services, and record outcomes.

The program-level data elements are to be completed as required by a locality or funder. They are provided as part of this notice so that consistent information can be obtained from programs that collect this type of data from homeless persons. For the Supportive Housing Program, Shelter Plus Care, Section 8 Moderate Rehabilitation for Single Room Occupancy Dwellings (SRO) Program, and the Housing Opportunities for Persons with HIV/AIDS (HOPWA) Program, the following program-level data elements and definitions are needed to complete Annual Progress Reports: 3.1 (Income and Sources) through 3.4 (Developmental Disability), 3.7 (HIV/AIDS Status), 3.8 (Behavioral Health Status), 3.9 (Domestic Violence), 3.11 (Employment), 3.13 (Services Received), 3.14 (Destination), and 3.15 (Follow-up After Program Exit).

The program-level data elements include:

- 3.1: Income and Sources

- 3.2: Non-Cash Benefits
- 3.3: Physical Disability
- 3.4: Developmental Disability
- 3.5: General Health Status
- 3.6: Pregnancy Status
- 3.7: HIV/AIDS Status
- 3.8: Behavioral Health Status
- 3.9: Domestic Violence
- 3.10: Education
- 3.11: Employment
- 3.12: Veterans
- 3.13: Services Received
- 3.14: Destination
- 3.15: Follow-up After Program Exit
- 3.16: Children's Education
- 3.17. Other Children's Questions

Most of the data elements require that staff from a homeless assistance agency enter information provided by the client into the HMIS database. For each data element one or more questions and multiple response categories are provided. As with the universal data elements, there is no requirement that the questions appear on the computer screens generated by the HMIS application. At the same time, staff are highly encouraged to use them. For APR-required data elements, the response categories are required and the HMIS application must include these responses exactly as they are presented in this section.

The program-level data questions are asked of each adult who applies for a homeless assistance service. Where a group of persons apply for services together (as a household or family), the intake worker will first ask for information from the household head who is applying for services and then request information from him/her about any children under 18 years of age who are applying for services with the household head. (The children do not need to be present at the time the household head applies for services.) Any other adults who are applying for services with this group of persons should be interviewed separately, unless an adult is unable to provide information for himself/herself.

Because these standards are presented in an interview format, all of the data elements that are asked of an adult are presented first in this section, followed by the data elements that are required for any children.

Since many program-level data elements include private or sensitive information, HUD requires that the client be told the purpose for which the question is being asked and the ways in which the client may benefit from answering the question (*e.g.*, by suggesting need or eligibility for a particular service). Local CoCs will have to establish firm policies and procedures to protect against unauthorized disclosure of, or misuse of, personal information. These issues will be discussed in more detail in Part 4 of this notice.

3.1 Income and Sources

Rationale: Income and sources of income are important for determining service needs of people at the time of program entry, determining whether they are accessing all income sources for which they are eligible, assessing their degree of vulnerability to chronic homelessness, and describing the characteristics of the homeless population. Capturing the amount of cash income from various sources will help to: Assure all income sources are counted in the calculation of total income; enable program staff to take into account the composition of income in determining needs; determine if people are receiving the mainstream program benefits to which they may be entitled; help clients apply for benefits assistance; and allow analysis of changes in the composition of income between entry and exit from the program.

Data Collection Method: Interview or self-administered form.

When Data Are Collected: Upon initial program entry (or as soon as possible thereafter), at program exit and during periodic follow-up. Needed to complete Annual Progress Reports for certain HUD McKinney-Vento Act programs.

Subjects: All adults served by the program.

Recommended Questions and APR-Required Response Categories:

Earned Income

Q: "Have you [and/or the children who are coming into this program with you] received money from working in the last month?"
0—No
1—Yes
88—Don't know
99—Refused

If yes, then ask the following question:
Q: "Over the last month, how much money did you [and/or the children who are coming to this program with you] receive from working?"
$__ __ __ __00
88—Don't know
99—Refused

Income from Other Sources

Q: Have you [and/or the children who are coming to this program with you] received money from any other sources in the last month?"
0—No
1—Yes
88—Don't know
99—Refused

If yes, then ask the following questions:
Q: "Over the last month, how much money did you [and/or the children who are coming into this program with you] receive from the following sources?"
Q: "Unemployment Insurance?"
$__ __ __ __.00
88—Don't know
99—Refused

Q: "Supplemental Security Income or SSI?"
$__ __ __ __.00
88—Don't know
99—Refused
(For household head with children)
Q: "Was this SSI for you or for a child who is with you?"
1—Self
2—A child

Q: "Over the last month, how much money did you [and/or the children who are coming into this program with you] receive from the following sources?" (Ask each)
$__ __ __ __.00
88—Don't know
99—Refused
a—Social Security Disability Income (SSDI)
b—A veteran's disability payment
c—Private disability insurance
d—Worker's compensation
e—Temporary Assistance for Needy Families (TANF) (or replace with local name)
f—General Assistance (GA) (or replace with local name)
g—Retirement income for Social Security
h—Veteran's pension
i—Pension from a former job
j—Child support
k—Alimony or other spousal support
l—Any other sources

If the client reported any sources of income as "Don't Know" or "Refused," then ask:
Q: "Over the last month, what was your total income? Please do not include the income of any persons in your household who are 18 years of age or older."
$__ __ __ __.00
88—Don't know
99—Refused

Special Issues: Note that this is the only data element that combines information for an adult and his or her children under 18 years of age who are participating in a program. Income for any other adult members of the household should be reported separately. Programs may choose to disaggregate the sources of income into more detailed categories as long as these categories can be aggregated into the above stated sources of income.

3.2 Non-Cash Benefits

Rationale: Non-cash benefits are important to determine whether people are accessing all mainstream program benefits for which they may be eligible and to ascertain a more complete picture of their situation.

Data Collection Method: Interview or self-administered form.

When Data Are Collected: Upon initial program entry or as soon as possible thereafter, at program exit, and during periodic follow-up. Needed to complete Annual Progress Reports for certain HUD McKinney-Vento Act programs.

Subjects: All adults served by program.

Recommended Questions and APR-Required Response Categories:

Q: "Have you [and/or the children who are coming into this program with you] received food stamps or money for food on a benefits card in the past month?"
0—No
1—Yes
88—Don't know
99—Refused

Q: "Do you participate in the MEDICAID health insurance program?" (or replace with local name)
0—No
1—Yes
88—Don't know
99—Refused

Q: "Do you participate in the MEDICARE health insurance program?" (or replace with local name)
0—No
1—Yes
88—Don't know
99—Refused

Q: "Do you participate in the State Children's Health Insurance Program (SCHIP)?" (or replace with local name)
0—No
1—Yes
88—Don't know
99—Refused

Q: "Do you participate in WIC?"
0—No
1—Yes
88—Don't know
99—Refused

Q: "Do you receive Veteran's Administration (VA) Medical Services?"
0—No
1—Yes
88—Don't know
99—Refused

Q: "Do you receive TANF Child Care services?" (or replace with local name)
0—No
1—Yes
88—Don't know
99—Refused

Q: "Do you receive TANF transportation services?" (or replace with local name)
0—No
1—Yes
88—Don't know
99—Refused

Q: "Do you receive any other TANF-funded services?" (or replace with local name)
0—No
1—Yes
88—Don't know
99—Refused

Q: "Do you receive help paying for your rent, for instance, Section 8, public housing, or a housing voucher?"
0—No
1—Yes
88—Don't know
99—Refused

Special Issues: Programs may choose to disaggregate the non-cash sources of income into more detailed categories as long as these categories can be aggregated into the above-stated non-cash sources of income. Programs may also choose to ask additional questions about non-cash sources of income, including: information related to benefit eligibility (*e.g.*, if a person is not receiving a service is it because they are not eligible or eligibility has not yet been determined); and start and stop dates for receipt of benefits.

3.3 Physical Disability

Rationale: To count the number of physically disabled persons served by homeless programs, and to determine eligibility for disability benefits.

Data Collection Methods: Interview or self-administered form.

When Data Are Collected: Upon program entry or as soon as possible thereafter. Needed to complete Annual Progress Reports for certain HUD McKinney-Vento Act programs.

Subjects: All adults and children served.

Recommended Question and APR-Required Response Categories:

Q: "Do you consider yourself to have a physical disability? By physical disability, I mean that you have a physical problem that is not temporary and that limits your ability to get around or work, or your ability to live on your own."
0—No
1—Yes
88—Don't know
99—Refused

3.4 Developmental Disability

Rationale: To count the number of developmentally disabled persons served by homeless programs, and to determine eligibility for disability benefits.

Data Collection Methods: Interview or self-administered form.

When Data Are Collected: Upon program entry or as soon as possible thereafter. Needed to complete Annual Progress Reports for certain HUD McKinney-Vento Act programs.

Subjects: All adults and children served.

Recommended Question and APR-Required Response Categories:

Q: "Have you ever received benefits or services (such as an income supplement or special education classes) for a developmental disability?"
0—No
1—Yes
88—Don't know
99—Refused

Special Issues: Those with developmental disabilities may include persons who have a severe, chronic disability that is attributed to a mental or physical impairment (or combination of physical and mental impairments) that occurs before 22 years of age and limits the capacity for independent living and economic self-sufficiency.

3.5 General Health Status

Rationale: Information on general health status is a first step to identifying what types of health services a client may need. Changes in health status between intake and exit can be a valuable outcome measure. This data element permits the self-reported health status of homeless persons to be compared with the self-reported health status of the U.S. population in general.

Data Collection Method: Interview or self-administered form.

When Data are Collected: Upon initial program entry (or as soon as possible thereafter), program exit, and during periodic follow-up.

Subjects: All adults and children served by the program.

Recommended Questions and Response Categories:

Q: "Compared to other people your age, would you say your health is excellent, very good, good, fair, or poor?"
1—Excellent
2—Very Good
3—Good
4—Fair
5—Poor
88—Don't know
99—Refused

3.6 Pregnancy Status

Rationale: To determine eligibility for benefits and need for services, and to determine the number of women entering programs for homeless persons while pregnant.

Data Collection Method: Interview or self-administered form.

When Data are Collected: Upon initial program entry or as soon as possible thereafter.

Subjects: All adult females served by the program.

Recommended Questions and Response Categories:

Q: "Are you pregnant?"

0—No
1—Yes
88—Don't know
98—Not applicable
99—Refused

If yes, then ask the following question:

Q: "What is your due date?" (use "X" for missing numbers)

___/__/____ (example: 01/31/2002, or 01/XX/2002) (Month) (Day) (Year)

3.7 HIV/AIDS Status

Rationale: To count the number of persons who have been diagnosed with AIDS or have tested positive for HIV.

Data Collection Methods: Interview or self-administered form.

When Data are Collected: Upon program entry or as soon as possible thereafter. Needed to complete Annual Progress Reports for certain HUD McKinney-Vento Act programs.

Subjects: All adults served.

Recommended Questions and APR-Required Response Categories:

Q: "Have you been diagnosed with AIDS or have you tested positive for HIV?"

0—No
1—Yes
88—Don't know
99—Refused

Special Issue: It is only appropriate to ask these questions if the program is prepared to help persons, in a confidential manner, in order to assess the need for service and/or for programmatic reporting purposes. This assessment process should result in enhanced provision and coordination of both specific HIV-related services and/or other general services addressing a client's needs. As in other areas involving sensitive client information, these questions should be asked and recorded when a program has adequate data confidentiality protections, including adequate training of staff, to ensure that HIV-related information on this person, such as their HIV status or their participation in related care, cannot be learned by anyone whom they themselves do not voluntarily provide or give permission to have this information. For more information on security and confidentiality, see Part 4 of this notice.

3.8 Behavioral Health Status

Rationale: To count the number of persons served with substance abuse and mental illness problems, and to assess the need for treatment.

Data Collection Methods: Interview or self-administered form.

When Data are Collected: Upon program entry or as soon as possible thereafter. Needed to complete Annual Progress Reports for certain HUD McKinney-Vento Act programs.

Subjects: All adults served.

Recommended Questions and APR-Required Response Categories:

Q: "Have you ever been in a residential, day, or outpatient treatment program (detox) or hospitalized for the treatment of alcoholism?"

0—No
1—Yes
88—Don't know
99—Refused

Q: "Do you feel that you have a problem with alcohol?"

0—No
1—Yes
88—Don't know
99—Refused

Q: "Have you ever been in a residential, day, or outpatient treatment program (detox) or hospitalized for treatment of drug dependency?"

0—No
1—Yes
88—Don't know
99—Refused

Q: "Do you feel that you have a problem with drugs?"

0—No
1—Yes
88—Don't know
99—Refused

Q: "Have you ever been treated or hospitalized for a psychiatric problem?"

0—No
1—Yes
88—Don't know
99—Refused

Q: "Do you feel that you have any current psychiatric or emotional problem(s) such as serious depression, serious anxiety, hallucinations, violent behavior, thoughts of suicide?"

0—No
1—Yes
88—Don't know
99—Refused

3.9 Domestic Violence

Rationale: Ascertaining whether a person is a victim of domestic violence is necessary to provide the person with the appropriate services to prevent further abuse and to treat the physical and psychological injuries from prior abuse. Also, ascertaining that a person may be experiencing domestic violence may be important for the safety of program staff and other clients. At the aggregate level, knowing the size of the homeless population that are victims of domestic violence can provide information needed for determining the resources needed to address the problem in this population.

Data Collection Method: Interview or self-administered form.

When Data are Collected: Upon initial program entry or as soon as possible thereafter or during assessment phase. Needed to complete Annual Progress Reports for certain HUD McKinney-Vento Act programs.

Subjects: All adults, except those who are entering domestic violence shelters.

Recommended Questions and APR-Required Response Categories:

Q: "Have you experienced domestic or intimate partner violence?"

0—No
1—Yes
88—Don't know
99—Refused

If yes, ask the following question:

Q: "How long ago did you have this experience?"

1—within the past three months
2—three to six months ago
3—from six to twelve months ago
4—more than a year ago
88—Don't know
99—Refused

Special Issues: First, it is only appropriate to ask these questions if the program is prepared to help the person, either by directly providing necessary support services or providing a referral to a program that can provide these services. Second, these questions are screening questions for identifying potential victims of domestic violence. Local programs have to decide what additional information is needed to assess the appropriate course of treatment or referral. Third, it is paramount that collecting information on domestic violence does not put the person at risk of suffering further abuse. Thus, these questions should only be asked and recorded when a program has adequate data confidentiality protections to ensure that this person or their location cannot be learned by anyone whom they themselves do not voluntarily provide or give permission to have this information. For more information on security and confidentiality, see Part 4 of this notice.

3.10 Education

Rationale: To assess the program participant's readiness for employment and need for education or employment services. It can also serve as an important outcome measure.

Data Collection Methods: Interview or self-administered form.

When Data are Collected: Upon initial program entry or as soon as possible thereafter, program exit, and during periodic follow-up.

Subjects: All adults served.

Recommended Question and Response Categories:

Q: "Are you in school now, or working on any degree or certificate?"

1—Yes
0—No
88—Don't know
98—Not applicable
99—Refused

Q: "Have you received any vocational training or apprenticeship certificates?"

1—Yes
0—No
88—Don't know
98—Not applicable
99—Refused

Q: "What is the highest level of school that you have completed?"

0—No schooling completed
1—Nursery school to 4th grade
2—5th grade or 6th grade
3—7th grade or 8th grade
4—9th grade
5—10th grade
6—11th grade
7—12th grade, No diploma
8—High school diploma
9—GED
10—More than twelve years
88—Don't know
99—Refused

If client has received a high school diploma or GED, ask the following questions:

Q: "Have you received any of the following degrees?"

[Ask about each degree until the client answers "no."] Code each response as: 0—No; 1—Yes; 88—Don't know; 98—Not applicable; 99—Refused]

a—Bachelors
b—Masters
c—PhD
d—Other graduate degree

3.11 Employment

Rationale: To assess the program participant's employment status. This can serve as an important outcome measure.

Data Collection Methods: Interview or self-administered form.

When Data are Collected: Upon initial program entry or as soon as possible thereafter, program exit, and during periodic follow-up. Needed to complete Annual Progress Reports for certain HUD McKinney-Vento Act programs.

Subjects: All adults served

Recommended Questions and APR-Required Response Categories:

Q: "Are you currently employed?"

1—Yes
0—No
88—Don't know
99—Refused

If yes, ask the following questions:

Q: "How many hours did you work last week?"

_____ hours of work last week
88—Don't know
99—Refused

Q: "Was this permanent, temporary, or seasonal work?"

1—Permanent
2—Temporary
3—Seasonal
88—Don't know
99—Refused

If client reports that he/she is not working, ask the following question:

Q: "Are you currently looking for work?"

1—Yes
0—No
2—Disabled
3—Retired
88—Don't know
99—Refused

Special Issues: Programs may choose to ask additional information about benefits received through employment.

3.12 Veterans

Rationale: To collect a more detailed profile of the homeless veteran's experience and to determine eligibility for Department of Veterans Affairs programs and benefits. These questions were developed in consultation with the Department of Veterans Affairs.

Data Collection Methods: Interview or self-administered form.

When Data are Collected: Upon program entry or as soon as possible thereafter.

Subjects: All persons who answered "Yes" to Veterans Status data element.

Recommended Question and Response Categories:

Q: "In which military service eras did you serve (choose all that apply)?"

[Ask each. Code each response as: 1—Yes; 0—No; 88—Don't know; 99—Refused]

a. World War I (April 1917—November 1918)
b. Between WWI and WWII (December 1918—August 1940)
c. World War II (September 1940—July 1947)
d. Between WWII and Korean War (August 1947—May 1950)
e. Korean War (June 1950—January 1955)
f. Between Korean and Vietnam War (February 1955—July 1964)
g. Vietnam Era (August 1964—April 1975)
h. Post Vietnam (May 1975—July 1991)
i. Persian Gulf Era (August 1991—Present)

Q: "How many months did you serve on active duty in the military?"

_____ months

Q: "Did you serve in a war zone?"

1—Yes
0—No
88—Don't know
99—Refused

If served in a war zone, then ask:

Q: "What war zone(s) (choose all that apply)?"

[Ask each. Code each response as: 1—Yes; 0—No; 88—Don't know; 99—Refused]

a. Europe
b. North Africa
c. Vietnam
d. Laos and Cambodia
e. South China Sea
f. China, Burma, India
g. Korea
h. South Pacific
i. Persian Gulf
j. Other

Q: "What was the number of months served in a war zone?"

_____ months

Q: "Did you ever receive hostile or friendly fire in a war zone?"

1—Yes
0—No
88—Don't know
99—Refused

Q: "What branch of the military did you serve in?"

1—Army
2—Air Force
3—Navy
4—Marines
5—Other
88—Don't know
99—Refused

Q: "What type of discharge did you receive?"

1—Honorable
2—General
3—Medical
4—Bad Conduct
5—Dishonorable
6—Other
88—Don't know

99—Refused

3.13 Services Received

Rationale: To determine the services provided during a program stay and their outcomes. Some funders may want information on service receipt as a performance measure, and service receipt may also be useful to CoCs to identify service gaps.

Data Collection Methods: Recorded by staff.

When Data are Collected: At or immediately after an assessment interview, at appropriate points during the program stay, and at program exit. Needed to complete Annual Progress Reports for certain HUD McKinney-Vento Act programs.

Subjects: All adults and children served.

APR-Required Response Categories:

For each service encounter, the following information should be recorded:

1. Date of Service

___/___/_____ (example: 01/31/2002)(Month) (Day) (Year)

2. Encounter Type

1—Referral
2—Service Provided

3. Type of Service Provided

Use service codes from: A Taxonomy of Human Services: A Conceptual Framework with Standardized Terminology and Definitions for the Field, 1994.

Special Issues: The Taxonomy is a classification system for human services that has been adopted by information and referral programs, libraries, crisis lines, and other programs throughout the United States. It features a five-level hierarchical structure that contains 4,300 terms that are organized into 10 basic service categories and a separate target group section. The Taxonomy provides a common language for human services, ensuring that people have common terminology for naming services, agreements regarding definitions for what a service involves, and a common way of organizing service concepts. The taxonomy is co-published by the Alliance of Information and Referral Systems (AIRS) and INFO LINE of Los Angeles. For more information visit *http://www.airs.org.*

3.14 Destination

Rationale: Destination is an important outcome measure.

Data Collection Method: Interview or self-administered form.

When Data Are Collected: At program exit. Needed to complete Annual Progress Reports for certain HUD McKinney-Vento Act programs.

Subjects: All adults and children served by the program.

Recommended Questions and APR-Required Response Categories:

Q: "After you leave this program, where will you be living?"

1—Emergency shelter
2—Transitional housing for homeless persons
3—Permanent housing for formerly homeless persons
4—Psychiatric facility
5—Substance abuse treatment facility
6—Hospital
7—Jail
8—Prison
9—Hotel or motel
10—Foster care home
11—Own room, apartment, or house
12—Living with someone else (family and friends)
13—A car or other vehicle
14—An abandoned building
15—At a transportation site (bus station, airport, subway station, *etc.*
16—Anywhere outside (streets, parks, campgrounds, cardboard boxes, *etc.*)
17—Other
88—Don't know
99—Refused

Q: "Is this move permanent (more than 90 days) or temporary?"

1—Permanent
2—Temporary
88—Don't know
99—Refused

Q: [*For staff only*]: Did your agency provide assistance for this move?

0—No
1—Yes
88—Don't know

Special Issues: Programs may choose to ask additional questions such as the reason for the client's departure, or whether upon leaving the program the client will be reuniting with other family members who have not been with them during the program stay.

3.15 Follow-Up After Program Exit

Rationale: Follow-up after program exit provides for important outcome measurements.

Data Collection Method: Interview or self-administered form.

When Data are Collected: Timing of follow-up is at the discretion of the local program. Needed to complete Annual Progress Reports for certain HUD McKinney-Vento Act programs.

Subjects: All adults served by the program.

Questions and Response Categories: Obtain follow-up information on six data elements previously described in this notice:

- 3.1 Income and Sources
- 3.2 Non-Cash Benefits
- 3.10 Education
- 3.11 Employment

The system should provide for changes in household composition at the time of the follow-up data collection—in particular, for dropping individuals from the household record or recording the addition of adults or children to the household. Changes in household composition can lead to changes in several of the required follow-up data elements, particularly a household's income and types of income sources.

Read names of members of household at exit and then ask:

Q: "Are they all living with you now?"

0—No
1—Yes
88—Don't know
98—Not applicable
99—Refused

If not all living with person, ask:

Q: "Who is not?" (list all separately)

_____

(example: John David Doe, Jr.)
88—Don't know
99—Refused

Q: "Does anyone else live with you now?"

0—No
1—Yes
88—Don't know
99—Refused

If there are additional members, ask:

Q: "How many new additional adults?"

_____

Q: "How many new additional children?"

_____

Staff: For each time a follow-up interview occurs, when did the interview happen?

___/___/_____(example: 01/31/2002) (Month) (Day) (Year)
88—Don't know

3.16 Children's Education

Rationale: To determine if homeless children and youth have the same access to free, public education, including public preschool education, that is provided to other children and youth. It can also serve as an important outcome measure. These questions were developed in consultation with the U.S. Department of Education.

Data Collection Methods: Interview or observations of program staff.

When Data are Collected: Upon initial program entry or as soon as possible thereafter, program exit, and during periodic follow-up.

Subjects: All children between 5 and 17 years of age.

Question and Response Categories:

Q: "Is [name of child] currently enrolled in school?"

1—Yes
0—No
88—Don't know
98—Not applicable
99—Refused

If child is currently enrolled in school, ask:

Q: "What is the name of the child's school(s)?"

_____

88—Don't know
98—Not applicable
99—Refused

Q: "What type of school is it? Is it a public or private school?'

1—Public school
2—Parochial or other private school
88—Don't know
98—Not applicable
99—Refused

If child is currently not enrolled in school, ask:

Q: "When was [name of child] last enrolled in school?" (use "X" for missing numbers)

___/___/_____(example: 01/31/2002, or 01/XX/2002) (Month) (Day) (Year)
88—Don't know
98—Not applicable
99—Refused

If child is currently not enrolled in school, ask:

Q: "I'm going to read a list of problems that you may have had getting your child into a school. Please tell me if you have experienced any of these problems for [name of child]."

[Ask each. Code each response as: 0—No; 1—Yes; 88—Don't know; 98—Not applicable; 99—Refused]

a. Residency requirements
b. Availability of school records
c. Birth certificates
d. Legal guardianship requirements
e. Transportation
f. Lack of available preschool programs
g. Immunization requirements
h. Physical examination records
i. Other

Special Issues: If only the month and year of the last enrollment date is known, the HMIS application should record the day as "01." One date-format field for last enrollment date should be created by the HMIS application.

Programs may choose to obtain additional information related to children's education, such as the number of school days missed over a specific period of time and the barriers to school attendance.

3.17 Other Children's Questions

Child's Physical Disability

Q: "Do you consider [name of child] to be physically disabled?"

0—No
1—Yes
88—Don't know
99—Refused

Child's Developmental Disability

Q: "Has [name of child] ever received benefits or services (such as an income supplement or special education classes) for a developmental disability?"

0—No
1—Yes
88—Don't know
99—Refused

Child's General Health Status

Q: "Compared to other children [name of child's] age, would you say [name of child's] health is excellent, very good, good, fair, or poor?"

1—Excellent
2—Very Good
3—Good
4—Fair
5—Poor
88—Don't know
99—Refused

Services Received

Record all services received by children, including the date and type of service (see 3.13 above).

Destination

Upon leaving the program, the following question should be asked about each child who has been with the adult client in the program.

Q: "Will [name of child] be staying with you?"

0—No
1—Yes
88—Don't know
98—Not applicable
99—Refused

If child will not be staying with the person, then ask:

Q: "In what kind of place will [name of child] be staying?"

1—Residence of other parent
2—Residence of friends or family (excluding other parent)
3—Foster care home
4—Child care residential institution
5—Runaway facility
6—Substance abuse treatment facility
7—Psychiatric facility
8—Juvenile detention center
9—Hospital
10—Anywhere outside (streets, parks, campgrounds, cardboard boxes, *etc.*)
11—Other

SUMMARY OF PROGRAM—LEVEL DATA ELEMENTS

Data standards	Subjects	Required for APR?	Data entry or computer-generated
Income and Sources	Adults and Children	Yes	Data Entry.
Non-Cash Benefits	Adults and Children	Yes	Data Entry.
Physical Disability	Adults and Children	Yes	Data Entry.
Developmental Disability	Adults and Children	Yes	Data Entry.
General Health Status	Adults and Children	No	Data Entry.
Pregnancy Status	All Adult Females	No	Data Entry.
HIV/AIDS Status	Adults	Yes	Data Entry.
Behavioral Health Status	Adults	Yes	Data Entry.
Domestic Violence	Adults	Yes	Data Entry.
Education	Adults	No	Data Entry.
Employment	Adults	Yes	Data Entry.
Veterans	Adults	No	Data Entry.
Services Received	Adults and Children	Yes	Data Entry.
Destination	Adults and Children	Yes	Data Entry.
Follow-up After Program Exit	Adults and Children	Yes	Data Entry.
Children's Education	Children	No	Data Entry.
Other Children's Questions	Children	No	Data Entry.

4. Standards for Data Confidentiality and Security

This section describes standards for the security of data collected and stored in HMIS at a local program or at a central storage facility, and the rights of individuals who are participating in the HMIS to have personal information kept secure. The intent of this section is to ensure the privacy and confidentiality of information collected by HMIS, while allowing for the use of data as needed by homeless assistance programs, CoCs and researchers. The information contained in this section of the notice is based upon common practice and standards within the information technology community, as well as in large measure upon the HIPAA (Health Insurance Portability and Accountability Act of 1996) standards for securing and protecting private medical information.

This section describes the minimum standards required by federal law. State and local laws may require confidentiality and security standards beyond those described in this notice. Local CoCs may also develop additional protocols or policies to further ensure the privacy and confidentiality of information collected through HMIS.

4.1 Protected Personal Information

This section identifies specific types of information that are considered protected personal information.

Any information that can be used to identify a particular individual is protected personal information. An HMIS user for these purposes is defined as program staff (or trained volunteers) and CoC system administrators who use the HMIS. A developer is defined for these purposes as both the individuals and organization responsible for developing the HMIS and any functionality that is built into HMIS. HMIS users and developers should consider the following to be protected personal information of an individual and his or her relatives, employers, or household members:

- Names.
- All geographic subdivisions smaller than a state, including street address, city, county, precinct, zip code, and their equivalent geocodes.
- All elements of dates (except year) directly related to an individual, including birth date, admission date, discharge date, and date of death.
- Telephone numbers.
- Social Security numbers.
- Medical record numbers.
- Vehicle identifiers and serial numbers, including license plate numbers.
- Device identifiers and serial numbers.
- Any other unique identifying number, characteristic, or code.

The HMIS user or developer must not use any other data element to identify an individual. Any other data element that can be used to identify an individual is considered protected personal information.

4.2 Securing HMIS and Data

This section describes the standards for system and application security.

System Security

Applicability. These system security provisions apply to the systems where the HMIS application is installed (networks, desktops, laptops, mini-computers, mainframes and servers).

User authentication. HMIS workstations and server shall be secured with, at a minimum, a user authentication system consisting of a username and a password. Passwords shall be at least eight characters long and meet industry standard complexity requirements, including, but not limited to, the use of at least one of each of the following kinds of characters in the passwords: Upper and lower-case letters, and numbers and symbols. Passwords shall not be, or include, the username, the HMIS name, or the HMIS vendor's name. In addition, passwords should not consist entirely of any word found in the common dictionary or any of the above spelled backwards. The use of default passwords on initial entry into the HMIS application is allowed so long as the application requires that the default password be changed on first use.

Written information specifically pertaining to user access (*e.g.*, username and password) shall not be stored or displayed in any publicly accessible location.

Virus protection. HMIS workstations and server shall be protected from viruses by commercially available virus protection software. Virus protection must include automated scanning of files as they are accessed by users on the system where the HMIS application is housed.

Firewalls. HMIS workstations and server shall be protected from malicious intrusion behind a secure firewall.

Public access. HMIS data shall not be housed on computers with public access to any part of the computer through the Internet, modems, bulletin boards, public kiosks, or similar arenas. HMIS that use such public forums for data collection or reporting must be secured to allow only connections from previously approved computers and systems through Public Key Infrastructure (PKI) certificates, extranets that limit access based on the Internet Provider (IP) address, or similar means. Further information on these tools can be found in the HMIS Consumer Guide and the HMIS Implementation Guide, both available on HUD's website.

Physical Access to Systems With Access to HMIS Data

Computers that are used to collect and store HMIS data shall be staffed at all times when in public areas. When workstations are not in use and staff are not present, steps should be taken to ensure that the computers and data are secure and not publicly accessible. These steps should minimally include: Logging off the data entry system, shutting down the computer, and storing the computer and data in a locked room.

Disaster Protection and Recovery

HMIS data shall be copied on a regular basis to another medium (*e.g.*, tape) and stored in a secure off site location where these same standards would apply. Ideally, off site storage shall include fire and water protection for the storage medium.

HMIS that store data in a central server, mini-computer, or mainframe shall store the central hardware in a secure room with appropriate temperature control and fire suppression systems.

Surge suppressors shall protect physical systems for collecting and storing the HMIS data.

Application Security

Applicability. These application security provisions apply to how the data are secured by the HMIS application itself, during entry, storage and review, or any other HMIS function.

User authentication. HMIS workstations and server shall be secured with, at a minimum, a user authentication system consisting of a username and a password. Passwords shall be at least eight characters long and meet industry standard complexity requirements, including, but not limited to, the use of at least one of each of the following kinds of characters in the passwords: Upper and lower-case letters, and numbers and symbols. Passwords shall not be, or include, the username, the HMIS name, or the HMIS vendor's name. In addition, passwords should not consist entirely of any word found in the common dictionary or any of the above spelled backwards. The use of default passwords on initial entry into the HMIS application is allowed so long as the application requires that the default password be changed on first use.

Written information specifically pertaining to user access (*e.g.*, username and password) shall not be stored or displayed in any publicly accessible location.

Electronic data transmission. MIS data that are electronically transmitted over publicly accessible networks or phone lines shall be encrypted to at least 128-bit encryption. Unencrypted data may be transmitted over secure direct connections between the two systems. A secure direct connection is one that can only be accessed by users who have been authenticated on at least one of the systems involved and does not utilize any tertiary systems to transmit the data.

Electronic data storage. HMIS data shall be stored in a binary, not text, format. Protected personal information shall be stored in an encrypted format using at least a 128-bit key. This encryption must be done within the HMIS so that the data are not readable from outside the local HMIS application.

Hard Copy Security

Applicability. This section is intended to provide standards for securing any hard copy that is either generated by or for HMIS, such as reports, data entry forms, and signed consents.

Any paper or other hard copy generated by or for HMIS that contain individually identifiable information as defined in this standard must be under constant supervision by an HMIS user or developer when in a public area. When staff are not present, the information shall be secured in areas that are not publicly accessible.

Written information specifically pertaining to user access (*e.g.*, username and password) shall not be stored or displayed in any publicly accessible location.

4.3 Privacy of Protected Personal Information

An HMIS user or developer may not use or disclose protected personal information except to the individual whose information it is or as permitted or required by this standard or by law.

Uses and Disclosures of Protected Personal Information Assumed by Entry Into the HMIS

By providing data to HMIS user or developer for entry into HMIS, an individual provides oral assent to the uses described in the following section. Such assent should only be assumed if the individual has been advised how he or she could benefit by providing the requested information, how the data will be protected, and how the data will be used.

An HMIS user or developer may use or disclose protected personal information without the written consent of the individual in situations specified in this notice, subject to the notice's applicable requirements. When the HMIS user or developer is required to inform the individual of, or when the individual may agree to a permitted use or disclosure, oral announcement is sufficient.

Uses and disclosures for administrative purposes. A CoC system administrator or developer may use or disclose protected personal information to program staff within the same program so they may perform necessary administrative functions (*e.g.*, ensure data integrity and create an unduplicated count of homeless persons). For the purpose of creating an unduplicated count within a CoC in which data are accessible across programs, the CoC may decide that oral consent is not sufficient. This notice neither requires nor prohibits the sharing of client information among programs in the CoC, but does require that local policy regarding information sharing be established and that either client notification or written consent be provided for in the event that information is shared.

Uses and disclosures for academic research purposes. An HMIS user or developer may use or disclose protected personal information to individuals performing academic research who have a formal relationship with a local program or CoC. Such research would be conducted either by an individual employed by the program, so long as the research has been approved by a program administrator, or by an outside institution that has entered into a research agreement with the program or CoC. Such data are to be used within the boundaries set by an approved research agreement. Such approvals do not substitute for Institutional Review Board (IRB) approvals, and researchers should seek appropriate IRB approvals.

Use for creating de-identified information. An HMIS user or developer may use protected personal information to create information that is not individually identifiable or disclose protected personal information to a third party to be used only for such purpose, whether or not the de-identified information is to be used by the HMIS user or developer.

Uses and disclosures required by law. An HMIS user or developer may use or disclose protected personal information to the extent that law requires such use or disclosure and the use or disclosure complies with and is limited to the relevant requirements of such law.

Disclosures about victims of abuse, neglect, or domestic violence. Consistent with applicable law and standards of ethical conduct, an HMIS user or developer may disclose protected personal information about an individual who is reasonably believed to be a victim of abuse, neglect, or domestic violence to a government authority (including a social service or protective services agency) authorized by law to receive reports of such abuse, neglect, or domestic violence. Disclosures to other entities are permissible only if the individual agrees to such disclosure.

Uses and disclosures to avert a serious threat to health or safety. An HMIS user or developer may, consistent with applicable law and standards of ethical conduct, use or disclose protected personal information if the HMIS user or developer, in good faith, believes the use or disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public and is made to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat.

Uses and disclosures about decedents.

- Coroners and medical examiners. An HMIS user or developer may disclose protected personal information to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law.
- Funeral directors. An HMIS user or developer may disclose protected personal information to funeral directors, consistent with applicable law, as necessary to carry out their duties with respect to a decedent. If necessary for funeral directors to carry out their duties, the HMIS user or developer may disclose the protected personal information prior to, and in reasonable anticipation of, the individual's death.

Disclosures for law enforcement purposes. An HMIS user or developer may, consistent with applicable law and standards of ethical conduct, disclose protected personal information for a law enforcement purpose to a law enforcement official. Such disclosure should meet only the minimum standards necessary for the law enforcement official's immediate purpose and not disclose information about other individuals within the program or CoC not specifically required by that purpose. A court order or search warrant may be required for

the disclosure of information about an individual in an HMIS. Such orders are restricted only to the individual(s) identified in the court order.

Disclosures for national security and intelligence activities. An HMIS user or developer may disclose protected personal information to authorized federal officials for the conduct of lawful intelligence, counter-intelligence, and other national security activities authorized by the National Security Act (50 U.S.C. 401, *et seq.*) and implementing authority (*e.g.*, Executive Order 12333).

Disclosures for protective services for the President and others. An HMIS user or developer may disclose protected personal information to authorized federal officials for the provision of protective services to the President or other persons authorized by 18 U.S.C. 3056, or to foreign heads of state or other persons authorized by 22 U.S.C. 2709(a)(3), or for the conduct of investigations authorized by 18 U.S.C. 871 and 879.

Uses and Disclosures of De-Identified Protected Personal Information

Information that meets the standard and implementation specifications for de-identification or has been aggregated is considered not to be individually identifiable information and, therefore, is not protected personal information. In order to meet this standard, none of the information listed in this notice as being part of the protected personal information may be included in the de-identified data. The restrictions concerning disclosure in this notice do not apply to information that has been de-identified in accordance with the applicable requirements, provided that there is no disclosure of a code or other means of record identification designed to enable coded or otherwise de-identified information to be re-identified. If de-identified information is re-identified, an HMIS user or developer may use or disclose such protected personal information only as permitted or required by this notice.

Re-Identification

An HMIS user or developer may assign a code or other means of record identification to allow information de-identified under this notice to be re-identified by the HMIS user or developer, provided that: The code or other means of record identification is not derived from or related to information about the individual and is not otherwise capable of being translated so as to identify the individual; and the HMIS user or developer does not use or disclose the code or other means of record identification for any other purpose, and does not disclose the mechanism for re-identification.

Consent for Other Uses or Disclosures of Private Information

An HMIS user or developer must obtain the individual's consent prior to using or disclosing protected personal information. A consent form must:

- Be stated in plain language;
- Include full disclosure of all the ways in which otherwise protected personal information might be used;
- State that the terms of its notice may change and describe how the individual may obtain a revised notice;
- State that the HMIS user or developer is not required to agree to additional restrictions that may be requested by the individual;
- Indicate that if the HMIS user or developer agrees to a requested restriction, the restriction is binding on the HMIS user or developer;
- State that the individual has the right to revoke the consent in writing, except to the extent that the HMIS user or developer has taken action in reliance thereon; and,
- Be signed and dated by the individual.

1.1 Notice of Privacy Practices for Protected Personal Information

An individual has a right to adequate notice of the uses and disclosures of protected personal information that may be made by the HMIS user or developer, and of the individual's rights and the HMIS user or developer's legal duties with respect to protected personal information.

The notice should be prominently displayed in the program offices where intake occurs.

The HMIS user or developer must promptly revise and distribute its notice whenever there is a substantive change to the uses or disclosures, the individual's rights, the HMIS user or developer's legal duties, or other privacy practices stated in the notice. Except when required by law, a substantive change to any term of the notice may not be implemented before the effective date of the notice in which a substantive change is reflected.

An HMIS user or developer must maintain documentation of compliance with the notice requirements by retaining copies of the notices issued by the HMIS user or developer.

The individual has the right to obtain a paper copy of the notice from the HMIS user or developer upon request.

An inmate does not have a right to notice, and the requirements of this notice do not apply to a correctional institution that is an HMIS user.

Content of Notice

The HMIS user or developer must provide a notice that is written in plain language and that contains the elements required by this section. These elements are not exclusive, and either oral or written notice may inform the individual of the uses of information that may help provide service or otherwise benefit the individual.

- The following statement as a header or otherwise must be prominently displayed: "THIS NOTICE DESCRIBES HOW INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY."
- A description of each of the purposes for which the HMIS user or developer is permitted or required by this notice to use or disclose protected personal information without the individual's written consent or authorization. These include administrative, programmatic, and academic research purposes.
- If a use or disclosure is prohibited or materially limited by other applicable law, the description of such use or disclosure must reflect the more stringent law.
- A statement that other uses and disclosures will be made only with the individual's written authorization and that the individual may revoke such authorization.
- A statement of the individual's rights with respect to protected personal information and a brief description of how the individual may exercise these rights.
- A statement that the HMIS user or developer is required by law to maintain the privacy of protected personal information and to provide individuals with notice of its legal duties and privacy practices with respect to protected personal information.
- A statement that the HMIS user or developer is required to abide by the terms of the notice currently in effect.
- A statement that reserves the right to change the terms of this notice and to make the new notice provisions effective for all protected personal information that it maintains. The statement must also describe how it will attempt to provide individuals with a revised notice.
- A statement that individuals may complain to the HMIS user or developer if they believe their privacy rights have been violated.

- A brief description of how the individual may file a complaint with the HMIS user or developer.
- A statement that the individual will not be retaliated against for filing a complaint.
- The name, or title, and telephone number of a person or office to contact for further information.
- The date on which the notice is first in effect, which may not be earlier than the date on which the notice is printed or otherwise published.

4.5 Rights To Request Privacy Protection for Protected Personal Information

Access of Individuals to Protected Personal Information

An individual has a right of access to inspect and obtain a copy of his/her own protected personal information in a record set, for as long as the protected personal information is kept, except for information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding. The individual also has the right to correct protected personal information (such as name and date of birth) when that information is inaccurate.

An HMIS user or developer must permit individuals to request and must accommodate reasonable requests by individuals to receive communications of protected personal information from the HMIS user or developer by alternative means or at alternative locations.

Accounting of Disclosures of Protected Personal Information

An individual has a right to receive an accounting of disclosures of protected personal information made by an HMIS user or developer in the six years prior to the date on which the accounting is requested, except for disclosures for national security or intelligence purposes or to correctional institutions or law enforcement officials.

The HMIS user or developer must temporarily suspend an individual's right to receive an accounting of disclosures to a health oversight agency or law enforcement official, for the time specified by such agency or official, if the agency or official provides the HMIS user or developer with a written statement confirming that such an accounting would impede the agency's activities. The notification should specify the time for which such a suspension is required.

4.6 Administrative Requirements

Local Protocol

A CoC system administrator is required to have a written policy governing its use and disclosure of information collected by HMIS. This policy should address the specifics of how use and disclosure decisions will be made and who will make them and with what documentation, as well as the specifics of how the data security standard will be met. These decisions should include who will have access to HMIS data and the level of access granted to each user. The policy should also address grievance procedures and penalties for non-compliance. Examples of such policies are discussed in the HMIS Implementation Guide available on HUD's Web site.

To test system and application security, a CoC system administrator is encouraged to periodically conduct penetration testing, a procedure which is also described in the Implementation Guide.

Local Policies

A CoC system administrator or developer who has instituted policies in addition to those listed in this notice must maintain a written copy detailing any and all additions and specifications beyond the content of this notice. Such written policy must be distributed to all staff and included as an additional notice for individuals affected.

Safeguards

A CoC system administrator or developer must have in place appropriate administrative, technical, and physical safeguards to protect the privacy of protected personal information including, but not limited to, those described in this notice and required by law.

Training

A CoC system administrator user or developer must provide orientation and ongoing training to all of its staff on the policies and procedures relating to protected personal information sufficient for staff to carry out their functions.

5. Technical Standards

This section presents the technical standards that will be required for HMIS applications and for the CoCs responsible for storing HMIS data. Except as otherwise provided, these standards do not specify or recommend any particular operating system, development environment, networking environment, database, hardware, or other aspect of the HMIS application.

This part of the notice is primarily directed to HMIS developers and CoC system administrators.

5.1 Required HMIS Capabilities

Automatic Generation of Identification Numbers and Information

Based on the data collected through program staff interviews or self-administered forms, the HMIS application must be capable of automatically generating data for each record. This capability includes the automatic generation of:

(1) Unique personal identification numbers (PINs) for persons who have not been previously served within the CoC, and re-assignment of PINs for persons who have been served previously within the CoC;

(2) Household identification numbers for persons who have been identified as members of a household that participated in the same program event;

(3) Program identification information that is uniquely associated with each program within a CoC and is assigned to every program event; and,

(4) A program event number that distinguishes each episode of program utilization.

Personal Identification Numbers (PINs)

PIN is a number randomly and automatically generated by the HMIS application. All records associated with the same person should be assigned the same PIN. The PIN is used to produce an unduplicated count of all persons within a CoC.

HMIS must be capable of searching the entire CoC database (whether or not data are shared across programs within a CoC) to determine if clients have been previously served. The search must involve the matching of client records using personal identifier fields (*e.g.*, Name, Social Security Number, Date of Birth, and Gender) to retrieve a record(s) with identical or similar values in each of these fields.

Household Identification Numbers

HMIS must generate the same household identification number for every person designated by program staff as being together for an episode of service (*i.e.*, program event). The household identification numbers assigned will be maintained in each person's permanent record and will be unique for each program event experienced by the client.

As discussed in Parts 2 and 3 of this notice, when a group of persons apply for services together (as a household or family), information is first asked of the household head who is applying for services and then information is

requested from him/her about any children under 18 years of age who are applying for services with the household head. The children do not need to be present at the time the household head applies for services. The same household identification number is assigned to the adult head of household and any children who have been identified as applying for services with the head. If there are other adult members of the household (over 18 years of age) who are reported to be part of this household, a separate intake is conducted. As part of this intake, this individual is assigned the same household identification number as the other household members.

Program Identification Information

Program identification information for every program offered in a CoC consists of the following four fields:

- Federal Information Processing System (FIPS) Code. To find the 10-digit FIPS code consisting of 2-digit state code, 3-digit county code, and 5-digit place code: (1) Go to website *http://geonames.usgs.gov/fips55.html;* (2) Click on "Search the FIPS55 Data Base"; (3) Click on state from "State Number Code" pull down menu (this also tells you 2-digit state code); (4) Type town or city name in "Fips55 Feature Name" box; and (5) Click on "Send Query", and 3-digit county code and 5-digit place code will be shown.
- Facility Code (to be locally determined)
- Continuum of Care (CoC) Code (HUD-assigned)
- Program Type Code:

0—Not applicable
1—Street outreach
2—Emergency shelter (*e.g.*, facility or vouchers)
3—Transitional housing
4—Permanent supportive housing
5—Homeless prevention (*e.g.*, security deposit or one month's rent)
6—Services-only type of program
7—Other

The FIPS code, facility code, CoC code, and program type code may be separate fields in the HMIS application. There is no requirement to merge them into a single field.

For each client intake, staff are only required to enter the program type code. Programs may choose to provide more detailed response categories for the services-only type program response. However, staff must be able to collapse these detailed categories into a single service-only type category. A corresponding FIPS code, facility code, and CoC code should be automatically generated by the HMIS. Once program identification information has been created, the HMIS must ensure that the information is associated with every program event recorded within the CoC.

Program Event Numbers

The HMIS application should generate unique codes for every program event occurring within the CoC. This will enable the system to distinguish episodes of service that occur on the same date and within the same program (*e.g.*, two counseling sessions conducted on the same day).

Missing Value Categories

Don't know, not applicable, and refused response categories specified for close-ended questions should appear on the same list as the valid responses. For open-ended questions (*e.g.*, name or the name of the child's school), the HMIS application should include the don't know, not applicable, and refused response categories for each field in the data element (*e.g.*, first name, last name, middle initial, and suffix).

Other Response Categories

Certain data elements may contain a response category labeled "other." When a data element contains such an option, there should also be, within the same database table, a separate alphanumeric field where the other value may be entered by program staff. For instance, a coded field that accepts the values 0–Red, 1–Yellow, 9–Other should have an accompanying field that accepts open-ended answers such as tangerine, blue, or magenta. The analysis of such data will allow the standard to adapt to include codes for common answers to questions that may not have been anticipated within the current standard.

Data Export

Although a standard environment is not specified, any HMIS application must be capable of exporting any and all data collected into a comma-separated values text file using the following format:

- All fields in a given record are separated by a comma;
- All records within a given text file contain the same fields;
- Blank fields are signified by the comma ending the previous field (or the beginning of the line if the field is the first in the record) followed by a comma indicating the end of the empty field;
- Fields containing text information (as opposed to numeric) will be surrounded by double quotes whenever the field includes blank spaces, commas, or other symbols not part of the standard alphabet;
- The first line of the file shall be a list of the field names included in every record in the file; and
- The list of field names shall be in the same format described above.

5.2 Continuum of Care Requirements

Storage Requirements

The CoC must have or designate a central coordinating body that will be responsible for centralized collection and storage of HMIS data.

HMIS data must be collected to a central location at least once a year from all HMIS users within the CoC.

HMIS data must be stored at the central location for a minimum of seven years after the date of collection by the central coordinating body or designee of the CoC.

5.3 Anonymous Data Collection

An anonymous data record is a record that does not provide sufficient (or any) of the protected personal identifiers to uniquely identify the individual in the record. Certain types of service providers, especially those dealing with victims of domestic violence, occasionally use anonymous records to protect a client's privacy and safety. Some HMIS collect anonymous data and assign a system-generated ID to the individual for the purposes of tracking a client's history of services. Other HMIS simply accept anonymous data and do not attempt to associate previously collected data with the data from the current event.

This notice does not preclude the collection of anonymous data within HMIS. It is important to note, however, that there are several important shortcomings associated with the collection of anonymous data. Anonymous data are nearly impossible to be-duplicated at any level. Also, depending on the amount of data collected for the anonymous client, there may be little practical use for the data, except to count intakes within a particular program.

Dated: July 16, 2003.

William H. Eargle,

Deputy Assistant Secretary for Operations, Office of Community, Planning and Development.

[FR Doc. 03–18505 Filed 7–17–03; 2:52 pm]

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Presidential Documents

Title 3—

The President

Proclamation 7691 of July 18, 2003

Captive Nations Week, 2003

By the President of the United States of America

A Proclamation

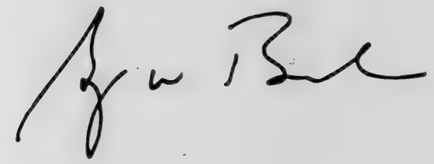
During Captive Nations Week, first declared in 1959 as a statement against the continuing Communist domination of Eastern Europe, America expresses its dedication to freedom and democracy. While many countries around the world uphold these principles, millions of people still live under regimes that violate their citizens' rights daily. In countries such as Burma and Iran, citizens lack the right to choose their government, speak out against oppression, and practice their religion freely. The despot who rules Cuba imprisons political opponents and crushes peaceful opposition, while in North Korea hundreds of thousands languish in prison camps and citizens suffer from malnutrition as the regime pursues weapons of mass destruction. Violence, corruption, and mismanagement reign in Zimbabwe and an authoritarian government in Belarus smothers political dissent.

Yet the cause of freedom is advancing. With the demise of the brutal regime of Saddam Hussein, the Iraqi people are no longer captives in their own country. Their freedom is evidence of the fall of one of the most oppressive dictators in history. Today, American and coalition forces are helping to restore civil order and provide critical humanitarian aid to the Iraqi people. Iraqis are now meeting openly and freely to discuss the future of their country. The United States vows to continue to work with those trying to bring about peaceful democratic change and greater respect for human rights.

The Congress, by Joint Resolution approved July 17, 1959, (73 Stat. 212), has authorized and requested the President to issue a proclamation designating the third week in July of each year as "Captive Nations Week."

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim July 20 through July 26, 2003, as Captive Nations Week. I call upon the people of the United States to observe this week with appropriate ceremonies and activities and to reaffirm their commitment to all those seeking liberty, justice, and self-determination.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of July, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.



[FR Doc. 03–18897
Filed 7–22–03; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 400, 407 and 457

RIN 0563–AB85

General Administrative Regulations, Subpart J—Appeal Procedure and Subpart T—Federal Crop Insurance Reform, Insurance Implementation, Regulations for the 1999 and Subsequent Reinsurance Years; Group Risk Plan of Insurance Regulations for the 2001 and Succeeding Crop Years; and the Common Crop Insurance Regulations, Basic Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final regulations which were published Wednesday, June 25, 2003 (68 FR 37697–37726). The regulations pertain to the General Administrative Regulations, Subpart J—Appeal Procedure and Subpart T—Federal Crop Insurance Reform, Insurance Implementation, Regulations for the 1999 and Subsequent Reinsurance Years; Group Risk Plan of Insurance Regulations for the 2001 and Succeeding Crop Years; and the Common Crop Insurance Regulations, Basic Provisions.

EFFECTIVE DATE: June 18, 2003.

FOR FURTHER INFORMATION CONTACT: For further information contact Janice Nuckolls, Insurance Management Specialist, Research and Development, Product Development Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO, 64133–4676, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction implemented changes mandated by the Federal Crop Insurance Act, as amended by the Agricultural Risk Protection Act of 2000, and required an earlier notice of loss for prevented planting in response to an Office of Inspector General Audit.

Need for Correction

As published, the final regulations contained a typographical error which may prove to be misleading and is in need of correcting. Section 37(a) of the Common Crop Insurance Regulations, Basic Provisions contained a cite, "section 8(b)(2)", which should have been "section 8(b)(1)."

Correction of Publication

■ Accordingly, the publication on Wednesday, June 25, 2003 of the final regulations at 68 FR 37697–37726 is corrected as follows:

PART 457—[CORRECTED]

§ 457.8 [Corrected]

■ On page 37726, in the second column, section 37(a) cites "section 8(b)(2)" which is corrected to read "section 8(b)(1)".

Signed in Washington, DC, on July 11, 2003.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 03–18720 filed 7–22–03; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1952 and 1956

Partial Withdrawal of Approval of the Virgin Islands State Plan; Resumption of Exclusive Federal Enforcement Authority in the Private Sector; and Conversion and Approval of the Virgin Islands State Plan to a State Plan for Public Employees Only

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Final rule.

SUMMARY: This action amends the Code of Federal Regulations (CFR) to reflect the withdrawal of approval by the Occupational Safety and Health Administration (OSHA) of the United States Virgin Islands' (the "Virgin Islands") comprehensive State plan covering both private and public sector employers and employees, and the conversion and approval of a public employee State plan, covering employers and employees of the Territory and its political subdivisions only. This action is taken as the result of unique structural and performance issues in the Virgin Islands and with mutual agreement. Federal OSHA will now exercise exclusive jurisdiction over all private sector employers and employees in the Virgin Islands. In addition to public employee coverage, the Territory will provide expanded on-site consultation services to the private sector in the U.S. Virgin Islands pursuant to a new cooperative agreement with OSHA as authorized by Section 21(d) of the Occupational Safety and Health Act.

EFFECTIVE DATE: July 23, 2003.

FOR FURTHER INFORMATION CONTACT: Barbara Bryant, Director, Office of State Programs, Directorate of Cooperative and State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3700, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 693–2200, Fax (202) 693–1671, E-mail: *Bryant.Barbara@dol.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

Section 18 of the Occupational Safety and Health Act of 1970 (the OSH Act), 29 U.S.C. 667, provides the basis for States to assume responsibility for the development and enforcement of occupational safety and health standards by submitting to the Assistant Secretary of Labor for Occupational Safety and Health ("Assistant Secretary"), and obtaining Federal approval of, a State plan. Under regulations at 29 CFR part 1902 and 1956 respectively, there are two types of State plans which a State may operate: a comprehensive "State plan" covering both private and public (State, or Territory, and its political subdivisions) employees; or a "State plan for public employees only."

Section 3(7) of the OSH Act makes several U.S. Territories and possessions including the U.S. Virgin Islands eligible to submit State plans under Section 18. The United States Virgin Islands ("Virgin Islands") State plan received initial approval for its comprehensive State plan on September 11, 1973 (38 FR 24896). A description of the plan and Federal OSHA approval was codified in the Code of Federal Regulations at 29 CFR part 1952, subpart S. The Virgin Islands Department of Labor, Division of Occupational Safety and Health (VIDOSH) was designated as the State agency with responsibility for administering the State plan, and operations under the plan commenced at the time of initial plan approval in 1973. The Virgin Islands State plan covered all issues of occupational safety in private and public sector workplaces located within the Virgin Islands. Although in the public sector the State plan covered occupational health as well as safety, in the private sector the State plan did not exercise enforcement authority over occupational health issues; enforcement of health standards and other health-related requirements in the Virgin Islands with regard to private sector employment remained a Federal OSHA responsibility.

The Virgin Islands State plan successfully completed all of its State plan developmental steps and was certified as structurally complete on September 22, 1981. Pursuant to Section 18(e) of the OSH Act and procedures at 29 CFR 1902, OSHA determined that the Virgin Islands program met all requirements and, in actual operation, was "at least as effective" as the Federal program, granted the Virgin Islands State plan final approval, and relinquished Federal enforcement authority effective April 17, 1984 (49 FR 16766). However, on November 13, 1995, OSHA announced that, as a result of its monitoring, it had found that the Virgin Islands State plan, was no longer "at least as effective as" Federal OSHA and that other 18(e) requirements were no longer being met. In response to this finding, the Virgin Islands Commissioner of Labor agreed to voluntarily relinquish the State plan's final approval status under Section 18(e), to the reassertion of concurrent Federal OSHA enforcement authority and jurisdiction, and to undertake necessary corrective action to regain final approval status (60 FR 56950).

The decision to reinstate concurrent jurisdiction in 1995 allowed Federal OSHA to exercise full discretionary concurrent enforcement authority to assure worker protection, while allowing the Virgin Islands time and assistance to improve its performance. However, since the agreement in 1995 the Virgin Islands has been unable to institute significant improvements to its staffing and operational performance. Federal OSHA monitoring of the State plan has not indicated sufficient improvements in the Territory's performance to alleviate the deficiencies identified at that time. This has made it necessary for OSHA to continue to provide Federal staffing and resources in recent years to assure an appropriate level of worker safety and health protection in workplaces in the Virgin Islands.

B. Partial Withdrawal of the Virgin Islands State Plan; Resumption of Exclusive Federal Enforcement Authority in the Private Sector

In a letter dated May 12, 2003, Governor Charles Turnbull of the United States Virgin Islands notified the Assistant Secretary of the decision of the Territory to formally withdraw that portion of its federally-approved occupational safety and health State plan which provides for occupational safety coverage of private sector employment, pursuant to 29 CFR 1955.3(b). This letter also notified the Assistant Secretary of the Virgin Islands' request that the OSHA-approved State plan be converted from a comprehensive State plan covering both private and public sector employees, as currently reflected in 29 CFR 1952, subpart S, to a public employee only State plan, as authorized by 29 CFR part 1956, covering employees of the Territory and its political subdivisions only. In addition, the Governor expressed the Territory's agreement to provide on-site consultation services to the private sector in the Virgin Islands pursuant to a cooperative agreement under section 21(d) of the OSH Act. (The Virgin Islands, up-to-now, has provided private sector consultation services under the auspices and funding of its State plan.) The Virgin Islands indicated such conversion would allow it to focus resources on increasing the protection provided to public sector employees, while at the same time providing increased safety and health assistance for small business employers and employees in the Territory with the additional Federal funding and assistance available through a Section 21(d) consultation agreement.

OSHA has conveyed to the Virgin Islands its agreement with the resolution set forth in the Governor's May 12 letter. This agreement resolves unique and long-standing issues regarding the status and funding of the Virgin Islands State plan, in a manner which recognizes Federal OSHA's ongoing responsibility to provide staffing and resources for private sector enforcement in the Virgin Islands, while assuring continued recognition and funding for the valuable public sector compliance and consultation activity provided by the Territory. The agreement makes it possible for OSHA to devote its resources to providing safety and health protection in Virgin Islands workplaces, rather than expending its resources in a possibly lengthy and complex proceeding under 29 CFR part 1955 to formally withdraw State plan approval. The agreement also allows the Virgin Islands to qualify for enhanced funding under a provision of the Omnibus Insular Areas Act of 1977 (48 U.S.C. Section 1469 (d)), which authorizes OSHA to waive the requirement for Territorial matching funds for grant amounts under $200,000.

Accordingly, OSHA is revising 29 CFR 1952 and 29 CFR part 1956 to reflect the Virgin Islands' decision to exclude private sector employment from coverage under the plan while retaining coverage of public sector employment, and to reflect the new status of the plan as one that applies to the public sector only. Pursuant to the Governor's May 12 letter, State plan coverage of all private sector employers and employees is terminated effective July 1, 2003; exclusive Federal OSHA jurisdiction over private sector employment in the Virgin Islands is resumed on the same date. In accordance with Section 18(f) of the OSH Act and 29 CFR part 1955.4, the Territory may retain jurisdiction in any case commenced prior to the July 1 voluntary termination of its private sector program in order to enforce standards under the plan. 29 CFR 1952, subpart S, which reflects the prior status of the Virgin Islands program as a comprehensive State plan, is being rescinded and reserved.

The Virgin Islands' decision to retain its existing State plan in the public sector is being implemented by adding a new subpart H to 29 CFR part 1956, which reflects the new status of the Virgin Islands plan as a public sector only plan. The new subpart codifies the Virgin Islands plan as a developmental plan under 29 CFR part 1956, as it will be necessary for the Territory to make certain adjustments to its public employee program structure and to revise its State plan document to reflect its new, more limited scope. The State plan already meets the majority of the criteria for public sector State plans in 29 CFR 1956.10 and the indices of effectiveness in 29 CFR part 1956.11. However, to provide a procedure for documenting how it meets those requirements, the Virgin Islands has submitted a developmental schedule for making the necessary adjustments to the State plan to reflect its change in scope, including the amendment and/or revision of Territorial legislation to provide more explicit authority for the public employee program, State plan narrative, implementing regulations and administrative procedures including revisions to its standards adoption procedures, and the development of a public employee only consultation program, strategic plan, and poster.

The State plan action and associated reconfiguration of the Virgin Islands workplace safety and health program will also result in changes in the Federal funding arrangements. As the reduction in the size and administrative cost of its State plan will reduce its funding requirements, OSHA has determined that the provisions of the Omnibus Insular Areas Act of 1977 (48 U.S.C. Section 1469(d)) can now apply. This authorizes OSHA to waive the Territory's matching share requirement for Federal funding under $200,000. The Virgin Islands is appropriately amending its grant documents to reflect these changes in status and funding.

C. Waiver of Comment Period; Immediate Effective Date

OSHA finds that good cause exists for amending 29 CFR parts 1952 and 1956 to reflect the modification in coverage of the Virgin Islands State plan without an opportunity for public comment, and for making this rule effective immediately upon publication in the **Federal Register**. Today's action imposes no new rights or obligations on affected parties, since as discussed above, private sector workplaces in the Virgin Islands have been subject to enforcement of Federal OSHA safety requirements since 1995, and subject to Federal OSHA health requirements since the inception of the Virgin Islands State plan. (Federal OSHA and Virgin Islands safety and health standards and regulations are identical.) Public sector employers in the Virgin Islands are likewise unaffected, as they remain subject to the same requirements approved as part of the Territory's existing plan, which was approved after public notice and comment (38 FR 24896). Today's revisions to the 29 CFR parts 1952 and 1956 have no substantial effect on the rights or obligations of any member of the public, and are made only to update these basic public references to reflect the current coverage of the Virgin Islands State plan. Accordingly, OSHA finds that good cause exists for making these revisions without an opportunity for public comment, and for making them effective immediately upon publication in the **Federal Register**.

D. Decision

In accordance with the Governor's request and in order to assure the most effective protection possible to both private and public sector workers in the U.S. Virgin Islands, the withdrawal of the Virgin Islands' State plan in the private sector and its conversion to a public employee only State plan under 29 CFR 1956 is hereby approved. This decision incorporates the requirements of the OSH Act and of regulations applicable to State plans generally.

E. Effective Date of State Plan Conversion

The Virgin Islands State plan ceased inspections and other compliance activity in the private sector, except for previously initiated cases, and began operating as a public employee only State plan limiting its coverage to employees of the Territory and its political subdivisions on July 1, 2003.

F. Paperwork Reduction

This final rule contains no collections of information other than those already imposed by State plan regulations which have been previously reviewed and approved by the Office of Management and Budget ("OMB"), and assigned OMB control number 1218–0247 under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The OMB approval of these collections of information contained in these regulations expires November 30, 2005.

G. Regulatory Review

Regulatory Flexibility Act

OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) that the approval of the withdrawal of the complete plan and conversion to a public employee only plan will not have a significant economic impact on a substantial number of small entities. This final rule applies only to the one Territorial agency operating an OSHA-approved State plan, and would not place small units of government under any new or different requirements, nor would any additional burden be placed upon the Territorial government beyond the responsibilities already assumed as part of the approved plan. By its own terms, the converted plan will have no effect on private sector employment, but is limited to the Territory and its political subdivisions. Moreover, a plan has been in effect in the Virgin Islands since 1973 and all public sector employers, including small units of local government, have been subject to its terms.

Unfunded Mandates Reform Act

The procedures in 29 CFR parts 1952, 1955 and 1956 for submission, initial approval and withdrawal of OSHA-approved State plans apply only to States and Territories which have voluntarily submitted a State plan for OSHA approval under the OSH Act, and accordingly these procedures do not meet the definition of a "Federal intergovernmental mandate" under section 421(5) of UMRA (2 U.S.C. 658(5)).

Federalism

Executive Order 13132, "Federalism," (64 FR 43255; Aug. 4, 1999) establishes fundamental Federalism criteria to be applied in formulating and implementing Federal policies, and requires agencies to consult with affected State, Territorial and local officials in the development of regulatory policies. Although OSHA has determined that the requirements and consultation procedures provided in Executive Order 13132 are not applicable to plan approval decisions under the Act, which have no effect outside the particular State or Territory receiving approval, OSHA has reviewed this action and believes it is consistent with the principles and criteria set forth in the Executive Order. This rule was developed in coordination with representatives from the U.S. Virgin Islands, and opportunities for additional State input have been afforded through consultation with the Occupational Safety and Health State Plan Association (OSHSPA), the organization of State agencies which administer Federally-approved plans.

Executive Order

This final rule has been deemed not significant under Executive Order 12866.

List of Subjects in 29 CFR Parts 1952 and 1956

Administrative practice and procedure, Intergovernmental relations, Law enforcement, Occupational safety and health, Reporting and recordkeeping requirements.

Authority

This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health. It is issued under Section 18 of the

Occupational Safety and Health Act of 1970 (29 U.S.C. 667), 29 CFR 1902, 1952, 1955, and 1956, and Secretary of Labor's Order 5–2002 (67 FR 65008, October 22, 2002).

Signed at Washington, DC this 16th day of July, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

■ Accordingly, the 29 CFR Ch. XVII is amended as set forth below:

PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

■ 1. The authority for 29 CFR part 1952 is revised to read as follows:

Authority: Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667), 29 CFR part 1902 and 1955, and Secretary of Labor's Order 5–2002 (67 FR 65008, October 22, 2002).

■ 2. Subpart S of 29 CFR part 1952 is removed and reserved to read as follows:

Subpart S—[Removed and Reserved]

PART 1956—STATE PLANS FOR THE DEVELOPMENT AND ENFORCEMENT OF STATE STANDARDS APPLICABLE TO STATE AND LOCAL GOVERNMENT EMPLOYEES IN STATES WITHOUT APPROVED PRIVATE EMPLOYEE PLANS

■ 3. The authority for 29 CFR part 1956 is revised to read as follows:

Authority: Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667), 29 CFR 1902, 1952, and 1955, and Secretary of Labor's Order 5–2002 (67 FR 65008, October 22, 2002).

■ 4. 29 CFR part 1956 is amended by adding a new subpart H to read as follows:

Subpart H—The Virgin Islands

Sec.

1956.70 Description of plan as approved.
1956.71 Developmental schedule.
1956.72 Changes to approved plan. [Reserved.]
1956.73 Determination of operational effectiveness. [Reserved.]
1956.74 Location of basic State plan documentation.

Subpart H—The Virgin Islands

§ 1956.70 Description of plan as approved.

(a) The Virgin Islands State plan was converted to a public employee only occupational safety and health program on July 1, 2003, and received initial approval on July 23, 2003. It is administered and enforced by the Virgin Islands Department of Labor, Division of Occupational Safety and Health ("the agency," or "VIDOSH") throughout the U.S. Virgin Islands (the "Virgin Islands"). The Virgin Islands public employee program, established by Executive Order 200–76 on July 11, 1975, extends full authority under Virgin Islands Act No. 3421, Section 16 (April 27, 1973) and implementing regulations to the agency to enforce and administer all laws and rules protecting the safety and health of employees of the Government of the Virgin Islands, its departments, agencies and instrumentalities, including any political subdivisions. It covers all activities of public employers and employees and places of public employment. The Territory has adopted all Federal standards promulgated as of June 2003, and has given assurances that it will continue to adopt and update all Federal standards, revisions and amendments. The plan is accompanied by a statement of the Governor's support.

(b) The plan establishes procedures for variances and the protection of employees from hazards under a variance; insures inspection in response to complaints; provides employer and employee representatives an opportunity to accompany inspectors and to call attention to possible violations before, during, and after inspections; notification to employees or their representatives when no compliance action is taken as a result of alleged violations, including informal review; notification of employees of their protection; protection of employees against discharge or discrimination in terms and conditions of employment; includes provision for prompt notices to employers and employees of violations of standards and abatement requirements and either sanctions or alternative mechanisms to assure abatement; employer's right to appeal citations for violations, abatement periods and any proposed sanctions and/or compulsory process; employee's right to appeal abatement periods; and employee participation in review proceedings. Also included are provisions for right of entry for inspection, prohibition of advance notice of inspection and the requirement for both employers and employees to comply with the applicable rules, standards, and orders, and employer obligations to maintain records and provide reports as required. Further, the plan provides assurances of a fully trained adequate staff and sufficient funding, and for voluntary compliance programs, including a public sector consultation program.

Note: The Virgin Islands' received initial approval for a comprehensive State plan covering the private (safety only) and public sectors on September 11, 1973 (38 FR 24896) and final approval under Section 18(e) of the Act on April 17, 1984 (49 FR 16766). Final approval status for that State plan was suspended and full Federal concurrent enforcement authority was reinstated on November 13, 1995 (60 FR 56950). Effective July 1, 2003, the Virgin Islands withdrew the portion of its State plan which covered private sector employment, and exclusive Federal enforcement jurisdiction for the private sector resumed.

§ 1956.71 Developmental schedule.

The Virgin Islands State plan for public employees only is developmental. The following is a schedule of major developmental steps to be completed:

(a) The Virgin Islands will review and amend its legislation and regulations, as appropriate, to assure proper statutory authority for "at least as effective" coverage of all public sector employers and employees including Territorial government employers and employees and any employers or employees of municipalities or other local governmental entities. The plan will be revised to include a legal opinion that the converted plan meets the requirements of the Occupational Safety and Health Act of 1970 and is consistent with the laws of the Virgin Islands. These actions will occur within one year of plan conversion approval.

(b) The Virgin Islands will review and amend its legislation and regulations as necessary to reflect its more limited coverage and to be consistent with formal withdrawal of Federal approval of the private sector portion of the State plan, within one year of plan conversion approval.

(c) The Virgin Islands will review its statutory authority regarding standards adoption and take appropriate legislative or administrative action to assure that it is consistent with 29 CFR part 1953 and that all standards applicable to the public sector will be promulgated within six months of the promulgation date of new Federal OSHA standards, within one year of plan conversion approval.

(d) The Virgin Islands will take appropriate legislative or administrative action to assure effective sanctions, either as monetary penalties, or an alternative mechanism for compelling abatement in the public sector within one year of plan conversion approval.

(e) The Virgin Islands will develop a five-year strategic plan and corresponding annual performance plan within two years of plan conversion approval.

(f) A new State poster will be developed and distributed to reflect coverage of the public sector only within one year of plan conversion approval.

(g) The Virgin Islands will submit a revised State plan, in electronic format to the extent possible, reflecting its coverage of public employers and employees only in accordance with 29 CFR 1956, within one year of plan conversion approval.

(h) The Virgin Islands will hire and provide appropriate training for their public sector compliance and consultation staffs, within one year of plan conversion approval.

(i) The Virgin Islands will develop a public sector consultation program within two years of plan conversion approval.

§ 1956.72 Changes to approved plan. [Reserved]

§ 1956.73 Determination of operational effectiveness. [Reserved]

§ 1956.74 Location of basic State plan documentation.

Copies of basic State plan documentation are maintained at the following locations. Specific documents are available upon request, and will be provided in electronic format, to the extent possible. Contact the: Directorate of Cooperative and State Programs, Office of State Programs, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Room N–3700, Washington, DC 20210; Office of the Regional Administrator, U.S. Department of Labor, Occupational Safety and Health Administration, 201 Varick Street, Room 670, New York, New York 10014; and the Virgin Islands Department of Labor, Division of Occupational Safety and Health, 3021 Golden Rock, Christiansted, St. Croix, Virgin Islands, 00840. Current contact information for these offices (including telephone numbers, mailing and e-mail addresses) is available on OSHA's Web site, *http://www.osha.gov*.

[FR Doc. 03–18719 Filed 7–22–03; 8:45 am]
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DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

[Secretary of the Navy Instruction 5211.5]

Privacy Act; Implementation

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is revising the exemption rule for N05520–5, entitled "Personnel Security Program Management Records System". The revision includes deleting the (k)(1) exemption because it is redundant to 32 CFR 701.117; and claiming subsections (c)(3) and (e)(1) under the (k)(5) exemption. The principal purpose of the (k)(5) exemption is to protect the identity of a confidential source. The expansion is considered supportive, and in furtherance, of the overall purpose of the exemption.

EFFECTIVE DATE: July 8, 2003.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The proposed rule was published on May 9, 2003, at 68 FR 24904. No comments were received, therefore, the rule, as changed, is being adopted as final.

Executive Order 12866. It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act. It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act". It has been determined that this Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism". It has been determined that this Privacy Act rule for the Department of Defense does not have federalism implications. The rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 701

Privacy.

■ Accordingly, 32 CFR part 701 is amended to read as follows:

PART 701—AVAILABILITY OF DEPARTMENT OF THE NAVY RECORDS AND PUBLICATION OF DEPARTMENT OF THE NAVY DOCUMENTS AFFECTING THE PUBLIC

■ 1. The authority citation for 32 CFR part 701, Subpart F continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

■ 2. Section 701.118, paragraph (n) is revised to read as follows:

§ 701.118 Exemptions for specific Navy record systems.

* * * * *

(n) *System identifier and name:* (1) *N05520–5, Personnel Security Program Management Records System.*

(2) *Exemption:* (i) Investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(ii) Therefore, portions of this system may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), and (e)(1).

(3) *Authority:* 5 U.S.C. 552a(k)(5).

(4) *Reasons:* (i) From subsection (c)(3) and (d) when access to accounting disclosures and access to or amendment of records would cause the identity of a confidential sources to be revealed. Disclosure of the source's identity not only will result in the Department breaching the promise of confidentiality made to the source but it will impair the Department's future ability to compile investigatory material for the purpose of determining suitability, eligibility, or

qualifications for Federal civilian employment, Federal contracts, or access to classified information. Unless sources can be assured that a promise of confidentiality will be honored, they will be less likely to provide information considered essential to the Department in making the required determinations.

(ii) From (e)(1) because in the collection of information for investigatory purposes, it is not always possible to determine the relevance and necessity of particular information in the early stages of the investigation. In some cases, it is only after the information is evaluated in light of other information that its relevance and necessity becomes clear. Such information permits more informed decision-making by the Department when making required suitability, eligibility, and qualification determinations.

* * * * *

Dated: July 16, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–18649 Filed 7–22–03; 8:45 am]

BILLING CODE 5001–08–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NJ62–262, FRL–7535–4]

Approval and Promulgation of Implementation Plans; New Jersey; Revised Motor Vehicle Emissions Inventories for 1996, 2005, and 2007 and Motor Vehicle Emissions Budgets for 2005 and 2007 Using MOBILE6

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a revision to the New Jersey State Implementation Plan (SIP) for the attainment and maintenance of the 1-hour national ambient air quality standard (NAAQS) for ozone. Specifically, EPA is approving New Jersey's: revised 1996, 2005, and 2007 motor vehicle emission inventories and 2005 and 2007 motor vehicle emissions budgets recalculated using MOBILE6; modified date for submittal of the State's mid-course review; and updated general conformity emissions budgets for McGuire Air Force Base. The intended effect of this action is to approve a SIP revision that will help the State continue to plan for attainment of the 1-hour NAAQS for ozone in the New York-Northern New Jersey-Long Island nonattainment area (NAA) and the Philadelphia-Wilmington-Trenton NAA.

EFFECTIVE DATE: This rule will be effective August 22, 2003.

ADDRESSES: Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW., Washington, DC 20460.

New Jersey Department of Environmental Protection, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Michael Moltzen, Air Programs Branch, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

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I. Background

On May 5, 2003 (68 FR 23662), EPA published a notice of proposed rulemaking regarding a SIP revision submitted by the State of New Jersey for its portions of the two severe ozone NAAs—the New York-Northern New Jersey-Long Island Area and the Philadelphia-Wilmington-Trenton Area. For purposes of this action, these areas will be referred to as the Northern New Jersey NAA and the Trenton NAA, respectively. That notice proposed to approve New Jersey's revised 1996, 2005, and 2007 motor vehicle emission inventories and 2005 and 2007 motor vehicle emissions "budgets" recalculated using MOBILE6, modified date for submittal of the State's mid-course review, and updated general conformity emissions budgets for McGuire Air Force Base.

The SIP revision was proposed under a procedure called parallel processing, whereby EPA proposes a rulemaking action concurrently with a state's procedures for amending its regulations. The proposed SIP revision was initially submitted to EPA on January 31, 2003, and the final SIP revision was formally submitted on April 8, 2003. New Jersey also submitted additional information in a letter dated June 26, 2003 to supplement the April 8, 2003 SIP revision. A detailed description of New Jersey's submittal and EPA's rationale for the proposed action were presented in the May 5, 2003 notice of proposed rulemaking and will not be restated here. In response to EPA's proposed action on this New Jersey SIP revision, no comments were received.

II. What Are the Details of EPA's Specific Actions?

A. Emission Inventories Revised with MOBILE6

New Jersey's April 8, 2003 SIP revision contained revised 1996, 2005, and 2007 motor vehicle emissions inventories recalculated with the MOBILE6 motor vehicle emissions factor model. Consistent with EPA's policy regarding the use of MOBILE6 in SIP development in its "Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity" and "Clarification of Policy Guidance for MOBILE6 in Mid-course Review Areas", New Jersey included in the April 8, 2003 submittal a relative reduction comparison to show that its 1-Hour Ozone Attainment Demonstration SIP continues to demonstrate attainment using revised MOBILE6 inventories for the Northern New Jersey NAA and the Trenton NAA. The State's methodology for the relative reduction comparison consisted of comparing the new MOBILE6 inventories with the previously approved on February 4, 2002 (67 FR 5152) MOBILE5 inventories for the Northern New Jersey NAA and the Trenton NAA to determine if attainment will still be predicted by the established attainment dates. Specifically, the State calculated the relative reductions (expressed as percent reductions) in ozone precursors between the 1996 base year and attainment year inventory, both MOBILE5-based. These percent reductions were then compared to the percent reductions between the revised MOBILE6-based 1996 base year and attainment year inventories.

To further support the relative reduction comparison submitted in the April 8, 2003 submittal, New Jersey performed a supplemental analysis, submitted as an addendum on June 26, 2003, which estimated the change in emission factors in going from MOBILE5 to MOBILE6 for 1990 and the attainment years of 2005 and 2007 for the Trenton NAA and Northern New Jersey NAA, respectively. This supplemental analysis shows that the percent reduction calculated with MOBILE6 is greater than the percent reduction calculated with MOBILE5, thus the required emission reductions needed to attain the 1-hour ozone NAAQS are achieved, and the SIP continues to demonstrate attainment.

New Jersey's submittal satisfies the conditions outlined in EPA's MOBILE6 Policy guidance, and demonstrates that the new levels of motor vehicle emissions calculated using MOBILE6 continue to support achievement of the projected attainment of the 1-Hour Ozone NAAQS by the attainment dates of 2007 for the Northern New Jersey NAA and 2005 for the Trenton NAA. Table 1 below summarizes the revised Reasonable Further Progress (RFP) and attainment year motor vehicle emissions inventories statewide and by nonattainment area in tons per summer day (tpd). EPA is approving these revised motor vehicle emissions inventories as part of New Jersey's SIP.

TABLE 1.—NEW JERSEY'S REVISED MOTOR VEHICLE EMISSIONS INVENTORIES

NAA area	2005			2007
	VOC (tpd)	NO_X (tpd)	VOC (tpd)	NO_X (tpd)
Atlantic City	14.63	22.07	(1)	(1)
Northern New Jersey	156.37	237.17	134.00	186.93
Trenton	50.48	77.72	(1)	(1)
Allentown	5.59	12.89	4.77	10.25
State total	227.08	349.85	(1)	(1)

[1] Not applicable.

B. Motor Vehicle Emissions Budgets Revised With MOBILE6

New Jersey's April 8, 2003 SIP revision contained revised motor vehicle emissions budgets recalculated using MOBILE6. For the South Jersey Transportation Planning Organization (SJTPO) and Delaware Valley Regional Planning Commission (DVRPC) the 2005 budgets are revised attainment year budgets. For the North Jersey Transportation Planning Authority (NJTPA) the 2005 budgets are revised budgets based on the RFP Plans, while the 2007 budgets are revised attainment year budgets. On June 2, 2003 (68 FR 32749), EPA found the revised attainment year budgets adequate for transportation conformity purposes. EPA is approving all of these budgets as part of New Jersey's SIP. Table 2 below summarizes New Jersey's revised budgets contained in the April 8, 2003 submittal.

TABLE 2.—NEW JERSEY MOTOR VEHICLE EMISSIONS BUDGETS

Transportation planning area	2005		2007	
	VOC (tpd)	NO_X (tpd)	VOC (tpd)	NO_X (tpd)
North Jersey Transportation Planning Authority (NJTPA)	161.97	250.05	138.77	197.19
South Jersey Transportation Planning Organization (SJTPO)	22.12	36.36	(1)	(1)
Delaware Valley Regional Planning Commission (DVRPC)	42.99	63.44	(1)	(1)

[1] Not applicable, since the attainment year is 2005.

C. Revised General Conformity Budgets

New Jersey's April 8, 2003 SIP revision contained updated general conformity budgets for the McGuire Air Force Base, which replace the previous budgets approved by EPA on February 4, 2002 (67 FR 5152). Specifically, New Jersey is increasing the 2005 NO_X budget and decreasing the 2005 VOC budget consistent with EPA's policy on substitution of ozone precursor emission reductions. Table 3 below summarizes the revised general conformity budgets. EPA is approving the revised 2005 general conformity emissions budgets.

TABLE 3.—MCGUIRE AIR FORCE BASE GENERAL CONFORMITY EMISSIONS BUDGETS

	Previously approved budgets		New budgets	
	VOC Tons/year	NO_X Tons/year	VOC Tons/year	NO_X Tons/year
1990 Baseline	1,112	1,038	1,112	1,038
1996	1,186	1,107	1,186	1,107
1999	1,223	1,142	1,223	1,142
2002	1,405	875	1,405	875
*2005	1,406	884	1,198	1,084

*2005 budgets updated such that the increase in NO_X is offset by a decrease in VOC, resulting in no expected net increase in ozone formation.

D. Modified Date for Submittal of the Mid-Course Review

New Jersey's April 8, 2003 SIP revision contained a modified date for submittal of the State's mid-course review. As approved into New Jersey's SIP on February 4, 2002 (67 FR 5152), the State originally committed to submit its mid-course review analysis to EPA by December 31, 2003. However, EPA allowed states to revise their mid-course commitments to provide for the review no later than December 31, 2004 in order to include the benefit of the Regional NO_x Program in its mid-course review and to be consistent with surrounding states. Therefore, New Jersey revised its commitment to perform a mid-course review to December 31, 2004. EPA is approving this revised commitment.

III. Conclusions

EPA is taking final action to approve New Jersey's April 8, 2003 SIP revision. This submittal revises New Jersey's 1996, 2005, and 2007 motor vehicle emission inventories and 2005 and 2007 motor vehicle emissions budgets using MOBILE6, modifies the planned date to complete the State's mid-course review to December 31, 2004, and updates the general conformity emissions budgets for McGuire Air Force Base. In accordance with the parallel processing procedures, EPA has evaluated New Jersey's final SIP revision submitted on April 8, 2003 and supplemental information submitted on June 26, 2003, and finds that no substantial changes were made from the proposed SIP revision submitted on January 31, 2003. New Jersey has demonstrated that its revised 1-Hour Attainment Demonstration SIP for the Northern New Jersey NAA and the Trenton NAA continues to demonstrate attainment with the revised MOBILE6 inventories.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 10, 2003.

Jane M. Kenny,

Regional Administrator, Region 2.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart FF—New Jersey

■ 2. Section 52.1582 is amended by removing and reserving paragraphs (d)(4) and (h)(5), removing paragraphs (h)(7)(iii) and (h)(7)(iv) and adding paragraph (i) to read as follows:

§ 52.1582 Control strategy and regulations: Ozone.

* * * * *

(i)(1) The revised 1996, 2005 and 2007 motor vehicle emission inventories calculated using MOBILE6 included in New Jersey's April 8, 2003 State Implementation Plan revision is approved.

(2) The 2005 conformity emission budgets for the New Jersey portion of the Philadelphia/Wilmington/Trenton nonattainment area and the 2005 and 2007 conformity emission budgets for the New Jersey portion of the New York/Northern New Jersey/Long Island nonattainment area included in New Jersey's April 8, 2003 State Implementation Plan revision are approved.

(3) The conformity emission budgets for the McGuire Air Force Base included in New Jersey's April 8, 2003 State Implementation Plan revision have been approved.

(4) The revised commitment to perform a mid-course review and submit the results by December 31, 2004 included in the April 8, 2003 SIP revision is approved.

[FR Doc. 03–18853 Filed 7–22–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0242; FRL–7317–5]

Thiophanate Methyl; Pesticide Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of thiophanate methyl and its metabolite methyl 2-benzimidazoyl carbamate (MBC) in or on fruiting vegetables. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on fruiting vegetables. This regulation establishes a maximum permissible level for residues of thiophanate methyl in this food commodity. The tolerance will expire and is revoked on December 31, 2005.

DATES: This regulation is effective July 23, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0242, must be received on or before September 22, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Andrea Conrath, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9356; e-mail address: *conrath.andrea@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer potentially affected entities may include, but are not limited to:

- Crop producers (NAICS 111)
- Animal producers (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification ID number OPP–2003–0242. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408 (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for residues of the fungicide thiophanate methyl and its metabolite methyl 2-benzimidazoyl carbamate, in or on vegetables, fruiting, group 8 at 0.5 parts per million (ppm). This tolerance will expire and is revoked on December 31, 2005. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 of the FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that

no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State Agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act of 1996 (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemptions for Thiophanate Methyl on Fruiting Vegetables and FFDCA Tolerances

Benomyl has historically been used to control the disease caused by *sclerotinia sclerotiorum*, more commonly known as white mold, timber rot, or sclerotinia stem rot, in fruiting vegetables, including tomatoes. The recent cancellation of benomyl has left fruiting vegetable producers in Florida, and tomato producers in New Jersey and Virginia without sufficient means to control this disease, and the applicants claim that there are no other registered fungicides or alternative control practices which are effective to control this disease. Thiophanate methyl is related to benomyl, and degrades to the same active compound as benomyl. Field trial data also shows thiophanate methyl to be significantly effective at controlling white mold. It is expected that a similar level of control would be achieved with thiophanate methyl as that achieved in the past with benomyl. Significant economic losses are expected without the requested use of thiophanate methyl. EPA has authorized under FIFRA section 18 the use of thiophanate methyl on fruiting vegetables in Florida, and tomatoes only in New Jersey and Virginia, for control of white mold, also known as timber rot, or sclerotinia stem rot (*sclerotinia sclerotiorum*). After having reviewed the submissions, EPA concurs that emergency conditions exist for these States.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of thiophanate methyl in or on fruiting vegetables. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although this tolerance will expire and is revoked on December 31, 2005, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on fruiting vegetables after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether thiophanate methyl meets EPA's registration requirements for use on fruiting vegetables or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of thiophanate methyl by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any States other than Florida, New Jersey, or Virginia to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for thiophanate methyl, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances November 26, 1997 (62 FR 62961) (FRL–5754–7).

Consistent with section 408(b)(2)(d) of the FFDCA , EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of thiophanate methyl and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a time-limited tolerance for residues of thiophanate methyl in or on fruiting vegetables at 0.5 ppm.

The most recent estimated aggregate risks resulting from the use of thiophanate methyl, are discussed in the **Federal Register** ofAugust 28, 2002 (67 FR 55137) (FRL–7192–1), final rule establishing tolerances for residues of thiophanate methyl in/on grapes, pears, potatoes, canola, and pistachios. In that prior action, risk was estimated assuming tolerance level residues in all commodities for established and proposed tolerances. Available residue data indicate that the use pattern for these emergency exemptions will not result in residues of thiophanate methyl in fruiting vegetables over 0.5 ppm. Therefore, a tolerance is being established for this crop group at this level. The risk assessment related to incremental addition of these items at this level to dietary exposure is discussed below. Refer also to the August 28, 2002 **Federal Register** document for a detailed discussion of the aggregate risk assessments and determination of safety. EPA relies in part upon that risk assessment and the findings made in the **Federal Register** document in support of this action. Below is a brief summary of the aggregate risk assessment.

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. A summary of the toxicological dose and endpoints for thiophanate methyl for use in human risk assessment is discussed in the final rule published in the **Federal Register** of August 28, 2002 (67 FR 55137) (FRL–7192–1). For thiophanate methyl, the Agency recently modified the tolerance expression, so that the residues to be regulated in plant and animal commodities for purposes of tolerance enforcement will consist of the residues of thiophanate methyl and its metabolite methyl 2-benzimidazolyl carbamate, expressed as thiophanate methyl.

Exposure from the use of benomyl, another pesticide which degrades under environmental conditions to MBC was not included in this assessment because the only basic registrant of benomyl requested voluntary cancellation of all benomyl-containing products in April 2001. Product cancellations were effective in early 2001 with sales and distribution of benomyl containing products ending by December 31, 2001. However, the Agency conducted a dietary assessment using United States Department of Agriculture (USDA) Pesticide Data Program (PDP) monitoring data for benomyl, measured as MBC to estimate residues of thiophanate methyl because MBC is a common metabolite of both benomyl and thiophanate methyl. PDP data were available for apples, bananas, beans, cucurbits, peaches and strawberries. The PDP analytical method employs a hydrolysis step that converts any benomyl present to MBC. MBC is then quantitated and corrected for molecular weight, and results are measured as the sum of benomyl and MBC. Therefore, using MBC data to estimate thiophanate methyl residues may be a conservative approach in that it may overestimate thiophanate methyl residues.

Monitoring data on benomyl from the PDP were used to estimate dietary exposure to MBC, for apples, apple juice, bananas, succulent beans, cantaloupes, cucumbers, peaches, strawberries, citrus, and fruiting vegetables.

EPA assessed risk scenarios for thiophanate methyl under acute, chronic, and short-term and intermediate-term exposures. Risk estimates were calculated for the residues of toxicological concern, the parent compound thiophanate methyl, and its metabolites methyl 2-benzimidazolyl carbamate plus 2-amine-1-H-benzimidazole (MBC+2-AB).

To update the previous risk assessment, thiophanate-methyl acute and chronic dietary exposure assessments were conducted using the most current version of the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM™-FCID), Version 1.3), which incorporates consumption data from USDA's Continuing Surveys of Food Intakes by Individuals (CSFII), 1994–1996/98. The 1998 CSFII survey focused on children from birth to 9 years old and greatly expanded (by several fold) the number of children aged birth to 4 years. Importantly, the supplemental survey was designed in a manner such that the results from the 1998 CSFII survey could be combined with the 1994–96 survey. The data in this newer CSFII survey (termed the 1994–1996/98 CSFII) are based on the reported consumption of more than 20,000 individuals over two non-consecutive survey days and is considered to be a more appropriate and more robust data set than the 1989–91 CSFII survey, which was used in the previous assessment.

The most current version of DEEM™-FCID was used for all dietary risk estimates calculated, and existing uses, as well as the proposed section 18 uses (blackberries, tomatoes and fruiting vegetables) were included. When calculating risk estimates from MBC+2-AB, an FQPA safety factor of 10 was applied for all infant and children population subgroups. Percent of crop treated information was also incorporated for most established uses and for all of the section 18 uses.

The acute and chronic dietary risk estimates for thiophanate methyl were <100% of the acute and chronic Population Adjusted Doses (aPAD and cPAD) at the 99.9th exposure percentile for the general U.S. population and all population subgroups. The acute and chronic dietary risk estimates for MBC +2-AB were also <100% of the aPAD and cPAD at the 99.9th exposure percentile for the general U.S. population and all population subgroups. EPA generally has no concern for exposures below 100% of the PADs, because the PADs represent the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The most highly exposed subgroup for all risk estimates calculated was children 1–2 years.

Table 1 summarizes the percentages of aPADs and cPADs for all scenarios for the overall U.S. population and for the most highly exposed population subgroup (children 1–2 years).

TABLE 1.—ACUTE AND CHRONIC DIETARY RISK ESTIMATES FOR THIOPHANATE METHYL EXISTING AND PROPOSED USES

Population Subgroup	aPAD Utilized		cPAD Utilized	
	TM	MBC +2-AB	TM	MBC +2-AB
U.S. population	6%	2%	<1%	<1%
Children (1–2 years)	22%	58%	2%	10%

The acute drinking water assessment, based on simultaneous dietary exposure to both MBC and thiophanate methyl (which was converted to MBC equivalents) resulted in Drinking Water Levels of Comparison (DWLOCs) for the overall U.S. population of 5,833 parts per billion (ppb), and for children (1–2 years) of 72 ppb (the population subgroup with the lowest DWLOC). All acute DWLOCs were well above the acute Estimated Environmental Concentrations (EECs) for ground water and surface water, at 3 and 44 ppb, respectively

The chronic drinking water assessment, based on simultaneous dietary exposure to both MBC and thiophanate methyl (which was converted to MBC equivalents) resulted in chronic DWLOCs for the overall U.S. population of 870 ppb, and for children (1–2 years) of 22 ppb (the population subgroup with the lowest DWLOC). All chronic DWLOCs were well above the chronic EEC for ground water of 3 ppb. The chronic DWLOCs were also above the chronic EEC for surface water of 23–24 ppb, except for that of the most highly exposed subgroup, children (1–2 years), which is slightly below the EEC with a chronic DWLOC of 22 ppb. However, given the conservative nature of the screening-level approach to estimated drinking water risks, and the equivalent levels of the chronic DWLOC and EEC (22–23–24 ppb), the Agency does not believe this represents a significant risk or concern for chronic aggregate exposures.

Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Thiophanate methyl and MBC are currently registered for uses that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for thiophanate methyl and MBC.

All residential exposures are considered to be short-term. The Margins of Exposure (MOEs) (converted to MBC equivalents) for aggregate short-term exposure to thiophanate methyl are as follows: Oral exposure of children (1–6 years) is 670; dermal exposure of children (1–6 years) is 1,000; and

dermal exposure of females (13–50 years) is 1,315. Prior to the application rate change agreed to by the registrants in connection with the Agency's reregistration process evaluation of thiophanate methyl, MOEs for aggregate exposure to MBC from the use of MBC as an in-can paint preservative were 670 for dermal exposure and 770 for exposure via inhalation. As a result of negotiated mitigation measures related to the reregistration review of this chemical, the registrant has now lowered the application rate for the in-can paint uses to the extent that the MOEs are now acceptable (>1,000). The MOEs (converted to MBC equivalents) for the total thiophanate methyl and MBC aggregate exposure are as follows: 630 for oral and dermal exposure of children (1–6 years); 770 for exposure via inhalation for females (13–50 years); and 620 for oral and dermal exposure for females (13–50 years). The aggregate short-term exposure to MBC and thiophanate methyl resulting from food, water and residential use exceeds the Agency's level of concern for children (infants, and 1–6 years), and females 13–50 years, due primarily to post-application exposures on turf. Registrants are performing a hand press study and have submitted a 5–day inhalation study to help refine this assessment. Based on these mitigation measures, and the conservative method of exposure estimation, the risks do not exceed the Agency's level of concern.

Aggregate cancer risk for U.S. population. The total thiophanate methyl and MBC+2-AB dietary cancer risk is 1.1×10^{-6} for existing and proposed new uses (incorporating the refinements and amortizations as previously described). The cancer risk from non-occupational residential exposure is 1.1×10^{-6}. Therefore, aggregate cancer risk is 2.2×10^{-6}. This risk estimate includes cancer risk from both thiophanate methyl and MBC+2-AB on food including all pending uses and section 18 uses, thiophanate methyl exposure from treating ornamentals, thiophanate methyl exposure from performing post-application lawn activities, and exposure from applying paint containing MBC. This is considered to be a high-end risk scenario since it is not expected that someone would treat ornamentals, perform high exposure post-application activities, and apply paint containing MBC every year for 70 years. Therefore, this estimate is considered to be a conservative estimate. Additionally, the cancer risk estimate for drinking water is based on the highest EEC, which is also a very high-end risk estimate since it is based on the maximum rate being applied every season for 70 years. The risk estimate calculations also assumed that the modeled surface water EEC is equivalent to concentrations in finished drinking water. Thus, food plus water plus non-occupational residential cancer risk is 2.2×10^{-6} which is within the range considered as negligible. Therefore, the risks do not exceed the Agency's level of concern.

Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to thiophanate methyl and MBC+2-AB residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address:*residuemethods@epa.gov.*

B. International Residue Limits

The Codex Alimentarius Commission has established maximum residue limits (MRLs) for thiophanate methyl residues in/on various plant and animal commodities. Codex MRLs for thiophanate methyl are currently expressed as MBC. The Codex MRL residue definition and the U.S. tolerance definition, previously expressed as only thiophanate methyl, have been incompatible and will remain incompatible even with the recent revision of the U.S. tolerance definition, since the revised tolerance definition includes both thiophanate methyl and MBC. Additionally, there is a 5.0 ppm Codex MRL for thiophanate methyl on tomatoes. The 0.5 ppm tolerance for fruiting vegetables, including tomatoes, being established by this document will not harmonize with Codex.

C. Conditions

The pesticide, thiophanate methyl may be applied using ground equipment, at a rate of 1 lb. of formulated product (0.7 lb. active ingredient (a.i.)) per acre, not to exceed 4 lbs. (2.8 lbs. a.i.) per acre per crop. A maximum of four applications per crop may be made at 7 to 14 day intervals, and a 2–day pre-harvest interval must be observed. Applications may not be made through any type of irrigation system.

VI. Conclusion

Therefore, the tolerance is established for residues of thiophanate methyl and its metabolite, MBC, expressed as thiophanate methyl, in or on vegetables, fruiting, group 8 at 0.5 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0242 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 22, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked

confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by the docket ID number OPP–2003–0242, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov.* Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Statutory and Executive Order Reviews

This final rule establishes a time-limited tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under section 408 of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This

rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 10, 2003.

Deborah McCall,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.371 is amended by alphabetically adding the following commodity to the table in paragraph (b) to read as follows:

§ 180.371 Thiophanate methyl; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/revocation date
* * * * * * *		
Vegetable, fruiting, group 8	0.5	12/31/05

* * * * *

[FR Doc. 03–18499 Filed 7–22–03; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 401

[USCG–2002–12840]

RIN 1625–AA74 (Formerly 2115–AG46)

Basic Rates and Charges on Lake Erie and the Navigable Waters From Southwest Shoal to Port Huron, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; change of effective period.

SUMMARY: The Coast Guard is extending the effective period for the temporary final rule on basic rates and charges on Lake Erie and the navigable waters from Southwest Shoal to Port Huron, MI (District Two, Area 5), to December 24, 2003. Extension of the effective period ensures that the pilotage rates in District Two, Area 5, remain at the current rate while the Coast Guard completes its pending ratemaking project.

DATES: Effective July 18, 2003, § 401.407(b), suspended at 67 FR 47466, July 19, 2002, effective July 19, 2002, until July 21, 2003, will continue to be suspended through December 24, 2003; and § 401.407(c), temporarily added at 67 FR 47466, July 19, 2002, effective July 19, 2002, until July 21, 2003, will continue to be extended through December 24, 2003.

ADDRESSES: The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Tom Lawler, Project Manager, Office of Great Lakes Pilotage, Coast Guard, Commandant (G–MW–1), at 202–267–1241. If you have questions on viewing to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, at 202–366–5149.

SUPPLEMENTARY INFORMATION:

Regulatory History

On July 19, 2002, we published a temporary final rule entitled "Basic Rates and Charges on Lake Erie and the Navigable Waters From Southeast Shoal to Port Huron, MI" in the **Federal Register** [67 FR 47464].

Background and Purpose

On July 12, 2001, the Coast Guard published a final rule in the **Federal Register** [66 FR 36484] amending the ratemaking for the Great Lakes Pilotage. The new rates became effective August 13, 2001. Those rates were challenged in District Court by the Lake Pilots Association, representing the pilots in District Two. While preparing our defense, we discovered that we had inadvertently accounted for delay and detention hours in District Two differently from how we had in Districts One and Three. We also noticed minor errors in computing the rates in District Two. The Coast Guard has recently completed a study that addresses, among other things, the issue of how we should count hours of delay and detention when computing bridge-hours in all three Districts. Also the Coast Guard is currently in the process of adjusting the pilotage rates in all three Districts. *See* [USCG–2002–11288].

Discussion of Temporary Rule

We did not publish a notice of proposed rulemaking (NPRM) in order to extend this temporary final rule, and it takes effect immediately. Delay in implementing this rule would be contrary to the public interest. This rulemaking will maintain the status quo allowing litigation and associated rulemaking to be completed.

While not agreeing with the allegations contained in the complaint of the Lakes Pilots' Association, for the reasons stated, the Coast Guard agreed to the relief sought in the lawsuit and temporarily restored the rates that were effective in Area 5 before August 13, 2001. The Coast Guard believes that this measure was in the best interest of the public, and mitigated the effects, if any, of the Coast Guard's disparate treatment of the pilots in District Two, when accounting for hours of delay and detention. These reasons remain just as valid today as they were when the temporary final rule was first published. The Coast Guard sees no benefit to restoring the 2001 rates in Area 5. Therefore, the Coast Guard finds under 5 U.S.C. 553(b)(B) and (d)(3), respectively, that neither notice-and-comment rulemaking nor 30 days' notice of effective date is required.

After the Coast Guard took this action, the District Court issued its ruling in the Lake Pilots Association lawsuit granting partial summary judgment for each side. The Court's decision was made considering a number of factors, including the Coast Guard's action with regard to the pilotage rates in Area 5. The Lake Pilots Association has appealed the District Court decision. Maintaining the current rates in Area 5 while the appeal is pending will facilitate the appellate process.

In addition, the Coast Guard has proposed new pilotage rates for all three Districts, including Area 5 of District Two. Maintaining the current Area 5 rates while that ratemaking project is completed will enable the Coast Guard to devote its scarce resources to establishing new rates for all areas, rather than engaging in a separate rulemaking just for Area 5. We will therefore continue to devote our energy to promulgating an interim rule and/or final rule updating the pilotage rates on the Great Lakes rather than start a separate rulemaking for Area 5.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has been reviewed by the Office of Management and Budget under that Order. It is not "significant" under the regulatory policies and procedures of Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Assessment under the regulatory policies and procedures of the DHS is unnecessary; however, a Regulatory Assessment has been prepared and may be viewed in the docket for this project.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule was not preceded by an NPRM and therefore is exempt from the requirements of the Regulatory Flexibility Act. Although this rule is exempt, we have reviewed it for potential economic impact on small entities.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This temporary final rule calls for no new collection of information under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520].

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, the effects of this rule are discussed elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** [66 FR 36361 (July 11, 2001)] requesting comments on how to best carry out the Order. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not

likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this temporary final rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) [42 U.S.C. 4321–4370f], and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(a), of the Instruction, from further environmental documentation. An "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are available in the docket where indicated under the section of this preamble on "Public Participation and Request for Comments". We will consider comments on this section before we make the final decision on whether this rule should be categorically excluded from further environmental review.

List of Subjects in 46 CFR Part 401

Administrative practice and procedure; Great Lakes; Navigation (water); Penalties; Reporting and recordkeeping requirements; Seamen.

■ For reasons discussed in the preamble, the Coast Guard amends 46 CFR part 401 as follows:

PART 401—GREAT LAKES PILOTAGE REGULATIONS

■ 1. Revise the authority citation for part 401 to read as follows:

Authority: 46 U.S.C. 2104(a), 6101, 7701, 8105, 9303, 9304; Department of Homeland Security Delegation No. 0170.1; 46 CFR 401.105 also issued under the authority of 44 U.S.C. 3507.

■ 2. In § 401.407, paragraph (b), which was suspended at 67 FR 47464, July 19, 2002, from July 19, 2002, until July 21, 2003, will continue to be suspended through December 24, 2003; and paragraph (c), temporarily added at 67 FR 47464, July 19, 2002, from July 19, 2002, until July 21, 2003, will continue to be extended through December 24, 2003.

Dated: July 18, 2003.

T.H. Gilmour,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 03–18759 Filed 7–18–03; 4:27 pm]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 96–45 and 97–21; FCC 03–161]

Request for Immediate Relief Filed by the State of Tennessee; Federal-State Joint Board in Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission has under consideration a Request for Immediate Relief filed by the State of Tennessee (Tennessee). Tennessee seeks approval to change its service provider for Funding Year 2002 of the schools and libraries universal service support mechanism, before the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has issued a Funding Commitment Decision Letter (FCDL) to Tennessee for Funding Year 2002. For the reasons set forth below, we grant Tennessee's Petition in part, and instruct USAC to process Tennessee's request.

FOR FURTHER INFORMATION CONTACT: Romanda Williams, Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400, TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in CC Docket Nos. 96–45 and 97–21; FCC 03–161 released on July 2, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC, 20554.

I. Introduction

1. The Federal Communications Commission has under consideration a Request for Immediate Relief filed by the State of Tennessee (Tennessee). Tennessee seeks approval to change its service provider for Funding Year 2002 of the schools and libraries universal service support mechanism, before the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has issued a Funding Commitment Decision Letter (FCDL) to Tennessee for Funding Year 2002. For the reasons set forth below, we grant Tennessee's Petition in part, and instruct USAC to process Tennessee's request in accordance with this Order.

II. Discussion

2. We conclude that it is appropriate to grant, in part, Tennessee's request by modifying the Good Samaritan policy in this limited instance. We direct USAC to process Tennessee's application and Good Samaritan election in accordance with the conditions set forth in this Order.

3. The Commission takes seriously all allegations of waste, fraud, and abuse. We are fully committed to maintaining the integrity of the schools and libraries support mechanism so that we adequately discharge our statutory obligation to preserve and advance universal service. At the same time, we recognize that inaction on a funding request during the pendency of a criminal investigation may have the effect of penalizing parties that are in no way implicated in potential wrongdoing. Based on the circumstances presented, we conclude that it is justified in this instance to allow Tennessee to substitute service providers for purposes of passing through payments to subcontractors.

4. In reaching this decision, we find several factors persuasive. First, we are not aware of any allegations of waste, fraud, abuse, or other wrongdoing relating to any of the subcontractors that have provided service under the Education Networks of America, Inc. (ENA) contract, or, for that matter, the award of the specific ENA contract itself. The relevant subcontractors have provided service in good faith to the schools of Tennessee, in reliance on the contractual agreement between ENA and Tennessee. Second, in granting the requested relief to Tennessee, the risk of improperly paying a potential wrongdoer is diminished because, as discussed more fully below, no funds will be paid to ENA pending further developments in the ongoing investigation. Third, we find it significant that Tennessee was not in a position to take any action to protect its ability to receive universal service discounts in Funding Year 2002. The investigation involving ENA was made public five months after the commencement of the funding year, long after the filing window for Funding Year 2002 has closed, and long after

Tennessee had entered into a contract with ENA for that funding year.

5. We conclude that, in light of the specific circumstances and the enumerated safeguards, it is appropriate to apply a modification of the Good Samaritan policy in this instance. We instruct USAC to grant Tennessee's request to substitute a common carrier as its Good Samaritan service provider for Funding Year 2002, consistent with its existing procedures for Good Samaritan providers and to process Tennessee's funding request. USAC shall determine whether the selected common carrier meets its existing criteria for identifying a substitute service provider. If USAC determines that Tennessee's application for Funding Year 2002 otherwise complies with the rules of the schools and libraries program, USAC shall issue a funding commitment to Tennessee. Upon determining that all of the invoices submitted by ENA's subcontractors comply with program rules and procedures, USAC then may disburse funds to the designated common carrier for payment to ENA's subcontractors. USAC should determine the identities of the subcontractors, their portion of the contract, and the portion associated with services provided by ENA. USAC should ascertain what services have been rendered, the total cost of those services, and the amount that Tennessee has actually paid for the services rendered. USAC may disburse funds for services delivered until the end of Funding Year 2002.

6. We also instruct USAC to set aside on ENA's account any funds that would have been paid to ENA to compensate it directly for its services under the Tennessee contract, but we do not authorize any payment to ENA at this time. We do not know how long the pending investigation may continue, and cannot predict its ultimate resolution. Absent an indictment or other public action, it may be difficult to determine whether the relevant authorities have concluded their investigation. We therefore cannot specify at this time the circumstances under which it would be appropriate for Tennessee or ENA to petition for reimbursement of funds owed to ENA for services rendered pursuant to ENA's Funding Year 2002 contract with Tennessee. At the same time, we expressly contemplate that ENA should have the opportunity to make its case at some future date that the remaining funds should be released to it for services rendered. If, however, ENA ultimately is found either civilly or criminally liable for any actions arising out of its participation in the schools and libraries program, the Commission shall initiate debarment proceedings pursuant to the rules adopted in the Commission's most recent order relating to the schools and libraries universal service mechanism.

7. We deny Tennessee's request that payments be made to its selected Good Samaritan provider to cover the salaries of certain key ENA employees who are necessary to keep the network operational for the remainder of the school year. We remain concerned about any funds going to persons currently employed by ENA at this point, especially given the percentage of funding that Tennessee asserts is required to pay these individuals. We encourage Tennessee to explore alternative arrangements to ensure that its network continues to support the educational mission of the state.

8. In reaching this decision, we seek to balance USAC's proper caution in acting on a funding request that may be associated with a law enforcement investigation with the equally important objective of avoiding potentially harmful effects on third parties. We recognize that the circumstances surrounding other investigations may vary significantly. In granting this petition, we emphasize the narrowness of this fact-specific determination. We do not intend our action today to affect the efficient administration of this universal service support mechanism.

9. In conclusion, we emphasize that we seek to guard against waste, fraud and abuse, while ensuring that universal service is preserved and advanced. We recognize that the ongoing investigation may call into question compliance with Commission rules and requirements. If it is ultimately determined that Tennessee, ENA, or other party has violated any program requirements, the Commission shall take all appropriate actions to address that wrongdoing, including, if merited, seeking reimbursement of disbursed funds. It remains incumbent upon the applicant to ensure its compliance with all program rules. But we decline to relegate the Tennessee Funding Year 2002 application to limbo indefinitely, during the pendency of this ongoing investigation.

III. Ordering Clause

10. Pursuant to sections 1–4, and 254 of the Communications Act of 1934, 47 U.S.C. 151–154 and 254, and § 54.503 of the Commission's rules, that the Petition for Immediate Relief filed by the State of Tennessee on April 17, 2003, is granted to the extent provided herein. We instruct SLD to process Tennessee's Funding Year 2002 application and, if appropriate, disburse funds to the designated Good Samaritan provider, as provided herein.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–18640 Filed 7–22–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 021209300–3048–02; I.D. 112502C]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Groundfish Fishery Management Measures; Corrections

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Corrections to the 2003 specifications and management measures.

SUMMARY: NMFS announces corrections to the Pacific Coast groundfish management measures published on March 7, 2003. South of 40°10′ N. lat., references to an area between Point Fermin and Newport South Jetty open during July and August to limited entry fixed gear and open access groundfish fisheries is corrected to allow California scorpionfish retention. Regulatory language referring to exempted prawn trawl in the open access fishery is clarified to only allow fishing inside the Rockfish Conservation Area (RCA) north of 40°10′ N. lat. as stated in the trip limit tables (Table 5 (North) and Table 5 (South)). This action also includes a correction to latitude and longitude coordinates for the RCA 75 fm (137 m) boundary. Typographical errors were corrected for these coordinates in a previous correction published on April 15, 2003, to the final rule but erroneously omitted in the most recent inseason action published on July 7, 2003).

DATES: Effective 0001 hours local July 22, 2003, until the 2004 annual specifications and management measures are effective, unless modified, superseded, or rescinded through a publication in the **Federal Register**.

ADDRESSES: Submit comments to D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way

NE, Seattle, WA 98115–0070; or Rod McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd, Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Jamie Goen (Northwest Region, NMFS), phone: 206–526–6140; fax: 206–526–6736; and e-mail: *jamie.goen@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is available on the Government Printing Office's website at: *http://www.access.gpo.gov/su_docs/ca/docs/aces/aces140.html*. Background information and documents are available at the NMFS Northwest Region website at: *http://www.nwr.noaa.gov/1sustfsh/gdfsh01.htm* and at the Pacific Fishery Management Council's website at: *http://www.pcouncil.org*.

Background

The Pacific Coast groundfish specifications and management measures for the 2003 fishing year (January 1–December 31, 2003) were initially published in the **Federal Register** as an emergency rule for January 1–February 28, 2003 (68 FR 908, January 7, 2003) and as a proposed rule for March 1–December 31, 2003 (68 FR 936, January 7, 2003). The emergency rule was amended at 68 FR 4719, January 30, 2003, and the final rule for March 1–December 31, 2003 was published in the **Federal Register** on March 7, 2003 (68 FR 11182). The final rule has been subsequently amended at 68 FR 18166 (April 15, 2003), at 68 FR 23901 (May 6, 2003), at 68 FR 23924 (May 6, 2003), at 68 FR 32680 (June 2, 2003), 68 FR 35575 (June 16, 2003) and at 68 FR 40187 (July 7, 2003).

Management measures for the Pacific Coast groundfish fishery, effective March 1–December 31, 2003 (68 FR 11182, March 7, 2003), contain errors in which species are subject to the limited entry fixed gear and open access Pt. Fermin/Newport South Jetty area (also known as Huntington Flats) opening during July through August. The inseason action published on May 6, 2003 (68 FR 23901), initially corrected the Pt. Fermin/Newport South Jetty area opening from applying to all Federal groundfish species to applying to all Federal groundfish species, except all rockfish and lingcod. The correction in the inseason action published on May 6, 2003, stated, "The intent of California's California Rockfish Conservation Area proposal presented to the Pacific Council at its September 2002 meeting, as well as language in California's Code of Regulations at Title 14, Section 27.82 (d)(2), was that this area should be open to limited entry fixed gear and open access fixed gear for all Federal groundfish species, except all rockfish, lingcod and ocean whitefish (Note: Ocean whitefish is managed by the State of California). This area is intended to be open during July-August to allow vessels to intercept California scorpionfish that are spawning on the sandy flats." However, language allowing California scorpionfish to be retained in the Pt. Fermin/Newport South Jetty area during the July through August opening was inadvertently left out of the May 6, 2003 correction. Since California scorpionfish is a species of rockfish, the language in the May 6, 2003 inseason action prohibits fishing for all rockfish in the Pt. Fermin/Newport South Jetty area, including mistakenly prohibiting fishing for California scorpionfish. This document corrects the error by specifying that fishing for California scorpionfish is permitted during the Pt. Fermin/Newport South Jetty opening.

In addition, regulatory language in the open access fishery section of the management measures (paragraph IV.C.(1)) referring to exempted prawn trawl in the open access fishery is clarified in this document to only allow fishing inside and retention of groundfish caught in the Rockfish Conservation Area (RCA) north of 40°10′ N. lat. as stated in the trip limit tables (Table 5 (North) and Table 5 (South)).

NMFS Actions

■ For the reasons stated herein, NMFS announces the following corrections to the 2003 specifications and management measures (68 FR 11182 (March 7, 2003), as amended at 68 FR 18166 (April 15, 2003), at 68 FR 23901 (May 6, 2003), at 68 FR 23924 (May 6, 2003), at 68 FR 32680 (June 2, 2003) at 68 FR 35575 (June 16, 2003) and at 68 FR 40187 (July 7, 2003)) to read as follows:

* * * * *

PART 660—[CORRECTED]

■ 1. On page 11206, in section IV., under A. General Definitions and Provisions, paragraph (19)(e)(ii) is corrected to read as follows:

(ii) The 75–fm (137–m) depth contour used north of 40°10′ N. lat. as an eastern boundary for the trawl RCA is defined by straight lines connecting all of the following points in the order stated:

* * * * *

(19) 48°05.91′ N. lat., 125°08.30′ W. long.;

(20) 48°07.00′ N. lat., 125°09.80′ W. long.;

(21) 48°06.93′ N. lat., 125°11.48′ W. long.;

(22) 48°04.98′ N. lat., 125°10.02′ W. long.;

* * * * *

■ 2. On page 11217, in section IV., under B. Limited Entry Fishery, paragraph (1) is revised to read as follows:

IV. NMFS Actions

B. Limited Entry Fishery

(1) *General.* Most species taken in limited entry fisheries will be managed with cumulative trip limits (see paragraph IV.A.(1)(d),) size limits (see paragraph IV.A.(6)), seasons (see paragraph IV.A.(7)), and areas that are closed to specific gear types. The trawl fishery has gear requirements and trip limits that differ by the type of trawl gear on board (see paragraph IV.A.(14)). Cowcod retention is prohibited in all fisheries and groundfish vessels operating south of Point Conception must adhere to CCA restrictions (see paragraph IV.A.(19)). Yelloweye rockfish retention is prohibited in the limited entry fixed gear fisheries. Most of the management measures for the limited entry fishery are listed above and in the following tables: Table 3 (North), Table 3 (South), Table 4 (North), and Table 4 (South).

A header in Table 3 (North), Table 3 (South), Table 4 (North) and Table 4 (South) generally describes the Rockfish Conservation Area (i.e., closed area) for vessels participating in the limited entry fishery. The RCA boundaries are defined by latitude and longitude coordinates (See paragraph IV.A.(19), earlier) [Note: Between a line drawn due south from Point Fermin (33°42′ 30″ N. lat.; 118°17′ 30″ W. long.) and a line drawn due west from the Newport South Jetty (33°35′37″ N. lat.; 117°52′50″ W. long.,) vessels fishing for all Federal groundfish species, except lingcod and all rockfish other than California scorpionfish, with hook-and-line and/or trap (or pot) gear may operate from shore to a seaward boundary line which approximates 50 fm (91 m) in the months of July and August.]

Management measures may be changed during the year by announcement in the **Federal Register**. However, the management regimes for several fisheries (nontrawl sablefish, Pacific whiting, and black rockfish) do not neatly fit into these tables and are addressed immediately following Table 3 (North), Table 3 (South), Table 4 (North), and Table 4 (South).

* * * * *

■ 3. On page 11221, in section IV., under B. Limited Entry Fishery, at the end of paragraph (1), Table 4 (South) is revised to read as follows:

IV. NMFS Actions

B. Limited Entry Fishery

(1) * * *

BILLING CODE 3510–22–S

Table 4 (South). Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table

		JUL-AUG	SEP-OCT	NOV-DEC
	Rockfish Conservation Area[7/] (RCA): South of 40°10' N. lat.	20 fm - 150 fm (See footnote 9 for description of Pt. Fermin/Newport South Jetty open area)	20 fm - 150 fm	
1	**Minor slope rockfish[4/]**			
2	40°10' - 38° N. lat.	No more than 25% of weight of sablefish landed/ trip		1,800 lb/ 2 months
3	South of 38° N. lat.	30,000 lb/ 2 months		
4	**Splitnose**			
5	40°10' - 38° N. lat.	1,800 lb/ 2 months		
6	South of 38° N. lat.	20,000 lb/ 2 months		
7	**Sablefish**			
8	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 3,200 lb/ 2 months		
9	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb		
10	**Longspine thornyhead**	9,000 lb/ 2 months		
11	**Shortspine thornyhead**	2,000 lb/ 2 months		
12	**Dover sole**	5,000 lb/ month		
13	**Arrowtooth flounder**	When fishing for Pacific sanddabs, vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb (0.45 kg) of weight per line are not subject to the RCAs.		
14	**Petrale sole**			
15	**Rex sole**			
16	**All other flatfish[2/]**			
17	**Whiting[3/]**	10,000 lb/ trip		
18	**Minor shelf rockfish, widow, and yellowtail rockfish[4/]**	250 lb/ 2 months	200 lb/ 2 months	100 lb/ 2 months
19	**Canary rockfish**	CLOSED[5/]		
20	**Yelloweye rockfish**	CLOSED[5/]		
21	**Cowcod**	CLOSED[5/]		
22	**Bocaccio**	CLOSED[5/]		
23	**Minor nearshore rockfish**			
24	Shallow nearshore	400 lb/ 2 months	300 lb/ 2 months	200 lb/ 2 months
25	Deeper nearshore	500 lb/ 2 months	300 lb/ 2 months	200 lb/ 2 months
26	California scorpionfish	800 lb/ 2 months	CLOSED[5/]	
27	**Lingcod[6/]**	400 lb/ month, when nearshore open		CLOSED[5/]
28	**Other fish[8/]**	Not limited		

Table 4 (South) continued

1/ "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with species specific management measures, including trip limits.

3/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies. See IV. B.(3).

4/ Chilipepper rockfish is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.

5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).

6/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

7/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at IV. A.(19)(e) that may vary seasonally.

8/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

9/ During July-August, between a line drawn due south from Point Fermin (33° 42' 30" N. lat.; 118° 17' 30" W. long.) and a line drawn due west from the Newport South Jetty (33° 35' 37" N .lat.; 117° 52' 50" W. long.,) vessels fishing for all federal groundfish species, except lingcod and all rockfish other than California scorpionfish, with hook&line and/or trap (or pot) gear may operate from shore to a seaward boundary line which approximates 50 fm.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

* * * * *

■ 4. On page 11222, in section IV., under C. Trip Limits in the Open Access Fishery, paragraph (1) is revised to read as follows:

IV. NMFS Actions

C. Trip Limits in the Open Access Fishery

(1) *General.* Open access gear is gear used to take and retain groundfish from a vessel that does not have a valid permit for the Pacific Coast groundfish fishery with an endorsement for the gear used to harvest the groundfish. This includes longline, trap, pot, hook-and-line (fixed or mobile), setnet and trammel net (south of 38° N. lat. only), and exempted trawl gear (trawls used to target non-groundfish species: pink shrimp or prawns, and, south of Pt. Arena, CA (38°57′30″ N. lat.), CA halibut or sea cucumbers). Unless otherwise specified, a vessel operating in the open access fishery is subject to, and must not exceed any trip limit, frequency limit, and/or size limit for the open access fishery. Groundfish species taken in open access fisheries will be managed with cumulative trip limits (see paragraph IV.A.(1)(d)), size limits (see paragraph IV.A.(6)), seasons (see paragraph IV.A.(7)), and closed areas. Cowcod retention is prohibited in all fisheries and groundfish vessels operating south of Point Conception must adhere to CCA restrictions (see paragraph IV.A.(19)). Retention of yelloweye rockfish and canary rockfish and, south of 40°10′ N. lat., bocaccio is prohibited in all open access fisheries. The trip limits, size limits, seasons, and other management measures for open access groundfish gear, including exempted trawl gear, are listed in Table 5 (North) and Table 5 (South). A header in Table 5 (North) and Table 5 (South) approximates the RCA (i.e., closed area) for vessels participating in the open access fishery. [Note: Between a line drawn due south from Point Fermin (33°42′ 30″ N. lat.; 118°17′ 30″ W. long.) and a line drawn due west from the Newport South Jetty (33°35′37″ N. lat.; 117°52′50″ W. long.,) vessels fishing for all Federal groundfish species, except lingcod and all rockfish other than California scorpionfish, with hook-and-line and/or trap (or pot) gear may operate from shore to a seaward boundary line which approximates 50 fm (91 m) in the months of July and August.] For vessels participating in exempted trawl fisheries, the RCAs are the same as those for limited entry trawl gear, except that pink shrimp and, north of 40°10′ N. lat., prawn trawl are not subject to the RCA. Exempted trawl gear RCAs are detailed in the exempted trawl gear sections at the bottom of Table 5 (North) and Table 5 (South). Retention of groundfish caught by exempted trawl gear is prohibited in the designated RCAs, except that pink shrimp trawl and, north of 40°10′ N. lat., prawn trawl may retain groundfish caught both inside and outside the trawl RCA subject to the limits in Table 5 (North) and Table 5 (South). Retention of groundfish caught by salmon troll gear is prohibited in the designated RCAs, except that salmon trollers may retain yellowtail rockfish caught both inside and outside the non-trawl RCA subject to the limits in Table 5 (North). The trip limit at 50 CFR 660.323(a)(1) for black rockfish caught with hook-and-line gear also applies. (The black rockfish limit is repeated at paragraph IV.B.(4).)

* * * * *

■ 5. On page 11225, in section IV., under C. Trip Limits in the Open Access Fishery, at the end of paragraph (1), Table 5 (South) is revised to read as follows:

IV. NMFS Actions

C. Trip Limits in the Open Access Fishery

(1) * * *

* * * * *

Table 5 (South). 2003 Trip Limits for Open Access Gears South of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply -- Read Sections IV. A. and C. NMFS Actions before using this table

		JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area[7/] (RCA):				
	South of 40°10' N. lat.	20 fm - 150 fm (See footnote 8 for description of Pt. Fermin/Newport South Jetty open area)	20 fm - 150 fm	
1	**Minor slope rockfish[2/]**			
2	40°10' - 38° N. lat.	Per trip, no more than 25% of weight of the sablefish landed		
3	South of 38° N. lat.	10,000 lb/ 2 months		
4	**Splitnose**	200 lb/ month		
5	**Sablefish**			
6	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 3,200 lb/ 2 months		
7	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb		
8	**Thornyheads**			
9	40°10' - 34°27' N. lat.	CLOSED[5/]		
10	South of 34°27' N. lat.	50 lb/ day, no more than 2,000 lb/ 2 months		
11	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. When fishing for Pacific sanddabs, vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb of weight per line are not subject to the RCAs.		
12	**Arrowtooth flounder**			
13	**Petrale sole**			
14	**Rex sole**			
15	**All other flatfish[3/]**			
16	**Whiting**	300 lb/ month		
17	**Minor shelf rockfish, widow and chilipepper rockfish[2/]**	250 lb/ 2 months	200 lb/ 2 months	100 lb/ 2 months
18	**Canary rockfish**	CLOSED[5/]		
19	**Yelloweye rockfish**	CLOSED[5/]		
20	**Cowcod**	CLOSED[5/]		
21	**Bocaccio**	CLOSED[5/]		

Table 5 (South) contined

22	**Minor nearshore rockfish**			
23	Shallow nearshore	400 lb/ 2 months	300 lb/ 2 months	200 lb/ 2 months
24	Deeper nearshore	500 lb/ 2 months	300 lb/ 2 months	200 lb/ 2 months
25	California scorpionfish	800 lb/ 2 months	CLOSED[5/]	
26	**Lingcod[4/]**	300 lb/ month, when nearshore open		CLOSED[5/]
27	**Other Fish[6/]**	Not limited		
28	**PINK SHRIMP EXEMPTED TRAWL GEAR** *(not subject to RCAs)*			
29	South	**Effective April 1 - October 31, 2003:** Groundfish 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.		
30	**PRAWN AND, SOUTH OF 38°57'30" N. LAT., CALIFORNIA HALIBUT AND SEA CUCUMBER EXEMPTED TRAWL**			
31	**EXEMPTED TRAWL Rockfish Conservation Area[7/] (RCA):**			
32	40°10' - 38° N. lat.	60 fm - 200 fm		
33	38° - 34°27' N. lat.	60 fm - 200 fm		
34	South of 34°27' N. lat.	100 fm - 200 fm along the mainland coast; shoreline - 200 fm around islands		
35		Groundfish 300 lb/trip. Trip limits in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57'30" N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 25.)		

Table 5 (South) contined

1/ "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA

2/ Yellowtail rockfish is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.

3/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 5 with species specific management measures, including trip limits.

4/ The size limit for lingcod is 24 inches (61 cm) total length.

5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).

6/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

7/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours, but specifically defined by lat./long. coordinates set out at IV. A.(19)(e), that may vary seasonally.

8/ During July-August, between a line drawn due south from Point Fermin (33° 42' 30" N. lat.; 118° 17' 30" W. long.) and a line drawn due west from the Newport South Jetty (33° 35' 37" N .lat.; 117° 52' 50" W. long.,) vessels fishing for all federal groundfish species, except lingcod and all rockfish other than California scorpionfish, with hook&line and/or trap (or pot) gear may operate from shore to a seaward boundary line which approximates 50 fm.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

* * * * *

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 17, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–18731 Filed 7–22–03; 8:45 am]

BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021122286–3036–02; I.D. 071803A]

Fisheries of the Exclusive Economic Zone off Alaska; Pelagic Shelf Rockfish in the West Yakutat District of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pelagic shelf rockfish in the West Yakutat District of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2003 total allowable catch (TAC) of pelagic shelf rockfish in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 20, 2003, through 2400 hrs, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2003 TAC of pelagic shelf rockfish for the West Yakutat District was established as 640 metric tons (mt) by the final 2003 harvest specifications for groundfish in the GOA (68 FR 9924, March 3, 2003).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2003 TAC for pelagic shelf rockfish in the West Yakutat District will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 630 mt, and is setting aside the remaining 10 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pelagic shelf rockfish in the West Yakutat District of the GOA.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the 2003 TAC for pelagic shelf rockfish in the Western Yakutat District of the GOA, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 18, 2003.

John H. Dunnigan

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–18729 Filed 7–18–03; 3:49 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021122286–3036–02; I.D. 071803C]

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for northern rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2003 total allowable catch (TAC) of northern rockfish in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 20, 2003, through 2400 hrs, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–2778.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2003 TAC of northern rockfish for the Western Regulatory Area was established as 890 metric tons (mt) by the final 2003 harvest specifications for groundfish in the GOA (68 FR 9924, March 3, 2003).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2003 TAC for northern rockfish in the Western Regulatory Area will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 740 mt, and is setting aside the remaining 150 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish in the Western Regulatory Area of the GOA.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the 2003 TAC for northern rockfish in the Western Regulatory Area of the GOA, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 18, 2003.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–18730 Filed 7–18–03; 3:49 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 68, No. 141

Wednesday, July 23, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 279–0406; FRL–7534–5]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). This revision concerns oxides of nitrogen (NO_X) emissions from mobile sources, specifically marine vessels. We are proposing to approve a local rule to regulate this emission source under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by August 22, 2003.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 or e-mail to *steckel.andrew@epa.gov.*

You can inspect copies of the submitted SIP revision and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revision at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, EPA Region IX, (415) 947–4117.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
SCAQMD	1631	Pilot Credit Generation Program for Marine Vessels	10/04/02	12/12/02

On February 7, 2003, this rule submittal was found to meet the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

We approved a version of Rule 1631 into the SIP on February 7, 2002. The SCAQMD adopted revisions to the SIP-approved version on October 4, 2002 and CARB submitted them to us on December 12, 2002.

C. What Is the Purpose of the Rule Revision?

The rule revision will allow mobile source emission reduction credits (MSERCs) to be generated from marine vessel engine remanufacture, in addition to engine replacement, and will allow participating marine vessels to travel beyond district waters twice per year for maintenance or repair. The MSERCs can be used by stationary sources in the SCAQMD's Regional Clean Air Incentive Market (RECLAIM) program to meet declining emission limits. The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193).

Guidance and policy documents that we used to define specific evaluation criteria include the following:

1. "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_X Supplement), 57 FR 55620, November 25, 1992.

2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).

3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

4. "Improving Air Quality with Economic Incentive Programs," January 2001, Office of Air and Radiation, EPA–452/R–01–001. This guidance document applies to discretionary economic incentive programs (EIPs) and represents the agency's interpretation of what EIPs should contain in order to meet the requirements of the CAA. Because this guidance is non-binding and does not represent final agency

action, EPA is using the guidance as an initial screen to determine whether approvability issues arise.

B. Does the Rule Meet the Evaluation Criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, and EIPs. The TSD has more information on our evaluation.

C. Public Comment and Final Action

Because EPA believes the submitted rule fulfills all relevant requirements, we are proposing to fully approve it as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate this rule into the federally enforceable SIP.

III. Background Information

A. Why Was This Rule Submitted?

NO_X helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO_X emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency NO_X rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). *See* section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990.	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 9, 2003.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 03–18739 Filed 7–22–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 16

RIN 1018–AI87

Review of Information Concerning Silver Carp (*Hypophthalmichthys molitrix*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of inquiry.

SUMMARY: The U.S. Fish and Wildlife Service is reviewing available economic and biological information on silver carp (*Hypophthalmichthys molitrix*) for possible addition of that species to the list of injurious wildlife under the Lacey Act. The importation and introduction of silver carp into the natural ecosystems of the United States may pose a threat to agriculture, horticulture, forestry, the health and welfare of human beings, and the welfare and survival of wildlife and wildlife resources in the United States. Listing silver carp as injurious would prohibit their importation into, or transportation between, the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any territory or possession of the United States, with limited exceptions. This document seeks comments from the public to aid in determining if a proposed rule is warranted.

DATES: Comments must be submitted on or before September 22, 2003.

ADDRESSES: Comments may be mailed or sent by fax to the Chief, Division of Environmental Quality, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 322, Arlington, VA 22203; fax (703) 358–1800. You may also send comments by electronic mail (e-mail) to: *SilverCarp@fws.gov*. See the Public Comments Solicited section below for file format and other information about electronic filing.

FOR FURTHER INFORMATION CONTACT: Kari Duncan, Division of Environmental Quality, Branch of Invasive Species at (703) 358–2464 or *kari_duncan@fws.gov*.

SUPPLEMENTARY INFORMATION: On October 16, 2002, the U.S. Fish and Wildlife Service received a petition requesting that bighead carp, black carp, and silver carp be considered for inclusion in the injurious wildlife regulations pursuant to the Lacey Act. The petitioners expressed concern that silver carp could invade the Great Lakes from the Mississippi River basin, where they are established, through a manmade ship and sanitary canal. The petitioners, 25 members of Congress representing the Great Lakes region, are concerned that silver carp, because they are voracious eaters, may impact food supplies available to native fisheries in the Great Lakes, which are already struggling against other invasive species. The petitioners also noted that the Great Lakes fisheries are valued at approximately $4 billion, and resource managers have spent decades trying to restore and protect them.

Silver carp are native to several major Pacific drainages in eastern Asia from the Amur River of far eastern Russia, south through much of the eastern half of China to the Pearl River, possibly including northern Vietnam. Silver carp are filter feeders capable of eating large amounts of phytoplankton. They also feed on zooplankton, bacteria, and detritus (loose material produced directly from disintegration processes). They prefer standing or slow-flowing water of impoundments or river backwaters ranging in temperature from 43 to 82 °F. They can grow to maximum lengths of about 40 inches and weigh up to 110 pounds. They reach sexual maturity at about 18 inches and can live up to 20 years.

Silver carp were imported into the United States in 1973 and stocked for phytoplankton control in eutrophic (nutrient rich) water bodies and as a food fish (Fuller, et al, 1999). By the mid-1970s, silver carp were being raised at six Federal, State, and private facilities, and had been stocked in several municipal sewage lagoons by the late 1970s. Silver carp have been recorded in 12 States.

The Lacey Act (18 U.S.C. 42) and its implementing regulations in 50 CFR part 16 restrict the importation into or the transportation between the continental United States, the District of Columbia, Hawaii, the Commonwealth of Puerto Rico, or any territory or possession of the United States of any species of wildlife, or eggs thereof, determined to be injurious or potentially injurious to certain interests, including those of agriculture, horticulture, forestry, the health and welfare of human beings, and the welfare and survival of wildlife and wildlife resources in the United States. However, injurious wildlife may be imported by permit for zoological, educational, medical, or scientific purposes in accordance with permit regulations at 50 CFR 16.22, or by Federal agencies without a permit solely for their own use. If the process initiated by this notice results in the addition of silver carp to the list of injurious wildlife contained in 50 CFR part 16, their importation into the United States would be prohibited except under the conditions, and for the purposes, described above.

This notice solicits economic, biological, or other information concerning silver carp. The information will be used to determine if the species is a threat, or potential threat, to those interests of the United States delineated above, and thus warrants addition to the list of injurious wildlife in 50 CFR 16.13.

Public Comments Solicited

Please send comments to Chief, Division of Environmental Quality, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 322, Arlington, VA 22030. Comments may be hand-delivered to the above address or faxed to (703) 358–1800. If you submit comments by e-mail, please submit comments as an ASCII file format and avoid the use of special characters and encryption. Please include "Attn: [RIN 1018–AI87]" and your name and return address in your e-mail message. Please note that this email address will be closed at the termination of this public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Authority: This notice is issued under the authority of the Lacey Act (18 U.S.C. 42).

Dated: June 27, 2003.

Craig Manson,

Assistant Secretary for Fish, Wildlife and Parks.

[FR Doc. 03–18654 Filed 7–22–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 030314059–3173–02; I.D. 062003A]

RIN 0648–AQ48

Fisheries of the Exclusive Economic Zone (EEZ) Off Alaska; Salmon Fisheries off the Coast of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to correct the definition of the area in which salmon fishing regulations implementing the Fishery Management Plan for the Salmon Fisheries in the EEZ off the Coast of Alaska (Salmon FMP) apply, to remove the words "high seas" wherever they appear in the salmon fishing regulations, and to remove an obsolete reference to the North Pacific Fisheries Act of 1954 from the salmon fishing regulations. This action is necessary to make the regulations consistent with the area definition approved by the Secretary of Commerce (Secretary) in Amendment 3 to the Salmon FMP. The intended effect of this action is

regulatory consistency with the provisions of Amendment 3 to the Salmon FMP and improved conservation and management of the salmon fisheries off the coast of Alaska.

DATES: Comments must be received no later than August 22, 2003.

ADDRESSES: Comments may be sent to Sue Salveson, Assistant Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, (Attn: Lori Durall). Hand or courier deliveries of comments may be sent to NMFS, Alaska Region, 709 West 9th Street, Room 420, Juneau, AK 99801. Comments also may be sent via facsimile (fax) to 907–586–7557. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of the Regulatory Impact Review (RIR) may be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 1668, Attn: Lori Gravel-Durall.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7228 or e-mail at patsy.bearden@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The salmon fishery in the EEZ off the Coast of Alaska is managed pursuant to the Salmon FMP prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* Implementing regulations originally appeared at 50 CFR part 674.

The original Salmon FMP provided for the management of the salmon fisheries throughout the EEZ off the coast of Alaska except for the extreme western part of the EEZ west of 175° E. long., near Attu Island. The Council excluded this extreme western part of the EEZ because this area was under the jurisdiction of the International Convention for the High Sea Fisheries of the North Pacific Ocean. The original name of the salmon FMP was the "Fishery Management Plan for the High Seas Salmon Fishery off the Coast of Alaska East of 175 Degrees East Longitude."

Over time, the international regime affecting salmon fisheries changed and the Council revisited its salmon management policies. In 1989, the Council adopted Amendment 3 to the FMP which, among other things, renamed the FMP to "Fishery Management Plan for the Salmon Fisheries in the EEZ off the Coast of Alaska," deferred regulation of the salmon fisheries in the EEZ to the State of Alaska, and extended the geographic jurisdiction of the Salmon FMP over waters of the EEZ west of 175° E. long. The Secretary approved Amendment 3 to the FMP in 1990 and published a final rule on November 15, 1990 (55 FR 47773) implementing associated measures and removing all the specific management measures from 50 CFR part 674. The 1990 implementing regulations unintentionally omitted the new title of the FMP and the extension of the geographic jurisdiction of the FMP. No public comment was received on this or on any of the other changes made by Amendment 3, and the entire amendment was non-controversial.

In compliance with required consolidation of all Federal fishery regulations pursuant to President Clinton's Regulatory Reform Initiative, NMFS Alaska Region combined all existing fisheries regulations for the EEZ off Alaska, including part 674, into a new 50 CFR part 679 (62 FR 19686, April 23, 1997). This final rule recodified the two regulatory provisions that NMFS erroneously failed to revise in its 1990 rulemaking that implemented Amendment 3. Moreover, NMFS erred again in the regulatory consolidation by redefining the "High Seas Salmon Management Area" as "the portion of the EEZ off Alaska east of 175° E. long." This new error reinstated the definition of the Salmon FMP management area effective prior to approval of Amendment 3 by eliminating waters west of 175 degrees east longitude from the management area. Consequently, the current regulations implementing the Salmon FMP fail to give regulatory effect to the expansion of geographic jurisdiction adopted in Amendment 3.

A correction notice was published (67 FR 44093, July 1, 2002) to change the name of the Salmon FMP as it appears in 50 CFR 679.1(i) to be consistent with the Salmon FMP as amended and approved by the Secretary.

This action proposes to correct the second omission in the regulations in order to completely implement Amendment 3, by revising the language that describes the geographic jurisdiction of the Salmon FMP as described in Amendment 3.

This action also incorporates other changes. The specific changes proposed by this action are as follows:

Section 679.1 Purpose and Scope

Section 679.1(h) would be revised to remove the reference to 175° E. long., and to restate the application of State of Alaska regulations consistent with the approved Salmon FMP, as shown in the following table.

TABLE 1. PROPOSED CHANGES TO REGULATORY TEXT.

Existing text	Proposed text
(i) Fishery Management Plan for the Salmon Fishery in the EEZ off the Coast of Alaska (Salmon FMP).Regulations in this part govern fishing for salmon by fishing vessels of the United States in the EEZ seaward of Alaska east of 175° E. long., referred to as the High Seas Salmon Management Area.	(i) Fishery Management Plan for the Salmon Fishery in the EEZ off the Coast of Alaska (Salmon FMP) (1) Regulations in this part govern fishing for salmon by fishing vessels of the United States in the Salmon Management Area. (2) State of Alaska laws and regulations that are consistent with the Salmon FMP and with the regulations in this part apply to vessels of the United States that are fishing for salmon in the Salmon Management Area.

Section 679.2 Definitions

The definitions of "High Seas Salmon Management Area," "Commercial fishing," paragraph (1)," "personal use fishing," and "Optimum yield," paragraph (1) would be revised to remove the term "high seas" which was made obsolete by approval of Amendment 3.

Section 679.3 Relation to Other Laws

The heading of § 679.3(f), § 679.3(f)(1), and § 679.3(f)(3) would be revised to remove "High Seas Salmon" and add in its place "Salmon."

Section 679.4 Permits

Section 679.4 would be revised to remove the term "High Seas Salmon" in 26 places where the term occurs in headings and paragraphs.

Section 679.7 Prohibitions

The heading for § 679.7(h) would be revised to remove the term "High Seas Salmon" and add in its place "Salmon." Section 679.7(h)(1) would be removed because it refers to the North Pacific Fisheries Act of 1954, 16 U.S.C. 1021–1035, which is no longer in effect. Paragraph (h)(2) would be redesignated as introductory paragraph (h) and would be revised to remove the term "High Seas Salmon" and add in its place "Salmon."

Figure 23 to 50 CFR part 679 would be added to present a map showing the location of the Salmon Management Area.

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed rule would extend the jurisdiction of the Salmon Fishery Management Plan (FMP) to the EEZ waters west of 175° E. long, so that it is consistent with the provisions of Amendment 3 to the FMP. This proposed rule will have no effect on any small entities because there is no domestic salmon fishery in these waters, there has not been any domestic salmon fishing in these waters for 40 years, and NMFS expects no salmon fishing to develop in these waters in the forseeable future. As a result, an initial regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, International organizations, Recordkeeping and reporting.

Dated: July 17, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 ef. seq., 1801 et. seq., and 3631 et. seq.

2. In § 679.1, paragraph (i) is revised to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(i) Fishery Management Plan for the Salmon Fisheries in the EEZ off the Coast of Alaska (Salmon FMP). (1) Regulations in this part govern fishing for salmon by fishing vessels of the United States in the Salmon Management Area.

(2) State of Alaska laws and regulations that are consistent with the Salmon FMP and with the regulations in this part apply to vessels of the United States that are fishing for salmon in the Salmon Management Area.

* * * * *

3. In § 679.2 , the definition for "High Seas Salmon Management Area" is removed; the definitions for "Commercial fishing," paragraph (1); "Optimum yield" paragraph (1); and "Personal use fishing," are revised and the definition for "Salmon Management Area" is added, alphabetically to read as follows:

§ 679.2 Definitions.

* * * * *

Commercial fishing means:

(1) For purposes of the salmon fishery, fishing for salmon for sale or barter.

* * * * *

Optimum yield means:

(1) With respect to the Salmon Fishery, that amount of any species of salmon that will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities, as specified in the Salmon FMP.

* * * * *

Personal use fishing means, for purposes of the salmon fishery, fishing other than commercial fishing.

* * * * *

Salmon Management Area means the waters of the EEZ off the coast of Alaska (see Figure 23 to part 679), including parts of the North Pacific Ocean, Bering Sea, Chukchi Sea, and Beaufort Sea. The Salmon Management Area is divided into a West Area and an East Area with the border between the two at the longitude of Cape Suckling (143 53′36″ W):

(1) The West Area is the area of the EEZ off the coast of Alaska west of the longitude of Cape Suckling (143°53′36″ W.) It includes the EEZ in the Bering Sea, Chukchi Sea, and Beaufort Sea, as well as the EEZ in the North Pacific Ocean west of Cape Suckling.

(2) The East Area is the area of the EEZ off the coast of Alaska east of the longitude of Cape Suckling (143°53′36″ W.).

* * * * *

4. In § 679.7, paragraph (h) is revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(h) *Salmon fisheries.* (1) Fish for, take, or retain any salmon in violation of this part.(2) Engage in fishing for salmon in the Salmon Management Area defined at § 679.2 and Figure 23 to this part, except to the extent authorized by § 679.4(h).

* * * * *

§§ 679.3 and 679.4 [Amended]

5. In addition to the amendment set out above, in 50 CFR part 679, remove the words "High Sea Salmon" and add in their place the word "Salmon" in the following places:

a. In § 679.3:

The heading for paragraph (f), introductory text, (f)(1), and (f)(3).

b. In § 679.4:

Paragraph (a)(1)(v),

The heading and paragraph (h) introductory text,

Paragraphs (h)(1), (h)(1)(iii), (h)(3), (h)(4), (h)(5)(i), (h)(5)(i)(A), (h)(5)(i)(B), (h)(5)(i)(C), (h)(5)(ii), (h)(6) introductory text, (h)(6)(iv), (h)(7)(i), (h)(8), (h)(10),

The heading for paragraph (h)(13) introductory text,

Paragraphs (h)(13)(i), (h)(13)(ii)(A), (h)(13)(ii)(E), (h)(14)(i), (h)(15)(i), (h)(15)(iii), (h)(15)(vii), (h)(16)(i).

§ 679.4 [Amended]

6. In § 679.4(h)(2), remove the words "High Seas Management Area" and add in their place the words "Salmon Management Area."

7. In part 679, Figure 23 is added to read as follows:

BILLING CODE 3510–22–S

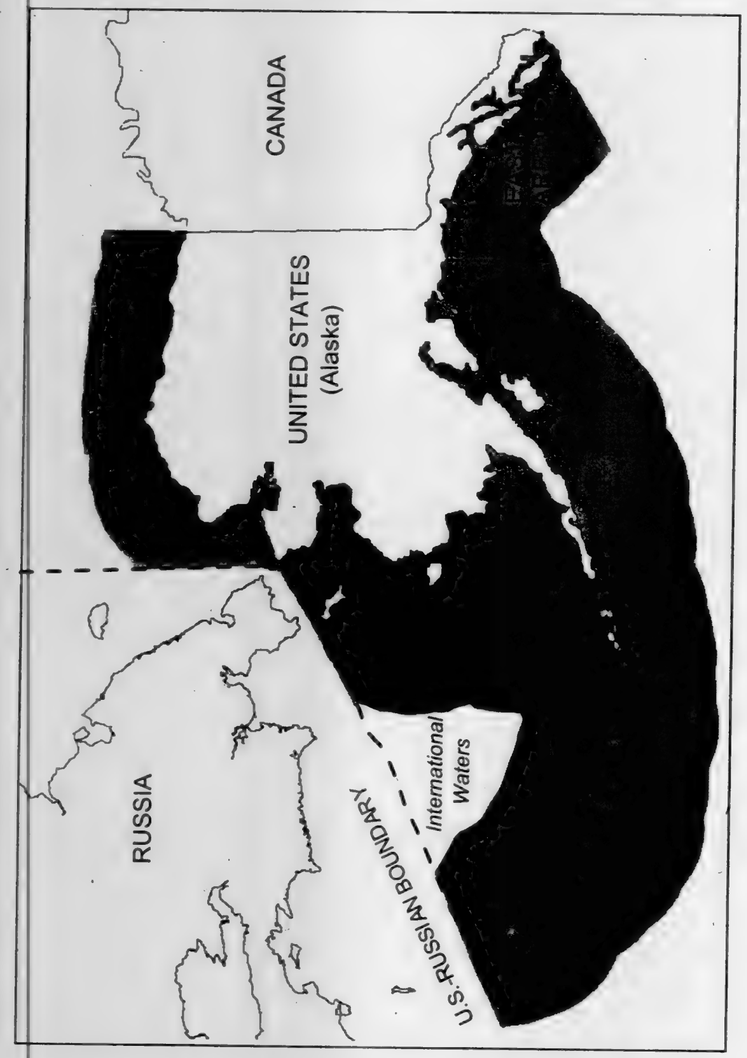


Figure 23 to Part 679 -- Salmon Management Area
(see § 679.2)

[FR Doc. 03–18734 Filed 7–22–03; 8:45 am]
BILLING CODE 3510–22–C

Notices

Federal Register
Vol. 68, No. 141
Wednesday, July 23, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Food Distribution Program: Value of Donated Foods From July 1, 2003 Through June 30, 2004

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the national average value of donated foods or, where applicable, cash in lieu of donated foods, to be provided in school year 2004 for each lunch served by schools participating in the National School Lunch Program (NSLP), and for each lunch and supper served by institutions participating in the Child and Adult Care Food Program (CACFP). It also announces the national average value of donated foods to be provided in school year 2004 for each lunch served by commodity only schools.

EFFECTIVE DATE: July 1, 2003.

FOR FURTHER INFORMATION CONTACT: Suzanne Rigby, Chief, Schools and Institutions Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302, or telephone (703) 305–2644.

SUPPLEMENTARY INFORMATION: These programs are listed in the Catalog of Federal Domestic Assistance under Nos. 10.550, 10.555, and 10.558 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. This notice has been determined to be exempt under Executive Order 12866.

National Average Minimum Value of Donated Foods for the Period July 1, 2003 Through June 30, 2004

This notice implements mandatory provisions of sections 6(c), 14(f) and 17(h)(1)(B) of the National School Lunch Act (the Act) (42 U.S.C. 1755(c), 1762a(f), and 1766(h)(1)(B)). Section 6(c)(1)(A) of the Act establishes the national average value of donated food assistance to be given to States for each lunch served in NSLP at 11.00 cents per meal. Pursuant to section 6(c)(1)(B), this amount is subject to annual adjustments as of July 1 of each year to reflect changes in a three-month average value of the Price Index for Foods Used in Schools and Institutions for March, April, and May each year (Price Index). Section 17(h)(1)(B) of the Act provides that the same value of donated foods (or cash in lieu of donated foods) for school lunches shall also be established for lunches and suppers served in CACFP. Notice is hereby given that the national average minimum value of donated foods, or cash in lieu thereof, per lunch under NSLP (7 CFR part 210) and per lunch and supper under CACFP (7 CFR part 226) shall be 15.75 cents for the period July 1, 2003 through June 30, 2004.

The Price Index is computed using five major food components in the Bureau of Labor Statistics Producer Price Index (cereal and bakery products; meats, poultry and fish; dairy products; processed fruits and vegetables; and fats and oils). Each component is weighted using the relative weight as determined by the Bureau of Labor Statistics. The value of food assistance is adjusted each July 1 by the annual percentage change in a three-month average value of the Price Index for March, April and May each year. The three-month average of the Price Index increased by 4 percent from 133.79 for March, April and May of 2002 to 139.09 for the same three months in 2003. When computed on the basis of unrounded data and rounded to the nearest one-quarter cent, the resulting national average for the period July 1, 2003 through June 30, 2004 will be 15.75 cents per meal. This is an increase of 0.50 cents from the school year 2003 rate.

Section 14(f) of the Act provides that commodity only schools shall be eligible to receive donated foods equal in value to the sum of the national average value of donated foods established under section 6(c) of the Act and the national average payment established under section 4 of the Act (42 U.S.C. 1753). Such schools are eligible to receive up to 5 cents per meal of this value in cash for processing and handling expenses related to the use of such commodities.

Commodity only schools are defined in section 12(d)(2) of the Act (42 U.S.C. 1760(d)(2)) as "schools that do not participate in the school lunch program under this Act, but which receive commodities made available by the Secretary for use by such schools in nonprofit lunch programs." For school year 2004, commodity only schools shall be eligible to receive donated food assistance valued at 36.75 cents for each free, reduced price, and paid lunch served. This amount is based on the sum of the section 6(c) level of assistance announced in this notice and the adjusted section 4 minimum national average payment factor for school year 2004. The section 4 factor for commodity only schools does not include the two cents per lunch increase for schools where 60 percent of the lunches served in the school lunch program in the second preceding school year were served free or at reduced prices, because that increase is applicable only to schools participating in NSLP.

Authority: Sections 6(c)(1)(A) and (B), 6(e)(1), 14(f) and 17(h)(1)(B) of the National School Lunch Act, as amended (42 U.S.C. 1755(c)(1)(A) and (B) and 6(e)(1), 1762a(f), and 1766(h)(1)(B)).

Dated: July 17, 2003.

Theodore O. Bell,

Acting Administrator.

[FR Doc. 03–18716 Filed 7–22–03; 8:45 am]
BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Forest Service

Bridger-Teton National Forest; Pinedale Ranger District; WY; Environmental Impact Statement for the Upper Green River Area Rangeland Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) to analyze the effects of domestic livestock grazing in the upper Green River area. The analysis contained in the EIS will be used by the Responsible Official to decide whether or not, and how, livestock grazing would be authorized on the grazing allotments within the project area. The project area is located in western Wyoming; approximately 30 miles northwest of Pinedale, Wyoming near the Green River Lakes. The majority of the project area lies within Sublette County, with small portions that extend into Teton and Fremont counties. The entire 162,800 acre project area lies within the boundaries of the Pinedale Ranger District. The project area is comprised on the following six grazing allotments: Badger Creek, Beaver-Twin Creeks, Noble Pastures, Roaring Fork, Upper Green River, and Wagon Creek.

DATES: Comments concerning the scope of the analysis must be received by August 25, 2003. The draft environmental impact statement is expected in September of 2003 and the final environmental impact statement is expected in January of 2004.

ADDRESSES: Send written comments to Craig Turlock, District Ranger, Pinedale Ranger District, Box 220, Pinedale, Wyoming 82941. For further information, mail correspondence to *mailroom r4 bridger teton@fs.fed.us* and on the subject line, put only "Upper Green Grazing Allotments".

FOR FURTHER INFORMATION CONTACT: Craig Turlock, District Ranger, Pinedale Ranger District, (see **ADDRESSES** above).

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of this analysis is to determine if livestock grazing is appropriate within the analysis area. If livestock grazing is appropriate, there may be a need to update and/or refine desired rangeland conditions and develop new management prescriptions to meet them. Integral to this is a need to confirm or attain compliance and consistency of this analysis and its resultant decision with legal mandates, including the National Environmental Policy Act of 1976 (NEPA), as well as policy direction, including the Bridger-Teton National Forest Land and Resource Management Plan (Forest Plan). To date the Forest Service has identified three alternatives.

Alternative B: Proposed Action

The Forest Service proposes to authorize grazing use within the project area under updated grazing management direction, in order to move existing rangeland resource conditions toward the desired conditions that will be developed by an interdisciplinary team. The updated direction would be incorporated in respective allotment management plans (AMP's) to guide grazing management within the project area. New Allotment Management Plans (AMP's) would be developed for the Badger Creek, Beaver-Twin Creeks, Noble Pastures, and Wagon Creek allotments, and the existing AMP's for the Roaring Fork and Upper Green River allotments would be updated as a result of this action. Grazing management strategies would be developed or revised in accordance with the Code of Federal Regulations (CFR), 36 CFR 222.1(b)(2), which describes allotment management planning provisions. Current grazing management strategies would be maintained where resource objectives are being achieved, and new management strategies would be implemented in areas where resource objectives have not been met. Rotational grazing systems would be initiated in the Badger Creek, Beaver-Twin Creeks, and Roaring Fork allotments and modified, as needed, in the remaining allotments to ensure desired conditions are reached.

Possible Alternatives

Alternative A—Grazing as Currently Permitted (No Action Alternative)

Although allotment management plans (AMP's) would be prepared for each of the six allotments, the grazing management practices specified for the allotments with existing AMP's would not be changed. The Upper Green River and Roaring Fork allotments would continue to operate under the guidelines specified in AMP's that are over 25 years old, and season-long grazing would persist in the Badger Creek and Beaver-Twin Creeks allotments. In addition, no new utilization standards would be initiated to move existing resource conditions in the project area toward the desired future conditions (DFC's) specified in the Forest Plan.

Alternative C—No Grazing by Domestic Livestock (No Grazing Alternative)

Alternative C would eliminate livestock grazing in the project area. This alternative was developed to demonstrate the effects that eliminating domestic cattle grazing would have on the environment and to more clearly illustrate the potential effects of implementing either Alternative A or Alternative B. Under this alternative, domestic livestock grazing in all six allotments of the project area would be phased out over several years as existing Term Grazing Permits expire.

Responsible Official

Craig Trulock, District Ranger, Pinedale Ranger District, PO Box 220, Pinedale, Wyoming 82941.

Nature of Decision To Be Made

The decision, which is based on this analysis, will be to decide if livestock will be allowed to graze on the allotment complex, either through the implementation of the proposed action, or an alternative to the proposed action. The decision would include any mitigation measures needed in addition to those prescribed in the Forest Plan.

Scoping Process

The following methods were used to invite the public to participate in this project: A scoping letter was mailed to those listed on the Bridger-Teton National Forest's general mailing list on February 10, 2000. The mailing list included private landowners, term grazing permit holders, special interest groups, interested members of the public, and local, state, and federal agencies. The letter described the proposed action, the purpose and need for the project, the process that would be followed for completing the environmental analysis, and the scope of the decision to be made. Additionally, the letter solicited public participation in the process, specifically the submission of comments, concerns, and recommendations regarding management of the six allotments in the project area.

Term grazing permit holders, or their representatives, were contacted shortly after the project was initiated to solicit their input concerning management of the six allotments within the project area.

The Forest Service is seeking information, comments, and assistance from individuals, organizations, tribal governments, and federal, state, and local agencies interested in or affected by this project. Comments submitted on the 2000 scoping effort and any new comments will be used to prepare the Draft Environmental Impact Statement (DEIS). Public participation will be solicited by notifying in person and/or by mail known interested and affected publics. News releases will be used to give the public general notice. Public participation activities would include requests for written comments. Scoping includes: (1) Identifying potential issues, (2) narrowing the potential issues and identifying significant issues of those that have been covered by prior environmental review, (3) exploring alternatives in addition to No Action, and (4) identifying potential environmental effects of the proposed action and alternatives.

Preliminary Issues

The Forest Service has identified the following potential issues. Through the 2000 scoping effort, issues have been refined. Public input is especially valuable here. It will help us determine which of these merit detailed analysis. It will also help identify additional issues related to the proposed action that may not be listed here.

Issue 1—Effects of livestock grazing on riparian and aquatic function.

Issue 2—Effects of livestock grazing on Threatened, Endangered and Sensitive species.

Issue 3—The social and economic effects of authorizing livestock grazing in the area.

Issue 4—Effects of livestock grazing on rangeland function.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: July 11, 2003

Craig P. Trulock,

District Ranger.

[FR Doc. 03–18685 Filed 7–22–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Olympic Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Olympic Provincial Advisory Committee (OPAC) will meet on Friday, August 15, 2003. The meeting will be held at the Forest Service Conference Room at the Forest Service Quinault office in Quinault, Washington. The meeting will begin at 9:30 a.m. and end at approximately 3 p.m. Agenda topics are: Current status of key Forest issues; Owl management update; Washington State Department of Natural Resources management on the Olympic Peninsula; Open forum; Public comments; and field trip to review two recently completed Secure Rural Schools and Community Self-Determination Act—Title II projects.

All Olympic Province Advisory Committee Meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Ken Eldredge, Province Liaison, USDA, Olympic National Forest Headquarters, 1835 Black Lake Blvd., Olympia, WA 98512–5623, (360) 956–2323 or Dale Hom, Forest Supervisor, at (306) 956–2301.

Dated: July 17, 2003.

Dale Hom,

Forest Supervisor, Olympic National Forest.

[FR Doc. 03–18676 Filed 7–22–03; 8:45 am]

BILLING CODE 3410–01–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arkansas and Mississippi Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Arkansas and Mississippi Advisory Committees will convene at 1:30 p.m. and adjourn at 3 p.m. (CDT) on Wednesday, August 20, 2003. The purpose of the conference call is to discuss the civil rights "Listening Tour" meeting to be held in November.

This conference call is available to the public through the following call-in number: 1–800–659–1109, access code #18042828. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Farella E. Robinson, Civil Rights Analyst of the Central Regional Office 913–551–1400 (TDD 913–551–1414), by 3 p.m. on Friday, August 15, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC July 15, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–18715 Filed 7–22–03; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New York Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the New York Advisory Committee to the Commission will convene at 9:10 a.m. and adjourn at 10:40 a.m. on Thursday, August 7, 2003. The purpose of the conference call is to discuss and approve draft report on the SAC's May 21st forum and to decide on the steps to complete this draft.

This conference call is available to the public through the following call-in number: 1–800–659–8292, access code: 18094622. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and contact name.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Aonghas St-Hilaire of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116), by 4 p.m. on Wednesday, August 6, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 15, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–18712 Filed 7–22–03; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Office of the Secretary, Office of Civil Rights.

Title: Request for Reasonable Accommodation.

Form Number(s): CD–575.

OMB Approval Number: None.

Type of Review: Regular submission.

Burden Hours: 2.

Number of Respondents: 20.

Average Hours Per Response: 7 minutes.

Needs and Uses: Under the Rehabilitation Act of 1973, Federal agencies must provide reasonable accommodation to qualified employees or applicants with disabilities, unless to do so would cause the undue hardship. The Department will provide reasonable accommodation to a qualified individual with a disability who is an: Applicant who needs an accommodation in order to be considered for a job (any change to a job application process that enables a qualified applicant with a disability to be considered for the position such qualified applicant desires); employee who needs an accommodation to enable him or her to perform the essential functions of the job or to gain access to the workplace (any change to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enables a qualified individual with a disability to perform the essential functions of that position); or employee who needs an accommodation to enjoy equal benefits and privileges of employment (that which enables an employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without disabilities). Executive Order 13164 requires Federal agencies to provide written procedures for reasonable accommodation for applicants and employees. Records must be maintained in order to evaluate the fair application of the procedures for the Department.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 17, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–18656 Filed 7–22–03; 8:45 am]

BILLING CODE 3510–BP–P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Internet Export Finance Matchmaker

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 22, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork, Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: William Franklin, Office of Finance, Room 1800A, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC 20230; phone number: (202) 482–3277.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Office of Finance assists U.S. firms in identifying trade finance opportunities and promoting the competitiveness of U.S. financial services in international trade. The Office of Finance interacts with private financial institutions in insurance, banking, leasing, factoring, barter, and counter-trade; U.S. financing agencies, such as the Export-Import Bank and the Overseas Private Investment Corporation; and multilateral development banks, such as the World Bank, Asian Development Bank, and others. To facilitate contact between exporters and financial institutions, the Office of Finance has developed an interactive Internet trade finance matchmaking program to link exporters seeking trade finance with banks and other financial institutions. The information collected from financial institutions regarding the trade finance products and services they offer is compiled into a database. An exporter is able to electronically submit a one-page form identifying the potential export transaction and type of financing requested. This information is electronically matched with the financial institution(s) that meet the requirements of the exporter. After a match has been made, a message is electronically sent to both the exporter and the financial institution containing information about the match, and contact information for either party to initiate communication. This program is designed to implement the Department of Commerce's goal of improving access to trade financing for small business exporters.

II. Method of Collection

Electronic submission to the International Trade Administration, Office of Finance.

III. Data

OMB Number: 0625–0232.

Form Number: ITA–4146P.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time Per Response: Exporters: 10 minutes; financial institutions: 30 minutes.

Estimated Total Annual Burden Hours: 90.

Estimated Total Annual Cost to the Public: $3,150.

IV. Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: July 17, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–18655 Filed 7–22–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–812]

Honey From Argentina; Extension of Time Limit for Preliminary Results of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limits.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the 2001–2002 administrative review of the antidumping duty order on honey from Argentina. This review covers seven exporters of the subject merchandise to the United States and the period May 11, 2001 through November 30, 2002.

EFFECTIVE DATE: July 23, 2003.

FOR FURTHER INFORMATION CONTACT: Brian J. Sheba at (202) 482–0145 or Donna Kinsella at (202) 482–0194, Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On January 22, 2003, in response to requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with December anniversary dates, we published a notice of initiation of this administrative review in the **Federal Register**. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 3009. Reviews were requested for honey from Argentina (A–357–812) for the following exporters: Asociacion de Cooperativas Argentinas, Centauro S.A., Cia. Europeo Americana SA, Comexter, Robinson S.A., Compa Inversora Platense S.A., Compania Apicola Argentina SA, ConAgra Argentina S.A., Coope-Riel Ltda., Cooperativa DeAgua Potable y Otros, Establecimiento Don Angel S.r.L., Food Way, S.A., Francisco Facundo Rodriguez, Jay Bees, Jose Luis Garcia, HoneyMax S.A, Mielar S.A., Navicon S.A., Nexco S.A., Parodi Agropecuaria S.A., Radix S.r.L., Seylinco S.A., Times S.A., and Transhoney S.A.

Petitioners submitted a withdrawal of request for review on January 17, 2003 for the following companies: Centauro S.A., Comexter, Robinson S.A., Compa Inversora Platense S.A., ConAgra Argentina S.A., Coope-Riel Ltda., Cooperativa DeAgua Potable y Otros, Establecimiento Don Angel S.r.L., Food Way, S.A., Francisco Facundo Rodriguez, Jay Bees, Jose Luis Garcia, Navicon S.A., Parodi Agropecuaria S.A., and Times S.A. The Department rescinded this review with respect to the above companies on March 21, 2003. *See Notice of Partial Rescission of Antidumping Duty Administrative Review*, 68 FR 13895. The Department also rescinded the reviews for Compania Apicola Argentina S.A. and Mielar S.A., who submitted withdrawals of their requests for review on March 18, 2003 and March 26, 2003, respectively. *See Notice of Partial Rescission of Antidumping Duty Administrative Review*, 68 FR 25568 (May 13, 2003).

Pursuant to the time limits for administrative reviews set forth in section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act), the current deadlines are September 2, 2003 for the preliminary results and December 31, 2003 for the final results. It is not practicable to complete this review within the normal statutory time limit due to a number of significant case issues, such as sales below cost, high inflation, and currency devaluation. Therefore, the Department is extending the time limit for completion of the preliminary results until December 8, 2003 in accordance with section 751(a)(3)(A) of the Tariff Act. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act (19 U.S.C. 1675 (a)(3)(A) (2001)).

Dated: July 16, 2003.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–18747 Filed 7–22–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

University of Missouri—Kansas City; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–023. *Applicant:* University of Missouri—Kansas City, Kansas City, MO 64110. *Instrument:* OptoTOP He 3–D Digitizing System. *Manufacturer:* Breuckmann GmbH, Germany. *Intended Use: See* notice at 68 FR 34907.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) Digitized video images for constructing very precise three-dimensional replicas, (2) imaging accuracy to 2.0 µm, (3) image acquisition times on the order of several seconds and (4) portable operation. The National Institutes of Health advises in its memorandum of June 9, 2003 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–18748 Filed 7–22–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

The University of Texas Health Science Center, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–025.

Applicant: The University of Texas Health Science Center at San Antonio, San Antonio, TX 78229–7750.

Instrument: Electron Microscope, Model JEM–1230.

Manufacturer: JEOL Ltd., Japan.

Intended Use: See notice at 68 FR 36770, June 19, 2003.

Order Date: May 1, 2003.

Docket Number: 03–027.

Applicant: Oregon Health & Science University, Beaverton, OR 97006.

Instrument: Electron Microscope, Model Tecnai G² 12 BioTWIN.

Manufacturer: FEI Company, The Netherlands.

Intended Use: See notice at 68 FR 36770.

Order Date: March 28, 2003.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–18749 Filed 7–22–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Vermont; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5 P.M. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 03–026. *Applicant:* University of Vermont, Burlington, VT 05405. *Instrument:* Cuvette System for muscle fiber investigation. *Manufacturer:* Scientific Instruments GmbH, Germany. *Intended Use:* See notice at 68 FR 36770, June 19, 2003.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides a laser-controlled perfusion cuvette system capable of both measuring the contractile force of a strip of muscle tissue and viewing the tissue with an inverted microscope. The National Institutes of Health advises in its memorandum of June 9, 2003 that (1) This capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 03–18750 Filed 7–22–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-357–813]

Notice of Extension of Time Limit for the Preliminary Results of Countervailing Duty Administrative Review: Honey from Argentina

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the administrative review of the countervailing duty order on honey from Argentina until no later than December 8, 2003. The period of review (POR) is January 1, 2001, through December 31, 2002. This extension is made pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: July 23, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn or Addilyn Chams-Eddine, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone: (202) 482–4236 or (202) 482–0648, respectively.

SUPPLEMENTARY INFORMATION:

Background

In December 2002, the Department received a timely request from interested parties in accordance with section 751(a) of the Act and section 351.213(b) of the regulations, for an administrative review of the countervailing duty order on honey from Argentina, which has a December anniversary date. On January 22, 2003, the Department initiated this administrativereview covering the period January 1, 2001, through December 31, 2001. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Review and Request for Revocation in Part*, 68 FR 3009 (January 22. 2003). Pursuant to a request from the Government of Argentina (GOA), and following the solicitation and analysis of comments from the interested parties, the Department extended the POR to cover calendar year 2002 in addition to 2001. *See Memorandum to the File: Honey from Argentina: Expansion of the Period of Review in the First Administrative Review of the Countervailing Duty Order* (dated February 21, 2003). The preliminary results of this review are currently due September 2, 2003.

Statutory Time Limits

Section 351.213(h)(1) of the regulations requires the Department to issue the preliminary results of review within 245 days after the last day of the anniversary month of the order or suspension agreement for which the administrative review was requested, and final results of the review within 120 days after the date on which notice of the preliminary results is published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within the aforementioned specified time limits, section 351.213(h)(2) allows the Department to extend the 245-day-period to 365 days and to extend the 120-day period to 180 days. If the Department does not extend the time for issuing preliminary results, the Department may extend the time for issuing final results from 120 to 300 days.

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the regulations, the Department has determined that it is not practicable to complete the preliminary results in this administrative review by September 2, 2003. The Department is awaiting the response to a supplemental questionnaire requesting additional information from the GOA. Moreover, the Department must analyze two years' worth of data and intends to verify the GOA questionnaire responses. Therefore, the Department is extending the deadline for completion of the preliminary results of the administrative review of the countervailing duty order on honey from Argentina by 97 days. The preliminary results of the review will be issued not later than December 8, 2003.

This notice is published pursuant to section 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: July 16, 2003.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–18746 Filed 7–22–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Notice of an Energy Trade Mission to Nigeria, Gabon, and Sao Tome and Principe

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies to participate in the following overseas trade mission: Oil and Gas Business Development Mission to Nigeria, Gabon, and Sao Tome and Principe. Date: November 15–22, 2003. The Deputy Assistant Secretary for Energy, Environment, and Materials, Kevin Murphy, will lead an energy trade mission to Nigeria, Gabon, and Sao Tome and Principe. Focusing on equipment, services, exploration, and production aspects of the energy sector, the mission will include representatives from 8–12 U.S. firms interested in gaining access to these West African energy markets. For a more complete description, obtain a copy of the mission statement from the Project Officer indicated below.

DATES: The trade will take place from November 15–22, 2003. Applications may be submitted immediately. All application must be received by September 15, 2003. Applications received after the date will be considered only if space and scheduling constraints permit. Recruitment and selection or private sector participants for the trade will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions dated March 3, 1997.

ADDRESSES: Applications must be submitted to Mr. Aaron Brickman, Office of Energy, U.S. Department of Commerce, Room H4056, Washington, DC 20230; Telephone: 202–482–1889; Facsimile: 202–482–0170; E-mail: *aaron_brickman@ita.doc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Aaron Brickman, U.S. Department of Commerce; Telephone: 202–482–1889; Facsimile: 202–482–0170; or E-mail: *aaron_brickman@ita.doc.gov.*

Dated: July 8, 2003.

Helen Burroughs,

Director, Office of Energy.

[FR Doc. 03–18708 Filed 7–22–03; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071803B]

Proposed Information Collection; Comment Request; An Observer Program for Catcher Vessels in the Pacific Coast Groundfish Fishery

AGENCY: AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 22, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be

directed to Jonathan Cusick, 206–860–3477, or at *Jonathan.Cusick@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Catcher vessels participating in the Pacific Coast Groundfish Fishery and who are selected by NOAA must provide NOAA with notification at least 24 hours before departure for a fishing trip and with notification when the vessel ceases to participate in the observed portion of the fleet. The information will be used to plan for fishery observer assignments.

II. Method of Collection

Reports are made by phone to a toll-free number.

III. Data

OMB Number: 0648–0423.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,116.

Estimated Time Per Response: 10 minutes.

Estimated Total Annual Burden Hours: 1,763.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 16, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–18732 Filed 7–22–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Office of Coast Survey; Notice of Solicitation for Hydrographic Services Review Panel

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of solicitation for Hydrographic Services Review Panel.

SUMMARY: This notice responds to the Hydrographic Services Improvement Act Amendments of 2002, Public Law 107–372, which requires the Under Secretary of Commerce for Oceans and Atmosphere to solicit nominations for membership on the Hydrographic Services Review Panel. This advisory committee will advise the Under Secretary on matters related to the responsibilities and authorities set forth in section 303 of the Hydrographic Services Improvement Act of 1998 and its amendments, and such other appropriate matters the Under Secretary refers to the Panel for review and advise.

DATES: Résumés should be sent to the address, e-mail or FAX specified and must be received by September 29, 2003.

ADDRESSES: Director, Office of Coast Survey, National Ocean Service, NOAA (N/CS), 1315 East West Highway, Silver Spring, MD, 20910, FAX: 301–713–4019, e-mail: *Hydroservices.panel@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Gretchen Imahori, Office of Coast Survey, NOS/NOAA, 301–713–2770, Extension 140, FAX: 301–713–4019, *Gretchen.Imahori@noaa.gov*.

SUPPLEMENTARY INFORMATION: Under 33 U.S.C. 883a *et seq*. NOS is responsible for providing nautical charts and related information for safe navigation and other purposes. In fulfilling this responsibility, NOS collects and compiles hydrographic, tidal and current, geodetic and a variety of other data and information. The Hydrographic Services Panel shall advise on topics such as the Office of Coast Survey (OCS) National Survey Plan, technologies relating to operations, research and development, and dissemination of data pertaining to:

(a) Hydrographic surveying and data;
(b) Nautical charting;
(c) Water level measurements;
(d) Current measurements;
(e) Geodetic measurements; and
(f) Geospatial measurements.

The Panel shall consist of 15 voting members appointed by the Under Secretary in accordance with the provisions and prohibitions of Section 105 of the Act. Members will be selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance. The Director of the Joint Hydrographic Institute and no more than two employees of the National Oceanic and Atmospheric Administration shall serve as nonvoting members of the Panel.

The voting members of the Panel shall be individuals who, by reason of knowledge, experience, or training, are especially qualified in one or more of the disciplines and fields relating to hydrographic surveying, tides, currents, geodetic and geospatial measurements, marine transportation, port administration, vessel pilotage, and coastal and fishery management. The membership shall be fairly balanced in terms of points of view represented and the functions to be performed by the Panel. An individual may not be appointed as a voting member of the Panel if the individual is a full-time officer or employee of the United States. Any voting member of the Panel who is an applicant for, or beneficiary of (as determined by the Administrator), any assistance under the Act shall disclose to the Panel that relationship, and may not vote on any matter pertaining to that assistance. The term of office of a voting member of the Panel shall be 4 years, except that of the original appointees, five shall be appointed for a term of 2 years, five shall be appointed for a term of 3 years, and five shall be appointed for a term of 4 years, as specified by the Administrator at the time of appointment. The members will serve at the discretion of the Administrator and will be subject to ethical standards applicable to special government employees. Any individual appointed to a partial or full term may be reappointed for one additional full term. A voting member may serve after the date of the expiration of the term of office for which appointed until his or her successor has taken office.

The Panel shall select one voting member to serve as the Chair and another voting member to serve as the Vice Chair. The Vice Chair shall act as Chair in the absence or incapacity of the Chair.

Meetings will occur on a biannual basis and, at any other time, at the call of the Chair or upon the request of a majority of the voting members or of the Administrator.

Voting members of the Panel shall receive compensation at a rate established by the Administrator, not to exceed the maximum daily rate payable under section 5376 of title 5, United States Code, when actually engaged in the performance of duties for such Panel and shall be reimbursed for actual and reasonable expenses incurred in the performance of such duties.

Dated: June 30, 2003.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 03–18252 Filed 7–22–03; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 030530139–3139–01; I.D. 010401B]

Marine Protected Areas and an Inventory of Existing Marine Managed Areas

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Solicitation of public comments on proposed criteria for building an Inventory of Marine Managed Areas.

SUMMARY: NOAA and the Office of the Secretary, Department of the Interior (DOI), jointly propose criteria, definitions, and data fields that will be used in development of an Inventory of U.S. Marine Managed Areas or MMAs. The MMA Inventory will provide information that will lead to the fulfillment of requirements of Executive Order (E.O.) 13158 on Marine Protected Areas (MPAs). This action requests comments on the working criteria for including existing sites in the MMA Inventory, and describes data fields to provide consistent information about each site. This notice also makes clear that the development of the MMA Inventory is Phase I, to be followed by the development of the List of MPAs (Phase II) called for in E.O. 13158. The intent of this document is to solicit public participation in the development of an inventory of existing U.S. MMAs (Federal, state, commonwealth, territorial, and tribal sites) as a resource for managers, scientists, and the general public.

DATES: Comments must be received on or before September 22, 2003.

ADDRESSES: Comments regarding the proposed MMA Inventory criteria, definitions, and data fields should be sent to Joseph Uravitch, National MPA Center, N/ORM, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910. Comments also will be accepted if submitted via e-mail to mpa.comments@noaa.gov. E-mail comments should state "MMA Inventory Comments" on the subject line.

FOR FURTHER INFORMATION CONTACT: Joseph Uravitch, NOAA, 301–713–3155, x195, or Piet deWitt, DOI, 202–208–6224.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document also is accessible via the Internet at the Office of the **Federal Register**'s web site at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

Background

E.O. 13158 directs DOC and DOI, in consultation with the Department of Defense, the Department of State, the United States Agency for International Development, the Department of Transportation, the Environmental Protection Agency, the National Science Foundation, and other pertinent Federal agencies, to work with non-Federal partners to protect significant natural and cultural resources within the marine environment of the United States, including the Great Lakes, by strengthening and expanding a scientifically-based comprehensive national system of MPAs. A key purpose of E.O. 13158 is to "enhance the conservation of our Nation's natural and cultural marine heritage and the ecologically and economically sustainable use of the marine environment for future generations." A first step in developing this scientifically-based national system of MPAs is the development of an inventory of MMAs. This inventory will become the initial pool of sites from which the List of MPAs called for in section 4(d) of E.O. 13158 will be developed.

DOC and DOI were given specific roles by E.O. 13158. DOC has delegated lead responsibility to the Under Secretary of Commerce for Oceans and Atmosphere. DOI has delegated its lead to the Assistant Secretary, Lands and Minerals Management. NOAA and DOI have stewardship responsibilities for marine resources under various Federal laws, including the Magnuson-Stevens Fishery Conservation and Management Act, the Endangered Species Act, the Marine Mammal Protection Act, the Coastal Zone Management Act, the National Marine Sanctuaries Act, the Antiquities Act, the National Wildlife Refuge System Administration Act, the Outer Continental Shelf Lands Act, and the National Park Service Organic Act. These and other authorities direct DOC and DOI agencies to manage marine areas for a wide variety of objectives. Area-based management has been used for years to protect marine habitats and submerged cultural resources, rebuild and sustain fisheries, provide recreational opportunities, promote marine research, recover endangered species, and support local economies that depend on ocean resources. These areas have been managed in different ways ranging from restricting specific activities and allowing sustainable use of natural resources within an area, to the establishment of marine reserves that limit access and close the site to all uses except research.

The MMA Inventory will be used in Phase I to inform Federal, state, commonwealth, territorial, local, and tribal agencies of the locations and characteristics of existing MMAs and to form a pool from which sites may later be considered for placement on the List of MPAs (Phase II). Resource managers and others can use this information to better manage these areas and determine the effectiveness of individual sites, as well as regional and national assemblages. The core purposes of the MMA Inventory are:

Providing centralized, easily accessed information and maps on existing Federal, state, commonwealth, territorial, local, and tribal MMAs in the United States;

• Providing information and tools for environmental assessments and effectiveness monitoring (supporting independent analyses and studies of a wide variety of marine issues by governmental and non-governmental users);

• Providing important site-specific information for developing and maintaining the official nationwide List of MPAs required by section 4(d) of E.O. 13158; and

• Providing information to fulfill other requirements of E.O. 13158.

NOAA and DOI have placed a variety of protective or restrictive measures on different marine areas to achieve different management purposes. The definitions and working criteria proposed in this notice are being used to build the MMA Inventory and may, at some future date, be used in determining which sites should be placed on the List of MPAs (Phase II). However, these definitions and criteria are not final and are subject to change based on public comment and through experience gained by using the MMA

Inventory and implementing E.O. 13158. The public will be informed of changes to the criteria through the **Federal Register** and the MPA web site, *http://www.mpa.gov*.

It is important to distinguish between the MMA Inventory and the List of MPAs. The MMA Inventory is not designed to fulfill the requirement of E.O. 13158 for a List of MPAs but is the first step toward development of that List. The List is to be established at some future date after an administrative process for listing has been established.

After public comment on this notice, NOAA and DOI will decide if the working criteria for building the MMA Inventory should be broadened, narrowed, or otherwise modified. A notice of agency decision will be published in the **Federal Register** and the MPA web site, *http://www.mpa.gov*, will be modified appropriately.

Proposal

E.O. 13158 defines a "marine protected area" as "any area of the marine environment that has been reserved by Federal, State, territorial, tribal, or local laws or regulations to provide lasting protection for part or all of the natural and cultural resources therein." The E.O. defines "marine environment" to mean "those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands thereunder, over which the United States exercises jurisdiction, consistent with international law." The E.O. does not define other key terms in the MPA definition such as "lasting," "protection," and "cultural resources." Given the breadth of these terms and the wide array of sites they could include, NOAA and DOI are clarifying key terms within the E.O.'s MPA definition that will serve as criteria for determining MMAs.

Therefore, NOAA and DOI jointly propose the following definitions for: "area," "marine," "reserved," "lasting," "protection," and "cultural." These definitions serve as criteria and include a description of the characteristics necessary for inclusion in the MMA Inventory and a description of features that would exclude a site from the MMA Inventory.

Area

To be included in the MMA Inventory, the site:

Must have legally defined geographical boundaries, and may be of any size, except that the site must be a subset of the U.S. Federal, state, commonwealth, territorial, local or tribal marine environment in which it is located. Application of this criterion would exclude, for example: Generic broad-based resource management authorities without specific locations. Areas whose boundaries change over time based on species presence.

Marine

To be included in the MMA Inventory, the site:

Must be: (a) ocean or coastal waters (note: coastal waters may include intertidal areas, bays or estuaries); (b) an area of the Great Lakes or their connecting waters; (c) an area of lands under ocean or coastal waters or the Great Lakes or their connecting waters; or (d) a combination of the above. The term "intertidal" is understood to mean the shore zone between the mean low water and mean high water marks. An MMA may be part of a larger site that includes uplands, however, the terrestrial portion is not considered an MMA. For mapping purposes, an MMA may show an associated terrestrial protected area.

NOAA and DOI propose to use the following definition for the term "estuary": "Part of a river or stream or other body of water having unimpaired connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage, and extending upstream to where ocean-derived salts measure less than 0.5 parts per thousand during the period of average annual low flow." Application of this criterion would exclude, for example, strictly freshwater sites outside the Great Lakes region that contain marine species at certain seasons or life history stages unless that site is a component of a larger, multi-unit MMA. Estuarine-like sites on tributaries of the Great Lakes will be considered for inclusion if they are located within the eight digit U.S. Geological Survey cataloging unit adjacent to a Great Lake or its connecting waters.

Reserved

To be included in the MMA Inventory, the site:

Must be established by and currently subject to Federal, state, commonwealth, territorial, local or tribal law or regulation.

Application of this criterion would exclude, for example:

Privately created or maintained marine sites.

Lasting

To be included in the MMA Inventory, the site:

Must provide year-after-year protection for at least three months of each year.

Must be established with an expectation of, or at least the potential for, permanence. If the reservation will expire on a date certain, the reservation must provide a minimum of two years of continuous protection and must have a specific mechanism to consider renewal of protection at the expiration of the reservation.

Application of this criterion would exclude, for example:

Areas subject only to temporary protections, such as areas protected only by emergency fishery regulations under the Magnuson-Stevens Act, which expire after 180 days, and areas that are protected by annual management specifications.

Protection

To be included in the MMA Inventory, the site:

Must have existing laws or regulations that are designed and applied to afford the site with increased protection for part or all of the natural and submerged cultural resources therein for the purpose of maintaining or enhancing the long-term conservation of these resources, beyond any general protections that apply outside the site.

Application of this criterion would exclude, for example:

Areas closed to avoid fishing gear conflicts.

Area-based regulations established solely to limit fisheries by quota management or to facilitate enforcement.

In addition, the Executive Order uses the term cultural resources. NOAA and DOI interpret this to mean any submerged historical or submerged cultural feature, including archaeological sites, historic structures, shipwrecks, artifacts, and subsistence uses in the marine environment.

Taken together, these definitions and criteria provide the basis for selecting sites to be included in the MMA Inventory.

MMA Inventory Data Fields

In addition to the above proposal, comments are solicited on what data and information should be provided about each site in the MMA Inventory. To make the MMA Inventory a useful resource for managers, scientists, users and the public, NOAA and DOI propose to provide specific information in a consistent format for each site. This information could be used by both government and non-government entities to aid analyses of protection of marine resources and improve regional and national coordination among existing sites. Data in the MMA Inventory eventually will be used to assess whether or not specific sites meet the definitions and criteria to be placed on the List of MPAs. In order to use existing mapping data, maps for sites with upland components will depict the entire area (i.e., the marine area constitutes the MMA by these proposed definitions/criteria; however, the maps in the MMA Inventory also will show any upland component of the national park, national estuarine research reserve, etc.).

NOAA and DOI propose to collect, use, and make available to the public the following information (listed below and found on the web site *http://www.mpa.gov*) for each site in the MMA Inventory. The agencies request public comments on these data fields to determine what information will be most useful for managers, scientists, user-groups, and other members of the public.

Proposed data fields:

MMA Name (name of the site protected); Type of Area (national marine sanctuary, national park, etc.); Level of Government Managing Site (Federal, state, local, tribal); Management Organizations (government agency/department responsible for site management); Purpose of Protections (explanation of what the site was established to protect or manage); Site Description (brief description of site including general features and most prominent, noteworthy, and unique features); Information Web Reference (primary informational web home page address); Location (nearest state, territory or commonwealth); Site Boundaries (if available provide: text description, latitude/longitude coordinates, digital coverage of site boundary, and digital or hard-copy map); Size of Area (number of square miles of surface of both water and land areas within site); Additional Location/Size Information (approximate shoreline length, overlap with other protected areas, connectivity with other protected areas); Marine Components (oceans, bays, estuaries, intertidal areas, Great Lakes, submerged lands, and/or other); Natural Features (biological and geological features); Cultural Features (archaeological remains, historic shipwrecks, subsistence uses); Legal Basis for Establishment (name, citation, and summary of legal authority for creating MMA); Date Established (date initial protection afforded to marine natural or submerged cultural resources, other important dates of increasing protection or expansion of site); Primary Restrictions (brief summary of primary restrictions in MMA); Legal Basis for Implementation (citation to regulations or other legal basis for implementing MMA); Expiration Date of Protections (date, if any, of expiration of regulations or other authority); Site Programs and Plans (types of management programs and plans developed for the MMA); Enforcement (government agencies/departments responsible for enforcing restrictions on site); Effectiveness (measures used to determine management effectiveness); Zone Information (if management of the site is zoned: general zone information, zone purposes, zone boundary delineation, zone resource protections, zone activity and use restrictions); and Information Sources (site staff/contact, publications, web sites, other sources).

Process

An initial and partial MMA Inventory comprised primarily of Federal sites, such as fisheries management zones, national parks, national wildlife refuges, and national marine sanctuaries, has been assembled and published on the MPA web site, *http://www.mpa.gov*. This initial MMA Inventory also includes state-federal national estuarine research reserves and some state sites in the Gulf of Maine and Western Pacific regions. More sites will be added to the MMA Inventory in the future.

The MMA Inventory will not contain all currently protected or managed sites in the marine environment. For example, sites developed by Regional Fishery Management Councils, in conjunction with the National Marine Fisheries Service (NMFS), NOAA, that provide less than three-months' protection or afford only annual restrictions would not appear in the MMA Inventory on the basis of the proposed working criteria.

Some MMA Inventory sites presumably will not meet all of the criteria necessary for placement on the List of MPAs during Phase II of this process. However, these sites will be maintained as part of the MMA Inventory to provide managers, analysts, and other interested parties with a comprehensive database of U.S. MMAs, including sites that may be considered for the List of MPAs, sites on the List of MPAs, and sites determined not to meet the criteria for the List of MPAs. Additional information will be added to the MMA Inventory as it becomes available.

Consultation and Public Comment

E.O. 13158 requires NOAA and DOI to develop the national MPA system in consultation with the Department of Defense, the Department of State, the United States Agency for International Development, the Department of Transportation, the Environmental Protection Agency, the National Science Foundation, and other pertinent Federal agencies. NOAA and DOI are also to consult with states and territories that contain portions of the marine environment, tribes, Regional Fishery Management Councils, and other entities, as appropriate, to promote coordination of Federal, state, territorial, and tribal actions to establish and manage MPAs. NOAA and DOI actively solicit comments from these entities and from the general public on any aspect of this notice of proposed MMA Inventory criteria, definitions, and data fields. Preliminary draft definitions and criteria, as well as inventory data fields, were first released to the public on December 21, 2000, when NOAA and DOI unveiled their MPA web site at *http://www.mpa.gov*. The public was invited informally to comment on any aspect of the web site including the definitions and criteria. For purposes of developing a final notice, comments made in response to the web site invitation will be considered as well as those made in response to this notice. Following review of comments received, NOAA and DOI will publish a final notice of MMA Inventory criteria, definitions, and data fields in the **Federal Register** and *http://www.mpa.gov*.

Classification

Regulatory Planning and Review

This action is not aa regulatory action subject to E.O. 12866 (58 FR 51735, October 4, 1993). This notice would not impose a compliance burden on the economy generally because the proposed definitions and MMA Inventory criteria provided here are only designed to collect data that may later be used to implement E.O. 13158.

Energy Effects

NOAA and DOI have determined that this action will have no effect on energy supply, distribution, or use as required by Executive Order 13211 (66 FR 28355).

Administrative Procedure Act

Pursuant to authority at 5 U.S.C. 553(b)(A), prior notice and an opportunity for public comment are not required to be given, as this is a document concerning agency procedure or practice. Nevertheless, NOAA and DOI want the benefit of the public's comment and are voluntarily giving prior notice and opportunity for public comment.

Dated: June 25, 2003.

Conrad C. Lautenbacher, Jr.,

Vice Admiral, U.S. Navy (Ret.), Under Secretary of Commerce for Oceans and Atmosphere.

[FR Doc. 03–18738 Filed 7–22–03; 8:45 am]

BILLING CODE 3510–08–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board Task Force on Patriot Systems Performance will meet in closed session on August 26–27, 2003, at SAIC, 4001 N. Fairfax Drive, Arlington, VA. The Task Force will assess the recent performance of the Patriot System in OPERATION IRAQI FREEDOM from deployment through use across the threat spectrum.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting, the Defense Science Board Task Force will: Assess logistical, doctrine, training, personnel management, operational and material performance; identify those lessons learned which are applicable to the development of the Medium Extended Air Defense System (MEADS); and assess the current planned spiral development of the Patriot to ensure early incorporation of fixes discovered in the lessons learned process.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that the Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: July 16, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–18650 Filed 7–22–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting date change.

SUMMARY: On Thursday, June 19, 2003 (68 FR 36772), the Department of Defense announced closed meetings of the Defense Science Board Task Force on Enabling Joint Force Capabilities. The August 26, 2003, meeting has moved to September 8, 2003. The Task Force will meet at SAIC, 4001 N. Fairfax Drive, Arlington, VA.

Dated: July 11, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–18651 Filed 7–22–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Office of the Secretary is amending a system of records notice in its inventory of records systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a). The amended system of records notice reflects the agency's name change from the 'Defense Protective Service' to the 'Pentagon Force Protection Agency'.

DATES: The changes will be effective on August 22, 2003 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 601–4722.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 15, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DWHS P42

SYSTEM NAME:

DPS Incident Reporting and Investigations Case Files (March 24, 1994, 59 FR 13938).

Changes

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Pentagon Police Department Incident Reporting and Investigations Case Files'.

SYSTEM LOCATION:

Delete entry and replace with 'Pentagon Force Protection Agency, 9000 Defense Pentagon, Washington, DC 20301–9000.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Chief Information Officer, Pentagon Force Protection Agency, 9000 Defense Pentagon, Washington, DC 20301–9000'.

* * * * *

DWHS P42

SYSTEM NAME:

Pentagon Police Department Incident Reporting and Investigations Case Files.

SYSTEM LOCATION:

Pentagon Force Protection Agency, 9000 Defense Pentagon, Washington, DC 20301–9000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are the source of an initial complaint or allegation that a crime took place.

Witnesses having information or evidence about any aspect of an investigation.

Suspects in the criminal situation who are subjects of an investigation. Persons who may pose a threat to the Secretary of Defense, the Deputy Secretary of Defense and other Senior Defense Officials.

Persons who may pose a threat to the personal safety of themselves or others while in the Pentagon Force Protection Agency/Pentagon Police Department (PFPA/PPD) controlled jurisdiction.

Subjects of investigations on non-criminal matters.

Current and former applicants for the position of PFPA/PPD Officer.

Sources of information and evidence. The identity of these individuals may be confidential as appropriate to the subject matter they contribute. These files contain information vital to the outcome of administrative procedures and civil and criminal cases.

Individuals associated with terrorism or terrorist groups and activities and names of regional, nationwide, and worldwide terrorist organizations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Preliminary and other reports of criminal investigations from the opening of a case until it is closed. These records are instituted and maintained at varying points in the process. The processes of criminal justice and civil and administrative remedies may require their partial or total disclosure.

Security files contain information such as name, date and place of birth, address, Social Security Number, education, occupation, experience, and investigatory material. Contingency Planning/Analysis files contain information such as names and other identifying information and investigatory material on an individual associated with terrorists or terrorist groups and activities. File contains information about regional, nationwide, and worldwide terrorist organizations and their effects on security of DoD facilities under the jurisdiction of PFPA. Intelligence briefs; tactical, operational, and strategic informational reports; regional and nationwide contingency analysis; contingency action plans; and patterns and trends of potential or actual terrorists or terrorist groups, or other activities that could disrupt the orderly operation of Defense-owned or controlled facilities over which the PFPA has jurisdiction.

Documents created in enforcing regulations regarding motor vehicle movement and parking on Federal premises including reports of traffic accidents, traffic violation notices and similar records maintained by PFPA.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 21, Internal Security Act of 1950 (Pub. L. 831, 81st Cong.); 40 U.S.C. 318, as delegated by Administrator, General Services Administration, to the Deputy Secretary of Defense, September 1987, and E.O. 9397 (SSN).

PURPOSE(S):

Information in this system supports the public safety, law enforcement, facility security, and contingency planning functions of the PFPA. Additional functions supported include information on current and former applicants for the position of PFPA/PPD Officer and Internal Affairs investigative records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To a Federal, state, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order, where the agency is aware of a violation or potential violation of civil or criminal law or regulation.

To an appeal, grievance, or formal complaints examiner; equal employment opportunity investigator; arbitrator; exclusive representative; or other officials engaged in investigating, or settling a grievance, complaint or appeal filed by an employee.

To various bureaus and divisions of the Department of Justice that have primary jurisdiction over subject matter and location which PFPA shares.

To law enforcement agencies which have lawfully participated in and conducted investigation jointly with PFPA.

Pursuant to the order of a court of competent jurisdiction, when the United States is party to or has interest in litigation, and using the records is relevant, necessary, and compatible with the purposes of collecting the information.

To an insurance company of one or more parties when an insured is involved in an injury or accident in the PFPA jurisdiction and an Accident Report is required to resolve claims or to settle matters of record.

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders in file cabinets. Magnetic media in controlled access areas for both on-line and storage disks.

RETRIEVABILITY:

Paper records by case control number and type of incident. Magnetic files by case control number, name, address, and physical description of subject individual.

SAFEGUARDS:

Paper records are stored in secure filing cabinets in room with built-in-position dial-type combination safe lock. Computer records are maintained in limited access sites on a system protected by a software-controlled password system.

RETENTION AND DISPOSAL:

Non-criminal records are destroyed one year after case is closed.

Criminal records are cutoff when case is closed and placed in an inactive file for three years. After three years in the inactive file, the records are retired to the Washington National Records Center for an additional 15 years, after which time they will be destroyed. Information on current and former applicants for position of PFPA/PPD Officer are maintained two years and then destroyed.

Contingency planning and analysis files pertaining to regional, nationwide, and worldwide terrorist organizations and their potential effects of the security of DoD facilities are destroyed when superseded, obsolete, or no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Pentagon Force Protection Agency, 9000 Defense Pentagon, Washington, DC 20301–9000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address inquiries to the Pentagon Force Protection Agency, 9000 Defense Pentagon, Washington, DC 20301–9000.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Pentagon Force Protection Agency, 9000 Defense Pentagon, Washington, DC 20301–9000.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Investigators, informants, witnesses, official records, investigative leads, statements, depositions, business records, or any other information source available to PFPA.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency, which performs as its principle function any activity pertaining to the enforcement of criminal laws. The criminal investigation case file and contingency planning and analysis file may be partially or totally subject to the general exemption.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 311. For additional information contact the system manager.

[FR Doc. 03–18644 Filed 7–22–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Office of the Secretary is proposing to alter an existing system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on August 22, 2003 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 601–4722.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on July 9, 2003, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: July 15, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DPAD 12.0

SYSTEM NAME:

DoD National Media Pool and Pentagon Correspondent Files (December 17, 2001, 66 FR 64960).

Changes

SYSTEM NAME:

Delete 'National' from entry.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete 'National' from entry.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete 'National' from entry. Add to first paragraph 'No fault ("hold harmless") legal contracts between DoD and media organizations as well as no-fault legal contracts between DoD and individual media representatives. Ground-rule agreements between DoD and individuals covering personal conduct before and during event. Certificates of background security clearance.'

* * * * *

RETENTION AND DISPOSAL:

Disposition pending. Until the National Archives and Records Administration has approved the retention and disposition of these records, treat records as permanent.

* * * * *

DPAD 12.0

SYSTEM NAME:

DoD Media Pool and Pentagon Correspondent Files.

SYSTEM LOCATION:

Office of the Assistant Secretary of Defense (Public Affairs), Directorate for Plans, Room 2D757, 1400 Defense Pentagon, Washington, DC 20301–1400 for Media Pool records.

Office of the Assistant Secretary of Defense (Public Affairs), Directorate of Defense Information, 1400 Defense Pentagon, Room 2E765, Washington, DC 20301–1400 for the Pentagon Correspondent records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian media representatives nominated by their respective bureaus to be members of the DoD Media Pool.

Pentagon correspondents who may conduct interviews with Pentagon executive level personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

DoD Media Pool files consist of accreditation and other questionnaires and forms soliciting the media representative's name, age, nationality, Social Security Number, office and home addresses and phone numbers, passport information, medical information, and person to be notified in an emergency effecting individual. No fault ("hold harmless") legal contracts between DoD and media organizations as well as no-fault legal contracts between DoD and individual media representatives. Ground-rule agreements between DoD and individuals covering personal conduct before and during event. Certificates of background security clearance.

Pentagon correspondent files consist of their photographs and biographies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 138, Assistant Secretaries of Defense; and E.O. 9397 (SSN).

PURPOSE(S):

Media Pool Files are used to issue Pentagon building passes, Media Pool Press Passes, orders, to arrange foreign country clearances and visas, and to determine individual's suitability/preparedness for deployment with the media pool.

Pentagon correspondent records are used by Pentagon executive level personnel to provide a brief summary of the correspondent's professional experience and background.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and computerized electronic records.

RETRIEVABILITY:

Paper records are retrieved by individual's last name, Social Security Number, bureau, or organization. Electronic records are retrieved by last name, Social Security Number, and/or news organization.

SAFEGUARDS:

Records are accessed by authorized personnel with an official need-to-know who have been trained for handling Privacy Act information. Electronic records are accessible only by the Directorate of Defense Information administrative staff.

RETENTION AND DISPOSAL:

Disposition pending. Until the National Archives and Records Administration has approved the retention and disposition of these records, treat records as permanent.

SYSTEM MANAGER(S) AND ADDRESS:

For DoD Media Pool files: Office of the Assistant Secretary of Defense (Public Affairs), Directorate for plans, Room 2D757, 1400 Defense Pentagon, Washington, DC 20301–1400.

FOR PENTAGON CORRESPONDENT FILES:

Deputy Director, Directorate for Defense Information, Office of the Assistant Secretary of Defense (Public Affairs), 1400 Defense Pentagon, Room 2E765, Washington, DC 20301–1400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the appropriate System manager above.

The request should contain individual's full name, individual's Social Security Number, and bureau or organization where employed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the appropriate System manager above.

The request should contain individual's full name, individual's Social Security Number, and bureau or organization where employed.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Accreditation and other questionnaires and forms completed or provided by the individual and information provided by the individual's employer or bureau.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–18645 Filed 7–22–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Office of the Inspector General; Privacy Act of 1974; System of Records

AGENCY: Office of the Inspector General, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Office of the Inspector General, DoD, is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on August 22, 2003, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Office of the Inspector General, Department of Defense, 400 Army Navy Drive, Room 223, Arlington, VA 22202–4704.

FOR FURTHER INFORMATION CONTACT: Mr. Darryl R. Aaron at (703) 604–9785.

SUPPLEMENTARY INFORMATION: The Office of the Inspector General, DoD, systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 16, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

CIG–11

SYSTEM NAME:

Budget Information Tracking System (BITS) (February 22, 1993, 58 FR 10213).

Changes

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Office of the Chief of Staff, Office of the Comptroller, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.'

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete from entry 'and Blanket Travel, employee training.' Move the records currently listed under Purpose, to this entry. Those records are 'individual's name, Social Security Number grade/rank and financial transaction document number'.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with 'Pub.L. 95–452, the Inspector General Act of 1978, as amended; 5 U.S.C. 301, Departmental Regulations; DoD 7000.14–R, DoD Financial Management Regulation; DoD Directive 5106.1, Inspector General of the Department of Defense, Organization and Functions Guide; OIG DoD Instruction 7200.1, Budget and Fund Control; OIG DoD Instruction 7250.13, Official Representation Funds; and E.O. 9397 (SSN).'

PURPOSE(S):

Delete entry and replace with 'Information is used in determining current year execution and future budgetary requirements for the OIG as follows:

a. Tracking temporary duty travel costs.

b. Tracking Permanent Change of Station costs.

c. Maintain spreadsheets maintained by Human Resource Training/purchase cardholders.

d. Tracking cash award costs.'

* * * * *

RETRIEVABILITY:

Records are retrieved by the individual's financial transaction document number. A specified data element or a combination thereof contained in this system of records are used for accessing information.

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records are maintained for current fiscal year. Destroy 6 years and 3 months after the close of the fiscal year.'

* * * * *

CIG–11

SYSTEM NAME:

Budget Information Tracking System (BITS).

SYSTEM LOCATION:

Office of the Chief of Staff, Office of the Comptroller, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Office of the Inspector General (OIG) employees who participate in OIG Travel, Permanent Change of Station, Awards, and Training.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number, grade and or rank, financial transaction document number, and the cost records of the OIG employees who have been approved for Temporary Duty; Permanent Change of Station (PCS); and an employee cash award.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 95–452, the Inspector General Act of 1978, as amended; 5 U.S.C. 301, Departmental Regulations; DoD 7000.14-R, DoD Financial Management Regulation; DoD Directive 5106.1, Inspector General of the Department of Defense, Organization and Functions Guide; OIG DoD Instruction 7200.1, Budget and Fund Control; OIG DoD Instruction 7250.13, Official Representation Funds; and E.O. 9397 (SSN).

PURPOSE(S):

Information is used in determining current year execution and future budgetary requirements for the OIG as follows:

a. Tracking temporary duty travel costs.

b. Tracking Permanent Change of Station costs.

c. Maintain spreadsheets maintained by Human Resources Training/purchase cardholders.

d. Tracking cash award costs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the OIG's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and or binders and on electronic storage media or a combination thereof.

RETRIEVABILITY:

Records are retrieved by the individual's financial transaction document number. A specified data element or a combination thereof contained in this system of records are used for accessing information.

SAFEGUARDS:

Access to the system is protected/restricted through the use of assigned user identification/passwords for entry into system modules.

RETENTION AND DISPOSAL:

Records are maintained for current fiscal year. Destroy 6 years and 3 months after the close of the fiscal year.

SYSTEM MANAGER(S) AND ADDRESS:

Comptroller, Office of the Chief of Staff, Office of the Inspector General of the Department of Defense, 400 Army Navy Drive, Arlington, VA 22202–4704.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief, Freedom of Information Act/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

The request should contain the full name, address, and Social Security Number of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Chief, Freedom of Information Act/Privacy Act Office, 400 Army Navy Drive, Arlington, VA 22202–4704.

The request should contain the full name, address, and Social Security Number of the individual.

CONTESTING RECORD PROCEDURES:

The OIG's rules for accessing records and for contesting contents and appealing initial agency determinations are published in 32 CFR part 312 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES

Data maintained in the system is obtained directly from the individual on the following forms:

a. Request to Temporary Duty Travel Form, provided to the Travel Section with information obtained from the individual traveler;

b. Request for Permanent Change of Station Form, provided by the Personnel and Security Directorate and Travel Section with information obtained from the individual;

c. Request for Training Form, provided by the Training Officer within each segment of the Office of the Assistant Inspector General with information obtained from the individual; and

d. Incentive Awards Nomination and Action Form, provided by the Personnel and Security Directorate with information obtained from an individual's supervisor and personnel records. To the extent that a follow-up to resolve discrepancies is required, information is collected directly from the individual or the appropriate office within the Office of the Inspector General on Department of Defense (DD) Forms 1610 and 1614, Standard Form 182, and IG Form 1400.430–3.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–18648 Filed 7–22–03; 8:45 am]

BILLING CODE 5001–08–U

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Army is amending one system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on August 22, 2003 unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/Privacy Act Office, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–FP, 7798 Cissna Road, Suite 205, Springfield, VA 22153–3166.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–7137/DSN 656–7137.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 16, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

AAFES 0410.01

SYSTEM NAME:

Employee Travel Files (August 9, 1996, 61 FR 41580).

Changes

* * * * *

STORAGE:

Delete entry and replace with 'Paper records in locked filing cabinets and on electronic storage media.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Paper records are destroyed after imaging and imaged documents are maintained for 7 years.'

* * * * *

AAFES 0410.01

SYSTEM NAME:

Employee Travel Files.

SYSTEM LOCATION:

Headquarters, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598; Commander, AAFES Europe, Unit 24580, APO AE 09245–4580; Commander, AAFES Pacific Rim Region, Unit 35163, APO AP 96378–5163; and Base on post exchange within the AAFES system. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the Army and Air Force Exchange Service (AAFES) authorized to perform official travel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents pertaining to travel of persons on official Government business, and/or their dependents, including but not limited to travel assignment orders, authorized leave en route, availability of quarters and/or shipment of household goods and personal effects, application for passport/visas; security clearance; travel expense vouchers; and similar related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army and 8013; Army Regulation 215–1, The Administration of Morale, Welfare, and Recreation Activities and Non-appropriated Fund Instrumentalities; Army Regulation 60–20, Army and Air Force Exchange Service Operating Policies; and E.O. 9397 (SSN).

PURPOSE(S):

To process official travel requests for military and civilian employees of the Army and Air Force Exchange Service; to determine eligibility of individual's dependents to travel; to obtain necessary clearance where foreign travel is involved, including assisting individual in applying for passports and visas and counseling where proposed travel involves visiting/transiting communist countries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to attaché or law enforcement authorities of foreign countries.

To the U.S. Department of Justice or Department of Defense legal/intelligence/investigative agencies for security, investigative, intelligence, and/or counterintelligence operations.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in locked filing cabinets and on electronic storage media.

RETRIEVABILITY:

By employee's surname.

SAFEGUARDS:

Information is accessed only by designated individuals having official need therefore in the performance of their duties.

RETENTION AND DISPOSAL:

Paper records are destroyed after imaging and imaged documents are maintained for 7 years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Army and Air Force Exchange Service, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Director, Administrative Services Division, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide full name, Social Security Number, current address and telephone number, details of travel authorization/clearance documents sought, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Army and Air Force Exchange Service, ATTN: Director, Administrative Services Division, 3911 S. Walton Walker Boulevard, Dallas, TX 75236–1598.

Individual should provide full name, Social Security Number, current address and telephone number, details of travel authorization/clearance documents sought, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, official travel orders, travel expense vouchers, receipts and similar relevant documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–18647 Filed 7–22–03; 8:45 am]

BILLING CODE 5001–08–U

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Defense Logistics Agency proposes to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on August 22, 2003 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on July 9, 2003, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: July 15, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S700.20

SYSTEM NAME:

Passport, Visa, and Country Clearance Files.

SYSTEM LOCATION:

Records are located at the offices of authorized passport agents at Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, and DLA field units. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Defense Logistics Agency (DLA) civilian employees, military members, and other individuals who travel to overseas locations under DLA sponsorship.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records include name; Social Security Number; nationality; date and place of birth; security clearance; travel itinerary; and applications for passports, visas, and theater and country clearances, including supporting documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 5702 *et seq.*, Travel, Transportation and Subsistence; 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 22 U.S.C., Chapter 4, Passports; DoD Regulation 1000.21, Passport and Visa Application Procedures; and E.O. 9397 (SSN).

PURPOSE(S):

Information is being collected and maintained to comply with requirements to gain clearances and approvals to travel to, or within, foreign countries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials and employees of other departments and agencies of the Executive Branch of government for purposes of securing passports or other required clearances.

To Foreign embassies, legations, and consular offices where visas or country entrance clearances are required.

To commercial carriers providing transportation to individuals whose applications are processed through this system of records.

The DoD 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper and electronic format.

RETRIEVABILITY:

Records are retrieved by name, Social Security Number, passport, or clearance request number.

SAFEGUARDS:

Computerized records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted by the use of locks, guards, and administrative procedures. Access to personal information is limited to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords, which are changed periodically. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during non-duty hours.

RETENTION AND DISPOSAL:

Application files and related papers are destroyed when 3 years old or upon separation of the bearer, whichever is sooner. Official passports are returned to the Department of State upon expiration or upon separation of the employee.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, DLA Support Services, Business Management Office, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, and the heads of DLA field activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DSS-B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individuals must supply the name of the DLA facility or activity where employed at the time the papers were created or processed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, or the Privacy Act Officer of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individuals must supply the name of the DLA facility or activity where employed at the time the papers were created or processed.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Data is obtained from the individual; existing files; the State Department and other agencies of the Executive Branch, including agency components; foreign embassies, legations, and consular offices; and transportation carriers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–18646 Filed 7–22–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive License; Phase IV Engineering, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy gives notice of its intent to grant Phase IV Engineering, Inc., a revocable, nonassignable, partially exclusive license, with exclusive fields of use in commercial transportation and logistics, law enforcement, private security, highway and road safety, facility HVAC, in the United States to practice the Government-owned invention, U.S. Patent Application Serial Number 10/021,700 entitled "Micromechanical Shock Sensor."

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than August 8, 2003.

ADDRESSES: Written objections are to be filed with Indian Head Division, Naval Surface Warfare Center, Code OC4, 101 Strauss Avenue, Indian Head, MD 20640–5035.

FOR FURTHER INFORMATION CONTACT: Dr. J. Scott Deiter, Head, Technology Transfer Office, Naval Surface Warfare Center Indian Head Division, Code 05T, 101 Strauss Avenue, Indian Head, MD 20640–5035, telephone (301) 744–6111.

Dated: July 10, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–18683 Filed 7–22–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive License; Unique Technologies, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy gives notice of its intent to grant Unique Technologies, Inc., a revocable, nonassignable, partially exclusive license, with exclusive fields of use in law enforcement, private security, and entertainment, in the United States to practice the Government-owned invention, U.S. Patent Application Serial Number 10/318,672 entitled "Non-Lethal Flash Grenade."

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than August 8, 2003.

ADDRESSES: Written objections are to be filed with Indian Head Division, Naval Surface Warfare Center, Code OC4, 101 Strauss Avenue, Indian Head, MD 20640–5035.

FOR FURTHER INFORMATION CONTACT: Dr. J. Scott Deiter, Head, Technology Transfer Office, Naval Surface Warfare Center Indian Head Division, Code 05T, 101 Strauss Avenue, Indian Head, MD 20640–5035, telephone (301) 744–6111.

Dated: July 10, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–18684 Filed 7–22–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 22, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 18, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Extension.

Title: National Student Loan Data System (NSLDS).

Frequency: On occasion, Weekly, Monthly, Quarterly.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 29,952.

Burden Hours: 179.712.

Abstract: The U.S. Department of Education collects data from postsecondary schools and guaranty agencies about Federal Perkins loans, Federal family education loans, and William D. Ford direct student loans to be used to determine eligibility for Title IV student financial aid.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2311. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivan.Reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–18709 Filed 7–22–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2069–007 Arizona]

Childs-Irving Hydroelectric Project; Notice of Telephone Conference

July 17, 2003.

a. *Date and Time of Telephone Conference:* August 7, 2003, at 2 p.m. EST

b. *FERC Contact:* Frank Winchell at (202) 502–6104.

c. *Purpose of the Telephone Conference:* The Federal Energy Regulatory Commission, Advisory Council on Historic Preservation, Arizona State Historic Preservation Office, USDA Forest Service, Yavapai-Apache, Hopi Tribe, and the Arizona Public Service Company intend to discuss the Final Memorandum of Agreement and Associated Revised Historic Properties Management Plan Involving the Childs-Irving Hydroelectric Project.

d. If you want to participate by telephone, please contact Frank Winchell at the number listed above no later than July 31, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18775 Filed 7–22–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–106–000, et al.]

Mobile Energy Services Company. LLC, et al.; Electric Rate and Corporate Filings

July 17, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Mobile Energy Services Company, LLC

[Docket No. EC03–106–000 Mobile Energy Services Holdings, Inc.]

Take notice that on July 11, 2003, Mobile Energy Services Company, LLC and Mobile Energy Services Holdings, Inc. (jointly the Applicants) filed with the Federal Energy Regulatory Commission (Commission), an application for authorization of the disposition of jurisdictional facilities to certain creditors under a proposed plan of reorganization in connection with bankruptcy proceedings, pursuant to Section 203 of the Federal Power Act, 16 U.S.C. 824(b)(2002), and a request for expedited approval and waiver of various provisions of the regulations.

Comment Date: August 1, 2003.

2. UNS Electric, Inc.

[Docket No. ER03–1064–000]

Take notice that on July 14, 2003, UNS Electric, Inc. (UNS Electric) filed an application requesting acceptance of (1) The Open Access Transmission Tariff of UNS Electric, Inc.; (2) a Non-firm Interchange Agreement between UNS Electric, Inc. and Aha Macav Power Service; (3) an Interchange Agreement between El Paso Electric Company and UNS Electric, Inc.; and (4) an Interconnection Agreement between Nevada Power Company and UNS Electric, Inc. UNS Electric states that the tariff and agreements will be transferred to UNS Electric as a result of the Commission-approved transfer of certain electric assets from Citizens Communications Company to UniSource Energy Corporation, UNS Electric's corporate parent. *See* Tucson Elec. Power Co., 103 FERC ¶ 62,100.

Comment Date: August 4, 2003.

3. Cleco Power LLC

[Docket No. ER03–1065–000]

Take notice that on July 14, 2003, Cleco Power LLC tendered for filing a Second Revised Service Agreement No. 66, under FERC Electric Tariff Original Volume No. 1. Cleco Power LLC states that the filing reflects revisions to the agreement made in section 1.3, Commercial Operation Date. Cleco Power LLC also states that the original Commercial Operation Date of November 1, 2004 has been revised to reflect a later date of June 1, 2005.

Comment Date: August 4, 2003.

4. The Dayton Power and Light Company

[Docket No. ER03–1066–000]

Take notice that on July 14, 2003, The Dayton Power and Light Company (Dayton), tendered for filing an Amendment to Interconnection Agreement with DPL Energy, LLC.

Comment Date: August 4, 2003.

5. Santa Rosa Energy LLC

[Docket No. ER03–1067–000]

Take notice that on July 14, 2003, Santa Rosa Energy LLC filed a Notice of Cancellation of its Rate Schedule FERC No. 1.

Comment Date: August 4, 2003.

6. Cinergy Services, Inc.

[Docket No. ER03–1068–000]

Take notice that on July 14, 2003, Cinergy Services, Inc., on behalf of The Cincinnati Gas & Electric Company (CG&E), tendered for filing a Notice of Cancellation of CG&E's FERC Electric Tariff, First Revised Volume No. 1, Rate WH–1, Rate Schedule No. 4.

Comment Date: August 4, 2003.

7. Cinergy Services, Inc.

[Docket No. ER03–1069–000]

Take notice that on July 14, 2003, Cinergy Services, Inc., on behalf of The Cincinnati Gas & Electric Company (CG&E), tendered for filing a Notice of Cancellation of CG&E's FERC Electric Tariff, First Revised Volume No. 1, Rate WS-P, Rate Schedule No. 5.

Comment Date: August 4, 2003.

8. Cinergy Services, Inc.

[Docket No. ER03–1070–000]

Take notice that on July 14, 2003, Cinergy Services, Inc., on behalf of The Cincinnati Gas & Electric Company (CG&E), tendered for filing a Notice of Cancellation of CG&E's FERC Electric Tariff, First Revised Volume No. 1, Rate WS-S, Rate Schedule No. 6.

Comment Date: August 4, 2003.

9. Cinergy Services, Inc.

[Docket No. ER03–1071–000]

Take notice that on July 14, 2003, Cinergy Services, Inc., on behalf of The Union Light, Heat and Power Company (ULH&P), tendered for filing a Notice of Cancellation of ULH&P's FERC Electric Tariff, Original Volume No. 1, Rate WS-S, Rate Schedule No. 4.

Comment Date: August 4, 2003.

10. New England Power Pool

[Docket No. ER03–1072–000]

Take notice that on July 15, 2003, the New England Power Pool (NEPOOL) submitted the Ninety-Eighth Agreement Amending New England Power Pool Agreement, which modifies Attachments L, N, and O of the Restated NEPOOL Open Access Transmission Tariff (the NEPOOL Tariff), the Financial Assurance Policy for NEPOOL Members, the NEPOOL Billing Policy, and the Financial Assurance Policy for Non-Participant Financial Transmission Rights Customers and Non-Participant Demand Response Providers (collectively, the Policies). NEPOOL states that the changes to the Policies (i) Change the timing of suspension of a Non-Municipal Participant that fails to provide adequate financial assurance; and (ii) change the Policies so that the suspension provisions more precisely reflect how the NEPOOL Markets operate under Standard Market Design in New England. A September 15, 2003 effective date is requested for these changes.

NEPOOL states that copies of these materials were sent to the NEPOOL Participants, Non-Participant Transmission Customers and the New England state governors and regulatory commissions.

Comment Date: August 5, 2003.

11. Florida Power & Light Company

[Docket Nos. ER03–1074–000]

Take notice that on July 15, 2003, Florida Power & Light Company (FPL) filed with the Federal Energy Regulatory Commission the First Revised Rate Schedule No. 23, which is the Contract for Interchange Service between FPL and Tampa Electric Corporation (Tampa Electric).

FPL states that a copy of this filing has been served on Tampa Electric and the Florida Public Service Commission.

Comment Date: August 5, 2003.

12. Cinergy Services, Inc.

[Docket No. ER03–1075–000]

Take notice that on July 14, 2003, Cinergy Services, Inc., on behalf of The Cincinnati Gas & Electric Company (CG&E), tendered for filing a Notice of Cancellation of CG&E's F.E.R.C. Electric Tariff, First Revised Volume No. 1, Rider F, Rate Schedule No. 7A.

Comment Date: August 4, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18772 Filed 7–22–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–107–000, et al.]

Northern Electric Power Co. L.P., et al.; Electric Rate and Corporate Filings

July 16, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Northern Electric Power Co., L.P., Adirondack Hydro-Fourth Branch LLC, NYSD Limited Partnership, Sissonville Limited Partnership and Warrensburg Hydro Power Limited Partnership

[Docket No. EC03–107–000]

Take notice that on July 11, 2003, Black Hills Generation, Inc. (Black Hills Generation), on behalf of certain of its subsidiaries and affiliates, together with Hamptons Power LLC (Hamptons), as sellers (collectively, Sellers), and BPIF LLC and Boralex New York Inc. (collectively, Buyers), tendered for filing with the Federal Energy Regulatory Commission (Commission), an application pursuant to section 203 of the Federal Power Act requesting authorization from the Federal Energy Regulatory Commission for Sellers to transfer to Buyers their interests in Northern Electric Power Co., L.P., Adirondack Hydro-Fourth Branch LLC, NYSD Limited Partnership, Sissonville Limited Partnership, and Warrensburg Hydro Power Limited Partnership.

Comment Date: August 1, 2003.

2. Calpine Newark, LLC

[Docket No. EG03–82–000]

Take notice that on July 14, 2003, Calpine Newark, LLC (Calpine Newark), c/o Calpine Corporation Eastern Region Office, The Pilot House, 2nd Floor, Lewis Wharf, Boston, MA 02110, filed with the Federal Energy Regulatory Commission (Commission), an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Calpine Newark states that it is a Delaware limited liability company and a wholly owned subsidiary of Calpine Cogeneration Corporation. Calpine Newark further states that it owns a 52 MW cogeneration facility located in Newark, New Jersey and sells the output of the facility at wholesale.

Newark states that copies of the application were served upon the Securities and Exchange Commission, New Jersey Board of Public Utilities,

Colorado Public Utilities Commission, Kansas Corporation Commission, Michigan Public Service Commission, Minnesota Public Utilities Commission, New Mexico Public Regulation Commission, North Dakota Public Service Commission, Oklahoma Corporation Commission, South Dakota Public Utilities Commission, Texas Public Utility Commission, Wisconsin Public Service Commission, and Wyoming Public Service Commission.

Comment Date: August 6, 2003.

3. Idaho Power Company

[Docket Nos. ER03–487–003 and ER03–488–003]

Take notice that on July 11, 2003, Idaho Power Company submitted a filing in compliance with the Commission's March 31, 2003 Order, 102 FERC ¶ 61,351 in Docket Nos. ER03–487–002 and ER03–488–002.*Comment Date:* August 1, 2003.

4. Sierra Pacific Industries

[Docket No. ER03–860–002]

Take notice that on July 11, 2003, Sierra Pacific Industries (SPI), filed with the Federal Energy Regulatory Commission a second errata to its May 21 application for approval of its initial tariff (FERC Electric Tariff Original Volume No. 1), and for blanket approval for market-based rates pursuant to part 35 of the Commission's regulations. SPI requests a shortened notice period for this errata. SPI also states that the purpose of the second errata is to reflect the creation of a subsidiary, Sierra Pacific Energy, LLC, (SPE) that will undertake power marketing pursuant to the authority requested in this application.

SPE states that it seeks blanket market-based rate authority as well as the waiver of those Commission rules generally granted to power marketers. SPI also states that it is a California corporation.

Comment Date: July 25, 2003.

5. Tri-State Power, LLC

[Docket No. ER03–1056–000]

Take notice that on July 10, 2003, Tri-State Power, LLC tendered for filing a Notice of Cancellation of its power sales contracts in accordance with 18 CFR 35.15" and the Commission's Order Authorizing Disposition of Jurisdictional Facilities issued June 12, 2003.

Comment Date: July 31, 2003.

6. Gulf Power Company

[Docket No. ER03–1059–000]

Take notice that on July 11, 2003, Gulf Power Company, filed a Notice of Cancellation of the portions of the Interconnection Agreement dated August 1, 1985 between Alabama Electric Cooperative, Inc. and Gulf Power Company (Gulf Power Company's Rate Schedule FERC No. 82) that pertain to the supply of emergency service. Gulf Power Company states that this cancellation was made pursuant to a bilateral amendment to the Interconnection Agreement.

Comment Date: August 1, 2003.

7. Carolina Power & Light Company

[Docket No. ER03–1060–000]

Take notice that on July 11, 2003, Carolina Power & Light Company (CP&L) tendered for filing a Notice of Termination of a Facility Interconnection and Operating Agreement (IOA) between CP&L and Dominion Person, Inc. (Dominion). CP&L states that termination of the IOA has been mutually agreed to by CP&L and Dominion.

Comment Date: August 1, 2003.

8. PJM Interconnection, L.L.C.

[Docket No. ER03–1061–000]

Take notice that on July 11, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing three interim interconnection service agreements (Interim ISAs) between PJM and Conectiv Delmarva Generation, Inc., Armstrong Energy Limited Partnership, L.L.L.P., and Handsome Lake Energy L.L.C. and three notices of cancellation of certain Interim ISAs that have been superseded.

PJM requests a waiver of the Commission's 60-day notice requirement to permit the effective dates agreed to by the parties to the agreements. PJM states that copies of this filing were served upon the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: August 1, 2003.

9. Citadel Energy Products LLC

[Docket No. ER03–1062–000]

Take notice that on July 11, 2003, Citadel Energy Products LLC (CEP) filed with the Federal Energy Regulatory Commission (Commission) an amendment to the Western Systems Power Pool (WSPP) Agreement. CEP states that this amendment revises the WSPP Agreement to list CEP as a member of the WSPP. CEP requests that the Commission allow the amendment to become effective July 11, 2003.

CEP states that a copy of this filing has been served upon Michael Small, General Counsel to the Western Systems Power Pool; Steve Norris, Arizona Public Service Company; Ricky Bittle, Chair of the WSPP Executive Committee; and Bobby J. Campo, Chair of the WSPP Operating Committee.

Comment Date: August 1, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18773 Filed 7–22–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12423–000 Idaho]

American Falls Reservoir District No. 2, Big Wood Canal Company; Notice of Availability of Environmental Assessment

July 17, 2003.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Lateral 993 Hydroelectric Project and has prepared an Environmental Assessment (EA) for the project. The project is located at the juncture of the 993 Lateral and North Gooding Main Canal, Boise Meridian, 20 miles northwest of the Town of Shoshone, Lincoln County, Idaho. The initial diversion is the Milner Dam on the Snake River. The North Gooding Main Canal is part of a U.S. Bureau of Land Management (BLM) project. The project would occupy 17 acres of Federal land managed by the BLM.

The EA contains the Staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

For further information, contact Allison Arnold at (202) 502–6346.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18774 Filed 7–22–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons to Attend

July 17, 2003.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: July 24, 2003, 9:30 a.m.

PLACE: Room 3M 4A/B, 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-Public Investigations and Inquiries and Enforcement Related Matters.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary; Telephone (202) 502–8400.

Chairman Wood and Commissioners Massey and Brownell voted to hold a closed meeting on July 24, 2003. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18783 Filed 7–18–03; 5:11 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act; Notice

July 16, 2003.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: July 23, 2003, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note—Items listed on the Agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, telephone (202) 502–8400. For a recording listing items stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the Agenda; however, all public documents may be examined in the Reference and Information Center.

836th—Meeting July 23, 2003, Regular Meeting, 10 a.m.

ADMINISTRATIVE AGENDA

A–1.
DOCKET# AD02–1, 000, Agency Administrative Matters

A–2.
DOCKET# AD02–7, 000, Customer Matters, Reliability, Security and Market Operations

A–3.
Western Energy Infrastructure Conference

MARKETS, TARIFFS AND RATES—ELECTRIC

E–1.
DOCKET# RM02–1, 000, Standardization of Generator Interconnection Agreements and Procedures

E–2.
DOCKET# RM02–12, 000, Standardization of Small Generator Interconnection Agreements and Procedures

E–3.
OMITTED

E–4.
DOCKET# EL03–23, 000, Pacer Power LLC

E–5.
DOCKET# EL02–111, 000, Midwest Independent Transmission System Operator, Inc., *et al.*

E–6.
DOCKET# EL03–17, 000, Investigation of Certain Enron-Affiliated QF's
OTHER#S QF87–365, 005, Zond Windsystems Holding Company
QF90–43, 004, Victory Garden Phase IV Partnership
QF91–59, 005, Sky River Partnership and Zond Windsystems Partners, Ltd., Series 85–A
EL03–19, 000, *Southern California Edison Company* v. *Enron Generating Facilities:*
QF90–43, 005, Victory Garden Phase IV Partnership
QF91–59, 006, Sky River Partnership
QF95–186, 005, Cabazon Power Partners LLC,
QF85–687, 002, Zond Windsystems Partners, Ltd., Series 85–A
QF85–686, 002, Zond Windsystems Partners, Ltd., Series 85–B
ER03–521, 000, Cabazon Power Partners LLC
ER03–522, 000, Enron Wind Systems, LLC
ER03–523, 000, Zond Windsystem Partners, Ltd., Series 85–A
ER03–524, 000, Zond Windsystem Partners, Ltd., Series 85–B
ER03–525, 000, Sky River Partnership
ER03–526, 000, Victory Garden Phase IV Partnership
ER03–527, 000, ZWHC LLC
ER03–528, 000, Painted Hills Wind Developers

E–7.
DOCKET# EL02–113, 002, El Paso Electric Company, Enron Power Marketing, Inc. and Enron Capital and Trade Resource Corporation
OTHER#S EL02–113, 000, El Paso Electric Company, Enron Power Marketing, Inc. and Enron Capital and Trade Resource Corporation

E–8.
DOCKET# ER03–563, 002, Devon Power Company, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC and NRG Power Marketing, Inc.
OTHER#S ER03–563, 003, Devon Power Company, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC and NRG Power Marketing, Inc.

ER03–563, 004, Devon Power Company, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC and NRG Power Marketing, Inc.
ER03–563, 005, Devon Power Company, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC and NRG Power Marketing, Inc.
ER03–563, 006, Devon Power Company, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC and NRG Power Marketing, Inc.
ER03–563, 007, Devon Power Company, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC and NRG Power Marketing, Inc.
ER03–563, 008, Devon Power Company, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC and NRG Power Marketing, Inc.
ER03–563, 009, Devon Power Company, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC and NRG Power Marketing, Inc.
ER03–563, 010, Devon Power Company, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC and NRG Power Marketing, Inc.

E–9.
DOCKET# ER03–559, 002, Automated Power Exchange, Inc.

E–10.
DOCKET# RT01–2, 005, PJM Interconnection L.L.C., Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, Public Service Electric & Gas Company and UGI Utilities Inc.
OTHER#S RT01–2, 006, PJM Interconnection L.L.C., Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, Public Service Electric & Gas Company and UGI Utilities Inc.
RT01–2, 007, PJM Interconnection L.L.C., Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, Public Service Electric & Gas Company and UGI Utilities Inc.
RT01–2, 008, PJM Interconnection L.L.C., Allegheny Electric Cooperative, Inc., Atlantic City Electric Company, Baltimore Gas & Electric Company, Delmarva Power & Light Company, Jersey Central Power & Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, Public Service Electric & Gas Company and UGI Utilities Inc.
ER03–738, 001, Allegheny Power System Operating Companies: Monongahela Power Company, Potomac Edison Company and West Penn Power Company, all d/b/a Allegheny Power Atlantic City Electric Company; Delmarva Power & Light Company, Baltimore Gas & Electric Company, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, PECO Energy Company, PPL Electric Utilities Corporation, Potomac Electric Power Company, Public Service Electric & Gas Company, Rockland Electric Company and UGI Utilities Inc.

E–11.
DOCKET# EL03–125, 000, *TransAlta Energy Marketing (U.S.) Inc.* v. *Bonneville Power Administration*

E–12.
DOCKET# ER03–902, 000, Commonwealth Edison Company

E–13.
DOCKET# ER03–901, 000, Midwest Independent Transmission System Operator, Inc.

E–14.
DOCKET# ER03–896, 000, Southwest Power Pool, Inc.

E–15.
DOCKET# ER03–697, 000, PacifiCorp

E–16.
DOCKET# ER03–854, 000, ISO New England Inc.
OTHER#S ER03–854, 001, ISO New England Inc.

E–17.
DOCKET# ER03–453, 000, Allegheny Power System, Inc.

E–18.
DOCKET# ER98–3760, 008, California Independent System Operator Corporation
OTHER#S EC96–19, 059, Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Company
ER96–1663, 062, Pacific Gas and Electric Company, San Diego Gas & Electric Company and Southern California Edison Company

E–19.
DOCKET# ER03–407, 002, California Independent System Operator Corporation
OTHER#S ER03–407, 003, California Independent System Operator Corporation

E–20.
OMITTED

E–21.
DOCKET# EL01–63, 004, PJM Interconnection, L.L.C.

E–22.
DOCKET# ER02–653, 002, PacifiCorp

E–23.
OMITTED

E–24.
OMITTED

E–25.
DOCKET# EF00–2012, 000, Bonneville Power Administration
OTHER#S EF00–2012, 001, Bonneville Power Administration

E–26.
OMITTED

E–27.
OMITTED

E–28.
DOCKET# ER03–379, 002, Southern Company Services, Inc.
OTHER#S ER03–379, 001, Southern Company Services, Inc.

E–29.
DOCKET# ER03–407, 001, California Independent System Operator Corporation

E–30.
DOCKET# EL03–50, 001, *Powerex Corporation* v. *California Power Exchange Corporation*

E–31.
DOCKET# EL02–121, 003, *Occidental Chemical Corporation* v. *PJM Interconnection, L.L.C. and Delmarva Power & Light Company*
OTHER#S EL02–121, 004, *Occidental Chemical Corporation* v. *PJM Interconnection, L.L.C. and Delmarva Power & Light Company*

E–32.
DOCKET# EL02–91, 001, *Williams Energy Marketing & Trading Company* v. *Southern Company Services, Inc.*

E–33.
DOCKET# ER02–2233, 005, Ameren Services Company, First Energy Corp., Northern Indiana Public Service Company, National Grid USA and Midwest Independent Transmission System Operator, Inc.
OTHER#S ER02–2233, 004, Ameren Services Company, First Energy Corp., Northern Indiana Public Service Company, National Grid USA and Midwest Independent Transmission System Operator, Inc.

E–34.
DOCKET# EL02–63, 002, *Constellation Power Source, Inc.* v. *California Power Exchange Corporation*

E–35.
DOCKET# PA02–2, 009, Fact-Finding Investigation into Possible Manipulation of Electric and Natural Gas Prices

E–36.
DOCKET# ER03–86, 003, Midwest Independent Transmission System Operator, Inc.

E–37.
OMITTED

E–38.
DOCKET# ER03–83, 003, TRANSLink Development Company, LLC

E–39.
DOCKET# ER03–601, 001, San Diego Gas & Electric Company

E–40.
DOCKET# EL03–130, 000, *MidAmerican Energy Company* v. *Mid-Continent Area Power Pool*

E–41.
OMITTED

E–42.
OMITTED

E–43.
OMITTED

E–44.
DOCKET# EL03–128, 000, D.E. Shaw Plasma Power, L.L.C.

E–45.
DOCKET# EL03–54, 000, *Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California and City of Vernon, California* v. *California Independent System Operator Corporation*

E–46.
DOCKET# ER99–2326, 000, Pacific Gas and Electric Company
OTHER#S EL99–68, 000, Pacific Gas and Electric Company

E–47.
DOCKET# ER98–997, 000, California Independent System Operator Corporation
OTHER#S ER98–997, 002, California Independent System Operator Corporation
ER98–1309, 000, California Independent System Operator Corporation
ER02–2297, 001, California Independent System Operator Corporation
ER02–2298, 001, California Independent System Operator Corporation

E–48.
OMITTED

E–49.
DOCKET# ER99–28, 003, Sierra Pacific Power Company
OTHER#S EL99–38, 002, Sierra Pacific Power Company
ER99–945 002 Sierra Pacific Power Company

E–50.
DOCKET# ER03–978, 000, Southwest Power Pool, Inc.

E–51.
DOCKET# EL02–47, 000, *Wisconsin Public Power, Inc.* v. *Wisconsin Power & Light Company*
OTHER#S EL02–52, 000, *Municipal Wholesale Power Group* v. *Wisconsin Power & Light Company Power*

E–52.
DOCKET# PA03–1, 000, American Electric Power Company
OTHER#S PA03–2, 000, Aquila Merchant Services, Inc.
PA03–3, 000, Coral Energy Resources, LP
PA03–4, 000, CMS Marketing Services & Trading
PA03–5, 000, Dynegy, Inc.
PA03–6, 000, Duke Energy Trading & Marketing, LLC
PA03–7, 000, El Paso Merchant Energy, LP
PA03–8, 000, Mirant Americas Energy Marketing, LP
PA03–9, 000, Reliant Resources, Inc.
PA03–10, 000, Sempra Energy Trading Corp.
PA03–11, 000, Williams Energy Marketing & Trading Company

E–53.
DOCKET# ER02–2001, 000, Electric Quarterly Reports
OTHER#S ER94–1246, 000, Ashton Energy Corporation
ER95–751, 000, PowerGasSmart.com, Inc.
ER95–792, 000, K Power Company
ER95–878, 000, Audit Pro Incorporated
ER95–1381, 000, Alliance Strategies
ER95–1399, 000, Electech, Inc.
ER95–1752, 000, Enpower, Inc.
ER96–734, 000, Energy Marketing Services, Inc.
ER96–924, 000, Direct Access Management, L.P.
ER96–1283, 000, BTU Power Corporation
ER96–1503, 000, Eagle Gas Marketing Company
ER96–1631, 000, Family Fiber Connection, Inc.
ER96–1724, 000, SDS Petroleum Product Inc.
ER96–1731, 000, Engineered Energy Systems Corporation
ER96–1735, 000, GDK Corporation
ER96–1774, 000, Growth Unlimited Investments, Inc.
ER96–1781, 000, EnergyTek, Inc.
ER96–2524, 000, Symmetry Device Research, Inc.
ER96–2635, 000, Tosco Power, Inc.
ER96–2879, 000, U.S. Energy, Inc.
ER96–2942, 000, National Power Marketing L.L.C.
ER97–1117, 000, TC Power Solutions
ER97–1428, 000, American Power Reserve Marketing
ER97–1643, 000, APRA Energy Group Inc.
ER97–1676, 000, Black Brook Energy Company
ER97–3053, 000, Keystone Energy Services, Inc.
ER97–3526, 000, Woodruff Energy
ER97–3815, 000, Friendly Power Company, LLC
ER97–4145, 000, Sigma Energy, Inc.
ER97–4364, 000, PowerCom Energy & Communications Access, Inc.
ER97–4434, 000, Clean Air Capital Markets Corporation
ER97–4680, 000, Starghill Alternative Energy Corporation
ER98–102, 000, Current Energy, Inc.
ER98–174, 000, Millennium Energy Corporation
ER98–573, 000, Aurora Power Resources, Inc.
ER98–1221, 000, Micah Tech Industries, Inc.
ER98–1297, 000, TransCurrent, LLC
ER98–1486, 000, Equinox Energy, LLC
ER98–1829, 000, UtiliSource Corporation
ER98–2232, 000, People's Utility Corporation
ER98–2423, 000, The FURSTS Group, Inc.
ER98–3006, 000, K&K Resources, Inc.
ER98–3052, 000, PowerSource, Corporation
ER98–3451, 000, American Premier Energy Corporation
ER98–3934, 000, Clinton Energy Management Services, Inc.
ER98–4333, 000, Primary Power Marketing, L.L.C.
ER99–581, 000, Business Discount Plan, Inc.
ER99–823, 000, River City Energy, Inc.
ER99–1890, 000, Commodore Electric
ER99–2069, 000, Trident Energy Marketing, Inc.
ER99–2540, 000, Full Power Corporation
ER99–2970, 000, Delta Energy Group
ER99–3207, 000, Capital Center Generating Company LLC
ER00–500, 000, Sierra Pacific Energy Company
ER00–891, 000, Thermo Ecotek Corp.
ER00–1408, 000, Utilimax.com, Inc.
ER00–1530, 000, Energy & Steam Company, Inc.
ER00–2316, 000, Energy Systems Northeast, LLC
ER00–2448, 000, LSP-Nelson Energy, LLC
ER00–2535, 000, The New Power Company
ER00–2670, 000, Multifuels LP
ER00–2806, 000, B.L. England Power LLC
ER01–36, 000, USPower Energy, LLC
ER01–138, 000, Delta Person Limited Partnership
ER01–904, 000, North Carolina Power Holdings, LLC
ER01–1258, 000, New Haven Harbor Power LLC (NHHP)
ER01–1414, 000, Northern Lights Power Company
ER01–1497, 000, Brooke Power, LLC
ER01–2059, 000, Entrust Energy, LLC
ER02–30, 000, Longhorn Power, LP
ER02–159, 000, Great Lakes Hydro America, LLC
ER02–566, 000, Meriden Gas Turbines LLC
ER02–806, 000, Wisconsin Electric Power Company
ER02–893, 000, Dorman Materials, Inc.

E–54.
DOCKET# ER03–194, 002, PJM Interconnection L.L.C.
OTHER#S ER03–309, 001, Allegheny Power
ER03–309, 002, Allegheny Power

E–55.
DOCKET# EL02–119, 000, *The Kroger Co.* v. *Dynergy Power Marketing, Inc.*

MISCELLANEOUS AGENDA

M–1.
DOCKET# PL03–3, 000, Price Discovery in Natural Gas and Electric Markets

M–2.
DOCKET# PL03–4, 000, Policy Statement on Consultation with Indian Tribes in Commission Proceedings

M–3.
DOCKET# RM02–4, 001, Critical Energy Infrastructure Information
OTHER#S PL02–1, 001, Critical Energy Infrastructure Information

M–4.
DOCKET# RM02–7, 001, Accounting, Financial Reporting, and Rate Filing Requirements for Asset Retirement Obligations

M–5.
DOCKET# RM03–6, 000, Amendments to Conform Regulations with Order No. 630 (Critical Energy Infrastructure Information Final Rule)

MARKETS, TARIFFS AND RATES—GAS

G–1.
DOCKET# RP03–529, 000, ANR Pipeline Company

G–2.
DOCKET# PR03–9, 000, Louisiana Intrastate Gas Company, L.L.C.

G–3.
DOCKET# CP02–57, 004, SCG Pipeline, Inc.

G–4.
DOCKET# RP03–199, 000, Enbridge Pipelines (AlaTenn) L.L.C.

G–5.

DOCKET# RP03–335, 000, Enbridge Offshore Pipelines (UTOS) LLC
G–6.
DOCKET# RP03–465, 001, ANR Pipeline Company
G–7.
OMITTED
G–8.
DOCKET# RP01–411, 000, Kern River Gas Transmission Company
G–9.
DOCKET# RP02–318, 002, Questar Southern Trails Pipeline Company
G–10.
DOCKET# IS01–504, 001, BP Transportation (Alaska) Inc.
OTHER#S IS01–504, 000, BP Transportation (Alaska) Inc.
IS03–74, 000, BP Transportation (Alaska) Inc.
G–11.
DOCKET# GT02–38, 006, Northern Natural Gas Company
G–12.
DOCKET# RP00–331, 002, Algonquin Gas Transmission Company
OTHER#S RP00–331, 003, Algonquin Gas Transmission Company
RP01–23, 004, Algonquin Gas Transmission Company
RP01–23, 005, Algonquin Gas Transmission Company
RP03–176, 000, Algonquin Gas Transmission Company
G–13.
DOCKET# RP00–340, 004, Gulf South Pipeline Company, LP
OTHER#S RP00–340, 005, Gulf South Pipeline Company, LP
RP00–340, 007, Gulf South Pipeline Company, LP
RP01–7, 001, Gulf South Pipeline Company, LP
G–14.
DOCKET# RP00–476, 003, Southern Natural Gas Company
OTHER#S RP00–476, 004, Southern Natural Gas Company
RP00–476, 001, Southern Natural Gas Company
RP01–64, 001, Southern Natural Gas Company
G–15.
DOCKET# RP00–506, 004, Northwest Pipeline Corporation
OTHER#S RP00–506, 005, Northwest Pipeline Corporation
RP00–506, 006, Northwest Pipeline Corporation
RP00–506, 007, Northwest Pipeline Corporation
G–16.
DOCKET# RP00–327, 003, Columbia Gas Transmission Corporation
OTHER#S RP00–327, 002, Columbia Gas Transmission Corporation
RP00–327, 004, Columbia Gas Transmission Corporation
RP00–604, 001, Columbia Gas Transmission Corporation
RP00–604, 002, Columbia Gas Transmission Corporation
RP00–604, 004, Columbia Gas Transmission Corporation
G–17.
DOCKET# RP02–365, 001, Northern Natural Gas Company
G–18.
OMITTED
G–19.
OMITTED
G–20.
DOCKET# RP00–333, 004, Crossroads Pipeline Company
OTHER#S RP01–51, 003, Crossroads Pipeline Company
G–21.
DOCKET# RP03–150, 002, Northern Natural Gas Company
G–22.
DOCKET# OR02–13, 001, SFPP, L.P.
G–23.
OMITTED
G–24.
DOCKET# RP92–137 052 Transcontinental Gas Pipe Line Corp.
G–25.
DOCKET# RP96–320 040 Gulf South Pipeline Company, LP
G–26.
DOCKET# PR03–8, 000, Humble Gas Pipeline Company
OTHER#S PR03–8, 001, Humble Gas Pipeline Company
G–27.
DOCKET# PL02–6, 000, Natural Gas Pipeline Negotiated Rate Policies and Practices

ENERGY PROJECTS—HYDRO

H–1.
DOCKET# RM02–16, 000, Hydroelectric Licensing under the Federal Power Act
H–2.
DOCKET# P–2114, 115, *The Yakama Nation* v. *Public Utility District No. 2 of Grant County, Washington*
H–3.
DOCKET# P–2816, 020, Vermont Electric Generation & Transmission Cooperative, Inc., and North Hartland, L.L.C.
H–4.
DOCKET# P–11162, 011, Wisconsin Power & Light Company

ENERGY PROJECTS—CERTIFICATES

C–1.
DOCKET# CP02–78, 002, Maritimes & Northeast Pipeline, L.L.C.
C–2.
DOCKET# CP03–32, 000, Northwest Pipeline Corporation
C–3.
DOCKET# CP03–51, 000, Natural Gas Pipeline Company of America
C–4.
DOCKET# CP03–39, 000, Kinder Morgan Interstate Gas Transmission LLC
C–5.
DOCKET# CP01–94, 004, Nornew Energy Supply, Inc. and Norse Pipeline, L.L.C.
C–6.
DOCKET# CP02–396, 003, Greenbrier Pipeline Company, LLC
OTHER#S CP02–397, 003, Greenbrier Pipeline Company, LLC
CP02–398, 003, Greenbrier Pipeline Company, LLC
C–7.
DOCKET# CP01–409, 003, Tractebel Calypso Pipeline, LLC
OTHER#S CP01–410, 003, Tractebel Calypso Pipeline, LLC
CP01–411, 003, Tractebel Calypso Pipeline, LLC
CP01–444, 003, Tractebel Calypso Pipeline, LLC
C–8.
DOCKET# CP02–204, 001, Transcontinental Gas Pipe Line Corporation

Magalie R. Salas,
Secretary.
[FR Doc. 03–18784 Filed 7–18–03; 5:14 pm]
BILLING CODE 6717–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants:
OTS Global Logistics (Mia) Inc. dba OTS Ocean Transportation Lines, 1701 NW. 84th Avenue, Miami, FL 33126. Officers: Gabriel Buedo, President, (Qualifying Individual) Alicia Byrne, Director.
Weiss-Rohlig USA LLC, 1555 Mittel Blvd., Suite N, Wood Dale, IL 60191. Officers: Steven Moser, Operations Officer, (Qualifying Individual) Paul Senger-Weiss, President.
Great Luck Inc., 1515 W. 178th Street, #102, Gardens, CA 90248. Officers: Jay Hino, Chief Operating Officer, (Qualifying Individual) Tetsumasa Suga, President/CEO.
Cargo International Consolidators, Inc., 18327 SW 151 Avenue, Miami, FL 33187. Officers: Michelle E. Fajardo, Director, (Qualifying Individual) Vivian E. Wever, Director.
Aqua Air Enterprises, 5250 W. Century Blvd., #606, Los Angeles, CA 90045. Jono Babic, Sole Proprietor.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:
Via Global Logistics, Inc., 150–30 132nd Avenue, #206, Jamaica, NY 11434. Officers: Charles Ching, President, Connie Chin, Vice President, (Qualifying Individuals) Cynthia Joa, Secretary.
Kingsco Shipping Line, Inc., 500 Carson Plaza Dr., Suite 208, Carson, CA 90746. Officer: Eun K. Han, President (Qualifying Individual).
Astron Distribution, Inc., 1316 NW. 78th Avenue, Miami, FL 33126. Officers: Karla V. Kushton, Vice President Sales, (Qualifying Individual) Dan C. Boiangin, President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:
Intertrans Express, Inc., 2219 W. Valley Blvd., Alhambra, CA 91803. Officers: Charles Yu, Director, (Qualifying Individual) Chun Tsung Tao, President.
Cargo International Services, Inc., 18327 SW 151 Avenue, Miami, FL 33187. Officers: Vivian E. Wever, Director, (Qualifying Individual) Michelle E. Fajardo, Director.

Dated: July 18, 2003.
Bryant L. VanBrakle,
Secretary.
[FR Doc. 03–18737 Filed 7–22–03; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 15, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Merchants & Manufacturers Bancorportation, Inc., and Merchants New Merger Corp., both of Brookfield, Wisconsin, to acquire 100 percent of the voting shares of Reedsburg Bancorporation, Inc., Reedsburg, Wisconsin, and thereby indirectly acquire The Reedsburg Bank, Reedsburg, Wisconsin.

2. Merchants & Manufacturers Bancorportation, Inc., and Merchants Merger Corp., both of Brookfield, Wisconsin, to acquire 100 percent of the voting shares of Random Lake Bancorp, Limited, Random Lake, Wisconsin, and thereby indirectly acquire Wisconsin State Bank, Random Lake, Wisconsin.

Board of Governors of the Federal Reserve System, July 17, 2003.
Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc. 03–18637 Filed 7–22–03; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 15, 2003.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. JCO Ventures, LLC, Union, South Carolina; HAO Management Company, LLC, Union, South Carolina; FOJ Management Company, LLC, Union, South Carolina; Frances W. Arthur Irrevocable Trust No. 2 for the benefit of Frances Oxner Jorgenson, Union, South Carolina; JCO Partners, L.P., Union, South Carolina; JCO Partners II, L.P., Union, South Carolina; HAO Partners, L.P., Union, South Carolina; HAO Partners, II, L.P., Union, South Carolina; FOJ Partners, L.P., Union, South Carolina; and FOJ Partners II, L.P., Union, South Carolina; to acquire 100 percent of the voting shares of Arthur Financial Corporation, Union, South Carolina, and thereby indirectly acquire voting shares of Arthur State Bank, Union, South Carolina.

2. FOJ Partners LP; FOJ Partners II, LP; FOJ Management Company LLC; JCO Partners, LP; JCO Partners II, LP; JCO Ventures, LLC; HAO Partners, LP; HAO Partners II, LP; HAO Management Company LLC; and Frances W. Arthur Irrevocable Trust No. 2 for the benefit of Frances Oxner Jorgenson, all of Union, South Carolina; to acquire 61.6 percent of the voting shares of Arthur Financial Corporation, Union, South Carolina, and thereby acquire voting shares of Arthur State Bank, Union, South Carolina.

In connection with this application Arthur Financial Corporation, Union, South Carolina, has applied to become a bank holding company by acquiring 100 percent of the voting shares of Arthur State Bank, Union, South Carolina.

3. United Bankshares, Inc., Charleston, West Virginia, and George

Mason Bankshares, Inc., Fairfax, Virginia; to acquire 100 percent of the voting shares of, and merge with, Sequoia Bancshares, Inc., Bethesda, Maryland, and thereby indirectly acquire Sequoiabank, Bethesda, Maryland.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Oswego Community Bank Employee Stock Ownership Plan, Oswego, Illinois; to acquire an additional 18.04 percent, for a total of 51 percent, of the voting shares of Oswego Bancshares, Inc., Oswego, Illinois, and thereby indirectly acquire voting shares of Oswego Community Bank, Oswego, Illinois.

2. TeamCo, Inc. Oak Lawn, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Oak Lawn Bank, Oak Lawn, Illinois.

Board of Governors of the Federal Reserve System, July 16, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–18675 Filed 7–22–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 5, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Hinsbrook Bancshares, Inc., Willowbrook, Illinois; to engage *de novo* in extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, July 16, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.03–18674 Filed 7–22–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 022 3122]

Global Instruments Ltd., *et al.*; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 18, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Connie Vecellio or Patricia Bak, FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2966 or 326–2842.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 18, 2003), on the World Wide Web, at *http://www.ftc.gov/os/2003/07/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Global Instruments Ltd. and Charles Patterson, individually and as an officer of the corporation.

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns practices related to the advertising, offering for sale, sale, and distribution of various electromagnetic, ultrasonic, and combination electromagnetic and ultrasonic pest control devices. The Commission's proposed complaint alleges that proposed respondents violated section 5 of the Federal Trade Commission Act, 15 U.S.C. § 5, by making numerous representations about Global's pest control products for which they lacked a reasonable basis. Specifically, the complaint alleges that the following representations were unsubstantiated:

- Global's electromagnetic pest control products repel, drive away, or eliminate mice, rats, and cockroaches from homes and other buildings in two to four weeks and drive them away by sending a pulsating signal throughout or altering the field around the electrical wiring inside homes and other buildings; they act as an effective alternative to or eliminate the need for chemicals, pesticides, insecticides, exterminators, and pest control services;
- Global's combination electromagnetic/ultrasonic pest control devices effectively repel, control or eliminate mice, rats, cockroaches, rodents, insects, spiders, silverfish, and bats from homes and other buildings and upset nesting sites of mice, rats, and cockroaches within walls, ceilings, and floors by using the products' pulse or electromagnetic technology through the household wiring;
- Global's ultrasonic pest control devices effectively repel, drive away, or eliminate mice, rats, bats, crickets, spiders and other insects from homes and eliminate the need for toxic chemicals, poisons or traps; and
- Global's pest control products are effective within a space of a given size (for example, 1000 sq. ft. or 2000 sq. ft.).

The proposed consent order contains provisions designed to prevent proposed respondents from engaging in similar acts and practices in the future. Part I of the proposed order prohibits the following representations unless respondents possess competent and reliable scientific evidence that substantiates the representations:

- That any pest control product repels, controls, or eliminates, temporarily or indefinitely, mice, rats, cockroaches, or any other insects or animal pests and that it does so in an area of a certain size;
- that any pest control product is an effective alternative to or eliminates the need for chemicals, pesticides, insecticides, exterminators, or any other pest control product or service; and
- that any pest control product will alter the electromagnetic field, send a pulsating signal, or otherwise work inside the walls or through the wiring of homes or other buildings in a manner that effectively repels, controls, drives away, or eliminates mice, rats, cockroaches, or any other insects or animal pests.

Part II of the proposed order requires respondents to possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, for claims about the benefit, performance, or efficacy of any product.

Part III of the proposed order requires the respondents to maintain certain records for five years after the last date of dissemination of any representation covered by the order. These records include: (1) All advertisements and promotional materials containing the representation; (2) all materials relied upon in disseminating the representation; and (3) all evidence in respondents' possession or control that contradicts, qualifies, or calls into question the representation or the basis for it.

Part IV of the proposed order requires distribution of the order to current and future principals, officers, directors, and managers, and to current and future employees, agents, and representatives having responsibilities with respect to the subject matter of the order.

Part V of the proposed order requires that the Commission be notified of any change in the corporation that might affect compliance obligations under the order. Part VI of the proposed order requires that for a period of three years, respondent Charles Patterson will notify the Commission of the discontinuance of his current business or employment or of his affiliation with any new business or employment involving the marketing of any consumer product.

Part VII of the proposed order requires the respondents to file a compliance report with the Commission.

Part VIII of the proposed order states that, absent certain circumstances, the order will terminate twenty (20) years from the date it is issued.

The purpose of this analysis is to facilitate public comment on the proposed consent order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–18742 Filed 7–22–03; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 021 0017]

The Maine Health Alliance, et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 18, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed in the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: Jeffrey Brennan, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2701.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 18, 2003), on the World Wide Web, at *http://www.ftc.gov/os/2003/07/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed

to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following email box: *consentagreement@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order with the Maine Health Alliance and its Executive Director, William R. Diggins. The Alliance is an organization consisting of over 325 physicians and 11 hospitals in northeastern Maine. The agreement settles charges that respondents violated section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by facilitating and implementing agreements among physician members and among hospital members of the Alliance to fix prices and other terms of dealing for physician and hospital services with health insurance firms and other third-party payors, and to refuse to deal with these payors except on collectively determined terms. These price-fixing agreements and concerted refusals to deal among otherwise competing physicians and among otherwise competing hospitals, in turn, have kept the price of health care in northeastern Maine above the level that would have prevailed absent the illegal conduct. The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify their terms in any way. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by the respondents that they violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

The Complaint Allegations

The Alliance was formed in 1995 by the vast majority of physicians and hospitals in five counties in northeastern Maine to negotiate payor contracts that contained "higher compensation" and more "advantageous" contract terms than the physicians and hospitals could obtain by dealing individually with payors. More than 85% of the physicians on staff at Alliance member hospitals are Alliance members, as are eleven of the sixteen hospitals in the five-county area. The physician and hospital members designated the Alliance as their negotiating agent to contract with payors, and authorized the Alliance to enter into, on their behalf, payor contracts.

Although the Alliance is a nonprofit corporation, and its member hospitals are tax-exempt organizations, a substantial majority of its physician members are for-profit entities. These for-profit physicians play a significant role in the governance of the Alliance and receive pecuniary benefits as a result of their participation. Participating physicians select 11 of the 22 members of the Alliance's Board of Directors and thus exercise substantial authority over the policies and actions of the Alliance. The participating physicians are therefore "members" of the Alliance within the meaning of Section 4 of the FTC Act, which grants the Commission jurisdiction over nonprofit organizations that carry on business for the profit of their members. Because the Alliance engages in substantial activities that confer pecuniary benefits on these for-profit members, its activities engaged in on behalf of the physician and hospital members fall within the Commission's jurisdiction.

Alliance physician and hospital members have refused to contract with payors on an individual basis. Instead, the Alliance's Board of Directors authorized Mr. Diggins to act as a principal negotiating agent with payors on behalf of the collective membership of the Alliance. Mr. Diggins was instrumental in forming the Alliance, coordinating the membership's collective bargaining activity, and negotiating payor contracts on behalf of the collective membership.

As guidance for Mr. Diggins, the Board, in conjunction with its Contracts Committee, compiled written "Contracting Guidelines and Parameters," setting forth price-related and other competitively significant terms that the Alliance required in order to contract with payors. Mr. Diggins reported the details of negotiations with payors to the Board and the Contracts Committee. Based on the recommendations of Mr. Diggins, and the Contracts Committee, the Board decided whether to accept or reject contracts with payors on behalf of the Alliance's physician and hospital members.

The Alliance and Mr. Diggins negotiated higher reimbursement for Alliance physician and hospital members, and more advantageous contract language, than the physicians and hospitals could have achieved through individual contracts with payors. Despite a written Alliance policy allowing members to contract independently of the Alliance, in fact the Alliance and Mr. Diggins encouraged the physician and hospital members to contract only through the Alliance, in order to maintain the Alliance's leverage over payors. Mr. Diggins provided Alliance physician and hospital members with a model letter for them to use to notify payors that they refused to negotiate individually, and that the Alliance would negotiate on their behalf. In response to payors' requests to contract directly with Alliance physician and hospital members, the members directed payors to the Alliance for contracting.

The Alliance's and Mr. Diggins' joint negotiation of fees and other competitively significant terms has not been reasonably related to any efficiency-enhancing integration. Although the Alliance has developed some clinical programs limited primarily to hospital members, none of the Alliance's clinical activities create any significant degree of interdependence among the physician or hospital participants, nor do the activities create sufficiently substantial potential efficiencies.

By orchestrating agreements among Alliance physician members, and hospital members, to deal only on collectively-determined terms, together with refusals to deal with payors that would not meet those terms, respondents have violated section 5 of the FTC Act.

The Proposed Consent Order

The proposed order is designed to prevent recurrence of the illegal conduct charged in the complaint, while allowing respondents to engage in legitimate conduct that does not impair competition.

The proposed order's specific provisions are as follows:

The proposed order's core prohibitions are contained in Paragraphs II, III, and V. Paragraph II is intended to prevent the Respondents from participating in, or creating, future unlawful agreements for physician services. Paragraph II.A prohibits the Alliance and Mr. Diggins from entering into or facilitating any agreement between or among any physicians: (1) To negotiate with payors on any physician's behalf; (2) to deal, not to deal, or threaten not to deal with payors; (3) on what terms to deal with any payor; or (4) not to deal individually with any payor, or to deal with any payor only through the Alliance.

Other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits the respondents from facilitating exchanges of information among physicians concerning whether, or on what terms, to contract with a payor. Paragraph II.C bars attempts to engage in any action prohibited by Paragraph II.A or II.B. Paragraph II.D proscribes inducing anyone to engage in any action prohibited by Paragraphs II.A through II.C.

Paragraph III is intended to prevent the Respondents from participating in, or creating, future unlawful agreements for hospital services. Paragraphs III.A through D are identical to Paragraphs II.A through D, except that they apply to the Alliance's or Mr. Diggins' actions regarding the provision of hospital, rather than physician, services. This matter is the Commission's first law enforcement action charging an organization with price-fixing and other anticompetitive collusive conduct in the market for hospital services, in violation of section 5 of the FTC Act. Thus, unlike previous orders involving collective bargaining with health plans, this order bars agreements relating to both physicians and hospitals.

As in other orders addressing providers' collective bargaining with health care purchasers, certain kinds of agreements are excluded from the general bar on joint negotiations. Respondents would not be precluded from engaging in conduct that is reasonably necessary to form or participate in legitimate joint contracting arrangements among competing physicians or competing hospitals, whether a "qualified risk-sharing joint arrangement" or a "qualified clinically-integrated joint arrangement."

As defined in the proposed order, a "qualified risk-sharing joint arrangement" possesses two key characteristics. First, all physician or all hospital participants must share substantial financial risk through the arrangement, such that the arrangement creates incentives for the participants to control costs and improve quality by managing the provision of services. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement.

A "qualified clinically-integrated joint arrangement," on the other hand, need not involve any sharing of financial risk. Instead, as defined in the proposed order, all physician participants must participate in active and ongoing programs to evaluate and modify their clinical practice patterns in order to control costs and ensure the quality of services provided, and the arrangement must create a high degree of interdependence and cooperation among physicians. As with qualified risk-sharing arrangements, any agreement concerning price or other terms of dealing must be reasonably necessary to achieve the efficiency goals of the joint arrangement.

In the event that the Alliance forms a qualified risk-sharing joint arrangement or a qualified clinically-integrated joint arrangement, Paragraph IV requires the Alliance to notify the Commission at least 60 days prior to negotiating or entering into agreements with payors, or discussing price or related terms among the participants of the arrangement. Notification is not required for negotiations or agreements with subsequent payors pursuant to any arrangement for which notice was given under Paragraph IV. Paragraph IV.B sets out the information necessary to make the notification complete. Paragraph IV.C establishes the Commission's right to obtain additional information regarding the arrangement.

Paragraph V prohibits Mr. Diggins, for three years, from negotiating with any payor on behalf of any Alliance physician or hospital member, and from advising any Alliance physician or hospital member to accept or reject any term, condition, or requirement of dealing with any payor. Mr. Diggins, however, is permitted to form, participate in, or take any action in furtherance of a qualified risk-sharing joint arrangement or qualified clinically-integrated joint arrangement on behalf of the Alliance.

Paragraph VI.A requires the Alliance to distribute the complaint and order to all physicians and hospitals who have participated in the Alliance, and to payors that contract with the Alliance. Paragraph VI.B requires the Alliance, at any payor's request and without penalty, to terminate its current contracts with respect to providing physician services. If a payor does request termination, Paragraph VI.B requires the Alliance to terminate the contract on its earliest termination or renewal date. Paragraph VI.B also provides that a contract may extend up to one year beyond the termination or renewal date if the payor affirms the contract in writing and the Alliance does not exercise its right to terminate the contract.

Paragraph VII.A requires Mr. Diggins to distribute the complaint and order to physician and hospital groups he represents in contracting with payors, and to payors with which he has dealt in contracting while representing any physician or hospital groups.

Paragraphs VII.B through IX of the proposed order impose various obligations on respondents to report or provide access to information to the Commission to facilitate monitoring respondents' compliance with the order.

The proposed order will expire in 20 years.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–18743 Filed 7–22–03; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 021 0188]

Washington University Physician Network; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 11, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to:

consentagreement@ftc.gov, as prescribed in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Garry Gibbs, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2767.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 11, 2003), on the World Wide Web, at *http://www.ftc.gov/os/2003/07/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order with the Washington University Physician Network (WUPN). The agreement settles charges that WUPN violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by orchestrating and implementing agreements among WUPN and its independent, community-based physician members ("community physicians"), and facilitating agreements among its community physicians and its Washington University School of Medicine full-time faculty physician members ("faculty physicians"), to fix prices and other terms on which they would deal with health plans, and to refuse to deal with such purchasers except on collectively-determined terms. The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify their terms in any way. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by WUPN that it violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

The Complaint Allegations

WUPN consists of 900 faculty physicians and 600 community physicians who provide health care services in St. Louis, Missouri and four neighboring counties ("the greater St. Louis area"). WUPN was established in 1993 to facilitate, among competing physicians, collective bargaining with health plans in order to obtain more favorable reimbursement rates and other "very favorable terms when compared to contracts entered into on an individual basis or through another organization."

WUPN is a not-for-profit corporation, and its sole legal member is Washington University ("WU"), also a non-profit entity. Section 4 of the FTC excludes certain types of non-profit corporations from its definition of entities under its jurisdiction. However, the Commission has jurisdiction over WUPN because WUPN's community physicians, who operate for profit, are "members" of WUPN due to their significant role in governing the organization. Also, WUPN provides substantial economic benefits for its community physician members, who make up a minority of the membership but are granted a substantial role in WUPN to enhance their incomes and bargaining power.

WUPN is managed and controlled by a Board of Directors made up of 16 community physicians and 13 faculty physicians. Contracts with health plans are negotiated by representatives of WUPN's Management Committee, and progress of its negotiations is reported to WUPN's Board. The Committee recommends to the Board whether to accept or reject a payor's fee schedule, or whether to terminate or extend a payor's existing contract. The Board votes on the recommendation, which requires majority approval.

WUPN has successfully coerced a number of health plans to increase the fees they pay to WUPN members, and thereby raised the cost of medical care in the greater St. Louis area. As a result of the challenged actions of WUPN, consumers in the greater St. Louis area are deprived of the benefits of competition among physicians. By facilitating agreements among WUPN members to deal only on collectively-determined terms, and actual or threatened refusals to deal with health plans that would not meet those terms, WUPN has violated Section 5 of the FTC Act.

WUPN's collective negotiations with payors are not justified by any efficiency-enhancing integration among the community physicians, or among the community physicians and the faculty physicians.

The Proposed Consent Order

The proposed order is designed to prevent recurrence of the illegal conduct charged in the complaint, while allowing WUPN to engage in legitimate conduct that does not impair competition. It is similar to recent orders that the Commission has issued to settle charges that physician groups engaged in unlawful agreements to raise the fees they receive from health plans.

The proposed order's specific provisions are as follows:

Paragraph II.A prohibits WUPN from entering into or facilitating any agreement between or among any physicians: (1) To negotiate with payors on any physician's behalf; (2) to deal, refuse to deal, or threaten not to deal with payors; (3) on what terms to deal with any payor; or (4) not to deal individually with any payor, or not to deal with any payor through an arrangement other than WUPN.

Other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits WUPN from facilitating exchanges of information among physicians concerning whether, or on what terms, to contract with a payor. Paragraph II.C bars attempts to engage in any action prohibited by Paragraph II.A or II.B. Paragraph II.D proscribes inducing anyone to engage in any action prohibited by Paragraphs II.A through II.C.

As in other orders addressing providers' collective bargaining with health care purchasers, certain kinds of agreements are excluded from the general bar on joint negotiations.

First, WUPN would not be precluded from engaging in conduct that is reasonably necessary to form or participate in legitimate joint contracting arrangements among competing physicians, whether a "qualified risk-sharing joint arrangement" or a "qualified clinically-integrated joint arrangement." Second, WUPN would be permitted to enter into any agreement or engage in any conduct that only involves WU faculty members with respect to services provided by WU physicians.

As defined in the proposed order, a "qualified risk-sharing joint arrangement" possesses two key characteristics. First, all physician participants must share substantial financial risk through the arrangement, such that the arrangement creates incentives for the participants to control costs and improve quality by managing the provision of services. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement.

A "qualified clinically-integrated joint arrangement," on the other hand, need not involve any sharing of financial risk. Instead, as defined in the proposed order, physician participants must participate in active and ongoing programs to evaluate and modify their clinical practice patterns in order to control costs and ensure the quality of services provided, and the arrangement must create a high degree of interdependence and cooperation among physicians. As with qualified risk-sharing arrangements, any agreement concerning price or other terms of dealing must be reasonably necessary to achieve the efficiency goals of the joint arrangement.

Paragraphs III.A and III.B require WUPN to send notice of the order and complaint to all WUPN participating physicians, WUPN employees and principals, and all payors WUPN has contacted since January 1, 1998, concerning the provision of physician services. Paragraph III.C. requires WUPN to terminate, without penalty, any preexisting contract with a payor upon receipt of a payor's written request to terminate the contract. This provision is intended to eliminate the effects of WUPN's anticompetitive actions. Paragraph III.D of the proposed order requires WUPN to distribute the order and complaint prospectively to new members, newly contracted payors, and new employees for a period of three years, and Paragraphs IV through VI set out WUPN's requirements to report or provide access to information to the Commission to facilitate monitoring of WUPN's compliance with the order.

The proposed order will expire in 20 years.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–18744 Filed 7–22–03; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

National Travel Forum 2004: Traveling on the Frontier of Change (NTF 2004)

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice.

SUMMARY: The General Services Administration (GSA) is announcing that it will hold its third national travel forum. The National Travel Forum 2004: Traveling on the Frontier of Change (NTF 2004) will take place June 28–July 1, 2004 at the Wyndham Anatole in Dallas, Texas. Nearly 1,500 travel, relocation, financial and other professionals within Federal, State, and local governments, as well as the private sector will attend. Much of the focus will be on the governmentwide eTravel Service (eTS), the Federal Premier Lodging Program (FPLP), and revised relocation regulations. Best practices in Government travel and relocation services, as well as many other topics will be discussed. To attend, exhibit, or hold an agency-wide meeting, visit the NTF 2004 Web site at *http://www.nationaltravelforum.org*.

FOR FURTHER INFORMATION CONTACT: Rick Freda, Office of Governmentwide Policy, at (202) 219–3500, or by e-mail to *Rick.Freda@gsa.gov*.

Dated: July 18, 2003.

Peggy DeProspero,

Director, Travel Management Policy.

[FR Doc. 03–18751 Filed 7–22–03; 8:45 am]

BILLING CODE 6820–24–P

GENERAL SERVICES ADMINISTRATION

[2003–N04]

Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

AGENCIES: Office of Civil Rights, General Services Administration (GSA).

ACTION: Notice of interim final policy guidance document.

SUMMARY: The General Services Administration (GSA) is publishing for public comment interim final policy guidance on Title VI's prohibition against national origin discrimination as it affects limited English proficient (LEP) persons. This guidance will become final after a 30-day comment period unless GSA determines that the comments require further modification to the guidance. Once final, this policy guidance will supplant the policy guidance published on January 17, 2001.

DATES: Submit comments on or before August 22, 2003. GSA will review all comments and will determine what modifications, if any, to this policy guidance are necessary. Because this guidance must adhere to the Federal-wide compliance standards and framework detailed in the model U.S. Department of Justice's LEP guidance, GSA specifically solicits comments on the nature, scope, and appropriateness of the GSA-specific examples set out in this guidance explaining and/or highlighting how those consistent Federal-wide compliance standards are applicable to recipients of Federal financial assistance through GSA.

ADDRESSES: Interested persons should submit written comments to Ms. Regina Budd, Deputy Associate Administrator, Office of Civil Rights, General Services Administration, 1800 F Street, NW., Suite 5127, Washington, DC 20405. Comments may also be submitted by facsimile at (202) 219–3369 or at e-mail *OCR@gsa.gov*.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Evelyn Britton at the Office of Civil Rights, General Services Administration, 1800 F Street, NW., Washington, DC 20405. Telephone (202) 501–0767; 1–800–662–6376; TDD 1–888–267–7660.

SUPPLEMENTARY INFORMATION: The purpose of this policy guidance is to further clarify the responsibilities of recipients of Federal financial assistance from GSA and assist them in fulfilling their responsibilities to limited English proficient (LEP) persons, pursuant to Title VI of the Civil Rights Act of 1964 and GSA implementing regulations. The policy guidance explains that to avoid discrimination against LEP persons on the ground of national origin, recipients must take reasonable steps to ensure that LEP persons have meaningful access to the programs, services, and information those recipients provide, free of charge.

GSA's guidance for recipients was originally published on January 17, 2001, and became effective immediately. (See 66 FR 4026.) That document, like the following guidance, was based on policy guidance issued by the Department of Justice entitled "Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency." (See 65 FR 50123, August 16, 2000.)

On February 20, 2002, the GSA re-published its recipient guidance for additional public comment. (See 67 FR 7692.) Comments representing 24 different organizations were received, and the following guidance was developed after review and consideration of those comments. Prior comments on the original guidance need not be re-submitted.

On March 14, 2002, the Office of Management and Budget (OMB) issued a Report to Congress titled "Assessment of the Total Benefits and Costs of Implementing Executive Order No. 13166: Improving Access to Services for Persons with Limited English Proficiency." The Report made several recommendations designed to minimize confusion and ensure that funds dedicated to LEP services best advance meaningful access for LEP individuals.

One significant recommendation was the adoption of uniform guidance across all Federal agencies, with flexibility to permit tailoring to each agency's specific recipients. In a memorandum to all Federal funding agencies dated July 8, 2002, Assistant Attorney General Ralph Boyd of DOJ's Civil Rights Division requested that agencies model their agency-specific guidance for recipients after sections I through VIII of DOJ's June 18, 2002, guidance. Therefore, this guidance is modeled after the language and format of DOJ's revised, final guidance, "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons", published on June 18, 2002, 67 FR 41455.

It has been determined that the guidance does not constitute a regulation subject to the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553.

The text of the complete guidance document appears as an attachment to this notice.

Dated: July 1, 2003.

Madeline Caliendo,

Associate Administrator, Office of Civil Rights.

I. Introduction

Most individuals living in the United States read, write, speak and understand English. There are many individuals, however, for whom English is not their primary language. For instance, based on the 2000 census, over 26 million individuals speak Spanish and almost 7 million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are limited English proficient, or "LEP." While detailed data from the 2000 census has not yet been released, 26% of all Spanish-speakers, 29.9% of all Chinese-speakers, and 28.2% of all Vietnamese-speakers reported that they spoke English "not well" or "not at all" in response to the 1990 census.

Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by federally funded programs and activities. The Federal Government funds an array of services that can be made accessible to otherwise eligible LEP persons. The Federal Government is committed to improving the accessibility of these programs and activities to eligible LEP persons, a goal that reinforces its equally important commitment to promoting programs and activities designed to help individuals learn English. Recipients should not overlook the long-term positive impacts of incorporating or offering English as a Second Language (ESL) programs in parallel with language assistance services. ESL courses can serve as an important adjunct to a proper LEP plan. However, the fact that ESL classes are made available does not obviate the statutory and regulatory requirement to provide meaningful access for those who are not yet English proficient. Recipients of Federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to important government services.[1]

In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from Federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d and Title VI regulations against national origin discrimination. The purpose of this policy guidance is to assist recipients in fulfilling their responsibilities to provide meaningful access to LEP persons under existing law. This policy guidance clarifies existing legal requirements for LEP persons by providing a description of the factors recipients should consider in fulfilling their responsibilities to LEP persons.[2] These are the same criteria GSA will use in evaluating whether recipients are in compliance with Title VI and Title VI regulations.

In a memorandum to all Federal funding agencies, dated July 8, 2002, Assistant Attorney General Ralph Boyd of the U.S. Department of Justice's (DOJ) Civil Rights Division requested that agencies model their agency-specific guidance for recipients after Sections I–VIII of DOJ's June 18, 2002 guidance. Therefore, this guidance is modeled after the language and format of the DOJ's revised, final guidance, "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons", published June 18, 2002, 67 FR 41455. The DOJ's role under Executive Order 13166 is unique. The Order charges DOJ with responsibility for providing LEP Guidance to other Federal agencies and for ensuring consistency among each agency-specific guidance. Consistency among Federal agencies is particularly important. Inconsistency or contradictory guidance could confuse

[1] GSA recognizes that many recipients had language assistance programs in place prior to the issuance of Executive Order 13166. This policy guidance provides a uniform framework for a recipient to integrate, formalize, and assess the continued vitality of these existing and possibly additional reasonable efforts based on the nature of its program or activity, the current needs of the LEP populations it encounters, and its prior experience in providing language services in the community it serves.

[2] The policy guidance is not a regulation but rather a guide. Title VI and its implementing regulations require that recipients take responsible steps to ensure meaningful access by LEP persons. This guidance provides an analytical framework that recipients may use to determine how best to comply with statutory and regulatory obligations to ensure meaningful access to the benefits, services, information, and other important portions of their programs and activities for individuals who are limited English proficient.

recipients of Federal funds and needlessly increase costs without rendering the meaningful access for LEP persons that this Guidance is designed to address. As with most government initiatives, this requires balancing several principles. While this Guidance discusses that balance in some detail, it is important to note the basic principles behind that balance. First, we must ensure that Federally-assisted programs aimed at the American public do not leave some behind simply because they face challenges communicating in English. This is of particular importance because, in many cases, LEP individuals form a substantial portion of those encountered in Federally-assisted programs. Second, we must achieve this goal while finding constructive methods to reduce the costs of LEP requirements on small businesses, small local governments, or small non-profits that receive Federal financial assistance.

There are many productive steps that the Federal government, either collectively or as individual grant agencies, can take to help recipients reduce the costs of language services without sacrificing meaningful access for LEP persons. Without these steps, certain smaller grantees may well choose not to participate in Federally assisted programs, threatening the critical functions that the programs strive to provide. To that end, GSA plans to continue to provide assistance and guidance in this important area. An interagency working group on LEP has developed a Web site, *http://www.lep.gov*, to assist in disseminating this information to recipients, Federal agencies, and the communities being served.

Many commentators have noted that some have interpreted the case of *Alexander* v. *Sandoval*, 532 U.S. 275 (2001), as impliedly striking down the regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to Federally assisted programs and activities. We have taken the position that this is not the case, and will continue to do so. Accordingly, we will strive to ensure that Federally assisted programs and activities work in a way that is effective for all eligible beneficiaries, including those with limited English proficiency.

II. Legal Authority

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, provides that no person shall "on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Section 602 authorizes and directs Federal agencies that are empowered to extend Federal financial assistance to any program or activity "to effectuate the provisions of [section 601] * * * by issuing rules, regulations, or orders of general applicability." 42 U.S.C. 2000d–1. GSA regulations promulgated pursuant to section 602 forbid recipients from "utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin." 41 CFR 101.6.204–2(a)(2). The Supreme Court, in *Lau* v. *Nichols*, 414 U.S. 563 (1974), interpreted regulations promulgated by the former Department of Health, Education, and Welfare to hold that Title VI prohibits conduct that has a disproportionate effect on LEP persons because such conduct constitutes national origin discrimination. In "Lau," a San Francisco school district that had a significant number of non-English speaking students of Chinese origin was required to take reasonable steps to provide them with a meaningful opportunity to participate in Federally funded educational programs.

On August 11, 2000, Executive Order 13166 was issued. "Improving Access to Services for Persons with Limited English Proficiency," 65 FR 50121 (August 16, 2000). Under that order, every Federal agency that provides financial assistance to non-Federal entities must publish guidance on how their recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding funding recipients from "restrict[ing] an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program" or from "utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin."

On that same day, DOJ issued a general guidance document addressed to "Executive Agency Civil Rights Officers" setting forth general principles for agencies to apply in developing guidance documents for recipients pursuant to the Executive Order. "Enforcement of Title VI of the Civil Rights Act of 1964 National Origin Discrimination Against Persons With Limited English Proficiency," 65 FR 50123 (August 16, 2000) ("DOJ LEP Guidance").

Subsequently, Federal agencies raised questions regarding the requirements of the Executive Order, especially in light of the Supreme Court's decision in *Alexander* v. *Sandoval*, 532 U.S. 275 (2001). On October 26, 2001, Ralph F. Boyd, Jr., Assistant Attorney General for the Civil Rights Division, issued a memorandum for "Heads of Departments and Agencies, General Counsels and Civil Rights Directors." This memorandum clarified and reaffirmed the DOJ LEP Guidance in light of Sandoval.[3] The Assistant Attorney General stated that because Sandoval did not invalidate any Title VI regulations that proscribe conduct that has a disparate impact on covered groups—the types of regulations that form the legal basis for the part of Executive Order 13166 that applies to Federally assisted programs and activities—the Executive Order remains in force.

Pursuant to Executive Order 13166, GSA developed its own guidance document for recipients and initially issued it on January 17, 2001, "Limited English Proficiency Policy Guidance for recipients of Federal Financial Assistance," 66 FR 4026 (January 17, 2001) ("LEP Guidance for GSA Recipients"). Because GSA did not receive any public comment on its January 17, 2001 publication, the Agency republished on February 20, 2002 its existing guidance document for additional public comment, "Limited English Proficiency Policy Guidance for Recipients of Federal Financial Assistance," 67 FR 7692 (February 20, 2002). GSA has since received

[3] The memorandum noted that some commentators have interpreted Sandoval as impliedly striking down the disparate-impact regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to Federally assisted programs and activities. *See, e.g.*, Sandoval 532 U.S. at 286, 286 n.6 ("[W]e assume for purposes of this decision that section 602 confers the authority to promulgate disparate-impact regulation; * * * We cannot help observing, however, how strange it is to say that disparate-impact regulations are 'inspired by, at the service of, and inseparably intertwined with' Sec. 601 * * * when Sec. 601 permits the very behavior that the regulations forbid."). The memorandum, however, made clear that DOJ disagreed with the commentators' interpretation. Sandoval holds principally that there is no private right of action to enforce Title VI disparate-impact regulations. It did not address the validity of those regulations or Executive Order 13166 or otherwise limit the authority and responsibility of Federal grant agencies to enforce their own implementing regulations.

significant public comment. This guidance document is thus published pursuant to Executive Order 13166. Once final it will supplant the January 17, 2001 publication in light of the public comment received and Assistant Attorney General Boyd's October 26, 2001 clarifying memorandum and July 8, 2002 memorandum advising agencies to revise and re-publish their guidance, modeled after DOJ's June 18, 2002 final guidance.

III. Who Is Covered?

GSA's implementation regulations provide, in part, at 41 CFR 101–6.204–1:

"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this subpart applies."

Specific discriminatory actions prohibited are addressed at 41 CFR 101–6.204–2: "(a)(1) In connection with any program to which this subpart applies, a recipient may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin:

(i) Deny an individual any services/benefits, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit to any individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny an individual an opportunity to participate in the program through the provision of services or otherwise, or afford him an opportunity to do so which is different from that afforded others under the program * * *."

Federal financial assistance includes grants, training, use of equipment, donations of surplus property, and other assistance. Recipients of GSA assistance include, for example:[4]

—State and local agencies involved in such activities as: Conservation; economic development; education; park and recreation programs; public safety; public health programs for the elderly; and programs for the homeless; and

—Nonprofit organizations that perform educational and public health activities exempt from taxation under section 501 of the Internal Revenue such as: Medical institutions; hospitals; clinics; health centers; and drug abuse treatment centers; schools; universities; Head Start; childcare centers; educational radio and television stations; museums attended by the public; libraries; food banks; and other eligible organizations that provide support and services to the needy, shelter, or support services to the homeless or impoverished.

Subrecipients likewise are covered when Federal funds are passed through from one recipient to a subrecipient. Coverage extends to a recipient's entire program or activity, *i.e.*, to all parts of a recipient's operations. This is true even if only one part of the recipient receives the Federal assistance.[5]

Example: GSA donates a surplus backhoe and grader to a State park within the State Department of Parks and Recreation. All of the operations of the entire State Department of Parks and Recreation—not just the particular park that received the property—are covered.

Finally, some recipients operate in jurisdictions in which English has been declared the official language. Nonetheless, these recipients continue to be subject to Federal non-discrimination requirements, including those applicable to the provision of Federally assisted services to persons with limited English proficiency.

IV. Who Is a Limited English Proficient Individual?

Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English can be limited English proficient, or "LEP," entitled to language assistance with respect to a particular type of service, benefit, or encounter.

Examples of populations likely to include LEP persons who are encountered and/or served by GSA recipients and should be considered when planning language services include, but are not limited to:

—Persons seeking assistance from a county's emergency services, such as 9–1–1 service, which include individuals reporting automobile accidents, fires, criminal, or other activity; and individuals who encounter the legal system;

—Parents or other family members seeking information about childcare and educational services; and

—Individuals seeking services from homeless shelters, domestic abuse shelters, food banks, clinics, hospitals, medical institutions, or health-care providers.

V. How Does a Recipient Determine the Extent of Its Obligation To Provide LEP Services?

Recipients are required to take reasonable steps to ensure meaningful access to their programs and activities by LEP persons. While designed to be a flexible and fact-dependent standard, the starting point is an individualized assessment that balances the following four factors: (1) The number or proportion of LEP persons eligible to be served or likely to be encountered by the program or grantee; (2) the frequency with which LEP individuals come in contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the grantee/recipient and costs. As indicated above, the intent of this guidance is to suggest a balance that ensures meaningful access by LEP persons to critical services while not imposing undue burdens on small business, small local governments, or small nonprofits.

After applying the above four-factor analysis, a recipient may conclude that different language assistance measures are sufficient for the different types of programs or activities in which it engages. For instance, some of a recipient's activities will be more important than others and/or have greater impact on or contact with LEP persons, and thus may require more in the way of language assistance. The flexibility that recipients have in addressing the needs of the LEP populations they serve does not diminish, and should not be used to minimize, the obligation that those needs be addressed. GSA recipients should apply the following four factors

[4] Pursuant to Executive Order 13166, the meaningful access requirement of the Title VI regulations and the four-factor analysis set forth in the GSA LEP Guidance are to additionally apply to the programs and activities of Federal agencies, including the GSA.

[5] However, if a Federal agency were to decide to terminate Federal funds based on noncompliance with Title VI or its regulations, only funds directed to the particular program or activity that is out of compliance would be terminated. 42 U.S.C. 2000d–1.

to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons.

(1) The Number or Proportion of LEP Persons Served or Encountered in the Eligible Service Population

One factor in determining what language services recipients should provide is the number or proportion of LEP persons from a particular language group served or encountered in the eligible service population. The greater the number or proportion of these LEP persons, the more likely language services are needed. Ordinarily, persons "eligible to be served, or likely to be directly affected by," a recipient's program or activity are those who are served or encountered in the eligible service population. This population will be program-specific, and includes persons who are in the geographic area that has been approved by a Federal grant agency as the recipient's service area. However, where, for instance, a nonprofit organization operates several shelters within a large county and one health clinic that serves a large LEP population in a rural part of the country, the appropriate service area for the clinic is most likely that portion of the county served by the health clinic, and not the entire population served by the nonprofit organization. The same would be true for the shelters. Where no service area has previously been approved, the relevant service area may be that which is approved by state or local authorities or designated by the recipient itself, provided that these designations do not themselves discriminatorily exclude certain populations. When considering the number or proportion of LEP individuals in a service area, recipients should consider LEP parent(s) when their English-proficient or LEP minor children and dependents encounter the recipient's services, programs or activities.

Recipients should first examine their prior experiences with LEP encounters and determine the breadth and scope of language services that were needed. In conducting this analysis, it is important to include language minority populations that are eligible for their programs or activities but may be underserved because of existing language barriers. Other data should be consulted to refine or validate a recipient's prior experience, including the latest census data for the area served, data from school systems and from community organizations, and data from state and local governments.[6] Community agencies, school systems, religious organizations, legal aid entities, and others can often assist in identifying populations for whom outreach is needed and who would benefit from the recipients' programs and activities were language services provided.

(2) The Frequency With Which LEP Individuals Come in Contact With the Program

Recipients should assess, as accurately as possible, the frequency with which they have or should have contact with an LEP individual from different language groups seeking assistance. The more frequent the contact with a particular language group, the more likely that enhanced language services in that language are needed. The steps that are reasonable for a recipient that serves an LEP person on a one-time basis will be very different than those expected from a recipient that serves LEP persons daily. It is also advisable to consider the frequency of different types of language contacts. For example, frequent contacts with Spanish-speaking people who are LEP may require certain assistance in Spanish. Less frequent contact with different language groups may suggest a different and less intensified solution. If an LEP individual accesses a program or service on a daily basis, a recipient has greater duties than if the same individual's program or activity contact is unpredictable or infrequent. But even recipients that serve LEP persons on an unpredictable or infrequent basis should use this balancing analysis to determine what to do if an LEP individual seeks services under the program in question. This plan need not be intricate. It may be as simple as being prepared to use one of the commercially-available telephonic interpretation services to obtain immediate interpreter services. In applying this standard, recipients should take care to consider whether appropriate outreach to LEP persons could increase the frequency of contact with LEP language groups.

[6] The focus of the analysis is on lack of English proficiency, not the ability to speak more than one language. Note that demographic data may indicate the most frequently spoken languages other than English and the percentage of people who speak that language who speak or understand English less than well. Some of the most commonly spoken languages other than English may be spoken by people who are also overwhelmingly proficient in English. Thus, they may not be the languages spoken most frequently by limited English proficient individuals. When using demographic data, it is important to focus in on the languages spoken by those who are not proficient in English.

(3) The Nature and Importance of the Program, Activity, or Service Provided by the Program

The more important the activity, information, service, or program, or the greater the possible consequences of the contact to the LEP individuals, the more likely language services are needed. The obligations to communicate with a person in need of emergency health, fire or law enforcement services may differ, for example, from those to provide information about museum hours, location, exhibits and services. A recipient needs to determine whether denial or delay of access to services or information could have serious or even life-threatening implications for the LEP individual. Decisions by a Federal, State, or local entity to make an activity compulsory, such as educational programs, the provision of a hearing or complaint process, or the communication of Miranda rights, or other rights or warning information, can serve as strong evidence of the program's importance.

(4) The Resources Available to the Recipient and Costs

A recipient's level of resources and the costs that would be imposed on it may have an impact on the nature of the steps it should take. Smaller recipients with more limited budgets are not expected to provide the same level of language services as larger recipients with larger budgets. In addition, "reasonable steps" may cease to be reasonable where the costs imposed substantially exceed the benefits.

Resource and cost issues, however, can often be reduced by technological advances; the sharing of language assistance materials and services among and between recipients, advocacy groups, and Federal grant agencies; and reasonable business practices. Where appropriate, training bilingual staff to act as interpreters and translators, information sharing through industry groups, telephonic and video conferencing interpretation services, pooling resources and standardizing documents to reduce translation needs, using qualified translators and interpreters to ensure that documents need not be "fixed" later and that inaccurate interpretations do not cause delay or other costs, centralizing interpreter and translator services to achieve economies of scale, or the formalized use of qualified community volunteers, for example, may help reduce costs.[7] Recipients should

[7] Small recipients with limited resources may find that entering into a bulk telephonic

Continued

carefully explore the most cost-effective means of delivering competent and accurate language services before limiting services due to resource concerns. Large entities and those entities serving a significant number or proportion of LEP persons should ensure that their resource limitations are well-substantiated before using this factor as a reason to limit language assistance. Such recipients may find it useful to be able to articulate, through documentation or in some other reasonable manner, their process for determining that language services would be limited based on resources or costs.

This four-factor analysis necessarily implicates the "mix" of LEP services required. Recipients have two main ways to provide language services: Oral interpretation either in person or via telephone interpretation service (hereinafter "interpretation") and written translation (hereinafter "translation"). Oral interpretation can range from on-site interpreters for critical services provided to a high volume of LEP persons to access through commercially-available telephonic interpretation services. Written translation, likewise, can range from translation of an entire document to translation of a short description of the document. In some cases, language services should be made available on an expedited basis while in others the LEP individual may be referred to another office of the recipient for language assistance.

The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. For instance, a medical clinic in a largely Hispanic neighborhood may need immediate oral interpreters available and should give serious consideration to hiring some bilingual staff. In contrast, there may be circumstances where the importance and nature of the activity and number or proportion and frequency of contact with LEP persons may be low and the costs and resources needed to provide language services may be high, such as in the case of a voluntary tour of a city park and recreation area, in which pre-arranged language services for the particular service may not be necessary. Regardless of the type of language service provided, quality and accuracy of those services can be critical in order to avoid serious consequences to the LEP person and to the recipient. Recipients have substantial flexibility in determining the appropriate mix.

interpretation service contract will prove cost effective.

VI. Selecting Language Assistance Services

Recipients have two main ways to provide language services: Oral and written language services. Quality and accuracy of the language service is critical in order to avoid serious consequences to the LEP person and to the recipient.

A. Oral Language Services (Interpretation)

Interpretation is the act of listening to something in one language (source language) and orally translating it into another language (target language). Where interpretation is needed and is reasonable, recipients should consider some or all of the following options for providing competent interpreters in a timely manner:

Competence of Interpreters. When providing oral assistance, recipients should ensure competency of the language service provider, no matter which of the strategies outlined below are used. Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English. Likewise, they may not be able to do written translations.

Competency to interpret, however, does not necessarily mean formal certification as an interpreter, although certification is helpful. When using interpreters, recipients should ensure that they:

Demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and identify and employ the appropriate mode of interpreting (*e.g.*, consecutive, simultaneous, summarization, or sight translation);

Have knowledge in both languages of any specialized terms or concepts peculiar to the entity's program or activity and of any particularized vocabulary and phraseology used by the LEP person; [8] and understand and follow confidentiality and impartiality rules to the same extent the recipient employee for whom they are interpreting and/or to the extent their position requires.

Understand and adhere to their role as interpreters without deviating into a role as counselor, legal/medical advisor, or other roles (particularly in court, administrative hearings, law enforcement or medical services contexts).

Some recipients, such as courts, may have additional self-imposed requirements for interpreters. Where individual rights depend on precise, complete, and accurate interpretation or translations, particularly in the contexts of courtrooms and custodial or other police interrogations, the use of certified interpreters is strongly encouraged.[9] Where such proceedings are lengthy, the interpreter will likely need breaks and team interpreting may be appropriate to ensure accuracy and to prevent errors caused by mental fatigue of interpreters.

While quality and accuracy of language services is critical, the quality and accuracy of language services is nonetheless part of the appropriate mix of LEP services required. The quality and accuracy of language services in a hospital emergency room, for example, must be extraordinarily high, while the quality and accuracy of language services in a bicycle safety class need not meet the same exacting standards.

Finally, when interpretation is needed and is reasonable, it should be provided in a timely manner. To be meaningfully effective, language assistance should be timely. While there is no single definition for "timely" applicable to all types of interactions at all times by all types of recipients, one clear guide is that the language assistance should be provided at a time and place that avoids the effective denial of the service, benefit, or right at issue or the imposition of an undue burden on or delay in important rights, benefits, or services to the LEP person. For example, when the timeliness of services is important, such as with certain activities of GSA recipients providing law enforcement, health, and safety services, and when important legal rights or the LEP individual's health or safety is at issue, a recipient would likely not be providing meaningful access if it had one bilingual staffer available one day a week to provide the service. Such conduct would likely result in delays for LEP persons that

[8] Many languages have "regionalisms," or differences in usage. For instance, a word that may be understood to mean something in Spanish for someone from Cuba may not be so understood by someone from Mexico. In addition, because there may be languages, which do not have an appropriate direct interpretation of, some technical terms and the interpreter should be so aware and be able to provide the most appropriate interpretation. The interpreter should likely make the recipient aware of the issue and the interpreter and recipient can then work to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate.

[9] For those languages in which no formal accreditation or certification currently exists, recipients should consider a formal process for establishing the credentials of the interpreter.

would be significantly greater than those for English proficient persons. Conversely, where access to or exercise of a service, benefit, or right is not effectively precluded by a reasonable delay, language assistance can likely be delayed for a reasonable period.

Hiring Bilingual Staff. When particular languages are encountered often, hiring bilingual staff offers one of the best, and often most economical, options. Recipients can, for example, fill public contact positions, such as 911 operators, police officers, guards, medical/emergency personnel, or program directors, with staff who are bilingual and competent to communicate directly with LEP persons in their language. If bilingual staff is also used to interpret between English speakers and LEP persons, or to orally interpret written documents from English into another language, they should be competent in the skill of interpreting. Being bilingual does not necessarily mean that a person has the ability to interpret. In addition, there may be instances when the role of the employee may conflict with the role of an interpreter (for instance, a staff witness in a school disciplinary hearing may not be appropriate to serve as an interpreter at the same time, even if he or she were skilled at interpreting). Effective management strategies, including any appropriate adjustments in assignments and protocols for using bilingual staff, can ensure that bilingual staff is fully and appropriately utilized. When bilingual staff cannot meet all of the language service obligations of the recipient, the recipient should turn to other options.

Hiring Staff Interpreters. Hiring interpreters may be most helpful where there is a frequent need for interpreting services in one or more languages. Depending on the facts, sometimes it may be necessary and reasonable to provide on-site interpreters to provide accurate and meaningful communication with an LEP person.

Contracting for Interpreters. Contract interpreters may be a cost-effective option when there is no regular need for a particular language skill. In addition to commercial and other private providers, many community-based organizations and mutual assistance associations provide interpretation services for particular languages. Contracting with and providing training regarding the recipient's programs and processes to these organizations can be a cost-effective option for providing language services to LEP persons from those language groups.

Using Telephone Interpreter Lines. Telephone interpreter service lines often offer speedy interpreting assistance in many different languages. They may be particularly appropriate where the mode of communicating with an English proficient person would also be over the phone. Although telephonic interpretation services are useful in many situations, it is important to ensure that, when using such services, the interpreters used are competent to interpret any technical or legal terms specific to a particular program that may be important parts of the conversation. Nuances in language and non-verbal communication can often assist an interpreter and cannot be recognized over the phone. Video teleconferencing may sometimes help to resolve this issue where necessary. In addition, where documents are being discussed, it is important to give telephonic interpreters adequate opportunity to review the document prior to the discussion and any logistical problems should be addressed.

Using Community Volunteers. In addition to consideration of bilingual staff, staff interpreters, or contract interpreters (either in-person or by telephone) as options to ensure meaningful access by LEP persons, use of recipient-coordinated community volunteers, working with, for instance, community-based organizations may provide a cost-effective supplemental language assistance strategy under appropriate circumstances. They may be particularly useful in providing language access for a recipient's less critical programs and activities. To the extent the recipient relies on community volunteers, it is often best to use volunteers who are trained in the information or services of the program and can communicate directly with LEP persons in their language. Just as with all interpreters, community volunteers used to interpret between English speakers and LEP persons, or to orally translate documents, should be competent in the skill of interpreting and knowledgeable about applicable confidentiality and impartiality rules. Recipients should consider formal arrangements with community-based organizations that provide volunteers to address these concerns and to help ensure that services are available more regularly.

Use of Family Members, or Friends or Other Volunteers as Interpreters. Although recipients should not plan to rely on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities, where LEP persons so desire, they should be permitted to use, at their own expense, an interpreter of their own choosing (whether a professional interpreter, family member, friend, other volunteer) in place of or as a supplement to the free language services expressly offered by the recipient. LEP persons may feel more comfortable when a trusted family member, friend, or other individual acts as an interpreter. In addition, in exigent circumstances that are not reasonably foreseeable, temporary use of interpreters not provided by the recipient may be necessary. However, with proper planning and implementation, recipients should be able to avoid most such situations.

Recipients, however, should take special care to ensure that family, legal guardians, caretakers, and other informal interpreters are appropriate in light of the circumstances and subject matter of the program, service or activity, including protection of the recipient's own administrative or enforcement interest in accurate interpretation. In many circumstances, family members (especially children), friends, other individuals are not competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise. LEP individuals may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing or sensitive information, such as medical history/condition, previous sexual or violent assault history, family history, or financial information to a family member, friend, or member of the local community.[10]

In addition, such informal interpreters may have a personal connection to the LEP person or an undisclosed conflict of interest, such as the desire to protect themselves or another individual. For these reasons, when oral language services are necessary, recipients should generally offer competent interpreter services free of cost to the LEP person. For GSA recipient programs and activities, this is particularly true in situations in which health, safety, or access to important benefits and services are at stake, or when credibility and accuracy are important to protect an individual's rights and access to important services.

An example of such a case is when police officers respond to a domestic violence call. In such a case, use of family members or neighbors to interpret for the alleged victim, perpetrator, or witnesses may raise

[10] Recipients should take these concerns into consideration when determining whether the LEP individual has made a knowing and voluntary choice for the use of a family, legal guardian, caretaker or other informal interpreter.

serious issues of competency, confidentiality, and conflict of interest and is thus inappropriate. While issues of competency, confidentiality, and conflict of interest in the use of family members (especially children), friends, other inmates or other detainees often make their use inappropriate, the use of these individuals as interpreters may be an appropriate option where proper application of the four factors would lead to a conclusion that recipient-provided services are not necessary. An example of this is a voluntary educational tour of a public building. There, the importance and nature of the activity may be relatively low and unlikely to implicate issues of confidentiality, conflict of interest, or the need for accuracy. In addition, the resources needed and costs of providing language services may be high. In such a setting, an LEP person's use of family, friends, or others may be appropriate.

If the LEP person voluntarily chooses to provide his or her own interpreter, a recipient should consider whether a record of that choice and of the recipient's offer of assistance is appropriate. Where precise, complete, and accurate interpretations or translations of information and/or testimony are critical for medical, safety, law enforcement, adjudicatory, or legal reasons, or where the competency of the LEP person's interpreter is not established, a recipient might decide to provide its own, independent interpreter, even if an LEP person wants to use his or her own interpreter as well. Extra caution should be exercised when the LEP person chooses to use a minor as the interpreter. While the LEP person's decision should be respected, there may be additional issues of competency, confidentiality, or conflict of interest when the choice involves using children as interpreters. The recipient should take care to ensure that the LEP person's choice is voluntary, that the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that a competent interpreter could be provided by the recipient at no cost.

B. Written Language Services (Translation)

Translation is the replacement of a written text from one language (source language) into an equivalent written text in another language (target language).

What Documents Should be Translated? After applying the four-factor analysis, a recipient may determine that an effective LEP plan for its particular program or activity includes the translation of vital written materials into the language of each frequently-encountered LEP group eligible to be served and/or likely to be affected by the recipient's program.

Such written materials could include, for example:

—Consent and complaint forms;
—Intake forms with the potential for important consequences;
—Written notices of rights and responsibilities, denial, loss, or decreases in benefits or services, parole, and other hearings;
—Notices of disciplinary action;
—Notices advising LEP persons of free language assistance;
—Written tests that do not assess English language competency, but test competency for a particular license, job, or skill for which Knowing English is not required; and
—Applications to participate in a recipient's program or activity or to receive recipient benefits or services.

Whether or not a document (or the information it solicits) is "vital" may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurately or in a timely manner. For instance, applications for a fishing class taught at the county lake should not generally be considered vital, whereas applications for drug and alcohol counseling/treatment in a homeless shelter or in prison could be considered vital. Where appropriate, recipients are encouraged to create a plan for consistently determining, over time and across its various activities, what documents are "vital" to the meaningful access of the LEP populations they serve.

Classifying a document as vital or non-vital is sometimes difficult, especially in the case of outreach materials like brochures or other information on rights and services. Awareness of rights or services is an important part of "meaningful access." Lack of awareness that a particular program, right, or service exists may effectively deny LEP individuals meaningful access. Thus, where a recipient is engaged in community outreach activities in furtherance of its activities, it should regularly assess the needs of the populations frequently encountered or affected by the program or activity to determine whether certain critical outreach materials should be translated. Community organizations may be helpful in determining what outreach materials may be most helpful to translate. In addition, the recipient should consider whether translations of outreach material may be made more effective when done in tandem with other outreach methods, including utilizing the ethnic media, schools, religious, and community organizations to spread a message.

Sometimes a document includes both vital and non-vital information. This may be the case when the document is very large. It may also be the case when the title and a phone number for obtaining more information on the contents of the document in frequently-encountered languages other than English is critical, but the document is sent out to the general public and cannot reasonably be translated into many languages. Thus, vital information may include, for instance, the provision of information in appropriate languages other than English regarding where a LEP person might obtain an interpretation or translation of the document.

Into What Languages Should Documents be Translated? The languages spoken by the LEP individuals with whom the recipient has contact determine the languages into which vital documents should be translated. A distinction should be made, however, between languages that are frequently encountered by a recipient and less commonly-encountered languages. Many recipients serve communities in large cities or across the country. They regularly serve LEP persons who speak dozens and sometimes over 100 different languages. To translate all written materials into all of those languages is unrealistic. Although recent technological advances have made it easier for recipients to store and share translated documents, such an undertaking would incur substantial costs and require substantial resources. Nevertheless, well-substantiated claims of lack of resources to translate all vital documents into dozens of languages do not necessarily relieve the recipient of the obligation to translate those documents into at least several of the more frequently-encountered languages and to set benchmarks for continued translations into the remaining languages over time. As a result, the extent of the recipient's obligation to provide written translations of documents should be determined by the recipient on a case-by-case basis, looking at the totality of the circumstances in light of the four-factor analysis. Because translation is a one-time expense, consideration should be given to whether the upfront cost of translating a document (as opposed to oral interpretation) should be amortized over the likely lifespan of the document when applying this four-factor analysis.

Safe Harbor. Many recipients would like to ensure with greater certainty that they comply with their obligations to provide written translations in languages other than English. Paragraphs (a) and (b) outline the circumstances that can provide a "safe harbor" for recipients regarding the requirements for translation of written materials. A "safe harbor" means that if a recipient provides written translations under these circumstances, such action will be considered strong evidence of compliance with the recipient's written-translation obligations.

The failure to provide written translations under the circumstances outlined in paragraphs (a) and (b) does not mean there is non-compliance. Rather, they provide a common starting point for recipients to consider whether and at what point the importance of the service, benefit, or activity involved; the nature of the information sought; and the number or proportion of LEP persons served call for written translations of commonly-used forms into frequently-encountered languages other than English. Thus, these paragraphs merely provide a guide for recipients that would like greater certainty of compliance than can be provided by a fact-intensive, four-factor analysis.

Example: Even if the safe harbors are not used, if written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, the translation of the written materials is not necessary. Other ways of providing meaningful access, such as effective oral interpretation of certain vital documents, might be acceptable under such circumstances.

Safe Harbor. The following actions will be considered strong evidence of compliance with the recipient's written-translation obligations:

The GSA recipient provides written translations of vital documents for each eligible LEP language group that constitutes five percent or 1,000, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

If there are fewer than 50 persons in a language group that reaches the five percent trigger in (a), the recipient does not translate vital written materials but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters where oral language services are needed and are reasonable. For example, schools should, where appropriate, ensure that school rules have been explained to LEP students, at orientation, for instance, prior to taking disciplinary action against them.

Competence of Translators. As with oral interpreters, translators of written documents should be competent. Many of the same considerations apply. However, the skill of translating is very different from the skill of interpreting, and a person who is a competent interpreter may or may not be competent to translate.

Particularly where legal or other vital documents are being translated, competence can often be achieved by use of certified translators. Certification or accreditation may not always be possible or necessary.[11] Competence can often be ensured by having a second, independent translator "check" the work of the primary translator. Alternatively, one translator can translate the document, and a second, independent translator could translate it back into English to check that the appropriate meaning has been conveyed. This is called "back translation."

Translators should understand the expected reading level of the audience and, where appropriate, have fundamental knowledge about the target language group's vocabulary and phraseology. Sometimes direct translation of materials results in a translation that is written at a much more difficult level than the English language version or has no relevant equivalent meaning.[12] Community organizations may be able to help consider whether a document is written at a good level for the audience.

[11] For those languages in which no formal accreditation currently exists, a particular level of membership in a professional translation association can provide some indicator of professionalism.

[12] For instance, there may be languages, which do not have an appropriate direct translation of some legal or technical terms, and the translator should be able to provide an appropriate translation. The translator should likely also make the recipient aware of this. Recipients can then work with translators to develop a consistent and appropriate set of descriptions of these terms in that language that can be used again, when appropriate. Recipients will find it more effective and less costly if they try to maintain consistency in the words and phrases used to translate terms of art and legal or other technical concepts. Creating or using already created glossaries of commonly used terms may be useful for LEP persons and translators and cost effective for the recipient. Providing translators with examples of previous translations of similar material by the recipient, other recipients, or federal agencies may be helpful.

Likewise, consistency in the words and phrases used to translate terms of art, legal, or other technical concepts helps avoid confusion by LEP individuals and may reduce costs. Creating or using already-created glossaries of commonly-used terms may be useful for LEP persons and translators and cost effective for the recipient. Providing translators with examples of previous accurate translations of similar material by the recipient, other recipients, or Federal agencies may be helpful.

While quality and accuracy of translation services is critical, the quality and accuracy of translation services is nonetheless part of the appropriate mix of LEP services required. For instance, documents that are simple and have no legal or other consequence for LEP persons who rely on them may use translators that are less skilled than important documents with legal or other information upon which reliance has important consequences (including, *e.g.*, information or documents of GSA recipients regarding certain law enforcement, health and safety service, or certain legal rights). The permanent nature of written translations, however, imposes additional responsibility on the recipient to ensure that the quality and accuracy permit meaningful access by LEP persons.

VII. Elements of Effective Plan on Language Assistance for LEP Persons

After completing the four-factor analysis and deciding what language assistance services are appropriate, a recipient should develop an implementation plan to address the identified needs of the LEP populations they serve. Recipients have considerable flexibility in developing this plan. The development and maintenance of a periodically-updated written plan on language assistance for LEP persons ("LEP plan") for use by recipient employees serving the public will likely be the most appropriate and cost-effective means of documenting compliance and providing a framework for the provision of timely and reasonable language assistance. Moreover, such written plans would likely provide additional benefits to a recipient's managers in the areas of training, administration, planning, and budgeting. These benefits should lead most recipients to document in a written LEP plan their language assistance services, and how staff and LEP persons can access those services. Despite these benefits, certain GSA recipients, such as recipients serving very few LEP persons and recipients with very limited resources, may choose

not to develop a written LEP plan. However, the absence of a written LEP plan does not obviate the underlying obligation to ensure meaningful access by LEP persons to a recipient's program or activities. Accordingly, in the event that a recipient elects not to develop a written plan, it should consider alternative ways to articulate in some other reasonable manner a plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, religious organizations, community groups, and groups working with new immigrants can be very helpful in providing important input into this planning process from the beginning. The following five steps may be helpful in designing an LEP plan and are typically part of effective implementation plans.

(1) Identifying LEP Individuals Who Need Language Assistance. The first two factors in the four-factor analysis require an assessment of the number or proportion of LEP individuals eligible to be served or encountered and the frequency of encounters. This requires recipients to identify LEP persons with whom it has contact.

One way to determine the language of communication is to use language identification cards (or "I speak cards"), which invite LEP persons to identify their language needs to staff. Such cards, for instance, might say, "I speak Spanish" in both Spanish and English, "I speak Vietnamese" in both English and Vietnamese, etc. To reduce costs of compliance, the Federal government has made a set of these cards available on the Internet. The Census Bureau "I speak card" can be found and downloaded at *http://www.lep.gov.* When records are normally kept of past interactions with members of the public, the language of the LEP person can be included as part of the record. In addition to helping employees identify the language of LEP persons they encounter, this process will help in future applications of the first two factors of the four-factor analysis. In addition, posting notices in commonly encountered languages notifying LEP persons of language assistance will encourage them to self-identify.

(2) Language Assistance Measures. An effective LEP plan would likely include information about the ways in which language assistance will be provided. For instance, recipients may want to include information on at least the following:

—Types of language services available.
—How staff can obtain those services.
—How to respond to LEP callers.
—How to respond to written communications from LEP persons.
—How to respond to LEP individuals who have in-person contact with recipient staff.
—How to ensure competency of interpreters and translation services.

(3) Training Staff. Staff should know their obligations to provide meaningful access to information and services for LEP persons. An effective LEP plan would likely include training to ensure that:

—Staff knows about LEP policies and procedures.
—Staff having contact with the public (or those in a recipient's care) are trained to work effectively with in-person and telephone interpreters.

Recipients may want to include this training as part of the orientation for new employees. It is important to ensure that all employees in public contact positions (or having contact with those in a recipient's care) are properly trained. Recipients have flexibility in deciding the manner in which the training is provided. The more frequent the contact with LEP persons, the greater the need will be for in-depth training. Staff with little or no contact with LEP persons may only have to be aware of an LEP plan. However, management staff, even if they do not interact regularly with LEP persons, should be fully aware of and understand the plan so they can reinforce its importance and ensure its implementation by staff.

(4) Providing Notice to LEP Persons. Once an agency has decided, based on the four factors, that it will provide language services, it is important for the recipient to let LEP persons know that those services are available and that they are free of charge. Recipients should provide this notice in a language LEP persons will understand. Examples of notification that recipients should consider include:

(a) Posting signs in intake areas and other entry points. When language assistance is needed to ensure meaningful access to information and services, it is important to provide notice in appropriate languages in intake areas or initial points of contact so that LEP persons can learn how to access those language services. This is particularly true in areas with high volumes of LEP persons seeking access to certain health, safety, or law enforcement services or activities run by GSA recipients. For instance, signs in intake offices could state that free language assistance is available. The signs should be translated into the most common languages encountered. They should explain how to get the language help.[13]

(b) Stating in outreach documents that language services are available from the agency. Announcements could be in, for instance, brochures, booklets, and in outreach and recruitment information. These statements should be translated into the most common languages and could be "tagged" onto the front of common documents.

(c) Working with community-based organizations and other stakeholders to inform LEP individuals of the recipients' services, including the availability of language assistance services.

(d) Using a telephone voice mail menu. The menu could be in the most common languages encountered. It should provide information about available language assistance services and how to get them.

(e) Including notices in local newspapers in languages other than English.

(f) Providing notices on non-English-language radio and television stations about the available language assistance services and how to get them.

(g) Presentations and/or notices at schools and religious organizations.

(5) *Monitoring and Updating the LEP Plan.* Recipients should, where appropriate, have a process for determining, on an ongoing basis, whether new documents, programs, services, and activities need to be made accessible for LEP individuals, and they may want to provide notice of any changes in services to the LEP public and to employees. In addition, recipients should consider whether changes in demographics, types of services, or other needs require annual reevaluation of their LEP plan. Less frequent reevaluation may be more appropriate where demographics, services, and needs are more static. One good way to evaluate the LEP plan is to seek feedback from the community.

In their reviews, recipients may want to consider assessing changes in:

—Current LEP populations in service area or population affected or encountered.
—Frequency of encounters with LEP language groups.
—Nature and importance of activities to LEP persons.
—Availability of resources, including technological advances and sources of additional resources, and the costs imposed.

[13] The Social Security Administration has made such signs available at *http://www.ssa.gov/multilanguage/lanlist.htm.* These signs could, for example, be modified for recipient use.

—Whether existing assistance is meeting the needs of LEP persons.
—Whether staff knows and understands the LEP plan and how to implement it.
—Whether identified sources for assistance are still available and viable.

In addition to these five elements, effective plans set clear goals, management accountability, and opportunities for community input and planning throughout the process.

VIII. Voluntary Compliance Effort

The goal for Title VI and Title VI regulatory enforcement is to achieve voluntary compliance. The requirement to provide meaningful access to LEP persons is enforced and implemented by GSA through the procedures identified in the Title VI regulations. These procedures include complaint investigations, compliance reviews, efforts to secure voluntary compliance, and technical assistance.

The Title VI regulations provide that GSA will investigate whenever it receives a complaint, report, or other information that alleges or indicates possible noncompliance with Title VI or its regulations. If the investigation results in a finding of compliance, GSA will inform the recipient in writing of this determination, including the basis for the determination. GSA is committed to using voluntary compliance (informal resolution) to resolve findings of noncompliance. However, if a case is fully investigated and results in a finding of noncompliance, GSA must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance. It must attempt to secure voluntary compliance through informal means. If the matter cannot be resolved informally, GSA must secure compliance through the termination of Federal assistance after the GSA recipient has been given an opportunity for an administrative hearing and/or by referring the matter to the DOJ to seek injunctive relief or pursue other enforcement proceedings. GSA engages in voluntary compliance efforts and provides technical assistance to recipients at all stages of an investigation. During these efforts, GSA proposes reasonable timetables for achieving compliance and consults with and assists recipients in exploring cost-effective ways of coming into compliance. In determining a recipient's compliance with the Title VI regulations, GSA's primary concern is to ensure that the recipient's policies and procedures provide meaningful access for LEP persons to the recipient's programs and activities.

While all recipients must work toward building systems that will ensure access for LEP individuals, GSA acknowledges that the implementation of a comprehensive system to serve LEP individuals is a process and that a system will evolve over time as it is implemented and periodically reevaluated. As recipients take reasonable steps to provide meaningful access to Federally assisted programs and activities for LEP persons, GSA will look favorably on intermediate steps recipients take that are consistent with this Guidance, and that, as part of a broader implementation plan or schedule, move their service delivery system toward providing full access to LEP persons. This does not excuse noncompliance but instead recognizes that full compliance in all areas of a recipient's activities and for all potential language minority groups may reasonably require a series of implementing actions over a period of time. However, in developing any phased implementation schedule, GSA recipients should ensure that the provision of appropriate assistance for significant LEP populations or with respect to activities having a significant impact on the health, safety, legal rights, or livelihood of beneficiaries is addressed first. Recipients are encouraged to document their efforts to provide LEP persons with meaningful access to Federally assisted programs and activities.

IX. Application to Specific Types of Recipients

GSA's recipients are in excess of 66,000 and represent State, county, city and local government agencies *e.g.*, transportation departments, parks/recreation departments, education departments, labor departments, health departments, correctional facilities/police departments, emergency 9–1–1, local fire departments (to include volunteer fire departments; housing authorities; schools (public and private); hospitals, health clinics, medical centers; day care centers, to include Head Start; homeless shelters, domestic abuse shelters, food banks, and other eligible non-profits.

The requirements of the Title VI regulations, as clarified by this guidance, supplement, but do not supplant, constitutional and other statutory or regulatory provisions that may require LEP services. Thus, a proper application of the four-factor analysis and compliance with the Title VI regulations does not replace constitutional or other statutory protections mandating information, warnings and notices in languages other than English, such as in the criminal justice context. Rather, this guidance clarifies the Title VI regulatory obligation to address, in appropriate circumstances and in a reasonable manner, the language assistance needs of LEP individuals beyond those required by the Constitution or statutes and regulations other than the Title VI regulations.

The following examples are provided to assist recipients in determining their responsibilities with regard to LEP individuals:

(1) A county has very few residents who are LEP. However, many Vietnamese-speaking LEP motorists go through a major freeway running through the county, which connects two areas with high populations of Vietnamese speaking LEP individuals. As a result, the Traffic Division of the county court processes a large number of LEP persons, but it has taken no steps to train staff or provide forms or other language access in that Division because of the small number of LEP individuals in the county. The Division should assess the number and proportion of LEP individuals processed by the Division and the frequency of such contact. With those numbers high, the Traffic Division may find that it needs to provide key forms or instructions in Vietnamese. It may also find, from talking with community groups, that many older Vietnamese LEP individuals do not read Vietnamese well, and that it should provide oral language services as well. The court may already have Vietnamese-speaking staff competent in interpreting in a different section of the court; it may decide to hire a Vietnamese-speaking employee who is competent in the skill of interpreting; or it may decide that a telephonic interpretation service suffices.

(2) A shelter for victims of domestic violence is operated by a recipient of GSA funds and located in an area where 15 percent of the women in the service area speak Spanish and are LEP. Seven percent of the women in the service area speak various Chinese dialects and are LEP. The shelter uses community volunteers to help translate vital outreach materials into Chinese (which is one written language despite many dialects) and Spanish. The shelter hotline has a menu providing key information, such as location, in English, Spanish, and two of the most common Chinese dialects. Calls for immediate assistance are handled by the bilingual staff. The shelter has one counselor and several volunteers fluent

in Spanish and English. Some volunteers are fluent in different Chinese dialects and in English. The shelter works with community groups to access interpreters in the several Chinese dialects that they encounter. Shelter staff trains the community volunteers in the sensitivities of domestic violence intake and counseling. Volunteers sign confidentiality agreements. The shelter is looking for a grant to increase its language capabilities despite its tiny budget. These actions constitute strong evidence of compliance.

(3) A small childcare center has three LEP parents (two who speak Mandarin and one speaks Spanish) whose English-speaking children attend its childcare center on a regular basis. The center has a staff of six, and has limited financial resources to afford to hire bilingual staff, contract with a professional interpreter service, or translate written documents. To accommodate the language needs of their LEP parents, the Center made arrangements with a Chinese and a Hispanic community organization for trained and competent volunteer interpreters in the appropriate language, and with a telephone interpreter language line, to interpret during parent meetings and to orally translate written documents. There have been no client complaints of inordinate delays or other service related problems with respect to LEP clients. The assistance that the childcare center is providing will probably be considered appropriate, given the center's resources, the size of staff, and the size of the LEP population. Thus, OCR would consider this strong evidence of compliance.

(4) A county social service program that administers the State's welfare and health programs has a large budget. Their service area encompasses an eligible service population of 500,000. Thirty-five hundred individuals in the serviced population are LEP and speak a Chinese dialect; 4,000 individuals in the serviced population are LEP and speak Spanish; 2000 individuals in the serviced population are LEP and speak Vietnamese; and 400 individuals are LEP and speak Vietnamese. The county has translated vital documents, *i.e.*, applications and program brochures, into Chinese, Spanish, and Vietnamese. Therefore, with regard to translation of vital documents, OCR would consider this strong evidence of compliance, consistent with the safe harbor provision in GSA's guidance. Additionally, the county should adequately address and provide needed interpretation services to their LEP clients (*i.e.*, hiring bilingual staff or contracting with a language service provider).

Permanent Versus Seasonal Populations. In many communities, resident populations change over time or season. For example, in some resort communities, populations swell during peak vacation periods, many times exceeding the number of permanent residents of the jurisdiction. In other communities, primarily agricultural areas, transient populations of workers may require increased services during the relevant harvest season. This dynamic demographic ebb and flow can also dramatically change the size and nature of the LEP community likely to come into contact with the recipient. Thus, recipients should not limit their analysis to numbers and percentages of permanent residents. In assessing factor one—the number or proportion of LEP individuals—emergency service providers should consider any significant but temporary changes in a jurisdiction's demographics.

[FR Doc. 03–18658 Filed 7–22–03; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting of a Health Care Policy and Research Special Emphasis Panel

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

The Health Care Policy and Research Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or long periods of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications for AHRQ Partnerships for Quality Competing Continuation (R18) Awards are to be reviewed and discussed at this meeting. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: AHRQ Partnerships for Quality Competing Continuation (R18) Awards.

Date: August 5, 2003 (open on August 5 from 11 a.m. to 11:10 a.m. and closed for the remainder of the Teleconference).

Place: John M. Eisenberg, M.D. Building, 540 Gaither Road, Room 2020, Rockville, Maryland 20850.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: July 14, 2003.

Carolyn M. Clancy,

Director.

[FR Doc. 03–18718 Filed 7–22–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Collection of Specimen Panels for Validation for Incidence Assays, Contract Solicitation Number 2003–N–00872; Correction

SUMMARY: This notice was published in the **Federal Register** on July 8, 2003, Volume 68, Number 130, Page 40676. The meeting date, time and location have been revised.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Collection of Specimen Panels for Validation for Incidence Assays, Contract Solicitation Number 2003–N–00872.

Action: The meeting times and dates have been revised as follows:

Times and Dates: 12:30 p.m.–1 p.m., July 25, 2003 (Open); 1 p.m.–3:30 p.m., July 25, 2003 (Closed).

Action: The meeting place has been revised as follows:

Place: Teleconference Number: 1–888–677–1828 passcode 5772091 for the Open portion of the meeting and 1–888–829–8669 for the Closed portion of the meeting.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Pub. L. 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Contract Solicitation Number 2003–N–00872.

For Further Information Contact: Esther Sumartojo, Ph.D., Deputy Associate Director for Science, National Center for HIV, STD, and TB Prevention, CDC, 1600 Clifton Road, NE, MS–E07, Atlanta, GA 30333, Telephone 404.639.8006.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 17, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–18793 Filed 7–22–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0084]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Electronic Records; Electronic Signatures

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by August 22, 2003.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Electronic Records; Electronic Signatures—21 CFR Part 11 (OMB Control No. 0910–0303)—Extension

The FDA regulations in part 11 (21 CFR part 11) provide criteria for acceptance of electronic records, electronic signatures, and handwritten signatures executed to electronic records as equivalent to paper records. Under these regulations, records and reports may be submitted to FDA electronically provided that the agency has stated its ability to accept the records electronically in an agency-established public docket and that the other requirements of part 11 are met.

The recordkeeping provisions in part 11 (§§ 11.10, 11.30, 11.50, and 11.300) require standard operating procedures to assure appropriate use of, and precautions for, systems using electronic records and signatures: (1) § 11.10 specifies procedures and controls for persons who use closed systems to create, modify, maintain, or transmit electronic records; (2) § 11.30 specifies procedures and controls for persons who use open systems to create, modify, maintain, or transmit electronic records; (3) § 11.50 specifies procedures and controls for persons who use electronic signatures; and (4) § 11.300 specifies controls to ensure the security and integrity of electronic signatures based upon use of identification codes in combination with passwords.

The reporting provision (§ 11.100) requires persons to certify in writing to FDA that they will regard electronic signatures used in their systems as the legally binding equivalent of traditional handwritten signatures.

The burden created by the information collection provision of this regulation is a one-time burden associated with the creation of standard operating procedures, validation, and certification. The agency anticipates the use of electronic media will substantially reduce the paperwork burden associated with maintaining FDA required records.

The respondents will be businesses and other for-profit organizations, state or local governments, Federal agencies, and nonprofit institutions.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
11.100	4,500	1	4,500	1	4,500

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
11.10	2,500	1	2,500	20	45,000

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]—Continued

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
11.30	2,500	1	2,500	20	45,000
11.50	4,500	1	4,500	20	90,000
11.300	4,500	1	4,500	20	90,000
Total					270,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In the **Federal Register** of March 26, 2003 (68 FR 14663), FDA published a 60-day notice requesting public comment on the information collection provisions. Three comments were received. All three were submitted to the docket in error. One was a comment meant for the part 11 scope and application draft guidance. One was an opinion on medical device approvals. The last comment was questions from an individual related to electronic records.

Dated: July 17, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–18690 Filed 7–22–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0142]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Guidance for Industry on Submitting and Reviewing Complete Responses to Clinical Holds

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by August 22, 2003.

ADDRESSES: The Office of Management and Budget (OMB) is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry—Submitting and Reviewing Complete Responses to Clinical Holds—OMB Control Number 0910–0445—Extension

Section 117 of the Food and Drug Administration Modernization Act (Public Law 105–115), signed into law by the President on November 21, 1997, provides that a written request to FDA from the applicant of an investigation that a clinical hold be removed shall receive a decision in writing, specifying the reasons for that decision, within 30 days after receipt of such request. A clinical hold is an order issued by FDA to the applicant to delay a proposed clinical investigation or to suspend an ongoing investigation for a drug or biologic. An applicant may respond to a clinical hold.

Under section 505(i)(3)(C) of the Federal Food, Drug, and Cosmetic Act, any written request to FDA from the sponsor of an investigation that a clinical hold be removed must receive a decision, in writing and specifying the reasons, within 30 days after receipt of the request. The request must include sufficient information to support the removal of the clinical hold.

In the **Federal Register** of May 14, 1998 (63 FR 26809), FDA published a notice of availability of a guidance that described how applicants should submit responses to clinical holds so that they may be identified as complete responses and the agency can track the time to respond. After considering the comment received on that guidance, FDA issued a revised guidance in October 2000. In the **Federal Register** of April 21, 2003 (68 FR 19545), FDA published a notice requesting comment on this information collection. No comments were received pertaining to the information collection.

The revised guidance states that FDA will respond in writing within 30-calendar days of receipt of a sponsor's request to release a clinical hold and a complete response to the issue(s) that led to the clinical hold. An applicant's complete response to an IND clinical hold is a response in which all clinical hold issues identified in the clinical hold letter have been addressed.

The guidance requests that applicants type "Clinical Hold Complete Response" in large, bold letters at the top of the cover letter of the complete response to expedite review of the response. The guidance also requests that applicants submit the complete response letter in triplicate to the IND, and that they fax a copy of the cover letter to the FDA contact listed in the clinical hold letter who is responsible for the IND. The guidance requests more than an original and two copies of the cover letter in order to ensure that the submission is received and handled in a timely manner.

Based on data concerning the number of complete responses to clinical holds received by the Center for Drug Evaluation and Research (CDER) in fiscal year 2001 and 2002, CDER estimates that approximately 41 responses are submitted annually from approximately 29 applicants, and that it takes approximately 284 hours to prepare and submit to CDER each response.

Based on data concerning the number of complete responses to clinical holds received by the Center for Biologics Evaluation and Research (CBER) in fiscal year 2001 and 2002, CBER estimates that approximately 123 responses are submitted annually from approximately 78 applicants, and that it takes approximately 284 hours to prepare and submit to CBER each response.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Complete Responses to Clinical Holds	Number of Respondents	Number of Responses Per Respondent	Total Annual Responses	Hours Per Response	Total Hours
CDER	29	approximately 1	41	284	11,644
CBER	78	1.58	123	284	34,932
Total					46,576

[1] There are no capital cost or operating and maintenance costs associated with this collection of information.

Dated: July 17, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–18691 Filed 7–22–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0314]

Agency Information Collection Activities; Proposed Collection; Comment Request; Food Labeling; Notification Procedures for Statements on Dietary Supplements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the regulation requiring manufacturers, packers, and distributors of dietary supplements to notify FDA that they are marketing a dietary supplement product that bears on its label or in its labeling a statement provided for in the Federal Food, Drug, and Cosmetic Act (the act).

DATES: Submit written or electronic comments on the collection of information by September 22, 2003.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.fda.gov/ecomments*. Submit written comments to the Division of Dockets Management (HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–305), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Food Labeling; Notification Procedures for Statements on Dietary Supplements—21 CFR Part 101.93 (OMB Control Number 0910–0331)—Extension

Section 403(r)(6) of the act (21 U.S.C. 343(r)(6)) requires that the agency be notified by manufacturers, packers, and distributors of dietary supplements that they are marketing a dietary supplement product that bears on its label or in its labeling a statement provided for in section 403(r)(6) of the act. Section 403(r)(6) of the act requires that the agency be notified, with a submission about such statements, no later than 30 days after the first marketing of the dietary supplement. Information that is required in the submission includes: (1) The name and address of the manufacturer, packer, or distributor of the dietary supplement product; (2) the text of the statement that is being made; (3) the name of the dietary ingredient or supplement that is the subject of the statement; (4) the name of the dietary supplement (including the brand name); and (5) a signature of a responsible individual who can certify the accuracy of the information presented, who must certify that the information contained in the notice is complete and accurate, and that the notifying firm has substantiation that the statement is truthful and not misleading.

The agency established § 101.93 (21 CFR 101.93) as the procedural regulation for this program. Section 101.93 provides details of the procedures associated with the submission and identifies the information that must be included in order to meet the requirements of section 403 of the act (21 U.S.C. 343).

Description of Respondents: Businesses or other for-profit organizations.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
101.93	2,500	1	2,500	.75	1,875

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The agency believes that there will be minimal burden on the industry to generate information to meet the requirements of section 403 of the act in submitting information regarding section 403(r)(6) of the act statements on labels or in labeling of dietary supplements. The agency is requesting only information that is immediately available to the manufacturer, packer, or distributor of the dietary supplement that bears such a statement on its label or in its labeling. This estimate is based on the average number of notification submissions received by the agency in the preceding 12 months.

Dated: July 17, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–18693 Filed 7–22–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0069]

Agency Emergency Processing Under OMB Review; Submission of Validation Data for Reprocessed Single-Use Devices; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of July 8, 2003 (68 FR 40676). The notice announced that a proposed collection of information had been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995 (the PRA). The proposed collection of information will be used by FDA to determine whether reprocessed single-use devices are substantially equivalent to legally marketed predicate devices. The document was inadvertently published with an error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy and Planning (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 03–17136, appearing on page 40676 in the **Federal Register** of Tuesday, July 8, 2003, the following correction is made:

1. On page 40677, in the first column, under **ADDRESSES**, in the eighth line, "electronically mailed to sshapiro@omb.eop.gov or faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Stuart Shapiro" is corrected to read "faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota".

Dated: July 17, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–18692 Filed 7–22–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Drug Safety and Risk Management Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Drug Safety and Risk Management Advisory Committee. This meeting was announced in the **Federal Register** of June 30, 2003 (68 FR 38713). The amendment is being made to reflect a change in the *Location* portion of the document. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Kimberly Littleton Topper, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800-741–8138 (301–443–0572 in the Washington, DC area), code 12535. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 30, 2003, FDA announced that a meeting of the Drug Safety and Risk Management Advisory Committee would be held on September 18, 2003. On page 38714, in the first column, the *Location* portion of the meeting is amended to read as follows:

Location: Holiday Inn, the Ballroom, 8777 Georgia Ave., Silver Spring, MD.

This notice is given under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: July 17, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–18633 Filed 7–22–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Neurological Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of the Committee: Neurological Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on August 5, 2003, from 10 a.m. to 5:30 p.m.

Location: Holiday Inn, Walker/Whetstone Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact: Janet L. Scudiero, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1184, ext. 176, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12513. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote on a premarket approval application for a neurological embolization device. Background information for the topic, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at *http://www.fda.gov/cdrh/panel/index.html*. Material will be posted on August 4, 2003.

Procedure: On August 5, 2003, from 10:30 a.m. to 5:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by August 1, 2003. Oral presentations from the public will be scheduled between approximately 10:45 a.m. and 11:15 a.m. and 3:30 p.m. and 4 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before August 1, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On August 5, 2003, from 10 a.m. to 10:30 a.m., the meeting will be closed to the public to permit discussion of trade secret and/or confidential information regarding neurological device issues (5 U.S.C. 552b(c)(4)).

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Shirley Meeks, Conference Management Staff, at 301–594–1283, ext. 105, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 17, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–18635 Filed 7–22–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pulmonary-Allergy Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pulmonary-Allergy Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 5, 2003, from 8 a.m. to 5:30 p.m.

Location: Holiday Inn, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Kimberly Littleton Topper, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12545. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss new drug application (NDA) 21–573, Ariflo (cilomilast) Tablets, 15 milligrams, by GlaxoSmithKline, for use in chronic obstructive pulmonary disease (COPD).

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 2, 2003. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 2, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kimberly Littleton Topper at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 17, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–18636 Filed 7–22–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0263]

Draft Guidance for Industry: Channels of Trade Policy for Commodities With Residues of Pesticide Chemicals, for Which Tolerances Have Been Revoked, Suspended, or Modified by the Environmental Protection Agency; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a level 1 draft guidance entitled "Guidance for Industry: Channels of Trade Policy for Commodities With Residues of Pesticide Chemicals, for Which Tolerances Have Been Revoked, Suspended, or Modified by the Environmental Protection Agency" (the draft guidance). This draft guidance presents FDA's general policy for implementing the channels of trade provision in the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: Submit written or electronic comments by September 22, 2003 to ensure adequate consideration in the preparation of the guidance document. Comments on this draft guidance may be submitted at any time. Submit comments on the collection of information by September 22, 2003.

ADDRESSES: Submit written requests for single copies of the draft guidance entitled "Guidance for Industry: Channels of Trade Policy for Commodities With Residues of Pesticide Chemicals, for Which Tolerances Have

Been Revoked, Suspended, or Modified by the Environmental Protection Agency" to Michael E. Kashtock, Center for Food Safety and Applied Nutrition (CFSAN) (see **FOR FURTHER INFORMATION CONTACT**). Include a self-addressed adhesive label to assist that office in processing your request.

Submit written comments concerning the draft guidance and the information collection provisions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane., rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Michael E. Kashtock, Center for Food Safety and Applied Nutrition (CFSAN) (HFS–305), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–2022, FAX: 301–436–2651, e-mail: *mkashtoc@cfsan.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On August 3, 1996, the FQPA was signed into law. This law, which amends the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the act, established a new safety standard for pesticide residues in food, with an emphasis on protecting the health of infants and children. The Environmental Protection Agency (EPA) is responsible for regulating the use of pesticides (under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)) and for establishing tolerances or exemptions from the requirement for tolerances for residues of pesticide chemicals in food commodities (under the act). EPA, in accordance with the FQPA, is in the process of reassessing the pesticide tolerances and exemptions which were in effect when the FQPA was signed into law. When EPA determines that a pesticide's tolerance level does not meet the safety standard under section 408 of the act (21 U.S.C. 346a), the registration for the pesticide may be canceled under FIFRA for all or certain uses. In addition, the tolerances for that pesticide may be lowered or revoked for the corresponding food commodities. Under section 408(l)(2) of the act, when the registration for a pesticide is canceled or modified due in whole or in part to dietary risks to humans posed by residues of that pesticide chemical on food, the effective date for the revocation of such tolerance (or exemption in some cases) must be no later than 180 days after the date such cancellation becomes effective or 180 days after the date on which the use of the canceled pesticide becomes unlawful under the terms of the cancellation, whichever is later.

When EPA takes such actions, food derived from a commodity that was lawfully treated with the pesticide may not have cleared the channels of trade by the time the revocation or new tolerance level takes effect. The food could be found by FDA, the agency that is responsible for monitoring pesticide residue levels and enforcing the pesticide tolerances in most foods (the U.S. Department of Agriculture (USDA) has responsibility for monitoring residue levels and enforcing pesticide tolerances in egg products and most meat and poultry products), to contain a residue of that pesticide that does not comply with the revoked or lowered tolerance. FDA would normally deem such food to be in violation of the law by virtue of it bearing an illegal pesticide residue. The food would be subject to FDA enforcement action as an "adulterated" food. However, the channels of trade provision of the act addresses the circumstances under which a food is not unsafe solely due to the presence of a residue from a pesticide chemical for which the tolerance has been revoked, suspended, or modified by EPA. The channels of trade provision (section 408(l)(5) of the act) states the following:

> PESTICIDE RESIDUES RESULTING FROM LAWFUL APPLICATION OF A PESTICIDE.—Notwithstanding any other provision of this Act, if a tolerance or exemption for a pesticide chemical residue in or on a food has been revoked, suspended, or modified under this section, an article of that food shall not be deemed unsafe solely because of the presence of such pesticide chemical residue in or on such food if it is shown to the satisfaction of the Secretary that-
>
> (A) the residue is present as the result of an application or use of a pesticide at a time and in a manner that was lawful under the Federal Insecticide, Fungicide, and Rodenticide Act; and
>
> (B) the residue does not exceed a level that was authorized at the time of that application or use to be present on the food under a tolerance, exemption, food additive regulation, or other sanction then in effect under this Act;
>
> unless, in the case of any tolerance or exemption revoked, suspended, or modified under this subsection or subsection (d) or (e), the Administrator has issued a determination that consumption of the legally treated food during the period of its likely availability in commerce will pose an unreasonable dietary risk.

FDA anticipates that food bearing lawfully applied residues of pesticide chemicals that are the subject of future EPA action the act to revoke, suspend, or modify their tolerances, will remain in the channels of trade after the applicable tolerance is revoked, suspended, or modified. If FDA encounters food bearing a residue of a pesticide chemical for which the tolerance has been revoked, suspended, or modified, it intends to address the situation in accordance with this draft guidance. FDA has developed this draft guidance to set forth its policy for how the agency plans to approach its enforcement of the channels of trade provision in the act with respect to pesticide chemicals that are subject to future EPA action to revoke, suspend, or modify their tolerances.

FDA is announcing the availability of this level 1 draft guidance. The draft guidance when finalized, will represent FDA's current thinking on its planned enforcement approach to the channels of trade provision of the act and how such provision relates to FDA regulated products with residues of pesticide chemicals for which tolerances have been revoked, suspended, or modified. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. You can use an alternative approach if the approach satisfies the requirements of the applicable statutes and regulations. If you want to discuss an alternative approach, contact the FDA staff responsible for implementing the guidance. If you cannot identify the appropriate FDA staff, call the telephone number listed on the title page of the guidance. The draft guidance is being distributed for comment purposes, in accordance with the FDA's good guidance practices regulation in 21 CFR 10.115(g).

II. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

Title: Channels of Trade Policy for Commodities With Residues of Pesticide Chemicals for Which Tolerances Have Been Revoked, Suspended, or Modified by the Environmental Protection Agency

Description: Under the pesticide tolerance reassessment process that EPA was mandated to carry out under the FQPA, EPA is expected to revoke, suspend, or modify tolerances for the pesticide chemicals on various food commodities. Section 408(l)(5) of the act includes a provision, referred to as the "channels of trade provision," that addresses the circumstances under which a food will not be deemed unsafe solely due to the presence of a residue from a pesticide chemical whose tolerance has been revoked, suspended, or modified by EPA.

In general, FDA anticipates that the party responsible for food found to contain the previously mentioned pesticide chemical residues (within the former tolerance) after the tolerance for the pesticide chemical has been revoked, suspended, or modified will be able to demonstrate that such food was handled, e.g., packed or processed, during the acceptable timeframes cited in the draft guidance by providing appropriate documentation to the agency as discussed in the draft guidance document. FDA is not suggesting that firms maintain an inflexible set of documents where anything less or different would likely be considered unacceptable. Rather, the agency is leaving it to each firm's discretion to maintain appropriate documentation to demonstrate that the food was so handled during the acceptable timeframes.

Examples of documentation which FDA anticipates will serve this purpose consist of documentation associated with packing codes, batch records, and inventory records. These are types of documents that many food processors routinely generate as part of their basic food-production operations.

Description of Respondents: The likely respondents to this collection of information are firms in the produce and food-processing industries that handle food products that may contain residues of pesticide chemicals after the tolerances for the pesticide chemicals have been revoked, suspended, or modified.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
652	1	652	3	1,956

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA does not know which pesticide chemicals will have their tolerances revoked, suspended, or modified in the future. Instead of calculating the paperwork burden for any one pesticide, FDA calculated the cost for an "average" pesticide by looking at test results for 417 pesticide chemicals on domestic products and 450 pesticide chemicals on imported products. FDA then used the average percent of samples found with residues as a substitute for the rate of residues found from a specific pesticide chemical.

The estimated annual reporting burden was determined using the average percent of samples found with residues for all pesticides for domestic and imported products. Using 1999 pesticide monitoring data, domestic products were tested for residues of 417 pesticide chemicals. On average, 1.02 percent of samples tested positive for a given pesticide chemical. For 450 pesticides tested for residues on imported products, on average 2.40 percent of samples contained a given pesticide chemical residue. This rate of positive findings for product samples was applied to the number of potentially affected establishments, 3,730 importers and 23,201 domestic businesses, giving an expected number of 326 potentially-affected businesses per revocation, suspension, or modification of a tolerance. FDA expects this number to be an overestimate of the number of affected businesses for two reasons. One, the positive residue test may be below the new tolerance. Second, tolerances may not be altered for all products. If the tolerance was altered for only vegetables but not fruit, then the number of affected establishments would be smaller. We assume two pesticide tolerances are altered per year, resulting in 652 businesses reporting per year. To date, tolerances have been revoked for two pesticide chemicals. However, FDA expects the total number of pesticide tolerances that are revoked, suspended, or modified by EPA to increase.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours	Capital Costs
65	1	65	16	1,040	$32,571

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In determining the estimated annual recordkeeping burden, FDA estimated that at least 90 percent of firms maintain documentation, such as packing codes, batch records, and inventory records, as part of their basic food production or

import operations. Therefore, the recordkeeping burden was calculated as the time required for the 10 percent of firms that may not currently be maintaining this documentation to develop and maintain documentation, such as batch records and inventory records. For firms that do not maintain documentation, such as batch records and inventory records, as part of their normal manufacturing operations, it was estimated that with $500 or less, the necessary software and hardcopy filing systems could be obtained to implement a system.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this draft guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

An electronic version of this draft guidance is available on the Internet at *http://www.cfsan.fda.gov/guidance.html*.

Dated: July 14, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–18634 Filed 7–22–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0282]

Guidance for Industry and FDA Staff; Medical Device User Fee and Modernization Act of 2002, Validation Data in Premarket Notification Submissions [510(k)s] for Reprocessed Single-Use Medical Devices; Availability; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of July 8, 2003 (68 FR 40679). The document announced the availability of a guidance entitled "Guidance for Industry and FDA Staff; Medical Device User Fee and Modernization Act of 2002, Validation Data in Premarket Notification Submissions [510(k)s] for Reprocessed Single-Use Medical Devices; Availability." The document published with the incorrect docket number. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce A. Strong, Office of Policy and Planning (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 03–17135, appearing on page 40679 in the **Federal Register** of July 8, 2003, the following correction is made:

1. On page 40679, in the first column, in the heading of the document, "[Docket No. 2003D–0232]" is corrected to read "[Docket No. 2003D–0282]".

Dated: July 17, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–18689 Filed 7–22–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

New Products and Updated Fee Schedule for National Flood Insurance Program Map and Insurance Products

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This Notice contains several new products and the updated fee schedule for processing requests for the National Flood Insurance Program (NFIP) map and insurance products available through the FEMA Map Service Center (MSC). The changes in the fee schedule include two new products and will allow FEMA to reduce further the expenses to the NFIP by recovering more fully the costs associated with producing, retrieving, and distributing particular NFIP map and insurance products.

DATES: The updated fee schedule is effective for all requests dated, August 1, 2003, or later.

FOR FURTHER INFORMATION CONTACT: Kathy L. Miller, Acting Chief, Information Exchange and Program Evaluation Branch, Mitigation Division, 500 C Street, SW., Washington, DC 20472; by telephone at (202) 646–3316 or by facsimile at (202) 646–4596 (not toll-free calls), by e-mail at *Kathy.Miller@DHS.GOV*.

SUPPLEMENTARY INFORMATION: Throughout this Notice, we use "we," "our," and "us" to refer to FEMA.

This Notice contains an updated fee schedule to include two new products available through the MSC.

Effective Date. The updated fee schedule is effective for all written requests, on-line internet requests made through the FEMA Flood Map Store, and all telephone requests received on or after August 1, 2003.

Evaluations Performed. To develop the revised fee schedule for the new products, we first evaluated the actual costs incurred at the MSC for producing, retrieving, and distributing these products. We then analyzed historical sales, cost data, and product unit costs for unusual trends or anomalies; analyzed the effect of program changes, new products, technology investments, and other factors on future sales and product costs. The products covered by this Notice are discussed below.

Periodic Evaluation of Fees. As indicated in the Notice, published at 67 FR 13764, March 26, 2002, a primary component of the fees is the prevailing private sector rates charged to FEMA for labor and materials. Because these rates and the actual production, retrieval, and distribution costs may vary from year to year, we will evaluate the fees periodically and publish a revised fee schedule, when appropriate, as a notice in the **Federal Register**.

Fee Schedule for Requests for Map and Insurance Products

The MSC distributes a variety of NFIP map and insurance products to a broad range of our customers, including Federal, State, and local government officials; real estate professionals; insurance providers; appraisers; builders; land developers; design engineers; surveyors; lenders; homeowners; and other private citizens. Specifically, the MSC distributes the following products:

- Paper (printed) copies of Flood Hazard Boundary Maps (FHBMs);
- Paper (printed) copies of Flood Insurance Rate Maps (FIRMs);
- Paper (printed) copies of Digital Flood Insurance Rate Maps (DFIRMs);
- Paper (printed) copies of Flood Insurance Study (FIS) reports, including the narrative, tables, Flood Profiles, photographs, and other graphics;
- Paper (printed) copies of Flood Boundary and Floodway Maps (FBFMs), when they are included as an exhibit in the FIS;

- Digital Q3 Flood Data files, which FEMA developed by scanning the published FIRM and vectorizing a thematic overlay of flood risks;
- Digital Q3 Flood Data files for Coastal Barrier Resource Areas (CBRA Q3 Flood Data files);
- Community Status Book, which is a report generated by FEMA's Community Information System database that provides pertinent map status information for all identified communities;
- Flood Map Status Information Service (FMSIS), through which FEMA provides status information for effective NFIP maps;
- Letter of Map Change (LOMC) Subscription Service, through which FEMA makes certain types of LOMCs available biweekly on CD–ROM;
- NFIP Insurance Manual (Full Manual), which provides vital NFIP information for insurance agents nationwide;
- NFIP Insurance Manual (Producer's Edition), which is used for reference and training purposes;
- Community Map Action List (CMAL), which is a bimonthly list of communities and their NFIP status codes;
- Maps on the Web—raster images of the FIRMs and Floodways in TIFF format;
- FIS on the Web—raster images of FIS in PDF format;
- Maps on CDs—includes only the raster images of the maps and can be purchased by panel or in community, county, or State kits;
- F–MIT Light on the Web—a free downloadable flood map image view tool, to be used in conjunction with viewing TIFF images, that supports panning, zooming, and creating a "firmette". A firmette is a user-defined "cut-out" section of the map at 100% map scale designed for printing on a standard office printer;
- F–MIT Light on CD—same as F–MIT Light on the Web, designed for use with the Flood Map CD without a Database; and
- FEMA's *Guidelines and Specifications for Flood Hazard Mapping Partners on CD:* This document combines previous FEMA publications, guidance documents, and memorandums regarding Flood Hazard Mapping. The Guidelines reflect recent changes to processes and products associated with the implementation of the Map Modernization Program, including the Cooperating Technical Partners initiative, new Project Scoping procedures, and DFIRM specifications.

The MSC is now adding two new products, which are denoted by an asterisk in the table. The following is a description of the MSC's new products:

- Community or County Databases—a digital version of the maps that is designated for use with Geographic Information Systems (GIS) software to allow users to access, view, and analyze mapping information using specialized data; and
- FMIT Pro on CD—a view and address look up tool designed for use with the community or county databases.

For more information on the map and insurance products available from the MSC, we invite interested parties to visit our MSC Web site at *http://www.msc.fema.gov/*.

There are no changes in the processing fees or shipping costs for any of the other products that the MSC distributes. Federal, State, and local governments continue to be exempt from paying fees for the map products. The fee schedules for the current and new products are shown in the table below.

Description of product of service	Fee	Shipping charge
Paper Products:		
FHBM, FIRM, DFIRM, or FBFM (floodway) panels.	$2.00 per map panel	$0.37 per panel for the first 10 panels plus $0.03 for each additional panel.
FIS (not including FBFM panels that are included as exhibit).	$5.00 per FIS volume plus $2.00 per floodway map.	$4.00 for the first study volume plus $0.40 for each additional study.
Hurry Charge-Added to regular charge	$33.00	N/A.
Internet Products (products downloadable from the web):		
FHBM, FIRM, DFIRM, or FBFM (floodway) panels.	$1.50 per map panel	None.
FIS	$4.00 per study plus $1.50 per floodway map	None.
F–MIT Light (view tool for map images) on the web.	Free	Not Applicable.
* F–Mit Pro (Viewtool & address look-up)	$30.00	Not Applicable.
FIRMette (A user defined portion of the FIRM printable on a desktop printer).	Free Viewing and downloading	Not Applicable.
CD Products:		
FHBM, FIRM, DFIRM, or FBFM (floodway) panels.	$1.50 per map panel	$3.65 for the first 4 CD–ROMs plus $0.10 for each additional CD–ROM.
* Community or County Database	$10.00 per database	$3.65 for the first 4 CD–ROMs plus $0.10 for each additional CD–ROM.
FIS	$4.00 per FIS volume plus $1.50 per floodway map.	$3.65 for the first 4 CD–ROMs plus $0.10 for each additional CD–ROM.
* F–MIT Light (view tool for map images)	Free	$3.65.
* F–MIT Pro (view tool & address look- up)	$30.00	$3.65.
Other Products:		
Q3 Flood Data Files	$50.00 per CD–ROM	$3.65 for the first 4 CD–ROMs, plus $0.10 for each additional CD–ROM in the same order.
CBRA Q3 Flood Data Files	$50.00 per CD–ROM or $200.00 for all 5 Q3 CDs.	$3.65 for the first 4 CD–ROMs, plus $0.10 for each additional CD–ROM in the same order.
Community Status Book (Individual Orders).	$2.50 per State $20.50 for entire U.S	$1.00 per State $4.26 for entire U.S.
Community Status Book (Annual Subscription).	$50.00 per State $250.00 for entire U.S	Not applicable.

Description of product of service	Fee	Shipping charge
FMSIS (Individual Orders)	$13.00 per State $38.00 for entire U.S	3.65 for the first 4 CD–ROMs, plus $0.10 for each additional CD–ROM in the same order.
FMSIS (Annual Subscription)	$148.00 per State $419.00 for entire U.S	Not applicable.
LOMC Subscription Service (Individual Orders).	$85.00 per issue	$3.65 for the first 4 CD–ROMs, plus $0.10 for each additional CD–ROM in the same order.
LOMC Subscription Service (Annual Subscription).	$2,000.00	Not applicable.
NFIP Insurance Manual (Full Manual)	$25.00 per subscription for complete manual	Not applicable.
NFIP Insurance Manual (Producer's Edition).	$15.00 per subscription	Not applicable.
FEMA's Guidelines and Specifications for Flood Hazard Mapping Partners on CD–ROM.	$2.60	$3.65.

Payment Submission Requirements

Fee payments for non-exempt requests must be made to us in advance of services being rendered. These payments shall be made in the form of a check, a money order, or by a credit card payment. Checks and money orders must be made payable, in U.S. funds, to the *National Flood Insurance Program.*

We will deposit all fees collected to the National Flood Insurance Fund, which is the source of funding for providing these services.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–18652 Filed 7–22–03; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Agency Information Collection Activities: OMB Emergency Approval and Proposed Renewal; Comment Request

AGENCY: Office of the Secretary (OS), Interior.

ACTION: Notice of an OMB emergency approval and of extension of an information collection (1093–0004).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that the Office of Management and Budget (OMB) approved on an emergency basis on June 24, 2003, and that we will submit to OMB for review and approval as a continuing information collection. The information collection request (ICR) concerns the paperwork requirements to carry out the Take Pride In America Program Act, 16 U.S.C. 4601–4608.

DATES: Submit written comments by September 22, 2003.

ADDRESSES: Mail or hand carry comments to the Department of the Interior, Office of the Secretary, Take Pride In America Program, MS–3459, 1849 C Street, NW., Washington, DC 20240. If you wish to e-mail comments, the address is: *TakePride@ios.doi.gov.* Reference "Information Collection 1093–0004" in your e-mail subject line and mark your message for return receipt. Include your name and return address in your message.

FOR FURTHER INFORMATION CONTACT: Marti Allbright, Take Pride In America, 202–208–5848. You may also contact Marti Allbright to obtain a copy, at no cost, of the Take Pride In America Program Act that necessitates this collection of information.

SUPPLEMENTARY INFORMATION:

Title: Take Pride In America National Awards Application/Nomination Process.

OMB Control Number: 1093–0004.

Abstract: Under the Take Pride In America Program Act (Act), 16 U.S.C. Sec. 4601–4608, the Secretary is to: (1) "conduct a national awards program to honor those individuals and entities which, in the opinion of the Secretary of the Interior * * * have distinguished themselves in activities" under the purposes of the Act; and also to (2) "establish and maintain a public awareness campaign in cooperation with public and private organizations and individuals—(A) to instill in the public the importance of the appropriate use of, and appreciation for Federal, State, and local lands, facilities, and natural and cultural resources; (B) to encourage an attitude of stewardship and responsibility toward these lands, facilities, and resources; and (C) to promote participation by individuals, organizations, and communities of a conservation ethic in caring for these lands, facilities, and resources." The Act states that "[t]he Secretary is authorized * * * generally to do any and all lawful acts necessary or appropriate to further the purposes of the TPIA Program."

The Take Pride In America (TPIA) Program was re-launched on April 16, 2003. The Program will collect information provided voluntarily by individuals or organizations about their events and activities to further the purposes of the Act in order to select finalists and winners of the annual Take Pride In America National Awards. The TPIA National Awards recognize the valuable and significant contributions that individuals and organizations make in support of stewardship of America's lands. Their tireless and creative efforts play a vital role in protecting, conserving, and enhancing America's wealth of natural, historical, and cultural resources. These awards recognize the efforts of individuals and organizations in both the public and private sectors for outstanding stewardship involving Federal, State, local, Tribal, and private lands.

We will use the information collected primarily to select finalists and winners of the TPIA National Awards. Information also will be used to assure the integrity of the Program (so that, for example, an individual or organization does not receive an award twice for the same project), for reporting on the accomplishments of the Program, for the public awareness campaign (such as press releases and website information on winning projects); and to further the purposes of the Act (such as fostering partnerships and coordination of projects).

OMB approved TPIA's application instructions and form on June 24, 2003, on an emergency basis, with an expiration date of December 31, 2003. The approved application instructions and form can be reviewed through the Internet, on *http://www.TakePride.gov.*

We will process any information in accordance with the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations at the Department (43 CFR part 2). No items of a sensitive nature are collected. Responses are voluntary.

Frequency: Primarily Annually.

Estimated Number and Description of Respondents: Approximately 500 voluntary responses from the public, another 500 from Federal employees.

Estimated Reporting and Recordkeeping "Hour" Burden: The currently approved annual reporting burden for this collection is 250 hours for the first year for an estimated 250 respondents. For this ICR, that burden will increase to 500 hours with the estimated increase in respondents. In calculating the burden, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no cost burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *". Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the "non-hour cost" burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or costs of annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or, (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identify, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: July 16, 2003.

Marti Allbright,

Executive Director, Take Pride In America Program.

[FR Doc. 03–18677 Filed 7–22–03; 8:45 am]

BILLING CODE 4310–RK–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Trustee Council; Notice of Meeting

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the *Exxon Valdez* Oil Spill Public Advisory Committee.

DATES: August 14, 2003, at 8:30 a.m.

ADDRESSES: Exxon Valdez Oil Spill Trustee Council Office, 441 West 5th Avenue, Suite 500, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 "C" Street, Suite 119, Anchorage, Alaska, 99501, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Committee was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91–081 CV. The meeting agenda will feature discussions about the Fiscal Year 2004 annual work plan.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 03–18752 Filed 7–22–03; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Meeting of the Trinity Adaptive Management Working Group

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Trinity Adaptive Management Working Group (TAMWG). The TAMWG affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River restoration efforts to the Trinity Management Council. Primary objectives of the meeting will include: review of Trinity River Restoration Program budget, establishment of Committee bylaws, presentations regarding public access, review of a request to the TAMWG to recommend that the Trinity River Restoration Program fund the Bureau of Land Management to purchase a parcel of land at Gold Bar on the Trinity River as a long-term course sediment source for the Restoration Program, a Restoration Program presentation of the Rush Creek Delta project, review of a letter from

Humboldt County to the Secretary of Interior regarding Klamath River Fishery Water Supply, an Executive Director's report, and setting future meeting dates. The meeting is open to the public.

DATES: The Trinity Adaptive Management Working Group will meet from 9:30 a.m. to 4 p.m. on Tuesday, July 29, 2003.

ADDRESSES: The meeting will be held at the Victorian Restaurant, 1709 Main Street, Weaverville, California 96093.

FOR FURTHER INFORMATION CONTACT: Dr. Mary Ellen Mueller of the U.S. Fish and Wildlife Service, California/Nevada Operations Office, 2800 Cottage Way, W–2606, Sacramento, California 95825, (916) 414–6464. Dr. Mary Ellen Mueller is the designee of the committee's Federal Official—Steve Thompson, Manager of the U.S. Fish and Wildlife Service, California/Nevada Operations Office.

SUPPLEMENTARY INFORMATION: For background information and questions regarding the Trinity River Restoration Program, please contact Douglas Schleusner, Executive Director, Trinity River Restoration Program, P.O. Box 1300, 1313 South Main Street, Weaverville, California 96093, (530) 623–1800.

Dated: July 17, 2003.

D. Kenneth McDermond,

Acting Manager, California/Nevada Operations Office, Sacramento, CA.

[FR Doc. 03–18785 Filed 7–22–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–910–03–0777XX]

Notice of Public Meetings of Resource Advisory Councils (RACs) in Nevada: Northeastern Great Basin, Sierra Front—Northwestern Great Basin, and Mojave-Southern Great Basin

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meetings of three BLM Nevada RACs to discuss Sustaining Working Landscapes (Nevada).

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Nevada Northeastern Great Basin RAC, the Sierra Front—Northwestern Great Basin RAC and the Mojave-Southern Great Basin RAC will meet as indicated below. The topic for discussion at each meeting will be to discuss Sustaining Working Landscapes policy and to consider comments from the public, from the RAC working subgroup and from each RAC.

DATES: The meeting for the Northeastern Great Basin RAC includes a public comment meeting on August 18, 2003, 7 p.m. at the Hilton Garden Inn, 3560 East Idaho Street, Elko, Nevada. The purpose of the public meeting is for the RAC to receive public comment about the Sustaining Working Landscapes policy. The business meeting to discuss policy and develop RAC comments on the Sustaining Working Landscapes policy will be held August 19, 2003 at the BLM Elko Field Office beginning at 9 a.m. The public comment period will begin at approximately 1 p.m. and the meeting will adjourn at approximately 5 p.m. Additional topics to be discussed at this meeting were announced in a notice dated July 8, 2003.

The meeting for the Sierra Front—Northwestern Great Basin RAC will be held on September 3, 2003, in the BLM Carson City Field Office at 5665 Morgan Mill Road, Carson City, Nevada, from 9 a.m. to noon. The purpose of the public meeting is to receive public comment and to discuss policy and develop RAC comments on the Sustaining Working Landscapes policy. The public comment period will begin at 10:30 a.m.

The meeting for the Mojave-Southern Great Basin RAC will be held on September 4, 2003, at Fire Station # 2, 209 W. Brougher, Tonopah, Nevada, at 1 p.m. Public comment will be taken 4 p.m. The purpose of the public meeting is to receive public comment on the Sustaining Working Landscapes policy. The Mojave-Southern RAC will meet on September 5 at the BLM Tonopah Field Station, 1553 S. Main Street, from 8 a.m. to noon to discuss policy and develop RAC comments on the Sustaining Working Landscapes policy. Public comment will occur at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Jo Simpson, Chief, Office of Communications, Nevada State Office, 1340 Financial Boulevard, Reno, NV 89520. Telephone: (775) 861–6586. E-mail: *jsimpson@nv.blm.gov*

SUPPLEMENTARY INFORMATION: The three 15-member Councils advise the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Nevada.

All meetings are open to the public. The public may present written comments to the Council. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, or reasonable accommodations, should contact Jo Simpson at (775) 861–6586.

Dated: July 16, 2003.

Robert V. Abbey,

BLM Nevada State Director.

[FR Doc. 03–18680 Filed 7–22–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of a Final Environment Impact Statement for the General Management Plan for Carl Sandburg Home National Historic Site, Flat Rock, NC

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service announces the availability of a Final Environmental Impact Statement and General Management Plan (FEIS/GMP) for Carl Sandburg Home National Historic Site, Flat Rock, North Carolina.

DATES: The Draft EIS/GMP was available for public review from October 15, 2002 through December 15, 2002. Responses to public comment are addressed in the FEIS/GMP. The National Park Service will execute a Record of Decision (ROD) no sooner than 30 days following publication by the Environmental Protection Agency of the notice of availability of the Final EIS.

ADDRESSES: Copies of the FEIS/GMP are available from the Superintendent, Carl Sandburg Home National Historic Site, 81 Carl Sandburg Lane, Flat Rock, North Carolina, 28731. Public reading copies of the FEIS/GMP will also be available for review at the following locations:

—Office of Superintendent, Carl Sandburg Home National Historic Site, 81 Carl Sandburg Lane, Flat Rock, North Carolina, 28731. Telephone: 828–693–4178.

—Division of Planning and Compliance, Southeast Regional Office, National Park Service, Attention: Tim Bemisderfer, 100 Alabama Street, 1924 Building, Atlanta, Georgia 30303. Telephone: 404–562–3124, ext. 693.

—An electronic copy of FEIS/GMP is available for download in .pdf format on the Internet at *http://www.nps.gov/carl/gmp news.htm.*

SUPPLEMENTARY INFORMATION: Consistent with the park's purpose, significance, and mission goals, the FEIS/GMP analyzes three action and one no action alternatives for guiding management of the park over the next 20 years. The environmental consequences anticipated from implementing the various alternatives are addressed in the document. Impact topics include cultural resources, natural resources, interpretation and museum operations, park operations and administration, and quality of life and the socioeconomic environment. The three action alternatives incorporate various management prescriptions to enhance resource protection and visitor experience conditions. The no-action alternative would continue current management practices into the future. The three action alternatives are described as follows:

The Sandburg Center alternative is the preferred alternative. Under this alternative, the park would serve as a focal point for learning about Carl Sandburg. Access to Sandburg related information, literature, and research would be enhanced by expanding the park's Internet database and creating secure and climate controlled exhibit areas for information and objects currently housed in the museum preservation facility. Additional interpretive program areas would be created by rehabilitating the interior of one or more historic structures near the main house or barn. The existing visitor contact station would be renovated to improve its interpretive and visitor services functions and a visitor center created outside the current authorized boundary of the park. The Sandburg Center alternative includes a Congressional legislated boundary expansion of 110 acres for scenic view and boundary protection and up to 5 acres for construction of a visitor center and new parking area.

The Paths of Discovery alternative would supplement the park's traditional high quality interpretive programs and enhance walking opportunities by constructing a ¾ mile long interpretive trail The alternative promotes a community-wide partnership strategy to address common needs such as additional parking and multi-purpose meeting space. The Paths of Discovery alternative includes a Congressionally legislated boundary expansion of 110 acres for scenic view and boundary protection and up to 5 acres for construction of a visitor center and new parking area.

In the Connemara Lifestyle alternative, visitors would experience the site much as Carl Sandburg knew it. Park management would focus on maintaining the site's historic landscape, structures, and furnishings and providing interpretive programs on site and at local schools. Primary access to the objects and information contained in the museum collection would occur at the main house, an expanded visitor contact station, and through the Internet or other mass media formats. Opportunities for access to objects and information would be greater than existing conditions but less than the Sandburg Center or Paths of Discovery alternatives. The Connemara Lifestyle alternative includes a Congressionally legislated boundary expansion of 25 acres for scenic view and boundary protection and up to 2 acres for construction of a new parking area.

In all action alternatives, the park would continue to provided guided tours of the Sandburg residence and maintain the historic landscape at a high level of integrity. Opportunities for walking would be available and closely managed to maintain the historic character of the site. The existing amphitheater would be relocated to a less intrusive location and the trailer restroom would be replaced by an appropriately designed modern facility at the same location. Any additional property interest would be acquired under a willing seller/willing buyer arrangement without the exercise of eminent domain.

FOR FURTHER INFORMATION CONTACT: Superintendent, Carl Sandburg Home National Historic Site, 81 Carl Sandburg Lane, Flat Rock, North Carolina, 28731, Telephone: 828–693–4178.

The responsible official for this Environmental Impact Statement is William W. Schenk, Regional Director, Southeast Region, National Park Service, 100 Alabama Street, SW., 1924 Building, Atlanta, Georgia 30303.

Dated: June 19, 2003.

W. Thomas Brown,

Acting Regional Director, Southeast Region.

[FR Doc. 03–18694 Filed 7–22–03; 8:45 am]

BILLING CODE 4310–SE–M

DEPARTMENT OF THE INTERIOR

National Park Service

Green Spring Unit, Colonial National Historical Park, Virginia

AGENCY: National Park Service, Department of the Interior.

ACTION: Availability of Final General Management Plan Amendment and Abbreviated Final Environmental Impact Statement for Green Spring Unit, Colonial National Historical Park.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service announces the availability of a Final General Management Plan Amendment and Abbreviated Final Environmental Impact Statement (Final GMPA/AEIS) for Green Spring Unit, Colonial National Historical Park, Virginia. The Final GMPA/AEIS proposes a long-term approach to managing Green Spring. Consistent with the park's mission, NPS policy, and other laws and regulations, three alternatives are presented to guide the management of the park over the next 15 to 20 years. The alternatives incorporate various zoning and management prescriptions to ensure resource preservation and public enjoyment of the park. The environmental consequences that are anticipated from implementing the various alternatives are evaluated in the report. Impact topics include cultural and natural resources, visitor experience, park operations, the socioeconomic environment, cumulative impacts and sustainability. Alternative C is the preferred alternative. After a 30-day no action period, a Record of Decision will be prepared. The Process is anticipated to be completed in August 2003.

DATES: The Draft GMPA/EIS was on public review from May 2 through July 11, 2001. Responses to public comment are addressed in the Final GMPA/AEIS. A 30-day no-action period will follow the Environmental Protection Agency's Notice of Availability of the Final GMPA/AEIS.

To Request Copies of the Document Contact: Superintendent, Colonial National Historical Park, Post Office Box 210, Yorktown, Virginia 23690, (757) 898–3400. Public reading copies of the Final GMPA/AEIS will be available for review at the following locations:

- Colonial National Historical Park, Park Headquarters, Yorktown Visitor Center, Yorktown, Virginia, Telephone: (757) 898–3400.
- Williamsburg Regional Library, 515 Scotland Street, Williamsburg, Virginia.
- James City County Library, 7770 Croaker Road, Williamsburg, Virginia.
- John D. Rockefeller, Jr. Library, 313 1st Street Williamsburg, Virginia.
- Office of Public Affairs, National Park Service, Department of Interior, 18th and C Streets NW, Washington, DC 20240,Telephone: (202) 208–6843.

FOR FURTHER INFORMATION CONTACT: Superintendent, Colonial National Historical Park, at the above address and telephone number.

Dated: July 1, 2003.

Alec Gould,

Superintendent, Colonial National Historical Park, National Park Service.

[FR Doc. 03–18701 Filed 7–22–03; 8:45 am]

BILLING CODE 4312–JM–P

DEPARTMENT OF THE INTERIOR

National Park Service

Record of Decision on the Final Environmental Impact Statement, Personal Watercraft Rule-Making, Glen Canyon National Recreation Area, Arizona and Utah

AGENCY: National Park Service (NPS), Department of the Interior.

ACTION: Notice of availability of the Record of Decision on the Final Environmental Impact Statement (FEIS), Personal Watercraft (PWC) Rule-Making, Glen Canyon National Recreation Area.

SUMMARY: On June 27, 2003, the Director, Intermountain Region, National Park Service, approved the Record of Decision on the Final Environmental Impact Statement, Personal Watercraft Rule-making for Glen Canyon National Recreation Area. As soon as practical the NPS will begin to implement the modified preferred alternative (Alternative B) contained in the FEIS issued May 23, 2003. Alternative B will allow PWC use in the recreation area under a special regulation with additional management restrictions. The following course of action will occur under the modified preferred alternative: PWC use will be prohibited in portions of the Colorado, Escalante, Dirty Devil, and San Juan Rivers to increase protection of environmental values and reduce visitor conflict; speed restrictions will be imposed on PWC on the Escalante River between Cow Canyon and the confluence of Coyote Creek to further reduce visitor conflict and improve visitor experience; after December 31, 2012, no one may operate a personal watercraft that does not meet the 2006 emission standards set by the EPA for the manufacturing of gasoline marine engines; educational programs and materials will be enhanced to provide more information to visitors on personal watercraft use and safety as well as recreation area resources; development of a monitoring program to evaluate the effects of PWC use on recreation area resources; and a comprehensive lake management plan will be developed that will consider the management of all lake uses. This alternative was identified as the environmentally preferred alternative in the FEIS. It was also determined to best accomplish the statutory mission of the NPS to provide long-term protection to the NPS units' resource and significance, while allowing for a spectrum of recreational uses. It was determined that implementation of the modified preferred alternative will not constitute an impairment of park resources and values. This course of action and two other alternatives were analyzed in the Draft and Final Environmental Impact Statements. The full range of foreseeable environmental consequences was assessed, and appropriate mitigating measures identified.

The full Record of Decision includes a statement of the decision made; synopsis of the alternatives considered, a description of the environmentally preferable alternative; the decision rationale used in selecting the alternative; a finding of no impairment of park resources and values; a description of mitigation measures and monitoring plans that will be implemented for the selected alternative; a statement that addresses how all practical means to avoid or minimize environmental harm from the selected alternative have been adopted; and a description of public involvement in the decision-making process.

Basis for the Decision

In reaching its decision to select the modified preferred alternative, the NPS considered the purposes for which Glen Canyon National Recreation Area was established, and other laws and policies that apply to federal lands, including the Organic Act, National Environmental Policy Act, and the NPS Management Policies 2001. The NPS also carefully considered public and agency comments received during the planning process.

FOR FURTHER INFORMATION CONTACT: Brian Wright, Glen Canyon National Recreation Area, (928) 608–6339.

Dated: June 27, 2003.

Michael D. Snyder,

Deputy Director, Intermountain Region, National Park Service.

[FR Doc. 03–18702 Filed 7–22–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of a Finding of No Significant Impact for the 2003 Telecommunications Facilities Environmental Assessment, Rock Creek Park, Washington, DC

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), Telecommunications Act of 1996, and the July 2002, Order of the U.S. District Court for the District of Columbia in *Audubon Naturalist Society of the Central Atlantic States, Inc. et al.* v. *National Park Service* (NPS) and *Bell Atlantic Mobile, Inc.*, the National Park Service prepared and made available for a 36-day public review an Environmental Assessment (EA) evaluating the potential impacts to the human and natural environment from two existing cellular communications towers located within Rock Creek Park, Washington, DC.

After the end of the 36-day public review period, the NPS selected for implementation, the preferred alternative as described in the EA, and determined that implementation of the preferred alternative will not have a significant impact on the quality of the human environment and that an environmental impact statement is not required. In making that selection and determination, the NPS considered the information and analysis contained in the EA and the comments received during the public review period. The NPS has prepared a Finding of No Significant Impact (FONSI) for the project. The NPS' decision was filed with the court pursuant to a June 20, 2003 court deadline.

The selected alternative allows the continued operation of the two wireless telecommunications facilities as presently located, with the NPS developing a park-wide telecommunications plan and a monitoring program for migratory birds.

SUPPLEMENTARY INFORMATION: Copies of the FONSI are available at *http://www.nps.gov/rocr* and the following public libraries: Martin Luther King Memorial Library, 901 G Street NW., Washington, DC 20001; Chevy Chase Library, 5625 Connecticut Avenue NW., Washington, DC 20015; Cleveland Park Library, 3310 Connecticut Avenue NW., Washington, DC 20008; Georgetown Library, 3260 R Street NW., Washington, DC 20007; Juanita Thorton Shepard Park Branch Library, 7420 Georgia Avenue NW., Washington, DC 20012; Langston Community Library, 2600 Bennet Road NE., Washington, DC 20019; Mt. Pleasant Library, 1600 Lamont Street NW., Washington, DC 20010; Northeast Branch Library, 330 7th Street NE., Washington, DC 20002; Petworth Branch Library, 4200 Kansas Avenue NW., Washington, DC 20011; Tenly-Friendship Branch Library, 4450 Wisconsin Avenue NW., Washington, DC 20016; Watha T. Daniel Library, 1701 8th Street NW., Washington, DC 20001; Woodbridge Library, 1801 Hamlin Street NE., Washington, DC 20018; Library of Congress, 101 Independence Avenue SE., Washington, DC 20540; Palisades, 4901 V Street NW., Washington, DC 20007; Sursum Corda Community Library, 135 New York Avenue NW., Washington, DC 20001. You may also request a hard copy at (202) 895–6000.

FOR FURTHER INFORMATION CONTACT: Adrienne Coleman, Superintendent, Rock Creek Park, at 3545 Williamsburg Lane NW., Washington, DC 20008–1207, or by telephone at (202) 895–6004.

Dated: June 20, 2003.

Terry R. Carlstrom,

Regional Director, National Capital Region.

[FR Doc. 03–18698 Filed 7–22–03; 8:45 am]

BILLING CODE 4310–71–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of a Final Environmental Impact Statement for Schuylkill River Valley National Heritage, Management Plan Update

AGENCY: National Park Service, Department of Interior.

ACTION: Availability of the final environmental impact statement for the Schuylkill River Valley National Heritage Area Management Plan Update.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service announces the availability of a Final Environmental Impact Statement (FEIS) for Schuylkill River Valley National Heritage Area Management Plan Update. The Schuylkill River Valley National Heritage Area Act of 2000 required the Schuylkill River Greenway Association, with guidance from the National Park Service, to prepare an update of their 1995 Schuylkill Heritage Corridor Management Action Plan. The Management Plan Update includes: (A) Actions to be undertaken by units of government and private organizations to protect the resources of the Heritage Area; (B) an inventory of the resources contained in the Heritage Area, including a list of any property in the Heritage Area that is related to the themes of the Heritage Area and that should be preserved, restored, managed, developed, or maintained because of its natural, cultural, historical, recreational, or scenic significance; (C) a recommendation of policies for resource management that considers and details application of appropriate land and water management techniques, including the development of intergovernmental cooperative agreements to protect the historical, cultural, recreational, and natural resources of the Heritage Area in a manner consistent with supporting appropriate and compatible economic viability; (D) a program for implementation of the management plan by the management entity, (E) an analysis of ways in which local, State, and Federal programs are to be coordinated to promote the purposes of this title, and (F) an interpretation plan for the Heritage Area.

The study area, designated as the Schuylkill River Valley National Heritage, includes parts of the counties of: Schuylkill, Berks, Chester, Montgomery and Philadelphia in southeastern Pennsylvania as associated with the Schuylkill River watershed.

The National Park Service (NPS) maintains two park sites within the region: Valley Forge National Historical Park and the Hopewell Furnace National Historic site. Otherwise the majority of land is non-federal and the NPS assumes a management role only within their park units. Instead, conservation, interpretation and other activities are managed by partnerships among federal, state, and local governments and private nonprofit organizations. The Schuylkill River Greenway Association manages the national heritage area. The National Park Service has been authorized by Congress to provide technical and financial assistance for a limited period (up to 10 years from the time of the designation in 2000).

DATES: The FEIS will remain on Public Review for thirty days from the publication of the notice in the **Federal Register** by the Environmental Protection Agency.

FOR FURTHER INFORMATION CONTACT: Peter Samuel, Project Leader, Northeast Region, National Park Service, US Custom House, 200 Chestnut Street, Philadelphia, PA 19106. *peter_samuel@nps.gov*, 215–597–1848.

If you correspond using the internet, please include your name and return address in your e-mail message. Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: June 19, 2003.

Marie Rust,

Regional Director, Northeast Region.

[FR Doc. 03–18696 Filed 7–22–03; 8:45 am]

BILLING CODE 4310–25–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare an Environmental Impact Statement for the White-Tailed Deer Management Plan, Indiana Dunes National Lakeshore, IN

AGENCY: National Park Service, Department of the Interior.

SUMMARY: Under the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the National Park Service (NPS) is preparing an environmental impact statement for the White-tailed Deer Management Plan for Indiana Dunes National Lakeshore (Lakeshore). A deer management plan is needed to ensure the local deer population does not become a dominant force within the Lakeshore that negatively influences ecosystem components such as sensitive vegetation or other wildlife.

DATES: The NPS will accept comments from the public for 60 days from the date this notice is published in the **Federal Register**. In addition, the NPS intends to conduct public scoping open houses at the Lakeshore. Please check local newspapers, the Lakeshore's Web site *http://www.nps.gov/indu* or contact the name listed below to find out when and where these open houses will be held.

ADDRESSES: Information will be available for public review and comment at the Lakeshore headquarters located at 1100 North Mineral Springs Road, Porter, Indiana, and the Dorothy

Buell Memorial Visitor Center, U.S. 12 and Kemil Road, Beverly Shores, Indiana.

FOR FURTHER INFORMATION CONTACT: The Resource Management Program Assistant, Indiana Dunes National Lakeshore, 219–926–7561, extension 332.

SUPPLEMENTARY INFORMATION: Within eastern national parks such as Indiana Dunes National Lakeshore, landscapes have been managed to allow for preservation and rehabilitation of scenic, scientific, and historic lands. The result is a mixture of forest, shrub, and grassland, which constitute excellent habitat for white-tailed deer. Since deer management has not been part of management policies in the majority of parks, the population of deer has greatly increased. Impacts to significant park resources by the deer population could compromise the park's purpose as mandated by Congress in 1966, which was to preserve the exceptional biological diversity found within its boundaries. The objectives of this planning effort include determining a science-based and supportable vegetation and wildlife impact level and corresponding density of deep populations to assist in potential future management actions. The plan would develop and implement an adaptive management approach for maintaining a healthy deer population. Finally, the plan would prevent impacts from deer browsing to sensitive, threatened or endangered plant and animal species. Preliminary alternatives to meet these objectives include fencing, repellents, reproductive control, direct reduction, and a combination of these management strategies. A no action alternative will also be analyzed.

A scoping brochure has been prepared that details the issues identified to date, and possible alternatives to be considered. Copies of that information may be obtained from the Resource Management Program Assistant, Indiana Dunes National Lakeshore, 1100 North Mineral Springs Road, Porter, Indiana 46304, telephone 219–926–7561, extension 332, or the Lakeshore's Web site *(http://www.nps.gov/indu)*.

If you wish to comment on the scoping brochure or on any other issues associated with the plan, you may submit your comments by any one of several methods. You may mail comments to Resource Management, Indiana Dunes National Lakeshore, at the address given above. You may also e-mail comments to *indu_forum@nps.gov*. Please submit Internet comments as a text file avoiding the use of special characters and any form of encryption. Please put in the subject line "Deer Management" and include your name and return address in your message. If you do not receive a confirmation from the system that we have received your message, contact us directly at Resource Management 219–926–7561, extension 332. Finally, you may hand-deliver comments to the Dorothy Buell Memorial Visitor Center, U.S. 12 and Kemil Road, Beverly Shores, Indiana.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: June 24, 2003.

Ernest Quintana,

Acting Regional Director, Midwest Region.

[FR Doc. 03–18697 Filed 7–22–03; 8:45 am]

BILLING CODE 4310–25–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Environmental Impact Statement, Padre Island National Seashore, Texas

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement for the General Management Plan, Padre Island National Seashore.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332 (C), the National Park Service is preparing an Environmental Impact Statement for the General Management Plan for Padre Island National Seashore. The effort will result in a comprehensive General Management Plan that encompasses preservation of natural and cultural resources, visitor use and interpretation, roads, and facilities. The plan will guide the protection and preservation of the natural and cultural environments considering a variety of interpretive and recreational visitor experiences that enhance the enjoyment and understanding of the park resources. In cooperation with local and national interests, attention will also be given to resources outside the boundaries that affect the integrity of park resources. Alternatives to be considered include a no-action and alternatives addressing the following:

To clearly describe specific resource conditions and visitor experiences in various management units throughout the park and,

To identify the kinds of management, use, and development that will be appropriate to achieving and maintaining those conditions.

Major issues include sea turtles, southern access from a ferry proposal from Port Mansfield, trash along the shoreline, dredge material disposal, illegal activities routes to smugglers, terrorists, and illegal immigrants, illegal off-road vehicles, poaching, metal detecting, and illegal commercial fishing), beach/shoreline management, boundaries, and partnership opportunities with other agencies (state and federal). A scoping brochure has been prepared outlining the issues identified to date and will be available in July 2003. Electronic copies of the newsletter will be available on the NPS Planning Web site for the plan in the What's New Section: *http://planning.nps.gov/parkweb/default.cfm?RecordID=143* or from, Jock Whitworth, Superintendent, Padre Island National Seashore, 20301 Park Road 22, Corpus Christi, Texas 78418. Public workshop information will be announced on the Web site in late August. Comments on this notice must be received by September 15, 2003.

DATES: The Park Service will accept comments from the public through September 22, 2003.

ADDRESSES: Information will be available for public review and comment in the office of the Superintendent, Padre Island National Seashore, 20301 Park Road 22, Corpus Christi, Texas 78418, (361) 949–8173.

FOR FURTHER INFORMATION CONTACT: Jock Whitworth, Superintendent, Padre Island National Seashore, (361) 949–8173.

SUPPLEMENTARY INFORMATION: If you wish to comment on the scoping brochure or on any other issues associated with the plan, you may submit your comments by any one of several methods. You may mail comments to Padre Island National Seashore, P.O. 181300, Corpus Christi, Texas 78480–1300. You may also comment via the Internet on the Your Input Section of the Web site at: *http://planning.nps.gov/parkweb/default.cfm?RecordID=143*

Please submit all comments at the address above by cutting and pasting the comments into the comment form provided on the Your Input Section of our website. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (361) 949–8173. Finally, you may hand-deliver comments to Padre Island National Seashore, 20301 Park Road 22, Corpus Christi, Texas 78418. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: May 16, 2003.

Michael D. Snyder,

Deputy Regional Director, Intermountain Region, National Park Service.

[FR Doc. 03–18700 Filed 7–22–03; 8:45 am]

BILLING CODE 4312–CD–P

DEPARTMENT OF THE INTERIOR

National Park Service

Acadia National Park; Bar Harbor, ME; Acadia National Park Advisory Commission; Notice of meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1, Sec. 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, September 8, 2003.

The Commission was established pursuant to Public Law 99–420, Sec. 103. The purpose of the commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the park, including but not limited to the acquisition of lands and interests in lands (including conservation easements of islands) and termination of rights of use and occupancy.

The meeting will convene at park Headquarters, McFarland Hill, Bar Harbor, Maine, at 1 p.m. to consider the following agenda:

1. Review and approval of minutes from the meeting held June 2, 2003
2. Committee reports:
   —Land Conservation
   —Park Use
   —Science
3. Old business
4. Superintendent's report
5. Public comments
6. Proposed agenda for next Commission meeting, February 2, 2004

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609; tel: (207) 288–3338.

Dated: June 25, 2003.

Len Bobinchock,

Acting Superintendent, Acadia National Park.

[FR Doc. 03–18706 Filed 7–22–03; 8:45 am]

BILLING CODE 4510–2N–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Park System Advisory Board; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix, that the National Park System Advisory Board will conduct a public meeting by teleconference on August 12, 2003, from 4 p.m. to 5 p.m. eastern standard time, inclusive. Members of the public may attend the meeting in person in Washington, DC, at the Jurys Washington Hotel, Burlington Ballroom A, 1500 New Hampshire Avenue, NW., Washington, DC 20036. During this teleconference, the National Park System Advisory Board will receive and discuss the report of its National Parks Science Committee concerning an evaluation of the National Park Service Natural Resource Challenge Program. The Board will make recommendations to the Director of the National Park Service concerning the future direction of science in the National Park Service. Anyone who wishes a copy of the committee report may contact Shirley Sears Smith, Office of Policy and Regulations, National Park Service, at 202–208–7456.

Opportunities for oral comment will be limited to no more than 3 minutes per speaker and no more than 15 minutes total. The Board's chairman will determine how time for oral comments will be allocated. Anyone who wishes further information concerning the meeting, or who wishes to submit a written statement, may contact Mr. Loran Fraser (202–208–7456), Office of Policy and Regulations, National Park Service, 1849 C Street, NW., Washington, DC 20240.

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting, in room 7250, Main Interior Building, 1849 C Street, NW., Washington, DC.

Dated: July 15, 2003.

Loran Fraser,

Chief, Office of Policy and Regulations, National Park Service.

[FR Doc. 03–18707 Filed 7–22–03; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 5, 2003. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by August 7, 2003.

Patrick W. Andrus,

Acting Keeper of the National Register of Historic Places.

COLORADO

Chaffee County

Morley Bridge, (Highway Bridges in Colorado MPS), Chaffee Cty Rd. 297 at milepost 2.40, Romley, 03000744

IOWA

Clinton County

Sharon Methodist Episcopal Church, 1223 125th St., Lost Nation, 03000745

MASSACHUSETTS

Essex County

Breakheart Reservation Parkways—Metropolitan Park System of Greater Boston (Metropolitan Park System of Greater Boston MPS), Forest St., Pine Tops, Elm and Hemlock Rds., Saugus, 03000748
Nahant Beach Boulevard—Metropolitan Park System of Greater Boston (Metropolitan Park System of Greater Boston MPS), Nahant Beach Blvd., Lynn, 03000747

Norfolk County

Blue Hills Reservation Parkways—Metropolitan Park System of Greater Boston (Metropolitan Park System of Greater Boston MPS), Parts of Blue Hill Rd., Chickatawbut Rd., Hillside St., Uniquity Rd., Wampatuck Rd., and Green St., Braintree, 03000746

NEVADA

Lander County

Austin Cemetery, N and S sides of U.S. 50 near jct. with NV 305, Austin, 03000753
Austin City Hall, 90 South St., Austin, 03000754
Austin Masonic and Odd Fellows Hall, 105 Main St., Austin, 03000756
Austin Methodist Church, 135 Court St., Austin, 03000751
Gridley Store, 247 Water St., Austin, 03000752
Nevada Central Turntable, Off Austin Roping Arena Rd., S side of U.S. 50, Austin, 03000759
St. Augustine's Catholic Church, 113 Virginia St., Austin, 03000758
St. George's Episcopal Church, 156 Main St., Austin, 03000755
Stokes Castle, Castle, U.S. 50 W of Austin, Austin, 03000757

Washoe County

Upson, Pearl, House, 937 Jones St., Reno, 03000749

OHIO

Franklin County

Rush Creek Village Historic District, Residential subdivision centered along East South St., E of Morning St., Worthington, 03000760

SOUTH DAKOTA

Beadle County

Anderson Barn, 19411 394th St., Hitchcock, 03000763

Brookings County

Cobel, Ivan, House, 727 Main Ave., Brookings, 03000762

Clay County

Wakonda State Bank, 118 Ohio St., Wakonda, 03000765

Fall River County

St. Martin's Catholic Church and Grotto, (Federal Relief Construction in South Dakota MPS), Lot Six Block 5, Oelrichs, 03000764

Hutchinson County

Kost Farm Barn, 42247 280th St., Olivet, 03000766

Minnehaha County

Slip Up Creek Homestead, 25359 478th Ave., Garretson, 03000761

Pennington County

Madison Ranch, 8800 Nemo Rd., Rapid City, 03000767

TEXAS

Austin County

Lander County Courthouse, 122 Main St., Austin, 03000750

Gonzales County

Houston, William Buckner and Sue, House, 621 E. St. George St., Gonzales, 03000769

Guadalupe County

Seguin Commercial Historic District (Boundary Increase), Roughly bounded by Myrtle St., Camp St., Washington St. and Crockett St., Seguin, 03000768

Nolan County

Newman, I.M. and Margaret, House, 309 Ragland St., Sweetwater, 03000771

Winkler County

Rig Theater, 213–215 E. Hendricks Blvd., Wink, 03000770

UTAH

Sanpete County

Nielson, John R., Cabin, Manti Canyon, Manti, 03000772

[FR Doc. 03–18678 Filed 7–22–03; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 12, 2003. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by August 7, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ARKANSAS

Union County

El Dorado Commercial Historic District, Courthouse Square, portions of Main, Jefferson, Washington, Jackson, Cedar and Locust Sts., El Dorado, 03000773

CALIFORNIA

Los Angeles County

Andalusia, 1471–1475 Havenhurst Dr., Los Angeles, 03000775
Neutra, Richard and Dion, VDL Research House II, 2300 Silver Lake Blvd., Los Angeles, 03000774

COLORADO

Denver County

McPhee and McGinnity Paint Factory, 2519 Walnut St., Denver, 03000776

San Miguel County

Rio Grande Southern Railroad Trout Lake Water Tank, along North Trout Lake Rd., Ophir, 03000777

DISTRICT OF COLUMBIA

District of Columbia

Arden, Elizabeth, Building, 1147 Connecticut Ave., Washington, 03000778
Springland Springhouse—Springland (Boundary Increase), 3517 Springland Ln, NW., Washington, 03000779

ILLINOIS

Cook County

Armour Square (Chicago Park District MPS), Bounded by W 33rd St., W 34th Place, S. Wells Ave. and S. Shields Ave., Chicago, 03000789
Calumet Park (Chicago Park District MPS), 9801 South Avenue G, Chicago, 03000788
Davis Square (Chicago Park District MPS), Roughlu bounded by W. 44th St., W, 45th St., S. Marshfield Ave. and S. Hemitage Ave., Chicago, 03000787
Palmolive Building, 919 N. Michigan Ave., Chicago, 03000784
Reid House, 2013 S. Prairie Ave., Chicago, 03000783
Washington Square Historic District (Land Subdivisions with Set-Aside Parks, Chicago, IL MPS), Washington Square, N. Dearborn St., from W. Walton St. to W. Chicago Ave., Chicago, 03000786

Lake County

Holy Family Church, 1840 Lincoln St., North Chicago, 03000780
Snite, John Taylor, House (Highland Park MRA), 225 N. Deere Park Ave. E, Highland Park, 03000790

Rock Island County

Sala Apartment Building, 320–330 Nineteenth St., Rock Island, 03000782

MASSACHUSETTS

Middlesex County

Bedford Depot, 80 Loomis St. and 120 South Rd., Bedford, 03000791
Wilson Mill—Old Burlington Road District, Old Burlington Rd. and Wilson Rd., Bedford, 03000792

Suffolk County

Publicity Building, 40–44 Bromfield St., Boston, 03000781

MISSOURI

Cole County

East End Drugs, 630 E. High St., Jefferson City, 03000794

Dent County

Nova Scotia Ironworks Historic District, Mark Twain National Forest, Salem, 03000793

NEBRASKA

Adams County

Central Hastings Historic District, Roughly 7th to 12th; Colorado Ave to Bellevue Ave., Hastings, 03000795

Lancaster County

Nebraska State Historical Society Building, 1500 R St., Lincoln, 03000797

Saunders County

Kirchman, F.J., House, 957 Beech St., Wahoo, 03000796

NEW MEXICO

De Baca County

Fort Sumner Community House (New Mexico Federation of Women's Club Buildings in New Mexico MPS), Jct. of U.S. 84 and Baker Ave., Fort Sumner, 03000798

NORTH CAROLINA

Buncombe County

Biltmore Hardware Building (Biltmore Village MRA), 28–32 Hendersonville Rd., Asheville, 03000800

Chatham County

Brewer, Sheriff Stephen Wiley, Farmstead (Pittsboro MRA), 365 Thompson St., Pittsboro, 03000801

Craven County

Cedar Street Recreation Center, 822 Cedar St., New Bern, 03000802

Cumberland County

Brownlea, 405 Southampton Court, Fayetteville, 03000803

Durham County

Venable Tobacco Company Prizery and Receiving Room, (Durham MRA), 302–04 East Pettigrew, Durham, 03000804

Yancey County

Yancey Collegiate Institute Historic District, School Dr. and Green Mountain Dr., Burnsville, 03000799

OHIO

Allen County

Lima Pennsylvania Railroad Passenger Depot, 424 N. Central Ave., Lima, 03000805

Hamilton County

Freund—Heintz House, 3332 Whitfield Ave., Cincinnati, 03000806

TEXAS

McLennan County

Texas Textile Mills—L.L. Sams Company Historic District, 2100 River St., Waco, 03000807

Nacogdoches County

Durst—Taylor House, 304 North St., Nacogdoches, 03000808

WASHINGTON

Garfield County

Downtown Pomeroy Historic District, Roughly bounded by Main St., Tenth and Ninth Sts., Columbia St., and Sixth St., Pomeroy, 03000811

Spokane County

Barnett, Alonzo and Louise, House, 902 E. Augusta Ave., Spokane, 03000809

Whitman County

U.S. Post Office—Pullman, (Historic U.S. Post Offices in Washington MPS), SE 245 Paradise St., Pullman, 03000810

[FR Doc. 03–18679 Filed 7–22–03; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA. The human remains and associated funerary objects were removed from Clark County, NV.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

An assessment of the human remains, and catalog records and associated documents relevant to the human remains, was made by Phoebe A. Hearst Museum of Anthropology professional staff in consultation with representatives of the Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Paiute Indian Tribe of Utah; San Juan Southern Paiute Tribe of Arizona; and Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho.

In 1928, human remains representing at least two individuals were removed from a cave located "eight miles from Glendale in the direction of Moapa" in Clark County, NV, by L.F. Herrick, who donated the human remains to the Phoebe A. Hearst Museum of Anthropology in the same year. No known individuals were identified. The one associated funerary object is a woven magenta wool cloth fragment.

The circumstances of burial of the human remains in a cave identify the human remains as Native American. The presence of an associated funerary object of Euroamerican origin, the wool cloth fragment, dates the burials to post-European contact. Historical records and consultation evidence indicate that this area was inhabited by Paiute culture groups at the time of European contact. The current descendants of these groups are the Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Paiute Indian Tribe of Utah; San Juan Southern Paiute Tribe of Arizona; and Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho.

Officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of at least two individuals of Native American ancestry. Officials of the Phoebe A. Hearst Museum of Anthropology also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the one object described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native

American human remains and the associated funerary object and the Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Paiute Indian Tribe of Utah; San Juan Southern Paiute Tribe of Arizona; and Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and the associated funerary object should contact C. Richard Hitchcock, NAGPRA Coordinator, Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA 94720, telephone (510) 642-6096, before August 22, 2003. Repatriation of the human remains and the associated funerary object to the Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Paiute Indian Tribe of Utah; San Juan Southern Paiute Tribe of Arizona; and Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho may proceed after that date if no additional claimants come forward.

The Phoebe A. Hearst Museum of Anthropology is responsible for notifying the Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada; Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada; Paiute Indian Tribe of Utah; San Juan Southern Paiute Tribe of Arizona; and Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho that this notice has been published.

Dated: June 12, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–18703 Filed 7–22–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Springfield Science Museum, Springfield, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Springfield Science Museum, Springfield, MA. The human remains were removed from an unknown site in North McGregor, Clayton County, IA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Springfield Science Museum professional staff in consultation with representatives of the Flandreau Santee Sioux Tribe of South Dakota; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Lower Sioux Indian Community in the State of Minnesota; Prairie Island Indian Community in the State of Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Santee Sioux Tribe of the Santee Reservation of Nebraska; Spirit Lake Tribe, North Dakota; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; and Yankton Sioux Tribe of South Dakota.

In 1860, a human cranium representing one individual was removed from an unknown site in North McGregor, IA, near the Mississippi River by Mr. H. Davis. In 1862, Mr. Davis donated the human remains to the Springfield Science Museum. No known individual was identified. No associated funerary objects are present. The physical anthropological characteristics indicate that the individual is Native American.

Based on the geographical location of North McGregor, IA, within the area recognized by the Indian Claims Commission as aboriginal land of the Sac & Fox Nation, the human remains are likely affiliated with the Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; and Sac & Fox Tribe of the Mississippi in Iowa. The land recognized by the Indian Claims Commission is included in the terms of the Treaty of September 21, 1832 (7 Stat., 374) between the Sauk and Fox and the United States, a cession required of the Sauk and Fox as indemnity for the expenses of the Black Hawk War.

Officials of the Springfield Science Museum have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Springfield Science Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can reasonably be traced between the Native American human remains and the Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; and Sac & Fox Tribe of the Mississippi in Iowa.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact David Stier, Director, Springfield Science Museum, 220 State Street, Springfield, MA 01103, telephone (413) 263-6800, extension 321, before August 22, 2003. Repatriation of the human remains to the Sac & Fox Tribe of the Mississippi in Iowa, acting on behalf of the Sac & Fox Nation of Missouri in Kansas and Nebraska and Sac & Fox Nation, Oklahoma may proceed after that date if no additional claimants come forward.

The Springfield Science Museum is responsible for notifying the Flandreau Santee Sioux Tribe of South Dakota; Ho-Chunk Nation of Wisconsin; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Lower Sioux Indian Community in the State of Minnesota; Prairie Island Indian Community in the State of Minnesota; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Santee Sioux Tribe of the Santee Reservation of Nebraska; Spirit Lake Tribe, North Dakota; Upper Sioux Community, Minnesota; Winnebago Tribe of Nebraska; and Yankton Sioux Tribe of South Dakota that this notice has been published.

Dated: May 28, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–18704 Filed 7–22–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Draft Director's Order Concerning National Park Service Policies and Procedures Governing Civic Engagement and Public Involvement

AGENCY: National Park Service, Interior.

ACTION: Availability of draft Director's Order.

SUMMARY: The NPS is inviting comment for a 30-day period on draft Director's Order #75A: Civic Engagement and Public Involvement. The document emphasizes the National Park Service (NPS) policy of welcoming the public to use the parks in appropriate, sustainable ways, and engaging the public in the work of the bureau with effective public involvement techniques. When adopted, the policies and procedures will apply to all park units and programs administered by the NPS.

DATES: Written comments will be accepted until August 22, 2003.

ADDRESSES: Submit comments to Marcia Keener, United States Department of Interior, National Park Service Office of Policy (Org. Code 0004), Room 7252, 1849 C Street, NW., Washington, DC 20240. Or, telefax to 202–219–8835; or send via electronic mail to *waso_opr@nps.gov.*

SUPPLEMENTARY INFORMATION: The NPS has long provided opportunities for public involvement through its planning, historic preservation, and environmental compliance procedures. Additional requirements and expectations for outreach and consultation are presently included in the 2001 edition of "Management Policies," and in a number of active Director's Orders. A distinct benefit of this draft Director's Order #75A is that civic engagement and public involvement expectations and guidance are now packaged into a single document. More detailed information on methods and techniques will follow in the form of a Sourcebook, which is now being developed. The draft Director's Order covers topics such as the importance of two-way communication and the need for creative public involvement efforts by NPS personnel so that the public will have a fuller voice in the work of the NPS. The draft Director's Order may be viewed on the Internet at *http://www.nps.gov/policy/DOrders/75A.htm.* Written copies may also be requested by contacting Marcia Keener at the address given above.

Civic Engagement and Public Involvement comports with the Secretary of the Interior's "Four Cs" principle of Consultation, Cooperation, and Communication, all in the service of Conservation. Another influence is a recent document that is currently being discussed and implemented within the NPS, the National Park System Advisory Board's report: "Rethinking the National parks for the 21st Century." The report can be found on the Internet at *http://www.nps.gov/policy/futurereport.htm.* The report has much to say about increasing the level of public participation and involvement with the National Park System. In part, the report states that:

> Too often the Park Service has been hesitant to engage outside talent, preferring to look inward for ideas and solutions to problems. This must change. Park staff can no longer be insular, but must work closely with private landowners, local community groups, local governments, and other federal agencies. Cooperation with neighbors is vital to conserve park resources. At a time of public cynicism about many matters on the national scene, opinion surveys indicate that the Park Service enjoys one of the highest public approval ratings of all government agencies. From the beginning the Park Service has sought to be people-friendly. The public looks upon national parks almost as a metaphor for America itself. To encourage ecological stewardship outside the parks, the Service should cooperate extensively with its neighbors-federal agencies, states, counties, cities, tribes, the private sector, even other countries.

Individual respondents may request that we withhold their name and/or address from the record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment.

FOR FURTHER INFORMATION CONTACT: Marcia Keener, Program Analyst, 202–208–7456.

Dated: July 17, 2003.

Loran Fraser,

Chief, Office of Policy and Regulations.

[FR Doc. 03–18695 Filed 7–22–03; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Draft Director's Order Concerning National Park Service Policies and Procedures Governing its Environmental Management Systems

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) is proposing to adopt a Director's Order setting forth the policies and procedures under which NPS facilities will develop and implement Environmental Management Systems (EMS). This is necessary because Executive Order 13148 requires that an EMS be implemented at all appropriate Federal facilities by December 31, 2005. The Director's Order will help ensure that all necessary actions are taken to integrate environmental accountability into day-to-day decision-making and long-term planning processes, and across all NPS activities and functions.

DATES: Written comments will be accepted until August 22, 2003.

ADDRESSES: Draft Director's Order #13A is available on the Internet at http://www.nps.gov/policy. Requests for copies of, and written comments on, the Director's Order should be sent to Carl Wang, NPS Environmental Management Program Manager, Park Facility Management Division, 1849 C Street, NW., Washington DC 20240, or to his Internet address: *carl_wang@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Carl Wang at 202/513–7033.

SUPPLEMENTARY INFORMATION: The NPS is updating its current system of internal written instructions. When these documents contain new policy or procedural requirements that may affect parties outside the NPS, they are first made available for public review and comment before being adopted. The draft Director's Order covers topics such as the principles of an EMS; NPS EMS policy; and elements of an EMS (*e.g.*, a commitment statement, goals and targets, recordkeeping, communication, training, monitoring, measurement, corrective action, management review, and roles and responsibilities). Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment.

Dated: April 30, 2003.

Dale J. Wilking,

Chief, Park Facility Management Division.

[FR Doc. 03–18699 Filed 7–22–03; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Interchangeable Virtual Instruments Foundation, Inc.

Notice is hereby given that, on June 30, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Interchangeable Virtual Instruments Foundation, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ICS Electronics, Pleasanton, CA; and GCSD Division of Harris Corp., Melbourne, FL have been added as parties to this venture. Also, Solectron, Milpitas, CA; and Nokia Mobile Phones Inc., San Diego, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Interchangeable Virtual Instruments Foundation, Inc. intends to file additional written notification disclosing all changes in membership.

On May 29, 2001, Interchangeable Virtual Instruments Foundation, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 30, 2001 (66 FR 39336).

The last notification was filed with the Department on April 8, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 7, 2003 (68 FR 24502).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–18714 Filed 7–22–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI Systems Alliance, Inc.

Notice is hereby given that, on June 30, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. § 4301 *et seq.* ("the Act"), PXT Systems Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Aeroflex, Inc., Wichita, KS; Nextronics, Taipei Hsien, Taiwan; Huntron, Inc., Mill Creek, WA; SMA Regelsysteme GmbH, Niestetal, Germany; and Acculogic, Inc., Markham, Ontario, Canada have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PXI Systems Alliance, Inc. intends to file additional written notification disclosing all changes in membership.

On November 22, 2000, PXI Systems Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 8, 2001 (66 FR 13971).

The last notification was filed with the Department on April 8, 2003. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 7, 2003 (68 FR 24502).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–18713 Filed 7–22–03; 8:45 am]

BILLING CODE 4410–71–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 03–082]

Return to Flight Task Group; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Return to Flight Task Group (RTFTG).

DATES: Thursday, August 7, 2003, 11:30 a.m. to 2 p.m.

ADDRESSES: John F. Kennedy Space Center, Visitors Complex, Debus Center, Highway 405, Kennedy Space Center, FL 32899, (321)–867–2468.

FOR FURTHER INFORMATION CONTACT: Mr. David M. Lengyel, Executive Secretary, National Aeronautics and Space Administration, Houston, TX 77058, (281) 283–7581.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Return to Flight Task Group is co-chaired by Lieutenant General Thomas Stafford, USAF, (Retired) and Mr. Richard O. Covey, using expertise from the Stafford IOR Advisory Expert Council—Task Force, personnel from the aerospace industry, federal government, academia, and the military. The Task Group will periodically report their assessments to the agency, and deliver a written report to the NASA Administrator one month before the return to flight of the Space Shuttle launch (STS–114). The agenda for the meeting is as follows:

—Task Group Charter/Panel Charters.

—Report Writing (Interim and Final Report Discussion).

—Draft Johnson Space Center Agenda.

Prior to the public meeting, the members of the Task Group will be receiving briefings concerning administrative matters, such as Federal Advisory Committee Act, Government personnel, travel and ethics issues, background briefings relative to their tasks and a tour of relevant facilities at the John F. Kennedy Space Center. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–18758 Filed 7–22–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On June 9, 2003, the National Science Foundation published a notice in the **Federal Register** of a permit application received. A permit was issued on July 16, 2003 to:

Peter Doran Permit No. 2004–004

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 03–18753 Filed 7–22–03; 8:45 am]

BILLING CODE 7555–01–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Voluntary Customer Surveys in Accordance with Executive Order 12862, OMB 3220–0192. In accordance with Executive Order 12862, the Railroad Retirement Board (RRB) conducts a number of customer surveys designed to determine the kinds and quality of services our beneficiaries, claimants, employers and members of the public want and expect, as well as their satisfaction with existing RRB services. The information collected is used by RRB management to monitor customer satisfaction by determining to what extent services are satisfactory and where and to what extent services can be improved. The surveys are limited to data collections that solicit strictly voluntary opinions, and do not collect information which is required or regulated.

The information collection, which was first approved by the Office of Management and Budget (OMB) in 1997, provides the RRB with a generic clearance authority. This generic authority allows the RRB to submit a variety of new or revised customer survey instruments (needed to timely implement customer monitoring activities) to the OMB for expedited review and approval.

The average burden per response for customer satisfaction activities is estimated to range from 2 minutes for a Web site questionnaire to 2 hours for participation in a focus group. The RRB estimates an annual burden of 2,050 annual respondents totaling 727 hours for the generic customer survey clearance.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–18686 Filed 7–22–03; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Statement of Claimant or Other Person.

(2) *Form(s) submitted:* G–93.

(3) *OMB Number:* 3220–0183.

(4) *Expiration date of current OMB clearance:*

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households, business or other for-profit.

(7) *Estimated annual number of respondents:* 900.

(8) *Total annual responses:* 900.

(9) *Total annual reporting hours:* 225.

(10) *Collection description:* Under Section 2 of the Railroad Retirement Act and the Railroad Unemployment Insurance Act, pertinent information and proofs must be submitted by an applicant so that the Railroad Retirement Board can determine his or her entitlement to benefits. The collection obtains information supplementing or changing information previously provided by an applicant.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363).

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–18687 Filed 7–22–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48187; File No. SR–NASD–2003–106]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendments to Pilot Rule in IM–10100(f) and (g) of the Code of Arbitration Procedure To Require Industry Parties in Arbitration To Waive Application of Contested California Arbitrator Disclosure Standards upon the Request of Customers or Associated Persons

July 16, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 8, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Dispute Resolution. NASD has designated the proposed rule change as constituting a "non-controversial" rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

19b–4(f)(6) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD proposes to amend the pilot rule in IM–10100(f) and (g) of the NASD Code of Arbitration Procedure to expand and clarify the scope of the requirement that industry parties waive application of the contested California Arbitrator Disclosure Standards upon the request of customers or associated persons. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

10000. Code of Arbitration Procedure

IM–10100. Failure To Act Under Provisions of Code of Arbitration Procedure

It may be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 2110 for a member or a person associated with a member to:

(a)–(e) No change.

(f) fail to waivn the California Rules of Court, Division VI of the Appendix, entitled, "Ethics Standards for Neutral Arbitrators in Contractual Arbitration" (the "California Standards"), if all the parties in the case who are customers, *or associated persons with a claim against a member firm or another associated person,* have waived application of the California Standards in that case. *The written waiver by the customer or the associated person asserting the claim against a member or associated person under the Code shall constitute and operate as a waiver for all member firms or associated persons against whom the claim has been filed. This rule applies to claims brought in California against all member firms and associated persons, including terminated or otherwise inactive member firms or associated persons.* [; or

(g) fail to waive the California Standards, if all the parties in the case who are associated persons with a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute have waived application of the California Standards in that case.] Remainder unchanged.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

On July 1, 2002, California introduced new rules governing the arbitration process in that state. The rules were designed to address conflicts of interest in private arbitration forums that are not part of a federal regulatory system overseen on a uniform, national basis by the SEC. The California Standards conflict with NASD's current arbitrator disclosure rules. Because NASD could not both administer its arbitration program in accordance with its own rules and comply with the new California Standards at the same time, NASD initially suspended the appointment of arbitrators in cases in California, but offered parties several options for pursuing their cases.[5]

In September 2002, NASD proposed implementation on an accelerated basis of a six-month pilot amendment to IM–10100 that would require all parties that are member firms or associated persons to waive the California Standards if all the parties in the case who are customers, or associated persons with a statutory employment discrimination claim, have waived application of the California Standards in that case. Under such a waiver, the case would proceed in California. The Commission approved the proposed rule change for a six-month period ending March 30, 2003,[6] and recently extended the pilot rule for an additional six-month period.[7] The pilot rule will expire on September 30, 2003.

Description of Proposed Rule Change

The proposed rule change would amend the pilot rule in several respects. First, it would extend the rule to apply to all claims by an associated person against a member firm or another associated person, as well as to all customer claims. Currently, the pilot rule only applies to customer claims and to statutory discrimination claims brought by an associated person against a member firm. As a result, cases involving other claims by associated persons against member firms or other associated persons ("industry respondents") cannot proceed if the industry respondents do not agree to waive the California Standards. To permit these cases to move forward, the proposed rule change would expand the current pilot rule to require that if an associated person with a claim against an industry respondent waives the application of the California Standards, all other industry respondents must also waive the application of the California Standards in that case. This change is consistent with New York Stock Exchange Rule 600(g), and would permit claims by associated persons against industry respondents in California to go forward.

The proposed rule change would also provide that, if a customer, or an associated person with a claim against an industry respondent, agrees to waive the application of the California Standards, and an industry respondent has not signed and returned a waiver form, the industry respondent will be deemed to have waived the application of the standards in that case. Currently, NASD requires member firms and associated persons covered by the rule to sign and return the waiver agreement. NASD staff often must call industry respondents to remind them to send in their waiver forms. When execution of the agreement by the respondent member or associated person is mandatory under the rule, this requirement adds an unnecessary administrative step to the arbitration process. Therefore, NASD is proposing to amend the pilot rule to provide, as NYSE Rule 600(g) currently does, that a written waiver by a customer or an associated person who is asserting a claim against a member or associated person under the Code will constitute a waiver for all member firms or associated persons against whom the claim has been filed.[8]

Finally, NASD is proposing to amend the pilot rule to clarify that it applies to respondents who are terminated members and associated persons.[9] As of June 5, 2003, there were 33 cases in which all customers and active industry parties had signed waivers, but the terminated members or associated persons had not signed. Another 51 pending cases involved both active and terminated industry parties that had not yet signed waivers; these cases could not proceed even if the active industry parties were deemed to have waived, unless the rule covered terminated parties. The proposed rule change will eliminate any confusion regarding the scope of the rule and will facilitate the administration of cases against such parties in California while the rule is in effect.

2. Statutory Basis

NASD Dispute Resolution believes that the proposed rule change as amended is consistent with the provisions of section 15A(b) of the Exchange Act,[10] in general, and furthers the objectives of section 15A(b)(6),[11] in particular, which requires, among other things, that the NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change will allow customers and associated persons with claims against a member firm or another associated person to exercise their contractual rights to proceed in arbitration in California, notwithstanding the confusion caused by the disputed California Standards.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NASD has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. A proposed rule change filed under Rule 19b–4(f)(6) normally requires that a self-regulatory organization give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time. NASD seeks to have the five-business-day pre-filing requirement waived with respect to the proposed rule change. The Commission has determined to waive the five-business-day pre-filing requirement with respect to this proposal. Therefore, the foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

Pursuant to Rule 19b–4(f)(6)(iii) under the Act,[14] the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. NASD has requested that the Commission waive the 30-day operative delay so that the proposed rule change will become immediately effective upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest to waive the 30-day period and to designate that the proposed rule change has become operative as of July 14, 2003.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–106 and should be submitted by August 13, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–18653 Filed 7–22–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48191; File No. SR–OC–2003–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by OneChicago, LLC Relating to MicroSector Futures

July 17, 2003.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on June 20, 2003, OneChicago, LLC ("OneChicago") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change described in Items I and II below, which Items have been prepared

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[4] 17 CFR 240.19b–4. In its filing, NASD requested that the Commission waive the rule's requirements of a five-day pre-filing notice and a 30-day operative delay.

[5] These measures included providing venue changes for arbitration cases, using non-California arbitrators when appropriate, and waiving administrative fees for NASD-sponsored mediations.

[6] *See* Securities Exchange Act Release No. 46562 (September 26, 2002), 67 FR 62085 (October 3, 2002).

[7] *See* Securities Exchange Act Release No. 47631 (April 3, 2002) 68 FR 17713 (April 10, 2003).

[8] The NASD amended this paragraph as it was originally filed to delete a phrase it inadvertently included. Telephone call between Laura Gansler, Counsel, NASD Dispute Resolution, and Andrew Shipe, Special Counsel, Division of Market Regulation, Commission, dated July 14, 2003.

[9] An associated person or member firm's obligation to arbitrate under the NASD Code of Arbitration Procedure survives resignation or termination from membership. *See O'Neel* v. *NASD*, 667 F. 2d 804 (9th Cir. 1982); *Muh* v. *Newburger, Loeb & Co., Inc.*, 540 F.2d 970 (9th Cir. 1976).

[10] 15 U.S.C. 78*o*–3(b).

[11] 15 U.S.C. 78*o*–3(b)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

by OneChicago.[3] The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons. OneChicago also filed the proposed rule change with the Commodity Futures Trading Commission ("CFTC"), together with written certifications under Section 5c(c) of the Commodity Exchange Act ("CEA")[4] on June 19, 2003.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

OneChicago is proposing to establish listing standards and amend its rules providing position limits, final settlement prices for futures on cash-settled narrow-based security indices, and employee confidentiality all of which are attached to the proposed rule change. The text of the proposed rule change follows: additions are *italicized*; deletions are [bracketed].

* * * * *

LISTING STANDARDS

For MicroSectors

CASH SETTLED NARROW-BASED INDEX FUTURES

V. Initial eligibility criteria for a MicroSector security futures product, based on an index composed of two or more securities.

A. For a cash settled Dow Jones MicroSector security futures product, the Dow Jones MicroSector Index must:

(i) Meet the definition of a narrow-based security index in Section 1a(25) of the Commodity Exchange Act and Section 3(a)(55) of the Exchange Act; and

(ii) Meet the following requirements:

(a) It must be approximately equal dollar-weighted composed of one or more securities in which each component security will be weighted equally based on its market price on the Selection Date.

(b) Each of its component securities must be registered under Section 12 of the Exchange Act.

(c) Each of its component securities must be a component security in the Dow Jones U.S. Total Market Index or an ADR linked to a security in the Dow Jones Global Index.

(d) Each of its component securities must be the subject of a U.S. exchange-traded option on the date of selection for inclusion in the index.

(e) Each of its component securities must have a trading history on a U.S. exchange for at least 12 months.

(f) Each of its component securities must have a "float market capitalization" of at least one billion dollars.

(g) Each of its component securities close at or above $7.50 for each of the trading days in the three months prior to selection for the index.

(h) Subject to (g), (i) and (k) below, component securities that account for at least 90 per cent of the total index weight and at least 80 per cent of the total number of component securities in the index must meet the requirements for listing a single-security future contract, as set forth in Section I.

(i) Each of its component securities must have an average daily trading volume in each of the preceding 12 months prior to selection for inclusion in the index greater than 109,000 shares (an ADR must have an average daily trading volume greater than 100,000 receipts).

(j) Each of its component securities must be (1) listed on an Exchange or traded through the facilities of an Association and (2) reported as an NMS security.

(k)(1) OneChicago must have in place an effective surveillance sharing agreement with the primary exchange in the home country where the stock underlying each component ADR is traded;

(2) The combined trading volume of each component ADR and other related ADRs and securities in the U.S. ADR market, or in markets with which OneChicago has in place an effective surveillance sharing agreement, represents (on a share equivalent basis) at least 50% of the combined worldwide trading volume in the ADR, the security underlying the ADR, other classes of common stock related to the underlying security, and ADRs overlying such other stock over the three-month period preceding the dates of selection of the ADR for futures trading ("Selection Date");

(3)(A) The combined trading volume of each component ADR and other related ADRs and securities in the U.S. ADR market, and in markets with which OneChicago has in place an effective surveillance sharing agreement, represents (on a share equivalent basis) at least 20% of the combined worldwide trading volume in the ADR and in other related ADRs and securities over the three-month period preceding the Selection Date;

(B) The average daily trading volume for the ADR in the U.S. markets over the three-month period preceding the Selection Date is at least 100,000 receipts; and

(C) The daily trading volume for the ADR is at least 60,000 receipts in the U.S. markets on a majority of the trading days for the three-month period preceding the Selection Date;

(4) The Securities and Exchange Commission and Commodity Futures Trading Commission have otherwise authorized the listing; or

(5) Foreign securities or ADRs thereon that are not subject to comprehensive surveillance sharing agreements must not represent more than 20% of the weight of the index.

(l) The current underlying index value must be reported at least once every 15 seconds during the time the MicroSector futures product is traded on OneChicago.

(m) An index underlying a MicroSector future must be reconstituted and rebalanced if the notional value of the largest component is at least twice the notional volume of the smallest component for 50 per cent or more of the trading days in the three months prior to December 31 of each year. For purposes of this provision the "notional value" is the market price of the component times the number of shares of the underlying component in the index. Reconstitution and rebalancing are also mandatory if the number of component securities in the index is greater than five at the time of rebalancing. In addition, OneChicago reserves the right to rebalance quarterly at its discretion.

(n) The MicroSector futures products will be AM settled.

(o) The initial indexes underlying MicroSector futures products will be created only for industry groups that have five or more qualifying securities.

VI. Maintenance standards for a MicroSector futures product based on an index composed of two or more securities.

A. OneChicago will not open for trading MicroSector futures products that are cash settled based on an index composed of two or more securities with a new delivery month unless the underlying index:

(i) Meets the definition of a narrow-based security index in Section 1a(25) of the Commodity Exchange Act and Section 3(a)(55) of the Exchange Act; and

(ii) Meets the following requirements:

(a) All of its component securities must be registered under Section 12 of the Exchange Act;

(b) Subject to (d) and (i) below, component securities that account for at least 90 per cent of the total index weight and at least 80 per cent of the total number of component securities in the index must meet the requirements for listing a single-security future, as set forth in Section I.

(c) Each component security in the index must have a market capitalization of at least $75 million, except that each of the lowest weighted component securities that in the aggregate account for no more than 10 per cent of the weight of the index may have a market capitalization of only $50 million.

(d) The average daily trading volume in each of the preceding six months for each component security in the index must be at least 22,750 shares or receipts, except that each of the lowest weighted component securities in the index that in the aggregate account for no more than 10 per cent of the weight of the index may have an average daily trading volume of at least 18,200 shares for each of the last six months.

(e) Each component security in the index must be (1) listed on an Exchange or traded through the facilities of an Association and (2) reported as an NMS security.

(f) The current underlying index value must be reported at least once every 15 seconds during the time the security futures product is traded on OneChicago.

(g) An approximately equal dollar weighted index underlying a MicroSector future must be reconstituted and rebalanced if the notional value of the largest component is at least twice the notional volume of the smallest component for 50 per cent or more of the trading days in the three months prior to December 31 of each year. For purposes of this provision the "notional value" is the market price of the component times the number of shares of the underlying component in the index. Reconstitution and rebalancing are also mandatory if the number of component securities in the index is greater than five at the time of rebalancing. In addition, OneChicago reserves the right to rebalance quarterly at its discretion.

(h) The total number of component securities in the index must not increase or decrease by more than 33⅓% from the number of component securities in the index at the time of its initial listing.

(i)(1) OneChicago must have in place an effective surveillance sharing agreement with the primary exchange in the home country where the stock underlying each component ADR is traded;

(2) The combined trading volume of each component ADR and other related ADRs and securities in the U.S. ADR market, or in markets with which OneChicago has in place an effective surveillance sharing agreement, represents (on a share equivalent basis) at least 50 per cent of the combined worldwide trading volume in the ADR, the security underlying the ADR, other classes of common stock related to the underlying security, and ADRs overlying such other stock over the three-month period preceding the dates of selection of the ADR for futures trading ("Selection Date");

(3)(a) The combined trading volume of the ADR and other related ADRs and securities in the U.S. ADR market, and in markets with which OneChicago has in place an effective surveillance sharing agreement, represents (on a share equivalent basis) at least 20 per cent of the combined worldwide trading volume in the ADR and in other related ADRs and securities over the three-month period preceding the Selection Date;

(b) The average daily trading volume for the ADR in the U.S. markets over the three-month period preceding the Selection Date is at least 100,000 receipts; and

(c) The daily trading volume for the ADR is at least 60,000 receipts in the U.S. markets on a majority of the trading days for the three-month period preceding the Selection Date;

(4) The Securities and Exchange Commission and Commodity Futures Trading Commission have otherwise authorized the listing, or

(5) Foreign securities or ADRs thereon that are not subject to comprehensive surveillance sharing agreements must not represent more than 20 per cent of the weight of the index.

B. (1) If the foregoing maintenance standards are not satisfied prior to opening a MicroSector futures product with a new delivery month, OneChicago will either (i) replace the component security or securities that fail to meet the maintenance standards with a security or securities that qualify under the initial listing standards for MicroSector futures products set forth in Section V, or (ii) receive the approval of the Securities and Exchange Commission and the Commodity Futures Trading Commission.

* * * * *

210. Confidentiality

(a) No member of the Board or any committee established by the Board or the Rules of the Exchange shall use or disclose any material non-public information, obtained in connection with such member's participation in the Board or such committee, for any purpose other than the performance of his or her official duties as a member of the Board or such committee.

(b) No officer, employee or agent of the Exchange shall (i) trade in any commodity interest *or security* if such officer, employee or agent has access to material non-public information concerning such commodity interest *or security* (ii) disclose to any other Person material non public information obtained in connection with such employee's, officer's or agent's employment, if such employee, officer or agent could reasonably expect that such information may assist another Person in trading any commodity interest.

(c) For purposes of this Rule 210, the terms "employee," "material information," "non-public information" and "commodity interest" shall have the meanings ascribed to them in Commission Regulation § 1.59. *For purposes of this Rule 210, the term "security" shall have the meaning ascribed to it in Section 3(a)(10) of the Exchange Act.*

* * * * *

Rule 1002 Contract Specifications

(a)–(d) No Change

(e) Position Limit. *(1) Pursuant to* [For purposes of] Rule 414*(a)*, [the position limit applicable to positions in any] *the Exchange shall establish speculative position limits for each* cash-settled Stock Index Future held during the last five trading days of an expiring contract month, [shall be] *determined according to the methodology set forth in subparagraph (2).*

(2) The position limit for each cash-settled Stock Index Future shall be the number of contracts calculated according to formula (A) "Market Cap Position Limit" or (B) "SSF Position Limit" below, whichever is less, rounded to the nearest multiple of 1,000 contracts; provided, however, that if formula (A) or (B), whichever is less, calculates a number less than 500 but not less than 400 for any such Future, the position limit will be 1,000 contracts.

(A) "Market Cap Position Limit"

i. The Exchange will determine the market capitalization of the Standard & Poor's 500 index (the "S&P 500") as of the selection date for the component securities in an underlying Stock Index (the "Selection Date") (the "S&P 500 Market Cap"); then

ii. The Exchange will calculate the notional value of a future position in CME's S&P 500 futures contract at its maximum limit (the "S&P 500 Notional Value Limit") by multiplying the S&P 500 by the position limit for Chicago Mercantile Exchange's ("CME") S&P 500 futures (20,000 contracts in all

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[3] With the permission of OneChicago, the Commission made a typographical, non-substantive correction to the text of the proposed rule change. See telephone conversation between Madge Hamilton, Deputy General Counsel, OneChicago and Andrew Shipe, Special Counsel, Division of Market Regulation, Commission, July 7, 2003.

[4] 7 U.S.C. 7a–2(c).

*months combined) and by the S&P 500 contract multiplier ($250) to calculate: S&P 500 Notional Value Limit = S&P 500 * 20,000 * $250; then*

iii. The Exchange will divide the S&P 500 Market Cap by the S&P 500 Notional Value Limit to calculate the "Market Cap Ratio":

Market Cap Ratio =
S&P 500 Market Cap
S&P 500 Notional Value Limit then

iv. The Exchange will calculate the market capitalization of the Stock Index by adding together the market capitalization of each stock comprising the Stock Index (the "Stock Index Market Cap"); then

v. The Exchange will calculate the notional value of the Stock Index Future (the "Notional Value") as follows:

Notional Value =
Stock Index level * contract multiplier

vi. The Exchange will calculate the Market Cap Position Limit of the Stock Index by dividing the Stock Index Market Cap by the product of the Notional Value of the Stock Index Future and the Market Cap Ratio:

Market Cap Position Limit = Stock Index Market Cap
Notional Value * Market Cap Ratio

(B) "SSF Position Limit"

i. The Exchange will calculate the notional value of the Stock Index Future (same as (A)(v) above):

Notional Value = Stock Index level * contract multiplier

ii. For each component security in the Stock Index, the Exchange will multiply its index weight by the Notional Value to determine that security's proportion of the Stock Index Future.*

iii. For each component security, the Exchange will divide the result in (B)(ii) by the security's price. This equals the number of shares of that security represented in the Stock Index contract.

iv. For each component security, the Exchange will divide the number of shares calculated in (B)(iii) by 100 to obtain the implied number of 100-share contracts per Stock Index Future contract.

v. The Exchange will divide the applicable single stock futures contract speculative position limit set in Commission Regulation 41.25(a)(3) (either 13,500 or 22,500 contracts) by the number of implied 100-share contracts. This provides the number of Stock Index Futures contracts that could be held without violating the speculative position limit on a futures contract on that component security (if such single stock futures contract existed). If the security qualifies for position accountability, ignore that security for purposes of this calculation.

vi. The Exchange will list the results of (B)(iv) and (B)(v). The SSF Position Limit is the minimum number of implied contracts based on this list.

(f)–(h) No Change

(i) Settlement Price.

(1) Daily Settlement Price. The daily settlement price for cash-settled Stock Index Futures will be calculated in the same manner as Rule 902(j).

(2) Final Settlement Price. (A) The final settlement price for cash-settled Stock Index Futures shall be determined on the third Friday of the contract month. If the Exchange is not open for business on the third Friday of the contract month, the final settlement price shall be determined on the Business Day prior to the third Friday of the contract month. The final settlement price for cash-settled Stock Index Futures shall be based on a special opening quotation of the underlying stock index ("Stock Index").

(B) Notwithstanding subparagraph (2)(A) of this Rule, if an opening price for one or more securities underlying a Stock Index Future is not readily available, the Chief Executive Officer of the Exchange or his designee for such purpose (referred to hereafter in this Rule 1002(i) as the "Designated Officer") will determine whether the security or securities are likely to open within a reasonable time.

(i) If the Designated Officer determines that one or more component securities are not likely to open within a reasonable time, then for the component security or securities which the Designated Officer determined were not likely to open within a reasonable time, the last trading price of the underlying security or securities during the most recent regular trading session for such security or securities will be used to calculate the special opening quotation.

(ii) If the Designated Officer determines that the security or securities are likely to open within a reasonable time, then for the component security or securities which the Designated Officer determined were likely to open within a reasonable time, the next available opening price of such security or securities will be used to calculate the special opening quotation.

(C) For purposes of this provision:

(i) "Opening price" means the official price at which a security opened for trading during the regular trading session of the national securities exchange or national securities association that lists the security. If the security is not listed on a national securities exchange or a national securities association, then "opening price" shall mean the price at which a security opened for trading on the primary market for the security. Under this provision, if a component security is an American Depository Receipt ("ADR") traded on a national securities exchange or national securities association, the opening price for the ADR would be derived from the national securities exchange or national securities association that lists it.

(ii) "Special opening quotation" means the Stock Index value that is derived from the sum of the opening prices of each security of the Stock Index.

(iii) "Regular trading session" of a security means the normal hours for business of a national securities exchange or national securities association that lists the security.

(iv) The price of a security is "not readily available" if the national securities exchange or national securities association that lists the security does not open on the day scheduled for determination of the final settlement price, or if the security does not trade on the securities exchange or national securities association that lists the security during regular trading hours.

(D) Notwithstanding any other provision of this Rule, this Rule shall not be used to calculate the final settlement price of a Stock Index Future if The Options Clearing Corporation fixes the final settlement price of such Stock Index Future in accordance with its rules and by-laws and as permitted by Commission Regulation § 41.25(b) and SEC Rule 6h–1(b)(3).

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

OneChicago has prepared statements concerning the purpose of, and statutory basis for, the proposed rules, burdens on competition, and comments received from members, participants, and others. These statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would establish listing standards ("Listing Standards") for cash-settled futures on narrow-based security indices that would trade under the brand name "OneChicago Dow Jones MicroSector Futures" ("MicroSector Futures"). The proposed rule change would also amend OneChicago Rule 1002(e) relating to position limits, Rule 1002(i) relating to the final settlement price of MicroSector Futures and Rule 210 relating to employee confidentiality.

Dow Jones & Company, Inc. ("Dow Jones") with the assistance of OneChicago will maintain the Dow Jones MicroSector Index on which each MicroSector Futures is based in a manner consistent with the proposed Listing Standards.[5] Each Dow Jones MicroSector Index will initially be comprised of five component securities, which will be approximately equal dollar weighted. The five component securities will be selected based on their market capitalization, option volume, dollar volume and correlation to one another within an industry group as defined by the Dow Jones Global Classification Standard.

Weighting of Dow Jones MicroSectors

The initial notional value of each Dow Jones MicroSector Index will be $40,000. Share lots will be created to "approximate equal dollar weighting" for each component security in a Dow Jones MicroSector Index. Therefore, the aggregate market value of the shares in each share lot will initially equal $8,000.[6]

Composition of Dow Jones MicroSector Indexes

The proposed Listing Standards require each security to meet all of the following qualifications to be included in a Dow Jones MicroSector Index:

- Be registered under section 12 of the Exchange Act;* [7]
- Be a common stock or an American Depositary Receipt ("ADR") representing common stock or ordinary shares;
- Be a component security in the Dow Jones U.S. Total Market Index or an ADR linked to a company in the Dow Jones Global Index SM ;[8]
- Have U.S. exchange-traded options on the security;
- Have a trading history on a U.S. exchange for at least 12 months;
- Have a "float market capitalization" [9] of at least one billion dollars; [10]
- Have at least seven million shares or receipts evidencing the underlying security outstanding that are owned by persons other than those required to report their security holdings pursuant to Section 16(a) of the Act; [11] *
- Have at least 2,000 security holders;*
- Close at or above $7.50 for each of the trading days in the three months prior to the Selection Date; and
- Have an average daily trading volume ("ADTV") for each of the 12 months prior to the Selection Date greater than 109,000 shares (an ADR must have an ADTV greater than 100,000 receipts).

A Dow Jones MicroSector will only be created if five or more securities in an eligible industry group qualify under the foregoing criteria.

Reconstitution and Rebalancing the Index

Under the proposed Listing Standards, a Dow Jones MicroSector Index will be reconstituted and rebalanced if the aggregate market value of the largest component is at least twice the aggregate market value of the smallest component for 50 percent or more of the trading days in the three months prior to the Selection Date. Reconstitution and rebalancing are mandatory if, as a result of spin-offs or other corporate action, the number of component securities in the index exceeds five. OneChicago also reserves the right to rebalance quarterly at its discretion.

Corporate Actions

In the event Dow Jones needs to remove a stock from a Dow Jones MicroSector as a result of a bankruptcy, ten consecutive no-trade days, delisting from NYSE, Nasdaq, or Amex, or financial distress, Dow Jones will add a replacement security on the effective date of the removal to maintain a total of five component securities in the index. If a Dow Jones MicroSector falls below four stocks, either Dow Jones will replace the component securities to bring the number of component securities in the index back up to five or OneChicago will delist the related MicroSector Future.

Corporate actions affecting the price of the component securities in a Dow Jones MicroSector (*e.g.*, splits and dividends) will require an adjustment of the share lots to maintain index integrity. The adjustments will be made before the open of trade on the effective date of the action. All adjustments to the share lots will preserve the weighting prior to and after the corporate event, causing no change to the index level or divisor. When a component security is removed from a Dow Jones MicroSector due to a merger, the common stock of the acquiring company will replace the component security in the index and will be kept in the index until the next Selection Date.

The following is a chart of how corporate actions will be handled:

CORPORATE ACTIONS

Type		Adjustments		Notes
Action	Company	Close price/action	Share lot	
Special Cash Dividend.	Component of Index.	Adj. Close=Prev. Close – Dividend.	Adj. Share Lot=(Share Lot* Prev Close)/Adj. Close.	
Stock Split or Dividend.	Component of Index.	Adj. Close=Prev. Close/Adjustment Factor.	Adj. Share Lot=Prev. Share Lot* Adjustment Factor.	Adjustment Factor=number of new shares for one old share

*Index weight of the component security = (assigned shares * price) of the component security / the sum of (assigned shares * price) for each component security.

[5] In conjunction with the proposed rule change, OneChicago is amending Rule 210 to prevent potential misuse by OneChicago staff of material, non-public information in connection with the maintenance of the Dow Jones MicroSector Indexes.

[6] The number of shares will be calculated by dividing the initial notional dollar value of each share lot ($8,000) by the closing price of the stock on the date on which the terms of the Dow Jones MicroSector Index are finalized or adjusted (the "Selection Date") carried out to eight decimal places.

[7] OneChicago (not the index calculation agent, Dow Jones) is responsible for ensuring that the components of the Dow Jones MicroSector Indexes comply with the criteria identified by an asterisk (*).

[8] Component securities in these indices are listed on the New York Stock Exchange, Inc. ("NYSE"), the American Stock Exchange LLC ("Amex") or the Nasdaq Stock Market, Inc. ("Nasdaq").

[9] "Float market capitalization" is the aggregate market value of the outstanding shares of the issuer which are available for trading by the public and does not include the market value of shares which are subject to trading restrictions.

[10] All market capitalization data is based on closing prices, number of outstanding shares, and number of shares available for trading by the public as of the Selection Date.

[11] 15 U.S.C. 78p(a).

CORPORATE ACTIONS—Continued

Action	Type	Adjustments		Notes
	Company	Close price/action	Share lot	
Spin Off	Component of Index (A).	Adj. Close=Close – (Ratio * Spun off company's Price).		Ratio=number of shares of spun-off company received for every share of parent company owned. Spun-off company be added at a weight such that the market capitalization of the two companies after the event is equal to the market capitalization of the parent prior to the event.
	Spun Off Company (B).	ADDED	Share Lot=((Share Lot A* Prev. Close A) – (Adj. Share Lot A*Adj. Close A))/Close B.	
Two Components Merge in an All Stock, Cash or Combination Deal.	Remaining Companies (A).		Adj. Share Lot=Share Lot + B's Share Lot)/number of remaining components)/ A's Close.	All remaining companies will be adjusted using the formula to the left. Their shares will increase based on their price so as to distribute the weight of the acquired company evenly.
	Acquired Company (B).	DELETED		
A Non-Component Takes Over a Component.	Acquirer (A)	ADDED	Adj. Share Lot=(B's Share Lot * B's Close)/A's Close.	The acquiring company will replace the acquired company in the index and the share lot will be adjusted.
	Acquired Component of Index (B).	DELETED		
Rights Issue	Component of Index (A).	Adj. Close=(Close+(Ratio * Subscription Price))/ (1+Ratio).	Adj. Share Lot=(Close * Share Lot)/Adj. Close.	Ratio=number of rights received for 1 share of A.
Extraordinary Removal.	Replacement Company (A).	ADDED	Adj. Share Lot=(B's Share Lot * B's Close) A's Close.	Component B may be removed for: Bankruptcy proceedings, financial distress (as determined by Dow Jones), delisting from a primary exchange (NYSE, Nasdaq, Amex), or illiquidity (10 consecutive no-trade days). Replacement A would be the highest ranked (as of the most recent Selection Date) of the remaining securities in the industry group which qualify for inclusion.
	Component of Index (B).	DELETED		

Position Limits

The proposed rule change to Rule 1002(e) provides the methodology to calculate position limits [12] for any cash-settled futures contract on a narrow-based security index ("Stock Index"), including the *MicroSector Futures*. The Exchange would calculate two numbers: One is based on the market capitalization of each Stock Index future and the notional value compared to the market capitalization of the Chicago Mercantile Exchange ("CME") position limit for its futures contract on the S&P 500 Index (referred to herein as the "Market Cap Method"), and the other is based on the current position limit permitted for single stock futures under CFTC Regulation 41.25[13] (referred to herein as the "SSF Limit Method"). The Exchange would impose a position limit on each Stock Index future equal to the lower number calculated by the two methods rounded to the nearest 1,000 contracts; provided, however, that if the result of either calculation is less than 500, but not less than 400 for any such Future, the position limit will be rounded up to 1,000 contracts.

Under the Market Cap Method, the Exchange would determine the market capitalization of the S&P 500 Index,[14] then calculate the notional value of a position at the limit of the CME's S&P 500 Index futures contract (the "S&P 500 Notional Value Limit") [15] and divide the first amount by the second to determine the market capitalization ratio (the "Ratio").[16] The Exchange would then determine the market capitalization and the Notional Value of the Stock Index. To calculate the Market Cap Method number, the Exchange would divide the market capitalization of the Stock Index by the contract size of the Stock Index futures multiplied by the Ratio.[17]

Under the SSF Limit Method, the Exchange would calculate the Notional Value of the Stock Index Future.[18] For each component security in the Stock Index, the Exchange would multiply the index weight of the component security [19] by the Notional Value to determine the security's proportion of the Stock Index futures ("Share Weighting"). The Exchange would then divide each security's Share Weighting by its price to calculate the number of shares of that security represented in the Stock Index futures contract ("Implied Shares"). The Exchange would then, for each component security in the Stock Index, divide the Implied Shares by 100 to obtain the implied number of 100-share contracts of each component security in each Stock Index future contract. The Exchange would divide the applicable single stock futures position limit permitted under CFTC Regulation 41.25(a)(3) [20] (either 13,500 or 22,500 contracts) for each component security by the number of implied 100-share contracts. This equals the number of Stock Index futures contracts that could be held without exceeding the speculative position limit on a futures contract on the component security ("Implied SSF Speculative Limit"). If a component security qualified for position accountability under CFTC Regulation 41.25(a)(3),[21] this step would be ignored for that security for purposes of this calculation. After calculating the Implied SSF Speculative Limit for each security in the Stock Index, the Exchange identifies the lowest Implied SSF Speculative Limit as the position limit for such futures contract under the SSF Limit Method.

Final Settlement Price

OneChicago also proposes to add paragraph (i) to Rule 1002 to establish how the final settlement price will be calculated for Stock Index futures, including MicroSector Futures. Under the proposed rule change to Rule 1002(i), a special opening quotation ("SOQ") of the relevant Stock Index will be calculated using the opening price of each component stock. When all of the component stocks have opened, the final SOQ will be calculated and disseminated.

If the price of a component security or securities is not readily available [22] on the day scheduled for determination of the final settlement price, the price of the component security or securities shall be based on the next available opening price of that security unless the Chief Executive Officer or his designee for such purposes ("Designated Officer") determines that such security or securities will not open within a reasonable time. If the Designated Officer makes such a determination, the price of the relevant component security or securities for purposes of calculating the final settlement price, will be the price of the security or securities during the most recent regular trading session for such security or securities.

Proposed Rule 1002(i) also provides that the Rule shall not be used to calculate the final settlement price of a Stock Index futures if The Options Clearing Corporation ("OCC") fixes the final settlement price of the Stock Index future in accordance with OCC's rules and By-Laws and as permitted under the Commission's Rule 6h-1(b)(3) [23] and CFTC Regulation 41.25.[24]

CFMA Listing Standard Requirements for Security Futures

Section 6(h) of the Act [25] requires that certain standards be met for an exchange to trade security futures products ("SFPs"). The proposed rule change meets these standards. First, section 6(h)(3)(A) of the Act [26] requires that each security underlying a SFP must be registered pursuant to section 12 of the Act. Both the initial and maintenance Listing Standards for MicroSector Futures meet this requirement.[27]

Section 6(h)(3)(C) of the Act [28] requires that OneChicago's Listing Standards for MicroSector Futures be no less restrictive than comparable listing standards for options traded on a national securities exchange. On September 5, 2001, the SEC Division of Market Regulation (the "Division") published Staff Legal Bulletin No. 15 ("Bulletin No. 15") [29] to offer guidance on how a securities exchange can satisfy this requirement. One Chicago states that the proposed Listing Standards follow the model listing standards in Bulletin No. 15 with a few modifications to tailor the Listing Standards to this particular product.

First, under the proposed Listing Standards, OneChicago notes that the component securities of the Dow Jones MicroSector Indices must have a "float market capitalization" of at least *one billion dollars*.[30] In contrast, the model listing standards in Bulletin No. 15 state that component securities of an index have a minimum market capitalization of only $75 million.[31] Second, OneChicago notes that the proposed Listing Standards require that the component securities of a Dow Jones MicroSector Index have an ADTV of *109,000 shares* in each of the preceding *12 months*,[32] whereas the model listing standards in Bulletin No. 15 suggest that each component security have an ADTV of only 45,500 shares for each of the preceding six months.[33]

Since the only index weighting methodology that will be permitted for Dow Jones MicroSector Indices is approximate equal dollar weighted, no references to other types of index weighting methodologies in the model listing standards in Bulletin No. 15 were incorporated into the Proposed Listing Standards.[34] Another modification from the model listing standards in Bulletin No. 15 was made in the proposed

[12] Consistent with CFTC Regulation 41.25, position limits apply to positions in any cash-settled stock index future held during the last five trading days of an expiring contract.

[13] 17 CFR 41.25.

[14] The Exchange will calculate the market capitalization as of the Selection Date.

[15] The speculative position limit for the CME's S&P 500 Index futures contract is 20,000 contracts (in all months combined) and the contract multiplier is $250. S&P 500 Notional Value Limit = Index * 20,000 * 250.

[16] Ratio = Market Capitalization of S&P 500 Index / S&P 500 Notional Value Limit.

[17] Market Capitalization Methodology number = market capitalization of the Stock Index / (contract size of the Stock Index Future * Ratio).

[18] Notional Value = index level * contract multiplier.

[19] Index weight of the component security = (assigned shares * price) of the component security / the sum of (assigned shares * price) for each component security.

[20] 17 CFR 41.25(a)(3).

[21] 17 CFR 41.25(a)(3).

[22] Under proposed Rule 1002(i)(2)(C)(iv), the price of a security is "not readily available" if the underlying market does not open on the date set for determination of the final settlement price or if the security does not trade on such securities exchange or national securities association during regular trading hours.

[23] 17 CFR 240.6h-1(b)(3).

[24] 17 CFR 240.41.25(b).

[25] 15 U.S.C. 78f(h)(3)(A).

[26] 15 U.S.C. 78l.

[27] See proposed Listing Standards requirements V.A.ii.b. and VI.A.ii.a.

[28] 15 U.S.C. 78f(h)(3)(C).

[29] U.S. Securities and Exchange Commission, Division of Market Regulation: Staff Legal Bulletin No. 15 (September 5, 2001).

[30] See proposed Listing Standard requirement V.A.ii.f.

[31] *See* Bulletin No. 15 model listing standard III.A.ii.d. Under this listing standard, each of the lowest weighted securities in the index that in the aggregate account for no more than 10 per cent of the weight of the index may have a minimum market capitalization of $50 million.

[32] *See* proposed Listing Standard requirement V.A.ii.i.

[33] *See* Bulletin No. 15 listing standard III.A.*ii.e.* Under this listing standard, each of the lowest weighted securities in the index that in the aggregate account for no more than 10 per cent of the weight of the index may have an ADTV of only 22,750 shares for each of the last six months.

[34] The following model listing standard requirements in Bulletin No. 15 were not adopted in the proposed Listing Standards III.A.ii.a, i and k, and IV.A.ii.j.

Listing Standards for ADRs. Under both the Bulletin No. 15 model listing standards and the proposed Listing Standards, a large portion of component securities must meet the listing standard requirements for single stock futures.[35] The ADR requirement for single stock futures deviates from what is suggested for ADRs under the Bulletin No. 15 model listing standard for a security futures product based on narrow-based security index.[36] OneChicago states that the listing standard requirement for single stock futures relating to ADRs[37] was incorporated into the proposed Listing Standard requirement for MicroSector Futures as an alternative.[38] In addition, eight new requirements were added to the proposed Listing Standards to accommodate this unique product.[39]

One Chicago states that the proposed Listing Standards incorporate the standards annunciated by the Division in Bulletin No. 15. Therefore, OneChicago believes that the proposed Listing Standards meet the requirement of section 6(h)(3)(C) of the Act.[40]

Section 6(h)(3)(D) of the Act[41] requires that all SFPs be based on common stock and such other equity securities as SEC and CFTC have jointly determined is appropriate. The SEC and CFTC have jointly permitted that SFPs may also be based on depositary shares.[42] Under the OneChicago Listing Standards, each component security must meet the initial listing standard requirement for security futures that it be a common stock or an American Depositary Receipt.[43] Therefore, OneChicago's Listing Standards meet this requirement.

Section 6(h)(3)(E) of the Act[44] requires that each security futures product be cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear security futures products, which permits the security futures product to be purchased on one market and offset on another market that trades such product. OneChicago notes that pursuant to section 6(h)(7) of the Act,[45] the foregoing requirement is deferred until the "compliance date" (as defined therein). OneChicago expects that both The Options Clearing Corporation and the Chicago Mercantile Exchange ("CME") clearinghouse will have in place procedures complying with the requirements of clause (E) after such "compliance date."

Section 6(h)(3)(F) of the Act[46] requires that broker-dealers must be subject to suitability rules comparable to those of a national securities association to effect transactions in SFPs. OneChicago satisfies this requirement through its Rule 605 which requires members to comply with the sales practice rules of the National Futures Association ("NFA") or the National Association of Securities Dealers, Inc. ("NASD"), which include suitability rules. Therefore, OneChicago meets this listing standard requirement.

Section 6(h)(3)(G) of the Act requires that SFPs be subject to the prohibition against dual trading in section 4j of the CEA[47] and CFTC regulations. Pursuant to section 4j of the CEA,[48] CFTC promulgated Regulation 41.27, which states that an electronic futures exchange is subject to the dual trading rule if the exchange provides market participants with a time or place advantage or the ability to override a predetermined algorithm.[49] Market participants have no such advantage or ability, so the dual trading rule does not apply to OneChicago.

Section 6(h)(3)(H) of the Act provides that SFPs must not be readily susceptible to manipulation of the price of the SFP, the price of the underlying security, the price of the option on such security, or options on a group or index including such securities. OneChicago believes that the design of the MicroSector futures fulfills this requirement. OneChicago states that the proposed Listing Standards require that component securities be highly capitalized with substantial daily trading volumes for the 12 months preceding the stocks' selection into the Dow Jones MicroSector Index. In addition, the proposed rule change to OneChicago Rule 1002(e) and (i) regarding the final settlement price and position limits of MicroSector Futures are also designed to deter manipulation.

The proposed rule change to Rule 1002(e) proposes a methodology to calculate position limits for cash-settled futures on narrow-based security indices. While OneChicago believes that these limits are appropriate for the launch of these products, because this product is unique and there is no other similar product to look to for guidance as to the appropriate position limit, once trading has begun OneChicago will monitor trading patterns in the MicroSector Futures and reassess the appropriateness of these position limits. OneChicago undertakes that if trading patterns indicate the position limits are not set at levels appropriate to deter manipulation, OneChicago will make the necessary adjustments to the position limits. In addition, OneChicago undertakes to coordinate surveillance with the relevant underlying stock markets to monitor for manipulation.

OneChicago has also proposed a final settlement rule that is designed to deter manipulation. Under proposed Rule 1002(i) the final settlement price of MicroSector Futures would be based on the opening price of each component stock. OneChicago believes that since the termination of MicroSector Futures will coincide with the expiration or termination of stock indices, options on stock indices and futures on stock indices, using the opening prices of each component security will reflect the price of the underlying securities when they are very liquid and thus more difficult to manipulate. The calculation of the final settlement price for these MicroSector Futures will be done on the same day and in a similar manner to the final settlement price for the options on the S&P 500 and the futures on the S&P 500. The expiration or termination of these large S&P 500 contracts will provide more liquidity to the opening of the underlying markets. Thus, the final settlement price based on opening prices is designed to deter manipulation.

In addition, OneChicago Rule 603 specifically prohibits market manipulation, and OneChicago Rule 604 prohibits members or access persons from violating applicable laws. Therefore, OneChicago believes that it meets this requirement.

Section 6(h)(3)(I)[50] of the Act requires that procedures be in place for coordinated surveillance among the market on which the SFP is traded, any market on which any security underlying the SFP is traded and other markets on which any related security is traded to detect manipulation and insider trading. OneChicago is an affiliate member of the Intermarket Surveillance Group through which it has an agreement to share market surveillance and regulatory information with other members of the group, which includes all of the predominant U.S. securities exchanges. OneChicago is also a member of the Joint Audit Committee, in which the futures self-regulatory organizations have an agreement to share information for regulatory purposes. Therefore, OneChicago believes it meets this requirement.

Section 6(h)(3)(J) of the Act[51] requires that an exchange have audit trails that are necessary or appropriate to facilitate the coordinated surveillance required under Section 6(h)(3)(I) of the Act.[52] The audit trail capability provided by CBOE*direct*®, the trade matching engine used by OneChicago, will create and maintain an electronic transaction history database that contains information with respect to all orders, whether executed or not, and resulting transactions on the Exchange. This applies to orders entered through CBOE*direct*® terminals as well as to orders routed to CBOE*direct*® through CME's Globex® system. The information recorded with respect to each order includes: time received (by CBOE*direct*" or Globex"), terms of the order, order type, instrument and contract month, price quantity, account type, account designation, user code and clearing firm.

OneChicago's electronic audit trail will consist of data recorded by CBOE*direct*" and Globex®, and OneChicago will have full access to all such data. Information logged by CBOE*direct*®, including in respect of orders received through CBOE*direct*® terminals, will be archived and provided to OneChicago each day. Orders received through Globex® will be archived and maintained at CME. Together these data sets will enable OneChicago to trace each order back to the clearing firm by or through which it was submitted. If any question or issue arises as to the source of an order prior to submission by or through a clearing firm, OneChicago will request that the clearing firm provide an electronic or other record of the order.

For orders that cannot be immediately entered into either CBOE*direct*® and Globex®, and therefore will not be recorded electronically at the time they are placed, OneChicago Rule 403(b) requires that the Clearing Member or, if applicable, the Exchange Member or the Access Person receiving such order must prepare an order form in a non-alterable written medium, which must be time-stamped when received and include the account designation, date and other required information (*i.e.*, order terms, order type, instrument and contract month, price and quantity). Each such form must be retained for at least five years from the time it is prepared. In addition, OneChicago Rule 501 establishes a general recordkeeping requirement pursuant to which each Clearing Member, Exchange Member and Access Person must keep all books and records as required to be kept by it pursuant to the Commodity Exchange Act, CFTC regulations, the Act, regulations under the Act and the Rules of the Exchange. OneChicago Rule 501 also requires that such books and records be made available to the Exchange upon request. Current CFTC regulations require books and records to be maintained for a period of five years. OneChicago believes that its audit trail meets the requirement of section 6(h)(3)(J) of the Act.[53]

Block trades will be entered in CBOE*direct*® by OneChicago's operations management after they are verbally reported by designated individuals at the Clearing Member for the selling party. At the time of each such verbal report, a trade identification number will be assigned and provided to the caller. Both the buyer and the seller in each trade will then follow up the verbal report by submitting a block trade reporting form via facsimile or email to OneChicago. Generally, the same procedures apply to exchange of futures for physical ("EFP") transactions, except that no verbal report is required for such transactions. Since block trades and EFP transactions involve orders that cannot be immediately entered into either CBOE's or CME's systems, the Clearing Members or, if applicable, Exchange Members or Access Persons involved must comply with the procedures specified in the preceding paragraph.

Section 6(h)(3)(K) of the Act[54] requires that a market on which a security futures product is traded have in place procedures to coordinate trading halts between such market and any market on which any security underlying the security futures product is traded and other markets on which any related security is traded. OneChicago Rule 419 requires that trading in a security future be halted at all times that a regulatory halt has been instituted for the relevant underlying security or securities.

Section 6(h)(3)(L) of the Act[55] requires that the margin requirements for a security futures product comply with the regulations prescribed pursuant to section 7(c)(2)(B) of the Act.[56] The Commission approved OneChicago Rule 515, which fulfills this requirement.[57]

2. Statutory Basis

OneChicago states that the proposed rule change is consistent with section 6(b)(5) of the Act[58] in that it promotes competition, is designed to prevent fraudulent and manipulative acts and practices, and is designed to protect investors and the public interest. OneChicago states that the proposed rule change would promote competition by making new products available to the public. OneChicago also states that the proposed rule change is also designed to deter manipulation of MicroSector Futures and to prevent using the product for fraudulent or manipulative trading in the component securities and their derivatives. In addition, the proposed position limit and final settlement rules along with surveillance and enforcement of these proposed rules are intended to deter manipulative activity in this product. In this manner, OneChicago states that the proposed rule change is designed to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

OneChicago does not believe that the proposed rule change will have an impact on competition because it

[35] *See* Bulletin No. 15 model listing standard III.A.ii.c and IV.A.ii.b and proposed Listing Standard V.A.ii.h and VI.A.ii.b, which require that except for ADTV, the component securities that account for at least 90 percent of the total index weight and at least 80 percent of the total number of component securities in the index must meet the requirements for listing a single-security future, as set forth in Section I.

[36] *See* Bulletin No. 15 model listing standard III.A.ii.g and IV.A.ii.f.

[37] *See* OneChicago listing standard I.A.x.

[38] *See* proposed Listing Standards V.A.ii.k and VI.A.ii.k.

[39] *See* proposed Listing Standards V.A.ii.a (approximate equal dollar-weighted), V.A.ii.c. (component securities must be component securities in the Dow Jones U.S. Total Market Index or an ADR linked to a security in the Dow Jones Global Index), V.A.ii.d. (component securities must have U.S. exchange-traded options on the securities), V.A.ii.e (component securities must have a trading history on a U.S. exchange for at least 12 months), V.A.ii.g (component securities must close at or above $7.50 for each of the trading days in the three months prior to Selection), V.A.ii.m (rebalancing of the index), V.A.ii.o (indexes will only be created for industry groups having five or more qualifying securities) and VI.A.ii.i (rebalancing of the index).

[40] 15 U.S.C. 78f(h)(3)(C).

[41] 15 U.S.C. 78f(h)(3)(D).

[42] Securities Exchange Act Release No. 44725 (August 20, 2001), "A depositary share is defined as a security evidenced by an American Depository Receipt that represents a foreign security or a multiple or factions thereof. See 17 CFR 240.12b-2." Id. at footnote 14.

[43] Proposed Listing Standard V.A.ii.h requires that except for the ADTV, "component securities that account for at least 90% of the total index weight and at least 80% of the total number of component securities in the index must meet the requirements for listing a single-security futures contract, as set forth in Section I." Section I.A.i. requires that the security underlying futures product based on a single security be a common stock or an American Depositary Receipt representing common stock.

[44] 15 U.S.C. 78f(h)(3)(D).

[45] 15 U.S.C. 78f(h)(7).

[46] 15 U.S.C. 78f(h)(3)(F).

[47] 7 U.S.C. 6i.

[48] Id.

[49] 17 C.F.R. 41.27(b)(2).

[50] 15 U.S.C. 78f(h)(3)(I).

[51] 15 U.S.C. 78f(h)(3)(J).

[52] 15 U.S.C. 78f(h)(3)(I).

[53] 15 U.S.C. 78f(f)(3)(J).

[54] 15 U.S.C. 78(h)(3)(K).

[55] 15 U.S.C. 78f(h)(3)(L).

[56] 15 U.S.C. 78g(c)(2)(B).

[57] Securities Exchange Act Release No. 46787 (November 7, 2002), 67 FR 69059 (Nobember 14, 2002) (SR–OC–2002–01).

[58] 15 U.S.C. 78f(b)(5).

believes that the proposed rule change will promote competition by permitting OneChicago to bring new products to the market.

C. Self-Regulatory Organization's Statement on Comments on Proposed Rules Received From Members, Participants, or Others

Comments on the OneChicago proposed rule change have not been solicited and none have been received.

III. Date of Effectiveness of the Proposed Rules and Timing for Commission Action

Pursuant to section 19(b)(7)(B) of the Act,[59] the proposed rule change became effective on June 20, 2003. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of section 19(b)(1) of the Act.[60]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rules conflict with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules that are filed with the Commission, and all written communications relating to the proposed rules between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of these filings will also be available for inspection and copying at the principal office of OneChicago. Electronically submitted comments will be posted on the Commission's Internet Web site (*http://www.sec.gov*). All submissions should refer to File No. SR–OC–2003–06 and should be submitted by August 13, 2003.

[59] 15 U.S.C. 78s(b)(7)(B).
[60] 15 U.S.C. 78s(b)(1).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[61]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–18736 Filed 7–22–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48193; File No. SR–PCX–2003–33]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Minor Rule Plan Housekeeping Changes

July 17, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 8, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend the Exchange's Minor Rule Plan ("MRP") and Recommended Fine Schedule ("RFS") (PCX Rule 10.13) in order to make a number of non-substantive and technical changes. The text of the proposed rule changes is available at the PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[61] 17 CFR 200.30–3(a)(75).
[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its MRP and RFS (PCX Rule 10.13) in order to make a number of non-substantive and technical changes. The Exchange also proposes to make minor conforming changes to various other rules where appropriate.

First, the Exchange proposes to amend PCX Rule 6.37(d) to correct a minor technical error. PCX Rule 6.37(d) states that formal disciplinary action may be taken if aggravating circumstances are found, pursuant to PCX Rule 10.3. The Exchange proposes to amend the text to reflect the correct rule number, which is "10.4". Second, the Exchange proposes to amend PCX Rule 6.37(h)(6) so that the first sentence in the rule will read "action and suspension" instead of "action or suspension." This was a technical error that the Exchange wishes to correct at this time.

Third, the Exchange proposes to correct a technical error in PCX Rules 10.13(h)(34) and 10.13(k)(i)(34). The text incorrectly references that PCX Rule 10.13(h)(34) is a violation of "Rule 6.87(d)(3)". The Exchange wishes to amend the text to reflect the correct rule number, which is "Rule 6.87(e)(3)". Fourth, the Exchange proposes to amend PCX Rule 6.89(b)(7), where the Exchange inadvertently used the acronym "PSE" instead of "PCX" in the rule text. Thus, the Exchange proposes to correct the technical error and replace the acronym PSE with the current acronym, PCX.

Fifth, the Exchange proposes to amend PCX Rules 10.13(h)(2) and 10.13(k)(i)(2) of the MRP and RFS. The purpose of this change is to replace the term "floor broker" with the term "member" in the text as the underlying rule violation (PCX Rule 6.67) is not limited to floor brokers and applies to all members. Sixth, the Exchange proposes to amend PCX Rule 10.13(e) in order to correct a technical error. Under the proposed amendment, the term "Compliance Department" will be replaced with the term "Corporate Secretary" as the latter is the correct office for this process at the Exchange.

Seventh, the Exchange proposes to amend PCX Rules 10.13(j)(1) and 10.13(k)(iii)(1) of the MRP and RFS. Under the proposed amendment, the rule referenced in the text, "Rule 10.2(c)," will be amended to reflect the correct corresponding rule number, which is "Rule 10.2(e)." Finally, the Exchange proposes to amend PCX Rules 10.13(j)(6) and 10.13(k)(iii)(6) of the MRP and RFS. Under the proposed rule change, the rule referenced in the text, "Rule 10.2(b)," will be amended to reflect the correct corresponding rule number, which is "Rule 10.2(d)."

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,[3] in general, and section 6(b)(5) of the Act,[4] in particular, in that it will promote just and equitable principles of trade; facilitate transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system; and protect investors and the public interest. The proposal is also consistent with section 6(b)(6) of the Act,[5] which requires that members and persons associated with members be appropriately disciplined for violations of Exchange rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(iii) of the Act [6] and subparagraph (f) Rule 19b–4 thereunder,[7] because it is concerned solely with the administration of the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to file number SR-PCX–2003–33 and should be submitted by August 13, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–18735 Filed 7–22–03; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78f(b).
[4] 15 U.S.C. 78f(b)(5).
[5] 15 U.S.C. 78f(b)(6).
[6] 15 U.S.C. 78s(3)(a).
[7] 17 CFR 240.19b–4.
[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3527]

State of Arizona

Pima County and the contiguous counties of Cochise, Graham, Maricopa, Pinal, Santa Cruz, and Yuma in the State of Arizona constitute a disaster area due to damages caused by the Aspen Fire that occurred beginning on June 17, 2003 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 15, 2003 and for economic injury until the close of business on April 16, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere:	5.625
Homeowners Without Credit Available Elsewhere:	2.812
Businesses with Credit Available Elsewhere:	5.908
Businesses and Non-Profit Organizations Without Credit Available Elsewhere:	2.953
Others (Including Non-Profit Organizations) with Credit Available Elsewhere:	5.500
For Economic Injury: Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere:	2.953

The number assigned to this disaster for physical damage is 352705. For economic injury, the number is 9W4100.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 16, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–18726 Filed 7–22–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3512, Amdt. 5]

State of West Virginia

In accordance with notices received from the Department of Homeland Security—Federal Emergency Management Agency, dated July 15 and July 16, 2003, the above numbered declaration is hereby amended to include Doddridge, Harrison, and Ritchie Counties in the State of West Virginia as a disaster area due to damages caused by severe storms, flooding, and landslides, and to establish the incident period for this disaster as beginning on June 11, 2003 and continuing through July 15, 2003.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated

location: Barbour, Calhoun, Gilmer, Lewis, Pleasants, Tyler, Upshur, Wirt, and Wood Counties in the State of West Virginia. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 20, 2003, and for economic injury the deadline is March 22, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: July 17, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–18725 Filed 7–22–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Guidelines on Goal Setting Under Procurement Preference Programs

AGENCY: Small Business Administration (SBA).

ACTION: Notice; request for comment.

SUMMARY: The U.S. Small Business Administration (SBA) must ensure that agencies establish goals for small business procurement that collectively, meet or exceed the governmentwide goals established by the Small Business Act in section 15 (g)(1) and (2). It is the policy of the Federal government to ensure that small businesses have maximum practicable opportunity to participate in Federal procurement. SBA is responsible for implementing the goaling program, assisting Federal agencies in establishing and obtaining the goals, and publishing quality information to the public. We are committed to making the methods, models, and processes that produce these results transparent and rigorous.

In summary, we are proposing these Goaling Guidelines to implement the recommendations made by GAO in August 2001 and as a continuation of our commitment to meeting our responsibility to implement the Small Business Preference Goaling Program in a user friendly manner. We welcome the opportunity for the Federal agencies and the public to comment on our proposed Goaling Guidelines.

SUPPLEMENTARY INFORMATION:

Background

SUMMARY: The Small Business Act establishes governmentwide goals and requires all Federal agencies with procurement authority to negotiate goals annually with SBA to ensure that small businesses receive maximum opportunity for participation in Federal contracts. Statutory governmentwide goals based on the value of all prime contract awards are:

- 23 percent for small business;
- 5 percent for small disadvantaged small business;
- 5 percent for women-owned small business;
- 3 percent for service-disabled, veteran-owned small business; and
- 3 percent for certified HUBZone small businesses (FY 2003).

(FY 1999—1 percent, FY 2000—1.5 percent, FY 2001—2 percent,

FY 2002—2.5 percent, FY 2003 and beyond—3 percent).

Subcontracting goals based on the value of subcontract awards are:

- 5 percent for small disadvantaged small business;
- 5 percent for women-owned small business; and
- 3 percent for service-disabled, veteran-owned small business.

SBA is required to obtain procurement data on achievements towards those goals and to publish an annual report to the President and the Congress that is also included in the *State of Small Business* report. As part of this mandate, SBA issues Goaling Guidelines that provide policy direction to the various Federal agencies pertaining to establishing annual goals, reporting procurement activity and submitting corrective action plans when goals are not met under the small business procurement preference programs. They provide procedures and timelines for the SBA to negotiate goals with each agency so that collectively the government-wide goals are established. The Goaling Guidelines, by which SBA manages the goaling program, must be updated periodically. Further, this document includes information on the statutory government-wide small business goals.

The current Goaling Guidelines were last revised in FY 2000 and are published on SBA's Web site at *www.sba.gov/GC/goals.*

In August 2001, the General Accounting Office (GAO) reviewed SBA's Goaling Program. (Small Business: More Transparency Needed in Prime Contract Goal Program. GAO–01–551. August 2001.) On pages 3 and 17, GAO recommended that the Goaling Guidelines be revised to ensure clarity, transparency and consistency. The recommendations require SBA to:

(1) Clearly communicate its goal-setting methodology,

(2) ensure that all agencies have an opportunity to negotiate goals for fiscal year 2002 and subsequent years,

(3) re-assess its rationale for making certain types of exclusions, and

(4) clarify its guidance on small business goals.

Each of the GAO recommendations is addressed in the proposed Goaling Guidelines. We believe the proposed revisions clarify SBA's goaling policies and provide transparency to the agencies and the public. SBA has posted the proposed Goaling Guidelines discussed in this Notice on its Web site at *www.sba.gov/GC/goals.* Click on the "Proposed Goaling Guidelines" button.

DATES: Comments of publication in the **Federal Register** must be received by 30 days from date of publication in the **Federal Register**.

ADDRESSES: Address comments to Linda G. Williams, Associate Administrator for Government Contracting, Small Business Administration, 409 Third St., SW., Suite 8100, Washington, DC 20416. Send e-mail to *goaling@sba.gov.* You may also submit comments electronically to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Pat Holden, National Goaling Program Manager, Small Business Administration, 409 Third St., SW., Suite 8000, Washington, DC 20416. Telephone (202) 205–6460 or by e-mail to *patricia.holden@sba.gov.*

Authority: Sec. 21, Pub. L. 507, 92 Stat. 1757; Sec 502(3), Pub. L. 100–656, 102 Stat. 3881; Sec. 7106(a)(2)(c), Pub. L. 103–355, 108 Stat. 3375; Sec. 221, Pub. L. 5–507.

Dated: July 17, 2003.

Fred C. Armendariz,

Associate Deputy Administrator, for Government Contracting and Business Development.

[FR Doc. 03–18724 Filed 7–22–03; 8:45 am]

BILLING CODE 8023–01–P

DEPARTMENT OF STATE

[Public Notice 4415]

Notice of Receipt of Application for Presidential Permit for the Construction of a New International Border Crossing

Notice is hereby given that the Department of State has received an application for a permit authorizing the construction, operation and maintenance of an international rail bridge in the Brownsville, Texas, area. The application has been filed by Cameron County, Texas, for a permit for a new single-track rail crossing 15 miles from the existing international rail bridge.

The Department's jurisdiction with respect to this application is based upon Executive Order 11423, dated August 16, 1968, as amended, and the International Bridge Act of 1972, (Pub. L. 92–343, 86 Stat. 731, approved September 26, 1972).

As required by E.O. 11423, the Department is circulating this application to concerned agencies for comment.

Interested persons may submit their views regarding this application in writing by August 1, 2003, to Mr. Dennis M. Linskey, Coordinator, U.S.-Mexico Border Affairs, Room 4258, Department of State, 2201 C St. NW., Washington, DC 20520.

The application and related documents made part of the record to be considered by the Department of State in connection with this application are available for review in the Office of Mexican Affairs during normal business hours throughout the comment period.

Any questions related to this notice may be addressed to Mr. Linskey at the above address or by fax at (202) 647–5752.

Dated: July 15, 2003.

Gregory Sprow,

Deputy Director, Office of Mexican Affairs, Department of State.

[FR Doc. 03–18722 Filed 7–22–03; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF STATE

[Public Notice 4416]

Notice of Receipt of Application for Presidential Permit for the Construction of a New International Border Crossing

Notice is hereby given that the Department of State has received an application from the County of El Paso, Texas for a Presidential Permit seeking authorization for the construction, operation and maintenance of an international bridge between Tornillo, Texas and Guadalupe, Chihuahua, Mexico. The proposed six lane bridge would be located approximately 650 feet from the existing Fabens-Caseta international crossing.

The Department's jurisdiction with respect to this application is based upon Executive Order 11423, dated August 16, 1968, as amended, and the International Bridge Act of 1972, (Pub. L. 92–343, 86 Stat. 731, approved September 26, 1972).

As required by E.O. 11423, the Department is circulating this application to concerned agencies for comment.

Interested persons may submit their views regarding this application in writing by August 30, 2003 to Mr. Dennis M. Linskey, Coordinator, U.S.-Mexico Border Affairs, Room 4258, Department of State, 2201 C St. NW., Washington, DC 20520.

The application and related documents made part of the record to be considered by the Department of State in connection with this application are available for review in the Office of Mexican Affairs during normal business hours throughout the comment period.

Any questions related to this notice may be addressed to Mr. Linskey at the above address or by fax at (202) 647–5752.

Dated: July 15, 2003.

Gregory Sprow,

Deputy Director, Office of Mexican Affair, Department of State.

[FR Doc. 03–18723 Filed 7–22–03; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Otsego County Regional Airport; Gaylord, MI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the sale of the airport property. The proposal consists of three parcels: Parcel A is 1.42 acres, Parcel B is 1.41 acres and Parcel C is 0.81 acres, totaling approximately 3.64 acres. Current use and present condition is abandoned dwelling and associated vacant land. The land was part of the original airport property and was not purchased with federal funds. There are no impacts to the airport by allowing the airport to dispose of the property.

The proposed land will be used to enhance the infrastructure surrounding the airport by developing commercial businesses. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before July 23, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Stephanie Swann, Program Manager, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO–613, Metro Airport Center, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone Number: 734–229–2945/FAX Number: 734–229–2950.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property located in Gaylord, Otsego County, Michigan, and described as follows:

Parcel "A": A parcel of land in the NE ¼ of Section 8, T30N–R3W, Bagley Township, Otsego County, Michigan described as: Beginning at the NE corner of said Section 8; Thence South 00 degrees 16′27″ E, 208.00′ along the East line of said Section 8; thence North 89 degrees 58′40″ W 295.93′; thence North 00 degrees 54′32″ W, 208.03′; thence South 89 degrees 58′40″ E, 298.23′ along the North line of said Section 8 to the Point of Beginning, containing 1.42 acres, more or less, and being subject to an easement for highway purposes over and across the Northerly 33′ and Easterly 40′ thereof. Said parcel contains approximately 1.42 acres.

Parcel "B": A parcel of land in the NE ¼ of Section 8, T30N–R3W, Bagley Township, Otsego County, Michigan, described as: Commencing at the NE corner of said Section 8; thence South 00 degrees 16′27″ E, 208.00′ along the East line of said Section 8 to the Point of Beginning; thence continuing South 00 degrees 16′27″ E, 208.00′ along the East line of said Section 8; thence North 89 degrees 58′40″ W, 293.63′; thence North 00 degrees 54′32″ E, 208.03′; thence South 89 degrees 58′40″ E, 295.93′ to the Point of Beginning, containing 1.41 acres more or less, and being subject to an easement for highway purposes over and across the Easterly 40′ thereof. Said parcel contains approximately 1.41 acres.

Parcel "C": A parcel of land in the NE ¼ of Section 8, T30N–R3W, Bagley Township, Otsego County, Michigan, described as: Commencing at the NE corner of Said Section 8; thence South 00 degrees 16′27″ E, 416.00′ along the East line of said Section 8 to the Point

of Beginning, thence continuing South 00 degrees 16'27" E, 120.00' along the East line of said Section 8; thence North 89 degrees 58'40" E, 293.29'; thence North 00 degrees 54'-32" W, 120.02'; thence South 89 degrees 58'40" E, 293.62' to the Point of Beginning, containing 0.81 acres, more or less, and being subject to an easement for highway purposes over and across the Easterly 40' thereof. Said parcel contains approximately 0.81 acres.

Issued in Romulus, Michigan on June 2, 2003.

Irene R. Porter,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 03–18389 Filed 7–22–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Presque Isle County/Rogers City Airport, Rogers City, MI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the sale of the airport property. The proposal consists of one parcel totaling approximately 7.13 acres. Current use and present conditions is undeveloped vacant land. The land was originally sold to the County from Bradley Reality Company, December 27, 1935. There are no impacts to the airport by allowing the airport to dispose of the property. The proposed land will be used to provide a road right-of-way on the south property line that will enhance airport use, revenue and provide access for a future industrial park. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before August 22, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Stephanie Swann, Program Manager, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO–613, Metro Airport Center, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone Number: 734–229–2945/FAX Number: 734–229–2950. Documents reflecting this FAA action may be reviewed at this same location or at Presque Isle County/Roger City Airport, Roger City, Michigan.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property located in Roger City, County of Presque Isle, Michigan, and described as follows:

A parcel of land in Rogers Township, Presque Isle county, State of Michigan, described as commencing at the Southwest corner of section 22, T35N, R5E; thence easterly 1,098.77 feet along the south section line of said section to the point of beginning: thence N 26°29'35" W, along the east R.O.W. of US–23 76.79 feet; thence N 87°51'37" E, 632.77 feet; thence N 02°06'33" W, 30 feet; thence N 87°51'37" E, 970.34 feet; thence N 87°51'25" E, 1345.12'; thence S 01°05'26" E, 100,00 feet; thence S 87°51'25" W, 1343.29 feet; thence S 87°51'37" W, 836.54 feet; thence S 02°06'33" E, 50 feet; thence S 87°51'37" W, 712.25 feet; thence N 26°29'35" W, 54.91 feet to the point of beginning. Said parcel contains approximately 7.13 acres.

Issued in Romulus, Michigan on June 2, 2003.

Irene R. Porter,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 03–18386 Filed 7–22–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Presque Isle County/Roger City Airport, Roger City, MI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the sale of the airport property. The proposal consists of one parcel totaling approximately 28.22 acres. Current use and present condition is undeveloped vacant land. The land was originally sold to the County from Bradley Realty Company, December 27, 1935. There are no impacts to the airport by allowing the airport to dispose of the property. The proposed land will be used to develop business in an area designated as a Renaissance Zone, as well as enhance the infrastructure surrounding the airport. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before August 22, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Stephanie Swann, Program Manager, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO–613, Metro Airport Center, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone Number: 734–229–2945/FAX Number: 734–229–2950. Documents reflecting this FAA action may be reviewed at this same location or at Presque Isle County/Roger City Airport, Roger City, Michigan.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property located in Roger City, County of Presque Isle, Michigan, and described as follows:

Beginning at the center of section 22, T35N, R5E, Presque Isle County, Michigan, thence easterly along the EW¼ line of said section 480.02 feet; thence S 02°02'11" E 150.00 feet; thence N 87°58'04"E 130.00; thence N 02°02'11" W 150.00 feet to the EW¼ line of said section; thence easterly along said ¼ line 544.72 feet; thence S 01°05'24" E, 1,133.16 feet; thence S 86°48'28" W, 514.43 feet; thence N 02°09'09" W, 302.22 feet; thence S 87°50'51" W, 220.00 feet; thence S 02°09'09" E, 318.12 feet; thence S 87°50'51" W, 407.19 feet to the NS¼ line of said section; thence N 01°16'25" W along said NS¼ line 1,164.72 feet to the point of beginning. Said parcel contains approximately 28.22 acres.

Dated: 1 Issued in Romulus, Michigan, on June 2, 2003.

Irene R. Porter,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 03–18387 Filed 7–22–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Presque Isle County/Roger City Airport, Roger City, MI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the sale of the airport property. The proposal consists of one parcel totaling approximately 42.68 acres. Current use and present condition is undeveloped vacant land. The land was originally sold to the County from Bradley Reality Company, December 27, 1935. There are no impacts to the airport by allowing the airport to dispose of the property. However, an avigation easement will be imposed over this property to protect the airspace for future aeronautical development and any building constructed on this parcel will be limited to one-story. The proposed land will be used to enhance the infrastructure surrounding the airport by developing business is an area designated as a Renaissance Zone. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the disposal of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the Federal Register 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before August 22, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Stephanie Swann, Program Manager, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO–613, Metro Airport Center, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone Number: 734–229–2945/FAX Number: 734–229–2950. Documents reflecting this FAA action may be reviewed at this same location or at Presque Isle County/Roger City Airport, Roger City, Michigan.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property located in Roger City, County of Presque Isle, Michigan, and described as follows:

A parcel commencing at the southwest corner of section 22, T35N R5S Presque Isle County, Michigan, thence along the south line of said section 1,016.28 feet to the point of beginning, thence W 26° 29'35" W 473.43 feet; thence north 87° 15'37" E, 349.90 feet; thence S 02° 08'32" E, 200.00 feet; thence N 87° 51'37" EM 177.00 feet; thence S 02° 08'32" E, 166.55 feet; thence S 87° 51'37" W, 280.29 feet, thence S 26° 29'35" E, 76.79 feet to the south line of said section; thence along said south line 80.97 feet to the point of beginning, also commencing at the S¼ corner said section; thence northerly along the NS¼ line of said section 100.11 feet, to the point of beginning; thence S 87° 51'37" W, 971.55 feet, thence N 02° 08'32' W, 744.22 feet; thence N 87° 51'37' E, 2078.05 feet, thence S 01° 05'26" W, 300 feet; thence N 87° 51'03" E, 250 feet to the E ⅛ line of said section; thence southerly along said ⅛ line 444.22 feet, thence S 87° 51'25" W, 1,343.91 feet to the point of beginning. Said parcel contains 42.68 acres.

Issued in Romulus, Michigan, on June 2, 2003.

Irene R. Porter,

Manager, Detroit Airports District Office, FAA, Great Lakes Region.

[FR Doc. 03–18388 Filed 7–22–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–21000]

KBUS Holdings, LLC—Acquisition of Assets and Business Operations—All West Coachlines, Inc., *et al.*

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice tentatively approving finance transaction.

SUMMARY: KBUS Holdings, LLC (KBUS or Applicant), a noncarrier, has filed an application under 49 U.S.C. 14303 to purchase and merge the assets and business operations of: All West Coachlines, Inc. (MC–212056); American Charters & Tours, Inc. (MC–153814); Americoach Tours, Ltd. (MC–212649); Antelope Valley Bus, Inc. (Antelope) (MC–125057); Airport Bus of Bakersfield, Inc., a subsidiary of Antelope (MC–163191); Arrow Stage Lines, Inc. (MC–029592); Bayou City Coaches, Inc. (MC–245246); Blackhawk, Central City Ace Express, Inc. (MC–273611); Browder Tours, Inc. (MC–236290); California Charters, Inc. (MC–241211); Desert Stage Lines, owned by Antelope (MC–140919); El Expreso, Inc. (MC–244195); Express Shuttle, Inc. (MC–254884); Franciscan Lines, Inc. (MC–425205); Fun Time Tours, Inc. (MC–176329); Goodall's Charter Bus Service, Inc. (MC–148870); Grosvenor Bus Lines, Inc. (MC–157317); Gulf Coast Transportation Company (MC–201397); Kerrville Bus Company, Inc. (MC–27530), and 3 subsidiaries, Community Rentals Company (MC–257338), Sunset Tours & Travel, Inc. (MC–241422), and William Timothy Vaught d/b/a Vaught Bus Leasing Company (MC–209574); K-T Contract Services, Inc. (MC–218583); PCSTC, Inc. (MC–184852); Powder River Transportation Services, Inc. (MC–161531); Royal West Tours & Cruises, Inc. (MC–239135); Stardust Tours-Memphis, Inc. (MC–318341); Texas Bus Lines, Inc. (MC–037640); Travel Impressions, LLC (MC–340826); Valen Transportation, Inc. (MC–212398); and Worthen Van Service, Inc. (MC–142573) (collectively, Sellers). Persons wishing to oppose this application must follow the rules at 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by September 8, 2003. Applicant may file a reply by September 22, 2003. If no comments are filed by September 8, 2003, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–21000 to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of any comments to applicant's representative: Stephen Flott, Flott & Co. PC, P.O. Box 17655, Arlington, VA 22216–7655.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: KBUS is a private limited liability company organized under the laws of the state of Delaware by Kohlberg & Company, LLC (Kohlberg), a noncarrier. Kohlberg is a private equity firm specializing in middle market investments. KBUS,

which was specifically created to undertake this transaction, entered into an agreement with the Sellers to buy the assets, including vehicles, and business operations of the Sellers and to take over vehicle leases. KBUS is undertaking this transaction under Kohlberg Fund IV, which closed in 2001 with a total capital of $576 million.

KBUS is a noncarrier and will remain a noncarrier after this transaction. Applicant plans to consolidate the assets and business operations of the Sellers into two entities: A leasing company and CUSA, LLC (CUSA). The leasing company will acquire the vehicles and CUSA will conduct carrier operations. CUSA has applied for twelve operating authorities from the Federal Motor Carrier Safety Administration to operate as a motor contract and common carrier of passengers in interstate commerce, in order to accommodate the twenty-four operating names under which CUSA intends to carry on business. The Federal operating authorities currently held by each of the Sellers will, upon consummation, be surrendered.

Under 49 U.S.C. 14303(b), the Board must approve and authorize a transaction found to be consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

Applicant has submitted information, as required by 49 CFR 1182.2, including information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b). Applicant states that the proposed transaction will not reduce competitive options, adversely impact fixed charges, or adversely impact the interests of employees of companies whose assets and businesses are being acquired. It asserts that granting the application will allow CUSA to take advantage of economies of scale and substantial benefits offered by Applicant, including interest cost savings and reduced operating costs. Additional information, including a copy of the application, may be obtained from Applicant's representative.

On the basis of the application, the Board finds that the proposed transaction is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed finance transaction is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed vacated.

3. This decision will be effective on September 8, 2003, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 400 7th Street, SW., Room 8214, Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, SW., Washington, DC 20590.

Decided: July 17, 2003.

By the Board, Chairman Nober.

Vernon A. Williams,

Secretary.

[FR Doc. 03–18745 Filed 7–22–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Proposed Collections; Comments Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on an information collection that is due for extension approval by the Office of Management and Budget. The Office of International Affairs within the Department of the Treasury is soliciting comments concerning Treasury International Capital Form S, Purchases and Sales of Long-term Securities by Foreigners.

DATES: Written comments should be received on or before September 22, 2003 to be assurred of consideration.

ADDRESSES: Direct all written comments to Dwight Wolkow, International Portfolio Investment Data Systems, Department of the Treasury, Room 4410–1440NYA, 1500 Pennsylvania Avenue NW., Washington, DC 20220. In view of possible delays in mail delivery, please also notify Mr. Wolkow by e-mail *(dwight.wolkow@do.treas.gov)*, FAX (202–622–1207) or telephone (202–622–1276).

FOR FURTHER INFORMATION CONTACT: Copies of the proposed forms and instructions are available on the Treasury's TIC Forms Web page, *http://www.treas.gov/tic/forms.html.* Requests for additional information should be directed to Mr. Wolkow.

SUPPLEMENTARY INFORMATION:

Title: Treasury International Capital Form S, Purchases and Sales of Long-term Securities by Foreigners.

OMB Control Number: 1505–0001.

Abstract: Form S is part of the Treasury International Capital (TIC) reporting system, which is required by law (22 U.S.C. 286f; 22 U.S.C. 3103; E.O. 10033; 31 CFR 128), and is designed to collect timely information on international portfolio capital movements. Form S is a monthly report used to cover transactions in long-term marketable securities undertaken DIRECTLY with foreigners by banks, other depository institutions, brokers, dealers, underwriting groups and other individuals and institutions. This information is necessary for compiling the U.S. balance of payments accounts, for calculating the U.S. international investment position, and for formulating U.S. international financial and monetary policies.

Current Actions: No changes to the current forms and instructions are being proposed.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Form S (1505–0001).

Estimated Number of Respondents: 250.

Estimated Average Time Per Respondent: about 5.6 hours per respondent per filing.

Estimated Total Annual Burden Hours: 16,800 hours, based on 12 reporting periods per year.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: (a) Whether Form S is necessary for the proper performance of the functions of the Office, including whether the information will have practical uses; (b) the accuracy of the above estimate of the burdens; (c) ways to enhance the quality, usefulness and clarity of the information to be collected; (d) ways to minimize the reporting and/or record keeping burdens on respondents, including the use of information technologies to automate the collection of the data; and (e) estimates of capital or start-up costs of operation, maintenance and purchase of services to provide information.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Systems.

[FR Doc. 03–18639 Filed 7–22–03; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of International Affairs; Survey of Foreign Ownership of U.S. Securities as of June 30, 2003

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Department of the Treasury is informing the public that it is conducting a mandatory survey of foreign ownership of U.S. securities as of June 30, 2003. This Notice constitutes legal notification to all United States persons (defined below) who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, this survey. Additional copies of the reporting form SHLA and instructions may be printed from the Internet at: *http://www.treas.gov/tic/forms.html*

Definition: A U.S. person is any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a state, provincial, or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency), who resides in the United States or is subject to the jurisdiction of the United States.

Who Must Report: The following U.S. persons must report on this survey: It is expected that reporting will be required only from those who filed last year Form SHLA entitled Foreign-Residents' Holdings of U.S. Securities, Including Selected Money Market Instruments as of June 28, 2002. The panel for this survey is based upon the level of foreign holdings of U.S. securities reported on the March 2000 benchmark survey of foreign holdings of U.S. securities and will consist of the largest reporters on that survey. Entities required to report will be contacted individually by the Federal Reserve Bank of New York. Entities not contacted by the Federal Reserve Bank of New York have no reporting responsibilities.

What to Report: This report will collect information on foreign resident holdings of U.S. securities, including equities, short-term debt securities (including selected money market instruments), and long-term debt securities.

How to Report: Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be obtained by contacting the survey staff of the Federal Reserve Bank of New York at (212) 720–6300, e-mail: *SHL.help@ny.frb.org.* The mailing address is: Federal Reserve Bank of New York, Statistics Function, 4th Floor, 33 Liberty Street, New York, NY 10045–0001.

When to Report: Data should be submitted to the Federal Reserve Bank of New York, acting as fiscal agent for the Department of the Treasury, by August 29, 2003.

Dated: July 11, 2003.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Reporting Systems.

[FR Doc. 03–18638 Filed 7–22–03; 8:45 am]

BILLING CODE 4810–25–P

Federal Register

Wednesday,
July 23, 2003

Part II

Department of Homeland Security

Bureau of Customs and Border Protection

19 CFR Parts 4, 103, 113 et al.
Required Advance Electronic Presentation of Cargo Information; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Parts 4, 103, 113, 122, 123 and 192

RIN 1515–AD33

Required Advance Electronic Presentation of Cargo Information

AGENCY: Customs and Border Protection, Homeland Security.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to provide that Customs and Border Protection (CBP) must receive, by way of a CBP-approved electronic data interchange system, information pertaining to cargo before the cargo is either brought into or sent from the United States by any mode of commercial transportation (sea, air, rail or truck). The cargo information required is that which is reasonably necessary to enable high-risk shipments to be identified so as to prevent smuggling and ensure cargo safety and security pursuant to the laws enforced and administered by CBP. The proposed regulations are specifically intended to implement the provisions of section 343(a) of the Trade Act of 2002, as amended by the Maritime Transportation Security Act of 2002.

DATES: Written comments must be received on or before August 22, 2003.

ADDRESSES: Written comments are to be addressed to the Bureau of Customs and Border Protection (CBP), Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Submitted comments may be inspected at CBP, 799 9th Street, NW., Washington, DC during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT:

Legal matters: Glen E. Vereb, Office of Regulations and Rulings, (202) 572–8724;

Trade compliance issues:

Inbound vessel cargo: Kimberly Nott, Field Operations, 202–927–0042;

Inbound air cargo: David M. King, Field Operations, 202–927–1133;

Inbound truck cargo: Enrique Tamayo, Field Operations, 202–927–3112;

Inbound rail cargo: Juan Cancio-Bello, Field Operations, 202–927–3459;

Outbound cargo, all modes: Erika Unangst, Field Operations, 202–927–0284;

For economic impact issues: Daniel J. Norman, Field Operations, 202–927–4305.

SUPPLEMENTARY INFORMATION:

Background

Section 343(a) of the Trade Act of 2002 (Public Law 107–210, 116 Stat. 933, enacted on August 6, 2002), as amended by section 108 of the Maritime Transportation Security Act of 2002 (Public Law 107–295, 116 Stat. 2064, enacted on November 25, 2002), and codified at 19 U.S.C. 2071 note, requires that the Secretary endeavor to promulgate final regulations not later than October 1, 2003, that provide for the mandatory collection of electronic cargo information by the Customs Service (now part of the Bureau of Customs and Border Protection (CBP)), either prior to the arrival of the cargo in the United States or its departure from the United States by any mode of commercial transportation (sea, air, rail or truck). Under section 343(a), as amended, the information required must consist of that information about the cargo which is determined to be reasonably necessary to enable CBP to identify high-risk shipments so as to prevent smuggling and ensure cargo safety and security pursuant to the laws that are enforced and administered by CBP.

Consequently, for the purposes set forth in section 343(a), as amended, and within the parameters prescribed in the statute, as highlighted below, this document proposes to amend the Customs Regulations in order to require the advance electronic transmission of information pertaining to cargo prior to its being brought into, or sent from, the United States.

CBP Authority for Issuance of Proposed Rule

When the Trade Act of 2002 was enacted (Public Law 107–210; August 6, 2002), CBP was part of the Department of the Treasury as the Customs Service. Thereafter, the Homeland Security Act of 2002 was enacted (Public Law 107–296; November 25, 2002), which created the Department of Homeland Security (DHS). Section 403 of the Homeland Security Act (the Act) transferred to the newly created Department the functions, personnel, assets, and liabilities of the Customs Service, including the functions of the Secretary of the Treasury relating thereto. Customs, later renamed as CBP, thereby became a component of DHS.

Furthermore, the Department of the Treasury recently issued an order (Treasury Order 100–16, dated May 15, 2003) delegating to DHS certain Customs revenue functions that were otherwise retained by the Treasury Department under sections 412 and 415 of the Act. In accordance with the Homeland Security Act and this transfer and delegation of functions, certain matters, such as this proposed rule which is designed to ensure cargo safety and security rather than revenue assessment, now fall solely within the jurisdiction of DHS.

Therefore, inasmuch as CBP is an integral component of DHS, and in view of the subject functions transferred/delegated in this regard from Treasury to DHS, this proposed regulation is being issued by CBP with the approval of DHS. Nevertheless, CBP has also coordinated the development of this proposed rule jointly with the Treasury Department.

Statutory Factors Governing Development of Regulations

Under section 343(a), as amended, the requirement to provide particular cargo information to CBP is generally to be imposed upon the party likely to have direct knowledge of the required information. However, where doing so is not practicable, CBP in the proposed regulations must take into account how the party on whom the requirement is imposed acquires the necessary information under ordinary commercial practices, and whether and how this party is able to verify the information it has acquired. Where the party is not reasonably able to verify the information, the proposed regulations must allow the party to submit the information on the basis of what it reasonably believes to be true.

Furthermore, in developing the regulations, CBP, as required, has taken into consideration the remaining parameters set forth in the statute, including:

- The existence of competitive relationships among parties upon which the information collection requirements are imposed;
- Differences among cargo carriers that arise from varying modes of transportation, different commercial practices and operational characteristics, and the technological capacity to collect and transmit information electronically;
- The need for interim requirements to reflect the technology that is available at the time of promulgation of the regulations for purposes of the parties transmitting, and CBP receiving and analyzing, electronic information in a timely fashion;
- That the use of information collected pursuant to these regulations is to be only for ensuring cargo safety and security and preventing smuggling and not for determining merchandise entry or for any other commercial enforcement purposes;
- The protection of the privacy of business proprietary and any other confidential cargo information that CBP receives under these regulations, with the exception that certain manifest information is required to be made available for public disclosure under 19 U.S.C. 1431(c);
- Balancing the likely impact on the flow of commerce with the impact on cargo safety and security in determining the timing for transmittal of required information;
- Where practicable, avoiding requirements in the regulations that are redundant with one another or with requirements under other provisions of law; and
- The need, where appropriate, for different transition periods for different classes of affected parties to comply with the electronic filing requirements in the regulations.

Additionally, the statute requires that a broad range of parties, including importers, exporters, carriers, customs brokers, and freight forwarders, among other interested parties, likely to be affected by the regulations, be consulted and their comments obtained and evaluated as a prelude to the development and promulgation of the regulations. In furtherance of this, by a notice published in the **Federal Register** (67 FR 70706) on November 26, 2002, the United States Customs Service, which is now merged into CBP, announced a series of public meetings in accordance with section 343(a) to assist in the formulation of these proposed regulations. The meetings were also announced on the Customs Web site.

Separate meetings were scheduled and held to address specific issues related to the advance electronic presentation of information prior to the arrival or departure of air cargo (January 14, 2003), truck cargo (January 16, 2003), rail cargo (January 21, 2003) and sea cargo (January 23, 2003). "Strawman" proposals were offered by Customs at the meetings and were made available on the Customs Web site. In the meetings, members of the importing and exporting community made many significant observations, insights, and suggestions as to what CBP should consider and how CBP should proceed in composing the proposed regulations. Also, at the meetings and on the Customs Web site, suggestions and comments were solicited from the public. The CBP received numerous submissions via e-mail which similarly provided valuable insights and recommendations regarding the development of the proposed rule.

Moreover, an extensive number of meetings were held with workgroups of the subcommittee on advance cargo information requirements of the Treasury Advisory Committee on the Commercial Operations of the U.S. Customs Service (COAC), which greatly assisted CBP in its development of these proposed regulations. Indeed, much of the input and recommendations from those members of the trade who participated in the public meetings, the various workgroups of the COAC subcommittee, as well as the views expressed in the many e-mail submissions in this matter, are reflected in these proposed regulations.

In this regard, what follows is a review of, and CBP's response to, the most salient issues and recommendations that were presented pursuant to this consultation process, along with an overview of the proposed programs for advance information filing for cargo destined to, or departing from, the United States by vessel, air, rail or truck.

Public Comments; General

Costs of Automation; Economic Analysis

Comment

Any implementing regulations compelling the advance presentation to CBP of electronic information for cargo destined to the United States, under section 343(a), as amended, would impose substantial automation costs on the carrier trade. The CBP should conduct an economic impact analysis to this effect.

CBP Response

As is set forth below, there are electronic data transmission systems already in place in many of the modes. When coupled with the fact that much of the trade already uses these systems, it does not appear that requiring advance electronic cargo information would impose substantial costs on the trade.

Nevertheless, Customs and Border Protection (CBP) has conducted an economic analysis to determine whether the proposed rule is an "economically significant regulatory action" under Executive Order 12866 and whether the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) would apply to this rulemaking. It has been determined, as a result of the *initial* analysis conducted, that this proposed rule would not have a significant economic impact upon a substantial number of small entities under the RFA. This economic analysis is attached as an Appendix to this document. For the reasons set forth in the analysis, the agency does not make a certification at this time with regard to the regulatory requirements of 5 U.S.C. 603 and 604. Comments are specifically requested as to the impact of the proposed rule on small entities.

This rule is a "significant regulatory action" under Executive Order (E.O.) 12866 and has been reviewed by the Office of Management and Budget in accordance with that E.O. However, it is our preliminary determination that the proposed rule would not result in an "economically significant regulatory action" under E.O. 12866, as regards the impact on the national economy.

Protection of Confidential Information Presented to CBP

Comment

Cargo manifest data collected by CBP under section 343(a), as amended, should be kept confidential by the agency and not be released to the public.

CBP Response

Section 343(a)(3)(G), as amended, expressly requires that CBP in its implementing regulations protect the privacy of any business proprietary and any other confidential cargo information that is furnished to CBP in accordance with section 343(a), except for any manifest information that is collected pursuant to section 431, Tariff Act of 1930, as amended (19 U.S.C. 1431), and required to be available for public disclosure pursuant to section 1431(c). It is emphasized in this connection that the application of section 1431(c) has been effectively limited only to vessel cargo manifest information (§ 103.31, Customs Regulations (19 CFR 103.31)).

As thus mandated by the law, CBP intends to accord full protection to the privacy of air, rail, or truck cargo information that is collected under section 343(a), as amended; to this effect, CBP has included in this document a proposed amendment to part 103, Customs Regulations (19 CFR part 103) (*see* proposed § 103.31a)).

Information Technology; Interface With Other Government Agencies

Comment

The regulations should avoid redundancy requirements with those of

other Federal agencies. There should be one filing procedure for all Federal agencies (*e.g.*, the Food and Drug Administration (FDA); and the Animal and Plant Health Inspection Service (APHIS)). All data elements to be required by Federal agencies, both within and without the Department of Homeland Security (DHS), for traffic entering the United States should be coordinated through a single entity, preferably CBP. Toward this end, the notification requirements of other Federal agencies should be integrated into the CBP regulations for section 343(a), as amended.

CBP Response

To the extent feasible, CBP will continue to explore ways and methods to harmonize and synchronize information collection requirements among the several agencies involved, so that the cargo information CBP collects under section 343(a), as amended, may be provided by electronic means to other Federal offices. Indeed, efforts in this regard are already underway in connection with the development of the Automated Commercial Environment (ACE) and the International Trade Data System (ITDS) (a single system that will fully integrate all requisite information about goods entering and exiting the United States). These discussions may ultimately lead to a sole portal ("single window") for receiving all inward cargo information that may be required to assist other agencies in administering and enforcing statutes enacted to further combat threats to the safety and security of the nation.

However, at present, CBP is of necessity operating under severe time constraints in endeavoring to comply with the statutory deadline for promulgating final regulations under section 343(a) as a national security imperative. Given the limited time available, the construction of a fully-integrated, comprehensive multi-agency electronic data interchange system does not, at this moment, appear to be a practicable or feasible concept, especially in view of the multitude of technological modifications and substantial reprogramming that would be needed for existing systems in order to effectuate this; and withholding the implementation of the final regulations pending the completion of an undertaking of such magnitude would quite clearly be inconsistent with the urgency of the legislation.

The CBP notes that other agencies, such as FDA, have different statutory requirements regarding advance notice of imports. The CBP further notes that, due to these different statutory requirements, these agencies may have different information needs to accomplish their different statutory mandates. For example, some of the information requirements in section 307 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 to address food safety and security assessments, are different from those required by CBP. In some instances, the time needed by other agencies to receive, review, and respond to this information to accomplish their statutory mission may be different from the time required by CBP to assess and respond to information needed to achieve CBP's statutory mission. To the extent possible, CBP will work with other interested agencies to share the information collected under section 343(a), as amended, with other Federal agencies.

Postal Shipments

Comment

The advance cargo information provisions for incoming cargo should apply to air/vessel shipments through the United States Postal Service (USPS).

CBP Response

As prescribed in section 343(a)(3)(K), as amended, CBP has the authority, in consultation with the Postmaster General, to require advance cargo information for shipments by the USPS. The CBP still has this issue under consideration. Should a determination be made to extend the advance electronic cargo information mandate to USPS shipments, such postal shipments would be the subject of a separate notice of proposed rulemaking.

Overview; Electronic Filing; Shipper on Master/House Bills

Pursuant to section 343(a)(1), as amended, cargo information for required inbound and outbound shipments must be transmitted to CBP by means of a CBP-approved electronic data interchange system. In this document, CBP is proposing that cargo information be transmitted or presented through existing CBP-approved data systems. As is further elucidated *infra*, for each incoming mode and for all outbound modes, these existing data systems are as follows:

Outbound, all modes: Automated Export System (AES);

Inbound vessels: Vessel Automated Manifest System (Vessel AMS);

Inbound aircraft: Air Automated Manifest System (Air AMS);

Inbound rail: Rail Automated Manifest System (Rail AMS);

Inbound truck: Free And Secure Trade System (FAST); Pre-Arrival Processing System (PAPS) (which employs the Automated Broker Interface (ABI)); Border Release Advanced Screening and Selectivity program (BRASS, modified as appropriate); and Customs Automated Forms Entry System (CAFES) or ABI in-bond reporting.

In this latter regard, and to the additional extent that future approved automated data systems are to be implemented, CBP, either generally or on a port-by-port basis, as applicable, will give advance notice of the effective date of implementation of the specific system at particular port(s) of arrival by publishing a notice to this effect in the **Federal Register**.

Master Bills/House Bills

Generally speaking, a master bill of lading refers to the bill of lading that is generated by the incoming carrier covering a consolidated shipment. A consolidated shipment would consist of a number of separate shipments that have been received and consolidated into one shipment by a party such as a freight forwarder or a Non Vessel Operating Common Carrier (NVOCC) for delivery as a single shipment to the incoming carrier. The consolidated shipment, as noted, would be covered under the incoming carrier's master bill; and this master bill could reflect the name of the freight forwarder, the NVOCC or other such party as being the shipper (of the consolidated shipment). However, each of the shipments thus consolidated would be covered by what is referred to as a house bill. The house bill for each individual shipment in the consolidated shipment would reference the name of the actual shipper (which would be the actual foreign owner and exporter of the cargo to the United States). As will be seen from the data elements as proposed in this rulemaking, it is this latter information as to the identity of the actual shipper from the relevant house bill that CBP is seeking for targeting purposes.

Public Comments; Vessel Cargo Destined to the United States

Summary of Principal Comments

Most of the comments received concerning the advance information reporting requirements for incoming vessel cargo evidenced an intent to revisit the "24-hour rule" that was issued and became effective last year (T.D. 02–62, 67 FR 66318; October 31, 2002).

In brief, it was principally requested that advance cargo information filing by

Non Vessel Operating Common Carriers (NVOCCs) be eliminated, due to a number of operational problems experienced by incoming carriers, that have resulted from limitations said to be inherent in the Vessel Automated Manifest System (AMS) when NVOCCs, as opposed to the vessel carriers, transmit shipment information to CBP; at the same time, though, it was advocated that importers should be permitted, at their discretion, to file through AMS certain information that would likely best be known to them as to the identification and nature of the incoming cargo. Also, it was asked that definitions be added to the regulations regarding those data elements pertaining to shipper and consignee information. In addition, it was asked that Department of Defense-contracted conveyances be exempted from the 24-hour rule.

CBP Response

In sum, CBP stands by the 24-hour rule for incoming vessel cargo and does not contemplate any major change to it under this rulemaking, with one exception: to introduce the mandate that vessel carriers file their advance cargo manifest information with CBP electronically.

As explained in the final rule (67 FR at 66319), the 24-hour pre-lading requirement for incoming vessel cargo, especially containerized vessel cargo, is tied inextricably to the Container-Security Initiative (CSI). CSI was developed to secure an indispensable, but vulnerable, link in the chain of global trade: containerized shipping. Annually, more than 6 million cargo containers are off loaded at U.S. seaports. A core element of CSI is to pre-screen such containers at the port of departure *before* they are shipped. To enable this pre-screening to be done fully and effectively, it is essential that the required advance cargo declaration information be presented to CBP at least 24 hours prior to lading the cargo aboard the vessel at the foreign port.

With the implementation of CSI and the 24-hour rule, CBP has been able to identify shipments that have posed potential threats; and security-related seizures of problematic shipments have occurred. In short, these programs—CSI coupled with the 24-hour rule—have become a critical bulwark against threats to the safety and security of United States seaports, trade, industry, and the country.

Non Vessel Operating Common Carriers (NVOCCs)

In consideration of the competitive relationships that exist in the international freight forwarding field, those NVOCCs that seek to file required business proprietary and other confidential cargo information for their incoming shipments directly with CBP should be allowed to do so, rather than having to furnish such information to vessel carriers for electronic presentation to CBP. The CBP is confident that operational issues that have arisen in relation to the implementation of the 24-hour rule will over time be satisfactorily addressed; toward this end, CBP will continue to be available to assist the trade in resolving such issues.

There is no consensus in the trade community as to whether importers should provide sea cargo data to CBP. When this split is coupled with the current design and functionality of the AMS system, CBP finds that allowing importers, at their discretion, to participate in advance electronic filing through the system would at this time be neither advisable nor practicable.

Government Vessels

Government vessels falling within the purview of § 4.5(a), Customs Regulations (19 CFR 4.5(a)), are exempt from the requirement to make entry, and, as such, they would already be exempt from having to comply with advance cargo declaration reporting under the 24-hour rule (*see* 19 CFR 4.7(a), (b)(2)). For purposes of enlarging upon those vessels that would be subject to such exemptions, it is noted that by a separate, interim rule, CBP will expand the definition of government vessels.

Data Elements—Shipper, Consignee; Date and Time of Departure

With reference to the identity of the shipper, at the master bill level, for consolidated shipments, the identity of the Non Vessel Operating Common Carrier (NVOCC), freight forwarder, container station or other carrier would be sufficient. For non-consolidated shipments, and for each house bill in a consolidated shipment, the identity of the actual shipper (who is both the owner and the exporter) of the cargo from the foreign country would be needed. To elaborate, the foreign owner of the goods just before they are delivered for export, and who initially consigns and ships them from the foreign country, is the party who ultimately decides that the goods are to be disposed of in another country, such as the United States. The foreign shipper and owner of the goods is, therefore, the exporter, because this is the party initially responsible for causing the export. Section 4.7a(c)(4)(viii), Customs Regulations (19 CFR 4.7a(c)(4)(viii)), would be revised to include the additional meaning of this data element.

In addition, with reference to the identity of the consignee, for consolidated shipments, at the master bill level, the identity of the NVOCC, freight forwarder, container station or other carrier would be sufficient. However, parties identified as "consolidators," even though they may also be NVOCCs, may not participate in Vessel AMS.

For non-consolidated shipments, and for each house bill in a consolidated shipment, the consignee would be the party to whom the cargo would be delivered in the United States, with the exception of "FROB" (Foreign Cargo Remaining On Board). If the name of the consignee, as described, is available, the carrier must disclose this information. However, where cargo is shipped "to the order of [a named party]," which is a common business practice, the carrier must report this named "to order" party as the consignee in the advance cargo information submission; and, if there is any other commercial party listed in the bill of lading for delivery or contact purposes, the carrier must also report this other commercial party's identity and contact information (address/phone number) in the "Notify Party" field of the advance electronic data transmission to CBP, to the extent that the CBP-approved electronic data interchange system is capable of receiving this data. Section 4.7a(c)(4)(ix) would be revised to include the added meaning of this data element.

Also, § 4.7a(c)(4) would further be amended to require the date and time of the departure of the vessel from foreign, as reflected in the vessel log.

Overview; Vessel Cargo Destined to the United States

Electronic Filing Mandate

Under this proposed rule, in principal part, the 24-hour rule would be amended to provide that vessel carriers must present their cargo declarations to CBP by means of a CBP-approved electronic data interchange system, 24 hours before lading the cargo aboard the vessel in the foreign port.

Transition/Timetable for Compliance With Electronic Filing Mandate

Within 90 days of the publication of this advance electronic cargo information requirement as a final rule in the **Federal Register**, all ocean carriers, and NVOCCs choosing to participate, must be automated on the Vessel AMS system at all ports of entry

in the United States where their cargo will initially arrive.

Comments; Air Cargo Destined to the United States

Time Frame for Presenting Advance Cargo Information to CBP

Comment

The time frames for presenting electronic cargo information to CBP for air cargo prior to the cargo's arrival in the United States that were set forth in the "strawman" proposal (12 hours in advance of foreign lading generally, and 8 hours in advance of foreign lading in the case of express courier shipments) were excessively long. Such lengthy advance time frames would destroy "just-in-time" delivery systems. Instead, it was chiefly recommended that the time frame be one hour prior to arrival in the United States; other commenters, however, thought that the time frame for transmission should be determined on a country-by-country basis, or, in the alternative, at the time of "wheels-up" on the aircraft.

Also, it was asserted that the advance notice time frame should be consistent within each mode of transport; alternatively, it was suggested that the advance filing time frame for charter flights should be shorter than for other flights, and that there should be special procedures for time-sensitive cargoes (short haul).

CBP Response

The time frames in the "strawman" proposal were put forth only for purposes of stimulating a dialogue with the importing trade regarding the development of an appropriate time frame for the electronic submission of information for inbound air cargo. This issue is central to the implementation of section 343(a) of the Trade Act of 2002, as amended.

Accordingly, after considering the feedback received from the importing trade in response to the "strawman," CBP is proposing in this rulemaking that information for inbound air cargo be electronically presented no later than the time of departure of the aircraft for the United States (no later than the time that wheels are up on the aircraft, and it is en route directly to the United States), in the case of aircraft departing for the United States from any foreign port or place in North America, which includes locations in Mexico, Central America, South America (from north of the Equator only), the Caribbean, and Bermuda. For aircraft departing for the United States from any other foreign area, information for the inbound air cargo would be required to be electronically presented to CBP no later than 4 hours prior to the arrival of the aircraft at the first port of arrival in the United States.

At present, CBP believes that these time frames (no later than "wheels-up" or 4 hours prior to arrival, as applicable) should enable CBP to properly conduct a risk assessment for incoming air cargo and, if found advisable, to make preparations to hold the cargo for further information or for examination, as required to ensure cargo safety and security under section 343(a), as amended. At the same time, CBP has determined that these time frames should realistically accommodate the concerns of the trade, and should not disrupt the flow of commerce. Indeed, an important reason for the different time frames proposed is the need to obviate disruptions in the flow of commerce; given this consideration, the effect on "just-in-time" ("JIT") delivery systems should be nonexistent.

The time frames proposed for submitting electronic information to CBP for inbound air cargo would thus be consistent for all air cargo shipments regardless of the type of operator or the nature of the cargo; the time frames would differ based only upon the foreign area from which the incoming air carrier was departing for the United States.

Parties Required/Eligible To Participate in Advance Cargo Information Filing

Comment

It was asked whether freight forwarders to the United States would be required to participate in advance cargo information filing. In the alternative, it was requested that advance electronic shipment information be supplied to CBP by the foreign shipper (the exporter to the United States) or by the U.S. importer. In addition, it was recommended that freight deconsolidators (Container Freight Stations) be allowed to transmit in-bond information electronically to CBP at the house air waybill level. In this overall context, it was further mentioned that CBP would need to specify what type of bond would be required for any non-carrier commercial participants in advance electronic cargo information filing under section 343(a), as amended. Also, two commenters urged that cargo information be supplied to CBP by the foreign country (government).

It was also generally stated that some parties in the air environment would simply be unable to comply with the advance electronic cargo information requirements. In any case, it was asserted that any liability for the accuracy of the information that a party presented to CBP should fall upon the entity that supplied the information to the presenting party.

CBP Response

Inbound air carriers that are otherwise required to make entry under § 122.41, Customs Regulations (19 CFR 122.41), would be required to file advance cargo information electronically with CBP. The existing automated air cargo manifest system (the Air Automated Manifest System (Air AMS)) was originally designed and structured to receive electronic data directly from the incoming air carrier.

Nevertheless, in addition to the incoming air carrier's mandatory participation in presenting advance electronic air cargo information, CBP has concluded that one of a number of other parties would be able to voluntarily present to CBP a part of the electronic information required for the inbound air cargo. These parties could consist of one of the following:

(1) An ABI (Automated Broker Interface) filer as identified by its ABI filer code (this entity could be either the importer of the cargo or the importer's authorized Customs broker);

(2) A Container Freight Station/deconsolidator as identified by its FIRMS (Facilities Information and Resources Management System) code;

(3) An Express Consignment Carrier Facility likewise identified by its FIRMS code; or

(4) Any air carrier as identified by its IATA (International Air Transport Authority) code, that arranged to have the incoming air carrier transport cargo to the United States.

Unlike Vessel AMS, as explained above, and Rail AMS, as discussed below, Air AMS has the existing design capabilities and functionality to, and in fact already does, accept information from parties other than the importing carrier for inward cargo shipments. The CBP expects to make this capability to supply data available to a wider group of trade members, as appropriate, and to make any systems modifications necessary to accommodate possible variations in the order in which data might be received.

Hence, along with the incoming air carrier for whom participation in Air AMS is compulsory, any one of the foregoing parties could elect to supply certain data for air cargo to CBP, provided that the party established the communication protocol required by CBP for properly presenting electronic data through the system, and provided further that the party, other than an importer or broker, was in possession of a Customs international carrier bond containing all the necessary provisions of 19 CFR 113.64.

However, in the case of cargo shipments transported under a consolidated master air waybill, only one party could supply information for all such cargo so shipped.

It is observed that the importer or its authorized agent would be the party in the United States most likely to have direct knowledge as to particular information about the nature and destination of the cargo. Secondly, a facility, such as a Consolidator or an Express Consignment Carrier, that handled the shipment and/or arranged for its delivery to the incoming carrier, would also have access to particular information about the cargo, more so than the incoming carrier. Generally speaking, for consolidated shipments, information in the direct possession of such a facility would consist of data from its house air waybill(s) that would not be directly known by the incoming carrier.

Thus, in recognition of possible competitive relationships that a party such as a container freight station, freight forwarder, or express consignment or other carrier, might have with the incoming air carrier, such party would have the opportunity, if it so elected, to present the required information directly to CBP, as opposed to having to present this information to the inward air carrier or a service provider who would, on its behalf, transmit this information for the cargo to CBP.

In any event, it would not be realistic or feasible to seek to obligate a foreign country (government) to transmit advance cargo information for commercial cargo sent from that country to the United States; and it is submitted in this connection that section 343(a)(3)(B), as amended, clearly envisages the electronic filing of cargo information by appropriate commercial or business entities, rather than foreign governments.

Since the party from whom electronic air cargo information would be required might not necessarily, in all situations, be the party with direct knowledge of that information, CBP would take into consideration how, in accordance with ordinary commercial practices, the electronic filer acquired such information, and whether and how the filer was able to verify this information. Where the party electronically presenting the cargo information to CBP was not reasonably able to verify such information, CBP would permit the party to electronically present the information on the basis of what the party reasonably believed to be true.

Comment

There should be an exemption from the advance cargo filing requirements for aircraft that are owned or leased by the Department of Defense.

CBP Response

Aircraft, including public aircraft as defined in 19 CFR 122.1(i), that are exempt from entry under 19 CFR 122.41 would be exempt from advance cargo information filing under this proposed rule. It is noted that by a separate, interim rule, CBP will expand upon those aircraft that are subject to such an exemption from entry.

Comment

Participants in the Customs-Trade Partnership Against Terrorism (C–TPAT), and related parties, should be excluded from the advance cargo information requirement or should be subject to a reduced time frame within which the advance cargo information must be transmitted.

CBP Response

The CBP disagrees with this suggestion. However, participation in C–TPAT would be considered as one factor in targeting whether cargo needed to be held upon arrival pending the receipt of further information or for examination. Such additional information, if required, would have to be made available at the port of arrival.

Required Cargo Information; Availability/Correction of Data Transmitted

Comment

For freight forwarders that might participate in the advance electronic filing of cargo information, it was asked what information they would specifically be required to transmit to CBP.

CBP Response

The specific data elements that would be required from a participating party are enumerated below under the heading "Overview; Air Cargo Destined to the United States" (*see* "Additional Data Elements from Incoming Carriers; Other Participants"); and these data elements are also set forth in proposed § 122.48a(d). A freight forwarder could be included among those parties that could participate voluntarily in electronic cargo information filing, provided that the freight forwarder was either an ABI filer, a Container Freight Station/deconsolidator or an Express Consignment Carrier Facility; that it had posted a Customs international carrier bond containing all necessary provisions of 19 CFR 113.64; and that it had established the communication protocol required by CBP for properly presenting electronic data through the system.

Comment

The CBP should clearly define the meaning of those data elements which must be presented for inbound air cargo.

CBP Response

The CBP believes that the proposed data elements to be required in advance for incoming air cargo are fairly well known; however, a number of the data elements set out in the proposed regulations are accompanied by detailed explanations as to their meaning. Should it be called for, CBP will include additional definitions for those elements about which the importing air community might prefer greater elucidation.

Therefore, CBP requests comments in response to this proposed rule especially concerning those data elements contained in proposed § 122.48a(d) for which the importing air community seeks additional guidance.

Comment

Most of the necessary data for incoming cargo would not necessarily be available prior to its lading aboard the aircraft. Moreover, the line-item Harmonized Tariff Schedule (HTS) number for air cargo would not be available prior to the departure of the aircraft. The air carrier would not always have information for cargo at the house air waybill level; and CBP should allow in-transit consolidations to be reported at the master air waybill level. Also, CBP should permit an air carrier to submit electronic cargo data for shipments brought in by truck.

CBP Response

Because CBP proposes to require advance cargo information for incoming aircraft either no later than the time of "wheels-up" or no later than 4 hours prior to arrival in the United States, as applicable (and not prior to the foreign lading of the cargo aboard the aircraft), the commenters' concerns as to the availability of the necessary data for the cargo prior to foreign lading are addressed.

Nevertheless, concerning the possible unavailability of the 6-digit HTS number for the cargo prior to foreign departure, it is emphasized that either a precise description of the cargo or its HTS 6-digit tariff subheading would be sufficient. In any case, under the

proposal, as already explained, the line-item HTS number for the cargo would essentially not be required prior to the departure of the aircraft for the United States.

As to the carrier not always having cargo information from the house air waybill, should another party, such as an ABI filer, elect to participate in advance automated cargo information filing, the carrier would only be responsible for transmitting information from the master air waybill. However, if another electronic filer did not participate in transmitting needed cargo information to CBP, the incoming carrier would need to obtain the house air waybill information from the relevant party for presentation to CBP.

In-transit consolidations of inbound cargo typically present the same issues of cargo safety and security as other inbound shipments. Thus, the complete house air waybill information would be required from the carrier or the other party electing to participate in advance cargo information filing. Also, should an air carrier choose to ship freight by truck, advance cargo information would be required to be presented to CBP through the truck processing system (*see* proposed § 123.92); electronic air documents would not be accepted in lieu of advance electronic truck cargo information.

Comment

If cargo were bumped from one flight to a later flight, there should be no need to re-transmit related cargo information that was previously transmitted to CBP.

CBP Response

Given the time frames proposed, since cargo information would essentially not be required prior to the departure of the aircraft for the United States, this issue should not present a significant concern.

Comment

The CBP should allow changes and additions to electronically transmitted manifest information in accordance with current manifest discrepancy reporting policies.

CBP Response

Complete and accurate information would need to be presented to CBP for cargo aboard the aircraft no later than the time period specified for the particular foreign area from which the aircraft departs for the United States. As for any changes in the cargo information already transmitted for a flight, the procedures for discrepancy reporting will be the subject of a separate rulemaking.

Pre-Departure Screening of Cargo; Cargo Inspections in the United States

Comment

Air cargo security is already highly regulated by the Transportation Security Administration (TSA), the Federal Aviation Administration (FAA), and other agencies and foreign governments. As such, there should be no pre-departure screening process required for incoming air cargo. In the alternative, it was advocated that CBP should consider a CSI (Container Security Initiative)-type program for air cargo. In the event that pre-departure/lading information is necessary for pre-screening purposes, CBP should provide a positive load/no-load message to the electronic filer. Also, for cargo that may be identified as high risk, CBP should not compel inspections of such cargo at locations in the United States that are merely technical stops.

CBP Response

There will be no pre-departure-screening-and-hold process applied to air cargo under this proposal. While CBP may consider the possibility of developing a CSI-type initiative for air cargo based on a number of factors, including the terrorist threat, the success of industry security programs, and the success of this rulemaking and related CBP security efforts, such a proposal falls outside the scope of this rulemaking.

In addition, inspections of cargo in the United States conducted for the purpose of ensuring cargo safety and security and for the prevention of smuggling would only be conducted if the cargo had been identified as potentially posing a safety, security or smuggling risk; and CBP would work with the carrier and other affected Government agencies to determine an appropriate location to examine such potentially high-risk cargo. In appropriate cases, however, landing rights could be denied to an incoming carrier if advance cargo information was not timely, accurately, and completely presented to CBP (*see* proposed § 122.14).

Comment

The possible need for a carrier to retain cargo in a staging/storage area at a foreign location in order to comply with a pre-departure advance information requirement for inbound cargo would create a security risk for the cargo that would not otherwise exist.

CBP Response

As indicated, the time frames proposed for the advance reporting of air cargo information have been designed so as to preclude any need to retain cargo in a foreign area in order to comply with the pre-arrival reporting mandate.

Requested Exemptions/Exclusions From Electronic Filing Requirements

Comment

Advance electronic information should not be required for inbound air cargo in diplomatic pouches. Merchandise brought in by the air carrier for its own use should be exempt as well from the advance electronic information provisions. Also, letters and documents should be exempted from the detailed advance electronic cargo information submission. It was further asked whether the advance filing requirements would apply to hand-carried merchandise or merchandise checked in passenger baggage.

CBP Response

For purposes of this rulemaking, all air cargo shipped under an air waybill, regardless of its nature, would be subject to the advance electronic reporting provisions. This would include diplomatic pouches and letters and documents. Also, merchandise brought in by an air carrier for its own use would be subject to the same advance cargo information filing requirements that would apply to other incoming cargo. However, hand-carried merchandise and merchandise contained in passenger baggage would not be subject to the advance cargo information requirements in this rulemaking; such merchandise would be included in the passenger baggage declaration.

Required Information Technology; Trade Support; Transition Periods

Comment

It was asked whether CBP would provide staffing for data/targeting analysis and related trade support on an around-the-clock basis; and two commenters were insistent that CBP conduct extensive training in Air AMS filing procedures at all ports. Various concerns were also expressed as to the ability of CBP to effectively analyze advance cargo information.

CBP Response

An automated targeting system for performing a risk assessment for incoming air cargo will be fully in place upon the effective date of the final regulations. Automated data/targeting analysis for risk assessment will be available at all times. Related trade support will be available during regular

port hours; and CBP will conduct any training that CBP personnel might need in Air AMS procedures.

Comment

To effectuate the filing of electronic cargo information under section 343(a), as amended, CBP should consider integrating advanced information technology (IT) products into its current automated manifest filing system. Additionally, the Automated Commercial Environment (ACE) system should be compatible with the implementing regulations. Also, there should be a grace period given under the implementing regulations in order to afford trade participants the chance to make suitable changes to their computer programming; and there should likewise be a grace period allowed during which such trade participants could bring the detail and accuracy of their advance information filing up to the level that CBP would require.

CBP Response

While disposed to explore any advances in IT products, CBP will largely rely, at least initially, upon the Air AMS, with appropriate future modifications, as the principal vehicle to achieve the goal of advance air cargo information presentation under section 343(a), as amended. However, any new system developed within the framework of ACE will be compatible with the implementing regulations. For this reason, therefore, the implementing regulations will refer generally to a CBP-approved electronic data interchange system (rather than to Air AMS, specifically).

The CBP contemplates that, pursuant to section 343(a)(3)(J), as amended, the effective date that would be set for the final implementing regulations following their promulgation should afford sufficient time for Air AMS participants to make suitable changes to their programming for the advance transmission of cargo data; and the effective date would similarly incorporate a reasonable grace period within which Air AMS participants should be able to bring their advance data filing up to the level of detail and accuracy that CBP seeks. Specifically, the proposed effective date, and the provisions for delaying the effective date, for compliance with the advance presentation of electronic air cargo information to CBP under section 343(a), as amended, are contained in proposed § 122.48a(e).

Overview; Air Cargo Destined to the United States

Electronic Systems To Be Used

Air carriers, and certain other parties authorized for voluntary participation in the program, must transmit through a CBP-approved electronic data interchange system advance cargo air waybill information, in accordance with the "Transition and Implementation Timeline" discussed below. The current CBP system for transmitting air cargo information is the Air Automated Manifest System (Air AMS). Also, certain express consignment carriers have proprietary electronic data systems which CBP personnel can access. The CBP will permit the use of these electronic proprietary systems, provided that the participants are capable of providing the data in a suitable electronic format to CBP for the purposes of ensuring cargo safety and security and preventing smuggling, unless CBP determines that it is necessary to migrate those participants to Air AMS. In addition, these express consignment carriers will be required to provide CBP with an electronic record of the data in a CBP-approved storage medium. All other express consignment carriers, including those that currently submit information to CBP using paper documents, will be required to participate in Air AMS.

Data Submission Timelines

Air carriers and other parties electing to participate in the program would transmit the required information to CBP no later than the time of departure ("wheels-up") for aircraft that are departing for the United States from any foreign port or place in North America, including locations in Mexico, Central America, South America (from north of the Equator only), the Caribbean, and Bermuda. For aircraft departing for the United States from any other foreign area, such carriers and other parties would transmit the required information to CBP no later than 4 hours prior to the arrival of the aircraft at the first port of arrival in the United States. This amount of time should enable CBP to conduct an adequate analysis of the data and to select individual shipments for further document review or physical examination, while not disrupting the flow of commerce and "just-in-time" delivery systems.

Parties Required/Eligible To Present Advance Electronic Cargo Information

All carriers required to enter under § 122.41, Customs Regulations (19 CFR 122.41), would be required to participate in the electronic data interchange system and present the necessary cargo information to CBP.

The carrier will only need to be automated at each port where entrance and clearance of the aircraft is required. Incoming air carriers and other authorized parties who choose to do so may participate in Air AMS until CBP migrates to a different processing system. For this reason, the implementing regulations will refer only to a "CBP-approved electronic data interchange system" in order to accommodate the future migration to any superseding data processing systems.

In addition to an incoming air carrier for whom participation will be mandatory, one of the following parties may elect to transmit particular data to CBP for incoming cargo: an ABI filer (importer or its Customs broker); a Container Freight Station/deconsolidator as identified by its FIRMS code; an Express Consignment Carrier Facility likewise identified by its FIRMS code; or an air carrier as identified by its IATA code, that arranged to have the incoming air carrier transport the cargo to the United States. To be qualified to file cargo information electronically, the party would need to establish the communication protocol required by CBP for properly presenting electronic information through the data interchange system; and, except for an importer or broker, the party would have to possess a Customs international carrier bond containing all the necessary provisions of 19 CFR 113.64.

Consequently, the carrier will either have to obtain all the needed cargo shipment information for presentation to CBP, or the carrier will need to obtain the unique identifier of the party that will separately transmit to CBP a portion of the required data for the cargo; the other party's unique identifier code would have to accompany the carrier's data transmission to CBP, so that CBP could associate the subject cargo shipment with both electronic transmissions related to the cargo.

Permission to unlade all or part of the cargo could be denied or delayed, and penalties and/or liquidated damages could be assessed, where the air carrier or other electronic filer transmitted inaccurate, incomplete or untimely information to CBP.

Information Required From Air Carriers

An incoming air carrier would need to transmit all of the necessary information for non-consolidated air waybills. For consolidated shipments: the carrier would have to present to CBP all the required information from the master air

waybill record; and the carrier would supply all the information for associated house air waybill records where another authorized party did not electronically transmit information for the associated house air waybills directly to CBP. If another approved party did transmit the information, the carrier would not be required to electronically supply such information.

The carrier would still be required under 19 U.S.C. 1431 to have a manifest for all cargo aboard the aircraft, whether that cargo was manifested under a non-consolidated air waybill or a house air waybill that was part of a consolidation.

These proposed regulations apply to air cargo that would be entered into the United States, as well as to in-transit air cargo including any cargo which remained aboard the aircraft on the same through flight.

Specific Data Elements; Air Carriers

In the following listing of data elements for air carriers, an "M" next to any element indicates that the data element would be mandatory in all cases; a "C" next to the data element indicates that the data element was conditional and would be transmitted to CBP if the condition were present for that particular air waybill.

(1) Air waybill number (M) (The air waybill number is the International Air Transport Association (IATA) standard 11-digit number);

(2) Trip/flight number (M);

(3) Carrier/ICAO (International Civil Aviation Organization) code (M) (The approved electronic data interchange system supports both 3- and 2-character ICAO codes, provided that the final digit of the 2-character code is not a numeric value);

(4) Airport of arrival (M) (The 3-alpha character ICAO code corresponding to the first airport of arrival in the Customs territory of the United States (for example, Chicago O'Hare = ORD; Los Angeles International Airport = LAX));

(5) Airport of origin (M) (The 3-alpha character ICAO code corresponding to the airport from which a shipment began its transportation by air to the United States (for example, if a shipment began its transportation from Hong Kong (HKG), and it transits through Narita, Japan (NRT), en route to the United States, the airport of origin is HKG, not NRT));

(6) Scheduled date of arrival (M);

(7) Total quantity based on the smallest external packing unit (M) (for example, 2 pallets containing 50 pieces each would be considered as 100, not 2);

(8) Total weight (M) (may be expressed in either pounds or kilograms);

(9) Cargo description (M) (for consolidated shipments, the word "Consolidation" is a sufficient description for the master air waybill record; for non-consolidated shipments, a precise cargo description or the 6-digit Harmonized Tariff Schedule (HTS) number must be provided);

(10) Shipper name and address (M) (for consolidated shipments, this may be the name and address of the consolidator, express consignment or other carrier, for the master air waybill record; for non-consolidated shipments, this must be the name and address of the actual shipper (the owner and exporter) of the merchandise from the foreign country);

(11) Consignee name and address (M) (for consolidated shipments, this may be the name and address of the container freight station, express consigament or other carrier, for the master air waybill record; for non-consolidated shipments, this must be the name and address of the party to whom the cargo will be delivered, with the exception of "FROB" (Foreign Cargo Remaining On Board));

(12) Consolidation identifier (C);

(13) Split shipment indicator (C) (this data element includes information indicating the particular portion of the split shipment that will arrive; the boarded quantity of that portion of the split shipment (based on the smallest external packing unit); and the boarded weight of that portion of the split shipment (expressed in either pounds or kilograms));

(14) Permit to proceed information (C) (this element includes the permit-to-proceed destination airport (the 3-alpha character ICAO code corresponding to the permit-to-proceed destination airport); and the scheduled date of arrival at the permit-to-proceed destination airport);

(15) Identifier of other party which is to submit additional air waybill information (C);

(16) In-bond information (C) (this data element includes the destination airport; the international/domestic identifier (the in-bond type indicator); the in-bond control number, if there is one (C); and the onward carrier identifier, if applicable (C)); and

(17) Local transfer facility (C).

Additional Data Elements From Incoming Carriers; Other Participants

In addition to the data elements listed in items "1" through "17" above, the incoming air carrier, or another eligible electronic filer electing to do so, must transmit the following information to CBP for the inward cargo:

(1) The master air waybill number and the associated house air waybill number (M) (the house air waybill number may be up to 12 alphanumeric characters (each alphanumeric character that is indicated on the paper house air waybill document must be included in the electronic transmission; alpha characters may not be eliminated));

(2) Foreign airport of origin (M) (The 3-alpha character ICAO code corresponding to the airport from which a shipment began its transportation by air to the United States (for example, if a shipment began its transportation from Hong Kong (HKG), and it transits through Narita, Japan (NRT), en route to the United States, the airport of origin is HKG, not NRT));

(3) Cargo description (M) (a precise description of the cargo or the 6-digit Harmonized Tariff Schedule (HTS) number must be provided. Generic descriptions, specifically those such as "FAK" ("freight of all kinds"), "general cargo", and "STC" ("said to contain") are not acceptable);

(4) Total quantity based on the smallest external packing unit (M) (for example, 2 pallets containing 50 pieces each would be considered as 100, not 2);

(5) Total weight of cargo (M) (may be expressed in either pounds or kilograms);

(6) Shipper name and address (M) (the name and address of the actual shipper (the owner and exporter) of the cargo from the foreign country);

(7) Consignee name and address (M) (the name and address of the party to whom the cargo will be delivered in the United States, with the exception of "FROB"); and

(8) In-bond information (C) (this data element includes the destination airport; the international/domestic identifier (the in-bond type indicator); the in-bond control number, if there is one (C); and the onward carrier identifier, if applicable (C)).

Advance Electronic Information for Letters and Documents

For purposes of compliance with the advance cargo information filing requirements under section 343(a), as amended, letters and documents would be subject to the same procedures as all other types of cargo. Such "letters and documents" comprise the data (for example, business records and diagrams) described in General Note 19(c), Harmonized Tariff Schedule of the United States (HTSUS); personal correspondence, whether on paper, cards, photographs, tapes, or other media; and securities and similar evidence of value described in subheading 4907, HTSUS, but not including monetary instruments covered under 31 U.S.C. 5301–5322.

Electronic Freight Status Notifications

If the facility (carrier, deconsolidator, or other party) currently holding the goods was automated, that party would have to honor all freight status notifications transmitted by CBP. Cargo could not be transferred to another facility, moved under the provisions of the in-bond regulations or released to the consignee except upon electronic status notifications from CBP. Should the cargo be transferred to a non-automated facility (*e.g.*, a Container Freight Station, a carrier facility in another port, or the like), that facility would be required to accept only paper documents for the disposition of the cargo.

Transition and Implementation Timeline

All air carriers, and those authorized parties that choose to participate in presenting advance cargo information electronically to CBP through the approved automated system, would be expected to comply with the provisions of these regulations on and after 90 days from the date that the final rule in this matter is published in the **Federal Register**. However, CBP could delay the implementation of the final regulations at a given port until the necessary training had been provided to CBP personnel at that port. Also, CBP could delay the effective date of the final regulations in the event that any essential programming changes to the applicable CBP-approved electronic data interchange system were not in place. Finally, CBP could delay the effective date of the regulations if further time were required to complete certification testing of new participants. Any such delay would be the subject of a notice provided through the **Federal Register**

Electronic System Failure; Downtime

Should the approved electronic data interchange system go down, the incoming air carrier and, if applicable, any other electronic filer would have to submit a hard copy equivalent of all required electronic cargo information to CBP either no later than "wheels-up" or no later than 4 hours prior to the arrival of the aircraft in the United States, depending upon the foreign area from which the incoming aircraft departs for the United States.

Comments; Rail Cargo Destined to the United States

Time Frame for Transmitting Information; Impact on Commerce

Comment

Various suggestions were made regarding the time in which advance rail cargo data would need to be electronically presented to CBP. Specifically, the following time frames were put forth: 4 hours prior to departure for the United States; 4 hours prior to arrival in the United States; 2 hours prior to arrival; and under 2 hours prior to arrival. By contrast, it was stated that the time frame set forth in the "strawman" proposal (24 hours prior to lading in the foreign country) was unworkable/unrealistic. It was also stated that any time frame that CBP proposed should not adversely impact "just-in-time" shipping practices.

CBP Response

The time frame in the "strawman" was put forth only as a perfunctory proposal, merely for the purpose of eliciting feedback from the trade in order to assist CBP in developing an appropriate time frame for inclusion in the proposed regulations. After considering the various recommendations from the rail trade, CBP agrees with those commenters who recommended that electronic cargo data for incoming rail cargo be presented no later than 2 hours prior to the arrival of the cargo at a United States port of entry.

The CBP is of the opinion that this minimum 2-hour period for presenting rail cargo information electronically in advance of arrival is a reasonable and practical time frame for the submission of the necessary cargo data, and one that should not disrupt the flow of rail commerce into the country. This view is based in large part on the understanding that rail carriers will transmit cargo data on many types of shipments (*e.g.*, intermodal sea traffic) as it becomes available, thereby limiting the amount of data that is transmitted 2 hours prior to arrival.

At present, CBP finds that this is the minimum time period needed to perform the requisite risk analysis in relation to the transmitted data, and, if necessary, to request further information about the cargo, or to arrange for its examination in those instances, which are anticipated to be rare, where an examination should be found warranted.

Rail carriers need to be advised, however, that while CBP is confident that the targeting can be accomplished within the 2-hour period, it may result in more trains spending time at the border uncoupling cars in order for them to be examined. Nevertheless, CBP is confident that this proposed time frame should not have any notable impact upon rail business practices, including "just-in-time" ("JIT") inventory shipments. In this latter respect, CBP is aware that commerce has increasingly relied on "JIT" shipping as a more cost effective way of conducting business.

Party Required To Present Data to CBP

Comment

One commenter asked that the shipper (the exporter from the foreign country) and the United States importer be required to transmit the required cargo data to CBP. Another commenter said that the shipper should supply the data. Three commenters asserted that data should be accepted utilizing current systems and that the trade not be forced to incur extraordinary expenses for system upgrades which might only have to be quickly replaced due to the establishment of the Automated Commercial Environment (ACE).

CBP Response

While it is recognized that the shipper and/or the United States importer could be the parties most likely to possess direct knowledge of particular information about the incoming rail cargo, CBP has initially concluded that it should be incumbent upon the rail carrier to submit the required information for the cargo. Simply stated, the current CBP-approved electronic data interchange system (the Rail Automated Manifest System (Rail AMS)) is essentially structured and programmed only to receive such data directly from the carrier. Accepting advance cargo information from the shipper and/or the United States importer would not be practicable in the present automated rail environment.

The CBP will employ the prevailing system to electronically transmit and receive cargo information pending the advent of the Automated Commercial Environment (ACE). When ACE is established and in place, it may have the capability to receive data from the foreign exporter and/or the U.S. importer.

Requested Exemptions From the Advance Electronic Filing Requirements

Comment

Vessel-to-rail containers and bulk/break-bulk shipments should be exempted from the filing requirements.

Members of C–TPAT (the Customs-Trade Partnership Against Terrorism) and participants in the FAST (Free And Secure Trade) system should be exempted from having to present advance electronic cargo data for their shipments; and the Department of Defense (DoD) should have exemptions based on the nature of their shipments (descriptions for sensitive military cargo should be general).

CBP Response

Generally speaking, it is the view of CBP that a straightforward and streamlined regulation, unencumbered with multiple special exemptions, would present the most workable system especially with respect to the rail environment. Given the abbreviated time frame proposed (no later than 2 hours prior to arrival at a U.S. port of entry), CBP believes that the rail community in particular should be able to comply with the advance transmission of needed cargo data, with no measurable disruption in the flow of cross-border commerce; this should render moot most of the special requests for exemptions from the proposed advance filing requirements.

Nevertheless, CBP is proposing to exempt one category of cargo from the advance automated notification rule: Domestic cargo that would arrive by train at one port from another in the United States after transiting a foreign country would not be subject to the advance electronic information filing requirement for incoming cargo; but advance information for such domestic cargo may be electronically presented to CBP, if desired.

Required Data Elements

Comment

Required data elements to be transmitted to CBP should be clearly set forth; and CBP should give clear instructions as to what level of data would be sought.

CBP Response

The proposed data elements for incoming rail cargo are contained in proposed § 123.91(d). A number of the data elements contained in this proposed regulation are accompanied by explanations. The CBP will include additional definitions for those elements about which the importing rail community may desire greater elucidation. To assist in making this determination, CBP requests comments especially concerning those data elements for which the importing rail community seeks further guidance.

Information Technology; High Risk Cargo

Comment

The CBP would need to automate any ports that were not already automated in order to enable the port to transmit or receive electronic data as part of the advance information filing program.

CBP Response

The CBP will automate any remaining port that is not now operational on the existing CBP-approved electronic data interchange system (Rail AMS).

Comment

Mandatory automation under section 343(a), as amended, would place additional pressure on trade participants. The CBP should take steps to ensure that its offices would be fully staffed around-the-clock at all rail crossings in order to handle any eventualities resulting from the implementation of the final advance cargo information filing regulations.

CBP Response

The CBP will make every effort to ensure that there will be sufficient staff to assist the trade in effectively complying with the regulations. The CBP is aware that effectively administering the advance cargo information program will undoubtedly place upon it additional burdens, especially on some of the smaller ports along the border.

Comment

Railroads rely extensively on Automated Line Release. The CBP should retain the C–4 Line Release Program (19 CFR part 142, subpart D) for the rail industry; eliminating Line Release would negatively affect carriers participating in Rail AMS as it would delay the time required for rail release.

CBP Response

For the present, CBP intends to keep some type of Line Release, which might necessitate only some slight changes in names and terms.

Comment

The CBP should establish procedures to be followed if Rail AMS were not functioning properly when a carrier attempted to file information through the system. Specific backup systems should be designated in the event of unplanned outages of either CBP's system or the rail carriers' systems.

CBP Response

The CBP contemplates that the existing procedures of presenting a paper copy of the electronic data elements would still be used, with some adjustments as appropriate.

Comment

Should an examination of any cargo aboard the incoming train be found warranted, the train should be allowed to proceed to the first inland port where the examination would be conducted.

CBP Response

Absent special circumstances, all security-related examinations under section 343(a), as amended, would occur at or near the border.

Transition Period for Complying with Advance Cargo Information Filing

Comment

A number of commenters advocated that they be afforded a transition period for complying with the regulations, without specifying what the period should be. One commenter asked for a period of 180 days; another suggested that different periods be allowed for different types of affected parties; and another requested that there be a period similar to the 90-day transition period granted for incoming vessel cargo under the "24-hour rule" (T.D. 02–62, 67 FR 66318; October 31, 2002).

CBP Response

The CBP, as noted, seeks uniformity and simplicity in its advance cargo reporting rule for rail traffic, and agrees with the recommendation that a 90-day transition period would be adequate under the circumstances, particularly given that the rail industry is highly automated. Hence, a rail carrier would need to begin the electronic transmission to CBP of the required cargo information 90 days from the date that the port of arrival becomes automated.

Overview; Rail Cargo Destined to the United States

Rail Carrier Transmittal of Required Information for Incoming Cargo

For any train requiring a train sheet under 19 CFR 123.6, that would have commercial cargo aboard, the rail carrier would be required to electronically present to CBP certain information concerning the incoming cargo no later than 2 hours prior to arrival at a United States port of entry. Specifically, based upon the transition/timetable as discussed below under "Transition Period," to effect the advance electronic transmission of the required rail cargo information to CBP, the rail carrier would have to use a CBP-approved electronic data interchange system.

Currently, the CBP-approved automated system for this purpose is the Rail Automated Manifest System (Rail AMS).

As indicated, the current CBP-approved automated system (Rail AMS) for electronically collecting cargo information for incoming rail cargo is programmed and structured to receive cargo data only from the inward rail carrier. Additionally, it is highly practicable and administratively expeditious for CBP to obtain the necessary cargo data from rail carriers as these carriers would already have the most direct contact with CBP, as opposed to the foreign shipper (exporter), a foreign freight forwarder, or the U.S. importer, who could, nevertheless, be more likely to have direct knowledge of particular information involving the incoming cargo. For this latter reason, and as a pre-requisite to accepting the cargo, the carrier would need to receive any necessary cargo information from the foreign shipper and owner of the cargo or from a freight forwarder, as applicable.

Foreign Cargo Transiting the United States

Any foreign cargo arriving by train for transportation in transit across the United States would be subject to the advance electronic information filing requirement for incoming cargo. This includes foreign cargo being transported from one foreign country into another, and cargo arriving by train for transportation through the United States from one point to another in the same foreign country. Further, cargo that was to be unladen from the arriving train and entered, in bond, for exportation, or for transportation and exportation, in another vehicle or conveyance would also be subject to this advance electronic information filing requirement.

Exemption From Filing Mandate; Domestic Cargo Transiting Foreign Country

With respect to incoming rail cargo, CBP believes that, as a general proposition, exemptions from the advance electronic filing requirements would unduly complicate the administration of the program. In consideration of the fairly abbreviated time frame for transmitting the electronic cargo information, CBP finds that a basic, uniformly-imposed advance filing requirement would occasion only minimal disruption to cross-border commerce in the rail environment.

Nevertheless, domestic cargo that would arrive by train at one port from another in the United States after transiting a foreign country would not be subject to the advance electronic information filing requirement for incoming cargo; however, advance information for such domestic cargo could be electronically presented to CBP, if desired.

Specific Information Required From the Carrier

The rail carrier must electronically present to CBP the following cargo shipment information for all incoming cargo, as outlined above, that would arrive in the United States by train:

(1) The rail carrier identification SCAC code (the unique Standard Carrier Alpha Code assigned for each carrier by the National Motor Freight Traffic Association; *see* 19 CFR 4.7a(c)(2)(iii));

(2) The carrier-assigned conveyance name, equipment number and trip number;

(3) The scheduled date and time of arrival of the train at the first port of entry in the United States;

(4) The numbers and quantities of the cargo laden aboard the train as contained in the carrier's bill of lading, either master or house, as applicable (this means the quantity of the lowest external packaging unit; containers and pallets do not constitute acceptable information; for example, a container holding 10 pallets with 200 cartons should be described as 200 cartons);

(5) A precise description (or the Harmonized Tariff Schedule (HTS) numbers to the 6-digit level under which the cargo is classified if that information is received from the shipper) and weight of the cargo; or, for a sealed container, the shipper's declared description and weight of the cargo (generic descriptions, specifically those such as "FAK" ("freight of all kinds"), "general cargo," and "STC" ("said to contain") are not acceptable);

(6) The shipper's complete name and address, or identification number, from the bill(s) of lading (this means the actual owner (exporter) of the cargo from the foreign country; listing a freight forwarder or broker under this category is not acceptable; the identification number will be a unique number to be assigned by CBP upon the implementation of the Automated Commercial Environment);

(7) The complete name and address of the consignee, or identification number, from the bill(s) of lading (The consignee is the party to whom the cargo will be delivered in the United States. However, in the case of cargo shipped "to the order of [a named party]," the carrier must identify this named "to order" party as the consignee; and, if there is any other commercial party listed in the bill of lading for delivery or contact purposes, the carrier must also report this other commercial party's identity and contact information (address/phone number) in the "Notify Party" field of the advance electronic data transmission to CBP, to the extent that the CBP-approved electronic data interchange system is capable of receiving this data. The identification number will be a unique number assigned by CBP upon implementation of the Automated Commercial Environment);

(8) The place where the rail carrier takes possession of the cargo shipment;

(9) Internationally recognized hazardous material code when such materials are being shipped by rail;

(10) Container numbers (for containerized shipments) or the rail car numbers; and

(11) The seal numbers for all seals affixed to containers and/or rail cars, to the extent that the electronic system can accept this information (currently, Rail AMS only has the capability to accept two seal numbers per container; the electronic presentation of up to two seal numbers for each container would be considered as constituting full compliance with this data element).

Electronic Freight Status Notifications

If the party holding the goods was automated, that party would have to honor all freight status notifications transmitted by CBP. Cargo could not be transferred to a facility, moved under the provisions of the in-bond regulations or released to the consignee except upon electronic status notifications from CBP.

Transition Period

The CBP will be automating any existing port that currently is not able to receive or transmit electronic information through the CBP-approved electronic data interchange system. There are currently up to 12 ports, most of them Permit Ports, that would require automation and training for CBP staff who are unfamiliar with the electronic data interchange system. Rail carriers would have to commence the advance electronic transmission to CBP of the required cargo information on and after 90 days from the date that CBP publishes a notice in the **Federal Register** informing affected carriers that Rail AMS is in place and operational at the port of entry where the train would initially arrive in the United States.

Electronic System Failure; Downtime

Should the automated system fail, after going online, existing procedures, with some adjustments, if necessary,

would be used for presenting a hard copy equivalent of the electronic documentation to CBP.

Public Comments; Truck Cargo Destined to the United States

Summary of Principal Comments

The following comments were received regarding the procedures for advance reporting of inbound cargo information for trucks:

1. Any provision for pre-reporting information for inbound truck cargo should be pre-arrival, rather than pre-lading; and it was variously recommended that such notification be required no earlier than either 15 minutes or 30 minutes prior to reaching the port of arrival in the United States. These time frames are necessary to account for the "just-in-time" delivery systems that have been developed around land border operations.

2. To accomplish the electronic transmission of the requisite data to CBP, on an interim basis, pending the establishment of the electronic truck multi-modal manifest system in the Automated Commercial Environment (ACE), the trade should be able to satisfy the pre-notification requirements of the statute by using existing systems/programs, such as PAPS (the Pre-Arrival Processing System), BRASS (the Border Release Advanced Screening and Selectivity program, and FAST (the Free and Secure Trade program). In particular, CBP should take into consideration the importance of the role of the BRASS system in expediting the flow of traffic at the land borders.

No new information-submission systems should be initiated or imposed during the interim period. The proposed pre-reporting provisions should be uniform for all ports on the U.S./Canada as well as the U.S./Mexico borders. Filers should not be held liable for incorrect/incomplete information supplied by others.

3. There should be transition periods for implementing advance cargo information transmissions for the trucking industry that would take into account the fact that the industry has, at present, multiple sectors with varying, limited degrees of automation; indeed, much of the trucking trade on the U.S./Mexico border is currently not automated. Further, a contingency plan for handling shipments arriving without any pre-notification should be created and publicized.

4. CBP should expand its hours of operation to 24 hours a day, seven days a week and have sufficient staffing to perform any inspections during those hours.

5. Participation in special programs such as the Customs-Trade Partnership Against Terrorism (C–TPAT) should be taken into account by CBP and CBP should work with the Canadian government under the Shared Border Accords to arrive at common procedures and requirements to ease the burden on the trade.

CBP Response

Taking into account the flexibility provided by the Trade Act (*e.g.*, developing interim measures based on existing technology to enable CBP to identify high-risk shipments), CBP agrees that, on an interim basis, existing systems, especially the Free and Secure Trade (FAST) system, will be employed, being enhanced and adapted as appropriate, to effect the advance presentation of the necessary commodity and carrier information for inbound truck cargo, as a prelude to the creation and activation of the Truck Manifest module in ACE. (The Truck Manifest module in ACE will be the subject of a separate notice in the **Federal Register**.) However, regardless of what actual program(s)/procedure(s) may be employed at any given time or place to comply with the pre-arrival information filing requirements of section 343(a), as amended, the regulations, for uniformity and continuity, will simply reflect that the required data elements must be presented through a CBP-approved electronic data interchange system.

Interim Measures

As indicated, until the development of the Truck Manifest Module in ACE, CBP will employ existing systems on both the Northern and Southern borders to receive and evaluate information for incoming truck shipments. These systems are FAST, PAPS (which uses the Automated Broker Interface (ABI)), BRASS (which would be modified as necessary), and CAFES (the Customs Automated Forms Entry System) or ABI in-bond reporting.

The Pre-Arrival Processing System (PAPS) is a method of speeding the release of Border Cargo Selectivity or regular Cargo Selectivity entries on the land border. The shipment data required to submit an entry through the Automated Broker Interface (ABI) must be provided to the entry filer by the shipper or the carrier or other trade partner in advance of the conveyance arrival. Also included in that ABI data is the Pro-Bill or Bill of Lading assigned to the shipment by the carrier and the Standard Carrier Alpha Code (SCAC) assigned to the carrier. That code and number is submitted through ABI to CBP by the entry filer. The carrier provides the driver with a bar-coded representation of that information to accompany the paper inward manifest (CF 7533) and invoices. The CBP inspector uses that bar code to retrieve the electronic record and targeting results in the automated system. The carrier can then be processed without the necessity of stopping at the entry filer's office and be released from either the primary truck inspection booth or from the cargo examination facility.

The advance transmission, via fax or other means, of the SCAC/Pro-bill number from the carrier or shipper to the filer eliminates the requirement of any return communication from the filer to the carrier. The submission of the ABI data in advance of arrival eliminates the need for carriers to park in an import lot and spend additional time at an entry filer's office; traffic congestion decreases and efficiencies in the release process increase.

The electronic filer would have to present commodity and transportation information to CBP for the subject cargo no later than either 30 minutes or 1 hour prior to the carrier's arrival at a United States port of entry, depending upon the specific CBP-approved system employed in transmitting the required data, with the exception of CAFES and BRASS, as described below. This 30-minute or 1-hour period would be measured by the time that CBP receives the information, as opposed to the time that the electronic filer transmits the information for the cargo. The CBP believes that this time period, in relation to the particular automated system used, would be the minimum period needed to perform a targeting analysis for cargo selectivity, and, if found warranted, to arrange for an inspection or examination of the cargo following its arrival. This advance cargo information reporting requirement would thus be the same at all ports, depending on the approved system used to present the cargo information to CBP.

Specifically, in this latter respect, under the Free and Secure Trade (FAST) system, the electronic filer would have to present commodity and transportation information to CBP for the subject cargo no later than 30 minutes prior to the carrier's arrival at a United States port of entry. The CBP believes that FAST shipments can be screened and targeted, as appropriate, with less advance notification than would otherwise be necessary, because of the prior screening incurred by the parties to the FAST transaction, including the driver. However, under PAPS or ABI in-bond reporting, the required cargo data would need to be presented no later than 1 hour prior to arrival at the U.S. port of entry. By contrast, for CAFES and BRASS (as modified), given the limitations of these systems, the necessary information would be submitted upon arrival at the first port of entry.

The only system currently in effect that allows carrier transmission of data electronically to CBP is FAST, with respect to those transactions that have data submitted totally through an electronic interface with CBP. Other participants in FAST have the electronic shipment data transmitted via the entry filer in the Automated Broker Interface (ABI) system of the Automated Commercial System (ACS), while the carrier/driver presents a paper manifest for the goods on the conveyance. In either case, the driver must be a registered driver in the FAST Driver Registration Program. Under the FAST system, the electronic filer would need to present cargo data to CBP no later that 30 minutes prior to the carrier's arrival at a U.S. port of entry.

Additionally, CBP acknowledges the role that BRASS (formerly Line Release (19 CFR part 142, subpart D)) plays in the expeditious movement of cargo on the land border. However, the current methodology utilized in BRASS for trucks does not allow for an advance electronic notice prior to arrival. The BRASS system is, and remains, heavily based upon the presentation of paper manifests, invoices and C–4 bar code labels (19 CFR 142.43(b)). It is observed, though, that CBP has already instituted an electronic form of BRASS in the Rail Automated Manifest System, and intends to do the same with the introduction of a Truck Automated Manifest System in ACE. In the interim, CBP intends to allow the continuation of BRASS for trucks, but may institute some additional requirements or otherwise modify BRASS in order to increase the security of BRASS transactions.

The CBP proposes a gradual transition from the reliance on the paper based BRASS release system. With the incorporation of a fully electronic version of BRASS planned in the new automated truck manifest scheduled for delivery under the Automated Commercial Environment (ACE), CBP does not propose making any changes to the method in which the current paper based BRASS operates. A gradual reduction in the parties eligible to utilize the existing paper based BRASS system is planned, with limitations in participation based on concerns of other government agencies, the level of compliance within past BRASS shipments and the volume of usage over the course of the preceding year. Additionally, CBP will take measures considered necessary to ensure the security of the BRASS program by incorporating voluntary program requirements such as FAST Driver registration and participation in the Customs-Trade Partnership Against Terrorism.

Moreover, for in-bond shipments transiting the United States that arrive by truck, as an interim procedure, CBP will also make use of those systems that are currently available, since the necessity for screening advance data for in-bond truck shipments must be addressed while awaiting future automated systems in the truck environment. In particular, the Customs Automated Forms Entry System (CAFES) will be utilized to prepare the Customs Form (CF) 7512 in-bond document at all land border crossings where no other automation is available for in-bond shipments. While this capability does not include advance notice of the details of a shipment, it does include automated screening when the shipment arrives and is processed by CBP. As an alternative, carriers or their agents may use the Automated Broker Interface (ABI) to transmit in-bond information for shipments arriving by truck.

Interim Transition Periods

Furthermore, CBP recognizes the merit, and necessity, of affording suitable transition periods for implementing the regulations for inward truck cargo. To this effect, CBP proposes that cargo information be filed electronically for truck cargo that would arrive at a United States port of entry on and after 90 days from the date that CBP has published a notice in the **Federal Register** informing affected carriers that:

(1) The approved data interchange is in place and fully operational at that port; and

(2) The carrier must commence the presentation of the required advance cargo information through the approved system.

During these interim periods, however, if CBP suspected that goods were being routed in an attempt to evade advance scrutiny at an automated United States port of arrival, those goods would very likely be treated as high risk upon their arrival at a non-automated port.

Mandatory Filing by Truck Carrier; Voluntary Importer Participation

Under the proposed pre-notification program, the incoming truck carrier would be obliged to submit all essential information to CBP within the designated time period. However, the United States importer, or its Customs broker, if electing to do so, could instead timely file with CBP any required commodity and other data that it possessed in relation to the cargo. Such information would likely be directly known by the importer or its broker. If the importer or broker did elect to file the commodity data with CBP, the carrier would have to present the required data pertaining to the transportation of the cargo. Such information would, of course, be best known by the carrier.

In any event, should the electronic filer of the cargo information receive any of this information from another party, the law mandates that where the electronic filer is not reasonably able to verify the information received, the regulations must allow the filer to transmit the information based on what it reasonably believes to be true. The CBP has expressly included this mandate in the proposed regulations.

The CBP will make every effort to ensure that there will be sufficient staff to assist the trade in effectively complying with the regulations. The CBP is aware that effectively administering the advance cargo information program will undoubtedly place additional burdens upon it, especially on some of the smaller ports along the border.

Finally, CBP will not propose a contingency plan for handling cargo that is not pre-reported in accordance with the regulations; once implemented at a port, the advance reporting provisions would be mandatory for all required cargo. For any inward cargo for which advance electronic commodity and transportation information was not presented to CBP, as otherwise required in the regulations, the transporting carrier could be refused admission to the United States, or be denied a permit to unlade such cargo.

Overview; Truck Cargo Destined to the United States

Transmittal of Required Information for Incoming Cargo

For any truck required to report its arrival under 19 CFR 123.1(b), that will have commercial cargo aboard, CBP must electronically receive from the inbound truck carrier, and from the United States importer, or its Customs broker, if they choose to do so, certain information concerning the incoming cargo. Except as provided for BRASS and CAFES under the previous section concerning "Interim Measures," CBP must receive such cargo information by means of a CBP-approved electronic

data interchange system no later than either 30 minutes (for FAST) or 1 hour (for PAPS and ABI in-bond reporting) prior to the carrier's arrival at a United States port of entry.

Foreign Cargo Transiting the United States

For foreign cargo transiting the United States in-bond, as an interim measure, CBP intends to employ CAFES or ABI in-bond reporting when either of these systems is available at the given port of arrival. In addition, any foreign cargo arriving by truck for transportation in transit across the United States would be subject to the advance electronic information filing requirement for incoming cargo when the Truck Manifest module in the Automated Commercial Environment (ACE) is implemented and made mandatory at the port of arrival. This reporting requirement for in-transit cargo would include foreign cargo being transported by truck from one foreign country to another (19 CFR 123.31(a)), and cargo being transported from point to point in the same foreign country (19 CFR 123.31(b); and 19 CFR 123.42). Further, cargo that is to be unladen from the arriving truck and entered, in bond, for exportation, or for transportation and exportation, in another vehicle or conveyance would also be subject to this advance electronic information filing requirement, either under CAFES or ABI in-bond reporting, or under ACE when it is implemented and made mandatory at the port of arrival. However, as previously observed, the implementation of ACE will be the subject of a future **Federal Register** notice.

Exemptions; Domestic Cargo Transiting Foreign Country; Certain Informal Entries

By contrast, domestic cargo transported by truck to one port from another in the United States by way of a foreign country (19 CFR 123.21; and 19 CFR 123.41) is not subject to the advance electronic filing requirement for incoming cargo. However, such information may be electronically transmitted in advance to CBP, if desired, when the electronic cargo information system is made available at the port of arrival.

Similarly, the following merchandise would be exempt from the advance cargo information reporting requirements under this proposed rule, to the extent that such merchandise qualifies for informal entry pursuant to part 143, subpart C, Customs Regulations (19 CFR part 143, subpart C): (1) Merchandise which may be informally entered on Customs Form (CF) 368 or 368A (cash collection or receipt); (2) Goods, unconditionally or conditionally free, not exceeding $2,000 in value, that are eligible for entry under CF 7523; and (3) Products of the United States being returned, for which entry is prescribed on CF 3311. In these instances, the paper entry document alone would serve as both the manifest and entry.

Affected Parties

The incoming truck carrier must present the required commodity and transportation information in advance to CBP electronically via the CBP-approved electronic data interchange, currently through FAST, PAPS, BRASS (modified as necessary), CAFES or ABI in-bond reporting, and, when available, through ACE. However, the United States importer, or its Customs broker, if choosing to do so, may instead electronically submit to CBP, within the designated time period, that portion of the required information that it possesses in relation to the cargo. Where the importer, or broker, elects to file a portion of the cargo information, the carrier would be responsible for timely presenting to CBP the remainder of the required data.

Specific Information Required

The cargo data elements that would need to be presented electronically to CBP, on an interim basis, are those data elements that are currently required under FAST. The anticipated data elements for electronic submission under ACE have not been completely finalized yet. The data elements that would be required under ACE will be identified at a future date pursuant to a future **Federal Register** notice.

Accordingly, the following commodity and transportation information, as applicable, would have to be electronically transmitted to and received by CBP for all required incoming cargo arriving in the United States by truck, to the extent that the particular CBP-approved electronic data interchange system employed can accept this information:

(1) Conveyance number, and (if applicable) equipment number (the number of the conveyance is its Vehicle Identification Number (VIN) or its license plate number and state of issuance; the equipment number, if applicable, refers to the identification number of any trailing equipment or container attached to the power unit);

(2) Carrier identification (this is the truck carrier identification SCAC code (the unique Standard Carrier Alpha Code) assigned for each carrier by the National Motor Freight Traffic Association; see 19 CFR 4.7a(c)(2)(iii));

(3) Trip number and, if applicable, the transportation reference number for each shipment (the transportation reference number is the freight bill number, or Pro Number, if such a number has been generated by the carrier);

(4) Container number(s) (for any containerized shipment) (if different from the equipment number), and the seal numbers for all seals affixed to the equipment or container(s);

(5) The foreign location where the truck carrier takes possession of the cargo destined for the United States;

(6) The scheduled date and time of arrival of the truck at the first port of entry in the United States;

(7) The numbers and quantities for the cargo laden aboard the truck as contained in the bill(s) of lading (this means the quantity of the lowest external packaging unit; containers and pallets do not constitute acceptable information; for example, a container holding 10 pallets with 200 cartons should be described as 200 cartons);

(8) The weight of the cargo, or, for a sealed container, the shipper's declared weight of the cargo;

(9) A precise description of the cargo or the Harmonized Tariff Schedule (HTS) numbers to the 6-digit level under which the cargo will be classified (Generic descriptions, specifically those such as FAK ("freight of all kinds"), "general cargo," and "STC" ("said to contain") are not acceptable);

(10) Internationally recognized hazardous material code when such cargo is being shipped by truck;

(11) The shipper's complete name and address, or identification number, from the bill(s) of lading (this is the actual shipper (the owner and exporter) of the cargo from the foreign country; the identification number will be a unique number to be assigned by CBP upon the implementation of the Automated Commercial Environment); and

(12) The complete name and address of the consignee, or identification number, from the bill(s) of lading (this is the party to whom the cargo will be delivered in the United States, with the exception of "FROB" (Foreign Cargo Remaining On Board); the identification number will be a unique number assigned by CBP upon implementation of the Automated Commercial Environment).

Transition/Timetable for Compliance

The incoming truck carrier and, if electing to do so, the United States importer, or its Customs broker, must present the advance electronic cargo data to CBP, as discussed above, at the particular port of entry where the truck will arrive in the United States on and after 90 days from the date that CBP has published a notice in the **Federal Register** informing affected carriers that:

(1) The approved data interchange is in place and fully operational at that port; and

(2) The carrier must commence the presentation of the required advance cargo information through the approved system.

Comments; Cargo Departing From the United States; All Modes

The following comments were received regarding the electronic submission of cargo data for outbound shipments.

Setting Transmittal Times for Electronically Presenting Information

Comment

The time frames proposed by Customs were too long, would significantly impede or eliminate Just-in-Time ("JIT") business practices, and impede or eliminate express shipping services.

CBP Response

The pre-departure filing time frames set forth in this proposed rule for export cargo information reporting are far shorter than the 24-hour period prior to lading that was included in the "strawman" proposals. As previously indicated, the time frames set forth in the "strawman" proposals were only intended to stimulate feedback from the trade, for consideration by CBP in formulating time frames for presenting the required cargo data under this proposed rule. The time frames proposed in this rule, discussed in further detail below, range from 24 hours prior to departure for vessels to not later than 1 hour prior to departure for trucks.

In determining the time frames for the advance reporting of information for outbound cargo in this proposed rule, CBP considered existing commercial practices. The CBP also took into account the minimum amount of time necessary to perform automated targeting and analysis and to request further information about the cargo or to schedule its examination, in the event that a shipment were identified as being potentially high-risk. The CBP also considered the different threats to the United States and others posed by outbound shipments. It is anticipated that these time frames are sufficiently abbreviated that there will be no palpable impact on "JIT" business/inventory practices.

Comment

The reporting time frames should be based on when the electronic filer transmits the information, as opposed to when the Government-administered automated system verifies the receipt of the transmitted information.

CBP Response

There is no mechanism in the approved electronic data interchange system (currently, the Automated Export System (AES)) for capturing the date and time of submission by the filer. The time of receipt is quantified by the time that an Internal Transaction Number (ITN) is generated, and the system records this date and time.

The AES has an Office of Management and Budget (OMB) performance measure for 2003 which sets the goal of monitoring and tuning trade processing to maintain the average monthly percent of filer transmissions with a turnaround time below one minute at 95%. The AES consistently meets this new performance measure. The CBP cannot monitor compliance and/or perform enforcement based on the date and time of submission by the filer.

Load/No Load Messages

Comment

The trade expressed the need for both a "No Load" message, and an "OK to Load" message for both imports and exports.

CBP Response

The CBP sees "No Load" situations for exports as an extremely infrequent occurrence. Therefore, a constant stream of "OK to Load" messages would not be useful to the export process.

The AES Commodity module, which will be used to meet the Trade Act mandate, currently does not have the capability to provide an automated "No Load" or "Hold" message to the carrier. The AES Commodity module does provide feedback to the United States Principal Party in Interest (USPPI) or its authorized filing agent in the form of warning messages for data inconsistencies as well as for data errors in cases where the system cannot accept the data as transmitted. (The CBP will use the term "USPPI," as defined in 15 CFR part 30; the term "Exporter" will not be used again in this document.) A "No Load" message transmitted to the USPPI or its filing agent is not the most efficient notification path for denying lading to a specific shipment. A "No Load" message will be feasible when export manifest modules for all modes are in place in AES.

At the time of promulgation of a final rule in this matter, automated manifest options will not be available for air, truck, and rail modes in AES. For the purposes of this rulemaking, pursuant to the Trade Act of 2002, CBP has determined that the option of waiting for the availability of automated export manifest systems in AES does not meet the intent of the Trade Act to improve cargo safety and security in the near term. Accordingly, should export manifest modules not be available upon the effective date of a final rule in this matter, CBP proposes to collect the following 6 transportation data elements for outbound cargo, which should otherwise be readily known to the USPPI or its authorized agent, as further discussed, *infra:* Mode of transportation; Carrier identification; Conveyance name; Country of ultimate destination; Estimated date of exportation; and Port of exportation.

Exemptions; Retention of Post-Departure Filing

Comment

The trade strongly supported retaining the Option 4 Post-Departure filing privilege.

CBP Response

The CBP supports a structured system of exemptions and/or pre-approval programs that recognize the varying degrees of risk associated with export shipments and the different threats posed to the United States and others by such shipments. Given the differences in in-bond and export shipments, a limited post-departure filing option may be appropriate for certain types of export shipments. The CBP will work with the Bureau of Census and the trade in designing these programs, building upon current initiatives such as AES Option 4, the Customs-Trade Partnership Against Terrorism (C–TPAT), and the Transportation Security Administration's (TSA's) "Known Shipper" Program. The C–TPAT is a joint government-business initiative designed to enhance security procedures over the entire supply chain of incoming cargo while improving the flow of trade. In return for tightening the security of their supply chains, C–TPAT participants can get their cargo processed through CBP faster.

At the present time, while not exempting any USPPI from the advance pre-departure cargo information reporting requirements, this rulemaking supports post-departure reporting by highly compliant exporters. The CBP and Census will develop and implement

changes to post-departure reporting jointly, and as appropriate.

Comment

The trade indicated a need for priority/exemption for a range of commodities and transaction types. Examples of commodities proposed for exemption were bulk cargo, perishables, and human organs/perishable medical products. Related or "twin plant" shipments were also suggested as candidates for exemption.

CBP Response

The CBP is not planning to eliminate exemptions in pre-approval programs in regulations promulgated pursuant to the Trade Act. The CBP agrees with the exemption of select export shipments such as human organs, perishable medical supplies, and emergency humanitarian aid. As such, the scope of future exemptions and the requirements for participation in low-risk exporter programs for reporting export commodity data will be determined jointly by CBP and Census.

Internal Transaction Number; External Transaction Number

Comment

The External Transaction Number (XTN) was preferred by most of those who commented. The XTN is generated by the USPPI or its authorized agent who transmits the electronic data. At the same time, some support in the trade community was expressed for the Internal Transaction Number (ITN), and there was near unanimity that CBP should not require reporting of both numbers. The ITN is the AES system-generated number that indicates that the transmission of required export cargo information has been received and accepted through the system.

CBP Response

The preference for the XTN is understandable, but because an XTN can be generated and annotated on export documents without transmitting shipment data to AES, the XTN is susceptible to abuse. This assertion is supported by a 60-day AES exemption statement survey conducted by CBP during the summer of 2002. Then Customs (now CBP) field locations nationwide audited over 13,000 AES exemption statements and found 25% to be invalid at the time of export. Therefore, CBP's position will be to require that the ITN number be annotated on the appropriate export documents for shipments which require full pre-departure reporting. However, CBP wishes to especially emphasize in this regard that the annotation of the ITN number on any export documentation will not be required or enforced until the implementation of the redesign of the AES commodity module, which is anticipated to be completed in mid 2004.

The ITN provides a link to a create date and time for the record in AES from which to verify compliance with pre-departure filing requirements. The ITN is also consistent in format, starting with an "X", followed by an 8-position date (century, year, month, day) and a 6-position sequential number that is assigned by the AES system. In addition, the AES mainframe typically returns the ITN in less than one minute.

By contrast, External Transaction Numbers (XTNs) consist of the 9-digit electronic filer identification and a Shipment Reference Number (SRN) that are separated by a hyphen. The SRN may contain up to 17 letters, numbers and symbols, allowing for a longer format with more variability than the ITN.

The CBP notes that ITNs will not be required for shipments authorized for post-departure (currently AES Option 4) reporting of export cargo information. The post-departure filing citation annotated on export documentation will continue to conform to approved formats contained in the Bureau of Census Foreign Trade Statistics Regulations (FTSR) (15 CFR part 30).

The CBP recognizes conditions under which ITNs will not be available due to a failure of an automated system. Procedures for dealing with system downtime—where the Government's electronic system and/or the USPPI's system for receiving and processing export cargo data fails—will be detailed in the Automated Export System Trade Interface Requirements handbook (AESTIR), and any successor publication. The AESTIR is available on the CBP Web site (*http://www.cbp.gov*).

Overview; Cargo Departing From the United States; All Modes

Outward Cargo Information Reporting; System To Be Used

To ensure the safety and security of cargo that would be sent from the United States, as mandated by section 343(a), as amended, CBP would use the existing approved electronic data interchange system for receiving export commodity data from the United States Principal Party in Interest (USPPI). The current system being used for this purpose is called the Automated Export System (AES).

The CBP has elected, in consultation and cooperation with the Bureau of Census, to utilize the commodity module of the AES (the automated Shipper's Export Declaration), to meet the mandate of the Trade Act. At such time as automated manifest modules are available for all modes, these enhanced capabilities will be reviewed to determine additional compliance with the Trade Act of 2002.

This is a considered decision recognizing that at the time of promulgation of the final rule under section 343(a), as amended, the filing of export data via the AES will not be mandatory. In short, it is intended that the final rule in this matter for the advance filing of cargo information for all reportable outbound shipments not be implemented until Bureau of Census regulations under the Security Assistance Act (Pub. L. 107–228) are implemented.

Since the inception of AES, the elimination of the paper Shipper's Export Declaration (SED) has been the ultimate goal, and with the passage of the Security Assistance Act, the Bureau of Census has the authority to mandate the electronic filing of all reportable export shipments, with promulgation of regulations planned for mid 2004. Prior to mandatory electronic filing for all reportable export shipments, the Department of Commerce, Bureau of Census, will publish a rule requiring mandatory electronic reporting for commodities on the Commerce Control List (CCL), and U.S. Munitions List (USML), planned for the summer of 2003.

The CBP, however, does intend to accomplish several things with this rulemaking:

(1) Articulate a commitment to strengthening export reporting processes in concert with external agency partners such as the Department of Commerce (the Bureau of Census and the Bureau of Industry and Security), the Department of State (the Directorate of Defense Trade Controls), the Department of Treasury (Office of Foreign Assets Control), the Department of Transportation, the Drug Enforcement Administration, and the Environmental Protection Agency;

(2) Establish time frames for automated reporting that will support targeting for high risk exports and allow CBP or other Government agencies to respond prior to export; and

(3) Establish the system generated Internal Transaction Number as *the* accepted proof of automated filing, for all reportable exports not eligible for exemption.

Utilizing the automated SED within the AES combined with mandatory filing under Census complies with the intent of the Trade Act to collect advance cargo information electronically from the party with the best knowledge of that information. Under current automated practices, the USPPI or its authorized agent has the capability to transmit export information electronically, and with limited exceptions, has knowledge of the data transmitted.

Time Frames for Presenting Information

A USPPI, or its authorized agent, participating in advance cargo information filing would have to present export cargo information through the AES commodity module for outbound shipments, as follows:

(1) For vessel cargo, the participating USPPI or its authorized agent must transmit and verify system acceptance of export vessel cargo information *no later than 24 hours prior to the departure of the vessel;*

(2) For air cargo, including cargo being transported by Air Express Couriers, the participating USPPI or its authorized agent must transmit and verify system acceptance of export air cargo information *no later than 2 hours prior to the scheduled departure time of the aircraft;*

(3) For truck cargo, including cargo departing by Express Consignment Courier, the participating USPPI or its authorized agent must present and verify system acceptance of export truck cargo information *no later than 1 hour prior to the arrival of the truck at the border;* and

(4) For rail cargo, the participating USPPI or its authorized agent must transmit and verify system acceptance of export rail cargo information *no later than 4 hours prior to the time at which the engine is attached to the train to go foreign.*

The preceding time frames are provided by CBP as minimum guidelines. All parties involved in export transactions should be advised that filing electronic cargo information as far in advance as practicable reduces the need for CBP to delay export of that cargo to complete any screening or examinations deemed to be necessary.

The foregoing time frames for reporting information about outbound vessel, air, truck and rail cargo only apply to shipments without an export license, that require full pre-departure reporting of shipment data, in order to comply with the advance cargo information filing requirements under section 343(a), as amended. The USPPI or its authorized agent may refer to proposed § 192.14(e) for specific guidance concerning the effective date for the time frames detailed herein. Requirements placed on exports controlled by other Government agencies will remain in force unless changed by the agency having the regulatory authority to do so. The CBP will also continue to require a 72-hour advance notice for vehicle exports pursuant to 19 CFR 192.2(c)(1) and (c)(2)(i). The USPPI or its authorized agent should refer to the relevant titles in the Code of Federal Regulations for the pre-filing requirements of other Government agencies.

Electronic Filer of Export Cargo Information; Proposed Requirements

The USPPI, or its authorized agent, who participates in reporting export data electronically via the commodity module (the automated Shipper's Export Declaration) of the AES, would continue to transmit and verify that such data had been accepted through the system, but would have to do so no later than the time, in advance of departure, prescribed for each mode of transportation under this proposed rule. The USPPI or its authorized agent may refer to proposed § 192.14(e) for specific information concerning effective dates for procedures outlined herein.

Since the AES Commodity Module already captures the requisite export data, and to avoid redundancy with existing export reporting requirements, no new commodity or transportation data elements would need to be required under section 343(a), as amended. Specifically, the export cargo information collected from USPPIs or their authorized agents is contained in the Bureau of Census electronic Shipper's Export Declaration (SED) that is presented to CBP through the AES. Those export commodity data elements that are required to be reported electronically through AES are also found in § 30.63 of the Bureau of Census Regulations (15 CFR 30.63). The required transportation data elements are defined below in accordance with 15 CFR 30.63.

1. *Mode of transportation.* The mode of transportation is defined as that by which the goods are exported or shipped (vessel, air, rail, or truck).

2. *Carrier identification.* The USPPI or its authorized agent should reasonably be expected to know the identification of the carrier that would actually be transporting the merchandise out of the United States. For vessel, rail and truck shipments, the unique carrier identifier would be its 4-character Standard Carrier Alpha Code (SCAC); for aircraft, this identifier would be the 2- or 3-character International Air Transport Association (IATA) code.

3. *Conveyance name.* The conveyance name would be the name of the carrier (for sea carriers, the name of the vessel; for others, the carrier name).

4. *Country of ultimate destination.* This is the country as known to the USPPI or its authorized agent at the time of exportation, where the cargo is to be consumed or further processed or manufactured. This country would be identified by the 2-character International Standards Organization (ISO) code for the country of ultimate destination.

5. *Estimated date of exportation.* The participating USPPI or its authorized agent must report the date the cargo is scheduled to leave the United States for all modes of transportation. If the actual date is not known, the participating USPPI or authorized agent must report the best estimate as to the time of departure.

6. *Port of exportation.* The port of exportation would be designated by its unique code, as set forth in Annex C, Harmonized Tariff Schedule of the United States (HTSUS).

Identifying High-Risk Shipments

The CBP finds that the data elements that the USPPI would have to timely present through AES covering both the commodity and transportation information for outbound cargo should prove to be sufficient for identifying and targeting potentially high-risk shipments. For outbound cargo that CBP has identified as high-risk, the carrier, after being duly notified by CBP, would be responsible for delivering the cargo for inspection/examination; if the cargo identified as high-risk had already departed, CBP would exercise its authority to demand that the cargo be redelivered (*see* 19 CFR 113.64(g)(2)).

Notably, in the case of outbound cargo, identifying high-risk shipments would principally be concerned with interdicting any attempted illegal export of technology, and associated goods and materials, that could be employed by terrorist organizations abroad in the construction of weapons of mass destruction (WMDs), such as nuclear and radiological dispersal devices ("dirty bombs"), that would be intended ultimately for use either here in the United States or in another country.

Proposed Requirement; Carrier Data

The CBP has made a prudent judgment that the transportation data, along with the commodity data (both collected in the AES Commodity Module), that CBP proposes to require from the participating USPPI or its authorized agent, would be sufficient for effective targeting and risk assessment under section 343(a), as amended.

Additional information for outward cargo is not readily available in advance of departure because exporting carriers, who have direct knowledge of this information, generally do not now have the electronic capability to furnish cargo data through AES. Specifically, there are no carrier manifest modules in AES, except for the vessel carrier module which is voluntary and does not yet include the capability to receive cargo data directly from Non Vessel Operating Common Carriers (NVOCCs). Therefore, implementation of mandatory automated cargo data processes for vessel operators in the absence of other such modules would create uneven requirements within and across modes of transportation.

Conversely, to presently obligate USPPIs or their authorized agents to transmit transportation data additional to that which is collected in the AES Commodity Module would be impracticable because such information would not necessarily otherwise be obtainable in a timely enough manner to meet the proposed advance electronic reporting procedures; this would inevitably delay and disrupt the movement of cross-border traffic.

Against this overall backdrop, therefore, CBP has concluded that its proposal to require pre-existing data elements for outward cargo represents a sound and sensible initial step in establishing a solid informational bulwark against threats to cargo safety and security, and one which would not adversely impact or impinge upon the flow of cross-border commerce.

To this end, and pursuant to Bureau of Census regulations that are due to be issued next year, the current AES system is to be upgraded and reprogrammed so as to enable, and require, that USPPIs or their authorized agents transmit, verify acceptance and annotate an ITN (unless otherwise exempt from pre-departure filing) on export documents presented to the exporting carrier in accordance with the time frames and procedures outlined in this rule. Nevertheless, CBP and the exporting trade agree with the advisability of creating carrier manifest modules in AES or a successor system that would facilitate the reporting of additional cargo information for outbound cargo.

Complete transportation data from exporting carriers would be collected for every export shipment when CBP has the system capabilities set up to receive this data directly from carriers. Once this requisite technology is approved and incorporated into an automated system, CBP will then review these new capabilities to determine additional compliance with the Trade Act of 2002. The CBP would then propose its own regulations in the **Federal Register** calling for exporting carriers, in advance of departure, to electronically file their outward cargo information with CBP through the approved system.

Proof of Electronic Filing; System Verification of Data Acceptance

For each export shipment to be laden, the participating USPPI, or its authorized agent, must furnish to the outbound carrier a proof of electronic filing citation covering the cargo to be laden, for annotation on the outward manifest, waybill, or other export documentation when cargo information is reported electronically; in the alternative, the USPPI, or authorized agent, would be responsible for providing to the exporting carrier an appropriate low-risk exporter citation (currently Option 4) or an exemption statement for the cargo. The carrier may not load cargo without the related electronic filing citation (*e.g.*, the ITN), low-risk exporter citation, or an appropriate exemption statement.

The proof of electronic filing citation, low-risk exporter citation, or exemption statement, will conform to the approved formats found in the Bureau of Census Foreign Trade Statistics Regulations (FTSR) (15 CFR part 30), or on the Census Web site (*http://www.census.gov/foreign-trade/regulations/index.html*).

When successfully transmitting cargo data for a shipment through the system, the USPPI or its authorized agent will receive a system-generated confirmation number, known as an Internal Transaction Number (ITN), which constitutes verification that the data transmitted has been accepted by the system. For transmitted data that passes system edits, the current approved electronic data interchange (AES) returns this confirmation number routinely in less than one minute. This enables CBP to base the monitoring and enforcement of the time frames on the actual time of receipt (of the data) rather than on its transmission, which cannot be quantified. When the redesign of the AES commodity module is in place, the proof of export filing citation will need to include the ITN.

Exemptions From Reporting Requirements

Exemptions from reporting requirements for certain cargo are under the authority of the Bureau of Census (15 CFR 30.50 through 30.58). The proposed CBP regulations under section 343(a), as amended, would likewise encompass these exemptions.

Transition Period; Implementation

For successfully targeting potentially high-risk export commodity shipments, CBP supports the employment of current AES systems that are already heavily in use and widely available to USPPIs. With Internet connections, as noted, AES allows new USPPIs that are relatively small businesses, to be brought into the system fairly easily and inexpensively. To this end, the proposed regulations for the specified pre-departure reporting of cargo commodity and transportation information for outbound shipments, together with the requirement of the ITN, would be implemented concurrent with the completion of the redesign of the AES commodity module and the implementation of mandatory filing regulations by the Department of Commerce pursuant to Public Law 107–228.

Future Rulemaking Regarding Related Laws

Waterborne Cargo; Section 343(b), Trade Act of 2002

Section 343(b), Trade Act of 2002, as amended (codified at 19 U.S.C. 1431a), requiring proper documentation for all cargo to be exported by vessel, will be the subject of a separate publication in the **Federal Register**.

Transportation Security Administration—Cargo Security Programs

It is also stressed that the final regulations that will be issued to implement section 343(a), as amended, may, in the foreseeable future, be subject to modification as necessary to accommodate a cargo security program that may be developed by the Transportation Security Administration (TSA) in accordance with the Aviation and Transportation Security Act (Public Law 107–71,115 Stat. 597; November 19, 2001) (49 U.S.C. 114(d), (f)(10); 44901(a), (f)).

Comments

Before adopting these proposed amendments, consideration will be given to any written comments that are timely submitted to Customs and Border Protection (CBP). The CBP specifically requests comments on the clarity of the proposed rule and how it may be made easier to understand. Comments are especially requested as to the sufficiency of the explanations that accompany the proposed data elements, as well as the impact on small business entities under the Regulatory Flexibility Act. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), at the Bureau of Customs and Border Protection, 799 9th Street, NW., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

Regulatory Flexibility Act and Executive Order 12866

Customs and Border Protection (CBP) has conducted an economic analysis to determine whether the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) would apply to this rulemaking. It has been determined, as a result of the *initial* analysis conducted, that this proposed rule would not have a significant economic impact upon a substantial number of small entities as required by the RFA. This economic analysis is attached as an Appendix to this document. For the reasons set forth in the analysis, the agency does not make a certification at this time with regard to the regulatory requirements of 5 U.S.C. 603 and 604. Also, this rule is a "significant regulatory action" under Executive Order (E.O.) 12866 and has been reviewed by the Office of Management and Budget in accordance with that E.O. However, it is our preliminary determination that the proposed rule would not result in an "economically significant regulatory action" under E.O. 12866, as regards the impact on the national economy.

Paperwork Reduction Act

The collection of information in this document is contained in §§ 4.7a, 122.48a, 123.91, 123.92, and 192.14. Under these sections, the information would be required and used to determine the safety and security conditions under which cargo to be brought into or sent from the United States was maintained prior to its arrival or departure. The likely respondents and/or recordkeepers are air, truck, rail and vessel carriers, Non Vessel Operating Common Carriers (NVOCCs), freight forwarders, deconsolidators, express consignment facilities, importers, exporters, and Customs brokers. The collection of information encompassed within this proposed rule has been submitted to the Office of Management and Budget (OMB) for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

Estimated annual reporting and/or recordkeeping burden: 2,299,640 hours.

Estimated average annual burden per respondent/recordkeeper: 52.3 hours.

Estimated number of respondents and/or recordkeepers: 43,960.

Estimated annual frequency of responses: 14,297,259.

Comments on this collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of Homeland Security, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. Comments should be submitted within the time frame that comments are due on the substance of the proposal.

Comments are invited on: (a) Whether the collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operations, maintenance, and purchase of services to provide information.

Part 178, Customs Regulations (19 CFR part 178), containing the list of approved information collections, would be revised to add appropriate references to the above-cited regulatory sections, upon the adoption of the proposal as a final rule.

List of Subjects

19 CFR Part 4

Administrative practice and procedure, Arrival, Cargo vessels, Common carriers, Customs duties and inspection, Declarations, Entry, Exports, Foreign commerce and trade statistics, Freight, Imports, Inspection, Maritime carriers, Merchandise, Penalties, Reporting and recordkeeping requirements, Shipping, Vessels.

19 CFR Part 103

Administrative practice and procedure, Computer technology, Confidential business information, Electronic filing, Freedom of information, Reporting and recordkeeping requirements.

19 CFR Part 113

Air carriers, Bonds, Common carriers, Customs duties and inspection, Exports, Foreign commerce and trade statistics, Freight, Imports, Reporting and recordkeeping requirements, Vessels.

19 CFR Part 122

Administrative practice and procedure, Advance notice of arrival, Advance notice requirements, Air cargo, Air cargo manifest, Air carriers, Aircraft, Air transportation, Commercial aircraft, Customs duties and inspection, Entry procedure, Foreign commerce and trade statistics, Freight, Imports, Penalties, Reporting and recordkeeping requirements, Security measures.

19 CFR Part 123

Administrative practice and procedure, Aircraft, Canada, Common carriers, Customs duties and inspection, Entry of merchandise, Freight, Imports, International traffic, Mexico, Motor carriers, Railroads, Reporting and recordkeeping requirements, Vehicles, Vessels.

19 CFR Part 192

Administrative practice and procedure, Aircraft, Customs duties and inspection, Exports, Foreign trade statistics, Law enforcement, Motor vehicles, Reporting and recordkeeping procedures, Vehicles, Vessels.

Proposed Amendments to the Regulations

It is proposed to amend parts 4, 103, 113, 122, 123, and 192, Customs Regulations (19 CFR parts 4, 103, 113, 122, 123, and 192), as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 would be revised, and the relevant specific authority citations would continue, to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624, 2071 note; 46 U.S.C. App. 3, 91;

* * * * *

Section 4.7 also issued under 19 U.S.C. 1581(a); 46 U.S.C. App. 883a, 883b;

* * * * *

Section 4.61 also issued under 46 U.S.C. App. 883;

* * * * *

2. Amend § 4.7 by:

a. Revising the first sentence of paragraph (b)(1);

b. Revising paragraph (b)(2);

c. Removing the words, "if automated", where appearing in paragraph (b)(3)(i);

d. Adding a new paragraph (b)(3)(iii); and

e. Adding a new paragraph (b)(5).

The revisions and additions would read as follows:

§ 4.7 Inward foreign manifest; production on demand; contents and form; advance filing of cargo declaration.

* * * * *

(b)(1) With the exception of any Cargo Declaration that has been filed in advance as prescribed in paragraph (b)(2) of this section, the original and one copy of the manifest must be ready for production on demand. * * *

(2) Subject to the effective date provided in paragraph (b)(5) of this section, and with the exception of any vessel exclusively carrying bulk or authorized break bulk cargo as prescribed in paragraph (b)(4) of this section, Customs and Border Protection (CBP) must receive from the incoming carrier, for any vessel covered under paragraph (a) of this section, the CBP-approved electronic equivalent of the vessel's Cargo Declaration (Customs Form 1302), 24 hours before the cargo is laden aboard the vessel at the foreign port (see § 4.30(n)(1)). The current approved system for presenting electronic cargo declaration information to CBP is the Vessel Automated Manifest System (AMS).

* * * * *

(3) * * *

(iii) Where the party electronically presenting to CBP the cargo information required in § 4.7a(c)(4) receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the presenting party acquired such information, and whether and how the presenting party is able to verify this information. Where the presenting party is not reasonably able to verify such information, CBP will permit the party to electronically present the information on the basis of what the party reasonably believes to be true.

* * * * *

(5) Within 90 days of [the publication of this paragraph as a final rule in the **Federal Register**], all ocean carriers, and NVOCCs electing to participate, must be automated on the Vessel AMS system at all ports of entry in the United States where their cargo will initially arrive.

* * * * *

3. Amend § 4.7a by:

a. Revising paragraphs (c)(4)(viii) and (c)(4)(ix);

b. Removing the word "and" after paragraph (c)(4)(xiii); and

c. Adding new paragraphs (c)(4)(xv) and (c)(4)(xvi).

The revisions and additions would read as follows:

§ 4.7a Inward manifest; information required; alternative forms.

* * * * *

(c) *Cargo Declaration.* * * *

(4) * * *

(viii) The shipper's complete name and address, or identification number, from all bills of lading. (At the master bill level, for consolidated shipments, the identity of the Non Vessel Operating Common Carrier (NVOCC), freight forwarder, container station or other carrier is sufficient; for non-consolidated shipments, and for each house bill in a consolidated shipment, the identity of the actual shipper (the owner and exporter) of the cargo from the foreign country is required; the identification number will be a unique number assigned by CBP upon the implementation of the Automated Commercial Environment);

(ix) The complete name and address of the consignee, or identification number, from all bills of lading. (For consolidated shipments, at the master bill level, the NVOCC, freight forwarder, container station or other carrier may be listed as the consignee. For non-consolidated shipments, and for each house bill in a consolidated shipment, the consignee is the party to whom the cargo will be delivered in the United States, with the exception of "FROB". However, in the case of cargo shipped "to order of [a named party]," the carrier must report this named "to order" party as the consignee; and, if there is any other commercial party listed in the bill of lading for delivery or contact purposes, the carrier must also report this other commercial party's identity and contact information (address/phone number) in the "Notify Party" field of the advance electronic data transmission to CBP, to the extent that the CBP-approved electronic data interchange system is capable of receiving this data. The identification number will be a unique number assigned by CBP upon implementation of the Automated Commercial Environment);

* * * * *

(xv) Date of departure from foreign, as reflected in the vessel log; and

(xvi) Time of departure from foreign, as reflected in the vessel log.

* * * * *

4. Amend § 4.61 by adding a new paragraph (c)(24) to read as follows:

§ 4.61 Requirements for clearance.

* * * * *

(c) *Verification of compliance.*

* * * * *

(24) Electronic receipt of required vessel cargo information (see 192.14(c) of this chapter).

* * * * *

PART 103—AVAILABILITY OF INFORMATION

1. The general authority citation for part 103 would continue, and a specific authority citation would be added for § 103.31a in appropriate numerical order, to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 19 U.S.C. 66, 1624; 31 U.S.C. 9701;

* * * * *

Section 103.31a also issued under 19 U.S.C. 2071 *note;*

* * * * *

2. Amend subpart C of part 103 by adding a new § 103.31a to read as follows:

§ 103.31a Advance electronic information for air, truck, and rail cargo.

Advance cargo information that is electronically presented to Customs and Border Protection (CBP) for inbound or outbound air, rail, or truck cargo in accordance with § 122.48a, 123.91, 123.92, or 192.14 of this chapter, is per se exempt from disclosure under § 103.12(d), unless CBP receives a specific request for such records pursuant to § 103.5, and the owner of the information expressly agrees in writing to its release.

PART 113—CUSTOMS BONDS

1. The authority citation for part 113 would continue to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

2. Amend § 113.62 by:

a. Revising the heading of paragraph (j), and redesignating its current text as paragraph (j)(1);

b. Adding a new paragraph (j)(2); and

c. Revising paragraph (l)(1) by adding the citation, "(j)(2),", after the citation, "(i),".

The revision and addition to paragraph (j) read as follows:

§ 113.62 Basic importation and entry bond conditions.

* * * * *

(j) *Agreement to comply with electronic entry and/or advance cargo information filing requirements.* (1)

* * *

(2) If the principal elects to provide advance inward air or truck cargo information to Customs and Border Protection (CBP) electronically, the principal agrees to provide such cargo information to CBP in the manner and in the time period required, respectively, under § 122.48a or 123.92 of this chapter. If the principal defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of $5,000 for each regulation violated.

* * * * *

3. Amend § 113.64 by revising the first sentence of paragraph (a); and by revising paragraph (c) to read as follows:

§ 113.64 International carrier bond conditions.

(a) *Agreement to Pay Penalties, Duties, Taxes, and Other Charges.* If any vessel, vehicle, or aircraft, or any master, owner, or person in charge of a vessel, vehicle or aircraft, slot charterer, or any non-vessel operating common carrier as defined in § 4.7(b)(3)(ii) of this chapter or other party as specified in § 122.48a(c)(2) of this chapter, incurs a penalty, duty, tax or other charge provided by law or regulation, the obligors (principal and surety, jointly and severally) agree to pay the sum upon demand by Customs and Border Protection (CBP). * * *

* * * * *

(c) *Non-vessel operating common carrier (NVOCC); other party.* If a slot charterer, non-vessel operating common carrier (NVOCC) as defined in § 4.7(b)(3)(ii) of this chapter, or other party specified in § 122.48a(c)(2) of this chapter, elects to provide advance cargo information to CBP electronically, the NVOCC or other party, as a principal under this bond, in addition to compliance with the other provisions of this bond, also agrees to provide such cargo information to CBP in the manner and in the time period required under those respective sections. If the NVOCC or other party, as principal, defaults with regard to these obligations, the principal and surety (jointly and severally) agree to pay liquidated damages of $5,000 for each regulation violated.

* * * * *

PART 122—AIR COMMERCE REGULATIONS

1. The general authority citation for part 122 would be revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a, 2071 note.

* * * * *

2. Amend § 122.12 by revising the heading of paragraph (c) and adding a sentence at the end of paragraph (c) to read as follows:

§ 122.12 Operation of international airports.

* * * * *

(c) *FAA rules; denial of permission to land.* * * * In addition, except in the case of an emergency or forced landing (*see* § 122.35), permission to land at an international airport may be denied if advance electronic information for incoming foreign cargo aboard the aircraft has not been received as provided in § 122.48a.

* * * * *

3. Amend § 122.14 by:

a. Redesignating paragraphs (d)(4) and (d)(5) as paragraphs (d)(5) and (d)(6), respectively;

b. Adding a new paragraph (d)(4); and

c. Revising newly redesignated paragraph (d)(5).

The addition and revision would read as follows:

§ 122.14 Landing rights airport.

* * * * *

(d) *Denial or withdrawal of landing rights.* * * *

(4) Advance cargo information has not been received as provided in § 122.48a;

(5) Other reasonable grounds exist to believe that Federal rules and regulations pertaining to safety, including cargo safety and security, and Customs, or other inspectional activities have not been followed; or

* * * * *

4. Amend § 122.33 by:

a. Revising paragraph (a), introductory text; and

b. Revising paragraph (a)(1).

The revisions read as follows:

§ 122.33 Place of first landing.

(a) The first landing of an aircraft entering the United States from a foreign area will be:

(1) At a designated international airport (*see* § 122.13), provided that permission to land has not been denied pursuant to § 122.12(c);

* * * * *

5. Amend § 122.38 by:

a. Adding a sentence at the end of paragraph (c); and

b. Adding a new paragraph (g).

The additions would read as follows:

§ 122.38 Permit and special license to unlade and lade.

* * * * *

(c) *Term permit or special license.* * * * In addition, a term permit or special license to unlade or lade already issued will not be applicable to any inbound or outbound flight, with respect to which Customs and Border Protection (CBP) has not received the advance electronic cargo information required, respectively, under § 122.48a or 192.14(b)(1)(ii) of this chapter (see paragraph (g) of this section).

* * * * *

(g) *Advance receipt of electronic cargo information.* The CBP will not issue a permit to unlade or lade cargo upon arrival or departure of an aircraft, and a term permit or special license already issued will not be applicable to any inbound or outbound flight, with respect to which CBP has not received the advance electronic cargo information required, respectively, under § 122.48a or 192.14 of this chapter. In cases in which CBP does not receive complete cargo information in the time and manner and in the electronic format required by § 122.48a or 192.14 of this chapter, as applicable, CBP may delay issuance of a permit or special license to unlade or lade cargo, and a term permit or special license to unlade or lade already issued may not apply, until all required information is received. The CBP may also decline to issue a permit or special license to unlade or lade, and a term permit or special license already issued may not apply, with respect to the specific cargo for which advance information is not timely received electronically, as specified in § 122.48a or 192.14(b)(1)(ii) of this chapter.

6. Amend § 122.48 by revising paragraph (a) to read as follows:

§ 122.48 Air cargo manifest.

(a) *When required.* Except as provided in paragraphs (d) and (e) of this section, an air cargo manifest need not be filed for any aircraft required to enter under § 122.41. However, an air cargo manifest for all cargo on board together with the general declaration must be kept aboard any aircraft required to enter under § 122.41, for production upon demand.

* * * * *

7. Amend subpart E of part 122 by adding a new § 122.48a to read as follows:

§ 122.48a Electronic information for air cargo required in advance of arrival.

(a) *General requirement.* Pursuant to section 343(a), Trade Act of 2002, as amended (19 U.S.C. 2071 note), and subject to paragraph (e) of this section, for any inbound aircraft required to enter under § 122.41, that will have commercial cargo aboard, Customs and Border Protection (CBP) must electronically receive from the inbound air carrier and, if applicable, an approved party as specified in paragraph (c)(1) of this section, certain information concerning the incoming cargo, as enumerated, respectively, in paragraphs (d)(1) and (d)(2) of this section. The CBP must receive such

information no later than the time frame prescribed in paragraph (b) of this section. The advance electronic transmission of the required cargo information to CBP must be effected through a CBP-approved electronic data interchange system.

(1) *Cargo remaining aboard aircraft; cargo to be entered under bond.* Air cargo arriving from and departing for a foreign country on the same through flight and cargo that is unladen from the arriving aircraft and entered, in bond, for exportation, or for transportation and exportation (see subpart J of this part), are subject to the advance electronic information filing requirement under paragraph (a) of this section.

(2) *Diplomatic pouches.* When goods comprising a diplomatic or consular bag (including cargo shipments, containers, and the like) that belong to the United States or to a foreign government are shipped under an air waybill, such cargo is subject to the advance reporting requirements of paragraph (a) of this section.

(b) *Time frame for presenting data.* (1) *Nearby foreign areas.* In the case of aircraft under paragraph (a) of this section that depart for the United States from any foreign port or place in North America, including locations in Mexico, Central America, South America (from north of the Equator only), the Caribbean, and Bermuda, CBP must receive the required cargo information no later than the time of the departure of the aircraft for the United States (no later than the time that wheels are up on the aircraft, and it is en route directly to the United States).

(2) *Other foreign areas.* In the case of aircraft under paragraph (a) of this section that depart for the United States from any foreign area other than that specified in paragraph (b)(1) of this section, CBP must receive the required cargo information no later than 4 hours prior to the arrival of the aircraft in the United States.

(c) *Party electing to file advance electronic cargo data.* (1) *Other filer.* In addition to incoming air carriers for whom participation is mandatory, one of the following parties meeting the qualifications of paragraph (c)(2) of this section, may elect to transmit to CBP the electronic data for incoming cargo that is listed in paragraph (d)(2) of this section:

(i) An Automated Broker Interface (ABI) filer (importer or its Customs broker) as identified by its ABI filer code;

(ii) A Container Freight Station/deconsolidator as identified by its FIRMS (Facilities Information and Resources Management System) code;

(iii) An Express Consignment Carrier Facility as identified by its FIRMS code; or,

(iv) An air carrier as identified by its carrier IATA (International Air Transport Association) code, that arranged to have the incoming air carrier transport the cargo to the United States.

(2) *Eligibility.* To be qualified to file cargo information electronically, a party identified in paragraph (c)(1) of this section must establish the communication protocol required by CBP for properly presenting cargo information through the approved data interchange system. Also, other than a broker or an importer (see 113.62(j)(2) of this chapter), the party must possess a Customs international carrier bond containing all the necessary provisions of § 113.64 of this chapter.

(3) *Nonparticipation by other party.* If another party as specified in paragraph (c)(1) of this section does not participate in advance electronic cargo information filing, the party that arranges for and/or delivers the cargo shipment to the incoming carrier must fully disclose and present to the carrier the cargo information listed in paragraph (d)(2) of this section; and the incoming carrier, on behalf of the party, must present this information electronically to CBP under paragraph (a) of this section.

(4) *Required information in possession of third party.* Any other entity in possession of required cargo data that is not the incoming air carrier or a party described in paragraph (c)(1) of this section must fully disclose and present the required data for the inbound air cargo to either the air carrier or other electronic filer, as applicable, which must present such data to CBP.

(5) *Party receiving information believed to be accurate.* Where the party electronically presenting the cargo information required in paragraph (d) of this section receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the presenting party acquired such information, and whether and how the presenting party is able to verify this information. Where the presenting party is not reasonably able to verify such information, CBP will permit the party to electronically present the information on the basis of what that party reasonably believes to be true.

(d) *Non-consolidated/consolidated shipments.* For non-consolidated shipments, the incoming air carrier must transmit to CBP all of the information for the air waybill record, as enumerated in paragraph (d)(1) of this section. For consolidated shipments: The incoming air carrier must transmit to CBP the information listed in paragraph (d)(1) of this section that is applicable to the master air waybill; and the air carrier must transmit cargo information for all associated house air waybills as enumerated in paragraph (d)(2) of this section, unless another party as described in paragraph (c)(1) of this section electronically transmits this information directly to CBP.

(1) *Cargo information from air carrier.* The incoming air carrier must present to CBP the following data elements for inbound air cargo (an "M" next to any listed data element indicates that the data element is mandatory in all cases; a "C" next to the listed data element indicates that the data element is conditional and must be transmitted to CBP only if the particular information pertains to the inbound cargo):

(i) Air waybill number (M) (The air waybill number is the International Air Transport Association (IATA) standard 11-digit number);

(ii) Trip/flight number (M);

(iii) Carrier/ICAO (International Civil Aviation Organization) code (M) (The approved electronic data interchange system supports both 3– and 2–character ICAO codes, provided that the final digit of the 2-character code is not a numeric value);

(iv) Airport of arrival (M) (The 3-alpha character ICAO code corresponding to the first airport of arrival in the Customs territory of the United States (for example, Chicago O'Hare = ORD; Los Angeles International Airport = LAX));

(v) Airport of origin (M) (The 3-alpha character ICAO code corresponding to the airport from which a shipment began its transportation by air to the United States (for example, if a shipment began its transportation from Hong Kong (HKG), and it transits through Narita, Japan (NRT), en route to the United States, the airport of origin is HKG, not NRT));

(vi) Scheduled date of arrival (M);

(vii) Total quantity based on the smallest external packing unit (M) (for example, 2 pallets containing 50 pieces each would be considered as 100, not 2);

(viii) Total weight (M) (may be expressed in either pounds or kilograms);

(ix) Precise cargo description (M) (for consolidated shipments, the word "Consolidation" is a sufficient description for the master air waybill record; for non-consolidated shipments, a precise cargo description or the 6-digit Harmonized Tariff Schedule (HTS) number must be provided (generic descriptions, specifically those such as "FAK" ("freight of all kinds"), "general cargo", and "STC" ("said to contain") are not acceptable));

(x) Shipper name and address (M) (for consolidated shipments, the identity of the consolidator, express consignment or other carrier, is sufficient for the master air waybill record; for non-consolidated shipments, the identity of the actual shipper (who is the owner and exporter) of the merchandise from the foreign country is required);

(xi) Consignee name and address (M) (for consolidated shipments, the identity of the container station, express consignment or other carrier is sufficient for the master air waybill record; for non-consolidated shipments, the name and address of the party to whom the cargo will be delivered is required, with the exception of "AFROB" (Foreign Cargo Remaining On Board));

(xii) Consolidation identifier (C);

(xiii) Split shipment indicator (C) (this data element includes information indicating the particular portion of the split shipment that will arrive; the boarded quantity of that portion of the split shipment (based on the smallest external packing unit); and the boarded weight of that portion of the split shipment (expressed in either pounds or kilograms));

(xiv) Permit to proceed information (C) (this element includes the permit-to-proceed destination airport (the 3-alpha character ICAO code corresponding to the permit-to-proceed destination airport); and the scheduled date of arrival at the permit-to-proceed destination airport);

(xv) Identifier of other party which is to submit additional air waybill information (C);

(xvi) In-bond information (C) (this data element includes the destination airport; the international/domestic identifier (the in-bond type indicator); the in-bond control number, if there is one (C); and the onward carrier identifier, if applicable (C)); and

(xvii) Local transfer facility (C).

(2) *Cargo information from carrier or other filer.* The incoming air carrier must present the following additional information to CBP for the incoming cargo, unless another party as specified in paragraph (c)(1) of this section elects to present this information directly to CBP. Information for all house air waybills under a single master air waybill consolidation must be presented electronically to CBP by the same party. (An "M" next to any listed data element indicates that the data element is mandatory in all cases; a "C" next to any listed data element indicates that the data element is conditional and must be transmitted to CBP only if the particular information pertains to the inbound cargo):

(i) The master air waybill number and the associated house air waybill number (M) (the house air waybill number may be up to 12 alphanumeric characters (each alphanumeric character that is indicated on the paper house air waybill document must be included in the electronic transmission; alpha characters may not be eliminated));

(ii) Foreign airport of origin (M) (The 3-alpha character ICAO code corresponding to the airport from which a shipment began its transportation by air to the United States (for example, if a shipment began its transportation from Hong Kong (HKG), and it transits through Narita, Japan (NRT), en route to the United States, the airport of origin is HKG, not NRT));

(iii) Cargo description (M) (a precise description of the cargo or the 6-digit Harmonized Tariff Schedule (HTS) number must be provided);

(iv) Total quantity based on the smallest external packing unit (M) (for example, 2 pallets containing 50 pieces each would be considered as 100, not 2);

(v) Total weight of cargo (M) (may be expressed in either pounds or kilograms);

(vi) Shipper name and address (M) (the name and address of the actual shipper (who is the owner and exporter) of the cargo from the foreign country);

(vii) Consignee name and address (M) (the name and address of the party to whom the cargo will be delivered in the United States, with the exception of "FROB" (Foreign Cargo Remaining On Board)); and

(viii) In-bond information (C) (this data element includes the destination airport; the international/domestic identifier (the in-bond type indicator); the in-bond control number, if there is one (C); and the onward carrier identifier, if applicable (C).

(3) *Letters and documents.* For purposes of advance electronic cargo information filing under this section, letters and documents being shipped to the United States are handled under the same procedures as all other types of cargo. Such shipments are subject to the same detailed data elements that are otherwise required for incoming air cargo under paragraphs (d)(1) and (d)(2) of this section. The term "letters and documents" as used in this paragraph means:

(i) The data (for example, records, diagrams, other business data) as described in General Note 19(c), Harmonized Tariff Schedule of the United States (HTSUS);

(ii) Securities and similar evidence of value described in subheading 4907, HTSUS, other than monetary instruments covered under 31 U.S.C. 5301–5322; and

(iii) Personal correspondence, whether on paper, cards, photographs, tapes, or other media.

(e) *Effective date of this section.* (1) *General.* Subject to paragraph (e)(2) of this section, all affected air carriers, and other parties as specified in paragraph (c)(1) of this section that elect to participate in advance automated cargo information filing, must comply with the requirements of this section on and after 90 days from the date that this section is published as a final rule in the **Federal Register**.

(2) *Delay in effective date of section.* The CBP may delay the general effective date of this section in the event that any necessary modifications to the approved electronic data interchange system are not yet in place. Also, CBP may delay the general effective date of this section at a given port until CBP has afforded any necessary training to CBP personnel at that port. In addition, CBP may delay implementation if further time is required to complete certification testing of new participants. Any such delay would be the subject of an announcement in the **Federal Register**.

8. Amend subpart G of part 122 by adding a new § 122.66 to read as follows:

122.66 Clearance or permission to depart denied.

If advance electronic air cargo information is not received as provided in § 192.14 of this chapter, Customs and Border Protection may deny clearance or permission for the aircraft to depart from the United States.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority citation for part 123 would be revised, and the relevant specific sectional authority citation would continue, to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624, 2071 note.

* * * * *

Section 123.8 also issued under 19 U.S.C. 1450–1454, 1459;

* * * * *

2. Amend § 123.8 by:

a. Adding a sentence after the second sentence in paragraph (a); and

b. Adding a sentence at the end of paragraph (d).

The additions would read as follows:

123.8 Permit or special license to unlade or lade a vessel or vehicle.

(a) *Permission to unlade or lade.* * * * Permission to unlade or lade a truck may be denied for any cargo with respect to which advance electronic information has not been received as provided in § 123.92 or 192.14 of this chapter, as applicable.* * * * * * * * *

(d) *Term permit or special license.* * * * A term permit or special license to unlade or lade a truck already issued will not be applicable as to any cargo with respect to which advance electronic information has not been received as provided in § 123.92 or 192.14 of this chapter, as applicable.

3. Amend part 123 by adding a new subpart J to read as follows:

Subpart J—Advance Information for Cargo Arriving by Rail or Truck

§ 123.91 Electronic information for rail cargo required in advance of arrival.

§ 123.92 Electronic information for truck cargo required in advance of arrival.

Subpart J—Advance Information for Cargo Arriving by Rail or Truck

§ 123.91 Electronic information for rail cargo required in advance of arrival.

(a) *General requirement.* Pursuant to section 343(a), Trade Act of 2002, as amended (19 U.S.C. 2071 note), and subject to paragraph (e) of this section, for any train requiring a train sheet under § 123.6, that will have commercial cargo aboard, Customs and Border Protection (CBP) must electronically receive from the rail carrier certain information concerning the incoming cargo, as enumerated in paragraph (d) of this section, no later than 2 hours prior to the arrival of the cargo at the United States port of entry. Specifically, to effect the advance electronic transmission of the required rail cargo information to CBP, the rail carrier must use a CBP-approved electronic data interchange system.

(1) *Through cargo in transit to a foreign country.* Cargo arriving by train for transportation in transit across the United States from one foreign country to another; and cargo arriving by train for transportation through the United States from point to point in the same foreign country are subject to the advance electronic information filing requirement for incoming cargo under paragraph (a) of this section.

(2) *Cargo under bond.* Cargo that is to be unladed from the arriving train and entered, in bond, for exportation, or for transportation and exportation, in another vehicle or conveyance is also subject to the advance electronic information filing requirement under paragraph (a) of this section.

(b) *Exception; cargo in transit from point to point in the United States.* Domestic cargo transported by train to one port from another in the United States by way of a foreign country is not subject to the advance electronic information filing requirement for incoming cargo under paragraph (a) of this section.

(c) *Incoming rail carrier.* (1) *Receipt of data; acceptance of cargo.* As a pre-requisite to accepting the cargo, the carrier must receive, from the foreign shipper and owner of the cargo or from a freight forwarder, as applicable, any necessary cargo shipment information, as listed in paragraph (d) of this section, for electronic transmission to CBP.

(2) *Accuracy of information received by rail carrier.* Where the rail carrier electronically presenting the cargo information required in paragraph (d) of this section receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the rail carrier acquired such information, and whether and how the carrier is able to verify this information. Where the rail carrier is not reasonably able to verify such information, CBP will permit the carrier to electronically present the information on the basis of what the carrier reasonably believes to be true.

(d) *Cargo information required.* The rail carrier must electronically transmit to CBP the following information for all required incoming cargo that will arrive in the United States by train:

(1) The rail carrier identification SCAC code (the unique Standard Carrier Alpha Code assigned for each carrier by the National Motor Freight Traffic Association; see § 4.7a(c)(2)(iii) of this chapter);

(2) The carrier-assigned conveyance name, equipment number and trip number;

(3) The scheduled date and time of arrival of the train at the first port of entry in the United States;

(4) The numbers and quantities of the cargo laden aboard the train as contained in the carrier's bill of lading, either master or house, as applicable (this means the quantity of the lowest external packaging unit; containers and pallets do not constitute acceptable information; for example, a container holding 10 pallets with 200 cartons should be described as 200 cartons);

(5) A precise cargo description (or the Harmonized Tariff Schedule (HTS) number(s) to the 6-digit level under which the cargo is classified if that information is received from the shipper) and weight of the cargo; or, for a sealed container, the shipper's declared description and weight of the cargo (generic descriptions, specifically those such as "FAK" ("freight of all kinds"), "general cargo," and "STC" ("said to contain") are not acceptable);

(6) The shipper's complete name and address, or identification number, from the bill(s) of lading (this means the actual owner (exporter) of the cargo from the foreign country; listing a freight forwarder or broker under this category is not acceptable; the identification number will be a unique number to be assigned by CBP upon the implementation of the Automated Commercial Environment);

(7) The complete name and address of the consignee, or identification number, from the bill(s) of lading (The consignee is the party to whom the cargo will be delivered in the United States. However, in the case of cargo shipped "to order of [a named party]," the carrier must identify this named "to order" party as the consignee; and, if there is any other commercial party listed in the bill of lading for delivery or contact purposes, the carrier must also report this other commercial party's identity and contact information (address/phone number) in the "Notify Party" field of the advance electronic data transmission to CBP, to the extent that the CBP-approved electronic data interchange system is capable of receiving this data. The identification number will be a unique number assigned by CBP upon implementation of the Automated Commercial Environment);

(8) The place where the rail carrier takes possession of the cargo shipment;

(9) Internationally recognized hazardous material code when such materials are being shipped by rail;

(10) Container numbers (for containerized shipments) or the rail car numbers; and

(11) The seal numbers for all seals affixed to containers and/or rail cars to the extent that CBP's data system can accept this information (for example, if a container has more than two seals, and only two seal numbers can be accepted through the system per container, the carrier's electronic presentation of two of these seal numbers for the container would be considered as constituting full compliance with this data element).

(e) *Effective date for compliance with this section.* Rail carriers must commence the advance electronic transmission to CBP of the required cargo information, 90 days from the date that CBP publishes notice in the **Federal Register** informing affected carriers that the approved electronic data interchange system is in place and operational at the port of entry where the train will first arrive in the United States.

§ 123.92 Electronic information for truck cargo required in advance of arrival.

(a) *General requirement.* Pursuant to section 343(a) of the Trade Act of 2002, as amended (19 U.S.C. 2071 note), and subject to paragraph (e) of this section, for any truck required to report its arrival under § 123.1(b), that will have commercial cargo aboard, Customs and Border Protection (CBP) must electronically receive from the party described in paragraph (c) of this section certain information concerning the cargo, as enumerated in paragraph (d) of this section. The CBP must receive such cargo information by means of a CBP-approved electronic data interchange system no later than either 30 minutes or 1 hour prior to the carrier's arrival at a United States port of entry, or such lesser time as authorized, based upon the CBP-approved system employed to present the information.

(1) *Through cargo in transit to a foreign country.* Cargo arriving by truck in transit through the United States from one foreign country to another (§ 123.31(a)); and cargo arriving by truck for transportation through the United States from one point to another in the same foreign country (§ 123.31(b); § 123.42) are subject to the advance electronic information filing requirement in paragraph (a) of this section.

(2) *Cargo entered under bond.* Cargo that is to be unladed from the arriving truck and entered, in bond, for exportation, or for transportation and exportation, in another vehicle or conveyance are also subject to the advance electronic information filing requirement in paragraph (a) of this section.

(b) *Exceptions from advance reporting requirements.* (1) *Cargo in transit from point to point in the United States.* Domestic cargo transported by truck and arriving at one port from another in the United States after transiting a foreign country (§ 123.21; § 123.41) is exempt from the advance electronic filing requirement for incoming cargo under paragraph (a) of this section.

(2) *Certain informal entries.* The following merchandise is exempt from the advance cargo information reporting requirements under paragraph (a) of this section, to the extent that such merchandise qualifies for informal entry pursuant to part 143, subpart C, of this chapter:

(i) Merchandise which may be informally entered on Customs Form (CF) 368 or 368A (cash collection or receipt);

(ii) Merchandise unconditionally or conditionally free, not exceeding $2,000 in value, eligible for entry on CF 7523; and

(iii) Products of the United States being returned, for which entry is prescribed on CF 3311.

(c) *Carrier; and importer or broker.* (1) *Single party presentation.* Except as provided in paragraph (c)(2) of this section, the incoming truck carrier must present all required information to CBP in the time and manner prescribed in paragraph (a) of this section.

(2) *Dual party presentation.* The United States importer, or its Customs broker, may elect to present to CBP a portion of the required information that it possesses in relation to the cargo. Where the broker, or the importer (*see* § 113.62(j)(2) of this chapter), elects to submit such data, the carrier is responsible for presenting to CBP the remainder of the information specified in paragraph (d) of this section.

(3) *Party receiving information believed to be accurate.* Where the party electronically presenting the cargo information required in paragraph (d) of this section receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the presenting party acquired such information, and whether and how the presenting party is able to verify this information. Where the presenting party is not reasonably able to verify such information, CBP will permit the party to electronically present the information on the basis of what the party reasonably believes to be true.

(d) *Cargo information required.* The following commodity and transportation information, as applicable, must be electronically transmitted to and received by CBP for all required incoming cargo arriving in the United States by truck, to the extent that the particular CBP-approved electronic data interchange system employed can accept this information:

(1) Conveyance number, and (if applicable) equipment number (the number of the conveyance is its Vehicle Identification Number (VIN) or its license plate number and State of issuance; the equipment number, if applicable, refers to the identification number of any trailing equipment or container attached to the power unit);

(2) Carrier identification (this is the truck carrier identification SCAC code (the unique Standard Carrier Alpha Code) assigned for each carrier by the National Motor Freight Traffic Association; *see* § 4.7a(c)(2)(iii) of this chapter);

(3) Trip number and, if applicable, the transportation reference number for each shipment (the transportation reference number is the freight bill number, or Pro Number, if such a number has been generated by the carrier);

(4) Container number(s) (for any containerized shipment) (if different from the equipment number), and the seal numbers for all seals affixed to the equipment or container(s);

(5) The foreign location where the truck carrier takes possession of the cargo destined for the United States;

(6) The scheduled date and time of arrival of the truck at the first port of entry in the United States;

(7) The numbers and quantities for the cargo laden aboard the truck as contained in the bill(s) of lading (this means the quantity of the lowest external packaging unit; containers and pallets do not constitute acceptable information; for example, a container holding 10 pallets with 200 cartons should be described as 200 cartons);

(8) The weight of the cargo, or, for a sealed container, the shipper's declared weight of the cargo;

(9) A precise description of the cargo or the Harmonized Tariff Schedule (HTS) numbers to the 6-digit level under which the cargo will be classified (generic descriptions, specifically those such as FAK ("freight of all kinds"), "general cargo," and "STC" ("said to contain") are not acceptable);

(10) Internationally recognized hazardous material code when such cargo is being shipped by truck;

(11) The shipper's complete name and address, or identification number, from the bill(s) of lading (the identity of the actual shipper (the owner and exporter) of the cargo from the foreign country is required; the identification number will be a unique number to be assigned by CBP upon the implementation of the Automated Commercial Environment); and

(12) The complete name and address of the consignee, or identification number, from the bill(s) of lading (the consignee is the party to whom the cargo will be delivered in the United States, with the exception of "FROB" (Foreign Cargo Remaining On Board); the identification number will be a unique number assigned by CBP upon implementation of the Automated Commercial Environment).

(e) *Effective date for compliance with this section.* The incoming truck carrier and, if electing to do so, the United States importer, or its Customs broker,

must present the necessary cargo data to CBP at the particular port of entry where the truck will arrive in the United States on and after 90 days from the date that CBP has published a notice in the **Federal Register** informing affected carriers that:

(1) The approved data interchange is in place and fully operational at that port; and

(2) The carrier must commence the presentation of the required cargo information through the approved system.

PART 192—EXPORT CONTROL

1. The authority citation for part 192 would be revised to read as follows:

Authority: 19 U.S.C. 66, 1624, 1646c. Subpart A also issued under 19 U.S.C. 1627a, 1646a, 1646b; subpart B also issued under 13 U.S.C. 303; 19 U.S.C. 2071 note; 46 U.S.C. 91.

2. Amend subpart B of part 192 by adding a new § 192.14 to read as follows:

§ 192.14 Electronic information for outward cargo required in advance of departure.

(a) *General requirement.* Pursuant to section 343(a), Trade Act of 2002, as amended (19 U.S.C. 2071 note), and subject to paragraph (e) of this section, for any commercial cargo that is to be transported out of the United States by vessel, aircraft, rail, or truck, unless exempted under paragraph (d) of this section, the United States Principal Party in Interest (USPPI), or its authorized agent, must electronically transmit for receipt by Customs and Border Protection (CBP), no later than the time period specified in paragraph (b) of this section, certain cargo information, as enumerated in paragraph (c) of this section. Specifically, to effect the advance electronic transmission of the required cargo information to CBP, the USPPI or its authorized agent must use a CBP-approved electronic data interchange system (currently, the Automated Export System (AES)).

(b) *Presentation of data.* (1) *Time for presenting data.* USPPIs or their authorized agents must electronically transmit and verify system acceptance of required cargo information for outbound cargo no later than the time period specified as follows (see paragraph (b)(3) of this section):

(i) For vessel cargo, the USPPI or its authorized agent must transmit and verify system acceptance of export vessel cargo information no later than 24 hours prior to the departure of the vessel;

(ii) For air cargo, including cargo being transported by Air Express Couriers, the USPPI or its authorized agent must transmit and verify system acceptance of export air cargo information no later than 2 hours prior to the scheduled departure time of the aircraft;

(iii) For truck cargo, including cargo departing by Express Consignment Courier, the USPPI or its authorized agent must transmit and verify system acceptance of export truck cargo information no later than 1 hour prior to the arrival of the truck at the border; and

(iv) For rail cargo, the USPPI or its authorized agent must transmit and verify system acceptance of export rail cargo information no later than 4 hours prior to the time at which the engine is attached to the train to go foreign.

(2) *Applicability of time frames.* The time periods in paragraph (b)(1) of this section for reporting required export cargo information to CBP for outward vessel, air, truck, or rail cargo only apply to shipments without an export license, that require full pre-departure reporting of shipment data, in order to comply with the advance cargo information filing requirements under section 343(a), as amended. Paragraph (e) of this section details effective dates for compliance with the time frames provided in paragraph (b)(1) of this section. Requirements placed on exports controlled by other Government agencies will remain in force unless changed by the agency having the regulatory authority to do so. The CBP will also continue to require 72-hour advance notice for vehicle exports pursuant to § 192.2(c)(1) and (c)(2)(i) of this part. USPPIs or their authorized agents should refer to the relevant titles of the Code of Federal Regulations for pre-filing requirements of other Government agencies.

(3) *System verification of data acceptance.* Once the USPPI or its authorized agent has transmitted the data required under paragraphs (c)(1) and (c)(2) of this section, and the CBP-approved electronic system has received and accepted this data, the system will generate and transmit to the USPPI a confirmation number (this number is known as the Internal Transaction Number (ITN)), which verifies that the data has been accepted as transmitted for the outgoing shipment.

(c) *Information required.* (1) *Currently collected commodity data.* The export cargo information to be collected from USPPIs or their authorized agents for outbound cargo is already contained in the Bureau of Census electronic Shipper's Export Declaration (SED) that the USPPI or its authorized agent currently presents to CBP through the approved electronic system. The AES Commodity Module already captures the requisite export data, so no new data elements for export cargo are required under this section. The export cargo data elements that are required to be reported electronically through the approved system are also found in § 30.63 of the Bureau of Census Regulations (15 CFR 30.63).

(2) *Transportation data.* Reporting of the following transportation information is currently mandatory for the vessel, air, truck, and rail modes (see also paragraph (c)(3) of this section):

(i) Mode of transportation (the mode of transportation is defined as that by which the goods are exported or shipped (vessel, air, rail, or truck));

(ii) Carrier identification (for vessel, rail and truck shipments, the unique carrier identifier is the 4-character Standard Carrier Alpha Code (SCAC); for aircraft, the carrier identifier is the 2-or 3-character International Air Transport Association (IATA) code);

(iii) Conveyance name (the conveyance name is the name of the carrier; for sea carriers, this is the name of the vessel; for others, the carrier name);

(iv) Country of ultimate destination (this is the country as known to the USPPI at the time of exportation, where the cargo is to be consumed or further processed or manufactured; this country would be identified by the 2-character International Standards Organization (ISO) code for the country of ultimate destination);

(v) Estimated date of exportation (the USPPI or its authorized agent must report the date the cargo is scheduled to leave the United States for all modes of transportation; if the actual date is not known, the USPPI or its authorized agent must report the best estimate as to the time of departure); and

(vi) Port of exportation (the port where the outbound cargo actually departs from the United States is designated by its unique code, as set forth in Annex C, Harmonized Tariff Schedule of the United States (HTSUS)).

(3) *Proof of electronic filing; exemption from filing.* The USPPI, or its authorized agent, must furnish to the outbound carrier a proof of electronic filing citation (the ITN), low-risk exporter citation (currently, the Option 4 filing citation), or exemption statement, for annotation on the carrier's outward manifest, waybill, or other export documentation covering the cargo to be shipped. The proof of electronic filing citation, low-risk exporter citation, or exemption statement, will conform to the approved data formats found in the Bureau of Census Foreign Trade Statistics Regulations (FTSR) (15 CFR part 30).

(4) *Carrier responsibility.* (i) *Loading of cargo.* The carrier may not load cargo without first receiving from the USPPI or its authorized agent either the related electronic filing citation as prescribed under paragraph (c)(3) of this section, or an appropriate exemption statement for the cargo as specified in paragraph (d) of this section.

(ii) *High-risk cargo.* For cargo that CBP has identified as potentially high-risk, the carrier, after being duly notified by CBP, will be responsible for delivering the cargo for inspection/examination. If the cargo identified as high risk has already departed, CBP will exercise its authority to demand that the export carrier redeliver the cargo in accordance with the terms of its international carrier bond (*see* § 113.64(g)(2) of this chapter).

(5) *USPPI receipt of information believed to be accurate.* Where the USPPI or its authorized agent electronically presenting the cargo information required in paragraphs (c)(1) and (c)(2) of this section receives any of this information from another party, CBP will take into consideration how, in accordance with ordinary commercial practices, the USPPI or its authorized agent acquired this information, and whether and how the USPPI or authorized agent is able to verify this information. Where the USPPI or authorized agent is not reasonably able to verify any information received, CBP will permit this party to electronically present the information on the basis of what it reasonably believes to be true.

(d) *Exemptions from reporting; Census exemptions applicable.* The USPPI or authorized agent must furnish to the outbound carrier an appropriate exemption statement (low-risk exporter or other exemption) for any export shipment laden that is not subject to pre-departure electronic information filing under this section. The exemption statement will conform to the proper format approved by the Bureau of Census. Any exemptions from reporting requirements for export cargo are enumerated in §§ 30.50 through 30.58 of the Bureau of Census Regulations (15 CFR 30.50 through 30.58). These exemptions are equally applicable under this section.

(e) *Effective date for compliance.* The requirements of this section, including the pre-departure time frames for reporting export cargo information for required shipments, and the requirement of the ITN, will be implemented concurrent with the completion of the redesign of the AES commodity module and the effective date of mandatory filing regulations that will be issued by the Department of Commerce pursuant to the Security Assistance Act (Pub. L. 107–228). This date will be announced in the **Federal Register**.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

Approved: July 17, 2003.

Tom Ridge,

Secretary, Department of Homeland Security.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix—Regulatory Flexibility Act and Executive Order 12866

The Bureau of Customs and Border Protection (CBP) conducted the analysis below to concurrently address the requirements of the Regulatory Flexibility Act (RFA) of 1980 and Executive Order 12866. Those provisions require, respectively, that CBP (1) assess the impact of proposed rules on small business entities via an initial regulatory flexibility analysis and (2) determine if the proposed rule is a significant regulatory action, defined as having annual impact on the United States economy of $100 million or more. Critical to recognize is the RFA's focus of the proposed rule's effect on small, United States-based entities, as established by the standards identified in Panel 1 below.

PANEL 1.—INDUSTRY SIZE STANDARDS FOR SMALL ENTITIES[1]

Mode	Industry grouping	NAICS sector identifier	Standard of measure—less than
Air	Scheduled and Non-Scheduled Freight	#48112 #481212	1500 employees.
Rail	Short Haul	#482112	500 employees.
Vessel	Deep Sea	#483111	500 employees.
Truck	(a) General Freight, Local	#484110	$21.5 million gross annual revenues.
	(b) General Freight, Long Distance	#484121	
	(b) General Freight, Long Distance & Less Than Truckload	#484122	
	(c) Specialized Freight, Local		
	(e) Specialized Freight, Long Distance	#484220 #484230	

[1] Source: Small Business Size Standards Matched to North American Industry Classification Systems (NAICS), Small Business Administration, October 1, 2002.

A. Need for and Objective of the Proposed Rule

The proposed rule responds to the requirements of section 343(a) of the Trade Act of 2002, as amended (19 U.S.C. 2071 note). That Act requires that CBP implement procedures which require the advanced electronic submission of cargo information for both imports into and exports from the United States while not unduly impeding the flow of lawful trade. The fundamental objective of the proposed rule centers on providing CBP with sufficient detailed information on trade flows within a sufficient advanced timeframe such that CBP may exercise review, targeting and inspection of those shipments with the purpose of identifying and subsequently inspecting those high risk shipments with potential application to terrorist activities.

B. Description and Estimates of Small Entities Affected by the Proposed Rule

The proposed rule centers on two key features: (a) electronic submission of cargo information and (b) that information's submission prior to arrival into/departure from the United States. The advanced submission requirements vary by mode of transport, reflecting operational requirements and conditions for those modes. The advanced submission timeframes by mode are summarized in Panel 2 below:

PANEL 2.—SUMMARY OF ELECTRONIC SUBMISSION TIMEFRAMES BY MODE

Mode	Inbound	Inbound baseline time-frame for advanced electronic submission	Outbound	Outbound baseline time-frame for advanced electronic submission
Vessel	All cargo requiring reporting for CBP purposes.	24 hours prior to lading at foreign port of departure.	All cargo requiring reporting under current Census regulations. [1]	24 hours prior to departure.
Air	All cargo requiring reporting for CBP purposes.	4 hours prior to arrival in US. [2]	All cargo requiring reporting under current Census regulations. [1]	2 hours prior to scheduled departure.
Rail	All cargo requiring reporting for CBP purposes.	2 hours prior to arrival at 1st US port.	All cargo requiring reporting under current Census regulations. [1]	4 hours prior to attachment of engine to train to go foreign.
Truck	All cargo requiring reporting for CBP purposes.	30 minutes or 1 hour prior to arrival at 1st US port.	All cargo requiring reporting under current Census regulations. [1]	1 hour prior to scheduled border crossing.

[1] **Note:** As a matter of clarification and definition of the proposal's coverage, United States exports to Canada are not subject to advanced electronic cargo information submission under this proposal unless (a) the merchandise is licensable by Department of State or Department of Defense regulations or (b) the merchandise is transiting Canada with a 3rd country destination.

[2] **Note:** However, in the case of cargo requiring reporting for CBP purposes that departs for the United States from any foreign port or place in North America (including locations in Mexico), Central America, South America (from north of the Equator only), the Caribbean, and Bermuda, the cargo information must be received no later than the time of the departure of the aircraft for the United States (no later than the time that wheels are up on the aircraft, and it is en route directly to the United States.)

The General Theory

In classical economic theory, the value and volume of the supply and demand for goods and services in a national economy exist under conditions of an equilibrium price for those goods and services, both domestically, through national income accounting components, and internationally, through the net trade component. Disruptions, or changes, in that state of equilibrium occur regularly and frequently, with concomitant changes in supply and demand. Sources of such changes can be of a cyclical, secular or random noise variety, ranging in gravity and comprehensiveness in effect from major, as in large sustained increases in international energy prices, to small, as in damage to a large retailer's distribution center, to negligible, as in the brief closure for periodic maintenance of a single manufacturing plant. Each such significant change results in the economic model's initial equilibrium adjusting and readjusting via the mechanism of elasticities of price with respect to demand until all multiplier effects are exhausted and a new state of equilibrium is achieved, both nationally and internationally via competing goods and services. The significance of change to a new equilibrium will depend on the gravity of that initial change.

The Specific Regulatory Case

In the case of the current considered proposed rule on advanced electronic submission of cargo information, such a proposed rule represents, to one degree or another, a change in the national and international economic system's equilibrium. To the extent that the rule requires substantive process adjustments by producers, carriers, brokers, importers and exporters, then the proposed rule would represent an effective change in system equilibrium, resulting in subsequent substantial changes in supply, demand and price. To the extent that the rule's effect on trade participants is slight to negligible, then the rule's effect would not measurably alter system equilibrium.

In the sections below, CBP will identify, isolate, explore, explain and estimate the extent of the proposed rule's impact on the national United States economy pursuant to E.O. 12866 and net trade component by means of identifying the process adjustments expected for small business entities under the RFA. The CBP intends to supplement this initial regulatory impact analysis under E.O. 12866, and this initial regulatory flexibility analysis under the RFA with an expanded, more comprehensive follow-up assessment conducted by a private source under contract. The summary of operational change, presented in Panel 2 above, serves as a map to the estimation of the rule's impact.

Commonalities of Proposed Rule

The proposed rule offers certain conditions in common for all trade participants regardless of mode:

(1) Advanced information submission, albeit with different timeframes for different modes;

(2) Mandatory electronic filing;

(3) Costs to be incurred for compliance include those which are recurring and those which are one-time only;

(4) Mandatory use of already existing government approved electronic data interchange systems, notably the Automated Export System (AES) for all export transactions; Automated Manifest System (AMS) with applications for inbound rail, air, and vessel shipments; and other modules, such as the NCAP (National Customs Automation Program) prototype, with special application for truck modal operations;

(5) Internet access to CBP data interchanges for information submission and message transaction;

(6) Submitter's choice to exercise preference to employ third parties for information submission; and

(7) "Just-in-time" manufacturing considerations, common in CBP's prior "Strawman" proposals, are eliminated as a result of substantive reductions in timeframes for prior data submission.

Air Mode Inbound

The proposed rule establishes timeframes of 4 hours for electronic submission of information prior to the aircraft's arrival in the United States, or no later than the time of "wheels-up" in the case of certain nearby foreign areas. Panel 3 below summarizes the volume of inbound air cargo by principal air carrier segment.

PANEL 3.—INBOUND AIR CARGO ACTIVITY, JANUARY 2003

Air carrier segment	Airway bill volume (in thousands)	Median number of U.S. ports served
Total Volume (355 Active Air Carriers)	3,270	
(A) Volume of Express Consignment Carriers: Major carriers	2,410 (73.7%)	14
(B) Other Air Cargo	860 (26.3%)	
Top 14 Carriers	460 (14.1%)	9

PANEL 3.—INBOUND AIR CARGO ACTIVITY, JANUARY 2003—Continued

Air carrier segment	Airway bill volume (in thousands)	Median number of U.S. ports served
Remaining 338 Carriers	400 (12.3%)	3

Source: Automated Commercial System.

In addition to requiring information submission four hours prior to arrival in the United States, or no later than the time of "wheels-up" in the case of certain nearby foreign areas, air carriers will be required to provide their own interface capability with the government approved electronic interchange at each U.S. Port of Arrival served by that carrier. The current government approved interchange is the Automated Manifest System—Air (AAMS). Those carriers will no longer be required to present a hard copy of their manifest upon arrival. Only in the event that the data interchange system is temporarily unavailable by malfunction would carriers be required to present a hard copy of their cargo manifest.

The data in Panel 3 establishes several relevant considerations in assessing the proposed rule's impact. The large majority of air inbound shipments (73.7%), as measured by airway bills, is accounted for by a relatively small number of large express consignment carriers. Those carriers currently are highly automated and currently have the capacity at virtually no cost to comply with the data submission provisions of the proposed rule. Measured by median, those carriers import shipments into 13 U.S. ports of arrival and long ago equipped those sites for AAMS transmissions.

These express consignment carriers would likely not be affected by the proposed rule even in the case of short haul flights, largely originating in Mexico and Canada, inasmuch as they would only be required to submit AAMS information no later than the time of departure from the foreign area (no later than the time of "wheels-up"). As a result, there would be no delay in departure from the foreign source necessitated in order to meet a pre-arrival reporting requirement. In any event, in operational practice, those carriers often engage more economical land shipment instead of higher cost air movement for short haul moves.

As a result of the above data and operational considerations, CBP concludes that these large carriers are substantially unaffected by the proposed rule.

The CBP estimates that these same factors and conclusion above hold for the second tier of air carriers, comprising 14.1% of airway bill volume. Those 14 carriers arrive at a median 9 U.S. Ports of Arrival.

The CBP data establish that a remaining 338 small carriers account for 12.3% of inbound air volume, serving a median 3 Ports of Arrival. Operating on a manual hard copy basis upon arrival, a majority of those 338 entities are foreign owned and fall out of the scope of the RFA. For those U.S. based small air carriers, CBP estimates that one time costs would be incurred to establish data transmission capability at the median three arrival ports. To a significant degree, those one time costs would be mitigated by recurring operational efficiencies related to standard business operations and more rapid CBP processing and release of shipments, allowing more rapid turnaround of the aircraft and crew for increased revenue generation activities.

International inbound mail shipments are included in the cargo volumes cited above. However, advanced data submission for mail shipments through the United States Postal Service (USPS) is excluded from consideration in the proposed rule. To this end, reflecting the restrictive condition of involvement of sovereign foreign governments and pre-existing international treaties governing the movement of international inbound mail shipments, CBP contemplates that such shipments will not at this time be subject to the terms and conditions of the proposed rule.

Truck Mode Inbound; Rail Mode Inbound

Panel 4 below illustrates the volume of truck and rail traffic reported on the Northern and Southern borders:

PANEL 4.—CONVEYANCE ARRIVALS

Mode	FY 2002 volume (in thousands)
Total Commercial Aircraft.	574.3.
Total Trucks	12,258.0.
At Southern Border	349.8 (2.9%).
At Northern Border	11,908.2 (97.2%).
Total Trains	44.3.
At Southern Border	8:4 (19%).
At Northern Border	35.9 (81%).
Total Vessels	226.2.

Source: Automated Commercial System.

Truck Mode Inbound; Explanation and Analysis of Data

The proposed rule requires cargo information submission either 30 minutes or 1 hour prior to arrival at the first U.S. Port of Arrival. As noted in Panel 4 above, the large majority of truck arrivals (97.2%) occurs at Northern Border ports. The CBP estimates that 60% of this inbound mode arrives with manually presented hard copy cargo information and, therefore, would be subject to changed operations to comply with the proposed rule. Further, consultations with industry sources suggest that the Northern Border supports an estimated 22,000 individual truck entities, of which 15,000 meet Small Business Administration standards as small entities (*see* Panel 1 above). A substantial portion of the 15,000 small trucking firms are Canada-based and, therefore, beyond the scope of the RFA's consideration. The portion of this segment which is U.S. based will be required to incur one time costs for hardware and software for data transmission.

While hardware requirements and software cost relatively little and while Internet transmission is distinctly low cost, those firms will be required to expend time for data entry. Compared to normal, pre-proposal operation standards, that factor could represent a significant cost.

On the other hand, CBP estimates that recurring annual costs of data transmission are low. Further, certain other benefits representing lower operating costs will be realized. Electronic transmission will represent a lower cost burden on record keeping for those entities as well as speed cargo information submission and physical border release of the conveyance at the U.S. port of arrival for those shipments. Such electronic efficiencies could be expected to translate directly into lower daily operational costs for entities. Also, the likelihood is substantial that U.S. based small truck entities will develop cooperative and commercial arrangements with exporters. Such arrangements would likely involve provision to the truck entity of data in readily transmittable format, thus reducing the data entry burden of this segment.

As yet another mitigating factor, small truck entities may choose to engage the data services of port authorities or commercial service providers. Further still, there is a social good to be considered in that faster conveyance release at the port of arrival will translate directly into less local traffic congestion at the port and lower diesel emissions for residents of the locality. While complex to quantify, such commercial and health benefits cannot responsibly be neglected because tangible social welfare and commercial benefits will result.

Less than 3% of truck activity takes place at Southern Border sites (*see* Panel 4 above). An unestablished number of trucking entities operate in that geographic environment. However, long-term operational observation establishes that much of that border's truck volume centers on servicing the maquiladora industry based in the local Mexican border area. These Mexican-based plants are owned and operated in the large majority for the assembly function by large U.S. and multinational corporations (Chapter 98, Subchapter II, Harmonized Tariff Schedule of the United States (HTSUS) (Articles Exported and Returned, Advanced or Improved Abroad)). Such U.S. and multinational corporations are highly automated in their record keeping and cargo information transmission capabilities.

Further, a substantial majority of that north bound traffic relies on lower cost Mexican-based trucking entities operating in a shuttle

fashion to supply finished products to distribution facilities located on U.S. territory. Such foreign owned trucking entities are beyond the scope of the RFA's consideration.

If small U.S. based truck companies engage data transmitting aids at a commercially negotiated cost, one would reasonably expect that truck companies would pass those costs downstream. Such a cost increase may encourage a change in competitive relationships with comparable transportation services offered by rail carriers. Further consideration, however, mitigates the likelihood and significance of any competitive modal shift in that such shifts depend highly on the (1) nature of the merchandise to be transported, (2) elasticities of price with respect to demand for those commodities for trade participants and (3) the inherent established time and location-of-service flexibility of trucking versus rail transport.

In summary for this inbound mode, a certain substantial number of U.S. based small truck entities operating on the Northern Border may experience measurable cost of operation impact from the proposed rule. However, CBP estimates that many of those costs would be offset by concomitant operational efficiencies directly resulting from an operational shift from pre-proposal manual hard copy practices to electronic filing and expedited border release, freeing up resources for expanded revenue generation opportunities.

Rail Mode Inbound; Explanation and Analysis of Data

The proposed rule establishes that cargo information will be electronically submitted 2 hours prior to arrival at the first U.S. port of arrival. As noted in Panel 4 above, 81% of rail volume occurs at Northern Border ports. The CBP estimates that all but 6 rail carriers already submit cargo information electronically. Only those 6 carriers would be affected by the proposed rule, and of those 6, some may not qualify as a small entity according to Panel 1 SBA standards. The operational effect of the proposal would be mitigated to a substantial degree by operational efficiencies attributable to electronic filing. Further mitigation is identified by the proposal's provision that the filing requirement will become mandatory within 90 days of CBP port automation to allow Rail AMS. The CBP establishes that 12 border ports still remain to be made operational for Rail AMS operation.

Vessel Mode Inbound

The proposed rule establishes that cargo information will be transmitted to CBP 24 hours prior to lading at the foreign port of departure, a standard which is consistent and exactly compatible with the earlier implemented Container Security Initiative (CSI). An estimated 50% of inbound vessel volume is accounted for by the previously implemented CSI program. The CBP estimates that a further 45% of inbound vessel cargo volume already participates in AMS electronic transmission, leaving only 5% of this vessel volume to be affected by the proposed rule. Also, because of the transportation timeframes inherent in long haul vessel transport, the filing time requirement is not expected to impose a measurable operational burden on carriers. And based on capital and labor requirements and practices in this segment, it is highly unlikely that these carriers would meet SBA small entity standards (*see* Panel 1 above). Further still, few carriers are U.S. based and thus properly considered under provisions of the RFA.

All Modes Outbound

Panel 5, below, illustrates the increasing volume of export shipments, from 1995 through 2002, that have been reported electronically through the Automated Export System (AES); and Panel 6, below, reflects, as of February 2003, the vastly increased number of export shipments being reported through AES as a percentage of the total number of export shipments reported, both electronically and on paper.

PANEL 5.—VOLUME OF AES SHIPMENTS

[External transaction numbers, in thousands]

Year	Total	Air	Rail/Truck	Vessel
1995	0.4	0	0	0.4
1996	21.4	0	0	21.4
1997	60.7	0.2	3.6	56.9
1998	221.0	30.3	81.1	109.6
1999	1038.5	486.4	262.7	289.5
2000	7140.9	4053.3	1407.0	1676.2
2001	8819.0	4424.3	1586.3	2800.7
2002	9424.0	4788.8	1832.9	2785.0

Source: Bureau of the Census.

PANEL 6.—EXPORT RECORDS, FEBRUARY 2003

[In thousands]

Mode	Via AES	Via paper SED	Total records	AES as percent of total
Air	421.3	80.7	502.1	83.9
Vessel	286.3	11.7	298.0	96.1
Truck/Rail	261.3	52.7	314.0	83.3
Total	968.9	145.2	1114.1	87.0

Source: Bureau of the Census.

All Modes Outbound; Explanation and Analysis of Data

The participation of outbound shipments in the proposed rule's reporting requirements will be concurrent with the completion of the redesign of the AES commodity module and mandatory, effective with a future regulatory publication by the Department of Commerce. For purposes of this proposed rule, the treatment below of outbound regulatory flexibility and E.O. 12866 impact is presented for information purposes solely.

The proposed rule states that exporters (U.S. Principal Parties in Interest—USPPI's) or their authorized agents will file commodity export information via the existing government approved data interchange, AES, within certain time frames prior to departure from the U.S. (*see* Panel 2 for time frames).

The use of AES has risen dramatically since its inception in 1995 (*see* Panel 5), such that currently AES transactions account for 87% of all export records (*see* Panel 6). Because of the large majority already participating in AES filing, only 13% of export records will be affected by the proposed rule.

Because of modal travel and preparation times, CBP does not identify notable operational hardship in meeting border crossing filing times for any mode. In fact, the air express consignment burden is decreased compared to imports by a 1 hour timeframe prior to departure. Filings may take place via low cost Internet transmission. In filing, the USPPI will submit electronically to CBP a self generated external transaction number (XTN), receiving from CBP an internal transaction number (ITN), which is a system verification and approval (confirmation) number for cargo shipment information. Actual performance establishes that the ITN turnaround is routinely less than 1 minute. Only in the case that the USPPI chooses to engage in a third party commercial data transmission agent would the ITN/XTN turnaround require greater time, an estimated 15–30 minutes.

As in the *Truck Mode Inbound* section above, a potential impact may be experienced by small truck entities serving Northern border export transactions. However, as detailed in the Note to Panel 2, United States exports to Canada are not subject to advanced electronic cargo information submission under this proposal unless (a) the merchandise is licensable by Department of State or Department of Defense regulations or (b) the merchandise is transiting Canada with a 3rd country destination. Such a reporting factor may reasonably be expected to mitigate any burden on small trucking entities in providing a significant portion of the remaining 13% of outbound AES data.

Further with respect to outbound small truck entities, as also noted in the *Truck Mode Inbound* section above, certain cost lowering operational efficiencies will flow from the proposal's obligation to employ electronic filing, namely: (a) Electronic transmission will represent a lower cost burden on record keeping for those entities; (b) more rapid cargo information submission; and (c) more rapid physical border release of the conveyance at the U.S. port of arrival for those shipments. Such electronic efficiencies could be expected to translate directly into lower daily operational costs for entities, either partially or entirely offsetting one-time data transmission costs.

Executive Order 12866 and Significant Regulatory Action

Sector of Impact Identified

Outbound merchandise shipments generated by the United States Postal Service (USPS) may or may not be included within the scope of the proposed rule. In the event of inclusion, as a hybrid-type "publicly owned private corporation", the USPS would be responsible for data entry and transmission of an estimated 30 million outbound merchandise transactions (*i.e.*, parcel shipments) per year. While not included in the framework of the small entity oriented RFA, this organization and the proposal's effects become relevant in E.O. 12866 considerations which relate to impacts on the national economy. The CBP estimates that USPS would incur costs of $4–$6 per outbound transaction in order to perform data entry or purchase data entry services for each export transaction, yielding a total impact of $120–$180 million annually. Reasonably expected is that the USPS would request and be permitted to pass that cost to exporters (U.S.-based consumers) through some mechanism of, effectively, a user fee.

In the case that outbound international mail shipments are indeed included in the proposed rule, then such an impact readily qualifies this proposal as a significant regulatory action, surpassing the $100 million economic impact threshold established by the Executive Order. In the case that such shipments are removed or waived from the proposal at a later time, then the proposed rule's categorization as a significant regulatory action would no longer hold.

Competitive Relationship Effect

In the event of the USPS being obliged to provide outbound shipment data, then CBP estimates that the proposed rule would increase the degree of commercial competition between USPS and express consignment carriers. The U.S. Customs Service (now merged into CBP) prepared a detailed report to Congress in late 1997 identifying a series of factors of preferential Customs treatment available to USPS and not available to express consignment carriers. One of those identified factors focused on the Customs requirement for express carriers to provide detailed export transaction data with no equivalent requirement for USPS export shipments. By requiring USPS to provide the same data elements as express carriers in the same timeframe, the proposed rule would eliminate one key element of disparate treatment, effectively leveling the playing field between these two exporting entities and bringing both parties into more equal business operating practices.

C. Automation Costs of Participation in Advance Electronic Cargo Information Submission

CBP estimates below the following costs of shipper/carrier/importer/exporter compliance with electronic transmission requirements within the proposed rule's time frame for submission. The data were gathered from discussions with software providers and trade participants active in electronic data transmission with CBP.

Air Mode

Air mode is estimated to incur the greater of the costs for all modes. In order to purchase software, a large air carrier would incur costs of $5,000–$25,000 as a one-time license fee and $6,000/year in maintenance costs, plus an estimated $20,000/yr. in operating costs, primarily labor. If the air carrier chose to develop the transmission software independently, the carrier would incur development costs of an estimated $100,000, plus annual operating costs of $400,000, primarily labor. If the air carrier were to seek transmission services from a service provider, the carrier would incur costs of $500–$2,000 in one time subscription fees, plus an annual minimum $6,000 cost.

In estimating air industry total costs of compliance with the proposed rule, CBP established that 260 of the total 355 air carriers are American-based. The CBP estimates that these 260 carriers will choose information transmission compliance options in the following distribution: (a) 5 to develop software, maintain system and transmit at their own initiative; (b) 50 to purchase software, maintain and transmit; and (c) 205 to employ service providers for software, maintenance and transmission. Employing that distribution, CBP estimates the following transmission costs of compliance, broken down by both one-time and recurring annual costs:

ESTIMATED AIR MODE COSTS OF TRANSMISSION

[Thousands of dollars]

Transmission option selected	One time costs	Recurring annual costs
I. Develop	$500	$2,000
II. Purchase	750	1,300
III. Service Providers	205	1,230
Total	1,455	4,530

Truck Mode

In consideration of the truck mode, the primary cost for a shipper/carrier would involve complying with the Automated Broker Interface (ABI) Selectivity practices.

Specifically, there are approximately 13,400 trucking firms that will eventually have to move from a paper-based system to an electronic system.* Compliance with the Automated Broker Interface Selectivity practices would require, at a minimum, a facsimile transmission within the proposed rule's time frame for advance information.

Therefore, this rule would impose a small capital cost (a fax machine for firms that do not already own a fax machine), and a per-transmission cost. Firms could also avail themselves of a commercial transmission service; however, the per-transmission cost may be less cost-effective than a personal fax machine for a firm involved in many shipments. The per-transmission cost should be minimal, since the information that firms would need to send already must be gathered and presented at the time of arrival under current procedures. The CBP also assumes that most trucking firms will already own a fax machine. If 50% of firms must invest in a fax machine (a likely overestimate) at approximately $150 per machine, the total cost of this rule for the trucking industry would be a one-time cost of approximately $1 million. The CBP also makes a preliminary determination that this rulemaking would not result in any other changes in business practices that would impose additional costs to trucking firms. We request comments on these assumptions.

(*CBP estimates the following already in the analysis: (22,000 Truck firms at the Canada border + 350 Truck firms at Mexico border) * (.60 that are currently paper based) = 13,410).)

Vessel and Rail Modes

Vessel and rail carriers are the least affected in terms of cost of transmission because of those carriers' already high participation rate in electronic transmission meeting the proposed rule's requirements. In practical terms, costs of data submission for

these segments of the trade are adjudged near negligible.

D. Recordkeeping and Reporting Requirements

The proposed rule does not include additional, new recordkeeping requirements. Instead, because of the reliance of the proposal on electronic transmissions, the proposal may well simplify and reduce existing recordkeeping obligations of the trade participants. In terms of reporting requirements, the proposal carefully relies on using existing government approved electronic data interchange tools already in widespread use by trade participants.

E. Alternatives Considered

The CBP considered and incorporated alternative methodologies into the proposed rule's data submission requirements on trade community participants. In developing the proposed rule, CBP sought to balance the operational needs of legitimate commercial cargo flows with a meaningful and effective timeframe for identifying, targeting and inspecting potentially high risk merchandise shipments. In order to identify that balance, CBP proposed requirements for advance electronic submission by mode in "Strawman" proposals. Those initial standards proposed submission timetables ranging from 24 hours prior to departure to 4–24 hours prior to lading and subsequent cargo movement.

Substantial public comment and public hearings followed the "Strawman" Proposals, offering multiple alternatives. With a high degree of uniformity and consistency, those alternatives focused on several common issues: (1) Using already existing automated systems, such as AES and AMS for data submission; (2) different, more compact timeframes for provision of advanced information, oriented primarily around the objective of non-disruption of standard business transportation practices and commercially critical "just-in-time" delivery systems; and (3) re-focus of advanced data submission from a pre-lading basis to, respectively, a pre-arrival-into or pre-departure-from U.S. basis.

In response to public expressions and explanations, CBP, subsequent to the "Strawman" Proposals, effectively re-focused the time and transportation scheduling basis for the advanced electronic data submissions (see Panel 2 above vs. original Strawman framework) such that the proposed rule fairly closely reflects the philosophy and principles of the publicly expressed alternatives.

F. Conclusion

Regulatory Flexibility Act (RFA)

With respect to RFA considerations, CBP concludes that the proposed rule will result in no significant economic impact on a substantial number of small U.S. entities because:

(1) The proposed rule's reporting timeframes are reasonably compatible with modern shipping practices and capabilities and fundamentally reflect the alternative approaches presented by those commercial interests;

(2) The high volume of inbound and outbound transactions already currently reported on an electronic basis;

(3) Low cost of electronic transmission of the required data;

(4) Accessibility to and use of already existing government approved electronic data interchange mechanisms;

(5) Subsequent operating efficiencies resulting from electronic filing, resulting in enhanced revenue generating activities of small carriers;

(6) Exclusion of most exports to Canada from Bureau of the Census reporting;

(7) The RFA's exclusion from consideration of non-U.S. entities;

(8) Availability of existing Discrepancy Reporting authority for carriers to update/correct previously submitted cargo data; and

(9) Reporting timeframes which do not interfere with critical "just-in-time" delivery systems.

Executive Order 12866

With respect to Executive Order 12866, CBP concludes that, should USPS export transactions be included within the scope of the proposal's reporting requirements, the proposal qualifies as a significant regulatory action, with annual national economic cost greater than $100 million because USPS costs incurred would likely be recouped as user fees charged to U.S. exporters. The reverse conclusion would hold in the event that USPS export transactions are not included within the proposed rule. Further, in the case that USPS exports are included, the USPS—express consignment commercial competitive relationship would be more equalized.

[FR Doc. 03–18558 Filed 7–17–03; 3:39 pm]
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Federal Register

Wednesday,
July 23, 2003

Part III

Environmental Protection Agency

Fifty-Second Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency; Receipt of Report and Request for Comments; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0026; FRL–7314–4]

Fifty-Second Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency; Receipt of Report and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice

SUMMARY: The Toxic Substances Control Act (TSCA) Interagency Testing Committee (ITC) transmitted its Fifty-Second Report to the Administrator of the EPA on May 30, 2003. In the 52nd ITC Report, which is included with this notice, the ITC is not revising the *Priority Testing List*. However, the ITC is revising the Voluntary Information Submissions Innovative Online Network (VISION).

In its 51st ITC Report, the ITC announced that it would consider revising its voluntary information submission procedures to encourage greater and more efficient use of its VISION. The ITC has reviewed its voluntary information submission procedures and considered industry comments discussed in the 51st ITC Report. At this time, the ITC is revising the VISION as outlined in the 52nd ITC Report, which is included in this notice and on the ITC web site.

DATES: Comments, identified by docket ID number OPPT–2003–0026, must be received on or before August 22, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Dr. John D. Walker, ITC Director (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–7527; fax: (202) 564–7528; e-mail address: *walker.johnd@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This notice is directed to the public in general. It may, however, be of particular interest to you if you manufacture (defined by statute to include import) and/or process TSCA-covered chemicals and you may be identified by the North American Industrial Classification System (NAICS) codes 325 (Chemical Manufacturing) and 32411 (Petroleum Refineries). Because this notice is directed to the general public and other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0026. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. You may also access additional information about the ITC at *http://www.epa.gov/opptintr/itc/* or through the web site for the Office of Prevention, Pesticides and Toxic Substances (OPPTS) at *http://www.epa.gov/opptsfrs/home/opptsim.htm/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPPT–2003–0026. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to oppt.ncic@epa.gov, Attention: Docket ID Number OPPT–2003–0026. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number— OPPT–2003–0026. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views and comments on the ITC 52nd Report. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. Provide specific examples to illustrate your concerns.

5. Make sure to submit your comments by the deadline in this notice.

6. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

The Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 *et seq.*) authorizes the Administrator of the EPA to promulgate regulations under section 4(a) requiring testing of chemicals and chemical mixtures in order to develop data relevant to determining the risks that such chemicals and chemical mixtures may present to health or the environment. Section 4(e) of TSCA established the ITC to recommend chemicals and chemical mixtures to the Administrator of the EPA for priority testing consideration. Section 4(e) of TSCA directs the ITC to revise the TSCA section 4(e) *Priority Testing List* at least every 6 months.

A. The ITC's 52nd Report

The 52nd ITC Report was transmitted to the EPA's Administrator on May 30, 2003, and is included in this notice. In the 52nd ITC Report, the ITC revises the VISION.

B. Status of the Priority Testing List

The current TSCA 4(e) *Priority Testing List* as of May 2003 can be found in Table 1 of the 52nd ITC Report, which is included in this notice.

List of Subjects

Environmental protection, Chemicals, Hazardous substances.

Dated: July 11, 2003.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

Fifty-Second Report of the TSCA Interagency Testing Committee to the Administrator, U.S. Environmental Protection Agency

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SUMMARY

In this 52nd ITC Report, the ITC is not revising the *Priority Testing List*. However, the ITC is revising the Voluntary Information Submissions Innovative Online Network (VISION).

The TSCA section 4(e) *Priority Testing List* is Table 1 of this unit.

TABLE 1.— THE TSCA SECTION 4(E) PRIORITY TESTING LIST (MAY 2003)

ITC Report	Date	Chemical name/Group	Action
31	January 1993	13 Chemicals with insufficient dermal absorption rate data	Designated
32	May 1993	16 Chemicals with insufficient dermal absorption rate data	Designated
35	November 1994	4 Chemicals with insufficient dermal absorption rate data	Designated
37	November 1995	2 Alkylphenols	Recommended
41	November 1997	1 Alkylphenol	Recommended
42	May 1998	3-Amino-5-mercapto-1,2,4-triazole	Recommended
42	May 1998	Glycoluril	Recommended
47	November 2000	9 Indium compounds	Recommended
48	May 2001	Benzenamine, 3-chloro-2,6-dinitro- N,N-dipropyl-4-(trifluoromethyl)-	Recommended
49	November 2001	Stannane, dimethylbis[(1-oxoneodecyl)oxy]-	Recommended
50	May 2002	Benzene, 1,3,5-tribromo-2-(2-propenyloxy)-	Recommended
50	May 2002	1-Triazene, 1,3-diphenyl-	Recommended
51	November 2002	43 Vanadium compounds	Recommended

I. Background

The ITC was established by section 4(e) of the Toxic Substances Control Act (TSCA) "to make recommendations to the Administrator respecting the chemical substances and mixtures to which the Administrator should give priority consideration for the promulgation of a rule for testing under section 4(a).... At least every six months ..., the Committee shall make such revisions to the *Priority Testing List* as it determines to be necessary and transmit them to the Administrator together with the Committee's reasons for the revisions" (Public Law 94–469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*). Since its creation in 1976, the ITC has submitted 51 semi-annual (May and November) reports to the EPA Administrator transmitting the *Priority Testing List* and its revisions. ITC reports are available from the ITC's web site (*http://www.epa.gov/opptintr/itc*) within a few days of submission to the Administrator and from *http://www.epa.gov/fedrgstr/* after publication in the **Federal Register**. The ITC meets monthly and produces its revisions to the *Priority Testing List* with administrative and technical support from the ITC Staff and ITC Members and their U.S. Government organizations and contract support provided by EPA. ITC Members and Staff are listed at the end of this report.

II. TSCA Section 8 Reporting

A. TSCA Section 8 Reporting Rules

Following receipt of the ITC's report (and the revised *Priority Testing List*) by the EPA Administrator, the EPA's Office of Pollution Prevention and Toxics (OPPT) appends the chemicals added to the *Priority Testing List* to TSCA section 8(a) Preliminary Assessment Information Reporting (PAIR) and TSCA section 8(d) Health and Safety Data Reporting (HaSDR) rules. The PAIR rule requires producers and importers of Chemical Abstract Service (CAS)-numbered chemicals added to the *Priority Testing List* to submit production and exposure reports (*http://www.epa.gov/opptintr/chemtest/pairform.pdf*). The HaSDR rule requires producers, importers, and processors of all chemicals (including those with no CAS numbers) added to the *Priority Testing List* to submit unpublished health and safety studies under TSCA section 8(d) that must be in compliance with the revised HaSDR rule. (Ref. 1) All submissions must be received by the EPA within 90 days of the reporting rules **Federal Register** publication date. The reporting rules are automatically promulgated by OPPT unless otherwise requested by the ITC.

B. ITC's Use of TSCA Section 8 and Other Information

The ITC reviews the TSCA section 8(a) PAIR rule reports, TSCA section 8(d) HaSDR rule studies and other information that becomes available after the ITC adds chemicals to the *Priority Testing List*. Other information includes TSCA section 4(a) studies, TSCA section 8(c) submissions, TSCA section 8(e) "substantial risk" notices, "For Your Information" (FYI) submissions, unpublished data submitted to and from U.S. Government organizations represented on the ITC, published papers, as well as use, exposure, effects, and persistence data that

are voluntarily submitted to the ITC by manufacturers, importers, processors, and users of chemicals recommended by the ITC. The ITC reviews this information and determines if data needs should be revised, if chemicals should be removed from the *Priority Testing List* or if recommendations should be changed to designations. To avoid duplicate reporting, the ITC carefully coordinates its information solicitations and reporting requirements with other national and international testing programs, e.g., the National Toxicology Program (NTP) (*http://ntp-server.niehs.nih.gov/*), the Organization for Economic Cooperation and Development (OECD) Screening Information Data Set (SIDS) Program (*http://www.oecd.org*) and EPA's High Production Volume (HPV) Challenge Program (*http://www.epa.gov/opptintr/chemrtk/volchall.htm*).

C. Previous and New Requests to Add Chemicals to TSCA Section 8(a) PAIR Rules

The following chemicals will be added to a TSCA section 8(a) PAIR rule: Benzenamine, 3-chloro-2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl)- (CAS No. 29091–20–1) (Ref. 2); stannane, dimethylbis[(1-oxoneodecyl)oxy]- (CAS No. 68928–76–7), benzene, 1,3,5-tribromo-2-(2-propenyloxy)- (CAS No. 3278–89–5) and 1-triazene, 1,3-diphenyl- (CAS No.136-35-6) (Ref. 3); and 43 vanadium compounds (Ref. 4). At this time, there are no new requests to add chemicals to the TSCA section 8(a) PAIR rule.

D. Previous and New Requests to Add Chemicals to TSCA Section 8(d) HaSDR Rules

The ITC has requested in previous reports to the EPA Adminstrator that the following chemicals be added to TSCA section 8(d) HaSDR rules: H-1,2,4-triazole-3-thione, 5-amino-1,2-dihydro- (3-amino-5-mercapto-1,2,4-triazole) (CAS No. 16691–43–3) and imidazo[4,5-d]imidazole-2,5(1H,3H)-dione, tetrahydro- (glycoluril) (CAS No. 496–46–8) (Ref. 5); 9 indium compounds (Ref. 6); benzenamine, 3-chloro-2,6-dinitro-N,N-dipropyl-4-(trifluoromethyl)- (CAS No. 29091–20–1) (Ref. 2); and stannane, dimethylbis[(1-oxoneodecyl)oxy]- (CAS No. 68928–76–7), benzene, 1,3,5-tribromo-2-(2-propenyloxy)- (CAS No. 3278–89–5) and 1-triazene, 1,3-diphenyl- (CAS No.136–35–6) (Ref. 3). At this time, the ITC is requesting that the EPA not add vanadium compounds to the TSCA section 8(d) HaSDR rule to allow producers and importers of vanadium compounds an opportunity to voluntarily provide the information requested in section IV.A.3. of the 51st ITC Report (Ref. 4).

For 3H-1,2,4-triazole-3-thione, 5-amino-1,2-dihydro- (3-amino-5-mercapto-1,2,4-triazole) and imidazo[4,5-d]imidazole-2,5-(1H,3H)-dione, tetrahydro- (glycoluril), the ITC requests that the TSCA section 8(d) HaSDR rule require the submission of pharmacokinetics, subchronic toxicity, immunotoxicity, genotoxicity, carcinogenicity, reproductive effects and developmental toxicity, and ecological effects studies. Only studies for which 3-amino-5-mercapto-1,2,4-triazole or glycoluril is ≥ 90% of the test substance by weight should be submitted.

For the 9 indium compounds remaining on the *Priority Testing List*, the ITC requests that the TSCA section 8(d) HaSDR rule require the submission of pharmacokinetics, genotoxicity, subchronic and chronic toxicity, reproductive effects and developmental toxicity studies. Only studies where indium compounds are ≥ 90% of the test substance by weight should be submitted. Indium tin oxide was inadvertently listed in the 51st ITC Report with CAS No. 17906–67–7. The correct CAS number for indium tin oxide is 50926–11–9 as listed in the 47th ITC Report. Indium tin oxide with CAS No. 50926–11–9 will be added to the TSCA section 8(d) HaSDR rule.

For benzenamine, 3-chloro-2,6-dinitro-N,N-dipropyl-4- (trifluoromethyl)-, the ITC requests that the TSCA section 8(d) HaSDR rule require the submission of biodegradation, bioconcentration, pharmacokinetics, subchronic toxicity, mutagenicity, reproductive effects and developmental toxicity, carcinogenicity, and ecological effects studies. Only studies where benzenamine, 3-chloro-2,6-dinitro-N,N-dipropyl-4- (trifluoromethyl)- is ≥ 90% of the test substance by weight should be submitted.

For stannane, dimethylbis[(1-oxoneodecyl)oxy]-, the ITC requests that the TSCA section 8(d) HaSDR rule require the submission of hydrolysis, biodegradation, bioconcentration, pharmacokinetics, subchronic toxicity, mutagenicity, neurotoxicity, reproductive effects and developmental toxicity, carcinogenicity, and ecological effects studies. Only studies where stannane, dimethylbis[(1-oxoneodecyl)oxy]- is ≥ 90% of the test substance by weight should be submitted.

For benzene, 1,3,5-tribromo-2-(2-propenyloxy)-, the ITC requests that the TSCA section 8(d) HaSDR rule require the submission of biodegradation, bioconcentration, pharmacokinetics, subchronic toxicity, neurotoxicity, reproductive effects and developmental toxicity, carcinogenicity, and ecological effects studies. Only studies where benzene, 1,3,5-tribromo-2-(2-propenyloxy)- is ≥ 90% of the test substance by weight should be submitted.

For 1-triazene, 1,3-diphenyl-, the ITC requests that the TSCA section 8(d) HaSDR rule require the submission of pharmacokinetics, genotoxicity, subchronic and chronic toxicity, reproductive effects and developmental toxicity studies. Only studies where 1-triazene, 1,3-diphenyl- is ≥ 90% of the test substance by weight should be submitted.

At this time, there are no new requests to add chemicals to the TSCA Section 8(a) HaSDR Rule.

III. ITC's Activities During this Reporting Period (November 2002 to May 2003): Voluntary Information Submissions Innovative Online Network (VISION)

In its 51st ITC Report, the ITC announced that it would consider revising its voluntary information submission procedures to encourage greater and more efficient use of its VISION. The ITC has reviewed its voluntary information submission procedures and considered industry comments discussed in the 51st ITC Report. At this time, the ITC is revising the VISION as outlined in this unit. The revised VISION will be accessible on the ITC web site following submission of this 52nd ITC Report to the EPA Administrator.

1. The ITC will continue to acknowledge trade organizations and companies that voluntarily submit information in response to an ITC solicitation. During this reporting period, the ITC acknowledges the voluntary submissions of information from the Color Pigments Manufacturers Association on DEBITS chemicals and vanadium compounds and from the Indium Corporation of America on indium compounds as requested in previous ITC reports.

2. The ITC has requested that the EPA include ITC's solicitations for voluntary information submissions in the summary and body of the preambles that are prepared for publication of the ITC's reports in the **Federal Register**. This change should allow companies to readily determine if the ITC is soliciting voluntary information for chemicals they produce or import.

3. The ITC will notify major chemical trade associations by e-mail that new ITC reports have been posted to the ITC's web site (*http://www.epa.gov/opptintr/itc/*). The e-mails will include a summary of the report and announcements of new information solicitations. This change should increase awareness of the ITC information solicitations and encourage voluntary submission of data.

4. The voluntary information submissions should be submitted within 90 days of the date the ITC report is published in the **Federal Register**. Failure to voluntarily submit information in a timely manner may lead ITC to request that the EPA promulgate the appropriate TSCA section 8(a) and 8(d) reporting rules in a subsequent report to the EPA Administrator.

5. The ITC will accept hard copy or electronic voluntary information submissions. All submissions should be titled as ITC-FYI and should bear the document control number or document ID number of the ITC report for which the submission is being provided, e.g., the docket ID number for the 50th ITC Report is OPPT-2002-0026. Confidential Business Information (CBI) must be submitted as hard copies. Both sanitized (no CBI) and unsanitized (CBI) versions must be provided.

6. Information submitted voluntarily will not have to be re-submitted under a TSCA section 8(d) rule.

7. Voluntary information may be submitted by mail, in person or by courier, or electronically.

a. *By mail.* Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

b. *In person or by courier.* OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

c. *Electronically.* By e-mail to: *oppt.ncic@epa.gov*, or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic voluntary information submissions may be submitted as Microsoft Word, WordPerfect, Excel, Integrated Scientific Information System (ISIS) Base, or pdf (portable document format) files.

8. To assure rapid review, copies of all CBI and non-CBI voluntary information submissions should also be sent to: John D. Walker, ITC Director, Office Pollution Prevention Toxic (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; e-mail: *walker.johnd@epa.gov*.

The ITC is continuing to discuss changes to the Electronic Health and Safety Data Reporting Form with the EPA along with other ways to improve electronic reporting of health and safety studies. To supplement the efforts to obtain studies in electronic format through VISION, the ITC Staff will continue to contact the producers and importers of ITC-recommended chemicals to obtain voluntary information submissions.

IV. Revisions to the TSCA Section 4(e) Priority Testing List

A. Chemicals Added to the Priority Testing List

At this time the ITC is not adding any chemicals to the *Priority Testing List.*

B. Chemicals Removed From the Priority Testing List

At this time the ITC is not removing any chemicals from the *Priority Testing List.*

V. References

1. EPA. 1998. Revisions to Reporting Regulations Under TSCA Section 8(d) (63 FR 15765, April 1, 1998) (FRL–5750–4). Available online at: *http://www.epa.gov/fedrgstr/.*

2. ITC. 2001. Forty-Eighth Report of the ITC. **Federal Register** (66 FR 51276, October 5, 2001) (FRL–6786–7). Available online at: *http://www.epa.gov/fedrgstr/.*

3. ITC. 2002. Fiftieth Report of the ITC. **Federal Register** (67 FR 49530, July 30, 2002) (FRL–7183–7). Available online at: *http://www.epa.gov/fedrgstr/.*

4. ITC. 2003. Fifty-First Report of the ITC. **Federal Register** (68 FR 8976, February 26, 2003) (FRL–7285–7). Available online at: *http://www.epa.gov/fedrgstr/.*

5. ITC. 1998. Forty-Second Report of the ITC. **Federal Register** (63 FR 42554, August 7, 1998) (FRL–5797–8). Available online at: *http://www.epa.gov/fedrgstr/.*

6. ITC. 2001. Forty-Seven Report of the ITC. **Federal Register** (66 FR 17768, April 3, 2001) (FRL–6763–6). Available online at: *http://www.epa.gov/fedrgstr/.*

VI. The TSCA Interagency Testing Committee

Statutory Organizations and Their Representatives

Council on Environmental Quality
Vacant

Department of Commerce

National Institute of Standards and Technology
Robert Huie, Member
Barbara C. Levin, Alternate

National Oceanographic and Atmospheric Administration
Thomas P. O'Connor, Member, Vice Chair
Teri Rowles, Alternate

Environmental Protection Agency
Gerry Brown, Member
Paul Campanella, Alternate

National Cancer Institute
Alan Poland, Member
David Longfellow, Alternate

National Institute of Environmental Health Sciences
Scott Masten, Member
William Eastin, Alternate

National Institute for Occupational Safety and Health
Mark Toraason, Member, Chair
Dennis W. Lynch, Alternate

National Science Foundation
Marge Cavanaugh, Member
Parag R. Chitnis, Alternate

Occupational Safety and Health Administration
Val H. Schaeffer, Member
Lyn Penniman, Alternate

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Agency for Toxic Substances and Disease Registry
William Cibulas, Member
Daphne Moffett, Alternate

Consumer Product Safety Commission
Treye Thomas, Member
Jacqueline Ferrante, Alternate

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Clifford P. Rice, Member
Laura L. McConnell, Alternate

Department of Defense
Barbara Larcom, Member
Warren Jederberg, Alternate
José Centeno, Alternate

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Barnett A. Rattner, Member

Food and Drug Administration
David Hatten, Member
Kirk Arvidson, Alternate
Ronald F. Chanderbhan, Alternate

National Library of Medicine
Vera W. Hudson, Member

National Toxicology Program
NIEHS, FDA, and NIOSH Members

Technical Support Contractor
Syracuse Research Corporation

ITC Staff
John D. Walker, Director
Norma S. L. Williams, Executive Assistant

TSCA Interagency Testing Committee, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–7527; fax number: (202) 564–7528; e-mail address: *williams.norma@epa.gov*; url: *http://www.epa.gov/opptintr/itc.*

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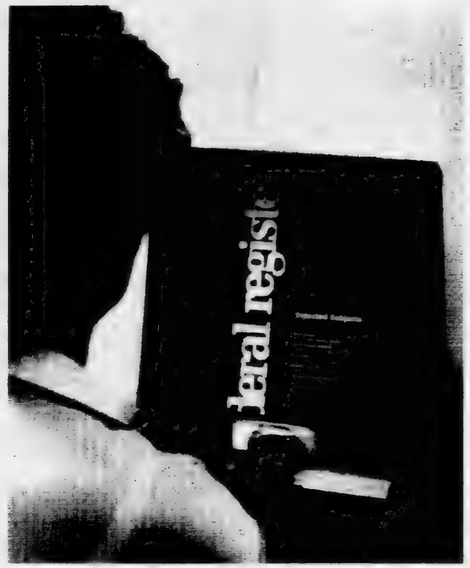
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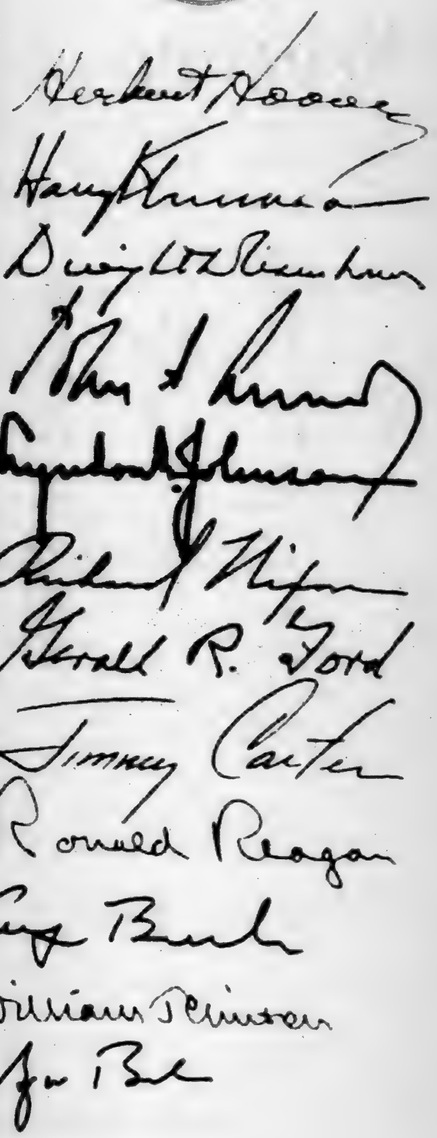
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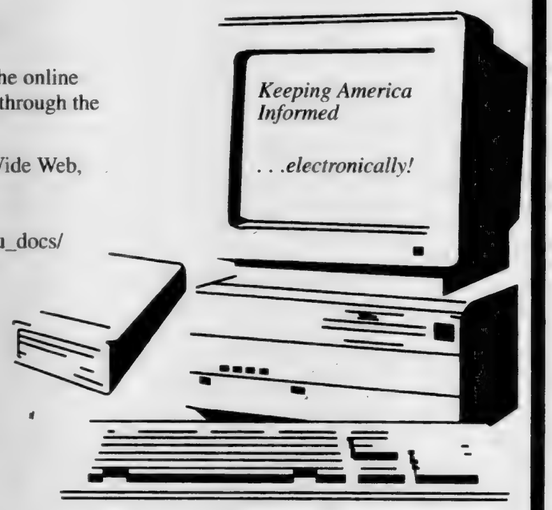
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Thursday, July 24, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 03–057–1]

Japanese Beetle; Domestic Quarantine and Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Japanese beetle quarantine and regulations to add Colorado and Montana to the list of protected States. This action is necessary to prevent the spread of Japanese beetle into noninfested areas of the United States.

DATES: This interim rule is effective July 18, 2003. We will consider all comments that we receive on or before September 22, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–057–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–057–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–057–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. S. Anwar Rizvi, Program Manager, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–4313.

SUPPLEMENTARY INFORMATION:

Background

The Japanese beetle feeds on fruits, vegetables, and ornamental plants and is capable of causing damage to over 300 potential hosts. The Japanese beetle quarantine and regulations, contained in 7 CFR 301.48 through 301.48–8 (referred to below as the regulations), quarantine the States of Alabama, Connecticut, Delaware, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia and restrict the interstate movement of aircraft from regulated airports in these States in order to prevent the spread of the Japanese beetle to noninfested States where the Japanese beetle could become established. Those noninfested States where the Japanese beetle could become established (referred to below as protected States) are listed in § 301.48(b).

The Japanese beetle is active during daylight hours only. Under § 301.48–2 of the regulations, an inspector of the Animal and Plant Health Inspection Service (APHIS) may designate any airport within a quarantined State as a regulated airport if he or she determines that adult populations of Japanese beetle exist during daylight hours at the airport to the degree that aircraft using the airport constitute a threat to spread the Japanese beetle and aircraft destined for protected States may be leaving the airport.

Also, under § 301.48–4 of the regulations, aircraft from regulated airports may move interstate to a protected State only if: (1) An inspector, upon visual inspection of the airport and/or the aircraft, determines that the aircraft does not present a threat to spread the Japanese beetle because adult beetle populations are not present; or (2) the aircraft is opened and loaded only while it is enclosed in a hangar that APHIS has determined to be free of and safeguarded against Japanese beetle; or (3) the aircraft is loaded during the hours of 8 p.m. to 7 a.m. (generally nondaylight hours) only or lands and departs during those hours and, in either situation, is kept completely closed while on the ground during the hours of 7 a.m. to 8 p.m.; or (4) if opened and loaded during daylight hours, the aircraft is inspected, treated, and safeguarded in accordance with the requirements described in § 301.48–4(d).

As noted previously, paragraph (b) of § 301.48 lists noninfested States that are protected by the regulations. Prior to the effective date of this interim rule, the States listed were Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington. When the list in § 301.48(b) was established in the 1970's, Colorado and Montana opted not to be listed because of the belief that the Japanese beetle could not survive in the States' climates. However, in recent years, State officials in Colorado and Montana have trapped increasing numbers of Japanese beetles in the vicinity of Denver International Airport and Billings Logan International Airport, respectively. In the case of Colorado, Japanese beetles have been found at several nurseries receiving stock from Japanese beetle infested Eastern States. In view of the increase in trap catches and the growing amount of shrub and turf areas under irrigation (especially in urban areas) in those States, Colorado and Montana State officials have informed APHIS that they now wish to be listed as protected States. Therefore, in this interim rule we are amending the regulations in § 301.48(b) by adding Colorado and Montana to the list of protected States.

Emergency Action

This rulemaking is necessary on an emergency basis to provide protection from the Japanese beetle to Colorado and Montana during the 2003 season of Japanese beetle activity, which begins in mid-June in many parts of the country. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

§ 301.48 [Amended]

■ 2. In § 301.48, paragraph (b) is amended by adding the word "Colorado," after the word "California," and by adding the word "Montana," after the word "Idaho,".

Done in Washington, DC, this 18th day of July 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–18851 Filed 7–23–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 993 and 999

[Docket No. FV03–993–3 IFR]

Dried Prunes Produced in California; Temporary Suspension of the Mandatory Outgoing Prune Inspection and Quality Requirements, and Modification of the Undersized Prune Disposition Requirements Under the Marketing Order; and Suspension of the Prune Import Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule suspends the outgoing prune inspection and quality requirements under the California Dried Prune Marketing Order (Order) and its administrative rules and regulations, and the prune import regulation, for a three-year period, and modifies the Order's undersized prune disposition requirements. The Order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (Committee). Suspension of the outgoing inspection and quality requirements, and import regulation provisions will ensure relief from these regulations. During the three-year suspension period the industry will consider developing and implementing outgoing inspection and finished product grade standards more consistent with current industry needs.

DATES: Effective August 1, 2003 through July 31, 2006, except for the amendments to § 993.150 (g)(2) and (g)(3), which are effective August 1, 2003. Comments received by September 22, 2003 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or E-mail: *moab.docketclerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993 (7 CFR part 993), both as amended, regulating the handling of dried prunes produced in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule suspends the outgoing prune inspection and quality requirements in the order and its administrative rules and regulations, and the prune import regulation for a three-year period, and modifies the undersized prune disposition requirements. These changes will be effective with the start of the new crop year on August 1, 2003. The order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (Committee). The Committee unanimously recommended suspension of the outgoing inspection, and outgoing prune quality requirements at meetings held on April 3, and May 1, 2003, because it is the quickest way to ensure relief from these regulations. During the three-year suspension period, the industry will consider developing and implementing outgoing inspection and finished product grade standards that are more in line with current industry needs. As discussed below, suspension of the prune import regulation is required under section 8e of the Act.

Marketing Order Authority To Modify and Suspend

Section 993.50(g) states in part: "rules and regulations to insure proper disposition of the [undersized] prunes shall be established by the Committee with the approval of the Secretary."

Section 993.90(a) states in part: "The Secretary shall terminate or suspend the operation of any or all of the provisions of this subpart, whenever he finds that such provisions do not tend to effectuate the declared policy of the act."

Outgoing Grade and Size Regulations

The order currently mandates outgoing inspections and outgoing prune quality, size, and labeling requirements of California produced prunes by California prune handlers to verify such prunes meet quality requirements. These requirements are based on the U.S. Standards for Grades of Dried Prunes and marketing order grade standards. The objective of the inspection; grade, size, and labeling requirements is to ensure that only prunes of acceptable quality and size enter the domestic and foreign markets for human consumption, thereby ensuring consumer satisfaction, increasing sales, and improving returns to producers. While the industry continues to believe that quality is an important factor in maintaining sales, the Committee believes that the costs associated with existing minimum grade, size, and labeling standards may exceed the benefits accrued from such requirements at this time.

Prune Import Regulations

Section 8e of the Agriculture Marketing Agreement Act of 1937 (Act) provides that when certain domestically produced commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Section 999.200 contains the prune import regulations that are comparable to the domestically produced prune outgoing quality and size requirements. Since this rule suspends the outgoing quality and size requirements for domestically produced prunes for three years, these requirements must be suspended in the import regulations during this period as well.

U.S. imports of dried prunes are insignificant compared to U.S. production. In 2002, while the U.S. produced 158,000 tons of dried prunes, only 616 tons were imported. In that year, the domestically produced tonnage was over 250 times as large as the imported tonnage. In 2001, 204 tons were imported, but the U.S. produced 150,000 tons. Production was 735 times as large as imports.

In recent years, about 90 percent of U.S. imports of dried prunes have come from Argentina. Other countries that export to the U.S. include Chile, France, Mexico, Iran, and Turkey.

Undersized Prune Disposition Regulations

The prune administrative rules and regulations currently require handlers to have a third party inspection of each lot of undersized prunes prior to shipment into nonhuman outlets or other disposition. Under § 993.51 of the Order, inspections are performed by the Dried Fruit Association of California. These requirements also require handlers to submit to the Committee comprehensive documentation verifying that they have satisfied their undersized prune obligation.

The prune administrative rules and regulations also currently limit the quantities of larger size that can be used to meet a handler's undersized disposition obligation. While the Committee plans to continue to restrict the shipment of undersized prunes into human consumption outlets, the Committee believes that the costs associated with the inspection and documentation of the disposal of undersized prunes may exceed the benefits. To reduce the cost and time for handlers to file reports and verify the disposition of undersized prunes through inspection, the Committee unanimously recommended removing the inspection requirements, and simplifying the documentation required from handlers to satisfy their undersized obligation as well as removing the limits on the weights of larger prunes that can be used to meet undersized obligations.

Background and Action Taken

California prune handlers are currently selling prunes in many forms to customers throughout the world. The majority of these sales involve sizing or processing the prunes to more stringent specifications than required under the order. Retail and wholesale buyers often visit handlers' plants in California to verify specification and quality procedures, which tend to be more stringent than the minimum outgoing quality requirements mandated in the marketing order. Handlers continue to improve the quality and outgoing inspection procedures to target the specific customer and market demands. Almost all prunes sold for consumption in the United States as prunes are pitted

and packaged in consumer bags and canisters targeting much higher standards than those mandated by the marketing order.

Current procedures require detailed administrative notating and reporting of defect information, large numbers of line inspectors at handler plants, and tracking and segregating lots and bins of fruit to comply with the order. As a result, handlers incur significant amounts of time and money on the inspection process. Also, almost all fruit is inspected by international buyers upon receipt, and is accepted or rejected based on the fruits' condition at the time of that review, regardless of any prior inspection process or certification. Further, prunes produced in other countries must meet customer specifications and inspection criteria.

Because of increased foreign competition that sells quality processed fruit, shifting consumer demand from natural condition to processed prunes, and increasingly competitive specifications that have left the minimum marketing order standards no longer reflect current industry needs. The Committee believes that California prune handlers must reduce all unnecessary costs in order to remain competitive with imported fruit and to profitably sell fruit in international markets.

The mandatory outgoing inspections focus on cosmetic defects or defects that tend to be removed through steaming, pitting, or juicing the fruit. While the industry once sold primarily unprocessed prunes, consumer demand has changed and some processing is invariably required, leaving the outgoing inspection criteria inapplicable and out-dated.

With regard to import requirements, section 8e of the Act requires import regulations to be comparable to the domestic regulations, not more restrictive. Since this rule suspends outgoing grade and size regulations for domestically produced prunes, and substantially relaxes the disposition and verification requirements on undersized prunes under the order, the import regulation must be suspended as well.

During the three-year suspension period, the industry will have the opportunity to consider developing and implementing more appropriate finished product grade standards through amendments to the order and administrative rules and regulations.

At its May 1, 2003, meeting, the Committee unanimously recommended suspension of all outgoing inspection, outgoing quality, size, and labeling requirements in the marketing order and the administrative rules and regulations for three years, beginning with the start of the new crop year on August 1, 2003. The suspension of these provisions will reduce some administrative costs.

This interim final rule suspends in their entirety §§ 993.50(a) through (f) and 993.97 Exhibit A—Part II of the order, and §§ 993.150(a) and (b), 993.150(d) through (g)(1), 993.515, 993.516, 993.517, 993.518 of the administrative rules and regulations, as well as § 999.200 of the import regulation. Portions of §§ 993.50(g) and 993.51 of the order, and portions of §§ 993.601 of the administrative rules and regulations are also suspended. These sections of the order and administrative rules and regulations pertain to the various requirements of the outgoing inspection, outgoing quality, size, and labeling requirements, and import regulation provisions.

Prune handlers oppose the current undersized prune regulations because they are costly to meet. Undersized prunes have marginal value as cattle feed or use in tobacco products (about $40–$45 per ton), and the costs of completing the required Committee paperwork and having them inspected by the DFA of California may exceed the revenue received. The industry is now also less concerned about the minimal amount of poor quality undersized prunes. Supplies of undersized prunes are now lower because of the recent tree pull programs and growers field sizing programs to drop small prune plums in the orchard, rather than deliver them to handlers.

The Committee chose to recommend removal of the limits on the quantities of larger-sized prunes that can be used to meet a handler's undersized weight disposition obligation, and the requirement for inspection of the undersized prunes and certification of handlers' receipt of usage, because these changes will eliminate certain inspection costs and reduce Committee and handler administration costs.

At the April 3, 2003, meeting, the Committee unanimously recommended modification of the undersized prune disposition provisions in the marketing order and the administrative rules and regulations, beginning with the start of the new crop year on August 1, 2003. The modification of these provisions will reduce some committee and handler administrative costs.

This interim final rule removes § 993.150(g)(2)(i), § 993.150(g)(2)(iii), and § 993.150(g)(2)(iv) in the administrative rules and regulations. Portions of § 993.150(g)(3) are amended.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Industry Profile

There are approximately 1,205 producers of dried prunes in the production area and approximately 21 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000 and small agricultural service firms are defined as those having annual receipts of less than $5,000,000.

Eight of the 21 handlers (38 percent) shipped over $5,000,000 worth of dried prunes and could be considered large handlers by the Small Business Administration. Thirteen of the 21 handlers (62 percent) shipped less than $5,000,000 worth of dried prunes and could be considered small handlers. An estimated 32 producers, or less than 3 percent of the 1,205 total producers, would be considered large growers with annual incomes over $750,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

In addition, there are an estimated 30 importers and one third-party entity that performs inspections under the order. USDA does not have precise information on these entities, but believes that the majority of the importers and the inspection agency are small entities.

Summary of Rule Change

This rule suspends the outgoing prune inspection and outgoing prune quality requirements under the order and the administrative rules and regulations, and the prune import provisions for a three-year period, and modifies the undersized prune disposition requirements. These changes will be effective with the start of the new crop year on August 1, 2003, for three years. In the absence of additional rulemaking, the suspended requirements will come back into effect at the end of the three-year period.

The industry chose suspension of the outgoing inspection, outgoing prune quality and size and labeling requirements, because suspension is the quickest way to ensure relief from these regulations. During the three-year suspension period, the industry will have the opportunity to consider developing and implementing more effective finished product grade standards through amendments to the order and administrative rules and regulations. It also will have an opportunity to decide whether these requirements should be terminated.

Authority to suspend these provisions of the marketing order and administrative rules and regulations is provided in § 993.90(a) of the order. Authority to modify the disposition requirements and procedures of undersized prunes in the administrative rules and regulations is provided in §§ 993.50(g) and 993.52 of the order. Authority for the import regulation is in section 8e of the Act.

Impact of Regulation

Regarding the impact of this rule on affected entities, this action could reduce the reporting and recordkeeping burden on California prune handlers and reduce the Committee's and handlers' administrative costs. Also, this action would reduce the number of inspections performed by the inspection agency under the order. The Committee estimates that 21 California prune handlers would be subject to these provisions and to filing the handler reports. Also under the prune import regulations, it is estimated that as many as 10 importers would file forms applicable to the import regulations. The handler annual burden to file these reports is 70.04 hours, and the respondent annual burden to file reports under the import regulations is 6.05 hours. Thus, there is a potential to reducing the annual handler and importer reporting burden by 76.09 hours during the suspension period. The benefits of this interim final rule are expected to be available to all prune handlers and importers, regardless of their size of operation.

The forms affected by this rule are as follows: (1) Form PMC 2.2, Application for Permission to Dispose of Substandard Prunes; (2) Form PMC 2.6, Statement of Proposed Disposition of Substandard Prunes; (3) Form PMC 4.72A, Foreign Export—Notice of Substandard Prunes for Manufacturing Purposes; (4) Form PMC 4.72B, Foreign Export—Notice of Usage of Substandard Prunes for Manufacturing Purposes; (5) Form PMC 2.21, Application for Permission to Dispose of Undersized Prunes for Non-Human Usage; (6) Form PMC 4.71A, User's Receipt of Dried Undersized Prunes for Non-Human Usage; (7) Form PMC 4.71B, User's Certificate of Non-Human Usage of Dried Undersized Prunes; (8) Form PMC 2.63, Statement of Proposed Disposition of Undersized Prunes; (9) Form FV–170, Prune Form No. 1; and (10) Form FV–171, Prune Form No. 2.

It should be noted that if the Committee determines that these suspensions are having an unfavorable impact on the industry, it could meet and recommend rescinding the suspensions.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements being suspended by this rule were previously approved by the Office of Management and Budget, under OMB No. 0581–0178. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Alternatives Considered

The Committee and industry members discussed at the Committee's April 3, 2003, and May 1, 2003, meetings different alternatives to these actions. The Committee discussed the possibility of suspending the total Federal prune marketing order, but its benefit in other areas is recognized by the industry. Another alternative discussed was to suspend all mandatory inspections (both incoming and outgoing inspections), but many on the Committee and in the industry deemed this action too extreme. Another alternative discussed was to exempt handlers from the inspection requirements if they could demonstrate that the automation of their plant assured consistent delivery of higher quality prunes, but this would not be practicable. Another alternative considered was a two-year suspension of the undersized prune regulation. This was opposed because it would increase the domestic salable tonnage and would add to the industry's oversupply.

The Committee's April 3, 2003, and May 1, 2003, meetings where the outgoing inspection, outgoing prune quality, size, and labeling requirement issues were deliberated were public meetings and widely publicized throughout the prune industry. At the April 3, 2003, meeting, the Committee recommended removing the limits on quantity of larger-sized that could be used to meet handler undersized obligations and eliminating of the DFA of California undersized prune inspection and certification of receipt of usage. This was because it will reduce costs, including inspection fees and other Committee costs associated with mandatory inspection, and the reporting burden resulting from the inspection requirements.

All interested persons were invited to attend the meetings and participate in the industry's deliberations. Finally, interested persons are invited to submit information on the regulatory and informational impacts of these changes on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

The Office of the U.S. Trade Representative has reviewed this interim final rule and concurs with its issuance.

A 60-day comment period is provided to allow interested persons to respond to this rule. All written comments timely received will be considered before a final determination is made on this matter. After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that the provisions being suspended would not tend to effectuate the declared policy of the Act during the three-year period, and that the provisions being amended would tend to effectuate the declared policy of the Act effective August 1, 2003.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The Committee recommended that the rule be implemented at the beginning of the new crop year, August 1, 2003; (2) this rule relaxes certain requirements in the order and the administrative rules and regulations; (3) the Committee unanimously recommended these

changes at a public meeting and interested parties had an opportunity to provide input; and (4) a 60-day comment period is provided and all comments received will be considered prior to finalization of this rule.

List of Subjects

7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

7 CFR Part 999

Dates, Filberts, Food grades and standards, Imports, Nuts, Prunes, Raisins, Reporting and recordkeeping requirements, Walnuts.

■ For the reasons set forth in the preamble, 7 CFR parts 993 and 999 are amended as follows:

■ 1. The authority citation for 7 CFR parts 993 and 999 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

■ 2. In § 993.50:

■ a. Paragraphs (a), (b), (c), (d), (e), and (f) are suspended in their entirety effective August 1, 2003, through July 31, 2006.

■ b. Paragraph (g) is amended by suspending the words ", and reasonably comparable in size, to" in the third sentence; suspending the fourth and fifth sentences in their entirety; and suspending the words "Any such tolerance, together with any" and "and that such prunes are reasonably comparable to the undersized prunes so received," in the sixth sentence, effective August 1, 2003, through July 31, 2006.

■ 3. Section 993.51 is amended by suspending the words ", and before shipping or disposing" and "or the pack specifications, including labeling," in the first sentence, effective August 1, 2003, through July 31, 2006.

■ 4. In § 993.97, section II pertaining to minimum standards for processed prunes is suspended in its entirety effective August 1, 2003, through July 31, 2006.

■ 5. In § 993.150:

■ a. Paragraphs (a), (b), (d), (e), and (f) are suspended in their entirety effective August 1, 2003, through July 31, 2006.

■ b. Paragraph (g) is amended by suspending paragraph (g)(1) in its entirety effective August 1, 2003, through July 31, 2006, and by removing paragraphs (g)(2)(i), (g)(2)(iii), and (g)(2)(iv) in their entirety effective August 1, 2003.

■ c. Paragraph (g)(2)(ii) is redesignated as paragraph (g)(2)(i) and revised as follows effective August 1, 2003:

§ 993.150 Disposition of prunes by handlers.

* * * * *

(g) * * *

(2) * * *

(i) *Documentation of shipment or other disposition.* For each quantity of undersized prunes so shipped or otherwise disposed of, the handler shall promptly forward to the Committee one copy of the applicable bill of lading, truck receipt, or related documentation of disposition which shall show: *(a)* The name of the consignee; *(b)* the destination by name and address of the person designated to receive the prunes; *(c)* the date of shipment or other disposition; *(d)* the net weight of the prunes; and *(e)* identification of the prunes as undersized prunes.

■ d. Paragraphs (g)(3)(i) and (g)(3)(ii) are revised effective August 1, 2003, to read as follows:

§ 993.150 Disposition of prunes by handlers.

* * * * *

(g) * * *

(3) * * *

(i) *Undersized French prunes.* Whenever an undersized regulation specifies an opening for French prunes, any quantity of any size of French prunes disposed of by a handler in compliance with § 993.50(g) shall satisfy a handler's undersized disposition.

(ii) *Undersized non-French prunes.* Whenever an undersized regulation specifies an opening for non-French prunes, any quantity of any size of non-French prunes disposed of by a handler in compliance with § 993.50(g) shall satisfy a handler's undersized disposition.

§ 993.150 Disposition of prunes by handlers.

■ 6. Sections 993.515, 993.516, 993.517, and 993.518 are suspended in their entirety effective August 1, 2003, through July 31, 2006.

■ 7. In § 993.601(a) the words, "and outgoing", "and the minimum standards which handlers' shipments or other final dispositions of prunes are required to meet pursuant to § 993.50(a)", "IIC(3)", and "IIC(6)" are suspended effective August 1, 2003, through July 31, 2006.

PART 999—SPECIALTY CROPS; IMPORT REGULATIONS

■ 8. Section 999.200 is suspended in its entirety effective August 1, 2003, through July 31, 2006.

Dated: July 16, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–18778 Filed 7–23–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 03–044–1]

Tuberculosis in Cattle and Bison; State Designations; New Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the bovine tuberculosis regulations regarding State and zone classifications by removing New Mexico from the list of accredited-free States and adding it to the list of modified accredited advanced States. This action is necessary to help prevent the spread of tuberculosis because New Mexico no longer meets the requirements for accredited-free State status.

DATES: This interim rule is effective July 24, 2003.

Compliance Date: The date for complying with certain requirements of 9 CFR 77.10 for sexually intact heifers, steers, and spayed heifers moving interstate from the State of New Mexico is September 30, 2003 (see "Delay in Compliance" under **SUPPLEMENTARY INFORMATION**). The compliance date for all other provisions in 9 CFR part 77 applicable to the interstate movement of cattle and bison from the State of New Mexico is July 24, 2003.

Comment Date: We will consider all comments that we receive on or before September 22, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–044–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–044–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–044–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Terry Beals, Senior Staff Veterinarian, Eradication and Surveillance Team, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–5467.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is a contagious, infectious, and communicable disease caused by *Mycobacterium bovis*. It affects cattle, bison, deer, elk, goats, and other species, including humans. Bovine tuberculosis in infected animals and humans manifests itself in lesions of the lung, bone, and other body parts, causes weight loss and general debilitation, and can be fatal.

At the beginning of the 20th century, bovine tuberculosis caused more losses of livestock than all other livestock diseases combined. This prompted the establishment of the National Cooperative State/Federal Bovine Tuberculosis Eradication Program for bovine tuberculosis in livestock.

Federal regulations implementing this program are contained in 9 CFR part 77, "Tuberculosis" (referred to below as the regulations), and in the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" (UMR), which is incorporated by reference into the regulations. The regulations restrict the interstate movement of cattle, bison, and captive cervids to prevent the spread of bovine tuberculosis. Subpart B of the regulations contains requirements for the interstate movement of cattle and bison not known to be infected with or exposed to tuberculosis. The interstate movement requirements depend upon whether the animals are moved from an accredited-free State or zone, modified accredited advanced State or zone, modified accredited State or zone, accreditation preparatory State or zone, or nonaccredited State or zone.

The status of a State or zone is based on its freedom from evidence of tuberculosis in cattle and bison, the effectiveness of the State's tuberculosis eradication program, and the degree of the State's compliance with the standards for cattle and bison contained in the UMR. In an interim rule published in the **Federal Register** on October 23, 2000, and effective on November 22, 2000 (65 FR 63502–63533, Docket No. 99–038–5), we, among other things, raised the designation of New Mexico from modified accredited to accredited-free.

Recently, two tuberculosis-affected herds (one dairy herd in the fall of 2002 and another dairy herd in the winter of 2002–2003) were detected in Roosevelt County, NM. Under the regulations in § 77.7(c), if two or more affected herds are detected in an accredited-free State or zone within a 48-month period, the State or zone will be removed from the list of accredited-free States or zones and will be reclassified as modified accredited advanced. Therefore, we are amending the regulations by removing New Mexico from the list of accredited-free States or zones and adding it to the list of modified accredited advanced States or zones.

The two affected herds detected in the State have been quarantined, and a complete epidemiological investigation into the potential sources of the disease is being conducted. In cooperation with the State, we have continuously tested area cattle for tuberculosis since the investigation began.

Under the regulations in § 77.10, cattle or bison that originate in a modified accredited advanced State or zone, and are not known to be infected with or exposed to tuberculosis, may be moved interstate only under one of the following conditions:

- The cattle or bison are moved directly to slaughter at an approved slaughtering establishment (§ 77.10(a));
- The cattle or bison are sexually intact heifers moved to an approved feedlot, or are steers or spayed heifers; and are either officially identified or identified by premises of origin identification (§ 77.10(b));
- The cattle or bison are from an accredited herd and are accompanied by a certificate stating that the accredited herd completed the testing necessary for accredited status with negative results within 1 year prior to the date of movement (§ 77.10(c)); or
- The cattle or bison are sexually intact animals, are not from an accredited herd, are officially identified, and are accompanied by a certificate stating that they were negative to an official tuberculin test conducted within 60 days prior to the date of movement (§ 77.10(d)).

Delay in Compliance

In an interim rule effective June 3, 2002, and published in the **Federal Register** on June 6, 2002 (67 FR 38841–38844, Docket No. 02–021–1), we amended the regulations by classifying the State of Texas as modified accredited advanced. In another interim rule effective and published in the **Federal Register** on April 25, 2003 (68 FR 20333–20336, Docket No. 03–005–1), we amended the regulations by classifying the State of California as modified accredited advanced. Given the size and complexity of the cattle industries in Texas and California, we delayed the date for complying with certain identification and certification requirements in § 77.10 for sexually intact heifers, steers, and spayed heifers moving interstate from the States of Texas and California until September 30, 2003.

In the interests of equitable treatment for producers in New Mexico, we are similarly delaying the date of compliance with the following interstate movement requirements of § 77.10 for sexually intact heifers, steers, and spayed heifers moving interstate from the State of New Mexico until September 30, 2003:

- The identification of sexually intact heifers moving to approved feedlots and steers and spayed heifers (§ 77.10(b));
- The identification requirements for sexually intact heifers moving to feedlots that are not approved feedlots (§ 77.10(d));
- Because identification is required for certification, the certification requirements for sexually intact heifers moving to unapproved feedlots (§ 77.10(d)).

All other applicable provisions of the regulations will be in effect as ofthe effective date of this rule.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the spread of tuberculosis in the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above).

After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

Prior to this rule, the State of New Mexico was classified as an accredited-free State for cattle and bison. However, two infected herds have been discovered within a 48-month period. Under the regulations, if two or more affected herds are detected in an accredited-free State or zone within a 48-month period, the State or zone must be reclassified as modified accredited advanced. In keeping with that requirement, this interim rule removes New Mexico from the list of accredited-free States and adds it to the list of modified accredited advanced States.

In 2001, there were approximately 8,500 cattle and bison operations in New Mexico, totaling 1.58 million head. According to the National Agricultural Statistics Service, the total cash value of cattle in New Mexico was over $1.3 billion as of that year. Over 92 percent of New Mexico's cattle operations yield less than $750,000 annually and are, therefore, considered small entities under criteria established by the Small Business Administration.

This interim rule changes the status of New Mexico to modified accredited advanced, resulting in interstate movement restrictions where none existed previously. Specifically, as explained previously, § 77.10 requires that, for movement to certain destinations, animals must test negative to an official tuberculin test and/or be officially identified by premises of origin identification before interstate movement.

This rule will prove beneficial by preventing the spread of tuberculosis to other areas of the United States. However, the stricter requirements for interstate movement will have an economic effect on those producers involved in the interstate movement of cattle and bison from New Mexico. As such, this analysis will focus on the expenses incurred by those producers engaged in interstate movement and in determining whether those negative impacts are significant.

The approximate per head tuberculin testing cost is $3.76, and the cost of official identification (an eartag) and an applicator is about $0.16 per head plus the cost of labor to apply the eartags. On January 1, 2002, the average value per animal in New Mexico was estimated to be $840, which translates to an average value per 185-head herd of about $155,400. Thus, we believe that the added cost of the required tuberculin testing and identification is small relative to the average value of cattle and bison, representing less than 1 percent of the per head value. Further, since this rule provides for a delay in date of compliance with the identification requirements in § 77.10(b) and (d), some herd owners' identification costs may be deferred until at least September 30, 2003.

The expenses stemming from the testing and identification requirements are not expected to be substantial for cattle and bison owners in New Mexico. The more a particular herd owner engages in interstate movement, the greater the resulting expense. Unfortunately, the exact number of herd owners involved in interstate movement is unknown. However, it is clear that this change in status will not have an economically substantial effect on cattle and bison herd owners in New Mexico.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579–0229 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. 03–044–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 03–044–1 and send your comments within 60 days of publication of this rule.

This interim rule removes New Mexico from the list of accredited-free States for bovine tuberculosis and adds it to the list of modified accredited advanced States. Cattle or bison that originate in a modified accredited advanced State or zone, and are not known to be infected with or exposed to tuberculosis, may be moved interstate only if the animals meet certain conditions with regards to transport, identification, and accreditation. These conditions are detailed in the **SUPPLEMENTARY INFORMATION** portion of this document as well as in § 77.10 of the regulations. As previously noted however, these requirements are suspended until September 30, 2003. We are soliciting comments from the public (as well as affected agencies) concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.016 hours per response.

Respondents: Certain herd owners in New Mexico.

Estimated annual number of respondents: 375.

Estimated annual number of responses per respondent: 100.

Estimated annual number of responses: 37,500.

Estimated total annual burden on respondents: 600 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this interim rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

■ Accordingly, we are amending 9 CFR part 77 as follows:

PART 77—TUBERCULOSIS

■ 1. The authority citation for part 77 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

§ 77.7 [Amended]

■ 2. In § 77.7, paragraph (a) is amended by removing the words "New Mexico,".

§ 77.9 [Amended]

■ 3. In § 77.9, paragraph (a) is amended by adding the words ", New Mexico," immediately after the word "California".

§ 77.10 [Amended]

■ 4. Section 77.10 is amended by revising the OMB control number citation at the end of the section to read as follows: "(Approved by the Office of Management and Budget under control numbers 0579–0146, 0579–0220, and 0579–0229)".

Done in Washington, DC, this 18th day of July 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–18850 Filed 7–23–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–257–AD; Amendment 39–13244; AD 2003–15–02]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all EMBRAER Model EMB–145 series airplanes, that currently requires repetitive replacement of the bleed-air check valve and associated gaskets on the bleed low-pressure lines of the engines with new parts. This amendment continues to require repetitive replacement of the bleed-air check valves and associated gaskets. Additionally, this amendment provides for optional terminating action for the repetitive replacement of bleed-air check valves by installing new improved check valves, and adds airplanes to the applicability of the existing AD. This amendment also clarifies that the replacement and follow-on actions are required for the left- and right-hand engines. The actions specified by this AD are intended to prevent failure of the bleed-air check valves on the bleed low-pressure lines of the engines, which could result in engine compressor stall and consequent flameout of the affected engines. This action is intended to address the identified unsafe condition.

DATES: Effective August 28, 2003.

The incorporation by reference of EMBRAER Service Bulletin 145–36–0011, dated January 28, 2000; and Change No. 01, dated March 23, 2000; as listed in the regulations; is approved by the Director of the Federal Register as of August 28, 2003.

The incorporation by reference of EMBRAER Alert Service Bulletin 145–36–A011, dated March 19, 1999, as listed in the regulations, was approved previously by the Director of the Federal Register as of June 2, 1999 (64 FR 26835, May 18, 1999).

ADDRESSES: The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 99–11–01, amendment 39–11172 (64 FR 26835, May 18, 1999), which is applicable to all EMBRAER Model EMB–145 series airplanes, was published in the **Federal Register** on March 20, 2001 (66 FR 15667). The action proposed to continue to require repetitive replacement of the bleed-air check valves and associated gaskets on the bleed low-pressure lines of the engines with new parts. That action also proposed to require repetitive replacement of an additional bleed-air check valve with a check valve having the same part number, or with a new improved check valve; and eventual replacement of the bleed-air check valves with new improved check valves, and various follow-on actions. In addition, that action proposed to add airplanes to the applicability of the existing AD.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received from a single commenter.

Request To Clarify Replacement Requirements

The commenter requests revising paragraph (b) of the proposed AD to specify that replacement of the bleed-air check valves on the bleed-air low-pressure lines applies to both the left- and right-hand engines. A reference to the left-hand engine was omitted from this paragraph.

The FAA concurs. Although a reference to the left-hand engine was

inadvertently omitted from paragraph (b) of the proposed AD, it was our intent to reference both the left- and right-hand engines. This intent is apparent from the preamble discussion and from the repetitive replacement requirements of paragraph (c) of the proposed AD. We have revised paragraph (b) of the final rule accordingly. In addition, we have revised the Summary section of the final rule to clarify that the replacement and follow-on actions are required for both the left- and right-hand engines.

Request To Revise Service Bulletin References

The commenter requests adding a reference to EMBRAER Service Bulletin 145–36–0011, dated January 28, 2000, in paragraphs (b), (c), and (d) of the proposed AD. The commenter states that EMBRAER Service Bulletin 145–36–0011, Change 01, dated March 23, 2000, was issued only for administrative purposes with no change to the technical content. In addition, the commenter states that Change 01 of the service bulletin divided the actions specified in the original service bulletin into ten parts because of a shortage of the bleed-air check valves needed to accomplish the service bulletin in its entirety (replacing all five check valves).

We concur with the request for the reasons provided by the commenter and have added a reference to EMBRAER Service Bulletin 145–36–0011, dated January 28, 2000, in paragraphs (b) and (d) of this final rule.

Request To Revise Compliance Time in Paragraph (d)

The commenter requests changing the compliance time in paragraph (d) of the proposed AD for replacing the bleed-air check valve on the tube assembly of the auxiliary power unit (APU). The commenter states that, because of a shortage of bleed-air check valves, it is necessary to change "before further flight" to "within 4,000 flight hours after the effective date of this AD." The commenter adds that only the bleed-air check valve on the bleed-air low-pressure line was replaced on the entire fleet of 65 affected airplanes. In addition, the remaining three bleed-air check valves (two high pressure and one APU) will be replaced during a C-check scheduled at 4,000 flight hours. The commenter is concerned that, if the present compliance time of "before further flight" is not changed, the 30 remaining airplanes (which still require two bleed-air check valves on the bleed-air high pressure lines, and one bleed-air check valve on the tube assembly of the APU) would be grounded.

Since issuance of the proposed AD, it has been determined that the requirements of paragraph (d) of the proposed AD do not address the unsafe condition. Therefore, those requirements have been removed from this final rule.

Request To Omit Paragraph (e)

The commenter suggests omitting paragraph (e) of the proposed AD because of the previously suggested changes to paragraph (d) of the proposed AD. The commenter contends that combining the requirements of paragraphs (d) and (e) would satisfy the terminating action requirement.

We partially agree. As described earlier, the requirements of paragraph (d) of the proposed AD have been omitted from this final rule. Because of this determination, the relief granted in paragraph (e) of the proposed AD still applies, and no change to paragraph (d) of this final rule (paragraph (e) of the proposed AD) is necessary in this regard.

Differences Between This Final Rule and the Service Bulletin/Brazilian Airworthiness Directive

Operators should note that, although the Accomplishment Instructions of Change 01 of the referenced service bulletin specify procedures that include Parts I through X, the Brazilian airworthiness directive references and requires accomplishment of only the procedures in Parts I through IV of the service bulletin. In consonance with the parallel Brazilian airworthiness directive, paragraph (b) of the proposed AD and the final rule require the actions specified in Parts I and II of the service bulletin. However, this final rule differs from the Brazilian airworthiness directive in that it does not require accomplishment of Parts III and IV of the service bulletin. For the purposes of this final rule, the actions specified in Parts III and IV of the service bulletin are optional terminating actions, as described in paragraph (d) of this final rule. The Departmento de Aviacao Civil has concurred in our assessment that accomplishment of the actions specified in Parts I and II are sufficient to ensure the safety of the fleet.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Cost Impact

There are approximately 135 Model EMB–135 and –145 series airplanes of U.S. registry that will be affected by this AD.

The repetitive replacements that are currently required by AD 99–11–01 take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $16,200, or $120 per airplane, per each repetitive replacement. The new requirements of this AD add no additional economic burden.

The cost impact figures discussed above is based on the assumption that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–11172 (64 FR 26835, May 18, 1999), and by adding a new airworthiness directive (AD), amendment 39–13244, to read as follows:

2003–15–02 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–13244. Docket 2000–NM–257–AD. Supersedes AD 99–11–01, Amendment 39–11172.

Applicability: All Model EMB–135 and EMB–145 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the bleed-air check valves on the bleed low-pressure line of the engines, which could result in engine compressor stall and consequent flameout of the affected engines; accomplish the following:

Restatement of Requirements of AD 99–11–01, Amendment 39–11172

(a) For Model EMB–145 series airplanes: Prior to the accumulation of 2,000 total flight hours, or within 100 flight hours after June 2, 1999 (the effective date of AD 99–11–01, amendment 39–11172), whichever occurs later: Replace the bleed-air check valves having part number (P/N) 816603–1, and associated gaskets having P/N 24096–250C, on the bleed low-pressure lines of the left- and right-hand engines, with new parts having the same P/Ns; per EMBRAER Alert Service Bulletin 145–36–A011, dated March 19, 1999; or EMBRAER Service Bulletin 145–36–0011, dated January 28, 2000; or Change 01, dated March 23, 2000. Thereafter, repeat the replacement at intervals not to exceed 2,000 flight hours in accordance with the service bulletin.

New Requirements of This AD

Note 2: The replacement interval of 2,000 flight hours specified in paragraph (a) of this AD is required only until the requirements of paragraph (b) of this AD are implemented.

Replacement

(b) *For all airplanes:* Replace any bleed-air check valve having either P/N 816603–1 or P/N 816603–2 on the bleed-air low-pressure lines of the left- and right-hand engines, and associated gaskets having P/N 24096–250C, with a new check valve and associated gaskets having the same P/N, or a new improved check valve having P/N 816603–3 (including reworking the flanges) and associated gaskets having P/N 24096–250C; per EMBRAER Service Bulletin 145–36–0011, dated January 28, 2000; or Change 01, dated March 23, 2000; at the later of the times specified in paragraph (b)(1) or (b)(2) of this AD:

(1) Before the accumulation of 1,600 total flight hours, or within 1,600 flight hours since the last replacement of the check valve, whichever occurs later; or

(2) Within 200 flight hours after the effective date of this AD.

Note 3: Where there are differences between this AD and the service bulletin, this AD prevails.

Repetitive Replacement

(c) *For all airplanes:* If the bleed-air check valves on the bleed-air low-pressure lines of the left- and right-hand engines have been replaced with check valves having either P/N 816603–1 or P/N 816603–2 per paragraph (b) of this AD, repeat the replacement requirements of paragraph (b) of this AD, at intervals not to exceed 1,600 flight hours, until the requirements of paragraph (d) of this AD are accomplished.

Optional Terminating Actions

(d) Replace bleed-air check valves on the bleed-air low-pressure lines of the left- and right-hand engines, having P/N 816603–1 or P/N 816603–2, with new improved bleed-air check valves having P/N 816603–3 (including reworking the flanges), per EMBRAER Service Bulletin 145–36–0011, dated January 28, 2000; or Change 01, dated March 23, 2000. Accomplishment of these actions constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) The actions shall be done in accordance with EMBRAER Alert Service Bulletin 145–36–A011, dated March 19, 1999; EMBRAER Service Bulletin 145–36–0011, dated January 28, 2000; or EMBRAER Service Bulletin 145–36–0011, Change 01, dated March 23, 2000; as applicable.

(1) The incorporation by reference of EMBRAER Service Bulletin 145–36–0011, dated January 28, 2000; and EMBRAER Service Bulletin 145–36–0011, Change 01, dated March 23, 2000; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of EMBRAER Alert Service Bulletin 145–36–A011, dated March 19, 1999, was approved previously by the Director of the Federal Register as of June 2, 1999 (64 FR 26835, May 18, 1999).

(3) Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in Brazilian airworthiness directive 1999–04–01R2, dated May 30, 2000.

Effective Date

(h) This amendment becomes effective on August 28, 2003.

Issued in Renton, Washington, on July 15, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–18417 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 10

[CBP Dec. 03–10]

RIN 1515–AD27

Refund of Duties Paid on Imports of Certain Wool Products

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by removing the regulation originally promulgated to provide procedures for the issuance of the refunds of duties paid on certain wool imports pursuant to section 505 of title V of the Trade and Development Act of 2000. As section 5101 of the Trade Act of 2002 significantly amended section 505 and provides self-effectuating procedures for the issuance of the refunds, the regulation implementing section 505 is no longer necessary and is obsolete.

DATES: The amendment is effective July 24, 2003.

FOR FURTHER INFORMATION CONTACT: Suzanne Kingsbury, Regulations Branch, Office of Regulations and Rulings, Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 572–8763.

SUPPLEMENTARY INFORMATION:

Background

On May 18, 2000, the Trade and Development Act of 2000 was signed into law. *See* Public Law 106–200, 114 Stat. 251. Title V of the Act concerns imports of certain wool articles and sets forth provisions intended to provide tariff relief to U.S. manufacturers of specific wool products. Within title V, section 505 permits eligible U.S. manufacturers to claim a limited refund of duties paid on imports of select wool articles.

On December 26, 2000, Customs (now the Bureau of Customs and Border Protection (CBP)) promulgated in § 10.184, Customs Regulations (19 CFR 10.184), a regulation to provide the procedures for issuing refunds pursuant to section 505. *See* 65 FR 81344. This section was subsequently amended by documents published in the **Federal Register** on April 23, 2001 (66 FR 20392), and January 23, 2002 (67 FR 3059).

On August 6, 2002, President Bush signed into law the Trade Act of 2002. Division E of the Trade Act of 2002 contains miscellaneous provisions. Within Division E, title L sets forth miscellaneous trade benefits with subtitle A pertaining specifically to wool provisions. Within subtitle A, section 5101, entitled the "Wool Manufacturer Payment Clarification and Technical Corrections Act," amends section 505.

The amendments to section 505 are extensive and self-effectuating, making § 10.184 of the Customs Regulations unnecessary and obsolete. For this reason, part 10 of the Customs Regulations is amended by removing § 10.184.

It is noted that a document was published in the **Federal Register** (67 FR 52520) on August 12, 2002, that set forth section 505 of the Trade Act of 2002, as amended, with its self-effectuating procedures, and provided a detailed description of the changes to the wool duty payment program.

Executive Order 12866, Regulatory Flexibility Act, Inapplicability of Prior Public Notice and Comment Procedures and Delayed Effective Date Requirements

This document does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866. Because this amendment merely removes from the Customs Regulations a regulation which is now obsolete, CBP has determined, pursuant to the provisions of 5 U.S.C. 553(b)(B), that prior public notice and comment procedures on this regulation are unnecessary and contrary to the public interest. For the same reason, pursuant to the provisions of 5 U.S.C. 553(d)(3), there is good cause for dispensing with a delayed effective date. Because no notice of proposed rulemaking is required, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Drafting Information

The principal author of this document was Ms. Suzanne Kingsbury, Regulations Branch, Office of Regulations and Rulings, CBP.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Imports, Reporting and recordkeeping requirements, Trade agreements.

Amendments to the Regulations

■ For the reasons stated above, 19 CFR part 10 is amended as follows:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

■ 1. The general authority citation for part 10 continues to read as follows, and the specific authority for § 10.184 is removed:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314.

* * * * *

■ 2. The center heading preceding § 10.184 and § 10.184 are removed.

Robert C. Bonner,

Commissioner of Customs and Border Protection.

Approved: July 21, 2003.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–18839 Filed 7–23–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Parts 24 and 111

[CBP Decision 03—13]

RIN 1515–AC81

User Fees

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule proposed amendments to the Customs Regulations to reflect various legislative amendments to 19 U.S.C. 58c, the Customs user fee statute, including those made by the Miscellaneous Trade and Technical Corrections Act of 1999 and the Tariff Suspension and Trade Act of 2000. The amended regulations set forth the fee structure for passengers arriving in the United States aboard commercial vessels and aircraft, provide for application of a fee to ferries in limited circumstances, and clarify how Customs and Border Protection administers certain user fees. Also, minor conforming changes are made to the regulations pertaining to customs brokers.

EFFECTIVE DATE: August 25, 2003.

FOR FURTHER INFORMATION CONTACT: Concerning user fees applicable to commercial vessel and aircraft passengers under § 24.22(g): Edward Matthews at (202) 927–0552. Concerning the various fee payment and information submission procedures under § 24.22: Robert T. Reiley at (202) 927–1504.

SUPPLEMENTARY INFORMATION:

Background

On March 18, 2002, Customs and Border Protection (CBP; the bureau within the new Department of Homeland Security that includes the former U.S. Customs Service) published a notice of proposed rulemaking (NPRM) in the **Federal Register** (67 FR 11954) proposing to amend part 24 of the Customs Regulations pertaining to user fees (19 CFR part 24) and certain related sections of part 111 pertaining to customs brokers (19 CFR part 111). The NPRM set forth the bases for the proposed changes to part 24 as follows: (1) Some proposed changes derived from provisions of the Miscellaneous Trade and Technical Corrections Act of 1999 (Pub. L. 106–36, 113 Stat. 127), signed into law on June 25, 1999; (2) one proposed change was based on a provision of the Tariff Suspension and Trade Act of 2000 (Pub. L. 106–476, 114 Stat. 2101), signed into law on November 9, 2000; (3) some proposed changes were based on other statutory provisions that were not reflected in the regulations; (4) some proposed changes were designed to bring the regulations up to date with current administrative practices; and (5) one proposed change was a technical correction. The NPRM provided that the proposed changes to part 111 were designed to clarify administration of the annual user fee and the permit fees for customs brokers. The changes that were proposed are further discussed below.

Changes Based on the Miscellaneous Trade and Technical Corrections Act of 1999

The Fee Structure

Section 2418 of the Miscellaneous Trade and Technical Corrections Act of 1999 (the Act) amended section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985, codified at 19 U.S.C. 58c (section 58c), which established user fees for certain services performed by CBP. Paragraph (b)(1) of section 2418 of the Act amended the fee structure set forth under section 58c(a)(5) applicable to passengers arriving in the United States on board commercial vessels or aircraft. Prior to the Act, only one fee applied to these covered passengers under section 58c(a)(5), as follows: $6.50 beginning on January 1, 1994, and applying to passengers arriving from a place outside the customs territory of the United States and $5 beginning on October 1, 1997, and applying to passengers arriving from a place outside the United States other than Canada, Mexico, a United States territory or possession, or an adjacent island. The amendment continued the $5 fee applicable to each passenger arriving in the United States aboard a commercial vessel or aircraft from a place outside the United States other than Canada, Mexico, a United States territory or possession, or an adjacent island. This fee, formerly provided for under section 58c(a)(5)(B), is now provided for under section 58c(a)(5)(A). The amendment also imposed, under section 58c(a)(5)(B), a fee of $1.75 per passenger arriving aboard a commercial vessel (not a commercial aircraft) from Canada, Mexico, a United States territory or possession, or an adjacent island. Under the amended statute, no fee applies in the case of passengers arriving aboard commercial aircraft from Canada, Mexico, a United States territory or possession, or an adjacent island.

In the NPRM, CBP proposed to amend § 24.22(g), Customs Regulations (19 CFR 24.22), to conform the regulations to the new fee structure of amended sections 58c(a)(5)(A) and (B).

Procedures for Payment of the New Fees

The NPRM also proposed changes to the Customs Regulations relative to the fee payment procedure. Under the current regulations, it is the responsibility of the carriers, travel agents, tour wholesalers, or other parties issuing tickets or travel documents to collect the fee from all passengers who are subject to the fee (§ 24.22(g)(3) in the current regulations). These parties must make payment of the collected fees to CBP no later than 31 days after the close of the calendar quarter in which the fees were required to be collected from the passengers (§ 24.22(g)(4) in the current regulations). Current § 24.22(g)(4) also provides that the quarterly fee payment must be accompanied by a statement that includes the name, address, and taxpayer identification number of the party remitting the payment and the calendar quarter covered by the payment.

The NPRM proposed to amend § 24.22(g)(3) to make clear that the party responsible for collecting the fee must collect a fee when an infant travels without a ticket or travel document. This follows CBP's consistent practice of treating infants as passengers for purposes of the passenger fees. Thus, CBP proposed to add to § 24.22(g)(1) a definition of the term "passenger" making it clear that it includes infants even if the carrier does not charge for their transportation and even if the infant is carried by another passenger (rather than occupying a seat).

Because CBP, since enactment of the Act, has had to administer two fees rather than one, the NPRM also proposed to amend § 24.22(g)(4) to require the following additional information in the statement required under that section: The total number of tickets for which fees were required to be collected, as well as the total number of infants traveling without a ticket or travel document for which fees were required to be collected; the total amount of fees collected and remitted; with respect to vessel fees, the total number of tickets and non-ticketed infants for which fees were required to be collected and the total amount of fees collected; and a breakdown of vessel fees collected and remitted under section 58c(a)(5)(A) (the $5 per passenger fee) and section 58c(a)(5)(B) (the $1.75 per passenger fee). This additional information is necessary to enable CBP to properly account for the fees now provided for under section 58c(a)(5).

Changes Based on the Tariff Suspension and Trade Act of 2000

The NPRM proposed amendments to §§ 24.22(b)(4)(iv) and 24.22(g)(1) of the Customs Regulations to conform the regulations to a statutory amendment regarding ferries. Section 1457 of the Tariff Suspension and Trade Act of 2000 amended section 58c(b)(1)(A)(iii) to provide an exception to the fee limitation relative to ferries. Prior to this amendment, ferries were excepted from application of the fees under section 58c(a). While this amendment was self-effectuating, effective on November 24, 2000, making ferries commencing operations on or after August 1, 1999, and operating south of 27 degrees latitude and east of 89 degrees longitude subject to the commercial vessel fee of section 58c(a)(1) (and § 24.22(b)(1)) (provided the ferry is of 100 net tons or more) and the $1.75 commercial vessel passenger fee of section 58c(a)(5)(B), the NPRM proposed to set forth the statutory requirement in the Customs Regulations.

Changes Based on Other Statutory Provisions

The NPRM also proposed to amend § 24.22(g) to cover the fee exemption provision set forth in section 58c(b)(1)(A)(iv) and the "one-time only fee" set forth in section 58c(b)(4)(B). These two statutory provisions are not reflected in the current regulation.

The fee exemption provision under section 58c(b)(1)(A)(iv) provides that no fee under section 58c(a)(5) applies to passengers arriving aboard commercial vessels traveling only between ports that are within the customs territory of the United States. The one-time only fee provision of section 58c(b)(4)(B) applies where a fee under section 58c(a)(5) is applicable to passengers arriving aboard a commercial vessel and the voyage is a single voyage involving two or more United States ports. In other words, if a vessel proceeds coastwise to one or more United States ports after its initial arrival from a place outside the United States, the applicable fee is charged only once for each passenger.

The NPRM also proposed to amend § 24.22(g) in order to reflect in § 24.22(g)(1)(iii) the definition of the term "adjacent islands" set forth in 8 U.S.C. 1101(b)(5). Under section 58c(b)(1)(A)(i)(I)(dd), the term "adjacent islands" is given meaning by reference to 8 U.S.C. 1101(b)(5).

Changes Regarding Administrative Practices

The NPRM proposed to amend various provisions of the regulation to reflect current fee payment and other practices, including clarification of the proper addresses for the mailing of payments, requirements for obtaining and using the user fee decal, and use of electronic and credit card payment options. These amendments were proposed for the following sections of the regulation: § 24.22(b)(3) which concerns the procedure for prepayment of the fee for the arrival of commercial vessels (that is, vessels of 100 net tons or more as well as barges and other bulk carriers arriving from Canada or Mexico); § 24.22(c)(3) which concerns the procedure for prepayment of the fee for the arrival of commercial vehicles; § 24.22(d) which concerns the fee for the arrival of railroad cars and includes, in paragraph (d)(3), procedures for prepayment of the fee and, in paragraph (d)(4)(ii), procedures for monthly statement filing and fee remittance; § 24.22(e)(1) and (2), which concern, respectively, payment of the fee at the time of arrival of private vessels and private aircraft and prepayment of the fee; § 22.24(g)(4) which covers the procedure for payment of fees for the arrival of passengers aboard commercial vessels and commercial aircraft; § 24.22(h) which concerns the annual customs broker permit fee; and § 24.22(i) which concerns procedures for remittance of, and for submitting information relative to, the fees provided for under § 24.22.

Changes To Make a Technical Correction

The NPRM proposed to correct several erroneous references to § 142.13(c) (19 CFR 142.13(c)) found in paragraphs (a), (c)(2), and (d) of § 24.25, which pertains to statement processing and automated clearinghouse procedures. Section 142.13(c) is currently reserved, and the reference in the above paragraphs of § 24.25 should instead be to § 142.13(b), which pertains to special classes of merchandise.

Conforming Changes to Part 111

Lastly, the NPRM proposed to amend certain sections of Part 111 of the Customs Regulations (19 CFR part 111) which pertains to customs brokers. Specifically, it was proposed to amend §§ 111.19 and 111.96 to conform to the change made to § 24.22(h) referred to above and to clarify the payment procedure in connection with a national customs broker permit application. In §§ 111.19 and 111.96, there are references to the payment of the annual customs broker permit user fee referred to in § 24.22(h).

Comments

One comment was received in response to the NPRM.

Comment: The commenter recommended the removal from the regulations of the exception found under § 24.22(e)(3)(i) which excepts private vessels less than 30 feet in length (and not carrying any goods that must be declared to CBP) from the fee imposed on private vessels under § 24.22(e)(1). The commenter based the recommendation on the grounds that the regulations require that all private vessels, regardless of tonnage or length, must report their arrival in the United States (see § 123.1(c)) and thus these vessels, including those under 30 feet in length, should not be exempt from the fee.

CBP response: CBP, at this time, is not adopting the commenter's recommendation to remove from the regulations the fee exception for private vessels of less than 30 feet in length. These vessels have been excepted from the fee because CBP incurred no processing costs in clearing them. Now, however, CBP requires the operators of these vessels to call when they arrive but does not inspect all of them. CBP will evaluate the matter and consider whether the exception should be retained, removed, or modified.

Conclusion

Based on analysis of the comment received and further review of the matter, CBP believes that the proposed regulatory amendments should be adopted without change.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Regulatory Flexibility Act

This amendment to the Customs Regulations will conform the regulations to already enacted statutory provisions concerning the collection of fees and will enhance the efficiency of the fee payment and collection process to the advantage of the public. Thus, it is certified, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that the regulatory amendments set forth in this document will not have a significant economic impact on a substantial number of small entities. Moreover, the new reporting requirements in this document impose an insignificant amount of additional annual burden on small businesses. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The collections of information contained in § 24.22 have previously been approved by the Office of Management and Budget (OMB) under OMB control number 1515–0154 (User Fees). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that lacks a valid control number.

The collections of information in this final rule are in § 24.22(g)(5)(iv) and (v), pertaining to information required in the statement that must accompany a quarterly fee payment relative to passenger fees. This information is necessary to allow CBP to track and account for the two passenger fees mandated in the Miscellaneous Trade and Technical Corrections Act of 1999. These collections of information are mandatory. The likely respondents and recordkeepers are small businesses or organizations.

The estimated average annual burden associated with the collections of information in this final rule is four hours per respondent/recordkeeper.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the OMB, Attention: Desk Officer for the Department of Homeland Security/Bureau of Customs and Border Protection, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

Drafting Information

The principal author of this document was Bill Conrad, Office of Regulations and Rulings, Customs and Border Protection. Other personnel contributed in its development.

List of Subjects

19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Fees, Financial and accounting procedures, Imports, Taxes, User fees.

19 CFR Part 111

Administrative practice and procedure, Brokers, Customs duties and inspection, Imports, Licensing.

Amendments to the Regulations

■ For the reasons stated in the preamble, parts 24 and 111 of the Customs Regulations (19 CFR parts 24 and 111) are amended as follows:

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

■ 1. The authority citation for part 24 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1505, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701.

* * * * *

■ 2. Section 24.22 of the regulations is amended by:

■ a. Revising paragraphs (b)(3), (b)(4)(iv), and (c)(3);

■ b. In paragraph (d), revising the second sentence of paragraph (d)(3), adding a new sentence at the end of paragraph (d)(4)(ii), and, in the last sentence of paragraph (d)(5), removing the words ", in accordance with the procedures set forth in paragraph (i)(2) of this section";

■ c. Revising paragraphs (e)(1) and (e)(2);

■ d. In paragraph (g), revising paragraph (g)(1), redesignating paragraphs (g)(2) through (g)(7) as (g)(3) through (g)(8), adding new paragraph (g)(2), revising newly designated paragraphs (g)(3), (g)(4), and (g)(5), and, at the end of the last sentence of newly designated paragraph (g)(7), removing the words ", in accordance with the procedures set forth in paragraph (i)(2) of this section"; and

■ e. Revising paragraphs (h) and (i).

The revisions read as follows:

24.22 Fees for certain services.

* * * * *

(b) * * *

(3) *Prepayment.* The vessel operator, owner, or agent may at any time prepay the maximum calendar year amount specified in paragraph (b)(1)(ii) or (b)(2)(ii) of this section, or any remaining portion of that amount if individual arrival fees have already been paid on the vessel for that calendar year. Prepayment must be made at a CBP port office. When prepayment is for the remaining portion of a maximum calendar year amount, certified copies of receipts (Customs Form 368 or 368A) issued for individual arrival fee payments during the calendar year must accompany the payment.

(4) *Exceptions.* * * *

(iv) A ferry except for a ferry that began operations on or after August 1, 1999, and operates south of 27 degrees latitude and east of 89 degrees longitude.

(c) * * *

(3) *Prepayment.* The owner, agent, or person in charge of a commercial vehicle may at any time prepay a fee of $100 to cover all arrivals of that vehicle during a calendar year or any remaining portion of a calendar year. Prepayment must be made in accordance with the procedures set forth in this paragraph and paragraph (i) of this section. Prepayment may be sent by mail, with a properly completed Customs Form 339, Annual User Fee Decal Request, to the following address: Bureau of Customs and Border Protection, Decal Program Administrator, P.O. Box 382030, Pittsburgh, PA 15250–8030. Alternatively, the decal request and prepayment by credit card may be made via the Internet through the "Traveler Information" links at CBP's website (*http://www.cbp.gov*). A third option, prepayment at the port, is subject to the port director's discretion to maintain user fee decal inventories. Once the prepayment has been made under this paragraph, a decal will be issued to be permanently affixed by adhesive to the lower left hand corner of the vehicle windshield or on the left wing window, and otherwise in accordance with the accompanying instructions, to show that the vehicle is exempt from payment of the fee for individual arrivals during the applicable calendar year or any remaining portion of that year.

(d) * * *

(3) *Prepayment.* * * * The prepayment, accompanied by a letter setting forth the railroad car number(s) covered by the payment, the calendar year to which the payment applies, a return address, and any additional information required under paragraph (i) of this section, must be mailed to: Customs and Border Protection, National Finance Center, Collections Section, P.O. Box 68907, Indianapolis, IN 46268 (or, if for overnight delivery, to: the same addressee at 6026 Lakeside Blvd., Indianapolis, IN 46278).

(4) *Statement filing and payment procedures.* * * *

(ii) * * * Payment must be made in accordance with this paragraph and paragraph (i) of this section and must be sent by mail to the following address: Customs and Border Protection, National Finance Center, Collections Section, P.O. Box 68907, Indianapolis, IN 46268 (or, if for overnight delivery, to: the same addressee at 6026 Lakeside Blvd., Indianapolis, IN 46278).

* * * * *

(e) *Fee for arrival of a private vessel or private aircraft.* (1) *Fee.* Except as provided in paragraph (e)(3) of this section, the master or other person in charge of a private vessel or private aircraft must, upon first arrival in any calendar year, proceed to CBP and tender the sum of $25 to cover services provided in connection with all arrivals of that vessel or aircraft during that calendar year. A properly completed Customs Form 339, Annual User Fee Decal Request, must accompany the payment. Upon payment of the annual fee, a decal will be issued to be permanently affixed by adhesive to the vessel or aircraft, in accordance with accompanying instructions, as evidence that the fee has been paid. Except in the case of private aircraft, and aircraft landing at user fee airports authorized under 19 U.S.C. 58b, all overtime charges provided for in this part remain payable notwithstanding payment of the fee specified in this paragraph.

(2) *Prepayment.* A private vessel or private aircraft owner or operator may, at any time during the calendar year, prepay the $25 annual fee specified in paragraph (e)(1) of this section. Prepayment must be made in accordance with the procedures set forth in this paragraph and paragraph (i) of this section. Prepayment may be sent by mail, along with a properly completed Customs Form 339, Annual User Fee Decal Request, to the following address: Customs and Border Protection, Decal Program Administrator, P.O. Box 382030, Pittsburgh, PA 15250–8030. Alternatively, the decal request and prepayment by credit card may be made via the Internet through the "Traveler Information" links at CBP's website (*http://www.cbp.gov*). A third option, prepayment at the port, is subject to the port director's discretion to maintain user fee decal inventories.

* * * * *

(g) *Fees for arrival of passengers aboard commercial vessels and commercial aircraft.* (1) *Fees.* (i) Subject to paragraphs (g)(1)(ii) and (g)(3) of this

section, a fee of $5 must be collected and remitted to CBP for services provided in connection with the arrival of each passenger aboard a commercial vessel or commercial aircraft from a place outside the United States, other than Canada, Mexico, one of the territories and possessions of the United States, or one of the adjacent islands, in either of the following circumstances:

(A) When the journey of the arriving passenger originates in a place outside the United States other than Canada, Mexico, one of the territories or possessions of the United States, or one of the adjacent islands; or

(B) When the journey of the arriving passenger originates in the United States and is not limited to Canada, Mexico, territories and possessions of the United States, and adjacent islands.

(ii) Subject to paragraph (g)(3) of this section, a fee of $1.75 must be collected and remitted to Customs for services provided in connection with the arrival of each passenger aboard a commercial vessel from Canada, Mexico, one of the territories and possessions of the United States, or one of the adjacent islands, regardless of whether the journey of the arriving passenger originates in a place outside the United States or in the United States.

(iii) For purposes of this paragraph (g), the term "territories and possessions of the United States" includes American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands, and the term "adjacent islands" includes Saint Pierre, Miquelon, Cuba, the Dominican Republic, Haiti, Bermuda, the Bahamas, Barbados, Jamaica, the Windward and Leeward Islands, Trinidad, Martinique, and other British, French, and Netherlands territory or possessions in or bordering on the Caribbean Sea.

(iv) For purposes of this paragraph (g), a journey, which may encompass multiple destinations and more than one mode of transportation, will be deemed to originate in the location where the person's travel begins under cover of a transaction which includes the issuance of a ticket or travel document for transportation into the customs territory of the United States.

(v) For purposes of this paragraph (g), the term "passenger" means a natural person for whom transportation is provided and includes an infant whether a separate ticket or travel document is issued for the infant or the infant occupies a seat or is held or carried by another passenger.

(vi) For purposes of paragraph (g)(1)(ii) of this section, the term "commercial vessel" includes any ferry that began operations on or after August 1, 1999, and operates south of 27 degrees latitude and east of 89 degrees longitude.

(vii) In the case of a commercial vessel making a single voyage involving two or more United States ports, the applicable fee prescribed under paragraph (g)(1)(i) or (g)(1)(ii) of this section is required to be charged only one time for each passenger.

(2) *Fee chart.* The chart set forth below outlines the application of the fees specified in paragraphs (g)(1)(i) and (ii) of this section with reference to the place where the passenger's journey originates and with reference to the place from which the passenger arrives in the United States (that is, the last stop on the journey prior to arrival in the United States). In the chart:

(i) SL stands for "Specified Location" and means Canada, Mexico, any territories and possessions of the United States, and any adjacent islands; (ii) The single asterisk (*) means that the journey originating in the United States is limited to travel to one or more Specified Locations;

(iii) The double asterisk (**) means that the journey originating in the United States includes travel to at least one place other than a Specified Location; and

(iv) N/A indicates that the facts presented in the chart preclude application of the fee.

Place where journey originates (see (g)(1)(iv))	Fee status for arrival from SL		Fee status for arrival from other than SL	
	Vessel	Aircraft	Vessel	Aircraft
SL	$1.75	No fee	No fee	No fee
Other than SL or U.S.	$1.75	No fee	$5	$5
U.S.*	$1.75	No fee	N/A	N/A
U.S.**	$1.75	No fee	$5	$5

(3) *Exceptions.* The fees specified in paragraph (g)(1) of this section will not apply to the following categories of arriving passengers:

(i) Crew members and persons directly connected with the operation, navigation, ownership or business of the vessel or aircraft, provided that the crew member or other person is traveling for an official business purpose and not for pleasure;

(ii) Diplomats and other persons in possession of a visa issued by the United States Department of State in class A–1, A–2, C–2, C–3, G–1 through G–4, or NATO 1–6;

(iii) Persons arriving as passengers on any aircraft used exclusively in the governmental service of the United States or a foreign government, including any agency or political subdivision of the United States or foreign government, so long as the aircraft is not carrying persons or merchandise for commercial purposes. Passengers on commercial aircraft under contract to the U.S. Department of Defense are exempted if they have been precleared abroad under the joint DOD/CBP Military Inspection Program;

(iv) Persons arriving on an aircraft due to an emergency or forced landing when the original destination of the aircraft was a foreign airport;

(v) Persons who are in transit to a destination outside the United States and for whom CBP inspectional services are not provided;

(vi) Persons departing from and returning to the same United States port as passengers on board the same vessel without having touched a foreign port or place; and

(vii) Persons arriving as passengers on board a commercial vessel traveling only between ports that are within the customs territory of the United States.

(4) *Fee collection procedures.* (i) Each air or sea carrier, travel agent, tour wholesaler, or other party issuing a ticket or travel document for transportation into the customs territory of the United States is responsible for collecting from the passenger the applicable fee specified in paragraph (g)(1) of this section, including the fee applicable to any infant traveling without a separate ticket or travel document. The fee must be separately identified with a notation "Federal inspection fees" on the ticket or travel document issued to the passenger to indicate that the required fee has been collected. A fee relative to an infant traveling without a ticket or travel document may be identified instead with the notation on a receipt or other document issued for that purpose or to record the infant's travel. If the ticket or travel document, or a receipt or other document issued relative to an infant traveling without a ticket or travel document, is not so marked and was issued in a foreign country, the fee must be collected by the departing carrier upon departure of the passenger from the United States. If the fee is collected at the time of departure from the United States, the carrier making the collection must issue a receipt to the passenger. U.S.-based tour wholesalers who contract for passenger space and issue non-carrier tickets or travel documents must collect the fee in the same manner as a carrier.

(ii) Collection of the fee under paragraph (g)(1)(i) of this section will include the following circumstances:

(A) When a through ticket or travel document is issued covering (or a receipt or other document issued for an infant traveling without a ticket or travel document indicates that the infant's journey is covering) a journey into the customs territory of the United States which originates in and arrives from a place outside the United States other than Canada, Mexico, one of the territories and possessions of the United States, or an adjacent island;

(B) When a return ticket or travel document is issued (or a receipt or other document that indicates an infant traveling without a return ticket or travel document is issued) in connection with a journey which originates in the United States, includes a stop in a place other than Canada, Mexico, one of the territories and possessions of the United States, or an adjacent island, and the return arrival to the United States is from a place other than one of these specified places; and

(C) When a passenger on a journey in transit through the United States to a foreign destination arrives in the customs territory of the United States from a place other than Canada, Mexico, one of the territories and possessions of the United States, or an adjacent island, is processed by CBP, and the journey does not originate in one of these specified places.

(iii) Collection of the fee under paragraph (g)(1)(ii) of this section will include the following circumstances:

(A) When a through ticket or travel document is issued covering (or a receipt or other document issued for an infant traveling without a ticket or travel document indicates that the infant's journey is covering) a journey into the customs territory of the United States from Canada, Mexico, one of the territories and possessions of the United States, or an adjacent island;

(B) When a return ticket or travel document is issued (or a receipt or other document that indicates an infant traveling without a return ticket or travel document is issued) in connection with a journey which originates in the United States and the return arrival to the United States is from Canada, Mexico, one of the territories and possessions of the United States, or an adjacent island; and

(C) When a passenger on a journey in transit through the United States to a foreign destination arrives in the customs territory of the United States from Canada, Mexico, one of the territories and possessions of the United States, or an adjacent island and is processed by CBP.

(5) *Quarterly payment and statement procedures.* Payment to CBP of the fees required to be collected under paragraph (g)(1) of this section must be made no later than 31 days after the close of the calendar quarter in which the fees were required to be collected from the passenger. Payment of the fees must be made, in accordance with the procedures set forth in this paragraph and paragraph (i) of this section, by the party required to collect the fee under paragraph (g)(4)(1) of this section. Each quarterly fee payment must be sent to the following address: Customs and Border Protection, National Finance Center, Collections Section, P.O. Box 68907, Indianapolis, IN 46268 (or, if for overnight delivery, to: the same addressee at 6026 Lakeside Blvd., Indianapolis, IN 46278). Overpayments and underpayments may be accounted for by an explanation with, and adjustment of, the next due quarterly payment to CBP. The quarterly payment must be accompanied by a statement that includes the following information:

(i) The name and address of the party remitting payment;

(ii) The taxpayer identification number of the party remitting payment;

(iii) The calendar quarter covered by the payment;

(iv) The total number of tickets for which fees were required to be collected, the total number of infants traveling without a ticket or travel document for which fees were required to be collected, and the total amount of fees collected and remitted; and

(v) For commercial vessel passengers, the total number of tickets for which fees were required to be collected, the total number of infants traveling without a ticket or travel document for which fees were required to be collected, the total amount of fees collected and remitted to CBP, and a separate breakdown of the foregoing information relative to the $5 vessel passenger fee collected and remitted under paragraph (g)(1)(i) of this section and the $1.75 vessel passenger fee collected and remitted under paragraph (g)(1)(ii) of this section.

* * * * *

(h) *Annual customs broker permit fee.* Customs brokers are subject to an annual fee for each district permit and for a national permit held by an individual, partnership, association, or corporation, as provided in § 111.96(c) of this chapter. The annual fee for each district permit must be submitted to the port through which the broker was granted the permit. The annual fee for a national permit must be submitted to the port through which the broker's license is delivered.

(i) *Information submission and fee remittance procedures.* In addition to any information specified elsewhere in this section, each payment made by mail must be accompanied by information identifying the person or organization remitting the fee, the type of fee being remitted (for example, railroad car, commercial truck, private vessel), and the time period to which the payment applies. All fee payments required under this section must be in the amounts prescribed and must be made in U.S. currency, or by check or money order payable to Customs and Border Protection, in accordance with the provisions of § 24.1 of this part. Authorization for making payments electronically can be obtained by writing to the National Finance Center, Collections Section, 6026 Lakeside Blvd., Indianapolis, IN 46278. Where payment is made at a CBP port, credit cards will be accepted only where the port is equipped to accept credit cards for the type of payment being made. If payment is made by check or money order, the check or money order must be annotated with the appropriate class code. The applicable class codes and payment locations for each fee are as follows:

(1) Fee under paragraph (b)(1) of this section (commercial vessels of 100 net tons or more other than barges and other bulk carriers from Canada or Mexico): class code 491. Payment location: port of arrival for each individual arrival (fee to be collected by CBP at the time of arrival) or prepayment at the port in accordance with paragraph (b)(3) of this section;

(2) Fee under paragraph (b)(2) of this section (barges and other bulk carriers from Canada or Mexico): class code 498. Payment location: port of arrival for each individual arrival (fee to be

collected by CBP at the time of arrival) or prepayment at the port in accordance with paragraph (b)(3) of this section;

(3) Fee under paragraph (c) of this section (commercial vehicles): for each individual arrival, class code 492; for prepayment of the maximum calendar year fee, class code 902. Payment location: port of arrival for each individual arrival (fee to be collected by CBP at the time of arrival) or prepayment in accordance with paragraph (c)(3) of this section;

(4) Fee under paragraph (d) of this section (railroad cars): for each individual arrival (under the monthly payment and statement filing procedure), class code 493; for prepayment of the maximum calendar year fee, class code 903. Payment location: for individual arrivals (monthly payment and statement filing), see paragraph (d)(4)(ii) of this section; for prepayment, see paragraph (d)(3) of this section;

(5) Fee under paragraph (e) of this section (private vessels and aircraft): for private vessels, class code 904; for private aircraft, class code 494. Payment location: port of arrival for each individual arrival (fee to be collected by CBP at the time of arrival) or prepayment in accordance with paragraph (e)(2) of this section;

(6) Fee under paragraph (f) of this section (dutiable mail): class code 496. Payment location: see paragraph (f) of this section;

(7) Fee under paragraph (g)(1)(i) of this section (the $5 fee for commercial vessel and commercial aircraft passengers): class code 495. Payment location: see paragraph (g)(5) of this section;

(8) Fee under paragraph (g)(1)(ii) of this section (the $1.75 fee for commercial vessel passengers): class code 484. Payment location: see paragraph (g)(5) of this section; and

(9) Fee under paragraph (h) of this section (customs broker permits): for district permits, class code 497; for national permits, class code 997. Payment location: see paragraph (h) of this section.

* * * * *

■ 3. Paragraphs (a), (c)(2), and (d) of § 24.25 are amended by removing the reference "§ 142.13(c)" wherever it appears and adding, in its place, the reference "§ 142.13(b)".

PART 111—CUSTOMS BROKERS

■ 4. The authority citation for Part 111 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202, (General Note 23, Harmonized Tariff Schedule of the United States), 1624, 1641.

* * * * *

Section 111.96 also issued under 19 U.S.C. 58c; 31 U.S.C. 9701.

■ 5. Section 111.19 is amended by revising paragraphs (c) and (f)(4) to read as follows:

§ 111.19 Permits.

* * * * *

(c) *Fees.* Each application for a district permit under paragraph (b) of this section must be accompanied by the $100 and $125 fees specified in §§ 111.96(b) and (c). In the case of an application for a national permit under paragraph (f) of this section, the $100 fee specified in § 111.96(b) and the $125 fee specified in § 111.96(c) must be paid at the port through which the applicant's license was delivered (see § 111.15) prior to submission of the application. The $125 fee specified in § 111.96(c) also must be paid in connection with the issuance of an initial district permit concurrently with the issuance of a license under paragraph (a) of this section.

* * * * *

(f) *National permit.* * * *

(4) Attach a receipt or other evidence showing that the fees specified in § 111.96(b) and (c) have been paid in accordance with paragraph (c) of this section.

* * * * *

■ 6. Section 111.96 is amended by revising paragraph (b); in paragraph (c), by removing from the second sentence the words "or upon filing the application for the" and adding in their place the words "or in connection with the filing of an application for a; and by removing from the same sentence the reference "§ 111.19(f)(4)" and adding in its place "§ 111.19(c)". The revision reads as follows:

§ 111.96 Fees.

* * * * *

(b) *Permit fee.* A fee of $100 must be paid in connection with each permit application under § 111.19 to defray the costs of processing the application, including an application for reinstatement of a permit that was revoked by operation of law or otherwise.

* * * * *

Dated: July 21, 2003.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

Approved: July 21, 2003.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–18837 Filed 7–23–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 102

[CBP Dec. 03—11]

Technical Corrections: Rules of Origin of Imported Goods (Other than Textile and Apparel Products) for Purposes of the NAFTA

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule; corrections.

SUMMARY: This document makes technical corrections to the Customs Regulations to reflect the terms of the current version of the Harmonized Tariff Schedule of the United States within the specific tariff shift rules and related requirements for determining the country of origin of imported goods (other than textiles and apparel products) for purposes of the NAFTA.

DATES: These corrections are effective July 24, 2003.

FOR FURTHER INFORMATION CONTACT: Robert Altneu, International Agreements Staff, Office of Regulations and Rulings, Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 572–8754.

SUPPLEMENTARY INFORMATION:

Background

Section 102.20 of the Customs Regulations (19 CFR 102.20) lists specific tariff shift rules and other requirements for determining the country of origin of imported goods (other than textiles and apparel products covered by § 102.21) for certain North American Free Trade Agreement (NAFTA) purposes. Specifically, § 102.20 prescribes tariff rules that may be used to determine when a good is a good of a NAFTA country (United States, Canada or Mexico). *See* the NAFTA Implementation Act, Public Law 103–182, 107 Stat. 437 (December 8, 1993).

Section 102.20 presents the origin rules in terms of tariff classification changes (tariff shifts) and/or specific operations which are required in order for origin to be conferred. The rule applicable to a particular good is determined by that good's tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS) at the time the country of origin determination is made.

Need for Correction

Pursuant to section 1205 of the Omnibus Trade and Competitiveness Act of 1988, the International Trade Commission is required to keep the HTSUS under continuous review and prepare investigations proposing modifications thereto to the President. *See* U.S. International Trade Commission Investigation No. 1205–5 (final), Proposed Modifications to the Harmonized Tariff Schedule of the United States, Publication 3430 (June 2001).

In 2002, the HTSUS was amended which resulted in the transfer of certain goods, for tariff classification purposes, to different or newly created tariff provisions, as well as the removal of tariff provisions currently referenced in § 102.20. *See* Presidential Proclamation 7515, dated December 18, 2001 (66 FR 66549, dated December 26, 2001). The changes to the HTSUS involve product coverage and/or numbering of select headings and subheadings, and are not intended to have any other substantive effect. *See* T.D. 96–48, Rules for Determining the Country of Origin of a Good for Purposes of Annex 311 of the North American Free Trade Agreement, 61 FR 28934 (June 6, 1996) and 60 FR 22312 (May 5, 1995). This document makes technical corrections to § 102.20 to reflect the terms of the current version of the HTSUS. The following examples are offered to illustrate the need for technical corrections to § 102.20.

Example: Pursuant to the existing terms of § 102.20(b), the tariff shift rule for HTSUS headings 1301–1302 permits a change to these headings "from any other chapter." Prior to the 2002 amendments to the HTSUS, poppy straw concentrates were classifiable in Chapter 13 and therefore did not undergo the requisite tariff shift necessary to confer origin. As a result of the 2002 amendments to the HTSUS, certain concentrates of poppy straw were moved from Chapter 13 and provided for under subheading 2939.11.00, HTSUS. Poppy straw concentrates classifiable in this provision (Chapter 29) would now satisfy the tariff shift rule for Chapter 13 pursuant to the existing terms of § 102.20(b). In order to reflect the original scope of the tariff shift rule for Chapter 13 within § 102.20(b), the tariff shift rule needs to be amended to specifically exclude changes from HTSUS subheading 2939.11 from conferring origin.

Example: In 2002, a new subheading was created at 1904.30.00, HTSUS, which provides for "bulgur wheat." This product was previously classified in the basket "other" provision under subheading 1904.90.00, HTSUS. As the new subheading 1904.30.00, HTSUS, is not included in the tariff shift rules set forth in § 102.20(d), the goods classifiable under this provision are currently precluded from having their origin determined pursuant to § 102.20(d). The technical corrections in this document amend the tariff shift rules in § 102.20(d) to add this new tariff provision and the rule "from any other heading," which was the rule for bulgur wheat when it was classified under subheading 1904.90 in the 2001 version of the HTSUS.

Executive Order 12866, Regulatory Flexibility Act, Inapplicability of Prior Public Notice and Comment Procedures and Delayed Effective Date Requirements

This document does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866. Because these amendments merely update the Customs Regulations by reflecting the terms of the 2002 HTSUS within the specific tariff shift rules and related requirements for determining the country of origin of imported goods (other than textiles and apparel products) for purposes of the NAFTA, Customs and Border Protection (CBP) has determined, pursuant to the provisions of 5 U.S.C. 553(b)(B), that prior public notice and comment procedures on this regulation are unnecessary and contrary to the public interest. For the same reasons, pursuant to the provisions of 5 U.S.C. 553(d)(3), there is good cause for dispensing with a delayed effective date. Because the document is not subject to the requirements of 5 U.S.C. 553, as noted, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Drafting Information

The principal author of this document was Ms. Suzanne Kingsbury, Regulations Branch, Office of Regulations and Rulings, CBP. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 102

Customs duties and inspection, Imports, Rules of origin, Trade agreements.

Amendment to the Regulations

■ For the reasons stated above, part 102 of the Customs Regulations (19 CFR part 102) is amended as set forth below.

PART 102—RULES OF ORIGIN

■ 1. The authority citation for part 102 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1624, 3314, 3592.

■ 2. In § 102.20, the table is amended by:

■ a. Removing the entries for "2009.11–2009.30", "2009.40–2009.80", "2816.20", "2816.30", "2841.10–2841.40", "2901.10–2901.90", "2905.49–2905.50", "2907.29–2907.30", "2933.11–2934.90", "3002.90", "3809.91–3809.99", "3817.10–3817.20", "4101–4103", "4104–4107", "4108–4111", "4601", "4811.10–4811.31", "4811.39", "4811.40–4811.90", "4823.11", "4823.20–4823.59", "6812.10", "6812.20", "6812.30", "6812.40", "8101.10–8101.92", "8101.93", "8102.10–8102.92", "8102.93", "8103.10–8113.00", "8508.10–8508.80", "8508.90", "9009.90", "9021.11", "9021.19", and "9112.10–9112.80";

■ b. Adding entries, in numerical order, for "1904.30", "2009.11–2009.39", "2009.41–2009.80", "2816.40", "2841.10–2841.30", "2901.10–2901.29", "2905.49–2905.59", "2907.29", "2933.11–2934.99", "3006.70", "3006.80", "3809.91–3809.93", "3817", "3825.10–3825.69", "3825.90", "4101", "4102", "4103", "4104–4106", "4107", "4112", "4113", "4114.10–4115.20", "4601.20–4601.99", "4811", "4823.12", "4823.20–4823.40", "8101.10–8101.95", "8101.96", "8102.10–8102.95", "8102.96", "8103.20–8113.00", "9009.91–9009.99", "9021.10", and "9112.20";

■ c. Revising the entries in the "Tariff shift and/or other requirements" column adjacent to the "HTSUS" column listing for "1301–1302", "2821.20", "2937–2941", "3001.10", "3001.20–3001.90", "3002.10–3002.90", "3003.10", "3003.20", "3003.31", "3003.39", "3003.40", "3003.90", "3004.10", "3004.20", "3004.31", "3004.32", "3004.39", "3004.40", "3004.50", "3004.90", "3005.10", "3006.10", "3006.20–3006.60", "3402.11", "3402.12–3402.20", "4401–4411", "6812.90", "8467.91–8467.99", "8471.60–8472.90", "8479.10–8479.89", and "9404.30–9404.90"; and

■ d. Adding in paragraph (h) titled "Section VIII: Chapters 41 through 43", in the "Chapter 42 Note" between the clauses "4202.32.40 through 4202.32.95" and "4202.92.15 through 4202.92.30", the reference ", 4202.92.05".

■ The additions and revisions read as follows:

§ 102.20 Specific rules by tariff classification.

* * * * *

HTSUS	Tariff shift and/or other requirements
1301–1302	A change to heading 1301 through 1302 from any other chapter, except from concentrates of poppy straw of subheading 2939.11
1904.30	A change to subheading 1904.30 from any other heading
2009.11–2009.39	A change to subheading 2009.11 through 2009.39 from any other chapter
2009.41–2009.80	A change to subheading 2009.41 through 2009.80 from any other chapter
2816.40	A change to subheading 2816.40 from any other subheading, except a change to oxides, hydroxides and peroxides of strontium of subheading 2816.40 from subheading 2530.90
2821.20	A change to subheading 2821.20 from any other subheading, except from earth color mineral substances of 2530.90 or from subheading 2601.11 through 2601.20
2841.10–2841.30	A change to subheading 2841.10 through 2841.30 from any other subheading, including another subheading within that group
2901.10–2901.29	A change to subheading 2901.10 through 2901.29 from any other subheading, including another subheading within that group, except from acyclic petroleum oils of heading 2710 or from subheading 2711.13, 2711.14, 2711.19, or 2711.29
2905.49–2905.59	A change to subheading 2905.49 through 2905.59 from any other subheading, including another subheading within that group
2907.29	A change to subheading 2907.29 from any other subheading, including a change to phenol-alcohols of subheading 2907.29, from polyphenols of subheading 2907.29, or a change to polyphenols of subheading 2907.29 from phenol-alcohols of subheading 2907.29, except a change from subheading 2707.99
2933.11–2934.99	A change to subheading 2933.11 through 2934.99 from any other subheading, including another subheading within that group
2937–2941	A change to heading 2937 through 2941 from any other heading, including another heading within that group, except a change to concentrates of poppy straw of subheading 2939.11 from poppy straw extract of subheading 1302.19
3001.10	A change to subheading 3001.10 from any other subheading, except from subheading 0206.10 through 0208.90 or 0305.20, heading 0504 or 0510, or subheading 0511.99 if the change from these provisions is not to a powder classified in subheading 3001.10, and except a change from subheading 3006.80
3001.10–3001.90	A change to subheading 3001.20 through 3001.90 from any other subheading, including another subheading within that group, except a change from subheading 3006.80
3002.10–3002.90	A change to subheading 3002.10 through 3002.90 from any other subheading, including another subheading within that group, except a change from subheading 3006.80
3003.10	A change to subheading 3003.10 from any other subheading, except from subheading 2941.10, 2941.20, 3003.20, or 3006.80
3003.20	A change to subheading 3003.20 from any other subheading, except from subheading 2941.30 through 2941.90, or 3006.80
3003.31	A change to subheading 3003.31 from any other subheading, except from subheading 2937.12 or 3006.80
3003.39	A change to subheading 3003.39 from any other subheading, except from hormones or their derivatives classified in Chapter 29, or except from subheading 3006.80
3003.40	A change to subheading 3003.40 from any other subheading, except from heading 1211, subheading 1302.11, 1302.19, 1302.20, 1302.39, or 3006.80 or alkaloids or derivatives thereof classified in Chapter 29
3003.90	A change to subheading 3003.90 from any other subheading, provided that the domestic content of the therapeutic or prophylactic component is no less than 40 percent by weight of the total therapeutic or prophylactic content, or except from subheading 3006.80

HTSUS	Tariff shift and/or other requirements
3004.10	A change to subheading 3004.10 from any other subheading, except from subheading 2941.10, 2941.20, 3003.10, 3003.20, or 3006.80
3004.20	A change to subheading 3004.20 from any other subheading, except from subheading 2941.30 through 2941.90, 3003.20, or 3006.80
3004.31	A change to subheading 3004.31 from any other subheading, except from subheading 2937.12, 3003.31, 3003.39, or 3006.80
3004.32	A change to subheading 3004.32 from any other subheading, except from subheading 3003.39 or 3006.80, or from adrenal corticosteroid hormones classified in Chapter 29
3004.39	A change to subheading 3004.39 from any other subheading, except from subheading 3003.39 or 3006.80, or from hormones or derivatives thereof classified in Chapter 29
3004.40	A change to subheading 3004.40 from any other subheading, except from heading 1211, subheading 1302.11, 1302.19, 1302.20, 1302.39, 3003.40 or 3006.80, or alkaloids or derivatives thereof classified in Chapter 29
3004.50	A change to subheading 3004.50 from any other subheading, except from subheading 3003.90 or 3006.80, or vitamins classified in Chapter 29 or products classified in heading 2936
3004.90	A change to subheading 3004.90 from any other subheading, except from subheading 3003.90 or 3006.80, and provided that the domestic content of the therapeutic or prophylactic component is no less than 40 percent by weight of the total therapeutic or prophylactic content
3005.10	A change to subheading 3005.10 from any other subheading, except from subheading 3006.80 or 3825.30
3006.10	A change to subheading 3006.10 from any other subheading, except from subheading 1212.20, 3006.80, 3825.30, or 4206.10
3006.20–3006.60	A change to subheading 3006.20 through 3006.60 from any other subheading, including another subheading within that group, except from subheading 3006.80 or 3825.30
3006.70	A change to subheading 3006.70 from any other subheading, except from subheading 3006.80 or 3825.30, and provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound
3006.80	A change to subheading 3006.80 from any other chapter
3402.11	A change to subheading 3402.11 from any other subheading, except from mixed alkylbenzenes of heading 3817
3402.12–3402.20	A change to subheading 3402.12 through 3402.20 from any other subheading, including another subheading within that group
3809.91–3809.93	A change to subheading 3809.91 through 3809.93 from any other subheading, including another subheading within that group
3817	A change to heading 3817 from any other heading, including changes from one product to another within that heading, except from subheading 2902.90
3825.10–3825.69	A change to subheading 3825.10 through 3825.69 from any other chapter, except from Chapter 28 through 38, 40 or 90
3825.90	A change to subheading 3825.90 from any other subheading, except from subheading 3824.90, and provided that no more than 60 percent by weight of the good classified in this subheading is attributable to one substance or compound
4101	A change to hides or skins of heading 4101 which have undergone a tanning (including a pre-tanning) process which is reversible from any other good of heading 4101 or from any other chapter; or A change to any other good of heading 4101 from any other chapter
4102	A change to hides or skins of heading 4102 which have undergone a tanning (including a pre-tanning) process which is reversible from any other good of heading 4102 or from any other chapter; or A change to any other good of heading 4102 from any other chapter.
4103	A change to hides or skins of heading 4103 which have undergone a tanning (including a pre-tanning) process which is reversible from any other good of heading 4103 or from any other chapter; or A change to any other good of heading 4103 from any other chapter
4104–4106	A change to heading 4104 through 4106 from any other heading, including another heading within that group, except from hides or skins of heading 4101 through 4103 which have undergone a tanning (including a pre-tanning) process which is reversible, or from heading 4107, 4112 or 4113
4107	A change to heading 4107 from any other heading except from hides or skins of heading 4101 which have undergone a tanning (including a pre-tanning) process which is reversible, or from heading 4104
4112	A change to heading 4112 from any other heading except from hides or skins of heading 4102 which have undergone a tanning (including a pre-tanning) process which is reversible, or from heading 4105
4113	A change to heading 4113 from any other heading except from hides or skins of heading 4103 which have undergone a tanning (including a pre-tanning) process which is reversible, or from heading 4106
4114.10–4115.20	A change to subheading 4114.10 through 4115.20 from any other subheading, including a subheading within that group
4401–4411	A change to heading 4401 through 4411 from any other heading, including another heading within that group; or

HTSUS	Tariff shift and/or other requirements
	A change to strips continuously shaped along the ends and also continuously shaped along the edges or faces of heading 4409 from strips continuously shaped only along the edges or faces of heading 4409
4601.20–4601.99	A change to subheading 4601.20 through 4601.99 from any other subheading, including another heading within that group
4811	A change to paper or paperboard in strips or rolls of a width not exceeding 15 cm of heading 4811 from strips or rolls of a width exceeding 15 cm of heading 4811 or any other heading, except from heading 4817 through 4823; A change to paper or paperboard in rectangular (including square) sheets with the larger dimension not exceeding 36 cm or the other dimension not exceeding 15 cm in the unfolded state of heading 4811 from strips or rolls of a width exceeding 15 cm of heading 4811, paper or paperboard in rectangular (including square) sheets with the larger dimension exceeding 36 cm and the other dimension exceeding 15 cm in the unfolded state of heading 4811 or any other heading, except from heading 4817 through 4823; or A change to any other good of heading 4811 from any other chapter
4823.12	A change to subheading 4823.12 from any other subheading
4823.20–4823.40	A change to subheading 4823.20 through 4823.40 from any other chapter
6812.90	A change to subheading 6812.90 from any other heading; or A change to yarn and thread of subheading 6812.90 from any other subheading including from any other good also classified in subheading 6812.90; or A change to cords and string, whether or not plaited of subheading 6812.90 from any other subheading or from any other good also classified in subheading 6812.90, except from yarn and thread of subheading 6812.90; or, A change to woven or knitted fabric of subheading 6812.90 from any other subheading including from any other good also classified in subheading 6812.90.
8101.10–8101.95	A change to subheading 8101.10 through 8101.95 from any other subheading, including another subheading within that group; or A change to any of the following goods classified in subheading 8101.10 through 8101.95, including from materials also classified in subheading 8101.10 through 8101.95: Matte; unwrought; bars except from rods or profiles; rods except from bars or profiles; profiles except from rods or bars; plates except from sheets or strip; sheets except from plate or strip; strip except from sheets or plate; foil except from sheet or strip
8101.96	A change to subheading 8101.96 from any other subheading, except from subheading 8101.95
8102.10–8102.95	A change to subheading 8102.10 through 8102.95 from any other subheading, including another subheading within that group; or A change to any of the following goods classified in subheading 8102.10 through 8102.95, including from materials also classified in subheading 8102.10 through 8102.95: Matte; unwrought; bars except from rods or profiles; rods except from bars or profiles; profiles except from rods or bars; plates except from sheets or strip; sheets except from plate or strip; strip except from sheets or plate; foil except from sheet or strip
8102.96	A change to subheading 8102.96 from any other subheading, except from subheading 8102.95
8103.20–8113.00	A change to subheading 8103.20 through 8113.00 from any other subheading; including another subheading within that group; or A change to any of the following goods classified in subheading 8103.20 through 8113.00, including from materials also classified in subheading 8103.20 through 8113.00: Matte; unwrought; powder except from flakes; flakes except from powder; bars except from rods or profiles; rods except from bars or profiles; profiles except from rods or bars; wire except from rod; plates except from sheets or strip; sheets except from plate or strip; strip except from sheets or plate; foil except from sheet or strip; tubes except from pipes; pipes except from tubes; tube or pipe fittings except from tubes or pipes; cables/stranded wire/plaited bands
8467.91–8467.99	A change to subheading 8467.91 through 8467.99 from any other heading, except from heading 8407, or except from heading 8501 when resulting from a simple assembly
8471.60–8472.90	A change to printing machines of subheading 8472.90 from any other subheading, except from subheading 8443.11 through 8443.60;

HTSUS	Tariff shift and/or other requirements
	A change to subheading 8471.60 through 8472.90 from any other subheading outside that group, except from subheading 8504.40 or heading 8473; or A change to subheading 8471.60 through 8472.90 from any other subheading within that group or from subheading 8504.90 or from heading 8473, provided that the change is not the result of simple assembly
8479.10–8479.89	A change to printing machines of subheading 8479.89 from any other subheading, except from subheading 8443.11 through 8443.60; or A change to subheading 8479.10 through 8479.89 from any other subheading, including another subheading within that group
9009.91–9009.99	A change to subheading 9009.91 through 9009.99 from any other heading
9021.10	A change to subheading 9021.10 from any other subheading, except from nails classified in heading 7317 or screws classified in heading 7318 when resulting from a simple assembly
9112.20	A change to subheading 9112.20 from any other subheading, except from subheading 9112.90 when that change is pursuant to General Rule of Interpretation 2(a)
9404.30–9404.90	A change to down- and/or feather-filled goods classified in subheading 9404.30 through 9404.90 from any other heading; or For all other goods classified in subheading 9404.30 through 9404.90, a change from any other heading, except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5809 through 5810, 5901, 5903 through 5904, 5906 through 5907, or 6001 through 6006, or subheading 6307.90

Robert C. Bonner,

Commissioner, Customs and Border Protection.

Approved: July 21, 2003.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–18840 Filed 7–23–03; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 133

[CBP Decision 03—12]

RIN 1515–AC98

Civil Fines for Importation of Merchandise Bearing a Counterfeit Mark

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to clarify the limit on the amount of a civil fine which may be assessed by the Bureau of Customs and Border Protection (CBP; a bureau of the new Department of Homeland Security that encompasses much of the agency formerly known as the U.S. Customs Service) when imported merchandise bearing a counterfeit mark is seized under 19 U.S.C. 1526(e). The regulations currently use, as a measurement for determining the limit, the domestic value of merchandise as if it had been genuine, based on the manufacturer's suggested retail price of the merchandise at the time of seizure. The language set forth in the amended regulation adheres more closely to the statutory language, basing the limit of the civil fine on the value of the genuine good according to the manufacturer's suggested retail price (MSRP), without any reference to domestic value. Because the MSRP excludes discounted sales and markdowns, it is usually greater than the good's domestic value. Removing the distinction between the statutory and regulatory language will clear up confusion and result in CBP more uniformly determining the amount of a civil fine when merchandise bearing a counterfeit mark is imported.

EFFECTIVE DATE: August 25, 2003.

FOR FURTHER INFORMATION CONTACT: Lynne O. Robinson, Office of Regulations and Rulings: (202) 572–8743.

SUPPLEMENTARY INFORMATION:

Background

The Anticounterfeiting Consumer Protection Act of 1996 (the ACPA; Pub. L. 104–153, 110 Stat. 1386) was signed into law on July 2, 1996, to ensure that Federal law adequately addresses the scope and sophistication of modern counterfeiting which costs American businesses an estimated $200 billion a year worldwide. Toward that end, the ACPA amended section 526 of the Tariff Act of 1930, as amended (19 U.S.C. 1526), to provide two new tools to fight the importation of counterfeit goods: (1) the seizure, forfeiture, and destruction of merchandise bearing a counterfeit mark under 19 U.S.C. 1526(e) (section 1526(e)), as amended by section 9 of the ACPA, and (2) the imposition of a civil fine under 19 U.S.C. 1526(f) (section 1526(f)), a new section of law created under section 10 of the ACPA.

Under section 1526(e), merchandise bearing a counterfeit mark that is seized and forfeited must be destroyed except where the merchandise is not unsafe or a hazard to health and the trademark owner has consented to its disposal by one of several alternative methods (*see* sections 1526(e)(1),(2) and (3)). This provision ensures that a violator cannot regain possession of the forfeited goods and distribute them in some other manner (including making another attempt to import them at another U.S.

port or into another country). Under section 1526(f)(1), a civil fine is assessed against any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise for sale or public distribution that is seized under section 1526(e). Section 1526(f)(2) provides for a fine for the first seizure in an amount up to the value the imported merchandise would have had if it were genuine, according to the manufacturer's suggested retail price (MSRP). Section 1526(f)(3) provides for a fine for subsequent seizures in the amount of up to twice the value the imported merchandise would have had if it were genuine, according to the MSRP.

On November 17, 1997, Customs published interim regulations in the **Federal Register** (62 FR 61231) to amend § 133.25 of the Customs Regulations (19 CFR 133.25) to reflect the ACPA's amendment of 19 U.S.C. 1526. The interim amendments were adopted as a final rule published in the **Federal Register** (63 FR 51296) on September 25, 1998. A final rule document published in the **Federal Register** (64 FR 9058) on February 24, 1999, redesignated § 133.25 as § 133.27.

Under § 133.27 of the Customs Regulations (19 CFR 133.27), CBP may impose a civil fine, in addition to any other penalty or remedy authorized by law, against any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise bearing a counterfeit mark that is seized under section 1526(e) and § 133.21 of the Customs Regulations (19 CFR 133.21). Under § 133.27(a), the fine imposed for the first violation (seizure) will not be more than the domestic value of the merchandise (as set forth in § 162.43(a)) as if it had been genuine, based on the MSRP of the genuine merchandise at the time of seizure. Under § 133.27(b), the fine imposed for subsequent violations will not be more than twice the domestic value of the merchandise as if it had been genuine, based on the MSRP of the genuine merchandise at the time of seizure.

Upon review of § 133.27, CBP determined that the language of the regulation is inconsistent with the language of section 1526(f). The regulation employs the term "domestic value" (of the merchandise) while the statute does not use that term. Moreover, because the MSRP is exclusive of any sale or markdown of a good at retail, it is usually greater than the good's domestic value. Therefore, setting the maximum amount of a civil fine by means of a formula that includes both the domestic value of the merchandise and the value of genuine merchandise according to the MSRP is confusing and contributes to misunderstanding by both CBP personnel and the public.

A review of the regulatory history indicates that CBP, in using the term "domestic value" in § 133.27 (§ 133.25 when published as a final rule on September 25, 1998), relied on 19 U.S.C. 1606 (section 1606) and § 162.43(a) of the Customs Regulations (19 CFR 162.43(a)). Section 1606 provides that CBP will determine the domestic value of merchandise seized under the Customs laws at the time and place of appraisement. Section 162.43(a) provides that "domestic value" as used in section 1606 means the price for which seized or similar property is freely offered for sale at the time and place of appraisement and in the ordinary course of trade.

While this "domestic value appraisement rule" of section 1606 and § 162.43(a) is applicable in various circumstances involving merchandise seized under the Customs laws, its application is qualified. Under 19 U.S.C. 1600, the procedures set forth in 19 U.S.C. 1602 through 1619, including the use of domestic value as laid out in section 1606, apply to seizures of property under any law enforced or administered by CBP unless such law specifies different procedures. Because section 1526(f) specifies the formula for imposing civil fines for the importation of merchandise bearing a counterfeit mark, the domestic value appraisement rule of section 1606 and § 162.43(a) does not apply.

This conclusion led CBP to publish a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (67 FR 39321) on June 7, 2002, which proposed to remove the term "domestic value" from § 133.27, leaving "manufacturer's suggested retail price" as the applicable measure of the penalty. The notice stated that using the MSRP as the measure for a penalty will: (1) Result in a formula for setting the maximum civil fine under the regulation that more closely follows the language of the statute; (2) clarify for CBP personnel and the importing public the limit of a civil fine; (3) enhance uniformity in CBP's assessment of fines when merchandise bearing a counterfeit mark is imported and seized; and (4) ensure that the Congressional intent in enacting section 1526(f), *i.e.*, to enhance deterrence of trade in counterfeit goods, will be uniformly served. Deterrence is furthered by the fact that the MSRP of a given article (in this case the genuine article that corresponds to imported merchandise bearing a counterfeit mark) is normally greater than its domestic value (because MSRP excludes discounted sales and markdowns) and a civil fine based on the MSRP will normally be greater.

Discussion of Comments

The NPRM invited public comment, and CBP received 15 responses by the close of the comment period. Of the 11 specific comments gleaned from the 15 responses, several agreed with CBP's proposal to amend the regulation and with CBP's reasons for doing so. However, some commenters suggested changes to the proposed amendment which are discussed below:

Comment: A commenter proposed that all previously issued fines under 19 U.S.C. 1526(f) should be canceled as they were not issued pursuant to a valid regulation.

Customs response: CBP disagrees. All penalties were issued in a manner consistent with the provisions of the statute, *i.e.*, fine amounts were finally set based on the MSRP. Thus, CBP will not cancel fines issued prior to the effective date of this amendment.

Comment: A commenter proposed that CBP should not issue a penalty notice assessing a fine under 19 U.S.C. 1526(f) where the manufacturer has not determined a MSRP for its genuine product. Another commenter suggested the use of "domestic resale value" when the MSRP of a genuine good is not available.

Customs response: CBP disagrees. CBP believes that in most cases, there will be a readily available MSRP to use in determining a fine under the statute. Occasional problematic situations will be handled on a case-by-case basis, and reasonable alternatives to using a manufacturer's MSRP, such as using the MSRP of a comparable good, will be employed with the assistance of CBP officers experienced in appraising merchandise.

Comment: A commenter proposed that the regulation incorporate sentencing guidelines used for criminal offenses.

Customs response: CBP disagrees. The sentencing guidelines are used by courts to determine sentences in criminal cases. Section 1526(f) provides for a civil fine which Congress sought to be imposed in addition to any other civil or criminal penalty (see section 1526(f)(4)). There is no indication that Congress wanted CBP to employ criminal sentencing guidelines in assessing penalties under section 1526(f).

Comment: A commenter proposed that because a fine under section 1526(f) is issued at the discretion of CBP, CBP officers should be instructed to impose fines only in the most egregious circumstances.

Customs response: CBP disagrees. The statute makes clear that a first offense and subsequent offenses are subject to penalty. There is no indication that Congress contemplated a range of offenses from minor to serious and a different result for minor offenses, whatever they might be. Further, the legislative history demonstrates strong Congressional resolve to stem the flow of counterfeit merchandise into the United States. Strict enforcement of the civil seizure and fine provisions under the statute are the means to accomplish the deterrence Congress envisioned. Violators will have the chance to submit arguments during the petitioning process for mitigation of the fine.

Comment: A commenter proposed that an importer/petitioner be permitted to challenge CBP's finding that a good bears a counterfeit mark in its petition to mitigate a fine assessed under section 1526(f).

Customs response: CBP does not disagree with this comment. A finding by CBP that a good bears a counterfeit mark forms the basis for a seizure under section 1526(e). A penalty under section 1526(f) follows the seizure under section 1526(e). They are separate proceedings. If a violator can successfully challenge the CBP finding that a good bears a counterfeit mark in the section 1526(e) proceeding, it will not face a section 1526(f) proceeding. In the section 1526(f) proceeding, a petitioner may always raise the issue of whether the good in question bears a counterfeit mark. At that time, CBP may review the validity of the initial finding and may remit the section 1526(f) penalty in appropriate circumstances.

Conclusion

Based on the comments received and the analysis of those comments as set forth above, and after further review of this matter, CBP believes that the proposed regulatory amendments should be adopted without change. CBP notes that with adoption of these amendments to the regulation, CBP will undertake to similarly amend the guidelines it uses to mitigate penalties assessed under section 1526(f). The current guidelines are set forth in T.D. 99–76, 33 Cust. Bull. No. 43, October 27, 1999.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Regulatory Flexibility Act

This amendment to the regulation will result in the language of the regulation more closely adhering to the language of the governing statute, thus clarifying for the public the maximum amount CBP can assess for a civil fine when merchandise bearing a counterfeit mark is imported and seized. Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), it is therefore certified that the amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Bill Conrad, Office of Regulations and Rulings, Customs and Border Protection. However, personnel from other offices contributed in its development.

List of Subjects in 19 CFR Part 133

Counterfeit goods, Penalties, Seizures and forfeitures, Trademarks.

Amendment to the Regulations

■ For the reasons stated in the preamble, part 133 of the Customs Regulations (19 CFR part 133) is amended as follows:

PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

■ 1. The authority citation for part 133 continues to read, in part, as follows:

Authority: 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

* * * * *

■ 2. Section 133.27 is revised to read as follows:

§ 133.27 Civil fines for those involved in the importation of merchandise bearing a counterfeit mark.

In addition to any other penalty or remedy authorized by law, CBP may impose a civil fine under 19 U.S.C. 1526(f) on any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise for sale or public distribution that bears a counterfeit mark resulting in a seizure of the merchandise under 19 U.S.C. 1526(e) (see § 133.21 of this subpart), as follows:

(a) *First violation.* For the first seizure of merchandise under this section, the fine imposed will not be more than the value the merchandise would have had if it were genuine, according to the manufacturer's suggested retail price in the United States at the time of seizure.

(b) *Subsequent violations:* For the second and each subsequent seizure under this section, the fine imposed will not be more than twice the value the merchandise would have had if it were genuine, according to the manufacturer's suggested retail price in the United States at the time of seizure.

Robert C. Bonner,
Commissioner, Customs and Border Protection.

Approved: July 21, 2003.

Timothy E. Skud,
Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–18838 Filed 7–23–03; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Los Angeles–Long Beach 03–005]

RIN 1625–AA00

Safety Zone; Offshore Gran Prix, Huntington Beach, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of the Pacific Ocean near Huntington Beach, California, for the Huntington Beach Offshore Gran Prix powerboat race on August 17, 2003. This temporary safety zone is necessary to provide for public safety in order to protect life and prevent property damage near the racecourse. Persons and vessels are prohibited from entering into or transiting through this safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: This rule is effective from 12 a.m. (noon) to 3 p.m. (PDT) on August 17, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP Los Angeles-Long Beach 03–005] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office/Group Los Angeles-Long Beach, 1001 South Seaside Avenue, Building 20, San Pedro, California, 90731 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Rob Griffiths, Assistant Chief of Waterways Management Division, at (310) 732–2020.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Final dates and other logistical details for the event were not provided to the Coast Guard in time to draft and publish an NPRM or a temporary final rule 30 days prior to the event, as the event would occur before the rulemaking process was complete. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to provide a safety zone to ensure the safety of the spectators and other vessels in the area.

For the same reasons stated above, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The Coast Guard is establishing a temporary safety zone in the navigable waters of the Pacific Ocean near Huntington Beach, California, for the Huntington Beach Offshore Gran Prix powerboat race on August 17, 2003. Pacific Offshore Powerboat Racing Association is sponsoring the race consisting of approximately 25 offshore powerboats, operating at high speeds, racing along a multi-lap oval course located offshore Huntington Beach between the hours of 12 a.m. (noon) and 3 p.m. (PDT). The course is centered between the entrance to Anaheim Bay and the Huntington Beach Pier, approximately 1/4 nautical mile offshore. This temporary safety zone is necessary to provide for public safety in order to protect life and prevent property damage near the racecourse.

The Coast Guard will close the waterway to all vessels and persons 30 minutes prior to the start of the race and will reopen the waterway approximately 30 minutes after the conclusion of the race if the Coast Guard determines that it is safe to do so. A broadcast notice to mariners will be issued for this event.

Discussion of Rule

The description and coordinates for this temporary safety zone are provided for in the regulatory text section below. This area is approximately 1,500 yards wide and 8,000 yards long and is geographically centered between Anaheim Bay and Huntington Beach Pier near Huntington Beach, California.

Persons and vessels are prohibited from entering into or transiting through this temporary safety zone during the race. By prohibiting persons and vessels from entering the waters near the racecourse, the risk of loss of life and damage to property will be significantly reduced.

U.S. Coast Guard personnel will enforce this safety zone. The Coast Guard may be assisted by other Federal, State, or local agencies, which during this event may include the Coast Guard Auxiliary, Huntington Beach Lifeguards, and Huntington Beach Police.

Section 165.23 of Title 33, Code of Federal Regulations, prohibits any unauthorized person or vessel from entering or remaining in a safety zone. Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232. Pursuant to 33 U.S.C. 1232, any violation of the safety zone described herein, will be punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and *in rem* liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Due to the limited scope of the safety zone, the fact that vessel traffic can pass safely around the zone, and the short duration of the zone, the Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule will possibly affect the following entities, some of which may be small entities: The owners and operators of private and commercial vessels intending to transit or anchor in the affected area. The impact to these entities would not, however, be significant since this zone will encompass only a small portion of the waterway for a limited period of time and vessels can safely navigate around the safety zone.

For these reasons and the reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a safety zone.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a new § 165.T11–073 to read as follows:

§ 165.T11–073 Safety Zone; Offshore Gran Prix, Huntington Beach, CA.

(a) *Location.* The following described area constitutes a temporary safety zone: All waters of the Pacific Ocean near Huntington Beach, California, from surface to bottom, encompassed by lines connecting points beginning at latitude 33°43′ 36″ N, longitude 118(05'0" W; then to 33°43′16″ N, 118°05′39″ W; then to 33°39′54″ N, 118°02′15″ W; then to 33°40′31″ N, 118°01′39″ W; and then returning to the point of origin. (Datum: NAD 1983).

(b) *Effective period.* This section is effective from 12 noon to 3 p.m. (PDT) on August 17, 2003.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within the safety zone is prohibited unless authorized by the Coast Guard Captain of the Port, Los Angeles-Long Beach, or his or her designated representative.

(2) Persons desiring to transit the area of the safety zone may contact the Captain of the Port at telephone number (800) 221–8724 or the Patrol Commander on VHF-FM channel 16 (156.8 MHz). If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

Dated: July 14, 2003.

John M. Holmes,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach, California.

[FR Doc. 03–18762 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF EDUCATION

34 CFR Part 263

RIN 1810–AA93

Indian Education Discretionary Grant Programs

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the discretionary grant programs administered under Title VII of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind Act of 2001, Public Law No. 107–110. The programs governed by this title include grants for the Professional Development program and the Demonstration Grants for Indian Children program. These regulations identify specific application and program requirements that must be set forth in order for applications to be considered for funding, and the requirements for the payback provisions that apply to the Professional Development program. These regulations will govern the grant application process for new awards under both programs for fiscal year 2003 and thereafter, including the payback provisions for the Professional Development program.

EFFECTIVE DATE: These regulations are effective July 24, 2003.

FOR FURTHER INFORMATION CONTACT: Cathie Martin. Telephone: (202) 260–1683 or via Internet: *cathie.martin@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Background

On January 8, 2002, the Demonstration Grants for Indian Children program and Professional Development program were revised and recodified as sections 7121 and 7122 of subpart 2 of part A of title VII of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by Public Law 107–110, the No Child Left Behind Act of 2001. On July 22, 2002, the Secretary published in the **Federal Register** (67 FR 47695) a final rule with request for comment on these programs. No comments were received, and no substantive changes are made to these regulations.

These regulations incorporate the specific program requirements for both programs. They also include the Secretary's application requirements for the Professional Development program that must be met in order for applications to be considered for funding, and the requirements concerning the payback provisions applicable to that program. The Secretary is required, under Section 7122(h) of the ESEA, to establish regulations governing payback and reporting provisions for the Professional Development program.

Analysis of Comments and Changes

No comments were received in response to the Secretary's invitation to comment on the final rule that suggested changes or clarification of the content of these regulations. Consequently, the Secretary has determined that no substantive changes are necessary.

Executive Order 12866

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the regulations are those resulting from statutory requirements and those we have determined to be necessary for administering these programs effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Waiver of Proposed Rulemaking

Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. Section 437(d)(2) of the General Education Provisions Act (GEPA), however, exempts from this rulemaking requirement those rules where the Secretary determines it would cause extreme hardship to the beneficiaries of the program that would be affected by those rules. The Secretary, in accordance with section 437(d)(2) of GEPA, has decided to issue these rules without first publishing them for public comment in order to ensure timely and high quality grant awards.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

The small entities that are affected by these regulations are small local educational agencies (LEAs) receiving Federal funds under this program. However, the regulations will not have a significant economic impact on the small LEAs affected because the regulations do not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control number assigned to the collection of information in these final regulations at the end of the affected sections of the regulations.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Assessment of Educational Impact

Based on the response to the final regulations with invitation to comment and our own review, we have determined that these final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.299 Indian Education—Special Programs.)

List of Subjects in 34 CFR Part 263

Elementary and secondary education, Grant programs-education, Indians-education, Reporting and recordkeeping requirements, Scholarships and fellowships.

Dated: July 21, 2003.

Eugene W. Hickok,

Under Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary revises part 263 of title 34 of the Code of Federal Regulations to read as follows:

PART 263—INDIAN EDUCATION DISCRETIONARY GRANT PROGRAMS

Subpart A—Professional Development Program

Sec.

263.1 What is the Professional Development program?
263.2 Who is eligible to apply under the Professional Development program?
263.3 What definitions apply to the Professional Development program?
263.4 What training costs may a Professional Development program include?
263.5 What priority is given to certain projects and applicants?
263.6 How does the Secretary evaluate applications for the Professional Development program?
263.7 What are the requirements for a leave of absence?
263.8 What are the payback requirements?
263.9 When does payback begin?
263.10 What are the payback reporting requirements?

Subpart B—Demonstration Grants for Indian Children Program

263.20 What definitions apply to the Demonstration Grants for Indian Children program?
263.21 What priority is given to certain projects and applicants?

Authority: 20 U.S.C. 7441 and 7442, unless otherwise noted.

Subpart A—Professional Development Program

§ 263.1 What is the Professional Development program?

(a) The Professional Development program provides grants to eligible entities to—

(1) Increase the number of qualified Indian individuals in professions that serve Indian people;

(2) Provide training to qualified Indian individuals to become teachers, administrators, teacher aides, social workers, and ancillary educational personnel; and

(3) Improve the skills of qualified Indian individuals who serve in the education field.

(b) The Professional Development program requires individuals who receive training to—

(1) Perform work related to the training received under the program and that benefits Indian people, or to repay all or a prorated part of the assistance received under the program; and

(2) Report to the Secretary on the individual's compliance with the work requirement.

(Authority: 20 U.S.C. 7442)

§ 263.2 Who is eligible to apply under the Professional Development program?

(a) In order to be eligible for either pre-service or in-service training programs, an applicant must be an eligible entity which means—

(1) An institution of higher education, including an Indian institution of higher education;

(2) A State educational agency in consortium with an institution of higher education;

(3) A local educational agency in consortium with an institution of higher education;

(4) An Indian tribe or Indian organization in consortium with an institution of higher education; or

(5) A Bureau of Indian Affairs (Bureau)-funded school.

(b) Bureau-funded schools are eligible applicants for—

(1) An in-service training program; and

(2) A pre-service training program when the Bureau-funded school applies in consortium with an institution of higher education that is accredited to provide the coursework and level of degree required by the project.

(c) Eligibility of an applicant requiring a consortium with any institution of higher education, including Indian institutions of higher education, requires that the institution of higher education be accredited to provide the coursework and level of degree required by the project.

(Authority: 20 U.S.C. 7442)

§ 263.3 What definitions apply to the Professional Development program?

The following definitions apply to the Professional Development program:

Bureau-funded school means a Bureau school, a contract or grant school, or a school for which assistance is provided under the Tribally Controlled Schools Act of 1988.

Department means the U.S. Department of Education.

Dependent allowance means costs for the care of minor children under the age of 18 who reside with the training participant and for whom the participant has responsibility. The term does not include financial obligations for payment of child support required of the participant.

Expenses means tuition and required fees; health insurance required by the institution of higher education; room, personal living expenses, and board at or near the institution; dependent allowance; and instructional supplies.

Full course load means the number of credit hours that the institution requires of a full-time student.

Full-time student means a student who—

(1) Is a degree candidate for a baccalaureate or graduate degree;

(2) Carries a full course load; and

(3) Is not employed for more than 20 hours a week.

Good standing means a cumulative grade point average of at least 2.0 on a 4.0 grade point scale in which failing grades are computed as part of the average, or another appropriate standard established by the institution.

Graduate degree means a post-baccalaureate degree awarded by an institution of higher education beyond the undergraduate level.

Indian means an individual who is—

(1) A member of an Indian tribe or band, as membership is defined by the Indian tribe or band, including any tribe or band terminated since 1940, and any tribe or band recognized by the State in which the tribe or band resides;

(2) A descendant of a parent or grandparent who meets the requirements of paragraph (1) of this definition;

(3) Considered by the Secretary of the Interior to be an Indian for any purpose;

(4) An Eskimo, Aleut, or other Alaska Native; or

(5) A member of an organized Indian group that received a grant under the Indian Education Act of 1988 as it was in effect October 19, 1994.

Indian institution of higher education means an accredited college or university within the United States cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994, any other institution that qualifies for funding under the Tribally Controlled College or University Assistance Act of 1978, and the Navajo Community College, authorized in the Navajo Community College Assistance Act of 1978.

Indian organization means an organization that—

(1) Is legally established—

(i) By tribal or inter-tribal charter or in accordance with State or tribal law; and

(ii) With appropriate constitution, by-laws, or articles of incorporation;

(2) Has as its primary purpose the promotion of the education of Indians;

(3) Is controlled by a governing board, the majority of which is Indian;

(4) If located on an Indian reservation, operates with the sanction or by charter of the governing body of that reservation;

(5) Is neither an organization or subdivision of, nor under the direct control of, any institution of higher education; and

(6) Is not an agency of State or local government.

Induction services means services provided after the participant completes his or her training program and includes, at a minimum, these activities:

(1) Mentoring, coaching, and consultation services for the participant to improve performance,

(2) Access to research materials and information on teaching and learning,

(3) Periodic assessment of, and feedback sessions on, the participant's performance, provided in coordination with the participant's supervisor,

(4) Periodic meetings or seminars for participants to enhance collaboration, feedback, and peer networking and support.

In-service training means professional activities and opportunities designed to

enhance the skills and abilities of individuals in their current areas of employment.

Institution of higher education means an accredited college or university within the United States that awards a baccalaureate or post-baccalaureate degree.

Participant means an Indian individual who is being trained under the Professional Development program.

Payback means work-related service or cash reimbursement to the Department of Education for the training received under the Professional Development program.

Pre-service training means training to Indian individuals to prepare them to meet the requirements for licensing or certification in a professional field requiring at least a baccalaureate degree.

Professional development activities means in-service training offered to enhance the skills and abilities of individual participants.

Secretary means the Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

Stipend means that portion of an award that is used for room and board and personal living expenses.

Note: Only full-time students are eligible for stipends.

Undergraduate degree means a baccalaureate (bachelor's) degree awarded by an institution of higher education.

(Authority: 20 U.S.C. 7442 and 7491)

§ 263.4 What training costs may a Professional Development program include?

(a) A Professional Development program may include, as training costs, assistance to either—

(1) Fully finance a student's educational expenses; or

(2) Supplement other financial aid—including Federal funding other than loans—for meeting a student's educational expenses.

(b) The Secretary announces the expected maximum amounts for stipends and other costs—including training costs—in the annual application notice published in the **Federal Register**.

(Authority: 20 U.S.C. 7442)

§ 263.5 What priority is given to certain projects and applicants?

(a) The Secretary awards a total of 5 points to an application submitted by an Indian tribe, Indian organization, or an Indian institution of higher education that is eligible to participate in the Professional Development program. A consortium application of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 of EDGAR and includes an Indian tribe, Indian organization or Indian institution of higher education will be considered eligible to receive the 5 priority points. The consortium agreement, signed by all parties, must be submitted with the application in order to be considered as a consortium application.

(b) The Secretary awards a total of 5 points to an application submitted by a consortium of eligible applicants that includes a tribal college or university and that designates that tribal college or university as the fiscal agent for the application. The consortium application of eligible entities must meet the requirements of 34 CFR 75.127 through 75.129 of EDGAR to be considered eligible to receive the 5 priority points. These competitive preference points are in addition to the 5 competitive preference points that may be given under paragraph (a) of this section. The consortium agreement, signed by all parties, must be submitted with the application in order to be considered as a consortium application.

(c) The Secretary may give absolute preference reserving all or a portion of the funds available for new awards under the Professional Development program, to only those applications that meet one of the following priorities selected for a fiscal year. The Secretary announces the absolute priority selected in the annual application notice published in the **Federal Register**.

(1) *Pre-Service training for teachers.* This priority provides support and training to Indian individuals to complete a pre-service education program that enables these individuals to meet the requirements for full State certification or licensure as a teacher through—

(i) Training that leads to a bachelor's degree in education before the end of the award period; or

(ii) For States allowing a degree in a specific subject area, training that leads to a bachelor's degree in the subject area as long as the training meets the requirements for full State teacher certification or licensure; or

(iii) Training in a current or new specialized teaching assignment that requires at least a bachelor's degree and in which a documented teacher shortage exists; and

(iv) One-year induction services after graduation, certification, or licensure, provided during the award period to graduates of the pre-service program while they are completing their first year of work in schools with significant Indian student populations.

Note to paragraph (c)(1): In working with various institutions of higher education and State certification/licensure requirements, we found that States requiring a degree in a specific subject area (*e.g.*, specialty areas or teaching at the secondary level) generally require a Master's degree or fifth-year requirement before an individual can be certified or licensed as a teacher. These students would be eligible to participate as long as their training meets the requirements for full State certification or licensure as a teacher.

(2) *Pre-service administrator training.* This priority provides—

(i) Support and training to Indian individuals to complete a master's degree in education administration that is provided before the end of the award period and that allows participants to meet the requirements for State certification or licensure as an education administrator; and

(ii) One year of induction services, during the award period, to participants after graduation, certification, or licensure, while they are completing their first year of work as administrators in schools with significant Indian student populations.

(Authority: 20 U.S.C. 7442 and 7473)

§ 263.6 How does the Secretary evaluate applications for the Professional Development program?

The following criteria, with the total number of points available in parenthesis, are used to evaluate an application for a new award:

(a) *Need for project (5) points.* In determining the need for the proposed project, the Secretary considers the following:

(1) The extent to which the proposed project will prepare personnel in specific fields in which shortages have been demonstrated; and

(2) The extent to which specific gaps or weaknesses in local capacity to provide, improve, or expand services that address the needs of the community or region have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(b) *Significance (10) points.* In determining the significance of the proposed project, the Secretary considers the following:

(1) The potential contribution of the proposed project to increase effective strategies for teaching and student achievement;

(2) The likelihood that the proposed project will build local capacity to provide, improve, or expand services that address the needs of the target population; and

(3) The likelihood that the proposed project will result in system change or improvement.

(c) *Quality of the project design (15) points.* The Secretary considers the following factors in determining the quality of the design of the proposed project:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable;

(2) The extent to which the design of the proposed project reflects up-to-date knowledge from scientifically-based research and effective practices on how to improve teaching and learning to support student proficiency in meeting rigorous academic standards;

(3) The extent to which performance feedback and continuous improvement of participant performance are integral to the design of the proposed project; and

(4) The extent to which the proposed project will establish linkages with other appropriate agencies and organizations providing educational services to the population of students to be served by the participants.

(d) *Quality of project services (15) points.* The Secretary considers the following factors:

(1) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge of scientifically-based research and effective practice;

(2) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in the achievement of students as measured against rigorous academic standards; and

(3) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of the training and project services provided.

(e) *Quality of project personnel (15) points.* The Secretary considers the following factors when determining the quality of the personnel who will carry out the proposed project:

(1) The qualifications, including relevant training and experience, of the project director;

(2) The qualifications, including relevant training and experience, of key project personnel; and

(3) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(f) *Adequacy of resources (10) points.* In determining the adequacy of support for the proposed project, the Secretary considers the following factors:

(1) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project;

(2) The extent to which the costs are reasonable in relation to the design of the program, program objectives, number of persons to be served, and the anticipated results and benefits; and

(3) The potential for the incorporation of project purposes, activities, or benefits into the ongoing program of the agency or organization at the end of Federal funding.

(g) *Quality of the management plan (15) points.* In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(1) The adequacy of procedures for ensuring feedback and continuous improvement in the performance of program participants in meeting the needs of the population they are to serve;

(2) The adequacy of the management plan to achieve the objectives of the proposed project during the award period, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks; and

(3) The extent to which the time commitments of the project director and other key personnel are appropriate and adequate to meet the objectives of the proposed project.

(h) *Quality of the project evaluation (15) points.* In determining the quality of the evaluation, the Secretary considers the following factors:

(1) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the context within which the project operates and the effectiveness of project implementation strategies;

(2) The extent to which the methods of evaluation will provide performance feedback on participants and permit periodic assessment of progress toward achieving the intended outcomes; and

(3) The extent to which the methods of evaluation include the use of objective output measures that are directly related to the intended outcomes of the project and will produce both quantitative and qualitative data to the extent possible.

(Approved by the Office of Management and Budget under control number 1810–0580)

(Authority: 20 U.S.C. 7442)

§ 263.7 What are the requirements for a leave of absence?

(a) A participant shall submit a written request for a leave of absence to the project director not less than 30 days prior to withdrawal or completion of a grading period, unless an emergency situation has occurred and the project director chooses to waive the prior notification requirement.

(b) The project director may approve a leave of absence, for a period not longer than one academic year, provided a training participant has successfully completed at least one academic year.

(c) The project director permits a leave of absence only if the institution of higher education certifies that the training participant is eligible to resume his or her course of study at the end of the leave of absence.

(Approved by the Office of Management and Budget under control number 1810–0580)

(Authority: 20 U.S.C. 7442)

§ 263.8 What are the payback requirements?

(a) Individuals receiving assistance under the Professional Development program are required to—

(1) Sign an agreement, at the time of selection for training, to meet the provisions of the payback requirement; and

(2) Perform work related to the training received and that benefits Indian people; or

(3) Repay all or a prorated part of the assistance received.

(b) The period of time required for a work-related payback is equivalent to the total period of time for which training was actually received under the Professional Development program.

(c) The cash payback required shall be equivalent to the total amount of funds received and expended for training received under these programs and may be prorated based on any approved work-related service the participant performs.

(Approved by the Office of Management and Budget under control number 1810–0580)

(Authority: 20 U.S.C. 7442)

§ 263.9 When does payback begin?

(a) For all participants who complete their training under the Professional Development program, payback shall begin within six months from the date of completion of the training.

(b) For participants who do not complete their training under the Professional Development program; payback shall begin within six months from the date the fellow leaves the Professional Development program, unless he or she continues as a full-time student without interruption, in a program leading to a degree in an accredited institution of higher education.

(1) If the participant leaves the Professional Development program, but plans to continue his or her education as a full-time student, the Secretary may defer the payback requirement until the participant has completed his or her educational program. Written requests for deferment shall be submitted to the Secretary within 30 days of leaving the Professional Development program and shall provide the following information—

(i) The name of the accredited institution the student will be attending;

(ii) A copy of the letter of admission from the institution;

(iii) The degree being sought; and

(iv) The projected date of completion.

(2) After approval by the Secretary for deferment of the payback provision on the basis of continuing as a full-time student, former participants are required to submit to the Secretary a status report from an academic advisor or other authorized representative of the institution of higher education, showing verification of enrollment and status, after every grading period.

(Approved by the Office of Management and Budget under control number 1810–0580)

(Authority: 20 U.S.C. 7442)

§ 263.10 What are the payback reporting requirements?

(a) *Notice of intent.* Participants shall submit to the Secretary, within 30 days of completion of their training program, a written notice of intent to complete a work-related or cash payback, or to continue in a degree program as a full-time student.

(b) *Work-related payback.* If the participant proposes a work-related payback, the written notice of intent shall include information explaining how the work-related service is related to the training received and how it benefits Indian people.

(1) For work-related service, the Secretary shall review each participant's payback plan to determine if the work-related service is related to the training received and that it benefits Indian people. The Secretary approves the payback plan if a determination is made that the work-related service to be performed is related to the training received and benefits Indian people, meets all applicable statutory and regulatory requirements, and is otherwise appropriate.

(2) The payback plan for work-related service shall identify where, when, the type of service, and for whom the work will be performed.

(3) A participant shall notify the Secretary in writing of any change in the work-related service being performed within 30 days of such change.

(4) For work-related payback, individuals shall submit a status report every six months beginning from the date the work-related service is to begin. The reports shall include a certification from the participant's employer that the service(s) have been performed without interruption.

(5) For participants that initiate, but cannot complete, a work-related payback, the payback reverts to a cash payback that is prorated based upon the amount of time the work-related payback has been completed.

(c) *Cash payback.* If a cash payback is to be made, the Department will contact the participant to establish an appropriate schedule for payments.

(Approved by the Office of Management and Budget under control number 1810–0580)

(Authority: 20 U.S.C. 7442)

Subpart B—Demonstration Grants for Indian Children Program

§ 263.20 What definitions apply to the Demonstration Grants for Indian Children program?

The following definitions apply to the Demonstration Grants for Indian Children program:

Federally supported elementary or secondary school for Indian students means an elementary or secondary school that is operated or funded, through a contract or grant, by the Bureau of Indian Affairs.

Indian means an individual who is—

(1) A member of an Indian tribe or band, as membership is defined by the Indian tribe or band, including any tribe or band terminated since 1940, and any tribe or band recognized by the State in which the tribe or band resides;

(2) A descendant of a parent or grandparent who meets the requirements described in paragraph (1) of this definition;

(3) Considered by the Secretary of the Interior to be an Indian for any purpose;

(4) An Eskimo, Aleut, or other Alaska Native; or

(5) A member of an organized Indian group that received a grant under the Indian Education Act of 1988 as it was in effect October 19, 1994.

Indian institution of higher education means an accredited college or university within the United States cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994, any other institution that qualifies for funding under the Tribally Controlled College or University Assistance Act of 1978, and the Navajo Community College, authorized in the Navajo Community College Assistance Act of 1978.

Indian organization means an organization that:

(1) Is legally established:

(i) By tribal or inter-tribal charter or in accordance with State or tribal law; and

(ii) With appropriate constitution, by-laws, or articles of incorporation;

(2) Has as its primary purpose the promotion of the education of Indians;

(3) Is controlled by a governing board, the majority of which is Indian;

(4) If located on an Indian reservation, operates with the sanction or by charter of the governing body of that reservation;

(5) Is neither an organization or subdivision of, nor under the direct control of, any institution of higher education; and

(6) Is not an agency of State or local government.

Professional development activities means in-service training offered to enhance the skills and abilities of individuals that may be part of, but not exclusively, the activities provided in a Demonstration Grants for Indian Children program.

(Authority: 20 U.S.C. 7441)

§ 263.21 What priority is given to certain projects and applicants?

(a) The Secretary awards a total of 5 competitive preference priority points to an application that presents a plan for combining two or more of the activities described in section 7121(c) of the Act over a period of more than one year.

(b) The Secretary awards a total of 5 competitive preference priority points to an application submitted by an Indian tribe, Indian organization, or Indian institution of higher education that is eligible to participate in the Demonstration Grants for Indian Children program. A consortium of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 of EDGAR and includes an Indian tribe, Indian organization, or Indian institution of higher education will be considered eligible to receive the five (5) priority points. The consortium agreement, signed by all parties, must be submitted with the application in order to be considered as a consortium application. These competitive preference points are in addition to the 5 competitive preference points that may be given under paragraph (a) of this section.

(c) The Secretary may give absolute preference reserving all or a portion of the funds available for new awards under the Demonstration Grants for Indian Children program, to only those applications that meet one or more of the following priorities selected for a fiscal year. The Secretary announces the absolute priority selected in the annual application notice published in the **Federal Register**.

(1) School readiness projects that provide age appropriate educational programs and language skills to three- and four-year-old Indian students to prepare them for successful entry into school at the kindergarten school level.

(2) Early childhood and kindergarten programs, including family-based preschool programs, emphasizing school readiness and parental skills.

(3) College preparatory programs for secondary school students designed to increase competency and skills in challenging subject matters, including math and science, to enable Indian students to successfully transition to postsecondary education.

(Authority: 20 U.S.C. 7441 and 7473)

[FR Doc. 03–18873 Filed 7–23–03; 8:45 am]

BILLING CODE 4000–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 01–185; FCC 03–15]

Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects one citation in the rule changes published in the **Federal Register** of June 5, 2003, regarding Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands. This correction cites to 47 CFR 25.136, the correct rule section affected by the rule change.

DATES: Effective on July 24, 2003.

FOR FURTHER INFORMATION CONTACT: Breck Blalock or James Ball, Policy Division, International Bureau, (202) 418–1460.

SUPPLEMENTARY INFORMATION: On June 5, 2003, the **Federal Register** published a summary of the final rule in the above captioned proceeding. As published, the final rule contains errors which may prove to be misleading and need to be clarified. In final rule FR Doc. 03–14081, beginning on page 33649 in the issue of June 5, 2003, make the following corrections:

On page 33649 in the 2nd column, remove instruction number 6 and the text.

Dated: July 16, 2003.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–18641 Filed 7–23–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 01–185; FCC 03–15]

Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects one citation in the rule changes published in the **Federal Register** of June 5, 2003, regarding Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands. This correction cites to 47 CFR 25.136, the correct rule section affected by the rule change.

DATES: Effective on July 24, 2003.

FOR FURTHER INFORMATION CONTACT: Breck Blalock or James Ball, Policy Division, International Bureau, (202) 418–1460.

SUPPLEMENTARY INFORMATION: The FCC published a document in the **Federal Register** of June 5, 2003, (68 FR 33640). In FR Doc. 03–14081, published in the **Federal Register** of June 5, 2003, (68 FR 33640), § 25.136 was inadvertently identified. In Rule FR Doc. 03–14081 published on June 5, 2003 (68 FR 33640) make the following correction.

On page 33649, in the second column,

■ 6. Section 25.136 is amended by revising the section heading and adding paragraphs (f), (g), and (h) of this section to read as follows:

§ 25.136 Licensing provisions for the L-Band mobile-satellite service.

* * * * *

(f) *Incorporation of ancillary terrestrial component base station into an L-band Mobile-Satellite Service System.* Any licensee authorized to construct and launch an L-band mobile-satellite system may construct ancillary terrestrial component (ATC) base stations as defined in § 25.201 at its own risk and subject to the conditions specified in this subpart any time after commencing construction of the mobile-satellite service system.

(g) *Pre-operational testing.* An MSS ATC licensee may, without further authority from the Commission, conduct equipment tests for the purpose of making such adjustments and measurements as may be necessary to assure compliance with the terms of the technical provisions of its MSS license, its ATC authorization, the rules and regulations in this part and the applicable engineering standards. An MSS licensee may not offer ATC service to the public for compensation during pre-operational testing. In order to operate any ATC base stations, such a licensee must meet all the requirements set forth in § 25.147 and must have been granted ATC authority through a modification of its space station license.

(h) *Aircraft.* All portable or hand-held transceiver units (including transceiver units installed in other devices that are themselves portable or hand-held) having operating capabilities in the 1626.5–1660.5 MHz and 1525–1559 MHz bands shall bear the following statement in a conspicuous location on the device: "This device may not be operated while on board aircraft. It must be turned off at all times while on board aircraft."

* * * * *

Dated: July 16, 2003.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–18642 Filed 7–23–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2258; MM Docket No. 02–15, RM–10364]

Radio Broadcasting Services; Glenpool and Okmulgee, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Shamrock Communications, Inc., reallots Channel 231C1 from Okmulgee to Glenpool, Oklahoma, and modifies Station KTSO(FM)'s license accordingly. *See* 67 FR 5961, February 8, 2002. Channel 231C1 can be allotted to Glenpool in compliance with the Commission's minimum distance separation requirements at petitioner's presently authorized site. The coordinates for Channel 231C1 at Glenpool are 35–50–02 North Latitude and 96–07–28 West Longitude.

DATES: Effective August 28, 2003.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 02–15, adopted July 9, 2003, and released July 14, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 54, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Oklahoma is amended by adding Glenpool, Channel 231C1 and by removing Okmulgee, Channel 231C1.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–18832 Filed 7–23–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2038; MM Docket No. 02–382; RM–10615]

Radio Broadcasting Services; Bridgeton, Pennsauken, NJ

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects the amendatory language to a final rule published in the **Federal Register** of July 15, 2003, regarding Radio Broadcasting Services in Bridgeton and Pennsauken, New Jersey. The amendatory language stated the wrong channel number for the community of Bridgeton. This document corrects the channel number for the community of Bridgeton.

DATES: Effective August 7, 2003.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

Correction

■ In final rule FR Doc. 03–17832, published July 15, 2003 (68 FR 41724), make the following correction.

■ On page 41724, in the third column of § 73.202(b), correct the amendatory language to read as follows:

■ 2. Section 73.202(b), the Table of FM Allotments under New Jersey, is amended by removing Bridgeton, Channel 299B and by adding Pennsauken, Channel 300A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–18835 Filed 7–23–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 89–1199; MM Docket No. 88–185; RM–6288, RM–6499, RM–6747]

Radio Broadcasting Services; Montgomery, WV

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document editorially amends 47 CFR 73.202(b), the Table of FM Allotments for the community of Montgomery, West Virginia, which was published in the **Federal Register** of Tuesday, October 10, 1989, (54 FR 41446). The Federal Communications Commission published in the **Federal Register**, of October 10, 1989, a document which added Channel 227A to Montgomery, West Virginia. *See* 54 FR 41446. This document amends 47 CFR 73.202(b), the Table of FM Allotments under West Virginia, by adding Montgomery, Channel 227A.

DATES: Effective on July 24, 2003.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION:

Background

The Federal Communications Commission published a document in the **Federal Register** of October 10, 1989, (54 FR 41446), which amended Section 73.202(b), the FM Table of Allotments under West Virginia by adding Montgomery, Channel 227A; by adding Channel 233B1 and removing Channel 233A at Dunbar; by removing Mount Gay-Shamrock, Channel 234A; and under Kentucky, by adding Channel 234C3 at Paintsville.

Need for Correction

Part 73 of title 47 of the Code of Federal Regulations no longer contains under Section 73.202(b), the FM Table of Allotments under West Virginia Channel 227A at Montgomery, therefore this community and channel needs to be added to the Code of Federal Regulations.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Accordingly, 47 CFR part 73 is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation of part 73 continues to read as follows:

Authority: 47 U.S.C. 54, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by adding Montgomery, Channel 227A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–18836 Filed 7–23–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF43

Endangered and Threatened Wildlife and Plants; Final Rule To Remove the Douglas County Distinct Population Segment of Columbian White-Tailed Deer From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: In this action, we, the U.S. Fish and Wildlife Service, establish two distinct population segments (DPS) of the Columbian white-tailed deer (*Odocoileus virginianus leucurus*): the Douglas County DPS and the Columbia River DPS; and remove the Douglas County DPS from the List of Threatened and Endangered Wildlife. We have also determined that the Douglas County, Oregon, DPS is no longer an endangered or threatened species pursuant to the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*), based on the best available data indicating that the Douglas County DPS has recovered. This DPS has increased from about 2,500 animals, in 1983, to over 6,000 today. The range of the population has also increased. This robust population growth, coupled with habitat acquired and protected for the population, has brought the Douglas County DPS to the point where a change in status is appropriate. This recovery has primarily been the result of habitat acquisition and management for the deer, hunting restrictions, and the application of local ordinances designed to protect the Douglas County DPS.

The delisting of the Douglas County DPS will not change the endangered status of the Columbia River DPS. It remains fully protected by the Act.

DATES: This rule is effective July 24, 2003.

ADDRESSES: The administrative file for this rule is available for inspection, by appointment, during normal business hours at the Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2600 SE. 98th Ave., Suite 100, Portland, Oregon 97266.

FOR FURTHER INFORMATION CONTACT: Cat Brown, Wildlife Biologist at the Oregon Fish and Wildlife Office (see **ADDRESSES** section) (telephone 503/231–6179; facsimile 503/231–6195).

SUPPLEMENTARY INFORMATION:

Background

The Columbian white-tailed deer is the westernmost representative of 30 subspecies of white-tailed deer in North and Central America (Halls 1978; Baker 1984). It resembles other white-tailed deer subspecies, ranging in size from 39 to 45 kilograms (kg) (85 to 100 pounds (lb)) for females and 52 to 68 kg (115 to 150 lb) for males (Oregon Department of Fish and Wildlife (ODFW) 1995). Generally a red-brown color in summer, and gray in winter, the subspecies has distinct white rings around the eyes and a white ring just behind the nose (ODFW 1995). Its tail is relatively long, brown on top with a white fringe, and white below (Verts and Carraway 1998). The subspecies was formerly distributed throughout the bottomlands and prairie woodlands of the lower Columbia, Willamette, and Umpqua River basins in Oregon and southern Washington (Bailey 1936; Verts and Carraway 1998). Early accounts suggested this deer was locally common, particularly in riparian areas along major rivers (Gavin 1978). The decline in Columbian white-tailed deer numbers was rapid with the arrival and settlement of pioneers in the fertile river valleys (Gavin 1978). Conversion of brushy riparian land to agriculture, urbanization, uncontrolled sport and commercial hunting, and perhaps other factors apparently caused the extirpation of this deer over most of its range by the early 1900s (Gavin 1978). By 1940, a population of 500 to 700 animals along the lower Columbia River in Oregon and Washington, and a disjunct population of 200 to 300 in Douglas County, Oregon, survived (Crews 1939; Gavin 1984; Verts and Carraway 1998). These two remnant populations remain geographically separated by about 320 kilometers (km) (200 miles (mi)), much of which is unsuitable or discontinuous habitat.

Columbian white-tailed deer in Douglas County are most often associated with riparian habitats, but studies have shown that the deer uses a variety of lower elevation habitat types. Radio-tagged deer in a recent study selected riparian habitats more frequently than any other habitat type, but were also found using all the other habitat types in the study area (*i.e.*, grassland, grass shrub, oak savannah, oak-hardwood woodland, oak-hardwood savannah shrub, oak-hardwood conifer, conifer, and urban/suburban yards) (Ricca 1999). This study found that the areas of concentrated use within a deer's home range were generally located within 200 meters (m) (650 feet (ft)) of streams (Ricca 1999), which confirms earlier work (Smith 1981) suggesting that habitat type is less important than distance to a stream. Open areas (grasslands and oak savanna) are used for feeding between dusk and dawn (Ricca 1999). The diet of Columbian white-tailed deer consists of forbs (broad-leaved herbaceous plants), shrubs, grasses, and a variety of other foods such as lichens, mosses, ferns, seeds, and nuts (Lowell Whitney, Oregon State University, pers. comm. 2001).

Population estimates for the Douglas County DPS have demonstrated a fairly steady upward trend since management for the population began (see Table 1).

TABLE 1.—REVISED ANNUAL TREND COUNTS (BASED ON SPRING CENSUSES) AND POPULATION ESTIMATES (BASED ON LINEAR REGRESSION) WITH CONFIDENCE INTERVALS (LOWER AND UPPER POPULATION ESTIMATES) FOR THE DOUGLAS COUNTY DPS OF COLUMBIAN WHITE-TAILED DEER, 1975–2002 (LINDSAY BALL, ODFW, IN LITT. 2002).

Year	Annual trend count (deer/mile)	Population estimate	95% confidence intervals	
			Lower population estimate	Upper population estimate
1975	1.7	1158	333	1984
1976	1.9	1340	468	2212
1977	1.95	1522	603	2441
1978	2	1704	738	2670
1979	2.3	1886	873	2899
1980	2.3	2068	1008	3128
1981	2.2	2250	1143	3357
1982	2.1	2432	1278	3585

TABLE 1.—REVISED ANNUAL TREND COUNTS (BASED ON SPRING CENSUSES) AND POPULATION ESTIMATES (BASED ON LINEAR REGRESSION) WITH CONFIDENCE INTERVALS (LOWER AND UPPER POPULATION ESTIMATES) FOR THE DOUGLAS COUNTY DPS OF COLUMBIAN WHITE-TAILED DEER, 1975–2002 (LINDSAY BALL, ODFW, IN LITT. 2002).—Continued

Year	Annual trend count (deer/mile)	Population estimate	95% confidence intervals	
			Lower population estimate	Upper population estimate
1983	2.5	2614	1413	3814
1984	2.7	2796	1548	4043
1985	2.6	2978	1683	4272
1986	2.2	3160	1818	4501
1987	4.1	3342	1953	4730
1988	5.6	3523	2088	4958
1989	5	3705	2223	5187
1990	6.6	3887	2358	5416
1991	7.7	4069	2493	5645
1992	5.6	4251	2628	5874
1993	6.6	4433	2763	6103
1994	5.3	4615	2898	6331
1995	4.3	4797	3033	6560
1996	4.3	4979	3168	6789
1997	5.5	5161	3303	7018
1998	4.6	5343	3438	7247
1999	7.7	5525	3573	7476
2000	5.4	5707	3708	7705
2001	6.9	5888	3843	7933
2002	8.6	6070	3978	8162

In the 1930s, the Columbian white-tailed deer population in Douglas County was estimated at 200 to 300 individuals within a range of about 79 square kilometers (km²) (31 square miles (mi²)) (Crews 1939). By 1983, the population had increased to about 2,500 deer (U.S. Fish and Wildlife Service (Service) 1983). The population has continued to grow and is currently estimated at over 6,000 deer (Lindsay Ball, ODFW, *in litt.* 2002). Along with this increase in numbers, the range also has expanded to the north and west, and the subspecies now occupies an area of approximately 800 km² (309 mi²) (ODFW 1995). In 2002, the ODFW estimated that there were 8.6 deer per mile along its standard census routes, with a sex ratio of 24 adult bucks to 100 adult does, and 34 fawns to 100 does (Lindsay Ball, ODFW, *in litt.* 2002). A recent 3-year study of the population found relatively low annual survival rates for adult deer (74 percent over 3 years), although the results were within the range of white-tailed deer survival rates in other parts of the country (Ricca *et al.* 2002). Fawn survival rates in this study were on the lower extreme of rates reported for other white-tailed deer populations (Ricca *et al.* 2002); the authors of the study suggest that poor fawn survival may be linked to high deer density in Douglas County. Annual population surveys indicate that deer density has doubled in the last 20 years, and the population may be at or near carrying capacity in portions of its range within Douglas County (Ricca 1999).

The State of Oregon has had a long history of research and active management of the Douglas County DPS of Columbian white-tailed deer. In 1927, the Oregon State Legislature established a White-tailed Deer Refuge in Douglas County. Early studies estimated a population of 200 to 300 Columbian white-tailed deer on the refuge, and an approximately equal number of Columbian black-tailed deer (*Odocoileus hemionus columbiana*) (Crews 1939). The State of Oregon (ODFW 1995) subsequently considered white-tailed deer in Douglas County to be black-tailed deer or a hybrid between the black-tailed deer and the Columbian white-tailed deer; the refuge was dissolved in 1952, and regulated hunting resumed (Gavin 1984). In 1978, Oregon recognized the white-tailed deer population in Douglas County as the Columbian white-tailed deer, and prohibited hunting of white-tailed deer in that County (Service 1983).

Since 1978, the ODFW has conducted spring and fall surveys to estimate population size, recruitment, and sex ratios (ODFW, *in litt.* 2001). Standard routes for spotlight surveys have been established along 76.4 km (47.5 mi) of road within the known range of the population (ODFW, *in litt.* 2001). The fall deer census counts both Columbian white-tailed deer and Columbian black-tailed deer throughout Douglas County, from November 15 through December 15 in most years, on nights with suitable survey conditions. All deer observed are classified by species, sex, and age (*i.e.*, fawns, does, or bucks by antler class). This allows an estimate of fawn production going into winter (fawns per 100 adults), and in the case of black-tailed deer, the post hunting season buck survival (bucks per 100 does) (Steve Denney, ODFW, *in litt.* 2001).

The spring census is similar to the fall count. On warm, wet nights in March, the ODFW conducts a spotlight count along the standard road routes, recording both white-tailed and black-tailed deer. All deer observed are recorded and classified as either adults or fawns; this provides an estimate of overwinter fawn survival (fawns per 100 does) and population trend (expressed as deer per mile) (S. Denney, ODFW, *in litt.* 2001).

The State also implements an active research program, in coordination with us and the Oregon State University, to investigate deer habitat use and movement of radio-tagged individuals (Ricca 1999; ODFW 1995; ODFW, *in litt.* 2001). Since 1998, for example, the ODFW has been transplanting radio-tagged Columbian white-tailed deer from areas of high deer densities to Mildred Kanipe Memorial Park in northwestern Douglas County. The goals of the project have been to boost numbers of deer in the park, accelerate range expansion to the north, to refine capture and transplanting techniques, and to move deer from areas where damage has been a concern (S. Denney, ODFW, *in litt.* 2001).

The Columbian white-tailed deer was listed as endangered by the State with the passage of the Oregon Endangered Species Act in 1987 (ODFW 1995). In 1995, the ODFW reviewed the status of the Columbian white-tailed deer in Oregon (both Douglas County and Columbia River populations) and concluded that the subspecies had recovered (ODFW 1995). At the November 1995 meeting of the Oregon Fish and Wildlife Commission, the Commissioners voted unanimously to remove the Columbian white-tailed deer from the State of Oregon List of Threatened and Endangered Species; the subspecies was placed on the State's Sensitive Species List for continued monitoring (Oregon Fish and Wildlife Commission 1995). Oregon continues to prohibit hunting of white-tailed deer in all western Oregon big-game management units (ODFW 2001).

Distinct Vertebrate Population Segment

The Douglas County and Columbia River populations of the Columbian white-tailed deer meet the requirements for consideration as distinct population segments as described in our Policy Regarding the Recognition of Distinct Vertebrate Population Segments, published in the **Federal Register** on February 7, 1996 (61 FR 4722). For a population to be considered as a distinct vertebrate population segment, two elements are considered: (1) The discreteness of the population segment in relation to the remainder of the species to which it belongs; and (2) the significance of the population segment to the species to which it belongs.

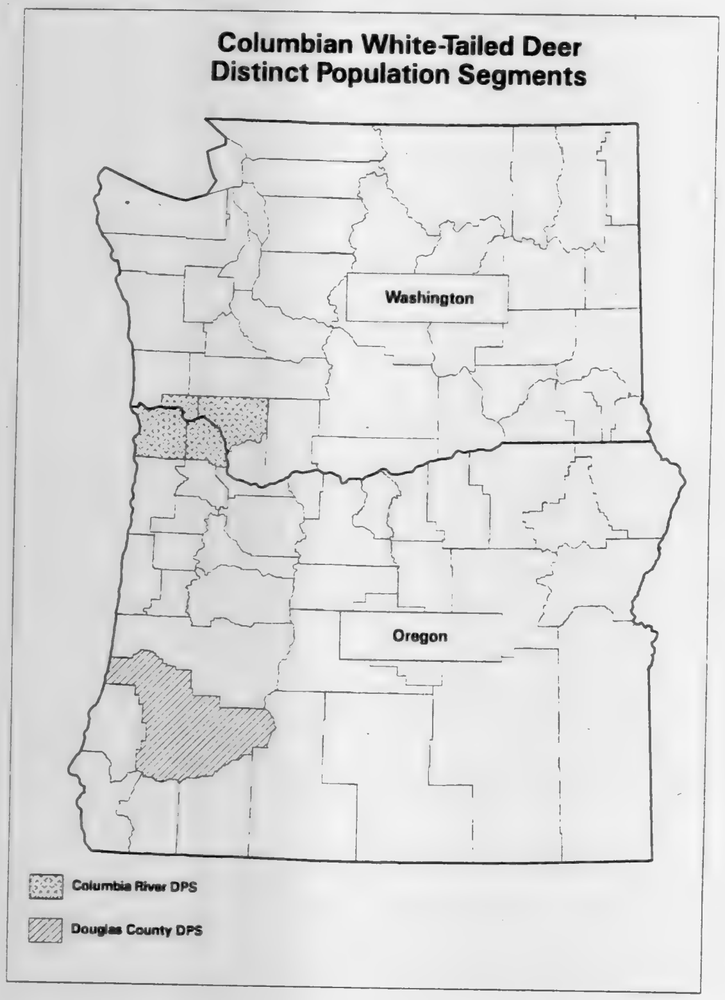
A population may be considered discrete if it is: (1) Separated from other populations of the same taxon by physical, physiological, ecological, or behavioral factors; or (2) limited by international governmental boundaries where there are differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms. The Douglas County and Columbia River populations of Columbian white-tailed deer are discrete because they are geographically isolated from each other. Historically, this subspecies ranged from the south end of Puget Sound in Washington south to the Umpqua River drainage in Oregon (Bailey 1936). At the present time, the subspecies is found in two locations (along the Columbia River in Washington and Oregon, and in Douglas County, Oregon), which are separated by over 320 km (200 mi), much of which is discontinuous or unsuitable habitat. Columbian white-tailed deer are not migratory and appear to restrict their movements to relatively small home ranges (ODFW 1995). Laboratory research has also demonstrated that there may be a relatively large genetic difference between the Douglas County and Columbia River populations of Columbian white-tailed deer (Gavin and May 1988), which indicates a lack of gene flow between the two populations. As a result, the wide geographic gap in suitable habitat between the Columbia River and Douglas County populations demonstrates that this subspecies has two discrete population segments.

The following issues are considered when determining significance: (1) Persistence of the discrete population segment in an unusual or unique setting for the taxon; (2) evidence that loss of the segment would result in a significant gap in the range of the taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or (4) evidence that the population segment differs from other populations of the species in its genetic characteristics.

The Douglas County and Columbia River populations are considered significant under our policy based on two factors. First, the loss of either of the Douglas County or Columbia River population would result in a significant gap in the range of the subspecies. The loss of either population would substantially constrict the current range of the subspecies. Second, each population has genetic characteristics that are not found in the other population (Gavin and May 1988). Because the Douglas County and Columbia River populations of the Columbian white-tailed deer are discrete and significant, they warrant recognition as Distinct Vertebrate Population Segments under the Act. The following map illustrates the location of these two DPSs.

BILLING CODE 4310–55–P

Map of the Columbian white-tailed deer, Douglas County DPS and Columbia River DPS



BILLING CODE 4310–55–C

Review of the Columbian White-tailed Deer Recovery Plan

In accordance with the Act, we appointed a team of experts (the Columbian White-tailed Deer Recovery Team (Recovery Team)) to develop a recovery plan for the Columbian white-tailed deer. We approved the original Columbian White-tailed Deer Recovery Plan (Recovery Plan) in 1977, and the Recovery Team revised the Recovery Plan in 1983 to include the newly recognized Douglas County population (Service 1983).

Because of the distance between the Columbia River and Douglas County populations and differences in habitats and threats, the Recovery Plan addresses the recovery of each population separately. The Recovery Plan identified the following objectives for the Douglas County population: (1) To downlist the population to threatened, the Recovery Plan recommended the maintenance of 1,000 Columbian white-tailed deer in a viable status on lands within the Umpqua Basin of Douglas County, while keeping the relative proportions of deer habitat within the known range of the subspecies from further deterioration; and (2) to delist the population, it recommended the maintenance of a minimum population of 500 animals from the larger population, to be distributed on 2,226 hectares (ha) (5,500 acres (ac)) of suitable, secure habitat within the Umpqua Basin of Douglas County on lands owned, controlled, protected, or otherwise dedicated to the conservation of the species (Service 1983).

The Recovery Plan defined secure habitat as those areas that are protected from adverse human activities (*e.g.*, heavy, unregulated grazing by domestic animals, clearing of woody plants) in the foreseeable future, and that are relatively safe from natural phenomena that would destroy their value to the subspecies (Service 1983). The Recovery Plan did not define secure habitat to include only publicly owned lands; rather, it provided further guidance on secure habitat by stating that local entities, including planning commissions, county parks departments, and farm bureaus, could secure habitat through zoning ordinances, land-use planning, parks and greenbelts, agreements, memoranda of understanding, and other mechanisms available to local jurisdictions (Service 1983). The Recovery Plan also recommended that private conservation organizations be encouraged to secure habitat for Columbian white-tailed deer through easements, leases, acquisitions, donations, or trusts (Service 1983).

The Recovery Plan identified a series of tasks that the Recovery Team recommended to meet the downlisting and delisting objectives for the Douglas County population of Columbian white-tailed deer (Service 1983). These tasks fall into five main categories: (1) Tracking population status; (2) Ensuring viability of the population through enforcement of existing laws and regulations; (3) Securing and protecting habitat to allow the population to increase; (4) Studying the ecology of the population and assessing the threat of hybridization with Columbian black-tailed deer; and (5) Encouraging public support for Columbian white-tailed deer restoration. Nearly all of the tasks listed in the Recovery Plan (Service 1983) have been accomplished. We provide a summary of recovery tasks, along with the status of their implementation, below.

1. *Tracking population status.* Tasks in this first category have been fully implemented. The ODFW, with our funding, has surveyed the population yearly since 1978. Data collected include spring and fall trend counts, estimates of overall population size, recruitment, and sex ratios. Surveys indicate that the population has grown from about 2,500 animals in 1982 to about 6,000 in 2002 (Service 1983; Lindsay Ball, ODFW, *in litt.* 2002). The Recovery Plan included a model to estimate the minimum population size necessary to avoid extinction; using this model, the Recovery Team concluded that a population of 500 deer in Douglas County could be considered safe from the potentially deleterious effects of inbreeding (Service 1983). The most recent estimate of the overall population of the Douglas County DPS is over 6,000 deer (ODFW, *in litt.* 2001).

2. *Ensuring viability of the population through enforcement of existing laws and regulations.* Tasks concerning enforcement of existing laws to protect the Columbian white-tailed deer have been fully implemented. It is currently illegal to take Columbian white-tailed deer under State law (ODFW 2001), and as proscribed in section 9 of the Act. Our biologists have coordinated with our agency's Law Enforcement Special Agents and our National Fish and Wildlife Forensics Laboratory in Ashland, Oregon, to refer illegal take cases to the Oregon State Police, which has successfully prosecuted a number of Columbian white-tailed deer poaching cases (Sgt. Joe Myhre, Oregon State Police, pers. comm. 2001). See additional discussion under Factor D, below, for more detail. We have also engaged in section 7 consultations with Federal agencies for those actions which were determined to have the potential to affect Columbian white-tailed deer.

3. *Securing and protecting habitat to allow the population to increase.* Since 1978, over 2,830 ha (7,000 ac) have come into public ownership and are being managed in a manner that is compatible with the needs of Columbian white-tailed deer (see full description of these parcels in Factor A, below). This acreage includes the North Bank Habitat Management Area (NBHMA), managed by the Bureau of Land Management (BLM), and Mildred Kanipe Memorial Park. Smaller parcels owned by Douglas County and The Nature Conservancy (TNC) also provide secure refugia for deer. In addition, Douglas County has used its authorities to conserve the Columbian white-tailed deer. The Douglas County Comprehensive Plan (Douglas County Planning Department (DCPD) 2000a), county zoning ordinances (DCPD 2000b), and the Douglas County Deer Habitat Protection Program (DCPD 1995), also have been essential in protecting open space and rural agricultural landscapes used by the deer.

The Recovery Plan recommended that we and the ODFW develop a long-term management plan for the Douglas County population of Columbian white-tailed deer (Service 1983). Although a single, population wide plan has not been prepared, this task has been accomplished, in part, through site-specific management plans for the NBHMA (BLM 2001), Douglas County's Habitat Protection Program for the Columbian white-tailed deer (DCPD 1995), and Mildred Kanipe Memorial Park (Douglas County Parks Department 2001a).

4. *Studying the ecology of the population and assessing the threat of hybridization with Columbian black-tailed deer.* Several tasks in the Recovery Plan recommended research on the ecology of the population. A substantial amount of research has been conducted by the ODFW and the Oregon State University (Smith 1981; ODFW 1995; Ricca 1999; Whitney 2001). The BLM used information from these studies to develop the NBHMA management plan, the largest property managed for the deer. Laboratory studies and field observations have been used to gauge the extent of hybridization between Columbian white-tailed deer and Columbian black-tailed deer in Douglas County (Gavin and May 1988; Kistner and Denney 1991; ODFW 1995); none of these studies has indicated that hybridization is a threat to the population.

5. *Encouraging public support for Columbian white-tailed deer restoration.* The final set of tasks in the Recovery Plan deals with providing the public with information about the Columbian white-tailed deer restoration program. This task continues to be implemented by our biologists and the ODFW. The ODFW has produced informational materials on the deer population in Douglas County for the public and landowners. Our staff and the ODFW also provide information and recommendations to private landowners who have Columbian white-tailed deer on their property.

Recovery plans are intended to guide and measure recovery. The Act provides for delisting whenever the best available information indicates that a species, subspecies, or distinct population segment is no longer endangered or threatened. The Douglas County DPS population is robust and expanding, and substantial habitat has been protected by Federal acquisition and Douglas County's zoning and open space regulations. The recovery plan calls for

500 deer on 5,500 acres of secure habitat. There are currently over 6,000 deer and over 7,000 acres of secure public lands managed to benefit the deer, plus zoning and other regulations and plans protecting additional habitat. It is not feasible, absent considerable expense, to demonstrate that 500 specific deer live entirely within secure lands managed for their benefit, as most deer move between public and private lands. However, the overall population increase and amount of secure habitat, as discussed previously, indicate that these recovery goals have been met. Accordingly, as discussed below in the listing factor analysis, we believe that the improved status of the Columbian white-tailed deer in Douglas County justifies its removal from the List of Endangered and Threatened Wildlife. We have reached this conclusion with the concurrence of the Recovery Team (Recovery Team, *in litt.* 2001).

Previous Federal Action

On March 11, 1967, the Columbian white-tailed deer was listed in the **Federal Register** as an endangered species under the Endangered Species Preservation Act of 1966 (32 FR 4001). At that time, the subspecies was believed to occur only along the Columbia River, whereas the population in Douglas County was believed to be hybridized with the Columbian black-tailed deer (ODFW 1995). On March 8, 1969, we again published in the **Federal Register** (34 FR 5034) a list of fish and wildlife species threatened with extinction under the Endangered Species Conservation Act of 1969. This list again included the Columbian white-tailed deer. On August 25, 1970, we published a proposed list of endangered species, which included the Columbian white-tailed deer, in the **Federal Register** (35 FR 13519) as part of new regulations implementing the Endangered Species Conservation Act of 1969. This rule became final on October 13, 1970 (35 FR 16047). Species listed as endangered on the above-mentioned lists were automatically included in the Lists of Endangered and Threatened Wildlife when the Endangered Species Act was enacted in 1973. In 1978, the State of Oregon determined that white-tailed deer in the Roseburg area belonged to the Columbian subspecies (ODFW 1995). This determination resulted in that population being considered as endangered, together with the Columbia River population.

On May 11, 1999, we published a proposed rule to remove the Douglas County DPS of the Columbian white-tailed deer from the List of Endangered and Threatened Wildlife; in the same notice, we also proposed to establish two distinct vertebrate population segments of the subspecies (the Douglas County and Columbia River populations) (64 FR 25263). We accepted public comments until July 12, 1999. We reopened the public comment period on November 3, 1999, to allow peer review of the proposed rule (64 FR 59729) until November 18, 1999. We opened the public comment period again from December 29, 1999, through January 13, 2000, in order to provide three peer reviewers an opportunity to review previous public comments, and to accept any new public comments on the proposed rule (64 FR 72992).

In response to significant new information, on June 21, 2002, we published a supplemental proposed rule to establish the Douglas County DPS and the Columbia River DPS, and to remove the Douglas County DPS from the Federal list of Endangered and Threatened Wildlife (67 FR 42217). We accepted public comments until August 20, 2002. During the public comment period we also solicited and received independent peer review of the supplemental proposed rule. We held a public hearing on the supplemental proposal to delist the Douglas County DPS on July 30, 2002, in Roseburg, Oregon.

Summary of Comments on the Supplemental Proposed Rule

We summarized and responded to comments on the 1999 proposed rule and subsequent comment period reopenings in the supplemental proposed rule published in June 2002. We will not repeat those comments and our responses here. In the June 21, 2002, supplemental proposed rule and associated notifications, we requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. We contacted appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties and asked them to comment. We also requested peer review from three independent scientists. We published newspaper notices in the Roseburg, Oregon, *News-Review*, and in *The Oregonian*, of Portland, Oregon, on June 21, 2002, which invited general public comment. We received 16 written comments, including those of 1 Federal agency, the State of Oregon, 3 county and municipal governments, 3 peer reviewers, and 8 individuals or groups; at the public hearing, we received 7 oral comments. Of the comments received, 22 supported and 1 opposed the proposed action.

Comments received during the comment period are addressed in the following summary. Comments of a similar nature are grouped into three general issues.

Issue 1: We received seven comments concerning the post-delisting monitoring plan. Commenters recommended continuation of the ODFW's population trend surveys, and also suggested that the monitoring plan include tracking of predation and disease occurrence in the Douglas County DPS, as well as an assessment of habitat quality on managed parcels. Commenters also recommended that the post-delisting monitoring period extend beyond the minimum requirement of 5 years, saying that 10 years may be more appropriate.

Our Response: Section 4(g) of the Act requires us to implement a system, in cooperation with the State, to monitor the status of delisted recovered species for a minimum of 5 years. We are working closely with the State to develop and implement an effective post-delisting monitoring plan for the Douglas County DPS. The monitoring program will include spring and fall census counts, analysis of key population parameters, tracking of disease levels, and an assessment of habitat protection efforts. The duration of the post-delisting monitoring plan has not yet been determined, but will not be less than 5 years post delisting, as required by the Act. See the Monitoring section of this final rule, below, for more information.

Issue 2: We received five comments regarding the need for a translocation program. Two of the commenters suggested using a trap-and-transplant program to alleviate the effects of overcrowding in portions of the Douglas County DPS's range. One commenter requested that we postpone delisting until a third population (in addition to the Douglas County and Columbia River populations) had been established via translocation from the Douglas County DPS in the Willamette Valley. Two of the peer reviewers offered views on translocation. One advised that translocation is appropriate for establishing new populations, but would not be a useful method to achieve density reduction in the existing population; the other reviewer stressed that the fate of translocated deer should be followed to determine the efficacy of such a program.

Our Response: Translocation is likely to be an important component of the management of the Douglas County DPS after delisting. In order to augment the Douglas County DPS in the northern portion of its current range, the State will likely continue to use trap-and-transplant operations, which may also be a useful tool to manage specific problem deer. Establishing a third population in the Willamette Valley before delisting the Douglas County DPS, is not necessary. A review of the threats to the Douglas County DPS (see the Summary of Factors Affecting the Species section, below) shows that it no longer requires the protection of the Act; therefore, delisting the Douglas County DPS is warranted.

Issue 3: In its comments, the ODFW provided recommendations on additional research projects for the Douglas County DPS. Among the research projects the State would like to see carried out: Additional genetic studies to elucidate affinities among the Douglas County DPS, the Columbia River DPS, and the Idaho white-tailed deer; a new habitat mapping program for the Douglas County DPS; and new research on parasite and disease levels and their effects on the Douglas County DPS.

Our Response: Continued research is likely to be needed for future management of the Douglas County DPS and is appropriate for the State to lead, because the State will assume management responsibility for the population after delisting.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for listing, reclassifying, or removing species from listed status. We may determine a species to be an endangered or threatened species because of one or more of the five factors described in section 4(a)(1) of the Act; we must consider these same five factors in delisting species. We may delist a species according to section 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons: (1) The species is extinct; (2) The species has recovered and is no longer endangered or threatened; and/or (3) The original scientific data used at the time the species was classified were in error.

After a thorough review of all available information, we have determined that the Douglas County DPS is no longer endangered or threatened with extinction. A substantial recovery has taken place since its listing in 1978, and none of the five factors addressed in section 4(a)(1) of the Act currently threatens the continued existence of the subspecies in Douglas County. These factors, and their relevance to the Douglas County DPS, are discussed below.

A. *The present or threatened destruction, modification, or curtailment of habitat or range.* The Recovery Team recognized conversion of habitat to rural residential homesites and intensive livestock grazing as the prime threats to Columbian white-tailed deer habitat in Douglas County (Service 1983). A large area of habitat used by the deer has been protected, which has contributed to the Douglas County DPS's recovery. Since 1978, over 2,830 ha (7,000 ac) have come into public ownership within the range of the Douglas County DPS. This acreage includes the BLM's NBHMA and Douglas County's Mildred Kanipe Memorial Park. In addition, several smaller parcels owned by the county and private landowners provide important refuge or hiding cover for deer.

The largest publicly owned parcel that provides habitat for deer is the NBHMA. The NBHMA, formerly the Dunning Ranch, was previously managed as a working cattle ranch. It was acquired by the BLM in 1994 through a land exchange (BLM 1998) specifically to secure habitat for the deer since it lies within the Douglas County DPS's core habitat. The NBHMA is located east of Roseburg in the North Umpqua River Basin and is characterized by four distinct habitat types: Grasslands and oak savannah (29 percent); hardwood/conifer forest (52 percent); oak woodlands (17 percent); and other habitat such as rock outcrops, riparian areas, and wetlands (2 percent) (BLM 1998). As many as 348 Columbian white-tailed deer have been estimated to occur on the NBHMA (S. Denney, ODFW, pers. comm. 2001). No active management occurred at the NBHMA in the period between its acquisition in 1994 and the completion of a management plan in 2001; this lack of management has resulted in a decline in habitat quality (BLM 2000). Thatch (rank vegetation) has built up in grassland areas, and invasion of undesirable shrub species, cedar encroachment in meadow areas, and conifer seedling establishment in oak woodlands have contributed to the decline in habitat quality by inhibiting forb production for deer forage, and by reducing the availability of preferred cover (BLM 1998). Even with this decline in habitat quality, the site continues to provide habitat for over 300 deer in the core of the Douglas County DPS's range. The delay in initiation of management activities resulted from the need to develop and approve a management plan for the parcel. A final management plan was approved in June 2001 (BLM 2001).

Management objectives identified in the final NBHMA management plan include: (1) Increased availability, palatability, and nutritional quality of deer forage and browse; (2) maintenance of mature oak, shrub, and herbaceous vegetation components; (3) control of noxious weeds; and (4) development of water sources (BLM 2001). Livestock grazing, prescribed burning, thinning, and timber management are some of the management tools that will be used to achieve these objectives (BLM 2001); these activities will be scheduled to avoid sensitive periods (such as fawning and nursing) for the deer (Service 2001).

Livestock grazing and prescribed burning will be used to increase the abundance of desirable forage plants, and thinning in oak woodlands and removal of encroaching conifers will provide more preferred open canopy hiding cover for the deer (BLM 2001; Service 2001). Heavy unregulated livestock grazing can be considered a threat to the Columbian white-tailed deer (Service 1983); the BLM recognizes that livestock grazing as a tool to improve deer habitat will have to be managed carefully on the NBHMA (BLM 2001). Poorly managed grazing can lead to the introduction or spread of non-native plant species, soil erosion and compaction, and reduction of desirable deer forage plants. However, the BLM will use livestock grazing as a tool to reduce thatch and annual grasses in favor of native perennial vegetation that the deer prefer, particularly in areas that are inaccessible to equipment used for mowing or seed drilling (BLM 2001). In the final management plan for the NBHMA, the BLM has stated that it will manage cattle herd dynamics, seasonal rotation, and stocking rates to enhance habitat for the deer (BLM 2001).

The final management plan also calls for development of water guzzlers (small mechanized watering trough), development of springs, pond construction, stream rehabilitation, and wetland enhancement to increase the use of habitats that are lightly used by the deer at present due to limited water availability (BLM 2001). This, in conjunction with forage and habitat improvement, should increase the carrying capacity of the NBHMA for Columbian white-tailed deer and would likely result in a better distribution of animals across the management area (Service 2001).

Implementation of the NBHMA final management plan will improve habitat quality for the deer (Service 2001). In

October 2001, the BLM began implementing the management plan by conducting a controlled burn to remove thatch on 162 ha (400 ac); subsequent monitoring shows that the burn was successful, and new forage plants have sprung up in the burn zone (Ralph Klein, BLM, pers. comm. 2001). In 2002, the BLM implemented several habitat improvements, including prescribed burning, mowing, water developments, stream restoration, interior fence removal, and noxious weed control (District Manager, BLM, *in litt.* 2002). We will continue to track the implementation of the NBHMA management plan through annual monitoring reports from the BLM, and as part of the post-delisting monitoring program.

The management plan also provides for a range of recreational opportunities within the NBHMA (nonmotorized trail use, hunting, and a boat ramp) (BLM 2001). In our Biological Opinion on the management plan, we concluded that these activities are compatible with management for Columbian white-tailed deer and other special status species, because the potential increase in public use that may result is not anticipated to negatively impact the deer, and the large amount of escape cover and forage areas available will provide an ample amount of refuge where disturbance may be avoided (Service 2001).

Mildred Kanipe Memorial Park, managed by the DCPD, is the second largest parcel of publicly owned land (445 ha) (1,100 ac) within the range of the Douglas County DPS; it lies about 16 km (10 mi) north of the NBHMA. Ms. Kanipe left the ranch to Douglas County in her will and directed the County to manage it as a wildlife refuge and working ranch (Kanipe 1983). Park activities, including recreation (equestrian and hiking trails), timber harvest, farming, and grazing are guided by the provisions in Ms. Kanipe's will, a new management plan, and the Douglas County Farm Lease program (Kanipe 1983; Douglas County Parks Department 2001a; Douglas County Parks Department 2001b). Ms. Kanipe's will states that the ranch is to be used for park purposes and includes a number of conditions relating to its management as a park: (1) No hunting or trapping is allowed; (2) all animals, birds, and fish are protected as in a refuge, provided that the county, for park purposes, may plant and permit fishing in the ranch ponds; (3) trapping and hunting of predatory animals is allowed in the event that they become a nuisance and harmful to domestic and wild animals both within the park and on adjoining lands; (4) the County may establish a limited picnic ground and associated parking facilities, but no motorized vehicles are permitted within the park except as may be required for park construction and maintenance; (5) pasture lands are to be cared for and continued in grass, and equestrian trails shall be permitted; and (6) no timber shall be cut or harvested except as may be necessary, and even then, only upon a sustained yield basis with all revenue from timber cutting used by the county in capital improvements upon the park (Kanipe 1983). The current farm lease at the park allows the lessee to graze sheep and cattle at the ranch. The terms of the lease include provisions to maintain pasture quality, minimize soil erosion, eradicate noxious non-native plants, and protect native wildlife and watercourses (Douglas County Parks Department 2001b). The annual farm lease provisions are reviewed and approved by the ODFW biologists (M. Black, ODFW, pers. comm. 2001).

Douglas County has prepared Coordinated Resource Management Plan Recommendations for Mildred Kanipe Memorial Park; a Steering Committee has been established, which includes representatives from our staff, local environmental and recreation groups, the Douglas County Parks Advisory Board, and individuals with forestry and range expertise (Douglas County Parks Department 2001a). The management plan covers a wide range of issues, including recreation, wildlife, grazing, timber management, and riparian conservation (Douglas County Parks Department 2001a).

Since 1998, the ODFW has conducted three translocations of marked Columbian white-tailed deer to the park. Of the 18 deer transplanted to the park, 7 are known to have died. Of those that died, one was an accidental death, two were killed by vehicles, one is suspected to have died of natural causes, two were likely the result of predation, and one was most likely an illegal kill (M. Black, ODFW, pers. comm. 2001; S. Denney, ODFW, pers. comm. 2001). The survivors have remained in or near the park, and at least two radio collared does have been observed with fawns (S. Denney, ODFW, *in litt.* 2001). In 2001, 25 deer were counted in the park (S. Denney, ODFW, pers. comm. 2001).

Between the years of 1996 and 2002, the ODFW implemented 23 enhancement projects to improve habitat for Columbian white-tailed deer on private property in Douglas County; most of the projects focused on improving riparian habitat conditions (Lindsay Ball, ODFW, *in litt.* 2002). These projects resulted in over 66 acres of stream-side habitat improvements for deer.

One parcel on private property provides protection for Columbian white-tailed deer habitat in perpetuity. In 1992, TNC purchased the Oerding Preserve at Popcorn Swale, a 14-ha (35-ac) site which is managed primarily for the endangered rough popcorn flower (*Plagiobothrys hirtus*) (Service 2000). The management objective at the preserve is to restore the native wet prairie (TNC 2001), but the preserve also provides some suitable foraging habitat for deer. Surveys have detected about 20 Columbian white-tailed deer on the parcel (S. Denney, ODFW, pers. comm. 2001).

Douglas County has implemented land-use plans and zoning ordinances that apply to private lands to protect habitat and assist in deer recovery (DCPD 2000a). These protective measures include retention of existing land uses that maintain essential habitat components. Minimum lot sizes for farm use and timberlands, as well as building setbacks along riparian zones, have been established to ensure maintenance of habitat and travel corridors (ODFW 1995; DCPD 2000a).

Douglas County's Columbian White-tailed Deer Habitat Protection Program was established in 1980 (DCPD 2000a). The County, in conjunction with the ODFW and us, identified the range of habitat with the greatest density of Columbian white-tailed deer, and 29,743 ha (73,495 ac) were designated as Essential Habitat Areas (DCPD 1995). Potential conflicting uses within the Essential Habitat Areas were identified as: (1) Residential development in native riparian habitat; (2) additional livestock development in lowland river valleys; and (3) brush clearing, aimed at creating and improving pastures for livestock, that removes cover for deer (DCPD 2000a). To address these concerns, 96.5 percent (28,553 ha) (70,555 ac) of the resource lands (agricultural or farm/forest) within the Essential Habitat Area are subject to a minimum parcel size of 32 ha (80 ac); any land division requests of less than 30 ha (75 ac) must be reviewed by the ODFW (DCPD 2000a). Land zoned as nonresource lands within the Essential Habitat Area (3.5 percent) is limited to single family dwellings, and rural residential development is limited to 0.8 ha (2 ac) and 2 ha (5 ac) lots (DCPD 1995; DCPD 2000a). Another component of Douglas County's program to preserve habitat for the subspecies is a 30-m (100-ft) structural development setback from streams to preserve riparian corridors within the Essential Habitat Area (DCPD 2000a).

Douglas County's application of zoning to protect Columbian white-tailed deer has been an essential factor in the Douglas County DPS's recovery. The county has succeeded in limiting development and maintaining low human densities in the core of the deer population's range. The maintenance of open space on private lands significantly enhances the value of small publicly owned parcels used by the deer, such as Whistler's Bend County Park. Whistler's Bend County Park is directly south of the NBHMA, across the North Umpqua River. The park is 71 ha (175 ac) in size and has a population of about 100 Columbian white-tailed deer (S. Denney, ODFW, pers. comm. 2001). The park is managed for human recreation needs (DCPD 2000a), but also provides hiding cover for deer, which make forays onto adjacent private lands to forage in the pastures and suburban yards surrounding the park (S. Denney, ODFW, pers. comm. 2001). Small parcels such as this park function as important refugia for deer that meet many of their foraging requirements on adjacent private lands (Recovery Team, *in litt.* 2001).

Since management actions began, the Douglas County DPS population has increased, and its range has expanded. In the 1930s, the Columbian white-tailed deer population in Douglas County was estimated at fewer than 300 individuals within a range of about 79 km^2 (31 mi^2) (Crews 1939). By 1983, the population had increased to about 2,500 deer (Service 1983). The population has continued to grow and is currently estimated at over 6,000 deer (Lindsay Ball, ODFW, *in litt.* 2002). Along with this increase in numbers, the range also has expanded to the north and west, and the subspecies now occupies an area of approximately 800 km^2 (309 mi^2) (ODFW 1995).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The white-tailed deer is a popular big-game animal. Past overutilization was considered a threat to the Douglas County DPS, and was one of the several factors leading to its listing as endangered.

Currently, the State of Oregon does not permit any hunting of white-tailed deer in western Oregon (ODFW 2001), and measures have been taken to reduce accidental shooting of white-tailed deer. For example, at present, black-tailed deer hunting is allowed on the NBHMA, but is limited by special permit only, usually 25 permits or fewer, and is limited to 1 or 2 weekends of the general deer season. Pre-hunt training on deer identification is mandatory to prevent the accidental shooting of white-tailed deer. This has resulted in hunting having no significant impacts to the Douglas County DPS population in this area (Service 2001).

Recreational hunting and the possession of loaded firearms are not permitted in Douglas County parks, with the exception of limited waterfowl hunting in some reservoir parks. Therefore, deer hunting is prohibited at Mildred Kanipe Memorial Park and at Whistler's Bend County Park (J. Powers, pers. comm. 2001). Ms. Kanipe's will also states that no hunting or trapping is to be allowed in the park (Kanipe 1983). TNC also prohibits hunting on the Oerding Preserve in order to maintain a refugia for Columbian white-tailed deer (TNC 2001).

With the delisting of the Douglas County DPS, the Oregon Fish and Wildlife Commission, with input from the ODFW, will be responsible for determining whether a sport hunting season is justified. State guidelines direct the ODFW to manage wildlife populations to assure population health for present and future generations of Oregonians to enjoy (ODFW, *in litt.* 2001). Initially, the ODFW intends to focus its efforts on expanding the range of the Columbian white-tailed deer with a trap and relocation program (ODFW, *in litt.* 2001). A recreational hunt could be considered as another tool to reduce population densities and improve herd health in selected areas (ODFW, *in litt.* 2001). The population currently numbers more than 6,000 deer, a number considered large enough to withstand some level of regulated harvest (ODFW, *in litt.* 2001).

Poaching, or illegal hunting, of Columbian white-tailed deer has been documented in the Douglas County DPS (Ricca 1999; ODFW, *in litt.* 2001). During a recent 3-year study, 3 deer, out of 64 marked, were believed to have been taken by poachers (Ricca 1999). The Oregon State Police actively prosecutes poachers in Douglas County; cooperation among the Oregon State Police, the ODFW, our local biologists, and our National Fish and Wildlife Forensics Laboratory has resulted in many successful cases. In each of the past 3 years, the Oregon State Police has successfully prosecuted three to five poaching cases. Nine of these illegal kills were proved to be intentional poaching, whereas four were cases of misidentification (*i.e.*, confusion with legally hunted black-tailed deer) (Sgt. J. Myhre, pers. comm. 2001). This low level of illegal hunting is not considered a threat to the survival of the population (ODFW 1995).

Other than sport hunting, we do not anticipate an appreciable demand for Columbian white-tailed deer for commercial or recreational purposes. There may be a small demand for deer for research. Scientific studies, permitted under section 10(a)(1)(A) of the Act, have resulted in the take of as many as 40 deer during 1 year from the Douglas County DPS (Kistner and Denney 1991). These permitted takings have not had measurable impacts on population trends in the Douglas County DPS. Once the Douglas County DPS is delisted, the ODFW will administer scientific taking permits based on the merits of the proposed research and with consideration of the effects to the population (ODFW, *in litt.* 2001).

We believe that ample protections are in place under State law and regulations, and thus overutilization is unlikely to be a threat to the population in the future. Our proposed monitoring plan (see the Monitoring section, below) will track the status of the Douglas County DPS for at least 5 years following delisting, which would alert us to any new threat of overutilization.

C. *Disease or predation.* No known epizootic (epidemic in animals) diseases have affected the Douglas County DPS, although several studies have documented the incidence of bacterial and parasitic infections. For example, in a recent study, disease was determined to have contributed to the deaths of adult deer in poor nutritional condition. Of 29 adult deer that died during a 3-year study, 28 percent died of a combination of disease and emaciation (Ricca 1999; Ricca *et al.* 2002). Necropsies revealed pneumonia, lungworms, and high levels of ectoparasite infestation; none of these diseases would have been likely to kill an otherwise healthy adult deer, but in combination with a poor nutritional state (as evidenced by emaciation), these diseases were likely a factor in the cause of death (Ricca 1999; Ricca *et al.* 2002). Diseases noted in fawn necropsies also included pneumonia and occasional instances of bacterial or viral infections (Ricca 1999). An earlier study by the ODFW found moderate to high levels of internal and external parasites on adult deer and fawns, with low levels of viral diseases communicable to livestock (Kistner and Denney 1991).

High internal parasite loads have been considered an indication of high deer densities (ODFW, *in litt.* 2001), and recent research has found evidence that some Columbian white-tailed deer in Douglas County are suffering poor health resulting from high density (Ricca 1999). Delisting the Douglas

County DPS would allow more management flexibility, such as hazing to disperse the deer to reduce or prevent large deer concentrations, or a regulated harvest, which could reduce the density of deer, resulting in improved herd health.

Deer hair-loss syndrome has been a concern in the Columbia River DPS, but has not been prevalent in the Douglas County DPS. This syndrome appears to be caused by a combination of internal and external parasites; internal parasites such as *Dictyocaulus viviparus* and *Parelaphostrongylus* spp. invade the lungs of infected deer, resulting in a low-grade pneumonia (Washington Department of Fish and Wildlife (WDFW) 1999; Biederbeck 2002). The pneumonia infection may suppress the deer's immune system, making infected deer more susceptible to external parasites. The disease is not necessarily fatal, but hair loss can result in death due to hypothermia in winter (WDFW 1999; Biederbeck 2002). Spotlight surveys by the ODFW noted 2 deer, out of 329 counted, with obvious hair loss problems (ODFW, *in litt.* 2001). Two marked deer on the NBHMA are known to have died with hair loss; an infected fawn was noted, but is not known to have died from the disease (ODFW, *in litt.* 2001). Deer hair-loss syndrome is not currently considered to be a threat to the Douglas County DPS, but the post-delisting monitoring program will include tracking the incidence of this disease.

In August 2001, a probable case of adenovirus, a viral disease, was identified through laboratory analysis in a Columbian white-tailed deer fawn in Douglas County. It is likely that the fawn contracted the disease while being held in a rehabilitation facility. This would be the first known incidence of this disease in white-tailed deer (Dr. Beth Valentine, Veterinary Diagnostic Laboratory, Oregon State University, *in litt.* 2001; Dr. Terry Hensley, D.V.M., U.S. Department of Agriculture, Veterinary Services, pers. comm. 2001). Adenovirus infection is potentially fatal to young deer, which may succumb to respiratory failure, hemorrhagic syndromes, or acute diarrhea and dehydration caused by the disease (Dr. T. Hensley, pers. comm. 2001). The disease has been previously detected in mule deer (*Odocoileus hemionus*) in northern California. An outbreak in the 1990s caused widespread mortality, but appears to have had no long-term effect on the population in California (Tapscott 1998). Therefore, we have determined that adenovirus is not a significant threat to the Douglas DPS. However, since its existence had been confirmed in the Douglas County DPS, the post-delisting monitoring program will include tracking the incidence of this disease.

Predation is known to be a leading cause of death in white-tailed deer populations (Halls 1978). Ricca *et al.* (2002) studied survival of Columbian white-tailed deer fawns, and found that predation was the most frequent known cause of death for fawns in his study. Bobcats (*Lynx rufus*) were the dominant predator, and researchers found some evidence of predation by red foxes (*Vulpes vulpes*) and domestic dogs (Ricca *et al.* 2002). Coyotes (*Canis latrans*) are frequent predators of white-tailed deer elsewhere (Halls 1978), but recent research (Ricca *et al.* 2002) found no evidence of fawns killed by coyotes in Douglas County. The apparent absence of coyote predation may be due in part to the Wildlife Services predator control program at the U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS). Douglas County contracts with APHIS, Wildlife Services, to conduct predator control. The program focuses mainly on coyotes, but also responds to fox, bobcat, and cougar (*Puma concolor*) complaints (Stan Thomas, District Supervisor, APHIS, Wildlife Services, pers. comm. 2001). The purpose of the program is to protect sheep and cattle ranching operations in the area, but it may also provide incidental benefits to the Douglas County DPS by reducing the number of potential predators on fawns. In summary, disease and predation are not considered threats to the Douglas County DPS.

D. *Inadequacy of existing regulatory mechanisms.* The lack of adequate Federal, State, or local regulatory mechanisms for protecting habitat and controlling take was largely responsible for the decline of the deer. Columbian white-tailed deer in Douglas County have recovered because Federal, State, and local governments have exercised their authorities to protect the subspecies and its habitat.

For example, the State of Oregon currently prohibits hunting of all white-tailed deer in western Oregon (described in Factor B, above). Delisting would provide the State with the flexibility to allow some regulated harvest to reduce population density if necessary to improve herd health.

Douglas County also provides important regulatory protection for Columbian white-tailed deer habitat on private lands through its Comprehensive Plan and Deer Habitat Protection Program (DCPD 1995; 2000a). The Comprehensive Plan addresses Oregon's Statewide Planning Goals. Goal 5 requires local governments to conserve open space and protect natural and scenic resources for future generations; Douglas County's Columbian White-Tailed Deer Habitat Protection Program, which is described in more detail under Factor A, was established in 1980 under Goal 5 (DCPD 2000a). Statewide planning Goals 3 and 4 provide guidelines to maintain the rural landscape in Douglas County by protecting agriculture, timber, and transitional (farm/forest) lands. These goals were also incorporated into Douglas County's Columbian White-tailed Deer Habitat Protection Program, and also provide a measure of protection for deer habitat (DCPD 2000a). Douglas County's zoning and planning ordinances and county park designations are recognized in the Recovery Plan as valid methods to secure habitat, and will provide continuing regulatory protection of Columbian white-tailed deer habitat unless changed through a public process.

E. *Other natural or manmade factors affecting its continued existence.* There are a number of other threats to the survival of individual Columbian white-tailed deer in Douglas County. These include road kill, hybridization with black-tailed deer, emaciation, conflicts with private landowners, and fire.

Road kill is one of the major sources of mortality for white-tailed deer in the United States (Halls 1978). Ricca *et al.* (2002) concluded that road kill was the second most frequent cause of death in his study; they determined that five deer (17 percent of marked adult deer) over a period of 3 years were killed by vehicle collisions. Apparently, the incidence of road kill is fairly constant. Almost 20 years earlier, Smith (1981) found car collisions to be the second most frequent cause of death for deer in Douglas County. Although road kill is a major source of mortality for the Douglas County DPS, it has not been a limiting factor for population growth (D. Jackson, ODFW, pers. comm. 2001).

Hybridization between Columbian white-tailed deer and Columbian black-tailed deer has long been suspected to occur, and probable hybrids have been observed in Douglas County for many years (ODFW 1995). Biologists from the ODFW have noted evidence of hybridization (*i.e.*, deer with physical characteristics of both white-tailed and black-tailed deer), but concluded that the rate of cross-breeding is not a threat to the continued existence of the Douglas County DPS (Kistner and Denney 1991). Gavin and May (1988) conducted laboratory analyses of muscle samples from Columbian white-tailed deer and Columbian black-tailed deer in Douglas County and found no evidence of hybridization between the two subspecies.

Emaciation, which may be the result of poor forage quality, was determined to be the leading cause of death in a recent study. During 3 years of research on marked deer, Ricca (1999) found that 28 percent of the deer that died during the study were emaciated and diseased (see disease discussion in Factor B, above). This finding is also consistent with an earlier study (Smith 1981). High deer density may result in poor habitat quality through overuse of habitat resources (Ricca 1999). Management actions to reduce deer density or increase habitat quality could reduce the incidence of emaciation. Active habitat management (prescribed burning) to improve forage quality has begun at the *NBHMA®. Klein, pers comm.*, 2001; District Manager, BLM, *in litt.* 2002).

With growth of the deer population, deer-human conflicts have increased. From 1996 to 2000, the ODFW recorded 249 complaints from private property owners with deer depredation problems (ODFW, *in litt.* 2001). Resident suburban deer can cause serious damage to croplands, gardens, and ornamental plantings. Conflict ensues because under the Act it is illegal to "take" listed deer, which includes such actions as hazing or harassing to disperse the deer, even where serious continued damage is occurring. Delisting the Douglas County DPS allows more flexibility in development and implementation of a management plan to control and enhance deer populations, while fostering better relationships with landowners and more effective long-term conservation.

Fire has historically played a large part in shaping habitat for Columbian white-tailed deer in Douglas County. Although fire may have negative short-term impacts on habitat, deer distribution, and numbers, the long-term effects can be beneficial by removing decadent brush, promoting the growth of nutritious vegetation, and maintaining the oak/grassland habitat that the deer prefer (Halls 1978; BLM 2000). Columbian white-tailed deer evolved with the occurrence of fire in the ecosystem, and prescribed burning is one of the key management prescriptions for restoring and maintaining habitat quality for the deer at the NBHMA (BLM 2000; Service 2001). The occurrence of a large-scale devastating wildfire is unlikely. The growing human population of Douglas County demands active fire suppression on public and private lands which, will likely convey some protection for the deer.

We have carefully assessed the best scientific and commercial information available concerning the past, present, and future threats faced by the Douglas County DPS. On the basis of this evaluation, we conclude the threats that caused the Douglas County population of Columbian white-tailed deer to decline no longer pose a risk to the continued survival of the DPS, and its removal from the List of Endangered and Threatened Wildlife is appropriate. The population is robust, and protection of abundant habitat used by the deer in Douglas County justifies delisting the DPS. During the public comment period on the supplemental proposed rule, we asked for review from three independent peer reviewers. All three peer reviewers agreed that the data support our decision to delist.

In accordance with 5 U.S.C. 553(d), we have determined that this rule relieves an existing restriction and good cause exists to make the effective date of this rule immediate. Delay in implementation of this delisting would cost government agencies staff time and monies on conducting formal section 7 consultation on actions that may affect a species no longer in need of the protection under the Act. Relieving the existing restriction associated with this listed species will enable Federal agencies to minimize any further delays in project planning and implementation for actions that may affect the Douglas County DPS of Columbian white-tailed deer.

Effects of the Rule

Promulgation of this final rule will affect the protection afforded to the Douglas County DPS under the Act. Taking, interstate commerce, import, and export of deer from the Douglas County DPS are no longer prohibited under the Act. In addition, with the removal of the Douglas County DPS from the List of Endangered and Threatened Wildlife, Federal agencies are no longer required to consult with us under section 7 of the Act to ensure that any action authorized, funded, or carried out by them is not likely to jeopardize the continued existence of the deer in Douglas County, Oregon.

Harvest and permitted scientific take will be regulated by the State of Oregon, and will be considered in the context of potential effects to population stability (ODFW, *in litt.* 2001). Biological data such as sex ratios, age, reproductive status, and health status (*i.e.*, parasitism and bacterial infections) from individual deer taken through legal harvest or the issuance of special permits will be available to inform future management. Delisting the Douglas County DPS is expected to have positive effects in terms of management flexibility to State and local governments. Deer densities in selected areas may be reduced by management actions. Individual deer could be controlled by hazing, and targeted individuals could be removed where repeated severe damage to agricultural crops, gardens, or ornamental plantings was documented. Thus, delisting will allow managers greater flexibility to take actions to reduce overcrowding in selected areas, which could result in a healthier deer population.

The delisting of the Douglas County DPS of Columbian white-tailed deer will not change the endangered status of the Columbia River DPS of this subspecies. It remains fully protected by the Act.

Monitoring

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a monitoring program for not less than 5 years for all species that have been recovered and delisted. The purpose of this requirement is to develop a program that detects the failure of any delisted species to sustain itself without the protective measures provided by the Act. If, at any time during the monitoring period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing.

A monitoring plan is being developed for the Douglas County DPS. The plan will be designed to detect changes in the status of the population, and will be comprised of three components: (1) Monitoring population size and other key population parameters; (2) tracking the incidence of disease in the herd; and (3) periodic assessment of habitat protection efforts in the Douglas County DPS's range.

The three components of the plan will likely be addressed as follows: (1) We will work with the ODFW to continue spring and fall population surveys; data from these surveys will allow us to assess key population parameters including population size, trend, recruitment, and distribution. (2) Data on the incidence of disease will be gathered to follow trends in contagious diseases in the herd, particularly those diseases that have a potential to become epizootic (*e.g.*, adenovirus and deer hair loss syndrome). Additional research into potential epizootic diseases may be conducted, when warranted, in cooperation with other agencies during the monitoring period. (3) Habitat protection efforts will be assessed in a

coordinated periodic review of the various management plans (*i.e.*, NBHMA, Mildred Kanipe Memorial Park, and Douglas County's Deer Habitat Protection Program). Data from the three components of the monitoring program will be evaluated by our experts, the ODFW, and the Recovery Team, as appropriate.

If at any time during the monitoring period we detect a significant change in the population, we will evaluate and change the monitoring methods, if appropriate, and/or consider relisting the DPS, if warranted. At the end of the monitoring period, we will decide if relisting, continued monitoring, or an end to monitoring activities is appropriate. If warranted (*e.g.*, data show a significant decline or increased threats), we will consider continuing monitoring beyond the specified period and may modify the monitoring program based on an evaluation of the results of the initial monitoring program.

The monitoring plan is being developed with the assistance of our technical staff and the ODFW, and will be peer reviewed. When a draft of the monitoring plan is complete, we will publish a notice of its availability in the **Federal Register** inviting public comment.

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on agency information collection and recordkeeping activities (5 CFR 1320.8(d)). The OMB regulations at 5 CFR 1320.3(c) define a collection of information as the obtaining of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on 10 or more persons. Furthermore, 5 CFR 1320.3(c)(4) specifies that "ten or more persons" refers to the persons to whom a collection of information is addressed by the agency within any 12-month period.

This rule does not include any collections of information that require approval by OMB under the Paperwork Reduction Act. The information needed to monitor the status of the Columbian white-tailed deer will be collected primarily by Service, ODFW, and the BLM. We do not anticipate a need to request data or other information from the public, other than the ODFW, to satisfy monitoring information needs. If it becomes necessary to collect information from 10 or more individuals, groups, or organizations per year, we will first obtain information collection approval from OMB.

National Environmental Policy Act

We have determined that an Environmental Assessment or an Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this designation in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Oregon Fish and Wildlife Office (see **ADDRESSES** section, above).

Author

The primary author of this final rule is Cat Brown, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office (see **ADDRESSES** section, above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulations Promulgation

■ For the reasons set out above, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. We amend section 17.11(h) by revising the entry for "deer, Columbian white-tailed, *Odocoileus virginianus leucurus*, under "Mammals" in the table "List of Endangered and Threatened Wildlife", to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	*
Deer, Columbian white-tailed.	*Odocoileus virginianus leucurus.*	U.S.A. (WA, OR)	Columbia River (Clark, Cowlitz, Pacific, Skamania, and Wahkiakum Counties, WA, and Clatsop, Columbia, and Multnomah Counties, OR).	E	1,738	NA	NA
*	*	*	*	*	*	*	*

Dated: July 1, 2003.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 03–17756 Filed 7–23–03; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 68, No. 142
Thursday, July 24, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 331

[Docket 03–070–1]

Public Meetings; Listing of Biological Agents and Toxins

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meetings.

SUMMARY: This is to notify individuals and entities possessing, using, or transferring biological agents and toxins listed in 7 CFR 331.3, as well as other interested parties, that the Animal and Plant Health Inspection Service will hold a series of public meetings to provide a forum for discussion of the criteria used to determine whether an agent has the potential to pose a severe threat to plant health or products.

DATES: We will consider all comments that we receive on or before September 8, 2003.

Three public meetings are scheduled for August 2003. They will be held on August 12, 2003, from 5:30 to 8:30 p.m. in Charlotte, NC; on August 19, 2003, from 9 a.m. to 3 p.m. in Riverdale, MD; and on August 21, 2003, from 9 a.m. to 3 p.m. in Sacramento, CA.

ADDRESSES: If you cannot attend the meetings and wish to submit comments, you may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–070–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–070–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–070–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

The public meetings will be held at the following locations:

1. Charlotte, NC. The Charlotte Convention Center, 510 South College Street, Room 217AB, Charlotte, NC 28202.

2. Riverdale, MD. The USDA Center at Riverside, 4700 River Road, Riverdale, MD 20737. Travel directions to the USDA Center at Riverside are available on the Internet at *http://www.aphis.usda.gov/ppq/direct.html*. Picture identification is required to gain access to the building. Parking is available next to the building for a $2.25 fee (please have quarters or $1 bills available). The nearest Metro station is the College Park station on the Green Line, which is within walking distance.

3. Sacramento, CA. The John E. Moss Federal Building, General Services Administration, 650 Capital Mall, 1st Floor Conference Center, Stanford Room, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Dr. Michael J. Firko, Assistant Director, Plant Health Programs, USDA, APHIS, PPQ, 4700 River Road Unit 137, Riverdale, MD 20737–1236; (301) 734–8758.

SUPPLEMENTARY INFORMATION: On June 12, 2002, the President signed into law the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub. L. 107–188). Title II of Public Law 107–188, "Enhancing Controls on Dangerous Biological Agents and Toxins" (sections 201 through 231), provides for the regulation of certain biological agents and toxins by the Department of Health and Human Services (subtitle A, sections 201–204) and the Department of Agriculture (subtitle B, sections 211–213), and provides for interagency coordination between the two departments regarding overlap agents and toxins (subtitle C, section 221). For the Department of Health and Human Services, the Centers for Disease Control and Prevention (CDC) has been designated as the agency with primary responsibility for implementing the provisions of the Act; the Animal and Plant Health Inspection Service (APHIS) is the agency fulfilling that role for the Department of Agriculture (USDA).

In subtitle B (which is cited as the "Agricultural Bioterrorism Protection Act of 2002," referred to below as the Act), section 212(a) provides, in part, that the Secretary of Agriculture (the Secretary) must establish by regulation a list of each biological agent and each toxin that she determines has the potential to pose a severe threat to animal or plant health, or to animal or plant products. In determining whether to include an agent or toxin on the list, the Act requires the Secretary to consider:

1. The effect of exposure to the agent or toxin on animal or plant health, and on the production and marketability of animal or plant products;

2. The pathogenicity of the agent or the toxicity of the toxin and the methods by which the agent or toxin is transferred to animals or plants;

3. The availability and effectiveness of pharmacotherapies and prophylaxis to treat and prevent any illness caused by the agent or toxin; and

4. Any other criteria that the Secretary considers appropriate to protect animal or plant health, or animal or plant products.

In accordance with these statutory requirements, on August 12, 2002, we published in the **Federal Register** (67 FR 52383–52389, Docket No. 02–082–1) an interim rule that established the initial lists of biological agents and toxins. To accomplish this, we established new parts in the Code of Federal Regulations (CFR), one part in the plant-related provisions of title 7, chapter III, and one part in the animal-related provisions of title 9, chapter I. Then, on December 13, 2002, we published in the **Federal Register** (67 FR 76908–76938, Docket No. 02–088–1) an interim rule that amended the initial lists of biological agents and toxins in both 7 CFR 331.3 and 9 CFR 121.3.

The Act requires that the lists of biological agents and toxins be reviewed and republished biennially, or more often as needed, and revised as necessary. In addition, the Act requires that, when determining whether to include an agent or toxin, the Secretary shall consult with appropriate Federal departments and agencies and with scientific experts representing appropriate professional groups.

In preparation for the biennial review of the list required by the Agricultural Bioterrorism Protection Act of 2002, APHIS' Plant Protection and Quarantine program intends to reevaluate and further develop the criteria used to determine whether an agent has the potential to pose a severe threat to plant health or products. Accordingly, we are holding a series of public meetings to provide a forum for discussion of the criteria that should be used.

The meetings will be held on August 12, 2003, from 5:30 to 8:30 p.m. in Charlotte, NC; on August 19, 2003, from 9 a.m. to 3 p.m. in Riverdale, MD; and on August 21, 2003, from 9 a.m. to 3 p.m. in Sacramento, CA. Information regarding the meetings may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written Comments

If you cannot attend the meeting, you may submit written comments on the topics outlined in this notice. To submit written comments, please follow the instructions listed under the heading **ADDRESSES** near the beginning of this document.

Done in Washington, DC, this 21st day of July, 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–18951 Filed 7–23–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 130

[Docket No. 00–024–1]

Veterinary Diagnostic Services User Fees

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to increase the user fees for veterinary diagnostic services to reflect changes in our operating costs and changes in calculating our costs. We are also proposing to set rates for multiple fiscal years. These proposed actions are necessary to ensure that we recover the actual costs of providing these services. We are also proposing to provide for a reasonable balance, or reserve, in the veterinary diagnostics user fee account. The Food, Agriculture, Conservation, and Trade Act of 1990, as amended, authorizes us to set and collect these user fees.

DATES: We will consider all comments that we receive on or before September 22, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 00–024–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–024–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 00–024–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For information concerning program operations, contact Dr. Randall Levings, Director, National Veterinary Services Laboratories, 1800 Dayton Road, P.O. Box 844, Ames, IA 50010; (515) 663–7357.

For information concerning rate development for the proposed user fees, contact Mrs. Kris Caraher, Accountant, User Fees Section, MRPBS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–8351.

SUPPLEMENTARY INFORMATION:

Background

User fees to reimburse the Animal and Plant Health Inspection Service (APHIS) for the costs of providing veterinary diagnostic services and import and export related services for live animals and birds and animal products are contained in 9 CFR part 130 (referred to below as the regulations). These user fees are authorized by section 2509(c) of the Food, Agriculture, Conservation and Trade Act of 1990, as amended (21 U.S.C. 136a), which provides that the Secretary of Agriculture may, among other things, prescribe regulations and collect fees to recover the costs of veterinary diagnostics relating to the control and eradication of communicable diseases of livestock or poultry within the United States.

In this document, we are proposing to amend the regulations by increasing the user fees for certain veterinary diagnostic services, including certain diagnostic tests, reagents, and other veterinary diagnostic materials and services. Operating costs have increased since these user fees were established in a final rule published in the **Federal Register** on October 7, 1998 (63 FR 53783–53798, Docket No. 94–115–2). Therefore, the user fees need to be updated to reflect those increases. However, the main reason for the increase in the fees is due to new cost-finding techniques employed by APHIS. The Statement of Federal Financial Accounting Standards (SFFAS) No. 4, "Managerial Cost Accounting Standards and Concepts," issued by the Office of Management and Budget, mandated that APHIS capture cost accounting data in its program costs. We were required to accumulate and report the costs of veterinary diagnostic activities on a regular basis through the use of cost accounting systems and cost finding techniques. In order to comply with SFFAS No. 4, APHIS conducted an Activity Based Costing (ABC) project at the National Veterinary Services Laboratories (NVSL) in Ames, IA, which identified the sources of all costs for veterinary diagnostic services. As a result of that project, we determined that costs for user fee-related services were not adequately being recovered through user fee collections. Based on this determination, we are proposing new fees to recover these newly identified costs. Each of the updated user fees contains a proportionate share of the costs identified in the ABC study.

The user fees that we are proposing for veterinary diagnostic goods and services would cover multiple fiscal years (2004 through 2007 and beyond). Establishing annual user fee changes in

advance would allow users to incorporate the fees into their budget planning.

Veterinary diagnostics is the work performed in a laboratory to determine if a disease-causing organism or chemical agent is present in body tissues or cells and, if so, to identify those organisms or agents. Services in this category include: (1) Performing laboratory tests and providing diagnostic reagents and other veterinary diagnostic materials and services at the NVSL Foreign Animal Disease Diagnostic Laboratory (NVSL FADDL) in Greenport, NY; and (2) performing identification, serology, and pathobiology tests and providing diagnostic reagents and other veterinary diagnostic materials and services at NVSL in Ames, IA.

APHIS veterinary diagnostic user fees fall into six categories:

(1) Laboratory tests, reagents, and other veterinary diagnostic services performed at NVSL FADDL;

(2) Laboratory tests performed as part of isolation and identification testing at NVSL in Ames;

(3) Laboratory tests performed as part of serology testing at NVSL in Ames;

(4) Laboratory tests performed at the pathobiology laboratory at NVSL in Ames;

(5) Diagnostic reagents produced at NVSL in Ames or other authorized sites; and

(6) Other veterinary diagnostic services or materials provided at NVSL in Ames.

Need for Regulation

User fees recover the cost of operating a public system by charging those members of the public who use the system, rather than the public as a whole, for its operation. Financing veterinary diagnostic services and products by charging for the right to use the incremental service internalizes those costs to those who require the service and benefit from it.

Veterinary diagnostic services and products enhance livestock production, trade, and research. The socially optimal prices for such commodities, of which veterinary diagnostics are inputs, are those price levels that induce the output level where the marginal benefit (what people are willing to pay for the good) is exactly equal to the marginal social cost (all costs associated with the production of the final output, including veterinary diagnostics). As it stands now, veterinary diagnostic services and products are provided at levels below their full cost to APHIS. These costs are, therefore, only partly incorporated into producers' costs of production. Our proposed revisions of the fee-for-service charges to recover the costs incurred by APHIS would move the private costs of individuals closer to the true cost of producing their outputs. The proposed annual increases, which would span fiscal years 2004 through 2007, would help ensure that the fees accurately reflect the cost of providing the service.

Development of Fee Structure

User fee components. The user fees proposed in this document are based on average laboratory employee salaries and benefits in each of the fiscal years 2004 through 2007, and estimates of the number of direct labor hours required to provide each service. The proposed user fees have been calculated to recover the full costs for tests, diagnostic reagents, and other veterinary diagnostic services. These costs include direct labor costs, administrative support costs, premium costs (if any), agency overhead costs, and departmental charges. These components are described below; the user fee calculation for the proposed virus isolation fee for fiscal year (FY) 2004 is used throughout as an example.

We are proposing to charge a specific dollar amount for each service we provide (*i.e.*, for each test we perform or each diagnostic reagent or other veterinary diagnostic service we provide). We have attempted to minimize the costs of our services, thereby keeping APHIS user fees at the lowest possible level. If, in the future, a user requests a test, diagnostic reagent, or other veterinary diagnostic material or service that is not specifically listed in our regulations, we would charge the proposed hourly user fee set forth in proposed § 130.19 for the amount of time required to perform the service, calculated to the nearest quarter of an hour.

Each user fee varies based on the direct labor hours required to perform the test or provide the diagnostic reagent or other veterinary diagnostic material or service. For example, the time spent by laboratory personnel to prepare a sample, conduct the test, and read the test would be part of the direct labor hours for testing a tissue sample for disease-causing organisms. In cases where a test is performed for more than one disease, it may take different amounts of time for each disease. Those times have been averaged to calculate the user fee for the test. We have carefully calculated all of our proposed user fees to correctly reflect the direct labor hours required for each test, reagent, or service. We took into account variations in the time needed to provide a service by determining the average time necessary to provide the service; similar user fee components are used for other agency user fees throughout the regulations.

Direct labor costs. Direct labor costs are the average salary and benefit costs of the laboratory employees performing the service multiplied by the estimated direct labor hours required. Average laboratory costs were used to calculate direct labor costs because we have determined that it is more accurate to use the average salary for laboratory employees to calculate the user fee. For example, the estimated average laboratory salary at the Diagnostic Virology Lab for FY 2004 is $28.85 per hour. On average, it takes 0.295 hours per virus isolation test, leading to direct labor costs of $8.51.

Administrative support costs. Administrative support costs are incurred at the laboratories. They include clerical and administrative activities; direct materials; indirect labor hours; rent; billing and collection costs; travel and transportation for personnel, supplies, equipment, and other necessary items; training; legal counsel; capital equipment costs; general supplies for offices, washrooms, and cleaning; contractual services; grounds maintenance; and utilities. Direct materials include the cost of any materials needed to conduct the test or to provide the diagnostic reagent, slide set, tissue set, or service. For example, direct materials for conducting a laboratory test include, but are not limited to, glassware, chemicals, and other supplies necessary to perform the test. Indirect labor hours include supervision of personnel and time spent doing necessary work, such as repairing equipment, that is not directly connected with a specific test, diagnostic reagent, or other veterinary diagnostic material or service. Contractual services may include, but are not limited to, guard service, trash pickup, and maintenance. Utilities include water, telephone, electricity, natural and propane gas, and heating and diesel oil.

The costs of administrative support are applied as a percentage of the base direct labor amount; at NVSL in Ames, administrative support is 296 percent of direct labor, and at NVSL FADDL, administrative support is 1,638 percent of direct labor. For example, the administrative support costs for the virus isolation test are calculated at 296 percent of its direct labor costs of $8.51 to be $25.19. The total direct labor and administrative support costs for one virus isolation test are $33.70.

NVSL FADDL administrative support costs compared to NVSL in Ames costs. Readers may note that our proposed user fees for tests performed at NVSL FADDL are higher than our proposed user fees for the same tests performed at NVSL in Ames. Both NVSL FADDL and NVSL in Ames work with infectious and contagious disease agents. However, NVSL FADDL, which is isolated from the U.S. mainland, is designed to work specifically with highly infectious diseases exotic to the United States. Because of this, special biosecurity measures are required at NVSL FADDL that are not required at NVSL in Ames. As a result, NVSL FADDL operating costs are higher than NVSL in Ames' operating costs. The user fees we are proposing reflect this difference in costs.

Premium costs. Premium costs are expenses that are incurred solely for a specific test or service. For example, certain tests require expensive reagents in addition to the direct labor time and laboratory materials included in administrative support costs. Premium costs for the proposed flat rate user fees have been included in the proposed calculated fees. For example, each sterilization by gamma radiation at NVSL FADDL requires special radioactive materials, irradiation costs, and travel costs for an APHIS employee to hand-carry the material. Based on the high amount of costs involved, these premium costs have been added to the proposed specific fee involved rather than included as an administrative support cost that is spread among all fees for tests, reagents, and other services.

Agency overhead. Agency overhead is the pro rata share, attributable to a particular diagnostic reagent, material, or veterinary diagnostic service, of the management and support costs for all Agency activities at the regional level and above. Included are the costs of providing budget and accounting services, management support at the headquarters and regional levels, including the Administrator's office, and personnel services, public information services, and liaison with Congress. Agency overhead is calculated at 16.15 percent of total direct labor and support costs. For example, the agency overhead for one virus isolation test is $5.44, which is the product of virus isolation direct labor and administrative support costs of $33.70 multiplied by 16.15 percent.

Departmental charges. Departmental charges are APHIS's share, expressed as a percentage of the total cost, of services provided centrally by the U.S. Department of Agriculture. Services the Department provides centrally include the Federal telephone service; mail; National Finance Center processing of payroll, billing, collections, and other money management; unemployment compensation; Office of Workers Compensation Programs; and central supply for storing and issuing commonly used supplies and departmental forms. The Department notifies APHIS how much the agency owes for these services.

We have included a pro rata share of these departmental charges, as attributed to a particular test, diagnostic reagent, or other veterinary diagnostic material or service, in our user fee calculations at the rate of 5.23 percent. For example, departmental charges to perform one virus isolation test are $2.05. This amount equals 5.23 percent of total direct labor costs, administrative support costs, and Agency overhead costs of $39.14 described above.

Reserve. We are proposing to add an amount that would provide for a reasonable balance, or reserve, in the veterinary diagnostics user fee account. All user fees would contribute to the reserve proportionately. The reserve would ensure that we have sufficient operating funds in cases of fluctuations in activity volumes, bad debt, program shutdown, or customer insolvency. We intend to monitor the reserve balance closely and propose adjustments in our fees as necessary to ensure a reasonable balance. For example, the reserve amount included in the calculation for one virus isolation test is $2.06 per test. The total costs in this example thus far equal $43.25.

Calculation of proposed user fees. The basic steps in the calculation for each particular service are: (1) Calculate direct labor costs by determining the average amount of direct labor required to perform the service and multiply the average direct labor hours by the average salary and benefit costs for laboratory employees; (2) calculate the pro rata share of administrative support costs; (3) determine the premium costs (if any); (4) calculate the pro rata share of agency overhead and departmental charges, respectively; (5) add all costs; and (6) round up to the next $0.25 for all fees less than $10 or round up or down to the nearest dollar for all fees greater than $10. For example, the total virus isolation cost per test for FY 2004 of $43.25 is rounded down to $43 per test. The result of these calculations is a user fee that covers the total cost to perform a particular test or provide a particular veterinary diagnostic material or service one time. As is the case with all APHIS user fees, we intend to review, at least annually, the user fees proposed in this document. We will publish any necessary adjustments in the **Federal Register**.

In addition, we would remove the following tests because they are either obsolete, no longer being performed at NVSL in Ames or NVSL FADDL, or are being performed but being incorporated into another published rate:

Avian origin bacterial antiserums, mycoplasma
Equine origin glanders antiserum
Leptospira culturing
Leptospira serotyping
Mycobacterium avium serotyping
Mycology culture identification
Mycology/fungus culture or isolation
Mycoplasma isolation
Mycoplasma identification
Plasmid typing
Warburg
Virus isolation for Newcastle disease virus
Brucella milk ELISA
Mercaptoehanol
Mycology/fungus serology
Check tests, anaplasma complement fixation
Manual, Brucellosis complement fixation
Manual, Anaplasmosis, Johnes's disease

We would also remove a footnote that appears in the tables in §§ 130.15(a) and 130.16(a) and (b). The footnote describes a discount that applies to all diagnostic, non-import-related complement fixation, hemagglutination inhibition, fluorescent antibody, indirect fluorescent antibody virus neutralization, and peroxidase linked antibody tests. The discount applies to the 11th and subsequent tests on the same submission by the same submitter for the same test and antigen. We have reevaluated the time it takes to conduct these additional tests and have determined that it is no longer cost effective to perform the tests at a discount. Therefore, we would remove the footnote from those tables.

Finally, in §§ 130.15(a), 130.16(a), and 130.18, we would amend the tables by updating several of the entries to reflect the designations currently used by NVSL to refer to the particular test or service. There would be no change in the services or tests themselves; the names would simply be changed to be consistent with the terminology used by NVSL.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to increase the user fees for veterinary diagnostic services to reflect changes in operating costs and changes in calculating our costs. These

proposed actions are necessary to ensure that we recover the actual costs of providing these services. We are also proposing to provide for a reasonable balance, or reserve, in the veterinary diagnostics user fee account. The reserve would ensure that we have sufficient operating funds in cases of fluctuations in activity volumes, bad debt, program shutdown, or customer insolvency. The Food, Agriculture, Conservation, and Trade Act of 1990, as amended, authorizes us to set and collect these user fees.

Estimated Impact of Changes in Veterinary Diagnostic User Fees

The calculation of impacts of the revision of veterinary diagnostic user fees is hindered by the difficulty in determining the elasticities of demand for the covered services and products. Therefore, Government savings are assumed equivalent to the total additional user fee collections for each category addressed in this proposed rule. Projections of changes in collections are based on estimates of the annual volume of the affected services and products. Estimates of the annual volumes were made by the Financial Management Division of APHIS using actual volumes from prior years and input from the laboratories.

Change in Collections

Table 1 summarizes the estimated changes in user fee collections for FY 2004 through FY 2007 that are necessary to recover fully the costs of performing these services. These proposed changes would result in a total increase in annual user fee collections of about $2.9 million over the period discussed in the proposed rule (from $2.7 million at current fee levels to $5.6 million in FY 2007). There would be increases in each year from FY 2004 to FY 2007. There would be an increase of about $2.4 million in FY 2004, about an additional increase of $101,200 increase in FY 2005, about a $231,500 increase in FY 2006, and about a $98,100 increase in FY 2007. If APHIS were to continue to collect user fees at the current rates over this time period, total collections would be approximately $10.8 million. At the proposed rates, the total would be about $21.4 million. Because the proposed changes in user fees are intended to cover cost changes that have already occurred and that are projected to occur over the period covered in the proposed rule, this difference of about $10.6 million demonstrates the shortfall in cost recovery that would occur absent the changes, and, conversely, the savings to taxpayers associated with this proposal.

TABLE 1.—SUMMARY OF CURRENT AND PROJECTED COLLECTIONS OF APHIS VETERINARY DIAGNOSTIC USER FEES

User fee categories	Collections under current fee levels	Estimated additional annual collections from user fee changes				
		FY 2004	FY 2005	FY 2006	FY 2007	Total
FADDL, all	$164,754	$140,959	$9,990	$10,533	$10,975	$172,457
Identification Testing, NVSL	431,920	304,900	26,497	22,913	26,067	380,377
Serology Testing, NVSL	1,076,474	948,408	7,027	134,273	2,210	1,091,918
Pathobiology Testing, NVSL	89,249	29,495	4,050	4,806	4,802	43,153
Diagnostic Reagents, NVSL	480,692	591,526	34,045	38,130	32,866	696,587
Other Veterinary Diagnostic Services, NVSL	461,153	408,962	19,571	20,851	21,184	470,568
Total	2,704,242	2,424,299	101,180	231,506	98,124	2,855,059

The largest increase in collections would occur in FY 2004. The fee increases in FY 2004 cover cost increases that have occurred since the last revision of these fees, in addition to cost increases expected to occur in FY 2004. The increase of about $2.4 million in veterinary diagnostic user fee collections in FY 2004 would be accounted for in the following manner. Collections from laboratory tests, reagents, and other veterinary services preformed at NVSL FADDL would increase by about $141,000; user fee collections for veterinary diagnostic isolation and identification tests performed at NVSL in Ames would increase by about $305,000; user fee collections for serology tests performed at NVSL in Ames would increase by about $948,000; user fee collections for veterinary diagnostic tests performed at the pathobiology laboratory at NVSL in Ames would increase by about $29,000; user fee collections for reagents produced at NVSL in Ames would increase by about $592,000; and user fee collections for other veterinary diagnostic services performed at NVSL in Ames would increase by about $409,000.

Impact on Users

Veterinary diagnostic services and products are provided to animal importers and exporters, veterinarians, State and Federal agencies and laboratories, commercial laboratories, educational institutions, and foreign governments. To the extent that the proposed changes in user fees would impact operational costs, any entity that utilizes APHIS veterinary diagnostic products or services subject to user fees could be affected by the proposed fee increases. The degree to which any entity could be affected depends on its market power (the extent to which costs can be either absorbed or passed on to its buyers). While the lack of information on profit margins and operational expenses of the affected entities, or the supply responsiveness of the affected industry, prevents the precise prediction of the scale of impacts, some conclusions on overall impacts to domestic and international commerce can be drawn.

The increases in user fees in this proposal represent significant percentages, primarily in the first year covered by this proposed rule. In all six categories, the average proposed fee change exceeds 80 percent in the first year and 100 percent in total over the period covered in the proposed rule. If the user fees cannot be passed on to their customers, the profit margins of some entities may decline as user fees are increased. However, new techniques now allow APHIS to better identify the true costs of providing the veterinary diagnostic services and products covered by user fees. These techniques have shown that there are considerable differences between those true costs and the user fees APHIS has been charging. Operating costs have increased since the last time these fees were adjusted. In addition, it has been shown that the direct labor portion of the fee calculations was vastly underestimated for many of the fees in previous calculations. When a user fee does not cover all associated costs, those costs are shifted away from those receiving and benefitting from the service and onto APHIS, and thus ultimately to the taxpayer.

There is also reason to believe that the economic effects of the proposed changes on most users would be small. The majority of the user fees would increase by $50 or less. The majority of the proposed fees should also make only a small contribution to the total additional collections and, therefore, would have a minor impact on the users of those services. This is either because the proposed change is small or the projected volume associated with the user fee is small, or both. In addition, user fees are not charged when tests are provided in the United States in association with a Federal or cooperative disease control program. Also, in addition to the role they play in protecting American agriculture, the veterinary diagnostic services and products we provide facilitate international trade and thereby enhance the business interests of many of those requesting these services.

Nearly 59 percent of the total projected change in collections would come from changes in only 9 of the 190 fees, and more than 93 percent of the change would come from changes in just 43 of the fees covered in this proposed rule. These 43 proposed fee changes are projected to generate $10,000 or more each in additional annual collections by the end of the period covered by the proposed rule. Several factors suggest, however, that these fee increases should not have a significant impact on users. These fees include small fees applied to a large annual volume of users, large fees applied to a very small volume of users, fees that represent a small percentage of the overall costs associated with a user's output, single fees for reagents with numerous final users, and fees that enhance the marketability of the users' final outputs.

Small Change in Collections

The majority of the individual user fee changes in this proposal would make only small contributions to the total additional collections, and, therefore, would have a minor effect on the users of those services. This is either because the change in the fee is small or the projected volume associated with the user fee is small, or both (see Table 2).

1. More than 60 percent of the user fees would change by less than $50, and nearly 16 percent by less than $10.

2. Nearly 50 percent of the user fees are projected to have an annual volume of 10 or fewer users, and about 65 percent fewer than 90.

3. More than 31 percent of the user fees would change by $50 or less and have a projected annual volume of 50 or fewer users.

4. More than 62 percent of the fees with more than 100 annual users would change by $25 or less, and about 62 percent of the fees that would change by more than $50 have an estimated annual volume of 10 or fewer users.

TABLE 2.—INCREASES AND VOLUMES ASSOCIATED WITH VETERINARY DIAGNOSTIC USER FEES

Total increase in user fee:	Number of fees with estimated annual volume of:				
	10 or fewer	11 to 20	20 to 50	51 to 100	More than 100
$10 or less	10	1	1	2	15
$10.01 to $25	16	3	3	1	26
$25.01 to $50	21	2	2	0	10
$50.01 to $100	29	1	4	1	9
More than $100	16	2	4	1	6

Program Diseases

When considering the proposed user fee changes, it is important to realize that user fees are not charged for tests and diagnostic reagents provided in the United States required in connection with current Federal or cooperative programs to control or eradicate various domestic diseases or pests, known as "program diseases." Examples of program diseases are tuberculosis, brucellosis, and pseudorabies. In those situations, no user fee would be charged for veterinary diagnostics.

Large Contributions to Collections

The following factors suggest that even those proposed user fee changes that would generate more than $10,000 in additional annual collections may have a minimal impact on users.

Thirty-six of the 43 proposed user fees that we expect would generate more than $10,000 each in additional annual collections would change by less than $75 each, and 14 would change by less than $25 each. In addition, most of the user fees covered in this proposal are collected in association with imports or exports. While those user fees would increase under this proposed rule, the fees continue to represent only a small fraction of the typical costs of purchasing and importing breeding grade registered animals into the United States, which can be between $1,500 and $5,000 per head. Purchase and import costs for feeder and slaughter animals are often significantly lower per animal but can easily exceed $1,500 per shipment depending on the number and type of animals in the shipment. About 18 percent of the total change in collections would come from a single user fee, that for complement fixation (CF) tests. About 90 percent of the CF test user fees are collected for import and export. The $5 change in the first year under the proposed fees and the $7 total change in the user fee for CF tests in § 130.16 would be very small in relation to the value of the animals involved and to the costs associated with importing and exporting animals. By providing the tests, this movement is facilitated.

A number of the proposed reagent user fees should generate considerable additional annual collections under this proposal. However, while these proposed changes represent considerable percentage increases in those fees, each purchasing laboratory can use the reagents to perform several hundred tests. Therefore, the purchasing laboratory can spread its costs across those several hundred tests for its customers. In addition, provision of the reagents enhances the purchasing laboratory's business, for without the reagents the tests would not be possible.

Along this same line, the fact that check tests would generate considerable additional collections under this proposal should have only a small impact. By passing (getting the correct results on a check test kit), the laboratory is certified to conduct the particular test on samples that are received by the laboratory. Being certified by APHIS to conduct a test enhances a laboratory's ability to attract customers.

Laboratory Tests, Reagents, and other Veterinary Services Performed at NVSL FADDL

The proposed user fee changes for NVSL FADDL veterinary diagnostic services and products could generate additional annual collections of about $141,000 in the first year and about $172,000 after all increases covered in this proposal have been implemented. These user fees cover veterinary diagnostic services and products associated with foreign animal diseases, including the diagnosis of foreign animal diseases, training in foreign animal disease recognition, reagent production, and vaccine testing. It should be noted that the NVSL FADDL laboratory is isolated from the mainland United States. Because the laboratory works with diseases exotic to the United States, special biosecurity measures are required at NVSL FADDL that are not required at NVSL in Ames, IA. The proposed user fees reflect the higher operating costs at NVSL FADDL.

Most of the user fees in this category would increase substantially under this proposed rule. The average increase in the first year would be about 89 percent. However, the total impact of the proposed changes should be small. Of the 35 fees in this category, only 4 are associated with increased annual collections of more than $10,000 each over the entire time period covered in the proposal. These four fees would account for more than 86 percent of the additional collections in this category. By the end of FY 2007, collections from hourly fees would have increased by about $64,000 annually, collections for virus neutralization tests would have increased by about $55,000 annually, collections for enzyme linked immunosorbent assay tests would have increased by about $17,000, and collections for indirect fluorescent antibody tests would have increased by about $12,000. In addition, the nature of the work at NVSL FADDL should limit the impact of the proposed changes in the user fees. The user fee work at NVSL FADDL is restricted to work associated with foreign animal diseases, and this limits the volume of user fee work at the laboratory. The majority of the user fee work is associated with imports. For example, the virus neutralization test is often used as a prescreening test for foot-and-mouth disease prior to an animal leaving its country of origin to ensure that the animal will not be refused entry into the United States and reexported. Also, a good deal of the user fee work at NVSL FADDL is performed in conjunction with the import of master seeds/cells for vaccines. The overall cost of developing and importing these vaccines is very high. Because of this, the user fees and the proposed increases in those fees represent a very small portion of an importer's costs.

Veterinary Diagnostic Isolation and Identification Tests Performed at NVSL in Ames

The proposed user fee changes for veterinary diagnostic isolation and identification tests performed at NVSL in Ames could generate additional annual collections of about $305,000 in FY 2004 and about $380,000 by the end of FY 2007. The average proposed increase in the fees in this category is more than 100 percent in the first year. However, the total impact of the changes should be small. The average increase in the first year would be less than $36, and 12 of the 20 fees in this category would change in total by less than $30 each. Only six of these fees should generate $10,000 or more in additional annual collections. Two of these fees are primarily associated with required testing at poultry slaughtering facilities, and are paid for by the Food Safety and Inspection Service (FSIS): Bacterial serotyping (Salmonella), which is projected to generate a total of about $119,000 in additional annual collections, and phage typing (all other), which is projected to generate a total of about $14,000 in additional annual collections. User fees for these tests are only charged for research and for confirming the FSIS tests. The proposed changes in the user fee for virus isolation tests are projected to generate total additional collections of $75,000. However, the change in this fee would be only $11.50 in the first year and $16.50 in total for virus isolations other than for Newcastle disease.

Veterinary Diagnostic Serology Tests Performed at NVSL in Ames

The proposed user fee changes for veterinary diagnostic serology tests performed at NVSL in Ames could generate additional annual collections of about $948,000 in FY 2004 and about $1.1 million by the end of FY 2007. The average total increase in the fees in this category would be more than 100 percent. However, the total impact of these proposed changes should be small. The average increase in the first year would be less than $9 and would increase by less than $10 in total. Only three of the fees in this category would increase in total by more than $20, and 16 would increase by less than $10. The proposed user fee for CF tests should generate about $509,000 in total additional annual collections, but the increase in this fee would be only $6 in the first year and $7 in total. About 90 percent of the CF test user fees are collected for import and export. The increases in this user fee would be very small in relation to the value of the animals involved and the costs associated with importing and exporting animals. For example, moving horses into or out of the United States generally requires four CF tests. Breeding stallions move between the northern and southern hemispheres to double the number of annual breeding seasons. These stallions, valued on average at approximately $400,000 and reaching $2 to $4 million, can command breeding fees of at minimum $10,000 per mare covered. Moving horses by air can cost between $6,000 and $9,000 per horse. The user fees represent a tiny portion of the total cost of moving these animals into the country, and by providing the tests, this movement is facilitated.

Veterinary Diagnostic Tests Performed at the Pathobiology Laboratory at NVSL in Ames

The proposed changes in the user fees for veterinary diagnostic tests performed at the pathobiology laboratory at NVSL in Ames could generate additional annual collections of about $29,000 in FY 2004 and about $43,000 by the end of FY 2007. The average increase in the fees in this category would be less than $30 in the first year and $35 in total. Only two of the proposed fees in this category are projected to generate more than $10,000 each in additional total annual collections, and the rest less than $1,000 each. Both of these two fees would change by less than $10 each in the first year, and by less than $15 each in total.

Veterinary Diagnostic Reagents Produced at NVSL in Ames

The proposed changes in user fees for veterinary diagnostic reagents produced at NVSL in Ames could generate additional annual collections of about $592,000 in FY 2004 and about $697,000 by the end of the FY 2007. The proposed changes to 16 of these fees should generate a total of more than $10,000 each in additional annual collections. The average increase in this category is less than $60 in the first year and $70 in total. Thirty-one of the fees increase by less than $50 each in total, and 20 by $25 or less each. While these proposed changes represent considerable percentage increases in those fees, the reagents are the basis for doing tests. The purchasing laboratory can use the reagent to perform several hundred tests. Therefore, the purchasing laboratory can spread its costs across those several hundred tests for its customers. In addition, the ability to obtain these reagents from APHIS enhances the purchasing laboratory's business, for without the reagents the tests would not be possible.

Other Veterinary Diagnostic Services or Materials Provided at NVSL in Ames

The proposed changes in user fees for other veterinary diagnostic services or materials provided at NVSL in Ames could generate additional annual collections of about $409,000 in FY 2004, and about $471,000 by the end of FY 2007. Providing check tests could account for about 47 percent of the total additional collections in this category, about $221,000. NVSL in Ames certifies laboratories to conduct certain tests, employing "check test kits" to perform the certification. The kits consist of about 20 sera (or live organisms if it is for culture), and the laboratory conducts the test it wants to be certified to perform using the sera in the check test kit. The laboratory must get a predetermined number of the sera right (positive or negative) in order to pass and be certified to run the tests. The proposed user fees for this service should not have a significant impact on the laboratories because being certified by APHIS to conduct a test enhances their ability to attract customers who pay the laboratory to conduct tests. Another large portion of the additional annual collections would be from the proposed fee for fetal bovine serum safety test. The proposed changes to this fee are projected to generate total additional annual collections of about $131,000 by the end of FY 2007. This fee is for testing fetal bovine serum to be sure it is free of foreign viruses. This serum is needed to grow viruses and is used by biologics manufacturers and diagnostic laboratories. Its value is high even relative to the large fee for the test.

Small Entities

The Regulatory Flexibility Act requires that agencies specifically consider the economic impact associated with their rules on small entities. The Small Business Administration (SBA) has set size criteria according to the categories of the North American Industrial Classification System (NAICS), which is used as a guide in determining which economic entities meet the definition of a small business.

The veterinary diagnostic services provided by APHIS at NVSL FADDL and NVSL in Ames are provided to determine if a disease-causing organism or chemical agent is present in body tissues or cells and to identify those organisms or agents. As such, the users of these services and products include importers, exporters, non-APHIS veterinarians, commercial laboratories and pharmaceutical manufacturers, State laboratories, universities, and foreign governments. These users may be affected by the proposed changes to user fees for veterinary diagnostic services and products.

The SBA's criterion for a small entity engaged in importing and exporting live animals, poultry, and birds is 100 or fewer employees. The criterion for a small veterinary testing laboratory is $6 million or less in annual sales. The criterion for a small pharmaceutical manufacturing company is 750 or fewer employees.

The number of entities specifically using the veterinary diagnostic products and services covered in this proposal that would qualify as a small entity under SBA criteria cannot be determined at this time. However, more than 99 percent [1] of the entities in livestock wholesale, poultry wholesale, and other farm product raw material wholesale (including horses and mules) can be considered small. Under NAICS, import and export merchants, agents, and brokers are included in the wholesale trade sector. According to the latest available information,[2] 94 percent of all testing laboratories, including veterinary testing laboratories, can be considered small. According to the 1997 Economic Census, at least 97.9 percent [3] of all chemical manufacturers can be considered small. Pharmaceutical manufacturing is included in this category under NAICS. It is, therefore, likely that the majority of users affected can be considered small. However, because the overall impacts of the proposal are expected to be limited, the impacts on small entities should be limited as well.

Costs and Benefits of User Fees

User fees for veterinary diagnostic services and products are intended to meet broad economic objectives. User fees promote the internalization of the real cost of providing veterinary diagnostic services and products in consumer transaction decisions. User fees also achieve savings in Government expenditures, and, therefore, reduce the tax support necessary for the system to operate at a given level. These tax funds can then be used in other programs or to reduce taxes overall and, thus, diminish the efficiency losses associated with the generation of taxes (deadweight loss plus collection costs).

Cost of Services

User fees reduce Government expenditures for fee-based services by shifting the burden of financing Federal services from general taxpayers to users and by curtailing the amount demanded for veterinary diagnostic service-related products. The consumer response to user fees is a movement toward a more socially optimal level of demand where users incorporate the cost of veterinary diagnostic services and products into their private costs.

As circumstances affecting the cost of providing services and products change, the amount of the user fees must be reevaluated to ensure that the user fee accurately reflects the cost of providing the services at that point in time. The socially optimal level of output, where the true cost is more fully incorporated into the transaction, is therefore maintained.

Benefits of Services

The net gain associated with the adjustment in consumer demand is quantified by subtracting the consumer welfare losses from the savings in Government expenditures. The magnitude of this gain depends on the elasticities of demand for each particular service or product (consumer responsiveness to changes in user fees). These elasticities are unknown. The demand for veterinary diagnostic services and products is intertwined with the demand for the commodities of which the products and services are inputs. However, there is no evidence to suggest that a significant change in demand for veterinary diagnostics has occurred due to the imposition or alteration of user fees in the past. When consumer adjustment is small, there is a correspondingly low net social gain.

Additional social gain can be expected from the reduction in losses associated with collecting and apportioning taxes to finance the veterinary diagnostic products and services. This reduction in losses arises from the internalization by consumers of the social cost of obtaining veterinary diagnostic products and services, and from the reduction in deadweight losses due to taxation.

Comparison of Benefits and Costs

To evaluate the overall costs and benefits of the user fee program, the two types of net benefits must be compared with the cost of the user fees. Because the demand elasticities for the veterinary diagnostic service-related products are unknown, the only

[1] U.S. Census Bureau, 1997 Economic Census.

[2] U.S. Census Bureau, 1992 Economic Census.

[3] In 1997, 13,187 of 13,474 chemical manufacturing establishments had fewer than 500 employees.

measures are the savings in Government expenditures and the administrative cost involved in obtaining these savings. APHIS already has a user fee program and a mechanism for collecting these fees in place. This proposal would update existing fees. Therefore, increases in administrative costs would be very small. Differences between the level of the user fees and actual cost of performing the services have become considerable. Therefore, the Government savings associated with this proposal should be substantial. It is likely that the net gain in reducing the burden on taxpayers as a whole would outweigh the cost of administering the revisions of the user fees.

The proposed user fee increases are needed to move toward economic efficiency. From the point of view of society, the optimal level of output is where the marginal benefit to society equals the marginal cost to society. User fees help to internalize the cost of performing the veterinary diagnostic services into the private transaction, and their revision helps ensure that the user fees adequately reflect the cost of performing the services over time.

Summary

The impacts of the proposed increases in veterinary diagnostic user fees in this proposal are expected to be muted. The majority of the proposed changes to the user fees are either small, associated with few users, or both. Over the period covered by the proposed rule, more than 60 percent of the individual increases are less than $50, nearly 16 percent increase by less than $10, and about 65 percent are associated with 100 or fewer users. The majority of the proposed fees should also make only small contributions to the total additional collections and, therefore, would have a minor impact on the users of those services. This is either because the proposed change is small or the projected volume associated with the user fee is small, or both. Even in those instances in which the change in a user fee would generate a larger total increase in collections, the impact should not be significant because they are small fees applied to a large annual volume of users, large fees applied to a very small volume of users, fees that represent a small percentage of the overall costs associated with a user's output, single fees for reagents with numerous final users, or fees that enhance the marketability of the user's final outputs. Therefore, the increases are not generally expected to substantially reduce profits or impede exports or imports. Indeed, the full burden of the proposed user fee changes is not likely to be borne entirely by the purchasers of products and services.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, we propose to amend 9 CFR part 130 as follows:

PART 130—USER FEES

1. The authority citation for part 130 would continue to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.4.

2. In § 130.14, paragraphs (a), (b), and (c), the tables would be revised to read as follows:

§ 130.14 User fees for FADDL veterinary diagnostics.

(a) * * *

Reagent	Unit	User fee			
		Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Bovine antiserum, any agent	1 mL	$150.00	$155.00	$160.00	$165.00
Caprine antiserum, any agent	1 mL	184.00	189.00	195.00	202.00
Cell culture antigen/microorganism	1 mL	103.00	106.00	109.00	111.00
Equine antiserum, any agent	1 mL	186.00	192.00	198.00	204.00
Fluorescent antibody conjugate	1 mL	169.00	172.00	176.00	179.00
Guinea pig antiserum, any agent	1 mL	184.00	189.00	194.00	200.00
Monoclonal antibody	1 mL	222.00	229.00	235.00	243.00
Ovine antiserum, any agent	1 mL	176.00	181.00	187.00	193.00
Porcine antiserum, any agent	1 mL	152.00	157.00	162.00	167.00
Rabbit antiserum, any agent	1 mL	179.00	185.00	190.00	196.00

(b) * * *

Test	Unit	User fee			
		Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Agar gel immunodiffusion	Test	$30.00	$31.00	$32.00	$33.00
Card	Test	17.00	17.00	18.00	18.00
Complement fixation	Test	36.00	37.00	38.00	40.00

Test	Unit	User fee			
		Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Direct immunofluorescent antibody	Test	22.00	23.00	24.00	25.00
Enzyme linked immunosorbent assay	Test	26.00	27.00	28.00	29.00
Fluorescent antibody neutralization (classical swine fever).	Test	194.00	201.00	208.00	215.00
Hemagglutination inhibition	Test	57.00	59.00	61.00	63.00
Immunoperoxidase	Test	29.00	30.00	31.00	32.00
Indirect fluorescent antibody	Test	35.00	36.00	37.00	39.00
In-vitro safety	Test	570.00	589.00	609.00	630.00
In-vivo safety	Test	5,329.00	5,387.00	5,447.00	5,509.00
Latex agglutination	Test	23.00	24.00	25.00	26.00
Tube agglutination	Test	28.00	28.00	29.00	30.00
Virus isolation (oesophageal/pharyngeal)	Test	180.00	186.00	192.00	199.00
Virus isolation in embryonated eggs	Test	346.00	358.00	370.00	383.00
Virus isolation, other	Test	155.00	160.00	166.00	171.00
Virus neutralization	Test	52.00	54.00	56.00	58.00

(c) * * *

Veterinary diagnostic service	Unit	User fee			
		Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Bacterial isolation	Test	$112.00	$115.00	$119.00	$123.00
Hourly user fee services [1]	Hour	445.00	460.00	476.00	492.00
Hourly user fee services—Quarter hour	Quarter hour	111.00	115.00	119.00	123.00
Infected cells on chamber slides or plates	Slide	49.00	50.00	51.00	53.00
Reference animal tissues for immunohistochemistry.	Set	171.00	177.00	182.00	187.00
Sterilization by gamma radiation	Can	1,740.00	1,799.00	1,860.00	1,923.00
Training (school or technical assistance)	Per person per day	910.00	941.00	973.00	1,006.00
Virus titration	Test	112.00	115.00	110.00	123.00

[1] For all veterinary diagnostic services for which there is no flat rate user fee, the hourly rate user fee will be calculated for the actual time required to provide the service.

* * * * *

3. In § 130.15, paragraphs (a) and (b), the tables would be revised to read as follows:

§ 130.15 User fees for veterinary diagnostic isolation and identification tests performed at NVSL(excluding FADDL) or other authorized site.

(a) * * *

Test	Unit	User fee			
		Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Bacterial identification, automated	Isolate	$48.00	$50.00	$51.00	$53.00
Bacterial identification, non-automated	Isolate	81.00	84.00	87.00	90.00
Bacterial isolation	Sample	33.00	34.00	35.00	36.00
Bacterial serotyping, all other	Isolate	51.00	52.00	53.00	55.00
Bacterial serotyping, Pasteurella multocida	Isolate	16.00	17.00	18.00	18.00
Bacterial serotyping, Salmonella	Isolate	33.00	34.00	35.00	36.00
Bacterial toxin typing	Isolate	109.00	112.00	116.00	120.00
Bacteriology requiring special characterization	Test	83.00	86.00	89.00	92.00
DNA fingerprinting	Test	54.00	56.00	58.00	59.00
DNA/RNA probe	Test	77.00	79.00	81.00	83.00
Fluorescent antibody	Test	17.00	17.00	18.00	19.00
Mycobacterium identification (biochemical)	Isolate	104.00	107.00	111.00	114.00
Mycobacterium identification (gas chromatography).	Procedure	87.00	90.00	93.00	96.00
Mycobacterium isolation, animal inoculations	Submission	770.00	791.00	814.00	837.00
Mycobacterium isolation, all other	Submission	136.00	141.00	146.00	151.00
Mycobacterium paratuberculosis isolation	Submission	65.00	67.00	70.00	72.00
Phage typing, all other	Isolate	38.00	39.00	41.00	42.00
Phage typing, Salmonella enteritidis	Isolate	21.00	22.00	23.00	24.00

(b) * * *

Test	Unit	User fee			
		Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Fluorescent antibody tissue section	Test	$27.00	$27.00	$28.00	$29.00
Virus isolation	Test	43.00	45.00	46.00	48.00

* * * * *

4. In § 130.16, paragraphs (a) and (b), the tables would be revised to read as follows:

§ 130.16 User fees for veterinary diagnostic serology tests performed at NVSL (excluding FADDL) or at authorized sites.

(a) * * *

Test	Unit	User fee			
		Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Brucella ring (BRT)	Test	$33.00	$34.00	$35.00	$36.00
Brucella ring, heat inactivated (HIRT)	Test	33.00	34.00	35.00	36.00
Brucella ring, serial (Serial BRT)	Test	49.00	51.00	53.00	54.00
Buffered acidified plate antigen presumptive	Test	6.00	7.00	7.00	7.00
Card	Test	4.00	4.00	4.00	4.00
Complement fixation	Test	15.00	15.00	16.00	16.00
Enzyme linked immunosorbent assay	Test	15.00	15.00	16.00	16.00
Indirect fluorescent antibody	Test	13.00	13.00	14.00	14.00
Microscopic agglutination-includes up to 5 serovars.	Sample	21.00	22.00	23.00	24.00
Microscopic agglutination-each serovar in excess of 5 serovars.	Sample	4.00	4.00	4.00	4.00
Particle concentration fluorescent immunoassay (PCFIA).	Test	33.00	34.00	35.00	36.00
Plate	Test	6.00	7.00	7.00	7.00
Rapid automated presumptive	Test	6.00	6.00	6.00	7.00
Rivanol	Test	6.00	7.00	7.00	7.00
Tube agglutination	Test	6.00	7.00	7.00	7.00

(b) * * *

Test	Unit	User fee			
		Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Agar gel immunodiffusion	Test	$15.00	$15.00	$16.00	$16.00
Complement fixation	Test	15.00	15.00	16.00	16.00
Enzyme linked immunosorbent assay	Test	15.00	15.00	16.00	16.00
Hemagglutination inhibition	Test	13.00	13.00	14.00	14.00
Indirect fluorescent antibody	Test	13.00	13.00	14.00	14.00
Latex agglutination	Test	15.00	15.00	16.00	16.00
Peroxidase linked antibody	Test	14.00	14.00	15.00	15.00
Plaque reduction neutralization	Test	16.00	17.00	17.00	18.00
Rabies fluorescent antibody neutralization	Test	41.00	42.00	44.00	45.00
Virus neutralization	Test	12.00	12.00	13.00	13.00

* * * * *

5. In § 130.17, paragraph (a), the table would be revised to read as follows:

§ 130.17 User fees for other veterinary diagnostic laboratory tests performed at NVSL (excluding FADDL) or at authorized sites.

(a) * * *

Test	Unit	User fee			
		Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Aflatoxin quantitation	Test	$27.00	$28.00	$29.00	$30.00
Aflatoxin screen	Test	26.00	27.00	28.00	29.00

Test	Unit	User fee			
		Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Agar gel immunodiffusion spp. identification	Test	11.00	12.00	12.00	13.00
Antibiotic (bioautography) quantitation	Test	59.00	61.00	63.00	65.00
Antibiotic (bioautography) screen	Test	108.00	112.00	115.00	119.00
Antibiotic inhibition	Test	59.00	61.00	63.00	65.00
Arsenic	Test	16.00	16.00	17.00	17.00
Ergot alkaloid screen	Test	59.00	61.00	63.00	65.00
Ergot alkaloid confirmation	Test	77.00	80.00	83.00	86.00
Feed microscopy	Test	59.00	61.00	63.00	65.00
Fumonisin only	Test	33.00	35.00	36.00	37.00
Gossypol	Test	89.00	92.00	95.00	98.00
Mercury	Test	131.00	135.00	140.00	145.00
Metals screen	Test	40.00	41.00	43.00	44.00
Metals single element confirmation	Test	11.00	12.00	12.00	13.00
Mycotoxin: aflatoxin-liver	Test	108.00	112.00	115.00	119.00
Mycotoxin screen	Test	43.00	44.00	46.00	48.00
Nitrate/nitrite	Test	59.00	61.00	63.00	65.00
Organic compound confirmation	Test	79.00	82.00	85.00	88.00
Organic compound screen	Test	137.00	141.00	146.00	151.00
Parasitology	Test	26.00	27.00	28.00	29.00
Pesticide quantitation	Test	119.00	123.00	128.00	132.00
Pesticide screen	Test	54.00	56.00	58.00	60.00
pH	Test	24.00	25.00	26.00	26.00
Plate cylinder	Test	89.00	92.00	95.00	98.00
Selenium	Test	40.00	41.00	43.00	44.00
Silicate/carbonate disinfectant	Test	59.00	61.00	63.00	65.00
Temperature disks	Test	118.00	122.00	126.00	130.00
Toxicant quantitation, other	Test	99.00	103.00	106.00	110.00
Toxicant screen, other	Test	30.00	31.00	32.00	33.00
Vomitoxin only	Test	48.00	49.00	51.00	53.00
Water activity	Test	30.00	31.00	32.00	33.00
Zearaleone quantitation	Test	48.00	49.00	51.00	53.00
Zearaleone screen	Test	26.00	27.00	28.00	29.00

* * * * *

6. In § 130.18, paragraphs (a) and (b), the tables would be revised to read as follows:

§ 130.18 User fees for veterinary diagnostic reagents produced at NVSL or other authorized site (excluding FADDL).

(a) * * *

Reagent	Unit	User fee			
		Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2004
Anaplasma card test antigen	2 mL	$87.00	$89.00	$92.00	$95.00
Anaplasma card test kit without antigen	Kit	115.00	119.00	123.00	127.00
Anaplasma CF antigen	2 mL	46.00	46.00	46.00	46.00
Anaplasma stabilate	4.5 mL	160.00	165.00	170.00	175.00
Avian origin bacterial antiserums	1 mL	43.00	44.00	46.00	47.00
Bacterial agglutinating antigens other than brucella and salmonella pullorum.	5 mL	49.00	51.00	52.00	54.00
Bacterial conjugates	1 mL	87.00	90.00	93.00	96.00
Bacterial disease CF antigens, all other	1 mL	26.00	27.00	28.00	29.00
Bacterial ELISA antigens	1 mL	27.00	27.00	28.00	29.00
Bacterial or protozoal, antiserums, all other	1 mL	54.00	56.00	58.00	60.00
Bacterial reagent culture[1]	Culture	66.00	68.00	70.00	73.00
Bacterial reference culture[2]	Culture	206.00	213.00	221.00	228.00
Bacteriophage reference culture	Culture	155.00	161.00	166.00	172.00
Bovine serum factor	1 mL	16.00	17.00	17.00	18.00
Brucella abortus CF antigen	60 mL	136.00	141.00	146.00	151.00
Brucella agglutination antigens, all other	60 mL	136.00	141.00	146.00	151.00
Brucella buffered plate antigen	60 mL	155.00	161.00	166.00	172.00
Brucella canis tube antigen	25 mL	102.00	105.00	107.00	109.00
Brucella card test antigen (packaged)	Package	81.00	84.00	87.00	90.00
Brucella card test kit without antigen	Kit	106.00	109.00	111.00	113.00
Brucella cells	Gram	17.00	17.00	18.00	18.00
Brucella cells, dried	Pellet*	5.00	5.00	5.00	6.00
Brucella ring test antigen	60 mL	218.00	225.00	233.00	241.00
Brucella rivanol solution	60 mL	27.00	27.00	28.00	29.00
Dourine CF antigen	1 mL	81.00	84.00	86.00	89.00

Reagent	Unit	User fee			
		Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2004
Dourine stabilate	4.5 mL	102.00	105.00	107.00	109.00
Equine and bovine origin babesia species antiserums.	1 mL	115.00	119.00	123.00	127.00
Equine negative control CF antigen	1 mL	267.00	272.00	276.00	281.00
Flazo-orange	3 mL	11.00	12.00	12.00	13.00
Glanders CF antigen	1 mL	70.00	73.00	75.00	77.00
Hemoparasitic disease CF antigens, all other	1 mL	489.00	505.00	522.00	540.00
Leptospira transport medium	10 mL	4.00	4.00	4.00	4.00
Monoclonal antibody	1 mL	88.00	90.00	93.00	95.00
Mycobacterium spp. old tuberculin	1 mL	21.00	22.00	23.00	24.00
Mycobacterium spp. PPD	1 mL	16.00	17.00	18.00	18.00
Mycoplasma hemagglutination antigens	5 mL	163.00	168.00	174.00	180.00
Negative control serums	1 mL	16.00	17.00	18.00	18.00
Rabbit origin bacterial antiserum	1 mL	47.00	48.00	50.00	52.00
Salmonella pullorum microagglutination antigen	5 mL	14.00	14.00	15.00	15.00
Stabilates, all other	4.5 mL	623.00	640.00	659.00	678.00

[1] A reagent culture is a bacterial culture that has been subcultured one or more times after being tested for purity and identity. It is intended for use as a reagent with a diagnostic test such as the leptospiral microagglutination test.
[2] A reference culture is a bacterial culture that has been thoroughly tested for purity and identity. It should be suitable as a master seed for future cultures.

(b) * * *

Reagent	Unit	User fee			
		Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Antigen, except avian influenza and chlamydia psittaci antigens, any.	2 mL	$55.00	$57.00	$59.00	$61.00
Avian antiserum except avian influenza antiserum, any.	2 mL	44.00	45.00	47.00	48.00
Avian influenza antigen, any	2 mL	30.00	31.00	32.00	33.00
Avian influenza antiserum, any	6 mL	93.00	96.00	100.00	103.00
Bovine or ovine serum, any	2 mL	115.00	119.00	123.00	127.00
Cell culture	Flask	136.00	141.00	146.00	151.00
Chlamydia psittaci spp. of origin monoclonal antibody panel.	Panel	88.00	90.00	93.00	95.00
Conjugate, any	1 mL	66.00	68.00	71.00	73.00
Diluted positive control serum, any	2 mL	22.00	23.00	24.00	24.00
Equine antiserum, any	2 mL	41.00	42.00	44.00	45.00
Monoclonal antibody	1 mL	94.00	96.00	99.00	102.00
Other spp. antiserum, any	1 mL	51.00	51.00	52.00	52.00
Porcine antiserum, any	2 mL	95.00	99.00	102.00	105.00
Porcine tissue sets	Tissue set	152.00	153.00	155.00	157.00
Positive control tissues, all	2 cm^2 section	55.00	57.00	58.00	60.00
Rabbit origin antiserum	1 mL	47.00	48.00	50.00	52.00
Reference virus, any	0.6 mL	163.00	169.00	174.00	180.00
Viruses (except reference viruses), chlamydia psittaci agent or chlamydia psittaci antigen, any.	0.6 mL	27.00	28.00	29.00	30.00

* * * * *

7. In § 130.19 , paragraph (a), the table would be revised to read as follows:

§ 130.19 User fees for other veterinary diagnostic services or materials provided at NVSL(excluding FADDL).

(a) * * *

Service	Unit	User fee			
		Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Antimicrobial susceptibility test	Isolate	$95.00	$98.00	$101.00	$105.00
Avian safety test	Test	3,774.00	3,871.00	3,972.00	4,075.00
Check tests, culture	Kit [1]	162.00	167.00	171.00	176.00
Check tests, serology, all other	Kit [1]	326.00	337.00	349.00	361.00
Fetal bovine serum safety test	Verification	1,061.00	1,078.00	1,096.00	1,114.00

Service	Unit	User fee			
		Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Oct. 1, 2005–Sept. 30, 2006	Beginning Oct. 1, 2006
Hourly user fee services:[2]					
Hour	Hour	84.00	84.00	84.00	84.00
Quarter hour	Quarter hour	21.00	21.00	21.00	21.00
Minimum		25.00	25.00	25.00	25.00
Manual, brucellosis culture	1 copy	104.00	107.00	111.00	114.00
Manual, tuberculosis culture (English or Spanish).	1 copy	155.00	161.00	166.00	172.00
Manual, Veterinary mycology	1 copy	155.00	161.00	166.00	172.00
Manuals or standard operating procedure (SOP), all other.	1 copy	31.00	32.00	33.00	34.00
Manuals or SOP, per page	1 page	2.00	2.00	2.00	2.00
Training (school or technical assistance)	Per person per day	300.00	310.00	320.00	331.00

[1] Any reagents required for the check test will be charged separately.
[2] For veterinary diagnostic services for which there is no flat rate user fee, the hourly rate user fee will be calculated for the actual time required to provide the service.

* * * * *

Done in Washington, DC, this 18th day of July, 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–18849 Filed 7–23–03; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[7590–01–P]

RIN 3150–AH00

Emergency Planning and Preparedness for Production and Utilization Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its emergency planning regulations governing the domestic licensing of production and utilization facilities. The proposed rule would amend the current regulations as they relate to NRC approval of licensee changes to Emergency Action Levels (EALs) and exercise requirements for co-located licensees.

DATES: Submit comments October 7, 2003. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH00) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff.

E-mail comments to: SECY@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Michael T. Jamgochian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. *Telephone:* (301) 415–3224. E-mail: *MTJ1@NRC.GOV.*

SUPPLEMENTARY INFORMATION: The Commission is proposing to make two changes to its emergency preparedness regulations contained in 10 CFR part 50, Appendix E. The first proposed amendment relates to the NRC approval of licensee changes to Emergency Action Levels (EALs), paragraph IV.B and the second proposed amendment relates to exercise requirements for co-located licensees, paragraph IV.F.2. A discussion of each of these proposed revisions follows.

NRC approval of licensee changes to EALs, 10 CFR part 50, Appendix E, Paragraph IV.B.

EALs are part of a licensee's emergency plan. There appears to be an inconsistency in the emergency planning regulations regarding the NRC approval of nuclear power plant licensee changes to EALs. Section 50.54(q) states that licensees may make changes to their emergency plans without Commission approval only if the changes "do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the standards of § 50.47(b) and the requirements of Appendix E" to 10 CFR part 50. By contrast, Appendix E states that "EAL's shall be * * * approved by NRC." However, the current industry practice, in general, has been to make

revisions to EALs and to implement them without requesting NRC approval after determining that the changes do not reduce the effectiveness of the emergency plan, in accordance with § 50.54(q). When the determination is made that a proposed change constitutes a decrease in effectiveness, licensees submit the changes to NRC for review and approval. If a change involves a major change to the EAL scheme, for example, changing from an EAL scheme based on NUREG–0654 guidance to an EAL scheme based on NUMARC/NESP–007 guidance, it has been the industry practice to seek NRC approval before implementing the change. The NRC has been aware of the industry practice and has not objected to it. The Commission believes that the current regulations are unclear and can be interpreted to require prior NRC approval for all changes to a licensee's EALs.

The Commission believes that NRC review and approval of every EAL change is not necessary to provide reasonable assurance that EALs will continue to provide an acceptable level of safety. The Commission's regulatory review should be focused on EAL changes that are of sufficient significance that a safety review by the NRC is appropriate before the licensee may implement the change. The Commission believes that EAL changes which have the potential to reduce the effectiveness of the emergency plan are of sufficient regulatory significance that prior NRC review and approval is warranted. This proposed standard is the same standard that the current regulations provide for determining whether changes to emergency plans (except EALs) require NRC review and approval. As such, this regulatory threshold has a long history of successful application, and this standard should also be used for EAL changes. Based upon the NRC's inspections of emergency plans, including EAL changes the Commission believes that licensees have been, in general, making appropriate determinations regarding whether an EAL change may potentially reduce the effectiveness of the emergency plan and have the capability to continue to do so. Limiting the NRC's review and approval to EAL changes which may reduce the effectiveness of emergency plans will ensure adequate NRC oversight of licensee-initiated EAL changes, while both increasing regulatory effectiveness (through use of a single consistent standard for evaluating all emergency plan changes) and reducing unnecessary regulatory burden on licensees (who would not be required to submit for approval EAL changes that do not decrease the effectiveness of the emergency plan).

The Commission believes a licensee proposal to convert from one EAL scheme (*e.g.*, NUREG–0654-based) to another EAL scheme (*e.g.*, NUMARC/NESP–007-based) will always involve a potential reduction in effectiveness. While the new EAL scheme may, upon review, be determined by the NRC to provide an acceptable level of safety and be in compliance with applicable NRC requirements, the potential safety significance of a change from one EAL scheme to another is such that prior NRC review and approval is appropriate to ensure that there is reasonable assurance that the proposed EAL change will provide an acceptable level of safety or otherwise result in non-compliance with applicable Commission requirements on emergency preparedness.

Accordingly, the Commission proposes to revise Appendix E to 10 CFR part 50 to provide that NRC approval of EAL changes would be necessary for all EAL changes that decrease the effectiveness of the emergency plan and for changing from one EAL scheme (*e.g.*, NUREG–0654-based) to another EAL scheme (*e.g.*, NUMARC/NESP–007-based).

(2) Exercise Requirements for Co-Located Licensees, 10 CFR part 50, Appendix E, Paragraph IV.F.

A. Rulemaking addressing exercise requirements for co-located licensees. The emergency planning regulations were significantly upgraded in 1980 after the accident at Three Mile Island (45 FR 55402; August 19, 1980). The 1980 regulations required an annual exercise of the onsite and offsite emergency plans. In 1984, the regulations were amended to change the frequency of participation of State and local governmental authorities in nuclear power plant offsite exercises from annual to biennial (49 FR 27733; July 6, 1984). In 1996, the regulations were amended to change the frequency of exercising the licensees' onsite emergency plan from annual to biennial (61 FR 30129; June 14, 1996). 10 CFR part 50, Appendix E to part 50, Paragraph IV.F.2, currently provides that the "offsite plans for each site shall be exercised biennially" with the full (or partial) participation of each offsite authority having a role under the plans, and that "each licensee at each site" shall conduct an exercise of its onsite emergency plan every 2 years, an exercise that may be included in the full participation biennial exercise (emphasis added).[1] Thus, Paragraph IV.F.2 is ambiguous about the emergency preparedness exercise requirements where multiple nuclear power plants, each licensed to different licensees, are co-located at the same site: whether each licensee must participate in a full-participation exercise of the off-site plan every two years, or whether the licensees may alternate their participation such that a full-participation exercise is held every two years and each licensee (at a two-licensee site) participates in a full-participation exercise every four years.

Upon consideration of the language of the current regulation and the legislative history of the exercise requirements, the Commission believes that the ambiguity in the current regulation can be interpreted such that each nuclear power plant licensee co-located on the same site must participate in a full-participation offsite exercise every two years (and that each offsite authority is to participate on either a full or partial participation basis in each licensee's biennial offsite exercise). Upon consideration of the matter, the Commission believes that requiring each licensee on a co-located site to participate in a full-participation

[1] 10 CFR part 50, Appendix E, IV.F.2, states:

2. The plan shall describe provisions for the conduct of emergency preparedness exercises as follows: Exercises shall test the adequacy of timing and content of implementing procedures and methods, test emergency equipment and communications networks, test the public notification system, and ensure that emergency organization personnel are familiar with their duties.

a. * * *

b. Each licensee at each site shall conduct an exercise of its onsite emergency plan every 2 years. The exercise may be included in the full participation biennial exercise required by paragraph 2.c. of this section.* * *

c. Offsite plans for each site shall be exercised biennially with full participation by each offsite authority having a role under the plan. Where the offsite authority has a role under a radiological response plan for more than one site, it shall fully participate in one exercise every two years and shall, at least, partially participate in other offsite plan exercises in this period. "Full participation" when used in conjunction with emergency preparedness exercises for a particular site means appropriate offsite local and State authorities and licensee personnel physically and actively take part in testing their integrated capability to adequately assess and respond to an accident at a commercial nuclear power plant. "Full participation" includes testing major observable portions of the onsite and offsite emergency plans and mobilization of state, local and licensee personnel and other resources in sufficient numbers to verify the capability to respond to the accident scenario. "Partial participation" when used in conjunction with emergency preparedness exercises for a particular site means appropriate offsite authorities shall actively take part in the exercise sufficient to test direction and control functions; *i.e.*, (a) protective action decision making related to emergency action levels, and (b) communication capabilities among affected State and local authorities and the licensee.

exercise every two years, and for the offsite authorities to participate in each licensee's full-participation exercise is not necessary to provide reasonable assurance that each licensee and the offsite authorities will be able to fulfill their responsibilities under the emergency plan should the plan be required to be implemented. Furthermore, the Commission believes that such an interpretation could impose an undue regulatory burden on offsite authorities. Currently, there is only one nuclear power plant site with two power plants licensed to two separate licensees: the James A. FitzPatrick and Nine Mile Point site. Although the ambiguity in Paragraph IV.F.2 has limited impact today, the Commission understands that future nuclear power plant licensing concepts currently being considered by the industry include siting multiple nuclear power plants on a single site. These plants may be owned and/or operated by different licensees. Therefore, the Commission believes that this rulemaking is necessary to remove the ambiguity in Paragraph IV.F.2 and clearly specify the emergency preparedness training obligations of co-located licensees.

The Commission proposes that where two nuclear power plants licensed to separate licensees are co-located on the same site, reasonable assurance of emergency preparedness exists where:

(1) The co-located licensees would exercise their onsite plans biennially;

(2) The offsite authorities would exercise their plans biennially;

(3) The interface between offsite plans and each of the onsite plans would be exercised biennially in a full or partial participation exercise alternating between each licensee.

Thus, each co-located licensee would participate in a full or partial participation exercise quadrennially. In addition, in the year when one of the co-located licensees is participating in a full or partial participation exercise, the proposed rule would require the other co-located licensees to participate in activities and interaction with offsite authorities. For the period between exercises the proposed rule would require the licensees to conduct emergency preparedness activities and interactions (A&I). The purpose of A&I would be to test and maintain interface functions among the affected State and local authorities and the licensees.

The Commission concludes that biennial full or partial participation exercises for each co-located licensee is not warranted and that the proposed regulation would provide a sufficient level of assurance of emergency preparedness for the following reasons. First, the proposed rule is consistent with the current licensees' practice for the James A. Fitizpatrick/Nine Mile Point plants. This practice has been reviewed periodically by the NRC, the Federal Emergency Management Agency (FEMA), and the State of New York. NRC has continued to find that there is reasonable assurance that appropriate measures could be taken to protect the public health and safety in the event of a radiological emergency, based on NRC's assessment of the adequacy of the licensee's onsite Emergency Planning (EP) program, FEMA's assessment of the adequacy of the offsite EP program, and the current level of interaction between the onsite and offsite emergency response organizations in the period between full (or partial) participation exercises.

Second, the central requirement of a "partial participation" exercise under the current regulations is to test the "direction and control functions" between the licensee and the offsite authorities (*i.e.*, protective action decision making related to emergency action levels, and communications capabilities among affected State and local authorities and the licensee). *See* 10 CFR part 50, Appendix E, Paragraph IV.F, footnote 5 of the current regulations. The proposed rule would contain a requirement that, in each of the three years between a licensee's participation in a full participation exercise, each licensee shall participate in activities and interactions (A&I) with offsite authorities to test and maintain interface functions. By requiring that the licensee's emergency preparedness organization engages in activities with offsite authorities to exercise and test effective communication and coordination, the proposed rule would provide the functional equivalent of a biennial exercise which tests the "direction and control functions" between the licensee and the offsite authorities. *Id.*

Third, the burden of requiring each licensee to participate biennially in a full or partial participation exercise with offsite participation falls most heavily on the offsite authorities (*i.e.*, the State and local authorities). The Commission's 1984 and 1996 rulemakings were specifically intended to reduce the schedule for offsite exercises, to remove unnecessary burden on offsite authorities. However, the Commission did not explicitly address the unique circumstance of two plants located on a single site, with each plant owned by different licensees. This proposed rulemaking would address the undue burden placed upon offsite authorities in these circumstances.

The proposed rule would define co-located licensees as licensees that share many of the following emergency planning and siting elements:

a. Plume exposure and ingestion emergency planning zones,

b. Offsite governmental authorities,

c. Offsite emergency response organizations,

d. Notification system, and/or

e. Emergency facilities.

The Commission requests public comments on whether the "alternating participation" concept should be extended to the situation where three or more nuclear power plants are co-located at a single site. For example, if there were five nuclear power plants each owned by separate licensees, co-located on a single site, should the final rule include a provision which would require each licensee to participate in a full offsite exercise once every 10 years with co-located licensees required to participate in activities and interactions with offsite authorities between exercises? If this is not considered appropriate, what alternative concept for the conduct of full-participation offsite exercises should the regulation specify?

The Commission also requests public comment on the elements of the definition of "co-located" licensees.

B. Proposed Guidance on Acceptable Emergency Planning Activities and Interactions for Co-Located Licensees. Currently, guidance on the conduct of training, including onsite and offsite exercises, is contained in Regulatory Guide (RG) 1.101, "Emergency Planning and Preparedness for Nuclear Power Reactors." The NRC intends to modify RG 1.101 to set forth guidance on the conduct of exercises, and activities and interactions, to reflect the provisions of any final rule addressing co-located licensees, as part of the final rulemaking package. The substance of the proposed guidance to be set forth in the revised version of RG 1.101 is set forth below. The Commission requests public comment on the following guidance for co-located licensees:

1. When one licensee hosts the two year full or partial participation exercise, the other licensee is involved in the following activities:

a. Scenario preparation;

b. Meetings with State, and local governmental personnel to develop extent of play document;

c. Licensee to conduct training at Reception Centers, Congregate Care Centers, and County Emergency Operations Centers; and

d. Provide controllers and observers for the full participation exercise.

2. Provide for the staffing of the State and County Emergency Operations Centers (EOC) with dose assessment and communications personnel as well as the staffing of the Joint News Center (JNC).

3. Hospital drills are conducted twice a year with alternating counties; if applicable.

4. The Notification Process and the Emergency Action Level Scheme shall be exercised.

5. Protective Action Recommendations (PAR) Methodology for the 10 and 50-mile Emergency Planning Zones (EPZs) and the Dose Assessment Methodology shall be exercised.

6. Licensee/Offsite training:

- Annual State County training (Examples: Reactor Systems, Dry Cask Storage, EALs).
- Licensee provided Fire Service Training (County).
- Licensee provided Ambulance Training (County).
- Licensee provided Hospital Training (County).
- Licensee provided Dose Assessment training, including dose assessment software (State and County).

7. Licensee/Offsite Meetings and Conferences:

- Quarterly Nuclear Safety Subcommitted (State and County).
- Ad hoc meetings with County Emergency Management staff.
- County and local government Emergency Planning Committee meetings.
- Licensee security meetings with offsite law enforcement and U.S. Coast Guard.
- Licensee assistance in the development of the County Emergency Planning public information booklet.

8. Licensee/Offsite drills and exercises:

- County and/or State partial participation in licensee quarterly drills and biennial exercises.
- Participation in County/State FEMA evaluated drills.
- Local fire department support during licensee on-site fire drills.
- Licensee participation at Hospital drills.

9. Licensee/Offsite support services:

- Licensee support at local government Reception Center training and practice drills.
- Licensee provides dosimeters and processing services to local government.
- Licensee provide radiological instrument calibration services to local government.
- Licensee support of local government during annual Public Notification System (PNS) system test.
- Licensee provides use of weapons firing range to local and state law enforcement (Sheriff, State Police).

Paragraph-by-Paragraph Discussion of Changes to 10 CFR Part 50, Appendix E

A. Paragraph IV. B—Assessment Actions. This paragraph would be amended by adding new language governing the type and scope of EAL changes that must receive NRC approval prior to implementation. The proposed amendment would clarify that NRC approval of EAL changes would be required for changes that decrease the effectiveness of the emergency plan or for changes to convert from one EAL scheme (*e.g.*, NUREG–0654-based) to another EAL scheme (*e.g.*, NUMARC/NESP–007-based). The proposed language would also clarify the existing requirement that applicants for initial reactor operating licenses and initial combined licenses (COL) must obtain NRC approval of initial proposed EALs.

Language would be added to the last sentence of 10 CFR 50.54(q), to clearly state that EAL changes that are made without NRC review and approval, as well as licensee requests for review and approval of EAL changes under the proposed language, must be submitted in accordance with the requirements of § 50.4. The Commission proposes to follow the current practice of approving EAL changes without the use of a license amendment.

B. Paragraph IV.F.2.—Training. This paragraph would be amended to articulate the emergency planning exercise requirements for co-located licensees. Under the proposed amendment, co-located licensees would be required to exercise their onsite plans biennially. The offsite authorities would exercise their plans biennially. The interface between offsite plans and each of the onsite plans would be exercised biennially in a full or partial participation exercise alternating between each licensee. Thus, each co-located licensee would participate in a full or partial participation exercise quadrennially. In addition, in the year when one of the co-located licensees is participating in a full or partial participation exercise, the proposed rule requires the other co-located licensee to participate in activities and interactions with offsite authorities. For the period between exercises the proposed rule requires the licensee to conduct emergency preparedness activities and interactions (A&I). The purpose of A&I would be to test and maintain interface functions among the affected State and local authorities and the licensee. Table 1 provides a graphical description of one possible way of meeting the requirements of the proposed rule.

TABLE 1.—EXAMPLE OF EMERGENCY PREPAREDNESS TRAINING FOR TWO (2) CO-LOCATED LICENSEES

Year	1	2	3	4	5	6	7	8	9
Licensee 1	X	A&I	A&I	A&I	X	A&I	A&I	A&I	X
Licensee 2	A&I	A&I	X	A&I	A&I	A&I	X	A&I	A&I

Notes:
X = Full or partial participation exercise.
A&I = Activities and interactions with offsite authorities.

This paragraph would also be amended to provide a definition of co-located licensees as licensees that share many of the following emergency planning and siting elements.

a. Plume exposure and ingestion emergency planning zones.

b. Offsite governmental authorities,

c. Offsite emergency response organizations,

d. Public notification system, and/or

e. Emergency facilities.

Metric Policy

On October 7, 1992, the Commission published its final Policy Statement on Metrication. According to that policy, after January 7, 1993, all new regulations and major amendments to existing regulations were to be presented in dual units. The proposed amendments to the regulations contain no units.

Plain Language

The Presidential memorandum dated June 1, 1998, entitled "Plain Language in Government Writing" directed that the Government's writing be in plain language. This memorandum was published on June 10, 1998 (63 FR 31883). In complying with this directive, editorial changes have been made in these proposed revisions to improve the organization and readability of the existing language of the paragraphs being revised. These types of changes are not discussed further in this document. The NRC requests comments on the proposed rule changes specifically with respect to the clarity of the language used. Comments should be sent to the address listed under the **ADDRESSES** caption of the preamble.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. The proposed rulemaking addresses two matters: (1) The circumstances under which a licensee may modify an existing EAL without prior NRC review and approval; and (2) the nature and scheduling of emergency preparedness exercises for two different licensees of nuclear power plants which are co-located on the same site (co-located licensees). These are not matters which are appropriate for addressing in industry consensus standards, and have not been the subject of such standards. Accordingly, this proposed rulemaking is not within the purview of the National Technology Transfer and Advancement Act of 1995, Public Law 104–113.

Environmental Assessment and Finding of No Significant Impact

The Commission is proposing to amend its emergency preparedness regulations contained in 10 CFR part 50, Appendix E. The first proposed revision relates to the NRC approval of changes to the EALs, Appendix E to 10 CFR part 50, paragraph IV.B. The second proposed revision relates to exercise requirements for co-located licensees (Appendix E, paragraph IV.F).

Need for the Action

(1) NRC Approval of Changes to Emergency Action Levels. 10 CFR 50.54(q) states that licensees may make changes to their emergency plans without Commission approval only if the changes "do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the standards of 10 CFR 50.47(b) and the requirements of Appendix E" to 10 CFR part 50. By contrast, Appendix E states that "EAL's shall be * * * approved by NRC." The industry practice, in general, has been to revise EALs that do not reduce the effectiveness of the emergency plan and to implement them in accordance with § 50.54(q), without requesting NRC approval. The Commission believes that the current regulations are unclear, and can be interpreted to require prior NRC approval for all licensee EAL changes. The Commission has determined that NRC approval of all EAL changes are not necessary to ensure an adequate level of safety. Thus, the current regulation imposes an unnecessary burden on licensees and the NRC.

2. Exercise Requirements for Co-Located licensees, (paragraph IV.F.2.). 10 CFR part 50, Appendix E, requires that the offsite emergency plans for each site shall be exercised biennially with the full (or partial) participation of each offsite authority having a role under the plans, and that each licensee at each site shall conduct an exercise of its onsite emergency plan every two years, an exercise that may be included in the full participation biennial exercise. Paragraph IV.F.2 is ambiguous about the emergency preparedness exercise requirements where multiple nuclear power plants, each licensed to different licensees, are co-located at the same site: whether each licensee must participate in a full-participation exercise of the off-site plan every two years, or whether the licensees may alternate their participation such that a full-participation exercise is held every two years and each licensee (at a two-licensee site) participates in a full-participation exercise every four years.

Upon consideration of the language of the current regulation and the legislative history of the exercise requirements, the Commission believes that the ambiguity in the current regulations can be interpreted that each nuclear power plant licensee co-located on the same site must participate in a full-participation offsite exercise every two years (and that each offsite authority is to participate on either a full or partial participation basis in licensee's biennial offsite exercise).

The Commission believes that requiring each licensee on a co-located site to participate in a full-participation exercise every two years, and for the offsite authorities to participate in each licensee's full-participation exercise is not necessary to provide reasonable assurance that each licensee and the offsite authorities will be able to fulfill their responsibilities under the emergency plan should the plan be required to be implemented. Furthermore, the Commission believes that this interpretation could impose an undue regulatory burden on offsite authorities. Therefore, the Commission believes that rulemaking is necessary to make clear that each co-located licensee need not participate in a full-participation offsite exercise every two years.

The Commission proposes that where two nuclear power plants licensed to separate licensees are co-located on the same site, reasonable assurance of emergency preparedness exists where; (1) The co-located licensees would exercise their onsite plans biennially; (2) The offsite authorities would exercise their plans biennially; and (3) The interface between offsite plans and each of the onsite plans would be exercised biennially in a full or partial participation exercise alternating between each licensee.

Thus, each co-located licensee would participate in a full or partial participation exercise quadrennially. In addition, in the year when one of the co-located licensees is participating in a full or partial participation exercise, the proposed rule would require the other co-located licensees to participate in activities and interaction with offsite authorities. For the period between exercises the proposed rule would require the licensees to conduct emergency preparedness activities and interactions. The purpose of A&I would be to test and maintain interface functions among the affected State and local authorities and the licensees.

Environmental Impact of the Proposed Actions

The NRC believes that the environmental impact for the proposed rule is negligible. The proposed rule would not require any changes to the design, or the structures, systems and components of any nuclear power plant. Nor would the proposed rule require any changes to licensee programs and procedures for actual operation of nuclear power plants. Thus, there would be no change in radiation dose to any member of the public which may be attributed to the proposed rule, nor will there be any changes in occupational exposures to workers. Furthermore, the proposed rule will not result in any changes that would increase or change the nature of nonradiological effluents from nuclear power plants.

Alternative to the Proposed Actions

The alternative to the proposed action is to not revise the regulations (*i.e.*, the no action alternative). No environmental impacts are associated with the no action alternative.

Agencies and Persons Consulted

Cognizant personal from the Federal Emergency Management Agency and New York State (for the co-located licensee part of the rule change), were consulted as part of this rulemaking activity.

Finding of No Significant Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR part 51, that the proposed amendments are not major Federal actions significantly affecting the quality of human environment, and therefore, an environmental impact statement is not required. These amendments would revise the emergency planning regulations to be consistent with current staff and licensee practices. Comments on any aspect of the environmental assessment may be submitted to the NRC as indicated under the **ADDRESSES** heading.

Paperwork Reduction Act Statement

This proposed rule increases the burden on co-located licensees to log activities and interactions with offsite agencies during the years that full or partial participation emergency preparedness exercises are not conducted and to prepare a one-time change to procedures to reflect the revised exercises requirements. The public burden for this information is estimated to average 30 hours per year. Because the burden for this information collection is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the Office of Management and Budget, approval number 3150–0011.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

The NRC has prepared a regulatory analysis for the proposed amendments. This analysis examines the costs and benefits of the alternatives considered by the Commission. The regulatory analysis is provided below and is also available for inspection in the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room 01-F21, Rockville, Maryland. Single copies of the analysis are available as indicated in the **ADDRESSES** heading.

I. Statement of Problem and Objectives

The Commission is proposing to make two changes to its emergency preparedness regulations contained in 10 CFR part 50, Appendix E. The first proposed amendment relates to the NRC approval of licensee changes to Emergency Action Levels, paragraph IV.B and the second proposed amendment relates to exercise requirements for co-located licensees, paragraph IV.F.2. A discussion of each of these proposed revisions follows.

(1) NRC approval of licensee changes to Emergency Action Levels, 10 CFR part 50, Appendix E, Paragraph IV.B. EALs are part of a licensee's emergency plan. There appears to be an inconsistency in the emergency planning regulations regarding the NRC approval of nuclear power plant licensee changes to emergency action levels. § 50.54(q) states that licensees may make changes to their emergency plans without Commission approval only if the changes "do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the standards of 10 CFR 50.47(b) and the requirements of Appendix E" to 10 CFR part 50. By contrast, Appendix E states that "EAL's shall be * * * approved by NRC." However, the current industry practice, in general, has been to make revisions to EALs and to implement them without requesting NRC approval, after determining that the changes do not reduce the effectiveness of the emergency plan in accordance with § 50.54(q). When the determination is made that a proposed change constitutes a decrease in effectiveness, licensees submit the changes to NRC for review and approval. If a change involves a major change to the EAL scheme, for example, changing from an EAL scheme based on NUREG–0654 guidance to an EAL scheme based on NUMARC/NESP–007 guidance, it has been the industry practice to seek NRC approval before implementing the change. The NRC has been aware of the industry practice and has not objected to it. The Commission believes that the current regulations are unclear and can be interpreted to require prior NRC approval for all changes to a licensee's EALs.

(2) Exercise Requirements for Co-Located Licensees, 10 CFR part 50, Appendix E, Paragraph IV.F. The emergency planning regulations were significantly upgraded in 1980 after the accident at Three Mile Island (45 FR 55402; August 19, 1980). The 1980 regulations required an annual exercise of the onsite and offsite emergency plans. In 1984, the regulations were amended to change the frequency of participation of State and local governmental authorities in nuclear power plant offsite exercises from annual to biennial (49 FR 27733; July 6, 1984). In 1996, the regulations were amended to change the frequency of exercising the licensees' onsite emergency plan from annual to biennial (61 FR 30129; June 14, 1996). Appendix E, to 10 CFR part 50, Paragraph IV.F.2, currently provides that the "offsite plans for each site shall be exercised biennially" with the full (or partial) participation of each offsite authority having a role under the plans, and that "each licensee at each site" shall conduct an exercise of its onsite emergency plan every two years, an exercise that may be included in the full participation biennial exercise (emphasis added). Thus, Paragraph IV.F.2 is ambiguous about the emergency preparedness exercise requirements where multiple nuclear power plants, each licensed to different licensees, are co-located at the same site: whether each licensee must participate in a full-participation exercise of the off-site plan every two years, or whether the licensees may alternate their participation such that a full-participation exercise is held every two years and each licensee (at a two-licensee site) participates in a full-participation exercise every four years.

Upon consideration of the language of the current regulation, and the legislative history of the exercise requirements, the Commission believes that the ambiguity in the current regulations can be interpreted that each nuclear power plant licensee co-located on the same site must participate in a full-participation offsite exercise every two years (and that each offsite authority is to participate on either a full or partial participation basis in each licensee's biennial offsite exercise). Upon consideration of the matter, the Commission believes that requiring each licensee on a co-located site to participate in a full-participation exercise every two years, and for the offsite authorities to participate in each licensee's full-participation exercise is not necessary to provide reasonable assurance that each licensee and the offsite authorities will be able to fulfill their responsibilities under the emergency plan should the plan be required to be implemented. Furthermore, the Commission believes that this interpretation could impose an undue regulatory burden on offsite authorities. Currently, there is only one nuclear power plant site with two power plants licensed to two separate licensees: The James A. FitzPatrick and Nine Mile Point site. Although the ambiguity in Paragraph IV.F.2 has limited impact today, the Commission understands that future nuclear power plant licensing concepts currently being considered by the industry include siting multiple nuclear power plants on a single site. These plants may be owned and/or operated by different licensees. Therefore, the Commission believes that this rulemaking is necessary to remove the ambiguity in Paragraph IV.F.2 and clearly specify the emergency preparedness training obligations of co-located licensees.

The Commission proposes that where two nuclear power plants licensed to separate licensees are co-located on the same site, reasonable assurance of emergency preparedness exists where: (1) The co-located licensees would exercise their onsite plans biennially; (2) The offsite authorities would exercise their plans biennially; and (3) The interface between offsite plans and each of the onsite plans would be exercised biennially in a full or partial participation exercise alternating between each licensee.

Thus, each co-located licensee would participate in a full or partial participation exercise quadrennially. In addition, in the year when one of the co-located licensees is participating in a full or partial participation exercise, the proposed rule would require the other co-located licensees to participate in activities and interaction with offsite authorities. For the period between exercises the proposed rule would require the licensees to conduct emergency preparedness activities and interactions. The purpose of A&I would be to test and maintain interface functions among the affected State and local authorities and the licensees.

The proposed rule defines co-located licensees as licensees that share many of the following emergency planning and siting elements.

a. Plume exposure and ingestion emergency planning zones,
b. Offsite governmental authorities,
c. Offsite emergency response organizations,
d. Public notification system, and/or
e. Emergency facilities.

II. Background

(1) Emergency Action Levels (paragraph IV.B). EALs are thresholds of plant parameters (such as containment pressure and radiation levels) used to classify events at nuclear power plants into one of four emergency classes (Notification of Unusual Event, Alert, Site Area Emergency, or General Emergency). EALs are required by Appendix E to 10 CFR part 50 and § 50.47(b)(4), and are contained in licensees' emergency plans and emergency plan implementing procedures.

Section 50.54(q) states that licensees can make changes to their emergency plans without Commission approval only if the changes "do not decrease the effectiveness of the plans and the plans, as changed, continue to meet the standards of § 50.47(b) and the requirements of Appendix E" to 10 CFR part 50. However, Appendix E to 10 CFR part 50 states that "EALs shall be discussed and agreed on by the applicant and State and local governmental authorities and approved by NRC." Because EALs are required to be included in the emergency plan, the issue is whether changes to EALs incorporated into the emergency plan are subject to the change requirements in 10 CFR 50.54(q), or to the more restrictive requirement in Appendix E.

(2) Exercise Requirements for Co-Located Licensees (paragraph IV.F.2). The NRC's current regulations contained in Appendix E, to 10 CFR part 50, require that the offsite emergency plans for each site shall be exercised biennially with the full (or partial) participation of each offsite authority having a role under the plans, and that each licensee at each site shall conduct an exercise of its onsite emergency plan every two years, an exercise that may be included in the full participation biennial exercise. This exercise requirement, though straight forward on its face, has implementation and compliance problems when two licensees occupy the same site thereby requiring the same state to conduct a full participation exercise with each co-located licensee every year.

There is currently only one site with two licensees, Nine Mile Point and James A. FitzPatrick site. However, the current trend in the nuclear industry is to locate new plants on currently approved sites, possibly with different licenses, thus the need for this proposed rule change.

III. Rulemaking Options for Both Amendments

Option 1—revise the regulations to reflect current staff and licensee practices..

Option 2—not to revise the regulations.

IV. Alternatives

Impact(s)

Option 1 for the EAL revisions would amend the existing regulations to eliminate the inconsistency between the requirements of Appendix E and § 50.54(q) relating to approval of changes to EALs and reflect current staff and licensee practice. This would be done by amending Appendix E to 10 CFR part 50, to require NRC to review for approval new EAL schemes or revisions to EALs that diminish the effectiveness of the emergency plans (§ 50.54(q) criteria). The rulemaking would provide a means for licensees to improve their EALs while reducing unnecessary regulatory burden. Once the rule is revised, licensees could make EAL changes that do not decrease the effectiveness of the emergency plan without prior NRC approval. This approach would reduce the unnecessary regulatory burden on licensees.

Option 2 for EAL changes would retain the inconsistency in the regulations, thereby increasing the unnecessary burden on licensees and the NRC staff in addressing questions on a case-by-case basis.

Option 1 for co-located licensees would maintain safety because EP exercises would continue to be required at the frequency which has provided reasonable assurance that the emergency plans can be implemented. The impact of Option 1 on the resources of licensees and offsite authorities would be minimal. Option 1 would reflect what licensees are currently doing and, therefore, there would not be a change in existing acceptable practices. Clarification of the regulatory requirements would modify wording that has resulted in ambiguous understanding of the requirements. This option would require NRC resources to conduct the rulemaking. The activities and interactions that would test and maintain interface functions for co-located licensees and offsite authorities in the period between exercises (outlined in this proposed rule) will provide a consistent expectation and basis for such activities. The level of activities and interactions adequate to maintain an appropriate level of preparedness would be ensured.

The impact of the no rulemaking option (option 2) for the co-located licensee exercise revision on the resources of staff, licensees and offsite authorities would be minimal. However, without clarification of the regulatory requirements, there would be the continued ambiguity in the requirements for future licensee situations. The impact of these continued ambiguities is that potential confusion over requirements would have to be resolved on a case-by-case basis by the staff. This option would not

require NRC resources for conducting a rulemaking.

V. Estimation and Evaluation of Values and Impacts

The proposed amendments would modify current requirements in the NRC's approval of changes to Emergency Action Levels (EALs) and the participation in emergency preparedness exercises for co-located licensees. The change in the requirement for NRC approval of EALs is being made solely for consistency, and that because it reflects current practice, as well as the Commission's original intent it does not impose a burden on licensees. However, the second change does modify the information collection requirements and impacts future co-located licensee burden. Current co-located licensees have implemented an emergency planning training regime consistent with the proposed rule.

The proposed amendment would require that future co-located licensees incorporate in their emergency planning procedures that each co-located licensee would hold a full participation emergency preparedness exercise with the offsite agencies once every four years. In addition, the licensee that does not conduct the full participation exercise with the offsite agencies will conduct a partial participation exercise with the offsite agencies every two years. Likewise each co-located licensee would log the activities and interactions with offsite authorities that are also conducted in the period between exercises. This proposed rule does not increase the burden on current co-located licensees because they have an emergency planning training regime consistent with the proposed rule. Future co-located licensees would keep a log of the activities and interactions with offsite authorities which is estimated to average 30 hour(s) per co-located licensee per year.

VI. Presentation of Results

As noted, the impact on a co-located licensee to implement the proposed rule change is a modest 30 hour(s) per year per co-located licensee. This time would be used to maintain a log of the activities and interactions with offsite authorities. At an assumed average hourly rate of $156/hour, the total industry implementation cost is estimated at $9,360. The cost for an individual co-located licensee is $4,680 per year.

With respect to the EAL rule change, licensees would save staff time by having explicit NRC requirements and guidance that should assist the licensees in the proper submittal of EAL changes. The impact of improved regulations on the NRC is a decrease in the amount of staff time needed to approve license EAL changes. This is estimated to be about a 100 staff-hour reduction or a $8,000 savings to the NRC per year (assuming a $80 hourly rate for NRC staff time). However, it is uncertain as to how many EAL changes might have been received by the NRC for review and approval.

There would be several additional benefits associated with these amendments. The greatest would be the increased assurance that the Commissions regulations are consistent and not ambiguous. Further, by addressing these issues generically, through rulemaking, rather than continuing the current case-by-case approach, it is expected that the burden on the NRC staff would be reduced by several hours for each license EAL change as well as future co-located licensee's exercise requirements that NRC would need to approve. Another beneficial attribute to this proposed action is regulatory efficiency resulting from the expeditious handling of future licensing actions by providing regulatory predictability and stability for the EAL changes as well as the exercise requirements for co-located licensees.

VII. Decision Rationale for Selection of the Proposed Action

As previously discussed, the additional burdens on a licensee and the NRC are expected to be modest. However, a revision of the requirements is desirable to remove ambiguities in the current regulations, while maintaining safety and reducing unnecessary regulatory burden.

VIII. Implementation

The NRC staff proposes that any Federal rulemaking take effect 90 days after publication of the final rule in the **Federal Register**.

The Commission requests public comment on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that the proposed rule if issued, will not have a significant economic impact on a substantial number of small entities. The proposed rule would affect only States and licensees of nuclear power plants. These States and licensees do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act, or the size standards established by the NRC (10 CFR 2.810).

Backfit Analysis

(1) NRC Approval of EAL Changes

The proposed rule, which eliminates the need for NRC review and approval for certain EAL changes, does not constitute a backfit as defined in 50.109(a)(1). Although 10 CFR 50.54(q) permits licensees to make changes to the emergency plan which do not decrease the effectiveness of the plan, 10 CFR part 50, Appendix E currently requires that EALs shall be approved by NRC. The proposed rulemaking would clarify the Appendix E requirement to clearly permit licensee changes to EALs without NRC review and approval if the changes do not decrease the effectiveness of the emergency plan. The proposed rule requires NRC review and approval for those EAL changes which decrease the effectiveness of the emergency plan, or constitute a change from one EAL scheme to another. The proposed rulemaking clarifies the requirements and represents the current practice of making changes under 50.54 (q) requirements and is therefore not a backfit.

In addition, the proposed change applies prospectively to changes initiated by licensees. The Commission has indicated in various rulemakings that the Backfit Rule does not protect the prospects of a potential applicant nor does the Backfit Rule apply when a licensee seeks a change in the terms and conditions of its license. A licensee-initiated change in an EAL does not fall within the scope of actions protected by the Backfit Rule, and therefore the Backfit Rule does not apply to this proposed rulemaking.

(2) Co-Located Licensee

The proposed rulemaking, which addresses the regulatory ambiguity regarding exercise participation requirements for co-located licensees, applies only to the existing co-located licensees for the Nine Mile Point and James A. Fitzpatrick site, and prospectively to future co-located licensees.

With respect to the Nine Mile Point and James A. FitzPatrick licensees, the proposed rule would arguably constitute a backfit, inasmuch as there is some correspondence between the licensees and the NRC which may be interpreted as constituting NRC approval of "alternating participation" by each licensee in a full-or partial-participation exercise every two years. The backfit may not fall within the scope of the compliance exception,10 CFR 50.109(a)(4)(i), in view of the lack of new information showing that the prior NRC approval of "alternating participation" was based upon a factual error or new information not known to the NRC at the time that the NRC approved "alternating participation." However, these licensees have informally been implementing an emergency planning training regime since year 2000 that is consistent with the proposed rule. Accordingly, the NRC does not propose to prepare a backfit analysis addressing the Nine Mile Point and James A. FitzPatrick licensees.

With respect to future holders of operating licenses (including combined licenses under part 52) for nuclear power plants which are co-located at the same site, the Commission has indicated in various rulemakings that the Backfit Rule does not protect the prospects of a potential applicant.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and record keeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act for 1954, as amended, the Energy Reorganization Act of 1974, as amended, the National Environmental Policy Act of 1969, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendment to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATIONS FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102,103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 12422, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5841). Section 50.10 also issued under secs. 101, 185, 168 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.43(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In Appendix E to Part 50, Paragraphs IV. B and F.2.c. are revised to read as follows:

Appendix E—Emergency Planning and Preparedness for Production and Utilization Facilities

* * * * *

IV. Content of Emergency Plans

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B. Assessment Actions

The means to be used for determining the magnitude of, and for continually assessing the impact of the release of radioactive materials shall be described, including emergency action levels that are to be used as criteria for determining the need for notification and participation of local and State agencies, the Commission, and other Federal agencies, and the emergency action levels that are to be used for determining when and what type of protective measures should be considered within and outside the site boundary to protect health and safety. The emergency action levels shall be based on in-plant conditions and instrumentation in addition to onsite and offsite monitoring. These EALs shall be discussed and agreed on by the applicant or licensee and State and local governmental authorities, and approved by the NRC. Thereafter, EALs shall be reviewed with the State and local governmental authorities on an annual basis. A revision to an EAL must be approved by the NRC prior to implementation if: (1) Licensee is changing from one EAL scheme to another EAL scheme (*e.g.* a change from an EAL scheme based on NUREG–0654 to a scheme based upon NUMARC/NESP–007); or (2) the EAL revision decreases the effectiveness of the emergency plan. A licensee shall submit each request for NRC approval of the proposed EAL change as specified in § 50.4. If a licensee makes a change to an EAL that does not require NRC approval, the licensee shall submit, as specified in § 50.4, a report of each change made within 30 days after the change is made.

* * * * *

F. Training

2. * * *

c. Offsite plans for each licensee shall be exercised biennially with full participation by each offsite authority having a role under the plan. Where the offsite authority has a role under a radiological response plan for more than one licensee it shall fully participate in one exercise every two years and shall, at minimum, partially participate[5] in other offsite plan exercises in this period.

If two licensees are located on any one site (co-located licensees)[6] each licensee shall:

(1) Conduct an exercise biennially of its onsite emergency plan;

(2) Participate quadrennially in an offsite biennial full or partial participation exercise; and

(3) Conduct emergency planning activities and interactions in the three years between its participation in the offsite full or partial participation exercise with offsite authorities, in order to test and maintain interface functions among the affected State and local authorities and the licensee.

[5] "Partial participation" when used in conjunction with emergency preparedness exercises for a particular site means appropriate offsite authorities shall actively take part in the exercise sufficient to test direction and control functions; *i.e.*, (a) protective action decision making related to emergency action levels, and (b) communication capabilities among affected State and local authorities and the licensee.

[6] Co-located licensees are licensees that share many of the following emergency planning and siting elements.

a. Plume exposure and ingestion emergency planning zones,

b. Offsite governmental authorities,

c. Offsite emergency response organizations,

d. Public notification system, and/or

e. Emergency facilities.

Dated at Rockville, Maryland, this 18th day of July, 2003.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

[FR Doc. 03–18845 Filed 7–23–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–167–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes. This proposal would require replacement of the wire assembly connectors of the bag rack lighting with new, moisture-resistant connectors and reidentification of the bag racks. This action is necessary to

prevent arcing of the wire assembly connectors of the overhead storage bin, and service module and bin extension assemblies, and consequent smoke/fire in the cabin. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 8, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–167–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–167–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–167–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–167–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of incidents of arcing and smoke from the electrical connectors of the ceiling lights on McDonnell Douglas Model MD–11 and –11F airplanes. It was determined that the cause of the connector failure was due to moisture intrusion into the mated connectors through the backshell. This condition, if not corrected, could result in arcing of the wire assembly connectors of the overhead storage bin, and service module and bin extension assemblies, and consequent smoke/fire in the cabin.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 and –11F airplanes, has reviewed all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of corrective actions identified during that process. We have previously issued several other ADs and may consider further rulemaking actions to address the remaining identified unsafe conditions.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletin MD11–33A064, dated March 6, 2002, which describes procedures for replacement of the wire assembly connectors of the bag rack lighting with new, moisture-resistant connectors and reidentification of the bag racks. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Cost Impact

There are approximately 111 Model MD–11 and –11F airplanes of the affected design in the worldwide fleet. The FAA estimates that 26 airplanes of U.S. registry would be affected by this proposed AD.

For Group 1 airplanes identified in the referenced service bulletin, it would take approximately 11 work hours per airplane to accomplish the proposed actions, at an average labor rate of $65 per work hour. Required parts would cost between $1,140 and $1,406 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,855 and $2,121 per airplane.

For Group 2 airplanes identified in the referenced service bulletin, it would take approximately 13 work hours per airplane to accomplish the proposed actions, at an average labor rate of $65 per work hour. Required parts would cost between $1,140 and $1,406 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,985, and $2,251 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this proposed AD.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2001–NM–167–AD.

Applicability: Model MD–11 and –11F airplanes, as listed in Boeing Alert Service Bulletin MD11–33A064, dated March 6, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing of the wire assembly connectors of the overhead storage bin, and service module and bin extension assemblies, and consequent smoke/fire in the cabin, accomplish the following:

Replacement and Reidentification

(a) Within 12 months after the effective date of this AD, replace the wire assembly connectors of the bag rack lighting with new, moisture-resistant connectors and reidentify the bag racks, per Boeing Alert Service Bulletin MD11–33A064, dated March 6, 2002.

Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on July 17, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–18792 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–52–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes, that would have required an inspection to detect arcing damage of the terminal strips, surrounding structure, and electrical cables in the forward cargo compartment; and repair or replacement of any damaged part with a new part. The proposed AD also would have required modification of the applicable terminal strip installation in the cargo compartment, and replacement of the applicable terminal strips in the cargo compartment with new strips. This new action revises the proposed rule by adding new procedures for certain airplanes; clarifying the applicability; and referencing the latest revision of the service bulletin. The actions specified by this new proposed AD are intended to prevent arcing and consequent damage to the terminal strips and adjacent structure and smoke/fire in the forward cargo compartment. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 18, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–52–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–52–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–52–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–52–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 5, 2001 (66 FR 50897). That NPRM would have required an inspection to detect arcing damage of the terminal strips, surrounding structure, and electrical cables in the forward cargo compartment; and repair or replacement of any damaged part with a new part. That NPRM also would have required modification of the applicable terminal strip installation in the cargo compartment, and replacement of the applicable terminal strips in the cargo compartment with new strips. That NPRM was prompted by an incident in which arcing occurred between the power feeder cables and terminal strip support brackets. That condition, if not corrected, could result in arcing and consequent damage to the terminal strips and adjacent structure and smoke/fire in the forward cargo compartment.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Reference Latest Service Bulletin

Two commenters request that the proposed AD be revised to reference Revision 01 of Boeing Alert Service Bulletin MD11–24A174, dated April 24, 2001 (the original issue of the service bulletin was referenced in the NPRM as the appropriate source of service information for accomplishment of the proposed actions). One commenter states that this revision corrects an incorrect part number and part quantity.

The FAA does not agree. Since issuance of the NPRM, the FAA has reviewed and approved Revision 03 of Boeing Alert Service Bulletin MD11–24A174, including Evaluation Form, dated July 25, 2002. This revision constitutes a complete reissue. More work is necessary for Group 2 airplanes changed per prior issues of this service bulletin.

Revision 03 of the service bulletin describes procedures for a general visual inspection to detect arcing damage of the terminal strips, surrounding structure, and electrical cables in the forward cargo compartment; and repair or replacement of the damaged part with a new part. The service bulletin also describes procedures for modification of the applicable terminal strip installation in the cargo compartment (including inspection for damaged cables and repair of any damaged cable) if necessary, and replacement of the applicable terminal strips in the cargo compartment with new strips (including inspection for damaged cables and repair of any damaged cable).

Therefore, we have revised this supplemental NPRM to reference Revision 03 of the service bulletin as the appropriate source of service information for accomplishing the proposed actions. However, although the service bulletin recommends completion and submission of an inspection report and an Evaluation Form that provides input on the quality of the service bulletin to the airplane manufacturer, this proposed AD does not include such requirements.

Request to Revise Cost Impact

One commenter notes that the original NPRM states, "The manufacturer has committed previously to its customers that it will bear the cost of replacement parts." The commenter states that this is not quite accurate, and that "operators of affected airplanes within the warranty period of April 1, 1995, as specified by their purchase agreement, must submit a no change purchase order."

From this comment, we infer that the commenter is requesting that the Cost Impact section of the original NPRM be revised. We concur and have revised this supplemental NPRM accordingly.

In addition, we have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Explanation of Change to Applicability

We find that Model MD–11F airplanes were not specifically identified by model name in the applicability of the original NPRM. However, those airplanes are identified by manufacturer's fuselage numbers in the effectivity listing of McDonnell Douglas Alert Service Bulletin MD11–24A174, dated January 31, 2001; and Boeing Alert Service Bulletin MD11–24A174, Revision 03, dated July 25, 2002. Therefore, we have revised this supplemental NPRM to specifically reference Model MD–11 and –11F airplanes where appropriate, and have revised the applicability to reference the Revision 03 of the service bulletin. In addition, we have specified model designations in the applicability of this supplemental NPRM as published in the most recent type certificate data sheet for the affected models.

Explanation of Change to Inspection Definition

For clarification purposes, the FAA has revised the definition of a "general visual inspection" in Note 2 of this supplemental NPRM.

Conclusion

Since certain of these changes expand the scope of the originally proposed rule, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD. Therefore, in this supplemental NPRM, Note 1 and paragraph (c) of the original NPRM have been removed, and paragraph (b) of the original NPRM has been revised.

Cost Impact

There are approximately 154 Model MD–11 and –11F airplanes of the affected design in the worldwide fleet. The FAA estimates that 59 airplanes of U.S. registry will be affected by this AD, that it will take approximately between 1 and 6 work hours per airplane depending on the airplane configuration to accomplish the required actions, and that the average labor rate is $65 per work hour. Required parts would cost between $133 and $474 depending on the airplane configuration. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be between $198 and $864 per airplane depending on the airplane configuration.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2001–NM–52–AD.

Applicability: Model MD–11 and –11F airplanes, as listed in Boeing Alert Service Bulletin MD11–24A174, Revision 03, dated July 25, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing and consequent damage to the terminal strips and adjacent structure and smoke/fire in the forward cargo compartment, accomplish the following:

Inspection, Modification, Replacement, and Corrective Actions, if Necessary

(a) For airplanes on which Boeing Alert Service Bulletin MD11–24A174, original issue, January 31, 2001; Revision 01, dated April 24, 2001; or Revision 02, dated December 17, 2001, have not been done: Within 18 months after the effective date of this AD, do the actions specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD per the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–24A174, excluding the Evaluation Form; both Revision 03, dated July 25, 2002. Although the service bulletin recommends the completion and submission of an Evaluation Form and a reporting requirement (Appendix), such reporting is not required by this AD.

(1) Do a general visual inspection to detect arcing damage of the terminal strips, surrounding structure, and electrical cables in the forward cargo compartment. If any damage is detected, before further flight, repair or replace the damaged part with a new part, per the service bulletin; except if the type of structural material that has been affected is not covered in the Structural Repair Manual (SRM), repair per a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA.

Note 1: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Note 2: Where there are differences between the referenced service bulletin and the AD, the AD prevails.

(2) Modify the applicable terminal strip installation in the cargo compartment (including inspection for damaged cables and repair of any damaged cable).

(3) Replace the applicable terminal strips in the cargo compartment with new strips (including inspection for damaged cables and repair of any damaged cable).

(b) For Group 2 airplanes listed in Boeing Alert Service Bulletin MD11–24A174, Revision 03, dated July 25, 2002, on which prior revisions of that service bulletin have been done: Within 18 months after the effective date of this AD, do the actions

specified in paragraphs (b)(1) and (b)(2) of this AD per the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–24A174, excluding the Evaluation Form; both Revision 03, dated July 25, 2002. Although the service bulletin recommends the completion and submission of an Evaluation Form and a reporting requirement (Appendix), such reporting is not required by this AD.

(1) Do a general visual inspection to detect arcing damage of the terminal strips, surrounding structure, and electrical cables in the forward cargo compartment: If any damage is detected, before further flight, repair or replace the damaged part with a new part, per the service bulletin; except if the type of structural material that has been affected is not covered in the SRM, repair per a method approved by the Manager, Los Angeles ACO, FAA.

(2) Replace the applicable terminal strip in the cargo compartment with a new strip (including inspection for damaged cables and repair of any damaged cable).

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, Los Angeles ACO, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on July 17, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–18791 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–57–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 airplanes, that would have required a one-time detailed visual inspection of the wire bundle installation behind the first observer's station to detect damaged or chafed wires; and corrective action, if necessary. That earlier proposed AD also would have required an inspection of the wire bundle installation behind the first observer's station to detect damaged or chafed wires; repair if necessary; installation of a grommet around the lower edge of the feed-through; replacement of the support bracket with a new bracket; and relocation of the support clamp of the wire bundle; as applicable. That proposal was prompted by the FAA's determination that the existing support bracket and the location of the support clamp of the wire bundle may not adequately preclude the wire bundle contained in the feed-through behind the first observer's station from contacting the bottom portion of the feed-through. This new action revises the proposed rule by specifying new corrective actions. The actions specified by this new proposed AD are intended to prevent such contact, which could cause cable chafing, electrical arcing, smoke, or fire in the cockpit.

DATES: Comments must be received by August 18, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–57–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–57–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–57–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–57–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 airplanes, was published as a notice of proposed rulemaking (NPRM) (hereafter referred to as "the original NPRM") in the **Federal Register** on October 5, 2001 (66 FR 50917). The original NPRM would have superseded AD 2000–03–13, amendment 39–11572 (65 FR 8028, February 17, 2000) to require a one-time detailed visual inspection of the wire bundle installation behind the first observer's station to detect damaged or chafed wires, and repair, if necessary. The original NPRM also would have required installing a grommet around the lower edge of the feed-through; replacing the support bracket with a new bracket; and relocating the support clamp of the wire bundle; as applicable. The original NPRM also expanded the applicability of the existing AD to include additional airplanes. The original NPRM was prompted by the FAA's determination that the existing support bracket and the location of the support clamp of the wire bundle may not adequately preclude the wire bundle contained in the feed-through behind the first observer's station from contacting the bottom portion of the feed-through. That condition, if not corrected, could cause cable chafing, electrical arcing, smoke, or fire in the cockpit.

Actions Since Issuance of the Original NPRM

Since the issuance of the original NPRM, the FAA has reviewed and approved Revision 03 of Boeing Alert Service Bulletin MD11–24A041, dated September 11, 2002. This revision incorporate engineering procedures released subsequent to the issuance of Revision 02 of the service bulletin, which was referenced in the original NPRM as the appropriate source of service information for accomplishing the proposed actions. The revised procedures involve installing and relocating a new bracket due to interference of existing potted inserts when installing the bracket per Revision 02 of the service bulletin. We have revised this supplemental NPRM to specify these new procedures and to include reference to Revision 03 of the service bulletin as the appropriate source of service information.

Comments

Due consideration has been given to the single comment received in response to the original NPRM:

One commenter notes that the original NPRM states, "The manufacturer has committed previously to its customers that it will bear the cost of replacement parts." The commenter states that this is not quite accurate, and that Boeing warranty remedies are available for MD–11 airplanes in warranty as of September 1, 1992.

From this comment, we infer that the commenter is requesting that the Cost Impact section of the original NPRM be revised. We concur and have revised the supplemental NPRM accordingly.

Explanation of Change to Applicability

We have revised the applicability of the original NRPM to identify model designations as published in the most recent type certificate data sheet for the affected models.

Conclusion

Since the change to include the revised procedures expands the scope of the original NPRM, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 193 Model MD–11 airplanes of the affected design in the worldwide fleet. We estimate that 62 airplanes of U.S. registry would be affected by this supplemental NPRM.

The new actions that are proposed in this AD action would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts would cost $407. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $33,294, or $537 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2001–NM–57–AD.

Applicability: Model MD–11 airplanes, as listed in Boeing Alert Service Bulletin MD11–24A041, Revision 03, dated September 11, 2002; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the wire bundle contained in the feed-through from contacting the bottom of the feed-through, which could cause cable chafing, electrical arcing, and smoke or fire in the cockpit, accomplish the following:

Inspection

(a) Within 1 year after the effective date of this AD, do a one-time detailed inspection of the wire bundle installation behind the first observer's station to detect damaged or chafed wires per Boeing Alert Service Bulletin MD11–24A041, Revision 03, dated September 11, 2002.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Condition 1: No Damaged or Chafed Wire

(b) If no damaged or chafed wire is detected during the detailed inspection required by paragraph (a) of this AD, before further flight, revise the wire bundle support clamp installation per Boeing Alert Service Bulletin MD11–24A041, Revision 03, dated September 11, 2002.

Condition 2: Any Damaged or Chafed Wire

(c) If any damaged or chafed wire is detected during the detailed inspection required by paragraph (a) of this AD, before further flight, repair wiring, and revise the wire bundle support clamp installation, per Boeing Alert Service Bulletin MD11–24A041, Revision 03, dated September 11, 2002.

Alternative Methods of Compliance

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2000–03–13, amendment 39–11572, are approved as alternative methods of compliance with this AD.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 17, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–18789 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–278–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200C and –200F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–200C and –200F series airplanes. This proposal would require repetitive inspections to find fatigue cracking in the upper chord of the upper deck floor beams, and repair if necessary. For certain airplanes, this proposal would also provide for an optional repair/modification, which would extend certain repetitive inspection intervals. This action is necessary to find and fix cracking in certain upper deck floor beams. Such cracking could extend and sever floor beams adjacent to the body frame and could result in rapid decompression and consequent loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 8, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–278–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–278–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6434; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

• Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the proposed AD is being requested.

• Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–278–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–278–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report of fatigue cracking of the station (STA) 340 upper deck floor beam on a Boeing Model 747–200F series airplane. The upper chord and web were completely severed by a crack which originated at a floor panel attachment fastener hole. A previous blend-out repair for corrosion was found at the crack location, and corrosion pitting was found in the fastener hole. Additionally, a 0.3-inch-long crack was found at an adjacent fastener hole. On certain Boeing Model 747–200C and –200F series airplanes, the upper chords of the floor beams at body station (BS) 340 through BS 440, and BS 500 through BS 520, are made from 7075 aluminum, which is more susceptible to fatigue cracking. BS 460 and BS 480 upper deck floor beams on these models are made from 2024 aluminum, which is known to be more durable than 7075 aluminum against fatigue. Cracking of the upper deck floor beam, if not corrected, could extend and sever floor beams adjacent to the body frame, which could result in rapid decompression and consequent loss of controllability of the airplane.

Other Relevant Rulemaking

On February 22, 2000, we issued AD 2000–04–17, amendment 39–11600 (65 FR 10695, February 29, 2000). That AD applies to certain Boeing Model 747–100, –200, and –300 series airplanes, and requires repetitive inspections to detect fatigue cracking in the upper deck floor beams located at certain body stations, and repair if necessary.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001, which describes procedures for repetitive inspections to find fatigue cracking in the upper chord of the upper deck floor beams, and repair if necessary, as follows:

• If access is gained from above, the procedures specify an open-hole high frequency eddy current (HFEC) inspection of the attachment fastener holes of the floor panel for cracks in the upper chord.

• If access is gained from below, the procedures specify modification of the clip nuts of the attachment fastener holes of the floor panel, and surface HFEC inspections of the forward and aft horizontal flanges of the floor beam upper chord for cracks.

• If any crack is found, the procedures specify accomplishment of the repair in the service bulletin or contacting Boeing for repair instruction, and repetitive inspections of the repaired area. If no crack is found, repeat the applicable inspection.

The service bulletin also describes procedures for an optional repair/modification, which would extend certain repetitive inspection intervals.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between the Alert Service Bulletin and This Proposed AD

Although the alert service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposed AD would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD; however, this AD identifies the office authorized to approve alternative methods of compliance.

Cost Impact

There are approximately 78 airplanes of the affected design in the worldwide fleet. The FAA estimates that 21 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 30 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspections proposed by this AD on U.S. operators is estimated to be $37,800, or $1,800 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2001–NM–278–AD.

Applicability: Model 747–200C and –200F series airplanes, as listed in Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To find and fix cracking in certain upper deck floor beams, which could extend and sever floor beams adjacent to the body frame and could result in rapid decompression and consequent loss of controllability of the airplane, accomplish the following:

Inspections and Repair

(a) Before the accumulation of 22,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever is later: Do the applicable inspection to find fatigue cracking in the upper chord of the upper deck floor beams as specified in Part 1 (Open-Hole High Frequency Eddy Current (HFEC) Inspection Method) or Part 2 (Surface HFEC Inspection Method) of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001. Do the inspections per the service bulletin.

(1) If any crack is found, before further flight, repair per Part 3 (Repair) of the Work Instructions of the service bulletin; except where the service bulletin specifies to contact Boeing for appropriate action, before further flight, repair according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or according to data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD. Do the applicable inspection of the repaired area per Part 1 of the service bulletin at the applicable time per Part 3 of the service bulletin. Repeat the applicable inspection at the applicable interval per Figure 1 of the service bulletin.

(2) If no crack is found, repeat the applicable inspection per paragraph (a) of this AD within the applicable interval per Figure 1 of the service bulletin. As an option, accomplishment of paragraph (b)(1) or (b)(2) of this AD, before further flight, extends the threshold for the initiation of the repetitive inspections required by this paragraph.

Optional Repair/Modification

(b) For airplanes on which the inspection required by paragraph (a) of this AD is done per Part 1 of the Work Instructions of Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001; and on which no cracking is found: Accomplishment of the actions specified in either paragraph (b)(1) or (b)(2) of this AD extends the threshold for the initiation of the repetitive inspections required by paragraph (a)(2) of this AD.

(1) Do the repair per Part 3 of the service bulletin. At the applicable time specified in Table 1 of Part 3 of the service bulletin, do the inspection of the repaired area per Part 1 of the service bulletin. Repeat the inspection thereafter within the applicable interval per Figure 1 of the service bulletin.

(2) Do the modification of the attachment hole of the floor panel per Figure 5 of the service bulletin. Within 10,000 flight cycles after accomplishment of the modification, do the inspection of the modified area per Part 1 of the service bulletin. Repeat the inspection thereafter within the applicable interval per Figure 1 of the service bulletin.

Adjustments to Compliance Time: Cabin Differential Pressure

(c) For the purposes of calculating the compliance threshold and repetitive interval for the actions required by paragraph (a) of this AD: The number of flight cycles in which cabin differential pressure is at 2.0 pounds per square inch (psi) or less need not be counted when determining the number of flight cycles that have occurred on the airplane, provided that flight cycles with momentary spikes in cabin differential pressure above 2.0 psi are included as full pressure cycles. For this provision to apply, all cabin pressure records must be maintained for each airplane. No fleet-averaging of cabin pressure is allowed.

Alternative Methods of Compliance

(d)(1) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings.

Issued in Renton, Washington, on July 18, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–18788 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–150–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes, that would have required one-time inspections to detect discrepancies of electrical wiring installations in various areas of the airplane, and corrective action if necessary. This new action expands the area to be inspected. The actions specified by this new proposed AD are intended to prevent smoke and fire in various areas of the airplane due to heat damage and/or electrical arcing of improperly installed wiring. The actions specified in this action are intended to address the identified unsafe condition.

DATES: Comments must be received by August 18, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–150–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–150–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Elvin K. Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–150–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–150–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on September 5, 2002 (67 FR 56768). That NPRM would have required one-time inspections to detect discrepancies of electrical wiring installations in various areas of the airplane, and corrective action if necessary. That NPRM was prompted by reports of damaged wiring insulation and chafed wiring in various areas on the affected airplanes. Investigation revealed that the damage and chafing might be attributed to improper wire installations and/or maintenance practices. This condition, if not corrected, could lead to heat damage and/or electrical arcing of the wiring, which could result in fire and smoke in various areas of the airplane.

Comments

Due consideration has been given to the comments received in response to the original NPRM.

Support for the Original NPRM

The Air Transport Association of America reports that its members generally support the intent of the original NPRM.

Request To Expand Areas To Be Inspected

Boeing asserts that the list of service bulletins cited in the original NPRM is incomplete and requests that the original NPRM be revised to expand the area of inspection to include the flight compartment and forward drop ceiling and the electrical/electronic (E/E) compartment, which may also be subject to the identified unsafe condition.

The FAA agrees. Boeing Service Bulletins MD80–24–176 and MD80–24–177, both Revision 02, both dated January 21, 2003, describe procedures for one-time nonintrusive inspections to detect discrepancies of exposed wiring in the flight compartment and forward drop ceiling and the E/E compartment, and, if necessary, corrective action (including replacing too-large clamps with smaller clamps, repositioning wires and clamps, replacing torn or broken clamps with new clamps, tightening loose wire terminations, and installing protective sleeving over wiring, as applicable). Those actions are intended to address the identified unsafe condition. This supplemental NPRM has been revised to add wiring inspections in those areas.

Request To Cite Most Recent Service Information

One commenter asserts that the serviceability of the wiring grommets (proposed to be inspected per the original NPRM) is subject to interpretation. The commenter states that Boeing has recognized that it would be impossible to nonintrusively verify the integrity of the grommets. Boeing plans to revise the service bulletins to remove the grommet inspection. Therefore, the commenter requests that we delay issuance of the AD until the service bulletins have been revised.

We agree. Boeing Service Bulletins MD80–24–178, MD80–24–179, MD80–24–180, MD80–24–181, and MD80–24–182, all Revision 01, including Appendix, dated June 12, 2001, were cited in the original NPRM as the appropriate sources of service information for the inspections. Those service bulletins were revised (Revision 02 was issued January 21, 2003) to remove the electrical component grommet inspection procedures. The remaining procedures were essentially unchanged. Therefore, this supplemental NPRM has been revised to cite Revision 02 of the service bulletins, but would provide credit for applicable inspections already done per the original issue or Revision 01 of the service bulletins.

Request To Extend Compliance Time

One commenter recommends that the compliance time be extended from 5 years to 6 years to accommodate

accomplishment of the inspections at heavy maintenance visits, since extensive access is necessary to reach the inspection areas.

We agree with the request. We find that extending the compliance time to 6 years for the inspections will better accommodate operators' schedules and still maintain an adequate level of safety. This supplemental NPRM has been revised accordingly.

Request To Revise Cost Estimate

One commenter claims that the original NPRM understates the labor hours necessary to accomplish the detail of inspection specified in the service bulletins. Based on experience, the commenter suggests that the work hours for the proposed inspections is 66 work hours per airplane, not 33 work hours as stated in the original NPRM. The commenter states that the inspections alone on its fleet would take 23,892 work hours. The commenter asserts that material and labor costs to restore any condition that does not conform to the service bulletin requirements cannot be estimated due to the extent of possible deviations/differences from airplane to airplane.

We infer that the commenter is requesting that the Cost Impact section of the original NPRM be revised. We partially agree with the commenter's rationale. We agree that the specified work hours may not always accurately reflect the amount of time necessary to complete the required work for every airplane or for every operator. We also recognize that material and labor costs to fix any discrepancy cannot be accurately estimated for each airplane. However, as explained in the Cost Impact section of the original NPRM, the economic analysis of the AD is limited to the cost of actions that would actually be required by the AD. The economic analysis does not consider the costs of conditional actions, such as repairing discrepancies found during a required inspection. Such conditional actions would be required to be accomplished—regardless of AD direction—to correct an unsafe condition identified in an airplane and to ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations. No change to this supplemental NPRM is necessary regarding this issue.

Conclusion

Since certain changes expand the scope of the original NPRM, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Changes to 14 CFR Part 39/Effect on This Supplemental NPRM

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Therefore, in this supplemental NPRM, Note 1 and paragraph (c) of the original NPRM have been removed, paragraph (b) of the original NPRM has been revised to identify the office authorized to approve AMOCs, and the remaining notes and paragraphs have been reidentified accordingly.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 1,191 airplanes of the affected design in the worldwide fleet. Estimates of the costs of the proposed actions are provided in the following table:

Service bulletin	Work hours per airplane	Labor rate/ hour	Cost per airplane	U.S. airplanes	U.S. fleet cost
MD80–24–176	8	$65	$521	732	$380,640
MD80–24–177	5	65	325	732	237,900
MD80–24–178	8	65	520	732	380,640
MD80–24–179	8	65	520	732	380,640
MD80–24–180	8	65	520	732	380,640
MD80–24–181	6	65	390	732	285,640
MD80–24–182	3	65	195	732	142,740

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Manufacturer warranty remedies may be available for labor costs associated with this supplemental NPRM. As a result, the costs attributable to the supplemental NPRM may be less than stated above.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2000–NM–150–, AD.

Applicability: All Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: The FAA recommends that the actions required by this AD be accomplished after replacing the metallized polyethyleneteraphthalate (MPET) insulation blankets, as required by AD 2000–11–02, amendment 39–11750.

To prevent smoke and fire in various areas of the airplane due to heat damage and/or electrical arcing of improperly installed wiring, accomplish the following:

Inspection

(a) Within 6 years after the effective date of this AD: Perform a detailed inspection to detect discrepancies of exposed electrical wiring installations as specified in Table 1 of this AD. Specific discrepancies are listed in paragraph 3.B.3. of each service bulletin. Prior to further flight thereafter, perform corrective actions in accordance with the service bulletin, as applicable. Table 1 follows:

TABLE 1.—INSPECTION REQUIREMENTS

Inspect the electrical wiring installations in the—	In accordance with the following McDonnell Douglas Service Bulletin:
(1) Flight compartment and forward drop ceiling	MD80–24–176, Revision 02, dated January 21, 2003.
(2) Electrical/electronic compartment	MD80–24–177, Revision 02, dated January 21, 2003.
(3) Forward passenger compartment from stations Y=218.000 to Y=846.000.	MD80–24–178, Revision 02, dated January 21, 2003.
(4) Aft passenger compartment from stations Y=846.000 to Y=1338.000.	MD80–24–179, Revision 02, dated January 21, 2003.
(5) Forward and mid cargo compartments from stations Y=218.000 to Y=811.000.	MD80–24–180, Revision 02, dated January 21, 2003.
(6) Aft cargo compartment from stations Y=1033.000 to Y=1338.000	MD80–24–181, Revision 02, dated January 21, 2003.
(7) Forward accessory compartment from stations Y=41.000 to Y=70.000.	MD80–24–182, Revision 02, dated January 21, 2003.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(b) Although the service bulletins identified in Table 1 of this AD specify that operators provide a report of inspection findings, this AD does not require such information.

(c) An inspection done before the effective date of this AD is acceptable for compliance with the inspection requirements of this AD, if accomplished in accordance with the corresponding service bulletin identified in Table 1 of this AD, original version, dated July 14, 2000; or Revision 01, dated June 12, 2001.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on July 18, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–18786 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–161–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes. This proposal would require revising the wire connection stackups for the terminal strip of the generator feeder tail compartment of the auxiliary power unit (APU), and removing a nameplate, as applicable. For certain airplanes, this proposal also would require replacing the terminal strips and revising the terminal hardware stackup for the feeder of the center cargo loading system. This action is necessary to prevent arcing damage to the terminal strips and damage to the adjacent structure, which could result in smoke and/or fire in the center and/or aft cargo compartments. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 8, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–161–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–161–AD" in the subject line and need not be submitted in triplicate. Comments sent via the

Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627-5350; fax (562) 627-5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001-NM-161-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2001-NM-161-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of an incident in which arcing occurred between the power feeder cables and support bracket of the terminal strips on a McDonnell Douglas Model MD-11 airplane. Investigation revealed that inadequate clearance exists between the terminal strips and associated support brackets in the center and aft cargo compartments. This condition, if not corrected, could result in arcing damage to the terminal strips and damage to the adjacent structure, which could result in smoke and/or fire in the center and/or aft cargo compartments.

The terminal strips and associated support brackets in the center and aft cargo compartments on certain McDonnell Douglas Model MD-11F airplanes are identical to those on the affected Model MD-11 airplanes. Therefore, both of these models may be subject to the same unsafe condition.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD-11 and -11F airplanes, has reviewed all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of corrective actions identified during that process. We have previously issued several other ADs and may consider further rulemaking actions to address the remaining identified unsafe conditions.

Explanation of Relevant Service Information

We have reviewed and approved McDonnell Douglas Alert Service Bulletin MD11-24A173, Revision 02, dated May 2, 2002, including Evaluation Form. The service bulletin describes procedures for revising the wire connection stackups for the terminal strip of the generator feeder tail compartment of the auxiliary power unit (APU), and removing a nameplate, as applicable. For certain airplanes, the service bulletin also describes procedures for replacing the terminal strips and revising the terminal hardware stackup for the feeder of the center cargo loading system. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the applicable actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed AD and Service Bulletin

Operators should note that the service bulletin specifies to repair damaged structure per the Structural Repair Manual (SRM). However, the SRM does not provide procedures for repair of certain structural material. Therefore, this proposed AD would require the repair of damaged structure that is not covered in the SRM to be accomplished per a method approved by us.

Although the referenced service bulletin describes procedures for completion and submission of an inspection report and service bulletin evaluation, this proposed AD would not require those actions.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Cost Impact

There are approximately 154 Model MD-11 and -11F airplanes of the affected design in the worldwide fleet. We estimate that 67 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately between 1 and 2 work hours per airplane (depending on the airplane configuration) to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost approximately $102 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to between $11,189 and $15,544, or between $167 and $232 per airplane (depending on the airplane configuration).

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. However, for affected airplanes within the period under the warranty agreement, we have been advised that the manufacturer has committed previously to its customers that it will bear the cost of replacement parts. We also have been advised that manufacturer warranty remedies are available for labor costs associated with accomplishing the actions required by this proposed AD. Therefore, the future economic cost impact of this AD may be less than the cost impact figure indicated above.

The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2001-NM-161-AD.

Applicability: Model MD-11 and -11F airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11-24A173, Revision 02, dated May 2, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing damage to the terminal strips and damage to the adjacent structure, which could result in smoke and/or fire in the center and/or aft cargo compartments, accomplish the following:

For Group 1 and Group 2 Airplanes: Revise Wire Connection Stackups, Remove Nameplate, and Inspect for Damage

(a) For Group 1 and Group 2 airplanes listed in McDonnell Douglas Alert Service Bulletin MD11-24A173, Revision 02, dated May 2, 2002, excluding Evaluation Form: Within 18 months after the effective date of this AD, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD per the service bulletin. Although the service bulletin references a reporting requirement in paragraph 4, "Appendix," such reporting is not required by this AD.

(1) Revise the wire connection stackups for the terminal strip of the generator feeder tail compartment of the auxiliary power unit (APU), and remove the namplate, as applicable.

(2) Do a general visual inspection to detect arcing damage of the surrounding structure, adjacent system components, and electrical cables in the center cargo and aft cargo compartments.

Note: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

For Group 2 Airplanes: Replace Terminal Strips, Revise Terminal Hardware Stackup, Remove Nameplate, and Inspect for Damage

(b) For Group 2 airplanes listed in McDonnell Douglas Alert Service Bulletin MD11-24A173, Revision 02, dated May 2, 2002, excluding Evaluation Form: Within 18 months after the effective date of this AD, do the actions specified in paragraphs (b)(1) and (b)(2) of this AD per the service bulletin. Although the service bulletin references a reporting requirement in paragraph 4, "Appendix," such reporting is not required by this AD.

(1) Replace the terminal strips and revise the terminal hardware stackup for the feeder of the center cargo loading system, and remove the nameplate, as applicable.

(2) Do a general visual inspection to detect arcing damage of the surrounding structure, adjacent system components, and electrical cables in the center cargo and aft cargo compartments.

Corrective Action if Necessary

(c) If any damage is detected during the inspection required by paragraph (a) or (b) of this AD, before further flight, repair damage or replace the damaged part with a new part, per McDonnell Douglas Alert Service Bulletin MD11-24A173, Revision 02, dated May 2, 2002, excluding Evaluation Form. If the type of structural material that has been damaged is not covered in the Structural Repair Manual, repair per a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Although the service bulletin references a reporting requirement in paragraph 4, "Appendix," such reporting is not required by this AD.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, Los Angeles ACO, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on July 17, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03-18796 Filed 7-23-03; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001-NM-163-AD]

RIN 2120-AA64

Airworthiness Directives; McDonnell Douglas Model MD-11 and -11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that currently requires an inspection to detect chafing or damage of the electrical wires leading to the terminal strips in the center accessory compartment (CAC) area, and corrective actions if necessary. That AD also currently requires revising the wire connection stack up of certain cable terminals at the electrical power center bays in the CAC, and replacing certain terminal strips with new strips and removing applicable nameplates at electrical power center bays. This action would require additional actions for improving the terminal strips and would revise the applicability of the existing AD to include additional airplanes. This proposal is prompted by issuance of revised service information. The actions specified by the proposed AD are intended to prevent arcing and sparking damage to the power feeder cables, terminal strips, and adjacent structure, and consequent smoke and fire in the CAC.

DATES: Comments must be received by September 8, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–163–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–163–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–163–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–163–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On November 22, 2000, the FAA issued airworthiness directive (AD) 2000–24–12, amendment 39–12019 (65 FR 75615, December 4, 2000), applicable to certain McDonnell Douglas Model MD–11 series airplanes, to require an inspection to detect chafing or damage of the electrical wires leading to the terminal strips in the center accessory compartment (CAC) area, and corrective actions if necessary. That AD also requires revising the wire connection stack up of certain cable terminals at the electrical power center bays in the CAC, and replacing certain terminal strips with new strips and removing applicable nameplates at electrical power center bays. That action was prompted by an incident of arcing between a power feeder cable and terminal strip support bracket. The requirements of that AD are intended to prevent arcing and sparking damage to the power feeder cables, terminal strips, and adjacent structure, and consequent smoke and fire in the CAC.

Other Related Rulemaking

We, in conjunction with Boeing and operators of Model MD–11 and –11F airplanes, have reviewed all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed AD is one of a series of corrective actions identified during that process. We have previously issued several other ADs and may consider further rulemaking actions to address the remaining identified unsafe conditions.

Actions Since Issuance of Previous Rule

Since the issuance of AD 2000–24–12, we have reviewed and approved Revision 02 of Boeing Alert Service Bulletin MD11–24A097, including Evaluation Form, dated December 4, 2002 (the original issue of the service bulletin was referenced in AD 2000–24–12 as the appropriate source of service information for accomplishing the required actions). Revision 02 provides additional terminal strip information; adds airplanes to the effectivity; and corrects part numbers for the terminal stud stack up washers, which were inadvertently called out incorrectly in the original issue of this service bulletin. More work is necessary on all airplanes changed per the original issue and Revision 01 of the service bulletin.

For certain airplanes, Revision 02 of the service bulletin describes procedures for:

- Revising the wire connection stack up of the cable terminals at the electrical power center bays in the CAC, as applicable, and doing a one-time general visual inspection of the surrounding structure and electrical cables for chafing or damage;
- Replacing terminal strips, removing the applicable nameplate at the electrical power center bays 1, 2, and 3 in the CAC, and doing a general visual inspection of the surrounding structure and electrical cables for arcing damage.

For certain other airplanes, Revision 02 of the service bulletin also describes procedures for relocating the terminal strip, and doing a general visual inspection of the surrounding structure and electrical cables for arcing damage.

If any chafing or damage is detected during any general visual inspection, Revision 02 of the service bulletin describes procedures for repairing or replacing the damaged or chafed component with new or serviceable components.

Accomplishment of the actions specified in Revision 02 of the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Change to Applicability

The applicability of this notice of proposed rulemaking (NRPM) differs from AD 2000–24–12 in that it identifies model designations as published in the most recent type certificate data sheet for the affected models, and references Revision 02 of the service bulletin, which includes additional airplanes that are subject to the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2000–24–12 to require accomplishment of the applicable actions specified in Revision 02 of the service bulletin described previously; except as discussed below.

Differences Between Proposed AD and Service Bulletin

Operators should note that Revision 02 of the service bulletin specifies to repair damage or chafed structure per the Structural Repair Manual (SRM). However, the SRM does not provide adequate procedures for repair of certain structural material. Therefore, this proposed AD would require the repair of damaged or chafed structure that is not covered in the SRM to be accomplished per a method approved by the FAA.

In addition, Revision 02 of the service bulletin specifies to use the form located in the Appendix for reporting inspection findings to the airplane manufacturer. Although the service bulletin references a reporting requirement, such reporting is not required by this AD. The airplane manufacturer has also informed us that it inadvertently published the service bulletin without the Appendix.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Cost Impact

There are approximately 163 Model MD–11 and –11F airplanes of the affected design in the worldwide fleet. The FAA estimates that 73 airplanes of U.S. registry would be affected by this proposed AD.

The new actions that are proposed in this AD action would take approximately between 1 and 7 work hours per airplane (depending on the airplane configuration) to accomplish, at an average labor rate of $65 per work hour. Required parts would cost approximately between $721 and $2,035 per airplane (depending on the airplane configuration). Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be between $786 and $2,490 per airplane (depending on the airplane configuration).

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12019 (65 FR 75615, December 4, 2000), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 2001–NM–163–AD. Supersedes AD 2000–24–12, Amendment 39–12019.

Applicability: Model MD–11 and –11F airplanes, as listed in Boeing Alert Service Bulletin MD11–24A097, Revision 02, dated December 4, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing and sparking damage to the power feeder cables, terminal strips, and adjacent structure, and consequent smoke and fire in the center accessory compartment (CAC), accomplish the following:

Revising Wire Connection Stack Up, Inspecting, Replacing Terminal Strips, Removing the Nameplate, and Relocating Terminal Strip; as Applicable

(a) For Groups 1 through 6 airplanes as listed in Boeing Alert Service Bulletin MD11–24A097, Revision 02, dated December 4, 2002: Within 12 months after the effective date of this AD, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD per the service bulletin. Although the service bulletin references a reporting requirement, such reporting is not required by this AD.

(1) Revise the wire connection stack up of the cable terminals at the electrical power center bays 1, 2, and 3 in the CAC, as applicable, and do a one-time general visual inspection of the surrounding structure and electrical cables for chafing or damage.

Note: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(2) Replace the terminal strips and remove the applicable nameplate at the electrical power center bays 1, 2, and 3 in the CAC, and do a general visual inspection of the surrounding structure and electrical cables for arcing damage.

(b) For Group 7 airplanes as listed in Boeing Alert Service Bulletin MD11–24A097, Revision 02, dated December 4, 2002: Within 12 months after the effective date of this AD, relocate the terminal strip, and do a general visual inspection of the surrounding structure and electrical cables for arcing damage, per the service bulletin. Although the service bulletin references a reporting requirement, such reporting is not required by this AD.

Corrective Action

(c) If any chafing or damage is detected during any general visual inspection required by this AD, before further flight, repair or replace the damaged or chafed component with new or serviceable components, per Boeing Alert Service Bulletin MD11–24A097, Revision 02, dated December 4, 2002; except if the type of structural material that has been affected is not covered in the Structural Repair Manual (SRM), repair per a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. In addition, although the service bulletin references a reporting requirement, such reporting is not required by this AD.

Credit for Earlier Service Bulletins

(d) Applicable actions specified in this AD accomplished before the effective date of this AD per McDonnell Douglas Alert Service Bulletin MD11–24A097, dated April 3, 2000; or Revision 01, dated July 12, 2001, are acceptable for compliance with the applicable requirements of this AD.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on July 17, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–18795 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–165–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes. This proposal would require revising the vent fan wiring in the right forward cabin drop ceiling, right mid cabin drop ceiling, and right forward cargo compartment, as applicable. This action is necessary to prevent fire and/or smoke in the right forward cabin drop ceiling, right mid cabin drop ceiling, or right forward cargo compartment. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 8, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–165–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–165–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130–L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–165–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–165–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of several instances of burned/overheated mod blocks in the terminal strips located above the right forward cabin drop ceiling and right mid cabin drop ceiling on McDonnell Douglas Model MD–11 and –11F airplanes. Investigation revealed that the mod blocks developed high heat due to the high current transmitted through the vent fan wiring of the forward cargo compartment. This condition, if not corrected, could result in fire and/or smoke in the right forward cabin drop ceiling, right mid cabin drop ceiling, or right forward cargo compartment.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 and –11F airplanes, has reviewed all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of corrective actions identified during that process. We have previously issued several other ADs and may consider further rulemaking actions to address the remaining identified unsafe conditions.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletin MD11–24A196, including Evaluation Form, Revision 01, dated November 20, 2002, which describes procedures for revising the vent fan wiring in the right forward cabin drop ceiling, right mid cabin drop ceiling, and right forward cargo compartment, as applicable. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as described below.

Clarification of Quality of Service Information

Operators should note that, although the referenced service bulletin describes procedures for the completion and submission of an Evaluation Form that provides input on the quality of the service bulletin to the airplane manufacturer, this AD does not include such a requirement.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Cost Impact

There are approximately 195 Model MD–11 and –11F airplanes of the affected design in the worldwide fleet. We estimate that 67 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost between $14 and $113 (depending on the airplane configuration). Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $79 and $180 per airplane (depending on the airplane configuration).

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Manufacturer warranty remedies may be available for labor costs associated with this proposed AD. Manufacturer warranty remedies may also be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2001–NM–165–AD.

Applicability: Model MD–11 and –11F airplanes, as listed in Boeing Alert Service Bulletin MD11–24A196, Revision 01, dated

November 20, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fire and/or smoke in the right forward cabin drop ceiling, right mid cabin drop ceiling, or right forward cargo compartment, accomplish the following:

Revise Vent Fan Wiring

(a) Within 6 months after the effective date of this AD, revise the vent fan wiring in the right forward cabin drop ceiling, right mid cabin drop ceiling, and right forward cargo compartment, as applicable, per Boeing Alert Service Bulletin MD11–24A196, excluding Evaluation Form, Revision 01, dated November 20, 2002.

(b) Revisions of the vent fan wiring accomplished before the effective date of this AD per Boeing Alert Service Bulletin MD11–24A196, dated December 17, 2001, are acceptable for compliance with the requirements of paragraph (a) of this AD.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on July 17, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–18794 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Los Angeles–Long Beach 03–006]

RIN 1625–AA00

Safety Zone; Offshore Gran Prix, Ventura, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone in the navigable waters of Pierpont Bay near Ventura, California, for the Ventura Offshore Gran Prix powerboat race on September 28, 2003. This proposed temporary safety zone is necessary to provide for public safety in order to protect life and prevent property damage near the racecourse. Persons and vessels will be prohibited from entering into or transiting through this proposed safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: Comments and related material must reach the Coast Guard on or before August 27, 2003.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard Marine Safety Office/Group Los Angeles-Long Beach, Waterways Management Division, 1001 South Seaside Avenue, Building 20, San Pedro, California. The Waterways Management maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at U.S. Coast Guard Marine Safety Office/Group Los Angeles-Long Beach, 1001 South Seaside Avenue, Building 20, San Pedro, California, 90731 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Rob Griffiths, Assistant Chief of Waterways Management Division, at (310) 732–2020.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (COTP Los Angeles-Long Beach 03–006), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them. If as we anticipate, we make the final rule effective less than 30 days after publication in the **Federal Register**, we will explain our good cause for doing so, as required by 5 U.S.C. 553(d)(3).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Waterways Management Division at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Pacific Offshore Powerboat Racing Association is sponsoring its annual Ventura Offshore Gran Prix in the navigable waters of Pierpont Bay near Ventura, California, from 12 a.m. (noon) to 3 p.m. (PDT) on September 28, 2003. Course description and coordinates are provided in the regulatory text section below.

This proposed safety zone is needed to provide for the safety of both the 25 participants and the estimated 125 spectators expected to attend this event. During this event, offshore powerboats designed for open ocean rough water racing may reach speeds of 125 miles per hour. Due to the high-speed nature of this event as well as the potential for loss of life and damage to property, the Coast Guard is proposing to close the waterway to all vessels and persons 30 minutes prior to the start of the race and will reopen the waterway approximately 30 minutes after the conclusion of the race if the Patrol Commander determines that it is safe to do so. A broadcast notice to mariners will be issued for this event.

Discussion of Proposed Rule

The description and coordinates for the racecourse are provided in the regulatory text section below.

Persons and vessels will be prohibited from entering into or transiting through this proposed safety zone unless authorized by the Captain of the Port. By prohibiting persons and vessels from entering this temporary safety zone the risk of loss of life and damage to property will be significantly reduced. Without this safety zone the Offshore Gran Prix would be cancelled.

U.S. Coast Guard personnel will enforce this proposed safety zone. The Coast Guard may be assisted by other Federal, State, or local agencies, which during this event may include the Coast Guard Auxiliary, Ventura Harbor Patrol, and Ventura Police Department.

Section 165.3 of Title 33, Code of Federal Regulations, prohibits any unauthorized person or vessel from entering or remaining in a Safety Zone. Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232. Pursuant to 33 U.S.C. 1232, any violation of the proposed safety zone described herein, will be punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and *in rem* liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Due to the limited scope of the proposed safety zone, the fact that vessel traffic can pass safely around the zone, and the short duration of the zone, the Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule will possibly affect the following entities, some of which may be small entities: the owners and operators of private and commercial vessels intending to transit or anchor in the affected area. The impact to these entities would not, however, be significant since this zone will encompass only a small portion of the waterway for a limited period of time and vessels can safely navigate around the safety zone.

For these reasons and the reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Junior Grade Rob Griffiths, Assistant Chief of Waterways Management Division, at (310) 732–2020.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a safety zone.

A draft "Environmental Analysis Check List" and a draft "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the

final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security Measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add a new § 165.T11–074 to read as follows:

§ 165.T11–074 Safety Zone; Offshore Gran Prix, Ventura, CA.

(a) *Location.* The following described area constitutes a temporary safety zone: All waters of Pierpont Bay near Ventura, California, from surface to bottom, encompassed by lines connecting points beginning at latitude 34°15′42″ N, longitude 119°16′40″ W; then to 34°16′17″ N, 119°17′32″ W; then to 34°16′17″ N, 119°19′25″ W; then to 34°14′31″ N, 119°19′25″ W; then to 34°14′31″ N, 119°16′40″ W; and then returning to the point of origin. (Datum: NAD 1983).

(b) *Effective period.* This section is effective from 12 a.m. (noon) to 3 p.m. (PDT) on September 28, 2003.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within the safety zone is prohibited unless authorized by the Coast Guard Captain of the Port, Los Angeles-Long Beach, or his or her designated representative.

(2) Persons desiring to transit the area of the safety zone may contact the Captain of the Port at telephone number (800) 221–8724 or the Patrol Commander on VHF-FM channel 16 (156.8 MHz). If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

Dated: July 14, 2003.

John M. Holmes,

Captain, Coast Guard, Captain of the Port, Los Angeles-Long Beach, California.

[FR Doc. 03–18761 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2283, MM Docket No. 00–104, RM–9812]

Digital Television Broadcast Service; Oklahoma City, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a request filed by Paramount Stations Group of Oklahoma City LLC to substitute DTV channel 40 for station KAUT–TV's assigned DTV channel 42 with an increase in ERP to 1000 kW. DTV Channel 40 can be allotted to Oklahoma City at coordinates 35–35–22 N. and 97–29–03 W. with a height above average terrain HAAT of 475 meters. This *Further Notice of Proposed Rule Making* does not afford an additional opportunity to file counterproposals in response to Paramount's initial proposal to substitute DTV channel 40 for DTV channel 42, but only seeks comments on Paramount's proposal to increase its power.

DATES: Comments must be filed on or before September 8, 2003, and reply comments on or before September 23, 2003.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in broadcast allotment proceedings). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners.Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Raymond A. White, Esquire, c/o Paramount Stations Group, Inc., 5202 River Road, Bethesda, Maryland 20816 (Counsel for Paramount Stations Group of Oklahoma City LLC).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Further Notice of Proposed Rule Making, MM Docket No. 00–104, adopted July 11, 2003, and released July 18, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibiiity Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Oklahoma, is amended by removing DTV channel 42 and adding DTV channel 40 at Oklahoma City.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–18833 Filed 7–23–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2261; MB Docket No. 03–161; RM–10708]

Radio Broadcasting Services; Tallapoosa, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by SSR Communications, Inc. requesting the allotment of Channel 255A at Tallapoosa, Georgia. The coordinates for Channel 255A at Tallapoosa are 33–39–20 and 85–15–27. There is a site restriction 10.3 kilometers (6.4 miles) south of the community. Channel 255A at this site conflicts with Channel 253C, Atlanta, Georgia. However, Station WSB has consented to the reclassification of its license from Class C to Class C0 in MB Docket 03–77 (68 FR 17592, April 10, 2003) which will remove the conflict with Channel 255A. The issuance of a *Report and Order* in this proceeding may be withheld pending final action in Docket 03–77 and the filing of an application by Station WSB, Atlanta, to operate on Channel 253C0 in lieu of Channel 253C.

DATES: Comments must be filed on or before September 5, 2003, and reply comments on or before September 22, 2003.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel as follows: Cary S. Tepper, Booth, Freret, Imlay & Tepper, P.C., 7900 Wisconsin Avenue, Suite 304, Bethesda, Maryland 20814–3628.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–161, adopted July 9, 2003, and released July 14, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, or via e-mail *qualexint@aol.com.k*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Tallapoosa, Channel 255A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–18830 Filed 7–23–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2260; MB Docket No. 03–162, RM–10723]

Radio Broadcasting Services; Linden and Marion, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Audio Division requests comments on a petition filed by Beckham Palmer, III, as Receiver, proposing the reallotment of Channel 275C2 from Linden to Marion, Alabama. Channel 275C2 can be reallotted to Marion in compliance with the Commission's minimum distance separation requirements with a site restriction of 9 kilometers (5.6 miles) northwest at petitioner's requested site. The coordinates for Channel 275C2 at Marion are 32–41–00 North Latitude and 87–23–39 West Longitude. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 275C2 at Marion, Alabama.

DATES: Comments must be filed on or before September 5, 2003, reply comments on or before September 22, 2003.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Mr. Beckham Palmer III, 2728 6th Street, Tuscaloosa, Alabama 35401 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–162, adopted July 9, 2003, and released July 14, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex, International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 275C2 at Linden; and by adding Marion, Channel 275C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–18811 Filed 7–23–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2262; MB Docket No. 03–164; RM–10737]

Radio Broadcasting Services; Marmet and Montgomery, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Educational Media Foundation, licensee of Station WKVW(FM), Channel 227A, Montgomery, West Virginia. The petition proposes to change Station WKVW(FM)'s community of license from Montgomery to Marmet, West Virginia, and provide Marmet with its first local aural transmission service. The coordinates for requested Channel 227A at Marmet, West Virginia, are 38–13–09 NL and 81–25–05 WL, with a site restriction of 13.4 kilometers (8.3 miles) east of Marmet.

Petitioner's reallotment proposal complies with the provisions of Section 1.420(i) of the Commission's Rules, and therefore, the Commission will not accept competing expressions of interest in the use of Channel 227A at Marmet, West Virginia, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before September 5, 2003, and reply comments on or before September 22, 2003.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners' counsel, as follows: David D. Oxenford, Esq., Veronica D. McLaughlin, Esq., and Amy L. Van de Kerckhove, Esq., SHAW PITTMAN LLP; 2300 N Street, NW., Washington, DC 20037–1128.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–164, adopted July 9, 2003, and released July 14, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by adding Marmet, Channel 227A, and removing Montgomery, Channel 227A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–18807 Filed 7–23–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2263; MB Docket No. 03–160; RM–10706]

Radio Broadcasting Services; Camp Verde and Payson, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Sierra H. Broadcasting, Inc. requesting the reallotment of Channel 282C from Payson, Arizona to Camp Verde, Arizona, as the community's first local aural transmission service, and modification of the license for Station KAJM to reflect the changes. Channel 282C can be allotted to Camp Verde at coordinates 34–25–48 and 111–30–16. Mexican concurrence will be requested for the allotment of Channel 282C at Camp Verde. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of channel 282C at Camp Verde.

DATES: Comments must be filed on or before September 5, 2003, and reply comments on or before September 22, 2003.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel as follows:

Barry A. Friedman, Thompson Hine LLP, 1920 N Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–160, adopted July 9, 2003, and released July 14, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, or via e-mail *qualexint@aol.com*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 282C at Payson, and by adding Camp Verde, Channel 282C.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–18808 Filed 7–23–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2259, MB Docket No. 03–163, RM–10734]

Radio Broadcasting Services; Fortuna Foothills and Wellton, Arizona

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a Petition for Rule Making filed by Dana J. Puopolo proposing the allotment of Channel 240A to Fortuna Foothills, Arizona, as the community's first local aural transmission service. In order to accommodate this allotment, the Petitioner also proposes the substitution of Channel 248A for vacant Channel 240A at Wellton, Arizona. Channel 240A can be allotted to Fortuna Foothills, Arizona, consistent with the minimum distance separation requirement of the Commission's Rules, provided there is a site restriction of 6.5 kilometers (4.0 miles) southeast to avoid a short-spacing to the license site of Station KSIQ, Channel 241B, Brawley, California. The reference coordinates for Channel 240A at Fortuna Foothills are 32–36–58 North Latitude and 114–21–47 West Longitude. Since Fortuna Foothills is located within 320 kilometers (199 miles) of the U.S.-Mexican border, Mexican concurrence has been requested. Channel 248A can also be allotted to Wellton, Arizona, consistent with minimum distance separation requirements of the Commission's Rules at city reference coordinates. The reference coordinates for Channel 248A at Wellton are 32–40–18 North Latitude and 114–08–18 West Longitude. Since Wellton is located within 320 kilometers (199 miles) of the U.S.-Mexican border, Mexican concurrence has been requested.

DATES: Comments must be filed on or before September 5, 2003, and reply comments on or before September 22, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Dana J. Puopolo, 2134 Oak Street, Unit C, Santa Monica, CA 90405.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–163, adopted July 9, 2003, and released July 14, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Fortuna Foothills, Channel 240A, by removing Channel 240A and by adding Channel 248A at Wellton.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–18809 Filed 7–23–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI82

Endangered and Threatened Wildlife and Plants; Endangered Status for Scimitar-Horned Oryx, Addax, and Dama Gazelle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the re-opening of the comment period on the proposed listing of three species of antelope: scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and dama gazelle (*Gazella dama*), as endangered under the Endangered Species Act (ESA) of 1973, as amended. We are re-opening the comment period to request additional information and comments from the public regarding the proposed rule. The original proposed rule was published on November 5, 1991 (56 FR 56491). Comments previously submitted need not be resubmitted because they will be incorporated into the public record as part of this comment period and will be fully considered in the final determination.

DATES: We will accept public comments until October 22, 2003.

ADDRESSES: Submit any comments, information, and questions by mail to the Chief, Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 750, Arlington, VA 22203; or by fax to 703–358–2276; or by e-mail to *ScientificAuthority@fws.gov*. Comments and supporting information will be available for public inspection, by appointment, from 8 a.m. to 4 p.m. at the above address. You may also obtain copies of the November 5, 1991, proposed rule from the above address.

FOR FURTHER INFORMATION CONTACT: Eleanora Babij at the above address, or by phone, 703–358–1708; fax, 703–358–2276; or e-mail, *ScientificAuthority@fws.gov*.

SUPPLEMENTARY INFORMATION:

Background

The scimitar-horned oryx (*Oryx dammah*), addax (*Addax nasomaculatus*), and dama gazelle (*Gazella dama*) originally occupied the same general region of North Africa. The reasons for the decline of all three antelope species are similar. Desertification, coupled with severe droughts, has dramatically reduced available habitat. The growth of permanent farming has brought additional pressures, such as human habitat disturbance and competition from domestic livestock, which have restricted these antelopes to marginal habitat. Additional pressures from the civil wars in Chad and the Sudan have resulted in increased military activity, construction, and uncontrolled hunting.

The range of the scimitar-horned oryx in North Africa once covered semi-deserts and steppes north of the Sahara, from Morocco to Egypt. Over-hunting and habitat loss have been the main reasons for the decline of the wild population of this antelope according to the World Conservation Union (IUCN 2002). Competition with domestic livestock has also contributed to the species' decline. During the 1970s and 1980s, the scimitar-horned oryx was first classified as vulnerable and then as endangered by the IUCN. In 1975, the scimitar-horned oryx was listed in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

The addax once occurred throughout the deserts and sub-deserts of North Africa, from the Atlantic Ocean to the Nile River. Motorized illegal hunting following World War II has been noted as the primary reason for decline of the addax (Antelope Taxon Advisory Group 2002), and hunting continues to threaten this species (IUCN 2002). Habitat degradation as a result of overgrazing by domestic livestock has also played an important role in the decline of the addax. Similar to the scimitar-horned oryx, during the 1970s and 1980s, the addax was first classified as vulnerable and then as endangered by the IUCN. In 1975, the addax was also listed in Appendix II of CITES.

The dama gazelle, the largest of the gazelles, was once common and widespread in arid and semi-arid regions of the Sahara. It has suffered greatly from uncontrolled hunting and overgrazing by domestic livestock (Mallon and Kingwood 2001). Habitat destruction and hunting are still the most serious threats facing dama gazelles today (Antelope Taxon Advisory Group 2002; IUCN 2002). Two subspecies of the dama gazelle, *Gazella dama lozanoi* and *Gazella dama mhorr*, were designated as endangered, and then the entire species of *G. dama* was designated by the IUCN as vulnerable and then endangered. In 1983, these two subspecies and *G. dama* were listed in CITES Appendix I. Two subspecies of dama gazelle, *G. d. lozanoi* and *G. d. mhorr*, have been listed as endangered under the ESA since 1970. A third subspecies, *G. d. ruficollis* was not included in this original listing. However, there is currently a taxonomic debate over the validity of *G. d. lozanoi* as a subspecies.

Of the three antelope species, the scimitar-horned oryx was the most susceptible to the threats it faced. By the mid-1980s, it was estimated that only a few hundred were left in the wild, with the only viable populations known to be in Chad. There have been no reported sightings of this species in the wild since the late 1980s, and the 2002 Red List status of the scimitar-horned oryx is "extinct in the wild" (IUCN 2002). However, this antelope has been reintroduced into Tunisia, and once the reintroduced population breeds, especially to the second generation, it is anticipated that the status of "extinct in the wild" will change.

The addax is better able to utilize waterless areas in the heart of the Sahara Desert and is less susceptible to human disturbance and livestock competition. It is believed that the addax was extirpated from Tunisia during the 1930s, and the last animals were killed in Libya and Algeria in 1966 and 1970, respectively. Remnant populations may still exist in the remote desert areas of Chad, Niger, and Mali, and occasionally move north into Libya and Algeria during times of good rainfall. In the Antelope Specialist Group's *Global Survey of Antelopes*, the addax is considered to be "regionally extinct" (Mallon and Kingwood 2001). Addax are listed as critically endangered in the 2002 Red List and probably number fewer than 250 in the wild.

The dama gazelle is able to utilize both semi-desert and desert habitats, and is smaller than either the oryx or addax. Although the dama gazelle is the least susceptible of these three antelopes to pressures from humans and domestic livestock, it is estimated that only small numbers survive in most of the eight countries within its historical range. It was previously extinct in Senegal, but has since been reintroduced, and in 1997, at least 25 animals existed there as part of a semi-captive breeding program (IUCN 2002). The IUCN lists all forms of dama gazelles as endangered. The dama gazelle has declined rapidly over the last 20 years, and recent estimates show numbers fewer than 2,500 and declining (Mallon and Kingwood 2001). *G. d. mhorr* may be extinct in the wild and only found in captive collections or reintroduced populations (Antelope Taxon Advisory Group 2002; IUCN 2002).

Public Comments Solicited

We will accept written comments and information during this re-opened comment period from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party. Comments particularly are sought concerning;

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the scimitar-horned oryx, addax, and dama gazelle;

(2) Additional information concerning the range, distribution, and population size of the scimitar-horned oryx, addax, and dama gazelle;

(3) Current planned activities in the species' range and their possible impacts on the scimitar-horned oryx, addax, and dama gazelle;

(4) Information on the validity of *G. d. lozanoi* as a subspecies;

(5) Alternatives to the treatment of captive populations of scimitar-horned oryx, addax, and dama gazelle; and

(6) Information on the genetic integrity of captive populations of scimitar-horned oryx, addax, and dama gazelle, and particularly whether any captive populations are likely to have been hybridized.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Any person commenting may request that we withhold their home address, which we will honor to the extent allowable by law. In some circumstances, we may also withhold a commenter's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m. at the Division of Scientific Authority (*see* **ADDRESSES** section).

References Cited

Antelope Taxon Advisory Group. 2002. Addax Fact Sheet. American Zoo and Aquarium Association. Downloaded from *http://www.csew.com/antelopetag*.

Antelope Taxon Advisory Group. 2002. Addra or Dama Gazelle Fact Sheet. American Zoo and Aquarium Association. Downloaded from *http://www.csew.com/antelopetag*.

Antelope Taxon Advisory Group. 2002. Scimitar-Horned Oryx Fact Sheet. American Zoo and Aquarium Association. Downloaded from *http://www.csew.com/antelopetag*.

International Union for Conservation of Nature and Natural Resources. 2002. 2002 IUCN Red List of Threatened Species. Downloaded from *http://www.iucn.org*.

Mallon, D.P., and S.C. Kingwood (Compilers). 2001. *Antelopes. Part 4: North Africa, the Middle East, and Asia. Global Survey and Regional Action Plans.* SSC Antelope Specialist Group. IUCN, Gland, Switzerland and Cambridge, UK. Viii + 260 pp.

Metzler, S. 2000. *Addra Gazelle North American Regional Studbook 1999 Update.* Disney's Animal Kingdom.

Author

The primary author of this notice is Eleanora Babij, Division of Scientific Authority, U.S. Fish and Wildlife Service (*see* **ADDRESSES** section).

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

Dated: July 16, 2003.

Matt Hogan,

Acting Director, Fish and Wildlife Service.

[FR Doc. 03–18841 Filed 7–23–03; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 68, No. 142
Thursday, July 24, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV–03–302]

Request for an Extension of and Revision to a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget, for an extension of and revision to the currently approved information collection for "Regulations Governing Inspection, Certification and Standards for Fresh Fruits and Vegetables, and Other Products."

DATES: Comments on this notice must be received on or before September 22, 2003, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Contact Kathleen A. Staley, Head, Field Operations Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 2058—South Building, Stop 0240, Washington, DC 20250–0240, Phone (202) 720–2482, Fax (202) 720–0393; E-mail *kathleen.staley@usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing Inspection, Certification and Standards For Fresh Fruits, Vegetables, and Other Products: 7 CFR Part 51.

OMB Number: 0581–0125.

Expiration Date of Approval: February 29, 2004.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Fresh Products Branch provides a nationwide inspection and grading service for fresh fruits, vegetables, and other products to shippers, importers, processors, sellers, buyers, and other financially interested parties on a "user fee" basis. The use of this service is voluntary and is made available only upon request or when specified by some special program or contract. Information is needed to carry out the inspection and grading services. Such information includes: The name and location of the person or company requesting the inspection, the type and location of the product to be inspected, the type of inspection being requested and any information that will identify the product.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .03 hours per response.

Respondents: Shippers, importers, processors, sellers, buyers, and others with a financial interest in lots of fresh fruits, vegetables, and other products.

Estimated Number of Respondents: 56,980.

Estimated Number of Responses per Respondent: 5.

Estimated Total Annual Burden on Respondents: 8,942.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Kathleen A. Staley, Head, Field Operations Section, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Stop 0240, Room 2058—South Building, Washington, DC 20250–0240; Fax (202) 720–0393. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: July 17, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–18777 Filed 7–23–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–071–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of animal disease surveillance programs.

DATES: We will consider all comments that we receive on or before September 22, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–071–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–071–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–071–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For information regarding the use of Veterinary Services (VS) Form 10–4, contact Ms. Connie J. Osmundson, Financial Analyst, National Veterinary Services Laboratories, VS, APHIS, USDA, 1800 Dayton Road, Ames, IA 50010; (515) 663–7571. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Specimen Submission.

OMB Number: 0579–0090.

Type of Request: Extension of approval of an information collection.

Abstract: The United States Department of Agriculture (USDA) is responsible for, among other things, preventing the interstate spread of animal diseases and for eradicating such diseases from the United States when feasible.

Disease prevention is the most effective method for maintaining a healthy animal population and enhancing international trade of animals and animal products. The Veterinary Services (VS) program of USDA's Animal and Plant Health Inspection Service is responsible for carrying out this disease prevention mission.

Disease prevention is accomplished with an effective disease surveillance program, which is conducted by VS. The VS Form 10–4 and its supplemental sheet (VS Form 10–4A) are critical components of our disease surveillance mission. They are routinely used whenever specimens (such as blood, milk, tissue, or urine) from any animal (including cattle, swine, sheep, goats, horses, and poultry) are submitted to our National Veterinary Services Laboratories for disease testing.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.25 hours per response.

Respondents: State veterinary officials, accredited veterinarians, animal health technicians and other personnel who are qualified to collect and submit specimens for laboratory analysis, and herd owners.

Estimated annual number of respondents: 12,000.

Estimated annual number of responses per respondent: 3.

Estimated annual number of responses: 36,000.

Estimated total annual burden on respondents: 9,000 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 17th day of July 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–18780 Filed 7–23–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

West Troy EIS; Kootenai National Forest, Lincoln County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) for a proposal for urban interface fuels treatments, vegetation management, watershed rehabilitation activities, and access management changes, including road decommissioning. The project is located on the Three Rivers Ranger District, Kootenai National Forest, Lincoln County, Montana, west of Troy, Montana.

Scoping Comment Date

Comments concerning the scope of the analysis should be received by August 31, 2003.

ADDRESSES: Written comments and suggestions concerning the scope of the analysis should be sent to Michael L. Balboni, District Ranger, Three Rivers Ranger District, 1437 Hwy 2, Troy, MT 59935.

FOR FURTHER INFORMATION CONTACT: Contact Jim Benedict or Steve Straley, Team Leaders, Three Rivers Ranger District, 1437 Hwy 2, Troy, MT 59935. Phone: (406) 295–4693.

SUPPLEMENTARY INFORMATION: The project area is immediately west of Troy, Montana, within T31N, R34W; T32N, R34W; T32N, R35W; PMM, Lincoln County, Montana; T58N, R3E; T59N, R2E; T59N, R3E; PMM, Bonner County, Idaho, and T60N, R3E, PMM, Boundary County, Idaho. The project area runs from the Kootenai River west to the boundary between the Kootenai and Idaho Panhandle National Forests. The project area is 90,770 acres, of which 49,270 acres are in Montana and 41,500 acres are in Idaho. Callahan Creek, Brush Creek, Ruby Creek, and Star Creek are the major drainages in the project area.

The purpose and need for this project is to: (1) Reduce fuels in the urban interface and adjacent to private timberlands in accordance with the National Fire Plan; (2) Manage for vegetative conditions that are more suitable to a fire-dependent ecosystem and, in the long term, encourage more resilient and sustainable forest conditions; (3) Contribute forest products to the economy and provide employment opportunities; (4) Improve conditions in old growth habitat; (5) Improve growing conditions and long-term management options for overstocked sampling/pole stands; and (6) Reduce adverse effects of roads on fish and water quality in the Callahan Creek drainage by treating unneeded roads.

To meet this purpose and need this project proposes:

(1) Intermediate tree harvest and fuels reduction treatments on approximately 1,036 acres to reduce fuels, create a more open forest structure, promote fire-adapted species, retain large overstory structure, and reduce vulnerability to insects, and disease. Stand replacement harvest and supplemental conifer planting would occur in areas with high insect and disease levels or where it is desirable to promote a more diverse species mix (approximately 216 acres). Approximately 1,087 acres of the total 1,242 acres of intermediate and regeneration harvest and associated fuels treatments would occur in the urban interface area west of Troy. Approximately 165 acres of the proposed harvest and fuels treatments would result in fuels reduction adjacent to private timberlands outside of the area of urban interface.

No new permanent roads will be built. It is estimated that 4 temporary roads ranging from 0.2 to 0.6 miles would be constructed to accomplish this harvest and would be decommissioned following activities. Best Management Practice work and road maintenance work would be implemented on identified roads

Proposed harvest will contribute approximately 8 million board feet (MMBF) or 19,500 hundred cubic feet (CCF) of timber products to the economy. This project would also result in employment associated with timber sales and service contracts.

(2) Mechanical fuels reduction treatments on approximately 43 acres in Forest Plan designated old growth located within the urban interface.

(3) Maintenance burning within the next 10 years on approximately 757 acres, including some of the harvest and mechanical fuels treatment units.

A maintenance burn is proposed on National Forest and State of Montana lands to reduce fuels, thin encroaching conifers, use fire as an ecological agent of disturbance, and to rejuvenate browse (30 acres). Implementation of this burn would be dependent on the State receiving direct funding or funding from a private agency.

(4) Pre-commercial thinning on approximately 230 acres to improve growing conditions.

(5) Decommissioning portions of five roads (approximately 6 miles) which were determined through an interdisciplinary process to be unneeded and at high risk of contributing sediment to Callahan Creek. The decommissioning work would include outsloping portions of the road prism, installing waterbars, and reestablishing stream crossings.

(6) Design features and mitigations to maintain and protect resource values.

Range of Alternatives

The Forest Service will consider a range of alternatives. One of these will be the "no action" alternative in which none of the proposed activities will be implemented. Additional alternatives will examine varying levels and locations for the proposed activities to achieve the proposal's purposes, as well as to respond to the issues and other resource values.

Public Involvement and Scoping

The public is encouraged to take part in the process and to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, Tribal governments, and other individuals or organizations that may be interested in, or affected by, the proposed action. This input will be used in preparation of the draft and final EIS. The scoping process will include:

1. Identifying potential issues.

2. Identifying major issues to be analyzed in depth.

3. Identifying alternatives to the proposed action.

4. Exploring additional alternatives that will be derived from issues recognized during scoping activities.

5. Identifying potential environmental effects of this proposal (i.e. direct, indirect, and cumulative effects and connected actions).

Estimated Dates for Filing

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in December 2003. At that time EPA will publish a Notice of Availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**. It is very important that those interested in the management of this area participate at that time.

The final EIS is scheduled to be completed in April 2004. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and to applicable laws, regulations, and policies considered in making a decision regarding the proposal.

Reviewer's Obligations

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official

The District Ranger of the Three Rivers Ranger District, Michael L. Balboni, is the Responsible Official. As Responsible Official, he will decide if the proposed project will be implemented and will document the decision and reasons for the decision in the Record of Decision.

Dated: July 15, 2003.

Bob Castaneda,

Forest Supervisor, Kootenai National Forest.

[FR Doc. 03–18834 Filed 7–23–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–804]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Japan; Amended Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final court decision and amended final results of administrative reviews.

SUMMARY: On April 10, 2003, the United States Court of Appeals for the Federal Circuit affirmed the United States Court of International Trade's affirmation of the Department of Commerce's final remand results affecting final assessment rates for the administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from Japan with respect to NTN Corporation and Koyo Seiko Co. Ltd. and the period May 1, 1997, through April 30, 1998. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. As there is now a final and conclusive court decision in these actions, we are amending our final results of reviews and we will instruct the Bureau of Customs and Border Protection (BCBP) to liquidate entries subject to these reviews.

EFFECTIVE DATE: July 24, 2003.

FOR FURTHER INFORMATION CONTACT: Jennifer Moats or Richard Rimlinger, AD/CVD Enforcement Group I, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 202–482–5047 or 202–482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 1999, the Department of Commerce (the Department) published *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Sweden, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews*, 64 FR 35590, and on September 1, 1999, it published *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Italy and Japan; Notice of Amended Final Results of Antidumping Duty Administrative Reviews*, 64 FR 47764 (collectively, *AFBs 9*), which covered the period May 1, 1997, through April 30, 1998. The Japanese companies covered by the reviews are NTN Corporation (NTN), NSK Ltd. (NSK), Koyo Seiko Co., Ltd. (Koyo), Nippon Pillow Block Manufacturing Company (NPBS), and Nachi Fujikoshi (Nachi). The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). Torrington, NSK, NTN, and Koyo appealed our determination in *AFBs 9*.

On May 10, 2001, the Court of International Trade (CIT) issued an order in *The Torrington Company* v. *United States*, Consol. Court No. 99–08–00462, Slip Op. 01–56 (May 10, 2001) (*Torrington*), remanding *AFBs 9* to the Department (First Remand). In *Torrington*, the CIT remanded *AFBs 9* to the Department to make the following changes: (1) Annul all findings and conclusions made pursuant to the duty-absorption inquiry conducted for these reviews; (2) clarify what action it took with respect to inputs that NTN obtained from affiliated parties, to articulate the reasoning for this action, and to open the record for additional information, if found necessary; and (3) articulate what methodology it used in conducting the arm's-length test and to apply the test in accordance with 19 CFR 351.403(c) (1998). The First Remand affected the Department's calculations for NTN and Koyo with respect to the antidumping duty orders on BBs, CRBs, and SPBs from Japan for the period May 1, 1997, through April 30, 1998.

The Department submitted its First Remand Results to the CIT on August 8, 2001. On November 26, 2001, the CIT remanded our results a second time (Second Remand). On May 20, 2002, the CIT affirmed the Second Remand Results in their entirety. See *The Torrington Company* v. *United States*, 206 F.Supp 2d 1296, Sup Op. 0246 (*Torrington II*). NTN appealed the CIT's ruling in *Torrington II*. On April 10, 2003, the United States Court of Appeals for the Federal Circuit (CAFC) affirmed the judgment of *Torrington II*. See *The Torrington Company* v. *United States*, Fed. Circ. 02–1520.

Amendment to Final Results

The time period for appealing the CAFC's Final Decision has expired and no party has appealed this decision. Pursuant to section 516A(e) of the Tariff Act of 1930, as amended, as there is now a final and conclusive court decision with respect to litigation for NTN and Koyo, we are now amending the final results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from Japan for the period May 1, 1997, through April 30, 1998, to reflect the findings of the Second Remand Results. The rates for NTN for this period are as follows: 4.18 for BBs, 3.63 for CRBs, and 1.44 for SPBs. There are no rate changes for Koyo.

Assessment Rates

The Department will determine, and the BCBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer/customer-specific assessment rate for merchandise subject to this review. Where the importer/customer-specific assessment rate is above *de minimis*, we will instruct the BCBP to assess antidumping duties on that importer's entries of subject merchandise. The Department will issue appropriate assessment instructions directly to the BCBP within 15 days of publication of these amended final results of review. We will direct the BCBP to assess the resulting assessment rates for the subject merchandise on each of the importer/customer's entries during the review period.

Notification

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is published pursuant to section 751(a) of the Act.

Dated: July 18, 2003.

Jeffrey May,

Acting Assistant Secretary for Grant Aldonas, Under Secretary.

[FR Doc. 03–18863 Filed 7–23–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801 and A–588–804]

Ball Bearings and Parts Thereof From France and Japan; Amended Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative reviews.

SUMMARY: On June 16, 2003, the Department of Commerce published in the **Federal Register** the final results of the administrative reviews of the antidumping duty orders on ball bearings and parts thereof from France, Germany, Italy, Japan, and the United Kingdom. The period of review is May 1, 2001, through April 30, 2002. Based on the correction of certain ministerial errors, we have changed the margins for two companies (i.e., Nippon Pillow Block Sales Company for the administrative review of ball bearings and parts thereof from Japan, and SKF for the administrative review of ball bearings and parts thereof from France).

FOR FURTHER INFORMATION CONTACT: Please Contact Susan Lehman at (202) 482–0180 or David Dirstine at (202) 482–3047; AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 2003, the Department of Commerce (the Department) published in the **Federal Register** the final results of the administrative reviews of the antidumping duty orders on ball bearings and parts thereof (ball bearings) from France, Germany, Italy, Japan, and the United Kingdom (68 FR 35623) (Final Results).

We received timely allegations of ministerial errors from Timken U.S. Corporation (Timken) and the SKF Group Companies in the United States and France (SKF France). In its comments dated June 18, 2003, Timken alleged that the Department erred when it made a correction to Nippon Pillow Block Sales Company's (NPBS's) preliminary results margin calculation. Specifically, Timken asserts that the Department erred when it deleted indirect advertising expenses from NPBS's U.S. indirect selling expense total. We agree with the alleged error and, therefore, we have amended the final results to correct the problem.

In its comments dated June 16, 2003, SKF France alleged that the Department made a clerical error in assigning the level of trade (LOT) for U.S. sales. We agree with SKF France that we incorrectly assigned the LOT for U.S. sales. We corrected this error.

Amended Final Results of Review

As a result of the correction of clerical errors, the following weighted-average margins exist for exports of ball bearings by NPBS and SKF France for the period May 1, 2001, through April 30, 2002:

Company	Margin (percent)
Nippon Pillow Block Sales Company (NPBS)	4.82
SKF France	6.70

The Department will determine, and the U.S. Bureau of Customs and Border Protection (BCBP), formerly known as the U.S. Customs Service, shall assess antidumping duties on all appropriate entries. We will issue appropriate assessment instructions directly to BCBP within 15 days of publication of these amended final results of review.

We will also direct BCBP to collect cash deposits of estimated antidumping duties on all appropriate entries in accordance with the procedures discussed in the Final Results and at the rates as amended by this notice. The amended deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date these amended final results are published in the **Federal Register**.

We are issuing and publishing these determinations and notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.224(e).

Dated: July 18, 2003.

Jeffrey May,

Acting Assistant Secretary, for Grant Aldonas, Under Secretary.

[FR Doc. 03–18862 Filed 7–23–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–862]

Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Foundry Coke from the People's Republic of China; Correction.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice; Correction.

SUMMARY: The Department of Commerce published a notice in the Federal Register on May 28, 2003, concerning the extension of time limit of the preliminary results for foundry coke from the People's Republic of China. *See Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Foundry Coke from the People's Republic of China*, 68 FR 31680 (May 28, 2003). The document contained incorrect information on page 31681, at paragraph 2.

EFFECTIVE DATE: July 24, 2003

FOR FURTHER INFORMATION CONTACT: Michael Holton, AD/CVD Enforcement, Group III, Office IX, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone: (202) 482–1324.

Extension of Time Limit for Preliminary Results

In the **Federal Register** of May 28, 2003, in 68 FR 31681 in the first column, correct the first sentence of the second paragraph to read:

"Therefore, we are extending the due date for the preliminary results by 120 days, until no later than September 30, 2003."

Dated: July 16, 2003.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–18861 Filed 7–23–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Notice of Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Amended Final Antidumping Duty Determination of Sales at Less Than Fair Value.

EFFECTIVE DATE: July 24. 2003.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva or James C. Doyle, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3208, or (202) 482–0159, respectively.

SUPPLEMENTARY INFORMATION:

Scope Of The Investigation

For purposes of this investigation, the product covered is frozen fish fillets, including regular, shank, and strip fillets and portions thereof, whether or not breaded or marinated, of the species *Pangasius Bocourti, Pangasius Hypophthalmus* (also known as *Pangasius Pangasius*), and *Pangasius Micronemus*. Frozen fish fillets are lengthwise cuts of whole fish. The fillet products covered by the scope include boneless fillets with the belly flap intact ("regular" fillets), boneless fillets with the belly flap removed ("shank" fillets), boneless shank fillets cut into strips ("fillet strips/finger"), which include fillets cut into strips, chunks, blocks, skewers, or any other shape. Specifically excluded from the scope are frozen whole fish (whether or not dressed), frozen steaks, and frozen belly-flap nuggets. Frozen whole dressed fish are deheaded, skinned, and eviscerated. Steaks are bone-in, cross-section cuts of dressed fish. Nuggets are the belly-flaps.

The subject merchandise will be hereinafter referred to as frozen "basa" and "tra" fillets, which are the Vietnamese common names for these species of fish. These products are classifiable under tariff article codes 0304.20.60.30 (Frozen Catfish Fillets), 0304.20.60.96 (Frozen Fish Fillets, NESOI), 0304.20.60.43 (Frozen Freshwater Fish Fillets) and 0304.20.60.57 (Frozen Sole Fillets) of the Harmonized Tariff Schedule of the United States ("HTSUS"). This investigation covers all frozen fish fillets meeting the above specification, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Background

On June 23, 2003, An Giang Fisheries Import and Export Joint Stock Company ("Agifish"), Can Tho Agricultural and Animal Products Import Export Company ("CATACO"), Nam Viet Company Limited ("Nam Viet"), and Vinh Hoan Company Limited ("Vinh Hoan"), hereinafter collectively referred to as "Mandatory Respondents," timely filed allegations that the Department made ministerial errors in the final determination.

Similarly, on June 23, 2003, Catfish Farmers of America ("CFA") and the individual U.S. catfish processors America's Catch Inc.; Consolidated Catfish Co., L.L.C.; Delta Pride Catfish, Inc.; Harvest Select Catfish, Inc.; Heartland Catfish Company; Pride of the Pond; Simmons Farm Raised Catfish, Inc.; and Southern Pride Catfish Co., Inc., hereinafter referred to collectively as "Petitioners," timely filed allegations that the Department made ministerial errors in the final determination.

Amendment Of Final Determination

On June 16, 2003, the Department of Commerce ("the Department") determined that certain frozen fish fillets from the Socialist Republic of Vietnam ("Vietnam") are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 735(a) of the Tariff Act. *See Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam* ("*Final Determination*") 68 FR 37116 (June 23, 2003).

The Department is amending the *Final Determination* in the antidumping investigation of certain frozen fish fillets from the Socialist Republic of Vietnam.

Ministerial Error

A ministerial error is defined as an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial. *See* 19 C.F.R. 351.224(f).

Ministerial Error Allegations From The Mandatory Respondents

Comment 1: By-Product Offset

The Mandatory Respondents argue that the Department has repeated the ministerial error regarding the by-product credit offset that was contained in the *Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam* ("*Preliminary Determination*") 68 FR 4986 (January 31, 2003). According to the Mandatory Respondents, as in the *Preliminary Determination*, the Department deducted the by-product credit from normal value after applying surrogate financial ratios, rather than deducting it from the cost of manufacturing before applying the surrogate financial ratios. The Mandatory Respondents assert that it is the Department's normal practice to deduct the by-product credit from the cost of manufacturing because the costs associated with the production of by-products are reflected in the costs for producing the primary finished products.

The Mandatory Respondents note that the Department previously corrected this error, explaining that the correction represented the Department's "normal practice," and that the method used in the *Preliminary Determination* "represents an error." *See Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam* ("*Amended Preliminary Determination*"), 68 FR 10440 (March 5, 2003). Finally, the Mandatory Respondents argue that the *Memorandum to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, from Barbara E. Tillman, Acting Deputy Assistant Sectretary for Import Administration, Group III, Issues and Decision Memorandum for the Antidumping Duty Investigation of Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, (June 16, 2003), ("*Issues and Decision Memorandum*") accompanying the *Final Determination* does not clearly explain why the Department reversed the correction in the *Amended Preliminary Determination* for purposes of the *Final Determination*. As a result, the Mandatory Respondents argue that the Department should again correct itself by deducting the by-product credit from the cost of manufacturing, as in the Amended Preliminary Determination.

The Petitioners rebut the Mandatory Respondents' allegation by citing the Department's description of its calculation methodology contained in the *Issues and Decision Memorandum* at 6. Furthermore, the Petitioners note that the Department defines ministerial errors as "an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial." Consequently, the Petitioners do not agree with the Mandatory Respondents' ministerial error allegation because the Department explained the rationale for this intended change and because the allegation does not meet the definition of a ministerial error.

Department's Position:

We disagree with the Mandatory Respondents that the Department incorrectly deducted the by-product credit from normal value. As we noted in the *Amended Preliminary Determination*, the Department would "carefully revisit all aspects of this issue in the final determination." As explained in the *Issues and Decision Memorandum*, the Department reviewed the surrogate company financial statements, and noted that Apex and Bionic do not reduce their cost of manufacturing amount for the by-product revenues. Instead, they recognize the by-product revenues as "miscellaneous income" which is shown as a separate line item in their financial statements. We used the cost of manufacturing amounts from the surrogate company's financial statements to calculate the selling, general and administrative ("SG&A") and profit rates. Accordingly, the Department has determined that, because the surrogate financial ratios were calculated excluding any by-product revenues, to deduct the by-product credit from the cost of manufacturing would misstate the results.

Therefore, the Department has not made the requested change.

Comment 2: Agifish's Electricity Consumption

Agifish argues that the Department incorrectly calculated Agifish's factor input for electricity in the production of the subject merchandise. Agifish asserts that the Department inadvertently transposed two numbers when it recorded electricity usage for the month of January 2002.

Department's Position:

We agree with Agifish that the Department incorrectly calculated Agifish's factor input for electricity in the production of the subject merchandise. Accordingly, the error regarding the correction of the electricity alleged by Agifish is a ministerial error within the meaning of 19 C.F.R. 351.224(f).

Therefore, we are amending our *Final Determination* with regard to Agifish's electricity consumption. For a more detailed analysis, please *see* the *Memorandum to the File from John D. A. LaRose, International Trade Analyst, to the File through James C. Doyle, Program Manager regarding the Amended Final Determination for Agifish* ("*Agifish Amended Final Memo*"), dated July 18 at 2.

Comment 3: Water Consumption

The Mandatory Respondents argue that the Department incorrectly estimated their water consumption ratios in the *Final Determination*. According to the Mandatory Respondents, the Department included the labor and electricity used to pump water into their processing facilities in the consumption figures for labor and electricity, respectively. The Mandatory Respondents argue that for this reason and because the companies do not pay for the water that they pump, the Department double-counted their water consumption at the processing facility in the *Final Determination*. The Mandatory Respondents argue that the Department should not value the water pumped into their processing facilities.

The Petitioners rebut the allegation regarding Agifish and CATACO by noting that the Department stated in the *Issues and Decision Memorandum* at 23 and 25 that Agifish and CATACO failed to provide data on water consumption at their by-products facilities. Accordingly, the Department applied the highest water consumption figures from the processing stage as adverse facts available. Petitioners assert that this was a methodological decision made by the Department.

The Petitioners also rebut all four Mandatory Respondents' argument that water costs are irrelevant because the companies did not pay for the water. Petitioners assert that the Department has specifically determined in past non-market economy cases that it is appropriate to value water in these specific instances, and that the actual price paid by the respondent for water is irrelevant.

Department's Position:

The Department disagrees with the Mandatory Respondents. The issue of "double-counting" water consumption by the inclusion in the margin calculations of both the water input and the factors (labor and electricity) used to pump the water is not a ministerial error within the meaning of 19 C.F.R. 351.224(f) because the Department intended to value the Mandatory Respondents' water consumption factors in the manner in which we did. At the time of the *Final Determination*, the Department was unaware of the possibility that the factors to pump water may have been included in the labor and electricity consumption factors. We note that no interested parties raised the issue regarding the "double-counting" of water during the investigation. Furthermore, even if any parties had raised the issue, no information or evidence was provided on the record which would have enabled the Department to address the issue otherwise. Finally, we note that the Mandatory Respondents did not cite any record evidence of "double-counting" in their ministerial error allegation.

Because the Department intended to value the Mandatory Respondents' water consumption factors in the manner in which we did at the time of the *Final Determination*, we do not consider this allegation as a ministerial error within the meaning of 19 C.F.R. 351.224(f). Consequently, the Department has not made the requested change.

Ministerial Error Allegations From The Petitioners

Comment 4: Agifish's, CATACO's and Nam Viet's Cold Storage and Warehousing Expenses

The Petitioners argue that the Department erred in applying the surrogate value for cold storage warehousing in the net U.S. price calculation for the Agifish, CATACO, and Nam Viet. The Petitioners assert that the Department only included a single day of cold storage costs, and failed to multiply the rate for a single day by the number of days of storage reported by each company. The Petitioners argue that the Department should remedy this error by multiplying the cold storage surrogate value of $0.0025 kg/day by the number of days the subject merchandise is kept in storage as reported by each company.

None of the Mandatory Respondents replied to this allegation.

Department's Position:

We agree with the Petitioners that the Department erred in calculating Agifish's, CATACO's, and Nam Viet's cold storage warehousing costs. In their December 30, 2002 supplemental response, Agifish, CATACO and Vinh Hoan reported their respective number of days that the subject merchandise is kept in cold storage at its warehouses. However, we inadvertently did not multiply the cold storage cost by the number of days each company stores the subject merchandise in cold storage in the *Final Determination*. Accordingly, the error regarding the cold storage costs is an error within the meaning of 19 C.F.R. 351.224(f) with regard to Agifish, CATACO and Nam Viet. Therefore, we have multiplied each companies' number of storage days by the single-day cold storage rate of $0.0025 to calculate the company-specific cold storage warehousing costs. For a more detailed explanation, please *see* the company specific analysis memoranda.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the U.S. Bureau of Customs and Border Protection ("Customs") to continue to suspend liquidation of all entries of subject merchandise from Vietnam, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the *Preliminary Determination* for Agifish, CATACO, Vinh Hoan, Mekonimex, and Viet Hai. With respect to Nam Viet, QVD, Da Nang, Afiex, Cafatex, Vinh Long and all other Vietnam exporters, the Department will continue to direct Customs to suspend liquidation of all entries of certain frozen fish fillets from Vietnam that are entered, or withdrawn from warehouse, on or after 90 days before the date of publication of the *Preliminary Determination*. Customs shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. This suspension of liquidation instructions will remain in effect until further notice.

Amended Final Determination

We determine that the following weighted-average dumping margins exist for the period October 1, 2001 through March 30, 2002:

CERTAIN FROZEN FISH FILLETS FROM VIETNAM

Producer/Manufacturer/Exporter	Final Margin	Amended Final Margin
Agifish	44.76	47.05
Vinh Hoan	36.84	36.84
Nam Viet	52.90	53.68
CATACO	45.55	45.81
Afiex	44.66	45.55
CAFATEX	44.66	45.55
Da Nang	44.66	45.55
Mekonimex	44.66	45.55
QVD	44.66	45.55
Viet Hai	44.66	45.55
Vinh Long	44.66	45.55
Vietnam-Wide Rate	63.88	63.88

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our amended final determination. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of subject merchandise entered for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d), 735(e) and 777(i)(1) of the Act.

Dated: July 17, 2003.

Jeffrey May,

Acting Assistant Secretary for Grant Aldonas, Under Secretary.

[FR Doc. 03–18860 Filed 7–23–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071703C]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat Oversight Committee in August, 2003 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Thursday, August 7, 2003 at 9:30 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Habitat Committee will consider alternatives for minimizing adverse effects of monkfishing on Essential Fish Habitat (EFH) within Amendment 2 to the Monkfish Fishery Management Plan (FMP). The Committee will also consider public comments received on habit issues related to Scallop Amendment 10.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens

Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: July 17, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–18895 Filed 7–23–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Technology Administration

National Medal of Technology Nomination Evaluation Committee; Notice of Determination for Closure of Meeting

The National Medal of Technology Nomination Evaluation Committee has scheduled a meeting for August 25, 2003.

The Committee was established to assist the Department in executing its responsibilities under 15 U.S.C. 3711. Under this provision, the Secretary is responsible for recommending to the President prospective recipients of the National Medal of Technology. The committee's recommendations are made after reviewing all nominations received in response to a public solicitation. The Committee is chartered to have twelve members.

Time and Place: The meeting will begin at 10 a.m. and end at 4 p.m. on August 25, 2003. The meeting will be held in Room 4813 at the U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230. For further information contact: Mildred S. Porter, Director National Medal of Technology, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Herbert C. Hoover Building, Room 4226, Washington, DC 20230, Phone: 202–482–5572.

If a member of the public would like to submit written comments concerning the committee's affairs at any time before and after the meeting, written comments should be addressed to the Director of the National Medal of Technology as indicated above.

SUPPLEMENTARY INFORMATION: The meeting will be closed to discuss the relative merits of persons and companies nominated for the Medal. Public disclosure of this information would be likely to significantly frustrate implementation of the National Medal of Technology program because premature publicity about candidates under consideration for the Medal, who may or may not ultimately receive the award, would be likely to discourage nominations for the Medal.

Accordingly, I find and determine, pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended, that the August 25, 2003, meeting may be closed to the public in accordance with section 552b(c)(9)(B) of Title 5, United States Code because revealing information about Medal candidates would be likely to significantly frustrate implementation of a proposed agency Action.

Due to closure of the meeting, copies of the minutes of the meeting will not be available, however a copy of the Notice of determination will be available for public inspection and copying in the office of Mildred Porter, Director, National Medal of Technology, 1401 Constitution Avenue, NW., Herbert Hoover Building, Room 4226, Washington, DC 20230, Phone: 202–482–1424.

Dated: July 17, 2003.

Phillip J. Bond,

Under Secretary of Commerce for Technology.

[FR Doc. 03–18803 Filed 7–23–03; 8:45 am]

BILLING CODE 3510–18–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 25, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 21, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Application for Grants Under the Strengthening Institutions Program, American Indian Tribally Controlled Colleges and Universities Program, and Alaska Native and Native Hawaiian-Serving Institutions Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 415.

Burden Hours: 19,250.

Abstract: The information is required of institutions of higher education that apply for grants under the Strengthening Institutions Program, the American Indian Tribally Controlled College and Universities Program, and the Alaska Native and Native Hawaiian-Serving Institutions Program, authorized under Title III, part A of the Higher Education Act of 1965, as amended. This information will be used in the peer review and in making funding recommendations.

This collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001).

Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2289. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivan.Reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–18852 Filed 7–23–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.299A]

Office of Elementary and Secondary Education, Office of Indian Education Demonstration Grants for Indian Children, Notice Inviting Applications for New Discretionary Program Awards for Fiscal Year (FY) 2003

Purpose of Program: The purpose of the Demonstration Grants program is to provide financial assistance to projects to develop, test, and demonstrate the effectiveness of services and programs to improve the educational opportunities and achievement of preschool, elementary, and secondary students. For FY 2003 the competition for new awards focuses on projects designed to meet the priorities we describe in the Priorities section of this application notice.

Eligible Applicants: Eligible applicants for this program are: State educational agencies (SEAs); local educational agencies (LEAs); Indian tribes; Indian organizations; federally supported elementary or secondary schools for Indian students; Indian institutions, including Indian institutions of higher education; or a consortium of such institutions that meet the requirements of 34 CFR 75.127 through 75.129. An application from a consortium of eligible entities must meet the requirements of 34 CFR 75.127 through 75.129. The consortium agreement, signed by all parties, must be submitted with the application in order to be considered as a consortium application.

Note: Letters of support do not meet the consortium requirements. The Secretary rejects any application that does not meet these requirements.

Applications Available: July 24, 2003.

Deadline for Transmittal of Applications: August 25, 2003.

Deadline for Intergovernmental Review: September 9, 2003.

Estimated Available Funds: $2,484,000.

Estimated Range of Awards: $150,000 to $400,000.

Estimated Average Size of Awards: $310,500.

Estimated Number of Awards: 8.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Budget Requirement: Projects funded under this competition must budget for a one and one-half day Project Directors' meeting in Washington, DC during each year of the project.

Maximum Annual Award Amount: In no case does the Secretary make an award greater than $400,000 during any single budget period in the award period. The Secretary rejects any application that proposes a budget exceeding this maximum amount.

Page Limit: The application narrative is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. An applicant must limit the narrative to the equivalent of no more than 50 double-spaced pages, using the following standards:

(1) A "page" is 8½" x 11" (one side only) with one-inch margins (top, bottom and sides).

(2) All text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than three lines per vertical inch).

(3) For all text (including charts, tables, and graphs), use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to the cover sheet; the assurances and certifications; or the one-page abstract, appendices, resumes, bibliography, and letters of support. However, all of the application narrative addressing the selection criteria must be included in the narrative section.

Reviewers will not read any pages of applications that—

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) 34 CFR part 263.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priorities

Absolute Priority

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the priority selected. The program regulations at 34 CFR 263.21(c) identify the absolute priorities for the Demonstration Grants for Indian Children program that may be selected by the Secretary. For the FY 2003 grant competition, the Secretary reserves all of the funds available for new awards under the Demonstration Grants for Indian Children program to fund only those applications that meet one or more of the following absolute priorities found at 34 CFR 263.21(c)(1) and (3):

(1) School readiness projects that provide age appropriate educational programs and language skills to three- and four-year old Indian students to prepare them for successful entry into school at the kindergarten school level.

(3) College preparatory programs for secondary school students designed to increase competency and skills in challenging subject matters, including math and science, to enable Indian students to successfully transition to postsecondary education.

Competitive Preference

(1) In making multiyear grants under this program, the Secretary will award five (5) additional points to an application that presents a plan for combining two or more of the activities described in section 7121(c) of the Elementary and Secondary Education Act, as amended, over a period of more than one year.

(Authority: 20 U.S.C. 7441(d)(1)(B).)

(2) In making grants under this program, the Secretary will award five (5) additional points to an application submitted by an Indian tribe, Indian

organization, or Indian institution of higher education, including a consortium of any of these entities with other eligible entities. An application from a consortium of eligible entities that meet the requirements of 34 CFR 75.127 through 75.129 and includes an Indian tribe, Indian organization, or Indian institution of higher education will be considered eligible to receive the five (5) additional priority points. The consortium agreement, signed by all parties, must be submitted with the application in order to be considered a consortium application.

Note: Letters of support do *not* meet the consortium requirements. The Secretary rejects any application that does not meet these requirements.

These competitive preference points are in addition to the five competitive preference points that may be given under Competitive Preference 1.

(Authority: 20 U.S.C. 7473.)

Selection Criteria

The selection criteria are included in full in the application package for this competition. These selection criteria were established based on the regulations for evaluating discretionary grants found in 34 CFR 75.200 through 75.209. Under the selection criteria "Quality of project services" and "Quality of the project evaluation," the Secretary considers the extent to which the applicant demonstrates a strong capacity to provide reliable data on these indicators.

Performance Measures: The Secretary has established the following key performance measures for assessing the effectiveness of the Demonstration Grants for Indian Children program: (1) Increasing percentages of pre-school American Indian and Alaska Native students who will possess school readiness skills gained through a scientifically based research based curriculum that prepares them for kindergarten; and (2) The percentage of American Indian and Alaska Native high school graduates who increase their competency and skills in challenging subject matter, including math and science, to enable successful transition to postsecondary education will increase.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in EDGAR (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Demonstration Grants for Indian Children program, CFDA 84.299A, is one of the programs included in the pilot project. If you are an applicant under the Demonstration Grants for Indian Children program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application) portion of the Grant Administration and Payment System (GAPS). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-APPLICATION, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

(1) Print the ED 424 form from the e-Application system.

(2) The institution's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:*

If you elect to participate in the e-Application pilot for the Demonstration Grants for Indian Children program and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

(1) You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

(2)(a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 and 3:30 p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request an extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Demonstration Grants for Indian Children program at: *http://e-grants.ed.gov.*

We have included additional information about the e-Application pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX (301) 470–1244. If you use a telecommunication device for the deaf (TDD), you may call (toll free): 1–877–576–7734. You may also contact ED Pubs via its Web site (*http://www.ed.gov/edpubs.html*) or its E-mail address (*edpubs@inet.ed.gov*). If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.299A.

Individuals with disabilities may obtain this document in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8351. Individuals who use a telecommunications device for the deaf (TDD), may call the Federal Information Relay Services (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Cathie Martin, Office of Indian Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W115, Washington, DC 20202–6335. Telephone: (202) 260–1683. Internet address: *Cathie.Martin@ed.gov.*

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

You may also view this document at the following site: *http://www.ed.gov/offices/OESE/oie/index.html.*

Note: The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 7441.

Dated: July 21, 2003.

Eugene Hickok,

Under Secretary of Education.

[FR Doc. 03–18871 Filed 7–23–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.299B]

Office of Elementary and Secondary Education, Office of Indian Education; Professional Development Program, Notice Inviting Applications for New Discretionary Grant Program Awards for Fiscal Year (FY) 2003

Purpose of Program: The purposes of the Professional Development program are to (1) increase the number of qualified Indian individuals in professions that serve Indian people; (2) provide training to qualified Indian individuals to become teachers, administrators, teacher aides, social workers, and ancillary educational personnel; and (3) improve the skills of qualified Indian individuals who serve in the capacities described in (2). Activities may include, but are not limited to, continuing programs, symposia, workshops, conferences, and direct financial support. For FY 2003 the competition for new awards focuses on projects designed to meet the priority described in the Priority section of this application notice.

Eligible Applicants: Eligible applicants for this program are institutions of higher education, including Indian institutions of higher education; State or local educational agencies, in consortium with institutions of higher education; Indian tribes or organizations, in consortium with institutions of higher education; and Bureau-funded schools. An application from a consortium of eligible entities must meet the requirements of 34 CFR 75.127 through 75.129. The consortium agreement, signed by all parties, must be submitted with the application in order to be considered as a consortium application.

Note: Letters of support do *not* meet the consortium requirements. The Secretary rejects any application that does not meet these requirements.

Note: In order to be considered an eligible entity, applicants, including institutions of higher education, must be eligible to provide the level and type of degree proposed in the application or must apply in consortium with an institution of higher education that is eligible to grant the target degree. The Secretary rejects any application that fails to meet the consortium requirements described in this notice.

Applications Available: July 24, 2003.

Deadline for Transmittal of Applications: August 25, 2003.

Deadline for Intergovernmental Review: September 9, 2003.

Estimated Available Funds: $2,484,000.

Estimated Range of Awards: $300,000 to $500,000.

Estimated Average Size of Awards: $310,500.

Estimated Number of Awards: 8.

Project Period: 36 months.

Note: The Department is not bound by any estimates in this notice.

Budget Requirement: Projects funded under this competition must budget for a two-day Project Directors' meeting in Washington, DC during each year of the project.

Maximum Annual Award Amount: in no case does the Secretary make an award greater than $500,000 for a single budget period of 12 months for the first 24 months of the award period. The last 12-month budget period of a 36-month award will be limited to induction services only at a cost not to exceed $75,000. The Secretary rejects any application that proposes a budget exceeding these maximum amounts.

Page Limit: The application narrative is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. An applicant must limit the narrative to the equivalent of no more than 50 double-spaced pages, using the following standards:

(1) A "page" is 8½" x 11" (one side only) with one-inch margins (top, bottom and sides).

(2) All text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than three lines per vertical inch).

(3) For all text (including charts, tables, and graphs), use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to the cover sheet; the assurances and certifications; or the one-page abstract, appendices, resumes, bibliography, and letters of support. However, all of the application narrative addressing the selection criteria must be included in the narrative section.

Reviewers will not read any pages of applications that—

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98 and 99; and (b) 34 CFR part 263.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priorities

Absolute Priority

Under Section 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the priority selected. The program regulations at 34 CFR 263.5(c) identify the absolute priorities for the Professional Development program that may be selected by the Secretary. For the FY 2003 grant competition, the Secretary reserves all of the funds available for new awards under the Professional Development program to fund only those applications that meet the following absolute priority found at 34 CFR 263.5(c)(1):

Pre-Service Training for Teachers—Provides support and training to Indian individuals to complete a pre-service education program that enables these individuals to meet the requirements for full State certification or licensure as a teacher through:

(i) Training that leads to a bachelor's degree in education before the end of the award period; or

(ii) For States allowing a degree in a specific subject area, training that leads to a bachelor's degree in the subject area as long as the training meets the requirements for full State teacher certification or licensure; or

(iii) Training in a current or new specialized teaching assignment that requires at least a bachelor's degree and in which a documented teacher shortage exists; and

(iv) One-year induction services after graduation, certification, or licensure provided during the award period to graduates of the pre-service program while they are completing their first year of work in schools with significant Indian student populations.

Note: In working with various institutions of higher education and State certification/licensure requirements, we found that States requiring a degree in a specific subject area (*e.g.*, specialty areas or teaching at the secondary level) generally require a Master's degree or fifth-year requirement before an individual can be certified or licensed as a teacher. These students would be eligible to participate so long as their training meets the requirements for full State certification or licensure as a teacher.

Competitive Preference

(1) The Secretary will award five (5) additional points to an application submitted by an Indian tribe, organization, or institution of higher education. A consortium application of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 and includes an Indian tribe, organization or institution of higher education will be considered eligible to receive the five (5) additional priority points. The consortium agreement, signed by all parties, must be submitted with the application in order to be considered a consortium application.

(Authority: 20 U.S.C. 7473.)

(2) The Secretary will award a total of five additional points to an application submitted by a consortium of eligible applicants that includes a tribal college or university and that designates that tribal college or university as the fiscal agent for the application. The consortium application of eligible entities must meet the requirements of 34 CFR 75.127 through 75.129 of EDGAR to be considered eligible to receive the five priority points. The consortium agreement, signed by all parties, must be submitted with the application in order to be considered a consortium application.

Note: Letters of support do *not* meet the consortium requirements. The Secretary rejects any application that does not meet these requirements.

These competitive preference points are in addition to the five competitive preference points that may be given under Competitive Preference 1.

Tribal colleges and universities are those institutions cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note), any other institution that qualifies for funding under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*), and Dine College, authorized in the Navajo Community College Assistance Act of 1978, Public Law 95–471, Title II (25 U.S.C. 640a note).

Selection Criteria

The selection criteria are included in full in the application package for this competition. These selection criteria are established in 34 CFR 263.6. Under the selection criteria "Quality of project services" and "Quality of the project evaluation," the Secretary considers the extent to which the applicant demonstrates a strong capacity to provide reliable data on these indicators and to help achieve the program target.

Performance Measure: The Secretary has established the following key performance measure for assessing the effectiveness of the Professional Development program: To increase the percentages of the teacher and principal workforces serving American Indian and Alaska Native students who are themselves American Indian and Alaska Native. The program target is to increase the percentage of American Indian and Alaska Native principals and teachers in public schools with 25 percent or more American Indian and Alaska Native students.

Fiscal Information: Stipends may be paid only to full-time students. For the payment of stipends to project participants being trained, the Secretary expects to set the stipend maximum at $1,775 per month for full-time students and $275 allowance per month per dependent during an academic term. The terms "stipend," "full-time student," and "dependent allowance" are defined in 34 CFR 263.3.

Application Procedures:

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Professional Development program, CFDA 84.299B, is one of the programs included in the pilot project. If you are an applicant under the Professional Development program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application) portion of the Grant Administration and Payment System (GAPS). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-APPLICATION, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.

When you enter the e-Application system, you will find information about its hours of operation.

- You may submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

(1) Print the ED 424 form from the e-Application system.

(2) The institution's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:*

If you elect to participate in the e-Application pilot for the Professional Development program and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

(1) You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

(2)(a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 and 3:30 p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request an extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Professional Development program at: *http://e-grants.ed.gov*.

We have included additional information about the e-Application pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734. You may also contact ED Pubs via its Web site (*http://www.ed.gov/pubs/edpubs.html*) or its E-mail address (*edpubs@inet.ed.gov*). If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.299B.

Individuals with disabilities may obtain this document in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8351. Individuals who use a telecommunications device for the deaf (TDD), may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Cathie Martin, Office of Indian Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W115, Washington, DC 20202–6335. Telephone: (202) 260–3774. Internet address: *Cathie.Martin@ed.gov*.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

You may also view this document at the following site: *http://www.ed.gov/offices/OESE/oie/index.html*.

Note: The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

Program Authority: 20 U.S.C. 7442.

Dated: July 21, 2003.

Eugene Hickok,

Under Secretary of Education.

[FR Doc. 03–18872 Filed 7–23–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Los Alamos Site Office, National Nuclear Security Administration; Notice of Floodplain/Wetlands Involvement for the Security Perimeter Project at Los Alamos National Laboratory, Los Alamos, NM

AGENCY: National Nuclear Security Administration, Los Alamos Site Office, DOE.

ACTION: Notice of floodplain/wetlands involvement.

SUMMARY: The National Nuclear Security Administration (NNSA), Los Alamos Site Office of the Department of Energy (DOE) plans to construct a single bypass road at the north end of Technical Area (TA) 3 at Los Alamos National Laboratory (LANL) in Los Alamos, New Mexico, as part of the Security Perimeter Project. This project combines the installation of access control stations at key locations around TA–3 and modification of road intersections with the construction of a bypass road to control unauthorized access to the core technical and administrative area at LANL. The proposed North Bypass Road will connect East Jemez Road, Diamond Drive, and State Road 501 by detouring behind the Los Alamos Research Park and along the south rim of Los Alamos Canyon (Figure 1). A bridge would be used to span a small tributary canyon. There is a small wetland within the Research Park that is primarily fed by stormwater runoff from adjacent buildings and parking lots. The wetland is less than 1,000 square feet in area and would be filled during construction of the bypass road. The 100-year floodplain of Los Alamos Canyon is located on the canyon floor below the Research Park and would not be directly impacted by the project; however,

erosion and siltation controls would be emplaced at the construction site to protect the floodplain.

In accordance with 10 CFR Part 1022, NNSA had prepared a floodplain/wetlands assessment that evaluates the positive and negative, direct and indirect, and long- and short-term effects on floodplains and wetlands in and near the project area.

DATES: Comments are due to the address below no later than August 8, 2003.

ADDRESSES: Written comments should be addressed to: Elizabeth Withers, Department of Energy, National Nuclear Security Administration, Los Alamos Site Office, 528 35th Street, Los Alamos, NM 87544, or submit them to the Mail Room at the above address between the hours of 8 am and 4:30 p.m., Monday through Friday. Written comments may also be sent electronically to: *ewithers@doeal.gov* or by facsimile to (505) 667–9998.

FOR FURTHER INFORMATION CONTACT: Lloyd Smith, Department of Energy, National Nuclear Security Administration, Los Alamos Site Office, 528 35th Street, Los Alamos, NM 87544. Telephone (505) 667–4235, facsimile (505) 667–9998.

For further information on general DOE floodplain/wetlands environmental review requirements, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, EH–42, Department of Energy, 1000 Independence Avenue, SW., Washington DC 20585–0119. Telephone (202) 586–4600 or (800) 472–2756, facsimile (202) 586–7031.

SUPPLEMENTARY INFORMATION: As a result of the events of September 11, 2001, the nature and extent of the terrorist threat has changed significantly in terms of the potential magnitude of the attack as well as the terrorists' motivations, targets, and methods. In recognition of this increased threat, LANL management and security officials have determined that there is a critical need to upgrade the physical protection around the core LANL technical and administrative area in TA–3, which houses vital national assets, government property, and key scientific and support staff. LANL is one of the few sites in the DOE complex where the general public has access to the core technical area and where public roads pass in close proximity to critical research facilities. Temporary measures have been recently implemented to help protect particular LANL assets, but long-term measures are required to provide an additional level of protection to the core of LANL. Unauthorized (unscreened) access in the future must be restricted and controlled to minimize the possibility of a terrorist threat being introduced into the core area.

The selected approach combines the installation of three access control stations at key locations and modification of road intersections with the development of a single bypass road at the north end of TA–3 to accomplish the mission need described. The proposed North Bypass Road would connect East Jemez Road, Diamond Drive and State Road 501 by detouring around the north of the Los Alamos Research Park. A small wetland would be directly affected and indirect impacts to the 100-year floodplain would be avoided by the use of best management practices for erosion and siltation control.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR Part 1022), NNSA has prepared a floodplain/wetlands assessment for this action, which is available by contacting Elizabeth Withers at the previously identified addresses, phone and facsimile numbers. The floodplain/wetlands assessment is available for review at the DOE Reading Room at the Los Alamos Outreach Center, 1619 Central Avenue, Los Alamos, NM 87854; and the DOE Reading Room at the Zimmerman Library, University of New Mexico, Albuquerque, NM 87131. The NNSA will publish a floodplain statement of findings for this project in the **Federal Register** no sooner than August 8, 2003.

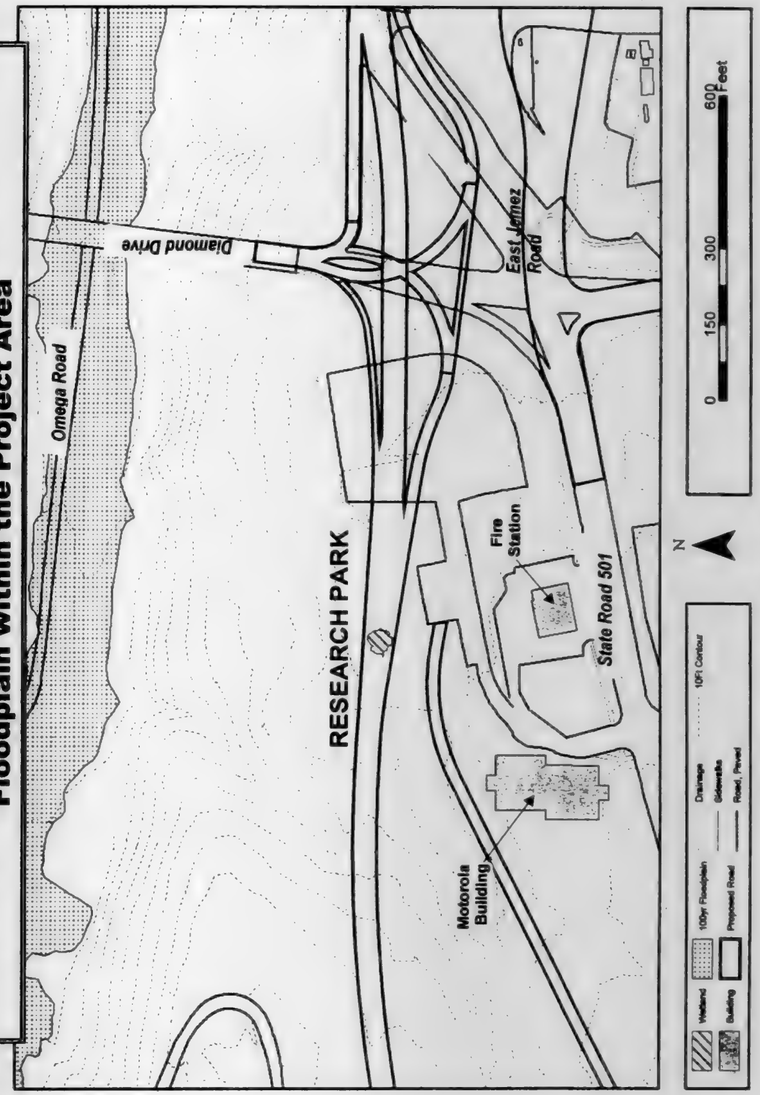
Issued in Los Alamos, NM on July 7, 2003.

E. Dennis Martinez,

Acting Manager, Department of Energy, National Nuclear Security Administration, Los Alamos Site Office.

BILLING CODE 6450–01–P

Figure 1 - Location of Research Park Wetland and 100-year Floodplain within the Project Area



Disclaimer: Neither the United States Government nor the University of California nor any of their employees, makes any warranty, express or implied, including the warranties of merchantability and fitness for a particular purpose, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights.

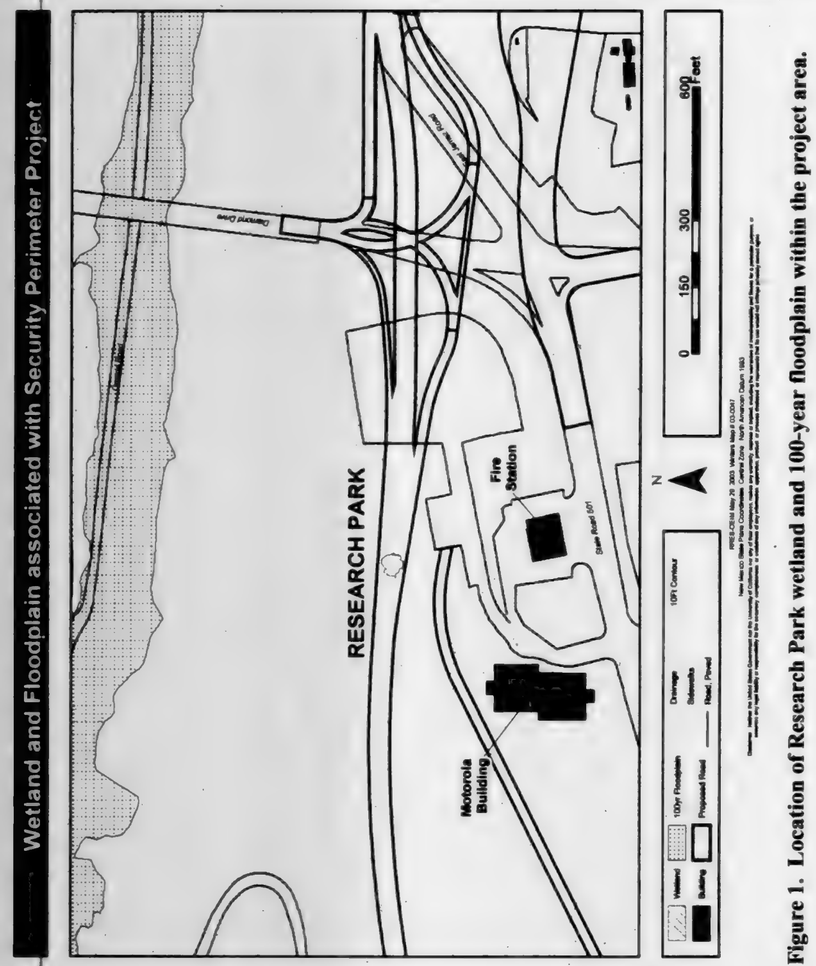


Figure 1. Location of Research Park wetland and 100-year floodplain within the project area.

[FR Doc. 03–18098 Filed 7–23–03; 8:45 am]
BILLING CODE 6450–01–C

ENVIRONMENTAL PROTECTION AGENCY

[CA 097–NOA; FRL–7535–3]

Adequacy Status of the San Joaquin Valley Unified Air Pollution Control District, California Submitted Ozone Rate of Progress Plan for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy determination.

SUMMARY: In this notice, EPA is notifying the public that we have found that the motor vehicle emissions budgets contained in the submitted Amended 2002 and 2005 Ozone Rate of Progress Plan for the San Joaquin Valley Unified Air Pollution Control District are adequate for transportation conformity purposes.

As a result of our finding, the various transportation planning agencies in the San Joaquin Valley and the Federal Highway Administration must use the VOC and NO_X motor vehicle emissions budgets from the Amended Rate of Progress plan for future conformity determinations.

DATES: This determination is effective August 8, 2003.

FOR FURTHER INFORMATION CONTACT: The finding is available at EPA's conformity Web site: *http://www.epa.gov/oms/transp/traqconf.htm* (once there, click on the "Transportation Conformity" link, then look for "Adequacy Web Pages").

You may also contact David Wampler, U.S. EPA, Region IX, Air Division AIR–2, 75 Hawthorne Street, San Francisco, CA 94105; (415) 972–3975 or *wampler.david@epa.gov*.

SUPPLEMENTARY INFORMATION: This notice announces our finding that the emissions budgets contained in the *Amended 2002 and 2005 Ozone Rate of Progress Plan* submitted by the State of California on behalf of the San Joaquin Valley Unified Air Pollution Control District on April 10, 2003, are adequate for transportation conformity purposes. EPA Region IX made this finding in a letter to the State of California, Air Resources Board on July 10, 2003. We are also announcing this finding on our conformity Web site: *http://www.epa.gov/oms/transp/traqconf.htm* (once there, click on the "Transportation Conformity" link, then look for "Adequacy Web Pages").

Transportation conformity is required by section 176(c) of the Clean Air Act. Our conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans (SIPs) and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). One of these criteria is that the motor vehicle emissions budgets, when considered together with all other emission sources, is consistent with applicable requirements for the reasonable further progress plan. We have preliminarily determined that the San Joaquin Valley Amended 2002 and 2005 Ozone Rate of Progress plan meets the necessary emissions reductions and, therefore, the motor vehicle emissions budgets can be found adequate. Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the submitted plan itself. Even if we find a budget adequate, the submitted plan could later be disapproved.

We have described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision"). We followed this guidance in making our adequacy determination on the emissions budgets contained in the Amended 2002 and 2005 Ozone ROP Plan for San Joaquin Valley.

Authority: 42 U.S.C. 7401–7671 q.

Dated: July 14, 2003.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 03–18854 Filed 7–23–03; 8:45 am]
BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

RIN 3046–AA58

Agency Information Collection Activities: Submission for OMB Review; Final Comment Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final notice of information collection under review; ADEA waivers.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Equal Employment Opportunity Commission (Commission or EEOC) gives notice that it has submitted to the Office of Management and Budget (OMB) a request for an extension of the existing collection requirements under 29 CFR 1625.22, Waivers of rights and claims under the Age Discrimination in Employment Act (ADEA). No public comments were received in response to the EEOC's May 12, 2003 60-Day notice solicitating comments on the proposed collection.

DATES: Written comments on this notice must be submitted on or before August 25, 2003.

ADDRESSES: The Request for Clearance (OMB 83–I), supporting statement, and other documents submitted to OMB for review may be obtained from: Carol R. Miaskoff, Assistant Legal Counsel, 1801 L Street, NW., Washington, DC 20507. Comments on this final notice must be submitted to Karen Lee, Policy Analyst, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, or e-mail at *KFLEE@OMB.EOP.GOV*. Comments should also be submitted to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW., Washington, DC 20507. The Executive Secretariat will accept comments transmitted by facsimile ("FAX") machine. The telephone number for the FAX receiver is (202) 663–4114. (This is not a toll-free-number.) Only comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TDD). (These are not toll-free-telephone numbers.) Copies of comments submitted by the public will be available for review at the Commission's library, Room 6502, 1801 L Street, NW., Washington, DC 20507 between the hours of 9:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Carol R. Miaskoff, Assistant Legal Counsel, Office of Legal Counsel, at (202) 663–4638 or TTY (202) 663–7026. This notice is also available in the following formats: large print, braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publications Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION: The EEOC enforces the ADEA of 1967, as amended, 29 U.S.C. 621 *et seq.*, which prohibits discrimination against employees and applicants for employment who are age 40 or older. Congress amended the ADEA by enacting the Older Workers Benefit Protection Act of 1990 (OWBPA), Pub. L. No. 101–433, 104 Stat. 983 (1990), to clarify the prohitions against discrimination on the basis of age. In Title II of OWBPA, Congress addressed waivers of rights and claims under the ADEA, amending section 7 of the ADEA by adding a new subsection (f), 29 U.S.C. 626 (f). The provisions of Title II of OWBPA require employers to provide certain information to employees (but not to EEOC) in writing. The regulation at 29 CFR 1625.22 reiterates those requirements.

The EEOC seeks extension without change of the information collection requirements contained in this recordkeeping regulation. On May 12, 2003, the Commission published a 60-Day Notice informing the public of its intent to request an extension of the information collection requirements from the Office of Management and

Budget. 68 FR 25372, May 12, 2003. No comments were received.

Collection Title: Informational requirements under Title II of the Older Workers Benefit Protection Act of 1990 (OWBPA), 29 CFR part 1625.

Form Number: None.

Frequency of Report: None required.

OMB Control No.: 3046–0042.

Type of Respondent: Business, Federal government, state or local governments, not for profit institutions.

Description of the Affected Public: Any employer with 20 or more employees that seeks waiver agreements in connection with exit incentive or other employment termination programs (hereinafter, "Programs").

Responses: 13,700.

Reporting Hours: 41,000.

Number of Forms: None.

Federal Cost: None.

Abstract: This requirement involves providing adequate information in waiver agreements offered to a group or class of persons in connection with a Program, to satisfy the requirements of the OWBPA.

Burden Statement: The paperwork burden involved is the inclusion of the relevant data in waiver agreements under the OWBPA. The rule applies to those employers who have 20 or more employees and who offer waivers to a group or class of employees in connection with a Program.

For the Commission.
Dated: July 17, 2003.

Cari M. Dominguez,

Chair.

[FR Doc. 03–18865 Filed 7–23–03; 8:45 am]

BILLING CODE 6570–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

July 7, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before August 25, 2003. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0168.

Title: Section 43.43, Reports of Proposed Changes in Depreciation Rates.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 10.

Estimated Time Per Response: 6,000 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Total Annual Burden: 60,000 hours.

Total Annual Cost: N/A.

Needs and Uses: Section 43.43 of the Commission's rules requires that certain carriers file specified information before making any change in the depreciation rates applicable to their operating plants. Carriers are required to file four summary exhibits along with the underlying data used to generate them, and must provide the depreciation factors, *i.e.*, life, salvage, curve shape, and depreciation reserve. This is the minimum amount of data needed to maintain oversight of carriers' depreciation expenses and rates. Mid-sized carriers are no longer required to file theoretical reserve studies.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–18767 Filed 7–23–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE AND TIME: *Tuesday, July 29, 2003 at 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: *Thursday, July 31, 2003 at 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes.

Draft Advisory Opinion 2003–11: Michigan Democratic State Central Committee by counsel, Andrew Nickelhoff.

Routine Administrative Matters.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03–19043 Filed 7–22–03; 3:47 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 7, 2003.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. James Wang and Ellen Ruth Kao Wang; Tony Yi Ping Wang and Michelle Yichun Yang; Ellot Hong Wai Wong and Michelle Wichun Yang; Aubrey Hui–Ju Wang, all of Gladwyne, Pennsylvania, and Janet Wang Calilung, Irvine, California; to acquire voting shares of Asian Financial Corporation, Philadelphia, Pennsylvania, and thereby indirectly acquire shares of Asian Bank, Philadelphia, Pennsylvania.

B. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Frederick Bernard Gariepy and the Peter Gariepy Estate Trust, Frederick Gariepy, as trustee, both of St. Ignatius, Montana; to retain control of Lake County Bank, St. Ignatius, Montana.

Board of Governors of the Federal Reserve System, July 18, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–18782 Filed 7–23–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 18, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. First Fontanelle Bancorporation, Fontanelle, Iowa; to acquire 100 percent of the voting shares of Corn Belt Bancorporation, Inc., Anita, Iowa, and thereby indirectly acquire Union National Bank, Anita, Iowa.

In connection with this application, Applicant also has applied to acquire Corn Belt Insurance Agency, Massena, Iowa, and thereby engage in insurance agency activities in a town of less than 5,000 persons, pursuant to section 225.28(b)(11)(iii)(A) of Regulation Y.

2. New City Bancorp, Inc., Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of New City Bank, Chicago, Illinois (in organization).

Board of Governors of the Federal Reserve System, July 18, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–18781 Filed 7–23–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–99]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: National Youth Tobacco Survey—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC). The proposed project is the 2004 national school-based National Youth Tobacco Survey. The purpose of this request is to obtain OMB approval to continue a biennial survey among junior and senior high school students attending regular public, private, and Catholic schools in grades 6–12. This survey was previously funded by the American Legacy Foundation in 1999, 2000, and 2002. The survey covers the following tobacco-related topics: Prevalence of use (cigarettes, smokeless tobacco, cigars, pipe, bidis, and kreteks), knowledge and attitudes, media and advertising, minors' access and enforcement, school curriculum, environmental tobacco smoke exposure, and cessation. Tobacco use, a major preventable cause of morbidity and mortality in the U.S., is one of the 28 focus areas in Healthy People 2010. Within the Healthy People 2010 focus area of tobacco use, the National Youth Tobacco Survey provides data relevant to six health objectives. The survey also provides data to monitor one of the 10 Leading Health Indicators for Healthy People 2010 that addresses tobacco use. In addition, the National Youth Tobacco Survey can identify racial and ethnic disparities in tobacco-related topics listed above. The National Youth Tobacco Survey is the most comprehensive source of nationally

representative data regarding high school students and tobacco. Moreover, the National Youth Tobacco Survey is the only source of such national data for middle school students (grades 6–8). The data have significant implications for policy and program development for school health programs nationwide.

To provide contextual data, in each participating school, the principal or another designated administrator will be asked to complete a questionnaire on the school's tobacco-related policies.

The lead health teacher identified by the principal will be asked to complete a questionnaire on the school's tobacco-related programs and curricula.

The only cost to respondents is their time to complete the survey.

Respondents	Number of respondents	Number of responses per respondent	Average burden per responses (in hrs.)	Total burden (in hrs.)
Students	24,500	1	45/60	18,375
School Administrator Arrangements	236	1	30/60	118
School Administrator Policy Survey	236	1	20/60	79
School Teacher Program Survey	236	1	20/60	79
Total				18,651

Dated: July 17, 2003.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–18800 Filed 7–23–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–100]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Workplace Exacerbation of Asthma (0920–0495)—EXTENSION—National Institute of Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Work-related asthma is the most common lung disease seen in occupational health clinics in the United States based on data from the Association of Occupational and Environmental Clinics for 1991–1996. Work-related asthma includes both new onset asthma initiated by workplace exposures and pre-existing asthma exacerbated by workplace environments, because in both types of cases repeated exposure to asthmatic agents can lead to chronic pulmonary impairment. Also, the 1985 American Thoracic Society statement "What Constitutes an Adverse Health Effect of Air Pollution" identified exacerbation of asthma as one of the serious effects of environmental air pollution. While anecdotal evidence suggests that as many as one-half of work-related asthma patients treated in occupational medicine clinics had pre-existing asthma that was exacerbated by workplace conditions, there are few data from studies in the United States to support this claim.

This study is investigating the frequency, causes, and consequences of workplace exacerbation of asthma (WEA). Given the diversity of workplace agents and processes associated with asthma, a population-based, rather than industry-based, study is needed to ascertain the full extent of the problem. This will be achieved by surveying adults with asthma. The Specific Aims of the study are: (1) To determine the frequency of WEA. (2) To determine the work circumstances associated with exacerbation of asthma. (3) To determine the social and economic costs associated with WEA. (4) To determine the sensitivity and specificity of self-reported WEA. (5) To determine whether WEA contributes to progression of disease. The design is a prospective cohort study with a nested validation study. The study consists of three parts: a Baseline Study addressing Specific Aims 1–3, a Validation Study addressing Specific Aim 4, and a Follow-up Study addressing Specific Aim 5.

To date, the Baseline Study telephone interviews have been completed with a total of 615 participants. Also, patient care records have been obtained in order to ascertain cost of care for asthma for each participant (Specific Aim 3). Currently, a subset of employed subjects with and without WEA are being enrolled in the Validation Study. All subjects from the Baseline Study will be asked to participate in the Follow-up study.

The data collected in this study will be used to further current understanding of the frequency of workplace-exacerbated asthma, the social and economic impacts of this problem, and the implication of self-reporting WEA for subsequent asthma severity. This information can be used to prioritize resources for addressing this problem. The data collected in this study will also identify which jobs and exposures are likely to exacerbate existing asthma, thus providing guidance on where to focus preventive efforts. Collected data on the validity of self-reporting WEA will be useful to both clinicians and researchers who attempt to treat or study individuals with this problem.

There will be no costs to respondents.

Respondents (adults with asthma)	Number of respondents	Number of responses/ respondent	Average burden per response (in hours)	Total burden (in hours)
Validation Study	200	1	7.51	500
Follow-up Study	465	1	30/60	233
Total	665			1733

Dated: July 17, 2003.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–18801 Filed 7–23–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0319]

Draft Guidance for Industry and FDA Staff; Premarket Assessment of Pediatric Medical Devices; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Premarket Assessment of Pediatric Medical Devices." This draft guidance presents FDA's current thinking on the type of safety and effectiveness information needed to support marketing of pediatric devices and on measures to be used to help protect this vulnerable patient population during the course of clinical trials involving such products. This draft guidance is neither final nor is it in effect at this time.

DATES: Submit written or electronic comments on this guidance by October 22, 2003.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the draft guidance document entitled "Premarket Assessment of Pediatric Medical Devices" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

For device issues contact: Joy Samuels-Reid, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1287 ext. 177.

For biologics issues contact: Edward Tabor, Center for Biologics Evaluation and Research (HFM–300), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–3518.

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2002, the Medical Device User Fee and Modernization Act of 2002 (MDUFMA), Public Law 107–250, was signed into law. Among other things, MDUFMA amends the Federal, Food, Drug, and Cosmetic Act (the act) by adding several new provisions concerning devices intended for pediatric use. MDUFMA requires FDA, within 270 days of enactment, to issue guidance on the safety and effectiveness information needed to support marketing of pediatric devices and on measures to be used to help protect this vulnerable patient population during the course of clinical trials involving such products. This guidance, as well as a collateral guidance on procedures for ensuring appropriate pediatric expertise on FDA Advisory Panels, "Pediatric Expertise for Advisory Panels" (*http://www.fda.gov/cdrh/ode/guidance/1208.html*), will help the agency achieve the intent of the pediatric provisions of MDUFMA.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance represents the agency's current thinking on "Premarket Assessment of Pediatric Medical Devices." It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

To receive "Premarket Assessment of Pediatric Medical Devices" by fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1220) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520) . The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket

notification submissions (21 CFR part 807, subpart E, OMB control number 0910–0120) and premarket approval applications (21 CFR part 814, OMB control number 0910–0231). The labeling provisions addressed in the guidance have been approved by OMB under the PRA under OMB No. 0910–0485.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this document. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments*. Submit two paper copies of any mailed comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 18, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–18909 Filed 7–21–03; 4:25 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Faculty Loan Repayment Program (FLRP) Application (OMB No. 0915–0150)—Extension

Under the Health Resources and Services Administration Faculty Loan Repayment Program, disadvantaged graduates from certain health professions may enter into a contract under which HRSA will make payments on eligible educational loans in exchange for a minimum of two years of service as a full-time or part-time faculty member of an accredited health professions school. Applicants must complete an application and provide current loan balances on all eligible educational loans.

The estimated burden hours for the form is as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per responses	Total burden hours
Applicants	94	1	94	1	94

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number 202–395–6974.

Dated: July 18, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–18764 Filed 7–23–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Announcement of Grant Awards

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Announcement of grant awards.

SUMMARY: The Office of Rural Health Policy (ORHP), HRSA is awarding the following grants to the State Offices of Rural Health (SORH), as authorized by Section 338J of the Public Health Service Act 42 U.S.C. 254r. The purpose of this notice is to announce the grant awards. The grant year began on July 1, 2003.

State Office of Rural Health Awards (CFDA# 93.913). These grants allow each State to designate a focal point of contact for rural health. They also play a vital role in helping coordinate rural health activities statewide such as collecting and disseminating health-related information within the State, improving the recruitment and retention of health professionals into rural areas, providing technical assistance to attract more Federal, State, and foundation funding, and coordinating rural health interests and activities across each State.

The following grantees have received awards for the first year of a 5-year project period.

- Alabama Department of Public Health; $150,000;
- Alaska Department of Health and Social Services; $150,000;
- Arizona Prevention Center, Office of Rural Health; $150,000;
- Arkansas Department of Health; $150,000;
- California Department of Health Services; $150,000;
- Colorado Rural Health Center; $150,000;
- Connecticut Community College Northwestern; $150,000;
- Delaware Department of Health and Social Services; $108,000;
- Florida Department of Health; $150,000;
- Georgia Department of Community Health, $150,000;
- Hawaii State Department of Health; $150,000;
- Idaho Department of Health and Welfare; $147,418;
- Illinois Department of Public Health; $150,000;
- Indiana State Department of Health; $150,000;
- Iowa Department of Public Health; $150,000;
- Kansas Department of Health and Environment; $150,000;
- Kentucky Research Foundation, University of Kentucky; $150,000;
- Louisiana Department of Health and Hospitals; $150,000;
- Maine Department of Human Services; $136,968;
- Maryland Office of Primary Care and Rural Health; $150,000;
- Massachusetts Department of Public Health; $150,000;
- Michigan Department of Community Health; $58,916;
- Minnesota Department of Health; $150,000;

- Mississippi State Department of Health; $150,000;
- Missouri Department of Health and Senior Services; $150,000;
- Montana State University-Bozeman; $150,000;
- Nebraska Health and Human Services System; $150,000;
- Nevada Office of Sponsored Projects Administration; $150,000;
- New Hampshire Department of Health and Human Services; $150,000;
- New Jersey Department of Health and Senior Services; $150,000;
- New Mexico Department of Health, Public Health Division; $150,000;
- New York Department of Health, Research Inc.; $150,000;
- North Carolina Department of Health and Human Services; $150,000;
- North Dakota Medicine and Health Sciences; $150,000;
- Ohio, State of Department of Health; $140,831;
- Oklahoma Center for Health Sciences; $200,000;
- Oregon Health and Science University; $150,000;
- Pennsylvania State University; $150,000;
- Rhode Island Department of Health, Office of Rural Health; $85,000;
- South Carolina State Office of Rural Health; $150,000;
- South Dakota Department of Health; $150,000;
- Tennessee State Department of Health; $150,000;
- Texas, Office of Rural Community Affairs; $150,000;
- Utah Department of Health; $150,000;
- Vermont State Department of Health; $150,000;
- Virginia Department of Health; $150,000;
- Washington State Office of Rural Health; $150,000;
- West Virginia Department of Health and Human Resources; $150,000;
- Wisconsin, Office of Rural Health-Board of Regents, University Wisconsin System; $150,000;
- Wyoming Department of Health; $62,028;

FOR FURTHER INFORMATION CONTACT: Jennifer Riggle, Director, State Office of Rural Health, Office of Rural Health Policy, HRSA, 5600 Fishers Lane, Room 9A–55, Rockville, MD 20857, (301)–443–0835.

Dated: July 17, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–18763 Filed 7–23–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Health, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contact proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: September 4, 2003.

Open: 8 a.m. to 2 p.m.

Agenda: For discussion of program policies and issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: 2 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Deborah P Beebe, PhD, Director, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Two Rockledge Center, Room 7100, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–0260.

Information is also available on the Institute's/Center's Home page: *http://www.nhlbi.nih.gov/meetings/index.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 16, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18878 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel ELSI Hap-Map Sample Collection Review.

Date: July 31, 2003.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301–402–0838.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: July 17, 2003.

LaVerne Y. Springfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18886 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, National Cooperative Drug Discovery Groups for Tuberculosis and Biodefense and Emerging Infectious Diseases Research.

Date: August 13–14, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, Terrace Room, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Gerald L. McLaughlin, PhD., Scientific Review Administrator, Scientific Review Program, National Institute of Allergy and Infectious Diseases, DEA/NIH/DHHS, 6700–B Rockledge Drive, MSC 7616, Room 2212, Bethesda, MD 20892–7616, 301–436–7465, *gm143a@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS).

Dated: July 18, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18875 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Disease; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Comprehensive International Program of Research on AIDS (CIPRA)—Peru.

Date: August 11, 2003.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Eleazar Cohen, PhD, Scientific Review Administrator, Scientific Review Program, National Institute of Allergy and Infectious Diseases, DEA/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Room 3112, Bethesda, MD 20892–7616, (301) 435–3564, *ec17w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 83.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 18, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18876 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Research on the Scope and Causes of Stillbirth in the United States.

Date: August 11–12, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Bldg Rm 5B01, Rockville, MD 20852, (301) 435–6889, *bhatnagg@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: July 16, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18879 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: August 8, 2003.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Roberta Binder, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH, 6700B Rockledge Drive, Rm 2155, Bethesda, MD 20892–7616, 301–496–2550, *rb169n@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 18, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18877 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Novel Approaches to Male Fertility Regulations.

Date: August 13–14, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Jon. M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: July 16, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18880 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Bright Light Treatment for Depression.

Date: July 23, 2003.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sara K. Goldsmith, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9608, Bethesda, MD 20892–9608.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 16, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18881 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel, July 31, 2003, 1 p.m. to July 31, 2003, 2:30 p.m. National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD, 20852 which was published in the **Federal Register** on June 6, 2003, 68 FR 33958.

The meeting will be held on August 8, 2003 and is going to be held at the same time and at the same place. The meeting is closed to the public.

Dated: July 16, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18882 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(∧), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Loan Repayment Program.

Date: August 12, 2003.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 754,

6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799, *ls38z@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 17, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18883 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Review of RO1 Application.

Date: July 25, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Wilco Building, 6000 Executive Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jeffrey I. Toward, PhD, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Extramural Project Review Branch, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, (301) 435–5337.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Small Business Innovation Research.

Date: July 28, 2003.

Time: 9:30 a.m. to 11 a.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Wilco Building, 6000 Executive Boulevard, Room 409, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jeffrey I. Toward, PhD, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Extramural Project Review Branch, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, (301) 435–5337.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Review of Collaborative Initiative on FASD U24 & U01 Applications.

Date: August 14, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Karen P. Peterson, PhD, Scientific Review Administrator, Extramural Project Review Branch, National Institute of Alcohol Abuse and Alcoholism, National Institutes of Health, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, (301) 451–3883, *kp177z@nih.gov*.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: August 21, 2003.

Time: 2 p.m. to 4 p.m.

Place: National Institutes of Health, Wilco Building, 6000 Executive Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eugene G. Hayunga, PhD, Chief, Extramural Project Review Branch, OSA, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Wilco Building, Suite 409, 6000 Executive Boulevard, MSC 7003, Bethesda, MD 20892–7003, 301–443–2860, *ehayunga@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: July 17, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18884 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel SBIR Phase I, Topic 306.

Date: July 28, 2003.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Mark Czarnolewski, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mczarnol@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel SBIR—Topic #302.

Date: August 7, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–7216, *hhaigler@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel SBIR Phase I, Topics 301 and 305.

Date: August 15, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Benjamin Xu, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6143, MSC 9608, Bethesda, MD 20892–9608, 301–443–1178, *benxu1@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 17, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18885 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel Fogarty Pediatric Applications.

Date: August 5–6, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Ritz-Carlton, 150 22nd Street, NW., Washington, DC 20037.

Contact Person: Phillip F. Wiethorn, MS, Scientific Review Administrator, DHHS/NIH/NINDS/DER/SRB, 6001 Executive Boulevard; MSC 9529, Neuroscience Center, Room 3203, Bethesda, MD 20892–9529, (301) 496–5388, *wiethorp@ninds.nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel Fogarty Adult Applications.

Date: August 12–13, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Ritz-Carlton, 150 22nd Street, NW., Washington, DC 20037.

Contact Person: Alan L. Willard, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–5390, *willarda@ninds.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 17, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18887 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Review of Contract Proposal NIH ES–03–03.

Date: September 4, 2003.

Time: 9:30 a.m. to 1 p.m.

Agenda: To review and evaluate contract proposals.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders Stroke Special Emphasis Panel Post-Stroke Intervention Trial.

Date: August 7, 2003.

Time: 10 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Katherine Woodbury, Ph.D., Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–5980, *kw47o@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 17, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18888 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Contract Proposal NIH ES–03–03.

Date: September 4, 2003.

Time: 9:30 a.m. to 1 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, EC 3162, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: July 18, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18889 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIEHS.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Environmental Health Sciences, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIEHS.

Date: August 24–26, 2003.

Closed: August 24, 2003, 8 p.m. to 9:30 p.m.

Agenda: To review and evaluate programmatic and personnel issues.

Place: Doubletree Guest Suites, 2515 Meridian Parkway, Research Triangle Park, NC 27713.

Open: August 25, 2003, 8:30 a.m. to 5 p.m.

Agenda: An overview of the organization and conduct of research in the Laboratory of Pulmonary Pathobiology.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: August 26, 2003, 8:30 a.m. to adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Steven K Akiyama, PhD, Division of Intramural Research, Nat. Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, MSC A2–09, Research Triangle Park, NC 27709, 919/541–3467, *akiyama@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: July 18, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18890 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Immunology Program Project Application Review.

Date: September 12, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700 B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alec Ritchie, PhD, Scientific Review Administrator, NIAID, DEA, Scientific Review Program, Room 2217, 6700 B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 18, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18891 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, July 14, 2003, 12 p.m. to July 14, 2003 2 p.m. National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892, which was published in the **Federal Register** on July 15, 2003, 68 FR 41832–41833.

The meeting will be held on July 24, 2003. The time and location remain the same. The meeting is closed to the public.

Dated: July 18, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18874 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings •

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications,, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Addictive Neural Mechanisms.

Date: July 22, 2003.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Rehabilitative Medicine.

Date: July 23, 2003.

Time: 1:20 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Oral Biology.

Date: July 24, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice if being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Olfaction.

Date: July 25, 2003.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center of Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255.

This notice if being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Dermatology/Rheumatology.

Date: July 29, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice if being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Use of Administrative Date to Evaluate an Intervention.

Date: August, 1, 2003.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, 3168, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ellen K. Schwartz, EdD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3l168, MSC 7770, Bethesda, MD 20892, 301–435–0681, *schwarte@csr.nih.gov.*

This notice if being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 PTHA 91S: Blood Brain Barrier Pharmaceutics.

Date: August 4, 2003.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.

This notice if being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Behavioral Genetics and Epidemiology Member Conflict.

Date: August 4, 2003.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Charles N. Rafferty, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, 301–435–3562, *raffertc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Bioengineering Research Partnership.

Date: August 6, 2003.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sharon K. Gubanich, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, 301–435–1767.

Name of Committee: Center for Scientific Review Special Emphasis Panel Special Review in Mammalian Genetics.

Date: August 6, 2003.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Camilla E. Day, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, 301–435–1037, *dayc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 BIO (05) Polysaccharides Regulating Cell Function.

Date: August 6, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael M. Sveda, PhD, Scientific Review Administrator, Biochemistry Study Section, Biochemical Sciences, IRG, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, 301–435–3565, *svedam@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 SSS–H (10).

Date: August 6, 2003.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: George W. Chacko, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7806, Bethesda, MD 20892, 301–435–1220, *chackoge@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Biophysics Special Emphasis Panel.

Date: August 8, 2003.

Time: 8 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Janet Nelson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1723, *nelsonja@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel SSS–M (55) R01 Advanced Biomaterials RFA.

Date: August 11–12, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndam City Center, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Paul D. Wagner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, (301) 435–6809, *wagnerp@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Chronic Fatigue Syndrome—Fibromyalgia Syndrome Special Emphasis Panel.

Date: August 11, 2003.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, Washington, DC 20037.

Contact Person: J Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781, *th88q@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Tooth Development and Biomineralization.

Date: August 11, 2003.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

Name of Committee: Center for Scientific Review Special Emphasis Panel Neuroscience—SBIR/STTR.

Date: August 12, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20037.

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

Name of Committee: Center for Scientific Review Special Emphasis Panel Health Services Research.

Date: August 12, 2003.

Time: 2 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Ann Guadagno, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1104, MSC 7770, Bethesda, MD 20892, (301) 451–8011.

Name of Committee: Center for Scientific Review Special Emphasis Panel Viral & Bacterial Synergy in Pathogenesis.

Date: August 14, 2003.

Time: 2:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joanna M. Pyper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, (301) 435–1151, *pyperj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Oral Biology and Medicine SBIR/STTR Special Emphasis Panel.

Date: August 15, 2003.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, N.W., Washington, DC 20037.

Contact Person: J. Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781, *th88q@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 18, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–18892 Filed 7–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–46]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request; Ending Chronic Homelessness Through Employment and Housing Application

AGENCY: Office of Special Needs Assistance Programs, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information collection supports the Collaborative Initiative to Help End Chronic Homelessness. Information is needed to assist in the selection of proposals submitted to HUD for the awarded funds.

DATES: *Comments Due Date:* August 7, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within seven (7) days from the date of this Notice. Comments should refer to the proposal by name/or OMB approval number) and should be sent to: Lauren Wittenberg, HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; e-mail: *Lauren_Wittenberg@omb.eop.gov*; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail: *Wayne_Eddins@HUD.gov*; telephone: (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing of a new information collection for selecting applicants for the joint HUD/DOL Notice of Funding Availability for Ending Chronic Homelessness through Employment and Housing initiative.

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Ending Chronic Homelessness through Employment and Housing Initiative.

Description of Information Collection: Prospective grant recipients may apply for the Collaborative Initiative to Help End Chronic Homelessness program, which was a joint initiative with HHS and VA earlier this year (January 2003) Notice of Funding Availability (NOFA). With this partnership with DOL, HUD's permanent housing grants will supplement each cooperative agreement effort with an additional award, to support permanent housing for individuals who are "chronically homeless" served through the DOL cooperative agreement.

OMB Control Number: Pending.

Agency Form Numbers: HUD 40076.1.

Members of Affected Public: Non-profit or public entities such as municipality, Public Housing Agencies, or nonprofit organization that meet HUD's requirements.

Estimation of the Total Numbers of Hours Needed to Prepare the Information Collection Including Number of Respondents, Frequency of Responses, and Hours of Response: An estimation of the total number of hours needed to prepare the information collection is—400, number of respondents is 100, frequency of response is 1 per annum, and the total hours per respondent is 44 hours.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 16, 2003.

Donna Eden,

Director, Investments, Strategies, Policy and Management, Office of the Chief Information Officer.

[FR Doc. 03–18754 Filed 7–23–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–47]

Notice of Submission of Proposed Information Collection to OMB: Application for Multifamily Housing Project

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This collection is completed by sponsors and general contractors of proposed multifamily projects and submitted by a HUD-approved mortgagee for application of FHA mortgage insurance. The information is used to determine project feasibility, principal's acceptability, and credit worthiness.

DATES: *Comments Due Date:* August 25, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0029) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of proposal: Application for Multifamily Housing Project.

OMB approval number: 2502–0029.

Form numbers: HUD–92013, HUD–92013–SUPP, HUD–92013–NHICF, and HUD–92013–E.

Description of the need for the information and its proposed use:

This collection is completed by sponsors and general contractors of proposed multifamily projects and submitted by a HUD-approved mortgagee for application of FHA mortgage insurance. The information is used to determine project feasibility, principal's acceptability, and credit worthiness.

Respondents: Business or other for-profit.

Frequency of submission: On occasion, required with each project application.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	6,350	6,350		26.5		168,680

Total estimated burden hours: 168,680.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 18, 2003.

Donna Eden,

Director, Investment, Strategies, Policy and Management Office of the Chief Information Officer.

[FR Doc. 03–18755 Filed 7–23–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–48]

Notice of Submission of Proposed Information Collection to OMB: Mortgagee's Certificate

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Mortgagees submit information to assure that fees are within acceptable limits and the required escrows will be collected. HUD determines the reasonableness of the fees and uses the information in calculating the financial requirement for closing. Allowable fees are collected from multi-family mortgagors at closing.

DATES: *Comments Due Date:* August 25, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0468) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) The office of the agency to collect the information; (3) The OMB approval number, if applicable; (4) The description of the need for the information and its proposed use; (5) The agency form number, if applicable; (6) What members of the public will be affected by the proposal; (7) How frequently information submissions will be required; (8) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) Whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) The name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of proposal: Mortgagee's Certificate.

OMB approval number: 2502–0468.

Form numbers: HUD–2434.

Description of the need for the information and its proposed use: Mortgagees submit information to assure that fees are within acceptable limits and the required escrows will be collected. HUD determines the reasonableness of the fees and uses the information in calculating the financial requirement for closing. Allowable fees are collected from multi-family mortgagors at closing.

Respondents: Business or other for-profit.

Frequency of submission: On occasion, Required for each insured project.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	1,100	1,100		0.75		825

Total estimated burden hours: 825

Status: Reinstatement, without change, of previously approved.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 18, 2003.

Donna Eden,

Director, Investment, Strategies, Policy and Management Office of the Chief Information Officer.

[FR Doc. 03–18756 Filed 7–23–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4821–N–02]

Notice of Proposed Information Collection: Comment Request; Commitment To Guarantee Mortgage-Backed Securities

AGENCY: Office of the President of Government National Mortgage Association (Ginnie Mae), HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* September 22, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Sonya Suarez, Office of Program Operations, Department of Housing & Urban Development, 451—7th Street, SW., Room 6206, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Sonya Suarez, Ginnie Mae, (202) 708–2884 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Commitment to Guarantee Mortgage-Backed Securities.

OMB Control Number, if applicable: 2503–0001.

Description of the need for the information and proposed use: This form is used by Mortgage-Backed Securities issuers to apply for Ginnie Mae commitment authority to guarantee mortgage-backed securities.

Agency form numbers, if applicable: HUD Form 11704.

Members of affected public: For-profit business (mortgage companies, thrifts, savings & loans, etc.).

Estimation of the total number of hours needed to prepare the information collection, including number of respondents, frequency of response, and hours of response:

Number of respondents—300
Frequency of responses—4 (per year)
Total annual response—1,200
Hours per response—.25 (15 minutes)
Total burden hours—300

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

George S. Anderson,

Executive Vice President, Ginnie Mae.

[FR Doc. 03–18757 Filed 7–23–03; 8:45 am]

BILLING CODE 4210–66–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Final Joint Restoration Plan and Environmental Assessment for the Lower Fox River and Green Bay Area and Finding of No Significant Impact (FONSI)

AGENCIES: Fish and Wildlife Service, Interior, lead; Bureau of Indian Affairs, Interior, cooperating agency; National Oceanic and Atmospheric Administration, Commerce, cooperating agency.

ACTION: Notice of Release of Finding of No Significant Impact (FONSI) and Final Restoration Plan and EA.

SUMMARY: This notice advises the public and other agencies of the availability of the Finding of No Significant Impact (FONSI) and the document titled "Joint Restoration Plan and Environmental Assessment for the Lower Fox River and Green Bay Area" ("The Plan") upon which it is based. The Fish and Wildlife Service formally selected Alternative C of The Plan through signing of the FONSI. Alternative C provides for natural resource-based restoration within and beyond the Assessment Area.

ADDRESSES: Persons may obtain copies of the final document by writing, telephoning, faxing, or e-mailing: Colette S. Charbonneau, 2661 Scott Tower Drive, New Franken, Wisconsin 54229, Telephone: (920) 866–1726, Fax: (920) 866–1710, e-mail: *colette_charbonneau@fws.gov.* The document is also available at the following Internet address: *http://midwest.fws.gov/nepa/.*

Copies of the document will be available for onsite review at the Appleton Public Library, 225 N. Oneida St., Appleton, Wisconsin; Brown County Library, 515 Pine St., Green Bay, Wisconsin; Door County Library, 104 S. Fourth Ave., Sturgeon Bay, Wisconsin; Oneida Community Library, 201 Elm St., Oneida, Wisconsin; Oshkosh Public Library, 106 Washington Ave., Oshkosh, Wisconsin and the Escanaba Public Library, 400 Ludington Street, Escanaba, Michigan.

SUPPLEMENTARY INFORMATION: The objective of the Natural Resource Damage Assessment and Restoration process in the Lower Fox River and Green Bay area is to compensate the public, through environmental restoration, for losses to natural resources that have been caused by historic releases of polychlorinated biphenyls (PCBs) into the environment. The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, more commonly known as the federal "Superfund" law) [42 U.S.C. 9601, *et seq.*] and the Federal Water Pollution Control Act (CWA, commonly known as the Clean Water Act) [33 U.S.C. 1251, *et seq.*] authorize States, federally recognized Tribes, and certain federal agencies that have authority to manage or control natural resources, to act as "trustees" on behalf of the public, to restore, rehabilitate, replace, and/or acquire natural resources equivalent to those harmed by hazardous substance releases.

The U.S. Department of the Interior (represented by the U.S. Fish and Wildlife Service and the Bureau of Indian Affairs), U.S. Department of Commerce (represented by the National Oceanic and Atmospheric Administration), Oneida Tribe of Indians of Wisconsin, Menominee Indian Tribe of Wisconsin, Wisconsin Department of Natural Resources, Michigan Attorney General, and Michigan Department of Environmental Quality ("Trustees") are trustees for natural resources considered in this Natural Resource Damage Assessment and Restoration (NRDAR) project, pursuant to subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR 300.600 and 300.610) and Executive Order 12580.

The Trustees have a Memorandum of Agreement which establishes a Trustee Council to develop and implement a restoration plan for ecological restorations in the Fox River valley and Green Bay watershed. The Trustees followed the NRDAR regulations found at 43 CFR part 11 for the development of The Plan. The Plan addresses the Trustees' overall approach to restore, rehabilitate, replace or acquire the equivalent of natural resources injured by the release of PCBs into the Lower Fox River and Green Bay environment. Signing of the FONSI completed the National Environmental Policy Act (NEPA) process and allows the Plan to be implemented, as described in Alternative C.

The Trustees have worked together, in a cooperative process, to determine appropriate restoration activities to address natural resource injuries caused by historic releases of PCBs into the Lower Fox River and Green Bay

environment. The results of this administrative process are contained in a series of planning and decision documents that have been published for public review under CERCLA and the CWA. Natural resource damages received, either through negotiated settlements or adjudicated awards, must be used to restore, rehabilitate, replace and/or acquire the equivalent of those natural resources that have been injured. The Plan addresses the Trustees' overall approach to restore, rehabilitate, replace or acquire the equivalent of natural resources injured by the release of PCBs into the Lower Fox River and Green Bay environment.

On September 19, 2002, the Service published in the **Federal Register** (67 FR 59073) a Notice of Availability commencing a 30-day public comment period on the draft document entitled, "Joint Restoration Plan and Environmental Assessment for the Lower Fox River and Green Bay Area". Comments received during the above public comment period were incorporated into a final document (The Plan). This current Notice of Availability informs the public that the Service has formally selected Alternative C of the The Plan through the signing of a Finding of No Significant Impact (FONSI).

Authority: 42 U.S.C. 4321–4347.

Dated: June 24, 2003.

T.J. Miller,

Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, MN.

[FR Doc. 03–18798 Filed 7–23–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–PB–24 1A; OMB Control Number 1004–0074]

Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has sent a request to extend the current approved information collection to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). On August 5, 2002, the BLM published a notice in the **Federal Register** (67 FR 50690) requesting comment on this information collection. The comment period ended on October 4, 2002. BLM received no comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be directed within 30 days to the Office of Management and Budget, Interior Department Desk Officer (1004–0074), at OMB–OIRA via facsimile to (202) 395–5806 or e-mail to *Ruth Solomon@omb.eop.gov.*

Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

2. The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

3. Ways to enhance the quality, utility and clarity of the information collection; and

4. Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Oil and Gas and Geothermal Resources Leasing (43 CFR 3120, 3209, and 3220).

OMB Control Number: 1004–0074.

Bureau Form Numbers: 3000–2 and 3200–9.

Abstract: We use the information from Form 3000–2 to determine whether a bidder is qualified to hold a lease under the Mineral Leasing Act of 1920. Also, we use the information from Form 3200–9 to conduct geothermal resource operations under the Geothermal Steam Act of 1969.

Frequency: Occasionally.

Description of Respondents: Individuals, small businesses, and large corporations.

Estimated Completion Time: 2 hours for Form 3200–9 and 10 minutes for Form 3000–2.

Annual Responses: 1,030.

Application Fee Per Response: $0.

Annual Burden Hours: 227.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: July 11, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–18847 Filed 7–23–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1990–PB–24 1A; OMB Control Number 1004–0025]

Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has sent a request to extend the current approved collection to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On July 26, 2002, the BLM published a notice in the **Federal Register** (67 FR 48938) requesting comment on this information collection. The comment period ended on September 24, 2002. BLM received no comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be directed to the Office of Management and Budget, Interior Department Desk Officer (1004–0025), at OMB–OIRA via facsimile to (202) 395–5806 or e-mail to *Ruth Solomon@omb.eop.gov.* Please provide a copy of our comments to the Bureau Information Collection Clearance Officer (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

2. The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

3. Ways to enhance the quality, utility and clarity on the information collected; and

4. Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Mineral Patent Applications (43 CFR part 3860) and Adverse Claims, Protests, and Conflicts (43 CFR part 3870).

OMB Control Number: 1004–0025.

Bureau Form Numbers: 3860–2 and 3860–5.

Abstract: We use the information to determine the right to a mineral patent and to disputes concerning the rights to the property in order to issue the patent to the rightful claimant.

Frequency: One.

Description of Respondents: Holders of unpatented mining claims and mill sites located on public lands, reserved mineral lands of the United States, National Forests, and National Parks.

Estimated Completion Time: 2 hours (contests and protests each).

Annual Responses: 31.

Application Fee Per Response: $10.

Annual Burden Hours: 62.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: July 8, 2003.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 03–18848 Filed 7–23–03; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–022–01–1060–JJ: G 03–0233]

Oregon: Meeting Notice—Use of Helicopters To Gather Wild Horses

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Burns District Office: Public meeting to discuss the use of helicopters to gather wild horses in Oregon.

SUMMARY: In accordance with Public Law 92–195 and 43 CFR 4740.1(b), this notice sets forth the public meeting date to discuss the use of helicopters for gathering wild horses in Oregon from August 1, 2003 through February 28, 2004.

DATES: August 7, 2003—2 p.m. to 3 p.m.

ADDRESSES: The meeting will take place at the BLM Burns District Office, 28910 Hwy 20 West, Hines, Oregon.

FOR FURTHER INFORMATION CONTACT: Connie Dellera, Bureau of Land Management, Burns District Office, 28910 Hwy 20 West, Hines, Oregon 97738, telephone (541) 573–4456.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Public comments will be accepted concerning the use of helicopters to gather wild horses in eastern Oregon. The proposed gathering schedule and approximate dates of gathering for the period of August 1, 2003 through February 28, 2004, will be presented at the meeting. Approximately 700 to 900 animals are proposed for gather and adoption in Oregon depending on availability of funds.

Persons interested in making an oral statement at this meeting regarding the use of helicopters for gathering horses are asked to notify the District Manager, Burns District Office, 28910 Hwy 20 West, Hines, Oregon 97738 by August 1, 2003. Summary minutes of the meeting will be available for public inspection and duplication within 30 days following the meeting.

The Burns District is also accepting written comments regarding the use of helicopters to gather wild horses. Written statements must be received by August 6, 2003 and should be sent to the address listed above.

Comments, including names, street addresses, and other contact information of respondents, will be available for public review. Individual respondents may request confidentiality. If you wish to request that BLM consider withholding your name, street address, and other contact information (such as: Internet address, FAX or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. BLM will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

Dated: July 15, 2003.

Thomas H. Dyer,

Burns District Manager.

[FR Doc. 03–18802 Filed 7–23–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0139).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 216, Production Accounting, subparts A and B; and part 210, Forms and Reports. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements. The ICR is titled "30 CFR Part 216, Production Accounting, Subparts A and B; and Part 210, Forms and Reports."

DATES: Submit written comments on or before August 25, 2003.

ADDRESSES: Submit written comments by either fax (202) 395–5806 or email *(Ruth_Solomon@omb.eop.gov)* directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0139). Mail or hand-carry a copy of your comments to Sharron L. Gebhardt, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also email your comments to us at *mrm.comments@mms.gov.* Include the title of the information collection and the OMB Control Number in the "Attention" line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your email, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3781, email *Sharron.Gebhardt@mms.gov.* You may also contact Sharron Gebhardt to obtain a copy at no cost of the forms and regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 216, Production Accounting, Subparts A and B; Part 210, Forms and Reports.

OMB Control Number: 1010–0139.

Bureau Form Number: Forms MMS–4054 and MMS–4058.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) under the Mineral Leasing Act (30 U.S.C. 1923) and the OCS Lands Act (43 U.S.C. 1353) is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws.

The Secretary has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. MMS performs the royalty management functions and assists the Secretary in carrying out DOI's Indian trust responsibility.

The financial accounting system is an integrated computer system that includes production reports submitted by lease/agreement operators and is designed to track minerals produced from Federal and Indian lands from the point of production to the point of disposition, or royalty determination, and/or point of sale. The financial accounting system also includes payment and sales volumes and values as reported by payors. The production and royalty volumes are compared to verify that proper royalties are received for the minerals produced.

The production reports provide MMS with ongoing information on lease, unit, or communitization agreement (lease/agreement) and facility production, sales volumes, and inventories. The reports summarize all operations on a lease/agreement or facility during a reporting period. They identify production by the American Petroleum Institute well number and sales by product. Data collected are used as a method of cross-checking reported production with reported sales. Failure to collect this information will prevent MMS from ensuring that all royalties owed on lease production are paid. Additionally, the data is shared electronically with the Bureau of Land Management, MMS's Offshore Minerals Management, Bureau of Indian Affairs, and tribal and state governments so they can perform their lease management responsibilities.

Form MMS–4054, Oil and Gas Operations Report (OGOR), is a three-part form that identifies all oil and gas lease production and dispositions. The form is used for all production reporting on the OCS and for onshore Federal and Indian lands. Monthly production information is compared with monthly sales and royalty data submitted on Form MMS–2014, Report of Sales and Royalty Remittance (OMB Control Number 1010–0140) to ensure proper royalties are paid on the oil and gas production reported to MMS. MMS uses the information from parts A, B, and C of the OGOR to track all oil and gas from the point of production to the point of first sale or other disposition. To streamline preparation of modified reports, the operator has the option of modifying the reporting line (delete/add by detail line) or replacing (overlaying) the previous report.

OGOR, Part A, Well Production: All operators submit part A, Well Production, for each lease or agreement with active wells until such wells are abandoned and inventories are disposed. Each line identifies a well/producing interval combination showing well status; days on production; volumes of oil, gas, and water produced; and any volumes injected during the report month.

OGOR, Part B, Product Disposition: For any month with production volumes, operators submit part B, Product Disposition, to identify the sales, transfers, and lease use of production reported on part A. A separate line for each disposition shows: (1) The volume of oil, gas, or water; (2) the sales meter or other meter identifier; (3) the gas plant for instances where gas was processed prior to royalty determination; and (4) the quality of production sold.

OGOR, Part C, Product Sales from Facility: The lease operators who store their production before selling it must submit part C, Product Sales from Facility. Separate lines for each product identify the storage facility, sales meter if applicable, quality of production sold, beginning and ending storage inventory, volume of sales, and volumes of other gains and losses to inventory.

Form MMS–4058, Production Allocation Schedule Report (PASR), is submitted monthly by operators of the facilities and measurement points where production from an offshore lease or metering point is commingled with production from other sources before it is measured for royalty determination. MMS uses the data to determine whether sales reported by the lessee are reasonable. Each line identifies a lease or metering point and allocated sales or transfer volumes. Delivered production volumes are no longer reported. Space has been provided on each detail line for the operator's property name (area/block), and a column has been added for indicating whether the operator is injecting oil, gas, or both into the pipeline system. Beginning and ending inventory are no longer reported. To streamline preparation of modified reports, the operator has the option of modifying (delete/add by detail line) or replacing (overlaying) the previous report.

No proprietary information will be submitted to MMS under this collection. No items of a sensitive nature are collected. The requirement to respond is mandatory.

We have also changed the title of this ICR from "Production Accounting and Auditing System Oil and Gas Reports (Forms MMS–4054, MMS–4055, MMS–4056, and MMS–4058)" to "30 CFR Part 216, Production Accounting, Subparts A and B; Part 210, Forms and Reports (Forms MMS 4054 and MMS 4058)" to clarify the regulatory language we are covering under 30 CFR parts 216 and 210.

Frequency: Monthly and as required.

Estimated Number and Description of Respondents: 2,500 industry operators.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 76,630 hours.

The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. Therefore, we consider these to be usual and customary and took that into account in estimating the burden.

RESPONDENT ANNUAL BURDEN HOUR CHART

30 CFR Part 216 Subparts A and B	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
216.11; 216.16(a); 216.21; 216.40(d); 216.53(a), (b), and (c); 210.20(a); 210.21(c)(1); and 210.50.	You must submit your Oil and Gas Operations Report, Form MMS–4054, in accordance with electronic reporting requirements. * * * All reporting forms * * * should be mailed to the Minerals Management Service, Minerals Revenue Management, * * * The reporter shall submit accurately, completely, and timely, * * * all information forms and other information required by MMS * * * The reporter shall have the burden of proving that a reporting problem was unavoidable. You must file an Oil and Gas Operations Report, Form MMS–4054, * * * You must submit a Form MMS–4054 for each well for each calendar month * * * MMS must receive your completed Form MMS–4054 * * * Electronically * * * Other than electronically * * * You must submit Form MMS–4054 to MMS electronically * * * Before you may begin reporting electronically, you must submit an electronic sample of your report for MMS approval using the MMS-supplied electronic reporting guidelines * * * Records may be maintained in microfilm, microfiche, or other recorded media..	.25 (Electronic) .25 (Manual)	294,000 6,000	73,500 1,500
216.56(a), (b), and (c).	Any operator of an offshore Facility Measurement Point * * * must file a Production Allocation Schedule Report (Form MMS–4058). You must submit a Production Allocation Schedule Report, Form MMS–4058, for each calendar month * * * MMS must receive your Form MMS–4058 * * * Electronically * * * Other than electronically * * *.	.1167 (Electronic) .25 (Manual)	7,280 3,120	850 780
216.57	Operators who have been granted a reduced royalty rate(s) by BLM must submit a Stripper Royalty Rate Reduction Notification (Form MMS–4377) to MMS: * * *.	Burden covered under OMB Control Number 1010–0090.		
Total			310,400	76,630

Estimated Annual Reporting and Recordkeeping "Non-hour" Cost Burden: Reporters require access to the internet through a subscription to an internet provider service. The annual subscription is estimated at $240 per reporter.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Comments: Section 3506(c)(2)(A) of the PRA requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a notice in the **Federal Register** on April 21, 2003 (68 FR 19575), announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no comments in response to this notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by August 25, 2003.

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm.* We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: July 15, 2003.
Lucy Querques Denett,
Associate Director for Minerals Revenue Management.
[FR Doc. 03–18893 Filed 7–23–03; 8:45 am]
BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.
ACTION: Notice.

SUMMARY: Notice is hereby given of contractual actions that have been proposed to the Bureau of Reclamation (Reclamation) and are new, modified, discontinued, or completed since the last publication of this notice on April 29, 2003. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities consistent with section 9(f) of the Reclamation Project Act of 1939. Additional announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Sandra L. Simons, Manager, Water Contracts and Repayment Office, Bureau of Reclamation, PO Box 25007, Denver, Colorado 80225–0007; telephone 303–445–2902.

SUPPLEMENTARY INFORMATION: Consistent with section 9(f) of the Reclamation Project Act of 1939 and 43 CFR 426.20 of the rules and regulations published in 52 FR 11954, April 13, 1987, Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act. Pursuant to the "Final Revised Public Participation Procedures" for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act, as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to (i) The significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. At a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

The February 28, 2003, notice should be used as a reference point to identify changes. The numbering system in this notice corresponds with the numbering system in the February 28, 2003, notice.

Definitions of Abbreviations Used in This Document

BCP Boulder Canyon Project
Reclamation Bureau of Reclamation
CAP Central Arizona Project
CVP Central Valley Project
CRSP Colorado River Storage Project
FR **Federal Register**
IDD Irrigation and Drainage District
ID Irrigation District
M&I Municipal and Industrial
O&M Operation and Maintenance
P–SMBP Pick-Sloan Missouri Basin Program
PPR Present Perfected Right
SOD Safety of Dams
WD Water District

Pacific Northwest Region:

Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5223.

New contract action:

21. Tualatin Valley ID, Clean Water Services, and the Cities of Hillsboro, Forest Grove, Beaverton, and Lake Oswego; Tualatin Project; Oregon: Repayment agreements for repayment of reimbursable cost of SOD modifications to Scoggins Dam.

Modified contract action:

17. Hermiston and West Extension IDs, Umatilla Project, Oregon: Amendatory repayment contracts for long-term boundary expansions to include lands outside of federally recognized district boundaries.

Completed contract actions:

17. Stanfield ID, Umatilla Project, Oregon: Amendatory repayment contracts for long-term boundary expansions to include lands outside of federally recognized district boundaries. Contract was executed April 30, 2003.

18. Emmett ID and 12 individual contract spaceholders, Boise Project, Payette Division, Idaho: Repayment agreements or contracts for reimbursable costs of SOD modifications to Deadwood Dam. Repayment contract with District and letters of agreement with individual contractors were executed June 2003.

Mid-Pacific Region:

Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

New contract actions:

41. Orland Unit Water User's Association, Orland Project, California: Repayment contract for the SOD costs assigned to the irrigation purpose of Stony Gorge Dam.

42. Delta Lands Reclamation District No. 770, CVP, California: Long-term operations contract for conveying nonproject flood flows.

43. Banta-Carbona ID, CVP, California: Proposed partial assignment of up to 5,000 acre-feet of Banta-Carbona ID's CVP irrigation water to City of Tracy for M&I use.

44. The West Side ID, CVP, California: Proposed partial assignment of up to 5,000 acre-feet of the West Side ID's CVP irrigation water to City of Tracy for M&I use.

Completed contract actions:

10. Mercy Springs WD, CVP, California: Partial assignment of about 7,000 acre-feet of Mercy Springs WD's water service contract to Westlands WD for agricultural use. Contract for the partial assignment executed March 1, 2003.

23. Lower Tule River, Porterville, and Vandalia IDs, and Pioneer Water Company, Success Project, California: Repayment contract for the SOD costs assigned to the irrigation purpose of Success Dam. Repayment contract was executed March 12, 2003.

35. Cachuma Operation and Maintenance Board, Cachuma Project, California: Long-term contract to transfer responsibility for O&M and O&M funding of certain Cachuma Project facilities to the member units. Long-term contract was executed March 1, 2003.

Lower Colorado Region:

Bureau of Reclamation, PO Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8536.

New contract actions:

52. Fishers Landing, LLC, BCP, Arizona: Water delivery contract for 53 acre-feet of Colorado River water.

53. City of Tucson, CAP, Arizona: Partial transfer of 4,454 acre-feet of M&I allocation from the City of Tucson to Wells Fargo Bank of Arizona, Trustee, for the town of Oro Valley.

Modified contract action:

31. Jessen Family Limited Partnership, BCP, Arizona: Contract for the delivery of 1,080 acre-feet of Colorado River water for agricultural purposes.

Discontinued contract action:

6. Curtis Family Trust *et al.*, BCP, Arizona: Contract for 2,100 acre-feet per year of Colorado River water for irrigation.

Completed contract actions:

32. Robson Communities, Southern Arizona Water Rights Settlement Act, Arizona: United States contract with Robson Communities for the sale of 3,500 acre-feet of long-term water storage credits accrued in the Tucson area during calendar year 2000–2001.

37. Citizens Communications Company (Agua Fria Division), CAP, Arizona: Assignment of M&I water service subcontract rights and responsibilities to Arizona American Water Company (Sun City).

40. Pasquinelli, Gary J. and Barbara J., BCP, Arizona: Contract for the delivery of 486 acre-feet of Colorado River water for agricultural purposes.

41. Citizens Communications Company (Sun City Division), CAP, Arizona: Assignment of M&I water service subcontract rights and responsibilities to Arizona American Water Company (Sun City Division).

42. Citizens Communications Company (Sun City West Division), CAP, Arizona: Assignment of M&I water service subcontract rights and responsibilities to Arizona American Water Company (Sun City West Division).

Upper Colorado Region

Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone 801–524–4419.

New contract actions:

21. Project Operations Committee, Animas-La Plata Project, Colorado and New Mexico: Agreement among the United States, the Southern Ute Indian Tribe, Ute Mountain Ute Tribe, Navajo Nation, San Juan Water Commission, Animas-La Plata Water Conservancy District, State of Colorado, and La Plata Conservancy District of New Mexico to coordinate and oversee the necessary operation, maintenance, and replacement activities of the project works.

22. Southern Ute Indian Tribe, Colorado, Animas-La Plata Project, Colorado and New Mexico: Water delivery contract for an average annual depletion not to exceed 16,525 acre-feet of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554).

23. Ute Mountain Ute Tribe, Colorado, Animas-La Plata Project, Colorado and New Mexico: Water delivery contract for an average annual depletion not to exceed 16,525 acre-feet of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554).

24. Navajo Nation, Animas-La Plata Project, Colorado and New Mexico: Water delivery contract for an average annual depletion not to exceed 2,340 acre-feet of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554).

25. Elk Meadows Homeowners Association, Aspinall Storage Unit, CRSP, Colorado: Elk Meadows has requested a 40-year water service contract for 3 acre-feet of water out of Blue Mesa Reservoir to support their plan of augmentation, Case No. 03WC20, District Court, Water Division 4.

26. Paul Hudgeons, Aspinall Storage Unit, CRSP, Colorado: Mr. Hudgeons has requested a 40-year water service contract for 1 acre-foot of water out of Blue Mesa Reservoir to support his plan of augmentation, Case No. 02WC283, District Court, Water Division 4.

Completed contract actions:

1.(h) Lamar Northworthy, Aspinall Storage Unit, CRSP, Colorado: Mr. Northworthy has requested a 40-year water service contract for 2 acre-feet of water out of Blue Mesa Reservoir to support his plan of augmentation, Case No. 02WC240, District Court, Water Division 4. Contract was executed May 30, 2003.

(i) Heatherwood Villas Condominium Association, Aspinall Storage Unit, CRSP, Colorado: The Association has requested a 40-year water service contract for 2 acre-feet of water out of Blue Mesa Reservoir to support its plan of augmentation. The Association is in the process of filling a plan of augmentation with the State of Colorado, Water Division 4. Contract was executed April 21, 2003.

(j) Riverland Lot Owners Association, Aspinall Storage Unit, CRSP, Colorado: The Association has requested a 40-year water service contract for 14 acre-feet of water out of Blue Mesa Reservoir to support its plan of augmentation. The Association is in the process of filling a plan of augmentation with the State of Colorado, Water Division 4. Contract was executed May 30, 2003.

5. Provo River Water Users Association, Provo River Project, Utah: Contract to provide for repayment of

reimbursable portion of construction costs of SOD modifications to Deer Creek Dam. Contract was executed April 25, 2003.

Great Plains Region

Bureau of Reclamation, PO Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone 406–247–7790.

New contract actions:

46. Town of Deaver, Shoshone Project, Wyoming: Negotiate a long-term contract for up to 475 acre-feet of irrigation water from the two drains below Deaver Reservoir.

47. Tom Green County Water Control and Improvement District No. 1, San Angelo Project, Texas: The District has requested deferment of its 2003 repayment obligation. A basis of negotiation has been prepared to amend contract No. 14–06–500–369. A public notice has been published in the San Angelo Times.

Modified contract actions:

19. Savage ID, P–SMBP, Montana: The District is currently seeking title transfer. The contract is subject to renewal pending the outcome of the title transfer process. The final version of a 5-year interim contract has been sent to the District for signature. The District has requested information concerning renewal of the long-term contract.

24. Belle Fourche ID, Belle Fourche Project, South Dakota: Belle Fourche ID has requested a $25,000 reduction in construction repayment. The contract amendment has been sent to the District for signature.

40. Clayton and Debbie Fulfer (Individual), P–SMBP, Boysen Unit, Wyoming: Renewal of long-term contract for up to 15 acre-feet of supplemental irrigation water to service 5.72 acres.

Discontinued contract action:

44. Frenchman-Cambridge ID, Frenchman Unit, P–SMBP, Nebraska: Proposed contract amendment for deferment of annual payment due to severe drought.

Completed contract actions:

27. Milk River Project, Montana: City of Harlem water service contract expired in December 2002. Initiating negotiations for renewal of a water service contract for an annual supply of raw water for domestic use from the Milk River not to exceed 500 acre-feet. Contract was executed May 22, 2003.

28. Lower Marias Unit, P–SMBP, Montana: Town of Chester water service contract expired in December 2002. Initiating negotiations for renewal of a long-term water service contract for an annual supply of raw water for domestic use from Tiber Reservoir not to exceed 500 acre-feet. Contract was executed May 27, 2003.

37. Chippewa Cree Tribe (Tribe), Rocky Boy's Indian Reservation, Montana: Pursuant to Title II, section 201(a)(2), of the Rocky Boy's Indian Reserved Water Rights Settlement and Water Supply Enhancement Act of 1999 (Pub. L. 106–163), Reclamation is negotiating to allocate 10,000 acre-feet per year of stored water in Lake Elwell. Contract was executed March 6, 2003.

41. Midvale ID, P–SMBP, Riverton Unit, Wyoming: Negotiations of a SOD Program contract for modification of Bull Lake Dam. An agreement was executed February 13, 2003.

Dated: June 23, 2003.

Wayne O. Deason,

Acting Director, Program and Policy Services.

[FR Doc. 03–18799 Filed 7–23–03; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[DES 03–43]

Lower Santa Ynez River Fish Management Plan and Cachuma Project Biological Opinion for Southern Steelhead Trout, Santa Barbara County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of the draft environmental impact statement/environmental impact report (EIS/EIR).

SUMMARY: In accordance with the National Environmental Policy Act of 1969, the Bureau of Reclamation (Reclamation) has prepared a Draft EIS/EIR for the Lower Santa Ynez River Fish Management Plan (Plan) and Cachuma Project Biological Opinion (Opinion) for Southern Steelhead Trout. The Plan and Opinion include various flow and non-flow measures to be implemented by Reclamation and the Cachuma Project Member Units to protect and enhance habitat for the endangered southern steelhead trout along the Santa Ynez River downstream of Bradbury Dam.

DATES: Written comments on the Draft EIS/EIR will be accepted for 45 days following the date the Environmental Protection Agency publishes the Notice of Availability of the Draft EIS/EIR in the **Federal Register**, anticipated to occur in April 2003.

ADDRESSES: Written comments should be sent or hand-delivered to: David Young, Bureau of Reclamation, South-Central California Area Office, 1243 N Street, Fresno, California, 93721, phone: 559–487–5127. Comments submitted by electronic mail should be sent to: *dkyoung@mp.usbr.gov*. Please include "Cachuma EIS/EIR" and your name and return address in the text of the message.

Copies of the Draft EIS/EIR for the Plan and Opinion are available in the South-Central California Area Field Office at the above address, or at the Cachuma Operation and Maintenance Board Office, 3301 Laurel Canyon Road, Santa Barbara, California, 93105, from 7:30 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: David Young, Bureau of Reclamation, at the above address, or at 559–487–5127.

SUPPLEMENTARY INFORMATION: The Cachuma Project consists of Bradbury Dam, Cachuma Lake, and various water conveyance facilities. The dam impounds water along the Santa Ynez River in northern Santa Barbara County. Water is provided to the Cachuma Project Member Units for irrigation, domestic, and municipal and industrial water uses. The current Member Units consist of the City of Santa Barbara, Goleta Water District, Montecito Water District, Carpinteria Valley Water District, and the Santa Ynez River Water Conservation District—Improvement District #1. Reclamation owns all project facilities and operates Bradbury Dam. Operation and maintenance of the Cachuma Project facilities, other than Bradbury Dam, was transferred in 1956 to the Member Units who formed Cachuma Operation and Maintenance Board (COMB) to carry out these responsibilities.

In August 1997, the National Marine Fisheries Service (NMFS) designated the anadromous steelhead (*Oncorhynchus mykiss*) of the Southern Evolutionarily Significant Unit (ESU), which includes the lower Santa Ynez River below Bradbury Dam, as an endangered species under the Federal Endangered Species Act. In April 1999, Reclamation requested initiation of consultation with NMFS regarding ongoing operations of the Cachuma Project under the provisions of Section 7 of the Federal Endangered Species Act. Reclamation submitted a Biological Assessment (BA) to NMFS in 1999. The proposed actions described in the BA are designed to improve the availability and quality of habitat for the steelhead in the lower river. NMFS issued a final Opinion in September 2000. The Opinion concluded that the proposed actions described in the BA would not jeopardize the continued existence of the anadromous steelhead of the Southern ESU, nor destroy or adversely modify critical habitat. The Opinion included mandatory terms and conditions that require Reclamation to implement 15 specific reasonable and prudent measures to minimize "take" of the southern steelhead. Reclamation will implement the management actions and projects in the Opinion to ensure compliance with the Federal Endangered Species Act.

Prior to, and concurrent with, the endangered species consultation, Reclamation and the Cachuma Member Units prepared a Fish Management Plan (FMP) for the lower Santa Ynez River. The FMP management actions include (1) creating new habitat and improving existing habitat in the lower river and tributaries; (2) improving access to spawning and rearing habitats in the lower river and tributaries; and (3) increasing public awareness and support for beneficial actions on private lands. The FMP identifies specific reaches of the mainstem and tributaries for habitat protection and improvement. The highest priority has been assigned to lower Hilton Creek, which is located on Reclamation property, and the mainstem of the river between Bradbury Dam and Highway 154. A high priority is also assigned to enhancing habitats on the following tributaries which have favorable flows and habitat conditions for aquatic resources: Quiota, El Jaro, and Salsipuedes creeks.

The overall purposes of the BO and FMP management actions are two-fold:

(1) Ensure that operation of the Cachuma Project is consistent with the Federal Endangered Species Act regarding effects on the southern steelhead; and (2) improve conditions for native fish, particularly the endangered southern steelhead, in the Santa Ynez River watershed below Bradbury Dam.

Reclamation and Cachuma COMB have prepared the draft EIS/EIR to evaluate the incidental adverse impacts of the proposed management actions and projects to improve fish habitat conditions on the Santa Ynez River below Bradbury Dam in northern Santa Barbara County. These impacts include temporary construction related disturbances to riparian and aquatic habitat during fish habitat restoration work in the river and tributaries; impacts to oak trees and recreational facilities at Cachuma Lake due to surcharging the reservoir to store additional water for downstream releases for fish; and others described in the Draft EIS/EIR.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Editorial Note: This document was received in the Office of the Federal Register on July 21, 2003.

Dated: March 31, 2003.

Frank Michny,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 03–18905 Filed 7–23–03; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Martin Marietta Materials, Inc.*, Case No. 7:03–CW–122–F(1), (E.D.N.C.), was lodged with the United States District Court for the Eastern District of North Carolina on July 8, 2003. The proposed Consent Decree concerns alleged violations of sections 301(a), 402, and 404 of the Clean Water Act, 33 U.S.C. 1311(a), 1342 and 1344, resulting from Defendant's unauthorized discharge of pollutants into waters of the United States at the Leland Stone Yard which is located on the south side of US Highway 74/76, east of Malmo Loop Road, in Brunswick County, North Carolina.

The proposed Consent Decree would require the payment of a civil penalty of $30,000 and completion of site restoration activities, including the filling of ditches.

The United States Department of Justice will receive written comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to Martin F. McDermott, Attorney, United States Department of Justice, Environmental Defense Section, P.O. Box 23986, Washington, DC 20026–3986, and should refer to *United States* v. *Martin Marietta Materials, Inc.*, Case No. 7:03–CV–122–F(1), (E.D.N.C.).

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Eastern District of North Carolina, 310 New Bern Avenue, Federal Building, 5th Floor, Raleigh, North Carolina, or at the following Web site: *http://www.usdoj.gov/enrd/open.html*.

Stephen Samuels,

Assistant Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. 03–18770 Filed 7–23–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Consistent with the procedures in 28 CFR 50.7 and 42 U.S.C. 9622(i), notice is hereby given that on July 3,2003, a proposed consent decree ("consent decree") in *United States* v. *Waste Management of Indiana, L.L.C.*, Civil Actions No. 3:03CV0483AS, was lodged with the United States District Court for the Northern District of Indiana, South Bend Division. This consent decree resolves claims against Waste Management of Indiana, L.L.C., for costs incurred and to be incurred under the Comprehensive Environmental Response, Compensation, and Liability Act, in connection with the Waste, Inc. Superfund Site located in Michigan City, Indiana. Under the terms of the consent decree, Waste Management of Indiana agrees to reimburse $95,000 to the Superfund.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Chicago Specialties, L.L.C.*, Civil Action No. 3:03CV0483AS, D.J. Ref. 90–11–3–1376/7.

The consent decree may be examined at the Office of the United States Attorney, 204 South Main Street, South Bend, Indiana 46601, and at U.S. EPA Region V, 77 West Jackson Blvd., Chicago, Illinois 60604. During the public comment period, the consent decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/*

open.html. A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood *(tonia.fleetwood@usdoj.gov),* fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the consent decree, please enclose a check in the amount of $4.75 (25 cents per page reproduction cost) payable to the U.S. Treasury for the consent decree.

William Brighton,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–18769 Filed 7–23–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Between the United States, the State of Michigan, and the Wisconsin Electric Power Company Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on July 10, 2003, a proposed Amended Consent Decree ("Amended Consent Decree") between the United States, Michael A. Cox, Attorney General of the State of Michigan, *ex rel.* Michigan Department of Environmental Quality ("State of Michigan"), and the Wisconsin Electric Power Company ("Wisconsin Electric"), Civil Action No. 03–C–0371, was lodged with the United States District Court for the Eastern District of Wisconsin.

This Amended Consent Decree modifies the Consent Decree that was lodged in the Eastern District of Wisconsin on April 29, 2003, notice of which was provided at 68 FR 26354 (May 15, 2003). Like the original proposed Consent Decree, this proposed Amended Consent Decree would resolve claims asserted by the United States against Wisconsin Electric pursuant to Sections 113(b) and 167 of the Clean Air Act (the "Act"), 42 U.S.C. 7413(b) and 7477, and seeks injunctive relief and the assessment of civil penalties for Wisconsin Electric's violations of:

(a) The Prevention of Significant Deterioration provisions in Part C of Subchapter I of the Act, 42 U.S.C. 7470-92;

(b) The nonattainment New Source Review provisions in Part D of Subchapter I of the Act, 42 U.S.C. 7501–7515;

(c) The federally-enforceable State Implementation Plan developed by the State of Michigan (the "Michigan SIP"); and

(d) The federally-enforceable State Implementation Plan developed by the State of Wisconsin (the "Wisconsin SIP").

In addition, this Amended Consent Decree would resolve claims asserted by the State of Michigan against Wisconsin Electric pursuant to Section 167 of the Act, 42 U.S.C. 7477, and Section 5530 of Part 55 of Michigan's Natural Resources and Environmental Protection Act ("Part 55 of NREPA"), MCL § 324.5530, for injunctive relief and the assessment of civil fines for alleged violations of:

(a) The Prevention of Significant Deterioration provisions in Part C of Subchapter I of the Act, 42 U.S.C. 7470–92; and

(b) Section 5505 of Part 55 of NREPA, MCL § 324.5505.

The proposed Amended Consent Decree incorporates two types of changes from the original Consent Decree. First, various changes have been made to reflect the addition of the State of Michigan as a Plaintiff-Intervenor. Among these are changes to the Penalty and Fines Section (Section X), in which Wisconsin Electric would be required to pay a fine of $100,000 to the State of Michigan and a civil penalty of $3.1 million to the United States, and changes to the Resolution of Claims Section (Section XI), in which a Resolution of Claims parallel to that provided by the United States is provided for claims that may be brought by the State of Michigan. Second, clarifying changes have been made to six paragraphs in which Wisconsin Electric's emissions would be limited to levels that are measured as either a 30-day or 12-month rolling average. (*See* paragraphs 58, 62, 63, 73, 76, and 77.) Each of these clarifying changes is intended to eliminate any ambiguity as to when the compliance requirement actually commences, given that, in each provision, the emission limit is measured by reference to a historical period (*i.e.*, the last 30 days or 12 months).

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Wisconsin Electric,* D.J. Ref. No. 90–5–2–1–07493.

The Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Wisconsin, Federal Courthouse, 517 East Wisconsin Ave., Milwaukee, Wisconsin 53202, and at U.S. EPA Region V, 77 West Jackson Blvd., Chicago, IL 60604–3507. During the public comment period, the Consent Decree, may also be examined on the following Department of justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood *(tonia.fleetwood@usdoj.gov),* fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $19.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

W. Benjamin Fisherow,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–18771 Filed 7–23–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Callahan's Foods; Denial of Application

On October 28, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Callahan's Foods (Callahan's) proposing to deny its application, executed on May 13, 1997, for DEA Certificate of Registration as a distributor of list I chemicals. The Order to Show Cause alleged that granting the application of Callahan's would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(h) and 824(a)(4). The Order to Show Cause also notified Callahan's that should no request for a hearing be filed within 30 days, its hearing right would be deemed waived.

According to the DEA investigative file, the Order to Show Cause was sent by certified mail to Callahan's at its proposed registered location in Pulaski, Virginia and was received on November 2, 2001. DEA has not received a request for hearing or any other reply from Callahan's or anyone purporting to represent the company in this matter.

Therefore, the Acting Administrator of DEA, finding that (1) thirty days having passed since the delivery of the Order to Show Cause at the applicant's proposed registered address, and (2) no request for hearing having been received, concludes that Callahan's has waived its hearing right. See Aqui Enterprises, 67 FR 12576 (2002). After considering relevant material from the investigative file in this matter, the Acting Administrator now enters his final order without a hearing pursuant to 21 CFR 1309.53(c) and (d) and 1316.67 (2003). The Acting Administrator finds as follows:

List I chemicals are those that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine and ephedrine are list I chemicals commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance.

Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

The Acting Administrator's review of the investigative file reveals that on May 21, 1997, DEA's Chemical Operations Registration section received an application dated May 13, 1997, on behalf of Callahan's. The application was submitted by the company's owner, Tony L. Callahan. The applicant sought DEA registration as a distributor of the list I chemicals, ephedrine, pseudoephedrine, and phenylpropanolamine. Because Callahan's submitted its application for registration on or before July 12, 1997, the firm qualified for temporary exemption from the requirement of registration, pursuant to 21 CFR 1309.10.

For reasons unknown, Callahan's registration application was not received by the DEA Richmond (Virginia) District Office for follow-up investigation until April 4, 1999. Nevertheless, on six separate occasions between April 27, 1999 and June 10, 1999, a DEA Diversion Investigator attempted to reach Tony Callahan by telephone to discuss information necessary for completion of the application process. There is no information in the investigative file demonstrating that DEA personnel were successful in reaching Tony Callahan during that time period. However, on December 3, 1999, and again on May 15, 2000, a DEA Diversion Investigator contacted Tony Callahan, and requested the following information:

a. A list of the company's officers;

b. A brief description of the company's main business;

c. Percentage of the company's business pertaining to list I chemicals;

d. A list of list I chemical suppliers;

e. A list of list I chemical customers;

f. Copies of relevant licenses; and

g. Description of the company's security as well as a copy of any security contracts.

Callahan's failed to provide the requested information. In response, a DEA Diversion Investigator traveled to Callahan's on January 4, and March 2, 2000, again requesting information necessary to process the company's registration application. On both occasions, the investigator met with Robert Callahan (son of Tony Callahan) and his wife Lisa. Robert and Lisa Callahan were part of the management structure and provided assistance to Tony Callahan in the operation of Callahan's. Despite DEA's repeated requests, the requested information was not provided.

On February 2, 2001, the DEA Richmond office directed a letter to Tony Callahan. The letter recited DEA's repeated attempts to obtain information from Callahan's and again requested information needed to process its pending DEA application. The letter further informed Tony Callahan that pursuant to 21 CFR 1309.35, DEA "may require an applicant to submit documents of written statements of fact" relevant to process a pending application. The letter further stated that "[t]he failure of the applicant to provide such documents or statements within a reasonable time after [such request] shall be deemed a waiver by the applicant of an opportunity to present * * * documents or facts for consideration by DEA in granting the application." The letter concluded that should the company fail to respond to DEA correspondence, such failure would be deemed a withdrawal of Callahan's pending application, pursuant to 21 CFR 1309.36(b). Callahan's was given thirty days to respond to DEA's letter. A similar letter was subsequently sent to Callahan's on April 16, 2001.

On or about March 5, 2001, Tony Callahan telephoned the DEA Richmond office and stated that he had sent the requested documents to DEA. However, DEA records did not show receipt of the requested information. Tony Callahan assured DEA personnel that he would send the documents.

On April 20, 2001, Tony Callahan called the Diversion Group Supervisor of the DEA Richmond Office stating that he wished to continue the registration process and to that end, again informed DEA personnel that he would submit all necessary documents. However, when DEA personnel finally received documents from Tony Callahan on May 3, 2001, the information contained therein was found to be incomplete with respect to names, addresses, phone numbers, and DEA registration numbers of both suppliers and customers of Callahan's Foods. During the following two months, DEA's repeated attempts to obtain further information from Callahan's, and/or arrange times for on-site inspections of the business were unsuccessful.

Pursuant to 21 U.S.C. 823(h), the Acting Administrator may deny an application for Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest as determined under that section. Section 823(h) requires the following factors be considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State, and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

As with the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Acting Administrator may rely on any one or combination of factors, and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See, *e.g.* Energy Outlet, 64 FR 14269 (1999). See also Harry J. Schwartz, Jr., M.D., 54 FR 16422 (1989).

The Acting Administrator finds factors one, four, and five relevant to Callahan's Foods' pending application.

With respect to factor one, maintenance of effective controls against the diversion of listed chemicals, the Acting Administrator's review of the investigative file reveals that Callahan's Foods failed to provide to DEA information regarding security or any security contracts that the company had entered into. Therefore, the record before the Acting Administrator contains no information as to any security measures employed by Callahan's designed to prevent the diversion of listed chemicals.

Regarding factor four, the applicant's past experience in the distribution of chemicals, DEA's investigation revealed

that Callahan's failed to provide information with respect to its list I chemical suppliers and customers. Similarly, with respect to factor five, other factors relevant to and consistent with the public safety, Callahan's failure to provide information necessary to the processing of its application for DEA registration supports the denial of its pending application. In addition, DEA investigators were unable to perform an on-site inspection of Callahan's to determine whether or not the company could adequately handle listed chemicals and the company provided incomplete information necessary to the processing of its DEA application. See, CHM Wholesale Co., 67 FR 9985 (2002).

In light of the above, and the absence of evidence to the contrary, the Acting Administrator is left with the conclusion that Callahan's cannot be entrusted with the responsibilities of a DEA registration. As a result, the Acting Administrator further concludes that it would be inconsistent with the public interest to grant the application of Callahan's Foods.

Accordingly, the Acting Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the pending application for DEA Certificate of Registration, previously submitted by Callahan's Foods be, and it hereby is denied. This order is effective August 25, 2003.

Dated: July 3, 2003.

William B. Simpkins,

Acting Administrator.

[FR Doc. 03–18868 Filed 7–23–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

G & O Pharmacy of Paducah, Incorporated; Denial of Application

On April 19, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to G & O Pharmacy [1] (G & O) notifying the applicant of an opportunity to show cause as to why DEA should not deny its pending application for DEA Certificate of Registration as a retail-pharmacy practitioner pursuant to 21 U.S.C. 823(f). As a basis for the denial, the Order to Show Cause alleged that G & O's registration would be inconsistent with the public interest. The Order to Show Cause also notified G & O that should no request for a hearing be filed within 30 days, its hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to G & O at its proposed registered location in Paducah, Kentucky, and was received on April 26, 2002. DEA has not received a request for hearing or any other reply from G & O or anyone purporting to represent the pharmacy in this matter.

Therefore, the Acting Administrator of DEA, finding that (1) thirty days having passed since the attempted delivery of the Order to Show Cause at the applicant's last known address, and (2) no request for hearing having been received, concludes that G & O is deemed to have waived its hearing right. See David W. Linder, 67 FR 12579 (2002). After considering material from the investigative file in this matter, the Acting Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Acting Administrator finds that G & O previously possessed DEA Certificate of Registration AG2999691. On July 23, 1992, an Order to Show Cause was issued proposing to revoke that Certificate of Registration. The Order to Show Cause alleged in substance that (1) in July 1990, an individual had overdosed on Demerol received from the owner-manager pharmacist of G & O Pharmacy, Randall Lockhart, without the benefit of a prescription; (2) accountability audits conducted of G & O Pharmacy by DEA investigators in 1990 revealed shortages of Schedules II and III controlled substances; (3) G & O Pharmacy had filled at least 217 call-in prescriptions not authorized by the physicians whose names appeared on the pharmacy's records; and (4) at least one individual, on multiple occasions, had received controlled substances from Mr. Lockhart without seeing the physician listed on the call-in prescription.

Following prehearing procedures, a hearing was held in Louisville, Kentucky, on March 10 and 11, 1993. After the hearing, both parties submitted proposed findings of fact, conclusions of law and argument. Subsequently, on December 16, 1993, counsel for the Government filed a motion to reopen the proceedings, alleging that Mr. Lockhart transferred ownership of G & O to AML Corporation (AML). The motion also alleged that AML had applied for and received DEA Certificate of Registration BA3838553 to operate G & O and that DEA had not been notified pursuant to 21 CFR 1301.62 and 1307.14(b) (both sections presently designated as section 1301.52). The motion further alleged that G & O Pharmacy had ceased doing business under it previous ownership or that Mr. Lockhart had transferred ownership to another entity. When G & O failed to respond to the Government's motion, Administrative Law Judge Mary Ellen Bittner (Judge Bittner) issued an order reopening the proceedings in Docket No. 92–78.

On March 11, 1994, an Order to Show Cause was issued to AML d/b/a G & O Pharmacy (containing the same allegations as those raised in the July 23, 1992, Order to Show Cause) alleging that its continued registration was inconsistent with the public interest. The Order to Show Cause further alleged that Mr. Lockhart had improperly transferred ownership of G & O without notifying DEA as required. Following the consolidation of the two cases, a hearing was conducted on November 17, 1994.

After finding that the continuance of a registration would be inconsistent with the public interest, the then-Deputy Administrator of DEA revoked DEA Certificate of Registration BA3838553 previously issued to AML Corporation d/b/a G & O Pharmacy. See, AML Corporation d/b/a G & O Pharmacy, and G & O Pharmacy, 61 FR 8973 (March 6, 1996). The Acting Administrator finds that the findings of fact and conclusions of law, which led to the revocation of AML/G & O's DEA Certificate of Registration, are set forth in great detail in the referenced final order. They will not be repeated in this final order, but are incorporated herein and will be referred to as necessary in rendering a decision in this matter.

G & O has a documented history of non-compliance with DEA laws and regulations. From 1989 to 1991 while registered under DEA registration number AG2999691, the pharmacy dispensed 24 vials of Demerol, a Schedule II controlled substance, to a dentist without a valid prescription. It was later determined that these drugs were dispensed for the dentist's personal use. Accountability audits conducted by DEA investigators of G & O's controlled substances revealed significant shortages of various Schedules II, III, and IV controlled substances and the pharmacy filled numerous prescriptions for controlled substances that were not authorized by physicians whose names appeared on the prescriptions. In addition, Mr. Lockhart improperly transferred ownership of G & O to AML without notifying DEA as required by the agency's regulations.

The Acting Administrator also finds that effective March 17, 1999, Mr. Lockhart and the Kentucky Board of Pharmacy (Board) entered into an Agreed Order with respect to Mr. Lockhart's license to practice pharmacy in that state. Among the factual findings agreed upon by the parties was that in September 1997, Mr. Lockhart made a false or fraudulent statement or misrepresentation of a material fact to the Board in securing renewal of his pharmacist license. As a result, Mr. Lockhart was ordered to pay a fine of $1,000 and obtain ten hours of continuing education.

The parties entered into a second Agree Order on September 13, 2000, when it was determined that Mr. Lockhart failed to submit evidence of continuing education hours as required by the order of March 17, 1999. as a result, Mr. Lockhart was fined $500, and ordered to obtain an additional 6.5 hours of continuing education within six months of the entry of the Agreed Order.

Pursuant to 21 U.S.C. 823(f), the Acting Administrator may deny an application for a DEA Certificate of Registration if he determines that such registration would be inconsistent with the public interest. In determining the public interest, the following factors are considered:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing or conducting research with respect to controlled substances.

(3) The applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable state, federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Acting Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwartz, Jr., M.D., 54 FR 16,422 (1989).

Regarding factor one, recommendation of appropriate state licensing board or professional disciplinary authority, in 1997 and again in 2000, Mr. Lockhart's license to practice pharmacy was subject to review and sanction by the Kentucky Board of Pharmacy. These actions were based upon Mr. Lockhart's misrepresentations on a renewal application regarding his continuing education, and his failure to obtain continuing education as required by the Board.

Factors two and four, experience in dispensing controlled substances and compliance with applicable controlled substance laws are relevant in determining whether G & O's registration would be inconsistent with the public interest. The then-Deputy Administrator previously found that Mr. Lockhart's improperly dispensed Schedule II controlled resulting in the transfer of 24 dosage units of Demerol to a dentist for his personal use. 61 FR at 8976. Further, accountability audits conducted by DEA investigators revealed shortages of over 40,000 dosage units of various Schedules II through IV controlled substances with no evidence adduced by G & O to explain the shortages. In addition, DEA's previous investigation of G & O revealed that the pharmacy unlawfully dispensed controlled substances in which approximately 198 prescriptions retrieved from the pharmacy were not authorized by the physicians whose names appeared on the pharmacy records. Such conduct is grounds for denying G & O's pending application for DEA registration.

In addition, Mr. Lockhart and G & O demonstrated non-compliance with DEA regulations when Mr. Lockhart transferred ownership of G & O to AML. Pursuant to 21 CFR 1307.14(b) (since redesignated as 21 CFR 1301.52), Mr. Lockhart was required to provide the Special Agent in Charge in his area specific information at least 14 days in advance of the date of the proposed transfer of his ownership in G & O. The record before the Acting Administrator reveals that Mr. Lockhart failed to inform DEA of the transfer.

As to factor five, the Acting Administrator finds relevant a finding in the previous proceeding that the transfer of ownership from G & O to AML was not a bona fide transaction, but as Judge Bittner described, "a stratagem to obtain a new DEA registration." 61 FR at 8976. The apparent ruse designed to secure a DEA Certificate of Registration demonstrates a disturbing willingness on the part of Mr. Lockhart to engage in dishonest conduct, and further weighs in favor of denying G & O's pending application. Similarly, factor five is relevant to Mr. Lockhart's use of false information on the application for renewal of his pharmacist license. It is well settled that a registration of pharmacy may be revoked or application denied based on the wrongdoing of its owner or officers, Crosstown Drugs, 54 FR 28521 (1989). See also, Alexander Drug Company, Inc., 66 FR 18299 (2001).

It is clear that G & O's past experience in handling controlled substances is dismal at best. The pharmacy, through its owner Randall Lockhart improperly dispensed controlled substances, including instances where the pharmacy failed to obtain physician authorization and G & O also failed to account for shortages of large quantities of controlled substances. Mr. Lockhart further engaged in the deceptive transfer of his ownership interest in G & O to another entity for the purpose of securing a DEA registration.

The Acting Administrator acknowledges that most of these events took place more than ten years ago. However, in light of G & O's failure to request a hearing in this matter, and the absence of evidence to rebut the above allegations, the Acting Administrator is left with the conclusion that the applicant has not corrected the deficiencies which led to the revocation of its previous Certificate of Registration. This conclusion is further supported by evidence that Mr. Lockhart has continued to engage in dishonest conduct by providing false information on a state professional application, resulting in fines and further conditions being placed on his pharmacist license. In view of the foregoing, the Acting Administrator concludes that G & O cannot be entrusted to handle controlled substances, and the granting of its application would not be in the public interest.

Accordingly, the Acting Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for DEA Certificate of Registration submitted by G & O Pharmacy of Paducah, Incorporated be, and it hereby is, denied. This order is effective August 25, 2003.

Dated: July 3, 2003.

William B. Simpkins,

Acting Administrator.

[FR Doc. 03–18870 Filed 7–23–03; 8:45 am]

BILLING CODE 4410–09–M

[1] On the July 18, 2001 application for DEA registration, Mr. Lockhart listed the business address of the pharmacy as "G & O Pharmacy of Paducah Inc."

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 02–26]

J&P Distributor; Denial of Application

On December 28, 2001, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to J&P Distributor (J&P), proposing to deny its application, executed on November 15, 2000, for DEA Certificate of Registration as a distributor of the list I chemical ephedrine. Prior to the issuance of the show cause order, J & P requested modification of its application to include pseudoephedrine, also a list I chemical. The Order to Show Cause alleged that granting J & P's application would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(h) and 824(a)(4).

The Order to Show Cause was delivered to J&P by certified mail, and the applicant timely requested a hearing. However, after the matter was docketed before Administrative Law Judge Mary Ellen Bittner (Judge Bittner), the Government filed a request for termination of proceedings on the ground that J&P withdrew its request for hearing. In her April 19, 2002, Order Terminating Proceedings, Judge Bitter similarly found that J&P had withdrawn its request for hearing and she subsequently terminated all proceedings before her. The matter was later transmitted to the Acting Deputy Administrator for issuance of a final order.

In light of the withdrawal of its request for hearing, the Acting Administrator finds that J&P has waived its hearing right. Aqui Enterprises, 67 FR 12576 (2002). After considering relevant material from the investigative file in this matter, the Acting Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46. The Acting Administrator finds as follows:

List I chemicals are those that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34) and 21 CFR 1310.02(a). Pseudoephedrine and ephedrine are list I chemicals that are commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

The Acting Administrator's review of the investigative file reveals that in or around December 2000, an application dated November 15, 2000, was received by DEA on behalf of J&P. The applicant sought DEA registration as a distributor of the list I chemical ephedrine. On March 15, 2001, Pat Alexander, co-owner of J&P, submitted a written request to add pseudoephedrine to J&P's application. Because J&P did not submit its application for registration on or before July 12, 1997, the firm did not qualify for temporary exemption from the requirement of registration, pursuant to 21 CFR 1309.10. Accordingly, J&P was not authorized to distribute listed chemicals prior to approval of its pending application for registration. See, Aseel, Incorporated, Wholesale Division, 66 FR 35459 (2001).

The Acting Administrator finds that J&P is a retail distributor located in Rockmart, Georgia, and is owned by Jeff Alexander and his wife Pat. The firm specializes in the sale of candy, hats, gloves and other novelty items. J&P was purchased from Mrs. Alexander's brother Larry Weaver under its former name, Novelty Plus. Novelty Plus was previously registered with DEA as a distributor of list I chemicals under Certificate of Registration number 002093NYY. That registration expired on October 31, 2000.

As part of a pre-registration investigation, DEA Diversion Investigators met with J&P's owners on March 15, 2001. J&P's owners informed DEA personnel that the firm anticipated that its retail sale of list I chemical products would constitute fifty-percent of the firm's business. J&P also provided to DEA investigators a list of ephedrine and pseudoephedrine products that it intended to sell, including "Heads Up" and "Max Alert" brands in 60-count bottles. A review of J&P's list of proposed customers reveals that they are comprised primarily of convenience stores or gas stations.

J&P also provided to DEA investigators the names of two of its proposed suppliers of list I chemical products. One of the suppliers, located in Belvedere, South Carolina, was previously the subject of DEA show cause proceedings to revoke its DEA registration, and was alleged to have violated DEA requirements related to recordkeeping, excessive purchases and failure to report suspicious orders of listed chemicals. In addition, as part of a December 2000 seizure of listed chemical products, law enforcement personnel in Springdale, Arizona seized approximately 51,000 pseudoephedrine tablets. It was subsequently determined that these products originated from J&P's proposed supplier.

During the month of July 2001, DEA conducted an unrelated regulatory investigation of J&P's second proposed supplier of listed chemicals, Galaxy Wholesale, Incorporated, of Mabletonton, Georgia. During an inspection of Galaxy Wholesale's distribution records, DEA investigators uncovered a sales invoice (with the purported signature of Pat Alexander) which revealed that on March 1, 2001, J&P purchased "Heads Up" ephedrine products (60-count bottles and 6-count packets) from Galaxy Wholesale. At the time of the purchase, J&P was not registered with DEA to handle listed chemicals. During the pre-registration inspection of March 15, 2001, neither Jeff or Pat Alexander informed DEA investigators of J&P's purchase of list I chemicals from Galaxy Wholesale when asked about their experience in handling list I chemicals products.

DEA's investigation further revealed that between December 2000 and March 2002, J&P sold to three retail establishments approximately 350 bottles (60-count) of various ephedrine products, as well as blister packets of other ephedrine and pseudoephedrine products. At the time of these sales, J&P's application for DEA registration was pending approval.

Pursuant to 21 U.S.C. 823(h), the Acting Administrator may deny an application for Certificate of Registration if he determines that granting the registration would be inconsistent with the public interest as determined under that section. Section 823(h) requires the following factors be considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State, and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

As with the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Acting Administrator may rely on any one or combination of factors, and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See, e.g. Energy Outlet, 64 FR 14269 (1999). See also Henry J. Schwartz, Jr., M.D., 54 FR 16422 (1989).

The Acting Administrator finds factors two, four and five relevant to J & P's pending application.

With respect to factor two, the applicant's compliance with applicable law, the Acting Administrator finds that between December 2000 and March 2002, J&P violated applicable law by distributing, without a DEA registration, bottle quantities of ephedrine as well as pseudoephedrine products to three retail establishments, in violation of 21 U.S.C. 843(a)(9). The Acting Administrator also finds factor two relevant to J&P's March 2001 purchase of ephedrine products from Galaxy Wholesale while not registered with DEA, in violation of 21 U.S.C. 822(a) and 21 CFR 1309.21(a) and 1310.09.

With respect to factor four, the applicant's past experience in the distribution of chemicals, the Acting Administrator finds that notwithstanding the above referenced purchase and sale of listed chemical products by the owners of J&P, the applicant has not demonstrated that it possesses any meaningful experience in the distribution of these products. The Acting Administrator finds J&P's lack of experience most telling in the fact that its owners continued the purchase and sale of listed chemical products even as its application for registration was being reviewed by DEA. This factor weighs against the granting of Respondent's pending application. See, CHM Wholesale Co., 67 FR 9985 (2002); Hologram Wonders, Inc., 67 FR 10231 (2002); Southern Illinois Wholesale, Inc., 67 FR 12583 (2002).

J&P's continued sale and purchase of listed chemical products during the pendency of its registration application is also relevant to factor five, other factors relevant to and consistent with the public safety. The Acting Administrator also finds factor five relevant to the failure on the part of J&P's owners to inform DEA investigators of any previous experience handling listed chemicals, when the firm in fact purchased ephedrine products from Galaxy Wholesale.

The Acting Administrator also finds that J&P provided to DEA investigators a list of customers that are comprised solely of convenience stores and gas stations. While there are no specific prohibitions regarding the sale of listed chemicals products to these entities, DEA has nevertheless found on previous occasions that gas stations and convenience stores constitute sources for the diversion of listed chemical products. See, *e.g.*, Sinbad Distributing, 67 FR 10232, 10233 (2002); K.V.M. Enterprises, 67 FR 70968 (2002) (denial of application based in part upon information developed by DEA that the applicant proposed to sell listed chemicals to gas stations, and the fact that these establishments in turn have sold listed chemical products to individuals engaged in the illicit manufacture of methamphetamine); Xtreme Enterprises, Inc., 67 FR 76195 (2002).

Factor five is further relevant to J&P's proposed use of listed chemical supplier that previously was the subject of DEA show cause proceedings. The show cause proceedings were based on allegations that the supplier violated laws and regulations related to its DEA registration, and engaged in distribution practices that led to the diversion of listed chemicals.

In light of the above, the Acting Administrator concludes that it would be inconsistent with the public interest to grant the application of J&P Distributor.

Accordingly, the Acting Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that the pending application for DEA Certificate of Registration, previously submitted by J&P Distributor be, and it hereby is, denied. This order is effective August 25, 2003.

Dated: July 3, 2003.

William B. Simpkins,

Acting Administrator.

[FR Doc. 03–18869 Filed 7–23–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Sustances; Notice of Registration

By Notice dated March 11, 2003, and published in the **Federal Register** on April 2, 2003, (68 FR 16091), Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application by renewal to the Drug Enfocement Adminstration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cocaine (9041)	II
Ecgonine (9180)	II

The above cited Notice contained an error in that the drug code for Cocaine was listed as 9040 rather than 9041.

The firm plans to manufacture the listed controlled substances for the manufacture of a non-controlled substance flavor extract.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Penick Corporation to manufacture the listed contolled substances is consistent with the public interest at this time. DEA has investigated Penick Corporation to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed is granted.

Dated: July 18, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–18867 Filed 7–23–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 25, 2001, the University of Massachusetts, Lyle E. Craker, Professor, Department of Plant and Soil Science, Stockbridge Hall, Box 37245, Amherst, Massachusetts 01003, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of Marijuana (7360) and Tetrahydrocannabinols (7370), basic classes of Schedule I controlled substances.

The University of Massachusetts-Amherst plans to bulk manufacture (cultivate) Marijuana and Tetrahydrocannabinols for distribution to approved researchers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to this notice of application.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCD) and must be filed no later than September 22, 2003.

Dated: July 2, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–18866 Filed 7–23–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP) Docket No.1379]

Notice of Funding Availability for Girls Study Group

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Justice.

ACTION: Notice of funding availability.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is soliciting applications from public or private agencies or organizations to assemble and convene a Girls Study Group. The purpose of the Girls Study Group is to develop a sound theoretical and empirical foundation to guide future development, testing, and dissemination of strategies to effectively prevent and reduce girls' involvement in delinquency and violence and reduce the negative consequences of such involvement. The Girls Study Group will provide state and local policymakers and practitioners with theoretically sound, culturally and developmentally appropriate, and empirically grounded strategies (encompassing program elements, principles, and policies) to prevent and reduce female delinquency and its consequences. One 2-year cooperative agreement will be awarded.

DATES: Applications must be received by September 22, 2003.

ADDRESS: All applications must be completed online using OJP's Grants Management System (*http://www.ojp.usdoj.gov/fundopps.htm*). Faxed or e-mailed applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: Barbara Allen-Hagan, by telephone, at 202–307–1308 (this is not a toll-free number) or by e-mail, at *barbara@ojp.usdoj.gov*.

SUPPLEMENTARY INFORMATION: The ultimate goal of the Girls Study Group project is to develop the research foundation that communities need to make sound decisions about how best to prevent and reduce delinquency and violence by girls. The Girls Study Group will consist of 12 to 15 individuals who have the collective expertise (both practical and theoretical) in female development and juvenile justice system involvement to undertake a comprehensive study of this kind.

The successful applicant must possess the necessary leadership, organizational, and analytical capabilities essential for the Study Group's success. The project tasks require the ability to organize and convene a group of researchers and practitioners with recognized expertise in diverse areas of female juvenile delinquency, child development and adolescent health; childhood victimization (including child maltreatment, domestic violence, and other forms of victimization); mental health; substance abuse; community-based treatment; youth work and outreach; the juvenile justice, child welfare, and related systems; and education. Expertise in statistics, research methodology, prevention research, and program evaluation is also required. The successful applicant must also demonstrate the ability to lead and interact with group members in order to coordinate a comprehensive literature review, synthesize information from diverse sources, recommend future research topics, and produce interim and final reports and related publications that effectively communicate the results to a broad audience of Federal, State, and local policymakers, practitioners, and researchers.

Because this is a cooperative agreement, OJJDP will review and approve all project consultants, plans, and products developed.

Interested applicants may access the program announcement for the Girls Study Group at OJJDP's Web site (*http://www.ojp.usdoj.gov/ojjdp*, click on "Grants & Funding").

Dated: July 18, 2003.

J. Robert Flores,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 03–18760 Filed 7–23–03; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,283]

Advanced Micro Devices (AMD), Fab 25, Austin, TX; Notice of Revised Determination on Reconsideration

By application of April 29, 2003, a petitioner requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation under this case number was for Advanced Micro Devices (AMD), Lone Star Fab Division, Austin, Texas, and resulted in a negative determination issued on April 7, 2003, based on the finding that imports of wafers and dies did not contribute importantly to worker separations at the subject plant. The denial notice was published in the **Federal Register** on April 24, 2003 (68 FR 20177).

To support the request for reconsideration, the petitioner stated that the Department had investigated the wrong worker group. Upon further review, it was revealed that the petitioner had not worked in the Lone Star Fab (also known as Fab 14 and Fab 15) but rather Fab 25, which produced a different product (a microprocessor chip).

Having identified the appropriate worker group, the Department contacted the company regarding imports of products like or directly competitive with those produced at Fab 25. As a result, it was revealed that the subject firm shifted production from Fab 25 to a foreign source within the relevant period, and subsequently imported directly competitive products to the U.S., contributing to layoffs at the subject plant.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Advanced Micro Devices (AMD), Fab 25, Austin, Texas, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Advanced Micro Devices (AMD), Lone Star Fab Division, Austin, Texas, who became totally or partially separated from employment on or after November 23, 2001, through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 9th day of July, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18822 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,880]

All Technologies, Inc., El Paso, T; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 12, 2000, applicable to workers of All Technologies, Inc., El Paso, Texas. The notice was published in the **Federal Register** on September 22, 2000 (65 FR 57386).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of desk top computers until the company closed in June, 2000.

New information shows that a worker was retained at the subject firm beyond the September 12, 2002 expiration date of the certification. This employee was engaged in employment related to the production of desk top computers until her termination on October 2, 2002.

Based on these findings, the Department is amending the certification to extend the September 12, 2002 expiration date for TA–W–37,880 to read October 2, 2002.

The intent of the Department's certification is to include all workers of All Technologies, Inc. who were adversely affected by increased imports.

The amended notice applicable to TA–W–37,880 is hereby issued as follows:

"All workers of All Technologies, Inc., El Paso, Texas, who became totally or partially separated from employment on or after August 21, 1999, through October 2, 2002, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 9th day of July, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18819 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,158]

Alcatel USA Marketing, Inc., Voice Network Division, PB3 Building, Jupiter 1 Building, Plano, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 7, 2003, applicable to workers of Alcatel USA Marketing, Inc., Voice Network Division (VND), PB3 Building, Plano, Texas, engaged in the production of printed circuit boards (PCBs). The notice was published in the **Federal Register** on March 26, 2003 (68 FR 17407).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm.

New information provided by the State agency representative and a company official, reveal that the overflow of PCB's manufactured at Alcatel USA Marketing, Inc., Voice Network Division, PB3 Building, are produced at the company's Jupiter 1 Building in Plano, Texas. Employment at Jupiter 1 has declined.

The intent of the Department's certification is to include all workers of the firm adversely affected by the shift in production of PCBs to Mexico.

Accordingly, the certification is being amended to include workers at Jupiter 1 Building engaged in employment related to the production of PCBs at Alcatel USA Marketing, Inc., Voice Network Division, Plano, Texas.

The amended notice applicable to TA–W–50,158 is hereby issued as follows:

Workers of Alcatel USA Marketing, Inc., Voice Network Division, PB3 Building, and Jupiter 1 Building, Plano, Texas, engaged in the production of printed circuit boards (PCBs), who became totally or partially separated from employment on or after November 19, 2001, through March 7, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 9th day of July, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18824 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,581]

American Standard, Inc., Trenton, NJ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 12, 2001, applicable to workers of American Standard, Inc. The notice was published in the **Federal Register** on April 16, 2001 (66 FR 19521).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of sanitary wares including bowls, toilets, pedestals, basins, lavatories, and combination toilets until the company closed at the end of 2001.

New information shows that workers were retained at the subject firm beyond the March 12, 2003 expiration date of the certification. These employees completed the close-down process until their termination on April 12, 2003. Based on these findings, the Department is amending the certification to extend the March 12, 2003 expiration date for TA–W–38,581 to read April 12, 2003.

The intent of the Department's certification is to include all workers of American Standard, Inc. who were adversely affected by increased imports.

The amended notice applicable to TA–W–38,581 is hereby issued as follows:

All workers of American Standard, Inc., Trenton, New Jersey, who became totally or partially separated from employment on or after January 10, 2000, through April 12, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 9th day of July 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18829 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,195]

APW, Creedmoor, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 1, 2003 in response to a worker petition filed a company official on behalf of workers at APW, Creedmoor, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 11th day of July, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18812 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,788]

ASF—Keystone, Inc., Alliance, Ohio; Notice of Termination of Certification

This notice terminates the Certification Regarding Eligibility to Apply for Worker Adjustment Assistance issued by the Department on January 22, 2002 for all workers of ASF—Keystone, Inc., Alliance, Ohio. The notice was published in the **Federal Register** on June 19, 2003 (68 FR 36847).

The Department, at the request of the State Agency, reviewed this certification for workers of the aforementioned group.

The certification review revealed that the petitioning group of workers is covered by an active certification (TA–W–39,744) issued on January 22, 2002.

Since the workers of ASF—Keystone, Inc., Alliance, Ohio are currently under certification, the investigation of TA–W–51,788 was conducted erroneously and the certification is thus invalid. Workers at ASF—Keystone, Inc., Alliance, Ohio continue to be eligible to apply for benefits of the TA–W–39,744 Trade Adjustment Assistance certification which remains in effect until January 22, 2004.

The certification issued under investigation TA–W–51,788 has been terminated.

Signed at Washington, DC, this 16th day of July, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18817 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,626]

Avaya Communications, Westminster, Colorado; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 9, 2003, in response to a worker petition filed by a State Agency Representative on behalf of workers at Avaya Communications, Westminster, Colorado.

The State Agency Representative has withdrawn the petition; thus, further investigation would serve no purpose and the investigation under this petition has been terminated.

Signed at Washington, DC, this 14th day of July, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18818 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,256]

Block Drug Co., a.k.a Glaxo Smith Kline, Jersey City, NJ, Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 9, 2003, in response to a petition filed on behalf of workers at Block Drug Co., a.k.a Glaxo Smith Kline, Jersey City, New Jersey.

The company official who filed the petition requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose and the investigation has been terminated.

Signed in Washington, DC this 11th day of July 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18810 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,114]

Cadmus Mack (CPS), East Stroudsburg, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application postmarked February 12, 2003, the Graphic Communications International Union (GCIU), Local 350C, requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on January 17, 2003, and published in the **Federal Register** on February 6, 2003 (68 FR 6211).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Cadmus Mack (CPS), East Stroudsburg, Pennsylvania was denied because the "contributed importantly" group eligibility requirement of section 222 of the Trade Act of 1974, was not met. Imports did not contribute importantly to the layoffs at the subject plant nor was there a shift in production to a foreign source.

The union asserts that the loss in business at the subject firm was directly attributable to competition with a Canadian competitor and its "dominance in the marketplace" is responsible for declines at the subject firm. Specifically, the union states that this Canadian firm has been the "largest commercial printer in the U.S. and Canada for four years in a row."

The original investigation established that layoffs and the closing of the East Stroudsberg facility were directly attributable to a transfer of production to a domestic affiliate. Further, sales and production declined minimally prior to the domestic shift.

In addition, a review of aggregate U.S. import data of newspapers, journals and periodicals for January through October 2002 declined in volume over the corresponding period of 2001.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 10th day of July, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18823 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,047]

CEMCO, Willits, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 16, 2003, in response to a worker petition filed by a company official on behalf of workers at CEMCO, Willits, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 14th day of July 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18814 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,108]

Custom Screens, Inc., Stoneville, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 20, 2003 in response to a petition filed by a company official on behalf of workers at Custom Screens, Inc., Stoneville, North Carolina.

The company official has requested that the investigation be terminated.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 10th day of July, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18813 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,028]

Cutler-Hammer, Inc., a Subsidiary of Eaton Corporation, Brooksville, FL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 13, 2003 in response to a petition filed by a company official on behalf of workers at Cutler-Hammer, Inc., a subsidiary of Eaton Corporation, Brooksville, Florida.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 9th day of July, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18816 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 4, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 4, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 14th day of July 2003.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

Appendix

Petitions Instituted Between 06/30/2003 and 07/03/2003

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
52,172	Garan Manufacturing (Comp)	Marksville, LA	06/30/2003	06/27/2003
52,173	Carr Lowrey (MD)	Baltimore, MD	06/30/2003	06/27/2003
52,174	Elkem Metals (PACE)	Alloy, WV	06/30/2003	06/25/2003
52,175	Froedtert Malt Co., Inc. (UAW)	Milwaukee, WI	06/30/2003	06/27/2003
52,176	Belmont Dyers (Wkrs)	Belmont, NC	06/30/2003	06/04/2003

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
52,177	Redman Knitting, Inc. (Comp)	Ridgewood, NY	06/30/2003	05/20/2003
52,178	Adobe Air., Inc. (Wkrs)	Phoenix, AZ	06/30/2003	06/24/2003
52,179	Jim Michel Logging, Inc. (Comp)	Baker City, OR	06/30/2003	06/27/2003
52,180	Stencil Aire, LLC (Wkrs)	Green Lake, WI	06/30/2003	06/27/2003
52,181	Electrical Wholesalers, Inc. (Comp)	Sumter, SC	06/30/2003	06/26/2003
52,182	Saint-Gobain Abrasives (Comp)	Brownsville, TX	06/30/2003	05/19/2003
52,183	Fishing Vessel (F/) Kristi Lynn (Comp)	Petersburg, AK	06/30/2003	06/26/2003
52,184	F/V Partisan (Comp)	Sitka, AK	07/01/2003	06/16/2003
52,185	F/V Flounder Flats (Comp)	Dillingham, AK	07/01/2003	06/06/2003
52,186	BASF Corporation (Wkrs)	Fenton, MO	07/01/2003	05/18/2003
52,187	General Electric (Comp)	Jonesboro, AR	07/01/2003	06/27/2003
52,188	Hewlett Packard (TX)	Cypress, TX	07/01/2003	06/25/2003
52,189	Oplink Communications (Wkrs)	San Jose, CA	07/01/2003	06/18/2003
52,190	Stearns, Inc. (Wkrs)	Grey Eagle, MN	07/01/2003	06/24/2003
52,191	Image Metal Works (Comp)	Milton Freewate, OR	07/01/2003	06/30/2003
52,192	Polymark Corporation (ITW)	Cincinnati, OH	07/01/2003	06/27/2003
52,193	Planar Systems, Inc. (Wkrs)	Hillsboro, OR	07/01/2003	06/23/2003
52,194	Cascades Diamond, Inc. (PACE)	Thorndike, MA	07/01/2003	06/24/2003
52,195	APW (Comp)	Creedmoor, NC	07/01/2003	06/30/2003
52,196	Emerson Motor Company (Wkrs)	Humboldt, TN	07/01/2003	06/25/2003
52,197	Specialty Mode, Inc. (Wkrs)	Jacksonville, NC	07/01/2003	05/19/2003
52,198	Agere Systems (IBEW)	Allentown, PA	07/01/2003	06/02/2003
52,199	Cirrus Logic (Comp)	Austin, TX	07/01/2003	06/27/2003
52,200	Ladd Furniture, Lea Industries div. (Comp)	Morristown, TN	07/01/2003	06/27/2003
52,201	Meridian Beartrack Company (Comp)	Salmon, ID	07/01/2003	06/16/2003
52,202	Lexel (Wkrs)	Hutsonville, IL	07/01/2003	06/23/2003
52,203	Dresser, Inc. (Comp)	Berea, KY	07/01/2003	07/01/2003
52,204	Ericsson (Comp)	Lynchburg, VA	07/01/2003	06/27/2003
52,205	Kimball (Comp)	Boise, ID	07/01/2003	06/26/2003
52,206	Say Cheese (Wkrs)	Lewiston, ME	07/01/2003	06/26/2003
52,207	F/V Selah (Comp)	Haines, AK	07/02/2003	06/26/2003
52,208	Neuville Industries, Inc. (Comp)	Athens, TN	07/02/2003	07/01/2003
52,209	H. Warshow & Sons, Inc. (Comp)	Milton, PA	07/02/2003	07/01/2003
52,210	Woodgrain Millwork (Comp)	White City, OR	07/02/2003	07/01/2003
52,211	Heraeus Quartztech, Inc. (Comp)	Fairfield, NJ	07/02/2003	06/30/2003
52,212	OBG Distribution LLC (UFCW)	Gainesboro, TN	07/02/2003	06/30/2003
52,213	Hoover Company (The) (IBEW)	North Canton, OH	07/02/2003	06/25/2003
52,214	ITT Industries (Comp)	Searcy, AR	07/02/2003	06/22/2003
52,215	B-Line Systems (Wkrs)	Portland, OR	07/02/2003	06/26/2003
52,216	Scope Molding LLC (Wkrs)	Almena, WI	07/02/2003	07/01/2003
52,217	Modular Mining Systems, Inc. (Wkrs)	Tucson, AZ	07/02/2003	07/01/2003
52,218	Giddings and Lewis (Comp)	Fond du Lac, WI	07/02/2003	06/26/2003
52,219	Geo-Form, Inc. (Comp)	Girard, PA	07/02/2003	06/20/2003
52,220	Nickell Molding Company (AR)	Malvern, AR	07/02/2003	06/30/2003
52,221	Motorola (Wkrs)	Mesa, AZ	07/02/2003	06/30/2003
52,222	O'Neill and Sons, Inc. (IBT)	Tumwater, WA	07/03/2003	07/02/2003
52,223	O'Neill Transportation, L.L.C. (IBT)	Tumwater, WA	07/03/2003	07/02/2003
52,224	VF Imagewear (Comp)	Brownsville, TX	07/03/2003	07/02/2003
52,225	Sanmina-SCI (Comp)	Stanton, KY	07/03/2003	05/12/2003
52,226	Yorkshire Americas, Inc. (Comp)	Charlotte, NC	07/03/2003	07/02/2003
52,227	Vestshell Vermont, Inc. (Comp)	St. Albans, VT	07/03/2003	07/03/2003
52,228	Harbison-Walker Refractories Co. (Comp)	Ludington, MI	07/03/2003	07/03/2003
52,229	Motorola (Wkrs)	Fort Worth, TX	07/03/2003	06/13/2003
52,230	Faribault Woolen Mill (Wkrs)	Faribault, MN	07/03/2003	02/14/2003
52,231	Salisbury Sportswear (Wkrs)	Salisbury, PA	07/03/2003	07/02/2003
52,232	Schas Industries, LLC (Comp)	Wilkesboro, NC	07/03/2003	06/27/2003
52,233	F/V Western Queen (Comp)	Southeast, AK	07/03/2003	07/01/2003

[FR Doc. 03–18805 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,402]

Geiger Bros, Inc., Lewiston, ME; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 16, 2003, applicable to all workers of Geiger Bros, Inc. located in Lewiston, Maine. The notice was published in the **Federal Register** on May 1, 2003 (68 FR 23323).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce diaries, day planners and calendars.

New information provided by a State agency representative and a company official shows that workers producing diaries, day planners and calendars are not separately identifiable among those products but are separately identifiable from workers in other divisions at the Lewiston, Maine plant.

Accordingly, the certification is being limited to the workers of Geiger Bros, Inc., Lewiston, Maine, engaged in employment related to the production of diaries, day planners and calendars, not all workers of the firm.

The amended notice applicable to TA–W–51,402 is hereby issued as follows:

Workers of Geiger Bros, Inc., Lewiston, Maine, engaged in employment related to the production of diaries, day planners and calendars, who became totally or partially separated from employment on or after March 31, 2002, through April 16, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 9th day of July, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18826 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,281]

Honeywell, Incorporated Advanced Circuits Division Including Leased Workers of TekSystems, Minnetonka, MN; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 13, 2002, applicable to workers of Honeywell, Incorporated, Advanced Circuits Division, Minnetonka, Minnesota. The notice was published in the **Federal Register** on February 28, 2002 (67 FR 9327).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. Information provided by the company shows that leased workers of TekSystems were employed at Honeywell, Incorporated, Advanced Circuits Division, were engaged in employment related to the production of multilayer printed circuit boards at the Minnetonka, Minnesota location of the subject firm.

Based on these findings, the Department is amending the certification to include leased workers of TekSystems employed at Honeywell, Incorporated, Advanced Circuits Division, Minnetonka, Minnesota.

The intent of the Department's certification is to include all workers of Honeywell, Incorporated, Advanced Circuits Division, who were adversely affected by increased imports.

The amended notice applicable to TA–W–39,281 is hereby issued as follows:

All workers of Honeywell, Incorporated, Advanced Circuits Division, Minnetonka, Minnesota, and leased workers of TekSystems engaged in employment related to production of multilayer printed circuit boards working at Honeywell, Incorporated, Advanced Circuits Division, Minnetonka, Minnesota, who became totally or partially separated from employment on or after May 7, 2000, through February 13, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 9th day of July 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance..

[FR Doc. 03–18828 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 4, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 4, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 16th day of July 2003.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

Appendix

Petitions Instituted Between 07/08/2003 and 07/11/2003

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
52,234	Kellwood Company (Comp)	Calhoun City, MS.	07/08/2003	06/26/2003
52,235	Honeywell Nylon, Inc. (Comp)	Anderson, SC	07/08/2003	07/07/2003
52,236	International Wire (Wkrs)	Kendallville, IN.	07/08/2003	07/02/2003
52,237	Alstom Power, Inc. (IBB)	Chattanooga, TN.	07/08/2003	07/03/2003

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
52,238	PCS Administration (USA), Inc. (Wkrs)	North Brook, IL.	07/08/2003	07/04/2003
52,239	Titan Tire Corp (USWA)	Des Moines, IA.	07/08/2003	06/24/2003
52,240	LTD Industries, Inc. (Comp)	Lewistown, IL	07/08/2003	06/30/2003
52,241	Research Seeds, Inc. (Comp)	St. Joseph, MO.	07/08/2003	07/03/2003
52,242	Louisiana Pacific Corp. (Comp)	Belgrade, MT	07/08/2003	07/07/2003
52,243	Nestle Purina Pet Food (Wkrs)	St. Joseph, MO.	07/08/2003	07/01/2003
52,244	Schneider Electric—Square D (Comp)	Cedar Rapids, IA.	07/08/2003	07/02/2003
52,245	Thomasville Furniture Industries, Inc. (C	Winston Salem, NC.	07/08/2003	07/03/2003
52,246	U.S. Data Source (CA)	Rancho Cucamong, CA.	07/08/2003	07/07/2003
52,247	Mackie Designs, Inc. (Comp)	Woodinville, WA.	07/08/2003	07/02/2003
52,248	Fibergrate Composite Structures, Inc. (W	Piney Flats, TN.	07/08/2003	07/01/2003
52,249	Paul Schurman Machine, Inc. (Comp)	Ridgefield, WA.	07/08/2003	07/07/2003
52,250	Hi-Tech Plastics, Inc. (Comp)	Cambridge, MD.	07/08/2003	06/27/2003
52,251	Waukesha Cherry Burrell—SPX (WI)	Delevan, WI	07/08/2003	07/08/2003
52,252	Richmond Management LLC (Comp)	Talbott, TN	07/08/2003	07/03/2003
52,253	Scope Molding, LLC (Wkrs)	Almena, WI	07/09/2003	07/01/2003
52,254	Alexander Fabircs (Wkrs)	Burlington, NC.	07/09/2003	07/01/2003
52,255	Solectron Technology (Comp.)	Charlotte, NC	07/09/2003	07/01/2003
52,256	Telco Systems, a BATM Co. (MA)	Foxboro, MA	07/09/2003	07/08/2003
52,257	Stoneville Furniture Co., Inc. (Comp)	Stoneville, NC.	07/09/2003	07/09/2003
52,258	Block Drug Co. (Comp)	Jersey City, NJ.	07/09/2003	07/27/2003
52,259	Bindery, Inc., (The) (MN)	Cambridge, MN.	07/09/2003	07/08/2003
52,260	Rockwell Automation (Comp)	Mequon, WI	07/10/2003	07/08/2003
52,261	Cummings Fisheries (Comp)	Dillingham, AK.	07/10/2003	07/10/2003
52,262	Sierra Pine Ltd. (Comp)	Springfield, OR.	07/10/2003	07/10/2003
52,263	Trelleborg Automotive (Comp)	Logansport, IN.	07/10/2003	07/10/2003
52,264	Springs Industries, Inc. (Comp)	Lyman, SC	07/10/2003	07/10/2003
52,265	Gasboy International LLC (Comp)	Lansdale, PA	07/10/2003	07/10/2003
52,266	Dana Corporation (Comp)	Crenshaw, MS.	07/10/2003	07/10/2003
52,267	Ken-Bar Manufacturing (Comp)	Baldwin, GA	07/10/2003	07/10/2003
52,268	California Cedar Products (Comp)	McCloud, CA	07/10/2003	07/10/2003
52,269	L.A. Darling Co. (Comp)	Paragould, AR.	07/10/2003	07/10/2003
52,270	LM Services LLC (Comp)	Cumberland, MD.	07/10/2003	07/10/2003
52,271	Kerr McGee Chemical (Comp)	Theodore, AL	07/10/2003	07/10/2003
52,272	Cooper Bussmann (Comp)	Black Mountain, NC.	07/10/2003	07/10/2003
52,273	Rapidigm (Comp)	Pittsburgh, PA.	07/10/2003	07/10/2003
52,274	Thomson Incorporated (Comp)	Circleville, OH.	07/10/2003	07/10/2003
52,275	Cordis Corp. (Comp)	Miami Lakes, FL.	07/10/2003	07/10/2003
52,276	Bureau of Engraving, Inc. (Comp)	Minneapolis, MN.	07/10/2003	07/10/2003
52,277	Hubbell Electrical Products (Comp)	Louisiana, MO.	07/10/2003	07/10/2003
52,278	Brandt, A Varco Company (Comp)	Oklahoma City, OK.	07/10/2003	07/10/2003
52,279	Jacuzz Bros (Comp)	Little Rock, AR.	07/11/2003	07/09/2003
52,280	Stone County Ironworks (Comp)	Mountain View, AR.	07/11/2003	07/09/2003

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
52,281	Tiffany Industries (Comp)	Conway, AR	07/11/2003	07/09/2003
52,282	Joe A. Craig (Comp)	Elfin Cove, AK.	07/11/2003	07/08/2003
52,283	Peregrine's Catch (Comp)	Haines, AK	07/11/2003	07/08/2003
52,284	Fisher Pierce (Comp)	Weymouth, MA.	07/11/2003	07/09/2003
52,285	Kinko's Inc. (Comp)	Mission, KS	07/11/2003	07/10/2003
52,286	L. A. Darling (Comp)	Piggot, AR	07/11/2003	07/09/2003
52,287	Vesuvius USA (Comp)	Cleveland, OH.	07/11/2003	07/08/2003
52,288	Pliana, Inc. (Comp)	Charlotte, NC	07/11/2003	06/30/2003
52,289	Phillips Plastic Medical Molding (Comp)	Menomonie, WI.	07/11/2003	07/08/2003
52,290	Ace Supply, Inc. (Comp)	Richmond, IN	07/11/2003	07/11/2003
52,291	Sterling China Co. (Comp)	Wellsville, OH	07/11/2003	07/11/2003
52,292	Manning Lighting (Comp)	Sheboygan, WI.	07/11/2003	07/11/2003
52,293	Hilti (Comp)	Tulsa, OK	07/11/2003	07/09/2003
52,294	Richardson Brothers Furniture Co. (Comp)	Sheboygan Falls, WI.	07/11/2003	07/09/2003
52,295	Breed Steering Systems (Comp)	Brownsville, TX.	07/11/2003	07/11/2003
52,296	L. A. Darling Co. (Comp)	Paragould, AR.	07/11/2003	07/03/2003

[FR Doc. 03–18804 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,241]

Research Seeds, Inc., a Subsidiary of Land O'Lakes, St. Joseph, MO; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 8, 2003 in response to a petition filed by a company official on behalf of workers at Research Seeds, Inc., a subsidiary of Land O'Lakes, St. Joseph, Missouri.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 15th day of July, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18811 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,274]

RFD Publications, LLC, including Leased Workers of Sirius, Wilsonville, OR; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 23, 2003, applicable to workers of RFD Publications, LLC, Wilsonville, Oregon. The notice was published in the **Federal Register** on May 7, 2003 (68 FR 24504).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of advertising inserts/flyers until the company closed in April 2003.

Information shows that RFD Publications, LLC, leased workers of Sirius that were engaged in employment related to the production of advertising inserts/flyers at the Wilsonville, Oregon plant.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of RFD Publications, LLC, who were adversely affected by increased imports.

The amended notice applicable to TA-W–51,274 is hereby issued as follows:

All workers of RFD Publications, LLC, Wilsonville, Oregon, and leased workers of Sirius engaged in employment related to the production of advertising inserts/flyers at RFD Publications, LLC, Wilsonville, Oregon, who became totally or partially separated from employment on or after March 19, 2002, through April 23, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 9th day of July, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18825 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,031]

Swing-N-Slide, Janesville, WI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 13, 2003, in response to a worker petition filed by a company official on behalf of workers at Swing-N-Slide, Janesville, Wisconsin.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 14th day of July, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18815 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,915]

TechBooks, York, PA; Notice of Revised Determination on Reconsideration

By application of May 7, 2003, a petitioner requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on March 31, 2003, based on the finding that the petitioning workers did not produce an article within the meaning of section 222(3) of the Act. The denial notice was published in the **Federal Register** on April 11, 2003 (68 FR 17831).

To support the request for reconsideration, the petitioner supplied additional information to supplement that which was gathered during the initial investigation. Upon further review, including an examination of the materials provided by the petitioner, it was established that the petitioning workers did produce a product.

In addition, it was revealed that the company shifted pre-press produced by the subject firm workers to a foreign source, and shipped the product back to the United States during the relevant period.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at TechBooks, York, Pennsylvania, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of TechBooks, York, Pennsylvania, who became totally or partially separated from employment on or after February 11, 2002 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 11th day of July, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18820 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,599]

Teksystems Workers Employed at Honeywell, Incorporated Advanced Circuits Division, Minnetonka, MN, Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 6, 2003 in response to a worker petition which was filed on behalf of workers at TekSystems employed at Honeywell, Incorporated, Advanced Circuits Division, Minnetonka, Minnesota.

An active certification covering the petitioning group of workers is already in effect (TA–W–39,281, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 9th day of July 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18827 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,468]

Textron, Cushman, Inc., Lincoln, NE; Notice of Revised Determination on Reconsideration

By letter postmarked March 26, 2003, the Paper, Allied-Industrial, Chemical and Energy International Workers Union, Local 5–0907, requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on February 3, 2003, based on the finding that imports of mini trucks, three wheel scooters, turf care application products, etc., did not contribute importantly to worker separations at the subject plant. The denial notice was published in the **Federal Register** on February 24, 2003 (68 FR 8619).

To support the request for reconsideration, the union supplied additional information to supplement that which was gathered during the initial investigation.

Upon further review and contact with the company, it was revealed that the company increased their imports of components competitive with those produced by the subject firm during the relevant period, contributing to the layoffs at the subject firm. The workers are not separately identifiable by product line.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Textron, Cushman, Inc., Lincoln, Nebraska, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Textron, Cushman, Inc., Lincoln, Nebraska, who became totally or partially separated from employment on or after December 30, 2001 through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 16th day of July, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–18821 Filed 7–23–03; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Renewal of Advisory Committee on Preservation

This notice is published in accordance with the provisions of section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App.) and advises of the renewal of the National Archives and Records Administration's (NARA) Advisory Committee on Preservation for a two-year period. In accordance with the Office of Management and Budget (OMB) Circular A–135, OMB has approved the inclusion of the Advisory Committee on Preservation in NARA's ceiling of discretionary advisory committees.

The Archivist of the United States has determined that the renewal of the Advisory Committee on Preservation is in the public interest due to the expertise and valuable advice the committee members provide on technical preservation issues affecting Federal records of all types of media. NARA uses the Committee's recommendations in NARA's implementation of strategies for preserving the permanently valuable records of the Federal government.

Dated: July 18, 2003.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 03–18806 Filed 7–23–03; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–315]

Indiana Michigan Power Company, Donald C. Cook Nuclear Plant, Unit 1; Exemption

1.0 Background

Indiana Michigan Power Company (the licensee) is the holder of Facility Operating License No. DPR–58 which authorizes operation of the Donald C. Cook (D.C. Cook) Nuclear Plant, Unit 1. The licensee provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a pressurized water reactor located in Stevensville, Michigan.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR), part 50, Appendix G requires that pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, Appendix G to 10 CFR part 50 states that "[t]he appropriate requirements on * * * the pressure-temperature limits and minimum permissible temperature must be met for all conditions." Further, Appendix G of 10 CFR part 50 specifies that the requirements for these limits are based on the application of evaluation procedures given in Appendix G to section XI of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (Code). In this exemption, consistent with the current provisions of 10 CFR 50.55(a), all references to the ASME Code denote the 1995 Edition through the 1996 Addenda of the ASME Code.

In order to address provisions of amendments to the D.C. Cook, Unit 1, Technical Specification (TS) P-T limit curves, the licensee requested in its submittal dated December 10, 2002, that the NRC staff exempt D.C. Cook, Unit 1, from application of specific requirements of Appendix G to 10 CFR part 50, and substitute the use of ASME Code Case N–641. ASME Code Case N–641 permits the use of an alternate reference fracture toughness curve for RPV materials and permits the postulation of a circumferentially-oriented flaw for the evaluation of circumferential RPV welds when determining the P–T limits. The proposed exemption request is consistent with, and is needed to support, the D.C. Cook, Unit 1, TS amendment that was contained in the same submittal. The proposed D.C. Cook, Unit 1, TS amendment will revise the P–T limits for heatup, cooldown, and inservice test limitations for the reactor coolant system (RCS) through 32 effective full power years of operation.

Code Case N–641

The licensee has proposed an exemption to allow the use of ASME Code Case N–641 in conjunction with Appendix G to ASME section XI, 10 CFR 50.60(a) and 10 CFR part 50, Appendix G, to establish the P–T limits for the D.C. Cook, Unit 1 RPV.

The proposed TS amendment to revise the P–T limits for D.C. Cook, Unit 1, relies in part, on the requested exemption. These revised P–T limits have been developed using the lower bound K_{IC} fracture toughness curve shown in ASME section XI, Appendix A, Figure A–2200–1, in lieu of the lower bound K_{IA} fracture toughness curve of ASME section XI, Appendix G, Figure G–2210–1, as the basis fracture toughness curve for defining the D.C. Cook Unit 1 P–T limits. In addition, the revised P–T limits have been developed based on the use of a postulated circumferentially-oriented flaw for the evaluation of RPV circumferential welds in lieu of the axially-oriented flaw which would be required by Appendix G to section XI of the ASME Code. The other margins involved with the ASME section XI, Appendix G process of determining P–T limit curves remain unchanged.

Use of the K_{IC} curve as the basis fracture toughness curve for the development of P–T operating limits is more technically correct than use of the K_{IA} curve. The K_{IC} curve appropriately implements the use of a relationship based on static initiation fracture toughness behavior to evaluate the controlled heatup and cooldown process of a RPV, whereas the K_{IA} fracture toughness curve codified into Appendix G to section XI of the ASME Code was developed from more conservative crack arrest and dynamic fracture toughness test data. The application of the K_{IA} fracture toughness curve was initially codified in Appendix G to section XI of the ASME Code in 1974 to provide a conservative representation of RPV material fracture toughness. This initial conservatism was necessary due to the limited knowledge of RPV material behavior in 1974. However, additional information has been gained about RPV materials which demonstrates that the lower bound on fracture toughness provided by the K_{IA} fracture toughness curve is well beyond the margin of safety required to protect the public health and safety from potential RPV failure.

Likewise, the use of a postulated circumferentially-oriented flaw in lieu of an axially-oriented one for the evaluation of a circumferential RPV weld is more technically correct. The flaw size required to be postulated for P–T limit determination has a depth of one-quarter of the RPV wall thickness and a length six times the depth. Based on the direction of welding during the fabrication process, the only technically reasonable orientation for such a large flaw is for the plane of the flaw to be circumferentially-oriented (*i.e.*, parallel to the direction of welding). Prior to the development of ASME Code Case N–641 (and the similar ASME Code Case N–588), the required postulation of an axially-oriented flaw for the evaluation of a circumferential RPV weld provided an additional, unnecessary level of conservatism to the overall evaluation.

In addition, P–T limit curves based on the K_{IC} fracture toughness curve and postulation of a circumferentially-oriented flaw for the evaluation of RPV circumferential welds will enhance overall plant safety by opening the P–T operating window with the greatest safety benefit in the region of low temperature operations. The operating window through which the operator heats up and cools down the RCS, is determined by the difference between the maximum allowable pressure determined by Appendix G of ASME section XI, and the minimum required pressure for the reactor coolant pump seals adjusted for instrument uncertainties. A narrow operating window could potentially have an adverse safety impact by increasing the possibility of inadvertent overpressure protection system actuation due to pressure surges associated with normal

plant evolutions such as RCS pump starts and swapping operating charging pumps with the RCS in a water-solid condition.

Since application of ASME Code Case N–641 provides appropriate procedures to establish maximum postulated defects and to evaluate those defects in the context of establishing RPV P–T limits, this application of the Code Case maintains an adequate margin of safety for protecting RPV materials from brittle failure. Therefore, the licensee concluded that these considerations were special circumstances pursuant to 10 CFR 50.12(a)(2)(ii), "[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule."

In summary, the ASME section XI, Appendix G, procedure was conservatively developed based on the level of knowledge existing in 1974 concerning reactor coolant pressure boundary materials and the estimated effects of operation. Since 1974, the level of knowledge about the fracture mechanics behavior of RCS materials has been greatly expanded, especially regarding the effects of radiation embrittlement and the understanding of fracture toughness properties under static and dynamic loading conditions. The NRC staff concurs that this increased knowledge permits relaxation of the ASME section XI, Appendix G requirements by application of ASME Code Case N–641, while maintaining, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the ASME Code and the NRC regulations to ensure an acceptable margin of safety against brittle failure of the RPV.

The NRC staff has reviewed the exemption request submitted by the licensee and has concluded that an exemption should be granted to permit the licensee to utilize the provisions of ASME Code Case N–641 for the purpose of developing D.C. Cook, Unit 1, RPV P–T limit curves.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present.

Special circumstances, pursuant to 10 CFR 50.12(a)(2)(ii), are present in that continued operation of D.C. Cook, Unit 1, with the P–T curves developed in accordance with ASME section XI, Appendix G, without the relief provided by ASME Code Case N–641 is not necessary to achieve the underlying purpose of Appendix G to 10 CFR part 50. The underlying purpose of the regulations in Appendix G to 10 CFR part 50 is to provide an acceptable margin of safety against brittle failure of the RCS during any condition of normal operation to which the pressure boundary may be subjected over its service lifetime. Application of ASME Code Case N–641 in lieu of the requirements of ASME Code section XI, Appendix G provides an acceptable alternative methodology which will continue to meet the underlying purpose of Appendix G to 10 CFR part 50.

The NRC staff examined the licensee's rationale to support the exemption request, and agrees within the licensee's determination that an exemption would be required to approve the use of Code Case N–641. The NRC staff agrees that the use of ASME Code Case N–641 would meet the underlying intent of Appendix G to 10 CFR part 50. The NRC staff concludes that the application of the technical provisions of ASME Code Case N–641 provides sufficient margin in the development of RPV P–T limit curves such that the underlying purpose of the regulations (Appendix G to 10 CFR part 50) continue to be met so that the use of all provisions in Appendix G to section XI of the ASME Code are not necessary. Therefore, the NRC staff concludes that the exemption requested by the licensee is justified based on the special circumstances of 10 CFR part 50(a)(2)(ii), "[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule."

Based upon a consideration of the conservatism that is explicitly incorporated into the methodologies of Appendix G to 10 CFR part 50; Appendix G to section XI of the ASME Code; and Regulatory Guide 1.99, Revision 2; the staff concludes that application of ASME Code Case N–641 as described would provide an adequate margin of safety against brittle failure of the RPV. This is also consistent with the determination that the staff has reached for other licensees under similar conditions based on the same considerations. Therefore, the NRC staff concludes that requesting the exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) is appropriate, and that the methodology of Code Case N–641 may be used to revise the P–T limits for the D.C. Cook, Unit 1, RPV.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants the licensee an exemption from the requirements of 10 CFR 50.60 and 10 CFR part 50, Appendix G, to allow application of ASME Code Case N–641 in establishing TS requirements for the reactor vessel pressure limits at low temperatures for D.C. Cook, Unit 1.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (68 FR 42137).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 18th day of July 2003.

For The Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–18842 Filed 7–23–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–498 and 50–499]

STP Nuclear Operating Company; South Texas Project, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses No. NPF–76 and NPF–80, issued to STP Nuclear Operating Company* (STPNOC) acting on behalf of itself and for Texas Genco, LP, the City Public Service Board of San Antonio (CPS), Central Power and Light Company (CPL), and the City of Austin, Texas (COA) (the licensees), dated March 31, 2003, (the licensee), for operation of the South Texas Project, Units 1 and 2 located in Matagorda County, Texas. Therefore, as required by

* STP Nuclear Operating Company is authorized to act for Texas Genco, LP, the City Public Service Board of San Antonio, Central Power and Light Company, and the City of Austin, Texas, and has exclusive responsibility and control over the physical construction, operation, and maintenance of the facility.

Section 10 CFR 51.21 of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50, the Commission is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise Facility Operating Licenses No. NPF–76 and NPF–80, replacing "Central Power and Light Company (CPL)" with "AEP Texas Central Company" throughout the Operating License of each unit.

The proposed action is in accordance with the licensee's application dated March 31, 2003.

The Need for the Proposed Action

The application was submitted by STPNOC, acting on behalf of itself and for Texas Genco, LP, the City Public Service Board of San Antonio, Central Power and Light Company, and the City of Austin, Texas. The amendments change the operating license to reflect a change in the name of "Central Power and Light Company (CPL)," a licensed co-owner of the facility, to "AEP Texas Central Company (AEP)," effective December 23, 2002.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and changes to the licenses. We agree with the licensee that the name change will not impact the existing ownership of South Texas Project, Units 1 and 2 or the existing entitlement to power and will not alter the existing antitrust license conditions applicable to STPNOC's ability to comply with these conditions or with any of its other obligations or responsibilities. As stated by the licensee, "With the exception of this name change, this transaction does not in any way affect the qualifications of AEP Texas Central Company for ownership of 25.2% [percent] of South Texas Project Electric Generating Station Units 1 and 2 (STPEGS), nor does it involve any direct or indirect transfer of control of the STPEGS Operating Licenses." Therefore, the change will not increase the probability or consequences of accidents, no changes are being made in the types or amounts of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the South Texas Project, Units 1 and 2.

Agencies and Persons Consulted

On July 15, 2003, the staff consulted with the Texas State official, Arthur Tate of the Division of Compliance and Inspection, Texas Department of Health, Bureau of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's application dated March 31, 2003. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail at *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 18th day of July, 2003.

For the Nuclear Regulatory Commission.

Robert A. Gramm,

Chief, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–18844 Filed 7–23–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Workshop on Issues Related to the Level of Programmatic Information Needed in a Combined License Application; Submitted in Accordance With 10 CFR Part 52

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of August 25, 2003, public workshop.

SUMMARY: The Nuclear Regulatory Commission (NRC) is holding a workshop on August 25, 2003, on issues related to the level of programmatic information that would be needed in order to issue a combined license (COL) in accordance with the requirements of Title 10 of the Code of Federal Regulations Part 52, Subpart C without inspections, tests, analyses, and acceptance criteria (ITAAC) for any particular program. The NRC staff has developed a draft proposal titled, "Use of Fire Protection as an Example Program to Discuss Programmatic Inspections, Tests, Analyses, and Acceptance Criteria," to address this issue. The NRC staff has scheduled the public workshop to discuss the issue and to solicit stakeholder comments on the staff's draft proposal. This workshop will be transcribed. To allow for timely registration on the day of the meeting, it is recommended that guests preregister for the workshop. To preregister for the workshop, contact Mr. Joseph Sebrosky (information provided below) and provide the following information: name, organization, phone number, and country of citizenship.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph M. Sebrosky, New, Research and Test Reactors Program, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Mr. Sebrosky may be reached by phone at 301–415–1132 or by e-mail at

jms3@nrc.gov. Questions on the public meeting process should be directed to Mr. Chip Cameron; e-mail: *fxc@nrc.gov*, telephone: 301–415–1642; Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

DATES: The workshop will be held on August 25, 2003, from 1 p.m. to 4:30 p.m. Comments on the NRC staff's draft proposal should be submitted by September 15, 2003. Comments received after the due date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: The workshop will be held at the Nuclear Regulatory Commission offices in the Two White Flint North Auditorium, 11545 Rockville Pike, Rockville, Maryland.

The NRC staff's draft proposal to use fire protection as an example program to discuss programmatic ITAAC is available for public inspection in the Agencywide Document Access and Management System (ADAMS) in the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike, Public File Area O1 F21, Rockville, Maryland. The information is also available electronically from the Publicly Available Records (PARS) component of ADAMS (ADAMS # ML031820084). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room). For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 202–634–3273 or by e-mail to *pdr@nrc.gov*. In addition, the draft proposal and additional associated documentation can be found on NRC's Web site under the combined license discussion on the following Web page: *http://www.nrc.gov/reactors/new-licensing/licensing-process.html*.

Written comments on the draft proposal should be sent to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop T6–D59, Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Comments may be submitted electronically by the Internet to the NRC at *nrcrep@nrc.gov*. All comments received by the Commission, including those made by Federal, State, and local agencies, Indian tribes, or other interested persons, will be made available electronically at the Commission's PDR in Rockville, Maryland or from the PARS component of NRC's document system (ADAMS).

SUPPLEMENTARY INFORMATION: In 1989, the NRC established new alternatives for nuclear plant licensing under Title 10 of the Code of Federal Regulations (10 CFR) Part 52, which describes, among other things, a process for issuing a combined construction and operating license, or combined license (COL). A COL authorizes construction and, with conditions, operation of a nuclear power plant. A COL application must describe the conditions (the ITAAC) that are necessary to ensure that the plant has been properly constructed and will operate safely. After issuing a COL, the NRC verifies that the licensee has completed the required ITAAC before the plant can operate. The NRC publishes notices of the successful completion of the ITAAC. Then, at least 180 days before the scheduled date for initial loading of nuclear fuel into the reactor, the NRC publishes a notice of intended operation. The notice will provide that any person whose interest may be affected by operation of the plant may request the Commission to hold a hearing on whether the facility complies, or on completion will comply with the acceptance criteria in the COL. A request for a hearing must demonstrate that the licensee has not met or will not meet the acceptance criteria in the COL.

The principle issue to be discussed at the workshop is the staff's draft proposal that categorizes operational programs such as emergency planning and training into those that will likely require ITAAC, those that may or may not require ITAAC (depending on the level of information available at the COL stage), and those that will be unlikely to require ITAAC. The staff would also like to discuss its proposal relative to the level of information needed for operational programs such as fire protection in order to issue a COL without ITAAC for any particular program.

In SECY–02–0067, "Inspections, Tests, Analyses, and Acceptance Criteria for Operational Programs (Programmatic ITAAC)," the staff requested Commission approval for its position that COLs for a nuclear power plant submitted in accordance with the requirements of 10 CFR Part 52 Subpart C contain ITAAC for operational programs required by regulations such as training and emergency planning (ADAMS Accession Number ML020700641). The Commission disapproved the staff's position in a September 11, 2002, staff requirements memorandum (SRM) (ADAMS Accession Number ML022540755). The Commission approved a much more limited use of programmatic ITAAC than that proposed by the staff. The Commission directed the staff to resolve the maximum number of programmatic issues prior to issuing a COL. The Commission also directed the staff to develop appropriate guidelines to support the submission of necessary and sufficient information on programs in COL applications and clarify when programs beyond emergency planning, if any, call for or are likely to call for ITAAC in the COL application.

In a public meeting on May 22, 2003, the NRC staff discussed a response to the SRM including a discussion of the following option. A draft standard review plan Section 14.3 Appendix E, "Programmatic ITAAC" would be developed for guidance. The staff stated that it was considering categorizing the 14 programs that it listed in SECY–02–0067 in the following manner as part of this guidance:

Category A: Programmatic ITAAC are required. A program that falls into this category is emergency planning.

Category B: Programmatic ITAAC are not necessary because hardware-related ITAAC address the results to which the program is directed. Examples of programs that may fall into this category are equipment qualification, quality assurance, and containment leak rate testing.

Category C: An ITAAC for a program or elements of the program is not necessary because the program and its implementation can be fully described [1] in the application and found to be acceptable at the COL stage.[2]

Category D: An ITAAC for a program or elements of the program is necessary because the program and its implementation cannot be fully described[1] in the application. That is, the COL applicant cannot provide the necessary and sufficient programmatic information for approval of the COL without ITAAC.[2]

Category E: An ITAAC for a program is not necessary because ITAAC will be dispositioned prior to fuel load and the program is not required to be implemented until after fuel load. Examples of programs that may fall into this category include the inservice inspection and inservice testing programs, and the maintenance rule program.

Subsequent to the May 22, 2003, meeting the NRC staff developed a proposal to use the fire protection program as an example program to illustrate the level of detail needed to determine if programmatic ITAAC are necessary. The fire protection program was chosen because it could fall into Category C or D above depending on the information provided at the time of a COL application.

During the workshop the following topics will be discussed:

- Is the categorization of the 14 programs listed in SECY–02–0067 appropriate?

—Are there programs that are missing from the list?

—Should any of the programs be placed in different categories?

- The NRC staff would like to discuss the programs that fall into Categories C and D. The NRC staff's proposal uses the fire protection program for the AP600 standard nuclear reactor design and the Callaway Plant as a starting point to develop guidelines for the level of programmatic information that would be needed in order to issue a COL without ITAAC for that program. Is the level of detail contained in the staff's proposal appropriate?

A specific agenda for the workshop will be developed and made available prior to the meeting. To assure a diversity of viewpoints, the NRC is inviting stakeholders from the nuclear power industry, representatives from citizens groups, and State agencies, to sit in a roundtable discussion. Although the focus of the meeting will be on the roundtable discussion, there will be opportunities for members of the audience to offer comments and ask questions. Questions related to the staff's draft proposal should be directed to Joseph Sebrosky. Questions related to the public meeting process should be directed to Mr. Chip Cameron. Mr. Sebrosky's and Mr. Cameron's contact information is provided above.

Dated at Rockville, Maryland, this 18th day of July, 2003.

For The Nuclear Regulatory Commission.

James E. Lyons,

Program Director, New, Research and Test Reactors Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–18843 Filed 7–23–03; 8:45 am]

BILLING CODE 7590–01–P

[1] A principal issue for these categories is what constitutes a "fully described" program.

[2] The following programs may fall into Category C or D depending on the information provided at the time of the COL: fire protection, radiation protection, security, fitness for duty, training, access authorization, reportability, licensed operator training.

NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication Method For Estimating Effective Dose Equivalent From External Radiation Sources Using Two Dosimeters

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to issue a Regulatory Issue Summary (RIS) which approves and provides guidance on a two dosimeter monitoring method that can be used by licensees for estimating effective dose equivalent (EDE) from external radiation exposures. The NRC is seeking comment from interested parties on the clarity and utility of the guidance contained in the proposed RIS. In particular, comment is requested on the following questions:

1. Is the two dosimeter method a technically acceptable alternative to the current practice of estimating EDE from deep dose equivalent (DDE)?
2. Is the NRC use of a RIS to approve the two dosimeter method acceptable under the existing regulations?
3. Are algorithms that attempt to provide better estimates of the effective dose equivalent by using more than one dosimeter of importance to your industry?
4. Do you believe that this and similar algorithms, many of which were described in NCRP Publication 122, are sufficiently technically developed to serve as a basis for dosimetry of record?
5. Is the discussion of the issues provided in the RIS sufficiently detailed to provide a background for the reasons for approving the EPRI method generically?
6. Should different or more detailed guidance be provided in an NRC Regulatory Guide or generic communication?
7. Should the definition of the total effective dose equivalent (TEDE) in part 20 be revised to replace the deep dose equivalent with the effective dose equivalent, and make that quantity more consistent with national and international definitions?
8. To what extent should accuracy replace conservatism as the goal for personnel monitoring?

The NRC will consider the comments received in its final evaluation of the proposed RIS.

This **Federal Register** notice is available through the NRC's Agencywide Documents Access and Management System (ADAMS) under accession number ML031980001.

DATES: Comment period expires September 22, 2003. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Mail Stop T6–D59, Washington, DC 20555–0001, and cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to NRC Headquarters, 11545 Rockville Pike (Room T–6D59), Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Sami Sherbini at (301) 415–7853 or by e-mail to *sxs2@nrc.gov*, or Roger Pedersen at (301) 415–3162 or by e-mail to *rlp1@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Draft Regulatory Issue Summary Method For Estimating Effective Dose Equivalent From External Radiation Sources Using Two Dosimeters

Addressees

All U.S. Nuclear Regulatory Commission (NRC) licensees.

Intent

NRC is issuing this regulatory issue summary (RIS) to provide guidance on an approved two-dosimeter monitoring method for estimating effective dose equivalent (EDE) from external radiation exposures. This EDE can be used instead of the deep dose equivalent (DDE) in complying with NRC regulatory requirements.

Background

Total effective dose equivalent (TEDE) is used in 10 CFR part 20 (part 20) to specify dose limits for occupationally exposed workers, and for members of the public. Other requirements (in part 20 and other parts of NRC's regulations), such as the criteria for license termination, are also specified in terms of the TEDE. Since EDE cannot be directly measured, part 20 defines TEDE as "the sum of the deep-dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures)." Part 20 goes on to specify that this DDE be measured at the part of the whole body with the highest exposure. This DDE can be directly measured with available dosimeters, and, in most exposure situations, provides a reasonable, conservative, and often the best, estimate for EDE from

external sources (EDE_{ex}). However, in non-uniform exposure situations, such as from a directional source, DDE measured at the part of the whole body with the highest exposure can be an overly conservative estimate.

The NRC recently published RIS 2003–04 to encourage licensees to use the EDE_{ex} for determining TEDE whenever the dose from external sources is calculated instead of measured with personnel dosimetry. The RIS discusses the limitations on, and the regulatory basis for, substituting the EDE_{ex} for DDE in determining compliance with TEDE based regulatory requirements. Estimating EDE_{ex} from dosimeter readings is very dependent on exposure geometry. Therefore, RIS 2003–04 also noted that methods for estimating TEDE from an EDE_{ex} determined from dosimeter readings, must be approved by the NRC. The 2003–04 RIS also noted that NRC approved the use of a two dosimeter method for estimating effective dose equivalent at Entergy sites (Reference 1).

This RIS describes the exposure situations in which NRC would regard the use of a monitoring method to estimate EDE_{ex} as appropriate and acceptable for estimating TEDE. This RIS does not affect the definition of other non-TEDE limits or criteria in part 20.

Summary of Issues

Use of Effective Dose Equivalent

The NRC has approved a method for estimating EDE_{ex} from external photon exposure situations. The guidance in this RIS is based on the review and approval of the exemption for Entergy (Reference 1).

This method uses two dosimeter readings and is based on research conducted by the Electric Power Research Institute (EPRI). The EPRI work (References 2, 3, and 4) indicates that a single dosimeter, calibrated to read DDE and worn on the chest, provides a reasonably accurate estimate of EDE_{ex} when the individual is exposed to a number of randomly distributed radiation sources during the monitoring period. This is consistent with current allowable dosimetry practices and requires no special approval. However, for nonuniform exposures, such as from directional radiation fields or point sources, EDE_{ex} can be estimated from a reading of a dosimeter worn on the front (R_{front}) of the trunk of the body, combined with the reading of a dosimeter worn on the back (R_{back}) of the trunk of the body.

Two algorithms are given by EPRI for combining the dosimeter results:

9. Mean Method:

The first algorithm is a simple, un-weighted, average (MEAN) of the two dosimeter readings. The MEAN is equal to ½ ($R_{front} + R_{back}$).

The EPRI technical reports state that the non-weighted average does not always give a conservative result. Since no method is provided to identify when the simple average gives non-conservative results, *this algorithm is not approved for use at this time.*

10. Weighted Method:

The second algorithm, which was the subject of the Entergy exemption, is a weighted average algorithm such that:

EDE_{ex} = ½(Hi + MEAN)

Where Hi is the higher of R_{front} or R_{back}.

A mathematically simpler form of this weighted algorithm is:

EDE_{ex} = 3/4Hi + 1/4Lo

Where Hi is the higher of R_{front} or R_{back} and Lo is the lower of R_{front} or R_{back}.

The data presented in the EPRI technical reports (references 1 and 2) indicate that this weighted two-dosimeter algorithm provides a reasonably conservative estimate of EDE_{ex}. Therefore, only the weighted two-dosimeter algorithm is approved for use at this time for exposures in a non-uniform field.

As a result of NRC approving the above weighted method, monitoring the DDE at the part of the body receiving the highest exposure as provided in 10 CFR 20.1201(c) is not needed for determining compliance with TEDE based requirements when the weighted method is used subject to the limitations which are set out below. This is because Footnote 2 in the "Organ Dose Weighting Factors" table in 10 CFR 20.1003, permits the use of weighting factors to determine external exposures without case-by-case approvals when specific NRC guidance has been issued. This RIS constitutes such guidance for using the above weighted method for determining the external exposure from weighted dosimeters measuring direct DDE. An exemption from part 20 is not needed if the guidance in this RIS is followed for determining external exposures. However, 10 CFR 20.1201(c) still applies to the DDE required to be used in complying with the organ dose limit in 10 CFR 20.1201(a)(1)(ii).

Additional Issues and Limitations

Licensees may, subject to the following limitations, use this weighted two-dosimeter method for determining EDE_{ex}, and estimating TEDE, from external photon exposures without applying for further approval from the NRC.

Partial-body irradiations (*i.e.*, exposure geometries that preferentially shield the dosimeters) could bias the EPRI method results in the non-conservative direction. Licensees must ensure that dosimeters are worn so that at least one of the two dosimeters "sees" the major source, or sources, of radiation (one dosimeter will normally be shielded from a source by the body). In other words, the radiological work will be conducted and the dosimeters worn in such a way, so that no shielding material is present between the radioactive source(s) and the whole body, that would cast a shadow on the dosimeter(s) and not over other portions of the whole body.

This method for estimating EDE_{ex} from dosimeter readings, is not valid for exposure situations where the individual is immersed in a shielding material (*i.e.*, diving operations). Large dose-rate gradients resulting from such immersions over the space occupied by the body can bias the two dosimeter results.

Only dosimeters that have demonstrated angular response characteristics at least as good as those specified in Reference 5, are to be used. If the dosimeter's response decreases more rapidly than EDE_{ex}, as the angle of incident radiation increases, the resulting EDE_{ex} estimate will be biased in the non-conservative direction. In addition, the dosimeters should be calibrated to indicate DDE at the monitored location to ensure their readings reflect electronic equilibrium conditions.

This method for estimating EDE_{ex} from two dosimeter readings is not applicable to exposure situations where the sources of radiation are nearer than 12 inches (30 cm) from the surface of the body. This is the closest distance that the two-dosimeter algorithm has been demonstrated to provide conservative results for discrete (point) radiation sources.

The use of monitoring methods for estimating EDE_{ex}, from exposure to point sources (*i.e.*, hot particles) on, or near the surface of the body, is outside the scope of this approval. Tables 5 through 7, in Reference 3, provide some calculated EDE_{ex} values resulting from exposure to point sources in contact with the torso of the body. However, the information provided in these tables does not bound all of the pertinent point source exposure situations.

Licensees using the weighted methodology need to maintain sufficient records to demonstrate the above limitations were satisfied.

Conclusions

The weighted two-dosimeter algorithm, described in this RIS, provides an acceptably conservative estimate of EDE_{ex}. The TEDE based on EDE_{ex} using this algorithm in accordance with its associated limitations is acceptable.

When recording or reporting doses in situations in which the EDE_{ex} is assessed instead of the DDE, the value of the EDE_{ex} is entered in place of the DDE in recording or reporting forms, such as NRC Forms 4 or 5.

References

1. Exemption from the Requirements of 10 CFR part 20, § 20.1003 Definition of Total Effective Dose Equivalent issued to Arkansas Nuclear One, Units 1 and 2; Grand Gulf Nuclear Station; Indian Point Nuclear Station, Units 1, 2 and 3; James A. Fitzpatrick Nuclear Power Plant; Pilgrim Nuclear Power Station; River Bend Station; Vermont Yankee Nuclear Power Plant; and Waterford Steam Electric Station, Unit 3, 67 FR 58826 (September 18, 2002) (ML022550559).

2. EPRI Technical Report TR–101909, Volume 1, February 1993.

3. EPRI Technical Report TR–101909, Volume 2, June 1995.

4. EPRI Implementation Guide TR–109446, September 1998.

5. Xu, X. G.; Reese, W. D.; and Poston, J. W. , "A Study of the Angular Dependence Problem In Effective Dose Equivalent Assessment", Health Physics, Volume 68., No. 2, February 1995, pp. 214–224.

Backfit Discussion

This RIS does not require any action nor written response nor require any modification to plant structures, systems, components, or design; therefore, the staff did not perform a backfit analysis.

Federal Register Notice

A notice of opportunity for public comment was published in the **Federal Register**.

Paperwork Reduction Act Statement

This RIS does not require any action nor written response nor require any modification to plant structures, systems, components, or design; therefore, the staff did not perform a backfit analysis.

Paperwork Reduction Act Statement

This RIS does not request any information collection.

End of Draft Regulatory Issue Summary

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html*. If you do not have access to ADAMS or if you have problems in accessing the documents in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209 or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 14th day of July 2003.

For the Nuclear Regulatory Commission.

William D. Beckner,

Branch Chief, Reactor Operations Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–18688 Filed 7–23–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Existing Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

Extension:

Rule 23c–1 [17 CFR 270.23c–1], SEC File No. 270–253, OMB Control No. 3235–0260.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 23c–1 under the Investment Company Act of 1940, among other things, permits a closed-end fund to repurchase its securities for cash if in addition to the other requirements set forth in the rule: (i) Payment of the purchase price is accompanied or preceded by a written confirmation of the purchase; (ii) the asset coverage per unit of the security to be purchased is disclosed to the seller or his agent; and (iii) if the security is a stock, the fund has, within the preceding six months, informed stockholders of its intention to purchase stock. The Commission staff estimates that approximately 19 closed-end funds rely on rule 23c–1 annually to undertake approximately 132 repurchases of their securities. The Commission staff estimates that, on average, a fund spends approximately 2.5 hours on complying with the paperwork requirements listed above each time it undertakes a security repurchase under the rule. The total annual burden of the rule's paperwork requirements thus is estimated to be 330 hours.

In addition, the fund must file with the Commission, during the calendar month following any month in which a purchase permitted by rule 23c–1 occurs, two copies of a report of purchases made during the month, together with a copy of any written solicitation to purchase securities given by or on behalf of the fund to 10 or more persons. The burden associated with filing Form N–23C–1, the form for this report, has been addressed in the submission for that Form.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: July 16, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–18898 Filed 7–23–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 5th Street, NW., Washington, DC 20549.

Extension:

Rule 13f–1 [17 CFR 240.13f–1], SEC File No. 270–22, OMB Control No. 3235–0006.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Section 13(f)[1] of the Securities Exchange Act of 1934[2] (the "Exchange Act") empowers the Commission to: (1) Adopt rules that create a reporting and disclosure system to collect specific information; and (2) disseminate such information to the public. Rule 13f–1[3] under the Exchange Act requires institutional investment managers that exercise investment discretion over accounts—having in the aggregate a fair market value of at least $100,000,000 of exchange-traded or NASDAQ-quoted equity securities—to file quarterly reports with the Commission on Form 13F.

The information collection requirements apply to institutional investment managers that meet the $100 million reporting threshold. Section 13(f)(5) of the Exchange Act defines an "institutional investment manager" as any person, other than a natural person, investing in or buying and selling securities for its own account, and any person exercising investment discretion with respect to the account of any other person. Rule 13f–1(b) under the Exchange Act defines "investment discretion" for purposes of Form 13F reporting.

The reporting system required by Section 13(f) of the Exchange Act is intended, among other things, to create in the Commission a central repository of historical and current data about the investment activities of institutional investment managers, and to improve the body of factual data available to regulators and the public.

[1] 15 U.S.C. 78m(f).
[2] 15 U.S.C. 78a *et seq.*
[3] 17 CFR 240.13f–1.

The Commission staff estimates that 2,472 respondents make approximately 9,888 responses under the rule each year. The staff estimates that on average, Form 13F filers spend 98.8 hours/year to prepare and submit the report. In addition, the staff estimates that 294 respondents file approximately 1,176 amendments each year. The staff estimates that on average, Form 13F filers spend 4 hours/year to prepare and submit amendments to Form 13F. The total annual burden of the rule's requirements for all respondents therefore is estimated to be 245,409.6 hours ((2,472 filers × 98.8 hours) + (294 filers × 4 hours)).

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: July 16, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–18899 Filed 7–23–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549–0004.

Extension:

Rule 27e–1 and Form N–27E–1, SEC File No. 270–486, OMB Control No. 3235–0545.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information under the Investment Company Act of 1940 ("Act") summarized below. The Commission plans to submit these collections of information to the Office of Management and Budget for approval.

Rule 27e–1 [17 CFR 270.27e–1] is entitled "Requirements for Notice to be Mailed to Certain Purchasers of Periodic Payment Plan Certificates Sold Subject to Section 27(d) of the Act." Form N–27E–1 is entitled "Notice to Periodic Payment Plan Certificate Holders of 18 Month Surrender Rights with Respect to Periodic Payment Plan Certificates." Form N–27E–1, which is prescribed by rule 27e–1 in order to implement the statutory mandate in section 27(e) of the Act, serves to notify holders of periodic payment plan certificates who have missed certain payments of their surrender rights with respect to the certificates. The Form N–27E–1 notice, which is sent directly to holders of periodic payment plan certificates, serves to alert purchasers of periodic payment plans of their rights in connection with their plan certificates.

Commission staff estimates that there are fewer than five issuers of periodic payment plan certificates affected by rule 27e–1. The frequency with which each of these issuers or their representatives must file the Form N–27E–1 notice varies with the number of periodic payment plans sold and the number of certificate holders who miss payments. The staff spoke with representatives of a number of firms in the industry that currently have periodic payment plan accounts. Based upon these conversations, the staff estimates that 3 respondents send out approximately 2,965 notices a year through completely automated processes. These estimates are based on an informal survey of representatives of several entities and are not derived from a comprehensive or necessarily even representative study of the cost of the Commission's rules and forms.

Complying with the collection of information requirements of rule 27e–1 is mandatory for issuers of periodic payment plans or their depositors or underwriters in the event holders of plan certificates miss certain payments within eighteen months after issuance. The information provided pursuant to rule 27e–1 will be provided to third parties and, therefore, will not be kept confidential. The Commission is seeking OMB approval, because an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: July 16, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–18900 Filed 7–23–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27697]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

July 18, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 8, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After August 8, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

E.ON AG, et al. (70–9985)

E.ON AG ("E.ON"), E.ON—Platz 1, 40479 Dusseldorf, Germany, a registered holding company under the Act; Fidelia Corporation ("Fidelia"), 300 Delaware Avenue, Suite 544, Wilmington, Delaware 19801, an indirect, financing subsidiary of E.ON; Louisville Gas and Electric Company ("LG&E"), 220 West Main Street, Louisville, Kentucky 40402, a public utility company under the Act and an indirect subsidiary of E.ON; and Kentucky Utilities Company ("KU"), One Quality Street, Lexington, Kentucky 40507, a public utility company under the Act and an indirect subsidiary of E.ON, (collectively, "Applicants"), have filed an application-declaration as a post-effective amendment ("Application") to a previously filed application-declaration under sections 6(a), 7, 9, 12(b), 12(d), 32 and 33 of the Act and rules 53 and 54 under the Act.

Applicants request authority through May 31, 2005 ("Authorization Period"), for Fidelia to provide intercompany loans to LG&E and KU and for LG&E and KU to grant security for these loans.

By order dated June 14, 2002 (Holding Company Act Release No. 27539)[1] ("June Order"), the Commission authorized the acquisition of Powergen plc by E.ON and authorized terms of the financing of the E.ON holding company system as well as certain related transactions. E.ON owns LG&E Energy Corp. ("LG&E Energy"), a public utility holding company exempt by order under section 3(a)(1) of the Act, which in turn owns LG&E and KU. E.ON's interest in LG&E Energy is held indirectly through several intermediate holding companies. E.ON U.S. Investments Corp., the direct parent of LG&E Energy, also owns E.ON North America Inc. ("E.ON NA"), which in turn currently owns 74.6% of Fidelia. The remaining 25.4% of Fidelia is owned by E.ON U.S. Holding GmbH, a direct, wholly-owned subsidiary of E.ON.

In the June Order, the Commission authorized, among other things, E.ON and its subsidiaries to engage in certain financing transactions. Specifically, E.ON and E.ON NA, through Fidelia or another special purpose financing subsidiary of E.ON NA, were authorized to finance all or a portion of the capital needs of LG&E Energy and its subsidiaries, directly or through other companies in the E.ON holding company system ("E.ON Group"). The financing authority in the June Order provided that borrowings would be unsecured and would only occur if the interest rate on the loan would result in an equal or lower cost of borrowing than the LG&E Energy Group company could obtain in a loan from E.ON or in the capital markets on its own.

E.ON is currently funding, and proposes to continue to fund, the cash requirements of LG&E and KU through intercompany loans. E.ON states that its financing strategy is to raise capital at the top holding company, E.ON, and to provide those funds to subsidiary companies through intercompany loans and/or as equity contributions. E.ON states that it is able to provide funds to LG&E and KU at a cost that is at or below the external borrowing costs of LG&E and KU.

LG&E and KU, however, have provisions in their respective articles of incorporation that restrict the amount of unsecured debt that can be outstanding. When LG&E and KU approach this limit on unsecured debt, any additional debt incurred by them would have to be secured. Therefore, under the financing authority granted in the June Order, LG&E and KU will not be able to take advantage of the economic efficiencies of the intercompany loans when they have reached their unsecured debt limits. E.ON states that it is in the best interest of LG&E and KU, as well as that of the E.ON group, that the financing needs of LG&E and KU be provided through intercompany loans. Therefore, the Applicants request authority for Fidelia to provide intercompany loans to LG&E and KU on a secured basis.

The Applicants request authorization for Fidelia to provide intercompany loans to LG&E and KU upon the terms and subject to the conditions set forth in

[1] The June Order granted authority requested in S.E.C. Filing 70–9961 ("Acquisition Filing") and 70–9985 ("Original Financing Filing"). The Original Financing Filing was amended by order dated February 21, 2003 (Holding Company Act Release No. 27654).

the June Order,[2] except that Applicants request that LG&E and KU may grant security for the intercompany loans.[3] LG&E and KU request authorization to secure intercompany loans with a subordinated lien on certain of the personal property of each company, including "utility assets" within the meaning of the Act. The subordination provisions will provide that the E.ON group companies cannot exercise any rights or remedies against the property of LG&E and KU unless all bonds under the borrowing company's first mortgage bond indenture have been paid in full. The aggregate outstanding principal amount of intercompany loans made to LG&E and KU on a secured basis will not exceed $275 million and $215 million, respectively. LG&E and KU commit that the aggregate principal amount of secured intercompany loans, together with the aggregate principal amount of bonds issued under their respective first mortgage bond indenture, will not exceed the limit on bonds set forth in their first mortgage bond indenture.[4] The Applicants further commit that neither LG&E nor KU will borrow any funds as secured intercompany loans under the authority granted, unless at the time of the incurrence of any secured intercompany loan, the following conditions are met:

A. E.ON and the borrowing company (LG&E or KU, as the case may be) maintain common equity [5] as a percentage of total capitalization [6] of at least 30%, as reflected in their most recent annual or semiannual report. Applicants request that the Commission reserve jurisdiction over the making of secured intercompany loans at any time that this condition is not satisfied.

B. All outstanding securities of the borrowing company that are rated are rated investment grade, and all outstanding securities of E.ON that are rated are rated investment grade. For purposes of this provision, a security will be deemed to be rated investment grade if it is rated investment grade by at least one nationally recognized statistical rating organization, as defined in rule 15c3–1(c)(2)(vi)(F) under the Securities Exchange Act of 1934. Applicants request that the Commission reserve jurisdiction over the making of secured intercompany loans at any time that this condition is not satisfied.

The secured intercompany loans would be in compliance with the Best Rate Method. Therefore, LG&E and KU would not pay more than they would pay in the capital markets for a similar loan had the borrower sought to finance its capital requirements with independent third parties. LG&E and KU would save the issuance expenses associated with the issuance of first mortgage bonds. These expenses would typically include legal fees, printing costs, trustees fees, rating agency fees and filing fees. In recent transactions, these expenses have aggregated approximately $300,000 per issuance.

E.ON states that its financing policy is to centralize, wherever possible, all external funding at the E.ON level. This strategy, it says, allows E.ON to ensure that all funds are raised at the lowest cost due to the greater financial strength of the holding company. Applicants state that E.ON (currently AA–, stable outlook, from Standard & Poor's, and A1, stable outlook, from Moody's) is the strongest credit in the E.ON Group. Lenders and bond investors see E.ON (and its finance companies under its guarantee) as the most creditworthy company in the E.ON Group, according to the Applicants; and E.ON receives the best margins and other terms and conditions. Therefore, according to the Applicants, E.ON (or its finance companies under guarantee of E.ON) is the preferred entity of the E.ON Group to approach the capital markets. E.ON lends the proceeds from financings in the form of intercompany loans to those subsidiaries with demand. According to the Applicants, for subsidiary companies to raise funds externally would create inefficiencies in E.ON's strategy because E.ON's creditors would be structurally subordinated to the debt of the subsidiaries. This would result in increased costs for E.ON, and consequently, all of its subsidiaries.

The articles of incorporation of LG&E and KU contain provisions for the benefit of the holders of their preferred shares that limits the amount of unsecured indebtedness which may be outstanding at any time that the company has any preferred shares outstanding. The unsecured debt limit at LG&E is 20% of the sum of (a) secured debt plus (b) total of capital and surplus. The limit at KU is 25% of the same sum. In order to exceed these limits, LG&E and KU would need to obtain the consent of the holders of a majority of the preferred shares outstanding.

Applicants state that LG&E and KU have significant projected capital and financing needs, including those related to the pending maturity of first mortgage bonds, the anticipated need to finance the installation of pollution control equipment and the planned acquisition of additional electric generation capacity in 2003. The projected capital expenditure budgets for LG&E and KU for 2003 and 2004 are approximately $340 million and $550 million, respectively. The limit on unsecured indebtedness in the Articles of Incorporation of LG&E and KU constrains the financing options available to LG&E and KU to finance these needs, Applicants state. The secured intercompany loans, as long-term debt, will provide a cost-efficient means for LG&E and KU to finance their capital needs, including payment of maturing indebtedness and financing of capital expenditures, according to the Applicants. The secured intercompany loans may also be used to finance the payments due upon termination of the accounts receivable securitization programs of LG&E and KU. The accounts receivable securitization programs, which were scheduled to terminate at the end of July 3003, are in the process of being extended.

The intercompany loans to be made by Fidelia to LG&E and KU will be made according to separate loan and security agreements between Fidelia and the borrower. The agreement documents the intercompany loan, specifying the Best Rate Method for determining the interest rate to be applicable to the loans and providing for the grant of a security interest in the specified collateral. The interest rate on the notes will be set at the time of issuance, based upon the maturity of the notes. At the time of the proposed intercompany loan, the borrowing company will obtain quotes from investment banks for a first mortgage bond issued by that company and quotes for an unsecured bond issued by E.ON. The interest rate applicable to the intercompany loan would be the lower of (a) the average of three quotes obtained from investment banks for an unsecured bond issued by E.ON with the applicable term of the loan and (b) the lowest of three quotes obtained by the borrowing company from investment banks for a first mortgage bond issued by a company with the applicable term of the loan. At this time, the debt of Fidelia is not rated. Therefore, the interest cost of any debt that would be issued by Fidelia to unaffiliated third parties would not be competitive with the rates available to E.ON and LG&E or KU. If in the future Fidelia is able to obtain funds in the capital markets on competitive terms, quotes will also be obtained in a similar manner for debt to be issued by Fidelia.

The collateral for the loans will consist of all of the borrower's now owned or later acquired "equipment," as that term is defined in Kentucky's Uniform Commercial Code (KRS Chapter 355), excluding, however, any equipment that is not subject to the lien under the borrower's first mortgage bond indenture. Only property subject to the lien of the first mortgage bond indenture will be subject to the subordinated security interest. As set out in the definition section of the loan and security agreement, "equipment" has the meaning set out in the Uniform Commercial Code ("goods other than inventory, farm products, or consumer goods") and includes all of the borrower's now owned or later acquired machinery, equipment, furniture, furnishings and all tangible personal property similar to any of the foregoing (other than inventory), together with all improvements, accessories and appurtenances of these and any proceeds of any of these, including insurance proceeds and condemnation awards and all books and records relating to the preceding. Motor vehicles and other property subject to a certificate of title law are not included as collateral. Also, assets such as cash and accounts receivable are not "equipment" and would not be subject to the lien.

As noted earlier, the security interest granted in the loan and security agreement is expressly subordinated to the lien of the borrower's first mortgage bond indenture. The subordination provisions provide that Fidelia cannot exercise any rights or remedies against the property of LG&E or KU unless all bonds under the company's first mortgage bond indenture have been paid in full. So long as LG&E and KU are not in default under their respective loan agreements, Fidelia will have no rights against LG&E and KU, except to receive payment of principal and interest on the loans when due, according to the Applicants. Even if a default existed under a loan agreement, Fidelia would have no right to pursue any remedies against the property of LG&E or KU, as applicable, until all of the borrower's first mortgage bonds have been paid in full. Under the existing financing agreements of E.ON, the creditors of E.ON would have no rights against LG&E or KU as a result of the proposed transactions, Applicants state. In any event, the creditors of E.ON could have no greater rights against LG&E and KU than those of Fidelia through the loan agreement, according to the Applicant. Therefore, the Applicants state, so long as LG&E or KU, as the case may be, is not in default of its obligations under the proposed loan agreement, neither Fidelia nor any creditor of E.ON would have any rights against LG&E or KU, as applicable, or their respective property.

CenterPoint Energy, Inc., et al. (70–10148)

CenterPoint Energy, Inc. ("CenterPoint"), 1111 Louisiana, Houston, TX 77002, a registered public-utility holding company, and its direct wholly owned registered holding company subsidiary, Utility Holding, LLC, 200 West Ninth Street Plaza, Suite 411, Wilmington, DE 19801 (together, "Applicants"), have filed a declaration under sections 6(a) and 7 of the Act and rules 44 and 54 under the Act.

Applicants request authority to engage in certain refinancing transactions, as more fully described below, commencing on the effective date of an order issued under this filing and ending June 30, 2005 ("Authorization Period").

I. Background

A. The CenterPoint System

CenterPoint is a registered public-utility holding company, created on August 31, 2002 as part of a corporate restructuring of Reliant Energy, Inc. CenterPoint has three public-utility subsidiary companies that are wholly owned (except as indicated below), that own and operate electric generation plants, electric transmission and distribution facilities, natural gas distribution facilities and natural gas pipelines.

CenterPoint Energy Houston Electric LLC ("T&D Utility") engages in the electric transmission and distribution business in a 5,000-square mile area of the Texas Gulf Coast that includes Houston.

Texas Genco Holdings, Inc. ("Texas Genco") is a section 3(a)(1) exempt holding company that, through Texas Genco LP, an electric utility company, owns the Texas generating plants formerly owned by the integrated electric utility that was a part of Reliant Energy, Inc.[7]

CenterPoint Energy Resources Corp. ("GasCo") owns gas distribution systems that together form one of the United States' largest natural gas distribution operations in terms of customers served. Through unincorporated divisions, GasCo provides natural gas distribution services in Louisiana, Mississippi and Texas (Entex Division), Arkansas, Louisiana, Oklahoma and Texas (Arkla Division) and Minnesota (Minnegasco Division). Through wholly owned subsidiaries, GasCo owns two interstate natural gas pipelines and gas gathering systems and provides various ancillary services.

Utility Holding, LLC is a Delaware limited liability company and an intermediate holding company that is registered under the Act. Utility Holding, LLC directly holds approximately 81% of the outstanding common stock of Texas Genco. Utility Holding, LLC is otherwise a conduit entity formed solely to minimize tax liability.

B. Existing Financing Authority

By order dated May 28, 2003,[8] the Commission authorized CenterPoint to pledge its interest in the common stock of Texas Genco (the "Texas Genco Stock"), in connection with the refinancing of approximately $3.85 billion of CenterPoint debt ("CenterPoint Facility"). The interest rate on borrowings under the CenterPoint Facility, currently 450 basis points over London Interbank Offered Rate, is based on CenterPoint's credit rating. Such borrowings are secured by a pledge of the Texas Genco Stock. Since February 28, 2003, CenterPoint has reduced the principal amount of the CenterPoint Facility by approximately $1 billion, from $3.85 billion to $2.846 billion.

By order dated June 30, 2003 (the "Omnibus Financing Order"),[9] the Commission authorized CenterPoint and its subsidiaries to engage in certain financing and related transactions through June 30, 2005. Among other

[2] The financing authority granted in the June Order requires that all borrowings by LG&E Energy and its subsidiary companies (the "LG&E Energy Group") from an associate company be at the lowest of: (i) E.ON's effective cost of capital; (ii) the lending associate's effective cost of capital (if lower than E.ON's effective cost of capital); and (iii) the borrowing LG&E Energy Group company's effective cost of capital determined by reference to the effective cost of a direct borrowing by the company from a nonassociate for a comparable term loan that could be entered into at that time (the "Best Rate Method"). E.ON states that the Best Rate Method assures that an LG&E Energy Group company that elects to obtain debt financing from an associate company would not pay more for that financing than it would pay in the capital markets for a similar loan had the borrower sought to finance its capital requirements with independent third parties.

[3] LG&E and KU are currently participants in a utility money pool, through which each company may borrow funds on an unsecured basis. The operation of the utility money pool would not be affected by this proposal, and money pool transactions would remain unsecured.

[4] Currently, LG&E and KU have sufficient capacity under their respective first mortgage bond indenture to issue first mortgage bonds, or alternatively to incur secured intercompany loans, in the amount of the authorization requested.

[5] Common stock equity includes common stock (*i.e.*, amounts received equal to par or stated value of the common stock), additional paid in capital, retained earnings and minority interests.

[6] Common stock to total capitalization ratio is calculated as follows: common stock equity/(common stock equity + preferred stock + gross debt). Gross debt is the sum of long-term debt, short-term debt and current maturities.

[7] On January 6, 2003, CenterPoint distributed to its shareholders approximately 19% of the common stock of Texas Genco. CenterPoint indirectly owns the remaining approximately 81% of the common stock of Texas Genco.

[8] Holding Co. Act Release No. 27680.

[9] Holding Co. Act Release No. 27692.

things, the Omnibus Financing Order authorized CenterPoint to enter into transactions undertaken to extend the terms of or replace, refund or refinance existing obligations and the issuance of new obligations in exchange for existing obligations, provided in each case that the issuing entity's total capitalization is not increased as a result of such financing transaction. In the Omnibus Financing Order, CenterPoint committed that long-term debt issued by it pursuant to such authorization would be unsecured.

II. Proposed Restructuring of the CenterPoint Facility

Based on the current favorable market conditions, CenterPoint is considering the restructuring of the $2.846 billion CenterPoint Facility to reduce the principal amount and the cost of borrowing under the facility. Depending on the response of the bank lenders, CenterPoint may renegotiate or replace the CenterPoint Facility.

Although the final structure has not yet been determined, Applicants currently contemplate that CenterPoint would repay the CenterPoint Facility with a combination of borrowings and repayments of intrasystem receivables as described below:

(a) CenterPoint would enter into a new, significantly smaller bank facility currently contemplated to be approximately $1.25 billion (the "New Facility") that may be secured by a pledge of the Texas Genco Stock. Such secured interest would be subordinate to or *pari passu* with that of the B Loan below.

(b) CenterPoint would enter into a new three-year borrowing (the "B Loan") that is secured by a pledge of the Texas Genco Stock. Applicants contemplate that the amount of the B Loan would be at least $500 million and possibly greater than $1 billion, depending on the response of the capital markets.

(c) CenterPoint would issue unsecured debt under the authority in the Omnibus Financing Order; and

(d) The T&D Utility would issue up to $500 million in unsecured debt. The proceeds will be used to repay existing intercompany debt from the T&D Utility to CenterPoint, to repay borrowings from the money pool, to displace financing that might otherwise be done at the T&D Utility and/or for other general corporate purposes.[10]

The proposed financing transactions are intended to reduce the effective cost of money to the CenterPoint system, as well as to reduce dependence on the lenders under the CenterPoint Facility. Applicants state that the transactions would not increase the overall amount of debt or adversely affect the capital structure of any entity or of the CenterPoint system as a whole. Nor would the transactions involve the grant of any new or additional security. The Texas Genco Stock that is pledged as security for the CenterPoint Facility currently would be extended to a different group of lenders; there would be no increased burden on the subject asset.

III. Requested Authority

CenterPoint seeks authority to issue debt that is secured by a pledge of the Texas Genco Stock in an amount of up to $2.85 billion [11] at any one time outstanding during the Authorization Period, where the proceeds of such financing transactions would be used to extend the terms of or replace, refund or refinance existing secured obligations, provided in each case that CenterPoint's total capitalization is not increased as a result of such financing transactions. Any financings under the requested authority would be subject to the following general terms, consistent with those established in the Omnibus Financing Order:

(a) Effective Cost of Money. The effective cost of money on any long-term debt financings occurring pursuant to the authorizations granted under this declaration would not exceed the greater of (i) 700 basis points over the yield to maturity of a U.S. Treasury security having a remaining term approximately equal to the term of the subject debt, but in no event greater than the current rates under the CenterPoint Facility or (ii) a rate that is consistent with similar securities of comparable credit quality and maturities issued by other companies of reasonably comparable credit quality as determined by the competitive capital markets.

(b) Maturity. The maturity of long-term indebtedness would not exceed 5 years.

(c) Issuance Expenses. The underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of securities pursuant to this declaration would not exceed 7% of the principal or total amount of the securities being issued.

(d) Use of Proceeds. The proceeds from the sale of securities in external financing transactions would be used to refinance or acquire, retire or redeem, pursuant to rule 42 under the Act, securities previously issued by CenterPoint or its subsidiaries.

(e) Common Equity Ratio. At all times during the Authorization Period, each of the T&D Utility, GasCo, and Texas Genco, LP (the utility subsidiaries) will maintain common equity of at least 30% of its consolidated capitalization (common equity, preferred stock, long-term debt and short-term debt) as reflected in the most recent Form 10–K or Form 10–Q filed with the Commission adjusted to reflect changes in capitalization since the balance sheet date therein;[12]

(f) Investment Grade Ratings. No securities may be issued in reliance on the authority requested herein unless: (i) The security to be issued, if rated, is rated investment grade by at least one nationally recognized statistical rating organization as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of Rule 15c3–1 under the Securities Exchange Act of 1934 ("NRSRO"); (ii) all outstanding rated securities of the issuer are rated investment grade by at least one NRSRO; and (iii) all outstanding rated securities of CenterPoint are rated investment grade by at least one NRSRO. Applicants request that the Commission reserve jurisdiction over the issuance of securities subject to the investment grade ratings criteria where one or more of the investment grade ratings criteria are not met.

(g) Authorization Period. No security will be issued pursuant to the authority sought herein after the last day of the Authorization Period (which is June 30, 2005), provided, however, that securities issuable or deliverable upon exercise or conversion of, or in exchange for, securities issued on or before June 30, 2005 in accordance with the terms of such authorization may be issued or delivered after such date.

[10] CenterPoint will seek authority necessary to effectuate this part of the refinancing in a post-effective amendment in SEC File No. 10128.

[11] Under the structure outlined above, CenterPoint would issue less than $2.5 billion in secured debt (in the form of the New Facility and the B Loan). The remainder of the CenterPoint Facility would be replaced with a combination of unsecured debt and T&D Utility borrowings. Because, however, the types and amounts of the constituent financings have not yet been finally determined, CenterPoint needs to preserve the ability to replace the CenterPoint Facility in its entirety with lower cost secured debt at the CenterPoint level. CenterPoint will amend the filing to reflect the ultimate form of the transactions. In no event would the overall amount of CenterPoint ssecured debt be increased as a result of the proposed transactions.

[12] Applicants state that net of securitization debt, CenterPoint's projected equity capitalization will be 30% or greater by the end of 2006.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–18779 Filed 7–23–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of July 28, 2003:

Closed Meetings will be held on Tuesday, July 29, 2003 at 2 p.m. and Thursday, July 31, 2003 at 3:30 p.m., and an Open Meeting will be held on Thursday, July 31, 2003 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

The subject matter of the Closed Meeting scheduled for Tuesday, July 29, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions;

Formal orders of investigation; and

Adjudicatory matter.

The subject matter of the Open Meeting scheduled for Thursday, July 31, 2003 will be:

The Commission will hear oral argument on an appeal by Piper Capital Management, Inc. ("PCM"), formerly a registered investment adviser, Marijo A. Goldstein, Robert H. Nelson, Amy K. Johnson, Molly J. Destro (collectively, the "Respondents"), and the Division of Enforcement from the decision of an administrative law judge.

The law judge found that PCM and Goldstein violated Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, Exchange Act Rule 10b–5, and Section 34(b) of the Investment Company Act of 1940 by making in various disclosure documents misrepresentations or omissions of material fact relating to the risks associated with an investment in a mutual fund PCM managed. PCM also caused that fund's violations of IC Act Section 13(a)(3) by aiding and abetting the material deviation from the fund's stated investment objective without shareholder consent. However, the law judge found that the Division failed to establish that PCM or Goldstein violated Securities Act Section 17(a) for failure to calculate the fund's net asset value on a daily basis, as required by the IC Act.

The law judge found that the Respondents violated Securities Act Section 17(a), Exchange Act Section 10(b), Exchange Act Rule 10b–5, and IC Act Section 34(b), and willfully aided and abetted and were causes of violations of IC Act Rule 22c–1, IC Act 31(a), and IC Act Rule 31a–1, by manipulating the fund's net asset value on April 4, 5, and 6, 1994.

The law judge censured Respondents and ordered each of them to cease and desist from violating or causing violations of the federal securities laws. Additionally, the law judge revoked PCM's registration as an investment adviser and assessed civil money penalties against it totaling $2,005,000.

Among the issues likely to be argued are:

1. Whether Respondents committed, aided and abetted, or were causes of the alleged violations; and

2. If so, whether sanctions should be imposed in the public interest.

For further information, please contact the Office of the Secretary at (202) 942–7070.

The subject matter of the Closed Meeting scheduled for Thursday, July 31, 2003 will be: Post-argument discussion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact the Office of the Secretary at (202) 942–7070.

Dated: July 22, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–19048 Filed 7–22–03; 3:52 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Worldwide Holdings Delaware Corporation; Order of Suspension of Trading

July 21, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Worldwide Holdings Delaware Corporation ("WWDH") because of questions regarding, among other things: (1) The accuracy of statements made by WWDH in its Commission filings concerning the identity of its majority shareholder(s), (2) the accuracy of statements made by WWDH in its Commission filings concerning the status and amount of WWDH's liabilities, and (3) the accuracy of WWDH's Form 10KSB/A for the year ended December 31, 2002.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EDST, on Monday, July 21, 2003 through 11:59 p.m. EDST, on Friday, August 1, 2003.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–18896 Filed 7–21–03; 3:21 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48196; File No. SR–NASD–2003–108]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the National Association of Securities Dealers, Inc. to Temporarily Increase the Non-Directed Order Maximum Response Time for Order-Delivery ECNs in Nasdaq's SuperMontage System

July 17, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 10, 2003, the National Association of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as constituting a "non-controversial" rule change under section 19(b)(3)(A)(iii) of the Act,[3] and paragraph (f)(6) of Rule 19b–4 under the Act,[4] which renders the proposal effective upon receipt of this filing by the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to increase, from 7 seconds to 30 seconds, the maximum time allowed for Nasdaq's National Market Execution System ("NNMS") Order-Delivery Electronic Communications Networks ("ECNs") to respond to non-directed orders sent to them by Nasdaq's SuperMontage system ("SuperMontage"). Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

4710. Participant Obligations in NNMS

(a) No Change.
(b) Non-Directed Orders
(1) No Change.
(A) through (B) No Change.
(C) Decrementation Procedures—The size of a Quote/Order displayed in the Nasdaq Order Display Facility and/or the Nasdaq Quotation Montage will be decremented upon the delivery of a Liability Order or the delivery of an execution of a Non-Directed Order or Preferenced Order in an amount equal to the system-delivered order or execution.
(i) No Change.
(ii) If an NNMS Order-Delivery ECN declines or partially fills a Non-Directed Order without immediately transmitting to Nasdaq a revised Attributable Quote/Order that is at a price inferior to the previous price, or if an NNMS Order-Delivery ECN fails to respond in any manner within *30* [7] seconds of order delivery, the system will cancel the delivered order and send the order (or remaining portion thereof) back into the system for immediate delivery to the next Quoting Market Participant in queue. The system then will zero out the ECN's Quote/Orders at that price level on that side of the market, and the ECN's quote on that side of the market will remain at zero until the ECN transmits to Nasdaq a revised Attributable Quote/Order. If both the bid and offer are zeroed out, the ECN will be placed into an excused withdrawal state until the ECN transmits to Nasdaq a revised Attributable Quote/Order.
(iii) through (iv) No Change.
(D) No Change.
(1) through (8) No Change.
(c) through (e) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 24, 2003, the Commission approved a proposed rule change in which Nasdaq reduced, from 30 seconds to 7 seconds, the maximum time allowed for NNMS Order-Delivery ECNs to respond to non-directed orders sent to them by SuperMontage ("the original proposal").[6] Under the original proposal, if an Order-Delivery ECN had failed to respond within 7 seconds, the delivered non-directed order would be canceled by SuperMontage and forwarded to the next NNMS Quoting Market Participant in queue for execution, and the ECN's quote at the price level on the side of the market to which the order was delivered would be reduced to zero.[7]

Since the approval of the original proposal, and prior to its implementation, Nasdaq has become aware of internal system processing queues that, in certain circumstances, do not allow adequate time for ECNs to receive and respond to SuperMontage non-directed orders using a 7-second standard. As a result, Nasdaq has determined to temporarily delay implementation of the 7-second maximum response time and revert back to previous 30-second maximum response time. Nasdaq represents that it is currently introducing system enhancements that are expected to eliminate the queuing problem and will submit a proposed rule change to the Commission seeking to implement a reduced ECN non-directed order response time parameter as soon as practicable.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act[8] in general, and with section 15A(b)(6) of the Act[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest) after the date of the filing, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Commission has decided, consistent with the protection of investors and the public interest, to waive the five-day pre-filing notice and 30-day operative date to allow Nasdaq to immediately provide for a 30-second maximum time period for Order-Delivery ECNs to respond to non-directed orders sent to them by SuperMontage.[12] The Commission believes that this should allow ECNs to continue to participate in SuperMontage without their quotes being zeroed out as a result of system queues.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Nasdaq. All submissions should refer to file number SR–NASD–2003–108, and should be submitted by August 14, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03–18901 Filed 7–23–03; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The NASD has requested that the Commission waive both the five-day pre-filing notification requirement and the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] *See* Securities Exchange Act Release No. 48078, 68 FR 39171 (July 1. 2003) (SR–NASD–2003–72).

[7] Nasdaq represents that the ECN's quote on that side of the market will remain at zero until the ECN transmits to Nasdaq a revised Attributable Quote/Order. If both the bid and offer are zeroed out, the ECN will be placed into an excused withdrawal state until the ECN transmits to Nasdaq a revised Attributable Quote/Order.

[8] 15 U.S.C. 78*o*–3.

[9] 15 U.S.C. 78*o*–3(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4356]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 1 p.m. on Thursday, August 7, 2003, in Room 4438 of the Department of Transportation Headquarters Building, 400 Seventh Street, SW., Washington, DC, 20950. The primary purpose of the meeting is to prepare for the 8th Session of the International Maritime Organization (IMO) Radio Communications and Search and Rescue (COMSAR) of the Subcommittee on Safety of Life at Sea, to be held at IMO Headquarters in London, England from February 16–20, 2004.

Among the items of particular interest are:

- Maritime Safety Information for GMDSS.
- Development of a procedure for recognition of mobile satellite systems.
- Revision of performance standards for NAVTEX equipment.
- Emergency radiocommunications, including false alerts and interference.
- Large passenger ship safety.
- Emergency radiocommunications, including false alerts and interference.
- Issues related to maritime security.
- Developments in maritime radiocommunication systems and technology, including long range tracking.
- Matters concerning Search and Rescue.
- Developments in maritime radiocommunication systems and technology.
- Planning for the 8th session of COMSAR.

Members of the public may attend these meetings up to the seating capacity of the rooms. Interested persons may seek information, including meeting room numbers, by writing Mr. Russell S. Levin, U.S. Coast Guard Headquarters, Commandant (G–SCT–2), Room 6509, 2100 Second Street, SW., Washington, DC 20593–0001; by calling: (202) 267–1389; or by sending Internet electronic mail to *rlevin@comdt.uscg.mil*.

Dated: July 16, 2003.

Margaret F. Hayes,
Director, Office of Ocean Affairs, Department of State.

[FR Doc. 03–18864 Filed 7–23–03; 8:45 am]

BILLING CODE 4710–07–P

TENNESSEE VALLEY AUTHORITY

Patriot Pipeline Crossing of the South Fork Holston River, Fort Patrick Henry Reservoir, Sullivan County, TN

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Record of decision and adoption of final environmental impact statement for the Patriot Project prepared by the Federal Energy Regulatory Commission (FERC).

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 Code of Federal Regulations [CFR] Sections 1500 to 1508) and TVA's procedures implementing the National Environmental Policy Act (NEPA).

On June 17, 2003, the TVA Board of Directors decided to grant a 30-year easement over 0.3 acre of Tract No. FHR–1032 to East Tennessee Natural Gas Company (ETNG). TVA would issue the easement under terms provided in the Mineral Leasing Act (30 United States Code (U.S.C.) 185). The easement would allow the company to install a new 24-inch-diameter natural gas pipeline loop on federal land managed by TVA as part of Fort Patrick Henry Reservoir. The natural gas pipeline loop proposed across TVA land in Sullivan County is part of a pipeline expansion and new pipeline construction project known as the Patriot Project. The environmental impacts of the Patriot Project were assessed in a 2002 Environmental Impact Statement (EIS) prepared by FERC. TVA was a cooperating agency in the preparation of this EIS. TVA has independently reviewed the EIS prepared by FERC and found that the EIS adequately addresses the environmental impacts of the Patriot Project. Accordingly, pursuant to 40 CFR 1506.3(c), TVA is herewith adopting FERC's EIS for the Patriot Project. TVA has also determined that the alternatives considered in the EIS and the decision based on them will further the policies set forth in Sections 101 and 102(1) of NEPA.

FOR FURTHER INFORMATION CONTACT: Harold M. Draper, NEPA Team Leader, Environmental Policy and Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8C, Knoxville,

Tennessee 37902–1499; telephone (865) 632–6889 or e-mail *hmdraper@tva.gov.*

SUPPLEMENTARY INFORMATION:

Background: On July 26, 2001, ETNG filed an application with FERC for a Certificate of Public Convenience and Necessity under the Natural Gas Act for authorization to construct and operate pipeline facilities in Tennessee, Virginia, and North Carolina. the proposed facilities would involve an expansion of ETNG's existing mainline facilities in Tennessee and Virginia and an extension of a new pipeline across southwestern Virginia and north-central North Carolina. Activities related to the mainline expansion would include compressor station construction and modifications, pipeline uprates, pipeline loop construction, and abandonment at numerous locations between Perry County, Tennessee, and Wythe County, Virginia. The Patriot Extension would involve construction of 99.7 miles of new pipeline and associated meter stations and taps in Wythe, Carroll, Floyd, Patrick, Henry, and Pittsylvania Counties in Virginia, and Rockingham County in North Carolina. The Patriot Project would provide natural gas to Duke Energy electricity generation facilities in Murray County, Georgia, and Wythe and Henry Counties, Virginia. In addition, gas would be provided to NUI Energy Brokers, Progress Energy, Public Service Company of North Carolina, and United Cities Gas Company for distribution to residential, commercial, and industrial customers in Virginia and North Carolina. The project would interconnect with the existing Transcontinental Gas Pipeline Corporation (Transco) facility in Rockingham County, North Carolina.

FERC issued a Notice of intent to prepare an EIS for the proposed Patriot Project on October 2, 2001. Meetings to inform local citizens about the project and to identify environmental issues to be addressed in the EIS were held in Stuart, Wytheville, Hillsville, and Martinsville, Virginia, and in Bristol and Chattanooga, Tennessee, in October and November 2001. TVA responded to the notice informing FERC that TVA would likely have a land use approval action related to the project. Because of its land use jurisdiction, TVA was subsequently included as a cooperating agency in the Draft EIS (DEIS). The Environmental Protection Agency (EPA) published Notice of Availability (NOA) of the DEIS in the **Federal Register** on May 3, 2002. Public meetings to receive comments on the DEIS were held in Martinsville, Stuart, and Hillsville, Virginia, and in Signal Mountain and Bristol, Tennessee, in May 2002. As a cooperating agency, TVA provided comments on the DEIS. During the DEIS public comment period, ETNG filed an amendment to the Patriot Project to add facilities previously included in a FERC certificate for another TVA project. The TVA project facilities had been previously reviewed by FERC when considering construction of a proposed TVA power plant in Franklin County, Tennessee. FERC completed an Environmental Assessment and issued a certificate for the proposed pipeline loops and other improvements needed for the TVA project on December 21, 2001. TVA completed a Final EIS (FEIS) on the proposed Franklin County Power Plant in August 2001 (EPA published NOA of the FEIS on August 31, 2001), but in 2002, decided not to proceed with construction. ETNG subsequently decided to incorporate certain previously approved facilities into its Patriot Project and to request that the previous certificate be vacated upon approval of the Patriot Project. ETNG also requested a realignment of the pipeline loop in the vicinity of the South Fork Holston River to minimize impacts to the Smith Shoals Subdivision and to provide for a shorter river crossing. This and other route variations were evaluated in more detail prior to completion of the FEIS. After considering comments on the DEIS, FERC published the FEIS in September 2002. EPA published NOA of the Patriot Project FEIS in the **Federal Register** on September 27, 2002. FERC issued its certificate on November 20, 2002, authorizing construction of facilities for the Patriot Project subject to certain conditions to minimize impacts to the environment. FERC denied all requests for rehearing on February 27, 2003.

Alternatives Considered

The EIS prepared by FERC considered use of other pipeline systems (System Alternatives), Major Route Alternatives, and Route Variations, in addition to No Action. The most likely System Alternative would involve obtaining gas to meet the project purpose and need from Transco. However, this alternative would involve extensive pipeline construction along routes similar to those required by the Patriot Project. A Mainline Expansion Route Alternative was evaluated in the Signal Mountain area, but was determined to increase impacts to forest land and would not have avoided impacts to nearby residences. The EIS evaluated 13 major route variations that could potentially deliver gas from the existing ETNG system to the area of Eden, North Carolina (Henry County Power, LLC), and Wytheville (Duke Energy North America Wythe, LLC), Virginia. None of the major route variations offered any environmental advantages over the proposed delivery system, and many of these variations augmented the length of the pipeline, increasing the potential for environmental impacts. The EIS evaluated 8 minor route variations to minimize impacts to specific sensitive resources or nearly residences. Six of these variations were not recommended due to increases in environmental impacts, but two were found to offer environmental advantages. A site variation that offered environmental advantages was the South Fork Holston River variation involving TVA land. Finally, the EIS also evaluated eight site alternatives for aboveground facilities, such as compressor stations. None of these site alternatives were found to offer environmental advantages over the proposed route.

For the proposed crossing of the South Fork Holston River (the action that requires an easement from TVA), FERC and TVA considered a route variation that would require the new loop to follow a slightly longer course than that currently followed by the existing pipeline. Since the route originally proposed would have run parallel to the existing pipeline, there would not be enough space for a drill rig and associated staging area. The route variation would allow additional space by moving the river crossing 2,000 feet downstream of the existing river crossing. The route variation is 0.58 miles longer, would increase the land affected during construction by 7.3 acres, and would increase impacts to forest lands by 3.2 acres as compared to the expansion of the existing route across TVA land. However, the variation, by avoiding the widening of the current pipeline crossing through Smith Shoals Subdivision, would cause lesser traffic and noise impacts to nearby residents. Further, drilling along the original pipeline route would also have involved crossing land managed by the Tennessee Wildlife Resources Agency and could have potentially impacted an archaeological site. Impacts to these sensitive resources would be avoided with the route variation. TVA agrees that the FERC alternatives would achieve the purposes of Sections 101 and 102(1) of NEPA because they seek to minimize impacts to important natural features and public land, while allowing energy resources to be transported to end users.

On November 20, 2002, FERC released an order issuing a certificate for the Patriot Project. The certificate issued by FERC on November 20, 2002,

authorizes ETNG to construct the pipeline along the applicant's proposed route, as modified by the South Fork Holston River and Reeds Creek Route Variations. The consultation process under Section 7 of the Endangered Species Act was completed on March 7, 2003, with the issuance of a Biological Opinion by the U.S. Fish and Wildlife Service. The consultation process under Section 106 of the National Historic Preservation Act was completed with the execution of a Programmatic Agreement (PA) between FERC and the Virginia and Tennessee State Historic Preservation Officers on April 29, 2003. FERC was the lead agency in these consultation processes. TVA was a concurring party to the PA.

Decision: TVA has decided to issue a 30-year term easement to ETNG for pipeline purposes under the Mineral Leasing Act (30 U.S.C. 185). The easement would allow ETNG to implement the South Fork Holston Route Variation and to cross 0.3 acre of TVA Tract No. FHR–1032 on Fort Patrick Henry Reservoir at South Fork Holston River Mile 16. In reaching its decision, TVA has reviewed the environmental impacts and public and agency concerns expressed for the entire pipeline project in Tennessee, Virginia, and North Carolina. TVA believes that the EIS process has enabled a thorough review of potential impacts and resulted in modifications and safeguards that would minimize adverse environmental impacts, while still allowing a needed energy supply project to proceed. The choice of the South Fork Holston River Route Variation and the use of directional drill, along with successful implementation of the 69 specific environmental safeguards contained in the November 20, 2002, FERC order, would minimize potential adverse environmental impacts of the proposal.

Environmentally Preferable Alternative

The proposed Patriot Project, as modified by the route variations and environmental protection measures approved by FERC, would avoid impacts to significant environmental resources, while accomplishing the applicant and FERC's goal of additional competitive natural gas supply for Georgia, North Carolina, and Virginia customers. Other alternatives, including the No Action Alternative, may result in greater impacts elsewhere as these energy demands are met through other energy supply system upgrades. Therefore, TVA concludes that the proposed Patriot Project route is an environmentally preferable alternative for supplying natural gas to Tennessee, Virginia, and North Carolina customers.

Environmental Consequences and Commitments

The Patriot Project would affect terrestrial and aquatic resources in a corridor stretching across parts of Tennessee, Virginia, and North Carolina. A total of 2,707 acres of land would be affected by new construction. The mainline expansion portion of the project generally would follow existing pipeline rights-of-way and would have minimal environmental impacts. However, construction would take place within 50 feet of 254 residences. A new pipeline corridor (the Patriot Extension) would be cleared for the pipeline extension and lateral lines between Wytheville, Virginia, and Eden, North Carolina. The Patriot Extension would affect an additional 28 residences. Recreational and public land would be crossed in four locations. In addition to the 0.3 acre of TVA land, the project would cross the Appalachian National Scenic Trail, New River Trail State Park, and Blue Ridge Parkway. Impacts to these properties would be minimized by time-of-year restrictions and the use of horizontal directional drill as opposed to open-trench construction. In exchange for a right-of-way easement to cross the Appalachian National Scenic Trail, the National Park Service would be provided title to 2 acres adjacent to the trail in Smyth County, Virginia. A billboard on Interstate 81, which is visible from the trail, would be removed. The crossing of the Blue Ridge Parkway in Patrick County, Virginia, would take place by horizontal directional drill that enters and exits outside National Park Service land.

About 34 percent of the proposed route is now forested and would be cleared for pipeline construction. A total of 922 acres of forested habitat would be cleared; of this, 404 acres would be permanently converted to herbaceous habitat or industrial use at compressor stations. The project would cross 367 surface water bodies. Major rivers along the route, including the South Fork Holston River, New River, and Smith River, would be crossed by horizontal directional drill to minimize impacts. Dry-crossing methods would be used for other stream crossings. A total of 71 wetland totaling 12.6 acres would be crossed. Of this, about 4.5 acres of forested wetlands would be permanently cleared. The project would not likely adversely affect the gray bat, Indiana bat small whorled pogonia, and large-flowered skullcap, but may affect the small-anthered bittercress and James spinymussel. No direct impacts to small-anthered bittercress plants are expected, and no reasonable and prudent measures (RPMs) were identified by the U.S. Fish and Wildlife Service to minimize "incidental take." A number of RPMs, including time-of-year restrictions, will be implemented to minimize "take" of the James spinymussel. Construction activities and operation of compressor stations would have minimal air emissions. Compressor stations would be constructed in such a manner that would minimize potential noise impacts and would be limited to an average day/night level of 55 decibels (dB) on the A-weighted (dBA) scale. Three archaeological sites would likely be adversely affected by pipeline construction.

FERC has adopted mitigation measures to avoid or minimize environmental harm. TVA believes that the measures required by FERC in its November 20, 2002, order would substantially reduce the environmental impacts of this project. These include detailed construction Best Management Practices, use of environmental inspectors, compliance with Section 106 of the National Historic Preservation Act by adherence to the PA, and surveys of properties along the expansion route for the bog turtle, James spinymussel, and small-anthered bittercress. The endangered species surveys have been completed, and formal consultation under the Endangered Species Act has been concluded. The project is not likely to jeopardize the continued existence of the small-anthered bittercress and James spinymussel. Potential adverse effects to cultural resources would be resolved by treatment plans outlined in a PA with the Virginia and Tennessee State Historic Preservation Officers.

In its order issuing a certificate for the project, FERC provided 69 environmental protection-related conditions to minimize project impacts. For the South Fork Holston River crossing at Fort Patrick Henry Reservoir, FERC required (condition no. 67) that the crossing be made by horizontal directional drill. In addition, ETNG was required to submit a site-specific construction and contingency plan for the crossing. The plan was required (1) to identify how construction noise would be reduced during the directional drill, (2) to include projected daytime and nighttime noise levels at nearby residences, and (3) to provide mitigation measures that would be used to minimize noise at the residences if the noise levels would exceed an average level of 55 dBA at any residence.

TVA has reviewed the construction and contingency plan required by FERC condition No. 67. To reduce

construction noise at the directional drill entry and exit sites, ETNG would install a temporary noise barrier system at both the entry and exit points. The barrier would consist of ¾-inch-thick plywood with 2-inch-thick fiberglass duct board attached to 50 to 60 percent of the inside surface. This should provide an 8 to 12 dB reduction of the noise associated with drilling equipment.

No surface disturbance is proposed on the federal property. The property would be used for an underground pipeline to be installed by directional drill from adjacent private property. The subsurface geology of the area where the drill is proposed is limestone. The estimated directional drill success rate for this type of geology is estimated at 80 percent or greater. The three possible modes of failure are estimated to be Pilot-Hole Failure, Reaming Failure, and Pullback Failure. These failures occur when soil or rock collapses on the drilling pipe. To minimize the possibility of failure, a casing pipe will be installed during the pilot-hole operation to ensure that gravel and cobbles will not fall onto the drill string and increase the torque needed to operate the drill pipe. This casing pipe would also reduce teh chance of drilling fluids being released into the environment if a failure occurs.

If directional drill failure does occur, the crossing of the South Fork Holston River would take place by traditional open-cut pipeline construction methods. A backhoe would work off of floating barges in the river. In this contingency, TVA would require further environmental reviews, including compliance with Section 106 of the National Historic Preservation Act due to the possible presence of an archaeological site. The FERC approval contains enforceable conditions that will minimize impacts of the pipeline construction across the TVA land and across other Tennessee Valley private land. Further, the RPMs identified in the Biological Opinion of March 7, 2003, could be independently enforced by the Secretary of the Interior under the Endangered Species Act.

These conditions require:

1. ETNG to adhere to its Erosion and Sedimentation Control Plan of July 20, 2001, contained in Appendix C–1 of the FERC EIS.

2. ETNG to adhere to its Spill Prevention Control and Countermeasure Plan and Preparedness, Prevention, and Contingency Plan of May 7, 2001, contained in Appendix C of the FERC EIS.

3. ETNG to adhere to U.S. Department of Transportation Pipeline Safety Requirements.

4. ETNG to comply with the 69 measures appended to FERC's Order Denying Rehearing, Authorizing Abandonment, and Issuing Certificate of November 20, 2002 (Docket Nos. CP01–415 and CP 01–375).

TVA Commitment List

1. ETNG will install a temporary noise barrier system at both the entry and exit points of the directional drill. The barrier will consist of ¾-inch-thick plywood with 2-inch-thick fiberglass duct board attached to 50 to 60 percent fo the inside surface.

2. A casing pipe will be installed during the directional drill pilot-hole operation to ensure that gravel and cobbles will not fall onto the drill string and increase the torque needed to operate the drill pipe.

3. If directional drill failure occurs, work will stop and additional approvals will be needed from TVA for open-cut construction.

With implementation of these commitments, TVA believes that the impacts of its right-of-way approval under the Mineral Leasing Act will be minimized.

Dated: July 17, 2003.

Kathryn J. Jackson,

Executive Vice President, River System Operations & Environment.

[FR Doc. 03–18797 Filed 7–23–03; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–43]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on this petition received must identify the petition docket number involved and must be received on or before August 13, 2003.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15528 at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Mike Brown, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–7653.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on July 21, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petition for Exemption

Docket No.: FAA–2003–15528.

Petitioner: Honeywell.

Section of 14 CFR Affected: 14 CFR part 21.603(a) and 21.607(d).

Description of Relief Sought: To permit Honeywell, at the time of manufacture, to continue production and support of components during the Technical Standard Order Authorization (TSOA) application process. Honeywell would like this exemption to be in place for one year.

[FR Doc. 03–18902 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34369]

Morristown & Erie Railway, Inc.—Modified Rail Certificate

On June 26, 2003, Morristown & Erie Railway, Inc. (M&E), filed a notice for a modified certificate of public convenience and necessity under 49 CFR 1150, Subpart C, *Modified Certificate of Public Convenience and Necessity*, to operate a portion of a rail line known as the Octoraro Branch (also referred to as Line 142), extending for approximately 36.50 miles between milepost 18.0 at Wawa, PA, and milepost 54.50 at the Pennsylvania/Maryland state line near Sylmar, MD.

The Octoraro Branch was previously owned by the Penn Central Transportation Company (Penn Central), and is currently owned by the Southeastern Pennsylvania Transportation Authority (SEPTA). The Octoraro Branch was not included in the final system plan at the time the Consolidated Rail Corporation was formed and, as such, was authorized to be abandoned without further regulatory approval pursuant to the Railroad Revitalization and Regulatory Reform Act of 1976, Public Law 94–210. SEPTA acquired the Octoraro Branch from the trustees of Penn Central after it was abandoned in 1976.

M&E states that, until recently, the line was operated by the Brandywine Valley Railroad Company (BVRR) and the purchaser of its rail assets, ISG Railways, Inc. (ISG), pursuant to a modified rail certificate issued in *Brandywine Valley Railroad Company—Modified Rail Certificate*, STB Finance Docket No. 33722 (STB served Apr. 16, 1999).[1] On April 1, 2003, BVRR filed with the Board, pursuant to 49 CFR 1150.24, a notice of intent to terminate service over the Octoraro Branch 60 days from the date of its notice. According to M&E, BVRR and ISG have terminated operations on the line. M&E states that, under an interim operating agreement between SEPTA and M&E, M&E will operate the Octoraro Branch for an interim period while SEPTA completes its procurement process to select a new railroad to provide freight service on the line. M&E also states that it will operate the line using the trade name Octoraro Railroad.

The rail segment qualifies for a modified certificate of public convenience and necessity. *See Common Carrier Status of States, State Agencies and Instrumentalities and Political Subdivisions*, Finance Docket No. 28990F (ICC served July 16, 1981).

M&E indicates that no subsidy is involved, that there are no preconditions for shippers to meet to receive rail service, and that it has obtained liability insurance coverage.

This notice will be served on the Association of American Railroads (Car Service Division) as agent for all railroads subscribing to the car-service and car-hire agreement: Association of American Railroads, 50 F Street, NW., Washington, DC 20001; and on the American Short Line and Regional Railroad Association: American Short Line and Regional Railroad Association, 1120 G Street, NW, Suite 520, Washington, DC 20005.

Decided: July 16, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–18577 Filed 7–23–03; 8:45 am]

BILLING CODE 4915–00–P

[1] Pursuant to an exemption that became effective on April 29, 2003, in *ISG Railways, Inc.—Acquisition of Control Exemption—Assets of Keystone Railroad LLC d/b/a Philadelphia, Bethlehem and New England Railroad Company, Conemaugh & Black Lick Railroad Company LLC, Steelton & Highspire Railroad Company LLC, Lake Michigan & Indiana Railroad Company LLC, Brandywine Valley Railroad Company LLC, Upper Merion & Plymouth Railroad Company LLC, Patapsco & Back Rivers Railroad Company LLC, and Cambria and Indiana Railroad, Inc.*, STB Finance Docket No. 34344 (STB served May 22, 2003), ISG was authorized to acquire the rail lines and assets of BVRR.

DEPARTMENT OF THE TREASURY

Privacy Act of 1974; System of Records

AGENCY: Treasury.

ACTION: Notice; correction.

SUMMARY: The Department of the Treasury published a document in the **Federal Register** of June 26, 2003, concerning the alteration of a Privacy Act system of records. The document added an incomplete routine use to the Privacy Act notice.

FOR FURTHER INFORMATION CONTACT: Dale Underwood, Privacy Act Officer, (202) 622–0874.

Correction

In notice document 03–16117 beginning on page 38111 in the issue of Thursday June 26, 2003, make the following correction: On page 38113, in the middle column, at the end of paragraph (17) insert the word "function" before the period ".".

Dated: July 10, 2003.

W. Earl Wright, Jr.,

Acting Chief Management and Administrative Programs Officer.

[FR Doc. 03–18846 Filed 7–23–03; 8:45 am]

BILLING CODE 4810–25–P

Federal Register

Thursday,
July 24, 2003

Part II

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone: Supplemental Rule Regarding a Recycling Standard Under Section 608 of the Clean Air Act; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7530–4]

RIN 2060–AF36

Protection of Stratospheric Ozone: Supplemental Rule Regarding a Recycling Standard Under Section 608 of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Through this action, EPA is amending the Refrigerant Recycling Regulations promulgated under section 608 of the Clean Air Act Amendments of 1990. On February 29, 1996, EPA published a proposed rule regarding a recycling standard under section 608 of the Clean Air Act. Today's action finalizes portions of the February 29, 1996, proposed rule and provides information concerning EPA's intention to continue consideration of the other aspects of the proposal that are not addressed in this final rule. Today's action amends the recordkeeping aspects of the section 608 technician certification program; refines aspects of the refrigerant sales restriction; adopts updated versions of ARI Standard 700 and ARI Standard 740, both of which are industry standards previously adopted by EPA; clarifies the distinction between major and minor service, maintenance, and repair of appliances; amends several definitions; and sets forth procedures for the revocation and/or suspension of approval to certify technicians and refrigerant recycling and/or recycling equipment and revocation and/or suspension procedures for certification as a refrigerant reclaimer.

Today's action also provides readers with notice that three of the items discussed in the February 29, 1996, proposal will not be completed as part of today's action (*i.e.*, the potential adoption of a more flexible method for cleaning refrigerants where the refrigerants will be transferred between appliances with different ownership; the potential adoption of a third-party certification program for reclaimers; and the potential adoption of a third-party certification program for laboratories that verify refrigerant purity or level of contaminants).

The regulatory changes promulgated through today's action will streamline and clarify portions of the existing refrigerant recycling regulations without compromising the goals of protecting public health and the environment or compliance with the requirements of the Clean Air Act Amendments of 1990.

EFFECTIVE DATE: The effective date for this action is September 22, 2003, except for certification of refrigerant recycling only equipment for which this rule becomes effective October 22, 2003.

ADDRESSES: Comments and supporting materials for this final rule are contained in Public Docket No. A–92–01; Environmental Protection Agency; 1301 Constitution Ave., NW., Washington, DC 20460 in room B–108. The docket may be inspected from 8 a.m. until 5:30 p.m., Monday through Friday. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Julius Banks; 202–564–9870; Stratospheric Protection Implementation Branch, Global Programs Division, Office of Atmospheric Programs, Office of Air and Radiation (6205–J); 1200 Pennsylvania Avenue, NW.; Washington, DC 20460. The Stratospheric Ozone Information Hotline can also be contacted for further information at 800–296–1996.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

I. Regulated Entities
II. Refrigerant Recycling Regulations
III. Proposed Revisions to the Refrigerant Recycling Regulations
IV. Summary of Comments Received on the Notice of Proposed Rulemaking
V. Final Rule
A. Contractor Reclamation and Third-Party Certification Programs
B. Definition of Reclaim and Adoption of the ARI Standard 700 Specifications for Fluorocarbon and Other Refrigerants
C. Revocation and Suspension Procedures
D. Technician Certification and the Sales Restriction
1. Recordkeeping
2. Sales Restriction on Refrigerants Approved for Use With Motor Vehicle Air Conditioners (MVACs)
3. Transfers Between Subsidiaries
4. Transfers Between Federal Facilities
5. Other Comments and Amendments to the Refrigerant Sales Restriction
E. Motor Vehicle Air Conditioner (MVAC)-Like Appliances
F. Changes to the ARI Standard 740 Test Procedure for Refrigerant Recycling and Recovery Equipment
1. Measurement of Vapor Recovery Rates
2. High-Temperature Testing
3. Use of Representative Recovery Cylinders
4. Limiting Emissions from Condenser Clearing, Oil Draining, Purging, and External Hoses
5. Durability Testing
6. Clarification of Labeling Requirements for Recovery/Recycling Equipment
7. Effective Date of New Standards and Grandfathering of Equipment
8. Requirements for Equipment Advertised as "Recycling Equipment"
9. Procedure for Updating Approval of Certification Organizations
10. Other Issues Raised by Commenters
G. Major and Minor Maintenance, Service, or Repair
H. Definition of Small Appliances
VI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks"
H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Congressional Review Act

I. Regulated Entities

Entities potentially regulated by this action are those that wish to recover, recycle, reclaim, sell, or distribute in interstate commerce refrigerants that contain chlorofluorocarbons (CFCs) and/or hydrochlorofluorocarbons (HCFCs) and those that service, maintain, repair, or dispose of appliances containing CFC or HCFC-refrigerants. In addition, the owners or operators of appliances containing CFC or HCFC-refrigerants may be potentially regulated. Regulated categories and entities include:

Category	Example of regulated entities
Industry	Refrigerant reclaimers
	Refrigerant recovery/recycling equipment manufacturers
	Air-conditioning and refrigeration contractors and technicians
	Owners and operators of air-conditioning and refrigeration equipment
	Certifying programs for technicians
	Refrigerant recovery/recycling equipment testing organizations

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your company is regulated by this action, you should carefully examine the applicability criteria contained in section 608 of the Clean Air Amendments of 1990 and 40 CFR part 82, subpart F, published on May 14, 1993 (59 FR 28660). If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Refrigerant Recycling Regulations

Final regulations promulgated by the U.S. Environmental Protection Agency (EPA) under section 608 of the Clean Air Act Amendments of 1990 (the Act), and published on May 14, 1993 (58 FR 28660), established a recycling program for ozone-depleting refrigerants recovered during the maintenance, service, repair, and disposal of air-conditioning and refrigeration equipment. The ozone-depleting refrigerants recycling regulations are codified at 40 CFR part 82, subpart F. Section 608 of the Clean Air Act prohibits the knowing venting, release, or disposal into the environment of any class I or class II substance used as a refrigerant during the maintenance, service, repair, and disposal of appliances or industrial process refrigeration equipment. Together with this statutory prohibition, the refrigerant recycling regulations are intended to substantially reduce the emissions of ozone-depleting refrigerants. The refrigerant recycling regulations were amended in final regulations published on November 9, 1994 (59 FR 55912); March 17, 1995 (60 FR 14607); and August 8, 1995 (60 FR 40419).

As promulgated, the refrigerant recycling regulations established recovery/recycling equipment and reclamation certification requirements, developed a technician certification requirement, and established that persons servicing air-conditioning and refrigeration equipment observe certain service practices to reduce emissions. The regulations also require that ozone-depleting compounds contained in appliances be removed prior to disposal of the appliances, and that all air-conditioning and refrigeration equipment, except for small appliances, be provided with a servicing aperture to facilitate recovery of refrigerant. In addition, the regulations restrict the sale of ozone-depleting refrigerants and establish a leak repair requirement for appliances that normally hold a refrigerant charge of more than 50 pounds. Also, the refrigerant recycling regulations require that refrigerant recovered from an appliance but not returned to that appliance or another appliance with the same ownership, be reclaimed by an EPA certified reclaimer.

As promulgated at 58 FR 28712, 40 CFR 82.154(g) and (h) prohibit the sale or offer for sale of any class I or class II substance consisting of used refrigerant, unless it has been (1) reclaimed as defined at § 82.152(q) and (2) reclaimed by a person certified as a reclaimer in accordance with § 82.164. These prohibitions were effective until May 15, 1995. On March 17, 1995, EPA promulgated a final rule extending the effective date of § 82.154(g) and (h) until March 18, 1996, or until EPA could promulgate a rule to adopt new specifications for reclaimed refrigerants based on industry guidelines (60 FR 14610). On February 29, 1996, EPA promulgated a final rule extending the effective date of these recycling prohibitions until December 31, 1996, or until EPA completes a rulemaking to adopt revised specifications for reclaimed refrigerants based on industry guidelines (61 FR 7724). On December 27, 1996, EPA indefinitely extended the effective date of the reclaimed refrigerant specifications of § 82.154(g) and (h) until EPA could complete a rulemaking to adopt the revised specifications (61 FR 68508).

III. Proposed Revisions to the Refrigerant Recycling Regulations

On February 29, 1996, EPA issued a Notice of Proposed Rulemaking (NPRM) that proposed amendments to several aspects of the recycling program (61 FR 7858). The NPRM proposed to allow additional flexibility in situations where refrigerants are transferred between appliances with different ownership; to adopt a third-party certification program for reclaimers and laboratories; to amend the recordkeeping aspects of the technician certification program; and to clarify aspects of the sales restriction. In addition, EPA proposed changes for the testing of recovery/recycling equipment and proposed to adopt the 1995 version of the industry standard ARI Standard 740 (an earlier version of which had been previously adopted by EPA). Also, the proposal included clarifications regarding the distinction between major and minor repairs.

IV. Summary of Comments Received on the Notice of Proposed Rulemaking

EPA received comments from 39 respondents on the refrigerant recycling NPRM. In addition, EPA also received two non-adverse comments on the direct final rulemaking to extend the reclamation requirements that were published in that same issue of the **Federal Register** (61 FR 7724). EPA has addressed the comments and questions submitted by these respondents with the exception of comments related to the three proposed items that the Agency will not address in today's final rule, namely the potential adoption of a more flexible method for cleaning refrigerants where the refrigerants will be transferred between appliances with different ownership; the potential adoption of a third-party certification program for reclaimers; and the potential adoption of a third-party certification program for laboratories.

The majority of commenters offered support for EPA's efforts, while expressing concern on a number of specific issues. One commenter expressed support for EPA's focus on the consumer by providing greater flexibility for technicians. Four commenters stated their approval for EPA's efforts to use the Industry Recycling Guide-2 (IRG–2) as the basis for the proposal; however, these commenters noted that certain elements of IRG–2 were omitted from the proposal and expressed concern for the potential of increased contamination in the refrigerant supply that could ultimately damage the environment. Several commenters did not believe that EPA had fully considered the impact of the proposal on industrial process refrigeration equipment or on large manufacturing facilities. A commenter representing the scrap metal recycling industry, specifically noted approval for EPA's efforts to reduce costs and burdens for the industry and believes that this action will encourage compliance with EPA refrigerant regulations. Commenters supported EPA's recognition of industry advances, equipment improvements, and continued advances in the options available to meet customers' needs, and specifically expressed support for EPA's efforts to update the refrigerant recovery/recycling equipment standards by adopting ARI Standard 740–1995. One commenter, who generally expressed approval for the proposed new certification programs for laboratories and refrigerant recovery/recycling equipment, expressed concern that some elements of the proposal may cause hardships for the refrigeration and air-conditioning industry.

Several commenters did not support portions of the NPRM. One commenter stated that EPA should not be in the business of consumer protection and believed that the Agency's proposed actions run counter to the goals of environmental protection. A couple of commenters were concerned that the comment period was too short and stated concerns regarding their ability to fully consider and address all the issues related to the proposed rulemaking during a thirty-day comment period.

EPA received two requests to extend the comment period for the NPRM.

EPA contacted the commenters after receiving the request for additional time. EPA informed them that while the official comment period would remain 30 days, EPA would accept and respond to comments received after the close of the comment period as long as those comments were received within a reasonable time frame. In today's action, EPA has included consideration and discussion of all comments, including those that were received after the close of the official comment period.

EPA received comment indicating that the refrigerant purity requirements and the sales restriction are basically consumer protection requirements, and that EPA should turn the issue over to the Consumer Products Safety Commission. The commenter believes that EPA may be going beyond its enabling legislation by establishing rules that are aimed at protecting consumers, rather than the environment. Specifically, the commenter believes that the purity of resold recovered refrigerants should not be the interest of EPA since EPA is chartered to protect the "purity of our environment." The commenter further stated that EPA's actions could result in "promoting rather than eliminating refrigerant dumping into the atmosphere," since according to this commenter, "most refrigerant being recovered from air-conditioning and refrigeration equipment is being vented, and the lack of refrigerant reclamation is a result of the lack of financial incentives for reclamation." The commenter believes that this situation is encouraged by manufacturers' associations that are sabotaging efforts to reuse refrigerants. The commenter also questioned the timing of the NPRM and the lack of an Agency requirement for sound service practices such as proper evacuation before charging appliances, installation of filter-dryers, and other proper service techniques.

EPA does not believe that the proposed requirements go beyond the Agency's statutory authority. Under section 608(a) of the Act, as amended in 1990, EPA is required (by no later than January 1, 1992) to promulgate regulations establishing standards and requirements that will maximize the recapture and recycling of refrigerants during the service, repair, or disposal of appliances and industrial process refrigeration equipment. EPA believes that the standards promulgated in the initial final rulemaking (58 FR 28660; May 14, 1993) properly implemented this statutory mandate. The NPRM was based on new developments between 1993–1996 and recognizes that today there are more options available that still maximize the recapture and recycling of refrigerants without compromising the goals of protecting human health and the environment, including the adoption of updated versions of industry specifications for refrigerants and recovery equipment certification (*i.e.*, ARI Standard 700–1995 and ARI Standard 740–1995, respectively). Furthermore, in the May 14, 1993 final rule and the February 29, 1996, direct final rule, EPA noted that the reclamation requirement encourages careful handling of refrigerant and prevents irretrievably contaminated (for instance through mixture with other refrigerants) refrigerant from being introduced into the marketplace, where it could lead to damage to equipment and eventual venting of refrigerant (58 FR 28679; May 14, 1993 and 61 FR 7725; February 29, 1996).

While some of the options discussed in the NPRM (61 FR 7859) clearly would help protect the owners and operators of the appliances (those that EPA believes the commenter has characterized as consumers), the essence of these requirements is not consumer protection, but remains protection of human health and the environment, consistent with EPA's mission. Today's final rule does not change the refrigeration sales restriction requiring that used refrigerant be reclaimed by a certified reclaimer prior to sale to a new owner; therefore, consumers will be afforded a level of protection since this rule restricts the transfer of used refrigerant. While this constitutes an ancillary consumer benefit worth noting, the primary goal of today's action is to minimize the release of ozone-depleting substances to the lowest achievable level by preventing equipment damage and subsequent refrigerant release. Without monitoring the quality of used refrigerant, substandard refrigerant may be charged into an appliance, and the consequent damage to the appliance may result in release of the ozone-depleting refrigerant.

EPA does not share the commenter's belief that today's action will result in the promotion rather than the elimination of illegal refrigerant venting. The phaseout of class I refrigerants has made these refrigerants a commodity worth recovering, and the Agency believes that the marketplace will dictate similar results as class II refrigerants are phased out. A requirement that used refrigerant meets a standard set of specifications, prior to resale, will insure that less venting occurs as a result of equipment failure caused by contaminated refrigerant that would otherwise have been transferred to a new owner without being reclaimed.

In addition, reports provided to EPA do not lead the Agency to believe that there is a lack of reclamation or economic incentives for reclamation. There are more than 50 EPA-certified reclaimers in the United States, who reported that approximately 2.0 and 6.1 million pounds of R–12 and R–22, respectively, were reclaimed during 1999. Similar reports reveal that approximately 1.7 and 7.1 million pounds of R–12 and R–22, respectively, were reclaimed during 2000. Reclamation trends lead the Agency to believe that while reclamation of class I refrigerants will decrease as stocks decrease, that future reclamation of all refrigerants will continue in the foreseeable future.

EPA agrees that sound and responsible service practices are important. EPA has a section of the regulations devoted to required practices (*i.e.*, § 82.156) and requires that technicians follow practices that are designed to reduce the emissions of ozone-depleting substances. EPA hopes that all technicians and contractors comply with reasonable service standards established and adopted by the industry, as well as standards established by EPA to ensure that the highest degree of responsible service is provided. For these reasons, EPA believes that today's action is consistent with the Agency's mandate under the Act.

EPA received comments that supported EPA's efforts while noting that EPA must consider the impact of the NPRM on the industrial process refrigeration industry as well as on other segments of the entire air-conditioning and refrigeration industry. Commenters stated that EPA may have proposed a rulemaking that addressed the concerns and needs of the commercial and residential refrigeration sectors without full consideration of the impacts and potential application of the proposed requirements to other segments of the industry and will do little to assist in the goals of introducing greater flexibility for the industrial process refrigeration industry.

EPA understands these concerns and has been careful to consider the impacts of today's action on the owners and operators of industrial process refrigeration equipment. For example, this rule allows greater flexibility by allowing the transfers of refrigerants between parent companies and their subsidiaries. The community affected by regulations promulgated under section 608 is diverse. Since promulgating the initial final rulemaking in 1993, EPA has amended the regulations several times to address the various needs of specific sectors. For example, in recognition that industrial process refrigeration equipment is custom-built, the August 8, 1995, amendments, to the leak repair requirements (60 FR 40420), provided additional time for owners and operators of industrial process refrigeration equipment to repair, retrofit, or retire equipment when replacement parts are not readily available. EPA believes that the Agency has recognized the diversity of the affected community, and, where appropriate, has tailored specific regulatory actions to address the uniqueness of the affected community.

EPA received a number of comments on the NPRM. EPA addresses many of the issues raised in comments in the preamble of this final rule. EPA also addresses comments in the corresponding *Industrial Recycling Guide-2 Comment Summary* document. This document may be found in EPA Docket Number A–92–01 VIII.

V. Final Rule

A. Contractor Reclamation and Third-Party Certification Programs

EPA proposed more flexible requirements, based on industry guidelines, for recycling refrigerants in the February 29, 1996 NPRM (61 FR 7858). EPA proposed to permit contractors to recycle refrigerants, draw a representative sample of the refrigerants, send the sample to a laboratory that would be certified by an EPA-approved certifying entity, and where the refrigerant sample met the criteria established by ARI Standard 700, to sell the refrigerant and charge the refrigerant into an appliance owned by someone other than the owner of the appliance from which the refrigerant was initially recovered. EPA stated in the NPRM that this approach, based on IRG–2, would provide greater flexibility for contractors and technicians while maintaining the integrity of the refrigerant supply. The proposed protocol relied on recordkeeping and reporting requirements concerning the custody and control of the refrigerant. This proposed protocol would have provided an alternative to the current requirements to send recovered refrigerant to a reclamation facility prior to selling and installing that refrigerant into an appliance with different ownership. Central to this approach was the proposed adoption of third-party certification programs for both laboratories and reclaimers. As proposed, EPA would rely on the technical knowledge of approved third parties to ensure the capabilities of the certified laboratories and reclaimers.

EPA received several detailed comments regarding the proposed structure of and likely participation in these third-party programs. EPA received comments both favoring and opposing contractor recycling and the two third-party certification programs for laboratories and reclaimers. Many commenters suggested changes in the proposed structure for the program and various ways to modify programmatic requirements while still ensuring that refrigerant purity is maintained. Several commenters identified specific concerns regarding the appropriateness of delegating various functions to private-sector third-parties and whether EPA may unintentionally establish a monopoly in a case where only one entity has shown interest in becoming a third party certifying organization. A few commenters opposed the proposed rulemaking, because they believed that the proposal would establish two different reclamation standards: one for contractors and another for refrigerant reclaimers, thus hurting contractors and wholesalers as well as penalizing companies that attempt to comply with the goals of the Act.

These comments have prompted EPA to more broadly explore variations on the proposed program that could meet the needs of both the regulated community and the Agency without compromising the goals of environmental protection, (as noted above, all comments submitted in response to the February 29, 1996, NPRM are contained in Air Docket A–92–01). Therefore, at this time, EPA is not prepared to promulgate final requirements for the following three provisions: (1) The potential adoption of a more flexible method for cleaning refrigerants where the refrigerants will be transferred between appliances with different owners; (2) the potential adoption of a third-party certification program for reclaimers; and (3) the potential adoption of a third-party certification program for laboratories. EPA has decided to separate these three issues from the rest of the NPRM and to complete action on these three provisions in either a separate final rule or possibly by re-proposing some or all of these three items.

This decision to separate these three items is not a signal of the Agency's agreement or disagreement with any of the comments received. EPA is merely indicating a need to further consider these comments prior to taking final action on any of these three proposed provisions. EPA believes a flexible approach to reclamation can be developed that avoids any perceived inappropriate delegations of authority and also does not preclude competition. To ensure that the public has adequate opportunity to comment, if EPA pursues a structure that varies significantly from what was discussed in the February 29, 1996, NPRM, EPA will issue a revised proposal and provide additional opportunity for comments.

Since EPA is not finalizing action on contractor reclamation or the related provisions for third-party certification of reclaimers and laboratories through today's action, EPA is not responding at this time to the comments the Agency received regarding these three items. When EPA takes additional action with regard to these provisions, EPA will respond to the comments in the accompanying notice.

While EPA clearly believes it is appropriate and necessary to delay action on these three items, it has taken steps to avoid a lapse in the current reclamation requirements. Such a lapse could result in widespread contamination of the stock of CFC and HCFC refrigerants. Such contamination could cause extensive damage to air-conditioning and refrigeration equipment, release of refrigerants, and refrigerant shortages with consequent price increases. Release of CFC and HCFC refrigerants has been found to deplete stratospheric ozone, resulting in increased human and environmental exposure to ultraviolet radiation. Increased exposure to ultraviolet radiation in turn can lead to serious health and environmental effects. Therefore, in a separate rulemaking published in the **Federal Register** on December 27, 1996 (61 FR 68506), EPA extended the effectiveness of the current refrigerant specifications indefinitely.

B. Definition of Reclaim and Adoption of the ARI Standard 700 Specifications for Fluorocarbon and Other Refrigerants

In the NPRM, EPA included a change to the definition of "reclaim," at § 82.152, that included a reference to the updated ARI Standard 700–1995. EPA proposed, in the subsequent "substitutes" proposed rule (63 FR 32058; June 11, 1998), to amend the definition of "reclaim" to reflect the update of the refrigerant specifications standards at appendix A from standards based on ARI Standard 700–1993 to standards based on ARI Standard 700–1995, and to clarify that to "reclaim" refrigerant means to reprocess the refrigerant to all of the specifications of the appendix. The Agency did not receive any comments specifically

addressing the proposed amendment to the definition of "reclaim" in either of the proposed rulemakings.

EPA believes that it is pertinent to take final action to clarify the definition of "reclaim" in this final rule, since the Agency has found that many in the regulated community believe that purity and/or reclamation equates to characterization of the used refrigerant with the use of a gas chromatograph, while ignoring the presence or failing to test for the presence of various contaminants as required by today's action and delineated in appendix A (*i.e.*, water, chloride, acidity, high boiling residue, particulates/solids, non-condensables, and other impurities including other refrigerants). Therefore, EPA has chosen to amend the definition in the rule being promulgated today, due to the definition's close association with IRG–2 and the importance of the clarification as it applies to refrigerant reclamation and the transfer of used refrigerant.

EPA is adopting the ARI Standard 700–1995, with modification, into regulation as appendix A of 40 CFR part 82, subpart F. At this time, EPA is not adopting the ARI Standard 700–1995 requirements for refrigerant blends that were not included as a part of the initial May 14, 1993, final rule. The adoption of refrigerant blends into appendix A of 40 CFR part 82, subpart F was proposed in the NPRM for the "substitutes" rule (63 FR 32064, June 11, 1998) and will be discussed in a subsequent rulemaking.

EPA has always interpreted 40 CFR 82.154(g) and 82.164 to require persons who "reclaim" refrigerant to reprocess the refrigerant to *all* of the specifications of appendix A (based upon the ARI Standard 700–1993 and now the 1995 version of the Standard) that are applicable to that refrigerant and to verify that the refrigerant meets those specifications using the analytical methodology prescribed in section 5 of appendix A (*i.e.*, Appendix–93 to ARI Standard 700–1993 and now Appendix–C to the 1995 version of the Standard) or alternate test methods that produce equivalent results. Therefore, EPA has amended the definition of "reclaim" by removing the reference to a "purity" standard and thereby making the definition more consistent with the full range of requirements provided in appendix A. Failure to abide by these protocols to assure that used refrigerant meets the requirements of appendix A, based upon the ARI Standard 700–1995, and may violate the prohibition against the sale of used refrigerant that has not been "reclaimed" (established under § 82.154(g)). This amendment to the definition of reclaim does not add additional requirements upon reclaimers, but ensures that the regulations explicitly reflect EPA's long standing interpretation of what constitutes "reclaimed" refrigerant.

C. Revocation and Suspension Procedures

Under 40 CFR part 82, subpart F, failure to abide by any of the provisions of subpart F may result in the revocation or suspension of EPA approval for technician certifying programs, recovery/recycling equipment testing organizations, as well as self certifications by refrigerant reclaimers. The NPRM contained specific revocation and suspension procedures for both the existing recovery and recycling equipment and the technician certification programs, as well as for the proposed third party laboratory and reclaimers programs.

In cases of revocation or suspension, EPA proposed that the Agency notify the certification program in writing regarding the action. The NPRM also specifies procedures concerning the proposed methods for a previously approved certification program to challenge a decision of revocation or suspension. In such cases, the NPRM stated that the program could request a hearing within 30 days; however, the program would have to submit in writing the program's objections and supporting data. If, after review of the request, the Agency agreed that the program had raised a substantial and factual issue, EPA would provide a hearing and assign a Presiding Officer. The Agency could direct that all arguments and presentation of evidence be concluded within a specified time of no less than 30 days from the date that the first written offer of a hearing was made and could direct that the decision of the Presiding Officer would be final. EPA proposed that the decision of the Presiding Officer would be final without further proceedings, unless there was an appeal or motion for review by the Administrator within 20 days of the decision. On appeal, EPA proposed to provide the Administrator with all the powers that he or she would have in making the initial decision, including the discretion to require or permit briefs, oral arguments, the taking of additional evidence, or the remanding to the Presiding Officer for additional proceedings. EPA requested comments on these procedures.

EPA proposed that these procedures would apply to section 608 technician certifying programs, equipment testing organizations, the proposed laboratory certification program, and the certification of reclaimers. However, since EPA is not promulgating third-party certification programs for either laboratories or reclaimers at this time, EPA is not establishing revocation procedures for these programs through today's action.

EPA received comment indicating that the revocation procedures should provide for the consideration of legal as well as factual issues. The final procedures state that EPA will give notice of the basis for the revocation or suspension in advance, and that the program will have an opportunity to demonstrate or achieve compliance with the provisions of subpart F. The program may raise legal issues in responding to EPA's notice.

EPA received comment indicating that the provisions should specify minimum qualifications for, and impartiality of, presiding officers. The commenter states that the presiding officer should be an attorney, preferably an administrative law judge, and should be independent of EPA's enforcement branch or the Department of Justice.

EPA understands this commenter's concerns; however, EPA disagrees with the need to include these criteria. EPA does not believe that it is necessary to specify prerequisites that the Administrator should use for determining who is an appropriate presiding officer. EPA believes that the Administrator will use her best judgement to ensure that a presiding officer is someone who can effectively act in an impartial manner and possesses appropriate knowledge to carry out all necessary duties.

The same commenter also indicated that the procedures for appealing adverse decisions are evidence that the regulations are too detailed. The commenter believes the regulations should be scaled back to impose only those requirements that the commenter believes protect the environment. However, the commenter further noted that the procedures seem fair and appropriate. The commenter states that this is the only program, established under the Clean Air Act, that specifies revocation procedures.

EPA first notes that there are other programs established under authority of the Clean Air Act that specify revocation procedures (*e.g.*, the mobile source regulations at 40 CFR 86.094–30(c)(1)–(5), referencing the hearing procedures at 40 CFR 86.078–6). When drafting the procedures applicable to subpart F of part 82, EPA reviewed where and how similar procedures have been used. Moreover, EPA believes that these regulations, taken in their entirety, serve to protect human health and the environment, and that providing regulatory text consistent with current practices does not alter that degree of protection. The Agency's ability to suspend or revoke programs based upon their noncompliance with EPA regulations further safeguards the environment.

Through today's action, EPA is promulgating procedures to revoke approval, of third-party certification programs for technician certifying programs and equipment testing organizations and self-certification by refrigerant reclaimers, based on failure to comply with the provisions of 40 CFR part 82 subpart F. Revocation procedures are established for approved equipment testing organizations, technician certifying programs, and reclaimer self certifications by amending 40 CFR 82.160(d), 82.161(e), and 82.164(g). In developing this final rule, EPA decided to apply the procedures to the revocation or suspension of self-certification of reclaimers, as well as the existing third-party certification programs for technician certifying programs and testing organizations for refrigerant recovery/recycling equipment. Accordingly, today's action includes procedures for the revocation and/or suspension of programs approved to certify technicians, programs approved to certify recovery and/or recycling equipment, and self-certification of refrigerant reclaimers. EPA believes that this broader approach will safeguard the environment by establishing greater oversight of reclaimers and third-party certifying programs.

D. Technician Certification and the Sales Restriction

EPA received comments concerning technician certification and the sales restriction that were beyond the issues presented in the NPRM. Comments concerning exemption of the technician certification requirements and the applicability of refrigerants under the Significant New Alternatives Policy (SNAP) will not be addressed in this final rule, but are addressed in the accompanying *Industrial Recycling Guide-2 Comment Summary* contained in EPA Docket Number A–92–01 VIII. All comments that address aspects of the proposed regulatory changes are discussed below.

1. Recordkeeping

EPA stated in the NPRM that the Agency is concerned with the maintenance of records [1] by approved certifying programs for technicians that no longer administer the section 608 certification test. Currently, there are more than 90 EPA-approved technician certification programs that provide testing in accordance with § 82.161 and appendix D to subpart F. These programs administer and grade tests, maintain records, issue certification credentials, and submit reports to EPA twice per calendar year. It has come to the Agency's attention that since the bulk of existing technicians has become certified, and the certification market now focuses on those first entering this field, some EPA-approved certification programs may choose to discontinue providing this service. EPA believes that the likelihood of programs withdrawing will increase over time. EPA stated in the NPRM that if a technician's certification credentials are lost and the program no longer exists, it may not be possible for the technician to receive duplicate credentials, thus denying the technician the ability to purchase class I or class II refrigerants or to legally perform aspects of his or her job.

Currently, programs that have been approved to administer the test must maintain records for at least three years (40 CFR part 82, subpart F, appendix D; 58 FR 28734). However, EPA does not believe that a mechanism exists that would effectively ensure that these records are maintained and are made available to EPA if a program goes out of business. Furthermore, even if the program does continue to maintain the records, access to the records may be difficult if the program itself no longer exists. Therefore, EPA proposed options aimed at ensuring that technicians can receive replacement credentials in instances where their certifying program is no longer in business or in instances where the request for the records exceeds the three-year minimum recordkeeping provision.

EPA discussed several options in the NPRM and requested comment. The first two proposed options would require maintenance of records by EPA. First, EPA could require programs leaving the certification business to forward their records to EPA, and thus the Agency would be responsible for maintaining those records. In the NPRM, EPA noted that the Agency may not have adequate resources for maintaining these records effectively. A second option would be to have the programs send the records to EPA and have the Agency choose a suitable existing certification program to maintain the records and forward the records to that program. EPA stated in the NPRM that the Agency is uncertain as to what criteria should be used for choosing the appropriate program. With more than 90 existing programs, all approved based on the same criteria, EPA would have difficulty in selecting a single program.

A third option would be to have the program that intends to cease operation identify an active program that is willing to accept the records and notify EPA. In this scenario, all pertinent information, including the records relating to the technicians and the testing information would be forwarded to another program. The program discontinuing certification activities would notify EPA of the identity of the certification program that it had identified as the new repository of its records, and the recipient of the records would notify EPA upon receipt of the records. EPA stated in the NPRM that the third option represented the most equitable approach. Therefore, EPA proposed to promulgate the third option. In addition, EPA requested comments regarding whether EPA should extend the minimum length of time that records must be maintained beyond the three-year minimum requirement.

The Agency received several comments supporting option one, but none specifically addressing whether or not EPA should select an appropriate program for the transfer of the records, as detailed in the second proposed option. In response to the first proposed option, one commenter stated that EPA's unwillingness to store certification records is evidence that third party certification of technicians should not be required.

EPA certainly supports the maintenance of records stating which certifying programs have certified which technicians, but EPA is reluctant to have information regarding each individual technician and their test scores maintained by the Agency. In addition, EPA does not believe the Federal government should develop a central registry or database for certified technicians. EPA's reluctance to maintain such a database is based in part on a discussion held during a meeting on April 3, 1995. That meeting was a forum for the EPA-approved section 608 technician certification programs to discuss concerns with EPA regarding the section 608 technician certification program. At that meeting, several representatives of approved technician certification programs expressed their desire to have the programs maintain information rather

[1] Certifying programs must maintain records that include, but are not limited to, the names and addresses of all individuals taking the tests, the scores of all certification tests administered, and the dates and locations of all testing administered.

than EPA. The concept of a national database was discussed and rejected by those directly involved in the certification process. Many of the programs were in operation prior to the 1993 EPA mandate for technician certification; hence, they had maintained such records and representatives felt that the continuing maintenance of such records should remain in the hands of certifying programs. Memoranda concerning the meeting can be found in Air Docket A–92–01.

In response to the third proposed option, one commenter stated that EPA should not impose a recordkeeping burden it is not willing to assume itself. EPA believes that the maintenance of technician certification records would be more efficiently managed by an existing technician certifying program. EPA's decision to propose the third option was consistent with the belief that those that already maintain such records may have data storage and retrieval mechanisms in place that would allow them to efficiently manage record maintenance, as well as the personnel required to handle the volume of inquiries and production of duplicate certification credentials.

Another commenter stated that if EPA would not keep the records, then they have relatively little value. The commenter suggested instead that the technician or their employers make a photocopy of the documents and put it in a file. The commenter believes that EPA should rely on the technicians and their employers to maintain whatever records are necessary.

As to the value of the records, EPA uses the aggregate data submitted by each approved program to monitor the effectiveness of the certification program and to compile information for subsequent changes to the section 608 technician certification test bank. The test bank is maintained by the Agency and is provided to testing organizations in order for the programs to formulate and test technicians in accordance with appendix D of 40 CFR part 82, subpart F.

EPA would like to clarify that the NPRM addressed possible changes to the maintenance of records by certifying programs that no longer offer section 608 certification testing not to the technician's requirement to maintain technician certification cards at the technician's place of business, as required by § 82.166(l). EPA agrees that the technician and, where appropriate, the employer should maintain copies of the credentials themselves to prevent difficulties resulting from lost or misplaced cards. The Agency recognizes that the potential exists for documentation to be lost; however, the recordkeeping requirement at § 82.166(l) does not offer a mechanism to replace lost credentials. EPA believes that it is prudent to have a mechanism to replace the cards so that the technician does not incur the burden of repeating the certification test. EPA also believes that requiring the entity that issues the credentials to also maintain supporting records on technicians that they certify will provide such a mechanism.

EPA also received several comments supporting the third proposed option to allow the records transfer and the subsequent maintenance of records by other EPA-approved certification programs rather than by EPA directly. Two commenters supporting this procedure raised concerns about notification of how to access transferred records. The first stated that the proposed requirement was necessary to ensure the reasonable availability of backup records for technicians requiring duplicate credentials by putting the onus on the discontinued program to see that the records are maintained. The commenter also stated that a mechanism to notify technicians would be necessary. Another commenter raised concerns regarding notification. The commenter stated that it is critical that programs no longer in operation notify EPA and technicians who they have certified.

EPA agrees that programs no longer in operation must notify EPA and is adding this requirement to appendix D in subpart F under the Recordkeeping and Reporting Requirements. This notification requirement will make it easier for the community and regulators to obtain this information directly from the Agency instead of trying to locate each individual technician. EPA hopes that both programs that no longer offer certification and those that voluntarily receive records choose to contact technicians certified under their programs. However, EPA questions the effectiveness of requiring those that are exiting the business to notify technicians. For example, if a previously approved program declares bankruptcy, it would be difficult to enforce such a requirement. Therefore, through today's action, EPA is encouraging programs exiting the certification business to inform technicians about where and how to receive duplicate credentials. In addition, EPA will continue to provide information on defunct programs on its factsheets and websites.

One commenter asked what would happen if no other program wished to accept the records of a program that no longer offered the certification test. EPA communications with the section 608 technician certification programs and comments received on this action indicate that several of the approved programs are willing to accept the responsibility for maintaining this information, but if such a scenario arose, the program would be required to submit the records to EPA where they would be maintained by the Agency until such a time that the Agency could identify a program that would be willing to accept the responsibility and maintenance of such records.

EPA received a few comments regarding extension of the recordkeeping provision beyond three years for technician certification programs. One commenter requested that the Agency require maintenance of the records for at least seven years or preferably indefinitely. Another commenter stated that the Agency should not require a longer retention than the current three-year requirement, especially if the Agency is not willing to retain the records on behalf of programs no longer offering technician certification.

It should be noted that prior to today's final rule, the recordkeeping requirement of appendix D of 40 CFR part 82, subpart F calls for a minimum record retention time frame of three years. In the Agency's day-to-day dealings with the technician certifying organizations, EPA has yet to find a testing organization that does not maintain records on a permanent basis, which for most programs well exceeds the minimum three year period. In response to voluminous requests for programs to assist technicians who have lost their credentials, the Agency has found that operating programs, and especially the more senior programs that existed prior to EPA regulation in 1993, have been able to produce records that date back to their inception. Since the permanent maintenance of certification records appears to be standard operating procedure for section 608 certifying programs, EPA does not believe that an additional significant burden would be placed on certifying programs for technicians by requiring that records be maintained for longer than three years minimum.

Through today's action, EPA is requiring that organizations no longer offering the section 608 technician certification exam notify EPA of their intent to cease operation. The Agency is also establishing a process for the transfer of records for programs exiting the section 608 technician certification business. Such programs will be required to forward records to another approved program and notify EPA as to which program the records have been given. Programs receiving records from a defunct program will also notify EPA. If no other program is willing to take those records on behalf of the defunct program, the program must forward the records to EPA. In these instances EPA will maintain this information and make it available to technicians as appropriate, until such a time when EPA can locate a program that is willing to accept responsibility and maintenance of the records. EPA is also extending the recordkeeping requirement of appendix D for certifying programs beyond the current three year period by requiring these programs to maintain records for as long as they are in business.

2. Sales Restriction on Refrigerants Approved for Use With Motor Vehicle Air Conditioners (MVACs)

In the NPRM, EPA stated that the Agency was concerned with the ability of technicians certified under a section 609 technician certification program, in accordance with § 82.40, to purchase any ozone-depleting refrigerant in any size container. EPA is concerned with reports that technicians with section 609 certifications are purchasing refrigerants that are not acceptable for use in MVACs, and that such refrigerants are either being improperly installed in MVACs or used by those technicians to service other appliances in violation of the regulations promulgated under Section 608. At the time that the sales restriction was drafted and promulgated in 1993 (58 FR 28714; May 14, 1993), EPA was aware that potential substitutes for R–12 for use in MVACs could include HCFC refrigerants or a refrigerant blend with an HCFC component. Therefore, EPA did not restrict the types of refrigerants that could be purchased by those with section 609 certification. Since that time, EPA has promulgated regulations—the Significant New Alternatives Policy (SNAP)—regarding acceptable and unacceptable alternatives to class I and class II refrigerants in specific refrigeration and air-conditioning end uses, under section 612 of the Act. Since SNAP now clearly delineates which refrigerants are acceptable for use as substitutes to R–12 in MVACs, EPA proposed that the sales restriction should employ a similar provision.

EPA received one comment asking that the Agency review the statutory provision (section 609(e)) barring the sale of small containers of R–12 (and other class I and class II substances suitable for use in MVACs) to anyone other than a technician who has been properly trained and certified under section 609. The commenter requested that EPA lift the restriction on sales of small containers.

EPA has no authority to promulgate regulations that are inconsistent with the statutory language. Therefore, the sales of small containers of class I and/or class II refrigerants must remain restricted pursuant to Section 609(e) of the Act.

EPA received one comment requesting that EPA clarify that SNAP acceptability is not the criterion to decide which substitute refrigerants may be purchased by technicians certified under section 609. The commenter stated that EPA had proposed to specify that MVAC technicians may purchase only those substitute refrigerants that are used in MVACs whether or not the refrigerants have been approved under SNAP.

The Agency proposed to amend the sales restriction to specify that section 609 certified technicians may only purchase CFC–12 (R–12) or SNAP-approved substitutes containing ozone-depleting refrigerants that have been found suitable for use in MVACs. EPA proposed (61 FR 7873) to modify the sales restriction, found at § 82.154(m)(3), to restrict the sale or distribution or the offer for sale or distribution of class I and class II refrigerants to technicians certified by a program approved under § 82.40 and certified in accordance with § 82.34 (*i.e.*, 609 technicians). The modification limits refrigerant purchases, by section 609 technicians, to R–12 and substitute refrigerants, containing a class I or class II substance, that are listed as acceptable for use in MVACs in accordance with all regulations promulgated under section 612 of the Act.

EPA received several comments supporting the proposed change to the sales restriction. Commenters stated that it was appropriate to distinguish between refrigerants used by technicians certified by a section 609 certification program and those certified in accordance with the requirements promulgated under section 608. One commenter stated that the result of EPA's proposed modification would be that the sales restriction would not apply to any refrigerant listed as acceptable under SNAP that did not consist in whole or in part of a class I or class II substance, such as the HFC refrigerant R–134a.

EPA would like to clarify that the sales of refrigerants (including HFC refrigerants such as R–134a) are not currently regulated under the sales restriction unless the refrigerant consists in whole or in part of a class I or class II substance (such as the case with several SNAP-acceptable refrigerant blends). EPA proposed a sales restriction on substitute refrigerants on June 11, 1998 (63 FR 32044), and the sales restriction for substitute refrigerants will be addressed in the final version of that proposed rule.

Therefore, through today's action EPA is amending the refrigerant sales restriction by amending § 82.154(m). EPA is further restricting the sale or distribution or the offer for sale or distribution of class I and class II refrigerants, that are suitable for use in MVACs, to technicians certified by a program approved under § 82.40 and certified in accordance with § 82.34 (*i.e.*, section 609 certified technicians). In accordance with 40 CFR 82.34(b), this modification limits refrigerant purchases, by such section 609 technicians, to CFC–12 (*i.e.*, R–12) and substitute refrigerants, containing a class I or class II substance, that are listed as acceptable for use in MVACs in accordance with all regulations promulgated under section 612 of the Act. Furthermore, only technicians certified under section 609 are allowed to purchase such ozone-depleting refrigerants in containers containing less than 20 pounds of such refrigerant, in accordance with § 82.34(b).

3. Transfers Between Subsidiaries

EPA proposed to permit transfers of used refrigerant between wholly-owned subsidiaries, without requiring refrigerant reclamation prior to such a transfer. As discussed in the NPRM, this proposal arose from specific requests for such relief that EPA had received from several entities that are organized as holding companies with wholly-owned subsidiaries. After considering such requests, EPA stated that the relationship between two subsidiaries should provide sufficient means to ensure that transfers between the subsidiaries would be "akin to transfers within one company." Therefore, EPA proposed to provide an exception to the sales restriction for the transfers of refrigerant between two wholly-owned subsidiaries of the same holding company.

EPA also received requests to permit the transfer of unreclaimed used refrigerant between subsidiaries that are not wholly-owned by the same holding company. As discussed in the NPRM, given that these types of subsidiaries would involve other investors who might have less of a commitment to each of the subsidiaries involved in the transactions, EPA did not believe that transfers between these types of

subsidiaries would be "akin to those within one organization." Therefore, EPA limited the proposed exception to wholly-owned subsidiaries.

EPA received comments regarding the proposal to allow the transfer of unreclaimed used refrigerant between two wholly-owned subsidiaries of the same holding company. One commenter noted that a holding company is a company that exists solely to control a partial or complete interest in other companies. The commenter delineated the type of company classified as a holding company from those considered to be a parent company by noting that by comparison, "a parent company generally has a business purpose beyond merely holding a partial or complete controlling interest in other companies." The commenter did not believe that there is any environmental benefit that could occur by limiting the exception exclusively to holding companies or their subsidiaries. Another commenter distinguished between holding companies and chemical manufacturers making a similar point with regard to their business interests.

EPA received several comments questioning why EPA believes it is necessary to limit transfers to wholly-owned subsidiaries. One commenter, stated that EPA's concerns regarding the transfers of refrigerant are inapplicable in the case of subsidiaries that are majority-owned and/or controlled by a parent corporation. For the purposes of refrigerant transfers, the commenter stated that the ownership dynamic in the case of two majority-owned and/or majority-controlled subsidiaries is no different from that of two wholly-owned subsidiaries. The commenter suggested that EPA revise the regulatory text to permit the transfers of unreclaimed refrigerant between majority-owned and/or controlled entities.

Another commenter, provided a lengthy discussion and several examples of transfers that would not be permitted if the provisions were adopted as proposed. Some of these scenarios included transfers involving the parent company, transfers involving a combined batch of refrigerant that mixes refrigerant drawn from equipment with various ownership within the corporate family, and transfers amongst various majority-owned subsidiaries.[2] The commenter noted that even though it owns less than 100% of some of its subsidiaries, the company has a strong interest in not damaging the refrigeration appliances, particularly those that are located at the parent facility and operated by the parent company personnel. The commenter stated that in order to use its supply of R–12 efficiently, it would like to store the recovered refrigerant together, regardless of whether it comes from an appliance owned by the parent or owned by a subsidiary. The parent would then be able to transfer the refrigerant to another plant owned either by the parent or by a subsidiary. The commenter indicated that what is important is that the knowledge of the refrigerant quality is transferred with the refrigerant, and therefore EPA should draft language that states that transfers between and amongst parent companies, wholly-owned subsidiaries and majority-owned subsidiaries, should be permitted.

The intended effect of EPA's proposal was to create an exception from the sales restriction for transfers that were "akin to those within one organization." EPA agrees with the commenters that transfers between a parent company[3] and its subsidiaries and amongst the subsidiaries of the same parent company should be permitted regardless of whether the parent company is a holding company. EPA believes that transfers between subsidiaries having the same ownership as well as transfers between a subsidiary and the parent company are indeed akin to those within one organization. The owner, being the parent company, has a financial investment and incentive to protect the well being of their air-conditioning and refrigeration equipment, regardless of which subsidiary holds and operates the equipment. Therefore, through this action, EPA has modified the regulatory language at § 82.154(g) to permit transfers between a parent company and one of its subsidiaries or between subsidiaries having the same parent company. Similarly, EPA has added a definition of the term "parent company" at § 82.152.

In light of the points made, the Agency has decided that it would be more consistent with the Agency's intent, to broaden the exception to the sales restriction for the transfers of refrigerant. In doing so, majority-owned and majority-controlled subsidiaries will be treated the same as wholly-owned subsidiaries. EPA's rationale for this decision is based on common financial interests of majority owned and majority controlled subsidiaries. EPA agrees with the commenters and believes that transfers among these subsidiaries are "akin to transfers within one company." These subsidiaries have a strong economic interest in not damaging the appliances owned by another subsidiary. EPA agrees with the commenters that majority-owned and majority-controlled subsidiaries should be treated the same as wholly-owned subsidiaries for the purposes of refrigerant transfers. Therefore, through today's action, EPA is making the necessary changes to the regulatory text at § 82.154(g) and § 82.152 to ensure that such transfers can legally occur without prior reclamation of the refrigerant.

4. Transfers Between Federal Facilities

While EPA proposed to permit the transfer of unreclaimed refrigerant between subsidiaries, the Agency did not address the transfer of refrigerants between different Federal facilities owned by the same Federal agency. EPA received comment from the Department of Energy (DOE) requesting that the sales restriction exemption for the transfer of refrigerant between subsidiaries be extended to transfers between government-owned facilities including government-owned contractor-operated facilities. DOE stated that the majority of their facilities are operated by contractors, and the transfers between these entities are akin to transfers between subsidiaries of a parent company.

EPA believes that it is reasonable to consider the transfer of refrigerant between federally-owned facilities as akin to transfers between subsidiaries of a parent company. Therefore EPA has added an exemption to the prohibition at § 82.154(h)(4) to allow for the transfer of refrigerant between facilities owned by the same Federal agency or department. This exemption will hold as long as the facilities involved in the transfer of used refrigerant are owned by the same Federal agency or department. The facilities need not be operated by employees of the Federal facility or department, as long as such facilities are ultimately under the control of the same Federal agency or department.

[2] EPA has responded fully to the scenarios identified in these comments. However, due to the length of the comments, EPA does not believe it is practical to provide a detailed summary of each scenario described by the commenter in this preamble. A complete copy of the comments identified by docket number VIII–I–13 as well as the accompanying "Response to Comments Document" is located in the EPA Air Docket: A–92–01.

[3] For purposes of the refrigerant sales restriction at § 82.154(g), the following definition apply: a "parent company" means an individual, corporation, partnership, association, joint-stock company, or an unincorporated organization that can direct or cause the direction of management and policies of another entity, through the ownership of shares or otherwise.

5. Other Comments and Amendments to the Refrigerant Sales Restriction

EPA requested comments on the appropriateness of modifying the sales restriction to limit the types of refrigerants available to technicians certified to service and maintain MVACs under section 609. EPA received one comment regarding § 82.154(m)(2) and (8). The commenter stated that EPA intended to reference § 82.154(n) not (m) and that the two provisions would expire prior to promulgation and should therefore not be promulgated.

EPA would like to clarify that the Agency was correct in referencing § 82.154(m). In the May 14, 1993, final rulemaking, EPA promulgated the prohibition against the sale and distribution of class I or class II substances for use as a refrigerant at § 82.154(n). Subsequent amendments to the regulations resulted in the removal of the prohibition against the sale and distribution of class I or class II substances for use as a refrigerant from §§ 82.154(n) through 82.154(m)(2) and (8) (*see* regulatory text amendments at 59 FR 55912; November 9, 1994).

In today's action, EPA is amending the sales restriction regulatory text at § 82.154(m), by deleting the two expired subparagraphs ((m)(2) and (m)(8)) and by adding two subparagraphs at (m)(2) and (m)(4). Former subparagraphs (m)(2) and (m)(8) permitted "grandfathered" technicians to purchase refrigerant until May 15, 1995. Since these subparagraphs have expired, this deletion makes no substantive change to the regulations. The subparagraphs that EPA is adding contain exceptions to the sales restriction for persons who employ certified technicians and who comply with the recordkeeping requirement at § 82.166(b). Such persons may purchase refrigerants or have designated representatives purchase refrigerants. As proposed, EPA is providing an exemption to the refrigerant sales restriction for persons who employ at least one section 609 certified technician, provided that the refrigerant is either R–12 or a SNAP-approved substitute for MVACs.

EPA received comments indicating that the prohibitions, at § 82.154(g) and (h), on the sale of used refrigerant that has not been reclaimed by an EPA-certified reclaimer are nearly identical and should be combined. EPA also received one comment requesting that the Agency clarify that refrigerant distributed from salvage facilities be subject to the reclamation requirements for the sale of used refrigerants at § 82.154(g) and (h).

EPA believes that the revised definition of reclaim warrants the combination of paragraphs (g) and (h). Therefore, EPA has combined § 82.154(g) and (h) accordingly. In addition, EPA has always intended the sales restriction on used refrigerant to apply to the sale or distribution or the offer for sale or distribution as specified at § 82.154(m). Therefore, as a point of clarification, EPA has amended § 82.154(g) to specifically include the prohibition to the distribution or offer to distribute used refrigerant. EPA believes that this amendment of § 82.154 simplifies the prohibition.

EPA is also amending § 82.154(m) to include a reference to the § 82.166(b) exception for persons who employ at least one section 608 certified technician. Although the NPRM did not include the reference to § 82.166(b) in proposed § 82.154(m), EPA has included it here in order to enhance the utility of the regulations and make them easier to use by the regulated community. This amendment only references currently existing regulatory language, and does not alter in any way the rights or obligations of any regulated party; therefore, it constitutes a minor technical change.

E. Motor Vehicle Air Conditioner (MVAC)–Like Appliances

MVAC-like appliances are essentially identical to motor vehicle air conditioners (MVACs), which are subject to regulations promulgated under section 609 of the Act. However, because MVAC-like appliances are contained in off-road vehicles, they are not regulated under section 609. Rather, they are subject to regulations promulgated under section 608 of the Act. EPA believes that if the appliance is similar to an MVAC in all relevant respects, it should be treated similarly to an MVAC. Hence, EPA proposed to modify the definition of MVAC-like appliance. Currently, § 82.152 states that, *MVAC-like appliance* means mechanical vapor compression, open-drive compressor appliances used to cool the driver's or passenger's compartment of an off-road motor vehicle. This includes the air-conditioning equipment found on agricultural or construction vehicles. This definition is not intended to cover appliances using R–22 refrigerant. (58 FR 28713).

Commenters sought clarification on what types of appliances the Agency considers as "MVAC-like." The Agency received comments questioning whether § 82.152 can be interpreted to include air-conditioners on mowing, quarrying, and heavy-duty off-road vehicles; planes; boats; and trolleys. Currently the definition of "MVAC-like appliance" specifically includes agricultural or construction equipment that does not use HCFC–22 refrigerant. EPA believes that mowing and quarrying appliances, planes, boats, and trolleys, that operate with open-drive compressors that are used to cool the driver's or passenger's compartments, and do not use HCFC–22 refrigerant, are similar to MVACs in all relevant respects and should be treated similarly to an MVAC appliance.

EPA believes, however, that the definition of MVAC-like should include an upper limit on the amount of refrigerant contained in the appliance. Without an upper limit, the definition could be construed to include appliances that are not similar to an MVAC in all relevant respects. For example, a chiller located on a marine vessel could be mistakenly considered MVAC-like. EPA believes that an upper limit would prevent any possible confusion. To ensure consistency between what is an "MVAC" and what is "MVAC-like," the refrigerant limit for MVAC-like appliances must be consistent with the largest amount of refrigerant contained in most MVACs. EPA discussed in the NPRM that EPA believes that all MVACs contain less than 20 pounds of refrigerant. Therefore, the adoption of a 20-pound limit for MVAC-like appliances should not exclude any appliance that reasonably should be considered MVAC-like. EPA further stated that placing a charge limit into the definition would provide clarity to those who are unsure about whether a particular appliance qualifies as MVAC-like, specifically where the charge is larger than that of the average automobile air conditioner, yet smaller than that of the average bus air conditioner. Therefore, EPA proposed to add a 20-pound ceiling to the definition of MVAC-like appliance.

EPA requested comment on amending the definition of MVAC-like appliances and whether a ceiling of 20 pounds represents an appropriate cutoff. EPA did not receive any comments or concerns indicating that the 20-pound limit was inappropriate based on the existence of appliances that should meet this definition and contain a larger refrigerant charge. Therefore, through this action, EPA is adding a 20-pound limit to the definition of MVAC-like appliances.

F. Changes to the ARI Standard 740 Test Procedure for Refrigerant Recycling and Recovery Equipment

As proposed, EPA is adopting several changes to the current test procedure for refrigerant recycling equipment found

in 40 CFR part 82, subpart F appendix B, which was based on the Air-Conditioning and Refrigeration Institute's 1993 standard for refrigerant recycling and recovery equipment (*i.e.*, ARI Standard 740–1993) and will now be based upon ARI Standard 740–1995. These changes, all of which have already been adopted by industry into the ARI Standard 740–1995, include: Adoption of a new and more representative method for measuring the equipment's refrigerant recovery rate; measurements of the equipment's recovery rate and final vacuum at high temperatures; a limit on the total quantity of refrigerant that may be released from equipment during non-condensable purging, oil draining, and equipment clearing; a measurement of the quantity of refrigerant left in the condenser of equipment after clearing has occurred; standards for external hose permeability; and a requirement that equipment be tested with recovery cylinders that are representative of those used with the equipment in the field.

In addition, EPA is requiring that equipment that is advertised as "recycling equipment" be capable of recycling refrigerants to the contamination levels (except that for "Other Refrigerants") set forth in the IRG–2 table of Maximum Contaminant Levels of Recycled Refrigerants in Same Owner's Equipment. As discussed in more detail below, EPA is adopting these changes to help ensure that recycling of refrigerant is maximized and that emissions of refrigerant from refrigerant recovery and recycling equipment are minimized.

EPA received many supportive comments on its proposed adoption of the above requirements. Comments recommending changes to the proposed requirements or requesting more information on their implementation are discussed in more detail below.

1. Measurement of Vapor Recovery Rates

As proposed, EPA is requiring a more representative measurement of recovery equipment's vapor recovery rate. As discussed in the proposal, the ARI Standard 740–1993 was adopted by EPA in the May 14, 1993 final rulemaking as appendix A. Appendix A required measurement of the maximum vapor recovery rate, but two pieces of equipment with identical maximum recovery rates can have very different average recovery rates. This is because equipment characteristics that are not important to vapor recovery rates at the beginning of recovery, such as compressor clearance, become increasingly important as recovery progresses. Although EPA has not established minimum vapor or liquid recovery rates, the Agency believes that the best possible information on these rates should be available to technicians to ensure that they purchase recycling and recovery equipment that best suits their needs. EPA also believes that technicians with adequate recovery equipment are less likely than technicians with slow equipment to interrupt the recovery procedure before it is complete. Thus, EPA is adopting the more recent version of the ARI Standard 740 (*i.e.*, ARI Standard 740–1995), which includes a measure of the average recovery rate.

The new test measures the change in mass and time elapsed as the pressure of the test chamber is lowered from the saturation pressure of the refrigerant at 24°C (75°F) (or from atmospheric pressure, if the refrigerant boils at a temperature above 75°F) to the lower of atmospheric pressure or 10% of the initial pressure. EPA specifically requested comment on adopting ARI Standard 740–1995 as the method of measuring the average recovery rate of recycling and recovery appliances, and on whether there was any reason to retain ARI Standard 740–1993 as the basis for appendix B of 40 CFR part 82, subpart F. EPA received no comments opposing or recommending changes to the more representative method of measuring the vapor recovery rate of equipment.

2. High-Temperature Testing

EPA is adopting the proposed requirement that the vapor recovery rate and final recovery vacuum of recovery and recycling equipment be measured at 40°C (104°F), in addition to 24°C (75°F), for recovery and recycling equipment intended for use with high-pressure refrigerants. As discussed in the NPRM, recovery and recycling equipment used in the field are likely to have to function at temperatures considerably higher than 75°F (61 FR 7866). The performance of recovery and recycling equipment is likely to be affected by such high temperatures. High temperatures raise the saturation pressure of the refrigerant in the recovery tank, thus raising the compression ratio against which the compressor in the recovery device must work to evacuate the refrigerant from an appliance. This can both slow recovery and prevent the equipment from achieving vacuums that it can achieve at 75°F. In some cases, equipment can actually stop running at high temperatures, because pressures rise too high or because the motor overheats or draws too much current in its attempt to recover the refrigerant, tripping safety switches. Underwriters Laboratories (UL) reported that more than 50 percent of refrigerant recovery and recycling units initially failed to operate continuously during high temperature testing that is required as part of UL's safety testing (Air Docket A–92–01, Category: VI–B7–14; 2/22/96 letter to Deborah Ottinger/USEPA; from Glenn Woo and Steve Leva/UL regarding Equipment Construction features affecting certification testing).[4]

EPA believes that the high-temperature tests included in the revised ARI Standard 740 provide useful information on equipment's ability and quickness to draw vacuums at high temperatures. At the same time, these tests are likely to reveal many of the problems that might occur in equipment operated at high temperatures in the field (as has UL's safety test at 104°F), such as thermal or electrical overloading of motors. The test requires that the mixing chamber, a container with a minimum volume of three cubic feet, be filled with refrigerant vapor (but no liquid) at the refrigerant's saturation pressure at 104°F. As in the 75°F test, this vapor is then recovered until the final recovery vacuum is reached. Also as in the 75°F test, the vapor recovery rate is measured while the pressure in the mixing chamber is reduced to 10% of the initial pressure. Because repeating the test with all of the refrigerants for which the equipment is rated would considerably raise the costs of certification, the high-temperature test is performed with one refrigerant, R–22. If the recycling or recovery equipment is not rated for R–22, then equipment is tested with the refrigerant with the lowest boiling point, and therefore the highest saturation pressure for which it is rated. If the equipment is not rated for refrigerants with boiling points in the range of −50° to 10°C, the high-temperature test is not performed.

EPA received two comments concerning the proposed adoption of the high-temperature testing requirement (as part of ARI Standard 740–1995), one in opposition and the other expressing concern that it would be the first of many requirements to test equipment at a variety of temperatures. The commenter, while stating that EPA had set forth a "convincing explanation why additional testing [at higher temperatures] was necessary," expressed concern that EPA "will have to issue more, and more, and more specifications [regarding testing at different temperatures] as time passes." This commenter stated that EPA might now attempt to issue requirements for testing at colder temperatures and could ultimately require testing at "two-degree increments over a range of 200 degrees." The commenter further stated that before the regulations ever required certification, that the commenter was capable of successfully manufacturing its own recycling/recovery equipment. Finally, the commenter concluded that "EPA is being trapped into specifying ever-greater detail, where no detail is really needed."

EPA disagrees with this conclusion. First, both the physics of refrigerant recovery and the results of UL's testing show that useful new information about equipment performance is gained through high-temperature testing. While some manufacturers may have caught and corrected performance problems at high temperatures without testing by third parties, others clearly have not. Thus, this "detail" is indeed "needed." Second, EPA does not believe that it has been "trapped into specifying ever-greater detail" in its equipment certification program. In general, EPA considers both the costs and the benefits of potential changes to its equipment certification standards. In some cases, the additional information that could be gained justifies the cost of additional testing; in others, it does not. For instance, the Agency believes that the additional information that could be gained through requiring a more representative measure of the vapor recovery rate justifies its cost; however, as discussed below, EPA has concluded that the additional information that could be gained through durability testing does not justify the additional cost. Thus, while certification requirements will clearly need to be amended as the industry changes and acquires more experience with recovery technologies, EPA does not anticipate that these amendments will be overly burdensome or unwieldy.

In this case, the high-temperature testing requirement is part of the only set of amendments to the test procedure for recycling and recovery equipment made so far, and reflects a change to this procedure that has already been made by industry. At one time, EPA had contemplated a requirement for low-temperature testing, but the Agency decided not to propose this because (1) performance problems at low temperatures were not as serious as those at high temperatures, and (2) recovery at low temperatures takes place less frequently than recovery at high temperatures, and hence venting of refrigerants is more likely to occur at higher temperatures. Of course, if new information arose indicating widespread equipment failure at low temperatures and subsequent venting of refrigerants, EPA might reconsider imposing a requirement for low-temperature testing. However, since equipment performance can be interpolated reasonably well between measurements at temperature means and extremes, it is very unlikely that EPA would require measurements of equipment performance at two-degree intervals.

3. Use of Representative Recovery Cylinders

As proposed, EPA is adopting the ARI Standard 740–1995 into appendix B2. To further ensure that equipment testing is representative of likely performance in the field, appendix B2 specifies that recovery cylinders used in testing (1) be the same size as those sold with the equipment and (2) be held at the saturation pressure of the refrigerant when testing begins. Use of oversize or evacuated cylinders can yield artificially high recovery rates and artificially deep recovery vacuums, because the recovery compressor does not have to work as hard to move refrigerant into oversize or evacuated cylinders as it does to move refrigerant into normal size cylinders at the saturation pressure of the refrigerant. Both of these requirements codify procedures that are being followed voluntarily by both of the EPA-approved equipment testing organizations.

One commenter expressed concern that this requirement would be inappropriately applied to equipment that is not sold with recovery cylinders, such as equipment that is designed to recover large charges into rail cars or tank trucks. According to ARI and UL, the two approved equipment testing organizations, most manufacturers whose equipment they have certified offer recovery cylinders with their equipment. UL actually requires manufacturers to provide recovery cylinders with the equipment. When equipment is not offered with recovery cylinders, ARI tests the equipment with the size cylinder specified in the manufacturer's instructions. EPA considers the latter approach as reasonable and is modifying appendix B2 (based on ARI Standard 740–1995) to add the phrase "or specified in the instructions" to the relevant requirement in section 7.4.1 to clarify that it is permissible. The modified requirement reads, "Recovery cylinder shall be the same size as normally furnished or specified in the instructions by the equipment manufacturer."

The same commenter argued that EPA should not object to the use of oversize recovery cylinders in testing, but only to the use of undersize cylinders, because oversized cylinders do not affect the results of certification testing. As described both in the proposal and above, oversize recovery cylinders can distort the results of certification testing. Therefore, EPA is promulgating the requirement that cylinders used in testing be the same size as those sold or specified for use with the equipment.

4. Limiting Emissions from Condenser Clearing, Oil Draining, Purging, and External Hoses

ARI Standard 740–1995 addresses three potential sources of refrigerant emissions that ARI 740–1993 did not address: condenser clearing, oil draining, and emissions from external hoses. As discussed in the NPRM substantial quantities of refrigerant may remain in the condensers of recycling and recovery equipment after refrigerant has been transferred to a recovery tank or back into an appliance. Unless this refrigerant is properly removed, it will either contaminate subsequent batches of refrigerant, a serious concern when switching refrigerants (*e.g.*, from R–12 to R–22), or be released to the atmosphere. There are a number of methods to remove this refrigerant properly; however, some of these methods are more complicated and time-consuming than others. One of the most important factors in the speed and effectiveness of the refrigerant clearing process is the design of the recovery or recycling equipment itself.

To help ensure that the design of recovery equipment minimizes the amount of residual refrigerant that either escapes to the atmosphere or contaminates subsequent batches, ARI Standard 740–1995 includes measurements both of the mass of refrigerant that is released during clearing and of the mass of refrigerant that remains in the equipment after clearing is complete. The mass of refrigerant released during clearing is added to the masses released during the purging of noncondensables and oil draining (see below); this total cannot exceed 3% of the total mass of refrigerant processed through the equipment. The mass of refrigerant that remains in the equipment is not limited, but is reported in the equipment ratings so that prospective buyers can use the information in their purchasing decisions.

To help ensure that the clearing procedure is not excessively complicated or time-consuming, the ARI Standard 740–1995 also requires that

[4] The equipment was redesigned to operate at elevated temperatures before it was UL listed.

the manufacturer provide methods and instructions that accomplish connections and clearing within 15 minutes. Any special equipment required for clearing, other than a vacuum pump or manifold gauge, must be provided by the manufacturer along with the recovery or recycling equipment, and the clearing procedure cannot rely upon a storage cylinder below the saturated pressure of the refrigerant. In setting up these constraints, ARI recognized that procedures requiring exotic equipment or excessive time are less likely to be followed than procedures that are simple and fast.

Another source of potential emissions is oil draining. Refrigerant oils are designed to mix well with refrigerants so that they flow easily within the refrigeration system. A drawback to this characteristic is that significant quantities of refrigerant can remain entrained in oil that is withdrawn from appliances. Because several system contaminants tend to concentrate in the oil, many recycling and recovery machines include an oil separator that must be periodically emptied. To ensure that oil draining does not result in excessive refrigerant emissions, the ARI Standard 740–1995 procedure measures the mass of refrigerant that is released from oil after its removal from the recovery or recycling equipment. As noted above, the sum of the masses of this refrigerant, the refrigerant emitted during condenser clearing, and the refrigerant emitted during noncondensables purging cannot exceed 3% of the mass of refrigerant processed by the equipment.

One commenter stated that while the 3% limit was appropriate for recycling equipment, it was too loose a standard for recovery only equipment, which does not purge noncondensables and therefore does not lose any refrigerant during this process. The commenter requested a 1% limit instead of 3%. EPA does not conclude that establishment of a 1% limit is warranted at this time; therefore, EPA is today establishing in appendix B2 a 3% limit for both recovery equipment and recycling equipment. In the future, however, EPA may consider lowering this limit for recovery equipment.

The third source of emissions addressed by ARI Standard 740–1995 is external hose assemblies. Although ARI 740–1993 includes a permeability limit for internal hoses of 5.8 g/cm^2/yr, it does not include such a limit for external hoses. ARI Standard 740–1995 establishes a limit of 3.9 g/cm^2/yr at 48.8°C (120°F) for all hose assemblies, to be tested under the conditions of UL 1963. EPA received no comments opposing this limit and is therefore incorporating it into appendix B2.

5. Durability Testing

As discussed in the NPRM, EPA does not believe that it would be useful to require long-term durability testing of recovery and recycling equipment. Factors militating against such a requirement include: (1) EPA does not believe that equipment durability has any effect on refrigerant emissions; (2) durability issues likely will be adequately addressed by free market forces; (3) equipment durability is not likely to be a concern due to technological advances in recovery technology; (4) notwithstanding factor (3), recovery equipment that is likely to experience durability problems is likely to be identified by ARI 740–1995; and (5) requiring durability testing would not be cost-effective, when compared to the relative benefits versus the substantial increased testing costs that would result. EPA received two comments opposing durability testing (61 FR 7869). One commenter "vigorously oppose[d]" durability testing. No commenters supported it. For the reasons discussed in the proposal, EPA is not requiring durability testing of recovery and recycling equipment.

6. Clarification of Labeling Requirements for Recovery/Recycling Equipment

EPA is clarifying that manufacturers of refrigerant recovery and recycling equipment must label their equipment in accordance with § 82.158(h) in addition to the labeling requirements established under section 11 of both Appendices B1 and B2 (based upon section 11 of the ARI Standard 740–1993 and 1995, respectively).

The EPA labeling requirement was promulgated as a part of the May 14, 1993, final rule, (58 FR 28682). The labeling requirement states that manufacturers and importers of recovery and recycling equipment certified under 40 CFR 82.158(b) and (d) must place a label on each piece of equipment stating the following: *This Equipment Has Been Certified by [Approved Equipment Testing Organization] to Meet EPA's Minimum Requirements For Recycling or Recovery Equipment Intended For Use With [Appropriate Category of Appliance].*[5] The label shall also show the date of manufacture and the serial number (if applicable) of the equipment. The label shall be affixed in a readily visible or accessible location, be made of a material expected to last the lifetime of the equipment, present required information in a manner so that it is likely to remain legible for the lifetime of the equipment, and be affixed in such a manner that it cannot be removed from the equipment without damage to the label.

Since 1993, EPA has adopted into appendix B, and now Appendices B1 and B2, the requirements of ARI Standard 740 (58 FR 28686). Section 11 of the standard, "Marking and Nameplate Data," specifies that the nameplate shall display the manufacturer's name, model designation, type of equipment, designated refrigerants, capacities and electrical characteristics where applicable. Section 11.2 -Data for Designated Refrigerants, states that for each refrigerant designated, the manufacturer shall include liquid recovery rate, vapor recovery rate, high temperature vapor recovery rate, final recovery vacuum, recycle flow rate, residual trapped refrigerant, and the quantity of refrigerant recycled as applicable.

EPA is clarifying that since the Agency has adopted the ARI Standard 740–1995 into appendix B2 and the ARI Standard 740–1993 into appendix B1, that the nameplate data of section 11 of Appendices B1 and B2 are also required. EPA reiterates that this is not a new requirement, and places emphasis on the labeling requirement by editing section 11 of both Appendices B1 and B2 to reference the labeling requirement at § 82.158(h). Adherence to only the nameplate data requirements of the ARI Standard 740 does not satisfy the labeling requirement of § 82.158(h) or section 11 of Appendices B1 and B2. Furthermore, the Agency is clarifying that the nameplate data and the labeling requirements established at § 82.158(h) are both the responsibilities of the importer or manufacturer of the equipment and not that of the equipment testing organization. Failure of the manufacturer to abide by these requirements is considered a violation of the prohibitions established at 40 CFR 82.154(c).

7. Effective Date of New Standards and Grandfathering of Equipment

EPA did not propose an effective date for the new equipment certification standard. However, several commenters pointed out that equipment testing organizations will require a significant amount of time to finish testing equipment to the new standard.

[5] Appropriate category of appliance is considered as low-, high-, and/or very high-pressure appliances as defined at § 82.152.

Commenters requested that EPA clarify whether equipment manufactured and certified under the old standards before the effective date of the new standard will be grandfathered.

ARI and UL indicated in their comments that it will take approximately one year for the equipment certification organizations to complete the recertification process. However, those comments were written and received in 1996. Since that time, the two equipment testing organizations (*i.e.*, UL and ARI) have independently begun to test to the ARI Standard 740–1995, while continuing to test to the 1993 version of the standard in order to satisfy the certification requirement of § 82.158. Therefore, EPA will not provide a one year period for the transition as proposed, but will ease the financial burden on equipment manufacturers by making the requirement to certify to the 1995 version of the standard effective 60 days after this final rule is published in the **Federal Register**.

However, EPA is "grandfathering" existing equipment by maintaining the reference to the 1993 version of the standard as it applies to equipment previously certified to the ARI Standard 740–1993. This is being accomplished by amending § 82.158(b)(1) to reference new appendix B1 (based on ARI Standard 740–1993), such that equipment manufactured on or after November 15, 1993 and before September 22, 2003, must be certified to appendix B1 based on the 1993 edition of the standard. In addition, EPA is maintaining the certification of equipment manufactured before November 15, 1993, that meets the applicable performance standards as set forth at § 82.158(c). Therefore, "grandfathered equipment" will include both (1) equipment manufactured on or after November 15, 1993 but before September 22, 2003, that was certified to ARI Standard 740–1993 by an EPA-approved equipment testing organization and (2) equipment manufactured before November 15, 1993 that meets the applicable performance standards as set forth at § 82.158(c). Equipment manufactured on or after September 22, 2003, must be certified to the new standard set forth at § 82.158(b)(2) and appendix B2 (based upon ARI Standard 740–1995).

While EPA is not requiring recertification of equipment previously certified under the conditions of the ARI Standard 740–1993, EPA is requiring that the three-year retest of certified equipment and inspections of equipment at manufacturing facilities conducted in accordance with § 82.158(j) subparagraphs (1) and (2) be done to the standard by which the equipment was originally certified in accordance with § 82.158(a).

8. Requirements for Equipment Advertised as "Recycling Equipment"

As proposed, EPA is requiring that equipment that is marketed as "recycling" equipment be able to recycle the sample of dirty refrigerant to the maximum contaminant levels (except for "Other Refrigerants") listed in the table in IRG–2 when tested under the conditions of ARI 740. As noted in the proposal, EPA believes that technicians and contractors should have some assurance that equipment that is marketed as "recycling equipment" is capable of recycling used refrigerant to some minimum level. This assurance would be especially useful to contractors who recycle refrigerant for reuse into their customers' equipment. IRG–2 states that recycling equipment that is certified to ARI Standard 740 and capable of consistently recycling refrigerant to the contaminant levels (as detailed in the maximum contaminant level table) should be used. The refrigerant sample used in ARI Standard 740 is representative of a contaminated system, so equipment that can recycle the refrigerant in this test to the contaminant levels of IRG–2 is considered to have acceptable recycling capabilities.

In the proposal, EPA reprinted the IRG–2 table entitled "Maximum Contaminant Levels of Recycled Refrigerants in Same Owner's Equipment." EPA received two comments on this table and its use as a standard for equipment advertised as "recycling" equipment. One of the comments noted that it was not appropriate to list maximum contamination by other refrigerants in a standard for recycling equipment, because recycling equipment is not capable of removing contamination by other refrigerants.

EPA agrees and has edited the table accordingly by removing the last row from the chart. The chart in IRG–2 included maximum levels for other refrigerants because its original purpose was to establish a general standard for the level of impurities, including other refrigerants, for refrigerant that is intended to be reused in the same owner's equipment. Thus, it included maximum levels for all the common contaminants of refrigerant, including other refrigerants. EPA has also edited the column labeled Low-pressure systems to reference the refrigerants used by low-pressure appliances for which the recycling equipment is intended.

One commenter asked why the limit for moisture in Table 1 was set at 20 ppm, while the limit for moisture in the ARI 700 standard is set at 10 ppm. The ARI 700 standard establishes a moisture limit of 10 ppm for high-pressure refrigerants and a limit of 20 ppm for low-pressure refrigerants. Table 1 sets a moisture limit of 10 ppm for R–12, and a limit of 20 ppm for other refrigerants.

The moisture limits are set in consideration of both the technical limits of recycling equipment and the tolerance of different types of refrigerants for moisture. The moisture limits in the IRG–2 standard (from which Table 1 is drawn) for most high-pressure refrigerants are slightly higher than those in the ARI Standard 700 in recognition of the fact that even high-quality recycling equipment may not be able to lower moisture levels to those in the Standard. A lower limit was established for R–12 in the IRG–2 Standard from which Table 1 is drawn because water is significantly less soluble in R–12 at its typical operating temperatures than in other refrigerants at their typical operating temperatures. For instance, at 20 degrees F (well within the range of typical evaporator temperatures for both R–12 and R–22 systems), the solubility of water in R–12 is just 16.6 ppm, while the solubility of water in R–22 is 472 ppm. This means that free (undissolved) water forms at much lower moisture levels in systems using R–12 than in systems using other types of refrigerants, and free water can damage or interfere with the functioning of air-conditioning and refrigeration systems by corroding system components or by restricting or even stopping the flow of refrigerant through the system. Thus, it is critical to keep moisture levels well below those where free water can form.

As proposed, EPA is making this change for certification of recycling only equipment effective 90 days after publication of this final rule, in order to give manufacturers the opportunity to change their advertising and marketing materials. Recycling only equipment that is manufactured on or after October 22, 2003, must be certified to appendix B2 (based on ARI Standard 740–1995) and must be able to recycle the dirty refrigerant sample under the conditions of appendix B2 to the levels stated in the following table.

MAXIMUM LEVELS OF CONTAMINANTS PERMISSIBLE IN REFRIGERANT PROCESSED THROUGH EQUIPMENT ADVERTISED AS "RECYCLING" EQUIPMENT

Contaminants	Low-pressure (R–11, R–123, R–113) systems	R–12 systems	All other systems
Acid Content (by wt.)	1.0 PPM	1.0 PPM	1.0 PPM.
Moisture (by wt.)	20 PPM	10 PPM	20 PPM.
Noncondensable Gas (by vol.)	N/A	2.0%	2.0%.
High Boiling Residues (by vol.)	1.0%	0.02%	0.02%.
Chlorides by Silver Nitrate Test	No turbidity	No turbidity	No turbidity.
Particulates	Visually clean	Visually clean	Visually clean.

9. Procedure for Updating Approval of Certification Organizations

EPA will continue to recognize the approval of the two existing testing organizations (*i.e.*, UL and ARI) to certify recovery/recycling equipment to the old standards at § 82.158(b)(1) and appendix B1 (based on ARI Standard 740–1993) until September 22, 2003.

The two equipment testing organizations that have been approved by EPA to certify equipment under the old standard at § 82.158(b)(1) are required to submit their intentions to certify equipment under the new standard at § 82.158(b)(2) in writing no later than 60 days after this final rule is published in the **Federal Register**. However, these organizations need not resubmit the information on their test facilities, equipment testing expertise, long-term performance verification programs, knowledge of the standards, and objectivity that they submitted to become approved to certify under § 82.158(b)(1). Instead, they only need state their intention to test equipment under the new conditions of § 82.158 and submit information in those areas where their original application to certify equipment under § 82.158(b)(1) and appendix B1 (based on ARI Standard 740–1993) differs from the requirements at § 82.158(b)(2) and appendix B2 (based on ARI Standard 740–1995).

Upon receipt of the written notification, EPA will continue to recognize the approval of the two existing testing organizations to certify to the new standard at § 82.158(b)(2) and appendix B2 (based on ARI Standard 740–1995) without interruption.

EPA has also amended § 82.160 "Approved equipment testing organizations," by deleting the paragraph that essentially grandfathered recovery/recycling equipment tested by UL and ARI prior to their approval as equipment testing organizations. The paragraph has become obsolete since UL and ARI are the only two programs that were approved by EPA to certify equipment under the conditions of § 82.158.

10. Other Issues Raised by Commenters

One commenter argued that EPA should require that recovery cylinders sold with recycling equipment be supplied with fill-limiting devices to prevent overfilling of cylinders and the injury that can result. EPA decided not to require fill-limiting devices in the final rule published in May 1993, citing several technical problems then involved with their use. However, EPA recognizes that some of these problems may have been resolved; therefore, EPA may consider requesting comment on this issue in a future notice.

The same commenter suggested that the rule include test procedures for evaluating recovery and recycling equipment for use with the new blends entering the marketplace. EPA agrees that this is an important consideration in equipment certification, and the Agency therefore plans to address this issue in the section 608 rulemaking covering recycling of substitutes for CFC and HCFCs.

EPA received a comment stating that paragraph 12 of appendix B inappropriately indicates that the refrigerant recovery/recycling equipment standard is voluntary. Paragraph 12 inadvertently includes the paragraph on voluntary conformance from the ARI Standard 740; therefore, EPA has deleted this paragraph in Appendices B1 and B2, and wishes to clarify that the ARI standards referenced in 40 CFR part 82, subpart F are included into regulation by their adoption into the appendices of subpart F. The ARI standards are not Federal regulations, but the Agency has used them as the basis for Appendices A, B1, and B2. Therefore, the regulated community is required to adhere to the regulations contained in 40 CFR part 82, subpart F (including all applicable appendices), not the ARI standards themselves. This distinction is extremely pertinent for issues such as the previously discussed labeling requirements for certified recovery and recycling equipment, where voluntary conformance to the marking and nameplate data of the ARI Standard 740–1995 does not satisfy the required labeling requirements of 40 CFR 82.158(h).

G. Major and Minor Maintenance, Service, or Repair

Effective July 13, 1993, technicians were required to evacuate air-conditioning and refrigeration equipment to established vacuum levels as stated in Table 1 of § 82.156. EPA also granted an exception to these evacuation requirements for non-major maintenance, service, or repair that did not include the removal of any major components and was not followed by the evacuation of the appliance to the environment, § 82.156(a)(1)(i). EPA believed that such repairs would result in very little release of refrigerant to the environment. EPA did not explicitly define "*non-major*" maintenance, service, or repair; instead EPA defined "*major*" maintenance, service, or repair as involving removal of the compressor, condenser, evaporator, or auxiliary heat exchanger coil. EPA specified removal of major equipment components, because at that time, EPA intended non-major maintenance, service, or repairs to include procedures that involve uncovering only a small opening in the appliance and that take place in a matter of minutes. After promulgation of the final rule, EPA received several requests for the Agency to expand and clarify the definition of "major maintenance, service, or repair" and explicitly define "non-major maintenance, service, or repair." The requesters believed that the definition of major maintenance, service, or repair was too narrow, excluding some types of repairs that result in considerable refrigerant release.

EPA agreed with the requesters that major maintenance, service, or repair had been defined too narrowly; therefore, EPA proposed in the NPRM to add definitions for "major repairs of low-pressure chillers" and "non-major repair of low pressure chillers." EPA requested comments on the proposed definitions; on whether the definitions were specific enough; whether other types of repairs should be considered; and whether the definitions were consistent with industry practices and/or terminology.

EPA received comments that questioned whether the proposed definitions of "major repairs of low-pressure chillers" and "non-major repair of low pressure chillers" were intended to apply to high-pressure and very high-pressure appliances. The commenters stated that emphasis should be placed on opening of the appliance during maintenance, service, or repair and not just repair of chillers. EPA also received several comments stating that, as proposed, the definitions would only affect repairs while ignoring maintenance and service of appliances. The commenters noted concern over the continued use of the word "repair" in the NPRM as it pertains to chillers instead of low-pressure appliances.

In the May 14, 1993, rulemaking, EPA made no distinctions between low-pressure, high-pressure, or very high-pressure appliances in defining major maintenance, service, or repair. The intent of the proposed definition of "major" and "non-major repairs of low-pressure chillers" was to provide clarity to the definition of major maintenance, service, or repair (at § 82.152) as it pertains to low-pressure chillers. EPA believes that while the intent of the NPRM was met by proposing two definitions, that this approach causes potential confusion by defining "major" and "non-major repairs of low-pressure chillers," while only referencing major in the evacuation exemption of § 82.156(a)(1)(i); therefore, EPA is revising the definition of major maintenance, service, and repair without adding new definitions for non-major maintenance, service, and repair of different appliance pressure groups nor is the Agency singling out low-pressure chillers in defining major maintenance, service, or repair.

While EPA proposed changes that specifically addressed low-pressure chillers, the Agency received several comments requesting clarification of the definition of major and non-major repairs of high-pressure and very high-pressure appliances as they relate to the evacuation exemption as described in § 82.156(a)(1) and (a)(2). Several commenters noted that non-major maintenance, service, or repair of high-pressure and very high-pressure appliances currently can be performed at atmospheric pressure without having to draw a deep vacuum and urged EPA to continue to allow this practice. EPA also received requests for clarification on whether or not the proposed changes affect the exceptions to the evacuation requirements for minor repairs that are not followed by evacuation of the appliance to the atmosphere. The commenters stated that the Agency's proposal to add a definition for major repair of low-pressure chillers invalidates the exceptions for high- and very high-pressure appliances and has also prohibited oil changes on high-or very high-pressure appliances without first evacuating the appliance to the levels established in Table 1 of § 82.156.

The revisions to the proposed definition of "major" and the deletion of the proposed definition of "non-major repair of low-pressure chillers" reflect the initial intent of the NPRM to provide clarity as to what the Agency considers "major" and do not affect the evacuation exceptions for persons opening appliances (except for small appliances, MVACs, and MVAC-like appliances) established under the subparagraphs of § 82.156(a)(1) and (a)(2). The required practices established at § 82.156 require that refrigerant be evacuated (to the levels of Table 1) from the appliance prior to opening the appliance, by properly using EPA-certified recovery and/or recycling equipment, except for instances where evacuation of the appliance to the atmosphere is not to be performed after completion of the maintenance, service, or repair and such action is not considered "major" (§ 82.156(a)(1)(i)). The required vacuum levels vary depending on the type of appliance and the date of manufacture of the certified recovery/recycling equipment, as stated in § 82.156 Table 1. These evacuation requirements still hold true for all types of appliances, including HCFC–22, other high-pressure, and very high-pressure appliances.

Five commenters stated that the proposal to limit the opening requirement to a two-inch diameter for non-major repairs of low-pressure chillers is too restrictive. Several other commenters claimed that some openings in fact may be oval, rectangular, some other shape, or three or more inches wide. Additionally, there can be a difference between the nominal diameter and the actual diameter depending on what "schedule" of pipe is used thus determining the thickness of pipe walls.

EPA agrees with these commenters that a two-inch diameter is too restrictive. In response, the Agency has determined that opening requirements should be expressed in square inches of "flow area" instead of an external circular diameter. Due to the fact that not all openings are circular, pipes are often fitted with gaskets with a variety of opening shapes. Therefore, the opening requirement for non-major maintenance, service, or repair of low-pressure appliances is not to exceed a "flow area" of four (4) square inches. The "flow area" should be interpreted to mean the most restricted opening through which refrigerant passes, therefore eliminating any confusion as to whether the definition applies to the nominal or actual pipe diameter or measurements. EPA is using the 4 in 2 as a criterion for designating a repair as "major maintenance, service, or repair" while not explicitly defining non-major or restricting the definition to low-pressure chillers as proposed.

One commenter stated that the language requiring technicians to cap or isolate openings during "non-major" repairs (of low-pressure chillers) should be revised. The commenter stated that a gas-tight cap may pose a safety risk in the case of pressure build-ups and that technicians should not be required to cap when it may be better to use a cover or plug. Additionally, this commenter believed that technicians should not be restricted to "isolation valves" when it may be better to use a blank for cases where openings cannot be covered at all times or instances when the appliance is not in use.

The Agency agrees that the proposed regulations were too prescriptive. The intent of the proposed provisions was to prevent unintentional refrigerant loss during maintenance, service, and repair procedures. However, EPA agrees that technicians must have discretion to select the safest alternative during any service procedure when no isolation valves are present. Since the regulations already allow for the isolation of appliance parts that are to be serviced, EPA has rescinded the proposed definition of non-major repair of low pressure chillers. This allows greater flexibility to technicians who service, maintain, and repair appliances, while maintaining the intent of the NPRM to reduce emissions during such service, maintenance, and repair.

EPA received comments concerning the proposed 15 minute time frame for defining non-major repair. One commenter stated that 15 minutes is too long, since a significant refrigerant loss can occur even when a technician is attempting to maintain atmospheric pressure. The commenter noted that a shorter time period would result in only "*de minimis*" releases of refrigerant. Another commenter requested

clarification of whether repairs are still considered non-major if they take more than 15 minutes and the opening is less than two inches and can be capped or isolated.

EPA is setting the 15 minute maximum in its revised definition of "major maintenance, service, or repair" as a means of differentiating between major and non-major activities, while not explicitly defining "non-major" or limiting the definition to low-pressure chillers. The designation of the maintenance, service, or repair as "major" establishes whether or not an exemption to the evacuation required practice is allowed under § 82.156(a). EPA is not establishing or suggesting a time limit for any particular maintenance, service, or repair activity on an appliance. However, maintenance, service, or repair involving the uncovering of a small opening of more than four square inches of flow area for more than 15 minutes will be considered "major," and the exemption to the evacuation required practice will not be allowed. This designation should not be interpreted as an EPA mandate on how much time is required to perform any specific maintenance, service, or repair. In addition, EPA is reiterating that the venting prohibition of the Act exempts "*de minimis*" releases associated with good faith attempts to recapture and recycle or safely dispose of class I and class II refrigerants. The circumstances under which releases may be considered *de minimis* are set forth at 40 CFR 82.154(a).

Two commenters stated that technicians should be allowed to hold low-pressure appliances at or below 0 psig, not exactly at 0 psig as the proposal requires. Two other commenters stated that EPA should not require non-major repairs to be performed at 0 psig for the entire appliance if isolation of the portion of the appliance requiring service, maintenance, or repair is possible.

The intent of the proposed rule was to minimize the risk of emission due to diffusion of refrigerant into the atmosphere and air into the system. EPA did not propose to lower the evacuation level for low-pressure appliances when evacuation of the appliance to the atmosphere is not to be performed as required by § 82.156(a)(2)(i)(B). Since the regulatory structure already allows for the evacuation of high- or very high-pressure appliances to no higher than 0 psig and at 0 psig before a low-pressure appliance is opened (§ 82.156(a)(2)(i)(A) and (B) respectively), EPA is rescinding the proposed definition of non-major repair for low-pressure chillers and has revised the proposed definition of major repairs of low-pressure chillers without the condition that such repairs be performed at 0 psig for the entire appliance or the isolated portion of the appliance.

One commenter urged EPA to clarify that the chart of examples of major and non-major repairs contained in the preamble to the February 29, 1996, NPRM is not part of the rule and may not necessarily be correct.

EPA is clarifying that this chart was submitted by a commenter and was included in the proposal only to present a hypothetical classification of certain service procedures and repairs. The chart was included in the NPRM to provide a non-comprehensive list of examples of common repair functions that technicians routinely encounter. It was not intended to represent a definitive compilation and should not be relied upon for categorizing repairs as major or non-major.

One commenter claimed that EPA has no justification to impose stringent new restrictions on non-major repairs in the absence of a cost/benefit analysis and that the Agency's action seems to go against Executive Order 12866. Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB). Executive Order 12866 defines "significant" regulatory action as one that is likely to lead to a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It was determined by OMB and EPA that the proposal to amend the final rule was not a "significant regulatory action" under the terms of Executive Order 12866. EPA submitted this final rule to OMB. OMB determined that this rule is acceptable and did not recommend any changes.

In response to commenters' issues discussed above, EPA is rescinding the proposed definitions of "major" and "non-major repair of low-pressure chillers," while revising the definition of "major maintenance, service, or repair" based on the comments received in response to the NPRM. Major maintenance, service, or repair means any maintenance, service, or repair that involves the removal of any or all of the following appliance components: compressor, condenser, evaporator, or auxiliary heat exchange coil or any maintenance, service; or repair that involves uncovering an opening of more than four (4) square inches of "flow area" for more than 15 minutes. Non-major maintenance, service, or repair is considered, but not defined at § 82.152, as any such action that does not fall within the definition of major maintenance, service, or repair.

H. Definition of Small Appliances

As discussed in the NPRM, EPA proposed a definition for small appliances prior to the May 14, 1993, rulemaking that included air-conditioning or refrigeration equipment containing less than one pound of refrigerant charge during normal operation. EPA received a number of comments on that proposal stating that the definition was too restrictive. In response, in the May 14, 1993, rule EPA expanded the definition to a more extensive list of products that were fully manufactured, charged, and hermetically sealed in a factory with five pounds or less of refrigerant. After the promulgation of the final rule, EPA received requests that the Agency expand the definition of small appliance to include units that met the criteria for small appliance but were not specifically listed in the definition. In response to these requests, EPA proposed in the NPRM to add appliances such as refrigerators and freezers that are built for medical or industrial research, as well as those used for commercial purposes, and are hermetically sealed at the factory and contain less than five (5) pounds of charge, to the definition of small appliance. In addition, EPA proposed to make the revised list of small appliances illustrative rather than restrictive in order to include in the definition appliances that meet the criteria but are not specifically listed.

EPA received comments that the proposed definition of "small appliance" would make the evacuation requirements more restrictive for some medical small appliances that consist of cascade refrigeration systems utilizing very high-pressure refrigerants. The commenters believed that the more stringent requirements would lead to increased operational costs.

EPA did not propose to change the evacuation requirements for small appliances. As proposed, EPA is amending the definition of "small appliance" at § 82.152, but this change merely clarifies that the list of small appliances used in the definition is illustrative rather than restrictive. Furthermore, the evacuation requirements for small appliances as established at § 82.156(a)(4) have not changed. EPA requires persons opening small appliances for maintenance, service, or repair to: (1) Recover 80% of the refrigerant in the small appliance when using recycling and recovery equipment manufactured before November 15, 1993; or (2) recover 90% of the refrigerant in the appliance when the compressor in the appliance is operating, or 80% of the refrigerant in the appliance when the compressor in the appliance is not operating, when using recycling or recovery equipment manufactured on or after November 15, 1993; or (3) evacuate the small appliance to four inches of mercury vacuum.

As an additional point of clarification, appliances that use any class I or class II refrigerant and meet the definition of "small appliance" must follow the evacuation requirements described above. For example, if an appliance meets the definition of small appliance and uses a refrigerant typically associated with a very high-pressure appliance, such as R–13, the technician opening that small appliance would have to adhere to the evacuation requirements for small appliances established at § 82.156(a)(4) not the evacuation requirements established for very high-pressure appliances (*i.e.*, 0" Hg vacuum).

One commenter requested that the Agency further expand the proposed definition of small appliances and include a list of all known appliances that meet the current definition. This commenter believes that the inclusion of a list of these items will remove any confusion regarding which appliances meet the definition but are not included in the proposed revised definition.

EPA believes that an illustrative list provides the most inclusive option for the definition of small appliances and that a restrictive list may further omit several appliances that meet both the spirit and the criteria of the definition. EPA does not want to make the definition excessively long or overly difficult to read. Therefore, EPA has decided not to include an exhaustive list of appliances that meet the definition for small appliances.

Additionally, the commenter stated that a list of appliances would enable technician certification programs, employers, technicians, sales and service companies and other business owners to better determine the type of technician certification that is necessary to properly service these appliances. Other commenters also expressed concern that the proposed definition of small appliance may require technicians to obtain both Type I and Type II certification in order to maintain small appliances.

EPA has not changed the technician certification requirements for persons servicing, maintaining, or repairing small appliances. Under § 82.161(a)(1), technicians who maintain, service, or repair "small appliances" as defined in § 82.152 must have a Type I certification. Technicians do not need Type II certification in order to maintain, service, or repair small appliances. In fact, § 82.161(a)(2) specifically states that Type II certification is not required to service, maintain, or repair small appliances.

One commenter noted an irregularity in § 82.161. The Agency is making an editorial correction to § 82.161(a)(2) so that it will refer to § 82.152 rather than § 82.152(x). Section 82.152 is the Definitions section and does not contain paragraphs designated by letters.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735; October 4, 1993), the Agency must determine whether this proposed regulatory action is "Significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA submitted this final rule to OMB. OMB determined that this rule is acceptable and did not recommend any changes.

B. Paperwork Reduction Act

The information collection requirements in this rule were submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1626.07, and OMB Control number: 2060–0256) and a copy may be obtained from Sandy Farmer by mail at OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW.; Washington, DC 20460; by email at *farmer.sandy@epa.gov*; or by calling (202) 260–2740. A copy may also be downloaded off the Internet at *www.epa.gov/icr*.

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0256.

EPA is concerned with the maintenance of records for approved certifying programs for technicians that no longer administer the section 608 technician certification test. These programs administer and grade tests, maintain records, issue certification credentials, and submit reports to EPA twice a year. EPA expects that programs withdrawing will increase over time and there is a concern that if a technician's certification credentials are lost and the program no longer exists, it may not be possible to receive duplicate credentials.

This rule is an amendment to the recycling standards under section 608 of the Clean Air Act. It amends the recordkeeping provisions by requiring programs that no longer offer section 608 technician certification programs to notify the agency. EPA does not expect cost associated with the withdrawal procedures to be a significant burden, since programs were previously required to maintain records for a minimum of three years, especially since this provision will only involve a notification of withdrawal and transfer of these records. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and

disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. EPA does not expect this rule to be a burden on time or financial resources.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's rule on small entities, small entities are defined as: (1) A small business that has fewer than 500 employees for most manufacturing and mining industries or 100 employees for all wholesale trade industries; assets of less than $5 million for most retail and service industries, $27.5 million for most general and heavy construction industries, $11.5 million for all special trade contractors, or $0.75 million for most agricultural industries; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

This rule affects those entities that recover, recycle, reclaim, and sell CFC and HCFC refrigerants. This rule also affects entities that maintain, service, repair, or dispose of appliances containing CFC or HCFC refrigerants. Entities affected by this action are refrigeration and air-conditioning contractors, refrigerated transport service dealers, scrap metal recyclers, and automobile dismantlers and recyclers. Additional entities affected include EPA-authorized Section 608 Technician Certification Programs and equipment testing organizations, refrigerant wholesalers and purchasers, refrigerant reclaimers, and other establishments that maintain, service, repair, or dispose of appliances containing ozone-depleting refrigerants.

After considering the economic impacts of today's final rule on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. EPA has determined that today's rulemaking could potentially affect approximately 71,150 small entities. These small entities may experience compliance costs ranging from 0.001 percent to 0.13 percent based on their estimated annual sales and revenues.

EPA performed a detailed screening analysis in 1992 of the impact of the section 608 refrigerant recycling regulations on small entities. The methodology of this analysis is discussed at length in the May 14, 1993, regulation (58 FR 28710), and its associated Information Collection Request (ICR) No. 1626.07/OMB No. 2060–0256.

In support of today's rule, EPA has prepared a Small Business Screening Analysis. This analysis assesses the economic impacts on small entities that are anticipated to result from this amendment to the section 608 refrigerant regulations. The screening analysis is not meant to estimate the total burden for compliance with the section 608 refrigerant regulations, but rather any additional burden that might result from today's action amending the section 608 regulations. The table below summarizes the number of small entities potentially affected by today's rule, according to North American Industry Classification System (NAICS) code, and shows the estimated economic impact due to the rule on an average firm within each NAICS code.

NAICS sector	Industry description	Number of small entities	Number of potentially affected small entities	Estimated average annual sales and revenues (based on average value of shipments per affected small entitiy)	Average economic impact (percent)
81131	Commercial Industrial	16,890	16,890	$681,264	0.10
811412	Appliance Repair and Maintenance	5,075	5,075	488,399	0.13
42193	Recyclable Material Wholesalers (Metal scrap and waste)	2,338	503	4,149,229	0.02
541380	Environmental Test Laboratories/Services	NA	<100	NA	NA
443111	Household Appliance Stores	10,484	8,842	713,426	0.09
23511	Plumbing, Heating, Air Conditioning Contractors	84,876	24,767	1,041,843	0.06
42111	Automobile and Other Motor Vehicle Wholesalers	737	362	109,314,837	0.001
42114	Motor Vehicle Suppliers and New Parts Wholesalers	2,393	2,148	763,965	0.09
44131	Automotive Parts and Accessories Stores	14,320	12,560	896,028	0.07

This table illustrates that while there is additional impact on the regulated community, there is no significant economic impact on a substantial number of small entities. EPA has estimated the number of small entities according to their NAICS, and projected the number of those entities that might be affected by today's action. The additional burden of today's action was then estimated for an average firm within each industrial sector, from which the economic impact to the average firm in the given sector could be determined as a ratio of the additional burden and the estimated average annual sales and revenues.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA has attempted to reduce the impact of this rule on small entities. This rule grants greater flexibility to small businesses working with refrigerants. For instance, this rule permits persons servicing small appliances and owners of refrigeration and air-conditioning equipment to transfer refrigerant on a wider basis than previously allowed. Today's final rule allows the transfer of refrigerant to different equipment as long as the equipment is owned by the same parent company. Prior to today's action, such refrigerant transfer was limited to equipment owned by one entity unless the refrigerant was first

reclaimed by an EPA-certified reclaimer. In essence today's final rule allows transfer of used refrigerant anywhere in the country, where the two pieces of equipment, have the same parent company (*i.e.*, they are subsidiaries of the parent company) without the additional cost of refrigerant reclamation.

This rule also eases the economic impact on refrigerant recovery equipment manufacturers by reducing the number of performance standards from two to one. Prior to this rulemaking refrigerant recovery/recycling equipment manufacturers were mandated to certify their equipment to the 1993 version of the ARI Standard 740, but many also certified to the 1995 version of the standard to maintain the marketability of their products. This rulemaking will reduce the extra burden on this segment of the regulated community by eliminating the requirement to comply with the outmoded 1993 ARI Standard 740, and mandating the use of the 1995 version of the standard for newly manufactured refrigerant recovery/recycling equipment.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government Agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This rule amends the section 608 refrigerant recycling standards to ensure that certain service practices are conducted, that reduce emissions, establish equipment and reclamation certification requirements. These standards are amendments to the recycling standards under section 608 of the Clean Air Act. Many of these standards involve reporting requirements and are not expected to be a high cost issue. In some situations, this rule provides greater flexibility and cost savings, such as the transfer of refrigerants between a parent company and its subsidiaries, the new definition of small appliances, and the establishment of a non-major maintenance, service, or repair of appliances. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

For the reasons outlined above, EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255; August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The regulations promulgated under today's action are done so under title VI of the Act which does not grant delegation rights to the States. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (59 FR 22951, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

This final rule does not have tribal implications, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

The requirements in this final rule are directed to economic entities that either recover, recycle, reclaim, sell, or distribute in interstate commerce refrigerants that contain CFCs and/or HCFCs, and those that service, maintain, repair, or dispose of appliances containing CFC or HCFC-refrigerants.

G. Executive Order 13045: "Protection of Children From Environmental Health Risks and Safety Risks"

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885; April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under EO 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those "economically significant" regulatory actions that are based on health or safety risks, such that the analysis required under Section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045, because it is not based on health or safety risks. The purpose of this rule is to protect human health and the environment from increased amounts of UV radiation by amending the recycling standards for CFC and HCFC

refrigerants. While the proposed version of today's rule was not determined to be "economically significant," EPA has submitted today's final rule to OMB for review. OMB classified this final rule as "consistent without change."

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

. This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects, since it addresses the means by which CFC and HCFC refrigerants are recovered, recycled, reclaimed, sold, or distributed in interstate commerce.

I. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (NTTAA), section 12(d), Public Law 104–113, requires Federal agencies and departments to use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments. If use of such technical standards is inconsistent with applicable law or otherwise impractical, a Federal agency or department may elect to use technical standards that are not developed or adopted by voluntary consensus standards bodies if the head of the Agency or department transmits to the Office of Management and Budget an explanation of the reasons for using such standards.

This rule is rule is an amendment to the recycling standards under section 608 of the Clean Air Act. This rule adopts an updated version of the industry standard for refrigerant recovery/recycling equipment (*i.e.*, ARI Standard 740–1995) into regulation as appendix B2 of 40 CFR part 82, subpart F. This standard, as well as the 1993 version of the standard that was adopted into regulation, was developed by the Air Conditioning and Refrigeration Institute (ARI). ARI is the national trade association representing manufacturers of more than 90 percent of U.S. produced central air-conditioning and commercial refrigeration equipment.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**.

A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective September 22, 2003.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Exports, Hydrochlorofluorocarbons, Imports, Interstate commerce, Nonessential products.

Dated: June 20, 2003.

Christine Todd Whitman,

Administrator.

■ Part 82, chapter I, title 40, of the Code of Federal Regulations, is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

■ 2. Section 82.152 is amended by revising the definition for "Certified refrigerant recovery or recycling equipment," "Major maintenance, service or repair," "MVAC-like appliance," "Reclaim," and "Small appliance," and by adding a new definition for "Parent company" in alphabetical order to read as follows:

§ 82.152 Definitions.

* * * * *

Certified refrigerant recovery or recycling equipment means equipment manufactured before November 15, 1993, that meets the standards in § 82.158(c), (e), or (g); equipment certified by an approved equipment testing organization to meet the standards in § 82.158(b), (d), or (f); or equipment certified pursuant to § 82.36(a).

* * * * *

Major maintenance, service, or repair means any maintenance, service, or repair that involves the removal of any or all of the following appliance components: compressor, condenser, evaporator, or auxiliary heat exchange coil; or any maintenance, service, or repair that involves uncovering an opening of more than four (4) square inches of "flow area" for more than 15 minutes.

* * * * *

MVAC-like appliance means mechanical vapor compression, open-drive compressor appliances with a normal charge of 20 pounds or less of refrigerant used to cool the driver's or passenger's compartment of an off-road motor vehicle. This includes the air-conditioning equipment found on agricultural or construction vehicles. This definition is not intended to cover appliances using R–22 refrigerant.

* * * * *

Parent company means an individual, corporation, partnership, association, joint-stock company, or an unincorporated organization that can direct or cause the direction of management and policies of another entity, through the ownership of shares or otherwise.

* * * * *

Reclaim refrigerant means to reprocess refrigerant to all of the specifications in appendix A to 40 CFR part 82, subpart F (based on ARI Standard 700–1995, Specification for Fluorocarbons and Other Refrigerants) that are applicable to that refrigerant and to verify that the refrigerant meets these specifications using the analytical methodology prescribed in section 5 of appendix A of 40 CFR part 82, subpart F.

* * * * *

Small appliance means any appliance that is fully manufactured, charged, and hermetically sealed in a factory with five (5) pounds or less of a class I or class II substance used as a refrigerant, including, but not limited to, refrigerators and freezers (designed for home, commercial, or consumer use), medical or industrial research refrigeration equipment, room air conditioners (including window air conditioners and packaged terminal air heat pumps), dehumidifiers, under-the-counter ice makers, vending machines, and drinking water coolers.

* * * * *

■ 3. Section 82.154 is amended by:
■ a. Revising paragraph (g);
■ b. Removing and reserving paragraph (h);
■ c. Revising introductory text of paragraph (m);
■ d. Revising paragraphs (m)(2) through (m)(8); and
■ e. Designating paragraph (m)(9) as new paragraph
(o) To read as follows:

§ 82.154 Prohibitions.

* * * * *

(g) No person may sell, distribute, or offer for sale or distribution for use as a refrigerant any class I or class II substance consisting wholly or in part of used refrigerant unless:

(1) The class I or class II substance has been reclaimed as defined in § 82.152 by a person who has been certified as a reclaimer pursuant to § 82.164;

(2) The class I or class II substance was used only in an MVAC or MVAC-like appliance and is to be used only in an MVAC or MVAC-like appliance and recycled in accordance with § 82.34(d);

(3) The class I or class II substance is contained in an appliance that is sold or offered for sale together with the class I or class II substance;

(4) The class I or class II substance is being transferred between or among a parent company and one or more of its subsidiaries, or between or among subsidiaries having the same parent company; or

(5) The class I or class II substance is being transferred between or among a Federal agency or department and a facility or facilities owned by the same Federal agency or department.

(h) [reserved]

* * * * *

(m) No person may sell or distribute, or offer for sale or distribution, any substance that consists in whole or in part of a class I or class II substance for use as a refrigerant to any person unless:

* * * * *

(2) The buyer complies with § 82.166(b) and employs at least one technician who is certified as a Type I, Type II, Type III, or Universal technician in accordance with § 82.161;

(3) The buyer has been certified in accordance with 40 CFR part 82; subpart B and the refrigerant is either R–12 or an approved substitute consisting wholly or in part of a class I or class II substance for use in motor vehicle air conditioners in accordance with 40 CFR part 82, subpart G;

(4) The buyer complies with § 82.166 (b) and employs at least one technician who is certified in accordance with 40 CFR part 82, subpart B, and the refrigerant is either R–12 or an approved substitute consisting wholly or in part of a class I or class II substance for use in motor vehicle air conditioners pursuant to 40 CFR part 82, subpart G. Nothing in this provision shall be construed to relieve persons of the requirements of § 82.34(b) or § 82.42 (b);

(5) The refrigerant is sold only for eventual resale to certified technicians or to appliance manufacturers (*e.g.*, sold by a manufacturer to a wholesaler, sold by a technician to a reclaimer);

(6) The refrigerant is sold to an appliance manufacturer;

(7) The refrigerant is contained in an appliance with a fully assembled refrigerant circuit; or

(8) The refrigerant is charged into an appliance by a certified technician or an apprentice during maintenance, service, or repair of the appliance.

* * * * *

(o) Rules stayed for consideration. Not withstanding any other provisions of this subpart, the effectiveness of 40 CFR 82.154(m), only as it applies to refrigerant contained in appliances without fully assembled refrigerant circuits, is stayed from April 27, 1995, until EPA takes final action on its reconsideration of these provisions. EPA will publish any such final action in the **Federal Register**.

* * * * *

■ 4. Section 82.156 is amended by revising paragraphs (a)(1)(i), introductory text of (a)(2)(i) and (a)(2)(i)(B) to read as follows:

§ 82.156 Required practices.

(a) * * *

(1) * * *

(i) Evacuation of the appliance to the atmosphere is not to be performed after completion of the maintenance, service, or repair, and the maintenance, service, or repair is not major as defined at § 82.152; or

* * * * *

(2)(i) If evacuation of the appliance to the atmosphere is not to be performed after completion of the maintenance, service, or repair, and if the maintenance, service, or repair is not major as defined at § 82.152, the appliance must:

* * * * *

(B) Be pressurized to a pressure no higher than 0 psig before it is opened if it is a low-pressure appliance. Persons must cover openings when isolation is not possible. Persons pressurizing low-pressure appliances that use refrigerants with boiling points at or below 85 degrees Fahrenheit at 29.9 inches of mercury (standard atmospheric pressure), (*e.g.* R–11 and R–123), must not use methods such as nitrogen, that require subsequent purging. Persons pressurizing low-pressure appliances that use refrigerants with boiling points above 85 degrees Fahrenheit at 29.9 inches of mercury, *e.g.*, R–113, must use heat to raise the internal pressure of the appliance as much as possible, but may use nitrogen to raise the internal pressure of the appliance from the level attainable through use of heat to atmospheric pressure; or

* * * * *

■ 5. Section 82.158 is amended by:
■ a. Revising paragraph (a);
■ b. Revising introductory text of paragraphs (b) and (b)(1) introductory text;
■ c. Designating paragraphs (b)(2) through (b)(6) as (b)(3) through (b)(7);
■ d. Revising the introductory text of newly designated paragraph (b)(3);
■ e. Revising newly designated paragraphs (b)(4), (b)(5), and (b)(7);
■ f. Adding new paragraph (b)(2);
■ g. Revising the introductory text of paragraph (d);
■ h. Revising paragraph (d)(2);
■ i. Adding paragraph (d)(3); and
■ j. Revising paragraph (j)(1); and
■ k. Adding paragraph (n) to read as follows:

§ 82.158 Standards for recycling and recovery equipment.

(a) Effective September 22, 2003, all manufacturers and importers of recycling and recovery equipment intended for use during the maintenance, service, or repair of appliances except MVACs and MVAC-like appliances or during the disposal of appliances except small appliances, MVACs, and MVAC-like appliances, shall have had such equipment certified by an approved equipment testing organization to meet the applicable requirements in paragraph (b)(1), (b)(2), or (d) of this section. All manufacturers and importers of recycling and recovery equipment intended for use during the maintenance, service, or repair of MVAC-like appliances shall have had such equipment certified pursuant to § 82.36(a).

* * * * *

(b) Equipment manufactured or imported on or after November 15, 1993 and before September 22, 2003, for use during the maintenance, service, or repair of appliances except small appliances, MVACs, and MVAC-like appliances or during the disposal of appliances except small appliances, MVACs, and MVAC-like appliances must be certified by an approved equipment testing organization to meet the requirements of paragraph (b)(1) of this section and the following requirements below. Equipment

manufactured or imported on or after September 22, 2003, for use during the maintenance, service, or repair of appliances except small appliances, MVACs, and MVAC-like appliances or during the disposal of appliances except small appliances, MVACs, and MVAC-like appliances must be certified by an approved equipment testing organization to meet the requirements of paragraph (b)(2) of this section and the following requirements.

(1) In order to be certified, the equipment must be capable of achieving the level of evacuation specified in Table 2 of this section under the conditions of appendix B1 of this subpart (based upon the ARI Standard 740–1993, Performance of Refrigerant Recovery, Recycling and/or Reclaim Equipment):

* * * * *

(2) In order to be certified, the equipment must be capable of achieving the level of evacuation specified in Table 2 of paragraph (b)(1) of this section under the conditions of appendix B2 of this subpart (based upon the ARI Standard 740–1995, Performance of Refrigerant Recovery, Recycling and/or Reclaim Equipment).

(3) Recovery or recycling equipment whose recovery efficiency cannot be tested according to the procedures in appendix B1 or B2 of this subpart as applicable may be certified if an approved third-party testing organization adopts and performs a test that demonstrates, to the satisfaction of the Administrator, that the recovery efficiency of that equipment is equal to or better than that of equipment that:

* * * * *

(4) The equipment must meet the minimum requirements for certification under appendix B1 or B2 of this subpart as applicable.

(5) If the equipment is equipped with a noncondensables purge device, the equipment must not release more than three (3) percent of the quantity of refrigerant being recycled through noncondensables purging under the conditions of appendix B1 and B2 of this subpart as applicable.

* * * * *

(7) The equipment must have its liquid recovery rate and its vapor recovery rate measured under the conditions of appendix B1 or B2 as applicable, unless the equipment has no inherent liquid or vapor recovery rate.

* * * * *

(d) Equipment manufactured or imported on or after November 15, 1993 and before September 22, 2003, for use during the maintenance, service, or repair of small appliances must be certified by an approved equipment testing organization to be capable of achieving the requirements described in either paragraph (d)(1) or (d)(2) of this section. Equipment manufactured or imported on or after September 22, 2003, for use during the maintenance, service, or repair of small appliances must be certified by an approved equipment testing organization to be capable of either paragraph (d)(1) or (d)(3) of this section:

* * * * *

(2) Achieving a four-inch vacuum under the conditions of appendix B1 of this subpart, based upon ARI Standard 740–1993; or

(3) Achieving a four-inch vacuum under the conditions of appendix B2 of this subpart, based upon ARI Standard 740–1995.

* * * * *

(j) * * *

(1) Retests of certified recycling or recovery equipment in accordance with paragraph (a) of this section or

* * * * *

(n) Effective October 22, 2003, equipment that is advertised or marketed as "recycling equipment" must be capable of recycling the standard contaminated refrigerant sample of appendix B2 of this subpart (based upon ARI Standard 740–1995), section 5, to the levels in the following table when tested under the conditions of appendix B2 of this subpart:

MAXIMUM LEVELS OF CONTAMINANTS PERMISSIBLE IN REFRIGERANT PROCESSED THROUGH EQUIPMENT ADVERTISED AS "RECYCLING" EQUIPMENT

Contaminants	Low-pressure (R–11, R–123, R–113) systems	R–12 systems	All other systems
Acid Content (by wt.)	1.0 PPM	1.0 PPM	1.0 PPM.
Moisture (by wt.)	20 PPM	10 PPM	20 PPM.
Noncondensable Gas (by vol.)	N/A	2.0%	2.0%.
High Boiling Residues (by vol.)	1.0%	0.02%	0.02%.
Chlorides by Silver Nitrate Test	No turbidity	No turbidity	No turbidity.
Particulates	Visually clean	Visually clean	Visually clean.

■ 6. Section § 82.160 is amended by revising paragraphs (a) and (b)(3), revising paragraph (d), and removing paragraph (e) to read as follows:

§ 82.160 Approved equipment testing organizations.

(a) Any equipment testing organization may apply for approval by the Administrator to certify equipment pursuant to the standards in § 82.158 and appendices B2 or C of this subpart. The application shall be mailed to: Section 608 Recycling Program Manager; Global Programs Division; Mail Code: 6205J; U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue, NW.; Washington, DC 20460.

(b) * * *

(3) Thorough knowledge of the standards and recordkeeping and reporting requirements as they appear in §§ 82.158 and 82.166 and Appendices B2 and/or C (as applicable) of this subpart.

* * * * *

(d) If at any time an approved testing organization is found to be conducting certification tests for the purposes of this subpart in a manner not consistent with the representations made in its application for approval under this section, the Administrator reserves the right to revoke approval in accordance with § 82.169. In such cases, the Administrator or her or his designated representative shall give notice to the organization setting forth the basis for her or his determination.

■ 7. Section 82.161 is amended by revising paragraphs (a)(1) and (e) to read as follows:

§ 82.161 Technician certification.

(a) * * *

(1) Technicians, as defined in § 82.152, who maintain, service, or repair small appliances must be properly certified as Type I technicians.

* * * * *

(e) If at any time an approved program violates any of the above requirements, the Administrator reserves the right to revoke approval in accordance with § 82.169. In such cases, the Administrator or her or his designated representative shall give notice to the organization setting forth the basis for her or his determination.

* * * * *

■ 8. Section 82.164 is amended by revising paragraph (g) to read as follows:

§ 82.164 Reclaimer certification.

* * * * *

(g) Failure to abide by any of the provisions of this subpart may result in revocation or suspension of the certification of the reclaimer in accordance with § 82.169. In such cases, the Administrator or her or his designated representative shall give notice to the organization setting forth the basis for her or his determination.

■ 9. Section 82.169 is added to subpart F to read as follows:

§ 82.169 Suspension and revocation procedures.

(a) Failure to abide by any of the provisions of this subpart may result in the revocation or suspension of the approval to certify technicians (under § 82.161), approval to act as a recovery/recycling equipment testing organization (under § 82.160), or reclaimer certification (under § 82.164), hereafter referred to as the "organization." In such cases, the Administrator or her or his designated representative shall give notice of an impending suspension to the person or organization setting forth the facts or conduct that provide the basis for the revocation or suspension.

(b) Any organization that has received notice of an impending suspension or revocation may choose to request a hearing and must file that request in writing within 30 days of the date of the Agency's notice at the address listed in § 82.160 and shall set forth their objections to the revocation or suspension and data to support the objections.

(c) If the Agency does not receive a written request for a hearing within 30 days of the date of the Agency's notice, the revocation will become effective upon the date specified in the notice of an impending suspension.

(d) If after review of the request and supporting data, the Administrator or her or his designated representative finds that the request raises a substantial factual issue, she or he shall provide the organization with a hearing.

(e) After granting a request for a hearing the Administrator or her or his designated representative shall designate a Presiding Officer for the hearing.

(f) The hearing shall be held as soon as practicable at a time and place determined by the Administrator, the designated representative, or the Presiding Officer.

(g) The Administrator or her or his designated representative may, at his or her discretion, direct that all argument and presentation of evidence be concluded within a specified period established by the Administrator or her or his designated representative. Said period may be no less than 30 days from the date that the first written offer of a hearing is made to the applicant. To expedite proceedings, the Administrator or her or his designated representative may direct that the decision of the Presiding Officer (who need not be the Administrator) shall be the final EPA decision.

(h) Upon appointment pursuant to paragraph (e) of this section, the Presiding Officer will establish a hearing file. The file shall consist of the following:

(1) The notice issued by the Administrator under § 82.169(a);

(2) the request for a hearing and the supporting data submitted therewith;

(3) all documents relating to the request for certification and all documents submitted therewith; and

(4) correspondence and other data material to the hearing.

(i) The hearing file will be available for inspection by the petitioner at the office of the Presiding Officer.

(j) An applicant may appear in person or may be represented by counsel or by any other duly authorized representative.

(k) The Presiding Officer, upon the request of any party or at his or her discretion, may arrange for a pre-hearing conference at a time and place he or she specifies. Such pre-hearing conferences will consider the following:

(1) Simplification of the issues;

(2) Stipulations, admissions of fact, and the introduction of documents;

(3) Limitation of the number of expert witnesses;

(4) Possibility of agreement disposing of any or all of the issues in dispute; and

(5) Such other matters as may aid in the disposition of the hearing, including such additional tests as may be agreed upon by the parties.

(l) The results of the conference shall be reduced to writing by the Presiding Officer and made part of the record.

(m) Hearings shall be conducted by the Presiding Officer in an informal but orderly and expeditious manner. The parties may offer oral or written evidence, subject to the exclusion by the Presiding Officer of irrelevant, immaterial, and repetitious evidence.

(n) Witnesses will not be required to testify under oath. However, the Presiding Officer shall call to the attention of witnesses that their statements may be subject to the provisions of 18 U.S.C. 1001, which imposes penalties for knowingly making false statements or representations or using false documents in any matter within the jurisdiction of any department or agency of the United States.

(o) Any witness may be examined or cross-examined by the Presiding Officer, the parties, or their representatives.

(p) Hearings shall be reported verbatim. Copies of transcripts of proceedings may be purchased by the petitioner from the reporter.

(q) All written statements, charts, tabulations, and similar data offered in evidence at the hearings shall, upon a showing satisfactory to the Presiding Officer of their authenticity, relevancy, and materiality, be received in evidence and shall constitute a part of the record.

(r) Oral argument may be permitted at the discretion of the Presiding Officer and shall be reported as part of the record unless otherwise ordered by the Presiding Officer.

(s) The Presiding Officer shall make an initial decision that shall include written findings and conclusions and the reasons or basis regarding all the material issues of fact, law, or discretion presented on the record. The findings, conclusions, and written decision shall be provided to the parties and made a part of the record. The initial decision shall become the decision of the Administrator without further proceedings, unless there is an appeal to the Administrator or motion for review by the Administrator within 20 days of the date the initial decision was filed.

(t) On appeal from or review of the initial decision, the Administrator or her or his designated representative shall have all the powers which he or she would have in making the initial decision, including the discretion to require or allow briefs, oral argument, the taking of additional evidence, or a remand to the Presiding Officer for additional proceedings. The decision by the Administrator or her or his designated representative shall include written findings and conclusions and the reasons or basis therefore on all the material issues of fact, law, or discretion presented on the appeal or considered in the review.

■ 10. Appendix A to subpart F is revised to read as follows:

Appendix A to Subpart F of Part 82—Specifications for Fluorocarbon Refrigerants

This appendix is based on Air-Conditioning and Refrigeration Institute Standard 700–1995:

Section 1. Purpose

1.1 *Purpose.* The purpose of this standard is to evaluate and accept/reject refrigerants regardless of source (*i.e.*, new, reclaimed and/or repackaged) for use in new and existing refrigeration and air-conditioning products as required under 40 CFR part 82, subpart F.

1.1.1 *Intent.* This standard is intended for the guidance of the industry including manufacturers, refrigerant reclaimers, repackagers, distributors, installers, servicemen, contractors and for consumers.

1.1.2 *Review and Amendment.* This standard is subject to review and amendment as the technology advances.

Section 2. Scope

2.1 *Scope.* This standard specifies acceptable levels of contaminants (purity requirements) for various fluorocarbon and other refrigerants regardless of source and lists acceptable test methods. These refrigerants are R–11; R–12; R–13; R–22; R–113; R–114; R–123; R–124; R–500; R–502; and R–503; as referenced in the ANSI/ASHRAE Standard 34–1992. (American Society of Heating, Refrigerating and Air-conditioning Engineers, Inc., Standard 34–1992). Copies may be obtained from ASHRAE Publications Sales, 1791 Tullie Circle, NE, Atlanta, GA 30329. Copies may also be inspected at Public Docket No. A–92–01, Environmental Protection Agency, 1301 Constitution Ave., NW., Washington, DC in room B–108.

Section 3. Definitions

3.1 *Shall, Should, Recommended, or It Is Recommended.* "Shall," "should," "recommended," or "it is recommended" shall be interpreted as follows:

3.1.1 *Shall.* Where "shall" or "shall not" is used for a provision specified, that provision is mandatory if compliance with the standard is claimed.

3.1.2 *Should, Recommended,* or *It is Recommended.* "Should," "recommended," or "it is recommended" is used to indicate provisions which are not mandatory but which are desirable as good practice.

Section 4. Characterization of Refrigerants and Contaminants

4.1 *Characterization.* Characterization of refrigerants and contaminants addressed are listed in the following general classifications:

4.1.1 *Characterization*
- a. Gas Chromatography
- b. Boiling point and boiling point range

4.1.2 *Contaminants*
- a. Water
- b. Chloride
- c. Acidity
- d. High boiling residue
- e. Particulates/solids
- f. Non-condensables
- g. Impurities including other refrigerants

Section 5. Sampling, Summary of Test Methods and Maximum Permissible Contaminant Levels

5.1 *Referee Test.* The referee test methods for the various contaminants are summarized in the following paragraphs. Detailed test procedures are included in *Appendix—C to ARI Standard 700–1995: Analytical Procedures for ARI Standard 700–1995,* 1995, Air-Conditioning and Refrigeration Institute. *Appendix C to ARI Standard* 700–1995 is incorporated by reference. [This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the Air-Conditioning and Refrigeration Institute, 4301 North Fairfax Drive, Arlington, Virginia 22203. Copies may also be inspected at Public Docket No. A–92–01, Environmental Protection Agency, 1301 Constitution Ave., NW., Washington, DC, in room B–108 or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC]. If alternative test methods are employed, the user must be able to demonstrate that they produce results equivalent to the specified referee method.

5.2 *Refrigerant Sampling.*

5.2.1 *Sampling Precautions.* Special precautions should be taken to assure that representative samples are obtained for analysis. Sampling shall be done by trained laboratory personnel following accepted sampling and safety procedures.

5.2.2 *Gas Phase Sample.* A gas phase sample shall be obtained for determining the non-condensables. Since non-condensable gases, if present, will concentrate in the vapor phase of the refrigerant, care must be exercised to eliminate introduction of air during the sample transfer. Purging is not an acceptable procedure for a gas phase sample since it may introduce a foreign product. Since R–11, R–113, and R–123 have normal boiling points at or above room temperature, non-condensable determination is not required for these refrigerants.

5.2.2.1 *Connection.* The sample cylinder shall be connected to an evacuated gas sampling bulb by means of a manifold. The manifold should have a valve arrangement that facilitates evacuation of all connecting tubing leading to the sampling bulb.

5.2.2.2 *Equalizing Pressures.* After the manifold has been evacuated, close the valve to the pump and open the valve on the system. Allow the pressure to equilibrate and close valves.

5.2.3 *Liquid Phase Sample.* A liquid phase sample is required for all tests listed in this standard except the test for non-condensables.

5.2.3.1 *Preparation.* Place a clean, empty sample cylinder with the valve open in an oven at 110°C (230°F) for one hour. Remove it from the oven while hot, immediately connect to an evacuation system and evacuate to less than 1 mm mercury (1000 microns). Close the valve and allow it to cool. Weigh the empty cylinder.

5.2.3.2 *Manifolding.* The valve and lines from the unit to be sampled shall be clean and dry. The cylinder shall be connected to an evacuated gas sampling cylinder by means of a manifold. The manifold should have a valve arrangement that facilitates evacuation of all connecting tubing leading to the sampling cylinder.

5.2.3.3 *Liquid Sampling.* After the manifold has been evacuated, close the valve to the pump and open the valve on the system. Take the sample as a liquid by chilling the sample cylinder slightly. Accurate analysis requires that the sample container be filled to at least 60% by volume, however under no circumstances should the cylinder be filled to more than 80% by volume. This can be accomplished by weighing the empty cylinder and then the cylinder with refrigerant. When the desired amount of refrigerant has been collected, close the valve(s) and disconnect the sample cylinder immediately.

5.2.3.4 *Record Weight.* Check the sample cylinder for leaks and record the gross weight.

5.3 *Refrigerant Characterization.*

5.3.1 *Primary Method.* The primary method shall be gas chromatography (GC) as described in Appendix-C to ARI Standard 700–1995. The chromatogram of the sample shall be compared to known standards.

5.3.2 *Alternative Method.* Determination of the boiling point and boiling point range is an acceptable alternative test method which can be used to characterize refrigerants. The test method shall be that described in the Federal Specification for "Fluorocarbon Refrigerants," BB-F–1421 B, dated March 5, 1982, section 4.4.3.

5.3.3 *Required Values.* The required values for boiling point and boiling point range are given in Table 1A, *Physical Properties of Single Component Refrigerants;* Table 1B, *Physical Properties of Zeotropic Blends (400 Series Refrigerants);* and Table 1C, *Physical Properties of Azeotropic Blends (500 Series Refrigerants).*

5.4 *Water Content.*

5.4.1 *Method.* The Coulometric Karl Fischer Titration shall be the primary test method for determining the water content of refrigerants. This method is described in *Appendix-C to ARI Standard 700–1995.* This method can be used for refrigerants that are either a liquid or a gas at room temperature, including refrigerants 11, 113, and 123. For all refrigerants, the sample for water analysis shall be taken from the liquid phase of the container to be tested. Proper operation of the analytical method requires special equipment and an experienced operator. The precision of the results is excellent if proper sampling and handling procedures are followed. Refrigerants containing a colored dye can be successfully analyzed for water using this method.

5.4.2 *Limits.* The value for water content shall be expressed as parts per million by weight and shall not exceed the maximum specified (*see* Tables 1A, 1B, and 1C).

5.5 *Chloride.* The refrigerant shall be tested for chloride as an indication of the presence of hydrochloric acid and/or metal chlorides. The recommended procedure is intended for use with new or reclaimed refrigerants. Significant amounts of oil may interfere with the results by indicating a failure in the absence of chloride.

5.5.1 *Method.* The test method shall be that described in *Appendix-C to ARI Standard 700–1995.* The test will show noticeable turbidity at chloride levels of about 3 ppm by weight or higher.

5.5.2 *Turbidity.* The results of the test shall not exhibit any sign of turbidity. Report the results as "pass" or "fail."

5.6 *Acidity.*

5.6.1 *Method.* The acidity test uses the titration principle to detect any compound that is highly soluble in water and ionizes as an acid. The test method shall be that described in *Appendix—C to ARI Standard 700–1995.* This test may not be suitable for determination of high molecular weight organic acids; however, these acids will be found in the high boiling residue test outlined in 5.7. The test requires a 100 to 120 gram sample and has a detection limit of 0.1 ppm by weight calculated as HCl.

5.6.2 *Limits.* The maximum permissible acidity is 1 ppm by weight as HCl.

5.7 *High Boiling Residue.*

5.7.1 *Method.* High boiling residue shall be determined by measuring the residue of a standard volume of refrigerant after evaporation. The refrigerant sample shall be evaporated at room temperature or at a temperature 45°C (115°F) for all refrigerants, except R–113 which shall be evaporated at 60°C (140°F), using a Goetz bulb as specified in *Appendix—C to ARI Standard 700–1995.* Oils and/or organic acids will be captured by this method.

5.7.2 *Limits.* The value for high boiling residue shall be expressed as a percentage by volume and shall not exceed the maximum percent specified (*see* Tables 1A, 1B, and 1C). An alternative gravimetric method is described in Appendix—C to *ARI Standard 700–1995.*

5.8 *Method of Tests for Particulates and Solids.*

5.8.1 *Method.* A measured amount of sample is evaporated from a Goetz bulb under controlled temperature conditions. The particulates/solids shall be determined by visual examination of the Goetz bulb prior to the evaporation of refrigerant. Presence of dirt, rust or other particulate contamination is reported as "fail." For details of this test method, refer to Part 3 of *Appendix—C to ARI Standard 700–1995.*

5.9 *Non-Condensables.*

5.9.1 *Sample.* A vapor phase sample shall be used for determination of non-condensables. Non-condensable gases consist primarily of air accumulated in the vapor phase of refrigerants. The solubility of air in the refrigerant's liquid phase is extremely low and air is not significant as a liquid phase contaminant. The presence of non-condensable gases may reflect poor quality control in transferring refrigerants to storage tanks and cylinders.

5.9.2 *Method.* The test method shall be gas chromatography with a thermal conductivity detector as described in *Appendix—C to ARI Standard 700–1995.*

5.9.3 *Limit.* The maximum level of non-condensables in the vapor phase of a refrigerant in a container shall not exceed 1.5% by volume (*see* Tables 1A, 1B, and 1C).

5.10 *Impurities, including Other Refrigerants.*

5.10.1 *Method.* The amount of other impurities including other refrigerants in the subject refrigerant shall be determined by gas chromatography as described in *Appendix—C to ARI Standard 700–1995.*

5.10.2 *Limit.* The subject refrigerant shall not contain more than 0.5% by weight of impurities including other refrigerants (*see* Tables 1A, 1B, and 1C).

Section 6. Reporting Procedure

6.1 *Reporting Procedure.* The source (manufacturer, reclaimer or repackager) of the packaged refrigerant shall be identified. The refrigerant shall be identified by its accepted refrigerant number and/or its chemical name. Maximum permissible levels of contaminants are shown in Tables 1A, 1B, and 1C. Test results shall be tabulated in a like manner.

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Table 1A. Physical Properties of Single Component Refrigerants

	Reporting Units	Reference (Subclause)	R-11	R-12	R-13	R-22	R-113	R-114	R-123	R-124
*CHARACTERISTICS**:										
Boiling Point*	°F @ 1.00 atm	---	74.9	-21.6	-114.6	-41.4	117.6	38.8	82.6	12.2
	°C @ 1.00 atm	---	23.8	-29.8	-81.4	-40.8	47.6	3.8	27.9	-11.0
Boiling Point Range*	K	---	0.3	0.3	0.5	0.3	0.3	0.3	0.3	0.3
Typical Isomer Content	by weight	---					0-1% R-113a	0-30% R-114a	0-8% R-123a	0-5% R-124a
VAPOR PHASE CONTAMINANTS:										
Air and other non-condensables	% by volume @ 25°C	5.9	N/A**	1.5	1.5	1.5	N/A**	1.5	N/A**	1.5
LIQUID PHASE CONTAMINANTS:										
Water	ppm by weight	5.4	20	10	10	10	20	10	20	10
All other impurities including refrigerants	% by weight	5.1	0.50	0.50	0.50	0.50	0.50	0.50	0.50	0.50
High boiling residue	% by volume	5.7	0.01	0.01	0.05	0.01	0.03	0.01	0.01	0.01
Particulates/solids	Visually clean to pass	5.8	pass	pass	pass	pass	pass	pass	pass	pass
Acidity	ppm by weight	5.6	1.0	1.0	1.0	1.0	1.0	1.0	1.0	1.0
Chlorides***	No visible turbidity	5.5	pass	pass	pass	pass	pass	pass	pass	pass

* Boiling points and boiling point ranges, although not required, are provided for informational purposes.

** Since R-11, R-13, and R-123 have normal boiling points at or above room temperature, non-condensable determinations are not required for these refrigerants.

*** Recognized chloride level for pass/fail is 3ppm.

Table 1B. Physical Properties of Zeotropic Blends (400 Series Refrigerants)

	Reporting Units	Reference (Subclause)	R-401A	R-401B	R-402A	R-402B
*CHARACTERISTICS**:						
Refrigerant Components			R-22/152a/124	R-22/152a/124	R-125/290/22	R-125/290/22
Nominal Comp, weight%			53/13/34	61/11/28	60/2/38	38/2/60
Allowable Comp, weight%			51-54/11.5-13.5/33-35	59-63/9.5-11.5/27-29	58-62/1-3/36-40	36-40/1-3/58-62
Boiling Point*	°F @ 1.00 atm	---	-27.7 to -18.1	-30.4 to -21.2	-54.8 to -53.9	-53.3 to -49.0
	°C @ 1.00 atm	---	-33.2 to -27.8	-34.7 to -29.6	-48.2 to -47.7	-47.4 to -45.0
Boiling Point Range*	K	---	5.4	5.1	0.5	2.4
VAPOR PHASE CONTAMINANTS:						
Air and other non-condensables	% by volume @ 25°C	5.9	1.5	1.5	1.5	1.5
LIQUID PHASE CONTAMINANTS:						
Water	ppm by weight	5.4	10	10	10	10
All other impurities including refrigerants	% by weight	5.1	0.50	0.50	0.50	0.50
High boiling residue	% by volume	5.7	0.01	0.01	0.01	0.01
Particulates/solids	Visually clean to pass	5.8	pass	pass	pass	pass
Acidity	ppm by weight	5.6	1.0	1.0	1.0	1.0
Chlorides**	No visible turbidity	5.5	pass	pass	pass	pass

* Boiling points and boiling point ranges, although not required, are provided for informational purposes.

** Recognized chloride level for pass/fail is 3ppm.

Table 1C. Physical Properties of Azeotropic Blends (500 Series Refrigerants)

	Reporting Units	Reference (Subclause)	R500	R502	R503
			R12/152a	R22/115	R23/13
CHARACTERISTICS:					
Refrigerant Components			73.8/26.2	48.8/51.2	40.1/59.9
Nominal Comp. weight%					
Allowable Comp. weight%			72.8-74.8/ 25.2-27.2	44.8-52.8/ 47.2-55.2	39-41/ 59-61
Boiling Point*	°F @ 1.00 atm	---	-28.1	-49.7	-127.7
	°C @ 1.00 atm	---	-33.4	-45.4	-88.7
Boiling Point Range*	K	---	0.5	0.5	0.5
VAPOR PHASE CONTAMINANTS:					
Air and other non-condensables	% by volume @ 25°C	5.9	1.5	1.5	1.5
LIQUID PHASE CONTAMINANTS:					
Water	ppm by weight	5.4	10	10	10
All other impurities including refrigerants	% by weight	5.1	0.50	0.50	0.50
High boiling residue	% by volume	5.7	0.05	0.01	0.01
Particulates/solids	Visually clean to pass	5.8	pass	pass	pass
Acidity	ppm by weight	5.6	1.0	1.0	1.0
Chlorides**	No visible turbidity	5.5	pass	pass	pass

* Boiling points and boiling point ranges, although not required, are provided for informational purposes.

** Recognized chloride level for pass/fail is 3ppm.

BILLING CODE 6560–50–C

References

Listed here are all standards, handbooks, and other publications essential to the formation and implementation of the standard. All references in this Appendix are considered as part of this standard.

ASHRAE Terminology of Heating, Ventilating, Air Conditioning and Refrigeration, American Society of Heating Refrigeration and Air-Conditioning Engineers, 1992, 1791 Tullie Circle NE., Atlanta, GA 30329–2305; U.S.A.

ASHRAE Standard 34–1992, *Number Designation and Safety Classification of Refrigerants*, American Society of Heating Refrigeration and Air-Conditioning Engineers, 1992, 1791 Tullie Circle NE., Atlanta, GA 30329–2305; U.S.A.

Appendix C to ARI Standard 700–1995: Analytical Procedures to ARI Standard 700–1995, Specifications for Fluorocarbon and Other Refrigerants, Air-Conditioning and Refrigeration Institute, 1995, 4301 North Fairfax Drive, Suite 425, Arlington, VA 22203; U.S.A.

Federal Specification for *Fluorocarbon Refrigerants, BB–F–1421–B*, dated March 5, 1992, Office of the Federal Register, National Archives and Records Administration, 1992, 800 North Capitol Street, NW., Washington, DC 20402; U.S.A.

■ 11. Appendix B to subpart F is amended by:

■ a. Designating appendix B as appendix B1;

■ b. Revising the introductory text of appendix B and sections 3.2 through 3.4;

■ c. Adding paragraph 11.3;

■ d. Removing section 12; and

■ e. Adding appendix B2 to read as follows:

Appendix B1 to Subpart F of Part 82—Performance of Refrigerant Recovery, Recycling, and/or Reclaim Equipment

This appendix is based on the Air-Conditioning and Refrigeration Institute Standard 740–1993.

* * * * *

Section 3. Definitions

* * * * *

3.2 Recover. Reference 40 CFR 82.152.

3.3 Recycle. Reference 40 CFR 82.152.

3.4 Reclaim. Reference 40 CFR 82.152.

* * * * *

11.3 The nameplate shall also conform to the labeling requirements established for certified recycling and recovery equipment established at 40 CFR 82.158(h).

* * * * *

Appendix B2 to Subpart F of Part 82—Performance of Refrigerant Recovery, Recycling, and/or Reclaim Equipment

This appendix is based on the Air-Conditioning and Refrigeration Institute Standard 740–1995.

Section 1

Purpose 1.1 *Purpose.* The purpose of this standard is to establish methods of testing for rating and evaluating the performance of refrigerant recovery, and/or recycling equipment and general equipment requirements (herein referred to as "equipment") for contaminant or purity levels, capacity, speed and purge loss to minimize emission into the atmosphere of designated refrigerants.

Section 2

Scope 2.1 *Scope.* This standard applies to equipment for recovering and/or recycling single refrigerants, azeotropics, zeotropic blends, and their normal contaminants from refrigerant systems. This standard defines the test apparatus, test gas mixtures, sampling procedures and analytical techniques that will be used to determine the performance of refrigerant recovery and/or recycling equipment (hereinafter, "equipment").

Section 3. Definitions

3.1 *Definitions.* All terms in this appendix will follow the definitions in § 82.152 unless otherwise defined in this appendix.

3.2 *Clearing Refrigerant.* Procedures used to remove trapped refrigerant from equipment before switching from one refrigerant to another.

3.3 *High Temperature Vapor Recovery Rate.* For equipment having at least one designated refrigerant (see 11.2) with a boiling point in the range of −50 to +10°C, the rate will be measured for R–22, or the lowest boiling point refrigerant if R–22 is not a designated refrigerant.

3.4 *Published Ratings.* A statement of the assigned values of those performance characteristics, under stated rating conditions, by which a unit may be chosen to fit its application. These values apply to all units of like nominal size and type (identification) produced by the same manufacturer. As used herein, the term "published rating" includes the rating of all performance characteristics shown on the unit or published in specifications, advertising or other literature controlled by the manufacturer, at stated rating conditions.

3.5 *Push/Pull Method.* The push/pull refrigerant recovery method is defined as the process of transferring liquid refrigerant from a refrigeration system to a receiving vessel by lowering the pressure in the vessel and raising the pressure in the system, and by connecting a separate line between the system liquid port and the receiving vessel.

3.6 *Recycle Flow Rate.* The amount of refrigerant processed divided by the time elapsed in the recycling mode. For equipment which uses a separate recycling sequence, the recycle rate does not include the recovery rate (or elapsed time). For equipment which does not use a separate recycling sequence, the recycle rate is a rate based solely on the higher of the liquid or vapor recovery rate, by which the contaminant levels were measured.

3.7 *Residual Trapped Refrigerant.* Refrigerant remaining in equipment after clearing.

3.8 *Shall, Should, Recommended* or *It Is Recommended* shall be interpreted as follows:

3.8.1 *Shall.* Where "shall" or "shall not" is used for a provision specified, that provision is mandatory if compliance with this appendix is claimed.

3.8.2. *Should, Recommended* or *It Is Recommended* is used to indicate provisions which are not mandatory but which are desirable as good practice.

3.9 Standard Contaminated Refrigerant Sample. A mixture of new or reclaimed refrigerant and specified quantities of identified contaminants which constitute the mixture to be processed by the equipment under test. These contaminant levels are expected only from severe service conditions.

3.10 *Trapped Refrigerant.* The amount of refrigerant remaining in the equipment after the recovery or recovery/recycling operation but before clearing.

3.11 *Vapor Recovery Rate.* The average rate that refrigerant is withdrawn from the mixing chamber between two pressures as vapor recovery rate is changing pressure and temperature starting at saturated conditions either 24°C or at the boiling point 100 kPa (abs), whichever is higher. The final pressure condition is 10% of the initial pressure, but not lower than the equipment final recovery vacuum and not higher than 100 kPa (abs).

Section 4. General Equipment Requirements

4.1 *Equipment Information.* The equipment manufacturer shall provide operating instructions, necessary maintenance procedures and source information for replacement parts and repair.

4.2 *Filter Replacement.* The equipment shall indicate when any filter/drier(s) needs replacement. This requirement can be met by use of a moisture transducer and indicator light, by use of a sight glass/moisture indicator or by some measurement of the amount of refrigerant processed such as a flow meter or hour meter. Written instructions such as "to change the filter every 181 kg, or every 30 days" shall not be acceptable except for equipment in large systems where the liquid recovery rate is greater than 11.3 kg/min where the filter/drier(s) would be changed for every job.

4.3 *Purge of Non-Condensable.* If non-condensables are purged, the equipment shall either automatically purge non-condensables or provide indicating means to guide the purge process.

4.4 *Purge Loss.* The total refrigerant loss due to purging non-condensables, draining oil and clearing refrigerant (*see* 9.5) shall be less than 3% (by weight) of total processed refrigerant.

4.5 *Permeation Rate.* High pressure hose assemblies ⅝ in. [16 mm] nominal and smaller shall not exceed a permeation rate of 3.9 g/cm²/yr (internal surface) at a temperature of 48.8°C. Hose assemblies that UL recognized as having passed ANSI/UL 1963 requirements shall be accepted without testing. See 7.1.4.

4.6 *Clearing Trapped Refrigerant.* For equipment rated for more than one refrigerant, the manufacturer shall provide a method and instructions which will accomplish connections and clearing within 15 minutes. Special equipment, other than a vacuum pump or manifold gauge set shall be furnished. The clearing procedure shall not rely upon the storage cylinder below saturated pressure conditions at ambient temperature.

4.7 *Temperature.* The equipment shall be evaluated at 24°C with additional limited evaluation at 40°C. Normal operating conditions range from 10°C to 40°C.

4.8 *Exemptions.* Equipment intended for recovery only shall be exempt from 4.2 and 4.3.

Section 5. Contaminated Refrigerants

5.1 *Sample Characteristics.* The standard contaminated refrigerant sample shall have the characteristics specified in Table 1, except as provided in 5.2.

5.2 *Recovery-Only Testing.* Recovery equipment not rated for any specific contaminant shall be tested with new or reclaimed refrigerant.

Section 6. Test Apparatus

6.1 *General Recommendations.* The recommended test apparatus is described in the following paragraphs. If alternate test apparatus are employed, the user shall be able to demonstrate that they produce results equivalent to the specified referee apparatus.

6.2 *Self-Contained Equipment Test Apparatus.* The apparatus, shown in Figure 1, shall consist of:

6.2.1 *Mixing Chamber.* A mixing chamber consisting of a tank with a conical-shaped bottom, a bottom port and piping for delivering refrigerant to the equipment, various ports and valves for adding refrigerant to the chamber and stirring means for mixing.

6.2.2 *Filling Storage Cylinder.* The storage cylinder to be filled by the refrigerant transferred shall be cleaned and at the pressure of the recovered refrigerant at the beginning of the test. It will not be filled over 80%, by volume.

6.2.3 *Vapor Feed.* Vapor refrigerant feed consisting of evaporator, control valves and piping to create a 3.0°C superheat condition at an evaporating temperature of 21°C ±2K.

6.2.4 *Alternative Vapor Feed.* An alternative method for vapor feed shall be to pass the refrigerant through a boiler and then through an automatic pressure regulating valve set at different saturation pressures, moving from saturated pressure at 24°C to final pressure of recovery.

6.2.5 *Liquid Feed.* Liquid refrigerant feed consisting of control valves, sampling port and piping.

6.2.6 *Instrumentation.* Instrumentation capable of measuring weight, temperature, pressure and refrigerant loss, as required.

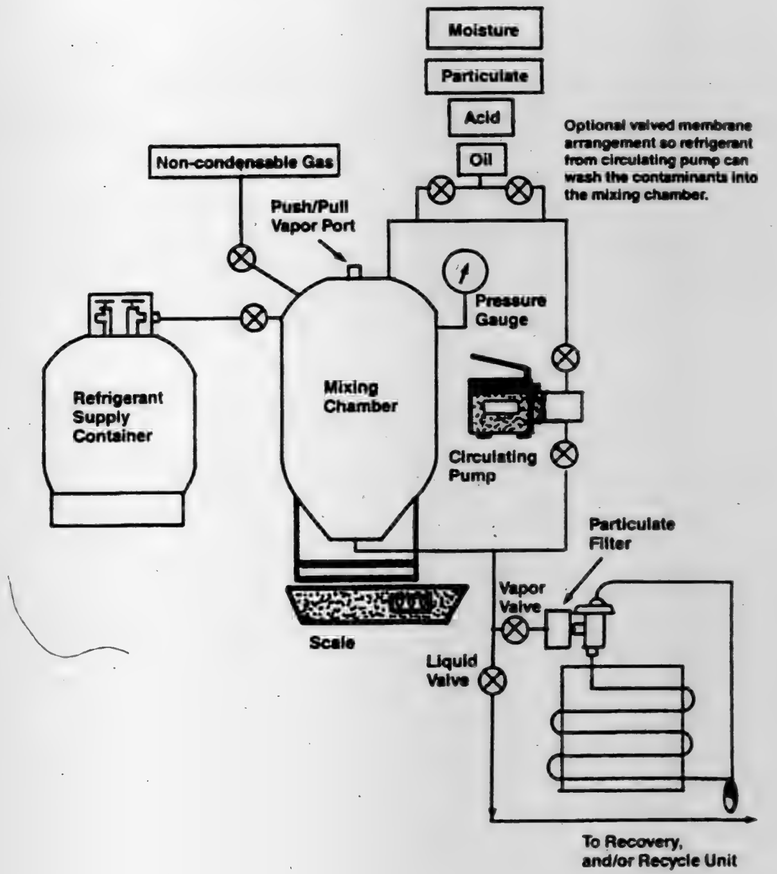
TABLE 1.—STANDARD CONTAMINATED REFRIGERANT SAMPLES

	R11	R12	R13	R22	R113	R114	R123	R134a	R500	R502	R503
Moisture Content: ppm by Weight of Pure refrigerant	100	80	30	200	100	85	200	200	200	200	30
Particulate Content: ppm by Weight of Pure Refrigerant Characterized by[1]	80	80	NA	80	80	80	80	80	80	80	NA
Acid Content: ppm by Weight of Pure Refrigerant—(mg KOH per kg Refrigerant) Characterized by[2]	500	100	NA	500	400	200	500	100	100	100	NA
Mineral Oil Content:											
% by Weight of Pure Refrigerant	20	5	NA	5	20	20	20	5	5	5	NA
Viscosity (SUS)	300	150	.....	300	300	300	300	150[3]	150	150	.....
Non-Condensable Gases (Air Content): % by Volume	NA	3	3	3	NA	3	NA	3	3	3	3

[1] Particulate content shall consist of inert materials and shall comply with particulate requirements in appendix B.
[2] Acid consists of 60% oleic acid and 40% hydrochloric acid on a total number basis.
[3] Synthetic ester-based oil.

BILLING CODE 6560–50–P

Figure 1. Test Apparatus for Self-Contained Equipment



BILLING CODE 6560–50–C

6.3 *Size.* The size of the mixing chamber shall be a minimum of .09 m^3. The bottom port and the refrigerant feed shall depend on the size of the equipment. Typically, the mixing valves and piping shall be 9.5 mm. For large equipment to be used on chillers, the minimum inside diameter of ports, valves and pipings shall be the smaller of the manufacturer's recommendation or 37 mm.

6.4 *System Dependent Equipment Test Apparatus.* This test apparatus is to be used

for final recovery vacuum rating of all system dependent equipment.

6.4.1 *Test Setup.* The test apparatus shown in Figure 2 consists of a complete refrigeration system. The manufacturer shall identify the refrigerants to be tested. The test apparatus can be modified to facilitate operation or testing of the system dependent equipment if the modifications to the apparatus are specifically described within the manufacturer's literature. (*See* Figure 2.) A 6.3 mm balance line shall be connected across the test apparatus between the high and low-pressure sides, with an isolation valve located at the connection to the compressor high side. A 6.3 mm access port with a valve core shall be located in the balance line for the purpose of measuring final recovery vacuum at the conclusion of the test.

Section 7. Performance Testing

7.1 *General Testing.*

7.1.1 *Temperatures.* Testing shall be conducted at an ambient temperature of 24°C ±1K except high temperature vapor recovery shall be at 40°C ±1K. The evaporator conditions of 6.2.3 shall be maintained as long as liquid refrigerant remains in the mixing chamber.

7.1.2 *Refrigerants.* The equipment shall be tested for all designated refrigerants (*see* 11.2). All tests in Section 7 shall be completed for each refrigerant before starting tests with the next refrigerant.

7.1.3 *Selected Tests.* Tests shall be as appropriate for the equipment type and ratings parameters selected (*see* 9.9, 11.1 and 11.2).

7.1.4 *Hose Assemblies.* For the purpose of limiting refrigerant emissions to the atmosphere, hose assemblies shall be tested for permeation according to ANSI/UL Standard 1963, Section 40.10.

7.2 *Equipment Preparation and Operation.* The equipment shall be prepared and operated per the operating instructions.

7.3 *Test Batch.* The test batch consisting of refrigerant sample (*see* Section 5) of the test refrigerant shall be prepared and thoroughly mixed. Continued mixing or stirring shall be required during the test while liquid refrigerant remains in the mixing chamber. The mixing chamber shall be filled to 80% level by volume.

7.3.1 *Control Test Batch.* Prior to starting the test for the first batch for each refrigerant, a liquid sample will be drawn from the mixing chamber and analyzed per Section 8 to assure that contaminant levels match Table 1 within ±10 ppm for moisture, ±20 ppm for particulate, ±20 ppm for oleic acid and ±0.5% for oil.

7.4 *Recovery Tests (Recovery and Recovery/Recycle Equipment).*

7.4.1. *Determining Recovery Rates.* The liquid and vapor refrigerant recovery rates shall be measured during the first test batch for each refrigerant (*see* 9.1, 9.2 and 9.4). Equipment preparation and recovery cylinder changeover shall not be included in elapsed time measurements for determining vapor recovery rate and liquid refrigerant recovery rate. Operations such as subcooling the recovery cylinder shall be included. Recovery cylinder shall be the same size as normally furnished or specified in the instructions by the equipment manufacturer. Oversized tanks shall not be permitted.

7.4.1.1 *Liquid Refrigerant Recovery Rate.* If elected, the recovery rate using the liquid refrigerant feed means (*see* 6.2.5) shall be determined. After the equipment reaches stabilized conditions of condensing temperature and/or recovery cylinder pressure, the recovery process shall be stopped and an initial weight shall be taken of the mixing chamber (*see* 9.2). The recovery process shall be continued for a period of time sufficient to achieve the accuracy in 9.4. The recovery process shall be stopped and a final weight shall be taken of the mixing chamber.

BILLING CODE 6560–50–P

Configuration of standard air conditioning or refrigeration system for use as a test apparatus

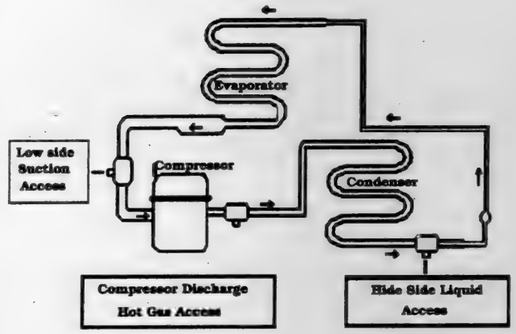


Figure 2. System Dependent Equipment Test Apparatus

BILLING CODE 6560–50–C

7.4.1.2 *Vapor Refrigerant Recovery Rate.* If elected, the average vapor flow rate shall be measured to accuracy requirements in clause 9.4 under conditions with no liquid refrigerant in the mixing chamber. The liquid recovery feed means shall be used. At initial conditions of saturated vapor at the higher of 24°C or the boiling temperature (100 kPa absolute pressure), the weight of the mixing chamber and the pressure shall be recorded. At final conditions representing pressure in the mixing chamber of 10% of the initial condition, but not less than the final recovery vacuum (*see* 9.6) nor more than 100 kPa, measure the weight of the mixing chamber and the elapsed time.

7.4.1.3 *High Temperature Vapor Recovery Rate.* Applicable for equipment having at least one designated refrigerant (*see* 11.2) with a boiling point between −50°C and +10°C. Measure the rate for R–22, or the refrigerant with the lowest boiling point if R–22 is not a designated refrigerant. Repeat the test in 7.4.1.2 at saturated conditions at 40°C and continue to operate equipment to assure it will achieve the final recovery vacuum (*see* 7.4.3).

7.4.2 *Recovery Operation.* This test is for determining the final recovery vacuum and the ability to remove contaminants as appropriate. If equipment is rated for liquid recovery (*see* 7.4.1.3), liquid recovery feed means described in 6.2.5 shall be used. If not, vapor recovery means described in 6.2.3 or 6.2.4 shall be used. Continue recovery operation until all liquid is removed from the test apparatus and vapor is removed to the point where equipment shuts down by automatic means or is manually shut off per operating instructions.

7.4.2.1 *Oil Draining.* Capture oil from the equipment at intervals as required in the instructions. Record the weight of the container. Completely remove refrigerant from oil by evacuation or other appropriate means. The weight difference shall be used in 9.5.2.

7.4.3 *Final Recovery Vacuum.* At the end of the first test batch for each refrigerant, the liquid valve and vapor valve of the apparatus shall be closed. After waiting 1 minute, the mixing chamber pressure shall be recorded (*see* 9.6).

7.4.4 *Residual Refrigerant.* This test will measure the mass of remaining refrigerant in the equipment after clearing and therefore the potential for mixing refrigerants (*see* 4.6).

7.4.4.1 *Initial Conditions.* At the end of the last test for each batch for each refrigerant, the equipment shall be disconnected from the test apparatus (Figure 1). Recycle per 7.5, if appropriate. Perform refrigerant clearing operations as called for in the instruction manual. Capture and record the weight of any refrigerant which would have been emitted to the atmosphere during the clearing process for use in 9.5. If two loops are used for recycling, trapped refrigerant shall be measured for both.

7.4.4.2 *Residual Trapped Refrigerant.* Evacuate an empty test cylinder to 1.0 kPa absolute. Record the empty weight of the test cylinder. Open all valves to the equipment so as to provide access to all trapped refrigerant. Connect the equipment to the test cylinder and operate valves to recover the residual refrigerant. Record the weight of the test cylinder using a recovery cylinder pressure no less than specified in 6.2.2. Place the test cylinder in liquid nitrogen for a period of 30 minutes or until a vacuum of 1000 microns is reached, whichever occurs first.

7.5 *Recycling Tests (Recovery/Recycle Equipment).*

7.5.1 *Recycling Operation.* As each recovery cylinder is filled in 7.4.2, recycle according to operating instructions. There will not necessarily be a separate recycling sequence. Note non-condensable purge measurement in 9.5.

7.5.1.1 *Recycle Flow Rate.* While recycling the first recovery cylinder for each refrigerant, determine the recycling flow rate by appropriate means (*see* 9.3) to achieve the accuracy required in 9.4.

7.5.2 *Non-Condensable Sample.* After completing 7.4.3, prepare a second test batch (7.3). Recover per 7.4.2 until the current recovery cylinder is filled to 80% level by volume. Recycle per 7.5.1. Mark this cylinder and set aside for taking the vapor sample. For equipment having both an internal tank of at least 3 kg refrigerant capacity and an external recovery cylinder, two recovery cylinders shall be marked and set aside. The first is the cylinder described above. The second cylinder is the final recovery cylinder after filling it to 80% level by volume and recycling.

7.5.3 *Liquid Sample for Analysis.* Repeat steps 7.3, 7.4.2 and 7.5.1 with further test batches until indication means in 4.2 show the filter/drier(s) need replacing.

7.5.3.1 *Multiple Pass.* For equipment with a separate recycling circuit (multiple pass), set aside the current cylinder and draw the liquid sample (*see* 7.4) from the previous cylinder.

7.5.3.2 *Single Pass.* For equipment with the single pass recycling circuit, draw the liquid sample (*see* 7.4) from the current cylinder.

7.6 *Measuring Refrigerant Loss.* Refrigerant loss due to non-condensables shall be determined by appropriate means (*see* 9.5.1). The loss could occur in 7.4.1, 7.4.2 and 7.5.1.

Section 8. Sampling and Chemical Analysis Methods

8.1 *Chemical Analysis.* Chemical analysis methods shall be specified in appropriate standards such as ARI 700–95 and Appendix C to ARI Standard 700–95.

8.2 *Refrigerant Sampling.*

8.2.1 *Water Content.* The water content in refrigerant shall be measured by the Karl Fischer Analytical Method or by the Karl Fischer Coulometric techniques. Report the moisture level in parts per million by weight.

8.2.2 *Chloride Ions.* Chloride ions shall be measured by turbidity tests. At this time, quantitative results have not been defined. Report chloride content as "pass" or "fail." In the future, when quantitative results are possible, report chloride content as parts per million by weight.

8.2.3 *Acidity.* The acidity test uses the titration principle. Report the acidity in parts per million by weight (mg KOH/kg) of sample.

8.2.4 *High Boiling Residue.* High boiling residues shall use measurement of the volume of residue after evaporating a standard volume of refrigerant. Using weight measurement and converting to volumetric units is acceptable. Report high boiling residues as percent by volume.

8.2.5 *Particulates/Solids.* The particulates/solids measurement employs visual examination. Report results as "pass" or "fail."

8.2.6 *Non-condensables.* The level of contamination by non-condensable gases in the base refrigerant being recycled shall be determined by gas chromatography. Report results as percent by volume.

Section 9. Performance Calculation and Rating

9.1 *Vapor Refrigerant Recovery Rate.* This rate shall be measured by weight change of the mixing chamber divided by elapsed time (*see* 7.4.1.2). The units shall be kg/min and the accuracy shall be per 9.4.

9.1.1 *High Temperature Vapor Recovery Rate.*

9.2 *Liquid Refrigerant Recovery Rate.* This rate shall be measured by weight change of the mixing chamber divided by elapsed time (*see* 7.4.1.3). The units shall be kg/min and the accuracy shall be per 9.4.

9.3 *Recycle Flow Rate.* The recycle flow rate shall be as defined in 3.10, expressed in kg/min, and the accuracy shall be per 9.4.

9.3.1 For equipment using multi-pass recycling or a separate sequence, the recycle rate shall be determined by dividing the net weight W of the refrigerant to be recycled by the actual time T required to recycle. Any set-up or operator interruptions shall not be included in the time T.

9.3.2 If no separate recycling sequence is used, the recycle rate shall be the higher of the vapor refrigerant recovery rate or the liquid refrigerant recovery rate. The recycle rate shall match a process which leads to contaminant levels in 9.9. Specifically, a recovery rate determined from bypassing a contaminant removal device cannot be used as a recycle rate when the contaminant levels in 9.9 are determined by passing the refrigerant through the contaminant removal device.

9.4 *Accuracy of Flow Rates.* The accuracy of test measurements in 9.1, 9.2 and 9.3 shall be ±008 kg/min or flow rates up to .42 kg/min and ±2.0% for flow rates larger than .42 kg/min. Ratings shall be expressed to the nearest .02 kg/min.

9.5 *Refrigerant Loss.* This calculation will be based upon the net loss of refrigerant which would have been eliminated in the non-condensable purge process (*see* 7.5.1), the oil draining process (*see* 7.4.2.1) and the refrigerant clearing process (*see* 7.4.4.1), all divided by the net refrigerant content of the test batches. The refrigerant loss shall not exceed 3% by weight.

9.5.1 *Non-Condensable Purge.* Evacuate an empty container to 2 kPa absolute. Record the empty weight of the container. Place the container in a dry ice bath. Connect the equipment purge connection to the container and operate purge according to operating instructions so as to capture the non-condensables and lost refrigerant. Weigh the cylinder after the recycling is complete. Equivalent means are permissible.

9.5.2 *Oil Draining.* Refrigerant removed from the oil after draining shall be collected and measured in accordance with 7.4.2.1.

9.5.3 *Clearing Unit.* Refrigerant captured during the clearing process shall be measured in accordance with 7.4.4.1.

9.6 *Final Recovery Vacuum.* The final recovery vacuum shall be the mixing chamber pressure in 7.4.3 expressed in kPa. The accuracy of the measurement shall be within 0.33 kPa.

9.7 *Residual Trapped Refrigerant.* The amount of residual trapped refrigerant shall be the final weight minus the initial weight of the test cylinder in 7.4.4.2, expressed in kg. The accuracy shall be ±0.02 kg and reported to the nearest 0.05 kg.

9.8 *Quantity Recycled.* The amount of refrigerant processed before changing filters (*see* 7.5.3) shall be expressed in kg to an accuracy of ±1%.

9.9 *Contaminant Levels.* The contaminant levels remaining after testing shall be published as follows:

Moisture content, ppm by weight
Chloride ions, pass/fail
Acidity, ppm by weight
High boiling residue, % (by volume)
Particulates-solid, pass/fail (visual examination)
Non-condensables, % (by volume)

9.10 *Minimum Data Requirements for Published Ratings.* Published ratings shall include all of the parameters as shown in Tables 2 and 3 for each refrigerant designated by the manufacturer.

Section 10. Tolerances

10.1 *Tolerances.* Performance related parameters shall not be less favorable than the published ratings.

Section 11. Marking and Nameplate Data

11.1 *Marking and Nameplate Data.* The nameplate shall display the manufacturer's name, model designation, type of equipment, designated refrigerants, capacities and electrical characteristics where applicable. The nameplate shall also conform to the labeling requirements established for certified recycling and recovery equipment established at 40 CFR 82.158(h).

Recommended nameplate voltages for 60 Hertz systems shall include one or more of the utilization voltages shown in Table 1 of ARI Standard 110–90. Recommended nameplate voltages for 50 Hertz systems shall include one or more of the utilization voltages shown in Table 1 of IEC Standard Publication 38, IEC Standard Voltages.

11.2 *Data for Designated Refrigerants.* For each refrigerant designated, the manufacturer shall include all the following that are applicable per Table 2:

a. Liquid Recovery Rate
b. Vapor Recovery Rate
c. High Temperature Vapor Recovery Rate
d. Final Recovery Vacuum
e. Recycle Flow Rate
f. Residual Trapped Refrigerant
g. Quantity Recycled

TABLE 2.—PERFORMANCE

Parameter/Type of equipment	Recovery	Recovery/ Recycle	Recycle	System dependent equipment
Liquid Refrigerant Recovery Rate	(1)	(1)	N/A	N/A
Vapor Refrigerant Recovery Rate	(1)	(1)	N/A	N/A
High Temp. Vapor Recovery Rate	(1)	(1)	N/A	N/A
Final Recovery Vacuum	(X)	(X)	N/A	(X)
Recycle Flow Rate	N/A	(X)	(X)	N/A
Refrigerant Loss	(3)	(X)	(X)	(3)
Residual Trapped Refrigerant	(2)	(2)	(2)	(2)
Quantity Recycled	N/A	(X)	(X)	N/A

X Mandatory rating.
1 For a recovery or recovery/recycle unit, one must rate either liquid refrigerant recovery rate or vapor refrigerant recovery rate or one can rate for both. If rating only the one, the other shall be indicated by N/A, "not applicable."
2 Mandatory rating for equipment tested for multiple refrigerants.
3 Mandatory rating if multiple refrigerants, oil separation or non-condensable purge are rated.
NOTE: For recovery equipment, these parameters are optional. If not rated use N/A, "not applicable."

TABLE 3.—CONTAMINANTS

Contaminant/Type of equipment	Recovery	Recovery/ Recycle	Recycle	System dependent equipment
Moisture Content	(*)	(X)	(X)	N/A
Chloride Ions	(*)	(X)	(X)	N/A
Acidity	(*)	(X)	(X)	N/A
High Boiling Residue	(*)	(X)	(X)	N/A
Particulates	(*)	(X)	(X)	N/A
Non-Condensables	(*)	(X)	(X)	N/A

* For recovery equipment, these parameters are optional. If not rated, use N/A, "not applicable."
X Mandatory rating.

[FR Doc. 03–18150 Filed 7–23–03; 8:45 am]
BILLING CODE 6560–50–P

Federal Register

Thursday,
July 24, 2003

Part III

Environmental Protection Agency

40 CFR Part 30 et al.

Participation by Disadvantaged Business Enterprises in Procurement Under Environmental Protection Agency (EPA) Financial Assistance Agreements; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 30, 31, 33, 35, and 40

[Docket ID NO. OA–2002–0001; FRL–7528–1]

RIN 2020–AA39

Participation by Disadvantaged Business Enterprises in Procurement Under Environmental Protection Agency (EPA) Financial Assistance Agreements

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to revise its Minority Business Enterprise (MBE) and Women's Business Enterprise (WBE) Program and rename it as EPA's Disadvantaged Business Enterprise (DBE) Program. EPA is proposing to delete existing MBE and WBE specific provisions in regulations for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, State and Local Assistance, and Research and Demonstration Grants and is proposing to consolidate and add to these provisions in a new regulation. The new regulation is intended to harmonize EPA's statutory DBE procurement objectives with the United States Supreme Court's decision in *Adarand Constructors, Inc.* v. *Pena*, 115 S. Ct. 2097 (1995). In *Adarand*, the Supreme Court extended strict judicial scrutiny to federal programs that use racial or ethnic criteria as a basis for decision making. This proposed rule reflects EPA's efforts to ensure that the compelling government interest of remedying past and current racial discrimination through the use of agency-wide DBE procurement objectives at EPA is served by a narrowly-tailored program. If you are a recipient of an EPA financial assistance agreement or an entity receiving an identified loan under a financial assistance agreement capitalizing a revolving loan fund, this proposed rule may affect you.

DATES: *Comments:* You must send comments electronically, by mail or through hand delivery/courier on or before January 20, 2004.

ADDRESSES: Send your comments (in triplicate, if possible) to: Office of Environmental Information Docket Environmental Protection Agency, Mailcode 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OA 2002–0001. Please use a font no smaller than 12pt. Comments may also be submitted electronically, or through hand delivery/courier. Follow the detailed instructions as provided in I.B. of the **SUPPLEMENTARY INFORMATION** section.

Public hearings: EPA will hold public hearings on this proposed rule. If you wish to speak, contact the person(s) named under the section entitled "For Further Information Contact." Verbatim transcripts of the hearings will be available for reading and copying at the official public docket for this action under Docket ID NO. OA–2002–0001. See Supplementary Information I.A.1.

FOR FURTHER INFORMATION CONTACT: Mark Gordon, Attorney Advisor at (202) 564–5951, Kimberly Patrick, Attorney Advisor at (202) 564–5386, or David Sutton, Deputy Director at (202) 564–4444, OSDBU, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OA–2002–0001. The official public docket consists of the documents specifically referenced in this action, any public comments received; and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Office of Environmental Information Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1742, and the telephone number for the Office of Environmental Information is (202) 566–1752.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in I.A.1 above.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or *see* 67 FR 38102, May 31, 2002.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. However, late comments may be considered if time permits.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. OA–2002–0001. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to oei.docket @ epamail.epa.gov Attention Docket ID No. OA–2002–0001. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in I.A.1 above. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments (in triplicate, if possible) to: Office of Environmental Information Docket Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OA 2002–0001. Please use a font size no smaller than 12.

3. *By Hand Delivery or Courier.* Deliver your comments (in triplicate, if possible) to: EPA Docket Center, (EPA/DC) EPA West, Room B 102, 1301 Constitution Avenue, NW., Washington, D.C. Attention Docket ID No. OA 2002–0001. Such deliveries are only accepted during the Docket's normal hours of operation as identified in I.A.1 above. Please use a font size no smaller than 12.

The docket is an organized file of all the information EPA considered in developing this proposed rule. The docketing system allows you to readily identify and locate documents so you can participate in the rulemaking. Along with the proposed and promulgated standards and their preambles, contents of the docket will serve as the record in case of judicial review.

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

D. Will EPA Hold Public Hearings and Tribal Consultations on This Proposed Rule?

EPA plans to hold a number of public hearings on this proposed rule during the 180 day comment period. As part of its ongoing consultation with Tribes, EPA also plans to hold a number of meetings with Tribal officials/representatives on this proposed rulemaking during the 180 day comment period. EPA will announce in the **Federal Register** the dates, times and locations of these public hearings and meetings.

In writing the following proposed preamble and rule, EPA has considered all comments received in response to the staff draft of the preamble and rule, dated June 19, 2000, which was posted on EPA's website at *http://www.epa.gov/osdbu* and distributed to various stakeholders. Changes have been made to this proposed preamble and rule in response to some of these comments.

This is a proposed rule. The contents of today's preamble are listed in the following outline:

I. Introduction
II. Section-by-Section Analysis
A. Subpart A—General Provisions
B. Subpart B—Certification
C. Subpart C—Good Faith Efforts
D. Subpart D—Fair Share Objectives
E. Subpart E—Recordkeeping and Reporting
III. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et. seq.*
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act

I. Introduction

40 CFR Part 33, Procurement under Assistance Agreements, became effective March 28, 1983. These procurement requirements required recipients of EPA financial assistance

agreements to take the six affirmative steps to assure that small, minority and women's businesses were used when possible as sources of construction, services and supplies. As part of a government-wide effort in 1988, EPA promulgated 40 CFR Part 31, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. In 1996, the Agency promulgated 40 CFR Part 30, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations. Parts 30 and 31 superseded the procurement provisions of former Part 33. Parts 30 and 31 contain DBE Program provisions at 40 CFR 30.44(b) and 31.36(e), respectively.

Various EPA programs have their own regulations containing DBE requirements. For example, the EPA Superfund Program promulgated regulations which contain DBE provisions for Grants for Technical Assistance at 40 CFR 35.4066(g) and for Cooperative Agreements and Superfund State Contracts for Superfund Response Actions at 40 CFR 35.6015(a)(26) and (54), 35.6580 and 35.6665 (b). The EPA Clean Water State Revolving Fund (CWSRF) Program promulgated regulations containing DBE provisions at 40 CFR 35.3145(d) and (e). The DWSRF Program has promulgated regulations containing DBE provisions at 40 CFR 35.3575(d). DBE requirements for Research and Demonstration Grants can be found at 40 CFR 40.145–3(c).

EPA's legal authorities for its DBE Program are:

Public Law 102–389, a 1993 appropriations act (42 U.S.C. 4370d) (EPA's 8% statute), which provides:

> The Administrator of the Environmental Protection Agency shall, hereafter, to the fullest extent possible, ensure that at least 8 per centum of Federal funding for prime and subcontracts awarded in support of authorized programs, including grants, loans and contracts for wastewater treatment and leaking underground storage tanks grants, be made available to business concerns or other organizations owned or controlled by socially and economically disadvantaged individuals (within the meaning of Section 8(a)(5) and (6) of the Small Business Act (15 U.S.C. 637(a)(5) and (6)), including historically black colleges and universities. For purposes of this section, economically and socially disadvantaged individuals shall be deemed to include women
> * * *

Public Law 101–549, Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 *note*) (EPA's 10% statute), which states:

> In providing for any research relating to the requirements of the amendments made by the Clean Air Act Amendments which use funds of the Environmental Protection Agency, the Administrator of the Environmental Protection Agency shall, to the extent practicable, require that not less than 10 percent of the total Federal funding for such research will be made available to disadvantaged business concerns. Nothing in this title shall permit or require the use of quotas or a requirement that has the effect of a quota in determining eligibility * * *

Other legal authorities include Public Law 99–499, the Superfund Amendments and Reauthorization Act of 1986; Public Law 100–590, the Small Business Administration Reauthorization and Amendment Act of 1988; Executive Order 12138, "Creating a National Women's Business Enterprise Policy and Prescribing Arrangements for Developing, Coordinating and Implementing a National Program for Women's Business Enterprise," issued May 18, 1979; Executive Order 11625, "Prescribing Additional Arrangements for Developing and Coordinating a National Program for Minority Business Enterprise," issued October 13, 1971; and Executive Order 12432, "Minority Business Enterprise Development," issued July 14, 1983.

In 1995, the Supreme Court's decision in *Adarand Constructors, Inc.* v. *Pena*, 115 S. Ct. 2097(1995), extended strict judicial scrutiny to federal affirmative action programs that use racial or ethnic criteria as a basis for decision making. In other words, such programs must be based on a compelling governmental interest, for example, remedying the effects of discrimination, and must be narrowly tailored to accomplish that interest.

In 1996, the Department of Justice (DOJ) began a review of affirmative action programs in the Federal Government. In response to this review, the Department of Transportation (DOT) revised its program for participation of DBEs in procurement under DOT's financial assistance agreements. 64 FR 5096. In direct Federal procurement, the Small Business Administration (SBA) has issued final regulations amending two programs intended to foster small disadvantaged business participation, the 8(a) Business Development and Small Disadvantaged Business Participation Programs. 63 FR 35726; 63 FR 36120.

This proposed rulemaking would affect only procurements pursuant to EPA financial assistance agreements rather than direct Federal procurement actions. All of EPA's current DBE fair share objectives and good faith efforts regulatory provisions would be deleted as part of this rulemaking effort, and the proposed DBE provisions to be codified in the new 40 CFR Part 33 would apply. In addition, this proposal would supersede inconsistent provisions of previous guidance documents for EPA's former MBE and WBE Program, including, but not limited to, OSDBU's "Guidance for Utilization of Small, Minority, and Women's Business Enterprises in Procurement Under Assistance Agreements' (the 1997 Guidance). 62 FR 45645.

II. Section-by-Section Analysis

Subpart A—General Provisions

Section 33.101 What Are the Objectives of This Part?

This proposed rule is EPA's revision to its current MBE and WBE Program. EPA needs to reconcile its requirements for financial assistance agreements under EPA's 8% statute and EPA's 10% statute with the Supreme Court's decision in *Adarand*. In that case the Supreme Court held that Federal Government programs that use race or national origin as a criterion for decision making are subject to strict judicial scrutiny. Such programs must be based on a compelling government interest, for example, remedying the effects of racial/ethnic discrimination, and must be narrowly tailored to accomplish that interest.

EPA's proposed rulemaking is one part of the Agency's overall effort to review and, where necessary, revise affirmative action programs in light of *Adarand*. This rulemaking proposal tailors EPA's DBE Program more precisely to the objective of remedying the effects of racial/ethnic discrimination.

Section 33.102 When Do the Requirements of This Part Apply?

This Part's requirements apply to procurement under EPA financial assistance agreements, including financial assistance agreements to capitalize revolving loan funds, performed entirely within the United States. The term "United States" is later defined in 33.103 to include the Commonwealth of Puerto Rico and any other territories and possessions of the United States.

Section 33.103 What Do the Terms in This Part Mean?

To the extent possible, EPA has referred to definitions contained in 40 CFR Parts 30, 31 and 35, and other agencies' existing regulations, *e.g.*, Historically Black College or University (HBCU). Other definitions were derived from the 1997 Guidance.

EPA is creating a new term, DBE, for its revised program. The new Part 33 defines DBE as an entity owned or controlled by an individual who is socially and economically disadvantaged under EPA's 8% statute, an entity owned and controlled by an individual who is socially and economically disadvantaged under EPA's 10% statute, as well as a Small Business Enterprise (SBE), a Small Business in a Rural Area (SBRA), a Labor Surplus Area Firm (LSAF), a Historically Underutilized Business (HUB) Zone Small Business Concern, or a concern under a successor program. Unlike EPA's previous program, the terms MBE and WBE no longer describe the entire program. Instead, these terms are now merely subsets of the entities described as DBEs. As a result, the definition of MBE has been modified to include an entity owned and/or controlled by an individual who is socially and economically disadvantaged under either EPA's 8% or 10% statutes.

In addition, the term "financial assistance agreement" has been defined as both grants and cooperative agreements awarded by EPA, including such agreements used to capitalize revolving loan funds including, but not limited to, the Clean Water State Revolving Fund, the Drinking Water State Revolving Fund or the Brownfields Revolving Fund Programs. The term "identified loan" is also defined to indicate those projects and activities to which the requirements of this Part apply for recipients of capitalization agreements for revolving loan funds. For Brownfields capitalization grant recipients, the identified loans will be those funded with EPA financial assistance.

The definition of Small Business in Rural Areas has been shortened from the one contained in the 1997 Guidance. No substantive change is intended. The U.S. Department of Agriculture (USDA) Rural-Urban Continuum Classification Code applies to every county in the United States, and classifies counties based on proximity to metropolitan areas. EPA is using Codes 6–9 as rural counties for purposes of identifying small businesses in rural areas.

Section 33.104 May a Recipient Apply for a Waiver From the Requirements of This Part?

A recipient will be able to apply for a waiver in a special or exceptional situation where the recipient believes that compliance with any of the requirements in this Rule would be impractical. The Agency believes that the waiver provision is an important component of narrowly tailoring its DBE Program to unique local circumstances and to ensure non-discrimination. EPA intends to carefully review any waiver applications to ensure that any proposed alternative program is able to meet the objectives of EPA's DBE Program and is in accordance with law. This added flexibility could allow an EPA financial assistance agreement recipient to deal creatively with its specific circumstances.

Section 33.105 What Are the Compliance and Enforcement Provisions of This Part?

This section reserves to EPA the right to take remedial action under existing legal authorities if a recipient fails to comply with any of the requirements of the Rule.

Section 33.106 What Assurances Must EPA Financial Assistance Recipients Obtain From Their Contractors?

An EPA financial assistance recipient must ensure that the contract term and condition in the Appendix to this Rule is included in the procurement contracts it awards under EPA financial assistance agreements. This includes contracts under identified loans pursuant to EPA financial assistance agreements capitalizing revolving loan fund programs. This term and condition ensures that a recipient applies pertinent provisions of this Rule to its prime contractor.

Section 33.107 What Are the Rules Governing Availability of Records, Cooperation, and Intimidation and Retaliation?

Paragraph (a) of this section discusses the availability to the general public of information concerning EPA's DBE Program. Paragraphs (b) and (c) discuss the obligation of all participants in EPA's DBE Program to cooperate and never use intimidation and retaliation with respect to EPA's DBE Program.

Subpart B—Certification

Section 33.201 What Does This Subpart Require?

Currently EPA recognizes an entity which is certified as socially and economically disadvantaged by the Small Business Administration (SBA), certified as an MBE by a State or Federal Agency or self-certifies that it is an independent business concern owned and controlled by a minority group member(s) as an MBE. 40 CFR 35.6015 (26); the 1997 Guidance, pp. 3–2 through 3–6.

EPA is proposing to make four changes to the current certification requirements. The first change is to no longer allow an entity to self-certify as being owned and/or controlled by a socially and economically disadvantaged individual or as a WBE under EPA's 8% or 10% statutes. The second change is to allow recognition of certifications of entities as owned and/or controlled by a socially and economically disadvantaged individual or by a woman under EPA's 8% or 10% statutes by Indian Tribal, State (including Insular Areas) and local Governments or independent private organizations so long as the applicable criteria match those under SBA's applicable 8(a) Business Development Program regulations. The third change is to clarify that EPA will accept DOT DBE certifications of U.S. citizens as valid certifications under this program. The fourth change is that EPA will set up its own certification program with the possible use of EPA Private Certifiers to assist EPA in its certification determinations.

The provisions for certification under EPA's 8% and 10% statutes have been separated from one another since the presumptions under those statutes are different. Because EPA's 8% statute incorporates Section 8(a)(5) of the Small Business Act, this Rule adopts for purposes of the 8% statute SBA's regulatory presumption that the following individuals are socially disadvantaged: Black Americans; Hispanic Americans; Native Americans (American Indians, Eskimos, Aleuts or Native Hawaiians); Asian Pacific Americans (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China (including Hong Kong and Macao), Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, the Phillippines, U.S. Trust Territory of the Pacific Islands, (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Fiji, Tonga, Kiribati, Tuvalu, or Nauru); Subcontinent Asian Americans (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands or Nepal); and members of other groups designated from time to time by SBA. As is the case under SBA's 8(a) Business Development Program, Brazilian Americans with Portugese surnames and Portugese Americans would be considered Hispanic Americans under this Program. In addition, Congress has by statute established that HBCUs and women also automatically qualify as

socially and economically disadvantaged under EPA's 8% statute. An entity must still be certified by a third party as to ownership or control in order to be eligible to participate as a WBE contractor for an EPA recipient under the DBE Program.

EPA's 10% statute also adopts SBA's regulatory presumption regarding the socially disadvantaged status of the individuals listed above. However, EPA's 10% statute also presumes that Black Americans, Hispanic Americans, Native Americans, Asian Americans, Women and Disabled Americans are socially and economically disadvantaged individuals. Furthermore, Congress provided in EPA's 10% statute that the following institutions are presumed to be entities owned and controlled by socially and economically disadvantaged individuals: HBCUs, colleges and universities having a student body in which 40% of the students are Hispanic, Minority Institutions and private and voluntary organizations controlled by individuals who are socially and economically disadvantaged. EPA's 8% and 10% statutes may be distinguished by their provisions regarding ownership and control. EPA's 8% statute references entities owned *or* controlled by socially and economically disadvantaged individuals while EPA's 10% statute references entities owned *and* controlled by socially and economically disadvantaged individuals.

Section 33.202 How Does an Entity Qualify as an MBE or WBE Under EPA's 8% Statute?

An entity must establish that it is owned or controlled by socially and economically disadvantaged individuals who are of good character and citizens of the United States. With one exception, definitions of "ownership," "control" and "socially and economically disadvantaged individuals" are the same as under the Small Business Act and its implementing regulations at 13 CFR 124.105, 124.106, 124.103 and 124.104. (*See also* 13 CFR 124.109 for special rules applicable to Indian tribes and Alaska Native Corporations; 13 CFR 124.110 for special rules applicable to Native Hawaiian Organizations). Generally, these regulations provide that ownership must be real, substantial and continuing, going beyond pro forma ownership of the business concern as reflected in ownership documents. Owners must share in the risks and profits of the business concern commensurate with their ownership interests. Control is demonstrated in most cases by the power to direct or cause the direction of the management and policies of the business concern and to make day-to-day as well as long-term decisions on matters of management, policy and operations. The one exception from the regulation regarding economic disadvantage worth noting is the exclusion of individuals with a net worth greater than or equal to $250,000 from initial eligibility and individuals with a net worth greater than or equal to $750,000 from continued eligibility. Similar to DOT, EPA is proposing to make $750,000 the cut off point for both initial and continued eligibility under the DBE Program.

HBCUs do not need to go through the certification process contained in Subpart B of this Rule since EPA's 8% statute automatically deems an HBCU to be owned or controlled by socially and economically disadvantaged individuals. While women are also deemed to be socially and economically disadvantaged under EPA's 8% statute, entities must still evidence ownership or control in accordance with paragraph (a) of this section, which may be accomplished by certification, pursuant to § 33.204.

Section 33.203 How Does an Entity Qualify as an MBE or WBE Under EPA's 10% Statute?

An entity must establish that it is owned and controlled by socially and economically disadvantaged individuals who are of good character and citizens of the United States. Again with the same notable exception discussed above regarding the $750,000 personal net worth threshold, definitions of "ownership," "control" and "socially and economically disadvantaged individuals" are the same as under the Small Business Act and its implementing regulations at 13 CFR 124.105, 124.106, 124.103 and 124.104. (See also 13 CFR 124.109 for special rules applicable to Indian tribes and Alaska Native Corporations; 13 CFR 124.110 for special rules applicable to Native Hawaiian Organizations).

With one exception, the provisions contained within subparagraphs (d)–(g) of this section are derived from EPA's 10% statute. EPA's 10% statute contains a presumption that colleges and universities having a student body in which 40% of the students are Hispanic should be considered entities owned and controlled by socially and economically disadvantaged individuals. In order to eliminate the burden of additional certification by such colleges and universities, EPA is proposing instead to apply the presumption to colleges and universities which have qualified as Hispanic-Serving Institutions under the Department of Education regulations at 34 CFR Part 606 or as Minority Institutions as defined by § 33.103 of this proposed Rule. Among other things, Hispanic-Serving Institutions and Minority Institutions require a student body in which 50% of the students are Hispanic. Because EPA's 10% statute only requires the Agency to implement the statute's requirements to the "extent practicable," the Agency, for administrative reasons, may propose regulatory provisions which vary from the exact wording of the statute.

Section 33.204 Where Does an Entity Become Certified Under EPA's 8% and 10% Statutes?

This proposed rule discontinues acceptance of an individual's self-certification regarding his or her racial/ethnic status in order to ensure consistency with the approach taken by other Federal agencies. For example, SBA under its Small Disadvantaged Business Program no longer permits self-certification of social and economic disadvantaged status. Similarly, DOT does not allow self-certification under its DBE Program. EPA is also proposing to discontinue self-certification by WBEs.

In addition, EPA would require that an entity first attempt to become certified as an MBE or WBE by the SBA or DOT under their respective programs or by an Indian Tribal Government, State Government, local Government, or independent private organization consistent with EPA's 8% or 10% statute as applicable. An entity may only attempt to become certified by EPA as an MBE or WBE under the procedures described in § 33.205 if that entity is unable to obtain certification from the other certifying entities described above. However, as part of the certification process, EPA will make the determination as to whether an entity's current certification by DOT, an Indian Tribal Government, State Government, local Government, or independent private organization constitutes acceptable certification under EPA's 8% statute, EPA's 10% statute or both. Acceptance of certifications from these other certifying entities is EPA's attempt at easing the burden created by discontinuation of the self-certification option. EPA currently envisions five categories of individuals or groups who would qualify for MBE or WBE certification under EPA's DBE Program but would be unable to obtain MBE or WBE certification from SBA or DOT due to differences in those Agencies' respective programs. These categories are women-owned and minority-owned

concerns that do not meet the SBA/DOT size standards (EPA's 8% and 10% statutes), Disabled Americans (EPA's 10% statute), private and voluntary organizations controlled by individuals who are socially and economically disadvantaged (EPA's 10% statute), entities which are certified under criteria which are inconsistent with EPA's DBE Program criteria (EPA's 8% and 10% statutes) and any entity claiming that it is owned *or* controlled by socially and economically disadvantaged individuals under EPA's 8% statute. SBA and DOT currently do not certify the first three categories and, as to the fifth category, requires a showing of ownership *and* control. Accordingly, these categories of individuals or groups may initially come to EPA for MBE or WBE certification if that individual or group is also unable to obtain MBE or WBE certification from an Indian Tribal, State, or local Government or an independent private organization in accordance with EPA's 8% or 10% statute as applicable. Finally, in implementing its own certification program, the Agency may use EPA Private Certifiers to assist the Agency in its certification determinations.

EPA has had a longstanding policy of requiring U.S. citizenship for eligibility as an MBE or WBE. See "EPA Guidance for Utilization of S/M/WBE in Procurement under Assistance Agreements' dated 05/22/86. This policy was continued in the Agency's 1997 Guidance. Currently, the Agency's regulatory definition of an MBE requires U.S. citizenship for a minority group member. See 40 CFR 35.6015(a)(26)(iii). EPA believes that its requirement for U.S. citizenship is consistent with SBA's 8(a) Business Development Program regulations at 13 CFR 124.101, and its Small Disadvantaged Business Programs regulations at 13 CFR 124.1002(d). While the Agency recognizes that DOT allows lawfully admitted permanent residents to qualify for certification under its DBE Program (49 CFR 26.67), the Agency believes that given its close association with SBA requirements, it is appropriate for U.S. citizenship to be a requirement for certification by EPA as well. In addition, at this time, EPA lacks data regarding how many additional entities EPA would have to certify if the Agency were to change its longstanding policy on this issue and the possible resource implications of such a policy change; the Agency believes that changing its policy on this issue could result in a substantial increase to the number of entities EPA would have to certify.

EPA welcomes public comment on these proposed changes, especially from large businesses and members of the DBE community since they are most likely to be directly affected if these proposed changes become part of the final rule. In addition, because EPA continues to explore opportunities to standardize DBE certification with other Federal agencies, the Agency encourages specific comments on the requirement for U.S. citizenship under this program, and the resource implications for the Agency if it were to change its policy of requiring U.S. citizenship for certification by EPA.

Section 33.205 How Does an Entity Become Certified by EPA?

This section describes the EPA certification application process, including procedures regarding the filing of an application, application processing, EPA's ownership and/or control determination, EPA's disadvantaged determination and evaluation standards.

Section 33.206 Is There a List of Certified MBEs and WBEs?

This provision provides two ways someone can obtain a list of certified MBEs and WBEs under EPA's DBE Program, via internet or mail.

Section 33.207 Can an Entity Reapply to EPA for MBE or WBE Certification?

This section describes how long an entity must wait before reapplying to EPA for MBE or WBE certification.

Section 33.208 How Long Does an MBE or WBE Certification From EPA Last?

This provision states that MBE or WBE certifications from EPA generally last for three years.

Section 33.209 Can EPA Re-Evaluate the MBE or WBE Status of an Entity After EPA Certifies It To Be an MBE or WBE?

This section explains procedures for removal of an entity from the EPA list of certified MBEs and WBEs. Credible information calling into question an entity's eligibility as an MBE or WBE may come from any source.

Section 33.210 Does an Entity Certified as an MBE or WBE by EPA Need To Keep EPA Informed of Any Changes Which May Affect the Entity's Certification?

This provision requires an annual affidavit from EPA certified MBEs or WBEs affirming that no changes in circumstance have occurred that affect the entity's status as an MBE or WBE. In addition to this annual affidavit, MBEs and WBEs certified by EPA are under a constant requirement throughout the year to keep EPA informed of any changes in circumstance which might affect that entity's status as an MBE or WBE.

Section 33.211 What Is an EPA Private Certifier?

This provision generally describes the role of an EPA Private Certifier. In all cases, EPA shall make the determination as to whether a particular entity should be certified as an MBE or WBE. EPA Private Certifiers are used by EPA merely to assist in the Agency's certification determination.

Section 33.212 Can an EPA Private Certifier Charge a Fee to an Entity To Process the Entity's Application for MBE or WBE Certification?

A reasonable fee, not contingent on whether the entity is eventually certified as an MBE or WBE by EPA, may be charged with the permission of the Agency.

Section 33.213 How Does an Organization or Business Concern Become an EPA Private Certifier?

This provision establishes the means by which an organization or business concern may become an EPA Private Certifier. In addition, this provision describes some of the requirements an organization or business concern must meet in order to be an EPA Private Certifier.

Section 33.214 How Long May an Organization or Business Concern Be an EPA Private Certifier?

The length of time an organization or business concern may be an EPA Private Certifier will be negotiated between EPA and that organization or business concern.

Section 33.215 Is There a List of EPA Private Certifiers?

This provision provides two ways someone can obtain a list of EPA Private Certifiers under EPA's DBE Program, via internet or mail.

Section 33.216 What Is the Process for Appealing or Challenging an EPA MBE or WBE Certification Determination?

This section describes the way in which an entity who has been denied MBE or WBE certification by EPA or a third party who disagrees with EPA's decision to certify an entity as an MBE or WBE can submit an appeal or challenge to the Agency. Included in these procedures are filing deadlines, appeal or challenge content

requirements and the Agency's standard of review.

Section 33.217 What Conduct Is Prohibited by This Subpart?

This provision prohibits false, fraudulent or deceitful conduct on the part of entities attempting to participate in the DBE Program. It has been placed in the Rule in order to protect the integrity of the DBE Program.

Subpart C—Good Faith Efforts

Section 33.301 What Does This Subpart Require?

The good faith efforts required by this section are activities by a recipient or its prime contractor to increase DBE awareness of procurement opportunities through race/gender neutral efforts. Race/gender neutral efforts are ones which increase awareness of contracting opportunities in general, including outreach, recruitment and technical assistance. The good faith efforts must be made by a recipient and its prime contractor toward all DBEs, including SBEs, LSAFs and SBRAs and not just MBEs and WBEs, even if the fair share objective requirements of Subpart D have been met.

For purposes of simplification, EPA has combined the six positive efforts of 40 CFR 30.44(b) applicable to institutions of higher education, hospitals and other non-profit organizations with the six affirmative steps of 40 CFR 31.36(e) applicable to Indian Tribal, State, and local Government recipients and renamed them the six "good faith efforts."is not the intention of the Agency to change the substance of the positive efforts or the affirmative steps.

The six good faith efforts required by this section must be performed by all recipients (including recipients who have been exempted under § 33.411 from the requirements of applying fair share objectives) and their prime contractors, if they award subcontracts, for the procurement categories of construction, equipment, services (including consulting services) and supplies. EPA offers the following examples to assist recipients and prime contractors in carrying out the good faith efforts.

(1) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and local Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

(a) Maintain and update a listing of qualified DBEs that can be solicited for construction, equipment, services and/or supplies.

(b) Provide listings to all interested parties who request copies of the bidding or proposing documents.

(c) Contact appropriate sources within your geographic area and State to identify qualified DBEs for placement on your DBE business listings.

(d) Utilize other DBE listings such as those of the State's Minority Business Office, the Small Business Administration, Minority Business Development Agency (MBDA) of the Department of Commerce, EPA OSDBU, and DOT.

(e) Have State environmental agency personnel review solicitation lists.

(2) Make information of forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

(a) Develop realistic delivery schedules which may provide for greater DBE participation.

(b) Advertise through the minority media in order to facilitate DBE utilization. Such advertisements may include, but are not limited to, contracting and subcontracting opportunities, hiring and employment, or any other matter related to the project.

(c) Advertise in general circulation publications, trade publications, State agency publications and minority and women's business focused media concerning contracting opportunities on your projects. Maintain a list of minority and/or women's business-focused publications that may be utilized to solicit DBEs.

(3) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities in order to increase opportunities for participation by DBEs in the competitive process.

(a) Perform an analysis to identify portions of work that can be divided and performed by qualified DBEs.

(b) Scrutinize the elements of the total project to develop economical units of work that are within the bonding range of DBEs.

(c) Conduct meetings, conferences, and follow-ups with DBE associations and minority media to inform these groups of opportunities to provide construction, equipment, services and supplies.

(4) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(a) Notify DBEs of future procurement opportunities so they may establish bidding solicitations and procurement plans.

(b) Provide DBE trade organizations with succinct summaries of solicitations.

(c) Provide interested DBEs with adequate information about plans, specifications, timing and other requirements of the proposed projects.

(5) Use the services and assistance of the SBA and the MBDA.

(a) Use the services of outreach programs sponsored by the MBDA and/or the SBA to recruit bona fide firms for placement on DBE bidders lists to assist these firms in the development of bid packaging.

(b) Seek out Minority Business Development Centers (MBDCs) to assist recipients and prime contractors in identifying DBEs for potential work opportunities on projects.

Appropriate use of the services and assistance of the SBA and the MBDA depends on the circumstances. It may involve using the services of outreach programs sponsored by the MBDA and/or the SBA to recruit bona fide firms for placement on DBE bidder's lists to assist the firms in the development of bid packages. Recipients and prime contractors may use SBA's Pro-Net Procurement Marketing and Access Network services to identify available DBEs to do the work. Recipients and prime contractors may utilize MBDCs for assistance in identifying DBEs for potential work opportunities on contracts under EPA financial assistance agreements, as well as using MBDA's Phoenix dBASE System to identify available DBEs to do the work.

(6) If the prime contractor awards subcontracts, require the prime contractor to take the steps in subparagraphs (1)–(5) of this section.

Section 33.302 Are There Any Additional Contract Administration Requirements?

The first provision of this section is intended to ensure that subcontractors receive prompt payment from prime contractors. The other provisions of this section, including the requirement to complete the forms mentioned below, are intended to prevent any "bait and switch" tactics at the subcontract level by prime contractors which may circumvent the spirit of the DBE Program. In addition, this proposal would require a recipient to be notified in writing before its prime contractor could terminate a DBE subcontractor for convenience and then perform the work itself.

Furthermore, when a DBE subcontractor is terminated or fails to complete its work under the subcontract for any reason, the recipient must require the prime contractor to make good faith efforts if the prime contractor chooses to hire another subcontractor. A recipient must also require its prime contractor to continue to make the good faith efforts even if the fair share objectives in Subpart D of this Rule have been met. Finally, this proposed rule mentions three new forms which are required if there are DBE subcontractors involved in a procurement. First, a recipient must require its prime contractor to provide EPA Form 6100–2—DBE Program Subcontractor Participation Form to all of its DBE subcontractors. EPA Form 6100–2—DBE Program Subcontractor Participation Form will allow DBE subcontractors the option of describing to EPA the work the DBE subcontractor received from the prime contractor, how much the DBE subcontractor was paid and any other concerns the DBE subcontractor might have. Second, a recipient must require its prime contractor to have any anticipated DBE subcontractors complete EPA Form 6100–3—DBE Program Subcontractor Performance Form. The prime contractor would then submit this form as part of its bid or proposal package when competing for a procurement. Third, a recipient must have its prime contractor complete EPA Form 6100–4—DBE Program Subcontractor Utilization Form whenever applicable and submit the form as part of the prime contractor's bid or proposal package when competing for a procurement.

Section 33.303 Are There Special Rules for Loans Under EPA Financial Assistance Agreements?

A recipient of an EPA financial assistance agreement to capitalize a revolving loan fund, such as a State under the CWSRF or DWSRF or an eligible entity under the Brownfields Cleanup Revolving Loan Fund program, must require that borrowers receiving identified loans comply with the good faith efforts described in § 33.301 and the contract administration requirements of § 33.302. This provision does not require that such private or non profit borrowers expend identified loan funds in compliance with any other procurement procedures contained in 40 CFR Part 30, 40 CFR Part 31, or 40 CFR Part 35, Subpart O, as applicable.

Section 33.304 Must a Native American (Either as an Individual, Organization, Tribe or Tribal Government) Recipient or Prime Contractor Follow the Six Good Faith Efforts?

Native Americans are defined in § 33.103 to include American Indians, Eskimos, Aleuts and Native Hawaiians. A Native American (either as an individual, organization, corporation, Tribe or Tribal Government) recipient or prime contractor must follow the six good faith efforts only if doing so would not conflict with existing Tribal or Federal law, including but not limited to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) which establishes, among other things, that any federal contract, subcontract, grant, or subgrant awarded to Indian organizations or for the benefit of Indians, shall require preference in the award of subcontracts and subgrants to Indian organizations and to Indian-owned economic enterprises.

Indian organizations awarded an EPA financial assistance agreement have the ability to solicit and recruit Indian organizations and Indian-owned economic enterprises and give them preference in the award process prior to undertaking the six good faith efforts. Tribal governments with promulgated tribal laws and regulations concerning the solicitation and recruitment of Native American-owned and other minority business enterprises, including women-owned business enterprises, have the discretion to utilize these tribal laws and regulations in lieu of the six good faith efforts. If the effort to recruit Indian organizations and Indian-owned economic enterprises is not successful, then the recipient must follow the six good faith efforts. Such tribal governments still must retain records documenting compliance in accordance with § 33.501 of the Rule and must report to EPA on their accomplishments in accordance with § 33.502 of the Rule.

Any recipient, whether Native American or not, of an EPA financial assistance agreement for the benefit of Native Americans, is required to solicit and recruit Indian organizations and Indian-owned economic enterprises and give them preference in the award process prior to undertaking the six good faith efforts. If the efforts to recruit Indian organizations and Indian-owned economic enterprises is not successful, then the recipient must follow the six good faith efforts.

Subpart D—Fair Share Objectives

Section 33.401 What Does This Subpart Require?

EPA's previous fair share policy has required that fair share objectives for MBEs and WBEs be negotiated with EPA financial assistance recipients, but has not required that fair share objectives be established for other types of DBEs. While good faith efforts have been required with respect to all DBEs, including LSAFs, SBEs and SBRAs, numerical fair share objectives need only be negotiated for MBEs and WBEs in accordance with EPA's 8% and 10% statutes. This proposed rule would continue this policy.

EPA's position reflects the requirement of its 8% and 10% statutes and is consistent with Executive Order 12138 (May 18, 1979), which requires all Federal agencies to take "appropriate affirmative action in support of [WBEs]." Further, OMB Circular A–102 (March 3, 1988) provides that "[i]t is national policy to award a fair share of contracts to small and minority business firms: and that "[g]rantees shall take similar appropriate affirmative action * * * [in] support of women's enterprises * * *"

Prior to FY 1998, EPA applied its 8% and 10% MBE and WBE objectives directly to each of its financial assistance agreements. Thus, each EPA financial assistance agreement for research relating to the requirements of the Clean Air Act Amendments of 1990 had a minimum of 10% as MBE and WBE fair share objectives. All other EPA financial assistance agreements had a minimum of 8% as MBE and WBE fair share objectives. EPA changed this policy beginning with its FY 1998 financial assistance agreements so that the minimum 8% and 10% MBE and WBE fair share objectives became agency-wide objectives rather than fair share objectives for each EPA financial assistance agreement. Notwithstanding these national objectives, fair share objectives for each financial assistance agreement recipient are negotiated based on an assessment of the availability of qualified MBEs and WBEs in the relevant procurement market for construction, equipment, services and supplies; thus, the overall national objectives may vary from the specific fair share objectives of an individual financial assistance agreement recipient.

The 8% and 10% objectives are national objectives which EPA uses to evaluate and monitor MBE and WBE opportunities to participate in contracts under EPA financial assistance agreements. They do not serve as quotas or set-asides. These national objectives

do not authorize or require a recipient to automatically establish MBE or WBE fair share objectives at the 8% or 10% levels. The fair share objectives apply only to procurement dollars and not, for example, to salaries or other overhead costs.

Section 33.402 Are There Special Rules for Loans Under EPA Financial Assistance Agreements?

A recipient of an EPA financial assistance agreement to capitalize a revolving loan fund will apply its fair share objective (if the entity receiving the identified loan uses a relevant geographic area that is substantially similar to the recipient's) or a separately negotiated fair share objective to entities receiving identified loans. For the CWSRF and DWSRF Programs, identified loans are those projects or activities funded from amounts equal to the capitalization grant. For the Brownfields Cleanup Revolving Loan Fund (BCRLF) Program, identified loans are those projects funded with federal financial assistance. If procurements will occur over more than one year, the recipient may choose to apply the fair share objective in place either for the year in which the identified loan is awarded or for the year in which the procurement action occurs. The recipient must specify this choice in the financial assistance agreement, or incorporate it by reference therein.

Section 33.403 What Is a Fair Share Objective?

A fair share objective is a percentage based on the capacity and availability of qualified MBEs, and WBEs in the relevant geographic market for the procurement categories of construction, equipment, services and supplies compared to the number of all qualified entities in the same market for the same procurement categories adjusted, if possible, to reflect the level of MBE and WBE participation absent the effects of past discrimination in the marketplace.

A fair share objective is not a quota. A recipient and its prime contractor must make the good faith efforts described in Subpart C of this Rule in attempting to achieve its fair share objectives.

Section 33.404 When Must a Recipient Negotiate Fair Share Objectives With EPA?

This Rule requires a recipient to submit its proposed fair share objectives and supporting documentation to the Agency within 90 days after its acceptance of a financial assistance agreement for more than $250,000. In situations where a recipient receives several EPA financial assistance agreements that are $250,000 or less in one fiscal year, the recipient must submit its proposed fair share objectives and supporting documentation to the Agency within 90 days after its acceptance of the financial assistance agreement that takes the recipient over the $250,000 threshold (*see* § 33.411). In recent years EPA has included time frames for submission of proposed fair share objectives in special grant conditions for each financial assistance agreement. EPA is now incorporating a general time frame into this Rule. A recipient may not spend any of its financial assistance award for procurement until the fair share objective negotiation process has been completed.

Section 33.405 How Does a Recipient Determine Its Fair Share Objectives?

Starting in FY 1998, EPA, through the 1997 Guidance and implementing terms and conditions, has required that fair share objectives for MBEs and WBEs be based on the availability of qualified MBEs and WBEs in the relevant market for the four procurement categories of construction, equipment, services and supplies. In this proposed regulation, EPA is also offering recipients the option of combining the four proposed procurement category objectives for MBEs into a single weighted objective. The same option would be available for WBEs. In this proposed regulation, EPA is continuing to allow recipients to establish separate MBE and WBE fair share objectives for different EPA financial assistance programs and to establish separate MBE and WBE fair share objectives by geographic area.

Beginning with MBE and WBE objectives for FY 1999, the Agency required that fair share negotiations be supported by an availability analysis, or at the recipient's option, a disparity study conducted within the past ten years. In this rulemaking, EPA is proposing to keep this basic approach, with some fine tuning. The recipient would have to consider whether an adjustment from the availability analysis or disparity study percentage is needed based on past MBE or WBE achievements, other disparity studies done within the recipient's jurisdiction or other types of relevant available data (*e.g.*, statistical disparities in the ability of MBEs and WBEs to obtain financing, bonding and insurance required to participate in the DBE Program). This process is needed to ensure that objectives accurately reflect the MBE and WBE participation expected absent the effects of discrimination.

Recognizing that EPA makes many different types of financial assistance awards (*e.g.*, Superfund awards for Hazardous Waste Cleanup, CWSRF capitalization grants) to a wide variety of recipients, EPA is also soliciting comments to help us determine how best to achieve a "level playing field" for MBEs and WBEs. EPA is specifically asking for comments on whether recipients should be able to choose from a variety of methods in calculating MBE and WBE fair share objectives with the Agency.

This process is intended to provide maximum flexibility for recipients while ensuring that objectives are based, at a minimum, on the capacity and availability of qualified MBEs and WBEs in the recipient's relevant market.

A recipient may negotiate separate MBE and WBE fair share objectives applicable to different geographic markets, and must use the fair share objectives for the geographic markets in which the contract work for its project is being performed.

(1) Step 1: Determining a Base Figure for the MBE and WBE Objectives

A recipient may determine a base figure by preparing an availability analysis. An availability analysis represents an actual measurement by the recipient of the availability of MBEs and WBEs in the relevant geographic market in the four procurement categories compared to the number of all businesses in the same market that perform work in the same procurement categories. From these data the recipient would derive a base figure that is as accurate a representation as possible of the percentage of qualified MBEs and WBEs available versus the total number of available businesses.

EPA is not specifying a methodology or formula for a recipient to use in preparing its availability analysis. Instead, the Agency is proposing to place primary emphasis on the principles underlying the measurement, requiring only that a measurement of the availability be made on the basis of demonstrable evidence of relevant market conditions.

EPA is providing a number of examples which recipients may adopt or use as guidelines for deriving their own availability analysis.

(A) MBE/WBE Directories and Census Bureau Data

The first example is setting an MBE base figure using a recipient's own MBE directories, including the bidders list required by § 33.501. For each procurement category, the recipient would first tabulate the number of qualified MBEs, with the resulting number becoming the numerator of the base figure. The denominator could then be derived from the Census Bureau's County Business Pattern (CBP) Database. The CBP Database contains all available businesses in the recipient's relevant geographic market organized by Standard Industrial Code (SIC code). SIC codes have been converted to North American Industrial Classification System (NAICS) codes. For purposes of the following discussion, NAICS codes may be substituted for SIC codes. The recipient may then combine all available businesses pertaining to construction, for example, and use this number as the denominator in the base figure for that particular procurement category.

EPA has a link to the Census Bureau's website at *osdbuweb.dot.gov/business/dbe/abe.pdf*. Utilizing this data, recipients would be able to customize their base figure within each procurement category. For example, major construction SIC codes are 15, 16 and 17. If a recipient estimates it will spend 10% of its federal funds within SIC code 15, 40% in SIC code 16, 25% in SIC code 17, and the remaining 25% on contracting spread over SIC codes 35 (equipment) and 87 (services), the recipient could separately determine the availability of MBEs for each of the SIC codes and weight each according to the amount of money to be spent in each area. In this example, the recipient could calculate its weighted base figure by first determining the number of MBEs in its directory for each of the SIC codes, then extracting the availability of CBP businesses for the same SIC codes. The recipient would then perform the following calculation to arrive at a base figure for step one of the objective setting process for MBEs.

Numerator = [.10 *(MBEs in SIC code 15)* + .40(*MBEs in SIC code 16*) + .25(*MBEs in SIC code 17*) + .25(*MBEs in SIC codes 35 & 87*)] × 100

Denominator = CBPs in SIC code 15 + CBPs in SIC code 16 + CBPs in SIC code 17 + CBPs in SIC codes 35 & 87

$$\text{Base Figure} = \frac{\text{Numerator}}{\text{Denominator}}$$

This formula is offered only as an example of how a recipient could choose to use the CBP Database. Recipients using the CBP data could choose whether to weight their calculation, and whether to do so by individual SIC codes or by groups of SIC codes, based on their own assessment of which method will best fit their spending patterns.

EPA is proposing to allow a recipient to negotiate separate MBE and separate WBE fair share objectives for each of the four procurement categories of construction, equipment, services and supplies or, at its option, negotiate a combined weighted objective for these four procurement category objectives for MBEs and separately for WBEs. This proposed approach would give recipients flexibility in preparing their availability analyses.

Several issues arise when comparing numbers from two different data sources. First, recipients will need to ensure that the scope of businesses included in the numerator is as close as possible to the scope included in the denominator. A recipient using its own MBE and WBE directories will still need to determine a similar scope for the fields it will use for the denominator. A good way for a recipient to do this would be to examine its contracting program and determine the SIC codes for the majority of its contracts. While it may be sufficient for some recipients to use their State borders as the boundaries for their relevant geographic market, this may not be appropriate for other recipients whose relevant geographic market may extend beyond their State borders. Conversely, the relevant geographic market for some recipients may be a specific region within a State's borders.

An alternative means of calculating the numerator is to use a bidders list. Under this approach the recipient would measure availability by the number of firms that have previously competed in the recipient's procurement process. The recipient must include all firms that have competed for prime and/or subcontracts.

In the category of construction, most MBE and WBE participation occurs through subcontracting. It is therefore crucial that all firms competing for subcontracts be included in the bidders list. EPA encourages recipients to use any sources of local data which allows them to make a more accurate calculation.

(B) Data From a Disparity Study

Another option for a recipient in determining a base figure is using a disparity study. Disparity studies involve comparing available MBE and WBE contractors with the contracts actually awarded to them. They generally are based on statistics which measure MBE and WBE utilization and anecdotal evidence showing that the underutilization of MBEs and WBEs is caused by conditions other than chance. These studies may be expensive and time consuming to perform.

EPA is not requiring a recipient to conduct a disparity study. EPA is also not specifying the data or analysis required in a disparity study since the design and conduct of the study are best left to recipients and the professional organizations with which they contract to perform the studies. If a disparity study is used it must address MBE and WBE utilization under the four procurement categories and be no more than ten years old. The fact that a disparity study utilized in negotiating fair share objectives has become more than ten years old during the three year period does not by itself constitute a significant change requiring renegotiation.

(C) The Objective of Another EPA Recipient

A recipient may also use another EPA recipient's MBE and WBE objectives if they were established in accordance with this Rule and were based on a substantially similar relevant geographic market. For example, a non-State agency recipient may use a State agency's MBE and WBE fair share objectives, but only if the non-State agency uses a substantially similar geographic market. Otherwise, the non-State Agency recipient would have to negotiate its own MBE and WBE fair share objectives with EPA based on the availability of MBEs and WBEs in its relevant geographic market. With the proposed exemption from the fair share objective negotiation process, the number of recipients who would be required to separately negotiate with EPA would be substantially reduced.

(D) Alternative Methods

This proposal also includes an option for recipients to propose an alternative method for calculating MBE and WBE base figures. Recipients may use this option to take advantage of any unique expertise or source of data that may not be available to other recipients, such as a comparable objective negotiated with DOT. EPA will consider any such proposal that recipients believe will better reflect their relevant market than any of the examples provided in this Rule.

Step 2: Adjusting the Base Figure for the MBE and WBE Objectives

Once a recipient has derived base figures for its proposed MBE and WBE objectives, it must then consider whether an adjustment from the Step 1 MBE and WBE base figures is appropriate. This second step is needed to ensure that objectives more

accurately reflect the MBE and WBE participation expected absent the effects of discrimination. A recipient should consider the proven capacity of MBEs and WBEs to perform on contracts under EPA financial assistance agreements. MBE and WBE past utilization does not necessarily reflect the availability of MBEs and WBEs. However, such past utilization is an indicia of the proven capacity of an MBE or WBE to perform on contracts under EPA financial assistance agreements. Other relevant information which should be examined, if available, include any other disparity studies conducted within a recipient's relevant geographic market; statistical disparities in the ability of MBEs and WBEs to get necessary financing, bonding and insurance; and data on limitations for employment, self employment, education, training and union apprenticeship.

EPA is not proposing to require recipients to make an adjustment to their base figures. Rather, recipients must consider whether an adjustment to the base figures is appropriate, and if so, make the adjustment. It is important to note that the data recipients would consider under this proposed approach only involve existing data and not the generation of any new data.

The question of allowability of costs of preparing availability analyses or disparity studies in connection with the DBE Program is determined in accordance with the cost principles applicable to the organization incurring the cost. 40 CFR 30.27 and 31.22. For State and local governments, the pertinent cost principles are found in OMB Circular A–87, as amended 8/29/97 ("A–87"). For institutions of higher education and other non-profit institutions, OMB Circulars A–21 and A–122 apply, respectively. Allowability of costs for hospitals is determined in accordance with the provision of appendix E of 45 CFR Part 74.

In general, the cost must be necessary and reasonable, be allocable to the Federal grant, be consistent with State law and be afforded consistent treatment as direct or indirect. The cost must be adequately documented, and be the net of any applicable credits. There is nothing inherent in the cost principles that would render the DBE costs unallowable.

Each recipient will have different fact situations to apply. In CERCLA Core Program Cooperative Agreements, costs incurred in encouraging DBE utilization in the Superfund Program are allowable for funding. The recipient may have conducted an analysis or study for its own purposes prior to the EPA financial assistance agreement, in which case some of the costs might be allocable to the EPA grant as an in-kind contribution. Costs must also be treated consistently as either direct or indirect in similar circumstances. Under OMB cost principles the costs of such analyses or studies could either be allowable direct or allowable indirect costs under an EPA assistance award. The recipient must determine whether under its particular circumstances, the DBE costs are allocable to the cost objective in question, and whether it is a direct or indirect cost.

In each case, the recipient will have to devise a method of allocating the cost of the analysis or study appropriately. If audited, the recipient may be asked to document and justify the allocation. If a recipient has questions concerning allocation issues, it should contact its appropriate EPA grants administration office.

Section 33.406 May a Recipient Designate a Lead Agency for Fair Share Objective Negotiation Purposes?

If an Indian Tribal, State or local Government has more than one agency that receives EPA financial assistance, the agencies within that government may designate a lead agency to negotiate MBE and WBE fair share objectives with EPA to be used by each of the agencies. Each agency must otherwise negotiate with EPA separately its own MBE and WBE fair share objectives.

Section 33.407 How Long Do MBE and WBE Fair Share Objectives Remain in Effect?

Once approved, a recipient's MBE and WBE fair share objectives would remain in effect for three fiscal years. However, if significant changes have occurred rendering the data relied upon in establishing the fair share objectives obsolete, the fair share objectives may need to be renegotiated before the end of the three fiscal year period. The fact that a disparity study utilized in negotiating fair share objectives has become more than ten years old during the three year period does not by itself constitute a significant change requiring renegotiation.

Section 33.408 May a Recipient Use Race and/or Gender Conscious Measures as Part of This Program?

To the extent good faith efforts described in Subpart C of this Rule and other race and/or gender neutral efforts prove to be adequate to achieve fair share objectives for MBEs and WBEs, a recipient or prime contractor need not take any race and/or gender conscious action. To the extent good faith efforts described in Subpart C of this Rule and other race and/or gender neutral efforts prove to be inadequate to achieve fair share objectives for MBEs and WBEs, a recipient or prime contractor is encouraged to take reasonable race and/or gender conscious action, subject to § 33.409, to more closely achieve the fair share objectives. Such actions may include, among other things, price incentives and technical evaluation credits. Any use of race and/or gender conscious measures must not result in the selection of an unqualified MBE or WBE. A recipient must notify EPA in advance of any race and/or gender conscious action it plans to take.

Section 33.409 May a Recipient Use Quotas as Part of This Program?

Quotas may never be used under EPA's 8% or 10% statute. In fact, EPA's 10% statute specifically prohibits quotas.

Section 33.410 May a Recipient Be Penalized for Failing To Meet Its Fair Share Objectives?

Under this Rule, a recipient may not be penalized or considered to be in noncompliance solely because its MBE or WBE utilization falls short of its fair share objectives. However, EPA may take remedial action under § 33.105 for a recipient's failure to administer any portion of the DBE Program including, but not limited to, the good faith efforts requirements described in Subpart C of this part.

Section 33.411 Who May be Exempted From This Subpart?

EPA is proposing to exempt recipients of financial assistance agreements with a combined total of $250,000 or less in EPA funds for any particular EPA financial assistance project or in any one fiscal year from the fair share objective requirements. These recipients would not be exempted from the six good faith efforts requirements of Subpart C or the recordkeeping and reporting requirements of Subpart E. The Agency is requesting comments on whether the exemption should be extended to the other requirements. Commenters are encouraged to submit relevant burden and/or cost information in support of extending the exemption to the other requirements of this Rule.

Financial assistance agreements of $250,000 or less account for about 82% of new EPA financial assistance awards each fiscal year, but less than 12% of the total EPA financial assistance funds awarded. For the Clean Water State Revolving Fund (CWSRF), Drinking Water State Revolving Fund (DWSRF), and Brownfields Cleanup Revolving Loan Fund (BCRLF) Programs, recipients are not required to apply the fair share objective requirements to an entity receiving an identified loan in the amount of $250,000 or less or to an entity receiving a combination of loans totaling in the amount of $250,000 or less in any one fiscal year. These exemptions are designed to minimize administrative burdens on EPA recipients. Recipients exempted by this provision are not exempted from the other requirements of the rule. The Agency is requesting comment, including comments from Tribes, on whether the exemptions should apply to other requirements, specifically the good faith efforts and reporting requirements. Commenters are encouraged to submit relevant burden and/or cost information in support of their comments to extend the exemption to other requirements of this Rule, including the good faith efforts and reporting requirements.

EPA is proposing to exempt Tribal and tribal consortia recipients from applying the fair share objective requirements to eligible program grants which can be included in Performance Partnership Grants (PPGs) under 40 CFR Part 35, Subpart B, due to the nature of these program grants and the unique nature of eligible recipients.

Finally, a recipient of a Technical Assistance Grant (TAG) would not be required to apply the fair share objective requirements of this Subpart to that grant. This provision would not, however, exempt such recipients from any other requirements of this Part.

Section 33.412 Is There a Special Rule for an Insular Area or Indian Tribal Government Recipient?

Currently, Insular Area and Indian Tribal Government recipients are not required to negotiate fair share objectives with EPA. For the most part, EPA is proposing to treat Insular Area and Indian Tribal Government recipients the same as other recipients with regard to the fair share objective negotiation requirements. For example, the fair share objectives of another recipient may be used so long as the relevant geographic market is the same or substantially similar.

The impact of this change on Indian Tribal Government recipients would be minimized by the general exemption described in § 33.411(a). The impact is further minimized in the case of tribes and tribal consortia by the exemption for eligible program grants which can be included in Performance Partnership Grants (PPGs) under 40 CFR Part 35, Subpart B, described in § 33.411(c). As with other recipients, fair share objectives would remain in effect for three years.

EPA is proposing to phase-in the MBE and WBE fair share objective negotiation process for Insular Area and Indian Tribal Government recipients over three years in order for such recipients to adjust to this change in policy. The Agency will develop guidance on what specific factors should be taken into account in determining the phase-in period for these recipients. In the interim, such recipients must still comply with all other requirements of this Rule.

Subpart E—Recordkeeping and Reporting

Section 33.501 What Are the Recordkeeping Requirements of This Part?

A recipient is required to maintain the records documenting its compliance with the requirements of this Part, including documentation of its and its prime contractor's good faith efforts and data relied upon in formulating its fair share objectives. A recipient must also comply with the applicable retention and access requirements for its financial assistance agreement, *e.g.*, 40 CFR 30.53 (for institutions of higher education, hospitals and other non-profit organizations); 40 CFR 31.42 (for Indian Tribal, State and local Government recipients); and 40 CFR 35.6705, 35.6710 (for Superfund Response Action Cooperative Agreements). In addition, a recipient of a Continuing Environmental Program Grant (*e.g.*, a State) or other annual grant would be required to create and maintain a bidders list. Such a list must only be kept until the grant project period has expired and the recipient is no longer receiving EPA funding under the grant. In addition, a recipient of an EPA financial assistance agreement to capitalize a revolving loan fund also must require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. (See *e.g.*, 40 CFR 33.303). The purpose of a bidders list is to provide the recipient and entities receiving identified loans who conduct competitive bidding with as accurate a database as possible about the universe of MBE/WBE and non-MBE/WBE prime and subcontractors. Such a list must only be kept until the project period for the identified loan has ended. Recipients are required to comply with these recordkeeping requirements, even if they are exempted by § 33.411 from applying the fair share objective requirements. The Agency is requesting comments on whether the exemption should be extended to the recordkeeping requirements. Commenters are encouraged to submit relevant burden and/or cost information in support of their comment to extend the exemption to the recordkeeping requirements.

Section 33.502 What Are the Reporting Requirements of This Part?

The effectiveness of EPA's DBE Program may be measured through its reporting requirements. These reports measure EPA's progress in achieving the national objectives established by EPA's 8% and 10% statutes.

All financial assistance agreement recipients must report on a quarterly basis except for recipients of continuing environmental program grants, and institutions of higher education, hospitals and other non-profit organizations receiving financial assistance awards under 40 CFR Part 30, who report on an annual basis. Examples of continuing environmental program grants include those specified in 40 CFR Part 35, Subpart A, as well as Performance Partnership Grants (PPGs) and GAP Grants for Indian Tribal governments and intertribal consortia. Recipients of grants capitalizing CWSRF or DWSRF Programs have historically reported MBE/WBE participation quarterly, and will continue to do so under this rule. Recipients of financial assistance agreements that capitalize revolving loan programs must require entities receiving identified loans to submit their MBE and WBE participation reports on a quarterly basis to the financial assistance agreement recipient, rather than to EPA. Private and non-profit organization loan recipients are not required to maintain a certified procurement system (*e.g.*, see 40 CFR 35.6055(a)).

In the past, EPA has presumed that all financial assistance award funds to Indian Tribal Government and Insular Area recipients have benefitted MBEs. Accordingly, despite the reporting requirements contained in 40 CFR Part 31, as a matter of policy, EPA has not uniformly required Indian Tribal Government and Insular Area recipients to report their degree of MBE or WBE utilization. In this proposed Subpart, Indian Tribal Government and Insular Area recipients are treated the same as other recipients with regard to recordkeeping and reporting requirements. All such recipients would therefore be required to retain records and report on actual MBE and WBE utilization.

The reporting requirements are applicable to all recipients, even those exempted from applying the fair share

objective requirements. The Agency is requesting comments on whether the exemption should be extended to the reporting requirements. Commenters are encouraged to submit relevant burden and/or cost information in support of their comment to extend the exemption to the reporting requirements.

Section 33.503 How Does a Recipient Calculate MBE and WBE Participation for Reporting Purposes?

In this rulemaking proposal the Agency is proposing to codify the principles of Chapter 8 of its 1997 Guidance concerning how MBE and WBE participation is counted.

EPA requires that a recipient report the total amount of financial assistance spent on procurement and the amount awarded to an MBE or WBE. For EPA assistance awards, except the CWSRF and DWSRF Revolving Funds, all project expenditures are deemed to include both the Federal Share and the recipient's required matching share. Therefore, except in the SRF Programs, the amount of procurement in the assistance award as a whole, *i.e.*, including any required cost share funds contributed by the recipient is reported. In the SRF Programs, only identified loans are considered to include Federal funds. Negative reports are required, *i.e.*, if a recipient does not make an MBE or WBE procurement award in a reporting period, the recipient must still file a Form 5700–52A.

By requiring recipients to report, EPA is attempting to measure the amount of overall MBE and WBE participation under the DBE Program. The reporting of MBE and WBE dollar amounts under a particular prime contract will result in a total that is no more than 100% of the prime contract value. For example, if an MBE is awarded a prime contract and then subcontracts 30% of the value of the contract, the total number of dollars reported would remain at the 100% level. This would be true even if the subcontractor in this example is another MBE.

If all project costs attributable to MBE and WBE participation are not eligible for funding under the EPA financial assistance agreement, the recipient may report MBE and WBE participation compared to the total eligible and non-eligible costs of the project.

Joint Ventures. The MBE and WBE participation within a joint venture shall be credited in a *pro rata* fashion. Where an MBE's or WBE's risk of loss, control or management responsibilities is not consistent with its share of the profit, the award official may direct an adjustment in the percentage of MBE or WBE participation.

Central Purchasing or Procurement Centers. Recipients must verify procurement dollars awarded to MBE and WBE firms from a recipient's central purchasing or procurement center.

In reporting MBE and WBE utilization, a recipient may use one of the methods described below or propose another method for approval by EPA.

(1) A recipient may report actual dollars expended on procurement from EPA financial assistance agreement funds to MBEs and WBEs, if sufficient records are maintained;

(2) If records are maintained for a recipient's MBE and WBE procurement generally but records are not specifically maintained for procurement under EPA financial assistance agreements, a recipient's MBE and WBE percentage utilization for its funds as a whole may be applied proportionally to the amount of procurement under EPA financial assistance agreements; or

(3) If actual records of MBE and WBE utilization are not maintained, a recipient may authorize its procurement center to estimate the total amount of funds awarded to MBEs and WBEs. Such estimate, provided it is reasonable, will be accepted.

Brokers. MBE and WBE participation will be credited for those MBEs and WBEs performing a useful business function according to industry custom and practice. Recipients *may not* count expenditures to an MBE or WBE that acts merely as a broker or passive conduit in a transaction. A broker is a firm that does not itself perform, manage or supervise the work of its contract or subcontract in a manner consistent with the normal business practices for contractors or subcontractors in its line of business. However, an MBE or WBE may subcontract a portion of the work to a non-MBE or non-WBE, provided that such further subcontracting is in accordance with this proposed regulation and that the majority of work is retained by the MBE or WBE having the prime contract.

Presumption. If an MBE or WBE prime contractor awards 50% or more of the prime contract value to a non-MBE and non-WBE, EPA presumes that such a MBE or WBE prime contractor is a broker. No MBE or WBE utilization may be reported for a broker.

Rebuttal. An MBE or WBE contractor may rebut this presumption by demonstrating that the degree of subcontracting is consistent with normal business practice and that it will actively perform, manage and supervise the work under its contract.

MBE or WBE Truckers/Haulers. A recipient may only count expenditures to an MBE or WBE Trucker/Hauler if that MBE or WBE Trucker/Hauler is performing a commercially useful function. The proposed rule discusses two factors to consider in determining whether an MBE or WBE Trucker/Hauler is performing a commercially useful function.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB). The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or tribal, State or local governments or communities.

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or programs, or the rights and obligations of recipients thereof.

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rule is a significant rule under Executive Order 12866 because of the substantial public interest concerning and policy importance of programs to ensure nondiscrimination in Federally assisted contracting. It also affects a wide variety of parties, including all EPA financial assistance programs, and the DBE and non-DBE contractors that perform work under them. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

Based on currently available information about costs that may be associated with complying with this rule (*e.g.*, costs to obtain MBE or WBE certification), EPA believes that this rule will not have an annual effect on the economy of $100 million or more. Therefore, EPA does not plan to prepare a regulatory impact statement for this rule. However, EPA invites commentors to furnish information on the economic costs, impacts and distributional effects of this proposed rule, after which the agency may reconsider its position.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned ICR No–2047.01.

This ICR is for the purpose of ensuring that EPA's statutory DBE procurement goal requirements are implemented in harmony with the United States Supreme Court's decision in *Adarand Constructors, Inc.* v. *Pena*, 115 S. Ct. 2097 (1995).

The requirements to complete EPA Forms 6100–2–DBE Program Subcontractor Participation Form, 6100–3–DBE Program Subcontractor Performance Form, and 6100–4–DBE Program Subcontractor Utilization Form, are intended to prevent any "bait and switch" tactics at the subcontract level by prime contractors which may circumvent the spirit of the DBE Program.

The requirements to complete the EPA DBE Certification Application (EPA Form 6100–1a) (Sole Proprietorship), the EPA DBE Certification Application (EPA Form 6100–1b) (Limited Liability Company), the EPA DBE Certification Application (EPA 6100–1c) (Partnerships), the EPA DBE Certification Application (EPA Form 6100–1d) (Corporations), the EPA DBE Certification Application (EPA Form 6100–1e) (Alaska Native Corporations), the EPA DBE Certification Application (EPA Form 6100–1f) (Tribally Owned Businesses), the EPA DBE Certification Application (EPA Form 6100–1g) (Private and Voluntary Organizations), the EPA DBE Certification Application (EPA Form 6100–1h) (Concerns owned by Native Hawaiian Organizations), and the EPA DBE Certification Application (EPA Form 6100–1i) (Concerns Owned by Community Development Corporations), as applicable, would be required to be completed by an entity seeking to be counted as a minority business enterprise (MBE) or women's business enterprise (WBE) under EPA's DBE Program, which cannot get certified as an MBE or WBE by the SBA or DOT under their respective programs or by an Indian Tribal Government or independent private organization consistent with EPA's 8% or 10% statute as applicable.

Responses to the collection of information will be mandatory. EPA's legal authorities for the DBE Program are Public Law 102–389, a 1993 appropriations act (42 U.S.C. 4370d) (EPA's 8% statute), and Public Law 101–549, Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 *note*) (EPA's 10% statute).

Other legal authorities include Public Law 99–499, the Superfund Amendments and Reauthorization Act of 1986; Public Law 100–590, the Small Business Administration Reauthorization and Amendment Act of 1988; Executive Order 12138, "Creating a National Women's Business Enterprise Policy and Prescribing Arrangements for Developing, Coordinating and Implementing a National Program for Women's Business Enterprise," issued May 18, 1979; Executive Order 11625, "Prescribing Additional Arrangements for Developing and Coordinating a National Program for Minority Business Enterprise," issued October 13, 1971; and Executive Order 12432, "Minority Business Enterprise Development," issued July 14, 1983.

EPA may make available to the public any information concerning EPA's DBE Program release of which is not prohibited by Federal law or regulation, including EPA's Confidential Business Information regulations at 40 CFR Part 2, Subpart B.

The total labor burden and costs to MBEs and WBEs for certification under State, Tribal and Insular Area funding programs is estimated to total $8,750,300, with 168,275 burden hours and 6,731 MBE and WBE entities affected for the three-year period of the ICR. The estimated annual burden hours per response is 25 hours; the number of respondents is estimated at 2,244 at an average annual labor burden and cost per MBE and WBE of $1300. The average annual burden and costs are estimated by spreading the first year cost over the three-year period of the ICR, yielding a total annual average burden of 56,092 hours and $2,916,767 in costs.

The total labor burden and costs to all EPA grant and loan recipients that would have to perform an availability analysis to meet the requirements of the proposed rule and other paperwork requirements are estimated to be $16,509,500 with 825,475 burden hours and 3,115 entities affected for the three-year period of the ICR. The estimated annual burden hours for all responses is 275,158, and the annual number of respondents is estimated at 1,038.

The annual cost for all respondents would be $5,503,167. The cost per respondent is estimated at $5,250 (each respondent is estimated to perform an availability analysis once every three years) and is estimated to take 265 hours at $20/hour. EPA assumed there were no additional start up costs or capital expenditures.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this ICR under Docket ID No. OA–2002–0001 which is available for public viewing at the OEI Docket in the EPA Docket Center (EPA/DC), EPA West Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket and to access those documents in the public docket, and to access those documents in the public docket that are available electronically. Once on the system, select "search," then key in the docket ID number identified above. Also, you can send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725

17th St., NW., Washington, DC 20503, Attention: Desk Officer for EPA. Please include the EPA Docket ID No. OA–2002–0001 in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 24, 2003, a comment to OMB is best assured of having its full effect if OMB receives it by August 25, 2003. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

Today's proposed rule is not subject to the RFA, which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. As a grants-related rule, this rule is not subject to the notice and comment requirements of the APA, 5 U.S.C. 553(a)(1). Nor is there any other statute which requires EPA to undergo notice and comment for this rulemaking.

Although this proposed rule is not subject to the RFA, EPA nonetheless will assess the potential of this rule to adversely affect small entities, which include small businesses, small not for profit enterprises and small governmental jurisdictions. At the outset, it is important to note that EPA's DBE Program is aimed at improving contracting opportunities for small businesses owned and controlled by socially and economically disadvantaged individuals, among others (*e.g.*, HBCUs, etc.). Accordingly, EPA believes that this proposed rule would affect a substantial number of small entities.

However, if the proposed exemptions at the $250,000 level or less from the fair share objective requirements are adopted, EPA believes that the effect on small entities, including small government jurisdictions, would be minimal. Additionally, under this rulemaking proposal, small entity recipients would be able to use State Agency negotiated MBE/WBE objectives if such recipients solicit bids/offers from a substantially similar geographic market as that State Agency. Accordingly, EPA believes that the economic impact of this rule, if enacted, on small entities should be minimal.

In EPA's view, this rule, if enacted, would not affect the total funds or business opportunities available to small businesses that seek to work in EPA financial assistance programs. To the extent that the provisions in this rulemaking proposal (*e.g.*, with respect to changes in the methods used to set objectives) lead to different objectives than those under EPA's current program policy, some firms may gain and others lose, business.

EPA is unaware of any data which would enable the Agency at this time to measure the distributive effects of the rulemaking proposal on various types of small entities. We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or to the private sector of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Morever, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal Mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The UMRA excluded from the definition of "Federal intergovernmental mandate" duties that arise from conditions of federal assistance.

Pursuant to section 203 of the UMRA, EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. If the proposed exemptions at the $250,000 level or less from compliance with the fair share objective requirements are adopted, EPA believes that there would be minimal impacts on small entities, including small government jurisdictions. Additionally, under this rulemaking proposal, small entity recipients would be able to use appropriate State Agency-negotiated MBE/WBE objectives if such recipients solicit bids/offers from substantially the same relevant geographic market as that State Agency. Therefore, this rule does not meet the threshold test for application of Section 203 of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule does not have "federalism implications," as that phase is defined in the Executive Order. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Because this rule conditions the use of federal assistance, it will not impose substantial direct compliance costs on State and local governments. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

Stakeholders, including representatives from State government agencies, State government organizations and local governments, were given an opportunity to comment on a draft of the rule which was posted on the Internet for public comment. Meetings were also held in several states across the country to discuss the draft of the rule and to encourage comment.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date. EPA to a great extent developed this proposed rule, however, during the period when Executive Order 13084 was in effect. Although EPA believes that it has fully complied with the requirements of Executive Order 13175, as indicated in the following discussion, EPA will analyze and ensure full compliance with the requirements of Executive Order 13175 before promulgating the final rule.

Executive Order 13175 requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

Under section 5(b) of Executive Order 13175, EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation. Under section 5(c) of Executive Order 13175, EPA may not issue a regulation that has tribal implications and that preempts tribal law, unless the Agency consults with tribal officials early in the process of developing the proposed regulation. However, today's proposed rulemaking will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. Thus, the requirements of section 5(b) and 5(c) of the Executive Order do not apply to this rule.

EPA has concluded that the proposed rule would have tribal implications because it will have substantial direct effects on one or more Indian tribes. The substantial direct effects on tribal governments are as follows:

Tribes receiving an EPA financial assistance agreement of more than $250,000 for any single assistance agreement or of more than one financial assistance agreement with a combined total of more than $250,000 in any one fiscal year (excluding PPG eligible grants to tribes and intertribal consortia under 40 CFR Part 35, Subpart B) would have to negotiate fair share objectives with EPA unless they choose to adopt MBE and WBE objectives of another EPA recipient consistent with today's proposed rule. Those tribes required to negotiate fair share objectives with EPA would have a phase-in period of up to three years in which to do so; their fair share objectives will remain in effect for three fiscal years after they have been approved by EPA, unless there are significant changes to the data supporting the fair share objectives.

Some tribally owned businesses (businesses that a Federally recognized tribal government owns or in which it has a majority share) would not be eligible to be counted in the future towards meeting the MBE/WBE fair share objectives if they do not meet the applicable SBA 8(a) criteria, *e.g.*, see 13 CFR 124.109(b); under EPA's current requirements such businesses may self certify their MBE status. Of course, tribes may continue to do business with tribally owned or other companies which do not meet the applicable SBA 8(a) criteria, they simply could not count such procurements toward meeting MBE/WBE objectives. In addition, the proposed rule would have the following impacts on tribes/tribally owned businesses:

First, a business owned by a Federally recognized tribal government would have to file an annual affidavit with EPA certifying no change in its MBE status, pursuant to § 33.210 of today's proposed rulemaking.

Second, a business owned by a Federally recognized tribal government would have to be recertified every three years as meeting SBA's applicable 8(a) criteria to be eligible to be counted in the future towards meeting the MBE/WBE fair share objectives, pursuant to § 33.208.

Third, a business owned by a Federally recognized tribal government, if it is not already certified in accordance with SBA's applicable 8(a) criteria, may have to incur costs to be certified if there is no tribal certifier available and the other certifying entity charges for its services.

Fourth, a tribe as a recipient of EPA financial assistance, would have to be notified in writing before any termination of a DBE subcontractor for convenience is made by its prime contractor, pursuant to § 33.303(a).

Fifth, consistent with other Federal and tribal laws, a tribe would have to require its prime contractor, after the tribe has unsuccessfully sought to apply Indian preference consistent with the Indian Self-Determination and Education Assistance Act, to employ the good faith efforts described in § 33.301 if a DBE subcontractor fails to complete work under a subcontract for any reason and the prime contractor solicits a replacement subcontractor, pursuant to § 33.303(b).

Sixth, consistent with other Federal and tribal Laws, a tribe would have to require its prime contractor, after it has unsuccessfully sought to apply Indian preference consistent with the Indian Self-Determination and Education Assistance Act, to employ the good faith efforts described in § 33.301 even if it has achieved its fair share objectives under Subpart D of the rule, pursuant to § 33.303(c).

Seventh, a tribe would have to require its prime contractors to provide EPA Form 6100–2—DBE Program Subcontractor Participation Form, EPA Form 6100–3—DBE Program Subcontractor Performance Form and EPA Form 6100–4—DBE Program

Subcontractor Utilization Form to all of its DBE subcontractors, pursuant to § 33.303(e), (f) and (g), respectively.

Eighth, a tribal recipient that conducts procurements will have to create and maintain a bidders list in accordance with § 33.501(b). The purpose of this list is to provide recipients as accurate a database as possible about the universe of MBE/WBE and non-MBE/WBE prime and subcontractors who seek to work on procurements under EPA financial assistance agreements. The following information must be obtained from all such prime and subcontractors: (1) Entity name; (2) Entity address; (3) Entity's status as an MBE/WBE.

Consistent with EPA policy, EPA nonetheless consulted with tribal officials and/or representatives of tribal governments early in the process of developing this regulation to permit them to have meaningful and timely input into its development. Because E.O. Sections 5(b) and 5(c) do not apply, a Tribal Impact Summary is not required. EPA nonetheless is including one in this preamble.

The following constitutes a Tribal Impact Summary under Executive Order 13175:

EPA posted a staff draft of this proposed rule, dated June 19, 2000, on EPA's internet website. As part of its ongoing tribal consultations on this rule, EPA held meetings with tribal officials to discuss the staff draft rule in Boston, Massachusetts on April 11, 2001 and in Seattle, Washington on May 23, 2001. EPA held further formal consultations with tribal officials to discuss a draft of this Rule in Ocean Shores, Washington during the week of January 28, 2002.

By way of further background, today's proposed rule has been under development for the past several years. EPA invited tribal recipients of EPA grants and cooperative agreements to an EPA/State/Tribal Annual Conference held on February 2–4, 1999 in Albuquerque, New Mexico. During this conference, EPA representatives discussed a number of issues relating to the rule under development with the general audience. In addition, EPA representatives met separately with tribal officials and/or representatives to discuss issues of concern to tribes. On June 27–30, 2000, the Agency held its EPA/State/Tribal Annual Conference in Albuquerque, New Mexico. Again, EPA invited tribal recipients of EPA financial assistance agreements to attend. During the June, 2000 conference, agency representatives discussed in detail the June 19, 2000 staff draft of the rule, which had been posted on EPA's website. EPA solicited comments on the staff draft of the rule from conference participants. Tribal officials and/or representatives attended that conference as well. As of June 30, 2001, EPA has received a total of 17 written comments on the staff draft from Indian tribes.

During the development of this rule EPA representatives have made a number of oral presentations to the Tribal Operations Committee (TOC) on the rule's progress and solicited input. The TOC is comprised of 19 national tribal representatives from the nine EPA Regions that have federally recognized tribes, and EPA Senior Management; its role is to provide input into EPA decision making affecting Indian Country. On November 29, 2000, EPA representatives met with the TOC at the EPA Tribal Caucus Regional Joint meeting in Miami, Florida to discuss the staff draft rule and to obtain further tribal input into the rulemaking process.

Starting in November, 2000, EPA invited tribal recipients of EPA grants and cooperative agreements to participate in outreach sessions held in cities around the country having EPA Regional offices in order to discuss the staff draft rule. EPA has further solicited tribal input into the rulemaking at meetings with tribal officials/representatives at the Department of the Interior 2001 Conference on the Environment hosted by the Bureau of Indian Affairs on March 13–15, 2001 in Albuquerque, New Mexico and at the Reservation Economic Summit and American Indian Business Trade Fair (RES 2001) in Anaheim, California, on March 20, 2001. EPA further solicited tribal input in another meeting with the TOC on April 24, 2001 in Miami, Florida.

EPA has considered tribal concerns and written comments in today's rulemaking. A summary of the nature of tribal concerns and EPA's initial response follows:

1. In general, tribes believe they should be exempt from the rule.

Awards of Grants and Cooperative Agreements to tribes are currently governed by 40 CFR Part 31, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." These are government wide requirements that have been in effect since 1988. Among other entities subject to the regulations are governments. The definition of "Government" in 40 CFR 31.3 includes "* * * a federally recognized Indian tribal government." Many requirements contained in this proposed rule are not new but rather are the same requirements contained in 40 CFR Part 31, with which many tribes already have been complying. For example, the reporting and recordkeeping requirements are already applicable to Indian tribes. In addition, neither EPA's 10% MBE/WBE procurement objective statute for research relating to the requirements of the Clean Air Act Amendments of 1990 nor EPA's statutory 8% MBE/WBE procurement objective requirements for all other programs contain language exempting tribes from their applicability. Therefore, EPA proposes that tribes should not be exempted from this rule because it promotes the utilization of all disadvantaged entities in procurement under EPA financial assistance agreements, including tribally owned businesses and businesses owned by a member(s) of a tribe.

2. Trigger for Fair Share Negotiations.

The issue of increasing the dollar amount of the trigger requiring compliance with the fair share objective requirements and the corresponding availability analysis was of special concern to tribes awarded GAP grants. One commentor also expressed the view that availability analysis preparation requirements should apply only to tribes spending 90% or more of their grants on outside procurement. Other tribes expressed the view that preparing availability analyses is too costly for them, especially for smaller tribes.

In response to concerns raised by tribes, under today's proposed rulemaking, the trigger requiring compliance with the fair share objective requirements has been increased to $250,000 from $100,000 contained in the staff draft of the rule. Also because of the nature of eligible program grants which can be included in Performance Partnership Grants (PPGs) to tribes under 40 CFR Part 35, Subpart B, and the unique nature of eligible recipients, the Agency is proposing to exempt PPG eligible program grants to tribes under 40 CFR Part 35, Subpart B from the fair share negotiation requirements.

Accordingly, only tribes receiving an EPA financial assistance agreement of more than $250,000 for any single assistance agreement or of more than one financial assistance agreement with a combined total of more than $250,000 in any one fiscal year (excluding PPG eligible program grants under 40 CFR Part 35, Subpart B) would have to comply with the fair share objective requirements.

The Agency believes that this change effectively addresses the concerns by setting a uniform standard applicable to all recipients, including tribes, rather than, for example, setting a standard based on amounts spent by tribes on outside procurement, which could pose implementation difficulties. EPA believes that most tribes will not have to comply with the fair share objective requirements under today's rulemaking because they will fall under the $250,000 exemption or the exemption for PPG eligible program grants under 40 CFR Part 35, Subpart B. Finally, EPA believes that a number of tribes which otherwise would have to negotiate fair share objectives may elect instead to apply the objectives of another recipient in accordance with the requirements of today's rulemaking. In any case, the rule would provide tribes with a three year phase-in period to comply with the fair share negotiation requirements.

Comments were also received suggesting that EPA exempt tribes from Fair Share Negotiations based on procurement dollars, rather than on total grant dollars. EPA is considering this option which would exempt tribal grantees whose actual procurement activities total $250,000 or less from Fair Share Negotiations. EPA is specifically requesting public comment on this suggestion.

3. The reporting and recordkeeping requirements.

Some tribes expressed concerns that keeping records of and reporting purchases for EPA funded grants would impose a heavy burden on tribal governments. Instead, they suggested basing reporting on the amount of money the tribe received rather than on the amount of money it spent on outside supplies and services.

EPA considered these concerns. However, 40 CFR Part 31 already requires tribes to comply with Part 31's recordkeeping and reporting requirements, which include MBE/WBE recordkeeping and reporting. Today's proposed rulemaking make no changes to the existing Part 31 reporting and recordkeeping requirements. The Agency believes that basing requirements on amounts received rather than on amounts spent would be an inaccurate measurement of MBE/WBE procurement utilization. EPA currently requires financial assistance recipients to report MBE/WBE accomplishments based on dollars spent on MBE/WBE procurements. EPA is not proposing to change this requirement.

4. Compliance with the good faith efforts requirements.

One commentor objected to having to advertise in newspapers; a comment was also made that EPA should investigate alternative mechanisms that encourage a tribe to seek out MBEs/WBEs during the procurement process without incurring an unreasonable financial burden.

However, as discussed above, Section 7(b) of the Indian Self-Determination and Education Assistance Act requires tribal governments to solicit tribally-owned businesses and/or businesses owned by a member(s) of a tribe, before undertaking the six good faith efforts. Tribes currently are currently subject to 40 CFR Part 31, which requires them to make good faith efforts to ensure that DBEs are used whenever possible. EPA is not proposing to change this requirement. EPA does not believe that the good faith efforts requirements are unduly burdensome. The good faith efforts requirements would take effect only if no DBEs are found to do the work in each of the four procurement categories of construction, equipment, services and supplies in the initial tribal solicitation.

5. Phase-In Period.

One commentor expressed a concern about the timing of the phase-in period and the maximum amount of time needed for the requirement to be implemented.

EPA expects those tribes who could implement this requirement before the expiration of the three year phase-in period to do so. Those tribes who cannot do so would be given the full three years. It is important for tribes to note that the three year phase-in period would only begin after the final rule's effective date, which should allow tribes sufficient time to comply with prepare for the implementation of the requirement.

In the spirit of Executive Order 13175 and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

Copies of written communications submitted by tribal officials/representatives are available upon request from the docket clerk for this rulemaking.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 applies to any rule that is determined to be: (1) "economically significant" as defined under Executive Order 12866, and (2) concerns any environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA has determined that the proposed rule is not a covered regulatory action because it is not economically significant and it does not involve decisions based on environmental health or safety risks. As a result, the proposed rule is not subject to the requirements of the Executive Order.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. EPA has concluded that this rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects

40 CFR Part 30

Environmental protection, Administrative practice and procedure, Grant programs—environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 31

Accounting, Administrative practice and procedure, Grant programs, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 33

Grant programs—environmental protection.

40 CFR Part 35

Grant programs—environmental protection. Grant programs—Indians, Hazardous waste, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 40

Research and Demonstration Grants—Projects involving construction.

Dated: July 9, 2003.

Linda J. Fisher,

Acting Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 30—[AMENDED]

1. The authority citation for part 30 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*; 15 U.S.C. 2601 *et seq.*; 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 241, 242(b), 243, 246, 300f, 300j–1, 300j–2, 300j–3; 1857 *et seq.*; 6901 *et seq.*, 7401 *et seq.*, OMB circular A–110 (64 FR 54926, October 8, 1999).

§ 30.44 [Amended]

2. Section 30.44 is amended by removing and reserving paragraph (b).

PART 31—[AMENDED]

3. The authority citation for part 31 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*; 42 U.S.C. 7401 *et seq.*; 42 U.S.C. 6901 *et seq.*; 42 U.S.C. 300f *et seq.*; 7 U.S.C. 136 *et seq.*; 15 U.S.C. 2601 *et seq.*; 42 U.S.C. 9601 *et seq.*; 20 U.S.C. 4011 *et seq.*; 33 U.S.C. 1401 *et seq.*

§ 31.36 [Amended]

4. Section 31.36 is amended by removing and reserving paragraph (e).

5. Part 33 is added as follows:

PART 33—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN UNITED STATES ENVIRONMENTAL PROTECTION AGENCY PROGRAMS

Subpart A—General Provisions

Sec.

33.101 What are the objectives of this part?
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Subpart A—General Provisions

§ 33.101 What are the objectives of this part?

The objectives of this part are:

(a) To ensure nondiscrimination in the award of contracts under EPA financial assistance agreements;

(b) To ensure that EPA's DBE Program is narrowly tailored in accordance with applicable law;

(c) To help remove barriers to the participation of DBEs in the award of contracts under EPA financial assistance agreements; and

(d) To provide appropriate flexibility to recipients of EPA financial assistance in establishing and providing contracting opportunities for DBEs.

§ 33.102 When do the requirements of this part apply?

The requirements of this part apply to procurement under EPA financial assistance agreements performed entirely within the United States, whether by a recipient or its prime contractor, for construction, equipment, services and supplies.

§ 33.103 What do the terms in this part mean?

Terms not defined below shall have the meaning given to them in 40 CFR part 30, part 31 and part 35 as applicable. As used in this part:

Availability analysis means documentation of the availability of MBEs and WBEs in the relevant geographic market in relation to the total number of firms available in that area.

Award official means the EPA Regional or Headquarters official delegated the authority to execute financial assistance agreements on behalf of EPA.

Broker means a firm that does not itself perform, manage or supervise the work of its contract or subcontract in a manner consistent with the normal business practices for contractors or subcontractors in its line of business.

Business, business concern or business enterprise means an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials or labor.

Construction means erection, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other improvements to real property, and activities in response to a release or a threat of a release of a hazardous substance into the environment, or activities to prevent the introduction of a hazardous substance into a water supply.

Disabled American means, with respect to an individual, permanent or temporary physical or mental impairment that substantially limits one or more of the major life activities of such an individual; a record of such an impairment; or being regarded as having such an impairment.

Disadvantaged Business Enterprise (DBE) means an entity owned or controlled by a socially and economically disadvantaged individual as described by Public Law 102–389 (42 U.S.C. 4370d) or an entity owned and controlled by a socially and economically disadvantaged individual as described by Title X of the Clean Air Act Amendments of 1990 (42 U.S.C. 7601 note); a Small Business Enterprise (SBE); a Small Business in a Rural Area (SBRA); or a Labor Surplus Area Firm (LSAF), a Historically Underutilized Business (HUB) Zone Small Business Concern, or a concern under a successor program.

Disparity study means a comparison within the preceding ten years of the available MBEs and WBEs in a relevant geographic market with their actual usage by entities procuring in the categories of construction, equipment, services and supplies.

EPA Private Certifier means an organization or business concern approved by EPA's Office of Small and Disadvantaged Business Utilization (OSDBU) to assist in EPA OSDBU's determination of whether an entity is owned and/or controlled by one or more individuals claiming disadvantaged status.

Equipment means items procured under a financial assistance agreement as defined by applicable regulations (for example 40 CFR 30.2 and 40 CFR 31.3) for the particular type of financial assistance received.

Fair share objective means an objective expressing the percentage of MBE or WBE utilization expected absent the effects of discrimination.

Financial assistance agreement means grants or cooperative agreements awarded by EPA. The term includes grants or cooperative agreements used to capitalize revolving loan funds, including, but not limited to, the Clean Water State Revolving Loan Fund (CWSRF) Program under Title VI of the Clean Water Act, as amended, 33 U.S.C. 1381 *et. seq.*, the Drinking Water State Revolving Fund (DWSRF) Program under section 1452 of the Safe Drinking Water Act, 42 U.S.C. 300j-12, and the Brownfields Cleanup Revolving Loan Fund (BCRLF) Program under section 104 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9604.

Good faith efforts means the race and/or gender neutral measures described in Subpart C of this part.

Historically Black College or University (HBCU) means an institution determined by the Secretary of Education to meet the requirements of 34 CFR part 608.

HUBZone means a historically underutilized business zone, which is an area located within one or more qualified census tracts, qualified metropolitan counties, or lands within the external boundaries of an Indian reservation.

HUBZone Small Business Concern means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

Identified loan means a loan project or set-aside activity receiving assistance from a recipient of an EPA financial assistance agreement to capitalize a revolving loan fund, which:

(1) In the case of the CWSRF Program, is a project funded from amounts equal to the capitalization grant;

(2) In the case of the DWSRF Program, is a loan project or set-aside activity funded from amounts up to the amount of the capitalization grant; or

(3) In the case of the BCRLF Program, is a project that has been funded with EPA financial assistance.

Insular area means the Commonwealth of Puerto Rico or any territory or possession of the United States.

Joint venture means an association of two or more concerns to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge.

Labor Surplus Area Firm (LSAF) means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas (as identified by the Department of Labor in accordance with 20 CFR part 654). Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

Minority Business Enterprise (MBE) means a Disadvantaged Business Enterprise (DBE) other than a Small Business Enterprise (SBE), a Labor Surplus Area Firm (LSAF), a Small Business in Rural Areas (SBRA), or a Women's Business Enterprise (WBE).

Minority institution means an accredited college or university whose enrollment of a single designated group or a combination of designated groups (as defined by the Small Business Administration regulations at 13 CFR part 124) exceeds 50% of the total enrollment.

Native American means any individual who is an American Indian, Eskimo, Aleut, or Native Hawaiian.

Recipient means an entity that receives an EPA financial assistance agreement or is a subrecipient of such agreement.

Services means a contractor's labor, time or efforts provided in a manner consistent with normal business practices which do not involve the delivery of a specific end item, other than documents (*e.g.*, reports, design drawings, specifications).

Small business, small business concern or Small Business Enterprise (SBE) means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding, and qualified as a small business under the criteria and size standards in 13 CFR part 121.

Small Business in a Rural Area (SBRA) means a small business operating in an area identified as a rural county with a code 6–9 in the Rural-Urban continuum Classification Code developed by the United States Department of Agriculture in 1980.

Supplies means items procured under a financial assistance agreement as defined by applicable regulations for the particular type of financial assistance received.

United States means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico and

any other territories and possessions of the United States.

Women's Business Enterprise (WBE) means a business concern which is at least 51% owned or controlled by women for purposes of EPA's 8% statute or a business concern which is at least 51% owned and controlled by women for purposes for EPA's 10% statute. Determination of ownership by a married woman in a community property jurisdiction will not be affected by her husband's 50 percent interest in her share. Similarly, a business concern which is more than 50 percent owned by a married man will not become a qualified WBE by virtue of his wife's 50 percent interest in his share.

§ 33.104 May a recipient apply for a waiver from the requirements of this part?

(a) A recipient may apply for a waiver from any of the requirements of this part that are not specifically based on a statute or Executive Order, by submitting a written request to the Director of the Office of Small and Disadvantaged Business Utilization (OSDBU Director).

(b) The request must document special or exceptional circumstances that make compliance with the requirement impractical, including a specific proposal addressing how the recipient intends to achieve the objectives of this part as described in § 33.101. The request must show that:

(1) There is a reasonable basis to conclude that the recipient could achieve a level of MBE and WBE participation consistent with the objectives of this part using different or innovative means other than those that are provided in subparts C or D of this part;

(2) Conditions in the recipient's jurisdiction are appropriate for implementing the request; and

(3) The request is consistent with applicable law.

(c) The OSDBU Director has the authority to approve a recipient's request. If the OSDBU Director grants a recipient's request, the recipient may administer its program as provided in the request, subject to the following conditions:

(1) The recipient's level of MBE and WBE participation continues to be consistent with the objectives of this part;

(2) There is a reasonable limitation on the duration of the recipient's modified program; and

(3) Any other conditions the OSDBU Director makes on the grant of the waiver.

(d) The OSDBU Director may end a program waiver at any time upon notice to the recipient and require a recipient to comply with the provisions of this part. The OSDBU Director may also extend the waiver if he or she determines that all requirements of paragraphs (b) and (c) of this section continue to be met. Any such extension shall be for no longer than the period originally set for the duration of the program waiver.

§ 33.105 What are the compliance and enforcement provisions of this part?

If a recipient fails to comply with any of the requirements of this part, EPA may take remedial action under 40 CFR parts 30, 31 or 35, as appropriate, or any other action authorized by law, including, but not limited to, enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

§ 33.106 What assurances must EPA financial assistance recipients obtain from their contractors?

The recipient must ensure that each procurement contract it awards contains the term and condition specified in the appendix to this part concerning compliance with the requirements of this part. The recipient must also ensure that this term and condition is included in each procurement contract awarded by an entity receiving an identified loan under a financial assistance agreement to capitalize a revolving loan fund.

§ 33.107 What are the rules governing availability of records, cooperation, and intimidation and retaliation?

(a) *Availability of records.* (1) In responding to requests for information concerning any aspect of EPA's DBE Program, EPA complies with the provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). EPA may make available to the public any information concerning EPA's DBE Program release of which is not prohibited by Federal law or regulation, including EPA's Confidential Business Information regulations at 40 CFR part 2, subpart B.

(2) EPA recipients shall safeguard from disclosure to unauthorized persons information that may reasonably be considered as confidential business information, consistent with Federal, state, and local law.

(b) *Cooperation.* All participants in EPA's DBE Program are required to cooperate fully and promptly with EPA, EPA Private Certifier and EPA recipient reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved in accordance with § 33.105.

(c) *Intimidation and retaliation.* A recipient, contractor, or any other participant in EPA's DBE Program must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this Part. Violation of this prohibition shall be a ground for appropriate action against the party involved in accordance with § 33.105.

Subpart B—Certification

§ 33.201 What does this subpart require?

(a) In order to participate as an MBE or WBE prime or subcontractor for EPA recipients under EPA's DBE Program, an entity must be properly certified.

(b) EPA's DBE Program is primarily based on two statutes. Public Law 102–389, 42 U.S.C. 4370d, provides for an 8% objective for awarding contracts under EPA financial assistance agreements to business concerns or other organizations owned or controlled by socially and economically disadvantaged individuals, including HBCUs and women ("EPA's 8% statute"). Title X of the Clean Air Act Amendments of 1990, 42 U.S.C. 7601 note, provides for a 10% objective for awarding contracts under EPA financial assistance agreements for research relating to such amendments to business concerns or other organizations owned and controlled by socially and economically disadvantaged individuals ("EPA's 10% statute").

§ 33.202 How does an entity qualify as an MBE or WBE under EPA's 8% statute?

To qualify as an MBE or WBE under EPA's 8% statute, an entity must establish that it is owned or controlled by socially and economically disadvantaged individuals who are of good character and citizens of the United States. An entity need not demonstrate potential for success.

(a) *Ownership or control.* "Ownership" and "control" shall have the same meanings as set forth in 13 CFR 124.105 and 13 CFR 124.106, respectively. (*See also* 13 CFR 124.109 for special rules applicable to Indian tribes and Alaska Native Corporations; 13 CFR 124.110 for special rules applicable to Native Hawaiian Organizations).

(b) *Socially disadvantaged individual.* A socially disadvantaged individual is a person who has been subjected to racial or ethnic prejudice or cultural bias because of his or her identity as a member of a group without regard to his or her individual qualities and as further defined by the implementing regulations of section 8(a)(5) of the Small Business Act (15 U.S.C. 637(a)(5); 13 CFR 124.103; *see also* 13 CFR 124.109 for special rules applicable to Indian tribes and Alaska Native Corporations; 13 CFR 124.110 for special rules applicable to Native Hawaiian Organizations).

(c) *Economically disadvantaged individual.* An economically disadvantaged individual is a socially disadvantaged individual whose ability to compete in the free enterprise system is impaired due to diminished capital and credit opportunities, as compared to others in the same business area who are not socially disadvantaged and as further defined by section 8(a)(6) of the Small Business Act (15 U.S.C. 637(a)(6)) and its implementing regulations (13 CFR 124.104). (*See also* 13 CFR 124.109 for special rules applicable to Indian tribes and Alaska Native Corporations; 13 CFR 124.110 for special rules applicable to Native Hawaiian Organizations). Under EPA's DBE Program, an individual claiming disadvantaged status must have an initial and continued personal net worth of less than $750,000.

(d) *HBCU.* An HBCU automatically qualifies as an entity owned or controlled by socially and economically disadvantaged individuals.

(e) *Women.* Women are deemed to be socially and economically disadvantaged individuals. Ownership or control must be demonstrated pursuant to paragraph (a) of this section, which may be accomplished by certification under § 33.204.

§ 33.203 How does an entity qualify as an MBE or WBE under EPA's 10% statute?

To qualify as an MBE or WBE under EPA's 10% statute, an entity must establish that it is owned and controlled by socially and economically disadvantaged individuals who are of good character and citizens of the United States.

(a) *Ownership and control.* An entity must be at least 51% owned by a socially and economically disadvantaged individual, or in the case of a publicly traded company, at least 51% of the stock must be owned by one or more socially and economically disadvantaged individuals, and the management and daily business operations of the business concern must be controlled by such individuals. (*See also* 13 CFR 124.109 for special rules applicable to Indian tribes and Alaska Native Corporations; 13 CFR 124.110 for special rules applicable to Native Hawaiian Organizations).

(b) *Socially disadvantaged individual.* A socially disadvantaged individual is a person who has been subjected to racial or ethnic prejudice or cultural bias because of his or her identity as a member of a group without regard to his or her individual qualities and as further defined by the implementing regulations of section 8(a)(5) of the Small Business Act (15 U.S.C. 637(a)(5); 13 CFR 124.103; *see also* 13 CFR 124.109 for special rules applicable to Indian tribes and Alaska Native Corporations; 13 CFR 124.110 for special rules applicable to Native Hawaiian Organizations).

(c) *Economically disadvantaged individual.* An economically disadvantaged individual is a socially disadvantaged individual whose ability to compete in the free enterprise system is impaired due to diminished capital and credit opportunities, as compared to others in the same business area who are not socially disadvantaged and as further defined by section 8(a)(6) of the Small Business Act (15 U.S.C. 637(a)(6)) and its implementing regulations (13 CFR 124.104). (*See also* 13 CFR 124.109 for special rules applicable to Indian tribes and Alaska Native Corporations; 13 CFR 124.110 for special rules applicable to Native Hawaiian Organizations). Under EPA's DBE Program, an individual claiming disadvantaged status must have an initial and continued personal net worth of less than $750,000.

(d) *Presumptions.* In accordance with Title X of the Clean Air Act Amendments of 1990, 42 U.S.C. 7601 note, Black Americans, Hispanic Americans, Native Americans, Asian Americans, Women and Disabled Americans are presumed to be socially and economically disadvantaged individuals. In addition, the following institutions are presumed to be entities owned and controlled by socially and economically disadvantaged individuals: HBCUs, Minority Institutions (including Tribal Colleges and Universities and Hispanic-Serving Institutions) and private and voluntary organizations controlled by individuals who are socially and economically disadvantaged.

(e) *Individuals not members of designated groups.* Nothing in this section shall prohibit any member of a racial or ethnic group that is not designated as socially and economically disadvantaged under paragraph (d) of this section from establishing that they have been impeded in developing a business concern as a result of racial or ethnic discrimination.

(f) *Rebuttal of presumptions.* The presumptions established by paragraph (d) of this section may be rebutted in accordance with § 33.209 with respect to a particular entity if it is reasonably established that the individual at issue is not experiencing impediments to developing such entity as a result of the individual's identification as a member of a specified group.

(g) *Joint ventures.* (1) A joint venture may be considered owned and controlled by socially and economically disadvantaged individuals, notwithstanding the size of such joint venture, if a party to the joint venture is an entity that is owned and controlled by a socially and economically disadvantaged individual.

(2) A person who is not an economically disadvantaged individual or an entity owned and controlled by a socially and economically disadvantaged individual, as a party to a joint venture, may not be a party to more than two awarded contracts in a fiscal year solely by reason of paragraph (g)(1) of this section.

§ 33.204 Where does an entity become certified under EPA's 8% and 10% statutes?

(a) In order to participate as an MBE or WBE prime or subcontractor for EPA recipients under EPA's DBE Program, an entity should first attempt to become certified by the following:

(1) The United States Small Business Administration (SBA), under its 8(a) Business Development Program (13 CFR part 124, subpart A) or its Small Disadvantaged Business (SDB) Program, (13 CFR part 124, subpart B);

(2) The United States Department of Transportation (DOT), under its regulations for Participation by Disadvantaged Business Enterprises in DOT Programs (49 CFR parts 23 and 26); or

(3) an Indian Tribal Government, State Government, local Government or independent private organization in accordance with EPA's 8% or 10% statute as applicable.

(4) Such certifications shall be considered acceptable for establishing MBE or WBE status, as appropriate, under EPA's DBE Program so long as the certification meets EPA's U.S. citizenship requirement under § 33.202 or § 33.203. An entity may only apply to EPA for MBE or WBE certification under the procedures set forth in § 33.205 if that entity first is unable to obtain MBE or WBE certification under paragraphs (a) (1) through (3) of this section.

(b) [Reserved].

§ 33.205 How does an entity become certified by EPA?

(a) *Filing an application.* In accordance with § 33.204, an entity may apply to EPA's Office of Small and Disadvantaged Business Utilization (EPA OSDBU) for certification as an

MBE or WBE. EPA's Regional Offices will provide further information and required application forms to any entity interested in MBE or WBE certification. In order to become certified as an MBE or WBE, an entity may apply to EPA OSDBU or, if directed by EPA OSDBU, to an EPA Private Certifier. The applicant must attest to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States. The application must include evidence demonstrating that the entity is owned or controlled by one or more individuals claiming disadvantaged status under EPA's 8% statute or owned and controlled by one or more individuals claiming disadvantaged status under EPA's 10% statute, along with certifications or narratives regarding the disadvantaged status of such individuals. In addition, the application must include documentation of a denial of certification by a Federal agency, State government, local government, Indian Tribal government, or independent private organization, if applicable.

(b) *Application processing.* EPA OSDBU or an EPA Private Certifier will advise each applicant within 15 days, whenever practicable, after receipt of an application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required. EPA OSDBU shall make its certification decision within 30 days of receipt of a complete and suitable application package, whenever practicable. The burden is on the applicant to demonstrate that those individuals claiming disadvantaged status own or control the entity under EPA's 8% statute or own and control the entity under EPA's 10% statute.

(c) *Ownership and/or control determination.* EPA OSDBU first will determine whether those individuals claiming disadvantaged status own or control the applicant entity under EPA's 8% statute or own and control the applicant entity under EPA's 10% statute. If EPA OSDBU determines that the applicant does not meet the ownership and/or control requirements of this Subpart, EPA OSDBU will issue a written decision to the entity rejecting the application and set forth the reasons for disapproval.

(d) *Disadvantaged determination.* Once EPA OSDBU determines whether an applicant meets the ownership and/or control requirements of this subpart, EPA OSDBU will determine whether the applicable disadvantaged status requirements under EPA's 8% or 10% statute have been met. If EPA OSDBU determines that the applicable disadvantaged status requirements have been met, EPA OSDBU shall notify the applicant that it has been certified and place the MBE or WBE on EPA OSDBU's list of qualified MBEs and WBEs. If EPA OSDBU determines that the applicable disadvantaged status requirements have not been met, EPA OSDBU will reject the entity's application for certification. EPA OSDBU will issue a written decision to the entity setting forth EPA OSDBU's reasons for disapproval.

(e) *Evaluation standards.* (1) An entity's eligibility shall be evaluated on the basis of present circumstances. An entity shall not be denied certification based solely on historical information indicating a lack of ownership and/or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the entity currently meets the ownership and/or control standards of this Subpart.

(2) Entities seeking MBE or WBE certification shall cooperate fully with requests for information relevant to the certification process. Failure or refusal to provide such information is a ground for denial of certification.

(3) In making its certification determination, EPA OSDBU may consider whether an entity has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE Program.

(4) EPA OSDBU shall not consider the issue of whether an entity performs a commercially useful function in making its certification determination. Consideration of whether an entity performs a commercially useful function or is a regular dealer pertains solely to counting toward MBE and WBE objectives as provided in subpart E of this part.

(5) Information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information will be safeguarded from disclosure to unauthorized persons, consistent with applicable Federal, State, and local law.

(6) To assist in making EPA OSDBU's certification determination, EPA OSDBU itself, or through an EPA Private Certifier, may take the following steps:

(i) Perform an on-site visit to the offices of the entity. Interview the principal officers of the entity and review their resumes and/or work histories. Perform an on-site visit to local job sites if there are such sites on which the entity is working at the time of the certification investigation. Already existing site visit reports may be relied upon in making the certification;

(ii) If the entity is a corporation, analyze the ownership of stock in the entity;

(iii) Analyze the bonding and financial capacity of the entity;

(iv) Determine the work history of the entity, including contracts it has received and work it has completed;

(v) Obtain a statement from the entity of the type of work it prefers to perform for EPA recipients under the DBE Program and its preferred locations for performing the work, if any, and;

(vi) Obtain or compile a list of the equipment owned by or available to the entity and the licenses the entity and its key personnel possess to perform the work it seeks to do for EPA recipients under the DBE Program.

§ 33.206 Is there a list of certified MBEs and WBEs?

EPA OSDBU will maintain a list of certified MBEs and WBEs on EPA OSDBU's Home Page on the Internet. Any interested person may also obtain a copy of the list from EPA OSDBU.

§ 33.207 Can an entity reapply to EPA for MBE or WBE certification?

An entity which has been denied MBE or WBE certification may reapply for certification at any time 12 months or more after the date of the most recent determination by EPA OSDBU to decline the application.

§ 33.208 How long does an MBE or WBE certification from EPA last?

Once EPA OSDBU certifies an entity to be an MBE or WBE by placing it on the EPA OSDBU list of certified MBEs and WBEs specified in § 33.206, the entity will generally remain on the list for a period of three years from the date of its certification. To remain on the list after three years, an entity must submit a new application and receive a new certification.

§ 33.209 Can EPA re-evaluate the MBE or WBE status of an entity after EPA certifies it to be an MBE or WBE?

(a) EPA OSDBU may initiate a certification determination whenever it receives credible information calling into question an entity's eligibility as an MBE or WBE. Upon its completion of a certification determination, EPA OSDBU will issue a written determination regarding the MBE or WBE status of the questioned entity.

(b) If EPA OSDBU finds that the entity does not qualify as an MBE or WBE, EPA OSDBU will decertify the entity as an MBE or WBE, and immediately remove the entity from the EPA OSDBU list of certified MBEs and WBEs.

(c) If EPA OSDBU finds that the entity continues to qualify as an MBE or WBE, the determination remains in effect for three years from the date of the decision under the same conditions as if the entity had been granted MBE or WBE certification under § 33.205.

§ 33.210 Does an entity certified as an MBE or WBE by EPA need to keep EPA informed of any changes which may affect the entity's certification?

(a) An entity certified as an MBE or WBE by EPA OSDBU must provide EPA OSDBU, every year on the anniversary of the date of its certification, an affidavit sworn to by the entity's owners before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the entity's circumstances affecting its ability to meet disadvantaged status, ownership, and/or control requirements of this subpart or any material changes in the information provided in its application form. Failure to comply may result in the loss of MBE or WBE certification under EPA's DBE Program.

(b) An entity certified as an MBE or WBE by EPA OSDBU must inform EPA OSDBU in writing of any change in circumstance affecting the MBE or WBE's ability to meet disadvantaged status, ownership, and/or control requirements of this subpart or any material change in the information provided in its application form. The MBE or WBE must attach supporting documentation describing in detail the nature of such change. The notice from the MBE or WBE must take the form of an affidavit sworn to by the applicant before a person who is authorized by State law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. The MBE or WBE must provide the written notification within 30 calendar days of the occurrence of the change.

§ 33.211 What is an EPA Private Certifier?

An EPA Private Certifier is an organization or business concern assisting EPA OSDBU in its determination of whether an entity applying for MBE or WBE certification is owned and/or controlled by one or more individuals claiming disadvantaged status. EPA OSDBU may elect to arrange for one or more EPA Private Certifiers to perform certain functions in the certification process; however the determination as to whether an entity will be certified as an MBE or WBE under this program shall only be made by EPA OSDBU. If EPA OSDBU elects to use EPA Private Certifiers to perform certain functions in the certification process, the provisions of §§ 33.212 through 33.214 will apply to those EPA Private Certifiers. EPA OSDBU may establish more detailed standards regarding qualifications, monitoring, procedures and use, if any, of EPA Private Certifiers in specific contracts or agreements between EPA and the EPA Private Certifiers.

§ 33.212 Can an EPA Private Certifier charge a fee to an entity to process the entity's application for MBE or WBE certification?

With EPA OSDBU's approval, an EPA Private Certifier may charge a reasonable fee to an entity in order to screen the entity's application for completeness. The fee must be for actual services rendered and must not be related to whether or not the entity is found to be owned and/or controlled by one or more individuals claiming disadvantaged status.

§ 33.213 How does an organization or business concern become an EPA Private Certifier?

(a) EPA may execute contracts or agreements with organizations or business concerns seeking to become EPA Private Certifiers. Any such contract or agreement will include provisions for the oversight, monitoring, and evaluation of all certification related activities by EPA.

(b) The organization or business concern must demonstrate a knowledge of EPA and SBA regulations regarding ownership and control, as well as business organizations and the legal principles affecting their ownership and control generally, including stock issuances, voting rights, convertibility of debt to equity, options, and powers and responsibilities of officers and directors, general and limited partners, and limited liability members.

(c) The organization or business concern must also, along with its principals, demonstrate good character. Good character does not exist for these purposes if the organization or concern or any of its principals:

(1) Is debarred or suspended under any Federal procurement or non-procurement debarment and suspension regulations; or

(2) Has been indicted or convicted for any criminal offense or suffered a civil judgment indicating a lack of business integrity.

(d) As a condition of approval, EPA may require that appropriate officers and/or key employees of the organization or business concern attend a training session on EPA and SBA rules and requirements.

(e) An organization or business concern seeking to become an EPA Private Certifier must agree to provide access to EPA of its books and records when requested, including records pertaining to its certification related activities.

(f) EPA will include in any contract or agreement document authorizing an organization or business concern to act as an EPA Private Certifier appropriate conditions to prohibit conflicts of interests between the EPA Private Certifier and the entities for which it processes MBE or WBE certifications.

§ 33.214 How long may an organization or business concern be an EPA Private Certifier?

(a) EPA's contract or agreement with the EPA Private Certifier will specify how long the organization or business concern may be an EPA Private Certifier.

(b) EPA may terminate a contract or agreement with an organization or business concern which is an EPA Private Certifier for the convenience of the Government at any time, and may terminate the contract or agreement for default where appropriate. Specific grounds for termination for default include, but are not limited to:

(1) Charging improper, unreasonable or contingent fees in violation of § 33.212; or

(2) Engaging in prohibited business transactions with firms for which it processes MBE or WBE certification applications in violation of § 33.213(f).

§ 33.215 Is there a list of EPA Private Certifiers?

EPA OSDBU will maintain a list of approved EPA Private Certifiers on EPA OSDBU's Home Page on the Internet. Any interested person may also obtain a copy of the list from EPA's OSDBU. The list is available at: *www.epa.gov/osdbu*.

§ 33.216 What is the process for appealing or challenging an EPA MBE or WBE certification determination?

(a) An entity which has been denied MBE or WBE certification by EPA OSDBU under § 33.205 or § 33.209 may appeal that denial. A third party may challenge EPA OSDBU's determination to certify an entity as an MBE or WBE under § 33.205 or § 33.209.

(b) Appeals and challenges must be sent to the Director of OSDBU at Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Mail Code 1230A, Washington, DC 20460.

(c) The appeal or challenge must be sent to the Director of OSDBU (Director) within 90 days of the date of EPA OSDBU's MBE or WBE certification determination. The Director may accept an appeal or challenge filed later than 90 days after the date of EPA OSDBU's MBE or WBE certification determination if the Director determines that there was good cause, beyond the control of the appellant or challenger, for the late filing of the appeal or challenge.

(d) No specific format is required for an appeal or challenge. However, the appeal or challenge must include information and arguments concerning why EPA OSDBU's MBE or WBE certification determination should be reversed. For challenges in which a third party questions EPA OSDBU's determination to certify an entity as an MBE or WBE under § 33.205 or § 33.209, the third party must also send a copy of the challenge to the entity whose MBE or WBE certification is being questioned. In addition, the Director shall request information and arguments from that entity as to why EPA OSDBU's determination to certify the entity as an MBE or WBE should be upheld.

(e) The Director makes his/her appeal or challenge decision based solely on the administrative record and does not conduct a hearing. The Director may supplement the record by adding relevant information made available by any other source, including the EPA Office of Inspector General; Federal, State, or local law enforcement authorities; an EPA recipient; or a private party.

(f) Consistent with Federal law, the Director shall make available, upon the request of the appellant, challenger or the entity affected by the Director's appeal or challenge decision, any supplementary information the Director receives from any source as described in paragraph (e) of this section.

(g) Pending the Director's appeal or challenge decision, EPA OSDBU's MBE or WBE certification determination remains in effect. The Director does not stay the effect of its MBE or WBE certification determination while he/she is considering an appeal or challenge.

(h) The Director shall reverse EPA OSDBU's MBE or WBE certification determination only if there was a clear and significant error in the processing of the certification or if EPA OSDBU failed to consider a significant material fact contained within the entity's application for MBE or WBE certification.

(i) All decisions under this section are administratively final.

§ 33.217 What conduct is prohibited by this subpart?

An entity that does not meet the eligibility criteria of this subpart may not attempt to participate as an MBE or WBE in contracts awarded under EPA financial assistance agreements or be counted as such by an EPA recipient. An entity that submits false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty may be subject to sanctions under § 33.105.

Subpart C—Good Faith Efforts

§ 33.301 What does this subpart require?

A recipient, including one exempted from applying the fair share objective requirements by § 33.411, is required to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, even if it has achieved its fair share objectives under subpart D of this part:

(a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

(b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

(c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

(d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

§ 33.302 Are there any additional contract administration requirements?

(a) A recipient must require its prime contractor to pay its subcontractor for satisfactory performance within a specific number of days from the prime contractor's receipt of payment from the recipient.

(b) A recipient must be notified in writing by its prime contractor prior to any termination of a DBE subcontractor for convenience by the prime contractor.

(c) If a DBE subcontractor fails to complete work under the subcontract for any reason, the recipient must require the prime contractor to employ the six good faith efforts described in § 33.301 if soliciting a replacement subcontractor.

(d) A recipient must require its prime contractor to employ the six good faith efforts described in § 33.301 even if the prime contractor has achieved its fair share objectives under subpart D of this part.

(e) A recipient must require its prime contractor to provide EPA Form 6100–2—DBE Program Subcontractor Participation Form to all of its DBE subcontractors. EPA Form 6100–2 gives a DBE subcontractor the opportunity to describe the work the DBE subcontractor received from the prime contractor, how much the DBE subcontractor was paid and any other concerns the DBE subcontractor might have, for example reasons why the DBE subcontractor believes it was terminated by the prime contractor. DBE subcontractors may send completed copies of EPA Form 6100–2 directly to the appropriate EPA DBE Coordinator.

(f) A recipient must require its prime contractor to have its DBE subcontractors complete EPA Form 6100–3—DBE Program Subcontractor Performance Form. A recipient must then require its prime contractor to include all completed forms as part of the prime contractor's bid or proposal package.

(g) A recipient must require its prime contractor to complete and submit EPA Form 6100–4—DBE Program Subcontractor Utilization Form as part of the prime contractor's bid or proposal package.

(h) Copies of EPA Form 6100–2—DBE Program Subcontractor Participation Form, EPA Form 6100–3—DBE Program Subcontractor Performance Form and EPA Form 6100–4—DBE Program Subcontractor Utilization Form may be obtained from EPA OSDBU's Home Page on the Internet or directly from EPA OSDBU.

(i) A recipient must ensure that each procurement contract it awards contains the term and condition specified in the Appendix concerning compliance with the requirements of this part. A recipient must also ensure that this term and condition is included in each procurement contract awarded by an entity receiving an identified loan under a financial assistance agreement to capitalize a revolving loan fund.

§ 33.303 Are there special rules for loans under EPA financial assistance agreements?

A recipient of an EPA financial assistance agreement to capitalize a revolving loan fund, such as a State under the CWSRF or DWSRF or an eligible entity under the Brownfields Cleanup Revolving Loan Fund program, must require that borrowers receiving identified loans comply with the good faith efforts described in § 33.301 and the contract administration requirements of § 33.302. This provision does not require that such private and nonprofit borrowers expend identified loan funds in compliance with any other procurement procedures contained in 40 CFR part 30, part 31, or part 35, subpart O, as applicable.

§ 33.304 Must a Native American (either as an individual, organization, Tribe or Tribal Government) recipient or prime contractor follow the six good faith efforts?

(a) A Native American (either as an individual, organization, corporation, Tribe or Tribal Government) recipient or prime contractor must follow the six good faith efforts only if doing so would not conflict with existing Tribal or Federal law, including but not limited to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e), which establishes, among other things, that any federal contract, subcontract, grant, or subgrant awarded to Indian organizations or for the benefit of Indians, shall require preference in the award of subcontracts and subgrants to Indian organizations and to Indian-owned economic enterprises.

(b) Tribal organizations awarded an EPA financial assistance agreement have the ability to solicit and recruit Indian organizations and Indian-owned economic enterprises and give them preference in the award process prior to undertaking the six good faith efforts. Tribal governments with promulgated tribal laws and regulations concerning the solicitation and recruitment of Native-owned and other minority business enterprises, including women-owned business enterprises, have the discretion to utilize these tribal laws and regulations in lieu of the six good faith efforts. If the effort to recruit Indian organizations and Indian-owned economic enterprises is not successful, then the recipient must follow the six good faith efforts. All tribal recipients still must retain records documenting compliance in accordance with § 33.501 and must report to EPA on their accomplishments in accordance with § 33.502.

(c) Any recipient, whether or not Native American, of an EPA financial assistance agreement *for the benefit of Native Americans,* is required to solicit and recruit Indian organizations and Indian-owned economic enterprises and give them preference in the award process prior to undertaking the six good faith efforts. If the efforts to solicit and recruit Indian organizations and Indian-owned economic enterprises is not successful, then the recipient must follow the six good faith efforts.

(d) Native Americans are defined in § 33.103 to include American Indians, Eskimos, Aleuts and Native Hawaiians.

Subpart D—Fair Share Objectives

§ 33.401 What does this subpart require?

A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreements.

§ 33.402 Are there special rules for loans under EPA financial assistance agreements?

A recipient of an EPA financial assistance agreement to capitalize revolving loan funds must either apply its own fair share objectives negotiated with EPA under § 33.401 to identified loans using a substantially similar relevant geographic market, or negotiate separate fair share objectives with entities receiving identified loans, as long as such separate objectives are based on demonstrable evidence of availability of MBEs and WBEs in accordance with this subpart. If procurements will occur over more than one year, the recipient may choose to apply the fair share objective in place either for the year in which the identified loan is awarded or for the year in which the procurement action occurs. The recipient must specify this choice in the financial assistance agreement, or incorporate it by reference therein.

§ 33.403 What is a fair share objective?

A fair share objective is an objective based on the capacity and availability of qualified MBEs and WBEs in the relevant geographic market for the procurement categories of construction, equipment, services and supplies compared to the number of all qualified entities in the same market for the same procurement categories, adjusted, as appropriate, to reflect the level of MBE and WBE participation expected absent the effects of discrimination. A fair share objective is not a quota.

§ 33.404 When must a recipient negotiate fair share objectives with EPA?

A recipient must submit its proposed MBE and WBE fair share objectives and supporting documentation to EPA within 90 days after its acceptance of its financial assistance award. EPA must respond in writing to the recipient's submission within 30 days of receipt, either agreeing with the submission or providing initial comments for further negotiation. Failure to respond within this time frame may be considered as agreement by EPA with the fair share objectives submitted by the recipient. MBE and WBE fair share objectives must be agreed upon by the recipient and EPA before funds may be expended for procurement under the recipient's financial assistance agreement.

§ 33.405 How does a recipient determine its fair share objectives?

(a) A recipient must determine its fair share objectives based on demonstrable evidence of the number of qualified MBEs and WBEs in the relevant geographic market for each of the four procurement categories. The relevant geographic market is the area of solicitation for the procurement as determined by the recipient. The market may be a geographic region of a State, an entire State, or a multi-State area. Fair share objectives must reflect the recipient's determination of the level of MBE and WBE participation it would expect absent the effects of discrimination. A recipient may combine the four procurement categories into one weighted objective for MBEs and one weighted objective for WBEs.

(b) *Step 1.* A recipient must first determine a base figure for the relative availability of MBEs and WBEs. The following are examples of approaches that a recipient may take. Any percentage figure derived from one of these examples should be considered a basis from which a recipient begins when examining evidence available in its jurisdiction.

(1) *MBE and WBE directories and Census Bureau data.* Separately determine the number of qualified MBEs and WBEs in the relevant geographic market for each procurement category from a MBE/WBE directory, such as a bidder's list. Using the Census Bureau's County Business Pattern (CBP)

data base, determine the number of all qualified businesses available in the market that perform work in the same procurement category. Separately divide the number of MBEs and WBEs by the number of all businesses to derive a base figure for the relative availability of MBEs and WBEs in the market.

(2) *Data from a disparity study.* Use a percentage figure derived from data in a valid, applicable disparity study conducted within the preceding ten years comparing the available MBEs and WBEs in the relevant geographic market with their actual usage by entities procuring in the categories of construction, equipment, services and supplies.

(3) *The objective of another EPA recipient.* A recipient may use, as its base figure, the fair share objectives of another EPA recipient if the recipient demonstrates that it will use the same, or substantially similar, relevant geographic market as the other EPA recipient. (*See* § 33.411 for exemptions from fair share objective negotiations).

(4) *Alternative methods.* Subject to EPA approval, other methods may be used to determine a base figure for the overall objective. Any methodology chosen must be based on demonstrable evidence of local market conditions and be designed to ultimately attain an objective that is rationally related to the relative availability of MBEs and WBEs in the relevant geographic market.

(c) *Step 2.* After calculating a base figure, a recipient must examine the evidence available in its jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at the fair share objective.

(1) There are many types of evidence that must be considered when adjusting the base figure. These include:

(i) The current capacity of MBEs and WBEs to perform contract work under EPA financial assistance agreements, as measured by the volume of work MBEs and WBEs have performed in recent years;

(ii) Evidence from disparity studies conducted anywhere within the recipient's jurisdiction, to the extent it is not already accounted for in the base figure; and

(iii) If the base figure is the objective of another EPA recipient, it must be adjusted for differences in the local market and the recipient's contracting program.

(2) A recipient may also consider available evidence from related fields that affect the opportunities for MBEs and WBEs to form, grow and compete. These include, but are not limited to:

(i) Statistical disparities in the ability of MBEs and WBEs to get the financing, bonding and insurance required to participate; and

(ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent it can be related to the opportunities for MBEs and WBEs to perform in the program.

(3) If a recipient attempts to make an adjustment to its base figure to account for the continuing effects of past discrimination (often called the "but for" factor) or the effects of another ongoing MBE/WBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

§ 33.406 May a recipient designate a lead agency for fair share objective negotiation purposes?

If an Indian Tribal, State or local Government has more than one agency that receives EPA financial assistance, the agencies within that government may designate a lead agency to negotiate MBE and WBE fair share objectives with EPA to be used by each of the agencies. Each agency must otherwise negotiate with EPA separately its own MBE and WBE fair share objectives.

§ 33.407 How long do MBE and WBE fair share objectives remain in effect?

Once MBE and WBE fair share objectives have been negotiated, they will remain in effect for three fiscal years unless there are significant changes to the data supporting the fair share objectives. The fact that a disparity study utilized in negotiating fair share objectives has become more than ten years old during the three year period does not by itself constitute a significant change requiring renegotiation.

§ 33.408 May a recipient use race and/or gender conscious measures as part of this program?

(a) Should the good faith efforts described in subpart C of this part or other race and/or gender neutral measures prove to be inadequate to achieve an established fair share objective, a recipient and its prime contractor are encouraged, but not required, to take reasonable race and/or gender conscious action, subject to § 33.409, to more closely achieve the fair share objectives.

(b) A recipient must notify EPA in advance of any race and/or gender conscious action it plans to take. Any use of race and/or gender conscious efforts must not result in the selection of an unqualified MBE or WBE.

§ 33.409 May a recipient use quotas as part of this program?

A recipient is not permitted to use quotas in procurements under EPA's 8% or 10% statute.

§ 33.410 Can a recipient be penalized for failing to meet its fair share objectives?

A recipient cannot be penalized, or treated by EPA as being in noncompliance with this subpart, solely because its MBE or WBE participation does not meet its applicable fair share objective. However, EPA may take remedial action under § 33.105 for a recipient's failure to comply with other provisions of this part, including, but not limited to, the good faith efforts requirements described in subpart C of this part.

§ 33.411 Who may be exempted from this subpart?

(a) *General.* A recipient of an EPA financial assistance agreement in the amount of $250,000 or less for any single assistance agreement, or of more than one financial assistance agreement with a combined total of $250,000 or less in any one fiscal year, is not required to apply the fair share objective requirements of this subpart. This provision does not exempt such recipients from any other requirements of this part.

(b) *Clean Water State Revolving Fund (CWSRF) Program, Drinking Water State Revolving Fund (DWSRF) Program, and Brownfields Cleanup Revolving Loan Fund (BCRLF) Program identified loan recipients.* A recipient under the CWSRF, DWSRF, or BCRLF Program is not required to apply the fair share objective requirements of this subpart to an entity receiving an identified loan in an amount of $250,000 or less or to an entity receiving more than one identified loan with a combined total of $250,000 or less in any one fiscal year. This provision does not exempt such recipients from any other requirements of this part.

(c) *Tribal and Intertribal Consortia recipients of program grants which can be included in Performance Partnership Grants (PPGs) under 40 CFR Part 35, Subpart B.* Tribal and Intertribal consortia recipients of PPG eligible grants are not required to apply the fair share objective requirements of this subpart to those grants.

(d) *Technical Assistance Grant (TAG) Program Recipients.* A recipient of a TAG is not required to apply the fair share objective requirements of this subpart to that grant. This provision does not exempt such recipients from any other requirements of this part.

§ 33.412 Must an Insular Area or Indian Tribal Government recipient negotiate fair share objectives?

The requirements in this subpart regarding the negotiation of fair share objectives will not apply to an Insular Area or Indian Tribal Government recipient until three calendar years after the effective date of this part. Furthermore, in accordance with § 33.411(c), tribal and intertribal consortia recipients of program grants which can be included in Performance Partnership Grants (PPGs) under 40 CFR part 35, subpart B are not required to apply the fair share objective requirements of this subpart to such grants.

Subpart E—Recordkeeping and Reporting

§ 33.501 What are the recordkeeping requirements of this part?

(a) A recipient, including those recipients exempted under § 33.411 from the requirement to apply the fair share objectives, must maintain all records documenting its compliance with the requirements of this part, including documentation of its, and its prime contractor's, good faith efforts and data relied upon in formulating its fair share objectives. Such records must be retained in accordance with applicable record retention requirements for the recipient's financial assistance agreement.

(b) A recipient of a Continuing Environmental Program Grant or other annual grant must create and maintain a bidders list. Such a list must only be kept until the grant project period has expired and the recipient is no longer receiving EPA funding under the grant. In addition, a recipient of an EPA financial assistance agreement to capitalize a revolving loan fund also must require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. (See *e.g.*, § 33.303). The purpose of a bidders list is to provide the recipient and entities receiving identified loans who conduct competitive bidding with as accurate of a database as possible about the universe of MBE/WBE and non-MBE/WBE prime and subcontractors. Such a list must only be kept until the project period for the identified loan has ended. The following information must be obtained from all prime and subcontractors: entity name; entity address; entity's status as an MBE/WBE.

§ 33.502 What are the reporting requirements of this part?

MBE and WBE participation must be reported by recipients, including those recipients exempted under § 33.411 from the requirement to apply the fair share objectives, on EPA Form 5700–52A on a quarterly basis, except for recipients of Continuing Environmental Program Grants, and institutions of higher education, hospitals and other non-profit organizations receiving financial assistance agreements under 40 CFR part 30, which report on an annual basis. Recipients of financial assistance agreements capitalizing revolving loan funds, including those exempted by § 33.411 from the requirement of applying the fair share objectives, will continue to report quarterly. Recipients of financial assistance agreements that capitalize revolving loan programs must require entities receiving identified loans to submit their MBE and WBE participation reports on a quarterly basis to the financial assistance agreement recipient, rather than to EPA.

§ 33.503 How does a recipient calculate MBE and WBE participation for reporting purposes?

(a) *General.* Amounts of MBE and WBE participation are calculated as a percentage of total financial assistance agreement project procurement costs, which include the match portion of the project costs, if any. For recipients of financial assistance agreements that capitalize revolving loan programs, the total amount is the total procurement dollars in the amount of identified loans equal to the capitalization grant amount.

(b) *Ineligible project costs.* If all project costs attributable to MBE and WBE participation are not eligible for funding under the EPA financial assistance agreement, the recipient may choose to report the percentage of MBE and WBE participation based on the total eligible and non-eligible costs of the project.

(c) *Joint ventures.* For joint ventures, MBE and WBE participation consists of the portion of the dollar amount of the joint venture attributable to the MBE or WBE. If an MBE's or WBE's risk of loss, control or management responsibilities are not commensurate with its share of the profit, the Agency may direct an adjustment in the percentage of MBE or WBE participation.

(d) *Central purchasing or procurement centers.* A recipient must report MBE and WBE participation from its central purchasing or procurement centers.

(e) *Brokers.* A recipient may not count expenditures to a MBE or WBE that acts merely as a broker or passive conduit of funds, without performing, managing, or supervising the work of its contract or subcontract in a manner consistent with normal business practices.

(1) *Presumption.* If 50% or more of the total dollar amount of a MBE or WBE's prime contract is subcontracted to a non-DBE, the MBE or WBE prime contractor will be presumed to be a broker, and no MBE or WBE participation may be reported.

(2) *Rebuttal.* The MBE or WBE prime contractor may rebut this presumption by demonstrating that its actions are consistent with normal practices for prime contractors in its business and that it will actively perform, manage and supervise the work under the contract.

(f) *MBE or WBE truckers/haulers.* A recipient may count expenditures to an MBE or WBE trucker/hauler only if the MBE or WBE trucker/hauler is performing a commercially useful function. The following factors should be used in determining whether an MBE or WBE trucker/hauler is performing a commercially useful function:

(1) The MBE or WBE must be responsible for the management and supervision of the entire trucking/hauling operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting MBE or WBE objectives.

(2) The MBE or WBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

Appendix to Part 33—Term and Condition

Each procurement contract signed by an EPA financial assistance agreement recipient, including those for an identified loan under an EPA financial assistance agreement capitalizing a revolving loan fund, must include the following term and condition:

The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

PART 35—[AMENDED]

Subpart E—[Amended]

6. The authority citation for part 35, subpart E, continues to read as follows:

Authority: Secs. 109(b), 201 through 205, 207, 208(d), 210 through 212, 215 through

217, 304(d)(3), 313, 501, 511, and 516(b) of the Clean Water Act, as amended, 33 U.S.C. 1251 *et seq.*

§ 35.936–7 [Removed]

7. Section 35.936–7 is removed.

§ 35.938–9 [Amended]

Section 35.938–9 is amended by removing and reserving paragraph (b)(2).

Subpart K—[Amended]

8. The authority citation for part 35, subpart K, continues to read as follows:

Authority: Sections 205(m), 501(a) and title VI of the Clean Water Act, as amended, 42 U.S.C. 1285(m), 33 U.S.C. 1361(a), 33 U.S.C. 1381–1387.

§ 35.3145 [Amended]

9. Section 35.3145(d) is removed and reserved.

§ 35.3145 [Amended]

10. Section 35.3145(e) is removed.

Subpart L—[Amended]

11. The authority citation for part 35, subpart L, continues to read as follows:

Authority: Section 1452 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300j–12.

§ 35.3575 [Amended]

12. Section 35.3575(d) is removed and reserved.

Subpart M—[Amended]

13. The authority citation for part 35, subpart M, continues to read as follows:

Authority: 42 U.S.C. 9617(e); sec. 9(g), E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

§ 35.4170 [Amended]

14. Section 35.4170(b) is removed and reserved.

§ 35.4205 [Amended]

15. Section 35.4205(g) is removed.

§ 35.4240 [Amended]

16. Section 35.4240(e) is removed and reserved.

Subpart O—[Amended]

17. The authority citation for part 35, subpart O, continues to read as follows:

Authority: 42 U.S.C. 9601 *et seq.*

§ 35.6015 [Amended]

18. Sections 35.6015(a)(26) and (a)(54) are removed and reserved.

§ 35.6580 [Removed]

19. Section 35.6580 is removed.

§ 35.6665 [Amended]

20. Section 35.6665(b) is removed.

PART 40—[AMENDED]

21. The authority citation for part 40 continues to read as follows:

Authority: Cited in § 40.110.

§ 40.145–3 [Amended]

22. Section 40.145–3(c) is removed and reserved.

[FR Doc. 03–18002 Filed 7–23–03; 8:45 am]
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Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter I, et al.
Federal Acquisition Circular 2001–15;
Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 2001–15; Introduction

AGENCIES: Department of Defense (DoD), General ServicesAdministration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules and technical amendments and corrections.

SUMMARY: This document summarizes the FederalAcquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the DefenseAcquisition Regulations Council in this FederalAcquisition Circular (FAC) 2001–15. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.arnet.gov/far.*

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2001–15 and specific FAR case number(s). Interested parties may also visit our Web site at *http://www.arnet.gov/far.*

Item	Subject	FAR case	Analyst
I	Elimination of Standard Form 129, Solicitation Mailing ListApplication	2001–032	De Stefano.
II	Energy-Efficient Standby Power Devices	2001–028	Smith.
III	Electronic Listing of Acquisition Vehicles Available For Use By More Than One Agency	2001–030	Zaffos.
IV	Compensation Cost Principle	2001–008	Loeb.
V	Leadership in Environmental Management (E.O. 13148)	2000–005	Goral.
VI	Selling Cost Principle	2001–024	Loeb.
VII	Section 508 Micropurchase Exception Sunset Provision	2002–012	Nelson.
VIII	Technical Amendments.		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2001–15 amends the FAR as specified below:

Item I—Elimination of Standard Form 129, Solicitation Mailing List Application (FAR Case 2001–032)

This final rule removes the requirement for contracting offices to establish and maintain manual solicitation mailing lists and the need to use the Standard Form (SF) 129, Solicitation Mailing List Application. The purpose of the rule is to broaden use and reliance on e-business applications. It is expected that this rule will eliminate, in part, the need for contracting offices to maintain paper-based sources of contractor information.

Item II—Energy-Efficient Standby Power Devices (FAR Case 2001–028)

This final rule implements Executive Order 13221, of July 31, 2001, Energy-Efficient Standby Power Devices, by providing guidance on energy-efficient standby power devices. The rule also clarifies requirements for the purchase of recovered material. The requirements of this rule apply to contracting officers that purchase products that use external standby power devices or that contain an internal standby power function, and products that are composed of recovered material. Government contracting and technical personnel will need to ensure that proposed acquisitions comply with the Government preference for energy-efficient products.

Item III—Electronic Listing of Acquisition Vehicles Available for use by More Than One Agency (FAR Case 2001–030)

This final rule provides the regulatory underpinning for the operation and use of an online directory to facilitate greater awareness of contracts available for multiple agency use. The rule—

1. Adds a new Subpart 5.6, Publicizing Multi-Agency Use Contracts, that—

(a) Provides the Internet address to access the database;

(b) Requires agencies to enter information into the database within ten days of award of a Governmentwide acquisition contract (GWAC), multi-agency contract, Federal Supply Schedule contract, or other procurement instrument intended for use by multiple agencies including blanket purchase agreements under Federal Supply Schedule contracts; and

(c) Requires contracting activities to enter information into the database by October 31, 2003, on all existing contracts and other procurement instruments intended for use by multiple agencies, except for those expiring on or before June 1, 2004.

2. Adds language at FAR 7.105(b)(1) to consider the sources contained in the database as prospective sources of supplies and services.

3. Adds language at FAR 10.002(b)(2)(iv) to encourage querying the database during market research for information relevant to agency acquisitions.

Item IV—Compensation Cost Principle (FAR Case 2001–008)

This final rule amends the FAR to revise the "compensation for personal services" cost principle by removing unnecessary and duplicative language and restructuring it. This rule is of particular interest to contracting officers who use cost analysis to price contracts and modifications, and who determine or negotiate reasonable costs in accordance with a clause of a contract, *e.g.*, price revision of fixed-price incentive contracts, terminated contracts, indirect cost rates.

Item V—Leadership in Environmental Management (E.O. 13148) (FAR Case 2000–005)

This final rule provides policies and procedures for obtaining contractor information so that agencies can implement environmental management systems and complete facility compliance audits. The rule implements Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management. The requirements of this rule apply to facilities owned or operated by Federal agencies, except those facilities located outside the United States and its outlying areas.

Item VI—Selling Cost Principle (FAR Case 2001–024)

This final rule amends the FAR to revise the "selling costs" cost principle by restructuring the paragraphs and removing unnecessary and duplicative language to increase clarity. The rule does not change the allowability of selling costs. The case was initiated at the request of the Aerospace Industries Association (AIA). This rule is of particular interest to contractors and contracting officers who use cost analysis to price contracts and modifications, and who determine or negotiate reasonable costs in accordance with a clause of a contract, *e.g.*, price revision of fixed-price incentive contracts, terminated contracts, or indirect cost rates.

Item VII—Section 508 Micropurchase Exception Sunset Provision (FAR Case 2002–012)

The interim rule published in the **Federal Register** at 67 FR 80321, December 31, 2002, is converted to a final rule, without change, to extend the Electronic and Information Technology (Section 508) micropurchase exception to October 1, 2004.

Item VIII—Technical Amendments

These amendments update references and make editorial changes at FAR 19.1005 and 52.212–1.

Dated: July 16, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001–15 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC2001–15 are effective August 25, 2003, except for Items III, VII, and VIII which are effective July 24, 2003.

Dated: July 14, 2003.

Deidre A. Lee,

Director, Defense Procurement and Acquisition Policy.

Dated: July 14, 2003.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy, General Services Administaration.

Dated: July 7, 2003.

Tom Luedtke,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 03–18532 Filed 7–23–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 5, 14, 19, 22, 36, 52, and 53

[FAC 2001–15; FAR Case 2001–032; Item I]

RIN 9000–AJ50

Federal Acquisition Regulation; Elimination of the Standard Form 129, Solicitation Mailing List Application

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to remove the requirement for contracting offices to establish and maintain manual solicitation mailing lists and the need to use the Standard Form (SF) 129, Solicitation Mailing List Application.

DATES: Effective Date: August 25, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAC 2001–15, FAR case 2001–032.

SUPPLEMENTARY INFORMATION:

A. Background

In order to broaden use and reliance on e-business applications, the Councils have been working with the Office of Federal Procurement Policy to eliminate the need to maintain paper-based sources of contractor information. As part of this effort, the Councils have agreed to eliminate the SF 129, Solicitation Mailing List Application.

The SF 129 was created to enable contracting activities to obtain information from sources to develop a solicitation mailing list. At the time the form was developed, manual processes were the only means available to assure access to adequate sources of supplies and services. Today, by sharp contrast, there are multiple tools available to agencies that can provide the functionality of the SF 129, but in a more efficient and effective manner. With the Administration's encouragement, agencies are taking advantage of these tools. For example, an increasing number of agencies are requiring potential contractors to register in the Central Contractor Registration (CCR) System, a centrally located, searchable database, accessible via the Internet, as their tool of choice for developing, maintaining, and providing sources for future procurements. The CCR database enables prospective contractors to update their information in one place via a Web site. Contracting officers are now able to access, via the Internet, contractor data and industry information less expensively, and more efficiently identify sources for contracting opportunities. FAR changes are pending that will require use of CCR as the single validated source of data on contractors doing business with the Government *(http://www.ccr.gov).* Furthermore, agencies are continually working to develop new electronic means of matching interested businesses with Government contracting offices on "FedBizOpps," *http://www.FedBizOpps.gov,* the designated single Governmentwide point of entry for public access to notices of procurement actions over $25,000. FedBizOpp, through its interested vendors list, has the capability to generate a list of vendors who are interested in a specific solicitation for purposes of teaming opportunities, subcontracting opportunities, and other business relationships. In light of these electronic initiatives, we have eliminated the manual collection of contractor data using the SF 129.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 67762, November 6, 2002. Three sources submitted comments in response to the proposed rule. All respondents agreed with the rule as published. One respondent pointed out a typographical error at 52.214–10. That error has been corrected. Additionally, the proposed rule inadvertently omitted the phrase "except for construction," at 14.201–6(e), the prescription for the use of the provision at 52.214–10, Contract Award-Sealed Bidding. That language has been corrected in this final rule.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive

Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule substitutes efficient electronic databases for solicitation mailing lists and the SF 129, Solicitation Mailing List Application. Continued reliance on the SF 129 would unnecessarily promote inefficiency associated with paper-based processes. The successful phase-out of the paper-based *Commerce Business Daily* in favor of reliance on FedBizOpps demonstrates that the Federal contracting community, including small businesses, is successfully transitioning to greater use of electronic tools and their associated efficiencies to conduct business.

C. Paperwork Reduction Act

The Paperwork Reduction Act no long applies because the final rule eliminates reporting and recordkeeping requirements currently approved under OMB Control Number 9000–0002. This rule will reduce the current OMB inventory by 464,000 hours.

List of Subjects in 48 CFR Parts 1, 5, 14, 19, 22, 36, 52, and 53

Government procurement.

Dated: July 15, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 5, 14, 19, 22, 36, 52, and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 5, 14, 19, 22, 36, 52, and 53 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106 in the table following the introductory paragraph by removing from FAR segment 14.205 its corresponding OMB Control Number "9000–0002" and adding "9000–0037" in its place; and by removing the FAR segments "14.205–4(c)" and "SF 129" and their corresponding OMB Control Numbers "9000–0037" and "9000–0002", respectively.

PART 5—PUBLICIZING CONTRACT ACTIONS

■ 3. Amend section 5.205 by revising the fourth sentence of paragraph (a) to read as follows:

5.205 Special situations.

(a) * * * Contracting officers must consider potential sources which respond to advance notices for a subsequent solicitation. * * *

* * * * *

5.403 [Amended]

■ 4. Amend section 5.403 in paragraph (a) by removing "(a) *Individual requests.*"; and by removing paragraph (b).

PART 14—SEALED BIDDING

14.103–1 [Amended]

■ 5. Amend section 14.103–1 by removing paragraph (b) and redesignating paragraphs "(c)" and "(d)" as "(b)" and "(c)", respectively.

■ 6. Amend section 14.201–6 by revising paragraph (e) to read as follows:

14.201–6 Solicitation provisions.

* * * * *

(e) Insert in all invitations for bids, except those for construction, the provision at 52.214–10, Contract Award-Sealed Bidding.

* * * * *

■ 7. Amend section 14.203–1 by revising the first sentence to read as follows:

14.203–1 Transmittal to prospective bidders.

Invitations for bids or presolicitation notices must be provided in accordance with 5.102. * * *

■ 8. Revise section 14.205 and its section heading to read as follows:

14.205 Presolicitation notices.

In lieu of initially forwarding complete bid sets, the contracting officer may send presolicitation notices to concerns. The notice shall—

(a) Specify the final date for receipt of requests for a complete bid set;

(b) Briefly describe the requirement and furnish other essential information to enable concerns to determine whether they have an interest in the invitation; and

(c) Normally not include drawings, plans, and specifications. The return date of the notice must be sufficiently in advance of the mailing date of the invitation for bids to permit an accurate estimate of the number of bid sets required. Bid sets shall be sent to concerns that request them in response to the notice.

14.205–1 through 14.205–5 [Removed]

■ 9. Remove sections 14.205–1 through 14.205–5.

14.211 [Amended]

■ 10. Amend section 14.211 in the first sentence of paragraph (a) by removing "14.205–4(c)" and adding "14.205" in its place.

■ 11. Amend section 14.503–1 by revising the introductory text of paragraph (a) to read as follows:

14.503–1 Step one.

(a) Requests for technical proposals shall be synopsized in accordance with Part 5. The request must include, as a minimum, the following:

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

19.202–2 [Amended]

■ 12. Amend section 19.202–2 by removing paragraph (a) and redesignating paragraphs "(b)" and "(c)" as "(a)" and "(b)", respectively.

19.202–4 [Amended]

■ 13. Amend section 19.202–4 by removing paragraph (c) and redesignating paragraph (d) as (c).

19.402 [Amended]

■ 14. Amend section 19.402 in paragraph (c)(3) by removing the words "on solicitation mailing lists or".

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 15. Amend section 22.1009–2 by revising paragraph (b) to read as follows:

22.1009–2 Attempt to identify possible places of performance.

* * * * *

(b) Databases available via the Internet for lists of prospective offerors and contractors.

* * * * *

PART 36—CONSTRUCTION AND ARCHITECT–ENGINEER CONTRACTS

36.213–3 [Amended]

■ 16. Amend section 36.213–3 in the parenthetical in paragraph (d) by removing "14.205 and".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.214–9 [Removed and Reserved]

■ 17. Remove and reserve section 52.214–9.

52.214–10 [Amended]

■ 18. Amend section 52.214–10 in the prescription by removing "14.201–6(e)(2)" and adding "14.201–6(e)" in its place.

PART 53—FORMS

53.214 [Amended]

■ 19. Amend section 53.214 by removing and reserving paragraph (e).

53.301–129 [Removed]

■ 20. Remove section 53.301–129.

[FR Doc. 03–18533 Filed 7–23–03; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 11, and 23

[FAC 2001–15; FAR Case 2001–028; Item II]

RIN 9000–AJ47

Federal Acquisition Regulation; Energy-Efficient Standby Power Devices

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 13221 of July 31, 2001, Energy-Efficient Standby Power Devices, and to clarify requirements for the purchase of recovered material.

DATES: *Effective Date:* August 25, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Laura Smith, at (202) 501–1224. Please cite FAC 2001–15, FAR case 2001–028.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils have agreed to amend the FAR to—

1. Implement E.O. 13221, by providing guidance on energy-efficient standby power devices; and

2. Clarify requirements for the purchase of recovered material.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 64010, October 16, 2002. Four respondents submitted public comments. A discussion of the comments is provided below. The Councils concluded that the proposed rule should be converted to a final rule, with only minor editorial changes made to the proposed rule (*see* Response" to comment number 3).

1. *Comment:* The respondent supported the proposed revisions to the FAR, as "they provide the needed clarity in both these areas and will enhance contracting officers' ability to effectively purchase green products."

Councils' Response: No change.

2. Comment: The proposed FAR 23.203(a)(1)(ii) authorizes the purchase of products that meet a Department of Energy Federal Energy Management Program (FEMP) standby power wattage recommendation. However, the FEMP recommended standby power wattage for about half of the product categories is higher than the one watt limit mandated by the E.O., even though the listing of products for the categories identify numerous products that consume one watt or less in their standby mode.

Councils' Response: Nonconcur. In accordance with Section 1. of E.O. 13221, adherence to the one watt requirement is mandated only "when life-cycle cost-effective and practicable and where the relevant product's utility and performance are not compromised as a result." Pursuant to this direction, FEMP does not recommend restricting procurement within a product category to items that use only one watt or less of electricity when such a restriction would not permit adequate competition among producers.

3. *Comment:* The definition of energy-efficient standby power devices that was added in FAR 2.101 could apply to all products that use power (*e.g.*, a flashlight), rather than "commercially available, off-the-shelf products that use external standby power devices, or that contain an internal standby power function" per Section 1. of the E.O. The respondent recommended revising paragraph 1 of the definition to read: "(1) Use external standby power devices, or that contain an internal standby power function."

Councils' Response: Concur. The Councils have revised the definition of energy-efficient standby power devices at FAR 2.101 accordingly.

4. *Comment:* The proposed rule would amend FAR 11.002, Policy, by adding to paragraphs (d)(1) and (2) a reference to E.O. 13221 and text regarding products containing energy-efficient standby power devices. The amendment, as proposed, could be interpreted as giving preference to products that consume one watt or less while in standby mode over products that consume zero watts when switched off. This, of course, would run contrary to the intent of the E.O. Moreover, many office products rarely enter into a standby power mode and, hence, greater energy can be conserved via a power management function, a feature typical on Energy Star-qualified products.

Councils' Response: Nonconcur. The policy statement does not express a preference for products with energy-efficient standby power devices over products which do not contain a standby power function. Rather, the policy statement indicates that if the Government requires a product that consumes power in a standby mode, the standby power device should be energy-efficient. Whether a product contains a standby power device will, in most instances, be determined by agency needs and related functions required of the product. For product categories covered by Energy Star, FEMP only considers a product for its standby power device list if it also meets the Energy Star criteria which includes power management functions.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule simply provides additional guidance to Government contracting and technical personnel with respect to the Government's preference, set forth in FAR Subpart 23.2, for buying energy-efficient products and services. This rule requires a contracting officer, when acquiring a product that uses an external standby power device or that

contains an internal standby power function, to purchase an energy-efficient product (when commercially available, life-cycle cost-effective, and practicable), *i.e.*, a product that uses no more than one watt in its standby power consuming mode. With respect to the change to the recovered material text, this rule only clarifies the condition for when the contracting office shall prepare a written justification.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 11, and 23

Government procurement.

Dated: July 16, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 11, and 23 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 11, and 23 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101, by adding in alphabetical order, the definition, "Energy-efficient standby power devices" to read as follows:

2.101 Definitions.

* * * * *

Energy-efficient standby power devices means products that use—

(1) External standby power devices, or that contain an internal standby power function; and

(2) No more than one watt of electricity in their standby power consuming mode or meet recommended low standby levels as designated by the Department of Energy Federal Energy Management Program.

* * * * *

PART 11—DESCRIBING AGENCY NEEDS

■ 3. Amend section 11.002 by revising paragraph (d)(1) and the introductory text of (d)(2) to read as follows:

11.002 Policy.

* * * * *

(d)(1) The Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901, *et seq.*), Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, Executive Order 13123 of June 3, 1999, Greening the Government through Efficient Energy Management, and Executive Order 13221 of July 31, 2001, Energy-Efficient Standby Power Devices, establish requirements for acquiring—

(i) Products containing recovered materials;

(ii) Environmentally preferable products and services;

(iii) Energy-efficient products and services;

(iv) Products and services that utilize renewable energy technologies; and

(v) Products containing energy-efficient standby power devices.

(2) Executive agencies shall consider use of recovered materials, energy- and water-efficient products and services, products containing energy-efficient standby power devices, environmentally preferable purchasing criteria developed by the EPA, and environmental objectives (*see* Subparts 23.2 and 23.4, and 23.703(b)) when—

* * * * *

■ 4. Amend section 11.101 in the introductory text of paragraph (b) by removing "must" and adding "shall" in its place; and by revising paragraph (b)(1) to read as follows:

11.101 Order of precedence for requirements documents.

* * * * *

(b) * * *

(1) Energy efficiency, including using products containing energy-efficient standby power devices and renewable energy technologies; and

* * * * *

PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

■ 5. Amend section 23.201 by adding paragraph (e) to read as follows:

23.201 Authorities.

* * * * *

(e) Executive Order 13221 of July 31, 2001, Energy-Efficient Standby Power Devices.

■ 6. Revise section 23.203 to read as follows:

23.203 Energy-efficient products.

(a) If life-cycle cost-effective and available—

(1) When acquiring energy-using products—

(i) Agencies shall purchase ENERGY STAR® or other energy-efficient items listed on the Department of Energy's Federal Energy Management Program (FEMP) Product Energy Efficiency Recommendations product list; and

(ii) For products that consume power in a standby mode and are listed on FEMP's Standby Power Devices product listing, agencies shall—

(A) Purchase items which meet FEMP's standby power wattage recommendation or document the reason for not purchasing such items; or

(B) If FEMP has listed a product without a corresponding wattage recommendation, purchase items which use no more than one watt in their standby power consuming mode. When it is impracticable to meet the one watt requirement, agencies shall purchase items with the lowest standby wattage practicable; and

(2) When contracting for services that will include the provision of energy-using products, including contracts for design, construction, renovation, or maintenance of a public building, the specifications shall incorporate the applicable requirements in paragraph (a)(1) of this section.

(b) The requirements in paragraph (a) of this section only apply when the relevant product's utility and performance meet the agency's need.

(c) Information is available via the Internet about—

(1) ENERGY STAR® at *http://www.energystar.gov/*; and

(2) FEMP at *http://www.eere.energy.gov/femp/procurement*.

■ 7. Amend section 23.405 by revising the introductory text of paragraph (c) to read as follows:

23.405 Procedures.

* * * * *

(c) The contracting officer shall place in the contract file a written justification if an acquisition of EPA-designated products above the micro-purchase threshold does not meet applicable minimum recovered material content recommended by EPA guidelines. If the agency has designated an Environmental Executive, the contracting officer shall give a copy of the written justification to that official. The contracting officer shall base the justification on the inability to acquire the product—

* * * * *

■ 8. Amend section 23.406 by revising paragraph (a) to read as follows:

23.406 Solicitation provision and contract clause.

(a) Insert the provision at 52.223–4, Recovered Material Certification, in solicitations that are for, or specify the use of, EPA-designated products containing recovered materials.

* * * * *

[FR Doc. 03–18534 Filed 7–23–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 7, and 10

[FAC 2001–15; FAR Case 2001–030; Item III]

RIN 9000–AJ30

Federal Acquisition Regulation; Electronic Listing of Acquisition Vehicles Available for Use by More Than One Agency

AGENCIES: Department of Defense (DoD), General ServicesAdministration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Federal Acquisition Regulatory Council (Council) has agreed on a final rule amending the Federal Acquisition Regulation (FAR) to require contracting activities to input information in an online contract directory for Governmentwide acquisition contracts (GWACs), multi-agency contracts, Federal Supply Schedule contracts, and other procurement instruments intended for multiple agency use, including blanket purchase agreements (BPAs) under Federal Supply Schedule contracts. The directory is located at *http://www.contractdirectory.gov*; and encourage consideration of the online contract directory during acquisition planning and market research.

The Office of Federal Procurement Policy (OFPP) seeks to improve application of acquisition basics generally and use of interagency contracts in particular. The contract directory furthers both of these objectives by providing easier access to information that will support more informed acquisition planning and market research. The contract directory also furthers the Administration's efforts to create a more efficient, effective, and citizen-centric government. *See* OFPP's May 6, 2003, memorandum to the Federal Acquisition Council and Agency Senior Procurement Executives, "Roll-Out of the Inter-Agency Contract Directory" available at *http://www.acqnet.gov*.

DATES: This rule is effective July 24, 2003. This rule applies July 24, 2003 for the following procurement instruments, except for those expiring on or before June 1, 2004: GWACs, multi-agency contracts, Federal Supply Schedule contracts, and other procurement instruments intended for multiple agency use, including blanket purchase agreements (BPAs) under Federal Supply Schedule contracts.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Gerald Zaffos, Procurement Analyst, at (202) 208–6091. Please cite FAC 2001–15, FAR case 2001–030.

SUPPLEMENTARY INFORMATION:

A. Background

1. The Proposed and Final Rules

The Council published a proposed rule in the **Federal Register** on February 15, 2002 (67 FR 7255). The proposed rule would add a new FAR Subpart 5.6, Publicizing Multi-Agency Use Contracts, to—

- Make contracting officers and program managers aware of an online database of information about GWACs, multi-agency contracts, Federal Supply Schedule contracts, and other procurement instruments intended for multiple agency use, including BPAs under Federal Supply Schedule contracts;
- Require contracting activities, within ten days of award of a procurement instrument intended for use by multiple agencies, to enter into the database general information about the instrument, as specified on the Web site hosting the database; and
- Require contracting activities to enter information into the database on all existing contracts and other procurement instruments intended for multiple agency use by a date to be established in the final rule.

The final rule generally adopts the proposed rule with certain changes. In particular, the final rule amends—

- FAR 7.105(b)(1) to add a requirement that contracting officers and program managers consider the sources contained in the database of interagency contracts, to be known as the "contract directory", as prospective sources of supplies and services; and
- FAR 10.002(b)(2)(iv) to encourage querying the database during market research for information relevant to agency acquisitions.

Consistent with the proposed rule, agencies will have ten days after contract award to input information on new awards. *See* FAR 5.601(b)(1). In addition, as set forth at FAR 5.601(b)(2), agencies will be required to enter information on existing contracts by October 31, 2003. Agencies may, but are not required to, input information on contracts that would expire on or before June 1, 2004.

While the Council intends for the contract directory to provide increased visibility regarding the opportunities agencies are creating through interagency vehicles, it also recognizes that contracts relatively close to expiration may be nearing or at ceiling limits. Accordingly, in deciding whether to input such contracts, agencies may consider the administrative burden to input such contracts in light of the likely amount of customer usage prior to expiration.

2. Data Fields

The data elements that will populate the contract directory will not be prescribed in the FAR. As noted in the preamble to the proposed rule, specific elements will be listed on the Web site that hosts the database. The address for the Web site is *http://www.contractdirectory.gov*.

After consideration of public comments (discussed below), the following data fields have been selected for use in the initial population of the contract directory. The fields fall within one of three categories: (1) General information about the procurement instrument, (2) information about placing orders, and (3) information about the servicing agency. (The numbering of the data fields below is provided for easy reference in this preamble and may differ on the contract directory Web site.) The list has been annotated to identify which fields will be searchable as well as those that will have "drop-down" boxes with more detailed information.

Description of Initial Data Fields for Contract Directory

Information about the procurement instrument.

(1) Program name and acronym (searchable).

(2) Procurement instrument number (searchable).

(3) Type of procurement instrument (searchable) with drop down box that includes GWAC, multi-agency contract, Federal Supply Schedule contract, BPA under Federal Supply Schedule contract, other.

(4) Contractor.
(5) Data Universal Numbering System (DUNS) Number of the contractor.
(6) North American Industrial Classification (NAICS) code (searchable).
(7) Principal Product or Service Code (searchable).
(8) Brief description of supplies and services (searchable).
(9) Applicable socio-economic information (searchable) with drop down box to identify from the following status categories those that apply to the contractor: Small Business, Emerging Small Business, Small Disadvantaged Business, 8(a), Very Small Business, Woman-Owned Business, HUBZone, Veteran-Owned Small Business, Service-Disabled Veteran-Owned Small Business, Historically Black Colleges and Universities, Minority Institution, Javits-Wagner-O'Day Participating Nonprofit Agency, Large Business, Other.
(10) Government Web site address where contract or program information is located, if available.

Information about placing orders.

(11) Agencies that may place orders (searchable).
(12) Date through which agencies may place orders.
(13) Statutory authority for placing orders with a drop down box to include—
(a) Clinger-Cohen GWAC authority (40 U.S.C. 11302(e));
(b) Economy Act (31 U.S.C. 1535), including Clinger Cohen multi-agency contract authority (40 U.S.C. 11314(a)(2));
(c) The Federal Property and Administrative Services Act authority for the Multiple Award Schedules Program (41 U.S.C. 259(b)(3)); and
(d) Other statutory authority not subject to the Economy Act (to be specified).
(14) Ordering procedures, unless addressed at the Web site identified in data field (10), above.
(15) List of administrative fees, unless addressed at the Web site identified in data field (10), above.

Information about the servicing agency.

(16) Agency or activity that awarded the procurement instrument (searchable).
(17) Activity point of contact/telephone number/e-mail address.

The fields described above include the following changes from the fields that were described in the preamble to the proposed rule:

• *Increased search capabilities.* More fields will be searchable. For example, agencies will be able to search the field that identifies who may place orders. This will make it easier for agencies to identify vehicles that are available for their own use. The "type of procurement instrument" field (*i.e.*, field no. 3) is also being made searchable so that agencies may view offerings available through a particular type of procurement vehicle.

To improve the visibility of the small business community, data captured in the socio-economic information field will be made searchable. This field will be further refined so that directory users can identify products offered by a Javits-Wagner-O'Day participating nonprofit agency.

The contract directory will not allow users to search for product and service offerings by contractor. The FAR Council seeks for the directory to be used, in general, to consider a range of sources. Broader searching will help agencies get a better sense of marketplace capabilities as they consider whether their needs are best met through an interagency contract or an open market new procurement action.

• *New field.* A field will be added to identify the contractor's Data Universal Numbering System (DUNS) number. DUNS numbers serve as a common link among Government databases. For example, DUNS numbers are required for contractors that register to do business with the Government in the Central Contractor Registration (CCR) database. Although DUNS numbers function as a useful business identifier, the directory will not provide for searches by DUNS number for the same reason that searches by contractor will not be enabled.

• *Easier entry and maintenance of data.* Data entry of the socio-economic field of the directory has been modified so that population of this information for woman-owned businesses matches the formats for forms DD 350 and SF 279. To aid agencies in maintaining the currency of their data, the directory will identify the last date information on a given entry was submitted or edited. In addition, at the point where agencies may no longer place orders, as identified by the agency, the directory will move the information to an inactive file.

The contract directory project is linked to a broader e-Government initiative to create an "integrated acquisition environment" (IAE). The goal of the IAE is to facilitate the migration and leveraging of information technology investments to modernized infrastructures. Once this transformation occurs, agencies will be able to effectively integrate the many functions critical to the successful operation of the acquisition process. Among other things, this effort will help to eliminate redundant processes. As efforts progress to modernize and integrate contract-writing systems, agencies will be able to populate fields in the contract directory without re-keying of information. In the meantime, electronic data submission is an option.

Like other IAE initiatives, the contract directory will be subject to a governance structure and its operations will be overseen by a configuration management board. Currently, a Federal interagency users group, the "E-Catalogs Group," under the aegis of GSA in its capacity as managing partner of the IAE, meets periodically to discuss how the contract directory will operate. The group has sought to minimize burden while ensuring the site supports acquisition planning and market research efforts.

3. Public Comments

Twelve respondents submitted public comments on the proposed rule and the planned fields for the contract directory (as described in the preamble to the proposed rule). The comments primarily focused on: (1) The purpose of FAR coverage, (2) the burden associated with populating and maintaining the contract directory, (3) the functionality of the directory, and (4) impact on small business. All comments were considered in developing the final rule and first generation of data elements. A summary of the more significant comments and their disposition is provided below.

a. *Purpose of FAR coverage.* One commenter recommended that the coverage proposed for FAR Subpart 5.6 establishing the requirement to enter interagency contracts into the database be moved to FAR Part 4, where administrative matters, including contract reporting, are covered. Another commenter supported finalizing the coverage in its proposed location in FAR Part 5.

The FAR Council recognizes that other data reporting requirements, such as that for the Federal Procurement Data System (FPDS), are addressed in FAR Part 4. However, the Council believes that the primary purpose of the contract directory, *i.e.*, to advertise existing contracts available for multiple agency use, is better aligned with the policies of FAR Part 5, which focus on publicizing contract actions.

One commenter suggested that FAR Parts 7 and 10 be revised to identify the database's usefulness in acquisition planning and market research. The FAR Council agrees with this suggestion and, as described above, has amended Parts 7 and 10 to ensure contracting officers and program managers consider information in the contract directory during these important early stages of the acquisition cycle.

b. *Burden.* A number of comments focused on the potential burden the rule and associated Web site instructions would place on agencies required to input information about their interagency contracts into the contract directory. The comments focused on

overall administrative burden, the mandatory nature of individual data fields, and the time for entering data.

i. *Overall administrative burden.* Several commenters suggested that entering the data described in the preamble to the proposed rule would create an administrative strain. As an alternative, they recommended that the desired information be collected through existing data sources, such as the FPDS.

The FAR Council agrees, in concept, that the functionalities of acquisition systems need to be integrated so that duplication of effort and associated burden is minimized. As stated above, this is a key goal of the ongoing IAE effort, the main acquisition initiative towards the creation of a more efficient, effective, and citizen-centric e-Government. Unfortunately, current information systems do not collect the information needed to populate the contract directory. The FPDS, for example, does not break out activity by multiple award contract vehicle. As a result, it is not possible to easily identify the multiple contractors who make up any given multi-agency contract.

The contract directory is designed to overcome these limitations and enable agencies to gauge the number and nature of inter-agency contracts currently in effect. This functionality will help senior managers better understand their own agency's use of these vehicles. Equally important, as noted above, the contract directory will help customers during acquisition planning and market research to identify whether there may be a suitable existing Federal contract that can satisfy their needs.

For these reasons, the Council believes the insight to be gained by the directory, by both customers and servicing agencies, will be worth the effort required to make it fully operational. In addition, the Council expects that the cost of input will be offset by the interagency activity and associated administrative fees servicing agencies will collect to cover costs.

ii. *Mandatory vs. non-mandatory data fields.* One commenter sought clarification as to whether inputs for all of the data fields are mandatory. Agencies will be expected to complete each of the 17 data fields described above, except that, in providing point of contact information (data field no. 17), an agency is not required to furnish an individual point of contact and may rely just on an e-mail address and/or phone number. Also, an agency is not required to create a Web site with program information (*i.e.*, data field no. 10); it is only required to identify the address of the Web site, if one already exists.

The contract directory, like other IAE projects, is designed to minimize redundant effort. If information is already accessible elsewhere on the Web, agencies generally will be able to simply provide a Web address where users may access that information. For example, if ordering procedures (field no. 14) and administrative fees (field no. 15) are already discussed on an agency's Web site, the contracting officer need only provide the Web site address or URL to satisfy those fields.

Recent General Accounting Office (GAO) and agency Inspectors General (IG) reports confirm that customers of task and delivery order contracts need to understand ordering procedures (*e.g.*, fair opportunity processes) and be aware of fees if they are to take effective advantage of competition and make informed decisions. It is especially important in an interagency environment that customers external to the agency be aware of any special management steps a servicing agency has taken to reinforce strategic and accountable use of its vehicle. Accordingly, if information on ordering procedures or administrative fees is not available on an existing Web site, agencies will need to provide this information on the contract directory or otherwise indicate how users may obtain it.

iii. *Time for entering data.* Two commenters raised concerns regarding the time allotted for entering data. One commenter suggested increasing the input period on new contracts from 10 to 45 days. Another commenter proposed an exemption for existing contracts with fewer than twelve months to expiration.

The Council believes that information needs to be entered as close to the time of award as possible to make the directory as current and useful as possible. Hence, the time for input on new contracts will remain at 10 days. However, as discussed above, the FAR Council recognizes that contracts relatively close to expiration may be nearing or at ceiling limits. For this reason, the rule leaves to an agency's discretion the determination as whether to input data on contracts that will expire on or before June 1, 2004.

c. *Functionality.* Numerous comments addressed the planned functionality for the database. Commenters focused, in particular, on the descriptions to be provided for available products and services, searching by individual contractor, information on order placement, data on limited use vehicles, and information on 8(a) contracting.

i. *Descriptions of products and services.* Several commenters raised concerns that the data field calling for a brief description of supplies or services (*i.e.*, data field no. 8) will not likely collect sufficiently meaningful information for an agency to determine if use of a given contract will meet its needs. They noted that the lack of standard nomenclature may further reduce the utility of information provided.

The FAR Council agrees that information placed in the database needs to provide a general level of insight into contract offerings in order for the contract directory to have a practical utility. As a general matter, the Council expects that agencies will have an incentive to exercise quality control and offer meaningful information because the Web site offers a means for agencies to secure greater visibility for, and use of, their vehicles. To assist agencies, the site will provide guidance to address how best to fill in this, and other, data fields. In addition, some degree of standardization will be provided by asking for principal service and product codes (*i.e.*, data field no. 7). While this type of information should help agencies in performing their front-end analysis, the Council recognizes that the contract directory will not, by itself, provide information sufficient for a complete analysis. At the same time, this is not the contract directory's role. It is intended to be just one tool for market research, and agencies will need to undertake additional efforts commensurate with the size and complexity of the acquisition in order to understand marketplace capabilities.

ii. *Searching by contractor.* A number of commenters requested that the "contractor" data element (*i.e.*, field no. 4) be searchable. The FAR Council acknowledges that there may be some utility in knowing what a contractor has offered through various vehicles with different agencies. At the same time, the Council is concerned that searches by contractor may, too often, conflict with the goal of encouraging thoughtful consideration of the marketplace and capabilities of multiple sources, as agencies consider whether their needs are better met through an interagency contract or through a new procurement action on the open market. Therefore, the contract directory will not provide for searches by contractor.

Notwithstanding whether the data field is searchable, one commenter suggested that contractor names be standardized in the contract directory. The FAR Council agrees with the intent of the comment and anticipates that the contract directory's integration with

other e-acquisition initiatives in the IAE will lead to this result over time.

iii. *Order placement.* One commenter remarked that while the rule provides benefit by laying the foundation for a new market research tool, the overall effort is shortsighted because it fails to capture any information regarding order placement. The commenter states that "procurement goals of transparency and accountability are not served when information about many millions of dollars spent under such vehicles is not readily available to the public."

The FAR Council strongly supports transparency and accountability in Government procurement and anticipates that other IAE initiatives, including the transformation of the FPDS, will facilitate greater insight of the type alluded to by the commenter. However, the Councils do not believe that the benefits of the contract directory should be delayed until this functionality is available.

iv. *Searching limited use vehicles.* Two commenters recommended that the contract directory include contracts available for use only to a single agency, command or even locale. The FAR Council believes the functionality of the directory should, at least initially, focus on contracts that are designed for broad usage. Once the directory is fully functional and is providing the desired insight, the Council may, at a later date, consider expanding the database to accommodate limited use contracts.

v. *8(a) contracting.* One commenter suggested providing a greater level of detail on the actual use and administration of 8(a) contracts. The commenter recommended, for instance, that the contract directory include information on how 8(a) contracting could be accomplished (*e.g.*, sole source), the competitive procedures to be used when the task order exceeds the sole source threshold, agency administrative responsibilities, and procedures regarding limitations on subcontracting and reporting.

As noted above, the contract directory will offer basic socio-economic information, including whether a contractor is an 8(a) small business (*see* field no. 9). Moreover, information on ordering procedures (provided through field no. 14) should reflect the steps customers will be expected to take in order to make a purchase, including those that may need to be taken to be in compliance with 8(a) contracting procedures. However, additional detail on the specific operation of the 8(a) program (or another socio-economic program) would go beyond the general purpose and scope of the contract directory and is more appropriately obtained though other means (*e.g.*, from the servicing agency, the Small Business Administration (SBA)).

d. *Impact on small business.* One commenter stated that the rule would have a significant economic impact on a substantial number of small entities. The commenter asserted that FAR 8.404, which sets forth procedures for the use of FSS contracts, has had a "withering effect" on small business awards. The commenter further states that small business set-asides should be incorporated into the FAR 8.404 procedures.

The Council believes this comment is outside of the scope of this rule. The rule focuses on improving access to information about vehicles available for interagency use. This rule does not speak to specific practices for how these vehicles are to be used. However, the Council notes that separate rulemaking efforts have been undertaken to address the consideration of small businesses in order placement under task and delivery order contracts. *See* 68 FR 5138, January 31, 2003, for notice of proposed FAR changes, and 68 FR 5133, January 31, 2003, for notice of proposed changes to SBA regulations. These separate efforts are intended to address concerns regarding the impact of contract bundling on small business participation for Federal procurements.

B. Executive Order 12866.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the establishment of an online database as a tool to collect information on acquisition vehicles intended for multiple agency use in order to facilitate its availability to the acquisition community is a matter of internal Government operating procedure. In addition, the rule is not intended to alter existing requirements addressing the use of small businesses.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 5, 7, and 10

Government procurement.

Dated: July 16, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 5, 7, and 10 as set forth below:

■ 1. The authority citation for 48 CFR parts 5, 7, and 10 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 5—PUBLICIZING CONTRACT ACTIONS

■ 2. Add Subpart 5.6 to read as follows:

Subpart 5.6—Publicizing Multi-Agency Use Contracts

5.601 Governmentwide database of contracts.

(a) A Governmentwide database of contracts and other procurement instruments intended for use by multiple agencies is available via the Internet at *http://www.contractdirectory.gov*. This searchable database is a tool that may be used to identify existing contracts and other procurement instruments that may be used to fulfill Government needs.

(b) The contracting activity shall—

(1) Enter the information specified at *http://www.contractdirectory.gov*, in accordance with the instructions on that Web site, within ten days of award of a Governmentwide acquisition contract (GWAC), multi-agency contract, Federal Supply Schedule contract, or any other procurement instrument intended for use by multiple agencies, including blanket purchase agreements (BPAs) under Federal Supply Schedule contracts.

(2) Enter the information specified at *http://www.contractdirectory.gov* in accordance with the instructions on that Web site by October 31, 2003, for all contracts and other procurement instruments intended for use by multiple agencies that were awarded before July 24, 2003.

PART 7—ACQUISITION PLANNING

■ 3. Amend section 7.105 by revising the second sentence of paragraph (b)(1) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) *Plan of action—(1) Sources.* * * * Consider required sources of supplies or services (*see* Part 8) and sources identifiable through databases including the Governmentwide database of contracts and other procurement instruments intended for use by multiple agencies available at *http://www.contractdirectory.gov*. * * *

* * * * *

PART 10—MARKET RESEARCH

■ 4. Amend section 10.002 by revising paragraph (b)(2)(iv) to read as follows:

10.002 Procedures.

* * * * *

(b) * * *

(2) * * *

(iv) Querying the Governmentwide database of contracts and other procurement instruments intended for use by multiple agencies available at *http://www.contractdirectory.gov* and other Government databases that provide information relevant to agency acquisitions.

* * * * *

[FR Doc. 03–18535 Filed 7–23–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 22, 31, 37, and 52

[FAC 2001–15; FAR Case 2001–008; Item IV]

RIN 9000–AJ36

Federal Acquisition Regulation; Compensation Cost Principle

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to revise the "compensation for personal services" cost principle by restructuring the paragraphs, and by removing unnecessary and duplicative language.

DATES: *Effective Date:* August 25, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb, Procurement Analyst, at (202) 501–0650. Please cite FAC 2001–15, FAR case 2001–008.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 19952, April 23, 2002, with request for comments. Three respondents submitted public comments. A discussion of the comments is provided below. Differences between the proposed and the final rule are discussed in paragraphs 1, 5, 13, 15, and 19 below.

Public Comments:

1. *Comment: Designate FAR 31.205–6(c) as Reserved.* The current paragraph designations, especially paragraph (j) for pensions, have been cited in many court cases, Government contracts, and other documents over the years. All the respondents expressed concerns that the re-designation of paragraphs (d) through (p) within FAR 31.205–6 as paragraphs (c) through (o) would create confusion.

Councils' response: Concur.

2. *Comment: Move proposed FAR 31.205–6(g)(1) (Backpay) to FAR 31.205–6(a)(1).* The respondent did not provide an explanation for this recommendation.

Councils' response. Do not concur. The Councils believe there is merit in maintaining a separate paragraph for backpay. *See* paragraph 16 for further discussion.

3. *Comment: Delete proposed FAR 31.205–6(a)(2) (total compensation).* The language is duplicative of FAR 31.201–3, Reasonableness, and the focus of the cost principle should be on the reasonableness of a contractor's total compensation plan and not on individual employees or job classes.

Councils' response. Do not concur. The proposed paragraph makes it clear that, although compensation must conform to FAR 31.201–3, it must also conform to the more specific provisions contained in this cost principle. The Councils do not agree with the concept that the reasonableness of compensation should be based "solely" on the contractor's total compensation plan, without consideration of the reasonableness of the compensation for individual employees or job classes of employees. See paragraph 9 for further discussion.

4. *Comment: Delete proposed FAR 31.205–6(a)(5) (unallowable cost).* The proposed language states: "Costs that are unallowable under other paragraphs of this Subpart 31.2 are not allowable under this subsection 31.205–6 solely on the basis that they constitute compensation for personal services." In lieu of the above statement, the respondent suggested adding the following language to FAR 31.204(c): "Cost made specifically unallowable under one cost principle in this subpart are not allowable under any other cost principle."

Councils' response: Do not concur. Similar proposals for such a global policy statement were rejected in the past by both industry and the Government. The current language at FAR 31.204(c) was adopted instead, and the "unallowable under other paragraphs" statements in individual cost principles were retained. The Councils agree with the original drafters of the current FAR 31.205–6(a)(5) that this language is needed to avoid a situation in which activity that is specifically designated unallowable in another cost principle becomes allowable merely because it meets the criteria for allowable "compensation."

5. *Comment: Modify proposed FAR 31.205–6(a)(6)(i) (partners and sole proprietors).* Reinstate the following portion of the current language included in FAR 31.205–6(b)(2)(i): "Compensation in lieu of salary for services rendered by partners and sole proprietors will be allowed to the extent that it is reasonable and does not constitute a distribution of profits." This insertion would become 31.205–6(a)(6)(i)(C). "Without this re-instatement costs previously allowed could become unallowable since there are instances where these costs are not distribution of profits and the deductible amount is zero."

Councils' response: Partially concur. Historically, the tax deductibility limitation on allowable compensation in the cost principle is solely for closely held corporations. The Councils did not intend to change the allowability of costs in this area. However, the proposed rule inadvertently removed the qualifying phrase for "closely held corporations." In addition, the editorial restructuring unintentionally changed the allowability of costs covered by this subsection. Accordingly, the Councils have revised FAR 31.205–6(a)(6) to clarify and rectify this situation.

6. *Comment: Remove phrase in proposed FAR 31.205–6(a)(6)(ii)(A) (distribution of profits).* Remove the unnecessary phrase "which is not an allowable cost."

Councils' response: Do not concur. The Councils' rationale for keeping this phrase is to affirm the unallowability of profit distributions.

7. *Comment: Revise proposed FAR 31.205–6(b)(1) (labor-management agreements).* Reposition the word "negotiated" and add the word "set" to the first sentence.

Councils' response: Do not concur. The Councils do not believe it improves the readability of this paragraph.

8. *Comment: Express rationale for deletion of current FAR 31.205–6(c)(1) and (c)(2) (unusual conditions).* "To make clear the contractor still has the opportunity to justify cost and consideration of unusual conditions(,) include express reason for language deletion of original rule sections (c)(1) and (c)(2)."

Councils' response: These paragraphs (c)(1) and (c)(2) were deleted because such guidance is not necessary in the cost principle.

9. *Comment: Revise proposed FAR 31.205–6(b)(2) (total compensation).* Revise FAR 31.205–6(b)(2) to reflect the concept that reasonableness of compensation should be reviewed at the total compensation plan(s) level and not at an individual employee or job class level.

Councils' response: Do not concur. Contractors should be able to determine their own mix of wages, bonuses, and benefits to fit the needs of their business and workforce. The Councils believe that compensation should be reviewed for reasonableness in total by employee or job class of employee and that "offsets" are implied in this concept. It should be noted that the concept of "review of total compensation reasonableness" does not waive the Government's right to review individual compensation elements in order to determine total reasonableness. It is impossible to determine the reasonableness of total compensation without reviewing individual compensation elements because reliable surveys of "total compensation" do not exist.

10. *Comment: Revise proposed FAR 31.205–6(b)(2) (ACO consideration).* Eliminate ACO consideration of the listed reasonableness factors and rely only on FAR 31.201–3 for determining reasonableness since rule enforcement should not vary according to individual ACO determination of relevancy. This list could cause misapplication, *e.g.*, have to consider all four factors in each instance. Restore original language related to proposed FAR 31.205–6(b)(2)(iv), if factors remain. New language is confusing, difficult to understand, and may lead to negative impacts.

Councils' response: Do not concur. In determining the reasonableness of compensation costs, both the criteria in FAR 31.201–3 and the criteria in FAR 31.205–6(b) should be used. The concept of listing various factors to be considered by the ACO has been in the cost principle for many years. The relevancy determination is an important and proper ACO function. The cost principle should continue to include coverage on the factors to be used in determining reasonableness, as well as the authority of the contracting officer to determine how to weigh such factors. We believe the proposed language is very straightforward and easy to understand.

11. *Comment: Change language in proposed FAR 31.205–6(c)(2)(i) (valuation date).* Suggest adding the phrase "to the employee" at FAR 31.205–6(c)(2)(i) to make clear that the award date is the date that compensation (in the form of securities) is awarded to the employee.

Councils' response: Do not concur. The proposed rule is basically the same language as in the current FAR. We merely deleted the term "measurement date" since the definition already included in the cost principle, *i.e.*, "first date the number of shares awarded is known," is more precise. The proper measurement date is upon the award of the stock; however, this award may be to an employee or to another entity, such as a trust. The respondent's recommended change would radically alter the current valuation methodology.

12. *Comment: Delete proposed FAR 31.205–6(6)(d) (Income tax differential pay).* Affirmative statements of allowability, such as that included in FAR 31.205–6(d)(1) for foreign differential pay, should not be included in the cost principles. In addition, the provision at FAR 31.205-6(d)(2) making domestic differential pay unallowable is not consistent with commercial practices or the allowability of foreign differential pay.

Councils' response: Do not concur. The Councils revised this paragraph to apply only to the allowability of differential pay to cover income tax increases due to foreign or domestic assignments. Normally, affirmative statements of allowability are not value-added in a cost principle. However, in this case, coverage making foreign income tax differentials explicitly allowable should remain. If there were no coverage on foreign differentials, reviewers might use FAR 31.204(c) to find the closest cost principle (domestic differentials) and improperly disallow the costs of foreign differentials. The Councils continue to believe domestic income tax differentials should be unallowable and do not agree with the respondent's argument that the treatment of domestic differentials has to be consistent with the treatment of foreign differentials. We continue to believe that there should be an incentive for employees to accept foreign assignments.

13. *Comment: Delete proposed FAR 31.205–6(e) (Bonuses and incentive compensation).* Specific limitations on bonuses and incentives are not necessary because these situations are covered by the general reasonableness provisions of FAR 31.201–3(b)(2), generally accepted sound business practices, and the executive compensation cap at FAR 31.205–6(p). "Streamlining should have the goal of defining what is unallowable; illustration of what is allowable makes regulation excessively detailed and cannot be comprehensive." There is no need to state in the proposed FAR 31.205–6(e)(1)(ii) that the basis of the award must be supported, since adequate documentation is required for all costs. In addition, the proposed paragraph (e)(2) at FAR 31.205–6 regarding deferred bonus and incentive compensation payment is not needed.

Councils' response. Do not concur. We have deleted those parts (*e.g.*, the listing of various types of incentive compensation) that the Councils view as unnecessary. It is important for the cost principle to continue to explicitly require that "the basis for the award is supported" in order for the cost to be allowable. This requirement for documenting the basis for the payment is separate and distinct from documenting that the payment was made. In addition, the proposed language at FAR 31.205–6(e)(2) is necessary to ensure deferred bonus payments are subject to both the incentive compensation and the deferred compensation allowability criteria.

However, this final rule is deleting the qualifying phrase "based on production, cost reduction, or efficient performance" which is current in the proposed rule at 31.205–6(e)(1). Although we generally agree that such criteria may be good standards for determining allowability, we do not believe that the current rule or proposed rule actually accomplishes this. The wording of the current cost principle or proposed rule may be read as not covering an incentive payment if it doesn't fall within one of these three criteria, although this is clearly not the intent.

14. *Comment: Delete proposed FAR 31.205–6(f) except for legislative coverage at (f)(5) (Severance pay).* The deleted portion is adequately covered by the reasonableness criteria at FAR 31.201–3.

Councils' response: Do not concur. This paragraph makes it clear that, although severance pay must conform to the general reasonableness criteria of FAR 31.201–3, it must also conform to the more specific provisions contained in this cost principle.

15. *Comment: Deletion of "designee" in FAR 31.205–6(f)(5).* To avoid confusion, suggest that the express reason for deleting the term "designee" in the waiver provision of the proposed FAR 31.205–6(f)(5) be explained.

Councils' response: The term "or designee" is unnecessary because paragraph (b) under FAR 1.108, FAR conventions, states that "each authority is delegable unless specifically stated otherwise (see 1.102–3(b))." Accordingly, the term has been deleted from the final rule at FAR 31.205–6(g)(6), FAR 37.113–1(a), and FAR 37.113–2(b). To avoid any possible ambiguity in the clauses, "head of the agency, or designee," was changed to "agency" at FAR provision 52.237–8(a) and (b).

16. *Comment: Modify proposed FAR 31.205–6(g) (Backpay).* Replace the language at FAR 31.205–6(g) with the following sentence: "Backpay resulting from violations of Federal labor laws or the Civil Rights Act of 1964 other than that for work performed is unallowable." Under the current rule, the "backpay" provisions do not apply unless and until there is a violation of Federal labor laws or the 1964 Civil Rights Act. Until such a violation is found by a court, compensation costs are not covered by these backpay provisions and they are allowable to the extent they are reasonable as defined by the general reasonableness provisions at FAR 31.201–3 and not limited by additional compensation for work performed. This proposed change could be construed to expand the definition of backpay to now cover retroactive adjustment to salaries or wages for those instances in which there has been no finding of a violation of the 1964 Civil Rights Act or other Federal labor laws and limits recovery to the additional compensation for work performed.

Contractors are currently being reimbursed for prudent decisions to save litigation expense by settling wrongful discharge cases for nominal amounts. It is in the Government's interest to continue to incentivize contractors to make prudent decisions. If the Government begins disallowing all settlements as unallowable "backpay," contractors may be incentivized to spend more allowable money litigating instead of settling.

Councils' response. Do not concur. The Councils rewrote this paragraph to improve its clarity without changing its meaning. Our intent was to emphasize that backpay for underpaid work is the only allowable retroactive adjustment, subject to the specific criteria listed in this paragraph. The current language might be improperly interpreted to mean that if a survey shows an employee is underpaid in a particular year, the contractor could make that underpayment up in a future year. Accordingly, we revised the language of the regulation to preclude such an interpretation.

Backpay for underpaid work that does not fall under the current FAR 31.205–6(h) criteria is unallowable, and the proposed FAR 31.205–6(g) language would not change that fact. The respondent's argument that all settlements would become unallowable is not correct. That part of the settlement that represents backpay for work actually performed is allowable.

17. *Comment: Eliminate FAR 31.205–6(m) (Fringe benefits).* Paragraph (m)(1) is covered by the general reasonableness provisions at FAR 31.201–3, and definitions and examples of allowable cost are not needed, only identification of unallowable cost. "List[s] of compensation elements have been eliminated throughout and should be eliminated here as well." Paragraph (m)(2), which covers the personal use of company furnished automobiles, should be eliminated unless legislated.

Councils' response. Do not concur. This paragraph needs to be retained as it includes needed criteria for allowability and not just general reasonableness criteria. The language on company furnished automobiles is required by 10 U.S.C. 2324(f)(1)(o).

18. *Comment: Eliminate FAR 31.206–6(n) (Employee rebate and purchase discount plans).* In an effort to move toward commercial practice, suggest the elimination of 31.205–6(n) "on the basis of immateriality and not cost efficient accounting." Also, employee rebates and purchase discounts are sales reductions and not compensation cost.

Councils' response. Do not concur. Employee rebates and discounts should be considered as a sales reduction; however, Generally Accepted Accounting Principles do allow such costs to be treated as compensation in some limited cases. Therefore, we retained this provision to prevent such sales reductions from being claimed as compensation costs.

19. *Additional change: Reinstate and revise FAR 31.205–6(g)(2)(ii).* This paragraph was deleted in the proposed rule because it was thought to be covered under FAR 31.201–4, Determining allocability. However, upon further analysis, the Councils have reinstated FAR 31.205–6(g)(2)(ii) (as FAR 31.205–6(g)(4) in the final rule) because the language exceeds the requirement stated in FAR 31.201–4 by expressly identifying what method equates to a proper allocation. The specific identification of what constitutes an allocable allocation of normal severance pay has worked and will continue to work to reduce disputes. The paragraph has been revised, however, to enhance its clarity.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle discussed in this rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 22, 31, 37, and 52

Government procurement.

Dated: July 16, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 22, 31, 37, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 22, 31, 37, and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.101–2 [Amended]

■ 2. Amend section 22.101–2 in the last sentence of paragraph (a) by removing "31.205–6(c)" and adding "31.205–6(b)" in its place.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 3. Amend section 31.001 by adding, in alphabetical order, the definition "Compensation for personal services" to read as follows:

31.001 Definitions.

* * * * *

Compensation for personal services means all remuneration paid currently or accrued, in whatever form and whether paid immediately or deferred, for services rendered by employees to the contractor.

* * * * *

■ 4. Amend section 31.205–6 by—

■ a. Revising paragraphs (a) through (h);

■ b. Removing the word "subdivisions" from the last sentence of the introductory text of paragraph (j)(7) and adding "paragraphs" in its place; and removing the word "subdivision" from paragraph (j)(8)(iii) and adding "paragraph" in its place;

■ c. Removing the word "section" from the introductory text of paragraph (o)(2) and adding "subsection" in its place; and removing the word "subdivision" from the first sentence of paragraph (o)(5) and adding "paragraph" in its place; and

d. Removing the colon from the end of the introductory text of paragraph (p)(2) and adding "—" in its place.

The revised text reads as follows:

31.205–6 Compensation for personal services.

(a) *General.* Compensation for personal services is allowable subject to the following general criteria and additional requirements contained in other parts of this cost principle:

(1) Compensation for personal services must be for work performed by the employee in the current year and must not represent a retroactive adjustment of prior years' salaries or wages (but see paragraphs (g), (h), (j), (k), (m), and (o) of this subsection).

(2) The total compensation for individual employees or job classes of employees must be reasonable for the work performed; however, specific restrictions on individual compensation elements apply when prescribed.

(3) The compensation must be based upon and conform to the terms and conditions of the contractor's established compensation plan or practice followed so consistently as to imply, in effect, an agreement to make the payment.

(4) No presumption of allowability will exist where the contractor introduces major revisions of existing compensation plans or new plans and the contractor has not provided the cognizant ACO, either before implementation or within a reasonable period after it, an opportunity to review the allowability of the changes.

(5) Costs that are unallowable under other paragraphs of this Subpart 31.2 are not allowable under this subsection 31.205–6 solely on the basis that they constitute compensation for personal services.

(6)(i) Compensation costs for certain individuals give rise to the need for special consideration. Such individuals include:

(A) Owners of closely held corporations, members of limited liability companies, partners, sole proprietors, or members of their immediate families; and

(B) Persons who are contractually committed to acquire a substantial financial interest in the contractor's enterprise.

(ii) For these individuals, compensation must—

(A) Be reasonable for the personal services rendered; and

(B) Not be a distribution of profits (which is not an allowable contract cost).

(iii) For owners of closely held companies, compensation in excess of the costs that are deductible as compensation under the Internal Revenue Code (26 U.S.C.) and regulations under it is unallowable.

(b) *Reasonableness*—(1) *Compensation pursuant to labor-management agreements.* If costs of compensation established under "arm's length" labor-management agreements negotiated under the terms of the Federal Labor Relations Act or similar state statutes are otherwise allowable, the costs are reasonable unless, as applied to work in performing Government contracts, the costs are unwarranted by the character and circumstances of the work or discriminatory against the Government. The application of the provisions of a labor-management agreement designed to apply to a given set of circumstances and conditions of employment (*e.g.*, work involving extremely hazardous activities or work not requiring recurrent use of overtime) is unwarranted when applied to a Government contract involving significantly different circumstances and conditions of employment (*e.g.*, work involving less hazardous activities or work continually requiring use of overtime). It is discriminatory against the Government if it results in employee compensation (in whatever form or name) in excess of that being paid for similar non-Government work under comparable circumstances.

(2) *Compensation not covered by labor-management agreements.* Compensation for each employee or job class of employees must be reasonable for the work performed. Compensation is reasonable if the aggregate of each measurable and allowable element sums to a reasonable total. In determining the reasonableness of total compensation, consider only allowable individual elements of compensation. In addition to the provisions of 31.201–3, in testing the reasonableness of compensation for particular employees or job classes of employees, consider factors determined to be relevant by the contracting officer. Factors that may be relevant include, but are not limited to, conformity with compensation practices of other firms—

(i) Of the same size;

(ii) In the same industry;

(iii) In the same geographic area; and

(iv) Engaged in similar non-Government work under comparable circumstances.

(c) [Reserved]

(d) *Form of payment.* (1) Compensation for personal services includes compensation paid or to be paid in the future to employees in the form of—

(i) Cash;

(ii) Corporate securities, such as stocks, bonds, and other financial instruments (see paragraph (d)(2) of this subsection regarding valuation); or

(iii) Other assets, products, or services.

(2) When compensation is paid with securities of the contractor or of an affiliate, the following additional restrictions apply:

(i) Valuation placed on the securities is the fair market value on the first date the number of shares awarded is known, determined upon the most objective basis available.

(ii) Accruals for the cost of securities before issuing the securities to the employees are subject to adjustment according to the possibilities that the employees will not receive the securities and that their interest in the accruals will be forfeited.

(e) *Income tax differential pay.* (1) Differential allowances for additional income taxes resulting from foreign assignments are allowable.

(2) Differential allowances for additional income taxes resulting from domestic assignments are unallowable. (However, payments for increased employee income or Federal Insurance Contributions Act taxes incident to allowable reimbursed relocation costs are allowable under 31.205–35(a)(10).)

(f) *Bonuses and incentive compensation.* (1) Bonuses and incentive compensation are allowable provided the—

(i) Awards are paid or accrued under an agreement entered into in good faith between the contractor and the employees before the services are rendered or pursuant to an established plan or policy followed by the contractor so consistently as to imply, in effect, an agreement to make such payment; and

(ii) Basis for the award is supported.

(2) When the bonus and incentive compensation payments are deferred, the costs are subject to the requirements of paragraphs (f)(1) and (k) of this subsection.

(g) *Severance pay.* (1) Severance pay is a payment in addition to regular salaries and wages by contractors to workers whose employment is being involuntarily terminated. Payments for early retirement incentive plans are covered in paragraph (j)(7) of this subsection.

(2) Severance pay is allowable only to the extent that, in each case, it is required by—

(i) Law;

(ii) Employer-employee agreement;

(iii) Established policy that constitutes, in effect, an implied agreement on the contractor's part; or

(iv) Circumstances of the particular employment.

(3) Payments made in the event of employment with a replacement contractor where continuity of employment with credit for prior length of service is preserved under substantially equal conditions of employment, or continued employment by the contractor at another facility, subsidiary, affiliate, or parent company of the contractor are not severance pay and are unallowable.

(4) Actual normal turnover severance payments shall be allocated to all work performed in the contractor's plant. However, if the contractor uses the accrual method to account for normal turnover severance payments, that method will be acceptable if the amount of the accrual is—

(i) Reasonable in light of payments actually made for normal severances over a representative past period; and

(ii) Allocated to all work performed in the contractor's plant.

(5) Abnormal or mass severance pay is of such a conjectural nature that accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, the Government will consider allowability on a case-by-case basis.

(6) Under 10 U.S.C. 2324(e)(1)(M) and 41 U.S.C. 256(e)(1)(M), the costs of severance payments to foreign nationals employed under a service contract performed outside the United States are unallowable to the extent that such payments exceed amounts typically paid to employees providing similar services in the same industry in the United States. Further, under 10 U.S.C. 2324(e)(1)(N) and 41 U.S.C. 256(e)(1)(N), all such costs of severance payments that are otherwise allowable are unallowable if the termination of employment of the foreign national is the result of the closing of, or the curtailment of activities at, a United States facility in that country at the request of the government of that country; this does not apply if the closing of a facility or curtailment of activities is made pursuant to a status-of-forces or other country-to-country agreement entered into with the government of that country before November 29, 1989. 10 U.S.C. 2324(e)(3) and 41 U.S.C. 256(e)(2) permit the head of the agency to waive these cost allowability limitations under certain circumstances (see 37.113 and the solicitation provision at 52.237–8).

(h) *Backpay.* Backpay is a retroactive adjustment of prior years' salaries or wages. Backpay is unallowable except as follows:

(1) Payments to employees resulting from underpaid work actually performed are allowable, if required by a negotiated settlement, order, or court decree.

(2) Payments to union employees for the difference in their past and current wage rates for working without a contract or labor agreement during labor management negotiation are allowable.

(3) Payments to nonunion employees based upon results of union agreement negotiation are allowable only if—

(i) A formal agreement or understanding exists between management and the employees concerning these payments; or

(ii) An established policy or practice exists and is followed by the contractor so consistently as to imply, in effect, an agreement to make such payments.

PART 37—SERVICE CONTRACTING

■ 5. Amend section 37.113–1 by revising the introductory text of paragraph (a) to read as follows:

37.113–1 Waiver of cost allowability limitations.

(a) The head of the agency may waive the 31.205–6(g)(6) cost allowability limitations on severance payments to foreign nationals for contracts that—

* * * * *

37.113–2 [Amended]

■ 6. Amend section 37.113–2 in paragraph (b) by removing ", or designee,".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Amend section 52.237–8 by revising the date of the provision, paragraph (a) and the introductory text of paragraph (b) of the provision to read as follows:

52.237–8 Restriction on Severance Payments to Foreign Nationals.

* * * * *

Restriction on Severance Payments to Foreign Nationals (Aug 2003)

(a) The Federal Acquisition Regulation (FAR), at 31.205-6(g)(6), limits the cost allowability of severance payments to foreign nationals employed under a service contract performed outside the United States unless the agency grants a waiver pursuant to FAR 37.113–1 before contract award.

(b) In making the determination concerning the granting of a waiver, the agency will determine that—

52.237–9 [Amended]

■ 8. Amend section 52.237–9 by revising the date of the clause to read "(Aug 2003); and by removing from paragraph (a) of the clause "31.205–6(g)(3)" and adding "31.205–6(g)(6) in its place.

[FR Doc. 03–18536 Filed 7–23–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 23 and 52

[FAC 2001–15; FAR Case 2000–005; Item V]

RIN 9000–AJ44

Federal Acquisition Regulation; Leadership in Environmental Management (E.O. 13148)

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

DATES: *Effective Date:* August 25, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Craig R. Goral, Procurement Analyst, at (202) 501–3856. Please cite FAC 2001–15, FAR case 2000–005.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 55670, August 29, 2002, with a request for comments. Two respondents submitted public comments. A discussion of the comments is provided below. Differences between the proposed and the final rule are discussed in paragraph 1 below.

1. *Comment:* One respondent recommended the following changes to FAR 23.1005:

a. Insert "or plans to implement" between "implemented" and "an EMS" at FAR 23.1005(b)(1) and (b)(2)(i);

b. Change "contractors" to "the contractor" at 23.1005(c)(1); and

c. Remove "FCA" and insert "facility compliance audit or an environmental management system audit" at FAR 23.1005(c)(2).

Councils' Response:

a. Concur. As proposed, FAR 23.1005 requires the use of FAR clause 52.223–5 at facilities with an environmental management system (EMS). The clarification expands the prescription for the use of the clause to include situations where an EMS is contemplated.

b. *Partially concur.* The Councils agree that there is a grammatical error, but corrected the error by substituting the term "contractor activities" for "contractors to conduct activities."

c. *Concur.* The inclusion of the phrase "or an environmental management system audit" acknowledges an agency's option to conduct an EMS audit in lieu of a facility compliance audit (FCA) as provided in section 402(b) of Executive Order 13148.

2. *Comment:* The respondent recommended that the FAR rule be reviewed to ensure that, wherever practicable, the FAR actively supports implementation of EMS at Federal facilities including, where the facility or agency deems appropriate, participation in the EMS by contracting entities, including suppliers. The FAR change requires more than the mere provision of information for implementation of an EMS, as the proposed rule now states, to instead include active participation in the EMS, where the facility or agency deems it necessary. At a minimum, the language should state that vendors, contractors, and/or subcontractors are required to be consistent with agency/bureau and/or facility EMS policies.

Councils' Response: Section 305(c) of E.O. 13148 states: "The Federal Acquisition Regulation (FAR) Council shall develop acquisition policies and procedures for contractors to supply agencies with all information necessary for compliance with this order." The Councils believe that the rule satisfies this requirement.

Per section 306 of E.O. 13148, an Interagency Environmental Leadership Workgroup "shall develop policies and guidance required by this order and member agencies shall facilitate implementation of the requirements of this order in their respective agencies." While the Councils recognize and fully appreciate the need for EMS policy and standards, these agency/bureau and/or facility EMS policies will vary among agencies/bureaus and will likely evolve as well. Additionally, the level of participation required by contractors/subcontractors will be contract-specific. Therefore, requirements for EMS participation by contractors/subcontractors would have to be identified in the contract itself. The recommended language does not serve this purpose and would lead to contractual ambiguities.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because as required by E.O. 13148, this rule does not change the current policies and procedures in FAR Subparts 23.8, 23.9, and 23.10. The final rule provides a means for agencies to obtain contractor information for the implementation of EMSs and the completion of FCAs at certain Federal facilities. Agencies will determine which facilities are appropriate for EMS implementation. Federal facilities include Government-owned, contractor-operated facilities, and Government-owned facilities on which multiple contractors perform services. The criteria for performing EMSs indicate that large, rather than small, Federal facilities are more likely to be included in EMSs, and these large Federal facilities are more likely to be operated by large businesses. If, on the other hand, several contractors are performing services on a Government-owned facility, many of the services performed by small businesses fall within the category of administrative support services considered "environmentally clean" and not included in EMSs. For similar reasons, the requirement pertaining to FCAs is not expected to have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the final rule contains information collection requirements. These changes to the FAR will increase the information collection requirement currently approved under Office of Management and Budget Control Number 9000–0147, since the rule requires contractors to provide information needed by a Federal facility to implement an EMS (Alternate I of FAR 52.223–5) and to complete an FCA (Alternate II of FAR 52.223–5). Accordingly, the FAR Secretariat has forwarded a request for approval of the increased information collection requirement concerning Leadership in Environmental Management (E.O. 13148) to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Interested parties may obtain copies of the form and supporting documents increasing the burden hours from the FAR Secretariat by requesting OMB Control Number 9000–0147, Leadership in Environmental Management (E.O. 13148).

List of Subjects in 48 CFR Parts 23 and 52

Government procurement.

Dated: July 16, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 23 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 23 and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

■ 2. Add section 23.001 to read as follows:

23.001 Definition.

Toxic chemical, as used in this part, means a chemical or chemical category listed in 40 CFR 372.65.

■ 3. Amend section 23.702 by revising paragraph (d) to read as follows:

23.702 Authorities.

* * * * *

(d) Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

* * * * *

■ 4. Amend section 23.801 by revising paragraph (b) to read as follows:

23.801 Authorities.

* * * * *

(b) Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

* * * * *

23.803 [Amended]

■ 5. Amend section 23.803 in the introductory text of paragraph (b) by removing "ensure that acquisitions"; and in paragraph (b)(1) by removing "Executive Order 12843" and adding "Executive Order 13148" in its place.

Subpart 23.9—Contractor Compliance With Toxic Chemical Release Reporting

■ 6. Revise the heading of Subpart 23.9 as set forth above.

■ 7. Revise section 23.901 to read as follows:

23.901 Purpose.

This subpart implements the requirements of Executive Order (E.O.) 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

■ 8. In section 23.902, add a sentence to the end of paragraph (b) to read as follows:

23.902 General.

* * * * *

(b) * * * See EPA's Web site at *http://www.epa.gov/tri* for guidance.

23.903 [Amended]

■ 9. In section 23.903, amend paragraph (a) by removing "(including all options)";

23.904 [Removed]

23.905 through 23.907 [Redesignated as 23.904 through 23.906]

■ 10. Remove section 23.904 and redesignate sections 23.905, 23.906, and 23.907 as 23.904, 23.905, and 23.906, respectively;

■ 11. In the newly designated section 23.905, revise paragraphs (a) introductory text and (a) (2) (iv), and amend paragraph (d) by removing "E.O. 12969" and adding "E.O. 13148" in its place. The revised text reads as follows:

23.905 Requirements.

(a) E.O. 13148 requires that solicitations for competitive contracts expected to exceed $100,000 include, to the maximum extent practicable, as an award eligibility criterion, a certification by an offeror that, if awarded a contract, either—

* * * * *

(2) * * *

(iv) Do not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:

(A) Major group code 10 (except 1011, 1081, and 1094.

(B) Major group code 12 (except 1241).

(C) Major group codes 20 through 39.

(D) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).

(E) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, *et seq.*), or 5169, or 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

* * * * *

■ 12. In the newly designated section 23.906, revise paragraph (a), and amend paragraph (b) by removing "(including all options)". The revised text reads as follows:

23.906 Solicitation provision and contract clause.

* * * * *

(a) Insert the provision at 52.223–13, Certification of Toxic Chemical Release Reporting, in all solicitations for competitive contracts expected to exceed $100,000 and competitive 8(a) contracts, unless it has been determined in accordance with 23.905(b) that to do so is not practicable; and

* * * * *

■ 13. Revise Subpart 23.10, consisting of sections 23.1000 through 23.1005, to read as follows:

Subpart 23.10—Federal Compliance With Right-to-Know Laws and Pollution Prevention Requirements

23.1000 Scope.

This subpart prescribes policies and procedures for obtaining information needed for Government—

(a) Compliance with right-to-know laws and pollution prevention requirements;

(b) Implementation of an environmental management system (EMS) at a Federal facility; and

(c) Completion of facility compliance audits (FCAs) at a Federal facility.

23.1001 Authorities.

(a) Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001–11050 (EPCRA).

(b) Pollution Prevention Act of 1990, 42 U.S.C. 13101–13109 (PPA).

(c) Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

23.1002 Applicability.

The requirements of this subpart apply to facilities owned or operated by an agency in the customs territory of the United States.

23.1003 Definitions.

As used in this subpart—

Federal agency means an executive agency (see 2.101).

Priority chemical means a chemical identified by the Interagency Environmental Leadership Workgroup or, alternatively, by an agency pursuant to section 503 of Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

23.1004 Requirements.

(a) E.O. 13148 requires Federal facilities to comply with the provisions of EPCRA and PPA.

(b) Pursuant to E.O. 13148, and any agency implementing procedures, every new contract that provides for performance on a Federal facility shall require the contractor to provide information necessary for the Federal agency to comply with the—

(1) Emergency planning and toxic release reporting requirements in EPCRA, PPA, and E.O. 13148;

(2) Toxic chemical, priority chemical, and hazardous substance release and use reduction goals of sections 502 and 503 of Executive Order 13148; and

(3) Requirements for EMSs and FCAs if the place of performance is at a Federal facility designated by the agency.

23.1005 Contract clause.

(a) Insert the clause at 52.223–5, Pollution Prevention and Right-to-Know Information, in solicitations and contracts that provide for performance, in whole or in part, on a Federal facility.

(b) Use the clause with its Alternate I if the contract provides for contractor—

(1) Operation or maintenance of a Federal facility at which the agency has implemented or plans to implement an EMS; or

(2) Activities and operations—

(i) To be performed at a Government-operated Federal facility that has implemented or plans to implement an EMS; and

(ii) That the agency has determined are covered within the EMS.

(c) Use the clause with its Alternate II if—

(1) The contract provides for contractor activities on a Federal facility; and

(2) The agency has determined that the contractor activities should be included within the FCA or an environmental management system audit.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 14. Amend section 52.213–4 by revising the date of the clause and paragraph (b)(1)(vii) to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other than Commercial Items) (Aug 2003)

* * * * *

(b) * * *

(1) * * *

(vii) 52.223–5, Pollution Prevention and Right-to-Know Information (Aug 2003) (E.O. 13148) (Applies to services performed on Federal facilities).

* * * * *

■ 15. Revise section 52.223–5 to read as follows:

52.223–5 Pollution Prevention and Right-to-Know Information.

As prescribed in 23.1005, insert the following clause:

Pollution Prevention and Right-to-Know Information (Aug 2003)

(a) *Definitions.* As used in this clause—

Priority chemical means a chemical identified by the Interagency Environmental Leadership Workgroup or, alternatively, by an agency pursuant to section 503 of Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management.

Toxic chemical means a chemical or chemical category listed in 40 CFR 372.65.

(b) Executive Order 13148 requires Federal facilities to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001–11050) and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101–13109).

(c) The Contractor shall provide all information needed by the Federal facility to comply with the following:

(1) The emergency planning reporting requirements of section 302 of EPCRA.

(2) The emergency notice requirements of section 304 of EPCRA.

(3) The list of Material Safety Data Sheets, required by section 311 of EPCRA.

(4) The emergency and hazardous chemical inventory forms of section 312 of EPCRA.

(5) The toxic chemical release inventory of section 313 of EPCRA, which includes the reduction and recycling information required by section 6607 of PPA.

(6) The toxic chemical, priority chemical, and hazardous substance release and use reduction goals of sections 502 and 503 of Executive Order 13148.

(End of clause)

Alternate I (Aug 2003). As prescribed in 23.1005(b), add the following paragraph (c)(7) to the basic clause:

(c)(7) The environmental management system as described in section 401 of E.O. 13148.

Alternate II (Aug 2003). As prescribed in 23.1005(c), add the following paragraph (c)(7) to the basic clause. If Alternate I is also prescribed, renumber paragraph (c)(7) as paragraph (c)(8).

(c)(7) The facility compliance audits as described in section 402 of E.O. 13148.

■ 16. Amend section 52.223–13 by revising the introductory text, the date of the provision, and paragraphs (a), (b)(2)(i) and (b)(2)(iv) to read as follows:

52.223–13 Certification of Toxic Chemical Release Reporting.

As prescribed in 23.906(a), insert the following provision:

Certification of Toxic Chemical Release Reporting (Aug 2003)

(a) Executive Order 13148, of April 21, 2000, Greening the Government through Leadership in Environmental Management, requires submission of this certification as a prerequisite for contract award.

(b) * * *

(2) * * *

[ ] (i) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.65;

* * * * *

[ ] (iv) The facility does not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:

(A) Major group code 10 (except 1011, 1081, and 1094.

(B) Major group code 12 (except 1241).

(C) Major group codes 20 through 39.

(D) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).

(E) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, *et seq.*), 5169, 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

* * * * *

■ 17. Amend section 52.223–14 by revising the introductory text, the date of the clause, and paragraphs (b)(1) and (b)(4) to read as follows:

52.223–14 Toxic Chemical Release Reporting.

As prescribed in 23.906(b), insert the following clause:

Toxic Chemical Release Reporting (Aug 2003)

* * * * *

(b) * * *

(1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed in 40 CFR 372.65;

* * * * *

(4) The facility does not fall within the following Standard Industrial Classification (SIC) codes or their corresponding North American Industry Classification System sectors:

(i) Major group code 10 (except 1011, 1081, and 1094.

(ii) Major group code 12 (except 1241).

(iii) Major group codes 20 through 39.

(iv) Industry code 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce).

(v) Industry code 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C (42 U.S.C. 6921, *et seq.*)), 5169, 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); or

* * * * *

[FR Doc. 03–18537 Filed 7–23–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 2001–15; FAR Case 2001–024; Item VI]

RIN 9000–AJ42

Federal Acquisition Regulation; Selling Cost Principle

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) "selling costs" cost principle by restructuring the paragraphs and removing unnecessary and duplicative language to increase clarity.

DATES: *Effective Date:* August 25, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb at (202) 501–0650. Please cite FAC 2001–15, FAR case 2001–024.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 55682, August 29, 2002, with request for comments. One respondent submitted comments; a discussion of the comments is provided below. Differences between the proposed rule and final rule are discussed in paragraph B.2. below.

B. Public Comments

Clarity of the Cost Principle

1. *Comment: Revise proposed FAR 31.205–38(a).* The cost principle's readability and clarity can be improved by changing the second sentence of the proposed paragraph (a) from "The cost of any selling efforts other than those addressed in this cost principle are unallowable" to "The costs of selling efforts are allowable unless expressly identified as unallowable in this or any other cost principle." The proposed wording will be difficult to apply in the field. The respondent is unaware of any selling costs that are not already included in the cost principle.

Councils' response: Nonconcur. The sentence in question was simply moved from the current paragraph (d) to the beginning of the cost principle. The sentence is not new; it was originally included to comply with the provisions of section 911 of the Defense Procurement Improvement Act of 1985 (codified at 10 U.S.C. 2324 (f)(1)(J)), which required that the allowability of selling and marketing costs be clarified. At that time, Congress and the General Accounting Office (GAO) were concerned about potential negotiation of 50/50 splits of the costs in this area due to unclear wording of the cost principle. The intent was to ensure that any gray areas of selling costs would be disallowed, particularly the costs of broadly targeted selling and marketing. The current wording continues this intent.

Cost Principle Consistency

2. *Comment: Delete portion of proposed FAR 31.205–38(a).* The last sentence in the proposed paragraph (a) is not needed as it reiterates what is already included in 31.204(c) (Application of principles and procedures).

Councils' response: Partially concur. Do not agree that the intent of the sentence in question is adequately covered by 31.204(c). However, the Councils concluded that the objective of this sentence is already adequately achieved by the operation of the proposed paragraph (b) which directs the reader to other specific cost principles governing the allowability of the identified categories of costs, and the second sentence of the proposed paragraph (a) which makes any selling efforts other than those addressed in the cost principle unallowable. Therefore, the last sentence of paragraph (a) is deleted.

Cost Principle Elimination

3. *Comment: Delete proposed FAR 31.205–38.* With the exception of its last paragraph, the proposed cost principle defines selling costs and expressly states they are allowable or refers the reader to other cost principles for the determination of allowability of related costs. Therefore, consideration should be given to completely eliminating the cost principle, after moving the proposed paragraph (c) to another cost principle, possibly 31.205–33(f) (Professional and consultant service costs).

Councils' response: Nonconcur. This cost principle has disallowed and should continue to disallow all selling costs not made specifically allowable by it or the other cited cost principles. In addition, this cost principle clarifying the allowability of selling and marketing costs is statutorily required by 10 U.S.C. 2324(f)(1)(J) and 41 U.S.C. 256(f)(1)(J).

General Reformatting of FAR Part 31.205

4. *Comment:* The respondent also recommended that the Councils consider a general reformatting of FAR Part 31, Contract Cost Principles and Procedures. Specifically, consideration should be given to establishing a uniform structure for the selected costs detailed in FAR Subpart 31.205, which the respondent believes will increase the clarity and understanding of the cost principles and thereby reduce misinterpretation.

Councils' response: Nonconcur. The Councils are unaware of any significant clarity problems with the current FAR cost principles and see no benefit in this recommendation. While it is true that the cost principles do not all share an identical format, it does not follow that this makes them difficult to understand. Moreover, such a comprehensive revision of the cost principles could actually increase disputes by substituting new wording for longstanding, court-tested language.

Of the 48 current FAR cost principles, 16 are only one paragraph long, and 11 more are only two or three paragraphs long. The Councils question the need to "force-fit" such short cost principles into a uniform format, particularly in the absence of any significant clarity problems. Not only would the recommended general reformatting of the cost principles be difficult to accomplish, but it would also offer no obvious benefit to either industry or the Government.

The Councils recommend instead that industry continue to identify those individual cost principles which it

views as problematic and to provide specific proposals for appropriate revisions. It should be noted that the continuing Defense Procurement and Acquisition Policy initiative to reduce accounting and administrative burdens in the cost principles, without jeopardizing the Government's interests, has resulted in significant changes or deletions involving more than 20 different cost principles to date, including the recent major revisions to the relocation cost principle (FAR 31.205–35) that made employee "tax gross-ups" and spouse employment assistance payments allowable for the first time, as well as increased the maximum allowable lump-sum amount for miscellaneous expenses from $1,000 to $5,000. In addition, cost principle streamlining cases are currently in process regarding compensation (FAR 31.205–6), training and education (FAR 31.205–44), depreciation (FAR 31.205–11), expanded relocation lump-sum (FAR 31.205–35), and travel (FAR 31.205–46) costs. The Councils continue to believe that such a case-by-case cooperative effort with industry offers the best opportunity for meaningful change in this often controversial area.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle discussed in this rule.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: July 16, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 31 as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 1. The authority citation for 48 CFR part 31 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

31.205–1 [Amended]

■ 2. Amend section 31.205–1 in paragraph (f)(1) by removing from the parenthetical "31.205–38(c)" and adding "31.205–38(b)(5)" in its place.

31.205–12 [Amended]

■ 3. Amend section 31.205–12 in paragraph (a) by removing the word "generalized" and adding "general" in its place.

■ 4. Amend section 31.205–33 by revising the first sentence of the introductory text of paragraph (f); and removing the parenthetical sentence. The revised text reads as follows:

31.205–33 Professional and consultant service costs.

* * * * *

(f) Fees for services rendered are allowable only when supported by evidence of the nature and scope of the service furnished (see also 31.205–38(c)). * * *

* * * * *

■ 5. Revise section 31.205–38 to read as follows:

31.205–38 Selling costs.

(a) "Selling" is a generic term encompassing all efforts to market the contractor's products or services, some of which are covered specifically in other subsections of 31.205. The costs of any selling efforts other than those addressed in this cost principle are unallowable.

(b) Selling activity includes the following broad categories:

(1) *Advertising.* Advertising is defined at 31.205-1(b), and advertising costs are subject to the allowability provisions of 31.205–1(d) and (f).

(2) *Corporate image enhancement.* Corporate image enhancement activities, including broadly targeted sales efforts, other than advertising, are included within the definition of public relations at 31.205–1(a), and the costs of such efforts are subject to the allowability provisions at 31.205–1(e) and (f).

(3) *Bid and proposal costs.* Bid and proposal costs are defined at 31.205–18 and are subject to the allowability provisions of that subsection.

(4) *Market planning.* Market planning involves market research and analysis and general management planning concerned with development of the contractor's business. Long-range market planning costs are subject to the allowability provisions of 31.205–12. Other market planning costs are allowable.

(5) *Direct selling.* Direct selling efforts are those acts or actions to induce particular customers to purchase particular products or services of the contractor. Direct selling is characterized by person-to-person contact and includes such efforts as familiarizing a potential customer with the contractor's products or services, conditions of sale, service capabilities, etc. It also includes negotiation, liaison between customer and contractor personnel, technical and consulting efforts, individual demonstrations, and any other efforts having as their purpose the application or adaptation of the contractor's products or services for a particular customer's use. The cost of direct selling efforts is allowable.

(c) Notwithstanding any other provision of this subsection, sellers' or agents' compensation, fees, commissions, percentages, retainer or brokerage fees, whether or not contingent upon the award of contracts, are allowable only when paid to bona fide employees or established commercial or selling agencies maintained by the contractor for the purpose of securing business.

[FR Doc. 03–18538 Filed 7–23–03; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 39

[FAC 2001–15; FAR Case 2002–012; Item VII]

RIN 9000–AJ53

Federal Acquisition Regulation; Section 508 Micropurchase Exception Sunset Provision

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to convert this FAR case from an interim rule to a final rule without change. The final rule amends the FAR to extend the Electronic and Information Technology (section 508) micropurchase exception to October 1, 2004.

DATES: *Effective Date:* July 24, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900, or Ms. Angelena Moy, Case Manager, at (703) 602–1302. The TTY Federal relay number for further information is 1–800–877–8973. Please cite FAC 2001–15, FAR case 2002–012.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 67 FR 80321, December 31, 2002, that amended FAR 39.204(a) to extend the Electronic and Information Technology (EIT) micropurchase exception until October 1, 2004.

The 60-day comment period for the interim rule ended March 3, 2003. Public comments were received from four commenters. One commenter submitted comments that are not relevant and outside the scope of the rule. Another commenter, the American Foundation for the Blind (AFB), believes that the Government is not doing enough to resolve the small purchase problem so that an exception is not needed. The AFB also believes that the Government should create tools with questions and measurements for the Federal purchaser to utilize in determining accessibility.

The remaining two commenters fully support the rule. They also submitted their views on labeling products for micropurchases made using the Government purchase card, and one of the commenter also addressed how it accomplished its internal 508 training. Summaries of these views follow:

1. Suggested that many firms in the information technology industry are unwilling to make blanket statements on a product label regarding section 508 because interpretations of the standards and product information may vary, exposing companies to litigation under the False Claims Act.

2. Stated that creating a label that would provide sufficient information to Federal buyers would be difficult and expensive.

3. Stated that the majority of the Governmentwide purchase card purchases are generally made using the Internet or by phone, and it is unlikely that the Government buyer would see the label until after the purchase.

4. Recommended that, as an alternative to labeling, the Government purchaser use the Voluntary Product Accessibility Template (VPAT) as a tool in making an informed decision regarding accessibility.

5. Suggested that the VPAT assists the Government in meeting the Acquisition Planning and Market Research requirements established in FAR parts 7 and 10, respectively.

6. One commenter described their intensive efforts to train their sales forces to assist purchasers in making their accessibility determinations and to put in place systems that ensure engineers include accessibility as a key design requirement.

The above views will be considered before the Government formulates its next step regarding acquisition of electronic and information technology products and services under micropurchase procedures.

We applaud industry's efforts to build accessibility features into their products and their participation in making information about product features available by completing the VPAT. We encourage industry to continue to work toward a solution that will assist the Government purchase cardholder, who may have little technical knowledge regarding section 508, in purchasing products and services that meet the applicable accessibility standards.

The Federal Government is in continual collaboration with the Accessibility Forum to focus on long-term solutions that will assist the Government in making informed decisions about section 508-related procurements. We are hopeful that a solution can be found that will be agreeable to both industry and the Government.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because for purchases under $2,500 (a "micropurchase"), no competitive quotations have to be obtained and micropurchases are no longer reserved exclusively for small firms.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 39

Government procurement.

Dated: July 16, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

Interim Rule Adopted as Final Without Change

■ Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR part 39, which was published in the **Federal Register** at 67 FR 80321, December 31, 2002, as a final rule without change.

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

[FR Doc. 03–18539 Filed 7–23–03; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19 and 52

[FAC 2001–15; Item VIII]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation (FAR) in order to update references and make editorial changes.

DATES: *Effective Date:* July 24, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202)

501–4755, for information pertaining to status or publication schedules. Please cite FAC 2001–15, Technical Amendments.

List of Subjects in 48 CFR Parts 19 and 52

Government procurement.

Dated: July 16, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 19 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 19 and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 19—SMALL BUSINESS PROGRAMS

■ 2. Amend section 19.1005 by revising paragraph (a) to read as follows:

19.1005 Applicability.

(a) *Designated industry groups.*

NAICS code	NAICS description
	1. Construction (Except Dredging) Subsector 236—Construction of Buildings
236115	New Single-Family Housing Construction (except Operative Builders).
236116	New Multi-Family Housing Construction (except Operative Builders).
236117	New Housing Operative Builders.
236118	Residential Remodelers.
236210	Industrial Building Construction.
236220	Commercial and Institutional Building Construction.
	Subsector 237—Heavy and Civil Engineering Construction
237110	Water and Sewer Line and Related Structures Construction.
237120	Oil and Gas Pipeline and Related Structures Construction.
237130	Power and Communication Line and Related Structures Construction.
237210	Land Subdivision.
237310	Highway, Street, and Bridge Construction.
237990	Other Heavy and Civil Engineering Construction (except dredging).
	Subsector 238—Specialty Trade Contractors
238110	Poured Concrete Foundation and Structure Contractors.
238120	Structural Steel and Precast Concrete Contractors.
238130	Framing Contractors.
238140	Masonry Contractors.
238150	Glass and Glazing Contractors.
238160	Roofing Contractors.
238170	Siding Contractors.
238190	Other Foundation, Structure, and Building Exterior Contractors.
238210	Electrical Contractors.
238220	Plumbing, Heating, and Air-Conditioning Contractors.
238290	Other Building Equipment Contractors.
238310	Drywall and Insulation Contractors.
238320	Painting and Wall Covering Contractors.
238330	Flooring Contractors.
238340	Tile and Terrazzo Contractors.
238350	Finish Carpentry Contractors.
238390	Other Building Finishing Contractors.
238910	Site Preparation Contractors.
238990	All Other Specialty Trade Contractors.
	2. Non-Nuclear Ship Repair
336611	Ship Building and Repairing.
PSC J998	Non-nuclear Ship Repair (East) Ship Repair (including overhauls and conversions) performed on non-nuclear propelled and non-propelled ships east of the 108th meridian.
PSC J999	Non-nuclear Ship Repair (West) Ship Repair (including overhauls and conversions) performed on non-nuclear propelled and non-propelled ships west of the 108th meridian.
	3. Architectural and Engineering Services (Including Surveying and Mapping)
541310	Architectural Services or;
541330	Engineering Services.
PSC C111	Administrative and Service Buildings.
PSC C112	Airfield, Communication and Missile Facilities.
PSC C113	Educational Buildings.
PSC C114	Hospital Buildings.
PSC C115	Industrial Buildings.
PSC C116	Residential Buildings.
PSC C117	Warehouse Buildings.
PSC C118	Research and Development Facilities.
PSC C119	Other Buildings.
PSC C121	Conservation and Development.

NAICS code	NAICS description
PSC C122	Highways, Roads, Streets, Bridges and Railways.
PSC C123	Electric Power Generation (EPG).
PSC C124	Utilities.
PSC C129	Other Non-Building Structures.
PSC C130	Restoration.
PSC C211	Architect-Engineering Services (including landscaping, interior layout, and designing).
PSC C212	Engineering Drafting Services.
PSC C213	A&E Inspection Services (non-construction).
PSC C214	A&E Management Engineering Services.
PSC C215	A&E Production Engineering Services (including Design and Control, and Building Programming).
PSC C216	Marine Architect and Engineering Services.
PSC C219	Other Architect and Engineering Services.
541360	Geophysical Surveying and Mapping Services or;
541370	Surveying and Mapping (except Geophysical) Services.
PSC T002	Cartography Services.
PSC T004	Charting Services.
PSC T008	Photogrammetry Services.
PSC T009	Aerial Photographic Services.
PSC T014	Topography Services.
PSC R404	Land Surveys, Cadastral Services (non-construction).
	4. Refuse Systems and Related Services
562111	Solid Waste Collection or;
562119	Other Waste Collection or;
562219	Other Nonhazardous Waste Treatment and Disposal.
PSC S205	Trash/Garbage Collection Services—including Portable Sanitation Services.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.212–1 by revising the date of the provision and paragraph (i)(2)(ii)(B) to read as follows:

52.212–1 Instructions to Offerors–Commercial Items.

Instructions to Offerors—Commercial Items (July 2003)

* * * * *

(i) * * *

(2) * * *

(ii) * * *

(B) Through the DoDSSP Internet site at *http://dodssp.daps.mil.*

* * * * *

[FR Doc. 03–18540 Filed 7–23–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small entity compliance guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2001–15 which amends the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 2001–15 which precedes this document. These documents are also available via the Internet at *http://www.arnet.gov/far.*

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2001–15

Item	Subject	FAR case	Analyst
I	Elimination of Standard Form 129, Solicitation Mailing List Application	2001–032	De Stefano.
II	Energy-Efficient Standby Power Devices	2001–028	Smith.
III	Electronic Listing of Acquisition Vehicles Available For Use By More Than One Agency	2001–030	Zaffos.
IV	Compensation Cost Principle	2001–008	Loeb.
V	Leadership in Environmental Management (E.O. 13148)	2000–005	Goral.
VI	Selling Cost Principle	2001–024	Loeb.
VII	Section 508 Micropurchase Exception Sunset Provision	2002–012	Nelson.
VIII	Technical Amendments.		

Item I—Elimination of Standard Form 129, Solicitation Mailing List Application (FAR Case 2001–032)

This final rule removes the requirement for contracting offices to establish and maintain manual solicitation mailing lists and the need to use the Standard Form (SF) 129, Solicitation Mailing List Application. The purpose of the rule is to broaden use and reliance on e-business applications. It is expected that this rule will eliminate, in part, the need for contracting offices to maintain paper-based sources of contractor information.

Item II—Energy-Efficient Standby Power Devices (FAR Case 2001–028)

This final rule implements Executive Order 13221, of July 31, 2001, Energy-Efficient Standby Power Devices, by providing guidance on energy-efficient standby power devices. The rule also clarifies requirements for the purchase of recovered material. The requirements of this rule apply to contracting officers that purchase products that use external standby power devices or that contain an internal standby power function, and products that are composed of recovered material. Government contracting and technical personnel will need to ensure that proposed acquisitions comply with the Government preference for energy-efficient products.

Item III—Electronic Listing of Acquisition Vehicles Available For Use By More Than One Agency (FAR Case 2001–030)

This final rule provides the regulatory underpinning for the operation and use of an online directory to facilitate greater awareness of contracts available for multiple agency use. The rule—

1. Adds a new Subpart 5.6, Publicizing Multi-Agency Use Contracts, that—

(a) Provides the Internet address to access the database;

(b) Requires agencies to enter information into the database within ten days of award of a Governmentwide acquisition contract (GWAC), multi-agency contract, Federal Supply Schedule contract, or other procurement instrument intended for use by multiple agencies including blanket purchase agreements under Federal Supply Schedule contracts; and

(c) Requires contracting activities to enter information into the database by October 31, 2003, on all existing contracts and other procurement instruments intended for use by multiple agencies, except for those expiring on or before June 1, 2004.

2. Adds language at FAR 7.105(b)(1) to consider the sources contained in the database as prospective sources of supplies and services.

3. Adds language at FAR 10.002(b)(2)(iv) to encourage querying the database during market research for information relevant to agency acquisitions.

Item IV—Compensation Cost Principle (FAR Case 2001–0)

This final rule amends the FAR to revise the "compensation for personal services" cost principle by removing unnecessary and duplicative language and restructuring it. This rule is of particular interest to contracting officers who use cost analysis to price contracts and modifications, and who determine or negotiate reasonable costs in accordance with a clause of a contract, *e.g.*, price revision of fixed-price incentive contracts, terminated contracts, indirect cost rates.

Item V—Leadership in Environmental Management (E.O. 13148) (FAR Case 2000–005)

This final rule provides policies and procedures for obtaining contractor information so that agencies can implement environmental management systems and complete facility compliance audits. The rule implements Executive Order 13148 of April 21, 2000, Greening the Government through Leadership in Environmental Management. The requirements of this rule apply to facilities owned or operated by Federal agencies, except those facilities located outside the United States and its outlying areas.

Item VI—Selling Cost Principle (FAR Case 2001–024)

This final rule amends the FAR to revise the "selling costs" cost principle by restructuring the paragraphs and removing unnecessary and duplicative language to increase clarity. The rule does not change the allowability of selling costs. The case was initiated at the request of the Aerospace Industries Association (AIA). This rule is of particular interest to contractors and contracting officers who use cost analysis to price contracts and modifications, and who determine or negotiate reasonable costs in accordance with a clause of a contract, *e.g.*, price revision of fixed-price incentive contracts, terminated contracts, or indirect cost rates.

Item VII—Section 5 Micropurchase Exception Sunset Provision (FAR Case 2002–012)

The interim rule published in the **Federal Register** at 67 FR 80321, December 31, 2002, is converted to a final rule, without change, to extend the Electronic and Information Technology (Section 5) micropurchase exception to October 1, 2004.

Item VIII—Technical Amendments

These amendments update references and make editorial changes at FAR 19.1005 and 52.212–1.

Dated: July 16, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

[FR Doc. 03–18541 Filed 7–23–03; 8:45 am]

BILLING CODE 6820–EP–P



Federal Register

Thursday,
July 24, 2003

Part V

Department of Transportation

14 CFR Part 399

Policy Statement Amendment and Withdrawal and Termination of Rulemaking Action; Final Rule and Notice

Federal Aviation Administration

14 CFR Parts 21, 36, et al.

Disposition of Comments to Final Rules and Withdrawal of Proposed Rules and Policy Statement; Final Rule, Proposed Rule, and Notice

Federal Highway Administration

23 CFR Part 945

Dedicated Short Range Communications in Intelligent Transportation Systems (ITS) Commercial Vehicle Operations; Proposed Rule

Federal Motor Carrier Safety Administration

49 CFR Parts 391, 393, 395, and 396

Motor Carrier Safety Standards—Withdrawal of Proposed Rulemaking; Proposed Rules

National Highway Traffic Safety Administration

49 CFR Parts 571 and 583

Motor Vehicle Safety Standards—Termination of Proposed Rulemaking; Proposed Rules

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–2003–15243]

Withdrawal and Termination Actions

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of withdrawal and termination of rulemaking actions.

SUMMARY: The Department of Transportation (DOT) is announcing its decision to withdraw certain proposed rulemakings, a policy statement, and an interim final rule that it had published in the **Federal Register** and is also announcing its decision to terminate a number of rulemaking actions previously listed in its semiannual Regulatory Agenda for which no proposed rules have been published. These actions are part of a Secretarial initiative to move forward with decisions on long-pending regulatory proposals, either bringing them to completion or eliminating them from DOT's Regulatory Agenda if no further regulatory action is presently contemplated. They include both significant and nonsignificant rulemaking actions of various modal administrations within DOT and the Office of the Secretary. Most of the withdrawals are published separately in today's **Federal Register**; for those that are not, we have provided the **Federal Register** citations for those already published and the expected publication date for those to be published in the near future. We also have identified in this notice those actions that are being terminated and provided the reason for the termination.

FOR FURTHER INFORMATION CONTACT: Jennifer Abdul-Wali, Office of the General Counsel, 400 Seventh Street, SW., Washington, DC 20590; (202) 366–4723; fax: (202) 366–9313; E-mail: *Jennifer.Abdul-Wali@ost.dot.gov.*

ADDRESSES: You may obtain a copy of this notice from the DOT public docket through the Internet at *http://dms.dot.gov*, docket number OST–03–15243. If you do not have access to the Internet, you may obtain a copy of the notice by United States mail from the Docket Management System, U.S. Department of Transportation, Room PL401, 400 Seventh Street, SW., Washington, DC 20590. You must identify docket number OST–03–15243 and request a copy of the notice entitled "Notice of Withdrawal, Termination, and Deferral of Rulemaking Actions." You may also review the public docket in person in the Docket office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office is on the plaza level of the Department of Transportation. Additionally, you can also get a copy of this document from the **Federal Register** Web site at *www.gpo.gov*.

SUPPLEMENTARY INFORMATION:

Background

At the Department of Transportation, we have been engaged in a comprehensive effort to overhaul and expedite the Department's rulemaking process and to move long-pending rulemaking projects to completion. It is in the public interest for the Department to develop high quality rulemaking documents in a timely manner. Without compromising the numerous substantive and procedural legal requirements that must be addressed, and while stressing the importance of justifying the approach taken with a well-reasoned analysis, we have also emphasized that all rulemakings must be completed in a timely manner.

To achieve these goals, we have taken a number of steps. For example, we have created an effective tracking system for DOT's significant rulemakings to ensure that rules are either completed in a timely manner or that delays are identified and fixed. Through this tracking system, we have been able to prepare a monthly, internet-accessible report for the public providing the current status of these significant rulemakings. This not only provides the public with valuable information concerning our important rulemaking activity, but also provides them with the information necessary to evaluate the Department's progress in meeting its goal of completing rulemakings in a timely manner.

Our senior staff has also conducted a review of the current status of all rulemakings pending within the Department. This review helped to identify and resolve problems that have delayed older rulemakings, and has resulted in a significant increase in our rulemaking productivity.

We also identified a number of rulemaking proceedings on the Department's Regulatory Agenda for which it was clear, as a result of the review, that no further action was presently contemplated. Many of these were proceedings for which no action has been taken in many years. The reasons for inaction varied. We decided to make a concerted effort to "clean up" the Department's Regulatory Agenda by withdrawing or terminating those proceedings for which no further action is intended.

As a result, 53 DOT rulemaking actions, many of them long-pending proceedings, have been or are being withdrawn or terminated. For withdrawals of proposed rules and other actions on which we asked for public comment, we have prepared, or will prepare, separate documents that respond to the public comments that we received and explain why the actions are being withdrawn. Each of those withdrawals is identified in this notice, and we provide information on when the withdrawal was or will be published. Most are being published in today's **Federal Register**. This notice also identifies those previously anticipated actions that were announced in a DOT semi-annual Regulatory Agenda, but which never resulted in a proposed rule. This notice announces that those actions have been, or will be, terminated, and provides a short explanation for the termination. All of this information is provided in the tables below:

1. The following twelve (12) proposed rulemakings, one (1) policy statement, and one (1) interim final rule (IFR) are withdrawn by separate actions in today's **Federal Register**. For each one, we have provided the DOT agency, the regulation identification number (RIN), the title, the action being withdrawn, and the **Federal Register** citation and date for the action being withdrawn.

Agency—RIN	Title	Action	Federal Register cite
OST—2105–AA46	Policy statement on airline preemption	Interim final rule	44 FR 9948, 02/15/79.
FAA—2120–AA09	Objects affecting navigable airspace	Notice of proposed rulemaking	55 FR 31722, 08/03/90.
FAA—2120–AA50	Miscellaneous amendments	Notice of proposed rulemaking	48 FR 45214, 10/03/83.
FAA—2120–AC72	Improved water survival equipment	Notice of proposed rulemaking	53 FR 24890, 06/30/88.
FAA—2120–AE41	Type certificates for some surplus aircraft of the armed forces.	Notice of proposed rulemaking	59 FR 19114, 04/21/94.
FAA—2120–AG16	Revised precision approach landing systems policy.	Policy statement	54 FR 53231, 12/27/89.

Agency—RIN	Title	Action	Federal Register cite
FAA—2120–AH60	Procedures for reimbursement of airports, on-airport parking lots, and vendors of on-airfield direct services to air carriers for security mandates.	Notice of proposed rulemaking	66 FR 66238, 12/21/01.
FHWA—2125–AE63	Standards for dedicated short-range communications (DSRC) applications for use by commercial vehicles in intelligent transportation systems projects.	Notice of proposed rulemaking	64 FR 73674, 12/30/99.
FMCSA—2126–AA12	Parts and accessories necessary for safe operation; sleeper berths on motor coaches.	Advance notice of proposed rulemaking	59 FR 1706, 01/12/94.
FMCSA—2126–AA19	Parts and accessories necessary for safe operation; television receivers and data display units.	Notice of proposed rulemaking	61 FR 14733, 04/03/96.
FMCSA—2126–AA31	English language requirement; qualification of drivers.	Advance notice of proposed rulemaking	62 FR 45200, 08/26/97.
FMCSA—2126–AA36	Out-of-service criteria	Advance notice of proposed rulemaking	63 FR 38791, 07/20/98.
NHTSA—2127–AA03	Crashworthiness ratings	Notice of proposed rulemaking	46 FR 7025, 01/22/81.
NHTSA—2127–AA44	Flammability of interior materials; school buses.	Advance notice of proposed rulemaking	53 FR 44627, 11/04/88.

2. The following two (2) proposed rules were recently withdrawn through separate actions in the **Federal Register**. In addition to the information provided under table 1, we have also provided the **Federal Register** citation and date for the withdrawal.

Agency—RIN	Title	Action	Federal Register cite (Proposal)	Federal Register cite (Withdrawal)
FRA—2130–AA60	Local rail freight assistance to states.	Notice of proposed rulemaking.	55 FR 49648, 11/30/92	68 FR 16753, 04/07/03.
FTA—2132–AA68	Buy America requirements; permanent waiver for microcomputers.	Advance notice of proposed rulemaking.	64 FR 54855, 10/08/99	68 FR 9801, 02/28/03.

3. The following thirty-five (35) rulemaking actions have recently been terminated. For each one, we have provided the DOT agency, the RIN, the title, and the reason for the termination.

Agency—RIN	Title
OST—2105–AA73	Direct flights. *Reason:* Petition denied.
OST—2105–AC79	Electronic filing option in DOT proceeding. *Reason:* This action was inadvertently placed in the agenda.
FAA—2120–AF80	Bird strike. *Reason:* Relative ability to improve safety and need to realize the greatest benefit from our limited resources.
FAA—2120–AH33	Design requirements for pressurization and pneumatic systems installed on transport category airplanes. *Reason:* Relative ability to improve safety and need to realize the greatest benefit from our limited resources.
FAA—2120–AH35	Reverse thrust and propeller pitch settings below the flight regime. *Reason:* Relative ability to improve safety and need to realize the greatest benefit from our limited resources.
FAA—2120–AH48	Modification of the dimensions of the Grand Canyon National Park special flight rules area and flight free zones. *Reason:* Environmental issues raised by National Park Service.
FAA—2120–AH71	Revised checked pitching maneuver for transport airplanes. *Reason:* Relative ability to improve safety and need to realize the greatest benefit from our limited resources.
FAA—2120–AH73	Revised requirements for gust and continuous turbulence design loads. *Reason:* Relative ability to improve safety and need to realize the greatest benefit from our limited resources.
FAA—2120–AH74	Harmonization of airworthiness standards flight rules, static lateral-directional stability, and speed increase and recovery characteristics. *Reason:* Relative ability to improve safety and need to realize the greatest benefit from our limited resources.
FAA—2120–AH80	Airworthiness standards; fire protection. *Reason:* Relative ability to improve safety and need to realize the greatest benefit from our limited resources.

Agency—RIN	Title
FHWA—2125–AE91	Debt financing. *Reason:* Impact of reauthorization of the surface transportation program.
FMCSA—2126–AA24	Electronic filing of surety bonds, trust fund agreements, insurance certificates; cancellations. *Reason:* Optional electronic filing capability makes this rulemaking no longer necessary.
FMCSA—2126–AA39	Federal motor carrier safety regulations; zero-base revision. *Reason:* Regulatory changes would have been burdensome.
FMCSA—2126–AA50	Post-accident controlled substances and alcohol test results; reporting requirements for fatality analysis reporting system. *Reason:* Regulatory changes would have been burdensome.
FMCSA—2126–AA63	Rules of practice for administrative proceedings. *Reason:* Merging into RIN 2126–AA15.
NHTSA—2127–AB79	Procedures for considering environmental impacts. *Reason:* Other higher priorities.
NHTSA—2127–AG79	Hybrid III 95th percentile male. *Reason:* Other higher priorities.
NHTSA—2127–AH00	Political subdivision participation in state highway safety programs and state highway safety agency. *Reason:* Other higher priorities.
NHTSA—2127–AH27	Metric conversion—phase III. *Reason:* Other higher priorities.
NHTSA—2127–AH56	Use of universal child seats in aircraft. *Reason:* Other higher priorities.
NHTSA—2127–AH58	Exemption for inconsequential defect or noncompliance. *Reason:* Other higher priorities.
NHTSA—2127–AH63	Compliance and enforcement. *Reason:* Other higher priorities.
NHTSA—2127–AH89	Defect reporting and notification. *Reason:* Other higher priorities.
NHTSA—2127–AH97	Guidelines for states on enforcement of light transmission. *Reason:* Any action by NHTSA will not lead to a regulation.
NHTSA—2127–AI36	Seat belt fit. *Reason:* Rulemaking unnecessary because many vehicles have belts long enough to fit almost all users and optional longer belts or seat belt extenders are available for 87.5 percent of the fleet. Requiring manufacturers to provide longer belts or belt extenders may have negative safety consequences.
NHTSA—2127–AI40	Voluntarily installed seat belt assembly anchorages. *Reason:* Other higher priorities.
NHTSA—2127–AI78	Exemption for inconsequential defect or noncompliance. *Reason:* Other higher priorities.
FRA—2130–AB27	Crane safety standards. *Reason:* Under review by the Rail Safety Advisory Committee.
FRA—2130–AB30	Annual adjustment of monetary threshold for reporting rail equipment accidents/incidents. *Reason:* Related rulemaking issued under 2130–AB57.
FRA—2130–AB35	Revision to railroad safety enforcement procedures. *Reason:* Limited resources.
FRA—2130–AB36	Rules of practice. *Reason:* Limited resources.
FRA—2130–AB46	Minimum standards for temperature in the locomotive cab. *Reason:* Not cost effective.
RSPA—2137–AD57	Hazardous materials; frangible discs on tank cars. *Reason:* Other higher priorities.
RSPA—2137–AD75	Hazardous materials; transportation of division 1.5 explosives (blasting agents) and ammonium nitrate mixtures in bulk. *Reason:* Other higher priorities.
BTS—2139–AA01	Modernizing the passenger origin-destination survey. *Reason:* Will merge with RIN 2105–AC71.

4. The following is a future withdrawal action that will be published in the Federal Register. For this item, we have provided the DOT agency, the RIN, the title, and the projected withdrawal date, the action being withdrawn, and the **Federal Register** citation and date for the action being withdrawn.

RIN	Title—projected date of withdrawal	Action	**Federal Register** cite
OST—2105–AC45	Overbooking of flights: elimination of airport notice signs—07/03.	Notice of proposed rulemaking	61 FR 27818, 06/03/96.

5. The following is a future termination action. For this item, we have provided the DOT agency, the RIN, the title, the reason for the termination, and a projected termination date.

RIN	Title	Projected termination date
NHTSA—2127–AG16	Door latch exemption for vehicles equipped with wheelchair lifts and ramps *Reason:* Recent changes in technology have eliminated the necessity for these modifications.	06/00/03.

Issued in Washington, DC, on July 9, 2003.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 03–18593 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 399

[Docket No. OST–2003–15592]

RIN 2105–AA46

Preemption in Air Transportation; Policy Statement Amendment

AGENCY: Department of Transportation.

ACTION: Final rule.

SUMMARY: This action ends a rulemaking commenced by the Civil Aeronautics Board in 1979, in which it announced interim policies to implement provisions of the Airline Deregulation Act of 1978 dealing with federal preemption. The Department of Transportation, which succeeded to various Civil Aeronautics Board functions, has concluded that the interim policy statement is of limited current value. Its major issue—continued intrastate economic regulation of air carriers—has long since been resolved. Its remaining subjects continue to evolve and are more appropriately addressed on a case-by-case basis rather than by a statement of general policy. The interim final policy is accordingly removed. The Department of Transportation will continue to monitor developments and to offer the proper interpretation of the statute's preemption provision in appropriate fact-specific circumstances.

EFFECTIVE DATE: July 24, 2003.

FOR FURTHER INFORMATION CONTACT: Paul Samuel Smith, Office of the Assistant General Counsel for Litigation, or Samuel Podberesky, Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9285 or 366–9342, respectively.

SUPPLEMENTARY INFORMATION: In February 1979, the former Civil Aeronautics Board ("CAB" or "Board") adopted interim final policies devoted in the main to the authority of state and federal governments to regulate air carriers operating pursuant to federal authority. Policy Statement-83 (February 7, 1979) ("PS–83"); 44 FR 9951 (February 15, 1979); 14 CFR 399.110. The policy statement addressed questions arising about the preemption provision of the then-newly enacted Airline Deregulation Act of 1978 (Pub. L. 95–504, 92 Stat. 1707) ("ADA"), now codified at 49 U.S.C. 41713, and it asked for comment to aid in setting final policies. The major features of the interim preemption policy have been that states may not enact or enforce (1) any economic regulation of carriers having authority under Title IV of the Federal Aviation Act, including commuters and those registered as air taxis under 14 CFR Part 298; and (2) legal provisions governing such matters as air carrier capitalization, insurance, and bonding, in-flight amenities, and so forth. There has also been a short general statement concerning the authority of airport proprietors.

Comments were received in 1979 from the following parties: the Air Transport Association, the Airport Operators Council International, the Illinois Aeronautics Board, the Maryland Department of Transportation, the Massachusetts Port Authority, the Michigan Aeronautics Commission, the North Dakota Aeronautics Commission, the State of Oregon through its Public Utility Commissioner, the Texas Aeronautics Commission, the Nebraska Department of Aeronautics, the Delaware Transportation Authority, the New York Department of Transportation, and Chapparal Airlines.

The Air Transport Association and the Delaware Transportation Authority supported the interim policy statement. The remaining parties opposed all or parts of the statement. They contended that the policy either (1) unlawfully precluded state regulation of commuter air carriers and air taxis; (2) unlawfully curbed state oversight that did not amount to the regulation of airline rates, routes, and service precluded by the ADA; or (3) improperly restricted the rights of airport proprietors.

Most of the policy statement and many of the comments concern the first category above: the regulation of carriers that were governed by both the states and the federal government prior to passage of the ADA. This once-major issue has long since been resolved by courts and the passage of time. It is now well settled that carriers certificated by the federal government, as well as commuters and air taxis operating under federal authority, are not subject to economic regulation by the states. *See, e.g., Hughes Air Corporation* v. *Public Utility Commission*, 644 F.2d 2334 (9th Cir. 1981).

The second category above, indirect regulation of air transportation by states, is of a somewhat different nature. On the one hand, time and litigation have clarified to some extent the reach of federal preemption in this sphere. In 1979 the CAB declared that states "could not interfere with the service that carriers offer in exchange for their rates and fares." PS–83 at 8. This included charges for headsets, excess baggage, and alcoholic beverages, as well as requirements for insurance coverage and capitalization. *Id.*; 14 CFR 399.110(d). Although some commenters considered this too restrictive of states' prerogatives, no court of which the Department is aware has held to the contrary with respect to interference with such matters. *See Hodges* v. *Delta Airlines*, 44 F.3d 334, 336 (5th Cir. 1995)(*en banc*) (airline "service" includes ticketing, the provision of food and drink, baggage handling, and boarding procedures). *Also generally Morales* v. *Trans World Airlines*, 503 U.S. 407 (1992) (preempting state-imposed fare advertising guidelines); *American Airlines* v. *Wolens*, 512 U.S. 1233 (1994) (preempting state-imposed restrictions on airline frequent flier programs). On the other hand, controversies about the application of the preemption provision have arisen about subjects and in contexts never even mentioned by the CAB. A prime example is the effect of the ADA on state tort law. *See Smith* v. *Comair, Inc.*, 134 F.3d 254 (4th Cir. 1998) (state tort claim may be preempted as "related to" airline "service"), and *Charas* v. *Trans World Airlines*, 160 F.3d 1259 (9th Cir. 2000) (airline "service" read narrowly so as not to preempt state tort claim).

The Department appreciates that it is not possible in a general policy statement to anticipate and address all relevant potential issues. Preemption is a dynamic area, in which questions will likely continue to arise with some regularity in circumstances that cannot now be anticipated. It would be extraordinarily ambitious, and in the end probably futile, to attempt to maintain a policy statement that provides contemporary and meaningful guidance across a full spectrum of situations. Rather, ad hoc administrative determinations, guidance, enforcement activities, and intervention in significant legal actions seem better suited to ensuring the proper implementation of this preemption provision.

The final subject included in the interim policy statement, the ADA's effect on the authority of airport proprietors, garnered only a small amount of the Board's attention. There is but one paragraph in the preamble and only a single very broad provision in the interim statement, to the effect that airport proprietors must exercise their authority in reasonable and nondiscriminatory fashion as necessary to accomplish legitimate objectives. PS–83 at 9; 14 CFR 399.110(f). The CAB also expressly acknowledged that the "full scope" of proprietary rights and duties had "yet to be developed." PS–83 at 9.

Some commenters felt that the Board had an overly narrow view of airport proprietors' authority. We disagree. This part of the interim policy statement remains an accurate statement of a fundamental principle of law: Airport proprietors clearly have rights, but those rights are not unfettered or unconstrained. They must be exercised in a reasonable, nondiscriminatory manner, and designed to achieve legitimate objectives. *Arapahoe County Public Airport Authority* v. *FAA*, 242 F.3d 1213, 1223 (10th Cir. 2001); *American Airlines* v. *DOT*, 202 F.3d 788, 806–08 (5th Cir. 2000); *National Helicopter Corp.* v. *City of New York*, 137 F.3d 81, 89 (2nd Cir. 1998). It is also true that airport proprietors may not impede federal airspace management interests or unreasonably interfere with interstate or foreign commerce. But these statements are so basic and so broad that they are of limited utility in any particular setting; they can only frame the proper inquiry. Questions about the scope and exercise of proprietary rights, like preemption generally, are most often fact-specific. *Arapahoe County*, 242 F.3d at 1223. Thus, litigation and administrative proceedings will likely continue to refine the contours of this authority, and no single policy statement is apt to comprehend or anticipate its precise parameters.

In sum, the interim policy statement either discusses subjects that have been overtaken by events in the last twenty-five years since the ADA was enacted, or offers statements so general in nature that their value is limited where, as here, new issues continue to evolve. The policy statement has provided assistance in the past, but it has increasingly become less helpful as the industry has changed and evolved over the years. In these circumstances the Department has decided to remove the interim policy statement at 49 CFR 399.110 and end this proceeding. We intend to continue to monitor developments, and to take action to apply the ADA's preemption provision when that is appropriate in individual fact-specific situations. This approach has proven itself in guarding against state and local government actions that improperly interfere with the deregulation of the airline industry. *See Wolens and Arapahoe County*, both *supra*.

Regulatory Analyses and Notices

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866, and therefore it was not reviewed by the Office of Management and Budget. This rule is not considered significant under the Department's regulatory policies and procedures. The change is being made solely for the purposes of eliminating an obsolete statement.

The Department also has determined that this rule has no economic impact. This rule does not impose unfunded mandates or requirements that will have any impact on the quality of the human environment.

Executive Order 12612

The Department has analyzed this rule under the principles and criteria contained in Executive Order 12612 ("Federalism") and has determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

This action does not contain information collection requirements for purposes of the Paperwork Reduction Act of 1995.

Regulatory Flexibility Act

The Department has evaluated the effects of this rule on small entities. I certify this rule will not have a significant economic impact on a substantial number of small entities, because we are merely removing an obsolete policy statement.

List of Subjects in 14 CFR Part 399

Administrative practice and procedure, Air carriers, Air rates and fares, Air taxis, Consumer protection, Small business.

■ For the reasons set forth in the preamble, the Department amends 14 CFR part 399 as follows:

PART 399—STATEMENTS OF GENERAL POLICY

■ 1. The authority citation for part 399 continues to read as follows:

Authority: 49 U.S.C. 40101 *et seq.*

§ 399.110 [Removed]

■ 2. Part 399, subpart J is amended by removing § 399.110.

Issued in Washington, DC on June 13, 2003, under the authority of 49 CFR part 1.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 03–18589 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 36, and 91

[Docket Nos. FAA–2000–7587, FAA–2002–12771, and FAA–1999–6411]

RIN 2120–AI01

Disposition of Comments to Final Rules: Noise Certification Standards for Subsonic Jet and Subsonic Transport Category Large Airplanes; Transition to an All Stage 3 Fleet Operating in the 48 Contiguous United States and the District of Columbia; and, Equivalent Safety Provisions for Fuel Tank System Fault Tolerance Evaluations (SFAR 88)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rules; disposition of comments.

SUMMARY: The FAA is providing response to public comments on three immediately adopted rules. The effect of this action is to close these rulemaking actions. This action is part of our effort to address recommendations of the Government Accounting Office and the Management Advisory Council to reduce the number of items in the Regulatory Agenda, and to accurately reflect agency initiatives.

FOR FURTHER INFORMATION CONTACT: Alicia K. Douglas, Office of Rulemaking (ARM–204), Federal Aviation Administration, 800 Independence Avenue, SW., Washington DC 20591, (202) 267–9681, *alicia.k.douglas@faa.gov.*

SUPPLEMENTARY INFORMATION:

Noise Certification Standards for Subsonic Jet and Subsonic Transport Category Large Airplanes, RIN 2120–AH03

On July 8, 2002, the FAA published a final rule (67 FR 45193), entitled "Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes". This immediately adopted rule amended the noise certification standards for subsonic jet airplanes and subsonic transport category large airplanes. These changes were based on the joint effort of the FAA, the European Joint Aviation Authorities (JAA), and the Aviation Rulemaking Advisory Committee. The intent of the change was to harmonize the U.S. noise certification regulations and the European Joint Aviation Requirements for subsonic jet airplanes and subsonic transport category large airplanes to

simplify airworthiness approvals for import and export purposes. The FAA invited comments on revised 14 CFR 36.2 on the applicable noise requirements. The rule became effective August 7, 2002. The comment period closed on September 6, 2002.

The FAA received four responses to the request for comments. Of the four responses, two comments were outside the scope of the request for comments.

Two commenters agreed with the regulations and expressed appreciation for the FAA and JAA efforts to harmonize the noise certification standards. One of the commenters proposed a revision to 14 CFR 36.2 to incorporate the § 21.17(c) time periods for type certification applications. The rule harmonized the applicability requirements of 14 CFR 36.2 with the intent of International Civil Aviation Organization Annex 16, Chapter 1. For harmonization, the FAA chose to adopt the five-year time period specified in Annex 16.

In addition, commenters identified a typographical error, suggested we add a definition of the term, "other standard", and recommended a change in the location of the word "notwithstanding" in two paragraphs. We corrected the typographical error in the final rule correction notice, published on October 10, 2002 (67 FR 63194). We included an explanation of "other standards" in the part 36 advisory material. Placement of the word "notwithstanding" at the beginning of the paragraphs did not change the meaning. Therefore, we plan to make no substantive changes to the rule because of these comments.

Transition to an All Stage 3 Fleet Operating in the 48 Contiguous United States and the District of Columbia, RIN 2120–AH41

On July 15, 2002, the FAA published a final rule (67 FR 46568), entitled "Transition to an All Stage 3 Fleet Operating in the 48 Contiguous United States and the District of Columbia". This rule removed outdated language, revised several sections, and added one new section to the noise operating regulations. These revisions were to make the noise operating regulations consistent with statutory changes to the Airport Noise and Capacity Act (Act). The FAA invited comments to the new rule. The rule became effective July 15, 2002. The comment period closed on August 14, 2002.

The FAA received comments from the Raleigh-Durham Airport Authority . They noted cross-references to deleted sections and suggested we insert the word "takeoff" in certain definitions. They also asserted that the FAA exceeded its authority in allowing the intermix of engines under 14 CFR part 21.

After reviewing the authority's comments, the FAA has determined that the changes made by the final rule are consistent with the Act. Therefore, we plan to make no changes to the rule (67 FR 46568) because of these comments.

Equivalent Safety Provisions for Fuel Tank System Fault Tolerance Evaluations (SFAR 88), RIN 2120–AH85

On September 10, 2002, the FAA published a final rule (67 FR 57490), entitled "Equivalent Safety Provisions for Fuel Tank System Fault Tolerance Evaluations (SFAR 88)". This immediately adopted rule added a provision to the existing requirements for fuel tank system fault tolerance evaluations to allow type certificate holders to use equivalent safety provisions for demonstrating compliance. The FAA invited comments to the immediately adopted rule. The comment period closed on October 10, 2002.

The FAA received comments on this rule change from two manufacturers and a public interest group. None of the comments opposed the final rule or requested changes within the scope of the final rule. Therefore, the FAA does not intend to amend this rule.

Conclusion

After consideration of the comments submitted in response to the immediately adopted rules, the FAA has determined that no further rulemaking action is necessary. The following rulemaking activity is closed:

- Noise Certification Standards for Subsonic Jet and Subsonic Transport Category Large Airplanes, RIN 2120–AH03.
- Transition to an All Stage 3 Fleet Operating in the 48 Contiguous United States and the District of Columbia, RIN 2120–AH41.
- Equivalent Safety Provisions for Fuel Tank System Fault Tolerance Evaluations (SFAR 88), RIN 2120–AH85.

Closing these rulemaking actions does not preclude the FAA from issuing a notice on these subjects in the future or from committing to any future course of action.

Issued in Washington, DC, on July 11, 2003.

Marion C. Blakey,

Administrator.

[FR Doc. 03–18591 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 61, 65, 77, 107, 109, 121, 135, 145, and 154

[Docket Nos. 23781, 25642, 26305, 27699, and FAA–2001–11172]

RIN 2120–AI02

Withdrawal of Proposed Rules: Miscellaneous Amendments; Improved Water Survival Equipment; Objects Affecting Navigable Airspace; Type Certificates for Some Surplus Aircraft of the Armed Forces; Procedures for Reimbursement of Airports, On-Airport Parking Lot and Vendors of On-Airfield Direct Services to Air Carriers for Security Mandates

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rules; disposition of comments and withdrawal.

SUMMARY: The FAA is withdrawing several previously published Notices of Proposed Rulemaking (NPRMs). This action is necessary because the proposed actions have been overcome by events, are no longer relevant, or will be addressed in future rulemaking. This action is part of our effort to address recommendations of the Government Accounting Office and the Management Advisory Council to reduce the number of items in the Regulatory Agenda, and to accurately reflect agency initiatives.

FOR FURTHER INFORMATION CONTACT: Alicia K. Douglas, Office of Rulemaking (ARM–204), Federal Aviation Administration, 800 Independence Avenue, SW., Washington DC 20591, (202) 267–9681, *alicia.k.douglas@faa.gov.*

SUPPLEMENTARY INFORMATION:

Miscellaneous Amendments, RIN 2120–AA50

On October 3, 1983, the FAA published a Notice of Proposed Rulemaking (Notice No. 83–13, 48 FR 45214), entitled "Miscellaneous Amendments". This NPRM proposed to amend various sections of the regulations. Some of the changes were editorial corrections, including clarifications and reference corrections. Others included relaxing certain requirements. The proposal was in response to many complaints, suggestions, and petitions for exemptions from users of the National Airspace System concerning several regulations. These users stated that these regulations contained outdated references and vague, complex, and inadequate language. Also, they suggested that, in some instances, the benefits gained would not justify the cost of compliance. The comment period closed on December 2, 1983.

Since 1983, when the document was published, all the affected sections of 14 CFR have been amended, with the proposed changes incorporated and comments dispositioned in the amendments. We are withdrawing Notice No. 83-13 (48 FR 45214, October 3, 1983) because the proposed changes have been accomplished or are no longer necessary and comments have been addressed.

Improved Water Survival Equipment, RIN 2120–AC72

On June 30, 1988, the FAA published a Notice of Proposed Rulemaking (Notice No. 88–11, 53 FR 24890). This NPRM, issued in response to the Airport and Airway Safety and Capacity Expansion Act of 1987, proposed new requirements for water survival equipment carried onboard aircraft for both 14 CFR parts 121 and 135 operators. The comment period closed on November 28, 1988.

The FAA received 118 comments in response to the proposal. More than half of the commenters supported the proposal. Forty-six commenters, most from part 135 air carriers, opposed the proposal. They suggested the costs associated with the proposal far exceeded any potential safety benefits, and that a 1984 FAA study had concluded that water survival equipment requirements for the U.S. air carrier fleet were satisfactory.

We have considered these comments in the light of the overall improvement in emergency safety equipment with the passage of time. We find the costs of proceeding with this rulemaking as proposed exceed the benefits to the public and that existing water survival equipment requirements are satisfactory. Accordingly, the FAA finds it is in the public interest to withdraw this proposal. Therefore, the FAA withdraws Notice No. 88–11 (53 FR 24890, June 30, 1988).

Objects Affecting Navigable Airspace (Part 77 Revision), RIN 2120–AA09

On August 3, 1990, the FAA published a Notice of Proposed Rulemaking (Notice No. 90–18, 55 FR 31722) proposing to amend 14 CFR part 77. This NPRM proposed amendments to the scope, notice requirements, and standards applicable to aeronautical studies detailed in 14 CFR part 77. Statutory mandates of Public Law No. 100–223 and recommendations from the National Airspace Review committee triggered the proposed amendments. This notice was corrected in the following documents: 55 FR 32999, August 13, 1990; 55 FR 35152, August 28, 1990; and 55 FR 37287, September 10, 1990. The correction published on August 28, 1990, also changed Notice No. 90–18 to Notice No. 90–19. The comment period closed on December 31, 1990.

On October 16, 1995, the FAA issued a Supplemental Notice of Proposed Rulemaking (Notice No. 90–19A, 60 FR 53680), proposing an amendment to the application of obstruction standards for the construction or alteration of objects affecting the navigable airspace. This notice did not reopen the proposed action contained in Notice No. 90–19 or request further comments on its proposals. The comment period closed on November 30, 1995.

In response to these notices, we received over 70 comments from individuals, engineering and communications firms, and building associations. Because of advances in the telecommunications industry, many of the proposals, recommendations, and comments are no longer relevant. Further, the proposed regulations no longer completely reflect the needs of the FAA's obstruction evaluation program or the needs of the industry and the general public. Therefore, we are considering a new proposals which would reflect recent technology and update the current provisions. We will consider comments received in response to the earlier notices in preparing this new proposal, RIN 2120–AH31.

We believe withdrawal of these notices would best serve the public and the FAA. Therefore, we are withdrawing Notice No. 90–18 (55 FR 31722, August 3, 1990) and Notice No. 90–19A (60 FR 53680, October 16, 1995).

Type Certificates for Some Surplus Aircraft of the Armed Forces, RIN 2120–AE41

On April 21, 1994, the FAA published a Notice of Proposed Rulemaking (Notice 94–12, 59 FR 19114), entitled "Type Certificates for Surplus Aircraft of the Armed Forces". The NPRM proposed changes to remove certain regulations for issuing type certificates for surplus aircraft of the Armed Forces. Specifically, the amendment would remove references in 14 CFR 21.27 to obsolete airworthiness standards for type certification of surplus military aircraft that at the time the FAA considered no longer appropriate. The comment period closed on June 20, 1994.

Five hundred and ninety commenters responded to the NPRM. An

overwhelming majority of the commenters opposed elimination § 21.27. Opposing commenters stated that the proposal would have a negative economic impact, would provide inadequate safety and certification coverage, and was not justified from a safety perspective also, some commenters suggested the FAA should clarify the regulation.

Having considered the comments received to Notice No. 94–12, we have decided not to remove § 21.27 for the present. We may consider revisions to the language of the rule in a future rulemaking action when resources permit. If we do, we will consider all comments received to Notice No. 94–12 in any new rulemaking project. Therefore, we are withdrawing Notice No. 94–12 (59 FR 19114, April 21, 1994).

Procedures for Reimbursement of Airports, On-Airport Parking Lots and Vendors of On-Airfield Direct Services to Air Carriers for Security Mandates, RIN 2120–AH60

On December 21, 2001, the FAA published a Notice of Proposed Rulemaking (Notice No. 01–13, 66 FR 66238), entitled "Procedures for reimbursement of Airports, On-Airport Parking Lots and Vendors of On-Airfield Direct Services to Air Carriers for Security Mandates".

Because of the terrorist events of September 11, 2001, Congress passed the Aviation and Transportation Security Act (S. 1447, Security Act) to improve aviation security. In response to the legislation, the FAA and TSA imposed new security requirements for airports, airline operators, and others. The Security Act also authorized funds to pay for some of the costs of the new security requirements. This notice proposed to reimburse airport operators, on-airport parking lots, and vendors of on-airfield direct services to air carriers for direct costs incurred in complying with the security requirements. The comment period closed January 22, 2002.

Ten commenters responded to the NPRM. Seven of the commenters expressed concerns about the definitions. The remaining commenters expressed concerns with the limits of reimbursement, distribution of available funds, and the proof required for reimbursement.

We are withdrawing Notice No. 01–13 (66 FR 66238, December 21, 2001) because of funds for reimbursement of security costs have been appropriated.

Conclusion

The FAA withdraws the following proposed rules:

- Miscellaneous Amendments, RIN 2120–AA50
- Improved Water Survival Equipment, RIN 2120–AC72
- Objects Affecting Navigable Airspace (Part 77 Revision), RIN 2120–AA09
- Type Certificates for Some Surplus Aircraft of the Armed Forces, RIN 2120–AE41
- Procedures for Reimbursement of Airports, On-Airport Parking Lots and Vendors of On-Airfield Direct Services to Air Carriers for Security Mandates, RIN 2120–AH60

Withdrawal of these proposed rules does not preclude the FAA from issuing a notice on these subjects in the future or from committing to any future course of action.

Issued in Washington, DC, on July 11, 2003.

Marion C. Blakey,

Administrator.

[FR Doc. 03–18592 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RIN 2120–AG16

Precision Approach Landing Systems Policy

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Policy statement; withdrawal.

SUMMARY: The FAA is withdrawing a previously published policy statement on the implementation of the Microwave Landing System (MLS) for precision approach service in the National Airspace System (NAS). This action is necessary because the policy has been overcome by events and is no longer relevant. This action is part of our effort to address recommendations of the Government Accounting Office and the Management Advisory Council to reduce the number of items in the Regulatory Agenda, and to accurately reflect agency initiatives.

FOR FURTHER INFORMATION CONTACT: Alicia K. Douglas, Office of Rulemaking (ARM–204), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–9681, *alicia.k.douglas@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On December 27, 1989, we published a policy statement entitled, "Precision Approach Landing Systems Policy" (54 FR 53231). This statement announced our transitioning from the Instrument Landing System to the MLS for precision approach service in the NAS. A delay in the MLS implementation occurred since publication of this policy statement. Meanwhile, Global Positioning System technology evolved and proved to have a greater potential to improve NAS capacity, efficiency, and safety than the MLS.

Reason for Withdrawal

We are withdrawing this policy statement, "Precision Approach Landing Systems Policy" (54 FR 53231), because it is no longer relevant.

Conclusion

Withdrawal of this policy statement, "Precision Approach Landing Systems Policy" (54 FR 53231), does not preclude the FAA from issuing a notice on this subject in the future or from committing to any future course of action.

Issued in Washington, DC, on July 11, 2003.

Marion C. Blakey,

Administrator.

[FR Doc. 03–18590 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 945

[FHWA Docket No. FHWA–99–5844]

RIN 2125–AE63

Dedicated Short Range Communications in Intelligent Transportation Systems (ITS) Commercial Vehicle Operations

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Withdrawal of proposed rulemaking and closing of public docket.

SUMMARY: This document withdraws a proposed rulemaking to amend FHWA regulations to require the use of the FHWA Specification for "Dedicated Short Range Communications (DSRC) for Commercial Vehicles." The FHWA undertook this rulemaking action to create a provisional standard for Intelligent Transportation Systems (ITS) commercial vehicle projects using Federal-aid highway funds. The final determination on this action was deferred until testing of the provisional standard was completed. This test program is still underway. However, the FHWA is withdrawing this NPRM action. Any further action to address national interoperability will be the subject of a separate rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. William S. Jones, ITS Joint Program Office (JPO), (202) 366–2128, e-mail address: *william.s.jones@fhwa.dot.gov;* or Mr. Wilbert Baccus, Office of the Chief Counsel, (HCC–40), (202) 366–0780, e-mail address: *wilbert.baccus@fhwa.dot.gov,* Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Docket Facility, Room PL–401, by using the URL: *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's Web site at: *http://www.access.gpo.gov.*

Background

A notice of proposed rulemaking (NPRM) published at 64 FR 73674 on December 30, 1999, with a supplemental notice of proposed rulemaking (SNPRM) published at 65 FR 77534 on December 12, 2000, proposed adding a new part to title 23, Code of Federal Regulations. In these actions, the FHWA proposed to require the use of FHWA Specification for DSRC for Commercial Vehicles as a provisional standard for ITS commercial vehicle projects using highway trust funds.

At the time there were several different technologies that were being proposed for use on commercial vehicles for interfacing with the Commercial Vehicle Information System Network (CVISN). However, CVISN is a national system for all commercial vehicles and it is necessary that there be technical uniformity in the devices on vehicles to enable a nationally interoperable system.

To ensure success of the program, the Transportation Equity Act for the 21st Century (Pub. L. 105–178, 112 Stat. 107, 1998) (TEA–21) required the Secretary of Transportation to issue provisional standards when national interoperability was required. This authority was delegated to the Federal Highway Administrator. Since the industry could not agree on a standard, the FHWA proposed a Provisional Standard for use on commercial vehicles.

Comments Received in Response to the NPRM and SNPRM

The FHWA received 24 comments in response to the NPRM and we summarized and discussed these comments in detail in the SNPRM. In response to the SNPRM, the FHWA received 4 comments in response to the SNPRM.

The major objections to the original NPRM were voiced by the industry that manufactures the DSRC devices, and the private companies that are the service providers for States in the implementation of the CVISN roadside network. The manufacturers had been unable to agree on a common standard and most of the commenters were not in favor of the Provisional Standard. The major issue raised by other commenters concerned the timing of the NPRM. At the time, no equipment had been designed, built, or tested using the Provisional Standard. Many felt it was inappropriate to require the use of devices that had not been thoroughly tested and proven to work in the CVISN system.

In response to these concerns, the FHWA issued an SNPRM announcing that further consideration of this rulemaking would be postponed until the appropriate testing of equipment designed to the Provisional Standard could be completed.

In response to the SNPRM, the FHWA received four comments. Three of the comments were from the State of Oregon: The Oregon DOT, the Oregon Forest Products Association, and the Oregon Trucking Association. In addition, a comment was received from the Kentucky Transportation Center of the University of Kentucky.

The four commenters supported the need for national interoperability for CVISN and the FHWA efforts through rulemaking to achieve that goal. The commenters noted that since the initial FHWA NPRM, all deployments of CVISN systems had used a single technology, and this technology had become the de facto standard. In addition, these commenters urged the FHWA to act on the remaining barrier to national interoperability.

That barrier involves the policies of the companies that are the service providers to many of the States deploying CVISN systems.

The FHWA is currently in the process of testing devices manufactured to the Provisional Standard. When these tests are completed successfully, the FHWA will reevaluate the need for rulemaking.

Determination

The FHWA recognizes that a de facto standard has emerged within the States deploying CVISN. Further, it is recognized that national interoperability is no longer inhibited by the technology, but rather, the business practices within the service provider industry. Therefore, the FHWA will not pursue the existing rulemaking dealing with technical interoperability at this time. Any further action to address national interoperability for commercial vehicles would be the subject of a separate rulemaking if necessary.

Conclusion

For the reasons stated above, the FHWA is terminating this proposed rulemaking and closing the docket.

Authority: 23 U.S.C. 315 and 502 note; sec. 6053(b), Pub. L. 102–240, 105 Stat. 1914, at 2190; sec. 5206(e), Pub. L. 105–178, 112 Stat. 107, at 457; and 49 CFR 1.48.

Issued on: May 12, 2003.

Mary E. Peters,

Federal Highway Administrator.

[FR Doc. 03–18594 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 391

[Docket No. FMCSA 1997–2759]

RIN 2126–AA31 (Formerly RIN 2125–AE19)

English Language Requirement; Qualifications of Drivers; Withdrawal

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); withdrawal.

SUMMARY: The FMCSA withdraws its advance notice of proposed rulemaking (ANPRM) requesting comments on potential changes to a provision in the Federal Motor Carrier Safety Regulations (FMCSRs) involving the English language. That provision requires that drivers of commercial motor vehicles (CMVs) operating in interstate commerce be able to "read and speak the English language sufficiently to converse with the general public, understand highway traffic signs and signals, respond to official inquiries, and make entries on reports and records." After analysis and review of the comments, FMCSA has concluded that at this time there is no quantifiable data on which to propose modifying the regulation to require a more stringent or definitive standard, or to require State motor vehicle agencies to administer a specific test for English proficiency.

DATES: The advance notice of proposed rulemaking published on August 26, 1997, at 62 FR 45200 is withdrawn as of July 24, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Moehring, Driver and Carrier Operations Division, (202) 366–4001, Federal Motor Carrier Safety Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

On August 26, 1997, the Federal Highway Administration (FHWA), predecessor agency to the FMCSA, published an ANPRM in the **Federal Register** (at 62 FR 45200) requesting comments on potential changes to 49 CFR 391.11(b)(2) of the FMCSRs. This provision requires that drivers of CMVs operating in interstate commerce be able to "read and speak the English language sufficiently to converse with the general public, understand highway traffic signs and signals, respond to official inquiries, and make entries on reports and records."

The ANPRM was published in response to a letter from the American Civil Liberties Union (ACLU) to the U.S. Department of Transportation's Office of Civil Rights indicating that this English language requirement may conflict with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.*, as amended, that prohibits discrimination against applicants and beneficiaries in the administration of federally funded programs and activities based on race, color and national origin. In this letter, the ACLU also alleged that the regulation, as written, is overly broad and subject to arbitrary enforcement, causing potential interference with the constitutional guarantees of due process and equal protection.

In the ANPRM, the FHWA stated that § 391.11(b)(2), as promulgated by the former Interstate Commerce Commission (ICC) in 1936, was intended to be enforced through the motor carrier employer. As noted in the ANPRM, the ICC specifically stated that it was the motor carrier employer's responsibility to evaluate the driver's proficiency in the English language. In addition, FHWA noted that the regulation was not intended to be enforced at the roadside. The employer was presumed to know what communication skills may be necessary for the type of cargo handled, the route taken, and the public contact required. The FHWA went on to say that it had never made speaking the English language a specific pre-requisite for obtaining a Commercial Driver License (CDL), and in fact proposed, and later authorized, administration of the CDL test in foreign languages.

The ANPRM asked the following 5 questions:

"1. Are there known instances in which a safety problem occurred which could be attributed, in whole or in part, to the driver not being able to read and speak English sufficiently to understand traffic signs or written or verbal instruction relating to the operation, loading or unloading of the vehicle? * * *

2. Do any of the States require drivers who operate commercial motor vehicles exclusively in intrastate commerce to read and speak the English language? * * *

3. How do States typically determine whether or not a driver or motor carrier is in violation of § 391.11(b)(2) or an equivalent State provision? Are there particular English phrases or terms that are used to test the driver's comprehension of the English language? Are there specific highway signs or messages that are shown to the driver?

4. Are there any cases in which State officials, exercising their authority under State law, have placed drivers out of service for being unable to read or speak the English language, after making a determination that the driver's inability to comprehend the language created a safety risk that was too great to be ignored? * * *

5. How does one measure an individual's level of 'English proficiency' or whether that individual has a 'working knowledge of English'? * * *"

Comments

Fifty-eight comments were received. These came from 9 States, the U.S. Equal Employment Opportunity Commission (EEOC), the ACLU, individual citizens, associations representing various segments of the trucking industry, insurance associations, several trucking companies, individual drivers and trucking industry management, associations representing State and Provincial enforcement and motor vehicle administrators, associations and unions representing drivers, and safety advocates.

Very few of the comments addressed the questions asked in the ANPRM. The vast majority of those commenting viewed the ANPRM as a proposal to lower the current English proficiency standard. The comments from groups representing the trucking industry, labor groups representing drivers, insurance companies and associations, and individual companies and drivers all recommended retaining the current provision. Nine States submitted comments that either recommended retaining the current standard or promulgating a more stringent standard. Of the members of the public who commented, 20 commenters recommended that the FMCSA either retain the current English language standard or enact a more stringent standard.

Mr. Victor Morales submitted a copy of a motion filed by counsel on his behalf in the County Court for Palm Beach County, Florida requesting the Court to declare § 316.302, Florida Statutes (1997), relating to the English proficiency requirement for CMV drivers, unconstitutional on the basis that it was vague, overly broad, and subject to arbitrary enforcement. Two commenters believed that the agency should revise the regulation to require a performance-based standard. Representative Lincoln Diaz-Balart (who represented Congressional District 21 in

Florida) opposes FMCSA's current regulation at § 391.11(b)(2) "due to a recurring problem in our state as it pertains to enforcement of this regulation." Representative Diaz-Balart states that his constituents have had their CDLs suspended due to enforcement of § 391.11(b)(2). Examples include, * * * "traffic citations to CDL drivers for not commanding the English language to the satisfaction of the law enforcement officer, thereby giving him or her unfettered discretion; suspension of the licenses by judges, magistrates and/or officers of the peace of those drivers for not being able to communicate in English with the judge when appearing in Court; violation of due process and therefore the posing of many civil rights questions." Representative Diaz-Balart urged the agency to revise § 391.11(b)(2) to protect the constitutional and civil rights of drivers, and to end the arbitrary application of the regulation. Another member of Congress stated that the current regulation ought to be retained for safety reasons. The Advocates for Highway and Auto Safety stated its belief that a "performance-based" standard might result in unacceptably low levels of English proficiency that would directly endanger the traveling public.

The ACLU submitted comments explaining why, in its view, the current regulation has a discriminatory impact upon national and ethnic minorities, and invited discriminatory enforcement. The EEOC stated it shared the concern of the ACLU that as "currently written, the FMCSRs' English fluency requirement may conflict with the Federal civil rights laws." The EEOC suggested drafting a qualification standard in broad terms that could be applied in a manner appropriate to a specific job for a specific employer.

Decision

The FMCSA has decided to withdraw the ANPRM. After analysis and review of the comments, FMCSA has concluded that at this time there is no quantifiable data on which to propose modifying the regulation either to require a more stringent or definitive standard or to require State motor vehicle agencies to administer a specific test for English proficiency.

The FMCSA appreciates the analysis provided by the EEOC and the ACLU relating to the requirements of Title VI. However, the information introduced in response to the ANPRM does not establish that the current regulation requires an unnecessarily high level of English fluency that has resulted in a discriminatory impact or effect based upon national origin, color or ethnicity. Accordingly, FMCSA believes that the regulation as currently written and properly enforced effectively balances issues of civil rights and highway safety.

In analyzing § 391.11(b)(2) in today's climate, the FMCSA believes that the regulation was, and remains, a requirement imposed to ensure that persons who drive commercial motor vehicles operate safely. As written, the regulation sets forth the qualifications of drivers of CMVs to read and speak the English language and allows each motor carrier employer the flexibility to determine the extent of proficiency needed to enforce it. It provides carriers with the flexibility to individually determine whether a driver has communication skills and English fluency to operate safely on the highway. There is no data available to suggest that this flexibility has caused discrimination or to conclude that motor carriers are employing the English language requirement in anything other than an evenhanded manner, tailored to the requirements of each particular company's operations. Nor do we have evidence to suggest that our State and local partners are subjecting limited English speakers to discrimination based on their race, color or national origin. The intent of the English-only regulation is not to discriminate, but to advance public safety and this is an essential aspect of our program.

Specifically, with regard to concerns about arbitrary or discriminatory enforcement, the FMCSA has found no evidence to suggest that enforcement officers routinely issue citations for lack of English proficiency. To the extent that such enforcement discretion is exercised, the FMCSA believes that such instances are exceedingly rare and may be occasioned by a misunderstanding of the provisions of § 391.11(b)(2). From the comments and the data available, the FMCSA believes that the discretion of enforcement officials to place a driver out of service when he or she constitutes a safety hazard is, and has been used judiciously.

Further, FMCSA finds no inconsistency in its authorization to States to offer CDL tests in languages other than English, while at the same time requiring motor carrier employers to ensure a level of English proficiency for drivers on our public highways. The tests, training and study manuals associated with obtaining a CDL are complex. Therefore, the administration of the CDL test in languages other than English is justified. However, in actual operation on the highway, the CDL driver must be able, based on the needs of the carrier's operation, to have a sufficient command of English to ensure that safety is not compromised.

After reviewing the comments, the FMCSA is also persuaded that the performance-oriented standard, based on required tasks, as suggested in the ANPRM and advocated by the ACLU and EEOC is, in fact, not substantively different than the current standard to which persons who drive commercial motor vehicles must already adhere. The FMCSA is mindful of the concerns voiced by safety groups and members of the enforcement community that drivers with limited English proficiency may pose a potential safety concern both on the roadway, as well as in situations in which an enforcement officer is conducting a vehicle inspection, weighing a vehicle, or in other routine law enforcement actions. At this time, however, as noted, the FMCSA has no quantifiable data on which to base a proposal that would modify the standards in or scope of the existing regulation at 49 CFR 391.11(b)(2).

One other matter requires comment here. Under Executive Order 13166, titled "Improving Access to Services for Persons with Limited English Proficiency" (65 FR 50121, September 16, 2000), and guidance issued on the same day by the Department of Justice (DOJ), titled "Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons With Limited English Proficiency" (65 FR 50123), the Federal government must ensure that no person with limited English Proficiency (LEP) shall be discriminated against on the grounds of race, color or national origin under any program or activity that receives Federal financial assistance.

Consistent with the executive order, the DOJ guidance, and additional guidance issued by the Department of Transportation titled, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries" (66 FR 6733), we believe that the regulation at 49 CFR 391.11(b)(2) is fully consistent with FMCSA's commitment to provide meaningful access to programs and activities that persons with limited English proficiency would seek. We are confident that the rule fulfills its purpose of advancing safety in a manner wholly in keeping with the terms of the executive order and the corresponding guidance.

In view of the foregoing considerations, Docket No. FMCSA–1997–2759 is withdrawn.

Issued on: July 11, 2003.

Annette M. Sandberg,

Acting Adminstrator.

[FR Doc. 03–18597 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 393

[Docket No. FMCSA–1997–2213 (Formerly FHWA Docket No. MC–93–34]

RIN 2126–AA12 (formerly RIN 2125–AD25)

Parts and Accessories Necessary for Safe Operation; Sleeper Berths on Motorcoaches; Withdrawal

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of withdrawal of proposed rulemaking.

SUMMARY: The FMCSA withdraws its January 12, 1994 Advance Notice of Proposed Rulemaking (ANPRM) relating to the use and design of driver sleeper berths used by the motorcoach industry. Due to other regulatory priorities and minimal interest by the industry concerning this issue, no further action was taken by the FMCSA after publication of the ANPRM. At this time FMCSA chooses not to establish potentially design-restrictive regulatory standards for the use of sleeper berths on motorcoaches without authoritative research to guide their development. Accordingly, the January 12, 1994 ANPRM regarding the use and design of motorcoach sleeper berths is withdrawn.

DATES: The advance notice of proposed rulemaking published on January 12, 1994, at 59 FR 1706 is withdrawn as of July 24, 2003.

FOR FURTHER INFORMATION CONTACT: John Steinhoff, Chief, Commercial Passenger Carrier Safety Division, (202) 366–2174, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On January 12, 1994, the Federal Highway Administration (FHWA) (now FMCSA), issued an ANPRM requesting public comment on the use and design of driver sleeper berths used by the motorcoach industry (59 FR 1706). This action was taken in response to comments received in past years from the motorcoach industry, and ones offered specifically at a motorcoach industry Zero-Base Review (an initiative in which the agency presumed that no prior regulations existed, and started drafting from a clean slate, or as if we had "zero" regulations). The hearing was held in Miami, Florida, on January 20, 1993. There was some concern among the industry that when the current sleeper berth regulations at 49 CFR 393.76 were promulgated, the differences in design and operation between motorcoaches and trucks may not have been considered by the agency.

The FHWA received nine comments to the docket in response to the ANPRM. The comments varied as to whether the regulations should be amended and whether the agency should prohibit the placement of a sleeper berth in the baggage area (under the passenger compartment) of a motorcoach. The current regulation prohibits placement of the sleeper berth in the cargo compartment. Some commenters believed that specific sleeper berth standards for motorcoaches would improve safety by improving the physical well-being of the driver and by providing an opportunity for a relief driver to get adequate rest.

Due to other regulatory priorities and a minimal interest by the industry concerning this issue, no further action was taken by the FMCSA after these comments were received.

Operationally, the motorcoach industry rarely uses sleeper berths, choosing to transport replacement drivers to rely points for the few non-stop trips that are longer than 500 miles in length. The vast majority of motorcoach trips are broken into segments where less than 10 hours of driving are required. Therefore, FMCSA believes there is no urgent safety need for the agency to initiate regulatory action on this matter.

The FMCSA believes there is presently no research on which to base the development of new, motorcoach-oriented sleeper berth specifications. The current requirement in § 393.76 sets forth the minimum specifications for sleeper berths, and these are far exceeded by the present-day truck manufacturers. While § 393.76 is geared more toward sleeper berth installations in the truck environment, the basic principles set forth for trucks could also be adhered to by motorcoach manufacturers. These principles include: a prohibition from placing the sleeper berth in the cargo compartment (in this case, the luggage compartment), a requirement for an exit from the sleeper berth into the driver's compartment (in this case, the passenger compartment, which also includes the driver's location), and provision for occupant restraint meeting the spirit of paragraph (h) of § 393.76. When conducting roadside inspections and compliance reviews, FMCSA considers these principles in applying the language of § 393.76 to sleeper berths installed in motorcoaches.

At this time, the FMCSA chooses not to develop regulatory standards for the use of sleeper berths on motorcoaches without authoritative research to guide their development. This could result in design restrictive requirements. Rather, the agency intends to work with the motorcoach manufacturers, the motorcoach industry, and safety organizations, such as the Commercial Vehicle Safety Alliance, to explore the development of a voluntary industry standard for motorcoach sleeper berth manufacture and maintenance. The FMCSA intends to work with these organizations to determine how the principles of § 393.76 apply to current and future motorcoach design and operations.

For these reasons, the January 12, 1994 ANPRM is withdrawn.

Issued on: July 11, 2003.

Annette M. Sandberg,

Acting Administrator

[FR Doc. 03–18600 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–EX–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 393

[Docket No. FMCSA–1997–2278 (Formerly Docket No. MC–96–5]

RIN 2126–AA19 (formerly RIN 2125–AD76)

Parts and Accessories Necessary for Safe Operation: Television Receivers and Data Display Units; Withdrawal

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of withdrawal of proposed rulemaking.

SUMMARY: The FMCSA withdraws its April 3, 1996, Notice of Proposed Rulemaking (NPRM) to rescind restrictions on the locations at which television receivers may be positioned within commercial motor vehicles (CMVs). After reviewing the public comments received in response to the NPRM, the agency no longer considers the restrictions to be obsolete and redundant. The agency believes that it is necessary to retain the rule to prohibit unsafe driver behavior, and that doing so is not likely to discourage the use of

Intelligent Transportation Systems (ITS)-related technologies such as collision-avoidance and traveler information systems which could be used to improve safety and efficiency, or other communications systems that employ display screens.

DATES: The notice of proposed rulemaking published on April 3, 1996, at 61 FR 14738 is withdrawn as of July 24, 2003.

FOR FURTHER INFORMATION CONTACT: Larry Minor, Chief, Vehicle and Roadside Operations Division, (202) 366–8842, Federal Motor Carrier Safety Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

On April 3, 1996, the Federal Highway Administration (FHWA) (now FMCSA) published an NPRM (61 FR 14733) to rescind 49 CFR 393.88. That regulation requires motor carriers to place television viewers or screens in the rear of the back of the driver's seat, if such viewer or screen is in the same compartment as the driver. Section 393.88 also requires the carrier to place the viewer or screen in a location that is not visible to the driver, while he/she is driving the CMV, with the operating controls for the television receiver also located in the back of the driver's seat so that the driver cannot operate them without leaving his/her seat.

As part of the President's Regulatory Reinvention Initiative, the agency reviewed § 393.88 and made a preliminary determination that the rule was obsolete and redundant. The agency stated that its approach differed from that of the former Interstate Commerce Commission (ICC). When the rule was originally adopted in 1951, the ICC believed that the absence of a Federal requirement would tempt people to install television receivers in commercial motor vehicles so that drivers could watch them while driving. This concern has not been borne out. The agency indicated that motor carriers recognize the inherent safety risks of allowing drivers to watch television while driving. In addition, the agency stated that the behavior that § 393.88 is intended to address, driver inattentiveness, is effectively covered by State laws and regulations.

With regard to the issue of whether the rule could potentially discourage the use of ITS-related technologies, the agency explained that some of the systems in question permit the use of in-vehicle display screens, which provide drivers with real-time map displays of areas of traffic congestion, construction, and accidents. Some satellite communications systems enable motor carriers to track CMVs en route to a destination, and to transmit written messages to drivers that appear on video terminals in the cab. Also, some collision-avoidance or warning systems display video images of traffic around the CMV.

The agency described how it relied on regulatory guidance to clarify the applicability of § 393.88, and intended the rescission to eliminate the potential need for a case-by-case interpretation on the various configurations of in-cab video display systems. The agency was concerned that such an interpretation or regulatory guidance process would become a de facto design approval program.

Discussion of Comments

The FMCSA received six comments in response to the NPRM. The commenters were: Advocates for Highway and Auto Safety (Advocates), the American Trucking Association (ATA), Federal Express Corporation (Federal Express), the Flxible Corporation (Flxible), Lancer Insurance Company (Lancer), and the Truck Manufacturers Association (TMA). Advocates, Lancer, and Federal Express generally opposed the agency's proposal, while ATA, Flxible, and TMA supported the removal of the current rule, primarily because of the potential for discouraging certain technologies. ATA suggested a revision of the rule to address the overall issue of devices that may distract a driver's attention from the roadway.

Advocates does not believe that State laws are an appropriate substitute for a Federal regulation applicable to interstate motor carriers. Advocates contends that an explicit Federal requirement is needed because it would be difficult to prove that a driver viewing a television screen caused an accident. Lancer also expressed concern about the proposed removal of § 393.88. Lancer indicated that the intercity bus industry, particularly charter and tour operators, already provide on-board video programming to passengers. Typically, the equipment used is a VCR located behind the driver's seat. None of the monitors are positioned so that the driver can view the images. The current restriction ensures that drivers do not divide their attention between driving and operating the video programming. Lacer agrees with the agency's efforts to be flexible in the use of ITS-related technology, but argues that there are potential safety problems with systems that would have drivers split their attention between driving and reading computer-generated messages.

Federal Express believes that rescinding § 393.88 could result in numerous States adopting different requirements. Federal Express recommends that the agency propose a new regulation that allows for new technologies, but prohibits devices that decrease the safety of operation of the commercial motor vehicles on which they used.

TMA and Flxible support the removal of § 393.88. TMA indicated that although the benefits provided by certain ITS-related technologies are not fully quantifiable because their cost-effectiveness and acceptance by drivers have not been documented, the usage of such devices should not be restricted by an outdated, obsolete regulation. Flexible explained that closed-circuit video surveillance equipment is sometimes installed on transit buses as a crime-fighting tool. The driver is able to observe passenger activity at all times, with the most advanced systems allowing the driver to lock-in on potential problem situations for continuous monitoring.

The ATA also support removal of § 393.88, but encourages government and the private sector (ITS America, Society of Automotive Engineers, equipment manufacturers, and motor carriers to work together to study the issue of driver workload, and develop new rules, if necessary, to respond to any safety issues identified by such research.

FMCSA Response to Comments

After reviewing the comments submitted in response to the NPRM, the FMCSA agrees with the commenters concerned with not having an explicit prohibition against positioning television receiver screens in a location that enables drivers to see the screen. Although the agency continues to believe that current State laws or regulations could be used to cite drivers who watch television while operating a commercial motor vehicle, we acknowledge that it is much easier for enforcement personnel to enforce an explicit prohibition rather than an agency's interpretation of the applicability of a general law or regulation concerning driver distraction of inattention. The FMCSA believes a more effective strategy for ensuring highway safety is to retain § 393.88 in its current form, at this time.

In response to commenters that support a rulemaking to respond to safety concerns about equipment and devices, other than television receivers, that may distract drivers' attention from driving tasks, the agency does not believe it is necessary to take such action at this time. Currently, the safety benefits of such a rulemaking cannot be quantified, and there is no practicable means of estimating the potential costs in the event that such a rulemaking would necessitate equipment manufacturers to design systems now being sold. The agency will, however, certainly work with the private sector if specific safety problems are identified that they require Federal rules to effectively address the issue.

The FMCSA continues to consider § 393.88 to be applicable only to television receivers, and believes that the rule should not be construed as being applicable to any other device or technology unless such technology is capable of receiving a television broadcast signal. The agency believes that § 393.3 provides adequate guidance concerning other technology in that it prohibits equipment and accessories that decrease the safety of operation of the CMV on which it is used. The agency will continue to provide general regulatory guidance, as necessary, to clarify the applicability of § 393.3 to devices other than television receivers, while ensuring to the greatest extent practicable, that the regulatory guidance process does not become a de facto design approval or product endorsement process.

FMCSA Decision

In consideration of the comments and for the reasons given above, the FMCSA will retain § 393.88. The agency no longer believes that the regulation could discourage the use of certain technologies intended to improve the safety or efficiency of motor carrier operations, at least to the extent that action must be taken at this time. Furthermore, the safety benefits of retaining the rule, while admittedly undocumented, outweigh the potential safety risks that would result from motor carriers or drivers concluding that there are no regulatory obstacles to the watching of television while a CMV is being operated on public roads.

For these reasons, the NPRM of April 3, 1996 (61 FR 14733), is withdrawn.

Issued on: July 11, 2003.

Annette M. Sandberg,

Acting Administrator.

[FR Doc. 03–18598 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–EX–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 395 and 396

[Docket No. FMCSA–98–3414]

RIN 2126–AA36

Withdrawal of Advance Notice of Proposed Rulemaking; Out-of-Service Criteria

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Withdrawal of advance notice of proposed rulemaking (ANPRM).

SUMMARY: The FMCSA withdraws the ANPRM published in the **Federal Register** of July 20, 1998, concerning the use of the North American Uniform Out-of-Service Criteria (the Criteria). FMCSA has determined that including the Criteria in the Federal Motor Carrier Safety Regulations (FMCSRs), either through codification of each criterion or through incorporation-by-reference of a specific edition of the Criteria, would not provide any discernible safety benefits to the public or resolve issues raised by parties seeking such action. Adoption of the Criteria into the FMCSRs would only have the effect of regulating FMCSA enforcement actions during roadside inspections. However, it would not necessarily preclude the States from continuing to use the uniform international tolerances. Accordingly, this rulemaking proceeding has been terminated.

FOR FURTHER INFORMATION CONTACT: Larry Minor, Chief of the Vehicle and Roadside Operations Division (MC–PSV), (202) 366–4009, Federal Motor Carrier Safety Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

ADDRESSES: The electronic file of this document is available from the DOT public docket at *http://dms.dot.gov*, docket number FMCSA–98–3414. It is also available from FMCSA's Web site at *http://www.fmcsa.dot.gov/rulesregs/fmcsr/rulemakings*; or the **Federal Register** Web site at *http://www.gpoaccess.gov*. If you do not have access to the Internet, you may request a copy of this document from the Docket Management System, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. You must identify the title and docket number of the document.

SUPPLEMENTARY INFORMATION:

Background

On July 20, 1998 (63 FR 38791), the Federal Highway Administration (FHWA) published an ANPRM requesting public comment concerning the use of the Criteria. During roadside inspections, Federal, State and local enforcement officials use the Criteria as a guide in determining whether a commercial motor vehicle (CMV) or driver should be placed out of service. The Criteria provides a list of violations of the safety regulations that are so unsafe that they must be corrected before operations can resume. Correction of other less severe violations may be deferred to a later date, but generally no later than 15 days from the date the violations were discovered (49 CFR 396.9(d)(3)).

Currently, the Criteria is published by the Commercial Vehicle Safety Alliance (CVSA), an association of Federal, State and Provincial official responsible for the administration and enforcement of motor carrier safety laws and regulations in the United States, Canada, and Mexico. Each year the CVSA reviews the Criteria through a committee process involving representatives from Federal, State, and Provincial governments and the motor carrier industry representatives, and adopts changes as necessary to reflect up-to-date information concerning the potential safety impacts of specific violations of motor carrier laws and regulations.

Discussion of Comments

Thirty comments were received in response to the ANPRM. These came from 12 States and Provinces, associations representing State and Provincial enforcement and motor vehicle administrators, associations representing various segments of the trucking industry, safety advocates, unions representing drivers, trucking companies, and individual citizens.

Most of the commenters expressed concern about incorporating the Criteria into the FMCSRs through codification of each criterion, or including the Criteria as an appendix to the FMCSRs. Generally, the commenters believes that subjecting the Criteria to the Federal rulemaking process would undermine the efforts of the States, Provinces and industry to work together through the CVSA's committee process to review and periodically revise the enforcement tolerances. However, most of the commenters who were opposed to codification of the criteria indicated that they would support incorporation-by-reference of the Criteria provided that such action would not delay, or

otherwise interfere with, the current process administered by the CVSA.

The American Trucking Associations, Inc., (ATA) believes that the development and maintenance of the Criteria would be severely hampered if it were subject to a notice and comment rulemaking process. ATA recommends incorporation by reference of the Criteria with the publication by FMCSA of a notice of availability and request for comments in January or February of each year. The comments would then be forwarded to CVSA for appropriate handling during CVSA's spring and fall meetings, and revised accordingly. Several other commenters had similar suggestions.

The Canadian Council of Motor Transport Administrators (CCMTA) indicated that Canadian governments have expressed concern about placing the Criteria in the Federal safety regulations. They believe doing so would have an adverse impact on the international collaborative nature of developing, revising and implementing the Criteria throughout North America. CCMTA indicated that it would not object to FMCSA referencing the Criteria in such a way that the CVSA process could continue to be used to update the document.

The International Brotherhood of Teamsters supports the formal adoption of the Criteria either through codification of each criterion or through incorporation-by-reference. The Teamsters believe the Criteria represent enforcement standards and that failure to adopt the Criteria through a notice and comment process may undermine the ability of the agency to pursue enforcement actions.

The Advocates for Highway and Auto Safety (Advocates), Owner-Operator Independent Drivers Association, Inc., (OOIDA), National Tank Truck Carriers, Inc., (NTTC) and the Iowa Department of Transportation support codification of the Criteria. Advocates does not belief the Criteria are legally binding on inspectors or their agencies since the document is not included in the FMCSRs. Advocates argues that the agency must assert the formal policy needed to bind field enforcement personnel by both directing and circumscribing the exercise of enforcement discretion through application of the Criteria. NTTC believes enforcement personnel treat the Criteria as substantive rules and that there are procedural and substantive deficiencies in the way the Criteria are structured and used. OOIDA believes the agency must adopt the Criteria as part of the FMCSRS because it represents the legal standard under which vehicles and drivers are placed out of service. Iowa DOT believes that including the Criteria in the regulations enhances the availability of the Criteria to motor carriers and drivers so that they will know which safety conditions will place them in jeopardy of not being able to complete their trip.

FMCSA Response to Comments

FMCSA believes the commenters have made compelling arguments against the agency taking any action that could adversely impact the current process for amending or revising the Criteria. The agency agrees with commenters that the current process for maintaining the Criteria provides an effective mechanism for Federal, State and Provincial officials and industry representatives from the U.S., Canada, and Mexico to work together to ensure uniform international enforcement tolerances. The agency believes that it is in the public interest to continue this process for ensuring highway safety, and facilitating international trade between the U.S., Canada, and Mexico.

However, the agency does not share commenters' belief that the mere act of adopting the Criteria into the Code of Federal Regulations would adversely impact the current process for maintaining the document. The adoption of the Criteria would amend the FMCSRs such that Federal personnel could use only those criterion included in the Federal regulations. The Federal version of the Criteria could only be amended or revised through notice-and-comment rulemaking. By contrast, each State would be responsible for taking the necessary actions to adopt compatible requirements under State laws and regulations, with the authority of State enforcement personnel being limited by those State laws and regulations, not the Federal regulations. Since States would be responsible for having a mechanism or process for adopting compatible laws and regulations, the States could adopt enforcement tolerances that differ from those used by the FMCSA if the State believes there is a safety problem that is not adequately addressed through the Federal enforcement tolerances.

Section 3114(c)(4) of Title 49 of the United States Code allows the States to adopt more stringent requirements than those specified in the FMCSRs. Under this provision, if the FMCSA determines that a State law or regulation is additional to or more stringent than a regulation prescribed under the authority of 49 U.S.C. 31136, the State law or regulation may be enforced unless the agency decides that (1) the State law or regulation has no safety benefit; (2) the State law or regulation is incompatible with the regulation prescribed by the agency; or (3) enforcement of the State law or regulation would cause an unreasonable burden on interstate commerce. This means that Federal requirements would not automatically preempt more stringent State requirements. Therefore, irrespective FMCSA's decision concerning the Criteria, the States could adopt more stringent enforcement tolerances than the FMCSA. This could include the States adopting criteria independently of the FMCSA's enforcement tolerances.

If the Criteria includes more stringent guidelines for determining when to place a driver or vehicle out of service than the Federal policy provides, the States would in effect, be adopting more stringent enforcement tolerances than those used by the FMCSA. Also, since State personnel conduct the overwhelming majority of the more than 2.7 million roadside inspections completed each year in the United States, FMCSA's adoption of the Criteria would not alter in any meaningful way, the enforcement tolerances that interstate motor carriers are subjected to during such inspections. Federal adoption would only increase the likelihood of creating inconsistencies between the enforcement tolerances used by Federal personnel and those used by State officials with no readily apparent benefit to motor carrier safety. Furthermore, such inconsistencies would only worsen the problems perceived by those persons who believe it is necessary to adopt the Criteria into the FMCSRs. Due to the success of the collaborative process currently used for amending or revising the Criteria, enforcement agencies throughout North America have achieved a level of uniformity that negates the need for separate enforcement tolerances for each jurisdiction.

With regard to commenters who believe that incorporation-by-reference of the Criteria would be less likely to disrupt the current process used to amend or revise the enforcement tolerances than including the text of the guidelines in the regulations, the FMCSA considers this to be a distinction without a meaningful difference. The Office of the Federal Register prescribes regulations (1 CFR part 51) concerning Federal agencies' incorporation-by-reference of publications prepared by non-Federal entities. Section 51.1 limits the incorporation to the specific edition approved by the Director of the Federal Register. Future amendments or revisions of the Criteria would not be included. Incorporation of the Criteria would make it part of the regulations, regardless of whether the text appears in the Code of Federal Regulations. Also, material is incorporated as it exists on the date of the approval and a notice of any change in the materials must be published in the **Federal Register**. In terms of practical applications, codification of the Criteria would provide a means for the agency to request comments on only the criterion that would be amended or revised from year to year, as opposed to incorporation-by-reference which would typically be an all-or-nothing proposition—a new edition would either be accepted in its entirety or rejected in its entirety. Although the agency could incorporate-by-reference portions of the Criteria while rejecting specific items, this approach would almost certainly make understanding the reference unnecessarily difficult from both an enforcement perspective and an industry perspective. Therefore, the agency has concluded that incorporation-by-reference is not a practical alternative to codification of the Criteria text.

In response to commenters who offered legal arguments suggesting that the agency must adopt the Criteria, the FMCSA does not believe those arguments have merit. The Criteria represent enforcement tolerances, and should not be construed to be regulations. The FMCSRs require compliance with all applicable requirements at all times. There is nothing in the FMCSRs that makes operating a commercial motor vehicle in interstate commerce, while violating any of the requirements contained therein, an acceptable practice. The agency recognizes that violations do occur and does not expect that motor carrier operations cease completely until 100 percent compliance is achieved. However, certain violations represent such serious safety risks to the motoring public that they must be corrected immediately. The Criteria presents a list of such violations developed over a period of more than 20 years by Federal, State and Provincial safety professionals, with input from the motor carrier industry, vehicle and equipment manufacturers, researchers, and other interested parties. The use of the Criteria is a matter of policy within FMCSA, so that the decision by Federal personnel to place a vehicle out-of-service is not an arbitrary action based solely on the discretion of the inspector. Likewise, the use of the Criteria by State officials is covered through either a documented policy, or State laws and regulations. The actions of State officials are based on the authority vested in them under their State statutes and should not be construed as arbitrary determinations by individual inspectors.

FMCSA Decision

In consideration of the responses to the ANPRM, and for the reasons explained above, FMCSA has decided not to adopt the Criteria, either through codification of the text or through incorporation-by-reference, into the FMCSRs. FMCSA believes it is in the public interest that these enforcement tolerances be managed through a partnership between the Federal, State, and Provincial governments from the United States, Canada, and Mexico, with participation by the industry, motor vehicle and equipment manufacturers, researchers and other interested parties. The use of uniform international enforcement tolerances is necessary to ensure highway safety and to facilitate the efficient transportation of passengers and freight between States and Provinces, and between countries in North America.

Therefore, this rulemaking proceeding is terminated.

Issued on: July 11, 2003.

Annete M. Sandberg,

Acting Administrator.

[FR Doc. 03–18599 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–EX–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2003–14306]

RIN 2127–AA44

Flammability of Interior Materials in School Buses

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of termination of proposed rulemaking.

SUMMARY: This notice terminates a rulemaking proceeding that NHTSA began in 1988 to consider upgrading Standard No. 302's flammability resistance requirements for school bus interiors. The rulemaking was initiated in response to a severe 1988 crash in Carrollton, Kentucky, in which a former school bus being used as a church activity bus burst into flames after colliding head-on with a pickup truck. After reviewing the available information and public comments, the agency has decided to terminate this rulemaking because: The risks presented by school bus fires pose a minimal safety problem; the agency's 1992 upgrade of Standard No. 217's emergency exit requirements to allow faster evacuation from school buses has reduced further the risks posed by fire; the bus involved in the Carrollton fire was built before upgraded Federal school bus standards went into effect in 1977 and did not meet the exit and fuel system integrity requirements; upgrading Standard No. 302 would result in significant costs; and further research would be necessary before the agency could propose a test protocol, utilizing scarce agency resources.

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Mr. Charles Hott, Office of Crashworthiness Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, Telephone: (202) 366–0247. For legal issues: Mr. Christopher Calamita, Vehicle Safety Rulemaking and Harmonization Division, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590, Telephone: (202) 366–2992.

SUPPLEMENTARY INFORMATION:

I. Background

In the late 1980s, school bus safety received substantial public and Congressional attention, especially in the aftermath of two catastrophic crashes. On May 14, 1988, in Carrollton, Kentucky, a former school bus [1] being used as a church activity bus burst into flames after colliding head-on with a pickup truck. This was a severe crash, with a combined impact speed exceeding 100 miles per hour. Twenty-seven of the 67 bus occupants died in the fire that ensued. On September 21, 1989, in Alton, Texas, a school bus became submerged in a water-filled pit after colliding with a tractor-semi trailer. Twenty-one of the 81 students in the bus drowned because they were unable to escape.

In its investigation of the Carrollton crash, the National Transportation Safety Board (NTSB) concluded:

[1] The bus was manufactured in 1977 shortly before April 1, 1977, prior to the effective date of a final rule improving Standard No. 217's emergency exit capacity requirements and Standard No. 301's fuel system integrity requirements. As a result, the Carrollton bus lacked safety features, such as fuel tank guards and improved access to emergency exits, required on most large school buses that were built after 1977.

Contributing to the severity of the accident was the puncture of the bus fuel tank and ensuing fire in the bus, the partial blockage by the rear bench seats of the area leading to the rear emergency door which impeded rapid passenger egress, and the flammability of the material in the bus seat cushions.[2]

The NTSB also determined that "some fire-retardant and flame blocking materials * * * when tested, will reduce the rate of spread of fire from seat to seat over materials currently used."[3]

In 1988, in response to the New Carrollton crash, NHTSA initiated two rulemaking proceedings to consider upgrading standards addressing school bus safety.

II. NHTSA Rulemaking Activity on School Bus Safety

A. 1988 ANPRM on Standard No. 217

On November 4, 1988, the agency issued an Advance Notice of Proposed Rulemaking (ANPRM) on the adequacy of Standard No. 217's requirements for school bus emergency exits.[4] Standard No. 217, "Bus Emergency Exits and Window Retention and Release," establishes requirements for the retention of windows in buses and operating forces, opening dimensions, and markings for bus emergency exits. The purpose of the standard is to minimize the likelihood of occupants being thrown from a bus and to provide bus occupants a readily accessible means of emergency evacuation.

NHTSA ultimately revised Standard No. 217's requirements for school bus emergency exits and access to school bus emergency doors in a 1992 final rule.[5] That final rule set requirements for minimum emergency exit space based upon the seating capacity of each bus. Thus, the rule required larger school buses to have an increased number of emergency exits. The final rule also required school buses to provide improved access to side emergency doors and improved visibility of emergency exits.

B. 1988 ANPRM on Standard No. 302

Also on November 4, 1988, NHTSA issued an ANPRM announcing the agency's plans to consider upgrading Standard No. 302's requirements for the flammability of interior materials in buses.[6] Standard No. 302, "Flammability of Interior Materials," specifies that the horizontal burn rate of certain specified materials (*e.g.*, seat cushions and seat backs) may not exceed four inches per minute. The purpose of the standard is to allow the driver time to stop the vehicle and, if necessary, evacuate the vehicle occupants before untenable conditions develop that could result in injuries or fatalities.

In the ANPRM, the agency requested comments on the safety need for a rulemaking to upgrade Standard No. 302, types of buses that should be covered, types of seating material available, toxicity of fumes emitted by burning seating materials, upgraded test procedures, and costs and benefits of such a rulemaking. The agency also noted that factors related to the risk of injuries from fire are often interrelated. Among these factors are a fire's source and magnitude, an occupant's ability to escape from a burning vehicle, the time needed to escape, the location and type of emergency exits, and the flammability resistance of the vehicle's interior materials.

In response to the ANPRM on Standard No. 302, NHTSA received 54 comments from bus manufacturers, seating and material manufacturers, State and local governments, trade associations, and individuals. The commenters generally agreed that measures could be taken to increase the flammability resistance of materials used in school buses. Commenters also addressed other issues raised in the ANPRM, including the rulemaking's scope, the availability of new flame-resistant materials, possible performance requirements to enhance flammability resistance, and the costs and benefits of the rulemaking. The comments were discussed in the agency's 1991 notice requesting comments on issues related to the flammability of interior materials in buses.[7] That notice is discussed below.

C. 1990 NIST Research Report

In January 1989, NHTSA commissioned the Center for Fire Research of the National Institute of Standards and Technology (NIST) to conduct a research program about the flammability resistance of various school bus seat assemblies. The research focused on factors such as ignitability, flame spread, rate of heat release, smoke generation, and toxicity of combustion products. In July 1990, NIST published its findings in a final report entitled "Assessment of the Fire Performance of School Bus Interior Components."[8] The major conclusions of the NIST report were:

1. No one simple small-scale test should be used to measure fire performance of a material.
2. A material's fire performance includes the examination of a combination of factors, such as ease of ignition, flame spread, rate of heat release, generation of gaseous species, smoke development, and toxicity of the combustion products. In addition, the heat exposure conditions and geometry of the school bus play a critical role.
3. A full-scale test procedure (testing a complete seat assembly) will provide the best basis for testing school bus seats.
4. While toxicity is a concern, it appears that heat and/or smoke generated by all likely school bus seating materials would cause incapacitation before toxicity became an issue.

D. 1991 Notice Requesting Comments on Standard No. 302

On February 26, 1991, NHTSA published a notice requesting comment on the NIST report and other issues to help the agency determine what appropriate measures, if any, were needed to address the fire resistance of materials used in school bus interiors. (56 FR 7826) The questions included the following:

1. Can the agency develop test protocols for improving the fire resistance of school bus interiors? What protocols and test criteria should be adopted?
2. How can the agency best define objective measures of tenability, *e.g.*, exposure to temperature, material ignitability, flame spread, rate of heat release, smoke generation, toxicity, etc.?
3. Does a small-scale (samples of seating materials) or full-scale (complete seat assemblies) test exist that would result in the use of seating materials that improve the fire resistance of school bus interiors? What tests are recommended?
4. Is it necessary to include toxicity in any test protocols designed to improve the fire resistance of school bus interiors? Are there alternative technical requirements that could be established that would result in negligible toxicity risks, such as establishing a temperature limit?
5. Are there any guidelines that could be adopted that would ensure that potentially carcinogenic materials are not utilized in the manufacture of fire retardant or fire resistant materials?
6. Are there other changes or modifications that could be made to school buses, such as changes in the number, location, and size of emergency exits, that would affect the fire resistance requirements of school buses? Should there be a correlation between the fire resistance of materials and the amount of available emergency egress area?
7. What would the costs of upgrading the fire resistance of school bus interiors be? Would the costs affect the ability of school districts to replace older, less safe school buses or to order school buses with other safety features that could have potentially higher benefits?

E. Comments on the 1991 Notice

In response to the 1991 Notice, NHTSA received comments from State and local governments, school bus and seat manufacturers, trade associations, a test laboratory, and the NTSB.

1. The Need To Upgrade Standard No. 302

The commenters expressed differing views about the need to improve the fire resistance of school bus interiors. Several commenters, including the NTSB, American Medical Association (AMA), the Connecticut Department of Motor Vehicles (Connecticut), and the Delaware Department of Pupil Instruction (Delaware), believed that the flammability test in Standard No. 302 needed to be upgraded. Other commenters, including the National School Transportation Association (NSTA), Maryland Department of Education (Maryland), West Virginia Department of Education (West Virginia), Marysville Washington School District (Marysville), Blue Bird Corporation and Thomas Built Buses, Inc. (bus manufacturers), and Lichter Rubber Products Company (a manufacturer of school bus seats and seat backs) questioned the need for upgrading the flammability resistance requirements in Standard No. 302.

Marysville stated that NHTSA should direct its resources to other school bus safety matters because the Carrollton crash represented an extremely rare situation and because seat flammability was a very low causal factor to the occupant deaths and injuries in that crash. Thomas Built and Lichter Rubber believed that it was not realistic to require seating to withstand fuel-fed fires like the Carrollton fire, which Lichter Rubber characterized as an "explosion." Maryland stated that during the past 30 years, its public school buses have transported students without a single student fatality related to fire.

2. Test Protocol

The commenters also expressed differing views about the form of an upgraded test protocol. Some commenters favored small-scale laboratory tests. Other commenters favored large-scale tests. Delaware recommended having both a small-scale and a large-scale test. The commenters did not provide any convincing information that would allow NHTSA to compare the desirability of requiring either small-scale or large-scale tests, or both. Similarly, while several commenters expressed concern about toxicity, no generally accepted protocol to establish acceptable toxicity levels was apparent from the comments.

3. Costs

Most commenters indicated that upgrading Standard No. 302 would result in significant costs. SFT, a foam manufacturer, stated that the cost of flame retardant foam cushioning for a 66-passenger bus could be $275 more than the cost of current foam cushioning. SFT also stated that equipping a bus with seat covers made of Kevlar-backed barrier fabric could increase the cost of a bus by $460, if this upgraded material were required. Thomas Built estimated that using fire block upholstery would increase the total seating cost for a bus by about $1,000, and requiring fire resistant seat foam and fire block seat covers could add $1,500 to $2,000 to the cost of bus. The Oregon Department of Education (Oregon) estimated that if NHTSA upgraded the fire resistance requirements in Standard No. 302 as well as the emergency exit requirements in Standard No. 217, the cost of a school bus could increase by $1,300 to $1,500.

4. Cost-Effectiveness

Several commenters, including NSTA and Blue Bird, stated that the costs of upgrading Standard No. 302 would be unjustified. Other commenters, including Arizona and Delaware, believed upgrading Standard No. 302 would be justified, notwithstanding the significant costs.

TAM–USA, a bus manufacturer, Blue Bird, and the Nebraska Department of Education (Nebraska) commented that even though increased flammability resistance was a desirable goal, other efforts, such as improving the emergency exit capacity requirements in Standard No. 217, would be more cost-effective. Similarly, NSTA recommended that the agency pursue requiring additional emergency exits rather than upgrading the flammability resistance requirements.

Maryland and TAM–USA stated that along with flammability, many other factors are involved in determining the risk from school bus fires. These factors include the type of fuel used, location and construction of the fuel tank, type of fire barriers between the engine and occupant compartments, and number and location of emergency exits.

III. Agency Decision

After reviewing the available information and public comments, NHTSA has decided to terminate the rulemaking to upgrade Standard No. 302's flammability requirements for school bus interiors for the following reasons: (1) The risks presented by school bus fires pose a minimal safety problem for current designs of school buses; (2) the agency's upgrade of Standard No. 217's emergency exit requirements to allow faster evacuation from school buses reduced further the risks posed by fire; (3) the bus involved in the Carrollton fire did not meet then current Federal standards; (4) upgrading Standard No. 302 would result in significant costs that would be disproportionate to minimal benefits; and (5) further research would be necessary before the agency could propose a test protocol, utilizing scarce agency resources.

A. Minimal Safety Problem

The agency notes that school bus fires are extremely rare. Most school bus fires are small-scale, non-crash engine fires that pose a low risk of injury because ample time is available to evacuate the bus. Large-scale, fuel-fed fires, like the Carrollton fire, are even more rare.

Other than the Carrollton fire, from 1975 through 2002, there were no school bus crashes in which fatalities were attributed to fire as the most harmful event. During this period, there were ten school bus-related fatalities in crashes in which fire was present. However, these fatalities were caused by the crash forces and were not attributed to fire.[9] The 1988 Carrollton crash resulted in 27 fatalities. Since that crash, there have been no fire-related fatalities in school buses.

B. Upgrade of Standard No. 217 Reduced Risks Associated With Fires

NHTSA believes that the limited risk posed by school bus fires was further reduced by the agency's issuance of the November 2, 1991 final rule upgrading Standard No. 217's emergency exit

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[2] Highway Accident Report—Pickup Truck/Church Activity Bus Head-on Collision and Fire Near Carrollton, Kentucky, May 14, 1988, Report No. NTSB/HAR/89/01 (March 28, 1989), at page 79.

[3] *Id.*, at page 69.

[4] 53 FR 44623, Docket No. 88–21, Notice 1.

[5] 57 FR 49413, November 2, 1992, Docket No. 88–21, Notice 3.

[6] 53 FR 44627, Docket No. 88–22, Notice 1.

[7] 56 FR 7826, February 26, 1991, Docket No. 88–22, Notice 3.

[8] A copy of this report was placed in Docket No. 88–22–GR.

[9] Nine of the ten fatalities resulted from a 1984 crash in Essex, Montana, in which a pre-1977 school bus was struck head-on by a tractor-semi trailer carrying jet fuel, which leaked from the trailer and caused the post-crash fire.

requirements to allow faster evacuation from school buses. Specifically, the final rule increased the number of emergency exits in larger school buses, improved access to side emergency doors, and improved the visibility of the emergency exits. These amendments have made possible shorter evacuation times from a school bus in case of fire or other emergency situations (*e.g.*, submersion in water). Thus, the benefits of the Standard No. 217 rulemaking are potentially broader than those that might have resulted from a Standard No. 302 rulemaking since the latter standard addresses only those emergencies involving fire.

NHTSA agrees with the comments of Blue Bird, TAM–USA, Nebraska, Maryland, and NSTA that the agency's improvement of the emergency exit capacity requirements in Standard No. 217 better addresses the risks associated with post-crash fires than upgrading the flammability resistance requirements in Standard No. 302 would. Accordingly, given that the agency's upgrade of Standard No. 217 has reduced the already minimal risk posed by school bus fires, the agency believes that upgrading Standard No. 302 is not warranted.

The agency also notes that the NTSB has accepted NHTSA's upgrade of Standard No. 217 as an acceptable alternative to upgrading Standard No. 302. In a December 17, 1998 letter to NHTSA's Administrator, the Chairman of the NTSB stated:

> Safety Recommendation H–89–4 was issued to NHTSA as a result of the Safety Board's investigation of the truck and bus collision near Carrollton, Kentucky on May 14, 1988.
>
> Safety Recommendation H–89–4 asked NHTSA to incorporate in FMVSS 302 the recommendations of the National Institute of Standards and Technology concerning the new material acceptance criteria to reduce the rate of fire spread in all buses.
>
> The Safety Board commends NHTSA for changing the emergency exit requirements so that school buses are required to have emergency exits. * * * As a result of NHTSA's efforts to upgrade the emergency exit requirements for school buses, thus reducing the need to upgrade the flammability requirements for school bus seats, Safety Recommendation H–89–4 has been classified "Closed " Acceptable Alternate Action."[10]

C. Carrollton Bus Did Not Meet the Then Current Federal Standards

The agency also notes that the bus involved in the Carrollton fire did not meet the then current Federal motor vehicle safety standards. That bus was built before April 1, 1977, prior to the effective date of the final rule improving Standard No. 217's emergency exit capacity requirements and Standard No. 301's fuel system integrity requirements.[11] As a result, the Carrollton bus lacked safety features, such as fuel tank guards and improved access to emergency exits, required on large school buses that were built after 1977.

If the Carrollton bus had been built after 1977, and thus had been equipped with a fuel tank guard, the post-crash fire might never have occurred. According to the NTSB report, a puncturing of the bus' fuel tank caused the fire.[12]

Finally, the agency agrees with the comments of Thomas Built, Lichter Rubber, and Blue Bird that even if the Carrollton bus had complied with a hypothetical upgraded Standard No. 302, the increased flammability resistance might not have increased the survivability of a Carrollton-type crash. As noted above, the Carrollton crash was extremely severe, with a combined impact speed exceeding 100 miles per hour, and the fire that ensued was fuel-fed and explosive in nature.

D. Significant Costs of Upgrading Standard No. 302

While NHTSA believes that the weighing of regulatory costs and benefits should not be the only basis for a decision, and while the costs of improving flammability resistance are not definitive since performance levels and compliance test procedures were not specifically defined in the agency's earlier notices, these costs would have been substantial and disproportionate to the minimal benefits. The commenters' estimated costs ranged from $275 to equip a 66-passenger bus with only fire retardant foam cushioning, to $2,000 to equip a bus with fire retardant foam cushions and fire block upholstery. The agency's own range of estimates is from $300 for fire retardant foam to $850 for fire block upholstery.

Based on its estimates, the agency believes that the costs of upgrading Standard No. 302 could exceed the costs associated with other school bus-related rulemakings. For example, the agency estimated that the costs of upgrading Standard No. 217's emergency exit requirements were $557 per bus. Accordingly, NHTSA concludes that the low level of risk posed by school bus fires, which was even further reduced by the agency's upgrade of Standard No. 217, does not justify the significant additional costs that would result from upgrading Standard No. 302's flammability resistance requirements.

The agency notes that an upgrade of Standard No. 302 would increase the costs of school buses, forcing States and local school districts to spend more funds. The agency believes that these funds would be better spent on other school bus safety programs and devices that could save more lives and reduce more injuries, such as purchasing school buses complying with the upgraded emergency exit requirements or retrofitting school buses with stop signal arms and improved mirror systems.

E. Test Protocol

Finally, the agency does not believe it could propose a test protocol and criteria regarding conditions vital for survivability in a fire without first conducting further research evaluating the flammability of school bus interiors during high intensity fires. Similarly, additional research would be necessary to develop a protocol for toxicity tests if it were determined that toxicity is an important component of upgrading flammability. While the absence of an existing test protocol would not, by itself, justify terminating this rulemaking, NHTSA notes that the additional costs and time involved in developing such a protocol contributed to the agency's decision to terminate this rulemaking.

IV. Conclusion

For the reasons set forth above, NHTSA has decided to terminate this rulemaking action.

Although NHTSA has decided not to upgrade Standard No. 302, the agency notes that States and local school districts may purchase school buses with interiors that exceed the minimum Federal requirements. At the 11th National Conference on School Transportation in May 1990, the State delegates voted to recommend a large-scale test procedure for measuring flammability resistance with performance levels exceeding those required by Standard No. 302. The Conference's recommendations were re-affirmed at the 12th National Conference, which was held in May 1995, and the 13th National Conference, which was held in May 2000. While the 11th National Conference's recommendations only provide guidance to most State school transportation personnel, a number of local school districts and States, including Connecticut, Mississippi, North Dakota, Tennessee, South Carolina, and Utah, have adopted the *Body and Chassis* specifications issued by the 11th Conference. Therefore, some school buses will be equipped with more flame-resistant interiors, notwithstanding NHTSA's decision not to upgrade Standard No. 302.[13] In addition, the agency's decision not to upgrade Standard No. 302's requirements does not preclude States from adopting flammability resistance requirements that impose a higher performance requirement than the Federal standard for vehicles procured for the State's own use. If a State is disposed to regulate in this area concerning public school buses, it may do so.

Issued: July 11, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–18595 Filed 7–23–03; 8:45 am]

BILLING CODE 4910–59–P

[10] A copy of this letter has been placed in the docket.

[11] Standard No. 301, "Fuel System Integrity," specifies fuel spillage limitations after each of several crash tests. The purpose of the standard is to reduce the probability of injuries and fatalities in post-crash fires. School buses were not required to comply with Standard No. 301 until April 1, 1977. See 41 FR 36026, August 26, 1976.

[12] Highway Accident Report—Pickup Truck/Church Activity Bus Head-on Collision and Fire Near Carrollton, Kentucky, May 14, 1988, Report No. NTSB/HAR/89/01 (March 28, 1989).

[13] To assure that school districts are aware of the ability to procure buses with more flame-resistant interiors, NHTSA wrote to the heads of State Pupil Transportation Services on November 24, 1995, to inform them of the availability of these materials.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 583

[Docket No. NHTSA 03–15125; Notice 1]

RIN 2127–AA03

Crashworthiness Ratings

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Termination of proposed rulemaking.

SUMMARY: This document terminates a proposed rulemaking in which we had considered establishing a crashworthiness performance ratings program for new motor vehicles. Under the contemplated program, for which the agency issued a notice of proposed rulemaking in 1981, information would have been developed by manufacturers on the ability of their vehicles to protect occupants in high speed crashes and made available to the public via window stickers on new motor vehicles. The NPRM raised the alternative possibility that the agency, instead of the manufacturers, would generate the information.

We are terminating this proposed rulemaking because it has been overtaken by events. During the years since 1981, we have continued to develop and expand our New Car Assessment Program (NCAP). Under the NCAP program, the agency generates the kinds of information that would have been provided by the proposed crashworthiness performance ratings program. Ratings are available for front and side impact crashworthiness. They are also now available for rollover resistance. Additional ratings are under development for dynamic rollover, braking and lighting.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590:

For technical issues: Mary Versailles, Office of Rulemaking, telephone (202) 366–2057.

For legal issues: Edward Glancy, Office of the Chief Counsel, telephone (202) 366–2992.

SUPPLEMENTARY INFORMATION: On January 22, 1981, we published (46 FR 7025) a notice of proposed rulemaking (NPRM) to establish a new vehicle crashworthiness performance ratings program. We already had a regulation requiring that consumers be provided with crash avoidance information, *e.g.*, braking performance, but did not have any comparable measures for providing crashworthiness information. The idea underlying the proposal was to supplement the agency's minimum crashworthiness standards with a program using market forces to encourage the manufacture of safer automobiles. It was anticipated that the information would not only aid consumers in making better informed purchasing decisions, but also competition among automobile manufacturers in the design of safer products. We noted several studies indicating that consumers were significantly interested in vehicle crashworthiness performance and that their purchasing decisions would be influenced by information about the performance of different models.

Under the contemplated program, information would have been developed by manufacturers on the ability of their new vehicles to protect occupants in high-speed crashes and made available to the public via window stickers. The primary element of the proposed regulation was to be a requirement for manufacturers to disclose to prospective purchasers whether or not their vehicles conform to the belted occupant protection criteria of Standard No. 208, *Occupant Crash Protection*, when tested under the frontal fixed rigid barrier crash procedures of that safety standard, but at a speed of 35 mph instead of the 30 mph speed specified in the standard.

Since publishing the NPRM for crashworthiness ratings in 1981, we have retained an entry for this rulemaking in the Regulatory Agenda. However, this rulemaking has long been overtaken by events.

Since 1981, we have significantly developed and expanded our New Car Assessment Program (NCAP). As part of this program, the agency, not the manufacturers, annually subjects selected cars, light trucks, sport utility vehicles, and vans to frontal and side crash tests, with particular focus on models that are new, popular, redesigned, or have improved safety equipment. These vehicles are then rated on how well they protect drivers and passengers during those frontal and side collisions. We use a five star system for rating vehicles. We provide the ratings to the public through a variety of means, including press releases, the NHTSA website, and an annual publication titled "Buying a Safer Car." That publication provides the public with a variety of valuable information on crash tests, safety features and buying tips.

Through the expanded NCAP program, we are accomplishing the goals we sought in proposing the crashworthiness performance ratings program. Our monitoring of test scores and ratings from year to year indicates that the manufacturers do modify their vehicles in response to the NCAP ratings and sometimes prominently feature those ratings in their advertising.

During the 1990's, we expanded our Regulatory Agenda entry for the crashworthiness ratings rulemaking to include a discussion of our publication of a request for comments summarizing a 1996 study by the National Academy of Sciences (NAS) titled "Shopping for Safety—Providing Consumer Automotive Safety Information." (62 FR 27648, May 20, 1997.) The NAS study made a number of recommendations to NHTSA on ways to improve automobile safety information for consumers. Our 1997 notice requested comments on our response to the recommendations of the NAS study and on programs we had begun or were considering to address those recommendations.

For the long term, the NAS study recommended the development of an overall measure combining the relative

importance of crashworthiness [1] and crash avoidance [2] features for a vehicle. The study recognized that, for the foreseeable future, summary measures of crashworthiness and crash avoidance must be presented separately due to differences in current levels of knowledge, and differences in the roles of vehicle and driver in the two areas. For the immediate future, the NAS study recommended that the agency develop a summary measure of a vehicle's crashworthiness that incorporates quantitative information supplemented with the professional judgment of automotive experts, statisticians, and decision analysts. According to the recommendation, NHTSA should provide information with this measure to reflect the range of uncertainty in those judgments. For crash avoidance, the study recommended the development of a checklist of features for the near future.

In our 1997 Request for Comments, we said we would study the possibility of combining frontal NCAP and side impact NCAP ratings into a single rating, as a first step toward a summary crashworthiness rating. We requested comments on a number of possible approaches to exploring the NAS study recommendation that a comprehensive crashworthiness rating be developed. These approaches included:

- A Federal Advisory Committee to develop a method that the agency or others could use to "rate" new vehicles. Such method would indicate what quantitative information should be used (both from NHTSA and from other sources), how such information should be combined, and how such information would be supplemented with expert judgement.
- A negotiated rulemaking under which NHTSA would agree to propose a new consumer information regulation.
- Development of a standard means by which manufacturers would establish the degree to which a specific vehicle make/model exceeded the minimum requirements in the safety standards.

We also indicated that we believed the development of some comparative crash avoidance information was possible.

Commenters on the 1997 Request for Comments indicated little support for combining the frontal NCAP and side impact NCAP scores into a single rating. They expressed concerns about the compatibility of the two ratings programs, since frontal NCAP scores cannot be combined across weight classes, while side impact NCAP scores can. As a result, we did not pursue this option any further.

Commenters also expressed concern about other aspects of the NAS study recommendation for a summary rating. In particular, commenters generally did not support the use of expert judgment to supplement gaps in available quantitative information.

Since the publication of the 1997 Request for Comments, we have greatly expanded the scope of information that consumers can use to evaluate the relative safety of new vehicles. Ratings are available for not only front and side impact crashworthiness, but also rollover resistance. Additional ratings are under development for dynamic rollover, braking and lighting. Information on safety features in the "Buying a Safer Car" brochure has expanded from four features with the first issue to 22 features in the 2002 issue. Information on an additional four features is available on NHTSA's website, which has been greatly expanded and improved since the 1997 Request for Comments. In addition, the brochure and web site provide information on the importance of vehicle weight and on the relative rate of occurrence of front and side crashes to help consumers weigh the relative importance of the available information without a summary rating.

With the introduction of Rollover Resistance Ratings in 2001, we once again began looking at the idea of a summary rating, to see if the addition of this quantitative information would address some of the commenter concerns from 1997. However, with Congress' mandate to conduct research on a dynamic rollover rating to supplement the Rollover Resistance Ratings, we decided to postpone beginning work on a possible summary rating until after that research was completed. Until we finish research on dynamic rollover, braking and lighting, we will not return to consideration of a summary rating.

While we may develop a summary rating in the future, it will not be in the context of the 1981 proposal. Any summary rating that might be developed would be vastly different than what would have been done under that proposal. First, it would likely include consideration of factors beyond crash protection. Second, such a rating would be developed and distributed by NHTSA rather than by vehicle manufacturers. Consumer research conducted over the years indicates that consumers are more likely to take into consideration safety information provided by a neutral party, with the government being regarded as a source that is unbiased and trustworthy.

For all of the reasons discussed above, we are terminating the 1981 proposed rulemaking for a vehicle crashworthiness performance ratings program.

Issued: July 11, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

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[1] Crashworthiness refers to a vehicle's ability to protect occupants from serious injury or death when a crash occurs.

[2] Crash avoidance refers to a vehicle's ability to prevent a crash from occurring.

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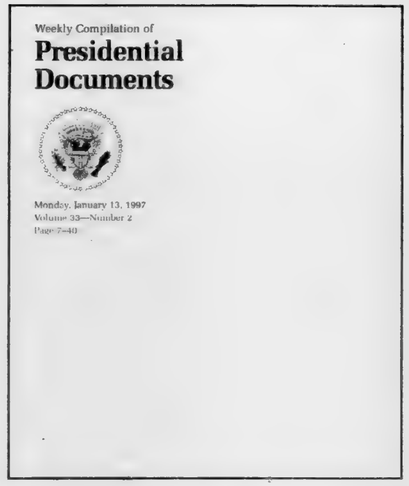
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DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103, 212, 214, 245, 248 and 299

[CIS No. 2080–00]

RIN 1615–AA10

Certificates for Certain Health Care Workers

AGENCY: Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule amends the Department of Homeland Security (DHS) regulations to provide that organizations previously authorized to issue health care worker certifications will continue to be permitted to issue certifications for a temporary period of time, and to set up procedures for authorizing organizations to issue the certificates, including an appeals process in the event that requests for authorization are denied. In addition, this rule adds the requirement that all nonimmigrants coming to the United States for the primary purpose of performing labor as health care workers, including those seeking a change of nonimmigrant status, be required to submit a health care worker certification. Publication of this rule will ensure more uniformity in the adjudication of petitions and admissibility determinations for aliens seeking to enter the United States to engage in labor as health care workers. On March 1, 2003, the former Immigration and Naturalization Service (Service) transferred from the Department of Justice to the DHS, pursuant to the Homeland Security Act of 2002 (Public Law 107–296). Accordingly, the Service's adjudications functions transferred to the Bureau of Citizenship and Immigration Services (BCIS) of the DHS, and the Service's inspections functions transferred to the Bureau of Customs and Border Protection (CBP). The DHS now has the authority to make revisions to what were previously Service regulations. For the sake of simplicity, this rule will no longer refer to the Service but rather DHS, even though meetings and publication of the previous interim rules, publication of the proposed rule, and receipt of comments took place under the Service prior to March 1, 2003.

DATES: This final rule is effective on September 23, 2003.

FOR FURTHER INFORMATION CONTACT: Mari F. Johnson, Adjudications Officer, Office of Adjudications, Bureau of Citizenship and Immigration Services, Department of Homeland Security, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 353–8177.

SUPPLEMENTARY INFORMATION: A proposed rule was published in the **Federal Register** on October 11, 2002, at 67 FR 63313. The rule proposed to implement section 343 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Public Law 104–208, 110 Stat. 3009, 636–37 (1996), now codified at section 212(a)(5)(C) of the Immigration and Nationality Act (Act), 8 U.S.C. 1182(a)(5)(C), and section 4(a) of the Nursing Relief for Disadvantaged Areas Act of 1999 (NRDAA), Public Law 106–95, codified at section 212(r) of the Act, 8 U.S.C. 1182(r).

What Are the Provisions of Sections 212(a)(5)(C) and (r) of the Immigration and Nationality Act (Act)?

Section 343 of IIRIRA created a new ground of inadmissibility. It provides that, subject to section 212(r) of the Act, an alien who seeks to enter the United States for the purpose of performing labor as a health care worker, other than a physician, is inadmissible unless the alien presents a certificate from the Commission on Graduates of Foreign Nursing Schools (CGFNS), or an equivalent independent credentialing organization approved by the Attorney General in consultation with the Secretary of the Department of Health and Human Services (HHS), verifying that:

(1) The alien's education, training, license, and experience meet all applicable statutory and regulatory requirements for admission into the United States under the classification specified in the application; are comparable with that required for an American health care worker of the same type; are authentic; and, in the case of a license, unencumbered;

(2) The alien has the level of competence in oral and written English considered by the Secretary of HHS, in consultation with the Secretary of Education, to be appropriate for health care work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write English; and

(3) If a majority of States licensing the profession in which the alien intends to work recognize a test predicting an applicant's success on the profession's licensing or certification examination, the alien has passed such a test, or has passed such an examination.

Section 212(r) of the Act created an alternative certification process for aliens who seek to enter the United States for the purpose of performing labor as a nurse. In lieu of a certification under the standards of section 212(a)(5)(C) of the Act, an alien nurse can present to the consular officer (or in the case of an adjustment of status, the Attorney General) a certified statement from CGFNS (or an equivalent independent credentialing organization approved for the certification of nurses) that:

(1) The alien has a valid and unrestricted license as a nurse in a state where the alien intends to be employed and that such state verifies that the foreign licenses of alien nurses are authentic and unencumbered;

(2) The alien has passed the National Council Licensure Examination (NCLEX); and

(3) The alien is a graduate of a nursing program that meets the following requirements:

(i) The language of instruction was English; and

(ii) The nursing program was located in a country which:

(A) Was designated by CGFNS no later than 30 days after the enactment of the NRDAA, based on CGFNS' assessment that designation of such country is justified by the quality of nursing education in that country, and the English language proficiency of

those who complete such programs in that country; or

(B) Was designated on the basis of such an assessment by unanimous agreement of CGFNS and any equivalent credentialing organizations which the Attorney General has approved for the certification of nurses; and

(iii) The nursing program:

(A) Was in operation on or before November 12, 1999; or

(B) Has been approved by unanimous agreement of CGFNS and any equivalent credentialing organizations which the Attorney General has approved for the certification of nurses.

CGFNS designated the following countries for purposes of this alternate certification: Australia, Canada, Ireland, New Zealand, South Africa, the United Kingdom, and the United States.

How Were These Requirements Implemented?

Section 212(a)(5)(C) of the Act became effective upon enactment on September 30, 1996. Shortly thereafter, the DHS met with HHS, the Department of Labor (DOL), the Department of Education (DoED), the Department of Commerce (DOC), the Office of the United States Trade Representative (USTR), and the Department of State (DOS) to reach consensus on the best approach for implementation of the new provision. The DHS also met with interested private organizations including CGFNS, the American Occupational Therapists Association, the National Board for Certification in Occupational Therapy (NBCOT), the Federated State Board of Physical Therapy, and the American Physical Therapy Association.

Section 343 of IIRIRA and NRDAA, was implemented via three interim rules published in the **Federal Register** as follows:

(1) Interim Procedures for Certain Health Care Workers, 63 FR 55007 (October 14, 1998) (codified at 8 CFR 212.15 and 245.14) (the first Interim Rule);

(2) Additional Authorization to Issue Certificates for Foreign Health Care Workers, 64 FR 23174 (April 30, 1999) (amending 8 CFR 212.15) (the second Interim Rule); and

(3) Additional Authorization to Issue Certificates for Foreign Health Care Workers; Speech Language Pathologists and Audiologists, Medical Technologists and Technicians, and Physician Assistants, 66 FR 3440 (January 16, 2001) (amending 8 CFR 212.15) (the third Interim Rule).

The supplementary information pertaining to the October 11, 2002, proposed rule describes these earlier rules in more detail.

The organizations that have already been granted authority to issue certifications under these interim rules, other than CGFNS, shall be required to seek authority to issue certifications under the provisions of this final rule. However, those organizations will retain interim authority to continue issuing certificates and certified statements provided that they submit a request for continued authorization on Form I–905, Application for Authorization to Issue Health Care Worker Certificates, on or before January 27, 2004, and during the period that the Form I–905 is pending adjudication with the DHS. The DHS will not require CGFNS to apply for authorization to issue certificates or certified statements for those seven health care occupations named in the legislative history to IIRIRA. However, CGFNS will be required to submit information regarding its certification processes via filing of Form I–905 without fee with the Director, Nebraska Service Center, on or before January 27, 2004. The DHS will review CGFNS' Form I–905 for content of the certificates for the seven health care occupations, and content of certified statements for nurses, and to ensure compliance with the universal standards set forth in this rule. Like other credentialing organizations, CGFNS will also be subject to ongoing review by the DHS, and termination of credentialing status for noncompliance with this rule. Further, the DHS will terminate the authority of any organization currently authorized to issue certificates or certified statements if the organization does not submit an application or provide information on Form I–905 on or before January 27, 2004.

What Were the Provisions of the First Interim Rule?

The DHS in consultation with HHS initially identified, on the basis of the legislative history, seven categories of health care workers subject to the provisions of section 212(a)(5)(C) of the Act. See H.R. CONF. REP. NO. 104–828 at 227 (1996). The seven categories are nurses, physical therapists, occupational therapists, speech-language pathologists, medical technologists (also known as clinical laboratory scientists), medical technicians (also known as clinical laboratory technicians) and physician assistants. *See* 63 FR at 55008.

In the first Interim Rule, CGFNS and the NBCOT were authorized to issue certificates to immigrant nurses and occupational therapists respectively, established the appropriate English language competency levels for foreign nurses and occupational therapists, and specified exemptions from English language proficiency testing.

The first Interim Rule applied only to immigrants. The DHS and DOS exercised their discretion under section 212(d)(3) of the Act, 8 U.S.C. 1182(d)(3), to waive the foreign health care worker certification requirement for nonimmigrant health care workers until promulgation of final implementing regulations. The DHS and DOS exercised their waiver discretion after carefully considering the complexity of the implementation issues, including how the health care certificate requirements affect United States obligations under international agreements and the need for health care facilities across the country to remain fully staffed and provide a high quality of service to the public. The waiver of inadmissibility applied to nonimmigrant health care workers already in possession of nonimmigrant visas and visa exempt aliens, including Canadians applying for classification under section 214(e) of the Act, 8 U.S.C. 1184(e) Trade NAFTA (TN) classification.

What Were the Provisions of the Second Interim Rule?

In the second Interim Rule, CGFNS was temporarily authorized to issue certificates to immigrant occupational therapists and physical therapists, it also temporarily authorized the Foreign Credentialing Commission on Physical Therapy (FCCPT) to issue certificates to immigrant physical therapists, and established the appropriate English language competency levels for physical therapists. The DHS, in consultation with HHS, found that both CGFNS and FCCPT met the "established track record" criterion, and concluded that there was a sustained level of demand for occupational therapists and physical therapists.

What Were the Provisions of the Third Interim Rule?

In the third Interim Rule, CGFNS was temporarily authorized to issue certificates to immigrant speech-language pathologists and audiologists, medical technologists (also known as clinical laboratory scientists), physician assistants, and medical technicians (also known as clinical laboratory technicians), listed the passing scores for the English language tests for those health care occupations, and amended the regulations concerning which organizations may administer the English language tests. The DHS also modified the criteria it had used in the first and second Interim Rules to temporarily authorize organizations to issue certificates to immigrant health care workers. CGFNS was found to have an established track record in issuing certificates for the additional occupations.

What Were the Provisions of the H–1C Interim Rule Published on June 11, 2001?

A related interim rule was published in response to the passage of the NRDAA, Petitioning Requirements for the H–1C Nonimmigrant Classification under Public Law 106–95, 66 FR 31107 (June 11, 2001) (amending 8 CFR 214.2(h)). Among other things, the NRDAA created an alternative certification process for foreign nurses only, as provided in section 212(r) of the Act. In the H–1C rule, the DHS announced that it would continue to waive the certification requirements for nonimmigrant nurses, pending the promulgation of new regulations implementing both certification processes.

What Provisions Were Contained in the Proposed Rule Published on October 11, 2002?

In the October 11, 2002, rule, the DHS proposed to implement a comprehensive process for the certification of foreign health care workers under sections 212(a)(5)(C) and (r) of the Act. It addresses foreign health care workers coming to the United States on a temporary basis (nonimmigrant aliens) as well as on a permanent basis (immigrants).

This rule proposed to amend 8 CFR 212.15 by:

(1) Specifying which organizations are authorized to issue certificates (8 CFR 212.15(e));

(2) Describing the required content of the certificate itself (8 CFR 212.15(f));

(3) Specifying the English language requirements for certification (8 CFR 212.15(g));

(4) Implementing the alternative certification process for foreign nurses and the required content of the certified statement (8 CFR 212.15(h));

(5) Establishing a streamlined certification process for certain nurses, occupational therapists, physical therapists, and speech language pathologists and audiologists (8 CFR 212.15(i));

(6) Describing the procedure to qualify as a certifying organization (8 CFR 212.15(j));

(7) Listing the standards that an organization must meet in order to obtain and retain authorization to issue foreign health care worker certifications (8 CFR 212.15(k)); and

(8) Providing for periodic review of the performance of certifying organizations (8 CFR 212.15(l)) and the termination of their authority (8 CFR 212.15(m)).

The rule also proposed to amend 8 CFR 103.1 by specifying at new paragraphs (f)(3)(iii)(QQ) and (RR) that the Associate Commissioner for Examinations exercises appellate jurisdiction over applications for authorization to issue foreign health care worker certifications, and the termination of authorization to issue foreign health care worker certifications.

The rule proposed to amend 8 CFR 103.7(b)(1) by adding a fee for filing Form I–905, Application for Authorization to Issue Certification for Health Care Workers. This form was previously approved for use in order to ensure that organizations formally seeking authorization to issue health care worker certificates or certified statements will be able to submit complete and uniform applications. However, because the authorization process was never implemented through a final regulation, the Form I–905 has not yet been distributed for public use.

The rule also proposed to amend 8 CFR 214.1(h) by adding a requirement that an alien who seeks to enter the United States for the purpose of performing labor in a health care occupation must present a foreign health care worker certification to the DHS in accordance with 8 CFR 212.15(d).

The rule further proposed to amend 8 CFR 248.3 by adding paragraph (i) to mandate that a nonimmigrant seeking a change of status to perform labor in a health care occupation must submit a foreign health care worker certification.

Discussion of Comments

What Comments Were Received in Response to the Proposed Rule?

Thirty-three comments were received from a variety of individuals and organizations including health care workers, attorneys, professional organizations, U.S. Government organizations, foreign government officials, and organizations granted authority to issue certifications to health care workers. The comments addressed many aspects of the proposed rule. For the sake of clarity, this section will summarize the justification for the regulatory amendments contained in the proposed rule and then discuss the comments that relate to the specific amendment.

It must be noted that the proposed rule generated a number of comments that were not related to the issue of certifications for health care workers. For example, two commenters discussed the general issue of the DHS' role in the importation of nurses to the United States while another commented on the issue of Social Security cards and licenses for nurses. One commenter discussed an alleged contradiction in the statutory language. These comments will not be discussed because they are not germane to the proposed rule.

Ten commenters made general observations on the impact of the rule on health care in the United States. Nine of the commenters provided that the rule will have an adverse affect on health care in the United States because it will make it harder for facilities to recruit, hire, and retain foreign health care workers. The commenters stated that the implementation of the regulation will result in increased backlogs and create difficulties for aliens attempting to enter the United States. The other commenter stated that CGFNS will have a difficult time processing the number of requests it will receive for certifications. One commenter stated that the regulation takes away the authority of hospital administrators to make decisions with respect to health care issues. Finally, one commenter stated that the regulation was not flexible and would create operational difficulties for health care facilities.

The statutory provisions relating to the certification process are complex. In drafting the previous interim rules, the proposed rule, and this final rule, every attempt has been made to minimize the adverse affects that they would have on health care facilities and health care workers and, at the same, ensure that they reflect the intent of Congress.

Aliens Who are Subject to the Health Care Certification Requirements

The DHS took the position in the proposed rule that the requirements of section 212(a)(5)(C) of the Act apply to both immigrants and nonimmigrants who seek to enter the United States for the purpose of performing labor as a health care worker. Physicians are explicitly exempted from the certification requirement by the statute and, therefore, are not covered by this rule.

Further, the DHS held that with respect to immigrants, the certification requirement applies to both aliens overseas who are seeking an immigrant visa, and aliens in the United States who are applying for adjustment of status to that of a permanent resident. The DHS interprets the statutory language, "any alien who seeks to enter the United States for the purpose of

performing labor as a health care worker * * *" with respect to immigrants, to limit the scope of this provision to aliens with an approved employment-based (EB) preference petition under section 203(b) of the Act, 8 U.S.C. 1153(b), to perform labor in a covered health care occupation. Therefore, an alien is not subject to section 212(a)(5)(C) of the Act if he or she is seeking an immigrant visa or adjustment of status on any other basis pursuant to a family-sponsored petition under section 203(a) of the Act, 8 U.S.C. 1153(a), an EB preference petition for a non-health care occupation; under section 209 of the Act, 8 U.S.C. 1159 (adjustment of status of refugees); under section 210 of the Act, 8 U.S.C. 1160 (special agricultural workers), or pursuant to section 240A of the Act, 8 U.S.C. 1229b (cancellation of removal); under section 249 of the Act, 8 U.S.C. 1259 (record of admission for permanent residence); or under any other statutory provision relating to admission as an immigrant.

With respect to nonimmigrant aliens, the proposed rule applied the certification requirement to all aliens who have obtained nonimmigrant status for the purpose of performing labor as a health care worker, including, but not limited to, those aliens described in sections 101(a)(15)(H), (J), and (O) of the Act, 8 U.S.C. 1101(a)(15), and aliens entering pursuant to section 214(e) of the Act, 8 U.S.C. 1184(e), as TN professionals.

The DHS also proposed that a nonimmigrant entering the United States to receive training in an occupation listed at 8 CFR 212.15(c) will not be required to obtain a health care certification. This includes, but is not limited to, F–1 nonimmigrants receiving practical training and J–1 nonimmigrants coming to the United States to undertake a training program in a medical field. Nonimmigrant aliens entering the United States to receive training in a health care occupation fall outside the ambit of section 212(a)(5)(C) of the Act because they are not independently performing the full range of duties of their occupation and, therefore, are not entering for the purpose of performing labor as a health care worker. Their primary purpose in the U.S. is not to perform health care but is rather to receive training.

Finally, the DHS concluded in the proposed rule that the alien health care certification requirement should not be applied to the spouse and dependent children of an immigrant or nonimmigrant. Dependent aliens enter the United States for the primary purpose of accompanying the principal alien, not to perform labor as a health care worker, or in any other field. A dependent alien derives his or her nonimmigrant status from his or her familial relationship with the principal alien and is not required to work in a particular occupational field or for a specific employer to maintain his or her status. Accordingly, regardless of whether or not a dependent alien may intend to work in a health care occupation listed at 8 CFR 212.15(c), he or she would not be subject to the health care worker certification requirement.

Eighteen comments were received in response to this portion of the proposed rule. Four commenters stated that all nonimmigrant aliens should be covered by section 212(a)(5)(C) of the Act. Six commenters suggested that section 212(a)(5)(C) of the Act should not apply to TN nonimmigrants because it conflicts with the terms of the North American Free Trade Agreement (NAFTA).

The DHS carefully considered these comments. However, as noted in the proposed rulemaking, based on our consideration of the relevant statutory provisions, legislative history, judicial precedent, and our prior rulemakings, the DHS has concluded that the health care certification requirement is intended to apply to all nonimmigrant health care workers. The legislative history of IIRIRA confirms that, in this instance, the DHS may not rely on the commenters' assertions regarding an alleged conflict with NAFTA to reach a different result. *See* H.R. CONF. REP. NO. 104–828 at 226–27 (1996).

Four commenters also stated that the certification requirement should be applied to the spouse and dependent children of an immigrant or nonimmigrant alien. One commenter stated that nonimmigrant aliens coming to the United States to obtain training, such as F–1 and J–1 nonimmigrants, should not be required to obtain a certificate while two commenters suggested that they should. Likewise, two commenters suggested that an H–3 alien should also be exempt from the provision because an H–3 alien is also coming to the United States to obtain training. Finally, one commenter suggested that the DHS specifically list the nonimmigrant aliens exempted from the certification requirements in the final regulation.

The DHS will not require dependent aliens to obtain a certificate even if they will eventually be employed in a covered health care occupation. Sections 212(a)(5)(C) and 212(r) of the Act relate to grounds of inadmissibility. Since dependent aliens enter the United States for the primary purpose of accompanying the principal alien, they are not coming to the United States to perform labor as a health care worker, or in any other field, and they will not be required to obtain a certification.

Further, the DHS will not list the specific aliens exempted from the requirement to obtain health care certificates. The language contained in the proposed rule at 8 CFR 212.15(a)(1) provides that the provision applies only to those aliens coming to the United States for the primary purpose of performing labor in a health care occupation. This language clearly does not apply to a nonimmigrant alien coming to the United States for training, including an H–3 nonimmigrant alien. Further, the listing of specific nonimmigrant classifications in the regulation may be erroneously interpreted by some to limit the exemption to those nonimmigrants specifically listed in the regulation.

Health Care Workers Who Were Trained in the United States, or Who Are in Possession of a Valid State License

The proposed rule provided that possession of a state license does not exempt a foreign health care worker from compliance with the certification requirement.

As stated in the proposed rule, this conclusion was reached after considering the language of the statute, and after consultation with HHS. Nothing in the text of section 212(a)(5)(C) of the Act relieves alien health care workers of this requirement, on the ground that they were trained in the United States or are already licensed here. Moreover, the certification requires that any state license the alien may already have is unencumbered. Indeed, had Congress intended to exempt such aliens from the certification requirement, it would not have explicitly provided that the certification must document the fact of an alien=s successful passage of any test or examination that is accepted as evidence of an applicant's likely success on a state licensing examination, if a majority of States recognize such a pre-licensing test or examination. In addition, in NRDAA, Congress explicitly addressed whether a foreign nurse, in possession of a full and unrestricted license issued by the state of intended employment, should be subject to the certification requirement. The NRDAA created a less onerous, alternative method of certification for foreign nurses who have unrestricted state licenses and meet certain other conditions, as provided in section 212(r) of the Act. The fact that Congress has chosen not to provide a less rigorous alternative certification option to state-licensed foreign health care workers other than nurses supports the inference that Congress intended state-licensed foreign health care workers to comply with the certification process.

In addition to the statutory scheme, there are policy considerations that mitigate in favor of applying the certification requirement to state-licensed foreign health care workers. The state screening process alone would not demonstrate that the other two prongs of the certification requirement, English language competency, and comparable training and unencumbered licensing, had been met. First, the state screening process does not always measure English proficiency. Second, HHS had advised that the state screening process may not always discover encumbrances and restrictions on a license.

The statute and legislative history are silent with respect to whether foreign health care workers, who received their training in the United States, are subject to the certification process. While such aliens would satisfy the comparable training certification requirements, their licensure would not be verified, as required by the statute. Given the lack of evidence of congressional intent that such aliens be exempt from the reach of section 212(a)(5)(C) of the Act, the DHS has concluded that foreign health care workers who received their training in the United States must comply with the certification requirement. The DHS will not modify the proposals contained in the proposed rule to wholly exempt foreign health care workers who received their training in the United States or who hold a license to practice in the United States.

One commenter suggested that the verification requirement for nurses at proposed 8 CFR 212.15(h)(2)(i) be amended to include the parenthetical phrase A(including reliance on evidence provided by the alien)" after the word Averified." Under the suggested language, credentialing organizations would not be permitted to second-guess a state's licensure verification. The DHS will not adopt this proposal. The statutory language at section 212(r) of the Act authorizes CGFNS or any other authorized credentialing organization to verify that the alien has a valid and unrestricted license in a state where the alien intends to be employed, and that such state verifies that the foreign licenses of alien nurses are authentic and unencumbered. The DHS does not have the authority under the statute to determine whether or not a state verifies that the foreign licenses of alien nurses are authentic and unencumbered, nor does the DHS have the authority to prevent CGFNS or any other authorized credentialing organization from making such a finding before issuing certification.

The proposed rule invited comments regarding the feasibility of having a more streamlined certification process for those who train in the United States or who are already licensed here, and regarding specific proposals on how to adopt such a policy.

The DHS received four comments in response to the request for suggestions relating to a streamlined certification process. Three commenters stated that the DHS should develop a streamlined approach without providing any suggested process while one commenter, CGFNS, provided a detailed description of a proposed process.

The CGFNS proposed that an alien nurse who graduated from an entry-level program accredited by the National League for Nursing Accreditation Commission (NLNAC) or the Commission on Collegiate Nursing Education (CCNE) would be exempt from the educational comparability review and English language proficiency testing. The CGFNS also proposed that aliens educated in the United States in any other named discipline and who have graduated from a program accredited by the discipline would be evaluated under this same process.

Pursuant to section 343 of IIRIRA, HHS, in consultation with the Secretary of Education, is required to establish a level of competence in oral and written English which is appropriate for the health care work of the kind in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write.

The statute vests the Secretary of HHS with the "sole discretion" to determine the standardized tests and appropriate minimum scores required by section 343 of IIRIRA. Because the organizations identified as the accrediting bodies for nursing go through a rigorous review prior to being recognized by the DoED, HHS has agreed that the proposal to accept graduation from an NLNAC or CCNE accredited program in lieu of a review of educational comparability and English proficiency has merit. Accordingly, the proposal will be adopted in the final rule. It will shorten the certification process required for health care workers educated in the United States. It will also allow CGFNS and any approved organization to comply with the statutory requirements and, at the same time, ease the burden on certain health care workers. This proposal has been implemented in this final rule at 8 CFR 215.15(i).

In addition, HHS has agreed to accept graduation from the following programs in lieu of a review of educational comparability and English proficiency:

(1) For occupational therapists, graduation from a program accredited by the Accreditation Council for Occupational Therapy Education (ACOTE) of the American Occupational Therapy Association (AOTA);

(2) For physical therapists, graduation from a program accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE) of the American Physical Therapy Association (APTA); and

(3) For speech language pathologists and audiologists, graduation from a program accredited by the Council on Academic Accreditation in Audiology and Speech Language Pathology (CAA) of the American Speech-Language-Hearing Association (ASHA).

However, the proposal that aliens educated in the United States in any other named discipline and who have graduated from a program accredited by the discipline would be evaluated under this same process will not be adopted as general provision, because specific accrediting bodies for other professions were not suggested. The HHS will continue to review further proposals for each profession on a case-by-case basis.

Health Care Occupations That Are Subject to 8 U.S.C. 1182(a)(5)(C)

In the proposed rule, based on congressional history, seven categories of health care workers subject to the health care certification requirements were identified. See H.R. CONF. REP. NO. 104–828 at 227 (1996). The seven categories are nurses, physical therapists, occupational therapists, speech-language pathologists, medical technologists (also known as clinical laboratory scientists), medical technicians (also known as clinical laboratory technicians) and physician assistants. *See* the first Interim Rule. The conference report also provided that the DHS could designate additional health care occupations subject to certification by regulation. Since the DHS had limited agency expertise with health care occupations and issues, it consulted extensively with HHS, the agency generally responsible for overseeing health care occupations and other related health care issues in the United States, with respect to the question of whether aliens in additional health care occupations should be required to comply with 8 U.S.C. 1182(a)(5)(C).

The proposed rule identified two factors relevant to the consideration of which health care occupations fall under the ambit of section 212(a)(5)(C) of the Act. The first factor is whether the health care occupation generally requires a license in a majority of the states. This factor reflects the states' historical and practical experience in distinguishing between those health care occupations requiring extensive regulation and those occupations that do not. At the advice of HHS, DHS has included the District of Columbia. While not a state, Washington, DC, has its own licensing authorities and should be included when determining whether a majority of states recognize a licensure or certification predictor exam.

The second factor is whether the health care worker has a direct effect on patient care, or, in other words, whether a health care worker in that occupation could reasonably pose a risk to patient health.

In response to this proposal, CGFNS suggested that a third factor should be considered in determining whether an occupation should be included in the certification process. The CGFNS suggested that an additional factor that should be considered is whether a significant number of foreign nationals enter the United States workforce for the purpose of performing labor in a particular health care occupation. The CGFNS noted that it would not be prudent to spend the time and resources required to establish a certification process for a particular occupation in which very few foreign workers are seeking employment.

The DHS has considered using the factor suggested by CGFNS. It would be difficult to accurately measure the number of "foreign" workers in a given occupation at a particular point in time, and the labor market for any occupation is subject to fluctuations. As the DHS is not currently adding any other occupations to the list of seven occupations requiring certification or certified statements, the DHS will not adopt the suggestion to evaluate inclusion of an occupation based on the number of foreign nationals seeking to enter the United States workforce in that occupation.

Under the proposed rule, health care workers such as, but not limited to, medical teachers, medical researchers, managers of health care facilities, and medical consultants to the insurance industry would not be required to comply with the certification requirement. In contrast, health care workers, such as supervisory physical therapists, who may not typically be involved in hands-on patient care but do have a direct effect on patient care, would be subject to the certification requirements. In the proposed rule, the DHS acknowledged that the job descriptions of certain occupations that could be added to the list may differ in other countries from the United States definition of the occupation. The differences may create confusion about which occupation is subject to certification. The DHS suggested that a possible solution would be to define each health care occupation subject to certification in this final rule. The DHS again invited comments regarding the need to define a health care occupation that is subject to certification.

In response to this provision, the DHS received nine comments. Three commenters suggested that the list of occupations be expanded to include additional occupations including Radiation Therapists and Radiological Technologists. Two commenters suggested that the current list of occupations be retained. Three commenters suggested that the DHS should define a health care occupation as any occupation that requires a license to provide direct and indirect patient care. Another commenter suggested that a health care occupation is any occupation that involves patient care. Finally, one commenter suggested that job descriptions should be used to define a health care occupation.

After reviewing the comments, the DHS will not include a specific definition of each health care occupation subject to certification in the regulation at this time. The definitions offered by the commenters were not sufficiently specific and could cover a range of occupations not contemplated by the legislative history. Further, the suggestions have not addressed concerns that the job descriptions of occupations may differ between the United States and other countries. The DHS will continue the past practice of examining the duties of the position offered to the foreign worker to determine if the position falls into one of the listed health care occupations. The practice of continuing to review the duties of the prospective position on a case by case basis will allow for a thorough evaluation of each application and a determination based on the merits of the case rather than the petitioner's or applicant's ability to make the duties of the position conform to a narrow definition.

When To Submit the Certification to the DHS

The statutory language at section 212(a)(5)(C) of the Act requires certain aliens seeking to enter the United States for the purpose of performing labor as a health care worker to present a certificate from CGFNS or an equivalent credentialing organization to the consular officer or, in the case of an adjustment of status, the Attorney General. In the proposed rule, the DHS also provided that the certification must be used for initial admission into the United States or for a change of status within 5 years of the date that it was issued.

Two comments were received in response to this proposal. One commenter suggested that the organization that issues the certification send it directly to either the DHS or, if the alien is outside the United States, to the consular post. Since the adoption of this suggestion would be contrary to statute, the requirement that the certificate be presented to a consular officer at the time of visa issuance and to the DHS at the time of admission or adjustment of status will continue in this final rule.

The other commenter suggested that the certification should be valid indefinitely. While the proposed regulation did not establish a validity date for the certification, it did require that it be submitted to the appropriate entity within 5 years of its issuance. The purpose of this proposal is to ensure that when the certification is submitted, the holder still has the appropriate language and technical skills to perform the duties of the occupation in the United States. Foreign licenses may be encumbered and therefore invalid after a prolonged period of time. Additionally, it is quite possible that over the course of time that the alien may lose certain skills necessary to safely perform the duties of the occupation in the United States. The 5-year submission period provides a basis to ensure that the holder of the certificate continues to meet the regulatory requirements for issuance of the certificate. The proposed rule also provided that if an alien seeking entry to the United States to perform labor in a particular health care occupation has already presented the certification and been admitted as a nonimmigrant, an immigrant, or has adjusted to permanent resident status, he or she will not be required to present the certificate again when he or she makes future applications for admission to the United States to perform labor in that particular health care occupation. The presentation of a Form I–94 issued to the alien at the initial admission to the United States, or a fee receipt showing that the alien was processed for admission under NAFTA would be used, if required, as evidence that the alien has previously presented a foreign health care worker certificate for a particular health care occupation. Similarly, such an alien would not have been required to again present the foreign health care worker certificate to the DHS, with an application for extension of status to perform labor in that particular health care occupation.

The DHS received no comments on this proposal. However, after considering the impact of this provision, the DHS has determined that it will only accept a valid health care worker certificate or certified statement as evidence that the alien is admissible. Currently, an alien is generally required to surrender the departure stub of Form I–94 upon departure from the United States. Controlling the departure of aliens is consistent with the DHS's efforts to fulfill a congressional mandate to implement a comprehensive entry-exit program by 2005. As a result, many aliens will not be able to present a departure stub from a previously issued Form I–94 as evidence of their continuing admissibility under section 212(a)(5)(C) of the Act. In addition, it is noted that information on a Form I–94 does not always include the occupation for an alien nonimmigrant. For this reason, even in exceptional instances where the alien is permitted to retain the departure stub of the Form I–94 when departing the United States, the DHS would not necessarily be able to use the departure stub of the Form I–94 to verify that a particular alien was previously admitted as a health care worker. Accordingly, the DHS has determined that it is in the best interest of affected aliens to require that they present valid health care worker certificates or certified statements each time they seek admission into the United States. Lawful permanent residents will not be required to present this evidence.

Implementation of the Certification Requirement

This rule adds a new 8 CFR 248.3(i) to outline the procedure for submitting the certificate to the DHS when an application is made to change nonimmigrant status within the United States.

The proposed rule also provided that, on the effective date of the final rule, nonimmigrants who have already entered the United States under a waiver of inadmissibility under section 212(d)(3) of the Act and are working as health care workers will be required to present a certificate to the DHS only if, at any point in the future, they file an application for an extension of stay, or apply for admission to the United States, whichever event occurs first.

The DHS received 13 comments in response to this provision. All 13 commenters suggested that the DHS delay the implementation of this provision for a period of time in order to ensure that the foreign health care workers already in the United States would not be adversely affected. The commenters noted that some health care workers may be required to travel outside of the United States and would not be able to obtain a certification prior to their departure. Other commenters noted that some health care workers who require an extension of their temporary stay would not be able to obtain a certification in a timely fashion and would be forced to terminate their employment at the health care facility.

The DHS believes that these comments are well-founded. The DHS is concerned about the possibility that health care facilities and the United States public will be adversely affected by an immediate implementation date. In addition, DOS also has recommended that the DHS continue to exercise its waiver authority under section 212(d)(3) of the Act for foreign health care workers for at least one year subsequent to the publication of this rule.

If this rule were effective upon publication, potentially every nonimmigrant working in one of the covered health care occupations and seeking admission into the United States would be immediately inadmissible and ineligible to work in the United States under their current nonimmigrant classifications. This would result in a serious disruption to the United States health care system, and is contrary to the intent of the rule. While the DHS does not have precise figures for the number of nonimmigrant health care workers within the United States, health care workers in general comprise a significant portion of the United States workforce. According to the 2001 National Occupational Employment and Wage Estimates from the Bureau of Labor Statistics, there are approximately 9,241,840 health care workers in the United States. Of these, approximately 2,217,990 are registered nurses; 683,790 are licensed practical nurses and licensed vocational nurses; 126,450 are physical therapists; 77,080 are occupational therapists; 94,150 are speech language pathologists and audiologists; 292,320 are medical technologists and technicians; and 56,200 are physician assistants.

Further, were this rule to be effective upon publication, there is no evidence that organizations authorized to issue health care certifications will be able to issue certifications to this potentially large group of workers within a reasonable amount of time. Not only are potentially affected health care workers required to apply for and obtain the actual certifications, but most workers would also be required to pass certain standardized English language tests as a minimum requirement to obtain certification. As discussed in this rule, one of the currently authorized English language testing organizations advised HHS and the DHS that it will no longer provide testing services to foreign health care workers because it cannot meet the demands placed upon it by foreign health care workers seeking health care certificates, and can no longer provide fair access or guarantee testing security.

In addition, health care workers abroad may be required to travel to remote locations in order to take certain tests and will require sufficient time to schedule testing and make any necessary travel arrangements. Although the tests may be offered several times a year, not all required tests are offered in one location. For example, the TSE is not always offered at the same location as the TOEFL, so a health care worker may have to go through several testing cycles in order to obtain a combination of test scores needed for certification. Finally, it should be noted that this rule is implementing the requirement that all approved credentialing organizations obtain evidence of candidate education and licensure directly from the issuing authorities. Thus, once a candidate has passed the requisite tests and submitted an application for certification, there will be additional delays while the authorized credentialing organization obtains and reviews documents such as educational transcripts and licensure materials.

After consideration of these factors, the DHS believes that it must continue the provision for temporary admission under section 212(d)(3) of the Act for a period of 1 year in order to allow for any potential delays in issuance of health care worker certification and to ensure that the United States public is not adversely affected when nonimmigrant health care workers currently employed in the United States are required to obtain certification. Therefore, the DHS has added language at 8 CFR 215.15(n) that continues in force the First Interim Rule's standing provision for temporary admission under section 212(d)(3) of the Act. An alien qualifies for this special provision only if the alien was admitted on or before July 26, 2004. Moreover, any petition or application to extend the alien's period of authorized stay or change the alien's status will be denied unless the alien obtains the required

certification no later than 1 year after the date of the alien's temporary admission.

Process for an Organization to Obtain Authorization to Issue Health Care Certificates

The statute provides that a foreign health care worker must present a certificate from CGFNS or an equivalent credentialing organization or, in the case of certain foreign nurses, a certified statement from CGFNS or an equivalent credentialing organization. In the legislative history to IIRIRA, the conferees identified seven health care occupations (which are currently reflected in 8 CFR 212.15(c)). It is reasonable to infer from the statutory designation of CGFNS as a credentialing organization that Congress considered CGFNS to possess the resources and expertise to issue certificates in at least those seven designated health care occupations. Accordingly, the DHS will not require CGFNS to apply for credentialing status with respect to those seven health care occupations. However, CGFNS will be required to submit information regarding its certification processes via filing of Form I–905 Application for Authorization to Issue Certification for Health Care Workers, without fee with the Director, Nebraska Service Center, in order to enable the DHS to review the content of its certificates for the seven health care occupations, and content of its certified statements for nurses, and ensure compliance with the universal standards set forth in this rule. Like other credentialing organizations, CGFNS will also be subject to ongoing review by the DHS, and termination of credentialing status for noncompliance with this rule.

It is less clear, however, that Congress considered whether CGFNS possessed the expertise to issue certificates for health care occupations other than the seven identified in the legislative history. Therefore, although CGFNS' statutory designation creates a strong presumption of expertise with respect to all health care occupations such that the DHS will not charge a fee for review of the Form I–905 in relation to those occupations, the DHS will require CGFNS to file an application on Form I–905 with fee under the procedures outlined at 8 CFR 212.15(j), for credentialing status with respect to any health care occupation other than the seven identified in the legislative history.

Organizations other than CGFNS may be approved to issue certificates or certified statements by submission of Form I–905 to the Director, Nebraska Service Center, with fee. The fee for Form I–905 will be $230.

For purposes of administrative ease and efficiency, the DHS will centralize all requests for designation as a credentialing organization at the Nebraska Service Center, regardless of the geographical location of the requesting organization. Centralization of these requests will enable personnel at the Nebraska Service Center to establish and maintain the appropriate contacts with HHS and DoED to assist in the adjudication of applications for credentialing status. The DHS will accord significant weight to the opinion of HHS in the adjudication of applications for credentialing status because of that agency's expertise with credentialing requirements for health care occupations and health care issues. It should be noted, however, that the DHS may deny a request for authorization on grounds unrelated to credentialing requirements for health care occupations or health care issues, despite a favorable HHS opinion. For example, the DHS may find that because an organization has been convicted, or the directors or officers of an authorized credentialing organization have individually been convicted of the violation of state or federal laws, it would not be appropriate to authorize an organization to issue certificates or certified statements.

Two comments were received with respect to the DHS's treatment of CGFNS under the proposed rule. One commenter stated that CGFNS should not be permitted to issue certificates to medical laboratory technologists because of the large number of credentialing organizations for this occupation in the United States. The other commenter stated that the treatment of CGFNS in the proposed rule is appropriate.

The DHS will not limit the scope of CGFNS' authority to issue certificates to medical laboratory technologists. The fact that other entities have established different licensing and credentialing processes in the United States does not mean that CGFNS is unable or less qualified to issue certificates to foreign health care workers employed in the same occupation. CGFNS has been issuing certificates and certified statements to health care workers in the field of nursing, a field that has a large number of credentialing entities and with varied standards.

The proposed rule noted that Form I–905 will require the organization seeking credentialing status to:

(1) Provide a point of contact and a written, detailed description of the organization and how the organization meets the standards described in 8 CFR 212.15(k);

(2) List the health care occupations for which the organization is seeking approval to issue certificates, and describe the organization's expertise in each health care occupation for which approval to issue certificates is sought;

(3) Describe how it will process applications and issue certificates on a timely basis; and

(4) Describe the procedure it has designed in order for the DHS to verify the validity of a certificate.

The DHS will provide the organization with a written decision on its application. An organization granted authorization to issue certificates must agree to provide the DHS with all requested documentation and to allow the DHS access to its records relating to the certification process. If the application is denied, the DHS will explain the reason(s) for the denial. Applications that are denied by the DHS may be appealed to the Administrative Appeals Office pursuant to 8 CFR 103.3.

In the proposed rule, the DHS sought comments on the best method of notifying the public when new organizations are approved to issue certifications and certified statements. One method of notifying the public was through the publication of an interim rule in the **Federal Register**.

In the alternative, the DHS considered designating, by a separate and comprehensive public notice in the **Federal Register**, the list of organizations approved to issue certification. The DHS would also maintain this list on its Web site at *http://www.immigration.gov).* This method would allow the DHS to update the list of authorized organizations more quickly than through publication of interim rules.

The DHS did not receive any comments on this particular issue. However, after additional consideration, the DHS has determined that it will provide notice to the public that an organization has been approved to issue certificates and certified statements through the publication of a comprehensive notice in the **Federal Register**. As a result, this final rule provides at 8 CFR 215.15(e)(4) that the DHS will notify the public of new approved organizations authorized to issue certificates by publishing a public notice in the **Federal Register**. This rule also adds the same provision with respect to organizations authorized to issue certified statements at 8 CFR 215.15(h)(1). The DHS would maintain the list of organizations authorized to issue certificates or certified statements, or whose authorization has been terminated, on its Web site at *http://www.immigration.gov.*

The proposed rule recognized that more than one organization could be approved to issue certifications for the same health care occupation. An alien may obtain a certificate from any organization authorized to issue certificates for that occupation.

One commenter suggested that recognizing more than one credentialing organization could create difficulties because the two organizations may establish different procedures for issuing certifications. The DHS is aware that organizations may have slightly different requirements for issuing certifications. However, the DHS is convinced that the standards established for approval guarantee that organizations will follow similar, although not identical, procedures for issuance of certifications.

This rule also adopts the language of the proposed rule and provides that the DHS's approval will be for a 5-year period of time subject to the review process described in 8 CFR 215.15(l).

Two commenters suggested that the organizations granted approval under the previously published interim rules be permitted to issue certificates for a given period of time until they could be approved under the standards listed in the final rule. The proposed rule provided that the authorization granted to organizations under the interim rules would continue pending final adjudication of its credentialing status under the provisions contained in the proposed rule.

Form I–905

The proposed rule set a filing fee of $230 for Form I–905. When establishing fees, the DHS must comply with guidance provided in the Office of Management and Budget (OMB) Circular A–25. This guidance directs federal agencies to charge the Afull cost'' of providing benefits when calculating fees that provide a special benefit to recipients. Section 6(d) of OMB Circular A–25 defined Afull cost'' as including Aall direct and indirect costs to any part of the Federal Government of providing a good, resource, or service.'' The DHS determined that $230 was the appropriate fee for Form I–905 after comparing the processing of the form to the process involved with Form I–17, Petition for Approval of School for Attendance by Nonimmigrant Student, which has a processing fee of $230. The DHS noted in the proposed rule that it will use $230 for the fee for the Form I–905 until the next biennial fee review, as required by the Chief Financial Officers Act of 1990, Public Law 101–576, 104 Stat. 2838.

In response to the new form, the DHS received two comments. One commenter suggested that the fee should be higher. The DHS will not increase the fee because the rationale used in the proposed rule to establish the fee is appropriate. The DHS may revise the fee after the next biennial fee review. The other commenter stated that the questions on the Form I–905 should be tailored to a specific occupation. Upon review, the DHS will not make any changes to Form I–905. The answers to the questions contained on the form will provide the DHS with the information necessary to determine an organization's eligibility to issue certifications.

The Standards an Organization Must Meet in Order To Obtain Authorization To Issue Certificates

The proposed rule lists the standards an organization must substantially meet in order to be authorized to issue certificates at 8 CFR 212.15(k). An organization seeking approval to issue certificates or certified statements should submit evidence addressing each of the standards. These standards were developed by HHS in order to ensure that an organization meets the requirements contemplated by Congress. In drafting these standards, HHS drew upon the legislative history to IIRIRA, and drew extensively from the standards of the National Commission for Certifying Agencies, a nationally recognized body that accredits certifying organizations. There are four guiding principles to the standards:

(1) The DHS should not approve a credentialing organization, unless the organization is independent and free of material conflicts of interest regarding whether an alien receives a visa;

(2) The organization should demonstrate an ability to evaluate both the foreign credentials appropriate for the profession, and the results of examinations for proficiency in the English language appropriate for the health care field in which the alien will be engaged;

(3) The organization should also maintain comprehensive and current information on foreign educational institutions, ministries of health, and foreign health care licensing jurisdictions; and

(4) If the health care field is one for which a majority of the States require a predictor examination (currently, this is done only for nursing), the organization should demonstrate an ability to conduct the examination outside the United States.

Since the statute and the report language is intended to ensure that aliens entering the United States for purposes of performing labor as a health care worker are of the same quality as United States trained workers, HHS has determined that this can be assured by requiring that organizations issuing certificates be held to a select group of standards. The DHS is concerned that in the absence of strict standards, unqualified organizations may obtain authorization from the DHS to issue certificates, which could ultimately have adverse consequences for health care in the United States. Since the provisions of section 212(r) of the Act appear to share with section 212(a)(5)(C) of the Act the goal of ensuring a high quality of health care service in the United States, the DHS will use the same standards to adjudicate applications from credentialing organizations under either provision.

The proposed rule solicited comments from the public and from interested organizations regarding the proposed standards, specifically, whether an organization seeking authorization to issue certificates may meet most, but not all of the standards. The DHS sought comment on the question of whether a prospective credentialing organization's inability to meet all of the proposed standards should preclude the DHS from authorizing the organization to issue certificates. The DHS also sought public comment on the question of whether the proposed standards should be considered as guidelines or as strict criteria that would preclude an organization from qualifying. Finally, the DHS invited public comment on the question of how a prospective credentialing organization can meet the requirement that it demonstrate that it is independent and free of material conflicts of interest regarding whether an alien receives a visa.

In response to this proposal, the DHS received 18 comments. Four commenters stated that organizations should be required to meet all the proposed standards and that the standards should be viewed as strict criteria, not merely guidelines. Two commenters stated that the organizations must be independent and free from prejudice. One commenter suggested that the DHS remove or modify the standard that requires organizations to compare the passing rate of foreign health care workers on licensure examinations with those of United States health care workers. Another commenter suggested that tracking the performance of certificate holders would not be practical.

One commenter suggested that recognized experts should be on an organization's board while another commenter suggested that members of the health care profession should be included. One commenter suggested that the standards were so complicated that they might discourage entities from applying for approval while one commenter stated that the requirements were not specific. Three commenters stated that the credential review process developed by the approved organizations must follow established guidelines. One commenter stated that organizations should be required to solicit information from applicants seeking a certification. Finally, one commenter suggested that each organization should require that health care workers complete the same course work for each occupation.

Two commenters made suggestions relative to the composition of the organization's board, including a suggestion from one commenter that the proposed language at 8 CFR 212.15(k)(l)(vi) be amended to clarify that a not-for-profit corporation that has a self-perpetuating board of directors may still demonstrate that it is independent and free of material conflicts of interest regarding whether an alien receives a visa. Many not-for-profit organizations have self-perpetuating boards of directors but may nevertheless be considered independent and free of material conflicts of interest under the statute. This provision was not intended to exclude not-for-profit corporations from receiving authorization to issue health care worker certifications, and the DHS recognizes that a not-for-profit organization with a self-perpetuating board of directors may yet establish that it has met the statutory requirement. Accordingly, the DHS will adopt this suggestion and has added language at 8 CFR 212.15(k)(l)(vi) to provide that not-for-profit corporations which have difficulty meeting the requirement relating to self-perpetuating boards of directors may nevertheless establish that the organization is independent and free of material conflicts of interest regarding whether an alien receives a visa.

One commenter suggested that any credentialing organization that seeks authorization to issue health care worker certificates should be required to request evidence of an alien's degree and transcript from the issuing educational and licensing authorities, rather than accept those documents from the applicants. The DHS, in consultation with HHS, has determined that this suggestion will provide additional protection against fraudulent submissions from applicants, and will ensure the authenticity of documentation relating to an applicant's education and licensure. Accordingly, the DHS will adopt this comment and has added language at 8 CFR 212.15(k)(3)(vi).

In general, the standards as written in the proposed rule have been one of the more contentious issues in the entire health care worker certification process; however, they were developed with HHS based in part on those standards held by other currently authorized entities. The standards are voluminous and, in some situations, can be satisfied in a number of different ways. As such, the DHS has determined that these standards are best viewed as guidelines and not strict criteria. Further, since the approval of an organization by the DHS is a matter of discretion, the final rule reflects that an organization seeking approval is required to meet the majority, but not all, of the listed standards. The burden to establish eligibility, however, rests with the organization seeking approval. An organization seeking approval to issue a health care certificate should make every attempt to submit evidence addressing each of the criteria listed. It should be noted that any organization, including a state agency, for example, could be found eligible for authorization to issue certification so long as it meets the majority of the listed standards.

It is the opinion of the DHS that the standards contained in this rule are specific enough to ensure that approved organizations will develop credentialing processes that are reasonably consistent given the differences in the types of health care occupations that will be reviewed. The DHS is aware that approved organizations will be required to develop different credentialing processes because of the differences in the educational and training requirements for the affected occupations. As a result, the DHS will not dictate specific credentialing processes to the approved organizations.

Aside from modifications relating to not-for-profit corporations and the requirement that a credentialing organization obtain educational and licensing documents directly from the issuing authorities, the DHS will not modify the proposed regulation with respect to the composition of its governing board or the portion of the organization responsible for overseeing certification. The standards as currently written provide sufficient flexibility to ensure that organizations will operate in a fair and objective fashion.

The DHS will not amend the standards describing an organization's responsibility to track the performance of foreign workers holding credentials. These provisions are valuable tools for determining the effectiveness of the credentialing process and are essential to the success of the credentialing program.

Monitoring Organizations Authorized To Issue Certificates or Certified Statements

In the proposed rule, the DHS provided that it intended to develop a regulatory process to monitor credentialing organizations, including CGFNS, to ensure that a credentialing organization continues to follow the standards described in the proposed rule. The DHS proposed to review and reauthorize the credentialing organizations every 5 years. The rule also proposed that the DHS notify the credentialing organization in writing of the results of the review and reauthorization. If the DHS developed adverse information with respect to the performance of the organization, the DHS could institute termination proceedings. The DHS solicited comments from the public regarding the frequency of review, *e.g.*, review as part of the 5-year reauthorization, or an annual or bi-annual review, the nature of the review, and whether reviews, if conducted separately from reauthorization, should be targeted versus random, would be of great assistance in the development of a review process.

The DHS also proposed to assess whether an authorized credentialing organization had issued certificates or certified statements in a timely manner so as to minimize any delays that may affect an alien's ability to proceed with his or her application for an immigration benefit, and to assess whether the fee charged for a certificate or certified statement unduly impairs an alien's ability to seek an immigration benefit. The DHS sought comments on what might constitute a reasonable period of time within which a credentialing organization would be required to issue certificates or certified statements, and regarding what methodology the DHS should use in assessing whether a fee constitutes an obstacle to obtaining an immigration benefit.

In response to this proposal the DHS received eight comments. One commenter stated that the 5-year review period was appropriate while two commenters suggested that the DHS conduct bi-annual reviews of approved organizations. Two commenters suggested that the DHS conduct random surveys during the 5-year period.

Finally, CGFNS stated that it should be exempt from the 5-year review process because it is specifically listed in the statute as an organization authorized to issue certifications.

The DHS does not feel that it is appropriate to modify the proposed review process at this time by conducting additional scheduled reviews or by exempting any organizations. The DHS will adopt the suggestion to review an organization at any time during the 5-year period by reserving the right to conduct reviews of the approval of any request for authorization to issue certificates. The DHS retains the right to conduct a review at any time within the 5-year period of authorization. This authority under § 212.15(k)(8)(iii) provides that the DHS can request information of the organization and its program for use in investigating allegations of non-compliance with standards and for general purposes of determining continued approval as an independent credentialing organization. The DHS intends to use this authority to conduct periodic reviews. The DHS notes the concerns expressed by the commenters that organizations should be monitored on a bi-annual basis to ensure compliance with the approval standards but finds that a 5-year review period appears appropriate at this time. It should be noted that the DHS also has the ability to initiate termination proceedings any time after approval has been granted. The DHS can initiate termination proceedings at any time during the 5-year period based on information received from other sources, *e.g.*, adverse information provided by state licensing boards or uncovered during the course of an ordinary review of approval of an entity's authorization.

The DHS will not exempt CGFNS from the 5-year review process. While CGFNS is named in section 212(a)(5)(C) of the Act, it is named as one of the entities from which an alien may receive a valid certificate in order to gain admission. This language relates to the alien and his or her admissibility, not to CGFNS' authority to issue certificates, which is still subject to approval by the Bureau of Citizenship and Immigration Services. Just as this language does not preclude approval of other certifying organizations, it is the position of the Bureau of Citizenship and Immigration Services that it does not guarantee approval in the case of CGFNS either. Finally, Congress named CGFNS as an example in the statute because it was aware that this entity existed and was active in this field, but did not mean to confer any authority on CGFNS. Thus, CGFNS is not exempt from governmental oversight. The approval and review process is a guarantee that CGFNS will continue to meet the standards required for all certifying organizations.

The DHS also received two comments relating to the fees that an organization charges for the certification. One commenter stated that the CGFNS fee was too high while the other commenter proposed a rolling fee based on an alien's monthly income in his or her country.

The DHS will not modify the proposed rule to address the fee issue. The statute does not give the DHS the authority to set fees for organizations approved to issue certifications or certified statements. The DHS is confident that organizations authorized to issue certifications and statements will charge a reasonable fee that covers the cost of their respective processes.

Only one comment was received regarding what might constitute a reasonable period of time within which a credentialing organization would be required to issue certificates. The commenter suggested that 60 days would be an appropriate time period.

The DHS has decided to accommodate this concern. As the comment notes, this rule provides at 8 CFR 212.15(k)(4)(x) that certificates must be provided to applicants in a timely manner. The BCIS shares the commenter's concern that the certification requirement may unduly delay the recruitment of foreign health care workers and adversely affect health care in the United States. The BCIS notes that in such a case, it retains authority to commence termination proceedings against a certifying organization if the situation warrants. The BCIS may also provide other remedies, such as a waiver under section 212(d)(3) of the Act of the certification requirement in individual cases upon request. Such a waiver will only facilitate a determination of admissibility in the context of an application for admission, change of status, and/or extension of stay, however, and the alien must continue the process of obtaining the certificate as described in 8 CFR 212.15(n)(2)(i). The BCIS intends to monitor this situation and welcomes input from the public on the performance of certifying organizations.

Finally, it should be noted that the proposed criteria for awarding and governing certificate holders had the unintended effect of requiring an alien to submit evidence of passage of the profession's licensing or certification examination when in fact the statute permits an alien to demonstrate that he or she has passed the profession's licensing or certification examination or a test predicting the success on such an examination, if a majority of states licensing the profession recognize such a predictor test. After consultation with HHS, the DHS has amended language at 8 CFR 212.15(k)(7)(i) to clarify that health care workers have the option to demonstrate passage of an acceptable predictor test for purposes of obtaining health care worker certification.

Process for Terminating an Organization's Authorization To Issue Certifications

The proposed rule provided that, upon notification that an authorized credentialing organization has been convicted, or the directors or officers of an authorized credentialing organization have individually been convicted, of a violation of state or federal laws, so that the fitness of the organization to continue to issue certificates is called into question, the DHS shall automatically terminate authorization to issue certificates via notice to the credentialing organization.

Upon receipt or discovery of information that the credentialing organization is no longer complying with the standards contained in 8 CFR 212.15(k), or upon receipt or discovery of information that termination of the organization's approval is otherwise warranted, the DHS will issue a Notice of Intent to Terminate Authorization to Issue Certificates to Foreign Health Care Workers to the credentialing organization. The credentialing organization will be given 30 days from the date of the Notice of Intent to Terminate Authorization to Issue Certificates to Foreign Health Care Workers to rebut or cure the allegations made in the DHS' notice.

DHS will submit any information received in response to the Notice to HHS upon receipt. Thirty days after the date of the Notice of Intent to Terminate, the DHS will request an opinion from HHS regarding whether the organization's authorization should be terminated and forward any additional evidence. The DHS shall accord HHS' opinion great weight in determining whether the authorization should be terminated. After consideration of the organization's response, if any, to the Notice of Intent to Terminate, and of HHS' opinion, the DHS will provide the organization with a written decision.

The DHS's decision terminating an organization's authorization may be appealed to the AAO pursuant to 8 CFR 103.3. Termination of credentialing

status will occur on the date of the decision and remain in effect until and unless the terminated organization reapplies, with fee, for credentialing status and is approved, or its appeal of the termination decision is sustained by the AAO. There is no waiting period for an organization to re-apply for credentialing status.

The DHS received six comments in response to the DHS's proposal on the termination of an organization's authorization to issue certifications. One commenter stated that the two grounds for termination of an organization's approval were sufficient and that no further grounds should be added to the regulation. One commenter suggested that an organization's authorization should be terminated only if the organization has failed to comply with a material term of its authorization. A technical violation should not be grounds for termination. One commenter suggested that HHS should have 30 days to respond to the DHS's Notice of Intent to Terminate. One commenter suggested that the term "or other adverse information" contained in the proposed rule at 8 CFR 215.15(m)(2) is too vague. Finally, CGFNS stated that it should be permitted to issue certifications while the appeal of the termination decision is pending at the AAO.

The DHS will not modify the language contained in the proposed rule relating to the termination process. While certain portions of the regulatory language may be vague, the regulatory language is sufficiently clear to provide the required protection to the public. Further, the term "or other adverse information" provides the DHS with a vehicle to institute termination proceedings based on situations that arise that cannot be predicted at this time. Further, the DHS will not require HHS to respond to the DHS's termination notice within any specific time period because some issues are far too complex to be decided in arbitrarily established timeframes. Finally, although CGFNS has been specifically identified in the statute as an organization authorized to issue certifications, there is nothing in the statutory language that requires the DHS to establish a separate process to determine whether their authorization to issue certifications should be terminated for any of the reasons described in this rule.

This rule also clarifies that the immediate termination provisions of 8 CFR 212(n)(1) may be triggered upon receipt of any information calling into question the entity's fitness to issue certificates. For example, national security concerns, or issues relating to fraud, may not lead to prosecution but certainly relate to the fitness of the organization to issue certificates. This clarification has been made necessary by events and issues identified during the course of the DHS' administration of this program since the proposed rule. The lack of a criminal prosecution or conviction in cases involving national security does not reduce the need to act appropriately to protect the public in such cases.

Revocation of Certificates

The proposed rule provided that a credentialing organization must develop policies and procedures for the revocation of certificates at any time if it finds that the certificate holder was not eligible to receive the certificate at the time it was issued. These policies and procedures include notification to the DHS, via the Nebraska Service Center, that a certificate has been revoked. The DHS may then take any appropriate action against the individual alien, including revocation of the petition, and initiation of removal proceedings under section 240 of the Act.

Three commenters responded to this provision. One commenter suggested that an alien's certification should be revoked if the alien does not obtain a license to practice within 1 year of the issuance of the certification. Another commenter suggested that the certification should be revoked if the alien's ability to practice in the occupation is restricted.

The DHS will not adopt the first suggestion. Certifications must be used within 5 years of their issuance. The DHS can envision a number of situations where the alien may be unable to obtain licensure within 1 year of issuance of the certification. In fact, in the case of EB petitions, there is no regulatory or statutory requirement that the alien ever obtain a license. Further, sections 212(a)(5)(C) and 212(r) of the Act are merely grounds of inadmissibility to the United States and therefore address an alien's ability to enter the United States and immediately begin the intended employment. They were not designed to regulate the practice of health care or the continuing qualifications of health care workers within the United States.

However, the DHS is concerned about events that may occur subsequent to an alien's certification and the effect those events may have upon an alien's admissibility to and status in the United States. This final rule therefore adopts the second commenter's suggestion and provides that an organization issuing certificates must include in its revocation process a mechanism to revoke a certificate when it learns that a holder is no longer eligible to hold a certificate.

The third commenter suggested that an alien that is issued a certification should be required to report employment information to the credentialing organization which will then be reported to the DHS. This comment will not be adopted because the role of credentialing organizations is to review a health care worker's qualifications, including education, training, license, and experience. The role of credentialing organizations does not include making a determination that an employment offer is valid and that the alien is continuing to work for the employer.

Form of the Health Care Worker Certification or Foreign Nurse Certified Statement

The proposed rule at 8 CFR 212.15(f) described the content of the certificate. The proposed rule at 8 CFR 212.15(h) described the content of the certified statement. The proposed rule provided that the certification should contain the following information:

(1) The name, designated point of contact to verify the validity of the certificate, address, and telephone number of the certifying organization;

(2) The date the certificate was issued;

(3) The health care occupation for which the certificate was issued; and

(4) The alien's name, and date and place of birth.

The proposed rule also provided that the certificate or certified statement does not constitute professional authorization to practice in that health care occupation.

The DHS received one comment regarding the information that should be included on the certification. The commenter suggested that each certification should contain the regulatory language indicating that the certification did not grant the holder authority to work in a health care occupation.

The DHS will not adopt this suggestion because it is unnecessary. A health care worker certificate or certified statement is evidence of an alien's admissibility under section 212(a) of the Act and not an employment authorization document. Acceptable employment authorization documents are enumerated under 8 CFR 274a. An alien who has made an application for a certification will be aware of the difference between the immigration requirements for entry in order to work in a covered health care occupation and the various state licensure requirements required to practice his or her occupation in the United States. In addition, the DHS has limited the information required on the certification to generally address the identity of the certificate holder and his or her admissibility under section 212(a)(5)(C) or 212(r) of the Act, rather than the certificate holder's authority to practice in the health care occupation.

Another commenter stated that an organization should not issue a certification until such time as the alien obtains a United States license to practice in his or her occupation. This comment will not be adopted because some aliens, *e.g.*, EB immigrants and certain nonimmigrants subject to this rule, such as aliens with extraordinary ability (O–1) and exchange visitors (J–1), are not required to satisfy state licensure requirements for classification.

One commenter noted that the proposed rule did not contain a description of what an approved organization was required to verify before it issued a certification. The commenter noted that the DHS had previously required approved organizations to examine the alien's education, training, and license prior to issuing a certification. This information was unintentionally omitted from the proposed rule. The DHS will amend 8 CFR 215.15(f) to include this information.

English Language Scores for Certification

As stated in the proposed rule, HHS, in consultation with DoED, is required to establish a level of competence in oral and written English appropriate for the health care field in which the alien will be engaged, as shown by an appropriate score on one or more nationally recognized, commercially available, standardized assessments of the applicant's ability to speak and write. The statute vests the Secretary of HHS with the "sole discretion" to determine the standardized tests and appropriate minimum scores. In developing the English language test scores, HHS consulted with DoED and appropriate health care professional organizations. HHS also examined a study sponsored in part by NBCOT entitled "Standards for Examinations Assessing English as a Second Language." The scores reflect the current industry requirements for particular health care occupations.

One commenter suggested that the DHS adopt separate scores and a specific test for the occupation of physician assistant. This comment will not be adopted in this rule because HHS has not designated a separate test and score for the occupation.

One commenter noted that the DHS had failed to specify which modules of the International English Language Testing System (IELTS) would be required for the covered occupations. This information was unintentionally omitted from the proposed rule. The DHS will amend 8 CFR 215.15(g)(4) to clarify when an Academic and/or General Module will be required for a covered health care occupation.

The HHS had initially identified four testing services which conduct a nationally recognized, commercially available, standardized assessment as contemplated in the statute. The four testing services were the Educational Testing Service (ETS), the Michigan English Language Assessment Battery (MELAB), the Test of English in International Communication (TOEIC) Service International, and the IELTS. The proposed regulation at 8 CFR 212.15(g) lists the tests and appropriate scores as determined by HHS for each occupation.

The DHS received 29 comments in response to the English language testing proposals. Eight commenters agreed that the IELTS and TOEIC tests should be included in the final rule. Six commenters expressed dissatisfaction with the test of spoken English (TSE) given by ETS, asserting that it was too difficult to pass and that it prevented health care facilities from recruiting qualified workers. One commenter even suggested that the test intentionally discriminated against certain nationalities.

The English test offered by ETS has been used by colleges, universities, and accrediting organizations for years to test English language skills. Both HHS and the DoED have reviewed this test prior to its inclusion in the previously published interim rules and the proposed rule. The DHS is not persuaded that the test is not a valid test of English language skills and, as a result, the option of TSE will remain in this final rule.

The DHS also proposed that, as an alternative to listing the tests and appropriate scores by Interim Rule, the DHS would designate, by a separate and comprehensive public notice in the **Federal Register**, the list of tests and appropriate scores. The DHS would maintain this list on its Web site. This method would allow the DHS to update the list of tests and scores more quickly than through publication of interim rules. The DHS will continue to coordinate with the HHS and the DoED to make the designation of tests and appropriate scores needed to satisfy the English proficiency requirement.

The DHS received four comments on this proposal. Three commenters suggested that the DHS adopt the alternative method of advising the public of the approved English tests by a notice in the **Federal Register** while one commenter suggested that the use of an interim rule would be more appropriate.

After consideration of the comments, the DHS will adopt the alternative method discussed in the proposed rule. In view of the extensive governmental review before a test is approved, it is not likely that the comments received in response to an interim rule would be beneficial. As a result, this final rule at 8 CFR 215.15(g)(4)(iv) provides that the DHS will notify the public of new approved English testing services by publishing a notice in the **Federal Register**. The DHS will also maintain the list of approved English tests and the appropriate scores on its Web site at *http://www.immigration.gov*.

One commenter noted that the current availability of English tests did not meet the demand creating significant delays for health care workers. To solve this problem, other testing services are encouraged to submit information concerning their testing services to the DHS, for HHS and DoED review, and credentialing organizations are encouraged to develop a test specifically designed to measure English language skills and to seek HHS approval of the test. As noted in the proposed rule, HHS has advised the DHS that graduates of health profession programs in Australia, Canada (except Quebec), Ireland, New Zealand, the United Kingdom, and the United States are deemed to have met the English language requirements. HHS has determined that aliens who have graduated from these programs have the requisite competency in oral and written English. The level of English that the graduates of these health profession programs would need in order to graduate is deemed equivalent to the level that would be demonstrated by achieving the minimum passing score on the tests previously described. Nurses who are eligible to present an alternate certified statement under section 212(r) of the Act by definition have satisfied the English language requirements.

Six commenters suggested that additional countries be added to the list of countries that should be exempt from the English language requirements. The list of countries has been furnished to HHS for their review for possible inclusion in the list of exempt countries.

One commenter suggested that the English language test be separate and apart from the credentialing portion of the certification process. This suggestion cannot be adopted because it is contrary to the statute.

Finally, after publication of the proposed rule, the DHS was notified that the MELAB no longer wishes to be designated as an approved English test for the purpose of issuing health care certifications. Therefore, MELAB has been removed from the list of approved English tests and is not included in this final rule. As a result, individuals who seek to meet the English language requirements will be required to do one of the following:

(1) Take the three tests offered by ETS;

(2) Take the TOEIC offered by TOEIC Service International, in addition to the test of spoken English and the test of written English offered by ETS; or

(3) Take the IELTS examination.

Additional Comments Regarding the Proposed Rule

Two commenters noted that the proposed rule did not contain a requirement that an organization was to verify that an alien either passed a predictor examination or the state licensing examination for his or her occupation. One of the commenters noted that the DHS had previously listed this requirement in the previously published interim rules.

The DHS has unintentionally failed to provide a description of what an organization is required to verify before it can issue a certification under section 212(a)(5)(C) of the Act. This information is now listed at 8 CFR 215.15(f).

Three commenters stated that nurses should not be required to take the predictor examination if they have passed the NCLEX–RN state licensing examination. The statute at sections 212(a)(5)(C) and 212(r) of the Act requires that a certifying entity verify that an alien has passed either the profession's licensing or certification examination, or a predictor test if a majority of states licensing the profession in which the alien intends to work recognize such a predictor test. The DHS has added language at 8 CFR 212.15(f)(1)(iv) to clarify that a nurse who is obtaining a certificate under section 212(a)(5)(C) of the Act must demonstrate that they have passed the profession's licensing examination (NCLEX–RN) or the predictor test.

One commenter stated that some nurses are not eligible to obtain a certified statement as described in section 212(r) of the Act. Section 212(r) of the Act was created as an alternative to the certification process of section 212(a)(5)(C) of the Act. It was specifically designed to accommodate a limited number of nurses who met certain criteria and not all nonimmigrant nurses.

Finally, CGFNS stated that the language in the proposed rule appeared to preclude them from obtaining authorization to issue certifications to audiologists. The DHS has corrected this oversight by amending the language at 8 CFR 215.15(j)(2) to include audiologists among the covered occupations.

Regulatory Flexibility Act

I have reviewed this regulation, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), and, by approving it, I have determined that this rule will not have a significant economic impact on a substantial number of small entities. It is projected that there will be, at most, 21 small businesses that apply to the Department of Homeland Security to issue certificates for health care workers. Although these small entities are required to pay a fee when submitting their applications, these small entities may recoup this expense if they charge aliens who must obtain a foreign health care worker certificate.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Homeland Security to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to OMB for review. The Department of Homeland Security has assessed both the costs and the benefits of this rule as required by Executive Order 12866, section 1(b)(6), and has made a reasoned determination that the benefits of this rule justify its costs. Briefly, that assessment is as follows:

The Department of Homeland Security has determined that any entity seeking authorization to issue health care worker certifications must apply for authorization on Form I–905. The Department of Homeland Security determined that $230 was the appropriate fee for Form I–905 after comparing the processing of the form to the process involved with Form I–17, Petition for Approval of School for Attendance by Nonimmigrant Student, which has a processing fee of $230. The Department of Homeland Security has estimated that there will be approximately 10 applicants who will each have a time burden of approximately 4 hours, and who will be required to pay a total of $2,300. Once the Form I–905 is approved, an authorized entity will be authorized to issue health care worker certification for a period of 5 years, and will be able to recoup the costs of the Form I–905 by charging a fee for each certificate that it issues.

Each credentialing organization may set its own fee to recover the costs of issuing of a health care worker certificate, although the price may vary between organizations. The CGFNS is the organization that is currently authorized to issue certifications to the largest number of applicants because it is authorized to issue certifications to all seven occupations. The Department of Homeland Security has estimated that the total time burden associated with each certification is approximately 220 minutes. The current price for a CGFNS certificate or certified statement is approximately $325, which is charged to an individual alien. In some cases, a petitioning employer may choose to pay on behalf of the alien. Finally, the Department of Homeland Security has determined that the benefit to the United States public of the statute requiring the issuance of certificates will be to ensure that all health care workers covered by the regulations, including all nonimmigrants, have met the same minimum requirements with regard to an evaluation of their credentials, licensing, training and English language ability before commencing employment in their respective occupations. Even in cases where all states require a foreign health care worker to be licensed to practice within the United States, as in the case of nurses, the underlying requirements for licensure differ from state to state. This rule will ensure that uniformly qualified foreign health care professionals enter the United States workforce and that foreign health care workers and the Department of Homeland Security are in compliance with the statutory requirements of section 212(a)(5)(C) of the Act.

Executive Order 13132

The rule will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act of 1995

The information collection requirement contained in this rule (Form I–905) (OMB Control Number 1115–0238) has been approved for use by OMB under the Paperwork Reduction Act. The information required on the health care certificate or certified statement (OMB Control Number 1115–0226) has been revised to reflect that a certificate must demonstrate that an alien has met the requirements of section 212(a)(5)(C) of the Act. This revision was submitted to OMB for review in accordance with the Paperwork Reduction Act.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government Agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 212

Administrative practice and procedures, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 214

Administrative practice and procedures, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 248

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

■ Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103 B—POWERS AND DUTIES OF SERVICE OFFICER; AVAILABILITY OF SERVICE RECORDS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 522a; 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p.166; 8 CFR part 2.

■ 2. Section 103.7(b)(1) is amended by adding a new entry for the Form "I–905" to the list of fees in alpha/numeric sequence, to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

Form I–905, Application for authorization to issue certification for health care workers—$230.

* * * * *

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

■ 3. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1225, 1226, 1227, 1228; 8 CFR part 2.

■ 4. Section 212.15 is revised to read as follows:

§ 212.15 Certificates for foreign health care workers.

(a) *General certification requirements.* (1) Except as provided in paragraph (b) or paragraph (d)(1) of this section, any alien who seeks admission to the United States as an immigrant or as a nonimmigrant for the primary purpose of performing labor in a health care occupation listed in paragraph (c) of this section is inadmissible unless the alien presents a certificate from a credentialing organization, listed in paragraph (e) of this section.

(2) In the alternative, an eligible alien who seeks to enter the United States for the primary purpose of performing labor as a nurse may present a certified statement as provided in paragraph (h) of this section.

(3) A certificate or certified statement described in this section does not constitute professional authorization to practice in that health care occupation.

(b) *Inapplicability of the ground of inadmissibility.* This section does not apply to:

(1) Physicians;

(2) Aliens seeking admission to the United States to perform services in a non-clinical health care occupation. A non-clinical care occupation is one in which the alien is not required to perform direct or indirect patient care. Occupations which are considered to be non-clinical include, but are not limited to, medical teachers, medical researchers, and managers of health care facilities;

(3) Aliens coming to the United States to receive training as an H–3 nonimmigrant, or receiving training as part of an F or J nonimmigrant program.

(4) The spouse and dependent children of any immigrant or nonimmigrant alien;

(5) Any alien applying for adjustment of status to that of a permanent resident under any provision of law other than under section 245 of the Act, or any alien who is seeking adjustment of status under section 245 of the Act on the basis of a relative visa petition approved under section 203(a) of the Act, or any alien seeking adjustment of status under section 245 of the Act on the basis of an employment-based petition approved pursuant to section 203(b) of the Act for employment that does not fall under one of the covered health care occupations listed in paragraph (c) of this section.

(c) *Covered health care occupations.* With the exception of the aliens described in paragraph (b) of this section, this paragraph (c) applies to any alien seeking admission to the United States to perform labor in one of the following health care occupations, regardless of where he or she received his or her education or training:

(1) Licensed Practical Nurses, Licensed Vocational Nurses, and Registered Nurses.

(2) Occupational Therapists.

(3) Physical Therapists.

(4) Speech Language Pathologists and Audiologists.

(5) Medical Technologists (Clinical Laboratory Scientists).

(6) Physician Assistants.

(7) Medical Technicians (Clinical Laboratory Technicians)

(d) *Presentation of certificate or certified statements.* (1) *Aliens required to obtain visas.* Except as provided in paragraph (n) of this section, if 8 CFR 212.1 requires an alien who is described in paragraph (a) of this section and who is applying for admission as a nonimmigrant seeking to perform labor in a health care occupation as described in this section to obtain a nonimmigrant visa, the alien must present a certificate or certified statement to a consular officer at the time of visa issuance and to the Department of Homeland Security (DHS) at the time of admission. The certificate or certified statement must be valid at the time of visa issuance and admission at a port-of-entry. An alien who has previously presented a foreign health care worker certification or certified statement for a particular health care occupation will be required to present it again at the time of visa issuance or each admission to the United States.

(2) *Aliens not requiring a nonimmigrant visa.* Except as provided in paragraph (n) of this section, an alien described in paragraph (a) of this section who, pursuant to 8 CFR 212.1, is not required to obtain a nonimmigrant visa to apply for admission to the United States must present a certificate or certified statement as provided in this section to an immigration officer at the time of initial application for admission to the United States to perform labor in a particular health care occupation. An alien who has previously presented a foreign health care worker certification or certified statement for a particular health care occupation will be required to present it again at the time of each application for admission.

(e) *Approved credentialing organizations for health care workers.* An alien may present a certificate from any credentialing organization listed in this paragraph (e) with respect to a particular health care field. In addition to paragraphs (e)(1) through (e)(3) of this section, the DHS will notify the public of additional credentialing organizations through the publication of notices in the **Federal Register**.

(1) The Commission on Graduates of Foreign Nursing Schools (CGFNS) is authorized to issue certificates under section 212(a)(5)(C) of the Act for nurses, physical therapists, occupational therapists, speech-language pathologists and audiologists, medical technologists (also known as clinical laboratory scientists), medical technicians (also known as clinical laboratory technicians), and physician assistants.

(2) The National Board for Certification in Occupational Therapy (NBCOT) is authorized to issue certificates in the field of occupational therapy pending final adjudication of its credentialing status under this part.

(3) The Foreign Credentialing Commission on Physical Therapy (FCCPT) is authorized to issue certificates in the field of physical therapy pending final adjudication of its credentialing status under this part.

(f) *Requirements for issuance of health care certification.* (1) Prior to issuing a certification to an alien, the organization must verify the following:

(i) That the alien's education, training, license, and experience are comparable with that required for an American health care worker of the same type;

(ii) That the alien's education, training, license, and experience are authentic and, in the case of a license, unencumbered;

(iii) That the alien's education, training, license, and experience meet all applicable statutory and regulatory requirements for admission into the United States. This verification is not binding on the DHS; and

(iv) Either that the alien has passed a test predicting success on the occupation's licensing or certification examination, provided such a test is recognized by a majority of states licensing the occupation for which the certification is issued, or that the alien has passed the occupation's licensing or certification examination.

(2) A certificate issued under section 212(a)(5)(C) of the Act must contain the following:

(i) The name, address, and telephone number of the credentialing organization, and a point of contact to verify the validity of the certificate;

(ii) The date the certificate was issued;

(iii) The health care occupation for which the certificate was issued; and

(iv) The alien's name, and date and place of birth.

(g) *English language requirements.* (1) With the exception of those aliens described in paragraph (g)(2) of this section, every alien must meet certain English language requirements in order to obtain a certificate. The Secretary of HHS has sole authority to set standards for these English language requirements, and has determined that an alien must have a passing score on one of the three tests listed in paragraph (g)(3) of this section before he or she can be granted a certificate. HHS will notify The Department of Homeland Security of additions or deletions to this list, and The Department of Homeland Security will publish such changes in the **Federal Register**.

(2) The following aliens are exempt from the English language requirements:

(i) Alien nurses who are presenting a certified statement under section 212(r) of the Act; and

(ii) Aliens who have graduated from a college, university, or professional training school located in Australia, Canada (except Quebec), Ireland, New Zealand, the United Kingdom, or the United States.

(3) The following English testing services have been approved by the Secretary of HHS:

(i) Educational Testing Service (ETS).

(ii) Test of English in International Communication (TOEIC) Service International.

(iii) International English Language Testing System (IELTS).

(4) Passing English test scores for various occupations.

(i) *Occupational and physical therapists.* An alien seeking to perform labor in the United States as an occupational or physical therapist must obtain the following scores on the English tests administered by ETS: Test Of English as a Foreign Language (TOEFL): Paper-Based 560, Computer-Based 220; Test of Written English (TWE): 4.5; Test of Spoken English (TSE): 50. The certifying organizations shall not accept the results of the TOEIC, or the IELTS for the occupation of occupational therapy or physical therapy.

(ii) *Registered nurses and other health care workers requiring the attainment of a baccalaureate degree.* An alien coming to the United States to perform labor as a registered nurse (other than a nurse presenting a certified statement under section 212(r) of the Act) or to perform labor in another health care occupation requiring a baccalaureate degree (other than occupational or physical therapy) must obtain one of the following combinations of scores to obtain a certificate:

(A) ETS: TOEFL: Paper-Based 540, Computer-Based 207; TWE: 4.0; TSE: 50;

(B) TOEIC Service International: TOEIC: 725; plus TWE: 4.0 and TSE: 50; or

(C) IELTS: 6.5 overall with a spoken band score of 7.0. This would require the Academic module.

(iii) *Occupations requiring less than a baccalaureate degree.* An alien coming to the United States to perform labor in a health care occupation that does not require a baccalaureate degree must obtain one of the following combinations of scores to obtain a certificate:

(A) ETS: TOEFL: Paper-Based 530, Computer-Based 197; TWE: 4.0; TSE: 50;

(B) TOEIC Service International: TOEIC: 700; plus TWE 4.0 and TSE: 50; or

(C) IELTS: 6.0 overall with a spoken band score of 7.0. This would allow either the Academic or the General module.

(h) *Alternative certified statement for certain nurses.* (1) CGFNS is authorized to issue certified statements under section 212(r) of the Act for aliens seeking to enter the United States to perform labor as nurses. The DHS will notify the public of new organizations that are approved to issue certified statements through notices published in the **Federal Register**.

(2) An approved credentialing organization may issue a certified statement to an alien if each of the following requirements is satisfied:

(i) The alien has a valid and unrestricted license as a nurse in a state where the alien intends to be employed and such state verifies that the foreign licenses of alien nurses are authentic and unencumbered;

(ii) The alien has passed the National Council Licensure Examination for registered nurses (NCLEX–RN);

(iii) The alien is a graduate of a nursing program in which the language of instruction was English;

(iv) The nursing program was located in Australia, Canada (except Quebec), Ireland, New Zealand, South Africa, the United Kingdom, or the United States; or in any other country designated by unanimous agreement of CGFNS and any equivalent credentialing organizations which have been approved for the certification of nurses and which are listed at paragraph (e) of this section; and

(v) The nursing program was in operation on or before November 12, 1999, or has been approved by unanimous agreement of CGFNS and any equivalent credentialing organizations that have been approved for the certification of nurses.

(3) An individual who obtains a certified statement need not comply with the certificate requirements of paragraph (f) or the English language requirements of paragraph (g) of this section.

(4) A certified statement issued to a nurse under section 212(r) of the Act must contain the following information:

(i) The name, address, and telephone number of the credentialing organization, and a point of contact to verify the validity of the certified statement;

(ii) The date the certified statement was issued; and

(iii) The alien's name, and date and place of birth.

(i) *Streamlined certification process.* (1) *Nurses.* An alien nurse who has graduated from an entry level program accredited by the National League for Nursing Accreditation Commission (NLNAC) or the Commission on Collegiate Nursing Education (CCNE) is exempt from the educational comparability review and English language proficiency testing.

(2) *Occupational Therapists.* An alien occupational therapist who has graduated from a program accredited by the Accreditation Council for Occupational Therapy Education (ACOTE) of the American Occupational Therapy Association (AOTA) is exempt from the educational comparability review and English language proficiency testing.

(3) *Physical therapists.* An alien physical therapist who has graduated from a program accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE) of the American Physical Therapy Association (APTA) is exempt from the educational comparability review and English language proficiency testing.

(4) *Speech language pathologists and audiologists.* An alien speech language pathologists and/or audiologist who has graduated from a program accredited by the Council on Academic Accreditation in Audiology and Speech Language Pathology (CAA) of the American Speech-Language-Hearing Association (ASHA) is exempt from the educational comparability review and English language proficiency testing.

(j) *Application process for credentialing organizations.* (1) *Organizations other than CGFNS.* An organization, other than CGFNS, seeking to obtain approval to issue certificates to health care workers, or certified statements to nurses shall submit Form I–905, Application for Authorization to Issue Certification for Health Care Workers, and all accompanying required evidence, to the Director, Nebraska Service Center, in duplicate with the appropriate fee contained in 8 CFR 103.7(b)(1). An organization seeking authorization to issue certificates or certified statements must agree to submit all evidence required by the DHS and, upon request, allow the DHS to review the organization's records related to the certification process. As required on Form I–905, the application must:

(i) Clearly describe and identify the organization seeking authorization to issue certificates;

(ii) List the occupations for which the organization desires to provide certificates;

(iii) Describe how the organization substantially meets the standards described at paragraph (k) of this section;

(iv) Describe the organization's expertise, knowledge, and experience in the health care occupation(s) for which it desires to issue certificates;

(v) Provide a point of contact;

(vi) Describe the verification procedure the organization has designed in order for the DHS to verify the validity of a certificate; and

(vii) Describe how the organization will process and issue in a timely manner the certificates.

(2) *Applications filed by CGFNS.* (i) CGFNS shall submit Form I–905 to the Director, Nebraska Service Center, to ensure that it will be in compliance with the regulations governing the issuance and content of certificates to nurses, physical therapists, occupational therapists, speech-language pathologists and audiologists, medical technologists (also known as clinical laboratory scientists), medical technicians (also known as clinical laboratory technicians), and physician assistants under section 212(a)(5)(C) of the Act, or issuing certified statements to nurses under section 212(r) of the Act.

(ii) Prior to issuing certificates for any other health care occupations, CGFNS shall submit Form I–905, Application for Authorization to Issue Certification for Health Care Workers, to the Director, Nebraska Service Center with the appropriate fee contained in 8 CFR 103.7(b)(1) for authorization to issue such certificates. The DHS will evaluate CGFNS' expertise with respect to the particular health care occupation for which authorization to issue certificates is sought, in light of CGFNS' statutory designation as a credentialing organization.

(3) *Procedure for review of applications by credentialing organizations.* (i) After receipt of Form I–905, the Director, Nebraska Service Center shall, in all cases, forward a copy of the application and supporting documents to the Secretary of HHS in order to obtain an opinion on the merits of the application. The DHS will not render a decision on the request until the Secretary of HHS provides an opinion. The DHS shall accord the Secretary of HHS' opinion great weight in reaching its decision. The DHS may deny the organization's request notwithstanding the favorable recommendation from the Secretary of HHS, on grounds unrelated to the

credentialing of health care occupations or health care services.

(ii) The DHS will notify the organization of the decision on its application in writing and, if the request is denied, of the reasons for the denial. Approval of authorization to issue certificates to foreign health care workers or certified statements to nurses will be made in 5-year increments, subject to the review process described at paragraph (l) of this section.

(iii) If the application is denied, the decision may be appealed pursuant to 8 CFR 103.3 to the Associate Commissioner for Examinations.

(k) *Standards for credentialing organizations.* The DHS will evaluate organizations, including CGFNS, seeking to obtain approval from the DHS to issue certificates for health care workers, or certified statements for nurses. Any organization meeting the standards set forth in paragraph (k)(1) of this section may be eligible for authorization to issue certificates. While CGFNS has been specifically listed in the statute as an entity authorized to issue certificates, it is not exempt from governmental oversight. All organizations will be reviewed, including CGFNS, to guarantee that they continue to meet the standards required of all certifying organizations, under the following:

(1) *Structure of the organization.* (i) The organization shall be incorporated as a legal entity.

(ii)(A) The organization shall be independent of any organization that functions as a representative of the occupation or profession in question or serves as or is related to a recruitment/placement organization.

(B) The DHS shall not approve an organization that is unable to render impartial advice regarding an individual's qualifications regarding training, experience, and licensure.

(C) The organization must also be independent in all decision making matters pertaining to evaluations and/or examinations that it develops including, but not limited to: policies and procedures; eligibility requirements and application processing; standards for granting certificates and their renewal; examination content, development, and administration; examination cut-off scores, excluding those pertaining to English language requirements; grievance and disciplinary processes; governing body and committee meeting rules; publications about qualifying for a certificate and its renewal; setting fees for application and all other services provided as part of the screening process; funding, spending, and budget authority related to the operation of the certification organization; ability to enter into contracts and grant arrangements; ability to demonstrate adequate staffing and management resources to conduct the program(s) including the authority to approve selection of, evaluate, and initiate dismissal of the chief staff member.

(D) An organization whose fees are based on whether an applicant receives a visa may not be approved.

(iii) The organization shall include the following representation in the portion of its organization responsible for overseeing certification and, where applicable, examinations:

(A) Individuals from the same health care discipline as the alien health care worker being evaluated who are eligible to practice in the United States; and

(B) At least one voting public member to represent the interests of consumers and protect the interests of the public at large. The public member shall not be a member of the discipline or derive significant income from the discipline, its related organizations, or the organization issuing the certificate.

(iv) The organization must have a balanced representation such that the individuals from the same health care discipline, the voting public members, and any other appointed individuals have an equal say in matters relating to credentialing and/or examinations.

(v) The organization must select representatives of the discipline using one of the following recommended methods, or demonstrate that it has a selection process that meets the intent of these methods:

(A) Be selected directly by members of the discipline eligible to practice in the United States;

(B) Be selected by members of a membership organization representing the discipline or by duly elected representatives of a membership organization; or

(C) Be selected by a membership organization representing the discipline from a list of acceptable candidates supplied by the credentialing body.

(vi) The organization shall use formal procedures for the selection of members of the governing body that prohibit the governing body from selecting a majority of its successors. Not-for-profit corporations which have difficulty meeting this requirement may provide in their applications evidence that the organization is independent, and free of material conflicts of interest regarding whether an alien receives a visa.

(vii) The organization shall be separate from the accreditation and educational functions of the discipline, except for those entities recognized by the Department of Education as having satisfied the requirement of independence.

(viii) The organization shall publish and make available a document which clearly defines the responsibilities of the organization and outlines any other activities, arrangements, or agreements of the organization that are not directly related to the certification of health care workers.

(2) *Resources of the organization.* (i) The organization shall demonstrate that its staff possess the knowledge and skills necessary to accurately assess the education, work experience, licensure of health care workers, and the equivalence of foreign educational institutions, comparable to those of United States-trained health care workers and institutions.

(ii) The organization shall demonstrate the availability of financial and material resources to effectively and thoroughly conduct regular and ongoing evaluations on an international basis.

(iii) If the health care field is one for which a majority of the states require a predictor test, the organization shall demonstrate the ability to conduct examinations in those countries with educational and evaluation systems comparable to the majority of states.

(iv) The organization shall have the resources to publish and make available general descriptive materials on the procedures used to evaluate and validate credentials, including eligibility requirements, determination procedures, examination schedules, locations, fees, reporting of results, and disciplinary and grievance procedures.

(3) *Candidate evaluation and testing mechanisms.* (i) The organization shall publish and make available a comprehensive outline of the information, knowledge, or functions covered by the evaluation/examination process, including information regarding testing for English language competency.

(ii) The organization shall use reliable evaluation/examination mechanisms to evaluate individual credentials and competence that is objective, fair to all candidates, job related, and based on knowledge and skills needed in the discipline.

(iii) The organization shall conduct ongoing studies to substantiate the reliability and validity of the evaluation/examination mechanisms.

(iv) The organization shall implement a formal policy of periodic review of the evaluation/examination mechanism to ensure ongoing relevance of the mechanism with respect to knowledge and skills needed in the discipline.

(v) The organization shall use policies and procedures to ensure that all aspects of the evaluation/examination procedures, as well as the development and administration of any tests, are secure.

(vi) The organization shall institute procedures to protect against falsification of documents and misrepresentation, including a policy to request each applicant's transcript(s) and degree(s) directly from the educational licensing authorities.

(vii) The organization shall establish policies and procedures that govern the length of time the applicant's records must be kept in their original format.

(viii) The organization shall publish and make available, at least annually, a summary of all screening activities for each discipline including, at least, the number of applications received, the number of applicants evaluated, the number receiving certificates, the number who failed, and the number receiving renewals.

(4) *Responsibilities to applicants applying for an initial certificate or renewal.* (i) The organization shall not discriminate among applicants as to age, sex, race, religion, national origin, disability, or marital status and shall include a statement of nondiscrimination in announcements of the evaluation/examination procedures and renewal certification process.

(ii) The organization shall provide all applicants with copies of formalized application procedures for evaluation/examination and shall uniformly follow and enforce such procedures for all applicants. Instructions shall include standards regarding English language requirements.

(iii) The organization shall implement a formal policy for the periodic review of eligibility criteria and application procedures to ensure that they are fair and equitable.

(iv) Where examinations are used, the organization shall provide competently proctored examination sites at least once annually.

(v) The organization shall report examination results to applicants in a uniform and timely fashion.

(vi) The organization shall provide applicants who failed either the evaluation or examination with information on general areas of deficiency.

(vii) The organization shall implement policies and procedures to ensure that each applicant's examination results are held confidential and delineate the circumstances under which the applicant's certification status may be made public.

(viii) The organization shall have a formal policy for renewing the certification if an individual's original certification has expired before the individual first seeks admission to the United States or applies for adjustment of status. Such procedures shall be restricted to updating information on licensure to determine the existence of any adverse actions and the need to re-establish English competency.

(ix) The organization shall publish due process policies and procedures for applicants to question eligibility determinations, examination or evaluation results, and eligibility status.

(x) The organization shall provide all qualified applicants with a certificate in a timely manner.

(5) *Maintenance of comprehensive and current information.* (i) The organization shall maintain comprehensive and current information of the type necessary to evaluate foreign educational institutions and accrediting bodies for purposes of ensuring that the quality of foreign educational programs is equivalent to those training the same occupation in the United States. The organization shall examine, evaluate, and validate the academic and clinical requirements applied to each country's accrediting body or bodies, or in countries not having such bodies, of the educational institution itself.

(ii) The organization shall also evaluate the licensing and credentialing system(s) of each country or licensing jurisdiction to determine which systems are equivalent to that of the majority of the licensing jurisdictions in the United States.

(6) *Ability to conduct examinations fairly and impartially.* An organization undertaking the administration of a predictor examination, or a licensing or certification examination shall demonstrate the ability to conduct such examination fairly and impartially.

(7) *Criteria for awarding and governing certificate holders.* (i) The organization shall issue a certificate after the education, experience, license, and English language competency have been evaluated and determined to be equivalent to their United States counterparts. In situations where a United States nationally recognized licensure or certification examination, or a test predicting the success on the licensure or certification examination, is offered overseas, the applicant must pass the examination or the predictor test prior to receiving certification. Passage of a test predicting the success on the licensure or certification examination may be accepted only if a majority of states (and Washington, DC) licensing the profession in which the alien intends to work recognize such a test.

(ii) The organization shall have policies and procedures for the revocation of certificates at any time if it is determined that the certificate holder was not eligible to receive the certificate at the time that it was issued. If the organization revokes an individual's certificate, it must notify the DHS, via the Nebraska Service Center, and the appropriate state regulatory authority with jurisdiction over the individual's health care profession. The organization may not reissue a certificate to an individual whose certificate has been revoked.

(8) *Criteria for maintaining accreditation.* (i) The organization shall advise the DHS of any changes in purpose, structure, or activities of the organization or its program(s).

(ii) The organization shall advise the DHS of any major changes in the evaluation of credentials and examination techniques, if any, or in the scope or objectives of such examinations.

(iii) The organization shall, upon the request of the DHS, submit to the DHS, or any organization designated by the DHS, information requested of the organization and its programs for use in investigating allegations of non-compliance with standards and for general purposes of determining continued approval as an independent credentialing organization.

(iv) The organization shall establish performance outcome measures that track the ability of the certificate holders to pass United States licensure or certification examinations. The purpose of the process is to ensure that certificate holders pass United States licensure or certification examinations at the same pass rate as graduates of United States programs. Failure to establish such measures, or having a record showing an inability of persons granted certificates to pass United States licensure examinations at the same rate as graduates of United States programs, may result in a ground for termination of approval. Information regarding the passage rates of certificate holders shall be maintained by the organization and provided to HHS on an annual basis, to the DHS as part of the 5-year reauthorization application, and at any other time upon request by HHS or the DHS.

(v) The organization shall be in ongoing compliance with other policies specified by the DHS.

(l) *DHS review of the performance of certifying organizations.* The DHS will review credentialing organizations every 5 years to ensure continued compliance with the standards described in this section. Such review will occur

concurrent with the adjudication of a Form I–905 requesting reauthorization to issue health care worker certificates. The DHS will notify the credentialing organization in writing of the results of the review and request for reauthorization. The DHS may conduct a review of the approval of any request for authorization to issue certificates at any time within the 5-year period of authorization for any reason. If at any time the DHS determines that an organization is not complying with the terms of its authorization or if other adverse information relating to eligibility to issue certificates is developed, the DHS may initiate termination proceedings.

(m) *Termination of certifying organizations.* (1) If the DHS determines that an organization has been convicted, or the directors or officers of an authorized credentialing organization have individually been convicted of the violation of state or federal laws, or other information is developed such that the fitness of the organization to continue to issue certificates or certified statements is called into question, the DHS shall automatically terminate authorization for that organization to issue certificates or certified statements by issuing to the organization a notice of termination of authorization to issue certificates to foreign health care workers. The notice shall reference the specific conviction that is the basis of the automatic termination.

(2) If the DHS determines that an organization is not complying with the terms of its authorization or other adverse information relating to eligibility to issue certificates is uncovered during the course of a review or otherwise brought to the DHS' attention, or if the DHS determines that an organization currently authorized to issue certificates or certified statements has not submitted an application or provided all information required on Form I–905 within 6 months of July 25, 2003, the DHS will issue a Notice of Intent to Terminate authorization to issue certificates to the credentialing organization. The Notice shall set forth reasons for the proposed termination.

(i) The credentialing organization shall have 30 days from the date of the Notice of Intent to Terminate authorization to rebut the allegations, or to cure the noncompliance identified in the DHS's notice of intent to terminate.

(ii) DHS will forward to HHS upon receipt any information received in response to a Notice of Intent to Terminate an entity's authorization to issue certificates. Thirty days after the date of the Notice of Intent to Terminate, the DHS shall forward any additional evidence and shall request an opinion from HHS regarding whether the organization's authorization should be terminated. The DHS shall accord HHS' opinion great weight in determining whether the authorization should be terminated. After consideration of the rebuttal evidence, if any, and consideration of HHS' opinion, the DHS will promptly provide the organization with a written decision. If termination of credentialing status is made, the written decision shall set forth the reasons for the termination.

(3) An adverse decision may be appealed pursuant to 8 CFR 103.3 to the Associate Commissioner for Examinations. Termination of credentialing status shall remain in effect until and unless the terminated organization reapplies for credentialing status and is approved, or its appeal of the termination decision is sustained by the Administrative Appeals Office. There is no waiting period for an organization to re-apply for credentialing status.

(n) *Transition.* (1) *One year waiver.* Under the discretion given to the Secretary, DHS, under section 212(d)(3) of the Act (and, for cases described in paragraph (d)(1) of this section, upon the recommendation of the Secretary of State), the Secretary has determined that until July 26, 2004 the DHS shall, subject to the conditions in paragraph (n)(2) of this section, exercise favorably the discretion given to the Secretary under section 212(d)(3) of the Act and may admit, extend the period of authorized stay, or change the nonimmigrant status of an alien described in paragraph (d)(1) or paragraph (d)(2) of this section to the United States temporarily, despite the alien's inadmissibility under section 212(a)(5)(C) of the Act and paragraph (a) of this section in any case, if the DHS admits the alien, or extends the alien's period of authorized stay, or changes the alien's status on or before July 26, 2004; and the alien is not inadmissible under any other provision of section 212(a) of the Act (or has obtained a waiver of that inadmissibility). On or after July 26, 2004, such discretion shall be applied on a case by case basis.

(2) *Conditions.* Until July 26, 2004, the temporary admission, extension of stay, or change of status of an alien described in paragraph (d)(1) or (d)(2) of this section that is provided for under this paragraph (n) is subject to the following conditions:

(i) The admission, extension of stay, or change of status may not be for a period longer than 1 year from the date of the decision, even if the relevant provision of 8 CFR 214.2 would ordinarily permit the alien's admission for a longer period;

(ii) The alien must obtain the certification required by paragraph (a) of this section within 1 year of the date of decision to admit the alien or to extend the alien's stay or change the alien's status; and,

(iii) Any subsequent petition or application to extend the period of the alien's authorized stay or change the alien's nonimmigrant status must include proof that the alien has obtained the certification required by paragraph (a) of this section, if the extension or stay or change of status is sought for the primary purpose of the alien's performing labor in a health care occupation listed in paragraph (c) of this section.

(3) *Immigrant aliens.* An alien described in paragraph (a) of this section, who is coming to the United States as an immigrant or is applying for adjustment of status pursuant to section 245 of the Act (8 U.S.C. 1255), to perform labor in a health care occupation described in paragraph (c) of this section, must submit the certificate or certified statement as provided in this section at the time of visa issuance or adjustment of status.

(4) *Expiration of certificate or certified statement.* The individual's certification or certified statement must be used for any admission into the United States, change of status within the United States, or adjustment of status within 5 years of the date that it is issued.

(5) *Revocation of certificate or certified statement.* When a credentialing organization notifies the DHS, via the Nebraska Service Center, that an individual's certification or certified statement has been revoked, the DHS will take appropriate action, including, but not limited to, revocation of approval of any related petitions, consistent with the Act and DHS regulations at 8 CFR 205.2, 8 CFR 214.2(h)(11)(iii), and 8 CFR 214.6(d)(5)(iii).

PART 214—NONIMMIGRANT CLASSES

■ 5. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–15 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009 B 708; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901, note, and 1931 note, respectively; 8 CFR part 2.

■ 6. Section 214.1 is amended by adding new paragraphs (i) and (j) to read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

* * * * *

(i) *Employment in a health care occupation.* Except as provided in 8 CFR 212.15(n), any alien described in 8 CFR 212.15(a) who is coming to the United States to perform labor in a heath care occupation described in 8 CFR 212.15(c) must obtain a certificate from a credentialing organization described in 8 CFR 212.15(e). The certificate or certified statement must be presented to the Department of Homeland Security (DHS) in accordance with 8 CFR 212.15(d). In the alternative, an eligible alien seeking admission as a nurse may obtain a certified statement as provided in 8 CFR 212.15(h).

(j) Extension of stay or change of status for health care worker. In the case of any alien admitted temporarily as a nonimmigrant under section 212(d)(3) of the Act and 8 CFR 212.15(n) for the primary purpose of the providing labor in a health care occupation described in 8 CFR 212.15(c), a petition to extend the period of the alien's authorized stay or to change the alien's status shall be denied if:

(1) The petitioner or applicant fails to submit the certification required by 8 CFR 212.15(a) with the petition or application to extend the alien's stay or change the alien's status; or

(2) The petition or application to extend the alien's stay or change the alien's status does include the certification required by 8 CFR 212.15(a), but the alien obtained the certification more than 1 year after the date of the alien's admission under section 212(d)(3) of the Act and 8 CFR 212.15(n). While the DHS may admit, extend the period of authorize stay, or change the status of a nonimmigrant health care worker for a period of 1 year if the alien does not have certification on or before July 26, 2004, the alien will not be eligible for a subsequent admission, change of status, or extension of stay as a health care worker if the alien has not obtained the requisite certification 1 year after the initial date of admission, change of status, or extension of stay as a health care worker.

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

■ 7. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1182, 1255; sec. 202, Pub. L. 105–100, 111 Stat. 2160, 2193; sec. 902, Pub. L. 105–277, 112 Stat. 2681, 8 CFR part 2.

§ 245.14 [Removed and Reserved]

■ 8. Section 245.14 is removed and reserved.

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

■ 9. The authority citation for part 248 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1258; 8 CFR part 2.

■ 11. Section 248.3 is amended by adding a new paragraph (i) to read as follows:

§ 248.3 Application.

* * * * *

(i) *Change of nonimmigrant status to perform labor in a health care occupation.* A request for a change of nonimmigrant status filed by, or on behalf of, an alien seeking to perform labor in a health care occupation as provided in 8 CFR 212.15(c), must be accompanied by a certificate as described in 8 CFR 212.15(f), or if the alien is eligible, a certified statement as described in 8 CFR 212.15(h). See 8 CFR 214.1(j) for a special rule concerning applications for change of status for aliens admitted temporarily under section 212(d)(3) of the Act and 8 CFR 212.15(n).

PART 299—IMMIGRATION FORMS

■ 10. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

■ 13. Section 299.1 is amended in the table by adding "Form I–905" to the list of prescribed forms in proper alpha/numeric sequence, to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
.	.	.
I–905	04–15–02	Application for Authorization to Issue Certification for Health Care Workers.
.	.	.

■ 14. Section 299.5 is amended in the table by:

■ a. Adding the Form "I–905" in proper alpha/numeric sequence; and by

■ b. Adding the entry "Certificates for Health Care Benefits" at the end of the table.

The additions read as follows:

§ 299.5 Display of control numbers.

* * * * *

INS form No.	INS form title	Currently assigned OMB control No.
.	.	.
I–905	Application for Authorization to Issue Certification for Health Care Workers.	1115–0238
.	.	.
	Certificates for Health Care Benefits.	1115–0226

Dated: July 17, 2003.

Tom Ridge,

Secretary, Department of Homeland Security.

[FR Doc. 03–18710 Filed 7–24–03; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15299; Airspace Docket No. 03–AWP–9]

Modification of Class E Airspace; Window Rock, AZ; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments; correction.

SUMMARY: This action corrects a rule that was published in the **Federal Register** on June 19, 2003, (68 FR 36743; FR Doc. 03–15526). It corrects an error in the legal description of the 1,200 Class E airspace for Window Rock, AZ.

DATES: The direct final rule is effective at 0901 UTC on September 4, 2003. Comments for inclusion in the Rules Docket must be received on or before July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Jeri Carson, Air Traffic Division, Airspace Branch, AWP–520, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6611.

SUPPLEMENTARY INFORMATION: The FAA published FR Document 03–15526 in the **Federal Register** on June 19, 2003, (68 FR 36743) to modify Class E airspace at Window Rock, AZ. The paragraph pertaining to the legal description of the 1,200' Class E airspace was described incorrectly. The following information corrects the

airspace legal description for Window Rock, AZ.

§71.1 [Corrected]

■ On page 36744, column 2, beginning with the 2nd line from the top, change to read: That airspace extending upward from 1,200 feet above the surface bounded by a line beginning at Lat. 36°04′00″ N, Long. 109°27′00″ W; to Lat. 36°07′00″ N, Long. 109°23′00″ W; to Lat. 35°54′00″ N, Long. 109°03′00″; thence along Lat. 35°54′00″ N to the western edge of V–421 and thence southwest along the western edge of V–421 to Lat. 35°13′15″ N, Long. 109°06′02″ W; to Lat. 35°20′25″ N, Long. 109°10′42″ W; to Lat. 35°08′00″ N, Long. 109°25′00″ W; to Lat. 35°08′00″ N, Long. 109°30′00″ W; thence north along Long. 109°30′00″ W to the southern edge of V–95; thence northeast along the southern edge of V–95 to Lat. 35°54′54″ N, Long. 109°13′10″ W; to the point of beginning.

Issued in Los Angeles, California, July 16, 2003.

Stephen Lloyd,

Acting Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 03–18919 Filed 7–24–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 030613151–3151–01]

Florida Keys National Marine Sanctuary; Establishment of Temporary No-Entry Zone in the White Bank Dry Rocks Area; Correction

AGENCY: National Ocean Service (NOS), National Marine Sanctuary Program.

ACTION: Temporary rule; correction.

SUMMARY: This document corrects coordinates published on July 1, 2003 for a no-entry zone in the Florida Keys National Marine Sanctuary. The no-entry zone was established by a temporary rule and became effective June 26, 2003 until August 25, 2003. That temporary rule created two no-entry zones in the vicinity of White Bank Dry Rocks off of Key Largo to prevent the inadvertent spread by swimmers and snorkelers of infectious agents associated with diseased corals in the two zones. Each no-entry zone is approximately 0.25 square miles in size. This document corrects the coordinates of White Bank South Patch that were incorrectly described in the temporary published on July 1, 2003.

DATES: Effective July 24, 2003 until August 25, 2003.

FOR FURTHER INFORMATION CONTACT: Billy D. Causey, Superintendent, Florida Keys National Marine Sanctuary, (FKNMS), Post Office Box 500368, Marathon, Florida 33050, (305) 743–2467.

SUPPLEMENTARY INFORMATION:

Need for Correction

The temporary rule establishing no-entry zones at White Bank North Patch and White Bank South Patch, off of Key Largo in the Florida Keys National Marine Sanctuary (68 FR 39005; July 1, 2003), contained errors in the coordinates for White Bank South Patch. The correct coordinates are:

White Bank South Patch—

(1) 25 degrees 02.414 seconds N 80 degrees 22.425 seconds W;

(2) 25 degrees 02.446 seconds N 80 degrees 22.267 seconds W;

(3) 25 degrees 02.314 seconds N 80 degrees 22.278 seconds W;

(4) 25 degrees 02.336 seconds N 80 degrees 22.408 seconds W.

Classification

Under 5 U.S.C. 553(b)(B), the Assistant Administrator of the National Ocean Service, NOAA, for good cause, finds that providing prior notice and public procedure thereon with respect to this correction is impracticable and contrary to the public interest. Recent evidence has come to light of an outbreak of infectious coral disease in areas of White Bank Dry Rocks near Key Largo. It is possible that humans entering the waters of the affected areas could inadvertently carry infectious agents to healthy coral reef areas. Infected corals are also most subject to stress from human activities. This action is intended to limit the innocent spread of infectious agents to healthy coral and to reduce stress to corals within the infected areas. As such, further damage to the infected corals as well as to healthy corals outside of the close areas would occur if the prohibition implemented by this rule is delayed to provide prior notice and opportunity for public comment.

Likewise, under 5 U.S.C. 553(d)(3), the Assistant Administrator of the National Ocean Service, NOAA, finds good cause to waive the 30-day delay in effective date for this correction. First, if the correction is delayed for 30 days, significant damage to the living coral resources could result. Further, 30 days are not necessary to give notification to visitors who might use the area in the future to move to other nearby sites. The U.S. Coast Guard will give immediate notification to vessels to stay out of the no-entry zones. Notification will be made by the U.S. Coast Guard via notice to mariners, Sanctuary radio announcements, press releases, press conferences, and with assistance by the U.S. Coast Guard and Sanctuary staff on the water within the area. This correction is effective upon filing at the Office of the **Federal Register**.

Dated: July 19, 2003.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 03–18933 Filed 7–24–03; 8:45 am]

BILLING CODE 3510–NK–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

15 CFR Part 2016

RIN 0350–AA06

Establishment of a Petition Process To Review Eligibility of Countries for the Benefits of the Andean Trade Preference Act, as Amended by the Andean Trade Promotion and Drug Eradication Act

AGENCY: Office of the United States Trade Representative.

ACTION: Final rule.

SUMMARY: This final rule provides for the establishment of a petition process to review the eligibility of countries for the benefits of the Andean Trade Preference Act, as amended by the Andean Trade Promotion and Drug Eradication Act.

DATES: This final rule is effective on July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Bennett M. Harman, Office of the Americas; Office of the United States Trade Representative at (202) 395–5190.

SUPPLEMENTARY INFORMATION: The Trade Act of 2002 (Pub. L. 107–210) (Trade Act) includes the "Andean Trade Promotion and Drug Eradication Act" (ATPDEA), which contains provision on enhanced trade benefits for eligible Andean countries. The ATPDEA renews and amends the Andean Trade Preference Act (ATPA) (19 U.S.C. 3201 *et seq.*) Section 3103(d) of the ATPDEA requires the President to promulgate regulations regarding the review of eligibility of articles and countries for the benefits of the ATPA, consistent with section 203(e) of the ATPA, as amended by the ATPDEA, not later than 180 days after the date of enactment of the Trade Act of 2002. The Trade Act was enacted on August 6, 2002. In Executive Order 13277 of November 19, 2002, the President assigned this function to the U.S. Trade Representative (USTR).

Section 203(e) of the ATPA, as amended, gives the President the authority to withdraw or suspend the designation of any ATPA or ATPDEA beneficiary country, or withdraw, suspend, or limit the application of preferential treatment under the ATPA, as amended by the ATPDEA, to any article of any such country, if the President determines that, as a result of changed circumstances, the country is not meeting the eligibility criteria of the ATPA and ATPDEA. Section 203(e) also establishes certain procedural guidelines for taking any of the actions described above.

An interim rule, on a final and emergency basis, was published in the **Federal Register** (68 FR 5542) for public comment on February 4, 2003. Consistent with section 3103(d)(2) of the ATPDEA, the interim rule was similar to the regulations governing the annual review used to modify the U.S. Generalized System of Preferences (GSP), which is authorized by title V of the Trade Act of 1974 (19 U.S.C. 2461 *et seq.*), as amended. The interim rule established an annual review that allows for public input, and includes procedures for requesting the withdrawal, suspension, or limitation of preferential duty treatment under the ATPA, as amended, and for reviewing such requests and implementing granted requests. USTR received two submissions with several comments on the interim rule. The following summarizes the comments and USTR's response to them. USTR has also made technical changes to the final regulations that do not affect the substance of the provision.

Comments

1. *Public Comment:* The regulations must provide for an article eligibility review as well as a country eligibility review.

USTR Response: The interim rule, consistent with section 203(e) of the ATPA, as amended, and section 3103(d) of the ATPDEA, addressed the issue of article eligibility in the context of country eligibility. The commenter suggests that the ATPDEA also requires the regulations to allow for petitions to add articles pursuant to section 204(b)(1) of the ATPA, as amended, which gives the President authority to proclaim certain articles as eligible for duty-free treatment under the ATPA if he determines that an article is not "import-sensitive in the context of imports from ATPDEA beneficiary countries."

In response, USTRA notes first that section 3103(d)(1) requires the President to promulgate regulations regarding the review of eligibility of articles and countries under the ATPA, consistent with section 203(e). As noted above, the President assigned this function to the USTR per Executive Order. Section 203(e) gives the President the authority to withdraw or suspend the designation of any ATPA or ATPDEA beneficiary country, or withdraw, suspend, or limit the application of preferential treatment under the ATPA, as amended by the ATPDEA, to any article of any such country, if the President determines that, as a result of changed circumstances, the country is not meeting the eligibility criteria of the ATPA and ATPDEA. Section 203(e) also establishes certain procedural guidelines for taking any of the actions described above. Second, section 3103(d)(2) requires the regulations to "include procedures for requesting withdrawal, suspension, or limitations of preferential duty treatment" under the ATPA.

Section 3103(d)(1) calls for the President (the USTR, by delegation) to promulgate regulations regarding the review of eligibility of articles and countries under the ATPA, "consistent with section 203(e)." Section 203(e) refers solely to the withdrawal, suspension, or limitation of preferential duty treatment, and makes no reference to procedures for adding articles to the list of those eligible for preferential treatment. Moreover, section 3103(d)(2), which addresses the content of the regulations that must be promulgated, refers exclusively to procedures for requesting "withdrawal, suspension, or limitations" of preferential duty treatment under the ATPA, making no mention of procedures for adding articles. Thus, USTR does not agree that regulations implementing section 3103(d) must include procedures for adding articles pursuant to section 204(b)(1).

2. *Public Comment:* The regulations must be revised to expressly include the possibility of restoring benefits for an article for which benefits have been withdrawn, suspended, or limited.

USTR Response: Neither the GSP regulations, section 203(e) of the ATPA, as amended, nor section 3103(d) of the ATPDEA addresses the possibility of restoring benefits for an article for which benefits have been withdrawn, suspended, or limited. Consequently, USTR does not consider that it is required to include in the regulations procedures for restoring benefits. However, the ATPA provides authority for the President to restore benefits that were withdrawn, suspended, or limited pursuant to section 203(e) if he determines that the country in question has resumed compliance with the eligibility criteria of the ATPA, as amended by the ATPDEA.

3. *Public Comment:* The procedures set out in the regulations should more closely adhere to those in the GSP regulations, in particular by limiting the right to file petitions to "interested parties," by establishing a petition process for adding products to the list of eligible articles, and by creating procedures for submitting economic data in support of such petitions.

USTR Response: This commenter makes three recommendations. First, the commenter suggests that the ATPA regulations, like the GSP regulations at 15 CFR 2007.0, should limit the right to file a petition to "interested parties." However, only the GSP provision that addresses petitions related to *product* eligibility under the GSP program, 15 CFR 2007.0(a), limits the right to petition to "interested parties." By contrast, the section of the GSP regulations that addresses *country* eligibility, 15 CFR 20007.0(b), affords the right to petition to "any person." Section 3103(d)(1) of the ATPDEA calls for regulations consistent with section 203(e) of the ATPA, which addresses both country and product eligibility. However, section 203(e) provides that any action to remove benefits for products must be based on a determination that a country no longer meets the eligibility criteria for ATPA benefits. It would be inappropriate to limit petitions addressing the broad range of issues related to a country's eligibility for benefits under the ATPA solely to "interested parties," as that term is defined in 15 CFR 2007.0(d). Rather, "any person" should be eligible to raise concerns about whether a country is continuing to meet the relevant eligibility criteria. Therefore, consistent with the broader approach to country eligibility petitions in the GSP regulations, the final ATPA regulations will permit "any person" to submit a petition seeking either the suspension or withdrawal of country eligibility or duty-free treatment. (The interim final rule inadvertently referred to "any person" as "any party" in several places. That error has been corrected in the final regulations.)

Second, the commenter suggests that the ATPA regulations should be similar to the GSP regulations in that they should contain procedures for adding products in accordance with section 204(b)(1) of the ATPA, as amended. This recommendation is addressed in

response to the first public comment above.

Lastly, the commenter suggests that, if USTR amends the regulations to authorize petitions that seek to add products in accordance with section 204(b)(1) of the ATPA, as amended, USTR should spell out the information to be provided in support of such petitions. Because USTR has decided not to amend the interim rule in the manner suggested, it is not necessary to address this recommendation.

4. *Public Comment:* Columbia should meet its commitment to cease applying a price band adjustment to imports of dry pet food.

USTR Response: This comment was previously submitted in response to USTR notice, published in the **Federal Register** on August 15, 2002 (67 FR 53379), requesting public comment on the designation of eligible countries as ATPDEA beneficiary countries. The interagency Andean subcommittee of the Trade Policy Staff Committee (TPSC) has already considered and acted on this comment.

The Regulatory Flexibility Act and Executive Order 12866

Under the Regulatory Flexibility Act, a Regulatory Flexibility Analysis is not required under sections 603 or 604 because USTR is not publishing a Notice of Proposed Rulemaking. This final rule is significant under Executive Order 12866 of September 30, 1993, and has been review by the Office of Management and Budget.

List of Subjects in 15 CFR Part 2016

Administrative practice and procedure, Confidential business information, Foreign Trade.

■ For the reasons set out in the **SUPPLEMENTARY INFORMATION** section of this document, 15 CFR part 2016 revised to read as follows:

PART 2016—PROCEDURES TO PETITION FOR WITHDRAWAL OR SUSPENSION OF COUNTRY ELIGIBILITY OR DUTY-FREE TREATMENT UNDER THE ANDEAN TRADE PREFERENCE ACT (ATPA), AS AMENDED

Sec.

2016.0 Requests for reviews.
2016.1 Action following receipt of petitions.
2016.2 Timetable for reviews.
2016.3 Publication regarding requests.
2016.4 Information open to public inspection.
2016.5 Information exempt from public inspection.

Authority: 19 U.S.C. 3201, *et seq.*; sec. 3103(d), Pub. L. 107–210; 116 Stat. 933; E.O. 13277, 67 FR 70303.

§ 2016.0 Requests for reviews

(a) Any person may submit a request (hereinafter "petition") that the designation of a country as an Andean Trade Preference Act (ATPA) beneficiary country be withdrawn or suspended, or the application of preferential treatment under the ATPA to any article of any ATPA beneficiary country be withdrawn, suspended, or limited. Such petitions should: include the name of the person or the group requesting the review; identify the ATPA beneficiary country that would be subject to the review; if the petition is requesting that the preferential treatment of an article or articles be withdrawn, suspended, or limited, identify such article or articles with particularity and explain why such article or articles were selected; indicate the specific section 203(c) or (d) (19 U.S.C. 3202(c), (d)) eligibility criterion that the petitioner believes warrant(s) review; and include all available supporting information. The Andean Subcommittee of the Trade Policy Staff Committee (TPSC) may request other information. If the subject matter of the petition was reviewed pursuant to a previous petition, the petitioner should consider providing the Andean Subcommittee with any new information related to the issue.

(b) Any person may submit a petition that the designation of a country as an Andean Trade Promotion and Drug Eradication At (ATPDEA) beneficiary country be withdrawn or suspended, or the application of preferential treatment to any article of any ATPDEA beneficiary country under section 204(b)(1), (3), or (4) (19 U.S.C.. 3202(b)(1), (3), (4)) be withdrawn, suspended, or limited. Such petitions should: Include the name of the person or the group requesting the review; identify the ATPDEA beneficiary country that would be subject to the review; if the petition is requesting that the preferential treatment of an article or articles be withdrawn, suspended, or limited, identify such article or articles with particularity and explain why such article or articles were selected; indicate the specific section 204(b)(6)(B) (19 U.S.C. 3203(b)(6)(B)) eligibility criterion or criteria that the petition believes warrant(s) review; and include all available supporting information. The Andean Subcommittee may request other information. If the subject matter of the petition was reviewed pursuant to a previous petition, the petitioner should consider providing the Andean Subcommittee with any new information related to the issue.

(c) All petitions and other submissions should be submitted in accordance with the schedule (*see* § 2016.2) and requirements for submission that The Office of the United States Trade Representative (USTR) will publish annually in the **Federal Register** in advance of each review. Foreign governments may make submission in the form of diplomatic correspondence and should observe the deadlines for each annual review published in the **Federal Register**.

(d) The TPSC may at any time, on its own motion, initiate a review to determine whether: the designation of a country as an ATPA beneficiary country should be withdrawn or suspended; the application of preferential treatment under the ATPA to any article of any ATPA beneficiary country should be withdrawn, suspended, or limited; the designation of a country as an ATPDEA beneficiary country should be withdrawn or suspended; or the application of preferential treatment to any article of any ATPDEA beneficiary country under section 204(b)(1), (3), or (4) (19 U.S.C. 3202(b)(1), (3), or (4) should be withdrawn, suspended, or limited.

(e) Petitions requesting the action described in paragraph (a) or (b) of this section that indicate the existence of exceptional circumstances warranting an immediate review may be considerd outside of the schedule for the annual review announced in the **Federal Register**. Requests for such urgent consideration should contain a statement of reasons indicating why an expedited review is warranted.

§ 2016.1 Action following receipt of petitions.

(a) USTR shall publish in the **Federal Register** a list of petitions filed in response to the announcement of the annual review, including the subject matter of the request and, where appropriate, the description of the article or articles covered by the request.

(b) Thereafter, the Andean Subcommittee shall conduct a preliminary review of the petitions, and shall submit the results of its preliminary review to the TPSC. The TPSC shall review the work of the Andean Subcommittee and shall conduct further review as necessary. The TPSC shall prepare recommendations for the President on any proposed action to modify the ATPA. The Chairman of the TPSC may, as appropriate, convene the Trade Policy Review Group (TPRG) to review the matter, and thereafter refer the matter to the USTR for Cabinet-level review as necessary.

(c) The USTR, after receiving the advice of the TPSC, TPRG, or Cabinet-level officials, shall make recommendations to the President on any proposed action to modify the application of the ATPA's benefits to countries or articles. The President (or if that function is delegated to the USTR, the USTR) shall announce in the **Federal Register** any such action he proposes to take. The USTR shall announce in the **Federal Register** notice of the results of the preliminary review, together with a schedule for receiving public input regarding such proposed action consistent with section 203(e) of the ATPA, as amended (19 U.S.C. 3202(e)).

(1) The schedule shall include the deadline and guidelines for any person to submit written comments supporting, opposing or otherwise commenting on any proposed action.

(2) The schedule shall also include the time and place of the public hearing, as well as the deadline and guidelines for submitting requests to present oral testimony.

(d) After receiving and considering public input, the Andean Subcommittee shall submit the results of the final review to the TPSC. The TPSC shall review the work of the Andean Subcommittee and shall conduct further review as necessary. The TPSC shall prepare recommendations for the President on any proposed action to modify the application of benefits under the ATPA to countries or articles. The Chairman of the TPSC may, as appropriate, convene the TPRG to review the matter, and thereafter refer the matter to the USTR for Cabinet-level review as necessary. The USTR, after receiving the advice of the TPSC, TPRG, or Cabinet-level officials, shall make recommendations to the President on any proposed action to modify the application of the ATPA's benefits to countries or articles, including recommendations that no action be taken. The USTR shall also forward to the President any documentation necessary to implement the recommended proposed action or actions to modify the application of the ATPA's benefits to countries or articles.

(e) In considering whether to recommend any proposed action to modify the ATPA, the Andean Subcommittee, on behalf of the TPSC, TPRG, or Cabinet-level officials, shall review all relevant information submitted in connection with a petition or otherwise available.

§ 2016.2 Timetable for reviews.

Beginning in calendar year 2003, reviews of pending petitions shall be conducted at least once each year, according to the following schedule, unless otherwise specified by **Federal Register** notice:

(a) September 15: Deadline for submission of petitions for review;

(b) On or about December 1: Announcement published in the **Federal Register** of the results of preliminary review;

(c) Decemeber/January: Written comments submitted and a public hearing held on any proposed actions;

(d) February/March: Preparation of recommendations to the President, Presidential decision, and implementation of Presidential decision.

§ 2016.3 Publication regarding requests.

Following the Presidential decision and where required, the publication of a Presidential proclamation modifying the application of benefits under the ATPA to countries or articles in the **Federal Register**, USTR will publish a summary of the decisions made in the **Federal Register**, including:

(a) For petitions on which decisions were made, a description of the outcome of the review; and

(b) A list of petitions on which no decision was made, and thus which are pending further review.

§ 2016.4 Information open to public inspection.

With the exception of information subject to § 2016.5, any person may, on request, inspect in the USTR Reading Room:

(a) Any written petition, comments, or other submission of information made pursuant to this part; and

(b) Any stenographic record of any public hearings held pursuant to this part.

§ 2016.5 Information exempt from public inspection.

(a) Information submitted in confidence shall be exempt from public inspection if USTR determines that the disclosure of such information is not required by law.

(b) A person requesting an exemption from public inspection for information submitted in writing shall clearly mark each page "BUSINESS CONFIDENTIAL" at the top, and shall submit a non-confidential summary of the confidential information. Such person shall also provide a written explanation of why the material should be so protected.

(c) A request for exemption of any particular information may be denied if USTR determines that such information is not entitled to exemption under law. In the event of such a denial, the information will be returned to the person who submitted it, with a statement of the reasons for the denial.

John K. Veroneau,

General Counsel.

[FR Doc. 03–18957 Filed 7–24–03; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Phenylbutazone Paste

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Bioniche Animal Health USA, Inc. The ANADA provides for oral use of phenylbutazone paste in horses for relief of inflammatory conditions associated with the musculoskeletal system.

DATES: This rule is effective July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: *lluther@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Bioniche Animal Health USA, Inc., 119 Rowe Rd., Athens, GA 30601, filed ANADA 200–266 for the oral use of BUTEQUINE (phenylbutazone) Paste in horses for relief of inflammatory conditions associated with the musculoskeletal system. Bioniche Animal Health's BUTEQUINE Paste is approved as a generic copy of Schering-Plough Animal Health's PHENYLZONE (phenylbutazone) Paste, approved under NADA 116–087. The ANADA is approved as of February 21, 2003, and the regulations are amended in 21 CFR 520.1720c to reflect the approval and current format. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness

data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 520.1720c is amended by revising paragraphs (a) and (b), by removing paragraph (c), and by redesignating paragraph (d) as new paragraph (c) to read as follows:

§ 520.1720c Phenylbutazone paste.

(a) *Specifications.*—(1) Each gram of paste contains 0.2 grams phenylbutazone.

(2) Each gram of paste contains 0.35 grams phenylbutazone.

(b) *Sponsors.* See sponsor numbers in § 510.600(c) of this chapter.

(1) Nos. 000061 and 010797 for use of product described in paragraph (a)(1) of this section.

(2) No. 064847 for use of product described in paragraph (a)(2) of this section.

* * * * *

Dated: July 3, 2003.

Andrew J. Beaulieu,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 03–18910 Filed 7–24–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–03–013]

RIN 1625–AA00

Safety Zone; Fireworks Display in the Captain of the Port Portland Zone, Colombia River, Astoria, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Captain of the Port Portland will begin enforcing the safety zone for the Astoria Regatta Fireworks Display established by 33 CFR 165.1316 on July 17, 2003. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with the fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

DATES: 33 CFR 165.1316 will be enforced August 9, 2003 from 9:30 p.m. until 10:30 p.m. (PDT).

FOR FURTHER INFORMATION CONTACT: Captain of the Port Portland, 6767 N. Basin Ave., Portland, OR 97217 at (503) 240–9370 to obtain information concerning enforcement of this rule.

SUPPLEMENTARY INFORMATION: On July 17, 2003, the Coast Guard published a final rule (68 FR 42289) establishing a safety zone, in 33 CFR 165.1316, to provide for the safety of vessels in the vicinity of the Astoria Regatta fireworks display. The safety zone will include all waters of the Columbia River at Astoria, Oregon enclosed by the following points: North from the Oregon shoreline at 123°49′36″ West to 46°11′51″ North thence east to 123°48′53″ West thence south to the Oregon shoreline and finally westerly along the Oregon shoreline to the point of origin. Entry into this zone is prohibited unless authorized by the Captain of the Port or his designee. The Captain of the Port Portland will enforce this safety zone on August 9, 2003 from 9:30 p.m. until 10:30 p.m. (PDT). The Captain of the Port may be assisted by other Federal, state, or local agencies in enforcing this security zone.

Dated: July 9, 2003.

Paul D. Jewell,

Captain, Coast Guard, Captain of the Port, Portland.

[FR Doc. 03–18918 Filed 7–24–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–399]

RIN 1625–AA00

Safety Zones; Captain of the Port Detroit Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Coast Guard is implementing safety zones for annual fireworks displays in the Captain of the Port Detroit Zone during August 2003. This action is necessary to provide for the safety of life and property on navigable waters during these events. These zones will restrict vessel traffic from a portion of the Captain of the Port Detroit Zone.

DATES: Effective from 12:01 a.m. on August 1, 2003, to 11:59 p.m. on August 31, 2003.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Brandon Sullivan, U.S. Coast Guard Marine Safety Office Detroit, at (313) 568–9580.

SUPPLEMENTARY INFORMATION:

The Coast Guard is implementing the permanent safety zones in 33 CFR 165.907 (a)(22) and (23) (66 FR 27868, May 21, 2001), for fireworks displays in the Captain of the Port Detroit Zone during August 2003. The following safety zones are in effect for fireworks displays occurring in the month of August 2003:

(1) *Maritime Day Fireworks, Marine City, MI.* This safety zone will be enforced on August 9, 2003, from 8 p.m. until 11:59 p.m.

(2) *Venetian Festival Boat Parade & Fireworks, St. Clair Shores, MI.* This safety zone will be enforced on August 9, 2003, from 7 p.m. until 11:59 p.m.

In order to ensure the safety of spectators and transiting vessels, these safety zones will be enforced for the duration of the events. In cases where shipping is affected, commercial vessels may request permission from the Captain of the Port Detroit to transit the safety zone. Approval will be made on a case-by case basis. Requests must be made in advance and approved by the Captain of the Port Detroit before transits will be authorized. The Captain of the Port Detroit may be contacted via U.S. Coast Guard Group Detroit on Channel 16, VHF–FM.

Dated: July 14, 2003.

S.K. Moon,

Lieutenant Commander, Coast Guard, Acting Captain of the Port Detroit.

[FR Doc. 03–18923 Filed 7–24–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AL68

Medication Prescribed by Non-VA Physicians

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: This rule amends VA's medical regulations that govern the provision of medication to veterans when the medication is prescribed by non-VA physicians. The rule provides that, in limited circumstances, VA may provide medication prescribed by a non-VA physician to veterans enrolled in VA's health care system prior to July 25, 2003, if the veterans have requested an initial appointment for primary care in a VA health care facility before July 25, 2003, and were unable to obtain an initial appointment for primary care within 30 days. The rule establishes specific requirements that veterans must meet to receive such medications and it establishes limits on the types and quantities of medication VA may provide. VA's intent is to assist enrolled veterans who have requested primary care appointments but who have not been able to obtain one within 30 days.

DATES: *Effective Date:* This interim final rule is effective on July 25, 2003; except for 38 CFR 17.96(e) which is effective August 25, 2003.

Comment Dates: Comments on the rule must be received on or before September 8, 2003; except that comments on the request for emergency approval of the collection of information provisions must be received on or before August 25, 2003.

Applicability Date: Benefits may be provided commencing September 22, 2003.

ADDRESSES: Mail or hand-deliver written comments to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or fax comments to (202) 273–9026; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to "RIN 2900–AL68." All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Kendra Drew, Chief Business Office (16), at (202) 254–0329 and Virginia Torrise, Pharmacy Benefits Management, Deputy Chief Consultant (119), at (202) 273–8426. These individuals are in the Veterans Health Administration of the Department of Veterans Affairs, located at 810 Vermont Avenue, NW., Washington, DC 20420.

SUPPLEMENTARY INFORMATION: Under existing law and regulations, a veteran desiring medical care from VA must enroll in VA's health care system, except for veterans whose service-connected disabilities are 50% or greater, or any veteran seeking treatment for a service-connected condition. When a veteran first enrolls in the VA system, and requests an appointment for care, VA schedules an appointment for a visit with a primary care physician. During that first appointment, a VA health care provider examines the veteran and determines what care the veteran needs. That primary care physician generally learns from the veteran what medication the veteran is taking, if any, assesses the need for medication, and writes prescriptions for any needed medication. Those prescriptions written by the VA physician are then filled by a VA pharmacy.

In recent years, VA has faced an extraordinary increase in demand for health care services. The increased demand has been caused, at least in part, by veterans enrolling in the VA health care system to obtain pharmacy benefits at no cost or at a reasonable cost. With dramatically increased enrollment, VA has been unable to provide all enrolled veterans with services in a timely manner. In many places that means veterans may wait a considerable length of time to receive an initial primary care visit. Many of those veterans have prescriptions, written by non-VA physicians, that VA primary care physicians may confirm and renew when the veterans are able to have initial primary care visits. In an effort to ease the financial burden on enrolled veterans currently waiting lengthy periods of time for their initial primary care visits, VA will provide these veterans with medications prior to their initial primary care visits at VA if these veterans present valid prescriptions from their non-VA physicians. VA will fill prescriptions written by non-VA physicians only for the period of time such veterans are awaiting a scheduled appointment with a VA health care provider. VA anticipates asking the veterans whether they want to have the next available appointment, or whether they want to postpone the initial appointment. VA will schedule the veterans' initial appointments within the period covered by the prescriptions written by their non-VA physicians. VA anticipates that some veterans will choose to postpone the initial appointment, shortening waiting lists and making appointment dates available to other veterans.

VA anticipates that in the near future, it will be able to provide all enrolled veterans with primary care in a timely manner. That would effectively eliminate the need for providing medications under this rule. However, it is important that VA have such regulations in place until such time as waiting periods can be reduced.

VA is undertaking this rulemaking pursuant to its authority under 38 U.S.C. 1710(a) to furnish needed medical services. As clarified in paragraph (a) of this rule, VA does not generally fill prescriptions for veterans that are written by non-VA physicians. Instead, VA usually provides only medications prescribed by VA physicians or VA contractors retained for that purpose. This is consistent with the primary purpose of the Veterans Health Administration, which is to provide integrated comprehensive health care for veterans, not simply act as a conduit for furnishing prescription medications.

In light of the backlog of veterans seeking VA care, however, the Secretary has determined that the filling of some prescriptions written by non-VA physicians is needed during the period of time such veterans are awaiting a scheduled appointment with a VA health care provider. As a result, paragraph (b) of this rule states that beginning September 22, 2003, VA may furnish medications for veterans enrolled in VA's health care system prior to July 25, 2003, if the veterans have requested an initial appointment for primary care in a VA health care facility before July 25, 2003, and the next available appointment date is scheduled more than 30 days after the veteran requests the appointment. VA chose the 30-day limitation because it is generally considered reasonable in the community at large to expect that one could obtain a first time primary care visit with a physician within 30 days. VA chose to limit the provision of medications in question to only those veterans enrolled prior to July 25, 2003, in order to specifically address the

problems of currently enrolled veterans facing lengthy waits for initial primary care appointments in a cost-effective manner. (*See* 38 U.S.C. 1706(a) requiring VA to "design, establish and manage health care programs in such a manner as to promote cost-effective delivery of health care services"). Moreover, without these limitations, the very issuance of the new rule could invite an influx of new enrollments and requests for appointments, exacerbating the wait-time problem the rule is intended to address. This rule also should benefit those who enroll after the effective date or attempt to make appointments after that date. By allowing those presently enrolled and waiting more than 30 days to reschedule appointments at dates closer to expiration of presently held non-VA prescriptions, additional near term appointments should become available for those who are not entitled to this limited benefit. Thus, the out-of-pocket costs for prescriptions filled while waiting for VA appointments should also be reduced for those not specifically included in this rule because their waiting time should be reduced.

Paragraph (c) of this rule states that VA may furnish an amount of medication that will appropriately meet the treatment needs of veterans until the date of the veterans' initial appointment for primary care in a VA facility. If veterans choose to postpone their initial appointment date until they have used all of the medication prescribed by the non-VA provider, VA will furnish the amount prescribed, including refills. VA will furnish such medications consistent with long-standing pharmacy practices. The decision on the precise quantity of medication that would be needed is generally considered to be a medical determination and would be left to appropriate VA clinicians including pharmacists.

Paragraph (d) of this rule states that if VA reschedules an initial appointment for primary care in a VA health care facility for veterans eligible under this rule, or if veterans reschedule their appointments for good reasons, as determined by the local VA medical facility, VA may furnish the eligible veterans with a quantity of medication that is sufficient to meet the treatment needs of the veterans until the date of the veterans' rescheduled appointments for primary care in a VA health care facility. If VA reschedules veterans' initial primary care visits, it is reasonable that VA would provide additional medication to meet the veterans' needs until the date of their rescheduled appointments. VA also understands that there are occasions when, for good cause, veterans might be forced to cancel appointments. For example, if the veteran had to reschedule an appointment because of inclement weather, or because of the illness or death of a family member, VA would not disqualify the veteran from continuing to receive the benefits of this remedial program. However, VA would not furnish medications to veterans who simply cancel or reschedule and extend their appointments without good reasons.

Paragraph (e) of this rule states that VA may furnish medications beginning on September 22, 2003, only if veterans provide VA with written current prescriptions for their medications signed by duly licensed physicians within the previous 90 days. To ensure the health and safety of veterans, VA will only fill prescriptions when veterans present VA with written prescriptions signed by licensed physicians. VA will not accept prescriptions called in by veterans' non-VA pharmacies or non-VA health care providers. VA lacks the resources to accept and manage those calls.

Paragraph (f) of this rule states that VA may furnish only medication under paragraph (b) that (1) must be dispensed by prescription, (2) is not an over-the-counter medication, (3) is not listed as a controlled substance under schedule I through V of the Comprehensive Drug Abuse Prevention and Control Act, 21 U.S.C. 812, (4) is included on VA's National Formulary, unless VA determines a non-Formulary medication is medically necessary, and (5) is not an acute medication, intravenous medication, nor one required to be administered only by a medical professional. By providing only medications that must be dispensed by prescription, VA is not furnishing over-the-counter drugs. Veterans can easily purchase over-the-counter medications without regard to whether they are able to schedule visits with a physician. For patient health and safety reasons, VA will not furnish controlled substances without a VA physician first seeing the patient and ordering the medication. VA will furnish veterans with medications prescribed by non-VA physicians only if the medication is on VA's National Formulary, or approved in advance through a special approval process. If a veteran provides VA with a prescription for medications that are not on VA's formulary, VA will contact the physician who wrote the prescription to determine whether a medication on VA's formulary is appropriate, and if not, the medical reasons why it is not appropriate. If VA determines that a medication is medically necessary, but is not on VA's formulary, VA will provide that medication. Finally, acute medications, intravenous medications, and medications required to be administered only by a medical professional will not be furnished because under this rule prescriptions will be filled only by mail.

Paragraph (g) of this rule provides that the existing copayment requirements applicable to VA furnishing medication will apply to medications furnished under this rule. Statutes (*e.g.*, 38 U.S.C. 1722A) require application of the copayment requirements.

Paragraph (h) of this rule provides that VA will furnish medications under this rule only by having the medication mailed to the veteran, typically by one of VA's Consolidated Mail Out-patient Pharmacies, or with VA contract pharmacies. Therefore, this benefit is not useful for veterans who require acute medications, intravenous medications, or medications to be administered only by a medical professional. VA pharmacies will not directly furnish medications or reimburse veterans for medications that they obtain from non-VA pharmacies.

Paragraph (i) of this rule restates, with no substantive change, longstanding regulatory provisions regarding prescriptions found in § 17.96.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553, we have found for this rule that notice and public procedure are impracticable, unnecessary, and contrary to the public interest, and that we have good cause to dispense with notice and comment on this rule and to dispense with a 30-day delay of its effective date. This is an effort to ease the financial burden on enrolled veterans currently waiting lengthy periods of time for their initial primary care visits. Delaying implementation of this benefit would only exacerbate the problems veterans are experiencing while waiting for VA treatment.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This proposed amendment would have no such effect on State, local, or tribal governments, or the private sector.

Paperwork Reduction Act

OMB assigns a control number for each collection of information it approves. Except for emergency approvals under 44 U.S.C. 3507(j), VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The interim final rule at § 17.96(e) contains collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521). Accordingly, under section 3507(d) of the Act, VA has submitted a copy of this rulemaking action to OMB for its review of the collections of information. We have requested OMB to approve the collection of information on an emergency basis by August 25, 2003. If OMB does not approve the collections of information as requested, we will immediately remove § 17.96(e) or take such other action as is directed by OMB.

We are also seeking an approval of the information collection on a non-emergency basis. Accordingly, we are also requesting comments on the collection of information provisions contained in § 17.96(e) on a non-emergency basis. Comments must be submitted by September 23, 2003.

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments on the collections of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, or faxed to 202 395–6974, with copies mailed or hand-delivered to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900–AL68."

Title: Medication Prescribed by non-VA Physicians.

Summary of collection of information: The interim final rule at § 17.96(e) contains application provisions for written prescriptions and information requirements. The interim rule at § 17.96(e) contains requirements for provision of medication to veterans when the medication is prescribed by non-VA physicians.

Application Provisions for Written Prescriptions and Information Requirements.

Description of the need for information and proposed use of information: This information is needed to determine eligibility for provision of medication to veterans when the medication is prescribed by non-VA physicians.

Description of likely respondents: veterans and treating physicians.

Estimated number of respondents per year: 181,723.

Estimated frequency of responses per year: 1.

Estimated total annual reporting and recordkeeping burden: 33,316 hours.

Estimated annual burden per collection: 11 minutes.

The Department considers comments by the public on collections of information in—

- Evaluating whether the collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including responses through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in this rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the interim final rule.

Executive Order 12866

The Office of Management and Budget has reviewed this document under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This amendment would not directly affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers for the programs affected by this document are 64.005, 64.007, 64.008, 64.009, 64.010, 64.011, 64.012, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.022, and 64.025.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: July 17, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, VA is amending 38 CFR part 17 as follows:

PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

■ 2. Section 17.96 is revised to read as follows:

§ 17.96 Medication prescribed by non-VA physicians.

(a) *General.* VA may not furnish a veteran with medication prescribed by a duly licensed physician who is not an employee of the VA or is not providing care to the veteran under a contract with the VA, except as provided in paragraphs (b) through (i) of this section.

(b) *Medication furnished prior to an initial primary care appointment.* Beginning on September 22, 2003, VA may furnish medication prescribed by a non-VA physician for a veteran enrolled under § 17.36 of this part prior to July 25, 2003, who had prior to July 25, 2003, requested an initial appointment for primary care in a VA health care facility, and the next available appointment date was more than 30 days from the date of the request.

(c) *Quantity of medication.* VA may furnish a quantity of medication under

paragraph (b) of this section that is sufficient to appropriately meet the treatment needs of the veteran until the date of the veteran's initial appointment for primary care in a VA health care facility.

(d) *Appointment cancellation.* If VA reschedules a veteran eligible under paragraph (b) for an initial appointment for primary care in a VA health care facility, or if such a veteran reschedules the appointment for good cause, as determined by the local VA treatment facility, VA may furnish the eligible veteran with a quantity of medication under paragraph (b) of this section that is sufficient to appropriately meet the treatment needs of the veteran until the date of the veteran's rescheduled appointment for primary care in a VA health care facility.

(e) *Written prescription and information requirements.* VA may furnish medication under paragraph (b) of this section only if the veteran provides VA with a written prescription for the medication signed by a duly licensed physician within the previous 90 days.

(1) *The veteran must furnish the following information:*

(i) Name;

(ii) Date of Birth;

(iii) Social Security Number;

(iv) Home address;

(v) Phone number (with area code);

(vi) Name of Health Insurance Company and Health Insurance Policy Number;

(vii) List of any allergies;

(viii) History of any adverse reaction to any medication;

(ix) List of current medications, including over-the-counter medications or herbal supplements; and

(x) Indication of whether the VA pharmacist may call a non-VA physician for information regarding medications.

(2) The non-VA physician must furnish the following information:

(i) Name;

(ii) Group practice name;

(iii) Social Security Number or Tax ID number;

(iv) License Number;

(v) Office address;

(vi) Phone number and fax number; and

(vii) E-mail address.

(f) *Medications that may be furnished.* VA may furnish medication under paragraph (b) of this section only if the medication:

(1) Must be dispensed by prescription;

(2) Is not an over-the-counter medication;

(3) Is not listed as a controlled substance under schedule I through V of the Comprehensive Drug Abuse Prevention and Control Act, 21 U.S.C. 812;

(4) Is included on VA's National Formulary, unless VA determines a non-Formulary medication is medically necessary; and

(5) Is not an acute medication, an intravenous medication nor one required to be administered only by a medical professional.

(g) *Copayments.* Copayment provisions in § 17.110 of this part apply to medication furnished under paragraph (b) of this section.

(h) *Mailing of Medications.* VA may furnish medication under paragraph (b) of this section only by having the medication mailed to the veteran.

(i) *Medications for veterans receiving increased compensation or pension.* Any prescription, which is not part of authorized Department of Veterans Affairs hospital or outpatient care, for drugs and medicines ordered by a private or non-Department of Veterans Affairs doctor of medicine or doctor of osteopathy duly licensed to practice in the jurisdiction where the prescription is written, shall be filled by a Department of Veterans Affairs pharmacy or a non-VA pharmacy in a state home under contract with VA for filling prescriptions for patients in state homes, provided:

(1) The prescription is for:

(i) A veteran who by reason of being permanently housebound or in need of regular aid and attendance is in receipt of increased compensation under 38 U.S.C. chapter 11, or increased pension under section 3.1(u) (Section 306 Pension) or section 3.1(w) (Improved Pension), of this title, as a veteran of the Mexican Border Period, World War I, World War II, the Korean Conflict, or the Vietnam Era (or, although eligible for such pension, is in receipt of compensation as the greater benefit), or

(ii) A veteran in need of regular aid and attendance who was formerly in receipt of increased pension as described in paragraph (a)(1) of this section whose pension has been discontinued solely by reason of excess income, but only so long as such veteran's annual income does not exceed the maximum annual income limitation by more than $ 1,000, and

(2) The drugs and medicines are prescribed as specific therapy in the treatment of any of the veteran's illnesses or injuries.

(Authority: 38 U.S.C. 1706, 1710, 17.12(d))

[FR Doc. 03–19011 Filed 7–24–03; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL7529–6]

RIN 2060–AK67

Protection of Stratospheric Ozone: Ban on Trade of Methyl Bromide with Non-Parties to the Montreal Protocol

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: With this action, EPA is taking direct final action on the regulations that govern the production, import, and export of substances that deplete the ozone layer under the authority of Title VI of the Clean Air Act (CAA or the Act) and in accordance with U.S. obligations under the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol). Specifically, today's amendments reflect the Montreal Amendments to the Protocol, which ban the import or export of methyl bromide (class I, Group VI controlled substance) from or to countries that are not Parties to the 1992 Copenhagen Amendments.

DATES: This rule is effective on October 23, 2003 without further notice, unless EPA receives adverse comment by August 25, 2003, or, if a public hearing is requested, by September 18, 2003. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

Written comments on this rule must be received on or before August 25, 2003, unless a public hearing is requested. Comments must then be received on or before 30 days following the public hearing. Any party requesting a public hearing must notify the contact person listed below by 5 p.m. Eastern Standard Time on August 4, 2003. If a hearing is requested it will be held August 19, 2003.

ADDRESSES: Comments may be submitted by mail to Air and Radiation. Send two copies of your comments to: Air and Radiation Docket (6102), Air Docket No. A–92–13, Section XIII, U.S. Environmental Protection Agency, Mailcode 6205J, 1200 Pennsylvania Ave. NW., Washington, DC 20460. The Docket's hours of operation are 8:30 a.m. until 4:30 p.m. Monday through Friday. Comments may also be submitted electronically, through hand delivery or courier. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. For hand delivery or courier, deliver your comments to: 501 3rd Street NW., Washington, DC 20001, Attention Docket ID No. A–92–13, Section XIII.

FOR FURTHER INFORMATION CONTACT: Kate Choban, U.S. Environmental Protection Agency, Global Programs Division, Stratospheric Programs Implementation Branch (6205J), 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202)–564–3524. Overnight or courier deliveries should be sent to 501 3rd Street, NW., Washington, DC 20001. You may also visit the Ozone Depletion web site of EPA's Global Programs Division at *http://www.epa.gov/ozone/index.html* for further information about EPA's Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and other topics.

SUPPLEMENTARY INFORMATION: EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. No adverse comment is expected due to the fact that the U.S. Senate gave its advice and consent to ratification of the Montreal Amendment on October 9, 2002, and this rule simply adopts one of the provisions contained in that Amendment. However, in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to implement the methyl bromide trade bans if adverse comments are filed. This rule will be effective on October 23, 2003 without further notice unless we receive adverse comment by August 25, 2003 (or, if a public hearing is requested, by September 18, 2003). If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any persons interested in commenting must do so at this time.

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I. General Information

A. Regulated Entities

Entities potentially regulated by this action are those associated with the import and export of methyl bromide. Potentially regulated categories and entities include:

Category	Examples of regulated entities
Industry	Importers and Exporters of methyl bromide

The above table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. To determine whether your facility, company, business, or organization is regulated by this action, you should carefully examine the regulations promulgated at 40 CFR part 82, subpart A. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies Of This Document and Other Related Information?

1. Docket. EPA has established an official public docket for this action under the Office of Air and Radiation Docket & Information Center, Air Docket ID No. A–92–13, Section XIII. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at EPA West, 1301 Constitution Ave. NW., Room B108, Mail Code 6102T, Washington, DC 20460, Phone: (202)–566–1742, Fax: (202)–566–1741. The materials may be inspected from 8:30 a.m. until 4:30 p.m. Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying docket materials.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The

entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of comment period will be marked late. EPA is not required to consider these late comments. If you plan to submit comments, please also notify Kate Choban, U.S. Environmental Protection Agency, Global Programs Division (6205J), 1200 Pennsylvania Ave. NW., Washington, DC 20460, (202) 564–3524.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments.

2. By Mail. Send two copies of your comments to: Air and Radiation Docket (6102), Air Docket No. A–92–13, Section XIII, U.S. Environmental Protection Agency, Mailcode 6205J, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

3. By Hand Delivery or Courier. Deliver your comments to: 501 3rd Street NW., Washington, DC, 20001, Attention Docket ID No. A–92–13, Section XIII. Such deliveries are only accepted during the Docket's normal hours of operation as identified under **ADDRESSES.**

4. By Facsimile. Fax your comments to: (202) 566–1741, Attention Docket ID No. A–92–13, Section XIII.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the mail or courier addresses listed in Units C.2 or C.3, as appropriate, to the attention of Air Docket ID No. A–92–13, Section XIII. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

II. What Is the Legislative and Regulatory Background of the Phaseout Regulations for Ozone-Depleting Substances?

The Clean Air Act Amendments of 1990 direct the Environmental Protection Agency (EPA) to issue regulations to implement the provisions of the Protocol within the United States through a system of controls on production and consumption of ozone-depleting substances. The current regulatory requirements of the Stratospheric Ozone Protection Program are codified at subpart A to Part 82 of Volume 40 of the Code of Federal Regulations (40 CFR part 82, subpart A). As the control measures of the Protocol have been amended or adjusted, and in consideration of other factors, subpart A has also been amended. For example, the amendments to the Protocol made at the Fourth Meeting of the Parties in Copenhagen in 1992 included an accelerated phaseout of ODS production and consumption. EPA published a final regulation in December of 1993, implementing the United States' accelerated phaseout obligation under the Copenhagen amendments (58 FR 65018).

The requirements contained in the final rules published in the **Federal Register** on December 20, 1994 and May 10, 1995 establish an Allowance Program. The Allowance Program and its history are described in the notice of proposed rulemaking published in the **Federal Register** on November 10, 1994 (59 FR 56276). The control and the phaseout of the production and consumption of class I ozone-depleting substances as required under the Protocol and the CAA are accomplished through the Allowance Program.

In developing the Allowance Program, we collected information on the amounts of ozone-depleting substances produced, imported, exported, transformed and destroyed within the U.S. for specific baseline years for specific chemicals. This information was used to establish the U.S. production and consumption ceilings for these chemicals. The data were also used to assign company-specific production and import rights to companies that were in most cases producing or importing during the specific year of data collection. These production or import rights are called "allowances." Due to the complete phaseout of many of the ozone-depleting chemicals, the quantities of allowances granted to companies for those chemicals were gradually reduced and eventually eliminated. Production allowances and consumption allowances continue to exist for only one specific class I controlled ozone-depleting substance—methyl bromide. All other production or consumption of class I controlled substances is prohibited under the Protocol and the CAA, but for a few narrow exemptions.

In the context of the regulatory program, the use of the term consumption may be misleading. Consumption does not mean the "use" of a controlled substance, but rather is defined as the formula: production + imports − exports, of controlled substances (Article 1 of the Protocol and Section 601 of the CAA). Class I controlled substances that were produced or imported through the expenditure of allowances prior to their phaseout date can continue to be used by industry and the public after that specific chemical's phaseout under these regulations, unless otherwise precluded under separate regulations.

The specific names and chemical formulas for the class I controlled ozone-depleting substances are in appendix A and appendix F in subpart A of 40 CFR part 82. The specific names and chemical formulas for the class II controlled ozone-depleting substances are in appendix B and appendix F in subpart A.

III. What Is Methyl Bromide?

Methyl bromide is an odorless and colorless gas used in the U.S. and throughout the world as a fumigant. Methyl bromide, which is toxic to living things, is used in many different situations to control a variety of pests, such as insects, weeds, pathogens, and nematodes. Additional characteristics and details about the uses of methyl bromide, as well as information on the basis for listing methyl bromide as a class I substance, can be found in the proposed rule published in the **Federal Register** on March 18, 1993 (58 FR 15014) and the final rule published in the **Federal Register** on December 10, 1993 (58 FR 65018). Updated information on methyl bromide can be found at the following sites of the World Wide Web: *http://www.epa.gov/ozone/mbr/* and *http://www.teap.org* or by contacting the Stratospheric Ozone Protection Hotline at 1–800–296–1996.

IV. What Is the Regulatory Background Relating Specifically to Methyl Bromide?

The Parties to the Protocol established a freeze in the level of methyl bromide production and consumption for industrialized countries at the 1992 Meeting in Copenhagen. The Parties agreed that each industrialized country's level of methyl bromide production and consumption in 1991 should be the baseline for establishing the freeze. EPA published a final rule in the **Federal Register** on December 10, 1993, listing methyl bromide as a class I, Group VI controlled substance, freezing U.S. production and consumption at this 1991 level, and, in § 82.7 of the rule, setting forth the percentage of baseline allowances for methyl bromide granted to companies in each control period (each calendar year) until the year 2001 (58 FR 65018). Consistent with the CAA requirements for newly listed class I ozone-depleting substances, this rule established a 2001 phaseout for methyl bromide. In the rule published in the **Federal Register** on December 30, 1993 (58 FR 69235), we established baseline methyl bromide production and consumption allowances for specific companies in § 82.5 and § 82.6.

At their 1997 meeting, the Parties agreed to establish the phaseout schedule for methyl bromide in industrialized countries. The U.S. Congress followed by amending the CAA (in Oct. 1998) to direct EPA to promulgate regulations reflecting the Protocol phaseout date of 2005, with interim phasedown steps in 1999, 2001, and 2003. EPA promulgated a regulation that was published in the **Federal Register** on June 1, 1999 (64 FR 29240), instituting the initial interim reduction of 25 percent in the production and import [1] of methyl bromide for the 1999 and 2000 control periods. In a subsequent rule, published in the **Federal Register** on November 28, 2000 (65 FR 70795), EPA implemented reductions in the production and consumption of methyl bromide for 2001 and beyond, as follows: beginning January 1, 2001, a 50 percent reduction in baseline levels; beginning January 1, 2003, a 70 percent reduction in baseline levels; and, beginning January 1, 2005, the complete phaseout of methyl bromide.

V. What Is the Ban on Trade of Methyl Bromide With non-Parties to the Protocol?

With today's action EPA is proposing to prohibit the import and export of methyl bromide (class I, Group VI controlled substance) from or to a foreign state that is not a Party to the 1992 Copenhagen Amendments to the Protocol. EPA is banning trade in methyl bromide with non-Parties to the Copenhagen Amendments to the Protocol in order to ensure the United States meets its obligations under the Protocol and associated amendments. Article 4, paragraph 1 *qua* of the Protocol bans the import of methyl bromide (Annex E substances) from any country not a Party to the Protocol amendments creating control obligations for methyl bromide (Copenhagen Amendments). Later refinements made to the methyl bromide phaseout schedule were in the form of adjustments, not amendments, and any Party that has ratified the Copenhagen Amendments is subject to those adjustments. Article 4, paragraph 2 *qua* of the Protocol bans exports of methyl bromide to any Party that has not ratified the Copenhagen Amendments to the Protocol. These bans were added as part of the 1997 Montreal Amendments to the Protocol. Section 614 of the CAA states, "This title as added by the Clean Air Act Amendments of 1990 shall be construed, interpreted, and applied as a supplement to the terms and conditions of the Montreal Protocol, as provided in Article 2, paragraph 11 thereof, and shall not be construed, interpreted, or applied to abrogate the responsibilities or obligations of the United States to implement fully the provisions of the Montreal Protocol. In the case of conflict between any provision of this title and any provision of the Montreal Protocol, the more stringent provision shall govern. Nothing in this title shall be construed, interpreted, or applied to affect the authority or responsibility of the Administrator to implement Article 4 of the Montreal Protocol with other appropriate agencies." Pursuant to section 614, today's action fulfills the U.S. obligation to implement the methyl bromide trade ban provisions of the Montreal Protocol.

Current regulations (60 FR 24970; 40 CFR 82.4(l)(2)) prohibit the import and export of certain class I controlled substances from or to foreign states not Parties to the Montreal Protocol or specific amendment packages to the Protocol (*e.g.*, the London Amendments). These bans on imports from and exports to non-Parties to amendment packages reflect an agreed strategy by the Parties to the Montreal Protocol to encourage ratification of each successive amendment package to the Protocol and to ensure that controlled ozone-depleting substances are not provided to countries that have not agreed to control measures.

A list of Parties that have ratified the Montreal Protocol and that have ratified successive amendments to the Protocol is published with today's action in appendix C. For the purposes of today's

[1] The formula for "consumption" is production + import − export. Because "consumption" encompasses "production and import", production and import controls also have the effect of controlling consumption.

methyl bromide trade ban, companies should refer to appendix C to subpart A of part 82 to identify nations that have not yet ratified the Copenhagen Amendments. Today's action prohibits imports of methyl bromide from, or exports of methyl bromide to, these nations that have not ratified the Copenhagen Amendments. EPA will publish notices on a periodic basis to update this list (appendix C) to reflect when Parties ratify the Montreal Protocol and its amendments. For additional information on countries that have ratified the Protocol and its amendments, you may want to visit the website of the United Nations Environmental Program (UNEP) Ozone Secretariat at *http://www.unep.org/ozone/* and look for the "Status of Ratification".

Article 4, paragraph 8 of the Protocol recognizes that countries may actually be complying with relevant control measures without having officially ratified the Protocol or its relevant Amendments and permits the Parties to meet and determine that imports from and exports to these countries are permitted. Therefore, EPA is reserving Annex 2 of appendix C for any country determined by the Parties to be complying with the relevant control measures.

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. No adverse comment is expected due to the fact that the U.S. Senate gave its advice and consent to ratification of the Montreal Amendment on October 9, 2002, and this rule simply adopts one of the provisions contained in that Amendment. The regulated producers, importers and exporters attended both meetings of the Parties to the Montreal Protocol the year that the trade ban provisions were agreed through an amendment. EPA did not hear from the producers, importers and exporters when this provision was up for consideration by the Parties. Therefore, we do not anticipate any adverse comments on this action. Establishing such a trade ban is now standard practice under the Protocol for controlled ozone-depleting substances. However, in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to implement the methyl bromide trade bans if adverse comments are filed. This rule will be effective on October 23, 2003 without further notice unless we receive adverse comment by August 25, 2003 (or, if a public hearing is requested, by September 18, 2003). If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any persons interested in commenting must do so at this time.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a "significant" regulatory action as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by EPA and OMB that this rule is not a "significant regulatory action" within the meaning of the Executive Order.

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) previously approved the information collection requirements that can be used to implement today's direct final rule. The previously approved ICR is assigned OMB control number 2060–0170 (EPA ICR No. 1432.21).

There is no additional paperwork burden as a result of this rule. Current record keeping will allow EPA to implement the provisions of today's action.

The information collection previously approved will be used to implement the trade ban in paragraph 1 qua under Article 4 of the Montreal Protocol for methyl bromide. The information collection under this rule is authorized under sections 603(b) and 603(d) of the Clean Air Act Amendments of 1990 (CAA). This information collection is conducted to meet U.S. obligations under Article 7, Reporting Requirements, of the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol); and to carry out the requirements of Title VI of the CAA, including sections 603 and 614.

The reporting requirements included in this rule are intended to:

(1) Satisfy U.S. obligations under the international treaty, The Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol), to report data under Article 7;

(2) Fulfill statutory obligations under Section 603(b) of Title VI of the Clean Air Act Amendments of 1990 (CAA) for reporting and monitoring;

(3) Provide information to report to Congress on the production, use and consumption of class I controlled substances as statutorily required in section 603(d) of title VI of the CAA.

EPA informs respondents that they may assert claims of business confidentiality for any of the information they submit. Information claimed confidential will be treated in accordance with the procedures for handling information claimed as confidential under 40 CFR part 2, subpart B, and will be disclosed only to the extent, and by means of the procedures, set forth in that subpart. If no claim of confidentiality is asserted when the information is received by EPA, it may be made available to the public without further notice to the respondents (40 CFR 2.203).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq.

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's rule on small entities, small entities are defined as: (1) A small business that is identified by the North American Industry Classification System (NAICS) Code in the Table below; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Category	NAICS code	SIC code	NAICS small business size standard (in number of employees or millions of dollars)
1. Chemical and Allied Products, NEC	*424690*	*5169*	*100*

Based on an analysis of the U.S. exports of methyl bromide to specific countries, EPA has determined that only 3 countries of the 50 to whom U.S. producers of methyl bromide have exported over the past three years would be impacted because they have not yet ratified the Copenhagen Amendments to the Protocol. Specifically, the rule would ban the export of 41 metric tonnes to Cyprus, Cote d'Ivoire, and the United Arab Emriates compared to an average export from the entire U.S. of 5,236 metric tonnes. These countries represent less than 1% of all U.S. exports of methyl bromide for the years 2000, 2001, and 2002. So, economic impacts for U.S. producers of methyl bromide would be extremely minimal. The rule will not constrain U.S. farmers' ability to obtain methyl bromide from importers because the major methyl bromide exporting countries have already ratified the Copenhagen Amendments.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. None of the entities affected by this rule are considered small as defined by the NAICS Code listed above.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a written statement is required under section 202, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Section 203 of the UMRA requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule. Section 204 of the UMRA requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more by State, local and tribal governments, in the aggregate, or by the private sector, in any one year. The provisions in today's rule fulfill the obligations of the United States under the international treaty, The Montreal Protocol on Substances that Deplete the Ozone Layer, as well as those requirements set forth by Congress in section 614 of the Clean Air Act. Viewed as a whole, all of today's amendments do not create a Federal mandate resulting in costs of $100 million or more in any one year for State, local and tribal governments, in the aggregate, or for the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, EPA is not required to develop a plan with regard to small governments under section 203. Finally, because this proposal does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials under section 204.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the regulation.

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule is expected to primarily affect importers and exporters of methyl bromide. EPA is not aware of any current uses of methyl bromide by public sector entities. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. Today's final rule does not significantly or uniquely affect the communities of Indian tribal governments. It does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Applicability of Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This is not such a rule, and therefore E.O. 13045 does not apply. This rule is not subject to E.O. 13045 because it implements specific trade measures adopted under the Montreal Protocol and required by section 614 of the CAA.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. The National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

VII. Congressional Review

A. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective October 23, 2003.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Exports, Imports, Methyl Bromide, Ozone layer.

Dated: July 11, 2003.

Linda J. Fisher,

Acting Administrator.

■ For reasons set out in the preamble, title 40 chapter I of the Code of Federal Regulations is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for subpart 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart A—Production and Consumption Controls

■ 2. Section 82.4 is amended by adding paragraph (l)(5).

§ 82.4 Prohibitions for Class I Controlled Substances.

* * * * *

(l) * * *

(5) Import or export any quantity of a controlled substance listed in Class I, Group VI, in Appendix A to this subpart, from or to any foreign state not Party to the Copenhagen Amendments (as noted in Appendix C, Annex I, to this subpart), unless that foreign state is complying with the Copenhagen Amendments (as noted in Appendix C, Annex 2, to this subpart).

* * * * *

■ 5. Appendix C to Subpart A is revised to read as follows:

Appendix C to Subpart A of Part 82—Parties to the Montreal Protocol, and Nations Complying With, But Not Parties To, The Protocol

Annex 1 to Appendix C of Subpart A—Parties to the Montreal Protocol (as of January 29, 2003)

The check mark [✓] means the particular country ratified the Protocol of the specific Amendment package. Amendment packages are identified by the name of the city where the amendment package was negotiated and agreed. Updated lists of Parties to the Protocol and the Amendments can be located at: *http://www.unep.org/ozone/ratif.shtml*.

Foreign state	Montreal protocol	London amendments	Copenhagen amendments	Montreal amendments	Beijing amendments
Albania	✓				
Algeria	✓	✓	✓		
Angola	✓				
Antigua and Barbuda	✓	✓	✓	✓	

Foreign state	Montreal protocol	London amendments	Copenhagen amendments	Montreal amendments	Beijing amendments
Argentina	✓	✓	✓	✓	
Armenia	✓				
Australia	✓	✓	✓	✓	
Austria	✓	✓	✓	✓	
Azerbaijan	✓	✓	✓	✓	
Bahamas	✓	✓	✓		
Bahrain	✓	✓	✓	✓	
Bangladesh	✓	✓	✓	✓	
Barbados	✓	✓	✓	✓	✓
Belarus	✓	✓			
Belgium	✓	✓	✓		
Belize	✓	✓	✓		
Benin	✓	✓	✓		
Bolivia	✓	✓	✓	✓	
Bosnia and Herzegovina	✓				
Botswana	✓	✓	✓		
Brazil	✓	✓	✓		
Brunei Darussalam	✓				
Bulgaria	✓	✓	✓	✓	✓
Burkina Faso	✓	✓	✓	✓	✓
Burundi	✓	✓	✓	✓	✓
Cambodia	✓				
Cameroon	✓	✓	✓		
Canada	✓	✓	✓	✓	✓
Cape Verde	✓	✓	✓	✓	
Central African Republic	✓				
Chad	✓	✓	✓	✓	
Chile	✓	✓	✓	✓	✓
China	✓	✓			
Colombia	✓	✓	✓		
Comoros	✓	✓	✓	✓	✓
Congo	✓	✓	✓	✓	✓
Congo, Democratic Republic of	✓	✓	✓		
Costa Rica	✓	✓	✓		
Cote d'Ivoire	✓	✓			
Croatia	✓	✓	✓	✓	✓
Cuba	✓	✓	✓		
Cyprus	✓	✓			
Czech Republic	✓	✓	✓	✓	✓
Denmark	✓	✓	✓		
Djibouti	✓	✓	✓	✓	
Dominica	✓	✓			
Dominican Republic	✓	✓	✓		
Ecuador	✓	✓	✓		
Egypt	✓	✓	✓	✓	
El Salvador	✓	✓	✓	✓	
Estonia	✓	✓	✓		
Ethiopia	✓				
European Community	✓	✓	✓	✓	✓
Federated States of Micronesia	✓	✓	✓	✓	✓
Fiji	✓	✓	✓		
Finland	✓	✓	✓	✓	✓
France	✓	✓	✓		
Gabon	✓	✓	✓	✓	✓
Gambia	✓	✓			
Georgia	✓	✓	✓	✓	
Germany	✓	✓	✓	✓	✓
Ghana	✓	✓	✓		
Greece	✓	✓	✓		
Grenada	✓	✓	✓	✓	
Guatemala	✓	✓	✓	✓	✓
Guinea	✓	✓			
Guinea Bissau	✓	✓	✓	✓	✓
Guyana	✓	✓	✓	✓	
Haiti	✓	✓	✓	✓	
Honduras	✓	✓	✓		
Hungary	✓	✓	✓	✓	✓
Iceland	✓	✓	✓	✓	
India	✓	✓			
Indonesia	✓	✓	✓		
Iran, Islamic	✓	✓	✓	✓	
Ireland	✓	✓	✓		
Israel	✓	✓	✓		

Foreign state	Montreal protocol	London amendments	Copenhagen amendments	Montreal amendments	Beijing amendments
Italy	✓	✓	✓	✓	
Jamaica	✓	✓	✓		
Japan	✓	✓	✓	✓	✓
Jordan	✓	✓	✓	✓	✓
Kazakhstan	✓	✓			
Kenya	✓	✓	✓	✓	
Kiribati	✓				
Korea, Democratic People's Republic of	✓	✓	✓	✓	✓
Korea, Republic of	✓	✓	✓	✓	
Kuwait	✓	✓	✓		
Kyrgyzstan	✓				
Lao, People's Democratic Republic	✓				
Latvia	✓	✓	✓	✓	
Lebanon	✓	✓	✓	✓	
Lesotho	✓				
Liberia	✓	✓	✓		
Libyan Arab Jamahiriya	✓	✓			
Liechtenstein	✓	✓	✓		
Lithuania	✓	✓	✓		
Luxembourg	✓	✓	✓	✓	✓
Madagascar	✓	✓	✓	✓	✓
Malawi	✓	✓	✓		
Malaysia	✓	✓	✓	✓	✓
Maldives	✓	✓	✓	✓	✓
Mali	✓	✓			
Malta	✓	✓			
Marshall Islands	✓	✓	✓		
Mauritania	✓				
Mauritius	✓	✓	✓		
Mexico	✓	✓	✓		
Moldova	✓	✓	✓		
Monaco	✓	✓	✓		
Mongolia	✓	✓	✓	✓	
Morocco	✓	✓	✓		
Mozambique	✓	✓	✓		
Myanmar	✓	✓			
Namibia	✓	✓			
Nauru	✓				
Nepal	✓	✓			
Netherlands	✓	✓			
New Zealand	✓	✓	✓	✓	✓
Nicaragua	✓	✓	✓	✓	
Niger	✓	✓	✓		
Nigeria	✓	✓	✓	✓	
Norway	✓	✓	✓	✓	
Oman	✓	✓	✓		✓
Pakistan	✓	✓	✓		
Palau	✓	✓	✓		
Panama	✓	✓	✓	✓	✓
Papua New Guinea	✓	✓	✓	✓	✓
Paraguay	✓	✓			
Peru	✓	✓	✓	✓	
Philippines	✓	✓	✓		
Poland	✓	✓	✓		
Portugal	✓	✓	✓	✓	
Qatar	✓	✓	✓		
Romania	✓	✓	✓		
Russian Federation	✓	✓	✓	✓	
Rwanda	✓	✓			
Saint Kitts & Nevis	✓				
Saint Lucia	✓	✓	✓	✓	
Saint Vincent and the Grenadines	✓	✓	✓	✓	✓
Samoa	✓	✓	✓		
Sao Tome and Principe	✓	✓	✓	✓	✓
Saudi Arabia	✓	✓	✓	✓	✓
Senegal	✓	✓	✓		
Seychelles	✓	✓	✓	✓	
Sierra Leone	✓	✓	✓	✓	✓
Singapore	✓	✓	✓	✓	✓
Slovakia	✓	✓	✓	✓	
Slovenia	✓	✓	✓	✓	✓
Solomon Island	✓	✓	✓	✓	✓
Somalia	✓	✓	✓	✓	✓

Foreign state	Montreal protocol	London amendments	Copenhagen amendments	Montreal amendments	Beijing amendments
South Africa	✓	✓	✓		
Spain	✓	✓	✓	✓	✓
Sri Lanka	✓	✓	✓	✓	✓
Sudan	✓	✓	✓		
Suriname	✓				
Swaziland	✓				
Sweden	✓	✓	✓	✓	✓
Switzerland	✓	✓	✓	✓	✓
Syrian Arab Republic	✓	✓	✓	✓	
Tajikistan	✓	✓			
Tanzania, United Republic of	✓	✓	✓	✓	✓
Thailand	✓	✓	✓		
The Former Yugoslav Republic of Macedonia	✓	✓	✓	✓	✓
Togo	✓	✓	✓	✓	✓
Tonga	✓				
Trinidad and Tobago	✓	✓	✓	✓	
Tunisia	✓	✓	✓	✓	
Turkey	✓	✓	✓		
Turkmenistan	✓	✓			
Tuvalu	✓	✓	✓	✓	
Uganda	✓	✓	✓	✓	
Ukraine	✓	✓	✓		
United Arab Emirates	✓				
United Kingdom	✓	✓	✓	✓	✓
United States of America	✓	✓	✓		
Uruguay	✓	✓	✓	✓	
Uzbekistan	✓	✓	✓		
Vanuatu	✓	✓	✓		
Venezuela	✓	✓	✓	✓	
Viet Nam	✓	✓	✓		
Yemen	✓	✓	✓	✓	
Yugoslavia	✓				
Zambia	✓	✓			

Annex 2 to Appendix C of Subpart A—Nations Complying with, But Not Parties to, the Protocol [Reserved]

[FR Doc. 03–18856 Filed 7–24–03; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–7535–9]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Withdrawal of Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Withdrawal of direct final rule.

SUMMARY: Because the United States Environmental Protection Agency (EPA) received adverse comment, we are withdrawing the direct final rule for Identification and Listing of Hazardous Waste; Final Exclusion, delisting petition from Bekeart Steel, Dyersburg, Tennessee. We published the direct final rule on June 2, 2003, (68 FR 32645–32656). We stated in that direct final rule that if we received adverse comment by July 17, 2003, we would publish a timely withdrawal in the **Federal Register**. We subsequently received adverse comment on that direct final rule. EPA is withdrawing the direct final rule on the delisting petition submitted by Bekaert Steel, Inc, for the Dyersburg, Tennessee facility.

DATES: The direct final rule published at 68 FR 32645, June 2, 2003, is withdrawn as of July 25, 2003.

FOR FURTHER INFORMATION CONTACT: For further information concerning this withdrawal of direct final rule, please contact Ms. Jewell Grubbs, Chief, RCRA Enforcement and Compliance Branch, (Mail Code 4WD–RCRA), U.S. Environmental Protection Agency, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8568, or call, toll free, (800) 241–1754, and leave a message, with your name and phone number, for Ms. Jewell Grubbs to return your call. Questions may also be e-mailed to Ms. Jewell Grubbs at *Grubbs.jewell@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA published a Direct Final Rule on June 2, 2003, granting the delisting petition submitted by Bekaert Steel, Inc. (Bekaert) for an F006 waste water treatment sludge from electroplating operations, where Bekaert manufactured copper plated steel cord for the automobile tire industry. The rule would have become effective on August 1, 2003, without further notice, unless EPA received adverse comment by July 17, 2003. The direct final rule 45-day public comment period explained that if we received adverse comments, we would withdraw the relevant direct final action.

We received adverse comment and are therefore withdrawing the direct final rule approving Bekaert's delisting petition. Commentors argued that EPA could not issue a delisting petition based on another identical facility's data, and that the regulations specifically require the delisting to be based on site specific information. Therefore, for the petition to be complete Bekaert should submit at a minimum, three additional data points from the Dyersburg, Tennessee facility to support the initial delisting petition. The three additional data points must be collected in compliance with 40 CFR 260.22. and be sufficient to demonstrate the temporal and spatial variability of the petitioned waste. EPA shall review the data submitted and shall publish a proposed rule to provide public notice

on EPA's proposed decision and collect comments on the proposed decision.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: July 18, 2003.

Jewell Harper,

Acting Director, Waste Management Division.

[FR Doc. 03–19005 Filed 7–24–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 411 and 489

[CMS–1475–FC]

RIN 0938–AM65

Medicare Program; Third Party Liability Insurance Regulations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule with comment period removes § 411.54(c)(2) and a portion of § 489.20(g) from our regulations. These regulations were held by a court to be inconsistent with the Medicare Secondary Payer provisions that are found in section 1862(b)(2)(a) of the Social Security Act. Specifically, the court held that § 411.54(c)(2) and a portion of § 489.20(g) are unenforceable to the extent that these regulations require providers and suppliers to only bill Medicare and prohibits them from billing a liability insurer or asserting or maintaining a lien against a beneficiary's liability insurance settlement during the "promptly" period.

DATES: *Effective date:* This final rule with comment period is effective on August 25, 2003.

Comment date: We will consider comments if we receive them at the appropriate address, as provided in the **ADDRESSES** section, no later than 5 p.m. on September 23, 2003.

ADDRESSES: In commenting, please refer to file code CMS–1475–FC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1475–FC, PO Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for us to receive mailed comments on time in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) to one of the following addresses: Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–8013.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available if you wish to retain proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, *see* the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Suzanne Ripley, (410) 786–0970.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* Comments received timely will be available for public inspection as they are recorded and processed, generally beginning approximately 4 weeks after the publication of the document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–7197.

I. Background

Under section 1862(b)(2)(A) of the Social Security Act (the Act), Medicare payments may not be made for any item or service for which payment has been made or can reasonably be expected to be made "promptly" (as determined in accordance with our regulations) under a liability insurance policy. The regulations at § 411.54(c)(2) and a portion of § 489.20(g) require providers and suppliers (including physicians) to bill Medicare for Medicare covered services. These regulations also prohibit those providers and suppliers from billing a liability insurer or asserting or maintaining a lien against the beneficiary's insurance settlement, regardless of when the liability insurer is billed or when the lien is asserted. After the regulations at § 411.54(c)(2) and § 489.20(g) were published, but before the effective date, the American Hospital Association (AHA), filed a lawsuit on behalf of its member hospitals to prevent us from implementing these sections. (*See American Hospital Association (AHA) v. Sullivan*, 1990 WL 274639 (D.D.C. May 24, 1990).) During the litigation, the parties stipulated to allow providers to bill liability insurers or assert or maintain a lien against a beneficiary's insurance settlement.

The court ultimately held that this statutory provision (that prohibits Medicare from making payment where liability insurance that is expected to pay promptly exists) permits a provider to seek payment from insurance or assert or maintain a lien against the beneficiary's insurance settlement during the "promptly" period. Therefore, we were unable to implement § 411.54(c)(2) and the portion of § 489.20(g) that states, "except when the primary payer is a liability insurer and except as provided in paragraph (j) of this section." The court took no action affecting existing special rules for Oregon. The court also did not address billing a liability insurer or asserting or maintaining a lien after the expiration of the "promptly" period. The *AHA* decision has not been appealed. Therefore, to the extent that § 411.54(c)(2) and a portion of § 489.20(g) are inconsistent with the court's decision, they are unenforceable.

In light of the *AHA* decision, we are continuing the policy which we stipulated during the *AHA* case with respect to all providers and suppliers (including physicians); that is, we are allowing them to bill liability insurers or assert or maintain liens on a beneficiary's liability insurance settlement rather than billing Medicare. The Commerce Clearing House, Inc. (CCH) published two policy memoranda that addressed the issue of billing a liability insurer or asserting or maintaining a lien against a beneficiary's liability insurance settlement, referring to the holding in the *AHA* case. (Medicare & Medicaid Guide (CCH) 45, 187 at 53, 508–53, 512 (1997). The first policy memorandum entitled, "Provider and Supplier Billing When Medicare is Secondary Payer to Liability Insurance—Information", is dated August 21, 1995. The second policy memorandum entitled " Charges to Beneficiaries and Handling Improper Collections By Providers and Suppliers When Medicare is Secondary Payer to Liability Insurance—Action", is dated March 12, 1996. These memoranda can

be obtained by calling the contact person listed in this final rule with comment period or by accessing the CMS Web site: *http://www.cms.hhs.gov.*

To date, we have not enforced § 411.54 (c)(2) or the portion of § 489.20(g) that is inconsistent with the court's decision. Because § 411.54(c)(2) was written without regard to the pre- and post "promptly" period, we are removing this section in its entirety, even though the *AHA* decision found it unenforceable only during the "promptly" period. This final rule with comment period does not establish lien rights that are not available to providers and suppliers (including physicians) under State law. The final rule with comment period does not alter the prohibition against double billing; that is, it does not allow a provider or supplier (including a physician) to bill Medicare and simultaneously bill the liability insurer or assert or maintain a lien against the beneficiary's liability insurance settlement.

II. Provisions of the Final Rule

The final rule with comment period removes § 411.54(c)(2) and revises paragraphs (c) and (d) of our regulations. It also removes the words "except when the primary payer is a liability insurer and except as provided in paragraph (j) of this section" from § 489.20(g).

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment when a collection of information requirement is submitted to the OMB for review and approval. In order to fairly evaluate whether OMB should approve an information collection, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on each of these issues for the information collection requirements discussed below.

Section 411.54 Limitation on Charges When a Beneficiary Has Received a Liability Insurance Payment or Has a Claim Pending Against a Liability Insurer

Section 411.54(c) states that a hospital must, upon request, furnish to the beneficiary or his or her representative an itemized bill of the hospital's charges.

This requirement, which is subject to the PRA, is not being revised in this regulation. The burden associated with this requirement is currently captured under OMB control number 0938–0565, which is approved through November of 2005.

We have submitted a copy of this final rule with comment period to OMB for its review of the information collection requirements described above. These requirements are not effective until they have been approved by OMB.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following: Centers for Medicare and Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attn.: Dawn Willinghan (Attn: CMS–1475–F), Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Brenda Aguilar, CMS Desk Officer.

IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority, under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued. The *AHA* decision holds that the Medicare Secondary Payer provisions permit a provider to seek payment from that insurance or assert or maintain a lien against the beneficiary's insurance settlement during the "promptly" period. To the extent that § 411.54(c)(2) and a portion of § 489.20(g) are inconsistent with the court's decision, they are unenforceable. Good cause exists to waive notice and comment because the agency's action to remove § 411.54(c)(2) and revise § 489.20(g) is compelled by the AHA decision.

Therefore, we find good cause to waive the notice of proposed rulemaking and to issue this final rule with comment period.

V. Regulatory Impact

We have examined the impacts of this final rule with comment period as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We have determined that the effect of this final rule on the economy and the Medicare program is negligible. Therefore, this final rule is not a major rule as defined in Title 5, United States Code, section 804(2) and is not an economically significant rule under Executive Order 12866.

Because these regulations have been unenforceable since the AHA decision, the impact of this regulation is limited to the expected elimination of potential lawsuits that may be brought against hospitals by beneficiaries seeking to require hospitals to bill Medicare for the cost of their treatment. Since 1990 we have been aware of only several cases where beneficiaries have brought litigation against hospitals seeking State court orders requiring the hospitals to bill Medicare. The beneficiaries have based their cases on the published regulations. While we do not believe that many such suits have or will be filed, individual hospitals can spend substantial monies defending these types of lawsuits. Beneficiaries who bring these suits, only to lose based on the State court's reading of CMS' policy, also may be responsible for some attorneys' costs and may be responsible for fees for the hospital's attorneys in some cases. To the extent that this regulation clarifies CMS policy by eliminating unenforceable regulations, we believe that the number of lawsuits filed may decline.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. Individuals and States are not considered to be small entities. Because this regulation merely deletes these unenforceable provisions from our regulations, we have determined and we certify that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, we are not preparing an analysis for the RFA.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule or notice having the effect of a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this final rule will not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing an analysis for section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule or notice having the effect of a rule that may result in expenditures in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This final rule has no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule or notice having the effect of a rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule will not have a substantial effect on State or local governments.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 411

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 485

Grant programs—health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as follows:

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

■ 1. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. Section 411.54 is amended by revising paragraphs (c) and (d) to read as follows:

§ 411.54 Limitation on charges when a beneficiary has received a liability insurance payment or has a claim pending against a liability insurer.

* * * * *

(c) *Itemized bill.* A hospital must, upon request, furnish to the beneficiary or his or her representative an itemized bill of the hospital's charges.

(d) *Exception—(1) Prepaid health plans.* If the services were furnished through an organization that has a contract under section 1876 of the Act (that is, an HMO or CMP), or through an organization that is paid under section 1833(a)(1)(A) of the Act (that is, through an HCPP) the rules of § 417.528 of this chapter apply.

(2) *Special rules for Oregon.* For the State of Oregon, because of a court decision, and in the absence of a reversal on appeal or a statutory clarification overturning the decision, there are the following special rules:

(i) The provider or supplier may elect to bill a liability insurer or place a lien against the beneficiary's liability settlement for Medicare covered services, rather than bill only Medicare for Medicare covered services, if the liability insurer pays within 120 days after the earlier of the following dates:

(A) The date the provider or supplier files a claim with the insurer or places a lien against a potential liability settlement.

(B) The date the services were provided or, in the case of inpatient hospital services, the date of discharge.

(ii) If the liability insurer does not pay within the 120-day period, the provider or supplier:

(A) Must withdraw its claim with the liability insurer and/or withdraw its lien against a potential liability settlement.

(B) May only bill Medicare for Medicare covered services.

(C) May bill the beneficiary only for applicable Medicare deductible and co-insurance amounts plus the amount of any charges that may be made to a beneficiary under 413.35 of this chapter (when cost limits are applied to these services) or under 489.32 of this chapter (when services are partially covered).

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

■ 1. The authority citation for part 489 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. Section 489.20 is amended by revising paragraph (g) to read as follows:

§ 489.20 Basic commitments.

* * * * *

(g) To bill other primary payers before Medicare.

* * * * *

Authority: Section 1862(b)(2)(A) of the Social Security Act (42 U.S.C. 1395Y)

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 6, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: June 30, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–18509 Filed 7–17–03; 10:06 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 25 and 101

[ET Docket No. 98–206; RM–9147; RM–9245; FCC 03–97]

Order To Deny Petitions for Reconsideration of MVDDS Technical and Licensing Rules in the 12 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission affirms the technical rules and procedures dealing with sharing of spectrum between Multichannel Video Distribution and Data Service (MVDDS) and Direct Broadcast Satellite (DBS) and Non-geostationary (NGSO) fixed satellite service (FSS) in the 12.2–12.7 GHz band that the Commission adopted in the *Memorandum Opinion and Order and Second Report and Order (Second R&O)*. The Commission also affirms the dismissal of the pending license applications to provide terrestrial service in the 12.2–12.7 GHz band. The Commission takes these actions in the course of addressing the petitions for reconsideration that were filed in response to the *Second R&O* in this proceeding. The Commission amends or clarifies certain rule sections, but otherwise denies the petitions for reconsideration. The adoption of the amended rules and the disposition of the petitions for reconsideration will facilitate initiation of MVDDS in the 12.2–12.7 GHz band.

DATES: Effective August 25, 2003, except § 25.146 which contains information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date. Written comments on the new and/or modified information collection(s) must be submitted by the public, Office of Management and Budget (OMB) and other interested parties on or before September 23, 2003.

FOR FURTHER INFORMATION CONTACT: Gary Thayer, Office of Engineering and Technology, (202) 418–2290, TTY (202) 418–2989, e-mail: *gthayer@fcc.gov;* Jennifer Burton, Wireless Telecommunications Bureau, (202) 418–7581, TTY (202) 418–7581, e-mail *jburton@fcc.gov*. For additional information concerning the information collections contained in this document, contact Les Smith at (202) 418–0217, or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Fourth Memorandum Opinion and Order*, ET Docket No. 98–206, FCC 03–97, adopted April 22, 2003, and released April 29, 2003. The full text of this Commission decision is available on the Commission's Internet site at *http://www.fcc.gov*. It is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365. File comments with the Office of the Secretary, a copy of any comments on the information collection contained herein should be submitted to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov*, and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *Kim A.Johnson@omb.eop.gov*.

Summary of the Fourth Memorandum Opinion and Order

1. *DBS Issues.* In this *Fourth Memorandum Opinion and Order (Fourth MO&O)*, the Commission affirms that the four regional EPFD limits and the 14 dBm EIRP limit adopted for MVDDS operation constitute objective standards that will prevent harmful interference to DBS as defined by § 2.1 of the Commission's rules and will provide certainty that, along with other reasonable procedures that were adopted, can be discerned and relied upon by DBS operators. The Commission declines to adopt higher EIRP and EPFD limits for rural areas because the adopted standards are sufficiently conservative to protect DBS in general application while preserving the flexibility for each MVDDS provider to make its own business decisions about what type of transmission system best suits its needs.

2. The Commission affirms that the rules and procedures adopted in the Second R&O, (ET Docket No. 98–206), 67 FR 43031, June 26, 2002 comply with the legislative history and provisions of the *Rural Local Broadcast Signal Act (RLBSA)* and the *Satellite Home Viewer Protection Act (SHVIA)*[1] that prohibit harmful interference to DBS. The Commission finds that, under the powers granted by the Communications Act, it was proper to define interference standards in terms of EPFD and EIRP limits on MVDDS that it concluded would prevent harmful interference to DBS. The Commission further finds that the adoption of these standards complies with the *Administrative Procedure Act (APA)* because they were developed through the usual notice and comment rule making process.

3. The Commission affirms that the rules and procedures adopted in the *Second R&O* do not violate other Commission rules or international radio regulations, and are consistent with the regulatory history of DBS and FS allocations in the 12 GHz band because MVDDS, unlike previous FS operations, is designed to coexist with DBS and because the adopted rules and procedures will prevent harmful interference to DBS.

4. The Commission affirms the self-mitigation responsibilities adopted in the *Second R&O* for new DBS receivers and finds that they are consistent with the primary status of DBS because, due to their modest, effective and infrequently required nature, they strike an appropriate public interest balance that will result in more efficient spectrum utilization and will facilitate compliance with the non-harmful interference provisions of the statutes while allowing initiation of a new service.

5. The Commission finds that adequate notice was given for the computer model used to derive the EPFD limits on MVDDS, and that the various inputs for this model—including using a 10% increase in DBS unavailability as a starting point rather than as a hard limit, the "double averaging" of EPFDs, and the decision not to include "wing satellites"—are reasonable and supported by the evidence of record particularly in light of the deficiencies or impracticalities involved in other models that were considered.

6. The Commission affirms that the "safety valve" rule, as written, is sufficiently specific and is a useful tool to ensure that MVDDS operations fully protect DBS. Consistent with past practice, the Commission notes that in many cases it has provided opportunities for licensees to petition for adjustments to rules (outside the waiver process) without specifying in exacting detail how such a filing should be made.

7. The Commission affirms its decision to require that MVDDS conduct a site survey as specified in § 101.1440(b) of the Commission's rules and finds that, in conjunction with other adopted procedures, it has provided sufficient detail and specificity—similar in nature to the broad good-faith-based guidelines that have proven to be both workable and beneficial in other proceedings—that the Commission concludes will protect DBS customers in this proceeding.

[1] *Satellite Home Viewer Improvement Act Of 1999 (SHVIA)/Rural Local Broadcast Signal Act (RLBSA). See* Public Law 106–113, 113 STAT. 1501, 1501A–544 TO 101A–545, Act of Nov. 29, 1999 (enacting S.1948, including the SHVIA and RLBSA. Titles I and II of the Intellectual Property and Communications Omnibus Reform Act of 1999).

8. The Commission affirms the 45-day DBS response time specified in § 101.1440(d)(2) of the Commission's rules, because it provides a reasonable balance between the needs of DBS licensees to ensure protection of their customers before MVDDS begins operation while affording MVDDS licensees the ability to initiate service on a reasonably expeditious basis. Further, the Commission concludes that DBS customers are protected once MVDDS begins operation because the MVDDS provider must correct interference or cease operation if it causes harmful interference to or exceeds the permitted EPFD limits to a DBS customer of record.

9. The Commission amends § 101.1440(e) of the rules to clarify the responsibility of DBS licensees in regard to future DBS receive antenna installations. The Commission recognizes that § 101.1440(e) of the rules adopted in the *Second R&O* appears to require a DBS licensee to oversee all future DBS receive antenna installations, which they currently may not do. It was not intent of the Commission to alter these arrangements. Rather, the Commission only expects a DBS licensee to provide information that they deem necessary so that other entities installing DBS receive antennas may take into account the presence of MVDDS operations. Typically, this information could be conveyed with installation guidelines for DBS equipment.

10. The Commission amends § 101.1440(d)(2) of the rules to allow DBS providers to identify—instead of all DBS customers of record—only those new DBS customers of record that they believe would receive harmful interference from the proposed MVDDS transmitter during the 30-day period specified in the rule. The Commission takes this action to address petitioners' concern regarding the possible uses to which other parties could put such information.

11. The Commission declines to adopt a methodology for measuring EPFD values in the field because any measurement techniques that might be described would artificially limit the flexibility of the licensees to perform these measurements, and could seemingly prohibit the use of a technique that is satisfactory for this purpose.

12. Concerning dispute resolution procedures, the Commission clarifies that an MVDDS transmitter can be turned on after expiration of the 90-day period specified in § 101.1440 of the rules. The Commission believes that the adopted EPFD contour methodology will reduce disputes to a minimum, and this time frame will ensure that licensees participate in conflict resolution in good faith.

13. The Commission affirms its decision to dismiss the pending applications of Broadwave Network, LLC (Northpoint), PDC Broadband Corporation (Pegasus), and Satellite Receivers, Ltd. (SRL) because the original *Ku-band Cut-Off Notice* did not provide adequate notice for all entities interested in filing applications for licenses to provide terrestrial services in the 12 GHz band. The Commission further finds that its decision to dismiss the pending applications is consistent with the *LOCAL TV Act* because there is no evidence that Congress explicitly ordered the Commission to limit terrestrial applications in this band to those already on file and validated by independent testing.

14. The Commission finds that the rules and procedures adopted in the Second R&O do not violate the *Administrative Procedure Act* (*APA*) because the decisions were fully explained and rationally based upon all the information in the record and, therefore, are not arbitrary, capricious or contrary to law.

15. The Commission finds that the adoption of the Second R&O did not violate the provisions of the *Government in the Sunshine Act (Sunshine Act)* because the item was not adopted at an open meeting as defined by the Act and that, therefore, the *Sunshine Act* is not applicable.

16. The Commission dismisses, as repetitious, the petitions for reconsideration to the extent that they challenge the underlying decision in the *First Report and Order*, 66 FR 10601, February 16, 2001, and *Further Notice of Proposed Rulemaking*, 66 FR 7607, January 24, 2001, in this proceeding to authorize MVDDS in the 12 GHz band, and to the extent they challenge the determination made in the memorandum opinion and order portion of the *Second R&O* that MVDDS is authorized on a primary, rather than secondary, non-harmful interference basis as to DBS.

17. The Commission denies as not ripe, because it relies upon purely speculative conjecture, a petition for reconsideration that asserts that DBS providers might at some time in the future suffer a "regulatory taking" as the result of being required to increase satellite power to overcome MVDDS interference.

18. *NGSO FSS Issues.* The Commission affirms the −135 dBW/m²/4kHz PFD limit at 3 km, and the 10 km separation rules for MVDDS because they provide reasonable interference protection to NGSO FSS and strike a reasonable balance between affording the first in service provider with easier and better use of the band while not unduly precluding deployment by the later-in provider. The Commission affirms its finding that an alternate NGSO FSS protection scheme proposed by one petitioner is unduly complex and provides no benefit over the adopted limits.

19. The Commission amends § 25.139(a) to reflect that the information NGSO FSS licensees are required to provide MVDDS should be construed narrowly and that only information necessary to achieve the required 10 km separation under § 25.139(b) needs to be provided.

20. The Commission clarifies the NGSO FSS low-angle PFD limit of § 25.208(o) for MVDDS protection. The limit will be treated in a manner consistent with the rules for NGSO FSS and BSS sharing where validation (*i.e.*, "hard limit") and operational (*i.e.*, can be exceeded so long as they are not exceeded into an operational receiver) EPFD limits were adopted. The low-angle PFD limit adopted by the Commission in the *Second R&O* for MVDDS protection is therefore intended to be an operational limit which means that it does not need to be met in all cases so long as it is not exceeded into an operational MVDDS receiver. To clarify this intent, the Commission modifies § 25.146 to add paragraph (g) to specify that the required technical showing shall demonstrate the NGSO FSS system is *capable* of meeting the limits specified in § 25.208(o). The Commission also amends § 25.208(o) to require that the specified power flux density shall not be exceeded into an *operational* MVDDS receiver.

21. The Commission clarifies the MVDDS emission mask by amending the footnote immediately after the definition of "B" in § 101.111(a)(2)(i) to add the proviso that the emission mask only applies at the 12.2–12.7 GHz band edges and does not restrict MVDDS channelization bandwidths within the band.

22. *Paperwork Reduction Act Analysis:* This Fourth Memorandum Opinion and Order contains a new or modified information collections. This Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collections contained in the Fourth Memorandum Opinion and Order, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due September 23, 2003.

Final Regulatory Flexibility Certification

23. The Regulatory Flexibility Act of 1980, as amended (RFA),[2] requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[3] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[4] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[5] A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[6]

24. Under the amended rules adopted in the Fourth Memorandum Opinion and Order, DBS licensees are required to provide the MVDDS licensee with a list of only those new DBS customer locations that have been installed in the 30-day period following the MVDDS notification and that the DBS licensee believes may receive harmful interference or where the prescribed equivalent power flux density (EPFD) limits may be exceeded. This requirement is less burdensome than the rule adopted in the *Second R&O*[7] that required disclosure of all DBS customer locations under similar circumstances. Furthermore, under the amended rules, DBS licensees are required to provide merely the information deemed necessary by DBS licensees to enable others to take into account the presence of MVDDS transmitters. This requirement is less burdensome than the rule adopted in the *Second R&O* that imposed direct responsibility on DBS licensees for proper siting of future DBS receivers to take into account the presence of MVDDS.

25. Licensees of NGSO FSS systems are required to submit, ninety days prior to the initiation of service to the public, a technical showing that demonstrates that they are capable of meeting low-angle radiation limits specified in § 25.208(o) of the Commission's rules for the 12.2–12.7 GHz band. Finally, licensees of NGSO FSS systems are required under the amended rules to ensure that the PFD limit is not exceeded into an operational MVDDS receiver. Taken together, these requirements are less burdensome than those adopted in the *Second R&O* because they merely require a showing that the NGSO FSS system is *capable* of meeting (instead of demonstrating the system has factually met) the specified technical limits, and because the PFD limit need only be met into *operational*, rather than *all*, MVDDS receivers.

26. These changes are deregulatory because they lessen compliance requirements. Therefore, we certify that the requirements of the Fourth Memorandum Opinion and Order will not have a significant economic impact on a substantial number of small entities.

27. The Commission will send a copy of the Fourth Memorandum Opinion and Order, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act.[8] In addition, the Fourth Memorandum Opinion and Order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA.[9]

Ordering Clauses

28. Pursuant to sections 4(i), 302, 303(e) 303(f), 303(g), 303(r) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, 303(e), 303(f), 303(g) and 405, the petitions for reconsideration filed by Pegasus Broadband Corporation, MDS America, Inc., EchoStar Satellite Corporation and DIRECTV, Inc., SkyBridge L.L.C., SES Americom, Inc., and Satellite Broadcasting and Communications Association *Are denied.*

29. Parts 25 and 101 of the Commission's rules are amended as specified in the rule changes, effective August 25, 2003, except § 25.146 which contains information collection requirements which have not been approved by the Office of Management and Budget ("OMB"). The Commission will publish a document in the **Federal Register** announcing the effective date. This action is taken pursuant to sections 4(i), 303(c), 303(f), 303(g) 303(r) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(c), 303(f), 303(g), 303(r) and 309(j).

30. It is further ordered that the proceeding in ET Docket No. 98–206 is terminated.

List of Subjects

47 CFR Part 25

Communications common carriers, Communications equipment, Radio, Reporting and recordkeeping requirements, Satellites, Securities, and Telecommunications.

47 CFR Part 101

Communications equipment, Radio, and Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 25 and 101 as follows:

PART 25—SATELLITE COMMUNICATIONS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended. 47 U.S.C. Sections 154, 301, 302, 303, 307, 309, and 332, unless otherwise noted.

■ 2. Section 25.139 is amended by revising paragraph (a) to read as follows:

§ 25.139 NGSO FSS coordination and information sharing between MVDDS licensees in the 12.2 GHz to 12.7 GHz band.

(a) NGSO FSS licensees shall maintain a subscriber database in a format that can be readily shared with MVDDS licensees for the purpose of determining compliance with the MVDDS transmitting antenna spacing requirement relating to qualifying existing NGSO FSS subscriber receivers set forth in § 101.129 of this chapter. This information shall not be used for purposes other than set forth in § 101.129 of this chapter. Only sufficient information to determine compliance with § 101.129 of this chapter is required.

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[2] The RFA, *see* 5 U.S.C. 601—612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[3] 5 U.S.C. 605(b).

[4] 5 U.S.C. 601(6).

[5] 5 U.S.C. 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

[6] 15 U.S.C. 632.

[7] *Second R&O*, 17 FCC Rcd 9614 (2002).

[8] *See* 5 U.S.C. 801(a)(1)(A).

[9] *See* 5 U.S.C. 605(b).

■ 3. Section 25.146 is amended by redesignating paragraphs (g) through (m) as paragraphs (h) through (n) and by adding a new paragraph (g) to read as follows.

§ 25.146 Licensing and operating authorization provisions for the non-geostationary satellite orbit fixed-satellite service (NGSO FSS) in the bands 10.7 GHz to 14.5 GHz.

* * * * *

(g) *Operational power flux density, space-to-Earth direction, limits.* Ninety days prior to the initiation of service to the public, the NGSO FSS system licensee shall submit a technical showing for the NGSO FSS system in the band 12.2–12.7 GHz. The technical information shall demonstrate that the NGSO FSS system is capable of meeting the limits as specified in § 25.208(o). Licensees may not provide service to the public if they fail to demonstrate compliance with the PFD limits.

* * * * *

■ 4. In § 25.208, paragraph (n), which was added at 67 FR 43037, June 26, 2002, is correctly designated as paragraph (o) and revised to read as follows:

§ 25.208 Power flux density limits.

* * * * *

(o) In the band 12.2–12.7 GHz, for NGSO FSS space stations, the specified low-angle power flux-density at the Earth's surface produced by emissions from a space station shall not be exceeded into an operational MVDDS receiver:

(1) 158 dB(W/m^2) in any 4 kHz band for angles of arrival between 0 and 2 degrees above the horizontal plane; and

(2) 158 + 3.33(δ − 2) dB(W/m^2) in any 4 kHz band for angles of arrival (δ) (in degrees) between 2 and 5 degrees above the horizontal plane.

Note to paragraph (o):

These limits relate to the power flux density, which would be obtained under assumed free-space propagation conditions.

PART 101—FIXED MICROWAVE SERVICES

■ 5. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

■ 6. Section 101.111 is amended by revising paragraph (a)(2)(i) to read as follows:

§ 101.111 Emission limitations.

(a) * * *

(2) * * *

(i) For operating frequencies below 15 GHz, in any 4 KHz band, the center frequency of which is removed from the assigned frequency by more than 50 percent up to and including 250 percent of the authorized bandwidth: As specified by the following equation but in no event less than 50 decibels:

$A = 35 + 0.8(P - 50) + 10 \text{ Log}_{10} B$.

(Attenuation greater than 80 decibels is not required.)

where:

A = Attenuation (in decibels) below the mean output power level.

P = Percent removed from the carrier frequency.

B = Authorized bandwidth in MHz. MVDDS operations in the 12.2–12.7 GHz band shall use 24 megahertz for the value of B in the emission mask equation set forth in this section. MVDDS operations in the 12.2–12.7 GHz bands shall use 24 megahertz for the value of B in the emission mask equation set forth in this section. The emission mask limitation shall only apply at the 12.2–12.7 GHz band edges and does not restrict MVDDS channelization bandwidth within the band.

* * * * *

■ 8. Section 101.1440 is amended by revising paragraph (d)(2) and (e) to read as follows.

§ 101.1440 MVDDS protection of DBS.

* * * * *

(d) * * *

(2) No later than forty-five days after receipt of the MVDDS system information in paragraph (d)(1) of this section, the DBS licensee(s) shall provide the MVDDS licensee with a list of only those new DBS customer locations that have been installed in the 30-day period following the MVDDS notification and that the DBS licensee believes may receive harmful interference or where the prescribed EPFD limits may be exceeded. In addition, the DBS licensee(s) could indicate agreement with the MVDDS licensee's technical assessment, or identify DBS customer locations that the MVDDS licensee failed to consider or DBS customer locations where they believe the MVDDS licensee erred in its analysis and could exceed the prescribed EPFD limit.

* * * * *

(e) Beginning thirty days after the DBS licensees are notified of a potential MVDDS site in paragraph (d)(1) of this section, the DBS licensees are responsible for providing information they deem necessary for those entities who install all future DBS receive antennas on its system to take into account the presence of MVDDS operations so that these DBS receive antennas can be located in such a way as to avoid the MVDDS signal. These later installed DBS receive antennas shall have no further rights of complaint against the notified MVDDS transmitting antenna(s).

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket OST–2003–15676]

RIN 2105–AD14

Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Drug and Alcohol Management Information System Reporting

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department of Transportation's Office of Drug and Alcohol Policy and Compliance (ODAPC) is revising the Management Information System (MIS) forms currently used within five U.S. Department of Transportation (DOT) agencies and the United States Coast Guard (USCG) for submission of annual drug and alcohol program data. The DOT agencies are: Federal Motor Carrier Safety Administration (FMCSA); Federal Aviation Administration (FAA); Federal Transit Administration (FTA); Federal Railroad Administration (FRA); and Research and Special Programs Administration (RSPA). The Department is streamlining the annual reporting of drug and alcohol program data to DOT agencies through use of a one-page MIS data collection form. The Department is standardizing across the DOT agencies the information collected and reducing the amount of data reported by transportation employers. If a DOT agency requires supplemental data, the DOT agency will address those issues separately.

DATES: Effective July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Jim L. Swart, Drug and Alcohol Policy Advisor at 202–366–3784 (voice) 202–366–3897 (fax) or at: *jim.swart@ost.dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Background and Purpose

Five DOT agencies and the USCG collect drug and alcohol program data from their regulated employers on an annual basis. Employers compile this data on MIS forms and each form is DOT-agency specific. In fact, twenty-one MIS data collection forms will be replaced within the DOT agencies by the new single-format form. The Department believes that data collection and entry will be greatly simplified for transportation employers and the Department if a single form is utilized throughout the transportation industries and the DOT agencies.

All drug and alcohol testing conducted under DOT authority uses a standard form for drug testing—Federal Drug Testing Custody and Control Form—and a standard form for alcohol testing—DOT Alcohol Testing Form. In essence, use of standard testing forms serves to limit MIS reporting to a finite number of data elements. Therefore, a core set of data elements will make up the new MIS form which all transportation employers will complete, as appropriate, for their companies and the DOT agencies regulating them.

This MIS form will simplify and streamline data recording for transportation employers and will require employers to enter less data. In addition, because the form contains fewer data elements and is on a one-page format, it can be more easily entered and processed via electronically-based systems. As an added benefit, there is a single set of MIS instructions for all transportation employers, regardless of DOT agency.

However, not every DOT agency expects information for all potential data elements (*e.g.*, RSPA does not conduct random alcohol testing), and some data elements may be collected through some means other than MIS (*e.g.*, USCG receives alcohol data immediately following each post-accident testing event). The form's instructions highlight some of those peculiar testing differences, and companies not required to conduct or report certain types of tests will simply leave those sections blank or may enter zeros. For instance, because USCG wants no alcohol testing data on the MIS form, USCG-regulated employers will leave blank (or enter zeros in) Section IV of the form. In addition, when no testing was done or no results were received for particular data elements, employers may leave those items blank or insert zeros.

The Department issued a notice of proposed rulemaking (NPRM) on September 30, 2002 (67 FR 61306), asking for comments and suggestions for changes to the MIS form and process. In response to the NPRM, we received a modest amount of comments from a dozen or so individuals, groups, and associations. The final rule responds to all those comments. The final rule also makes significant modifications to the previous DOT agency MIS forms.

Additional Background Issue

In the NPRM we said, "On June 6, 2002, President Bush announced his proposal to create a Cabinet-level homeland security department. Inside this new department, the President proposes to put several agencies, including the USCG. The President urged Congress to pass legislation to create the new Department of Homeland Security. This process may take some time. As a result, if you have USCG ties and MIS interests, please submit your comments to this NPRM. We will consider congressional and presidential action regarding the USCG and homeland security in the final rule."

The Department of Homeland Security (DHS) has been established and the USCG's being part of that cabinet agency is reality. However, the USCG intends to keep 49 CFR part 40 as an incorporated part of its regulated industry testing rules—46 CFR part 16. Consequently, the USCG intends to follow part 40 regulations applicable (*e.g.*, part 40 alcohol rules do not apply) to the marine industry until such time as resources permit them to create their own rules, should that become necessary in the future. The USCG intends to rely upon 49 CFR part 40 for testing procedures, guidance, and interpretations. They also intend to remain a part of the MIS form, its process, and its related regulation section in part 40. Therefore, USCG-regulated employers will continue to report on this MIS form until further notice.

ODAPC desires to support the USCG efforts to facilitate a seamless transition from DOT to DHS. In this light, we will support the USCG's use of 49 CFR part 40 in their regulated industry testing program. [We view USCG's use of part 40 as being similar to DOT's required incorporation of Department of Health and Human Services (HHS) laboratory regulations and guidance into part 40.] In this light, the MIS regulation, form, and instructions will continue to reference the USCG as a DOT agency even though it became part of DHS on March 1, 2003.

Effective Dates

The Department has decided that use of the new MIS form will be required for employer MIS submissions in CY 2004 documenting CY 2003 data. Therefore, employers must immediately adopt provisions in the rule which will permit them to start, as appropriate, collection of the required data and which establish how companies are to determine the number of employees upon which 2003 random testing is based.

Discussion of Significant Comments to the Docket

Comment: The vast majority of commenters supported the Department's decision to streamline and simplify the various MIS forms currently in use into one form that will be used across all DOT agencies. Most expressed the belief that doing so will enhance accuracy of data being reported and the efficiency of those employers and service agents who will be tasked with providing the reports. A few commenters suggested that the new form will also be more easily processed through electronic means (when those are up and running) than would the variety of past MIS iterations.

Two commenters believed the new form did not effectively address the needs of data collection. One of these commenters expressed the belief that much more information needed to be collected and needed to be collected on a more frequent than once per year basis. The other commenter indicated that use of one specific DOT agency's MIS forms should not be changed because those forms best fit, the commenter asserts, the needs of a particular industry which the commenter represents (and because companies do not wish to change established reporting programs which are geared to provide the information required on current forms).

DOT Response: We agree with the preponderance of commenters who supported use of a single form across all modes of transportation. We agree with the majority of commenters who supported use of a trimmed-down version of the form. We agree with commenters who believed the new form readily lends itself to electronic transfer of items and data. In this light, it is important to note that the new form represents an all important first step in the Department's desire to have this form on-line and to permit electronic transmission of data. The fact that one form will be used throughout the transportation industry makes the difficult task of designing the system much simpler (to say nothing of our being able to obtain accurate data in consistent fields across all DOT agencies).

The Department, after reaching a self-imposed deadline date for the publication of the NPRM, did not intend for the new form to be used to collect 2002 MIS information. To do so would have meant a change in the way

companies that had already collected 2002 data would have had to download that information. In addition, many companies had not been collecting vital data regarding refusals to test. Therefore, use of the new form will be required in CY 2004 for collecting data representing CY 2003 testing.

During 2003, the Federal Transit Administration (FTA) has agreed to field-test an electronic data collection system using data elements of the new form. The FTA will select transit systems for reporting MIS data as part of this field-test. FTA's Volpe Center resources will coordinate the data collection. Through field-testing we can expose the Volpe-developed system software to a wide range of equipment and real-world usage. This field test will be accomplished with an eye toward full implementation across all DOT agencies as soon as possible. We believe the revised MIS form and its data format represent the best way to accomplish the Department's ultimate goal of having full automation for MIS submissions. Early demonstrations of FTA's system have shown the design to be very user-friendly and uncomplicated for the input required data.

Comment: Several commenters expressed the concern that employers could believe the data requirements no longer reflected on MIS forms are being de-emphasized by the DOT agencies. Most of these commenters wished us to reiterate the importance of training information that will no longer be asked for on the MIS form.

DOT Response: As we stated in the NPRM, the items for which we are no longer asking are items that DOT agencies can obtain in a variety of other ways and in other venues and formats. It is worth reiterating that the vast majority of items removed from the MIS form remain important. Employers would be remiss, to say nothing about being in violation of part 40 and DOT agency regulations, if they chose not to obtain, maintain, and furnish information required by regulations. Employers and service agents will be in clear violation of regulations and subject to sanctions if the DOT agency requirements (e.g., for supervisory training, for recordkeeping) are now ignored simply because the data generated by those requirements are no longer being recorded on the MIS form.

Comment: The bulk of commenters supported how the Department proposed to count the number of covered employees (*i.e.*, employees subject to testing because they perform DOT safety-sensitive duties) using the averaging formula. Some commenters, while supporting the averaging formula method, expressed concern for companies that make random selections on a daily or weekly basis (as opposed to those selecting monthly or quarterly). Only one commenter expressed the desire to use a number determined at the start of the year believing it simpler than factoring-in employee census fluctuations. This commenter believed that doing so would be better than having an employer determine the average number of employees at year's end—which was not an idea proposed by the Department in the NPRM. In addition, this commenter indicated that employers represented by the commenter did not know how many safety-sensitive employees they actually employ throughout the year.

DOT Response: The Department believes the calculation of the employee average will be the best way for employers to determine the number of covered employees eligible for DOT testing throughout the year. This process will more readily enable employers to take into account employment of seasonal workers; periods of downsizing; and business start-ups and other increases in employee numbers. To fix the number of covered employees at the start of a year does not take those important factors into consideration. For some employers, establishing the number at the start of the year may lead to their conducting much more random testing than required, and for others, far too little random testing.

Companies that do not know how many employees they employ and release from employment; do not know how many eligible employees are in each random selection pool; and do not know if eligible employees are placed into and taken out of random selection pools have problems irrespective of how the MIS form is completed.

In any case, the Department believes the best way for the random testing pools to be kept current and for the random testing rate to reflect the number of employees actually performing safety sensitive duties is the proposed averaging formula, and we have adopted it in this regulation. It is imperative that companies not wait until the end of the year to make this calculation. Companies must place all covered employees into the pool, know how many are in the pool, and select and test the appropriate percentages.

While we believe that companies conducting their random testing draws on a daily or weekly basis have computer systems sophisticated enough to factor the average on a daily or weekly basis, the Department will not require those companies to do so. However, those companies conducting random draws more frequently than monthly (*e.g.*, daily, weekly, bi-weekly) will not be required to do the averaging more than once each month. And, for example, companies selecting monthly, must calculate monthly; and companies selecting quarterly, must calculate quarterly.

Comment: One commenter believed the requirement to capture "refusal to test" data would be too complex for employers. This commenter also stated that counting the number of cancelled tests would also add a burden to employers, although the commenter wished to have cancelled tests counted toward satisfaction of the random testing rate. In short, this commenter did not favor changes to the old single-industry-specific forms.

DOT Response: The Department believes that the testing panorama has changed considerably since the inception of the DOT testing program. Other program forms, such as the Breath Alcohol Testing Form and the Federal Drug Testing Custody and Control Form, have changed to reflect program changes. We believe it is important that the MIS form transform accordingly. At one time the Department did not envision that specific reasons for refusals would become important enough to track. However, a troubling industry has risen whose primary goal is to "beat the drug test." Adulterated and substituted test results have increased considerably: when we speak of refusals, no longer are we simply talking about employees failing to appear for tests. Times change and this refusal delineation is now important for the Department, the DOT agencies, and employers to have.

As proposed in the NPRM, we have determined that refusals to test should count as a test result—one that goes toward satisfaction of a company's random testing rate. However, we do not believe that cancelled tests should count toward satisfaction of the rate. We continue to support part 40's contention that a cancelled test does not count toward compliance with DOT's testing requirements.

Again, we believe a single MIS format is the most appropriate approach. We believe that the many items we no longer desire to capture on the form more than offset the few new collection requirements for refusals and cancellations.

Comment: Two commenters believed the collection of data on separate sheets for each employee category would present too much work for those charged with completing the form. One commenter supported the one-page concept while recognizing that some companies may have to enter data on additional sheets.

DOT Response: The Department gave a lot of thought to this issue, but did not see a valid way around separate pages for different employee categories, at least in the short term. Again, it is important to note that the Department views the use of this standard format, one-page MIS form to be a logical first step in providing an automated system for future MIS data entry. A "must" for the automated system will be the ability of the employer to view entry options only for eligible categories of employees. For instance, an employer entering MIS data online for the FTA will see only employee categories corresponding to the FTA rules. For an employer entering MIS data for the FAA, only those FAA employee categories will appear.

Interestingly, even if an employer has multiple employee categories, the amount of information collected equates to far less than if the employer used the old forms. There is no more actual work involved in entering the employee testing data even if using separate sheets. In fact, our test runs of the form (*e.g.*, to obtain industry estimates on the amount of time to fully complete the form) with companies having multiple employee categories were met with positive feedback. From those estimates, we concluded that completion of the form—even with multiple sheets—will take between 45 minutes and 1.5 hours. For the old MIS forms, estimates showed that the "EZ" forms took between 30 minutes and 1 hour to complete; and the long forms took 2.5 hours each (alcohol and drug) to complete. Again, we hold that the time savings is substantial using the new form rather than the multitude of old forms.

Comment: Two commenters asked us to clarify MIS requirements for companies reporting MIS data to more than one DOT agency—companies that, for instance, may have full-time drivers and full-time pipeline workers. In addition, they asked us to resolve confusion over how to record testing data for employees who perform duties that are regulated by more than one DOT agency—for example, a company's employees drive trucks sometimes and perform safety-sensitive railroad duties at other times.

DOT response: In its first paragraph, the NPRM's MIS instruction form provided guidance for companies regulated by more than one DOT agency. It said, "If you are preparing reports for more than one DOT Operating Administration (OA), then you must submit OA-specific forms." We have maintained that text requirement intact. Therefore, if a company has drivers and pipeline workers covered under FMCSA and RSPA regulations respectively, and the company is asked by FMCSA and by RSPA to submit MIS data, the company should send an MIS report on its drivers to the FMCSA and an MIS report on its pipeline workers to RSPA.

The second scenario the commenters brought up, how to record MIS data for employees who perform cross-modal safety sensitive duties where an employee performs duties regulated by two or more DOT agencies (*e.g.*, the employee is a truck driver and a pipeline maintenance worker), is more complex. For a number of years, DOT agency rules have stipulated that a covered employee, subject to testing under more than one DOT agency rule for the same employer, would be subject to random testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employee's safety-sensitive duties.

Further complicating the issue becomes the fact that some DOT agencies (*i.e.*, RSPA and USCG) do not authorize random alcohol testing for employees. So while an employee who drives a truck and performs pipeline maintenance for a company may carry out more than 50% of his or her duties under RSPA rules and be in a RSPA random pool for drug testing, that employee must still be in an FMCSA pool for random alcohol testing. Or, the company can choose to place all these employees in the same random drug testing pool if they test at or above the highest random rates established by the DOT agency under whose jurisdiction they fall.

The Department is settling the issue by stating that for purposes of the MIS form, employees covered under more than one DOT agency rule need only be reported on the MIS form for the DOT agency under which they are randomly tested.

For example, an employee conducting 51% of her safety-sensitive work under FMCSA rules will be randomly tested under those rules rather than under the rules of another DOT agency under which she performs the other 49% of her DOT safety sensitive duties. For MIS purposes, therefore, she will be counted and her tests reported only under the MIS submission to the FMCSA. If 49% of her duties are under FTA, for instance, she will not appear on the FTA MIS submission even though she would continue to be eligible for testing under the FTA rule for post accident and reasonable suspicion, and perhaps for return-to-duty and follow-up testing. Employers may have to explain her testing data to FMCSA and FTA agency representatives during an inspection or audit.

Additional Discussion of Rule

The ODAPC and the DOT agencies have revised the MIS reporting requirements to standardize the collection of data for the agencies. The proposed rulemaking will impose a few new requirements for data collection; specifically, data related to information associated with the revised (65 FR 122, June 23, 2000) Federal Drug Testing Custody and Control Form. However, the overall amount of required data is less than that required currently. The Department has also placed the MIS form and instructions for completing it into part 40. The forms and instructions will be removed from all DOT agency regulations.

As stated earlier, many data elements are no longer part of the MIS form. DOT agencies have decided that some information items required on previous MIS forms are available in other formats or are items obtainable during inspections, reviews and audits. The following represents a listing for each DOT agency of most of the data elements we are eliminating from reporting on the MIS form:

FMCSA

1. Number of persons denied a position following a positive drug test.
2. Number of employees returned to duty following a refusal or positive drug test.
3. Supervisor initial drug training data.
4. Number of employees denied a position following an alcohol test of 0.04 or greater.
5. Number of employees returned to duty after engaging in alcohol misuse.
6. Number of employees having both a positive drug test and an alcohol test of 0.04 or greater when both tests were administered at the same time.
7. Actions taken for alcohol violations other than alcohol testing.
8. Supervisor initial alcohol training data.

FAA

1. Number of employees returned to duty after having failed or refused a drug test.
2. Actions taken for drug test refusals.
3. Number of persons denied employment for a positive drug test.
4. Actions taken for positive drug results.
5. Employee initial drug training data.
6. Supervisor initial drug training data.
7. Supervisor recurrent drug training data.
8. Number of persons denied a position for an alcohol test 0.04 or greater.
9. Number of employees returned to duty after engaging in alcohol misuse.

10. Actions taken for alcohol regulation violations.
11. Number of employees having both a positive drug test and an alcohol test of 0.04 or greater when both tests were administered at the same time.
12. Number of other violations of the alcohol regulation.
13. Actions taken for refusals to take an alcohol test.
14. Supervisor alcohol training data.

FTA

1. Number of persons denied a position for alcohol results 0.04 or greater.
2. Number of accidents (noted as fatal and non-fatal) with alcohol results 0.04 or greater.
3. Number of fatalities from accidents resulting in alcohol results 0.04 or greater.
4. Number of employees returned to duty following an alcohol violation.
5. Number of employees having both a positive drug test and an alcohol test of 0.04 or greater when both tests were administered at the same time.
6. Actions taken for other alcohol rule violations.
7. Supervisor alcohol training data.
8. Number of persons denied a position for positive drug test results.
9. Number of accidents (noted as fatal and non-fatal) with positive drug test results.
10. Number of fatalities from accidents resulting in positive drug tests results.
11. Number of persons returned to duty following a positive drug test or refusal result.
12. Employee drug education data.
13. Supervisor drug training data.
14. Funding source information.

FRA

1. Number of applicants/transfers denied employment/transfer for a positive drug test.
2. Number of employees returned to duty after having failed or refused a drug test.
3. Detailed breakouts of for-cause drug and alcohol testing.
4. Non-qualifying accident drug testing data.
5. Supervisor drug training data.
6. Number of applicants/transfers denied employment/transfer for alcohol results 0.04 or greater.
7. Number of employees returned to duty after engaging in alcohol misuse.
8. Supervisor alcohol training data.

USCG

1. Number of persons denied a position for a positive drug test.
2. Number of employees returned to duty following a drug violation.
3. Employee drug and alcohol training data.
4. Supervisor drug and alcohol training data.
5. Post-accident alcohol testing data.
6. Reasonable cause alcohol testing data.

RSPA

1. Number of employees returned to duty after engaging in alcohol misuse.
2. Actions taken for alcohol test results equal to or greater than 0.04.
3. Number of other alcohol rule violations and actions taken for them.
4. Actions taken for alcohol test refusals.
5. Supervisor initial alcohol training data.
6. Number of persons denied a position following a positive drug test.
7. Number of employees returned to duty following a positive or refusal drug test.
8. Actions taken for positive drug tests.
9. Actions taken for drug test refusals.
10. Supervisor initial drug training data.

The Department will also count collections differently than under the old MIS regimen. Under the old MIS counting method a drug collection was considered to be a testing event that resulted in a negative, positive, or cancellation. Refusals to test—no matter the reason for the refusal—were not considered appropriate for inclusion. Despite the instruction to include no refusals, we know that many companies included those that were the result of adulterated or substituted results that were verified by the MRO as refusals. Still other companies counted these types of refusals as well as refusal events for which no urine was sent to laboratories for testing (*e.g.*, employee failed to show-up at the collection site; employee left the collection site before urine had been collected).

Similarly, in determining if companies were conducting random testing at the appropriate established annual rates, some DOT agencies did not count refusals: some counted all refusals; and still others counted only refusals reported by the MRO (as a result of adulteration or substitution) toward satisfaction of the random testing rate requirement. Furthermore, in calculating the annual random rates for testing, all DOT agency rules said the following will be factored for the positive rate: number of random positives plus number of random refusals divided by the number of random tests plus the number of random refusals. This means that some cancelled random tests and random refusals were already in the random test numbers before the number of random refusals had been added to the total.

To clear up these discrepancies, the Department will count the number of specimens collected as the number of testing events resulting in negative, positive, and refusal to test results no matter the reason for the refusal. We have added all refusals to the number of tests because DOT agencies factor refusals into determining whether or not employers have met annual random testing rate requirements. We will not add cancelled test results to the mix because part 40.207(b) says, ". . . a cancelled test does not count toward compliance with DOT requirements (*e.g.*, being applied toward the number of tests needed to meet the employer's minimum random testing rate)."

Invalid test results are always cancelled and will not be included. However, those invalid results requiring a subsequent directly observed collection will simply be considered another collection that will have a final result. In addition, blind testing will not be counted as a testing event. Counting in this manner will enable many of the columns and rows of the MIS form to total up.

In addition, annual random testing rates will be determined using more accurate counts because no cancelled test will be mistakenly included and no refusals will be factored twice in the total. DOT agency inspectors, reviewers, and auditors will count all refusals (*e.g.*, be they from an adulterated specimen result or from "shy bladder" evaluation with no medical condition) as satisfying a company's meeting its random testing rate.

For cancellations requiring the employee to take a second test, the test that is cancelled will not count. However, the result of the subsequent recollection will count, provided that it too is not cancelled. These situations include: invalid test cancellations requiring the employee to go in for an observed collection; split specimen cancellations requiring the employee to go in for an observed collection; and cancellations requiring the employee to go in for another collection because a negative result is needed (for pre-employment; return to duty; and follow-up testing).

In addition, if more than one set of specimens is sent to the lab during one testing event, they will count together as one collection: These include: negative-dilute specimens when the employee goes in for a second collection per employee policy [the result of the second test is the result of record]; and observed collections requiring both the original collection and the observed collection be sent to the laboratory (*e.g.*, specimen out of temperature range) [the result requiring the most stringent consequence will ultimately be the result of record].

The Department is also clarifying and making uniform among DOT agencies how employers determine the total number of employees against which the annual random rate applies. Some DOT agencies have told employers to count the number of covered employees working at the start of the calendar year; some DOT agencies have directed employers to count the total number of covered employees that worked for the company within the year; and still others have advised employers to count the average number of employees on a monthly or quarterly basis.

This rule directs employers to add the total number of covered employees eligible for random testing in each random testing selection period for the year and divide that total by the number of random testing periods. For instance, a company conducting random testing quarterly will add the total of safety-sensitive employees they had in the random pool when each selection was made; then divide this number by 4 to obtain the yearly average number of covered employees. [As an example, if Company A had 1500 employees in the first quarter random pool, 2250 in the second quarter, 2750 in the third quarter; and 1500 in the fourth quarter; 1500 + 2250 + 2750 + 1500 = 8000; 8000 / 4 = 2000; the total number of employees subject to testing for the year would be reported as "2000". (Note: This number, "2000", would also be the number on which an employer would base the random testing rate.)]

As stated earlier, no company will be required to factor the average number of employees more often than once per month: No more than 12 times per year.

Companies (and their contractors, as applicable) will continue to submit the MIS reports in accordance with requirements (*e.g.*, dates for submission; selection of companies required to submit, etc.) that will continue to be in each DOT agency regulation. Likewise, DOT agency regulations will continue to address the manner (*e.g.*, mail; CD; electronic transmission) and locations for submitting the forms. Responding to a commenter, we have added a reference to this in rule text.

It is important to note that MIS alcohol testing data reflects all these proposals made for MIS drug testing data. Refusals will count as testing events; cancelled tests will not; and random pool averages will determine the number of employees against which the annual testing rate applies.

The Department is currently working toward an electronic MIS form capable of Internet submission. Each form would be DOT agency specific and would not have extraneous items showing (for example, the USCG-specific form would not include an alcohol testing section; the RSPA-specific form would not show an alcohol random testing category). Additionally, the system would bring to the attention of the person completing the form any items that did not accurately compute mathematically. Finally, employee categories listed would only be those for the specific DOT agency.

The Department recognizes that Consortia/Third Party Administrators (C/TPAs) are responsible for administering a large number of transportation industry drug and alcohol testing programs. For this reason, the MIS form will contain a space for the employer to note the name of the C/TPA the company uses, if any. Finally, we have made some of the minor, but useful changes recommended by several commenters and DOT agency representatives. These include typographical, counting, and example errors; and the option to use zeros instead of leaving testing data items blank.

Finally, the Department wants reasonable suspicion and reasonable cause testing to be counted together on the MIS form with no differentiation between the two. The issue of how to count these two types of tests has been complicated by the fact that neither the CCF nor the BATF distinguish between the two even though the DOT agencies do. For instance, FMCSA and FTA authorize reasonable suspicion drug testing; FAA, RSPA, and USCG authorize reasonable cause drug testing; and FRA authorizes both. FMCSA, FAA, FTA, and RSPA authorize reasonable suspicion alcohol testing; and FRA authorizes both reasonable suspicion and reasonable cause alcohol testing. Sufficient documentation should exist with employers for DOT agency representatives to tell the difference between the two during inspections and audits.

Regulatory Analyses and Notices

This rule is not a significant rule for purposes of Executive Order 12866 or the DOT's regulatory policies and procedures. Nor is the rule an economically significant regulation. It is a reworking of existing requirements; it imposes no new mandates; and it will not create any new costs. In fact, the rule will serve to reduce requirements and costs. The Department realizes that some companies maintain their current MIS data items on basic computer spreadsheets. However, we are requiring only a minimal number of additions to the format while removing a larger number of items.

This final rule does not have sufficient Federalism impact to warrant a Federalism assessment under Executive Order 13132. With respect to the Regulatory Flexibility Act, the certifies that, if adopted, this rule would not have a significant economic impact on a substantial number of small entities, so a Regulatory Flexibility analysis has not been prepared. Even though this rule might affect a large number of small entities, we do not expect the new MIS requirements to have a significant economic impact on anyone.

The rule also contains information collection requirements. As required by the Paperwork Reduction Act of 1995, (the PRA, 44 U.S.C. 3507(d)), the Department is submitting these requirements to the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) for review, as required under the PRA. For informational purposes, the Department will place its entire PRA package for the MIS form on the Internet when that submission is approved.

As noted elsewhere in this preamble, the proposal would amend part 40 to include a new format and a new set of instructions for the MIS form. This single form would be used across DOT agencies rather than the multiple forms with multiple instructions currently in use. The form's data elements would be reduced significantly as well.

Completing an MIS report requires a company to collect and compile drug and alcohol testing data generated throughout the year by that company's drug and alcohol testing program and placing some of that data onto the form. Certainly, the more complex a company's testing program set-up, the more complex assembling needed data becomes. Companies having decentralized program locations may have to draw information from a variety of localized programs. Companies with a number of subsidiaries may have large amounts of data to compile and authenticate. In addition, companies failing to regularly update and bring together their testing data may find themselves in positions of having to do so in a hurried manner at the end of the year. Also, companies lacking computerization of data capabilities may have to rely on manual methods.

Because MIS reporting has been part of the DOT testing equation for several years, many companies have become experienced in and have applied sound business sense to putting the report together. Many companies update their drug and alcohol program data on a regular, throughout-the-year basis rather than doing so at the last minute. Most companies require their localized programs, subsidiaries, and contractors to regularly provide program updates rather than authenticate data at the end of the year. Many companies utilize computer databases rather than "pen-and-ink" data entries. Still other companies prefer to have data entry provided as part of their C/TPA's contracted services.

Whatever the case, the Department does not require any particular management approach to compiling program data. We simply require that the data be accurate; that it be in a system that has controlled access; that it be readily auditable; and that specific data be included in MIS reports when they are required or requested by DOT agencies. The Department would prefer that companies update their drug and alcohol program data throughout the year; require their divisions, subsidiaries, and contractors to report their data regularly to them; and computerize their data-entry methodologies. However, we do not mandate these actions even though we think they are all preferable to end-of-the-year company scrambles to complete MIS forms.

The Department believes that requiring less data entry on MIS forms and having only one form throughout the transportation industries will make data gathering and compilation simpler. For instance, no longer will employers need to provide employee and supervisor training data, violation consequence data, and non-Part 40 violation data (among other entries). Furthermore, the single-format MIS form replaces the "EZ" drug form, the "EZ" alcohol form, the long drug form, and the long alcohol form, the formats of which were different for each DOT agency. Therefore, employers subject to more than one DOT agency rule will not have to navigate their ways through multiple MIS formats.

These represent important steps in reducing the amount of time needed to compile data for MIS purposes—no matter how a company chooses to manage their drug and alcohol testing data. The Department believes the simplicity of the form will result in another significant time saving action for employers.

DOT agency MIS PRA submissions for the old MIS forms reveal that nearly 6,800 companies submit 13,541 MIS forms annually to DOT; and the time it takes to fill out the forms is 18,406 hours. Estimates for the new MIS form indicate that these companies will send 7,186 MIS reports to DOT and the time to complete them will be 10,779 hours. Therefore, we foresee over 7,500 hours saved per year in filling out the new MIS form as opposed to completing the old multiple MIS forms. [Based upon industry and DOT agency estimates, we have concluded that the new MIS report will take between 45 minutes and 1.5 hours to complete. We have chosen, for this paragraph and for our OMB PRA submission, to use the highest industry and DOT agency estimate —1.5 hours. We estimate that slightly over 300 companies report to more than one DOT agency.]

According to OMB's regulations implementing the PRA (5 CFR 1320.8(b)(2)(vi)), an agency may not conduct or sponsor, and a person need not respond to a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information will be published in the **Federal Register** after OMB approves it.

A number of other Executive Orders can affect rulemakings. These include Executive Orders 13084 (Consultation and Coordination with Indian Tribal Governments), 12988 (Civil Justice Reform), 12875 (Enhancing the Intergovernmental Partnership), 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights), 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), 13045 (Protection of Children from Environmental Health Risks and Safety Risks), and 12889 (Implementation of North American Free Trade Agreement). We have considered these Executive Orders in the context of this rule, and we believe that the rule does not directly affect matters that the Executive Orders cover.

We have prepared this rulemaking in accordance with the Presidential Directive on Plain Language.

List of Subjects in 49 CFR Part 40

Administrative practice and procedure, Alcohol abuse, Alcohol testing, Drug testing, Laboratories, Reporting and recordkeeping requirements, Safety, Transportation.

Issued this 9th day of July, 2003, at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

■ For reasons set forth in the preamble, the Department of Transportation amends Part 40 of Title 49, Code of Federal Regulations, as follows:

■ 1. The authority citation for 49 CFR Part 40 continues to read as follows:

Authority: 49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 45101 *et seq.*

■ 2. Add a new § 40.26 to read as follows:

§ 40.26 What form must an employer use to report Management Information System (MIS) data to a DOT agency?

As an employer, when you are required to report MIS data to a DOT agency, you must use the form and instructions at appendix H to part 40. You must submit the MIS report in accordance with rule requirements (*e.g.*, dates for submission; selection of companies required to submit, and method of reporting) established by the DOT agency regulating your operation.

■ 3. Add a new Appendix H to read as follows:

Appendix H to Part 40—DOT Drug and Alcohol Testing Management Information System (MIS) Data Collection Form

The following form and instructions must be used when an employer is required to report MIS data to a DOT agency.

BILLING CODE 4910–62–P

U.S. DEPARTMENT OF TRANSPORTATION DRUG AND ALCOHOL TESTING MIS DATA COLLECTION FORM

Calendar Year Covered by this Report: _____

I. Employer:

Company Name: _____

Doing Business As (DBA) Name (if applicable): _____

Address: _____ E-mail: _____

Name of Certifying Official: _____ Signature: _____

Telephone: (____) _____ Date Certified: _____

Prepared by (if different): _____ Telephone: (____) _____

C/TPA Name and Telephone (if applicable): _____ (____) _____

Check the DOT agency for which you are reporting MIS data; and complete the information on that same line as appropriate:

___ FMSCA – Motor Carrier: DOT #: _____ Owner-operator: (circle one) YES or NO Exempt (Circle One) YES or NO

___ FAA – Aviation: Certificate # (if applicable): _____ Plan / Registration # (if applicable): _____

___ RSPA – Pipeline: (Check) Gas Gathering__ Gas Transmission__ Gas Distribution__ Transport Hazardous Liquids__ Transport Carbon Dioxide__

___ FRA – Railroad: Total Number of observed/documented Part 219 "Rule G" Observations for covered employees: _____

___ USCG – Maritime: Vessel ID # (USCG- or State-Issued): _____ (If more than one vessel, list separately.)

___ FTA – Transit

II. Covered Employees: (A) Enter Total Number Safety-Sensitive Employees In All Employee Categories: _____

(B) Enter Total Number of Employee Categories: _____

(C)

Employee Category	Total Number of Employees in this Category

If you have multiple employee categories, complete Sections I and II (A) & (B). Take that filled-in form and make one copy for each employee category and complete Sections II (C), III, and IV for each separate employee category.

III. Drug Testing Data:

	1	2	3	4	5	6	7	8	9	10	11	12	13
									Refusal Results				
Type of Test	Total Number Of Test Results [Should equal the sum of Columns 2, 3, 9, 10, 11, and 12]	Verified Negative Results	Verified Positive Results – For One Or More Drugs	Positive For Marijuana	Positive For Cocaine	Positive For PCP	Positive For Opiates	Positive For Amphetamines	Adulterated	Substituted	"Shy Bladder" – With No Medical Explanation	Other Refusals To Submit To Testing	Cancelled Results
Pre-Employment													
Random													
Post-Accident													
Reasonable Susp./Cause													
Return-to-Duty													
Follow-Up													
TOTAL													

IV. Alcohol Testing Data:

	1	2	3	4	5	6	7	8	9
							Refusal Results		
Type of Test	Total Number Of Screening Test Results [Should equal the sum of Columns 2, 3, 7, and 8]	Screening Tests With Results Below 0.02	Screening Tests With Results 0.02 Or Greater	Number Of Confirmation Tests Results	Confirmation Tests With Results 0.02 Through 0.039	Confirmation Tests With Results 0.04 Or Greater	"Shy Lung" – With No Medical Explanation	Other Refusals To Submit To Testing	Cancelled Results
Pre-Employment									
Random									
Post-Accident									
Reasonable Susp./Cause									
Return-to-Duty									
Follow-Up									
TOTAL									

PAPERWORK REDUCTION ACT NOTICE (as required by 5 CFR 1320.21)

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 2105-0529. The Department of Transportation estimates that the average burden for this report form is 1.5 hours. You may send comments regarding this burden estimate or any suggestions for reducing the burden to: U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, Room 10403, 400 Seventh Street, SW, Washington, D.C. 20590; OR Office of Management and Budget, Paperwork Reduction Project, 725 Seventeenth Street, NW, Washington, D.C. 20503.

Title 18, USC Section 1001, makes it a criminal offense subject to a maximum fine of $10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements of representations in any matter within the jurisdiction of any agency of the United States.

U.S. DEPARTMENT OF TRANSPORTATION
DRUG AND ALCOHOL TESTING MIS DATA COLLECTION FORM
INSTRUCTION SHEET

This Management Information System (MIS) form is made-up of four sections: employer information; covered employees (i.e., employees performing DOT regulated safety-sensitive duties) information; drug testing data; and alcohol testing data. The employer information needs only to be provided once per submission. However, you must submit a separate page of data for each employee category for which you report testing data. If you are preparing reports for more than one DOT agency then you must submit DOT agency-specific forms.

Please type or print entries legibly in black ink.

TIP *~ Read the entire instructions before starting. Please note that USCG-regulated employers do not report alcohol test results on the MIS form.*

Calendar Year Covered by this Report: Enter the appropriate year.

Section I. Employer

1. Enter your company's name, to include when applicable, your "doing business as" name; current address, city, state, and zip code; and an e-mail address, if available.
2. Enter the printed name, signature, and complete telephone number of the company official certifying the accuracy of the report and the date that person certified the report as complete.
3. If someone other than the certifying official completed the MIS form, enter that person's name and phone number on the appropriate lines provided.
4. If a Consortium/Third Party Administrator (C/TPA) performs administrative services for your drug and alcohol program operation, enter its name and phone number on the appropriate lines provided.
5. DOT Agency Information: Check the box next to the DOT agency for which you are completing this MIS form. Again, if you are submitting to multiple DOT agencies, you must use separate forms for each DOT agency.

a. If you are completing the form for FMCSA, enter your FMCSA DOT Number, as appropriate. In addition, you must indicate whether you are an owner-operator (i.e., an employer who employs only himself or herself as a driver) and whether you are exempt from providing MIS data. Exemptions are noted in the FMCSA regulation at 382.103(d).

b. If you are completing the form for FAA, enter your FAA Certificate Number and FAA Antidrug Plan / Registration Number, when applicable.

c. If you are completing the form for RSPA, check the additional box(s) indicating your type of operation.

d. If you are completing the form for FRA, enter the number of observed/documented Part 219 "Rule G" Observations for covered employees.

e. If you are submitting the form for USCG, enter the vessel ID number. If there is more than one number, enter the numbers separately.

Section II. Covered Employees

1. In Box II-A, enter the total number of covered employees (i.e., employees performing DOT regulated safety-sensitive duties) who work for your company. Then enter, in Box II-B, the total number of employee categories that number represents. If you have employees, some of whom perform duties under one DOT agency and others of whom perform duties under another DOT agency, enter only the number of those employees performing duties under the DOT agency for whom you are submitting the form. If you have covered employees who perform multi-DOT agency functions (e.g., an employee drives a commercial motor vehicle and performs pipeline maintenance duties for you), count the employee only on the MIS report for the DOT agency regulating more than 50 percent of the employee's safety sensitive function.

[Example: If you are submitting the information for the FRA and you have 2000 covered employees performing duties in all FRA-covered service categories – you would enter "2000" in the first box (II-A) and "5" in the second box (II-B), because FRA has five safety-sensitive employee categories and you have employees in all of these groups. If you have 1000 employees performing safety-sensitive duties in three FRA-covered service categories (e.g., engine service, train service, and dispatcher/operation), you would enter "1000" in the first box (II-A) and "3" in the second box (II-B).]

TIP *~ To calculate the total number of covered employees, add the total number of covered employees eligible for testing during each random testing selection period for the year and divide that total by the number of random testing periods. (However, no company will need to factor the average number of employees more often than once per month). For instance, a company conducting random testing quarterly needs to add the total of covered employees they had in the random pool when each selection was made; then divide this number by 4 to obtain the yearly average number of covered employees. It is extremely important that you place all eligible employees into these random pools. [As an example, if Company A had 1500 employees in the first quarter random pool, 2250 in the second quarter, 2750 in the third quarter; and 1500 in the fourth quarter; 1500 + 2250 + 2750 + 1500 = 8000; 8000 / 4 = 2000; the total number of covered employees for the year would be reported as, "2000".*

If you conduct random selections more often than once per month (e.g., you select daily, weekly, bi-weekly), you do not need to compute this total number of covered employees rate more than on a once per month basis. Therefore, employers need not compute the covered employees rate more than 12 times per year.]

2. If you are reporting multiple employee categories, enter the specific employee category in box II-C; and provide the number of employees performing safety-sensitive duties in that specific category.

[Example: You are submitting data to the FTA and you have 2000 covered employees. You have 1750 personnel performing revenue vehicle operation and the remaining 250 are performing revenue vehicle and equipment maintenance. When you provide vehicle operation information, you would enter "Revenue Vehicle Operation" in the first II-C box and "1750" in the second II-C box. When you provide data on the maintenance personnel, you would enter "Revenue Vehicle and Equipment Maintenance" in the first II-C box and "250" in the second II-C box.]

TIP *~ A separate form for each employee category must be submitted. You may do this by filling out a single MIS form through Section II-B and then make one copy for each additional employee category you are reporting. [For instance, if you are submitting the MIS form for the FMCSA, you need only submit one form for all FMCSA covered employees working for you – your only category of employees is "driver." If you are reporting testing data to the FAA and you employ only flight crewmembers, flight attendants, and aircraft maintenance workers, you need to complete one form each for category – three forms in all. If you are reporting to FAA and have all FAA categories of covered employees, you must submit eight forms.]*

Here is a full listing of covered-employee categories:

FMCSA *(one category): Driver*
FAA *(eight categories): Flight Crewmember; Flight Attendant; Flight Instructor; Aircraft Dispatcher; Aircraft Maintenance; Ground Security Coordinator; Aviation Screener; Air Traffic Controller*
RSPA *(one category): Operation/Maintenance/Emergency Response*
FRA *(five categories): Engine Service; Train Service; Dispatcher/Operation; Signal Service; Other [Includes yardmasters, hostlers (non-engineer craft), bridge tenders; switch tenders, and other miscellaneous employees performing 49 CFR 228.5 (c) defined covered service.]*
USCG *(one category): Crewmember*
FTA *(five categories): Revenue Vehicle Operation; Revenue Vehicle and Equipment Maintenance; Revenue Vehicle Control/Dispatch; CDL/Non-Revenue Vehicle; Armed Security Personnel*

Section III. Drug Testing Data

This section summarizes the drug testing results for all covered employees (to include applicants). The table in this section requires drug test data by test type and by result. The categories of test types are: Pre-Employment; Random; Post-Accident; Reasonable Suspicion / Reasonable Cause; Return-to-Duty, and Follow-Up.

The categories of type of results are: Total Number of Test Results [excluding cancelled tests and blind specimens]; Verified Negative; Verified Positive; Positive for Marijuana; Positive for Cocaine; Positive for PCP; Positive for Opiates; Positive for Amphetamines; Refusals due to Adulterated, Substituted, "Shy Bladder" with No Medical Explanation, and Other Refusals to Submit to Testing; and Cancelled Results.

TIP *~ Do not enter data on blind specimens submitted to laboratories. Be sure to enter all pre-employment testing data regardless of whether an applicant was hired or not. You do not need to separate reasonable suspicion and reasonable cause drug testing data on the MIS form. [Therefore, if you conducted only reasonable suspicion drug testing (i.e., FMCSA and FTA), enter that data; if you conducted only reasonable cause drug testing (i.e., FAA, RSPA, and USCG); or if you conducted both under FRA drug testing rules, simply enter the data with no differentiation.] For USCG, enter any "Serious Marine Incident" testing in the Post-Accident row. For FRA, do not enter post accident data (the FRA does not collect this data on the MIS form). Finally, you may leave blank any row or column in which there were no results, or you may enter "0" (zero) instead. Please note that cancelled tests are not included in the "total number of test results" column.*

Section III, Column 1. Total Number of Test Results ~ This column requires a count of the total number of test results in each testing category during the entire reporting year. Count the number of test results as the number of testing events resulting in negative, positive, and refusal results. Do not count cancelled tests and blind specimens in this total.

[Example: A company that conducted fifty pre-employment tests would enter "50" on the Pre-Employment row. If it conducted one hundred random tests, "100' would be entered on the Random row. If that company did no post-accident, reasonable suspicion, reasonable cause, return-to-duty, or follow-up tests, those categories will be left blank or zeros entered.]

Section III, Column 2. Verified Negative Results ~ This column requires a count of the number of tests in each testing category that the Medical Review Officer (MRO) reported as negative. Do not count a negative-dilute result if, subsequently, the employee underwent a second collection; the second test is the test of record.

[Example: If forty-seven of the company's fifty pre-employment tests were reported negative, "47" would be entered in Column 2 on the Pre-Employment row. If ninety of the company's one hundred random test results were reported negative, "90" would be entered in Column 2 on the Random row. Because the company did no other testing, those other categories would be left blank or zeros entered.]

Section III, Column 3. Verified Positive Results ~ For One Or More Drugs ~ This column requires a count of the number of tests in each testing category that the MRO reported as positive for one or more drugs. When the MRO reports a test positive for two drugs, it would count as one positive test.

[Example: If one of the fifty pre-employment tests was positive for two drugs, "1" would be entered in Column 3 on the Pre-Employment row. If four of the company's one hundred random test results were reported positive (three for one drug and one for two drugs), "4" would be entered in Column 3 on the Random row.]

■ **Section III, Columns 4 through 8. Positive** (for specific drugs) ~ These columns require entry of the by-drug data for which specimens were reported positive by the MRO.

[Example: The pre-employment positive test reported by the MRO was positive for marijuana, "1" would be entered in Column 4 on the Pre-Employment row. If three of the four positive results for random testing were reported by the MRO to be positive for marijuana, "3" would be entered in Column 4 on the Random row. If one of the four positive results for random testing was reported positive for both PCP and opiates, "1" would be entered in Column 6 on the Random row and "1" would be entered in Column 7 of the Random row.]

TIP *~ Column 1 should equal the sum of Columns 2, 3, 9, 10, 11, and 12. Remember you have not counted specimen results that were ultimately cancelled or were from blind specimens. So, Column 1 = Column 2 + Column 3 + Column 9 + Column 10 + Column 11 + Column 12. Certainly, double check your records to determine if your actual results count is reflective of all negative, positive, and refusal counts.*

An MRO may report that a specimen is positive for more than one drug. When that happens, to use the company example above (i.e., one random test was positive for both PCP and opiates), the positive results should be recorded in the appropriate columns – PCP and opiates in this case. There is no expectation for Columns 4 through 8 numbers to add up to the numbers in Column 3 when you report multiple positives.

Section III, Columns 9 through 12. Refusal Results ~ The refusal section is divided into four refusal groups – they are: Adulterated; Substituted; "Shy Bladder" ~ With No Medical Explanation; and Other Refusals To Submit to Testing. The MRO reports two of these refusal types – adulterated and substituted specimen results – because of laboratory test findings.

When an individual does not provide enough urine at the collection site, the MRO conducts or causes to have conducted a medical evaluation to determine if there exists a medical reason for the person's inability to provide the appropriate amount of urine. If there is no medical reason to support the inability, the MRO reports the result to the employer as a refusal to test: Refusals of this type are reported in the "Shy Bladder" ~ With No Medical Explanation category.

Finally, additional reasons exist for a test to be considered a refusal. Some examples are: the employee fails to report to the collection site as directed by the employer; the employee leaves the collection site without permission; the employee fails to empty his or her pockets at the collection site; the employee refuses to have a required shy bladder evaluation. Again, these are only four examples: there are more.

■ **Section III, Column 9. Adulterated** ~ This column requires the count of the number of tests reported by the MRO as refusals because the specimens were adulterated.

[Example: If one of the fifty pre-employment tests was adulterated, "1" would be entered in Column 9 of the Pre-Employment row.]

■ **Section III, Column 10. Substituted** ~ This column requires the count of the number of tests reported by the MRO as refusals because the specimens were substituted.

[Example: If one of the 100 random tests was substituted, "1" would be entered in Column 10 of the Random row.]

■ **Section III, Column 11. "Shy Bladder" ~ With No Medical Explanation** ~ This column requires the count of the number of tests reported by the MRO as being a refusal because there was no legitimate medical reason for an insufficient amount of urine.

[Example: If one of the 100 random tests was a refusal because of shy bladder, "1" would be entered in Column 11 of the Random row.]

■ **Section III, Column 12. Other Refusals To Submit To Testing** ~ This column requires the count of refusals other than those already entered in Columns 9 through 11.

[Example: If the company entered "100" as the number of random specimens collected, however it had five employees who refused to be tested without submitting specimens: two did not show up at the collection site as directed; one refused to empty his pockets at the collection site; and two left the collection site rather than submit to a required directly observed collection. Because of these five refusal events, "5" would be entered in Column 11 of the Random row.]

TIP ~ *Even though some testing events result in a refusal in which no urine was collected and sent to the laboratory, a "refusal" is still a final test result. Therefore, your overall numbers for test results (in Column 1) will equal the total number of negative tests (Column 2); positives (Column 3); and refusals (Columns 9, 10, 11, and 12). Do not worry that no urine was processed at the laboratory for some refusals; all refusals are counted as a testing event for MIS purposes and for establishing random rates.*

Section III, Column 13. Cancelled Tests ~ This column requires a count of the number of tests in each testing category that the MRO reported as cancelled. You must not count any cancelled tests in Column 1 or in any other column. For instance, you must not count a positive result (in Column 3) if it had ultimately been cancelled for any reason (e.g., specimen was initially reported positive, but the split failed to reconfirm).

[Example: If a pre-employment test was reported cancelled, "1" would be entered in Column 13 on the Pre-Employment row. If three of the company's random test results were reported cancelled, "3" would be entered in Column 13 on the Random row.]

TOTAL Line. Columns 1 through 13 ~ This line requires you to add the numbers in each column and provide the totals.

Section IV. Alcohol Testing Data

This section summarizes the alcohol testing conducted for all covered employees (to include applicants). The table in this section requires alcohol test data by test type and by result. The categories of test types are: Pre-Employment; Random; Post-Accident; Reasonable Suspicion / Reasonable Cause; Return-to-Duty, and Follow-Up.

The categories of results are: Number of Screening Test Results; Screening Tests with Results Below 0.02; Screening Tests with Results 0.02 Or Greater; Number of Confirmation Test Results: Confirmation Tests with Results 0.02 through 0.039; Confirmation Tests with Results 0.04 Or Greater; Refusals due to "Shy Lung" with No Medical Explanation, and Other Refusals to Submit to Testing; and Cancelled Results.

TIP ~ *Be sure to enter all pre-employment testing data regardless of whether an applicant was hired or not. Of course, for most employers pre-employment alcohol testing is optional, so you may not have conducted this type of testing. You do not need to separate "reasonable suspicion" and "reasonable cause" alcohol testing data on the MIS form. [Therefore, if you conducted only reasonable suspicion alcohol testing (i.e., FMCSA, FAA, FTA, and RSPA), enter that data; if you conducted both reasonable suspicion and reasonable cause alcohol testing (i.e.., FRA), simply enter the data with no differentiation.] RSPA does not authorize "random" testing for alcohol. Finally, you may leave blank any row or column in which there were no results, or you may enter "0" (zero) instead. Please note that USCG-regulated employers do not report alcohol test results on the MIS form: Do not fill-out Section IV if you are a USCG-regulated employer.*

Section IV, Column 1. Total Number of Screening Test Results ~ This column requires a count of the total number of screening test results in each testing category during the entire reporting year. Count the number of screening tests as the number of screening test events with final screening results of below 0.02, of 0.02 through 0.039, of 0.04 or greater, and all refusals. Do not count cancelled tests in this total.

[Example: A company that conducted twenty pre-employment tests would enter "20" on the Pre-Employment row. If it conducted fifty random tests, "50' would be entered. If that company did no post-accident, reasonable suspicion, reasonable cause, return-to-duty, or follow-up tests, those categories will be left blank or zeros entered.]

Section IV, Column 2. Screening Tests With Results Below 0.02 ~ This column requires a count of the number of tests in each testing category that the BAT or STT reported as being below 0.02 on the screening test.

[Example: If seventeen of the company's twenty pre-employment screening tests were reported as being below 0.02, "17" would be entered in Column 2 on the Pre-Employment row. If forty-four of the company's fifty random screening test results were reported as being below 0.02, "44" would be entered in Column 2 on the Random row. Because the company did no other testing, those other categories would be left blank or zeros entered.]

Section IV, Column 3. Screening Tests With Results 0.02 Or Greater ~ This column requires a count of the number of screening tests in each testing category that BAT or STT reported as being 0.02 or greater on the screening test.

[Example: If one of the twenty pre-employment tests was reported as being 0.02 or greater, "1" would be entered in Column 3 on the Pre-Employment row. If four of the company's fifty random test results were reported as being 0.02 or greater, "4" would be entered in Column 3 on the Random row.]

Section IV, Column 4. Number of Confirmation Test Results ~ This column requires entry of the number of confirmation tests that were conducted by a BAT as a result of the screening tests that were found to be 0.02 or greater. In effect, all screening tests of 0.02 or greater should have resulted in confirmation tests. Ideally the number of tests in Column 3 and Column 4 should be the same. However, we know that this required confirmation test sometimes does not occur. In any case, the number of confirmation tests that were actually performed should be entered in Column 4.

[Example: If the one pre-employment screening test reported as 0.02 or greater had a subsequent confirmation test performed by a BAT, "1" would be entered in Column 4 on the Pre-Employment row. If three of the four random screening tests that were found to be 0.02 or greater had a subsequent confirmation test performed by a BAT, "3" would be entered in Column 4 on the Random row.]

Section IV, Column 5. Confirmation Tests With Results 0.02 Through 0.039 ~ This column requires entry of the number of confirmation tests that were conducted by a BAT that led to results that were 0.02 through 0.039.

[Example: If the one pre-employment confirmation test yielded a result of 0.042, Column 5 of the Pre-Employment row would be left blank or zeros entered. If two of the random confirmation tests yielded results of 0.03 and 0.032, "2" would be entered in Column 5 of the Random row.]

Section IV, Column 6. Confirmation Tests With Results 0.04 Or Greater ~ This column requires entry of the number of confirmation tests that were conducted by a BAT that led to results that were 0.04 or greater.

[Example: Because the one pre-employment confirmation test yielded a result of 0.042, "1" would be entered in Column 6 of the Pre-Employment row. If one of the random confirmation tests yielded a result of 0.04, "1" would be entered in Column 6 of the Random row.]

TIP *~ Column 1 should equal the sum of Columns 2, 3, 7, and 8. The number of screening tests results should reflect the number of screening tests you have no matter the result (below 0.02 or at or above 0.02, plus refusals to test), unless of course, the tests were ultimately cancelled. So, Column 1 = Column 2 + Column 3 + Column 7 + Column 8. Certainly, double check your records to determine if your actual screening results count is reflective of all these counts.*

There is no need to record MIS confirmation tests results below 0.02: That is why we have no column for it on the form. [If the random test that screened 0.02 went to a confirmation test, and that confirmation test yielded a result below 0.02, there is no place for that confirmed result to be entered.] We assume that if a confirmation test was completed but not listed in either Column 5 or Column 6, the result was below 0.02. In addition, if the confirmation test ended up being cancelled, it should not have been included in Columns 1, 3, or 4 in the first place.

Section IV, Columns 7 and 8. Refusal Results ~ The refusal section is divided into two refusal groups – they are: Shy Lung ~ With No Medical Explanation; and Other Refusals To Submit to Testing. When an individual does not provide enough breath at the test site, the company requires the employee to have a medical evaluation to determine if there exists a medical reason for the person's inability to provide the appropriate amount of breath. If there is no medical reason to support the inability as reported by the examining physician, the employer calls the result a refusal to test: Refusals of this type are reported in the "Shy Lung ~ With No Medical Explanation" category.

Finally, additional reasons exist for a test to be considered a refusal. Some examples are: the employee fails to report to the test site as directed by the employer; the employee leaves the test site without permission; the employee fails to sign the certification at Step 2 of the ATF; the employee refuses to have a required shy lung evaluation. Again, these are only four examples; there are more.

■ **Section IV, Column 7. "Shy Lung" ~ With No Medical Explanation** ~ This column requires the count of the number of tests in which there is no medical reason to support the employee's inability to provide an adequate breath as reported by the examining physician; subsequently, the employer called the result a refusal to test.

[Example: If one of the 50 random tests was a refusal because of shy lung, "1" would be entered in Column 7 of the Random row.]

■ **Section IV, Column 8. Other Refusals To Submit To Testing** ~ This column requires the count of refusals other than those already entered in Columns 7.

[Example: The company entered "50" as the number of random specimens collected, however it had one employee who did not show up at the testing site as directed. Because of this one refusal event, "1" would be entered in Column 8 of the Random row.]

TIP *~ Even though some testing events result in a refusal in which no breath (or saliva) was tested, there is an expectation that your overall numbers for screening tests (in Column 1) will equal the total number of screening tests with results below 0.02 (Column 2); screening tests with results 0.02 or greater (Column 3); and refusals (Columns 7 and 8). Do not worry that no breath (or saliva) was tested for some refusals; all refusals are counted as a screening test event for MIS purposes and for establishing random rates.*

Section IV, Column 9. Cancelled Tests – This column requires a count of the number of tests in each testing category that the BAT or STT reported as cancelled. Do not count any cancelled tests in Column 1 or in any other column other than Column 9. For instance, you must not count a 0.04 screening result or confirmation result in any column, other than Column 9, if the test was ultimately cancelled for some reason (e.g., a required air blank was not performed).

[Example: If a pre-employment test was reported cancelled, "1" would be entered in Column 9 on the Pre-Employment row. If three of the company's random test results were reported cancelled, "3" would be entered in Column 13 on the Random row.]

TOTAL Line. Columns 1 through 9 – This line requires you to add the numbers in each column and provide the totals.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–03–15712]

RIN 2127–AH08

Federal Motor Vehicle Safety Standards; Glazing Materials; Low Speed Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule updates the Federal motor vehicle safety standard on glazing materials so that it incorporates by reference the 1996 version of the industry standard on motor vehicle glazing. Currently, the Federal standard references the 1977 version of the industry standard and the 1980 supplement to that standard.

Today's final rule also simplifies understanding the Federal glazing performance requirements. The amendments of the past 20 years have resulted in a patchwork of requirements in the Federal standard that must be read alongside the industry standard in order to gain a comprehensive understanding of the overall requirements of the Federal standard. The incorporation by reference of the 1996 version of the industry standard permits the deletion of most of the existing text of the Federal standard. This change to the Federal standard means that the industry standard will henceforth provide a single source of Federal glazing performance requirements for most purposes.

In addition, this final rule addresses several issues not covered by the 1996 American National Standards Institute (ANSI) standard. For example, this action limits the size of the shade band that glazing manufacturers place at the top of windshields and clarifies the meaning of the phrase "the most difficult part or pattern" for the fracture test in the 1996 ANSI standard. This action also makes minor conforming amendments to the standard on low speed vehicles.

DATES: Effective date: This final rule is effective September 23, 2003. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of September 23, 2003. If you wish to submit a petition for reconsideration of this rule, your petition must be received by September 8, 2003.

ADDRESSES: Petitions for reconsideration should refer to the docket number and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For technical and policy issues: Mr. John Lee, Office of Crashworthiness Standards, NVS–112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–4924. Fax: (202) 366–4329.

For legal issues: Nancy Bell, Attorney Advisor, Office of the Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

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I. Background

By letter dated August 12, 1997, the American Automobile Manufacturers Association (AAMA) (which has since evolved into the Alliance of Automobile Manufacturers) petitioned us to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 205, "Glazing Materials" (49 CFR 571.205), to incorporate the most recent update of the American National Standards Institute (ANSI) standard: American National Standard for Safety Glazing Materials for Glazing Motor Vehicles and Motor Vehicle Equipment Operating on Land Highways—ANSI/SAE Z26.1–1996 ("ANSI/SAE Z26.1–1996"). AAMA stated in its petition that incorporating ANSI/SAE Z26.1–1996 would improve safety, achieve international harmonization, streamline and clarify FMVSS No. 205, and eliminate wire glass as an approved safety glazing option. On January 2, 1998, we granted the AAMA's petition.

FMVSS No. 205 specifies performance requirements for the types of glazing that may be installed in motor vehicles. It also specifies the vehicle locations in which the various types of glazing may be installed. The standard incorporates by reference ANSI Standard Z26.1, "Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways," as amended through 1980 ("ANS Z26.1").[1] The requirements in ANS Z26.1 are specified in terms of performance tests that the various types or "items" of glazing must pass. There are 21 "items" of glazing for which requirements are currently specified in FMVSS No. 205.

The Society of Automotive Engineers (SAE) Glazing Materials Standards Committee, acting under the sponsorship of ANSI, has revised the ANSI standard periodically. However, since the FMVSS cannot be changed except through rulemaking, revisions to the ANSI standard do not become part of FMVSS No. 205 unless we expressly identify and incorporate them through a rulemaking. SAE previously petitioned us to upgrade ANS Z26.1 with 1983 and 1990 revisions. However, we denied those petitions.

In addition to incorporating some of the revisions of the ANSI standard, we have occasionally updated FMVSS No. 205 directly by adding provisions similar or identical to those in various revisions of the ANSI standard.

II. Summary of the Notice of Proposed Rulemaking (NPRM)

On August 4, 1999, NHTSA published a NPRM (64 FR 42330) proposing to amend FMVSS No. 205 by incorporating by reference ANSI/SAE Z26.1–1996. In this notice, NHTSA discussed the benefits of incorporating ANSI/SAE Z26.1–1996, and proposed revisions to FMVSS No. 205.

[1] The most recent revision we incorporated into FMVSS No. 205 was ANSI Z26.1a–1980, which supplemented the 1977 version. It was incorporated by a final rule published on February 23, 1984 (49 FR 6732).

A. Benefits of Incorporating ANSI/SAE Z26.1–1996

NHTSA tentatively concluded that incorporating ANSI/SAE Z26.1–1996 would be beneficial for (1) improved safety, (2) harmonization with foreign glazing standards, and (3) streamlining and clarification.

1. Improved Safety

ANSI Z26.1 requires a fracture test (Test No. 7) of a 305 mm (12 in.) square, flat sample of glazing. In contrast, ANSI/SAE Z26.1–1996 requires the use of a full-size production piece of vehicle window glass. Paragraph 5.7.2 of ANSI/SAE Z26.1–1996 states that the specimens of glazing selected for testing "shall be of the most difficult part or pattern designation within the model number." NHTSA stated that it interpreted this to mean the portion of glazing which we consider most likely to fail the test.

ANSI/SAE Z26.1–1996 also improves safety by eliminating wire glass as an approved glazing material. Wire glass is flat-rolled glass reinforced with wire mesh. Wire glass is known to shatter more readily at lower impact speeds and is more lacerative than laminated glass. Wire glass was used in past automotive applications. However, this practice has been discontinued and, to our knowledge, no company currently produces wire glass for vehicle use.

2. Harmonization with Foreign Glazing Standards

Incorporating ANSI/SAE Z26.1–1996 will improve harmonization between US, Canadian, and European glazing standards in the following ways:

- The test fixture for the impact, fracture and penetration resistance tests (Tests 6, 7, 8, 9, 10, 11, 12, 13, 14 and 26) is identical to the support frame required in Economic Commission for Europe (ECE) Regulation R43.
- The equipment used for the abrasion test (Tests 17 and 18) is similar to that used under ECE R43.
- The Weathering Test (Test 16) is similar to International Organization for Standardization ("ISO") Standard 3917, which requires a xenon light source, instead of the carbon arc light source currently specified in FMVSS No. 205.
- The solvents specified in the chemical resistance test (Test 20) have been revised to conform to the requirements of the American Society for Testing and Materials (ASTM) and Occupant Safety and Health Administration (OSHA). These are the same solvents specified in ECE R43. This will also result in consistency with the NTTAA (National Technology Transfer Advancement Act), which requires use of voluntary consensus standards unless such use is infeasible or otherwise inconsistent with law.
- Canadian Motor Vehicle Safety Standard No. 205, "Glazing Materials," already incorporates ANSI/SAE Z26.1–1996. Therefore, we would achieve closer harmonization of our Standard No. 205 and Canadian Standard No. 205.

3. Streamlining and Clarification

The proposed incorporation by reference of ANSI/SAE Z26.1–1996 would permit the deletion of most of the existing text of FMVSS No. 205. The amendments of the past 20 years have resulted in a patchwork of requirements that must be read in conjunction with the ANSI Z26.1 in order to gain a comprehensive understanding of the overall requirements of FMVSS No. 205. Adoption of the proposal would simplify FMVSS No. 205, consistent with our regulatory-reform efforts.

B. Proposed Revisions to FMVSS No. 205

NHTSA discussed some proposed revisions to FMVSS No. 205, as described below.

First, NHTSA discussed the general nature of the textual changes to ANSI Z26.1. We stated that our substitution of the 1996 version for the 1980 version of the ANSI standard would not make many substantive changes to our standard since our current standard already contains many provisions of the 1996 version. They were directly added to our standard in various rulemaking proceedings between 1977 and 1996 to supplement the 1977 version of the ANSI standard.[2] Therefore, the practical effect of our incorporation by reference of the 1996 ANSI standard is that it would enable us to eliminate the provisions added to our standard between 1977 and 1996.

Second, NHTSA proposed to modify the application section of FMVSS No. 205 so that the standard explicitly applied to vehicles.

Third, NHTSA proposed that "the most difficult part or pattern" for the Fracture Test means that all portions of the glazing surface must be able to pass the test requirements.[3] We explained

[2] The 1996 provisions include new types of glazing, *e.g.* items 4A, 11C, 12, 13, 14, 15A, 15B, 16A, and 16B. ANSI/SAE Z26.1–1996 also includes numerous editorial and minor substantive changes made to be consistent with FMVSS No. 205 or to be internally consistent. We have listed these changes in a table submitted to the docket for the NPRM (Docket No. NHTSA 99–6024).

[3] The requirement for specimens to be tested for the fracture test in section 5.7.2 of ANSI/SAE

Continued

that we believe "the most difficult part or pattern" was intended to mean the part of the glazing that provides for "worst case" testing, not the type of difficulty contemplated or how we select the most difficult part or pattern in our compliance testing. Therefore, all portions of the glazing surface must be able to pass the test requirements. NHTSA proposed that this interpretation would be made explicit in the regulatory text of FMVSS No. 205.

Fourth, NHTSA tentatively concluded that a xenon arc light source produces a spectral power distribution closer to that of sunlight than the carbon arc lamp currently utilized in the weathering test procedures of ANSI Z26.1 and requested comment on this issue.[4] We said that carbon arc technology, which was developed in 1919 for textile and printing industries, is no longer the best light source for simulating sunlight because the spectral power distribution of carbon arc is unlike that of natural sunlight.[5] Further, we noted that most of the testing industry is currently using xenon-arc lamp test devices to simulate weathering.

Fifth, NHTSA proposed to modify FMVSS No. 205 to incorporate the June 1995 version of the Society of Automotive Engineers, Inc. (SAE), Recommended Practice J100, "Class 'A' Vehicle Glazing Shade Bands" (SAE J100) and requested comments on the appropriateness of that shade band standard or any alternative shade band standard that should be considered. NHTSA said that a visibility requirement needs to be set to establish boundaries for shade bands on glazed surfaces since we need to be able, for the purposes of compliance testing, to differentiate between those areas of a window that are intended to meet the 70 percent transmittance requirements and those areas that are not so intended.[6]

Currently, neither FMVSS No. 205 nor the updated ANSI/SAE Z26.1–1996 set boundaries for the area of glazing that does not have to meet the 70 percent light transmittance requirement. SAE J100 sets limits for the shade band on the windshield, rear window and fixed side windows based upon the eyellipse of the 95th percentile male driver's eye positions in a vehicle.[7]

Sixth, NHTSA proposed modifying S5(b)(8) of FMVSS No. 500, "Low-speed vehicles" (49 CFR 571.500), to eliminate the incorporation by reference of ANSI Z26.1 and any reference to the permitted types of glazing.[8] Instead, S5(b)(8) would simply state that low speed vehicles must have windshield glazing that meets the requirements of FMVSS No. 205.

NHTSA also proposed to revise the applicability paragraph of FMVSS No. 205 to add low speed vehicles to the list of vehicles to which the standard applies. This would assure that manufacturers of glazing materials in low speed vehicles certify compliance with FMVSS No. 205. In addition, we proposed adding a paragraph to the requirements specifying the use of AS–1 or AS–4 glazing in the windshields of low speed vehicles. This section is necessary because the descriptions of the locations of glazing specified by the ANSI standard would not otherwise allow AS–5 glazing.

Also, NHTSA proposed to correct a technical error in FMVSS No. 500. We replaced AS–5 glazing with AS–4 glazing as a permitted glazing type in low speed vehicles. AS–4 is equivalent glazing to AS–5 but contains a light transmittance requirement so that it can be used in windshields, since the windshield is a location considered requisite for driving visibility.

Finally, NHTSA requested comments on the need to verify DOT numbers based on the concern of SAE's Glazing Materials Standards Committee regarding the accuracy of our Glazing Manufacturer list.[9] SAE has contended that only 25 percent of the manufacturers listed with DOT numbers are currently active; some of the manufacturers have gone out of business without notifying us, and many other manufacturers have moved or merged.

III. Summary of Public Comments to the NPRM

NHTSA received eight comments on the August 1999 NPRM. Three glazing manufacturers, three vehicle manufacturers, one glazing manufacturers association, and one automotive standards organization submitted the eight comments. The comments are summarized below.

A. Meaning of the "Most Difficult Part or Pattern" for the Fracture Test

Several manufacturers stated that NHTSA had misinterpreted the meaning of "most difficult part or pattern" and that the fracture test could be interpreted to have many fracture points, instead of a single point 25 mm (1 in.) in-bound along the center of the longest edge.

Sekurit Saint-Gobain (Sekurit), a glazing manufacturer, suggested that NHTSA adopt ISO 3537. ISO 3537 has several fracture points [(point 1, 30 mm (1.2 in.) from the edge in one corner; point 2, 30 mm (1.2 in.) from the nearest edge; point 3 at the geometric center, and for curved materials, point 4 on the longest median at a point of maximum curvature)] and allows for fracture of the windshield.

SAE encouraged NHTSA to revise S5.1.2 to read as follows: "NHTSA may conduct the Fracture Test as specified in ANSI/SAE Z26.1–1996 Section 5.7 on any piece of glazing material that is required to comply with Section 5.7."

B. Xenon Light Source for Weathering Test

Ford Motor Company (Ford) and SAE both commented that a xenon arc light source more closely simulates sunlight than does a carbon arc and that the xenon arc is a much-improved light source for the weathering tests. Ford also said that a xenon arc lamp would meet the requirement of ECE R43 stating that any source of radiation which produces the same effect as a mercury vapor lamp may be used for the test procedure.

C. Limiting the Width of the Shade Band

DaimlerChrysler (DC) and SAE supported the adoption of SAE J100 to identify areas of glazing not requisite for driving visibility. DC also urged the agency to clarify the definition of shade band to mean any obscuration band on a glazing because of the variations in band application to laminated safety glass (dye or pigment added to interlayer material prior to application) and tempered safety glass (pattern of lines and dots printed onto the glass surface).

Toyota Motor Corporation (Toyota) and the Flat Glass Manufacturers Association of Japan (FGMAJ), however, suggested incorporating "area B," specified in ECE R43 92/22EC to establish boundaries for the shade band instead of incorporating SAE J100 because it would harmonize FMVSS No. 205 with the requirements adopted in Europe and Japan and because application of the "area B" requirement of ECE R43 is current practice for Toyota. More specifically, Toyota stated that FMVSS No. 205 should "prescribe that the area of the windshield other than the 'area B' may be tinted" and FGMAJ stated that the "[d]etermination of the top boundary of windshield for driving visibility should be the upper edge of Zone B, which is drawn in accordance with V1 prescribed in ECE R43."

Additionally, on the issue of whether shade band requirements should be applied to side and rear windows, FGMAJ stated, "[t]his non-requirement provision for driving visibility should be limited to the windshield, which would harmonize with the international standard."

D. Certification and Verification of DOT Numbers

Pilkington Libbey Owens Ford (LOF), and Glassig Inc. (Glassig), both glazing manufacturers, commented that DOT numbers should be kept current and suggested notification to the agency or re-certification every five years so that separate active and non-active manufacturer lists can be prepared. SAE suggested that NHTSA avoid reassigning DOT numbers and also supported the use of separate active and non-active manufacturer lists. Sekurit said that the confusion that results from the reassigning of DOT numbers could be avoided if glass manufacturers were required to apply their trade names to their products. FGMAJ suggested that a manufacturer who simply cuts sections of glazing for use in a motor vehicle application obtain a separate DOT code number from that of the prime glazing manufacturer who produces the glazing. Additionally, FGMAJ suggested that the definition of "prime glazing manufacturer" should specify the inclusion of aftermarket manufacturers.

E. Other Issues

1. Applicability of Proposal to MPVs

DC and SAE encouraged NHTSA not to delete paragraph S5.1.1.6 of FMVSS No. 205, which states that glazing intended for use in multipurpose passenger vehicles (MPVs) is treated identically to glazing used in trucks. ANSI/SAE Z26.1–1996 expressly prohibits the use of deep tinted windows adjacent to the driver in trucks but is silent with regard to tinting in MPVs.

2. Edge Treatment for Automotive Safety Glass

The SAE recommended that NHTSA eliminate paragraph S5.2 of FMVSS No. 205 because it incorporates by reference the edge treatment requirements (SAE Recommended Practice J673, "Automotive Safety Glasses") that are already incorporated by reference in ANSI/SAE Z26.1–1996.[10]

3. Labeling

Toyota suggested that FMVSS No. 205 specify that the cleaning instruction label currently required for Items 12, 13, 16A and 16B not be required for these items of glazing because these items of glazing are not required to meet the 70% light transmittance requirement (Test 2 of the ANSI standard). The NPRM proposed deleting S5.1.2.2 and S5.1.2.10, which contains cleaning instruction label requirements from FMVSS No. 205. Since ANSI/SAE Z26.1–1996 contains the cleaning instruction label requirements for the aforementioned Items, FMVSS No. 205 would incorporate them by reference.

4. Additional Tests

Sekurit expressed the view that additional tests, not included in ANSI/SAE Z26.1–1996, could have been added to FMVSS No. 205. These tests include a head-impact test for windshields (ISO 3537), a requirement for testing of optical properties of a windshield according to ISO 3538, and a mechanical strength test using a 227 g (0.5 lb.) ball at high and low temperatures. According to Sekurit, ISO 3538 takes windscreen design, rake angle, and field of vision into account while ANSI/SAE Z26.1–1996 tests optical properties by an obsolete method that does not take into account the current design of windshields. Additionally, Sekurit argued that a mechanical strength test using a 227 g (0.5 lb.) ball would more closely proximate real-life conditions than the strength test in ANSI.

IV. Agency Discussion of Issues and Response to Comments

A. Summary of Changes from the NPRM

In response to the comments, the agency is modifying the approach it proposed in the NPRM. The major deviations from the proposal are summarized below.

- The fracture test of ANSI/SAE Z26.1–1996 is clarified to indicate that *any* piece of glazing subject to the fracture test may be tested, and that the test procedure is a single fracture origin or break point 25 mm (1 in.) inboard at the edge of the midpoint of the longest edge of the specimen as specified in ANSI/SAE Z26.1–1996.
- Shade band areas are required to conform with the SAE J100 recommended practice. However, a substitution of the ECE R43 procedure "up angle" of 7 degrees, instead of the SAE procedure "up angle" of 5 degrees, will be used to determine the upper limit of the area for driving visibility.

B. Meaning of the "Most Difficult Part or Pattern" for the Fracture Test

Currently, Fracture Test No. 7 specifies dropping a 227 g (0.5 lb) ball onto 305 mm × 305 mm (12 in. × 12 in.) laboratory samples of glazing. The drop height starts at ten feet and increases until the samples break. To pass the test, the largest fractured particle must weigh 4.3 g (0.15 oz.) or less.

The proposed fracture test in S5.7.2 specified six production parts representing each construction type model number. Fracture Test No. 7 stated, "[T]he number of specimens selected from each model number of glazing shall be six (6) and shall all be of the *most difficult part or pattern* (emphasis added) designation within the model number." The fracture origin or break point is 25 mm (1 in.) inboard of the edge at the midpoint of the longest edge of the specimen. If the specimen has two long edges of equal length, the edge nearer the manufacturer's trademark is chosen. To obtain fracture, a spring loaded center punch or a hammer of about 75 g (2.65 oz.), each with a point having a radius

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Z26.1–1996 states, "[t]he number of specimens selected from each model number of glazing shall be six (6) and shall all be of the most difficult part or pattern designation within the model number."

[4] Laboratory-accelerated weathering tests are used to test the durability of glazing materials by simulating the damaging effects of sunlight over an extended period of time. The weathering tests are used to identify materials that are more susceptible to sun damage, such as rigid plastics, flexible plastics and glass-plastics (annealed and tempered). Currently, the weathering test procedures of ANSI Z26.1 simulate sunlight using a carbon arc lamp.

[5] Narrow spikes of energy in the ultraviolet range of the electromagnetic spectrum (wavelengths of 400 nm and below) can affect how some materials will degrade.

[6] ANSI Z26.1 requires most passenger car windows to pass a light transmittance test that assures that they transmit 70 percent of the incident light. While all windows in passenger cars are considered requisite for driving visibility, certain areas of the glazing that are not at levels requisite for driving visibility may be tinted. The most familiar location for the tinted areas is the upper region of the windshield. This area is typically called a "shade band."

[7] As defined in SAE's Recommended Practices, an eyellipse is a statistical representation of driver eye locations in road vehicles. It is an eye movement/position survey designed to identify vision and field of view contours. The 95th percentile male eyellipse is specified in SAE J100 because it is the highest eyellipse, and therefore is the eyellipse most likely to be blocked by the shade band.

[8] On June 17, 1998, we published (63 FR 33194) a new standard for "low-speed vehicles" (49 CFR 571.500). The rule defines low-speed vehicles as a separate vehicle type, and S5(b)(8) of the rule specifies the use of either AS–1 or AS–5 glazing for the windshield of these vehicles. The rule also separately incorporates by reference the 1977/1980 version of ANSI Z26.1, rather than cross-referencing FMVSS No. 205.

[9] Paragraph S6.2 of FMVSS No. 205 requires that the prime glazing manufacturer mark the glazing with, among other things, a manufacturer's mark. We assign the mark upon written request of the manufacturer. We maintain a list of glazing manufacturers and the marks assigned to them. One use of these code marks (often referred to as a "DOT number") is during an enforcement action to identify the manufacturer that produced a particular piece of glazing.

[10] SAE Recommended Practice J673 provides several mechanical treatments that shape the edge of the finished glazing for either laminated glazing or tempered glass glazing. The intent of these treatments is to reduce the risk of a lacerative injury due to an exposed sharp edge or corner in the finished glazing product.

of curvature of 0.2 mm ± 0.05 mm (0.0008 in. ± 0.002 in.), is used. To pass the test, the largest fractured particle must weigh 4.3g (0.15 oz.) or less.

In the NPRM, NHTSA stated "we believe that the phrase "most difficult part or pattern" was intended to mean the part of the glazing that provides for 'worst-case' testing." After consideration of the comments, NHTSA now agrees that this interpretation of the phrase was not the intent of the authors of ANSI/SAE Z26.1–1996. In the context of ANSI/SAE Z26.1–1996, as clarified by SAE in its comment to the NPRM, the "most difficult part or pattern" refers to the most difficult application or component with respect to the fracture performance for a given glazing model number. In other words, ANSI/SAE Z26.1 calls for fracture testing on the "worst-case" use, rather than on the worst case target area. It does not refer to the fracture location on a given piece of glazing, nor does it refer to the part of the glazing that provides for "worst-case" testing.

For the purposes of FMVSS No. 205, the phrase "the most difficult part or pattern" means the worst-case component with respect to fracture performance, not the worst-case test location on that component. The worst-case component could be picked from the grouping of such articles that are described by a common manufacturer's model number. For instance, using the example cited by SAE in its comments to the NPRM,[11] if a manufacturer produces side and rear windows with the same model number and the rear window performs worse in the fracture performance test, then the rear window must pass the fracture performance test. The difficulty referred to is in regard to meeting the particle weight requirement of the fracture test.

Sekurit suggested requiring multiple fracture points and other manufacturers have objected to conducting fracture testing on production parts with a single fracture origin or breakpoint 25 mm (1 in.) inboard at the edge of the midpoint of the longest edge of the specimen. They stated that the fracture test could be interpreted to have many fracture points. These manufacturers, however, have not demonstrated a safety need to deviate from the testing specified in ANSI/SAE Z26.1–1996. For this reason, NHSTA believes that the test procedures need not be revised at this time. However, as suggested by Sekurit, NHTSA will continue to explore the desirability of extending the test procedures to multiple break points in the future, through participation in the UN/ECE Working Party 29's Working Party on General Safety Provisions (GRSG).

In retaining the "most difficult part or pattern" requirement, NHTSA agrees with the SAE and has decided to clarify that *any* piece of glazing subject to the fracture test may be tested, and that the test procedure will be a single fracture origin or break point 25 mm (1 in.) inboard at the edge of the midpoint of the longest edge of the specimen as specified in ANSI/SAE Z26.1–1996.

C. Xenon Light Source for the Weathering Test

As noted above, Ford and SAE concurred with the agency's tentative conclusion that a xenon arc produces a spectral power distribution closer to that of sunlight than carbon arc lamps and that it is an improved light source for the weathering tests. As in the NPRM, we also note that most of the testing industry is currently using xenon arc lamp test devices to simulate weathering. For these reasons, the agency has decided to adopt the use of the xenon arc lamp test device for the weathering tests as specified in ANSI/SAE Z26.1–1996.

D. Limiting the Width of the Shade Band

In response to comments by DaimlerChrysler, Toyota, and FGMAJ, NHTSA commissioned a study at General Test Laboratories (GTL) of current industry practices (SAE J100 and ECE R43) concerning shade band areas.[12]

As a preliminary matter, NHTSA collected data for a series of five windshields from current production vehicles to evaluate the lower boundary of actual windshield shade bands in comparison to the SAE J100 recommendations. The vehicle manufacturers supplied full size templates for each windshield. On these templates, NHTSA engineers measured the difference between the AS–1 line and the boundary of the shade band zone defined in Section 4.1 of SAE J100 for forward glazing (J100 line). The boundary value for the upper limit of level of visibility in SAE J100 is defined as the intersection of the windshield's centerline with an inclined plane tangent to the upper edge of the 95th eyellipse. The AS–1 line marked on the upper edge of the windshield equipped with a shade band shows the current shade band practice by the manufacturer.[13] NHTSA's limited survey of vehicles found that the manufacturer-provided shade bands did not extend as far downward as permitted by SAE J100, and the distance between the lower boundary of the shade bands and the boundary limit recommended in SAE J100 ranged from 45 mm (1.8 in.) for the Chevrolet Camaro to about 191 mm (7.5 in.) for the Pontiac Grand Am (Table 1). Based on these measurements, all vehicles tested exceeded the recommendations set forth in SAE J100.

Next, NHTSA determined the extent to which the ECE R43 requirement (ECE R43 line) was exceeded. It then compared the extent to which the ECE R43 line was exceeded with the extent to which the J100 line was exceeded. These comparisons are shown in Table 1.

TABLE 1.—COMPARISON OF ESTIMATED SHADE BAND COMPLIANCE WITH SAE J100 AND ECE–R43

Manufacturer	Model	(a) AS–1 line, SAE exceedance*, inches	Pass SAE J100?	(b) AS–1 line, ECE–R43 exceedance*, inches	Pass ECE 43?
General Motors	Chevrolet Camaro	1.8	Yes	–0.8	No
General Motors	Saturn LS2	4	Yes	2.4	Yes
General Motors	Pontiac Grand Am	7.5	Yes	5	Yes
Mitsubishi	Galant	N/A**	N/A**	N/A**	N/A**

[11] Docket No. NHTSA–99–6024–10.

[12] GTL is a test facility used by NHTSA to evaluate vehicle equipment for compliance with the FMVSSs.

[13] FMVSS No. 205 requires that manufacturers mark the windshields to show the limits of the area having a luminous transmittance of less than 70%. For example, if a manufacturer chooses to install a shade band at the upper edge of the windshield, the windshield must be permanently marked with a line indicating the line of demarcation. An arrow and "AS–1" must also be marked on the glazing which points to the area compliant with the visibility requirements [minimum level of light transmittance required for a windshield in the area indicated by the direction of the arrow] of FMVSS No. 205.

TABLE 1.—COMPARISON OF ESTIMATED SHADE BAND COMPLIANCE WITH SAE J100 AND ECE–R43—Continued

Manufacturer	Model	(a) AS–1 line, SAE exceedance*, inches	Pass SAE J100?	(b) AS–1 line, ECE–R43 exceedance*, inches	Pass ECE 43?
Ford	Focus	6.1	Yes	4.3	Yes

*Linear distance measured on the windshield surface between the location of the AS–1 line indicated on the windshield and the lowest allowable AS–1 line in accordance with SAE J100 or ECE R43. A positive value indicates that the AS–1 line lies above the lowest allowable AS–1 line. A negative value indicates noncompliance with the requirement, *i.e.*, it represents a hypothetical test failure.
** Not applicable. There was no AS–1 line on the windshield because it had no shade band.

As demonstrated in Table 1, not all tested vehicles comply with ECE R43, and differing results occur for the SAE J100 procedure and the ECE R43 procedure. The SAE procedure uses an "up angle" of 5 degrees to determine the lower limit of the shade band area and the ECE R43 procedure uses an "up angle" of 7 degrees to determine the upper limit of the area for driving visibility. Other minor factors distinguish the SAE method from the ECE method, but these differences are due only to the method by which the point of origin for the 5 degree and 7 degree lines is established.[14]

As stated in the NPRM, NHTSA believes that establishing a lower boundary for windshield shade bands is a necessary component of the amended glazing standard. Further, no negative comments were received on the proposal to institute a requirement for the lower boundary for a shade band on a windshield.

The net safety benefit from the slight differences in allowable shade band design between SAE J100 and ECE R43 is negligible. While the SAE procedure offers slightly greater glare protection, the ECE R43 procedure allows a greater daylight opening for visibility at luminous transmittance values of 70% or greater. NHTSA believes that the approaches set forth in both ECE R43 and SAE J100 represent reasonable approaches to determining the limits of a windshield shade band.

However, each procedure is dependent upon the location of a seating design point defined by the vehicle manufacturer. The ECE method relies upon the location of the European "R-point" whereas the SAE method relies upon the SAE seating reference point (SgRP). Due to the existence of only slight technical differences between the two methods and the use of SgRP in other FMVSS, NHTSA has decided to adopt the SAE J100 recommended practice. This adoption includes, however, a substitution of the ECE R43 procedure "up angle" of 7 degrees, instead of the SAE procedure "up angle" of 5 degrees, to determine the upper limit of the area for driving visibility.

Using the 7 degree "up angle" method for determining the location of the AS–1 line increases the total windshield visibility. Additionally, manufacturers that presently manufacture their shade bands in accordance with SAE J100 can continue using the same testing conditions and procedures defined in SAE J100, except for the "up angle." However, due to the substantial similarity between the provisions of SAE J100 and ECE R43, except for the degree of the "up angle," the agency anticipates the shade band boundary line under the new rule would more closely approximate the ECE-R43 line due to the 7 degree "up angle" for most vehicles. Therefore, we believe manufacturers would be able to market vehicles with the same AS–1 line in both Europe and the United States.

Agency testing indicates that most manufacturers do not use all of the potential available windshield shade band area available under ECE R43 for shade band coverage. However, as demonstrated above in Table 1, not all tested vehicles complied with ECE R43 (one out of four did not comply). Therefore, a small percentage of current production vehicles may not comply with the new shade band requirement. However, as with the 2000 Chevrolet Camaro, the anticipated extent of failure for this small percentage of vehicles is slight. The agency believes that modifying the shade band location by 25 mm (1 inch) or less on most vehicles represents a reasonable undertaking that should not be costly for manufacturers and that can be accomplished within a short lead time. Based on the results of the agency's testing, manufacturers should have no difficulty adjusting shade bands to meet the new requirement.

With regard to shade band requirements for glazing areas other than the upper edge of the windshield, SAE J100 does not address driver visibility for the bottom edge of the windshield or for the side of the windshield. SAE J100 does include shade band requirements for fixed side and rear windows. While SAE J100 includes this requirement for side and rear windows, the majority of side and rear windows are tempered glass. Shade bands can only be applied to laminated glazing (by tinting the inner layer). Laminated glazing is required only for windshield applications. Therefore, shade bands rarely exist on fixed side and rear windows. Further, ECE R43 does not contain shade band requirements for side or rear windows. Because of the limited number of fixed side and rear windows containing shade bands and because of harmonization concerns, as commented by FGMAJ, the agency has decided to apply the provisions of SAE J100 exclusively to windshield applications. However, the light transmittance requirements for side and rear windows contained in FMVSS No. 205 and ANSI/SAE Z26.1–1996 will continue to apply to side and rear windows.

E. Certification and Verification of DOT Numbers

Comments concerning the certification and verification of DOT numbers suggest that NHTSA's DOT registry process should require additional certification and verification activities such as the re-certification of numbers every 5 years and the maintenance of active and non-active manufacturer lists. Commenters did not, however, provide evidence that the additional certification and verification activities would yield safety benefits. Further, the agency believes that additional certification and verification activities would require additional resources and manpower which would, in turn, adversely impact the agency's use of its resources to upgrade its safety

[14] The test zones used by each standard are generated using different methods. The European test zone uses the ISO "V" points (coordinates related to seat back angle) while the U.S. zones are based on the SAE J941 eyellipse. However, the ISO "V" points are a derivative of the SAE eyellipse, and generate substantially similar zones. While the zones are not identical, the differences in practice account for only slight variations in calculated outcomes.

standards. Due to the absence of apparent safety benefits and because additional registry and certification activities would detract resources from its safety mission, the agency is not amending the current DOT registry process at this time.

As stated above, FGMAJ suggested that a manufacturer who cuts glazing should be required to obtain a separate DOT code number from the one used by the prime glazing manufacturer who produces the glazing. NHTSA is unaware of any safety benefits associated with this suggestion. Additionally, this suggested action would create an additional resource burden for the agency.[15] Therefore, NHTSA is not adopting the suggested requirement. NHTSA, however, is aware of the need for clarification regarding certification responsibilities and is adopting the language proposed in the NPRM for S6 of FMVSS No. 205. This revised section provides a more straightforward and clearer statement of the certification and marking responsibilities of a manufacturer who fabricates, laminates, or tempers glazing material and distinguishes those responsibilities from those of a manufacturer who cuts a section of glazing material for subsequent use in a motor vehicle application. This text also makes clear that the requirement to affix a manufacturer's code mark to the glazing applies only to the prime glazing manufacturer [16] and not to a manufacturer or distributor who simply cuts a piece of glazing.

The proposed regulatory text in the NPRM included a definition of "prime glazing manufacturer" as "a manufacturer that fabricates, laminates, or tempers glazing materials." FGMAJ commented that this definition should also include a reference to aftermarket manufacturers. The agency considers it unnecessary to add a reference to aftermarket manufacturers in the definition of "prime glazing manufacturer." FMVSS No. 205 applies to all glazing for use in motor vehicles, whether it is supplied as original equipment in a vehicle or as an aftermarket product. Besides this suggestion by FGMAJ, the agency received no other comments concerning the definition of "prime glazing manufacturer." Therefore, the agency has decided to adopt the definition of "prime glazing manufacturer" as proposed in the NPRM.

D. Other Issues

1. Applicability of Standard to MPVs

Today's rule retains S5.1.1.6 in the regulatory text of FMVSS 205. Paragraph S5.1.1.6 ensures that MPVs must meet the same glazing requirements as those required for trucks. NHTSA agrees with DC and SAE that the requirements for glazing to be used in trucks should be applied to glazing for use in MPVs. This approach of applying identical requirements to both trucks and MPVs is consistent with the treatment of trucks and MPVs in past interpretations (57 FR 2496; 63 FR 37820).

2. Edge Treatment for Automotive Safety Glass

NHTSA agrees with SAE that the requirements of S5.2 of FMVSS No. 205 are redundant with the edge treatment provisions of Section 6 of ANSI/SAE Z26.1–1996, which requires that exposed edges in vehicles other than school buses shall be treated in accordance with SAE J673 (April 1993 version) and that exposed edges in school buses shall be banded. Section 6 of ANSI/SAE Z26.1–1996 is identical to the current requirements for edge treatment in FMVSS No. 205, except that FMVSS No. 205 incorporates by reference an outdated (1967) version of SAE J673. Due to the redundancy between FMVSS No. 205 and ANSI/SAE Z26.1–1996 concerning the requirements for edge treatment and because ANSI/SAE Z26.1–1996 contains a more recent version of SAE J673, the agency will delete S5.2 from FMVSS No. 205 and revise the regulatory text accordingly.

3. Labeling

Toyota has requested that FMVSS No. 205 state that the cleaning instruction label requirement in ANSI/SAE Z26.1–1996 is not applicable to Items 12, 13, 16A and 16 B. With the deletion of S5.1.2.2 and S5.1.2.10, the cleaning instruction requirements for these items would be found in ANSI/SAE Z26.1–1996.

Toyota is correct that Items 12, 13, 16A and 16B are not required to meet the light transmittance test in ANSI/SAE Z26.1–1996. However, ANSI/SAE Z26.1–1996 does include tests, *e.g.*, the weathering test, which ensure that they maintain a luminous transmittance that closely approximates the transmittance found in their original manufactured state. This indicates to NHTSA that, while Items 12, 13, 16A and 16B need not meet the 70% light transmittance test, it is important for these items of glazing to maintain a luminous transmittance which is achieved, in part, by proper maintenance and cleaning indicated on the cleaning instruction label on the glazing. Additionally, ANSI/SAE Z26.1–1996 provides manufacturers with the option of placing cleaning instructions in the vehicle's owner's manual rather than on a label affixed to the glazing for Items 16A and 16B. The agency believes that the option of placing the cleaning instructions in the owner's manual rather than on a cleaning instruction label on the glazing partially alleviates Toyota's concern.

4. Additional Tests

As discussed above, Sekurit suggested that the agency incorporate additional tests for head impact into windscreens, optical properties, and mechanical strength into FMVSS No. 205. Currently, the agency, through participation in GRSG meetings on the proposed Global Glazing Regulation, is evaluating the tests recommended by Sekurit. If NHTSA tentatively concludes that these tests would have a safety benefit, the agency may propose adoption of one or more of these tests in a future rulemaking.

V. Effective Date

The agency proposed a leadtime of 45 days. AP Technoglass, a glazing manufacturer, commented that the new requirements, including shade band, glass fracture test, and weathering test requirements, may affect glazing currently under production that does not conform to the new requirements. For instance, manufacturers may need to purchase new equipment to perform the weathering test with a xenon arc lamp. NHTSA agrees that these new requirements may take longer than 45 days to incorporate. In NHTSA's judgment, these changes can be accomplished within 180 days. Consequently, the changes to FMVSS No. 205 will become effective, and compliance will be required, 180 days following the publication of the final rule. However, manufacturers may voluntarily comply with this rule earlier.

VI. Plain Language

In accordance with Executive Order 12866, we have rewritten or reorganized portions of the regulatory text for clarity and conformance to Plain Language practices. These include portions of the regulatory text that are not being substantively changed by this rule. For example, we have replaced passive verbs with active verbs, replaced "shall" with "must," and made explicitly clear who has the responsibility for acting.

Rewriting is especially apparent in the certification and marking requirements of section 6. We eliminated the marking requirement of former S6.1 because it is already incorporated in section 7 of ANSI/SAE Z26.1–1996. We moved the definition of prime glazing manufacturer in S6.1 into the S4 definitions section. To eliminate redundancy, former S6.2 and S6.3 have been combined in S6.1, and former S6.4 and S6.5 have been combined in S6.3. We do not intend by this rule to make any substantive changes in S6.

VII. Rulemaking Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking action was not reviewed under Executive Order 12866. The rulemaking action is not significant under Department of Transportation regulatory policies and procedures. The effect of the rulemaking action is to clarify existing requirements. It will not impose any additional burden upon any person. Impacts of the final rule are, therefore, so minimal that preparation of a full regulatory evaluation is not warranted.

Regulatory Flexibility Act

We have considered the impacts of this rulemaking action in relation to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this rulemaking action will not have a significant economic impact upon a substantial number of small entities.

The following is our statement providing the factual basis for the certification (5 U.S.C. 605(b)). The final rule affects manufacturers of motor vehicles and motor vehicle glazing. According to the size standards of the Small Business Association (at 13 CFR part 121.601), manufacturers of glazing are considered manufacturers of "Motor Vehicle Parts and Accessories" (SIC Code 3714). The size standard for SIC Code 3714 is 750 employees or fewer. The size standard for manufacturers of "Motor Vehicles and Passenger Car Bodies" (SIC Code 3711) is 1,000 employees or fewer. This Final Rule will not have any significant economic impact on a small business in these industries because it makes no significant substantive change to requirements currently specified in FMVSS No. 205. Small organizations and governmental jurisdictions that purchase glazing will not be significantly affected because this rulemaking will not cause price increases. Accordingly, we have not prepared a Regulatory Flexibility Analysis.

Federalism

Executive Order 13132 requires us to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, we may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or unless we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation with Federalism implications and that preempts State law unless we consult with State and local officials early in the process of developing the proposed regulation.

This final rule will not have any substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of Section 6 of the Executive Order do not apply to this rule.

Civil Justice Reform

This rule does not have any retroactive effect. According to 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

National Technology and Transfer and Advancement Act of 1995 (NTTAA)

Under the National Technology and Transfer and Advancement Act of 1995 (NTTAA) (Public Law 104–113), "all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments." Certain technical standards developed by the American National Standards Institute (ANSI) and Society of Automotive Engineers (SAE) have been considered and incorporated by reference in the formulation of these requirements.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et. seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. NHTSA has reviewed this proposal and determined that it does not contain collection of information requirements.

Unfunded Mandates Reform Act of 1995

This rule does not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. (2 U.S.C. 1531 *et seq.*).

VIII. Regulatory Text

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.205 is amended by:
■ a. Revising paragraph S3,
■ b. Amending S4 by adding a new definition in alphabetical order,
■ c. Revising paragraph S5.1,
■ d. Revising paragraph S5.2,
■ e. Adding paragraph S5.3,
■ f. Adding paragraph S5.4,
■ g. Revising paragraphs S6.1 through S6.3,
■ h. Removing paragraphs S6.4 and S6.5, and

[15] The Automotive Manufacturers Equipment Compliance Agency (AMECA) and AP Technoglass Company estimate that there are in excess of 700 prime glazing manufacturers. They further estimate that the number of manufacturers that cut glass is the same or slightly more than the number of prime glazing manufacturers.

[16] A "prime glazing manufacturer" is defined as one who "fabricates, laminates, or tempers the glazing material."

■ i. Removing Figure 1, at the end of the section.

The additions and revisions read as follows:

§ 571.205 Standard No. 205, Glazing materials.

* * * * *

S3. *Application and Incorporation by Reference.*

S3.1 *Application.* This standard applies to passenger cars, multipurpose passenger vehicles, trucks, buses, motorcycles, slide-in campers, pickup covers designed to carry persons while in motion, and low speed vehicles, and to glazing materials for use in those vehicles.

S3.2 *Incorporation by Reference.*

(a) "American National Standard for Safety Glazing Materials for Glazing Motor Vehicles and Motor Vehicle Equipment Operating on Land Highways-Safety Standard" ANSI/SAE Z26.1–1996, Approved by American National Standards Institute August 11, 1997 (ANSI/SAE Z26.1–1996) is incorporated by reference in Section 5.1 and is hereby made part of this Standard. The Director of the Federal Register approved the material incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 (*see* § 571.5 of this part). A copy of ANSI/SAE Z26.1–1996 may be obtained from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096–0007. A copy of ANSI/SAE Z26.1–1996 may be inspected at NHTSA's technical reference library, 400 Seventh Street, SW., Room 5109, Washington, DC or at the Office of the Federal Register, 900 North Capitol Street, NW., Suite 700, Washington, DC.

(b) The Society of Automotive Engineers (SAE) Recommended Practice J673, revised April 1993, "Automotive Safety Glasses" (SAE J673, rev. April 93) is incorporated by reference in Section S5.1, and is hereby made part of this Standard. The Director of the Federal Register approved the material incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 (*see* § 571.5 of this part). A copy of SAE J673, rev. April 93 may be obtained from SAE at the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096. A copy of SAE J673, rev. April 93 may be inspected at NHTSA's technical reference library, 400 Seventh Street, SW., Room 5109, Washington, DC, or at the Office of the Federal Register, 900 North Capitol Street, NW., Suite 700, Washington, DC.

(c) The Society of Automotive Engineers (SAE) Recommended Practice J100, revised June 1995, "Class 'A' Vehicle Glazing Shade Bands" (SAE J100, rev. June 95) is incorporated by reference in Section S5.3, and is hereby made part of this Standard. The Director of the Federal Register approved the material incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 (*see* § 571.5 of this part). A copy of SAE J100, rev. June 95 may be obtained from SAE at the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096. A copy of SAE J100, rev. June 95 may be inspected at NHTSA's technical reference library, 400 Seventh Street, SW., Room 5109, Washington, DC, or at the Office of the Federal Register, 900 North Capitol Street, NW., Suite 700, Washington, DC.

S4. *Definitions.*

* * *

Prime glazing manufacturer means a manufacturer that fabricates, laminates, or tempers glazing materials.

* * * * *

S5. *Requirements.*

S5.1 Glazing materials for use in motor vehicles must conform to ANSI/SAE Z26.1–1996 unless this standard provides otherwise.

S5.2 NHTSA may test any portion of the glazing when doing the fracture test (Test No. 7) described in section 5.7 of ANSI/SAE Z26.1–1996.

S5.3 *Shade bands.* Shade band areas for windshields shall comply with SAE J100, rev. June 95 except that the value of 7 degrees must be used in place of the value of 5 degrees specified in Section 4, Shade Band Boundary Requirements, of SAE J100, rev. June 95.

S5.4 *Low speed vehicles.* Windshields of low speed vehicles must meet the ANSI/SAE Z26.1–1996 specifications for either AS–1 or AS–4 glazing.

S6. *Certification and marking.*

S6.1 A prime glazing material manufacturer must certify, in accordance with 49 U.S.C. 30115, each piece of glazing material to which this standard applies that is designed—

(a) As a component of any specific motor vehicle or camper; or

(b) To be cut into components for use in motor vehicles or items of motor vehicle equipment.

S6.2 A prime glazing manufacturer certifies its glazing by adding to the marks required by section 7 of ANSI/SAE Z26.1–1996, in letters and numerals of the same size, the symbol "DOT" and a manufacturer's code mark that NHTSA assigns to the manufacturer. NHTSA will assign a code mark to a manufacturer after the manufacturer submits a written request to the Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. The request must include the company name, address, and a statement from the manufacturer certifying its status as a prime glazing manufacturer as defined in S4.

S6.3 A manufacturer or distributor who cuts a section of glazing material to which this standard applies, for use in a motor vehicle or camper, must—

(a) Mark that material in accordance with section 7 of ANSI/SAE Z26.1–1996; and

(b) Certify that its product complies with this standard in accordance with 49 U.S.C. 30115.

■ 3. Section 571.500 is amended by revising paragraph (b)(8) of S5; to read as follows:

§ 571.500 Standard No. 500; Low-speed vehicles.

S5. *Requirements*

* * * * *

(b) * * *

(8) A windshield that conforms to the Federal motor vehicle safety standard on glazing materials (49 CFR 571.205).

* * * * *

Issued on: July 21, 2003.

Jeffrey W. Runge,

Administrator.

[FR Doc. 03–18924 Filed 7–24–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2003–15505]

NHTSA Vehicle Safety Rulemaking and Supporting Research: Calendar Years 2003–2006

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Vehicle safety rulemaking priorities document; notice of availability.

SUMMARY: This document announces the availability of a planning document that describes NHTSA's vehicle safety rulemaking priorities with supporting research through 2006. The plan includes those rulemaking actions of highest priority for the period 2003 to 2006, based primarily on the greatest potential protection of lives and prevention of injury, that fall within the immediate four-year time frame. In addition, NHTSA has considered the realistic likelihood for successful action, especially considering the reality of numerous worthwhile options competing for budgetary resources. The priorities were defined through extensive discussions within the agency, taking into account the views heard in recent years at public meetings and comments submitted to the agency via rulemaking notices and requests for comment. In addition, comments submitted by the public in response to a Request for Comments announcing the draft of this plan on July 25, 2002 (Docket No. NHTSA–2002–12391) were evaluated and incorporated, as appropriate, into the planned agency activities. The results produced by previous NHTSA rulemaking priority planning exercises also provided input to this process. While the plan includes other active areas, in addition to the rulemaking priorities, it discusses only a portion of all rulemaking actions the agency has begun or plans to undertake in the four-year period. The absence of a particular regulatory or research activity from the plan does not necessarily mean that the agency will not pursue it. Although the execution of a priority plan is affected by factors beyond its control (*e.g.*, petitions, budgets, legislation), this plan provides a blueprint for regulatory action on those vehicle safety goals the agency considers its highest priorities.

ADDRESSES: Interested persons may obtain a copy of the planning document by downloading a copy of the document from the Docket Management System, U.S. Department of Transportation, at the address provided below, or from NHTSA's Web site at *http://www.nhtsa.dot.gov/cars/rules/rulings.* Alternatively, interested persons may obtain a copy of the document by contacting the agency officials listed in the section titled, "For Further Information Contact," immediately below.

The Docket Management System is located on the Plaza level of the Nassif Building at the U.S. Department of Transportation, PL 401, 400 Seventh Street, SW, Washington, DC 20590–0001. You can review public dockets there between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You can also review comments on-line at the DOT Docket Management System Web site at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Lawrence L. Hershman, Office of Rulemaking, NVS–133, National Highway Traffic Safety Administration, Room 5320, 400 Seventh Street, SW, Washington, DC 20590. Telephone: 202–366–4929. E-mail: *lhershman@nhtsa.dot.gov.*

SUPPLEMENTARY INFORMATION: Motor vehicle crashes killed more than 42,000 individuals and injured 2.9 million others in six million crashes in 2001. In addition to the terrible personal toll, these crashes make a huge economic impact on our society with an estimated annual cost of $230.6 billion, or an average of $820 for every person living in the United States. One of the most important ways in which NHTSA carries out its safety mandate is to issue and enforce Federal Motor Vehicle Safety Standards (FMVSS). Through these rules, NHTSA strives to reduce the number of crashes and to minimize the consequences of those crashes that do occur. NHTSA's rulemaking activities, via the Rulemaking Program with support from the offices of Applied Research, Enforcement, Planning, Evaluation and Budget, Advanced Research and Analysis, and Chief Counsel, identify safety problem areas, develop countermeasures, and collect and analyze information to develop new FMVSS and amendments to existing FMVSS.

As we continue into the new century, NHTSA will strive to influence the automotive industry to incorporate the rapidly accelerating pace of advances in vehicle and safety technology into new vehicles while ensuring that the use of the new technologies enhances vehicle safety. The plan outlines the highlights of NHTSA's vehicle safety rulemaking plans through 2006. Agency priorities emanate from many sources, including: the size of the safety problem and likelihood of solutions, Executive initiatives, Congressional interest and mandates, petitions to the agency for rulemaking and other expressions of public interest, interest in harmonizing safety standards with those of other nations, and changes needed as a result of new vehicle technologies. The starting point for rulemaking priorities is the quest for the greatest potential protection of lives and prevention of injury.

The plan is organized along several broad categories: Crash Prevention includes crash avoidance data, driver distraction, vehicle visibility, crash warnings, and vehicle control and handling. Occupant Protection includes protection in frontal, side, rollover, and rear crashes. Other sections cover Incompatibility Between Passenger Cars and Light Trucks, Heavy Truck Safety, and Protecting Special Populations, including safety for children, people with disabilities, and older people.

The plan includes several potential rulemaking projects that require additional research to determine whether rulemaking action is needed, but are priorities based on their potential for significantly sizeable death and injury prevention benefits. The plan also contains an appendix that discusses some other regulatory activities that the agency considers important, although not rising to the same level of immediate high priority as the activities included in the main body of the plan. Another appendix discusses upcoming milestones in consumer information activities that the agency plans to pursue in the next few years, including the New Car Assessment Program (NCAP).

This document announces the availability of the document to the public. Received comments on the draft plan were evaluated and incorporated, as appropriate, into planned agency activities. Comments that could not be accommodated in the current plan will be considered in the context of future updates.

The plan will be posted on NHTSA's Web site on July 21, 2003. The agency intends to periodically update the plan.

You may also see the plan on the Internet by taking the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov*).

2. On that page, click on "search."

3. On the next page (*http://dms.dot.gov/search/*) type in the five-digit Docket number shown at the beginning of this document (NHTSA–2003–15505). Click on "search."

4. On the next page, which contains Docket summary information for the Docket you selected, click on the desired document. You may also download the document.

Authority: 49 U.S.C. 30111, 30117, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: July 17, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–18914 Filed 7–24–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 030514123–3162–02; I.D. 041003B]

RIN 0648–AQ76

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 38 to the Northeast Multispecies Fishery Management Plan; Correcting Amendment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correcting amendment.

SUMMARY: NMFS issued a final rule to implement measures contained in Framework Adjustment 38 (Framework 38) to the Northeast (NE) Multispecies Fishery Management Plan (FMP) to exempt a fishery from the Gulf of Maine (GOM) Regulated Mesh Area mesh size regulations. The final rule implementing Framework 38 was published in the **Federal Register** on July 9, 2003. One of the coordinates contained in the Gulf of Maine (GOM) Grate Raised Footrope Trawl Whiting Fishery Exemption Area table is incorrect. This document corrects that error.

DATES: This regulation is effective July 25, 2003.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, 978–281–9272.

SUPPLEMENTARY INFORMATION:

Need for the Correction

The final rule implementing measures contained in Framework 38 to the FMP was published in the **Federal Register** on July 9, 2003 (68 FR 40810), and became effective on the date of publication. The North Latitude coordinate for Point GRF5 (44° 58.5′) in the table, GOM Grate Raised Footrope Trawl Whiting Fishery Exemption Area, contained in § 648.80(a)(16), is incorrect. The correct North Latitude coordinate for Point GRF5 is 43° 58.8′.

When the Council voted to include the ocean area adjacent to the original experimental fishery area because of its similarity to the area in which the experimental fishery took place, it incorrectly listed the GRF5 decimal point reference as 44.98 N. Latitude in the EA. This point reference should have been 43.98 N. Latitude, which converts to the geographic coordinates equivalent of 43 58.8′. While substitution of the correct geographic coordinates for Point GRF5 does not change the seaward boundaries of the fishing area, it removes the erroneous landward extension of the fishing area north from the shoreline.

Therefore, because the final rule published on July 9, 2003, which was the subject of FR Doc. 03–17106, contained an incorrect coordinate in the table contained in § 648.80(a)(16), on page 40810, in the third column, in the table contained in § 648.80(a)(16), second column under "N. Lat.", the last coordinate, "44° 58.5′" is removed, and in its place "43° 58.8′" is added.

This document corrects the table under § 648.80(a)(16) as follows:

List of Subjects in 50 CFR Part 648

Fishing, Fisheries, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, 50 CFR part 648 is corrected to read as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for 50 CFR part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.80, the table contained in paragraph (a)(16) is corrected to read as follows:

§ 648.80 Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(16) * * *

GOM GRATE RAISED FOOTROPE TRAWL WHITING FISHERY EXEMPTION AREA

(July 1 through November 30)

	Point N.	Lat.W.	Long.
GRF1		43° 15′	70° 35.4′
GRF2		43° 15′	70° 00′
GRF3		43° 25.2′	70° 00′
GRF4		43° 41.8′	69° 20′
GRF5		43° 58.8′	69° 20′

* * * * *

Dated: July 18, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 03–18894 Filed 07–24–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 68, No. 143

Friday, July 25, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 922, 923, and 924

[Docket No. FV03–922–1 PR]

Increased Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rates established for the Washington Apricot Marketing Committee, the Washington Cherry Marketing Committee, and the Washington-Oregon Fresh Prune Committee (Committees) for the 2003–2004, and subsequent fiscal periods. This rule would increase the assessment rates established for the Committees from $2.50 to $3.00 per ton for Washington apricots, from $0.75 to $1.00 per ton for Washington sweet cherries, and $1.00 to $1.50 per ton for Washington-Oregon fresh prunes. The Committees are responsible for local administration of the marketing orders which regulate the handling of apricots and cherries grown in designated counties in Washington, and prunes grown in designated counties in Washington and in Umatilla County, Oregon. Authorization to assess apricot, cherry, and prune handlers enables the Committees to incur expenses that are reasonable and necessary to administer the programs. The fiscal period for these marketing orders begins April 1 and ends March 31. The assessment rates would remain in effect indefinitely unless modified, suspended or terminated.

DATES: Comments must be received by August 11, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George J. Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence SW, STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 922 (7 CFR part 922), regulating the handling of apricots grown in designated counties in Washington; Marketing Agreement and Order No. 923 (7 CFR part 923) regulating the handling of sweet cherries grown in designated counties in Washington; and Marketing Agreement and Order No. 924 (7 CFR part 924) regulating the handling of fresh prunes grown in designated counties in Washington and Umatilla County, Oregon, hereinafter referred to as the Aorders." The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing orders now in effect, handlers in the designated areas are subject to assessments. Funds to administer the orders are derived from such assessments. It is intended that the assessment rates as proposed herein would be applicable to all assessable Washington apricots, Washington sweet cherries, and Washington-Oregon fresh prunes beginning April 1, 2003, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rates established for the Committees for the 2003–2004 and subsequent fiscal periods from $2.50 to $3.00 per ton for Washington apricots, from $0.75 to $1.00 per ton for Washington sweet cherries, and $1.00 to $1.50 per ton for Washington-Oregon fresh prunes.

The orders provide authority for the Committees, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committees are producers and handlers in designated counties in Washington and in Umatilla County, Oregon. They are familiar with the Committees' needs and with the costs for goods and services in their local areas and are thus in a position to formulate appropriate budgets and assessment rates. The assessment rates are formulated and discussed in public

meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2002–2003 and subsequent fiscal periods, the Washington Apricot Marketing Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Washington Apricot Marketing Committee met on May 21, 2003, and unanimously recommended 2003–2004 expenditures of $10,559 and an assessment rate of $3.00 per ton of apricots. In comparison, last year's budgeted expenditures were $11,685. The assessment rate of $3.00 is $0.50 higher than the rate currently in effect. The increase is necessary to offset an anticipated decrease in production due to the adverse effect of cooler temperatures on the size and quality of the 2003 apricot crop.

The assessment rate recommended by the Washington Apricot Marketing Committee was derived by dividing anticipated expenses by expected shipments of apricots grown in designated counties in Washington. Applying the $3.00 per ton rate of assessment to the Washington Apricot Marketing Committee's 3,600 ton shipment estimate should provide $10,800 in assessment income. Income derived from handler assessments would be adequate to cover budgeted expenses and allow the Apricot Committee to maintain an acceptable financial reserve. Funds in the reserve ($8,360 as of March 31, 2003) would be kept within the maximum permitted by the order (approximately one fiscal period's operational expenses; § 922.42).

For the 1997–98 and subsequent fiscal periods, the Washington Cherry Marketing Committee recommended, and the USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Washington Cherry Marketing Committee met on May 22, 2003, and unanimously recommended 2003–2004 expenditures of $71,865 and an assessment rate of $1.00 per ton of cherries. In comparison, last year's budgeted expenditures were $68,715. The assessment rate of $1.00 is $0.25 higher than the rate currently in effect. The higher assessment rate is necessary to offset an anticipated decrease in production due to the adverse effect of cooler temperatures on the size and quality of the 2003 cherry crop.

The assessment rate recommended by the Washington Cherry Marketing Committee was derived by dividing anticipated expenses by expected shipments of sweet cherries grown in designated counties in Washington. Applying the $1.00 per ton rate of assessment to the Washington Cherry Marketing Committee's 64,000-ton shipment estimate should provide $64,000 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve ($33,064 as of March 31, 2003) would be kept within the maximum permitted by the order (approximately one fiscal period's operational expenses; § 923.42).

For the 2001–2002 and subsequent fiscal periods, the Washington-Oregon Fresh Prune Marketing Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Washington-Oregon Fresh Prune Marketing Committee met on June 3, 2003, and unanimously recommended 2003–2004 expenditures of $7,411 and an assessment rate of $1.50 per ton of prunes. In comparison, last year's budgeted expenditures were $8,095. The assessment rate of $1.50 is $0.50 higher than the rate currently in effect. The higher assessment rate is necessary to bring the assessment rate closer to budgeted expenses, and to use less of the reserve to fund expenses.

The assessment rate recommended by the Washington-Oregon Fresh Prune Committee was derived by dividing anticipated expenses by expected shipments of fresh prunes grown in designated counties in Washington, and Umatilla County, Oregon. Applying the $1.50 per ton rate of assessment to the Washington-Oregon Fresh Prune Marketing Committee's 4,300-ton shipment estimate should provide $6,450 in assessment income. Income derived from handler assessments, along with funds from the Washington-Oregon Fresh Prune Marketing Committee's authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve ($5,407 as of March 31, 2003) would be kept within the maximum permitted by the order (approximately one fiscal period's operational expenses; § 924.42).

All three Committees are managed from the same office, and as such, major expenses recommended by the Committees for the 2003–2004 year include salaries ($54,500), rent and maintenance ($7,200), compliance officer ($4,840), and Committee travel and compensation ($4,000). Budgeted expenses for these items in 2002–2003 were $49,100, $6,800, $5,120, and $6,100, respectively.

The proposed assessment rates would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committees or other available information.

Although the assessment rates would be in effect for an indefinite period, the Committees would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rates. The dates and times of the Committees' meetings are available from the Committees or USDA. The Committees' meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate the Committees' recommendations and other available information to determine whether modification of the assessment rates is needed. Further rulemaking would be undertaken as necessary. The Committees' 2003–2004 budgets and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 272 Washington apricot producers, 1,800 Washington sweet cherry producers, and 215 Washington-Oregon fresh prune producers in the respective production areas. In addition, there are approximately 28 Washington apricot handlers, 69 Washington sweet cherry handlers, and 10 Washington-Oregon fresh prune handlers subject to regulation under the respective marketing orders. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on a three-year average fresh apricot production of 4,225 tons (Washington Apricot Marketing Committee records), a three-year average producer price of $893 per ton as reported by National Agricultural Statistics Service (NASS), and 272 Washington apricot producers, the average annual producer revenue is approximately $13,871. In addition, based on Washington Apricot Marketing Committee records and 2002 f.o.b. prices ranging from $12.50 to $16.50 per 24-pound container as reported by USDA's Market News Service (MNS), all of the Washington apricot handlers ship under $5,000,000 worth of apricots.

Based on a three-year average fresh cherry production of 71,220 tons (Washington Cherry Marketing Committee records), a three-year average producer price of $1,857 per ton as reported by NASS, and 1,800 Washington cherry producers, the average annual producer revenue is approximately $73,475. In addition, based on Washington Cherry Marketing Committee records and an average 2002 f.o.b. price of $28.00 per 20-pound container as reported by MNS, 81 percent of the Washington cherry handlers ship under $5,000,000 worth of cherries.

Based on a three-year average fresh prune production of 4,893 tons (Washington-Oregon Fresh Prune Marketing Committee records), a three-year average producer price of $210 per ton as reported by NASS, and 215 Washington-Oregon prune producers, the average annual producer revenue is approximately $4,779. In addition, based on Washington-Oregon Fresh Prune Marketing Committee records and 2002 f.o.b. prices ranging from $8.50 to $9.50 per 30-pound container as reported by MNS, all of the Washington-Oregon prune handlers ship under $5,000,000 worth of prunes.

In view of the foregoing, the majority of Washington apricot, Washington sweet cherry, and Washington-Oregon fresh prune producers and handlers may be classified as small entities.

This rule would increase the assessment rates established for the Committees from $2.50 to $3.00 per ton for apricots, from $0.75 to $1.00 per ton for cherries, and from $1.00 to $1.50 per ton for prunes. For the 2003–2004 fiscal period, the quantity of assessable fruit is estimated at 3,600 tons for apricots, 64,000 tons for cherries, and 4,300 tons for prunes.

All three Committees are managed from the same office, and as such, major expenses recommended by the Committees for the 2003–2004 year include salaries ($54,500), rent and maintenance ($7,200), compliance officer ($4,840), and Committee travel and compensation ($4,000). Budgeted expenses for these items in 2002–2003 were $49,100, $6,800, $5,120, and $6,100, respectively.

The higher assessment rates are necessary to offset increases in salaries and rent and maintenance, and projected decreases in the production of each crop due to the adverse effect of cooler temperatures on the size and quality of the fruit. The additional assessment income would also permit the Washington Apricot Marketing Committee and the Washington-Oregon Fresh Prune Committee to meet budgeted expenses and maintain an acceptable financial reserve. For the Washington Cherry Marketing Committee, the increased assessment rate would allow it to use less reserve funds to meet its budgeted expenses.

The Committees discussed alternatives to this rule, including alternative expenditure levels. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the programs with adequate reserves.

Apricot shipments for 2003 are estimated at 3,600 tons, which should provide $10,800 in assessment income. Income derived from handler assessments would be adequate to cover budgeted expenses. Funds in the reserve ($8,360 as of March 31, 2003) would be kept within the maximum permitted by the order (approximately one fiscal period's operational expenses; § 923.42).

Sweet cherry shipments for 2003 are estimated at 64,000 tons, which should provide $64,000 in assessment income. Income derived from handler assessments, along with funds from the authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve ($33,064 as of March 31, 2003) would be kept within the maximum permitted by the order (one fiscal period's operational expenses; § 923.42).

Fresh prune shipments for 2003 are estimated at 4,300 tons, which should provide $6,450 in assessment income. Income derived from handler assessments, along with funds from the authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve ($5,407 as of March 31, 2003) would be kept within the maximum permitted by the order (approximately one fiscal period's operational expenses; § 924.42).

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the producer price for the 2003–2004 season could range between $783 and $1,050 per ton for Washington apricots, between $1,580 and $2,000 per ton for Washington sweet cherries, and between $166 and $252 per ton for Washington-Oregon fresh prunes. Therefore, the estimated assessment revenue for the 2003–2004 fiscal period as a percentage of total producer revenue could range between 0.29 and 0.38 percent for Washington apricots, between 0.05 and 0.06 percent for Washington sweet cherries, and between 0.60 and 0.90 for Washington-Oregon fresh prunes.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing orders. In addition, the Committees' meetings were widely publicized throughout the Washington apricot, Washington sweet cherry, and Washington-Oregon fresh prune industries and all interested persons were invited to attend and participate in the Committees' deliberations on all issues. Like all meetings of these Committees, the May 21, May 22, and June 3 meetings were public meetings and all entities, both large and small, were able to express views on the issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Washington apricot, Washington sweet cherry, or Washington-Oregon fresh prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop

marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because: (1) The 2003–2004 fiscal period began on April 1, and the marketing orders require that the rate of assessment for each fiscal period apply to all assessable Washington apricots, Washington sweet cherries, and Washington-Oregon fresh prunes handled during such fiscal period; (2) the Committees need to have sufficient funds to pay for expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by each of the Committees at public meetings and are similar to other assessment rate actions issued in past years.

List of Subjects

7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 924

Plums, Prunes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 922, 923, and 924 are proposed to be amended as follows:

1. The authority citation for 7 CFR parts 922, 923, and 924 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

2. Section 922.235 is revised to read as follows:

§ 922.235 Assessment rate.

On or after April 1, 2003, an assessment rate of $3.00 per ton is established for the Washington Apricot Marketing Committee.

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

3. Section 923.236 is revised to read as follows:

§ 923.236 Assessment rate.

On or after April 1, 2003, an assessment rate of $1.00 per ton is established for the Washington Cherry Marketing Committee.

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND UMATILLA COUNTY, OREGON

4. Section 924.236 is revised to read as follows:

§ 924.236 Assessment rate.

On or after April 1, 2003, an assessment rate of $1.50 per ton is established for the Washington-Oregon Fresh Prune Marketing Committee.

Dated: July 22, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–18984 Filed 7–24–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV03–930–3 PR]

Tart Cherries Grown in the States of Michigan, et al.; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would increase the assessment rate for tart cherries that are utilized in the production of tart cherries products from $0.0019 to $0.0021 per pound. The assessment rate was recommended by the Cherry Industry Administrative Board (Board) under Marketing Order No. 930 for the 2003–2004 and subsequent fiscal periods. The Board is responsible for local administration of the marketing order which regulates the handling of tart cherries grown in the production area. Authorization to assess tart cherry handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins July 1, 2003, and ends June 30, 2004. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by August 25, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moabdocket.clerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: *http://www.ams/usda.gov/fv/moab/html*.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, MD 20737, telephone: (301) 734–5243, or Fax: (301)–734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, tart cherry handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein would be applicable to all assessable tart cherries beginning July 1, 2003, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, and provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Board for the 2003–2004 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products from $0.0019 to $0.0021 per pound of cherries.

The tart cherry marketing order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of tart cherries. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2002–2003 fiscal period, the Board recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the USDA upon recommendation and information submitted by the Board or other information available to USDA.

Section 930.42(a) of the order authorizes a reserve sufficient to cover one year's operating expenses. The increased rate is expected to generate enough income to meet the Board's operating expenses in 2003–2004.

The Board met on January 23, 2003, and unanimously recommended 2003–2004 expenditures of $532,000. The industry completed a formal rulemaking proceeding which amended the assessment rate section by authorizing one assessment rate rather than two assessment rates for different tart cherry products [67 FR 51697]. The provisions requiring the establishment of different assessment rates for different products were removed. In their place, the Board is required to consider the volume of cherries used in making various products and the relative market value of those products in deciding whether the assessment rate should be a single, uniform rate applicable to all cherries or whether varying rates should be recommended for cherries manufactured into different products.

In addition, the amended order provides that the assessment rate should not apply to cherries diverted in orchard by growers, and those diverted by handlers through destruction at their plants. The Board recommended the amendment to allow one assessment rate for all tart cherry products handled. In making its recommendation, the Board stated that while a two-tiered assessment rate scheme may be appropriate in some years, it may not be in others.

The amended order specifically provides that under § 930.41(f)(1) and (2) the established assessment rate may be uniform, or may vary depending on the product the cherries are used to manufacture. The Board consider the differences in the number of pounds of cherries utilized for various cherry products and the relative market values of such cherry products.

On June 25, 2003 (68 FR 37726), a final rule was published in the **Federal Register** that established a single assessment rate for the 2002–2003 fiscal period for all tart cherries handled regardless of the product the cherries are used to manufacture. The Board determined that the markets for juice, juice concentrate, and puree were gaining in importance and that cherries used in such products should be assessed the same as those sold for use in assorted bakery items, as canned pie fill, and as dried cherries. The assessment rate for tart cherry products other than juice, juice concentrate, or puree was increased from $0.00175 to $0.0019 per pound of cherries. The assessment rate for cherries utilized for juice, juice concentrate, or puree was increased from $0.000875 to $0.0019 per pound.

The Board considered the above items and decided that one assessment rate should be recommended for all cherry products during 2003–2004. According to the Board, processors have developed a strong market for juice and concentrate products over the past few years. There is considerable belief that juice will be one of the growth outlets for tart cherries. This results from the industry's promotional efforts being undertaken for juice and concentrate products, the segmentation of the market into retail and industrial components, and the nutritional/nutraceutical profile of the product. As a result, there has been an increase in consumer recognition, acceptance, purchases, and the value of tart cherry juice and concentrate.

According to the Board, prices received for tart cherry juice concentrate are now $25.00 per gallon or more. This is derived by using the fairly common conversion ratio of 100 pounds to the gallon for mid-west production, which has a raw product value of $0.25 per pound. Using a 50 pound to the gallon conversion for the product, typical for west coast production, this represents a per pound value of $0.50. The difference in the west and mid-west conversion factors is that tart cherries produced in the western United States generally have a higher sugar content and larger fruit size, thus fewer raw product is needed. The average grower price received ranges between $0.17 to $0.20 per pound.

According to the Board, puree products are as valuable and comparable to juice and juice concentrate products. The Board reported that the spot price for single strength puree for 2001 was about 60 cents per pound. The raw product equivalent (RPE) volume of pureed fruit was 539,504 pounds which is about 0.15 percent of all processed fruit. The Board also reported for 2001 that the price for five plus one product was 67 cents per pound. Five plus one is a product of cherries and sugar which is manufactured by many processors (25 pounds of cherries and five pounds of sugar to make a 30 pound commercial container). It is the main product that handlers produce. Five plus one cherries are primarily sold and remanufactured into assorted bakery items, canned pie fill, and dried cherries. Since, juice, juice concentrate, and puree are not considered to be low value products at this time the Board considers one assessment to be appropriate. The product is moved between production areas and may be converted into puree or concentrate at a later date, depending on the market demand for these products.

In comparing the costs of juice, juice concentrate, and puree, the Board has determined that current prices are similar for these products when compared to the 5 plus 1 product. The information received from the Board

indicates that puree products are becoming a viable market and should be assessed at a higher assessment rate.

As a result of last season's short crop, much of the tart cherry products released from inventory were in the form of tart cherry juice and/or juice concentrate. There is not much, if any, of this product available on the market today. The Board contends that given these factors, it is hard to suggest that juice/concentrate, or puree, are of lesser value than the more traditional products such as pie-fill or individually quick frozen tart cherries. Thus, the Board determined that one assessment rate is appropriate for the 2003–04 fiscal period.

Budgeted expenditures for the 2003–04 fiscal period were unanimously recommended at $532,000. The major expenditures recommended by the Board for 2003–04 include $81,000 for meetings, $149,000 for compliance, $191,000 for personnel, $106,000 for office expenses, and $5,000 for industry educational efforts. Budgeted expenses for those items in 2002–2003 were $85,000 for meetings, $170,000 for compliance, $185,000 for personnel, $80,000 for office expenses, and $2,500 for industry educational efforts, respectively.

Last fiscal period's budgeted expenditures were $522,500. However last season, the tart cherry industry experienced a significant frost mainly in Michigan which severely impacted the crop. Only 60 million pounds of cherries were produced in comparison to a normal crop of about 260 million pounds. The Board staff responded to this decrease in funds by cutting its expenditures. The Board reduced its staff and Committee travel for meetings and used reserve funds to continue administrative operations in 2002–2003. The recommended assessment rate of $0.0021 is higher than the current rate of $0.0019 per pound. The Board recommended an increased assessment rate to generate larger revenue to meet its expenses and keep its reserves at an acceptable level.

In deriving the recommended assessment rate, the Board determined assessable tart cherry production for the fiscal period at 260 million pounds. Therefore, total assessment income for 2003–2004 is estimated at $546,000. This amount plus adequate funds in the reserve and interest income would be adequate to cover budgeted expenses. Funds in the reserve (approximately $66,000) would be kept within the approximately six months' operating expenses as recommended by the Board consistent with § 930.42(a).

The assessment rate established in this rule would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and other information submitted by the Board or other available information.

Although the assessment rate would be effective for an indefinite period, the Board would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or the USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Board's 2003–2004 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the USDA.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this initial regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) allows AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opts for such certification, but rather performs regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $5,000,000, and small agricultural producers are those whose annual receipts are less than $750,000. A majority of the tart cherry handlers and producers may be classified as small entities.

The Board unanimously recommended 2003–2004 expenditures of $532,000 and an assessment rate increase from $0.0019 to $0.0021 per pound. This rule would increase the assessment rate established for the Board and collected from handlers for the 2003–2004 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products. The quantity of assessable tart cherries expected to be produced during the 2003–2004 crop year is estimated at 260 million pounds. Assessment income, based on this crop, along with interest income and reserves, would be adequate to cover budgeted expenses.

The major expenditures recommended by the Board for the 2003–2004 fiscal period include $81,000 for meetings, $149,000 for compliance, $191,000 for personnel, $106,000 for office expenses, and $5,000 for industry educational efforts. Budgeted expenses for those items in 2002–2003 were $85,000 for meetings, $170,000 for compliance, $185,000 for personnel, $80,000 for office expenses, and $2,500 for industry educational efforts, respectively.

The Board discussed the alternative of continuing the existing assessment rate, but concluded that would cause the amount in the operating reserve to be reduced to an unacceptable level.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. Data from the National Agricultural Statistics Service (NASS) states that during the period 1995/96 through 2002/03, approximately 92 percent of the U.S. tart cherry crop, or 285.7 million pounds, was processed annually. Of the 285.7 million pounds of tart cherries processed, 58 percent was frozen, 30 percent was canned, and 12 percent was utilized for juice.

Based on NASS data, acreage in the United States devoted to tart cherry production has been trending downward. Since 1987/88 tart cherry bearing acres have decreased from 50,050 acres, to 36,900 acres in the 2002/03 crop year. In 2002/03, 93 percent of domestic tart cherry acreage was located in four States: Michigan, New York, Utah, and Wisconsin. Michigan leads the nation in tart cherry acreage with 74 percent of the total. Michigan produces about 75 percent of the U.S. tart cherry crop each year. Tart cherry acreage in Michigan decreased from 28,500 acres in 2000–2001, to 27,400 acres in 2002–2003.

In deriving the recommended assessment rate, the Board estimated assessable tart cherry production for the fiscal period at 260 million pounds. Cherries used for handler destruction and grower diversion outlets are exempt from assessment obligations. Funds in the reserve (approximately $66,000) will be kept within the approximately six months' operational expenses as recommended by the Board which would be consistent with the order (§ 930.42(a)).

While this action will impose additional costs on handlers, the costs are in the form of assessments which are applied uniformly. Some of the costs may also be passed on to producers. However, these costs are offset by the benefits derived from the operation of the marketing order. The Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the January 23, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action will impose no additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab/html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2003–2004 fiscal begins on July 1, 2003, and ends on June 30, 2004, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable tart cherries handled during such fiscal period; (2) the Board needs the funds to operate the program; and (3) handlers are aware of this action which was unanimously recommended by the Board at a public meeting. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is proposed to be amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 930.200 is revised to read as follows:

§ 930.200 Handler assessment rate.

On and after July 1, 2003, the assessment rate imposed on handlers shall be $0.0021 per pound of tart cherries grown in the production area and utilized in the production of tart cherry products.

Dated: July 22, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Services.

[FR Doc. 03–18985 Filed 7–24–03; 8:45 am]

BILLING CODE 3410–02–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of intent to waive the nonmanufacturer rule for ammunition (except small arms) manufacturing.

SUMMARY: The U.S. Small Business Administration (SBA) is considering granting a waiver of the Nonmanufacturer Rule for Ammunition (Except Small Arms) Manufacturing. The basis for waivers is that no small business manufacturers are supplying these classes of products to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program. The purpose of this notice is to solicit comments and potential source information from interested parties.

DATES: Comments and sources must be submitted on or before August 8, 2003.

ADDRESSES: Address comments to: Edith Butler, Program Analyst, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC, 20416, Tel: (202) 619–0422.

FOR FURTHER INFORMATION CONTACT: Edith Butler, Program Analyst, (202) 619–0422 FAX (202) 205–7280.

SUPPLEMENTARY INFORMATION: Pub. L. 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors in the Federal market.

To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines "class of products" based on six digit coding systems.

The first coding system is the Office of Management and Budget *North American Industry Classification System (NAICS)*. The second is the Product and Service Code established by the Federal Procurement Data System.

The U.S. Small Business Administration is currently processing a request to waive the Nonmanufacturer Rule for Ammunition (Except Small Arms) Manufacturing, North American Industry Classification System (NAICS) 332993. The public is invited to comment or provide source information to SBA on the proposed waiver of the

nonmanufacturer rule for this NAICS code.

Linda G. Williams,

Associate Administrator for Government Contracting.

[FR Doc. 03–18986 Filed 7–24–03; 8:45 am]

BILLING CODE 8025–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1275

[Notice 03–083]

RIN 2700–AC50

Investigation of Research Misconduct

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Aeronautics and Space Administration (NASA) proposes this rule to implement the "Federal Policy on Research Misconduct" (the Federal Policy). This proposed rule sets out the definition of research misconduct, procedure for investigating allegations of research misconduct and recommending findings, and procedure for adjudicating and appealing such findings. Findings of research misconduct must be accompanied by recommendations for administrative action by NASA to discourage such behavior and ensure the integrity of research funded or supported by NASA.

DATES: Comments must be received on or before September 23, 2003.

ADDRESSES: Send comments to: NASA Policy on Research Misconduct (NPRM) Comments, Office of the Chief Scientist, Code AS, National Aeronautics and Space Administration, 300 E Street SW., Washington, DC 20546–0001. NASA will consider late comments to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Mayra N. Montrose, (202) 358–1492 (voice), (202) 358–3931 (fax).

SUPPLEMENTARY INFORMATION: The objective of the Federal Policy is to create a uniform policy framework for Federal agencies for the handling of allegations of misconduct in Federally funded or supported research. Within this framework, each Federal agency funding or supporting research is expected to fashion its own regulations to accommodate the various types of research transactions in which it is engaged.

In keeping with these objectives, the proposed NASA rule incorporates key aspects of the Federal policy, including the definition of research misconduct as fabrication, falsification or plagiarism, and the definitions of each of these sub-components; the requirements for a finding of research misconduct; and the four-stage process for determining research misconduct; *i.e.*, inquiry, investigation, adjudication, and appeal.

NASA's research mission involves the advancement of research in the fields of aeronautics, space science, earth science, biomedicine, biology, engineering, and physical sciences (physics and chemistry). NASA fulfills this objective through intramural research performed by NASA researchers and through extramural contracts, cooperative agreements, grants, and Space Act agreements with the private sector, and with other governmental entities. Because of this multiplicity of research arrangements, allegations of research misconduct could arise in any number of ways.

In addition, the core principle of the Federal Policy is that while research institutions have the primary responsibility for the inquiry, investigation, and adjudication of allegations of research misconduct, Federal agencies have ultimate oversight authority for the research it funds or supports. While there is some overlap in the actions that may be pursued by Federal agencies and research institutions, the proposed rule is designed to provide procedures and criteria for the interaction of NASA with its research partners in dealing with the various contingencies that could arise in the processing of research misconduct allegations.

For example, an allegation of research misconduct might first be submitted to NASA through the NASA Office of Inspector General (OIG). If the research in question is conducted by NASA researchers, NASA shall conduct the inquiry, investigation, adjudication, and appeal stages. If the research is conducted by a research institution, the OIG shall ordinarily forward the allegation to that institution for inquiry and investigation and decide whether NASA shall conduct a parallel inquiry or investigation or defer its procedures pending completion of the investigative proceedings of the institution. The criteria for these decisions are set forth in the proposed rule.

On the other hand, if the allegation is received by the institution, the institution must inform the OIG if its inquiry determines that an investigation is warranted at which time, the OIG determines whether the OIG should conduct a parallel investigation.

In all cases, the investigation report and supporting evidence must be forwarded to NASA for adjudication and possible remedial administrative action. If the OIG deferred NASA's procedures pending review of the results of the research institution's investigative process, the OIG shall decide whether to recommend to the NASA Adjudication Official acceptance of the research institution's investigation report and final determination, in whole or in part. If the OIG makes such a recommendation, the OIG shall provide copies of the investigation report, evidentiary record, and final determination to the NASA Adjudication Official. If not, the OIG can initiate its own investigation or remand to the institution for further investigation.

With regard to any investigation conducted by the OIG, the OIG shall forward the copies of the investigation report and evidentiary record to the NASA Adjudication Official. All cases involving NASA-funded or -supported research that have gone through the investigation stage must receive an independent decision by the NASA Adjudication Official, which may be appealed.

The possible administrative actions that may be taken by NASA after research misconduct is determined to have occurred are set out in the proposed rule. The rule cannot prescribe the manner in which such action will be taken, however, as that will depend on whether the research is intramural or extramural, and if the latter, on the type of transaction being used to fund or support the research.

For example, Federal law prescribes different procedural frameworks for adverse contract actions, adverse grant actions, suspensions, or debarments from competing for Federal procurement or grant awards, and for adverse personnel actions against Federal civil service employees. In the latter instance, the OIG may proceed under its previously existing administrative investigation process when misconduct is alleged against Federal civil service employees. The proposed rule provides that the recommendations for administrative action, which must be included with a determination of research misconduct, shall be forwarded to the relevant NASA officials for their consideration. Nevertheless, a final determination of research misconduct can serve as the basis for correcting the research record and for notifying the relevant scientific review groups.

NASA shall amend 14 CFR part 1260 (Grants Handbook), 14 CFR 1274 (Commercial agreements with cost sharing), and 48 CFR Chapter 18 (NASA FAR Supplement), to reflect the implementation of this policy.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order.

Small Entities

As required by the Regulatory Flexibility Act (5 U.S.C. 601–612), NASA has considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. NASA certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on small business entities.

Collection of Information

This proposed rule does not contain any information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. NASA has analyzed this proposed rule under that Order and has determined that it does not have implications for federalism.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Action and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure in any 1 year of $100 million or more by a State, local, and tribal government in the aggregate, or by the private sector.

NASA certifies that this regulation will not compel the expenditure in any 1 year of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector. Therefore, the detailed statement under section 202 of the Unfunded Mandates Reform Act is not required.

List of Subjects in 14 CFR Part 1275

Administrative practice and procedure, Grant programs, Human research subjects, Research, Science and technology, Scientists.

For the reasons discussed in the preamble, the National Aeronautics and Space Administration proposes to amend 14 CFR Chapter V by adding part 1275 to read as follows:

PART 1275—RESEARCH MISCONDUCT

Sec.

1275.100 Purpose and scope.
1275.101 Definitions.
1275.102 OIG handling of research misconduct matters.
1275.103 Role of awardee institutions.
1275.104 Conduct of the OIG inquiry.
1275.105 Conduct of the OIG research misconduct investigation.
1275.106 Administrative actions.
1275.107 Adjudication.
1275.108 Appeals.

Appendix to Part 1275—NASA Research Disciplines and its Associated Enterprises

Authority: The National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2473).

§1275.100 Purpose and scope.

(a) The purpose of this part is to establish procedures to be used by the National Aeronautics and Space Administration (NASA) for the handling of allegations of research misconduct. Specifically, the procedures contained in this part are designed to result in:

(1) Findings as to whether research misconduct by a person or institution has occurred in proposing, performing, reviewing, or reporting results from research activities funded or supported by NASA; and

(2) Recommendations on appropriate administrative actions that may be undertaken by NASA in response to research misconduct determined to have occurred.

(b) This part applies to all research wholly or partially funded or supported by NASA. This includes any research conducted by a NASA installation and any research conducted by a public or private entity receiving NASA funds or using NASA facilities, equipment or personnel, under a contract, grant, cooperative agreement, Space Act agreement, or other transaction with NASA.

(c) NASA shall make a determination of research misconduct only after careful inquiry and investigation by an awardee institution, another Federal agency, or NASA, and an adjudication conducted by NASA. NASA shall afford the accused individual or institution a chance to comment on the investigation report and a chance to appeal the decision resulting from the adjudication. In structuring procedures in individual cases, NASA may take into account procedures already followed by other entities investigating the same allegation of research misconduct. Investigation of allegations which, if true, would constitute criminal offenses, are not covered by this part.

(d) A determination that research misconduct has occurred must be accompanied by recommendations on appropriate administrative actions. However, the administrative actions themselves may be imposed only after further procedures described in applicable NASA regulations concerning contracts, cooperative agreements, grants, Space Act agreements, or other transactions, depending on the type of agreement used to fund or support the research in question. Administrative actions involving NASA civil service employees may be imposed only in compliance with all relevant Federal laws and policies.

(e) Allegations of research misconduct concerning NASA research may be transmitted to NASA in one of the following ways: by mail addressed to Office of Inspector General (OIG), Code W, National Aeronautics and Space Administration, 300 E Street, SW, Washington, DC 20546–0001; via the NASA OIG Hotline at 1–800–424–9183, or the NASA OIG cyber hotline at *www.hq.nasa.gov/office/oig/hq/hotline.html*.

(f) To the extent permitted by law, the identity of the Complainant, witnesses, or other sources of information who wish to remain anonymous shall be kept confidential. To the extent permitted by law, NASA shall protect the research misconduct inquiry, investigation, adjudication, and appeal records maintained by NASA as exempt from mandatory disclosure under 5 U.S.C. 552, the Freedom of Information Act, as amended, and 5 U.S.C. 552a, the Privacy Act, as amended.

§ 1275.101 Definitions.

(a) *Research misconduct* means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest error or differences of opinion. Research as used in this part includes all basic, applied, and demonstration research in all fields of science, engineering, and mathematics, such as research in economics, education, linguistics, medicine, psychology, social sciences, statistics, and research involving human subjects or animals.

(b) *Fabrication* means making up data or results and recording or reporting them.

(c) *Falsification* means manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

(d) *Plagiarism* means the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

(e) *Awardee institution* means any public or private entity or organization (including a Federal, State, or local agency) that is a party to a NASA contract, grant, cooperative agreement, Space Act agreement, or to any other transaction with NASA, whose purpose includes the conduct of research.

(f) *NASA research* means research wholly or partially funded or supported by NASA involving an awardee institution or a NASA installation. This definition includes research wholly or partially funded by NASA appropriated funds, or research involving the use of NASA facilities, equipment, or personnel.

(g) *NASA research discipline* means one of the following areas of research that together comprise NASA's research mission for aeronautics, space science, earth science, biomedicine, biology, engineering and physical sciences (physics and chemistry).

(h) *Inquiry* means the assessment of whether an allegation of research misconduct has substance and warrants an investigation.

(i) *Investigation* means the formal development of a factual record and the examination of that record leading to recommended findings on whether research misconduct has occurred, and if the recommended findings are that such conduct has occurred, to include recommendations on appropriate administrative actions.

(j) *Complainant* is the individual bringing an allegation of research misconduct related to NASA research.

(k) *Respondent* is the individual or institution who is the subject of an allegation of research misconduct related to NASA research.

(l) *Adjudication* means the formal procedure for reviewing and evaluating the investigation report and the accompanying evidentiary record and for determining whether to accept the recommended findings and any recommendations for administrative actions resulting from the investigation.

(m) *NASA Adjudication Official* is the NASA Associate Administrator for the Enterprise with the greatest expertise in the NASA research discipline involved in the research misconduct allegation. The appendix to this part contains the list of NASA research disciplines and their associated Enterprises.

(n) *Appeal* means the formal procedure initiated at the request of the Respondent for review of a determination resulting from the adjudication and for affirming, overturning, or modifying it.

(o) *NASA Appeals Official* is the NASA Deputy Administrator or other official designated by the NASA Administrator.

§ 1275.102 OIG handling of research misconduct matters.

(a) When an allegation is made to the OIG, rather than to the awardee institution, the OIG shall determine whether the allegation concerns NASA research and whether the allegation, if true, falls within the definition of research misconduct in § 1275.101(a). Investigation of allegations which, if true, would constitute criminal offenses, are not covered by this part. If these criteria are met and the research in question is being conducted by NASA researchers, the OIG shall proceed in accordance with § 1275.104. If the research in question is being conducted at an awardee institution, another Federal agency, or is a collaboration between NASA researchers and coinvestigators at either academia or industry, the OIG must refer the allegation that meets the definition of research misconduct to the entities involved and determine whether to—

(1) Defer its inquiry or investigation pending review of the results of an inquiry or investigation conducted at the awardee institution or at the Federal agency (referred to for purposes of this part as external investigations); or

(2) Commence its own inquiry or investigation.

(b) The OIG must inform the NASA Office of the Chief Scientist of all allegations that meet the definition of research misconduct received by the OIG and of the determinations of the OIG required by § 1275.101. The NASA Office of the Chief Scientist shall notify the NASA Office of the Chief Engineer or the NASA Office of the Chief Technologist when the research is either engineering or technology research.

(c) The OIG should defer its inquiry or investigation pending review of the results of an external investigation whenever possible. Nevertheless, the OIG retains the right to proceed at any time with a NASA inquiry or investigation. Circumstances in which the OIG may elect not to defer its inquiry or investigation include, but are not limited to, the following:

(1) When the OIG determines that the awardee institution is not prepared to handle the allegation in a manner consistent with this part;

(2) When the OIG determines that NASA involvement is needed to protect the public interest, including public health and safety;

(3) When the OIG determines that the allegation involves an awardee institution of sufficiently small size that it cannot reasonably conduct the investigation itself;

(4) When the OIG determines that a NASA program or project could be jeopardized by the occurrence of research misconduct; or

(5) When the OIG determines that any of the notifications or information required to be given to the OIG by the awardee institution pursuant to § 1275.103(b) requires NASA to cease its deferral to the awardee institution's procedures and to conduct its own inquiry or investigation.

(d) A copy of the investigation report, evidentiary record, and final determination resulting from an external investigation must be transmitted to the OIG. The OIG shall determine whether to recommend to the NASA Adjudication Official acceptance of the investigation report and final determination in whole or in part. The OIG's decision must be made within 45 days of receipt of the investigation report and evidentiary record. This period of time may be extended by the OIG for good cause. The OIG shall make this decision based on the OIG's assessment of the completeness of the investigation report, and the OIG's assessment of whether the investigating entity followed reasonable procedures, including whether the Respondent had an adequate opportunity to comment on the investigation report and whether these comments were given due consideration. If the OIG decides to recommend acceptance of the results of the external investigation, in whole or in part, the OIG shall transmit a copy of the final determination, the investigation report, and the evidentiary record to the NASA Adjudication Official, and to the NASA Office of the Chief Scientist. When the OIG decides not to recommend acceptance, the OIG must initiate its own investigation.

(e) In the case of an investigation conducted by the OIG, the OIG shall transmit copies of the investigation report, including the Respondent's written comments (if any), the evidentiary record and its recommendations, to the NASA Adjudication Official and to the NASA Office of the Chief Scientist.

(f) Upon learning of alleged research misconduct, the OIG shall identify potentially implicated awards or proposals and, when appropriate, shall ensure that program, grant, or contracting officers handling them are informed. Neither a suspicion nor allegation of research misconduct, nor a pending inquiry or investigation, shall normally delay review of proposals. Subject to paragraph (g) of this section, reviewers or panelists shall not be informed of allegations or of ongoing inquiries or investigations in order to avoid influencing reviews.

(g) If, during the course of an OIG conducted inquiry or investigation, it appears that immediate administrative action, as described in § 1275.106, is necessary to protect public health or safety, Federal resources or interests, or the interests of those involved in the inquiry or investigation, the OIG shall inform the appropriate NASA officials.

§ 1275.103 Role of awardee institutions.

(a) The awardee institutions have the primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of research misconduct alleged to have occurred in association with their own institutions, although NASA has ultimate oversight authority for NASA research.

(b) When an allegation of research misconduct related to NASA research is made directly to the OIG and the OIG defers to the awardee institution's inquiry or investigation, or when an allegation of research misconduct related to NASA research is made directly to the awardee institution which commences an inquiry or investigation, the awardee institution is required to:

(1) Notify the OIG immediately of the allegation and inform if an initial inquiry supports a formal investigation as soon as this is determined.

(2) Keep the OIG informed during such an investigation.

(3) Notify the OIG immediately at any time during an inquiry or investigation—

(i) If the seriousness of the apparent research misconduct warrants an investigation;

(ii) If public health or safety is at risk;

(iii) If Federal resources, reputation, or other interests need protecting;

(iv) If research activities should be suspended;

(v) If there is reasonable indication of possible violations of civil or criminal law;

(vi) If Federal action is needed to protect the interests of those involved in the investigation; or

(vii) If the research community or the public should be informed.

(4) Provide the OIG with a copy of the investigation report, including the recommendations made to the awardee institution's adjudication official and the Respondent's written comments (if any), along with a copy of the evidentiary record.

(5) Provide the OIG with the awardee institution's final determination, including any corrective actions taken or planned.

(c) If an awardee institution wishes the OIG to defer its own inquiry or investigation, the awardee institution shall complete any inquiry and decide whether an investigation is warranted within 60 days. It should similarly complete any investigation, adjudication, or other procedure necessary to produce a final determination, within an additional 180 days. If completion of the process is delayed, but the awardee institution wishes NASA's deferral of its own procedures to continue, NASA may require submission of periodic status reports.

(d) Each awardee institution must maintain and effectively communicate to its staff, appropriate policies and procedures relating to research misconduct, including the requirements on when and how to notify NASA.

§ 1275.104 Conduct of the OIG inquiry.

(a) When an awardee institution or another Federal agency has promptly initiated its own investigation, the OIG may defer its inquiry or investigation until it receives the results of that external investigation. When the OIG does not receive the results within a reasonable time, the OIG shall ordinarily proceed with its own investigation.

(b) When the OIG decides to initiate a NASA investigation, the OIG must give prompt written notice to the individual or institution to be investigated, unless notice would prejudice the investigation or unless a criminal investigation is underway or under active consideration. If notice is delayed, it must be given as soon as it will no longer prejudice the investigation or contravene requirements of law or Federal law-enforcement policies.

(c) When alleged misconduct may involve a crime, the OIG shall determine whether any criminal investigation is already pending or projected. If not, the OIG shall determine whether the matter should be referred to the Department of Justice.

(d) When a criminal investigation by the Department of Justice or another Federal agency is underway or under active consideration, the OIG shall determine what information, if any, may be disclosed to the Respondent or to NASA employees.

(e) To the extent possible, the identity of sources who wish to remain anonymous shall be kept confidential. To the extent allowed by law, documents and files maintained by the OIG during the course of an inquiry or investigation of misconduct shall be treated as investigative files exempt from mandatory public disclosure upon request under the Freedom of Information Act.

(f) When the OIG proceeds with its own inquiry, it is responsible for ensuring that the inquiry is completed within 60 days after it is commenced. The OIG may extend this period of time for good cause.

(g) On the basis of what the OIG learns from an inquiry, and in consultation as appropriate with other NASA offices, the OIG shall decide whether a formal investigation is warranted.

§ 1275.105 Conduct of the OIG research misconduct investigation.

(a) The OIG shall make every reasonable effort to complete a NASA research misconduct investigation and issue a report within 120 days after initiating the investigation. The OIG may extend this period of time for good cause.

(b) A NASA investigation may include:

(1) Review of award files, reports, and other documents readily available at NASA or in the public domain;

(2) Review of procedures or methods and inspection of laboratory materials, specimens, and records at awardee institutions;

(3) Interviews with parties or witnesses;

(4) Review of any documents or other evidence provided by or properly obtainable from parties, witnesses, or other sources;

(5) Cooperation with other Federal agencies; and

(6) Opportunity for the Respondent to be heard.

(c) The OIG may invite outside consultants or experts to participate in a NASA investigation.

(d) During the course of the investigation, the OIG shall provide a draft of the investigation report to the Respondent, who shall be invited to submit comments. The Respondent must submit any comments within 20 days of receipt of the draft investigation report. This period of time may be extended by the OIG for good cause. Any comments submitted by the Respondent shall receive full consideration before the investigation report is made final.

(e) At the end of the investigation proceedings, an investigation report must be prepared, that shall include recommended findings as to whether research misconduct has occurred. A recommended finding of research misconduct requires that:

(1) There be a significant departure from accepted practices of the relevant research community for maintaining the integrity of the research record;

(2) The research misconduct be committed intentionally, knowingly, or in reckless disregard of accepted practices; and

(3) The allegation be proven by a preponderance of evidence.

(f) The investigation report must also be transmitted with the recommendations for administrative action, when recommended findings of research misconduct are made. Section 1275.106 lists possible recommended administrative actions and considerations for use in determining appropriate recommendations.

(g) NASA OIG may elect to proceed with its administrative investigation processes in lieu of a research misconduct investigation under this part when the allegation is against a civil service employee.

§ 1275.106 Administrative actions.

(a) Listed in paragraphs (a)(1) through (a)(3) of this section are possible administrative actions that may be recommended by the investigation report and adopted by the adjudication process. They are not exhaustive and are in addition to any administrative actions necessary to correct the research record. The administrative actions range from minimal restrictions (Group I Actions) to severe restrictions (Group III Actions), and do not include possible criminal sanctions.

(1) *Group I Actions.* (i) Send a letter of reprimand to the individual or institution.

(ii) Require as a condition of an award that for a specified period of time an individual, department, or institution obtain special prior approval of particular activities from NASA.

(iii) Require for a specified period of time that an institutional official other than those guilty of research misconduct certify the accuracy of reports generated under an award or provide assurance of compliance with particular policies, regulations, guidelines, or special terms and conditions.

(2) *Group II Actions.* (i) Restrict for a specified period of time designated activities or expenditures under an active award.

(ii) Require for a specified period of time special reviews of all requests for funding from an affected individual, department, or institution to ensure that steps have been taken to prevent repetition of the research misconduct.

(3) *Group III Actions.* (i) Immediately suspend or terminate an active award.

(ii) Debar or suspend an individual, department, or institution from participation in NASA programs for a specified period of time.

(iii) Prohibit participation of an individual as a NASA reviewer, advisor, or consultant for a specified period of time.

(b) In deciding what actions are appropriate when research misconduct is found, NASA officials should consider the seriousness of the misconduct, including, but not limited to:

(1) The degree to which the misconduct was knowing, intentional, or reckless;

(2) Whether the misconduct was an isolated event or part of a pattern;

(3) Whether the misconduct had a significant impact on the research record, research subjects, or other researchers, institutions, or the public welfare.

§ 1275.107 Adjudication.

(a) The NASA Adjudication Official must review and evaluate the investigation report and the evidentiary record required to be transmitted pursuant to §1275.102(d) and (e). The NASA Adjudication Official may initiate further investigations, which may include affording the Respondent another opportunity for comment, before issuing a decision regarding the case. The NASA Adjudication Official may also return the investigation report to the OIG with a request for further fact-finding or analysis.

(b) Based on a preponderance of the evidence, the NASA Adjudication Official shall issue a decision setting forth the Agency's findings as to whether research misconduct has occurred and recommending appropriate administrative actions that may be undertaken by NASA in response to research misconduct determined to have occurred. The NASA Adjudication Official shall render a decision within 30 (thirty) days after receiving the investigation report and evidentiary record, or after completion of any further proceedings. The NASA Adjudication Official may extend this period of time for good cause.

(c) The decision shall be sent to the Respondent and, if appropriate, to the Complainant. If the decision confirms the alleged research misconduct, it must include instructions on how to pursue an appeal to the NASA Appeals Official. The decision shall also be transmitted to the NASA Office of the Chief Scientist and the OIG.

§1275.108 Appeals.

(a) The Respondent may appeal the decision of the NASA Adjudication Official by notifying the NASA Appeals Official in writing of the appeal within 30 days after Respondent's receipt of the decision. If the decision is not appealed within the 30-day period, the decision becomes the final Agency action insofar as the findings are concerned.

(b) The NASA Appeals Official shall inform the Respondent of a final determination within 30 days after receiving the appeal. The NASA Appeals Official may extend this period of time for good cause. The final determination may affirm, overturn, or modify the decision of the NASA Adjudication Official and shall constitute the final Agency action insofar as the findings are concerned. The final determination shall also be transmitted to the NASA Office of the Chief Scientist and the OIG.

(c) Once final Agency action has been taken pursuant to paragraphs (a) or (b) of this section, the recommendations for administrative action shall be sent to the relevant NASA components for further proceedings in accordance with applicable laws and regulations.

Appendix to Part 1275—NASA Research Disciplines and Respective Associated Enterprises

1. Aeronautics Research—Aerospace Technology Enterprise
2. Space Science Research—Space Science Enterprise
3. Earth Science Research and Applications—Earth Science Enterprise
4. Biomedical Research—Biological and Physical Research Enterprise
5. Fundamental Biology—Biological and Physical Research Enterprise
6. Fundamental Physics—Biological and Physical Research Enterprise
7. Other engineering research not covered by disciplines above—NASA Chief Engineer
8. Other technology research not covered by disciplines above—NASA Chief Technologist

Dated: July 10, 2003.

Sean O'Keefe,

Administrator.

[FR Doc. 03–18982 Filed 7–24–03; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3282

[Docket No. FR–4867–N–02]

Manufactured Housing Consensus Committee—Rejection of Consumer Complaint Handling Proposal

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Denial for recommendation for proposed regulatory changes.

SUMMARY: The Secretary has rejected a proposed recommendation by the Manufactured Housing Consensus Committee to revise regulations concerning how manufacturers are required to handle reports of problems with manufactured homes. The Secretary has determined that the proposal conflicts in several ways with the requirements of the National Manufactured Housing Construction and Safety Standards Act of 1974.

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Administrator, Manufactured Housing Program, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708\6401 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number at TTY by calling the toll-free Federal Information Relay Service at (800) 87–8339.

SUPPLEMENTARY INFORMATION: The Manufactured Housing Consensus Committee (MHCC) has transmitted to the Secretary a recommendation dated March 26, 2003 (MHCC proposal), that the Manufactured Home Procedural and Enforcement Regulations, 24 CFR part 3282, be amended by revising Subpart I, Consumer Handling and Remedial Actions (24 CFR 3282.401–416) (Subpart I).

Background

The MHCC as established by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401–5426 (the Act) for the purpose of providing periodic recommendations to the Secretary to adopt, revise, and interpret the federal manufactured housing construction and safety standards and the procedural and enforcement regulations. 42 U.S.C. 5403(a)(3)(A). It may submit to the Secretary proposed procedural and enforcement regulations and recommendations for the revision of the regulations. 42 U.S.C. 5403(b)(1). To be promulgated by HUD, the regulation and revisions recommended by the MHCC must be consistent with the Act.

Within 120 days from the date on which the Secretary receives a proposed procedural or enforcement regulation from the MHCC, the Secretary approve a reject the proposal. If the Secretary rejects the proposal, HUD must provide to the MHCC a written explanation of the reasons for rejection and publish in the **Federal Register** the rejected proposal and the reasons for the rejection. 42 U.S.C. 5403(b)(4).

Procedural Explanation

The Secretary recognizes and appreciates that the members of the MHCC are working hard to implement the role of the MHCC in the federal manufactured housing program. Although this proposal is inconsistent with the authority granted to the MHCC under the Act, HUD is publishing this proposal (Appendix A) and the Secretary's reasons for rejecting the proposal, as if the proposal were subject to the procedures in section 604(b).

Decision of the Secretary

The Secretary rejects the MHCC's proposal for the revision of regulations in Subpart I for the handling of reports of problems in manufactured housing for reasons that include the following:

The MHCC proposal is in direct conflict with parts of the Act. In section 615 of the Act (42 U.S.C. 5414), Congress placed responsibilities for the correction and notification of defects in manufactured homes on manufacturers, and set guidelines for manufacturers to meet these responsibilities. Section 613 of the Act (42 U.S.C. 5412) imposes additional repair and repurchase requirements on manufacturers. Subpart I, which the MHCC proposal would amend, contains the regulations by which the Department has implemented the intent to Congress with respect to notification and correction requirements.

The MHCC proposal seeks to limit the statutory responsibilities of manufacturers while imposing similar duties on parties on whom Congress did not place these responsibilities, such as retailers, distributors, transporters, and landscapers. HUD does not have authority to shift statutory responsibilities away from manufacturers. The MHCC has not established that HUD has authority to hold these newly identified parties responsible for correction and notification of defects in manufactured homes.

The MHCC proposal adds significantly to the administrative responsibilities of HUD and the states, by making HUD and the State Administrative Agencies (SAA's) the initial arbiters of responsibility on all complaints and information about problems in manufactured homes. The proposal does not take into account the self-policing responsibilities of the manufacturers set out in section 615 of the Act (42 U.S.C. 5414). The concern about additional administrative burdens also applies to the provisions that make SAA's responsible for assuring that all notifications are sent and all concerns are made. In addition, the MHCC proposal may define roles for HUD and the SAAs that require them to interfere in matters that are traditionally settled through private contracts. Further, HUD cannot permit voluntary undertakings by private parties to constitute governmental action for purposes of judicial review.

The MHCC proposal would, in effect, create a warranty for products found in the home, and would then limit the applicable time of the warranty. There is not authority in the Act to create a warranty. In fact, during consideration of the most recent amendments to the Act, Congress heard testimony suggesting a statutory warranty but declined to adopt this approach. Instead, the Act was amended in section 623 (42 U.S.C. 5422) to establish an additional protection for consumers through a dispute resolution program that covers problems reported in the

first year after a manufactured home is installed.

The MHCC proposal does not adequately implement the provision in section 615(h) of the Act (43 U.S.C. 5414(h)), which requires manufactures to submit a notification and correction plan to the Secretary for approval before the plan is implemented. Under the MHCC proposal, a party would be permitted to correct a home without first having a plan of correction approved.

The MHCC proposal seeks to establish time limits for a manufacturer's responsibilities under section 615 (42 U.S.C. 5414) that are not consistent with the Act. Section 615 contemplates enforcement authority over certain defects about which the consumer would not have knowledge unless notified or until his or her safety is compromised. While the Act places affirmative notification and correction requirements on manufacturers for defects as a protective measure even if an affected consumers has not yet complained, the MHCC proposal would limit a manufacturer's responsibility to act until after a consumer complains. Further, the MHCC proposal would limit the responsibility of manufacturers and retailers to those defects discovered within 5 years from the date of the first sale. An even shorter period of 2 years would be established for defects that could be attributed to other parties. Section 615 includes no such limits.

The MHCC proposal raises further questions relating to section 623 of the act (42 U.S.C. 5422). Section 623 requires HUD to implement a dispute resolution program by December 2005, which would be used to resolve disputes among manufacturers, retailers, and installers about responsibilities for the correction of defects reported in the first year after a manufactured home is installed. The MHCC proposal is not in agreement with the section 623 process because the proposal; adds potentially responsible parties (*e.g.*, landscapers, contractors, product suppliers); creates the limits that are inconsistent with section 623; and fails to provide for a forum in which the disputes are to be resolved.

Text of MHCC Proposal

The text of the rejected proposal submitted by the MHCC is published as Appendix A.

Dated: July 17, 2003.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

Appendix A—Manufactured Housing Consensus Committee Proposal To Amend Manufactured Housing Home Procedural and Enforcement Regulations 24 CFR Part 3282

March 26, 2003.

§ 3282.7 Definitions.

(i) *Dealer*—See *Retailer.*

(j) *Defect* means a failure to comply, or the failure of a component used to comply with an applicable Federal Manufactured home safety and construction standard that renders the manufactured home or any part thereof not fit for the ordinary use for which it was intended, but does not result in an unreasonable risk of injury or death to occupants of the affected manufactured home. See related definitions of imminent safety hazard (definition q), non-compliance (definition x), and serious defect (definition ff).

(dd) *Retailer* means any person engaged in the sale, leasing, or distribution of new manufactured homes primarily to persons whom in good faith purchase or lease a manufactured home for purposes other than resale.

(ee) *Responsible party* means any of the following: manufactured home manufacturers, retailers, distributors, contractors, product suppliers, product distributors, installers, transporters, developers, landscapers, and/or homeowners.

Subpart—Consumer Complaint Handling and Remedial Actions

§ 3282.401 Purpose and scope.

(a) The purpose of this subpart is to establish a system under which the protections of the Act are provided with a minimum of formality and delay, but in which the rights of all parties are protected.

(b) This subpart sets out the procedures to be followed by responsible parties, State Administrative Agencies, primary inspection agencies, and the Secretary to assure proper notification and/or correction with respect to manufactured homes as required by the Act. Notification and correction may be required to be provided with respect to manufactured homes that have been sold or otherwise released by the manufacturer to another party when the responsible party, an SAA or the Secretary determines that an imminent safety hazard, serious defect, or defect may exist in those manufactured homes as set out herein. For non-compliances, correction shall be required to the single home it's reported in.

(c) This subject sets out the rights of retailers under section 613 of the Act, 42 U.S.C. 5412, to obtain remedies from manufacturers in certain circumstances.

§ 3282.402 General principles.

(a) Nothing in this subpart or in these regulations shall limit the rights of the purchaser under any contract or applicable law.

(b) The liability of manufactured home manufacturers to provide remedial actions under this subpart is limited by the principle that manufacturers are not responsible for failures that occur in manufactured homes or parts thereof as the result of the actions of other responsible parties, normal wear and aging, gross and unforeseeable consumer abuse, or unforeseeable neglect of maintenance.

(c) Responsibility for remedial actions under this subpart may also be assessed to responsible parties to the extent that they have contributed to or caused the failure.

(d) The extent of a responsible party's responsibility for providing notification and/or correction depends upon the seriousness of problems for which they may be responsible under this subpart.

(e) It is the policy of these regulations that all consumer complaints or other information indicating the possible existence of an imminent safety hazard, serious defect, defect, or non-compliance should be referred to the manufacturer and/or retailer and/or other responsible party of the potentially affected manufactured home as early as possible so that the manufacturer or other responsible party can begin to timely respond to the consumer and take any necessary remedial actions. If the responsible party receiving the notice believes the issue is the responsibility of another responsible party, the information may be forwarded to that party.

§ 3282.403 Limitations

This shall limit the requirements under this subpart for notification or correction to the time frames listed below:

(a) By a manufactured home manufacturer or retailer, to a period of five (5) years from the date of first sale and completion of set-up of the manufactured home to the first purchaser. Any home over five (5) years in age from the date of sale and delivery to the first purchaser is exempt from these regulations or requirements for notification or correction by a manufactured home manufacturer or retailer;

(b) By an installer, contractor, product supplier, product distributor, transporter, developer, or landscaper for work completed and/or product supplied, to a period of two (2) years from the date such work is completed or such product is supplied. Any home over two (2) years after the date of completion of such work is exempt from these regulations by an installer, contractor, product supplier, product distributor, transporter, developer, or landscaper.

(c) The homeowner has a continuing obligation for providing adequate upkeep and maintenance of their manufactured home.

(d) Manufacturers and/or other responsible parties are not liable for the notification and correction of work done by others.

§ 3282.404 Consumer complaint and information referral.

When a consumer complaint or other information indicating the likely existence of a non-compliance, defect, serious defect, or imminent safety hazard is received by a State Administrative Agency or the Secretary, the SAA or the Secretary shall forward the complaint or other information to the responsible party. The responsibility to assure proper investigation and assignment of responsible party belongs to the SAA in the state in which the home is located. The SAA or the Secretary may, when it appears from the complaint or other information that more than one manufactured home may be involved, simultaneously send a copy of the complaint or other information to the SAA of the state where the manufactured home was manufactured or to the Secretary if there is no such SAA. When it appears that an imminent safety hazard or serious defect may be involved, the SAA shall send a copy to the Secretary. The SAA in the state of production of the manufactured home shall assist the SAA in the state in possession of the manufactured home as needed. The SAA in the state of production shall be responsible to assure the manufacturer's records reflect the proper investigation, record keeping, corrective action, and responses of manufacturer actions.

§ 3282.405 Investigation, determination, repair and notification by responsible parties.

(a) The manufacturer shall review its records to determine whether or not a defect, serious defect, or imminent safety hazard is indicated as set out in this subpart with respect to all manufactured homes produced by the manufacturer within five (5) years of the date of sale to the first purchaser, in which there likely exists an imminent safety hazard, serious defect, or defect.

[FR Doc. 03–18908 Filed 7–24–03: 8:45 am]

BILLING CODE 4210–27–M

POSTAL SERVICE

39 CFR Part 111

Merchandise Return Service Label Changes

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes revisions to the *Domestic Mail Manual* that would require a Postal routing barcode on all Merchandise Return Service labels.

DATES: Submit comments on or before August 25, 2003.

ADDRESSES: Mail or deliver written comments to the Manager, Mail Preparation and Standards, U. S. Postal Service, 1735 N. Lynn Street, Room 3025, Arlington, VA 22209–6038. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at Postal Service Headquarters Library, 475 L'Enfant Plaza SW, 11 Floor N, Washington, DC 20260. Comments may be submitted via fax to 703–292–4058, ATTN: Obataiye B. Akinwole or via email to *obataiye.b.akinwole@usps.gov.*

FOR FURTHER INFORMATION CONTACT: Obataiye B. Akinwole, (703) 292–3643.

SUPPLEMENTARY INFORMATION:

Background

Under current Postal Service standards, there is no requirement for barcodes on Merchandise Return Service (MRS) labels with the exception of those using Delivery Confirmation Service.

The Postal Service is concerned that optimum service may not be realized when MRS labels are not barcoded. As a result, the Postal Service will, upon publication of a final rule, require a Postal routing barcode that represents the correct 5-digit ZIP Code information for the delivery address of the MRS label. This is in line with the Postal Service's obligation to ensure prompt, efficient service for all product lines.

Effective Date

The Postal Service is proposing that the following revisions become effective January 5, 2004. Mailers are permitted to prepare labels under the revised standards immediately upon publication of the final rule. Effective with required compliance on June 2, 2005 nonbarcoded labels will not be accepted.

Proposed Changes

Under this proposal, all MRS labels must include a properly prepared barcode that represents the correct ZIP Code information for the delivery address on the MRS label plus the appropriate verifier character suffix or application identifier prefix characters appropriate for the barcode symbology as described in *Domestic Mail Manual (DMM)* C850 for machinable parcels. Effective January 10, 2004, only the UCC/EAN Code 128 symbology may be used for all parcel barcodes. All mailable hazardous materials sent at First-Class Mail, Priority Mail, or Express rates are exempt from this standard.

The Postal Service is replacing the Small Parcel and Bundle Sorter (SPBS) with the new Automated Parcel Processing System (APPS). The APPS machine is capable of processing small parcels that would normally by pass Bulk Mail Center (BMC) operations, at more than twice the efficiency of the SBPS machine. This machine is capable of reading a variety of barcode symbologies. As a result, customers distributing labels for parcels that will bypass the BMC environment must use the standards in this notice.

Mailers using Delivery Confirmation Service (DelCon) must use a single concatenated barcode that combines the postal routing code and Delivery Confirmation using the symbologies in DMM C850. Delivery Confirmation Service is not mandatory; however, customers using the service option must use the label format in this notice.

Mailers will be required to submit 10 samples of new labels to the office where the permit was originally issued no later than the next anniversary date of the permit, or within six months of the effective date of this notice, whichever occurs last. Although customers will not be required to provide samples when MRS labels are reprinted, it is recommended that they work with their local office to ensure pieces meet postal standards.

Although exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S. C. of 553 (b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment of the following proposed revisions to the DMM, incorporated by reference in the *Code of Federal Regulations. See* 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S. C. 552(a); 39 U.S.C. 101, 401,403,404,414,3001–3011,3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the *Domestic Mail Manual (DMM)* as set forth below:

Domestic Mail Manual (DMM)

* * * * *

S Special Services

S900 Special Postal Services

* * * * *

S920 Convenience

* * * * *

S923 Merchandise Return Service

* * * * *

5.0 FORMAT

* * * * *

5.6 Format Elements

* * * * *

[Add new item j to read as follows:]

j. Every MRS label must include a properly prepared barcode that represents the correct ZIP Code

information for the delivery address on the label plus the appropriate verifier character suffix or application identifier prefix characters appropriate for the barcode symbology as described in C850 for machinable parcels. MRS labels with Delivery Confirmation items must use a single concatenated barcode as described in C850. In addition to the barcode requirements in C850, the following requirement must be met in preparing MRS labels:

(1) Barcode Location. If a separate label is used, a minimum clear zone of ⅛ inch must be maintained on all sides of the barcode. If a barcoded label is used it must be placed either above the delivery address and to the right of the return address or to the left of the delivery address. In all cases the barcode must be placed on the address side and not overlap any adjacent item. The barcode must be parallel to the address as read.

* * * * *

Exhibit 5.6a Merchandise Return Label With No Special Services or With Insurance, Special Handling, or Pickup Service (*see* 5.6d)

[Revise Exhibit 5.6a as follows:]

FROM: _____

_____

_____

I.D. # 654321A

POSTAGE DUE COMPUTED BY ACCEPTANCE POST OFFICE

POSTAGE _____
*INSURANCE FEE (IF ANY) _____
*SPECIAL HANDLING FEE (IF ANY) _____
*PICKUP SERVICE FEE (IF ANY) _____
TOTAL POSTAGE & FEES DUE _____
INSURANCE DESIRED BY PERMIT HOLDER FOR $ _____ (VALUE)

NO POSTAGE NECESSARY IF MAILED IN THE UNITED STATES

[redacted]

MERCHANDISE RETURN LABEL
PERMIT NO. 1 CONESTOGA PA 17516
ABC CO. 501 FIRST AVE

ZIP 17516

POSTAGE DUE UNIT
US POSTAL SERVICE
PO BOX 9998
CONESTOGA PA 17516-9998

* * * * *

[Add new Exhibit 5.6e to read as follows:]

Exhibit5.6e Merchandise Return Label With a Single Concatenated Barcode

FROM: _____

_____

_____

POSTAGE DUE COMPUTED BY ACCEPTANCE POST OFFICE

POSTAGE _____
DELIVERY CONFIRMATION FEE _____
TOTAL POSTAGE & FEES DUE $ _____

NO POSTAGE NECESSARY IF MAILED IN THE UNITED STATES

[redacted]

MERCHANDISE RETURN LABEL
PERMIT NO 1 CONESTOGA PA 17516
ABC CO 501 FIRST AVE

ZIP - USPS DELIVERY CONFIRMATION

4201 7516 9182 0268 3733 1000 0000 14

POSTAGE DUE UNIT
US POSTAL SERVICE
PO BOX 9998
CONESTOGA PA 17516-9998

* * * * *

We will publish appropriate amendment to 39 CFR 11.3 to reflect the changes if the proposal is adopted.

Stanley F. Mires,
Chief Counsel, Legislative.
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7529–5]

RIN 2060–AK67

Protection of Stratospheric Ozone: Ban on Trade of Methyl Bromide With Non-Parties to the Montreal Protocol

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rule.

SUMMARY: With this action, EPA is proposing to prohibit the import and export of methyl bromide (class I, Group VI controlled substance) from or to a foreign state that is not a Party to the 1992 Copenhagen Amendments to the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol). EPA is proposing to ban trade in methyl bromide with non-Parties to the Copenhagen Amendments to the Protocol in order to ensure the United States meets its obligations under the Protocol and associated amendments.

In the "Rules and Regulations" section of the **Federal Register**, we are adopting these prohibitions as a direct final rule without prior proposal because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule. If we receive no relevant adverse comment, we will not take further action on this proposed rule. If we receive relevant adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Written comments on the companion direct final rule must be received on or before August 25, 2003, unless a public hearing is requested. Comments must then be received on or before 30 days following the public hearing. Any party requesting a public hearing must notify the contact person listed below by 5 p.m. Eastern Standard Time on August 4, 2003. If a hearing is requested it will be held August 19, 2003.

ADDRESSES: Comments on the companion direct final rule may be submitted by mail to Air and Radiation. Send two copies of your comments to: Air and Radiation Docket (6102), Air Docket No. A–92–13, Section XIII, U.S. Environmental Protection Agency, Mailcode 6205J, 1200 Pennsylvania Ave. NW., Washington, DC 20460. The Docket's hours of operation are 8:30 a.m. until 4:30 p.m. Monday through Friday. Comments may also be submitted electronically, through hand delivery or courier. Refer to the companion direct final for detailed instructions on submitting comments electronically, or through hand delivery or courier.

FOR FURTHER INFORMATION CONTACT: For further information about this proposed rule, contact Kate Choban by telephone at (202) 564–3524, or by e-mail at *choban.kate@epa.gov*, or by mail at Kate Choban, U.S. Environmental Protection Agency, Global Programs Division, Stratospheric Program Implementation Branch (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, 202–564–3524. Overnight or courier deliveries should be sent to 501 3rd Street, NW., Washington, DC, 20001. You may also visit the Ozone Depletion Web site of EPA's Global Programs Division at *http://www.epa.gov/ozone/index.html* for further information about EPA's Stratospheric Ozone Protection

regulations, the science of ozone layer depletion, and other topics.

SUPPLEMENTARY INFORMATION: This action concerns the import and export of methyl bromide (class I, Group VI controlled substance) from or to a foreign state that is not a Party to the 1992 Copenhagen Amendments to the Montreal Protocol on Substances the Deplete the Ozone Layer (Protocol). EPA is proposing to ban trade in methyl bromide with non-Parties to the Copenhagen Amendments to the Protocol in order to ensure the United States meets its obligations under the Protocol and associated amendments. For further information, please *see* the information provided in the direct final action that is located in the "Rules and Regulations" section of this **Federal Register** publication.

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I. General Information

A. Regulated Entities

Entities potentially regulated by this action are those associated with the import and export of methyl bromide. Potentially regulated categories and entities include:

Category	Examples of regulated entities
Industry	Importers and Exporters of methyl bromide

The above table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. To determine whether your facility, company, business, organization is regulated by this action, you should carefully examine the regulations promulgated at 40 CFR 82, Subpart A. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under the Office of Air and Radiation Docket & Information Center, Air Docket ID No. A–92–13, Section XIII. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at EPA West, 1301 Constitution Ave. NW., Room B108, Mail Code 6102T, Washington, DC 20460, Phone: (202)–566–1742, Fax: (202)–566–1741. The materials may be inspected from 8:30 am until 4:30 pm Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying docket materials.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of comment period will be marked late. EPA is not required to consider these late comments. If you plan to submit comments, please also notify Kate Choban, U.S. Environmental Protection Agency, Global Programs Division (6205J), 1200 Pennsylvania Ave. NW., Washington, DC 20460, (202)–564–3524.

Information designated as Confidential Business Information (CBI) under 40 CFR, Part 2, Subpart 2, must be sent directly to the contact person for this notice. However, the Agency is requesting that all respondents submit a non-confidential version of their comments to the docket as well.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments.

2. *By Mail.* Send two copies of your comments to: Air and Radiation Docket (6102), Air Docket No. A–92–13, Section XIII, U.S. Environmental Protection Agency, Mailcode 6205J, 1200 Pennsylvania Ave. NW., Washington, DC, 20460.

3. *By Hand Delivery or Courier.* Deliver your comments to: 501 3rd Street NW., Washington, DC 20001, Attention Docket ID No. A–92–13, Section XIII. Such deliveries are only accepted during the Docket's normal hours of operation as identified under **ADDRESSES.**

4. *By Facsimile,* Fax your comments to: (202) 566–1741, Attention Docket ID No. A–92–13, Section XIII.

D. How Should I Submit Confidential Business Information (CBI) to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the mail or courier addresses listed in Units C.2 or C.3, as appropriate, to the attention of Air Docket ID No. A–92–13, Section XIII. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

Summary of Supporting Analysis

II. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a "significant" regulatory action as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by EPA and OMB that this rule is not a "significant regulatory action" within the meaning of the Executive Order and will be signed by the Administrator only after completion of review by OMB.

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) previously approved the information collection requirements that can be used to implement today's proposed rule. The previously approved ICR is assigned OMB control number 2060–0170 (EPA ICR No. 1432.21).

There is no additional paperwork burden as a result of this rule. Current record keeping will allow EPA to implement the provisions of today's action.

The information collection previously approved will be used to implement the trade ban in paragraph 1 qua under Article 4 of the Montreal Protocol for methyl bromide. The information collection under this rule is authorized under sections 603(b) and 603(d) of the Clean Air Act Amendments of 1990 (CAA). This information collection is conducted to meet U.S. obligations under Article 7, Reporting Requirements, of the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol); and to carry out the requirements of Title VI of the CAA, including sections 603 and 614.

The reporting requirements included in this rule are intended to:

(1) Satisfy U.S. obligations under the international treaty, The Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol), to report data under Article 7;

(2) Fulfill statutory obligations under Section 603(b) of Title VI of the Clean Air Act Amendments of 1990 (CAA) for reporting and monitoring;

(3) Provide information to report to Congress on the production, use and consumption of class I controlled substances as statutorily required in Section 603(d) of Title VI of the CAA.

EPA informs respondents that they may assert claims of business confidentiality for any of the information they submit. Information claimed confidential will be treated in accordance with the procedures for handling information claimed as confidential under 40 CFR part 2, Subpart B, and will be disclosed only to the extent, and by means of the procedures, set forth in that subpart. If no claim of confidentiality is asserted when the information is received by EPA, it may be made available to the public without further notice to the respondents (40 CFR 2.203).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology

and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that is identified by the North American Industry Classification System (NAICS) Code in the Table below; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less that 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Category	NAICS Code	SIC Code	SIC small business size standard (in number of employees or millions of dollars)
1. Chemical and Allied Products, NEC	*424690*	*5169*	*100*

Based on an analysis of the U.S. exports of methyl bromide to specific countries, EPA has determined that only 3 countries of the 50 to whom U.S. producers of methyl bromide have exported over the past three years would be impacted because they have not yet ratified the Copenhagen Amendments to the Protocol. Specifically, the rule would ban the export of 41 metric tonnes to Cyprus, Cote d'Ivoire, and the United Arab Emriates compared to an average export from the entire U.S. of 5,236 metric tonnes. These countries represent less than 1% of all U.S. exports of methyl bromide for the years 2000, 2001, and 2002. So, economic impacts for U.S. producers of methyl bromide would be extremely minimal. The rule will not constrain U.S. farmers' ability to obtain methyl bromide from importers because the major methyl bromide exporting countries have already ratified the Copenhagen Amendments.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. None of the entities affected by this rule are considered small as defined by the NAICS Code listed above.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a written statement is required under section 202, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Section 203 of the UMRA requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule. Section 204 of the UMRA requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more by State, local and tribal governments, in the aggregate, or by the private sector, in any one year. The provisions in today's rule fulfill the obligations of the United States under the international treaty, The Montreal Protocol on Substances that Deplete the Ozone Layer, as well as those requirements set forth by Congress in section 614 of the Clean Air Act. Viewed as a whole, all of today's amendments do not create a Federal mandate resulting in costs of $100 million or more in any one year for State, local and tribal governments, in the aggregate, or for the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, EPA is not required to develop a plan with regard to small governments under section 203. Finally, because this proposal does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials under section 204.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the regulation.

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule is expected to primarily affect importers and exporters of methyl bromide. EPA is not aware of any current uses of methyl bromide by public sector entities. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. The rule does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Applicability of Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This is not such a rule, and therefore E.O. 13045 does not apply. This rule is not subject to E.O. 13045 because it implements specific trade measures adopted under the Montreal Protocol and required by section 614 of the CAA.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. The National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards.

Therefore, EPA is not considering the use of any voluntary consensus standards.

Dated: July 11, 2003.

Linda J. Fisher,

Acting Administrator.

[FR Doc. 03–18855 Filed 7–24–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405 and 411

[CMS–6014–P]

RIN 0938–AL14

Medicare Program; Interest Calculation

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would change the way we calculate interest, on Medicare overpayments and underpayments to providers, suppliers, health maintenance organizations, competitive medical plans, and health care prepayment plans to be more reflective of current business practices. This change would reduce the amount of interest assessed on overpayments and underpayments and simplify the way the interest is calculated.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on September 23, 2003.

ADDRESSES: In commenting, please refer to file code CMS–6014–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and two copies) to the following addresses ONLY: Centers for Medicare and Medicaid Services, Department of Health and Human Services, Attention: CMS–6014–P, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) to one of the following addresses:

Hubert H. Humphrey Building, Room 445–G, 200 Independence Avenue, SW., Washington, DC 21201, or

Centers for Medicare & Medicaid Services, Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Nancy Braymer, (410) 786–4323.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after the publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule and appointment to view public comments, telephone (410) 786–7197.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 (or toll-free at 1–888–293–6498) or by faxing to (202) 512–2250. The cost for each copy is $9. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through *GPO Access*, a service of the U.S. Government Printing Office. The Web site address is: *http://www.access.gpo.gov/nara/index.html*.

I. Background

A. Interest Calculation

Sections 1815(d) and 1833(j) of the Social Security Act (the Act) require that whenever a payment to a provider, supplier, or other entity is more than (overpayment) or less than (underpayment) the amount that was due to the provider, supplier, or other entity, we assess interest on the amount of the overpayment that the provider, supplier, or other entity owes to us or the underpayment that we owe to the provider, supplier, or other entity. This interest becomes due if the overpayment amount owed to us or the underpayment amount owed by us is not paid within 30 days of the date of the final determination of the overpayment or underpayment. We determine the rate of interest in accordance with 42 CFR 405.378 by comparing the Private Consumer Rate with the Current Value of Funds Rate and assessing the interest at the higher of the two rates that is in effect on the date of the final determination of the amount of the overpayment or underpayment.

Interest is calculated from the date of the final determination and is owed if the amount of the overpayment or underpayment is not paid within 30 days. Interest is calculated in 30-day periods. A period that is less than 30 days is considered to be a full 30-day period.

In this proposed rule, we are proposing to change the method of calculating the amount of interest that is assessed on overpayments and underpayments to better align our practices to a commercial business model. We now assess interest prospectively (30 days into the future). Under private sector practices, interest is assessed on delinquent debts retrospectively.

We are proposing that periods of less than 30 days would not be treated as a full 30-day period. Interest would be assessed only for full 30-day periods when payment is not made on time.

The change in the method of calculation would apply only to overpayments and underpayments whose date of final determination occurred after the effective date of the final regulation implementing this proposed rule.

B. Technical Correction

We are making a technical correction to correct a reference that was cited in a previous revision of the Code of Federal Regulations (CFR). In § 411.24, the rate of interest to be assessed on the recovery of Medicare conditional payments is incorrectly referenced as appearing in § 405.376(d), rather than § 405.378(d), which is the correct reference.

II. Provisions of the Proposed Regulations

The provisions of this proposed rule are as follows:

- In § 405.378, we would revise paragraph (b)(2) to delete the requirement that periods of less than 30 days be treated as a full 30-day period.
- In § 411.24, we would revise paragraph (m)(2)(iii) to correct the reference to § 405.376(d) by changing the reference to § 405.378(d).

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget (OMB) under the authority of the Paperwork Reduction Act of 1995 (PRA).

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

V. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866, (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year).

This proposed rule is not a major rule. It simply changes the way we calculate interest on overpayments and underpayments. It does not change how overpayments or underpayments are determined, nor does it require providers, suppliers, or other entities to change the way they interact with us in determining overpayments and underpayments.

During fiscal year (FY) 2001, we recovered $167 million in interest on delinquent overpayments. Had this proposed rule been in effect, interest recoveries would have been $153 million, a difference of $14 million due to the change in the interest calculation. During FY 2002, we recovered $115.7 million in interest on delinquent overpayments. Had this proposed rule been in effect, interest recoveries would have been $106.1 million, a difference of $9.6 million. During FY 2001, we paid $2.6 million in interest on underpayments. Had this proposed rule been in effect, interest payments would have been $2.4 million, a difference of $0.2 million. During FY 2002, we paid $5.2 million in interest on underpayments. Had this proposed rule been in effect, interest payments would have been $4.8 million, a difference of $0.4 million.

The RFA requires agencies to analyze options for regulatory relief of small businesses, nonprofit organizations, and government agencies. Most hospitals, and most other providers, suppliers, health maintenance organizations, competitive medical plans, and health care prepayment plans are small entities, either by nonprofit status or by having revenues of $29 million or less in any 1 year. During FY 2001, we recovered $167 million in interest on delinquent overpayments; during FY 2002, we recovered $115.7 million. Had this proposed rule been in effect, interest recoveries would have been $153 million during FY 2001 and $106.1 million during FY 2002, a difference of $14 million and $9.6 million, respectively. This would amount to 0.1 percent of the $13.5 billion in overpayments recovered during FY 2001 and less than 0.1 percent of the $13.4 billion recovered during FY 2002. During FY 2001, we paid $2.6 million in interest on underpayments; during FY 2002, we paid $5.2 million. Had this proposed rule been in effect, we would have paid $2.4 million during FY 2001 and $4.8 million during FY 2002, a difference of $0.2 million and $0.4 million, respectively. This would amount to less than 0.1 percent of the $236 billion and $246.8 billion in benefit payments made during FY 2001 and FY 2002. For further details, see the Small Business Administration's regulation that set forth size standards for health care industries at 65 FR 69432.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

This proposed rule has no operations impact on any provider, supplier, or other entity including small rural hospitals. The proposed rule simply changes the way we calculate interest we assess on overpayments and underpayments. It does not change how overpayments or underpayments are determined nor require providers, suppliers, or other entities to change how they interact with us in determining overpayments or underpayments. Therefore, we have determined that this proposed rule would not have a significant effect on the operations of a substantial number of rural hospitals. Because the interest we collect in a year far exceeds the interest we pay, the majority of providers, suppliers, and other entities would benefit from changing the method of calculating interest.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. During FY 2001 and FY 2002, we recovered $167 million and $115.7 million, respectively, in interest on delinquent overpayments. Had this proposed rule been in effect, interest recoveries would have been $153 million during FY 2001, a difference of $14 million. For FY 2002, interest recoveries would have been $106.1 million, a difference of $9.6 million. During FY 2001, we paid $2.6 million in interest on underpayments. Had this proposed rule been in effect, we would have paid $2.4 million, a difference of $0.2 million. During FY 2002, we paid $5.2 million in interest on underpayments. Had this proposed rule been in effect, interest payments would have been $4.8 million, a difference of $0.4 million.

This proposed rule would have no impact on State, local, or tribal governments. It would reduce annual expenditures by providers, suppliers, or other entities in the private sector because it changes the way that we compute interest on any delinquent overpayments owed to us. Additionally, the change in interest calculation that we pay on underpayments owed to providers, suppliers, and other entities would not be an expenditure by a State, local, or tribal government.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This proposed rule would impose no direct requirement costs on State and local governments, would not preempt State law, or have any Federalism implications. By changing how we calculate interest, we are reducing the amount of interest assessed on overpayments owed to us and underpayments owed by us to providers, suppliers, and other entities.

B. Effects on the Medicare and Medicaid Programs

This proposed rule would reduce the amount of interest assessed on Medicare overpayments and underpayments. During FY 2001, we recovered $167 million in interest on delinquent overpayments. Had this proposed rule been in effect, interest recoveries would have been $153 million, a difference of $14 million. During FY 2001, we paid $2.6 million in interest on underpayments. Had this proposed rule been in effect, we would have paid $2.4 million, a difference of $0.2 million. During FY 2002, we recovered $115.7 million in interest on delinquent overpayments. Had this proposed rule been in effect, interest recoveries would have been $106.1 million, a difference of $9.6 million. During FY 2002, we paid $5.2 million in interest on underpayments. Had this proposed rule been in effect, we would have paid $4.8 million, a difference of $0.4 million. There is no effect on the Medicaid program.

C. Alternatives Considered

We considered a number of other methods to use in calculating the amount of interest owed. We assessed the relative merits of alternative calculation methods based on two primary criteria: Comparability to a commercial business model and secondly, relative ease and cost of administration. Applying the first criterion precludes continuing our current calculation method. Under the proposed rule, we would be able to use commercially obtained off-the-shelf software to calculate interest. As in the private sector, the debtor would still have a set payment period (30 days) to pay the amount owed without additional interest being assessed during the payment period. We considered calculating and assessing interest on a daily basis but determined this would be prohibitively expensive and administratively burdensome for Medicare contractors, providers and beneficiaries.

D. Conclusion

This proposed rule is not a major rule. It would not change the way overpayments or underpayments are

determined. It would not have a significant impact on a substantial number of rural hospitals. Since a partial period would no longer be considered a full 30-day period, interest assessed on amounts owed to us would be reduced. Therefore, this proposed rule would reduce State, local, and tribal government expenditures. The proposed rule does not impose any direct requirement costs on State and local governments and does not preempt State law or have any Federalism implications.

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this proposed regulation was reviewed by the Office of Management and Budget.

List of Subjects Affected

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medical devices, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 411

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

1. The authority citation for part 405, subpart C, continues to read as follows:

Authority: Secs. 1102, 1815, 1833, 1842, 1866, 1870, 1871, 1879, and 1892 of the Social Security Act (42 U.S.C. 1302, 1395g, 1351, 1395u, 1395cc, 1395gg, 1395hh, 1395pp, and 1395ccc) and 31 U.S.C. 3711.

Subpart C—Suspension of Payment, Recovery of Overpayments, and Repayment of Scholarships and Loans

2. In § 405.378, paragraph (b)(2) is revised to read as follows:

§ 405.378 Interest charges on overpayments and underpayments to providers, suppliers, and other entities.

* * * * *

(b) * * *

(1) * * *

(2) Interest will accrue from the date of the final determination as defined in paragraph (c) of this section, and will either be charged on the overpayment balance or paid on the underpayment balance for each full 30-day period that payment is delayed.

* * * * *

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

3. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Insurance Coverage That Limits Medicare Payment; General Provisions

4. In § 411.24, paragraph (m)(2)(iii) is revised to read as follows:

§ 411.24 Recovery of conditional payments.

* * * * *

(m) * * *

(2) * * *

(iii) The rate of interest is that provided at § 405.378(d) of this chapter.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)
(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 10, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: April 10, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–18859 Filed 7–24–03; 8:45 am]
BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 406

[CMS–4018–P]

RIN 0938–AK94

Medicare Program; Continuation of Medicare Entitlement When Disability Benefit Entitlement Ends Because of Substantial Gainful Activity

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would conform the existing Medicare eligibility regulations to reflect a change made by the Ticket to Work and Work Incentives Improvement Act of 1999. That statutory change, which was implemented effective October 1, 2000, provides working disabled individuals with continued Medicare entitlement for an additional 54 months beyond the previous limit of 24 months, for a total of 78 months of Medicare coverage following the 15th month of the reentitlement period.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on September 23, 2003.

ADDRESSES: In commenting, please refer to file code CMS–4018–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4018–P, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) to one of the following addresses: Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–8010. (Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Denise Cox, (410) 786–3195.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document,

at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–9994.

I. Background

Before October 1, 2000, section 226(b) of the Social Security Act (the Act) provided that disabled beneficiaries who continued to engage in substantial gainful activity after completing a trial work period would receive Medicare coverage for 24 months following the 15th month of the reentitlement period.

Effective October 1, 2000, section 202 of the Ticket to Work and Work Incentives Improvement Act of 1999 (Pub. L. 106–170) amended section 226(b) of the Act to extend the period of Medicare coverage to 78 months after the 15th month of the reentitlement period. Because Section 202 was implemented effective October 1, 2000, Medicare coverage has already been extended to 78 months for all disabled individuals who continue to engage in substantial gainful activity after completing a trial work period. This regulation is intended to codify these statutory provisions.

II. Provisions of the Proposed Regulations

We are proposing to revise § 406.12(e)(2)(i) of our regulations to be consistent with the amended section 226(b) of the Act, which was implemented effective October 1, 2000. We are proposing to change the 24 months of extended Medicare coverage to 78 months of Medicare coverage following the 15th month of the re-entitlement period.

III. Collection of Information Requirements

This proposed rule does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the "DATES" section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

V. Regulatory Impact Statement

A. Overall Impact

We have examined the impact of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980 Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132. This proposed rule would essentially conform our regulations to the plain language of the statute.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We estimate a cost of $100 million to the Medicare trust fund in 2005. This cost estimate includes Medicare payments for disabled beneficiaries who are currently working and entitled to Medicare coverage, as well as payments for individuals who will become entitled to disability benefits in the future and subsequently return to work with extended Medicare coverage. As noted above, the plain language of the statute leaves us no discretion in interpreting this provision, and these costs flow directly from the statute, with or without this proposed rule. Therefore, this proposed rule is not a major rule and does not have a significant economic effect.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 to $29 million in any 1 year. For purposes of the RFA, beneficiaries are not considered to be small entities. Individuals and States are not included in the definition of a small entity. This regulation proposes to codify provisions of the Ticket to Work and Work Incentives Improvement Act of 1999 that were implemented on October 1, 2000. Eligible working disabled individuals are already receiving this extended Medicare benefit. This regulation would merely codify statutory provisions that have already been implemented and would not impose any regulatory burdens on small entities. Therefore, we have determined, and we certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. This proposed rule would not significantly affect the operations of a substantial number of small rural hospitals because it simply codifies a statutory extension of the period of Medicare entitlement for individuals who are already entitled to and receiving the coverage. Therefore, we have determined, and we certify, that this proposed rule will not have a significant impact on the operation of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. State, local, or tribal governments will not be affected since this proposed rule simply extends the length of time individuals who complete a trial work period and continue to work can receive Medicare benefits.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This proposed rule, which was implemented effective October 1, 2000, would not have a substantial effect on State or local governments because the extension of Medicare entitlement is for individuals already receiving the coverage.

B. Anticipated Effects

1. Effects on Beneficiaries

Before October 1, 2000, disabled beneficiaries who returned to work received 24 additional months of Medicare coverage following the 15th month of their re-entitlement period. Effective October 1, 2000, these beneficiaries receive 78 months of Medicare coverage following the 15th month of the re-entitlement period.

2. Effects on the Medicare Programs

Anticipated expenditures to the Medicare program have been projected over a 5-year period and are shown in the following chart:

Year	2004	2005	2006	2007	2008
Cost[1]	100	110	130	140	160
Disabled individuals affected[2]	35,000	39,000	42,000	45,000	48,000

[1] Rounded to the nearest 10 million.
[2] Rounded to nearest thousand.

C. Alternatives Considered

We considered excluding individuals whose disability benefit entitlement, and thus Medicare coverage, should have ended September 30, 2001 or earlier, but determined that it would be appropriate to extend the additional Medicare coverage to all beneficiaries who were entitled to Medicare as of October 1, 2000. The aggregate economic effect of this approach is negligible.

In accordance with the provisions of Executive Order 12866, this proposed regulation was reviewed by the Office of Management and Budget.

List of Subjects Affected in 42 CFR Part 406

Health facilities, Medicare.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR, chapter 4, part 406, subpart B as set forth below:

PART 406—HOSPITAL INSURANCE ELIGIBILITY AND ENTITLEMENT

Subpart B—Hospital Insurance Without Monthly Premiums

1. The authority citation for part 406 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 406.12, revise the introductory text to paragraph (e)(2) and revise paragraph (e)(2)(i) to read as follows:

§ 406.12 Individual under age 65 who is entitled to social security or railroad retirement disability benefits.

* * * * *

(e) * * *

(2) *Duration of continued Medicare entitlement.* If an individual's entitlement to disability benefits or status as a qualified disabled railroad retirement beneficiary ends because he or she engaged in, or demonstrated the ability to engage in, substantial gainful activity after the 36 months following the end of the trial work period, Medicare entitlement continues until the earlier of the following:

(i) The last day of the 78th month following the first month of substantial gainful activity occurring after the 15th month of the individual's re-entitlement period or, if later, the end of the month following the month the individual's disability benefit entitlement ends.

* * * * *

Authority: (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 1, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: March 26, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–19068 Filed 7–24–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 424

[CMS–1185–P]

RIN 0938–AK79

Medicare Program; Elimination of Statement of Intent Procedures for Filing Medicare Claims

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would remove the written statement of intent (SOI) procedures used to extend the time for filing Medicare claims. One of the goals of our regulatory reform efforts is to update our regulations based on recent experiences with filing practices and changes in the law. The SOI procedures extend the time to file a claim by 6 months after the month in which a Medicare contractor acknowledges the receipt of a valid statement of intent. We are proposing to remove the SOI procedures because beneficiaries, whom the SOI procedures were intended to benefit, rarely file claims or SOIs. Instead, SOIs are filed in great numbers on behalf of, especially, dually-eligible beneficiaries by States that have previously made Medicaid payments, and occasionally by providers and suppliers. The large number of SOIs imposes a significant expenditure of resources on our contractors, and may also be due to, in part, a lack of careful screening as to whether claims should have initially been presented to and paid by Medicaid. In the absence of an SOI, providers and suppliers (and, where applicable, beneficiaries) would still have from 15–27 months (depending on the date of service) to file claims with Medicare contractors.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on September 23, 2003.

ADDRESSES: In commenting, please refer to file code CMS–1185–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Mail written comments (one original and three copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1185–P, P.O. Box 8014, Baltimore, MD 21244–8014.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses: Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for commenters wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: *David Walczak,* (410) 786–4475.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. by calling (410) 786–7197.

I. Background

The purpose of the statement of intent (SOI) procedures is to extend the timely filing period for the submission of an initial Medicare claim. An SOI, by itself, does not constitute a claim, but rather is a means of extending the deadline for filing a timely and valid claim. Our regulations at 42 CFR 424.32, "Basic requirements for all claims," and § 424.44, "Time limits for filing claims," require that Medicare claims be filed on Medicare-designated claims forms by providers, suppliers, and beneficiaries according to Medicare instructions, by the end of the year following the year in which the services were furnished. Services furnished in the last 3 months of a calendar year are deemed to be furnished in the subsequent calendar year, and thus, in this situation, a provider, supplier, or beneficiary has until December 31 of the second year following the year in which the services were furnished to file claims. Where an SOI has been filed with the appropriate Medicare contractor and the contractor notifies the submitter of the SOI that the SOI is valid (that is, the SOI sufficiently identifies the beneficiary and the items or services rendered), the period in which to file a claim may be extended an additional 6 months after the month of the contractor's notice.

The original regulation on extending the time to file claims for Medicare benefits was codified at 20 CFR 405.1693, and was based on 20 CFR 404.613, which pertained to applications for Social Security benefits. Section 404.613 reflected the Social Security program's interest in allowing virtually any type of writing to be a placeholder for filing a claim for Social Security benefits, provided that a perfected claim was submitted shortly thereafter. Because we believed that Medicare beneficiaries might sometimes need extra time to file a Part B claim due to extenuating circumstances such as poor health or unfamiliarity with the claims filing process, we instituted the SOI procedures.

Experience has shown, however, that beneficiaries rarely submit SOIs directly. Medicare contractors that we surveyed reported no SOIs were directly submitted by beneficiaries for the claims filing period ending December 31, 2000, the latest year for which we have complete data. One reason for the lack of beneficiary-initiated SOIs is the fact that beneficiaries rarely need to file claims. The percentage of Part B claims taken on assignment is about 98 percent today, compared to about 52 percent in 1975. ("Assignment" is the process by which the physician or other supplier agrees to accept Medicare payment in full for a Part B item or service and file the claim for such payment.) Even for Part B claims not taken on assignment, the law now requires the physician or other supplier to file the claim and provides for sanctions for failure to do so. (*See* section 1848(g)(4) of the Act (42 U.S.C. 1395w–4(g)(4)). The number of Part A claims filed by beneficiaries has always been minimal because the law requires that payment for Part A services generally be made only to providers of services, with very limited exceptions. (*See* section 1814(a) of the Act (42 U.S.C. 1395f(a)). Thus, we believe that the SOI procedures are no longer necessary insofar as they are not serving their intended purpose.

Further, we believe retention of the SOI procedures is counterproductive because of the amount of resources needed to process SOIs submitted by States and because the SOI procedures may encourage or facilitate inappropriate behavior on the part of some States and some providers.

Each year, our contractors receive an enormous number of SOIs that are submitted by States that, having first made Medicaid payments to dually-eligible (that is, Medicare and Medicaid) beneficiaries, subsequently believe that Medicare should be the proper payor. Subsequent to several court decisions in the early 1990s, we permitted States to "stand in the shoes" of a dually-eligible beneficiary with respect to claims filing and appeals. For example, States are not required to obtain a beneficiary's signature in order to request providers to file a Part A claim or in order to file an appeal. We also have permitted States and their contractors to file SOIs on the States' behalf or as appointed representatives of the beneficiaries.

The great majority of these SOIs are filed on paper and thus must be manually processed to determine whether they are valid SOIs. (According to our requirements, SOIs must contain detailed and specific information to ensure that a subsequently filed claim was in fact protected by an SOI. (See Program Memorandum AB–03–61)). Also, these SOIs are typically filed in large batches near the end of the timely filing period. All of these factors contribute to the amount of resources and consequent cost incurred in processing the SOIs.

We also believe that the SOI procedures may contribute to States "paying and chasing" instead of following the required cost-avoidance procedures, and to the incorrect submission of claims to Medicaid by providers. Our regulations at § 433.139(b) provide that, unless a waiver is granted under § 433.139(e), a State Medicaid agency that has established the probable existence of third party liability (including Medicare liability) at the time a claim for Medicaid payment is presented to it, must reject the claim and return it to the provider for a determination of liability. This process is known as cost avoidance. Some States, however, have been paying thousands of Medicaid claims, despite the knowledge that the beneficiaries involved are entitled to Medicare. These States subsequently identify a significant portion of the claims that they have paid as ones for which Medicare should be the proper payor, and use the SOI procedures to extend the time for providers to file claims.

The fact that such large numbers of claims are paid first by Medicaid and then identified as payable by Medicare raises the inference that providers are not as careful as they should be as to which payor they initially submit claims, and that States, by initially paying such claims, are not fully practicing cost avoidance. We are concerned that the availability of the SOI procedures to extend the time for filing claims is contributing to such inappropriate behavior. We also note that many of the claims filed with Medicare subsequent to the SOIs are "demand bills," which require full medical review, thus increasing the

claims processing cost for our contractors. (Where a provider believes that a service is not covered by Medicare but the beneficiary (or the State as the beneficiary's subrogee) requests the provider to bill Medicare regardless, the provider's Medicare provider agreement requires it to bill Medicare. Such a bill is known as a "demand bill." It requires full medical review because the fact that the provider initially believed that the service was not covered by Medicare raises the question of whether Medicare should pay it.)

Finally, we are cognizant that providers and suppliers sometimes file SOIs. We believe, however, that the filing periods in § 424.44 (15 to 27 months, depending on the date the service was rendered) are more than an adequate amount of time to submit claims.

Based on a survey of SOI requests filed with Medicare contractors for the claims filing period that ended December 31, 2001 (the latest year for which data was available), a very small percentage of claims were processed and paid compared to the total number of SOI requests received. The entire process of receiving an SOI request, determining if an SOI is valid or invalid, examining a later-submitted claim to determine whether the claim was in fact protected by the earlier-submitted SOI, and adjudicating the claim (which, in many cases involves full medical review) are all done manually, and the costs associated with such manual processing are not included in our contractors' budgets (contractors are not required to calculate costs at this level). Therefore, the expenditure of resources and money for such manual processing takes away from the resources needed to do the activities and functions that are included in our contractors' budgets. This proposed rule, if finalized, should have little financial impact on entities that currently submit SOI requests. The rule would simply require these entities to submit their claims six months or so earlier, to comply with Medicare's timely filing requirements (that is, 15 to 27 months after the date of service, depending on the particular month the service was rendered). Given that the requirements for submitting a claim are not much different than submitting a valid SOI, and given that an SOI must be filed within the timely filing period, we anticipate no significant difficulty for such entities to timely submit claims.

Therefore, for the above reasons, we propose removing § 424.45 from our regulations.

II. Provisions of the Proposed Regulation

This regulation proposes to remove 42 CFR 424.45. In the absence of § 424.45, providers, suppliers and beneficiaries still would have from 15–27 months to submit claims to Medicare.

III. Collection of Information Requirements

This document does not impose new information collection and recordkeeping requirements but does remove an old one.

The elimination of §424.45 will reduce costs and workload burdens on providers and suppliers. Specifically, by eliminating the written SOI procedures, we hope to: (1) Reduce provider, supplier and Medicare contractor resource burdens; (2) reduce the burden placed on providers and suppliers from having to resubmit claims, and also from having to reimburse States for claims that were incorrectly paid for by the States; (3) reduce Medicare contractor administrative costs; (4) eliminate changes to existing intermediary/carrier claims payment systems; (5) encourage States to pursue cost-avoidance procedures to ensure that Medicaid is truly the payor of last resort, and thus reduce the need to use "pay and chase" procedures; (6) reduce the necessity for medical review at the contractor level; (7) strengthen Medicare and Medicaid program integrity efforts to ensure correct payment the first time; and (8) improve coordination efforts between the Medicare and Medicaid programs.

Given that CMS, in the past, did not specifically quantify the burden associated with this regulatory requirement, we are seeking public comment on the burden reduction associated with the elimination of section 42 CFR 424.45.

If you have any comments on any of these information collection and record keeping requirements, please mail the original and three copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, DRDI, DRD–B, Baltimore, MD 21244–1850, ATTN: Julie Brown, CMS–1185-P; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, ATTN: Brenda Aguilar, CMS Desk Officer CMS–1185-P.

Comments submitted to OMB may also be emailed to the following address: email: *baguilar@omb.eop.gov*; or faxed to OMB at (202) 395–6974.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

V. Regulatory Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1955 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). This is not a major rule. This proposed rule will have no substantial economic impact on either costs or savings to the Medicare or Medicaid programs.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million annually (*see* 65 FR 69432). Individuals and States are not included in the definition of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital located outside of a Metropolitan Statistical Area with fewer than 100 beds.

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant impact on a substantial number small entities or rural hospitals because providers and suppliers will still have 15 to 27 months to file claims. Although some providers and suppliers may be small entities or rural hospitals, they are not filing a significant number of SOIs and the information required to file a valid SOI is essentially the same information that providers and suppliers are required to provide when filing a valid claim. We are aware that some States rely on the SOI process at the end of the period for Medicare timely claims filing, to pay and recover expenditures for some of their claims that could have been paid by Medicare. Elimination of the SOI process will require that these States revert to the standard recovery process in the Medicaid regulations to assure that claims are filed within the (15–27 months) Medicare timely filing requirements. While the elimination of the SOI process will not completely eliminate the issue of "pay and chase," we believe it will encourage States to pursue cost-avoidance procedures to ensure that Medicaid is truly the payer of last resort, reducing the need to use "pay and chase" procedures. We solicit comment on the impact of this regulation on States and providers.

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This rule would not have such an effect on State, local, or tribal governments, or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule that would impose substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications.

While this rule would not have a substantial effect on State and local governments, States need to preserve their ability to appropriately recover expenditures for Medicaid benefits that should have been paid by Medicare. We are aware that some States rely on the SOI process, at the end of the period for Medicare timely claims filing, to recover expenditures for some of their claims that could have been paid by Medicare. Elimination of the SOI process will require that these States revert to the standard recovery process in the Medicaid regulations to assure that claims are filled within the (15–27 months) Medicare timely filing requirements.

For the reasons discussed earlier in this regulation, we believe this time frame is adequate to address the States' need for recovering claims from Medicare. We will continue to address the States' concerns on these payment and recoupment issues, through the efforts of the State Technical Advisory Group (TAG) on Third Party Liability, and will continue to consult with States about issues affecting their ability to recover expenditures for some of their claims that should have been covered by Medicare.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

PART 424—CONDITIONS FOR MEDICARE PAYMENT

Part 424 is amended as follows:

1. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 424.45 [Removed]

2. Section 424.45 is removed.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 20, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: April 18, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–18994 Filed 7–24–03; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 22 and 90

[WT Docket No. 03–103; FCC 03–95]

Rules To Benefit the Consumers of Air-Ground Telecommunications Services; Biennial Regulatory Review

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on its rules governing the provision of air-ground telecommunications services on commercial airplanes in order to enhance the options available to the public. The Commission also proposes to revise or eliminate certain Public Mobile Services (PMS) rules that have become obsolete as the result of technological change, increased competition in the Commercial Mobile Radio Services (CMRS), supervening changes to related rules, or a combination of these factors. In addition, the Commission proposes to recodify and amend several rules, and make several conforming amendments to the Commission's rules. The Commission also seeks comment on providing licensees of nationwide paging channels flexibility to provide other services and on whether rules limiting the provision of dispatch service by paging licensees are too restrictive.

DATES: Comments are due on or before September 23, 2003, and reply comments are due on or before October 23, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., TW–A325, Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for filing instructions.

FOR FURTHER INFORMATION CONTACT: Richard Arsenault, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418–0920, e-mail *richard.arsenault@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, FCC 03–95, in WT Docket No. 03–103, adopted on April 17, 2003, and released on April 28, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

1. In this Notice of Proposed Rulemaking (NPRM), the Commission undertakes a fundamental reexamination of its rules governing the

provision of air-ground telecommunications services on commercial airplanes (*i.e.*, those rules affecting the availability of wireless services to passengers on commercial aircraft) in order to enhance the options available to the public. The Commission's goal is to promote service provision that better meets the needs of the public for wireless air-ground communications services. At present, only one of the six available licenses in this service is used to serve the public. In this NPRM, the Commission seeks comment on whether any changes to its rules could provide greater opportunities for the competitive provision of these services, leading to lower prices to consumers and increased choices in wireless services and enhancements while traveling by commercial airliner. To this end, the Commission is open to all possible suggestions for fundamental reform. In addition, in this context, the Commission seeks comment regarding whether the commercial air-ground spectrum is being efficiently used, since there is now only one operating licensee in a regulatory plan that originally contemplated six competing service providers. The Commission also seeks comment on possible amendment of rules for other wireless services to permit the provision of commercial air-ground service by licensees of such spectrum.

2. The Commission initiates this proceeding partly in furtherance of its biennial review of regulations pursuant to section 11 of the Communications Act of 1934, as amended. Section 11 requires the Commission to review its regulations applicable to providers of telecommunications service and to "determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service," and to repeal or modify any regulation that the Commission finds no longer necessary in the public interest. This NPRM, in part, is one of the steps in the Commission's implementation of staff recommendations under section 11 for deleting or modifying various part 22 rules. In addition, this NPRM considers other proposals submitted to the Commission by members of the public regarding changes to the part 22 regulations, including those that do not fall within the scope of section 11. The Commission accordingly seeks comment on changes to rules for each of the part 22 services—Paging and Radiotelephone, Rural Radiotelephone, Air-Ground Radiotelephone, and Offshore Radiotelephone—other than cellular as well as its rules governing developmental authorizations. In addition to eliminating unnecessary regulatory hurdles, many of these proposals provide licensees with greater flexibility regarding the use of their spectrum, which in turn leads to greater technical, economic, and marketplace efficiency.

3. In this NPRM, the Commission also proposes to revise or eliminate certain part 22 Public Mobile Services (PMS) rules that may have become obsolete as the result of technological change, increased competition in the Commercial Mobile Radio Services (CMRS), supervening changes to related Commission rules, or a combination of these factors. This NPRM in addition proposes to recodify certain part 22 PMS rules to part 1 of the Commission's rules, amend several of the part 1 rules, and make several conforming amendments to the Commission's part 90 rules.

4. In this NPRM, the Commission also seeks comment on ways to increase flexibility to enable licensees to better serve the public. For example, the Commission seeks comment on providing licensees of nationwide paging channels flexibility to provide other services and on whether its rules limiting the provision of dispatch service by paging licensees are too restrictive.

5. Specifically, to illustrate the proposals outlined above, the NPRM seeks comment on elimination or modification of numerous part 22 technical, operational and service rules. For example, the NPRM tentatively concludes that the directional antenna requirements set forth in § 22.363 and Table C–2 to § 22.361 should be eliminated. In addition to these rule changes, the NPRM seeks comment on elimination of the requirement to file FCC Form 409 (Airborne Mobile RadioTelephone License Application) to apply for authority to operate an airborne station. The NPRM also seeks comment regarding whether § 1.929(c)(1) of the Commission's rules should be amended to specify that expansion of a composite interference contour (CIC) of a site-based licensee in the Paging and Radiotelephone Service—as well as the Rural Radiotelephone Service and 800 MHz Specialized Mobile Radio Service—over water, on a secondary, non interference basis, should be classified as a minor (rather than major) modification of license. Such reclassification would substantially reduce the filing requirements associated with these license modifications. Finally, the NPRM seeks comment on recodification of § 22.157 (computation of distance) and § 22.159 (computation of terrain elevation) to part 1 of the Commission's rules. Subject to several exceptions, recodification of these rules to part 1 would harmonize the methods for computing distance and terrain elevation applicable to Wireless Radio Services described in parts 1, 20, 21, 22, 24, 27, 80, 87, 90, 95, 97, and 101 so that they are subject to the same requirements.

Procedural Matters

Initial Regulatory Flexibility Analysis

6. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Below contains the IRFA. The Commission requests written public comments on the IRFA. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, the Commission asks a number of questions regarding the prevalence of small businesses in the affected industries.

7. Interested parties must file comments in accordance with the same filing deadlines as comments filed in this NPRM, but they must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act.

Ex Parte Rules—Permit-but-Disclose Proceedings

8. This is a permit-but-disclose notice and comment rulemaking proceeding. The Commission's rules permit ex parte presentations, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. See generally 47 CFR 1.1202, 1.1203, and 1.2306(a).

Comment Dates

9. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before September 23, 2003, and reply comments October 23, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS), *http://www.fcc.gov/e-file/ecfs.html*, or by filing paper copies.

10. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should including the following words in the body of the message, "get form <your e-mail address." A sample form and directions will be sent in reply.

11. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., TW–A325, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

12. Parties who choose to file by paper should also submit their comments on diskette. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Microsoft Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contract, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, D.C. 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

13. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418–7426, TTY (202) 418–7365 or via e-mail to bmillin@fcc.gov. This NPRM can also be downloaded at *http://www.fcc.gov/wtb*.

Further Information

14. The World Wide Web addresses/URLs that the Commission gives here were correct at the time this document was prepared but may change over time. They are included herein in addition to the conventional citations as a convenience to readers. The Commission is unable to update these URLs after adoption of this NPRM, and readers may find some URLs to be out of date as time progresses. The Commission also advises readers that the only definitive text of FCC documents is the one that is published in the FCC Record. In case of discrepancy between the electronic documents cited here and the FCC Record, the version in the FCC Record is definitive.

Initial Paperwork Reduction Act of 1995 Analysis

15. This NPRM contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995. Public, agency, and OMB comments are due at the same time as other comments on this NPRM (which are due 60 days from the date of publication of this NPRM in the **Federal Register**). Comments should address: (a). Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collection; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of technology.

16. Written comments by the public on the proposed and/or modified information collections are due September 23, 2003. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before September 23, 2003. In addition to filing comments with the Secretary, a copy of any comments on the information(s) contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jboley@fcc.gov*, and to Kim Johnson, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington, DC 20503, or via the Internet to *Kim_A._Johnson@omb.eop.gov*.

Initial Regulatory Flexibility Analysis

17. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities of the policies and rules proposed in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM, provided in paragraph 79 of the item. The Commission will send a copy of this NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

Need for, and Objectives of, the Proposed Rules

18. In this NPRM, the Commission undertakes a fundamental reexamination of its rules governing the provision of air-ground telecommunications services on commercial airplanes (*i.e.*, those rules affecting the availability of wireless services to passengers on commercial aircraft) in order to enhance the options available to the public. The Commission's goal is to promote service provision that better meets the needs of

the public for wireless air-ground communications services. At present, only one of the six available licenses in this service is used to serve the public. In this NPRM, the Commission seeks comment on whether any changes to its rules could provide greater opportunities for the competitive provision of these services, leading to lower prices to consumers and increased choices in wireless services and enhancements while traveling by commercial airliner. To this end, the Commission is open to all possible suggestions for fundamental reform. In addition, in this context, the Commission seeks comment regarding whether the commercial air-ground spectrum is being efficiently used, since there is now only one operating licensee in a regulatory plan that originally contemplated six competing service providers. The Commission also seeks comment on possible amendment of rules for other wireless services to permit the provision of commercial air-ground service by licensees of such spectrum.

19. The Commission initiates this proceeding partly in furtherance of its biennial review of regulations pursuant to section 11 of the Communications Act of 1934, as amended. Section 11 requires the Commission to review its regulations applicable to providers of telecommunications service and to "determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service," and to repeal or modify any regulation that the Commission finds no longer necessary in the public interest. This NPRM, in part, is one of the steps in the Commission's implementation of staff recommendations under section 11 for deleting or modifying various part 22 rules. In addition, this NPRM considers other proposals submitted to the Commission by members of the public regarding changes to the part 22 regulations, including those that do not fall within the scope of section 11. The Commission accordingly seeks comment on changes to rules for each of the part 22 services—Paging and Radiotelephone, Rural Radiotelephone, Air-Ground Radiotelephone, and Offshore Radiotelephone—other than cellular as well as its rules governing developmental authorizations. In addition to eliminating unnecessary regulatory hurdles, many of these proposals provide licensees with greater flexibility regarding the use of their spectrum, which in turn leads to greater technical, economic, and marketplace efficiency.

20. In this NPRM, the Commission also proposes to revise or eliminate certain part 22 Public Mobile Services (PMS) rules that may have become obsolete as the result of technological change, increased competition in the Commercial Mobile Radio Services (CMRS), supervening changes to related Commission rules, or a combination of these factors. This NPRM in addition proposes to recodify certain part 22 PMS rules to part 1 of the Commission's rules, amend several of the part 1 rules, and make several conforming amendments to the Commission's part 90 rules.

21. In this NPRM, the Commission also seeks comment on ways to increase flexibility to enable licensees to better serve the public. For example, the Commission seeks comment on providing licensees of nationwide paging channels flexibility to provide other services and on whether its rules limiting the provision of dispatch service by paging licensees are too restrictive.

22. Specifically, to illustrate the proposals outlined above, the NPRM seeks comment on elimination or modification of numerous part 22 technical, operational and service rules. For example, the NPRM tentatively concludes that the directional antenna requirements set forth in § 22.363 and Table C–2 to § 22.361 should be eliminated. In addition to these rule changes, the NPRM seeks comment on elimination of the requirement to file FCC Form 409 (Airborne Mobile RadioTelephone License Application) to apply for authority to operate an airborne station. The NPRM also seeks comment regarding whether § 1.929(c)(1) of the Commission's rules should be amended to specify that expansion of a composite interference contour (CIC) of a site-based licensee in the Paging and Radiotelephone Service—as well as the Rural Radiotelephone Service and 800 MHz Specialized Mobile Radio Service—over water, on a secondary, non interference basis, should be classified as a minor (rather than major) modification of license. Such reclassification would substantially reduce the filing requirements associated with these license modifications. Finally, the NPRM seeks comment on recodification of § 22.157 (computation of distance) and § 22.159 (computation of terrain elevation) to part 1 of the Commission's rules. Subject to several exceptions, recodification of these rules to part 1 would harmonize the methods for computing distance and terrain elevation applicable to Wireless Radio Services described in parts 1, 20, 21, 22, 24, 27, 80, 87, 90, 95, 97, and 101 so that they are subject to the same requirements.

Legal Basis

23. The potential actions on which comment is sought in this NPRM would be authorized under sections 1, 4(i), 11, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 161, and 303(r).

Description and Estimate of the Number of Small Entities Subject to the Rules

24. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

25. This NPRM could result in rule changes that, if adopted, would affect small businesses that currently are or may become Paging and Radiotelephone, Rural Radiotelephone, Air-Ground Radiotelephone, or Offshore Radiotelephone service providers regulated under subparts E, F, G, and I of part 22 of the Commission's rules, respectively. The proposed changes to § 22.7 of the Commission's rules would, if adopted, affect Cellular Radiotelephone Service providers that are regulated under subpart H of part 22 of the Commission's rules. In addition, pursuant to § 90.493(b) of the Commission's rules, paging licensees on exclusive channels in the 929–930 MHz bands are subject to the licensing, construction, and operation rules set forth in part 22. As this rulemaking proceeding applies to multiple services, the Commission will analyze the number of small entities affected on a service-by-service basis, and discuss the number of small equipment manufacturing entities that are potentially affected by the proposed rule changes.

26. *Cellular Radiotelephone Service.* Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company employing no more than 1,500 persons. There are 1,758 cellular licenses; however, a cellular licensee may own several licenses. According to the most recent Trends in Telephone Service data, 858 carriers reported that they were engaged in the provision of cellular service, PCS, or SMR telephony, which are grouped together in the data. Of these, 567 have more than 1,500 employees; the remaining 291 are small business concerns under the SBA's definition. However, because data for cellular service, PCS, and SMR telephony are reported collectively, the Commission is unable at this time to estimate how many of the 291 small business concerns are cellular service carriers. Consequently, the Commission estimates that there are 291 or fewer small cellular service carriers that may be affected by the proposal to amend § 22.7, if adopted.

27. *Paging and Radiotelephone Service.* The Commission has defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $15 million. A "very small business" is defined as an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $3 million. The SBA has approved these definitions. An auction of MEA licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won licenses. An auction of MEA and EA paging licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold. In this auction, high bids were placed by 130 entities that qualify as small businesses under the Commission's definition. Licenses have been granted to 128 of these entities, and the applications of the other entities remain pending. Thus, in addition to existing licensees, should the Commission adopt the rule changes proposed in the NPRM, 130 license winners in the recent auction would be affected small entities.

28. In addition, the SBA defines small paging companies as an entity employing no more than 1,500 persons. At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to the most recent Trends in Telephone Service data, 576 carriers reported that they were engaged in the provision of paging and messaging service. Only 19 of the 576 carriers have more than 1,500 employees; the remaining 557 are small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 557 small paging carriers that may be affected by the proposed rules, if adopted. The Commission estimates that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

29. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small business specific to the Air-Ground Radiotelephone Service. Accordingly, the Commission uses the SBA definition applicable to cellular and other wireless telecommunication companies, *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

30. *Offshore Radiotelephone Service.* This service operates on several ultra high frequency (UHF) TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. The Commission has not adopted a definition of small business specific to the Offshore Radiotelephone Service. Accordingly, the Commission uses the SBA definition applicable to cellular and other wireless telecommunication companies, i.e., an entity employing no more than 1,500 persons. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition. The Commission assumes, for purposes of this IRFA, that all of the 55 licensees are small entities, as that term is defined by the SBA.

31. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). The Commission therefore uses the SBA definition applicable to cellular and other wireless telecommunication companies, i.e., an entity employing no more than 1,500 persons. There are approximately 1000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

32. *Equipment Manufacturers.* Some of the proposed actions in the NPRM could also affect equipment manufacturers. The Commission does not know how many equipment manufacturers are in the current market. The 1994 County Business Patterns Report of the Bureau of the Census estimates that there are 920 companies that make communications subscriber equipment. This category includes not only cellular, paging, air-ground, offshore, and rural radiotelephone equipment manufacturers, but television and AM/FM radio manufacturers as well. Thus, the number of cellular, paging, air-ground, offshore, and rural radiotelephone equipment manufacturers is lower than 920. Under SBA regulations, a "communications equipment manufacturer" must have a total of 1000 or fewer employees in order to qualify as a small business concern. Census Bureau data from 1992 indicate that at that time there were an estimated 858 such U.S. manufacturers and that 778 (91 percent) of these firms had 750 or fewer employees and would therefore be classified as small entities. Using the Commission's current estimate of equipment manufacturers and the previous percentage estimate of small entities, the Commission estimates that this current action may affect approximately 837 small equipment manufacturers.

33. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.

34. This NPRM neither proposes nor anticipates any additional reporting, recordkeeping, or other compliance measures. If certain of the proposals in the NPRM (*e.g.*, eliminating the § 22.655 requirement that certain paging licensees file channel usage reports, or elimination of the requirement to file FCC Form 409 (Airborne Mobile Radiotelephone License Application) to apply for authority to operate an airborne station) are adopted as a result of this proceeding, then the Commission contemplates a reduction in these requirements. The reduction would be the same for all entities.

35. In addition to these rule changes, the NPRM also seeks comment regarding whether § 1.929(c)(1) of the Commission's rules should be amended to specify that expansion of a composite interference contour (CIC) of a site-based licensee in the Paging and Radiotelephone Service—as well as the Rural Radiotelephone Service and 800 MHz Specialized Mobile Radio Service—over water on a secondary, non interference basis should be classified as a minor (rather than major) modification of license. Such

reclassification, if adopted, would substantially reduce the filing requirements associated with these license modifications.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

36. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

37. As stated earlier, a number of the Commission's part 22 technical, operational and service rules may be determined to be outdated. Therefore, modifying or eliminating these rules should decrease the costs associated with regulatory compliance for service providers, provide additional flexibility in the provision of service and manufacturing of equipment, and enhance the market demand for some services. The Commission therefore anticipates that, although it seems likely that there will be a significant economic impact on a substantial number of small entities, there will be no adverse economic impact on small entities. In fact, certain of the proposed rule changes may particularly benefit small entities. For example, the NPRM proposes that § 1.929(c)(1) should be amended to specify that expansion of the composite interference contour (CIC) of a site-based licensee in the Paging and Radiotelephone Service—as well as the Rural Radiotelephone Service and 800 MHz Specialized Mobile Radio Service—over water, on a secondary, non interference basis to any geographic area licensee in the same area, is a minor, not a major, modification of license. Although adoption of such an amendment would benefit both small and large entities (because minor modifications are self-effectuating, while major modifications require FCC approval), the majority of businesses in these three radio services are small entities. The NPRM further proposes that a site-based licensee expanding its CIC over water as defined above could do so on a permissive basis, with no notification to the Commission required. Many licensees in these services are small entities that could benefit from this rule change.

38. In the NPRM, then, the Commission has set forth various options it is considering for each rule, from modifying rules to eliminating them altogether. As discussed in the NPRM, the effect of any rule change on the regulatory burden of licensees will be a significant criterion in determining appropriate Commission action. With the exception of the reexamination of the rules governing the provision of air-ground telecommunications services on commercial airplanes in order to enhance the options available to the public, the entire intent underlying the Commission's actions here is to lessen the levels of regulation, consistent with its mandate for undertaking biennial reviews. The Commission seeks comment on any additional appropriate alternatives and especially alternatives that may further reduce economic impacts on small entities.

Federal Rules That May Duplicate, Overlap or Conflict With the Proposed Rules

39. None.

Ordering Clauses

40. Pursuant to the authority contained in sections 1, 4(i), 11, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 161, and 303(r), this Notice of Proposed Rulemaking is *adopted*.

41. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 603(a).

List of Subjects in 47 CFR Parts 1, 22 and 90

42. Administrative practice and procedure, Communications common carriers, Communications equipment, Metric system , Radio, Reporting and recordkeeping requirements, Rural areas, Telecommunications.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons stated in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1, 22, and 90 as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. Section 1.903 is amended by revising paragraph (c) to read as follows:

§ 1.903 Authorization required.

* * * * *

(c) *Subscribers.* Authority for subscribers to operate mobile or fixed stations in the Wireless Radio Services, except for certain stations in the Rural Radiotelephone Service, is included in the authorization held by the licensee providing service to them. Subscribers are not required to apply for, and the Commission does not accept, applications from subscribers for individual mobile or fixed station authorizations in the Wireless Radio Services. Individual authorizations are required to operate rural subscriber stations in the Rural Radiotelephone Service, except as provided in § 22.703 of this chapter. Individual authorizations are required for end users of certain Specialized Mobile Radio Systems as provided in § 90.655 of this chapter. In addition, certain ships and aircraft are required to be individually licensed under Parts 80 and 87 of this chapter. See §§ 80.13, 87.18 of this chapter.

3. Section 1.929 is amended by revising paragraph (c)(1) to read as follows:

§ 1.929 Classification of filings as major or minor.

* * * * *

(c) * * *

(1) In the Paging and Radiotelephone Service, Rural Radiotelephone Service and 800 MHz Specialized Mobile Radio Service (SMR), any change that would increase or expand the applicant's existing composite interference contour, except extensions of a composite interference contour over bodies of water that extend beyond county boundaries (*i.e.*, including but not limited to oceans, the Gulf of Mexico, and the Great Lakes) on a secondary basis.

* * * * *

4. Section 1.958 is added to subpart F of part 1 to read as follows:

§ 1.958 Distance computation.

The method given in this section must be used to compute the distance between any two locations, except that, for computation of distance involving stations in Canada and Mexico, methods for distance computation specified in the applicable international agreement, if any, must be used instead. The result of a distance calculation under parts 21 and 101 of this chapter must be rounded to the nearest tenth of a kilometer. The method set forth in this paragraph is considered to be sufficiently accurate for distances not exceeding 475 km (295 miles):

(a) Convert the latitudes and longitudes of each reference point from degree-minute-second format to degree-decimal format by dividing minutes by 60 and seconds by 3600, then adding the results to degrees.

$$LATX_{dd} = DD \div \frac{MM}{60} + \frac{SS}{3600}$$

$$LONX_{dd} = DDD \div \frac{MM}{60} + \frac{SS}{3600}$$

(b) Calculate the mean geodetic latitude between the two reference points by averaging the two latitudes:

$$ML = \frac{LAT1_{dd} \div LAT2_{dd}}{2}$$

(c) Calculate the number of kilometers per degree latitude difference for the mean geodetic latitude calculated in paragraph (b) of this section as follows:

KPD sublat = 111.13209 − 0.56605 cos 2ML +0.00120 cos 4ML

(d) Calculate the number of kilometers per degree of longitude difference for the mean geodetic latitude calculated in paragraph (b) of this section as follows:

KPD sublon = 111.41513 cos ML − 0.09455 cos 3ML +0.00012 cos 5ML

(e) Calculate the North-South distance in kilometers as follows:

NS = KPD sublat × (LAT1 subdd − LAT2 subdd)

(f) Calculate the East-West distance in kilometers as follows:

EW = KPD sublon x (LON1 subdd − LON2 subdd)

(g) Calculate the distance between the locations by taking the square root of the sum of the squares of the East-West and North-South distances:

$$DIST = \sqrt{NS^2 + EW^2}$$

(h) Terms used in this section are defined as follows:

(1) LAT1 subdd and LON1 subdd are the coordinates of the first location in degree-decimal format.

(2) LAT2 subdd and LON2 subdd are the coordinates of the second location in degree-decimal format.

(3) ML is the mean geodetic latitude in degree-decimal format.

(4) KPD sublat is the number of kilometers per degree of latitude at a given mean geodetic latitude.

(5) KPD sublon is the number of kilometers per degree of longitude at a given mean geodetic latitude.

(6) NS is the North-South distance in kilometers.

(7) DIST is the distance between the two locations, in kilometers.

5. Section 1.959 is added to subpart F of part 1 to read as follows:

§ 1.959 Computation of average terrain elevation.

Except as otherwise specified in § 90.309(a)(4) of this chapter, average terrain elevation must be calculated by computer using elevations from a 30 second point or better topographic data file. The file must be identified. If a 30 second point data file is used, the elevation data must be processed for intermediate points using interpolation techniques; otherwise, the nearest point may be used. In cases of dispute, average terrain elevation determinations can also be done manually, if the results differ significantly from the computer derived averages.

(a) Radial average terrain elevation is calculated as the average of the elevation along a straight line path from 3 to 16 kilometers (2 and 10 miles) extending radially from the antenna site. If a portion of the radial path extends over foreign territory or water, such portion must not be included in the computation of average elevation unless the radial path again passes over United States land between 16 and 134 kilometers (10 and 83 miles) away from the station. At least 50 evenly spaced data points for each radial should be used in the computation.

(b) Average terrain elevation is the average of the eight radial average terrain elevations (for the eight cardinal radials).

(c) For locations in Dade and Broward Counties, Florida, the method prescribed above may be used or average terrain elevation may be assumed to be 3 meters (10 feet).

§ 1.1102 [Amended]

6. Section 1.1102 is revised by removing paragraph (16)(h).

§ 1.2003 [Amended]

7. Section 1.2003 is revised by removing the phrase "FCC 409 Airborne Mobile Radio Telephone License Application;"

PART 22—PUBLIC MOBILE SERVICES

8. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 222, 303, 309 and 332.

9. Section 22.1 is amended by revising paragraph (b) to read as follows:

§ 22.1 Basis and purpose.

* * * * *

(b) *Purpose.* The purpose of these rules is to establish the requirements and conditions under which domestic radio stations may be licensed and used in the Public Mobile Services.

10. Section 22.3 is amended by revising paragraph (b) to read as follows:

§ 22.3 Authorization required.

* * * * *

(b) Authority for subscribers to operate mobile or fixed stations in the Public Mobile Services, except for certain stations in the Rural Radiotelephone Service, is included in the authorization held by the licensee providing service to them. Subscribers are not required to apply for, and the FCC does not accept applications from subscribers for, individual mobile or fixed station authorizations in the Public Mobile Services, except that individual authorizations are required to operate rural subscriber stations in the Rural Radiotelephone Service, except as provided in § 22.703.

11. Section 22.7 is revised to read as follows:

§ 22.7 General eligibility.

Any entity, other than those precluded by section 310 of the Communications Act of 1934, as amended, 47 U.S.C. 310, is eligible to hold a license under this part. Applications are granted only if the applicant is legally, financially, technically and otherwise qualified to render the proposed service.

12. Amend § 22.99 as follows:

a. Revise the definitions of Air-Ground Radiotelephone Service, Cellular Radiotelephone Service, Channel, Communications channel, Control channel, Ground station, Offshore Radiotelephone Service, Public Mobile Services, and Rural Radiotelephone Service.

b. Remove the definitions of "Meteor burst propagation mode," "Radio Common Carrier," and "Wireline Common Carrier."

c. Remove the reference to "Air-ground Radiotelephone Service" and add in its place "Air-Ground Radiotelephone Service" wherever it appears.

The revisions read as follows:

§ 22.99 Definitions.

* * * * *

Air-Ground Radiotelephone Service. A radio service in which licensee are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

* * * * *

Cellular Radiotelephone Service. A radio service in which common carriers are authorized to offer and provide cellular service for hire to the general public. This service was formerly titled Domestic Public.

* * * * *

Channel. The portion of the electromagnetic spectrum assigned by the FCC for one emission. In certain circumstances, however, more than one emission may be transmitted on a channel.

* * * * *

Communications channel. In the Cellular Radiotelephone and Air-Ground Radiotelephone Services, a channel used to carry subscriber communications.

* * * * *

Control channel. In the Cellular Radiotelephone Service and the Air-Ground Radiotelephone Service, a channel used to transmit information necessary to establish or maintain communications. In the other Public Mobile Services, a channel that may be assigned to a control transmitter.

* * * * *

Ground station. In the Air-Ground Radiotelephone Service, a stationary transmitter that provides service to airborne mobile stations.

* * * * *

Offshore Radiotelephone Service. A radio service in which common carriers are authorized to offer and provide radio telecommunication services for hire to subscribers on structures in the offshore coastal waters of the Gulf of Mexico.

* * * * *

Public Mobile Services. Radio services in which common carriers are authorized to offer and provide mobile and related fixed radio telecommunication services for hire to the public.

* * * * *

Rural Radiotelephone Service. A radio service in which licensee are authorized to offer and provide radio telecommunication services for hire to subscribers in areas where it is not feasible to provide communication services by wire or other means.

* * * * *

13. Section 22.143 is amended by revising paragraph (d)(4) to read as follows:

§ 22.143 Construction prior to grant of application.

* * * * *

(d) * * *

(4) For any construction or alteration that would exceed the requirements of § 17.7 of this chapter, the licensee has notified the appropriate Regional Office of the Federal Aviation Administration (FAA Form 7460–1), filed a request for antenna height clearance and obstruction marking and lighting specifications (FCC Form 854) with the FCC at WTB, Database Management Division, Analysis and Development Branch, 1120 Fairfield Road, Gettysburg, PA 17325 or electronically via the FCC Antenna Structure Registration homepage, *http://wireless.fcc.gov/antenna/*;

* * * * *

§ 22.157 [Removed]

14. Remove § 22.157.

§ 22.159 [Removed]

15. Remove § 22.159.

§ 22.161 [Removed]

16. Remove § 22.161.

17. Section 22.351 is revised to read as follows:

§ 22.351 Channel assignment policy.

The channels allocated for use in the Public Mobile Services are listed in the applicable subparts of this part. Channels and channel blocks are assigned in such a manner as to facilitate the rendition of service on an interference-free basis in each service area. Except as otherwise provided in this part, each channel or channel block is assigned exclusively to one licensee in each service area. All applicants for, and licensees of, stations in the Public Mobile Services shall cooperate in the selection and use of channels in order to minimize interference and obtain the most efficient use of the allocated spectrum.

18. Section 22.352 is amended by revising the undesignated paragraph and paragraph (c)(7) to read as follows:

§ 22.352 Protection from interference.

Public Mobile Service stations operating in accordance with applicable FCC rules and the terms and conditions of their authorizations are normally considered to be non-interfering.

* * * * *

(c) * * *

(7) *In-building radiation systems.* No protection is provided against interference to the service of in-building radiation systems.

§ 22.361 [Removed]

19. Section 22.361 is removed.

§ 22.363 [Removed]

20. Section 22.363 is removed.

§ 22.373 [Removed]

21. Section 22.373 is removed.

§ 22.379 [Removed]

22. Section 22.379 is removed.

§ 22.381 [Removed]

23. Section 22.381 is removed.

§ 22.383 [Removed]

24. Section 22.383 is removed.

§ 22.415 [Removed]

25. Section 22.415 is removed.

26. Section 22.503 is amended by adding paragraph (g)(4) to read as follows:

§ 22.503 Paging geographic area authorizations.

* * * * *

(g) * * *

(4) The application is for a minor modification of license to expand a licensee's composite interference contour over water on a secondary, non-interference basis under § 1.929(c)(1) of this chapter.

* * * * *

§ 22.539 [Removed]

27. Section 22.539 is removed.

28. Section 22.563 is revised to read as follows:

§ 22.563 Provision of rural radiotelephone service.

Channels in the frequency ranges 152.03–152.81, 157.77–158.67, 454.025–454.650 and 459.025–459.650 MHz, inclusive, are also allocated for assignment in the Rural Radiotelephone Service.

§ 22.569 [Removed]

29. Section 22.569 is removed.

§ 22.591 [Amended]

30. Section 22.591 is amended by removing the table entitled "Microwave channels," and by removing and reserving paragraph (b).

31. Section 22.593 is revised to read as follows:

§ 22.593 Effective radiated power limits.

The effective radiated power of fixed stations operating on the channels listed in § 22.591 must not exceed 150 Watts.

32. Section 22.601 is amended by revising the undesignated paragraph to read as follows:

§ 22.601 Assignment of microwave channels.

Assignment of the 2110–2130 and 2160–2180 MHz channels (formerly listed in § 22.591) is subject to the transition rules in § 22.602. No new systems will be authorized under this part.

* * * * *

33. Section 22.602 is amended by revising the undesignated paragraph to read as follows:

§ 22.602 Transition of the 2110–2130 and 2160–2180 MHz channels to emerging technologies.

The 2110–2130 and 2160–2180 MHz microwave channels (formerly listed in § 22.591) have been allocated for use by emerging technologies (ET) services. No new systems will be authorized under this part. The rules in this section provide for a transition period during which existing Paging and Radiotelephone Service (PARS) licensees using these channels may relocate operations to other media or to other fixed channels, including those in other microwave bands. For PARS licensees relocating operations to other microwave bands, authorization must be obtained under Part 101 of this chapter.

* * * * *

34. Section 22.625 is amended by revising paragraph (a) to read as follows:

§ 22.625 Transmitter locations.

* * * * *

(a) *928–960 MHz.* In this frequency range, the required minimum distance separation between co-channel fixed transmitters is 113 kilometers (70 miles).

* * * * *

35. Section 22.655 is amended by revising paragraph (a) to read as follows:

§ 22.655 Channel usage.

* * * * *

(a) In Alaska, channels 42.40, 44.10, 44.20 and 45.90 MHz are allocated for assignment to transmitters providing rural radiotelephone service using meteor burst propagation modes, subject to the provisions of § 22.729.

* * * * *

36. Section 22.725 is amended by revising the section heading and the text of the undesignated paragraph to read as follows:

§ 22.725 Channels for conventional rural radiotelephone stations and basic exchange telephone radio systems.

The following channels are allocated for paired assignment to transmitters that provide conventional rural radiotelephone service and to transmitters in basic exchange telephone radio systems. These channels may be assigned for use by central office or rural subscriber stations as indicated, and interoffice stations. These channels may be assigned also for use by relay stations in systems where it would be impractical to provide rural radiotelephone service without the use of relay stations. All channels have a bandwidth of 20 kHz and are designated by their center frequencies in MegaHertz.

* * * * *

37. Section 22.757 is revised to read as follows:

§ 22.757 Channels for basic exchange telephone radio systems.

The channels listed in § 22.725 are also allocated for paired assignment to transmitters in basic exchange telephone radio systems.

§ 22.805 [Removed]

38. Section 22.805 is removed.

39. Section 22.815 is revised to read as follows:

§ 22.815 Construction period for general aviation ground stations.

The construction period (see § 1.946) for general aviation ground stations is 12 months.

§ 22.871 [Removed]

40. Section 22.871 is removed.

41. Section 22.1003 is revised to read as follows:

§ 22.1003 General eligibility.

Any entity, other than those precluded by section 310 of the Communications Act of 1934, as amended, 47 U.S.C. 310, is eligible to hold a license under this subpart. Applications are granted only if the applicant is legally, financially, technically and otherwise qualified to render the proposed service.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

42. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

43. Section 90.309 is amended by revising paragraph (a)(1) to read as follows:

§ 90.309 Tables and figures.

(a) * * *

(1) Using the method specified in § 1.958 of this chapter, determine the distances (i) between the proposed land mobile base station and the protected cochannel television station and (ii) between the proposed land mobile base station and the protected adjacent channel television station. If the exact mileage does not appear in table A for protected cochannel television stations (or table B for channel 15 in New York and Cleveland and channel 16 in Detroit) or table E for protected adjacent channel television stations, the next lower mileage separation figure is to be used.

* * * * *

[FR Doc. 03–18643 Filed 7–24–03; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 15

[ET Docket No. 03–122; FCC 03–110]

Unlicensed Devices in the 5 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the rules governing the operation of unlicensed National Information Infrastructure (U–NII) devices, including Radio Local Area Networks (RLANs), to make available an additional 255 megahertz of spectrum in the 5.47–5.725 GHz band. This will increase the spectrum available to unlicensed devices in the 5 GHz region of the spectrum by nearly 80%, and, it represents a significant increase in the spectrum available for unlicensed devices across the overall radio spectrum. We believe that the increased available capacity gained from access to an additional 255 megahertz of spectrum, coupled with the ease of deployment and operational flexibility provided by our U–NII rules, will foster the development of a wide range of new and innovative unlicensed devices and lead to increased wireless broadband access and investment.

DATES: Written comments are due September 3, 2003, and reply comments are due September 23, 2003.

ADDRESSES: Federal Communications, Marlene H. Dortch, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for filing information.

FOR FURTHER INFORMATION CONTACT: Ahmed Lahjouji, Office of Engineering and Technology, (202) 418–2061; TTY (202) 418–2989, e-mail: *Ahmed.Lahjouji@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, ET Docket 03–122, FCC 03–122, adopted May 15, 2003, and released June 4, 2003. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may

be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Summary of Notice of Proposed Rule Making

1. The *Notice of Proposed Rule Making*, proposed to amend part 15 of the rules governing the operation of unlicensed National Information Infrastructure (U–NII) devices, including Radio Local Area Networks (RLANs), to make available an additional 255 megahertz of spectrum in the 5.47–5.725 GHz band. This will increase the spectrum available to unlicensed devices in the 5 GHz region of the spectrum by nearly 80%, and, it represents a significant increase in the spectrum available for unlicensed devices across the overall radio spectrum. This action responds to the petition for rule making submitted by the Wireless Ethernet Compatibility Alliance (WECA—now known as the Wi-Fi Alliance). We believe that the increased available capacity gained from access to an additional 255 megahertz of spectrum, coupled with the ease of deployment and operational flexibility provided by our U-NII rules, will foster the development of a wide range of new and innovative unlicensed devices and lead to increased wireless broadband access and investment. Also, this proposal would align the frequency bands used by U–NII devices with those in other parts of the world, thus decreasing development and manufacturing costs for U.S. manufacturers by allowing for the same digital communications products to be used in most other parts of the world.

2. In addition to proposing to make more spectrum available for use by U–NII devices, we proposed several other changes to the Table of Frequency Allocations to accommodate the needs of other radio services operating in the 5 GHz region of the spectrum. Specifically, we proposed to modify the U.S. Table of Frequency Allocations in Part 2 of the rules to upgrade the status of the Federal Government Radiolocation service to primary in the 5.46–5.65 GHz band. We also proposed to upgrade the status of the non-Federal Government radiolocation to primary in the 5.47–5.65 GHz band. We further proposed to add primary allocations for the Federal Government and secondary allocations for the non-Federal Government Space Research Service (active) (SRS) in the 5.35–5.57 GHz band and the Earth Exploration-Satellite Service (active) (EESS) in the 5.46–5.57 GHz band. We also proposed to modify certain technical requirements for U–NII devices in the part 15 rules to protect various radio services against harmful interference. Our proposals are consistent with the U.S. World Radiocommunication Conference 2003 (WRC–03) position regarding this band.

Proposed Changes to the Table of Frequency Allocations

3. We proposed to implement the following allocations consistent with the U.S. proposals to the WRC–03. First, we proposed to modify the U.S. Table of Frequency Allocations in part 2 of the rules to upgrade the status of the Federal Government Radiolocation service to primary in the 5.46–5.65 GHz band. We will similarly upgrade the status of the non-Federal Government Radiolocation service to co-primary in the 5.47–5.65 GHz band so that we do not disadvantage non-Government licensees. These bands are used by non-Federal Government broadcast weather radar stations. We note that the Federal Radiolocation service already has a primary allocation in the 5.35–5.46 GHz band. The elevation in status for Federal Government Radiolocation along with the requirement for DFS as described below will ensure that these existing services are protected from interference from U–NII devices. We further proposed to add primary allocations for the Federal Government and secondary allocations for the non-Federal Government for the Space Research Service (active) (SRS) in the 5.35–5.57 GHz band and the Earth Exploration-Satellite Service (active) (EESS) in the 5.46–5.57 GHz band. We seek comment on these proposals.

4. In the U.S., part 15 unlicensed devices including U–NII devices operate on a non-interference basis and do not operate within radio services listed in the Table of Frequency Allocations. Instead, part 15 devices share spectrum with radio services on the basis that they may not cause any harmful interference and must accept any interference that may be received. Although the WECA petition and comments request an allocation of spectrum for unlicensed U–NII devices, they also request operation under part 15 of the rules. We thus propose to modify our part 15 rules to allow U–NII devices to operate in the 5.470–5.725 GHz band on a non-interference basis, and seek comment on this proposal. We note that WRC–03 is considering a Mobile allocation for the 5.150–5.350 GHz and 5.470–5.725 GHz bands and that some administrations would need a Mobile allocation in the international Table of Frequency Allocations for RLANs or HiperLANs to operate in the bands. Therefore, the U.S. position for WRC–03 supports adoption of an international Mobile allocation so that these devices may operate throughout the world.

5. Table 1 on page 7 of the NPRM summarizes all the allocation proposed herein. We seek comment on the proposed changes to the Table of Frequency Allocations. Commenters are requested to provide a technical analysis to substantiate any claims of interference which may be caused by operations of U–NII devices under these proposed rules.

Proposed Changes to U–NII Rules

6. *Technical requirements.* Under the existing part 15 U–NII rules, there are three different frequency sub-bands available to U–NII devices, each with its own set of technical requirements (*e.g.*, transmit power and antenna gain), based on its sharing environment. U–NII devices operating in the 5.150–5.250 GHz sub-band are restricted to indoor operations and a power limit of 200 mW e.i.r.p. in order to protect co-channel Mobile Satellite Service (MSS) feeder links. Because of the relatively low power limit and indoor usage requirement, this sub-band is most suitable for U–NII devices providing communications links between devices separated by short distances indoors, such as between computing devices within a room or in adjoining rooms. The 5.250–5.350 GHz sub-band may be used indoors and outdoors and is limited to 1 watt e.i.r.p. This sub-band is shared with the Federal Government Radiolocation Service, Earth Exploration Satellite Service and Space Research Service. This U–NII sub-band is suitable for communications links both within and between buildings such as for campus-wide local area networks. The 5.725–5.825 GHz sub-band may be used indoors and outdoors with power levels up to 4 watts e.i.r.p. This U–NII sub-band is shared with Federal Government Radiolocation, Amateur, ISM, and other part 15 devices and is suitable for communications links within and among buildings and over long distances through use of high-gain antennas.

7. We propose to add the 5.470–5.725 GHz band to the U–NII bands with the same technical requirements that apply to the existing 5.250–5.350 GHz U–NII sub-band. This is consistent with the WECA petition and the U.S. position for the upcoming WRC–03. The Federal Government believes that the power must be limited to 1 watt e.i.r.p. to protect incumbent systems. We also believe that this will best provide for communications among devices within and among buildings where demand is greatest. We expect that the 100 MHz of spectrum that is already available at 5.725–5.825 GHz will remain sufficient for higher power operations. We note in particular that operations over longer distances employ directional antennas that allow for high reuse and sharing of the spectrum, which mitigates the need for additional spectrum for these types of operations. We seek comment on this analysis.

8. ARRL argues that WECA, in its petition, has not demonstrated that U–NII devices operating in the 5.650–5.725 GHz band will avoid causing interference to the Amateur Radio service, which operates on a secondary basis in this band. Our review of ARRL's web site indicates that amateur use of this band is limited to propagation beacons and possibly some limited satellite use. Roeder comments that there is little ready made Amateur equipment for this band and that there are only a few rare mountain top users of this band. We observe that amateurs already share the 5.725–5.825 GHz band with U–NII devices and we are unaware of any complaints of interference. Further, we have proposed to permit a lower e.i.r.p. for U–NII devices operating in the 5.470–5.725 GHz band (*i.e.*, 1 watt e.i.r.p.) than for the existing 5.725–5.825 GHz band (*i.e.*, 4 watts e.i.r.p.). Therefore, we believe that U–NII devices can operate in 5.650–5.725 GHz band without causing interference. Finally, U–NII devices in this band would continue to operate under part 15 of our rules and would be required to eliminate any harmful interference that may occur to the Amateur Radio service. We tentatively conclude that the proposals in the NPRM are adequate to protect the Amateur Radio service from interference. We seek comment on this tentative conclusion.

9. In addition to applying the existing technical requirements for the 5.250–5.350 GHz sub-band to the new 5.470–5.725 GHz band, to ensure protection to existing vital DoD radar operations, we are proposing that U–NII devices operating in both the existing 5.250–5.350 GHz sub-band and the new 5.470–5.725 GHz sub-band employ a listen-before-talk mechanism called dynamic frequency selection (DFS). DFS is an interference avoidance mechanism. Prior to the start of any transmissions, and through constant monitoring, the device (*e.g.*, RLAN) equipped with such a mechanism monitors the radio environment for a radar's presence. If the U–NII device determines that a radar is present, it either moves to another channel or enters a sleep mode if no channels are available. We proposed that U–NII devices be required to continuously monitor their environment for the presence of radars both prior to and during operation. DoD concurs that the use of DFS at the thresholds proposed will provide the necessary protection for its vital radar systems.

10. For systems, where multiple devices operate under a central controller, we propose that only the central controller be required to have DFS capability. We recognize that there may be devices or architectures developed, where remote devices are not under the control of a master device. We seek comment on requiring such devices to have DFS. We also invite comment on how to identify remote units that operate only under the control of a central controller.

11. The U–NII device's ability to reliably detect a radar's presence in the channel depends greatly on the pulse characteristics of the radar. The time for which the radar occupies the U–NII channel (dwell time) also influences the detection probability. The problem arises when the dwell time is very short as is the case for frequency hopping radars. In this case, the subject radar signal is characterized as a receive signal strength (RSS) equal to or greater than the DFS detection threshold level within the U–NII device's channel bandwidth (*e.g.*, typically 18 MHz for devices operating under IEEE 802.11(a)). The radar signal has a bandwidth of 1 MHz and a pulse repetition rate (PRR) in the range 200–4000 pulses/s, where the nominal pulse width is in the range of 1 to 20 microseconds. We seek comment on the minimum number of pulses and the observation time required for reliable detection.

12. We are also proposing to require a transmit power control (TPC) mechanism in the 5.470–5.725 GHz band to further reduce the potential for impact on EESS and SRS operations. TPC is a feature intended to adjust the transmitter's output power based on the signal level at the receiver. TPC will allow the transmitter to operate at less than the maximum power for most of the time. As the signal level at the receiver rises or falls, the transmit power will be decreased or increased as needed. Because TPC equipped devices adjust their transmit power to the minimum necessary to achieve the desired performance, the average interference power from a large number of devices is reduced, the power consumption is minimized and network capacity is increased. Consistent with the U.S. proposals to the WRC–03, we are proposing that U–NII devices employ a TPC mechanism that will ensure a 6 dB drop in power when triggered. We seek comment on what the appropriate triggering mechanism will be. For example, should TPC seek to keep a receiver parameter such as received signal strength, bit error rate, or block error rate below a certain threshold? How long will a pair of U–NII devices have to adjust their link powers? Will it be necessary to require U–NII devices to employ TPC if their maximum power is 3 dB or more below the maximum permitted under the rules? How should TPC be applied to system configurations where multiple devices may operate under the control of a central device.

13. *Test procedures.* We seek comment on appropriate test procedures needed to ensure compliance with the DFS and TPC requirements proposed in this proceeding. We note that the operational requirements for DFS are well defined in the applicable industry standards. We observe that while TPC has been agreed to as a general requirement, its operational details are still under development. Therefore, we particularly seek comment on the means by which devices can be tested for compliance with TPC requirements to implement reduced power without placing unnecessary restrictions on device design. We also seek comment on the extent to which devices under development that may have unique or

novel transmission waveforms may require special measurement instrumentation settings (*e.g.*, integration times) that differ from those used for measuring compliance for existing U–NII band devices.

14. *Transition period for U–NII equipment operating in the 5.250–5.350 GHz band.* U–NII devices currently operate in this band without DFS capability. As a result, we recognize that some period of time will be needed to implement the new DFS requirement for U–NII equipment operating in the 5.250–5.350 GHz band. We propose that the DFS requirement for the 5.250–5.350 GHz band effective for U–NII equipment that is certified after one year from the date of publication of the Report and Order in this proceeding in the **Federal Register**. We believe that this should be sufficient time for equipment devices operating in the 5.250–5.350 GHz band that are imported or shipped in interstate commerce on or after two years from the date of publication in the **Federal Register** comply with these standards. We believe that most affected products will be redesigned within this three-year time frame and that compliance with this proposal would not cause an unreasonable burden on industry. Comments are requested on these proposed transition provisions. We are proposing to require that U–NII equipment operating in the new spectrum at 5.470–5.725 GHz meet all the technical requirements, including DFS and TPC, on the effective date of these rules.

Order Clauses

15. Pursuant to sections 1, 4, 301, 302(a), 303, 307, 309, 316, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154, 301, 302(a), 303, 307, 309, 316, 332, 334, and 336, the notice of proposed rule making is hereby adopted.

16. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this notice of proposed rule making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Initial Regulatory Flexibility Analysis

17. As required by the Regulatory Flexibility Act of 1980 as amended,[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking* (*"NPRM"*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided in paragraph 31 of the item. The Commission will send a copy of the *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the *NPRM* and IFRA (or summaries thereof) will be published in the **Federal Register**.[3]

A. Need for, and Objectives of, the Proposed Rules

18. This *NPRM* proposes to amend part 15 of our rules governing the operation of unlicensed National Information Infrastructure (U–NII) devices, including Radio Local Area Networks (RLANs), to make available an additional 255 megahertz of spectrum in the 5.47–5.725 GHz band for the growth and development of unlicensed wireless broadband networks. This action responds to the petition for rule making submitted by the Wireless Ethernet Compatibility Alliance (WECA—now known as Wi-Fi Alliance).[4]

19. In addition to proposing to make more spectrum available for use by U–NII devices, the Notice also proposes several other rules changes in the 5 GHz band that will further facilitate the use of this band for U–NII devices, while at the same time ensuring sufficient protection for various incumbents in the band. Specifically, it proposes to modify the U.S. Table of Frequency Allocations in part 2 of the rules to upgrade the status of the Federal Government Radiolocation service to primary in the 5.46–5.65 GHz band. It similarly proposes to upgrade the non-Federal Government radiolocation service to primary in the 5.47–5.65 GHz band. It further proposes to add primary allocations for the Federal Government and the non-Federal Government Space Research Service (active) (SRS) in the 5.35–5.46 GHz band and the Earth Exploration-Satellite Service (active) (EESS) and SRS (active) in the 5.46–5.57 GHz band..

20. The *NPRM* also proposes to modify certain technical requirements for U–NII devices in the part 15 rules. In addition to applying the existing technical requirements for the 5.250–5.350 GHz sub-band to the new 5.470–5.725 GHz band, it proposes that U–NII devices operating in both the existing 5.250–5.350 GHz sub-band and the new 5.470–5.725 GHz sub-band employ a listen-before-talk mechanism called dynamic frequency selection (DFS). DFS is an interference avoidance mechanism. Prior to start of any transmissions, and through constant monitoring, the device (*e.g.*, RLAN) equipped with such a mechanism monitors the radio environment for a radar's presence. If the U–NII device determines that a radar signal is present, it either moves to another channel or enters a sleep mode if no channels are available. The Notice seeks comments regarding alternative DFS requirements for various U–NII operating conditions. For example, in point-to-multi-point systems, it may not be necessary that DFS be required for both the controlling station and slaves (*e.g.*, devices designed as clients only) as long as the DFS timing requirements are met. The *NPRM* invites comments on whether DFS should be applied to the controlling stations (*e.g.*, Hub, AP) as well as to slaves.

21. The NPRM also proposes to require a transmit power control (TPC) mechanism in the 5.470–5.725 GHz band to further reduce the potential for impact on EESS and SRS operations. TPC is a feature intended to adjust the transmitter's output power based on the signal level at the receiver. TPC will allow the transmitter to operate at less than the maximum power for most of the time. As the signal level at the receiver rises or falls, the transmit power will be decreased or increased as needed. Because TPC equipped devices adjust their transmit power to the minimum necessary to achieve the desired performance, the average interference power from a large number of devices is reduced, the power consumption is minimized and network capacity is increased. The NPRM seeks comments regarding what the appropriate triggering mechanism might be and how long the U–NII device might need to adjust its power? It also asks for comments on the necessity of requiring all U–NII devices to employ TPC. For example, in some point-to-multipoint system configurations, U–NII devices may be designed to function only with a particular controller or hub. Should only the controlling point or hub be required to employ TPC in this configuration? Some U–NII devices will be designed to operate with a maximum e.i.r.p. below what the rules allow. Should these devices be exempt from the TPC requirement?

22. The NPRM seeks comment on appropriate test procedures needed to ensure compliance with the DFS and TPC requirements proposed in this proceeding. It notes that the operational requirements for DFS are well defined in the applicable industry standards.[5] It particularly seeks comment on means by which devices can be tested for compliance with TPC requirements to implement reduced power without placing unnecessary restrictions on device design. It also seeks comment on the extent to which devices under development with unique and novel transmission waveforms may require special measurement instrumentation settings (*e.g.*, integration times) that differ from those used for measuring compliance for existing U–NII band devices.

23. U–NII devices currently operate in the 5.250–5.350 GHz band without DFS capability. As a result, some period of time will be needed to implement the new DFS requirement for U–NII equipment operating in the 5.250–5.350 GHz band. The *NPRM* proposes that the DFS requirement for the 5.250–5.350 GHz band effective for U–NII equipment that is certified after one year from the date of publication of the Report and Order in this proceeding in the **Federal Register**. It also proposes to require that all U–NII devices operating in the 5.250–5.350 GHz band that are imported or shipped in interstate commerce on or after three years from the date the adopted rules are published in the **Federal Register** comply with these standards. The Commission believes that most affected products will be redesigned within this three-year time frame and that compliance with this proposal would not cause an unreasonable burden on industry. Comments are requested on these proposed transition provisions. The *NPRM* proposes that U–NII equipment operating in the new spectrum at 5.470–5.725 GHz meet all the technical requirements, including DFS and TPC, on the effective date of these rules.

B. Legal Basis

24. This action is taken pursuant to sections 1, 4, 301, 302(a), 303, 307, 309, 316, 332, 334, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 301, 302(a), 303, 307, 309, 316, 332, 334, and 336.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

25. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[6] The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under Section 3 of the Small Business Act.[7] Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operations; and (3) meets any additional criteria established by the Small Business Administration (SBA).[8]

26. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[9] Nationwide, as of 1992, there were approximately 275,801 small organizations.[10] The term "small governmental jurisdiction" is defined as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[11] As of 1997, there were approximately 87,453 governmental jurisdictions in the United States.[12] This number includes 39,044 counties, municipal governments, and townships, of which 27,546 have populations of fewer than 50,000 and 11,498 counties, municipal governments, and townships have populations of 50,000 or more. Thus, we estimate that the number of small governmental jurisdictions is approximately 75,955 or fewer.

27. The Commission has not developed a definition of small entities applicable to unlicensed communications devices manufacturers. Therefore, we will utilize the SBA definition application to manufacturers of Radio and Television Broadcasting and Communications Equipment. According to the SBA regulations, unlicensed transmitter manufacturers must have 750 or fewer employees in order to qualify as a small business concern.[13] Census Bureau indicates that there are 858 U.S. companies that manufacture radio and television broadcasting and communications equipment, and the 778 of these firms have fewer than 750 employees and would be classified as small entities.[14] We do not believe this action would have a negative impact on small entities that manufacture unlicensed U–NII devices. Indeed, we believe the actions should benefit small entities because it should make available increased business opportunities to small entities. We request comment on these assessments.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

28. Part 15 transmitters are already required to be authorized under the Commission's certification procedures as a prerequisite to marketing and importation. Under the proposals in the *NPRM*, manufacturers will be required to demonstrate that U–NII devices operating in the bands 5.250–5.350 GHz and 5.470–5.725 GHz have Dynamic Frequency Selection Capabilities. Additionally, U–NII devices operating in the 5.470–5.725 GHz band must exhibit Transmit Power Control capabilities. The reporting and recordkeeping requirements associated with these equipment authorizations would not be changed by the rule revisions proposed in this *NPRM*.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

29. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[15]

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[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.* has been amended by the Contract With America Advancement Act of 1996, Public Law 104–112, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

[2] *See* 5 U.S.C. 603(a).

[3] *See* 5 U.S.C. 603(a).

[4] *See* WECA Petition for Rulemaking, RM–10371, filed on January 15, 2002, Public Notice Report No. 2527, January 29, 2002.

[5] *See supra* note 36.

[6] *See* U.S.C. 603(b)(3).

[7] *Id.* 601(3).

[8] *Id.* 632.

[9] 5 U.S.C. 601(4).

[10] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[11] 5 U.S.C. 601(5).

[12] 1995 Census of Governments, U.S. Census Bureau, United States Department of Commerce, Statistical Abstract of the United States (2000).

[13] *See* 13 CFR 121.20 NAICS Code 33420 (SIC Code 3663). Although SBA now uses the NAICS classifications, instead of SIC, the size standard remains the same.

[14] *See* U.S. Dept. of Commerce, *1992 census of Transportation, Communications and Utilities* (issued May 1995), SIC category 3663 (NAICS Code 34220).

[15] 5 U.S.C. 603(c).

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules.

31. None.

List of Subjects in 47 CFR Parts 2 and 15

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 2 and 15 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is proposed to be amended by revising pages 56 and 57.

§ 2.106 Table of Frequency Allocations.

The proposed revisions and additions read as follows:

* * * * *

BILLING CODE 6712–01–P

5150-5250 AERONAUTICAL RADIO-NAVIGATION US260 FIXED-SATELLITE (Earth-to-space) 5.447A US344 5.447C US211 US307	Private Land Mobile (90)	Aviation (87) Private Land Mobile (90)	Private Land Mobile (90)	Maritime (80) Private Land Mobile (90)	See next page for 5570-5650 MHz
5.367 US211 US307 US344 US370	5250-5350 RADIOLOCATION 5.333 US110 G59	5350-5460 AERONAUTICAL RADIO-NAVIGATION 5.449 RADIOLOCATION G55 SPACE RESEARCH (active) US48	5460-5470 RADIONAVIGATION 5.449 Radiolocation EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G56 RADIONAVIGATION 5.449 SPACE RESEARCH (active) US49 US65	5470-5570 MARITIME RADIONAVIGATION EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION G56 SPACE RESEARCH (active) US50 US65	See next page for 5570-5650 MHz

Page 56

5150-5250 AERONAUTICAL RADIONAVIGATION FIXED-SATELLITE (Earth-to-space) 5.447A		
5.446 5.447 5.447B 5.447C		
5250-5255 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH 5.447D		
5.448 5.448A		
5255-5350 EARTH EXPLORATION-SATELLITE (active) RADIOLOCATION SPACE RESEARCH (active)		
5.448 5.448A		
5350-5460 EARTH EXPLORATION-SATELLITE (active) 5.448B AERONAUTICAL RADIONAVIGATION 5.449 Radiolocation		
5460-5470 RADIONAVIGATION 5.449 Radiolocation		
5470-5650 MARITIME RADIONAVIGATION Radiolocation		
5.450 5.451 5.452		

5570-7250 MHz (SHF)			Page 57
United States Table			FCC Rule Part(s)
Region 3	Federal Government	Non-Federal Government	
	5570-5600 MARITIME	5570-5600 MARITIME	Maritime (80)
	RADIONAVIGATION RADIOLOCATION G56 US50 US65	RADIONAVIGATION RADIOLOCATION US50 US65	Private Land Mobile (90)
	5600-5650 MARITIME RADIONAVIGATION METEOROLOGICAL AIDS RADIOLOCATION US51 G56 5.452 US65	5600-5650 MARITIME RADIONAVIGATION METEOROLOGICAL AIDS RADIOLOCATION US51 5.452 US65	5.452 US65
	5650-5925 RADIOLOCATION G2 5.150 US245	5650-5830 Amateur 5.150 5.282 5830-5850 Amateur Amateur-satellite (space-to-Earth) 5.150 5850-5925 FIXED-SATELLITE (Earth-to-space) US245 MOBILE NG160 Amateur 5.150	ISM Equipment (18) Amateur (97) ISM Equipment (18) Private Land Mobile (90) Amateur (97)
	5925-6425	5925-6425 FIXED NG41 FIXED-SATELLITE (Earth-to-space)	Satellite Communications (25) Fixed Microwave (101)
	6425-6525	6425-6525 FIXED-SATELLITE (Earth-to-space) MOBILE 5.440 5.458	Auxiliary Broadcasting (74) Cable TV Relay (78) Fixed Microwave (101)

International Table		
Region 1	Region 2	Region 3
See previous page for 5470-5650 MHz		
5650-5725 RADIOLOCATION Amateur Space research (deep space)		
5.282 5.451 5.453 5.454 5.455		
5725-5830 FIXED-SATELLITE (Earth-to-space) RADIOLOCATION Amateur	572 RAI Am	5830)LOCATION ur
5.150 5.451 5.453 5.455 5.456	5.1	5.453 5.455
5830-5850 FIXED-SATELLITE (Earth-to-space) RADIOLOCATION Amateur Amateur-satellite (space-to-Earth)	583 RAI	5850)LOCATION
5.150 5.451 5.453 5.455 5.456	5.150 5.453 5.455	
5925-6700 FIXED FIXED-SATELLITE (Earth-to-space) MOBILE		

BILLING CODE 6712-01-C

PART 15—RADIO FREQUENCY DEVICES

3. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 304, 307 and 544A.

4. Section 15.37 amended by adding paragraph (l) to read as follows:

§ 15.37 Transition provisions for compliance with the rules.

* * * * *

(l) U–NII Equipment operating in the 5.25—5.35 GHz band that are authorized under the certification procedure on or after [1 year after publication of R&O in ET Docket No. 03–122 in the **Federal Register**] shall comply with the DFS requirement specified in § 15.407. All U–NII Equipment operating in the 5.25–5.35 GHz band that are manufactured or imported on or after [2 years from publication of R&O in ET Docket No. 03–122 in the **Federal Register**] shall comply with the DFS requirement specified in § 15.407. Equipment authorized, imported or manufactured prior to these dates shall comply with the requirements for U–NII Equipment operating in the 5.25–5.35 GHz band that were in effect immediately prior to [60 days after publication of R&O in ET Docket No. 03–122 in the **Federal Register**].

5. Section 15.401 is revised to read as follows:

§ 15.401 Scope.

This subpart sets out the regulations for unlicensed National Information Infrastructure (U–NII) devices operating in the 5.15—5.35 GHz, 5.47—5.725 GHz and 5.725—5.825 GHz bands.

4. Section 15.403 is revised to read as follows:

§ 15.403 Definitions.

(a) *Access Point (AP).* A U–NII transceiver that operates either as a bridge in a peer-to-peer connection or as a connector between the wired and wireless segments of the network.

(b) *Available Channel.* A radio channel on which a *Channel Availability Check* has not identified the presence of a radar.

(c) *Average Symbol Envelope Power.* The average symbol envelope power is the average, taken over all symbols in the signaling alphabet, of the envelope power for each symbol.

(d) *Channel Availability Check.* A check during which the U–NII device listens on a particular radio channel to identify whether there is a radar operating on that radio channel.

(e) *Channel Move Time.* The time needed by a U–NII device to cease all transmissions on the Operating Channel upon detection of a signal above the DFS detection threshold. Transmissions during this period will consist of intermittent management and control signals required to facilitate vacating the Operating Channel.

(f) *Digital modulation.* The process by which the characteristics of a carrier wave are varied among a set of predetermined discrete values in accordance with a digital modulating function as specified in document ANSI C63.17–1998.

(g) *Dynamic Frequency Selection (DFS)* is a mechanism that detects signals from other systems and avoids co-channel operation with these systems, notably radar systems. The DFS process shall be required to provide a uniform spreading of the loading over all the available channels.

(h) *DFS Detection Threshold.* The required detection level defined by detecting a received signal strength (RSS) that is greater than a threshold specified, within the U–NII device channel bandwidth.

(i) *Emission bandwidth.* For purposes of this subpart the emission bandwidth shall be determined by measuring the width of the signal between two points, one below the carrier center frequency and one above the carrier center frequency, that are 26 dB down relative to the maximum level of the modulated carrier. Determination of the emissions bandwidth is based on the use of measurement instrumentation employing a peak detector function with an instrument resolution bandwidth approximately equal to 1.0 percent of the emission bandwidth of the device under measurement.

(j) *In-Service Monitoring.* Monitoring of the *Operating Channel* to check that a co-channel radar has not moved or started operation within range of the U-NII device.

(k) *Non-Occupancy Period.* The required period in which, once a channel has been recognized as containing a radar signal by a U–NII device, the channel will not be selected as an available channel.

(l) *Operating Channel.* Once a U–NII device starts to operate on an *Available Channel* then that channel becomes the *Operating Channel.*

(m) *Peak Power Spectral Density.* The peak power spectral density is the maximum power spectral density, within the specified measurement bandwidth, within the U–NII device operating band.

(n) *Peak Transmit Power.* The maximum transmit power as measured over an interval of time of at most 30/B (where B is the 26 dB emission bandwidth of the signal in hertz) or the transmission pulse duration of the device, whichever is less, under all conditions of modulation.

(o) *Power Spectral Density.* The power spectral density is the total energy output per unit bandwidth from a pulse or sequence of pulses for which the transmit power is at its peak or maximum level, divided by the total duration of the pulses. This total time does not include the time between pulses during which the transmit power is off or below its maximum level.

(p) *Pulse.* A pulse is a continuous transmission of a sequence of modulation symbols, during which the average symbol envelope power is constant.

(q) *RLAN.* Radio Local Area Network.

(r) *Transmit Power.* The total energy transmitted over a time interval of at most 30/B (where B is the 26 dB emission bandwidth of the signal in hertz) or the duration of the transmission pulse, whichever is less, divided by the interval duration.

(s) *Transmit Power Control (TPC).* A feature that enables a U-NII device to dynamically switch between several transmission power levels in the data transmission process.

(t) *U–NII devices.* Intentional radiators operating in the frequency bands 5.15—5.35 GHz and 5.470—5.825 GHz that use wideband digital modulation techniques and provide a wide array of high data rate mobile and fixed communications for individuals, businesses, and institutions.

7. Section 15.407 is amended by revising paragraph (a)(2), redesignating paragraphs (b)(3) through (b)(6) as paragraphs (b)(4) through (b)(7), adding a new paragraph (b)(3) and paragraph (h) to read as follows:

§ 15.407 General Technical Requirements.

(a) * * *

(2) For the 5.25–5.35 GHz and 5.47–5.725 GHz bands, the peak transmit power over the frequency bands of operation shall not exceed the lesser of 250 mW or 11 dBm + 10log B, where B is the 26 dB emission bandwidth in megahertz. In addition, the peak power spectral density shall not exceed 11 dBm in any 1 megahertz band. If transmitting antennas of directional gain greater than 6 dBi are used, both the peak transmit power and the peak power spectral density shall be reduced by the amount in dB that the directional gain of the antenna exceeds 6 dBi.

* * * * *

(b) * * *

(3) For transmitters operating in the 5.47–5.725 GHz band: all emissions outside of the 5.47–5.725 GHz band

shall not exceed an EIRP of -27 dBm/MHz.

* * * * *

(h) *Transmit Power Control (TPC) and Dynamic Frequency Selection (DFS).*

(1) *Transmit power control (TPC).* U–NII devices operating in the 5.47–5.725 GHz band shall employ a TPC mechanism. The U–NII device is required to have the capability to operate at least 6 dB below the mean EIRP value of 30 dBm.

(2) *Dynamic Frequency Selection (DFS).* U–NII devices operating in the 5.25–5.35 GHz and 5.47–5.725 GHz bands shall employ a DFS mechanism to detect the presence of radar systems and to avoid co-channel operation with radar systems. The minimum DFS detection threshold for devices with a maximum e.i.r.p. of 200 mW to 1 W is -64 dBm. For devices that operate with less than 200 mW e.i.r.p. the minimum detection threshold is -62 dBm. The detection threshold is the received power averaged over 1 microsecond referenced to a 0 dBi antenna.

(i) *Operational Modes.* The DFS requirement applies to the following operational modes:

(A) The requirement for channel availability check time applies in the master operational mode; and

(B) The requirement for channel move time applies in both the master and slave operational modes.

(ii) *Channel Availability Check Time.* A U–NII device shall check if there is a radar system already operating on the channel before it can initiate a transmission on a channel and when it has to move to a new channel. The U–NII device may start using the channel if no radar signal with a power level greater than the interference threshold values, as listed in (h)(2) of this section, is detected within 60 seconds.

(iii) *Channel Move Time.* After a radar's presence is detected, all transmissions shall cease on the operating channel within 10 seconds. Transmissions during this period will consist of normal traffic for typically less than 100 ms and a maximum of 200ms after detection of the radar signal. In addition, intermittent management and control signals can be sent during the remaining time to facilitate vacating the operating channel. The aggregate time of the intermittent management and control signals are typically less than 20 ms.

(iv) *Non-occupancy Period.* A channel that has been flagged as containing a radar system, either by a channel availability check or in-service monitoring, is subject to a non-occupancy period of at least 30 minutes. The non-occupancy period starts at the time when the radar system is detected.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018–AH92

Marine Mammals; Incidental Take During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the Fish and Wildlife Service, are proposing regulations that would authorize the incidental, unintentional take of small numbers of polar bears and Pacific walrus during year-round oil and gas industry (Industry) exploration, development, and production operations in the Beaufort Sea and adjacent northern coast of Alaska. Industry operations for the covered period are similar to and include all activities covered by the 3-year Beaufort Sea incidental take regulations that were effective from March 30, 2000, through March 31, 2003 (65 FR 16828). We are proposing that this rule be effective for approximately 16 months from date of issuance.

We will also be conducting an evaluation for a new 5-year regulation based on a petition received from Industry on August 23, 2002. We will work to assess the effects of Industry activities for the requested period (5 years) and expect to publish a longer term proposed rule during the period that this rule is in effect.

We propose a finding that the total expected takings of polar bear and Pacific walrus during oil and gas industry exploration, development, and production activities will have a negligible impact on these species and no unmitigable adverse impacts on the availability of these species for subsistence use by Alaska Natives. We base this finding on the results of 9 years of monitoring and evaluating interactions between polar bears, Pacific walrus, and Industry, and on oil spill trajectory models, polar bear density models, and independent population recruitment and survival models that determine the likelihood of impacts to polar bears should an accidental oil release occur. We are seeking public comments on this proposed rule.

DATES: Comments on this proposed rule must be received by August 25, 2003.

ADDRESSES: You may submit comments by any of the following methods:

1. By mail to: Craig Perham, Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503.
2. By Fax to: (907) 786–3816.
3. By Internet, electronic mail by sending to: *FW7MMM@fws.gov*. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: RIN 1018–AH92" and your name and return address in your Internet message subject header. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at U.S. Fish and Wildlife Service, Office of Marine Mammals Management, (907)–786–3810 or 1–800–362–5148.
4. By hand-delivery to: Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503.

Comments and materials received in response to this action are available for public inspection during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday, at the Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Craig Perham, Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503; Telephone 907–786–3810 or 1–800–362–5148; or Internet *craig_perham@fws.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 1371(a)(5)(A) of the Marine Mammal Protection Act (Act) (16 U.S.C. 1361–1407) gives the Secretary of the Interior (Secretary) through the Director of the U.S. Fish and Wildlife Service (we) the authority to allow the incidental, but not intentional, taking of small numbers of marine mammals, in response to requests by U.S. citizens (you) [as defined in 50 CFR 18.27(c)] engaged in a specified activity (other than commercial fishing) in a specified geographic region. If regulations allowing such incidental taking are issued, we can issue Letters of Authorization (LOA) to conduct activities under the provisions of these regulations when requested by citizens of the United States.

We propose to authorize the incidental taking of polar bears and Pacific walrus based on our proposed finding using the best scientific evidence available that the total of such taking for the regulatory period will have no more than a negligible impact on these species and will not have an unmitigable adverse impact on the availability of these species for taking for subsistence use by Alaska Natives. These regulations set forth: (1) Permissible methods of taking; (2) the means of effecting the least practicable adverse impact on the species and their habitat and on the availability of the species for subsistence uses; and (3) requirements for monitoring and reporting.

The term "take," as defined by the Act, means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill, any marine mammal.

Harassment as defined by the Act, as amended in 1994, "means any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild" (the Act calls this type of harassment Level A harassment), "or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering." (the Act calls this type of harassment Level B harassment). As a result of 1986 amendments to the Act, we amended 50 CFR 18.27 (*i.e.*, regulations governing small takes of marine mammals incidental to specified activities) with a final rule published on September 29, 1989. Section 18.27(c) included a revised definition of "negligible impact" and a new definition for "unmitigable adverse impact" as follows. Negligible impact is "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." Unmitigable adverse impact means "an impact resulting from the specified activity (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met." Industry conducts activities such as oil and gas exploration, development, and production in marine mammal habitat and, therefore, risks violating the prohibitions on the taking of marine mammals.

Although Industry is under no legal requirement to obtain incidental take authorization, since 1993 Industry has chosen to seek authorization to avoid the uncertainties of taking marine mammals associated with conducting activities in marine mammal habitat.

On November 16, 1993 (58 FR 60402), we issued final regulations to allow the incidental, but not intentional, take of small numbers of polar bears and Pacific walrus when such taking(s) occurred in the course of Industry activities during year-round operations in the area described later in this proposed rule in the section "Description of Geographic Region." The regulations were effective for 18 months. At the same time, the Secretary of the Interior directed us to develop, and then begin implementation of, a polar bear habitat conservation strategy before extending the regulations beyond the initial 18 months for a total 5-year period as allowed by the Act. On August 14, 1995, we completed development of and issued our Habitat Conservation Strategy for Polar Bears in Alaska to ensure that the regulations met with the intent of Congress. On August 17, 1995, we issued the final rule and notice of availability of a completed final polar bear habitat conservation strategy (60 FR 42805). We then extended the regulations for an additional 42 months to expire on December 15, 1998.

On August 28, 1997, BP Exploration (Alaska), Inc., submitted a petition for itself and for ARCO Alaska, Inc., Exxon Corporation, and Western Geophysical Company for rulemaking pursuant to section 101(a)(5)(A) of the Act, and section 553(e) of the Administrative Procedure Act (APA; 5 U.S.C. 553). Their request sought regulations to allow the incidental, but not intentional, take of small numbers of polar bears and Pacific walrus when takings occurred during Industry operations in Arctic Alaska. Specifically, they requested an extension of the incidental take regulations that begin at 50 CFR 18.121 for an additional 5-year term from December 16, 1998, through December 15, 2003. The geographic extent of the request was the same as that of previously issued regulations that begin at 50 CFR 18.121 that were in effect through December 15, 1998 (see above).

The petition to extend the incidental take regulations included two new oil fields (Northstar and Liberty). Plans to develop each field identified a need for an offshore gravel island and a buried sub-sea pipeline to transport crude oil to existing onshore infrastructure. The Liberty prospect was subsequently abandoned, while the Northstar prospect moved toward production. At the time, based on the preliminary nature of the information related to sub-sea pipelines published in a Draft Environmental Impact Statement (DEIS) for the Northstar project, we were unable to make a finding of negligible impact and issue regulations for the full 5-year period as requested by Industry.

On November 17, 1998, we published proposed regulations (63 FR 63812) to allow the incidental, unintentional take of small numbers of polar bears and Pacific walrus in the Beaufort Sea and northern coast of Alaska for a 15-month period. These regulations did not authorize the incidental take of polar bears and Pacific walrus during construction or operation of sub-sea pipelines in the Beaufort Sea. On January 28, 1999, we issued final regulations effective through January 30, 2000 (64 FR 4328).

The U.S. Army Corps of Engineers finalized the Northstar Final Environmental Impact Statement (FEIS) in February 1999. On February 3, 2000, we issued regulations effective through March 31, 2000 (65 FR 5275), in order to finalize the subsequent longer term regulations without a lapse in coverage. After a thorough analysis of the Northstar FEIS and other data related to oil spills, on March 30, 2000, we issued regulations effective for a 3-year duration, through March 31, 2003 (65 FR 16828). This assessment included a polar bear oil spill risk analysis, a model that simulated oil spills and their subsequent effects on estimated polar bear survival on the basis of distribution in the Beaufort Sea. The likelihood of polar bear mortality caused by oil spills during different seasons (open-water, ice-covered, broken ice) was also analyzed. A 3-year period was selected, rather than a 5-year period, due to the potential development of additional offshore oil and gas production sites, such as the offshore Liberty Development, which would need increased oil spill analysis if development proceeded. The Liberty Development Plan was subsequently withdrawn by the operator to be re-evaluated.

Between January 1994 and March 2003, we issued 223 LOAs for oil and gas related activities. Activities covered by LOAs included: exploratory operations, such as seismic surveys and drilling; development activities, such as construction and remediation; and production activities for operational fields. Between January 1, 1994, and March 31, 2000, 77 percent (n=89) of LOAs issued were for exploratory

activities, 10 percent (n=11) were for development, and 13 percent (n=15) were for production activities. Less than a third (32 of 115) of these activities actually sighted polar bears, and approximately two-thirds of sightings (171 of 258) occurred during production activities.

Summary of Current Request

On August 23, 2002, the Alaska Oil and Gas Association (AOGA), on behalf of its members, requested that we promulgate regulations for nonlethal incidental take of small numbers of Pacific walrus and polar bears pursuant to section 101(a)(5) of the Act. The request was for a period of 5 years, from March 31, 2003, through March 31, 2008. Members of AOGA include Alyeska Pipeline Service Company; Marathon Oil Company; Anadarko Petroleum Corporation Petro Star, Inc.; BP Exploration (Alaska) Inc.; Phillips Alaska, Inc.; ChevronTexaco Corporation; Shell Western E&P Inc.; Cook Inlet Pipe Line Company; Tesoro Alaska Company; Cook Inlet Region, Inc.; TotalFinaElf E&P USA; EnCana Oil & Gas (USA) Inc.; UNOCAL; Evergreen Resources, Inc.; Williams Alaska Petroleum, Inc.; ExxonMobil Production Company; XTO Energy, Inc.; and Forest Oil Corporation. Along with their request for incidental take authorization, Industry has also developed and implemented polar bear conservation measures. The geographic region defined in Industry's 2002 application is described later in this proposed rule in the section titled "Description of Geographic Region."

We are proposing to issue new regulations that would remain in effect for, 16 months, from date of issuance, to ensure that we have adequate time to thoroughly assess effects of Industry activities over the longer period (5 years) requested by Industry. New LOAs may be issued after the new finding is made. We will assess the effects of Industry activities for the requested period (5 years) and expect to publish a longer-term proposed rule during the term described in this proposed rule.

Prior to issuing regulations at 50 CFR part 18, subpart J, we must evaluate the level of industrial activities, their associated potential impacts to polar bears and Pacific walrus, and their effects on the availability of these species for subsistence use.

To minimize disruptions related to a lapse in the regulations, we propose developing a short-term rule, while a longer term rule is being developed to address anticipated future actions by Industry. The recent petition and discussions with Industry indicate that industrial activities during the effective period of this rule will be similar to those analyzed in the most recent regulations, with no new major Industry developments anticipated.

Description of Proposed Regulations

The regulations that we are proposing include: permissible methods of taking; measures to ensure the least practicable adverse impact on the species and the availability of these species for subsistence uses; and requirements for monitoring and reporting. The geographic coverage and the scope of industrial activities assessed in these proposed regulations are the same as those in the regulations we issued on March 30, 2000. New LOAs will be issued if the proposed regulations become final.

These proposed regulations would not authorize the actual activities associated with oil and gas exploration, development, and production. Rather, they would authorize the incidental, unintentional take of small numbers of polar bears and Pacific walrus associated with those activities. The U.S. Minerals Management Service, the U.S. Army Corps of Engineers, and the U.S. Bureau of Land Management are responsible for permitting activities associated with oil and gas activities in Federal waters and on Federal lands. The State of Alaska is responsible for activities on State lands and in State waters.

If we issue final incidental take regulations, persons seeking taking authorization for particular projects will apply for an LOA to cover take associated with exploration, development, and production activities pursuant to the regulations. Each group or individual conducting an oil and gas industry-related activity within the area covered by these regulations may request an LOA. Applicants for LOAs must submit a plan to monitor the effects of authorized activities on polar bears and walrus. Applicants for LOAs must also include a Plan of Cooperation on the availability of these species for subsistence use by Alaska Native communities that may be affected by Industry operations. The purpose of the Plan is to minimize the impact of oil and gas activity on the availability of the species or the stock to ensure that subsistence needs can be met. The Plan must provide the procedures on how Industry will work with the affected Native communities, including a description of the necessary actions that will be taken to: (1) Avoid interference with subsistence hunting of polar bears and Pacific walrus, and (2) ensure continued availability of these species for subsistence use.

We will evaluate each request for an LOA for a specific activity and specific location, and may condition each LOA for that activity and location. For example, an LOA issued in response to a request to conduct activities on barrier islands with known active bear dens, or a history of polar bear denning, may be conditioned to require avoidance of a specific den site by 1 mile, intensified monitoring in a 1-mile buffer around the den, or avoiding the area until a specific date. More information on applying for and receiving an LOA can be found at 50 CFR 18.27(f).

Description of Geographic Region

These proposed regulations would allow Industry to incidentally take small numbers of polar bear and Pacific walrus within the same area, referred to as the Beaufort Sea Region, as covered by our previous regulations. This region is defined by a north/south line at Barrow, Alaska, and includes all Alaska State waters and all Outer Continental Shelf waters, east of that line to the Canadian border. The onshore region is the same north/south line at Barrow, 25 miles inland and east to the Canning River. The Arctic National Wildlife Refuge is not included in the area covered by these regulations.

Description of Activities

In accordance with 50 CFR 18.27, Industry submitted a request for the promulgation of incidental take regulations pursuant to section 101(a)(5)(A) of the Act. Activities covered in this proposed regulation include Industry exploration, development, and production of oil and gas, as well as environmental monitoring associated with these activities. These proposed regulations do not authorize incidental take for offshore production sites other than the previously evaluated Northstar Production area.

Exploration activities may occur onshore or offshore and include: geological surveys; geotechnical site investigations; reflective seismic exploration; vibrator seismic data collection; airgun and water gun seismic data collection; explosive seismic data collection; vertical seismic profiles; subsea sediment sampling; construction and use of drilling structures such as caisson-retained islands, ice islands, bottom-founded structures (steel drilling caisson: SDC), ice pads and ice roads; oil spill prevention, response, and cleanup; and site restoration and remediation.

Exploratory drilling for oil is an aspect of exploration activities. Exploratory drilling and associated support activities and features include: transportation to site; setup of 90–100 person camps and support camps (requiring lights, generators, snow removal, water plants, wastewater plants, dining halls, sleeping quarters, mechanical shops, fuel storage, camp moves, landing strips, aircraft support, health and safety facilities, data recording facility and communication equipment); building gravel pads; building gravel islands with sandbag and concrete block protection, ice islands, and ice roads; gravel hauling; gravel mine sites; road building; pipelines; electrical lines; water lines; road maintenance; buildings; facilities; operating heavy equipment; digging trenches; burying pipelines and covering pipelines; sea lift; water flood; security operations; dredging; moving floating drill units; helicopter support; and drill ships such as the SDC, CANMAR Explorer III, and the Kulluk.

Development activities associated with oil and gas industry operations include: road construction; pipeline construction; waterline construction; gravel pad construction; camp construction (personnel, dining, lodging, maintenance shops, water plants, wastewater plants); transportation (automobile, airplane, and helicopter traffic; runway construction; installation of electronic equipment); well drilling; drill rig transport; personnel support; and demobilization, restoration, and remediation.

Production activities include: personnel transportation (automobiles, airplanes, helicopters, boats, rolligons, cat trains, and snowmobiles); and unit operations (building operations, oil production, oil spills, cleanup, restoration, and remediation).

Alaska's North Slope encompasses an area of 88,280 square miles and contains 8 major oil and gas fields in production: Endicott/Duck Island; Prudhoe Bay; Kuparuk River; Point McIntyre; Milne Point; Badami; Northstar; and Colville River. These 8 fields include 21 current satellite oilfields: Sag Delta North; Eider; North Prudhoe Bay; Lisburne; Niakuk; Niakuk-Ivashak; Aurora; Midnight Sun; Borealis; West Beach; Polaris; Orion; Tarn; Tabasco; Palm; West Sak; Meltwater; Cascade; Schrader Bluff; Sag River; and Alpine. Exploration and delineation of known satellite fields identified within existing production fields would also be appropriate for coverage under the provisions of this proposed rule.

During the period covered by the proposed regulations, we anticipate a level of activity per year at existing production facilities similar to that during the timeframe of the previous regulations. In addition, during the period of the rule, we anticipate that the levels of new annual exploration and development activities will be similar to those of the previous 3 years.

Biological Information

Pacific Walrus

The Pacific walrus (Odobenus rosmarus) typically inhabits the waters of the Chukchi and Bering seas. Most of the population congregates near the ice edge of the Chukchi Sea pack ice west of Point Barrow during the summer. Walrus migrate north and south following the annual advance and retreat of the pack ice. In the winter, walrus inhabit the pack ice of the Bering Sea, with concentrations occurring in the Gulf of Anadyr, south of St. Lawrence Island, and south of Nunivak Island. The most current conservative, minimum population estimate is approximately 200,000 walrus. Pacific walrus use five major haul out sites on the west coast of Alaska. There are no known haulout sites from Point Barrow to Demarcation Point on the Beaufort Sea coast.

Walrus occur infrequently in the Beaufort Sea, and although individuals are occasionally seen in the Beaufort Sea, they do not occur in significant numbers to the east of Point Barrow. If walrus are observed, they are most likely to be seen in nearshore and offshore areas during the summer, open-water season. They will not be encountered during the ice-covered season.

Walrus sightings in the Beaufort Sea have consisted solely of widely scattered individuals and small groups. For example, while walrus have been encountered and are present in the Beaufort Sea, there were only five sightings of walrus between 146° and 150°W during Minerals Management Service (MMS) sponsored aerial surveys conducted from 1979 to 1995.

Pacific walrus mainly feed on bivalve mollusks obtained from bottom sediments along the shallow continental shelf, typically at depths of 80 m (262 ft) or less. Walrus are also known to feed on a variety of benthic invertebrates, such as, worms, snails, and shrimp, and some slow-moving fish; and some animals feed on seals and seabirds.

Mating usually occurs between January and March. Implantation of a fertilized egg is delayed until June or July. Gestation lasts 11 months (a total of 15 months after mating) and birth occurs between April and June during the annual northward migration. Calves weigh about 63 kg (139 lb) at birth and are usually weaned by age two. Females give birth to one calf every two or more years. This reproductive rate is much lower than other pinnipeds; however, some walrus may live to age 35–40 and remain reproductively active until late in life.

Polar Bear

Polar bears (Ursus maritimus) occur in the circumpolar Arctic and they live in close association with polar ice. In Alaska, their distribution extends from south of the Bering Strait to the U.S.-Canada border. Two stocks occur in Alaska: the Chukchi/Bering seas stock, whose minimum size is approximately 2,000, and the Southern Beaufort Sea stock, which was estimated in 2002 to have 2;273 bears.

Females without dependent cubs breed in the spring and enter maternity dens by late November. Females with cubs do not mate. Each pregnant female gives birth to one to three cubs, with two cub litters being most common. Cubs are usually born in December. Family groups emerge from their dens in late March or early April. Only pregnant females den for an extended period during the winter; however, other polar bears may burrow in depressions to escape harsh winter winds. The reproductive potential (intrinsic rate of increase) of polar bears is low. The average reproductive interval for a polar bear is 3–4 years. The maximum reported age of reproduction in Alaska is 18 years. Based on these data, a female polar bear may produce about 8–10 cubs in her lifetime.

Ringed seals (Phoca hispida) are the primary prey species of the polar bear, although polar bears occasionally hunt bearded seals (Erignathus barbatus) and walrus calves. Polar bears also scavenge on marine mammal carcasses washed up on shore and have been known to eat anthropogenic nonfood items such as Styrofoam, plastics, car batteries, antifreeze, and lubricating fluids.

Polar bears have no natural predators, and they do not appear to be prone to death by disease or parasites. The most significant source of mortality is humans. Since 1972, with the passage of the Act, only Alaska Natives are allowed to hunt polar bears in Alaska. Bears are used by Alaska Natives for subsistence purposes, such as for consumption and the manufacture of handicraft and clothing items. The Native harvest occurs without restrictions on sex, age, number, or season, provided that takes

are non-wasteful. From 1980 through 2002, the total annual harvest in Alaska averaged 107 bears. The majority of this harvest (69 percent) occurred in the Chukchi and Bering Seas area.

Polar bears in the near-shore Alaskan Beaufort Sea are widely distributed in low numbers, with an average density of about one bear per 30 to 50 square miles. Polar bears congregate on barrier islands in the fall and winter because of available food and favorable environmental conditions. Polar bears will occasionally feed on bowhead whale carcasses on barrier islands. In November 1996, biologists from the U.S. Geological Survey observed 28 polar bears near a bowhead whale carcass on Cross Island, and approximately 11 polar bears within a 2-mile radius of another bowhead whale carcass near the village of Kaktovik on Barter Island. From 2000 to 2003, biologists from the USFWS conducted systematic coastal aerial surveys for polar bears from Cape Halkett to Barter Island. During these surveys they observed as many as 5 polar bears at Cross Island and 51 polar bears on Barter Island within a 2-mile radius of bowhead whale carcasses. In a survey during October 2002, we observed 109 polar bears on barrier islands and the coastal mainland from Cape Halkett to Barter Island, a distance of approximately 350 kilometers.

Effects of Oil and Gas Industry Activities on Subsistence Uses of Marine Mammals

The subsistence harvest provides Native Alaskans with food, clothing, and materials that are used to produce arts and crafts. Walrus meat is often consumed, and the ivory is used to manufacture traditional arts and crafts. Polar bears are primarily hunted for their fur, which is used to manufacture cold weather gear; however, their meat is also consumed. Although walrus and polar bears are a part of the annual subsistence harvest of most rural communities on the North Slope of Alaska, these species are not as significant of a food resource as bowhead whales, seals, caribou, and fish.

Pacific Walrus

The Pacific walrus has cultural and subsistence significance to native Alaskans. Although it is not considered a primary food source for residents of the North Slope, walrus are still taken by a few Alaskan communities located in the southern Beaufort Sea along the northern coast of Alaska, including Barrow, Nuiqsut, and Kaktovik.

The primary range of Pacific walrus is west and south of the Beaufort Sea. Accordingly, few walrus inhabit, or are harvested in, the Beaufort Sea along the northern coast of Alaska. Therefore, the effect to Pacific walrus of Industry activities described in this rule making would most likely be minimal, as they would affect only those individuals inhabiting the Beaufort Sea. Walrus constitute only a small portion of the total marine mammal harvest for the village of Barrow. From 1994 to 2002, 182 walrus were reported taken by Barrow hunters through the Service Marking, Tagging, and Reporting Program. Reports indicate that only up to 4 of the 182 animals were taken east of Point Barrow, within the geographic area of these proposed incidental take regulations. Furthermore, hunters from Nuiqsut and Kaktovik do not normally hunt walrus east of Point Barrow and have taken only one walrus in that area in the last 13 years.

Polar Bear

Within the area covered by the proposed regulations, polar bears are taken for subsistence use in Barrow, Nuiqsut, and Kaktovik where Alaska Natives utilize parts of the bears to make traditional handicrafts and clothing. Data from our Marine Mammal Management Office indicate that, from July 1, 1993, to June 30, 2002, a total of 194 polar bears was reported harvested by residents of Barrow; 26 by residents of the village of Nuiqsut; and 26 by residents of the village of Kaktovik. Hunting success varies considerably from year to year because of variable ice and weather conditions.

Native subsistence polar bear hunting could be affected by oil and gas activities in various ways. Hunting areas where polar bears are historically taken may be viewed as tainted if an oil spill were to occur at these sites. In general, though, traditional hunting areas are not located near current or planned Industry activities. Other potential disturbances, such as noise and vehicular traffic, could have limited effects on subsistence activities if these disturbances were to occur near traditional hunting areas and lead to the displacement of polar bears.

Plan of Cooperation

Polar bear and Pacific walrus inhabiting the Beaufort Sea represent a small portion, in terms of the number of animals, of the total subsistence harvest for the villages of Barrow, Nuiqsut, and Kaktovik. Despite this fact, the harvest of these species is important to Alaska Natives. An important aspect of the LOA process therefore, is that prior to receipt of an LOA, Industry must provide evidence to us that an adequate Plan of Cooperation has been presented to the subsistence communities, the Eskimo Walrus Commission, the Alaska Nanuuq Commission, and the North Slope Borough. The plan will ensure that oil and gas activities will continue not to have an unmitigable adverse impact on the availability of the species or stock for subsistence uses. This Plan of Cooperation must provide the procedures on how Industry will work with the affected Native communities and what actions will be taken to avoid interfering with subsistence hunting of polar bear and walrus.

Effects of Oil and Gas Industry Activities on Marine Mammals

Pacific Walrus

Walrus are not present in the region of activity during the ice-covered season and occur only in small numbers in the defined area during the open-water season. From 1994 to 2000, three Pacific walrus were sighted during the open-water season. In June 1996, one walrus was observed from a seismic vessel near Point Barrow. In October 1996, one walrus was sighted approximately 5 miles northwest of Howe Island. In September 1997, one walrus was sighted approximately 20 miles north of Pingok Island.

Certain activities associated with oil and gas exploration and production during the open-water season have the potential to disturb walrus. Activities that may affect walrus include disturbance by: (1) Noise, including stationary and mobile sources, and vessel and aircraft traffic; (2) physical obstructions; and (3) contact with releases of oil or waste products. Despite the potential for disturbance, no walrus has been injured during an encounter by industry activities on the North Slope, and there have been no lethal takes to date.

1. Noise Disturbance

Reactions of marine mammals to noise sources, particularly mobile sources, such as marine vessels, vary. Reactions depend on the individual's prior exposure to the disturbance source and their need or desire to be in the particular habitat or area where they are exposed to the noise and visual presence of the disturbance sources. Walrus are typically more sensitive to disturbance when hauled out on land or ice than when they are in the water. In addition, females and young are generally more sensitive to disturbance than adult males.

Noise generated by Industry activities, whether stationary or mobile, has the potential to disturb small numbers of

walrus. The response of walrus to sound sources may be either avoidance or tolerance. In one instance, prior to the initiation of incidental take regulations, walrus that tolerated noises produced by Industry activities were intentionally harassed to protect them from more serious injury. Shell Western E & P Inc. encountered several walrus close to the drillship during offshore drilling operations in the eastern Chukchi Sea in 1989. On more than one occasion, one walrus actually entered the "moon pool" of the drillship. Eventually, the walrus had to be removed from the ship for its own safety.

A. Stationary Sources—It is highly improbable that noise from stationary sources would impact many walrus. Currently, Endicott, the saltwater treatment plant, and Northstar, are the only offshore facilities that could produce noise that has the potential to disturb walrus. Although walrus are rare in the vicinity of these facilities, one walrus hauled out on Northstar Island in the fall of 2001.

B. Mobile Sources—Open-water seismic exploration produces underwater sounds, typically with airgun arrays, that may be audible numerous kilometers from the source. Such exploration activities could potentially disturb walrus at varying ranges. In addition, source levels are thought to be high enough to cause hearing damage in pinnipeds that are in close proximity to the sound. It is likely that walrus hearing and sensitivities are similar to pinnipeds at close range, and therefore, it is possible that walrus within the 190 dB re 1 μPa safety radius of seismic activities (industry standard) could suffer temporary threshold shift; however, the use of acoustic safety radii and monitoring programs are designed to ensure that marine mammals are not exposed to potentially harmful noise levels. Previous open-water seismic exploration has been conducted in nearshore ice-free areas. It is highly unlikely that walrus will be present in these areas, and therefore, it is not expected that seismic exploration would disturb many walrus.

C. Vessel Traffic—Noise produced by routine vessel traffic could potentially disturb walrus. However, walrus densities are highest along the edge of the pack ice, and Industry vessel traffic typically avoids these areas. The reaction of walrus to vessel traffic is highly dependent on distance, vessel speed, as well as previous exposure to hunting. Walrus in the water appear to be less readily disturbed by vessels than walrus hauled out on land or ice. In addition, barges and vessels associated with Industry activities will not typically travel near large ice floes or land where walrus could potentially be found. Thus, vessel activities are likely to impact at most a few walrus.

D. Aircraft Traffic—Aircraft overflights may disturb walrus; however, most aircraft traffic is in nearshore areas, where there are typically few to no walrus. Reactions to aircraft vary with range, aircraft type, and flight pattern, as well as walrus age, sex, and group size. Adult females, calves, and immature walrus tend to be more sensitive to aircraft disturbance.

2. Physical Obstructions

Based on known walrus distribution and numbers in the Beaufort Sea near Prudhoe Bay, it is unlikely that walrus movements would be displaced by offshore stationary facilities, such as the Northstar or Endicott, or vessel traffic. There was no indication that the walrus, that used Northstar Island as a haulout in 2001 was displaced from its movements. Vessel traffic could temporarily interrupt the movement of walrus, or displace some animals when vessels pass through an area. This displacement would probably be short-term and would last no more than a few hours at most.

3. Contact With Releases of Oil or Waste Products

The potential releases of oil and waste products associated with oil and gas exploration and production during the open-water season and the associated potential to disturb walrus and polar bears are discussed following the polar bear discussion in this section.

Polar Bear

Oil and gas activities could impact polar bears in various ways during both open-water and ice-covered seasons. These impacts could result from the following: (1) Noise from stationary operations, construction activities, vehicle traffic, vessel traffic, aircraft traffic, and geophysical and geological exploration activities; (2) physical obstruction, such as a causeway or an artificial island; (3) human/animal encounters; and (4) oil spills or contact with hazardous materials or production wastes.

1. Noise Disturbance

Noise produced by Industry activities during the open-water and ice-covered seasons could potentially result in takes of polar bears. During the ice-covered season, denning female bears, as well as mobile, non-denning bears, could be exposed to oil and gas activities and potentially affected in different ways. The best available scientific information indicates that female polar bears entering dens, or females in dens with cubs, are thought to be more sensitive than other age and sex groups to noises.

Noise disturbance can originate from either stationary or mobile sources. Stationary sources include: construction, maintenance, repair, and remediation activities; operations at production facilities; flaring excess gas; and drilling operations from either onshore or offshore facilities. Mobile sources include: vessel and aircraft traffic; open-water seismic exploration; winter vibroseis programs; geotechnical surveys; ice road construction and associated vehicle traffic; drilling; dredging; and ice-breaking vessels.

A. Stationary Sources—All production facilities on the North Slope in the area to be covered by this rulemaking are currently located within the landfast ice zone. Typically, most polar bears ocurr in the active ice zone, far offshore, hunting throughout the year; although some bears also spend a limited amount of time on land, coming ashore to feed, den, or move to other areas. At times, usually during the fall season when the ice edge is near shore and then quickly retreats northward, bears may remain along the coast or on barrier islands for several weeks until the ice returns. During this time of year, the potential for human/bear encounters can increase. Polar bear interaction plans and employee training serve to reduce the number of encounters and the need for deliberately harassing bears.

During the ice-covered season, noise and vibration from Industry facilities may deter females from denning in the surrounding area, even though polar bears have been known to den in close proximity to industrial activities. In 1991, two maternity dens were located on the south shore of a barrier island within 2.8 km (1.7 mi) of a production facility. Recently, industrial activities were initiated while two polar bears denned close to the activities. During the ice-covered seasons of 2000–2001 and 2001–2002 active, known dens were located within approximately 0.4 km and 0.8 km (0.25 mi and 0.5 mi) of remediation activities on Flaxman Island without any observed impact to the polar bears. Other observations indicate some dens may have been vacated due to exposure to human disturbance.

Noise produced by stationary Industry activities could elicit several different responses in polar bears. The noise may act as a deterrent to bears entering the area, or the noise could potentially attract bears. Attracting bears to these facilities could result in a human/bear

encounter, which could result in unintentional harassment, lethal take, or intentional hazing (under separate permit) of the bear.

Most bears seen near production facilities are transients, and only a small fraction of those observed closely approach the facilities. Currently, there is no evidence that unequivocally states that noise associated with Industry facilities disturbs or does not disturb polar bears. In fact, bears have commonly approached industrial sites in the Canadian Beaufort Sea. In addition, a few bears will approach facilities, particularly on artificial or natural islands, such as Endicott and West Dock in Prudhoe Bay, even though garbage and other attractants are carefully managed.

B. Mobile Sources—In the southern Beaufort Sea, during the open-water season, polar bears spend the majority of their lives on the pack ice, which limits the chances of impacts on polar bears from industry activities. Although polar bears have been documented in open water, miles from the ice edge or ice floes, this is a relatively rare occurrence. In the open-water season, Industry activities are generally limited to vessel-based exploration activities, such as ocean-bottom cable (OBC) and shallow hazards surveys.

C. Vessel Traffic—Vessel traffic would most likely result in short-term behavioral disturbance only. During the open-water season, most polar bears remain offshore in the pack ice and are not typically present in the area of vessel traffic.

D. Aircraft Traffic—Routine aircraft traffic should have little to no affect on polar bears. However, extensive or repeated overflights of fixed-wing aircraft or helicopters could disturb polar bears throughout the year. Behavioral reactions of non-denning polar bears should be limited to short-term changes in behavior and would have no long-term impact on individuals and no impacts on the polar bear population. Mitigation measures are routinely implemented to reduce the likelihood that bears are disturbed by aircraft. Noise and vibrations produced by extensive aircraft overflights could also disturb denning bears during the ice-covered season, potentially causing them to abandon their dens or depart their dens prematurely.

E. Seismic Exploration—It is unlikely that seismic exploration activities or other geophysical surveys during the open-water season would result in more than temporary behavioral disturbance to polar bears. Polar bears normally swim with their heads above the surface, where underwater noises are weak or undetectable. Although polar bears are typically associated with the pack ice during summer and fall, open-water seismic exploration activities can encounter polar bears in the central Beaufort Sea in late summer or fall.

Noise and vibrations produced by oil and gas exploration and production activities during the ice-covered season could potentially result in impacts on polar bears. During this time of year, denning female bears as well as mobile, non-denning bears could be exposed to and affected differently by potential impacts from oil and gas activities. Disturbances to denning females, either on land or on ice, are of particular concern. As part of the LOA application for seismic surveys during denning season, Industry provides us with the proposed seismic survey routes. To minimize the likelihood of disturbance to denning females, we evaluate these routes along with information about known polar bear dens, historic denning sites, and probable denning habitat.

A standard condition of LOAs requires Industry to maintain a 1-mile buffer between survey activities and known denning sites. In addition, we may require Industry to avoid denning habitat until bears have left their dens. To further reduce the potential for disturbance to denning females, we have conducted research, in cooperation with Industry, to enable us to accurately detect active polar bear dens. We have evaluated the use of remote sensing techniques, such as Forward Looking Infrared (FLIR) imagery and the use of scent-trained dogs to locate dens. In addition, Industry has sponsored cooperative research evaluating noise and vibration propagation through substrates and the received levels of noise and vibration in polar bear dens.

Depending upon the circumstances, bears can be either repelled from or attracted to sounds, smells, or sights associated with Industry activities including seismic exploration. The LOA process requires the applicant to develop a polar bear interaction plan for each operation. These plans outline the steps the applicant will take, such as garbage disposal procedures, to minimize impacts to polar bears by reducing the attraction of Industry activities to polar bears. Interaction plans also outline the chain of command for responding to a polar bear sighting. In addition to interaction plans, Industry personnel participate in polar bear interaction training while on site. The result of these polar bear interaction plans and training allows personnel on site to detect bears and respond appropriately. Most often, this response involves deterring the bear from the site. Without such plans and training, the undesirable outcome of lethal takes of bears in defense of human life could occur.

Although very unlikely, it is possible that on-ice vehicle traffic related to seismic exploration could physically run-over an unidentified polar bear den. Known dens around the oilfield are monitored by USFWS and Industry. The oil and gas industry communicates with the USFWS to determine the location of their activities relative to known dens. General LOA provisions require Industry operations to avoid known polar bear dens by 1-mile. There is the possibility that an unknown den may be encountered during Industry activities. If a previously unknown den is identified, communication between Industry and the USFWS and the implementation of mitigation measures help ensure that disturbance is minimized.

2. Physical Obstructions

There is little chance that Industry facilities would act as physical barriers to movements of polar bears. Most facilities are located onshore where polar bears are only occasionally found. The offshore and coastal facilities are most likely to be approached by polar bears. The Endicott Causeway and West Dock facilities have the greatest potential to act as barriers to movements of polar bears because they extend continuously from the coastline to the offshore facility. Yet, because polar bears appear to have little or no fear of man-made structures and can easily climb and cross gravel roads and causeways, bears have frequently been observed crossing existing roads and causeways in the Prudhoe Bay oilfields. Offshore production facilities, such as Northstar, may be approached by polar bears, but due to their layout (*i.e.*, continuous sheet pile walls around the perimeter) the bears may not gain access to the facility itself. This situation may present a small scale, local obstruction to the bears' movement, but also minimizes the likelihood of human/bear encounters.

3. Human/Polar Bear Encounters

Encounters with humans can result in the harassment or (rarely) the death of polar bears. Unlike most mammals, polar bears typically do not fear humans and are extremely curious. Polar bears are most likely to encounter humans during the ice-covered season, when both humans and bears are found on the land-fast ice and adjacent coastline. Polar bears can also come in contact with humans along the coast or on islands, particularly near locations where subsistence whalers haul bowhead whales on shore to butcher them. Employee training programs are designed to educate field personnel about the dangers of bear encounters and to implement safety procedures in the event of a bear sighting. Personnel are instructed to leave an area where bears are seen. If it is not possible to leave, in most cases bears can be displaced by using pyrotechnics or other forms of deterrents.

Contact With Oil or Waste Products by Pacific Walrus and Polar Bears

The discharge of oil into the environment could potentially impact polar bears and walrus depending on the location (*i.e.*, onshore or offshore), size of the spill, environmental conditions, and success of cleanup measures. Spills of crude oil and petroleum products associated with onshore production facilities during ice-covered and open-water seasons are usually minor spills (*i.e.*, 1 to 50 barrels per incident) that are contained and cleaned up immediately. They can occur during normal operations (*e.g.*, transfer of fuel, handling of lubricants and liquid products, and general maintenance of equipment). Fueling crews have personnel that are trained to handle operational spills. If a small offshore spill occurs, spill response vessels are stationed in close proximity and respond immediately. Production related spills, generally larger, could occur at any production facility or pipeline connecting wells to the Trans-Alaska Pipeline System (TAPS). These large spills have been modeled to examine potential impacts on marine mammals.

1. Physical Effects of Oil on Pacific Walrus and Polar Bear

Walrus could contact oil in water and on potential haulouts (ice or islands), while polar bears could contact spilled oil in the water, on ice, or on land. In 1980, Canadian scientists performed experiments that studied the effects to polar bears of exposure to oil. More information is available regarding the effects of oil on polar bears than walrus.

Effects on experimentally oiled polar bears (where bears were forced to remain in oil for prolonged periods of time) included acute inflammation of the nasal passages, marked epidermal responses, anemia, anorexia, biochemical changes indicative of stress, renal impairment, and death. In experimental oiling, many effects did not become evident until several weeks after exposure to oil.

A. External Oiling— Oiling of the pelt causes significant thermoregulatory problems by reducing the insulation value of the pelt in polar bears. Excessive oiling could cause mortality as well. Polar bears rely on their fur as well as their layer of blubber for thermal insulation. Experiments on live polar bears and pelts showed that the thermal value of the fur decreased significantly after oiling, and oiled bears showed increased metabolic rates and elevated skin temperatures. Irritation or damage to the skin by oil may further contribute to impaired thermoregulation. Furthermore, an oiled bear would ingest oil because it would groom in order to restore the insulation value of the oiled fur.

In one field observation, biologists documented a bear in Cape Churchill, Manitoba with lubricating oil matted into its fur on parts of its head, neck and shoulders. The bear was re-sighted two months later, at which time he had suffered substantial hair loss in the contaminated areas. Four years later, the bear was recaptured and no skin or hair damage was detectable, which suggests that while oiling can damage the fur and skin, in some instances this damage is only temporary.

Walrus do not rely on fur for thermal insulation, using a layer of blubber for warmth. Hence, they would be less susceptible to similar insulative and pelt impacts of external oiling than bears.

Petroleum hydrocarbons can also be irritating or destructive to eyes and mucous membranes, and repeated exposure could have detrimental consequences to polar bears and walrus. In one experimental study, ringed seals quickly showed signs of eye irritation after being immersed in water covered by crude oil. This progressed to severe inflammation and corneal erosions during the 24-hour experiment. When the animals were returned to uncontaminated water, the eye condition resolved within 3–4 days. This reaction could be expected in other marine mammals, such as polar bears and walrus.

B. Ingestion and Inhalation of Oil— Oil ingestion by polar bears through consumption of contaminated prey, and by grooming or nursing, could have pathological effects, depending on the amount of oil ingested and the individual's physiological state. Death could occur if a large amount of oil were ingested or if volatile components of oil were aspirated into the lungs. Indeed, two of three bears died in the Canadian experiment and it was suspected that the ingestion of oil was a contributing factor to the deaths. Experimentally oiled bears ingested much oil through grooming. Much of it was eliminated by vomiting and in the feces, but some was absorbed and later found in body fluids and tissues.

Ingestion of sub-lethal amounts of oil can have various physiological effects on a polar bear, depending on whether the animal is able to excrete and/or detoxify the hydrocarbons. Petroleum hydrocarbons irritate or destroy epithelial cells lining the stomach and intestine, and thereby affect motility, digestion and absorption. Polar bears may exhibit these types of symptoms if they ingest oil.

Polar bears and walrus swimming in, or bears walking adjacent to, an oil spill could inhale petroleum vapors. Vapor inhalation by polar bears and walrus could result in damage to various systems, such as the respiratory and the central nervous systems, depending on the amount of exposure.

C. Indirect Effects of Oil— Oil may affect food sources of walrus and polar bears. A local reduction in ringed seal numbers as a result of direct or indirect effects of oil could, therefore, temporarily affect the local distribution of polar bears. A reduction in density of seals as a direct result of mortality from contact with spilled oil could result in polar bears not using a particular area for hunting. Also, seals that die as a result of an oil spill could be scavenged by polar bears, thus increasing the bears' exposure to hydrocarbons. Additionally, potentially lethal impacts caused by an oil spill to an area's benthic community could divert walrus from using the area as a food source.

2. Oil Spill and Hazardous Waste Impacts on Pacific Walrus and Polar Bears

A. Pacific Walrus

Onshore oil spills would not impact walrus unless oil moved into the offshore environment. During the open-water season, if a small spill occurs at offshore facilities or by vessel traffic, few walrus would likely encounter the oil. In the event of a larger spill during the open-water season, oil in the water column could drift offshore and possibly encounter a limited number of walrus. During the ice-covered season, spilled oil would be incorporated into the thickening sea ice. During spring melt, the oil would then travel to the surface of the ice, via brine channels, where most could be collected by spill response activities.

Few walrus are found in the Beaufort Sea east of Barrow and low to moderate numbers are found along the pack-ice edge 241 km (150 mi) or more northwest of Prudhoe Bay. Thus, the probability of individual walrus encountering oil, as a

result of an oil spill from Industry activities, is low.

B. Polar Bear

Polar bears could encounter oil spills during the open-water and ice-covered seasons in offshore or onshore habitat. Although the majority of the Southern Beaufort Sea polar bear population spends a large amount of its time offshore on the pack ice, it is likely that individual bears will encounter oil from a spill regardless of ocean conditions.

Small spills (1–50 barrels) of oil or hazardous wastes throughout the year by Industry activities could impact small numbers of bears. As stated previously, the effects of fouling fur or ingesting oil or wastes, depending on the amount of oil or wastes involved, could be short term or result in death. In April 1988, a dead polar bear was found on Leavitt Island, approximately 9.3 km (5 n mi) northeast of Oliktok Point. The cause of death was determined to be poisoning by a mixture that included ethylene glycol and Rhodamine B dye; however; the source of the mixture was unknown.

During the ice-covered season, mobile, non-denning bears would have a higher probability of encountering oil or other production wastes than denning females. Current management practices put in place by Industry attempt to minimize the potential for such incidents by requiring the proper use, storage and disposal of hazardous materials. In the event of an oil spill, it is also likely that polar bears would be deliberately hazed to move them away from the area, further reducing the likelihood of impacting the population.

To date, large oil spills from industry activities in the Beaufort Sea and coastal regions that have impacted polar bears have not occurred, although the development of offshore production facilities has increased the potential for large offshore oil spills. In a large spill (*i.e.*, 3,600 barrels: the size of a rupture in the Northstar pipeline and a complete drain of the subsea portion of the pipeline), oil would be influenced by seasonal weather and sea conditions. These would include temperature, winds, and for offshore events wave action and currents. Weather and sea conditions would also affect the type of equipment needed for spill response and how effective spill clean-up would be. For example, spill response has been unsuccessful in the clean-up of oil in broken ice conditions. These factors, in turn, would dictate how large spills impact polar bear habitat and numbers.

The major concern regarding large oil spills is the impact a spill would have on the survival and recruitment of the Southern Beaufort Sea polar bear population. Currently, this bear population is approximately 2,200 bears. The most recent population growth rate was estimated at 2.4% annually based on data from 1982 through 1992, although the population is believed to have slowed their growth or stabilized since 1992. In addition, the maximum sustainable harvest is 80 bears for this population (divided between Canada and Alaska). In Alaska, the annual subsistence harvest has fluctuated around 36 bears. The annual subsistence harvest for the Southern Beaufort Sea population (Alaska and Canada combined) has been approximately 62 bears.

The bear population may be able to sustain the additional mortality caused by a large oil spill of a small number of bears, such as 1–5 individuals. The additive effect, however, of numerous bear deaths (*i.e.* in the range of 20–30) caused by an oil spill coupled with the subsistence harvest and other potential impacts, both natural and human-induced, may reduce recruitment and survival. The removal rate of bears from the population would then increase higher than what could be sustained by the population, potentially causing a decline in the bear population and affecting bear productivity and subsistence use.

Actual Impacts of Industry Activities on Pacific Walrus and Polar Bears

The actual impact to Pacific walrus in the central Beaufort Sea from oil and gas activities has been minimal. Between 1994 to 2000, only three Pacific walrus were encountered in the Beaufort Sea. All were sighted during open-water seismic programs.

Actual impacts on polar bears by the oil and gas industry during the past 30 years have been minimal as well. Polar bears have been encountered at or near most coastal and offshore production facilities, or along the roads and causeways that link these facilities to the mainland. During this time, only 2 polar bear deaths related to oil and gas activities have occurred. In winter 1968–1969, an industry employee on the Alaskan North Slope shot and killed a polar bear. In 1990 a female polar bear was killed at a drill site on the west side of Camden Bay. In contrast, 33 polar bears were killed in the Canadian Northwest Territories between 1976 to 1986 due to encounters with industry. Since the beginning of the incidental take program, no polar bears have been killed due to encounters associated with current Industry activities in the Prudhoe Bay area (Alpine to Badami).

The majority of actual impacts on polar bears have resulted from direct human/bear encounters. Monitoring efforts by Industry required under previous regulations for the incidental take of polar bears and walrus have documented various types of interaction between polar bears and Industry. During a 7-year period (1994–2000), while incidental take regulations were in place, Industry reported 258 polar bear sightings. During this period, polar bears were sighted during 32 of the 115 activities covered by incidental take regulations. Approximately two-thirds of the sightings (171 of 258 sightings) occurred during production activities, which suggests that Industry activities that occur on or near the Beaufort Sea coast have a greater possibility for encountering polar bears than other Industry activities. Sixty-one percent of polar bear sightings (157 of 258 sightings) consisted of observations of polar bears traveling through or resting near the monitored areas without a perceived reaction to human presence, while 101 polar bear sightings involved bear-human interactions.

Twenty-one percent of all bear-human interactions (21 of 101 sightings) involved anthropogenic attractants, such as garbage dumpsters and landfills, where these attractants altered the bear's behavior. Sixty-five percent of polar bear-human interactions (66 of 101 sightings) involved Level B harassment to maintain human and bear safety by preventing bears from approaching facilities and people. We have no indication that encounters that alter the behavior and movement of individual bears have any long-term effects on those bears, related to recruitment or survival. We, therefore, believe that the small number of encounters anticipated to occur between polar bears and Industry are unlikely to have any significant effect on the polar bear population.

We conclude that it is unlikely that large numbers of polar bears will be taken by Industry in the future based on the proceeding information. Based on this discussion, any take reasonably likely to or reasonably expected to be caused by routine oil and gas activities will not result in more than a negligible impact on this species.

Risk Assessment Analysis

For marine mammals oil spills are of most concern when they occur in the marine environment, where spilled oil can accumulate at the water surface, ice edge, in leads, and similar areas of importance to marine mammals. Thus, offshore production activities, such as Northstar, have the potential to cause

negative impacts on marine mammals because as additional offshore oil exploration and production occurs, the potential for large spills increases. Northstar transports crude oil from a gravel island in the Beaufort Sea to shore via a 5.96-mile buried sub-sea pipeline. The pipeline is buried in a trench in the sea floor deep enough to reduce the risk of damage from ice gouging and strudel scour. Production of Northstar began in 2001, and currently 70,000 barrels of oil pass through the pipeline daily.

Due to the concern of a potential offshore oil spill, a risk assessment was performed to investigate the probability of mortality in polar bears due to an oil spill and the likelihood of occurrence in various ice conditions. Pacific walrus were not included in the risk assessment due to a lack of data regarding walrus abundance and distribution in the Beaufort Sea because of small numbers present seasonally in the Beaufort Sea.

The quantitative rationale for a negligible impact determination was based on a risk assessment that considered oil spill probability estimates for the Northstar Project, an oil spill trajectory model, and a polar bear distribution model. The Northstar FEIS provided estimates of the probability that one or more spills greater than 1,000 barrels of oil will occur over the project's life of 15 years. We considered only spill probabilities for the drilling platform and sub-sea pipeline, as these are the spill locations that would affect polar bears.

Methodology

Initially, Applied Sciences Associates, Inc., was contracted by BP Exploration Alaska Inc. to run the OILMAP oil spill trajectory model. The size of the modeled spills was set at 3,600 barrels, simulating rupture and drainage of the entire sub-sea pipeline. Each spill was modeled by tracking the location of 100 "spillets," each representing 36 barrels. In the model, spillets were driven by wind, and their movements were stopped by the presence of sea ice. Open water and broken ice scenarios were each modeled with 250 simulations. A solid ice scenario was also modeled, in which oil was trapped beneath the ice and did not spread. In this event, we found it unlikely that polar bears will contact oil, and therefore removed this scenario from further analysis. Each simulation was run to cover a period of 4 days, with no cleanup or containment efforts simulated. At the end of each simulation, the size and location of each spill was represented in a geographic information system (GIS).

The trajectory model was dependent on numerous assumptions, some of which underestimate, while others overestimate, the potential risk to polar bears. These assumptions relate to, and include: variation in spill probabilities during the year; the length of time that oil was in the environment and was subject to the spill trajectory model; whether or not containment occurred in various runs of the trajectory model; types of efforts and effects of efforts to deter wildlife during spills; contact by bears with a modeled spillet resulting in mortality; and the presence and size of bear groups. We assumed that the annual probability of a spill was equal during any season of the year. Any differences in seasonal spill probabilities would have a corresponding increase or decrease in risk. The model assumed oil would remain in the environment for 4 days; increasing that period of time would increase the risk to polar bears, while decreasing the period would decrease the risk. We assumed that containment of oil in broken-ice conditions would not be effective; however, any successful containment of oil under other water conditions would correspondingly reduce the risk of oiling to wildlife. We assumed that deterrent hazing of wildlife did not take place. If instituted, hazing could reduce the likelihood of polar bears encountering oil. We assumed that polar bear distribution was not affected by sights, smells, or sounds associated with a spill and that polar bears were neither attracted to nor displaced by these factors.

Similarly, the risk assessment model accounted for average movements and likelihood of polar bears being present in any given location based on a history of movements from satellite-collared females. The model did not consider aggregations of polar bears that may be present seasonally in the study area, nor did it consider whether other sex and age classes of polar bears have movements similar to adult females. If aggregations were to occur, then the risk to polar bears could increase. If the distribution of other sex/age classes differs from adult females, then risk may correspondingly increase or decrease for these sex/age classes.

Lastly, we assumed that polar bears located within the distribution grid that intersected with oil spillets modeled in the trajectory model were oiled and that mortality occurred, although this may not occur naturally. In evaluating the impacts of all these assumptions, we determined that the assumptions that overestimate and underestimate mortalities were generally in balance.

Impacts to polar bears from the oil spill trajectory model were derived using telemetry data from the U.S. Geological Survey, Biological Resources Division (USGS). Telemetry data suggest that polar bears are widely distributed in low numbers across the Beaufort Sea with a density of about one bear per 30–50 square miles. Movement and distribution information was derived from radio and satellite relocations of collared adult females. The USGS developed a polar bear distribution model based on an extensive telemetry data set of over 10,000 relocations. Using a technique called "kernel smoothing," they created a grid system centered over Northstar and estimated the number of bears expected to occur within each 0.25-km^2 grid cell. Each of the simulated oil spills was overlaid with the polar bear distribution grid. In the simulation, if a spillet passed through a grid cell, the bears in that cell were considered killed by the spill. In the open water scenario, the estimated number of bears killed ranged from less than 1 to 78 bears, with a median of 8 bears. In the broken ice scenario, results ranged from less than 1 to 108, with a median of 21. These results are based on an "average" distribution of polar bears and do not include potential aggregation of bears, such as on Cross Island in the fall.

The Service then analyzed the spill trajectory and polar bear distribution to estimate the probability of an oil spill during the proposed 16-month regulation period and the likelihood of occurrence of oil spills causing mortality for various numbers of bears. Assuming this probability was uniform throughout the year, the probability during any particular set of ice conditions was proportional to the length of those conditions. The probability of polar bear mortality in the event of an oil spill was calculated from mortality levels in excess of 5, 10, and 20 bears. Likelihood of occurrence is the product of the probabilities of spill and mortality. Hence, the overall likelihood is the sum of likelihoods over all ice conditions.

Results

The results of the analysis suggested that there is a 0.72% probability of an oil spill occurring during the period of the proposed rule. Furthermore, there was a 0.13–0.21 percent chance of a spill occurring that results in greater than five polar bears killed. As the threshold number of bears is increased, the likelihood of that event decreases; the likelihood of taking more bears becomes less. Thus, the probability of a spill that will cause a mortality of 10 or

more bears was 0.11–0.14 percent; and for 20 or more bears, it is 0.06–0.08 percent.

In addition, using exposure variables and production estimates from the Northstar EIS, we estimated that the likelihood of one or more spills greater than 1,000 barrels in size occurring in the marine environment is 1–5 percent during the period covered by the proposed regulations.

Discussion

The greatest source of uncertainty in our calculations was the probability of an oil spill occurring. The oil spill probability estimates for the Northstar Project were calculated using data for sub-sea pipelines outside of Alaska and outside of the Arctic. These spill probability estimates, therefore, do not reflect conditions that are routinely encountered in the Arctic, such as permafrost, ice gouging, and strudel scour. They may include other conditions unlikely to be encountered in the Arctic, such as damage from anchors and trawl nets. Consequently, we have some uncertainty about oil spill probabilities as presented in the Northstar FEIS. If the probability of a spill were actually twice the estimated value, however, the probability of a spill that will cause a mortality of one or more bears is still low (about 6 percent).

In addition to the results from the risk analysis, anecdotal information supported our determination that any take associated with Northstar will have a negligible impact on the Beaufort Sea polar bear population. This information was based on observations of polar bear aggregations on barrier islands and coastal areas in the Beaufort Sea, which may occur for brief periods in the fall, usually 4 to 6 weeks. The presence and duration of these aggregations are influenced by the presence of sea ice near shore and the availability of marine mammal carcasses, notably bowhead whales from subsistence hunts. In order for any take associated with a Northstar oil spill to have more than a negligible impact on polar bears, an oil spill would have to occur, an aggregation of bears would have to be present, and the spill would have to contact the aggregation. We believe the probability of all these events occurring simultaneously is low.

We concluded that if an offshore oil spill were to occur during the fall or spring broken-ice periods, a significant impact to polar bears could occur. However, in balancing the level of impact with the probability of occurrence, we concluded that the probability of large-volume spills that would cause significant polar bear takes is low. Additionally, because of the small volume of oil associated with onshore spills, the rapid response system in place to clean up spills, and the protocol available to deter bears away from the affected area for their safety, we concluded that onshore spills would have little impact on the polar bear population. Therefore, the total expected taking of polar bear during Industry activities will have no more than a negligible impact on this species.

In making this proposed finding, we are following Congressional direction in balancing the potential for a significant impact with the likelihood of that event occurring. The specific Congressional direction that justifies balancing probabilities with impacts follows:

> If potential effects of a specified activity are conjectural or speculative, a finding of negligible impact may be appropriate. A finding of negligible impact may also be appropriate if the probability of occurrence is low but the potential effects may be significant. In this case, the probability of occurrence of impacts must be balanced with the potential severity of harm to the species or stock when determining negligible impact. In applying this balancing test, the Service will thoroughly evaluate the risks involved and the potential impacts on marine mammal populations. Such determination will be made based on the best available scientific information. 53 FR at 8474; accord, 132 Cong. Rec. S 16305 (Oct. 15, 1986).

Summary of Take Estimate for Pacific Walrus and Polar Bear

Pacific Walrus

Since walrus are typically not found in the region of Industry activity, the probability is small that Industry activities, such as offshore drilling operations, seismic, and coastal activities, will affect walrus. Walrus observed in the region have typically been lone individuals, further reducing the number of potential takes expected. Only 3 walrus were observed by Industry during its activities between 1994 to 2000. In addition, the majority of walrus hunted by Barrow residents were harvested west of Point Barrow, outside of the area covered by incidental take regulations, while Kaktovik harvested only one walrus. Given this information, no more than a small number of walrus will be taken during the length of this rule. These takes would be unintentional and most likely non-lethal.

Polar Bear

Industry activities, from exploration, development and production operations could potentially disturb polar bears. These disturbances are expected to be primarily short-term behavioral reactions resulting in displacement, and should have no more than a negligible impact on the population. Noise and vibration are theorized to have the following effects on polar bears. Polar bears could be displaced from the immediate area of activity due to noise and vibrations. They could be attracted to sources of noise and vibrations out of curiosity, which could result in human/bear encounters. Denning females with cubs could prematurely abandon their dens due to noise and vibrations produced by certain industrial activities at close distances. Also, noise and vibration from stationary sources could keep females from denning in the vicinity of the source.

Contact with, or ingestion of oil could also potentially affect polar bears. Small oil spills are cleaned up immediately and should have little opportunity to affect polar bears. The probability of a large spill occurring is very small. If such a spill were to occur at an offshore oil facility, however, polar bears could come into contact with oil. The impact of a large spill would depend on the location and size of the spill, environmental factors, and the success of clean-up measures.

The Service estimates that only a small number of polar bear takes will occur during the length of the proposed regulations. These takes would be unintentional and non-lethal. However, it is possible that a few unintentional lethal takes could occur under low probability circumstances. For example, a scenario of an unintentional lethal take could be a road accident where a vehicle strikes and kills a polar bear.

Conclusions

Based on the previous discussion, we make the following findings regarding this action.

Impact on Species

The Beaufort Sea polar bear population is widely distributed throughout their range. Polar bears typically occur in low numbers in coastal and nearshore areas where most Industry activities occur. Hence, impacts that might be significant for individuals or small groups of animals are expected to be no more than negligible for the polar bear population as a whole. Likewise, the Pacific walrus is only occasionally found during the open-water season in the Beaufort Sea. Industry impacts would be no more than negligible for the walrus population as well.

We reviewed the effects of the oil and gas industry activities on marine mammals, which included impacts from stationary and mobile sources, such as noise, physical obstructions, and oil spills. Based on past LOA monitoring reports, we believe that takes resulting from the interactions between Industry and Pacific walrus and polar bears has had a negligible impact on these species. Additional information, such as recorded subsistence harvest levels and incidental observations of polar bears near shore, suggests that these populations have not been adversely affected. The projected level of activities during the period covered by the proposed regulations (existing development and production activities, as well as proposed exploratory activities) are similar in scale to previous levels. In addition, current mitigation measures will be kept in place. Therefore, based on past LOA monitoring reports, we conclude that any take reasonably likely to or reasonably expected to occur as a result of projected activities will have a negligible impact on polar bear and Pacific walrus populations.

The Northstar development is currently the only offshore development in production with a subsea pipeline. Concerns about potential oil spills in the marine environment as a result of this development were raised in the Northstar FEIS. We have analyzed the likelihood of an oil spill in the marine environment of the magnitude necessary to kill a significant number of polar bears, and found it to be minimal. Thus, after considering the cumulative effects of existing development and production activities, and proposed exploratory activities, both onshore and offshore, we find that the total expected takings resulting from oil and gas industry exploration, development, and production activities will have a negligible impact on polar bear and Pacific walrus populations, and will have no unmitigable adverse impacts on the availability of these species for subsistence use by Alaska Natives during the proposed duration of this rule.

We find, based on the recent scientific information available on polar bear and walrus, the results of monitoring data from our previous regulations, and the results of our oil spill modeling assessments, that any take reasonably likely to result from the effects of oil and gas related exploration, development, and production activities through the duration of these regulations, in the Beaufort Sea and adjacent northern coast of Alaska will have a negligible impact on polar bear and Pacific walrus populations.

Even though the probability of an oil spill that will cause significant impacts to the walrus and polar bear population is extremely low, in the event of a catastrophic spill, we will reassess the impacts to polar bear and walrus and reconsider the appropriateness of authorizations for incidental taking through section 101(a)(5)(A) of the Act.

Our proposed finding of "negligible impact" applies to oil and gas exploration, development, and production activities. As with our past incidental take regulations for these actions, generic conditions would be attached to each LOA. These conditions minimize interference with normal breeding, feeding, and possible migration patterns to ensure that the effects to the species remain negligible. We may add additional measures depending upon site-specific and species-specific concerns. Generic conditions include the following: (1) These regulations do not authorize intentional taking of polar bear or Pacific walrus. (2) For the protection of pregnant polar bears during denning activities (den selection, birthing, and maturation of cubs) in known and confirmed denning areas, Industry activities may be restricted in specific locations during specified times of the year. These restrictions will be applied on a case-by-case basis after assessing each LOA request. In potential denning areas, we may require pre-activity surveys (*e.g.*, aerial surveys) to determine the presence or absence of denning activity; in known denning areas we may require enhanced monitoring during activities. (3) Each activity covered by an LOA requires a site-specific plan of operation and a site-specific polar bear interaction plan. The purpose of the required plans is to ensure that the level of activity and possible takes will be consistent with our proposed finding that the cumulative total of incidental takes will have a negligible impact on polar bear and Pacific walrus, and where relevant, will not have an unmitigable adverse impact on the availability of these species for subsistence uses.

Impact on Subsistence Take

We find, based on the best scientific information available, including the results of monitoring data, that any take reasonably likely to result from the effects of of Industry activities during the period of the rule in the Beaufort Sea and adjacent northern coast of Alaska, will not have an unmitigable adverse impact on the availability of polar bears and Pacific walrus for taking for subsistence uses.

Polar bears are hunted primarily during the ice-covered season, and the proposed activities are expected to have a negligible impact on the distribution, movement, and numbers of polar bears found during this time period in the regulation area. Walrus are primarily hunted during the open-water season, and the proposed oil and gas activities are also expected to have a negligible impact on the distribution, movement, and numbers of walrus in the region. Regular communication between the industry and native communities will further reduce the likelihood of interference with subsistence harvest.

If there is evidence during the period of the rule that oil and gas activities may affect the availability of polar bear or walrus for take for subsistence uses, we will reevaluate our findings regarding permissible limits of take and the measures required to ensure continued subsistence hunting opportunities.

Monitoring and Reporting

We require an approved plan for monitoring and reporting the effects of oil and gas industry exploration, development, and production activities on polar bear and walrus prior to issuance of an LOA. Monitoring plans are required to determine effects of oil and gas activities on polar bear and walrus in the Beaufort Sea and the adjacent northern coast of Alaska. Monitoring plans must identify the methods used to assess changes in the movements, behavior, and habitat use of polar bear and walrus in response to Industry activities. Monitoring activities are summarized and reported in a formal report each year. The applicant must submit a monitoring and reporting plan at least 90 days prior to the initiation of a proposed activity. We base each year's monitoring objective on the previous year's monitoring results. For exploration activities the applicant must submit a final monitoring report to us no later than 90 days after the completion of the activity. Since development and production activities are continuous and long-term, we will issue LOAs, which include monitoring and reporting plans for the life of the activity or until the expiration of the regulations, whichever occurs first. Prior to January 15 of each year, we will require that the operator submit development and production activity monitoring results of the previous year's activity. We require approval of the monitoring results for continued coverage under the LOA.

Required Determinations

NEPA Considerations

We have prepared a draft Environmental Assessment (EA) in conjunction with this proposed rulemaking. Subsequent to closure of the comment period for this proposed rule, we will decide whether this is a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969. For a copy of the draft Environmental Assessment, contact the individual identified above in the section **FOR FURTHER INFORMATION CONTACT.**

Regulatory Planning and Review

This document has not been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review). This rule will not have an effect of $100 million or more on the economy; will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; and does not raise novel legal or policy issues. The proposed rule is not likely to result in an annual effect on the economy of $100 million or more. Expenses will be related to, but not necessarily limited to, the development of applications for regulations and LOAs, monitoring, record keeping, and reporting activities conducted during Industry oil and gas operations, development of polar bear interaction plans, and coordination with Alaska Natives to minimize effects of operations on subsistence hunting. Compliance with the rule is not expected to result in additional costs to Industry that it has not already been subjected to for the previous 6 years. Realistically, these costs are minimal in comparison to those related to actual oil and gas exploration, development, and production operations. The actual costs to Industry to develop the petition for promulgation of regulations (originally developed in 2002) and LOA requests probably does not exceed $500,000 per year, short of the "major rule" threshold that would require preparation of a regulatory impact analysis. As is presently the case, profits would accrue to Industry; royalties and taxes would accrue to the Government; and the rule would have little or no impact on decisions by Industry to relinquish tracts and write off bonus payments.

Small Business Regulatory Enforcement Fairness Act

We have determined that this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The proposed rule is also not likely to result in a major increase in costs or prices for consumers, individual industries, or government agencies or have significant adverse effects on competition, employment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

We have also determined that this proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Oil companies and their contractors conducting exploration, development, and production activities in Alaska have been identified as the only likely applicants under the regulations. These potential applicants have not been identified as small businesses. The analysis for this rule is available from the person in Alaska identified above in the section, **FOR FURTHER INFORMATION CONTACT.**

Public Comments Solicited

We are opening the comment period on this proposed rule for only 30 days because the previous regulations authorizing the incidental, unintentional take of small numbers of polar bears and Pacific walrus during year-round oil and gas industry exploration, development, and production operations in the Beaufort Sea and adjacent northern coast of Alaska expired March 31, 2003.

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading; for example, § 18.123, "When is this rule effective?"

(5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule?

(6) What else could we do to make the rule easier to understand?

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state that prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Takings Implications

This proposed rule is not expected to have a potential taking implications under Executive Order 12630 because it would authorize the incidental, but not intentional, take of small numbers of polar bear and walrus by oil and gas industry companies and thereby exempt these companies from civil and criminal liability as long as they operate in compliance with the terms of their LOAs.

Federalism Effects

This proposed rule also does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132. In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*), this rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. This rule will not produce a Federal mandate of $100 million or greater in any year, *i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform

The Departmental Solicitor's Office has determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act of 1995

This regulation requires information collection under the Paperwork Reduction Act. General regulations in 50 CFR 18.27 (that implement the provisions of section 101(a)(5)(A) of the Act) contain information collection, record keeping, and reporting requirements associated with development and issuance of specific regulations and LOAs that are subject to Office of Management and Budget (OMB) clearance under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) The request for regulations includes information collection and record keeping requirements; therefore, under the requirements of the Paperwork Reduction Act the process of receiving authorization from the OMB is underway.

Energy Effects

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule would provide exceptions from the taking prohibitions of the MMPA for entities engaged in the exploration, development, and production of oil and gas in the Beaufort Sea and adjacent coastal areas of northern Alaska. By providing certainty regarding compliance with the MMPA, this rule will have a positive effect on Industry and its activities. Although the rule would require Industry to take a number of actions, these actions have been undertaken by Industry for many years in the past as part of similar regulations. Therefore, this rule is not expected to significantly affect energy supplies, distribution, or use and does not constitute a significant energy action. No Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Alaska, Imports, Indians, Marine mammals, Oil and gas exploration, Reporting and record keeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons set forth in the preamble, the Service proposes to amend Part 18, Subchapter B of Chapter 1, Title 50 of the Code of Federal Regulations as set forth below.

PART 18—MARINE MAMMALS

1. The authority citation of 50 CFR part 18 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Revise part 18 by adding a new subpart J to read as follows:

Subpart J—Taking of Marine Mammals Incidental to Oil and Gas Exploration, Development, and Production Activities in the Beaufort Sea and Adjacent Northern Coast of Alaska

Sec.

18.121 What specified activities does this rule cover?
18.122 In what specified geographic region does this rule apply?
18.123 When is this rule effective?
18.124 How do I obtain a Letter of Authorization?
18.125 What criteria does the Service use to evaluate Letter of Authorization requests?
18.126 What does a Letter of Authorization allow?
18.127 What activities are prohibited?
18.128 What are the monitoring and reporting requirements?
18.129 What are the information collection requirements?

§ 18.121 What specified activities does this rule cover?

Regulations in this subpart apply to the incidental, but not intentional, take of small numbers of polar bear and Pacific walrus by you (U.S. citizens as defined in § 18.27(c)) while engaged in oil and gas exploration, development, and production activities in the Beaufort Sea and adjacent northern coast of Alaska.

§ 18.122 In what specified geographic region does this rule apply?

This rule applies to the geographic region defined by a north/south line at Barrow, Alaska, and includes all Alaska coastal areas, State waters, and Outer Continental Shelf waters east of that line to the Canadian border and an area 25 miles inland from Barrow on the west to the Canning River on the east. The Arctic National Wildlife Refuge is not included in the area covered by this rule. The following map shows the area where this rule applies.

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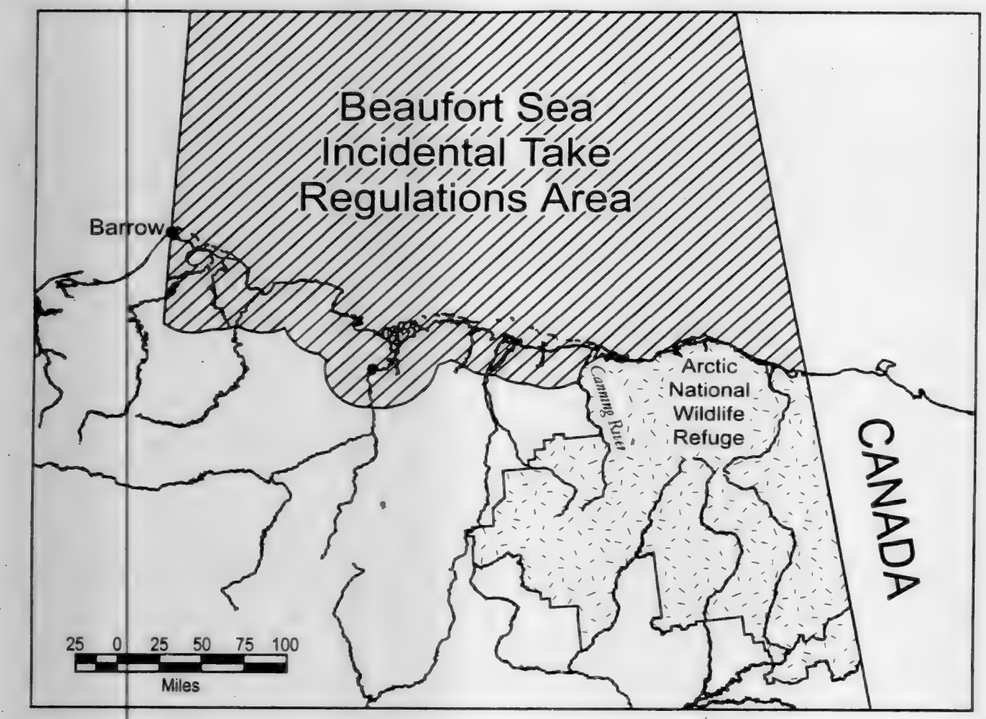


Figure 1. Specific geographic area covered by the Beaufort Sea incidental take regulations.

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§ 18.123 When is this rule effective?

Regulations in this subpart are effective for 16 months from date of issuance, for year-round oil and gas exploration, development, and production activities.

§ 18.124 How do I obtain a Letter of Authorization?

(a) You must be a U.S. citizen as defined in § 18.27(c) of this part.

(b) If you are conducting an oil and gas exploration, development, or production activity that may cause the taking of polar bear or Pacific walrus in the geographic region described in § 18.122 and you want incidental take authorization under this rule, you must apply for a Letter of Authorization for each exploration activity or a Letter of Authorization for activities in each development and production area. You must submit the application for authorization to our Alaska Regional Director (*see* 50 CFR 2.2 for address) at least 90 days prior to the start of the proposed activity.

(c) Your application for a Letter of Authorization must include the following information:

(1) A description of the activity, the dates and duration of the activity, the specific location, and the estimated area affected by that activity.

(2) A site-specific plan to monitor the effects of the activity on the behavior of polar bear and Pacific walrus that may be present during the ongoing activity. Your monitoring program must document the effects on these marine mammals and estimate the actual level and type of take. The monitoring requirements will vary depending on the activity, the location, and the time of year.

(3) A site specific polar bear awareness and interaction plan. For the protection of human life and welfare, each employee on site must complete a basic polar bear encounter training course.

(4) A Plan of Cooperation to mitigate potential conflicts between the proposed activity and subsistence hunting. This Plan of Cooperation must identify measures to minimize adverse effects on the availability of polar bear and Pacific walrus for subsistence uses if the activity takes place in or near a traditional subsistence hunting area. You must contact affected subsistence communities to discuss potential conflicts caused by location, timing, and methods of proposed operations. You must make reasonable efforts to ensure that activities do not interfere with subsistence hunting or that adverse effects on the availability of polar bear or Pacific walrus are properly mitigated.

§ 18.125 What criteria does the Service use to evaluate Letter of Authorization requests?

(a) We will evaluate each request for a Letter of Authorization based on the specific activity and the specific geographic location. We will determine whether the level of activity identified in the request exceeds that considered by us in making a finding of negligible impact on the species and a finding of no unmitigable adverse impact on the availability of the species for take for subsistence uses. If the level of activity is greater, we will reevaluate our findings to determine if those findings continue to be appropriate based on the greater level of activity that you have requested. Depending on the results of the evaluation, we may grant the authorization as is, add further conditions, or deny the authorization.

(b) In accordance with § 18.27(f)(5) of this part, we will make decisions concerning withdrawals of Letters of Authorization, either on an individual or class basis, only after notice and opportunity for public comment.

(c) The requirement for notice and public comment in paragraph (b) of this section will not apply should we determine that an emergency exists that poses a significant risk to the well-being of the species or stock of polar bear or Pacific walrus.

§ 18.126 What does a Letter of Authorization allow?

(a) Your Letter of Authorization may allow the incidental, but not intentional, take of polar bear and Pacific walrus when you are carrying out one or more of the following activities:

(1) Conducting geological and geophysical surveys and associated activities;

(2) Drilling exploratory wells and associated activities;

(3) Developing oil fields and associated activities;

(4) Drilling production wells and performing production support operations;

(5) Conducting environmental monitoring programs associated with exploration, development, and production activities to determine specific impacts of each activity.

(b) You must use methods and conduct activities identified in your Letter of Authorization in a manner that minimizes to the greatest extent practicable adverse impacts on polar bear and Pacific walrus, their habitat, and on the availability of these marine mammals for subsistence uses.

(c) Each Letter of Authorization will identify conditions or methods that are specific to the activity and location.

§ 18.127 What activities are prohibited?

(a) Intentional take of polar bear or Pacific walrus.

(b) Any take that fails to comply with the terms and conditions of these specific regulations or of your Letter of Authorization.

§ 18.128 What are the monitoring and reporting requirements?

(a) We require holders of Letters of Authorization to cooperate with us and other designated Federal, State, and local agencies to monitor the impacts of oil and gas exploration, development, and production activities on polar bear and Pacific walrus.

(b) Holders of Letters of Authorization must designate a qualified individual or individuals to observe, record, and report on the effects of their activities on polar bear and Pacific walrus.

(c) We may place an observer on the site of the activity or on board drill ships, drill rigs, aircraft, icebreakers, or other support vessels or vehicles to monitor the impacts of your activity on polar bear and Pacific walrus.

(d) For exploratory activities, holders of a Letter of Authorization must submit a report to our Alaska Regional Director within 90 days after completion of activities. For development and production activities, holders of a Letter of Authorization must submit a report to our Alaska Regional Director by January 15 for the preceding year's activities. Reports must include, at a minimum, the following information:

(1) Dates and times of activity;

(2) Dates and locations of polar bear or Pacific walrus activity as related to the monitoring activity; and

(3) Results of the monitoring activities including an estimated level of take.

§ 18.129 What are the information collection requirements?

(a) The collection of information contained in this subpart has been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned clearance number 1018–0070. We need to collect the information in order to describe the proposed activity and estimate the impacts of potential takings by all persons conducting the activity. We will use the information to evaluate the application and determine whether to issue specific Letters of Authorization.

(b) For the duration of this rule, when you conduct operations under this rule, we estimate an 8-hour burden per Letter of Authorization, a 4-hour burden for monitoring, and an 8-hour burden per monitoring report. You must respond to this information collection request to

obtain a benefit pursuant to section 101(a)(5) of the Marine Mammal Protection Act. You should direct comments regarding the burden estimate or any other aspect of this requirement to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Department of the Interior, Mail Stop 222 ARLSQ, 1849 C Street, NW., Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project (1018–0070), Washington, D.C. 20503.

Dated: July 15, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–18907 Filed 7–24–03; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 68, No. 143
Friday, July 25, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Informational Meetings

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of informational meetings.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) will hold two informational meetings at the dates and locations noted below. The meetings will assist the Access Board in developing accessibility guidelines under the Americans with Disabilities Act for passenger vessels. Specifically, the meetings will focus on the issue of providing accessible embarkation and disembarkation for persons with disabilities on and off passenger vessels which are subject to 46 CFR subchapters H or K, and foreign flag vessels of a comparable size and passenger capacity.

DATES: The Access Board will hold the first meeting on August 20, 2003, from 1:30 p.m. to 5:30 p.m. A second meeting will be held on September 9, 2003, from 1: p.m to 5:30 p.m.

ADDRESSES: The meeting on August 20 will be held at the Hilton New Orleans Riverside, Two Poydras Street, New Orleans, LA. The second meeting, on September 9 will be held at the Seattle Marriott Waterfront, 2100 Alaskan Way, Seattle, WA.

FOR FURTHER INFORMATION CONTACT: Paul Beatty, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–0012 (Voice); (202) 272–0082 (TTY). These are not toll-free numbers. Electronic mail address: *pvag@access-board.gov*. This document is available in alternate formats (cassette tape, Braille, large print, or ASCII disk) upon request. This document is also available on the Board's Internet Site (*http://www.access-board.gov/pvagmtg.htm*).

SUPPLEMENTARY INFORMATION: In 1998, the Access Board established an advisory committee to make recommendations on accessibility guidelines for passenger vessels. Membership included disability groups, industry organizations, State and local government agencies, and passenger vessel operators. The Passenger Vessel Access Advisory Committee held nine meetings from September 1988 to September 2000 and submitted a final report to the Board entitled "Recommendations for Accessibility Guidelines for Passenger Vessels" in December 2000. The Board has made this report widely available as a source of guidance until final guidelines are developed. The report is available on the Access Board's Web site at *http://www.access-board/gov/pvaac/commrept/index.htm*. Single copies of this publication may be obtained at no cost by calling the Access Board's automated publications order line (202) 272–0080, by pressing 2 on the telephone keypad, then 1, and requesting publication A–42 (Recommendations for Accessibility Guidelines for Passenger Vessels). Persons using a TTY should call (202) 272–0082. Please record a name, address, telephone number and request publication A–42. This document is available in alternate formats upon request. Persons who want a copy in an alternate format should specify the type of format (cassette tape, Braille, large print, or ASCII disk).

Although the advisory committee provided recommendations on a number of issues, specific recommendations regarding running slopes for gangways were not provided. (See Chapter 2 of the Recommendations for Accessibility Guidelines for Passenger Vessels report.) Because passenger vessels come in different shapes and sizes and the marine environment in which the piers are located are influenced by many factors which add to the complexities of providing access, additional information is needed on this topic before specific criteria for gangway running slopes can be proposed for public comment.

The meetings will principally focus on the issue of gangway running slopes. As gangways are the primary method used in providing a pedestrian connection between piers and passenger vessels, the running slope of such gangways is an important access issue for persons with disabilities. In addition to gangways, the meeting will also focus on other methods used to provide access on and off passenger vessels. Issues not related to providing access on and off passenger vessels are not the subject of these meetings.

To maximize the time available, the meeting will only focus on passenger vessels which are subject to 46 CFR subchapters H or K (and foreign flag vessel of a comparable size and passenger capacity). These passenger vessels are typically larger vessels, as compared to those subject to subchapters C or T.

Interested members of the public are encouraged to contact Paul Beatty at the Access Board at (202) 272–0012 (Voice), (202) 272–0082 (TTY) or *pvag@access-board.gov* to pre-register to attend the informational meetings. All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings. Persons attending the informational meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 03–18997 Filed 7–24–03; 8:45 am]

BILLING CODE 8150–01–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: August 24, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800,

1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On December 6, 2002, May 9, and May 16, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 72640, 68 FR 24919, and 26566/26567) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

(End of Certification)

Accordingly, the following products and services are added to the Procurement List:

Products

Product/NSN: Fluid Element Filter, 2940–00–832–6054.
NPA: Gaston Skills, Inc., Gastonia, North Carolina.
Contract Activity: Defense Supply Center Columbus, Columbus, Ohio.
Product/NSN: Supply Cup, 7510–00–161–6211.
NPA: The Lighthouse for the Blind in New Orleans, New Orleans, Louisiana.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Services

Service Type/Location: Custodial Services, Franklin D. Roosevelt Library, Hyde Park, New York.
NPA: Gateway Community Industries, Inc., Kingston, New York.
Contract Activity: National Archives & Records Administration, College Park, Maryland.
Service Type/Location: Custodial Services, U.S. Border Station, Old Champlain Farm, Champlain, New York.
NPA: Clinton County Chapter, NYSARC, Inc., Plattsburgh, New York.
Contract Activity: GSA/PBS Upstate New York Service Center, Syracuse, New York.
Service Type/Location: Janitorial/Custodial, FAA, ATCT & FSDO, Gerald Ford International Airport, Grand Rapids, Michigan.
NPA: Hope Network Services Corporation, Grand Rapids, Michigan.
Contract Activity: Federal Aviation Administration, Des Plaines, Illinois.
Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center Garden Grove, Garden Grove, California.
NPA: Lincoln Training Center and Rehabilitation Workshop, South El Monte, California.
Contract Activity: 63rd Regional Support Command, Los Alamitos, California.
Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center, Eau Claire, Wisconsin.
NPA: L.E. Phillips Career Development Center, Inc., Eau Claire, Wisconsin.
Contract Activity: Headquarters, 88th Regional Support Command, Fort Snelling, Minnesota.
Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center, Fairmont, West Virginia, U.S. Army Reserve Center, Grafton, West Virginia, U.S. Army Reserve Center, New Martinsville, West Virginia.
NPA: PACE Training and Evaluation Center, Inc., Star City, West Virginia.
Contract Activity: 99th Regional Support Command, Coraopolis, Pennsylvania.
Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center, Walker, Michigan.
NPA: Hope Network Services Corporation, Grand Rapids, Michigan.
Contract Activity: Headquarters, 88th Regional Support Command, Fort Snelling, Minnesota.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–18980 Filed 7–24–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 24, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments of the proposed actions. If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

(End of Certification)

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Lock-Jaw-Wood Mop Handle, 7920–01–452–2028.
NPA: New York City Industries for the Blind, Inc., Brooklyn, New York.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Services

Service Type/Location: Base Supply Center, Fort Sill, Oklahoma.
NPA: Beacon Lighthouse, Inc., Wichita Falls, Texas.
Contract Activity: U.S. Army Field Artillery Center & Fort Sill, Oklahoma.
Service Type/Location: Janitorial/Custodial, Bureau of Land Management, Salt Lake Field Office and Warehouse, Salt Lake City, Utah.
NPA: Community Foundation for the Disabled, Inc., Salt Lake City, Utah.
Contract Activity: Bureau of Land Management—Utah State Office, Salt Lake City, Utah.
Service Type/Location: Janitorial/Custodial, Federal Aviation Administration, Belleville SFO, Scott AFB, Illinois.
NPA: Challenge Unlimited, Inc., Alton, Illinois.
Contract Activity: Federal Aviation Administration, Des Plaines, Illinois.
Service Type/Location: Janitorial/Grounds Maintenance, Veterans Affairs Regional Office, Montgomery, Alabama.
NPA: Lakeview Center, Inc., Pensacola, Florida.
Contract Activity: Veterans Affairs Regional Office, Montgomery, Alabama.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–18981 Filed 7–24–03; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 030715174–3174–01]

Revisions to the Unverified List—Guidance as to "Red Flags"

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice.

SUMMARY: On June 14, 2002, the Bureau of Industry and Security ("BIS") published a notice in the **Federal Register** that set forth a list of persons in foreign countries who were parties to past export transactions where pre-license checks ("PLC") or post-shipment verifications ("PSV") could not be conducted for reasons outside the control of the U.S. Government ("Unverified List"). This notice advised exporters that the involvement of a listed person as a party to a proposed transaction constitutes a "red flag" as described in the guidance set forth in Supplement No. 3 to 15 CFR Part 732, requiring heightened scrutiny by the exporter before proceeding with such a transaction. The notice also stated that, when warranted, BIS would remove persons from the Unverified List. Recently a PSV was completed at the facilities of Daqing Production Logging Institute, No. 3 Fengshou Village, Sartu District, Daqing City, Heilongjiang, People's Republic of China. Accordingly, by this notice, Daqing Production Logging Institute is removed from the Unverified List.

DATES: This notice is effective July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas W. Andrukonis, Office of Enforcement Analysis, Bureau of Industry and Security; Telephone: (202) 482–4255.

SUPPLEMENTARY INFORMATION: In administering export controls under the Export Administration Regulations (15 CFR Parts 730 to 774) ("EAR"), BIS carries out a number of preventive enforcement activities with respect to individual export transactions. Such activities are intended to assess diversion risks, identify potential violations, verify end-uses, and determine the suitability of end-users to receive U.S. commodities or technology. In carrying out these activities, BIS officials, or officials of other federal agencies acting on BIS's behalf, selectively conduct PLCs to verify the bona fides of the transaction and the suitability of the end-user or ultimate consignee. In addition, such officials sometimes carry out PSVs to ensure that U.S. exports have actually been delivered to the authorized end-user, are being used in a manner consistent with the terms of a license or license exception, and are otherwise consistent with the EAR.

In certain instances BIS officials, or other federal officials acting on BIS's behalf, have been unable to perform a PLC or PSV with respect to certain export transactions for reasons outside the control of the U.S. Government (including a lack of cooperation by the host government authority, the end-user, or the ultimate consignee). In a notice issued on June 14, 2002 (67 FR 40910), BIS set forth an Unverified List of certain foreign end-users and consignees involved in such transactions.

The June 14, 2002 notice also advised exporters that participation of a person on the Unverified List in a proposed transaction will be considered by BIS to raise a "red flag" under the "Know Your Customer" guidance set forth in Supplement No. 3 to 15 CFR Part 732 of the EAR. Under that guidance, whenever there is a "red flag," exporters have an affirmative duty to inquire, verify, or otherwise substantiate that proposed transaction to satisfy themselves that the transaction does not involve a proliferation activity prohibited in 15 CFR Part 744, and does not violate other requirements set forth in the EAR.

The **Federal Register** notice further stated that BIS may periodically add persons to the Unverified List based on the criteria set forth above, and remove names of persons from the list when warranted.

BIS has not conducted a PSV in a transaction involving Daqing Production Logging Institute, No. 3 Fengshou Village, Sartu District, Daqing City, Heilongjiang, People's Republic of China, a person included on the Unverified List. This notice advises exporters that Daqing Production Logging Institute is removed from the Unverified List, and the "red flag" resulting from Daqing Production Logging Institute's inclusion on the Unverified List is rescinded.

The Unverified List, as modified by this notice, is set forth below.

Lisa A. Prager,

Acting Assistant Secretary for Export Enforcement.

Unverified List (as of July 25, 2003)

The Unverified List includes names and countries of foreign persons who in the past were parties to a transaction with respect to which BIS could not conduct a pre-license check ("PLC") or a post-shipment verification ("PSV") for reasons outside of the U.S. Government's control. Any transaction to which a listed person is a party will be deemed by BIS to raise a "red flag" with respect to such transaction within the meaning of the guidance set forth in Supplement No. 3 to 15 CFR Part 732. The "red flag" applies to the person on the Unverified List regardless of where the person is located in the country included on the list.

Name	Country	Last known address
Lucktrade International	Hong Kong Special Administrative Region	P.O. Box 91150, Tsim Sha Tsui, Hong Kong.
Brilliant Interves	Malaysia	14–1, Persian 65C, Jalan Pahang Barat, Kuala Lumpur, 53000.
Dee Communications M SDN.BHD	do	G5/G6, Ground Floor, Jin Gereja, Johor Bahru.
Shaanxi Telecom Measuring Station	People's Republic of China	39 Jixiang Road, Yanta District Xian, Shaanxi.
Yunma Aircraft Mfg.	do	Yaopu Anshun, Guizhou.
Civil Airport Construction Corporation	do	111 Bei Sihuan Str. East, Chao Yang District, Beijing.
Power Test & Research Institute of Guangzhou	do	No. 38 East Huangshi, Road, Guangzhou.
Beijing San Zhong Electronic Equipment Engineer Co., Ltd.	do	Hai Dian Fu Yuau, Men Hao 1 Hao, Beijing.
Huabei Petroleum Administraion Bureau Logging Company	do	South Yanshan Road, Ren Qiu City, Hebei.
Peluang Teguh	Singapore	203 Henderson Road #09–05H, Henderson Industrial Park, Singapore.
Lucktrade International PTE Ltd	do	35 Tannery Road, #01–07 Tannery Block, Ruby Industrial Complex, Singapore 347740.
Arrow Electronics Industries	United Arab Emirates	204 Arbift Tower, Benyas Road, Dubai.

[FR Doc. 03–19017 Filed 7–24–03; 8:45 am]
BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–888]

Notice of Initiation of Antidumping Investigation: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of Antidumping Investigation

EFFECTIVE DATE: July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Paige Rivas or Sam Zengotitabengoa, AD/CVD Enforcement Office IV, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–0651 or (202) 482–4195, respectively.

INITIATION OF INVESTIGATION:

The Petition

On June 30, 2003, the Department of Commerce (the Department) received a *Petition for the Imposition of Antidumping Duties on Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China* (*the petition*), filed in proper form, by Home Products International, Inc. (the petitioner). The Department received information supplementing the petition on July 2, 2003, and July 8, 2003.

In accordance with section 732(b) of the Tariff Act of 1930 (the Act), as amended by the Uruguay Round Agreements Act, the petitioner alleges that imports of floor-standing, metal-top ironing tables and certain parts thereof (ironing tables) from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that such imports are materially injuring, or are threatening to materially injure, an industry in the United States.

The Department finds that the petitioner filed this petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and has demonstrated sufficient industry support with respect to the antidumping investigation that it is requesting the Department to initiate. *See Determination of Industry Support for the Petition* section below.

Period of Investigation

The anticipated period of investigation (POI) for this investigation is October 1, 2002, through March 31, 2003.

Scope of Investigation

For purposes of this investigation, the product covered consists of floor-standing, metal-top ironing tables, assembled or unassembled, complete or incomplete, and certain parts thereof. The subject tables are designed and used principally for the hand ironing or pressing of garments or other articles of fabric. The subject tables have full-height leg assemblies that support the ironing surface at an appropriate (often adjustable) height above the floor. The subject tables are produced in a variety of leg finishes, such as painted, plated, or matte, and they are available with various features, including iron rests, linen racks, and others. The subject ironing tables may be sold with or without a pad and/or cover. All types and configurations of floor-standing, metal-top ironing tables are covered by this investigation.

Furthermore, this investigation specifically covers imports of ironing tables, assembled or unassembled, complete or incomplete, and certain parts thereof. For purposes of this investigation, the term "unassembled" ironing table means product requiring the attachment of the leg assembly to the top or the attachment of an included feature such as an iron rest or linen rack. The term "complete" ironing table means product sold as a ready-to-use ensemble consisting of the metal-top table and a pad and cover, with or without additional features, *e.g.* iron rest or linen rack. The term "incomplete" ironing table means product shipped or sold as a "bare board" *i.e.*, a metal-top table only, without the pad and cover- with or without additional features, *e.g.* iron rest or linen rack. The major parts or components of ironing tables that are intended to be covered by this investigation under the term "certain parts thereof" consist of the metal top component (with or without assembled supports and slides) and/or the leg components, whether or not attached together as a leg assembly. The investigation covers separately shipped metal top components and leg components, without regard to whether the respective quantities would yield an exact quantity of assembled ironing tables.

Ironing tables without legs (such as models that mount on walls or over doors) are not floor-standing and are specifically excluded. Additionally, tabletop or countertop models with short legs that do not exceed 12 inches in length (and which may or may not collapse or retract) are specifically excluded.

The subject ironing tables were previously classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 9403.20.0010. Effective July 1, 2003, the subject ironing tables are classified under new HTSUS subheading 9403.20.0011. The subject metal top and leg components are classified under HTSUS subheading 9403.90.8040. Although the HTSUS subheadings are provided for convenience and for the purposes of U.S. Bureau of Customs and Border Protection (Customs), the Department's written description of the scope remains dispositive.

During our review of the petition, we discussed the scope with the petitioner and the commodity specialist at the United States Bureau of Customs and Border Protection to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (62 FR 27296, 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit (CRU), at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of our preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) at least 25 percent of the total production of the domestic like product; and, (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Finally, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the administering agency shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or (ii) determine industry support using any statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the Act directs the Department to look to producers and workers who account for production of the domestic like product. *See* sections 771(4)(A)(i) and (ii) of the Act. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. *See* section 771(10) of the Act. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as "a product that is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition. Moreover, the petitioner does not offer a definition of domestic like product distinct from the scope of the investigation.

Based on our analysis of the information presented by the petitioner, we have determined that there is a single domestic like product, which is defined in the "Scope of Investigation" section of the notice. The Department has no basis on the record to find this definition of the domestic like product to be inaccurate. The Department, therefore, has adopted this domestic like product definition. *See Import Administration Antidumping Investigation Checklist*, dated July 18, 2003, (*Initiation Checklist*), at page 2 (public version on file in the CRU of the Department, Room B-099).

The Department has further determined that this petition contains adequate evidence of industry support. As HPI is the only producer of floor-standing metal-top ironing tables in the United States, there is no production data for any other domestic producers of floor-standing metal-top ironing tables. The petitioner provided actual production volume for January through December 2002. We conducted a search of the information reasonably available on the Internet and could find no information that contradicted the petitioner's assertion. Information contained in the petition demonstrates that the domestic producer or workers who support the petition account for over 50 percent of total production of the domestic like product. Therefore, the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) of the Act are met. *See Initiation Checklist*, at pages 3 and 4. Furthermore, because the Department received no opposition to the petition, the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition. *See Initiation Checklist*, at pages 3 and 4. Thus, the requirements of section 732(c)(4)(A)(ii) of the Act are also met.

Accordingly, the Department determines that this petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See Id.*

Export Price and Normal Value

The following are descriptions of the allegations of sales at LTFV upon which our decision to initiate this investigation is based. Based on the information submitted in the petition, adjusted where appropriate, we are initiating this investigation, as discussed below and in the *Initiation Checklist*.

The Department has analyzed the information in the petition and considers the country-wide import statistics for the anticipated POI and market information used to calculate the

[1] *See Algoma Steel Corp. Ltd., v. United States*, 688 F. Supp. 639, 642-44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefore from Japan: Final Determination: Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380-81 (July 16, 1991).

estimated margin for the subject country to be sufficient for purposes of initiation. *See Initiation Checklist*, at page 3. Should the need arise to use any of this information in our preliminary or final determination for purposes of facts available under section 776 of the Act, we may re-examine the information and revise the margin calculation, if appropriate.

Export Price

To calculate export price (EP), the petitioner provided: (1) a direct price quotation of a mesh-top T-leg unit, with pad and cover, from a major Chinese producer and exporter of ironing tables to the United States; and, (2) a bid offer from an unknown competing vendor. The price quotation provided by the petitioner for the subject merchandise was determined to be sufficient for initiation purposes. Since the petitioner was unable to document who the supplier was, we did not consider the bid offer as a basis for EP. Should the need arise to use any of this information as facts available under section 776 of Tariff Act of 1930 (the Act) in our preliminary or final determinations, we may reexamine the information and revise the margin calculations, if appropriate. *See Petition*, at page 17.

The ironing table model referenced in the price quotation represents the single dominant design that pervades the U.S. market. *See Initiation Checklist*, at page 6. Given the terms of sale applicable to the price quotation, the petitioner made no adjustments to EP because the reliance upon the sale price offered by the seller reflects a conservative approach.

Normal Value

The petitioner asserted that the PRC is an NME country and no determination to the contrary has yet been made by the Department. In previous investigations, the Department determined that the PRC is an NME. *See, e.g., Final Determination on Ferrovanadium from the People's Republic of China*, 67 FR 71137 (November 29, 2002); *Final Determination on Cold-Rolled Carbon Steel Flat Products from the People's Republic of China*, 67 FR 62107 (October 3, 2002). In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Because the PRC's status as an NME remains in effect, the petitioner determined the dumping margin using a factors of production (FOP) analysis.

For the normal value (NV) calculation, the petitioner based the FOP analysis, with respect to raw materials, labor, and energy, as defined by section 772(c)(3) of the Act, on its knowledge and experience of the ironing board industry and ironing board production process, and, where applicable, on a physical examination of a Chinese mesh-top T-leg ironing table. The petitioner also added to the FOP values an amount for factory overhead, selling, general, and administrative expenses, and profit, as well as an amount for packing.

Pursuant to section 773(c) of the Act, the petitioner asserted that India is the most appropriate surrogate country for the PRC, claiming that India is: (1) at a level of development comparable to the PRC in terms of per capita gross national income (GNI), which is the current World Bank term for what was previously termed "Gross National Product" (GNP); and, (2) a significant producer of comparable merchandise. The petitioner further notes that India has often been the primary surrogate country for PRC cases. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China*, 67 FR 79049, 79054 (December 27, 2002). Furthermore, the petitioner has been able to obtain all of the necessary data to value the factors of ironing table production in India. Based on the information provided by the petitioner, we believe that the petitioner's use of India as a surrogate country is appropriate for purposes of initiating this investigation. *See Initiation Checklist*, at page 7.

The petitioner identified and quantified the material inputs (*e.g.*, cold-rolled flat-rolled steel, washers, cloth, etc.) based on its knowledge and experience, as well as its physical examination of a Chinese mesh-top T-leg ironing table. The petitioner valued these material inputs based on Indian import statistics for the period of July 2002 through December 2002, as published by the *World Trade Atlas* subscription service, which, in turn, obtains data from the Indian Ministry of Commerce and Industry, Director General, Commercial Intelligence & Statistics. Because some of these values are from a period preceding the POI, the petitioner adjusted for inflation the values to reflect the POI levels, where appropriate, using the Indian Wholesale Price Index (WPI) (compiled by the Indian ministry of Commerce and Industry, Office of the Economic Advisor). *See Initiation Checklist*, at page 6.

Based on its knowledge of Chinese ironing-table producing equipment, the petitioner was able to quantify the amount of electricity consumed. The petitioner valued electricity based on the Indian publication *Electricity for Industry*, for the fourth quarter 2001, as maintained by the International Energy Agency on its website (http://www.iea.org/statist/keyworld2002/key2002/p_0505.htm). That value was then adjusted for inflation on the basis of the Indian monthly WPI for Electricity for Industry. *See Initiation Checklist*, at page 7.

To determine the quantity of natural gas used in the heat curing finishing process, the petitioner relied on its own knowledge and experience. To value natural gas, the petitioner used a value derived from the Indian company Gail (India) Ltd., for May through September 2002. *See Initiation Checklist*, at page 7.

The petitioner valued labor by applying the Department's regression-based wage rate for the PRC, in accordance with section 351.408(c)(3) of the Department's regulations, to the corresponding yield rates for each process.

For manufacturing overhead, selling, general, and administrative expenses, and profit, the petitioner relied upon the publicly available financial data of Godrej & Boyce Manufacturing Company Ltd. (Godrej). The Department recently relied upon this data in another antidumping investigation. *See Notice of Final Determination of Sales at Less Than Fair Value: Folding Metal Tables and Chairs from the People's Republic of China*, 67 FR 20090 (April 24, 2002). Godrej is an Indian producer of metal furniture, including folding metal tables that is sufficiently similar to metal-top ironing tables in terms of materials and production processes to be considered comparable merchandise. *See Initiation Checklist*, at page 8.

Based on the information provided by the petitioner, we believe that the surrogate values represent information reasonably available to the petitioner and are acceptable for purposes of initiating this investigation. See Initiation Checklist, at page 8.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of ironing tables from the PRC are being, or are likely to be, sold at LTFV.

Based on a comparison of EP to NV, the petitioner calculated an estimated dumping margin of **59.32** percent. A summary of the margin calculation is contained in the *Initiation Checklist* at Attachment III.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of the imports of the subject merchandise sold at less than NV. The allegations of injury and causation are supported by relevant evidence including the petitioner's import data, lost sales data, and pricing information. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See Initiation Checklist*, at page 4 and Attachment II.

Initiation of Antidumping Investigation

Based on our examination of the petition, we have found that the petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping investigation to determine whether imports of ironing tables from the PRC are being, or are likely to be, sold in the United States at LTFV. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may reexamine the information and revise the margin calculations, if appropriate. Unless this deadline is extended, we will make our preliminary determination no later than 140 days after the date of this initiation.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, copies of the public version of the petition have been provided to representatives of the government of the PRC.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will determine by August 14, 2003, whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, by reason of imports of ironing tables from the PRC. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published in accordance with section 777(i) of the Act.

Dated: July 21, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary

[FR Doc. 03–19025 Filed 7–24–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–803]

Fresh Atlantic Salmon from Chile: Final Results of Antidumping Duty Changed Circumstances Review, Revocation of Order, and Rescission of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Final results of antidumping duty changed circumstances review; revocation of order; and rescission of administrative review.

SUMMARY: On May 23, 2003, the Department of Commerce (the Department) published a notice of initiation of a changed circumstances review with the intent to revoke the antidumping order on fresh Atlantic salmon from Chile. *See Notice of Initiation of Antidumping Duty Changed Circumstances Review: Fresh Atlantic Salmon from Chile*, 68 FR 28196 (May 23, 2003) (Initiation Notice). On July 1, 2003, based on the fact that domestic parties have expressed no interest in the continuation of the order, the Department published the preliminary results of the changed circumstances review and preliminarily revoked this order, retroactive to July 1, 2001, with respect to entries of fresh Atlantic salmon from Chile. *See Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Fresh Atlantic Salmon from Chile*, 68 FR 39058 (July 1, 2003) (Preliminary Results). We gave interested parties an opportunity to comment on both the Initiation Notice and the Preliminary Results, but received no comments. Therefore, the Department hereby revokes the order on fresh Atlantic salmon from Chile for all entries that were entered, or withdrawn from the warehouse, on or after July 1, 2001, the first day after the last completed administrative review in this proceeding. As the result of the revocation of the order, the Department also is rescinding the on-going administrative review of fresh Atlantic salmon from Chile covering the period July 1, 2001, through June 30, 2002.

EFFECTIVE DATE: July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Keith Nickerson or Constance Handley, at (202) 482–3813 or (202) 482–0631, respectively; AD/CVD Enforcement Office 5, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On July 30, 1998, the Department issued an antidumping duty (AD) order on fresh Atlantic salmon from Chile. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Fresh Atlantic Salmon from Chile*, 63 FR 40699 (July 30, 1998). On July 1, 2002, the Department issued a notice of opportunity to request the fourth administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 67 FR 44172 (July 1, 2002).

On July 31, 2002, in accordance with 19 CFR 351.213(b)(2003), L.R. Enterprises, Inc. (L.R. Enterprises) requested a review of 90 producers/exporters of fresh Atlantic salmon. Twelve respondents also requested reviews of themselves. On August 27, 2002, the Department published the notice of initiation of this AD administrative review, covering the period July 1, 2001, through June 30, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 55000 (August 27, 2002). L.R. Enterprises subsequently withdrew its request for review of all but 13 of these companies. For a detailed discussion of L.R. Enterprises' withdrawals, as well as a listing of which respondents requested reviews, *see Notice of Partial Rescission of Antidumping Duty Administrative Review: Fresh Atlantic Salmon from Chile*, 67 FR 76378 (December 12, 2002).

On April 29, 2003, L.R. Enterprises withdrew its request that the Department conduct reviews of the remaining 13 producers/exporters of fresh Atlantic salmon from Chile. Furthermore, L.R. Enterprises stated that it had no interest in maintaining the AD order. Subsequently, by letters dated April 29, 2003, five U.S. producers of fresh Atlantic salmon including

Heritage Salmon Inc., Maine Nordic Salmon, Stolt Sea Farms Inc., Cypress Island Inc., and Atlantic Salmon of Maine, requested that the Department initiate a changed circumstances review for the purpose of revoking the AD order on the subject merchandise. On May 2 and 7, 2003, L. R. Enterprises and Trumpet Island Salmon Farm Inc., respectively, submitted their requests to the Department for the initiation of a changed circumstances review for the purpose of revoking the AD order. All parties requested that the Department grant revocation of the AD order retroactive to July 1, 2001, the first day of the period of review covered by the on-going fourth administrative review.

On May 23, 2003, the Department published a notice of initiation of a changed circumstances review with the intent to revoke the AD order on fresh Atlantic salmon from Chile. In the Initiation Notice, we indicated that interested parties could submit comments for consideration in the Department's preliminary results no later than 20 days after publication of the initiation of the review, and submit rebuttal to those comments no later than 10 days following the submission of comments. We did not receive any comments on the Initiation Notice.

On July 1, 2003, the Department published the preliminary results of the changed circumstances review and preliminarily revoked this order with respect to all unliquidated entries for all entries of fresh Atlantic salmon from Chile that were entered, or withdrawn from the warehouse, on or after July 1, 2001, based on the fact that domestic parties have expressed no interest in continuation of the order. In addition, we stated our intention to rescind the fourth administrative review. In the Preliminary Results, we stated that interested parties could submit case briefs to the Department no later than 10 days after the publication of the Preliminary Results notice in the **Federal Register**, and submit rebuttal briefs, limited to the issues raised in those case briefs, five days subsequent to this due date. We did not receive any comments on the Preliminary Results.

Scope of the Order

The product covered by this order is fresh, farmed Atlantic salmon, whether imported "dressed" or cut. Atlantic salmon is the species *Salmo salar*, in the genus *Salmo* of the family *salmoninae*. "Dressed" Atlantic salmon refers to salmon that has been bled, gutted, and cleaned. Dressed Atlantic salmon may be imported with the head on or off; with the tail on or off; and with the gills in or out. All cuts of fresh Atlantic salmon are included in the scope of the order. Examples of cuts include, but are not limited to: crosswise cuts (steaks), lengthwise cuts (fillets), lengthwise cuts attached by skin (butterfly cuts), combinations of crosswise and lengthwise cuts (combination packages), and Atlantic salmon that is minced, shredded, or ground. Cuts may be subjected to various degrees of trimming, and imported with the skin on or off and with the "pin bones" in or out.

Excluded from the scope are (1) fresh Atlantic salmon that is "not farmed" (*i.e.*, wild Atlantic salmon); (2) live Atlantic salmon; and (3) Atlantic salmon that has been subject to further processing, such as frozen, canned, dried, and smoked Atlantic salmon, or processed into forms such as sausages, hot dogs, and burgers.

The merchandise subject to this order is classifiable as item numbers 0302.12.0003 and 0304.10.4093 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS statistical reporting numbers are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Final Results of Changed Circumstances Review and Revocation of the AD Order

Pursuant to sections 751(d)(1) and 782(h)(2) of the Tariff Act of 1930, as amended (the Act), the Department may revoke an antidumping or countervailing duty order, in whole or in part, based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant review of a final affirmative antidumping determination. The Department's regulations at 19 CFR 351.222(g)(2) provide that the Department will conduct a changed circumstances review under 19 CFR 351.216 if the Secretary concludes from the available information that changed circumstances sufficient to warrant revocation or termination exist. The Department may revoke an order (in whole or in part), if the Secretary determines that: (i) producers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or (ii) if other changed circumstances sufficient to warrant revocation exist. 19 CFR 351.222(g)(1)(i); *See also Certain Tin Mill Products From Japan: Final Results of Changed Circumstances Review*, 66 FR 52109 (October 12, 2001) and 19 CFR 351.208(c). According to the record of this case, the following are all of the known U.S. producers of fresh Atlantic salmon: L.R. Enterprises, Heritage Salmon Inc., Maine Nordic Salmon, Stolt Sea Farms Inc., Cypress Island Inc., Atlantic Salmon of Maine, and Trumpet Island Salmon Farm Inc. Based upon the statement of no interest by the U.S. producers referenced above and the fact that the Department did not receive any comments during the comment periods following the initiation and preliminary results of this review, the Department hereby revokes this order for all entries of fresh Atlantic salmon from Chile that were entered, or withdrawn from warehouse, on or after July 1, 2001, the first day after the last completed administrative review in this proceeding, in accordance with sections 751(b) and (d) and 782(h) of the Act and 19 CFR 351.216.

Rescission of Antidumping Duty Administrative Review

On August 27, 2002, the Department published in the **Federal Register** (67 FR 55000) a notice of initiation of an administrative review for the period July 1, 2001, through June 30, 2002. As the result of the revocation of the order, the Department is rescinding the on-going administrative review of fresh Atlantic salmon from Chile pursuant to section 751(d)(3) of the Act.

Instructions to the Customs Service

In accordance with 19 CFR 351.222, the Department will instruct the U.S. Bureau of Customs and Border Protection (BCBP) to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, all unliquidated entries of fresh Atlantic salmon from Chile, entered, or withdrawn from warehouse, on or after July 1, 2001, which is the first day after the last completed review covering the 2001–2002 review period. The Department will further instruct the BCBP to refund with interest any estimated duties collected with respect to unliquidated entries of fresh Atlantic salmon from Chile entered, or withdrawn from warehouse, on or after July 1, 2001, in accordance with section 778 of the Act.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice of final results of antidumping duty changed circumstances review and revocation of the antidumping duty order are in accordance with sections 751(b) and (d), and 777(i) of the Act and 19 CFR 351.222(g). The 2001–2002 antidumping duty administrative review of fresh Atlantic salmon from Chile is rescinded in accordance with section 751(d)(3) of the Act.

Dated: July 21, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary.

[FR Doc. 03–19022 Filed 7–24–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey From the People's Republic of China: Final Rescission, in Part, of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final rescission, in part, of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) has determined that the first administrative reviews of five PRC honey exporters/producers should be rescinded.

EFFECTIVE DATE: July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza or Brandon Farlander at (202) 482–3019 or (202) 482–0182, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified at 19 CFR part 351 (April 2002).

Case History

On December 17, 2002, the Department published a *Notice of Opportunity to Request an Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 67 FR 77222 (December 17, 2002). On December 31, 2002, the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners) in this proceeding, requested, in accordance with section 351.213(b) of the Department's regulations, an administrative review of the antidumping duty order on honey from the People's Republic of China (PRC) covering the period May 11, 2001, through November 30, 2002.[1]

Petitioners requested that the Department conduct an administrative review of entries of subject merchandise made by ten PRC producers/exporters, including Anhui Native Produce Import & Export Corp. (Anhui), Inner Mongolia Autonomous Region Native Produce and Animal By-Products (Inner Mongolia), Shanghai Xiuwei International Trading Co., Ltd. (Shanghai Xiuwei), Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd. (Sichuan Dubao), and Wuhan Bee Healthy Co., Ltd. (Wuhan).[2] We also received a timely request from Zhejiang Native Produce and Animal By-Products Import & Export Corp., a.k.a. Zhejiang Native Produce and Animal By-Products Import and Export Group Corporation (collectively Zhejiang), that the Department conduct an administrative review of entries of subject merchandise exported by Zhejiang during the POR. On January 22, 2003, the Department initiated an administrative review of all requested PRC honey exporters/producers. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 3009 (January 22, 2003).

In a separate proceeding, the Department received timely requests from Shanghai Xiuwei and Sichuan Dubao, in accordance with 19 CFR 351.214(c), for new shipper reviews of the antidumping duty order on honey from the PRC, which has a December annual anniversary month. On February 5, 2003, we published a *Notice of Initiation of New Shipper Antidumping Duty Reviews*, 68 FR 5868 (February 5, 2003) initiating new shipper reviews of Shanghai Xiuwei's and Sichuan Dubao's sales during the same POR as this administrative review.[3]

On May 6, 2003, the Department preliminarily determined to rescind, in part, the administrative reviews of Anhui, Inner Mongolia, Shanghai Xiuwei, Sichuan Dubao, and Wuhan. See Memorandum to Barbara Tillman, Acting Deputy Assistant Secretary, AD/CVD Enforcement Group III; Intent to Partially Rescind Administrative Reviews (May 6, 2003) (Rescission Memo).

As discussed in the above-referenced Rescission Memo, this administrative review is intended to cover shipments of subject merchandise by Anhui and Inner Mongolia during the POR of May 11, 2001, through November 30, 2003. However, based upon our shipment data query and examination of entry documents, we determined that Anhui and Inner Mongolia did not ship subject merchandise during this period.

As discussed in the Department's Rescission Memo, the new shipper reviews of Shanghai Xiuwei and Sichuan Dubao covered the same POR as this administrative review. The Department also determined, with respect to Wuhan, that there were no other entries to review other than those currently under review in its new shipper review. Therefore, we determined that Shanghai Xiuwei, Sichuan Dubao, and Wuhan were new shippers and should not be subject to this proceeding.

We invited parties to comment on our Rescission Memo. On May 21, 2003, we received responses from Wuhan, Inner Mongolia, and Anhui in support of the Department's decision to rescind their respective administrative reviews. We did not receive comments from petitioners, Shanghai Xiuwei, nor Sichuan Dubao. Furthermore, interested

[1] On January 27, 2003, the Department clarified that the period of review (POR) for certain PRC honey exporters/producers, including Wuhan, Shanghai Xiuwei, and Sichuan Dubao is February 10, 2001, through November 30, 2002. *See* Memorandum to the File through Donna L. Kinsella, Case Manager, Office 8; POR for Exporters of Honey from the People's Republic of China with Affirmative Critical Circumstances Findings (January 27, 2003) for further details.

[2] The other five PRC honey exporters/producers included Henan Native Produce and Animal By-Products Import & Export Company, High Hope International Group Jiangsu Foodstuffs Import and Export Corp., Kunshan Foreign Trade Company, Shanghai Eswell Enterprise Co., Ltd., and Zhejiang.

[3] Moreover, the Department currently is conducting a six-month new shipper review of Wuhan's sales during the period December 1, 2001, through May 31, 2002. *See Honey from the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews*, 67 FR 50862 (August 6, 2002). *See also Notice of Preliminary Results of Antidumping Duty New Shipper Review: Honey from the People's Republic of China*, 68 FR 33099 (June 3, 2003).

parties did not submit case briefs or request a hearing. In summary, all parties commenting on the Rescission Memo supported the Department's preliminary decision to rescind these reviews, and there have been no changes since the Department placed its Rescission Memo on the record of this administrative review.

Scope of Review

The merchandise under review is honey from the PRC. The products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form. The merchandise under review is currently classifiable under item 0409.00.00, 1702.90.90 and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

Rescission, in Part, of First Administrative Review

We provided interested parties with an opportunity to comment on our preliminary determination to rescind the administrative reviews of Anhui, Inner Mongolia, Shanghai Xiuwei, Sichuan Dubao, and Wuhan. As noted above, we received responses from Wuhan, Inner Mongolia, and Anhui in support of the Department's decision to rescind their respective administrative reviews. As discussed in detail in our Rescission Memo, because Anhui and Inner Mongolia made no entries, exports or sales of subject merchandise to the United States during the POR, we determined that these companies were non-shippers. Furthermore, because Wuhan, Shanghai Xiuwei, and Sichuan Dubao made no entries, exports or sales of subject merchandise to the United States not currently under review in their respective new shipper reviews, the Department determined to treat these companies as new shippers not subject to this administrative review. In accordance with §§ 351.213(d)(3) and 351.214(j)(1) of the Department's regulations, we are rescinding our administrative reviews of Anhui, Inner Mongolia, Shanghai Xiuwei, Sichuan Dubao, and Wuhan. *See, e.g., Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China: Final Results of 1999–2001 Administrative Review and Partial Rescission of Review*, 67 FR 68987 (November 14, 2002); *see also, Frozen Concentrated Orange Juice from Brazil: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 40913 (June 14, 2002)).

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO are sanctionable violations.

This determination is issued and published pursuant to sections 751(a) and 777(i) of the Act.

Dated: July 22, 2003.

Richard O. Weible,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–19020 Filed 7–24–03; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey From the People's Republic of China: Extension of Time Limit for Preliminary Results of First Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on honey from the People's Republic of China until no later than December 31, 2003. The period of review for those entities with an affirmative critical circumstances finding is February 10, 2001, through November 30, 2002. For all other companies, the period of review is May 11, 2001, through November 30, 2002.

EFFECTIVE DATE: July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza or Brandon Farlander at (202) 482–3019 or (202) 482–0182, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and section 351.213(h)(1) of the Department's regulations require the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of the order or suspension agreement for which the administrative review was requested, and final results of review within 120 days after the date on which the notice of the preliminary results was published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act and § 351.213(h)(2) of our regulations allow the Department to extend the 245-day period to 365 days and the 120-day period to 180 days.

Background

On December 10, 2001, the Department of Commerce (the Department) published in the **Federal Register** an antidumping duty order covering honey from the People's Republic of China (PRC). *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Honey from the People's Republic of China*, 66 FR 63670 (December 10, 2001). On December 17, 2002, the Department published a *Notice of Opportunity to Request an Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 67 FR 77222 (December 17, 2002). On December 31, 2002, the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners) in this proceeding, requested, in accordance with § 351.213(b) of the Department's regulations, an administrative review of the antidumping duty order on honey from the PRC covering the period May 11, 2001, through November 30, 2002.[1]

The petitioners requested that the Department conduct an administrative review of entries of subject merchandise made by ten PRC producers/exporters, which included Shanghai Eswell Enterprise Co., Ltd. (Shanghai Eswell), Zhejiang Native Produce and Animal By-Products Import & Export Corp., a.k.a. Zhejiang Native Produce and Animal By-Products Import and Export Group Corporation (Zhejiang), and Wuhan Bee Healthy Co., Ltd. (Wuhan). We also received a timely request from Zhejiang (active respondent in the original investigation) that the Department conduct an administrative review of entries of subject merchandise it exported to the United States during the period of review (POR). On January 22, 2003, the Department initiated an administrative review for all of these companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 3009 (January 22, 2003).

On February 20, 2003, the Department issued antidumping duty questionnaires to all ten PRC producers/exporters of the subject merchandise. On April 4, 2003, we received responses to Section A of our antidumping duty questionnaires from Zhejiang and Wuhan. On April 18, 2003, we received responses to Sections C and D of our antidumping duty questionnaires from Zhejiang and Wuhan.

On April 22, 2003, petitioners submitted a withdrawal of request for review for Shanghai Eswell. On May 6, 2003, the Department rescinded, in part, the administrative review of the antidumping duty order on honey with respect to Shanghai Eswell. *See Honey from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 68 FR 23963 (May 6, 2003).

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Act and section 351.213(h) of the Department's regulations, we determine that it is not practicable to complete this administrative review within the statutory time limit of 245 days. The Department finds that it is not practicable to complete the preliminary results of this administrative review within this time limit because we need additional time to research the appropriate surrogate value used to value raw honey. Additionally, the Department is analyzing the Indian financial statements currently on the record to determine the appropriate surrogate financial ratios to use in our calculation of normal value. Therefore, in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations, the Department is extending the time limit for the completion of these preliminary results by an additional 120 days. The preliminary results will now be due no later than December 31, 2003. The final results will, in turn, be due 120 days after the date of issuance of the preliminary results, unless extended.

Dated: July 21, 2003.

Richard O. Weible,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–19021 Filed 7–24–03; 8:45 am]

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[1] On January 27, 2003, in a memorandum to the file, we determined that the POR for entities with affirmative findings of critical circumstances to be February 10, 2001, through November 30, 2002. *See* Memorandum to the File from Angelica L. Mendoza through Donna L. Kinsella, dated January 27, 2003 for further details.

DEPARTMENT OF COMMERCE

International Trade Administration

[C-507–501]

Notice of Rescission of Countervailing Duty Administrative Review: In-shell Pistachios from the Islamic Republic of Iran

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Countervailing Duty Administrative Review.

SUMMARY: On April 16, 2003, the Department of Commerce (the Department) initiated an administrative review of the countervailing duty order on in-shell (raw) pistachios from the Islamic Republic of Iran (Iran), covering one manufacturer/exporter of the subject merchandise, Rafsanjan Pistachio Producers Cooperative (RPPC), and the period January 1, 2002, through December 31, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 68 FR 19498 (April 21, 2003). This review has now been rescinded due to petitioners'[1] withdrawal of their request for an administrative review.

EFFECTIVE DATE: July 25, 2003

FOR FURTHER INFORMATION CONTACT: Darla Brown or Eric B. Greynolds, AD/CVD Enforcement, Office VI, Group II, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2849 or (202) 482–6071, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 31, 2003, the Department received a timely request from the CPC for an administrative review of the countervailing duty order on in-shell (raw) pistachios from Iran. On April 16, 2003, the Department initiated an administrative review of this order for the period January 1, 2002, through December 31, 2002. On July 9, 2003, the CPC submitted a timely letter requesting to withdraw their request for the above-referenced administrative review.

Scope of the Review

The product covered by this administrative review is in-shell (raw) pistachio nuts from which the hulls have been removed, leaving the inner hard shells and edible meat, as currently classifiable in the Harmonized Tariff Schedules of the United States (HTSUS) under item number 0802.50.20.00. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Rescission of Review

On July 9, 2003, the CPC submitted a letter requesting to withdraw its request for the above-referenced administrative review. *See* letter from the CPC to the Department dated July 9, 2003, on file in the Central Records Unit, Room B-099, main building of the Department of Commerce. This letter was timely filed within 90 days of the publication notice of initiation of the requested review.

Having accepted the CPC's request, the Department hereby rescinds the administrative review of in-shell (raw) pistachios from Iran for the period January 1, 2002, to December 31, 2002. *See* 19 CFR section 351.213(d)(1). The Department will issue appropriate assessment instructions to the U.S. Bureau of Customs and Border Protection (Customs) within 15 days of publication of this notice.

This notice is in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended, and section 351.213(d) of the Department's regulations.

Dated: July 21, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–19024 Filed 7–24–03; 8:45 am]

BILLING CODE 3510–DS–S

[1] Petitioners are the California Pistachios Commission (CPC) and its members.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–838]

Certain Softwood Lumber Products from Canada: Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty changed circumstances review.

SUMMARY: On March 27, 2003, the Department of Commerce (the Department) published a notice of initiation of a changed circumstances review to determine whether entries naming Monterra Lumber Mills Limited (Monterra), a Canadian producer of softwood lumber products and an interested party in this proceeding, as manufacturer and exporter should receive the "All Others" cash deposit rate of 8.43 percent. *See Initiation of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products From Canada*, 68 FR 14947 (March 27, 2003) (Initiation Notice). We have preliminarily determined that entries naming Monterra as manufacturer and exporter should receive the "All Others" cash deposit rate of 8.43 percent.

EFFECTIVE DATE: July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Keith Nickerson or Constance Handley, at (202) 482–3813 or (202) 482–0631, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

As a result of the antidumping duty order issued following the completion of the less-than-fair-value investigation of certain softwood lumber products from Canada, imports of softwood lumber from Monterra, a subsidiary of respondent company Weyerhaeuser Company Limited (Weyerhaeuser), became subject to a cash deposit rate of 12.39 percent (*See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Order: Certain Softwood Lumber Products from Canada*, 67 FR 36068 (May 22, 2002)). On February 4, 2003, Monterra notified the Department that effective December 23, 2002, Weyerhaeuser sold its interest in Monterra to 1554545 Ontario, Inc. (1554545 Ontario), a wholly owned subsidiary of Tercamm Corp., a privately owned Canadian investment company. As a result, Monterra requested that the Department conduct a changed circumstances review in order to conclude that, effective December 23, 2002, it be subject to the "All Others" cash deposit rate of 8.43 percent, rather than Weyerhaeuser's 12.39 percent rate. On March 27, 2003, the Department published a notice of initiation of a changed circumstances review to determine whether entries naming Monterra as manufacturer and exporter should receive the "All Others" cash deposit rate of 8.43 percent.

On April 29, 2003, Monterra, at the request of the Department, submitted additional information and documentation regarding its sale by Weyerhaeuser to 1554545 Ontario. On May 8, 2003, the petitioner[1] submitted comments on the information provided by Monterra and requested that the Department issue a supplemental questionnaire. On May 21, 2003, the Department issued a supplemental questionnaire requesting further details and documentation surrounding the sale and purchase, which was provided by Monterra in its subsequent submission of June 4, 2003. The petitioner did not comment on Monterra's June 4, 2003, submission.

Scope of the Order

The products covered by this order are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under headings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

(1) coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding six millimeters;

(2) coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed;

(3) other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded or finger-jointed; and

(4) coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive. Preliminary scope exclusions and clarifications were published in three separate federal register notices.

Softwood lumber products excluded from the scope:

- trusses and truss kits, properly classified under HTSUS 4418.90
- I-joist beams
- assembled box spring frames
- pallets and pallet kits, properly classified under HTSUS 4415.20
- garage doors
- edge-glued wood, properly classified under HTSUS item 4421.90.98.40
- properly classified complete door frames.
- properly classified complete window frames
- properly classified furniture

Softwood lumber products excluded from the scope only if they meet certain requirements:

- *Stringers* (pallet components used for runners): if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.98.40.
- *Box-spring frame kits*: if they contain the following wooden pieces - two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius-cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1" in actual thickness or 83" in length.
- *Radius-cut box-spring-frame components*, not exceeding 1" in actual thickness or 83" in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner.

[1] The petitioner in this proceeding is the Coalition for Fair Lumber Imports Executive Committee.

- *Fence pickets* requiring no further processing and properly classified under HTSUS 4421.90.70, 1" or less in actual thickness, up to 8" wide, 6' or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog-eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring 3/4 inch or more.
- *U.S. origin lumber* shipped to Canada for minor processing and imported into the United States, is excluded from the scope of this order if the following conditions are met: 1) the processing occurring in Canada is limited to kiln-drying, planing to create smooth-to-size board, and sanding, and 2) if the importer establishes to U.S. Bureau of Customs and Border Protection's (BCBP) satisfaction that the lumber is of U.S. origin.[2]
- *Softwood lumber products contained in single family home packages or kits*,[3] regardless of tariff classification, are excluded from the scope of the orders if the following criteria are met:

1. The imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;
2. The package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, subfloor, sheathing, beams, posts, connectors and if included in purchase contract decking, trim, drywall and roof shingles specified in the plan, design or blueprint;
3. Prior to importation, the package or kit must be sold to a retailer of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;
4. The whole package must be imported under a single consolidated entry when permitted by the BCBP, whether or not on a single or multiple trucks, rail cars or other vehicles, which shall be on the same day except when the home is over 2,000 square feet;
5. The following documentation must be included with the entry documents:

- a copy of the appropriate home design, plan, or blueprint matching the entry;
- a purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;
- a listing of inventory of all parts of the package or kit being entered that conforms to the home design package being entered;
- in the case of multiple shipments on the same contract, all items listed immediately above which are included in the present shipment shall be identified as well.

We have determined that the excluded products listed above are outside the scope of this order provided the specified conditions are met. Lumber products that the BCBP may classify as stringers, radius cut box-spring-frame components, and fence pickets, not conforming to the above requirements, as well as truss components, pallet components, and door and window frame parts, are covered under the scope of this order and may be classified under HTSUS subheadings 4418.90.40.90, 4421.90.70.40, and 4421.90.98.40. Due to changes in the 2002 HTSUS whereby subheading 4418.90.40.90 and 4421.90.98.40 were changed to 4418.90.45.90 and 4421.90.97.40, respectively, we are adding these subheadings as well.

Preliminary Results of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. Monterra contends that, because it is no longer owned by Weyerhaeuser, it should be subject to the "All Others" cash deposit rate. In accordance with 19 CFR 351.216 (c), due to the change in ownership, the Department found good cause to initiate a changed circumstances review despite the final determination being in existence for fewer than 24 months. Therefore, we initiated a changed circumstances administrative review pursuant to section 751(b)(1) of the Act and 19 CFR 351.216(c) to determine whether entries naming Monterra as manufacturer and exporter should receive the "All Others" cash deposit rate of 8.43 percent.

In reviewing the information provided by Monterra, the Department has preliminarily found that Monterra, as a result of the sale by Weyerhaeuser and purchase by 1554545 Ontario on December 23, 2002, is no longer owned by or in any way affiliated with Weyerhauser and, as a result, should not be subject to Weyerhaeuser's cash deposit rate of 12.39 percent. In addition, we note that during the antidumping duty investigation of certain softwood lumber from Canada, the Department granted an exemption to Weyerhaeuser allowing it to exclude reporting the U.S. sales by Monterra since these sales represented such a small amount of Weyerhaeuser's total U.S. sales.[4] As a result, Monterra's sales had no effect on the calculation of Weyerhaeuser's cash deposit rate of 12.39 percent. Therefore, for the above-stated reasons, we have preliminarily determined that entries naming Monterra as manufacturer and exporter should receive the "All Others" cash deposit rate of 8.43 percent.

We are denying Monterra's request to have the cash deposit rate of 8.43 percent made effective as of December 23, 2002. Because cash deposits are only estimates of the amount of antidumping duties that will be due, changes in cash deposit rates are not made retroactively. *See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom: Final Results of Changed-Circumstances Antidumping and Countervailing Duty Administrative Reviews*, 64 FR 66880 (November 30, 1999). However, on May 30, 2003, Monterra requested, during the anniversary month of the publication of the order, an administrative review of those entries to determine the proper assessment rate and receive a refund of any excess deposits. Accordingly, on July 1, 2003, the Department published a notice of initiation of an administrative review of the antidumping duty order on certain softwood lumber products from Canada for 421 companies, including Monterra. (*See Initiation of Antidumping Duty Administrative Review*, 68 FR 39059 (July 1, 2003).)

Public Comment

Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 45

[2] As clarified in the Memorandum from Dave Layton, Case Analyst, through Charles Riggle, Program Manager, and Gary Taverman, Office Director, to Bernard Carreau, Deputy Assistant Secretary, concerning the Certain Softwood Lumber from Canada Scope re: Final Scope Ruling in Response to Request by the Coalition for Fair Lumber Imports Executive Committee regarding U.S.-origin Lumber Undergoing Additional Processing, dated January 22, 2003.

[3] To ensure administrability, we clarified the language of this exclusion to require an importer certification and to permit single or multiple entries on multiple days as well as instructing importers to retain and make available for inspection specific documentation in support of each entry.

[4] See Memorandum from Constance Handley, Senior Import Compliance Specialist, to Gary Taverman, Office Director, concerning the Antidumping Duty Investigation of Certain Softwood Lumber from Canada, dated July 16, 2001.

days after the date of publication of this notice, or the first working day thereafter. Interested parties may submit case briefs and/or written comments not later than 30 days after the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in such briefs or comments, may be filed not later than 37 days after the date of publication of this notice. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.

Due to the fact that the petitioner has not agreed to the outcome of this proceeding, the Department will conduct this review in accordance with section 351.216(e) of its regulations. Thus, consistent with section 351.216(e) of the Department's regulations, we will issue the final results of this changed circumstances review no later than 270 days after the date on which this review was initiated.

This notice is in accordance with sections 751(b)(1) and 777(I)(1) of the Act and 19 CFR 351.216, 351.221(b), and 351.222(g)(3)(I).

Dated: July 21, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary.

[FR Doc. 03–19023 Filed 7–24–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 021028257–3178–02]

NOAA Office of Ocean Exploration Announcement of Funding Opportunity, Fiscal Year 2004

AGENCY: Office of Ocean Exploration, National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: NOAA's Office of Ocean Exploration (OE) is seeking pre-proposals and full proposals for grants, cooperative agreements, and other financial collaborations to implement OE's mission to expand our knowledge of the ocean's physical, chemical, biological and archaeological characteristics, processes, and resources. OE's mission objectives also include conveying the experience and knowledge gained in all of OE's missions though a structured program of public education and outreach. Many of OE's missions will be accomplished by projects, experiments, and expeditions to unknown, or poorly known, ocean and Great Lakes regions. Consistent with OE's intent to explore and discover, successful OE proposals will be relatively broad-based in terms of their objectives and they may be relatively high-risk. Prospective applicants are encouraged to visit the Ocean Explorer Web site: *http://oceanexplorer.noaa.gov* in order to familiarize themselves with past and present OE activities.

DATES: Pre-proposals are required and must be postmarked or received by September 3, 2003. Full proposals must be postmarked or received by October 28, 2003. In the event that these dates fall on a weekend or holiday, the effective date shall be the first working day after the date specified. Email and/or facsimile pre-proposals and/or proposals submissions will not be accepted.

ADDRESSES: Send pre-proposals and proposals to NOAA, Office of Ocean Exploration, ATTN: OE Science Program Coordinator, Bldg. SSMC3, Rm. 10221, 1315 East West Highway, Silver Spring, MD 20910. Email and/or facsimile pre-proposals and/or proposals submissions will not be accepted.

FOR FURTHER INFORMATION CONTACT: Margot Bohan, OE Science Program Coordinator, or Randi Neff, OE Program Grants Coordinator, NOAA Office of Ocean Exploration, 301–713–9444, facsimile 301–713–4252 or submit inquiries via email to the Frequently Asked Questions address: *oar.oe.FAQ@noaa.gov*. Email inquiries should include the Principal Investigator's name in the subject heading. A copy of this notice, as well as ancillary information, will be posted on the OE Web site *http://www.explore.noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Program Authority

Authority: 33 U.S.C. 883d.

Catalog of Federal Domestic Assistance Number: 11.460.

II. Program Description

A. Background

In June 2000, a panel of leading ocean explorers, scientists, and educators developed a national strategy for exploring the oceans, and presented its recommendations in a report entitled, *Discovering Earth's Final Frontier: A U.S. Strategy for Ocean Exploration* (*http://oceanpanel.nos.noaa.gov*). NOAA was selected as the lead Federal agency to guide a national program in ocean exploration and the Office of Ocean Exploration was established in 2001.

B. Program Mission

The mission of OE is to search, investigate, and document unknown and poorly known areas of the ocean and Great Lakes through interdisciplinary exploration, and to advance and disseminate knowledge of the ocean environment and its physical, chemical, biological, and historical resources.

III. Program Notice

A. Notice Objectives

The purpose of this announcement is to invite the submission of pre-proposals and full proposals for grants, cooperative agreements, and other financial collaborations whose objectives are to explore the ocean and map its resources, to gain new insights about its physical, chemical, biological, and archaeological characteristics, and its living and non-living resources.

B. Program Guidance

Themes. Persons submitting proposals may elect to address these preferred themes, developed in part from eight regional workshops of ocean scientists, explorers, and educators from public, private and commercial organizations. Applicants with non-OE-funded shiptime, projects, or other resources may wish to propose supplementing them by the addition of tasks or objectives that are consistent with (and are, therefore, eligible for funding by) the OE program mission. The themes are (in no order of priority):

1. Mapping ocean characteristics and bathymetry;
2. Marine life inventories: vertebrate, invertebrate, macro-organisms and micro-organisms;
3. Marine archaeology;
4. Characterization of benthic and pelagic habitats and ecosystems;
5. Locating and mapping corals (including deep corals);
6. New ocean resources;
7. Passive ocean acoustics;
8. Technology: innovative applications and leveraged development;
9. Outreach: communicating exploration efforts in new and innovative ways to broad audiences.

Workshop reports can be viewed online at *http://explore.noaa.gov/workshops/welcome.html*.

C. Program Priorities

The following are requirements for proposals successfully funded by OE.

Outreach & Education. All funded applicants and collaborators will be required to cooperate with OE in facilitating education and outreach activities. This may entail participation in the development of lesson plans, professional development for teachers, accommodation of a teacher/educator-at-sea, and at-sea media participation.

Data Management. In accepting full or partial OE sponsorship, each applicant is obligated to meet certain data management requirements including:

1. Applicants will provide metadata, *e.g.*, number and type of data, and description of the data collected immediately upon completion of a project cruise. Other data or data products may also be required at the discretion of the OE Director.

2. Applicants will provide OE and the public access to acquired data sets collected as soon as practical and, in no case, later than one year following the date of collection, unless an extension is specifically granted by OE.

Proposals should include a description and justification of data funding needs and explain how data will be made accessible or available to the public.

3. NOAA's Ocean Explorer Web site (*http://oceanexplorer.noaa.gov*) is the principal vehicle for chronicling and documenting all missions supported by NOAA and OE. Applicants and mission participants will be required to provide material (*i.e.*, throughout the mission) for this site such as cruise tracks, preliminary bathymetry, characterization of data collected, photographic or other images from the mission, and participants interviews, essays, or written materials. Funded applicants will be required to cooperate with the NOAA Ocean Explorer website team which may include accommodation of a NOAA web team member. (*See* Ancillary Information at: *http://explore.noaa.gov*).

D. Funding Considerations

OE will give priority to the following factors when making funding decisions: (1) Proposals that are interdisciplinary in approach; (2) Proposals which have substantial collaborations with multiple institutions, government, academia, or industry; (3) Proposals whose costs are leveraged with available OE funds; (4) The propriety of the level of investment for OE; (5) Applicants which express a willingness to facilitate and participate in outreach and education activities that OE supports; and (6) The heightened level of risk.

IV. Funding Availability

FY2004 funding for this program has not yet been appropriated. Not all available FY2004 program funds will be awarded through this announcement. Publication of this Notice does not obligate NOAA to award any specific project or to obligate all or any part of the available funds.

Proposals are encouraged for collaborations and explorations ranging from the tens of thousands of dollars to funds appropriate for up to two months of expeditionary exploration work. Multi-year proposals may be accepted, although the present principal focus of the OE program will be on one-year projects and expeditions. Out-year funding will be contingent upon factors including successful accomplishment of prior-year objectives as well as availability of program funding and other relevant resources.

V. Eligibility

Eligible applicants are institutions of higher education, other nonprofits, commercial organizations, international organizations, federal, state, local and Indian tribal governments. Proposals from non-Federal and Federal applicants will be competed against each other. Proposals selected for funding from non-Federal applicants will be funded through a project grant or cooperative agreement under the terms of this notice. Proposals selected for funding from NOAA scientists shall be effected by an intra-agency fund transfer. Proposals selected for funding from a non-NOAA Federal agency will be funded through an inter-agency transfer. *Please note:* Before non-NOAA Federal applicants may be funded, they must demonstrate that they have legal authority to receive funds from another Federal agency in excess of their appropriation. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis.

There is no limit to the number of pre-proposals and proposals an applicant may submit. Applicants that fail to meet eligibility requirements and guidelines for submission will not be funded (*see* section V. and VI.)

Cost Sharing

Cost sharing or matching is not required by this program (However, *see* section II.D. Funding Considerations (3)).

VI. Guidelines for Submission

There will be a two-stage competition with pre-proposals utilized for an initial selection process. Full proposals will be solicited from investigators who submit successful pre-proposals. An approved pre-proposal is a prerequisite for submission of a full proposal. Pre-proposals will be judged in terms of their consistency with OE's program mission and themes. Available program funds will also be taken into consideration (*See* **DATES** for submission deadlines and **ADDRESSES** for hard copy submission address).

A. Preliminary Proposals

A pre-proposal should include a summary of the proposed research, project priorities, a statement of objectives, and a description of how the proposed project relates with OE's mission. The area of proposed operations must be clearly defined (*e.g.*, including latitude, longitude, and depth). Required platforms or other critical assets should be identified. The pre-proposal should make clear any time or other operational constraints, especially with regard to field operations. Any auxiliary funding sources for the proposed project should be identified. Pre-proposals must identify all collaborators and include a summary budget. Pre-proposals must not exceed two typewritten single-sided pages and must use 12-point font. Additionally, pre-proposals must include a completed pre-proposal cover sheet (available electronically at *http://explore.noaa.gov*) (*see* **FOR FURTHER INFORMATION CONTACT** to request a hard copy version). The applicant's last name must be typed in the bottom right-hand corner of each page. Three hard copies of the complete pre-proposal must be postmarked or received by September 3, 2003. *See* **ADDRESSES** for hard copy submission address.

B. Proposals

All proposals must include the following, packaged in the order listed here:

(a) completed proposal cover sheet (available electronically at *http://explore.noaa.gov*);

(b) maximum half-page executive summary;

(c) maximum 15-page description of the entire project (including work plan, schedule, and collaborations);

(d) summary of relevant current funding support;

(e) brief resumes for each investigator, including recent relevant publication references,

(f) *SF–424*, Application for Federal Assistance (Rev July 1997) (available electronically at *http://explore.noaa.gov*);

(g) detailed budget (including all ship and equipment costs) and

(h) budget narrative (including justification for non-standard items).

All pages should be single-sided, single-or double-spaced, typewritten margin in a minimum 12-point font on an 8½" x 11" page. The bottom right-hand corner of every page, excluding cover sheet, must be numbered and labeled with the applicant's last name. Tables and visual materials, including charts, graphs, maps, photographs, and other pictorial presentations are to be included in the 15-page limit. The cover sheet, executive summary, current support, resumes, references/literature cited, *SF–424* Application for Federal Assistance, budgets, and budget narrative sections need not be counted against the 15 page limit. All information needed for review of the proposal should be included in the main text, not submitted as appendices.

The proposal must clearly explain each participant's efforts and their respective requests for OE funds, as well as any cost-sharing. Separate budgets within the single proposal must be provided if more than one funding action is anticipated (*e.g.*, if funds are to be allocated to more than one institution or agency). Three hardcopies of the proposal are required. For the proposal only, in addition to the hard copies it is highly recommended that applicants submit a digital version (cdrom, floppy disk, or zip disk) of a complete proposal, preferably in Adobe .pdf format in order to facilitate proposal review. All proposals, hard copies and digital versions, must be postmarked or received by October 28, 2003. If applicants wish reviewers to receive included color graphics, glossy photographs, or other unusual materials, applicants are encouraged to submit a total of 10 complete hard copies. For further information, *see Announcement of Opportunity: Application Kit* at *http://www.explore.noaa.gov/* or *see* **ADDRESSES** and/or **FOR FURTHER INFORMATION CONTACT**.

Intergovernmental Review. Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs." Applicants must contact their State's Single Point of Contact (SPOC) to find out about and comply with the State's process under EO 12372. The names and addresses of the SPOCs are listed in the Office of Management and Budget's Web site: *http://www/whitehouse.gov/omb/grants/spoc.html*.

C. Forms

The following government forms shall be required only from those applicants subsequently recommended for award. Forms must be submitted in triplicate, each with original signatures. These forms include:

SF–424A Budget Information—Nonconstruction Programs (Rev July 1997)

SF–424B Assurances—Nonconstruction Programs

SF–LLL Disclosure of Lobbying Activities

Form CD–346 Application for Funding Assistance,

Form CD–511 Certification Regarding Debarment, Suspension and Other Responsibility matters: Drug-Free Workplace Requirements and Lobbying,

Form CD–512 Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying and shall be used in applying for financial assistance, and, if applicable, please submit your most current negotiated indirect cost rate agreement.

All necessary forms may be obtained via the OE Web site (*see:* OE Application Kit at *http://explore.noaa.gov*, for hard copies, *see* **ADDRESSES** and/or **FOR FURTHER INFORMATION CONTACT**).

Proposals received after the deadline, or proposals that deviate from the format described in this Notice will not be accepted.

VII. Pre-Proposal and Proposal Review and Selection Process

A. Pre-Proposal Evaluation

The OE Director will make the decision to request or not request full proposal submissions based on the following factors: (1) Proposal consistency with the format of this announcement (2) Consistency with the OE program and mission (3) Applicability of the project objectives to OE themes and project funding considerations (4) Extent to which the proposal focuses on a geographical area that is unknown or poorly known (5) Reasonableness of project costs relative to available program funds (6) Logistical feasibility (*e.g.*, ship availability), given OE resource availability. The final decision to submit a full proposal is up to the applicant.

B. Proposal Evaluation

Proposals will be evaluated and rated individually by (a) independent peer panel review or by (b) correspondence review. The evaluators will be composed of scientists, engineers, social scientists, economists, outreach specialists, and resource managers as appropriate to the scope of proposals received in response to this announcement. Some proposals, including those focused on activities such as technology development, organizing and implementing workshops, and outreach activities, will be reviewed by correspondence (*i.e.*, at least three mail peer-reviews) rather than by independent peer panel review. The following criteria will be used to review proposals using the corresponding weight value:

Scientific and Technical merit: This criterion assesses whether the approach is technically sound and/or innovative, if the methods are appropriate, and whether there are clear project goals and objectives. For the OE review process this includes: (a) The scientific and/or technical value of the work proposed, its probability of success, and the applicant's scientific and/or technical capabilities to undertake the proposed work; (b) the anticipated scientific and/or technical impact of the results of the project on the advancement of knowledge within the field(s) of the endeavor. (40%)

Importance/Relevance and Applicability of Proposal to the Program Goals: This criterion ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA, international, federal, regional, state, or local activities. For the OE review process this includes the degree to which the proposal addresses and supports OE's mission and this notice's objectives. (20%)

Project Costs: This criterion evaluates the budget to determine if it is realistic and commensurate with the project needs and time-frame. For the OE review process this includes the reasonableness of project costs relative to the scope of work proposed. (20%)

Overall qualifications of applicants: This criterion ascertains whether the applicant possesses the necessary education, experience, training, facilities, and administrative resources to accomplish the project. For the OE review process this includes the qualifications of the applicant to accomplish the work proposed. (20%)

All proposals will be rated by the independent peer reviewers or correspondence review panel according to an adjectival scale (that will later be converted into a score) ranging in order of decreasing merit, as follows:

Excellent: Comprehensive, thorough and of exceptional merit, one or more major strengths, no major weaknesses, and any minor weaknesses easily correctable.

Very Good: Competent, one or more major strengths, strengths outweigh weaknesses, and major weaknesses correctable.

Good: Reasonable, may be strengths and/or weaknesses, weaknesses do not significantly detract from the proposal's viability, any major weaknesses are correctable.

Fair: One or more major weaknesses, weaknesses outweigh strengths, major weaknesses may possibly be corrected or minimized.

Poor: One or more major weaknesses, which will be difficult to correct or may not be correctable.

C. Selection Process

The Selecting Official (the OE Director) in consultation with the OE Chief Scientist will select proposals after considering the peer reviews and the selection factors listed below. In making the final selections, the Selecting Official will endeavor to award in rank order unless the proposal is justifiably selected out of rank order based upon one or more of the selection factors below. The OE Director will have the final authority and responsibility for decisions regarding proposal selection.

The selection factors include the following: (1) The availability of program funding (*i.e.*, feasibility for OE to meet applicants requests given projects costs and logistics); (2) the extent to which the proposal contributes to a balanced national program in terms of distribution of funds by geography/institution/partners/study areas/ and project; (3) the avoidance of duplication with other projects funded or considered for funding by NOAA or other Federal Agencies; (4) the responsiveness to overall program priorities (section III.C.) and policy factors (see section III.D., Funding Considerations); (5) applicant's prior award performance; and (6) partnerships with participation of targeted groups.

High proposal peer review ratings may not result in funding for a given proposal. Investigators may be asked to modify objectives, work plans, or budgets prior to approval of the award. Subsequent administrative processing will be in accordance with current NOAA financial administrative procedures.

The National Science Foundation, the federal agencies of the National Ocean Partnership Program, and other NOAA programs have mission objectives which involve ocean research and technology development. Examples of NOAA agencies and programs are: the National Undersea Research Program, the National Sea Grant College Program, the Arctic Research Office, NOAA Fisheries, and the National Ocean Service. OE anticipates and encourages investigators to seek complementary funding for their proposed projects through linked proposals to these agencies. OE will work with program managers at other agencies to facilitate such projects. OE places a high priority on proposed co-funded projects that receive high ratings through each agency's respective evaluation process. For additional details about these other programs, *see: http://oceanexplorer.noaa.gov*.

D. Notification of Award

Successful applicants will receive an email or letter notifying the applicant that his/her proposal has been recommended for funding. It is the applicant's responsibility to notify all collaborators of the award.

E. Disposition of Unsuccessful Applications

Those proposals not ultimately selected for OE funding will be destroyed.

VIII. Federal Policies and Procedures Applicable to OE

A. Environmental Impact

Applicants whose proposed projects may have an environmental impact should furnish sufficient information to assist proposal reviewers in assessing the potential environmental consequences of supporting the project.

B. Permits and Authorizations

Applicants are responsible for obtaining relevant permits and authorizations required under the laws of the jurisdiction in which the work is to be performed and under U.S. law.

For further information about permits, authorizations or viewing marine mammals and other protected species in the wild please visit the following NOAA Fisheries Web site: *http://www.nmfs.noaa.gov/prot_res/overview/permits.html, http://www.nmfs.noaa.gov/prot_res/MMWatch/MMViewing.html*.

IX. Other Requirements

The Department of Commerce Pre-award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** Notice of October 1, 2001 [66 FR 49917], as amended by the **Federal Register** Notice published on October 30, 2002 [67 FR 66109], is applicable to this solicitation.

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act (5 U.S.C. 553(a)(2)) or any other law for this notice concerning grants, benefits, and contracts. Because notice and comment are not required, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared. This action has been determined to be not significant for purposes of Executive Order 12866.

This notice contains collection-of-information requirements, which are subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD–346 have been approved by OMB under the respective control numbers 0348–0043,0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number.

Dated: July 22, 2003.

Julie Scanlon,

Director, Management and Organizational Development, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 03–18975 Filed 7–24–03; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission of OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by August 25, 2003.

Title and OMB Number: Application for Department of Defense Impact Aid for Children with Severe Disabilities; SD Form 816 and SD Form 816C; OMB Number 0704–0425.

Type of Request: Extension.

Number of Respondents: 50.

Responses Per Respondent: 1.

Annual Responses: 50.

Average Burden Per Response: 8 hours.

Annual Burden Hours: 400.

Needs and Uses: Department of Defense funds are authorized for local educational agencies (LEAs) that educate military dependent students with severe disabilities and meet certain

criteria. Eligible LEAs are determined by their responses to the U.S. Department of Education (ED) from information they submitted on children with disabilities when they completed the Impact Program form for the Department of Education. This application will be requested of LEAs who educate military dependent students with disabilities who have been deemed eligible for U.S. Department of Education Impact Aid program, to determine if they meet the criteria to receive additional funds from the Department of Defense due to high special education cost of military dependents with severe disabilities that they serve.

Affected Public: State, local, or tribal government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jackie Zeiher. Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Officer of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing. Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 21, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–18970 Filed 7–24–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 25, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group; Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 22, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Extension.

Title: Ronald E. McNair Postbaccalaureate Achievement Program Annual Performance Report Form.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 156.

Burden Hours: 702.

Abstract: McNair Program grantees must submit the report annually. The report provides the Department of Education with information needed to evaluate a grantee's performance and compliance with program requirements and to award prior experience points in accordance with the program regulations. The data collected is also aggregated to provide national information on project participants and program outcomes.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2298. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivan.Reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–18995 Filed 7–24–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request.

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On July 14, 2003, the Department of Education published a 30-day regular public comment period notice in the **Federal Register** (Page 41566, Column 2) for the information collection, "Case Service Report". The "Type of Review" is being corrected from "Extension" to "Reinstatement". The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Sheila Carey at her e-mail address *Sheila.Carey@ed.gov.*

Dated: July 21, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

[FR Doc. 03–18950 Filed 7–24–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

RIN 1820 ZA17

National Institute on Disability and Rehabilitation Research (NIDRR)

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priorities.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services (OSERS) announces final priorities for Research Projects, a Research Infrastructure Capacity Building Project, a Technical Assistance Resource Center on Parenting with a Disability Project, and Development Projects under the Disability and Rehabilitation Research Projects (DRRP) Program of NIDRR for fiscal year (FY) 2003 and later years. We take these actions to focus research attention on areas of national need. We intend these priorities to improve the rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: This priority is effective August 25, 2003.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880 or via the Internet: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP program is to plan and conduct research, demonstration projects, training, and related activities that help to maximize the full inclusion and integration of individuals with disabilities into society and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (the Act).

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement may include one or more of the following (34 CFR 350.40(b)):

(1) Proposing project objectives addressing the needs of individuals with disabilities from minority backgrounds.

(2) Demonstrating that the project will address a problem that is of particular significance to individuals with disabilities from minority backgrounds.

(3) Demonstrating that individuals from minority backgrounds will be included in study samples in sufficient numbers to generate information pertinent to individuals with disabilities from minority backgrounds.

(4) Drawing study samples and program participant rosters from populations or areas that include individuals from minority backgrounds.

(5) Providing outreach to individuals with disabilities from minority backgrounds to ensure that they are aware of rehabilitation services, clinical care, or training offered by the project.

(6) Disseminating materials to or otherwise increasing the access to disability information among minority populations.

Under the DRRP program, we define a research project as basic or applied (34 CFR 350.5). Research is classified on a continuum from basic to applied:

(1) Basic research is research in which the investigator is concerned primarily with gaining new knowledge or understanding of a subject without reference to any immediate application or utility.

(2) Applied research is research in which the investigator is primarily interested in developing new knowledge, information, or understanding which can be applied to a predetermined rehabilitation problem or need. Applied research builds on selected findings from basic research.

In carrying out a research activity under this program (34 CFR 350.13), a grantee must:

(a) Identify one or more hypotheses; and

(b) Based on the hypotheses identified, perform an intensive systematic study directed toward—

(1) New or full scientific knowledge; or

(2) Understanding of the subject or problem studied.

Under the DRRP program, we define a development activity as the use of knowledge and understanding gained from research to create materials, devices, systems, or methods beneficial to the target population, including design and development of prototypes and processes.

Note: NIDRR supports the goals of President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.*

The final priorities are in concert with NIDRR's Long-Range Plan (the Plan). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. While applicants will find many sections throughout the Plan that support potential research to be conducted under these final priorities, a specific reference is included for each topic presented in this notice. The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/offices/OSERS/NIDRR/Products.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

We published a separate notice of each proposed priority (NPP) in the **Federal Register** on May 9, 2003.

Priority 1—Research Projects (84.133A–1) (68 FR 25014).

Priority 2—Research Infrastructure Capacity Building (84.133A–4) (68 FR 25009).

Priority 3—Technical Assistance Resource Center on Parenting with a Disability (84.133A–5) (68 FR 25017).

Priority 4—Development Projects (84.133A–7) (68 FR 25006).

We have combined these four priorities in this notice of final priorities (NFP).

There are no significant differences between the NPPs and this NFP.

Analysis of Comments and Changes

In response to our invitation in the NPPs, several parties submitted comments.

We discuss these comments and changes in the Analysis of Comments and Changes section published as an appendix to this notice.

Note: This NFP does *not* solicit applications. In any year in which we choose to use one or more of these priorities, we invite applications through a notice in the **Federal Register**. A notice inviting applications for FY 2003 awards was published in the **Federal Register** on May 29,

2003 (68 FR 32026). When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) Awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Background

The background statements for the following priorities were published in the NPPs on May 9, 2003.

Priorities

Priority 1—Research Projects

The Assistant Secretary will fund one or more DRRPs that will focus on stabilizing and improving lives of persons with disabilities. In carrying out the purposes of this priority, projects awarded under each of the following topics must, in consultation with the NIDRR project officer:

- Coordinate and establish partnerships, as appropriate, with other academic institutions and organizations that are relevant to the project's proposed activities;
- Demonstrate use of culturally appropriate data collection, evaluation, dissemination, training and research methodologies, and significant knowledge of the needs of individuals with disabilities from traditionally underserved populations;
- Involve, as appropriate, individuals with disabilities or their family members, or both, in all aspects of the research as well as in the design of clinical services and dissemination activities;
- Demonstrate how the research project can transfer research findings to practical applications in planning, policy-making, program administration, and delivery of services to individuals with disabilities; and
- Disseminate findings to appropriate audiences, including information on best practices, where applicable.

An applicant must propose research activities and dissemination of findings under one of the following topics:

(a) *Self-Determination in Transition to Adulthood for Youth with Disabilities:* Under this topic, a project must conduct research and disseminate information about factors that enhance and promote self-determination for youth with disabilities who are transitioning into adulthood. The project may include research on interventions that (1) enable successful transition to life activities such as independent living, higher education, and employment; and (2) improve functional outcomes such as enhanced memory, learning, visual perception, auditory reception, literacy, and self-advocacy. The reference for this topic can be found in the Plan, chapter 3, Employment Outcomes: Transition from School to Work.

(b) *Examining Violence Against People With Disabilities:* Under this topic, a project must conduct research and disseminate information on violence against persons with disabilities. Activities may include research on statistics related to criminal victimization of people with disabilities compiled under the 1998 Crime Victims with Disabilities Awareness Act (Pub. L. 301–105); study of data from enhanced crime incident reports; and analysis of data and research findings on the impact of violence on specific populations such as, but not limited to, individuals with cognitive or intellectual disabilities, women with disabilities, individuals with sensory disabilities, and individuals with mobility disabilities. The reference for this topic can be found in the Plan, chapter 2, Dimensions of Disability: Emerging Universe of Disability.

(c) *Family and Cultural Aspects of Independent Living:* Under this topic, a project must conduct research and disseminate information on how individuals with disabilities draw upon their families (or those with whom they share living arrangements) to obtain necessary supports such as economic assistance, informal and formal care giving, and emotional nurturing. Activities may include: (1) Identifying factors that help or hinder NFI goals regarding educational attainment, home ownership, and full access in community life; (2) research on ways that family and shared-community living arrangements may facilitate independence and help implement the Supreme Court's *Olmstead* v. *L.C.* ruling; and (3) research on how family and shared-community living arrangements may facilitate meeting the objectives for people with disabilities in Healthy People 2010. The references for this topic can be found in the Plan, chapter 2, Dimensions of Disability: Disability, Employment, and Independent Living, and chapter 6, Research on Social Roles.

(d) *Older Women and Falls:* Under this topic, a project must identify and compare outcomes-oriented rehabilitation interventions for older women to overcome the disabilities and secondary conditions associated with falls and to prevent secondary falls and other complications. The project must examine risk factors for falls (*e.g.*, age, disability, medications use, health, functional ability, environmental hazards). The references for this topic can be found in the Plan, chapter 2, Dimensions of Disability: Emerging Universe of Disability, and chapter 4, Health and Function: Research on Trauma Rehabilitation; Research on Aging.

(e) *Issues in Asset Accumulation and Tax Policy for People with Disabilities:* Under this topic, a project must conduct research on fiscal and social environmental barriers to economic empowerment and self-sufficiency for people with disabilities and the impact of legislation designed to promote economic self-sufficiency and facilitate community integration. The project must conduct systematic analysis of the relationship between tax policy and asset accumulation for individuals with disabilities and improved economic and community integration outcomes. This includes testing the impact of asset accumulation on economic improvements and community integration for individuals with disabilities. The reference for this topic can be found in the Plan, chapter 3, Employment Outcomes: Economic Policy and Labor Market Trends.

(f) *Identifying Opportunities and Barriers to Entrepreneurship for People with Disabilities:* Under this topic, a project must conduct research on ways to improve employment outcomes of individuals with disabilities through self-employment and entrepreneurial strategies and how to train both people with disabilities and counselors in successful use of these strategies. The research must include analysis of the effects of policies and practices of the vocational rehabilitation system; related programs such as those of the Small Business Administration; and other public, private, or nonprofit employment organizations on self-employment options for individuals with disabilities. The reference for this topic can be found in the Plan, chapter 3, Employment Outcomes: Economic Policy and Labor Market Trends.

Priority 2—Research Infrastructure Capacity Building

The Assistant Secretary will fund one DRRP that will focus on a research, development, and dissemination project on Research Infrastructure Capacity Building. The reference for this topic can be found in the Plan, chapter 9, Capacity Building: Priorities in Capacity Building. In carrying out this priority the DRRP must:

(1) Develop and evaluate an innovative method(s) for establishing long-term collaborative research partnerships, with an emphasis on relationships among minority entities, Indian tribes, and nonminority entities;

(2) Research, develop, and evaluate strategies to assess the efficacy of existing research theories, methodologies, and measures for studying and describing underrepresented individuals with disabilities from minority racial and ethnic populations and their needs;

(3) Research, identify and modify or develop, and evaluate scientifically valid measurement strategies and methodologies for research involving the study of underrepresented minority racial and ethnic populations; determine their efficacy; and examine the implications of introducing newly developed approaches designed specifically for the study of this population;

(4) Develop and evaluate research principles or standards for culturally appropriate and linguistically competent disability and rehabilitation research, and disseminate guidelines; and

(5) Develop, implement, and evaluate approaches for disseminating research findings, information about best practices for research involving underrepresented minority racial and ethnic populations, and information about research collaboration.

In carrying out the purposes of the priority, the DRRP must:

- In the first three months of the grant, develop and implement a research partnership plan ensuring that all activities are predominantly focused on research infrastructure capacity building and provide for mutual benefit for each member of the partnership, including persons with disabilities or their representatives;
- In the first year of the grant, implement a plan to disseminate research results;
- In the third year of the grant, conduct a state-of-the-science conference focused on the funded area of research and related topics;
- In the fourth year of the grant, publish and disseminate a comprehensive report on the outcomes and proceedings of the conference;
- Demonstrate how the research project can transfer research findings to practical applications in planning, policy-making, program administration, and delivery of services to individuals with disabilities; and
- Conduct ongoing program evaluation and produce a closing report describing research outcomes, as they relate to the research goals and objectives, and future directions for research infrastructure development and capacity building.

Priority 3—Resource and Technical Assistance Center on Parenting with a Disability

The Assistant Secretary will fund one DRRP that will focus a dissemination, utilization, training, and technical assistance project to be a "Resource and Technical Assistance Center on Parenting with a Disability." The references for this topic can be found in the Plan, chapter 2, Dimensions of Disability: Disability, Employment, and Independent Living, and chapter 8, Knowledge Dissemination and Utilization: Overview. The DRRP must:

(1) Develop quality standards to guide the identification of information for dissemination;

(2) Provide information and technical assistance to people with disabilities who are or wish to be parents. A variety of methods and tools will be developed to provide information and technical assistance. Tools might include such items as: catalogues and listings of assistive technology, fact sheets, and articles for publication in various media. Methods to reach interested parties might include: interactive features of the Internet, wide area telephone service, presentations at meetings or conferences and personal visits;

(3) Develop parent-to-parent support methods, including approaches for sharing of information about "best practices" in parenting with a disability;

(4) Train parents, potential parents, service providers, and others on issues relating to parenting with a disability and the research, information, and services available to them; and

(5) Evaluate project technical assistance and information dissemination activities.

In carrying out the purposes of the priority, the DRRP must:

- Through consultation with the NIDRR project officer, coordinate and establish partnerships, as appropriate, with other projects sponsored by OSERS, academic institutions, and organizations that are relevant to the project's proposed activities;
- Demonstrate how the project will yield measurable results for people with disabilities;
- Identify specific performance targets and propose outcome indicators, along with time lines to reach these targets; and
- Using information developed from the project's dissemination, training, and technical assistance activities, with emphasis on materials from NIDRR projects, provide materials, consultation, technical assistance, and related capacity-building activities to NIDRR grantees on how to assist parents with disabilities.

Priority 4—Development Projects

The Assistant Secretary will fund one or more DRRPs that will focus on stabilizing and improving lives of persons with disabilities. In carrying out the purposes of the priority, projects awarded under each of the following topics, in consultation with the NIDRR project officer, must:

- Coordinate and establish partnerships, as appropriate, with other academic institutions and organizations that are relevant to the project's proposed activities;
- Demonstrate use of culturally appropriate data collection, evaluation, dissemination, training, and development methodologies and significant knowledge of the needs of individuals with disabilities from traditionally underserved populations;
- Involve, as appropriate, individuals with disabilities or their family members, or both, in all aspects of development as well as in the design of clinical services and dissemination activities;
- Demonstrate how the project will yield measurable results for people with disabilities;
- Identify specific performance targets and propose outcome indicators, along with time lines to reach these targets; and
- Disseminate findings on products and technologies to appropriate audiences, including information on best practices, where applicable.

An applicant must propose development activities and dissemination of findings under one of the following topics:

(a) *Voting Access and Privacy.* Under this topic, a project must develop technologies, strategies, and approaches that can be used to improve and expand access, including physical accessibility,

to voting accurately, independently, and privately for all citizens with disabilities. Voting is a citizen's most basic right. Yet many individuals with disabilities find it difficult, if not impossible, to vote without a poll worker's or another individual's assistance. Development products may address, but are not limited to, voting apparatus, accommodations information, training materials (*i.e.*, books, guidelines, electronic materials) for public elections officials and citizens, and cost analysis and evaluation of products and technologies to enhance voting access for citizens with disabilities. The reference for this topic can be found in the Plan, chapter 5, Technology for Access and Function: Research to Improve Accessibility of Telecommunications and Information Technology.

(b) *Technologies for Families and Caregivers.* Under this topic, a project must develop technologies, strategies, and approaches that will facilitate and improve the continuum of activities and reduce the demands involved in care giving for individuals with disabilities. The upsurge of programs such as "Long-Term Care" and "Home-Health Care" has stimulated the need for tools and strategies that enable individuals with disabilities to live longer and more productively in their communities. New and improved technologies for care giving will help implement the Supreme Court's *Olmstead* v. *L.C.* decision. Development products may address, but are not limited to, evaluation and assessment of existing technology solutions, accommodations information, training materials (*i.e.*, books, guidelines, electronic materials) for public officials and citizens, and cost analysis and evaluation of products and technologies to enhance community integration, personal assistance services, and independent living for citizens with disabilities. The reference for this topic can be found in the Plan, chapter 5, Technology for Access and Function: Assistive Technology for Individuals.

Executive Order 12866

This NFP has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the NFP are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this NFP, we have determined that the benefits of the priorities justify the costs.

Summary of Potential Costs and Benefits

The potential costs associated with these priorities are minimal while the benefits are significant. Grantees may anticipate costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

The benefits of the DRRP Program have been well established over the years in that similar projects have been successfully completed. These final priorities will generate new knowledge through research to focus on stabilizing and improving lives of persons with disabilities.

The benefit of these final priorities and project requirements will be the establishment of new DRRP projects that generate, disseminate, and promote the use of new information that will improve the options for disabled individuals to perform regular activities in the community.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.133A, Disability Rehabilitation Research Project)

Program Authority: 29 U.S.C. 762(g) and 764(a).

Dated: July 22, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix

Analysis of Comments and Changes

General

Comment: Several commenters raised concerns that NIDRR did not publish a priority that specifically targeted Native Americans.

Discussion: The priority on Research Infrastructure Capacity Building includes Native Americans as a proposed target group. Nothing in the other published priorities precludes applicants from proposing Native Americans as the target population for the proposed research. The peer review process will evaluate the merits of the proposal.

Changes: None.

Comment: One commenter expressed several concerns about references to racial, ethnic, and linguistic minority populations in the NIDRR priorities. These concerns included: (1) NIDRR's use of a standard statement about inclusion of minorities in research activities; (2) combining ethnic categories into one proposed priority is inappropriate; (3) NIDRR does not ensure that applicants demonstrate "who, what, when, and where" in addressing the needs of individuals with disabilities from minority backgrounds; and (4) the American Indian and Alaska Native populations are a culturally and linguistically diverse population. Commenters also noted that many caregivers do not speak, write, or read the English language, and they questioned whether it was likely that potential grantees would deal with caregivers who do not speak, write, or read the English language or would address minority backgrounds including American Indians and Alaska Natives with disabilities.

Discussion: (1) The standard statement that each NIDRR applicant must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds is required by 34 CFR 350.40(a), and as a result, cannot be changed by this priority. (2) Nothing in these priorities precludes an applicant from focusing on any racial, ethnic, or minority population, including American Indians and Alaska Natives. (3) In section 350.40(b), NIDRR lists some of the approaches applicants may take to meet the requirement in § 350.40(a), including, for example, addressing a problem that is of particular significance to individuals with disabilities from minority backgrounds and generating information pertinent to individuals with disabilities from minority backgrounds. (4) In the background section to these priorities, language barriers and lack of understanding about cultural values and beliefs are identified as challenges to the effectiveness of rehabilitation services received by individual with disabilities form minority backgrounds. An applicant may choose to include linguistic or cultural issues in the proposed research activities. However, NIDRR has no basis for requiring that all applicants adopt the same approach or address the same issue. The peer review process will evaluate the merits of the proposal.

Changes: None.

Violence:

Comment: One commenter expressed an opinion that focusing on analysis of "extant data from crime reports" might unnecessarily limit the scope of research in the proposed DRRP priority on violence.

Discussion: NIDRR agrees that it might be valuable to collect new data to answer research questions in this area. Nothing in the priority precludes an applicant from suggesting such an approach. However, NIDRR has no basis for requiring all applicants to collect new data. The peer review process will evaluate the merits of the proposal.

Changes: None.

Technical Assistance Resource Center

Comment: One commenter suggested that the Technical Assistance Resource Center provide information on coordinated services for parents who are deaf or hard of hearing.

Discussion: NIDRR agrees that this might be a useful service. Nothing in the priority prohibits an applicant from suggesting this approach. However, NIDRR has no basis for requiring that all applicants take this approach. The peer review process will evaluate the merits of the proposal.

Changes: None.

Research Methods for Underserved Populations

Comment: One commenter expressed concern that Native Americans and Alaska Natives are listed with other minority population categories as a potential focus of this priority and recommended that the priority should specify the target population so that researchers studying different ethnic populations do not have to compete against each other.

Discussion: NIDRR is committed to improving research methods for studying all minority and ethnic populations. Nothing in the priority precludes an applicant from targeting a specific population. The peer review process will evaluate the merits of the proposal.

Changes: None.

[FR Doc. 03–19015 Filed 7–24–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[RIN 1820 ZA18]

National Institute on Disability and Rehabilitation Research (NIDRR)

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priorities.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services (OSERS) announces final priorities for a Disability Demographics and Statistics Center, Community Integration Outcomes Centers, and Health and Function Centers under the Rehabilitation Research and Training Centers (RRTC) Program under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal year (FY) 2003 and later years. We take these actions to focus research attention on areas of national need. We intend these priorities to improve the rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: These priorities are effective August 25, 2003.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880 or via the Internet: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Rehabilitation Research and Training Centers

We may make awards for up to 60 months through grants or cooperative agreements to public and private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations, to conduct research, demonstration, and training activities regarding rehabilitation in order to enhance opportunities for meeting the needs of, and addressing the barriers confronted by, individuals with disabilities in all aspects of their lives. Each RRTC must be operated by or in collaboration with an institution of higher education or providers of rehabilitation or other appropriate services. RRTCs conduct coordinated and integrated advanced programs of research targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, alleviate or stabilize disability conditions, or promote maximum social and economic independence for persons with disabilities. Additional information on the RRTC program can be found at: *http://www.ed.gov/officers/OSERS/NIDRR/Programs/res_program.html#RRTC.*

General Requirements of Rehabilitation Research and Training Centers

RRTCs must:

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties;
- Serve as centers for national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties; and
- Involve individuals with disabilities and individuals from minority backgrounds as participants in research as well as training.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

Note: NIDRR supports the goals of President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.*

The final priorities are in concert with NIDRR's Long-Range Plan (the Plan). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. While applicants will find many sections throughout the Plan that support potential research to be conducted under these final priorities, a specific reference is included for the topics presented in this notice. The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/offices/OSERS/NIDRR/Products.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of

knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

We published a separate notice of each proposed priority (NPPs) in the **Federal Register** on May 9, 2003.

Priority 1—Disability Demographics and Statistics Center (84.133B–1) (68 FR 25004).

Priority 2—Community Integration Outcomes Centers (84.133B–5) (68 FR 25019).

Priority 3—Health and Function Centers (84.133B–7) (68 FR 25011).

We have combined these three priorities in this notice of final priorities (NFP).

Analysis of Comments and Changes

In response to our invitation in the NPPs, we received 269 comments.

We discuss these comments and changes in the Analysis of Comments and Changes section published as an appendix to this notice.

There are no significant differences between the NPPs and this NFP.

Note: This notice does not solicit applications. In any year in which we choose to use one or more of these priorities, we will do so through a notice in the **Federal Register**. A notice inviting applications for FY 2003 awards was published in the **Federal Register** on May 29, 2003 (68 FR 32023). When inviting applications we designate these priorities as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Background

The background statements for the following priorities were published in the NPPs on May 9, 2003.

Priorities

Priority 1—Disability Demographics And Statistics Center

The Assistant Secretary will fund one RRTC on disability demographics and statistics. The purpose of this RRTC is to support rigorous collaborative research to generate new knowledge that advances evidence-based decision making to improve the lives of persons with disabilities. The references for this topic can be found in the Plan, chapter 2, Dimensions of Disability: Age, Gender, Education, Income, and Geography; chapter 7, Associated Disability Areas: Disabilty Statistics. The RRTC must:

(1) Conduct analyses using a variety of data sources, including those that assess facilitators and barriers to participation in society, to address the status and understanding of the population of individuals with disabilities;

(2) Identify, develop as necessary, and validate a series of best-practice approaches that facilitate the selection of appropriate measures, ensure a high degree of power and representativeness of the sample, and apply techniques of interviewing and data collection that lead to high levels of quality and relevance of information while minimizing the burden on respondents;

(3) Identify, develop as necessary, and evaluate instruments, data sources, administrative records, or other sources that allow Federal policymakers to use the International Classification of Functioning, Disability, and Health (ICF) classification system for evidence-based decisionmaking;

(4) Serve as a resource on disability statistics and demographics for Federal and other government agencies, policymakers, consumers, advocates, researchers, and others; and

(5) Develop quality standards to guide the identification of information for dissemination and conduct all activities to prepare, produce, and disseminate findings in a variety of media, such as web-based and print documents, meetings and conferences, and teleconferences that are targeted to the wide range of audiences who need such information.

In addition to the activities proposed by the applicant to carry out these purposes, the RRTC must:

• Conduct a state-of-the-science conference on its respective area of research in the third year of the grant cycle and publish a comprehensive report on the final outcomes of the conference in the fourth year of the grant cycle. This conference must include materials from experts internal and external to the center;

• Develop a systematic plan for widespread dissemination of informational materials based on knowledge gained from the Center's research activities, and disseminate the materials to persons with disabilities, their representatives, service providers, and other interested parties.

• Coordinate on research projects of mutual interest with relevant NIDRR-funded projects as identified through consultation with the NIDRR project officer;

• Involve individuals with disabilities in planning and implementing its research, training, and dissemination activities, and in evaluating the Center;

• Demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds;

• Demonstrate how the RRTC project will yield measurable results for people with disabilities;

• Identify specific performance targets and propose outcome indicators, along with time lines to reach these targets; and

• Demonstrate how the RRTC project can transfer research findings to practical applications in planning, policy-making, program administration, and delivery of services to individuals with disabilities.

Priority 2—Community Integration Outcomes Centers

The Assistant Secretary will fund up to four RRTCs that will focus on improving the community integration outcomes of persons with disabilities. Each RRTC must:

(1) Identify, develop, and evaluate rehabilitation techniques to address its respective area of research and improve outcomes for its designated population group;

(2) Develop, implement, and evaluate a comprehensive plan for training critical stakeholders, *e.g.*, consumers and their family members, practitioners, service providers, researchers, policymakers, and the community;

(3) Provide technical assistance to critical stakeholders, as appropriate, *e.g.*, consumers and their family members, practitioners, service providers, and the community, to facilitate utilization of research findings in its respective area of research; and

(4) Develop a systematic plan for widespread dissemination of informational materials based on knowledge gained from the Center's research activities, and disseminate the materials to persons with disabilities, their representatives, service providers, and other interested parties.

In addition to the activities proposed by the applicant to carry out these purposes, each RRTC must:

• Conduct a state-of-the-science conference on its respective area of research in the third year of the grant cycle and publish a comprehensive report on the final outcomes of the conference in the fourth year of the grant cycle;

• Coordinate on research projects of mutual interest with relevant NIDRR-funded projects as identified through consultation with the NIDRR project officer;

• Involve individuals with disabilities in planning and implementing its research, training, and dissemination activities, and in evaluating the Center;

• Demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds.

• Demonstrate how the project will yield measurable results for people with disabilities;

• Identify specific performance targets and propose outcome indicators, along with time lines to reach these targets; and

• Demonstrate how the project can transfer research findings to practical applications in planning, policy-making, program administration, and delivery of services to individuals with disabilities.

Each RRTC must focus on one of the following priorities.

(a) *Community Integration for Individuals with Intellectual and Developmental Disabilities (I/DD):* This Center must conduct qualitative and quantitative research, including the development and implementation of outcome measures, on factors that assist and hinder community integration, self-determination, training, employment, and independent living for persons with I/DD. The references for this topic can be found in the Plan, chapter 6, Independent Living and Community Integration: Independent Living and Community Integration Concepts; Expanding the Theoretical Framework; and Directions of Future Research on Independent Living and Community Integration.

(b) *Promoting Healthy Aging and Community Inclusion Among Adults with Intellectual and Developmental Disabilities (I/DD):* This Center must conduct epidemiological and community-based research, training, and dissemination activities regarding factors, such as aging, healthcare utilization, and caregiver characteristics, that assist and hinder community integration for adults with I/DD. The references for this topic can be found in the Plan, chapter 4, Health and Function: Research on Aging with a Disability; and chapter 6, Independent Living and Community Integration: Independent Living and Community Integration Concepts; Expanding the Theoretical Framework; and Directions of Future Research on Independent Living and Community Integration.

(c) *Positive Behavioral Support in Community Settings:* This Center must conduct research, training, and dissemination activities on positive behavioral support interventions that assist and sustain community integration efforts for a broad range of individuals with disabilities, including people with mental illness, over time and across systems. Dissemination and training efforts must target community partners, *e.g.*, employers, teachers and coaches, and landlords, as well as individuals with disabilities and their families. The reference for this topic can be found in the Plan, chapter 6, Independent Living and Community Integration: Research on Increasing Personal Development and Adaptation.

(d) *Policies Affecting Families of Children with Disabilities:* This Center must research and disseminate information on the effects of government, system, network, and agency policies on community integration and quality of life for families who have children with disabilities. The Center also must validate instruments to measure these effects and provide technical assistance, with the goal of improving community integration and quality of life, by: (1) enhancing and coordinating policies among systems and (2) informing and empowering family and peer-based networks and partnerships. The references for this topic can be found in the Plan, chapter 2, Dimensions of Disability: Employment and Independent Living; and chapter 6, Research on Social Roles.

(e) *Community Integration for People with Psychiatric Disabilities:* This Center must research, disseminate, and provide training on factors, policies, and interventions, such as peer-support models and other innovative treatment approaches, that assist community integration for people with psychiatric disabilities. The target population may include individuals from any age group. The references for this topic can be found in the Plan, chapter 6, Independent Living and Community Integration: Independent Living and Community Integration Concepts; Expanding the Theoretical Framework; and Directions of Future Research on Independent Living and Community Integration.

(f) *Substance Abuse:* This Center must conduct research, disseminate information, and provide training on community-based interventions, partnerships, and service delivery models that improve community integration outcomes for people with disabilities who are recovering from substance abuse problems. The target population may or may not include individuals with co-occurring disorders such as mental illness. The reference for this topic can be found in the Plan, chapter 2, Dimensions of Disability: Emerging Universe of Disability.

Priority 3—Health and Function

The Assistant Secretary will fund up to seven RRTCs that will focus on rehabilitation to improve the health and function of persons with disabilities and thus to improve their ability to live in the community. Each RRTC must:

(1) Identify, develop, and evaluate rehabilitation techniques to address its respective area of research and improve outcomes for its designated population group;

(2) Develop, implement, and evaluate a comprehensive plan for training critical stakeholders, *e.g.*, consumers/family members, practitioners, service providers, researchers, and policymakers;

(3) Provide technical assistance, as appropriate, to critical stakeholders, (*e.g.*, consumers/family members, practitioners, and service providers) to facilitate utilization of research findings in its respective area of research; and

(4) Develop a systematic plan for widespread dissemination of informational materials based on knowledge gained from the Center's research activities, and disseminate the materials to persons with disabilities, their representatives, service providers, and other interested parties.

In addition to the activities proposed by the applicant to carry out these purposes, each RRTC must:

• Conduct a state-of-the-science conference on its respective area of research in the third year of the grant cycle and publish a comprehensive report on the final outcomes of the conference in the fourth year of the grant cycle. This conference must include materials from experts internal and external to the center;

• Coordinate on research projects of mutual interest with relevant NIDRR-

funded projects as identified through consultation with the NIDRR project officer;

• Involve individuals with disabilities in planning and implementing its research, training, and dissemination activities, and in evaluating the Center;

• Demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds; and

• Demonstrate how the RRTC project will yield measurable results for people with disabilities;

• Identify specific performance targets and propose outcome indicators, along with time lines to reach these targets; and

• Demonstrate how the RRTC project can transfer research findings to practical applications in planning, policy-making, program administration, and delivery of services to individuals with disabilities.

Each RRTC must focus on one of the following priority topic areas:

(a) *Psycho-social Factors Affecting Individuals Aging with Disability:* This Center must conduct research and training activities that generate new knowledge regarding the psycho-social issues that affect individuals aging with disabilities and the sources of resilience used by this population to cope with or respond to these issues. In an effort to improve long-term outcomes for these individuals, the Center is encouraged to identify or develop and test the effectiveness of interventions that will prevent or minimize the impact of psycho-social issues on the health, activity, and community participation of individuals with disabilities across the life span and promote positive adjustment and improved quality of life. The reference for this topic can be found in the Plan, chapter 4, Health and Function: Research on Aging with a Disability.

(b) *Secondary Conditions in Rehabilitation of Individuals with Spinal Cord Injury (SCI):* In an effort to improve the general health, well-being, and community integration of individuals with SCI, this Center must conduct research and training activities to enhance knowledge regarding either treatment or prevention strategies, or both, that addresses the wide array of secondary conditions associated with SCI, including, but not limited to, respiratory complications, urinary tract infections, pressure ulcers, pain, obesity, and depression. The reference for this topic can be found in the Plan, chapter 4, Health and Function: Research on Secondary Conditions.

(c) *Community Integration of Individuals With Traumatic Brain Injury (TBI):* This Center must identify, assess, and evaluate current and emerging community integration needs of individuals with TBI, including but not limited to mild TBI. The Center should consider the impact of secondary conditions on community integration outcomes as well as the role of assistive devices and other technology. In addition, this Center must develop and evaluate a comprehensive plan to facilitate the translation of new knowledge into rehabilitation practice and the delivery of community-based services. The reference for this topic can be found in the Plan, chapter 4, Health and Function: Research on Trauma Rehabilitation.

(d) *Rehabilitation of Individuals with Neuromuscular Diseases:* This Center must conduct research that addresses rehabilitation needs, particularly related to exercise, nutrition, and pain, of individuals with neuromuscular diseases. In doing this, the Center must identify or develop and evaluate health promotion and wellness programs to enhance recreational opportunities for individuals with neuromuscular diseases. This Center must identify, develop as appropriate, and evaluate devices and other technology that improve employment and community integration outcomes for this population of individuals with disabilities. The reference for this topic can be found in the Plan, chapter 4, Health and Function: Research on Progressive and Degenerative Disease Rehabilitation.

(e) *Rehabilitation of Stroke Survivors:* This Center must conduct research to develop rehabilitation interventions that improve rehabilitation, employment, and community integration outcomes of stroke survivors, including young stroke survivors. Such interventions may include robotics, complementary alternative therapies, and universal design methodologies aimed at improving the utility of workplace tools and devices. This Center must explore the cost-effectiveness of stroke rehabilitation treatments, such as group model approaches. The reference for this topic can be found in the Plan, chapter 4, Health and Function: Research on Trauma Rehabilitation.

(f) *Rehabilitation of Individuals with Arthritis:* This Center must address national goals to reduce pain and disability, improve physical fitness and quality of life, and promote independent living and community integration for persons with arthritis of all ages in the United States. This Center must research the benefits of exercise and physical fitness; home and community-based self-management programs; and technologies available to the broad populations of persons with arthritis in the environments where they live, learn, work, and play. The reference for this topic can be found in the Plan, chapter 4, Health and Function: Research on Progressive and Degenerative Disease Rehabilitation.

(g) *Rehabilitation of Children with Traumatic Brain Injury (TBI):* This Center must identify, assess, and evaluate current and emerging rehabilitation needs for children and adolescents with TBI. In doing this, the Center must document patterns of recovery, determining the effectiveness of current outcome measures for this population. Of particular interest will be evaluation of interventions and technologies, including specialized support services, to assist families and caregivers with transition to the school and the community. This RRTC must identify or develop effective rehabilitation strategies to improve outcomes for children and adolescents with TBI at all stages of rehabilitation. The reference for this topic can be found in the Plan, chapter 4, Health and Function: Research on Trauma Rehabilitation.

(h) *Rehabilitation of Individuals with Multiple Sclerosis (MS):* This Center must conduct research to maximize the participation of people with MS, including those with all levels of symptoms associated with the disease, at home, in the community, and while working or learning. In doing so, the Center must identify, develop as necessary, and evaluate interventions to enhance the independence of people with MS. Those interventions must include strategies and programs that address interactions among cognitive, psychosocial, sensory, mobility, and other manifestations of the disease across the lifespan. The Center must consider the role of assistive and universally designed technologies, strategic goals, and financial planning for persons with MS, and the role of caregivers throughout the disease course. The reference for this topic can be found in the Plan, chapter 4, Health and Function: Research on Progressive and Degenerative Disease Rehabilitation.

Executive Order 12866

This NFP has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with this NFP are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this NFP, we have determined that the benefits of the final priorities justify the costs.

Summary of Potential Costs and Benefits

The potential cost associated with these final priorities is minimal while the benefits are significant. Grantees may anticipate costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

The benefits of the RRTC program have been well established over the years given that similar projects have been successfully completed. These final priorities will generate new knowledge through research, dissemination, utilization, training, and technical assistance projects.

The benefit of these final priorities and proposed applications and project requirements will be the establishment of new RRTCs that generate, disseminate, and promote the use of new information that will improve the options for disabled individuals to perform regular activities in the community.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

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(Catalog of Federal Domestic Assistance Number: 84.133B, Rehabilitation Research and Training Center Program)

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Dated: July 22, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix

Analysis of Comments and Changes

General

Comment: Several commenters raised concerns about the failure of the priorities to require a focus on the Native American population, citing the high rates of disability within this population.

Discussion: Nothing in the priorities precludes an applicant from focusing on the needs of Native Americans. The peer review process will evaluate the merits of the proposal.

Changes: None.

Disability Demographics and Statistics Center

Comment: One commenter expressed concern that the Disability Demographics and Statistics Center priority does not specifically target analyses focused on the status of individuals who are American Indian or Alaskan Native.

Discussion: Nothing in the priority precludes an applicant from including these populations in proposed research. However, NIDRR has no basis for requiring that all applicants focus on these populations in responding to these priorities. The peer review process will evaluate the merits of the proposal.

Changes: None.

Community Integration

General

Comment: Several commenters suggested that NIDRR increase the number of funded centers under these competitions.

Discussion: The proposed number of funded centers is not part of the proposed priorities and is not subject to comment.

Changes: None.

Comment: Several commenters expressed concern about NIDRR's plan to publish the Notice Inviting Application (NIA) prior to the end of the comment period, effectively shortening the time from publication of the proposed priority to the due date for the applications.

Discussion: NIDRR announced in the NIA that, if it received comments that resulted in changes to the priorities, an extension would be granted to allow for more time to respond in light of such changes. NIDRR believes that a period of 60 days from the date of the NIA to the due date of the proposal is adequate time to prepare a proposal in response to the priorities.

Changes: None.

Comment: Many commenters expressed concern that NIDRR was "forcing different disability groups" to compete against each other for funds.

Discussion: The proposed grouping of NIDRR competitions is not part of the proposed priorities and is not subject to comment. However, NIDRR offers the following observation. NIDRR has previously conducted successful competitions in which it listed more topics than it could fund. This approach will provide NIDRR with peer review input to guide decisions about funding worthy topics. This grouping is intended to foster competition to improve research outcomes and have a positive impact on the lives of individuals with disabilities.

Changes: None.

Comment: Many commenters expressed concern that NIDRR's priorities do not provide sufficient opportunities for applicants that are concerned with psychiatric disability.

Discussion: The announcement includes a proposed new priority topic on the Community Integration of Individuals with Psychiatric Disabilities. In addition to this opportunity, NIDRR's commitment to the area of psychiatric disability is demonstrated by its current funding of five RRTCs on issues of psychiatric disability and mental health. In addition, NIDRR funds a number of field-initiated projects that focus on this topic as well as an advanced research training project and a Disability Rehabilitation Research Project (DRRP) on mental health service delivery. NIDRR's commitment to this critical area has not changed, and NIDRR is committed to supporting future initiatives in this area.

Changes: None.

Comment: One commenter suggested that the definition of "critical stakeholders," in the list of requirements for each RRTC, be revised to include the word "community"—and noted that the realization of true community integration must include the community itself.

Discussion: NIDRR agrees that community members are critical components of community integration for individuals with disabilities and that they should be included in training and technical assistance efforts.

Changes: The priority has been changed to reflect this addition.

Comment: One commenter suggested that programs measuring Presidential, Congressional, and Judicial objectives regarding community inclusion be included in RRTC activities, by means of national and state data collection activities.

Discussion: NIDRR agrees that data collection to assist the measurement of community inclusion-related national objectives would be worthwhile, and applicants may submit applications in this area. However, NIDRR has no basis for requiring applicants to focus on this issue. The peer review process will evaluate the merits of the proposal.

Changes: None.

Psychiatric Disability

Comment: One commenter expressed concern that the description of the proposed RRTC on Community Integration for People with Psychiatric Disabilities is not age-specific but instead indicates that, "the target population may include individuals from any age group." The commenter noted that children and adults, while having some overlapping areas, also have distinct age-specific needs.

Discussion: NIDRR agrees that children and adults have many distinct age-specific needs. The language in the proposed priority was

not a suggestion (or requirement) that the applicant address issues of both. Rather, it was intended to allow flexibility for applicants in selecting their target populations. The peer review process will evaluate the merits of the proposal.

Changes: None.

Substance Abuse

Comment: Several commenters urged NIDRR to co-fund research activities with the Substance Abuse and Mental Health Services Administration (SMHSA), National Institute on Alcohol Abuse and Alcoholism (NIAAA), and National Institute on Drug Abuse (NIDA) in the area of substance abuse and co-existing disabilities.

Discussion: While co-funding of research in the area of substance abuse may have merit, this is not a subject for comment relative to the priority.

Changes: None.

Comment: Many commenters suggested that the unique needs of persons with disabilities who have co-occurring substance abuse disorders be addressed exclusively.

Discussion: The priority is clear that the target population is people with disabilities who are recovering from substance abuse problems. The priority also states that the applicants may or may not focus on individuals with co-occuring disorders such as mental illness. However, NIDDR has no basis to determine that all applicants should be required to focus on the unique needs of persons with disabilities who have co-occurring disorders such as mental illness. The peer review process will evaluate the merits of the proposal.

Changes: None.

Comment: Several commenters encouraged substance abuse research that is policy oriented at Federal and State levels.

Discussion: Nothing in the priority precludes an applicant from focusing on policy issues at the Federal and State level. However, NIDRR has no basis to determine that all applicants should be required to focus on policy issues. The peer review process will evaluate the merits of the proposal.

Changes: None.

Comment: One commenter suggested that the substance abuse priority require research on approaches for modifying treatment modalities to support the integration of patients with co-existing disabilities into community-based treatment programs rather than emphasize specialized programs. The commenter further suggested that the priority focus on employment outcomes, including retention.

Discussion: The priority does not preclude research focusing on either treatment modalities or employment outcomes for persons with disabilities who have substance abuse disorders. However, NIDRR has no basis to require that all applicants focus on these topics. The peer review process will evaluate the merits of the proposal.

Changes: None.

Comment: Two commenters suggested the priority require research in cross-training of program staff and community-based staff involved in providing services to individuals with disabilities who have substance abuse problems.

Discussion: The priority requires an applicant to provide training that improves community-integration outcomes for person with disabilities who are recovering from substance abuse problems. The applicant has the discretion to identify the specific target populations to be trained and the manner in which they will be trained. However, NIDRR has no basis to require all applicants to conduct cross-training of staff. The peer review process will evaluate the merits of the proposal.

Changes: None.

Health and Function

General

Comment: One commenter expressed concern that the Health and Function priorities do not specifically target the health needs of individuals with disabilities who are American Indian or Alaskan Native.

Discussion: NIDRR is aware of the critical health care issues facing American Indians and Alaskan Natives with disabilities. Nothing in the priority precludes an applicant from including these populations in proposed research. However, NIDRR has no basis for requiring that all applicants focus on these populations in responding to these priorities. The peer review process will evaluate the merits of the proposal.

Changes: None.

Comment: One commenter suggested adding Parkinson's Disease to the list of possible RRTC topics or expanding the neuromuscular disease priority to include Parkinson's Disease.

Discussion: Parkinson's Disease is often categorized as a neuromuscular disease. Nothing in the priority precludes an applicant from proposing Parkinson's Disease as a topic under the neuromuscular disease category. The peer review process will evaluate the merits of the proposal.

Changes: None.

[FR Doc. 03–19018 Filed 7–24–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 03–24: High Energy Physics Outstanding Junior Investigator Program

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of High Energy Physics of the Office of Science (SC), U.S. Department of Energy, hereby announces its interest in receiving grant applications for support under its Outstanding Junior Investigator (OJI) Program. Applications should be from tenure-track faculty investigators who are currently involved in experimental or theoretical high energy physics or accelerator physics research, and should be submitted through a U.S. academic institution. The purpose of this program is to support the development of individual research programs by outstanding scientists early in their careers. Awards made under this program will help to maintain the vitality of university research and assure continued excellence in the teaching of physics.

DATES: To permit timely consideration for award in Fiscal Year 2004, formal applications submitted in response to this notice should be received before November 4, 2003.

ADDRESSES: Applications for OJI Awards referencing Program Notice DE–FG01–03ER03–24 must be submitted electronically by an authorized institutional business official through the DOE Industry Interactive Procurement System (IIPS) Web site at: *http://pr.doe.gov* (*see also http://www.sc.doe.gov/production/grants/grants.html*). IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS your business official will need to register at the IIPS website. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. IIPS offers the option of submitting multiple files—please limit submissions to only one file within the volume if possible, with a maximum of no more than four files. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific application as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be E-mailed to the IIPS Help Desk at: *HelpDesk@pr.doe.gov*, or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Jeffrey Mandula, Office of High Energy Physics, SC–221/Germantown Building, U.S. Department of Energy, 1000 Independence Avenue, Washington, DC 20585–1290. Telephone: (301) 903–4829. E-mail: *jeffrey.mandula@science.doe.gov*.

SUPPLEMENTARY INFORMATION: The Outstanding Junior Investigator program was started in 1978 by the Department of Energy's Office of Science. A principal goal of this program is to identify exceptionally talented high energy physicists early in their careers and assist and facilitate the development of their research programs. Eligibility for awards under this notice is therefore restricted to non-tenured investigators who are conducting experimental or theoretical high energy physics or accelerator physics research. Since its debut, the program has initiated support for between five and ten new OJIs each year. The program has been very successful and contributes importantly to the vigor of the U.S. High Energy Physics program. Applicants should request support under this notice for normal research project costs as required to conduct their proposed research activities. The full range of activities currently supported by the Division of High Energy Physics is eligible for support under this program.

The DOE expects to make five to ten grant awards in Fiscal Year 2004, to meet the objectives of this program. It is anticipated that approximately $500,000 will be available in Fiscal Year 2004, subject to availability of appropriated funds. In the recent past, awards have averaged $60,000 per year, with the number of awards determined by the number of excellent applications and the total funds available for this program. Multiple-year funding of grant awards is expected, including renewal beyond the initial project period, as long as the recipient's tenure status is unchanged. Funding will be provided on an annual basis subject to availability of funds. Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following criteria, which are listed in descending order of importance as set forth in 10 CFR 605.10(d):

1. Scientific and/or technical merit of the project;
2. Appropriateness of the proposed method or approach;
3. Competency of applicant's personnel and adequacy of proposed resources; and
4. Reasonableness and appropriateness of the proposed budget.

General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Science Financial Assistance Program and 10 CFR part 605. Electronic access to the application guide and required forms is available on the World Wide Web at: *http://www.sc.doe.gov/production/grants/grants.html*. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC, on July 17, 2003.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 03–18979 Filed 7–24–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Federal Energy Management Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of public meeting.

SUMMARY: This notice announces an open meeting of the Federal Energy Management Advisory Committee (FEMAC). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that this meeting be announced in the **Federal Register** to allow for public participation. This notice announces the eighth meeting of FEMAC, an advisory committee established under Executive Order 13123—"Greening the Government through Efficient Energy Management." FEMAC provides public and private sector input to the Secretary of Energy on achieving mandated energy efficiency goals for Federal facilities. The U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Office of the Federal Energy Management Program, coordinates FEMAC activities.

DATES: Tuesday, August 19, 2003; 4 p.m. to 5:30 p.m.

ADDRESSES: Wyndham Palace Resort and Spa, 1900 Büena Vista Drive, Lake Buena Vista, Florida 32830–2206. The FEMAC meeting will be held in the Wyndham's Cloister Room (lobby level).

FOR FURTHER INFORMATION CONTACT: Steven Huff, Designated Federal Officer for the Committee, Office of the Federal Energy Management Program, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–3507.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: This FEMAC meeting is an open forum for communicating with FEMAC members and Federal Energy Management Program officials.

Tentative Agenda: Agenda will include an open discussion on the following topics:

- Implementation of Executive Order 13123
- Innovative Financing Mechanisms (Energy Saving Performance Contracts and Utility Energy Service Contracts)
- Incorporating New Technologies, Products, and Services in Federal Facilities
- Sustainable Design in Federal Facilities
- Training and Technical Assistance
- Other Energy Management Issues and Topics
- Barriers and Opportunities
- Public Comment

Public Participation: For this discussion session, FEMAC invites members of the public to help identify possible solutions in achieving the goals of reducing energy use and increasing energy efficiency in Federal facilities. No advance registration is required for the meeting. Those wishing to address the committee will be heard based on a "first-come, first-served" sign-up list for the session. With the limited time available, the committee also encourages written recommendations, suggestions, position papers, etc., combined with a short oral summary statement.

Documents may be submitted either before or after the meeting. The Chair of the Committee will make every effort to hear the views of all interested parties. The Chair will conduct the meeting to facilitate the orderly conduct of the meeting.

If you would like to file a written statement with the committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the agenda topics, you should contact Steven Huff at (202) 586–3507 or by e-mail to *steven.huff@ee.doe.gov*.

Members of the FEMAC are: Stuart Berjansky, Advance Transformer Company; Jared Blum, Polyisocyanurate Insulation Manufacturers Association; Robert Collins, Jr., Tampa Electric Company; Richard Earl, PB Facilities, Inc., Parsons Brinckerhoff Company; Terrel Emmons, Office of the Architect of the Capitol; Richard Hays, City of San Diego; Brian Henderson, New York State Energy Research and Development Authority; Erbin Keith, Sempra Energy Solutions, LLC; Vivian Loftness, Carnegie Mellon University; Anne Marie McShea, The Center for Resource Solutions; Get Moy, Office of the Deputy Under Secretary of Defense; Mary Palomino, Salt River Project; James Rispoli, U.S. Department of Energy; Mitchell Rosen, Liberty Total Comfort

Systems; and Cynthia Vallina, Office of Management and Budget. Mr. Henderson is the FEMAC chair.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on July 21, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–18978 Filed 7–24–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2180]

PCA Hydro, Inc.; Notice of Authorization for Continued Project Operation

July 21, 2003.

On June 26, 2001, PCA Hydro, Inc., licensee for the Grandmother Falls Project No. 2180, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2180 is located on the Wisconsin River in Lincoln County, Wisconsin.

The license for Project No. 2180 was issued for a period ending June 30, 2003. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2180 is issued to PCA Hydro, Inc. for a period effective July 1, 2003 through June 30, 2004, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before July 1, 2004, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that PCA Hydro, Inc. is authorized to continue operation of the Grandmother Falls Project No. 2180 until such time as the Commission acts on its application for subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19037 Filed 7–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–400–001]

Midwestern Gas Transmission Company; Notice of Compliance Filing

July 2, 2003.

Take notice that on June 27, 2003, Midwestern Gas Transmission Company (Midwestern) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Fourth Revised Sheet No. 272, effective July 1, 2003.

Midwestern states that the purpose of this filing is to comply with the Commission's uncited letter order at docket RP03–400–000 dated June 20, 2003, wherein the Commission directed Midwestern to revise its tariff to reflect that NAESB WGQ Standards 5.3.7, 5.3.41, 5.3.42, 5.3.46, and 5.3.48 refer to Recommendation R02002 and NAESB WGQ Data Sets 1.4.4, 5.4.1, 5.4.3, 5.4.4, 5.4.7, and 5.4.9 refer to both Version 1.6 of the NAESB WGQ Standards and Recommendation R02002. This filing also incorporates by reference NAESB WGQ Standard 2.3.29, which was not included in the initial filing in this proceeding.

Midwestern states that copies of this filing have been sent to all of Midwestern 's contracted shippers and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: July 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18942 Filed 7–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–370–001]

National Fuel Gas Supply Corporation; Notice of Compliance Filing

July 2, 2003.

Take notice that on June 27, 2003, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff sheets listed in its filing, with an effective date of July 1, 2003.

National Fuel states that the purpose of this filing is to submit revised tariff sheets in compliance with the Commission letter order issued on June 20, 2003, in Docket No. RP03–370–000 and to conform to the WGQ Standards incorporated by Order No. 587–R.

Standards for Business Practices of Interstate Natural Gas Pipelines.

National Fuel states that copies of this filing were served upon its customers, interested state commissions and the parties on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: July 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18940 Filed 7–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–088]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

July 2, 2003.

Take notice that on June 30, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets listed on Appendix A to the filing, to be effective July 1, 2003.

Natural states that the purpose of this filing is to implement a new negotiated rate transaction entered into by Natural and Wisconsin Electric Power Company under Natural's Rate Schedule FTS, pursuant to section 49 of the General Terms and Conditions of Natural's Tariff.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Intervention and Protest Date: July 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18947 Filed 7–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–350–001]

Northern Natural Gas Company; Notice of Compliance Filing

July 2, 2003.

Take notice that on June 30, 2003, Northern Natural Gas Company (Northern), tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1, Substitute Tenth Revised Sheet No. 204, with an effective date of July 1, 2003.

Northern states that the filing is being made in compliance with the Director's order dated June 18, 2003 in Docket No. RP03–350–000 regarding compliance with Order No. 587–R.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: July 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18939 Filed 7–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–416–001]

Northwest Pipeline Corporation; Notice of Compliance Filing

July 2, 2003.

Take notice that on June 27, 2003, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fourth Revised Sheet No. 254; Fifth Revised Sheet No. 255; Fifth Revised Sheet No. 256; and Fourth Revised Sheet No. 257, to be effective July 28, 2003.

Northwest states that this filing complies with the Commission's order dated June 9, 2003 in Docket No. RP01–416–000 by revising a conditionally accepted tariff provision to also provide a mechanism for sharing the costs of

laterals when a shipper has elected the lump sum payment method.

Northwest states that a copy of this filing has been served upon each person designated on the official service list complied by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: July 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18938 Filed 7–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–449–001]

Panhandle Eastern Pipe Line Company, LLC; Notice of Compliance Filing

July 2, 2003.

Take notice that on June 30, 2003, Panhandle Eastern Pipe Line Company, LLC (Panhandle) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendices A and B to the filing. The revised tariff sheets are proposed to be effective on June 23, 2003, and July 1, 2003, respectively.

Panhandle states that this filing is being made to comply with the Commission's Letter Order dated June 19, 2003, in Docket No. RP03–449–000.

Panhandle states that copies of this filing are being served on all affected shippers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: July 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18944 Filed 7–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–046]

PG&E Gas Transmission, Northwest Corporation; Notice of Negotiated Rates

July 2, 2003.

Take notice that on June 30, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1A, Fifteenth Revised Sheet No. 15 and First Revised Sheet No. 21B, to be effective July 1, 2003.

GTN states that these sheets are being filed to reflect the implementation of one new negotiated rate agreement and the removal of one negotiated rate agreement that has expired.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Intervention and Protest Date: July 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18948 Filed 7–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–323–000, et al.]

Pinnacle Pipeline Company; Notice of Application

July 2, 2003.

Take notice that on June 19, 2003, Pinnacle Pipeline Company (Pinnacle), 5100 Westheimer, Suite 320, Houston, Texas 77056, filed in Docket Nos. CP03–323–000, CP03–324–000 and CP03–325–000 an application pursuant to Section 7(c) of the Natural Gas Act and Parts 284 and 157 of the Commission's Regulations for a certificate of public convenience and necessity to continue operating the Hobbs Lateral, an existing pipeline facility located in the State of New Mexico; provide open-access firm and interruptible transportation services; engage in certain routine activities; and expand the Hobbs Lateral through the addition of looping facilities, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Pinnacle states that the Hobbs Lateral is an existing 5-mile, 10-inch diameter high pressure lateral pipeline located in Lea County, New Mexico. Pinnacle further states that the requested authorization will allow Pinnacle to continue to serve the existing and expanded combustion turbine needs of two electric power plants that are owned and operated by Southwestern Public Service Company (SPS), the only customer served by the Hobbs Lateral. Pinnacle states that the proposed expansion will consist of 2.4 miles of 12-inch diameter pipeline with two 12-inch mainline block valve assemblies at each end of the pipeline loop. Pinnacle estimates the cost of facilities to be $531,000.

Any questions regarding this application should be directed to William G. Janacek, Pinnacle Pipeline Company, 5100 Westheimer, Suite 320, Houston, Texas 77056–5511, at (713) 965–9151, fax (713) 965–9156.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding. with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: July 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18934 Filed 7–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–530–000]

Portland Natural Gas Transmission System; Notice of Proposed Change in FERC Gas Tariff

July 2, 2003.

Take notice that on June 27, 2003, Portland Natural Gas Transmission System (PNGTS) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 366, to become effective on August 1, 2003.

PNGTS states that the purpose of its filing is to clarify PNGTS's billing procedures in the event that PNGTS, pursuant to an agreement with a shipper, incurs third-party charges to provide service to such shipper. PNGTS states that its proposed tariff provision is similar to third-party billing provisions in other pipeline tariffs.

Specifically, PNGTS is proposing a new subsection 15.8 to the Billings and Payment section of the General Terms and Conditions of its FERC Gas Tariff, which states in pertinent part that "If Shipper requests, and Transporter agrees, that Transporter shall, to provide service to Shipper, use service which Transporter has contracted for with third party(s) for the benefit of Shipper, Shipper shall pay Transporter an amount equal to the charges Transporter is obligated to pay such third party(s), which charges may include, but are not limited to, reservation and/or usage charges and surcharges, fuel charges, compression fees, balancing or storage fees, measurement fees, processing fees, and/or facility charges." Subsection 15.8 also provides that any such third party charges shall be set forth as a separate item on billings rendered to Shipper.

PNGTS also states that copies of this filing are being served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections

385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18945 Filed 7–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–391–002]

Questar Southern Trails Pipeline Company; Notice of Compliance Filing

July 2, 2003.

Take notice that on June 27, 2003, Questar Southern Trails Pipeline Company (Southern Trails) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute Second Revised Sheet No. 103 and Substitute Second Revised Sheet No. 105, with an effective date of July 1, 2003.

Southern explains that, on May 1, 2003, and May 23, 2003, Southern Trails filed tariff sheets to comply with Order No. 587–R. Order No. 587–R requires interstate pipelines to incorporate Version 1.6 of the consensus standards promulgated by the Wholesale Gas Quadrant (WGQ) of the North American Energy Standards Board (NAESB). Southern further states that, on June 17, 2003, the Commission issued an order in Docket No. RP03–391–000 and –001 and, with minor exceptions, accepted Southern Trails' tariff sheets to be effective July 1, 2003. The Commission, in the June 17 Order, directed Southern Trails to file revisions to its tariff sheets within ten days of the June 17 Order. Southern states that this filing is tendered to comply with the Commission's June 17 Order.

Southern Trails states that a copy of this filing has been served upon its customers and the Public Service Commissions of Utah, New Mexico, Arizona, and California.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: July 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18941 Filed 7–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–422–001]

Trailblazer Pipeline Company; Notice of Compliance Filing

July 2, 2003.

Take notice that on June 27, 2003, Trailblazer Pipeline Company (Trailblazer) tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Eighth Revised Sheet No. 203A and Original Sheet No. 203B, to be effective July 1, 2003.

Trailblazer states that the purpose of this filing is to comply with the Commission's letter order issued June 20, 2003, in Docket No. RP03–422 (Order). The Order accepted, subject to specified modifications, tariff sheets filed by Trailblazer in accordance with Order No. 587–R, issued on March 12, 2003, in Docket No. RM96–1–024 (Order 587–R). Trailblazer's original Order 587–R compliance filing was made on May 1, 2003. No tariff changes other than those required by the Order are reflected in this filing.

Trailblazer states that copies of the filing have been mailed to all parties set out on the Commission's official service list in Docket No. RP03–422.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: July 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18943 Filed 7–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–531–000]

West Texas Gas, Inc.; Notice of Gas Cost Reconciliation Report

July 2, 2003.

Take notice that on June 26, 2003, West Texas Gas, Inc. (WTG) submitted for filing its annual purchased gas cost reconciliation for the period ending April 30, 2003. Under section 19, any difference between WTG's actual purchased gas costs and its spot market-based pricing mechanism is refunded or surcharged to its two jurisdictional customers annually, with interest. WTG states that the report indicates that WTG overcollected its actual costs by $19,533 during the reporting period.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18946 Filed 7–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–1085–006, et al.]

South Carolina Electric & Gas Company, et al.; Electric Rate and Corporate Filings

July 18, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. South Carolina Electric & Gas Company

[Docket No. ER96–1085–006]

Take notice that on July 15, 2003, South Carolina Electric and Gas Company filed its second triennial market power analysis in support of its market pricing authority.

Comment Date: August 5, 2003.

2. MI Energy, LLC

[Docket No. ER03–1076–000]

Take notice that on July 15, 2003, MI Energy, LLC tendered for filing a Notice of Cancellation of its FERC Rate Schedule No. 1.

MI Energy states that it has no long-term customers, is not regulated by a state commission, and has no outstanding market-based rate transactions. Therefore, MI Energy states it has not served copies of this filing upon any entity.

Comment Date: August 5, 2003.

3. Virginia Electric and Power Company

[Docket No. ER03–1077–000]

Take notice that on July 15, 2003, Virginia Electric and Power Company, d/b/a Dominion Virginia Power (the Company), filed copies of a letter agreement between Central Virginia Electric Cooperative (CVEC) and the Company. The Company states that the letter agreement, dated June 11, 2003, adds a new delivery point to the March 20, 1967 Contract for the Purchase of Electricity for Resale by Rural Electric Cooperatives, as amended, between CVEC and the Company, First Revised Rate Schedule FERC No. 94. The Company requests waiver of the Commission's notice of filing requirements to allow the letter agreement to become effective on August 1, 2003. The Company states that it will begin service under the new delivery point on or after August 1, 2003.

The Company states that copies of the filing were served upon CVEC, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment Date: August 5, 2003.

4. Calpine Newark, LLC

[Docket Nos. QF86–891–005 and EL03–211–000]

Take notice that on July 11, 2003, Calpine Newark, LLC filed with the Federal Energy Regulatory Commission (Commission), a petition for limited waiver of the Commission's operating and efficiency standards for a topping-cycle cogeneration facility.

Comment Date: August 11, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18949 Filed 7–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission; Soliciting Additional Study Requests; Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

July 2, 2003.

Take notice that the following hydroelectric license application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–2183–035.

c. *Date filed:* June 2, 2003.

d. *Applicant:* Grand River Dam Authority (GRDA).

e. *Name of Project:* Markham Ferry Hydroelectric Project.

f. *Location:* On the Grand (Neosho) River, in Mayes County, Oklahoma. This project would not use federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Mr. Robert W. Sullivan, Assistant General Manager, Risk Management & Regulatory Compliance, GRDA, P.O. Box 409, Vinita, Oklahoma 74301; (918)–256–5545.

i. *FERC Contact:* John Ramer, *john.ramer@ferc.gov*, (202) 502–8969.

j. *Cooperating Agencies:* We are asking Federal, state, and local agencies and Indian tribes with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. Pursuant to Section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian tribe, or person believes that an additional scientific study should be conducted in order to form an factual basis for complete analysis of the application on its merit, the resource agency, Indian tribe, or person must file a request for a study with the Commission not later than 60 days after the application filing and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* August 1, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filing. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

m. The application is not ready for environmental analysis at this time.

n. *Project Description:* The Markham Ferry Hydroelectric Project consists of the following existing facilities: (1) The 3,744-foot-long by about 90-foot-high Robert S. Kerr dam, which includes an 824-foot-long gated spillway, topped with 17, 40-foot-long by 27-foot-high, steel Taintor gates and two 80-ton capacity traveling gate hoists; (2) the 15-mile-long Lake Hudson, which has a surface area of 10,900 feet, 200,300 acre-feet of operating storage, and 444,500 acre-feet total of flood storage capacity; (3) the 6,200-foot-long by 45-foot-high Salina Dike; (4) a concrete powerhouse containing four 35 horsepower Kaplan turbines with a total maximum hydraulic capacity of 28,000 cubic feet per second (cfs) and four generating units with a total installed generating capacity of 108,000 kilowatts (kW), and producing an average of 257,107,000 kilowatt hours (kWh) annually; (5) one unused 110-kilovolt (kV) transmission line; and (6) appurtenant facilities. The dam and existing project facilities are owned by GRDA.

o. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "FERRIS" link—select "Docket #" and follow the instructions. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676 or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

p. You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

q. With this notice, we are initiating consultation with the Oklahoma State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

r. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate. The Commission staff proposes to issue one environmental assessment rather than issue a draft and final EA. Comments, terms and conditions, recommendations, prescriptions, and reply comments, if any, will be addressed in an EA issued in early 2005.

Issue Acceptance or Deficiency Letter: November 2003.

Issue Scoping Document: April 2004.

Notice that application is ready for environmental analysis: August 2004.

Notice of the availability of the EA: February 2005.

Ready for Commission decision on the application: May 2005.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18935 Filed 7–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2720–036]

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

July 2, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2720–036.

c. *Date filed:* July 29, 2002.

d. *Applicant:* City of Norway, Michigan.

e. *Name of Project:* Sturgeon Falls Hydroelectric Project.

f. *Location:* On the Menominee River in Dickinson County, Michigan and Marinette County, Wisconsin. The project does not utilize lands of the United States.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r)

h. *Applicant Contact:* Ray Anderson, City Manager, City of Norway, City Hall, 915 Main Street, Norway, Michigan 49870, (906) 563–8015.

i. *FERC Contact:* Patti Leppert (202) 502–6034, or *patricia.leppert@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. *Description of Project:* The existing project consists of: (1) A 270-foot-long concrete dam with spillway equipped with a 16.7-foot-high by 24-foot-wide Taintor gate and a 16.7-foot-high by 16-foot-wide Taintor gate; (2) a 126.5-foot-long concrete head-works structure; (3) a 400-acre impoundment with a normal pool elevation of 829.8 feet National Geodetic Vertical Datum; (4) a 300-foot-long, 60-foot-wide power canal; (5) a powerhouse containing four generating units with a total installed capacity of 5,136 kilowatts; (6) a 300-foot-long, 7.2-kV transmission line; and (7) appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ≥FERRIS≥ link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

o. Procedural schedule and final amendments: The application should be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Scoping Document 1 for comments: July 2003.

Request Additional Information, if necessary: August 2003.

Issue Scoping Document 2, if necessary: August 2003.

Notice Ready for Environmental Analysis: September 2003.

Notice of the availability of the EA: January 2004.

Ready for Commission's decision on the application: March 2004.

p. You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Magalie R. Salas,

Secretary.

[FR Doc. 03–18936 Filed 7–24–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 659]

Notice of Intent To File Application for New License

July 2, 2003.

a. *Type of Filing:* Notice of Intent to File Application for a New License.

b. *Project No.:* 659.

c. *Date Filed:* June 18, 2003.

d. *Submitted By:* Crisp County Power Commission—current licensee.

e. *Name of Project:* Lake Blackshear Hydroelectric Project.

f. *Location:* On the Flint River, in Crisp, Dooly, Lee, Sumter, and Worth Counties, Georgia.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act.

h. *Licensee Contact:* Steve Rentfrow, General Manager, Crisp County Power Commission, P.O. Box 1218, Cordelle, GA 31010; 229–273–3811; *srentfrow@crispcountypower.com.*

i. *FERC Contact:* Janet Hutzel at 202–502–8675; *janet.hutzel@ferc.gov.*

j. *Effective Date of Current License:* August 14, 1980.

k. *Expiration Date of Current License:* August 9, 2008.

l. *Description of the Project:* (1) A 415-foot-long, 49-foot-high gated spillway; (2) a 630-foot-long auxiliary spillway; (3) a 3,410-foot-long north embankment; (4) a 680-foot-long south embankment; (5) a 8,700-acre impoundment at a full pool elevation of 237 feet mean sea level; (6) a powerhouse containing four turbines with a total installed capacity of 15.2 MW; (7) a 1,400-foot-long, 46-kV transmission line; and (8) appurtenant facilities. No new facilities are proposed.

m. Each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by August 9, 2006.

n. A copy of this filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ≥FERRIS≥ link. Enter the docket number to access the document excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or TTY 202–502–8659. A copy is also available for inspection and reproduction at the address in item h above.

o. Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support as shown in the paragraph above.

Magalie R. Salas,

Secretary.

Mailing List for P–659

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[FR Doc. 03–18937 Filed 7–24–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Hydroelectric Applications; Notice of Filing

July 21, 2003.

Backbone Windpower Holdings, LLC
[Docket No. ER02–2559–001]
Badger Windpower, LLC
[Docket No. ER01–1071–002]
Bayswater Peaking Facility, LLC
[Docket No. ER02–669–002]
Blythe Energy, LLC
[Docket No. ER02–2018–002]
Calhoun Power Company I, LLC
[Docket No. ER02–2074–002]
Doswell Limited Partnership
[Docket No. ER90–80–001]
ESI Vansycle Partners, L.P.
[Docket No. ER98–2494–004]
Florida Power & Light Company
[Docket No. ER97–3359–005]
FPL Energy Cape, LLC
[Docket No. ER00–3068–002]
FPL Energy Hancock County Wind, LLC
Docket No. ER03–34–001]
FPL Energy Maine Hydro, Inc.
[Docket No. ER98–3511–006]
FPL Energy MH 50, LP
[Docket No. ER99–2917–003]
FPL Energy Marcus Hook, L.P.
[Docket No. ER02–1903–001]
FPL Energy Mason, LLC
[Docket No. ER98–3562–006]
FPL Energy New Mexico Wind, LLC
[Docket No. ER03–179–002]
FPL Energy Pennsylvania Wind, LLC
[Docket No. ER02–2166–001]
FPL Energy Power Marketing, Inc.
[Docket No. ER98–3566–009]
FPL Energy Rhode Island Energy, L.P.
[Docket No. ER02–2120–001]
FPL Energy Seabrook, LLC
[Docket No. ER02–1838–001]
FPL Energy Vansycle, LLC
[Docket No. ER01–838–002]
FPL Energy Wyman, LLC
[Docket No. ER98–3563–006]
FPL Energy Wyman IV, LLC
[Docket No. ER98–3564–006]
Gray County Wind Energy, LLC
[Docket No. ER01–1972–002]
Hawkeye Power Partners, LLC
[Docket No. ER98–2076–005]
High Winds, LLC
[Docket No. ER03–155–001]
Jamaica Bay Peaking Facility, LLC
[Docket No. ER03–623–003]
Lake Benton Power Partners II, LLC
[Docket No. ER98–4222–001]
Mill Run Windpower, LLC
[Docket No. ER01–1710–002]
Somerset Windpower, LLC
[Docket No. ER01–2139–003]
West Texas Wind Energy Partners, LP
[Docket No. ER98–1965–002]

Take notice that on June 30, 2003, the FPL Energy, LLC, on behalf of certain of its subsidiaries, and Florida Power and Light Company tendered for filing their updated market analysis associated with market-based rate authorizations.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: August 1, 2003.

Linda Mitry,
Acting Secretary.
[FR Doc. 03–19036 Filed 7–24–03; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0057; FRL–7535–5]

Agency Information Collection Activities; Submission of EPA ICR Number 1160.07 (OMB Number 2060–0114) to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: *NSPS for Wool Fiberglass Insulation Manufacturing Plants (40 CFR Part 60, Subpart PPP) and NESHAP for Wool Fiberglass Manufacturing Plants (40 CFR Part 63, Subpart NNN).* The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 25, 2003.

ADDRESSES: Follow the detailed instructions under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Gregory Fried, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code: 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7016; fax number: (202) 564–0050; E-mail address: *fried.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 26, 2002 (67 FR 60672), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2003–0057, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is: (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to OMB and EPA within 30 days of this notice, and according to the following detailed instructions: (1) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC

20503, and (2) Submit your comments to EPA online using EDOCKET (our preferred method), by E-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code: 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or in paper, will be available for public viewing in EDOCKET as EPA receives them without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment placed in EDOCKET. The entire printed comment, including copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *www.epa.gov/edocket*.

Title: NSPS for Wool Fiberglass Insulation Manufacturing Plants (40 CFR Part 60, Subpart PPP) and NESHAP for Wool Fiberglass Manufacturing Plants (40 CFR Part 63, Subpart NNN) (OMB Control Number 2060–0114, EPA ICR Number 1160.07). This is a request to renew an existing approved collection that is scheduled to expire on July 31, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The Administrator has judged that Particulate Matter (PM) and Hazardous Air Pollutants (HAP) emissions from wool fiberglass manufacturing plants cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners/operators of wool fiberglass manufacturing plants subject to New Source Performance Standards (NSPS) subpart PPP and/or National Emissions Standards for Hazardous Air Pollutants (NESHAP) subpart NNN must provide notifications to EPA of construction, modification, startups, shut downs, date and results of initial performance tests and provide semiannual reports of excess emissions. Owners/operators of wool fiberglass manufacturing facilities subject to NSPS subpart PPP and/or NESHAP subpart NNN must also record continuous measurements of control device operating parameters. For NSPS subpart PPP these operating parameters include gas pressure drop and liquid flow rate if using a wet scrubber and voltage and inlet water flow rates if using an electrostatic precipitator (ESP). For NESHAP subpart NNN operating parameter measurements, include bag leak detection system alarms, furnace operating temperature, glass pull rate, and scrubber and ESP parameter controls.

In order to ensure compliance with the standards promulgated to protect public health, adequate reporting and recordkeeping is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 101 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Wool Fiberglass Manufacturing Plants.

Estimated Number of Respondents: 61.

Frequency of Response: Initial and semiannual.

Estimated Total Annual Hour Burden: 18,216.

Estimated Total Capital and Operations & Maintenance (O & M) Annual Costs: $488,500 which includes $0 annualized capital/startup costs and $488,500 annual O&M costs.

Changes in the Estimates: There is a decrease of 882 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to all existing sources having already completed required performance testing given that the compliance date of June 14, 2002, has passed.

Dated: July 17, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–19002 Filed 7–24–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7535–6]

Agency Information Collection Activities; OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Susan Auby (202) 566–1672, or email at *auby.susan@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 0226.17; Applications for NPDES Discharge Permits and the Sewage Sludge Management Permits; was approved 06/12/2003; in 40 CFR 122.26(b)(14)(i-xi), 40 CFR 122.21(b-l)(p)(q), 40 CFR 122.21(g)(7), (13), 40 CFR 122.21(a)(2); OMB Number 2040–0086, expires 06/30/2006.

EPA ICR No. 0649.08; NSPS for Metal Furniture Coating; was approved 06/16/2003; in 40 CFR part 60, subpart EE; OMB Number 2060–0106; expires 06/30/2006.

EPA ICR No. 0659.09; NSPS for Surface Coating of Large Appliances; was approved 06/16/2003; in 40 CFR part 60, subpart SS; OMB Number 2060–0108; expires 06/30/2006.

EPA ICR No. 0783.44; Motor Vehicle Emission Standards and Emission Credits Provisions (Highway Motorcycles and Recreational Vehicles) (Amendments) (Final Rule); was approved 06/11/2003; in 40 CFR part 1051; OMB Number 2060–0104; expires 07/31/2005.

EPA ICR No. 0997.07; NSPS for Petroleum Dry Cleaners; was approved 06/16/2003; in 40 CFR part 60, subpart JJJ; OMB Number 2060–0079; expires 06/30/2006.

EPA ICR No. 1062.08; NSPS for Coal Preparation Plants; was approved 06/16/2003; in 40 CFR part 60, subpart Y; OMB Number 2060–0122; expires 06/30/2006.

EPA ICR No. 1156.09; NSPS for Synthetic Fiber Production Facility; was approved 06/16/2003; in 40 CFR part 60, subpart HHH; OMB Number 2060–0059; expires 06/30/2006.

EPA ICR No. 1432.22; Recordkeeping and Period Reporting of the Production, Import, Export, Recycling, Destruction, Transhipment and Feedstock Use of Ozone-Depleting Substances (proposed rule); was approved 06/16/2003; in 40 CFR part 82, subpart E, 40 CFR part 82, subpart A, § 83.13; OMB Number 2060–0170; expires 05/31/2005.

EPA ICR No. 1711.04; Voluntary Customer Service Satisfaction Surveys; was approved 06/16/2003; OMB Number 2090–0019; expires 06/30/2006.

EPA ICR No. 1820.03; NPDES Storm Water Program Phase III; was approved 06/12/2003; in 40 CFR 122.26(a), 40 CFR 122.26(c), 40 CFR 122.26(g), 40 CFR 122.33, 40 CFR 122.34(g), 40 CFR 123.25, 40 CFR 123.35; OMB Number 2040–0211; expires 06/30/2006.

EPA ICR No. 1838.02; Industry Detailed Questionnaire: Phase III Cooling Water Intake Structures; was approved 06/20/2003; OMB Number 2040–0213; expires 06/30/2006.

EPA ICR No. 1842.04; Notice of Intent for Storm Water Discharges Associated with Construction Activity under a NPDES General Permit; was approved 06/12/2003; in 40 CFR 122.26(c)(1)(ii), 40 CFR 122.28(b)(2), 40 CFR 122.41(h–i), 40 CFR 122.41(l), 40 CFR 122.44(K)(2); OMB Number 2040–0188; expires 06/30/2006.

EPA ICR No. 1847.03; Federal Plan Recordkeeping and Reporting Requirements for Large Municipal Waste Combustors Constructed on or Before September 20, 1994; was approved 06/16/2003; in 40 CFR part 62, subpart FFF; OMB Number 2060–0390; expires 06/30/2006.

EPA ICR No. 1900.02; NSPS Small Municipal Waste Combustors; was approved 06/16/2003; in 40 CFR part 60, subpart AAAA; OMB Number 2060–0423; expires 06/30/2006.

EPA ICR No. 2003.02; NESHAP for Integrated Iron and Steel Manufacturing (Final Rule); was approved 06/16/2003; in 40 CFR 63.7840(a), 40 CFR 63.7800(b), 40 CFR 63.7841(b–c), 40 CFR 63.7842(a)(1–3), 40 CFR 63.7842(b–d); OMB Number 2060–0517; expires 06/30/2006.

EPA ICR No. 2014.02; Reporting and Recordkeeping Requirements of the HCFC (Hydro-Chlorofluorocarbon) allowance system (Final Rule); was approved 06/16/2003; in 40 CFR 82.23, 40 CFR 82.24; OMB Number 2060–0498; expires 06/30/2006.

EPA ICR No. 2023.02; Recordkeeping and Reporting Requirements for the Clay Ceramics Manufacturing NESHAP; was approved 06/16/2003; in 40 CFR part 63, subpart KKKKK; OMB Number 2060–0513; expires 06/30/2006.

EPA ICR No. 2042.02; NESHAP for Semiconductor Manufacturing; was approved 06/16/2003; in 40 CFR part 63, subpart BBBBB; OMB Number 2060–0519; expires 06/30/2006.

EPA ICR No. 0940.17; Ambient Air Quality Surveillance; was approved 06/06/2003; in 40 CFR part 58; OMB Number 2060–0084; expires 06/30/2006.

EPA ICR No. 1813.04; Information Collection Request for Proposed Regional Haze Regulations; was approved 07/02/2003; in 40 CFR 51.309; OMB Number 2060–0421; expires 07/31/2006.

EPA ICR No. 1053.07; NSPS Subpart Da—Standards of Performance for Electric Utility Steam Generating Units; was approved 07/02/2003; in 40 CFR part 60, subpart Da; OMB Number 2060–0023; expires 07/31/2006.

EPA ICR No. 2066.02; NESHAP for Engine Test Cells/Stands (Final Rule); was approved 07/03/2003; in 40 CFR part 63, subpart PPPPP; OMB Number 2060–0483; expires 07/31/2005.

EPA ICR No. 2032.02; NESHAP for Hydrocholoric Acid Production (Final Rule); was approved 07/03/2003; in 40 CFR part 63, subpart NNNNN; OMB Number 2060–0529; expires 07/31/2006.

EPA ICR No. 1573.10; Part B Permit Application, Permit Modifications and Special Permits (Renewal); was approved 07/03/2003; in 40 CFR 264.90, 264.193, 264.221, 264.251, 264.272, 264.301, 264.344, 270.1, 270.10, 270.14–270.29, 270.33, 270.40, 270.41, 270.42, 270.50, 270.51, 270.60, 270.62, 270.63, 270.64, 270.65 and 270.552; OMB Number 2050–0009; expires 07/31/2006.

EPA ICR No. 1989.02; Final NPDES and ELG Regulatory Revision for Concentrated Animal Feeding Operations; was approved 07/10/2003; in 40 CFR 122, 40 CFR 122.21(i)(1)(i–xi), 40 CFR 122.21(f), 40 CFR 122.21(f)(1), 40 CFR 122.21(f)(7), 40 CFR 122.23(f)(1–3), 40 CFR 122.23(g–h), 40 CFR 122.28(b)(3)(iv), 40 CFR 122.41, 40 CFR 122.42(e)(1), 40 CFR 122.42(e)(1)(i–iv), 40 CFR 122.42(e)(4), 40 CFR 122.42(e)(3), 40 CFR 122.62, 40 CFR 122.62(b)(2–4), 40 CFR 123, 40 CFR 123.25, 40 CFR 123.40, 40 CFR 123.25(a)(22, 27, 30, 31, 33, 34), 40 CFR 123.26(b), 40 CFR 123.42(e)(3–4), 40 CFR 123.42(e)(4)(i–vi), 40 CFR 123.62, 40 CFR 123.62(a), 40 CFR 123.62(b)(1), 40 CFR 412, 40 CFR 412(a)(1)(i–iii), 40 CFR 412.37(b), 40 CFR 412.37(b)(1–6), 40 CFR 412.37(c), 40 CFR 412.37(c)(1–9); OMB Number 2040–0250; expires 07/31/2006.

EPA ICR No. 1569.05; Approval of State Coastal Nonpoint Pollution Control Programs (CZARA Section 6217); was approved 07/09/2003; OMB Number 2040–0153; expires 07/31/2006.

Short Term Extensions

EPA ICR No. 0976.10; The 2001 Hazardous Waste Report (Biennial Report); in 40 CFR 262.40(b), 262.41, 264.75, 265.75; OMB Number 2050–0024; on 06/25/2003; OMB extended the expiration date through 09/30/2003.

EPA ICR No. 1764.02; Reporting and Recordkeeping Requirements for National Volatile Organic Compound Emission Standards for Consumer Products; in 40 CFR part 59, subpart C; OMB Number 2060–0348; on 06/20/2003; OMB extended the expiration date through 09/30/2003.

EPA ICR No. 1765.02; Reporting and Recordkeeping Requirements for National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings; in 40 CFR part 59, subpart B; OMB Number 2060–0353; on 06/20/2003 OMB extended the expiration date through 09/30/2003.

EPA ICR No. 1912.01; Information Collection Request: National Primary Drinking Water Regulation for Lead and Copper (Final Rule); OMB Number 2040–0210; OMB extended the expiration date through 09/30/2003.

EPA ICR No. 1560.06; National Water Quality Inventory Reports (TMDL Final Rule: Clean Water Act Sections 305(b), 303(d), 314(a) and 106(e)); OMB Number 2040–0071; OMB extended the expiration date through 10/31/2003.

Comment Filed

EPA ICR No. 2044.01; NESHAP Surface Coating of Plastic Parts and Products; in 40 CFR part 63, subpart PPPP; on 06/16/2003 OMB filed a comment.

EPA ICR No. 1975.01; NESHAP for Stationary Reciprocating Internal Combustion Engines; in 40 CFR part 63, subpart ZZZZ; on 06/16/03 OMB filed a comment.

EPA ICR No. 1897.05; Information Requirements for Nonroad Diesel Engines (Nonroad Large SI Engines and Marine Diesel Engines); in 40 CFR part 94, 40 CFR part 1048; on 06/11/2003 OMB filed a comment.

EPA ICR No. 1967.01; NESHAP for Stationary Combustion Turbines; in 40 CFR part 63, subpart YYYY; on 07/03/2003 OMB filed a comment.

EPA ICR No. 2096.01; NESHAP for Iron and Steel Foundries (Proposed Rule); in 40 CFR 63.7700, 40 CFR 63.7720, 40 CFR 63.7340, 40 CFR 63.7750, 40 CFR 63.7741, 40 CFR 63.7751, 40 CFR 63.7752; on 07/03/2006 OMB filed a comment.

EPA ICR No. 2099.01; Implementation of Pollution Prevention Alternatives; in 40 CFR part 63; on 07/03/2003 OMB filed a comment.

EPA ICR No. 2046.01; NESHAP for Mercury Cell Chlor-Alkali Plants (Proposed rule) in 40 CFR part 63, subpart IIIII; on 07/03/2003 OMB filed a comment.

EPA ICR No. 2044.01; Reporting and Recordkeeping Requirements for National Emission Standards for Hazardous Air Pollutants for Plastic Parts and Products Surface Coating in 40 CFR part 63, subpart PPPP; on 06/24/2003 OMB filed a comment.

Withdrawn

EPA ICR No. 2083.01; Estimating the Value of Improvements to Coastal Waters—A Pilot Study of a Coastal Valuation Survey; on 06/12/2003 EPA withdrew ICR from OMB review.

Dated: July 17, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–19009 Filed 7–24–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[IL200–3; FRL–7585–7]

Adequacy Status of the Submitted 2005 and 2007 Revised Attainment Demonstration Budgets for the 1-hour Ozone National Ambient Air Quality Standard for Transportation Conformity Purposes for the Chicago, IL Severe Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that we have found the revised attainment year motor vehicle emissions budgets ("budgets") for volatile organic compounds (VOC) and nitrogen oxides (NO_X) in the submitted revision to the 1-hour ozone attainment demonstration state implementation plan (SIP) for the Chicago, Illinois severe nonattainment area to be adequate for conformity purposes. These attainment year budgets were recalculated using EPA's latest motor vehicle emissions factor model, MOBILE6. On March 2, 1999, the DC Circuit Court ruled that submitted state implementation plan budgets cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, the Chicago, Illinois severe ozone nonattainment area can use the revised 2007 attainment year budgets of VOC and NO_X from the submitted revision to the 1-hour ozone attainment demonstration SIP for future conformity determinations. Illinois also submitted an updated 2005 VOC budget as part of the Rate Of Progress requirement. As a result of this finding, the 2005 VOC budget can also be used for conformity determinations in the Chicago, Illinois area.

DATES: This finding is effective August 11, 2003.

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Environmental Scientist, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8656, *morris.patricia@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever "we", "us" or "our" is used, we mean EPA.

Background

Today's notice is simply an announcement of a finding that we have already made. EPA Region 5 sent a letter to the Illinois Environmental Protection Agency on June 26, 2003, stating that the revised attainment year motor vehicle emissions budgets in the Chicago, Illinois submitted 1-hour ozone attainment demonstration SIP revision (dated April 11, 2003) are adequate for conformity purposes. The purpose of Illinois's April 11, 2003 submittal was to address its enforceable commitment to revise the attainment year budgets using MOBILE6 within two years of the release of the model. This enforceable commitment was approved by EPA on November 13, 2001 (66 FR 56903). EPA's adequacy finding will also be announced on EPA's conformity Web site: *http://www.epa.gov/otaq/traq*, (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity").

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they conform. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

We have described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision"). We followed this guidance, which can also be found on EPA's Web site at: *http://www.epa.gov/otaq/traq*, in making our adequacy determination.

Authority: 42 U.S.C. *et seq.*

Dated: July 9, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 03–19004 Filed 7–24–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7536–4]

National Drinking Water Advisory Council; Request for Nominations

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites all interested persons to nominate qualified individuals to serve a three-year term as members of the National Drinking Water Advisory Council (Council). This Council was established by the Safe Drinking Water Act (SDWA) to provide practical and independent advice, consultation and recommendations to the Agency on the activities, functions and policies related to the implementation of the SDWA. The Council consists of fifteen members, including a Chairperson, appointed by the Deputy Administrator. Five members represent the general public; five members represent appropriate State and local agencies concerned with water hygiene and public water supply; and five members represent private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply. The SDWA requires that at least two members of the Council represent small, rural public water systems. On December 15 of each year, five members complete their appointment. Therefore, this notice solicits names to fill the five vacancies, with appointed terms ending on December 15, 2006.

Any interested person or organization may nominate qualified individuals for membership. Nominees should be identified by name, occupation, position, address and telephone number. To be considered, all nominations must include a current resume providing the nominee's background, experience and qualifications.

DATES: All nominations must be received by October 15, 2003.

ADDRESSES: Please submit nominations to Brenda P. Johnson, Designated Federal Officer, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (4601), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001.

FOR FURTHER INFORMATION CONTACT: Brenda P. Johnson at the address listed in the **ADDRESSES** section, by telephone at 202/564–3791, or by e-mail at *Johnson.BrendaP@epa.gov.*

SUPPLEMENTARY INFORMATION: Persons selected for membership will receive compensation for travel and a nominal daily compensation while attending meetings. The Council holds two face-to-face meetings each year, generally in the spring and fall. Additionally, members may be asked to serve on one of the Council's workgroups that are formed each year to assist the EPA in addressing specific programmatic issues. These workgroup meetings are held approximately four times a year, typically with two meetings by conference call.

Dated: July 22, 2003.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 03–19008 Filed 7–24–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6642–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 4, 2003 (68 FR 16511).

Draft EISs

ERP No. D–AFS–F65042–WI Rating EC2, Sunken Moose Project, Proposal to Restore and/or Maintain the Red and White Pine Communities, Washurn Ranger District, Chequamegon-Nicolet Forest, Bayfield County, WI.

Summary: EPA expressed environmental concerns relating to adverse impacts to interior forest species, habitat fragmentation and non-native invasive species.

ERP No. D–DOA–K36137–HI Rating EC2, Lahaina Watershed Flood Control Project, To Reduce Flooding and Erosion Problems, U.S. Army COE Section 404 and NPDES Permits, County of Maui, HI.

Summary: EPA expressed environmental concerns regarding the project's impacts on the nearshore marine environment, waters of the U.S., and water quality. In addition, EPA is concerned about the range of alternatives evaluated in the DEIS, and whether future development on adjacent lands have been incorporated into project design and evaluation of impacts.

ERP No. D–FHW–L40217–AK Rating EC2, South Extension of the Coastal Trail Project, Existing Tony Knowles Coastal Trail Extension from Kincaid Park through the Project Area to the Potter Weigh Station, U.S. Army COE Section 10 and 404 Permits Issuance, Municipality of Anchorage, Anchorage, Alaska.

Summary: EPA has environmental concerns with the proposed project, particularly concerning impacts to the aquatic environment. EPA recommends alignment modifications to further avoid and minimize adverse impacts. EPA requests further information regarding the affected environment, stream crossings, design detail for accommodating wildlife passage, siting or location clarifications, and other specifics.

ERP No. D–NOA–E91013–00 Rating EC1, Essential Fish Habitat Components of Amendment 13 to the Northeast Multispecies Fishery Management Plan, Selection of the Best Method of Minimizing Impacts of Groundfish Fishing on Essential Fish Habitats, New England Fishery Management Council, ME, NH, VT, MA, RI, CT, NY, NJ, DE, MD, VA, and NC.

Summary: EPA expressed environmental concern on numbers of traps, wet storage of traps and no tag accountability.

ERP No. D–NOA–G39038–LA Rating LO, Programmatic EIS—The Louisiana Regional Restoration Planning Program, Establishment and Implementation of Natural Resource Trust Mandates, LA.

Summary: EPA had no objection to the selection of the preferred alternative.

ERP No. D–NOA–L91017–00 Rating EO2, Programmatic EIS—Pacific Salmon Fisheries Management Plan, Off the Coasts of Southeast Alaska, Washington, Oregon and California, and the Columbia River Basin, Implementation, Magnuson-Stevens Act, AK, WA, OR, and CA.

Summary: EPA has environmental objections due to uncertainty about the effects of the alternatives on the 26 listed ESUs of salmon. The draft programmatic EIS does not clearly disclose critical information regarding the effect of the alternatives, does not provide identifiable evidence to support its conclusions that all alternatives would not jeopardize ESUs, and does not identify a preferred alternative. EPA recommends that analysis in the final programmatic EIS demonstrate that alternatives would protect and recover the 26 listed species of salmon affected by proposed activities.

ERP No. D–UAF–K11109–AZ Rating LO, Barry M. Goldwater Range (BMGR) Proposed Integrated Natural Resources Management Plan (INRMP), Implementation, Military Lands Withdrawal Act of 1999 (Pub. L. 106–65) and Sike Act (16 U.S.C. 670), Yuma, Pima and Maricopa Counties, AZ.

Summary: EPA expressed a lack of objections but recommended mitigation to protect water quality by restriction on driving recreational vehicles in desert washes.

ERP No. D–UAF–K11110–CA Rating EC2, Los Angeles Air Force Base Land Conveyance, Construction and Development Project, Transfer Portions of Private Development in Exchange for Construction of New Seismically Stable Facilities, Cities of El Sequndo and Hawthorne, Los Angeles County, CA.

Summary: EPA expressed environmental concerns regarding air toxic impacts and recommended additional analysis and mitigation to reduce air pollution.

ERP No. DB–AFS–L65155–00 Rating LO, Northern Spotted Owl Project, Updated information to Amend Selected Portions of the Aquatic Conservation Strategy, (Part of the Northwest Forest Plan), Protect and Restore Watersheds, CA, WA, and OR.

Summary: EPA has no objections to the proposed action. However, the final EIS should consider a more specific statement of project purpose, include additional data on existing conditions and recent Strategy actions in the Plan area, and a prediction of cumulative impacts based on key threshold levels.

Final EISs

ERP No. F–FHW–J40175–UT, Reference Post (RP) 13 Interchange and City Road Project, Construction of New Interchange at RP 13 between I–15 and City Road in Washington City, Funding, Washington County, UT.

Summary: EPA has environmental concerns regarding the lack of alternatives presented in the FEIS to meet the purpose and need of accommodating planned future growth. EPA continues to believe that, in this case, one build alternative is not sufficient for an adequate EIS.

ERP No. F–NPS–J65365–00, Glen Canyon National Area, Personal Watercraft Rule Making, Implementation, Lake Powell, Coconino County, AZ and Garfield, Kane, San Juan and Wayne Counties, UT.

Summary: EPA continued to express environmental concerns about potential violations of State water quality standards and suggested a compliance strategy. While EPA commends the NPS for providing an improved preferred alternative there were other reasonable alternatives that should have been analyzed.

Dated: July 22, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–19010 Filed 7–24–03; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6642–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed July 14, 2003 Through July 18, 2003

Pursuant to 40 CFR 1506.9.

EIS No. 030330, Draft EIS, AFS, CO, Copper Mountain Resort Trails and Facilities Improvements, Implementation, Special Use Permit, White River National Forest, Dillon Ranger District, Summit County, CO, Comment Period Ends: September 8, 2003, Contact: Michael Liu (970) 468–5400.

EIS No. 030331, Final EIS, AFS, CA, Blue Fire Forest Recovery Project, Proposal to Move the Existing Condition Caused by the Blue Fire of 2001 Towards the Desired Condition, Modoc National Forest, Warner Mountain Ranger District, Lassen and Modoc Counties, Wait Period Ends: August 25, 2003, Contact: Edith Asrow (530) 279–6116. This document is available on the Internet at: *http://www.fs.fed.us/r5/modoc/publications/Bluefeis.shtml.*

EIS No. 030332, Final EIS, AFS, CO, Trout-West Hazardous Fuels Reduction Project, Proposed Action to Reduce Fuels, Pike-San Isabel National Forest, Trout and West Creek Watersheds, Teller, El Paso and Douglas Counties, CO, Wait Period Ends: August 25, 2003, Contact: Rochelle Desser (541) 592–4075. This document is available on the Internet at: *http://www.fs.fed.us/r2/psicc/tpl/twest.htm.*

EIS No. 030333, Draft EIS, IBR, CA, Battle Creek Salmon and Steelhead Restoration Project, Restoring Habitat in Battle Creek and Tributaries, License Amendment Issuance, Implementation, Tehama and Shasta Counties, CA, Comment Period Ends: September 22, 2003, Contact: Mary Marshall (916) 978–5248.

EIS No. 030334, Final EIS, AFS, OR, Metolius Basin Forest Management Project, Fuel Reduction and Forest Health Management Activities, Implementation, Deschutes National Forest, Sisters Ranger District, Jefferson County, OR, Wait Period Ends: August 25, 2003, Contact: Kris Martinson (541) 549–7730.

EIS No. 030335, Draft EIS, AFS, WA, Gotchen Risk Reduction and Restoration Project, Implementation, Mount Adams Ranger District, Gifford Pinchot National Forest, Skamania and Yakima Counties, WA, Comment Period Ends: September 8, 2003, Contact: Julie Knutson (509) 395–3410.

EIS No. 030336, Final EIS, AFS, MT, Management Area 11 Snowmobile Use Areas on the Seeley Lake Ranger District, Implementation, Lola National Forest, Missoula and Powell Counties, MT, Wait Period Ends: August 25, 2003, Contact: Timothy Love (406) 677–2233.

EIS No. 030337, Draft EIS, AFS, OR, Mt. Ashland Ski Area Expansion, Site Specific Project, Maintenance and Enhancements of Environmental Resources, Implementation, Special Use Permit, Ashland Ranger District, Rogue River National Forest and Scott River Ranger District, Klamath National Forest, Jackson County, OR, Comment Period Ends: September 23, 2003, Contact: John Schuyler (541) 482–3333.

EIS No. 030338, Draft EIS, FRC, OR, Bull Run Hydroelectric Project (FERC No.477–024), Proposal to Decommission Bull Run Project, and Remove Facilities Project, Including Marmot Dam, Little Sandy Diversion Dam and Roslyn Lake, Application to Surrender its License), Sandy, Little Sandy, Bull Run Rivers, Town of Sandy, Clackamas County, MS, Comment Period Ends: September 8, 2003, Contact: Alan Mitchnick (202) 502–6074. This document is available on the Internet at: *http://www.ferc.gov.*

EIS No. 030339, Draft Supplement, FTA, NJ, Newark-Elizabeth Rail Link-Elizabeth Segment to Document the Social, Economic and Transportation Impact of the 5.8 mile Light Rail Transit (LRT) Alignment, Minimal Operable Segment 3 (MOS–3), City of Elizabeth, Union County, NJ, Comment Period Ends: September 8, 2003, Contact: Irwin B. Kessman (212) 668–2170.

EIS No. 030340, Draft Supplement, SCS, MS, Town Creek Watershed Project, To Address the Impact of Installing the Floodwater Retarding Structures (FWRS) No. 1, 5, 8, and 59 and to Delete FWRS No. 10A, Lee, Pontotoc, Prentiss, and Union Counties, MS, Comment Period Ends: September 8, 2003, Contact: Homer L. Wilkes (601) 965–5205.

Amended Notices

EIS No. 030313, Draft EIS, NPS, NY, NJ, Ellis Island and Statue of Liberty National Monument Development Concept Plan, Long-Term Rehabilitation and Reuse for Historic Buildings, Implementation, New York Harbor, NY and NJ, Comment Period Ends: September 12, 2003, Contact: Cynthia Garrett (212) 363–3206 ext. 100. Revision of FR Notice Published on 7/11/2003: Correction to Contact Person Name and Telephone Number.

EIS No. 030327, Draft EIS, FRC, CT, Housatonic River Hydroelectric Project, Application to Relicense Existing Licenses for Housatonic Project No. 2576–022 and the Falls Village Project No. 2597–019, Housatonic River Basin, Fairfield, New Haven and Litchfield Counties, CT, Comment Period Ends: September 16, 2003, Contact: Jack Duckworth (202) 502–6392. Revision of FR Notice Published on 7/18/2003: CEQ Comment Period Ending 9/2/2003 has been Corrected to 9/16/2003.

Dated: July 22, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–19009 Filed 7–24–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0231; FRL–7315–6]

Notice of Receipt of Requests to Voluntarily Cancel Fenridazone Potassium Pesticide Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request by a registrant to voluntarily cancel a certain pesticide registration.

DATES: Unless the Agency receives any substantive comments within the comment period that would merit its further review of this request, or the request has been withdrawn by August 25, 2003, EPA intends to issue an order canceling the registration at the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Demson Fuller, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8062; e-mail address: *fuller.demson@epamail.epa..gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0231. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of a request from the registrant to cancel its EPA Registration for the pesticide product containing the active ingredient, fenridazone potassium. The technical registrant, Monsanto Company submitted a letter to the Agency on May 20, 2003, requesting a voluntary cancellation of their only registration for the product containing fenridazone potassium. This registration is listed in the following Table 1.

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
524–453	Hybrex 2LC Chemical Hybridizing Agent	Fenridazone potassium

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary termination of any minor agricultural use before granting the request, unless: (1) The registrants request a waiver of the comment period, or (2) the Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment. The registrant has requested that EPA waive the 180–day comment period. EPA is granting the registrants' request to waive the 180–day comment period. Therefore, EPA will provide a 30–day comment period on the proposed requests. EPA anticipates granting the cancellation request shortly after the end of the 30–day comment period for this notice

unless the Agency receives substantive comments within the comment period that would merit further review of the request. The registration for which cancellation was requested is identified in Table 1. of this unit.

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, orders will be issued canceling this registration. Users of this pesticide or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 30–day period.

Table 2 of this unit includes the name and address of record for the registrant of the product in Table 1 of this unit.

TABLE 2.—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
524	Monsanto Company 600 13th Street, NW Suite 600 Washington, DC 20005

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before August 25, 2003. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The order effecting this requested cancellation will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a Data Call-In. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a Special Review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

In the letter the Agency received from the registrant on May 20, 2003, the registrant stated that the Hybrex 2LC Chemical Hybridizing product has not been sold since 1989 nor has the chemical ever been distributed. Therefore, no products should be in the channels of trade.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 18, 2003.

Richard P. Keigwin, Jr.,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 03–19007 Filed 7–24–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket 98–67; DA 03–2332]

Notice of Certification of State Telecommunications Relay Service (TRS) Programs

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The purpose of this document is to notify state Telecommunications Relay Service (TRS) programs that certification of their program has been granted through July 26, 2008. Notice is hereby given that the applications for certification of state Telecommunications Relay Services (TRS) programs of the states listed below have been granted, subject to the condition described below, pursuant to Title IV of the Americans with Disabilities Act (ADA), 47 U.S.C. 225(f)(2), and section 64.605(b) of the Commission's rules, 47 CFR 64.605(b). The Commission will provide further Public Notice of the certification of the remaining applications for certification once final review of those states' applications has been completed. On the basis of the state applications, the Commission has determined that: the TRS program of the states meet or exceed all operational, technical, and functional minimum standards contained in section 64.604 of the Commission's rules, 47 CFR 64.604; the TRS programs of the listed states make available adequate procedures and remedies for enforcing the requirements of the state program; and the TRS programs of the listed states in no way conflict with federal law.

DATES: This certification shall remain in effect for a five year period, beginning July 26, 2003, and ending July 25, 2008, pursuant to 47 CFR 64.605(c).

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Erica Myers, (202) 418–2429 (voice), (202) 418–0464 (TTY), or e-mail *Erica.Myers@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, DA 03–2332, CC Docket No. CC 98–67, released July 16, 2003. Copies of applications for certification are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The applications for certification are also available on the Commission's web site at *http://www.fcc.gov/cgb/dro/trs_by_state.html*. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call Consumer & Governmental Affairs Bureau, at (202) 418–0531 (voice), (202) 418–7365 (TTY). This *Public Notice* can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cgb/dro*.

Synopsis: The Commission also has determined that, where applicable, the intrastate funding mechanisms of the listed states are labeled in a manner that promotes national understanding of TRS and does not offend the public, consistent with section 64.605(d) of the Commission's rules, 47 CFR 64.605(d).

Because the Commission may adopt changes to the rules governing relay programs, including state relay programs, the certification granted herein is conditioned on a demonstration of compliance with the new rules adopted and any additional new rules that are adopted by the Commission. The Commission will provide guidance to the states on demonstrating compliance with such rule changes.

This certification, as conditioned herein, shall remain in effect for a five year period, beginning July 26, 2003, and ending July 25, 2008, pursuant to 47 CFR 64.605(c). One year prior to the expiration of this certification, July 25, 2007, the states may apply for renewal of their TRS program certification by filing demonstration in accordance with the Commission's rules, pursuant to 47 CFR sections 64.605(a) and (b).

Second Group of States Approved for Certification

File No: TRS–51–02, Georgia Public Utilities Commission, State of Georgia
File No: TRS–07–02, Kansas Corporation Commission, State of Kansas
File No: TRS–45–02, New Jersey Board of Utilities, State of New Jersey
File No: TRS–11–02, South Carolina Budget & Control Board, State of South Carolina
File No: TRS–22–02, Hawaii Public Utilities Commission, State of Hawaii
File No: TRS–34–02, Department of Public Utilities, State of Massachusetts
File No: TRS–59–02, Division of Public Utilities and Carriers, State of Rhode Island

Federal Communications Commission.

Margaret M. Egler,

Deputy Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 03–18972 Filed 7–24–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 18, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. *Total Bancshares, Inc.*, Miami, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of TotalBank, Miami, Florida.

Board of Governors of the Federal Reserve System, July 21, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–18983 Filed 7–24–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Research on the Impact of Law on Public Health, Program Announcement 03049

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Research on the Impact of Law on Public Health, Program Announcement 03049.

Times and Dates: 1 p.m.–1:30 p.m., August 11, 2003 (Open). 1:30 p.m.–5 p.m., August 11, 2003 (Closed). 8:30 a.m.–4 p.m., August 12, 2003 (Closed).

Place: Sheraton Midtown Colony Square Hotel, 188 14th Street at Peachtree, Atlanta, GA 30361, Telephone 404.892.6000.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Pub. L. 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 03049.

FOR FURTHER INFORMATION CONTACT: Joan F. Karr, Ph.D., Scientific Review Administrator, Public Health Practice Program Office, CDC, 4770 Buford Highway, MS–K38, Atlanta, GA 30341, Telephone 770.488.2597.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 21, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–18955 Filed 7–24–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality (AHRQ)

Statement of Organization, Functions, and Delegations of Authority

Part E, Chapter E (Agency for Healthcare Research and Quality), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (61 FR 15955–58, April 10, 1996, most recently amended at 66 FR 44149–50 on August 22, 2001) is further amended to reflect recent organizational changes. The specific amendments are as follows:

Under *Section E–10, Organization,* delete A. through K. and replace with the following:

A. Office of the Director.
B. Center for Delivery, Organization, and Markets.
C. Center for Financing, Access, and Cost Trends.
D. Center for Outcomes and Evidence.
E. Center for Primary Care, Prevention, and Clinical Partnerships.
F. Center for Quality Improvement and Patient Safety.
G. Office of Communications and Knowledge Transfer.
H. Office of Extramural Research, Education, and Priority Populations.
I. Office of Performance, Accountability, Resources and Technology.

Under *Section E–20. Functions,* delete all titles and statements and replace with the following:

Office of the Director (EA). Directs the activities of the Agency for Healthcare Research and Quality (AHRQ) to ensure the achievement of strategic objectives. Specifically: (1) Provides overall leadership for the Agency; (2) maintains the scientific integrity and objectivity of the Agency's research; (3) directs and coordinates the Agency's research, research training programs, and dissemination activities; (4) ensures that Agency programs support Administration goals and objectives; (5) represents the Agency within the Department, at the highest level of Government, and to the public; (6) coordinates the legislative activities of the Agency, the review and clearance of Department and other Federal policies and regulations, and reports to Congress; (7) controls the flow of correspondence and official documents entering and leaving the Agency; (8) manages the National Advisory Council; and (9) supports the AHRQ Ombuds.

Center for Financing, Access, and Cost Trends (EC). Conducts, supports and manages studies of the cost and financing of health care, the access to health care services and related trends. Develops data sets to support policy and behavioral research and analyses. These studies and data development activities are designed to provide health care leaders and policymakers with the information and tools they need to improve decisions on health care financing, access, coverage and cost. Specifically: (1) Conducts, supports and manages research and analysis of trends and patterns of health expenditures, public and private insurance coverage, use of personal health services, health status and access to care for the general population and subgroups of policy interest; (2) conducts and manages health sector surveys such as medical expenditure surveys; surveys of medical care providers, employers and other sources of insurance coverage and health benefits; and surveys of the use, cost, and financing of care for special populations; (3) collects, reorganizes, and analyzes administrative databases related to health care use, health status, cost and financing; (4) provides modeling and projections of health care use, status, expenditures, and payments for policy research; (5) conducts and supports statistical and methodological research on survey design, sampling and estimation techniques, and data quality; (6) conducts and supports surveys and research of institutional and community based long term care; (7) evaluates administrative data sets for intramural and extramural research including policy and methodological studies; and (8) builds research and data collection partnerships with the health care sector, employers, and foundations, and represents the Agency in meetings with Federal agencies and experts on health policy issues especially issues related to health expenditures, access, and insurance, Federal and State health care programs.

Division of Modeling and Simulation (ECB). Provides research, models, and data bases to support microsimulation analyses of household impacts and trends in health expenditures from health policies embodied in current law and from health care policies embodied in generic versions of proposed health care reforms. Specifically: (1) Projects the National Medical Expenditure Survey and the Medical Expenditure Panel Survey household expenditure data to future years; (2) aligns the projected household expenditure data to the Health Care Financing Administration's National Health Expenditures by type of health service and payment source; (3) uses a variety of outside data sources to project, for example, the household population, Medicaid enrollees, household income, and private and public health insurance benefits; (4) develops and updates the Agency's MEDSIM microsimulation model's software to estimate current household income and payroll taxes, current private and public insurance coverage and benefits, and the costs and consequences of generic versions of proposed health care reforms; (5) provides the latest versions of the projected expenditure data bases and associated research products on the Agency home page; (6) uses MEDSIM and its data bases to conduct and publish research on current and proposed health policies and on trends in household health care expenditures; and (7) provides cost and distributional MEDSIM estimates of specific legislative health care reform proposals to provide predecisional guidance to requesting federal officials.

Division of Social and Economic Research (ECC). Provides basic descriptive and behavioral analyses of the population's access to, use of expenditures and sources of payment for health care; the availability and costs of private health insurance in the employment-related and non-group markets; the population enrolled in public health insurance coverage and those without health care coverage; and the role of health status in health care use, expenditures, and household decision-making, and in health insurance and employment choices. Specifically: (1) Provides analytical input to the design and development of primary data collection efforts and research-related data bases; (2) develops a research agenda related to health care use, expenditures, access to care, sources of payment, health insurance, and health status; (3) conducts applied research in these areas by applying substantive research tools from the fields of health services research, health economics, medical sociology, public policy analysis, demography, statistics and econometrics; (4) disseminates research findings through presentations at conferences, publications in peer reviewer journals, book chapters, and conference volumes; (5) provides substantive technical expertise on health care use, expenditures, and

insurance coverage to other units within AHRQ, other governmental units, private sector research institutions, and by serving as technical reviewers and advisors to scholarly journals, technical advisory committees, and private and public sector task forces.

Division of Statistical Research and Methods (ECD). Plans and conducts studies on statistical methods and the use of statistics in survey design in health services research. These studies provide the bases for policy research and analysis and for technical assistance provided to other Centers and Offices within the Agency. Specifically: (1) Identifies, designs, conducts, and implements statistical research and evaluation studies in accordance with the Agency's research priorities; (2) oversees the statistical design of the National Medical Expenditure Panel Survey (MEPS); and (3) conducts research in the areas of survey design, sampling, estimation, imputation, the analysis of complex survey data, and the reduction of sources of sampling and nonsampling errors in the design of national health care surveys.

Division of Survey Operations (ECE). Plans, implements and monitors the fielding of CFACT surveys. Specifically: (1) Develops and disseminates public use data files which including editing, imputation and estimation tasks; (2) assists in the development of data reports which are of particular interest to the Department and other Federal, State and local government agencies as well as the larger research community; and (3) monitors the development of Computer Assisted Personal Interviewing (CAPI) data collection instruments.

Center for Delivery, Organization, and Markets (EH). Provides a locus of leadership and expertise for advances in health care delivery, organization, and markets through research. Specifically: (1) Conducts, supports, and manages ' studies designed to give health care leaders and policy makers the information and tools they need to improve health system performance; (2) generates evidence on how health care delivery and organizational dynamics affect performance through qualitative and quantitative research, delivery-based research networks, data and tool development and other state, federal, and private partnerships; (3) examines the impact of delivery and organizational attributes and changes—including payer mix, delivery sites, practice patterns, structure, workforce, leadership, governance and culture—across acute, community-based, and long-term-care settings; (4) studies how market forces and reactions to them—such as payment methods financial and non-financial incentives, safety net funding, employer purchasing strategies, quality measurement and reporting, and regulations—influence performance; and (5) represents the Agency in meetings with Federal agencies and experts on health policy issues especially those related to advancing evidence-based decision making in organizations and the public policy arena.

Center for Outcomes and Evidence (EJ). Conducts and supports research and assessment of health care practices, technologies, processes, and systems. Specifically: (1) Conducts and supports research, assessments, and demonstrations on safety, quality, effectiveness, cost-effectiveness, and other relevant attributes of health care practices, technologies, processes and systems; (2) facilitates and coordinates the development of infrastructures for collection, analysis, and synthesis of evidence and data on the safety, effectiveness and quality of health care practices, technologies, processes, and systems; (3) serves as a center of excellence for methods and measurement development for the conduct and analysis of outcomes research, cost effectiveness analysis, and evidence-based systematic reviews and technology assessments; (4) serves as a source of evidence based information about therapeutics, technologies, and healthcare practices for clinical and policy decision makers; (5) directs and supports research on and implementation of the appropriate use of therapeutics and medical technologies, including preventing overuse, under-use and adverse effects; (6) provides an array of tools and products to promote and facilitate evidence-based clinical practices and health care decision making; (7) fosters partnerships with health care provides, insurers, employers and consumers to bring about sustainable systemic change to implement evidence-based practices and improve patient outcomes and quality of care; and (8) represents the Agency in meetings with experts and organizations in the areas of outcomes research and evidence-based medicine and organizes conferences on these topics.

Center for Primary Care, Prevention, and Clinical Partnerships (EK). Expands the knowledge base for clinical providers and patients and to assure the translation of new knowledge and systems improvement into primary care practices. Supports and conducts research to improve the access, effectiveness, and quality of primary and preventive health care services in the United States. Specifically: (1) Supports primary care practice-based research networks (PBRNs) in order to investigate questions related to community-based practice and to improve the quality of primary and preventive care; (2) responsible for the rigorous evaluation of clinical research assessing the merits of preventive measures, including screening tests, counseling, immunizations, and chemoprevention through the United States Preventive Services Task Force; (3) serves as the Agency's locus for the use of information technology to improve health care and facilitates the evaluation and diffusion of effective information technology tools into clinical practice; and (4) supports research and demonstrations that improve healthcare system preparedness for bioterrorism and other public health threats, with an emphasis on the role of front-line clinical providers.

Center for Quality Improvement and Patient Safety (EL). Works to improve the quality and safety of our health care system through research an implementation of evidence. Specifically: (1) Conducts and supports research, demonstrations, and evaluations of the quality of health care and patient safety across our health care systems and, specifically, for priority populations; (2) conducts and supports research on the measurement of health care quality and promotes the use of these measures; (3) conducts and supports research on effective ways to improve the quality of health care and participates in the dissemination of this knowledge; (4) evaluates methods for identifying, preventing and ameliorating medical errors and enhancing patient safety; (5) designs, conducts, and supports surveys to assess the quality of and patients' experiences with health care services and systems; (6) develops and disseminates annual reports on health care quality, disparities and patient safety; (7) provides technical assistance and gathers information on the use of quality measures, consumer and patient information, and reporting on patient safety and the resulting effects; (8) supports dissemination and communication activities to improve quality of care and patient safety; (9) partners with stake holders to implement research findings and evidence related to quality measurement, quality improvement and patient safety; and (10) represents the Agency in meetings with domestic and international experts and organizations concerned with measuring and

evaluating the quality of care and enhancing patient safety.

Office of Communications and Knowledge Transfer (EN). Designs, develops, implements, and manages programs for disseminating the results of Agency activities with the goal of changing audience behavior. Specifically: (1) Communicates the results and significance of health services research and other AHRQ initiatives to the health care industry, health care providers, consumers and patients, policy makers, researchers, and the media with particular emphasis on communicating AHRQ initiatives in the ways each of these constituencies are most interested and are likely to lead to behavior change; (2) manages the editing, publication, and information distribution processes of the Agency, including Freedom of Information Act administration; (3) provides the administrative support for reference services and the distribution of technical information to Agency staff; (4) manages the public affairs activities of the Agency. Agency clearinghouse for responding to requests for information and technical assistance, and a program for consumer information about health care research findings; (5) directs a user liaison program to provide health care research and policy findings to Federal, State and local public officials, and other audiences as appropriate; (6) evaluates the effectiveness of Agency dissemination strategies and implements changes indicated by such evaluations; and (7) represents the Agency in meetings with Department representatives on press releases, media events, and publication clearance.

Division of Print and Electronic Publishing (EBB). Responsible for disseminating AHRQ's many and varied informational products.Ensures that findings and information from conducted or funded by AHRQ are created in forms useful to intended recipients. Specifically: (1) Produces information products in a variety of print and electronic formats that are scientifically bound and appropriately targeted to various audiences; (2) edits and controls the review and publication of all AHRQ documents; (3) ensures proper clearance procedures consistent the Departmental rules; (4) provides interfaces with the Government Printing Office and National Technical Information Service; (5) organizes and conducts AHRQ's exhibits program and provides conference support services to program staff; (6) provides and coordinates graphics, printing and visual aids production for AHRQ; (7) analyzes AHRQ audiences and information needs, and recommends information products that meet AHRQ's scientific information and dissemination goals; and (8) works with and assists the National Library of Medicine in efforts to improve the availability of health services information to the public.

Division of Public Affairs (ENC). Responsible for planning and carrying out the public affairs activities the Agency. Specifically: (1) Handles AHRQ media relations; (2) develops health care research information dissemination partnerships with other Federal agencies, provider groups, the continuing education and continuing medical education communities, and the private sector; (3) ensures that findings and information from research conducted or funded by AHRQ are made promptly available to the public and private sectors; (4) analyzes AHRQ audiences and information needs and recommends new outreach/dissemination programs and information products to meet AHRQ's scientific information and dissemination goals and needs of AHRQ target audiences; (5) recommends the most effective and efficient approaches to information dissemination; (6) develops and evaluates the effectiveness of Agency dissemination strategies; (7) manages AHRQ's publication clearinghouse; (8) responds to public inquires about AHRQ and its research; (9) makes final reports of Agency-supported research available to the public through the National Technical Information Service; and (10) carries out AHRQ's Freedom of Information Act activities.

Division of User Liaison and Research Translation (END). Provides direction and coordination of the Agency's program to define the issues, problems, and information needs of selected users of health services research, especially public and private sector policymakers, and to disseminate to them relevant research findings, program data, and descriptive information related to the organization, planning, management, financing, delivery, evaluation, and outcomes of health services at the Federal, state, and local level. Specifically: (1) Develops syntheses of research findings focused on particular issues dealing with policy concerns and operational problems; (2) plans and conducts workshops and seminars to provide research findings and related information to policymakers and other consumers of health services research to allow them to make better informed health care policy decisions; (3) maintains liaison with State and local government organizations, public policy organizations, and with the research community and receives and appropriately transmits information which may impact the Agency's research plan and priority setting process; (4) formulates, in collaboration with Agency staff, appropriate policies and activities to develop effective linkages with potential users of health services research; (5) communicates information regarding user research needs to the Agency Director and appropriate Agency staff to ensure user needs are adequately addressed in current and planned Agency project; (6) develops and implements mechanisms to identify and contact potential users of research findings and related information; (7) plans meetings and coordinates contacts between Agency staff and individual users and representatives of users' groups and organizations; (8) provides assistance and advice to other Federal agencies and organizations in evaluating the utility of Federally-sponsored research to State and local government officials; and (9) provides technical assistance for the design and implementation of research projects undertaken by State and local governments.

Office of Extramural Research, Education, and Priority Populations (EP). Directs the scientific review process for grants and Small Business Innovation Research (SBIR) contracts, manages Agency research training programs, evaluates the scientific contribution of proposed and on-going research, demonstrations, and evaluations, and supports and conducts health services research on priority populations. Specifically: (1) Directs the process for selecting, reviewing, and funding grants and reviewing SBIR contracts for scientific merit and program relevance; (2) assigns grant applications to Centers and Offices for administrative action; (3) manages the process for making funding decisions for grants; (4) directs Agency research training and career development programs and implementation of the National Research Service Award authority; (5) manages the committee management and scientific integrity processes for the intramural and extramural programs of the Agency; (6) develops and coordinates clearance of peer review regulations, as required, policy notices and program announcements; (7) facilitates Agency-wide communication and coordination regarding extramural policy, planning, and analysis; (8) represents the Agency in meetings with experts and organizations on issues related to the administration of the Agency's scientific programs; (9) advises the Agency leadership on matters pertaining to the health needs and health care of priority populations, including scientific, ethical, legal and policy issues; (10) prepares the agenda for priority populations research—both extramural and intramural—through the Agency's strategic planning process, needs assessments, and user input; (11) serves as an expert resource within the Agency on priority populations to assist program development and participates in the development of policies and programs to implement the Agency's priority populations agenda; (12) fosters new knowledge, tool, talent, and strategy development related to priority populations by recommending, leading, coordinating and conducting new initiatives, including intramural initiatives; (13) works in partnership with other Centers and Offices to design and implement efforts to translate, disseminate, and implement evidence-based initiatives and programs to improve health care for priority populations; (14) evaluates the degree to which the Agency is meeting its goals for priority populations; (15) provides national expertise to Agency staff and Agency partners on priority populations issues, establishing and maintaining liaison with other knowledgeable or concerned agencies, governments and organizations; (16) establishes new contacts and cultivates present ones with external groups (a) To spur increased awareness and emphasis on priority populations within the health services research, health care policy, and health care delivery communities, (b) to partner with organizations and agencies to expand research on priority populations, thereby securing additional resources for these activities, and (c) to build research and implementation capacity on priority populations; and (17) enhances the visibility of the Agency in priority populations through frequent presence and delivery of speeches and scientific presentations of meetings of relevance to the field and to AHRQ's mission.

Division of Research Education (EPB). Develops, implements, and evaluates a comprehensive extramural health services research education program which supports the career development of predoctoral and postdoctoral students. Specifically: (1) Manages the AHRQ research education/training portfolio, which includes National Research Service Award (NRSA) institutional training grants, NRSA individual postdoctoral training grants, dissertation training grants, and incentive innovation awards; (2) establishes systems/mechanisms to monitor the external health care environment for research needs of potential private and public sector employers and to anticipate special training needs; (3) implements new programs and support mechanisms, and modifies existing ones to meet changing needs; (4) develops and manages activities intended to evaluate the effects of past investments in health services research training by examining career patterns, publication records, and research productivity of persons supported by AHRQ; (5) promotes visibility for the field of health services research and the availability of training support through a variety of mechanisms; (6) keeps abreast of Department policies and procedures which pertain to extramural research education training, and assures compliance at the AHRQ level; and (7) works with AHRQ leadership to sure communication and collaboration between ORREP and program centers with an interest in research education.

Division of Scientific Review (EPC). Plans and carries out the scientific review for all AHRQ extramural research grants and SBIR proposals. Specifically: (1) Assures compliance with organizational, regulatory, and policy aspects of peer review; (2) determines review requirements for standing study sections and special emphasis panels; (3) anticipates needs/changes regarding the charters of standing study sections, establishes and implements procedures for chartering study sections, filling study section vacancies and appointing new members and chairpersons, orient new reviewers to peer review processes; (4) advises Agency staff on peer review processes and grant solicitations; (5) keeps abreast of departmental, especially NIH, policies and procedures regarding peer review to assure compatibility of AHRQ processes; (6) interacts with the health services research community and keeps abreast of emergent research developments as they relate to review planning; (7) establishes and maintains continuous quality monitoring and improvement activities; and (8) coordinates funding meetings and relevant follow-up activities.

Division of Priority Populations Research (EPD). Coordinates, supports, manages and conducts health services research on priority populations. Specifically: (1) Advises the Agency leadership on matters pertaining to the health needs and health care of priority populations, including scientific, ethical, legal and policy issues; (2) prepares the agenda for priority populations research through the Agency's strategic planning process, needs assessment, and user input; (3) serves as an expert resource within the Agency on priority populations to assist program developments and participates in the development of policies and programs to implement the Agency's priority populations agenda; (4) fosters new knowledge, tool, and talent development related to priority populations by recommending, leading, coordinating and conducting new initiatives; (5) assists in the translation, dissemination, and application of Agency initiatives and programs to improve health care for priority populations; (6) evaluates the degree to which the Agency is meeting its goals for priority populations research; (7) provides national expertise to Agency staff and Agency partners on priority populations issues, establishing and maintaining liaison with other knowledgeable or concerned agencies, governments and organizations; (8) establishes new contacts and cultivates present ones with external groups (a) To spur increased awareness and emphasis on priority populations within the health services research community, (b) to partner with organizations and agencies to expand research on priority populations, thereby securing additional resources for the these activities, and (c) build the research capacity on priority populations; and (9) enhances the visibility of the Agency in priority populations research.

Office of Performance, Accountability, Resources, and Technology (EQ). Directs and coordinates Agency-wide program planning and evaluation activities and administrative operations. Specifically: (1) Ensures program planning is integrated with budget formulation and performance and serves as the Agency's focal point for Government Performance and Results Act activities; (2) plans and directs financial management activities including budget formulation, presentation, and execution functions and supports linking of the budget and planning processes; (3) provides human resource consultation services regarding all aspects of personnel management, workforce planning and restructuring, and the allocation and utilization of personnel resources; (4) provides organizational and management analysis, develops operating policies and procedures, and implements and carries out Agency management programs and policies; (5) coordinates the Agency's Federal Managers' Financial Integrity Act, competitive sourcing and FAIR Act, and Privacy Act activities; (6) conducts all business management aspects of the review, negotiation, award, and administration

of Agency research grants, cooperative agreements, and contracts; (7) manages the analysis, selection, implementation, and operation of all aspects of the Agency's information technology infrastructure and telecommunication systems; (8) provides other Agency support services including the acquisition, management, and maintenance of supplies, equipment, and space.

These changes are effective upon date of signature.

Dated: July 8, 2003.

Carolyn M. Clancy,

Director.

[FR Doc. 03–18911 Filed 7–24–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04012]

HIV Prevention Projects; Notice of Availability of Funds Amendment

A notice announcing the availability of fiscal year (FY) 2004 funds for cooperative agreements for HIV prevention projects was published in the **Federal Register** July 10, 2003, Volume 68, Number 132, pages 41138–41147. The notice is amended as follows:

On page 41140, first column, Section "F. Application Content," first paragraph, insert the following, "Beginning October 1, 2003, applicants will be required to have a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. Proactively obtaining a DUNS number at the current time will facilitate the receipt and acceptance of applications after September 2003. To obtain a DUNS number, access the following Web site: *www.dunandbradstreet.com* or call 1–866–705–5711.

Dated: July 21, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–18954 Filed 7–24–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Research To Improve Smoke Alarm Maintenance and Function, Program Announcement 03100; Correction

Summary: This notice was published in the **Federal Register** on July 11, 2003, Volume 68, Number 133, Page 41374. The meeting date, time, and location have been revised.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Research to Improve Smoke Alarm Maintenance and Function, Program Announcement 03100.

Action: The meeting times and dates have been revised as follows:

Times and Dates: 10 a.m.–10:15 a.m., July 28, 2003 (Open); 10:15 a.m.–4 p.m., July 28, 2003 (Closed).

Place: Teleconference Number 1–800–988–9352 passcode Unintentional for the Open portion of the meeting.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Note: Due to administrative delays, this corrected **Federal Register** Notice is being published less than 15 days before the date of the meeting.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 03100.

Contact Person for More Information: Jean Langlois, Sc.D., Epidemiologist, Division of Injury and Disability Outcomes and Programs, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway, NE., Atlanta, GA 30341; telephone 770.488.1478.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 22, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–19054 Filed 7–23–03; 10:54 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3124–WN]

Medicare Program; Withdrawal of Medicare Coverage of Multiple-Seizure Electroconvulsive Therapy, Electrodiagnostic Sensory Nerve Conduction Threshold Testing, and Noncontact Normothermic Wound Therapy

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces our decisions previously set forth in program instructions to withdraw Medicare coverage for multiple-seizure electroconvulsive therapy (sometimes referred to as multiple electroconvulsive therapy), electrodiagnostic sensory nerve conduction threshold testing, and noncontact normothermic wound therapy.

DATES: This notice provides **Federal Register** confirmation of the coverage withdrawals previously published as program instructions effective April 1, 2003, for multiple-seizure electroconvulsive therapy, October 1, 2002, for electrodiagnostic sensory nerve conduction threshold testing, and July 1, 2002, for noncontact normothermic wound therapy.

FOR FURTHER INFORMATION CONTACT: Anthony Norris (410–786–8022) for multiple-seizure electroconvulsive therapy. Lorrie Ballantine (410–786–7543) for electrodiagnostic sensory nerve conduction threshold testing and noncontact normothermic wound therapy.

SUPPLEMENTARY INFORMATION: On April 27, 1999, we published a notice in the **Federal Register** (64 FR 22619) that established the procedures used for making national coverage determinations (NCDs). The April 27, 1999 notice also described the procedures we used to implement NCDs. In the notice we stated that if we chose to "withdraw or reduce coverage for a service," we would publish the decision as a general notice in the **Federal Register** (64 FR 22624).

Multiple-seizure electroconvulsive therapy (MECT), sensory nerve conduction threshold testing (sNCT), and noncontact normothermic wound therapy (NNWT) did not have NCDs governing Medicare coverage prior to the effective dates noted above. Therefore, coverage for each of these services was at the discretion of the local Medicare contractor.

This notices restates our previous decisions, announced in program instructions, to withdraw coverage nationally for multiple-seizure electroconvulsive therapy (CR 2499, TR AB–03–003, 01/10/03), electrodiagnostic sensory nerve conduction threshold testing (CR 2153, TR AB–02–066, 05/02/02), and noncontact normothermic wound therapy (CR 2027, TR AB–02–025, 02/15/02). Medicare has not covered multiple-seizure electroconvulsive therapy, electrodiagnostic sensory nerve conduction threshold testing, and noncontact normothermic wound therapy as of the effective dates noted above.

Multiple-Seizure Electroconvulsive Therapy (MECT)

We have examined the medical and scientific evidence as well as the additional information obtained as a result of our own investigation. We have determined that the available evidence is adequate to conclude that MECT may pose additional safety risks over conventional electroconvulsive therapy (ECT) for patients with affective disorders or other psychiatric disorders without a balancing clinical benefit.

We have also found that the available evidence, limited to case reports, is not adequate to conclude that non-routine use of MECT is warranted for medical conditions such as neuroleptic malignant syndrome and intractable seizures that do not respond to other therapies.

Therefore, MECT (including the practice of routinely initiating treatment with double-seizure ECT) is considered not reasonable and necessary for the treatment of psychiatric and non-psychiatric conditions in the Medicare population.

Sensory Nerve Conduction Threshold Testing (sNCT)

The available scientific evidence is not adequate to demonstrate the accuracy of sNCT or the accuracy of sNCT as compared to nerve conduction studies (NCS). Unlike NCS, sNCT does not assess the integrity of motor nerves, which is important in evaluating some patient populations, such as diabetics. In addition, it is not evident that sNCT offers any diagnostic advantages over a history and physical examination in detecting the presence of a neuropathy. There are also no clinical studies that we identified that demonstrate that the use of sNCT leads to changes in patient management in a particular Medicare subpopulation. As stated in 42 CFR 410.32, a diagnostic test is not reasonable and necessary unless its results are used by the treating physician (who also orders the test) in the management of the beneficiary's specific medical problem.

In our discussions with experts, we were also unable to identify a subpopulation with whom the results of sNCT would alter medical care. We conclude that the scientific and medical literature does not demonstrate that the use of sNCT to diagnose sensory neuropathies in Medicare beneficiaries is reasonable and necessary.

Noncontact Normothermic Wound Therapy (NNWT)

The medical literature does not support a finding that NNWT heals any wound type better than conventional treatment. While the submitted studies support better healing, due to serious methodological weaknesses, inadequate controls, and a variety of biases, the improved outcomes could also easily disappear in a properly controlled randomized trial.

We have decided to issue a national noncoverage policy for all uses of NNWT for the treatment of wounds because the medical literature is not sufficient to support a NCD.

For complete decision memoranda providing the rationale for these withdrawals, please refer to *http://www.cms.gov/ncdr/ncdr_index.asp* on the Internet and scroll down to the appropriate topic under completed determinations.

Authority: Sections 1862, 1869(b)(3), and 1871 of the Social Security Act (42 U.S.C. 1395y, 1395ff(b)(3), and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 30, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–18858 Filed 7–24–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1260–N]

Medicare Program; Meeting of the Advisory Panel on Ambulatory Payment Classification Groups—August 22, 2003

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), this notice announces the second biannual meeting of the Advisory Panel on Ambulatory Payment Classification (APC) Groups (the Panel) for 2003.

The purpose of the Panel is to review the APC groups and their associated weights and to advise the Secretary of Health and Human Services (the Secretary) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) (the Administrator) concerning the clinical integrity of the APC groups and their associated weights. The advice provided by the Panel will be considered as CMS prepares its annual updates of the hospital outpatient prospective payment system (OPPS) through rulemaking.

DATES: The second biannual meeting for 2003 is scheduled for Friday, August 22, 2003, from 8 a.m. to 5 p.m. (e.d.t.).

ADDRESSES: The meeting will be held in the Multipurpose Room, 1st Floor, at the CMS Central Office, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: For copies of the charter, for inquiries regarding these meetings, for meeting registration, and for submitting oral presentations or written agenda items, contact Shirl Ackerman-Ross, the meeting coordinator and Designated Federal Official, CMS, Center for Medicare Management, Hospital Ambulatory Policy Group, Division of Outpatient Care, 7500 Security Boulevard, Mail Stop C4–05–17, Baltimore, MD 21244–1850 or phone (410) 786–4474. Also, please refer to the CMS Advisory Committees' Information Line at 1–877–449–5659 (toll free) and (410) 786–9379 (local).

For additional information on the APC meeting agenda topics and/or updates to the Panel's activities, search our Internet Web site: *http://www.cms.hhs.gov/faca/apc/default.asp.*

To submit a request for a copy of the charter, search the Internet at *http://*

www.cms.hhs.gov/faca or e-mail *SAckermannross@cms.hhs.gov*.

Written materials may also be sent electronically to *outpatientpps@cms.hhs.gov*.

News media representatives should contact our Public Affairs Office at (202) 690–6145.

Background

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Health and Human Services (the Secretary) is required by section 1833(t)(9)(A) of the Social Security Act (the Act), as amended by section 201(h)(1)(B) and redesignated by section 202(a)(2) of the Balanced Budget Refinement Act (BBRA) of 1999 (Pub. L. 106–113), to establish and consult with an expert, outside advisory panel on Ambulatory Payment Classification (APC) groups. The Advisory Panel on Ambulatory Payment Classification Groups (the Panel) meets up to three times annually to review the APC groups and to provide technical advice to the Secretary and to the Administrator of the Centers for Medicare & Medicaid Services (CMS) (the Administrator) concerning the clinical integrity of the groups and their associated weights. We will consider the technical advice provided by the Panel as we prepare the proposed rule that proposes changes to the Outpatient Prospective Payment System (OPPS) for the next calendar year.

The Panel may consist of up to 15 representatives of Medicare providers that are subject to the OPPS and a Chair. The Administrator selected the Panel membership based upon either self-nominations or nominations submitted by providers or organizations.

The Panel presently consists of the following members and a Chair: Paul Rudolf, M.D., J.D., Chair, a CMS medical officer; Geneva Craig, R.N., M.A.; Lora DeWald, M.Ed.; Robert E. Henkin, M.D.; Stephen T. House, M.D.; Kathleen Kinslow, C.R.N.A., Ed.D.; Mike Metro, R.N., B.S.; Gerald V. Naccarelli, M.D.; and Beverly K. Philip, M.D.

The new members recently appointed to the Panel are: Marilyn Bedell, M.S., R.N., O.C.N.; Albert Brooks Einstein, Jr., M.D.; Lee H. Hilborne, M.D., M.P.H. (reappointment); Frank G. Opelka, M.D., F.A.C.S.; Lynn R. Tomascik, R.N., M.S.N., C.N.A.A.; Timothy Gene Tyler, Pharm.D.; and William Van Decker, M.D. (reappointment).

The agenda for the August 2003 meeting will provide for discussion and comment on the following topics:

- Reconfiguration of APCs (for example, splitting of APCs, moving Healthcare Common Procedure Coding System (HCPCS) codes from one APC to another, and moving HCPCS codes from New Technology APCs to Clinical APCs).
- Evaluation of APC weights.
- Packaging devices and drug costs into APCs: methodology, effect on APCs, and need for reconfiguring APCs based upon device and drug packaging.
- Removal of procedures from the inpatient list for payment under the OPPS.
- Use of single and multiple procedure claims data.
- Packaging of HCPCS codes.
- Other technical issues concerning APC structure.

We are soliciting comments from the public on specific proposed items falling within these agenda topics for the August 2003 Panel meeting. We will consider agenda topics for this meeting if they are submitted in writing and fall within the agenda topics listed above. We urge those who wish to comment to send comments as soon as possible, but no later than 5 p.m. (e.d.t.) on Thursday, August 14, 2003.

The meeting is open to the public, but attendance is limited to the space available. Individuals or organizations wishing to make 5-minute oral presentations should contact the meeting coordinator by 5 p.m. (e.d.t.) on Thursday, August 14, 2003, in order to be scheduled. The number of oral presentations may be limited by the time available. Oral presentations should not exceed 5 minutes.

Persons wishing to present must submit a copy of the presentation and the name, address, and telephone number of the presenter. In addition, all presentations must contain, at a minimum, the following supporting information and data:

- The presenter's financial relationship(s), if any, with any company whose products, services, or procedures are under consideration.
- Physicians' Current Procedural Terminology (CPT) codes involved.
- APC(s) affected.
- Description of the issue(s).
- Clinical description of the service under discussion (with comparison to other services within the APC).
- Recommendations and rationale for change.
- Expected outcome of change and potential consequences of not making the change.

Submit a written copy of the oral remarks or written agenda items to the meeting coordinator listed above or electronically to the address: *outpatientpps@cms.hhs.gov*. Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission and cannot acknowledge or respond individually to comments we receive.

In addition to formal presentations, there will be an opportunity during the meeting for public comment, limited to 1 minute for each individual or organization.

Persons wishing to attend this meeting, which is located on Federal property, must call the meeting coordinator, Shirl Ackerman-Ross, at (410) 786–4474, to register in advance no later than Thursday, August 14, 2003. Persons attending must present a photographic identification to the Federal Protective Service or Guard Service personnel before they will be allowed to enter the building.

Persons who are not registered in advance will not be permitted into the building and will not be permitted to attend the meeting.

A member of our staff will be stationed at the Central Building, first-floor lobby, to provide assistance to attendees. Please remember that all visitors must be escorted if they have business in areas other than the lower and first floor levels in the Central Building. Parking permits and instructions are issued upon arrival by the guards at the main entrance.

Special Accommodation: Individuals requiring sign language interpretation or other special accommodations should send a request for these services to the meeting coordinator by Thursday, August 14, 2003.

Authority: Section 1833(t) of the Act (42 U.S.C. 1395l(t), as amended by section 201(h) of the BBRA of 1999 (Pub. L. 106–113). The Panel is governed by the provisions of Pub. L. 92–463, as amended (5 U.S.C. Appendix 2).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 11, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–18857 Filed 7–24–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3117–N]

Medicare Program; Meeting of the Medicare Coverage Advisory Committee—September 9, 2003

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces a public meeting of the Medicare Coverage Advisory Committee (the Committee). The Committee provides advice and recommendations to us about clinical issues. The Committee advises us on whether adequate evidence exists to determine whether specific medical items and services are reasonable and necessary under the Medicare statute. The Committee will discuss and make recommendations concerning the quality of the evidence and related issues for the use of ocular photodynamic therapy (OPT) with verteporfin in routine clinical use in the population of Medicare beneficiaries who have age-related macular degeneration (AMD) and occult with no classic choroidal neovascularization (CNV). Notice of this action is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)).

DATES: The public meeting announced will be held on Tuesday, September 9, 2003 from 7:30 a.m. until 3:30 p.m., e.d.t.

Deadline for Presentations and Comments: Interested persons may present data, information, or views orally or in writing, on issues pending before the Committee. Written presentations and comments must be submitted to the Executive Secretary, Michelle Atkinson, by telephone at 410–786–2881 or by e-mail at *matkinson@cms.hhs.gov* by August 21, 2003, 5 p.m., e.d.t.

Special Accommodations: Persons attending the meeting who are hearing or visually impaired, or have a condition that requires special assistance or accommodations, are asked to notify the Executive Secretary by August 21, 2003 (*see* **FOR FURTHER INFORMATION CONTACT**).

ADDRESSES: The meeting will be held at the Holiday Inn Inner Harbor, Room: Harbor 1, 12th floor, 301 West Lombard Street, Baltimore, MD 21201. Refer to Medicare Coverage Advisory Committee meeting if making reservations through the Holiday Inn Inner Harbor.

Presentations and Comments: Submit formal presentations and written comments to Michelle Atkinson by telephone at 410–786–2881, by e-mail at *matkinson@cms.hhs.gov*, or by mail to the Executive Secretary, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail Stop C1–09–06, Baltimore, MD 21244.

Web site: You may access up-to-date information on this meeting at *http://www.cms.gov/coverage*.

Hotline: You may access up-to-date information on this meeting on the CMS Advisory Committee Information Hotline, 1–877–449–5659 (toll free), or in the Baltimore area, (410) 786–9379.

FOR FURTHER INFORMATION CONTACT: Michelle Atkinson, Executive Secretary, by telephone at 410–786–2881, or by email at *matkinson@cms.hhs.gov*

SUPPLEMENTARY INFORMATION: On December 14, 1998, we published a notice in the **Federal Register** (63 FR 68780) to describe the Medicare Coverage Advisory Committee (the Committee), which provides advice and recommendations to us about clinical issues. This notice announces the following public meeting of the Committee.

Meeting Topic: The Committee will discuss the evidence, hear presentations and public comment, and make recommendations regarding the use of ocular photodynamic therapy (OPT) with verteporfin in routine clinical use in the population of Medicare beneficiaries who have age-related macular degeneration (AMD) and occult with no classic choroidal neovascularization (CNV). Background information about this topic, including panel materials, is available on the Internet at *http://www.cms.gov/coverage*.

Procedure and Agenda: This meeting is open to the public. The Committee will hear oral presentations from the public. The Committee may limit the number and duration of oral presentations to the time available. If you wish to make formal presentations, you must notify the Executive Secretary named in the **FOR FURTHER INFORMATION CONTACT** section, and submit the following by August 21, 2003, 5 p.m., e.d.t.: A brief statement of the general nature of the evidence or arguments you wish to present, and the names and addresses of proposed participants. A written copy of your presentation must be provided to each Panel member before offering your public comments. We will request that you declare at the meeting whether or not you have any financial involvement with manufacturers of any items or services being discussed (or with their competitors).

After the public and the CMS presentations, the Committee will deliberate openly on the topic. Interested persons may observe the deliberations, but the Committee will not hear further comments during this time except at the request of the chairperson. The Committee will also allow an unscheduled open public session for any attendee to address issues specific to the topic. At the conclusion of the day, the members will vote and the Committee will make its recommendation.

Authority: 5 U.S.C. App. 2, section 10(a)(1) and (a)(2).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 16, 2003.

Steve Phurrough,

Acting Director, Coverage and Analysis Group, Office of Clinical Standards and Quality, Chief Medical Officer, Centers for Medicare & Medicaid Services.

[FR Doc. 03–18993 Filed 7–24–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–14496]

Information Collection Under Review by the Office of Management and Budget (OMB): OMB Control Numbers 1625–0063 (formerly 2115–0586), 1625–0014 (formerly 2115–0053), 1625–0009 (formerly 2115–0025), and 1625–0002 (formerly 2115–0007)

AGENCY: Coast Guard, DHS.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded the four Information Collection Requests (ICRs) abstracted below to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for review and comment. Our ICRs describe the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before August 25, 2003.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2003–14496] more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. (b) By mail to OIRA, 725 17th Street NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Facility at 202–493–2251 and (b) OIRA at 202–395–5806, or e-mail to OIRA at *oira_docket@omb.eop.gov* attention: Desk Officer for the Coast Guard.

(4)(a) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*. (b) OIRA does not have a website on which you can post your comments.

(5) Electronically through Federal eRule Portal: *http://www.regulations.gov*.

The Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 (Plaza level), 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

Copies of the complete ICRs are available for inspection and copying in public dockets. They are available in docket USCG 2003–14496 of the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the internet at *http://dms.dot.gov*; and for inspection from the Commandant (G–CIM–2), U.S. Coast Guard, room 6106, 2100 Second Street SW., Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this request for comment by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov*, and they will include any personal information you have provided. We have an agreement with DOT to use the Docket Management Facility. *Please see* DOT's "Privacy Act" paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2003–14496], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES** but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 [65 FR 19477], or you may visit *http://dms.dot.gov*.

Regulatory History

This request constitutes the 30-day notice required by OIRA. The Coast Guard has already published (68 FR 8324, February 20, 2003) the 60-day notice required by OIRA. That notice elicited no comments.

Request for Comments

The Coast Guard invites comments on the proposed collections of information to determine whether the collections are necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the collections; (2) the accuracy of the Department's estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collection on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Number of the ICR addressed. Comments to DMS must contain the docket number of this request, USCG 2003–14496. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Request

1. *Title:* Marine Occupational Health and Safety Standards for Benzene—46 CFR Part 197, Subpart C.
OMB Control Number: 1625–0063.
Type of Request: Extension of a currently approved collection.
Affected Public: Owners and operators of vessels.
Form: This collection of information does not require the public to fill out forms, but does require that information collected be maintain and made available for Coast Guard inspection.
Abstract: To protect marine workers from exposure to toxic benzene vapor, the Coast Guard implemented 46 CFR Part 197, Subpart C.
Annual Estimated Burden Hours: The estimated burden is 59,766 hours a year.

2. *Title:* Request for Designation and Exemption of Oceanographic Research Vessels.
OMB Control Number: 1625–0014.
Type of Request: Extension of a currently approved collection.
Affected Public: Owners or operators of vessels.
Form: This collection of information does not require the public to fill out forms, but does require the information to be in written format to the Coast Guard.
Abstract: 46 U.S.C. 2113 authorizes the Secretary of Transportation to exempt Oceanographic Research Vessels, by rule, from certain parts of Subtitle II of Title 46, Shipping, of the United States Code, concerning vessels and seamen. This information is necessary to ensure that a vessel qualifies for exemption.
Annual Estimated Burden Hours: The estimated burden is 21 hours a year.

3. *Title:* Oil Record Book for Ships.
OMB Control Number: 1625–0009.
Type of Request: Extension of a currently approved collection.
Affected Public: Operators of vessels.
Form: CG–4602A.
Abstract: The Act to Prevent Pollution from Ships (APPS) and the International Convention for Prevention of Pollution from Ships, 1973, as modified by the 1978 Protocol relating thereto (MARPOL 73/78), require the entry into an Oil Record Book (CG–4602A) of information about oil carried as cargo or fuel. The maintenance of the Book constitutes the collection of information. The requirement for it appears at 33 CFR 151.25.
Annual Estimated Burden Hours: The estimated burden is 29,048 hours a year.

4. *Title:* Application for Vessel Inspection and Waiver.
OMB Control Number: 1625–0002.
Type of Request: Extension of a currently approved collection.
Affected Public: Owners, operators, agents, or masters of vessels, or interested Federal agencies.
Form: CG–2633 and CG–3752.
Abstract: The collection of information requires the owner, operator, agent, or master of a vessel to apply in writing to the Coast Guard before the commencement of the inspection for certification, or when, in the interest of national defense, a waiver from the requirements of navigation and vessel inspection seems desirable
Annual Estimated Burden Hours: The estimated burden is 677 hours a year.

Dated: July 17, 2003.

Clifford I. Pearson,

Director of Information and Technology.

[FR Doc. 03–18922 Filed 7–24–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–30]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 17, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 03–18620 Filed 7–24–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Second Information Request for the 5-Year Reviews of the Marbled Murrelet (*Brachyramphus marmoratus marmoratus*) and the Northern Spotted Owl (*Strix occidentalis caurina*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Second information request for northern spotted owl and marbled murrelet 5-year reviews.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a second request for information for the 5-year reviews of the marbled murrelet (*Brachyramphus marmoratus marmoratus*) and the northern spotted owl (*Strix occidentalis caurina*) under section 4(c)(2)(A) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) (Act). The first request for information closed June 20, 2003. We are announcing this second request to allow the public additional time to provide information for these reviews. We are again requesting submission of any new information (best scientific and commercial data) on the marbled murrelet and the northern spotted owl that has become available since their original listings in 1992 and 1990, respectively. If the present classification of each of these species is not consistent with the best scientific and commercial information available, we may, at the conclusion of these reviews, initiate a separate action to propose changes to the List of Endangered and Threatened Wildlife and Plants (List) accordingly.

DATES: To allow us adequate time to conduct these reviews, we must receive your information no later than August 20, 2003. We want to emphasize that the timely submission of information is critical to ensure its use in these 5-year reviews.

ADDRESSES: Submit information to the Field Office Supervisor, Attention Owl and Murrelet 5-year Review, Oregon Fish and Wildlife Office, 2600 SE. 98th Avenue, Suite 100, Portland, Oregon 97266. Information received in response to this notice and the results of these reviews will be available for public inspection by appointment, during normal business hours, at the above address. New information regarding the northern spotted owl may be sent electronically to *owl_information@r1.fws.gov*. New information regarding the marbled murrelet may be sent electronically to *murrelet_information@r1.fws.gov*.

FOR FURTHER INFORMATION CONTACT: For the marbled murrelet, contact Lee Folliard at the above address, or at 503/231–6179. For the northern spotted owl, contact Robin Bown at the above address, or at 503/231–6179.

SUPPLEMENTARY INFORMATION: Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. The purpose of a 5-year review is to ensure that the classification of a species as threatened or endangered on the List is accurate. The 5-year review is an assessment of the best scientific and commercial data available at the time of the review that has become available since the species' original listing or its most recent status or 5-year review.

On April 21, 2003, we announced in a **Federal Register** notice (68 FR 19569) that we are commencing 5-year reviews of the marbled murrelet (*Brachyramphus marmoratus marmoratus*) and the northern spotted

owl (*Strix occidentalis caurina*). We are conducting the reviews for these two species in connection with the January 13 and 14, 2003, settlement agreements for two lawsuits, *Western Council of Industrial Workers* v. *Secretary of the Interior*, Civil No. 02–6100–AA (D. Or.) and *American Forest Resources Council* v. *Secretary of the Interior*, Civil No. 02–6087–AA (D. Or.). The public comment period for the April 21, 2003, notice ended June 20, 2003. However, to allow additional time for the public to submit information, amendments to the settlement agreements were filed on June 30, 2003, with the District Court in Oregon extending the deadlines for completing the reviews. In accordance with the amended settlement agreements, we are reopening the public comment periods on these reviews until August 20, 2003.

The 5-year reviews for these two species will assess: (a) Whether new information suggests that the species' populations are increasing, declining, or stable; (b) whether existing threats are increasing, the same, reduced, or eliminated; (c) if there are any new threats; and (d) if new information or analysis calls into question any of the conclusions in the original listing determinations as to the species' status. The reviews will also apply this new information to consideration of the appropriate application of the Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722) to the listed entity, if applicable.

If there is no new information concerning the marbled murrelet or northern spotted owl, no changes will be made to their classifications. However, if we find that there is new information concerning the marbled murrelet or northern spotted owl indicating a change in classification is warranted, we may propose new rules that could either: (a) Reclassify the species from threatened to endangered; or (b) remove the species from the List.

Public Solicitation of New Information

We are publishing this second request for any new information relating to the current status of the northern spotted owl and marbled murrelet that has become available since their original listing. In particular, we are seeking information such as:

A. Species biology including, but not limited to, population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions including, but not limited to, amount, distribution, and suitability;

C. Conservation measures that have been implemented that benefit the species;

D. Threat status and trends; and

E. Other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes, or improved analytical methods.

Specifically for the spotted owl and murrelet we are interested in new information, analyses, and/or reports for these species that summarize and interpret their population status and related threats. The reviews will consider information such as: Population and demographic trend data; studies of dispersal and habitat use; genetics and species competition investigations; surveys of habitat amount, quality, and distribution; adequacy of existing regulatory mechanisms; and management and conservation planning information. We request this information for all applicable land ownerships within the range of both species.

Information submitted should be supported by documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

Authority: This document is published under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: July 16, 2003.

Marshall P. Jones,

Acting Director, Fish and Wildlife Service.

[FR Doc. 03–19039 Filed 7–22–03; 4:48 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Hyundai Motor America Automotive Test Track Project in Kern County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: Hyundai Motor America (HMA) and the City of California City (collectively Applicants) have applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Service is considering issuing a 30-year permit to the Applicants that would authorize take of the threatened desert tortoise (Gopherus agassizii) incidental to otherwise lawful activities associated with the construction and operation of a proposed automotive test track project on 4,340 acres in Kern County, California. With the access road from the south and access road/waterline from the east, the project would result in the permanent removal of approximately 4,368.5 acres of occupied desert tortoise habitat, relocation of desert tortoises currently occupying the site, and acquisition of 3,228.5 acres of higher quality desert tortoise habitat. Desert tortoise impacts to 1,140 acres on the project site previously were compensated under a federal land exchange, the West Mojave Land Tenure Adjustment Act.

We request comments from the public on the proposed Habitat Conservation Plan (Plan), Environmental Assessment, and Implementing Agreement, which are available for review. The Plan describes the proposed action and the measures that the Applicant will undertake to minimize and mitigate take of the desert tortoise. To review the permit application or Environmental Assessment, see "Availability of Documents" in the **SUPPLEMENTARY INFORMATION** section.

DATES: We must receive your written comments on or before September 23, 2003.

ADDRESSES: Please address written comments to Field Supervisor, Ventura Fish and Wildlife Office, Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003. You also may send comments by facsimile to (805) 644–3958.

FOR FURTHER INFORMATION CONTACT: Tim Thomas, Botanist, Ventura Fish and Wildlife Office, Barstow Sub-office; (760) 255–8890.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of these documents for review by contacting the above office, or by making an appointment to view the documents at the above address during normal business hours (**FOR FURTHER INFORMATION CONTACT**). Documents also will be available for public inspection, on our Web site at *http://ventura.fws.gov.*, and during regular business hours at the California City Library, 9507 California City Boulevard, California City, California.

Background

Section 9 of the Act and federal regulations prohibit the "take" of fish and wildlife species listed as endangered or threatened. Take of federally listed fish and wildlife is defined under the Act as including to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." The Service may, under limited circumstances, issue permits to authorize incidental take (*i.e.*, take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). Regulations governing incidental take permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22.

The Applicants are proposing to construct an automotive test track facility and associated water line and access roads to evaluate the safety, performance and handling of concept, prototype and production automobiles to be manufactured at HMA's automotive assembly and manufacturing plant currently under construction in Birmingham, Alabama. HMA proposes to construct the facility on 4,340 acres located approximately 60 miles southeast of Bakersfield, California, 9 miles east of the community of Mojave, California and 0.5 mile north of State Highway 58 in Kern County, California. The proposed project is located in the west Mojave Desert. The proposed facility will consist of a 6-mile long oval test course, two access roads, a winding track, a vehicle dynamics area, a hill-up road, a straight stability road, a support building and parking lot and perimeter fencing. The proposed project includes installation of desert tortoise exclusion fencing around the 4,340-acre site perimeter and removal and relocation of desert tortoises from the site. The project also includes an off-site access road from State Highway 58 that will remove 8.5 acres of desert tortoise habitat. Finally, the City of California City proposes to build a 2-mile water line extension and widen Joshua Tree Boulevard to serve the project, which will result in adverse effects to 20 acres of desert tortoise habitat.

The 4,340-acre project site includes 1,140 acres that were part of the Western Mojave Land Tenure Adjustment (LTA) Project, a land exchange program between private parties and the U.S. Bureau of Land Management (BLM). Pursuant to a Biological Opinion issued by the Service to BLM on January 8, 1998, (6844440 (CA–063.50) (1–8–98–F–60R)), any proposed take of desert tortoise on the 1,140 acres must be authorized by the Service, but no further mitigation is required for take of the desert tortoise or impacts to its habitat.

The project site is classified by BLM as Category III habitat for desert tortoise and is occupied by desert tortoise. Category III habitat is defined as areas that are not essential to maintenance of viable populations, that contain low to medium densities, and that are not contiguous with medium- or high-density areas and in which the population is stable or decreasing. The proposed project site supports three common Mojave Desert plant communities—desert saltbush scrub, Mojave creosote bush scrub, and Joshua tree woodland. Past and current grazing of domestic sheep has degraded the site. Field survey observations also documented signs of human disturbance, including approximately 60 acres of unimproved roads, scattered shotgun shells and bullet casings, trash, and abandoned campsites and automobiles. Signs of historical military use also are found throughout the site, including ammunition casings and at least one aircraft crash site.

During directed surveys in March and April 2002, three live desert tortoises were observed on the proposed development site. An additional survey performed in May 2003 observed 8 live tortoises. Construction of the proposed project is anticipated to directly affect 834.5 acres of occupied desert tortoise habitat. In addition, the 4,340-acre site will no longer be accessible to desert tortoise due to installation of desert tortoise exclusion fencing around the perimeter of the site. The State Highway 58 access road will remove 8.5 acres of desert tortoise habitat, and the City water line extension and Joshua Tree Boulevard road access will adversely affect 20 acres of desert tortoise habitat. Impacts to 1,140 acres on the project site already have been mitigated pursuant to the LTA 1998 Biological Opinion. The Applicants propose to mitigate for the remaining desert tortoise impacts by acquiring 3,228.5 acres of higher quality desert tortoise habitat in an area adjacent to the Desert Tortoise Natural Area and translocating desert tortoises from the Hyundai site to a location that will be managed for the desert tortoise. Based on the survey results and habitat impacts, the Service concluded that implementation of the proposed project likely will result in take of less than 40 desert tortoises due to their translocation from the project site.

The Service's Environmental Assessment considers the environmental consequences of five alternatives, including: (1) The No Action Alternative, which consists of no permit issuance and no development on the Hyundai property at this time; (2) the On-Site Fencing Alternative, which consists of installing desert tortoise exclusion fencing around the test track and other features on the Hyundai property and moving tortoises outside the exclusion fence to adjacent areas on the Hyundai property; (3) the San Bernardino County Automotive Test Course Site, which consists of locating the project to a site within San Bernardino County; (4) the Riverside County Automotive Test Course Site, which consists of locating the project to a site within Riverside County; and (5) the Proposed Action, which consists of installing desert tortoise exclusion fence around the perimeter of the Hyundai property and relocating all desert tortoises to an off-site location. Except for the No Action Alternative, the alternatives to the Proposed Action would adversely affect more federally listed species than the Proposed Action Alternative.

This notice is provided pursuant to section 10(a) of the Act and the regulations of the National Environmental Policy Act (NEPA) of 1969 (40 CFR 1506.6). All comments that we receive, including names and addresses, will become part of the official administrative record and may be made available to the public. We will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of NEPA regulations and section 10(a) of the Act. If we determine that those requirements are met, we will issue a permit to the Applicants for the incidental take of the desert tortoise.

Dated: July 18, 2003.

D. Kenneth McDermond,

Manager, California/Nevada Operations Office, Sacramento, California

[FR Doc. 03–18925 Filed 7–24–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–912–0777–XP]

Notice of Public Meetings; Western, Central, Eastern Montana, and Dakotas Resource Advisory Council Meetings; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), the Western, Central, and Eastern Montana, and the

Dakotas Resource Advisory Councils will meet as indicated below.

DATES: The Western Montana RAC meeting will be held September 10, 2003, at the Search and Rescue Building in Dillon, Montana, beginning at 10 a.m. The public comment period on Sustaining Working Landscapes (SWL) and other topics will begin at 1 p.m. and the meeting is expected to adjourn by 3 p.m. Also on the agenda will be information about the Montana/Dakotas Off-Highway Vehicle policy.

The Central Montana RAC will meet September 23–25, 2003, at the Agricultural Museum in Fort Benton, Montana. The RAC members will tour the Missouri River on September 23. The meeting will convene at 8 a.m. on September 24. Public comment periods on SWL and other topics are scheduled for that day from 12–12:30 p.m. and 4–5 p.m. Another public comment session is scheduled for 8 a.m.-8:30 a.m. on September 25. The meeting should adjourn at 12:45 p.m. on September 25. Also on the agenda will be information about the Montana/Dakotas Off-Highway Vehicle policy and the Blackleaf EIS.

The Eastern Montana RAC will meet August 14, 2003, at 8 a.m. in Billings, Montana, at the Hampton Inn. The public comment period on SWL and other topics will begin at 2 p.m., and the meeting will adjourn at about 3:30 p.m. Also on the agenda will be information about the Montana/Dakotas Off-Highway Vehicle policy.

The Dakotas RAC will meet September 3, 2003, at 2 p.m. at the Golden Hills Resort Best Western, in Lead, South Dakota, to tour Grizzly Gulch fire rehabilitation and monitoring. The meeting will resume at 8 a.m. on September 4, 2003, at the Golden Hills Resort Best Western. Sustaining Working Landscapes and other topics, including the Montana/Dakotas Off-Highway Vehicle policy, will be discussed with public comment taken on those and other issues beginning at 2 p.m.

SUPPLEMENTARY INFORMATION: The 15-member Councils advise the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Montana and the Dakotas. At these four meetings, the Councils will accept public comment on the SWL initiative and possibly develop recommendations on the same for the consideration of the Montana/Dakotas State Director.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: For the Western Montana RAC, contact Marilyn Krause, Resource Advisory Council Coordinator, at the Butte Field Office, 106 North Parkmont, Butte, MT 59701, telephone 406–533–7617, or Tim Bozorth, Field Manager, at the Dillon Field Office, 1005 Selway Drive, Dillon, MT 59725, telephone 406–683–2337.

For the Central Montana RAC, contact David L. Mari, Lewistown Field Manager, at the Lewistown Field Office, P.O. Box 1160, Airport Road, Lewistown, MT 59457, 406–538–7461.

For the Eastern Montana RAC, contact Mark Jacobsen, Resource Advisory Council Coordinator, at the Miles City Field Office, 111 Garryowen Road, Miles City, MT 59301, 406–233–2831.

For the Dakotas RAC, contact Doug Burger, North Dakota Field Manager, at the North Dakota Field Office, 2933 Third Avenue West, Dickinson, ND 58601, 701–227–7700.

Dated: July 17, 2003.

A. Jerry Meredith,

Associate State Director, Montana State Office.

[FR Doc. 03–18956 Filed 7–24–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–100–5882–AF; HAG03–0236]

Notice of Public Meeting, Roseburg Resource Advisory Committee Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Cancellation of meetings for the Roseburg District Bureau of Land Management (BLM) Resource Advisory Committee under section 205 of the Secure Rural Schools and Community Self Determination Act of 2000 (Pub. L. 106–393).

SUMMARY: This notice is published in accordance with section 10(a)(2) of the Federal Advisory Committee Act. Meeting notice is hereby given for the Roseburg District BLM Resource Advisory Committee pursuant to section 205 of the Secure Rural School and Community Self Determination Act of 2000, Public Law 106–393 (the Act). Topics to be discussed by the Roseburg District BLM Resource Advisory Committee include specific information of specific projects and/or decisions on specific projects.

DATES: The Roseburg Resource Advisory Committee was scheduled to meet at the BLM Roseburg District Office, 777 NW. Garden Valley Boulevard, Roseburg, Oregon 97470 on July 21, July 28, and August 4, 2003 from 9 a.m. to 4 p.m. These meetings have been canceled. For briefing information please refer to HAG–03–0134.

SUPPLEMENTARY INFORMATION: Pursuant to the Act, five Resource Advisory Committees have been formed for western Oregon BLM district that contain Oregon & California (O&C) Grant Lands and Coos Bay Wagon Road lands. The Act establishes a six-year payment schedule to local counties in lieu of funds derived from the harvest of timber on federal lands, which have dropped dramatically over the past 10 years.

The Act creates a new mechanism for local community collaboration with Federal land management activities in the selection of projects to be conducted on Federal lands or that will benefit resources on Federal lands using funds under Title II of the Act. The Roseburg District BLM Resource Advisory Committee consists of 15 local citizens (plus 6 alternates) representing a wide array of interests.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the Roseburg District BLM Resource Advisory Committee may be obtained from E. Lynn Burkett, Public Affairs Officer, Roseburg District Office, 777 NW. Garden Valley Blvd., Roseburg, Oregon 97470 or *elynn_burkett@blm.gov*, or on the Web at *http://www.or.blm.gov*.

Dated: July 18, 2003.

Gail S. Schaefer,

Acting Roseburg District Manager.

[FR Doc. 03–18958 Filed 7–24–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Gulf of Mexico Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents. Prepared for OCS mineral proposals on the Gulf of Mexico OCS.

SUMMARY: Minerals Management Service (MMS), in accordance with Federal regulations that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related Site-Specific Environmental Assessments (SEA) and Findings of No Significant Impact (FONSI), prepared by MMS for the following oil and gas activities proposed on the Gulf of Mexico OCS.

FOR FURTHER INFORMATION CONTACT: Public Information Unit, Information Services Section at the number below.

SUPPLEMENTARY INFORMATION: MMS prepares SEAs and FONSIs for proposals that relate to exploration for and the development/production of oil and gas resources on the Gulf of Mexico OCS. These SEAs examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. Environmental Assessments are used as a basis for determining whether or not approval of the proposals constitutes major Federal actions that significantly affect the quality of the human environment in the sense of NEPA section 102(2)(C). A FONSI is prepared in those instances where MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the SEA.

This notice constitutes the public notice of availability of environmental documents required under the NEPA Regulations.

This listing includes all proposals for which the Gulf of Mexico OCS Region prepared a FONSI in the period subsequent to publication of the preceding notice dated August 13, 2002.

Activity/Operator	Location	Date
Kerr McGee Oil & Gas Corporation, Development Operations Coordination Plan and Lease-Term Pipeline, PEA No. N–7625 and Segment No. P–14109.	Garden Banks Area, Blocks 667, 668 and 669, Leases OCS–G 17406, 17407 and 17408, respectively, located 117.5 miles from the nearest Texas shoreline.	04/02/03
BP Exploration & Production, Inc., Development Operations Coordination Plan, SEA No. N–7646.	Green Canyon Area, Blocks 742, 743, 744, 787 and 788, Leases OCS–G 15606, 15607, 15608, Unleased and Unleased, respectively, located 122 miles from the nearest Louisiana shoreline.	04/25/03
Fugro Geoservices, Inc. for BP America, Inc., Geological and Geophysical Exploration Plan, SEA No. L03–17.	Located in the Central Gulf of Mexico southeast of Patterson, Louisiana.	05/02/03
Anadarko Petroleum Corporation, Initial Exploration Plan, SEA No. N–7686.	DeSoto Canyon Area, Block 621, Lease OCS–G 23529, located 95.5 miles from the nearest Louisiana shoreline.	05/05/03
Shell Offshore, Inc., Initial Exploration Plan, SEA No. N–7698 ...	Lloyd Ridge Area, Block 399, Lease OCS–G 23480, located 128 miles from the nearest Louisiana shoreline.	05/07/03
Anadarko Petroleum Corporation, Initial Exploration Plan, SEA No. N–7713.	Lloyd Ridge Area, Blocks 265 and 309, Leases OCS–G 03472 and 03473, respectively, located 120 miles from the nearest Louisiana shoreline.	05/07/03
Amerada Hess Corporation, Initial Exploration Plan, SEA No. N–7672.	DeSoto Canyon Area, Block 620, Lease OCS–G 23528, located 93 miles from the nearest Louisiana shoreline.	05/21/03
W & T Inc., Right-of-Way Pipeline Application, SEA No. P–14037.	Offshore, Garden Banks Area, Block 139, Lease OCS–G 17295 to High Island Area, Block A389, Lease OCS–G 02759, located 123 miles from the nearest Louisiana shoreline.	05/30/03
Endymion Oil Pipeline Company, LLC, Right-of-Way Pipeline Application, SEA No. P–13534.	South Pass Area, Block 89, to traverse through Federal waters in South Pass Block 88, West Delta Blocks 145, 128, 129, 126, 125, 112, 113, 104, 103, 91, 92, 93, 72, 71, 66, 67, 39 and 38, and Grand Isle Blocks 20, 19 and 18, and continue through Louisiana State waters to Louisiana Offshore Oil Port near Clovelly, Louisiana, length through Federal waters is 46 miles and total length in offshore waters is 54 miles.	05/29/03
Anadarko Petroleum Corporation, Initial Exploration Plan, SEA No. N–7751.	Lloyd Ridge Area, Blocks 47, 91 and 135, located 111 miles from the nearest Louisiana shoreline.	06/17/03
ATP Oil & Gas Corporation, Structure Removal Activity, SEA ES/SR Nos. 03–010 and 03–011.	Vermilion Area (South Addition), Block 389, Lease OCS–G 14430, and Block 410, Lease OCS–G 11903, located 109–110 miles south of Cameron, Louisiana, and 129–131 miles south-southeast of Cameron Parish, Louisiana.	02/04/03
WesternGeco for Exxon Mobil Production Company, Geological & Geophysical Exploration, SEA No. L03–12.	Located in the central Gulf of Mexico southeast of Fourchon, Louisiana.	03/31/03
WesternGeco for Multi-Client, Geological & Geophysical Exploration, SEA No. L03–13.	Located in the central Gulf of Mexico southeast of Fourchon, Louisiana, and New Orleans, Louisiana.	04/15/03
Energy Resource Technology, Inc., Structure Removal Activity, SEA ES/SR No. 03–067.	South Timbalier Area, Block 213, Lease OCS–G 18055, located 50 miles from the nearest Louisiana shoreline.	04/07/03
Energy Resource Technology, Inc., Structure Removal Activity, SEA ES/SR No. 03–068.	West Cameron Area, Block 277, Lease OCS–G 04761, located 60 miles from the nearest Louisiana shoreline.	04/07/03
Petrobras America, Inc., Structure Removal Activity, SEA ES/SR No. 03–069.	Ship Shoal Area, Block 301, Lease OCS–G 10794, located 57 miles from the nearest Louisiana shoreline.	05/06/03
Anadarko E & P Company, LP, Structure Removal Activity, SEA ES/SR No. 03–070.	Eugene Island Area, Block 296, Lease OCS–G 02105, located 61 miles from the nearest Louisiana shoreline.	05/06/03
Ocean Energy, Inc., Structure Removal Activity, SEA ES/SR No. 03–071.	Vermillion Area, Block 68, Lease OCS–G 08662, located 15 miles from the nearest Louisiana shoreline.	05/06/03
Ocean Energy, Inc., Structure Removal Activity, SEA ES/SR No. 03–072.	East Cameron Area, Block 152, Lease OCS–G 17849, located 44 miles from the nearest Louisiana shoreline.	05/06/03

Activity/Operator	Location	Date
Ocean Energy, Inc., Structure Removal Activity, SEA ES/SR No. 03–073.	Galveston Area, Block 283, Lease OCS–G 09039, located 15 miles from the nearest Texas shoreline.	05/06/03
Ocean Energy, Inc., Structure Removal Activity, SEA ES/SR No. 03–074.	Galveston Area, Block 393, Lease OCS–G 15761, located 22 miles from the nearest Texas shoreline.	05/06/03
Ocean Energy, Inc., Structure Removal Activity, SEA ES/SR No. 03–07, 03–076 and 03–077.	Brazos Area, Block 399, Lease OCS–G 07218, located 14 miles from the nearest Texas shoreline.	05/06/03
Ocean Energy, Inc., Structure Removal Activity, SEA ES/SR No. 03–078.	Brazos Area, Block 432, Lease OCS–G 09018, located 20 miles from the nearest Texas shoreline.	05/06/03
Amerada Hess Corporation, Structure Removal Activity, SEA ES/SR No. 03–080.	West Cameron Area, Block 505, Lease OCS–G 16200, located 97 miles from the nearest Texas shoreline.	05/03/03
Amerada Hess Corporation, Structure Removal Activity, SEA ES/SR No. 03–081 and 03–082.	West Cameron Area, Block 556, Lease OCS–G 05346, located 97 miles from the nearest Texas shoreline.	05/06/03
Amerada Hess Corporation, Structure Removal Activity, SEA ES/SR No. 03–083.	Galveston Area, Block 210, Lease OCS–G 07236, located 97 miles from the nearest Texas shoreline.	05/06/03
Hunt Oil Company, Structure Removal Activity, SEA ES/SR No. 03–087, 03–088, 03–089, 03–090 and 03–091.	South Pass Area, Block 37, Leases OCS–G 01335 and OCS 00697, located 6–8 miles east-southeast of Plaquemines Parish, Louisiana shoreline.	04/15/03
ATP Oil & Gas Corporation, Structure Removal Activity, SEA No. ES/SR 03–092.	South Timbalier Area, Block 30, Lease OCS–G 13928, located 7 miles south of LaFourche Parish, Louisiana shoreline.	04/14/03
J. M. Huber Corporation, Structure Removal Activity, SEA ES/SR No. 03–093 and 03–094.	South Timbalier Area, Block 21, Lease OCS–G 00263, located 5 miles from the nearest Louisiana shoreline.	04/11/03
BP America Production Company, Structure Removal Activity, SEA ES/SR No. 03–095.	High Island Area, Block A1, Lease OCS–G 15780, located 30 miles from the nearest Louisiana shoreline.	04/14/03
Chevron U.S.A., Inc., Structure Removal Activity, SEA ES/SR No. 03–096 and 03–097.	Eugene Island Area, Block 23, Lease OCS–G 00980, located 45 miles from the nearest Louisiana shoreline.	05/16/03
Chevron U.S.A., Inc., Structure Removal Activity, SEA ES/SR No. 03–098.	Ship Shoal Area, Block 108, Lease OCS–00814, located 20 miles from the nearest Louisiana shoreline.	04/22/03
Burlington Resources offshore, Inc., Structure Removal Activity, SEA ES/SR No. 03–099.	Eugene Island Area, Block 159, Lease OCS–G 04449, located 35 miles from the nearest Louisiana shoreline.	04/16/03
Murphy Exploration & Production Company, Structure Removal Activity, SEA ES/SR No. 03–100, 03–101, 03–102, 03–103, 03–104, 03–105, 03–106, 03–107, 03–108, and 03–109.	South Pelto Area, Blocks 12 and 19, Leases OCS–G 00072 and 00073; Ship Shoal Area, Block 101, Lease OCS–G 09612; and Vermilion Area, Block 130, Lease OCS–G 16296; all located 8 to 32 miles south and southwest from the nearest Louisiana shoreline.	04/23/03
J. M. Huber Corporation, Structure Removal Activity, SEA ES/SR No. 03–110.	West Cameron Area, Block 238, Lease No. OCS–02834, located 40 miles from the nearest Louisiana shoreline.	04/23/03
TotalFinaElf E&P USA, Inc., Structure Removal Activity, SEA ES/SR No. 03–111 and 03–112.	West Cameron Area, Block 167, Lease OCS–G 09400, located 25 miles from the nearest Louisiana shoreline.	04/29/03
McMoRan Oil & Gas, Structure Removal Activity, SEA ES/SR No. 03–113.	Eugene Island Area, Block 215, Lease OCS–G 00578, located 43 miles from the nearest Louisiana shoreline.	05/06/03
W & T Offshore, Inc., Structure Removal Activity, SEA ES/SR No. 03–114.	East Cameron Area, Block 303, Lease OCS–G 12850, located 88 miles from the nearest Louisiana shoreline.	05/19/03
Spinnaker Exploration Company, LLC, Structure Removal Activity, SEA ES/SR No. 03–115—03–117.	East Cameron Area, Blocks 138 and 139, Leases OCS–G 13863 and 21576, located 45 miles from the nearest Louisiana shoreline.	05/14/03
Spinnaker Exploration Company, LLC, Structure Removal Activity, SEA ES/SR No. 03–118.	High Island Area, Block 235, Lease OCS–G 18941, located 30 miles from the nearest Louisiana shoreline.	05/16/03
Chinese Offshore Oil Geophysical Corporation for GX Technology Corporation, Geological and Geo-Physical Exploration Plan, SEA No. T03–08.	Located in the Central and Western Gulf of Mexico from south of Fourchon, Louisiana, extending offshore to northeast of Port Isabel, Texas.	05/16/03
El Paso Production Company, Structure Removal Activity, SEA ES/SR No. 97–095A.	West Cameron, (South Addition) Area, Block 498, Lease OCS–G 03520. located 92 miles from the nearest Louisiana shoreline.	05/20/03
ChevronTexaco, Structure Removal Activity, SEA ES/SR Nos. 00–1342A, 03–119, 95–049A, 07–090A, 03–120 and 03–121.	High Island Area (South Addition), Block A548, Lease OCS-G 02706; West Cameron Area, Blocks 17 and 48, Lease OCS–G 01351, located 99 miles southeast of Galveston, Texas, and 3.5 miles south of Cameron, Louisiana, respectively.	05/21/03
The William G. Helis Company, LLC, Structure Removal Activity, SEA ES/SR No. 03–122.	South Timbalier (South Addition) Area, Block 212, Lease OCS–G 14538, located 43 miles from the nearest Louisiana shoreline.	05/21/03
Forest Oil Corporation, Structure Removal Activity, SEA ES/SR No. 03–123.	Eugene Island Area, Block 273, Lease OCS–G 00987, located 60 miles from the nearest Louisiana shoreline.	05/21/03
Chevron U.S.A., Inc., Structure Removal Activity, SEA ES/SR No. 03–124.	Eugene Island Area, Block 64, Lease OCS–G 02098, located 20 miles from the nearest Louisiana shoreline.	06/02/03
Callon Petroleum Operating Company, Structure Removal Activity, SEA ES/SR No. 03–125.	Main Pass Area, Block 161, Lease OCS–G 05703, 45 miles from the nearest Louisiana shoreline.	05/29/03
El Paso Production Oil & Gas Company, Structure Removal Activity, SEA ES/SR No. 03–126.	East Cameron Area, Block 82, Lease OCS–G 08640, located 28 miles from the nearest Louisiana shoreline.	06/03/03
WesternGeco for Multi-Client, Geological & Geophysical Exploration, SEA No. L03–32.	Located in the central Gulf of Mexico south of Cocodrie, Louisiana.	06/03/03
WesternGeco for Multi-Client, Geological & Geophysical Exploration, SEA No. L03–26 and L03–27.	Located in the central Gulf of Mexico south of Cocodrie and Fourchon, Louisiana.	06/05/03
WesternGeco for Multi-Client, Geological & Geophysical Exploration, SEA No. L03–28 and L03–29.	Located in the central Gulf of Mexico south of Louisa and Leeville, Louisiana.	06/05/03

Activity/Operator	Location	Date
Ocean Energy, Inc., Structure Removal Activity, SEA ES/SR No. 03–127.	Main Pass Area, Block 63, Lease OCS–G 18086, located 16 miles from the nearest Louisiana shoreline.	06/20/03
Maritech Resources, Inc., Structure Removal Activity, SEA ES/SR No. 03–128, 03–129 and 03–130.	Eugene Island Area, Block 215, Lease OCS–G 00580; 37 miles from the nearest Louisiana shoreline.	06/18/03
Hunt Oil Company, Structure Removal Activity, SEA ES/SR No. 03–131.	Eugene Island Area, Block 76, Lease OCS–G 04823, located 17 miles from the nearest Louisiana shoreline.	06/11/03
Union Oil Company of California, Structure Removal Activity, SEA ES/SR No. 03–132.	South March Island Area, Block 11, Lease OCS–G 01182, located 35 miles southwest from the nearest Louisiana shoreline.	06/09/03
Torch Energy Services, Inc., Structure Removal Activity, SEA ES/SR No. 03–133.	Main Pass Area, Block 100, Lease OCS–G 04910, located 13 miles east-southeast of the nearest Louisiana shoreline.	06/16/03
EOG Resources, Structure Removal Activity, SEA ES/SR No. 03–137.	East Cameron Area, Block 118, Lease OCS–G 14362, located 36 miles south-southwest from the nearest Louisiana shoreline.	06/16/03
Nexen Petroleum U.S.A., Inc., Structure Removal Activity, SEA ES/SR No. 03–134.	Eugene Island Area, Block 295, Lease OCS–G 02104, located 70 miles from the nearest Louisiana shoreline.	06/18/03
Walter Oil & Gas Corporation, Structure Removal Activity, SEA ES/SR No. 03–135 and 03–136.	Padre Island Area, Blocks 976 and 996, OCS-G 05954 and 08962, located 25 miles from the nearest Louisiana shoreline.	06/23/03

Persons interested in reviewing environmental documents for the proposals listed above or obtaining information about SEAs and FONSIs prepared for activities on the Gulf of Mexico OCS are encouraged to contact MMS at the address or telephone listed in the **FOR FURTHER INFORMATION** section.

Dated: June 27, 2003.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 03–18531 Filed 7–24–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Lake Casitas Resource Management Plan, Ventura County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Intent to prepare a draft environmental impact statement (EIS).

SUMMARY: Pursuant to section 102(2) (c) of the National Environmental Policy Act (NEPA), the Bureau of Reclamation proposes to prepare a draft environmental impact statement (DEIS) for Lake Casitas Resource Management Plan (RMP), which will be issued concurrent with the DEIS. Reclamation will be conducting two public scoping meetings to elicit comments on the scope and issues to be addressed in both the RMP and EIS. The date and time of these meetings are listed below. Reclamation is also seeking written comments, as noted below. The Draft RMP and DEIS are expected to be issued in late 2004.

DATES: Submit written comments on or before September 23, 2003.

The two scoping meetings will be held as follows:

- September 24, 2003, at 7 p.m., Ojai, CA 93023
- September 25, 2003, at 7 p.m., Ventura, CA 93001

ADDRESSES: Written comments on the scope of the RMP and DEIS should be sent to Mr. Dan Holsapple, Bureau of Reclamation, South-Central California Area Office, 1243 N Street, Fresno, CA 93721–1813; or by telephone at 559–487–5409; or faxed to 559–487–5130 (TDD 559–487–5933).

The meeting locations are:

- Ojai, California, at the Soule Golf Course, Banquet Room, 1033 East Ojai Avenue
- Ventura, California, at the E.P. Foster Library, Topping Room, 651 East Main Street

FOR FURTHER INFORMATION CONTACT: Mr. Dan Holsapple, Bureau of Reclamation, 559–487–5409.

SUPPLEMENTARY INFORMATION: The Casitas Project (originally called the Ventura Project) was constructed in the early 1950's by Reclamation on behalf of Ventura County and Casitas Municipal Water District (Casitas). The project includes Casitas Dam, Lake Casitas, the developed Recreation Area at the north end of the lake, and the Open Space Lands north of the lake, purchased in the late 1970's. Casitas operates the dam and manages the Open Space Lands under contracts with Reclamation. Casitas manages the Recreation Area, although a formal contract has not been established with Reclamation to date.

Reclamation is preparing a RMP for government lands associated with the Casitas Project, including the Recreation Area. The RMP will include long-term management actions to protect natural resources while maintaining and enhancing recreational opportunities. The RMP will be used to guide the development of a long-term recreation contract between Reclamation and the non-Federal Managing Partner, Casitas.

The RMP will specifically address the Recreation Area, the entire lake, and all government land surrounding the lake. The objective of an RMP is to establish management objectives, guidelines, and actions to be implemented by Reclamation directly, or through its recreation contract with Casitas, that will protect the water supply and water quality functions of Lake Casitas; protect and enhance natural and cultural resources in the Recreation Area consistent with Federal law and Reclamation policies; and provide recreational opportunities and facilities consistent with the Project purposes and Reclamation policies.

The development of the RMP will be performed within the authorities provided by the Congress through the Reclamation Act, Federal Water Project Recreation Act, Reclamation Recreation Management Act, and applicable agency and Department of the Interior policies.

The RMP will be developed based on a comprehensive inventory of environmental resources and Project facilities. It will include an analysis of the natural resources of the area, the identification of land use suitability and capability, and the development of management policies, objectives, responsibilities, guidelines, and plans. The overall purpose of an RMP is to foster stewardship of Reclamation lands. The RMP will enable managers to make land-use and resource decisions that are consistent with the overall management objectives of Reclamation land and water areas and the needs of the public. The RMP will assist Reclamation in minimizing conflicts among the competing interests and types of use at Lake Casitas.

The plan will be developed with input from various agencies and parties, including (but not limited to) U.S. Fish and Wildlife Service and National Marine Fisheries Service, Ventura County (various departments), Casitas, City of Ojai, environmental and community groups, and the public. The plan will be used to guide future recreational uses and administrative arrangements to be considered by Reclamation in the establishment of a recreation contract with Casitas.

The primary emphasis of the RMP will be protecting Project water supply, water quality, and natural resources, while enhancing recreational uses at and surrounding the lake. Specific issue areas to be addressed include (among others): management of the Casitas Open Space lands north of Highway 150 to protect water quality; improvements and expansion of recreational facilities in the Recreation Area; potential new trails surrounding the lake; expanded areas for boat fishing; protection of sensitive natural and cultural resources; coordination with adjacent activities on the National Forest; and fire management practices.

The environmental impacts of the RMP and associated alternatives will be assessed in an EIS that will be prepared concurrent with the RMP. The environmental review will focus on the potential for management actions to cause adverse environmental impacts to natural and cultural resources such as water quality, endangered species, public safety, and historic resources. It will include an analysis of alternative land, recreation, and natural resource management approaches.

Reclamation practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: July 3, 2003.

Robert Eckart,

Chief, Environmental Compliance Branch, Mid-Pacific Region.

[FR Doc. 03–18952 Filed 7–24–03; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–436 (Preliminary) and 731–TA–1042 (Preliminary)]

Certain Colored Synthetic Organic Oleoresinous Pigment Dispersions From India

Determination

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 19 U.S.C. 1673b(a)) (the Act), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from India of certain colored synthetic organic oleoresinous pigment dispersions [2] that are alleged to be subsidized by the Government of India and alleged to be sold in the United States at less than fair value (LTFV).

Background

On June 5, 2003, a petition was filed with the Commission and Commerce by Apollo Colors, Inc., Rockdale, IL; General Press Colors, Ltd., Addison, IL; Magruder Color Company, Inc., Elizabeth, NJ; and Sun Chemical Corporation, Fort Lee, NJ, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized and LTFV imports of certain colored synthetic organic oleoresinous pigment dispersions from India. Accordingly, effective June 5, 2003, the Commission instituted countervailing duty investigation No. 701–TA–436 (Preliminary) and antidumping duty investigation No. 731–TA–1042 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 11, 2003 (68 FR 35003). The conference was held in Washington, DC on June 27, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on July 21, 2003. The views of the Commission are contained in USITC Publication 3615 (July 2003), entitled Certain Colored Synthetic Organic Oleoresinous Pigment Dispersions from India: Investigation Nos. 701–TA–436 (Preliminary) and 731–TA–1042 (Preliminary).

By order of the Commission.

Issued: July 21, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–18926 Filed 7–24–03; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Certain colored synthetic organic pigment dispersions subject to these investigations are classifiable under statistical reporting numbers 3204.17.6020 (Pigment Blue 15:4) and 3204.17.6085 (Pigments Red 48:1, Red 48:2, Red 48:3, and Yellow 174), 3204.17.9005 (Pigment Blue 15:3), 3204.17.9010 (Pigment Green 7), 3204.17.9015 (Pigment Green 36), 3204.17.9020 (Pigment Red 57:1), 3204.17.9045 (Pigment Yellow 12), 3204.17.9050 (Pigment Yellow 13), 3204.17.9055 (Pigment Yellow 74), and 3204.17.9086, which prior to July 2002 was 3204.17.9085 (Pigments Red 22, Red 48:4, Red 49:1, Red 49:2, Red 52:1, Red 53:1, Yellow 14, and Yellow 83) of the Harmonized Tariff Schedule of the United States.

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 15, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on (202) 693–4129 (this is not a toll-free number) or E-Mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316/this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Mine Safety and Health Administration.

Title: Fire Protection (Underground Coal Mines).

OMB Number: 1219–0054.

Affected Public: Business or other for-profit.

Number of Respondents: 893.

Requirement	Frequency	Annual responses	Average response time (hours)	Annual burden hours
Examine chemical fire extinguishers—30 CFR 75.1100–3	Semi-annually	36,840	0.033	1,216
Program of instruction—30 CFR 75.1101–23(a)	On occasion	248	0.500	124
Fire drill certifications—30 CFR 75.1101–23(c)	Quarterly	10,716	0.500	5,358
Inspect automatic fire sensors and warning devices—30 CFR 75.1103–8				
Weekly examinations	Weekly	123,760	0.250	30,940
Weekly certification	Weekly	123,760	0.170	21,039
Annual function test	Annually	2,380	0.250	595
Test fire hydrant—30 CFR 75.1103–11	Annually	35,700	0.500	17,850
Total		333,404		77,122

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $1,240.

Description: Section 311(a) of the Mine Safety and Health Act of 1977 (Pub. L. 91–173) states that each coal mine shall be provided with suitable firefighting equipment adapted for the size and conditions of the mine. Under 30 CFR 75.1100–3, chemical fire extinguishers must be examined every 6 months and the date of the examination recorded on a permanent tag attached to the extinguisher. Under section 75.1101–23(a), operators of underground coal mines are required to establish a program for the instruction of all miners in the proper fire fighting and evacuation procedures to be followed in event of an emergency. The program includes a specific fire fighting and evacuation plan designed to acquaint miners on all shifts with procedures for: (i) Evacuation of all miners not required for fire fighting activities; (ii) rapid assembly and transportation of necessary people, fire suppression equipment, and rescue apparatus to the scene of the fire; and (iii) operation of the fire suppression equipment available in the mine. Under section 75–1101–23(c), an underground coal mine operator is required to conduct fire drills at intervals of not more than 90 days. The operator is to certify by signature and date that fire drills were conducted in accordance with the approved program. Under section 75.1103–8, a qualified person must examine the automatic fire sensor and warning device systems on a weekly basis, and must conduct a functional test of the complete system at least once a year. Under section 75.1103–11, each fire hydrant and hose must be tested at least once a year, and the records of those tests shall be kept in an appropriate location.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–18964 Filed 7–24–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 21, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on (202) 693–4129 (this is not a toll-free number) or E-Mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316/this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension of a currently approved collection.

Title: Reporting and Performance Standards System for Migrant and Seasonal Farmworker Youth Programs Under Title I–D, section 167 of the Workforce Investment Act (WIA).

OMB Number: 1205–0429.

Affected Public: Not-for-profit institutions.

Type of Response: Recordkeeping and Reporting.

Information collection requirement	Number of Responses	Frequency	Annual responses	Average response time (hours)	Annual burden hours
Plan Narrative	12	Annually	12	5	60
Data Record	12	On occasion	5,000	3	15,000
Report from Data Record	12	Annually	12	2	24
Budget Information Summary (ETA–9096)	12	Annually	12	15	180
Program Planning Summary (ETA–9097)	12	Annually	12	15	180
Program Status Summary (ETA–9098)	12	Quarterly	48	7	336
Totals			5,096		15,780

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Section 185 of the Workforce Investment Act (WIA). (Pub. L. 105–220) requires funds recipients to keep records and submit such reports as may be required by the Secretary of Labor "to permit the tracing of funds to a level of expenditure adequate to ensure that the funds have not been spent unlawfully." The WIA Final Rules at 20 CFR 667.300 require annual plans and quarterly performance reports from all "direct grant recipients".

The primary uses of the data under WIA 167 Migrant and Seasonal Farmworker Youth Program are to provide material reports to the Secretary of Labor, respond to Congressional inquiries, support Congressional testimony on behalf of the program and to identify areas of technical assistance need and performance improvement. Data is also used to establish performance standards for each of the required performance measures per regulations at part 669, subpart D, sections 669.500 and 669.510.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. 03–18965 Filed 7–24–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB review; Comment Request

July 21, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1994 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Vanessa Reeves on (202) 693–4124 (this is not a toll-free number) or E-Mail: *reeves.vanessa2@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316 / this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on whose who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension of a currently approved collection.

Title: Weekly Claims and Extended Benefits Data and Weekly Initial and Continued Weeks Claimed.

OMB Number: 1205–0028.

Affected Public: State, Local, or Tribal Government.

Type of Response: Reporting.

Frequency: Weekly.

Number of Respondents: 53.

Information collection requirement	Annual responses	Average response time (hours)	Annual burden hours
ETA 538	2,756	.50	1,378
ETA 539	2,756	.833	2,297
Total	5,512		3,675

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The ETA 538 and ETA 539 reports are weekly reports which contain information on initial claims and continued weeks claimed. These figures are important economic indicators. The ETA 538 provides information that allows national unemployment claims information to be released to the public five days after the close of the reference period. The ETA 539 contains more refined weekly claims detail and the state's 13-week insured unemployment rate, which is used to determine eligibility for the Extended Benefits program.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. 03–18966 Filed 7–24–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 16, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Vanessa Reeves on 202–693–4124 (this is not a toll-free number) or E-Mail: *reeves,vanessa2@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316/this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Ground Control Plan.

OMB Number: 1219–0026.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Type of Response: Reporting.

Number of Respondents: 1,401.

Information collection requirements	Annual responses	Average response time (hours)	Annual burden hours
New Ground Control Plans	168	9.00	1,512
Revised Ground Control Plans	34	6.00	204
Total	202		1,716

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining system or purchasing services): $267.

Description: 30 CFR 77.1000 and 77.1000–1 require that Ground Control Plans that are reviewed by MSHA to ensure that surface coal mine operators' methods of controlling highwalls and spoil banks are consistent with prudent engineering design and will ensure safe working conditions for miners.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–18967 Filed 7–24–03; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract

work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 2090 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I
None
Volume II
None
Volume III
None
Volume IV
None
Volume V
None
Volume VI
None
Volume VII
None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Dated: Signed at Washington, DC, this 17th day of July 2003.

Carl Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–18711 Filed 7–24–03; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. GE2003–2]

Draft Ergonomics for the Prevention of Musculoskeletal Disorders: Guidelines for Poultry Processing

AGENCY: Occupational Safety and Health Administration (OSHA); Department of Labor.

ACTION: Extension of comment period, announcement of public meeting.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is extending the comment period for its draft Ergonomics for the Prevention of Musculoskeletal Disorders: Guidelines for Poultry Processing (draft guidelines) an additional forty-five (45) days, until September 18, 2003, OSHA is also announcing that a public stakeholder meeting will be held on October 2, 2003, in Washington, DC.

DATES: *Written Comments:* Comments must be submitted by the following dates:

Hard Copy: You must submit your comments (postmarked or sent) by September 18, 2003.

Facsimile and electronic transmission: You must submit your comments by September 18, 2003. (Please see the **SUPPLEMENTARY INFORMATION** below for additional information on submitting comments.)

Stakeholder meeting: OSHA will hold a half-day stakeholder meeting to discuss the draft guidelines. The meeting will be held on Thursday, October 2, 2003, from 8:30 a.m. to 12:30 p.m. in Washington, DC. Interested persons must submit their intention to participate in the stakeholder meeting through express delivery, hand delivery, messenger service, fax, or electronic means by September 18, 2003.

ADDRESSES:

I. Submission of Comments and Intention To Participate in Stakeholder Meeting

Regular mail, express delivery, hand-delivery, and messenger service: You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. GE2003–2, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). The OSHA Docket Office and the Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., E.S.T. You need only submit one copy of your intention to participate in the stakeholder meeting by express delivery, hand delivery, or messenger service to the above address.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this document, Docket No. GE2003–2, in your comments. You may also fax your intention to participate in the stakeholder meeting.

Electronic: You may submit comments and your intention to participate in the stakeholder meeting through the Internet at *http://ecomments.osha.gov/*. (Please see the **SUPPLEMENTARY INFORMATION** below for additional information on submitting comments.)

II. Obtaining Copies of the Draft Guidelines

You can download the draft guidelines from OSHA's Web page at *http://www.osha.gov*. A printed copy of the draft guidelines is available from the OSHA Office of Publications, Room N–3101, U.S., Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; or by telephone at (800) 321–OSHA (6742). You may fax your request for a copy of the draft guidelines to (202) 693–2498.

III. Stakeholder Meeting

The stakeholder meeting will be held at the Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC 20001; telephone (202) 628–2100.

FOR FURTHER INFORMATION CONTACT: Steven F. Witt, OSHA Directorate of Standards and Guidance, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1950.

SUPPLEMENTARY INFORMATION:

I. Extension of Comment Period

OSHA announced publication of its draft Ergonomics for the Prevention of Musculoskeletal Disorders: Guidelines for Poultry Processing in the **Federal Register** on June 4, 2003 (68 FR 33536). In that notice, the Agency provided the public with sixty (60) days to submit written comments, until August 4, 2003. Several interested persons requested that OSHA provide additional time to submit written comments on the draft guidelines. In light of the interest expressed by the public, and to provide a similar extension to that previously provided on OSHA's draft ergonomics guidelines for the retail grocery industry, OSHA is providing an additional forty-five (45) days for comment. Accordingly, written comments must now be submitted by September 18, 2003.

II. Submission of Comments and Internet Access to Comments

You may submit comments in response to this document by (1) hard copy, (2) fax transmission (facsimile), or (3) electronically through the OSHA Web page. You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic submission, you must submit three copies of them to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject and docket number so we can attach them to your comments. Because of security-related procedures the use of regular mail may cause a significant delay in the receipt of comments. Please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

All comments and submissions will be available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions will be posted on OSHA's Web page at *www.osha.gov*. OSHA cautions you about submitting personal information such as social security numbers, date of birth, etc. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about materials not available through the OSHA Web page and for assistance in using the internet to locate docket submissions.

III. Stakeholder Meeting

Following the close of the comment period, OSHA will hold a stakeholder meeting in Washington, DC, at the Washington Court Hotel on Thursday, October 2, 2003 from 8:30 a.m. to 12:30 p.m. Interested parties must submit their intention to participate in the stakeholder meeting by September 18, 2003 to allow the Agency to make appropriate plans for the meeting.

This notice was prepared under the direction of John L. Henshaw, Assistant Secretary for Occupational Safety and Health. It is issued under sections 4 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 657).

Issued at Washington, DC, this 18 day of July, 2003

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–18959 Filed 7–24–03; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL COUNCIL ON DISABILITY

Youth Advisory Committee Meeting

AGENCY: National Council on Disability (NCD).

AGENDA: Roll call, announcements, reports, new business, adjournment.

Time and Date: 1 p.m.–2:30 p.m., August 20, 2003.

Place: Intercontinental Houston Hotel, 2222 West Loop South, Houston, Texas.

Status: All parts of this meeting will be open to the public. Those interested in participating in this meeting should contact the appropriate staff member listed below.

FOR FURTHER INFORMATION CONTACT: Geraldine Drake Hawkins, PhD., Program Specialist, National Council on Disability, 1331 F Street NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), *ghawkins@ncd.gov* (e-mail).

Youth Advisory Committee Mission: The purpose of NCD's Youth Advisory Committee is to provide input into NCD activities consistent with the values and goals of the Americans with Disabilities Act.

Dated: July 22, 2003.

Ethel D. Briggs,

Executive Director.

[FR Doc. 03–19019 Filed 7–24–03; 8:45 am]

BILLING CODE 6820–MA–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities, NFAH.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Heather Gottry, Acting Advisory Committee Management Officer, National Endowment for the

Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* August 1, 2003.
Time: 9:00 a.m. to 5:30 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003 deadline.

2. *Date:* August 4, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003 deadline.

3. *Date:* August 5, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003 deadline.

4. *Date:* August 6, 2003.
Time: 9 a.m. to 5:30 p.m.
Room: M–07.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003 deadline.

5. *Date:* August 7, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: M–07.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003 deadline.

6. *Date:* August 7, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003 deadline.

7. *Date:* August 8, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003 deadline.

8. *Date:* August 8, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: M–07.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003 deadline.

9. *Date:* August 8, 2003.
Time: 11 a.m. to 12 p.m.
Room: 318.
Program: This meeting will review applications for Faculty Research Awards, submitted to the Division of Research Programs at the May 1, 2003 deadline.

10. *Date:* August 8, 2003.
Time: 4 p.m. to 5 p.m.
Room: 318.
Program: This meeting will review applications for Faculty Research Awards, submitted to the Division of Research Programs at the May 1, 2003 deadline.

11. *Date:* August 11, 2003.
Time: 9 a.m. to 5 p.m.
Room: 527.
Program: This meeting will review applications for Faculty Research Awards, submitted to the Division of Research Programs at the May 1, 2003 deadline.

12. *Date:* August 11, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003 deadline.

13. *Date:* August 11, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003 deadline.

14. *Date:* August 12, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003 deadline.

15. *Date:* August 12, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003 deadline.

16. *Date:* August 13, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003 deadline.

17. *Date:* August 13, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003 deadline.

18. *Date:* August 14, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003 deadline.

19. *Date:* August 14, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003 deadline.

20. *Date:* August 15, 2003.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003 deadline.

21. *Date:* August 19, 2003.
Time: 9 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Fellowships, submitted to the Division of Research Programs at the May 1, 2003 deadline.

Heather Gottry,
Acting Advisory Committee Management Officer.

[FR Doc. 03–18998 Filed 7–24–03; 8:45 am]
BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–413, 50–414, 50–369 and 50–370]

Duke Energy Corporation, et al., Catawba Nuclear Station, Units 1 and 2; McGuire Nuclear Station, Units 1 and 2; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–9 and NPF–17, issued to Duke Power Company (the licensee), for operation of the McGuire Nuclear Station, Unit Nos. 1 and 2 (McGuire), located in Mecklenburg County, North Carolina and to Facility Operating License Nos. NPF–35 and NPF–52, issued to Duke Power Company, *et al.* (the licensee), for operation of the Catawba Nuclear Station (CNS), Units 1 and 2, located in York County, South Carolina.

The proposed amendments, requested by the licensee in a letter dated February 27, 2003, would revise the Technical Specifications (TSs) to allow the use of four mixed oxide (MOX) lead assemblies at either the Catawba Nuclear Station or the McGuire Nuclear Station. The licensee has proposed changes to two sections of the TSs that address the storage of MOX fuel assemblies in the spent fuel storage racks: Section 3.7.15, "Spent Fuel Assembly Storage" and Section 4.3, "Fuel Storage." The licensee has also proposed changes to TS Section 4.2, "Reactor Core," to reflect the use of MOX fuel in addition to the currently specified slightly enriched uranium dioxide fuel and to reflect the use of fuel rods clad with an M5™ zirconium alloy that has a different material specification than the materials currently referenced in the TS. Associated changes are proposed for TS Section 5.6.5, "Core Operating Limits Report (COLR)," to add several more methodologies that will be used to develop the limits that will be included in the COLR. Associated changes have also been proposed for the TS Bases section.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By August 25, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/NRC/CFR/index.html*. If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding, (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding, and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing and petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Ms. Lisa F. Vaughn, Legal Department (ECIIX), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(l)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92. For further details with respect to the proposed action, see the licensee's application dated February 27, 2003. Documents may be examined, and/or copied for a fee, at the NRC's Public Document room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site, *http://www.nrc.gov*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 21st day of July, 2003.

For the Nuclear Regulatory Commission.

Robert E. Martin, Sr.,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–18963 Filed 7–24–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–09164]

Environmental Assessment and Finding of No Significant Impact Related to Issuance of a License Amendment of U. S. Nuclear Regulatory Commission Byproduct Material License No. 47–15473–01, Charleston Area Medical Center

I. Summary

The U.S. Nuclear Regulatory Commission (NRC) is considering amending Byproduct Material License No. 47–15473–01 to authorize the release of one of the licensee's facilities located on Pennsylvania Avenue in Charleston, West Virginia, for unrestricted use and has prepared an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) in support of this action.

The NRC has reviewed the results of the final survey of Laboratory 304 located at 830 Pennsylvania Avenue in Charleston, West Virginia. The Charleston Area Medical Center was authorized by the NRC from August 31, 1995 until the present to use radioactive materials for research and development purposes at the Pennsylvania Avenue facility. The authorization was limited to the in-vitro use of small quantities of Hydrogen-3, Carbon-14, Phosphorous-32, and Iodine-125. In September 2002, the Charleston Area Medical Center ceased operations with licensed materials at the Pennsylvania Street location and requested that it be removed from their materials license as a place of use. The Charleston Area Medical Center has conducted surveys of the facility and determined that the facility meets the license termination criteria in Subpart E of 10 CFR Part 20. The NRC staff has evaluated the Charleston Area Medical Center's request and the results of the surveys, performed a confirmatory survey, and has developed an EA in accordance with the requirements of 10 CFR Part 51. Based on the staff evaluation, the conclusion of the EA is a Finding of No Significant Impact on human health and the environment for the proposed licensing action.

II. Environmental Assessment

Introduction

The Charleston Area Medical Center has requested release, for unrestricted use, of their facility located at Suite 304, 830 Pennsylvania Avenue, in Charleston, West Virginia, as authorized by NRC License No. 47–15473–01. This location of use was authorized on August 31, 1995. NRC-licensed activities performed at the Pennsylvania Avenue location were limited to laboratory procedures typically performed on bench tops and in hoods. No outdoor areas were affected by the use of licensed materials. Licensed activities ceased completely in September 2002, and the licensee requested release of the facility for unrestricted use. Based on the licensee's historical knowledge of the site and the condition of the facility, the licensee determined that only routine decontamination activities, in accordance with licensee radiation safety procedures, were required. The licensee surveyed the facility and provided documentation that the facility meets the license termination criteria specified in Subpart E of 10 CFR part 20, "Radiological Criteria for License Termination."

The Proposed Action

The proposed action is to amend NRC Radioactive Materials License No. 47–15473–01 to release one of the licensee's facilities located at Suite 304, 830 Pennsylvania Avenue, in Charleston, West Virginia, for unrestricted use. By letter dated September 3, 2002, the Charleston Area Medical Center provided survey results which demonstrate that the Pennsylvania Avenue facility in Charleston, West Virginia is in compliance with the radiological criteria for license termination in Subpart E of 10 CFR Part 20, "Radiological Criteria for License Termination." No further actions or activities are required on the part of the licensee to remediate the facility.

Purpose and Need for the Proposed Action

The purpose of the proposed action is to release the licensee's Pennsylvania Avenue facility for unrestricted use and to remove the location as an authorized place of use from the materials license. This will allow the licensee to make other use of the facility. There is no residual radioactivity remaining at the facility that is distinguishable from background levels. NRC is fulfilling its responsibilities under the Atomic Energy Act to make a decision on a proposed license amendment for release of facilities for unrestricted use that ensures protection of public health and safety and environment.

Alternative to the Proposed Action

The only alternative to the proposed action of amending the license to release the Pennsylvania Avenue facility for unrestricted use is no action. The no-action alternative is not acceptable because it will result in violation of NRC's Timeliness Rule (10 CFR 30.36), which requires licensees to decommission their facilities when licensed activities cease. The licensee does not plan to perform any activities with licensed materials at these locations. Maintaining the area under a license would also reduce options for future use of the property.

The Affected Environment and Environmental Impacts

The licensee's place of use within Laboratory 304 is located in a four story concrete and stucco medical offices building adjacent to the Charleston Area Medical Center's Women and Children's Hospital. The hospital is surrounded by similar type construction office buildings.

The NRC staff has reviewed the surveys performed by the Charleston Area Medical Center to demonstrate compliance with the 10 CFR 20.1402 license termination criteria and has performed a confirmatory survey. Based on its review, the staff has determined that the affected environment and environmental impacts associated with the decommissioning of the Charleston Area Medical Center facility are bounded by the impacts evaluated by the "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities" (NUREG–1496). The staff also finds that the proposed release for unrestricted use of the Charleston Area Medical Center facility is in compliance with 10 CFR 20.1402, "Radiological Criteria for Unrestricted Use." The NRC has found no other activities in the area that could result in cumulative impacts.

Agencies and Persons Contacted and Sources Used

This Environmental Assessment was prepared entirely by the NRC staff. The U.S. Fish and Wildlife Service was contacted for comment and responded by letter dated December 10, 2002, with no opposition to the action. The West Virginia Division of Culture and History was also contacted and responded by letter dated November 15, 2002, with no opposition.

Conclusion

Based on its review, the NRC staff has concluded that the proposed action complies with 10 CFR Part 20. NRC has prepared this EA in support of the proposed license termination to release the Charleston Area Medical Center facility located at Suite 304, 830 Pennsylvania Avenue, in Charleston, West Virginia, for unrestricted use. On the basis of the EA, NRC has concluded that the environmental impacts from the proposed action are not expected to be significant and has determined that preparation of an environmental impact statement for the proposed action is not required.

List of Preparers

Orysia Masnyk Bailey, Health Physicist, Materials Licensing/Inspection Branch 1, Division of Nuclear Materials Safety, Region II.

List of References

1. NRC License No. 47–15473–01 inspection and licensing records.

2. Charleston Area Medical Center. (License amendment request and supporting documentation) Letter from S. Danak to NRC dated September 3, 2002. (ML022470219)

3. Title 10 Code of Federal Regulations Part 20, Subpart E, "Radiological Criteria for License Termination."

4. **Federal Register** notice, Volume 65, No. 114, page 37186, dated Tuesday, June 13, 2000, "Use of Screening Values to Demonstrate Compliance With the Federal Rule on Radiological Criteria for License Termination."

5. NRC. NUREG–1757 "Consolidated NMSS Decommissioning Guidance," Final Report dated September 2002.

6. NRC. NUREG 1496 "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities," Final Report dated July 1997.

7. U.S. Fish and Wildlife Service. Letter from J.K. Towner to NRC dated December 10, 2002 (ML023500031).

8. West Virginia Department of Culture and History. Letter from S.M. Pierce to NRC dated November 15, 2002.

III. Finding of No Significant Impact

Based upon the environmental assessment, the staff concludes that the proposed action will not have a significant effect of the quality of the human environment. Accordingly, the staff has determined that preparation of an environmental impact statement is not warranted.

IV. Further Information

The references listed above are available for public inspection and may also be copied for a fee at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. These documents are also available for public review through ADAMS, the NRC's electronic reading room, at: *http://www.nrc.gov/reading-rm/adams.html*. Any questions with respect to this action should be referred to Orysia Masnyk Bailey, Materials Licensing/Inspection Branch 1, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region II, Suite 23T85, 61 Forsyth Street, SW., Atlanta, Georgia, 30303. Telephone 404–562–4739.

Dated at Atlanta, Georgia the 11th day of July, 2003.

For the Nuclear Regulatory Commission.

Douglas M. Collins,

Division of Nuclear Materials Safety, Region II.

[FR Doc. 03–18960 Filed 7–24–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443]

FPL Energy Seabrook, LLC, Et al.; Seabrook Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) part 50, section 50.60, "Acceptance criteria for fracture prevention measures for light-water nuclear power reactors for normal operation," and 10 CFR part 50, appendix G, "Fracture Toughness Requirements," for Facility Operating License No. NPF–86, issued to FPL Energy Seabrook, LLC, *et al.* (the licensee), for operation of the Seabrook Power Station, located in Seabrook, New Hampshire. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from the requirements of 10 CFR part 50, section 50.60(a) and Appendix G, and allow the use of American Society of Mechanical Engineers *Boiler and Pressure Vessel Code* (ASME Code) Code Case N–641 in the development of the Seabrook Reactor Pressure Vessel (RPV) Pressure and Temperature (P–T) limits. These limits would be used through 20 effective full-power years of operation.

10 CFR 50.60(a) requires, in part, that except where an exemption is granted by the Commission, all light-water nuclear power reactors must meet the fracture toughness requirements for the reactor coolant pressure boundary set forth in appendices G and H to 10 CFR part 50. Appendix G to 10 CFR part 50 requires that P–T limits be established for RPVs during normal operating and hydrostatic or leak-rate testing conditions. Specifically, 10 CFR part 50, Appendix G states, "The appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions." Additionally, the appendix specifies that the requirements for these limits are given in the ASME Code, section XI, appendix G limits.

ASME Code Case N–641 permits the use of alternate reference fracture toughness curves (*i.e.*, use of the "K_{IC} fracture toughness curve" instead of the

"K_{IA} fracture toughness curve," as defined in ASME Code, section XI, appendices A and G, respectively) for reactor vessel materials in determining the P–T limits for heatup, cooldown, and inservice testing.

The proposed action is in accordance with the licensee's application dated October 11, 2002.

The Need for the Proposed Action

The provisions of ASME Code Case N–641 were incorporated in appendix G of section XI of the ASME Code in the 1998 though the 2000 Addenda, which is the edition and addenda of record in the 2003 Edition of 10 CFR part 50. However, the proposed action is needed to apply Code Case N–641, because the Seabrook licensing basis has only been updated to include the 1995 Edition through the 1996 Addenda of the ASME Code.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that, as set forth below, there are no significant environmental impacts associated with the use of ASME Code Case N–641 in developing RPV P–T limits for heatup, cooldown, and inservice testing. The proposed action does not adversely affect the integrity of the reactor vessel or the function of the reactor vessel to act as a radiological barrier during an accident.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. The proposed action does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the Seabrook Station, Unit No. 1, dated December 1982.

Agencies and Persons Consulted

On June 4, 2003, the staff consulted with the New Hampshire State Official, Mike Nawoj of the New Hampshire Office of Emergency Management, and with the Massachusetts State Official, Diane Brown-Couture, of the Massachusetts Emergency Management Agency, regarding the environmental impact of the proposed action. The State Officials had no comments.

Finding of No Significant Impact

On the basis of the Environmental Assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 11, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 21st day of July, 2003.

For the Nuclear Regulatory Commission.

James W. Clifford,

Chief, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–18962 Filed 7–24–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285]

Omaha Public Power District; Fort Calhoun Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Appendix G for Facility Operating License No. DPR–40, issued to Omaha Public Power District (the licensee), for operation of the Fort Calhoun Station, Unit No. 1 (FCS), located in Washington County, Nebraska. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from certain requirements of Appendix G to 10 CFR Part 50 to allow the application of the methodology in Combustion Engineering (CE) Topical Report NPSD–683–A, Revision 6, "Development of a RCS Pressure and Temperature Limits Report for the Removal of P–T Limits and LTOP Requirements from the Technical Specifications," for the calculation of flaw stress intensity factors due to thermal stress loadings (K_{It}).

The proposed action is in accordance with the licensee's application dated October 8, 2002.

The Need for the Proposed Action

In the associated exemption, the staff has determined that, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the regulation will continue to be served by the implementation of the alternative methodology. The proposed action would revise the currently-approved methodology for pressure temperature (P–T) limit calculations to incorporate the methodology approved for use in CE NPSD–683–A, Revision 6. CE NPSD–683–A, Revision 6, allows the use of an alternate methodology to calculate the flaw stress intensity factors due to thermal stress loadings (K_{It}). The exemption is needed because the methodology in CE NPSD–683–A, Revision 6, could not be shown to be conservative with respect to the methodology for the determination of K_{It} provided in Editions and Addenda of ASME Code, Section XI, Appendix G, through the 1995 Edition and 1996 Addenda (the latest Edition and Addenda of the ASME Code which had been incorporated into 10 CFR 50.55a at the time of the staff's review of CE NPSD–683–A, Revision 6). Therefore, in conjunction with the licensee's October 8, 2002, license amendment request, the licensee also submitted an exemption request, consistent with the requirements of 10 CFR 50.60, to apply the K_{It} calculational methodology of CE NPSD–683–A, Revision 6 as part of the FCS pressure temperature limit report (PTLR) methodology.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the exemption described above would provide an adequate margin of safety against brittle failure of the reactor pressure vessel at FCS. The details of the staff's evaluation will be provided in the exemption to Appendix G, which will allow the use of the methodology in Topical Report NPSD–683–A, Revision 6, to calculate the flaw stress intensity factors due to thermal stress loadings (K_{It}), that will be issued in a future letter to the licensee.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for the FCS dated August 1972.

Agencies and Persons Consulted

On July 18, 2003, the staff consulted with the Nebraska State official, Howard Shuman of the Nebraska Consumer Health Services Agency, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 8, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 18th day of July, 2003.

For the Nuclear Regulatory Commission.

Stephen Dembek,

Chief, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–18961 Filed 7–24–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27699]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

July 21, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 15, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After August 15, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Progress Energy, Inc. (70–10132)

Progress Energy, Inc. ("Progress Energy"), a registered holding company, 410 South Wilmington Street, Raleigh, North Carolina 27602, has filed an application under sections 9(a)(1), 10, and 12(f) of the Act and rule 54 under the Act.

Progress Energy directly or indirectly owns all of the outstanding common stock of Carolina Power & Light Company, Florida Power Corporation, and North Carolina Natural Gas Corporation (collectively, the "Utility Subsidiaries"). Together, the Utility Subsidiaries provide electric service and natural gas or gas transportation service to approximately 2.9 million wholesale and retail customers in parts of three states. The Utility Subsidiaries and non-regulated generating subsidiaries of Progress Energy own all or portions of thirty-six electric generating plants in

the United States having a combined generating capability of more than 21,900 megawatts. Through direct and indirect subsidiaries, Progress Energy is also engaged in various nonutility businesses.

Progress Energy requests authority to acquire, directly or indirectly through one or more subsidiaries, a membership interest in PowerTree Carbon Company, LLC ("PowerTree Carbon"). The initial capital contribution of Progress Energy would be $100,000. Progress Energy also requests authority to sell all or a portion of its membership interest in PowerTree Carbon at any time to any of its associate companies.

PowerTree Carbon, a Delaware limited liability company, was organized in cooperation with the U.S. Department of Energy ("DOE"). It is designed to facilitate investments by energy companies such as Progress Energy in forestation projects in the Lower Mississippi River Valley and possibly other sites.

One proven means for reducing greenhouse gases is to use trees to remove CO_2 from the atmosphere and store it in tree biomass and roots and soil. PowerTree Carbon is part of an industry-wide effort to voluntarily address climate change through measures designed to reduce greenhouse gas emissions in response to President Bush's recent "Climate VISION" plan, or Climate, Voluntary Innovative Sector Initiatives: Opportunities Now. Climate VISION is the first step in the President's policy of encouraging industry to produce voluntary cuts in greenhouse gas emissions. The Bush Administration has also proposed, as part of its Global Climate Change program, the creation of transferable emission control credits for measures that reduce greenhouse gas emissions.

PowerTree Carbon has obtained commitments totaling approximately $3.5 million from approximately twenty-five electric utilities, electric utility holding companies and other energy concerns that will be used to fund six forestation projects located in Louisiana, Mississippi and Arkansas.[1] These projects will provide multiple environmental benefits, including removing from the atmosphere and storing over 2 million tons of CO_2 over the projects' 100-year lifetimes. Other benefits will include: restoring habitat for birds and animals; reducing fertilizer inputs to waters; and stabilizing soils. Two of the projects will involve purchase and donation of land to the U.S. Fish & Wildlife Service, while other projects will involve obtaining easements for tree planting on private land. The contributions of the members to PowerTree Carbon will be utilized for land acquisition and to pay the cost of planting tree seedlings. It is estimated that these projects will provide carbon benefits of more than 400 and 450 tons of CO_2 per acre by years 70 and 100, respectively, at a cost of less than two dollars per ton.

PowerTree Carbon was organized as a for-profit limited liability company ("LLC"), to allow carbon or CO_2 reduction credits, if and when they become available, to be more readily transferred. The LLC structure will also allow members to take advantage of tax benefits of land donation. Although formed as a for-profit LLC, PowerTree Carbon is essentially a passive medium for making investments in projects that are not expected to have any operating revenues, and will not engage in any active business operations.

Under the Operating Agreement of PowerTree Carbon ("Operating Agreement"), the business and affairs of the company shall be managed by its board of managers ("Board"). Each member that commits to make a capital contribution of at least $100,000 is entitled to appoint one representative to the Board. In general, actions by the Board may be taken by a majority of the managers present at a meeting. However, certain actions of the Board or of any individual manager or any officer require authorization by a two-thirds vote of the full board. These include, among other actions: the sale, exchange or other disposition of any of the assets of the company greater than $20,000 in value; the commencement of a voluntary bankruptcy proceeding; the declaration or making of any distributions to members; the incurrence of any indebtedness by the company; capital expenditures exceeding $20,000; and the acquisition or lease of any real property and any sale of, donation, lease or sublease affecting real property owned by the company.

New members would be admitted to PowerTree Carbon only upon the unanimous approval of the then existing members. Upon admission of any new member, the percentage interests of existing members shall be reduced accordingly. A member may transfer all or a portion of its membership interest only upon receiving approval of two-thirds of the existing members, except that, without the prior approval of the other members, a member may transfer all or a part of its membership interest to an affiliate of such member or to any other member. A two-thirds vote of the members also would be required to elect officers of PowerTree Carbon. The members have equal voting rights, regardless of their percentage interests in PowerTree Carbon.

The Operating Agreement provides that, so long as any member is a registered holding company or subsidiary company thereof, any voting rights received or otherwise obtained by that member equal to or exceeding ten percent of the total outstanding voting rights in PowerTree Carbon shall be automatically (and without any requirement for consent on the part of the affected member) allocated to the other members in equal portions such that no registered holding company member will hold ten percent or more of voting rights in PowerTree Carbon. In addition, any member may elect to limit its voting rights to less than five percent of the total voting rights in PowerTree Carbon, in which case the voting rights of such member or members equal to or exceeding five percent of the total voting rights in PowerTree Carbon would be automatically allocated in equal portions to the other members.

The Operating Agreement further provides that each member (or its designee(s) or transferee(s)) shall be entitled to claim a *pro rata* share of all carbon that is determined to be sequestered by PowerTree Carbon's efforts to which legal rights, if any, have been obtained ("Carbon Reductions") based on the member's percentage interest in PowerTree Carbon. A member may generally utilize its share of any Carbon Reductions in connection with its participation in any greenhouse gas reporting or regulatory program or transfer or assign such Carbon Reductions to one or more other persons.

[1] Progress Energy is one of eleven registered holding companies that have committed, either directly or through subsidiaries, to make capital contributions to PowerTree Carbon. The others are: Ameren Corporation; American Electric Power Company, Inc.; Cinergy Corp.; Dominion Resources, Inc.; Entergy Corporation; Exelon Corporation; FirstEnergy Corp.; Great Plains Energy Incorporated; PEPCO Holdings, Inc.; and Xcel Energy, Inc. Other energy companies that have committed to make capital contributions are: CLECO Corporation; The Detroit Edison Company; Duke Energy Corporation; Minnesota Power (a division of ALLETE, Inc.); OGE Energy Corp.; Oglethorpe Power Corporation; Peabody Energy Corporation; Pinnacle West Capital Corporation; Public Service Electric and Gas Company; Public Service Company of New Mexico; Reliant Resources, Inc.; Tennessee Valley Authority; TXU Corp.; We Energies (the trade name of Wisconsin Electric Power Company and Wisconsin Gas Company); and Wisconsin Public Service Corporation.

Ameren Corporation (70–10133)

Ameren Corporation ("Ameren"), a registered holding company, 1901 Chouteau Avenue, St. Louis, Missouri 63103, has filed an application under sections 9(a)(1), 10, and 12(f) of the Act and rule 54 under the Act.

Ameren directly or indirectly owns all of the outstanding common stock of the following public-utility companies: Union Electric Company; Central Illinois Public Service Company; and Central Illinois Light Company (collectively, the "Utility Subsidiaries"). Together, the Utility Subsidiaries provide electric service to approximately 1.7 million wholesale and retail customers and approximately 500,000 retail natural gas customers in parts of Missouri and Illinois. The Utility Subsidiaries and non-regulated generating subsidiaries of Ameren own all or portions of electric generating plants in the United States having a combined generating capability of more than 14,500 megawatts. Through direct and indirect subsidiaries, Ameren is also engaged in various nonutility businesses.

Ameren requests authority to acquire, directly or indirectly through one or more subsidiaries, a membership interest in PowerTree Carbon Company, LLC ("PowerTree Carbon"). The initial capital contribution of Ameren would be $100,000. Ameren also requests authority to sell all or a portion of its membership interest in PowerTree Carbon at any time to any of its associate companies.

PowerTree Carbon, a Delaware limited liability company, was organized in cooperation with the U.S. Department of Energy ("DOE"). It is designed to facilitate investments by energy companies such as Ameren in forestation projects in the Lower Mississippi River Valley and possibly other sites.

One proven means for reducing greenhouse gases is to use trees to remove CO_2 from the atmosphere and store it in tree biomass and roots and soil. PowerTree Carbon is part of an industry-wide effort to voluntarily address climate change through measures designed to reduce greenhouse gas emissions in response to President Bush's recent "Climate VISION" plan, or Climate, Voluntary Innovative Sector Initiatives: Opportunities Now. Climate VISION is the first step in the President's policy of encouraging industry to produce voluntary cuts in greenhouse gas emissions. The Bush Administration has also proposed, as part of its Global Climate Change program, the creation of transferable emission control credits for measures that reduce greenhouse gas emissions.

PowerTree Carbon has obtained commitments totaling approximately $3.5 million from approximately twenty-five electric utilities, electric utility holding companies and other energy concerns that will be used to fund six forestation projects located in Louisiana, Mississippi and Arkansas.[2] These projects will provide multiple environmental benefits, including removing from the atmosphere and storing over 2 million tons of CO_2 over the projects' 100-year lifetimes. Other benefits will include: Restoring habitat for birds and animals; reducing fertilizer inputs to waters; and stabilizing soils. Two of the projects will involve purchase and donation of land to the U.S. Fish & Wildlife Service, while other projects will involve obtaining easements for tree planting on private land. The contributions of the members to PowerTree Carbon will be utilized for land acquisition and to pay the cost of planting tree seedlings. It is estimated that these projects will provide carbon benefits of more than 400 and 450 tons of CO_2 per acre by years 70 and 100, respectively, at a cost of less than two dollars per ton.

PowerTree Carbon was organized as a for-profit limited liability company ("LLC"), to allow carbon or CO_2 reduction credits, if and when they become available, to be more readily transferred. The LLC structure will also allow members to take advantage of tax benefits of land donation. Although formed as a for-profit LLC, PowerTree Carbon is essentially a passive medium for making investments in projects that are not expected to have any operating revenues, and will not engage in any active business operations.

Under the Operating Agreement of PowerTree Carbon ("Operating Agreement"), the business and affairs of the company shall be managed by its board of managers ("Board"). Each member that commits to make a capital contribution of at least $100,000 is entitled to appoint one representative to the Board. In general, actions by the Board may be taken by a majority of the managers present at a meeting. However, certain actions of the Board or of any individual manager or any officer require authorization by a two-thirds vote of the full board. These include, among other actions: The sale, exchange or other disposition of any of the assets of the company greater than $20,000 in value; the commencement of a voluntary bankruptcy proceeding; the declaration or making of any distributions to members; the incurrence of any indebtedness by the company; capital expenditures exceeding $20,000; and the acquisition or lease of any real property and any sale of, donation, lease or sublease affecting real property owned by the company.

New members would be admitted to PowerTree Carbon only upon the unanimous approval of the then existing members. Upon admission of any new member, the percentage interests of existing members shall be reduced accordingly. A member may transfer all or a portion of its membership interest only upon receiving approval of two-thirds of the existing members, except that, without the prior approval of the other members, a member may transfer all or a part of its membership interest to an affiliate of such member or to any other member. A two-thirds vote of the members also would be required to elect officers of PowerTree Carbon. The members have equal voting rights, regardless of their percentage interests in PowerTree Carbon.

The Operating Agreement provides that, so long as any member is a registered holding company or subsidiary company thereof, any voting rights received or otherwise obtained by that member equal to or exceeding ten percent of the total outstanding voting rights in PowerTree Carbon shall be automatically (and without any requirement for consent on the part of the affected member) allocated to the other members in equal portions such that no registered holding company member will hold ten percent or more of voting rights in PowerTree Carbon. In addition, any member may elect to limit its voting rights to less than five percent of the total voting rights in PowerTree Carbon, in which case the voting rights of such member or members equal to or exceeding five percent of the total voting rights in PowerTree Carbon

[2] Ameren is one of eleven registered holding companies that have committed, either directly or through subsidiaries, to make capital contributions to PowerTree Carbon. The others are: American Electric Power Company, Inc.; Cinergy Corp.; Dominion Resources, Inc.; Entergy Corporation; Exelon Corporation; FirstEnergy Corp.; Great Plains Energy Incorporated; PEPCO Holdings, Inc.; Progress Energy, Inc.; and Xcel Energy, Inc. Other energy companies that have committed to make capital contributions are: CLECO Corporation; The Detroit Edison Company; Duke Energy Corporation; Minnesota Power (a division of ALLETE, Inc.); OGE Energy Corp.; Oglethorpe Power Corporation; Peabody Energy Corporation; Pinnacle West Capital Corporation; Public Service Electric and Gas Company; Public Service Company of New Mexico; Reliant Resources, Inc.; Tennessee Valley Authority; TXU Corp.; We Energies (the trade name of Wisconsin Electric Power Company and Wisconsin Gas Company); and Wisconsin Public Service Corporation.

would be automatically allocated in equal portions to the other members.

The Operating Agreement further provides that each member (or its designee(s) or transferee(s)) shall be entitled to claim a *pro rata* share of all carbon that is determined to be sequestered by PowerTree Carbon's efforts to which legal rights, if any, have been obtained ("Carbon Reductions") based on the member's percentage interest in PowerTree Carbon. A member may generally utilize its share of any Carbon Reductions in connection with its participation in any greenhouse gas reporting or regulatory program or transfer or assign such Carbon Reductions to one or more other persons.

Cinergy Corp. (70–10134)

Cinergy Corp. ("Cinergy"), a registered holding company, 139 East Fourth Street, Cincinnati, Ohio 45202, has filed an application under sections 9(a)(1), 10, and 12(f) of the Act and rule 54 under the Act.

Cinergy directly or indirectly owns all of the outstanding common stock of the following public-utility companies: PSI Energy, Inc.; The Cincinnati Gas & Electric Company; The Union Light, Heat & Power Company; Lawrenceburg Gas Company; and Miami Power Corporation (collectively, the "Utility Subsidiaries"). Together, the Utility Subsidiaries provide retail gas and electric and wholesale electric service to more than 1.5 million customers in parts of Indiana, Ohio, and Kentucky. The Utility Subsidiaries and non-regulated generating subsidiaries of Cinergy own all or portions of thirty-one electric generating plants in the United States having a combined generating capability of approximately 13,929 megawatts. Through direct and indirect subsidiaries, Cinergy is also engaged in various nonutility businesses.

Cinergy requests authority to acquire, directly or indirectly through one or more subsidiaries, a membership interest in PowerTree Carbon Company, LLC ("PowerTree Carbon"). The initial capital contribution of Cinergy would be $100,000. Cinergy also requests authority to sell all or a portion of its membership interest in PowerTree Carbon at any time to any of its associate companies.

PowerTree Carbon, a Delaware limited liability company, was organized in cooperation with the U.S. Department of Energy ("DOE"). It is designed to facilitate investments by energy companies such as Cinergy in forestation projects in the Lower Mississippi River Valley and possibly other sites.

One proven means for reducing greenhouse gases is to use trees to remove CO_2 from the atmosphere and store it in tree biomass and roots and soil. PowerTree Carbon is part of an industry-wide effort to voluntarily address climate change through measures designed to reduce greenhouse gas emissions in response to President Bush's recent "Climate VISION" plan, or Climate, Voluntary Innovative Sector Initiatives: Opportunities Now. Climate VISION is the first step in the President's policy of encouraging industry to produce voluntary cuts in greenhouse gas emissions. The Bush Administration has also proposed, as part of its Global Climate Change program, the creation of transferable emission control credits for measures that reduce greenhouse gas emissions.

PowerTree Carbon has obtained commitments totaling approximately $3.5 million from approximately twenty-five electric utilities, electric utility holding companies and other energy concerns that will be used to fund six forestation projects located in Louisiana, Mississippi and Arkansas.[3] These projects will provide multiple environmental benefits, including removing from the atmosphere and storing over 2 million tons of CO_2 over the projects' 100-year lifetimes. Other benefits will include: restoring habitat for birds and animals; reducing fertilizer inputs to waters; and stabilizing soils. Two of the projects will involve purchase and donation of land to the U.S. Fish & Wildlife Service, while other projects will involve obtaining easements for tree planting on private land. The contributions of the members to PowerTree Carbon will be utilized for land acquisition and to pay the cost of planting tree seedlings. It is estimated that these projects will provide carbon benefits of more than 400 and 450 tons of CO_2 per acre by years 70 and 100, respectively, at a cost of less than two dollars per ton.

PowerTree Carbon was organized as a for-profit limited liability company ("LLC"), to allow carbon or CO_2 reduction credits, if and when they become available, to be more readily transferred. The LLC structure will also allow members to take advantage of tax benefits of land donation. Although formed as a for-profit LLC, PowerTree Carbon is essentially a passive medium for making investments in projects that are not expected to have any operating revenues, and will not engage in any active business operations.

Under the Operating Agreement of PowerTree Carbon ("Operating Agreement"), the business and affairs of the company shall be managed by its board of managers ("Board"). Each member that commits to make a capital contribution of at least $100,000 is entitled to appoint one representative to the Board. In general, actions by the Board may be taken by a majority of the managers present at a meeting. However, certain actions of the Board or of any individual manager or any officer require authorization by a two-thirds vote of the full board. These include, among other actions: the sale, exchange or other disposition of any of the assets of the company greater than $20,000 in value; the commencement of a voluntary bankruptcy proceeding; the declaration or making of any distributions to members; the incurrence of any indebtedness by the company; capital expenditures exceeding $20,000; and the acquisition or lease of any real property and any sale of, donation, lease or sublease affecting real property owned by the company.

New members would be admitted to PowerTree Carbon only upon the unanimous approval of the then existing members. Upon admission of any new member, the percentage interests of existing members shall be reduced accordingly. A member may transfer all or a portion of its membership interest only upon receiving approval of two-thirds of the existing members, except that, without the prior approval of the other members, a member may transfer all or a part of its membership interest to an affiliate of such member or to any other member. A two-thirds vote of the members also would be required to elect officers of PowerTree Carbon. The members have equal voting rights, regardless of their percentage interests in PowerTree Carbon.

The Operating Agreement provides that, so long as any member is a registered holding company or subsidiary company thereof, any voting rights received or otherwise obtained by that member equal to or exceeding ten percent of the total outstanding voting rights in PowerTree Carbon shall be automatically (and without any requirement for consent on the part of the affected member) allocated to the other members in equal portions such that no registered holding company member will hold ten percent or more of voting rights in PowerTree Carbon. In addition, any member may elect to limit its voting rights to less than five percent of the total voting rights in PowerTree Carbon, in which case the voting rights of such member or members equal to or exceeding five percent of the total voting rights in PowerTree Carbon would be automatically allocated in equal portions to the other members.

[3] Cinergy is one of eleven registered holding companies that have committed, either directly or through subsidiaries, to make capital contributions to PowerTree Carbon. The others are: Ameren Corporation; American Electric Power Company, Inc.; Progress Energy, Inc.; Dominion Resources, Inc.; Entergy Corporation; Exelon Corporation; FirstEnergy Corp.; Great Plains Energy Incorporated; PEPCO Holdings, Inc.; and Xcel Energy, Inc. Other energy companies that have committed to make capital contributions are: CLECO Corporation; The Detroit Edison Company; Duke Energy Corporation; Minnesota Power (a division of ALLETE, Inc.); OGE Energy Corp.; Oglethorpe Power Corporation; Peabody Energy Corporation; Pinnacle West Capital Corporation; Public Service Electric and Gas Company; Public Service Company of New Mexico; Reliant Resources, Inc.; Tennessee Valley Authority; TXU Corp.; We Energies (the trade name of Wisconsin Electric Power Company and Wisconsin Gas Company); and Wisconsin Public Service Corporation.

The Operating Agreement further provides that each member (or its designee(s) or transferee(s)) shall be entitled to claim a *pro rata* share of all carbon that is determined to be sequestered by PowerTree Carbon's efforts to which legal rights, if any, have been obtained ("Carbon Reductions") based on the member's percentage interest in PowerTree Carbon. A member may generally utilize its share of any Carbon Reductions in connection with its participation in any greenhouse gas reporting or regulatory program or transfer or assign such Carbon Reductions to one or more other persons.

Pepco Holdings, Inc. (70–10135)

Pepco Holdings, Inc. ("Pepco"), a registered holding company, 701 9th Street, 10th Floor, Suite 1300, Washington DC 20068, has filed an application under sections 9(a)(1), 10, and 12(f) of the Act and rule 54 under the Act.

Pepco directly or indirectly owns all of the outstanding common stock of the following public-utility companies: Atlantic City Electric Company; Delmarva Power & Light Company; Potomac Electric Power Company; Conectiv Delmarva Generation, Inc.; and Conectiv Atlantic Generation, LLC (collectively, the "Utility Subsidiaries"). Together, the Utility Subsidiaries provide retail and wholesale electric service to more than 1.8 million customers in parts of the District of Columbia, Delaware, Maryland, New Jersey, and Virginia. The Utility Subsidiaries and other non-regulated generating subsidiaries of Pepco own all or portions of twenty-four electric generating plants in the United States having a combined generating capability of approximately 4,580 megawatts. Through direct and indirect subsidiaries, Pepco is also engaged in various nonutility businesses.

Pepco requests authority to acquire, directly or indirectly through one or more subsidiaries, a membership interest in PowerTree Carbon Company, LLC ("PowerTree Carbon"). The initial capital contribution of Pepco would be $50,000. Pepco also requests authority to sell all or a portion of its membership interest in PowerTree Carbon at any time to any of its associate companies.

PowerTree Carbon, a Delaware limited liability company, was organized in cooperation with the U.S. Department of Energy ("DOE"). It is designed to facilitate investments by energy companies such as Pepco in forestation projects in the Lower Mississippi River Valley and possibly other sites.

One proven means for reducing greenhouse gases is to use trees to remove CO_2 from the atmosphere and store it in tree biomass and roots and soil. PowerTree Carbon is part of an industry-wide effort to voluntarily address climate change through measures designed to reduce greenhouse gas emissions in response to President Bush's recent "Climate VISION" plan, or Climate, Voluntary Innovative Sector Initiatives: Opportunities Now. Climate VISION is the first step in the President's policy of encouraging industry to produce voluntary cuts in greenhouse gas emissions. The Bush Administration has also proposed, as part of its Global Climate Change program, the creation of transferable emission control credits for measures that reduce greenhouse gas emissions.

PowerTree Carbon has obtained commitments totaling approximately $3.5 million from approximately twenty-five electric utilities, electric utility holding companies and other energy concerns that will be used to fund six forestation projects located in Louisiana, Mississippi and Arkansas.[4] These projects will provide multiple environmental benefits, including removing from the atmosphere and storing over 2 million tons of CO_2 over the projects' 100-year lifetimes. Other benefits will include: restoring habitat for birds and animals; reducing fertilizer inputs to waters; and stabilizing soils. Two of the projects will involve purchase and donation of land to the U.S. Fish & Wildlife Service, while other projects will involve obtaining easements for tree planting on private land. The contributions of the members to PowerTree Carbon will be utilized for land acquisition and to pay the cost of planting tree seedlings. It is estimated that these projects will provide carbon benefits of more than 400 and 450 tons of CO_2 per acre by years 70 and 100, respectively, at a cost of less than two dollars per ton.

PowerTree Carbon was organized as a for-profit limited liability company ("LLC"), to allow carbon or CO_2 reduction credits, if and when they become available, to be more readily transferred. The LLC structure will also allow members to take advantage of tax benefits of land donation. Although formed as a for-profit LLC, PowerTree Carbon is essentially a passive medium for making investments in projects that are not expected to have any operating revenues, and will not engage in any active business operations.

Under the Operating Agreement of PowerTree Carbon ("Operating Agreement"), the business and affairs of the company shall be managed by its board of managers ("Board"). Each member that commits to make a capital contribution of at least $100,000 is entitled to appoint one representative to the Board. In general, actions by the Board may be taken by a majority of the managers present at a meeting. However, certain actions of the Board or of any individual manager or any officer require authorization by a two-thirds vote of the full board. These include, among other actions: the sale, exchange or other disposition of any of the assets of the company greater than $20,000 in value; the commencement of a voluntary bankruptcy proceeding; the declaration or making of any distributions to members; the incurrence of any indebtedness by the company; capital expenditures exceeding $20,000; and the acquisition or lease of any real property and any sale of, donation, lease or sublease affecting real property owned by the company.

[4] Pepco is one of eleven registered holding companies that have committed, either directly or through subsidiaries, to make capital contributions to PowerTree Carbon. The others are: Ameren Corporation; American Electric Power Company, Inc.; Cinergy Corp.; Dominion Resources, Inc.; Entergy Corporation; Exelon Corporation; FirstEnergy Corp.; Great Plains Energy Incorporated; Progress Energy, Inc.; and Xcel Energy, Inc. Other energy companies that have committed to make capital contributions are: CLECO Corporation; The Detroit Edison Company; Duke Energy Corporation; Minnesota Power (a division of ALLETE, Inc.); OGE Energy Corp.; Oglethorpe Power Corporation; Peabody Energy Corporation; Pinnacle West Capital Corporation; Public Service Electric and Gas Company; Public Service Company of New Mexico; Reliant Resources, Inc.; Tennessee Valley Authority; TXU Corp.; We Energies (the trade name of Wisconsin Electric Power Company and Wisconsin Gas Company); and Wisconsin Public Service Corporation.

New members would be admitted to PowerTree Carbon only upon the unanimous approval of the then existing members. Upon admission of any new member, the percentage interests of existing members shall be reduced accordingly. A member may transfer all or a portion of its membership interest only upon receiving approval of two-thirds of the existing members, except that, without the prior approval of the other members, a member may transfer all or a part of its membership interest to an affiliate of such member or to any other member. A two-thirds vote of the members also would be required to elect officers of PowerTree Carbon. The members have equal voting rights, regardless of their percentage interests in PowerTree Carbon.

The Operating Agreement provides that, so long as any member is a registered holding company or subsidiary company thereof, any voting rights received or otherwise obtained by that member equal to or exceeding ten percent of the total outstanding voting rights in PowerTree Carbon shall be automatically (and without any requirement for consent on the part of the affected member) allocated to the other members in equal portions such that no registered holding company member will hold ten percent or more of voting rights in PowerTree Carbon. In addition, any member may elect to limit its voting rights to less than five percent of the total voting rights in PowerTree Carbon, in which case the voting rights of such member or members equal to or exceeding five percent of the total voting rights in PowerTree Carbon would be automatically allocated in equal portions to the other members.

The Operating Agreement further provides that each member (or its designee(s) or transferee(s)) shall be entitled to claim a *pro rata* share of all carbon that is determined to be sequestered by PowerTree Carbon's efforts to which legal rights, if any, have been obtained ("Carbon Reductions") based on the member's percentage interest in PowerTree Carbon. A member may generally utilize its share of any Carbon Reductions in connection with its participation in any greenhouse gas reporting or regulatory program or transfer or assign such Carbon Reductions to one or more other persons.

FirstEnergy Corporation (70–10138)

FirstEnergy Corporation ("FirstEnergy"), a registered holding company, 76 South Main Street, Akron, Ohio 44308, has filed an application under sections 9(a)(1), 10, and 12(f) of the Act and rule 54 under the Act.

FirstEnergy directly or indirectly owns all of the outstanding common stock of eleven public-utility companies: Ohio Edison Company; The Cleveland Electric Illuminating Company; The Toledo Edison Company; American Transmission Systems, Incorporated; Jersey Central Power & Light Company; Pennsylvania Electric Company; Metropolitan Edison Company; Pennsylvania Power Company; York Haven Power Company; The Waverly Electric Power & Light Company (collectively, the "Electric Utility Subsidiaries"); and Northeast Ohio Natural Gas Corp. ("NONG"). Together, the Electric Utility Subsidiaries provide electric service to approximately 4.3 million retail and wholesale customers in a 37,200 square mile area in Ohio, New Jersey, New York, and Pennsylvania. NONG provides gas transportation and distribution services to approximately 5,000 customers in central and northeast Ohio. Certain of FirstEnergy's public-utility company subsidiaries own all or a portion of the units at sixteen electricity generating stations in the United States having a combined generating capability of approximately 13,387 megawatts. Through direct and indirect subsidiaries, FirstEnergy is also engaged in various nonutility businesses.

FirstEnergy requests authority to acquire, directly or indirectly through one or more subsidiaries, a membership interest in PowerTree Carbon Company, LLC ("PowerTree Carbon"). The initial capital contribution of FirstEnergy would be $100,000. FirstEnergy also requests authority to sell all or a portion of its membership interest in PowerTree Carbon at any time to any of its associate companies.

PowerTree Carbon, a Delaware limited liability company, was organized in cooperation with the U.S. Department of Energy ("DOE"). It is designed to facilitate investments by energy companies such as FirstEnergy in forestation projects in the Lower Mississippi River Valley and possibly other sites.

One proven means for reducing greenhouse gases is to use trees to remove CO_2 from the atmosphere and store it in tree biomass and roots and soil. PowerTree Carbon is part of an industry-wide effort to voluntarily address climate change through measures designed to reduce greenhouse gas emissions in response to President Bush's recent "Climate VISION" plan, or Climate, Voluntary Innovative Sector Initiatives: Opportunities Now. Climate VISION is the first step in the President's policy of encouraging industry to produce voluntary cuts in greenhouse gas emissions. The Bush Administration has also proposed, as part of its Global Climate Change program, the creation of transferable emission control credits for measures that reduce greenhouse gas emissions.

PowerTree Carbon has obtained commitments totaling approximately $3.5 million from approximately twenty-five electric utilities, electric utility holding companies and other energy concerns that will be used to fund six forestation projects located in Louisiana, Mississippi and Arkansas.[5] These projects will provide multiple environmental benefits, including removing from the atmosphere and storing over 2 million tons of CO_2 over the projects' 100-year lifetimes. Other benefits will include: restoring habitat for birds and animals; reducing fertilizer inputs to waters; and stabilizing soils. Two of the projects will involve purchase and donation of land to the U.S. Fish & Wildlife Service, while other projects will involve obtaining easements for tree planting on private land. The contributions of the members to PowerTree Carbon will be utilized for land acquisition and to pay the cost of planting tree seedlings. It is estimated that these projects will provide carbon benefits of more than 400 and 450 tons of CO_2 per acre by years 70 and 100, respectively, at a cost of less than two dollars per ton.

PowerTree Carbon was organized as a for-profit limited liability company ("LLC"), to allow carbon or CO_2 reduction credits, if and when they become available, to be more readily transferred. The LLC structure will also allow members to take advantage of tax benefits of land donation. Although formed as a for-profit LLC, PowerTree Carbon is essentially a passive medium for making investments in projects that are not expected to have any operating revenues, and will not engage in any active business operations.

[5] FirstEnergy is one of eleven registered holding companies that have committed, either directly or through subsidiaries, to make capital contributions to PowerTree Carbon. The others are: Ameren Corporation; American Electric Power Company, Inc.; Cinergy Corp.; Dominion Resources, Inc.; Entergy Corporation; Exelon Corporation; Progress Energy, Inc.; Great Plains Energy Incorporated; PEPCO Holdings, Inc.; and Xcel Energy, Inc. Other energy companies that have committed to make capital contributions are: CLECO Corporation; The Detroit Edison Company; Duke Energy Corporation; Minnesota Power (a division of ALLETE, Inc.); OGE Energy Corp.; Oglethorpe Power Corporation; Peabody Energy Corporation; Pinnacle West Capital Corporation; Public Service Electric and Gas Company; Public Service Company of New Mexico; Reliant Resources, Inc.; Tennessee Valley Authority; TXU Corp.; We Energies (the trade name of Wisconsin Electric Power Company and Wisconsin Gas Company); and Wisconsin Public Service Corporation.

Under the Operating Agreement of PowerTree Carbon ("Operating Agreement"), the business and affairs of the company shall be managed by its board of managers ("Board"). Each member that commits to make a capital contribution of at least $100,000 is entitled to appoint one representative to the Board. In general, actions by the Board may be taken by a majority of the managers present at a meeting. However, certain actions of the Board or of any individual manager or any officer require authorization by a two-thirds vote of the full board. These include, among other actions: The sale, exchange or other disposition of any of the assets of the company greater than $20,000 in value; the commencement of a voluntary bankruptcy proceeding; the declaration or making of any distributions to members; the incurrence of any indebtedness by the company; capital expenditures exceeding $20,000; and the acquisition or lease of any real property and any sale of, donation, lease or sublease affecting real property owned by the company.

New members would be admitted to PowerTree Carbon only upon the unanimous approval of the then existing members. Upon admission of any new member, the percentage interests of existing members shall be reduced accordingly. A member may transfer all or a portion of its membership interest only upon receiving approval of two-thirds of the existing members, except that, without the prior approval of the other members, a member may transfer all or a part of its membership interest to an affiliate of such member or to any other member. A two-thirds vote of the members also would be required to elect officers of PowerTree Carbon. The members have equal voting rights, regardless of their percentage interests in PowerTree Carbon.

The Operating Agreement provides that, so long as any member is a registered holding company or subsidiary company thereof, any voting rights received or otherwise obtained by that member equal to or exceeding ten percent of the total outstanding voting rights in PowerTree Carbon shall be automatically (and without any requirement for consent on the part of the affected member) allocated to the other members in equal portions such that no registered holding company member will hold ten percent or more of voting rights in PowerTree Carbon. In addition, any member may elect to limit its voting rights to less than five percent of the total voting rights in PowerTree Carbon, in which case the voting rights of such member or members equal to or exceeding five percent of the total voting rights in PowerTree Carbon would be automatically allocated in equal portions to the other members.

The Operating Agreement further provides that each member (or its designee(s) or transferee(s)) shall be entitled to claim a *pro rata* share of all carbon that is determined to be sequestered by PowerTree Carbon's efforts to which legal rights, if any, have been obtained ("Carbon Reductions") based on the member's percentage interest in PowerTree Carbon. A member may generally utilize its share of any Carbon Reductions in connection with its participation in any greenhouse gas reporting or regulatory program or transfer or assign such Carbon Reductions to one or more other persons.

Exelon Corporation (70–10139)

Exelon Corporation ("Exelon"), a registered holding company, 10 South Dearborn Street, 37th Floor, Chicago, Illinois 60603, has filed an application under sections 9(a)(1), 10, and 12(f) of the Act and rule 54 under the Act.

Exelon has a number of public-utility company subsidiaries: PECO Energy Company, which transmits, distributes and sells electricity and purchases and sells natural gas in Pennsylvania; Commonwealth Edison Company, which transmits, distributes and sells electricity in Illinois; Exelon Generation Company (also a registered holding company), which generates and sells electricity in Pennsylvania, Illinois, and elsewhere;[6] Commonwealth Edison Company of Indiana; PECO Energy Power Company, Susquehanna Power Company; and Susquehanna Electric Company. Through direct and indirect subsidiaries, Exelon is also engaged in various nonutility businesses.

Exelon requests authority to acquire, directly or indirectly through one or more subsidiaries, a membership interest in PowerTree Carbon Company, LLC ("PowerTree Carbon"). Exelon also requests authority to sell all or a portion of its membership interest in PowerTree Carbon at any time to any of its associate companies.

PowerTree Carbon, a Delaware limited liability company, was organized in cooperation with the U.S. Department of Energy ("DOE"). It is designed to facilitate investments by energy companies such as Exelon in forestation projects in the Lower Mississippi River Valley and possibly other sites.

One proven means for reducing greenhouse gases is to use trees to remove CO_2 from the atmosphere and store it in tree biomass and roots and soil. PowerTree Carbon is part of an industry-wide effort to voluntarily address climate change through measures designed to reduce greenhouse gas emissions in response to President Bush's recent "Climate VISION" plan, or Climate, Voluntary Innovative Sector Initiatives: Opportunities Now. Climate VISION is the first step in the President's policy of encouraging industry to produce voluntary cuts in greenhouse gas emissions. The Bush Administration has also proposed, as part of its Global Climate Change program, the creation of transferable emission control credits for measures that reduce greenhouse gas emissions.

PowerTree Carbon has obtained commitments totaling approximately $3.5 million from approximately twenty-five electric utilities, electric utility holding companies and other energy concerns that will be used to fund six forestation projects located in Louisiana, Mississippi and Arkansas.[7] These projects will provide multiple environmental benefits, including removing from the atmosphere and storing over 2 million tons of CO_2 over the projects' 100-year lifetimes. Other benefits will include: restoring habitat for birds and animals; reducing fertilizer inputs to waters; and stabilizing soils. Two of the projects will involve purchase and donation of land to the U.S. Fish & Wildlife Service, while other projects will involve obtaining easements for tree planting on private land. The contributions of the members to PowerTree Carbon will be utilized for land acquisition and to pay the cost of

[6] Exelon Generation Company owns, directly or indirectly, electricity generating plants in the United States having a combined generating capability of approximately 26,241 megawatts.

[7] Exelon is one of eleven registered holding companies that have committed, either directly or through subsidiaries, to make capital contributions to PowerTree Carbon. The others are: Ameren Corporation; American Electric Power Company, Inc.; Cinergy Corp.; Dominion Resources, Inc.; Entergy Corporation; Progress Energy, Inc.; FirstEnergy Corp.; Great Plains Energy Incorporated; PEPCO Holdings, Inc.; and Xcel Energy, Inc. Other energy companies that have committed to make capital contributions are: CLECO Corporation; The Detroit Edison Company; Duke Energy Corporation; Minnesota Power (a division of ALLETE, Inc.); OGE Energy Corp.; Oglethorpe Power Corporation; Peabody Energy Corporation; Pinnacle West Capital Corporation; Public Service Electric and Gas Company; Public Service Company of New Mexico; Reliant Resources, Inc.; Tennessee Valley Authority; TXU Corp.; We Energies (the trade name of Wisconsin Electric Power Company and Wisconsin Gas Company); and Wisconsin Public Service Corporation.

planting tree seedlings. It is estimated that these projects will provide carbon benefits of more than 400 and 450 tons of CO_2 per acre by years 70 and 100, respectively, at a cost of less than two dollars per ton.

PowerTree Carbon was organized as a for-profit limited liability company ("LLC"), to allow carbon or CO_2 reduction credits, if and when they become available, to be more readily transferred. The LLC structure will also allow members to take advantage of tax benefits of land donation. Although formed as a for-profit LLC, PowerTree Carbon is essentially a passive medium for making investments in projects that are not expected to have any operating revenues, and will not engage in any active business operations.

Under the Operating Agreement of PowerTree Carbon ("Operating Agreement"), the business and affairs of the company shall be managed by its board of managers ("Board"). Each member that commits to make a capital contribution of at least $100,000 is entitled to appoint one representative to the Board. In general, actions by the Board may be taken by a majority of the managers present at a meeting. However, certain actions of the Board or of any individual manager or any officer require authorization by a two-thirds vote of the full board. These include, among other actions: the sale, exchange or other disposition of any of the assets of the company greater than $20,000 in value; the commencement of a voluntary bankruptcy proceeding; the declaration or making of any distributions to members; the incurrence of any indebtedness by the company; capital expenditures exceeding $20,000; and the acquisition or lease of any real property and any sale of, donation, lease or sublease affecting real property owned by the company.

New members would be admitted to PowerTree Carbon only upon the unanimous approval of the then existing members. Upon admission of any new member, the percentage interests of existing members shall be reduced accordingly. A member may transfer all or a portion of its membership interest only upon receiving approval of two-thirds of the existing members, except that, without the prior approval of the other members, a member may transfer all or a part of its membership interest to an affiliate of such member or to any other member. A two-thirds vote of the members also would be required to elect officers of PowerTree Carbon. The members have equal voting rights, regardless of their percentage interests in PowerTree Carbon.

The Operating Agreement provides that, so long as any member is a registered holding company or subsidiary company thereof, any voting rights received or otherwise obtained by that member equal to or exceeding ten percent of the total outstanding voting rights in PowerTree Carbon shall be automatically (and without any requirement for consent on the part of the affected member) allocated to the other members in equal portions such that no registered holding company member will hold ten percent or more of voting rights in PowerTree Carbon. In addition, any member may elect to limit its voting rights to less than five percent of the total voting rights in PowerTree Carbon, in which case the voting rights of such member or members equal to or exceeding five percent of the total voting rights in PowerTree Carbon would be automatically allocated in equal portions to the other members.

The Operating Agreement further provides that each member (or its designee(s) or transferee(s)) shall be entitled to claim a *pro rata* share of all carbon that is determined to be sequestered by PowerTree Carbon's efforts to which legal rights, if any, have been obtained ("Carbon Reductions") based on the member's percentage interest in PowerTree Carbon. A member may generally utilize its share of any Carbon Reductions in connection with its participation in any greenhouse gas reporting or regulatory program or transfer or assign such Carbon Reductions to one or more other persons.

Dominion Resources, Inc. (70–10140)

Dominion Resources, Inc. ("Dominion"), a registered holding company, 120 Tredegar Street, Richmond, Virginia, has filed an application under sections 9(a)(1), 10, and 12(f) of the Act and rule 54 under the Act.

Dominion directly owns all of the outstanding common stock of Virginia Electric & Power Company ("Virginia Electric"), which sells electricity to approximately 2.2 million retail customers and to wholesale customers. Virginia Electric non-regulated generating subsidiaries of Dominion own all or portions of thirty-eight electric generating plants in the United States having a combined generating capability of approximately 19,927 megawatts. Through direct and indirect subsidiaries, Dominion is also engaged in various nonutility businesses.

Dominion requests authority to acquire, directly or indirectly through one or more subsidiaries, a membership interest in PowerTree Carbon Company, LLC ("PowerTree Carbon"). The initial capital contribution of Dominion would be $100,000. Dominion also requests authority to sell all or a portion of its membership interest in PowerTree Carbon at any time to any of its associate companies.

PowerTree Carbon, a Delaware limited liability company, was organized in cooperation with the U.S. Department of Energy ("DOE"). It is designed to facilitate investments by energy companies such as Dominion in forestation projects in the Lower Mississippi River Valley and possibly other sites.

One proven means for reducing greenhouse gases is to use trees to remove CO_2 from the atmosphere and store it in tree biomass and roots and soil. PowerTree Carbon is part of an industry-wide effort to voluntarily address climate change through measures designed to reduce greenhouse gas emissions in response to President Bush's recent "Climate VISION" plan, or Climate, Voluntary Innovative Sector Initiatives: Opportunities Now. Climate VISION is the first step in the President's policy of encouraging industry to produce voluntary cuts in greenhouse gas emissions. The Bush Administration has also proposed, as part of its Global Climate Change program, the creation of transferable emission control credits for measures that reduce greenhouse gas emissions.

PowerTree Carbon has obtained commitments totaling approximately $3.5 million from approximately twenty-five electric utilities, electric utility holding companies and other energy concerns that will be used to fund six forestation projects located in Louisiana, Mississippi and Arkansas.[8] These projects will provide multiple environmental benefits, including removing from the atmosphere and storing over 2 million tons of CO_2 over the projects' 100-year lifetimes. Other benefits will include: restoring habitat for birds and animals; reducing fertilizer inputs to waters; and stabilizing soils. Two of the projects will involve purchase and donation of land to the U.S. Fish & Wildlife Service, while other projects will involve obtaining easements for tree planting on private land. The contributions of the members to PowerTree Carbon will be utilized for land acquisition and to pay the cost of planting tree seedlings. It is estimated that these projects will provide carbon benefits of more than 400 and 450 tons of CO_2 per acre by years 70 and 100, respectively, at a cost of less than two dollars per ton.

[8] Dominion is one of eleven registered holding companies that have committed, either directly or through subsidiaries, to make capital contributions to PowerTree Carbon. The others are: Ameren Corporation; American Electric Power Company, Inc.; Cinergy Corp.; Progress Energy, Inc.; Entergy Corporation; Exelon Corporation; FirstEnergy Corp.; Great Plains Energy Incorporated; PEPCO Holdings, Inc.; and Xcel Energy, Inc. Other energy companies that have committed to make capital contributions are: CLECO Corporation; The Detroit Edison Company; Duke Energy Corporation; Minnesota Power (a division of ALLETE, Inc.); OGE Energy Corp.; Oglethorpe Power Corporation; Peabody Energy Corporation; Pinnacle West Capital Corporation; Public Service Electric and Gas Company; Public Service Company of New Mexico; Reliant Resources, Inc.; Tennessee Valley Authority; TXU Corp.; We Energies (the trade name of Wisconsin Electric Power Company and Wisconsin Gas Company); and Wisconsin Public Service Corporation.

PowerTree Carbon was organized as a for-profit limited liability company ("LLC"), to allow carbon or CO_2 reduction credits, if and when they become available, to be more readily transferred. The LLC structure will also allow members to take advantage of tax benefits of land donation. Although formed as a for-profit LLC, PowerTree Carbon is essentially a passive medium for making investments in projects that are not expected to have any operating revenues, and will not engage in any active business operations.

Under the Operating Agreement of PowerTree Carbon ("Operating Agreement"), the business and affairs of the company shall be managed by its board of managers ("Board"). Each member that commits to make a capital contribution of at least $100,000 is entitled to appoint one representative to the Board. In general, actions by the Board may be taken by a majority of the managers present at a meeting. However, certain actions of the Board or of any individual manager or any officer require authorization by a two-thirds vote of the full board. These include, among other actions: the sale, exchange or other disposition of any of the assets of the company greater than $20,000 in value; the commencement of a voluntary bankruptcy proceeding; the declaration or making of any distributions to members; the incurrence of any indebtedness by the company; capital expenditures exceeding $20,000; and the acquisition or lease of any real property and any sale of, donation, lease or sublease affecting real property owned by the company.

New members would be admitted to PowerTree Carbon only upon the unanimous approval of the then existing members. Upon admission of any new member, the percentage interests of existing members shall be reduced accordingly. A member may transfer all or a portion of its membership interest only upon receiving approval of two-thirds of the existing members, except that, without the prior approval of the other members, a member may transfer all or a part of its membership interest to an affiliate of such member or to any other member. A two-thirds vote of the members also would be required to elect officers of PowerTree Carbon. The members have equal voting rights, regardless of their percentage interests in PowerTree Carbon.

The Operating Agreement provides that, so long as any member is a registered holding company or subsidiary company thereof, any voting rights received or otherwise obtained by that member equal to or exceeding ten percent of the total outstanding voting rights in PowerTree Carbon shall be automatically (and without any requirement for consent on the part of the affected member) allocated to the other members in equal portions such that no registered holding company member will hold ten percent or more of voting rights in PowerTree Carbon. In addition, any member may elect to limit its voting rights to less than five percent of the total voting rights in PowerTree Carbon, in which case the voting rights of such member or members equal to or exceeding five percent of the total voting rights in PowerTree Carbon would be automatically allocated in equal portions to the other members.

The Operating Agreement further provides that each member (or its designee(s) or transferee(s)) shall be entitled to claim a *pro rata* share of all carbon that is determined to be sequestered by PowerTree Carbon's efforts to which legal rights, if any, have been obtained ("Carbon Reductions") based on the member's percentage interest in PowerTree Carbon. A member may generally utilize its share of any Carbon Reductions in connection with its participation in any greenhouse gas reporting or regulatory program or transfer or assign such Carbon Reductions to one or more other persons.

American Electric Power Company, Inc. (70–10142)

American Electric Power Company, Inc. ("AEP"), a registered holding company, 1 Riverside Plaza, Columbus, Ohio 43215, has filed an application under sections 9(a)(1), 10, and 12(f) of the Act and rule 54 under the Act.

AEP directly or indirectly owns all of the outstanding common stock of nine public-utility company subsidiaries (collectively, the "Utility Subsidiaries"). Together, the Utility Subsidiaries provide retail and wholesale electric service to approximately 5 million customers in parts of eleven states (Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia, and West Virginia). The Utility Subsidiaries and non-regulated generating subsidiaries of the Applicant own all or portions of ninety-three electric generating plants in the United States having a combined generating capability of approximately 40,000 megawatts. Through direct and indirect subsidiaries, AEP is also engaged in various nonutility businesses.

AEP requests authority to acquire, directly or indirectly through one or more subsidiaries, a membership interest in PowerTree Carbon Company, LLC ("PowerTree Carbon"). The initial capital contribution of AEP would be $300,000. AEP also requests authority to sell all or a portion of its membership interest in PowerTree Carbon at any time to any of its associate companies.

PowerTree Carbon, a Delaware limited liability company, was organized in cooperation with the U.S. Department of Energy ("DOE"). It is designed to facilitate investments by energy companies such as AEP in forestation projects in the Lower Mississippi River Valley and possibly other sites.

One proven means for reducing greenhouse gases is to use trees to remove CO_2 from the atmosphere and store it in tree biomass and roots and soil. PowerTree Carbon is part of an industry-wide effort to voluntarily address climate change through measures designed to reduce greenhouse gas emissions in response to President Bush's recent "Climate VISION" plan, or Climate, Voluntary Innovative Sector Initiatives: Opportunities Now. Climate VISION is the first step in the President's policy of encouraging industry to produce voluntary cuts in greenhouse gas emissions. The Bush Administration has also proposed, as part of its Global Climate Change program, the creation of transferable emission control credits for measures that reduce greenhouse gas emissions.

PowerTree Carbon has obtained commitments totaling approximately $3.5 million from approximately twenty-five electric utilities, electric utility holding companies and other energy concerns that will be used to fund six forestation projects located in Louisiana, Mississippi and Arkansas.[9]

[9] AEP is one of eleven registered holding companies that have committed, either directly or through subsidiaries, to make capital contributions to PowerTree Carbon. The others are: Ameren Corporation; Progress Energy, Inc.; Cinergy Corp.;

Continued

These projects will provide multiple environmental benefits, including removing from the atmosphere and storing over 2 million tons of CO_2 over the projects' 100-year lifetimes. Other benefits will include: Restoring habitat for birds and animals; reducing fertilizer inputs to waters; and stabilizing soils. Two of the projects will involve purchase and donation of land to the U.S. Fish & Wildlife Service, while other projects will involve obtaining easements for tree planting on private land. The contributions of the members to PowerTree Carbon will be utilized for land acquisition and to pay the cost of planting tree seedlings. It is estimated that these projects will provide carbon benefits of more than 400 and 450 tons of CO_2 per acre by years 70 and 100, respectively, at a cost of less than two dollars per ton.

PowerTree Carbon was organized as a for-profit limited liability company ("LLC"), to allow carbon or CO_2 reduction credits, if and when they become available, to be more readily transferred. The LLC structure will also allow members to take advantage of tax benefits of land donation. Although formed as a for-profit LLC, PowerTree Carbon is essentially a passive medium for making investments in projects that are not expected to have any operating revenues, and will not engage in any active business operations.

Under the Operating Agreement of PowerTree Carbon ("Operating Agreement"), the business and affairs of the company shall be managed by its board of managers ("Board"). Each member that commits to make a capital contribution of at least $100,000 is entitled to appoint one representative to the Board. In general, actions by the Board may be taken by a majority of the managers present at a meeting. However, certain actions of the Board or of any individual manager or any officer require authorization by a two-thirds vote of the full board. These include, among other actions: The sale, exchange or other disposition of any of the assets of the company greater than $20,000 in value; the commencement of a voluntary bankruptcy proceeding; the declaration or making of any distributions to members; the incurrence of any indebtedness by the company; capital expenditures exceeding $20,000; and the acquisition or lease of any real property and any sale of, donation, lease or sublease affecting real property owned by the company.

New members would be admitted to PowerTree Carbon only upon the unanimous approval of the then existing members. Upon admission of any new member, the percentage interests of existing members shall be reduced accordingly. A member may transfer all or a portion of its membership interest only upon receiving approval of two-thirds of the existing members, except that, without the prior approval of the other members, a member may transfer all or a part of its membership interest to an affiliate of such member or to any other member. A two-thirds vote of the members also would be required to elect officers of PowerTree Carbon. The members have equal voting rights, regardless of their percentage interests in PowerTree Carbon.

The Operating Agreement provides that, so long as any member is a registered holding company or subsidiary company thereof, any voting rights received or otherwise obtained by that member equal to or exceeding ten percent of the total outstanding voting rights in PowerTree Carbon shall be automatically (and without any requirement for consent on the part of the affected member) allocated to the other members in equal portions such that no registered holding company member will hold ten percent or more of voting rights in PowerTree Carbon. In addition, any member may elect to limit its voting rights to less than five percent of the total voting rights in PowerTree Carbon, in which case the voting rights of such member or members equal to or exceeding five percent of the total voting rights in PowerTree Carbon would be automatically allocated in equal portions to the other members.

The Operating Agreement further provides that each member (or its designee(s) or transferee(s)) shall be entitled to claim a *pro rata* share of all carbon that is determined to be sequestered by PowerTree Carbon's efforts to which legal rights, if any, have been obtained ("Carbon Reductions") based on the member's percentage interest in PowerTree Carbon. A member may generally utilize its share of any Carbon Reductions in connection with its participation in any greenhouse gas reporting or regulatory program or transfer or assign such Carbon Reductions to one or more other persons.

Entergy Arkansas, Inc. (70–10143)

Entergy Arkansas, Inc. ("Entergy Arkansas"), 425 West Capitol Avenue, Little Rock, Arkansas 72201, a public-utility company subsidiary of Entergy Corporation, a registered holding company, has filed an application under sections 9(a)(1), 10, and 12(f) of the Act and rule 54 under the Act.

Entergy Arkansas provides retail electric service to approximately 649,000 customers in the State of Arkansas. It owns or leases all or portions of twelve electric generating plants having a combined generating capability of 4,690 megawatts. Entergy Corporation, through direct and indirect subsidiaries, is also engaged in various nonutility businesses.

Entergy Arkansas requests authority to acquire, directly or indirectly through one or more subsidiaries, a membership interest in PowerTree Carbon Company, LLC ("PowerTree Carbon"). The initial capital contribution of Entergy Arkansas would be $100,000. Entergy Arkansas also requests authority to sell all or a portion of its membership interest in PowerTree Carbon at any time to any of its associate companies.

PowerTree Carbon, a Delaware limited liability company, was organized in cooperation with the U.S. Department of Energy ("DOE"). It is designed to facilitate investments by energy companies such as Entergy Arkansas in forestation projects in the Lower Mississippi River Valley and possibly other sites.

One proven means for reducing greenhouse gases is to use trees to remove CO_2 from the atmosphere and store it in tree biomass and roots and soil. PowerTree Carbon is part of an industry-wide effort to voluntarily address climate change through measures designed to reduce greenhouse gas emissions in response to President Bush's recent "Climate VISION" plan, or Climate, Voluntary Innovative Sector Initiatives: Opportunities Now. Climate VISION is the first step in the President's policy of encouraging industry to produce voluntary cuts in greenhouse gas emissions. The Bush Administration has also proposed, as part of its Global Climate Change program, the creation of transferable emission control credits for measures that reduce greenhouse gas emissions.

PowerTree Carbon has obtained commitments totaling approximately $3.5 million from approximately twenty-five electric utilities, electric utility holding companies and other energy concerns that will be used to fund six forestation projects located in Louisiana, Mississippi and Arkansas.[10] These projects will provide multiple environmental benefits, including removing from the atmosphere and storing over 2 million tons of CO_2 over the projects' 100-year lifetimes. Other benefits will include: restoring habitat for birds and animals; reducing fertilizer inputs to waters; and stabilizing soils. Two of the projects will involve purchase and donation of land to the U.S. Fish & Wildlife Service, while other projects will involve obtaining easements for tree planting on private land. The contributions of the members to PowerTree Carbon will be utilized for land acquisition and to pay the cost of planting tree seedlings. It is estimated that these projects will provide carbon benefits of more than 400 and 450 tons of CO_2 per acre by years 70 and 100, respectively, at a cost of less than two dollars per ton.

PowerTree Carbon was organized as a for-profit limited liability company ("LLC"), to allow carbon or CO_2 reduction credits, if and when they become available, to be more readily transferred. The LLC structure will also allow members to take advantage of tax benefits of land donation. Although formed as a for-profit LLC, PowerTree Carbon is essentially a passive medium for making investments in projects that are not expected to have any operating revenues, and will not engage in any active business operations.

Under the Operating Agreement of PowerTree Carbon ("Operating Agreement"), the business and affairs of the company shall be managed by its board of managers ("Board"). Each member that commits to make a capital contribution of at least $100,000 is entitled to appoint one representative to the Board. In general, actions by the Board may be taken by a majority of the managers present at a meeting. However, certain actions of the Board or of any individual manager or any officer require authorization by a two-thirds vote of the full board. These include, among other actions: the sale, exchange or other disposition of any of the assets of the company greater than $20,000 in value; the commencement of a voluntary bankruptcy proceeding; the declaration or making of any distributions to members; the incurrence of any indebtedness by the company; capital expenditures exceeding $20,000; and the acquisition or lease of any real property and any sale of, donation, lease or sublease affecting real property owned by the company.

New members would be admitted to PowerTree Carbon only upon the unanimous approval of the then existing members. Upon admission of any new member, the percentage interests of existing members shall be reduced accordingly. A member may transfer all or a portion of its membership interest only upon receiving approval of two-thirds of the existing members, except that, without the prior approval of the other members, a member may transfer all or a part of its membership interest to an affiliate of such member or to any other member. A two-thirds vote of the members also would be required to elect officers of PowerTree Carbon. The members have equal voting rights, regardless of their percentage interests in PowerTree Carbon.

The Operating Agreement provides that, so long as any member is a registered holding company or subsidiary company thereof, any voting rights received or otherwise obtained by that member equal to or exceeding ten percent of the total outstanding voting rights in PowerTree Carbon shall be automatically (and without any requirement for consent on the part of the affected member) allocated to the other members in equal portions such that no registered holding company member will hold ten percent or more of voting rights in PowerTree Carbon. In addition, any member may elect to limit its voting rights to less than five percent of the total voting rights in PowerTree Carbon, in which case the voting rights of such member or members equal to or exceeding five percent of the total voting rights in PowerTree Carbon would be automatically allocated in equal portions to the other members.

The Operating Agreement further provides that each member (or its designee(s) or transferee(s)) shall be entitled to claim a *pro rata* share of all carbon that is determined to be sequestered by PowerTree Carbon's efforts to which legal rights, if any, have been obtained ("Carbon Reductions") based on the member's percentage interest in PowerTree Carbon. A member may generally utilize its share of any Carbon Reductions in connection with its participation in any greenhouse gas reporting or regulatory program or transfer or assign such Carbon Reductions to one or more other persons.

Great Plains Energy Incorporated (70–10146)

Great Plains Energy Incorporated ("Great Plains"), a registered holding company, 1201 Walnut, Kansas City, Missouri 64106, has filed an application under sections 9(a)(1), 10, and 12(f) of the Act and rule 54 under the Act.

Great Plains directly owns all of the outstanding common stock of Kansas City Power & Light Company ("KCP&L"), a public-utility company. KCP&L provides retail and wholesale electric service to more than 485,000 customers in parts of Missouri and Kansas, and owns or leases all or portions of twenty-six electric generating plants in the United States having a combined generating capability of more than 4,043 megawatts. Through direct and indirect subsidiaries, Great Plains is also engaged in various nonutility businesses.

Great Plains requests authority to acquire, directly or indirectly through one or more subsidiaries, a membership interest in PowerTree Carbon Company, LLC ("PowerTree Carbon"). The initial capital contribution of Great Plains would be $50,000. Great Plains also requests authority to sell all or a portion of its membership interest in PowerTree Carbon at any time to any of its associate companies.

PowerTree Carbon, a Delaware limited liability company, was organized in cooperation with the U.S. Department of Energy ("DOE"). It is designed to facilitate investments by energy companies such as Great Plains in forestation projects in the Lower Mississippi River Valley and possibly other sites.

One proven means for reducing greenhouse gases is to use trees to remove CO_2 from the atmosphere and store it in tree biomass and roots and soil. PowerTree Carbon is part of an industry-wide effort to voluntarily address climate change through measures designed to reduce greenhouse gas emissions in response to President Bush's recent "Climate VISION" plan, or Climate, Voluntary Innovative Sector Initiatives:

Dominion Resources, Inc.; Entergy Corporation; Exelon Corporation; FirstEnergy Corp.; Great Plains Energy Incorporated; PEPCO Holdings, Inc.; and Xcel Energy, Inc. Other energy companies that have committed to make capital contributions are: CLECO Corporation; The Detroit Edison Company; Duke Energy Corporation; Minnesota Power (a division of ALLETE, Inc.); OGE Energy Corp.; Oglethorpe Power Corporation; Peabody Energy Corporation; Pinnacle West Capital Corporation; Public Service Electric and Gas Company; Public Service Company of New Mexico; Reliant Resources, Inc.; Tennessee Valley Authority; TXU Corp.; We Energies (the trade name of Wisconsin Electric Power Company and Wisconsin Gas Company); and Wisconsin Public Service Corporation.

[10] Entergy Corporation, through Entergy Arkansas, is one of eleven registered holding companies that have committed, either directly or through subsidiaries, to make capital contributions to PowerTree Carbon. The others are: Ameren Corporation; American Electric Power Company, Inc.; Cinergy Corp.; Dominion Resources, Inc.; Progress Energy, Inc.; Exelon Corporation; FirstEnergy Corp.; Great Plains Energy Incorporated; PEPCO Holdings, Inc.; and Xcel Energy, Inc. Other energy companies that have committed to make capital contributions are: CLECO Corporation; The Detroit Edison Company; Duke Energy Corporation; Minnesota Power (a division of ALLETE, Inc.); OGE Energy Corp.; Oglethorpe Power Corporation; Peabody Energy Corporation; Pinnacle West Capital Corporation; Public Service Electric and Gas Company; Public Service Company of New Mexico; Reliant Resources, Inc.; Tennessee Valley Authority; TXU Corp.; We Energies (the trade name of Wisconsin Electric Power Company and Wisconsin Gas Company); and Wisconsin Public Service Corporation.

Opportunities Now. Climate VISION is the first step in the President's policy of encouraging industry to produce voluntary cuts in greenhouse gas emissions. The Bush Administration has also proposed, as part of its Global Climate Change program, the creation of transferable emission control credits for measures that reduce greenhouse gas emissions.

PowerTree Carbon has obtained commitments totaling approximately $3.5 million from approximately twenty-five electric utilities, electric utility holding companies and other energy concerns that will be used to fund six forestation projects located in Louisiana, Mississippi and Arkansas.[11] These projects will provide multiple environmental benefits, including removing from the atmosphere and storing over 2 million tons of CO_2 over the projects' 100-year lifetimes. Other benefits will include: Restoring habitat for birds and animals; reducing fertilizer inputs to waters; and stabilizing soils. Two of the projects will involve purchase and donation of land to the U.S. Fish & Wildlife Service, while other projects will involve obtaining easements for tree planting on private land. The contributions of the members to PowerTree Carbon will be utilized for land acquisition and to pay the cost of planting tree seedlings. It is estimated that these projects will provide carbon benefits of more than 400 and 450 tons of CO_2 per acre by years 70 and 100, respectively, at a cost of less than two dollars per ton.

PowerTree Carbon was organized as a for-profit limited liability company ("LLC"), to allow carbon or CO_2 reduction credits, if and when they become available, to be more readily transferred. The LLC structure will also allow members to take advantage of tax benefits of land donation. Although formed as a for-profit LLC, PowerTree Carbon is essentially a passive medium for making investments in projects that are not expected to have any operating revenues, and will not engage in any active business operations.

Under the Operating Agreement of PowerTree Carbon ("Operating Agreement"), the business and affairs of the company shall be managed by its board of managers ("Board"). Each member that commits to make a capital contribution of at least $100,000 is entitled to appoint one representative to the Board. In general, actions by the Board may be taken by a majority of the managers present at a meeting. However, certain actions of the Board or of any individual manager or any officer require authorization by a two-thirds vote of the full board. These include, among other actions: The sale, exchange or other disposition of any of the assets of the company greater than $20,000 in value; the commencement of a voluntary bankruptcy proceeding; the declaration or making of any distributions to members; the incurrence of any indebtedness by the company; capital expenditures exceeding $20,000; and the acquisition or lease of any real property and any sale of, donation, lease or sublease affecting real property owned by the company.

New members would be admitted to PowerTree Carbon only upon the unanimous approval of the then existing members. Upon admission of any new member, the percentage interests of existing members shall be reduced accordingly. A member may transfer all or a portion of its membership interest only upon receiving approval of two-thirds of the existing members, except that, without the prior approval of the other members, a member may transfer all or a part of its membership interest to an affiliate of such member or to any other member. A two-thirds vote of the members also would be required to elect officers of PowerTree Carbon. The members have equal voting rights, regardless of their percentage interests in PowerTree Carbon.

The Operating Agreement provides that, so long as any member is a registered holding company or subsidiary company thereof, any voting rights received or otherwise obtained by that member equal to or exceeding ten percent of the total outstanding voting rights in PowerTree Carbon shall be automatically (and without any requirement for consent on the part of the affected member) allocated to the other members in equal portions such that no registered holding company member will hold ten percent or more of voting rights in PowerTree Carbon. In addition, any member may elect to limit its voting rights to less than five percent of the total voting rights in PowerTree Carbon, in which case the voting rights of such member or members equal to or exceeding five percent of the total voting rights in PowerTree Carbon would be automatically allocated in equal portions to the other members.

The Operating Agreement further provides that each member (or its designee(s) or transferee(s)) shall be entitled to claim a *pro rata* share of all carbon that is determined to be sequestered by PowerTree Carbon's efforts to which legal rights, if any, have been obtained ("Carbon Reductions") based on the member's percentage interest in PowerTree Carbon. A member may generally utilize its share of any Carbon Reductions in connection with its participation in any greenhouse gas reporting or regulatory program or transfer or assign such Carbon Reductions to one or more other persons.

Xcel Energy Inc. (70–10147)

Xcel Energy Inc. ("Xcel"), a registered holding company, 800 Nicollet Mall, Minneapolis, Minnesota 55402, has filed an application under sections 9(a)(1), 10, and 12(f) of the Act and rule 54 under the Act.

Xcel directly and indirectly owns all of the outstanding common stock of: Cheyenne Light, Fuel and Power Company; Northern States Power Company; Public Service Company of Colorado; and Southwestern Public Service Company (collectively, the "Utility Subsidiaries"). Together, the Utility Subsidiaries provide retail and wholesale electric service to more than 3.2 million customers in parts of Colorado, Kansas, Michigan, Minnesota, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Wisconsin, and Wyoming. The Utility Subsidiaries own all or portions of seventy electric generating plants in the United States having a combined generating capability of approximately 15,246 megawatts. Through direct and indirect subsidiaries, Xcel is also engaged in various nonutility businesses.

Xcel requests authority to acquire, directly or indirectly through one or more subsidiaries, a membership interest in PowerTree Carbon Company, LLC ("PowerTree Carbon"). The initial capital contribution of Xcel would be $100,000. Xcel also requests authority to sell all or a portion of its membership interest in PowerTree Carbon at any time to any of its associate companies.

PowerTree Carbon, a Delaware limited liability company, was organized in cooperation with the U.S. Department of Energy ("DOE"). It is designed to facilitate investments by energy companies such as Xcel in forestation projects in the Lower Mississippi River Valley and possibly other sites.

One proven means for reducing greenhouse gases is to use trees to remove CO_2 from the atmosphere and store it in tree biomass and roots and soil. PowerTree Carbon is part of an industry-wide effort to voluntarily address climate change through measures designed to reduce greenhouse gas emissions in response to President Bush's recent "Climate VISION" plan, or Climate, Voluntary Innovative Sector Initiatives: Opportunities Now. Climate VISION is the first step in the President's policy of encouraging industry to produce voluntary cuts in greenhouse gas emissions. The Bush Administration has also proposed, as part of its Global Climate Change program, the creation of transferable emission control credits for measures that reduce greenhouse gas emissions.

PowerTree Carbon has obtained commitments totaling approximately $3.5 million from approximately twenty-five electric utilities, electric utility holding companies and other energy concerns that will be used to fund six forestation projects located in Louisiana, Mississippi and Arkansas.[12] These projects will provide multiple environmental benefits, including removing from the atmosphere and storing over 2 million tons of CO_2 over the projects' 100-year lifetimes. Other benefits will include: Restoring habitat for birds and animals; reducing fertilizer inputs to waters; and stabilizing soils. Two of the projects will involve purchase and donation of land to the U.S. Fish & Wildlife Service, while other projects will involve obtaining easements for tree planting on private land. The contributions of the members to PowerTree Carbon will be utilized for land acquisition and to pay the cost of planting tree seedlings. It is estimated that these projects will provide carbon benefits of more than 400 and 450 tons of CO_2 per acre by years 70 and 100, respectively, at a cost of less than two dollars per ton.

PowerTree Carbon was organized as a for-profit limited liability company ("LLC"), to allow carbon or CO_2 reduction credits, if and when they become available, to be more readily transferred. The LLC structure will also allow members to take advantage of tax benefits of land donation. Although formed as a for-profit LLC, PowerTree Carbon is essentially a passive medium for making investments in projects that are not expected to have any operating revenues, and will not engage in any active business operations.

Under the Operating Agreement of PowerTree Carbon ("Operating Agreement"), the business and affairs of the company shall be managed by its board of managers ("Board"). Each member that commits to make a capital contribution of at least $100,000 is entitled to appoint one representative to the Board. In general, actions by the Board may be taken by a majority of the managers present at a meeting. However, certain actions of the Board or of any individual manager or any officer require authorization by a two-thirds vote of the full board. These include, among other actions: The sale, exchange or other disposition of any of the assets of the company greater than $20,000 in value; the commencement of a voluntary bankruptcy proceeding; the declaration or making of any distributions to members; the incurrence of any indebtedness by the company; capital expenditures exceeding $20,000; and the acquisition or lease of any real property and any sale of, donation, lease or sublease affecting real property owned by the company.

New members would be admitted to PowerTree Carbon only upon the unanimous approval of the then existing members. Upon admission of any new member, the percentage interests of existing members shall be reduced accordingly. A member may transfer all or a portion of its membership interest only upon receiving approval of two-thirds of the existing members, except that, without the prior approval of the other members, a member may transfer all or a part of its membership interest to an affiliate of such member or to any other member. A two-thirds vote of the members also would be required to elect officers of PowerTree Carbon. The members have equal voting rights, regardless of their percentage interests in PowerTree Carbon.

The Operating Agreement provides that, so long as any member is a registered holding company or subsidiary company thereof, any voting rights received or otherwise obtained by that member equal to or exceeding ten percent of the total outstanding voting rights in PowerTree Carbon shall be automatically (and without any requirement for consent on the part of the affected member) allocated to the other members in equal portions such that no registered holding company member will hold ten percent or more of voting rights in PowerTree Carbon. In addition, any member may elect to limit its voting rights to less than five percent of the total voting rights in PowerTree Carbon, in which case the voting rights of such member or members equal to or exceeding five percent of the total voting rights in PowerTree Carbon would be automatically allocated in equal portions to the other members.

The Operating Agreement further provides that each member (or its designee(s) or transferee(s)) shall be entitled to claim a *pro rata* share of all carbon that is determined to be sequestered by PowerTree Carbon's efforts to which legal rights, if any, have been obtained ("Carbon Reductions") based on the member's percentage interest in PowerTree Carbon. A member may generally utilize its share of any Carbon Reductions in connection with its participation in any greenhouse gas reporting or regulatory program or transfer or assign such Carbon Reductions to one or more other persons.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–18931 Filed 7–24–03; 8:45 am]

BILLING CODE 8010–01–P

[11] Great Plains is one of eleven registered holding companies that have committed, either directly or through subsidiaries, to make capital contributions to PowerTree Carbon. The others are: Ameren Corporation; American Electric Power Company, Inc.; Cinergy Corp.; Dominion Resources, Inc.; Entergy Corporation; Exelon Corporation; FirstEnergy Corp.; Progress Energy, Inc.; PEPCO Holdings, Inc.; and Xcel Energy, Inc. Other energy companies that have committed to make capital contributions are: CLECO Corporation; The Detroit Edison Company; Duke Energy Corporation; Minnesota Power (a division of ALLETE, Inc.); OGE Energy Corp.; Oglethorpe Power Corporation; Peabody Energy Corporation; Pinnacle West Capital Corporation; Public Service Electric and Gas Company; Public Service Company of New Mexico; Reliant Resources, Inc.; Tennessee Valley Authority; TXU Corp.; We Energies (the trade name of Wisconsin Electric Power Company and Wisconsin Gas Company); and Wisconsin Public Service Corporation.

[12] Xcel is one of eleven registered holding companies that have committed, either directly or through subsidiaries, to make capital contributions to PowerTree Carbon. The others are: Ameren Corporation; American Electric Power Company, Inc.; Cinergy Corp.; Dominion Resources, Inc.; Entergy Corporation; Exelon Corporation; FirstEnergy Corp.; Great Plains Energy Incorporated; PEPCO Holdings, Inc.; and Progress Energy, Inc. Other energy companies that have committed to make capital contributions are: CLECO Corporation; The Detroit Edison Company; Duke Energy Corporation; Minnesota Power (a division of ALLETE, Inc.); OGE Energy Corp.; Oglethorpe Power Corporation; Peabody Energy Corporation; Pinnacle West Capital Corporation; Public Service Electric and Gas Company; Public Service Company of New Mexico; Reliant Resources, Inc.; Tennessee Valley Authority; TXU Corp.; We Energies (the trade name of Wisconsin Electric Power Company and Wisconsin Gas Company); and Wisconsin Public Service Corporation.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26101; File No. 812–12924]

ReliaStar Life Insurance Company of New York, et al.

July 21, 2003.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an amended order pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act") granting exemption from Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder.

APPLICANTS: ReliaStar Life Insurance Company of New York ("RLNY"), Separate Account NY–B of ReliaStar Life Insurance Company of New York ("Account NY–B"), Golden American Life Insurance Company ("Golden American") (with RLNY, the "Life Companies"), Separate Account B of Golden American Life Insurance Company ("Account B") (with Account NY–B, the "Accounts"), any other separate accounts of RLNY or Golden American that support Future Contracts (defined below) (collectively, the "Future Accounts") and Directed Services, Inc. ("DSI") (together, the "Applicants").

SUMMARY OF THE APPLICATION: Applicants hereby amend and restate an application originally filed on January 31, 2003 for an order to amend an existing order [1] ("Existing Order") to: (1) Add Golden American, Account B, and DSI (collectively, "Additional Applicants") as parties to the Existing Order, and (2) permit the Additional Applicants to recapture certain bonuses applied to purchase payments made under (a) certain deferred variable annuity contracts and certificates, including certain certificate data pages and endorsements, that Golden American will issue through Account B (the "Account B Contracts") and under (b) contracts and certificates, including certain certificate data pages and endorsements, that the Life Companies may issue in the future through Account B or the Future Accounts of the Life Companies (together with Account B, the "Accounts") and that are substantially similar in all material respects to the deferred variable annuity contracts ("Account NY–B Contracts") covered by the Existing Order (collectively, the "Future Contracts" and together with the Account B Contracts, the "Contracts"). Applicants also request that the order being sought extend to any National Association of Securities Dealers, Inc. ("NASD") member broker-dealer controlling or controlled by, or under common control with any Additional Applicant, whether existing or created in the future, that serves as a distributor or principal underwriter of the Contracts offered through the Accounts (collectively "Affiliated Broker-Dealers").

FILING DATE: The Application was filed on January 31, 2003, and amended and restated on June 4, 2003, and June 27, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on August 15, 2003, and should be accompanied by proof of service on the Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicant, c/o Linda Senker, Esq., Golden American Life Insurance Company, 1475 Dunwoody Drive, West Chester, Pennsylvania 19380.

FOR FURTHER INFORMATION CONTACT: Curtis A. Young, Esq., Senior Counsel, or Lorna J. MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the Application. The Application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. RLNY is a stock life insurance company originally incorporated under the laws of New York (originally incorporated under the name Morris Plan Insurance Society) on June 11, 1917. RLNY is engaged in the business of writing life insurance and annuities, both individual and group, and is authorized to do business in all 50 states. RLNY is a wholly-owned subsidiary of Security-Connecticut Life Insurance Company, which is a wholly-owned subsidiary of ReliaStar Life Insurance Company. RLNY is ultimately controlled by ING Groep N.V., a global financial services holding company with approximately $470.9 billion in assets as of December 31, 2002. As of December 31, 2002, Golden American had assets of approximately $17.6 billion. For purposes of the Act, RLNY is the depositor and sponsor of Account NY–B as those terms have been interpreted by the Commission with respect to variable annuity separate accounts.

2. Golden American is a stock life insurance company originally incorporated under the laws of Minnesota on January 2, 1973, and later redomiciled to Delaware. Golden American is engaged in the business of writing annuities, both individual and group, in all states (except New York) and the District of Columbia. Golden American is a subsidiary of Equitable Life Insurance Company of Iowa, which, in turn is a subsidiary of Lion Connecticut Holdings, Inc. Golden American is also ultimately controlled by ING Groep N.V. For purposes of the Act, Golden American is the depositor and sponsor for Account B, as those terms have been interpreted by the Commission with respect to variable annuity separate accounts. Golden American also serves as depositor for several currently existing Future Accounts, one or more of which may support obligations under Future Contracts. Golden American may establish one or more additional Future Accounts for which it will serve as depositor.

3. Golden American established Account B as a segregated investment account under Delaware law on July 14, 1988. Under Delaware law, the assets of Account B attributable to the Account B Contracts and any other variable annuity contracts through which interests in the Account are issued are owned by Golden American but are held separately from all other assets of Golden American, for the benefit of the owners of, and the persons entitled to payment under, Contracts, issued through the Account. Consequently, such assets are not chargeable with liabilities arising out of any other business that Golden American may conduct. Income, gains and losses, realized or unrealized, from each subaccount of the Account B, are credited to or charged against that subaccount without regard to any other income, gains or losses of Golden American. Account B is a "separate account" as defined by Rule 0–1(e) under the Act, and is registered with the Commission as a unit investment trust.

4. Each of the Accounts currently is divided into a number of subaccounts. Each subaccount invests exclusively in shares representing an interest in a separate corresponding investment portfolio of one of several series-type open-end management investment companies. The assets of each Account support one or more varieties of variable annuity contacts, including the Contracts. Account NY–B is registered with the Commission as a unit investment trust (File No. 811–7935), and interests in the Account to be offered through the Contracts have been registered under the 1933 Act on Form N–4 (File No. 333–85618). Account B is registered with the Commission as a unit investment trust (File No. 811–5626), and interests in the Account to be offered through the Contracts have been registered under the 1933 Act on Form N–4 (File No. 333–101481).

5. DSI is a wholly owned subsidiary of Lion Connecticut Holdings, Inc. It serves as the principal underwriter of a number of RLNY and Golden American separate accounts registered as unit investment trusts under the Act, including the Accounts, and is the distributor of variable annuity contracts issued through such separate accounts, including the Contracts. DSI is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. (the "NASD").

6. The Contracts are deferred combination variable and fixed annuity contracts that RLNY and Golden American may issue to individuals or groups on a "non-qualified" basis or in connection with employee benefit plans that receive favorable federal income tax treatment under Sections 401, 403(b), 408, 408A or 457 of the Internal Revenue Code of 1986, as amended (the "Code").

7. The Contracts make available a number of subaccounts of the Accounts to which owners may allocate net premium payments and associated bonus credits (described below) and to which owners may transfer contract value. The Contracts also offer fixed-interest allocation options under which RLNY or Golden American, as applicable, credit guaranteed rates of interest for various periods. Transfers of contract value among and between the subaccounts and, subject to certain restrictions, among and between the subaccounts and the fixed-interest options, may be made at any time. The Contracts offer a variety of annuity payment options to owners. In the event of an owner's (or, in certain circumstances, an annuitant's) death prior to the annuity commencement date, beneficiaries may elect to receive death benefits in the form of one of the annuity payment options instead of a lump sum. In general, the Contracts offer all of the features typically found in variable annuity contracts today.

8. The Contracts generally may only be purchased with a minimum initial premium of $15,000 ($1,500 for certain employee benefit plans) under Option Package I and $5,000 ($1,500 for certain employee benefit plans) for Option Packages II and III. RLNY or Golden American, as applicable, may deduct a premium tax charge from premium payments in certain states, but otherwise deducts a charge for premium taxes upon surrender or annuitization of the Contract or upon the payment of a death benefit, depending upon the jurisdiction. The Contracts provide for an annual administrative charge of $30 that RLNY or Golden American, as applicable, deducts on each Contract Anniversary and upon a full surrender of a Contract and a daily administrative charge deducted from the assets of the Account at an annual rate of 0.15% of the Account's average daily net assets. A daily mortality and expense risk charge is deducted from the assets of the Accounts at the following annual rates:

Account NY–B Contracts: 0.90% for Option Package I, 1.10% for Option Package II, and 1.25% for Option Package III, of the Account's average daily net assets. Account B Contracts: 0.95% for Option Package I, 1.15% for Option Package II, and 1.30% for Option Package III, of the Account's average daily net assets. The Contracts also provide for a charge of $25 for each transfer of contract value in excess of 12 transfers per contract year. RLNY and Golden American currently anticipate waiving this charge for the foreseeable future. Lastly, the Contracts have a surrender charge in the form of a contingent deferred sales charge.

9. The contingent deferred sales charge ("CDSC") is equal to the percentage of each premium payment surrendered or withdrawn. The CDSC is separately calculated and applied to each premium payment at any time that the payment (or part of the payment) is surrendered or withdrawn. The CDSC applicable to each premium payment diminishes as the payment ages.

The Account NY–B Contract schedule is as follows:

Number of full years since payment of each premium	Charge (in percent)
less than 1	6.0
2	6.0
3	6.0
4	6.0
5	5.0
6	4.0
7	3.0
8+	0.0

The Account B Contract schedule is as follows:

Number of full years since payment of each premium	Charge (in percent)
less than 1	7.0
2	7.0
3	6.0
4	6.0
5	5.0
6	4.0
7	3.0
8+	0.0

10. No CDSC applies to contract value representing an annual free withdrawal amount or to contract value in excess of aggregate premium payments (less prior withdrawals of premium payments) ("earnings"). The CDSC is calculated using the assumption that premium payments are withdrawn on a first-in, first-out basis. The CDSC also is calculated using the assumption that contract value is withdrawn in the following order: (1) The annual free withdrawal amount for that contract year, (2) premium payments, and (3) earnings. The annual free withdrawal amount is 10% of contract value, measured at the time of withdrawal, less any prior withdrawals made in that contract year. Under Option Package III, any unused percentage of the 10% free withdrawal amount from a contract year may carry forward into successive contract years, based on the percentage remaining after the last withdrawal in a contract year. However, under Option Package III, the accumulated free withdrawal amount may not exceed 30% of contract value.

11. If an owner dies before the annuity start date, the Contracts provide, under most circumstances, for a death benefit payable to a beneficiary, computed as of the date RLNY or Golden American, as applicable, receives written notice and due proof of death. The death benefit payable to the beneficiary depends on whether the owner selected Option Package I, II or III. Each option package provides a death benefit upon the death of the owner which death benefit is based upon the highest amount payable under the separate death benefit options available under that option package. Under the Account NY–B Contracts, the death benefit options available under the option packages include:

(1) The Standard Death Benefit which equals return of premium, less credits applied since or within 12 months prior to death, reduced pro rata for withdrawals;

(2) the contract value on the claim date, less credits applied since or within 12 months prior to death;

(3) the Annual Ratchet death benefit which equals the maximum contract value on each contract anniversary occurring on or prior to attainment of age 90, adjusted for new premiums and credits and reduced pro rata for withdrawals, less credits applied since or within 12 months prior to death; and

(4) return of premium.

[1] ReliaStar Life Insurance Company of New York, Investment Company Act Release No. 25875 (Jan. 22, 2003) (File No. 812–12914).

Under Option Package I, the death benefit payable is the greater of (1), (2) and (4). Under Option Package II, the death benefit payable is the greatest of (1), (2), (3) and (4). Under Option Package III, the death benefit payable is the greatest of (1), (2), (3) and (4).

Under the Account B Contracts, the death benefit options available under the option packages include:

(1) The Standard Death Benefit which equals return of premium, less credits applied since or within 12 months prior to death, reduced pro rata for withdrawals;

(2) the contract value on the claim, less credits applied since or within 12 months prior to death;

(3) the Annual Ratchet death benefit which equals the maximum contract value on each contract anniversary occurring on or prior to attainment of age 90, adjusted for new premiums and credits and reduced pro rata for withdrawals, less credits applied since or within 12 months prior to death;

(4) the 5% Roll-Up death benefit which equals the lesser of premiums, plus credits, if applicable, adjusted for withdrawals and transfers, accumulated at 5% for Covered Funds or Excluded Funds and 0% for Special Funds until the earlier of attainment of age 90 or reaching the cap (equal to 3 times all premium payments and credits, if applicable, as reduced by adjustments for withdrawals) and thereafter at 0%, and the cap.

Under Option Package I, the death benefit payable is the greater of (1) and (2). Under Option Package II, the death benefit payable is the greatest of (1), (2) and (3). Under Option Package III, the death benefit payable is the greatest of (1), (2), (3) and (4).

12. RLNY and Golden American intend to offer a bonus credit provision under the Contracts. At the time of application, an owner may elect the bonus credit provision. Under the bonus credit provision, RLNY or Golden American, as applicable, credits contract value in the subaccounts and the fixed-interest allocations with an amount that is a percentage of the premium payment. The bonus credit applies upon issuance of the Contract and is based upon premium payments received within the first contract year ("first year premium payments"). RLNY or Golden American, as applicable, allocates the bonus credit among the subaccounts and fixed-interest allocations the owner selects in proportion to the premium payment in each investment option. The bonus credit equals 4% of the first year premium payments. The annual charge assessed for the premium credit rider (as a percentage of contract value) is 0.50%. The charge is payable for the first seven contract years. The charge is deducted from the contract value in the subaccounts and is also deducted from amounts in fixed interest allocations by crediting a lower interest rate.

13. Under the bonus credit provision, RLNY or Golden American, as applicable, recaptures or retains the credited amount in the event that the owner exercises his or her cancellation right during the "free look" period. RLNY or Golden American, as applicable, recaptures bonus credits applied after or within twelve months of the date as of which a death benefit is computed. RLNY or Golden American, as applicable, also will recapture part or all of the credited amount upon surrender or withdrawal. The portion of the credit deducted is based on the percentage of first year premium withdrawn and the contract year of surrender or withdrawal. The amount recaptured is calculated separately and applied to each premium payment at any time that the payment (or part of the payment) is surrendered or withdrawn. The recapture percentage applicable to each premium payment is level for the first two contract years and diminishes to zero after the seventh contract year. The schedule is as follows:

Contract year of surrender or withdrawal	Percentage of premium credit forfeited (based on percentage of first year premium withdrawn)
Years 1–2	100
Years 3–4	75
Years 5–6	50
Year 7	25
Years 8+	0

14. No recapture percentage applies to contract value representing the annual free withdrawal amount or to contract value representing earnings. Because of the recapture provisions discussed above, the value of a credit only "vests" or belongs irrevocably to the owner as the recapture period for the credit expires. As to bonus credits resulting from premiums paid before the "free look" period ends, no part of the credit vests for the owner until the expiration of the "free look" period. After the expiration of the "free look" period, all bonus credits vest in full over the 7-year period after RLNY or Golden American, as applicable, grants them. Under the bonus credit provision, RLNY or Golden American, as applicable, credits amounts to an owner's contract value either by "purchasing" accumulation units of an appropriate subaccount or adding to the owner's fixed interest allocation option values.

15. With regard to variable contract value, several consequences flow from the foregoing. First, increases in the value of accumulation units representing bonus credits accrue to the owner immediately, but the initial value of such units only belongs to the owner when, or to the extent that, each vests. Second, decreases in the value of accumulation units representing bonus credits do not diminish the dollar amount of contract value subject to recapture. Therefore, additional accumulation units must become subject to recapture as their value decreases. Stated differently, the proportionate share of any owner's variable contract value (or the owner's interest in the Account) that RLNY or Golden American, as applicable, can "recapture" increases as variable contract value (or the owner's interest in the Account) decreases. This dilutes somewhat the owner's interest in the Account vis-a-vis RLNY or Golden American, as applicable, and other owners, and in his or her variable contract value vis-a-vis RLNY or Golden American, as applicable. Lastly, because it is not administratively feasible to track the unvested value of bonus credits in the Account, RLNY or Golden American, as applicable, deducts the daily mortality and expense risk charge and the daily administrative charge from the entire net asset value of the Account. As a result, the daily mortality and expense risk charge and the daily administrative charge paid by any owner is greater than that which he or she would pay without the bonus credit.

16. Applicants request that the Commission issue an amended order pursuant to Section 6(c) of the Act, adding Additional Applicants as parties to the Existing Order, and granting exemptions from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder, to the extent necessary to permit Additional Applicants to recapture bonuses under Contracts under the same circumstances covered by the Existing Order.

Legal Analysis

1. Subsection (i) of Section 27 provides that Section 27 does not apply to any registered separate account supporting variable annuity contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of subsection (i). Paragraph (2) provides that it shall be unlawful for a registered separate account or sponsoring insurance company to sell a variable annuity contract supported by the separate account unless the "* * * contract is a redeemable security; and * * * [t]he insurance company complies with Section 26(e) * * *"

2. Section 2(a)(32) defines a "redeemable security" as any security, other than short-term, paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

3. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company. Rule 22c–1 thereunder imposes requirements with respect to both the amount payable on redemption of a redeemable security and the time as of which such amount is calculated. Specifically, Rule 22c–1, in pertinent part, prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security from selling, redeeming or repurchasing any such security, except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption, or of an order to purchase or sell such security.

4. Section 6(c) of the Act authorizes the Commission to exempt any person, security, or transaction or any class of persons, securities, or transactions from any provision or provisions of the Act and/or any rule under it if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

5. Applicants submit that the recapture of bonus credits would not, at any time, deprive an owner of his or her proportionate share of the current net assets of an Account. Until the appropriate recapture period expires, RLNY and Golden American retain the right to and interest in each owner's contract value representing the dollar amount of any unvested bonus credits. Therefore, if RLNY or Golden American recaptures any bonus credit or part of a bonus credit in the circumstances described above, it would merely be retrieving its own assets. RLNY and Golden American would grant bonus credits out of their respective general account assets and the amount of the credits (although not the earnings on such amounts) would remain RLNY's or Golden American's until such amounts vest with the owner. Thus, to the extent that RLNY or Golden American may grant and recapture bonus credits in connection with variable contract value, it would not, at either time, deprive any owner of his or her then proportionate share of the Account's assets. It is the nature of the bonus recapture provisions as they apply to variable contract value that an owner would obtain a benefit from a bonus credit in a rising market because any earnings on the bonus credit amount would vest with him or her immediately. Over time this would, of course, cause the owner's share of both the Contract's variable contract value and the Account's net assets to be greater on a relative basis than it would have been without the bonus credit. Conversely, in a falling market an owner would suffer a detriment from a bonus credit because losses on the bonus credit amount also would "vest" with him or her immediately. As explained above, over time this would cause the owner's share of both the Contract's variable contract value and the Account's net assets to decrease on a relative basis.

6. Applicants do not believe that the dynamics of RLNY's or Golden American's proposed bonus credit provisions would violate Sections 2(a)(32) or 27(i)(2)(A) of the Act. To begin with, Section 2(a)(32) defines a redeemable security as one "under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net asset value." Taken together, these two sections of the Act do not require that the holder receive the exact proportionate share that his or her security represented at a prior time. Therefore, the fact that the proposed bonus credit provisions have a dynamic element that may cause the relative ownership positions of RLNY or Golden American and a Contract owner to shift due to Account performance and the vesting schedule of such credits, would not cause the provisions to conflict with Sections 2(a)(32) or 27(i)(2)(A). Nonetheless, in order to avoid any uncertainty as to full compliance with the Act, Applicants seek exemptions from these two sections.

7. RLNY's or Golden American's granting of a bonus credit would have the result of increasing an owner's contract value in a way that could be viewed as the purchase of an interest in the Account at a price below net asset value. Similarly, RLNY's or Golden American's recapture of any bonus credit could be viewed as the redemption of such an interest at a price above net asset value. If such is the case, then the bonus credit provisions could be viewed as conflicting with Rule 22c–1 under the Act. Applicants contend, however, that the bonus credits do not violate Rule 22c–1 under the Act. The bonus credit provisions do not give rise to either of the evils that Rule 22c–1 was designed to address. The Rule was intended to eliminate or reduce, as far as was reasonably practicable, the dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption at a price above net asset value, or other unfair results, including speculative trading practices."

8. Applicants argue that the evils prompting the adoption of Rule 22c–1 were primarily the result of backward pricing, the practice of basing the price of a mutual fund share on the net asset value per share determined as of the close of the market on the previous day. Backward pricing permitted certain investors to take advantage of increases or decreases in net asset value that were not yet reflected in the price, thereby diluting the values of outstanding shares. The proposed bonus credit provisions pose no such threat of dilution. An owner's interest in his or her contract value or in the Account would always be offered under the Contracts at a price determined on the basis of net asset value. The granting of a bonus credit does not reflect a reduction of that price. Instead, RLNY or Golden American will purchase with their own money on behalf of the owner, an interest in the Account equal to the bonus credit. Because any bonus credit will be paid from RLNY's or Golden American's general account and not from the assets of the Account, no dilution will occur as a result of the credit. Likewise, because RLNY or Golden American will use general account assets to increase an owner's total contract value, no dilution will occur from such an increase.

9. Recaptures of bonus credits result in a redemption of RLNY's interest in an owner's contract value or in the Account at a price determined on the basis of the Account's current net asset value and not at an inflated price. Moreover, the amount recaptured will always equal the amount that RLNY or Golden American paid from its general account for the credits. Similarly, although owners are entitled to retain any investment gains attributable to the

bonus credits, the amount of such gains would always be computed at a price determined on the basis of net asset value. Because neither of the harms that Rule 22c–1 was intended to address arise in connection with the proposed bonus credit provisions, the provisions do not conflict with the Rule. Nonetheless, in order to avoid any uncertainty as to hill compliance with the Act, Applicants seek exemptions from Rule 22c–1.

10. The bonus credit recapture provisions are necessary for RLNY or Golden American to offer the bonus credits. It would be unfair to RLNY or Golden American to permit owners to keep their bonus credits upon their exercise of the Contracts' "free look" provision. Because no CDSC applies to the exercise of the "free look" provision, the owner could obtain a quick profit in the amount of the bonus credit at RLNY's or Golden American's expense by exercising that right. Similarly, the owner could take advantage of the bonus credit by taking withdrawals within the recapture period, because the cost of providing the bonus credit is recouped through charges imposed over a period of years. Likewise, because no additional CDSC applies upon death of an owner (or annuitant), a death shortly after the award of bonus credits would afford an owner or a beneficiary a similar profit at RLNY's or Golden American's expense. In the event of such profits to owners or beneficiaries, RLNY or Golden American could not recover the cost of granting the bonus credits. This is because RLNY and Golden American intend to recoup the costs of providing the bonus credits through the charges under the Contract, particularly the daily mortality and expense risk charge and the daily administrative charge. If the profits described above are permitted, certain owners could take advantage of them, reducing the base from which the daily charges are deducted and greatly increasing the amount of bonus credits that RLNY or Golden American must provide. Therefore, the recapture provisions are a price of offering the bonus credits. RLNY and Golden American simply cannot offer the proposed bonus credits without the ability to recapture those credits in the limited circumstances described herein.

11. Applicants state that the Commission's authority under Section 6(c) of the Act to grant exemptions from various provisions of the Act and rules thereunder is broad enough to permit orders of exemption that cover classes of unidentified persons. Applicants request an order of the Commission that would exempt them, RLNY's successors in interest, Future Accounts and Future Underwriters from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder. The exemption of these classes of persons is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act because all of the potential members of the class could obtain the foregoing exemptions for themselves on the same basis as the Applicants, but only at a cost to each of them that is not justified by any public policy purpose. As discussed below, the requested exemptions would only extend to persons that in all material respects are the same as the Applicants. The Commission has previously granted exemptions to classes of similarly situated persons in various contexts and in a wide variety of circumstances, including class exemptions for recapturing bonus credits under variable annuity contracts.

12. Applicants represent that Future Contracts will be substantially similar in all material respects to the Contracts and that each factual statement and representation about the bonus credit provisions of the Contracts will be equally true of Future Contracts. Applicants also represent that each material representation made by them about Account B and DSI will be equally true of Future Accounts and Future Underwriters, to the extent that such representations relate to the issues discussed in this application. In particular, each Future Underwriter will be registered as a broker-dealer under the Securities Exchange Act of 1934 and be a NASD member.

Conclusion

Applicants submit that the requested relief therefrom is consistent with the exemptive relief provided under the Existing Order.

Based on the grounds summarized above, Applicants submit that their exemptive request meets the standards set out in Section 6(c) of the Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–18992 Filed 7–24–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48201; File No. SR–GSCC–2002–10]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving Proposed Rule Change To Establish a Comprehensive Standard of Care and Limitation of Liability to its Members

July 21, 2003.

I. Introduction

On October 10, 2002, the Government Securities Clearing Corporation ("GSCC")[1] filed with the Securities and Exchange Commission ("Commission") proposed rule change SR–GSCC–2002–10 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[2] Notice of the proposal was published in the **Federal Register** on January 14, 2003.[3] The Commission received two comment letters in response to the proposed rule change.[4] For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

The purpose of GSCC's rule change is to establish a comprehensive standard of care and limitation of liability with respect to its members. Historically, the Commission has left to user-governed clearing agencies the question of how to allocate losses associated with, among other things, clearing agency functions.[5] In determining the appropriate standard of care, the Commission has reviewed clearing agency services on a case-by-case basis in order to balance the need for a high degree of care at clearing agencies with the effects that liabilities may have on clearing agency operations, costs, and safekeeping of securities and funds.[6] Because standards of care represent an allocation of rights and liabilities between a clearing agency and its members or participants, which are sophisticated financial entities, the Commission has refrained from establishing a unique federal standard of care and has allowed clearing agencies and other self-regulatory organizations and their participants to establish their own standards of care.[7]

GSCC believes that adopting a rule[8] limiting GSCC's liability to its members to direct losses caused by GSCC's gross negligence, willful misconduct, or violation of Federal securities laws for which there is a private right of action: (1) Memorializes an appropriate commercial standard of care that will protect GSCC from undue liability; (2) permits the resources of GSCC to be appropriately utilized for promoting the prompt and accurate clearance and settlement of securities; and (3) is consistent with similar rules adopted by other self-regulatory organizations and approved by the Commission.[9]

III. Comment Letters

The Commission received a comment letter from Dan W. Schneider, Counsel to AGC, and a response comment letter from GSCC. The AGC letter asserted that registered clearing agencies should be subject to a negligence standard of care in safeguarding funds and securities and in performing processing obligations relating to custody functions. In addition, registered clearing agencies like GSCC that provide the securities markets and the securities processing community with centralized essential utility services and that become focal points for concentrated risk should meet at least the same standard of care that is required of commercial custodians under Commission rules designed to protect investors. Finally, AGC opined that permitting registered clearing agencies that are central facilities in the national clearance and settlement system to conform their conduct to gross negligence while requiring bank custodians to adhere to a higher standard of care creates a liability differential for which no appropriate statutory or policy basis exists.

GSCC responded that the proposed rule change would not affect GSCC's standard of performance because registered clearing agencies such as GSCC are subject to rigorous regulatory standards for their operations under Section 17A of the Act. The proposed rule change only relates to GSCC's standard of liability and not to the Commission's regulatory operational standards for GSCC. Also, GSCC has operated for 15 years with a gross negligence standard of liability under SEC temporary registration orders without any financial loss to its members or third parties arising from a failure of performance by GSCC. Neither the Act nor prior Commission orders require that a particular level of liability for private rights of action be assumed by registered clearing agencies, as distinguished from the high regulatory standards imposed by the Commission for clearing agency operations under Section 17A. In addition, GSCC members are sophisticated parties who can best determine the allocation of GSCC risk for unintentional loss. GSCC pointed out that adoption of a universal simple negligence standard of liability for GSCC would likely result in a gap between the liability limitation of GSCC and the gross negligence liability limitation of clearing banks and other service providers to which GSCC is dependent for certain key operational services.

IV. Discussion

Section 19(b) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[10] The Commission believes that approval of GSCC's rule change is consistent with this Section because it will permit the resources of GSCC to be appropriately utilized for promoting the prompt and accurate clearance and settlement of securities.

Although the Act does not specify the standard of care that must be exercised by registered clearing agencies, the Commission has determined that a gross-negligence standard of care is acceptable for non-custodial functions where the parties contractually agree to limit liability.[11] GSCC's functions are

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[1] On January 1, 2003, MBS Clearing Corporation ("MBSCC") was merged into the Government Securities Clearing Corporation ("GSCC") under New York law, and GSCC was renamed the Fixed Income Clearing Corporation ("FICC"). The functions previously performed by GSCC are now performed by the Government Securities Division ("GSD") of FICC, and the functions previously performed by MBSCC are now performed by the Mortgage-Backed Securities Division ("MBSD") of FICC. The GSD succeeded to the GSCC proposed rule change upon the merger of MBSCC and GSCC. To avoid confusion and maintain consistency with the Notice, in this Order, we will continue to refer to GSCC instead of the GSD of FICC. Securities Exchange Act Release No. 47015 (December 17, 2002), 67 FR 78531 [File Nos. SR–GSCC–2002–09 and SR–MBSCC–2002–01].

[2] 15 U.S.C. 78s(b)(1).

[3] Securities Exchange Act Release No. 47135 (January 7, 2003), 68 FR 1876.

[4] Letters from Dan W. Schneider, Counsel to the Association of Global Custodians ("AGC") (March 24, 2003) and Jeffrey F. Ingber, Managing Director, General Counsel, and Secretary, Fixed Income Clearing Corporation (June 12, 2003).

[5] Securities Exchange Act Release Nos. 20221 (September 23, 1983), 48 FR 45167 and 22940 (February 24, 1986), 51 FR 7169.

[6] *Id.*

[7] *Id.*

[8] The language of new Section 3 to Rule 39 is as follows: Section 3—Limitation on Liability of the Corporation Notwithstanding any other provision in the Rules:

(a) The Corporation will not be liable for any action taken, or any delay or failure to take any action, hereunder or otherwise to fulfill the Corporation's obligations to its Members, other than for losses caused directly by the Corporation's gross negligence, willful misconduct, or violation of Federal securities laws for which there is a private right of action. Under no circumstances will the Corporation be liable for the acts, delays, omissions, bankruptcy, or insolvency, of any third party, including, without limitation, any depository, custodian, sub-custodian, clearing or settlement system, transfer agent, registrar, data communication service or delivery service ("Third Party"), unless the Corporation was grossly negligent, engaged in willful misconduct, or in violation of Federal securities laws for which there is a private right of action in selecting such Third Party; and

(b) Under no circumstances will the Corporation be liable for any indirect, consequential, incidental, special, punitive or exemplary loss or damage (including, but not limited to, loss of business, loss of profits, trading losses, loss of opportunity and loss of use) howsoever suffered or incurred, regardless of whether the Corporation has been advised of the possibility of such damages or whether such damages otherwise could have been foreseen or prevented.

[9] *See, e.g.*, Securities Exchange Act Release Nos. 37421 (July 11, 1996), 61 FR 37513 [SR–CBOE–96–02] and 37563 (August 14, 1996), 61 FR 43285 [SR–PSE–96–21].

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] In the release setting forth standards to be used by the Division of Market Regulation in evaluating clearing agency registration applications, the Division of Market Regulation urged clearing agencies to embrace a strict standard of care in safeguarding participants' funds and securities. Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 4192. In the release granting permanent registration to The Depository Trust Company, the National Securities Clearing Corporation, and several other clearing agencies, however, the Commission indicated that it did not believe that sufficient justification existed at that time to require a unique federal standard of care for registered clearing agencies. Securities Exchange Act Release No. 20221 (October 3, 1983), 48 FR 45167. In a subsequent release, the Commission stated that the clearing agency standard of care and the allocation of rights and liabilities between a clearing agency and its participants applicable to clearing agency services generally may be set by the clearing agency and its participants. In the same release, the Commission stated that it should review clearing agency proposed rule changes in this area on a case-by-case basis and balance the need for a high degree of clearing agency care with the effect resulting liabilities may have on clearing agency operations, costs, and safeguarding of securities and funds. Securities Exchange Act Release No. 22940 (February 24, 1986), 51 FR 7169. Subsequently, in a release granting temporary registration as a clearing agency to The Intermarket Clearing Corporation, the Commission stated that a gross negligence standard of care may be appropriate for certain noncustodial functions that, consistent with minimizing risk mutualization, a clearing agency, its board of directors, and its members determine to allocate to individual service users. Securities Exchange Act release No. 26154 (October 3, 1988), 53 FR 39556. Finally, in a release granting the

Continued

non-custodial in that it does not hold its members funds or securities. GSCC relies on clearing banks to perform custodial services for Government securities, which are uncertificated, and for funds. It is reasonable for GSCC, which is member-owned and governed, and its members to agree among themselves through board approval of the proposed rule change and through the proposed rule change notice and approval process to agree and to contract with one another in a cooperative arrangement as to how to allocate GSCC's liability among GSCC and themselves.

In its order granting temporary registration as a clearing agency, the Commission expressed concerned that GSCC's failure to perform accurately and timely the comparison service could adversely affect the ability of GSCC members to deliver securities and effect trade settlements. Considering the size of the Government securities market and the next-day time frame for trade settlements, the Commission deemed it appropriate that GSCC amend its standard of care to an ordinary negligence standard of care in performing all functions affecting member settlements of Government securities. [12] The Commission, recognizing that GSCC's members are best suited to allocate GSCC's rights and liabilities, has determined and finds that, given the non-custodial nature of GSCC's services, the extensive and rigorous financial and operational regulatory oversight to which GSCC is subject,[13] and GSCC's exemplary level of performance,[14] a gross negligence standard of care is appropriate for GSCC.

The Commission has given thoughtful and careful consideration to the comment letter of AGC and finds that AGC's concerns about the performance level of GSCC operating under a gross negligence standard of care and limitation of liability are addressed by the extensive regulatory oversight to which GSCC is subject as a registered clearing agency and the fact GSCC is not changing its financial and operational standards with the adoption of a gross negligence standard of care and limitation of liability.[15]

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–2002–10) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[16]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–18990 Filed 7–24–03; 8:45 am]

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approval of temporary registration as a clearing agency to the International Securities Clearing Corporation, the Commission indicated that historically it has left to user-governed clearing agencies the question of how to allocate losses associated with noncustodial, data processing, clearing agency functions and has approved clearing agency services embodying a gross-negligence standard of care. Securities Exchange Act Release No. 26812 (May 12, 1989), 54 FR 21691.

[12] Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19639.

[13] GSCC must have its rule changes approved by the Commission and is the subject of frequent Commission examinations for compliance with its rules and those of the Commission. As directed by Congress, the Commission cannot approve GSCC's proposed rule changes if they are inconsistent with Section 17A of the Act, including being inimical to the public interest or the protection of investors.

[14] Over the past 15 years, GSCC has demonstrated a high level of responsibility in performing its non-custodial functions and has had appropriate standards in place to ensure adequate performance. As a result, GSCC has operated without financial loss to its members or third parties arising from its failure to perform.

[15] The Commission notes that the rule change does not alleviate GSCC from liability for violation of the Federal securities laws where there exists a private right of action and therefore is not designed to adversely affect GSCC's compliance with the Federal securities laws and private rights of action that exist for violations of the Federal securities laws.

[16] 17 CFR 200.30–30(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48200; File No. SR–GSCC–2002–11]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving Proposed Rule Change To Reduce the Permitted Use of Letters of Credit to Twenty-Five Percent of a Member's Required Clearing Fund Deposit

July 21, 2003.

I. Introduction

On October 10, 2002, the Government Securities Clearing Corporation ("GSCC") [1] filed with the Securities and Exchange Commission ("Commission") proposed rule change SR–GSCC–2002–11 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[2] Notice of the proposal was published in the **Federal Register** on June 17, 2003.[3] For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

The purpose of the proposed rule change is to reduce the permitted use of letters of credit ("LCs") to twenty-five percent of a member's required clearing fund deposit. One of GSCC's most important risk management tools is its maintenance of clearing fund collateral. GSCC's clearing fund is comprised of cash, certain netting-eligible securities, and eligible LCs. The purposes served by the clearing fund are (1) to have on deposit from each netting member assets sufficient to satisfy any losses that may be incurred by GSCC as the result of the default by the member and the resultant close-out of that member's settlement positions and (2) to ensure that GSCC has sufficient liquidity at all times to meet its payment and delivery obligations.

Currently, GSCC's rules permit up to 70 percent of a member's required clearing fund deposit to be in the form of LCs. Although GSCC believes that it will always receive funds from the presentment of an LC for payment, GSCC has recognized that in a period of market crisis there is the potential that GSCC might not receive the funds on a timely basis. To ensure that GSCC can always meet its liquidity needs on a timely basis in the unlikely event of a member default and in times of market crisis, GSCC is reducing the permitted use of LCs to 25 percent of a member's required clearing fund deposit. Thus, the minimum level of cash and securities required to be maintained on deposit will increase from 30 percent to 75 percent of a member's required clearing fund deposit.[4]

[1] On January 1, 2003, MBS Clearing Corporation ("MBSCC") was merged into GSCC under New York law, and GSCC was renamed the Fixed Income Clearing Corporation ("FICC"). The functions previously performed by GSCC are now performed by the Government Securities Division ("GSD") of FICC, and the functions previously performed by MBSCC are now performed by the Mortgage-Backed Securities Division ("MBSD") of FICC. The GSD succeeded to the GSCC proposed rule change upon the merger of MBSCC and GSCC. To avoid confusion and maintain consistency with the Notice, in this Order we will continue to refer to GSCC as such. Securities Exchange Act Release No. 47015 (December 17, 2002), 67 FR 78531 [File Nos. SR–GSCC–2002–09 and SR–MBSCC–2002–01].

[2] 15 U.S.C. 78s(b)(1).

[3] Securities Exchange Act Release No. 48016 (June 11, 2003), 68 FR 35925.

[4] The new LC limitation will not affect the requirement that certain non-US GSCC members post additional collateral in the form of LCs to protect GSCC against legal risk presented by the insolvency laws in those members' home countries. These members will not be required to increase the amount of their deposit that is in the form of cash and securities from 30 percent to 75 percent of their required clearing fund deposit.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[5] The Commission finds that GSCC's proposed rule change is consistent with this requirement because it will protect GSCC and its members by ensuring that GSCC has adequate liquidity resources in the event of member insolvency or during times of market crisis.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–2002–11) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–18991 Filed 7–24–03; 8:45 am]

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[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48194; File No. SR–NYSE–2003–14]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change To Add NYSE Rules 60, 124(A), 130, 407A, 411(b), 440I, and 445(4) to the "List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to NYSE Rule 476A"

July 17, 2003.

On May 5, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise the "List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to NYSE Rule 476A" for imposition of fines for minor violations of rules and/or policies ("List") by adding to the List failure to comply with the provisions of NYSE Rules 60, 124(A), 130, 407A, 411(b), 440I, and 445(4).

The proposed rule change was published for comment in the **Federal Register** on June 11, 2003.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [4] and, in particular, the requirements of section 6 of the Act [5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(6) [6] of the Act because it should enable the Exchange to appropriately discipline its members and others associated with its members for violation of the provisions of this title, the rules or regulations thereunder, or the rules of the Exchange.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with these rules, and all other rules subject to the imposition of fines under the Exchange's minor rule violation plan. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Exchange with greater flexibility in addressing certain violations, the Exchange's minor rule violation plan provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinary proceedings. The Commission expects that the NYSE will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of rules under the Exchange's minor rule violation plan, on a case by case basis, or if a violation requires formal disciplinary action.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NYSE–2003–14) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–18930 Filed 7–24–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 47984 (June 4, 2003), 68 FR 35045.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(6).

[7] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48195; File No. SR–NYSE–2003–13]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change To Amend the Fine Schedule for Individuals and Member Organizations Who Commit Minor Rule Violations Under Rule 476A

July 17, 2003.

On April 28, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the fine schedule for individuals and member organizations who commit minor rule violations under NYSE Rule 476A.

The proposed rule change was published for comment in the **Federal Register** on June 11, 2003.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange [4] and, in particular, the requirements of section 6 of the Act [5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(6) [6] of the Act because it should enable the Exchange to appropriately discipline members and others

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 47985 (June 4, 2003), 68 FR 35046.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(6).

associated with its members for violation of Exchange rules.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with these rules, and all other rules subject to the imposition of fines under the Exchange's minor rule violation plan. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Exchange with greater flexibility in addressing certain violations, the Exchange's minor rule violation plan provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinary proceedings. The Commission expects that the NYSE will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of rules under the Exchange's minor rule violation plan, on a case by case basis, or if a violation requires formal disciplinary action.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NYSE–2003–13) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–18932 Filed 7–24–03; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3526]

State of Indiana (Amendment #1)

In accordance with the notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective July 17, 2003, the above numbered declaration is hereby amended to include Clay, Fulton, Morgan, Newton, Parke, and Vigo Counties in the State of Indiana as a disaster area due to damages caused by severe storms, tornadoes, and flooding occurring on July 4, 2003 and continuing.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Brown, Greene, Monroe, Owen, and Sullivan Counties in the State of Indiana; and Clark, Edgar, and Kankakee Counties in the State of Illinois. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is September 9, 2003, and for economic injury the deadline is April 12, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 18, 2003.

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 03–18989 Filed 7–24–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3529]

State of Kansas

Seward County and the contiguous counties of Haskell, Meade, and Stevens in the State of Kansas; and Beaver and Texas Counties in the State of Oklahoma constitute a disaster area due to a severe thunderstorm accompanied by large hail and flooding that occurred on June 28 and June 29, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 15, 2003 and for economic injury until the close of business on April 19, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Boulevard, Suite 102, Forth Worth, TX 76155.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere:	5.625
Homeowners Without Credit Available Elsewhere:	2.812
Businesses with Credit Available Elsewhere:	5.906
Businesses and Non-profit Organizations Without Credit Available Elsewhere:	2.953
Others (Including Non-profit Organizations) with Credit Available Elsewhere:	5.500
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere:	2.953

The numbers assigned to this disaster for physical damage are 352911 for Kansas and 353011 for Oklahoma. For economic injury, the numbers are 9W4400 for Kansas and 9W4500 for Oklahoma.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 17, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–18987 Filed 7–24–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3531]

State of Texas

As a result of the President's major disaster declaration on July 17, 2003, I find that Calhoun, Jackson, Matagorda, Refugio, and Victoria Counties in the State of Texas constitute a disaster area due to damages caused by Hurricane Claudette occurring on July 15, 2003 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 16, 2003 and for economic injury until the close of business on April 19, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Ste., 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Aransas, Bee, Brazoria, De Witt, Goliad, Lavaca, San Patricio, and Wharton in the State of Texas.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.625
Homeowners Without Credit Available Elsewhere	2.812
Businesses With Credit Available Elsewhere	5.906
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	2.953
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	5.500
For Economic Injury:	
Businesses And Small Agricultural Cooperatives Without Credit Available Elsewhere	2.953

The number assigned to this disaster for physical damage is 353108. For economic injury, the number is 9W5200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 21, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–18988 Filed 7–24–03; 8:45 am]

BILLING CODE 8025–01–P

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection packages that may be included in this notice are for new information collections, revisions to OMB-approved information collections and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB)

Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10235, 725 17th St., NW., Washington, DC 20503, Fax 202–395–6974.

(SSA)

Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex, 6401 Security Blvd., Baltimore, MD 21235, Fax 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. *Application for Special Age 72-or-Over Monthly Payments—20 CFR, Subpart D, 404.380–.384—0960–0096.* Form SSA–19–F6 is needed to determine if an individual is entitled to Special Age 72 payments. Eligibility requirements will be evaluated based on the data collected on this form. The respondents are individuals who attained age 72 before 1972.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 10.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 3 hours.

2. *Statement of Self-Employment Income, CFR Subpart B, 404.101 and Subpart K, 404.1096—0960–0046.* The information collected on Form SSA–766 is used to determine if the individual will have at least the minimum amount of self-employment income needed for one or more quarters of coverage in the current year. Additional quarters of coverage may be credited on the basis of the information obtained, and benefit payments may be expedited where there are sufficient quarters of coverage to give the individual insured status. The respondents are self-employed persons applying for Social Security benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 5,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 417 hours.

3. *Childhood Disability Evaluation Form—20 CFR 416.924–0960–0568.* SSA and State Disability Determination Services (DDS) use the information collected on Form SSA–538 to record medical and functional findings regarding the severity of impairments of the children who claim SSI benefits based on disability. The form is used for initial determinations of eligibility, in appeals, and in initial continuing disability reviews. The respondents are employees of DDS responsible for these determinations.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 750,000.

Frequency of Response: 1.

Average Burden Per Response: 25 minutes.

Estimated Annual Burden: 312,500 hours.

4. *Subpart T—State Supplementation Provisions—20 CFR 416.2095–2099—0960–0240.* Section 1618 of the Social Security Act contains pass-along provisions of the Social Security Amendments. These provisions require States that supplement the Federal SSI benefits pass along Federal cost-of-living increases to the individuals who are eligible for State Supplementary benefit payments. If the State fails to keep payments at the required level, it becomes ineligible for Medicaid reimbursement under Title XIX of the Social Security Act. Regulations at 20 CFR 416.2099 require the States to report mandatory minimum and optional supplementary payment data to SSA. The information is used to determine compliance with the law and regulations. The respondents are States that supplement Federal SSI payments.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 26.

Frequency of Response: 15 states report quarterly; 11 states report annually.

Average Burden per Response: 1 hour.

Estimated Annual Burden: 71.

5. *Representative Payee Report-Special Veterans Benefits Form—0960–0621.* SSA needs the information collected on form SSA–2001 to determine whether payments certified to the representative payee have been used properly and whether the representative payee demonstrates concern for the beneficiary's best interest. The form will be completed annually by representative payees receiving Special Veterans Benefit payments on behalf of beneficiaries who are outside of the United States. It will also be required when SSA has reason to believe a representative payee could be misusing the payments. The respondents are representative payees for beneficiaries who are receiving Special Veterans Benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 100.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 17 hours.

6. *You Can Make Your Payment by Credit Card—0960–0462.* SSA will use the information on Forms SSA–4588 and SSA–4589 to update the individual's social security record to reflect that a payment has been made on their overpayment and to effectuate payment through the appropriate credit card company. The respondents are Title II (Old-Age, Survivors and Disability Insurance) and Title XVI (Supplemental Security Income) debtors; and citizens requesting material through SSA.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 19,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 1,583 hours.

II. The information collection listed below has been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. *Certification by Religious Group—20 CFR, Subpart K, 404.1075—0960–0093.* The data collected on Form SSA–1458 will be used to determine if a religious group meets the qualifications set out in section 1402(g) of the Internal Revenue Code, which permits its members to be exempt from the payment of self-employment taxes. The respondents are spokespersons for a religious group or sect.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 180.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 45 hours.

2. *Statement of Care and Responsibility for Beneficiary—20 CFR, Subpart U, 404.2020–.2025 & Subpart F, 416.620–.625–0960–0109.* Form SSA–788 is used to obtain information from the beneficiary's custodian about the representative payee applicant's concern and responsibility for the beneficiary. The respondents are individuals who have custody of a beneficiary, where someone else has filed to be the beneficiary's payee.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 130,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 21,667.

3. *Request for Reconsideration—Disability Cessation—20 CFR, Subpart J, 404.909 & Subpart N, 416.1409–0960–0349.* Form SSA–789 is used by SSA to schedule disability hearings and to develop additional evidence/information for claimants whose disability is found to have ceased, not to have existed, or to no longer be disabling. The information will also be used to determine if an interpreter is needed for the disability hearing. The respondents are claimants under Title II & XVI of the Social Security Act who wish to request reconsideration of disability cessation.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 49,000.

Frequency of Response: 1.

Average Burden Per Response: 10–13.5 minutes.

Estimated Annual Burden: 10,045 hours.

4. *Psychiatric Review Technique—20 CFR, Subpart P, 404.1520(a) Subpart I, 416.920(a)–0960–0413.* Form SSA–2506–BK assists the Disability Determination Services (DDS) in evaluating mental impairments by helping to (1) identify the need for additional evidence for impairment severity; (2) consider aspects of the mental impairment relevant to the individual's ability to perform work-related mental functions; and (3) organize and present the findings in a clear, concise and consistent manner. The respondents are 54 State DDSs administering Title II and title XVI disability programs.

Type of Request: Extension of an OMB-approved information collection.

Number of Responses: 1,253,703.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 313,426 hours.

5. *Request for Reconsideration—20 CFR, Subpart J, 404.907–.921 and Subpart N, 416.1407–.1421–0960–0622.* The information collected on Form SSA–561 is used by SSA to document and initiate the reconsideration process for determining entitlement to Social Security benefits (Title II), Supplemental Security Income payments (Title XVI), and Special Veterans benefits (Title VIII). The respondents are individuals filing for such reconsideration.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 1,455,000.

Frequency of Response: 1.

Average Burden Per Response: 8 minutes.

Estimated Annual Burden: 194,000 hours.

6. *Individuals or Agents Seeking Information or Testimony in non-Social Security Administration Cases—20 CFR 403.120–0960–0619.* 20 CFR 403.120 establishes a procedure whereby an individual, organization or governmental entity may request testimony of an agency employee in a legal proceeding to which the agency is not a party. The request, which must be in writing to the Commissioner, must fully explain the nature and the relevance of the sought testimony and include the time, date, and place where the testimony will be given. Respondents are individuals or their representatives who require testimony from Social Security Administration employees in a legal proceeding to which the Social Security Administration is not a party.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 40.

Frequency of Response: 1.

Average Burden Per Response: 60 minutes.

Estimated Annual Burden: 40.

7. *Medical Consultant's Review of Physical Functional Capacity Assessment—20 CFR 404.1520(a), 20 CFR 404.1640, 20 CFR 404.1645, 20 CFR 404.1643, and 20 CFR 416.920(a)—OMB #0960–NEW.* The SSA–392 is used by the Social Security Administration's regional review component to facilitate the medical consultant's review of the Physical Residual Functional Capacity Form, the SSA–4734. The SSA–392 records the reviewing medical consultant's assessment of the SSA–4734 that was prepared by the adjudicating component. The SSA–392 is required for each SSA–4734 form completed. The respondents are the medical/psychological consultants responsible for reviewing the SSA–4734.

Type of Request: Request for approval of new collection.

Number of Respondents: 256.

Frequency of Response: 359.

Average Burden Per Response: 12 minutes.

Estimated Annual Burden: 18,380 hours.

8. *Medical Consultant's Review of Mental/Functional Capacity Assessment Form, SSA 392 SUP.—20 CFR 404.1640, 20 CFR 404.1645, 20 CFR 404.1643, 20 CFR 404.1520(a) and 20 CFR 416.920(a)—0960–NEW.* Medical Consultant's Review of Mental Residual Functional Capacity Form, SSA–392 SUP, is used by the Social Security Administration's regional review component to facilitate the medical/psychological consultant's review of the Mental Residual Functional Capacity Form or SSA–4734–SUP. The form records the reviewing medical/psychological consultant's assessment of the SSA–4734–SUP prepared by the adjudicating component and whether the reviewer agrees or disagrees with the manner in which the SSA–4734–SUP was completed. The SSA–392–SUP is required for each SSA–4734–SUP form completed. The respondents are the medical/psychological consultants responsible for reviewing the SSA–4734–SUP.

Type of Request: Request for approval of new collection.

Number of Respondents: 256.

Frequency of Response: 359.

Average Burden Per Response: 12 minutes.

Estimated Annual Burden: 18,380.

9. *Request for Withdrawal of Application—20 CFR 404.460—0960–0015.* Request for Withdrawal of Application—0960–0015. Form SSA–521 is completed by the Social Security Administration (SSA) when an individual wishes to withdraw his or her application for Social Security benefits. The respondents are individuals who wish to withdraw their applications for benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 100,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 8,333 hours.

Dated: July 21, 2003.

Nicholas E. Tagliareni,

Acting Reports Clearance Officer, Social Security Administration.

[FR Doc. 03–18906 Filed 7–24–03; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

The Ticket To Work and Work Incentives Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of meetings.

DATES: August 26, 2003, 9:30 a.m.–5:30 p.m., August 27, 2003, 9 a.m.–5 p.m., August 28, 2003, 9 a.m.–1 p.m.

ADDRESSES: Detroit Marriott Renaissance Center, Renaissance Center (East Jefferson Street), Detroit, MI 48243, Phone: (313) 568–8000.

SUPPLEMENTARY INFORMATION:

Type of meeting: This is a quarterly meeting open to the public. The public is invited to participate by coming to the address listed above. Public comment will be taken during the quarterly meeting. The public is also invited to submit comments in writing on the implementation of the Ticket to Work and Work Incentives Improvement Act (TWWIIA) of 1999 at any time.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces a meeting of the Ticket to Work and Work Incentives Advisory Panel (the Panel). Section 101(f) of Public Law 106–170 establishes the Panel to advise the President, the Congress and the Commissioner of SSA on issues related to work incentives programs, planning and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the TWWIIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

Interested parties are invited to attend the meeting. The Panel will use the meeting time to receive briefings, hear presentations, conduct full Panel deliberations on the implementation of TWWIIA and receive public testimony. The topics for the meeting will include presentations of briefing papers prepared for the Panel, establishment of priorities for the coming year and agency updates from SSA, the Department of Education and the Department of Health and Human Services.

The Panel will meet in person commencing on Tuesday, August 26, 2003 from 9:30 a.m. to 5:30 p.m.; Wednesday, August 27, 2003 from 9 a.m. to 5 p.m.; and Thursday, August 28, 2003 from 9 a.m. to 1 p.m.

Agenda: The Panel will hold a quarterly meeting. Briefings, presentations, full Panel deliberations and other Panel business will be held on Tuesday, Wednesday, and Thursday, August 26, 27, and 28, 2003. Public testimony will be heard in person on Tuesday, August 26, 2003 from 2:30 p.m. to 3 p.m. and on Thursday, August 28, 2003 from 9 a.m. to 9:30 a.m. Members of the public must schedule a time slot in order to comment. In the event that the public comments do not take up the scheduled time period for public comment, the Panel will use that time to deliberate and conduct other Panel business.

Individuals interested in providing testimony in person should contact the Panel staff as outlined below to schedule time slots. Each presenter will be called on by the Chair in the order in which they are scheduled to testify and is limited to a maximum five-minute verbal presentation. Full written testimony on TWWIIA implementation, no longer than 5 pages, may be submitted in person or by mail, fax or e-mail on an on-going basis to the Panel for consideration.

Since seating may be limited, persons interested in providing testimony at the meeting should contact the Panel staff by e-mailing Kristen M. Breland, at *kristen.m.breland@ssa.gov* or calling (202) 358–6423.

The full agenda for the meeting will be posted on the Internet at *http://www.ssa.gov/work/panel* at least one week before the meeting or can be received in advance electronically or by fax upon request.

Contact Information: Anyone requiring information regarding the Panel should contact the TWWIIA Panel staff. Records are being kept of all Panel proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the Panel staff by:

- Mail addressed to: Social Security Administration, Ticket to Work and Work Incentives Advisory Panel Staff, 400 Virginia Avenue, SW., Suite 700, Washington, DC 20024.
- Telephone: contact Kristen Breland at (202) 358–6423.
- Fax: (202) 358–6440.
- E-mail: *TWWIIAPanel@ssa.gov.*

Dated: July 21, 2003.

Carol Brenner,

Designated Federal Official.

[FR Doc. 03–18969 Filed 7–24–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4419]

30-Day Notice of Proposed Information Collection: Form DS–2029/SS–5, Application for Consular Report of Birth Abroad of a Citizen of the United States of America; OMB Control Number 1405–0011

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement of a previously approved collection.

Originating Office: CA/OCS.

Title of Information Collection: 1405–0011, Application for Consular Report of Birth Abroad of a Citizen of the United States.

Frequency: On occassion.

Form Number: DS–2029.

Respondents: Parents or legal guardians of American citizen children born overseas.

Estimated Number of Respondents: approximately 46,000 per year.

Average Hours Per Response: approximately 20 minutes, or .33 of an hour.

Total Estimated Burden: 15,333 hours.

Public comments are being solicited to permit the agency to:

• Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Michael Meszaros, who may be reached on 202–312–9750. Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to the State Department Desk Officer, Officer of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: July 11, 2003.

Maura Harty,

Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 03–19001 Filed 7–24–03; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 4418]

Bureau of Nonproliferation; Imposition of Missile Proliferation Sanctions Against a North Korean Entity

AGENCY: Bureau of Nonproliferation, Department of State.

ACTION: Notice.

SUMMARY: A determination has been made that a North Korean entity has engaged in activities that require the imposition of measures pursuant to the Arms Export Control Act, as amended, and the Export Administration Act of 1979, as amended (as carried out under Executive Order 13222 of August 17, 2001).

EFFECTIVE DATE: July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Vann H. Van Diepen, Office of Chemical, Biological and Missile Nonproliferation, Bureau of Nonproliferation, Department of State (202–647–1142). On import ban issues, Licensing Division, Office of Foreign Assets Control, Department of the Treasury (202–622–2480). On U.S. Government procurement ban issues, Gladys Gines, office of the Procurement Executive, Department of State (703–516–1621).

SUPPLEMENTARY INFORMATION: Pursuant to section 73(a)(1) of the Arms Export Control Act (22 U.S.C. 2797b(a)(1)); section 11B(b)(1) of the Export Administration Act of 1979 (50 U.S.C. app. 2410(b)(1)), as carried out under Executive Order 13222 of August 17, 2001 (hereinafter cited as the "Export Administration Act of 1979"); and Executive Order 12851 of June 11, 1993; the U.S. Government determined on July 17, 2003 that the following foreign person has engaged in missile technology proliferation activities that require the imposition of the sanctions described in sections 73(a)(2)(B) and (C) of the Arms Export Control Act (22 U.S.C. 2797b(a)(2)(B) and (C) and sections 11B(b)(1)(B)(ii) and (iii) of the Export Administration Act of 1979 (50 U.S.C. app. 2410b(b)(1)(B)(ii) and (iii) on this person: Changgwang Sinyong Corporation (North Korea) and its sub-units and successors.

Accordingly, the following sanctions are being imposed on this person for three years and eight months:

(A) Denial of all new individual licenses for the transfer to the sanctioned entity of all items on the U.S. Munitions List and all items the export of which is controlled under the Export Administration Act; and,

(B) Denial of all U.S. Government contracts with the sanctioned entity; and

(C) Prohibition on the importation into the U.S. of all products produced by the sanctioned entity.

With respect to items controlled pursuant to the Export Administration Act of 1979, the above export sanction only applies to exports made pursuant to individual export licenses.

Additionally, because North Korea is a country with a non-market economy that is not a former member of the Warsaw Pact (as referenced in the definition of "person" in section 74(8)(B) of the Arms Export Control Act), the following sanctions shall be applied for three years and eight months to all activities of the North Korean government relating to the development or production of missile equipment or technology and all activities of the North Korean government affecting the development or production of electronics, space systems or equipment, and military aircraft:

(A) Denial of all new individual licenses for the transfer to the government activities described above of all items on the U.S. Munitions List; and,

(B) Denial of all U.S. Government contracts with the government activities described above; and

(C) Prohibition on the importation into the U.S. of all products produced by the government activities described above.

These measures shall be implemented by the responsible departments and agencies of the United States Government as provided in Executive Order 12851 of June 11, 1993.

Dated: July 21, 2003.

Susan F. Burk,

Acting Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 03–19000 Filed 7–24–03; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending July 4, 2003

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (*see* 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–1998–4755.

Date Filed: July 1, 2003.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 22, 2003.

Description: Contingent Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. 41102 and 41108 and Subpart B, requesting renewal of its certificate of public convenience and necessity for Route 756, which authorizes Delta to engage in foreign air transportation of persons, property, and mail between a point or points in the United States, the intermediate point Paris, France, and Johannesburg, South Africa.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 03–18916 Filed 7–24–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Order Granting Exemption

AGENCY: Department of Transportation.

ACTION: Notice of Order Granting Exemption (Docket OST–02–13896)—Order 2003–7–22.

SUMMARY: The Department of Transportation has granted an application by the International Air Transport Association (IATA) to permit IATA to implement certain resolutions and recommended practices of its worldwide Cargo Services Conference (CSC), without filing the resolutions and recommended practices for prior approval by the Department and without obtaining immunity from the U.S. antitrust laws.

FOR FUTHER INFORMATION CONTACT: Mr. John Kiser or Ms. Bernice Gray, Pricing & Multilateral Affairs Division (X–43, Room 6424), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, 202–366–2435.

Dated: July 18, 2003.

Michael W. Reynolds,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 03–18913 Filed 7–24–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Six Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on six currently approved public information collections which will be submitted to OMB for renewal.

DATES: Comments must be received on or before September 23, 2003.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, Room 613, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Therefore, the FAA solicits comments on the following current collection of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, the clarity of the information to be collected, and possible ways to minimize the burden of the collection in preparation for submission to renew the clearances of the following information collections.

1. 2120–0033: Representatives of the Administrator, FAR 183. Title 49, U.S.C., section 44702, authorizes appointment of properly qualified private persons to be representatives of the Administrator for examining, testing, and certifying airmen for the purpose of issuing them airmen certificates. The information collected is used to determine eligibility of the representatives. The current estimates annual reporting burden is 3,974 hours.

2. 2120–0563: Notice and Approval of Airport Noise and Access Restrictions. The Airport Noise and Capacity Act of 1990 mandates the formulation of a national noise policy. One part of the mandate is the development of a national program to review noise and access restrictions on the operation of Stage 2 and 3 aircraft. Respondents are airport operators proposing voluntary agreements and/or mandatory restrictions on Stage 2 and 3 aircraft operations, and aircraft operators that request reevaluation of a restriction. The current estimated annual reporting burden is 30,000 hours.

3. 2120–0611: Associated Administrator for Commercial Space Transportation (AST) Customer Service Survey. The FAA Office of the Associated Administrator for Commercial Space Transportation conducts a survey to obtain industry input on the customer service standards which have been developed and distributed to industry customers. This is a requirement of the White House NPR Customer Service Initiatives. AST collects and analyzes the data for results. The current estimated annual reports burden is 300 hours.

4. 2120–0618: Overflight billing and Collection Customer Information Form. This information is needed to obtain accurate billing information for FAA air traffic and related services for certain aircraft that transit U.S. controlled airspace but neither take off from, nor land in, the United States. The current estimated annual reporting burden is 50 hours.

5. 2120–0663: Service Difficulty Report (SDR). September 15, 2000, the Federal Aviation Administration (FAA) published a rule amending the reporting requirements for air carriers and certificates domestic and foreign repair station operators concerning failures, malfunctions, and defects of aircraft, aircraft engines, systems, and components. This action was prompted by an internal FAA review of the effectiveness of the reporting system and by air carriers industry's concern over the quality of the data being reported. The reports submitted by certificate holders and certificated repair stations provide the FAA with airworthiness statistical data necessary for planning, directing, controlling, and evaluating certain assigned safety-related programs. The current estimated annual reporting burden associated with this revision is 6,107 hours.

6. 2120–0665: Safe Disposition of Life-Limited Aircraft Parts. This action responds to the Wendell H. Ford Investment Reform Act for the 21st Century by requiring that all persons who remove any life-limited aircraft part be required to have a method to prevent the installation of that part after it has reached its life limit. This action reduces the risk of life-limited aircraft parts being used beyond their life limits. This collection also requires that manufacturers of life-limited parts provide marking instructions, when requested. The current estimated annual reporting burden is 52,000 hours.

Issued in Washington, DC on July 18, 2003.

Judith D. Street,

FAA Information Collection Clearance Officer, APF–100.

[FR Doc. 03–18921 Filed 7–24–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM–01–03]

Factors To Consider When Reviewing an Applicant's Proposed Human Factors Methods of Compliance for Flight Deck Certification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of final policy; correction.

SUMMARY: The Federal Aviation Administration (FAA) announces a correction to a final policy memorandum that clarifies current FAA policy with respect to compliance with human factors-related regulations during certification projects on transport category airplanes.

DATE: This final policy was issued by the Transport Airplane Directorate on February 7, 2003.

FOR FURTHER INFORMATION CONTACT: Steve Boyd, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airplane & Flightcrew Interface Branch, ANM–111, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–1138; fax (425) 227–1320; e-mail: *9-ANM-111-human-factors@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

On February 7, 2003, the FAA issued policy memorandum number ANM–01–03 on the subject of guidance with respect to the recommended content of a Human Factors Certification Plan. After issuance and publication of the notice of final policy, an inadvertent error in the memo was brought to our attention. The error occurs in the "Effect of Policy" paragraph, second sentence. This sentence is corrected to read: "The general policy stated in this document does *not* constitute a new regulation or create what the courts refer to as a 'binding norm.'" The error has been corrected and the revised memorandum, ANM–01–03(A) is available on the Internet at the following address: *http://www.airweb.faa.gov/rgl*.

If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Renton, Washington, on July 14, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–18920 Filed 7–24–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement, Riverside County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of withdrawal.

SUMMARY: The FHWA is issuing this notice to advise the public that the Notice of Intent to prepare an Environmental Impact Statement (EIS) for the proposed Bridge replacement, River Road Bridge, Riverside County, California will be withdrawn; and an Environmental Assessment (EA) in lieu of an EIS is being prepared for this proposed highway project.

FOR FURTHER INFORMATION CONTACT: Cesar Perez, Project Development and Environment Unit, Federal Highway Administration, California Division, 980 Ninth Street, Suite 400, Sacramento, California 95814–2724, Telephone: (916) 498–5020.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans), conducted studies of the potential environmental impacts associated with the proposed highway project to replace River Road Bridge, in Riverside County, California. During the course of conducting these studies and coordinating with regulatory and resource agencies, it was found that many of the potential environmental issues that led to issuing the Notice of Intent were not significant. In addition, changes to avoid or minimize potential impacts identified in early scoping have been made to the designs. One significant change in minimizing impacts is to replace the existing bridge with a significantly shorter bridge than originally planned (800 ft vs. 3000 ft), as well as utilizing stage construction in lieu of a full detour. The FHWA has determined that the proposed project is not likely to result in significant impacts to the environment; that an EA would be an appropriate environmental document for the project; and that the Notice of Intent, available on the **Federal Register** should be withdrawn.

The EA will be available for public inspection prior to the public meeting. Comments or questions concerning this proposed action and the determination that an EA is the proper environmental document should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program.)

Issued on: July 21, 2003.

Cesar Perez,

Team Leader, Project Development and Environment—South Sacramento, California.

[FR Doc. 03–18953 Filed 7–24–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Granted Buy America Waiver

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of granted Buy America waiver.

SUMMARY: This waiver allows ticket vending machine manufacturers to install the Cash Code bill-handling unit and count it as domestic for purposes of Buy America compliance. It is predicated on the non-availability of the item domestically and was granted on June 11, 2003, for the period of two years. This notice shall insure that the public is aware of this waiver.

FOR FURTHER INFORMATION CONTACT: Meghan G. Ludtke, FTA Office of Chief Counsel, Room 9316, (202) 366–1936 (telephone) or (202) 366–3809 (fax).

SUPPLEMENTARY INFORMATION: *See* waiver below.

Issued: July 22, 2003.

Jennifer L. Dorn,

Administrator.

June 11, 2003.

Mr. Val Levitan,

Senior V.P. Sales & Marketing, Cash Code, 553 Basaltic Road, Concord, Ontario Canada L4K 4W8

Dear Mr. Levitan: This letter responds to your correspondence of May 8, 2003, in which you request a non-availability waiver of the Buy America requirements for certain bill-handling units manufactured for use in ticket vending machines. These bill-handling units accept, validate, and mechanically escrow banknotes of various denominations until a transaction is complete. For the reasons below, I have determined that a waiver is appropriate here.

The Federal Transit Administration's (FTA) requirements concerning domestic preference for federally funded transit projects are set forth in 49 U.S.C. 5323(j). However, section 5323(j)(2)(B) states that those requirements shall not apply if the item or items being procured are not produced in the U.S. in sufficient and reasonably available quantities and of a satisfactory quality. The implementing regulation also provides that a waiver may be requested "for a specific item or material that is used in the production of a manufactured product." 49 CFR 661.7(g). The regulations allow a bidder or supplier to request a waiver only if it is being sought under this section. See, 49 CFR 661.7(g) and 49 CFR 661.9(d).

You state that there are no U.S. manufacturers of this component with a functionally equivalent product. This assertion is supported by GFI Genfare, a ticket vending machine manufacturer and potential end user of this component. GFI Genfare conducted a market survey, the results of which affirmed that there is no U.S. manufacturer of an equivalent bill-handling unit. FTA also posted a request for comments on this matter on our website and received no comments. FTA has granted similar waivers to other bill-handling unit manufacturers, Mars Electronics and Toyocom, U.S.A., also based on the non-availability of a U.S. alternative.

Based on the above-referenced information, I have determined that the grounds for a "non-availability" waiver exist. Therefore, pursuant to the provisions of 49 U.S.C. 5323(j)(2)(B), a waiver is hereby granted for manufacture of the BB–5001/2/3/4 bill-handling unit for a period of two years. In order to insure that the public is aware of this waiver it will be published in the **Federal Register**. If you have any questions, please contact Meghan Ludtke at (202) 366–1936.

Very truly yours,

Gregory B. McBride,

Deputy Chief Counsel.

[FR Doc. 03–19012 Filed 7–24–03; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 01–9362; Notice 3]

Saleen, Inc.; Receipt of Application for Extension of Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

Saleen, Inc., of Irvine, California, has applied for an extension of its temporary exemption from the automatic restraint requirements of Federal Motor Vehicle Safety Standard No. 208 *Occupant Crash Protection*. The basis of the request is that compliance would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith. 49 U.S.C. 30113(b)(3)(B)(i).

We are publishing this notice of receipt of an application in accordance with the requirements of 49 U.S.C. 30113(b)(2). This action does not represent any judgment of the agency on the merits of the application.

In June 2001, NHTSA granted Saleen a two-year hardship exemption from S4.1.5.3 of Standard No. 108 (66 FR 33298), expiring July 1, 2003. The reader is referred to that notice for background information on the company in support of its original petition. Because Saleen's application for renewal was received more than 60 days before the expiration of the extension, the exemption will remain in effect until the Administrator has made a decision on its request (49 CFR 555.8(e)).

Saleen's temporary exemption covers its model S7. It had anticipated shipping its initial production of cars in July 2001. However, it was not able to do so until March 2003, when it received Certificates of Conformity for the 2003 model year from the Environmental Protection Agency and the California Air Resources Board. Between then and June 11, 2003, it sold and shipped eight S7s. It hopes to be able to ship a total of 36 S7s by the end of the year. Saleen's other line of business is the alteration of Ford Mustangs. However, the company has "sustained a major slowdown" in sales of these vehicles which it attributes "to the downturn in the U.S. economy." The company has produced only 79 Saleen Mustangs as of June 11, 2003, compared with 327 in the comparable period in 2002. Its cumulative net losses in the three years preceding its original petition were $9,716,334; this has been only slightly ameliorated in the most current three-year period, to a cumulative net loss of $8,832,999.

Saleen had originally assumed that it needed 20 months and $3,000,000 for the development of air bags, but in the absence of sales, did not generate these funds. According to its petition, "development delays almost completely exhausted all of our economic resources necessary to stay in business, let alone the development of air bags." One of the economic consequences is the shrinking of its payroll from 122 employees to 96. The company has asked for a three-year extension of its original two-year exemption in order to generate funds that would allow it to comply with the Advanced Air Bag requirements, S14 of Standard No. 208, which were issued during the period of its exemption. According to its projection of sales, it believes that it will be financially able to begin development of advanced air bags by July 2004. It anticipates that the project will take 24 months and $3,800,000, and that it will be able to comply with S5.1.1(b)(1) on September 1, 2006.

If the petition is denied, the company would have to cease the production and sale of the S7, and estimates that its earnings before taxes would fall to $7,000.

The company argued that a temporary exemption is in the public interest because the S7 "is a unique supercar designed and produced in the United States utilizing many U.S. sourced components." An exemption would also allow it to maintain its payroll of 96 full time employees and to continue its purchase of U.S.-sourced components for the Mustangs that it modifies. Its business "with U.S. suppliers indirectly provides employment for several hundred other Americans." An exemption would be consistent with vehicle safety objectives because the S7 otherwise will conform to all applicable Federal motor vehicle safety standards.

Interested persons are invited to submit comments on the application described above. Comments should refer to the docket number and the notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket at the above address both before and after that date. The Docket Room is open from 10 a.m. until 5 p.m. To the extent possible, comments filed after the closing date will also be considered.

Notice of final action on the application will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: August 25, 2003.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on: July 17, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–18915 Filed 7–24–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34380]

Union Pacific Railroad Company—Temporary Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

The Burlington Northern and Santa Fe Railway Company (BNSF) has agreed to

grant temporary overhead trackage rights to Union Pacific Railroad Company (UP) between BNSF milepost 29.9 near Fremont, NE, and BNSF milepost 104.1 near Ferry, NE, a distance of 74.2 miles.

The transaction is scheduled to become effective on August 31, 2003, and the authorization is scheduled to expire on or about October 20, 2003. The purpose of the temporary rights is to facilitate maintenance work on UP lines.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights-BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), *aff'd sub nom. Railway Labor Executives' Ass'n v. United States*, 675 F.2d 1248 (D.C. Cir. 1982).

This notice is filed under 49 CFR 1180.2(d)(8). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34380, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Robert T. Opal, 1416 Dodge St., Room 830, Omaha, NE 68179.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: July 17, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–18727 Filed 7–24–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34372]

Heritage Railroad Corporation—Lease and Operation Exemption—Rail Line of United States Department of Energy

Heritage Railroad Corporation (HRRC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease and operate a 7-mile rail line owned by the United States Department of Energy (DOE) from milepost 0.0 at a point of connection with a rail line of Norfolk Southern Railway Company at Blair, TN, to the end of the line at milepost 7.0 at East Tennessee Technology Center near Oak Ridge, TN. The lease includes 24 spur tracks, totaling approximately 7.5 miles, for a combined total of approximately 14.5 miles of track. HRRC certifies that the projected revenues as a result of this transaction will not result in the creation of a Class I or Class II rail carrier.

HRRC states that it had entered into a management agreement with Southern Freight Logistics, LLC (SFL), effective September 30, 2000, wherein SFL was given exclusive rights to provide freight service on the line until September 14, 2005.[1] HRRC could terminate the management agreement by providing SFL with 90 days' written notice. HRRC provided such notice by letter dated June 16, 2003. Nevertheless, HRRC is willing to allow SFL to continue using the line after September 14, 2003, under new terms and conditions.

HRRC also states that it does not intend to consummate the transaction and take over operations until the 90-day notice of termination of the SFL management agreement has expired, on or about September 14, 2003. The earliest the transaction could have been consummated was July 8, 2003 (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34372, must be filed with the Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Thomas F. McFarland, 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1194.

Board decisions and notices are available on our website at *http://www.stb.dot.gov*.

Decided: July 16, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–18728 Filed 7–23–03; 9:14 am]

BILLING CODE 4915–00–P

[1] Prior to the management agreement, SFL leased the line from HRRC's predecessor. *See Southern Freight Logistics, LLC-Lease and Operation Exemption-Community Reuse Organization of East Tennessee*, STB Finance Docket No. 33392 (STB served May 15, 1997).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending July 11, 2003

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2003–15586.
Date Filed: July 8, 2003.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote, 311 PTC123 0244 dated 8 July 2003, South Atlantic Special Passenger Amending Resolution from Brazil r1–r5, Intended effective date: 1 August 2003.

Docket Number: OST–2003–15587.
Date Filed: July 8, 2003.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR–ME 0167 dated 8 July 2003, TC2 Europe-Middle East Expedited Resolutions r1–r12, Intended effective date: 15 August 2003.

Docket Number: OST–2003–15657.
Date Filed: July 11, 2003.
Parties: Members of the International Air Transport Association.
Subject: PTC COMP 1071 dated 11 July 2003, Mail Vote 312—Resolution 024a, TC2/12/23/123 Establishing Passenger Fares and Related Charges—Iraq, CTC COMP 0448 dated 11 July 2003, Mail Vote 313—Resolution 033a, TC2/12/23/123 Establishing Cargo Rates, Charges and Amounts—Iraq, Intended effective date: 1 August 2003.

Docket Number: OST–2003–15658.
Date Filed: July 11, 2003.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 314—Resolution 002c
PTC2 ME 0126 dated 15 July 2003
TC2 Within Middle East
Special Amending Resolution r1–r8,
Intended effective date: 15 August 2003.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 03–18917 Filed 7–24–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Renewal of the Treasury Borrowing Committee of the Bond Market Association

ACTION: Notice of renewal.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended Pub. L. 92–463; 5 U.S.C. App. 2), with the concurrence of the General Services Administration, the Secretary of the Treasury has determined that renewal of the Treasury Borrowing Advisory Committee of The Bond Market Association (the "Committee") is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Treasury by law.

EFFECTIVE DATE: July 13, 2003.

FOR FURTHER INFORMATION CONTACT: Jeff Huther, Deputy Director, Office of Market Finance, (202) 622–2630.

SUPPLEMENTARY INFORMATION: The purpose of the Committee is to provide informed advice as representatives of the financial community to the Secretary of the Treasury and Treasury staff, upon the Secretary of the Treasury's request, in carrying out Treasury responsibilities for federal financing and public debt management.

The Committee meets to consider special items on which its advice is sought pertaining to immediate Treasury funding requirements and pertaining to longer term approaches to manage the national debt in a cost-effective manner. The Committee usually meets immediately before the Treasury announces each mid-calendar quarter funding operation, although special meetings also may be held.

Membership consists of 20–25 individuals who are experts in the government securities market and who are involved in senior positions in debt markets as institutional investors, investment advisors, or as dealers in government securities.

The Designated Federal Official for the Advisory Committee is the Associate Director of the Office of Market Finance, reporting through the Assistant Secretary for Financial Markets. The Treasury Department filed copies of the Committee's renewal charter with appropriate committees in Congress.

Dated: July 21, 2003.

Brian C. Roseboro,

Assistant Secretary, Financial Markets.

[FR Doc. 03–18929 Filed 7–24–03; 8:45 am]

BILLING CODE 4810–25–M

Federal Register

Friday,
July 25, 2003

Part II

Federal Communications Commission

47 CFR Parts 64 and 68
Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 64 and 68

[CG Docket No. 02–278, FCC 03–153]

Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, we revise the current Telephone Consumer Protection Act of 1991 (TCPA) rules, and adopt new rules to provide consumers with several options for avoiding unwanted telephone solicitations. These new rules establish a national do-not-call registry, set a maximum rate on the number of abandoned calls, require telemarketers to transmit caller ID information, and modify the Commission's unsolicited facsimile advertising requirements.

DATES: Effective August 25, 2003, except for § 64.1200(d)(2), which contains the national do-not-call rules, and will become effective on October 1, 2003; § 64.1200(a)(5) and (a)(6), which contain the call abandonment rules, and will become effective on October 1, 2003; § 64.1601(e), which contains the caller ID rules, and will become effective on January 29, 2004; and §§ 64.1200(a)(3)(i), (d)(1), (d)(3), (d)(6), (f)(3), and (g)(1), which contain information collection requirements under the Paperwork Reduction Act (PRA) that have not been approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date for these sections. Written comments by the public on the new and modified information collections are due September 23, 2003.

ADDRESSES: In addition to filing comments with the Office of the Secretary, a copy of comments on the information collection(s) contained herein should be submitted to Leslie Smith, Federal Communications Commission, Room 1–A804, 445 12th Street SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Erica H. McMahon or Richard D. Smith at 202–418–2512, Consumer & Governmental Affairs Bureau. For additional information concerning the information collection(s) contained in this document, contact Les Smith at 202–418–0217 or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (Order) in CG Docket No. 02–278, FCC 03–153, adopted on June 26, 2003 and released July 3, 2003. The full text of this document is available at the Commission's Web site (*http://www.fcc.gov*) on the Electronic Comment Filing System and for public inspection and copying during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0531 (voice) or (202) 418–7365 (tty).

Paperwork Reduction Act: The Report and Order contains either new and/or modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this Report and Order as required by the PRA. Public and agency comments are due September 23, 2003.

Synopsis

1. We revise the TCPA rules and adopt new rules to provide consumers with several options for avoiding unwanted telephone solicitations. Specifically, we establish with the Federal Trade Commission (FTC) a national do-not-call registry for consumers who wish to avoid unwanted telemarketing calls. The national do-not-call registry will supplement the current company-specific do-not-call rules for those consumers who wish to continue requesting that particular companies not call them. To address the more prevalent use of predictive dialers, we have determined that a telemarketer may abandon no more than three percent of calls answered by a person and must deliver a prerecorded identification message when abandoning a call. The new rules will also require all companies conducting telemarketing to transmit caller identification (caller ID) information, when available, and prohibit them from blocking such information. The Commission has revised its earlier determination that an established business relationship constitutes express invitation or permission to receive an unsolicited fax, and we have clarified when fax broadcasters are liable for the transmission of unlawful facsimile advertisements.

National Do-Not-Call List

2. *Section 227.* The TCPA requires the Commission to protect residential telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object. In so doing, 47 U.S.C. 227(c)(1) directs the Commission to "compare and evaluate alternative methods and procedures" including the use of electronic databases and other alternatives in protecting such privacy rights. Pursuant to 47 U.S.C. 227(c)(3), the Commission "may require the establishment and operation of a single national database to compile a list of telephone numbers of residential subscribers who object to receiving telephone solicitations, and to make that compiled list and parts thereof available for purchase." If the Commission determines that adoption of a national database is warranted, 47 U.S.C. 227(c)(3) enumerates a number of specific statutory requirements that must be satisfied. Additionally, 47 U.S.C. 227(c)(4) requires the Commission to consider the different needs of telemarketers operating on a local or regional basis and small businesses. In addition to our general authority over interstate communications, section 2(b) of the Communications Act specifically provides the Commission with the authority to apply section 227 to intrastate communications.

3. We conclude that the record compiled in this proceeding supports the establishment of a single national database of telephone numbers of residential subscribers who object to receiving telephone solicitations. Consistent with the mandate of Congress in the Do-Not-Call Implementation Act (Do-Not-Call Act), the national do-not-call rules that we establish in this order "maximize consistency" with those of the FTC. The record clearly demonstrates widespread consumer dissatisfaction with the effectiveness of the current rules and network technologies available to protect consumers from unwanted telephone solicitations. Indeed, many consumers believe that with the advent of such technologies as predictive dialers that the vices of telemarketing have become inherent, while its virtues remain accidental. We have compared and evaluated alternative methods to a national do-not-call list for protecting consumer privacy rights and conclude that these alternatives are costly and/or ineffective for both telemarketers and consumers. *See* 47 U.S.C. 227(c)(1)(A).

4. A national do-not-call registry that is supplemented by the amendments made to our existing rules will provide consumers with a variety of options for managing telemarketing calls. Consumers may now: (1) Place their number on the national do-not-call list; (2) continue to make do-not-call requests of individual companies on a case-by-case basis; and/or (3) register on the national list, but provide specific companies with express permission to call them. Telemarketers may continue to call individuals who do not place their numbers on a do-not-call list and consumers with whom they have an established business relationship. We believe this result is consistent with Congress' directive in the TCPA that "[i]ndividuals" privacy rights, public safety interests, and commercial freedoms of speech and trade must be balanced in a way that protects the privacy of individuals and permits legitimate telemarketing practices." *See TCPA*, Section 2(9), *reprinted* in 7 FCC Rcd at 2744.

5. We agree with Congress that consistency in the underlying regulations and administration of the national do-not-call registry is essential to avoid consumer confusion and regulatory uncertainty in the telemarketing industry. In so doing, we emphasize that there will be one centralized national do-not-call database of telephone numbers. The FTC has set up and will maintain the national database, while both agencies will coordinate enforcement efforts pursuant to a forthcoming Memorandum of Understanding. The states will also play an important role in the enforcement of the do-not-call rules. The FTC has received funding approval from Congress to begin implementation of the national do-not-call registry. Because the FTC lacks jurisdiction over certain entities, including common carriers, banks, insurance companies, and airlines, those entities would be allowed to continue calling individuals on the FTC's list absent FCC action exercising our broad authority given by Congress over telemarketers. In addition, the FTC's jurisdiction does not extend to intrastate activities. Action by this Commission to adopt a national do-not-call list, as permitted by the TCPA, requires all commercial telemarketers to comply with the national do-not-call requirements, thereby providing more comprehensive protections to consumers and consistent treatment of telemarketers.

National Do-Not-Call Registry

6. Pursuant to our authority under 47 U.S.C. 227(c), we adopt a national do-not-call registry that will provide residential consumers with a one-step option to prohibit unwanted telephone solicitations. This registry will be maintained by the FTC. Consistent with the FTC's determination, the national registry will become effective on October 1, 2003. Subject to certain exemptions, telemarketers will be prohibited from contacting those consumers that register their telephone numbers on the national list. In reaching this conclusion, we agree with the vast majority of consumers in this proceeding and the FTC that a national do-not-call registry is necessary to enhance the privacy interests of those consumers that do not wish to receive telephone solicitations. In response to the widespread consumer dissatisfaction with telemarketing practices, Congress has recently affirmed its support of a national do-not-call registry in approving funding for the FTC's national database. *See* H.R. J. Res. 2, 108th Congress at 96 (2003). *See also* H.R. REP. NO. 108–8 at 3 (2003), reprinted in 2003 U.S.C.C.A.N. 688, 670 ("[i]t is the strongly held view of the Committee that a national do-not-call list is in the best interest of consumers, businesses and consumer protection authorities. This legislation is an important step toward a one-stop solution to reducing telemarketing abuses."). In so doing, Congress has indicated that this Commission should adopt rules that "maximize consistency" with those of the FTC. The record in this proceeding is replete with examples of consumers that receive numerous unwanted calls on a daily basis. The increase in the number of telemarketing calls over the last decade combined with the widespread use of such technologies as predictive dialers has encroached significantly on the privacy rights of consumers. For example, the effectiveness of the protections afforded by the company-specific do-not-call rules have been reduced significantly by dead air and hang-up calls that result from predictive dialers. In these situations, consumers have no opportunity to invoke their do-not-call rights and the Commission cannot pursue enforcement actions. Such intrusions have led many consumers to disconnect their phones during portions of the day or avoid answering their telephones altogether. The adoption of a national do-call-list will be an important tool for consumers that wish to exercise control over the increasing number of unwanted telephone solicitation calls.

7. Although some industry commenters attempt to characterize unwanted solicitation calls as petty annoyances and suggest that consumers purchase certain technologies to block unwanted calls, the evidence in this record leads us to believe the cumulative effect of these disruptions in the lives of millions of Americans each day is significant. As a result, we conclude that adoption of a national do-not-call list is now warranted. We believe that consumers should, at a minimum, be given the opportunity to determine for themselves whether or not they wish to receive telephone solicitation calls in their homes. The national do-not-call list will serve as an option for those consumers who have found the company-specific list and other network technologies ineffective. The telephone network is the primary means for many consumers to remain in contact with public safety organizations and family members during times of illness or emergency. Consumer frustration with telemarketing practices has reached a point in which many consumers no longer answer their telephones while others disconnect their phones during some hours of the day to maintain their privacy. We agree with consumers that incessant telephone solicitations are especially burdensome for the elderly, disabled, and those that work non-traditional hours. Persons with disabilities are often unable to register do-not-call requests on many company-specific lists because many telemarketers lack the equipment necessary to receive that request. Given the record evidence, along with Congress's recent affirmative support for a national do-not-call registry, we adopt a national do-not-call registry. We are mindful of the need to balance the privacy concerns of consumers with the interests of legitimate telemarketing practices. Therefore, we have provided for certain exemptions to the national do-not-call registry.

8. While we agree that concerns regarding the cost, accuracy, and privacy of a national do-not-call database remain relevant, we believe that circumstances have changed significantly since the Commission first reviewed this issue over a decade ago such that they no longer impose a substantial obstacle to the implementation of a national registry. As several commenters in this proceeding note, advances in computer technology and software now make the compilation and maintenance of a national database a more reasonable proposition. In addition, considerable experience has been gained through the implementation of many state do-not-

call lists. In 1992, it was estimated by some commenters that the cost of establishing such a list in the first year could be as high as $80 million. Congress has recently reviewed and approved the FTC's request for $18.1 million to fund the national do-not-call list. We believe that the advent of more efficient technologies and the experience acquired in dealing with similar databases at the state level is responsible for this substantial reduction in cost.

9. Similarly, we believe that technology has become more proficient in ensuring the accuracy of a national database. The FTC indicates that to guard against the possibility of including disconnected or reassigned telephone numbers, technology will be employed on a monthly basis to check all registered telephone numbers against national databases, and remove those numbers that have been disconnected or reassigned. The length of time that registrations remain valid also directly affects the accuracy of the registry as telephone numbers change hands over time. We conclude that the retention period for both the national and company-specific do-not-call requests will be five years. *See FTC Order*, 68 FR 4580 at 4640 (January 29, 2003). Our rules previously required a company-specific do-not-call request to be honored for ten years. *See* 47 CFR 64.1200(e)(2)(vi). Five years is consistent with the FTC's determination and our own record that reveals that the current ten-year retention period for company-specific requests is too long given changes in telephone numbers. Consumers must also register their do-not-call requests from either the telephone number of the phone that they wish to register or via the Internet. The FTC will confirm the accuracy of such registrations through the use of automatic number identification (ANI) and other technologies. The term "ANI" refers to the delivery of the calling party's billing number by a local exchange carrier to any interconnecting carrier for billing or routing purposes, and to the subsequent delivery of such number to end users. 47 CFR 64.1600(b). We believe that a five-year registration period coupled with a monthly purging of disconnected telephone numbers adequately balances the need to maintain accuracy in the national registry with any burden imposed on consumers to re-register periodically their telephone numbers.

10. We conclude that appropriate action has been taken to ensure the privacy of those registering on the national list. Specifically, the only consumer information telemarketers and sellers will receive from the national registry is the registrant's telephone number. This is the minimum amount of information that can be provided to implement the national registry. We note that the majority of telephone numbers are publicly available through telephone directories. To the extent that consumers have an unlisted number, the consumer will have to make a choice as to whether they prefer to register on a national do-not-call list or maintain complete anonymity. We reiterate, however, that the only information that will be provided to the telemarketer is the telephone number of the consumer. The "seller" and "telemarketer" may be the same entity or separate entities. Each entity on whose behalf the telephone call is being made must purchase access to the do-not-call database. No corresponding name or address information will be provided. We believe that this approach reduces the privacy concerns of such consumers to the greatest extent possible. As an additional safeguard, we find that restrictions should be imposed on the use of the national list. Consistent with the FTC's determination and 47 U.S.C. 227(c)(3)(K), we conclude that no person or entity may sell, rent, lease, purchase, or use the national do-not-call database for any purpose except compliance with section 227 and any such state or federal law to prevent telephone solicitations to telephone numbers on such list. *See* 47 U.S.C. 227(c)(3)(K). *See also* 16 CFR 310.4(b)(2). We conclude that these safeguards adequately protect the privacy rights of those consumers who choose to register on the national do-not-call list.

11. We conclude that the national database should allow for the registration of wireless telephone numbers, and that such action will better further the objectives of the TCPA and the Do-Not-Call Act. In so doing, we agree with the FTC and several commenters that wireless subscribers should not be excluded from the protections of the TCPA, particularly the option to register on a national do-not-call list. Congress has indicated its intent to provide significant protections under the TCPA to wireless users. 47 U.S.C. 227(b)(1)(iii). Allowing wireless subscribers to register on a national do-not-call list furthers the objectives of the TCPA, including protection for wireless subscribers from unwanted telephone solicitations for which they are charged.

12. Nextel Communications, Inc. (Nextel) argues, however, that, because the "TCPA only authorizes the Commission to regulate solicitations to 'residential telephone subscribers,'" wireless subscribers may not participate in the do-not-call list. Nextel Comments at 19. Nextel states we should define "residential subscribers" to mean "telephone service used primarily for communications in the subscriber's residence." However, Nextel's application would result in "[a]t most, the Commission [having the] authority to regulate solicitations to wireless subscribers in those circumstances where wireless service actually has displaced a residential land line, and functions as a consumer's primary residential telephone service." Nextel Comments at 21.

13. Nextel's definition of "residential subscribers" is far too restrictive and inconsistent with the intent of section 227. Specifically, there is nothing in section 227 to suggest that only a customer's "primary residential telephone service" was all that Congress sought to protect through the TCPA. In addition, had Congress intended to exclude wireless subscribers from the benefits of the TCPA, it knew how to address wireless services or consumers explicitly. For example, in section 227(b)(1); Congress specifically prohibited calls using automatic telephone dialing systems or artificial or prerecorded voice to telephone numbers assigned to "paging service [or] cellular telephone service * * *." Moreover, under Nextel's definition, even consumers who use their wireless telephone service in their homes to supplement their residential wireline service, such as by using their wireless telephone service to make long distance phone calls to avoid wireline toll charges, would be excluded from the protections of the TCPA. Such an interpretation is at odds even with Nextel's own reasoning for its definition—that the TCPA's goal is "to curb the 'pervasive' use of telemarketing 'to market goods and services to the home'." Nextel Comments at 20. It is well established that wireless subscribers often use their wireless phones in the same manner in which they use their residential wireline phones. Indeed, as even Nextel recognizes, there is a growing number of consumers who no longer maintain wireline phone service, and rely only on their wireless telephone service. Thus, we are not persuaded by Nextel's arguments.

14. Moreover, we believe it is more consistent with the overall intent of the TCPA to allow wireless subscribers to benefit from the full range of TCPA protections. Congress afforded wireless subscribers particular protections in the context of autodialers and prerecorded calls. 47 U.S.C. 227(b)(1)(A)(iii). In addition, although Congress expressed concern with residential privacy, it also was concerned with the nuisance, expense and burden that telephone solicitations place on consumers. Therefore, we conclude that wireless subscribers may participate in the national do-not-call list. As a practical matter, since determining whether any particular wireless subscriber is a "residential subscriber" may be more fact-intensive than making the same determination for a wireline subscriber, we will presume wireless subscribers who ask to be put on the national do-not-call list to be "residential subscribers." This presumption is only for the purposes of section 227 and is not in any way indicative of any attempt to classify or regulate wireless carriers for purposes of other parts of Title II. Such a presumption, however, may require a complaining wireless subscriber to provide further proof of the validity of that presumption should we need to take enforcement action.

15. We emphasize that it is not our intent in adopting a national do-not-call list to prohibit legitimate telemarketing practices. We believe that industry commenters present a false choice between the continued viability of the telemarketing industry and the adoption of a national do-not-call list. We are not persuaded that the adoption of a national do-not-call list will unduly interfere with the ability of telemarketers to contact consumers. Many consumers will undoubtedly take advantage of the opportunity to register on the national list. Several industry commenters suggest, however, that consumers derive substantial benefits from telephone solicitations. If so, many such consumers will choose not to register on the national do-not-call list and will opt instead to make do-not-call requests on a case-by-case basis or give express-permission to be contacted by specific companies. In addition, we have provided for certain exemptions to the do-not-call registry in recognition of legitimate telemarketing business practices. For example, sellers of goods or services via telemarketing may continue to contact consumers on the national list with whom they have an established business relationship. We also note that calls that do not fall within the definition of "telephone solicitation" as defined in section 227(a)(3) will not be precluded by the national do-not-call list. These may include surveys, market research, political or religious speech calls.[1] The national do-not-call rules will also not prohibit calls to businesses and persons with whom the marketer has a personal relationship. Telemarketers may continue to contact all of these consumers despite the adoption of a national do-not-call list. Furthermore, we decline to adopt more restrictive do-not-call requirements on telemarketers as suggested by several commenters. For example, we decline to adopt an "opt-in" approach that would ban telemarketing to any consumer who has not expressly agreed to receive telephone solicitations. We believe that establishing such an approach would be overly restrictive on the telemarketing industry. We also decline to extend the national do-not-call requirements to tax-exempt nonprofit organizations or entities that telemarket on behalf of nonprofit organizations.

16. We agree with the FTC that a safe harbor should be established for telemarketers that have made a good faith effort to comply with the national do-not-call rules. A seller or telemarketer acting on behalf of the seller that has made a good faith effort to provide consumers with an opportunity to exercise their do-not-call rights should not be liable for violations that result from an error. Consistent with the FTC, we conclude that a seller or the entity telemarketing on behalf of the seller will not be liable for violating the national do-not-call rules if it can demonstrate that, as part of the seller's or telemarketer's routine business practice: (i) It has established and implemented written procedures to comply with the do-not-call rules; (ii) it has trained its personnel, and any entity assisting in its compliance, in the procedures established pursuant to the do-not-call rules; (iii) the seller, or telemarketer acting on behalf of the seller, has maintained and recorded a list of telephone numbers the seller may not contact; (iv) the seller or telemarketer uses a process to prevent telemarketing to any telephone number on any list established pursuant to the do-not-call rules employing a version of the do-not-call registry obtained from the administrator of the registry no more than three months prior to the date any call is made, and maintains records documenting this process; and (v) any subsequent call otherwise violating the do-not-call rules is the result of error. We acknowledge that the three-month safe harbor period for telemarketers may prove to be too long to benefit some consumers. The national do-not-call list has the capability to process new registrants virtually instantaneously and telemarketers will have the capability to download the list at any time at no extra cost. The Commission intends to monitor carefully the impact of this requirement pursuant to its annual report to Congress and may consider a shorter time frame in the future.

17. As required by 47 U.S.C. 227(c)(1)(A), we have compared and evaluated the advantages and disadvantages of certain alternative methods to protect consumer privacy including the use of network technologies, special directory markings, and company-specific lists in adopting a national do-not-call database. The effectiveness of the company-specific approach has significantly eroded as a result of hang-up and "dead air" calls from predictive dialers. Consumers in these circumstances have no opportunity to assert their do-not-call rights. We believe that, as a stand-alone option, the company-specific approach no longer provides consumers with sufficient privacy protections. We also conclude that the availability of certain network technologies to reduce telephone solicitations is often ineffective and costly for consumers. Although technology has improved to assist consumers in blocking unwanted calls, it has also evolved in such a way as to assist telemarketers in making greater numbers of calls and even circumventing such blocking technologies. Millions of consumers continue to register on state do-not-call lists despite the availability of such technologies. Several commenters note that they continue to receive unwanted calls despite paying for technologies to reduce telephone solicitations. Several commenters also note that telemarketers routinely block transmission of caller ID. In particular, we are concerned that the cost of technologies such as caller ID, call blocking, and other such tools in an effort to reduce telemarketing calls fall entirely on the consumer. We believe that reliance on a solution that places the cost of reducing the number of unwanted solicitation calls entirely on the consumer is inconsistent with Congress' intent in the TCPA. For the reasons outlined in the 1992 TCPA Order, we also decline to adopt special area codes or prefixes for telemarketers. We believe this option is costly for

[1] Such calls may be prohibited if they serve as a pretext to an otherwise prohibited advertisement or a means of establishing a business relationship. Moreover, responding to such a "survey" does not constitute express permission or establish a business relationship exemption for purposes of a subsequent telephone solicitation. *See* H.R. Rep. No. 102–317 at 13 ("[T]he Committee does not intend the term "telephone solicitation" to include public opinion polling, consumer or market surveys, or other survey research conducted by telephone. A call encouraging purchase, rental, or investment would fall within the definition, however, even though the caller purports to be taking a poll or conducting a survey.").

telemarketers that would be required to change their telephone numbers and administratively burdensome to implement. We also decline to adopt special directory markings of area white page directories because it would require telemarketers to purchase and review thousands of local telephone directories, at great cost to the telemarketers. We also note that telemarketers often compile solicitation lists from many sources other than local telephone directories. In addition, such directories do not include unlisted or unregistered telephone numbers and are often updated infrequently. We also note that the record in this proceeding provides little support for this option.

18. We now review the other requirements of 47 U.S.C. 227(c)(1). As required by section 227(c)(1)(B), we have evaluated AT&T Government Solutions, the entity selected by the FTC to administer the national database, and conclude that it has the capacity to establish and administer the national database. Congress has reviewed and approved funding for the implementation of that database. We believe that it is unnecessary to evaluate any other such entities at this time. We have considered whether different methods and procedures should apply for local telephone solicitations and small businesses as required by section 227(c)(1)(C). We conclude that the national do-not-call database takes into consideration the costs of those conducting telemarketing on a local or regional basis, including many small businesses. In particular, we note that the national do-not-call database will permit access to five or fewer area codes at no cost to the seller. Pursuant to section 227(c)(1)(D), we have considered whether there is a need for additional authority to further restrict telephone solicitations. We conclude that no such authority is required at this time. Pursuant to the Do-Not-Call Act, the Commission must report to Congress on an annual basis the effectiveness of the do-not-call registry. Should the Commission determine that additional authority is required over telephone solicitations as part of that analysis; the Commission will propose specific restrictions pursuant to that report. As required by section 227(c)(1)(E), we have developed regulations to implement the national do-not-call database in the most effective and efficient manner to protect consumer privacy needs while balancing legitimate telemarketing interests.

19. The FTC's decision to adopt a national do-not-call list is currently under review in federal district court. Because Congress has approved funding for the administration of the national list only for the FTC, this Commission would be forced to stay implementation of any national list should the plaintiffs prevail in one of those proceedings.

Exemptions

20. *Established Business Relationship.* We agree with the majority of industry commenters that an exemption to the national do-not-call list should be created for calls to consumers with whom the seller has an established business relationship. We note that 47 U.S.C. 227(a)(3) excludes from the definition of telephone solicitation calls made to any person with whom the caller has an established business relationship. We believe the ability of sellers to contact existing customers is an important aspect of their business plan and often provides consumers with valuable information regarding products or services that they may have purchased from the company. For example, magazines and newspapers may want to contact customers whose subscriptions have or soon will expire and offer new subscriptions. This conclusion is consistent with that of the FTC and the majority of states that have adopted do-not-call requirements and considered this issue. We revise the definition of an established business relationship so that it is limited in duration to eighteen (18) months from any purchase or transaction and three (3) months from any inquiry or application.

21. To the extent that some consumers oppose this exemption, we find that once a consumer has asked to be placed on the seller's company-specific do-not-call list, the seller may not call the consumer again regardless of whether the consumer continues to do business with the seller. We believe this determination constitutes a reasonable balance between the interests of consumers that may object to such calls with the interests of sellers in contacting their customers. This conclusion is also consistent with that of the FTC.

22. *Prior Express Permission.* In addition to the established business relationship exemption, we conclude that sellers may contact consumers registered on a national do-not-call list if they have obtained the prior express permission of those consumers. We note that section 227(a)(3) excludes from the definition of telephone solicitation calls to any person with "that person's prior express invitation or permission." Consistent with the FTC's determination, we conclude that for purposes of the national do-not-call list such express permission must be evidenced only by a signed, written agreement between the consumer and the seller which states that the consumer agrees to be contacted by this seller, including the telephone number to which the calls may be placed. For purposes of this exemption, the term "signed" shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal or state contract law. Consumers registered on the national list may wish to have the option to be contacted by particular entities. Therefore, we conclude that sellers may obtain the express written agreement to call such consumers. The express agreement between the parties shall remain in effect as long as the consumer has not asked to be placed on the seller's company-specific do-not-call list. If the consumer subsequently requests not to be called, the seller must cease calling the consumer regardless of whether the consumer continues to do business with the seller. We also note that telemarketers may not call consumers on the national do-not-call list to request their written permission to be called unless they fall within some other exemption. We believe that to allow such calls would circumvent the purpose of this exemption. Prior express permission must be obtained by some other means such as direct mailing.

23. *Tax-Exempt Nonprofit Organizations.* We agree with those commenters that contend that the national do-not-call requirements should not be extended to tax-exempt nonprofit organizations or calls made by independent telemarketers on behalf of tax-exempt nonprofit organizations. We note that 47 U.S.C. 227(a)(3) specifically excludes calls made by tax-exempt nonprofit organizations from the definition of telephone solicitation. In so doing, we believe Congress clearly intended to exclude tax-exempt nonprofit organizations from prohibitions on telephone solicitations under the TCPA. The legislative history indicates that commercial calls constitute the bulk of all telemarketing calls. A number of commenters and the FTC agree with Congress' conclusion as it relates to a national do-not-call list. For this reason, we decline to extend the national do-not-call requirements to tax-exempt nonprofit organizations. A few commenters seek clarification that requests for blood donations will be exempt from the national do-not-call list. When such requests are made by tax-exempt nonprofit organizations, they will fall within the exemption for tax-exempt nonprofit organizations.

24. *Others.* We decline to create specific exemptions to the national do-not-call requirements for entities such as newspapers, magazines, regional telemarketers, or small businesses. We find unpersuasive arguments that application of the national do-not-call database adopted herein will result in severe economic consequences for these entities. In particular, we note the exemptions adopted for calls made to consumers with whom the seller has an established business relationship and those that have provided express agreement to be called. As noted, many consumers may also determine not to register on the national database. Telemarketers may continue to contact all of these consumers. We believe these exemptions provide telemarketers with a reasonable opportunity to conduct their business while balancing consumer privacy interests. Although we agree that newspapers and other entities may often provide useful information and services to the public, given our conclusion that adoption of the national do-not-call list will not unduly interfere with the ability of telemarketers to reach consumers, we do not find this to be a compelling basis to exempt these entities.

25. We find that the national do-not-call rules do not apply to calls made to persons with whom the marketer has a personal relationship. As discussed herein, a "personal relationship" refers to an individual personally known to the telemarketer making the call. In such cases, we believe that calls to family members, friends and acquaintances of the caller will be both expected by the recipient and limited in number. In determining whether a telemarketer is considered a "friend" or "acquaintance" of a consumer, we will look at, among other things, whether a reasonable consumer would expect calls from such a person because they have a close or, at least, firsthand relationship. If a complaining consumer were to indicate that a relationship is not sufficiently personal for the consumer to have expected a call from the marketer, we would be much less likely to find that the personal relationship exemption is applicable. While we do not adopt a specific cap on the number of calls that a marketer may make under this exemption, we underscore that the limited nature of the exemption creates a strong presumption against those marketers who make more than a limited number of calls per day. Therefore, the two most common sources of consumer frustration associated with telephone solicitations—high volume and unexpected solicitations—are not likely present when such calls are limited to persons with whom the marketer has a personal relationship. Accordingly, we find that these calls do not represent the type of "telephone solicitations to which [telephone subscribers] object" discussed in 47 U.S.C. 227(c)(1). Moreover, we conclude that the Commission also has authority to recognize this limited carve-out pursuant to 47 U.S.C. 227(c)(1)(E). This subsection provides the Commission with discretion in implementing rules to protect consumer privacy to "develop proposed regulations to implement the methods and procedures that the Commission determines are the most effective and efficient to accomplish the purpose of this section." 47 U.S.C. 227(c)(1)(E). To the extent that any consumer objects to such calls, the consumer may request to be placed on the telemarketer's company's company-specific do-not-call list. We intend to monitor these rules and caution that any individual or entity relying on personal relationships abusing this exemption may be subject to enforcement action.

26. In addition, we decline to extend this approach beyond persons that have a personal relationship with the marketer. For example, Vector urges the Commission to adopt an exemption that covers "face-to-face" appointment calls to anyone known personally to the "referring source." We note that such relationships become increasingly tenuous as they extend to individuals not personally known to the marketer and thus such calls are more likely to be unexpected to the recipient and more voluminous. Accordingly, referrals to persons that do not have a personal relationship with the marketer will not fall within the category of calls discussed above.

27. We also decline to establish an exemption for calls made to set "face-to-face" appointments *per se*. We conclude that such calls are made for the purpose of encouraging the purchase of goods and services and therefore fall within the statutory definition of telephone solicitation. We find no reason to conclude that such calls are somehow less intrusive to consumers than other commercial telephone solicitations. The FTC has reviewed this issue and reached the same conclusion. In addition, we decline to exempt entities that make a "*de minimis*" number of commercial telemarketing calls. In contrast to Congress' rationale for exempting nonprofit organizations, we believe that such commercial calls continue to be unexpected to consumers even if made in low numbers. We do not believe the costs to access the national database is unreasonable for any small business or entity making a "*de minimis*" number of calls.

28. In response to the *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Further Notice of Proposed Rulemaking, CG Docket No. 02–278, FCC 03–62 published at 68 FR 16250, April 3, 2003 (FNPRM) a few commenters contend that any new rules the Commission adopts would not apply to entities engaged in the business of insurance, because such rules would conflict with the McCarran-Ferguson Act. The McCarran-Ferguson Act provides that "[t]he business of insurance * * * shall be subject to the laws of the * * * States which relate to the regulation * * * of such business." 15 U.S.C. 1012(a). The McCarran-Ferguson Act further provides that "[n]o Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance * * * unless such Act specifically relates to the business of insurance." 15 U.S.C. 1012(b). American Council of Life Insurers (ACLI) explains that insurers' marketing activities are extensively regulated at the state level. The Commission's proposal, ACLI argues, "intrudes upon the insurance regulatory framework established by the states" and, therefore, should not be applicable to insurers under McCarran-Ferguson.

29. The McCarran-Ferguson Act does not operate to exempt insurance companies wholesale from liability under the TCPA. It applies only when their activities constitute the "business of insurance," the state has enacted laws "for the purpose of regulating" the business of insurance, and the TCPA would "impair, invalidate, or supersede" such state laws. *See* 15 U.S.C. 1012(b). In the one case cited by commenters as addressing the interplay between McCarran-Ferguson and the TCPA, a federal district court dismissed a claim brought against two insurance companies under the TCPA for sending unsolicited facsimile advertisements. *The Chair King, Inc.* v. *Houston Cellular Corp.*, 1995 WL 1760037 (S.D. Tex. 1995), *vacated for lack of subject matter jurisdiction* 131 F.3d 507 (5th Cir. 1997). The *Chair King* court found that the TCPA conflicted with a Texas law that prohibited untrue, deceptive, or misleading advertising by insurers and their agents. In its analysis, the court determined that insurance advertising was part of the "business of insurance," and that the Texas law in question was enacted for the purpose of regulating the business of insurance. The court then concluded that because the TCPA

"prohibits unsolicited insurance advertising by facsimile while the Texas [laws] permit [such] advertising * * * so long as the advertisements are truthful and not misleading," the TCPA conflicts with the Texas law and is preempted under McCarran-Ferguson. *See* 47 U.S.C. 227(b)(1)(C) and (a)(4).

30. To the extent that any state law regulates the "business of insurance" and the TCPA is found to "invalidate, impair, or supersede" such state law, it is possible that a particular activity involving the business of insurance would not fall within the reach of the TCPA. Any determination about the applicability of McCarran-Ferguson, however, requires an analysis of the particular activity and State law regulating it. In addition, McCarran-Ferguson applies only to federal statutes that "invalidate, impair, or supersede" state insurance regulation. Courts have held that duplication of state law prohibitions by a federal statute do not "invalidate, impair, or supersede" state laws regulating the business of insurance. Nor is the mere presence of a regulatory scheme enough to show that a state statute is "invalidated, impaired or superseded."

31. We believe that the TCPA, which was enacted to protect consumer privacy interests, is compatible with states' regulatory interests. In fact, the TCPA permits States to enforce the provisions of the TCPA on behalf of residents of their State. 47 U.S.C. 227(f)(1). In addition, we believe that uniform application of the national do-not-call registry to all entities that use the telephone to advertise best serves the goals of the TCPA. To exempt the insurance industry from liability under the TCPA would likely confuse consumers and interfere with the protections provided by Congress through the TCPA. Therefore, to the extent that the operation of McCarran-Ferguson on the TCPA is unclear, we will raise this issue in our Report to Congress as required by the Do-Not-Call Act.

32. We conclude that the national do-not-call mechanism established by the FTC and this Commission adequately takes into consideration the needs of small businesses and entities that telemarket on a local or regional basis in gaining access to the national database. As required by 47 U.S.C. 227(c)(1)(C), we have considered whether different procedures should apply for local solicitations and small businesses. We decline, however, to exempt such entities from the national do-not-call requirements. Given the large number of entities that solicit by telephone, and the technological tools that allow even small entities to make a significant number of solicitation calls, we believe that to do so would undermine the effectiveness of the national do-not-call rules in protecting consumer privacy and create consumer confusion and frustration. In so doing, we conclude that the approach adopted herein satisfies section 227(c)(4)'s requirement that the Commission, in developing procedures for gaining *access* to the database, consider the different needs of telemarketers conducting business on a national, regional, State, or local level and develop a fee schedule for recouping the cost of such database that recognizes such differences. The national database will be available for purchase by sellers on an area-code-by-area-code basis. The cost to access the database will vary depending on the number of area codes requested. Sellers need only purchase those area codes in which the seller intends to telemarket. In fact, sellers that request access to five or fewer area codes will be granted access to those area codes at no cost. We note that thirty-three states currently have five or fewer area codes. Thus, telemarketers or sellers operating on a "local" or "regional" basis within one of these thirty-three states will have access to all of that state's national do-not-call registrants at no cost. In addition, the national database will provide a single number lookup feature whereby a small number of telephone numbers can be entered on a web page to determine whether any of those numbers are included on the national registry. We believe this fee structure adequately reflects the needs of regional telemarketers, small business and those marketing on a *de minimis* level. For these reasons, we conclude that this approach will not place any unreasonable costs on small businesses. 47 U.S.C. 227(c)(4)(B)(iii).

Section 227(c)(3) Requirements

33. We conclude that the national do-not-call database adopted jointly by this Commission and the FTC satisfies each of the statutory requirements outlined in 47 U.S.C. 227(c)(3)(A) through (c)(3)(L). We now discuss each such requirement. Section 227(c)(3)(A) requires the Commission to specify the method by which an entity to administer the national database will be selected. On August 2, 2002, the FTC issued a Request for Quotes (RFQ) to selected vendors on GSA schedules seeking proposals to develop, implement, and operate the national registry. After evaluating those proposals, the FTC selected a competitive range of vendors and issued an amended RFQ to those vendors on November 25, 2002. After further evaluation, the FTC selected AT&T Government Solutions as the successful vendor for the national do-not-call database on March 1, 2003. Congress has approved the necessary funding for implementation of the national database.

34. Pursuant to sections 227(c)(3)(B) through (c)(3)(C), we require each common carrier providing telephone exchange service to inform subscribers for telephone exchange service of the opportunity to provide notification that such subscriber objects to receiving telephone solicitations. Each telephone subscriber shall be informed, by the common carrier that provides local exchange service to that subscriber, of (i) the subscriber's right to give or revoke a notification of an objection to receiving telephone solicitations pursuant to the national database and (ii) the methods by which such rights may be exercised by the subscriber. Pursuant to section 227(c)(3)(C), we conclude that, beginning on January 1, 2004, such common carriers shall provide an annual notice, via an insert in the customer's bill, to inform their subscribers of the opportunity to register or revoke registrations on the national do-not-call database. Although we do not specify the exact description or form that such notification should take, such notification must be clear and conspicuous. At a minimum, it must include the toll-free telephone number and Internet address established by the FTC to register or revoke registrations on the national do-not-call database.

35. Section 227(c)(3)(D) requires the Commission to specify the methods by which registrations shall be collected and added to the database. Consumers will be able to add their telephone numbers to the national do-not-call registry either through a toll-free telephone call or over the Internet. Consumers who choose to register by phone will have to call the registration number from the telephone line that they wish to register. Their calls will be answered by an Interactive Voice Response (IVR) system. The consumers will be asked to enter on their telephone keypad the telephone number from which the consumer is calling. This number will be checked against the ANI that is transmitted with the call. If the number entered matches the ANI, then the consumer will be informed that the number has been registered. Consumers who choose to register over the Internet will go to a Web site dedicated to the registration process where they will be asked to enter the telephone number they wish to register. We encourage the FTC to notify consumers in the IVR message that the national registry will prevent most, but not all, telemarketing calls. Specifically, we believe consumers should be informed that the do-not-call registry does not apply to tax-exempt nonprofit organizations and companies with whom consumers have an established business relationship. The effectiveness and value of the national registry depends largely on an informed public. Therefore, we also intend to emphasize in our educational materials and on our Web site the purpose and scope of the new rules.

36. Section 227(c)(3)(E) prohibits any residential subscriber from being charged for giving or revoking notification to be included on the national do-not-call database. Consumers may register or revoke do-not-call requests either by a toll-free telephone call or over the Internet. No charge will be imposed on the consumer. Section 227(c)(3)(F) prohibits any person from making or transmitting a telephone solicitation to the telephone number of any subscriber included on the national database. Subject to the exemptions, we adopt rules herein that will prohibit telephone solicitations to those consumers that have registered on the national database. *See also* 16 CFR 310.4(b)(1)(iii)(B).

37. Section 227(c)(3)(G) requires the Commission to specify (i) the methods by which any person deciding to make telephone solicitations will obtain access to the database, by area code or local exchange prefix, and (ii) the costs to be recovered from such persons. Section 227(c)(3)(H) requires the Commission to specify the methods for recovering, from the persons accessing the database, the costs involved in the operations of the database. To comply with the national do-not-call rules, telemarketers must gain access to the telephone numbers in the national database. Telemarketers will have access to the national database by means of a fully-automated, secure Web site dedicated to providing information to these entities. The first time a telemarketer accesses the system, the company will be asked to provide certain limited identifying information, such as name and address, contact person, and contact person's telephone number and address. If a telemarketer is accessing the registry on behalf of a client seller, the telemarketer will also need to identify that client. When a telemarketer first submits an application to access registry information, the company will be asked to specify the area codes they want to access. An annual fee will be assessed based upon the number of area codes requested. The FTC has proposed that sellers be charged $29 per area code with a maximum annual fee of $7,250 for access to the entire national database. Sellers may request access to five or less area codes for free. Each entity on whose behalf the telephone solicitation is being made must pay this fee via credit card or electronic funds transfer. After payment is processed, the telemarketer will be given an account number and permitted to access the appropriate portions of the registry. Telemarketers will be permitted to access the registry as often as they wish for no additional cost, once the annual fee is paid.

38. Section 227(c)(3)(I) requires the Commission to specify the frequency with which the national database will be updated and specify the method by which such updates will take effect for purposes of compliance with the do-not-call regulations. Because the registration process will be completely automated, updates will occur continuously. Consumer registrations will be added to the registry at the same time they register—or at least within a few hours after they register. The safe harbor provision requires telemarketers to employ a version of the registry obtained not more than three months before any call is made. Thus, telemarketers will be required to update their lists at least quarterly. Instead of making the list available on specific dates, the registry will be available for downloading on a constant basis so that telemarketers can access the registry at any time. As a result, each telemarketer's three-month period may begin on different dates. Appropriate state and federal regulators will be capable of verifying when the telemarketer last accessed the list. In addition, the administrator will check all telephone numbers in the do-not-call registry each month against national databases, and those numbers that have been disconnected or reassigned will be removed from the registry. We encourage parties that may have specific recommendations on ways to improve the overall accuracy of the database in removing disconnected and reassigned telephone numbers to submit such proposals to our attention and to the FTC directly.

39. Section 227(c)(3)(J) requires that the Commission's regulations be designed to enable states to use the database for purposes of administering or enforcing state law. In fact, 47 U.S.C. 227(e)(2) prohibits states from using any database that does not include the part of the national database that relates to such state. Section 227(c)(3)(K) prohibits the use of the database for any purpose other than compliance with the do-not-call rules and any such state law and requires the Commission to specify methods for protection of the privacy rights of persons whose numbers are included in such database. Consistent with the determination of the FTC, we conclude that any law enforcement agency that has responsibility to enforce federal or state do-not-call rules or regulations will be permitted to access the appropriate information in the national registry. This information will be obtained through a secure Internet Web site. Such law enforcement access to data in the national registry is critical to enable state Attorneys General, public utility commissions or an official or agency designated by a state, and other appropriate law enforcement officials to gather evidence to support enforcement of the do-not-call rules under the state and federal law. In addition, we have imposed restrictions on the use of the national list. Consistent with the FTC's determination, we have concluded that no person or entity may sell, rent, lease, purchase, or use the national do-not-call database for any purpose except compliance with section 227 and any such state or federal law to prevent telephone solicitations to telephone numbers on such list. We specifically prohibit any entity from purchasing this list from any entity other than the national do-not-call administrator or dispensing the list to any entity that has not paid the required fee to the administrator. The only information that will be made available to telemarketers is the telephone number of consumers registered on the list. Given the restrictions imposed on the use of the national database and the limited amount of information provided, we believe that adequate privacy protections have been established for consumers.

40. Section 227(c)(3)(L) requires each common carrier providing services to any person for the purpose of making telephone solicitations to notify such person of the requirements of the national do-not-call rules and the regulations thereunder. We therefore require common carriers, beginning January 1, 2004, to make a one-time notification to any person or entity making telephone solicitations that is served by that carrier of the national do-not-call requirements. We do not specify the exact description or form that such notification should take. At a minimum, it must include a citation to the relevant federal do-not-call rules as set forth in 47 CFR 64.1200 and 16 CFR part 310, respectively. Although we recognize that carriers may not be capable of identifying every person or entity engaged in telephone solicitations

served by that carrier, we require carriers to make reasonable efforts to comply with this requirement. We note that failure to give such notice by the common carrier to a telemarketer served by that carrier will not excuse the telemarketer from violations of the Commission's rules.

Constitutionality

41. We conclude that a national do-not-call registry is consistent with the First Amendment. We believe, like the FTC, that our regulations satisfy the criteria set forth in *Central Hudson Gas & Elec.* v. *Pub. Serv. Comm. of N.Y.*, in which the Supreme Court established the applicable analytical framework for determining the constitutionality of a regulation of commercial speech. *Central Hudson Gas & Elec.* v. *Pub. Serv. Comm. of N.Y.*, 447 U.S. 557 (1980). *See Kathryn Moser* v. *Federal Communications Commission*, 46 F.3d 970 (9th Cir. 1995) (*Moser*) *cert. denied*, 515 U.S. 1161 (1995) (upholding ban on prerecorded telephone calls); *State of Missouri* v. *American Blast Fax*, 323 F.3d 649 (8th Cir. 2003) (*American Blast Fax*), *pet. for rehearing pending* (upholding ban on unsolicited fax advertising) and *Destination Ventures* v. *Federal Communications Commission*, 46 F.3d 54 (9th Cir.1995) (*Destination Ventures*) (upholding ban on unsolicited fax advertising). Our conclusion is also consistent with every Court of Appeals decision that has considered First Amendment challenges to the TCPA.

42. Under the framework established in *Central Hudson*, a regulation of commercial speech will be found compatible with the First Amendment if (1) there is a substantial government interest; (2) the regulation directly advances the substantial government interest; and (3) the proposed regulations are not more extensive than necessary to serve that interest. *Central Hudson*, 447 U.S. at 566. Specifically, the Court found that "[f]or commercial speech to come within the First Amendment, it at least must concern lawful activity and not be misleading. Next, it must be determined whether the asserted governmental interest to be served by the restriction on commercial speech is substantial. If both inquiries yield positive answers, it must then be decided whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest." *Id.* at 557. Under the first prong, we find that there is a substantial governmental interest in protecting residential privacy. The Supreme Court has "repeatedly held that individuals are not required to welcome unwanted speech into their homes and that the government may protect this freedom." *Frisby* v. *Schultz*, 487 U.S. 474, 485. *See also Federal Communications Commission* v. *Pacifica Foundation, 438 U.S. 726, 748 (1978)* ("[I]n the privacy of the home, * * * the individual's right to be left alone plainly outweighs the First Amendment rights of an intruder.").

43. In particular, the government has an interest in upholding the right of residents to bar unwanted speech from their homes. In *Rowan* v. *United States Post Office*, the Supreme Court upheld a statute that permitted a person to require that a mailer remove his name from its mailing lists and stop all future mailings to the resident:

> The Court has traditionally respected the right of a householder to bar, by order or notice, solicitors, hawkers, and peddlers from his property. In this case the mailer's right to communicate is circumscribed only by an affirmative act of the addressee giving notice that he wishes no further mailings from that mailer. * * * In effect, Congress has erected a wall—or more accurately permits a citizen to erect a wall—that no advertiser may penetrate without his acquiescence.

Rowan v. *United States Post Office*, 397 U.S. 728 at 737–738 (1970).

44. Here, the record supports that the government has a substantial interest in regulating telemarketing calls. In 1991, Congress held numerous hearings on telemarketing, finding, among other things, that "[m]ore than 300,000 solicitors call more than 18,000,000 Americans every day" and "[u]nrestricted telemarketing can be an intrusive invasion of privacy and, when an emergency or medical assistance telephone line is seized, a risk to public safety." Our record, like the FTC's, demonstrates that telemarketing calls are even more of an invasion of privacy than they were in 1991. The number of daily calls has increased five fold (to an estimated 104 million), due in part to the use of new technologies, such as predictive dialers. An overwhelming number of consumers in the approximately 6,500 commenters in this proceeding support the adoption and implementation of a national do-not-call registry. In addition to citing concerns about the numerous and ever-increasing number of calls, they complain about the inadequacies of the company-specific approach, the burdens of such calls on the elderly and people with disabilities, and the costs of acquiring technologies to reduce the number of unwanted calls. Accordingly, we believe that the record demonstrates that telemarketing calls are a substantial invasion of residential privacy, and regulations that address this problem serve a substantial government interest.

45. Under *Central Hudson's* second prong, we find that the Commission's regulations directly advance the substantial government interest. Under this prong, the government must demonstrate that "the harms it recites are real and that its restriction will in fact alleviate them to a material degree." *Florida Bar* v. *Went For It, Inc.*, 515 U.S. 618, 626 (1995) (citations omitted). It may justify the restrictions on speech "based solely on history, consensus, and "simple common sense." *Id.* at 628 (citation omitted). Creating and implementing a national do-not-call registry will directly advance the government's interest in protecting residential privacy from unwanted telephone solicitations. Congress, consumers, state governments and the FTC have reached the same conclusion. The history of state administered do-not-call lists demonstrates that such do-not-call programs have a positive impact on the ability of many consumers to protect their privacy by reducing the number of unwanted telephone solicitations that they receive each day. Congress has reviewed the FTC's decision to establish a national do-not-call list and concluded that the do-not-call initiative will provide significant benefits to consumers throughout the United States. We reject the arguments that because our do-not-call registry provisions do not apply to tax-exempt nonprofit organizations, our regulations do not directly and materially advance the government interest of protecting residential privacy. "Government [need not] make progress on every front before it can make progress on any front." *United States* v. *Edge Broadcasting Company*, 509 U.S. 418, 434 (1993). *See also Moser* v. *FCC*, 46 F.3d at 975 ("Congress may reduce the volume of telemarketing calls without completely eliminating the calls.").

46. We believe that the facts here are easily distinguishable from those in *Rubin* v. *Coors Brewing Company*, 514 U.S. 476 (1995) and *City of Cincinnati* v. *Discovery Network*, 507 U.S. 410 (1993). In *Coors*, the Court struck down a prohibition against disclosure of alcoholic content on labels or in advertising that applied to beer but not to wine or distilled spirits, finding that "the irrationality of this unique and puzzling regulatory framework ensures that the labeling ban will fail to achieve [the Government's interest in combating strength wars.]" In *Discovery Network*, the Court struck down an ordinance which banned 62 newsracks containing commercial publications but did not ban 1,500–2,000 newsracks containing newspapers, finding that "the distinction bears no relationship *whatsoever* to the particular [aesthetic] interests that the city has asserted." Here, Congress' decision to exclude tax-exempt nonprofit organizations from the definition of telemarketing in the TCPA was both rational and related to its interest in protecting residential privacy. The House Report finds that "the record suggests that most unwanted telephone solicitations are commercial in nature. * * *[T]he Committee also reached the conclusion, based on the evidence, that " calls [from tax-exempt nonprofit organizations] are less intrusive to consumers because they are more expected. Consequently, the two main sources of consumer problems " high volume of solicitations and unexpected solicitations—are not present in solicitations by nonprofit organizations." H.R. Rep. No. 102–317, at 16 (1991).

47. Commenters in our record also express the concern that subjecting fax-exempt nonprofit organizations to the national do-not-call requirements may sweep too broadly because it would prompt some consumers to accept blocking of non-commercial, charitable calls to which they might not otherwise object as an undesired effect of registering on the national database to stop unwanted commercial solicitation calls. Both the Eighth and the Ninth Circuits in *American Blast Fax* and *Destination Ventures* found that the provisions of the TCPA, which bans unsolicited commercial faxes but not non-commercial faxes, directly advance a substantial government interest, and we believe that the same distinction may be applied to the national do-not-call registry.

48. We find under the third prong of the *Central Hudson* test that our proposed regulations are not more extensive than necessary to protect residential privacy. The Supreme Court has made clear that with respect to this prong, "the differences between commercial speech and noncommercial speech are manifest." *Florida Bar*, 515 U.S. 618, 632. The Court held that:

> [T]he least restrictive means test has no role in the commercial speech context. What our decisions require, instead, is a fit between the legislature's ends and the means chosen to accomplish those ends, a fit that is not necessarily perfect, but reasonable; that represents not necessarily the single best disposition but one whose scope is in proportion to the interest served * * * [T]he existence of numerous and obvious less-burdensome alternatives to the restriction on commercial speech is certainly a relevant consideration in determining whether the fit between the ends and means is reasonable.

In *Florida Bar*, the Supreme Court found that a prohibition against lawyers using direct mail to solicit personal injury or wrongful death clients within 30 days of an accident was not more extensive than necessary to "protect * * * the privacy and tranquility of personal injury victims and their loved ones against intrusive, unsolicited contact by lawyers." *Id.* at 624. Similarly, the Ninth Circuit has found that the TCPA's ban on prerecorded telemarketing calls constitutes a "reasonable fit" with the government's legitimate interest in protecting residential privacy. *Moser*, 46 F.3d at 975.

49. Here, we find that our regulations meet the requirements of *Central Hudson's* third prong. Pursuant to our regulations, we adopt a single, national do-not-call database that we will enforce jointly with the FTC. Our rules mandate that common carriers providing telephone exchange service shall inform their subscribers of their right to register on the database either through a toll-free telephone call or over the Internet. Furthermore, telemarketers and sellers must gain access to telephone numbers in the national database and will be able to do so by means of a fully automated, secure Web site dedicated to providing information to these entities. In addition, sellers will be assessed an annual fee based upon the number of area codes they want to assess, with the maximum annual fee capped at $7,250. Our rules also provide that the national database will be updated continuously, and telemarketers must update their lists quarterly. We find that our regulations are a reasonable fit between the ends and means and are not as restrictive as the bans upheld in the cases cited. In *Florida Bar*, the Supreme Court upheld an *absolute* ban against lawyers using direct mail to solicit personal injury or wrongful death clients within 30 days of an accident. Similarly, the Ninth Circuit has upheld the TCPA's *absolute* ban on prerecorded telemarketing calls, and both the Eighth and Ninth Circuit have upheld the TCPA's *absolute* ban on unsolicited faxes. Here, our regulations do not absolutely ban telemarketing calls. Rather, they provide a mechanism by which individual consumers may choose not to receive telemarketing calls. We also note that there are many other ways available to market products to consumers, such as newspapers, television, radio advertising and direct mail. *See Florida Bar*, 515 U.S. at 633–34. In addition, there simply are not "numerous and obvious less-burdensome alternatives" to the national do-not-call registry. The record clearly demonstrates widespread consumer dissatisfaction both with the effectiveness of the current company-specific rules that are currently in place and the effectiveness and expense of certain technological alternatives to reduce telephone solicitations. We also note that many of the "burdens" of the national do-not-call registry—issues concerning its costs, accuracy, and privacy—have been addressed by advances in computer technology and software over the last ten years. Thus, we find that our regulations implementing the national do-not-call registry are consistent with the First Amendment and the framework established in *Central Hudson*.

50. Furthermore, we reject the arguments that the *Central Hudson* framework is not appropriate and that strict scrutiny is required because the regulations implementing the national do-not-call list are content-based, due to the TCPA's exemptions for non-profit organizations and established business relationships. For support, commenters cite to *Discovery Network*, 507 U.S. 410, in which the Court struck down Cincinnati's ordinance which banned newsracks containing commercial publications but did not ban newsracks containing newspapers. The Court found that the regulation could neither be justified as a restriction on commercial speech under *Central Hudson*, nor could it be upheld as a valid time, place, or manner restriction on protected speech. *City of Cincinnati* v. *Discovery Network Inc. et al.*, 507 U.S. 410 at 430 (1993). The Court explained that "the government may impose reasonable restrictions on the time, place or manner of engaging in protected speech provided that they are adequately justified "without reference to the content of the regulated speech'." *Id.* at 428 (citation omitted). In this case, the Court held that the City's ban which covered commercial publications but not newspapers was content-based. *Id.* at 429. "It is the absence of a neutral justification for its selective ban on newsracks that prevents the city from defending its newsrack policy as content neutral." *Id.* at 429–30.

51. Here, however, there was a neutral justification for Congress' decision to exclude non-profit organizations. Congress found that "the two sources of consumer problems—high volume of solicitations and unexpected solicitations—are not present in solicitations by nonprofit organizations." H.R. Rep. No. 102–317, at 16 (1991). Congress also made a similar finding with respect to solicitations based on established

business relationships. *Id.* at 14. Consumers are more likely to anticipate contacts from companies with whom they have an existing relationship and the volume of such calls will most likely be lower. Furthermore, as the Eighth Circuit noted when it distinguished the *Discovery Network* case in upholding the TCPA's ban on unsolicited faxes that applies to commercial speech but not to noncommercial speech, "the government may regulate one aspect of a problem without regulating all others." *Missouri ex rel.* v. *American Blast Fax*, 323 F.3d at 656 n.4 (*citing United States* v. *Edge Broad. Co.*, 509 U.S. 418 at 434). Thus, we believe it is clear that our do-not-call registry regulations may apply to commercial solicitations without applying to tax-exempt nonprofit solicitations, and that such regulations are not subject to a higher level of scrutiny. Indeed, we agree with the FTC that regulation of non-profit solicitations are subject to a higher level of scrutiny than solicitations of commercial speech *FTC Order*, 68 FR at 4636, n. 675, *quoting from Metromedia* v. *San Diego*, 453 U.S. 490, 513 (1981) and *citing Watchtower Bible and Tract Soc'y* v. *Village of Stratton*, 122 S.Ct. 2080, and "greater care must be given [both] to ensuring that the governmental interest is actually advanced by the regulatory remedy, and [to] tailoring the regulation narrowly so as to minimize its impact on First Amendment rights." *FTC Order*, 68 FR at 4636.

Consistency With State and FTC Do-Not-Call Rules

52. We conclude that harmonization of the various state and federal do-not-call programs to the greatest extent possible will reduce the potential for consumer confusion and regulatory burdens on the telemarketing industry. An underlying concern expressed by many commenters in this proceeding is the potential for duplication of effort and/or inconsistency in the rules relating to the state and federal do-not-call programs. Congress has indicated a similar concern in requiring the Commission to "maximize consistency" with the FTC's rules. We find that the use of a single national database of do-not-call registrants will ultimately prove the most efficient and economical means for consumer registrations and access for compliance purposes by telemarketing entities and regulators.

53. The states have a long history of regulating telemarketing practices, and we believe that it is critical to combine the resources and expertise of the state and federal governments to ensure compliance with the national do-not-call rules. In fact, the TCPA specifically outlines a role for the states in this process. See 47 U.S.C. 227(e) and (f). In an effort to reconcile the state and federal roles, we have conducted several meetings with the states and FTC. We expect such coordination to be ongoing in an effort to promote the continued effectiveness of the national do-not-call program. We clarify the respective governmental roles in this process under the TCPA. We intend to develop a Memorandum of Understanding with the FTC in the near future outlining the respective federal responsibilities under the national do-not-call rules. We note that a few commenters have expressed concern that the FTC and this Commission may adopt separate national do-not-call lists. We reiterate here that there will be only one national database.

54. *Use of a Single Database.* We conclude that the use of a single national do-not-call database, administered by the vendor selected by the FTC, will ultimately prove the most efficient and economical means for consumer registrations and access by telemarketers and regulators. The establishment of a single database of registrants will allow consumers to register their requests not to be called in a single transaction with one governmental agency. In addition, telemarketers may access consumer registrations for purposes of compliance with the do-not-call rules through one visit to a national database. This will substantially alleviate the potential for consumer confusion and administrative burden on telemarketers that would exist if required to access multiple databases. In addition, we note that section 227(e)(2) prohibits states, in regulating telephone solicitations, from using any database, list, or list system that does not include the part of such single national database that relates to that state. Thus, pursuant to this requirement, any individual state do-not-call database must include all of the registrants on the national database for that state. We determine that the administrator of the national database shall make the numbers in the database available to the states as required by the TCPA.

55. We believe the most efficient way to create a single national database will be to download the existing state registrations into the national database. The FTC has indicated that the national database is designed to allow the states to download into the national registry—at no cost—the telephone numbers of consumers that have registered with their state do-not-call lists. We believe that consumers, telemarketers, and regulators will benefit from the efficiencies derived from the creation of a single do-not-call database. We encourage states to work diligently toward this goal. We recognize that a reasonable transition period may be required to incorporate the state registrations in a few states into the national database. We therefore adopt an 18-month transition period for states to download their state lists into the national database. Having an 18-month transition period will allow states that do not have full-time legislatures to complete a legislative cycle and create laws that would authorize the use of a national list. In addition, this transition period is consistent with the amount of time that the FTC anticipates it would take to incorporate the states' lists into the national database. Although we do not preempt or require states to discontinue the use of their own databases at this time, once the national do-not-call registry goes into effect, states may not, in their "regulation of telephone solicitations, require the use of any database, list, or listing system that does not include the part of [the national do-not-call registry] that relates to [each] State." See 47 U.S.C. 227(e)(2). We believe that there are significant advantages and efficiencies to be derived from the creation and use of a single database for all parties, including states, and we strongly encourage states to assist in this effort. The Commission intends to work diligently with the states and FTC in an effort to establish a single do-not-call database.

56. *Interplay of State and Federal Do-Not-Call Regulations.* In the *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Notice of Proposed Rulemaking and Memorandum Opinion and Order, 17 FCC Rcd 17459, CG Docket No. 02–278 and CC Docket No. 92–90 (2002) (2002 Notice), we generally raised the issue of the interplay of state and federal do-not-call statutes and regulations. In response, several parties argued that state regulations must or should be preempted in whole, or at least in part, and several other parties argued that the Commission cannot or should not preempt. For example, several industry commenters contend that the TCPA provides the Commission with the authority to preempt state do-not-call regulations. These commenters contend that Congress intended the TCPA to occupy the field or, at the very least, intended to preempt state regulation of interstate telemarketing. Many state and consumer commenters note, however, that the TCPA contemplates a role for the states in regulating telemarketing and specifically prohibits preemption of state law in certain instances. States and consumers note that state do-not-call regulations have been a successful initiative in protecting consumer privacy rights. In addition, several commenters note the importance of federal and state cooperation in enforcing the national do-not-call regulations. The record also indicates that states have historically enforced their own state statutes within, as well as across state lines. The statute also contains a savings clause for state proceedings to enforce civil or criminal statutes, and at least one federal court has found that the TCPA does not preempt state regulation of autodialers that are not in actual conflict with the TCPA. Van *Bergen* v. *Minnesota*, 59 F.3d 1541, 1547–48 (8th Cir. 1995).

57. The main area of difference between the state and federal do-not-call programs relates to the exemptions created from the respective do-not-call regulations. Some state regulations are less restrictive by adopting exemptions that are not recognized under federal law. For example, some states have adopted exemptions for insurance agents, newspapers, or small businesses. In addition, a few states have enacted laws that are more restrictive than the federal regulations by not recognizing federal exemptions such as the established business relationship. Most states, however, exempt nonprofit organizations and companies with whom the consumer has an established business relationship in some manner consistent with federal regulations.

58. At the outset, we note that many states have not adopted any do-not-call rules. The national do-not-call rules will govern exclusively in these states for both intrastate and interstate telephone solicitations. Pursuant to 47 U.S.C. 227(f)(1), all states have the ability to enforce violations of the TCPA, including do-not-call violations, in federal district court. Thus, we conclude that there is no basis for conflict regarding the application of do-not-call rules in those states that have not adopted do-not-call regulations.

59. For those states that have adopted do-not-call regulations, we make the following determinations. First, we conclude that, by operation of general conflict preemption law, the federal rules constitute a floor, and therefore would supersede all less restrictive state do-not-call rules. We believe that any such rules would frustrate Congress' purposes and objectives in promulgating the TCPA. Specifically, application of less restrictive state exemptions directly conflicts with the federal objectives in protecting consumer privacy rights under the TCPA. Thus, telemarketers must comply with the federal do-not-call rules even if the state in which they are telemarketing has adopted an otherwise applicable exemption. Because the TCPA applies to both intrastate and interstate communications, the minimum requirements for compliance are therefore uniform throughout the nation. We believe this resolves any potential confusion for industry and consumers regarding the application of less restrictive state do-not-call rules.

60. Second, pursuant to 47 U.S.C. 227(e)(1), we recognize that states may adopt more restrictive do-not-call laws governing intrastate telemarketing. With limited exceptions, the TCPA specifically prohibits the preemption of any state law that imposes more restrictive intrastate requirements or regulations. Section 227(e)(1) further limits the Commission's ability to preempt any state law that prohibits certain telemarketing activities, including the making of telephone solicitations. This provision is ambiguous, however, as to whether this prohibition applies both to intrastate and interstate calls, and is silent on the issue of whether state law that imposes more restrictive regulations on interstate telemarketing calls may be preempted. We caution that more restrictive state efforts to regulate interstate calling would almost certainly conflict with our rules.

61. We recognize that states traditionally have had jurisdiction over only intrastate calls, while the Commission has had jurisdiction over interstate calls. Here, Congress enacted section 227 and amended section 2(b) to give the Commission jurisdiction over both interstate and intrastate telemarketing calls. Congress did so based upon the concern that states lack jurisdiction over interstate calls. Although section 227(e) gives states authority to impose more restrictive intrastate regulations, we believe that it was the clear intent of Congress generally to promote a uniform regulatory scheme under which telemarketers would not be subject to multiple, conflicting regulations. We conclude that inconsistent interstate rules frustrate the federal objective of creating uniform national rules, to avoid burdensome compliance costs for telemarketers and potential consumer confusion. The record in this proceeding supports the finding that application of inconsistent rules for those that telemarket on a nationwide or multi-state basis creates a substantial compliance burden for those entities.

62. We therefore believe that any state regulation of interstate telemarketing calls that differs from our rules almost certainly would conflict with and frustrate the federal scheme and almost certainly would be preempted. We will consider any alleged conflicts between state and federal requirements and the need for preemption on a case-by-case basis. Accordingly, any party that believes a state law is inconsistent with section 227 or our rules may seek a declaratory ruling from the Commission. We reiterate the interest in uniformity—as recognized by Congress—and encourage states to avoid subjecting telemarketers to inconsistent rules.

63. National Association of Attorneys General (NAAG) contends that states have historically enforced telemarketing laws, including do-not-call rules, within, as well as across, state lines pursuant to "long-arm" statutes. According to NAAG, these state actions have been met with no successful challenges from telemarketers. We note that such "long-arm" statutes may be protected under section 227(f)(6) which provides that "nothing contained in this subsection shall be construed to prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of such state." 47 U.S.C. 227(f)(6). Nothing that we do in this order prohibits states from enforcing state regulations that are consistent with the TCPA and the rules established under this order in state court.

Company Specific Do-Not-Call Lists

Efficacy of the Company-Specific Rules

64. We conclude that retention of the company-specific do-not-call rules will complement the national do-not-call registry by providing consumers with an additional option for managing telemarketing calls. We believe that providing consumers with the ability to tailor their requests not to be called, either on a case-by-case basis under the company do-not-call approach or more broadly under the national registry, will best balance individual privacy rights and legitimate telemarketing practices. As a result, those consumers that wish to prohibit telephone solicitations from only certain marketers will continue to have the option to do so. In addition, consumers registered on the national do-not-call registry will have the opportunity to request that they not be called by entities that would otherwise fall within the established business relationship exemption by using the option to be placed on the company-

specific lists. This finding is consistent with that of the FTC.

65. We agree with those commenters that contend that the company-specific do-not-call approach has not proven ideal as a stand-alone method to protect consumer privacy. In particular, the increase in telemarketing calls over the last decade now places an extraordinary burden on consumers that do not wish to receive telephone solicitations. These consumers must respond on a case-by-case basis to request that they not be called. The record in this proceeding is replete with examples of consumers that receive numerous unwanted telemarketing calls each day. In addition, the widespread use of predictive dialers now results in many "dead air" or hang-up calls in which consumers do not even have the opportunity to make a do-not-call request. Such calls are particularly burdensome for the elderly and disabled consumers. We believe, however, that the measures adopted in this order will enhance the effectiveness of the company-specific list. For example, the adoption of a national do-not-call registry alleviates the concerns of those consumers, including elderly and disabled consumers that may find a case-by-case do-not-call option particularly burdensome. In addition, restrictions on abandoned calls will reduce the number of "dead air" calls. Caller ID requirements will improve the ability of consumers to identify and enforce do-not-call rights against telemarketers. We also note that although many commenters question the effectiveness of the company-specific approach, there is little support in the record to eliminate those rules based on the adoption of the national do-not-call list. We retain the option for consumers to request on a case-by-case basis whether they desire to receive telephone solicitations.

Amendments to the Company-Specific Rules

66. We agree with several industry commenters that the retention period for records of those consumers requesting not to be called should be reduced from the current ten-year requirement to five years. As many commenters note, telephone numbers change hands over time and a shorter retention period will help ensure that only those consumers who have requested not to be called are retained on the list. Both telemarketers and consumers will benefit from a list that more accurately reflects those consumers who have requested not to be called. The FTC has concluded and several commenters in this proceeding agree that five years is a more reasonable period to retain consumer do-not-call requests. We believe a five-year retention period reasonably balances any administrative burden imposed on consumers in requesting not to be called with the interests of telemarketers in contacting consumers. As noted, a shorter retention period increases the accuracy of the database while the national do-not-call option mitigates the burden on those consumers who may believe more frequent company-specific do-not-call requests are overly burdensome. We believe any shorter retention period, as suggested by a few industry commenters, would unduly increase the burdens on consumers who would be forced to make more frequent renewals of their company-specific do-not-call requests without substantially improving the accuracy of the database. We therefore amend our rules to require that a do-not-call request be honored for five years from the time the request is made.

67. We decline at this time to require telemarketers to make available a toll-free number or Web site that would allow consumers to register company-specific do-not-call requests or verify that such a request was made with the marketer. We also decline to require telemarketers to provide a means of confirmation so that consumers may verify their requests have been processed at a later date. Telemarketers should, however, confirm that any such request will be recorded at the time the request is made by the consumer. In addition, consumers calling to register do-not-call requests in response to prerecorded messages should be processed in a timely manner without being placed on hold for unreasonable periods of time. Although we believe the additional measures discussed above would improve the ability of consumers, including consumers with disabilities, to register do-not-call requests, we agree with those commenters that contend that such requirements would be unduly costly to businesses. In particular, we are concerned with the costs imposed on small businesses. The Commission will, however, continue to monitor compliance with our company-specific do-not-call rules and take further action as necessary.

68. We conclude that telemarketers must honor a company-specific do-not-call request within a reasonable time of such request. We disagree, however, with commenters that suggest that periods of up to 90 days are a reasonable time required to process do-not-call requests. Although some administrative time may be necessary to process such requests, this process is now largely automated. As a result, such requests can often be honored within a few days or weeks. Taking into consideration both the large databases of such requests maintained by some entities and the limitations on certain small businesses, we conclude that a reasonable time to honor such requests must not exceed thirty days from the date such a request is made. Consistent with our existing rules, such request applies to all telemarketing campaigns of the seller and any affiliated entities that the consumer reasonably would expect to be included given the identification of the caller and the product being advertised. 47 CFR 64.1200(e)(2)(v). We note that the Commission's rules require that entities must record company-specific do-not-call requests and place the subscriber's telephone number on the do-not-call list at the time the request is made. 47 CFR 64.1200(e)(2)(iii). Therefore, telemarketers with the capability to honor such company-specific do-not-call requests in less than thirty days must do so. We believe this determination adequately balances the privacy interests of those consumers that have requested not to be called with the interests of the telemarketing industry. Consumers expect their requests not to be called to be honored in a timely manner, and thirty days should be the maximum administrative time necessary for telemarketers to process that request.

69. In addition, we decline to extend the company-specific do-not-call rules to entities that solicit contributions on behalf of tax-exempt nonprofit organizations. The TCPA excludes calls or messages by tax-exempt nonprofit organizations from the definition of telephone solicitation. *See* 47 U.S.C. 227(a)(3)(C). The Commission has clarified that telemarketers who solicit on behalf of tax-exempt nonprofit organizations are not subject to the rules governing telephone solicitations. In the 2002 Notice, the Commission declined to seek further comment on this issue. We acknowledge that this determination creates an inconsistency with the FTC's conclusion to extend its company-specific requirements to entities that solicit contributions on behalf of tax-exempt nonprofit organizations. The Commission, however, derives its authority to regulate telemarketing from the TCPA, which excludes tax-exempt nonprofit organizations from the definition of telephone solicitation. We therefore decline to extend the company-specific requirements to entities that solicit on behalf of tax-exempt nonprofit organizations. We note that some tax-exempt nonprofit organizations have determined to honor voluntarily specific do-not-call requests. Other organizations may find it advantageous to follow this example.

70. Finally, to make clear our determination that a company must cease making telemarketing calls to a customer with whom it has an established business relationship when that customer makes a do-not-call request, we amend the company-specific do-not-call rules to apply to any call for telemarketing purposes. We also adopt a provision stating that a consumer's do-not-call request terminates the established business relationship for purposes of telemarketing calls even if the consumer continues to do business with the seller.

Interplay of Sections 222 and 227

71. We first note that the fact that a telecommunications carrier has current CPNI about a particular consumer indicates that the consumer is a customer of that carrier. In that situation, there exists an established business relationship between the customer and the carrier. *See* 47 CFR 64.1200(f)(4). The established business relationship is an exception to the national do-not-call registry. However, based on the evidence in the record and as supported by numerous commenters, we confirm our tentative conclusion that if a customer places her name on a carrier's do-not-call list, that request must be honored even though the customer may also have provided consent to use her CPNI under section 222. By doing so, we maximize the protections and choices available to consumers, while giving maximum effect to the language of both statutes. At the outset, the average consumer seems rather unlikely to appreciate the interrelationship of the Commission's CPNI and do-not-call rules. Allowing CPNI consent to trump a do-not-call request would, therefore, thwart most consumers' reasonable expectations about how a company-specific do-not-call list functions. Equally important, permitting a consumer's CPNI consent to supercede a consumer's express do-not call request might undermine the carrier's do-not-call database as the first source of information about the consumer's telemarketing preferences.

72. Because we retain the exemption for calls and messages to customers with whom the carrier has an established business relationship, the determination that a customer's CPNI approval does not trump her inclusion on a do-not-call list should have no impact on carriers' ability to communicate with their customers via telemarketing. Carriers will be able to contact customers with whom they have an established business relationship via the telephone, unless the customer has placed her name on the company's do-not-call list; whether the customer has consented to the use of her CPNI does not impact the carrier's ability to contact the customer via telemarketing.

73. We are not persuaded by the arguments of those commenters who urge the Commission to find that CPNI consent should trump a customer's request to be placed on a do-not-call list or similarly, that CPNI consent equates to permission to market "without restriction." We note that the Concerned Telephone Companies assert that CPNI consent equates to "consent to market *without restriction* based on [customers'] CPNI." Concerned Telephone Companies Comments at 2 (emphasis added). The Commission finds no support for this assertion in any Commission order or statutory provision and, we specifically determine that CPNI approval does not equate to unlimited consent to market without restriction.

74. Similarly, a number of commenters argue that a customer's CPNI authorization "covers a number of forms of marketing, including telemarketing." AT&T Wireless Reply Comments at 26–27. However, such assertions ignore the plain fact that CPNI approval deals specifically with a carrier's use of a customer's personal information, and only indirectly pertains to or arguably "authorizes" marketing to the customer. Do-not-call lists, on the other hand, speak directly to customers' preferences regarding telemarketing contacts. Accordingly, we are convinced that a customer's do-not-call request demonstrates more directly her willingness (or lack thereof) to receive telemarketing calls, as opposed to any indirect inference that can be drawn from her CPNI approval.

75. Additionally, we disagree with those commenters who claim that allowing CPNI approval to trump a consumer's request to be on a national or state do-not-call list gives consumers greater flexibility. A carrier's established business relationship with a customer exempts the carrier from honoring the customer's national do-not-call request. However, as stated above, CPNI consent is not deemed to trump a carrier-specific do-not-call list request. For similar reasons, we decline to make a distinction based on what type of CPNI consent (opt-in versus opt-out) received, as some commenters urge.

76. We do not allow carriers to combine the express written consent to allow them to contact customers on a do-not-call list with the CPNI notice in the manner that AT&T Wireless describes. However, we do allow carriers to combine in the same document CPNI notice with a request for express written consent to call customers on a do-not-call list, provided that such notices and opportunities for consumer consent are separate and distinct. That is, consumers must have distinct choices regarding both whether to allow use of their CPNI and whether to allow calls after registering a do-not-call request, but carriers may combine those requests for approval in the same notice document. Finally, we find a distinction based on the type of CPNI consent unnecessary here, as carriers can avail themselves of the established business relationship exception to contact their existing customers, irrespective of the type of CPNI consent obtained.

77. Similarly, we agree with those commenters who advise against using a time element to determine whether a customer's do-not-call request takes precedence over the customer's opt-in approval to use her CPNI, because adding a time element would unnecessarily complicate carrier compliance and allow carriers to game the system. In particular, the New York State Consumer Protection Board (NYSCPB) argues that "enrollment on a national do-not-call list should take precedence over the prior implied consent through the 'opt-out' procedure, but that the latest in time should prevail regarding 'opt-in' consents." NYSCPB Comments at 5. Because we determine that carriers can contact consumers with whom they have established business relationships, irrespective of those consumers' CPNI preferences, we find this proposed methodology unnecessary in determining whether a customer's CPNI consent should trump her do-not-call request. Additionally, we note that this proposal could be manipulated by carriers to overcome consumers' do-not-call preferences, by allowing carriers to send CPNI notices to customers that are intentionally timed to "overcome" previously expressed do-not-call requests.

78. Finally, although it was not directly raised in the 2002 Notice, some commenters raised the issue of whether any type of do-not-call request revokes or limits a carrier's ability to use CPNI in a manner other than telemarketing. To the degree such affirmation is necessary, we agree with those commenters who maintain that a carrier's ability to use CPNI is not impacted by a customer's inclusion on a do-not-call list, except as noted.

79. *Constitutional Implications.* We disagree with those commenters who argue that our decision that a customer's CPNI approval does not trump her request to be on a do-not-call list violates the First Amendment rights of carriers and customers. Commenters cite no authority to support their arguments, and we do not believe the fact that customers have given their approval for carriers to use their CPNI implicates any additional First Amendment issues beyond those discussed. Accordingly, we find our rules implementing the do-not-call registry are consistent with the First Amendment as applied to any consumer, including those who have previously given their approval to carriers to use their CPNI, pursuant to section 222. Furthermore, we believe that the exception which allows carriers to call consumers with whom they necessarily have an established business relationship renders commenters' arguments moot, as carriers necessarily have an established business relationship with any customer from whom they solicit CPNI approval.

Established Business Relationship

80. We conclude that, based on the record, an established business relationship exemption is necessary to allow companies to communicate with their existing customers. The "established business relationship," or EBR, permits telemarketers to call consumers registered on the national do-not-call list and to deliver prerecorded messages to consumers. The "established business relationship," however, is not an exception to the company-specific do-not-call rules. Companies that call their EBR customers must maintain company-specific do-not-call lists and record any do-not-call requests as required by amended 47 CFR 64.1200(d). The Commission has also reversed its prior conclusion that an "established business relationship" provides the necessary permission to deliver unsolicited facsimile advertisements. Companies maintain that the exemption allows them to make new offers to existing customers, such as mortgage refinancing, insurance updates, and subscription renewals. They suggest that customers benefit from calls that inform them in a timely manner of new products, services and pricing plans. American Express contends that its financial advisors have a fiduciary duty to their customers, requiring them to contact customers with time-sensitive information. We are persuaded that eliminating this EBR exemption would possibly interfere with these types of business relationships. Moreover, the exemption focuses on the relationship between the sender of the message and the consumer, rather than on the content of the message. It appears that consumers have come to expect calls from companies with whom they have such a relationship, and that, under certain circumstances, they may be willing to accept these calls. Finally, we believe that while consumers may find prerecorded voice messages intrusive, such messages do not necessarily impose the same costs on the recipients as, for example, unsolicited facsimile messages. Therefore, we retain the exemption for established business relationship calls from the ban on prerecorded messages. Telemarketers that claim their prerecorded messages are delivered pursuant to an established business relationship must be prepared to provide clear and convincing evidence of the existence of such a relationship.

Definition of Established Business Relationship

81. We conclude that the Commission's current definition of "established business relationship" should be revised. We are convinced that consumers are confused and even frustrated more often when they receive calls from companies they have not contacted or done business with for many years. The legislative history suggests that it was Congress's view that the relationship giving a company the right to call becomes more tenuous over time. In addition, we believe that this is an area where consistency between the FCC rules and FTC rules is critical for both consumers and telemarketers. We conclude that, based on the range of suggested time periods that would meet the needs of industry, along with consumers' reasonable expectations of who may call them and when, eighteen (18) months strikes an appropriate balance between industry practices and consumers' privacy interests. Therefore, the Commission has modified the definition of established business relationship to mean:

> A prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber's purchase or transaction with the entity within the eighteen (18) months immediately preceding the date of the telephone call or on the basis of the subscriber's inquiry or application regarding products or services offered by the entity within the three (3) months immediately preceding the date of the call, which relationship has not been previously terminated by either party.

See amended 47 CFR 64.1200(f)(3). The 18-month time period runs from the date of the last payment or transaction with the company, making it more likely that a consumer would expect a call from a company with which they have recently conducted business. The amended definition permits the relationship, once begun, to exist for eighteen (18) months in the case of purchases or transactions and three (3) months in the case of inquiries or applications, unless the consumer or the company "terminates" it. We emphasize here that the termination of an established business relationship is significant only in the context of solicitation calls. We also note that the act of "terminating" an established business relationship will not hinder or thwart creditors' attempts to reach debtors by telephone, to the extent that debt collection calls constitute neither telephone solicitations nor include unsolicited advertisements. Therefore, consistent with the language in the definition, a company's prior relationship with a consumer entitles the company to call that consumer for eighteen (18) months from the date of the last payment or financial transaction, even if the company does not currently provide service to that customer. For example, a consumer who once had telephone service with a particular carrier or a subscription with a particular newspaper could expect to receive a call from those entities in an effort to "win back" or "renew" that consumer's business within eighteen (18) months. In the context of telemarketing calls, a consumer's "prior or existing relationship" continues for eighteen (18) months (3 months in the case of inquiries and applications) or until the customer asks to be placed on that company's do-not-call list.

82. *Inquiries.* The Commission asked whether we should clarify the type of consumer *inquiry* that would create an "established business relationship" for purposes of the exemption. Some consumers and consumer groups maintain that a consumer who merely inquires about a product should not be subjected to subsequent telemarketing calls. Industry commenters, on the other hand, believe that companies should be permitted to call consumers who have made inquiries about their products and services, and that consumers have come to expect such calls. The legislative history suggests that Congress contemplated that an inquiry by a consumer could be the basis of an established business relationship, but that such an inquiry should occur within a reasonable period of time.

While we do not believe any communication would amount to an established business relationship for purposes of telemarketing calls, we do not think the definition should be narrowed to only include situations where a purchase or transaction is completed. The nature of any inquiry must, however, be such to create an expectation on the part of the consumer that a particular company will call them. As confirmed by several industry commenters, an inquiry regarding a business's hours or location would not establish the necessary relationship as defined in Commission rules. By making an inquiry or submitting an application regarding a company's products or services, a consumer might reasonably expect a prompt follow-up telephone call regarding the initial inquiry or application, not one after an extended period of time. Consistent with the FTC's conclusion, the Commission believes three months should be a reasonable time in which to respond to a consumer's inquiry or application. Thus, we amend the definition of "established business relationship" to permit telemarketing calls within three (3) months of an inquiry or application regarding a product or service offered by the company.

83. We emphasize here that the definition of "established business relationship" requires a voluntary two-way communication between a person or entity and a residential subscriber regarding a purchase or transaction made within eighteen (18) months of the date of the telemarketing call or regarding an inquiry or application within three (3) months of the date of the call. Any seller or telemarketer using the EBR as the basis for a telemarketing call must be able to demonstrate, with clear and convincing evidence, that they have an EBR with the called party.

84. *Different Products and Services.* The Commission also invited comment on whether to consider modifying the definition of "established business relationship" so that a company that has a relationship with a customer based on one type of product or service may not call consumers on the do-not-call list to advertise a different service or product. Industry commenters believe an EBR with a consumer should not be restricted by product or service, but rather, should permit them to offer the full range of their services and products. Consumer advocates who commented on the issue maintain that a company that has a relationship based on one service or product should not be allowed to use that relationship to market a different service or product. The Commission agrees with the majority of industry commenters that the EBR should not be limited by product or service. In today's market, many companies offer a wide variety of services and products. Restricting the EBR by product or service could interfere with companies' abilities to market them efficiently. Many telecommunications and cable companies, for example, market products and services in packages. As long as the company identifies itself adequately, a consumer should not be surprised to receive a telemarketing call from that company, regardless of the product being offered. If the consumer does not want any further calls from that company, he or she may request placement on its do-not-call list.

85. *Affiliated Entities.* In the *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CC Docket No. 92–90, Report and Order, 7 FCC Rcd 8752 (1992) (1992 TCPA Order), the Commission found that a consumer's established business relationship with one company may also extend to the company's affiliates and subsidiaries. *See 1992 TCPA Order*, 7 FCC Rcd at 8770–71, para. 34. Consumer advocates maintain that the EBR exemption should not automatically extend to affiliates of the company with whom a consumer has a business relationship. Industry members argue that it should apply to affiliates that provide reasonably-related products or services. The Commission finds that, consistent with the FTC's amended Rule, affiliates fall within the established business relationship exemption only if the consumer would reasonably expect them to be included given the nature and type of goods or services offered and the identity of the affiliate. This definition offers flexibility to companies whose subsidiaries or affiliates also make telephone solicitations, but it is based on consumers' reasonable expectations of which companies will call them. As the American Teleservices Association (ATA) and other commenters explain, consumers often welcome calls from businesses they know. A call from a company with which a consumer has not formed a business relationship directly, or does not recognize by name, would likely be a surprise and possibly an annoyance. This determination is also consistent with current Commission rules on the applicability of do-not-call requests made to affiliated persons or entities. Under those rules, a residential subscriber's do-not-call request will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product advertised. *See* 47 CFR 64.1200(e)(2)(v).

86. *Other Issues.* The Commission clarifies that the established business relationship exemption does not permit companies to make calls based on referrals from existing customers and clients, as the person referred presumably does not have the required business relationship with the company that received the referral. An EBR is similarly not formed when a wireless subscriber happens to use another carrier's services through roaming. In such a situation, the consumer has not made the necessary purchase or inquiry that would constitute an EBR or provided prior express consent to receive telemarketing calls from that company. We recognize that companies often hire third party telemarketers to market their services and products. In general, those telemarketers may rely on the seller's EBR to call an individual consumer to market the seller's services and products. However, we disagree with Nextel that a consumer's EBR with a third party telemarketer, including a retail store or independent dealer, extends to a seller simply because the seller has a contractual relationship with that telemarketer. The seller would only be entitled to call a consumer under the EBR exemption based on its own EBR with a consumer. We also disagree with WorldCom, Inc. (WorldCom) that the EBR should extend to marketing partners for purposes of telemarketing joint offers, to the extent the "partner" companies have no EBR with the consumer.

Telecommunications Common Carriers

87. In the 2002 Notice, we asked what effect the established business relationship exemption might have on the telecommunications industry, if a national do-not-call list is established. According to WorldCom, telephone solicitations are the primary mechanism for, and the means by which consumers are accustomed to, purchasing competitive telecommunications services. WorldCom argues that with the advent of competition in the formerly monopolized local telephone markets, and the entry of the Regional Bell Operating Companies into the long distance market, carriers need to be able to market effectively their new services. WorldCom argues that a national do-not-call list that exempts calls to persons with whom a company has established business relationships will favor incumbent providers. According to WorldCom, incumbent local exchange carriers maintain most of the

local customer base, and therefore would be able to telemarket new services to all those customers, regardless of whether they were on the national do-not-call registry, because of the established business relationship exemption. New competitors, on the other hand, would be restricted from calling those same consumers.

88. One approach would be to narrow the "established business relationship" for telecommunications carriers, so that a carrier doing business with customers based on one type of service may not call those customers registered with the national do-not-call list to advertise a different service. We find, however, that the record does not support such an approach in the context of telemarketing calls. Along with the majority of industry commenters in this proceeding, WorldCom maintains that companies "must have flexibility in communicating with their customers not only about their current services, but also to discuss available alternative services or products. * * *" WorldCom Comments at 15. Limiting a common carrier's "established business relationship" by product or service might harm competitors' efforts to market new goods or services to existing customers, and would not be in the public interest.

89. WorldCom proposes instead that the Commission revise the definition of established business relationship so that all providers of a telecommunications service—incumbents and new entrants alike—are deemed to have an established business relationship with all consumers. Alternatively, WorldCom suggests that the definition of an established business relationship be revised to exclude a company whose relationship with a consumer is based solely on a service for which the company has been a dominant or monopoly provider of the service, until such time as competitors for that service have sufficiently penetrated the market.

90. Although we take seriously WorldCom's concerns about the potential effects of a national do-not-call list on competition in the telecommunications marketplace, we decline to expand the definition of "established business relationship" so that common carriers are deemed to have relationships with all consumers for purposes of making telemarketing calls. Broadening the scope of the established business relationship in such a way would be inconsistent with Congress's mandate "to protect residential telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object." *See* 47 U.S.C. 227(c)(1). To permit common carriers to call consumers with whom they have no existing relationships and who have expressed a desire not to be called by registering with the national do-not-call list, would likely confuse consumers and interfere with their ability to manage and monitor the telemarketing calls they receive.

91. We further note that with the establishment of a national do-not-call registry, carriers will still be permitted to contact competitors' customers who have not placed their numbers on the national list. In addition, carriers will be able to call their prior and existing customers for 18 months to market new products and services, such as long distance, local, or DSL services, as long as those customers have not placed themselves on that carrier's company-specific do-not-call list. For the remaining consumers with whom common carriers have no established business relationship and who are registered with the do-not-call list, carriers may market to them using different advertising methods, such as direct mail. Therefore, we find that treating common carriers like other entities that use the telephone to advertise, best furthers the goals of the TCPA to protect consumer privacy interests and to avoid interfering with existing business relationships.

Interplay Between Established Business Relationship and Do-Not-Call Request

92. In the 2002 Notice, we sought comment on the effect of a do-not-call request on an established business relationship. We noted the legislative history on this issue, which suggests that despite an established business relationship, a company that has been asked by a consumer not to call again, must honor that request and avoid further calls to that consumer. Consumer advocates who discussed the interplay between the established business relationship and a do-not-call request maintained that a do-not-call request should "trump" an established business relationship, and that consumers should not be required to terminate business relationships in order to stop unwanted telemarketing calls. The majority of industry commenters also supported the notion that companies should honor requests from individual consumers not to be called, regardless of whether there is a business relationship. Companies will be permitted to call consumers with whom they have an established business relationship for a period of 18 months from the last payment or transaction, even when those consumers are registered on the national do-not-call list, as long as a consumer has not asked to be placed on the company's do-not-call list. Once the consumer asks to be placed on the company-specific do-not-call list, the company may not call the consumer again regardless of whether the consumer continues to do business with the company. This will apply to all services and products offered by that company. If the consumer continues to do business with the telemarketer after asking not to be called (by, for example, continuing to hold a credit card, subscribing to a newspaper, or making a subsequent purchase), the consumer cannot be deemed to have waived his or her company-specific do-not-call request. In some instances, however, a consumer may grant explicit consent to be called during the course of a subsequent purchase or transaction. We amend the company-specific do-not-call rules to apply to "any call for telemarketing purposes" to make clear that a company must cease making telemarketing calls to any customer who has made a do-not-call request, regardless of whether they have an EBR with that customer. We also adopt a provision stating that a consumer's do-not-call request terminates the EBR for purposes of telemarketing calls even if the consumer continues to do business with the seller.

Tax-Exempt Nonprofit Organization Exemption

93. We reaffirm the determination that calls made by a for-profit telemarketer hired to solicit the purchase of goods or services or donations on behalf of a tax-exempt nonprofit organization are exempted from the rules on telephone solicitation. We again reiterate that calls that do not fall within the definition of "telephone solicitation" as defined in 47 U.S.C. 227(a)(3) will not be precluded by the national do-not-call list. These may include calls regarding surveys, market research, and calls involving political and religious discourse. In crafting the TCPA, Congress sought primarily to protect telephone subscribers from unrestricted commercial telemarketing activities, finding that most unwanted telephone solicitations are commercial in nature. In light of the record before us, the Commission believes that there has been no change in circumstances that warrant distinguishing those calls made by a professional telemarketer on behalf of a tax-exempt nonprofit organization from those made by the tax-exempt nonprofit itself. The Commission recognizes that charitable and other nonprofit entities with limited expertise, resources and infrastructure, might find it advantageous to contract out its fundraising efforts. Consistent with section 227, a tax-exempt nonprofit organization that conducts its own fundraising campaign or hires a professional fundraiser to do it, will not be subject to the restrictions on telephone solicitations. If, however, a for-profit organization is delivering its own commercial message as part of a telemarketing campaign (*i.e.*, encouraging the purchase or rental of, or investment in, property, goods, or services), even if accompanied by a donation to a charitable organization or referral to a tax-exempt nonprofit organization, that call is not *by or on behalf of a tax-exempt nonprofit organization*. Such calls, whether made by a live telemarketer or using a prerecorded message, would not be entitled to exempt treatment under the TCPA. Similarly, an affiliate of a tax-exempt nonprofit organization that is itself not a tax-exempt nonprofit is not exempt from the TCPA rules when it makes telephone solicitations. We emphasize here, as we did in the 2002 Notice, that the statute and our rules clearly apply already to messages that are predominantly commercial in nature, and that we will not hesitate to consider enforcement action should the provider of an otherwise commercial message seek to immunize itself by simply inserting purportedly "non-commercial" content into that message. A call to sell debt consolidation services, for example, is a commercial call regardless of whether the consumer is also referred to a tax-exempt nonprofit organization for counseling services. Similarly, a seller that calls to advertise a product and states that a portion of the proceeds will go to a charitable cause or to help find missing children must still comply with the TCPA rules on commercial calls.

Automated Telephone Dialing Equipment

Predictive Dialers

94. *Automated Telephone Dialing Equipment.* The record demonstrates that a predictive dialer is equipment that dials numbers and, when certain computer software is attached, also assists telemarketers in predicting when a sales agent will be available to take calls. The hardware, when paired with certain software, has the capacity to store or produce numbers and dial those numbers at random, in sequential order, or from a database of numbers. As commenters point out, in most cases, telemarketers program the numbers to be called into the equipment, and the dialer calls them at a rate to ensure that when a consumer answers the phone, a sales person is available to take the call. The principal feature of predictive dialing software is a timing function, not number storage or generation. Household Financial Services states that these machines are not conceptually different from dialing machines without the predictive computer program attached.

95. The TCPA defines an "automatic telephone dialing system" as "equipment which has the capacity (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers." 47 U.S.C. 227(a)(1). The statutory definition contemplates autodialing equipment that either stores or produces numbers. It also provides that, in order to be considered an "automatic telephone dialing system," the equipment need only have the "*capacity* to store or produce telephone numbers (emphasis added) * * *." It is clear from the statutory language and the legislative history that Congress anticipated that the FCC, under its TCPA rulemaking authority, might need to consider changes in technologies. In the past, telemarketers may have used dialing equipment to create and dial 10-digit telephone numbers arbitrarily. As one commenter points out, the evolution of the teleservices industry has progressed to the point where using lists of numbers is far more cost effective. The basic function of such equipment, however, has not changed—the *capacity* to dial numbers without human intervention. We fully expect automated dialing technology to continue to develop.

96. The legislative history also suggests that through the TCPA, Congress was attempting to alleviate a particular problem—an increasing number of automated and prerecorded calls to certain categories of numbers. The TCPA does not ban the use of technologies to dial telephone numbers. It merely prohibits such technologies from dialing emergency numbers, health care facilities, telephone numbers assigned to wireless services, and any other numbers for which the consumer is charged for the call. Such practices were determined to threaten public safety and inappropriately shift marketing costs from sellers to consumers. Coupled with the fact that autodialers can dial thousands of numbers in a short period of time, calls to these specified categories of numbers are particularly troublesome. Therefore, to exclude from these restrictions equipment that use predictive dialing software from the definition of "automated telephone dialing equipment" simply because it relies on a given set of numbers would lead to an unintended result. Calls to emergency numbers, health care facilities, and wireless numbers would be permissible when the dialing equipment is paired with predictive dialing software and a database of numbers, but prohibited when the equipment operates independently of such lists and software packages. We believe the purpose of the requirement that equipment have the "capacity to store or produce telephone numbers to be called" is to ensure that the prohibition on autodialed calls not be circumvented. *See* 47 U.S.C. 227(a)(1). Therefore, the Commission finds that a predictive dialer falls within the meaning and statutory definition of "automatic telephone dialing equipment" and the intent of Congress. Because the statutory definition does not turn on whether the call is made for marketing purposes, we also conclude that it applies to modems that have the "capacity (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers." *See* 47 U.S.C. 227(a)(1).

97. *Predictive Dialers as Customer Premises Equipment.* A few commenters maintain that predictive dialers are Customer Premises Equipment (CPE) over which the Communications Act gives the FCC exclusive jurisdiction. The ATA and Direct Marketing Association (DMA) urge the Commission to assert exclusive authority over CPE and, in the process, preempt state laws governing predictive dialers. They contend that, in the absence of a single national policy on predictive dialer use, telemarketers will be subject to the possibility of conflicting state standards. In the past, CPE was regulated as a common carrier service based on the Commission's jurisdiction and statutory responsibilities over *carrier-provided* equipment. The Commission long ago deregulated CPE, finding that the CPE market was becoming increasingly competitive, and that in order to increase further the options that consumers had in obtaining equipment, it would require common carriers to separate the provision of CPE from the provision of telecommunications services. As part of its review of CPE regulations, the Commission pointed out that it had never regarded the provision of terminal equipment in isolation as an activity subject to Title II regulation. While the Commission recognized that such equipment is within the FCC's authority over wire and radio communications, it found that the equipment, by itself, is not a

"communication" service, and therefore there was no mandate that it be regulated. None of the commenters who argue this point describe a change in circumstances that would warrant reevaluating the Commission's earlier determination and risk disturbing the competitive balance the Commission deemed appropriate in 1980. In addition, it is not the equipment itself that states are considering regulating; it is the use of such equipment that has caught the attention of some state legislatures. We believe it is preferable at this time to regulate the use of predictive dialers under the TCPA's specific authority to regulate telemarketing practices. Therefore, we decline to preempt state laws governing the use of predictive dialers and abandoned calls or to regulate predictive dialers as CPE.

"War Dialing"

98. In the 2002 Notice, the Commission sought comment on the practice of using autodialers to dial large blocks of telephone numbers in order to identify lines that belong to telephone facsimile machines. Of those commenters who weighed in on "war dialing" (using automated equipment to dial telephone numbers, generally sequentially, and software to determine whether each number is associated with a fax line or voice line), there was unanimous support for a ban on the practice. Commenters explained that ringing a telephone for the purpose of determining whether the number is associated with a fax or voice line is an invasion of consumers' privacy interests and should be prohibited. Moreover, they asserted there is no free speech issue when the caller has no intention of speaking with the called party. The TCPA prohibits the transmission of unsolicited facsimile advertisements absent the consent of the recipient. The Commission agrees that because the purpose of "war dialing" is to identify those numbers associated with facsimile machines, the practice serves few, if any, legitimate business interests and is an intrusive invasion of consumers' privacy. Therefore, the Commission adopts a rule that prohibits the practice of using any technology to dial any telephone number for the purpose of determining whether the line is a fax or voice line.

Artificial or Prerecorded Voice Messages

Offers for Free Goods or Services; Information-Only Messages

99. Congress found that "residential telephone subscribers consider automated or prerecorded telephone calls * * * to be a nuisance and an invasion of privacy." *TCPA*, Section 2(10), *reprinted in* 7 FCC Rcd at 2744. It also found that "[b]anning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy invasion." *TCPA*, Section 2(12), *reprinted in* 7 FCC Rcd at 2744–45. Congress determined that such prerecorded messages cause greater harm to consumers' privacy than telephone solicitations by live telemarketers. The record reveals that consumers feel powerless to stop prerecorded messages largely because they are often delivered to answering machines and because they do not always provide a means to request placement on a do-not-call list.

100. Additionally, the term "unsolicited advertisement" means "any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission." 47 U.S.C. 227(a)(4); 47 CFR 64.1200(f)(5). The TCPA's definition does not require a sale to be made during the call in order for the message to be considered an advertisement. Offers for free goods or services that are part of an overall marketing campaign to sell property, goods, or services constitute "advertising the commercial availability or quality of any property, goods, or services." *See* 47 U.S.C. 227(a)(4). Therefore, the Commission finds that prerecorded messages containing free offers and information about goods and services that are commercially available are prohibited to residential telephone subscribers, if not otherwise exempted. For example, a prerecorded message that contains language describing a new product, a vacation destination, or a company that will be in "your area" to perform home repairs, and asks the consumer to call a toll-free number to "learn more," is an "unsolicited advertisement" under the TCPA if sent without the called party's express invitation or permission. *See* 47 U.S.C. 227(a)(4). However, as long as the message is limited to identification information only, such as name and telephone number, it will not be considered an "unsolicited advertisement" under our rules.

101. In addition, we amend the prerecorded message rule at 47 CFR 64.1200(c)(2) so that the prohibition expressly applies to messages that constitute "telephone solicitations," as well as to those that include or introduce an "unsolicited advertisement." The current rule exempts from the prohibition any call that is made for a commercial purpose but does not include the transmission of any unsolicited advertisement. *See* 47 CFR 64.1200(c)(2). We amend the rule to exempt a call that is made for a commercial purpose but does not include or introduce an unsolicited advertisement or *constitute a telephone solicitation*. *See* amended rule at 47 CFR 64.1200(a)(2)(iii). We agree with those commenters who suggest that application of the prerecorded message rule should turn, not on the caller's characterization of the call, but on the purpose of the message. Amending the rule to apply to messages that constitute "telephone solicitations," is consistent with the goals of the TCPA and addresses the concerns raised by commenters about purported "free offers." In addition, we believe the amended rule will afford consumers a greater measure of protection from unlawful prerecorded messages and better inform the business community about the general prohibition on such messages.

102. The so-called "dual purpose" calls described in the record—calls from mortgage brokers to their clients notifying them of lower interest rates, calls from phone companies to customers regarding new calling plans, or calls from credit card companies offering overdraft protection to existing customers—would, in most instances, constitute "unsolicited advertisements," regardless of the customer service element to the call. The Commission explained in the 2002 Notice that such messages may inquire about a customer's satisfaction with a product already purchased, but are motivated in part by the desire to sell ultimately additional goods or services. If the call is intended to offer property, goods, or services for sale either during the call, or in the future (such as in response to a message that provides a toll-free number), that call is an advertisement. Similarly, a message that seeks people to help sell or market a business' products, constitutes an advertisement if the individuals called are encouraged to purchase, rent, or invest in property, goods, or services, during or after the call. However, the Commission points out that, if the message is delivered by a company that has an established business relationship with the recipient, it would be permitted under our rules.

We also note that absent an established business relationship, the telemarketer must first obtain the prior express consent of the called party in order to lawfully initiate the call. Purporting to obtain consent during the call, such as requesting that a consumer "press 1" to receive further information, does not constitute the *prior* consent necessary to deliver the message in the first place, as the request to "press 1" is part of the telemarketing call.

Identification Requirements

103. The TCPA rules require that all artificial or prerecorded messages delivered by an automatic telephone dialing system identify the business, individual, or other entity initiating the call, and the telephone number or address of such business, individual or other entity. *See* 47 CFR 64.1200(d). Additionally, the Commission's rules contain identification requirements that apply without limitation to "any telephone solicitation to a residential telephone subscriber." 47 CFR 64.1200(e)(2)(iv). The term "telephone solicitation" is defined to mean "the initiation of a telephone call or *message* for the purpose of encouraging the purchase or rental of * * * property, goods, or services * * *" (emphasis added). 47 CFR 64.1200(f)(3). We sought comment, however, on whether we should modify our rules to state expressly that the identification requirements apply to otherwise lawful artificial or prerecorded messages, as well as to live solicitation calls.

104. The vast majority of consumer and industry commenters support modifying the rules to provide expressly that telemarketers must comply with the identification requirements when delivering prerecorded messages. Some consumers urge the Commission to require specifically that companies provide the name of the company under which it is registered to do business. They explain that a company will often use a "d/b/a" ("doing business as") or "alias" in the text of the prerecorded message, making it difficult to identify the company calling. The Commission recognizes that adequate identification information is vital so that consumers can determine the purpose of the call, possibly make a do-not-call request, and monitor compliance with the TCPA rules. Therefore, we are amending our rules to require expressly that all prerecorded messages, whether delivered by automated dialing equipment or not, identify the name of the business, individual or other entity that is responsible for initiating the call, along with the telephone number of such business, other entity, or individual. With respect to the caller's name, the prerecorded message must contain, at a minimum, the legal name under which the business, individual or entity calling is registered to operate. The Commission recognizes that some businesses use "d/b/as" or aliases for marketing purposes. The rule does not prohibit the use of such additional information, provided the legal name of the business is also stated. The rule also requires that the telephone number stated in the message be one that a consumer can use during normal business hours to ask not to be called again.[2] If the number provided in the message is that of a telemarketer hired to deliver the message, the company on whose behalf the message is sent is nevertheless liable for failing to honor any do-not-call request. This is consistent with the rules on live solicitation calls by telemarketers. If a consumer asks not to be called again, the telemarketer must record the do-not-call request, and the company on whose behalf the call was made must honor that request.

Radio Station and Television Broadcaster Calls

105. The TCPA prohibits the delivery of prerecorded messages to residential telephone lines without the prior express consent of the called party. 47 U.S.C. 227(b)(1)(B). Commission rules exempt from the prohibition calls that are made for a commercial purpose but do not include any unsolicited advertisement. 47 CFR 64.1200(c)(2). The Commission sought comment on prerecorded messages sent by radio stations or television broadcasters that encourage telephone subscribers to tune in at a particular time for a chance to win a prize or similar opportunity. We asked whether the Commission should specifically address these kinds of calls, and if so, how. The record reveals that such calls by radio stations and television broadcasters do not at this time warrant the adoption of new rules. Few commenters in this proceeding described either receiving such messages or that they were particularly problematic. The few commenters who addressed the issue were split on whether such messages fall within the TCPA's definition of "unsolicited advertisement" and are thus subject to the restrictions on their delivery. We conclude that if the purpose of the message is merely to invite a consumer to listen to or view a broadcast, such message is permitted under the current rules as a commercial call that "does not include the transmission of any unsolicited advertisement" and under the amended rules as "a commercial call that does not include or introduce an unsolicited advertisement or constitute a telephone solicitation." *See* amended 47 CFR 64.1200(a)(2)(iii). However, messages that encourage consumers to listen to or watch programming, including programming that is retransmitted broadcast programming for which consumers must pay (*e.g.*, cable, digital satellite, *etc.*), would be considered advertisements for purposes of our rules. The Commission reiterates, however, that messages that are part of an overall marketing campaign to encourage the purchase of goods or services or that describe the commercial availability or quality of any goods or services, are "advertisements" as defined by the TCPA. Messages need not contain a solicitation of a sale during the call to constitute an advertisement.

Abandoned Calls

106. Given the arguments raised on both sides of this issue as well as the FTC's approach to the problem, the Commission has determined to adopt a rule to reduce the number of abandoned calls consumers receive. Under the new rules, telemarketers must ensure that any technology used to dial telephone numbers abandons no more than three (3) percent of calls answered by a person, measured over a 30-day period. A call will be considered abandoned if it is not transferred to a live sales agent within two (2) seconds of the recipient's completed greeting. When a call is abandoned within the three (3) percent maximum allowed, a telemarketer must deliver a prerecorded identification message containing only the telemarketer's name, telephone number, and notification that the call is for "telemarketing purposes." To allow time for a consumer to answer the phone, the telemarketer must allow the phone to ring for fifteen seconds or four rings before disconnecting any unanswered call. Finally, telemarketers

[2] This would be 9 a.m.–5 p.m., Monday through Friday, during the particular telemarketing campaign. A seller or telemarketer's telephone number must permit consumers to make their do-not-call requests in a timely manner. Therefore, the seller or telemarketer must staff the "do-not-call number" sufficiently or use an automated system for processing requests in such a way that consumers are not placed on hold or forced to wait for an agent to answer the connection for an unreasonable length of time. We also reiterate the Commission's determination in its *1995 TCPA Reconsideration Order* that any number provided for identification purposes may not be a number that requires the recipient of a solicitation to incur more than nominal costs for making a do-not-call request (*i.e.*, for which charges exceed costs for transmission of local or ordinary station-to-station long distance calls). *See 1995 TCPA Reconsideration Order*, 10 FCC Rcd 12391, 12409, para. 38. *See also* amended 47 CFR 64.1200(b)(2).

using predictive dialers must maintain records that provide clear and convincing evidence that the dialers used comply with the three (3) percent call abandonment rate, "ring time" and two-second-transfer rule.

Maximum Rate on Abandoned Calls

107. The Commission believes that establishing a maximum call abandonment rate is the best option to reduce effectively the number of hang-ups and "dead air" calls consumers experience. We recognize that industry generally advocates a five percent abandonment rate, claiming that a rate lower than five percent would reduce efficiencies the technology provides. Some industry commenters indicate that a 3 percent rate still obtains productivity benefits. However, the Commission is not convinced that a five percent rate will lead to a reasonable reduction in the number of abandoned calls. The DMA's current guideline, cited by many commenters, calls for an abandonment rate of no higher than five percent. And several telemarketers maintain that they now utilize an abandonment rate of five percent or lower in their calling campaigns. Consumers nevertheless report receiving as many as 20 dropped calls per day that interrupt dinners, interfere with home business operations, and sometimes frighten the elderly and parents with young children. A rule that is consistent with the FTC's will effectively create a national standard with which telemarketers must comply and should lead to fewer abandoned calls, while permitting telemarketers to continue to benefit from such technology. It is also responsive to Congress' mandate in the Do-Not-Call Act to maximize consistency with the FTC's rules.

108. The three percent abandonment rate will be measured over a 30-day period, a standard supported by several industry commenters. Industry members maintain that measuring the abandonment rate on a per day basis would severely curtail the efficiencies gained from the use of predictive dialers, and may be overly burdensome to smaller telemarketers. A per day measurement, they argue, would not account for short-term fluctuations in marketing campaigns. They further argue that the impact of abandoned calls on consumers depends more on the aggregate number of contacts made by a telemarketer over time and not on the number in any given day. The Commission believes that a three (3) percent abandonment rate measured over a 30-day period will ensure that consumers consistently receive fewer disconnected calls, and that telemarketers are permitted to manage their calling campaigns effectively under the new rules on abandoned calls. Although we recognize that this rate of measurement differs from the FTC's rule, we believe a rate measured over a longer period of time will allow for variations in telemarketing campaigns such as calling times, number of operators available, number of telephone lines used by the call centers, and other similar factors. The record also suggests that an abandonment rate measured over a 30-day period will allow telemarketers to more easily comply with the recordkeeping requirements associated with the use of predictive dialers.

Two-Second-Transfer Rule

109. The record confirms that many consumers are angered by the "dead air" they often face when answering the telephone. Running to the telephone only to be met by silence can be frustrating and even frightening, if the caller cannot be identified. To address the problem of "dead air" produced by dialing technologies, the Commission has determined that a call will be considered abandoned if the telemarketer fails to connect the call to a sales representative within two (2) seconds of the person's completed greeting. Calls disconnected because they were never answered (within the required 15 seconds or 4 rings) or because they received busy signals will not be considered abandoned. Calls that reach voicemail or an answering machine will not be considered "answered" by the called party. Therefore, a call that is disconnected upon reaching an answering machine will not be considered an abandoned call. This requirement is consistent with the FTC's rule.

110. *Answering Machine Detection.* Opposition from industry to the two-second-transfer requirement appears to be based largely on its implications for use of Answering Machine Detection (AMD). Some industry members explain that AMD is used by telemarketers to detect answering machines, and thereby avoid leaving messages on them. The ATA and DMA maintain that if telemarketers are required to connect to a sales agent or message within 1–2 seconds, a large percentage of calls reaching answering machines will be transferred to sales agents, thereby reducing the efficiencies gained from AMD. According to these commenters, 1–2 seconds is often insufficient for AMD to determine accurately if the call has reached an answering machine. Other commenters explain that AMD is used instead by telemarketers to transmit prerecorded messages to answering machines; in such circumstances, calls that reach live persons are disconnected. It is unclear from the record how prevalent the use of AMD is in the telemarketing industry. One commenter stated that the elimination of AMD would put "consumer-oriented" telemarketing firms out of business. However, other industry members acknowledge that AMD contributes significantly to the amount of "dead air" consumers experience, and one large telemarketing firm maintains that AMD should be banned completely. The Commission believes that the record does not warrant a ban on the use of AMD. Instead, if the AMD technology is deployed in such a way that the delay in transfer time to a sales agent is limited to two seconds, then its continued use should not adversely affect consumers' privacy interests.

Prerecorded Message for Identification

111. The FTC's "safe harbor" provisions require that, when a sales agent is unavailable to speak to a person answering the phone, marketers deliver a prerecorded message that states the name and telephone number of the seller on whose behalf the call was made. The Commission has similarly determined that when a telemarketer abandons a call under the three (3) percent rate allowed, the telemarketer must deliver a prerecorded message containing the name of the business, individual or other entity initiating the call, as well as the telephone number of such business, individual or other entity. The message must also state that the call is for "telemarketing purposes." By requiring such notice, we believe consumers will be less likely to return the call simply to learn the purpose of the call and possibly incur unnecessary charges. We recognize that many consumers are frustrated with prerecorded messages. However, the record also reveals that consumers are frightened and angered by "dead air" calls and repeated hang-ups. A prerecorded message, limited to identification information only, should mitigate the harms that result from "dead air," as consumers will know who is calling them. And, they will more easily be able to make a do-not-call request of a company by calling the number provided in the message. We note that such messages sent in excess of the three (3) percent allowed under the call abandonment rate, will be considered abandoned calls, unless otherwise permitted by our rules. The content of the message must be limited to name and telephone number, along with a notice to the called party that the call is for "telemarketing purposes." The message may not be used to deliver an unsolicited advertisement. As long as the message is limited to identification information only, it will not be considered an "unsolicited advertisement" under our rules. We caution that additional information in the prerecorded message constituting an unsolicited advertisement would be a violation of our rules, if not otherwise permitted under 47 CFR 64.1200(a)(2).

Established Business Relationship

112. While the TCPA prohibits telephone calls to residential phone lines using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, the Commission determined that the TCPA permits an exemption for established business relationship calls from the restriction on artificial or prerecorded message calls to residences. The record reveals that an established business relationship exemption is necessary to allow companies to contact their existing customers. Companies currently use prerecorded messages, for example, to notify their customers about new calling plans, new mortgage rates, and seasonal services such as chimney sweeping and lawn care. Therefore, prerecorded messages sent by companies to customers with whom they have an established business relationship will not be considered "abandoned" under the revised rules, if they are delivered within two (2) seconds of the person's completed greeting. Similarly, any messages initiated with the called party's prior express consent and delivered within two (2) seconds of the called person's completed greeting are not "abandoned" calls under the new rules. Such messages must identify the business, individual or entity making the call and contain a telephone number that a consumer may call to request placement on a do-not-call list. We recognize that the established business relationship exception to the prohibition on prerecorded messages conflicts with the FTC's amended rule. However, for the reasons described above, we believe the current exception is necessary to avoid interfering with ongoing business relationships.

Ring Duration

113. The Commission also adopts a requirement that telemarketers allow the phone to ring for 15 seconds or four (4) rings before disconnecting any unanswered call. This standard is consistent with that of the FTC, similar to current DMA guidelines, and used by some telemarketers already. One industry commenter asserted that telemarketers often set the predictive dialers to ring for a very short period of time before disconnecting the call; in such cases, the predictive dialer does not record the call as having been abandoned. The practice of ringing and then disconnecting the call before the consumer has an opportunity to answer the phone is intrusive of consumer privacy and serves only to increase efficiencies for telemarketers. Moreover, in discussing the interplay between the FTC's rules with the Commission's rules, very few commenters opposed the "ring time" requirement adopted by the FTC, or raised any particular concerns about how it might work in the TCPA framework. Therefore, given the substantial interest in protecting consumers' privacy interests, as well as Congress's direction to maximize consistency with the FTC's rules, we have determined to adopt the 15 second or four (4) ring requirement.

114. Finally, consistent with the FTC's rules, the Commission has determined that telemarketers must maintain records establishing that the technology used to dial numbers complies with the three (3) percent call abandonment rate, "ring time," and two-second rule on connecting to a live sales agent. Telemarketers must provide such records in order to demonstrate compliance with the call abandonment rules. Only by adopting a recordkeeping requirement will the Commission be able to enforce adequately the rules on the use of predictive dialers.

115. The TCPA seeks primarily to protect subscribers from unrestricted commercial telemarketing calls, and therefore exempts calls or messages by tax-exempt nonprofit organizations from the definition of telephone solicitation. Therefore, the Commission has determined not to extend the call abandonment rules to tax-exempt nonprofit organizations in the absence of further guidance from Congress. Because this will result in an inconsistency with the FTC's rules, we will discuss the call abandonment rules in the report due to Congress within 45 days after the promulgation of final rules. *See* Do-Not-Call Act, Section 4. However, the call abandonment rules will apply to all other companies engaged in telemarketing, and the existence of an established business relationship between the telemarketer and consumer will not be an exception to these rules. For these entities, the call abandonment rules will become effective on October 1, 2003. We decline to establish an effective date beyond October 1, 2003, which is consistent with the date that telemarketers must comply with the FTC's call abandonment rules. This should permit telemarketers to make any modifications to their autodialing equipment or purchase any new software to enable them to comply with the three (3) percent call abandonment rate, the prerecorded message requirement and the two-second-transfer rule.

Wireless Telephone Numbers

Telemarketing Calls to Wireless Numbers

116. We affirm that under the TCPA, it is unlawful to make *any call* using an automatic telephone dialing system or an artificial or prerecorded message to any wireless telephone number. *See* 47 U.S.C. 227(b)(1). Both the statute and our rules prohibit these calls, with limited exceptions, "to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other common carrier service, or any service for which the called party is charged." 47 U.S.C. 227(b)(1)(A)(iii). This encompasses both voice calls and text calls to wireless numbers including, for example, short message service calls, provided the call is made to a telephone number assigned to such service. Congress found that automated or prerecorded telephone calls were a greater nuisance and invasion of privacy than live solicitation calls. Moreover, such calls can be costly and inconvenient. The Commission has long recognized, and the record in this proceeding supports the same conclusion, that wireless customers are charged for incoming calls whether they pay in advance or after the minutes are used. Wireless subscribers who purchase a large "bucket" of minutes at a fixed rate nevertheless are charged for those minutes, and for any minutes that exceed the "bucket" allowance. This "bucket" could be exceeded more quickly if consumers receive numerous unwanted telemarketing calls. Moreover, as several commenters point out, telemarketers have no way to determine how consumers are charged for their wireless service.

117. Although the same economic and safety concerns apply to all telephone solicitation calls received by wireless subscribers, the Commission has determined not to prohibit all live telephone solicitations to wireless numbers. We note, however, that the TCPA already prohibits live solicitation calls to wireless numbers using an autodialer. *See* 47 U.S.C. 227(b)(1). The national do-not-call database will allow for the registration of wireless telephone

numbers for those subscribers who wish to avoid live telemarketing calls to their wireless phones. Wireless subscribers thus have a simple means of preventing most live telemarketing calls if they so desire. Registration on the do-not-call database will not prevent calls from entities that have an established business relationship with a wireless subscriber. Wireless subscribers who receive such live calls can easily make a company-specific do-not-call request. Moreover, relying on the do-not-call database to control live telephone solicitations recognizes that prohibiting such calls to wireless numbers may unduly restrict telemarketers' ability to contact those consumers who do not object to receiving telemarketing calls and use their wireless phones as either their primary or only phone.

118. The Commission's rules provide that companies making telephone solicitations to residential telephone subscribers must comply with time of day restrictions and must institute procedures for maintaining do-not-call lists. *See* 47 CFR 64.1200(e). We conclude that these rules apply to calls made to wireless telephone numbers. We believe that wireless subscribers should be afforded the same protections as wireline subscribers.

Wireless Number Portability and Pooling

119. Based on the evidence in the record, we find that it is not necessary to add rules to implement the TCPA as a result of the introduction of wireless Local Number Portability (LNP) and thousands-block number pooling. The TCPA rules prohibiting telemarketers from placing autodialed and prerecorded message calls to wireless numbers have been in place for twelve years. Further, the Commission's pooling requirements have been in place for several years and the porting requirements have been in place for over five years. Accordingly, telemarketers have received sufficient notice of these requirements in order to develop business practices that will allow them to continue to comply with the TCPA.

120. Additionally, telemarketers have taken measures in the past to identify wireless numbers, and there is no indication that these measures would not continue to be effective for identifying wireless numbers affected by pooling and porting. As noted above, the industry currently makes use of a variety of tools to enable it to avoid making prohibited calls. The record provides a sampling of methods, including the DMA's "Wireless Telephone Suppression Service," that telemarketers use to avoid making prohibited calls to wireless numbers.

121. LNP and pooling do not make it impossible for telemarketers to comply with the TCPA. The record demonstrates that information is available from a variety of sources to assist telemarketers in determining which numbers are assigned to wireless carriers. For example, NeuStar, Inc. as the North American Numbering Plan Administrator, the National Pooling Administrator, and the LNP Administrator makes information available that can assist telemarketers in identifying numbers assigned to wireless carriers. Also, other commercial enterprises such as Telcordia, the owner-operator of the Local Exchange Routing Guide maintain information that can assist telemarketers in identifying numbers assigned to wireless carriers. We acknowledge that beginning November 24, 2003, numbers previously used for wireline service could be ported to wireless service providers and that telemarketers will need to take the steps necessary to identify these numbers. We also note that there are various solutions that will enable telemarketers to identify wireless numbers in a pooling and number portability environment. We decline to mandate a specific solution, but rather rely on the telemarketing industry to select solutions that best fit telemarketers' needs. The record demonstrates that telemarketers have found adequate methods in the past to comply with the TCPA's prohibition on telephone calls using an autodialer or an artificial or prerecorded voice message to any telephone number assigned to a cellular telephone service, a paging service, or any service for which the called party is charged for the call. We expect telemarketers to continue to make use of the tools available in the marketplace in order to ensure continued compliance with the TCPA.

122. Moreover, the record indicates that telemarketing to wireless phones is not a significant problem, indicating that the industries' voluntary efforts have been successful. Commenters further declare that the wireless and telemarketing industries have been actively working together to ensure that telemarketing does not become a problem for wireless customers.

123. Finally, we reject proposals to create a good faith exception for inadvertent autodialed or prerecorded calls to wireless numbers and proposals to create implied consent because we find that there are adequate solutions in the marketplace to enable telemarketers to identify wireless numbers.

Caller Identification

124. The Commission has determined to require all sellers and telemarketers to transmit caller ID information, regardless of their calling systems. In addition, any person or entity engaging in telemarketing is prohibited from blocking the transmission of caller ID information. Caller ID information must include either ANI or Calling Party Number (CPN) and, when available by the telemarketer's carrier, the name of the telemarketer. If the information required is not passed through to the consumer, through no fault of the telemarketer originating the call, then the telemarketer will not be held liable for failure to comply with the rules. In such a circumstance, the telemarketer must provide clear and convincing evidence that the caller ID information could not be transmitted. However, the Commission concurs with the FTC that caller ID information can be transmitted cost effectively for the vast majority of calls made by telemarketers. Caller ID allows consumers to screen out unwanted calls and to identify companies that they wish to ask not to call again. Knowing the identity of the caller is also helpful to consumers who feel frightened or threatened by hang-up and "dead air" calls. We disagree with those commenters who argue that caller ID information only benefits those consumers who subscribe to caller ID services. Consumers can also use the *69 feature to obtain caller ID information transmitted by a telemarketer. The *69 feature, available through many subscribers' telephone service providers, provides either: (1) Information regarding the last incoming call, and the option to dial the caller back, or (2) the ability to return the last incoming call. Call information, however, would not be available for an incoming call, if the caller failed to transmit caller ID information or blocked such information. Caller ID also should increase accountability and provide an important resource for the FCC and FTC in pursuing enforcement actions against TCPA and TSR violators.

125. We conclude that while SS7 capability is not universally available, the vast majority of the United States has access to SS7 infrastructure. The SS7 network contains functionality to transmit both the CPN and the charge number. "Charge number" is defined in 47 CFR 64.1600(d) and refers to the delivery of the calling party's billing number by a local exchange carrier for billing or routing purposes, and to the subsequent delivery of such number to end users. Under the Commission's rules, with certain limited exceptions, common carriers using SS7 and offering or subscribing to any service based on SS7 functionality are required to transmit the CPN associated with an interstate call to connecting carriers. *See* 47 CFR 64.1600, 64.1601. Regardless of whether SS7 is available, a LEC at the originating end of a call must receive and be able to transmit the ANI to the connecting carrier, as the ANI is the number transmitted through the network that identifies the calling party for billing purposes. The term "ANI" refers to the delivery of the calling party's billing number by a local exchange carrier to any interconnecting carrier for billing or routing purposes, and to the subsequent delivery to end users. *See* 47 CFR 64.1600(b). ANI is generally inferred by the switch. Each line termination on the telco switch corresponds to a different phone number for ANI. Thus, we determine that telemarketers must ensure that either CPN or ANI is made available for all telemarketing calls in order to satisfy their caller ID requirements. Whenever possible, CPN is the preferred number and should be transmitted. Provision of Caller ID information does not obviate the requirement for a caller to verbally supply identification information during a call. *See* 47 CFR 64.1200(e)(iv). Consistent with the FTC's rules, CPN can include any number associated with the telemarketer or party on whose behalf the call is made, that allows the consumer to identify the caller. This includes a number assigned to the telemarketer by its carrier, the specific number from which a sales representative placed a call, the number for the party on whose behalf the telemarketer is making the call, or the seller's customer service number. Any number supplied must permit an individual to make a do-not-call request during regular business hours for the duration of the telemarketing campaign.[3]

126. Some commenters state that it is not technically feasible for telemarketers to transmit caller ID information when using a private branch exchange (PBX) and typical T–1 trunks. As noted by National Association of State Utility Consumer Advocates, the Commission's rules exempt from the current caller ID rules, PBX and Centrex systems which lack the capability to pass CPN information. Regardless of whether a call is made using a typical T–1 trunk or an ISDN trunk, ANI is transmitted to the Local Exchange Carrier for billing purposes. With both PBX and Centrex systems, the carrier can determine the billing number from the physical line being used to make a call, even if the billing number is not transmitted along that line to the carrier. We are cognizant of the fact that with PBX and Centrex systems, the billing number could be associated with multiple outgoing lines. Nevertheless, telemarketers using PBX or Centrex systems are required under the new rules not to block ANI, at a minimum, for caller ID purposes.

127. We recognize that ISDN technology is preferred, as it presents the opportunity to transmit both CPN and ANI. However, in situations where existing technology permits only the transmission of the ANI or charge number, then the ANI or charge number will satisfy the Commission's rules, provided it allows a consumer to make a do-not-call request during regular business hours. By allowing transmission of ANI or charge number to satisfy the caller ID requirement, we believe that carriers need not incur significant costs to upgrade T–1 and ISDN switches. For these same reasons, we also believe that mandating caller ID will not create a competitive advantage towards particular carriers. As typical T–1 technology is upgraded to ISDN technology, we expect that telemarketers will increasingly be able to transmit the preferred CPN instead of ANI or charge number.

128. Finally, the record strongly supports a prohibition on blocking caller ID information. Both National Consumers League and National Association of State Utility Consumer Advocates state that there is no valid reason why a telemarketer should be allowed to intentionally block the transmission of caller ID. We conclude that the caller ID requirements for commercial telephone solicitation calls do not implicate the privacy concerns associated with blocking capability for individuals. *See* 47 CFR 64.1601(b). We recognize that absent a prohibition on blocking, a party could transmit CPN in accordance with the new rules and simultaneously transmit a request to block transmission of caller ID information. Thus, the Commission has determined to prohibit any request by a telemarketer to block caller ID information or ANI.

129. The TCPA seeks primarily to protect subscribers from unrestricted commercial telemarketing calls. Therefore, the Commission has determined not to extend the caller ID requirements to tax-exempt nonprofit organizations. However, the caller ID rules will apply to all other companies engaged in telemarketing, and the existence of an established business relationship between the telemarketer and the consumer shall not be an exception to these rules. For all covered entities, the effective date of the caller ID requirements will be January 29, 2004. This will provide telemarketers a reasonable period of time to obtain or update any equipment or systems to enable them to transmit caller ID information. We decline to extend the effective date beyond January 29, 2004, which is consistent with the date on which telemarketers are required to comply with the FTC's caller ID provision.

Unsolicited Facsimile Advertisements

Prior Express Invitation or Permission

130. The Commission has determined that the TCPA requires a person or entity to obtain the prior express invitation or permission of the recipient before transmitting an unsolicited fax advertisement. This *express* invitation or permission must be in writing and include the recipient's signature. The term "signature" in the amended rule shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law. The recipient must clearly indicate that he or she consents to receiving such faxed advertisements from the company to which permission is given, and provide the individual or business's fax number to which faxes may be sent.

131. *Established Business Relationship.* The TCPA does not act as a total ban on fax advertising. Persons and businesses that wish to advertise using faxes may, under the TCPA, do so with the express permission of the recipients. In the 2002 Notice, we sought comment on whether an established business relationship between a fax sender and recipient establishes the requisite consent to receive telephone facsimile advertisements. The majority of industry commenters support the finding that facsimile transmissions from persons or entities that have an established business relationship with the recipient can be deemed to be invited or permitted by the recipient. These commenters maintain that

[3] This would mean 9 a.m.–5 p.m. Monday through Friday. A seller or telemarketer calling on behalf of a seller must be able to record do-not-call requests at the number transmitted to consumers as caller ID. Therefore, if the person answering the calls at this number is not the sales representative who made the call or an employee of the seller or telemarketer who made the call, or if the telemarketer is using an automated system to answer the calls, the seller is nevertheless responsible for ensuring that any do-not-call request is recorded and the consumer's name, if provided, and telephone number are placed on the seller's do-not-call list at the time the request is made.

eliminating the EBR exemption for facsimile advertisements would interfere with ongoing business relationships, raise business costs, and limit the flow of valuable information to consumers. They urge the Commission to amend the rules to provide expressly for the EBR exemption. Conversely, the majority of consumer advocates argue that the TCPA requires companies to obtain express permission from consumers—even their existing customers—before transmitting a fax to a consumer. Some consumer advocates maintain that the Commission erred in its 1992 determination that a consumer, by virtue of an established business relationship, has given his or her express invitation or permission to receive faxes from that company. They urge the Commission to eliminate the EBR exemption, noting that Congress initially included in the TCPA an EBR exemption for faxes, but removed it from the final version of the statute.

132. We now reverse our prior conclusion that an established business relationship provides companies with the necessary express permission to send faxes to their customers. As of the effective date of these rules, the EBR will no longer be sufficient to show that an individual or business has given their express permission to receive unsolicited facsimile advertisements. The record in this proceeding reveals consumers and businesses receive faxes they believe they have neither solicited nor given their permission to receive. Recipients of these faxed advertisements assume the cost of the paper used, the cost associated with the use of the facsimile machine, and the costs associated with the time spent receiving a facsimile advertisement during which the machine cannot be used by its owner to send or receive other facsimile transmissions.

133. The legislative history indicates that one of Congress' primary concerns was to protect the public from bearing the costs of unwanted advertising. Certain practices were treated differently because they impose costs on consumers. For example, under the TCPA, calls to wireless phones and numbers for which the called party is charged are prohibited in the absence of an emergency or without the prior express consent of the called party. *See* 47 U.S.C. 227(b)(1). Because of the cost shifting involved with fax advertising, Congress similarly prohibited unsolicited faxes without the prior express permission of the recipient. 47 U.S.C. 227(b)(1)(C) and (a)(4). Unlike the do-not-call list for telemarketing calls, Congress provided no mechanism for opting out of unwanted facsimile advertisements. Such an opt-out list would require the recipient to possibly bear the cost of the initial facsimile and inappropriately place the burden on the recipient to contact the sender and request inclusion on a "do-not-fax" list.

134. Instead, Congress determined that companies that wish to fax unsolicited advertisements to customers must obtain their express permission to do so before transmitting any faxes to them. *See* 47 U.S.C. 227(b)(1)(C) and (a)(4). Advertisers may obtain consent for their faxes through such means as direct mail, Web sites, and interaction with customers in their stores. Under the new rules, the permission to send fax advertisements must be provided in writing, include the recipient's signature and facsimile number, and cannot be in the form of a "negative option." A facsimile advertisement containing a telephone number and an instruction to call if the recipient no longer wishes to receive such faxes, would constitute a "negative option." This option (in which the sender presumes consent unless advised otherwise) would impose costs on facsimile recipients unless or until the recipient were able to ask that such transmissions be stopped. For example, a company that requests a fax number on an application form could include a clear statement indicating that, by providing such fax number, the individual or business agrees to receive facsimile advertisements from that company. Such statement, if accompanied by the recipient's signature, will constitute the necessary prior express permission to send facsimile advertisements to that individual or business. We believe that even small businesses may easily obtain permission from existing customers who agree to receive faxed advertising, when customers patronize their stores or provide their contact information. The Commission believes that given the cost shifting and interference caused by unsolicited faxes, the interest in protecting those who would otherwise be forced to bear the burdens of unwanted faxes outweighs the interests of companies that wish to advertise via fax.

135. *Membership in a Trade Association.* In its 1995 *Reconsideration Order*, the Commission determined that mere distribution or publication of a telephone facsimile number is not the equivalent of prior express permission to receive faxed advertisements. The Commission also found that given the variety of circumstances in which such numbers may be distributed (business cards, advertisements, directory listings, trade journals, or by membership in an association), it was appropriate to treat the issue of consent in any complaint regarding unsolicited facsimile advertisements on a case-by-case basis. In the 2002 Notice, we sought comment specifically on the issue of membership in a trade association or similar group and asked whether publication of one's fax number in an organization's directory constitutes an invitation or permission to receive an unsolicited fax. The American Business Media argued that those willing to make fax numbers available in directories released to the public do so with an expectation that such fax numbers will be used for advertising. Consumer advocates, however, contend that publicly listing a fax number is not a broad invitation to send commercial faxes. TOPUC asserted that businesses often publish their fax numbers for the convenience of their customers, clients and other trade association members, not for the benefit of telemarketers.

136. The Commission agrees that fax numbers are published and distributed for a variety of reasons, all of which are usually connected to the fax machine owner's business or other personal and private interests. The record shows that they are not distributed for other companies' advertising purposes. Thus, a company wishing to fax ads to consumers whose numbers are listed in a trade publication or directory must first obtain the express permission of those consumers. Express permission to receive a faxed ad requires that the consumer understand that by providing a fax number, he or she is agreeing to receive faxed advertisements. We believe the burden on companies to obtain express permission is warranted when balanced against the need to protect consumers and businesses from bearing the advertising costs of those companies. Finally, the Commission affirms that facsimile requests for permission to transmit faxed ads, including toll-free opt-out numbers, impose unacceptable costs on the recipients. This kind of "negative option" is contrary to the statutory requirement for prior express permission or invitation.

Fax Broadcasters

137. The Commission explained in the 2002 Notice that some fax broadcasters, who transmit other entities' advertisements to a large number of telephone facsimile machines for a fee, maintain lists of facsimile numbers that they use to direct their clients' advertisements. We noted that this practice, among others, indicates a fax broadcaster's close involvement in sending unlawful fax advertisements and may subject such entities to enforcement action under the TCPA and our existing rules. We then sought comment on whether the Commission should address specifically in the rules the activities of fax broadcasters. Companies and organizations whose members hire fax broadcasters to transmit their messages argue that the fax broadcaster should be liable for violations of the TCPA's faxing prohibition. American International Automobile Dealers Association maintains this should be the case, even if the fax broadcaster uses the list of fax numbers provided by the company doing the advertising. Nextel argues that liability ought to lie with the party controlling the destination of the fax; that fax broadcasters who actively compile and market databases of fax numbers are the major perpetrators of TCPA fax violations. Nextel specifically urges the Commission to find that companies whose products are advertised by independent retailers should not be liable for TCPA violations when they have no knowledge of such activities. Fax broadcasters disagree that they should be liable for unlawful faxes, maintaining that many of them do not exercise any editorial control or discretion over the content of the messages, and do not provide the list of fax numbers to which the ads are transmitted. Many industry as well as consumer commenters agree that only those fax broadcasters who are closely involved in the transmission of the fax should be subject to liability. Reed asserts that liability should rest with the entity on whose behalf a fax is sent; that fax broadcasters are not in a position to know firsthand whether, for example, an established business relationship exists between the company and consumer.

138. The Commission's rulings clearly indicate that a fax broadcaster's exemption from liability is based on the type of activities it undertakes, and only exists "[i]n the absence of 'a high degree of involvement or actual notice of an illegal use and failure to take steps to prevent such transmissions.'" *1992 TCPA Order*, 7 FCC Rcd at 8780, para. 54 (quoting *Use of Common Carriers*, 2 FCC Rcd 2819, 2820 (1987)). The Commission believes that, based on the record and our own enforcement experience, addressing the activities of fax broadcasters will better inform both consumers and businesses about the prohibition on unsolicited fax advertising. The Commission has determined to amend the rules to state explicitly that a fax broadcaster will be liable for an unsolicited fax if there is a high degree of involvement or actual notice on the part of the broadcaster. The new rules provide that if the fax broadcaster supplies the fax numbers used to transmit the advertisement, the fax broadcaster will be liable for any unsolicited advertisement faxed to consumers and businesses without their prior express invitation or permission. We agree, however, that if the company whose products are advertised has supplied the list of fax numbers, that company is in the best position to ensure that recipients have consented to receive the faxes and should be liable for violations of the prohibition. Therefore, the fax broadcaster will not be responsible for the ads, in the absence of any other close involvement, such as determining the content of the faxed message. A high degree of involvement might be demonstrated by a fax broadcaster's role in reviewing and assessing the content of a facsimile message. In such circumstances where both the fax broadcaster and advertiser demonstrate a high degree of involvement, they may be held jointly and severally liable for violations of the unsolicited facsimile provisions. In adopting this rule, the Commission focuses on the nature of an entity's activity rather than on any label that the entity may claim. We believe the rule will better inform the business community about the prohibition on unsolicited fax advertising and the liability that attaches to such faxing. And, it will better serve consumers who are often confused about which party is responsible for unlawful fax advertising. For the same reasons, the new rules define "facsimile broadcaster" to mean a person or entity that transmits messages to telephone facsimile machines on behalf of another person or entity for a fee. *See* 47 CFR 64.1200(f)(4).

139. Some commenters ask the Commission to clarify the extent of common carriers' liability for the transmission of unsolicited faxes. Cox specifically urges the Commission to distinguish the obligations of fax broadcasters from "traditional common carriers." As noted above, the Commission has stated that "[i]n the absence of 'a high degree of involvement or actual notice of an illegal use and failure to take steps to prevent such transmissions,' common carriers will not be held liable for the transmission of a prohibited facsimile message." *1992 TCPA Order*, 7 FCC Rcd at 8780, para. 54 (quoting *Use of Common Carriers*, 2 FCC Rcd 2819, 2820 (1987)). We reiterate here that if a common carrier is merely providing the network over which a subscriber (a fax broadcaster or other individual, business, or entity) sends an unsolicited facsimile message, that common carrier will not be liable for the facsimile.

140. Nextel urges the Commission to clarify that section 217 of the Communications Act does not impose a higher level of liability on common carriers than on other entities for violations of the TCPA. Section 217 provides that "[i]n construing and enforcing the provisions of this Act, the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or user as well as that of the person." 47 U.S.C. 217. The Commission declines to address the scope of section 217 in this rulemaking, which was not raised in the 2002 Notice or in subsequent notices in this proceeding.

Fax Servers

141. The TCPA makes it unlawful for any person to use any telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine. 47 U.S.C. 227(b)(1)(C). The TCPA defines the term "telephone facsimile machine" to mean "equipment which has the capacity (A) to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line, or (B) to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper." 47 U.S.C. 227(a)(2). The Commission sought comment on any developing technologies, such as computerized fax servers, that might warrant revisiting these rules.

142. Commenters who addressed this issue were divided on whether fax servers should be subject to the unsolicited facsimile provisions. Some industry representatives urged the Commission to clarify that the TCPA does not prohibit the transmission of unsolicited fax advertisements to fax servers and personal computers because these transmissions are not sent to a "telephone facsimile machine," as defined in the statute. Nextel maintains that such faxes do not implicate the harms Congress sought to redress in the TCPA, as they are not reduced to paper and can be deleted from one's inbox without being opened or examined. Other commenters disagree, noting that there are other costs associated with faxes sent to computers and fax servers. They note that the TPCA only requires

that the equipment have the capacity to transcribe text or messages onto paper, and that computer fax servers and personal computers have that capacity.

143. We conclude that faxes sent to personal computers equipped with, or attached to, modems and to computerized fax servers are subject to the TCPA's prohibition on unsolicited faxes. However, we clarify that the prohibition does not extend to facsimile messages sent as email over the Internet. The record confirms that a conventional stand-alone telephone facsimile machine is just one device used for this purpose; that developing technologies permit one to send and receive facsimile messages in a myriad of ways. Today, a modem attached to a personal computer allows one to transmit and receive electronic documents as faxes. "Fax servers" enable multiple desktops to send and receive faxes from the same or shared telephony lines.

144. The TCPA's definition of "telephone facsimile machine" broadly applies to any equipment that has the capacity to send or receive text or images. The purpose of the requirement that a "telephone facsimile machine" have the "capacity to transcribe text or images" is to ensure that the prohibition on unsolicited faxing not be circumvented. Congress could not have intended to allow easy circumvention of its prohibition when faxes are (intentionally or not) transmitted to personal computers and fax servers, rather than to traditional stand-alone facsimile machines. As the House Report accompanying the TCPA explained, "facsimile machines are designed to accept, process and print all messages which arrive over their dedicated lines. The fax advertiser takes advantage of this basic design by sending advertisements to available fax numbers, knowing that it will be received and printed by the recipient's machine." H.R. Rep. No. 102–317 at 10 (1991). However, Congress also took account of the "interference, interruptions, and expense" resulting from junk faxes, emphasizing in the same Report that "[i]n addition to the costs associated with the fax advertisements, when a facsimile machine is receiving a fax, it may require several minutes or more to process and print the advertisement. During that time, the fax machine is unable to process actual business communications. H.R. Rep. No. 102–317 at 25 (1991)."

145. Facsimile messages sent to a computer or fax server may shift the advertising costs of paper and toner to the recipient, if they are printed. They may also tie up lines and printers so that the recipients' requested faxes are not timely received. Such faxes may increase labor costs for businesses, whose employees must monitor faxes to determine which ones are junk faxes and which are related to their company's business. Finally, because a sender of a facsimile message has no way to determine whether it is being sent to a number associated with a stand-alone fax machine or to one associated with a personal computer or fax server, it would make little sense to apply different rules based on the device that ultimately received it.

Identification Requirements

146. The TCPA and Commission rules require that any message sent via a telephone facsimile machine contain the date and time it is sent and an identification of the business, other entity, or individual sending the message and the telephone number of the sending machine or of such business, other entity, or individual. 47 U.S.C. 227(d)(1)(B); 47 CFR 68.318(d). In the 2002 Notice, the Commission asked whether these rules have been effective at protecting consumers' rights to enforce the TCPA. The Commission determined in its *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CC Docket No. 92–90, Order on Further Reconsideration, 12 FCC Rcd 4609, 4613, para. 6 (1997) (*1997 TCPA Reconsideration Order*) that a facsimile broadcast service must ensure that the identifying information of the entity on whose behalf the provider sent messages appear on facsimile messages. In its discussion, the Commission clarified that the sender of a facsimile message is the creator of the content of the message, finding that Section 227(d)(1) of the TCPA mandates that a facsimile include the identification of the business, other entity, or individual creating or originating a facsimile message, and not the entity that transmits the message. The Commission believes that if a fax broadcaster is responsible for the content of the message or for determining the destination of the message (*i.e.*, supplying the list of facsimile numbers to which the faxes are sent), it should be identified on the facsimile, along with the entity whose products are advertised. Therefore, we amend the rules to require any fax broadcaster that demonstrates a high degree of involvement in the transmission of such facsimile message to be identified on the facsimile, along with the identification of the sender. This will permit consumers to hold fax broadcasters accountable for unlawful fax advertisements when there is a high degree of involvement on the part of the fax broadcaster. Commenters suggested the Commission clarify what constitutes an adequate identification header. Consistent with our amended identification rules for telemarketing calls, senders of fax advertisements will be required under the new rules to use the name under which they are officially registered to conduct business. Use of a "d/b/a" ("doing business as") or other more widely recognized name is permissible; however, the official identification of the business, as filed with state corporate registration offices or comparable regulatory entities, must be included, at a minimum.

Private Right of Action

147. The Commission declines to make any determination about the specific contours of the TCPA's private right of action. Congress provided consumers with a private right of action, "if otherwise permitted by the laws or rules of court of a State." 47 U.S.C. 227(c)(5). This language suggests that Congress contemplated that such legal action was a matter for consumers to pursue in appropriate state courts, subject to those courts' rules. The Commission believes it is for Congress, not the Commission, to either clarify or limit this right of action.

Informal Complaint Rules

148. In the 2002 Notice, the Commission noted that it had released another Notice of Proposed Rulemaking in February of 2002, seeking comment on whether to extend the informal complaint rules to entities other than common carriers. We sought comment in this proceeding on whether the Commission should amend these informal complaint rules to apply to telemarketers. We will review this issue as part of the Informal Complaints proceeding. All comments filed in this proceeding that address the applicability of the informal complaint rules to telemarketers will be incorporated into CI Docket No. 02–32.

Time of Day Restrictions

149. Commission rules restrict telephone solicitations between the hours of 8 a.m. and 9 p.m. local time at the called party's location. 47 CFR 64.1200(e)(1). As part of our review of the TCPA rules, we sought comment on how effective these time restrictions have been at limiting objectionable solicitation calls. The Commission also asked whether more restrictive calling times could work in conjunction with a national registry to better protect consumers from telephone solicitations to which they object.

150. Industry members that commented on the calling time restrictions unanimously asserted that the current calling times should be retained. Some explained that any restrictions on calls made during the early evening hours, in particular, would interfere with telemarketers' ability to reach their customers. Consumers, on the other hand, urged the Commission to adopt tighter restrictions on the times that telemarketers may call them. Some object to calls at the end of the day and during the dinner hour; others prefer that telemarketers not be able to begin calling until later in the morning. Some suggest the calling times should parallel local noise ordinances. EPIC advocated allowing consumers to specify the hours they wish to receive calls.

151. The Commission declines to revise the restrictions on calling times. Instead, we retain the current calling times, which are consistent with the FTC's rules. We believe the current calling times strike the appropriate balance between protecting consumer privacy and not unduly burdening industry in their efforts to conduct legitimate telemarketing. We also believe that Commission rules that diverge from the FTC's calling restrictions will lead to confusion for consumers. Moreover, consumers who want to block unwanted calls during certain times will now have the option of placing their telephone numbers on the national do-not-call registry. They will have the additional option of giving express verifiable authorization to only those companies from which they wish to hear. The Commission declines at this time to require companies to adhere to consumers' calling preferences, including "acceptable" calling times. The Commission encourages any seller or telemarketer to comply with consumers' requests not to be called during certain times of the day. We believe that the costs of monitoring calling times for individual consumers could be substantial for many companies, particularly small businesses.

Enforcement Priorities

152. TCPA enforcement has been a Commission priority over the past several years, and we intend that it remain so. In guiding our future enforcement plans, we recognize that the FTC's recent rule changes expand that agency's regulation of telemarketing activities and require coordination to ensure consistent and non-redundant federal enforcement in this area. Most notably, the FTC's adoption of a nationwide do-not-call registry, the related Do-Not-Call Act, and finally our adoption of requirements that maximize consistency with those adopted by the FTC create an overlap in federal regulations governing major telemarketing activities. There are other overlapping regulations such as provisions governing abandoned calls, transmission of caller ID, and time-of-day restrictions. We hereby direct Commission staff to negotiate with FTC staff a Memorandum of Understanding between the respective staffs to achieve an efficient and effective enforcement strategy that will promote compliance with federal telemarketing regulations.

153. The FCC's jurisdiction over telemarketing is significantly broader than the FTC's. First, as noted above, the FTC does not have authority over telemarketing calls made by in-house employees of common carriers, banks, credit unions, savings and loans, insurance companies, and airlines. In addition, the FTC's telemarketing rules pertain only to interstate transmissions. In contrast, the FCC's telemarketing rules apply without exception to any entity engaged in any of the telemarketing activities targeted by the TCPA and the Commission's related rules, including those that involve purely intrastate activities. 47 U.S.C. 152(b). Given the substantial gaps in the FTC's authority over the full range of telemarketing activities, we contemplate that our enforcement staff will focus particularly on those activities and entities that fall outside the FTC's reach—airlines, banks, credit unions, savings and loans, insurance companies, and common carriers, as well as intrastate transmissions by any entity.

154. Nevertheless, we do not contemplate Commission enforcement that targets only those activities, entities, or transmissions that are outside the FTC's jurisdiction. The TCPA creates a statutory expectation for FCC enforcement in the telemarketing area. See 47 U.S.C. 227(f)(3), (7). Moreover, the TCPA's detailed standards pertaining to do-not-call matters evince Congressional intent that the FCC assume a prominent role in federal regulation of this aspect of telemarketing, a mandate that is not altered by the Do-Not-Call Act. Accordingly, even with the FTC's new do-not-call regulations, including its administration of a national do-not-call registry, we emphasize that the Commission must stand ready to enforce each of our telemarketing rules in appropriate cases. For reasons of efficiency and fairness, our staff will work closely with the FTC to avoid unnecessarily duplicative enforcement actions.

155. In determining enforcement priorities under the new telemarketing rules, we contemplate that the Enforcement Bureau will continue its policy of reviewing FCC and FTC consumer complaint data and conferring with appropriate state and federal agencies to detect both egregious violations and patterns of violations, and will act accordingly. The Enforcement Bureau has in place effective procedures to review aggregate complaint information to determine the general areas that merit enforcement actions, and to identify both particular violators and the individual consumers who may be able to assist the staff in pursuing enforcement actions against such violators. Enforcement action could include, for example, forfeiture proceedings under section 503(b),[4] cease and desist proceedings under section 312(c), injunctions under section 401, and revocation of common carrier section 214 operating authority.

Other Issues

Access to TCPA Inquiries and Complaints

156. The Commission stated that the 2002 Notice was "prompted, in part, by the increasing number and variety of inquiries and complaints involving our rules on telemarketing and unsolicited fax advertisements." A few commenters maintain that the Commission should not consider final rules until parties have had an opportunity to analyze the consumer complaints referenced in the 2002 Notice. Other commenters contend that the number of complaints received by the Commission does not necessarily demonstrate a problem that demands government intervention. The ATA filed a Freedom of Information Act (FOIA) request with the Commission on October 16, 2002, seeking access to the TCPA-related informal complaints. The FOIA generally provides that any person has a right to obtain access to federal agency records, subject to enumerated exemptions from disclosure. The FOIA requirements do not apply to records that contain "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." *See* 5 U.S.C. 552(b)(6). Many of the complaints sought by the ATA contain personal private information. In addition, the complaints are part of a

[4] Before initiating a forfeiture proceeding against most entities that do not hold an FCC authorization, the violator must have received a Commission citation and then engaged in an additional violation. 47 U.S.C. 503(b)(5).

system of records subject to the Privacy Act. 5 U.S.C. 552(a); 47 CFR 0.551 *et seq.* For these reasons, the Commission agreed to release the complaints on a rolling basis only after personal information was redacted. In response to ATA's FOIA request, the Commission has thus far provided approximately 2,420 redacted complaints.

157. We agree with commenters that the increasing number of inquiries and complaints about telemarketing practices should not form the basis upon which we revise or adopt new rules under the TCPA. Rather, such information can be considered in determining whether to seek comment on the effectiveness of any of its rules. Other considerations included: the Commission's own enforcement experience; the amount of time that had passed since the Commission undertook a broad review of the TCPA rules, during which time telemarketing practices have changed significantly; and the actions by the FTC to consider changes to its telemarketing rules, including the establishment of a national do-not-call registry. We note that, even in the absence of any such complaints, the Commission is required by the Do-Not-Call Act to complete the TCPA rulemaking commenced last year. We disagree with commenters who suggest that parties must have access to all of the complaints referenced in the NPRM in order to be able to have a meaningful opportunity to participate in this proceeding. It is not the existence of the complaints, or the number of complaints, that led the Commission to institute this proceeding to consider revision of its TCPA rules. Rather, our TCPA rules have been in place for more than ten years. We opened this proceeding to determine "whether the Commission's rules need to be revised in order to more effectively carry out Congress's directives in the TCPA." 2002 Notice, 17 FCC Rcd at 17461, para. 1. In any event, since September 2002, consumers, industry, and state governments have filed over 6,000 comments in this proceeding, during which time the Commission extended the comment periods twice and released an FNPRM in order to ensure that parties had ample opportunity to comment on possible FCC action. The substantial record compiled in this proceeding, along with the Commission's own enforcement experience, provides the basis for the actions we take here today.

Reports to Congress

158. The Do-Not-Call Act requires the Commission to transmit reports to Congress within 45 days after the promulgation of final rules in this proceeding, and annually thereafter. By this Order, the Commission delegates its authority to the Chief, Consumer & Governmental Affairs Bureau, to issue all such reports.

Procedural Issues

Final Regulatory Flexibility Analysis

159. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), 5 U.S.C. 603,[5] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the 2002 Notice released by the Commission on September 18, 2002. The Commission sought written public comments on the proposals contained in the 2002 Notice, including comments on the IRFA. On March 25, 2003, the Commission released the FNPRM, seeking comments on the requirements contained in the Do-Not-Call Act which was signed into law on March 11, 2003. None of the comments filed in this proceeding were specifically identified as comments addressing the IRFA; however, comments that address the impact of the proposed rules and policies on small entities are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. *See* 5 U.S.C. 604.

A. Need for, and Objectives of, the Order

160. Since 1992, when the Commission adopted rules pursuant to the TCPA, telemarketing practices have changed significantly. New technologies have emerged that allow telemarketers to better target potential customers and make marketing using telephones and facsimile machines more cost-effective. At the same time, these new telemarketing techniques have heightened public concern about the effect telemarketing has on consumer privacy. A growing number of states have passed, or are considering, legislation to establish statewide do-not-call lists, and the FTC has decided to establish a national do-not-call registry. Congress provided in the TCPA that "individuals' privacy rights, public safety interests, and commercial freedoms of speech and trade must be balanced in a way that protects the privacy of individuals and permits legitimate telemarketing practices." *See TCPA*, Section 2(9), *reprinted* in 7 FCC Rcd 2736 at 2744.

161. The 2002 Notice sought comments on whether to revise or clarify Commission rules governing unwanted telephone solicitations, the use of automatic telephone dialing systems, prerecorded or artificial voice messages, telephone facsimile machines, the effectiveness of company-specific do-not-call lists, and the appropriateness of establishing a national do-not-call list. In addition, in the IRFA, the Commission sought comments on the effect the proposed policies and rules would have on small business entities.

162. In this Order the Commission revises the current TCPA rules and adopts new rules to provide consumers with additional options for avoiding unwanted telephone solicitations. We establish a national do-not-call registry for consumers who wish to avoid most unwanted telemarketing calls. This national do-not-call registry will supplement the current company-specific do-not-call rules, which will continue to permit consumers to request that particular companies not call them. The Commission also adopts a new provision to permit consumers registered with the national do-not-call list to provide permission to call to specific companies by an express written agreement. The TCPA rules exempt from the "do-not-call" requirements nonprofit organizations and companies with whom consumers have an established business relationship. The definition of "established business relationship" has been amended so that it is limited to 18 months from any purchase or financial transaction with the company and to three months from any inquiry or application from the consumer. Any company that is asked by a consumer, including an existing customer, not to call again must honor that request for five years. We retain the current calling time restrictions of 8 a.m. until 9 p.m.

163. To address the use of predictive dialers, we have determined that a telemarketer must abandon no more than three percent of calls answered by a person, must deliver a prerecorded identification message when abandoning a call, and must allow the telephone to ring for 15 seconds or four rings before disconnecting an unanswered call. The new rules also require all companies conducting telemarketing to transmit caller identification information when available, and they prohibit companies from blocking such information. The Commission has revised its earlier determination that an established business relationship constitutes express invitation or permission to receive an unsolicited facsimile advertisement. We find that the permission to send fax ads must be in writing, include the recipient's signature, and clearly indicate the recipient's consent to receive such ads. In addition, we have clarified when fax broadcasters are liable for the transmission of unlawful fax advertisements.

164. We believe the rules the Commission adopts in the Order strike an appropriate balance between maximizing consumer privacy protections and avoiding imposing undue burdens on telemarketers. In addition, the Commission must comply with the Do-Not-Call Act, which requires the Commission to file an annual report to the House Committee on Energy and Commerce and the Senate Committee on Commerce, Science and Transportation. This report is to include: (1) An analysis of the effectiveness of the registry; (2) the number of consumers included on the registry; (3) the number of persons accessing the registry and the fees collected for such access; (4) a description of coordination with state do-not-call registries; and, lastly, (5) a description of coordination of the registry with the Commission's enforcement efforts.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

165. There were no comments filed in direct response to the IRFA. Some commenters, however, raised issues and questions about the impact the proposed rules and policies would have on small entities. Telemarketers maintained that "telemarketing is used to introduce consumers to novel and competitive products and services," often offered by small businesses. Some commenters insisted that business-to-business telemarketing is essential for small businesses. They indicated that they rely on fax broadcasting as a cost-effective form of advertising. On the other hand, other small businesses have requested that the Commission allow their telephone numbers to be included on any national do-not-call list and urged the Commission to adopt rules protecting them from unsolicited faxes. The rules adopted herein reflect not only the difficult balancing of individuals' privacy rights against the protections afforded commercial speech, but the difficult balancing of the interests of small businesses that rely on telemarketing against those that are harmed by unwanted telephone calls and facsimile transmissions. The amended rules should reduce burdens on both consumers and businesses, including small businesses.

166. *National Do-Not-Call List.* As discussed more extensively in the Order, some commenters opposed the adoption of a national do-not-call registry, stating that company-specific do-not-call lists adequately protect consumer privacy. Other commenters supported the establishment of a national do-not-call registry, arguing that "further regulation is needed because the current system does little or nothing to protect privacy in the home." *See* Privacy Rights Clearinghouse (Privacy Rights) at 2. National Federation of Independent Business (NFIB) "believes that significant burdens are being placed upon businesses of all sizes in order to comply with the regulations * * *, but that small businesses bear the brunt of those burdens." NFIB Comments at 1. NFIB suggested that women, minorities and small businesses will be affected disproportionately by any new restrictions. And, some commenters maintained that businesses, including small businesses, will suffer a reduction in telemarketing sales as a result of the establishment of a national do-not-call list. Small Business Survival Committee (SBSC), while opposed to a national do-not-call list, nevertheless offered a recommendation that would make such a list less onerous for small businesses. SBSC suggested exempting local calls that might result in a face-to-face transaction from the do-not-call list requirements. National Association of Insurance & Financial Advisors also encouraged exempting calls which result in face-to-face meetings and recommended an exemption for those businesses that make a *de minimis* number of calls.

167. The Commission received comments arguing that a national do-not-call list "would be cumbersome" and too expensive for small businesses to use. Direct Selling Association specifically indicated that a national do-not-call list would increase businesses' start-up costs if they were required to purchase the list. In addition, Mortgage Bankers Association of America (MBA) maintained that many small lenders use referrals from existing customers, not large lists, to attract new business. Such referrals, MBA suggested, will be difficult to scrub against a national do-not-call list. Some commenters suggested that an option to help reduce the cost of a national do-not-call list for small businesses would be to offer smaller pieces of the list to small businesses.

168. Yellow Pages Integrated Media Association urged the Commission to continue to exempt business-to-business calls from a national do-not-call list, because small businesses benefit tremendously by advertising in yellow pages and on-line. However, other commenters requested that small businesses be allowed to include their telephone numbers on the national do-not-call list. One small business commenter stated that "* * * telemarketing * * * interferes with business operations, especially small business operations * * *." Mathemaesthetics, Inc. (Mathemaesthetics) Comments at 6. Another commenter argued that "people that work from home * * * should not have to be bothered with telemarketing calls that would impact their job performance and potentially their ability to make a living." David T. Piekarski Comments (Docket No. 03–62) at 1–2. Finally, some have assured the Commission that a national do-not-call list would be manageable and feasible to maintain. NCS Pearson, Inc. (NCS), for example, maintained that even extremely small telemarketers could gain access to the do-not-call list at a reasonable cost using the Internet.

169. *Web site or Toll-Free Number to Access Company-Specific Lists and to Confirm Requests.* The Commission sought comment on whether to consider any modifications that would allow consumers greater flexibility to register on company-specific do-not-call lists. We specifically asked whether companies should be required to provide a toll-free number and/or Web site that consumers can access to register their names on do-not-call lists. Some commenters argued that it would be costly if small, local businesses were required to design and maintain Web sites or provide toll-free numbers for consumers to make do-not-call requests. In addition, they maintained that businesses should not be required to confirm registration of a consumer's name on a company's do-not-call list. Confirmations by mail, they stated, would be expensive for a business and probably perceived by the consumer as "junk mail."

170. *Established Business Relationship.* One issue raised by commenters as particularly burdensome for small business was monitoring existing business relationships and do-not-call requests. NFIB stated that members have found requests by existing customers to cease contacting them "unwieldy and difficult * * * to translate as a business practice." NFIB Comments at 2. "An individual who continues to interact with a [sic] these small businesses following a 'do not contact' request does not sever the business relationship *de facto* * * *". NFIB Comments at 2. According to

[5] The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

NFIB, it should be the right of the business to continue to call that customer. They argued that it should be the responsibility of the customer to terminate the relationship with that business affirmatively.

171. National Automobile Dealers Association (NADA) indicated that there has been no significant change that would warrant a revision of the established business relationship exemption. In fact, NADA stated that "narrowing the exemption would unnecessarily deprive small businesses of a cost-effective marketing opportunity." NADA Comments at 2. According to NADA, small businesses must maximize their marketing resources and the best way to do so is to direct their marketing efforts toward their existing customers.

172. While no commenter specifically addressed the effect of time limits on small businesses, several entities discussed time limits for the established business relationship rule in general. DMA indicated the difficulty in establishing a "clock" that "will apply across all the industries that use the phone to relate to their customers." DMA Comments at 20. DMA continued by stating "[d]ifferent business models require different periods of time." DMA Comments at 20. This concept was supported by Nextel, "the FTC's eighteen-month limit on its EBR rule would be inappropriate for the telecommunications industry" and would "dramatically increase administrative burdens and costs for all businesses as they would be forced to monitor and record every customer inquiry and purchasing pattern to ensure compliance with the FCC's rules." Nextel Reply Comments 12–13.

173. *Unsolicited Facsimile Advertising and "War Dialing"*. Privacy Rights commented that the practice of dialing large blocks of numbers to identify facsimile lines, *i.e.*, "war dialing," should be prohibited, especially because such calls cannot be characterized as telemarketing. It argued that "this practice is particularly troubling for small business owners who often work out of home offices" because it deprives the small business owner of the use of the equipment, creates an annoyance and interrupts business calls. Privacy Rights Comments at 4–5.

174. NFIB advocated on behalf of its small business members that "the ability to fax information to their established customers is an essential commercial tool." NFIB Comments at 3–4. Any customer who provides contact information when patronizing a business is providing express permission to be contacted by that business, including via facsimile advertising. In addition, NFIB indicated that businesses engaged in facsimile advertising should not be required to identify themselves, and that customers should be required to notify the business that they do not wish to receive such faxes. NADA agreed that the Commission should "preserve its determination that a prior business relationship between a fax sender and recipient establishes the requisite consent to receive fax advertisements." NADA Comments at 2. According to NADA, changing these rules would deprive small businesses of a marketing tool upon which they have come to rely.

175. Other commenters disagreed, explaining that numerous small businesses are burdened by the intrusion of ringing telephones and fax machines, the receipt of advertisements in which they are not interested, the depletion of toner and paper, and the time spent dealing with these unwanted faxes. A few home-based businesses and other companies maintain that facsimile advertisements interfere with the receipt of faxes connected to their own business, and that the time spent collecting and sorting these faxes increases their labor costs. In fact, NFIB has received complaints from its own members "who * * * failed to realize that their membership *entitles* them to the receipt of such information via fax." NFIB Comments at 2 (emphasis added).

176. *Caller ID Requirements*. In response to the Commission's proposal to require telemarketers to transmit caller ID or prohibit the blocking of such information, NYSCPB favored prohibiting the intentional blocking of caller ID information, but acknowledged that requiring the transmission of caller ID may be inappropriate for smaller firms. NYSCPB stated that "[w]hile mandatory transmission of caller ID information would undoubtedly facilitate do-not-call enforcement * * * we would not want to impose onerous burdens on smaller, less technically sophisticated firms * * *." NYSCPB-Other Than National DNC List Comments at 9. In addition, NYSCPB suggested that smaller businesses that lack the capability to transmit caller ID be exempt from providing caller ID information until the business installs new equipment with caller ID capabilities.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

177. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. 632). Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632.

178. The Commission's rules on telephone solicitation and the use of autodialers, artificial or prerecorded messages and telephone facsimile machines apply to a wide range of entities, including all entities that use the telephone or facsimile machine to advertise. 47 CFR 64.1200. That is, our action affects the myriad of businesses throughout the nation that use telemarketing to advertise. For instance, funeral homes, mortgage brokers, automobile dealers, newspapers and telecommunications companies could all be affected. Thus, we expect that the rules adopted in this proceeding could have a significant economic impact on a substantial number of small entities.

179. Nationwide, there are a total of 22.4 million small businesses, according to SBA data. And, as of 1992, nationwide there were approximately 275,801 small organizations [not-for-profit].

180. Again, we note that our action affects an exhaustive list of business types and varieties. We will mention with particularity the intermediary groups that engage in this activity. SBA has determined that "telemarketing bureaus" with $6 million or less in annual receipts qualify as small businesses. *See* 13 CFR 121.201, NAICS code 561422. For 1997, there were 1,727 firms in the "telemarketing bureau" category, total, which operated for the entire year. Of this total, 1,536 reported annual receipts of less than $5 million, and an additional 77 reported receipts of $5 million to $9,999,999. Therefore, the majority of such firms can be considered to be small businesses.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

181. The rules contained herein require significant recordkeeping requirements on the part of businesses, including small business entities. First, while the national do-not-call list will be developed and maintained by the FTC, all businesses that engage in telemarketing will be responsible for obtaining the list of telephone numbers on the national do-not-call list and scrubbing their calling lists to avoid calling those numbers. They must also continue to be responsible for maintaining their own company-specific do-not-call lists; however, this is not a new requirement, but a continuation of the Commission's existing rules. The Commission has reduced the period of time that businesses must retain company-specific do-not-call requests from 10 years to five years. In addition, for those businesses, including small businesses, that wish to call consumers under the "established business relationship" exemption, they must continue to maintain customer lists in the normal course of business. Because of the time limits associated with this rule, businesses will need to monitor and record consumer contacts to assure that they are complying with the 18-month and three-month provisions in the rule. Businesses that want to call consumers with whom they have no relationship, but who are listed on the national do-not-call list, must obtain a consumer's express permission to call. This permission must be evidenced by a signed, written agreement.

182. Second, all businesses that use autodialers, including predictive dialers, to sell goods or services, will be required to maintain records documenting compliance with the call abandonment rules. Such records should demonstrate the telemarketers' compliance with a call abandonment rate of no less than three percent measured over a 30-day period, with the two-second-transfer rule, and with the ring duration requirement.

183. Third, with the exception of tax-exempt nonprofit organizations, all businesses that engage in telemarketing will be required to transmit caller ID information.

184. Fourth, businesses that advertise by fax will be required to maintain records demonstrating that recipients have provided express permission to send fax advertisements. Such permission must be given in writing, and businesses must document that they have obtained the required permission.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

185. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): "(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities." 5 U.S.C. 603(c)(1) through (c)(4).

186. There were five specific areas in which the Commission considered alternatives for small businesses. These areas were: (1) Establishing a National Do-Not-Call List ((a) providing a portion of the national do-not-call list (five area codes) for free, (b) providing businesses with 30 days to process do-not-call requests, and (c) reducing the do-not-call record retention rate from 10 years to five years); (2) maintaining the current established business rule exemption and adopting the FTC's time limits of 18 months and three months; (3) establishing a call abandonment rate of three percent, rather than zero percent, and measuring the rate over a 30-day period, rather than on a per day basis; (4) continuing to prohibit facsimile advertising to residential and business numbers; and (5) declining to require businesses to maintain a Web site or toll-free number for do-not-call requests or confirmation of such requests by consumers. Small businesses presented arguments on both sides of each of these issues.

187. *National Do-Not-Call List*. This Order establishes a national do-not-call list for those residential telephone subscribers who wish to avoid most unwanted telephone solicitations. Although many businesses, including small businesses, objected to a national do-not-call registry, the Commission determined that a national do-not-call list was necessary to carry out the directives in the TCPA. We agreed with those commenters who maintained that the company-specific approach to concerns about unwanted telephone solicitations does not alone adequately protect individuals' privacy interests. We declined to exempt local solicitations and small businesses from the national do-not-call list. Given the numerous entities that solicit by telephone, and the technological tools that allow even small entities to make a significant number of solicitation calls, we believe that to do so would undermine the effectiveness of the national do-not-call rules in protecting consumer privacy. In addition, we declined to permit businesses to register their numbers on the national do-not-call registry, despite the requests of numerous small business owners to do so. The TCPA expressly contemplates that a national do-not-call database includes residential telephone subscribers' numbers. Although business numbers will not be included in the national do-not-call database, a business could nevertheless request that its number be added to a company's do-not-call list.

188. The Commission considered the costs to small businesses of purchasing the national do-not-call list. In an attempt to minimize the cost for small businesses, we have considered an alternative and determined that businesses will be allowed to obtain up to five area codes free of charge. Since many small businesses telemarket within a local area, providing five area codes at no cost should help to reduce or eliminate the costs of purchasing the national registry for small businesses. Furthermore, as suggested by NCS, small businesses should be able to gain access to the national list in an efficient, cost-effective manner via the Internet.

189. As discussed extensively in the Order, many businesses, including small business entities, requested specific exemptions from the requirements of a national do-not-call list. In order to minimize potential confusion for both consumers and businesses alike, we declined to create specific exemptions for small businesses. We believe the exemptions adopted for calls made to consumers with whom a seller has an established business relationship and those that have provided express agreement to be called provide businesses with a reasonable opportunity to conduct their business while protecting consumer privacy interests.

190. The Commission also considered modifying for small businesses the time frames for (1) processing consumers' do-not-call requests; (2) retaining consumer do-not-call records; and (3) scrubbing calling lists against the national do-not-call registry. In doing so, we recognized the limitations on small businesses of processing requests in a timely manner. Therefore, we determined to require that both large and small businesses must honor do-not-call requests within 30 days from the date such a request is made, instead of requiring that businesses honor requests in less time. Although some commenters suggested periods of up to 60 to 90 days to process do-not-call requests, we determined that such an inconsistency in the rules would lead to confusion for consumers.

Consumers might not easily recognize that the telemarketer calling represented a small business and that they must then allow a longer period of time for their do-not-call requests to be processed.

191. The Commission also determined to reduce the retention period of do-not-call records from 10 years to five years. This modification should benefit businesses that are concerned about telephone numbers that change hands over time. They argue that a shorter retention requirement will result in do-not-call lists that more accurately reflect those consumers who have requested not to be called. Finally, we considered allowing small businesses additional time to scrub their customer call lists against the national do-not-call database. The FTC's rules require telemarketers to scrub their lists every 90 days. For the sake of consistency, and to avoid confusion on the part of consumers and businesses, the Commission determined to require all businesses to access the national registry and scrub their calling lists of numbers in the registry every 90 days.

192. *Established Business Relationship.* We have modified the current definition of "established business relationship" so that it is limited in duration to 18 months from any purchase or transaction and three months from any inquiry or application. The revised definition is consistent with the definition adopted by the FTC. We concluded that regulating the duration of an established business relationship is necessary to minimize confusion and frustration for consumers who receive calls from companies they have not contacted or patronized for many years. There was little consensus among industry members about how long an established business relationship should last following a transaction between the consumer and seller. We believe the 18-month timeframe strikes an appropriate balance between industry practices and consumer privacy interests. Although businesses, including small businesses must monitor the length of relationships with their customers to determine whether they can lawfully call a customer, we believe that a rule consistent with the FTC's will benefit businesses by creating one uniform standard with which businesses must comply.

193. *Call Abandonment.* In the 2002 Notice, the Commission requested information on the use of predictive dialers and the harms that result when predictive dialers abandon calls. In response, some small businesses urged the Commission to adopt a maximum rate of zero on abandoned calls. They described their frustration over hang-up calls that interrupt their work and with answering the phone "only to find complete silence on the other end." Mathemaesthetics Comments at 6. Most industry members encouraged the Commission to adopt an abandonment rate of no less than five percent, claiming that this rate "minimizes abandoned calls, while still allowing for the substantial benefits achieved by predictive dialers." WorldCom Reply at 18–19. The Commission has determined that a three percent maximum rate on abandoned calls balances the interests of businesses that derive economic benefits from predictive dialers and consumers who find intrusive those calls delivered by predictive dialers. We believe that this alternative, a rate of three percent, will also benefit small businesses that are affected by interruptions from hang-ups and "dead air" calls.

194. The three percent rate will be measured over a 30-day period, rather than on a per day basis. Industry members maintained that a per day measurement would not account for short-term fluctuations in marketing campaigns and may be overly burdensome to smaller telemarketers. We believe that measuring the three percent rate over a longer period of time will still reduce the overall number of abandoned calls, yet permit telemarketers to manage individual calling campaigns effectively. It will also permit telemarketers to more easily comply with the recordkeeping requirements associated with the use of predictive dialers.

195. *Unsolicited Facsimile Advertising.* The record reveals that facsimile advertising can both benefit and harm small businesses with limited resources. The small businesses and organizations that rely upon faxing as a cost-effective way to advertise insist that the Commission allow facsimile advertising to continue. Other small businesses contend that facsimile advertising interferes with their daily operations, increases labor costs, and wastes resources such as paper and toner. The Commission has reversed its prior conclusion that an established business relationship provides companies with the necessary express permission to send faxes to their customers. Under the amended rules, a business may advertise by fax with the prior express permission of the fax recipient, which must be in writing. Businesses may obtain such written permission through direct mail, Web sites, or during interaction with customers in their stores. This alternative will benefit those small businesses, which are inundated with unwanted fax advertisements.

196. *Web site or Toll-Free Number to Access Company-Specific Lists and to Confirm Requests.* Lastly, the Commission has determined not to require businesses to provide a Web site or toll-free number for consumers to request placement on company-specific do-not-call lists or to respond affirmatively to do-not-call requests or otherwise provide some means of confirmation that consumers have been added to a company's do-not-call list. Several commenters indicated that such requirements would be costly to small businesses. Although we believe these measures would improve the ability of consumers to register do-not-call requests, we agree that such requirements would be potentially costly to businesses, particularly small businesses. Instead, we believe that the national do-not-call registry will provide consumers with a viable alternative if they are concerned that their company-specific do-not-call requests are not being honored. In addition, consumers may pursue a private right of action if there is a violation of the do-not-call rules. This alternative should reduce, for small businesses who engage in telemarketing, both the potential cost and resource burdens of maintaining company-specific lists.

197. *Report to Congress:* The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Ordering Clauses

198. Accordingly, pursuant to the authority contained in Sections 1–4, 222, 227, and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. 151–154, 222 and 227; and 47 CFR 64.1200 of the Commission's rules, and the Do-Not-Call Implementation Act, Public Law 108–10, 117 Stat. 557, the Report and Order in CG Docket No. 02–278 IS ADOPTED, and Parts 64 and 68 of the Commission's rules, 47 CFR Parts 64.1200, 64.1601, and 68.318, are amended as set forth in the attached Rule Changes. Effective August 25, 2003, except for 47 CFR 64.1200(c)(2), which contains the national do-not-call rules, which will go into effect on October 1, 2003; 47 CFR 64.1200(a)(5) and (6) which contain the call abandonment rules, which will go into effect on October 1, 2003; 47 CFR 64.1601(e), which contains the caller ID rules, which will go into effect on January 29, 2004; and §§64.1200(a)(3)(i), (d)(1), (d)(3), (d)(6), (f)(3) and (g)(1), which contain information collection requirements under the Paperwork Reduction Act (PRA) that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date for those sections.

199. The comments addressing the applicability of the informal complaint rules to telemarketers ARE INCORPORATED into CI Docket 02–32.

200. The Commission's Consumer & Governmental Affairs Bureau shall have authority to issue any reports to Congress as required by the Do-Not-Call Implementation Act.

201. The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 64 and 68

Telephone.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends parts 64 and 68 of the Code of Federal Regulations as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read:

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, and 254(k) unless otherwise noted.

■ 2. Subpart L is amended by revising the subpart heading to read as follows:

* * * * *

Subpart L—Restrictions on Telemarketing and Telephone Solicitation

* * * * *

■ 3. Section 64.1200 is revised to read as follows:

§ 64.1200 Delivery restrictions.

(a) No person or entity may: (1) Initiate any telephone call (other than a call made for emergency purposes or made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice,

(i) To any emergency telephone line, including any 911 line and any emergency line of a hospital, medical physician or service office, health care facility, poison control center, or fire protection or law enforcement agency;

(ii) To the telephone line of any guest room or patient room of a hospital, health care facility, elderly home, or similar establishment; or

(iii) To any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call.

(2) Initiate any telephone call to any residential line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call,

(i) Is made for emergency purposes,

(ii) Is not made for a commercial purpose,

(iii) Is made for a commercial purpose but does not include or introduce an unsolicited advertisement or constitute a telephone solicitation,

(iv) Is made to any person with whom the caller has an established business relationship at the time the call is made, or

(v) Is made by or on behalf of a tax-exempt nonprofit organization.

(3) Use a telephone facsimile machine, computer, or other device to send an unsolicited advertisement to a telephone facsimile machine,

(i) For purposes of paragraph (a)(3) of this section, a facsimile advertisement is not "unsolicited" if the recipient has granted the sender prior express invitation or permission to deliver the advertisement, as evidenced by a signed, written statement that includes the facsimile number to which any advertisements may be sent and clearly indicates the recipient's consent to receive such facsimile advertisements from the sender.

(ii) A facsimile broadcaster will be liable for violations of paragraph (a)(3) of this section if it demonstrates a high degree of involvement in, or actual notice of, the unlawful activity and fails to take steps to prevent such facsimile transmissions.

(4) Use an automatic telephone dialing system in such a way that two or more telephone lines of a multi-line business are engaged simultaneously.

(5) Disconnect an unanswered telemarketing call prior to at least 15 seconds or four (4) rings.

(6) Abandon more than three percent of all telemarketing calls that are answered live by a person, measured over a 30-day period. A call is "abandoned" if it is not connected to a live sales representative within two (2) seconds of the called person's completed greeting. Whenever a sales representative is not available to speak with the person answering the call, that person must receive, within two (2) seconds after the called person's completed greeting, a prerecorded identification message that states only the name and telephone number of the business, entity, or individual on whose behalf the call was placed, and that the call was for "telemarketing purposes." The telephone number so provided must permit any individual to make a do-not-call request during regular business hours for the duration of the telemarketing campaign. The telephone number may not be a 900 number or any other number for which charges exceed local or long distance transmission charges. The seller or telemarketer must maintain records establishing compliance with paragraph (a)(6) of this section.

(i) A call for telemarketing purposes that delivers an artificial or prerecorded voice message to a residential telephone line that is assigned to a person who either has granted prior express consent for the call to be made or has an established business relationship with the caller shall not be considered an abandoned call if the message begins within two (2) seconds of the called person's completed greeting.

(ii) Calls made by or on behalf of tax-exempt nonprofit organizations are not covered by paragraph (a)(6) of this section.

(7) Use any technology to dial any telephone number for the purpose of determining whether the line is a facsimile or voice line.

(b) All artificial or prerecorded telephone messages shall:

(1) At the beginning of the message, state clearly the identity of the business, individual, or other entity that is responsible for initiating the call. If a business is responsible for initiating the call, the name under which the entity is registered to conduct business with the State Corporation Commission (or comparable regulatory authority) must be stated, and

(2) During or after the message, state clearly the telephone number (other than that of the autodialer or prerecorded message player that placed the call) of such business, other entity,

or individual. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges. For telemarketing messages to residential telephone subscribers, such telephone number must permit any individual to make a do-not-call request during regular business hours for the duration of the telemarketing campaign.

(c) No person or entity shall initiate any telephone solicitation, as defined in paragraph (f)(9) of this section, to:

(1) Any residential telephone subscriber before the hour of 8 a.m. or after 9 p.m. (local time at the called party's location), or

(2) A residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the federal government. Such do-not-call registrations must be honored for a period of 5 years. Any person or entity making telephone solicitations (or on whose behalf telephone solicitations are made) will not be liable for violating this requirement if:

(i) It can demonstrate that the violation is the result of error and that as part of its routine business practice, it meets the following standards:

(A) *Written procedures.* It has established and implemented written procedures to comply with the national do-not-call rules;

(B) *Training of personnel.* It has trained its personnel, and any entity assisting in its compliance, in procedures established pursuant to the national do-not-call rules;

(C) *Recording.* It has maintained and recorded a list of telephone numbers that the seller may not contact;

(D) *Accessing the national do-not-call database.* It uses a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than three months prior to the date any call is made, and maintains records documenting this process; and

(E) *Purchasing the national do-not-call database.* It uses a process to ensure that it does not sell, rent, lease, purchase or use the national do-not-call database, or any part thereof, for any purpose except compliance with this section and any such state or federal law to prevent telephone solicitations to telephone numbers registered on the national database. It purchases access to the relevant do-not-call data from the administrator of the national database and does not participate in any arrangement to share the cost of accessing the national database, including any arrangement with telemarketers who may not divide the costs to access the national database among various client sellers; or

(ii) It has obtained the subscriber's prior express invitation or permission. Such permission must be evidenced by a signed, written agreement between the consumer and seller which states that the consumer agrees to be contacted by this seller and includes the telephone number to which the calls may be placed; or

(iii) The telemarketer making the call has a personal relationship with the recipient of the call.

(d) No person or entity shall initiate any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of that person or entity. The procedures instituted must meet the following minimum standards:

(1) *Written policy.* Persons or entities making calls for telemarketing purposes must have a written policy, available upon demand, for maintaining a do-not-call list.

(2) *Training of personnel engaged in telemarketing.* Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.

(3) *Recording, disclosure of do-not-call requests.* If a person or entity making a call for telemarketing purposes (or on whose behalf such a call is made) receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the request and place the subscriber's name, if provided, and telephone number on the do-not-call list at the time the request is made. Persons or entities making calls for telemarketing purposes (or on whose behalf such calls are made) must honor a residential subscriber's do-not-call request within a reasonable time from the date such request is made. This period may not exceed thirty days from the date of such request. If such requests are recorded or maintained by a party other than the person or entity on whose behalf the telemarketing call is made, the person or entity on whose behalf the telemarketing call is made will be liable for any failures to honor the do-not-call request. A person or entity making a call for telemarketing purposes must obtain a consumer's prior express permission to share or forward the consumer's request not to be called to a party other than the person or entity on whose behalf a telemarketing call is made or an affiliated entity.

(4) *Identification of sellers and telemarketers.* A person or entity making a call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(5) *Affiliated persons or entities.* In the absence of a specific request by the subscriber to the contrary, a residential subscriber's do-not-call request shall apply to the particular business entity making the call (or on whose behalf a call is made), and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.

(6) *Maintenance of do-not-call lists.* A person or entity making calls for telemarketing purposes must maintain a record of a caller's request not to receive further telemarketing calls. A do-not-call request must be honored for 5 years from the time the request is made.

(7) Tax-exempt nonprofit organizations are not required to comply with 64.1200(d).

(e) The rules set forth in paragraph (c) and (d) of this section are applicable to any person or entity making telephone solicitations or telemarketing calls to wireless telephone numbers to the extent described in the Commission's Report and Order, CG Docket No. 02–278, FCC 03–153, "Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991."

(f) As used in this section:

(1) The terms *automatic telephone dialing system* and *autodialer* mean equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers.

(2) The term *emergency purposes* means calls made necessary in any situation affecting the health and safety of consumers.

(3) The term *established business relationship* means a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber's purchase or transaction with the entity within the eighteen (18) months immediately preceding the date of the telephone call or on the basis of the subscriber's inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the call, which relationship has not been previously terminated by either party.

(i) The subscriber's seller-specific do-not-call request, as set forth in paragraph (d)(3) of this section, terminates an established business relationship for purposes of telemarketing and telephone solicitation even if the subscriber continues to do business with the seller.

(ii) The subscriber's established business relationship with a particular business entity does not extend to affiliated entities unless the subscriber would reasonably expect them to be included given the nature and type of goods or services offered by the affiliate and the identity of the affiliate.

(4) The term *facsimile broadcaster* means a person or entity that transmits messages to telephone facsimile machines on behalf of another person or entity for a fee.

(5) The term *seller* means the person or entity on whose behalf a telephone call or message is initiated for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(6) The term *telemarketer* means the person or entity that initiates a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(7) The term *telemarketing* means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(8) The term *telephone facsimile machine* means equipment which has the capacity to transcribe text or images, or both, from paper into an electronic signal and to transmit that signal over a regular telephone line, or to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper.

(9) The term *telephone solicitation* means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message:

(i) To any person with that person's prior express invitation or permission;

(ii) To any person with whom the caller has an established business relationship; or

(iii) By or on behalf of a tax-exempt nonprofit organization.

(10) The term *unsolicited advertisement* means any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission.

(11) The term *personal relationship* means any family member, friend, or acquaintance of the telemarketer making the call.

(g) Beginning January 1, 2004, common carriers shall:

(1) When providing local exchange service, provide an annual notice, via an insert in the subscriber's bill, of the right to give or revoke a notification of an objection to receiving telephone solicitations pursuant to the national do-not-call database maintained by the federal government and the methods by which such rights may be exercised by the subscriber. The notice must be clear and conspicuous and include, at a minimum, the Internet address and toll-free number that residential telephone subscribers may use to register on the national database.

(2) When providing service to any person or entity for the purpose of making telephone solicitations, make a one-time notification to such person or entity of the national do-not-call requirements, including, at a minimum, citation to 47 CFR 64.1200 and 16 CFR 310. Failure to receive such notification will not serve as a defense to any person or entity making telephone solicitations from violations of this section.

(h) The administrator of the national do-not-call registry that is maintained by the federal government shall make the telephone numbers in the database available to the States so that a State may use the telephone numbers that relate to such State as part of any database, list or listing system maintained by such State for the regulation of telephone solicitations.

■ 4. Section 64.1601 is amended by adding paragraph (e) to read as follows:

§ 64.1601 Delivery requirements and privacy restrictions.

* * * * *

(e) Any person or entity that engages in telemarketing, as defined in section 64.1200(f)(7) must transmit caller identification information.

(1) For purposes of this paragraph, caller identification information must include either CPN or ANI, and, when available by the telemarketer's carrier, the name of the telemarketer. It shall not be a violation of this paragraph to substitute (for the name and phone number used in, or billed for, making the call) the name of the seller on behalf of which the telemarketing call is placed and the seller's customer service telephone number. The telephone number so provided must permit any individual to make a do-not-call request during regular business hours.

(2) Any person or entity that engages in telemarketing is prohibited from blocking the transmission of caller identification information.

(3) Tax-exempt nonprofit organizations are not required to comply with this paragraph.

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

■ 5. The authority citation for part 68 continues to read:

Authority: 47 U.S.C. 154, 303.

■ 6. Section 68.318 is amended by revising paragraph (d) to read as follows:

§ 68.318 Additional limitations.

* * * * *

(d) *Telephone facsimile machines; Identification of the sender of the message.* It shall be unlawful for any person within the United States to use a computer or other electronic device to send any message via a telephone facsimile machine unless such person clearly marks, in a margin at the top or bottom of each transmitted page of the message or on the first page of the transmission, the date and time it is sent and an identification of the business, other entity, or individual sending the message and the telephone number of the sending machine or of such business, other entity, or individual. If a facsimile broadcaster demonstrates a high degree of involvement in the sender's facsimile messages, such as supplying the numbers to which a message is sent, that broadcaster's name, under which it is registered to conduct business with the State Corporation Commission (or comparable regulatory authority), must be identified on the facsimile, along with the sender's name. Telephone facsimile machines manufactured on and after December 20, 1992, must clearly mark such identifying information on each transmitted page.

* * * * *

[FR Doc. 03–18766 Filed 7–24–03; 8:45 am]

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Federal Register

Friday,
July 25, 2003

Part III

Department of Labor

Occupational Safety and Health Administration

Voluntary Protection Programs To Provide Safe and Healthful Working Conditions, Draft Revisions; Notice

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Voluntary Protection Programs To Provide Safe and Healthful Working Conditions, Draft Revisions; Notice

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of proposed changes to the program; request for comments.

SUMMARY: The Occupational Safety and Health Administration requests comments on a proposed revision to its Voluntary Protection Programs (VPP) that would change the benchmark injury and illness rates used to determine whether VPP applicants and participants meet the rate requirements for the VPP Star Program. This change would also apply to the requirements for construction applicants' qualification for the Merit Program.

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be postmarked by August 25, 2003.

Facsimile and electronic transmission: Your comments must be sent by August 25, 2003.

ADDRESSES: *Regular mail, express delivery, hand-delivery, and messenger service:* You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. C–06, Room N–2625, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery, and messenger service. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., EST.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this document, Docket No. C–06, in your comments.

Electronic: You may submit comments, but not attachments, through OSHA's Web site at the following address: *http://ecomments.osha.gov*. Information such as studies and journal articles must be submitted in triplicate hard copy to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject, and docket number so we can attach them to your comments.

Access to comments and submissions: OSHA will make all comments and submissions available for inspection and copying at the OSHA Docket Office at the above address. Comments, and submissions relating to this document that are not protected by copyright, will also be available on OSHA's website. OSHA cautions you about submitting personal information such as Social Security numbers and birth dates. Contact the OSHA Docket Office at (202) 693–2350 for information about materials not available through the OSHA website and for assistance in using the website to locate docket submissions.

FOR FURTHER INFORMATION CONTACT: Cathy Oliver, Director, Office of Partnerships and Recognition, Occupational Safety and Health Administration, Room N3700, 200 Constitution Ave. NW., Washington, DC 20210, telephone (202) 693–2213. Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's website, *http://www.osha.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

The Voluntary Protection Programs (VPP), adopted by OSHA in **Federal Register** Notice 47 FR 29025, July 2, 1982, have established the efficacy of cooperative action among government, industry, and labor to address worker safety and health issues and expand worker protection. VPP participation requirements center on comprehensive management systems with active employee involvement to prevent or control the safety and health hazards at the worksite. Employers who qualify generally view OSHA standards as a minimum level of safety and health performance and set their own more stringent standards where necessary for effective employee protection.

One way that OSHA determines the qualification of applicants and the continuing qualification of participants in the VPP Star Program, the most challenging participation category, is to compare their injury and illness rates to industry rates—benchmarks—published annually by the Bureau of Labor Statistics (BLS). For Star eligibility, rates must be below the benchmark BLS rates. This notice proposes to change the benchmark rates that OSHA employs. Until now, the benchmarks have been two rates obtained from the most recent year's industry averages for nonfatal injuries and illnesses. OSHA proposes to now require that, to qualify for Star, applicants' and participants' rates must be below the two BLS industry rates for at least 1 of the 3 most recent years published. This change would also apply to the requirements for construction applicants' qualification for the Merit Program.

B. Statutory Framework

The Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.* (hereinafter referred to as the Act or the OSH Act), was enacted "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources. * * *"

Section 2(b) specifies the measures by which the Congress would have OSHA carry out these purposes. They include the following provisions that establish the legislative framework for the Voluntary Protection Programs:

* * * (1) by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

* * * (4) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;

* * * (5) * * * by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;

* * * (13) by encouraging joint labor-management efforts to reduce injuries and disease arising out of employment.

II. Discussion of the Proposed Change

OSHA has been concerned for some time about the effect on some VPP applicants and participants of substantial fluctuations from year to year in a limited number of BLS rates. For example, worksites in the manufacturing classification Petroleum and Coal Products/Petroleum Refining (Standard Industrial Classification—SIC—Code 29/291) were compared with published average total recordable case incidence rates (TCIR) of 2.50 in 1999, 3.70 in 2000, and 1.40 in 2001. This represented a rate change from 1999 to 2000 of plus 32 percent, and from 2000 to 2001 of minus 62 percent. Similarly, worksites in the manufacturing classification Sanitary Paper Products (SIC 2676) were compared with a published average TCIR of 7.00 in 1999, 4.50 in 2000, and 5.40 in 2001. This represented a 20 percent increase from 1999 to 2000, and a 35 percent decrease from 2000 to 2001.

The effect of these rate fluctuations is to create an unpredictable moving target that, in any particular year, may not fairly represent the injury and illness situation in an industry. It certainly creates a difficult dilemma for OSHA if the agency must approve one worksite and disapprove another when both have similarly excellent safety and health management systems and similar injury and illness experience. This situation occurs when OSHA compares one worksite against a 2000 benchmark rate, for example, and a similarly performing site against an unreasonably divergent 2001 benchmark rate.

There is no easy solution to this problem. Injury and illness rates are useful tools in judging how well a worksite is protecting its employees. OSHA believes, however, that the goals of VPP are not well served when worksites that have established excellent protective systems and that are steadily improving their injury and illness rates fail to obtain Star approval because of statistical anomalies in national rates.

After exploring various ways to address this problem, OSHA proposes to change the way it compares VPP applicants' and participants' injury and illness rates to the national rates that BLS publishes. The agency would no longer compare the individual worksite rates to the most recently published BLS industry rates at the most precise level available (at this time usually three or four digits). Instead, OSHA would look at the most recent 3 years of BLS rates (at the most precise level available each year) and require that worksite rates be below at least 1 of those 3 years of rates to qualify or continue to qualify for Star participation.

This proposed change might have the effect of reducing somewhat the weight OSHA heretofore has assigned to rates within VPP. Rates will continue to play a significant role, however. They are one indicator of how well a safety and health management system is operating and of how well a VPP candidate or participant is fulfilling the requirement for continuous improvement. In addition to examining a worksite's injury and illness rates, OSHA will continue to carefully evaluate how well a site is implementing the required major elements of Management Leadership and Employee Involvement; Worksite Analysis; Hazard Prevention and Control; and Safety and Health Training.

By going to the BLS website, a worksite aspiring to qualify for Star or to continue its Star qualification will be able to easily determine the rate against which its own rate will be compared. If there is a downward trend in the industry, that also will be apparent, but a sudden, inexplicably large drop in the BLS's industry rate will not have the impact it currently has for some VPP participants and applicants. And while a sudden, inexplicably large increase in the BLS's industry rate may make it easier for a worksite to meet the Star rate requirements, the program's many other, rigorous requirements will continue to ensure that only worksites with excellent safety and health management systems gain VPP Star approval.

To implement this revision, OSHA proposes changes in the following sections of the VPP:

III.F.4.a.(1) This is the basic Star rate requirement.

III.F.4.a.(2)(a) This is the alternative rate calculation available to qualifying small businesses.

III.H.2.b.(2) This deals with construction applicants' qualification for VPP's Merit Program.

III. Proposed Changes to the Voluntary Protection Programs

A. The Star Rate Requirement.

The beginning of III.F.4.a.(1) would change to:

"For site employees—Two rates reflecting the experience of the most recent 3 calendar years must be below at least 1 of the 3 most recent years of specific industry national averages for nonfatal injuries and illnesses (at the most precise level available, either three or four digits) published by the Bureau of Labor Statistics (BLS)."

B. The Alternative Rate Calculation for Qualifying Small Businesses

The complete wording of III.F.4.a.(2)(a) would change to:

"To determine whether the employer qualifies for the alternative calculation method, do the following:

- Using the most recent employment statistics (hours worked in the most recent calendar year), calculate a hypothetical total recordable case incidence rate for the employer assuming that the employer had two cases during the year;
- Compare that hypothetical rate to the 3 most recently published years of BLS combined injury/illness total recordable case incidence rates for the industry; and
- If the hypothetical rate (based on two cases) is equal to or higher than the national average for the firm's industry in at least 1 of the 3 years, the employer qualifies for the alternative calculation method."

C. Construction Applicants' Qualification for Merit

The beginning of III.H.2.b.(2) would change to:

"For construction, if the incidence rates for the applicant site are not below the industry averages as required for Star, the applicant company must demonstrate that the company-wide 3-year rates are below at least 1 of the 3 most recently published years of BLS rates for the industry (at the three-digit level)."

Signed at Washington, DC this 8th day of July 2003.

John L. Henshaw,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 03–18928 Filed 7–24–03; 8:45 am]

BILLING CODE 4510–26–P

Federal Register

Friday,
July 25, 2003

Part IV

Department of Education

Special Demonstration Programs—Model Demonstrations To Improve the Literacy and Employment Outcomes of Individuals With Disabilities; Notices

DEPARTMENT OF EDUCATION

RIN 1820–ZA29

Special Demonstration Programs—Model Demonstrations To Improve the Literacy and Employment Outcomes of Individuals With Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priorities.

SUMMARY: The Assistant Secretary for the Office of Special Education and Rehabilitative Services (OSERS) proposes priorities under the Special Demonstration Programs. The Assistant Secretary may use these priorities in fiscal year (FY) 2003 and in later years. We take this action to focus attention on the adult literacy needs of individuals with disabilities pursuing employment under the State Vocational Rehabilitation Services Program. We intend that projects funded under these priorities will demonstrate that certain specific literacy services may raise the literacy levels and earnings of individuals with disabilities compared to individuals who receive the usual vocational rehabilitation (VR) services.

DATES: We must receive your comments on or before August 25, 2003.

ADDRESSES: Address all comments about these proposed priorities to Susan-Marie Marsh, U.S. Department of Education, 400 Maryland Avenue, SW., Switzer Building, room 3316, Washington, DC 20202–2641. If you prefer to send your comments through the Internet, use the following address: *Susan-Marie.Marsh@ed.gov*.

You must include the term "Model Demonstrations to Improve the Literacy and Employment Outcomes of Individuals With Disabilities" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Susan-Marie Marsh. Telephone: (202) 358–2796 or via Internet: *Susan-Marie.Marsh@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–8133.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed priorities. We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed priorities in room 3038, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern Time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

We will announce the final priorities in a notice in the **Federal Register**. We will determine the final priorities after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use these proposed priorities, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priorities

Background

Preliminary data from the *Longitudinal Study of the Vocational Rehabilitation Services Program* suggest reading achievement levels are highly positively correlated with earnings. Data also indicate that VR agencies provide basic literacy services to only one percent of the VR population. As a result of these findings, the Rehabilitation Services Administration (RSA) is testing two instructional reading curricula: The Lindamood-Bell Language Program (LBLP) and the Wilson Reading System® (WRS). Both curricula have proven effective with adults with disabilities. However, the impact of these curricula on the literacy skills of adults with disabilities has not been assessed, and neither curriculum has been studied in a VR setting by RSA. Thus, RSA is interested in testing the impact of each curriculum on the literacy of adults with disabilities against the traditional services provided by VR.

Both curricula are phonics-based, but their instructional models differ. The WRS, based on the principles of Orton-Gillingham methodology, focuses on decoding and spelling for adults who have been unable to learn encoding and decoding through traditional basal methods, whole language, or other phonics programs and who require multisensory language instruction to master the phonological coding system of English. Teaching models of direct instruction with drill are implemented. The WRS Web site address is: *http://www.WilsonLanguage.com*.

The LBLP is used to develop students' cognitive and linguistic abilities in the areas of phonemic and orthographic awareness (symbol imagery) for decoding and spelling, and concept imagery for vocabulary development and oral and written language comprehension. The curriculum is student-driven, sequential, and constructivist-based, aimed at ultimately developing students' thinking or reasoning skills necessary for effective language processing (including reading), including all those areas predictive for reading success, including phonemic awareness, phonics, fluency, vocabulary, and comprehension. All of LBLP's instructional approaches use a Socratic pedagogy whereby the teacher leads the learner or learners in homogenous groups, via a series of diagnostically based questions toward the area or areas needing to be stimulated. Instruction is customized and relies heavily on appropriate assessments from the most basic linguistic units all the way through the higher level cognitive and linguistic functions including metacognition, critical thinking, language processing, and inferential thinking. Further information may be found on the Internet at the following Web site: *http://www.lblp.com*.

An independent evaluator, selected after awards are made, will work with grantees to ensure that their projects are designed and implemented in a manner that will allow for rigorous evaluation, including the assignment of project participants into literacy intervention and control groups.

Proposed Priority—Model Demonstrations To Improve the Literacy Skills and Employment Outcomes of Individuals With Disabilities

This priority supports projects that demonstrate the effect literacy services and instruction have on improving literacy skills of targeted groups of VR consumers and the effect on their employment and earnings outcomes. Projects must demonstrate how VR offices can effectively integrate literacy services into their service delivery systems and can best provide literacy services and instruction to a targeted group of VR consumers.

Evaluation

Projects must assure cooperation with RSA and RSA's outside evaluator in meeting the evaluation needs of the project and RSA. Project cooperation with RSA's outside evaluator must include the following:

1. The assessment of all entering VR consumers in the designated project service area using brief methodologically acceptable screening instruments for learning disabilities and literacy levels to determine their eligibility for the project. The assessment does not include VR consumers with evidence of mental retardation in their case files.

2. The assignment of approximately one-half of the eligible project participants into a literacy intervention group who would receive the additional services and benefits of the project and approximately one-half of the project participants into a control group who would not receive projects services. However, no individual in the control group can be denied literacy services if his or her Individualized Plan for Employment (IPE) requires those services. Furthermore, those services may not be provided or paid for under these demonstration grants.

3. The use of diagnostic tests and effective assessments of reading proficiency consistent with the procedures of RSA's outside evaluator.

4. The administration of a pre- and post-test to project participants as directed by RSA's outside evaluator.

Interventions

An applicant for this competition must choose either the LBLP or the WRS for its curriculum and provide a rationale for its choice (*e.g.*, the local adult literacy provider already uses WRS). However, an applicant may also choose to describe its capacity to use the other curriculum if it would be willing to substitute the alternative curriculum as its curriculum in order to enhance its ability to compete. RSA will select grantees in a manner to ensure that each curriculum intervention is adequately represented in the applications selected for funding.

Project Participants

The following participant research criteria must be met:

1. Projects must have a sufficient number of individuals in the control and experimental groups so that the effects of the literacy intervention can be adequately measured.

2. Project participants must be eligible to receive VR services by the State VR agency and have, or be in the process of developing, an IPE.

3. All project participants (control and experimental groups) must be given an informed choice with respect to participation in the demonstration project consistent with the human subjects provisions as included in the application package.

4. Project participants for the experimental and control groups must be selected using the requisite instrument. RSA requires use of the *Learning Needs Screening Tool*, a validated and public domain screener, which can be incorporated into the VR intake process. Copies of the screener as well as further information may be found on the Internet at the following Web site: *http://www.seakingwdc.org/ld/WaScreenTool.htm*.

Use of Funds

Funds may be used only for project costs and related activities and may not be used to supplant the cost of services ordinarily provided by the VR program. Related activities may include, but are not limited to—(1) counselor training or orientation, including counselor training on administration of literacy assessment instruments, (2) educational assessment and evaluation, (3) research expenses, (4) support services such as consumer transportation, childcare, and facilitation for attendance and retention, (5) instructional materials, (6) curriculum and instruction, (7) professional development for instructors and administrators, (8) assistive technology devices and services, (9) instructional technology, and (10) consultants.

Invitational Priority

Within the priority for this competition, we are particularly interested in applications that meet the following invitational priority:

Establishing partnerships with other organizations that can assist in carrying out their respective projects related to improving literacy and employability skills of adults with disabilities.

These organizations might include Adult Education and Family Literacy (AEFL) programs, institutions of higher education, volunteer-based literacy programs, community rehabilitation programs, nonprofit or for-profit vendors of literacy services, and other workforce agencies. Applicants under this invitational priority must meet the requirements in 34 CFR 75.127 through 75.129, which governs how partnerships and other groups of eligible parties may submit applications and conduct funded projects.

Under 34 CFR 75.105(c)(1) we do not give an application that meets the invitational priority a competitive or absolute preference over other applications.

Executive Order 12866

This notice of proposed priorities has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priorities are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priorities, we have determined that the benefits of the proposed priorities justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

The Assistant Secretary has determined this project to be beneficial to the ongoing research and further assistance of VR customers. No other direct financial contribution is expected of the grantee.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program. *Applicable Program Regulations:* 34 CFR part 373.

Electronic Access to This Document

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(Catalog of Federal Domestic Assistance Number 84.235P Special Demonstration Programs—Model Demonstration Projects to Improve the Literacy and Employment Outcomes of Individuals With Disabilities)

Program Authority: 29 U.S.C. 773(b).

Dated: July 22, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–19013 Filed 7–24–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.235P]

Special Demonstration Programs—Model Demonstrations To Improve the Literacy and Employment Outcomes of Individuals With Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: Special Demonstration Programs support projects that expand and improve the provision of rehabilitation and other services authorized under the Rehabilitation Act of 1973, as amended (Act), or further the purposes of the Act in empowering individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion and integration into society. This competition focuses attention on the adult literacy needs of individuals with learning disabilities pursuing employment under the State Vocational Rehabilitation Services Program. We intend that projects funded under these priorities will demonstrate that certain specific literacy services may raise the literacy levels and earnings of individuals with disabilities compared to individuals who receive the usual vocational rehabilitation (VR) services.

Eligible Applicants: State VR agencies.

Applications Available: July 28, 2003.

Deadline for Transmittal of Applications: August 27, 2003.

Deadline for Intergovernmental Review: September 26, 2003.

Estimated Available Funds: $1,600,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 8. Eight projects will be funded in total. Four projects will be funded under each of the two reading curricula described in the Background section of the notice of proposed priorities published elsewhere in this issue of the **Federal Register**.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. It is suggested that you limit Part III to 35 pages.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 97, and 99. (b) The regulations for this program in 34 CFR part 373.

Priorities

Model Demonstrations To Improve the Literacy and Employment Outcomes of Individuals With Disabilities

It is the policy of the Department of Education not to solicit applications before the publication of final priorities. However, in this case it is essential to solicit applications on the basis of the notice of proposed priorities published elsewhere in this issue of the **Federal Register**, because the Department's authority to obligate these funds will expire on September 30, 2003. Applicants should base their applications on the proposed priorities. If changes are made in the final notice in response to public comments or other considerations, applicants will be given an opportunity to revise or resubmit their applications.

For FY 2003, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

Invitational Priority

The invitational priority in the notice of proposed priorities published elsewhere in this issue of the **Federal Register** also applies to this competition.

Under 34 CFR 75.105(c)(1) we do not give an application that meets the invitational priority a competitive or absolute preference over other applications.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Special Demonstration Programs—CFDA number 84.235P is one of the programs included in the pilot project. If you are an applicant under the Special Demonstration Programs, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within 3 working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the Special Demonstration Programs and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of 1 business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

1. You must be a registered user of e-Application, and have initiated an e-Application for this competition; and
2. (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Special Demonstration Programs at: *http://e-grants.ed.gov.*

We have included additional information about the e-Application pilot project (*see* Parity Guidelines between Paper and Electronic Applications) in the application package.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html.*

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.235P.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Susan-Marie Marsh, U.S. Department of Education, 400 Maryland Avenue, SW., room 3316, Switzer Building, Washington, DC 20202–2650. Telephone: (202) 358–2796, or via Internet: *susan-marie.marsh.@ed.gov.*

If you use a TDD, you may call FIRS at 1–800–877–8339. Individuals with disabilities may obtain this document in an alternative format (e.g. Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in the preceding paragraph.

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Program Authority: 29 U.S.C. 773(b).

Dated: July 22, 2003.

Loretta Petty Chittum,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–19014 Filed 7–24–03; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV03–920–1 FR]

Kiwifruit Grown in California; Relaxation of Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises pack requirements currently prescribed for California kiwifruit under the California kiwifruit marketing order (order). The order regulates the handling of kiwifruit grown in California and is administered locally by the Kiwifruit Administrative Committee (Committee). This rule removes the requirement that the count must equal three times the size designation for shipments in volume filled containers in which the quantity is specified by count; continues to suspend, for the 2003–04 season, the standard packaging requirement that requires volume filled containers of kiwifruit designated by weight to hold 22-pounds (10-kilograms) net weight of kiwifruit, unless such containers hold less than 10-pounds or more than 35-pounds net weight of kiwifruit; and exempts the "Hort16A" kiwifruit variety from the "tightly packed" standard pack requirement. These changes were recommended by the Committee and are expected to help handlers compete more effectively in the marketplace, better meet the needs of retailers, and to improve grower returns.

EFFECTIVE DATE: This final rule becomes effective July 29, 2003.

FOR FURTHER INFORMATION CONTACT: Rose Aguayo, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 920 as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule revises pack requirements currently prescribed for California kiwifruit under the order. This rule: (1) Removes the requirement that the count must equal three times the size designation for shipments in volume filled containers in which the quantity is specified by count; (2) continues to suspend, for the 2003–04 season, the standard packaging requirement that requires volume filled containers of kiwifruit designated by weight to hold 22-pounds (10-kilograms) net weight of kiwifruit, unless such containers hold less than 10-pounds or more than 35-pounds net weight of kiwifruit; and (3) exempts the "Hort16A" kiwifruit variety from the "tightly packed" standard pack requirement. The Committee recommended these changes at its March 12, 2003, meeting. This rule is expected to help handlers compete more effectively in the marketplace, better meet the needs of retailers, and to improve grower returns.

Volume Filled Containers Designated by Count

Under the terms of the order, fresh market shipments of kiwifruit grown in California are required to be inspected and meet grade, size, maturity, pack, and container requirements.

Section 920.52(a)(1) and (3) of the order authorizes the establishment of pack requirements for California kiwifruit.

Section 920.302(a)(4) of the order's administrative rules and regulations outlines specific pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(iv) provides that for volume filled containers in which the quantity is specified by count, the count must equal three times the size designation in accordance with tolerances specified in 7 CFR 51.2328(c)(2) of the U.S. Standards for Grades of Kiwifruit (Grade Standards). For example, if the fruit has a size designation of "30" marked on the container, then three times the size designation or 90 kiwifruit must be packed into the container and the container must be marked with "90 count."

During the early 1990's handlers packed kiwifruit into several styles of containers: trays, bins, consumer packs, and volume filled containers. (Volume filled containers are those in which kiwifruit are loosely packed without cell

compartments, cardboard fillers, or molded trays). Volume filled containers were designated by size and also either net weight or count. It was a customary industry practice to pack the equivalent of three single layer trays into a volume filled container and to specify the quantity of the kiwifruit placed into the volume filled container by count.

In 1993, the Committee recommended and the USDA established a pack requirement under the order's administrative rules and regulations which specified that for shipments in volume filled containers in which the quantity was specified by count, the count must equal three times the size designation in accordance with tolerances specified in 7 CFR 51.2328(c)(2) of the Grade Standards, (58 FR 43243, April 16, 1993). This requirement was established to ensure that volume filled containers designated by size and count held a consistent number of kiwifruit.

During the 1993–94 season handlers realized that it was more labor intensive and more expensive to pack volume filled containers designated by count than by net weight. They also realized that the difference in the average FOB values for each type of volume filled container was negligible. Retailers were unwilling to pay a higher price for volume filled containers designated by count and handlers were unwilling to pack these more labor-intensive and more expensive containers, if they could not recoup the extra handling costs. As a result, the amount of kiwifruit packed into volume filled containers designated by count and size declined to 2 percent during the 1995–96 season. While kiwifruit handlers have not used volume filled containers designated by count and size since the 1995–96 season, they continue to use volume filled containers designated by net weight and size.

Recently, retailers have requested new, smaller containers of kiwifruit designated by count and size. Some handlers in the industry, including those that are packing a new variety, "Hort16A", want the flexibility to pack these smaller containers of kiwifruit. These handlers are currently unable to meet retailer requests for smaller volume filled containers of kiwifruit, as the order's administrative rules and regulations require the count to equal three times the size designation in volume filled containers in which the quantity is specified by count. For example, if a retailer requests containers of Size 20 fruit with 50 kiwifruit in each container, the handler will not be able to meet the retailer's requirements because the order's administrative rules and regulations require that 60 kiwifruit (a count equal to three times the size designation) be packed into the container.

Thus, the Committee, at its March 12, 2003, meeting, unanimously recommended removing this requirement as it is obsolete and no longer meets the industry's needs. This relaxation in pack requirements is expected to enable handlers to compete more effectively in the marketplace and to improve grower returns.

Continued Suspension of Standard Packaging Requirement for Volume Filled Containers Designated by Weight

Section 920.52(a)(3) of the order authorizes the establishment of weight requirements for containers of California kiwifruit.

Section 920.302(a)(4) of the order's administrative rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Prior to the issuance of an interim final rule on August 22, 2002 (67 FR 54327), § 920.302 (a)(4)(v) specified that all volume filled containers of kiwifruit designated by weight had to hold 22-pounds (10-kilograms) net weight of kiwifruit unless such containers hold less than 10-pounds or more than 35-pounds net weight of kiwifruit. This standard packaging requirement was unanimously recommended by the Committee and established under the order's administrative rules and regulations by a final rule issued on October 25, 1994, (59 FR 53563).

During the 1994–95 season 52 percent of the total crop was packed into volume filled containers. The percentage of the total crop packed into volume filled containers increased to 85 percent during the 2001–02 season. In 2001–02, imports from the Northern hemisphere (Greece, Italy, and France) totaled approximately 17 percent of the U.S. market share. The majority of imported kiwifruit was shipped in 19.8-pound (9-kilogram) net weight volume filled containers, whereas the order limited California handlers to 22-pound (10-kilogram) net weight volume filled containers. Retailers do not differentiate between imported 19.8-pound (9-kilogram) and 22-pound (10-kilogram) net weight volume filled containers from California. Because buyers pay the same price for each container, the effect is not favorable for California handlers.

At its April 9, 2002, meeting, the Committee unanimously recommended and the USDA approved suspending the standardized packaging requirement of 22-pounds (10-kilograms) net weight for volume filled containers for the 2002–03 season. This suspension was implemented by an interim final rule published on August 22, 2002 (67 FR 54327) and will be in effect until July 31, 2003. This was made final on November 21, 2002 (67 FR 76140).

To date during the 2002–03 season, handlers shipped 85 percent of the crop in volume filled containers (73 percent in 22-pounds (10-kilograms) net weight volume filled containers, 12 percent in 19.8-pounds (9-kilograms) net weight containers, and less than 1 percent in volume filled containers of other weights).

At its March 12, 2003, meeting, the Committee discussed three options for volume filled containers: (1) Establishing a standard packaging requirement of 19.8-pounds (9-kilograms) net weight, (2) reestablishing a standard packaging requirement of 22-pounds (10-kilograms) net weight and (3) continuing the suspension of the standardized packaging requirement for the 2003–04 season, thus allowing flexibility to pack any net weight volume filled container. In its deliberations, the Committee discussed grower returns and the ability to meet buyer's preferences for alternate containers. Committee members mentioned that 10 percent more containers could be packed if the standard were set at 19.8-pounds (9-kilograms) net weight. Others mentioned that the increased number of containers will not offset the increased handler costs of packing more, smaller containers and could result in decreased grower returns. Many retailers do not differentiate between 19.8-pounds (9-kilograms) net weight volume filled containers and 22-pounds (10-kilograms) net weight volume filled containers and pay the same price for each. Thus, packaging 19.8-pounds (9-kilograms) net weight containers may not be beneficial for growers and handlers.

The Committee also discussed reestablishing the 22-pounds (10-kilograms) net weight container standard packaging requirement. Some Committee members believe that increased flexibility benefits growers and handlers, as handlers are able to meet buyer's preferences for alternate containers. Before making the change permanent, the Committee needs to gather more data to further evaluate the benefits of suspending standard pack requirements for another season, the 2003–04 season.

The majority of the Committee members agreed that the suspension of the standard packaging requirement for volume filled containers by net weight should be continued for the 2003–04 season. Of the twelve members present, eight voted for this change and four voted against it. Opponents of this recommendation preferred standard packaging, but could not agree whether the 22-pound (10-kilogram) or 19.8-pound (9-kilogram) net weight containers should be the standard. The majority of the Committee believes that handlers and growers will benefit by being able to meet buyer's preferences for alternate containers. Small and large growers and handlers are expected to continue benefiting from this change. This suspension will be in effect until July 31, 2004.

Standard Pack "tightly packed" Requirement

Section 920.52(a)(2) of the order authorizes the establishment of grade standards.

Section 920.302(a)(1) of the order's administrative rules and regulations states the minimum grade shall be at least KAC No. 1 quality.

Section 920.302(b) defines the term KAC No. 1 quality as kiwifruit that meets the requirements of U.S. No. 1 grade as defined in 7 CFR 51.2335 through 51.2340 of the Grade Standards, except that the kiwifruit shall be "not badly misshapen" and an additional 7 percent tolerance is provided for "badly misshapen" fruit. Section 51.2338(a) of the Grade Standards defines standard pack requirements, requires containers to be well filled; and requires the contents to be tightly packed, but not excessively or unnecessarily bruised by overfilling or oversizing.

The Grade Standard's "tightly packed" provisions were established under the order to ensure that the "Hayward" variety (the predominant kiwifruit variety produced in the production area) fits tightly into the tray-liner cups (55 FR 42179, October 18, 1990). Kiwifruit that is packed tightly into the cups of the tray-liners is less subject to movement and therefore less damage.

Recently, a new kiwifruit cultivar, the *Actinidia chinensis* "Hort16A" has been introduced in California and is expected to be harvested and sold commercially during the 2003–04 season. The "Hort16A" is referred to as a "gold" variety because the internal flesh is a yellow to gold color when fully mature. The "Hort16A" kiwifruit is more susceptible to bruising and injury and has a protrusion on the blossom end, referred to as a "beak." Therefore, the "Hort16A" must be handled differently than the "Hayward" variety. Care must be taken during the packing process to protect the beak. To minimize damage, the "Hort16A" is packed into a special shallow molded tray with a notch for the beak. The "Hort16A" kiwifruit, when packed in this shallow tray, may not meet the "tightly packed" requirement for standard pack under the Grade Standards.

Therefore, the Committee, at its March 12, 2003, meeting, unanimously recommended an exemption for all "gold" kiwifruit varieties from the order's "tightly packed" requirement. However, the "Hort16A" with its unique "beak" is currently the only known commercially produced "gold" kiwifruit. Because it is not known whether other "gold" kiwifruit varieties will experience the same difficulty in meeting the "tightly packed" standard pack requirement, this final rule limits the exemption to the "Hort16A" variety.

This change is expected to enable handlers to be more competitive in the marketplace and to provide consumers with higher quality "Hort16A" kiwifruit.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 46 handlers of California kiwifruit subject to regulation under the marketing order and approximately 300 growers in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000. None of the 46 handlers subject to regulation have annual kiwifruit sales of at least $5,000,000. In addition, six growers subject to regulation have annual sales exceeding $750,000. Therefore, a majority of the kiwifruit handlers and growers may be classified as small entities.

This final rule revises pack requirements prescribed under the California kiwifruit order. This rule: (1) Removes the requirement that the count must equal three times the size designation for shipments in volume filled containers in which the quantity is specified by count; (2) continues to suspend, for the 2003–04 season, the standard packaging requirement that requires volume filled containers of kiwifruit designated by weight to hold 22-pounds (10-kilograms) net weight of kiwifruit, unless such containers hold less than 10-pounds or more than 35-pounds net weight of kiwifruit; and (3) exempts the "Hort16A" kiwifruit variety from the "tightly packed" standard pack requirement.

The Committee recommended these changes at its March 12, 2003, meeting. These changes are expected to help handlers compete more effectively in the marketplace, better meet the needs of retailers, and to improve grower returns. Authority for these actions is provided in § 920.52 of the order.

Volume Filled Containers Designated by Count

Section 920.302(a)(4) of the order's administrative rules and regulations outlines specific pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(iv) of the order's administrative rules and regulations provides that for volume filled containers in which the quantity is specified by count, the count must equal three times the size designation in accordance with tolerances specified in the Grade Standards listed in 7 CFR 51.2328(c)(2). For example, if the fruit has a size designation of "30" marked on the container, then three times the size designation or 90 kiwifruit must be packed into the container and the container must be marked with "90 count."

During the early 1990's handlers packed kiwifruit into several styles of containers: trays, bins, consumer packs, and volume filled containers. Volume filled containers were designated by size and also by either net weight or count. It was a customary industry practice to pack the equivalent of three single laver trays into a volume filled container and to specify the quantity of the kiwifruit placed into the volume filled container as the count.

In 1993, the Committee recommended and the USDA established a pack requirement under the order's administrative rules and regulations which specified that for shipments in volume filled containers in which the quantity is specified by count, the count must equal three times the size designation in accordance with tolerances specified in 7 CFR 51.2328(c)(2) of the Grade Standards, (58 FR 43243, April 16, 1993). This requirement was established to ensure

that volume filled containers designated by size and count held a consistent number of kiwifruit.

During the 1993–94 season handlers realized it was more labor intensive and more expensive to pack volume filled containers by count than by net weight. They also realized that the difference in the average FOB values for each type of volume filled container was negligible. Retailers were unwilling to pay a higher price for volume filled containers designated by count and handlers were unwilling to pack these more labor-intensive and more expensive containers, if they could not recoup the extra handling costs. As a result, the amount of kiwifruit packed into volume filled containers designated by count and size declined to 2 percent during the 1995–96 season. While kiwifruit handlers have not used volume filled containers designated by count and size since the 1995–96 season, they continue to use volume filled containers packed by net weight and size designation.

Recently, retailers have requested new, smaller containers of kiwifruit designated by count and size. Some kiwifruit handlers in the industry, including those that are packing a new variety, "Hort16A", want the flexibility to pack these smaller containers of kiwifruit. These handlers are currently unable to meet retailer's requests for smaller volume filled containers of kiwifruit, as the order's administrative rules and regulations require the count to equal three times the size designation in volume filled containers in which the quantity is specified by count. For example, if a retailer requests containers of Size 20 fruit with 50 kiwifruit in each container, the handler will not be able to meet the retailer's requirements because the order's administrative rules and regulations require that 60 pieces of fruit (a count equal to three times the size designation) be packed into the container.

Thus, the Committee, at its March 12, 2003, meeting, unanimously recommended removing the requirement as it is obsolete and no longer meets the industry's needs. The Committee discussed alternatives to this change, including not removing this requirement from the order's administrative rules and regulations, but concluded that small and large growers and handlers will benefit from this change. This change will not affect volume filled containers packed by net weight and is expected to help handlers compete more effectively in the marketplace and to improve grower returns.

Continued Suspension of Standard Packaging for Volume Filled Containers Designated by Weight

Section 920.302(a)(4) of the order's administrative rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Prior to the issuance of an interim final rule on August 22, 2002 (67 FR 54327), § 920.302(a)(4)(v) specified that all volume filled containers of kiwifruit designated by weight shall hold 22-pounds (10-kilograms) net weight of kiwifruit unless such containers hold less than 10-pounds or more than 35-pounds net weight of kiwifruit. This standard packaging requirement was unanimously recommended by the Committee and established under the order's administrative rules and regulations by a final rule issued on October 25, 1994, (59 FR 53563).

During the 1994–95 season, 52 percent of the total crop was packed into volume filled containers. The percentage of the total crop packed into volume filled containers increased to 85 percent during the 2001–02 season. In 2001–02, imports from the Northern hemisphere (Greece, Italy, and France) totaled approximately 17 percent of the U.S. market share. The majority of imported kiwifruit was shipped in 9.8-pound (9-kilogram) net weight volume filled containers, whereas the order limited California handlers to 22-pound (10-kilogram) net weight volume filled containers. Retailers do not differentiate between imported 19.8-pound (9-kilogram) and 22-pound (10-kilogram) net weight volume filled containers from California. Because buyers pay the same price for each container, the effect is not favorable for California handlers.

At its April 9, 2002, meeting, the Committee, unanimously recommended and the USDA approved suspending the standardized packaging requirement of 22-pounds (10-kilograms) net weight for volume filled containers for the 2002–03 season. This suspension was implemented by an interim final rule published on August 22, 2002 (67 FR 54327) and will be in effect until July 31, 2003. This was made final on November 21, 2002 (67 FR 76140). To date, relaxation of these packaging requirements during the 2002–03 season enabled handlers to ship 73 percent of the crop in 22-pound (10-kilogram) net weight volume filled containers, 12 percent of the crop in 19.8-pound (9-kilogram) net weight containers and less than 1 percent in volume filled containers of other weights.

The Committee concluded that while suspending the standard packaging requirements for the 2002–03 season had enabled handlers to compete more effectively in the marketplace, it needs to gather more data to further evaluate the benefits of suspended standard pack requirements for another season, the 2003–04.

Therefore, the majority of the Committee members agreed that the suspension of the standard packaging requirement for volume filled containers by net weight should be continued for the 2003–04 season. Of the twelve members present, eight voted for this change, and four voted against it. Opponents of this recommendation preferred standard packaging, but could not agree whether the 22-pound (10-kilogram) or the 19.8-pound (9-kilogram) net weight container should be the standard. Small and large growers and handlers are expected to benefit from the continued suspension of the standard packaging requirements. The majority of the Committee believes that handlers and growers will benefit by being able to meet buyer's preferences for alternate containers. This suspension will be in effect until July 31, 2004.

The Committee discussed alternatives to this change including reinstating the 22-pound (10-kilogram) net weight standard packaging requirement for the 2003–04 season. Committee members also suggested two other alternatives. One alternative was to establish a standard packing requirement that will require volume filled containers of kiwifruit designated by weight to hold 19.8-pounds (9 kilograms) net weight of kiwifruit, unless such containers hold less than 10-pounds or more than 35-pounds net weight of kiwifruit. The other alternative suggested was to establish a standard packing requirement that requires volume filled containers of kiwifruit designated by weight to hold 19.8-pounds (9-kilograms) net weight of kiwifruit, unless such containers hold less than 15-pounds or more than 35-pounds net weight of kiwifruit. The Committee did not adopt these suggestions, as it believes that continuing the suspension of the standard packaging requirement of 22-pounds (10-kilograms) net weight for volume filled containers of kiwifruit designated by weight will allow handlers the flexibility to meet buyer container preferences and to increase sales. Further, the majority of the Committee believes that establishing standard packaging requirements for volume filled containers of kiwifruit packed by net weight may negatively impact grower returns.

Standard Pack "tightly packed" Requirement

Section 920.302(a)(1) of the order's administrative rules and regulations states the minimum grade shall be at least KAC No. 1 quality.

Section 920.302(b) defines the term KAC No. 1 quality as kiwifruit that meets the requirements of U.S. No. 1 grade as defined in 7 CFR 51.2335 through 51.2340 of the Grade Standards, except that the kiwifruit shall be "not badly misshapen" and an additional 7 percent tolerance is provided for badly misshapen fruit. Section 51.2338(a) of the Grade Standards defines standard pack requirements, requires containers to be well filled; and requires the contents to be tightly packed, but not excessively or unnecessarily bruised by overfilling or oversizing.

The Grade Standard's "tightly packed" provisions were established in the order to ensure that the "Hayward" variety (the predominant kiwifruit produced in the production area) fits tightly into the tray-liner cups (55 FR 42179, October 18, 1990). Kiwifruit that is packed tightly into the cups of the tray-liners is less subject to movement and therefore less damage.

As previously mentioned, a new kiwifruit cultivar, the *Actinidia chinensis* "Hort16A" has recently been introduced in California and is expected to be harvested and sold commercially during the 2003–04 season. The "Hort16A" is referred to as a "gold" variety because the internal flesh is a yellow to gold color when fully mature. The "Hort16A" kiwifruit is more susceptible to bruising and injury and has a protrusion on the blossom end, referred to as a "beak." Therefore, the "Hort16A" must be handled differently than the "Hayward" variety. Care must be taken during the packing process to protect the beak. To minimize damage, the "Hort16A" is packed into a special shallow molded tray with a notch for the beak. The "Hort16A" kiwifruit, when packed in this shallow tray, may not meet the "tightly packed" requirement for standard pack under the Grade Standards.

Therefore, the Committee, at its March 12, 2003, meeting, unanimously recommended an exemption for all "gold" kiwifruit varieties from the order's "tightly packed" requirement. However, the "Hort16A" with its unique "beak" is currently the only known commercially produced "gold" kiwifruit. Because it is not known whether other "gold" kiwifruit varieties will experience the same difficulty in meeting the "tightly packed" standard pack requirement, this rule limits the exemption to the "Hort16A" variety.

This change is expected to enable handlers to be more competitive in the marketplace and to provide consumers with higher quality "Hort16A" kiwifruit.

The Committee discussed alternatives to this change, including exempting all kiwifruit packs from the "tightly packed" requirement, but did not adopt this suggestion because eliminating the requirement for the "Hayward" variety is unnecessary and "tightly packed" is still a pack standard desired by the industry for the vast majority of kiwifruit currently packed in California. It is anticipated that within the next 5 to 10 years more than 1,000 acres of "Hort16A" will be planted in California with production exceeding one million tray equivalents (one tray equivalent equals approximately 7 pounds). Small and large growers and handlers are expected to benefit from this change. These changes are expected to help handlers compete more effectively in the marketplace and to improve grower returns.

These changes relax pack requirements under the kiwifruit order. Accordingly, these actions will not impose any additional reporting or recordkeeping requirements on either small or large kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule. However, as previously stated, California kiwifruit must meet the "tight-fill" requirements, as specified in the U.S. Standards for Grade of Kiwifruit (7 CFR 51.2335 through 51.2340) issued under the Agricultural Marketing Agreement Act of 1946 (7 U.S.C. 1621 through 1627).

In addition, the Committee's meeting was widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the March 12, 2003, meeting, was a public meeting and all entities, both large and small, were able to express their views on these issues.

A proposed rule concerning this action was published in the **Federal Register** on June 23, 2003 (68 FR 37097). Copies of the rule were mailed or sent via facsimile to all Committee members and kiwifruit handlers. Finally, the rule was made available through the Internet by the Office of the Federal Register and USDA. A 15-day comment period ending July 8, 2003, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the fiscal period for kiwifruit begins on August 1, 2003, and these relaxations should be made as soon as possible. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 15-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 920.302 [Amended]

■ 2. Section 920.302 is amended as follows:

■ a. Paragraph (a)(4)(iv) is removed;

■ b. Paragraph (a)(4)(v) is redesignated as paragraph (a)(4)(iv);

■ c. The existing suspension of newly designated paragraph (a)(4)(iv) is extended until July 31, 2004;

■ d. Paragraph (b) is revised to read as follows:

§ 920.302 Grade, size, pack, and container regulations.

* * * * *

(b) *Definitions.* The term *KAC No. 1 quality* means kiwifruit that meets the requirements of the U.S. No. 1 grade as defined in the United States Standards for Grades of Kiwifruit (7 CFR 51.2335 through 51.2340) except that the kiwifruit shall be "not badly misshapen," and an additional tolerance of 7 percent is provided for kiwifruit that is "badly misshapen," and except that the "Hort16A" variety of kiwifruit is exempt from the "tightly packed" standard as defined in § 51.2338(a) of the U.S. Standards for Grades of Kiwifruit. The terms *fairly uniform in size and diameter* mean the same as defined in the U.S. Standards for Grades of Kiwifruit.

* * * * *

Dated: July 23, 2003.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 03–19131 Filed 7–25–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–62–AD; Amendment 39–13246; AD 2003–15–04]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes, that requires inspection of the drive trunnion pins for the main landing gear (MLG) doors to determine the part number of the pins and corrective action if necessary. The actions specified by this AD are intended to prevent failure of the MLG and consequent reduced controllability of the airplane during takeoff or landing.

DATES: Effective September 2, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 2, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175, fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes was published in the **Federal Register** on April 15, 2003 (68 FR 18168). That action proposed to require inspection of the drive trunnion pins for the main landing gear (MLG) doors to determine the part number of the pins, and corrective action if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Change to Labor Rate Estimate

After the proposed AD was issued, we reviewed the figures we use to calculate the labor rate to do the required actions. To account for various inflationary costs in the airline industry, we find it appropriate to increase the labor rate used in these calculations from $60 to $65 per work hour. The economic impact information below has been revised to reflect this increase in the specified hourly labor rate.

Cost Impact

The FAA estimates that 57 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $7,410, or $130 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–15–04 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–13246. Docket 2002–NM–62–AD.

Applicability: All Model Jetstream 4101 airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main landing gear (MLG) and consequent reduced controllability of the airplane during takeoff or landing, accomplish the following:

Inspection, and Replacement if Necessary

(a) Within 60 days after the effective date of this AD, perform a general visual inspection of the drive trunnion pins for the MLG doors to determine the part number (P/N) of the pins, per "Part 1—Inspection" of the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–32–080, dated January 24, 2002.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If P/N AIR135154 is found on both pins: No further action is required by this paragraph.

(2) If any pin having P/N AIR134402 is found, or if any pin having no P/N is found: Within 90 days after accomplishing the inspection, replace the pin having P/N AIR134402 or the pin having no P/N, with a new, improved pin, per "Part 2—Rectification" of the Accomplishment Instructions of the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with BAE Systems (Operations) Limited Service Bulletin J41–32–080, dated January 24, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in British airworthiness directive 007–01–2002.

Effective Date

(e) This amendment becomes effective on September 2, 2003.

Issued in Renton, Washington, on July 18, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–18790 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–34–AD; Amendment 39–13245; AD 2003–15–03]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, and –300F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that requires replacement of the aileron control override quadrant with a modified unit. The actions specified by this AD are intended to prevent corrosion of the input override mechanism bearings of the lateral central control actuator, which, in the event of a subsequent jam in the pilot's aileron control system, could result in failure of the aileron override system and consequent reduced lateral controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective September 2, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 2, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Douglas Tsuji, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6487; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on February 24, 2003

(68 FR 8566). That action proposed to require replacement of the aileron control override quadrant with a modified unit. That action also proposed to revise the applicability of the original NPRM.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received. One commenter has a program in place to do the modification specified in the supplemental NPRM. Another commenter concurs with the contents of the supplemental NPRM and has no additional comments.

Request for Immediate Check of the Fleet Before Replacement

One commenter agrees that the replacement of the aileron control override quadrant with a modified unit that is not susceptible to corrosion, as specified in the supplemental NPRM, is necessary. However, the commenter states that it would have preferred that an additional immediate check of the fleet be added to the supplemental NPRM to identify any seized assemblies so that they could be replaced before a dormant failure became critical. The commenter adds that 18 months is a long time for airplanes to be exposed to the identified deficiency.

We do not agree that it is necessary to add an immediate check of the fleet to the final rule to identify seized assemblies of the aileron control override quadrant before accomplishment of the replacement. In developing the 18-month compliance time for the replacement of the aileron control override quadrant, we considered the effects of a jammed lateral system, combined with a seized override bearing (increased wheel load), and determined that such a compliance time would allow operators sufficient time to accomplish the replacement and would adequately address the unsafe condition. However, operators are always permitted to perform the actions earlier than the compliance time specified in an AD. No change to the final rule is necessary in this regard.

Request To Extend Compliance Time

One commentor asks that the compliance time specified in the supplemental NPRM be extended from 18 months to 24 months or at the next C-check, whichever is later. The commenter states it has reworked four of its airplanes and submits the following supporting data:

- No signs of corrosion or seizure of bearings was present.
- Currently, limited quantities of compliant spares exist in industry.
- Costs and turnaround times far exceed the supplemental NPRM estimates.

Paragraph (a) of the supplemental NPRM specifies an 18-month compliance period to replace the aileron control quadrant with a modified unit. The commenter does not have "in house" capabilities to accomplish the retrofit of the aileron quadrants, nor is its machine shop utilized for heavy maintenance. Therefore, the quadrants must be sent to Boeing for modification and/or repair, which exceeds the specified turnaround time and costs.

We do not agree with the commenter's request to extend the compliance time to 24 months or the next C-check, whichever is later. With regard to parts availability, as stated above, we find that an 18-month compliance time will be adequate for a sufficient quantity of parts to be available. With regard to extending the compliance time to allow the replacement to be accomplished at a C-check, we have already considered factors such as operators' maintenance schedules in setting a compliance time for the required replacement and determined that 18 months is an appropriate compliance time in which the replacement may be accomplished during scheduled airplane maintenance for the majority of affected operators. Since maintenance schedules vary from operator to operator, it would not be possible to guarantee that all affected airplanes could be modified during scheduled maintenance, even with a compliance time of 24 months. In any event, we find that 18 months represents the maximum time wherein the affected airplanes may continue to operate without compromising safety. No change to the final rule is necessary in this regard.

Alternate Method of Compliance

One commenter asks that, as an alternate method of compliance to the required roller swage installation procedures done during the specified replacement, operators be allowed to stake the subject bearings per the Boeing Standard Overhaul Practices Manual (SOPM), Chapter 20–50–03.

We infer that the commenter requests this alternate method because it's easier to do; however, we do not agree with the commenter that the suggested alternative method of staking the bearings per the SOPM, instead of doing the roller swage installation procedures, can be done. The replacement bearings and the bearing lugs of the aileron control quadrant are specifically designed for roller swaging, not bearing staking. No change to the final rule is necessary in this regard.

Request To Change Cost Impact Section

One commenter asks that the Cost Impact section in the supplemental NPRM be changed. In addition to the supporting information provided in the Request To Extend Compliance Time section discussed previously, the commenter adds that two of the four aileron quadrant assemblies on its airplanes were damaged during the removal process. As a result of this damage, the assemblies were sent to Boeing for repair, at a cost of $2,816.67, with an estimated turnaround time of 45 days. Boeing indicated that the damage caused is common to this type of bearing housing when removed. Two new units were purchased by the commenter to replace the damaged units at a cost of approximately $13,000.00 per unit. The commenter notes that this cost is not specified in the referenced service bulletin, and adds that the supplemental NPRM should be re-evaluated for costs and work hours necessary for the replacement.

We have investigated the commenter's concerns regarding the cost information specified in the supplemental NPRM, and we do not agree with the request to re-evaluate the costs and work hours necessary for the replacement specified in the Cost Impact section of the supplemental NPRM. The Cost Impact section only includes the "direct" costs of the specific actions required, not costs associated with repair of parts damaged while performing the actions, costs of new parts to replace the damaged parts, or costs associated with the turnaround time for the repair. Such costs would be required regardless of AD direction, to correct an unsafe condition identified in an airplane and to ensure the airworthiness of that airplane, as required by the Federal Aviation Regulations. No change to the Cost Impact section in the final rule is necessary.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the supplemental NPRM regarding that material.

Cost Impact

There are approximately 836 airplanes of the affected design in the worldwide fleet. The FAA estimates that 443 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10 work hours per airplane to accomplish the actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $146 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $330,478, or $746 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–15–03 Boeing: Amendment 39–13245. Docket 2002–NM–34–AD.

Applicability: Model 767–200, –300, and –300F series airplanes; certificated in any category; line numbers 1 through 836 inclusive.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent corrosion of the input override mechanism bearings of the lateral central control actuator, which, in the event of a subsequent jam in the pilot's aileron control system, could result in failure of the aileron override system and consequent reduced lateral controllability of the airplane, accomplish the following:

Replacement

(a) Within 18 months after the effective date of this AD, replace the aileron control override quadrant with a modified unit, in accordance with Boeing Alert Service Bulletin 767–27A0175, dated October 25, 2001.

Note 2: This AD does not require accomplishment of the actions specified by Boeing Service Bulletin 767–27–0142.

Part Installation

(b) As of the effective date of this AD, no person may install, on any airplane, an aileron control override quadrant that has not been modified in accordance with the requirements of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Alert Service Bulletin 767–27A0175, dated October 25, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on September 2, 2003.

Issued in Renton, Washington, on July 17, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–18787 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14608; Airspace Docket No. 03–AAL–02]

Establishment of Class E Airspace; Ambler, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Ambler, AK to provide adequate controlled airspace to contain aircraft executing two new Standard

Instrument Approach Procedures (SIAP). This rule results in new Class E airspace upward from 1,200 ft. above the ground at Ambler, AK.

EFFECTIVE DATE: 0901 UTC, October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–531, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; email: *Derril.Bergt@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

History

On Thursday, April 3, 2003, the FAA proposed to revise part 71 of the Federal Aviation Regulations (14 CFR part 71) to create new Class E airspace upward from 1,200' above the surface at Ambler, AK (68 FR 16227). The action was proposed in order to add Class E airspace sufficient in size to contain aircraft within a Terminal Arrival Area (TAA) while executing two new SIAPs for the Ambler Airport. The new approaches are (1) Area Navigation-Global Positioning System (RNAV GPS) Z Runway 36 original, and (2) RNAV (GPS) Y Runway 36 original. The proposed Class E airspace encompasses small and unusable pieces of Class G airspace that remained from Class E airspace actions in the past. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received, thus, the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9K, *Airspace Designations and Reporting Points*, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be revoked and revised subsequently in the Order.

The Rule

This revision to 14 CFR part 71 establishes Class E airspace at Ambler, Alaska. This additional Class E airspace is being created to accommodate aircraft executing new SIAPs and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Ambler Airport, Ambler, Alaska.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, *Airspace Designations and Reporting Points*, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Ambler, AK [Revised]

Ambler Airport, AK
(Lat. 67°06'23" N., long. 157°51'27" W.)
Ambler NDB
Lat. 67°06'24" N., long. 157°51'29" W.)

That airspace extending upward from 700 feet above the surface within a 6.3°-mile radius of the Ambler Airport and within 3.5 miles each side of the 193°-bearing of the Ambler NDB extending from the 6.3 mile radius to 7.2 miles southwest of the airport; and that airspace extending upward from 1,200 feet above the surface within a 47-mile radius of the Ambler Airport.

* * * * *

Issued in Anchorage, AK, on July 17, 2003

Trent S. Cummings,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 03–19155 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15080; Airspace Docket No. 03–ACE–48]

Modification of Class E Airspace; Sibley, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Sibley, IA.

EFFECTIVE DATE: 0901 UTC, September 4, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 23, 2003 (68 FR 28126) and subsequently published a correction in the **Federal Register** on June 3, 2003 (68 FR 33231). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 4, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on July 15, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–19159 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15077; Airspace Docket No. 03–ACE–45]

Modification of Class E Airspace; Pocahontas, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Pocahontas, IA.

EFFECTIVE DATE: 0901 UTC, September 4, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 23, 2003 (68 FR 28121) and subsequently published a correction in the **Federal Register** on June 4, 2003 (68 FR 33579). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 4, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on July 15, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–19160 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15078; Airspace Docket No. 03–ACE–46]

Modification of Class E Airspace; Red Oak, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Red Oak, IA.

EFFECTIVE DATE: 0901 UTC, September 4, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 23, 2003 (68 FR 28123) and subsequently published a correction in the **Federal Register** on June 4, 2003 (68 FR 33579). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 4, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on July 15, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–19161 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15079; Airspace Docket No. 03–ACE–47]

Modification of Class E Airspace; SAC City, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Sac City, IA.

EFFECTIVE DATE: 0901 UTC, September 4, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on May 23, 2003 (68 FR 28127). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 4, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on July 15, 2003.

Paul J. Sheridan

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–19163 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14644; Airspace Docket No. 03–AGL–01]

Modification of Class E Airspace; Kenton, OH; Revocation of Class E Airspace; Bellefontaine, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Kenton, OH, and revokes Class E airspace at Bellefontaine, OH. Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPS) have been developed for a new airport at Bellafontaine, OH, which has been named Bellefontaine Regional Airport. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing these approaches. This action modifies existing controlled airspace for Hardin County Airport, and revokes existing controlled airspace for the old Bellefontaine Municipal Airport.

EFFECTIVE DATE: 0901 UTC, October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, March 31, 2003, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Kenton, OH, and revoke Class E airspace at Bellefontaine, OH, (68 FR 15388). The proposal was to modify controlled airspace extending upward from 700 feet above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Kenton, OH, and revokes Class E airspace at Bellefontaine, OH. This will accommodate aircraft executing instrument flight procedures. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

AGL OH E5 Bellefontaine, OH [Revoked]

AGL OH E5 Kenton, OH [Revised]

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 40°43′34″ N., long. 83°33′51″W., to lat. 40°38′16″N., long. 83°23′39″W., to lat. 40°30′37″N., long. 83°30′57″W., to lat. 40°24′00″N., long. 83°33′37″W., to lat. 40°13′31″N., long. 83°40′22″W., to lat. 40°11′47″N., long. 83°52′11″W., to lat. 40°16′44″N., long. 84°01′10″W., to lat. 40°24′31″N., long. 84°02′39″W., to lat. 40°31′30″N., long. 83°56′56″W., to lat. 40°32′35″N., long. 83°46′53″W., to lat. 40°38′56″N., long. 83°48′49″W., to lat. 40°43′49″N., long. 83°42′14″W., to the point of beginning, excluding that airspace within the Urbana, OH Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on July 9, 2003.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–19167 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15360; Airspace Docket No. 03–ASO–7]

Amendment of Class E5 Airspace; Tuscaloosa, AL; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to the final rule (FAA–2003–15360; 03–ASO–7), which was published in the **Federal Register** on June 16, 2003, (68 FR 35535), amending Class E5 airspace at Tuscaloosa, AL. This action changes the name of the Tuscaloosa Municipal Airport to the Tuscaloosa Regional Airport.

EFFECTIVE DATE: Effective 0901 UTC, September 4, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Background

Federal Register Document 03–15142, Docket No. FAA–2003–15360; Airspace Docket No. 03–ASO–7, published on June 16, 2003, (68 FR 35535), amends Class E5 airspace at Tuscaloosa, AL, changing the name of the Tuscaloosa VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) to Crimson VORTAC. On July 15, 2003, the Tuscaloosa Municipal Airport name was changed to the Tuscaloosa Regional Airport. This action corrects the published docket.

Designations for Class E airspace areas designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

Need for Correction

As published, the final rule contains an error which incorrectly identifies the name of the airport. Accordingly, pursuant to the authority delegated to me, the legal description for the Class E5 airspace area at Tuscaloosa, AL, incorporated by reference at § 71.1, 14 CFR 71.1, and published in the **Federal Register** on June 16, 2003, (68 FR 35535), is corrected by making the following correcting amendment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

■ In consideration of the foregoing, the Federal Aviation Administration corrects the adopted amendment, 14 CFR part 71, by making the following correcting amendment:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Corrected]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ASO AL E5 Tuscaloosa, AL [Corrected]

Tuscaloosa Regional Airport, AL

(Lat. 33°13′14″ N., long. 87°36′41″ W.

CRIMSON VORTAC

(Lat. 33°15′32″ N., long. 87°32′13″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Tuscaloosa Regional Airport and within 2.4 miles each side of Crimson VORTAC 058° radial, extending from the 7 mile radius to 7 miles northeast of the VORTAC.

* * * * *

Issued in College Park, Georgia, on July 18, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–19156 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30378 ; Amdt. No. 3067]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective July 28, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 28, 2003.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: PO Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the

affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on July 18, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S. C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective August 7, 2003*

Frederick, MD, Frederick Muni, RNAV (GPS) RWY 23, Amdt 1

** * * Effective September 4, 2003*

Blytheville, AR, Arkansas International, VOR RWY 18, Amdt 1
Blytheville, AR, Arkansas International, VOR RWY 36, Amdt 1
Blytheville, AR, Arkansas International, ILS RWY 18, Orig
Blytheville, AR, Arkansas International, ILS/DME RWY 18, Orig-B, CANCELLED
Blytheville, AR, Arkansas International, RNAV (GPS) RWY 18, Orig
Blytheville, AR, Arkansas International, RNAV (GPS) RWY 36, Orig
Brooksville, FL, Hernando County, RNAV (GPS) RWY 3, Orig
Brooksville, FL, Hernando County, RNAV (GPS) RWY 9, Orig
Brooksville, FL, Hernando County, RNAV (GPS) RWY 21, Orig
Brooksville, FL, Hernando County, RNAV (GPS) RWY 27, Orig
Brooksville, FL, Hernando County, GPS RWY 3, Orig, CANCELLED
Brooksville, FL, Hernando County, GPS RWY 9, Amdt 1, CANCELLED
Brooksville, FL, Hernando County, GPS RWY 21, Amdt 1, CANCELLED
Brooksville, FL, Hernando County, GPS RWY 27, Amdt 1, CANCELLED
Kamulea, HI, Waimea-Kohala, VOR/DME–A, Orig
Kamulea, HI, Waimea-Kohala, VOR/DME RWY 4, Orig
Kamulea, HI, Waimea-Kohala, RNAV (GPS) RWY 4, Orig
Kamulea, HI, Waimea-Kohala, RNAV (GPS) RWY 22, Orig
Mansfield, LA, Desoto Parish, NDB RWY 18, Amdt 2
Mansfield, LA, Desoto Parish, RNAV (GPS) RWY 18, Orig
Mansfield, LA, Desoto Parish, GPS RWY 18, Orig, CANCELLED
Galliano, LA, South Lafourche, RNAV (GPS) RWY 18, Orig
Galliano, LA, South Lafourche, GPS RWY 18, Orig, CANCELLED
Patterson, LA, Harry P. Williams Memorial, VOR/DME–A, Amdt 10
Patterson, LA, Harry P. Williams Memorial, NDB RWY 6, Amdt 10
Patterson, LA, Harry P. Williams Memorial, ILS RWY 24, Amdt 1
Patterson, LA, Harry P. Williams Memorial, RNAV (GPS) RWY 6, Orig
Patterson, LA, Harry P. Williams Memorial, RNAV (GPS) RWY 24, Orig
Mitchellville, MD, Freeway, VOR RWY 36, Orig-B
Mitchellville, MD, Freeway, RNAV (GPS) RWY 18, Orig
Mitchellville, MD, Freeway, RNAV (GPS) RWY 36, Orig
Windom, MN, Windom Muni, NDB RWY 17, Amdt 5
Windom, MN, Windom Muni, RNAV (GPS) RWY 17, Orig
Windom, MN, Windom Muni, RNAV (GPS) RWY 35, Orig
Brookfield, MO, North Central Missouri Regional, RNAV (GPS) RWY 18, Orig
Brookfield, MO, North Central Missouri Regional, RNAV (GPS) RWY 36, Orig
New Madrid, MO, County Memorial, NDB RWY 18, Amdt 3, CANCELLED
Beatrice, NE, Beatrice Municipal, VOR RWY 13, Amdt 16B
Beatrice, NE, Beatrice Municipal, VOR RWY 35, Amdt 7A
Beatrice, NE, Beatrice Municipal, NDB–A, Amdt 3B
Beatrice, NE, Beatrice Municipal, NDB RWY 13, Amdt 8B
Beatrice, NE, Beatrice Municipal, RNAV (GPS) RWY 13, Orig
Beatrice, NE, Beatrice Municipal, RNAV (GPS) RWY 17, Orig
Beatrice, NE, Beatrice Municipal, RNAV (GPS) RWY 31, Orig
Beatrice, NE, Beatrice Municipal, RNAV (GPS) RWY 35, Orig
Beatrice, NE, Beatrice Municipal, GPS RWY 35, Orig-B, CANCELLED
Falls City, NE, Brenner Field, NDB–A, Amdt 3B
Falls City, NE, Brenner Field, RNAV (GPS) RWY 14, Orig
Falls City, NE, Brenner Field, RNAV (GPS) RWY 32, Orig
Falls City, NE, Brenner Field, GPS RWY 32, Orig, CANCELLED
Clayton, NM, Clayton Muni Arpk, RNAV (GPS) RWY 2, Orig
Clayton, NM, Clayton Muni Arpk, RNAV (GPS) RWY 20, Orig
Guthrie, OK, Guthrie Muni, RNAV (GPS) RWY 16, Orig
Guthrie, OK, Guthrie Muni, RNAV (GPS) RWY 34, Orig
Guthrie, OK, Guthrie Muni, GPS RWY 16, Orig-A, CANCELLED
Guthrie, OK, Guthrie Muni, GPS RWY 34, Amdt 1, CANCELLED
Oklahoma City, OK, Clarence E. Page Muni, RNAV (GPS) RWY 17R, Orig
Oklahoma City, OK, Clarence E. Page Muni, RNAV (GPS) RWY 35L, Orig
Oklahoma City, OK, Clarence E. Page Muni, GPS RWY 17R, Orig-A, CANCELLED
Oklahoma City, OK, Clarence E. Page Muni, GPS RWY 35L, Orig-A, CANCELLED
Sallisaw, OK, Sallisaw Muni, NDB–A, Amdt 2
Sallisaw, OK, Sallisaw Muni, RNAV (GPS) RWY 35, Orig
Sallisaw, OK, Sallisaw Muni, GPS RWY 35, Orig, CANCELLED
Corvallis, OR, Corvallis Muni, RNAV (GPS) RWY 35, Orig
Corvallis, OR, Corvallis Muni, GPS RWY 35, Orig-A, CANCELLED
Rock Springs, WY, Rock Springs-Sweetwater County, VOR–B, Amdt 4A
Rock Springs, WY, Rock Springs-Sweetwater County, NDB–C, Amdt 2A
Rock Springs, WY, Rock Springs-Sweetwater County, ILS OR LOC/DME RWY 27, Orig
Rock Springs, WY, Rock Springs-Sweetwater County, ILS/DME RWY 27, Amdt 5A, CANCELLED
Rock Springs, WY, Rock Springs-Sweetwater County, GPS RWY 27, Orig, CANCELLED
Rock Springs, WY, Rock Springs-Sweetwater County, RNAV (GPS) Z RWY 27, Orig
Rock Springs, WY, Rock Springs-Sweetwater County, RNAV (GPS) Y RWY 27, Orig

** * * Effective October 30, 2003*

Bethel, AK, Bethel, VOR/DME RWY 36, Amdt 1

The FAA published the following procedures in Docket No. 30376; Amdt No. 3065 to Part 97 of the Federal Aviation Regulations (Vol. 68, FR No. 134, Page 41524; dated Monday, July 14, 2003) under section 97.33 effective September 4, 2003 which are hereby rescinded:

Frederick, MD, Frederick Muni, RNAV (GPS) 23, Amdt 1

The FAA published the following procedures in Docket No. 30376; Amdt. No. 3065 to Part 97 of the Federal Aviation Regulations (Vol. 68, FR No. 134, Page 41524; dated Monday, July 14, 2003) under sections 97.23 and 97.33 as cancelled effective September 4, 2003. The following procedures are hereby reinstated and will be published effective September 4, 2003:

Pleasanton, TX, Pleasanton Muni, NDB–A, Amdt 5A
Pleasanton, TX, Pleasanton Muni, GPS RWY 34, Orig

[FR Doc. 03–18903 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30379; Amdt. No. 3068]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective July 28, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 28, 2003.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S.

Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on July 18, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

Effective Upon Publication

FDC date	State	City	Airport	FDC No.	Subject
07/03/03	TX	EASTLAND	EASTLAND MUNI	3/5347	RNAV (GPS) RWY 35, ORIG
07/03/03	SD	PIERRE	PIERRE REGIONAL	3/5274	RNAV (GPS) RWY 25, ORIG
07/03/03	SD	PIERRE	PIERRE REGIONAL	3/5275	VOR OR TACAN RWY 25, ORIG
07/09/03	AZ	CASA GRANDE	CASA GRANDE MUNI	3/5370	VOR RWY 5, AMDT 4B
06/25/03	UT	WENDOVER	WENDOVER	3/4988	VOR/DME OR TACAN RWY 26, ORIG-A
07/09/03	FL	VERO BEACH	VERO BEACH	3/5619	RNAV (GPS) RWY 11R, ORIG
07/09/03	FL	VERO BEACH	VERO BEACH	3/5618	RNAV (GPS) RWY 29L ORIG
07/10/03	GA	SAVANNAH	SAVANNAH/HILTON HEAD INTL	3/5701	ILS RWY 9, AMDT 26
07/10/03	GA	SAVANNAH	SAVANNAH/HILTON HEAD INTL	3/5700	NDB RWY 9, AMDT 22
07/09/03	PR	SAN JUAN	SAN JUAN/LUIS MUNOZ MARIN INTL.	3/5635	RNAV (GPS) RWY 8, ORIG-A
07/09/03	PR	SAN JUAN	SAN JUAN/LUIS MUNOZ MARIN INTL.	3/5637	RNAV (GPS) RWY 26, ORIG-A
07/09/03	PR	SAN JUAN	SAN JUAN/LUIS MUNOZ MARIN INTL.	3/5636	RNAV (GPS) RWY 10, ORIG-B
07/09/03	VI	CHRISTIANSTED, ST. CROIX.	CHRISTIANSTED, ST. CROIX/HENRY E. ROHLSEN.	3/5634	RNAV (GPS) RWY 10, ORIG–B
07/11/03	CA	SACRAMENTO	SACRAMENTO INTL	3/5599	RNAV (GPS) RWY 16L, ORIG
07/11/03	CA	SACRAMENTO	SACRAMENTO INTL	3/5600	RNAV (GPS) RWY 16R, ORIG
07/11/03	CA	SACRAMENTO	SACRAMENTO INTL	3/5601	RNAV (GPS) RWY 34L, ORIG
07/11/03	CA	SACRAMENTO	SACRAMENTO INTL	3/5602	RNAV (GPS) RWY 34R, ORIG
07/11/03	HI	HILO	HILO INTL	3/5611	RNAV (GPS) RWY 26, ORIG-A
07/11/03	AK	ANCHORAGE	TED STEVENS ANCHORAGE INTL	3/5613	RNAV (GPS) RWY 14, ORIG
07/11/03	AK	KENAI	KENAI	3/5614	RNAV (GPS) RWY 19R, ORIG
07/15/03	IN	AUBURN	DE KALB	3/5903	VOR RWY 9, AMDT 7
07/15/03	GU	AGANA	GUAM INTL	3/5603	RNAV (GPS) Z RWY, ORIG-A
3/17/03	VT	BURLINGTON	BURLINGTON INTL	3/2181	NDB RWY 15, AMDT 19E
07/10/03	MA	PROVINCETOWN	PROVINCETOWN MUNI	*3/5662	RNAV (GPS) RWY 17, ORIG-A
07/10/03	TX	HOUSTON	ELLINGTON FIELD	3/5604	RNAV (GPS) RWY 4, ORIG
07/10/03	TX	HOUSTON	ELLINGTON FIELD	3/5608	RNAV (GPS) RWY 17R, ORIG
07/10/03	TX	AUSTIN	AUSTIN-BERGSTROM INTL	3/5725	ILS RWY 17R, AMDT 2
07/11/03	AR	CARLISLE	CARLISLE MUNI	3/5803	GPS RWY 9, AMDT 1
07/11/03	MO	JOPLIN	JOPLIN REGIONAL	3/5798	ILS RWY 13, AMDT 23A
07/15/03	AR	CLARKSVILLE MUNI	CLARKSVILLE MUNI	3/5948	GPS RWY 9, ORIG
07/15/03	AR	BENTON	SALINE COUNTY/WATTS FIELD	3/5949	GPS RWY 17, ORIG
07/15/03	AR	BENTON	SALINE COUNTY/WATTS FIELD	3/5950	GPS RWY 35, ORIG
07/15/03	NE	CAMBRIDGE	CAMBRIDGE MUNI	3/5973	NDB RWY 32, AMDT 4

FDC date	State	City	Airport	FDC No.	Subject
07/15/03	TX	LAREDO	LAREDO INTL	3/5982	ILS RWY 17R, AMDT 9
07/15/03	NM	ARTESIA	ARTESIA MUNI	3/5988	NDB RWY 30, AMDT 4
07/14/03	PA	PERKASIE	PENNRIDGE	3/5888	RNAV (GPS) RWY 8, ORIG-A
07/14/03	NY	LAKE PLACID	LAKE PLACID	3/5791	RNAV (GPS)-A, ORIG
07/11/03	CO	HAYDEN	YAMPA VALLEY	3/5767	RNAV (GPS) Y RWY 10, ORIG
07/11/03	CO	HAYDEN	YAMPA VALLEY	3/5769	RNAV (GPS) RWY 28, ORIG
07/11/03	CO	HAYDEN	YAMPA VALLEY	3/5768	RNAV (GPS) Z RWY 10, ORIG

*Replaces 3/5078.

[FR Doc. 03–18904 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 2001Q–0313]

Food Labeling: Health Claims; Soluble Dietary Fiber From Certain Foods and Coronary Heart Disease

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is adopting as a final rule, without change, the provisions of the interim final rule that amended the regulation authorizing a health claim on the relationship between beta-glucan soluble fiber from whole oat sources and reduced risk of coronary heart disease (CHD). FDA is taking this action to complete the rulemaking initiated with the interim final rule.

DATES: This rule is effective July 28, 2003.

FOR FURTHER INFORMATION CONTACT: James E. Hoadley, Center for Food Safety and Applied Nutrition (HFS–830), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1450.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 2, 2002 (67 FR 61773), the agency published an interim final rule to amend the regulation in part 101 (21 CFR part 101) that authorizes a health claim on the relationship between soluble dietary fiber from certain foods and reduced risk of CHD, to include an additional eligible source of whole oat beta-glucan soluble fiber, oatrim, the soluble fraction of alpha-amylase hydrolyzed oat bran or whole oat flour. Under section 403(r)(3)(B)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(r)(3)(B)(i)), FDA issued this interim final rule in response to a petition filed under section 403(r)(4) of the act (21 U.S.C. 343(r)(4)). Section 403(r)(3)(B)(i) of the act states that the Secretary of Health and Human Services (the Secretary) (and, by delegation, FDA) shall issue a regulation authorizing a health claim only if he or she determines, based on the totality of publicly available scientific evidence (including evidence from well-designed studies conducted in a manner which is consistent with generally recognized scientific procedures and principles), that there is significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence (see also § 101.14(c)). Section 403(r)(4) of the act sets out the procedures that FDA is to follow upon receiving a health claim petition.

On April 21, 2001, the Quaker Oats Co. and Rhodia, Inc., (the petitioners) jointly filed a petition requesting that the agency amend the "soluble fiber from certain foods and coronary heart disease health claim" at § 101.81 to include a fourth source of beta-glucan soluble fiber eligible for the health claim. The petitioners requested that this amendment be made "with specific reference to the Quaker-Rhodia group oatrim, known as Oatrim (BETATRIM)" (Ref. 1). FDA filed the petition for comprehensive review in accordance with section 403(r)(4) of the act on July 20, 2001.

FDA considered the relevant scientific evidence presented in the petition as part of its review of the scientific literature on soluble fiber from the soluble fraction of alpha-amylase hydrolyzed oat bran or whole oat flour (referred to as "oatrim") and CHD risk. The agency summarized this evidence in the interim final rule and determined that based on the available evidence: (1) CHD continues to be a disease for which the U.S. population is at risk; (2) soluble fiber from oatrim when used at levels providing 0.75 grams of beta-glucan soluble fiber per serving is a food because it provides nutritive value; (3) oatrim when used at levels necessary to justify the health claim is safe and lawful; (4) there is a physiological equivalence of beta-glucan soluble fiber from oatrim and beta-glucan soluble fiber from whole oat sources such as oat bran and rolled oats; and (5) there is significant scientific agreement, among qualified experts, that oatrim with a beta-glucan content of up to 10 percent on a dry weight basis (dwb) and not less than that of the starting material (dwb) may reduce the risk of CHD (67 FR 61773 at 61775 to 61779). Consequently, FDA published an interim final rule amending the health claim on the relationship between soluble dietary fiber from certain foods and reduced risk of CHD (§ 101.81) to include oatrim, the soluble fraction of alpha-amylase hydrolyzed oat bran or whole oat flour with a beta-glucan soluble fiber content of up to 10 percent on a dwb and not less than that of the starting material (dwb) as a source of oat beta-glucan soluble fiber eligible for the health claim.

II. Summary of Comments and the Agency's Response

FDA solicited comments on the interim final rule. The 75-day comment period closed on December 16, 2002. The agency received no comments in response to the interim final rule. Given the absence of contrary evidence on the agency's decisions announced in the interim final rule, FDA is adopting as a final rule, without change, the interim final rule that amended § 101.81 to add oatrim, the soluble fraction of alpha-amylase hydrolyzed oat bran or whole oat flour with a beta-glucan soluble fiber content of up to 10 percent on a dwb and not less than that of the starting material (dwb) as a substance eligible for the health claim.

III. Environmental Impact

The agency has determined under 21 CFR 25.32(p) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment

nor an environmental impact statement is required.

IV. Analysis of Impacts

A. Regulatory Impact Analysis

We have examined the economic implications of this final rule as required by Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity).

With this final rule, FDA is adopting, without change, the provisions of the interim final rule published in the **Federal Register** of October 2, 2002. The interim final rule amended the regulation authorizing a health claim on the relationship between beta-glucan soluble fiber from whole oat sources and reduced risk of CHD to include oatrim, the soluble fraction of alpha-amylase hydrolyzed oat bran or whole oat flour with a beta-glucan content up to 10 percent dwb and not less than that of the starting material (dwb). We assessed the costs and benefits of the interim final rule in that **Federal Register** document (67 FR 61773 at 61781). By now reaffirming that interim final rule, FDA has not imposed any new requirements. There are, therefore, no additional costs and benefits associated with this final rule.

B. Regulatory Flexibility Analysis

We have examined the economic implications of this final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires the agency to analyze regulatory options that would minimize the economic impact of the rule on small entities.

As this final rule does not make any changes to the interim final rule or our analysis included therein, this final rule does not impose any new costs on firms. Accordingly, we certify that this final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

C. Unfunded Mandates

Section 202(a) of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires that agencies prepare a written statement of anticipated costs and benefits before issuing any final rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 in any one year (adjusted annually for inflation). The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for this rule, because the rule is not expected to result in any 1 year expenditure that would exceed $100 million adjusted for inflation. The current inflation-adjusted statutory threshold is $113 million.

V. Paperwork Reduction Act

FDA concludes that the labeling provisions of this final rule are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Rather, the food labeling health claim on the association between oatrim and reduced risk of CHD is a "public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule has a preemptive effect on State law. Section 4(a) of the Executive order requires agencies to "construe * * * a Federal Statute to preempt State law only where the statute contains an express preemption provision, there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute." Section 403A of the act (21 U.S.C. 343–1) is an express preemption provision. That section provides that "no State or political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food in interstate commerce" certain food labeling requirements, unless an exemption is provided by the Secretary (and by delegation, FDA). Relevant to this final rule, one such requirement that states and political subdivisions may not adopt is "any requirement respecting any claim of the type described in section 403(r)(1) of the act made in the label or labeling of food that is not identical to the requirement of section 403(r) * * *" (section 403A(a)(5) of the act (21 U.S.C. 343–1(a)(5)). Prior to the effective date of this rule and the interim final rule that preceded it, this provision operated to preempt States from imposing health claim labeling requirements concerning beta glucan soluble fiber from oatrim and reduced risk of CHD because no such requirements had been imposed by FDA under section 403(r) of the act. Under this final rule and the interim final rule that preceded it, States are preempted from imposing any health claim labeling requirements for beta-glucan soluble fiber from oatrim and reduced risk of CHD that are not identical to those required by these rules. Section 403A(a)(5) of the act displaces both state legislative requirements and state common-law duties. *Medtronic* v. *Lohr*, 518 U.S. 470, 503 (1996) (Breyer, J., concurring in part and concurring in judgment); *id.* at 510 (O'Connor, J., joined by Rehnquist, C.J., Scalia, J., and Thomas, J., concurring in part and dissenting in part); *Cipollone* v. *Liggett Group, Inc.*, 505 U.S. 504, 521 (1992) (plurality opinion); *id.* at 548–49 (Scalia, J., joined by Thomas, J., concurring in judgment in part and dissenting in part). Although this final rule has preemptive effect in that it would preclude States from adopting statues, issuing regulations or adopting or enforcing any requirements including state tort-law requirements, about beta-glucan soluble fiber from oatrim and reduced risk of CHD that are not identical to the provisions of the interim final rule as adopted by this final rule, this preemptive effect is consistent with what Congress set forth in section 403A of the act.

Section 4(e) of the Executive order provides that "when an agency proposes to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings." Similarly, section 6(e) of the Executive order states that "to the extent practicable and permitted by law, no agency shall promulgate any regulation that has federalism implications and that preempts state law, unless the agency, prior to the formal promulgation of the regulation *** consulted with State and local officials early in the process of developing the proposed regulation." This requirement, that FDA provide the States with an opportunity for appropriate participation in this rulemaking, has been met. FDA sought input from all stakeholders through publication of the interim final rule in the **Federal Register**. There were no comments from State or local government entities received.

In conclusion, the agency believes that it has complied with all of the applicable requirements under the Executive order and has determined that the preemptive effects of this final rule are consistent with Executive Order 13132.

VII. References

The following reference has been placed on display at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. The Quaker Oats Co. and Rhodia, Inc., "Oatrim (BETATRIM) Health Claim Petition," HCN1, vol. 1, Docket No. 01Q–0313, April 12, 2001.

■ Accordingly, the interim final rule amending 21 CFR 101.81 that was published in the **Federal Register** of October 2, 2002 (67 FR 61773), is adopted as a final rule without change.

Dated: July 21, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–19027 Filed 7–25–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–03–008]

RIN 1625–AA00

Safety Zones; Annual Fireworks Events in the Captain of the Port Portland Zone, Willamette River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Captain of the Port Portland will begin enforcing the safety zone for the Oregon Symphony Concert Fireworks Display established by 33 CFR 165.1315 on May 30, 2003. The Captain of the Port, Portland, Oregon, is taking this action to safeguard watercraft and their occupants from safety hazards associated with the fireworks display. Entry into this safety zone is prohibited unless authorized by the Captain of the Port.

DATES: 33 CFR 165.1315 will be enforced August 28, 2003 from 8:30 p.m. (PDT) until 9:30 p.m. (PDT). A rain date is scheduled for August 29.

SUPPLEMENTARY INFORMATION: On May 30, 2003, the Coast Guard published a final rule (68 FR 32366) establishing safety zones, in 33 CFR § 165.1315, to provide for the safety of vessels in the vicinity of fireworks displays. One of these fireworks displays is the Oregon Symphony Concert fireworks display. The safety zone covers all waters of the Willamette River bounded by the Hawthorne Bridge to the north, Marquam Bridge to the south, and shoreline to the east and west. Entry into this zone is prohibited unless authorized by the Captain of the Port or his designee. The Captain of the Port Portland will enforce this safety zone on August 28, 2003 from 8:30 p.m. (PDT) until 9:30 p.m. (PDT). A rain date is scheduled for August 29. The Captain of the Port may be assisted by other federal, state, or local agencies in enforcing this safety zone.

FOR FURTHER INFORMATION CONTACT: Captain of the Port Portland, 6767 N. Basin Ave., Portland, OR 97217 at (503) 240–9370 to obtain information concerning enforcement of this rule.

Dated: July 13, 2003.

Paul D. Jewell,

Captain, Coast Guard, Captain of the Port, Portland.

[FR Doc. 03–19144 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 512

[Docket No. NHTSA–02–12150; Notice 2]

RIN 2127–AI13

Confidential Business Information

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT

ACTION: Final rule

SUMMARY: This document amends the regulation on Confidential Business Information to simplify and update the regulation to reflect developments in the law and to address the application of the regulation to the early warning reporting regulation issued pursuant to the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act.

DATES: This rule is effective on September 11, 2003. If you wish to submit a petition for reconsideration of this rule, your petition must be received by September 11, 2003.

ADDRESSES: Petitions for reconsideration should refer to the docket number and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For questions relating to procedures under Part 512, contact Lloyd Guerci or Otto Matheke. For questions relating to the treatment of material under the early warning reporting regulations, contact Lloyd Guerci or Michael Kido. For questions relating to the early warning regulation itself, contact Lloyd Guerci or Andrew DiMarsico. All can be reached in the Office of the Chief Counsel at the National Highway Traffic Safety Administration, 400 7th Street SW., Room 5219, Washington, DC 20590. They can be reached by telephone at (202) 366–5263.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

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I. Background

On April 30, 2002, NHTSA published a Notice of Proposed Rulemaking (NPRM) to amend 49 CFR part 512, Confidential Business Information (part 512). The proposal was intended to make the regulation clearer and easier to follow, particularly for organizations or individuals who do not submit materials to the agency on a regular or frequent basis, and to update specific sections of the regulation to reflect developments in the law. The agency proposed to reorganize the provisions of part 512 and to use a question and answer format, designed to guide the reader through the procedural steps of making a claim for confidential treatment of business information. The NPRM also addressed a variety of procedural matters relating to such claims.

The agency sought comment on whether it should create a series of class determinations of information presumed not to cause substantial competitive harm, in addition to those classes already contained in Appendix B to Part 512 applicable to information the disclosure of which has been determined to cause substantial competitive harm. Although the final rule establishing the early warning reporting obligations had not yet been issued, the agency sought comment on whether to establish class determinations relating to the early warning reporting information.

II. Comments Received

The comment period closed on July 1, 2002. The agency received timely comments from various sectors of the automotive industry, including vehicle manufacturers, tire manufacturers, supplier and equipment manufacturers, and other interested parties. Comments were received from the following trade associations: the Alliance of Automobile Manufacturers (Alliance), the Association of International Automobile Manufacturers (AIAM), the Rubber Manufacturers Association (RMA), the Tire Industry Association (TIA), the Motor and Equipment Manufacturers Association and the Original Equipment Suppliers Association (MEMA/OESA), the Automotive Occupant Restraints Council (AORC), the Juvenile Products Manufacturers Association (JPMA), the Truck Manufacturers Association (TMA) and the Motorcycle Industry Council (MIC). Comments were received also from individual manufacturers: General Motors North America (GM), Cooper Tire (Cooper), Utilimaster, Blue Bird Body Company (Blue Bird), Bendix, Harley-Davidson Motorcycle Company (Harley-Davidson), WABCO North America (WABCO), Meritor-WABCO, and Workhorse Custom Chassis (Workhorse). Enterprise Rent-A-Car Company (Enterprise) and the Washington Legal Foundation (WLF) also filed comments.

On October 17, 2002, representatives of Public Citizen met with the agency and requested the opportunity to file comments three months after the closing of the comment period. As was noted in a memo to the docket, the agency informed Public Citizen that, consistent with its longstanding practice, the agency would consider late filed comments to the extent possible.[1] Public Citizen filed its comments on November 27, 2002.

III. Overview of the Comments

Most of the comments supported the NPRM's approach to make Part 512 easier to read and to update the substantive description of what constitutes confidential business information to conform to developments in the law. Many commenters expressed concern over the number of copies the agency was considering requiring to be filed, the agency's request that certain submitters redact personal identifiers, and various other aspects of the proposal. Objections were also raised to the concept of establishing categories of information presumed not to cause substantial competitive harm if disclosed.

The majority of the comments responded to the agency's request that commenters address the early warning reporting requirements, which were proposed on December 21, 2001. *See* 66 FR 66190. Most of the business interests argued that the TREAD Act's disclosure provision in 49 U.S.C. 30166(m)(4)(C) created a categorical, statutory exemption for information submitted pursuant to the early warning reporting regulations, unless the Administrator makes certain findings specified in 49 U.S.C. 30167(b). This position was presented with the most detail in the comments filed by the RMA.

Many of the comments also expressed substantive concerns that the early warning data, given that it is "raw" and comprehensive in scope, could be misleading, available for misuse, and create public confusion. Many business interests presented arguments as to why the disclosure of specific elements of the early warning data would be competitively harmful within their particular sections of the motor vehicle or equipment industry. In addition, many commenters expressed concern that the public disclosure of the early warning information would be unfair to those companies that proactively seek out and collect customer feedback and field data.

The Alliance and Public Citizen did not adopt the view that the TREAD Act created a statutory exemption from disclosure. Public Citizen and the Alliance agreed with much of the analysis set forth in an internal departmental memo, dated October 27, 2000, and placed into the public docket on March 6, 2001. That memo expressed the view of NHTSA's Chief Counsel that the TREAD Act's disclosure provision did not create a statutory categorical exemption because of the manner in which it referenced 49 U.S.C. 30167(b). The memo concluded that the provision instead indicated a Congressional intent that NHTSA determine the confidentiality of the early warning reporting data in the same manner as it treated other data submitted to the agency; *i.e.*, under Exemption 4 of the Freedom of Information Act (FOIA), 5 U.S.C. 502(b)(4).

The Alliance suggested that, in accordance with the October 27, 2000 memo, the agency could apply either Exemption 4 (confidential business information) or Exemption 7 (investigative records), and further argued that either exemption allows the agency to retain the data as confidential. The Alliance asserted that Congress considered the early warning data to be pre-investigative screening information of the type NHTSA traditionally considers part of its internal deliberative process, and intended that the information be confidential until such time as a defect investigation is opened. The Alliance contended that the effect of Section 30166(m)(4)(C) was to modify a presumption in Section 30167(b) generally favoring disclosure.

Public Citizen argued that the TREAD Act did not create a categorical, statutory exemption from disclosure, and that a class determination that information does not presumptively create competitive harm should apply to information about consumer complaints, warranty data and property damage claims. Public Citizen further contended that it is reasonable to disclose each of the other categories of information because it is summary data by make and model and therefore, in Public Citizen's view, not competitively harmful. Public Citizen also asserted that reports of death and injuries and field reports are materials prepared as part of a defect investigation and therefore should be disclosed.

[1] The agency's analysis is scheduled to begin promptly after the comment period closes and, in general, we expect all comments to be filed within the specified period. We analyze the comments and all other available data to make decisions on how to shape our final rules. Allowing commenters to file late provides an unfair opportunity to critique the comments of those who submitted their comments in a timely manner. In some rulemakings it is possible to consider late comments without delaying the agency's decision making. In general, however, we only consider late comments to the extent they are filed before the agency has made significant progress towards the next step in the regulatory process and to the extent that they critique the agency's proposal.

IV. Overview of the Final Rule

In the NPRM, we proposed changes to part 512 that were designed primarily to simplify and improve the clarity of the regulation and to update specific sections of the regulation to reflect current case law and legislation. The proposal was intended to ensure the efficient processing of requests for confidential treatment and the proper protection for sensitive business information received by NHTSA.

In a newly captioned Subpart A, the final rule includes the general provisions that establish the purpose, scope, and applicability of the regulation governing claims for confidential treatment, and that define the terms used in the regulation. Additionally, the final rule revises the definition of confidential business information to reflect developments in the law.

The final rule addresses the number of copies to be submitted to the agency when information is claimed to be confidential. The following must accompany any claim for confidential treatment: (1) A complete copy of the submission, (2) a copy of a public version of the submission and (3) either a second complete copy of the submission or, alternatively, only those portions of the submission containing the material relating to the request for confidential treatment, with any appropriate sections within the pages marked in accordance with this rule. Those filing comments to rulemakings must additionally submit a copy of the public version to the docket. The submissions must also be marked in accordance with this final rule.

The final rule has eliminated the requirement that submitters redact personal identifying information from their submissions. The final rule specifies in Subpart B the manner in which information submitted to NHTSA and claimed to be confidential must be marked and identifies the supporting documentation that must accompany each submission. Each page containing information claimed to be confidential must be marked. If an entire page is claimed to be confidential, the markings must indicate this clearly. If portions of a page are claimed to be confidential, they must be marked by enclosing them within brackets "[ ]."

The final rule clarifies issues relating to the duty to amend claims for confidential treatment. It also provides that, when confidentiality is claimed for information obtained by the submitter from a third party, such as a supplier, the submitter is responsible for obtaining from the third party the information that is necessary to comply with the submission requirements of Part 512, including the requirement to submit a certificate and supporting information.

We have decided against the creation of categories of information presumed not to cause substantial competitive harm for a variety of reasons, including the fact that such a presumption is duplicative of existing law. Class determinations are intended to reduce or eliminate the need for individual consideration of information that, by its nature, has been determined to cause substantial competitive harm if released. Class determinations alleviate the unnecessary burden of filing individual claims for confidential treatment. Information not subject to one of the class determinations is already presumed to be publicly available. Submitters must make individual claims relating to the information and carry the burden of showing that disclosure would either likely cause substantial competitive harm or, if the information is voluntarily submitted, that it is not ordinarily released to the public.

We nonetheless remain concerned that submitters may routinely seek confidential treatment for information the agency has consistently determined would not cause competitive harm if released. We will take appropriate action to discourage those who repeatedly file claims for confidential treatment despite our consistent rejection of similar requests.

Consistent with the analysis contained in the October 27, 2000 memo, we have determined that Section 30166(m)(4)(C) of the TREAD Act did not create a categorical statutory exemption pursuant to Exemption 3 of the FOIA applicable to all early warning reporting information. We have decided to consider the confidentiality of early warning reporting information pursuant to Exemption 4 of the FOIA, which exempts confidential business information from disclosure. We have created a series of class determinations covering those portions of the early warning reporting information we have determined are entitled to confidential treatment. We are permitting the information in these classes to be submitted and given confidential treatment without the filing of a part 512 justification and the accompanying certificate.

V. Specific Provisions of Part 512

A. Subpart A—General Provisions

The agency proposed to include in Subpart A the general provisions that establish the purpose, scope, and applicability of the regulation governing claims for confidential treatment, and that define the terms used in the regulation. In addition, we proposed to revise the definition of confidential business information to reflect developments in the law.

The agency did not receive any comments objecting to these portions of the regulation, and is adopting the proposed changes to this subpart without modification.

B. Subpart B—Submission Requirements

The agency proposed to delineate in Subpart B the specific requirements that submitters must follow when they request confidential treatment for materials submitted to NHTSA. The NPRM described the information required to be submitted with a confidentiality request, how documents were to be marked, how many copies would be required, where materials were to be submitted and what supporting documentation would be needed. The comments raised no concerns regarding most provisions contained in proposed Subpart B, but several commenters objected to certain of its features.

1. Copies of Submissions

Part 512 previously provided that submitters send to the Chief Counsel two copies of documents containing information claimed to be confidential and one copy of a public version of the documents, from which portions claimed to be confidential were redacted. Submitters were also to send a second copy of the public version of the document to the appropriate program office within NHTSA (typically those engaged in the development of motor vehicle safety—Enforcement, Rulemaking or Applied Research). Thus, the submitter sent the agency two confidential sets of documents and two public sets of documents.

We proposed changing the regulation to require the submitters to send to the Office of the Chief Counsel one confidential and one public set of submitted documents. The submitter could also send, along with the confidential set, any non-confidential information the submitter wanted NHTSA to consider along with its request. We also proposed that submitters send a confidential and a public set of the documents to the appropriate program office.

A number of comments characterized this proposal as requiring the creation of a "third version" of the submitted materials, and argued that it would significantly increase the time, expense, and difficulty associated with the exercise of the statutory right to protection of confidential commercial and financial information. JPMA and others suggested instead that the agency require submitters to furnish two copies of the complete submission and one or two redacted versions.

The agency did not intend to require the creation of any "third version" of submitted documents. The agency believes that some companies may find it easier to send the Chief Counsel only those material for which confidential treatment is sought, especially when the amount of material claimed to be confidential is small in comparison to the whole submission or when it is limited to documents that are easily severable from the whole. We have accordingly modified this provision to provide this option when submitting confidentiality claims.

Each claim for confidential treatment must be accompanied with the following: (1) A complete copy of the submission, (2) a copy of a public version of the submission and (3) either a second complete copy of the submission or, alternatively, only those portions of the submission containing the material relating to the request for confidential treatment, with any appropriate sections within the pages marked in accordance with this rule. Those individuals who are filing comments to rulemakings must additionally file an electronic or hard copy of the public version to the docket. All submissions must be appropriately marked in accordance with this final rule. Information for which the submitter requests confidential treatment may be submitted electronically or in an electronic format. Submitters should also provide any special software necessary to review the submitted materials.

The Chief Counsel will distribute the complete copy and the public version of the material to the program office for its use, and will use the additional marked copy or set of material to evaluate the claim for confidential treatment. This will provide the program office expeditiously with the information necessary for program activity and ensure that the program office is aware of which material is claimed to be confidential and which is not. This process will also provide the Chief Counsel with the information needed to consider the claim for confidential treatment. Generally, this will simply be the material for which confidential treatment is sought. The submitter may also include any additional information it wishes the Chief Counsel to evaluate in considering the claim.

2. Personal Information

The agency proposed to include in Part 512 a request that submitters remove personal information, such as names, addresses and telephone numbers of consumers, from the redacted version of submitted materials, to protect the privacy of individuals. The agency's policy has been to redact personal identifiers from all owner complaints (whether filed directly with the agency or from documents obtained from manufacturers in the course of a defect investigation) before placing them on the public record. The policy was designed to encourage the submission of information by protecting personal privacy concerns. The agency believes that consumers may be less willing to make complaints if their personal contact and other information are made publicly available.

In *Center for Auto Safety* v. *National Highway Traffic Safety Administration*, 809 F. Supp. 148 (D.D.C. 1993), the Center for Auto Safety sought release of the names and addresses of consumers who filed complaints directly with the agency. The court analyzed the possible effects of disclosure, balancing the interests of the individuals filing complaints with the asserted public interest in obtaining not only the substance of the complaint, which was publicly available, but also the identities of those filing them. The Court ruled that the privacy of the complainants will be recognized and protected because "there is no ascertainable public interest of sufficient significance or certainty to outweigh [a complainant's privacy] right" that would justify the release of this personal contact information provided by consumers. *Id.* at 150. Thus, the court upheld the agency's decision not to release the names of, and other personal information about, those voluntarily providing information to the agency.[2]

The same policy concerns apply to personal identifiers on copies of information submitted by manufacturers. The judicially recognized privacy interest in protecting the personal identifiers and contact information when a consumer complains to the agency is at least as strong when applied to a consumer who complains directly to the company, and is in all likelihood unaware that the company may be required to send that communication to the government, which, in turn, will place it into a publicly accessible file.

Many comments, including those from TMA and the Alliance, objected to the proposed requirement that submitters remove personal information, pointing out that the legal burden of reviewing and redacting personal identifiers lay with the agency, not with the private submitters of the information. TMA also argued that relying on submitters to redact the information might lead to inconsistent approaches and cause confusion over what personal identifiers are or are not redacted.

In light of the comments, we have revised the proposed regulation to eliminate this requirement. The agency nonetheless would appreciate submissions, in addition to the complete copy, of redacted versions deleting any personal identifiers from any companies willing to provide them.

[2] Public Citizen expressed opposition to the agency's practice of providing a release option on its Vehicle Owner Questionnaires to allow the agency to share consumer names with manufacturers but not a similar release option with respect to advocacy groups. Manufacturers have a legal obligation to investigate vehicle problems and make timely defect determinations. The release of information to them, with the owner's permission, assists in their performance of their legal responsibilities by enabling them to investigate reports of vehicle problems. Advocacy groups and other members of the public have no such statutory obligation.

3. Stamp Each Page

The proposal specified the manner in which information submitted to NHTSA and claimed to be confidential must be marked, and identified the supporting documentation that must accompany each submission. The NPRM intended to continue the requirement that each page containing information claimed to be confidential be marked as such. The markings would indicate if an entire page was claimed to be confidential or would identify with brackets any particular portions of a page claimed to be confidential.

This proposal was intended to avoid misunderstanding by establishing a system through which companies could provide the agency with clear direction as to which portions of the pages or documents were claimed to be confidential. To allow the pages with confidential information to be identified easily, the proposal provided also that each page claimed to contain confidential information must be numbered.

The RMA claimed that the combination of this feature with other parts of the proposed regulation would create an unreasonable burden and violate the Paperwork Reduction Act. The RMA was concerned with the combined effect of presumably requiring three versions of the same information, stamping each appropriate page with the word "confidential," potentially redacting personal information, and the potential application of all the requirements to each quarterly submission of the early warning reporting information.

As noted above, we have made various modifications to address many of these concerns. We have clarified that we did not intend to require a so-called third version of each submission, have eliminated the proposal to require the redaction of personal identifiers, and have addressed the early warning reporting information through a series of class determinations covering those portions we have determined are entitled to confidential treatment under Exemption 4 of the FOIA.

In sum, we believe that this final rule simplifies the process for submitting confidentiality claims, allows for the more efficient handling of those claims within the agency and imposes no additional burden on those submitting the information. The final early warning reporting regulation likewise clarified those reporting obligations and, we believe, assuages many of the concerns raised by the RMA.

Those providing submissions electronically must either separate the material that is confidential from that which is not, or find an alternative method of marking those pages that are confidential. We note that companies increasingly are supplying information required as part of a defect or noncompliance investigation in electronic formats.

C. Subpart C—Additional Requirements

In Subpart C, the agency proposed to retain additional requirements from the existing regulation that submitters must follow when certain circumstances apply. The NPRM stated that we did not intend to change these requirements substantively, only to clarify the requirements and assemble them in a single subpart.

The requirements contained in this portion of the proposed rule covered such issues as the submitter's continuing obligation to amend information provided in support of a claim for confidential treatment, the manner in which confidential treatment is to be claimed for multiple items of information or for information submitted by a third party, the steps submitters must take if they need an extension of time to claim confidential treatment, and the consequences for noncompliance with part 512.

The final rule includes the requirement that submitters specify with their claim the length of time for which confidential treatment is sought. The information supporting the confidentiality request must include adequate justification for the time period specified in the claim.

The agency did not receive comments objecting to the proposed reorganization of these provisions into Subpart C, or to most of the specific requirements contained in this portion of the proposal. Objections were raised, however, regarding two provisions of the proposal:

1. Duty To Amend

The existing regulation provides that submitters of information "shall promptly amend supporting information" justifying a claim for confidential treatment "if the submitter obtains information upon the basis of which the submitter knows that the supporting information was incorrect when provided, or that the supporting information, though correct when provided, is no longer correct and the circumstances are such that a failure to amend the supporting information is in substance a knowing concealment." 49 CFR 512.4(i). The NPRM proposed to revise this language to provide that submitters "shall promptly amend any information under § 512.4 of this part whenever the submitter knows or becomes aware that the information was incorrect at the time it was provided to NHTSA, or that the information, although correct when provided to NHTSA, is no longer correct."

Several comments, including those submitted by TMA and AIAM, objected to this proposed change on the grounds that it would impose an unreasonable burden on submitters to monitor submissions constantly in order to avoid civil penalties. Workhorse expressed concern that, by removing the "knowing concealment" standard, the rule would subject submitters to civil penalties based on "constructive knowledge." Business interests urged the agency not to adopt the proposed changes. Public Citizen, on the other hand, considers the "knowing concealment" standard "too weak" and believes it allows situations in which materials that are no longer confidential receive continued protection "long after the conditions justifying its confidentiality have been removed."

We note that the agency requires the submitter to identify the length of time for which confidential treatment is sought. The agency will evaluate these requests when determining whether to grant confidential treatment and will release information once the time period for which confidential treatment is granted has lapsed. If the time period between the grant and the possible disclosure is long, the agency may seek reconfirmation, with appropriate support, that the information remains confidential.

The comments show that the proposed language could impose substantial and unnecessary burdens on submitters to monitor information previously submitted to the agency without providing additional benefit, since the agency is able to monitor the time for which confidential treatment is granted and is able to reassess a confidentiality grant should the information be requested. Accordingly, we have revised the final rule to clarify that the duty to amend relates to the supporting information submitted to justify the claim for confidential treatment, not to the substance of the reported information itself. In addition, we have revised the rule further so that, as before, the duty to amend is triggered only when circumstances are such that a failure to amend the supporting information would constitute a knowing concealment.

2. Third Parties

In the NPRM, the agency proposed that, when confidentiality is claimed for information obtained by the submitter

from a third party, such as a supplier, the submitter is responsible for obtaining from the third party the information that is necessary to comply with the requirements of this regulation, including the requirement to submit a certificate of confidentiality.

The agency received several comments, all from suppliers, raising questions concerning this aspect of the agency's proposal. MEMA/OESA, AORC, Bendix, and WABCO, among others, argued that they should have the opportunity to request confidentiality directly with respect to information that they submit to their customers, and should be able to deal directly with the agency regarding information that is not available to the original submitter.

The agency believes these comments reflect a misunderstanding of the proposed regulation. The proposed regulation would not prevent suppliers from submitting information to the agency or seeking confidential treatment directly. This provision of the NPRM merely provided that if a person submits information that was obtained from a third party (such as an automobile manufacturer submitting information obtained from a supplier, a supplier submitting information obtained from a vehicle manufacturer, a contractor submitting information obtained from a subcontractor, or a similar situation involving wholly different parties), and if the submitter seeks confidential treatment for the information, it must obtain adequate supporting documentation to justify the claim. For example, it may be appropriate, or even necessary, to obtain and submit a Certificate in Support of the Request for Confidentiality that was prepared by the entity from which the information was obtained. In the absence of adequate supporting information, the agency will have no choice but to make the information public. Accordingly, this provision of the proposed rule is adopted without change.

D. Subpart D—Agency Determination

NHTSA proposed in the NPRM to delineate the confidentiality standards and procedures used by the agency to render a confidentiality determination. We also proposed to state that the agency may render determinations involving classes of information and that submitters may request reconsideration if they disagree with an agency decision. We indicated that we were proposing to clarify these provisions and assemble them into a single subpart. We indicated also that we were proposing some substantive changes to these portions of the regulation.

The majority of the comments related to the submission and protection of early warning reporting information, but a few additional issues were also addressed:

1. Time To Request Reconsideration or To Respond When a FOIA Request Is Pending

Part 512 previously provided that, if a request for confidential treatment is denied in whole or in part, the agency would inform the submitter of its right to petition for reconsideration of the denial within ten working days after receiving notice of the agency's decision. The NPRM proposed no changes to this aspect of the rule. A number of comments, primarily from smaller businesses, requested that this period of time be extended.

Blue Bird, for example, asserted that small-to medium-sized companies should have "the opportunity to undertake the type of expanded review which the Company would need in cases where it must fully consider and present all possible arguments and justifications to protect what [it considers to be] proprietary, competitively sensitive information." In addition, MEMA/OESA asserted that "requests for reconsideration where sensitive company documents are otherwise at risk will often require the input of many company employees * * * [and that] the ten-day period under the current and proposed rules * * * provides insufficient time." These comments recommended that the period of time should be extended from 10 working days to 20 working days or 30 calendar days.

Upon consideration of the difficulties faced by small companies (Blue Bird) and the potential need to coordinate responses with widely dispersed employees (MEMA/OESA), the agency has decided to adopt the commenters' request to extend the period of time to request reconsideration of denials of confidential treatment rendered by the agency, from ten working days to twenty working days.

In related comments, citing sections 512.22 and 512.23 of the regulation, which appear in Subpart E and relate to modifications of confidentiality decisions and the public release of confidential information under certain limited circumstances, the WLF recommended that "the agency should [n]ever give less than ten (10) day advance notice to [a] company before releasing business documents." Although not specifically raised in any other comments, the agency notes that several portions of part 512 provide submitters of information with ten working days within which to seek review of agency decisions.

For example, if a petition for reconsideration is denied in whole or in part under Section 512.19 (also in subpart D), or if the agency determines that an earlier determination of confidentiality should be modified under section 512.22 or that information previously determined or claimed to be confidential will be disclosed under section 512.23 (in subpart E), the submitter is advised that the information will be made available to the public not less than ten working days after the date on which notification of the agency's action is received.

The reasons that support an extension from ten working days to twenty working days for requesting reconsideration also justify the extension of these other time periods. Nonetheless, while we are revising the regulations to provide a period of twenty working days, rather than ten, in each of the sections referenced above, we are reserving the right to shorten these periods when the agency finds it to be in the public interest.

WLF asserted that the NPRM would provide "an inadequate amount of time to businesses to review and respond to FOIA requests submitted to the [agency] by third parties," and recommended that the agency "provide the third-party FOIA request to the affected business within three (3) business days after receiving it * * * [and] copies of all correspondence between the agency and the FOIA requester."

The agency notes that while the WLF's comments asserted that they concern notice to businesses upon the agency's receipt of a FOIA request for the information, the sections of the NPRM that WLF cites do not relate to these circumstances. Moreover, the agency does not believe that additional notice to submitters is needed at the time a FOIA request is received. Unlike many other Federal agencies, NHTSA does not wait until it has received a FOIA request before asking a submitter to justify the withholding of information. Instead, NHTSA's regulation provides that submitters must support their claims for confidential treatment at the time of submission. *See* 49 CFR 512.4. The agency would not expect, nor would we welcome, any additional materials from a submitter simply because a FOIA request has been filed. If a submitter disagrees with the agency's confidentiality determination (whether or not it is made in the context of a FOIA request), it can then request reconsideration. Therefore, there is no need to notify submitters if a FOIA request is received by the agency for submitted information.

2. Whether Voluntarily Submitted Materials Should Be Returned Following a Denial of a Confidentiality Request

Bendix suggested that Section 512.18 should be amended to "clarify" that information voluntarily provided to the agency subject to a claim for confidential treatment should be returned to the submitter if the agency denies the request for confidential treatment. Such information may be submitted as part of a rulemaking, research activity or a request for interpretation of our statutes and regulations.

We note that the Federal Records Act imposes limitations on the agency's ability to return information voluntarily submitted to the agency. That Act mandates the maintenance and preservation of federal records.[3] It does not contemplate the return of records to individual submitters. Those providing technical or market information as part of a rulemaking or in connection with the agency's research activity do so voluntarily and with knowledge of the standards applicable to the treatment of the data. Further, we believe we can respond to interpretation requests while maintaining the confidentiality of any information. Accordingly, we are not adopting this suggestion.

3. Class Determinations

The NPRM proposed no specific changes to the already established class determinations applicable to information found to cause substantial competitive harm if released. Appendix B to part 512 currently contains three such determinations. These classes are blueprints and engineering drawings (under certain circumstances), future specific model plans, and anticipated vehicle or equipment production or sales figures (in some cases, for limited periods of time).

The NPRM sought comment with regard to whether the agency should also consider the establishment of class determinations applicable to categories of information that presumptively would not cause substantial competitive harm if released. The proposal suggested that such class determinations, if established, would be applicable only to compelled information. The agency did not intend that any such class determinations would be applicable to information voluntarily submitted to the agency. Such information is subject to disclosure under a different legal standard and only upon a showing that the company customarily discloses the information to the public.

We have decided against the creation of class determinations trying to address categories of information the release of which would be presumed not to cause substantial competitive harm. Such class determinations are unnecessary because all data the agency requires to be submitted is already presumptively subject to disclosure under FOIA unless shown to be subject to a FOIA exemption or covered by a class determination. Class determinations merely set forth those categories in which it is unnecessary to make individual submissions regarding the release of data that by its very nature would cause substantial competitive harm or impair the Government's ability to obtain the information in the future. In addition, we have concluded that some of the areas we posed as candidates for such treatment, such as testing conducted pursuant to "known" procedures, would require specific evaluation, thus rendering the class determination futile.

We nonetheless remain concerned that submitters may routinely seek confidential treatment for information the agency has consistently determined would not cause competitive harm if released. We will take appropriate action to discourage those who repeatedly file claims for confidential treatment despite our consistent rejection of similar requests.

E. Subpart E—Agency Treatment of Information

In Subpart E, the proposal described the manner in which information claimed to be confidential would be treated by the agency. The proposal intended to continue the practice of providing that any information identified and claimed to be confidential would be protected from disclosure by the agency pending an agency decision, and would continue to be treated confidentially as if the submitter's request for confidential treatment were granted, except under certain limited circumstances.

The Alliance suggested that the final rule should explicitly state that information claimed to be confidential would remain confidential pending the agency's administrative determination that the information is not entitled to confidential treatment. The NPRM expressly proposed such protection during the administrative reconsideration process: "Upon receipt of a timely petition for reconsideration * * * the submitted information will remain confidential, pending a determination regarding the petition." The Alliance also suggested an express regulatory provision maintaining the confidentiality of material pending any judicial review of the agency's final administrative action regarding confidential treatment.

The agency will continue to treat as confidential any information that remains subject to an administrative review. This includes both the initial determination and the agency's response to any petition for reconsideration. The agency declines, however, to adopt the Alliance's suggestion that we continue automatically to treat such information as confidential pending judicial review. The agency will make the information publicly available, consistent with its administrative decision, unless ordered otherwise by a court of competent jurisdiction. We recognize that if we were to make information available immediately following the denial of a petition for reconsideration, it would obviate the submitters' right to judicial review. Accordingly, the regulation will provide that the agency will allow the submitter twenty working days within which to obtain a court order (*e.g.*, through a temporary restraining order) requiring the agency to maintain the confidentiality of information pending judicial review. We have chosen twenty working days to be consistent with the other time periods incorporated into this final rule. We also recognize that, while the basis and arguments for the confidentiality claim should have been fully developed by the time a submitter seeks judicial review of our determination, additional work may be necessary before a lawsuit is filed. In the absence of a judicial order to the contrary, information we have determined is not entitled to confidential treatment will be placed into the public record twenty working days after receipt of the agency's decision on reconsideration. As in other contexts, we reserve the right to shorten this period if we find that it is in the public interest to do so.

The proposal also provided that a grant of confidentiality may be modified

[3] The Act defines a "federal record" as consisting of "all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them." 44 U.S.C. 3301. The disposal of these records is governed by 44 U.S.C. 3314 and related provisions of the Act. See 44 U.S.C. 3302, *et seq.*

under certain circumstances, including newly discovered or changed facts, a change in applicable law, a change in a class determination, or a finding that the prior determination was erroneous.

The proposal further incorporated certain statutory provisions under which information that has been claimed or determined to be entitled to confidential treatment may nonetheless be publicly released in some situations, including releases made to Congress, pursuant to a court order, to the Secretary of Transportation or to other Executive agencies in accordance with applicable law, with the consent of the submitter, and to contractors (subject to certain conditions).

The agency's existing regulation also listed three additional situations under which information determined to be confidential may nonetheless be disclosed to the public. The proposed rule explained that the Cost Savings Act and the Vehicle Safety Act have been repealed and their pertinent provisions have been codified under title 49 of the United States Code. Accordingly, the NPRM proposed to modify part 512 in a manner consistent with these statutory changes. We are adopting these revisions.

VI. Early Warning Reporting Information

The NPRM sought public comment on how the agency should handle the data to be submitted under the new early warning reporting regulation. Although the final rule prescribing the early warning reporting requirements had not yet been issued, the agency received numerous comments with regard to that data.

Some business interests argued that the TREAD Act itself prohibits the disclosure of any early warning reporting information under Exemption 3 of the Freedom of Information Act (FOIA). Others argued that Exemption 4 of the FOIA, applicable to confidential business information, governs whether the information should be disclosed. All business interests contended that release of the early warning data is likely to cause substantial competitive harm and many pointed out that disclosure is likely to impair the agency's ability to obtain the material in the future. Public Citizen, while agreeing that Exemption 4 is applicable, argued that all the data should be released because it is summary in nature, is important to the identification of potential defects and is often released in the course of individual defect determinations.

As the Court of Appeal for the District of Columbia Circuit recently noted, the Freedom of Information Act is premised on public access to information within enumerated bounds ensuring that the government's proper functions are not impeded:

> "Public access to government documents" is the "fundamental principle" that animates FOIA. *John Doe Agency* v. *John Doe Corp.*, 493 U.S. 146, 151 (1989). "Congress recognized, however, that public disclosure is not always in the public interest." *CIA* v. *Sims*, 471 U.S. 159, 166–67 (1985). Accordingly, FOIA represents a balance struck by Congress between the public's right to know and the government's legitimate interest in keeping certain information confidential. John Doe Agency, 493 U.S. at 152. To that end, FOIA mandates disclosure of government records unless the requested information falls within one of nine enumerated exemptions, see 5 U.S.C. 552(b). While these exemptions are to be "narrowly construed," *FBI* v. *Abramson*, 456 U.S. 615, 630 (1982), courts must not fail to give them a "meaningful reach and application," John Doe Agency, 493 U.S. at 152. The government bears the burden of proving that the withheld information falls within the exemptions it invokes. 5 U.S.C. 552(a)(4)(b).
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> *See Center for National Security Studies, et. al.* v. *U.S. Department of Justice*, 331 F.3d 918 (D.C. Cir. 2003).

We have determined that the confidentiality of the early warning submissions should be reviewed under Exemption 4 of FOIA relating to confidential business information. Below we briefly set forth the early warning reporting requirements and the arguments made in favor and against disclosure. We then apply the principles set forth in *National Parks & Conservation Ass'n* v. *Morton* (*National Parks*), 498 F.2d 765 (D.C. Cir. 1974), and its progeny to each element of the early warning reporting information.

A. Summary of the Early Warning Reporting Requirements

The bulk of the early warning reporting requirements apply to larger manufacturers of motor vehicles, and all manufacturers of child restraint systems and tires (*see* 49 CFR part 579). In general, vehicle manufacturers must submit quarterly reports with regard to the following categories of vehicles, if they produce 500 or more vehicles of a category annually: light vehicles, medium-heavy vehicles and all buses, trailers, and motorcycles. The reporting information required of these manufacturers is summarized below:

- *Deaths.* These manufacturers must report certain specified information about each incident involving a death that occurred in the United States that is identified in a claim (as defined) against and received by the manufacturer. They must also report information about incidents involving a death in the United States that is identified in a notice received by the manufacturer alleging or proving that the death was caused by a possible defect in the manufacturer's product. Finally, they must report on each death occurring in foreign countries that is identified in a claim against the manufacturer involving the manufacturer's product, or one that is identical or substantially similar to a product that the manufacturer has offered for sale in the United States.
- *Injuries.* These manufacturers must report certain specified information about each incident involving an injury that occurred in the United States that is identified in a claim against and received by the manufacturer, or that is identified in a notice received by the manufacturer which notice alleges or proves that the injury was caused by a possible defect in the manufacturer's product.
- *Property damage.* These manufacturers (other than child restraint system manufacturers) must report the numbers of claims for property damage that occurred in the United States that are related to alleged problems with certain specified components and systems, regardless of the amount of such claims.
- *Consumer complaints.* These manufacturers (other than tire manufacturers) must report the numbers of consumer complaints they receive that are related to problems with certain specified components and systems that occurred in the United States. Manufacturers of child restraint systems must report the combined number of such consumer complaints and warranty claims, as discussed below.
- *Warranty claims information.* These manufacturers,must report the number of warranty claims (adjustments for tire manufacturers), including extended warranty and good will, they receive that are related to problems with certain specified components and systems that occurred in the United States. As noted above, manufacturers of child restraint systems must combine these with the number of reportable consumer complaints.
- *Field reports.* These manufacturers (other than tire manufacturers) must report the total number of field reports they receive from the manufacturer's employees, representatives, and dealers, and from fleets, that are related to problems with certain specified components and systems that occurred in the United States. In addition, manufacturers must provide copies of certain field reports received from their employees, representatives, and fleets, but are not required to provide copies of reports received from dealers.
- *Production.* These manufacturers must report the number of vehicles, child restraint systems, and tires, by make, model, and model year, during the reporting period and the prior nine model years (prior four years for child restraint systems and tires).

In addition, these manufacturers must submit to the agency, on a one-time basis, historical data relating to the number of warranty claims/adjustments and field reports for each calendar quarter during the three-year period from July 1, 2000 through June 30, 2003.[4]

Smaller manufacturers (as defined in the early warning rule), and manufacturers of original motor vehicle equipment or replacement equipment other than child restraint systems and tires, are required to submit reports containing information about claims and notices of deaths allegedly caused by their products, but are not required to submit other information.

B. Application of the FOIA to the Early Warning Reporting Program

The TREAD Act's disclosure provision applies to information provided under 49 U.S.C. 30166(m), which was added to the Vehicle Safety Act in the aftermath of hearings held in connection with NHTSA's investigation of Firestone ATX and Wilderness AT tires. That statutory section mandates that the agency initiate a rulemaking "to establish early warning reporting requirements for manufacturers of motor vehicles and motor vehicle equipment to enhance the Secretary's ability to carry out the provisions of this chapter." 49 U.S.C. 30166(m)(1).

Section 30166(m)(3) sets forth the type of information Congress expected the rulemaking to include. Congress specifically directed the agency to require the submission of information relating to repair and/or replacement campaigns. The Act provides for the submission of data on claims submitted to the manufacturer for serious injuries (including death) and aggregate statistical data on property damage from alleged defects in a motor vehicle or in motor vehicle equipment that may assist in the identification of defects. 49 U.S.C. 30166(m)(3)(A). Congress also specifically provided for manufacturers to submit information relating to claims of death or serious injury alleged to be caused by a defect where the manufacturer receives actual notice. 49 U.S.C. 30166(m)(3)(C).

Congress recognized that additional types of information may be useful to the agency in carrying out its mission to identify safety related defects. In Section 30166(m)(3)(B), Congress gave the agency the authority to mandate the submission of "other data" in addition to the information described above "to the extent that such information may assist in the identification of defects related to motor vehicle safety in motor vehicles and motor vehicle equipment in the United States." Pursuant to that authority, NHTSA's early warning reporting rule requires the submission of information relating, among others, to warranty claims, field reports and consumer complaints.

Congress also considered the extent to which the data submitted as part of the early warning reporting regulation should be subject to public disclosure or, alternatively, the extent to which it should be held confidential to enhance the agency's ability to identify potential safety defects. The TREAD Act's disclosure provision, Section 30166(m)(4)(C), reads:

> None of the information collected pursuant to the final rule promulgated under paragraph (1) shall be disclosed pursuant to section 30167(b) unless the Secretary determines the disclosure of such information will assist in carrying out sections 30117(b) and 30118 through 30121.[5]

1. The TREAD Act and the FOIA Exemptions

In a letter to Secretary Slater dated October 20, 2000, days after passage of the TREAD Act, but before President Clinton signed the Act into law, Public Citizen objected to the disclosure provision.[6] Public Citizen was concerned that the provision would be construed to prohibit the disclosure of any early warning reporting data:

> The secrecy provision in sec. 3(b)(4)(c) is imposed upon all safety defect information collected as part of the bill's "early warning reporting requirements" rulemaking. We believe that the secrecy provision thwarts the clear purpose of the legislation—to protect the public from defect cover-ups—and may drastically reduce public access to safety defect information. Under that section, the Secretary shall not disclose defect and early warning information about lawsuits, consumer complaints, deaths, injuries, component failures or consumer satisfaction campaigns unless you determine that disclosure will assist in carrying out the law. This inverts existing law, as the current presumption of 49 U.S.C. sec. 30167(b) is to favor the disclosure over and above the disclosure requirements of the Freedom of Information Act (FOIA). Indeed, the function of this reversal in presumptions is to create a categorical exemption under FOIA's exemption three, and thus to keep information submitted under the new rule totally secret, probably indefinitely. (Emphasis in original)[7]

NHTSA's Chief Counsel considered and rejected this view of the TREAD Act's disclosure provision in an internal departmental memo, which was subsequently placed in the public record. That memo stated in part:

> Ms. Claybrook's letter seems to suggest that the variation in language could be interpreted to prevent the disclosure of any early warning information submitted to the agency in the absence of a decision by the Secretary that disclosure of the information "will assist in carrying out" the purposes of the Act. However, the legislation clearly requires that such a decision be made prior to disclosure only when the disclosure is being made under section 30167(b), which by its terms is invoked only when the disclosure involves information that has been determined to be entitled to confidential treatment.
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> Moreover, section 30167(b) provides specifically that "A requirement to disclose information under this subsection is in addition to the requirements of [the FOIA]." Accordingly, neither section 30167(b) nor paragraph (4)(C) would affect the agency's initial decision regarding whether information submitted to the agency is entitled to confidential treatment. Such decisions will continue to be made in accordance with Exemption 4 of [the FOIA], the Trade Secrets Act and the agency's regulations concerning the treatment of confidential business information, 49 CFR part 512.[8]

In its comments to this rulemaking, Public Citizen agreed that Section 30166(m)(4)(C) permits the agency to consider the early warning information under Exemption 4 of the FOIA. Public Citizen claimed that the effect of the provision is to alter a preexisting presumption in Section 30167(b) from one of disclosure to nondisclosure in the absence of the specified findings of the Secretary. Public Citizen also clarified that its "statements about the possible meaning of the bill were concerned with its potential for legal manipulation by the industry, *i.e.*, what in the worst case it could mean, rather than any suggestion of what it should or actually does mean in agency practice."

The RMA argued that the TREAD Act provision falls within Exemption 3(b) of the FOIA, which negates disclosure when Congress has established particular criteria for withholding

[4] The early warning regulation contains definitions and explanations that provide further context to these requirements and that are not repeated here.

[5] Section 30167(B) provides: "Subject to subsection (a) of this section, the Secretary shall disclose information obtained under this chapter related to a defect or noncompliance that the Secretary decides will assist in carrying out sections 30117(b) and 30118–30121 of this title or that is required to be disclosed under section 30118(a) of this title. A requirement to disclosure information under this subsection is in addition to the requirements of section 552 of title 5."

[6] Public Citizen's letter appears in the docket as an attachment to the comments submitted by the RMA.

[7] Exemption 3 applies to material "specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld." 5 U.S.C. 552(b)(3).

[8] Memo from Frank Seales, Chief Counsel, NHTSA, to Rosalind Knapp, Acting General Counsel of the Department of Transportation, at 2 (Oct. 27, 2000) (emphasis in original).

information or has referred to particular types of matters to be withheld. The RMA asserted that the reference in the disclosure provision to the rulemaking required by Section 30166(m)(1) is sufficient to bring the statute within the purview of Exemption 3. According to the RMA, the analysis prepared by the agency in the October 27, 2000 memorandum would render the statutory provision meaningless and violate a central tenet of statutory construction.

The RMA, as well as individual tire makers and many other manufacturers, further argued that the information required by the early warning reporting regulation would lead to substantial competitive harm if disclosed. In addition, they suggest that disclosure would lead to less candor from field personnel, resulting in less reliable information, and would discourage marketing efforts that lead to more complete and useful data.

The Alliance suggested that the provision assumes the confidentiality of the early warning reporting data because information cannot be disclosed under section 30167(b) unless it is otherwise confidential. The Alliance asserted that the information may be found to be confidential under either Exemption 4 or Exemption 7 of the FOIA. The Alliance submitted affidavit evidence to support its claim that disclosure of the early warning reporting information would lead to substantial competitive harm within the automotive industry. General Motors also submitted comments explaining how, in its view, substantial competitive harm is likely to result if the data were disclosed.

The TREAD Act mandated that NHTSA collect and maintain information in a manner not previously followed by the agency. Historically, the agency has received information relating specifically to a particular alleged defect or noncompliance, including engineering drawings, warranty claim information, customer complaints, field reports and lawsuit information. Manufacturers submitting information in response to the agency's information requests frequently seek confidential treatment for portions of the information submitted. The agency reviews those requests in accordance with Exemption 4 of the FOIA.

The early warning reporting regulation requires regular periodic submissions of data that relate not simply to alleged problems, but to all of a manufacturer's products. These submissions are not necessarily indicative of any problem needing investigation. We do not believe that the language of Section 30166(m)(4)(C), and the colloquy accompanying its enactment (*See* Appendix A), expresses a Congressional mandate to treat all early warning reporting information confidentially. Instead, we believe that Congress expected the agency to review the confidentiality of early warning reporting information under Exemption 4 of the FOIA, but to apply Section 30167(b) in a more restrictive manner to that data than to other information received by the agency.[9]

As many of the commenters pointed out, Section 30167(b) applies only after we have determined that information is entitled to confidential treatment. The provision permits the disclosure of confidential information whenever the Secretary, in his discretion, believes that the information can be useful in carrying out the agency's defect identification and remediation function. In contrast, the TREAD Act's disclosure provision does not permit the disclosure of confidential early warning reporting information unless the Secretary specifically finds that disclosure is necessary to carry out the agency's responsibility to identify potential safety-related defects. Thus, the basis for justifying disclosure of the early warning reporting information is significantly more stringent than that for all other material submitted to the agency and found entitled to confidential treatment under the FOIA.

Both Public Citizen and the Alliance construed the TREAD Act provision in a manner consistent with our analysis. Public Citizen stated that the provision "inverts existing law, as the current presumption of 49 U.S.C. § 30167(b) is to favor disclosure over and above the disclosure requirements of the Freedom of Information Act (FOIA)."[10] The Alliance similarly argued that Congress enacted the TREAD Act aware that the Vehicle Safety Act contained a provision generally favoring disclosure of information, even if it is otherwise confidential, when deemed necessary to assist in carrying out the agency's defect remediation function. According to the Alliance, Congress intended to neutralize that presumption and to disfavor disclosure of the early warning information:

> [U]nder longstanding NHTSA practice, *nonconfidential* information related to potential defects or noncompliances under investigation by the agency is routinely available in the agency's public reference reading room, without need for a Secretarial "determination" under § 30167(b), even though NHTSA could lawfully invoke FOIA Exemption Seven (relating to law enforcement investigations) to protect this information. Thus, as a practical matter, information in NHTSA's possession *is not even considered for release* under § 30167(b) of the Safety Act, **unless and until that information is already entitled to confidential treatment** under one of the Freedom of Information Act exemptions. (Emphases in original.)

As set forth in the October 27, 2000 memo, the agency disagrees with the assertion presented by the RMA and other business interests that the TREAD Act provision categorically prohibits the disclosure of any early warning reporting information pursuant to Exemption 3 of the FOIA. Our analysis of the arguments in favor of the application of FOIA Exemption 3, and our reasons for rejecting those arguments are amplified in Appendix A to this Final Rule. In sum, we believe the TREAD Act provision intended the Secretary initially to determine which information is entitled to confidential treatment as confidential business information, and, if so and only then, to consider whether disclosure is nonetheless necessary for the agency to fulfill its responsibilities to detect and enforce the laws governing the recall of vehicles and equipment containing safety related defects.

2. The Early Warning Reporting Information and FOIA Exemption 4

Consistent with the October 27, 2000 memo, we have determined that the confidentiality of the early warning reporting information should be construed under Exemption 4 of the FOIA. Exemption 4 protects information from disclosure that are "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. 552(b)(4). Information is confidential if its disclosure is likely "(1) to impair the Government's ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained." *National Parks*, 498 F.2d at 770. *See also Center for Auto Safety* v. *National Highway Traffic Safety Administration* (*CAS* v. *NHTSA*), 244 F.3d 144, 147–48 (D.C. Cir. 2001) (discussing application of Exemption 4 to mandatory submissions).[11]

Business interests contended that the early warning reporting information is entitled to protection under both prongs. They argued that early warning submissions would provide insight into the field experience and performance of a submitter's entire product line. Business enterprises were concerned that this information could then be analyzed by competitors to assess various factors, such as a submitter's experience with a particular supplier, production cycles, and the reliability of that submitter's products. Many of the commenters also pointed out that the disclosure of information may deter candor and discourage efforts to obtain reliable information from the field.

The RMA asserted that disclosure of early warning reporting information would harm individual competitors. The Alliance echoed these concerns and emphasized that the information would be valuable to competitors, particularly within the context of competition among its member companies, aftermarket parts manufacturers, potential new entrants, and franchised dealers. Many commenters pointed out that the early warning reporting information constitutes a unique and comprehensive compilation of information not otherwise available, and, while subject to misinterpretation by the public, is especially valuable to competitors.

The Alliance submitted affidavit evidence with its comments from an automotive marketing consultant to support its claim that the early warning reporting information relates to issues of importance to new car buyers, and therefore that the material is likely to be used (and potentially misused) in the competitive marketplace. The Alliance pointed out that the most significant factors cited by automobile consumers when choosing a vehicle relate to reliability, quality and dependability—all factors upon which the early warning reporting information is likely to shed some light.

The Alliance and others expressed concern over the potential misuse of the early warning reporting information, either by competing companies or others who may draw conclusions from the data that, according to the Alliance and others, may be unwarranted. The Alliance stated that in addition to "[t]he unfairness of subjecting the submitting manufacturers to the competitive harm that would flow from the disclosure of [early warning information]," any comparison of this information by the public would not be valid because of the differences in warranty periods among manufacturers.

GM reiterated this concern. Workhorse similarly wrote that disclosure of early warning information would create "a serious risk that the public will be misled by disclosing such raw, unverified data" and lead to "consumer confusion and manufacturer harm." The RMA, while arguing that the potential misuse should support a blanket prohibition from disclosure, also asserted that the early warning reporting information is commercially valuable, and that its value is directly related to the extent of its confidentiality.

The Alliance recognized and did not take issue with NHTSA's current practice of releasing similar types of information submitted during specific defect investigations, but argued that this "does not justify the release of the comprehensive compilations of information" collected under the early warning reporting rule. The Alliance explained that "[a] limited release of information that is relevant to, and specific to, an individual defect investigation is much different from a competitive standpoint than the automatic release of the continually collected, full compendium of quality and customer satisfaction information that is represented by the complete 'early warning' submission each quarter."

Because of the comprehensive nature of the early warning information, the Alliance argued that these submissions "should * * * be protected by a class determination presuming their confidentiality and * * * should not have to be accompanied by a traditional part 512 justification with each quarterly submission." The Alliance added that NHTSA's "long-standing practice of releasing information limited in terms of scope and timeframe related to consumer complaints, warranty claims, property damage claims, field reports, etc., when this information has been submitted in connection with an individual, specific defect investigation does not defeat the presumptive confidentiality of the comprehensive collection of such information."

AIAM asserted a similar argument in favor of protecting early warning information, claiming that its main point of contention "lies with a comprehensive disclosure of all, unscreened early warning information." The AIAM added that "we recognize that, in appropriate instances, portions of the early warning information could still be disclosed to the public." AIAM explained that such releases could occur "after NHTSA has processed and evaluated early warning information and decided to pursue an investigation about a particular vehicle/component."

GM also distinguished between the disclosures that NHTSA currently makes during defect investigations and the disclosures that would occur if the class determinations the agency proposed for warranty information were made. The company explained that its responses to agency information requests "often include warranty data for a limited number of makes, models, and years."

Public Citizen argued that most of the information to be submitted under the early warning reporting rule is summary in nature and not specific enough to qualify for confidential treatment. Public Citizen also contended that because information to be submitted is similar or identical to the type of information submitted as part of a defect investigation, it should be treated as it currently is in a defect investigation. Public Citizen noted that the agency had speculated early in the development of the early warning reporting regulation that it thought manufacturers may not seek confidential treatment of the early warning reporting information.

We believe that the information submitted in the course of a defect investigation is qualitatively and quantitatively different from the comprehensive compendium of pre-investigation information to be submitted under the early warning reporting rule, and further that the competitive harm caused by the disclosure of some of the early warning reporting data is substantial. While the early warning reporting information will generally not be as specific as the data submitted during a defect investigation into a defined and particular problem, each company must provide data with regard to each product it manufacturers. The information relating to certain elements of reporting provides specific information that competitors are likely to find valuable and, at the same time,

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[9] We must give meaning to all words and phrases of a statute, and therefore we must give meaning to the reference in Section 30166(m)(4)(C) to the preexisting Section 30167(b). *See, e.g., TRW Inc.* v. *Andrews*, 534 U.S. 19, 31 (2001) ("It is 'a cardinal principle of statutory construction that a statute ought, upon the whole, to be construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant' ") *and United States* v. *Menasche*, 348 U.S. 528, 538–539 (1955)("It is our duty "to give effect, if possible, to every clause and word of a statute.' " We must also ensure that our construction of the statute does not render the TREAD Act provision meaningless or duplicative of existing law. *See, e.g., Dunn* v. *Commodity Futures Trading Commission*, 519 U.S. 465, 472 (1997) ("Our reading of the exemption is therefore also consonant with the doctrine that legislative enactments should not be construed to render their provisions mere surplusage").

[10] In its comments, Public Citizen expressed its view that the provision is not an Exemption 3 statute, stating that "while the TREAD Act provision may *reverse a presumption* available for certain information under Section 30167(b), the language of the statute falls far short of creating a withholding statute or exemption from FOIA." (Emphasis in original.)

[11] A different standard applies to information that is submitted voluntarily to a government agency. *See Critical Mass Energy Project* v. *Nuclear Regulatory Commission*, 975 F.2d 871 (D.C. Cir. 1992) (en banc). Since all the information provided under the early warning reporting regulation is "required," *Critical Mass* does not apply.

provides comparative data across each manufacturer's entire product line.

The U.S. Court of Appeals for the D.C. Circuit has also recognized that a collection of information may be found likely to cause substantial competitive harm even if some of the individual pieces of data are not independently entitled to confidential treatment. *See Trans-Pacific Policing Agreement* v. *United States Customs Service*, 177 F.3d 1022 (D.C. Cir. 1999).[12] *See also Center for National Security Studies, et. al.* v. *U.S. Dept. of Justice*, 331 F.3d 918 (D.C. Cir. 2003) (finding that Exemption 7 protects a comprehensive list of names and other personal information even though individual pieces of information have been otherwise revealed). We further note that the D.C. Circuit has acknowledged that potential consumer misuse, with competitive consequences, is a legitimate factor to consider when determining the confidentiality of the information required to be submitted to the agency. *See Worthington Compressors* v. *Costle*, 662 F.2d 45, 52 n.43 (D.C. Cir. 1981)(trial court should consider "whether competitors or consumers may misuse the information to the detriment" of the submitters' competitive positions).[13]

NHTSA has consistently recognized the importance of providing accurate (and complete) information to the public about motor vehicle safety. The agency issues Consumer Advisories to help instruct consumers on the proper use of automotive products and encourages the public to refer to its New Car Assessment Program (NCAP) when choosing a vehicle to purchase. In developing the NCAP program, the agency expressed its belief that "if consumers have valid comparative information on important motor vehicle characteristics, they will use that information in their vehicle purchase decisions." *See* 52 FR 31691 (Aug. 21, 1987). The agency has even rescinded certain aspects of its Consumer Information programs after concluding that the data may mislead consumers and, therefore, will not provide valuable safety information. *See* 60 FR 32918 (June 26, 1985).

Some of the commenters also raised the possibility that NHTSA's release of early warning information would impair both the agency's ability to obtain this information in the future and the quality of the information that the agency receives. For example, AIAM noted that "[d]espite the manufacturer's intent to the contrary; individuals who prepare field reports may be less thorough or candid if they know that their reports will be available to the general public and not just to experienced, sophisticated analysts employed by the manufacturer and the government." Similarly, TIA asserted that, under the proposed presumptive categories, submitters "will produce the bare minimum required." TIA added that if the information were protected, submitters "will be more likely to provide robust amounts of data."

The purpose of the TREAD Act's mandate to develop a regulation requiring the submission of the early warning data to the agency is made clear in the language of the law itself. The purpose of the early warning reporting regulation is "to enhance *the Secretary's* ability to carry out the provisions of this chapter," 49 U.S.C. 30166(m)(1), which includes reducing both the number of traffic accidents and the fatalities and injuries arising from them. (Emphasis added). The Secretary has delegated those responsibilities to NHTSA. *See* 49 CFR 501.2. The agency's ability promptly to identify safety related defects would not be "enhanced" if disclosure of all or part of the data diminishes the volume and/or reliability of the information, nor would the public interest in motor vehicle safety be served if disclosure has the result of discouraging manufacturers from being responsive to consumer concerns that may relate to motor vehicle safety or imposing greater costs on consumers who need to address such concerns.[14] Therefore, we must consider whether the disclosure of each reporting element has the potential to impair our early detection of possible safety related defects.

The Alliance argued that all early warning data are entitled to confidential treatment under Exemption 4, although both it and General Motors placed particular emphasis on the confidential nature of warranty information. Conversely, Public Citizen argued that all of the early warning data should be categorically considered public in order to achieve what it perceives to be the purpose of the TREAD Act—that is, to give the public complete access to the data required pursuant to the TREAD Act so that the public can make its own decisions relating to products. Public Citizen contended that some Members of Congress voted for the TREAD Act only because they believed the information required by it would be publicly available, citing unreported conversations between NHTSA's and Congressional staff. [15] Public Citizen also argued that business interests failed to establish that early warning reporting submissions qualify for blanket confidential treatment under Exemption 4.

We do not believe that Exemption 4 should be applied to the early warning reporting information on a wholesale basis, whether in favor or against disclosure. Instead, we will consider the application of Exemption 4 to each "reporting element" to be submitted under the early warning reporting regulation. In doing so, we consider whether the disclosure of each element of information is either likely to cause substantial competitive harm or likely to impair the agency's ability to obtain necessary information in the future (and thereby impair an important government function). An analysis of the case law applying *National Parks* and its progeny, and discussing the impairment prong in particular, is included as Appendix B.

C. Specific Types of Information To Be Provided Under the Early Warning Regulation

Congress provided for the agency to collect from manufacturers reports of safety related recalls and campaigns conducted outside the United States, and reports relating to claims for deaths and serious injuries.[16] These mandates grew directly from information arising from the Ford/Firestone tire problem—reports of foreign safety related service actions and a plethora of lawsuits, neither of which had been reported to the agency. Congress also directed the agency to collect aggregate statistical information on property damage claims and authorized it to collect any other data that would assist the agency in its efforts to identify safety related defects in the field.

The purpose of the early warning reporting rule is to ensure that the agency has information from which it can detect potential safety problems and investigate them in a timely manner. We are concerned that our decisions on whether information will be disclosed could discourage manufacturers from collecting the information in the first instance, thereby reducing the information available to the agency to serve this critical function. We are also worried that the public interest in motor vehicle safety will be adversely affected if disclosure has the result of causing manufacturers to be less responsive to consumer safety concerns or to impose greater costs on consumers who need to address problems with their vehicles and equipment, thereby reducing the likelihood of repairing potential safety issues.

The case law construing Exemption 4 makes clear that, while the functioning of our early warning defect detection program is an appropriate consideration when construing the confidentiality of the data, assertions that the data may be useful in a broader public context is not. (*See* Appendix B) We must consider whether each element required to be submitted pursuant to the early warning reporting regulation is entitled to confidential treatment either because its disclosure will likely cause substantial competitive harm or because its disclosure will likely impair our ability to obtain in the future information important to our early warning defect detection program.

1. Production Numbers

The early warning reporting rule requires certain manufacturers to submit the number of vehicles, tires and child restraint systems, by make, model, and model (or production) year, produced during the model year of the reporting period and the prior nine model years (prior four years for child restraint systems and tires). The agency previously noted in the early warning reporting NPRM that it has generally granted confidential treatment to production data on child restraints and tires submitted to NHTSA, but that light vehicle production numbers are generally available to the public through the automotive press and have generally not been granted confidential status.

Many business interests discussed their efforts to maintain the confidentiality of their production figures. Harley Davidson and MIC stated that production numbers by model have never been generally available in the motorcycle industry. Cooper Tire submitted an affidavit, further confirmed through RMA's comments, with regard to the competitive harm that disclosure of otherwise confidential production numbers would have in the tire industry. JPMA argued that disclosure of these data would provide new entrants and competitors in the child restraint industry with information about production capacities, sales and market performance not otherwise available in the absence of considerable investment in market research. Bluebird (buses, school buses and motor homes), Utilimaster (final stage walk-in vans and freight bodies for commercial use) and the AORC (occupant restraint systems and other components) also each stated that production numbers in their segment of the industry are confidential and likely to lead to substantial competitive harm if released.

The comments substantiate that production numbers in many sectors of the automotive and equipment industries are competitively protected information, revealing otherwise unobtainable data relating to business practices and marketing strategies. Production numbers for manufacturers other than light vehicle manufacturers have been treated confidentially in the past and their disclosure is likely to cause substantial competitive harm to the businesses engaged in these industries. Accordingly, we are establishing a class determination applicable to such information.

2. Claims and Notices Involving Death, Personal Injury and Property Damage

The early warning reporting rule requires all vehicle and equipment manufacturers, including those producing less than 500 vehicles annually, to report certain information about each incident involving a death that occurred in the United States that is identified in a claim against and received by the manufacturer. They must also report information about incidents involving a death in the United States that is identified in a notice received by the manufacturer alleging or proving that the death was caused by a possible defect in the manufacturer's product. Finally, they must report on each death occurring in a foreign country that is identified in a claim against and received by the manufacturer involving the manufacturer's product, if it is identical or substantially similar to a product that the manufacturer has offered for sale in the United States.

Certain manufacturers are also required to report specified information about each incident involving an injury that occurred in the United States that is identified in a claim against and received by the manufacturer, or that is identified in a notice received by the manufacturer alleging or proving that the injury was caused by a possible defect in the manufacturer's product.

In general, the information that must be reported includes, for each claim or notice: the make, model, model year and Vehicle Identification Number of the vehicle involved, the date of the incident, the number of deaths and/or injuries involved, the state or foreign country in which the incident occurred, and each system or component that is referred to in the claim or notice. In addition, the larger vehicle manufacturers and tire manufacturers must report the numbers of claims for property damage that occurred in the United States that involve certain specified components and systems, regardless of the amount of such claims.

Industry commenters, such as TMA and MEMA/OESA, alleged that release of death and injury data will result in substantial competitive harm. Public Citizen claimed that such reports do not reveal detailed competitive information, but rather reveal only summary information about the incidents reported.

The submissions relating to claims and notices of death, personal injury or property damage involve a collection of information, many of the pieces of which are publicly available. While the data are not generally available to the

[12] We do not agree with Public Citizen's assertion that the analysis in *Trans-Pacific* is limited to its facts and has no applicability to other, similar situations. *Trans-Pacific* neither compels the protection of the information here, nor does it compel its disclosure. The case supports consideration of any substantial competitive harm arising from the disclosure of a comprehensive compendium of information, even if the disclosure of individual pieces of that compendium are not competitively harmful.

[13] NHTSA has long maintained that public embarrassment per se (that is, in the absence of substantial competitive harm or a deleterious effect on a government program) is not a basis for confidential treatment. The record here, however, provides support that public disclosure of some of the early warning reporting information may lead to mischaracterizations causing substantial competitive harm and may lead to less, rather than more, reporting.

[14] Section 30166(m)(4)(B) provides that "the regulations promulgated by the Secretary under paragraph (1) may not require a manufacturer of a motor vehicle or motor vehicle equipment to maintain or submit records respecting information not in the possession of the manufacturer."

[15] Public Citizen neither provided evidence to support this claim, nor identified those Members who might have voted differently. Further, the analysis in the memo was prepared in response to the October 20, 2000 letter and post-dated the Congressional votes. The TREAD Act passed in the House of Representatives on October 10, 2000 and in the Senate on October 11, 2000. The letter to Secretary Slater was dated October 20, 2000, and the memo was dated October 27, 2000. The TREAD Act was signed into law on November 1, 2000. The memo was placed in the public docket in March 2001. There is no reference to the memo in the Congressional record. Nor are we aware of any public dissemination of the memo, or its analysis, prior to its placement in the docket approximately five months after the TREAD Act was passed.

[16] The provision requiring the reporting of safety related recalls and other safety campaigns conducted in foreign countries on vehicles that are identical or substantially similar to those offered for sale in the United States is section 30166(l). The disclosure provision in Section 30166(m)(4)(C) does not apply to this category of information. We mention it, however, because it is a critical element of the information Congress thought important for the agency to obtain. As in the case of information delineating safety recalls in the United States and other widely distributed technical information, we do not consider this category of information confidential and will not protect it from public disclosure.

public in this type of compilation, the disclosure of this collected information is not likely to reveal business strategies or other data that can be used competitively. These kinds of claims tend to be more historical than other types of information required by the early warning reporting regulation, with any apparent trends arising over longer periods of time. Given the nature of the data, we consider it unlikely that information about claims of death, personal injury or property damage will lend itself to cross-company comparison. We further note that the claims about a particular issue against a particular manufacturer, and in particular a developing set of claims, often receive media attention and are already in the public domain.

Nor are we concerned that disclosure will detract from the future availability or reliability of this information. Manufacturers receive claims based on incidents occurring in the field, not as the result of proactive efforts to obtain data or customer feedback. They are required under 49 CFR part 576 to retain this information and do not have the option to refuse to amass it. Further, the required information relating to these claims does not involve subjective determinations or require companies to make any admissions relating to facts or legal conclusions in dispute. The reports simply reflect the existence of allegations made with regard to events that occurred in the field.

For these reasons, we have decided not to create a class determination to cover the early warning reporting information relating to claims and notices of death or personal injury, or property damage claims. We have determined that release of that data generally will neither lead to substantial competitive harm nor impair our ability to obtain such information in the future.

3. Information Regarding Warranty Claims

Manufacturers of more than 500 vehicles per year and tire manufacturers must report quarterly the number of warranty claims (adjustments for tire manufacturers), including extended warranty and good will, they paid that involved certain specified components and systems and that arose in the United States. Manufacturers of child restraint systems must combine these with the number of reportable consumer complaints. In addition, these manufacturers must provide similar historical information relating to warranty claims paid during each calendar quarter from July 1, 2000 to June 30, 2003. The information is provided on a make/model basis and categorized with reference to the twenty-two categories defined as part of implementation of the early warning regulation.

Public Citizen argued that the information is summary in nature and typical of that generally provided as part of particularized defect investigations. Conversely, almost all the corporate commenters decried the potential disclosure of warranty data claims as the revelation of vital competitive information. Comments from the Alliance and Cooper Tire included affidavits providing evidence relating to the competitive harm that would be associated with the disclosure of warranty data within the light vehicle and tire industry, respectively.

As suggested by the affidavit from AutoPacific, Inc., submitted by the Alliance, knowledge of the warranty experience of one of the specified components or systems on a make/model level can provide other manufacturers with information about the reliability of a component or system not otherwise available to them, except perhaps through extensive investment in market research. GM offered the following example:

> If supplier A offers a newly-designed system to OEMs, any OEM can tear it down and test it, but no practical test duplicates the experience that is gained from having the system in hundreds of thousands of vehicles. If OEM1 makes the investment to put the system in some of its vehicles, it would gain that field experience and could use it to make better decisions about the future use of the system. With early warning warranty data disclosure, other OEMs would have access to some of the same information and would be able to make their decisions with less extensive testing and analysis. Through the loss of its confidential information, OEM1 is forced to subsidize the other OEMs, reducing their costs at OEM1's expense.

General Motors also makes the further point that warranty cost information is critical in the competitive automotive marketplace. While particular warranty information (such as that submitted as part of a particular defect investigation) does not reveal a company's cost structure, when aggregated by make, model and model year and applied across systems, a cost index is created. As GM notes, cost structure information has consistently been considered data likely to cause substantial competitive harm if released.

Cooper Tire raised concerns that competitors could mischaracterize the data and use it to their competitive advantage. In an affidavit submitted to the docket, Cooper Tire's expert explained that the release of "a few statistics, such as the warranty adjustment rate, without the complete background behind those statistics could lead to a very misleading picture of tire performance." The company indicated that the differences between warranties among otherwise identical tire lines sold to different types of users "could lead to erroneous inferences about tire safety which, in turn could lead to erroneous and justified competitive harm." Many other commenters echoed this same concern, asserting that because warranty practices differ and because the raw data do not reflect any technical evaluation, the data can be used and abused competitively.

In addition to the comments filed in the docket, additional public information illustrates the extent to which the industry as a whole relies on and uses sensitive warranty information. For example, GM uses its warranty data to help it pinpoint problem areas and to help it reduce its warranty costs. *See, e.g.*, Gregory L. White, "GM Takes Tips from CDC to Debug its Fleet of Cars," Wall St. J., April 8, 1999, at B1 (noting GM's adaptation of the epidemiological system used by the Centers for Disease Control and Prevention to warranty issues) *and* "A Message to Dealers Regarding the Ford Recall of Firestone Wilderness AT Tires and General Motors Continued Use of Firestone Tires on its Vehicles" (May 25, 2001)(stating that GM and Firestone tire engineers "are on site at GM's tire and wheel laboratory two days a week" to "monitor tire warranty data"), published on GM's Web site at *http://www.gmfleet.com*.

The comments and affidavits submitted support a conclusion that the warranty information required by the early warning reporting rule—that is, the number of claims associated with specific components and systems broken down by make, model and model year (with slightly different breakouts for tires and child restraint systems)—is likely to provide competing manufacturers with sufficient information about the field experience of those components and systems to provide commercial value to competitors who may be deciding whether to purchase similar components, the price at which to purchase those components and which suppliers to choose.

While manufacturers are likely to explore the practices and policies of their competitors when reviewing any publicly available warranty claims information, the public is more likely simply to rely on generic cross-company comparisons. The warranty claims information may be used as part of vehicle comparisons, even though the warranty terms and conditions and corporate warranty practices may differ. As a result, the potential for the warranty claims information to give rise to misleading comparisons and cause substantial competitive harm is also strong.

For the reasons set forth above, we have determined that the early warning reporting of warranty information, both as regards the quarterly reports and the one-time seeding of the system, is entitled to confidential treatment because its disclosure is likely to cause substantial competitive harm.[17]

The warranty data required by the early warning reporting regulation are also entitled to confidential treatment because their disclosure is likely to impair the agency's ability in the future to obtain and use reliable warranty information as part of its program to identify potential safety related defects. Warranty claims data—which begin to accumulate as soon as vehicles are sold and continue for the length of any given warranty policy—will be a significant indicant of potential defects. The quarterly warranty claims reports, combined initially with the historical seeding material, will help the agency to identify trends involving particular equipment and systems or components in a particular make, model and model year of a given product.

The more warranty information available to the agency, the more useful the warranty data will be in assisting the agency in identifying areas for further investigation. Warranty information is particularly important since it is generated early in the life of the vehicle, thus assisting in the prompt identification of potential defects. The record is replete with comments explaining why disclosure is likely to impair corporate willingness to provide expansive warranty coverage or to apply warranty policy in a more generous and less restrictive way. Longer warranties, and more liberal applications of warranty policy, will increase the number of claims paid by manufacturers and, therefore, the amount of data available to the agency. Moreover, changes in warranty policy caused by a reaction to disclosure of warranty data would likely reduce the ability of the agency to compare current data with historical data and to explore apparent changes in the data.

We are aware that, for marketing purposes, manufacturers may choose to make available to their customers warranties of longer duration and broader mileage (*e.g.*, a company may offer a 5 year/50,000 mile warranty or a 3 year/36,000 mile warranty), making more warranty claims information available to the agency. DaimlerChrysler, for example, lengthened its engine warranty period to gain in the competitive market. *See, e.g.*, Jeff Green, "DC Emphasizes Warranty," Bloomberg, Sept. 6, 2002, available at *http://www.theautochannel.com*. Not only do warranties differ by manufacturer, they also differ based on the targeted market (*e.g.* luxury v. non-luxury) and on system components. *See*, 2003 Manufacturers' Warranties, available at *http://www.enterprise.com*.

Similarly, companies can choose strictly to adhere to their warranty limitations or, alternatively, they may adopt policies of avoiding customer dissatisfaction by covering repairs arguably no longer covered under warranty, either because they may not fall within the terms of the warranty or because they fall outside their time or mileage parameters. As pointed out in the comments, the disclosure of early warning warranty data may deter "good will," customer satisfaction, and early dispute resolution efforts since such efforts will increase the number of warranty claims.[18] If these data were made public, it could lead consumers to assume that the product was of poorer quality than a similar competing product made by a manufacturer with a stricter approach to allowing warranty or "good will" claims.

The disclosure of early warning warranty information could lead to contraction of current warranty policies, and discourage their expansion, resulting in substantially less information available to NHTSA to screen for signs of early field problems. Thus, the disclosure of the comprehensive compendium of warranty data will likely impair the agency's defect detection program. Because disclosure of the early warning reporting warranty information is likely to cause substantial competitive harm and will likely impair the ability of the agency to obtain comprehensive warranty information in the future, we have decided to create a class determination covering this information.

4. Field Reports

Larger vehicle manufacturers and manufacturers of child restraint systems must report on a quarterly basis the total number of field reports they receive from the manufacturer's employees, representatives, and dealers, and from fleets, that are related to problems with certain specified components and systems, with respect to vehicles and restraints offered for sale, sold or leased in the United States. In addition, these manufacturers must provide copies of certain field reports received from their employees, representatives, and fleets, but are not required to provide copies of reports received from dealers. Like information relating to warranty claims, the agency is requiring the submission of historical field report information from these manufacturers to provide it with a seeding of data it can use immediately to detect any trends within the manufacturers' product lines.

The nature, quality and quantity of field reports vary significantly from company to company. Some companies actively pursue field feedback, whether directly from customers or through dealers and manufacturer representatives. Our experience in conducting defect investigations, in which we routinely receive field reports about the specific problem under investigation, shows that companies obtain information from the field in differing ways and with differing degrees of specificity and technical evaluation. Some manufacturers collect field reports that are little more than customer complaints, collected through dealers and field personnel. For others, a field report is more akin to technical investigation into a problem detected through warranty, consumer complaint or other data available to the company.

Field reports reflect the in-use experience of a manufacturer's product, collected by the company at its expense and with the intent of identifying problems associated with its products in the field. Such information would be of substantial value to competitors, who could—if this information were to be made public—avert similar issues or improve their products without the need to invest in market research, engineering development or actual

[17] In its comments, the Alliance pointed out the competitive value of warranty information by identifying publications available through sale, including one called the Automotive Industry Status Report. Public Citizen, in turn, points out that the Alliance both claims that warranty claim data are competitively protected and that they are generally available for sale. Having reviewed the website on which that publication is sold, we believe that the report provides certain summary information relating to aftermarket equipment, but that it is not comparable to the compendium of more specific data required to be submitted under the early warning reporting regulation.

[18] We recognize that this is not a matter of corporate generosity. Some companies may choose as a matter of marketing or customer relations to apply their warranty policies liberally, thus generating additional numbers of warranty claims. Other companies may make decisions aimed primarily at avoiding potential warranty liability in the context of real or potential disputes. In either event, disclosing early warning warranty claims data may discourage customer satisfaction and early dispute resolution efforts.

market experience. Competitors (and others) may also use the field report information competitively, just as with warranty data, to suggest comparisons that may merely result from differing policies and practices.

Public Citizen maintains that, because field reports are often disclosed as part of individual defect investigations, field reports and/or field report information should also be disclosed in a wholesale fashion when submitted as part of early warning data. On the other hand, manufacturers such as Utilimaster and Enterprise Fleet Services described the harmful competitive effects of disclosing the confidential field reports relating to the performance of their products. As stated by Utilimaster, "public and private parcel delivery operations do not under any circumstances want their competitors (or competitors of their respective customers) to be aware of and exploit delivery vehicle fleet performance, maintenance or durability issues which might impact on the operational capability of the delivery company in a particular region/trading area, or on the operations of particular customer accounts.".

The same is true for other manufacturers, who collect equally proprietary information about their products that allows them to conform future design and production to field experience. Because they would have access to comprehensive data covering all products, competitors would obtain data revealing which product features, components and systems have met with consumer acceptance (and which have not), as well as what problems may be associated with particular components and systems. The information may also reveal which aspects of a vehicle's performance (whether potentially safety related or not) a manufacturer deems important in its commercial efforts. As a result, and as commenters have illustrated, the disclosure both of the hard copies of field reports and information about the number of reports associated with the components and systems specified is likely to cause substantial competitive harm. This is true both for the quarterly reports and with regard to the historical seeding field report information.

The field report data are also entitled to protection because their disclosure is likely to lead to fewer and less reliable field reports available to the agency in its efforts to identify potential safety defects promptly. The agency has required the submission of hard copies of certain field reports, as well as the numbers of all field reports, because the agency believes that this information will be especially helpful in identifying the existence of possible safety-related problems. We recognize that we cannot compel the preparation of field reports, but rather only require that manufacturers submit to the agency information about, and copies of, those field reports that companies choose to prepare and/or obtain. *See* 49 U.S.C. 30166(m)(4)(B). Therefore, we do not want to do anything to discourage manufacturers from preparing accurate and comprehensive field reports about problems with their products. Nor do we want to detract from the candor and specificity with which field reports are written.

As made clear throughout the comments, disclosure of field reports is likely to discourage candor on the part of field personnel and could adversely affect corporate policies and practices with respect to their preparation. The available evidence shows that the disclosure of the field reports and the field report data would likely inhibit a significant feature of the agency's program to encourage the collection and reporting of information and to identify the potential existence of safety defects as soon as they begin to manifest themselves in the field. It would also reduce the amount of valuable information available to the agency during our defect investigations.

Because disclosure of the field report information required by the early warning reporting rule is likely to cause substantial competitive harm and will likely impair the ability of the agency to obtain comprehensive field report information in the future, we have decided to create a class determination applicable to these data.

5. Consumer Complaints

The early warning reporting regulation also requires larger vehicle manufacturers and child restraint manufacturers to submit complaints received each quarter relating to specified components and systems.[19] Consumer complaints are defined by the regulation as:

> [A] communication of any kind made by a consumer (or other person) to or with a manufacturer addressed to the company, an officer thereof or an entity thereof that handles consumer matters, a manufacturer website that receives consumer complaints, a manufacturer electronic mail system that receives such information at the corporate level, or that are otherwise received by a unit within the manufacturer that receives consumer inquiries or complaints, including telephonic complaints, expressing dissatisfaction with a product, or relating the unsatisfactory performance of a product, or any actual or potential defect in a product, or any event that allegedly was caused by any actual or potential defect in a product, but not including a claim of any kind or a notice involving a fatality or injury.[20]

The definition recognizes that companies may receive customer input in a variety of ways and may establish differing practices for the receipt of customer complaints. Companies may enhance their ability to receive consumer complaints, for example, by increasing the staff at their toll free telephone numbers or by creating web-based systems through which consumers can make complaints instantly by email. The more consumer inputs a company receives, the more reliable the information available to it, and the agency, to assess its products' performance in the hands of consumers.

We are concerned that release of the consumer complaint information will discourage companies from actively pursuing or will restrict their ability to receive consumer feedback.[21] Consumer complaint information is a critical aspect of the data the agency intends to use to identify potential vehicle problems. Like warranty data and field reports, the aggregate information is likely to be a useful pointer to areas that, after appropriate inquiry, may lead to defect investigations and ultimately to the remedy of safety defects.

Our experience in defect investigations has been that companies generally receive considerably more consumer inputs than does the agency on any given vehicle problem. Indeed, the importance of this material increases as warranties expire and the availability of warranty claims information correspondingly diminishes. The early warning reporting regulation will make available to the agency information about the volume of complaints received by manufacturers as to each of the specified components or systems, thus considerably enhancing the agency's ability to review field experience as it arises. The disclosure of this information is likely to discourage manufacturers' proactive efforts to obtain the data or to expend sums to establish systems to receive more information or to use it more effectively. Consequently, such disclosure could impair the effective and efficient implementation of the agency's early warning process.

Manufacturers argued that release of consumer complaint information is likely to cause substantial competitive harm because it will be used by competing manufacturers and potentially others in the public to make cross-company comparisons. If misinterpreted, the information may result in unwarranted product disparagement, leading to substantial competitive harm. As many of the comments pointed out, consumer complaints reveal the raw, unverified perceptions of vehicle owners. They neither reflect a repair that was conducted (which is revealed by warranty claims) nor an evaluation of an event by a manufacturer's employee or dealer (which is often the source of field reports). Furthermore, the consumer complaint information is not subject to any controls or analytic rigor that we believe are imbedded into the development of public acceptance surveys.

Competitors with access to complaint data would obtain, to a certain extent, information revealing which product features, components and systems have met with consumer acceptance (and which have not) and what perceived problems may be associated with particular components and systems. The information may also reveal which aspects of a vehicle's performance (whether potentially safety related or not) a manufacturer deems important in its commercial efforts. Thus, the public disclosure of complaint data is likely to cause substantial competitive harm.

Because we have determined that the disclosure of the consumer complaint data required by the early warning reporting rule will likely impair the ability of the agency to obtain comprehensive consumer complaint information in the future and is likely to cause substantial competitive harm, we have decided to create a class determination covering these data.

VII. Appendix A—FOIA Exemption 3 and the TREAD Act Disclosure Provision

Exemption 3 of the Freedom of Information Act prevents the disclosure of information provided to the government when Congress evidences a clear intent through a statutory scheme that prohibits disclosure. The RMA argued that Congress referred specifically to all of the information submitted under the regulations issued to implement Section 30166(m)(1), and therefore all such information must be withheld from disclosure under Exemption 3.

Exemption 3 is designed to incorporate into the FOIA exemptions other statutes that, on their face, clearly exempt information from FOIA's disclosure requirements. *See, e.g., Reporters Comm'n for Freedom of the Press* v. *Department of Justice*, 816 F.2d 730, 735 (D.C. Cir.), *modified on other grounds*, 831 F.2d 1124 (D.C. Cir. 1987), *rev'd on other grounds*, 489 U.S. 749 (1989) (providing that "a statute that is claimed to qualify as an Exemption 3 withholding statute must, on its face, exempt matters from disclosure"), *and Irons & Sears* v. *Dann*, 606 F.2d 1215, 1220 (D.C. Cir. 1979) (stating that "[o]nly explicit nondisclosure statutes that evidence a congressional determination that certain materials ought to be kept in confidence will be sufficient to qualify under the exemption."). An Exemption 3 statute must either make clear that the agency has no discretion on whether to disclose the information or must clearly circumscribe the determination by setting forth particular criteria or specifically identifying the information to be withheld from disclosure. The RMA claims that the TREAD Act's disclosure provision does the latter.

We disagree. Had Section 30166(m)(4)(C) stated only that "none of the information collected pursuant to the final rule promulgated under paragraph (1) shall be disclosed," then the provision would have provided unambiguous direction to the agency and clearly identified the information to be withheld. But that is not what the disclosure provision states. Instead, the provision makes reference to Section 30167(b) and states that "[n]one of the information collected pursuant to the final rule promulgated under paragraph (1) shall be disclosed pursuant to section 30167(b) unless the Secretary determines the disclosure of such information will assist in carrying out sections 30117(b) and 30118 through 30121." By making reference to preexisting Section 30167(b), the provision suggests that Congress intended the Secretary to determine initially which of the early warning reporting information is entitled to confidential treatment as confidential business information, and, if so and only then, would consider whether disclosure was nonetheless necessary for the agency to fulfill its responsibilities.

The colloquy between Congressmen Markey and Tauzin during the TREAD Act hearings suggests that Congress intended the agency to consider the confidentiality of the early warning reporting information by applying the same legal standards otherwise applicable to information the agency requires to be submitted:

> Mr. MARKEY: First, under the section entitled "early warning requirements," we provide for the reporting of new information to NHTSA generally at an earlier stage than the stage when an actual recall takes place based on the finding of a defect. To protect the confidentiality of this new early stage information, the bill provides in Section 2(b) in the subsection titled "disclosure" that such information shall be treated as confidential unless the Secretary makes a finding that its disclosure would assist in ensuring public safety, but with respect to information that NHTSA currently requires be disclosed to the public *it is my understanding of the committee's intention that we not provide manufacturers with the ability to hide from public disclosure information which under current law must be disclosed. Would the gentleman from Louisiana (Mr. Tauzin) agree that this special disclosure provision for new early stage information is not intended to protect from disclosure [information] that is currently disclosed under existing law* such as information about actual defects or recalls?
>
> * * * * *
>
> Mr. TAUZIN: Mr. Speaker, the gentleman is correct.[22]

The RMA and other commenters, however, pointed to other statutory schemes in which Congress' intent to ensure the confidentiality of submitted information was made clear. The AIAM, citing the practices of several State and Federal agencies, noted that these "regulatory agencies receive product quality-related information from regulated parties for compliance evaluation purposes" and have "consistently follow[ed] policies of withholding such information from public disclosure." AIAM admitted, however, that the statutory provisions for these agencies "differ from those affecting NHTSA" and "do not * * * provide controlling legal authority for NHTSA's handling of the early warning report information."

For example, the Supreme Court has held that the statute governing the activities of the Consumer Product Safety Commission (CPSC) contains a provision constituting an Exemption 3 statute. *CPSC* v. *GTE Sylvania*, 447 U.S. 102 (1980). The Court noted that Section 6(b) of the Consumer Product Safety Act, 15 U.S.C. 2055, sets forth specific procedures that CPSC must follow prior to the release of information to the public. *Id.* at 105. Under that provision, the CPSC must ensure the accuracy of the information it plans to release, notify the manufacturer and provide it

[19] Child restraint system manufacturers will report consumer complaints and warranty data together. As to those manufacturers, the data are considered warranty data for purposes of this rule.

[20] 49 CFR 579.4(c).

[21] Harley-Davidson noted its proactive efforts to pursue consumer feedback that might not otherwise be brought to the company's attention. Efforts such as those of Harley-Davidson show that consumer complaint data may be developed by manufacturers at their own expense and for their own proprietary purposes. The record, however, does not indicate that efforts like those described by Harley-Davidson are prevalent among all manufacturers.

[22] 146 Cong. Rec. H9629 (daily ed. Oct. 10, 2000) (emphasis added).

with a summary of the information that the CPSC intends to release if the summary would enable one to readily ascertain the identity of that manufacturer. *Id.* The manufacturer is also afforded an opportunity to comment on the CPSC's summary. *Id.*

Similarly, some of the statutory provisions regarding the disclosure of information the Federal Aviation Administration (FAA) receives involve very specific instances or types of information. For example, in *Public Citizen* v. *FAA*, 988 F.2d 186 (D.C. Cir. 1993), the court determined that information concerning air transportation security could be withheld under the agency's Air Security Improvement Act of 1990. Under the provisions of that Act, the court determined that "Congress's intent was to *broaden* the FAA's power to withhold sensitive information" held by the agency. *Id.* at 195 (emphasis in original).

Indeed, the extent of protection afforded to submitters of information under federal programs varies.[23] For example, while the Food and Drug Administration (FDA) must adhere to a statutory scheme that governs the public disclosure of information (21 U.S.C. 360j), the D.C. Circuit noted that a lower court's reading of the FDA statute as an Exemption 3 provision was "contradicted by the language of Section 360j(h), its legislative history, and its interrelation with other provisions of the Medical Device Amendments." *Public Citizen Health Research Group* v. *FDA*, 704 F.2d 1280, 1284 (D.C. Cir. 1983). Under the FDA's statutory provisions, the agency must release a summary of information relating to the safety of medical devices. The court noted that the statutory provision's "legislative history repudiates the proposition that Section 360j(h) specifically prohibits the disclosure of health and safety data that do not qualify for protection under Exemption 4 to the FOIA or [Trade Secrets Act]." *Id.* at 1285.

The Tenth Circuit Court of Appeals considered whether another provision of the FDA statute, 21 U.S.C. 331(j), qualifies as an Exemption 3 statute. *See Anderson* v. *HHS*, 907 F.2d 936, 950 (D.C. Cir. 1990). Section 331(j) provides that any information acquired under the FDA's various information-collection statutes must not be disclosed if the information "concern[s] any method or process which as a trade secret is entitled to protection." *Id.* While the court indicated that Section 331(j) qualified as an Exemption 3 statute, it held that the scope of the statute is not broader than Exemption 4 and "cannot provide any independent justification for nondisclosure." *Id.*

The colloquy between Congressmen Markey and Tauzin suggests no intent to create a statutory scheme like that governing the disclosure of information from the CPSC or other provisions prohibiting disclosure. Rather, the limited legislative history of Section 30166(m)(4)(C), and the reference to Section 30167(b) in that provision, shows that Congress intended the agency to determine the confidentiality of the early warning reporting information in accordance with its long standing practice of considering whether the data constitutes confidential business information. Congress is presumed to be aware of agency practice when promulgating statutes and, therefore, is presumed to have been aware of NHTSA's practice of analyzing confidentiality claims pursuant to Exemption 4 of the FOIA. See *e.g.*, *U.S.* v. *Wilson*, 290 F.3d 347, 356 (D.C. Cir. 2002) ("Congress is presumed to preserve, not abrogate, the background understandings against which it legislates").[24]

VIII. Appendix B—Confidential Business Information Case Law Analysis

In assessing whether Exemption 4 applies to required submissions the Government must examine whether the disclosure is likely to impair the Government's ability to obtain necessary information in the future or is likely to cause substantial competitive harm to the submitter. Substantial competitive harm can arise when the information has significant commercial value to competitors, such as: from revealing fundamental data (such as price, cost or other proprietary business structure); from revealing information that would otherwise require investment, through reverse engineering or other means, to obtain; or from revealing business strategies by making information that otherwise would be unobtainable available to competitors.

The *National Parks* test also recognizes that the Government requires the submission of certain information because it is needed to serve an important government function. In describing this aspect of Exemption 4, the court in *National Parks* noted that:

> The "financial information" exemption recognizes the need of government policymakers to have access to commercial and financial data. Unless persons having necessary information can be assured that it will remain confidential, they may decline to cooperate with officials and the ability of the Government to make intelligent, well-informed decisions will be impaired. *Id.* at 767.

The DC Circuit nonetheless decided that the information at issue—financial information of concessionaires in national parks—did not qualify as confidential under the impairment prong because it was required by government regulation and therefore the government's ability to obtain it in the future would not be impaired by its disclosure. The court remanded the case to the district court for a determination of whether the data would cause competitive harm if released.

That the *National Parks* test was intended in part to ensure the proper functioning of government business was further made clear in *Washington Post Co.* v. *HHS*, 865 F.2d 320 (D.C. Cir. 1989). In remanding the case for the development of a more complete record, the court emphasized that it had no intention of undermining the impairment prong of *National Parks*. Instead, the *Washington Post* court prognosticated that the impairment prong would tend to focus on protecting the reliability of data, rather than the availability of data. *Id.* at 328. Thus, the court reiterated the fundamental concept that the receipt of valid information on which the government can rely in performing its programmatic functions is a critical component of considering Exemption 4 claims.

The DC Circuit once again considered its policy of encouraging the submission of information to the government in *Critical Mass Energy Project* v. *Nuclear Regulatory Commission*, 975 F.2d 871 (D.C. Cir. 1992) (en banc). In *Critical Mass*, the court distinguished between information the government compels and that which is voluntarily submitted to help further governmental functions, such as rulemakings. The court held that information voluntarily submitted to the government should be treated as confidential under Exemption 4 as long as the submitter can show that it is not customarily released to the public. *Id.* at 880. In contrast, information compelled by the government would continue to be considered under the two prongs enunciated in *National Parks*.

The Exemption 4 jurisprudence in the aftermath of *Critical Mass* makes clear that the determination of whether information should be protected under Exemption 4 may include additional considerations, but only to the extent that those considerations relate to the government functions for which the information is sought. Underpinning the jurisprudence surrounding Exemption 4 has been the acknowledgement that "it is intended to protect the interests of both the Government and the individual," including advancing the efficiency of government operations. *National Parks*, 498 F.2d at 767. The concern that disclosure policy should not impair government programs remains strong whether the information is compelled (and its disclosure governed by the two prongs of *National Parks*) or voluntarily submitted (and its disclosure governed by the *Critical Mass* test). *See CAS* v. *NHTSA*, 244 F.3d at 148 (D.C. Cir. 2001) (explaining that "[w]hen the Government obtains the information as part of a mandatory submission, the Government's access to the information *normally* is not seriously threatened by disclosure; the private interest is the principal factor tending against disclosure, and the harm to the private interest must be significant to prevent public access to information") (emphasis added).

For example, the government may withhold information that, if disclosed, would diminish the effectiveness of a licensing program even when the basis for disclosure would arguably advance an underlying public interest. *See Public Citizen Health Research Group* v. *National Institutes of Health (PCHRG* v. *NIH)*, 209 F. Supp. 2d 37, 46 (D.D.C. 2002) (finding certain royalty information confidential under Exemption 4 because "disclosure of the royalty information would impair the efficient and effective performance of [the government's] licensing program").

It is not sufficient, therefore, to argue that some public need unrelated to the government's function warrants the disclosure of information under Exemption 4. *Public Citizen Health Research Group* v. *Food & Drug Administration (PCHRG* v. *FDA)*, 185 F.3d 898 (D.C. Cir. 1999) (rejecting the argument that a company's clinical studies, which were required to be submitted to the FDA, should be disclosed because disclosure would allow the public to learn from the company's experience). As the D.C. Circuit stated in *PCHRG* v. *FDA:*

> It is not open to Public Citizen, however, to bolster the case for disclosure by claiming an additional public benefit in that, if the information is disclosed, then other drug companies will not conduct risky clinical trials of the drugs that Schering has abandoned. That is not related to "what the [ ] government is up to" and the Court has clearly stated "whether disclosure of a * * * document * * * is warranted must turn on the nature of the requested document and its relationship to the basic purpose of the Freedom of Information Act to open agency action to the light of public scrutiny * * * rather than on the particular purpose for which the document is being requested. In other words, the public interest side of the balance is not a function of the identity of the requester * * * or of any potential negative consequences disclosure may have for the public * * * nor likewise of any collateral benefits of disclosure. *Id.* at 904 (citations omitted).

In most of the cases discussing the *National Parks* test, the courts were considering the kind of commercial information that would be created independent of any government mandate, and thus the courts have generally considered the inquiry under the impairment prong to focus on the reliability, rather than the availability, of the data. Yet, the courts have carefully maintained the vitality of the impairment prong as applied to compelled submissions and, in doing so, have maintained an analytic framework within which to ensure that the disclosure of information does not unduly impair the government's functions by reducing both qualitatively and quantitatively the data available to the government. Thus, as in *CAS* v. *NHTSA*, the Court was careful to state that "when the Government obtains the information as part of a mandatory submission, the Government's access to information normally is not seriously threatened by disclosure," and in *PCHRG* v. *NIH*, the impairment of the government's program served as an independent basis for the court's refusal to require disclosure.

IX. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document is not economically significant. It was, however, reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." The rulemaking action has been determined to be significant under the Department's regulatory policies and procedures, given the degree of public interest in the treatment of the early warning reporting information.

This final rule simplifies and clarifies the agency's regulation on confidential information and updates specific sections of the regulation to reflect legal developments. In addition, this final rule creates a series of class determinations applicable to those portions of the data to be submitted pursuant to the early warning reporting regulation that are determined to be entitled to confidential treatment under the procedures set forth in this final rule.

The procedural aspects of this final rule impose no new, significant burdens on submitters of information. The treatment of the early warning reporting information addresses the manner in which the agency will handle the data, and also imposes no new, significant burdens on submitters of information. Because no additional burdens are imposed, there are no costs requiring the development of a full cost/benefit evaluation.

B. Regulatory Flexibility Act

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) This rule does not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. This final rule imposes no additional obligations on the submitters of information to NHTSA beyond those otherwise required by the Vehicle Safety Act and the early warning reporting regulation. This final rule addresses the agency's treatment of early warning reporting data and simplifies procedures for all submitters, including small entities, when submitting information to the agency. The rule protects from disclosure early warning reporting information found likely to cause competitive harm. It permits the disclosure of that early warning information determined neither to cause competitive harm if released nor to impair the ability of the government to obtain the information in the future.

C. National Environmental Policy Act

NHTSA has analyzed this rule for the purposes of the National Environmental Policy Act and determined that it does not have any significant impact on the quality of the human environment.

D. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132 and has

[23] We note that the U.S. District Court for the District of Columbia has rejected the notion that the Vehicle Safety Act generally provides Exemption 3 protection for information the agency requires be submitted. *Ditlow* v. *Volpe*, 362 F. Supp. 1321, 1324 (D.D.C. 1973) (specifically rejecting application of Exemption 3 to the Motor Vehicle Safety Act), *rev'd on other grounds*, *Ditlow* v. *Brinegar*, 494 F.2d 1073 (D.C. Cir. 1974).

[24] The Alliance suggests that Exemption 7 may also be applicable. Exemption 7 protects records from disclosure relating to law enforcement purposes when disclosure could reasonably be expected to interfere with the enforcement proceedings. NHTSA has historically not invoked Exemption 7 to withhold information received from manufacturers during the course of defect investigations. *See CNA* v. *Donovan*, 830 F.2d 1132, 1139 (D.C. Cir. 1987).

determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The rule has no substantial effects on the States, or on the current Federalism-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Unfunded Mandate Reform Act

The Unfunded Mandate Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). This rule will not result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually.

F. Executive Order 12778 (Civil Justice Reform)

This rule will not have any preemptive or retroactive effect. This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The rule does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

G. Paperwork Reduction Act

The existing requirements of part 512 are considered to be information collection requirements as that term is defined by the Office of Budget and Management (OMB) in 5 CFR part 1320. Accordingly, the existing part 512 regulation was submitted to and approved by OMB pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements were approved in February, 2002 through February 28, 2005. This final rule does not revise the existing currently approved information collection under Part 512.

Commenters to the Notice of Proposed Rulemaking objected to the submission of a "third version" of information for review, a request for submitters to redact personal identifiers and certain other features of the form with which the agency had proposed the submission of information claimed to be confidential. This agency has considered and addressed these concerns, including the number of copies to be submitted. These proposals, whether intended or otherwise interpreted, were not adopted.

H. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. This regulatory action does not meet either of these criteria.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards [25] in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.*, the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. This requirement is not relevant to this rulemaking action.

J. Data Quality Act

Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (the "Data Quality Act") requires agencies to take certain affirmative steps to maximize the utility, objectivity, and integrity of data agencies disseminate to the public. This final rule establishes a series of class determinations applicable to those portions of the early warning reporting information determined likely, if released, to cause substantial competitive harm and to impair the government's ability to obtain data necessary to the operation of the agency's defect detection and remediation program. Such submissions are entitled to confidential treatment under Exemption 4 of the Freedom of Information Act.

The early warning reporting information determined not to be entitled to confidential treatment—reports of claims and notices of deaths, personal injury and property damage and some production numbers—involves factual matter and does not constitute data relied on or developed as part of a determination by the agency. The remainder of the early warning information is similarly factual, but will not be disclosed to the public. This rule does not implicate Data Quality Act concerns.

[25] Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as "performance-based or design-specific technical specifications and related management systems practices." They pertain to "products and processes, such as size strength, or technical performance of a product, process or material."

K. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 512

Administrative procedure and practice, Confidential Business Information, Freedom of Information, Motor Vehicle Safety, Reporting and Record Keeping Requirements.

■ In consideration of the foregoing, the National Highway Traffic Safety Administration amends title 49, Code of Federal Regulations, by revising Part 512 as set forth below.

Subpart A—General Provisions

Sec.
512.1 Purpose and scope.
512.2 Applicability.
512.3 Definitions.

Subpart B—Submission Requirements

512.4 When requesting confidentiality, what should I submit?
512.5 How many copies should I submit?
512.6 How should I prepare documents when submitting a claim for confidentiality?
512.7 Where should I send the information for which I am requesting confidentiality?
512.8 What supporting information should I submit with my request?

Subpart C—Additional Requirements

512.9 What are the requirements if the information comes from a third party?
512.10 Duty to amend.
512.11 What if I need an extension of time?
512.12 What if I am submitting multiple items of information?
512.13 What are the consequences for noncompliance with this part?

Subpart D—Agency Determination

512.14 Who makes the confidentiality determination?
512.15 How will confidentiality determinations be made?
512.16 Class determinations.
512.17 How long should it take to determine whether information is entitled to confidential treatment?
512.18 How will I be notified of the confidentiality determination?
512.19 What can I do if I disagree with the determination?

Subpart E—Agency Treatment of Information Claimed To Be Confidential

512.20 How does the agency treat information submitted pursuant to this part before a confidentiality determination is made?
512.21 How is information submitted pursuant to this part treated once a confidentiality determination is made?
512.22 Under what circumstances may NHTSA modify a grant of confidentiality?
512.23 Under what circumstances may NHTSA publicly release confidential information?
Appendix A—Certificate in Support of Request for Confidentiality
Appendix B—General Class Determinations
Appendix C—Early Warning Reporting Class Determinations
Appendix D—OMB Clearance

Authority: 49 U.S.C. 322; 5 U.S.C. 552; 49 U.S.C. 30166; 49 U.S.C. 30167; 49 U.S.C. 32307; 49 U.S.C. 32505; 49 U.S.C. 32708; 49 U.S.C. 32910; 49 U.S.C. 33116; delegation of authority at 49 CFR 1.50.

Subpart A—General Provisions

§ 512.1 Purpose and scope.

The purpose of this part is to establish the procedures and standards by which NHTSA will consider claims that information submitted to the agency is entitled to confidential treatment under 5 U.S.C. 552(b), most often because it constitutes confidential business information as described in 5 U.S.C. 552(b)(4), and to address the treatment of information determined to be entitled to confidential treatment.

§ 512.2 Applicability.

(a) This part applies to all information submitted to NHTSA, except as provided in paragraph (b) of this section, for which a determination is sought that the material is entitled to confidential treatment under 5 U.S.C. 552(b), most often because it constitutes confidential business information as described in 5 U.S.C. 552(b)(4), and should be withheld from public disclosure.

(b) Information received as part of the procurement process is subject to the Federal Acquisition Regulation, 48 CFR Chapter 1, as well as this part. In any case of conflict between the Federal Acquisition Regulation and this part, the provisions of the Federal Acquisition Regulation prevail.

§ 512.3 Definitions.

Whenever used in this part:

(a) *Administrator* means the Administrator of the National Highway Traffic Safety Administration.

(b) *Chief Counsel* means the Chief Counsel of the National Highway Traffic Safety Administration.

(c) *Confidential business* information means trade secrets or commercial or financial information that is privileged or confidential, as described in 5 U.S.C. 552(b)(4).

(1) A *trade secret* is a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort.

(2) Commercial or financial information is considered confidential if it has not been publicly disclosed and:

(i) If the information was required to be submitted and its release is likely to impair the Government's ability to obtain necessary information in the future, or is likely to cause substantial harm to the competitive position of the person from whom the information was obtained; or

(ii) if the information was voluntarily submitted and is the kind of information that is customarily not released to the public by the person from whom it was obtained.

(d) NHTSA means the National Highway Traffic Safety Administration.

(e) "*Substantial competitive harm*" includes "*significant competitive damage*" under Chapter 329 of Title 49 of the United States Code, Automobile Fuel Economy, 49 U.S.C. 32910(c).

Subpart B—Submission Requirements

§ 512.4 When requesting confidentiality, what should I submit?

Any person submitting information to NHTSA, other than information in a class identified in Appendix C of this Part, and requesting that the information be withheld from public disclosure pursuant to 5 U.S.C. 552(b) shall submit the following:

(a) The materials for which confidentiality is being requested, in conformance with §§ 512.5, 512.6, and 512.7 of this part;

(b) The Certificate, in the form set out in Appendix A to this part;

(c) Supporting information, in conformance with § 512.8; and

(d) Any request for an extension of time, made in accordance with § 512.11.

§ 512.5 How many copies should I submit?

(a) Except as provided for in subsection (c), a person must send the following in hard copy or electronic format to the Chief Counsel when making a claim for confidential treatment covering submitted material:

(1) A complete copy of the submission, and

(2) A copy of the submission containing only the portions for which no claim of confidential treatment is made and from which those portions for which confidential treatment is claimed has been redacted, and

(3) Either a second complete copy of the submission or, alternatively, those portions of the submission containing the material for which confidential treatment is claimed and any additional information the submitter deems important to the Chief Counsel's consideration of the claim.

(4) If submitted in electronic format, a copy of any special software required to review materials for which confidential treatment is requested and user instructions must also be provided.

(b) A person filing comments to a rulemaking action must additionally submit to the rulemaking docket a copy of the submission containing only the portions for which no claim of confidential treatment is made and from which those portions for which confidential treatment is claimed has been redacted.

(c) Any person submitting blueprints or engineering drawings need only provide an original version with their submission.

§ 512.6 How should I prepare documents when submitting a claim for confidentiality?

(a) Information claimed to be confidential must be clearly identified to enable the agency to distinguish between those portions of the submission claimed to constitute confidential business information and those portions for which no such claim is made.

(b) The word "CONFIDENTIAL" must appear on the top of each page containing information claimed to be confidential.

(1) If an entire page is claimed to be confidential, the submitter must indicate clearly that the entire page is claimed to be confidential.

(2) If the information for which confidentiality is being requested is contained within a page, the submitter shall enclose each item of information that is claimed to be confidential within brackets: "[ ]."

(3) If submitted in electronic format, a comparable method to of identifying the information claimed to be confidential may be used. If submitted on CD–ROM or other format, the item containing the information shall be labeled as containing confidential information.

§ 512.7 Where should I send the information for which I am requesting confidentiality?

A claim for confidential treatment must be submitted in accordance with

the provisions of this regulation to the Chief Counsel of the National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW., Washington, DC 20590.

§ 512.8 What supporting information should I submit with my request?

When requesting confidentiality, the submitter shall:

(a) Describe the information for which confidentiality is being requested;

(b) Identify the confidentiality standard(s) under which the confidentiality request should be evaluated, in accordance with § 512.15;

(c) Justify the basis for the claim of confidentiality under the confidentiality standard(s) identified pursuant to paragraph (b) of this section by describing:

(1) Why the information qualifies as a trade secret, if the basis for confidentiality is that the information is a trade secret;

(2) What the harmful effects of disclosure would be and why the effects should be viewed as substantial, if the claim for confidentiality is based upon substantial competitive harm;

(3) What significant NHTSA interests will be impaired by disclosure of the information and why disclosure is likely to impair such interests, if the claim for confidentiality is based upon impairment to government interests;

(4) What measures have been taken by the submitter to ensure that the information is not customarily disclosed or otherwise made available to the public, if the basis for confidentiality is that the information is voluntarily submitted; and

(5) The information is otherwise entitled to protection, pursuant to 5 U.S.C. 552(b).

(d) Indicate if any items of information fall within any of the class determinations included in Appendix B to this Part;

(e) Indicate the time period during which confidential treatment is sought; and

(f) State the name, address, and telephone number of the person to whom NHTSA's response and any inquiries should be directed.

Subpart C—Additional Requirements

§ 512.9 What are the requirements if the information comes from a third party?

Where confidentiality is claimed for information obtained by the submitter from a third party, such as a supplier, the submitter is responsible for obtaining from the third party the information that is necessary to comply with § 512.4 of this part, including a certificate in the form set out in Appendix A to this Part.

§ 512.10 Duty to amend.

The submitter shall promptly amend any supporting information provided under § 512.4 if the submitter obtains information upon the basis of which the submitter knows that the supporting information was incorrect when provided, or that the supporting information, though correct when provided to the agency, is no longer correct and the circumstances are such that a failure to amend the supporting information is in substance a knowing concealment.

§ 512.11 What if I need an extension of time?

If a person is unable to submit the necessary information required under § 512.4 at the time the claimed confidential information is submitted to NHTSA, then that person may request an extension of time. Any request for an extension shall explain the reason for the extension of time and the length of time requested.

§ 512.12 What if I am submitting multiple items of information?

Any certificate provided under § 512.4(b) of this part, and any supporting information provided under § 512.4(c) of this part, may be used to support a claim for confidential treatment of more than one item of information. However, general or nonspecific assertions or analysis may be insufficient to form an adequate basis for the agency to find that the information is entitled to confidential treatment, and may result in the denial of the claim.

§ 512.13 What are the consequences for noncompliance with this part?

(a) If the submitter fails to comply with § 512.4 of this part at the time the information is submitted to NHTSA or does not request an extension of time under § 512.11, the claim for confidentiality may be waived, unless the agency is notified or otherwise becomes aware of the claim before the information is disclosed to the public. If the information is placed in a public docket or file, such placement is disclosure to the public within the meaning of this part and may preclude any claim for confidential treatment. The Chief Counsel may notify a submitter of information or, if applicable, a third party from whom the information was obtained, of inadequacies regarding a claim for confidential treatment and may allow the submitter or third party additional time to supplement the submission, but has no obligation to provide either notice or additional time.

(b) If the submitter does not provide the certificate required under § 512.4(b) of this part or any supporting information required under § 512.4(c) of this part, or if the information is insufficient to establish that the information should be afforded confidential treatment under the confidentiality standards set out in § 512.15 of this part, a request that such information be treated confidentially may be denied. The Chief Counsel may notify a submitter of information of inadequacies in the supporting information and may allow the submitter additional time to supplement the showing, but has no obligation to provide either notice or additional time.

Subpart D—Agency Determination

§ 512.14 Who makes the confidentiality determination?

The Chief Counsel will determine whether an item of information will be afforded confidential treatment under this part.

§ 512.15 How will confidentiality determinations be made?

Information may be afforded confidential treatment if the Chief Counsel determines that:

(a) The information is a trade secret;

(b) Public disclosure of the information would be likely to cause substantial harm to the competitive position of the submitter;

(c) Public disclosure of the information would be likely to impair NHTSA's ability to obtain necessary information in the future;

(d) The information was provided to NHTSA voluntarily and was not customarily released to the public by the person from whom it was obtained; or

(e) The information is otherwise entitled to protection, pursuant to 5 U.S.C. 552(b).

§ 512.16 Class determinations.

(a) The Chief Counsel may issue class determinations of categories of information to be entitled to confidential treatment if the Chief Counsel determines that one or more characteristics common to each item of information in that class, will, in most cases, result in identical treatment, and further that it is appropriate to treat all such items as a class for one or more purposes under this part. Once a class determination is made, the Chief Counsel will publish the new class determination in the **Federal Register**.

(b) The Chief Counsel may amend, modify, or terminate any class determination established under this section. These changes will be published in the **Federal Register**.

(c) Class determinations made by the Chief Counsel are listed in Appendices B and C to this Part.

(d) A class determination may state that all of the information in the class:

(1) Is or is not governed by a particular section of this part or by a particular set of substantive criteria of this part;

(2) Satisfies one or more of the applicable substantive criteria; or

(3) Satisfies one or more of the substantive criteria, but only for a certain period of time.

§ 512.17 How long should it take to determine whether information is entitled to confidential treatment?

(a) When information claimed to be confidential is requested under the Freedom of Information Act, the determination will be made within twenty (20) working days after NHTSA receives such a request or within thirty (30) working days in unusual circumstances as provided under 5 U.S.C. 552(a)(6)(A). However, these time periods may be extended by the Chief Counsel for good cause shown or on request from any person. An extension will be made in accordance with 5 U.S.C. 552(a)(6)(A), and will be accompanied by a written statement setting out the reasons for the extension.

(b) When information claimed to be confidential is not requested under the Freedom of Information Act, the determination of confidentiality will be made within a reasonable period of time, at the discretion of the Chief Counsel.

§ 512.18 How will I be notified of the confidentiality determination?

(a) If a request for confidential treatment is granted, the submitter of the information will be notified in writing of the determination and of any appropriate limitations.

(b) If a request for confidential treatment is denied in whole or in part, the submitter of the information will be notified in writing of the determination, and the reasons for the denial, by certified mail, return receipt requested. The information may be made available to the public twenty (20) working days after the submitter of the information has received notice of the denial, unless a request for reconsideration is filed. The information may be released publicly on an earlier date, if the Chief Counsel determines in writing that the public interest requires that the information be made available to the public on such date.

§ 512.19 What can I do if I disagree with the determination?

(a) A submitter of information whose request for confidential treatment is denied in whole or in part, may petition for reconsideration of that decision. Petitions for reconsideration shall be addressed to and received by the Chief Counsel prior to the date on which the information would otherwise be made available to the public. The determination by the Chief Counsel upon such petition for reconsideration shall be administratively final.

(b) If a person is unable to submit a petition for reconsideration within twenty (20) working days of receiving notice that a claim for confidential treatment was denied, that person may submit a request for an extension of time. The Chief Counsel must receive any request for an extension of time before the date on which the information would be made available to the public, and the request must be accompanied by an explanation describing the reason for the request and the length of time requested. The Chief Counsel will determine whether to grant or deny the extension and the length of the extension.

(c) If a petition for reconsideration is granted, the petitioner will be notified in writing of the determination and of any appropriate limitations.

(d) If a petition for reconsideration is denied in whole or in part, or if a request for an extension is denied, the petitioner will be notified in writing of the denial, and the reasons for the denial, and will be informed that the information will be made available to the public not less than twenty (20) working days after the petitioner has received notice of the denial. The information may be released publicly on an earlier date, if the Administrator determines in writing that the public interest requires that the information be made available to the public on such date.

Subpart E—Agency Treatment of Information Claimed To Be Confidential

§ 512.20 How does the agency treat information submitted pursuant to this part before a confidentiality determination is made?

(a) Information received by NHTSA, for which a properly filed confidentiality request is submitted, will be kept confidential until the Chief Counsel makes a determination regarding its confidentiality. Such information will not be disclosed publicly, except in accordance with this part.

(b) Redacted copies of documents submitted to NHTSA under this part will be disclosed to the public.

§ 512.21 How is information submitted pursuant to this part treated once a confidentiality determination is made?

(a) Once the Chief Counsel makes a determination regarding the confidentiality of the submitted information, all materials determined not to be entitled to confidential protection will be disclosed to the public in accordance with the determination, unless a timely petition for reconsideration is received by the agency.

(b) Upon receipt of a timely petition for reconsideration under § 512.19 of this part, the submitted information will remain confidential, pending a determination regarding the petition.

(c) Should the Chief Counsel, after considering a petition for reconsideration, decide that information is not entitled to confidential treatment, the information may make the information available after twenty (20) working days after the submitter has received notice of that decision from the Chief Counsel unless the agency receives direction from a court not to release the information.

§ 512.22 Under what circumstances may NHTSA modify a grant of confidentiality?

(a) The Chief Counsel may modify a grant of confidentiality based upon:

(1) Newly discovered or changed facts;

(2) A change in the applicable law;

(3) A change in class determination, pursuant to § 512.16;

(4) The passage of time; or

(5) A finding that the prior determination is erroneous.

(b) If the Chief Counsel believes that an earlier determination of confidentiality should be modified based on one or more of the factors listed in paragraph (a) of this section, the submitter of the information will be notified in writing that the Chief Counsel has modified its earlier determination and of the reasons for the modification, and will be informed that the information will be made available to the public in not less than twenty (20) working days from the date of receipt of the notice of modification. The information may be released publicly on an earlier date, if the Administrator determines in writing that the public interest requires that the information be made available to the public on such date. The submitter may seek reconsideration of the modification, pursuant to § 512.19.

§ 512.23 Under what circumstances may NHTSA publicly release confidential information?

(a) Information that has been claimed or determined to be confidential under this part may be disclosed to the public by the Administrator notwithstanding such claim or determination, if disclosure would be in the public interest as follows:

(1) Information obtained under chapter 325, 327, 329 or 331 of title 49 of the United States Code (formerly under the Motor Vehicle Information and Cost Savings Act) may be disclosed when that information is relevant to a proceeding under the chapter under which the information was obtained.

(2) Information obtained under chapter 301 of title 49 of the United States Code (49 U.S.C. § 30101 *et seq.*), relating to the establishment, amendment, or modification of Federal motor vehicle safety standards, may be disclosed when relevant to a proceeding under the chapter.

(3) Except as specified in the next sentence, information obtained under Chapter 301 of title 49 of the United States Code (49 U.S.C. 30101 *et seq.*), related to a possible defect or noncompliance, shall be disclosed when the Administrator decides the information will assist in carrying out sections 30117(b) and 30118 through 30121 of title 49 or is required to be disclosed under 30118(a) of title 49, except as provided in paragraph (a)(4) of this section.

(4) No information will be disclosed under paragraph (a) of this section unless the submitter of the information is given written notice of the Administrator's intention to disclose information under this section. Written notice will be given at least twenty (20) working days before the day of release, unless the Administrator finds that shorter notice is in the public interest. The notice under this paragraph will include a statement of the Administrator's reasons for deciding to disclose the information, and will afford the submitter of the information an opportunity to comment on the contemplated release of the information. The Administrator may also give notice of the contemplated release of information to other persons and may allow these persons the opportunity to comment. In making the determination to release information pursuant to this section, the Administrator will consider ways to release the information that will cause the least possible adverse effects to the submitter.

(b) Notwithstanding any other provision of this part, information that has been determined or claimed to be confidential may be released:

(1) To a committee of Congress;

(2) Pursuant to an order of a court of competent jurisdiction;

(3) To the Office of the Secretary, U.S. Department of Transportation and other Executive branch offices or other Federal agencies in accordance with applicable laws;

(4) With the consent of the submitter of the information; and

(5) To contractors, if necessary for the performance of a contract with the agency or any Federal agency, with specific prohibitions on further release of the information.

Appendix A—Certificate in Support of Request for Confidentiality

Certificate in Support of Request for Confidentiality

I _____, pursuant to the provisions of 49 CFR part 512, state as follows:

(1) I am (official's name, title) and I am authorized by (company) to execute this certificate on its behalf;

(2) I certify that the information contained in (pertinent document(s)) is confidential and proprietary data and is being submitted with the claim that it is entitled to confidential treatment under 5 U.S.C. 552(b)(4) (as incorporated by reference in and modified by the statute under which the information is being submitted);

(3) I hereby request that the information contained in (pertinent document(s)) be protected for (requested period of time);

(4) This certification is based on the information provided by the responsible (company) personnel who have authority in the normal course of business to release the information for which a claim of confidentiality has been made to ascertain whether such information has ever been released outside (company);

(5) Based upon that information, to the best of my knowledge, information and belief, the information for which (company) has claimed confidential treatment has never been released or become available outside (company); (except as hereinafter specified);

(6) I make no representations beyond those contained in this certificate and, in particular, I make no representations as to whether this information may become available outside (company) because of unauthorized or inadvertent disclosure (except as stated in paragraph 5); and

(7) I certify under penalty of perjury that the foregoing is true and correct. Executed on this the _____ day of _____, _____. [If executed outside of the United States of America: I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct). (signature of official)

Appendix B—General Class Determinations

The Chief Counsel has determined that the following classes of information will cause substantial competitive harm if released:

(1) Blueprints and engineering drawings containing process and production data where the subject could not be manufactured without the blueprints or engineering drawings except after significant reverse engineering;

(2) Future specific model plans (to be protected only until the date on which the specific model to which the plan pertains is first offered for sale); and

(3) Future vehicle production or sales figures for specific models (to be protected only until the termination of the production period for the model year vehicle to which the information pertains).

Appendix C—Early Warning Reporting Class Determinations

(a) The Chief Counsel has determined that the following information required to be submitted to the agency under 49 CFR 579, subpart C, will cause substantial competitive harm and will impair the government's ability to obtain this information in the future if released:

(1) Reports and data relating to warranty claim information;

(2) Reports and data relating to field reports, including dealer reports and hard copy reports; and

(3) Reports and data relating to consumer complaints.

(b) In addition, the Chief Counsel has determined that the following information required to be submitted to the agency under 49 CFR 579, subpart C, will cause substantial competitive harm if released: Reports of production numbers for child restraint systems, tires, and vehicles other than light vehicles, as defined in 49 CFR 579.4(c).

Appendix D—OMB Clearance

The OMB clearance number for this regulation is 2127–0025.

Issued on: July 21, 2003.

Jeffrey W. Runge,

Administrator.

[FR Doc. 03–19069 Filed 7–24–03; 11:00 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 030509120–3171–02; I.D. 033103D]

RIN 0648–AQ32

Fisheries of the Northeastern United States; Recreational Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2003

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement recreational measures for the 2003 summer flounder, scup, and black sea bass fisheries. The intent of these measures is to prevent overfishing of the summer flounder, scup, and black sea bass resources.

DATES: Effective July 28, 2003.

ADDRESSES: Copies of supporting documents used by the Summer Flounder, Scup, and Black Sea Bass Monitoring Committee and of the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), and Final Regulatory Flexibility Analysis (EA/RIR/FRFA) are available from Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. The EA/RIR/IRFA is also accessible via the Internet at *http://www.nero.nmfs.gov*.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, Fishery Policy Analyst, (978) 281–9279, fax (978) 281–9135, e-mail *sarah.mclaughlin@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) and its implementing regulations found at 50 CFR part 648, subparts A, G (summer flounder), H (scup), and I (black sea bass), describe the process for specifying annual recreational measures. Final quota specifications for the 2003 summer flounder, scup, and black sea bass fisheries were published on January 2, 2003 (68 FR 60); a correction notice was published on March 3, 2003 (68 FR 9905). These specifications were determined to be consistent with the 2003 target fishing mortality rate (F) for summer flounder and the target exploitation rates for scup and black sea bass. The 2003 coastwide recreational harvest limits are 9.28 million lb (4,209 mt) for summer flounder, 4.01 million lb (1,819 mt) for scup, and 3.43 million lb (1,557 mt) for black sea bass.

The proposed rule to implement annual Federal recreational measures for the 2003 summer flounder, scup, and black sea bass fisheries was published on May 21, 2003 (68 FR 27768), and contained management measures (minimum fish sizes, possession limits, and fishing seasons) intended to keep annual recreational landings from exceeding the specified harvest limits. A complete discussion of the development of the recreational measures appeared in the preamble of the proposed rule and is not repeated here.

The recreational measures for scup and black sea bass contained in this final rule are unchanged from those published in the proposed rule. Table 1 contains the coastwide Federal measures for scup and black sea bass that are being implemented. For summer flounder, this final rule implements conservation equivalency, as the process was described in the proposed rule. The management measures will vary according to the state of landing (see Table 2). All minimum fish sizes discussed below are total length (TL) measurements of the fish, i.e., the straight-line distance from the tip of the snout to the end of the tail while the fish is lying on its side.

TABLE 1 - 2003 RECREATIONAL MEASURES

Species	Minimum Size (total length)	Possession Limit	Open Season
Summer Flounder	.....	Varies according to state of landing	
Scup	10 inches (25.4 cm)	50 fish	January 1 through February 28, and July 1 through November 30
Black Sea Bass	12 inches (30.5 cm)	25 fish	January 1 through September 1, and September 16 through November 30

TABLE 2 - 2003 STATE RECREATIONAL MANAGEMENT MEASURES FOR SUMMER FLOUNDER

State	Minimum Size (inches)	Minimum size (cm)	Possession Limit	Open Seasons
MA	16.5	41.9	7 fish	Year-Round
RI	17.5	44.5	5 fish	May 1 through September 20
CT	17	43.2	6 fish	Year-Round
NY	17	43.2	7 fish	Year-Round
NJ	16.5	41.9	8 fish	May 3 through October 13
DE	17.5	44.5	4 fish	Year-Round
MD	17	43.2	8 fish	Year-Round
VA	17.5	44.5	8 fish	March 29 through December 31
NC	15	38.1	8 fish	Year-Round

Changes from the Proposed Rule

Section 648.107(a) is corrected to clarify that the recreational measures proposed to be implemented by the states of Maine through North Carolina for 2003 are the conservation equivalent of the non-preferred (i.e., to be implemented in the Exclusive Economic Zone if conservation equivalency is not implemented) coastwide season, minimum size, and possession limit prescribed in §§ 648.102, 648.103, and 648.105(a), as identified in the proposed rule.

There were no public comments received on the proposed rule.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

This action establishes recreational management measures for federally permitted vessels participating in the recreational fishery, specifically party/charter vessels. The recreational

summer flounder, scup, and black sea bass fisheries are fully underway. In 2002, recreational black sea bass landings exceeded the recreational harvest limit by approximately 30 percent. This information was not available until development of this rule was begun. Immediate action to impose a more stringent minimum fish size in the black sea bass fishery must be taken to slow the recreational harvest of black sea bass and enhance the probability that the black sea bass harvest limit will not be exceeded in 2003. For summer flounder, this action is necessary to achieve consistency between state and Federal measures. Recreational summer flounder landings have exceeded the recreational harvest limits by an average of 50 percent over the 1996–2002 period. Failure to implement these provisions immediately could result in similar overharvest in 2003. Furthermore, because the Federal fishery is currently operating under status quo measures and the states have already implemented measures for state waters, inconsistencies between state and Federal regulations also can lead to confusion for operators of federally-permitted vessels. The Assistant Administrator for Fisheries, NOAA (AA), therefore finds good cause under 5 U.S.C. 553(d)(3) to waive the 30–day delay in effectiveness of the 2003 summer flounder and black sea bass recreational measures.

For the scup fishery, the recreational sector is currently fishing under the Federal EEZ measures, which allow for a possession limit of only 20 fish. This final rule will increase the possession limit to 50 fish, thereby relieving the possession limit restriction. This increase is being implemented to allow the recreational fishing sector to achieve the recreational harvest limit. The improving status of these fisheries has allowed NOAA Fisheries to implement these regulations, which provide some relief to the recreational sector from the current, more restrictive, measures. Implementation of the revised possession limit as soon as possible is important to allow for the increased scup fishing opportunities intended by the Council in amending this regulation. Because the increase to the possession limit relieves a restriction on the recreational fishing industry, the AA finds that the 30–day delayed effectiveness period of the scup regulations contained within this final rule does not apply, pursuant to 5 U.S.C. 553(d)(1).

Included in this final rule is the Final Regulatory Flexibility Analysis prepared pursuant to 5 U.S.C. 604(a). The FRFA is composed of the IRFA, the comments (and responses) on the proposed rule, and the analyses completed in support of this action.

Final Regulatory Flexibility Analysis

Statement of Objective and Need

A description of the reasons why action by the agency is being taken and the objectives of this final rule are explained in the preambles to the proposed rule and this final rule and are not repeated here.

Summary of Significant Issues Raised in Public Comments

No comments were received on the economic impacts of the measures contained in the proposed rule.

Description and Estimate of Number of Small Entities to which Rule Will Apply

The Mid-Atlantic Fishery Management Council (Council) estimated that the proposed action could affect any of the 760 vessels possessing a Federal party/charter permit for summer flounder, scup, and/or black sea bass in 2001, the most recent year for which complete permit data are available. Only 368 of these vessels reported active participation in the recreational summer flounder, scup, and/or black sea bass fisheries in 2001.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

No additional reporting, recordkeeping, or other compliance requirements are included in this final rule.

Description of the Steps Taken to Minimize Economic Impact on Small Entities

It is not possible to further mitigate economic impacts on small entities because the Council selected the alternative with least significant impacts relative to the other alternatives determined to achieve the biological objectives. Specifications of recreational fish size limits, possession limits, and open fishing seasons is constrained by the conservation objectives of the FMP, and implemented at 50 CFR part 648 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The economic analysis assessed the impacts of the various management alternatives. In the EA, the no action alternative for each species is defined as the continuation of the management measures implemented for the 2002 fishing season. The Council did not analyze an alternative combining the status quo measures in place for all three species. In consideration of the Council-recommended recreational harvest limits established for the 2003 fishing year, implementation of the same recreational measures established for the 2002 fishing year would be inconsistent with the goals and objectives of the FMP and its implementing regulations, and, because it could result in overfishing of the black sea bass fishery, it also would be inconsistent with National Standard 1 of the Magnuson-Stevens Act. Therefore, the no action alternative was not considered to be a reasonable alternative to the preferred action and its collective impacts were not analyzed in the EA/RIR/IRFA. The no action measure for summer flounder was analyzed in Alternative 1, in combination with preferred measures for scup and black sea bass. The no action measures for scup and black sea bass were considered as part of Alternative 2, in combination with the non-preferred coastwide measures for summer flounder, i.e., the measures that would be implemented if conservation equivalency were not implemented in the final rule. A summary of the economic impacts of the measures to be implemented follow.

Impacts of Summer Flounder Alternatives

Landings projections for 2002 indicate that Virginia (VA) is the only state required to reduce summer flounder landings (by 11 percent) in 2003. States other than VA do not require any reductions in recreational summer flounder landings, if their current regulations are maintained. At this time, it is not possible to determine the economic impact of conservation equivalency for Virginia. However, it may be proportional to the level of landings reductions required. If the preferred conservation equivalency alternative is effective at achieving the recreational harvest limit, then it is likely to be the only alternative that minimizes economic impacts, to the extent practicable, yet achieves the biological objectives of the FMP. Because states have a choice of specific measures to implement, it is more rational for the states to adopt conservation equivalent measures that result in fewer adverse economic impacts than to adopt the much more restrictive measures contained in the precautionary default alternative.

The impacts of the non-preferred summer flounder coastwide alternative (in Alternative 2), which proposes a 17–inch (43.2–cm) minimum fish size, a possession limit of four fish per person, and no closed season, were evaluated. Impacted trips were defined as individual angler trips taken aboard party/charter vessels in 2002 that landed at least one summer flounder smaller than 17 inches (43.2 cm), or that landed more than four summer flounder. The analysis concluded that the measures would affect 1 percent or less of the party/charter trips in most states, with state revenue losses identified for Massachusetts (MA) ($927), Rhode Island (RI) ($15,850), New York (NY) ($155,636), New Jersey (NJ) ($22,208), Delaware (DE) ($570), Maryland (MD) ($570), VA ($7,362), and North Carolina (NC) ($161). (These figures are for all vessels operating in each state, rather than for each vessel). No state revenue losses were identified for Maine (ME), New Hampshire (NH), or Connecticut (CT).

The average maximum gross revenue loss per party/charter vessel was estimated to be $9 in MA, $634 in RI, $2,993 in NY, $347 in NJ, $285 in DE, $190 in MD, $409 in VA, and $23 in NC. As discussed in the proposed rule, it is very likely that the Council's analysis of economic impacts overestimates potential revenue impacts of the proposed measures, since some anglers would continue to take party/charter vessel trips, even if the restrictions limit their landings, because they participate in catch and release fishing or target other species.

Precautionary default measures are defined as measures that would achieve at least the overall required reduction in landings for each state. The precautionary default measures specified by the Council and the Council's Demersal Species Committee and the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board (in Alternative 3) consists of an 18–inch (45.7–cm) minimum fish size, a possession limit of one fish per person, and no closed season.

The precautionary default measures would reduce state specific landings by a range of 41 percent (DE) to 88 percent (NC). As specified by Framework 2 to the FMP, states that fail to implement conservation equivalent measures would be required to implement precautionary default measures. The state-specific landings reductions associated with the precautionary default measures are substantially higher than the reductions that would be implemented using conservation equivalency. As such, it is expected that states will avoid the impacts of precautionary approach measures by establishing conservation equivalent management measures. Therefore, the precautionary default provision that is included in the conservation equivalency proposal was not analyzed as a separate provision.

Impacts of Scup Alternatives

The proposed action for scup would limit coastwide landings to 4.01 million lb (1,819 mt) and reduce landings by at least 27 percent compared to 2001. The overall estimated economic impacts of the proposed action are less than the impacts that would result from implementation of either of the other scup alternatives analyzed.

For the preferred scup alternative (in Alternative 1), impacted trips were defined as individual angler trips taken aboard party/charter vessels in 2002 that landed at least one scup smaller than 10 inches (25.4 cm), that landed more than 50 scup, or that landed at least one scup during the proposed closed seasons of March 1 through June 30, and December 1 through December 31. The analysis concluded that the measures would affect 10 percent of the party/charter trips in MA and 1 percent or less of the party/charter trips in five states, with statewide revenue losses identified for MA ($421,057), RI ($2,324), NY ($1,829), NJ ($6,475), MD ($25,450), and NC ($8,064).

The average maximum gross revenue loss per party/charter vessel associated with the preferred scup alternative was estimated to be $8,593 in MA, $166 in RI, $59 in NY, $185 in NJ, $25,450 in MD, and $2,688 in NC.

For the scup no action alternative (in Alternative 2), impacted trips were defined as individual angler trips taken aboard party/charter vessels in 2002 that landed at least one scup smaller than 10 inches (25.4 cm), that landed more than 20 scup, or that landed at least one scup during the periods of March 1 through June 30, and October 3 through December 31. The analysis concluded that the measures would affect 11 percent of angler trips taken aboard party/charter boats in MA, 4 percent in RI, 5 percent in NY, and less than 1 percent in NJ, DE, MD, and NC, with statewide revenue losses identified for MA ($486,423), RI ($55,664), NY ($702,429), NJ ($67,060), MD ($25,450), and NC ($8,064). No state revenue losses were identified for ME, NH, CT, DE, or VA.

The average maximum gross revenue loss per party/charter vessel associated with this alternative was estimated to be $9,927 in MA, $3,976 in RI, $22,659 in NY, $1,916 in NJ, $25,450 in MD, and $2,688 in NC.

For the scup measures considered in Alternative 3, impacted trips were defined as individual angler trips taken aboard party/charter vessels in 2002 that landed at least one scup smaller than 10 inches (25.4 cm), that landed more than 50 scup, or that landed at least one scup during the period March 1 through July 13. The analysis concluded that the measures in this alternative would affect 11 percent of the party/charter trips in MA and 1 percent or less of the party/charter trips in most states, with statewide revenue losses identified for MA ($469,518), RI ($9,576), NY ($81,902), NJ ($19,880), MD ($25,450), and NC ($8,064). No state revenue losses were identified for ME, NH, CT, DE, or VA.

The average maximum gross revenue loss per party/charter vessel associated with this alternative was estimated to be $9,582 in MA, $684 in RI, $2,642 in NY, $568 in NJ, $25,450 in MD, and $2,688 in NC.

Impacts of Black Sea Bass Alternatives

The proposed action for black sea bass would limit coastwide landings to 3.43 million lb (1,557 mt) and reduce landings by at least 27 percent compared to 2002. Although the economic impacts of the preferred alternative (in Alternative 1) are greater than for the status quo measures (in Alternative 2), Alternative 1 was selected for implementation because it is expected to achieve the necessary reduction in landings relative to 2002, consistent with the goals and objectives of the FMP, while resulting in less economic impact than would the measures in Alternative 3.

For the preferred black sea bass alternative, impacted trips were defined as individual angler trips taken aboard party/charter vessels in 2002 that landed at least one black sea bass smaller than 12 inches (30.5 cm), that landed more than 25 black sea bass, or that landed at least one black sea bass during the proposed closed seasons of September 2 through September 15, and December 1 through December 31. The analysis concluded that the measures would affect 3 percent of the party/charter trips in NJ, 4 percent in DE, and 1 percent or less in most states, with statewide revenue losses identified for MA ($1,805), RI ($5,404), CT ($368), NY ($20,332), NJ ($441,702), DE ($89,544), MD ($41,331), VA ($19,418), and NC ($364). No state revenue losses were identified for ME or NH.

The average maximum gross revenue loss per party/charter vessel associated with the proposed black sea bass alternative was estimated to be $19 in MA, $193 in RI, $46 in CT, $442 in NY, $8,334 in NJ, $44,772 in DE, $13,777 in MD, $1,022 in VA, and $52 in NC.

For the non-preferred black sea bass measures considered in Alternative 2, impacted trips were defined as

individual angler trips taken aboard party/charter vessels in 2002 that landed at least one black sea bass smaller than 11.5 inches (29.2 cm), or that landed more than 25 black sea bass. The analysis concluded that the measures would affect 3 percent of the party/charter trips in DE, 2 percent in NJ, and 1 percent or less in most states, with statewide revenue losses identified for RI ($1,960), CT ($368), NJ ($248,570), DE ($82,988), MD ($16,329), VA ($21,261), and NC ($119). No state revenue losses were identified for ME, NH, MA, or NY.

The average maximum gross revenue loss per party/charter vessel associated with this alternative was estimated to be $70 in RI, $46 in CT, $4,690 in NJ, $41,494 in DE, $5,443 in MD, $1,119 in VA, and $17 in NC.

For the non-preferred black sea bass measures considered in Alternative 3, impacted trips were defined as individual angler trips taken aboard party/charter vessels in 2002 that landed at least one black sea bass smaller than 12.5 inches (31.8 cm) or that landed more than 25 black sea bass. The analysis concluded that the measures would affect approximately 5 percent of the party/charter trips in DE, 3 percent in NJ, and 1 percent or less in most states, with statewide revenue losses identified for RI ($1,960), CT ($368), NY ($3,220), NJ ($483,095), DE ($125,132), MD ($40,395), VA ($29,602), and NC ($364). No state revenue losses were identified for ME, NH, or MA.

The average maximum gross revenue loss per party/charter vessel associated with this alternative was estimated to be $70 in RI, $46 in CT, $70 in NY, $9,115 in NJ, $62,566 in DE, $13,465 in MD, $1,558 in VA, and $52 in NC.

Combined Impacts of Summer Flounder, Scup, and Black Sea Bass Alternatives

Potential revenue losses in 2003 could differ for party/charter vessels that land more than one of the regulated species. The cumulative maximum gross revenue loss per vessel varies by the combination of permits held and by state. In RI, for example, revenue losses could reach $993 for vessels that land all three species in 2003, compared to expected revenues for 2002. However, in MD, where the contribution of black sea bass to the total catch by party/charter vessels is nearly twice as high as it is for other states, a vessel that lands all three species could potentially lose up to a maximum of $39,417 in 2003. On average, the largest potential losses were projected for party/charter vessels operating out of MA, NJ, DE, and MD in 2003.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ≥small entity compliance guides.≥ The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide (the guide) was prepared. Copies of the guide will be sent to all holders of Federal party/charter permits issued for the summer flounder, scup, and black sea bass fisheries. The guide will be available on the Internet at *http://www.nero.noaa.gov*. Copies of the guide can also be obtained from the Regional Administrator (see **ADDRESSES**).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: July 22, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.105, the first sentence of paragraph (a) is revised to read as follows:

§ 648.105 Possession restrictions.

(a) Unless otherwise specified pursuant to § 648.107, no person shall possess more than four summer flounder in, or harvested from, the EEZ, unless that person is the owner or operator of a fishing vessel issued a summer flounder moratorium permit, or is issued a summer flounder dealer permit. * * *

* * * * *

■ 3. In § 648.107, the first sentence of the introductory text is revised to read as follows:

§ 648.107 Conservation equivalent measures for the summer flounder fishery.

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by the states of Maine through North Carolina for 2003 are the conservation equivalent of the season, minimum size and possession limit prescribed in §§ 648.102, 648.103 and 648.105(a), respectively.* * *

* * * * *

■ 4. In § 648.122, paragraph (g) is revised to read as follows:

§ 648.122 Time and area restrictions.

* * * * *

(g) *Time restrictions.* Vessels that are not eligible for a moratorium permit under § 648.4(a)(6), and fishermen subject to the possession limit, may not possess scup, except from January 1 through February 28 and from July 1 through November 30. This time period may be adjusted pursuant to the procedures in § 648.120.

■ 5. In § 648.125, the first sentence of paragraph (a) is revised to read as follows:

§ 648.125 Possession limit.

(a) No person shall possess more than 50 scup in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a scup moratorium permit, or is issued a scup dealer permit.* * *

* * * * *

■ 6. Section 648.142 is revised to read as follows:

§ 648.142 Time restrictions.

Vessels that are not eligible for a moratorium permit under § 648.4(a)(7), and fishermen subject to the possession limit, may not possess black sea bass, except from January 1 through September 1 and September 16 through November 30. This time period may be adjusted pursuant to the procedures in § 648.140.

■ 7. In § 648.143, paragraph (b) is revised to read as follows:

§ 648.143 Minimum sizes.

* * * * *

(b) The minimum size for black sea bass is 12 inches (30.5 cm) TL for all vessels that do not qualify for a moratorium permit, and for party boats holding a moratorium permit, if fishing with passengers for hire or carrying more than five crew members, and for charter boats holding a moratorium permit, if fishing with more than three crew members. The minimum size may be adjusted for recreational vessels pursuant to the procedures in § 648.140.

* * * * *

[FR Doc. 03–19133 Filed 7–25–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 68, No. 144

Monday, July 28, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV03–905–4 PR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the Citrus Administrative Committee (Committee) for the 2003–04 and subsequent fiscal periods from $0.005 to $0.006 per 4/5 bushel carton of oranges, grapefruit, tangerines, and tangelos handled. The Committee locally administers the marketing order, which regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida. Authorization to assess Florida citrus handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins August 1 and ends July 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by August 27, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884–1671; telephone: (863) 324–3375, Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida citrus handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein would be applicable to all assessable oranges, grapefruit, tangerines, and tangelos grown in Florida, beginning August 1, 2003, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 2003–04 and subsequent fiscal periods from $0.005 per 4/5 bushel carton to $0.006 per 4/5 bushel carton of oranges, grapefruit, tangerines, and tangelos grown in Florida.

The Florida citrus marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of oranges, grapefruit, tangerines, and tangelos. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2001–02 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on July 1, 2003, and unanimously recommended 2003–04 expenditures of $247,000 and an assessment rate of $0.006 per 4/5 bushel of oranges, grapefruit, tangerines, and tangelos grown in Florida based on a crop estimate of 45 million 4/5 bushels.

In comparison, last year's budgeted expenditures were $250,700. The assessment rate of $0.006 is $0.001 higher than the $0.005 rate currently in effect. This increase reflects the Committee's expectation of lower shipments in the coming year resulting in less assessment income to cover expenses. In addition, the Committee would like to increase the monies available in their reserve fund.

The major expenditures recommended by the Committee for the 2003–04 fiscal year include $126,000 for salaries, $25,000 for Manifests-USDA–FDACS, $21,000 for insurance and bonds, $19,500 for retirement plan, and $10,100 for payroll taxes. Budgeted expenses for these items in 2002–03 were $126,000, $25,000, $21,000, $19,500, and $10,100, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of oranges, grapefruit, tangerines, and tangelos. As mentioned earlier, Florida citrus shipments for the year are estimated at 45 million ⅘ bushels, which should provide $270,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve currently total approximately $23,091 and are within the maximum permitted by the order of not to exceed one half of one fiscal period's expenses as stated in § 905.42(a).

The assessment rate established in this rule would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2003–04 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 11,000 producers of oranges, grapefruit, tangerines, and tangelos in the production area and approximately 75 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida oranges, grapefruit, tangerines, and tangelos during the 2002–03 season was approximately $8.55 per ⅘ bushel carton, and total fresh shipments for the 2003–04 season are estimated at 45 million cartons of oranges, grapefruit, tangerines, and tangelos. Approximately 20 handlers handled 65 percent of Florida's citrus shipments in 2002–03. Considering the average f.o.b. price, at least 55 percent of the oranges, grapefruit, tangerine, and tangelo handlers could be considered small businesses under SBA's definition. Therefore, the majority of Florida citrus handlers may be classified as small entities. The majority of Florida citrus producers may also be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2003–04 and subsequent fiscal periods from $0.005 to $0.006 per ⅘ bushel carton of oranges, grapefruit, tangerines, and tangelos. The Committee unanimously recommended 2003–04 expenditures of $247,000 and an assessment rate of $0.006 per ⅘ bushel carton. The assessment rate of $0.006 is $0.001 higher than the rate now in effect. The quantity of assessable oranges, grapefruit, tangerines, and tangelos for the 2003–04 season is estimated at 45 million ⅘ bushel cartons. Thus, the $0.006 rate should provide $270,000 in assessment income and would be adequate to meet this year's expenses.

The major expenditures recommended by the Committee for the 2003–04 year include $126,000 for salaries, $25,000 for Manifests-USDA–FDACS, $21,000 for insurance and bonds, $19,500 for retirement plan, and $10,100 for payroll taxes. Budgeted expenses for these items in 2002–03 were $126,000, $25,000, $21,000, $19,500, and $10,100 respectively.

The proposed increase in the assessment rate is due to the Committee's expectation that shipments in the coming year will be lower affecting assessment income. The Committee would also like to replenish its reserve fund.

The Committee reviewed and unanimously recommended 2003–04 expenditures of $247,000. Prior to arriving at this budget, the Committee considered information from various sources including the Committee's Budget Subcommittee. Alternative assessment rates were discussed based on different estimates of assessable cartons and budget expenses. The assessment rate of $0.006 per ⅘ bushel carton of assessable oranges, grapefruit, tangerines, and tangelos was then determined by dividing the total recommended budget by the quantity of assessable commodity, estimated at 45 million ⅘ bushel cartons for the 2003–04 season taking into consideration the need for additional funds to increase reserves. This assessment rate would yield approximately $23,000 over anticipated budgeted expenses with the excess funds to be earmarked for the reserve fund.

A review of historical information and preliminary information pertaining to the upcoming 2003–04 fiscal period indicates that the grower price for the 2003–04 season could range between $1.80 and $20.40 per ⅘ bushel of oranges, grapefruit, tangerines, and tangelos. Therefore, the estimated assessment revenue for the 2003–04 fiscal period as a percentage of total grower revenue could range between .03 and .33 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order.

In addition, the Committee's meeting was widely publicized throughout the Florida citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the July 1, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Florida citrus handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2003–04 fiscal period began August 1, 2003, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable citrus fruit handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 905

Grapefruit, Oranges, Tangelos, Tangerines, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 905 is proposed to be amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 905.235 is revised to read as follows:

§ 905.235 Assessment rate.

On and after August 1, 2003, an assessment rate of $0.006 per ⅘ bushel carton or equivalent is established for assessable Florida citrus covered under the order.

Dated: July 23, 2003.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 03–19129 Filed 7–25–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV03–948–2 PR]

Irish Potatoes Grown in Colorado; Reinstatement of the Continuing Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would reinstate the continuing assessment rate established for the Area No. 3 Colorado Potato Administrative Committee (Committee) for the 2003–2004 and subsequent fiscal periods at $0.03 per hundredweight of potatoes handled. The Committee locally administers the marketing order regulating the handling of potatoes grown in northern Colorado. The continuing assessment rate was suspended for the 2001–2002 and subsequent fiscal periods to bring the monetary reserve within the program limit of two fiscal periods' operating expenses. Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began July 1 and ends June 30. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by August 12, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or e-mail: *moab.docketclerk@usda.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR part 948), regulating the handling of potatoes grown in Colorado, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Colorado potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable potatoes beginning on July 1, 2003, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any

obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would reinstate § 948.215 of the order's rules and regulations and establish a continuing assessment rate for the Committee for the 2003–2004 and subsequent fiscal periods at $0.03 per hundredweight of potatoes handled.

The Colorado potato marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Colorado potatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2001–2002 and subsequent fiscal periods, the Committee recommended, and USDA approved, a suspension of the continuing assessment rate that would remain suspended until reinstated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 8, 2003, and unanimously recommended 2003–2004 expenditures of $19,737 and an assessment rate of $0.03 per hundredweight of potatoes. In comparison, last year's budgeted expenditures were also $19,737. For the 2001–2002 fiscal period, the Committee recommended suspending the continuing assessment rate to bring the monetary reserve within program limits of approximately two fiscal periods' operating expenses (§ 948.78). At that time, the reserve fund contained about $60,000. The Committee has been operating for the last two years by drawing income from its reserve. With a suspended assessment rate and a significant decrease in the number of potato producers and acreage in Area No. 3, the reserve has rapidly decreased to the current level of about $24,077. The Committee would like to maintain the reserve at approximately this level, thus reinstatement of the assessment rate at $0.03 per hundredweight is needed.

The major expenditures recommended by the Committee for the 2003–2004 fiscal period include $8,200 for salaries, $3,000 for rent expense, and $1,750 for office expenses. Budgeted expenses for these items in 2002–2003 were also $8,200, $3,000, and $1,750, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Colorado potatoes. Colorado potato shipments for the year are estimated at 632,500 hundredweight which should provide $18,975 in assessment income. Income derived from handler assessments along with interest and rent income should be adequate to cover budgeted expenses. Funds in the reserve (estimated at $24,077 as of June 30, 2003) would be kept within the maximum permitted by the order (approximately two fiscal period's expenses; § 948.78).

The reinstated assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2003–2004 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Based on Committee data, there are 12 producers, (9 of whom are also handlers) and 10 handlers (9 of whom are also producers) in the production area subject to regulation under the order. Small agricultural firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000.

Based on Committee data, the production of Area No. 3 Colorado potatoes for the 2001–2002 marketing year was 773,053 hundredweight. Based on National Agricultural Statistics Service data, the average producer price for Colorado summer potatoes for the 2001–2002 marketing year was $6.70 per hundredweight. The average annual producer revenue for the 12 Colorado Area No. 3 potato producers is therefore calculated to be approximately $431,621. Using Committee data regarding each individual handler's total shipments during the 2001–2002 marketing year and a Committee estimated average f.o.b. price during the 2001–2002 marketing year of $8.80 per hundredweight ($6.70 per hundredweight plus estimated packing and handling costs of $2.10 per hundredweight), all of the Colorado Area No. 3 potato handlers ship under $5,000,000 worth of potatoes. In view of the foregoing, it can be concluded that the majority of the Colorado Area No. 3 potato producers and handlers may be classified as small entities.

This rule would reinstate § 948.215 of the order's rules and regulations and establish a continuing assessment rate for the Committee, to be collected from handlers for the 2003–2004 and subsequent fiscal periods, at $0.03 per hundredweight of potatoes. The Committee recommended 2003–2004 expenditures of $19,727 and an assessment rate of $0.03 per hundredweight. The quantity of Area No. 3 Colorado potatoes for the 2003–2004 fiscal period is estimated at 632,500 hundredweight. Thus, the $0.03 rate should provide $18,975 in assessment income. This together with interest and rent income should be adequate to meet this fiscal period's budgeted expenses.

The major expenditures recommended by the Committee for the 2003–2004 fiscal period include $8,200 for salaries, $3,000 for rent expense, and $1,750 for office expenses. Budgeted expenses for these items in 2002–2003 were also $8,200, $3,000, and $1,750, respectively.

For the 2001–2002 fiscal period, the Committee recommended suspending the continuing assessment rate to bring the monetary reserve within program limits of approximately two fiscal periods' operating expenses (§ 948.78). At that time, the reserve fund contained about $60,000. The Committee has been operating for the last two years by drawing income from its reserve. With a suspended assessment rate and a significant decrease in the number of potato producers and acreage in Area No. 3, the reserve has rapidly decreased to the current level of about $24,000. The Committee would like to maintain the reserve at approximately this level, thus reinstatement of the assessment rate is needed.

The Committee discussed alternatives to this rule, including alternative expenditure levels. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the program with adequate reserves.

The assessment rate of $0.03 per hundredweight of assessable potatoes was determined by dividing the total recommended budget by the quantity of assessable potatoes, estimated at 632,500 hundredweight for the 2003–2004 fiscal period. This is approximately $1,402 above the anticipated expenses when combined with interest and rent income, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the producer price for the 2003–2004 fiscal period could range between $5.10 and $6.70 per hundredweight of Colorado summer potatoes. Therefore, the estimated assessment revenue for the 2003–2004 fiscal period as a percentage of total producer revenue could range between 0.45 and 0.59 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Area No. 3 Colorado potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 8, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Colorado Area No. 3 potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because: (1) The 2003–2004 fiscal period began on July 1, 2003, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable potatoes handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay for expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is proposed to be amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 948.215 is reinstated and revised to read as follows:

§ 948.215 Assessment rate.

On and after July 1, 2003, an assessment rate of $0.03 per hundredweight is established for Colorado No. 3 potatoes.

Dated: July 23, 2003.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 03–19130 Filed 7–25–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

[Docket No. FV03–987–1 PR]

Domestic Dates Produced or Packed in Riverside County, CA; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would decrease the assessment rate established for the California Date Administrative Committee (Committee) for the 2003–04 and subsequent crop years from $0.90 to $0.75 per hundredweight of dates handled. The Committee locally administers the marketing order that regulates the handling of dates produced or packed in Riverside County, California. Authorization to assess date handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The crop year begins October 1 and ends September 30. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by August 27, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or E-mail: *moab.docketclerk@usda.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular

business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Marketing Assistant, or Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey St., suite 102B, Fresno, CA 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 987, both as amended (7 CFR part 987), regulating the handling of domestic dates produced or packed in Riverside County, California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California date handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein will be applicable to all assessable dates beginning on October 1, 2003, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would decrease the assessment rate established for the Committee for the 2003–04 and subsequent crop years from $0.90 to $0.75 per hundredweight of assessable dates handled.

The California date marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and producer-handlers of California dates. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2002–03 and subsequent crop years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 20, 2003, and unanimously recommended 2003–04 expenditures of $225,365 and an assessment rate of $0.75 per hundredweight of dates handled. In comparison, last year's budgeted expenditures were $273,450. The recommended assessment rate of $0.75 is $0.15 lower than the rate currently in effect. The decrease in the assessment rate and budget is primarily due to a lower marketing and promotion budget.

Proceeds from the sales of cull dates are usually deposited in a surplus account for subsequent use by the Committee in covering the surplus pool share of the Committee's expenses. Handlers may also dispose of cull dates of their own production within their own livestock-feeding operation; otherwise, such cull dates must be shipped or delivered to the Committee for sale to non-human food product outlets.

Last year, the Committee applied $5,000 of surplus account monies to cover surplus pool expenses. Based on a recent trend of declining sales of cull dates over the past few years and reduced surplus pool costs, the Committee decided not to apply any of the surplus pool funds toward the 2003–04 Committee budget. The Committee, instead, recommended assessing handlers $0.75 per hundredweight and use $30,365 from the administrative reserves to fund the reduced Committee budget of $225,365.

The budgeted administrative expenses for the 2003–04 crop year include $123,710 for labor and office expenses. This compares to $123,450 in budgeted expenses in 2002–03. In addition, $101,655 has been budgeted for marketing and promotion under the program for the 2003–04 crop year. This compares to $150,000 in budgeted marketing and promotion expenses for the 2002–03 crop year.

The assessment rate of $0.75 per hundredweight of assessable dates was derived by applying the following formula where:

A = Administrative Reserve ($30,365 of the anticipated $40,000 Administrative Reserve)
B = 2003–04 expected shipments (260,000 hundredweight)
C = 2003–04 expenses ($225,365);
(C − A) ÷ B = $0.75 per hundredweight.

Estimated shipments should provide $195,000 in assessment income. Income derived from handler assessments and the administrative reserves would be adequate to cover budgeted expenses. Funds in the reserve are expected to total about $23,553 by September 30, 2004, and therefore would be less than the maximum permitted by the order (not to exceed 50 percent of the average of expenses incurred during the most recent five preceding crop years; § 987.72(c)).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings.

USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2003–04 budget and those for subsequent crop years would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 producers of dates in the production area and approximately 10 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $5,000,000. Five of the 10 handlers (50 percent) shipped over $5,000,000 of dates and could be considered large handlers by the Small Business Administration. Five of the 10 handlers (50 percent) shipped under $5,000,000 of dates and could be considered small handlers. The majority of California date producers may be classified as small entities.

This rule would decrease the assessment rate established for the Committee and collected from handlers for the 2003–04 and subsequent crop years from $0.90 to $0.75 per hundredweight of assessable dates handled. The Committee unanimously recommended 2003–04 expenditures of $225,365 and the $0.75 per hundredweight assessment rate. The proposed assessment rate of $0.75 is $0.15 lower than the rate currently in effect. The quantity of assessable dates for the 2003–04 crop year is estimated at 260,000 hundredweight. Thus, the $0.75 per hundredweight rate should provide $195,000 in assessment income. This along with administrative reserve funds would be adequate to meet the Committee's 2003–04 crop year expenses.

The budgeted administrative expenses for the 2003–04 crop year include $123,710 for labor and office expenses. This compares to $123,450 in budgeted expenses in 2002–03. In addition, $101,655 has been budgeted for marketing and promotion under the marketing order for the 2003–04 crop year. This compares to $150,000 in budgeted marketing and promotion expenses for the 2002–03 crop year.

The Committee reviewed and unanimously recommended 2003–04 expenditures of $225,365 which include marketing and promotion programs. Prior to arriving at this budget, the Committee considered alternative expenditure levels, including a proposal to not have a budget. The assessment rate of $0.75 per hundredweight of assessable dates was then determined by applying the following formula where:

A = Administrative Reserve ($30,365 of the anticipated $40,000 Administrative Reserve)
B = 2003–04 expected shipments (260,000 hundredweight)
C = 2003–04 expenses ($225,365);
(C − A) ÷ B = $0.75 per hundredweight.

Estimated shipments should provide $195,000 in assessment income. Income derived from handler assessments and the administrative reserves would be adequate to cover budgeted expenses. Funds in the administrative reserve are expected to total about $23,553 by September 30, 2004, and therefore would be less than the maximum permitted by the order (not to exceed 50 percent of the average of expenses incurred during the most recent five preceding crop years; § 987.72(c)).

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the grower price for the 2003–04 season could range between $40 and $120 per hundredweight of dates. Therefore, the estimated assessment revenue for the 2003–04 crop year as a percentage of total grower revenue could range between .6 and 2 percent.

This action would decrease the assessment obligation imposed on handlers under the Federal marketing order. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate would reduce the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the California date industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 20, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large California date handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http//www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2003–04 crop year begins on October 1, 2003, and the marketing order requires that the rate of assessment for each crop year apply to all assessable dates handled during such crop year; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 987 is proposed to be amended as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR part 987 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 987.339 is revised to read as follows:

§ 987.339 Assessment rate.

On and after October 1, 2003, an assessment rate of $0.75 per hundredweight is established for California dates.

Dated: July 23, 2003.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 03–19128 Filed 7–25–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 991

[Docket No. AO–F&V–991–A3; FV03–991–01]

Hops Produced in Washington, Oregon, Idaho and California; Hearing on Proposed Marketing Agreement and Order No. 991

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of Public Hearing on Proposed Marketing Agreement and Order.

SUMMARY: Notice is hereby given of a public hearing to consider a proposed marketing agreement and order under the Agricultural Marketing Agreement Act of 1937 to cover hops grown in Washington, Oregon, Idaho and California. The proposal was submitted by the Hop Marketing Order Proponent Committee (committee), a group of industry members who support a marketing order for hops. The proposed order would authorize volume control measures in the form of producer allotments to regulate the marketing of alpha acid in hops in the production area. Alpha acid is a bittering agent used in brewing that is the primary marketable component of hops. The proposed order would also allow for reserve pooling of excess production of alpha acid and would provide for production research, marketing research and development projects to promote the marketing, distribution and consumption or efficient production of hops. The program would be financed by assessments on hop handlers and would be administered by a committee of growers nominated by the industry and appointed by the Department of Agriculture (USDA).

DATES: The hearing will be held on August 14 and 15 in The Dalles, Oregon, on August 16 and 18 in Hood River, Oregon and continue, if necessary, on August 19, 20, 21 and 22 in Hood River, Oregon. The hearing will begin each day at 8:30 a.m. and end at 5 p.m.

ADDRESSES: The hearing locations are: August 14 and 15, 2003, Shilo Inn, 3223 Bret Clodfelter Way, The Dalles, Oregon 97058; August 16 and 18 (and August 19 through 22, if necessary) Best Western Hood River Inn, 1108 East Marina Way, Hood River, Oregon 97031.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Northwest Marketing Field Office, 1220 SW Third Avenue, Room 369, Portland, Oregon 97204; telephone (503) 326–2724 or Fax (503) 326–7440; or Kathleen M. Finn, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, fax: (202) 720–8938. Small businesses may request information on this proceeding by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, fax: (202) 720–8938.

SUPPLEMENTARY INFORMATION: This administrative action is instituted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act." This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposal on small businesses.

The marketing agreement and order proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If issued, the proposed agreement and order would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

This proposal is the result of more than two years of efforts undertaken by the committee. The committee was established as a result of renewed industry interest in a Federal marketing order. According to the committee, meetings for discussion of a hop marketing order involved all segments of the industry with varying views on establishment of an order and included growers, handlers, dealers and end users. In addition, meetings were held in each area of the production area to provide opportunities for all hop growers and other interested parties to provide input.

According to the committee, the hop industry is suffering from a chronic oversupply situation that is depressing prices to below economically viable levels. Technological advances have increased the efficiency of both the production of alpha acid from hops and the utilization of the alpha acid in brewing. Consequently, less hop acreage is needed to adequately supply the market and excess alpha inventories have resulted. Industry reductions in acreage have not kept pace with the declining demand for alpha acid. The proponent group contends that the proposed marketing order program would bring stability to the U.S. hop industry by balancing supplies with market needs, which would enhance producer returns.

There have been three previous marketing orders for hops. The most recent was for hop growers in the Northwest which was in effect from July 1966 to December 1985. The principal feature of that order was a producer allotment form of volume control. There was considerable controversy involved in the order during the 1980's, which included concerns over the grower base used in calculating the volume regulations. The base was limited to industry production levels prior to establishment of the order and effectively restricted new growers from entering the industry. USDA terminated the order in 1985. According to the proponent committee, this proposal is different from the previous order as provisions have been included that allow for new base allotments in each year of expanding demand to both existing and new growers.

The proposal submitted by the committee has not received approval by USDA.

To assist in its review of the proposal, USDA issued a press release seeking comments from interested parties on the proposed order. Over 75 comments were received expressing a variety of views. There were no specific additional proposals or modifications to the committee's proposals submitted.

USDA was concerned that the methodology for establishing initial base quantities set forth in the proposal was inconsistent with the statutory requirement that the salable quantity be allocated equitably among all growers. USDA issued a press release requesting alternatives to the proposal before proceeding to hearing. The proponents submitted a modification to their proposal addressing USDA concerns. An alternative to the establishment of initial base quantities, as well as other alternatives to the proposal, were submitted by Lenseigne Farms, Inc. The alternatives submitted are being included in this notice. Eight other comments were received during the period for receiving alternatives. However, these comments did not set forth alternatives.

After reviewing the modified proposed program and all comments and alternatives received from the public, USDA has determined that the proposed marketing agreement and order potentially meets the objectives of the Act and has scheduled a public hearing.

Testimony is invited at the hearing on the proposed marketing agreement and order (hereinafter referred to as the order) and all of its provisions, as well as any appropriate modifications or alternatives.

The public hearing is held for the purpose of:

(a) Receiving evidence about the economic and marketing conditions that relate to the proposed order and to appropriate modifications thereof;

(b) Determining whether the handling of hops produced in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce;

(c) Determining whether there is a need for a marketing order for hops;

(d) Determining the economic impact of the proposed order on the industry in the proposed production area and on the public affected by such program; and

(e) Determining whether the proposed order or any appropriate modification thereof would tend to effectuate the declared policy of the Act.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, USDA employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex-parte basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel; and the Fruit and Vegetable Programs, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Provisions of the proposed marketing agreement and order follow. USDA modified the committee's proposed § 991.78(b) to be consistent with the authority of the Act. The Act specifies that the Secretary shall terminate any marketing order when termination is favored by a majority of the producers, provided they have produced more than 50 percent of the volume of the commodity. There is no authority under the Act to modify these criteria. Therefore, the proposed section has been changed to be consistent with the Act. USDA has also added three provisions to the committee's proposal that are common to and relate to marketing agreements now operating. These provisions are necessary to effectuate the provisions of the marketing agreement, if ratified. These sections are identified with an asterisk (*).

List of Subjects in Proposed 7 CFR Part 991

Hops, Marketing agreements, Reporting and recordkeeping requirements.

Proposal Number 1

The marketing agreement and order proposed by the Hop Marketing Order Proponent Committee would add a new part 991 to read as follows:

PART 991—HOPS PRODUCED IN WASHINGTON, OREGON, IDAHO AND CALIFORNIA

Subpart—Order Regulating Handling

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Authority: 7 U.S.C. 601–674.

Subpart—Order Regulating Handling

Definitions

§ 991.01 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any other officer or employee of the U.S. Department of Agriculture who is, or who may be, authorized to perform the duties of the Secretary of Agriculture of the United States.

§ 991.02 Act.

Act means Public Act No. 10, 73rd Congress, as amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*; 48 Stat. 31, as amended).

§ 991.03 Person.

Person means an individual, partnership, corporation, association, or any other business unit.

§ 991.04 Hops and Hop Products.

(a) *Hops* means and includes all kinds and varieties of Humulus lupulus or Humulus americanus grown and harvested in the United States, whether loose, packaged or baled and all pellets, powder, oils, extracts and/or lupulin derived therefrom.

(b) Alpha Acid hops are those varieties that are primarily used for their bittering value. Aroma hops are those varieties primarily used for their aroma characteristics.

§ 991.05 Production Area.

Production area means all States with commercial production of hops and shall be divided into the following districts:

(a) District 1—Washington
(b) District 2—Oregon
(c) District 3—Idaho and California

§ 991.06 Producer.

Producer is synonymous with *grower* and means any person engaged in a proprietary capacity in the commercial production of hops. Any producer with multiple legal entities under his/her control (*e.g.* common Board of directors, common ownership, common banking, etc.* * *), shall be, for voting purposes only, included under the primary entity and shall be entitled to one vote.

§ 991.07 Handler.

Handler means any person who handles hops.

§ 991.08 Handle.

Handle means to prepare hops for market, acquire hops from a producer, use hops commercially of one's own production, sell, transport or ship (except as a common or contract carrier of hops owned by another) or otherwise place hops into the current of commerce within the production area or from the area to points outside thereof, except that:

(a) The preparation for market of hops by producers, not dealers or users of the product, or;

(b) The sale, transportation or shipment of such hops by a producer to a handler of record within the production area, and;

(c) The transfer of excess hops by the producer to another producer to enable that producer to fill a deficiency in an annual allotment, shall not be construed as handling.

§ 991.09 Marketing Year.

Marketing year means the 12 months from August 1 to the following July 31, inclusive.

§ 991.10 Crop.

Crop means hops produced by a producer during the marketing year.

§ 991.11 Salable Quantity.

Salable Quantity means the total quantity of hops that handlers may purchase from, or handle on behalf of, producers during the marketing year.

§ 991.12 Annual Allotment.

Annual Allotment means that portion of the Salable Quantity prorated to a producer.

§ 991.13 New Producer.

The term *New Producer* means a person who has not grown hops prior to 2003. The term *New Producer* specifically excludes any person who has previously been granted Hop Commission grower number or an allotment base in any capacity, either as an individual, or as an owner, officer or operator of any business entity.

Administrative Committee

§ 991.15 Establishment and Membership.

(a) A Hop Administrative Committee consisting of eight members, each of whom shall have an alternate, is hereby established to administer the terms and provisions of this part. Five of the members and their alternates shall be producers in District 1, Two members and their alternates shall be producers in District 2; and One member and his/her alternate shall be producers in District 3. An additional member and his/her alternate shall represent the public and shall be an ex-officio member of the Committee without a vote.

(b) Representation on the Committee shall be by independent producers as follows:

(1) Position 1 for District 1, Sub District 1 shall be all that portion of the State of Washington lying north of the south line of Township 12 N.

(2) Position 2 for District 1, Sub District 2 shall be all that portion of the State of Washington lying south of the south line of Township 12 N. and west of the east line of Range 20 E.

(3) Position 3 for District 1, Sub District 3 shall be all areas of the state of Washington not included in Sub District 1 or Sub District 2.

(4) Position 4 is an at large position and shall be all of District 1.

(5) Position 5 is an at large position and shall be all of District 1.

(6) Position 6 shall be all of District 2.

(7) Position 7 shall be all of District 2.

(8) Position 8 shall be all of District 3.

(c) The committee may change sub-district boundaries in District 1 to reflect significant changes in numbers of producers.

(d) Each Committee shall select officers consisting of a Chairman, Vice Chairman, Secretary and Treasurer and these officers shall constitute the Executive Sub Committee.

§ 991.16 Eligibility.

Each member and alternate of the Committee shall be; at the time of his/her selection and during his/her term of office, a producer or an officer or employee of a producer, in the district or sub district for which selected: *Provided*, That these requirements shall not apply to the public member and the alternate public member.

§ 991.17 Term of Office.

The term of office of each member and alternate member of the Committee shall be for a period of 3 years: *Provided*, that the members initially selected for Positions 1, 2 and 5 shall serve for terms ending on December 31, 2006, and the members initially selected for Positions 3, 7 and 8 shall serve for terms ending on December 31, 2007, and the members initially selected for Positions 4 and 6 shall serve for terms ending on December 31, 2008. Committee members shall serve in such capacity and for the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified. No member shall serve more then two consecutive terms as member and no alternate shall serve more then two consecutive terms as alternate.

§ 991.18 Nominations.

(a) Nominations for producer members of the Committee and their alternates shall be made at nomination meetings of producers in each District or Sub-District. Such meetings shall be held at such times (on or before November 1 of each year) and places as the Committee shall designate. One nominee shall be elected for each position to be filled. The names and addresses of each nominee shall be submitted to the Secretary not later than December 1 of each year.

(b) Only producers, including duly authorized officers or employees of producers present and eligible to serve as producer members of the Committee, shall participate in the nomination. If a producer produces hops in more than one district, the producer shall select the district in which that producer will participate and notify the Committee of the choice.

(c) Should the Committee find it impractical to hold nomination meetings, nominations may be submitted to the Secretary based on the results of balloting by mail. Ballots to be used may contain the names of candidates and a blank space for write-in candidates for each position, together with voting instructions. The eligible person receiving the highest number of votes for a member or alternate position shall be the nominee for that position.

(d) The producer members of the Committee shall nominate the ex-officio public member and alternate public member at the first meeting following the selection of members for a new term of office.

(e) Initial members. As soon as practicable following the effective date of this part, the Secretary shall hold, or cause to be held, nomination meetings of producers in each district to nominate the initial members of the Committee.

(f) The Committee shall issue rules and regulations necessary to carry out the provisions of this section or to change the procedures in this section in the event they are no longer practical.

§ 991.19 Selection.

Committee members shall be selected by the Secretary from nominees submitted by the Committee or from among other eligible persons. Each person so selected shall qualify by filing a written acceptance with the Secretary prior to assuming the duties of the position.

§ 991.20 Alternate members.

An alternate for a member shall act in the place of such member:

(a) In the member's absence,

(b) In the event of the member's death, removal, resignation, or disqualification, until a successor for the member's unexpired term has been selected and has qualified, or

(c) When requested and designated by the member.

§ 991.21 Vacancies.

To fill any vacancy occasioned by the failure of any person appointed as a member or as an alternate member of the Committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the Committee, a successor to fill the unexpired term shall be nominated and appointed in the manner specified in §§ 991.18 and 991.19. If the names of the nominees to fill any such vacancy are not made available to the Secretary within 30 days after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which appointment shall be made on the basis of representation provided for in § 991.15.

§ 991.22 Powers.

The Committee shall have the following powers:

(a) To administer this part in accordance with its terms and provisions;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 991.23 Duties.

The Committee shall have, among others, the following duties;

(a) To select from among its membership such officers and adopt such rules or bylaws for the conduct of its meetings as it deems necessary;

(b) To appoint such employees as it may deem necessary, and to determine the compensation and to define the duties of each employee;

(c) To appoint such subcommittees and consultants as it may deem necessary;

(d) To keep minutes, books, and records which will reflect all of the acts and transactions of the Committee and which shall be subject to examination by the Secretary;

(e) To prepare periodic statements of the financial operations of the Committee and to make copies of each such statement available to producers and handlers for examination at the office of the Committee;

(f) To cause the books of the Committee to be audited by a certified public accountant at such times as the Committee may deem necessary, or as the Secretary may request, to submit copies of each audit report to the Secretary, and to make available a copy which does not contain confidential data for inspection at the offices of the committee by producers and handlers;

(g) To act as intermediary between the Secretary and any producer or handler;

(h) To investigate and assemble data on the growing, handling, and marketing conditions with respect to hops and hop products;

(i) To submit to the Secretary such available information as may be requested or that the Committee may deem desirable and pertinent;

(j) To notify producers and handlers of all meetings of the Committee to consider recommendations for regulations and of all regulatory actions taken affecting producers and handlers;

(k) To give the Secretary the same notice of meetings of the Committee and its subcommittees as is given to its members;

(l) To investigate compliance and use means available to prevent violations of the provisions of this part;

(m) To redefine, with the approval of the Secretary, the districts into which the production area is divided and to reapportion the representation of any district on the Committee: *Provided*, That such changes shall reflect, insofar as practical, shifts in hop production within the production area and numbers of producers; and

(n) To establish such rules and regulations as are necessary or incidental to administration of this part, as are consistent with its provisions, and as would tend to accomplish the purposes of this part and the act.

§ 991.24 Committee Expenses and Compensation.

Members and Alternates of the Committee shall serve without compensation but shall receive such allowances for necessary expenses incurred in connection with their duties as may be approved by the Committee.

§ 991.25 Procedure.

(a) At an assembled meeting, all votes shall be cast in person and seven members of the Committee shall constitute a quorum. Decisions of the Committee shall require the concurring vote of at least six members. If both a Committee member and appropriate alternate are unable to attend a Committee meeting, the Committee may designate any other alternate from the same district who is present at the meeting to serve in the member's place.

(b) The Committee may vote by mail, telephone, or other means of communication: *Provided*, That each

proposition is explained accurately, fully, and identically to each member. All votes shall be confirmed promptly in writing. Seven concurring votes and no dissenting votes shall be required for approval of a Committee action by such method.

§ 991.26 Research and Development Projects.

The Committee may establish or provide for the establishment of production research, marketing research and development projects designed to assist, improve, or promote the marketing, distribution and consumption or efficient production of hops. The expense of such projects shall be paid from funds collected pursuant to § 991.31.

Expenses and Assessments

§ 991.30 Expenses.

The Committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it for such purposes as the Secretary may, pursuant to this part, determine to be appropriate, and for the maintenance and functioning of the Committee during each marketing year. The Committee shall submit to the Secretary a budget for each marketing year, including an explanation of the items appearing therein, and a recommendation as to the rate of assessment for such year.

§ 991.31 Assessments.

(a) Requirements for payment. Each person who first handles hops shall pay to the Committee, upon demand, that handler's prorata share of the expenses authorized by the Secretary for each marketing year. Each handler's prorata share for each variety of hops sold shall be the rate of assessment fixed by the Secretary times the number of pounds of that variety of hops sold, times the alpha acid factor for that variety of hops which the handler handles as the first handler thereof. The payment of assessments for the maintenance and functioning of the Committee and for such purposes as the Secretary may, pursuant to this part, determine to be appropriate, may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) Rate of assessment. The Secretary shall fix the rate of assessment to be paid by each handler. In order to provide funds for the administration of this part before sufficient operating income is available from assessments, the Committee may accept advance assessments and may also borrow money for such purpose. Advance assessments received from a handler shall be credited toward assessments levied against the handler during the marketing year.

(c) Assessments not paid within a time prescribed by the Committee may be made subject to interest or late payment charges, or both. The period of time, rate of interest, and late payment charge will be as recommended by the Committee: *Provided,* That when interest or late payment charges are in effect, they shall be applied to all assessments not paid within the prescribed period of time.

(d) Excess funds. At the end of a marketing year, funds in excess of the year's expenses may be placed in an operating reserve not to exceed approximately one marketing year's operational expenses or such lower limits as the Committee, with the approval of the Secretary, may establish. Funds in such reserve shall be available for use by the Committee for expenses authorized pursuant to § 991.30. Funds in excess of those placed in the operating reserve shall be refunded to handlers: *Provided,* That any sum paid by a first handler in excess of that handler's prorata share of the expenses during any marketing year may be applied by the Committee at the end of such marketing year to any outstanding obligations due the Committee from such person. Each handler's share of such excess funds shall be the amount of assessments paid in excess of that handler's prorata share.

(e) Disposition of funds upon termination of order. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practicable, such funds will be returned prorata to the first handler from whom such funds were collected.

(f) The Committee may establish rules and regulations necessary and incidental to the administration of this section.

Volume Limitations

§ 991.50 Marketing Policy.

(a) The Committee shall meet on or before November 15 of each year to adopt a marketing policy for the ensuing marketing year or years. As soon as is practical following the meeting or meetings, the Committee shall submit to the Secretary recommendations for volume regulations deemed necessary to meet market requirements and establish orderly marketing conditions. Additional reports shall be submitted to the Secretary if the Committee, subsequently adopts a new or revised policy because of changes in the demand and supply situation with respect to Alpha Acid.

(b) In determining such marketing policy, Committee consideration *shall include* but not be limited to:

(1) The estimated quantity of salable Alpha Acid held by producers and handlers;

(2) The estimated demand for Alpha Acid;

(3) Prospective production of Alpha Acid;

(4) Total of allotment bases for the current marketing year and the estimated total of allotment bases for the ensuing marketing year;

(5) The quantity of reserve Alpha Acid in storage;

(6) Producer prices of Alpha Acid;

(c) Notice of the marketing policy recommendations for a marketing year and any later changes shall be announced publicly by the Committee, and be submitted promptly to the Secretary and all producers and handlers. The Committee shall publicly announce its marketing policy or revision thereof and notice and contents thereof shall be submitted to producers and handlers by bulletins or through appropriate media.

(d) As soon as practical following the effective date of this part and the organization of the Committee, the Committee may adopt a marketing policy.

§ 991.51 Recommendations for Volume Regulation.

(a) If the Committee's marketing policy considerations indicate a need for limiting the quantity of Alpha Acid, the Committee shall recommend to the Secretary a salable quantity and allotment percentage for the ensuing marketing year. Such recommendations shall be made prior to November 15, or such other date as the Committee may establish.

(b) At any time during the marketing year for which the Secretary, pursuant to § 991.52(a), has established a salable quantity and an allotment percentage, the Committee may recommend to the Secretary that such quantity be increased with an appropriate increase in the allotment percentage. Each such recommendation, together with the Committee's reason for such recommendation, shall be submitted promptly to the Secretary.

(c) As soon as practical following the effective date of this part and the organization of the Committee, the Committee may recommend a salable quantity.

§ 991.52 Issuance of Volume Regulation.

(a) Whenever the Secretary finds, on the basis of the Committee's recommendation or other information, that limiting the total quantity of Alpha Acid of any crop that handlers may purchase from producers during a marketing year, would tend to effectuate the declared policy of the act, the Secretary shall establish the salable quantity for that crop. The salable quantity shall be prorated among producers by applying an allotment percentage to each producer's allotment base. The allotment percentage shall be established by dividing the salable quantity by the total of all producers' allotment bases.

(b) When an allotment percentage is established for any marketing year, no handler shall purchase from producers any Alpha Acid during such year unless:

(1) It is, at the time of handling, within the unused portion of a producer's annual allotment, and

(2) Such handler notifies the Committee of the handling in such manner as the Committee may prescribe.

(c) An Alpha Acid Factor shall be established for the ensuing marketing year for each variety of hops and shall be equal to the most recent three year average of the Alpha Acid for each variety. If there is not a 3 year average for a variety the Committee shall determine the Alpha Acid Factor for that variety until a three year average is available. The Alpha Acid Factor for each variety shall be determined in accordance with rules and regulations established by the Committee. The Alpha Acid Factor shall be established no later than November 15 of each year. A producer may forward sell any variety of hops in an amount equal to that variety's production times the Alpha Acid Factor for that variety for the year for which the Alpha Acid Factor has been established, or the producer may sell any combination of varieties, provided that, in any case, the total quantity sold is within the producer's salable quantity for that year.

§ 991.53 Allotment Base.

(a) The Representative Base Period shall be the marketing years 1997, 1998, 1999, 2000, 2001 and 2002; *Provided* that, a producer must have produced hops in the 2001 and/or 2002 crop year to be eligible to apply for initial allotment base.

(b) Initial Issuance: Each eligible producer desiring an allotment base for hops shall register with the Committee and furnish to it, on forms provided by the Committee, the following:

(1) The Actual Production (in number of pounds) of each variety of hops produced during the highest production year of the Representative Base Period and the name of the handler(s) each variety of hops was sold to during that year.

(2) The Alpha Acid Percentage for each variety of hops with an Alpha Acid percentage of 10% or more produced during the year selected pursuant to § 991.53(b)(1).

(3) The County and State where the production of each variety of hops occurred during the year selected pursuant to § 991.53(b)(1).

(4) As verification for the information submitted to the Committee, the producer shall also submit a copy of the appropriate state certification documents, or, if such documentation is unavailable, a copy of the handler ultra violet spectral analysis documentation relative to the submissions pursuant to this section.

(5) The Executive Sub Committee shall act as a Hardship Committee for establishment of initial allotment base. Any producer has the right to petition the Hardship Committee for special consideration for their initial allotment base, provided that, such petition is in writing, and that it is based solely on hardships brought about by acts of God. The Hardship Committee may elect to defer their decision to the Administrative Committee.

(6) The Committee shall not be required to accept applications for initial allotment base after one year from the effective date of this part.

(7) A producer who has changed or changes identity from an individual producer to a partnership or corporate producer, or from a partnership to a corporate or individual producer, or from a corporate to a partnership or individual producer, may for the purpose of establishing the initial and subsequent allotment base, register with the Committee as one and the same person.

(c) The Initial Allotment Base shall be established by the Committee for each registered producer based on the information submitted by the producer pursuant to 991.53(b), as follows:

(1) For each variety over 10% Alpha Acid Percentage, that "Variety Alpha Acid Base" contribution to the total Alpha Acid Allotment Base shall be determined by multiplying the Actual Production by the Actual Alpha Acid Percentage of that variety for the chosen year.

(2) For each variety equal to or less than 10% Alpha Acid Percentage, that "Variety Alpha Acid Base" contribution to the total Alpha Acid Allotment Base shall be determined by multiplying the Actual Production of that variety for the chosen year by a flat rate of 10%. The sum of all of the "Variety Alpha Acid Bases" as calculated above shall be the producer's "Initial Allotment Base."

(d) Adjustment to allotment base. Periodically, but at least once every five years, the Committee shall review and may adjust each producer's allotment base to recognize changes and trends in production and demand. Any such adjustment shall be made in accordance with a formula prescribed by the Committee with the approval of the Secretary.

(e) Additional allotment base. (1) The Committee annually shall make additional allotment bases available in the amount of no more than 1 percent of the total allotment base. Fifty percent of these additional allotment bases shall be made available for new producers and 50 percent made available for existing producers; *Provided that,* in any year in which the current salable percentage is equal to or less than the previous year's salable percentage, the Committee shall not be required to make additional base available for the ensuing marketing year.

(2) Any person may apply for an additional allotment base by filing an application with the Committee on or before December 1 of the marketing year preceding the marketing year for which the additional allotment bases will be made available.

(3) The Committee shall, with the approval of the Secretary, establish rules and regulations to be used for determining the distribution of additional allotment bases.

In establishing such rules, the Committee shall take into account, among other things, the minimum economic enterprise requirements for hop production, the applicant's ability to produce hops, the area where the hops will be produced and other economic and marketing factors.

(f) Bona Fide Effort Requirement: The right of each producer receiving an allotment base, or any legal successor in interest, to retain all or part of an allotment base, shall be dependent on continuance to make a bona fide effort to produce the annual allotment referable thereto and failing to do so, such allotment base shall be reduced by an amount equivalent to such unproduced portions: *Provided*, that a producer's reserve pool shall be included in the bona fide effort requirement. The Committee shall develop the bona fide effort requirement.

(g) Notwithstanding the foregoing, any person or entity who has entered the

hop industry as a *New Producer* for the 2003 crop year, shall be entitled to an allotment base as a matter of right. Such allotment base shall be calculated in the same manner as with any other producer; *Provided:* However that the *New Producer's* representative base period and initial allotment base shall be limited exclusively to the 2003 crop year, and any such allotment shall be determined by the *New Producer's* actual production in 2003.

§ 991.54 Issuance of Annual Allotments.

(a) Whenever the Secretary establishes a salable quantity and allotment percentage that may be marketed during a marketing year, the Committee shall issue an annual allotment to each producer holding an allotment base. Each producer's annual allotment shall be determined by multiplying the producer's allotment base by the allotment percentage.

(b) On or before February 1, the Committee shall furnish each registered holder of an allotment base a form for the producer to apply for an annual allotment for the ensuing marketing year. The Committee, shall establish rules and regulations prescribing the information to be submitted on this form. The Committee shall notify each producer of the producer's annual allotment within 10 days after the Secretary establishes the salable quantity and allotment percentage.

(c) Through 2003, a handler may acquire Alpha Acid of a producer's own production to fulfill a written contract entered into by these two persons prior to January 31, 2002. The terms of this contract shall require the producer to deliver to that handler a specified quantity of Alpha Acid from that producer's production at a specific price from a specified acreage and produced prior to 2003. The quantity of Alpha Acid acquired by the handler pursuant to that contract during the 2003–04 or 2004–05 marketing year may exceed the producer's annual allotment for the applicable marketing year, but shall be charged against the producer's annual allotment for that year.

§ 991.55 Identification.

(a) Each producer shall, under supervision of the Committee, identify each variety of Alpha Acid by October 15 of each year.

(b) Identification shall include the name of the producer, the variety of hops, the net weight, the lot number and such other information as may be required by the Committee.

(c) No handler shall handle as salable Alpha Acid that has not been identified as provided in this section, and no person shall alter or remove any identification.

§ 991.56 Excess Hops and Hop Products.

Alpha Acid that is in excess of an individual producer's annual allotment at the conclusion of his/her harvest shall be identified as excess Alpha Acid and shall be disposed of as follows:

(a) Before November 30, or such date as the Committee may establish, a producer, following notification of the Committee, may transfer excess alpha acid to another producer to enable that producer to fill a deficiency in that producer's annual allotment, or

(b) On December 1, or such other date as the Committee, with the approval of the Secretary, may establish, excess Alpha Acid shall be identified as Reserve Pool Alpha Acid.

(c) No handler shall handle Reserve Pool Alpha Acid.

(d) The Committee may establish such rules and regulations as it deems necessary for the administration of the Reserve Pool.

§ 991.57 Reserve pool requirements.

(a) General. The Committee shall pool Reserve Pool Alpha Acid in a manner to accurately account for its receipt, storage, and disposition. The Committee shall designate a Committee employee as Reserve Pool Manager. Administration of the provisions in this section shall be in accordance with such rules and regulation as the Committee may prescribe.

(b) Disposition. (1) When, in any marketing year, a producer has produced less than the annual allotment of Alpha Acid, the producer may, upon notification of the Committee, fill the deficiency with Alpha Acid from the producer's Reserve Pool.

(2) Under supervision of the Committee, a producer may exchange salable alpha acid for the same quantity of reserve alpha acid from own production so long as the alpha acid is properly identified.

§ 991.58 Transfers.

(a) Nothing contained in this part shall prevent a producer from transferring the location where that producer's annual allotment is produced to another location except that the producer shall report the transfer to the Committee within 30 days after the transfer.

(b) A producer may transfer all or part of an allotment base to another producer under rules and regulations established by the Committee: *Provided,* That the allotment base obtained by transfer from another producer or issued pursuant to § 991.53(e) shall not be transferred for at least 2 years following transfer or issuance, and that the person receiving the allotment base submit to the Committee, evidence of an ability to produce hops from such allotment base in the first marketing year following the transfer or issuance of the allotment base.

Reports and Records

§ 991.60 Reports.

(a) Inventory. Each handler shall file, with the Committee or its designee, a certified report showing such information as the Committee may specify with respect to any hops which were held by such handler on March 1 and September 1 or such other dates as the Committee may designate.

(b) Receipts. Each handler shall, upon request of the Committee, file with the Committee a certified report showing the quantity of hops handled.

(c) Other Reports. Upon the request of the Committee, each handler shall furnish to the Committee such other information as may be necessary to enable it to exercise its powers and perform its duties under this part.

§ 991.61 Records.

Each handler shall maintain such records pertaining to all hops handled as will substantiate the required reports. All such records shall be maintained for not less than 2 years after the termination of the marketing year to which such records relate.

§ 991.62 Verification of reports & records.

For the purpose of assuring compliance with record keeping requirements and verifying reports filed by handlers, the Secretary and the Committee through its duly authorized employees, shall have access to any premises where applicable records are maintained, where hops and or hop products are received or held, and at any time during reasonable business hours shall be permitted to inspect such handler premises, and any and all records of such handlers with respect to matters within the purview of this part.

§ 991.63 Confidential information.

All reports and records furnished or submitted by handlers to, or obtained by the employees of, the Committee which contain data or information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular handler from whom received, shall be treated as confidential and the reports and all information obtained from records shall at all times be kept in the custody and under the control of one or more employees of the Committee who shall disclose such information to no person other than the Secretary.

Miscellaneous Provisions

§ 991.70 Compliance.

No person shall handle hops and or hop products except in conformity with the provisions of this part.

§ 991.71 Rights of the Secretary.

Members of the Committee and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every decision, determination, and other act of the Committee shall be subject to the continuing right of disapproval by the Secretary at any time. Upon such disapproval, the disapproved action of the Committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ 991.72 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 991.73 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the U.S. Department of Agriculture, to act as his/her agent or representative in connection with any of the provisions of this part.

§ 991.74 Personal Liability.

No member or alternate member of the Committee and no employee or agent of the Committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 991.75 Duration of Immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

§ 991.76 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance or thing is held invalid, the validity of the remainder of this part of the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 991.77 Effective Time.

The provisions of this part, and of any amendment thereto, shall become effective at such time as the Secretary may declare above his/her signature and shall continue in force until terminated in one of the ways specified in 991.78.

§ 991.78 Termination.

(a) Failure to effectuate. The Secretary shall terminate or suspend the operation of any or all of the provisions of this part whenever he/she finds that such provisions obstruct or do not tend to effectuate the declared policy of the act.

(b) Referendum. The Secretary shall terminate the provisions of this part at the end of any marketing year whenever he/she finds that such termination is favored by a majority of the producers who during the preceding marketing year produced for market more than 50 percent of the volume of Alpha Acid so produced: *Provided,* That termination shall be effective only if announced before May 31 of the then current marketing year.

(c) Termination of act. The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 991.79 Continuance.

(a) Within 4 years of the effective date of this part, the Secretary shall conduct a continuance referendum to ascertain whether continuance of this part is favored by producers. Subsequent referenda to ascertain continuance shall be conducted every 6 years thereafter. The Secretary may terminate the provisions of this part at the end of any fiscal year in which the Secretary has found that continuance of this part is not favored by producers who during a representative period determined by the Secretary, have been engaged in the production of hops for market in the production area.

(b) Termination of act. The provisions of this part shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 991.80 Proceedings After Termination.

Upon termination of the provisions of this part, the Committee shall, for the purpose of liquidating the affairs of the Committee, continue as trustees of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination. The said trustees shall:

(a) Continue in such capacity until discharged by the Secretary;

(b) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Committee and of the trustees, to such persons as the Secretary may direct; and

(c) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Committee or the trustees pursuant thereto. Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the Committee and upon the trustees.

§ 991.81 Effect of Termination or Amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provisions of this part or any regulation issued hereunder, or

(b) Release or extinguish any violation of this part or any regulation issued hereunder, or

(c) Affect or impair any rights or remedies of the Secretary or any other person with respect to any such violation.

§ 991.92 Counterparts.

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

§ 991.93 Additional parties.

After the effective date thereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting part at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

§ 991.94 Order with marketing agreement.

Each signatory hereby requests the Secretary to issue, pursuant to the Act,

an order providing for regulating the handling of hops in the same manner as is provided for in this agreement.

The following proposals were submitted by Lenseigne Farms, Inc.

Proposal Number 2

Establishment of initial allotment base would be based upon actual production for the most current season for which data is available. No specific regulatory text was submitted.

Proposal Number 3

Ensure that initial base quantities are only allocated to existing producers. No specific regulatory text was submitted.

Proposal Number 4

The representative period for purposes of voter eligibility would be the most current season for which data is available. No specific regulatory text was submitted.

Proposal Number 5

Establish a market allocation pool, using salable and reserve percentages, instead of a producer allotment program. No specific regulatory text was submitted.

Proposal Number 6

Provide a 3-year or more exemption from volume regulation for forward contracting agreements on hops. No specific regulatory text was submitted.

Proposal Number 7

Provide an exemption for "aroma varieties" from marketing order regulations. No specific regulatory text was submitted.

Proposal Number 8

If a producer allotment marketing order is established, allow a minimum of 10 percent of existing base quantities be made available to new and existing growers annually. No specific regulatory text was submitted.

Proposal Number 9

If a producer allotment marketing order is established, base quantities would be based on actual alpha acid content. No specific regulatory text was submitted.

Proposal Number 10

If a producer allotment marketing order is established, prohibit the sale, lease or transfer of base. No specific regulatory text was submitted.

Dated: July 23, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–19127 Filed 7–25–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–23–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 208 and 208B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise Airworthiness Directive (AD) 2002–22–17, which currently requires you to repetitively inspect the inboard forward flap bellcranks for cracks and eventually replace these bellcranks on all Cessna Aircraft Company (Cessna) Models 208 and 208B airplanes. AD 2002–22–17 resulted from Cessna re-evaluating the bellcrank life limit analysis and determining that the original estimate is too high. Since FAA issued AD 2002–22–17, Cessna has designed a new flap bellcrank with a life limit of 40,000 landings (instead of 7,000 landings). This proposed AD would retain the requirement that you repetitively inspect the inboard forward flap bellcranks for cracks and eventually replace these bellcranks and would provide the option of installing the new design flap bellcrank to increase the life limits and terminate the repetitive inspections. The actions specified by this proposed AD are intended to detect, correct, and prevent future cracks in the bellcrank, which could result in failure of this part. Such failure could lead to damage to the flap system and surrounding structure and result in reduced or loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before October 6, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–23–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2002–CE–23–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Cessna Aircraft Company, Product Support, PO Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Paul Nguyen, Aerospace Engineer, FAA, Wichita Aircraft Certification Office ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316–946–4125; facsimile: 816–946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the proposed rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of this proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How can I be sure FAA receives my comment? If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–23–AD." We will date stamp and mail the postcard back to you.

Discussion

Has FAA taken any action to this point? Ten cracked bellcrank incidents on Cessna Models 208 and 208B airplanes caused us to issue AD 2002–22–17, Amendment 39–12944 (67 FR 68508, November 12, 2002). AD 2002–22–17 currently requires the following on Cessna Models 208 and 208B airplanes:

—Inspecting, using eddy current inspection, the inboard forward flap bellcrank for cracks; and

—Replacing the inboard forward flap bellcrank.

What has happened since AD 2002–22–17 to initiate this proposed action? Since we issued AD 2002–22–17, Cessna has designed a new flap bellcrank, part number (P/N) 2622311–7, with a life limit of 40,000 landings (instead of 7,000 landings). The new flap bellcrank (P/N 2622311–7) may be substituted for the older flap bellcranks, either P/N 2622281–2, 2622281–12, or 2692001–2. Installation of this new flap bellcrank would eliminate the need for repetitive inspections.

Is there service information that applies to this subject? Cessna has issued the following service information:

—Cessna Caravan Service Bulletin No.: CAB02–1, dated February 11, 2002;

—Cessna Caravan Service Bulletin No.: CAB02–12, Revision 1, dated January 27, 2003; and

—Cessna Caravan Service Kit No.: SK208–148A, dated January 27, 2003.

What are the provisions of this service information? The service information includes procedures for:

—Inspecting, using eddy current methods, the inboard forward flap bellcrank for cracks; and

—Replacing bellcranks.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What has FAA decided? After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other Cessna Models 208 and 208B airplanes of the same type design;

—The installation of either the 7,000 landings or 40,000 landings life limit bellcranks addresses the unsafe condition;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What would this proposed AD require? This proposed action would revise AD 2002–22–17 by proposing a new AD that would:

—Retain the requirements of AD 2002–22–17; and

—Provide the option of installing the 40,000 landings life limit bellcranks.

How does the revision to 14 CFR part 39 affect this proposed AD? On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 1,300 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $60 per hour = $60	No cost for parts	$60	$60 × 1,300 = $78,000

We estimate the following costs to accomplish any necessary replacements using the same flap bellcrank (P/N 2622281–2, 2622281–12, 2692001–2, or FAA-approved equivalent P/N) that would be required based on the proposed inspection or the reduced life limits:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 workhours × $60 per hour = $180	$1,793	$180 + $1,793 = $1,973	$1,973 × 1,300 = $2,564,900

We estimate the following costs to accomplish any necessary replacements using the name flap bellcrank (P/N 2622311–7 2692001–2, or FAA-approved equivalent P/N) that would be required based on the proposed inspection or the reduced life limits. We have no way of determining the number of airplanes that may need such replacement with the new flap bellcrank:

Labor cost	Parts cost	Total cost per airplane
3 workhours × $60 per hour = $180	$1,845	$180 + $1,845 = $2,025

What is the difference between the cost impact of this proposed AD and the cost impact of AD 2002–22–17? AD 2002–22–17 already established the life limit for the flap bellcrank (P/N 2622281–2, 2622281–12, 2692001–2, or FAA-approved equivalent P/N) on the affected airplanes. Therefore, the replacement is already required through that AD. The only difference in the cost impact upon the public of this proposed AD and AD 2002–22–17 is the

additional $52 cost difference for the new flap bellcrank.

Regulatory Impact

Would this proposed AD impact various entities? The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 2002–22–17, Amendment 39–12944 (67 FR 68508, November 12, 2002), and by adding a new AD to read as follows:

Cessna Aircraft Company: Docket No. 2002–CE–23–AD; Revises AD 2002–22–17, Amendment 39–*****.

(a) *What airplanes are affected by this AD?* This AD affects Models 208 and 208B airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect, correct, and prevent cracks in the bellcrank, which could result in failure of this part. Such failure could lead to damage to the flap system and surrounding structure and result in reduced or loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) *Repetitive Inspections:* Inspect, using eddy current method, any inboard forward flap bellcrank (part number (P/N) 2622281–2, 2622281–12, 2692001–2, or FAA-approved equivalent (P/N) for cracks.	Initially inspect upon the accumulation of 4,000 landings on the bellcrank or within the next 250 landings after the effective date of this AD, whichever occurs later. Repetitively inspect thereafter at every 500 landings until 7,000 landings are accumulated at which time you must replace as required in paragraphs (d)(2) and (d)(3) of this AD.	In accordance with the Inspection Instructions of Cessna Caravan Service Bulletin No.: CAB02–1, dated February 11, 2002, and the applicable maintenance manual.
(2) *Initial Replacement:* Replace any inboard forward flap bellcrank (P/N 2622281–2, 2622281–12, 2692001–2, or FAA-approved equivalent P/N) with either: (i) the same flap bellcrank (P/N 2622281–2, 2622281–12, 2692001–2, or FAA-approved equivalent P/N); or (ii) a new flap bellcrank (P/N 2622311–7 or FAA-approved equivalent P/N).	Must be replaced prior to further flight if cracks are found. If cracks are not found, initially replace at whichever occurs later; upon the accumulation of 7,000 landings on the bellcrank or within the next 75 landings after the effective date of this AD.	For flap bellcrank (P/N 2622281–2, 2622281–12, 2692001–2, or FAA-approved equivalent P/N): In accordance with the Inspection Instructions of Cessna Caravan Service Bulletin No.: CAB02–1, dated February 11, 2002, and the applicable maintenance manual. For new flap bellcrank (P/N 2622311–7 or FAA-approved equivalent P/N): In accordance with the Accomplishment Instructions of Cessna Caravan Service Bulletin No.: CAB02–12, Revision 1, dated January 27, 2003, and the Accomplishment Instructions of Cessna Caravan Service Kit No.: SK208–148A, dated January 27, 2003.
(3) *Life Limits (Repetitive Replacements):* (i) The life limit for the inboard forward flap bellcranks (P/N 2622281–2, 2622281–12, 2692001–2, or FAA-approved equivalent P/N) is 7,000 landings. Repetitive inspections every 500 landings begin at 4,000 landings (see paragraph (d)(1) of this AD. (ii) The life limit for the inboard forward flap bellcranks (P/N 2622311–7 or FAA-approved equivalent P/N) is 40,000 landings. No repetitive inspections are required on these bellcranks.	Replace at the applicable referenced life limits.	Use the service information referenced in paragraph (d)(2) of this AD.

Note 1: Inboard forward flap bellcranks (P/N 2622281–2, 2622281–12, or 2692001–2) with 7,000 landings or more do not have to be replaced until 75 landings after the effective date of this AD.

Note 2: The compliance times of this AD are presented in landings instead of hours TIS. If the number of landings is unknown, hours time-in-service (TIS) may be used by multiplying the number of hours TIS by 1.25.

(e) *Can I comply with this AD in any other way?*

(1) To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Wichita Aircraft Certification Office (ACO). For information on any already approved alternative methods of compliance, contact Paul Nguyen, Aerospace Engineer, FAA, Wichita ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316–946–4125; facsimile: 816–946–4407.

(2) Alternative methods of compliance approved in accordance with AD 2002–22–17, which is revised by this AD, are not approved as alternative methods of compliance with this AD.

(f) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(g) *Does this AD action affect any existing AD actions?* This amendment revises AD 2002–22–17, Amendment 39–12944.

Issued in Kansas City, Missouri, on July 21, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–19059 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15398; Airspace Docket No. 03–AGL–09]

Proposed Revocation of Class D Airspace; Chicago, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to revoke Class D airspace at Chicago, IL. The City of Chicago has permanently closed Merrill C Meigs Airport, Chicago, IL, and therefore there is no longer a requirement for the existing Class D airspace. This action would revoke the area of the existing controlled airspace for Merrill C Meigs Airport, Chicago, IL.

DATES: Comments must be received on or before September 29, 2003.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the Docket Number FAA–2003–15398/Airspace Docket No. 03–AGL–09, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–15398/Airspace Docket No. 03–AGL–09." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to revoke Class D airspace at Chicago, IL, for Merrill C Meigs Airport. Controlled airspace extending upward from the surface of the earth is no longer needed to contain aircraft executing instrument approach procedures. Class D airspace areas extending upward from the surface of the earth are published in paragraph 5000 of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class D designations listed in this document would be removed subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a

Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 5000 Class D airspace.

AGL IL D Chicago, IL [Revoked]

Chicago, Merrill C Meigs Airport, IL
(Lat. 41°51′32″ N., long. 87°36′28″ W.)

That airspace extending upward from the surface to and including 3,100 feet MSL and within a 3.8-mile radius of the Merrill C Meigs Airport, excluding that airspace within the Chicago, IL, Class B airspace area and the Chicago Midway Airport, IL, Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on July 9, 2003.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–19166 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–03–022]

RIN 1625–AA00

Security and Safety Zone; Protection of Large Passenger Vessels, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: In order to maintain an increased maritime security posture, the Coast Guard proposes to establish regulations for the security and safety of large passenger vessels in the navigable waters of the Portland, OR Captain of the Port zone. This proposed security and safety zone, when enforced by the Captain of the Port Portland, will provide for the regulation of vessel traffic in the vicinity of large passenger vessels in the navigable waters of the United States.

DATES: Comments and related material must reach the Coast Guard on or before August 27, 2003.

ADDRESSES: You may mail comments and related material to Commanding Officer, Marine Safety Office Portland, 6767 N. Basin Ave, Portland, OR 97217. Marine Safety Office Portland maintains the public docket [CGD13–03–022] for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Portland between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT(jg) Tad Drozdowski, c/o Captain of the Port Portland, 6767 N. Basin Ave, Portland, OR 97217 at 503–240–9370.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD13–03–022), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Portland at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

Hostile entities continue to operate with the intent to harm U.S. National Security. The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks (67 FR 58317, Sept. 13, 2002) (continuing national emergency with respect to terrorist attacks), (67 FR 59447, Sept. 20, 2002) (continuing national emergency with respect to persons who commit, threaten to commit or support terrorism). The President also has found pursuant to law, including the Act of June 15, 1917, as amended August 9, 1950, by the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is and continues to be endangered following the attacks (E.O. 13,273, 67 FR 56215, Sept. 3, 2002) (security endangered by disturbances in international relations of U.S. and such disturbances continue to endanger such relations).

The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert because the al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide. On May 2, 2003, the Captain of the Port Portland issued a temporary final rule (TFR) (68 FR 23390, CGD13–03–012, 33 CFR 165.T13–006) establishing a large passenger vessel security and safety zone, which expires on September 12, 2003. The Coast Guard, through this proposed rule, intends to continue to assist large passenger vessels by establishing a permanent security and safety zone that when enforced by the Captain of the Port would exclude persons and vessels from the immediate vicinity of all large passenger vessels. Entry into this zone will be prohibited unless authorized by the Captain of the Port or his designee. The Captain of the Port may be assisted by other federal, state, or local agencies.

Discussion of Proposed Rule

This proposed rule, for security and safety concerns, would control vessel movement in a regulated area surrounding large passenger vessels. The Coast Guard received one comment regarding the scope and impact of the TFR. Specifically, the commenter noted that it would be difficult for the average waterway user to distinguish a large passenger vessel which is subject to the rule from vessels of similar size and design that are not subject to the rule. We have considered this comment in adopting the proposed rule.

The intent of the proposed rule is to protect those passenger vessels readily apparent to a reasonable waterway user as carrying passengers such as cruise ships, ferries, and excursion vessels. These vessels have been determined to be most at risk from possible hostile activities. Additionally, the master of such vessels, Coast Guard or the designated official patrol must provide verbal notification to the waterway user if they are in the vicinity of the exclusionary zone. This would eliminate confusion for waterway users.

The other idea offered by the commenter suggested establishing national standards of identifying vessels around which security zones have been established. COTP Portland has the authority to publish and enforce security zones solely in his area of responsibility. The Commandant of the Coast Guard has authority to implement national standards. Therefore, this proposal will be forwarded to our headquarters for consideration. However, the need to enforce this security zone in the COTP Portland zone is important and cannot be delayed while this proposal is under consideration.

This proposed rule would be enforced from time to time by the Captain of the Port Portland for such time as he deems necessary to prevent damage or injury to any vessel or waterfront facility, to safeguard ports, harbors, territories, or waters of the United States or to secure the observance of the rights and obligations of the United States. The Captain of the Port Portland will cause notice of the activation of this security and safety zone to be made by all appropriate means to effect the widest publicity among the affected segments of the public, including Marine Safety Office Portland's internet web page located at *http://www.uscg.mil/d13/units/msoportland*. In addition, Marine Safety Office Portland maintains a telephone line that is staffed 24 hours a day, 7 days a week. The public can contact Marine Safety Office Puget Sound at (503) 240–9311 to obtain information concerning enforcement of this rule. For the purpose of this regulation, a large passenger vessel means any vessel over 100 feet in length (33 meters) carrying passengers for hire including, but not limited to, cruise ships, auto ferries, passenger ferries, and excursion vessels.

All vessels within 500 yards of a large passenger vessel shall operate at the minimum speed necessary to maintain a safe course, and shall proceed as directed by the official patrol. No vessel, except a public vessel as defined in paragraph (b), is allowed within 100 yards of a large passenger vessel that is underway or at anchor, unless authorized by the official patrol or large passenger vessel master. Vessels requesting to pass within 100 yards of a large passenger vessel that is underway or at anchor shall contact the official patrol on VHF–FM channel 16 or 13. The on-scene official patrol or large passenger vessel master may permit vessels that can only operate safely in a navigable channel to pass within 100 yards of a large passenger vessel that is underway or at anchor in order to ensure a safe passage in accordance with the Navigation Rules. Similarly, vessels at anchor may be permitted to remain at anchor within 100 yards of passing large passenger vessel. Public vessels for the purpose of this proposed rule are vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this proposed rule would restrict access to the regulated area, the effect of this proposed rule will not be significant because: (i) Individual large passenger vessel security and safety zones are limited in size; (ii) the official on-scene patrol or large passenger vessel master may authorize access to the large passenger vessel security and safety zone; (iii) the large passenger vessel security and safety zone for any given transiting large passenger vessel will effect a given geographical location for a limited time; (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which may be small entities: the owners or operators of vessels intending to operate near or anchor in the vicinity of large passenger vessels in the navigable waters of the United States.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons: (i) Individual large passenger vessel security and safety zones are limited in size; (ii) the official on-scene patrol or large passenger vessel master may authorize access to the large passenger vessel security and safety zone; (iii) the large passenger vessel security and safety zone for any given transiting large passenger vessel will effect a given geographical location for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121),

we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact one of the points of contact listed under **FOR INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

The Coast Guard recognizes the rights of Native American Tribes under the Stevens Treaties. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies to mitigate tribal concerns. Given the flexibility of this proposed rule to accommodate the special needs of mariners in the vicinity of large passenger vessels and the Coast Guard's commitment to working with the Tribes, we have determined that passenger vessel security and fishing rights protection need not be incompatible and therefore have determined that this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Nevertheless, Indian Tribes that have questions concerning the provisions of this proposed rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard's preliminary review indicates this proposed rule is categorically excluded from further environmental documentation under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D. The environmental analysis and Categorical Exclusion Determination will be prepared and be available in the docket for inspection and copying where indicated under **ADDRESSES**. All standard environmental measures remain in effect.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.1318 to read as follows:

§ 165.1318 Security and Safety Zone Regulations, Large Passenger Vessel Protection, Portland, OR Captain of the Port Zone

(a) *Notice of enforcement or suspension of enforcement.*

The large passenger vessel security and safety zone established by this section will be enforced only upon notice by the Captain of the Port Portland. Captain of the Port Portland will cause notice of the enforcement of the large passenger vessel security and safety zone to be made by all appropriate means to effect the widest publicity among the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port Portland will issue a Broadcast Notice to Mariners and Local Notice to Mariners notifying the public when enforcement of the large passenger vessel security and safety zone is suspended.

(b) *Definitions.* As used in this section—

Federal Law Enforcement Officer means any employee or agent of the United States government who has the authority to carry firearms and make warrantless arrests and whose duties involve the enforcement of criminal laws of the United States.

Large Passenger Vessel means any vessel over 100 feet in length (33 meters) carrying passengers for hire including, but not limited to, cruise ships, auto ferries, passenger ferries, and excursion vessels.

Large Passenger Vessel Security and Safety Zone is a regulated area of water, established by this section, surrounding large passenger vessels for a 500-yard radius that is necessary to provide for the security and safety of these vessels.

Navigable waters of the United States means those waters defined as such in 33 CFR part 2.

Navigation Rules means the Navigation Rules, International-Inland.

Official Patrol means those persons designated by the Captain of the Port to monitor a large passenger vessel security and safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zone and take other actions authorized by the Captain of the Port. Persons authorized as Federal Law Enforcement Officers to enforce this section will be designated as the Official Patrol.

Public vessel means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

Oregon Law Enforcement Officer means any Oregon Peace Officer as defined in Oregon Revised Statutes section 161.015.

Washington Law Enforcement Officer means any General Authority Washington Peace Officer, Limited Authority Washington Peace Officer, or Specially Commissioned Washington Peace Officer as defined in Revised Code of Washington section 10.93.020.

(c) *Security and safety zone.* There is established a large passenger vessel security and safety zone extending for a 500-yard radius around all large passenger vessels in the navigable waters of the United States, in Portland, OR starting at the Columbia River Bar "C" buoy and extending eastward on the Columbia River to Kennewick, WA and upriver through Lewiston, ID on the Snake River.

(d) *Compliance.* The large passenger vessel security and safety zone established by this section remains in effect around large passenger vessels at all times, whether the large passenger vessel is underway, anchored, or moored. Upon notice of enforcement by the Captain of the Port Portland, the Coast Guard will enforce the large passenger vessel security and safety zone in accordance with rules set out in this section. Upon notice of suspension of enforcement by the Captain of the Port Portland, all persons and vessels are authorized to enter, transit, and exit the large passenger vessel security and safety zone, consistent with the Navigation Rules.

(e) *Navigation Rules.* The Navigation Rules shall apply at all times within a large passenger vessel security and safety zone.

(f) *Restrictions based on distance from large passenger vessel.* When within a large passenger vessel security and safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course and shall proceed as directed by the on-scene official patrol or large passenger vessel master. No vessel or person is allowed within 100 yards of a large passenger vessel that is underway or at anchor, unless authorized by the on-scene official patrol or large passenger vessel master.

(g) *Requesting authorization to operate within 100 yards of large passenger vessel.* To request authorization to operate within 100 yards of a large passenger vessel that is underway or at anchor, contact the on-scene official patrol or large passenger vessel master on VHF–FM channel 16 or 13.

(h) *Maneuver-restricted vessels.* When conditions permit, the on-scene official patrol or large passenger vessel master should:

(1) Permit vessels constrained by their navigational draft or restricted in their ability to maneuver to pass within 100 yards of a large passenger vessel in order to ensure a safe passage in accordance with the Navigation Rules; and

(2) Permit commercial vessels anchored in a designated anchorage area to remain at anchor within 100 yards of a passing large passenger vessel; and

(3) Permit vessels that must transit via a navigable channel or waterway to pass within 100 yards of an anchored large passenger vessel.

(i) *Stationary vessels.* When a large passenger vessel approaches within 100 yards of any vessel that is moored or anchored, the stationary vessel must stay moored or anchored while it remains with in the large passenger vessel's security and safety zone unless it is either ordered by, or given permission by the Captain of the Port Portland, his designated representative or the on-scene official patrol to do otherwise.

(j) *Exemption.* Public vessels as defined in paragraph (b) of this section are exempt from complying with paragraphs (c), (d), (f), (g), (h), and (i), of this section.

(k) *Enforcement.* Any Coast Guard commissioned, warrant or petty officer may enforce the rules in this section. In the navigable waters of the United States to which this section applies, when immediate action is required and representatives of the Coast Guard are not present or not present in sufficient force to provide effective enforcement of this section in the vicinity of a large passenger vessel, any Federal Law Enforcement Officer, Oregon Law Enforcement Officer or Washington Law Enforcement Officer may enforce the rules contained in this section pursuant to 33 CFR 6.04–11. In addition, the Captain of the Port may be assisted by other federal, state or local agencies in enforcing this section.

(l) *Waiver.* The Captain of the Port Portland may waive any of the requirements of this section for any vessel or class of vessels upon finding that a vessel or class of vessels, operational conditions, or other circumstances are such that application of this section is unnecessary or impractical for the purpose of port security, safety or environmental safety.

Dated: July 15, 2003.

Paul D. Jewell,

Captain, Coast Guard, Captain of the Port, Portland, Oregon.

[FR Doc. 03–19145 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7534–6]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent for partial deletion of the Rocky Mountain Arsenal National Priorities List Site from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 announces its intent to delete the Selected Perimeter Area (SPA), encompassing 4,930 acres, of the Rocky Mountain Arsenal National Priorities List Site (RMA/NPL Site) On-Post Operable Unit (OU) from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes

Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

EPA bases its proposal to delete the SPA of the RMA/NPL Site on the determination by EPA and the State of Colorado, through the Colorado Department of Public Health and Environment (CDPHE), that all appropriate actions under CERCLA have been implemented to protect human health, welfare and the environment and that no further response action by responsible parties is appropriate.

This partial deletion pertains to the surface (soil, surface water, sediment), structures, and groundwater media of the Selected Perimeter Area of the On-Post OU of the RMA/NPL Site. The Surface Deletion Area of the On-Post OU RMA/NPL Site, composed of the surface and structures media only within an additional 123 acres, also is being proposed as a separate partial deletion during the same public comment period. The rest of the On-Post OU and the Off-Post OU will remain on the NPL and response activities will continue at those OUs.

DATES: Comments concerning this proposed partial deletion may be submitted on or before August 26, 2003.

ADDRESSES: Comments may be mailed to: Catherine Roberts, Community Involvement Coordinator (8OC), U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466, 1–800–227–8917 or (303) 312–6025.

Comprehensive information on the RMA/NPL Site, as well as information specific to this proposed partial deletion, is available through EPA's Region 8 Superfund Records Center in Denver, Colorado. Documents are available for viewing by appointment from 8 a.m. to 4 p.m., Monday through Friday excluding holidays, by calling (303) 312–6473. The Administrative Record for the RMA/NPL Site and the Deletion Docket for this partial deletion are maintained at the Joint Administrative Records Document Facility, Rocky Mountain Arsenal, Building 129, Room 2024, Commerce City, Colorado 80022–1748, (303) 289–0362. Documents are available for viewing from 12 p.m. to 4 p.m., Monday through Friday, or by appointment.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Williams, Remedial Project Manager (8EPR–F), U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver Colorado, 80202–2466, (303) 312–6660.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Partial Site Deletion

I. Introduction

The Environmental Protection Agency (EPA) Region 8 announces its intent to delete the Selected Perimeter Area (SPA) of the Rocky Mountain Arsenal/National Priorities List (RMA/NPL) Site, Commerce City, Colorado, from the National Priorities List (NPL) and requests comment on this proposed action. The NPL constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to Section 105 of Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9605. EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). This partial deletion of the Site is proposed in accordance with 40 CFR 300.425(e) and Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List (60 FR 55466 (Nov. 1, 1995)). As described in 40 CFR 300.425(e)(3), portions of a site deleted from the NPL remain eligible for further remedial actions if warranted by future conditions.

EPA will accept comments concerning its intent for partial deletion of the RMA/NPL Site for thirty days after publication of this notice in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this proposed partial deletion. Section IV discusses the Selected Perimeter Area of the RMA/NPL Site and explains how it meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate to protect public health or the environment. In making such a determination pursuant to section 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

Section 300.425(e)(1)(i). Responsible parties or other persons have implemented all appropriate response actions required; or

Section 300.425(e)(1)(ii). All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

Section 300.425(e)(1)(iii). The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking remedial measures is not appropriate.

A partial deletion of a site from the NPL does not affect or impede EPA's ability to conduct CERCLA response activities for portions not deleted from the NPL. In addition, deletion of a portion of a site from the NPL does not affect the liability of responsible parties or impede agency efforts to recover costs associated with response efforts. The U.S. Army and Shell Oil Company will be responsible for all future remedial actions required at the area deleted if future site conditions warrant such actions.

III. Deletion Procedures

Upon determination that at least one of the criteria described in Section 300.425(e) of the NCP has been met, EPA may formally begin deletion procedures. The following procedures were used for this proposed deletion of the SPA of the RMA/NPL Site:

(1) EPA has recommended the partial deletion and has prepared the relevant documents.

(2) The State of Colorado, through the CDPHE, has concurred with publication of this notice of intent for partial deletion.

(3) Concurrent with this national Notice of Intent for Partial Deletion, a local notice has been published in a newspaper of record and has been distributed to appropriate federal, State, and local officials, and other interested parties. These notices announce a thirty (30) day public comment period on the deletion package, which ends on August 26, 2003, based upon publication of this notice in the **Federal Register** and a local newspaper of record.

(4) EPA has made all relevant documents available at the information repositories listed previously for public inspection and copying.

Upon completion of the thirty calendar day public comment period, EPA Region 8 will evaluate each significant comment and any significant new data received before issuing a final decision concerning the proposed partial deletion. EPA will prepare a responsiveness summary for each significant comment and any significant new data received during the public comment period and will address concerns presented in such comments and data. The responsiveness summary will be made available to the public at the EPA Region 8 office and the information repository listed above and will be included in the final deletion package. Members of the public are encouraged to contact EPA Region 8 to obtain a copy of the responsiveness summary. If, after review of all such comments and data, EPA determines that the partial deletion from the NPL is appropriate, EPA will publish a final notice of partial deletion in the **Federal Register**. Deletion of the Selected Perimeter Area of the RMA/NPL Site does not actually occur until a final notice of partial deletion is published in the **Federal Register**. A copy of the final partial deletion package will be placed at the EPA Region 8 office and the information repository listed above after a final document has been published in the **Federal Register**.

IV. Basis for Intended Partial Deletion

The following information provides EPA's rationale for deletion of the SPA of the RMA/NPL Site from the NPL and EPA's finding that the proposed final deletion satisfies 40 CFR 300.425(e) requirements:

RMA/NPL Site Background

The Rocky Mountain Arsenal was established in 1942 by the U.S. Army, and was used to manufacture chemical warfare agents and incendiary munitions for use in World War II. Prior to this, the area was largely undeveloped ranch and farmland. Following the war and through the early 1980s, the facilities continued to be used by the Army. Beginning in 1946, some facilities were leased to private companies to manufacture industrial and agricultural chemicals. Shell Oil Company, the principal lessee, primarily manufactured pesticides from 1952 to 1982. After 1982, the only activities at the Arsenal involved remediation.

Complaints of groundwater pollution north of the RMA/NPL Site began to surface in 1954. Common industrial and waste disposal practices used during these years resulted in contamination of structures, soil, surface water, and groundwater. As a result of this contamination, the RMA was proposed for inclusion on the NPL on October 15, 1984. The listing of RMA on the NPL, excluding Basin F, was finalized on July 22, 1987. Basin F was added to the RMA/NPL Site listing on March 13, 1989. On February 17, 1989, an interagency agreement—referred to as a Federal Facility Agreement (FFA)—formalizing the process framework for selection and implementation of cleanup remedies at the RMA/NPL Site, became effective. The FFA was signed by the Army, Shell Oil Company, EPA, U.S. Department of the Interior, U.S. Department of Justice, and the Agency for Toxic Substances and Disease Registry.

Prior to the selection of remedial alternatives, a remedial investigation/endangerment assessment/feasibility study (RI/EA/FS) was conducted for the On-Post OU to provide information on the type and extent of contamination, human and ecological risks, and feasibility of remedial actions suitable for application at RMA. The remedial investigation (RI) completed in January 1992 studied each of the five environmental media at the RMA/NPL Site, including soils, water, structures, air, and biota. The feasibility study (FS) was finalized in October 1995, and a proposed remedial action plan was prepared and presented to the public in October 1995.

On June 11, 1996, the Army, EPA, and the State of Colorado signed the Record of Decision (ROD) for the On-Post Operable Unit. The ROD, which formally establishes the cleanup approach to be taken for the On-Post OU, specified the remedial actions to be implemented for soil, structures, and groundwater for the On-Post OU of RMA.

The On-Post OU of the RMA/NPL Site (*see* map, RMA Selected Perimeter Area) encompasses 25.5 square miles in southern Adams County, Colorado, approximately 8 miles northeast of downtown Denver.

Selected Perimeter Area of the On-Post OU

The SPA is an area of approximately 4,930 acres (7.7 square miles) on the perimeter of RMA. The proposed deletion of the SPA includes the surface, structures, and groundwater media of portions of Sections 1, 2, 3, 4, 10, 19, 20, 22, 27, 28, 29, 32, and 33; and all of Sections 5, 7, 8, 11, and 12 (*see* map).

A remedial investigation (RI) for the On-Post OU completed in January 1992 studied each of the environmental media at the RMA/NPL Site including soil, sediment, structures, water, air, and biota. Based upon evidence gathered during the RI, areas with similar soil contamination were combined into individual projects. This resulted in four separate soil cleanup projects within the SPA. These include the Toxic Storage Yards project located in the southeastern area of the SPA; the Miscellaneous Southern Tier Soil project located in the south-central portion of the SPA near the south lakes; the Existing (Sanitary) Landfill—Section 4 project located in the southwestern portion of the SPA; and the Burial Trenches—Part I project located in the southwestern portion of the SPA and east of the Sanitary Landfill project.

The Toxic Storage Yards project incorporated three contamination areas, one located within the SPA, considered to potentially contain chemical warfare agent based on use histories and detections of agent breakdown products. The Miscellaneous Southern Tier Soil project included eight contamination areas, four located within the SPA, contaminated with pesticides (aldrin and dieldrin), and heavy metals. The Existing (Sanitary) Landfill project incorporated five contamination areas, all within the SPA, which contained trash and debris, asbestos-containing material, and drums with high concentrations of styrene. The Burial Trenches—Part I project included 35 contamination areas, five within the SPA, considered to potentially contain ordnance or explosives, unexploded ordnance, and munition debris as well as general construction-related debris and trash.

A structures survey identified seventeen structures within the SPA. Four of these structures have no history of contamination and were designated to be retained for future use. The contaminants identified within the other thirteen structures include asbestos, polychlorinated biphenyls (PCBs), pesticides, herbicides and heavy metals.

Two groundwater plumes below the western portion of the SPA contain 1,1-dichloroethylene, 1,1,1-trichloroethane, and TCE but are not attributable to the RMA/NPL Site. Because the groundwater does not meet drinking water standards, the Klein Water Treatment Facility—built in 1989, prior to completion of the RI—treats the groundwater contamination that is now known to originate from non-RMA/NPL sources.

The Irondale Containment System (ICS) was constructed during development of the RI/FS as an interim response action (IRA). The ICS was mostly located on the SPA and installed to extract and treat groundwater emanating from the Rail Yard—which is primarily contaminated with dibromochloropropane, and the Motor Pool—which is primarily contaminated with trichloroethylene. Both of these areas in the RMA/NPL Site are in close proximity to the SPA. Two additional groundwater plumes were identified beneath the northwest portion of the

SPA along the Colorado Highway 2 border. These plumes originate in the South Plants manufacturing area—which is primarily contaminated with benzene, chloroform, carbon tetrachloride, and trichloroethylene; and the historic basins located in the northwest area of the RMA/NPL Site—which is primarily contaminated with dieldrin, chloroform, and DIMP (a byproduct of nerve agent production).

A feasibility study (FS) was finalized in October 1995, and a proposed plan prepared and presented to the public in October 1995. On June 11, 1996, the On-Post Record of Decision (ROD) was signed by the Army, EPA, and the State of Colorado. The ROD required the excavation and consolidation of soil presenting a risk to human health, as well as munition debris, in a state-of-the-art hazardous waste landfill to be built within the On-Post OU; and excavation of debris and soil presenting a risk to biota and placement of those soils in the Basin A consolidation area which is located in the central portion of the RMA/NPL Site. The excavated human health exceedence areas were backfilled with on-post borrow material and revegetated. Unexploded ordnance was to be transported off-site for detonation or other demilitarization process, unless the unexploded ordnance was unstable and must be detonated on-site.

The remedy for structures included the demolition of thirteen of the seventeen structures identified in the SPA. Four of the seventeen structures had no contamination history and were not identified for demolition by the ROD.

The selected groundwater remedy consisted of continued operation of the groundwater treatment systems, including the ICS to treat the Motor Pool and Rail Yard plumes and the Northwest Boundary Containment System to treat the South Plants plumes. Additionally, wells which had the potential to provide a cross-contamination pathway from the contaminated, upper groundwater aquifer to the deeper, confined aquifer were to be closed. The ROD also required continued use restrictions for the property.

Community Involvement

Since 1988, each of the parties involved with the Arsenal cleanup has made extensive efforts to ensure that the public is kept informed on all aspects of the cleanup program. More than 100 fact sheets about topics ranging from historical information to site remediation have been developed and made available to the public. Following the release and distribution of the draft Detailed Analysis of Alternatives report (a second phase of the FS), the Army held an open house for about 1,000 community members. The open house provided opportunity for individual discussion and understanding of the various technologies being evaluated for cleanup of the RMA/NPL Site.

The Proposed Plan for the On-Post OU was released for public review on October 16, 1995. On November 18, 1995, a public meeting was held, attended by approximately 50 members of the public, to obtain public comment of the Proposed Plan. As a result of requests at this meeting, the period for submitting written comments on the plan was extended one month, concluding on January 19, 1996. Minimal comments were received on the alternatives presented for the projects in the SPA of the On-Post OU. Specifically, the comments requested that excavation of the western tier landfills be "complete," that the health and safety of nearby communities be protected from air emissions during excavation and demolition activities, that additional treatment capabilities or modification of the existing water treatment systems be considered, and that potential dioxin contamination of the entire RMA/NPL Site be evaluated.

The designs for the Miscellaneous Structures, Confined Flow System Well Closure, and each of the soil projects were provided to the public for a thirty calendar day review and comment period at both the 30 percent and 95 percent design completion stages (twelve separate public comment periods). Each design was also presented at the monthly meeting of the RMA Restoration Advisory Board, composed of community stakeholders, regulatory agencies, the Army, Shell Oil Company, and the USFWS. No comments regarding the excavation/demolition approach or the proposed health and safety controls for each project were received.

Upon completion of the thirty calendar day public comment period for this NOIDp, EPA Region 8 in consultation with the State and the Army, will evaluate each comment and any significant new data received before issuing a final decision concerning the proposed partial deletion.

Current Status

The Toxic Storage Yards Soil project, completed in 2000, consisted of three separate cleanup areas including one in the SPA. A total of 4,400 bank cubic yards (bcy) of soils presenting a risk to human health was removed from this SPA area and disposed in the on-site hazardous waste landfill. Chemical agent screening was conducted during the soil excavation and soil ripping activities and three groundwater monitoring wells were closed. The Miscellaneous Southern Tier Soil project, completed in 2000, remediated eight areas including three in the SPA. A total of 12,649 bcy of soil presenting a risk to human health and 8 bcy of debris were excavated from the three areas within the SPA and disposed in the hazardous waste landfill. Another 3,325 bcy of soil presenting a risk to biota was disposed in Basin A. This project also included the demolition of one structure, Building 863, which was also disposed in Basin A.

The Existing (Sanitary) Landfill—Section 4 project, completed in 2000, consisted of five separate areas which are all in the SPA. A small amount of asbestos containing material and 11,975 bcy of soil presenting a human health risk was disposed in the hazardous waste landfill. A total of 40,260 bcy of trash and debris was disposed in Basin A. Ten intact drums containing high concentrations of styrene were sent to an offsite facility for disposal in accordance with hazardous waste regulatory requirements. The Burial Trenches Soil Remediation project, completed in 2002, remediated thirty-five areas including five in Section 4 of the SPA. All soil presenting a risk to human health, munition debris and related soil, and asbestos containing material was disposed in the on-site hazardous waste landfill. All other material with lesser degrees of contamination, *e.g.*, asphalt pavement, general construction debris and trash, was disposed in the Basin A consolidation area.

Demolition and removal of nine of the thirteen structures slated for removal was completed as part of the Miscellaneous RMA Structure Demolition and Removal—Phase I project completed in 2002. This project consisted of the demolition of the structures and foundations; removal and disposal of structures and foundations, substations, debris piles, roads and parking areas; removal and disposal or recycling of underground storage tanks, structural steel and other metal components; backfilling and grading; and revegetation of the excavated areas. Of the four remaining structures, one was demolished as part of the Miscellaneous Southern Tier Soil project, two had been demolished prior to remedial action, and one structure has been retained for continued operations of the RMA/NPL Site.

The Northwest Boundary Containment System will continue to operate long-term to prevent migration of groundwater plumes offsite. However, monitoring of the groundwater below the SPA indicates that contamination in the groundwater has been below all regulatory standards since 1993. The ICS extraction wells have met the ROD shut-off criteria and were shut down on October 1, 1997. Extraction wells for the Motor Pool IRA also met shut-off criteria in March 1998; therefore, the ICS facility was demolished and removed as part of the Miscellaneous Structures project on May 7, 2002. A treatment system was constructed at the Rail Yard to more directly treat the contaminated groundwater associated with the Rail Yard. The Rail Yard IRA and Treatment System, and Motor Pool IRA are not associated with the SPA. Monitoring of the groundwater aquifer for the Northwest Boundary Containment System and that previously treated through the ICS extraction wells has been incorporated into the sitewide monitoring program, as required by the ROD.

The Confined Flow System Well Closure project was completed in 2000. A total of 51 wells, six in the SPA, which extended into the deeper, confined flow aquifer were closed. Closure was accomplished by overdrilling the well casing and installing a grout plug. An additional 134 monitoring wells within the SPA are part of the long-term, site-wide monitoring plan.

Use of the groundwater below the SPA and surface water for potable drinking purposes is prohibited by the FFA, Public Law 102–402, and the ROD; and will continue to be prohibited even after the SPA is transferred to the U.S. Department of Interior or units of local government. Additional prohibitions imposed by the FFA, Public Law 102–402, and the ROD include the use of the SPA for residential, industrial, and agricultural purposes, and for hunting or fishing for consumptive purposes.

The Army is responsible for ongoing monitoring and maintenance associated with groundwater wells located on land to be transferred to the Department of Interior within the SPA. The conduct of long-term groundwater monitoring required by the ROD is delineated in the Final Interim Rocky Mountain Arsenal Institutional Control Plan.

Post-ROD Investigations

Since the signing of the ROD on June 11, 1996, three studies have been conducted that are relevant to the deletion of the SPA. The Summary and Evaluation of Potential Ordnance/Explosives and Recovered Chemical Warfare Materiel Hazards at the Rocky Mountain Arsenal (2002) was conducted in response to the unexpected discovery of six M139 bomblets as part of the Miscellaneous Structures—Phase I project in the Section 36 Boneyard (central portion of the RMA/NPL Site). Using state-of-the-art computer imaging, mapping technology, and software capability which had not existed previously, a comprehensive RMA-wide evaluation for the potential presence of ordnance and explosives as well as recovered chemical warfare materiel hazards was completed. The evaluation identified six additional areas for remedial action (none in the SPA) and concluded that the future discovery of additional sites with ordnance/explosives or recovered chemical warfare materiel hazards is highly unlikely.

In 2001, EPA conducted a four-part Denver Front Range Dioxin Study which determined that the concentration of dioxins at most of the RMA/NPL Site, including the SPA, is not statistically different from values observed in open space and agricultural areas within the Denver Front Range area. Therefore there is no significant health risk from dioxin in soils to future Refuge workers, volunteers, or visitors.

As required by the ROD, a Terrestrial Residual Ecological Risk Assessment was completed in 2002. This report concluded that no significant excess terrestrial residual risks will remain after the ROD-required cleanup actions for soil, including additional areas of excavation and tilling identified as part of remedial design refinement as required by the ROD, are completed.

Based on the extensive investigations and risk assessment performed for the SPA of the RMA/NPL Site, there are no further response actions planned or scheduled for this area. Currently, no hazardous substances remain at the SPA above health-based levels with respect to anticipated uses of and access to the site, which are limited under the FFA, Public Law 102–402, and the ROD. Because the SPA is subject to these restrictions on land and water use, it will be included in the RMA-wide five-year reviews. There are no operation and maintenance requirements for the remedies implemented at the SPA. All completion requirements for the SPA of the On-Post OU have been achieved as outlined in OSWER Directive 9320.2–09A–P.

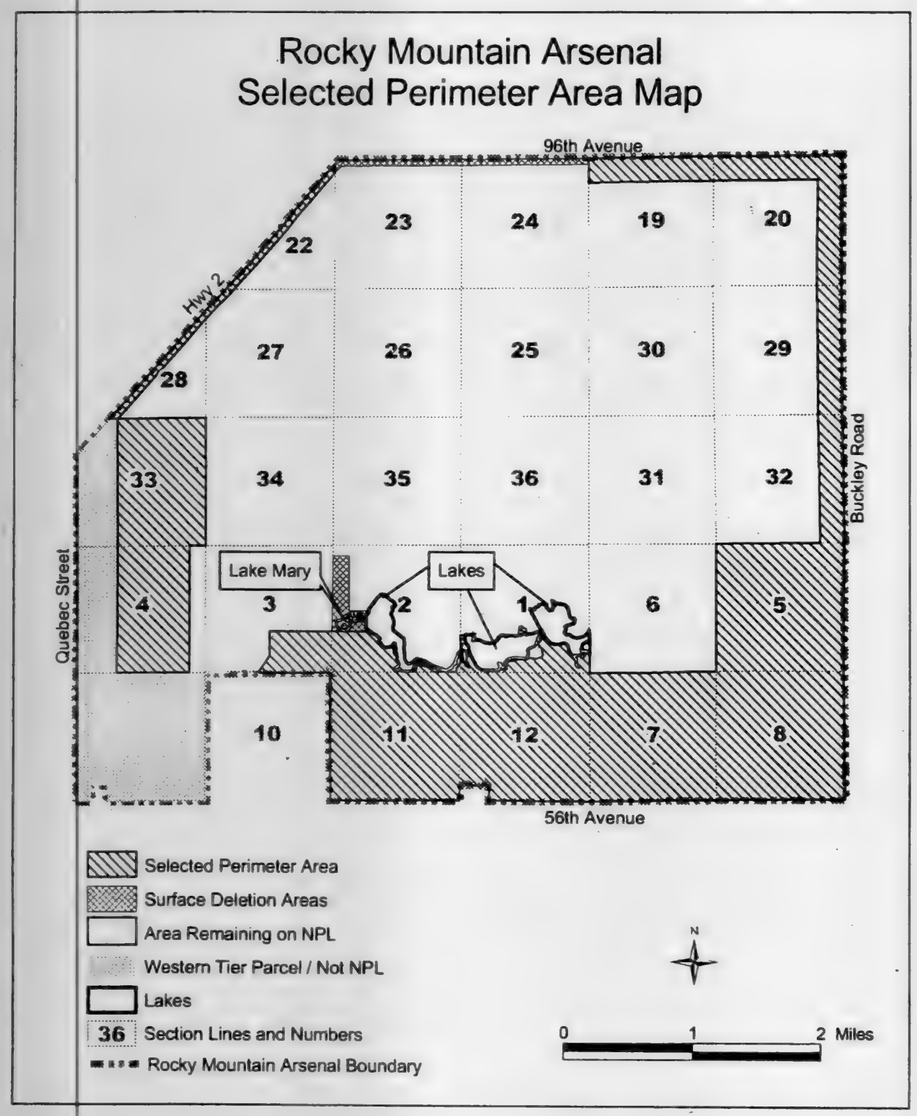
EPA, with concurrence from the State of Colorado, has determined that all appropriate CERCLA response actions have been completed within the SPA of the RMA/NPL Site to protect public health and the environment and that no further response action by responsible parties is required. Therefore, EPA proposes to delete the SPA of the On-Post OU of the RMA/NPL Site from the NPL.

Dated: July 16, 2003.

Kerrigan G. Clough,

Acting Regional Administrator, Region 8.

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BILLING CODE 6560–55–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7534–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent for partial deletion of the Rocky Mountain Arsenal National Priorities List Site from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 announces its intent to delete the Surface Deletion Area (SDA), which includes the surface and structures media only within 123 acres of the Rocky Mountain Arsenal National Priorities List Site (RMA/NPL Site) On-Post Operable Unit (OU), from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

EPA bases its proposal to delete the SDA of the RMA/NPL Site on the determination by EPA and the State of Colorado, through the Colorado Department of Public Health and Environment (CDPHE), that all appropriate actions under CERCLA have been implemented to protect human health, welfare and the environment and that no further response action by responsible parties is appropriate.

This partial deletion pertains to the surface (soil, surface water, sediment) and structures media only and excludes the groundwater media of the Surface Deletion Area of the On-Post OU of the RMA/NPL Site. The Selected Perimeter Area of the On-Post OU RMA/NPL Site, composed of the surface, structures, and groundwater media within an additional 4,930 acres, also is being proposed as a separate partial deletion during the same public comment period. The rest of the On-Post OU and the Off-Post OU will remain on the NPL and response activities will continue at those OUs.

DATES: Comments concerning this proposed partial deletion may be submitted on or before August 26, 2003.

ADDRESSES: Comments may be mailed to: Catherine Roberts, Community Involvement Coordinator (8OC), U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466, 1–800–227–8917 or (303) 312–6025.

Comprehensive information on the RMA/NPL Site, as well as information specific to this proposed partial deletion, is available through EPA's Region 8 Superfund Records Center in Denver, Colorado. Documents are available for viewing by appointment from 8 a.m. to 4 p.m., Monday through Friday excluding holidays, by calling (303) 312–6473. The Administrative Record for the RMA/NPL Site and the Deletion Docket for this partial deletion are maintained at the Joint Administrative Records Document Facility, Rocky Mountain Arsenal, Building 129, Room 2024, Commerce City, Colorado 80022–1748, (303) 289–0362. Documents are available for viewing from 12 p.m. to 4 p.m., Monday through Friday, or by appointment.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Williams, Remedial Project Manager (8EPR–F), U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466, (303) 312–6660.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Partial Deletion

I. Introduction

The Environmental Protection Agency (EPA) Region 8 announces its intent to delete the Surface Deletion Area (SDA) of the Rocky Mountain Arsenal/National Priorities List (RMA/NPL) Site, Commerce City, Colorado, from the National Priorities List (NPL) and requests comment on this proposed action. The NPL constitutes appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9605. EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). This partial deletion of the Site is proposed in accordance with 40 CFR 300.425(e) and Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List (60 FR 55466 (Nov. 1, 1995)). As described in 40 CFR 300.425(e)(3), portions of a site deleted from the NPL remain eligible for further remedial actions if warranted by future conditions.

EPA will accept comments concerning its intent for partial deletion of the RMA/NPL Site for thirty days after publication of this notice in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this proposed partial deletion. Section IV discusses the Surface Deletion Area of the RMA/NPL Site and explains how it meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate to protect public health or the environment. In making such a determination pursuant to section 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

Section 300.425(e)(1)(i). Responsible parties or other persons have implemented all appropriate response actions required; or

Section 300.425(e)(1)(ii). All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

Section 300.425(e)(1)(iii). The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking remedial measures is not appropriate.

A partial deletion of a site from the NPL does not affect or impede EPA's ability to conduct CERCLA response activities for portions not deleted from the NPL. In addition, deletion of a portion of a site from the NPL does not affect the liability of responsible parties or impede agency efforts to recover costs associated with response efforts. The U.S. Army and Shell Oil Company will be responsible for all future remedial actions required at the area deleted if future site conditions warrant such actions.

III. Deletion Procedures

Upon determination that at least one of the criteria described in Section 300.425(e) of the NCP has been met, EPA may formally begin deletion procedures. The following procedures were used for this proposed deletion of the SDA of the RMA/NPL Site:

(1) EPA has recommended the partial deletion and has prepared the relevant documents.

(2) The State of Colorado, through the CDPHE, has concurred with publication of this notice of intent for partial deletion.

(3) Concurrent with this national Notice of Intent for Partial Deletion, a local notice has been published in a newspaper of record and has been distributed to appropriate federal, State, and local officials, and other interested parties. These notices announce a thirty (30) day public comment period on the deletion package, which ends on August 26, 2003, based upon publication of this notice in the **Federal Register** and a local newspaper of record.

(4) EPA has made all relevant documents available at the information repositories listed previously for public inspection and copying.

Upon completion of the thirty calendar day public comment period, EPA Region 8 will evaluate each significant comment and any significant new data received before issuing a final decision concerning the proposed partial deletion. EPA will prepare a responsiveness summary for each significant comment and any significant new data received during the public comment period and will address concerns presented in such comments and data. The responsiveness summary will be made available to the public at the EPA Region 8 office and the information repository listed above and will be included in the final deletion package. Members of the public are encouraged to contact EPA Region 8 to obtain a copy of the responsiveness summary. If, after review of all such comments and data, EPA determines that the partial deletion from the NPL is appropriate, EPA will publish a final notice of partial deletion in the **Federal Register**. Deletion of the Surface Deletion Area of the RMA/NPL Site does not actually occur until a final notice of partial deletion is published in the **Federal Register**. A copy of the final partial deletion package will be placed at the EPA Region 8 office and the information repository listed above after a final document has been published in the **Federal Register**.

IV. Basis for Intended Partial Deletion

The following information provides EPA's rationale for deletion of the SDA of the RMA/NPL Site from the NPL and EPA's finding that the proposed final deletion satisfies 40 CFR 300.425(e) requirements:

RMA/NPL Site Background

The Rocky Mountain Arsenal was established in 1942 by the U.S. Army, and was used to manufacture chemical warfare agents and incendiary munitions for use in World War II. Prior to this, the area was largely undeveloped ranch and farmland. Following the war and through the early 1980s, the facilities continued to be used by the Army. Beginning in 1946, some facilities were leased to private companies to manufacture industrial and agricultural chemicals. Shell Oil Company, the principal lessee, primarily manufactured pesticides from 1952 to 1982. After 1982, the only activities at the Arsenal involved remediation.

Complaints of groundwater pollution north of the RMA/NPL Site began to surface in 1954. Common industrial and waste disposal practices used during these years resulted in contamination of structures, soil, surface water, and groundwater. As a result of this contamination, the RMA was proposed for inclusion on the NPL on October 15, 1984. The listing of RMA on the NPL, excluding Basin F, was finalized on July 22, 1987. Basin F was added to the RMA/NPL Site listing on March 13, 1989. On February 17, 1989, an interagency agreement—referred to as a Federal Facility Agreement (FFA)—formalizing the process framework for selection and implementation of cleanup remedies at the RMA/NPL Site, became effective. The FFA was signed by the Army, Shell Oil Company, EPA, U.S. Department of the Interior, U.S. Department of Justice, and the Agency for Toxic Substances and Disease Registry.

Prior to the selection of remedial alternatives, a remedial investigation/endangerment assessment/feasibility study (RI/EA/FS) was conducted for the On-Post OU to provide information on the type and extent of contamination, human and ecological risks, and feasibility of remedial actions suitable for application at RMA. The remedial investigation (RI) completed in January 1992 studied each of the five environmental media at the RMA/NPL Site, including soils, water, structures, air, and biota. The feasibility study (FS) was finalized in October 1995, and a proposed remedial action plan was prepared and presented to the public in October 1995.

On June 11, 1996, the Army, EPA, and the State of Colorado signed the Record of Decision (ROD) for the On-Post Operable Unit. The ROD, which formally establishes the cleanup approach to be taken for the On-Post OU, specified the remedial actions to be implemented for soil, structures, and groundwater for the On-Post OU of RMA.

The On-Post OU of the RMA/NPL Site (see map, RMA Surface Deletion Area) encompasses 25.5 square miles in southern Adams County, Colorado, approximately 8 miles northeast of downtown Denver.

Surface Deletion Area of the On-Post OU

The SDA is an area of approximately 123 acres (0.2 square miles) on the northern and southern perimeter of the RMA/NPL Site. The SDA consists of a 250-foot-wide strip along the northern RMA boundary in Sections 23 and 24, and 62.6 acres adjacent to Lake Ladora and including Lake Mary in Section 2 (see map). Below the SDA area, the groundwater contaminant concentrations remain above remedial action levels. Therefore, only the surface and structures media are included as part of the SDA. The groundwater media below the SDA will remain as part of the RMA/NPL Site.

A remedial investigation (RI) for the On-Post OU, completed in January 1992, studied each of the environmental media at the RMA/NPL Site including soil, sediment, structures, water, air, and biota. Based upon evidence gathered during the RI, one soil project was identified within the SDA. The Miscellaneous Southern Tier Soil project located near the south lakes included eight contamination areas; one located partially within the SDA in Section 2, contaminated with pesticides (aldrin and dieldrin) which presented a risk to human health and biota. A structures survey identified three structures within the SDA. One of these structures has no history of contamination and is designated for future use. The contaminants identified within the other two structures include asbestos, polychlorinated biphenyls (PCBs), pesticides, herbicides and heavy metals.

One groundwater plume below the northern portion of the SDA primarily contains chloroform, benzene, atrazine, dieldrin, DIMP (a byproduct of nerve agent production), trichloroethylene, dibromochloropropane, and DDT. A second groundwater plume flows beneath the southern portion of the SDA and primarily contains dieldrin and chloroform.

A feasibility study (FS) was finalized in October 1995, and a proposed plan prepared and presented to the public in October 1995. On June 11, 1996, the On-Post Record of Decision (ROD) was signed by the Army, EPA, and the State of Colorado. The ROD required the excavation and consolidation of soil presenting a risk to human health, as well as munition debris, in a state-of-the-art hazardous waste landfill to be built within the On-Post OU; and excavation of debris and soil presenting a risk to biota and placement of those soils in the Basin A consolidation area which is located in the central portion of the RMA/NPL Site. The excavated human health exceedence areas were to be backfilled with on-post borrow material and revegetated. Unexploded ordnance was to be transported off-site for detonation or other demilitarization process, unless the unexploded ordnance was unstable and must be detonated on-site.

The remedy for structures included the demolition of two of the three structures identified in the SDA. The selected groundwater remedy consisted of continued operation of the groundwater treatment systems, including the North Boundary Containment System to treat the groundwater plume in the northern portion of the SDA and the Northwest Boundary Containment System to treat the groundwater plume originating in the southern portion of the SDA. Lake levels were to be maintained to prevent the groundwater plume from entering the South Lakes, including Lake Mary. Additionally, wells which had the potential to provide a cross-contamination pathway from the contaminated, upper groundwater aquifer to the deeper, confined aquifer were to be closed. The ROD also required continued use restrictions for the property.

Community Involvement

Since 1988, each of the parties involved with the Arsenal cleanup has made extensive efforts to ensure that the public is kept informed on all aspects of the cleanup program. More than 100 fact sheets about topics ranging from historical information to site remediation have been developed and made available to the public. Following the release and distribution of the draft Detailed Analysis of Alternatives report (a second phase of the FS), the Army held an open house for about 1,000 community members. The open house provided opportunity for individual discussion and understanding of the various technologies being evaluated for cleanup of the RMA/NPL Site.

The Proposed Plan for the On-Post OU was released for public review on October 16, 1995. On November 18, 1995, a public meeting was held, attended by approximately 50 members of the public, to obtain public comment of the Proposed Plan. As a result of requests at this meeting, the period for submitting written comments on the plan was extended one month, concluding on January 19, 1996. Minimal comments were received on the alternatives presented for the projects in the SDA of the On-Post OU. Specifically, the comments requested that the health and safety of nearby communities be protected from air emissions during excavation and demolition activities, that additional treatment capabilities or modification of the existing water treatment systems be considered, and that potential dioxin contamination of the entire RMA/NPL Site be evaluated.

The design for the Miscellaneous Southern Tier Soils, Miscellaneous RMA Structure Demolition, Phase I, and Confined Flow System Well Closure projects were provided to the public for a thirty calendar day review and comment period at both the 30 percent and 95 percent design completion stages (six separate public comment periods). Each design was also presented at the monthly meeting of the RMA Restoration Advisory Board, composed of community stakeholders, regulatory agencies, the Army, Shell Oil Company, and USFWS. No comments regarding the excavation/demolition approach or the proposed health and safety controls for each project were received.

Upon completion of the thirty calendar day public comment period for this NOIDp, EPA Region 8 in consultation with the State and the Army, will evaluate each comment and any significant new data received before issuing a final decision concerning the proposed partial deletion.

Current Status

The Miscellaneous Southern Tier Soil project, completed in 2000, remediated eight areas including one partially located in the SDA. A total of 1,054 bank cubic yards (bcy) of soil presenting a risk to human health was disposed in the hazardous waste landfill. Another 134 bcy of soil presenting a risk to biota was disposed in the Basin A consolidation area. The Miscellaneous Structures Demolition and Removal Project Design, Phase I required the demolition of the structures and foundations; removal and disposal of the structures and foundations, substations, debris piles, roads and parking areas; removal and disposal or recycling of underground storage tanks, structural steel and other metal components; backfilling and grading; and revegetation of the excavated areas. During the design process, the two structures in the SDA slated for demolition were determined to have been previously demolished.

The North and Northwest Boundary Containment Systems will continue to operate long-term to treat the groundwater below the SDA which continues to have contaminants above regulatory standards. Monitoring of the groundwater aquifer for the North and Northwest Boundary Containment Systems has been incorporated into the sitewide monitoring program, as required by the ROD.

The Confined Flow System Well Closure project was completed in 2000. A total of 51 wells, one in the SDA, which extended into the deeper, confined flow aquifer were closed. Closure was accomplished by overdrilling the well casing and installing a grout plug. An additional 32 monitoring wells within the SDA are part of the long-term, site-wide monitoring plan. Four wells located within a 100-foot strip of land in the northern part of the SDA to be transferred to local government will be closed. Substitute wells will be used to monitor inside the new RMA boundary.

In 2001, an evaluation of existing water quality data below Lake Mary identified naturally occurring conditions that have prevented the South Plants contaminated groundwater plume from entering the lake. Therefore, there is no need to artificially maintain the water level in Lake Mary. This minor change to the ROD was documented in the Lake Mary Fact Sheet (2003).

Use of the groundwater below the SDA and surface water for potable drinking purposes is prohibited by the FFA, Public Law 102–402, and the ROD; and will continue to be prohibited even after the SDA is transferred to the U.S. Department of Interior or units of local government. Additional prohibitions imposed by the FFA, Public Law 102–402, and the ROD include the use of the SDA for residential, industrial, and agricultural purposes, and for hunting or fishing for consumptive purposes.

The Army is responsible for ongoing monitoring and maintenance associated with groundwater wells located on land to be transferred to the Department of Interior within the SPA. The conduct of long-term groundwater monitoring required by the ROD is delineated in the Final Interim Rocky Mountain Arsenal Institutional Control Plan.

Post-ROD Investigations

In addition to the 2001 evaluation for Lake Mary, four studies have been conducted since the signing of the ROD on June 11, 1996, that are relevant to the deletion of the SDA. The Summary and Evaluation of Potential Ordnance/Explosives and Recovered Chemical Warfare Materiel Hazards at the Rocky Mountain Arsenal (2002) was conducted in response to the unexpected discovery of six M139 bomblets as part of the

Miscellaneous Structure Demolition and Removal, Phase I project in the Section 36 Boneyard (central portion of the RMA/NPL Site). Using state-of-the-art computer imaging, mapping technology, and software capability which had not existed previously, a comprehensive RMA-wide evaluation for the potential presence of ordnance and explosives as well as recovered chemical warfare materiel hazards was completed. The evaluation identified six additional areas for remedial action (none in the SDA) and concluded that the future discovery of additional sites with ordnance/explosives or recovered chemical warfare materiel hazards is highly unlikely.

In 2001, EPA conducted a four-part Denver Front Range Dioxin Study which determined that the concentration of dioxins at most of the RMA/NPL Site, including the SDA, is not statistically different from values observed in open space and agricultural areas within the Denver Front Range area. Therefore there is no significant health risk from dioxin in soil to future Refuge workers, volunteers, or visitors.

As required by the ROD, a Terrestrial Residual Ecological Risk Assessment was completed in 2002. This report concluded that no significant excess terrestrial residual risks will remain after the ROD-required cleanup actions for soil, including additional areas of excavation and tilling identified as part of remedial design refinement as required by the ROD, are completed. In addition, an aquatic residual risk assessment was conducted for the South Lakes, including Lake Mary. This report estimated risks for the great blue heron, shorebird, and waterbird and concluded that no remediation of lake sediments is required to protect aquatic receptors. Long-term terrestrial and aquatic biomonitoring will be conducted as part of the USFWS Biomonitoring Program.

Based on the extensive investigations and risk assessment performed for the SDA of the RMA/NPL Site, there are no further response actions planned or scheduled for this area. Currently, no hazardous substances remain at the SDA above health-based levels with respect to anticipated uses of and access to the site, which are limited under the FFA, Public Law 102–402, and the ROD. Because the SDA is subject to these restrictions on land and water use, it will be included in the RMA-wide five-year reviews. There are no operation and maintenance requirements for the remedies implemented at the SDA. All completion requirements for the SDA of the On-Post OU have been achieved as outlined in OSWER Directive 9320.2–09A–P.

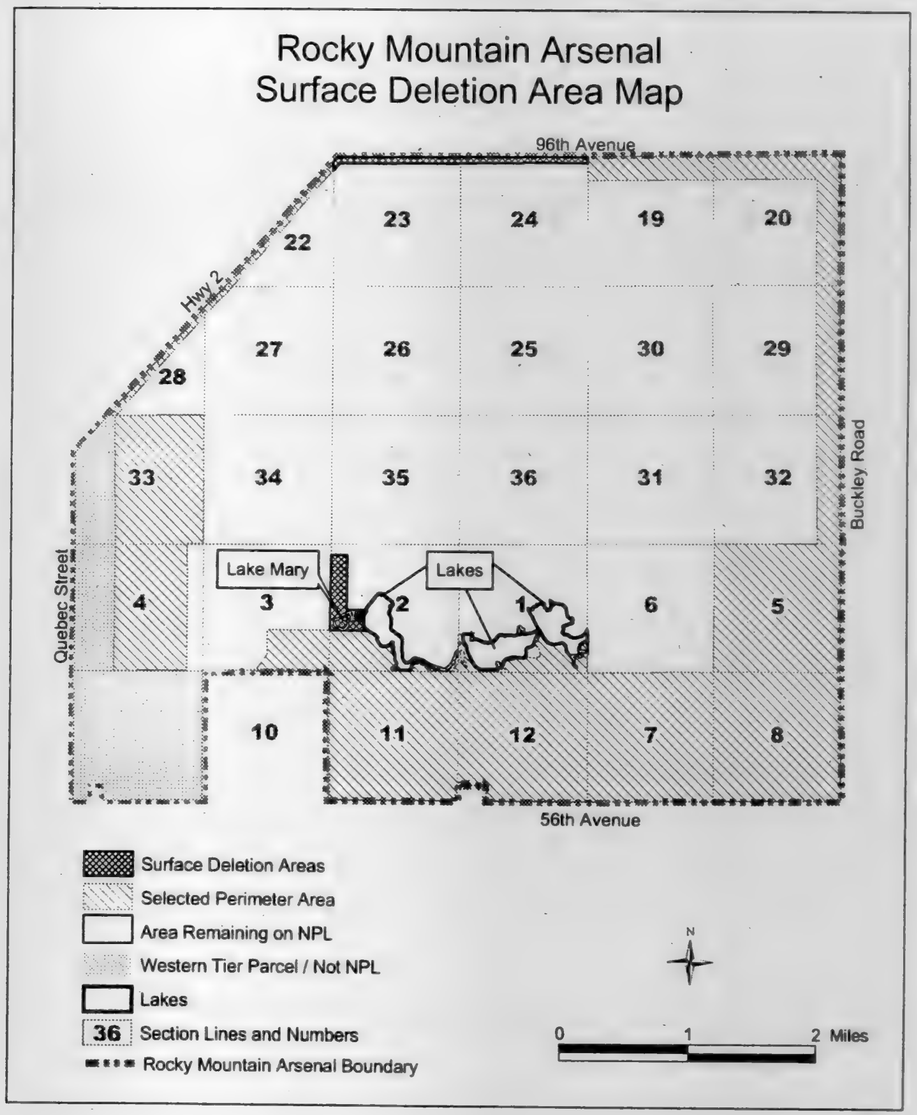
EPA, with concurrence from the State of Colorado, has determined that all appropriate CERCLA response actions have been completed within the SDA of the RMA/NPL Site to protect public health and the environment and that no further response action by responsible parties is required. Therefore, EPA proposes to delete the SDA of the On-Post OU of the RMA/NPL Site from the NPL.

Dated: July 16, 2003.

Kerrigan G. Clough,

Acting Regional Administrator, Region 8.

BILLING CODE 6560–50–P



[FR Doc. 03–18740 Filed 7–25–03; 8:45 am]

BILLING CODE 6560–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7535–8]

National Oil and Hazardous Substances Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Gurley Pit Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 announces its intent to delete the Gurley Pit Superfund Site (Site) from the National Priorities List (NPL) and requests public comments on this proposed deletion. The NPL constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. The EPA and the Arkansas Department of Environmental Quality (ADEQ) have determined that the remedial actions for the Site have been successfully executed, that all appropriate Fund-financed responses under CERCLA have been implemented, and that no further response action by responsible parties is appropriate.

DATES: Written public comments concerning this proposed deletion must be received by EPA by August 27, 2003.

ADDRESSES: Comments may be mailed to: Mr. Donn R. Walters, Community Involvement Coordinator (6SF–P), U.S. EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6483 or 1–800–533–3508.

Comprehensive information on this Site has been compiled in a public docket which is available for viewing at the Site information repositories:

U.S. EPA Region 6 Library (6MD–II), 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6424 or 665–6427; Hours of Operation: 7:30 a.m. to 4:30 p.m. Monday through Friday, excluding holidays.

Arkansas Department of Environmental Quality, Attn: Mr. Kim Siew, 8001 National Drive, Little Rock, Arkansas 72219, (501) 682–0855; Hours of Operation: 8 a.m. to 4:30 p.m. Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest R. Franke, P.E., Remedial Project Manager (6SF–AP), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8521 or 1–800–533–3508.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis For Intended Site Deletion

I. Introduction

The U. S. Environmental Protection Agency (EPA) Region 6 announces its intent to delete the Gurley Pit Superfund Site (Site), Edmondson, Crittenden County, Arkansas, from the National Priorities List (NPL), which constitutes appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, and requests comments on this proposed deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). The EPA and the Arkansas Department of Environmental Quality (ADEQ) have determined that the remedial actions for the Gurley Pit Site have been successfully completed. Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if future conditions at the deleted site warrant such action.

The EPA will accept comments on the proposal to delete this Site for thirty (30) days after the publication of this document in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the history of the Site and explains how the Site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with NCP § 300.425(e)(1), sites may be deleted from or recategorized on the NPL where no further response is appropriate. In determining whether to delete a site from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future site conditions warrant such action. Whenever there is a significant release from a site deleted from the NPL, the deleted site shall be restored to the NPL without application of the Hazard Ranking System.

The NPL is designed primarily for information purposes and to assist EPA management. Deletion of a site from the NPL does not itself create, alter, or revoke any person's rights or obligations.

III. Deletion Procedures

The following procedures were used for the proposed deletion of this Site:

(1) All appropriate response actions for the Site under CERCLA have been implemented, and no further action by EPA is appropriate.

(2) The EPA Region 6 has recommended deletion and has prepared the relevant documents.

(3) The State of Arkansas, Arkansas Department of Environmental Quality (ADEQ), has concurred by letter dated October 11, 1999, with the proposed deletion.

(4) Concurrently with this Notice of Intent to Delete, a notice is being published in a local newspaper and is being distributed to appropriate federal, state, and local officials and other interested parties. The local notice announces the 30-day public comment period and the availability of this Notice of Intent to Delete for review.

(5) The EPA has made all relevant documents available in the Site information repositories.

The EPA will consider comments received during the 30-day public comment period before making a final decision concerning the proposed deletion. If necessary, EPA will prepare a Responsiveness Summary to address concerns raised by the comments received during the public comment period. EPA responds to each significant comment and any significant new data submitted during a public comment period. If it is necessary to prepare a Responsiveness Summary, it will be made available to the public at the information repositories, and members of the public may contact EPA Region 6 to obtain a copy of the Responsiveness Summary, when available.

Deletion of a site from the NPL occurs when the Regional Administrator of an EPA region publishes a final notice of deletion in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the Notice.

IV. Basis for Intended Site Deletion

The following summary provides EPA's rationale for the proposal to delete the Gurley Pit Superfund Site from the NPL.

Site History and Background

The Gurley Pit Site is located 1.2 miles north of the community of Edmondson, Arkansas, which has a population of 286 residents. It is surrounded on one side by a small residential community and on three sides by farmland. The Site is in Crittenden County, northwest of the intersection of County Road 14, County Road 175, and State Highway 131. The facility is situated in the flood plain of Fifteen Mile Bayou, which is approximately 400 feet south of the Site, and has five residences within a half-mile circular radius.

There are three major ground water aquifers within Crittenden County, which are found at depths of 40 to 200 feet, 300 to 1125 feet, and 1400 to 1700 feet. The deepest aquifer is used for all municipal wells. The middle aquifer is comparatively undeveloped, and the shallow aquifer is used for domestic wells. Due to the water quality, most of the domestic wells found in the shallow aquifer are used for agricultural irrigation purposes. The residences surrounding the Gurley Pit Site obtain their drinking water from the Midway Water Association well located in the deep (1,585 feet) aquifer, which is 2.2 miles southeast of the Site.

The Site originally consisted of one large pit which was excavated for the clay material found in this area. Gurley Refining Co., Inc., subsequently leased the property in 1970 from Robert Caldwell for use as a disposal area. The Site pit was divided into three cells for disposal of sludges from the refining of used oil, with major contaminants including lead, barium, zinc, and polychlorinated biphenyls (PCBs). Waste disposal operations were permitted under specified conditions by the ADPC&E, now known as ADEQ, from 1970 until 1975, when Gurley Refining Co., Inc., notified the State that disposal at the Site had stopped.

There were two releases from the pit in 1978 and 1979 requiring response actions by EPA. It is estimated that as much as 500,000 gallons of oil were released during the second event. The Site was proposed for inclusion on the NPL in December 1982 and was listed in August 1983. Several attempts were made by EPA to get the potentially responsible parties (PRPs) to conduct the Remedial Investigation, Feasibility Study, Remedial Design, and Remedial Action. However, the PRPs failed to take any action, and Superfund monies were used to perform the needed actions. In 1992, the United States was awarded a judgment against Mr. William Gurley and Mr. Larry Gurley for past response costs associated with the Site and a declaratory judgment for all future costs. The United States is continuing efforts to recover all Site response costs.

Response Actions

After reviewing the results of the Remedial Investigations and Feasibility Studies, EPA issued two decision documents for the Site. The project was divided into source control and ground water operable units. The Enforcement Decision Document, which was signed October 6, 1986, addressed source control and included the following major components:

- Solidification of contaminated sludge, sediments, and soil, and placement of the solidified material in a Resource Conservation and Recovery Act (RCRA) compliant vault located in the north cell, and
- Placement of appropriate monitoring wells, and long-term operation and maintenance (O&M) of the RCRA vault and the monitoring wells.

The ground water operable unit investigation culminated in a Record of Decision (ROD) dated September 26, 1988, and concluded that no further action was necessary provided the source control measures in the Enforcement Decision Document were implemented.

During the Remedial Design of the source control operable unit, it was determined that an insignificant change to the Enforcement Decision Document was desirable from a cost and construction standpoint. The location of the RCRA vault was moved from the north cell toward the south; this was more cost effective because the north cell had approximately 85 percent of the contaminated materials. Using the north cell as a temporary holding cell for all the contaminated material during construction reduced the volume of contaminated material which had to be handled prior to construction of the RCRA vault. This saved EPA and ADEQ the costs of unnecessary handling and reduced the potential for spillage during handling operations. In addition, this approach allowed EPA to address concerns of ADEQ about the overall height of the RCRA vault by allowing the vault to be spread out over a larger surface area.

In 1992, the EPA began implementation of the Remedial Action pursuant to a Superfund State Contract with ADEQ. EPA Region 6 determined during the Remedial Design phase that this Site represented a potential opportunity for implementation of an affirmative action approach wherein a woman-owned or minority business could conduct the work. Through the direction of EPA, the U.S. Army Corps of Engineers (USACE) entered into negotiations with the Small Business Administration, and a contract was awarded to a minority business, Mobley Contractors, Inc., on July 31, 1992. The Notice to Proceed was issued on September 9, 1992. Mobilization was on October 26, 1992, and full-scale construction commenced on November 13, 1992.

Remedial construction activities were conducted as planned, and no additional areas of contamination were identified. EPA, ADEQ, and USACE conducted a pre-final inspection of the construction at the Site on August 12, 1994, and conducted a final inspection on August 31, 1994. A September 12, 1994, letter from EPA to USACE certified that the Remedial Action construction activities were performed according to the Remedial Design, with only minor modifications.

The Enforcement Decision Document and the ROD also called for monitoring of the ground water; leachate sampling and analysis and removal; and maintenance of the sumps and the perimeter fencing. Six new monitoring wells (MW–A through MW–F) were installed and developed on-site during the Remedial Action, and two existing off-site monitoring wells (MW–30 & MW–31) also were monitored in each of the sampling events. The source control Remedial Action has protected the ground water and human health through containment of the source. Ground water monitoring data for the Site indicates that contaminants from the pit have not migrated through the subsurface into the ground water, supporting EPA's decision not to conduct any separate remediation of the ground water.

After the construction of the RCRA vault, the Site entered the operational and functional phase of the Remedial Action. In September 1995, there was a significant volume of liquid in the detection and collection systems. The ADEQ was concerned that this water indicated the liner was damaged during

landfill construction. Measurements were made which indicated that the water was approximately eight feet in depth, but the total volume of water within the cell was unknown. Due to the fact that pumping activity was principally from the secondary leak detection sump and given the existence of water from construction activities, it was decided that the Site could not be considered to be operational and functional.

Operational and functional is defined in NCP § 300.435(f)(2) as follows:

> A remedy becomes "operational and functional" either one year after construction is complete, or when the remedy is determined concurrently by EPA and the State to be functioning properly and is performing as designed, whichever is earlier. EPA may grant extensions to the one-year period, as appropriate.

Based on the measurements of water described above, and in accordance with NCP Section 300.435(f)(2), the one-year operational and functional period was extended by the EPA. By means of an interagency agreement with EPA, USACE continued remedial activities at the Site. The USACE secured a contractor and installed a permanent electrical supply box, flow meter, high and low pump limit switches, circuit and wiring modifications for automated water pumping activities, and project signs; USACE also arranged for Site mowing and other related activities. In October of 1995, Halliburton Services was contracted to cut additional slots into the sump pipes using a hydrojet. After the slots were cut, the recharge of the water into the sump pipes increased appreciably.

Pumping operations began May 20, 1996. A contractor, Griffin Electric of West Memphis, Arkansas, installed a control system on one of the pumps in March that would turn the pumps on and off automatically according to the water levels in the sump pipe. A flow totalizer was installed to record the amount of water removed from the landfill. Operational shakedown and verification of system performance were completed on July 11, 1997, and the system ran fully automatically. As of July 29, 1998, the automated system had pumped an additional 16,708 gallons. Pumping by the USACE continued until January 1999, with a decrease in the average pump rate over the course of the USACE-conducted pumping.

The Quality Assurance/Quality Control (QA/QC) program utilized throughout the Remedial Action was sufficient to enable EPA, ADEQ and USACE to determine that the testing results reported were accurate to assure satisfactory completion of the Remedial Action consistent with the Enforcement Decision Document. All previous sampling results from the Remedial Investigation, Feasibility Study, and Remedial Design are documented in the project files and also followed appropriate QA/QC procedures.

Several types of data were collected over the course of the USACE-conducted operational and functional activities, including recharge rates to the sumps, volumetric data, hydraulic characteristics, ground water elevations, and analytical data. Based upon this data, the final engineering report prepared by USACE concluded that the Gurley Pit landfill cell appears to be operational and functional as designed and constructed. The following items support this conclusion:

- Pumping data demonstrates that the collection system is capable of maintaining less than one foot of head above the bottom liner system.
- Recharge rates into the detection and collection sumps continued to decrease throughout the USACE pumping period, refuting the possibility of a major influx of water table flow and/or recurring rainwater into the cell during or between the pumping events.
- The volume of water pumped continued to decrease steadily with each pumping event or work period, further negating concerns of major infiltration of ground water and bearing evidence of minimum rainfall permeability of the cell.
- The comparison of elevation data collected over the course of the USACE work period does not indicate hydraulic communication between the pumping water and the water bearing zone which is being monitored.
- Contaminant concentrations have remained consistently low and uniform in the ground water monitoring events.

Similarities in types of chemical constituents detected in the samples collected by USACE in both the primary and secondary leachate collection systems indicate that the two systems may be in hydraulic communication; a general trend in the data was that the majority of the water pumped was from the secondary containment system. However, while it appears that there may be a leak in the primary liner which allows water to move into the secondary containment system, there has been no evidence of detectable contamination in the tested ground water.

As documented in the Final Close-Out Report, dated July 31, 1998, EPA extensively reviewed applicable regulations and guidance to evaluate the severity of the leakage problem. EPA's review supports the determination that there is not a serious leak of the top or bottom liner systems at the Site and that the Site remedy is fully operational and functional, and this determination is also supported by the results of the second five-year review for the Site, conducted in September 2002. The presence of water in the detection and collection systems apparently resulted from heavy rainfall during construction of the cell, which evidently saturated the sand drainage system in the cell, but did not indicate any problems with the remedy or the integrity of the cell. It also should be noted that landfill covers of this design in similar climate conditions do leak to a limited extent. Moreover, the solidified cell waste serves to further minimize leachate and ensure a low-risk facility at the Site. Continued pumping of leachate from the vault will be required throughout the operation and maintenance (O&M) period to remove construction water and leachate as they accumulate, and continued monitoring of the ground water monitoring wells will also be needed. These activities are detailed in ADEQ's O&M plan for which ADEQ has secured EPA's approval; the final O&M and monitoring plan will be implemented by ADEQ.

CERCLA requires a five-year review of all sites with hazardous substances remaining above the health-based levels for unrestricted use of the site. A five-year review was required for this Site because the selected remedy does not allow for unlimited use and unrestricted exposure. The first five-year review was completed on January 9, 1997, and a second five-year review was completed in September 2002. Ground water sampling performed by EPA in 2002 confirmed EPA's determination that the Site remedy is fully operational and functional. Further five-year reviews will be conducted pursuant to OSWER Directive 9355.7–02A, "Structure and Components of Five Year Reviews," and other applicable guidance.

On July 31, 1998, the final Close-Out Report was signed in which EPA, in consultation with ADEQ, concluded that all appropriate response actions required to ensure the protectiveness of human health and the environment at the Gurley Pit Superfund Site had been implemented. Long-term O&M of the ground water wells and the RCRA vault will be under the direction of ADEQ.

All the completion requirements for this Site have been met as specified in OSWER Directive 9320.2–09A, "Close Out Procedures for National Priorities List Sites." Confirmatory sampling conducted during the second five-year review has verified that the ROD and Enforcement Decision Document objectives have been achieved and that all actions specified have been implemented. Pursuant to the Superfund State Contract between EPA and ADEQ executed in March 1992, ADEQ agreed to assume full responsibility for performing Site O&M activities, and the State subsequently agreed to begin those O&M activities after the sampling performed by EPA in 2002. EPA will be providing oversight of all O&M activities.

One of the three criteria for site deletion specifies that EPA may delete a site from the NPL if "all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate." 40 CFR 300.425(e)(1)(ii). EPA, with the concurrence of the State of Arkansas, believes that this criterion for deletion has been met. Accordingly, EPA is proposing deletion of this Site from the NPL.

Dated: June 23, 2003.

Myron O. Knudson,

P.E., Director, Superfund Division (6SF).

[FR Doc. 03–19006 Filed 7–25–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 03–151; FCC 03–160]

Amendment of the Commission's Rules Regarding AM Directional Antennas

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission issues this document in order to resolve an apparent conflict between §§ 73.62 and 73.1350(d)(2) of the Commission's rules. Both of these rules are invoked when an AM station's directional antenna monitor indications and/or monitoring point field strength measurements exceed the required operating tolerances. Each rule provides for different time periods for AM licensees to take action when their directional antenna operating parameters are found to be out of licensed tolerances. The inconsistent directive leaves AM licensees unclear as to the course of action they must take when they observe excessive monitor measurements. It is important that these rules be clarified because they affect termination of broadcast operation. This document begins a proceeding to harmonize these rules.

DATES: Comments are due August 29, 2003 and reply comments are due September 18, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. See **SUPPLEMENTARY INFORMATION** for filing instructions.

FOR FURTHER INFORMATION CONTACT: Karen A. Kosar, Media Bureau at (202) 418–1053 or via Internet at *kkosar@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making (NPRM), MB Docket No. 03–151, adopted July 1, 2003 and released July 7, 2003. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554, and may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com* or may be viewed via Internet at *http://www.fcc.gov/mb/*.

1. This Notice of Proposed Rule Making (NPRM) proposes to resolve an apparent conflict between §§ 73.62 and 73.1350(d)(2) of the Commission's rules regarding the operation of AM stations with directional antennas. Both of these rules are invoked when an AM broadcast station's directional antenna operating parameters and/or monitoring point field strengths exceed operating tolerances. Section 73.62 of the rules, which specifically governs directional antenna system tolerances, provides that, whenever the operating parameters of a directional antenna cannot be maintained within the tolerances specified in the rule, an AM broadcast station has twenty-four hours within which to identify any excessive monitoring point field strengths followed by three hours to take corrective action. In contrast, § 73.1350(d)(2) of the rules, which addresses transmission system operation, requires that, in the event of any condition of antenna parameters or monitoring points out of tolerance, station operation be terminated within three minutes unless power is reduced sufficiently to eliminate any excess radiation. This inconsistent directive in our rules leaves AM licensees unclear as to the correct course of action they must take when they observe out-of-tolerance indications. Clarity in our rules is especially necessary when the rules may require that broadcast operations terminate within a matter of minutes. In such situations, termination of operations would be disruptive to programming and, in some cases, broadcast listeners may be deprived of information regarding hazardous weather or other emergency conditions. Moreover, broadcast stations may be faced with fines and forfeitures if found not to be in compliance with our rules.

2. The NPRM recognizes that almost all AM broadcast station directional antenna arrays experience some amount of instability. Unfavorable weather conditions or other environmental factors occasionally may affect monitoring systems to such an extent that these systems experience short-term out-of-tolerance operation. Such out-of-tolerance indications during heavy rain, snow or icing, or during abrupt and substantial changes in temperature or humidity, may not warrant immediate corrective action. Regardless of whether out-of-tolerance indications were caused by these conditions, § 73.1350(d)(2) arguably requires that stations shut down or reduce power within three minutes. In contrast, § 73.62 of the rules, which is narrowly aimed at directional antenna tolerances, provides a reasonable period of time for corrective action.

3. The NPRM tentatively concludes that § 73.1350(d)(2) is excessively stringent and was not intended to apply to instances of minor out-of-tolerance directional antenna operating parameters. The NPRM tentatively concludes that both §§ 73.62 and 73.1350 should be revised and restructured to delineate clearly those situations that require 24-hour, three-hour and/or three minute responses by AM licensees, as well as by FM and TV licensees. The NPRM tentatively concludes that a requirement to terminate operation within three minutes should apply only to catastrophic events that are likely to cause significant disruption to the operation of other stations or that pose a threat to life or property. The NPRM tentatively concludes that a requirement to terminate operation within three hours should apply to instances of out-of-tolerance operation which are likely to result in minor interference to other stations. The NPRM seeks comment on these tentative conclusions as well as comment on other ways to resolve the problem presented by these rules.

I. Procedural Matters

A. Initial Regulatory Flexibility Analysis

4. As required by the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory

Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth below. These comments must be filed in accordance with the same filing deadlines for comments on the NPRM, and they should have a separate and distinct heading designating them as responses.

B. Paperwork Reduction Act

5. This NPRM contains no proposed or modified information collection.

C. Ex Parte—Permit-But-Disclose Proceedings

6. This is a permit-but-disclose notice and comment rule making proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. *See generally* 47 CFR 1.1202, 1.1203, 1.1206(a).

D. Filing of Comments and Reply Comments

7. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before August 29, 2003 and reply comments on or before September 18, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

8. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

9. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554.

II. Initial Regulatory Flexibility Analysis

10. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided in paragraph 14 of the item. The Commission will send a copy of this NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules Changes

11. The NPRM seeks comment on ways to remedy the apparent conflict between §§ 73.1350(d)(2) and 73.62 of the Commission's rules. Both rules are invoked when an AM station's directional operating parameters and/or monitoring point field strengths exceed the required operating tolerances. Section 73.62 of the rules provides that an AM broadcast station has 24 hours within which to identify any excessive monitoring point readings followed by three hours to take corrective action. By comparison, § 73.1350(d)(2) of the rules requires that station operation be terminated within three minutes unless power is reduced sufficiently to eliminate any excess radiation. It is important that this apparent conflict in our rules be addressed because these rules affect termination of broadcast operations, which may deprive listeners of necessary information regarding hazardous weather or other emergency conditions. In addition, if broadcasters are found not to be in compliance with these rules, they may face fines or have forfeiture action instituted against them.

B. Legal Basis

12. The authority for the action proposed in this NPRM is contained in sections 1, 4(i) and (j), 301, 303, 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 301, 303, and 403.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rule Changes Will Apply

13. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1997, there were approximately 87,453 governmental entities in the United States. This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be approximately 84,098 or fewer.

14. The proposed rule amendments to §§ 73.1350 and 73.62 will primarily apply to certain AM directional radio broadcasting licensees and potential licensees. The proposed amendments to § 73.1350 would also affect FM broadcast stations in the event that any FM broadcast station operates in a manner that poses a threat to life or property or in a manner that is likely to cause significant disruption to the operation of other stations. The SBA defines a radio broadcast entity that has $6 million or less in annual receipts as a small business. Business concerns included in this industry are those "primarily engaged in broadcasting aural programs by radio to the public." According to Commission staff review of the BIA Publications, Inc., Master Access Radio Analyzer Database, as of May 16, 2003, about 10,427 of the 10,945 commercial radio stations in the United States have revenues of $6 million or less. We note, however, that many radio stations are affiliated with much larger corporations with much higher revenue, and that in assessing whether a business concern qualifies as small under the above definition, such business (control) affiliations are included. Our estimate, therefore likely overstates the number of small businesses that might be affected by the proposed rules.

15.The proposed amendments to § 73.1350 would also affect television stations in the event that any television station operates in a manner that poses a threat to life or property or is likely to significantly disrupt the operation of other stations. The SBA defines a television broadcasting station that has no more than $12 million in annual receipts as a small business. Business concerns included in this industry are those "primarily engaged in broadcasting images together with sound." According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States have revenues of $12 million or less. We note, however, that in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimates, therefore, likely overstate the number of small entities that might be affected by the proposed rules because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

We do not expect that the proposed rule changes would impose any additional reporting or recordkeeping requirements.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

17. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

18. As indicated above, the NPRM seeks comment on how to remedy an apparent conflict in the Commission's rules that affect AM broadcast stations that employ directional antennas. Amendment of one of the rules also may affect FM and television broadcast services. No alternatives to our proposal herein are mentioned because we anticipate no differential impact on smaller entities. However, we welcome comment on modifications of proposals if based on potential differential impact.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Commission's Proposals

None.

III. Ordering Clauses

19. *It is ordered* that, pursuant to sections 1, 4(i) and (j), 301, 303, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (j), 301, 303, and 403, *comment is hereby sought* on the analysis, questions, discussions and statements of issues in the Notice of Proposed Rule Making.

20. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this NPRM; including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the Regulatory Flexibility Act.

List of Subjects in 47 CFR Part 73

Administrative practice and procedure and radio broadcast services.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

2. Section 73.62 is revised to read as follows:

§ 73.62 Directional antenna system operation and tolerances.

(a) Each AM station operating a directional antenna must maintain the relative amplitudes of the antenna currents, as indicated by the antenna monitor, within 5% of the values specified on the instrument of authorization. Directional antenna relative phases must be maintained within 3 degrees of the values specified on the instrument of authorization.

(b) In the event of a failure of system components, improper pattern switching or any other event that results in operation substantially at variance from the radiation pattern specified in the instrument of authorization for the pertinent time of day, operation must be terminated within three minutes unless power can be reduced sufficiently to eliminate any excessive radiation. *See* § 73.1350(e).

(c) In the event of minor variations of directional antenna operating parameters from the tolerances specified in paragraph (a) of this section, the following procedures will apply:

(1) The licensee shall measure and log every monitoring point at least once for each mode of directional operation. Subsequent variations in operating parameters will require the remeasuring and logging of every monitoring point to assure that the authorized monitoring point limits are not being exceeded. The licensee will be permitted 24 hours to accomplish these actions; provided that, the date and time of the failure to maintain proper operating parameters has been recorded in the station log.

(2) Provided each monitoring point is within its specified limit, operation may continue for a period up to 30 days before a request for Special Temporary Authority (STA) must be filed, pursuant to paragraph (c)(4) of this section, to operate with parameters at variance from the provisions of paragraph (a) of this section.

(3) If any monitoring point exceeds its specified limit, the licensee must either terminate operation within three hours or reduce power in accordance with the applicable provisions of § 73.1350(d), in order to eliminate any possibility of interference or excessive radiation in any direction.

(4) If operation pursuant to paragraph (c)(3) of this section is necessary, or before the 30 day period specified in paragraph (c)(2) of this section expires, the licensee must request a Special Temporary Authority (STA) in accordance with § 73.1635 to continue operation with parameters at variance and/or with reduced power along with a statement certifying that all monitoring points will be continuously maintained within their specified limits.

(d) In any other situation in which it might reasonably be anticipated that the operating parameters might vary out of tolerance (such as planned array repairs or adjustment and proofing procedures), the licensee shall, before such activity is undertaken, obtain a Special Temporary Authority (STA) in accordance with § 73.1635 in order to operate with parameters at variance and/or with reduced power as required to maintain all monitoring points within their specified limits.

3. Section 73.1350 is amended by revising paragraphs (b)(2) and (d); by redesignating paragraphs (e) through (h) as paragraphs (f) through (i); and by adding a new paragraph (e) to read as follows:

§ 73.1350 Transmission system operation.

* * * * *

(b) * * *

(2) The transmitter control personnel must have the capability to turn the transmitter off at all times. If the personnel are at a remote location, the control system must provide this capability continuously or must include an alternate method of acquiring control that can satisfy the requirement of paragraph (e) of this section that operation be terminated within 3 minutes.

* * * * *

(d) In the event that a broadcast station is operating in a manner that is not in compliance with the applicable technical rules set forth elsewhere in this part or the terms of the station authorization, and the condition is not listed in paragraph (e) or (f) of this section, broadcast operation must be terminated within three hours unless antenna input power is reduced sufficiently to eliminate any excess radiation power. Examples of conditions that require termination of operation within three hours include excessive power, excessive modulation or the emission of spurious signals that do not result in harmful interference.

(e) If a broadcast station is operating in a manner that poses a threat to life or property or that is likely to significantly disrupt the operation of other stations, immediate corrective action is required. In such cases, operation must be terminated within three minutes unless antenna input power is reduced sufficiently to eliminate any excess radiation. Examples of conditions that require immediate corrective action include the emission of spurious signals that cause harmful interference, any mode of operation not specified by the station license for the pertinent time of day, or operation substantially at variance from the authorized radiation pattern.

* * * * *

[FR Doc. 03–19092 Filed 7–25–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 219

Docket No. FRA 2001–11068, Notice No. 4

RIN 2130–AB39

Application of FRA Alcohol and Drug Rules to Foreign Railroad Foreign-Based Employees Who Perform Train or Dispatching Service in the United States: Completion of Consultations with Canadian and Mexican Governments and Closure of Comment Period

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Proposed rule.

SUMMARY: Currently, employees of a foreign railroad (a railroad incorporated outside the United States) whose primary reporting point is outside the United States who enter into the United States to perform train or dispatching service (foreign railroad foreign-based employees or "FRFB employees") are subject only to the general conditions, prohibitions, post-accident testing and reasonable suspicion testing requirements in FRA's alcohol and drug regulations (49 CFR part 219). In a December 11, 2001 notice (NPRM) (66 FR 64000), FRA proposed to make FRFB employees, who are presently excepted from the requirements concerning employee assistance programs, random alcohol and drug testing and pre-employment drug testing, fully subject to part 219 requirements.

In this notice, FRA outlines the likely revisions to the NPRM based, in part, on consultations with the Canadian and Mexican Governments. FRA also announces the closure of the comment period on this rule.

DATES: *Written Comments:* Written comments must be received by August 27, 2003. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FRA 2001–11068, Notice No. 4] by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, *see* the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: For technical issues, Lamar Allen, Alcohol and Drug Program Manager, FRA Office of Safety, RRS–11, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590 (telephone 202–493–6313). For legal issues, Patricia V. Sun, Trial Attorney, Office of the Chief Counsel, RCC–11, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone 202–493–6038).

SUPPLEMENTARY INFORMATION:

Public Participation

FRA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written documents.

We will file in the docket all written comments that we receive, as well as a report summarizing each substantive public contact with FRA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it's possible to do so without incurring expense or delay. We may change this proposal in light of the comments that we receive.

If you want FRA to acknowledge receipt of your comments on the proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Background

As stated above, in December 2001, FRA proposed to amend part 219 by making FRFB employees subject to the employee assistance program, random alcohol and drug testing, and pre-employment drug testing requirements. In May 2002, two months after FRA had held a public hearing and closed the comment period, the Canadian Embassy delivered a diplomatic note objecting to the proposed rule, while in July 2002 the Canadian Human Rights Commission issued a long-awaited policy (Policy) on the alcohol and drug testing of workers. In response to these developments, FRA published a notice (67 FR 75996, December 10, 2002) which asked for comment on the Policy and reopened the comment period until further notice to allow for additional consultations with Canada and Mexico. Since then, FRA has twice had the opportunity to discuss these issues: first, at the annual Transport Canada/FRA meeting in March 2003 and, more recently, at the Land Transportation Standards Subcommittee meeting in May 2003. At the latter meeting FRA also discussed the NPRM with representatives of the Mexican Government; the Mexican representatives indicated that Mexico would be issuing regulations in the near future that would be compatible with FRA's rules.

Based upon the considerations discussed among FRA and the representatives of the Canadian and Mexican governments, as well as other comments to the docket, FRA intends to issue a final rule that would revise the NPRM as outlined below. FRA believes that the final rule will reasonably address the concerns which Canadian and Mexican representatives expressed during the consultation process. FRA will, of course, carefully consider any comments that are filed when issuing the final rule.

1. The proposed rule will be made final, but with significant revisions.

2. FRA will include in the final rule an exclusion permitting foreign-based employees of foreign railroads to enter into the United States to perform train or dispatching service for a distance of up to 10 route miles under the present exceptions (which will have the effect of facilitating interchange with U.S. railroads at the majority of current gateways). FRA will work with Transport Canada to confirm the locations and mileage of existing Canadian gateways.

3. FRA will entertain and consider requests for waiver in other circumstances where consistent with railroad safety and in the public interest. Existing crew assignments will remain subject to the current exceptions until waiver requests can be considered on their merits, provided such requests are filed within 120 days of the publication of the final rule.

4. Obligations of foreign railroads with respect to testing may, at the election of the railroad, be conducted on U.S. soil. Any employee testing positive or refusing a test will be subject to removal from service only with respect to service in the U.S. Canadian and Mexican railroads will otherwise be free to handle such employees under applicable law in their home countries.

5. Even where no exception or waiver applies, FRA will except current employees from pre-employment drug testing requirements. Only employees entering train or dispatching service in the U.S. after the effective date of the final rule will be required to be pre-employment tested. (This is consistent with FRA's approach to U.S. workers as the pre-employment drug testing program was initiated.) Again, FRA is indifferent to whether specimens are collected in Canada (for Canadian railroads), Mexico (for Mexican railroads), or the U.S., so long as United States Department of Transportation workplace procedures (49 CFR part 40) are observed and records are maintained as required. Canadian and Mexican employers remain free to retain any employee testing positive or refusing a test, although these employees may not be used for service in the U.S.

6. The final rule will also allow FRA's Associate Administrator for Safety to recognize a foreign government's program as compatible to that of FRA. To be so recognized, the foreign government program must include the essential elements of part 219, including pre-employment testing and random testing, and adopt testing procedures, criteria and assays equivalent to those used in part 40. Once granted, program recognition remains valid so long as the program retains these elements and foreign-based railroads comply with the program's requirements.

FRA believes that the approach outlined above is the best compromise that can be fashioned to accommodate the concerns of some commenters while continuing to be responsible for control of alcohol and drug use in railroad operations within U.S. borders.

Issued in Washington, DC on July 22, 2003.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 03–19042 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 072103A]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), National Marine Fisheries Service (NMFS).

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has determined that an application for EFPs contains all of the required information and warrants further consideration. The Regional Administrator is considering the impacts of the activities to be authorized under the EFPs with respect to the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue EFPs. Therefore, NMFS announces that the Regional Administrator proposes to issue EFPs in response to an application submitted by the Groundfish Group Associated Fisheries of Maine (Associated Fisheries of Maine), in collaboration with Manomet Center for Conservation Sciences (Manomet). These EFPs would allow up to four vessels to fish for yellowtail flounder in NE multispecies year-round Closed Area II (CA II) during September and October 2003. The purpose of the study is to conduct supplementary sampling in relation to a currently ongoing experimental fishery for yellowtail flounder in CA II, which was approved by the Regional Administrator on September 10, 2002.

DATES: Comments on this action must be received at the appropriate address or fax number (see **ADDRESSES**) on or before August 12, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, NE Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Yellowtail EFP Proposal." Comments may also be sent via fax to (978) 281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of the Draft Environmental Assessment (EA) are available from the NE Regional Office at the same address.

FOR FURTHER INFORMATION CONTACT: Allison Ferreira, Fishery Policy Analyst, phone: 978–281–9103, fax: 978–281–9135, email: *allison.ferreira@noaa.gov*

SUPPLEMENTARY INFORMATION:

Background

On September 10, 2002, in response to an EFP application submitted by Manomet and the Associated Fisheries of Maine, the Regional Administrator approved the issuance of 17 EFPs (12 vessels plus five alternate vessels) to conduct an experimental fishery for yellowtail flounder in CA II. The purpose of this experimental fishery is to collect observer-based data to determine whether seasonal access to portions of CA II for the purpose of harvesting Georges Bank (GB) yellowtail flounder is possible without significant bycatch and discard of other regulated NE multispecies, particularly cod and haddock. This information could then be used by the New England Fishery Management Council (Council) and NMFS to determine the feasibility of establishing a seasonal access program that would allow the harvest of GB yellowtail flounder in portions of CA II.

The study period proposed for the initial experimental fishery was July through December 2002. However, because the applicants were required to prepare an EA to assess the impacts of the proposed experimental fishery on the environment, the issuance of EFPs was delayed until September 2002. In order to accommodate the proposed study period, NMFS authorized the July and August 2002 portion of the study to take place during July and August 2003. Due to a change in the proposed study period, Manomet and the Associated Fisheries of Maine submitted an application for six EFPs (four vessels plus two alternate vessels) on June 20, 2003, to conduct additional sampling during September and October 2003. The objective of this additional sampling is to compare the survey data collected in September and October 2002 to the data collected in September and October 2003, in order to assess the similarity of data between the two calendar years. In addition, harsh weather conditions during October 2002 resulted in incomplete sampling of the survey area. Therefore, additional sampling of the survey area is being requested for October 2003.

The proposed supplemental experimental fishery would utilize up to four commercial vessels to complete four trips of 5 days in duration, for a total of 20 days-at-sea (DAS). Two trips would take place concurrently during September 2003, and two concurrent trips would take place during October 2003. The participating vessels would be exempt from NE multispecies DAS requirements, but would be prohibited from fishing in areas outside CA II during an experimental fishing trip.

The proposed supplemental experimental fishery would occur in the same area and follow the same scientific protocols established for the previously approved yellowtail experimental fishery in CA II (previously approved study). Therefore, the study would occur in the area south of 41°30′ N. lat. within CA II, participating vessels would use standard otter trawl gear having a 6.5–inch (16.5–cm) square mesh codend, and participating vessels would follow a pre-determined sampling design. In addition, the proposed supplemental experimental fishery would have 100–percent observer coverage provided by Manomet staff.

Participating vessels would be bound by the same permit conditions as the previously approved study. Bycatch of cod and haddock would be limited to 2,000 lb (907 kg) and 3,000 lb (1,361 kg) per DAS, respectively, and all fish landed would be required to meet minimum size requirements. In addition, due to concerns over skate bycatch, the applicants have agreed to identify and record all skates caught, by species, and return all skates caught to the sea immediately in order to minimize mortality. No skates would be retained for landing or sale.

The previously approved study is constrained to a yellowtail flounder total allowable catch (TAC) of 220 mt. This overall TAC would also apply to the proposed supplemental experimental fishery. According to the applicants and the preliminary data they have provided, only 17.1 mt of yellowtail flounder was harvested during the first 4 months of the previously approved study. Furthermore, the EFPs would contain a provision that the Regional Administrator has the authority to terminate the experimental fishery if the yellowtail flounder TAC of 220 mt is exceeded, or if excessive bycatch of cod, haddock and other species of concern (including, but not limited to, skates) occurs during any given trip.

A draft EA has been prepared that analyzes the impacts of the proposed experimental fishery on the human environment. This draft EA concludes that the proposed activities to be conducted under the requested EFPs are consistent with the goals and objectives of the FMP, would not be detrimental to the well-being of any stocks of fish harvested, and would have no significant environmental impacts. The draft EA also concludes that the proposed experimental fishery would not be detrimental to Essential Fish Habitat, marine mammals, or protected species.

EFPs would be issued to up to six vessels (four vessels plus two alternate vessels), exempting them from the DAS requirements and CA II restrictions of the FMP. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 22, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–19147 Filed 7–25–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 144

Monday, July 28, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request; Food Stamp Program Identification Cards

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collection associated with Food Stamp Program Identification Cards.

DATES: Written comments must be submitted on or before September 26, 2003.

ADDRESSES: Send comments and requests for copies of this information collection to: Lizbeth Silbermann, Chief, Electronic Benefit Transfer Branch, Benefit Redemption Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Lizbeth Silbermann, Chief, Electronic Benefits Transfer Branch, (703) 305–2517.

SUPPLEMENTARY INFORMATION:

Title: Food Stamp Program Identification Cards.

OMB Number: 0584–0124.

Form Number: None.

Expiration Date: 11/30/2003.

Type of Request: Revision of a currently approved collection.

Abstract: Section 11(e)(15) of the Food Stamp Act (the Act) (7 U.S.C. 2020 (e)(15)) requires State agencies to issue photographic identification to recipients in certain project areas if the Secretary and the Department's Inspector General find it useful and cost effective for program integrity. The Food Stamp Program (FSP) regulations at 7 CFR 274.10(a) require State agencies to issue an identification (ID) card to recipients as a proof of eligibility. FSP regulations at 7 CFR 274.10(b) require State agencies to issue photo ID cards in project areas with 100,000 or more recipients unless the area uses direct mail issuance or has implemented an Electronic Benefits Transfer (EBT) system. Because of EBT and direct mail issuance, there are no remaining areas where photo ID cards are now needed; therefore, this category of cards has been eliminated. Recipients in areas without EBT or direct mail issuance, however, must present ID cards to coupon issuers. Also, retailers that have been authorized to accept FSP benefits may ask recipients to show their ID when making a purchase.

The proposed revision to the information collection burden associated with FSP identification cards reflects a reduction because of the legislated requirement for State agencies to change from coupon to EBT systems in Section 7(i) of the Act (7 U.S.C. 2016 (i)). With EBT systems, the need to prove identity or eligibility with a paper document becomes obsolete. With EBT systems, benefits are not physically distributed but are posted electronically to accounts created for recipients by State agencies through their EBT vendors. As a result, coupon issuance agents are eliminated. The State agencies provide each recipient with a plastic card and Personal Identification Number (PIN) that serve to identify the recipient. Recipients are instructed to protect their card and PIN and as long as the PIN is secure, no one other than the recipient is able to use their benefits. The cards and PINs are used at authorized retailers who are guaranteed payment for the electronic purchases within two banking days. If EBT vouchers are necessary as a result of telecommunication or systems disruptions, retailers are guaranteed payment as long as they follow the procedures issued by the State agency. As a result, retailers are not concerned with other forms of ID.

Estimate of Burden: Currently, over 90 per cent of FSP benefits are delivered via EBT. Only one State agency (Guam) remains without EBT although three (California, Delaware, and Iowa) have not completed statewide implementation. Based on the schedules for these State agencies, there will be no coupon issuance by January 2005.

This information collection burden affects State agencies where there are still coupon issuance systems. In those areas each newly certified recipient must be issued an ID card and replacements must be provided if they are lost. There are only 609,973 recipient households being issued coupons as of March 2003. We estimate 38,034 new recipients will still be issued coupons and therefore ID cards annually. We also estimate that about 6,100 of the remaining recipients using coupons will lose their ID cards which the State agencies will have to replace. Therefore, the total State agency respondent estimate is 44,134 for the ID card burden; a reduction of 133,650 respondents from 177,784 respondents.

Although we expect the ID burden to end in January 2005, we will leave the estimate of the burden the same for all three of the renewal periods.

Affected Public: State agencies.

Estimated Number of Respondents: 44,134.

Estimated Number of Responses per respondent: 1.

Estimated Time per Response: 1 minute.

Estimated Total Annual Burden: 735.6 hours annually.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 03–19080 Filed 7–25–03; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

[I.D. 072103B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Reporting Requirements for Commercial Fisheries Authorization under Section 118 of the Marine Mammal Protection Act.

Form Number(s): None.

OMB Approval Number: 0648-0292.

Type of Request: Regular submission.

Burden Hours: 30.

Number of Respondents: 200.

Average Hours Per Response: 9 minutes.

Needs and Uses: The reporting of injury and/or mortalities of marine mammals is mandated under Section 118 of the Marine Mammal Protection Act. This information is required to determine the impact of commercial fishing on marine mammals populations. The information is also used to categorize commercial fisheries: Category I (frequent), Category II (occasional), and Category III (remote chance) taking of a marine mammal. Participants in the first two categories have to be authorized to take marine mammals, while those in Category III are exempt from this requirement. All categories must report injuries or mortalities on a National Marine Fisheries Service form.

Affected Public: Business or other for-profit organizations, individuals or households.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: July 17, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–19038 Filed 7–25–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 35–2003]

Foreign-Trade Zone 33—Pittsburgh, PA, Application for Subzone Status, Mitsubishi Electric Power Products, Inc. (Circuit Breakers), Warrendale and Freedom, PA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Regional Industrial Development Corporation of Southwestern Pennsylvania, grantee of FTZ 33, requesting special-purpose subzone status for the circuit breaker manufacturing facilities of Mitsubishi Electric Power Products, Inc. (MEPPI) (a subsidiary of Mitsubishi Electric Corporation, of Japan), located in Warrendale and Freedom, Pennsylvania. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 16, 2003.

The proposed subzone would be comprised of three separate facilities: *Site 1* (7 acres/76,000 sq. ft., manufacturing plant)—510–512 Keystone Drive, Warrendale (Allegheny County), Pennsylvania; *Site 2* (12 acres/50,000 sq. ft., manufacturing plant)—530 Keystone Drive, Warrendale, about 20 miles northwest of Pittsburgh; and, *Site 3* (5 acres/14,000 sq. ft., leased warehouse)—Buildings 3 and 3A, Tri-County Commerce Park, 2509 Lovi Road, Freedom (Beaver County), Pennsylvania, some 5 miles west of Site 1. The facilities (190 employees) are used to assemble and repair high-voltage circuit breakers (HTSUS Heading 8535) for export and the U.S. market. Up to 600 units can be produced annually. The circuit breakers (1,000+ volts) are assembled from domestic and foreign-origin components. Components purchased from abroad (representing approximately 50% of finished circuit breaker value) include: mechanisms, moving and stationary interrupters, trip coils, DC motors, auxiliary switches, porcelain and composite insulators, and tanks (duty rate range: free—4.0%). FTZ procedures would exempt MEPPI from Customs duty payments on the foreign materials used in export production. On its domestic sales and exports to NAFTA markets, the company would be able to choose the duty rate that applies to finished circuit breakers (2.0%) for the foreign-sourced components noted above. The application indicates that subzone status would help improve the facilities' international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or,

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is September 26, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 14, 2003).

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address No. 1 listed above and at the U.S. Department of Commerce Export Assistance Center, Suite 2002, 1000 Liberty Avenue, Pittsburgh, PA 15222.

Dated: July 16, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–19142 Filed 7–25–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 36–2003]

Foreign-Trade Zone 234—Gregg County, TX; Application for Subzone Status, Eubank Manufacturing Enterprises, Inc. (Air Conditioning and Heating Equipment), Longview, TX

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Gregg County, Texas, grantee of FTZ 234, requesting special-purpose subzone status for the air conditioning and heating equipment manufacturing plant of Eubank Manufacturing Enterprises, Inc. (Eubank) (a subsidiary of Fedders Corporation), located in Longview, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 21, 2003.

The Eubank plant (9 acres/140,000 sq.ft.) is located adjacent to Interstate Highway 20 and FM2011 in Longview (Gregg County), Texas. The facility (140 employees) is used to produce air conditioning units (window/wall, unitary, condensing) and components (A-coils), air handlers, and furnaces for export and the U.S. market. The finished products are manufactured from domestic and foreign-origin components. Components that are, or may be, purchased from abroad (representing approximately 25% of finished product value) include: gases classified under HTSUS heading 2903—saturated/unsaturated chlorinated derivatives of acyclic hydrocarbons; fluorinated, brominated or iodinated derivatives of acyclic hydrocarbons; halogenated derivatives of cyclanic, cyclenic or cycloterpenic hydrocarbons; halogenated derivatives of aromatic hydrocarbons; polystyrene, styrene acrylonitrile, ABS and MBS copolymers, plastic gaskets/washer/seals/o-rings, v-belts and fasteners, articles of hard rubber, printed labels, glass fiber yarn (Category 201; must be admitted under privileged foreign status—19 CFR 146.41), glass fiber fabric, steel cloth/netting/fencing/bands, fasteners, radiators, hot-air distributors, copper bars/rods/profiles/tubes/pipes/fittings, aluminum bars/rods/profiles/plates/sheets/strips/foil, compressors, pumps, fans, hoods, furnace burners, filters, valves (check, safety relief, control, regulator), electric motors, transformers, conductors, rectifiers, power supplies, capacitors, switches, terminals, connectors, switchboards, circuit breakers, contractors, wire, thermostats, regulators, and controllers (duty rate range: free—7.4%)

FTZ procedures would exempt Eubank from Customs duty payments on the foreign materials used in export production. On its domestic sales and exports to NAFTA markets, the company would be able to choose the duty rate that applies to the finished air conditioning and heating equipment and components (free, 1.4%) for the foreign-sourced inputs noted above. Foreign status merchandise and domestic merchandise destined for export would be exempt from certain local inventory taxes. Eubank would be able to defer Customs duty payments on foreign-origin finished products that would be admitted to the proposed subzone for U.S. distribution. Duties would be deferred or reduced on foreign production equipment admitted to the proposed subzone until which time it becomes operational. The application indicates that subzone status would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or,

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is September 26, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 14, 2003).

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address No. 1 listed above and at the U.S. Department of Commerce Export Assistance Center, Business Education Building 119H, One University Place, Shreveport, LA 71115–2399.

Dated: July 21, 2003.

Pierre V. Duy,

Acting Executive Secretary.

[FR Doc. 03–19138 Filed 7–25–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Sensors and Instrumentation Technical Advisory Committee; Notice of Open Meeting

The Sensors and Instrumentation Technical Advisory Committee will meet on August 12, 2003, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

1. Introductions and opening remarks by the Chairman.
2. Presentation of papers and comments by the public.
3. Update on Bureau of Industry and Security initiatives.
4. Presentation on Special Comprehensive Licenses.
5. Update on the Wassenaar Arrangement.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, OSIES/EA/BIS, MS: 3876, U.S. Department of Commerce, 14th St. and Constitution Ave., NW., Washington, DC 20230.

For more information contact Lee Ann Carpenter on (202) 482–2583.

Dated: July 22, 2003.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 03–19034 Filed 7–25–03; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–098]

Anhydrous Sodium Metasilicate from France: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request from a domestic interested party, the Department of Commerce is conducting an administrative review of the antidumping duty order on anhydrous sodium metasilicate from France for the period January 1, 2002, through December 31, 2002.

We have preliminarily determined a dumping margin in this review. If these preliminary results are adopted in the final results of this administrative review, we will instruct the Bureau of Customs and Border Protection to assess antidumping duties on subject merchandise manufactured or exported by Rhodia HPCII.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: July 28, 2003.

FOR FURTHER INFORMATION CONTACT: Susan Lehman or Richard Rimlinger, AD/CVD Enforcement Group I, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: 202–482–0180 or 202–482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 2, 2003, the Department of Commerce (the Department) published a notice of "Opportunity to Request Administrative Review" (68 FR 80) with respect to the antidumping duty order on anhydrous sodium metasilicate (ASM) from France. The petitioner, PQ Corporation, requested a review of Rhodia HPCII (Rhodia) on January 30, 2003. In response to PQ Corporation's request, the Department published a notice of initiation of an administrative review on February 27, 2003 (68 FR 9048).

Scope of Order

Imports covered by the review are shipments of ASM, a crystallized silicate which is alkaline and readily soluble in water. Applications include waste paper de-inking, ore-flotation, bleach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent formulations. This merchandise is classified under *Harmonized Tariff Schedules* (HTS) item numbers 2839.11.00 and 2839.19.00. The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Period of Review

The period of review is from January 1, 2002, through December 31, 2002.

Facts Available

Section 776(a)(2) of the Act provides that, if an interested party 1) withholds information that has been requested by the Department, 2) fails to provide such information in a timely matter or in the form or manner requested, subject to sections 782(c)(1) and (e) of the Act, 3) significantly impedes a determination under the antidumping statute, or 4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, then the Department shall, subject to section 782(d) of the Act, use facts otherwise available in determining the dumping margin.

The Department sent Rhodia a questionnaire on March 3, 2003, with a deadline of April 9, 2003, for providing information necessary to conduct a review of any shipments that the firm may have made to the United States during the period of review. Rhodia did not respond to our original questionnaire. We sent a follow-up letter to the company on April 24, 2003, but Rhodia did not respond. Because Rhodia has withheld information we requested and has, in fact, made no effort to participate in this proceeding, we must, pursuant to sections 776(a)(2)(A) and (D) of the Act, use facts otherwise available to determine its dumping margin.

Based on the lack of any response from Rhodia, we find that the company has failed to cooperate by not acting to the best of its ability to comply with a request for information. Therefore, pursuant to section 776(b) of the Act, the Department may use an inference that is adverse to the interests of Rhodia in selecting from among the facts otherwise available. This section also provides that an adverse inference may include reliance on information derived from the petition, the final determination in the investigation segment of the proceeding, a previous review under section 751 of the Act or a determination under section 753 of the Act, or any other information placed on the record. In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 316, Vol. 1, 103d Cong. (1994) (SAA), establishes that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate that if it had cooperated fully." SAA at 870. In employing adverse inferences, the Department is instructed to consider "the extent to which a party may benefit from its own lack of cooperation." See *Roller Chain Other Than Bicycle, From Japan; Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 62 FR 69477 (November 10, 1997), and *Certain Welded Carbon Steel Pipes and Tubes from Thailand; Final Results of Antidumping Administrative Review*, 62 FR 53808, 53820–21 (October 16, 1997). Because we find that Rhodia failed to cooperate by not complying with our request for information and in order to ensure that it does not benefit from its lack of cooperation, we are employing an adverse inference in selecting from the facts available.

The Department's practice when selecting an adverse rate from among the possible sources of information has been to ensure that the margin is sufficiently adverse "as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." See *Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales as Less Than Fair Value*, 63 FR 8909, 8932 (February 23, 1998).

In order to ensure that the rate is sufficiently adverse so as to induce Rhodia's cooperation, we have assigned this company as adverse facts available a rate of 60.0 percent, the margin calculated in the original less-than-fair-value (LTFV) investigation using information provided by Rhodia (then, Rhone-Poulenc, S.A.) (see *Anhydrous Sodium Metasilicate from France; Final Determination of Sales at Less Than Fair Value*, 45 FR 77498 (November 24, 1980)). This rate is currently applicable to Rhodia.

Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information used for facts available by reviewing independent sources reasonably at its disposal. Information from a prior segment of the proceeding, such as that used here, constitutes secondary information. The SAA

provides that to "corroborate" means simply that the Department will satisfy itself that the secondary information to be used here has probative value. SAA at 870. As explained in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used.

Unlike other types of information, such as input costs or selling expenses, there are no independent sources from which the Department can derive calculated dumping margins; the only source for margins is administrative determinations. In an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period.

With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstance indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. *See Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996) (where the Department disregarded the highest dumping margin as adverse best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). There is no evidence of circumstances indicating that the margin used as facts available in this review is not appropriate. Therefore, the requirements of section 776(c) of the Act are satisfied.

Preliminary Results of the Review

As a result of this review, the Department preliminarily determines that a margin of 60 percent exists for Rhodia for the period January 1, 2002, through December 31, 2002.

Interested parties may request a hearing not later than 30 days after publication of this notice. Interested parties may also submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument a statement of the issue and a brief summary of the argument. Any hearing, if requested, will be held three days after the scheduled date for submission of rebuttal briefs.

The Department will publish the final results of this administrative review, including a discussion of its analysis of issues raised in any case or rebuttal brief or at a hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

Upon completion of the final results of this review, the Department shall determine, and the Bureau of Customs and Border Protection (BCBP) shall assess, antidumping duties on all appropriate entries. The rate will be assessed uniformly on all entries of Rhodia merchandise made during the period of review. The Department will issue appraisement instructions for Rhodia merchandise directly to the BCBP.

Furthermore, the following deposit rates will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) the cash-deposit rate for Rhodia will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash-deposit rate shall be 60.0 percent, the "all others" rate established in the LTFV investigation (45 FR 77498, November 24, 1980). This deposit rate, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with section 751(a)(1) and section 777(i)(1) of the Act.

Dated: June 26, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–19143 Filed 7–25–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-475–818]

Certain Pasta from Italy: Extension of Time Limit for Preliminary Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 28, 2003.

FOR FURTHER INFORMATION CONTACT: Alicia Kinsey at (202) 482–4793, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to issue the preliminary results of a new shipper review within 180 days after the date on which the new shipper review was initiated and the final results within 90 days after the date on which the preliminary results are issued. *See also* 19 CFR § 351.214(i)(1). However, if the Department determines that the case is extraordinarily complicated and that the review cannot be completed within that time period, section 751(a)(2)(B)(iv) of the Act, and 19 CFR § 351.214(i)(2) allow the Department to extend the time limit for the preliminary results up to 300 days from the date of initiation and, for the final results, up to 150 days from the date the preliminary results are issued.

Background

On March 7, 2003, the Department published a notice of initiation of the new shipper review of the antidumping duty order on certain pasta from Italy, covering the period July 1, 2002 to December 31, 2002. *See Certain Pasta from Italy: Notice of Initiation of New Shipper Antidumping Duty Review*, 68 FR 11044 (March 7, 2003). The preliminary results are currently due no later than September 3, 2003.

Extension of Preliminary Results of Reviews

We determine that this case is extraordinarily complicated, and that it is not possible to complete the preliminary results of this review within the original time limits. Specifically, on June 24, 2003, the Department initiated a cost investigation and issued instructions to respondents to fill out the Section D questionnaire, specifying that responses would be due on July 25, 2003. To adequately analyze the responses and allow additional time necessary for the issuance and analysis of supplemental sales and cost questionnaires, the Department requires an extension of the time limit for the preliminary results. Therefore, we are extending the time limit for completion of the preliminary results until no later than January 2, 2004. *See* Extension of Time Limit for the Preliminary Results Memorandum from Melissa Skinner, Director of Office VI, to Holly A. Kuga, Acting Deputy Assistant Secretary, dated July 21, 2003, which is on file in the Central Records Unit, B-099 of the main Commerce Building. We intend to issue the final results no later than 90 days after the publication of the notice of preliminary results of this new shipper review.

This extension is in accordance with section 751(a)(2)(B)(iv) of the Act.

Dated: July 21, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–19140 Filed 7–25–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–806]

Silicon Metal From Brazil: Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review and Notice of Intent To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Preliminary results of antidumping duty administrative review, partial rescission of review and notice of intent to revoke order in part.

SUMMARY: In response to requests by Elkem Metals Company and Globe Metallurgical (collectively petitioners), and requests by Companhia Brasileira Carbureto de Calcio (CBCC) and Rima Industrial S/A (Rima), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on silicon metal from Brazil. The period of review (POR) is July 1, 2001, through June 30, 2002.

We preliminarily determine that CBCC did not sell subject merchandise at less than normal value (NV) during the POR. We also intend, preliminarily, to revoke the order, in part, with respect to CBCC, because we find that CBCC has met all of the requirements for revocation, as set forth in 19 CFR 351.222(b). We are rescinding the review with respect to Rima because, since the initiation of this current review, Rima has been revoked from the order in a prior administrative review of this proceeding. If these preliminary results are adopted in our final results of this administrative review, we will instruct the U.S. Bureau of Customs and Border Protection (BCBP) to assess antidumping duties based on the difference between the export price (EP) or the constructed export price (CEP) and NV. We invite interested parties to comment on the preliminary results.

EFFECTIVE DATE: July 28, 2003.

FOR FURTHER INFORMATION CONTACT: Maisha Cryor at (202) 482–5831 or Ronald Trentham at (202) 482–6320, AD/CVD Enforcement, Office IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On July 31, 1991, the Department published in the **Federal Register** the antidumping duty order on silicon metal from Brazil. *See Antidumping Duty Order: Silicon Metal from Brazil* 56 FR 36135 (July 31, 1991). On July 1, 2002, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on silicon metal from Brazil for the period July 1, 2001, through June 30, 2002. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 67 FR 44172 (July 1, 2002). On July 15, 2002, CBCC and Rima requested that the Department conduct an administrative review of their sales, and partially revoke the order pursuant to 19 CFR 351.222. On July 31, 2002, petitioners requested that the Department conduct an administrative review of sales made by CBCC and Rima. On August 16, 2002, in anticipation of the current administrative review, the Department issued questionnaires to CBCC and Rima.[1] On August 27, 2002, in accordance with 19 CFR 351.221(c)(1)(i), the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 55000 (August 27, 2002).

On October 15, 2002, the Department received responses to sections A through C of the questionnaire from CBCC and Rima. On December 17, 2002, the order was revoked, in part, with respect to Rima. *See Silicon Metal from Brazil: Final Results of Antidumping Duty Administrative Review and Revocation of Order in Part*, 67 FR 77225, 77226 (December 17, 2002) (*2000–2001 Silicon Metal*). On February 10, 2003, the Department informed CBCC that it was required to respond to section D of the Department's questionnaire. On February 24, 2003, the Department received a response to section D of the questionnaire from CBCC.

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.

On March 11, 2003, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department extended the deadline for the preliminary results until July 22, 2003. *See Silicon Metal from Brazil: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 11519 (March 11, 2003).

The Department issued supplemental questionnaires to CBCC on April 16, 2003, and May 8, 2003, and received responses on May 9, 2003 and May 15, 2003, respectively.

The Department is conducting this review in accordance with section 751 of the Act.

Scope of Review

The merchandise covered by this administrative review is silicon metal from Brazil containing at least 96.00 percent but less than 99.99 percent silicon by weight. Also covered by this administrative review is silicon metal from Brazil containing between 89.00 and 96.00 percent silicon by weight but which contains more aluminum than the silicon metal containing at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States (HTSUS) as a chemical product, but is commonly referred to as a metal. Semiconductor grade silicon (silicon metal containing by weight not less than 99.99 percent silicon and provided for in subheading 2804.61.00 of the HTSUS) is not subject to the order. Although the HTSUS item numbers are provided for convenience and for customs purposes, the written description remains dispositive.

Fair Value Comparisons

During the POR, CBCC reported that it made both EP and CEP sales to the United States. However, in CBCC's October 15, 2002, and May 9, 2003, questionnaire responses, CBCC stated that its U.S. sales to an unaffiliated trading company were ultimately purchased by Dow Corning Corporation, Inc. (Dow), its U.S. affiliate. Nevertheless, we have determined that the record evidence in this POR does not establish that at the time of the sales by CBCC to the unaffiliated trading company, CBCC had or should have had knowledge that this merchandise would ultimately be purchased by Dow. Therefore, for the purposes of these preliminary results, we have continued to treat CBCC's sales to the unaffiliated trading company as EP sales. *See* Section 772(e) Memorandum from Thomas F. Futtner, Acting Office Director, to Holly A. Kuga, Acting Deputy Assistant Secretary, dated July 22, 2003, which is on file in the CRU. To determine whether EP sales of silicon metal by CBCC to the United States were made at less than NV, we compared EP to the NV, as described in the *Export Price* and *Normal Value* sections of this notice. To determine whether CEP sales of silicon metal by CBCC to the United States were made at less than NV, we compared CEP to the NV, as described in the *Constructed Export Price* and *Normal Value* sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual EP or CEP transactions, as appropriate.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by CBCC, covered by the description in the *Scope of Review* section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Further, as in a prior segment of this proceeding, we have continued to treat all silicon metal meeting the description of the merchandise under the *Scope of Review* section above (with the exception of slag and contaminated products), as identical products for purposes of model-matching. *See Silicon Metal From Brazil: Preliminary Results, Intent To Revoke in Part, Partial Rescission of Antidumping Duty Administrative Review, and Extension of Time Limits*, 64 FR 43161 (August 9, 1999); *aff'd Final Results of Antidumping Duty Administrative Review: Silicon Metal from Brazil*, 65 FR 7497 (February 15, 2000). Therefore, where applicable, if there were no contemporaneous sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to the constructed value (CV) of the product sold in the U.S. market during the comparison period, consistent with section 351.405 of the Department's regulations.

Verification

As provided in section 782(i) of the Act, we conducted verifications of the information provided by CBCC. We used standard verification procedures including examination of relevant sales and financial records, and selection of relevant source documentation as exhibits. Our verification findings are detailed and on file in the Central Records Unit (CRU), Room B099 of the Main Commerce building (CRU—Public File).

Partial Rescission

On December 17, 2002, the order was revoked, in part, with respect to Rima. *See 2000–2001 Silicon Metal*, 67 FR at 77226. Consequently, we are rescinding the administrative review with respect to sales made by Rima. *See Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and Singapore: Final Results of Antidumping Duty Administrative Reviews, Rescission of Administrative Review in Part, and Determination Not To Revoke Order in Part*, 68 FR 35623, 35625 (June 16, 2003).

Revocation

The Department "may revoke, in whole or in part" an antidumping duty order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia*, that a company requesting revocation must submit the following: (1) A certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; (2) a certification that the company sold the subject merchandise in commercial quantities in each of the three years forming the basis of the revocation request; and (3) an agreement to reinstatement in the order or suspended investigation, as long as any exporter or producer is subject to the order (or suspended investigation), if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than NV. *See* 19 CFR 351.222(e)(1). Upon receipt of such a request, the Department will consider the following in determining whether to revoke the order in part: (1) Whether the producer or exporter requesting revocation has sold subject merchandise at not less than NV for a period of at least three consecutive years; (2) whether the continued application of the antidumping duty order is otherwise necessary to offset dumping; and (3) whether the producer or exporter requesting revocation in part has agreed in writing to the immediate reinstatement of the order, as long as any exporter or producer is subject to the order, if the Department concludes that the exporter or producer, subsequent to revocation, sold the subject merchandise at less than NV. *See* 19 CFR 351.222(b)(2); *see also Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Intent to Revoke Antidumping Duty Order in Part: Certain Pasta From Italy*, 66 FR 34414, 34420 (June 28, 2001).

On July 15, 2002, CBCC submitted a request, in accordance with 19 CFR 351.222, that the Department partially revoke the order covering silicon metal from Brazil with respect to its sales of subject merchandise. In accordance with 19 CFR 351.222(e)(1), the request was accompanied by certifications from CBCC that, for a consecutive three-year period, including this review period, it sold the subject merchandise in commercial quantities at not less than NV, and would continue to do so in the future. CBCC also agreed to its immediate reinstatement in this antidumping order, as long as any firm is subject to the order, if the Department concludes that, subsequent to revocation, CBCC sold the subject merchandise at less than NV. We received no comments from petitioners regarding CBCC's request for revocation.

Based on the preliminary results in this review and the final results of the two preceding reviews, CBCC has preliminarily demonstrated three consecutive years of sales at not less than NV. *See 2000–2001 Silicon Metal*, 67 FR 77225, 77226 (December 17, 2002); *Silicon Metal from Brazil; Final Results of Antidumping Duty Administrative Review*, 67 FR 6488, 6489 (February 12, 2002). Further, in determining whether three years of no dumping establish a sufficient basis to make a revocation determination, the Department must be able to determine that the company continued to participate meaningfully in the U.S. market during each of the three years at issue. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada; Final Results of Antidumping Duty Administrative Reviews and Determination To Revoke in Part*, 64 FR 2173, 2175 (January 13, 1999); *see also Pure Magnesium From Canada; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke Order in Part*, 64 FR 12977, 12979 (March 16, 1999); and *Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Order: Brass Sheet and Strip from the Netherlands*, 65 FR 742 (January 6, 2000). This practice has been codified in 19 CFR 351.222(d)(1), which states that, "before revoking an order or terminating a suspended investigation, the Secretary must be satisfied that, during each of the three (or five) years, there were exports to the United States in commercial quantities of the subject merchandise to which a revocation or termination will apply." *See* 19 CFR 351.222(d)(1); *see also* 19 CFR 351.222(e)(1)(ii). For purposes of revocation, the Department must be able to determine that past margins are reflective of a company's normal commercial activity. Sales during the POR which, in the aggregate, are of an abnormally small quantity do not provide a reasonable basis for determining that the discipline of the order is no longer necessary to offset dumping.

With respect to the threshold matter of whether CBCC made sales of subject merchandise to the United States in commercial quantities, we find that CBCC's sales to the United States were made in commercial quantities during each of the past three consecutive years. The quantity of CBCC's shipments of subject merchandise to the United States has remained at a sufficiently high level to be considered as having been made in commercial quantities. Therefore, we can reasonably conclude that the zero and *de minimis* margins calculated for CBCC in each of the last three administrative reviews are reflective of the company's normal commercial experience. *See* Memorandum from Maisha Cryor, Analyst, to File, "Shipments of Silicon Metal to the United States by CBCC," dated July 22, 2003.

CBCC also agreed in writing that it will not sell subject merchandise at less than NV in the future and to the immediate reinstatement of the antidumping order, as long as any exporter or producer is subject to the order, if the Department concludes that, subsequent to the partial revocation, CBCC has sold the subject merchandise at less than NV. Thus, in light of the above and pursuant to 19 CFR 351.222, we preliminarily find, for CBCC, that the subject merchandise was sold at not less than NV for a period of at least three consecutive years and that dumping is not likely to resume in the future. Consequently, the continuing imposition of an antidumping duty order is not necessary to offset dumping.

Therefore, if these preliminary results are affirmed in our final results, we intend to revoke the order in part with respect to merchandise produced and exported by CBCC. In accordance with 19 CFR 351.222(f)(3), we will terminate the suspension of liquidation for any such merchandise entered, or withdrawn from warehouse, for consumption on or after July 1, 2001, and will instruct the BCBP to refund any cash deposits.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction, as appropriate. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP sales, the U.S. LOT is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP sales, the U.S. LOT is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated or affiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and the comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In determining whether separate LOTs actually existed in the home and U.S. markets for CBCC, we examined whether CBCC's sales involved different marketing stages (or their equivalent) based on the channel of distribution, customer categories, and selling functions (or services offered) to each customer or customer category, in both markets.

CBCC reported home market sales through one channel of distribution to three unaffiliated customer categories (direct sales to distributors, original equipment manufacturers and silicon metal producers). CBCC reported both EP and CEP sales in the U.S. market. For EP sales, CBCC reported one customer category and one channel of distribution (direct sales to unaffiliated trading companies). For CEP sales, CBCC

reported one customer category and one channel of distribution (direct sales to original equipment manufacturers). In its response, CBCC stated that it performs the same type of services for home market customers as it does for its foreign market customers. For this reason, CBCC has not requested a LOT adjustment to NV for comparison to its EP and CEP sales.

Because of the similarity of the selling functions involved in the EP and CEP sales, we found there is only one LOT in the U.S. market. Moreover, in analyzing CBCC's selling activities in both the home and U.S. markets, we determined that essentially the same services were provided for both markets. The selling functions in both markets were minimal in nature and limited to arranging for freight and delivery. Therefore, based upon this information, we have preliminarily determined that for CBCC, the LOT for all U.S. sales is the same as that in the home market. Consequently, because we find the U.S. and home market sales to be at the same LOT, no LOT adjustment under section 773(a)(7) of the Act is warranted for CBCC.

Export Price

For CBCC (where appropriate) we used the Department's EP methodology, in accordance with section 772(a) of the Act, because CBCC sold the subject merchandise to unaffiliated purchasers in the United States prior to importation and because the Department's CEP methodology was not otherwise warranted. We made deductions from the starting price for movement expenses in accordance with section 772(c) of the Act. Movement expenses included, where appropriate, foreign inland freight, brokerage and handling, international freight, insurance and U.S. warehousing.

Constructed Export Price

In its October 15, 2002, response, CBCC reported sales to its U.S. affiliate, Dow, as CEP sales. CBCC also reported that Dow further manufactured the purchased silicon metal into a multitude of other products, mostly chemicals, and sold these products in the United States. Therefore, CBCC requested that the Department apply section 772(e) of the Act to the further manufactured sales.

Where appropriate, in accordance with section 772(d)(2) of the Act, the Department deducts from CEP the cost of any further manufacture or assembly in the United States, except where the special rule, provided in section 772(e) of the Act, is applied. Section 772(e) of the Act provides that, where the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, the Department has the discretion to determine the CEP using alternative methods.

The alternative methods for establishing CEP are: (1) The price of identical subject merchandise sold by the exporter or producer to an unaffiliated person; or (2) the price of other subject merchandise sold by the exporter or producer to an unaffiliated person. The Statement of Administrative Action (SAA) notes the following with respect to these alternatives:

> There is no hierarchy between these alternative methods of establishing the export price. If there is not a sufficient quantity of sales under either of these alternatives to provide a reasonable basis for comparison, or if the Department determines that neither of these alternatives is appropriate, it may use any other reasonable method to determine CEP, provided that it supplies the interested parties with a description of the method chosen and an explanation of the basis for its selection. Such a method may be based upon the price paid to the exporter or producer by the affiliated person for the subject merchandise, if the Department determines that such price is appropriate.

To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added based on the difference between the averages of the prices charged to the first unaffiliated purchaser for one form of the merchandise sold in the United States and the averages of the prices paid for the subject merchandise by the affiliated person. *See* 19 CFR 351.402(2). Based on this analysis, and the information on the record, we determined that the estimated value added in the United States by Dow accounted for at least 65 percent of the price charged to the first unaffiliated customer for the merchandise as sold in the United States. Therefore, we determined that the value added is likely to exceed substantially the value of the subject merchandise. As a consequence, the Department has relied upon an alternative methodology to calculate CBCC's margin for these sales. However, we found that there is not a sufficient quantity of sales to unaffiliated parties to use such sales as an alternative method of establishing export price. Therefore, as the alternative methodology, the Department used the price paid to CBCC by Dow. *See* Section 772(e) Memorandum from Thomas F. Futtner, Acting Office Director, to Holly A. Kuga, Acting Deputy Assistant Secretary, dated July 22, 2003, which is on file in the CRU.

Normal Value

1. Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared CBCC's volume of home market sales of the foreign like product to the volume of its U.S. sales of subject merchandise, in accordance with section 773(a)(1) of the Act. Since CBCC's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market provides a viable basis for calculating NV. Therefore, pursuant to section 773(a)(1)(B) of the Act, we based NV on home market sales.

2. COP Analysis

On November 4, 2002, petitioners filed a timely sales-below-cost allegation with respect to CBCC. In the case of CBCC, petitioners' allegation was based on CBCC's antidumping duty questionnaire responses. Upon review of the allegation, we found that petitioners' methodology provided the Department with a reasonable basis to believe or suspect that sales in the home market had been made at prices below the COP by CBCC. Accordingly, pursuant to section 773(b)(1) of the Act, we initiated an investigation to determine whether CBCC's sales of silicon metal were made at prices below the COP during the POR. *See* Memorandum Regarding the Analysis of Petitioners' Allegation of Sales Below the COP for CBCC, dated February 10, 2003.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated company- and product-specific COPs based on the sum of CBCC's cost of materials and fabrication for the foreign like product, plus amounts for home market SG&A expenses, including interest expenses, and packing costs.

We relied on the COP information submitted by CBCC in its questionnaire responses and verified by the Department.

B. Test of Home Market Sales Prices for CBCC

For CBCC, we compared the per-unit adjusted weighted-average COP figures for the POR to home market sale prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales were made at prices below the COP. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges, rebates, and discounts. In determining whether to disregard home market sales made at prices below the COP, we examined whether: (1) Within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time.

C. Results of COP Test for CBCC

Pursuant to section 773(b)(2)(C), where less than 20 percent of a respondent's sales of a given product were at prices below the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of the respondent's sales of a given product during the POR were made at prices below the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) of the Act. In such cases, because we compared prices to POR-average costs, we also determined that such sales were not made at prices which would permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that CBCC did not make comparison-market sales at prices below the COP within an extended period of time in substantial quantities. Therefore, we did not exclude any sales from our analysis in accordance with section 773(b)(1) of the Act.

Price-to-Price Comparisons

For those comparison products for which there were sales at prices above the COP, we based CBCC's NV on the prices at which the foreign like product was first sold to unaffiliated parties for consumption in Brazil, in the usual commercial quantities, in the ordinary course of trade in accordance with section 773(a)(1)(B)(i) of the Act. We based NV on sales at the same LOT as the U.S. transactions. For LOT analysis, please see the *Level of Trade* section above. In accordance with section 773(a)(6) of the Act, we made adjustments to home market price, where appropriate, for inland freight. Where home market prices were reported inclusive of VAT, we deducted the VAT from the gross home market price, consistent with past practice. *See Silicon Metal from Brazil: Preliminary Results of Antidumping Administrative Review and Notice of Intent to Revoke Order in Part*, 67 FR 51539, 51543 (August 8, 2002); *aff'd 2000–2001 Silicon Metal* 67 at 77225.

To account for differences in circumstances of sale between the home market and the United States, where appropriate, we adjusted home market prices by deducting home market direct selling expenses (including credit) and adding an amount for late payment fees earned on home market sales, where appropriate. In order to adjust for differences in packing between the two markets, we deducted home market packing costs and added U.S. packing costs, where appropriate, in accordance with sections 773(a)(6)(A) and (B) of the Act.

Currency Conversions

We made currency conversions in accordance with section 773A of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following weighted-average dumping margin exists for the period July 1, 2001, through June 30, 2002.

Manufacturer/exporter	Weighted-average margin percentage
CBCC	0.00

Therefore, we preliminarily revoke the order covering silicon metal from Brazil with respect to sales of subject by CBCC. We are also rescinding the review of Rima as a result of our revocation of the order with respect to Rima in *2000–2001 Silicon Metal*.

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within 5 days of the date of publication of this notice. Any interested party may request a hearing within 30 days of the date of publication of this notice. Parties who submit arguments in this proceeding are requested to submit with each argument: (1) A statement of the issue and (2) a brief summary of the argument. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. All case briefs must be submitted within 30 days of the date of publication of this notice. Rebuttal briefs, which are limited to issues raised in the case briefs, may be filed not later than seven days after the case briefs are filed. A hearing, if requested, will be held two days after the date the rebuttal briefs are filed or the first business day thereafter.

The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of the issues raised in any written comments or at the hearing, within 120 days from the publication of these preliminary results.

The Department shall determine, and BCBP shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to BCBP. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. For duty assessment purposes, we will calculate a per-unit customer or importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales to each customer/importer and dividing this amount by the total quantity of those sales. Where the assessment rate is above *de minimis*, we will instruct BCBP to assess duties on all entries of subject merchandise by that importer.

Furthermore, if these preliminary results are affirmed in the final results of this administrative review, we will not set a cash deposit requirement for CBCC since it has been revoked from the order. However, the following deposit requirements will be effective for all shipments of silicon metal from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (2) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) for all other manufacturers and/or exporters of this merchandise, the cash deposit rate will continue to be 91.06 percent, the "all others" rate established in the LTFV investigation. These requirements, when imposed, shall remain in effect until

publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: July 22, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Grant Aldonas, Under Secretary.

[FR Doc. 03–19139 Filed 7–25–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-580–851]

Notice of Amended Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final affirmative countervailing duty determination.

SUMMARY: On June 16, 2003, the Department of Commerce issued the *Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*. On June 23, 2003, the Department published in the **Federal Register** the *Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122. On June 24, 2003, Hynix Semiconductors, Inc., filed allegations of ministerial errors. On June 30, 2003, the petitioner, Micron Technologies, Inc., filed a response to the allegations. Based on our review of the comments received from all parties regarding the alleged ministerial errors, we have revised the estimated countervailing duty rate for Hynix Semiconductors, Inc., as well as the "All Others" rate. The revisions to the estimated countervailing duty rates are listed below in the "Amended Final Determination" section.

EFFECTIVE DATE: July 28, 2003.

FOR FURTHER INFORMATION CONTACT: Ryan Langan or Jesse Cortes, Office of Antidumping/Countervailing Duty Enforcement, Group 1, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone(202) 482–2613 and (202) 482–3986, respectively.

SUPPLEMENTARY INFORMATION:

Scope of Investigation

The products covered by this investigation are dynamic random access memory semiconductors ("DRAMS") from the Republic of Korea ("ROK"), whether assembled or unassembled. Assembled DRAMS include all package types. Unassembled DRAMS include processed wafers, uncut die, and cut die. Processed wafers fabricated in the ROK, but assembled into finished semiconductors outside the ROK are also included in the scope. Processed wafers fabricated outside the ROK and assembled into finished semiconductors in the ROK are not included in the scope.

The scope of this investigation additionally includes memory modules containing DRAMS from the ROK. A memory module is a collection of DRAMS, the sole function of which is memory. Memory modules include single in-line processing modules, single in-line memory modules, dual in-line memory modules, small outline dual in-line memory modules, Rambus in-line memory modules, and memory cards or other collections of DRAMS, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules that contain additional items which alter the function of the module to something other than memory, such as video graphics adapter boards and cards, are not included in the scope. This investigation also covers future DRAMS module types.

The scope of this investigation additionally includes, but is not limited to, video random access memory and synchronous graphics random access memory, as well as various types of DRAMS, including fast page-mode, extended data-out, burst extended data-out, synchronous dynamic RAM, Rambus DRAM, and Double Data Rate DRAM. The scope also includes any future density, packaging, or assembling of DRAMS. Also included in the scope of this investigation are removable memory modules placed on motherboards, with or without a central processing unit, unless the importer of the motherboards certifies with the U.S. Bureau of Customs and Border Protection ("Customs") that neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation. The scope of this investigation does not include DRAMS or memory modules that are re-imported for repair or replacement.

The DRAMS subject to this investigation are currently classifiable under subheadings 8542.21.8005 and 8542.21.8021 through 8542.21.8029 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). The memory modules containing DRAMS from the ROK, described above, are currently classifiable under subheadings 8473.30.10.40 or 8473.30.10.80 of the HTSUS. Removable memory modules placed on motherboards are classifiable under subheading 8471.50.0085. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the scope of this investigation remains dispositive.

Period of Investigation

The period for which we are measuring subsidies, or period of investigation, is January 1, 2001, through June 30, 2002.

Amended Final Determination

In accordance with section 705(d) of the Tariff Act of 1930, as amended, ("the Act"), on June 23, 2003, the Department published in the **Federal Register** the *Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122. Subsequently, on June 24, 2003, Hynix Semiconductor, Inc. ("Hynix" or "respondent") submitted timely ministerial error allegations pursuant to 19 CFR 351.224(c)(2). On June 30, 2003, the petitioner, Micron Technologies, Inc. ("Micron"), submitted a rebuttal to Hynix' allegations.

Hynix alleged that, for certain loans, the Department erroneously applied uncreditworthy benchmark interest rates to financing obtained before Hynix was determined to be uncreditworthy. The petitioner rebutted these allegations stating that they related to methodological issues, not ministerial issues. Additionally, the petitioner identified data that showed that Hynix' allegations were for loans that were refinanced and, therefore, the Department correctly used uncreditworthy benchmark rates for these loans after the refinancing date. Hynix further alleged that the Department used long-term benchmark rates in the benefit calculations for three short-term loans, which were refinanced for an additional year. Micron claimed that this allegation is methodological, not ministerial, and should be rejected. Hynix then alleged that the Department erroneously included interest payments that accrued outside of the POI in its benefit calculations. Micron argued that this does not constitute a ministerial error because it is solely related to the methodology used by the Department. Hynix also alleged that the Department attributed the wrong percentage of KDB Fast Track bonds to Hynix' creditors because of debt conversions that occurred in June and December, 2001. Micron claimed that this allegation constitutes a methodological error allegation and, therefore, should be rejected by the Department. Finally, Hynix alleged that the Department failed to include the second of two interest payments that were made for the same bond but were reported separately. Micron stated that there is no evidence on the record linking the alleged second payment to the bonds identified by Hynix and, therefore, the Department must reject this allegation.

After analyzing the submissions, we have determined, in accordance with section 705(e) of the Act and 19 CFR 351.224, that we made the following ministerial errors in the margin calculations for Hynix: 1) For certain loans, we did not use the correct benchmark for financing obtained prior to the period during which we found Hynix to be uncreditworthy; 2) We incorrectly used a long-term benchmark interest rate for one loan that was refinanced for one year; 3) For KDB Fast Track bonds, we incorrectly calculated the percentage of these bonds held by Hynix' creditors after June 2001, and December 2001. For a detailed discussion of the ministerial error allegations and the Department's analysis, see the July 21, 2003 memorandum from Team to Laurie Parkhill, Acting Deputy Assistant Secretary entitled *Ministerial Error Allegations for the Final Determination*, which is on file in the Department's Central Records Unit in Room B-099 of the main Department building.

Therefore, we are amending the final determination for the countervailing duty investigation of dynamic random access memory semiconductors from the Republic of Korea to reflect the corrections of the above-noted ministerial errors. The revised total estimated net subsidy rate for each company is as follows:

Producer/Exporter	Net Subsidy Rate
Samsung Electronics Co., Ltd.	0.04 percent (de minimis) (unchanged from the Final Determination)
Hynix Semiconductor Inc. (formerly, Hyundai Electronics Industries Co., Ltd.)	44.29 percent
All Others	44.29 percent

Suspension of Liquidation

In accordance with section 705(c)(1)(B) of the Act, we are directing Customs to continue suspending liquidation on all imports of subject merchandise from the Republic of Korea, except for imports of subject merchandise from Samsung Electronics Co., Ltd., that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Customs shall require a cash deposit or the posting of a bond equal to the margin/subsidy rates indicated in the chart above. These suspension of liquidation instructions will remain in effect until further notice.

We will issue a countervailing duty order if the International Trade Commission ("ITC") issues a final affirmative injury determination. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our amended final determination.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: July 21, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Grant Aldonas, Under Secretary.

[FR Doc. 03–19141 Filed 7–25–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052803A]

Small Takes of Marine Mammals Incidental to Specified Activities; Oceanographic Surveys at the Storegga Slide, Norwegian Sea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application and proposed incidental take authorization; request for comments.

SUMMARY: NMFS has received an application from the Lamont-Doherty Earth Observatory (LDEO) for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting oceanographic surveys at the Storegga slide off the west coast of Norway in the Norwegian Sea. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to LDEO to incidentally take, by harassment, small numbers of several species of cetaceans and pinnipeds for a limited period of time within the next year.

DATES: Comments and information must be received no later than August 27, 2003.

ADDRESSES: Comments on the application should be addressed to Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. A copy of the application containing a list of the references used in this document may be obtained by writing to this address or by telephoning the contact listed here. Comments cannot be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Sarah C. Hagedorn, Office of Protected Resources, NMFS, (301) 713–2322, ext 117.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Under Section 3(18)(A), the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

The term "Level A harassment" means harassment described in subparagraph (A)(i). The term "Level B harassment" means harassment described in subparagraph (A)(ii).

Subsection 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On April 21, 2003, NMFS received an application from LDEO for the taking, by harassment, of several species of marine mammals incidental to conducting a seismic survey program within the Storegga slide area off the west coast of Norway, in the Norwegian Sea, between 8°W. and 7°E. and between 62 and 68°N. during late August and September 2003. The Storegga slide was produced by colossal slope failures on the Norwegian continental margin in the late Quarternary period. The purpose of this survey is to determine whether submarine landslides can release methane from hydrate into the oceans and/or atmosphere. More specifically, the survey of the Storegga slide seeks to discover: (1) how much hydrate and free gas is present in the Storegga region and how it is distributed, (2) if methane escaped from the slide, and if so, how much, when and by what mechanisms, and (3) if hydrate dissociation promotes and/or localizes submarine landslides. A coordinated seismic and coring study of the Storegga slide is proposed to obtain information on these subjects (the coring portion of the project will be completed in 2004). This study will help explain whether methane in gas hydrate reservoirs is mobile and can affect the earth's climate.

Description of the Activity

The seismic survey will involve a single vessel, the *R/V Maurice Ewing*, which will conduct the seismic work. The *Maurice Ewing* will deploy an array of airguns as an energy source, plus a 6–km (3.2–nm) towed streamer containing hydrophones to receive the returning acoustic signals.

All planned geophysical data acquisition activities will be conducted by LDEO scientists, with the participation of scientists from the University of Wyoming. Water depths within the Storegga slide survey area will range from approximately 100 to 5,000 m (330 to 16,405 ft). The *Maurice Ewing* will initially deploy a 2–GI gun array for several survey lines, and then a 6–airgun array will be employed for several survey lines. Whichever array produces better data will be used for the rest of the cruise. The project will consist of 3,109 km (1,678 n.mi) of survey lines, of which approximately 2,596 km (1,402 n.mi) will be conducted in water depths greater than 1,000 m(3,280 ft.), 504 km (272 n.mi) will be surveyed in depths 100–1000 m (330–3,280 ft.), and 9 km (4.9 n.mi) will be surveyed in water less than 100 m (330 ft.) deep. There will be additional operations associated with equipment testing, startup, line changes, and repeat coverage of any areas where initial data quality is sub-standard.

The procedures to be used for the 2003 seismic survey will be similar to those used during previous seismic surveys by LDEO, e.g., in the equatorial Pacific Ocean (Carbotte *et al.*, 1998, 2000). The proposed program will use conventional seismic methodology with a towed airgun array as the energy source and a towed streamer containing hydrophones as the receiver system. The energy to the airgun array is compressed air supplied by compressors on board the source vessel. In addition, a multi-beam bathymetric sonar will be operated from the source vessel continuously throughout the entire cruise, and a lower-energy sub-bottom profiler will also be operated during most of the survey. Seismic surveys will likely commence on August 28, 2003, and continue until September 25, 2003, for a total of 29 days of seismic surveying.

The *R/V Maurice Ewing* will be used as the source vessel. It will tow the airgun array (either the 2–GI gun or 6–gun array) and a streamer containing hydrophones along predetermined lines. The vessel will travel at 4–5 knots (7.4–9.3 km/hr), and seismic pulses will be emitted at intervals of approximately 20 seconds. The 20–sec spacing corresponds to a shot interval of about 50 m (164 ft). The 6–gun array will include six 2000 psi 1500C Bolt airguns ranging in chamber volume from 80 to 500 in^3, with a total volume of 1,350 in3. These airguns will be spaced in an approximate rectangle with dimensions 12 m (39.4 ft)(across track) by 10 m (32.8 ft)(along track). The two 105 in3 GI guns will be towed 7.8 m (25.6 ft) apart side by side and 37 m (121.4 ft) behind the vessel, with a total volume of 210 in^3.

The dominant frequency components for both airgun arrays is 0–188 Hz. The 2–airgun array will have a peak sound source level of 237 dB re 1 µPa or 243 dB peak-to-peak (P-P). The 6–airgun array will have a peak sound source level of 243 dB re 1 µPa or 250 dB P-P. These are the nominal source levels for the sound directed downward, and represent the theoretical source level close to a single point source emitting the same sound as that emitted by the array of 2 or 6 sources. Because the actual source is a distributed sound source (2 or 6 guns) rather than a single point source, the highest sound levels measurable at any location in the water will be less than the nominal source level. Also, because of the downward directional nature of the sound from these airgun arrays, the effective source level for sound propagating in near-horizontal directions will be substantially lower.

Along with the airgun operations, two additional acoustical data acquisition systems will be operated during most or all of the cruise. The ocean floor will be mapped with an Atlas Hydrosweep DS–2 multi-beam 15.5–kHz bathymetric sonar, and a 3.5–kHz sub-bottom profiler will also be operated along with the multi-beam sonar. These mid-frequency sound sources are commonly operated from the *Maurice Ewing* simultaneous with the airgun array.

The Atlas Hydrosweep is mounted in the hull of the *R/V Maurice Ewing*, and it operates in three modes, depending on the water depth. The first mode is when water depth is <400 (1312.3 ft). The source output is 210 dB re 1 µPa-m rms and a single 1–millisec pulse or "ping" per second is transmitted, with a beamwidth of 2.67 degrees fore-aft and 90 degrees in beamwidth. The beamwidth is measured to the 3 dB point, as is usually quoted for sonars. The other two modes are deep-water modes: The Omni mode is identical to the shallow-water mode except that the source output is 220 dB rms. The Omni mode is normally used only during start up. The Rotational Directional Transmission (RDT) mode is normally used during deep-water operation and has a 237 dB rms source output. In the RDT mode, each "ping" consists of five successive transmissions, each ensonifying a beam that extends 2.67 degrees fore-aft and approximately 30 degrees in the cross-track direction. The five successive transmissions (segments) sweep from port to starboard with minor overlap, spanning an overall cross-track angular extent of about 140 degrees, with tiny (<1 millisec) gaps between the pulses for successive 30–degree segments. The total duration of the "ping", including all 5 successive segments, varies with water depth but is 1 millisec in water depths <500 m (1640.4 ft) and 10 millisec in the deepest water.

The sub-bottom profiler is normally operated to provide information about the sedimentary features and bottom topography that is simultaneously being mapped by the Hydrosweep. The energy from the sub-bottom profiler is directed downward by a 3.5–kHz transducer mounted in the hull of the *Maurice Ewing*. The output varies with water depth from 50 watts in shallow water to 800 watts in deep water. Sounds from the sub-bottom profiler are very short pulses, occurring for 1, 2 or 4 msec once every second. Pulse interval is 1 second but a common mode of operation is to broadcast five pulses at 1–s intervals followed by a 5–s pause. Most of the energy in the sound pulses emitted by this multi-beam sonar is at mid-frequencies, centered at 3.5 kHz. The beamwidth is approximately 30° and is directed downward.

Sound levels have not been measured for the sub-bottom profiler used by the *Maurice Ewing*, but Burgess and Lawson (2000) measured the sounds propagating more or less horizontally from a similar unit with similar source output (205 dB re 1 µPa-m). The 160 and 180 dB re 1 µPa (rms) radii, in the horizontal direction, were estimated to be near 20 m (66 ft) and 8 m (26 ft), respectively, from the source, as measured in 13 m (43 ft) water depth. The corresponding distances for an animal in the beam below the transducer would be greater, on the order of 180 m (591 ft) and 18 m (59 ft), assuming spherical spreading.

The sub-bottom profiler on the *Maurice Ewing* has a maximum source level of 204 dB re 1 µPa-m. Thus the received level would be expected to decrease to 160 and 180 dB at about 160 m (525 ft) and 16 m (52 ft) below the transducer, respectively (assuming spherical spreading). Corresponding distances in the horizontal plane would be lower, given the directionality of this source (30° beamwidth) and the measurements of Burgess and Lawson (2000). Additional information on the airgun arrays, Atlas Hydrosweep, and sub-bottom profiler specifications is contained in the application, which is available upon request (see **ADDRESSES**).

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Norwegian Sea and its associated marine mammals can be found in a number of documents referenced in the LDEO application and is not repeated here. Approximately 24 species of cetaceans and seven species of pinnipeds may be found within the area of the Storegga slide. These species are the sperm whale (*Physeter macrocephalus*), Cuvier's beaked whale (*Ziphius cavirostris*), northern bottlenose whale (*Hyperoodon ampullatus*), Sowerby's beaked whale (*Mesoplodon bidens*), Blainville's beaked whale (*Mesoplodon densirostris*), beluga whale (*Delphinapterus leucas*), narwhal (*Monodon monoceros*), bottlenose dolphin (*Tursiops truncatus*), striped dolphin (*Stenella coeruleoalba*), short-beaked common dolphin (*Delphinus delphis*), white-beaked dolphin (*Lagenorhynchus albirostris*), Atlantic white-sided dolphin (*Lagenorhynchus acutus*), Risso's dolphin (*Grampus griseus*), false killer whale (*Pseudorca crassidens*), killer whale (*Orcinus orca*), long-finned pilot whale (*Globicephala melas*), harbor porpoise (*Phocoena phocoena*), North Atlantic right whale (*Eubalaena glacialis*), bowhead whale (*Balaena mysticetus*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), sei whale (*Balaenoptera borealis*), fin whale (*Balaenoptera physalus*), blue whale (*Balaenoptera musculus*), walrus (*Odobenus rosmarus*), bearded seal (*Erignathus barbatus*), hooded seal (*Cystophora cristata*), harbor seal (*Phoca vitulina*), ringed seal (*Pusa hispida*), grey seal (*Halichoerus grypus*), and the harp seal (*Pagophilus groenlandicus*). Additional information on most of these species is contained in Caretta *et al.* (2001, 2002) which is available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html*.

Potential Effects on Marine Mammals

With 2–GI gun and 6–gun arrays, the distances at which seismic pulses are expected to diminish to received levels of 190, 180, 170 dB and 160 dB re 1 µPa, on an rms basis, are as follows:

Airgun Array	RMS Radii (m/ft)			
	190 dB	*180 dB*	*170 dB*	*160 dB*
2 GI guns	15/49	50/164	155/509	520/1706
6 airguns	50/164	220/722	700/2297	2700/8859

An earlier notice of a (LDEO) application and proposed IHA was published in the **Federal Register** on April 14, 2003 (68 FR 17909). That notice described, in detail, the characteristics of the *Ewing's* acoustic sources and, in general, the anticipated effects on marine mammals including masking, disturbance, and potential

hearing impairment and other physical effects. That information is not repeated here. However, possible effects of the sub-bottom profiler, which was not used in the project described in that notice, are described below. The LDEO application also provides information on what is known about the effects on marine mammals of the types of seismic operations planned by LDEO.

Masking by Sub-bottom Profiler Signals

There is little chance that marine mammal communications will be masked appreciably by the sub-bottom profiler signals given its relatively low power output, the low duty cycle, directionality, and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of baleen whales, the sonar signals do not overlap with the predominant frequencies in the calls, which would avoid significant masking.

Behavioral Responses Resulting from Sub-bottom Profiler Signals

Marine mammal behavioral reactions to pulsed sound sources and responses to the sub-bottom profiler are likely to be similar to those of other pulsed sources at the same received levels. However, the pulsed signals from the sub-bottom profiler are much weaker than those from the airgun array and the multi-beam sonar. Therefore behavioral responses rising to Level B harassment are not expected unless marine mammals are very close to the source, e.g. within about 160 m (525 ft) below the vessel, or a lesser distance to the side. Because simple momentary behavioral reactions that are within normal behavioral patterns for that species are not considered to be a taking, the very brief exposure of cetaceans to small numbers of signals from the sub-bottom profiler is unlikely to result in a "take" by harassment.

Hearing Impairment and Other Physical Effects

Source levels of the sub-bottom profiler are much lower than those of the airguns and the multi-beam sonar that will be used during the planned project. Furthermore, received levels of pulsed sounds that are necessary to cause temporary or permanent hearing impairment in marine mammals appear to be higher than 180 dB. Thus, it is unlikely that the sub-bottom profiler produces pulse levels strong enough to cause hearing impairment or other physical injuries even in an animal that is briefly in a position immediately adjacent to the source.

Furthermore, the sub-bottom profiler is usually operated simultaneously with other higher-power acoustic sources. Many marine mammals will move away in response to the approaching higher-power sources before the mammals would be close enough to be affected by the less intense sounds from the sub-bottom profiler. In the event that mammals do not avoid the approaching vessel and its various sound sources, mitigation measures that would be applied to minimize effects of the higher-power sources (discussed later in this document) would further reduce or eliminate any minor effects of the sub-bottom profiler.

Estimates of Take by Harassment for the Norwegian Sea Cruise

The estimates of takes by harassment are based on the number of marine mammals that might be found within the 160 dB isopleth radius and potentially disturbed by operations with the 6–airgun array planned for the project. If the 2–GI gun array is used for all or part of the survey, the numbers of marine mammals that might be affected by the proposed seismic survey would be lower than the estimates described below. If only the 2–GI gun array is used, the numbers of animals that would encounter airgun sounds ≥160 dB re 1 (rms) would be about one-fifth of the number if only the 6–gun array were used.

Based on summer marine mammal density survey data collected by Sigurjonsson and Gunnlaugsson (1989), LDEO used its best estimate of density to compute a best estimate of the number of marine mammals that may be exposed to seismic sounds ≥160 dB re 1 μPa (rms) (NMFS' current criterion for onset of Level B harassment), except for bottlenose whales. Northern bottlenose whales are migratory and most leave the proposed seismic survey area before the end of June (Benjaminsen 1972; Sigurjonsson and Gunnlaugsson 1990). Therefore, only a few, if any, bottlenose whales may be seen during the seismic survey in the study area during late August to September. For bottlenose whales, LDEO used 0.10x the observed average or maximum density to calculate the numbers that might be exposed to seismic sounds, but even this reduced number is likely a high estimate. For all other species, the average densities were multiplied by the proposed survey effort (3109 km or 1678 n.mi) and twice the 160–dB safety radius around the 6–gun array to estimate the "best estimate" of the numbers of animals that might be exposed to sound levels ≥160 dB re 1 μPa (rms) during the proposed seismic survey program.

Based on this method, Table 3 in LDEO (2003) gives the best estimates of densities for each species or species group of marine mammal that might be exposed to received levels ≥160 dB re 1 μPa (rms), and thus potentially taken by Level B harassment, during seismic surveys in the proposed study area of the Norwegian Sea. Of these, 86 animals would be endangered species, primarily fin (42), humpback (22), and sperm whales (18). Delphinidae would account for 75 percent of the overall estimate for potential taking by harassment, with white-beaked dolphins (298) believed to account for about 90 percent of all delphinids in the area of the proposed seismic survey, and with killer whales (137) and long-finned pilot whales (302) accounting for most of the remaining 10 percent. However, part or all of the survey could be conducted with 2–GI guns. The 160–dB radius for the 2–GI gun array is 520 m (1706 ft) or 19 percent of that of the 6–gun array. Thus, if all surveys were conducted with the 2 GI guns, best estimates of the numbers of animals that would be exposed to seismic sounds ≥160 dB would be much less.

As described previously (68 FR 17909), animals subjected to sound levels ≥160 dB may alter their behavior or distribution, and therefore might be considered to be taken by Level B harassment. However, the 160 dB criterion is based on studies of baleen whales. Odontocete hearing at low frequencies is relatively insensitive, and dolphins and harbor porpoises generally appear to be more tolerant of strong sounds than are most baleen whales. Delphinidae have their best hearing in the higher frequencies and are unlikely to be as sensitive as the mysticete whales to the low frequency of the airgun array. Therefore, they are less likely to experience Level B harassment at 160 dB. A more likely threshold for onset of Level B harassment in response to seismic sounds is at about 170 dB.

Conclusions-Effects on Cetaceans

Strong avoidance reactions by several species of mysticetes to seismic vessels have been observed at ranges up to 6 to 8 km (3.2 to 4.3 nm) and occasionally as far as 20–30 km (10.8–16.2 nm) from the source vessel. Some bowhead whales avoided waters within 30 km (16.2 nm) of the seismic operation. However, reactions at such long distances appear to be atypical of other species of mysticetes, and even for bowheads may only apply during migration.

Odontocete reactions to seismic pulses, or at least those of dolphins, are expected to extend to lesser distances than are those of mysticetes. Odontocete low-frequency hearing is less sensitive than that of mysticetes, and dolphins are often seen from seismic vessels. In fact, there are documented instances of dolphins approaching active seismic vessels. However, dolphins as well as some other types of odontocetes sometimes show avoidance responses and/or other changes in behavior when near operating seismic vessels.

Taking account of the mitigation measures that are planned, effects on cetaceans are generally expected to be limited to avoidance of the area around the seismic operation and short-term changes in behavior, falling within the MMPA definition of "Level B harassment." In the cases of mysticetes, these reactions are expected to involve small numbers of individual cetaceans because few mysticetes occur in the area where seismic surveys are proposed. LDEO's best estimate is that 42 fin whales, or 0.5 percent of the estimated fin whale population in and adjacent to the study area, will be exposed to sound levels ≥160 dB re 1 μPa (rms) and potentially affected. Similarly, 22 humpback whales, or 0.8 percent, and 18 sperm whales, or 0.2 percent of their populations that occur in and adjacent to the proposed survey area, would receive seismic sounds ≥160 dB. Therefore, these potential takings by Level B harassment will have a negligible impact on their populations. Numbers and impact would be even smaller if the 2–GI gun array is used for a substantial fraction of the survey project.

Larger numbers of odontocetes may be affected by the proposed activities, but the populations sizes of the main species are large and the numbers potentially affected are small relative to the population sizes. The best estimate of the total number of odontocetes that might be exposed to ≥160 dB re 1 μPa (rms) in the proposed survey area in the Norwegian Sea is 878. Of these, 770 are Delphinidae, and of these about 200 might be exposed to ≥170 dB. These figures are <0.1 percent of the populations of these combined species that occur in the Northeast Atlantic, and the 200 value is believed to be a more accurate estimate of the number potentially affected.

Mitigation measures such as controlled speed, look-outs, non-pursuit, ramp-ups, avoidance of start-ups during periods of darkness when possible, and shut-down when within defined ranges (See Mitigation) should further reduce short-term reactions to disturbance, and minimize any effects on hearing sensitivity.

Conclusions-effects on Pinnipeds

Very few if any pinnipeds are expected to be encountered during the proposed seismic survey in the Norwegian Sea. A maximum of 70 pinnipeds in the Storegga slide area may be affected by the proposed seismic surveys. If pinnipeds are encountered, the proposed seismic activities would have, at most, a short-term effect on their behavior and no long-term impacts on individual seals or their populations. Responses of pinnipeds to acoustic disturbance are variable, but usually quite limited. Effects are expected to be limited to short-term and localized behavioral changes falling within the MMPA definition of Level B harassment.

Mitigation

For the proposed seismic operations in the Storegga slide area in 2003, LDEO will use 2 GI guns with a total volume of 210 in³ and/or a 6–gun array with a total volume of 1350 in3. The airguns comprising these arrays will be spread out horizontally, so that the energy from the arrays will be directed mostly downward.

Modeled results for the 2– and 6–gun arrays indicate received levels to the 180–dB re 1 μPa (rms) isopleth (the level for the potential for Level A harassment applicable to cetaceans) were estimated as 50 and 220 m (164 and 722 ft), respectively. The radii around the 2– and 6–gun arrays where the received level would be 190 dB re 1 μPa (rms), (the level for the potential for Level A harassment applicable to pinnipeds), were estimated as 15 and 50 m (49 and 164 ft), respectively. Results from a calibration study that occurred in late the spring of 2003 in the Gulf of Mexico will determine the actual radii corresponding to each sound level. If the modeled radii have not been verified by the time of the Storegga slide surveys, LDEO proposes to use 1.5 times the 180- (cetaceans) and 190– (pinnipeds) dB radii predicted by the model as the safety radii until the radii have been verified. Thus, during the Storegga slide cruise the proposed safety radii for cetaceans are 75 and 330 m (246 and 1,083 ft), respectively, for the 2–GI gun and 6–gun arrays, and the proposed safety radii for pinnipeds are 23 and 75 m (75 and 246 ft), respectively.

Vessel-based observers will monitor marine mammals in the vicinity of the arrays. LDEO proposes to shut down the seismic source if marine mammals are observed within the proposed safety radii. Also, LDEO proposes to use a ramp-up procedure when commencing operations using the 6–gun array. Ramp-up will begin with the smallest gun in the array (80 in³), and guns will be added in a sequence such that the source level of the array will increase at a rate no greater than 6 dB per 5–minute period over a total duration of about 14 minutes. Ramp-up will not occur for the 2–GI gun array because the total air discharge volume is small (210 in³). Please refer to LDEOs application for more detailed information about the mitigation measures that are an integral part of the planned activity.

Operational Mitigation

The directional nature of the 6–airgun array to be used in this project is an important mitigating factor, resulting in lower sound levels at any given horizontal distance than would be expected at that distance if the source were omnidirectional with the stated nominal source level. Because the actual seismic source is a distributed sound source (2 or 6 guns) rather than a single point source, the highest sound levels measurable at any location in the water will be less than the nominal source level.

Marine Mammal Monitoring

Up to three vessel-based observers will be stationed on the *R/V Maurice Ewing* during seismic operations in the Storegga slide area. Vessel-based observers will monitor for marine mammals near the seismic source vessel for at least 30 minutes prior to and during all daylight ramp-up and airgun operations, and during any nighttime startups of the airguns. Airgun operations will be suspended when marine mammals are observed within, or about to enter, designated safety zones, where there is a possibility of Level A harassment. Observers will not be on duty during ongoing seismic operations at night; bridge personnel will watch for marine mammals during this period and will call for the airguns to be shut down if marine mammals are observed in or about to enter the safety radii. A marine mammal observer will be on "standby" at night, in case bridge personnel see a marine mammal. An image-intensifier night-vision device (NVD) will be available for use at night, although past experience has shown that NVDs are of limited value for this purpose. If the airguns are started up at night, two marine mammal observers will monitor for marine mammals near the source vessel for 30 minutes prior to start up using night-vision devices. The 30–minute observation period is only required prior to commencing seismic operations following an extended shut down period.

The *R/V Maurice Ewing* is a suitable platform for marine mammal observations. The observer's eye level will be approximately 11 m (36 ft) above sea level when stationed on the bridge (the highest practical vantage point on the vessel), allowing for good visibility within a 210° arc for each observer. The proposed monitoring plan is summarized later in this document.

Proposed Safety Radii

Received sound levels have been modeled for the 2–GI guns and the 6–airgun arrays. Based on the modeling, estimates of the 190–, 180–, 170–, and 160–dB re 1 µPa (rms) distances (safety radii) for these arrays have been provided previously in this document.

Airgun operations will be suspended immediately when cetaceans are seen within or about to enter the appropriate 180–dB (rms) radius, or if pinnipeds are seen within or about to enter the 190–dB (rms) radius. These 180– and 190–dB criteria are consistent with guidelines listed for cetaceans and pinnipeds by NMFS (2000) and other guidance by NMFS.

Mitigation During Operations

The following mitigation measures, as well as marine mammal monitoring, will be adopted during the proposed Storegga slide seismic survey program and the acoustic verification program, provided that doing so will not compromise operational safety requirements: (1) Course alteration; and (2) Shut-down procedures; and (3) Ramp-up procedures.

Course Alteration

If a marine mammal is detected outside the safety radius and, based on its position and the relative motion, is likely to enter the safety radius, alternative ship tracks will be plotted against anticipated mammal locations. The vessel's direct course and/or speed will be changed in a manner that also minimizes the effect to the planned science objectives. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the safety radius. If the mammal appears likely to enter the safey radius, further mitigative actions will be taken, i.e., either further course alterations or shutdown of the airguns.

Shutdown Procedures

Vessel-based observers will monitor marine mammals near the seismic vessel during daylight and for at least 30 minutes prior to start up during darkness throughout the program. Airgun operations will be suspended immediately when marine mammals are observed within, or about to enter, designated safety zones. The shutdown procedure should be accomplished within several seconds or one shot period of the determination that a marine mammal is within or about to enter the safety zone. Airgun operations will not resume until the marine mammal is outside the safety radius. Once the safety zone is clear of marine mammals, the observer will advise that seismic surveys can re-commence. The "ramp-up" procedure will then be followed.

Ramp-up Procedure

A "ramp-up" procedure will be followed when the airgun arrays begin operating after a specified-duration period without airgun operations. Under normal operational conditions (vessel speed 4–5 knots), a ramp-up would be required after a "no shooting" period lasting 2 minutes or longer. At 4 knots, the source vessel would travel 247 m (810 ft) during a 2–minute period. If the towing speed is reduced to 3 knots or less, as sometimes required when maneuvering in shallow water, it is proposed that a ramp-up would be required after a "no shooting" period lasting 3 minutes or longer. At towing speeds not exceeding 3 knots, the source vessel would travel no more than 277 m (909 ft) in 3 minutes. These guidelines would require modification if the normal shot interval were more than 2 or 3 min, but that is not expected to occur during the Storegga slide cruise.

Ramp-up will begin with the smallest gun in the 6–gun array (80 in^3). Guns will be added in a sequence such that the source level of the array will increase in steps not exceeding 6 dB per 5–minute period over a total duration of approximately 14 min. During the ramp-up procedures, the safety zone for the full gun array will be maintained. Ramp-up will not occur for the 2–GI gun array, since the total air discharge volume for this array is small (210 in^3).

Monitoring and Reporting

LDEO proposes to conduct marine mammal monitoring of its 2003 Storegga slide seismic program in the Norwegian Sea and acoustical verification of safety radii, in order to satisfy the anticipated requirements of the IHA.

Vessel-based Visual Monitoring

The observer(s) will systematically scan the area around the vessel with 7 X 50 Fujinon reticle binoculars or with the naked eye during the daytime. At night, night vision equipment will be available (ITT F500 Series Generation 3 binocular image intensifier or equivalent). Laser rangefinding binoculars (Bushnell Lytespeed 800 laser rangefinder with 4 optics or equivalent) will be available to assist with distance estimation. If a marine mammal is seen well outside the safety radius, the vessel may be maneuvered to avoid having the mammal come within the safety radius (see Mitigation). When mammals are detected within or about to enter the designated safety radii, the airguns will be shut down immediately. The observer(s) will continue to maintain watch to determine when the animal is outside the safety radius. Airgun operations will not resume until the animal is outside the safety radius.

At least one experienced marine mammal observer will be on duty aboard the seismic vessel, as well as a fishery expert (as likely required by the Norwegian Petroleum Directorate (2003)) and possibly one qualified contract biologist. Observers (appointed by LDEO) will complete a one-day training/refresher course on marine mammal monitoring procedures, given by a contract employee experienced in vessel-based seismic monitoring projects.

Observers will be on duty in shifts of duration no longer than 4 hours. Use of two simultaneous observers will increase the proportion of the marine mammals present near the source vessel that are detected. Bridge personnel additional to the dedicated marine mammal observers will also assist in detecting marine mammals and implementing mitigation requirements, and before the start of the seismic survey will be given instruction in how to do so.

Reporting

The vessel-based monitoring will provide data required to estimate the numbers of marine mammals exposed to various received sound levels, to document any apparent disturbance reactions, and thus to estimate the numbers of mammals potentially taken by Level B harassment. It will also provide the information needed in order to shut down the airguns at times when mammals are present in or near the safety zones. When a mammal sighting is made, the following information about the sighting will be recorded: (1) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to seismic vessel (e.g., none, avoidance, approach, paralleling, etc.), and behavioral pace; and (2) time, location, heading, speed, activity of the vessel (shooting or not), sea state, visibility, cloud cover, and sun glare. The data listed under (2) will also be recorded at the start and end of each observation watch and during a watch, whenever there is a change in one or more of the variables.

All mammal observations and airgun shutdowns will be recorded in a standardized format. Data will be entered into a custom database using a laptop computer when observers are off-duty. The accuracy of the data entry will be verified by computerized validity data checks as the data are entered and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical or other programs for further processing and archiving.

Results from the vessel-based observations will provide (1) the basis for real-time mitigation (airgun shutdown); (2) information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS; (3) data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted; (4) information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity; and (5) data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

A report will be submitted to NMFS within 90 days after the end of the seismic program in the Storegga slide area. The end of the Storegga slide program is predicted to occur on or about September 25, 2003. The report will cover the seismic surveys in the Storegga slide area and will be submitted to NMFS, providing full documentation of methods, results, and interpretation pertaining to all monitoring tasks. The 90–day report will summarize the dates and locations of seismic operations, sound measurement data, marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and estimates of the amount and nature of potential "take" of marine mammals by harassment or in other ways.

Endangered Species Act (ESA)

Under section 7 of the ESA, NMFS has begun consultation on the proposed issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to the issuance of an IHA.

National Environmental Policy Act (NEPA)

The NSF has prepared an EA for the Storegga slide survey. NMFS is reviewing this EA and will either adopt it or prepare its own NEPA document before making a determination on the issuance of an IHA. A copy of the NSF EA for this activity is available upon request (see ADDRESSES).

Preliminary Conclusions

NMFS has preliminarily determined that the impact of conducting a seismic survey program in the Storegga slide portion of the southern Norwegian Sea will result, at worst, in a temporary modification in behavior by certain species of marine mammals. This activity is expected to result in no more than a negligible impact on the affected species.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is low and will be avoided through the incorporation of the mitigation measures mentioned in this document. In addition, the proposed seismic program is not expected to interfere with any subsistence hunts, since operations in the whaling and sealing areas will be limited.

Proposed Authorization

NMFS proposes to issue an IHA to LDEO for conducting a seismic survey program in the Storegga slide portion of the southern Norwegian Sea, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of small numbers of marine mammals; would have no more than a negligible impact on the affected marine mammal stocks; and would not have an unmitigable adverse impact on the availability of stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**).

Dated: July 21, 2003.

Laurie K. Allen,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–19035 Filed 7–25–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011503A]

Endangered Species; File No. 1409

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Karen G. Holloway-Adkins, East Coast Biologists, Inc., P.O. Box 33715, Indialantic, FL 32903, has been issued a permit to take green (*Chelonia mydas*) and loggerhead (*Caretta caretta*) turtles for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Sarah Wilkin (301)713–2289 or Patrick Opay (301)713–1401.

SUPPLEMENTARY INFORMATION: On January 28, 2003, notice was published in the **Federal Register** (68 FR 4178) that a request for a scientific research permit to take loggerhead and green sea turtles had been submitted by the above-named individual. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The purpose of the research is to characterize marine turtle aggregations (including their size class and foraging habits) that use the nearshore reefs of central Brevard County, FL as developmental habitat, and to gather information about sea turtle movements among similar study areas that exist on the east coast of Florida.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 18, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–19146 Filed 7–25–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination Under the African Growth and Opportunity Act (AGOA)

July 22, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Determination

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that handloomed fabric and handmade articles made from such handloomed fabric that are produced in and exported from Zambia qualify for preferential treatment under Section 112(a) of the African Growth and Opportunity Act. Therefore, imports of eligible products from Zambia with an appropriate AGOA Visa will qualify for duty-free treatment under the AGOA.

EFFECTIVE DATE: August 4, 2003.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION: The African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Pub. L. No. 106-200)(AGOA) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries. In a letter to the Commissioner of Customs dated January 18, 2001, the United States Trade Representative directed Customs to require that importers provide an appropriate export visa from a beneficiary sub-Saharan African country to obtain preferential treatment under section 112(a) of the AGOA (66 FR 7837). The first digit of the visa number corresponds to one of 9 groupings of textile and apparel products that are eligible for preferential tariff treatment. Grouping "9" is reserved for handmade, handloomed, or folklore articles.

In Section 2 of Executive Order 13191 of January 17, 2001, CITA is authorized to "consult with beneficiary sub-Saharan African countries and to determine which, if any, particular textile and apparel goods shall be treated as being handloomed, handmade, or folklore articles" (66 FR 7272). Consultations were held on March 13, 2003, and CITA has now determined that handloomed fabrics and handmade articles made from such handloomed fabrics produced in and exported from Zambia are eligible for preferential tariff treatment under section 112(a) of the AGOA. In the letter published below, CITA directs the Commissioner of Customs to allow entry of such products from Zambia under Harmonized Tariff Schedule provision 9819.11.27, when accompanied by an appropriate export visa in Grouping "9".

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 22, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: The Committee for the Implementation of Textiles Agreements (CITA), pursuant to Sections 112(a) of the African Growth and Opportunity Act (Title I of Pub. L. No. 106-200) (AGOA) and Executive Order 13191 of January 17, 2001, has determined that, effective on August 4, 2003, handloomed fabric produced in Zambia and handmade articles produced in Zambia from such handloomed fabric shall be treated as being handloomed, handmade, or folklore articles under the AGOA, and that an export visa issued by the Government of Zambia for Grouping "9" is a certification by the Government of Zambia that the article is handloomed, handmade, or folklore. CITA directs you to permit duty-free entry of such articles accompanied by the appropriate visa and entered under heading 9819.11.27 of the Harmonized Tariff Schedule of the United States.

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–19062 Filed 7–25–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in Colombia

July 22, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: July 28, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 72922, published on December 9, 2002.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 22, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 3, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and wool textile products in the following categories, produced or manufactured in Colombia and exported during the twelve-month period which began on January 1, 2003, and extends through December 31, 2003.

Effective on July 28, 2003, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
315	39,084,116 square meters.
443	151,374 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.03–19064 Filed 7–25–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Oman

July 22, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: July 29, 2003.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection Web site at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 68572, published on November 12, 2002.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 22, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 1, 2002, by the Chairman, Committee for the Implementation of Textile Agreements, That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Oman and exported during the twelve-month period beginning on January 1, 2003 and extending through December 31, 2003.

Effective on July 29, 2003, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
335/635	367,981 dozen.
338/339	922,140 dozen.
341/641	267,966 dozen.
347/348	1,536,223 dozen.
647/648	445,061 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–19063 Filed 7–25–03; 8:45 am]

BILLING CODE 3510– DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 03–10]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 03–10 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 21, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

17 JUL 2003
In reply refer to:
I-03/002455

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 03-10, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $60 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Richard J. Millies
Deputy Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 03-10

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Egypt

(ii) Total Estimated Value:

Major Defense Equipment*	$ 0 million
Other	$60 million
TOTAL	$60 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: two C-130H-based roll-on/roll-off airborne Electronic Intelligence (ELINT) systems with the following major subsystems: two airborne signal detection and processing centers which can be mounted on C-130H aircraft; ground analysis center; ground mobile tactical center; and base workshop repair station. This proposed sale will also include related modification kits, support/test equipment, spare/repair parts, publications, technical data, U.S. Government and contractor technical services, and other related elements of logistics support.

(iv) Military Department: Air Force (QES)

(v) Prior Related Cases, if any: none

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 17 JUL 2003

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt – C-130H Based Roll-on/roll-off ELINT Systems

The Government of Egypt has requested a possible sale of two C-130H-based roll-on/roll-off airborne Electronic Intelligence (ELINT) systems with the following major subsystems: two airborne signal detection and processing centers which can be mounted on C-130H aircraft; ground analysis center; ground mobile tactical center; and base workshop repair station. This proposed sale will also include related modification kits, support/test equipment, spare/repair parts, publications, technical data, U.S. Government and contractor technical services, and other related elements of logistics support. The estimated cost is $60 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

The ELINT systems will be integrated on existing C-130H aircraft and will provide the Egyptian Air Force (EAF) an important ability to build, maintain, and update threat radar data. The EAF should have no problem operating and maintaining this retrofit capability.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be: Lockheed Martin ISR Systems of Englewood, Colorado; Plano Microwave Incorporated of Plano, Texas; and Mission Research Corporation of Santa Barbara of California. There are no offset agreements proposed in connection with this potential sale.

This program will include semi-annual management reviews for one-week intervals with 10 each U.S. Government and contractor representatives. In addition, annually, there will be 10 each U.S. Government and contractor representatives to participate in program management and technical reviews.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 03-10

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The C-130H-based roll-on/roll-off ELINT system contains sensitive technology. This is a radio signal monitoring system based on the USAF Senior Scout system and provides the ability to collect threat radar data.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Egypt can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 03–19077 Filed 7–25–03; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 03–15]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 03–15 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 21, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

17 JUL 2003
In reply refer to:
I-03/003310

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 03-15, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services estimated to cost $50 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Richard J. Millies
Deputy Director

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 03-15

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended (U)

(i) Prospective Purchaser: Egypt

(ii) Total Estimated Value:

Major Defense Equipment*	$43 million
Other	$ 7 million
TOTAL	$50 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 414 AIM-9M-1/2 Sidewinder air-to-air missiles, missile containers, support equipment, spare and repair parts, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering and support services and other related elements of logistics support.

(iv) Military Department: Navy (ACM)

(v) Prior Related Cases, if any:
FMS case ABR - $36 million - 05Dec96
FMS case AAP - $37 million - 01Jul86
FMS case AAJ - $14 million - 27Dec83
FMS case AAD - $27 million - 15Jun82

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress:

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Egypt – AIM-9M-1/2 Sidewinder Missiles

The Government of Egypt has requested a possible sale of 414 AIM-9M-1/2 Sidewinder air-to-air missiles, missile containers, support equipment, spare and repair parts, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering and support services and other related elements of logistics support. The estimated cost is $50 million.

This sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been and continues to be an important force for political stability and economic progress in the Middle East.

The missiles obtained in this proposed sale will augment existing inventories of AIM-9L and AIM-9M-1/2 Sidewinder air-to-air missiles and improve the defensive air intercept capabilities of Egyptian Air Force's F-16 fighters. Egypt will have no difficulty absorbing the additional missiles into its munitions inventory.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor is the Raytheon Systems Corporation of Tucson, Arizona. There are no offset agreements proposed in connection with this potential sale.

Implementation of this sale will not require the assignment of any additional U.S. Government and contractor representatives in Egypt. However, there will be U.S. Government representatives for two-week intervals twice annually to participate in training, program management and technical review.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 03-15

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex Item No. vii

(vii) Sensitivity of Technology:

1. The external view of the AIM-9M-1/2 Sidewinder missile is Unclassified and not sensitive. The guidance and control system and target detector are Confidential and contain sensitive state-of-the-art technology. Manuals and technical documents, which are necessary for operational use and organization maintenance, include Confidential information. Performance and operating logic of the countermeasures circuits are Secret. This information is required for the effective deployment of the system and to enable the recipient country to maintain it properly.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that the Egypt can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

4

[FR Doc. 03–19078 Filed 7–25–03; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patent Applications for Non-Exclusive, Exclusive, or Partially Exclusive Licensing

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with 35 U.S.C. 209 and 37 CFR part 404, announcement is made of the availability for licensing of the following U.S. Patent Applications for non-exclusive, exclusive, or partially exclusive licensing listed under **SUPPLEMENTARY INFORMATION.** The inventions listed below have been assigned to the United States Government as represented by the Secretary of the Army, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. John Biffoni, Intellectual Property Attorney, U.S. Army Soldier and Biological Chemical Command, ATTN: AMSSB–CC (Bldg. E4435), Aberdeen Proving Ground, MD 21010–5424, phone: (410) 436–1158, FAX: (410) 436–2534, or e-mail: *John.Biffoni@sbccom.apgea.army.mil.*

SUPPLEMENTARY INFORMATION:

1. *Title:* "Compositions and Methods for Enhancing Bioassay Performance."

Description: This invention relates generally to nanomanipulation and, more particularly, to nanoorientation of antibody-dendrimer conjugates. The compositions of matter and methods of the present invention allow one to construct more sensitive bioassays by improving the orientation of the antibody binding domains within the bioassay at the nanoscopic level.

Patent Application Number: 09/939,884.

Filing Date: 08/27/2001.

2. Title: "Enhancing Protein Activity Through Nanoencapsulation"

Description: This invention deals with nanoencapsulation and nanocapsules, and a method of using these encapsulation systems to enhance protein/enzyme reactivity. The invention uses nanocapsules to protect and enzymes from inactivation in a variety of harsh environments such as extreme temperatures and pH. In addition, it provides a method for using nanoencapsulation to enhance protein/enzyme reactivity in organic solvents. Finally, the invention provides a method of using nanocapsules as controlled-release agents or carries for drug, protein, and vaccine delivery.

Patent Application Number: 09/859,260.

Filed: May 17, 2001.

Luz D. Ortiz,
Army Federal Register Liaison Officer.

[FR Doc. 03–19099 Filed 7–25–03; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of U.S. Patent and U.S. Patent Applications for Non-Exclusive, Exclusive, or Partially Exclusive Licensing

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with 35 U.S.C. 209 and 37 CFR part 404 announcement is made of the availability for licensing of the U.S. Patent Applications and U.S. Patent for non-exclusive, exclusive, or partially exclusive licensing listed in under **SUPPLEMENTARY INFORMATION.** The inventions listed have been assigned to the United States Government as represented by the Secretary of the Army, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. John Biffoni, Intellectual Property Attorney, U.S. Army Soldier and Biological Chemical Command, ATTN: AMSSB–CC (Bldg E4435), Aberdeen Proving Ground, MD 21010–5424; phone: (410) 436–1158, FAX: 410–436–2534 or e-mail: *John.Biffon@sbccom.apgea.army.mil.*

SUPPLEMENTARY INFORMATION:

1. *Title:* "Enzymatic Detoxification of Organophosphorus Compounds"

Description: The present invention relates to the expression of a recombinant bacterial enzyme which is useful for detoxifying cholinesterase-inhibiting organophosphorus compounds such as pesticides and chemical nerve agents and the decontamination of substances contaminated with these compounds.

Patent Number: 5,928,927.

Issue Date: July 27, 1999.

2. *Title.* "One-step Purification Process for Organophosphorus Hydrolase Enzyme."

Description: The present invention relates to an improved and simplified process for purifying organophosphorus hydrolase enzyme ("OPH") from a recombinant host cell, that expresses this enzyme.

Patent Number: 6,469,145.

Issue Date: October 22, 2002.

Luz D. Ortiz,
Army Federal Register Liaison Officer.

[FR Doc. 03–19098 Filed 7–25–03; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Army is altering a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on August 27, 2003, unless comments are received which result in a contrary determination.

ADDRESSES: Army Systems of Records Notices Manager, Department of Army Freedom of Information and Privacy Acts Office, 7798 Cissna Road, Suite 205, Springfield, VA 22153–3166.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–7137.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on July 9, 2003, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 2996, 61 FR 6427).

Dated: July 21, 2003.

Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0380–19 SAIS

SYSTEM NAME:

Information Assurance For Automated Information Systems (AIS) Files (April 13, 2001, 66 FR 19148).

Changes

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Information Assurance For Automated Information Systems (AIS) and Defense Biometric Technology Files.'

SYSTEM LOCATION:

Delete entry and replace with 'Department of Defense Biometrics Fusion Center, 1600 Aviation Way, Bridgeport, WV 26330–9476 and at any Department of Defense system that collects, stores, accesses, retrieves, or uses biometrics technology to recognize the identity, or verify the claimed identity of an individual.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Individuals covered include, but is not limited to military, civilian, and contractor personnel; military reserve personnel; and other persons requiring access to DoD information and facilities.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Add 'images,' to entry.

PURPOSE(S):

Add a new paragraph 'To control logical and physical access to DoD information and facilities by using a measurable physical or behavioral characteristic.'

* * * * *

RETRIEVABILITY:

Add to entry 'biometric template'.

* * * * *

A0380–19 SAIS

SYSTEM NAME:

Information Assurance For Automated Information Systems (AIS) and Defense Biometric Technology Files.

SYSTEM LOCATION:

Department of Defense Biometrics Fusion Center, 1600 Aviation Way, Bridgeport, WV 26330–9476, and at any Department of Defense system that collects, stores, accesses, retrieves, or uses biometrics technology to recognize the identity, or verify the claimed identity of an individual.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered include, but is not limited to military, civilian, and contractor personnel; military reserve personnel; Army and Air National Guard personnel; and other persons requiring access to DoD information and facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Operator's/user's name, Social Security Number, organization, telephone number, and office symbol; security clearance; level of access; subject interest code; user identification code; data files retained by users; assigned password; magnetic tape reel identification; abstracts of computer programs and names and phone numbers of contributors; similar relevant information; biometrics templates, images, and supporting documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 106–246, section 112; 10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 8013, Secretary of the Air Force; Department of Defense Directive 8500.1, Information Assurance (IA); Army Regulation 380–19, Information System Security; and E.O. 9397 (SSN).

PURPOSE(S):

To administer passwords and identification numbers for operators/users of data in automated media; to identify data processing and communication customers authorized access to or disclosure from data residing in information processing and/or communication activities; and to determine propriety of individual access into the physical data residing in automated media.

To control logical and physical access to DoD information and facilities by using a measurable physical or behavorial characteristic.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Name, Social Security Number, subject, application program key word/author, and biometric template.

SAFEGUARDS:

Computerized records maintained in a controlled area are accessible only to authorized personnel. Physical and electronic access is restricted to designated individuals having a need therefore in the performance of official duties.

RETENTION AND DISPOSAL:

Individual data remain on file while a user of computer facility; destroyed on person's reassignment of termination.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Department of the Army, 107 Army Pentagon, Washington, DC 20310–0107.

Director, Department of Defense Biometrics Management Office, 2531 Jefferson Davis Highway, Arlington, VA 22202–4800.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief Information Officer, Department of the Army, 107 Army Pentagon, Washington, DC 20310–0107.

For verification purposes, individual should provide full name, sufficient details to permit locating pertinent records, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief Information Officer, Department of the Army, 107 Army Pentagon, Washington, DC 20310–0107.

For verification purposes, individual should provider full name, sufficient details to permit locating pertinent records, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, DoD security offices, system managers, computer facility managers, automated interfaces for user codes on file at Army sites.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–19079 Filed 7–25–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare a Supplemental Overseas Environmental Impact Statement/Supplemental Environmental Impact Statement for Employment of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) Regulations 40 CFR 1502.9, and pursuant to Executive Order 12114, the Department of the Navy (Navy) is announcing its intent to prepare a Supplemental Overseas Environmental Impact Statement (SOEIS)/Supplemental Environmental Impact Statement (SEIS) for the operational employment of SURTASS LFA sonar.

SUPPLEMENTARY INFORMATION: The Final Overseas Environmental Impact Statement and Environmental Impact Statement (OEIS/EIS) for the Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar was completed in January 2001. The Deputy Assistant Secretary of the Navy for Environment (DASN[E]) reviewed the SURTASS LFA Sonar OEIS/EIS and, after carefully weighing the operational, scientific, technical, and environmental implications of the alternatives considered, announced the decision to employ two SURTASS LFA sonar systems with certain geographical restrictions and monitoring mitigation designed to reduce adverse effects on the marine environment. This decision, which pertained to the employment of two SURTASS LFA systems, implemented the preferred alternative, Alternative 1, identified in the Final OEIS/EIS.

DASN(E) found that the analysis in the OEIS/EIS had taken the requisite "hard look" at the environmental consequences of the decision to employ the SURTASS LFA sonar and issued the Record of Decision (ROD) on 16 July 2002.

However, in recognition of concerns raised in Federal Court over employment of the SURTASS LFA system and to further the Navy's commitment to responsible stewardship of the marine environment, DASN(E) has determined that the purposes of NEPA would be furthered by the preparation of a supplemental analysis related to employment of the system. This analysis will take the form of a SOEIS/SEIS and will provide additional information regarding the environment that could be potentially affected by employment of SURTASS LFA and additional information related to mitigation of the potential impacts of the system, focusing on identifying geographic areas and seasonal periods of high marine mammal abundance in those areas where the Navy intends to use SURTASS LFA for routine training and testing. The SOEIS/SEIS will consider this information in the context of specific potential operational areas. The SOEIS/SEIS will comply with both NEPA and Executive Order 12114.

Dated: July 16, 2003.

E. F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–19089 Filed 7–25–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Performance Review Board Membership

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), the Department of the Navy (DON) announces the appointment of members to the DON's numerous Senior Executive Service (SES) Performance Review Boards (PRBs). The purpose of the PRBs is to provide fair and impartial review of the annual SES performance appraisal prepared by the senior executive's immediate and second level supervisor; to make recommendations to appointing officials regarding acceptance or modification of the performance rating; and to make recommendations for monetary performance awards. Composition of the specific PRBs will be determined on an ad hoc basis from among individuals listed below:

ACKLEY, V. H. MR.
ADAMS, P. C. MS.
AKIN, M. G. MR.
ANTANITUS, D. RADM
ANTOINE, C. S. MR.
ARNY, L. W. MR.
AVILES, D. M. HON.
BAILEY, W. C. MR.
BALDERSON, W. M. MR.
BARBER, A. H. MR.
BARNUM, H. C. MR.
BAUMAN, D. M. MR.
BEDARD, E. R. LTGEN
BELAND, R. W. DR.
BETRO, T: A. MR.
BEVINS, S. E. MR.
BLAIR, A. K. MS.
BONIN, R. L. MR.
BONWICH, S. M. MR.
BOZIN, S. D. RADML
BRANT, D. L. MR.
BREEDLOVE, W. J. DR.
BROWN, P. F. MR.
BURNS, J. RADM
BUSH, C. T. RADML
BUTLER, J. D. RADML
CALI, R. T. MR.
CARPENTER, A. MS.
CATRAMBONE, G. P. MR.
CATTO, W. D. BGEN
CHURCH III, A. T. VADM
CIESLAK, R. C. MR.
CLARK, C. A. MS.
COBB JR. W. W. RADM
COCHRANE JR, E. R. MR.
COHEN, J. M. RADM
COHN, H. MR.
COLEMAN, R. S. BGEN
COMBS, D. S. MR.
COMMONS, G. J. MS.
COOK, C. E. MR.
CRABTREE, T. R. MR.
CROWLEY III, R. E. RADM
CUDDY, J. V. MR.
CURTIS, D. I. MR.
DECKER, J. MS.
DECKER, M. H. MR.
DEWITTE, C. K. MS.
DONAHUE, P. E. MR.
DUDLEY, W. S. DR.
DURAND, S. R. MS.
DWYER, D. M. RADM
DYER, J. W. VADM
EASTER, S. B. MS.
EDMOND, D. J. MS.
EHRLER, S. M. MR.
ELLIS, W. G. MR.
ENGELHARDT, B. B. RADML
ENNIS, M. BGEN
EVANS, G. L. MS.
EXLEY, R. L. MR.
FILIPPI, D. M. MS.
FLYNN, B. P. MS.
FRANKLIN, R. E. MR.
GODWIN III, J. B. RADM
GREER, E. R. MR.
GRIFFIN JR, R. M. MR.
HAAS, R. L. MR.
HAGEDORN, G. D. MR.
HANDEL, T. H. MR.
HANNAH, B. W. DR.
HAYNES, R. S. MR.
HILDEBRANDT, A. H. MR.
HOBART, R. L. MR.
HOGUE, R. D. MR.
HONECKER, M. W. MR.
HOWARD, J. S. MR.
HUBBELL, P. C. MR.
JAGGARD, M. F. MR.
JAMES, J. H. MR.
JOHNSON, H. T. HON
JOHNSTON JR, C. H. RADM
JOHNSTON, K. J. DR.
JUNKER, B. R. DR.
KASKIN, J. D. MR.

KEENEY, C. A. MS.
KELLY, R. L. LTGEN
KLEIN, J. A. MR.
KLEINTOP, M. U. MS.
KLEMM, W. R. RADM
KRANZ, T. F. MR.
KRASIK, S. A. MS.
KRUM, R. A. MR.
LACEY, M. E. MRS.
LA RAIA, J. H. MR.
LAUX, T. E. MR.
LEACH, R. A. MR.
LEBOEUF, G. G. MR.
LEDVINA, T. N. MR.
LEGGIERI, S. R. MS.
LENGERICH, A. W. RADM
LEWIS, R. D. MS.
LIBERATORE, C. MS.
LOFTUS, J. V. MS.
LOTT, B. M. MAJGEN
LOWELL, P. M. MR.
MAGLICH, M. F. MR.
MAGNUS, R. LTRGEN
MASCIARELLI, J. R. MR.
MATTHEIS, W. G. MR.
MCDONNELL, T. E. MR.
MCGRATH, M. F. MR.
MCLAUGHLIN, P. M. MR.
MCNAIR, J. W. MR.
MEADOWS, L. J. MS.
MEEKS JR, A. W. DR.
MELCHER, G. K. MR.
MELOY, K. E. MS.
MERRITT, M. M. MR.
MESEROLE JR., M. MR.
MILLER, K. E. MR.
MOHLER, M. K. MR.
MOLZAHN, W. R. MR.
MONTGOMERY, J. A. DR.
MOORE, S. B. MR.
MORA, A. J. HON
MORRAL, D. C. RADML
MORRIS, D. A. MR.
MURDAY, J. S. DR.
MURPHY, P. M. MR.
MURPHY, R. E. MR.
MUTH, C. C. MS.
MYERS IV, A. G. RADM
NATHMAN, J. B. VADM
NAVAS JR., W. A. HON.
NEWSOME, L. D. RADM
NEWTON, L. A. MS.
NICKELL JR, J. R. MR.
ORNER, J. G. MR.
PANEK, R. L. MR.
PAOLETTI, C. R. MR.
PARKS, G. L. LTGEN
PAULING, D. V. MR.
PAYNE, T. MR.
PERSONS, B. J. MR.
PHELPS, F. A. MR.
PHILLIPS, R. L. RDML
PIC, J. E. MR.
PIVIROTTO, R. R. MR.
PLUNKETT, B. J. MR.
POLZIN, J. E. MR.
RANDALL, S. R. MR.
RAPS, S. P. MS.
REEVES, C. R. MR.
RHODES, M. L. MR.
ROBY, C. MS.
RODERICK, B. A. MR.
ROGERS, L. F. MR.
ROSENTHAL, R. J. MR
RYZEWIC, W. H. MR.
SANDEL, E. A. MS.
SANDERS, D. MR.
SAUL, E. L. MR.
SCHAEFER, J. C. MR.
SCHREGARDUS, D. R. MR.
SCHUBERT, D. CAPT
SCHUSTER, J. G. MR.
SHARP, M. A. RADML
SHEPHARD, M. R. MS.
SHOUP, F. E. DR.
SIMON, E. A. MR.
SLOCUM, W. MR.
SMITH, R. F. MR.
SOMOROFF, A. R. DR.
STELLOH-GARNER, C. MS.
SULLIVAN, P. E. RADML
TAMBURRINO, P. M. MR.
TARRANT, N. J. MS.
TESCH, T. G. MR.
THOMAS, J. R. BGEN
THOMPSON, R. C. MR.
THROCKMORTON JR., E. L. MR.
TOWNSEND, D. K. MS.
TRAMMELL, R. K. MR.
TULLAR, E. W. MR.
UHLER, D. G. DR.
WENNERGREN, D. M. MR.
WEST, L. E. MR.
WEYMAN, A. S. MR.
WHITON, H. W. RADM
WHITTEMORE, A. MS.
WILLIAMS, G. P. MR.
WRIGHT JR, J. W. DR.
YOUNG, C. B. RADM
YOUNG, J. J. HON.
ZEMAN, A. R. DR.

FOR FURTHER INFORMATION CONTACT: Ms. Carmen Arrowood, Office of Civilian Human Resources, telephone (202) 764–0635.

Dated: July 16, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–19105 Filed 7–25–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 26, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 22, 2003.

Angela C. Arrington,

Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: Reinstatement.
Title: Carl D. Perkins Vocational and Technical Education Act (Pub. L. 105–332)—State Plan-Perkins Annual Levels of Performance
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 25.
Burden Hours: 1,700.
Abstract: Pub. L. 105–332 requires eligible State agencies to submit a 5-year State plan, with annual revisions as the agency deems necessary, in order to receive Federal funds. Program staff review the plans for compliance and quality. This collection also solicits proposed annual levels of performance from States and outlying areas in accordance with section 113(b)(3)(A)(v) of the Carl D. Perkins Vocational and Technical Education Act (Pub. L. 105–332).

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2313. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–19053 Filed 7–25–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2003.

SUMMARY: This notice announces closing dates, priorities, and other information regarding the transmittal of grant applications for FY 2003 competitions under two programs authorized under part D, subpart 2 of the Individuals with Disabilities Education Act, as amended (IDEA). The two programs are: (1) Special Education—Research and Innovation to Improve Services and Results for Children with Disabilities (1 priority); and (2) Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities (1 priority).

Please note that significant dates for the availability and submission of applications, as well as important fiscal information, are listed in a table at the end of this notice.

Waiver of Rulemaking

It is generally our practice to offer interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the public comment requirements in the Administrative Procedure Act (5 U.S.C. 553) inapplicable to the priorities in this notice.

General Requirements

(a) The projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see section 661(f)(1)(A) of IDEA).

(c) The projects funded under these priorities must budget for a two-day Project Directors' meeting in Washington, DC during each year of the project.

(d) In a single application, an applicant must address only one absolute priority in this notice.

(e) If a project maintains a Web site, it must include relevant information and documents in an accessible form.

Page Limit: If you are an applicant, Part III of each application, the application narrative, is where you address the selection criteria that are used by reviewers in evaluating the application. You must limit Part III to the equivalent of no more than the number of pages listed in the table at the end of this notice, using the following standards:

- A "page" is 8.5" x 11" (on one side only) with one-inch margins (top, bottom, and sides).
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I—the cover sheet; Part II—the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography or references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject without consideration or evaluation any application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Project for Electronic Submission of Applications

In Fiscal Year 2003, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The two programs in this announcement: Research and Innovation to Improve Services and Results for Children with Disabilities—CFDA 84.324, and Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities—CFDA 84.326, are included in the pilot project. If you are an applicant for a grant under the two programs in this notice, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you

enter the e-Application system, you will find information about its hours of operation.

• You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.

2. The institution's Authorizing Representative must sign this form.

3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

• We may request that you give us original signatures on all other forms at a later date.

• *Closing Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the Research and Innovation to Improve Services and Results for Children with Disabilities Program, or the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities Program and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

1. You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

2. (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC, time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC, time) on the deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Research and Innovation to Improve Services and Results for Children with Disabilities Program, or the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities Program at: *http://e-grants.ed.gov.*

We have included additional information about the e-Application pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application packages.

Research and Innovation To Improve Services and Results for Children With Disabilities [CFDA Number 84.324]

Purpose of Program: To produce, and advance the use of, knowledge to improve the results of education and early intervention for infants, toddlers, and children with disabilities.

Eligible Applicants: State educational agencies (SEAs); local educational agencies (LEAs); institutions of higher education (IHEs); other public agencies; nonprofit private organizations; outlying areas; freely associated States; and Indian tribes or tribal organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) The selection criteria, chosen from the EDGAR general selection criteria in 34 CFR 75.210. The specific selection criteria for these competitions will be provided in the application package for these competitions.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

Priorities

Under 34 CFR 75.105(c)(3), we consider only applications that meet the following priority:

Absolute Priority—Research Institute on Progress Monitoring (84.324H)

Background

Progress monitoring research has focused mostly on developing basic reading and math skills for elementary school students with high incidence disabilities. The focus of this research must be expanded to include students with significant cognitive and developmental disabilities. The use of progress monitoring will determine the skills that these students have learned and need to learn, their rates of learning, and instructional modifications that are needed to improve their access to and progress in the general education curriculum.

Priority

The purpose of this priority is to support a cooperative agreement for an Institute that will conduct a program of research that addresses issues associated with the use of progress monitoring for students with significant cognitive and developmental disabilities in elementary school, middle school, and high school. The Institute's activities must include, but are not limited to, the following:

(a) Developing and implementing plans of research to identify and validate progress monitoring strategies for elementary school, middle school, and high school that will maximize achievement of students who have significant cognitive and developmental disabilities. These strategies should focus on content domains and complex skills and align with the existing curriculum.

(b) Developing a conceptual framework that builds upon current progress monitoring research, provides a basis for the intervention strategies to be studied, and includes a theoretical and empirical rationale for the research design.

(c) Establishing and validating progress monitoring standards. This activity must:

(1) Describe the process for assessing student progress given the wide range of student performance and high expectations States have for all students;

(2) Ensure that standards are relevant for students with significant disabilities;

(3) Identify and describe what assessments will be used, how often measures will be administered, how the measures will be scored, and to what grade level the measures apply; and

(4) Identify methods for effectively reporting progress to teachers and parents.

(e) Evaluating the interaction between instruction and progress monitoring. This evaluation must:

(1) Examine and improve the process for making decisions about how to target instruction that will be effective, given the identified learning characteristics of each student;

(2) Measure the interaction between progress monitoring outcomes and the modification of instruction in terms of the consistency, explicitness, intensity, and duration of the instruction as well as the fidelity to its design;

(3) Evaluate the effect that context of instruction has on student growth and outcomes;

(4) Study content of instruction and the efficacy of progress monitoring in this content;

(5) Document changes that could be made to strengthen the approach to instruction modification based upon progress monitoring results;

(6) Identify effective strategies for including progress monitoring in the Individualized Education Program development; and

(7) Examine the role of technology in progress monitoring.

The Institute must also:

(a) For projects that use group comparison research, or other research covered by the Design and Implementation Assessment Device (DIAD), utilize an overall methodology that meets the standards set out in the DIAD protocol from the What Works Clearinghouse (WWC);

(b) Report the findings, as specified in the DIAD protocol from the What Works Clearinghouse, for all publications based on group comparison research, or other research covered by the DIAD. More information about the WWC and the DIAD protocol can be found at *http://www.w-w-c.org;*

(c) Prepare and disseminate reports and documents, including publications in peer-refereed journals, on progress monitoring and other related topics for specific audiences, as appropriate, such as researchers and policymakers;

(d) Prepare and disseminate, through a Web site (in both English and Spanish) and by other means, reports and documents on research findings and related topics, including a comprehensive analysis of progress monitoring literature;

(e) Share information with the Technical Assistance and Dissemination Center on Progress Monitoring;

(f) Maintain communication with the Federal project officer through e-mail communication, as needed, and monthly conference calls. The Institute must submit annual performance reports and provide additional written materials, as needed, for the Federal project officer to monitor the Institute's work;

(g) Establish, maintain, and meet at least annually with an advisory committee consisting of researchers, representatives of State and local agencies, individuals with significant disabilities, parent educators, TA providers, professional organizations and advocacy groups, and representatives of other appropriate groups to review and advise on the Institute's design, plans, products, and activities; and

(h) In addition to the three two-day meetings listed in the General Requirements section of this notice, budget for, at least, two annual planning meetings and, at least, eight two-day trips annually as requested by OSEP to attend meetings such as Department briefings, Department sponsored conferences, and other OSEP-requested activities.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary which review will be conducted during the last half of the project's second year in Washington, DC. Projects must budget for the travel associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Institute; and

(c) The degree to which the project's design and methodology demonstrate the potential for advancing significant new knowledge.

Special Education—Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities [CFDA Number 84.326]

Purpose of Program: The purpose of this program is to provide technical assistance and information—through such mechanisms as institutes, regional resource centers, clearinghouses, and programs that support States and local entities in building capacity—to (1) improve early intervention, educational, and transitional services and results for children with disabilities and their families; and (2) address systemic-change goals and priorities.

Eligible applicants: State educational agencies, local educational agencies, institutions of higher education, other public agencies, nonprofit private organizations, for-profit organizations, outlying areas, freely associated States, and Indian tribes or tribal organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) The selection criteria, chosen from the general selection criteria in 34 CFR 75.210. The specific selection criteria for these competitions will be provided in the application package for these competitions.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Priorities

Under 34 CFR 75.105(c)(3) we consider only applications that meet the following priority:

Absolute Priority—Technical Assistance and Dissemination Center on Progress Monitoring (84.326W)

Background

The use of progress monitoring can lead to improved learning outcomes for students with and without disabilities and higher expectations for students through more frequent instructional modifications. Although progress monitoring is proving to be a powerful tool, it is not widely utilized. Widespread use of progress monitoring will provide more timely information on the extent to which students with disabilities are making progress and are prepared for statewide assessments.

Priority

The purpose of this priority is to support a cooperative agreement for a Center that will provide technical assistance for State educational agencies (SEAs) and local educational agencies (LEAs) and disseminate information regarding progress monitoring, particularly for use in content areas taught in grades kindergarten through five.

The Center's activities must include, but are not limited to, the following:

(a) Working directly with the Office of Special Education (OSEP) Technical Assistance Network, States, school districts, national teacher organizations, and other relevant programs and organizations on the scale up and sustainability of progress monitoring in schools, particularly in grades kindergarten through five. This activity must include:

(1) Setting student expectations, selecting measures of progress, scoring and analyzing progress monitoring data, and using data to institute changes in instruction, policy, and teacher accountability;

(2) Establishing a cadre of national trainers and a system for communication and discussion among States implementing progress monitoring;

(3) Conducting an annual survey of States to determine the current status of

implementing progress monitoring, including how States use progress monitoring and how States promote its use, and evaluating policies and practices that sustain its use;

(4) Identifying States and LEAs that have successfully used progress monitoring to improve outcomes for students with disabilities;

(5) Fostering partnerships between LEAs that have successfully used progress monitoring and others that want to implement progress monitoring, and observing and documenting the process of change for those LEAs who have not previously implemented progress monitoring;

(6) Providing technical assistance to States based upon their needs and commitment to implementation of progress monitoring. This must include providing technical assistance to three OSEP-identified States per year. This effort may include the following: (i) Collaborative Web-based technical assistance activities, (ii) coordination of and participation in State-to-State communities of practice, and (iii) direct technical assistance to OSEP-specified States through partnerships between OSEP and selected States.

Note: Staff time and project resources dedicated to provide technical assistance to OSEP-specified States will be negotiated with OSEP as part of the cooperative agreement within 30 days of the project award (OSEP anticipates that technical assistance to OSEP-specified States could average approximately $40,000 per year. Budgets should be developed with this in mind);

(7) Developing and applying strategies for the dissemination of information to specific audiences including teachers, families, administrators, policymakers, and researchers. Such strategies must involve collaboration with other technical assistance providers, organizations, and researchers as described above; and

(8) Establishing an internal evaluation to:

(i) Document successful practices and analyze less successful approaches to determine changes that could strengthen these less successful approaches;

(ii) Examine patterns and strategies for implementing effective use of progress monitoring across successful LEAs; and

(iii) Identify where additional areas of limited knowledge research is needed.

(b) Conducting National and regional meetings including large-scale dissemination conferences, focused trainer forums, topical symposium, and other meetings on progress monitoring and related issues as requested by OSEP. At a minimum, the Center must hold trainer forums every other year, a symposium in the off years, and a national conference in year 5.

(c) Preparing and disseminating reports and documents, on progress monitoring and other related topics for specific audiences, as appropriate, such as parents, administrators, teachers, related-services personnel, researchers, and individuals with disabilities. This effort must also include compiling documentation to assist LEAs in implementing progress monitoring and other technical assistance providers in developing training materials.

(d) Preparing and disseminating, through a Web site (in both English and Spanish) and by other means, reports and documents on research findings and related topics, including a comprehensive analysis of progress monitoring literature.

(e) Sharing information with the Research Institute on Progress Monitoring.

(f) Maintaining communication and collaboration with other Office of Special Education and Rehabilitative Services (OSERS)—funded projects such as the Office of Special Education Regional Resource Centers; the IDEA Partnership Project; parent projects; other OSEP progress monitoring, dissemination, and synthesis projects; and other projects, as appropriate.

(g) Maintaining communication with the Federal project officer through e-mail communication, as needed, and monthly conference calls. The Center must submit annual performance reports and provide additional written materials, as needed, for the Federal project officer to monitor the Center's work.

(h) Establishing, maintaining, and meeting at least annually with an advisory committee consisting of technical assistance providers, researchers, representatives of State and local agencies, individuals with disabilities, parents, professional organizations and advocacy groups, and representatives of other appropriate groups to review and advise on the Center's design, plans, products, and activities.

(i) Establishing an external evaluation mechanism to analyze the implementation of progress monitoring and the overall impact of the Center's work, particularly its effect on student outcomes. The Center must report its evaluation findings annually to the Federal project officer.

(j) Coordinating with the National Dissemination Center for Children with Disabilities, which OSEP expects to fund this year, to ensure timely and accurate dissemination of progress monitoring information. Evidence of coordination and proposed outcomes of the coordination must be reported to the Federal project officer.

(k) Prior to developing any new product, whether paper or electronic, submit for approval a proposal describing the content and purpose of the product to the document review board of the National Dissemination Center for Children with Disabilities.

(l) In addition to the three two-day meetings listed in the General Requirements section of this notice, budget for, at least, two 2-day annual planning meetings and at least eight two-day trips annually as requested by OSEP to attend meetings such as Department briefings, Department sponsored conferences, and other OSEP-requested activities.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary which review will be conducted during the last half of the project's second year in Washington, DC. Projects must budget for the travel associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center; and

(c) Evidence of the degree to which the Center's activities have contributed to a changed practice and improved student outcomes.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT APPLICATION NOTICE FOR FISCAL YEAR 2003

CFDA No. and name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated available funds	Maximum award (per year)*	Project period	Page limit	Estimated number of awards
84.324H Research Institute on Progress Monitoring.	07/28/03	08/27/03	09/29/03	$1,000,000	$1,000,000	Up to 60 mos.	70	1
84.326W Technical Assistance and Dissemination Center on Progress Monitoring.	07/28/03	08/27/03	09/29/03	800,000	800,000	Up to 60 mos.	70	1

*We will reject any application that proposes a budget exceeding the maximum award for a single budget period of 12 months.
Note: The Department of Education is not bound by any estimates in this notice.

For Applications Contact: If you want an application for any competition in this notice, contact Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, Maryland 20794–1398. Telephone (toll free): 1–877–4ED–Pubs (1–877–433–7827). FAX: 301–470–1244. Individuals who use a telecommunications device for the deaf (TDD) may call (toll free) 1–877–576–7734.

You may also contact Ed Pubs via its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify the competition by the appropriate CFDA number.

FOR FURTHER INFORMATION CONTACT: If you want additional information about any competition in this notice, contact the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the Grants and Contracts Services Team under **FOR FURTHER INFORMATION CONTACT**. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Intergovernmental Review

All programs in this notice (except for the Research and Innovation to Improve Services and Results for Children with Disabilities Program) are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. This document provides early notification of our specific plans and actions for these programs.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the internet at the following site: *www.ed.gov/legislation/FedRegister*. To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo/nara/index.html*.

Program Authority: 20 U.S.C. 1405, 1461, 1471, 1472, and 1485.

Dated: July 22, 2003.

Loretta Petty Chittum,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–19081 Filed 7–25–03; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2003.

SUMMARY: This notice announces closing dates, priorities, and other information regarding the transmittal of grant applications for FY 2003 competitions under three programs authorized under part D, subpart 2 of the Individuals with Disabilities Education Act, as amended (IDEA). The three programs are: (1) Special Education—Research and Innovation to Improve Services and Results for Children with Disabilities (2 priorities); (2) Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities (2 priorities); and (3) Special Education—Technology and Media Services for Individuals with Disabilities (3 priorities).

Please note that significant dates for the availability and submission of applications, as well as important fiscal information, are listed in a table at the end of this notice.

Waiver of Rulemaking

It is generally our practice to offer interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the public comment requirements in the Administrative Procedure Act (5 U.S.C. 553) inapplicable to the priorities in this notice.

General Requirements

(a) The projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see section 661(f)(1)(A) of IDEA).

(c) The projects funded under these priorities must budget for a two-day Project Directors' meeting in

Washington, DC during each year of the project.

(d) In a single application, an applicant must address only one absolute priority in this notice.

(e) If a project maintains a Web site, it must include relevant information and documents in an accessible form.

Page Limit

If you are an applicant, part III of each application, the application narrative, is where you address the selection criteria that are used by reviewers in evaluating the application. You must limit part III to the equivalent of no more than the number of pages listed in the table at the end of this notice, using the following standards:

- A "page" is 8.5" x 11" (on one side only) with one-inch margins (top, bottom, and sides).
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to part I—the cover sheet; part II—the budget section, including the narrative budget justification; part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography or references, or the letters of support. However, you must include all of the application narrative in part III.

We will reject without consideration or evaluation any application if —

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Project for Electronic Submission of Applications

In Fiscal Year 2003, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The three programs in this announcement: Research and Innovation to Improve Services and Results for Children with Disabilities—CFDA 84.324, Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities—CFDA 84.326, and Technology and Media Services for Individuals with Disabilities—CFDA 84.327, are included in the pilot project. If you are an applicant for a grant under any of the three programs, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the Research and Innovation to Improve Services and Results for Children with Disabilities Program, the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities Program, or the Technology and Media Services for Individuals with Disabilities Program and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

1. You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

2. (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 and 3:30 p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension you must contact either (1) The person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Research and Innovation to Improve Services and Results for Children with Disabilities Program, the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities Program, or the Technology and Media Services for Individuals with Disabilities Program at: *http://e-grants.ed.gov.*

We have included additional information about the e-Application pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application packages.

Research and Innovation To Improve Services and Results for Children With Disabilities [CFDA Number 84.324]

Purpose of Program

To produce, and advance the use of, knowledge to improve the results of education and early intervention for infants, toddlers, and children with disabilities.

Eligible Applicants

State educational agencies (SEAs); local educational agencies (LEAs); institutions of higher education (IHEs); other public agencies; nonprofit private organizations; outlying areas; freely associated States; and Indian tribes or tribal organizations.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; and (b). The selection criteria, chosen from the EDGAR general selection criteria in 34 CFR 75.210. The specific selection criteria for these competitions will be provided in the application package for these competitions.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Priorities

Under 34 CFR 75.105(c)(3), we consider only applications that meet one of the following priorities:

Absolute Priority 1—Research Validation and Implementation Project for Children Who Are Deaf-Blind (84.324D)

Background

New evidence-based research findings, including those related to hearing impairment, visual impairment, and other disabilities, have not been rapidly or systematically applied to children who are deaf-blind. These children are at high risk for exclusion from evidence-based research practices that promote high student achievement.

Priority

This priority supports a cooperative agreement to validate evidence-based research findings by translating those findings into procedures usable by personnel serving children who are deaf-blind, implementing new intervention procedures in home and community settings, and evaluating the effectiveness of the new procedures in meeting the early intervention and educational needs of children who are deaf-blind.

Projects are expected to address one or more of the following areas of investigation: (a) Assessment of communication and cognitive development in infants, toddlers, and young children who are deaf-blind; (b) improving communication and language development for children who are deaf-blind including alternative forms for those children who do not use signs or speech; (c) learning strategies that encourage systematic instruction with a clear focus on targeting specific educational outcomes and producing knowledge on how these outcomes are achieved and replicated; (d) use of innovative technology to increase access to education and enhance learner performance; (e) transition from school to work; and (f) improved strategies and models for the use of paraprofessionals, including the intervenor. An intervenor is a term used in the deaf-blind community to describe an individual who provides direct support for all or part of the instructional day to a student who is deaf-blind.

The project must:

(a) Form a consortium with one or more research institutions at other locations to (1) Validate new approaches with multiple children and in multiple settings and (2) replicate initial evaluation findings.

(b) Identify specific research findings and the interventions or strategies based on those findings that will be implemented and evaluated;

(c) Carry out the project activities within a conceptual framework that provides a basis for the areas of investigation, the interventions or strategies to be implemented and evaluated, the evaluation design, and the target population;

(d) Produce a variety of descriptive and outcome data, including (1) Information regarding the settings, the service providers, the children, and if applicable, their families, targeted by the project (*e.g.*, age, disabilities, skill and ability levels); and (2) multiple, performance outcome data regarding the children and families who are the focus of the interventions or strategies;

(e) Address causal questions by employing randomized experimental designs; to the extent appropriate; and

(f) Translate research findings into demonstrable practice that provides the informational bridge necessary to (1) Move research into practice, and (2) reduce lag time between research and implementing practice for children who are deaf-blind.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition —

(a) The recommendation of a review team consisting of experts selected by the Secretary which review will be conducted during the last half of the project's second year in Washington, DC. The project must budget for the travel associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The degree to which the project's design and methodology demonstrate the potential for advancing significant new knowledge.

Absolute Priority 2—Center on Outcomes for Infants, Toddlers, and Preschoolers With Disabilities (84.324L)

Background

The NCLB Act and the IDEA Amendments of 1997 emphasize accountability in improving results for children with disabilities. With the Administration's "Good Start, Grow Smart" early childhood initiative, programs serving young children such as Head Start, Early Head Start, and State-funded Pre-Kindergarten programs are beginning to develop standards, outcome measures, and accountability systems to track the progress of the children they serve.

As part of this emphasis on accountability for results, reliable and valid outcome measures designed for young children with disabilities and their families must be developed and implemented.

Priority

The purpose of this priority is to fund a cooperative agreement to support a center to provide national leadership in the development and use of outcome information by early intervention and preschool special education programs and personnel. This Center must identify current and best practices in measuring outcomes for children with disabilities birth through five years of age and their families, served under parts C and B of IDEA, including performance indicators and assessment methodologies. The Center must accomplish this mission through a combination of research, technical assistance, dissemination, collaboration, and other leadership functions.

The Center's research activities must include, but are not limited to:

(a) Conducting an annual survey of State educational agencies (SEAs), local educational agencies (LEAs), and part C Lead Agencies (LAs) to determine their current progress in identifying outcomes for children with disabilities birth through five years of age and their families, and in developing performance indicators and assessment methodologies to measure the progress of children birth through five years of age and their families served under IDEA (including determining the age range of the children in accountability systems and whether or not they are aligned with other accountability systems such as Head Start, State Pre-K, and K–12 accountability systems);

(b) Evaluating State and local policies and practices to determine valid and technically adequate approaches to measuring the progress of young children with disabilities (in areas such as cognition, pre-reading and language skills, communication, social-emotional development, adaptive/self-help skills, and physical development);

(c) Conducting an annual review of State reports and parts C and B data to track the development of State parts C and B accountability systems and the status of State data systems;

(d) Synthesizing research on relevant topics such as the technical adequacy of outcome measures for young children vis-a-vis the range of disabilities defined under IDEA; the variation of eligibility criteria for services among States; the measurement of satisfaction of parents regarding children's progress; the impact of families on children's outcomes; the methods for aggregating data from child and family measures for use at the local, State, and Federal level; and procedures for data analysis and reporting;

(e) Conducting, collaborating in, or commissioning focused research studies on topics related to outcomes and measurement of the performance of programs serving young children with disabilities and their families, including work to ensure that technically adequate measures of outcomes for young children with disabilities are identified or developed; and

(f) Conducting or commissioning a synthesis of the measures and approaches to measurement used for assessment of family outcomes, including work to ensure that technically adequate measures of outcomes for families are identified or developed.

The Center's technical assistance and dissemination activities must include, but are not limited to:

(a) Preparing and disseminating reports and documents on research findings and related topics;

(b) Maintaining a world wide Web site with relevant information and documents in an accessible formats for individuals with disabilities;

(c) Conducting national and regional meetings, in collaboration with other centers such as the National Early Childhood Technical Assistance Center, the Regional Resource Centers, and the National Center for Special Education Accountability Monitoring, and the national and regional parent technical assistance centers to assist part C lead agencies, SEAs, LEAs, and local agencies in working collaboratively with stakeholders to develop accountability systems to measure the progress of children birth through five served under IDEA.

(d) Working directly with State educational agencies, local educational agencies, local agencies, and other stakeholders to develop and improve accountability systems to measure progress of children with disabilities, birth through five; and

(e) Developing and applying strategies for dissemination of information to specific audiences, including teachers, service providers, families, administrators, policymakers, and researchers. Such strategies must involve collaboration with other technical assistance providers, organizations, and researchers as described below.

The Center's collaboration and other leadership activities must include, but are not limited to:

(a) Maintaining communication and collaboration with other technical assistance providers (including the National Early Childhood Technical Assistance Center, the Regional Resource Centers, the Federal Resource Center, the National Center for Special Education Accountability Monitoring, the National Center on Educational Outcomes, Parent Training and Information Centers, and others) and organizations (including the National Association of State Directors of Special Education, the Council for Exceptional Children, the Infant and Toddler Coordinator's Association, Council of Chief State School Officers, parent and disability organizations, and others), as well as technical assistance projects funded under Office of Elementary and Secondary Education and Head Start concerning the development of outcome measures for young children with disabilities and accountability-related activities;

(b) Maintaining communication and collaboration with researchers (including researchers funded by the Institute of Education Sciences, the National Institute of Child Health and Human Development, the National Institute of Mental Health, and Administration for Children and Families) studying outcome measures for young children, accountability systems for programs serving young children, and related topics in order to promote the use of research findings and measures;

(c) Working directly with State educational agencies, local educational agencies, local agencies, technical assistance providers, parent organizations, parent trainers, other relevant organizations, and researchers to build consensus among stakeholders on what is important to measure, how the measurement should be conducted, the importance of using outcome indicators in early intervention and preschool special education, and the selection of child outcomes and indicators and family outcomes and indicators. The strategies for developing measures should include broad stakeholder input as to what they are, and how they should be considered;

(d) Convening conferences, at the request of OSEP, on topics related to the development of outcome measures and accountability systems for young children served under IDEA; and

(e) Collaborating and coordinating with Head Start and regular early childhood programs.

The Center must also:

(a) Establish, maintain, and meet at least annually with an advisory committee consisting of representatives of State and local educational and part C lead agencies, individuals with disabilities, parents of children with disabilities, including parents of young children with disabilities, educators, service providers, professional organizations and advocacy groups, researchers, and other appropriate groups to review and advise on the Center's activities and plans. The committee membership must include individuals who are from communities representing rural, low-income, urban, and limited English proficient populations;

(b) Establish, maintain, and meet at least annually with a technical workgroup consisting of SEA, LEA, and part C LA data specialists, researchers, and other appropriate individuals to advise on the Center's technical and research activities;

(c) Fund as project assistants at least three doctoral students per year who have concentrations in relevant topics such as early childhood special education, early intervention, assessment, educational policy, and administration;

(d) In addition to the two-day Project Directors Meeting listed in the General Requirements section of this notice, budget for two additional two-day trips annually to Washington, DC, to attend an additional Project Director meeting and to attend an OSEP Leadership Conference; and one trip a month to attend appropriate meetings convened by the Department of Education, and other Centers and organizations.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary which review will be conducted during the last half of the project's second year in Washington, DC. Projects must budget for the travel associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center;

(c) The degree to which the project's design and methodology demonstrates the potential for advancing significant new knowledge; and

(d) Evidence of the degree to which the project's activities have contributed to changed practice and improved outcomes for children with disabilities.

Special Education—Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities [CFDA Number 84.326]

Purpose of Program

The purpose of this program is to provide technical assistance and information—through such mechanisms as institutes, regional resource centers, clearinghouses, and programs that support States and local entities in building capacity—to (1) Improve early intervention, educational, and transitional services and results for children with disabilities and their families; and (2) address systemic-change goals and priorities.

Eligible Applicants

State educational agencies, local educational agencies, institutions of higher education, other public agencies, nonprofit private organizations, for-profit organizations, outlying areas, freely associated States, and Indian tribes or tribal organizations.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) The selection criteria, chosen from the general selection criteria in 34 CFR 75.210. The specific selection criteria for these competitions will be provided in the application package for these competitions.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Priorities

Under 34 CFR 75.105(c)(3) we consider only applications that meet one of the following priorities:

Absolute Priority 1—National Dropout Prevention Center for Students With Disabilities (84.326Q)

Background

The National Longitudinal Transition Study (NLTS) reported that 38 percent of students with disabilities who left school did so by dropping out, 30 percent enrolled in high school but did not finish, and 8 percent dropped out before entering high school. In 1996, Blackorby and Wagner found the dropout rate for students with disabilities to be approximately twice that of regular education students. Through technical assistance that will lead to improved results for children with disabilities, this priority is expected to have a significant impact on dropout prevention, the improvement of educational services, and interagency coordination.

Priority

The Secretary establishes an absolute priority for a cooperative agreement to support a National Dropout Prevention Center for Students with Disabilities to provide guidance and assistance to States, schools, families, agencies, and communities in designing, implementing, and evaluating effective comprehensive dropout prevention programs based on scientifically validated practices for students with disabilities. The Center will focus on two broad areas: (1) Prevention and Educational Programs, and (2) Reentry. The Center must address these areas through knowledge development activities and technical assistance and dissemination.

Knowledge development activities of the Center must include, but are not limited to:

(a) Conducting an annual survey of States to determine the current status of implementation of scientifically validated dropout prevention and educational and reentry programs and evaluating policies and practices that sustain or pose barriers to these interventions. Reentry program status must include information on service options such as the general education diploma (GED) participation, test accommodations on the GED, and adult education programs.

(b) Contracting with the What Works Clearinghouse to identify effective exemplary programs for wide replication.

(c) Organizing and synthesizing research, policy, and practice and advances in the two focus areas.

Technical assistance and dissemination activities of the Center must include, but are not be limited to:

(a) Responding to written and telephone inquiries with research-validated information.

(b) Collaborating with the National Center on Secondary Education and Transition and the Office of Special Education Programs (OSEP)-supported Promoting What Works Synthesis Center on the preparation and dissemination of information materials designed to increase awareness of and the use of research-validated practices by a variety of audiences (e.g., educators, policy makers, service providers, families, community agencies).

(c) Developing partnerships and communications around dropout issues with leaders and key stakeholders in special education and regular education, State and school level administrators, and consumer and advocacy organizations such as the Parent Training and Information Centers (PTIs).

(d) Establishing a coordinated network of researchers, practitioners, policy makers, families, service providers, community agencies, business groups who will serve as resources to States in designing and implementing effective programs.

(e) Providing for information exchanges between researchers and practitioners who direct effective model programs and those seeking to design, implement, or replicate these models. Information must be exchanged through a variety of methods, including a national forum during the first year, and a national forum in the fifth year. These exchanges must be designed to expand the coordinated interagency network, create a dialog about systemic

comprehensive services, develop awareness of the scientifically based practices in dropout prevention and education programming, and reentry. This forum must include exemplars and descriptions of model programs addressing the two focus areas.

(f) Packaging a set of effective models that would permit others to replicate or implement effective practices that also include alternative approaches to delivery of effective services for students. The package must identify barriers and effective programming and suggest effective proven strategies for working with students with disabilities from low socio-economic backgrounds, speakers of English as a second language, those who become pregnant, and those who repeat a grade or more.

(g) Developing and implementing strategic activities to provide technical assistance to States to assist them in the development of effective systems to address the dropout problem.

(h) Coordinating with the OSEP contractor in working with States to improve data quality and analyze the approaches to assess the nature and extent of the problem.

(i) Assisting States in developing model districts and school sites and help States replicate these models throughout the State.

(j) Providing technical assistance to States focused on needs identified in the State survey and State's commitment to implementation.

(k) Submitting for approval a proposal describing the content and purpose of any new product, whether paper or electronic, to the document review board of OSEP's newly funded Dissemination Center, for which OSEP expects to fund this year.

(l) Providing OSEP-specified technical assistance to States. This effort may include participation in: (1) Collaborative Web-based technical assistance activities, (2) coordination of and participation in State-to-State communities of practice, and (3) direct technical assistance to OSEP-specified States through partnerships between OSEP and selected States. Staff time and project resources dedicated to provide technical assistance to OSEP-specified States will be negotiated with OSEP as part of the cooperative agreement within 30 days of the project award (OSEP anticipates that technical assistance to OSEP-specified States could averaged approximately $40,000 per year. Budgets should be developed with this in mind).

The Center must also:

(a) Meet with the OSEP project officer in the first two months of the project to review and refine the strategic plan of technical assistance and dissemination approaches;

(b) In addition to the two-day Project Director's Meeting listed in the general requirements section of this notice, budget for at least two annual planning meetings and eight two-day trips annually as requested by OSEP for Department briefings, Department sponsored conferences and other events.

(c) Maintain communication with the Federal project officer through monthly phone conversations and e-mail communication as needed. The Center must submit annual performance reports and provide additional written materials as needed for the project Federal officer to monitor the Center's work.

(d) Establish, maintain and meet at least biannually with an advisory committee consisting of representatives of State, local agencies, individuals with disabilities, persons from underrepresented populations, parent educators, professional organizations or advocacy groups, researchers, and other appropriate groups to review and advice the Center's activities and plans.

(e) Conduct evaluations of its specific activities and of the overall impact of its work. The Center must report its evaluation findings annually to the Federal project officer.

(f) Maintain a Web site with relevant information and documents in an accessible format with information available in both English and Spanish.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary which review will be conducted during the last half of the project's second year in Washington, DC. Projects must budget for the travel associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center; and

(c) Evidence of the degree to which the Center's activities have contributed to a changed practice and improved student outcomes.

Absolute Priority 2—Center on Positive Behavioral Interventions and Supports (84.326S)

Background

In 1998 the Office of Special Education Programs (OSEP) funded the establishment of the Center on Positive Behavioral Interventions and Supports. This targeted technical assistance effort was a response to the newly reauthorized IDEA, which specified the need for the Individualized Education Program teams to consider, when appropriate, positive behavioral interventions and supports and other strategies to address problem behavior. Based on a strong history of application of these practices to improve the behavior of primarily individual students with mental retardation, recent research and demonstration has focused on expanding these practices to groups of students, classrooms, schools, districts, and States, focusing on building infrastructures of support that ultimately improve the school environment and the overall quality of life for children with challenging behaviors.

OSEP established this Center to give schools capacity-building information and technical assistance for identifying, adapting, and sustaining effective schoolwide disciplinary practices.

The Center had two primary foci: (1) Broad dissemination to schools, families, and communities about a technology of schoolwide positive behavioral interventions and support and (2) Demonstrations at the levels of individual students, schools, districts, and States of the feasibility and effectiveness of schoolwide positive behavioral interventions and support. The follow-up investment in this area will continue the work of the past five years building on the emerging Positive Behavioral Support (PBS) Blueprint for Practice with an emphasis on building State and district level infrastructures of support to enable efficient and effective large scale implementation and sustainability of positive behavior support. For further information on the PBS Blueprint for Practice and the work of the past investment go to *http://www.PBIS.org*.

Priority

This priority will support a cooperative agreement for a technical assistance center focusing on dissemination of research-based schoolwide practices, and systems of positive behavioral support that foster positive learning and teaching environments and support the large-scale implementation and sustainability of those practices for school-aged children. Positive behavioral support has been defined as a broad range of systematic and individualized strategies for achieving important social and learning outcomes while preventing problem behavior. The Center must engage in a variety of leadership and technical assistance activities regarding positive behavioral supports and related topics such as: schoolwide discipline systems; classroom and nonclassroom management; individual student behavioral management; functional assessment-based behavioral support planning; social skills and self-management instruction; safe schools; discipline and behavioral support policy; and family, school, and community partnerships.

The Center's knowledge development activities must include, but are not limited to, the following:

(a) Conducting an annual survey of States to determine the current status of establishing Statewide infrastructures to support systems of positive behavioral support and evaluate any policies and practices that sustain or pose barriers to these systems.

(b) Continuing documentation of the PBS practices by continued demonstrations across the continuum of primary, secondary, and tertiary interventions in elementary, middle, and high schools at the local level and system implementation at the district and State levels with particular emphasis on (1) Function-based support at the tertiary level; (2) district and State level implementation; (3) students in high schools; and (4) coordination with other agencies such as mental health and juvenile justice.

(c) Establishing a mechanism for assessing and synthesizing the growing research base on positive behavioral support. This process should include the establishment of a network of researchers to assist the Center in the analysis and synthesis of the current and emerging research on PBS and other related topics.

(d) Maintaining a database suitable for collecting and analyzing information from schools, districts and States on behavior measures such as office discipline referrals and other appropriate data to enable schools to make data-based decisions and track progress regarding PBS. The Center must have training and materials available to facilitate implementation of the data collection system at local sites. The Center will also be responsible for analysis of the data and producing reports on trends and patterns related to PBS and other topics as requested by OSEP such as analysis of urban and rural schools and overrepresentation issues.

The Center's technical assistance activities must include, but are not limited to, the following:

(a) Maintaining a user-friendly Web site with relevant information and documents in an accessible format with information available in both English and Spanish.

(b) Working directly with States and school districts to (1) Improve systemic implementation of positive behavioral supports and (2) establish and maintain an evaluation system based on a standard protocol such as the school evaluation tool (SET, *see http://www.pbis.org*) to measure progress of implementation. This work must also include a plan for the establishment of a cadre of national trainers and a system for communication and discussion among State implementation teams.

(c) Conducting national and regional meetings including large-scale dissemination conferences, focused trainer forums, topical symposia and other meetings on PBS and related issues as requested by OSEP. At a minimum the Center must hold trainer forums every other year, a symposia in the off years and a national conference in year 5.

(d) Preparing and disseminating reports and documents on positive behavioral support and other related topics such as those listed above including publications in peer-referred journals.

(e) Developing and applying strategies for the dissemination of information to specific audiences including teachers, families, administrators, policymakers, and researchers. Such strategies must involve collaboration with other technical assistance providers, organizations and researchers as described above.

(f) Developing partnerships with relevant programs and organizations to assist with the scale up and sustainability efforts. Partners are not limited to but must include national teacher organizations, school administrators, parent organizations, and teacher trainers.

(g) Prior to developing any new product, whether paper or electronic, submitting for approval a proposal describing the content and purpose of any new product whether paper or electronic, to the document review board of OSEP's new Dissemination Center which OSEP expects to fund this year.

(h) Providing OSEP-specified technical assistance to States. This effort may include participation in: (1) Collaborative Web-based technical assistance activities, (2) coordination of and participation in State-to-State communities of practice, and (3) direct technical assistance to OSEP-specified States through partnerships between OSEP and selected States. Staff time and project resources dedicated to provide technical assistance to OSEP-specified States will be negotiated with OSEP as part of the cooperative agreement within 30 days of the project award (OSEP anticipates that technical assistance to OSEP-specified States could average approximately $40,000 per year. Budgets should be developed with this in mind).

The Center must also:

(a) Meet with the OSEP project officer and other appropriate staff in DC within the first two months of the project to clarify project activities and develop a strategic plan for technical assistance and dissemination.

(b) Maintain communication with the Federal project officer through monthly phone conversations and e-mail communication as needed. The Center must submit annual performance reports and provide additional written materials as needed for the Federal project officer to monitor the Center's work.

(c) Establish, maintain and meet at least annually with an advisory committee consisting of representatives of State or local agencies, individuals with disabilities, parent educators, professional organizations or advocacy groups, researchers and other appropriate groups to review and advise the Center's activities and plans.

(d) Maintain communication and collaboration with other OSERS-funded projects such as the OSEP Regional Resource Centers, the IDEA Partnership Project, the Parent Training and Information Centers and other parent projects, the National Institute on Disability and Rehabilitation Research's Research Training Center on PBS, other OSEP PBS projects, dissemination and synthesis projects, and other projects as appropriate.

(e) Fund, as project assistants, three doctoral students per year who have concentrations in relevant topics such as special education or behavioral disorders.

(f) Conduct evaluations of its specific activities and of the overall impact of its work. The Center must report its evaluation findings annually to the Federal project officer.

(g) In addition to the two-day Project Meeting listed in the general requirements section of this notice, budget for an additional two-day project meeting to attend the Research Project Meeting and at least two annual planning meetings; and eight two-day trips annually as requested by OSEP to attend meetings such as Department briefings, Department-sponsored conferences; and other OSEP-requested activities.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary which review will be conducted during the last half of the project's second year in Washington, DC. Projects must budget for the travel associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center; and

(c) Evidence of the degree to which the Center's activities have contributed to a changed practice and improved student outcomes.

Special Education—Technology and Media Services for Individuals With Disabilities [CFDA Number 84.327]

Purpose of Program

To: (1) Improve results for children with disabilities by promoting the development, demonstration, and use of technology; (2) support educational media activities designed to be of educational value to children with disabilities; and (3) provide support for some captioning, video description, and cultural activities.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) The selection criteria for this priority are chosen from the EDGAR general selection criteria in 34 CFR 75.210. The specific selection criteria for these competitions will be provided in the application package for these competitions.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Eligible Applicants

State and local educational agencies; IHEs; other public agencies; nonprofit private organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

Priority

Under 34 CFR 75.105(c)(3), we consider only applications that meet the following priorities:

Absolute Priority 1—Family Center on Technology and Disability (84.327F)

Background

Parents and families play a critical role in obtaining the benefits of assistive technology for students with disabilities. Parents must often advocate for making assistive technology available to their children and can help in selecting, planning, and implementing assistive technology. Family support is often an important determinant of the success or failure of assistive technology.

To fulfill these functions, parents and families must have up-to-date information about various forms of assistive technology and the processes for obtaining assistive technology devices and services. Parents and families may need to learn skills in using technology and helping students with disabilities in its use.

There is a national infrastructure of programs and organizations that can potentially address the assistive technology-related needs of parents and families. These include the Parent Training and Information Centers and the Community Parent Resource Centers funded by the Office of Special Education Programs (OSEP), disability and advocacy groups, professional associations, community groups, etc. However, these programs and organizations are often not adequately prepared to provide information and services related to assistive technology.

Since 1998, OSEP has funded a center called the Family Center on Technology and Disability (FCTD) not to work directly with parents but instead to work with other relevant programs and organizations to improve the availability and quality of technology-related information and support to families of children with disabilities. Information about FCTD is available at the Center's Web site at: *http://www.fctd.info*. The contract supporting FCTD is currently scheduled to end in September 2003.

Priority

The purpose of this priority is to support a cooperative agreement for a Center to improve the availability and quality of technology-related information and support to families of children with disabilities. The Center's activities must include, but are not limited to:

(a) *Developing a strategic plan.* The Center must review existing data and literature and develop a strategic plan for increasing the capacity of projects and organizations such as the Parent Training and Information Centers and the Community Parent Resource Centers funded by OSEP, disability and advocacy groups, professional associations, and community groups to meet the assistive technology needs of parents and families within the parameters of this priority. The purpose of this strategic plan is to integrate the Center's various activities, as described below, into a cohesive process for improving the capacity of projects and organizations to meet the assistive technology needs of parents and families.

(b) *Maintaining and expanding a broad-based network.* The Center must retrieve all available information on network members from the current FCTD contractor and establish a database and communication system for maintaining the network. The Center must also establish and carry out a plan for identifying and recruiting as network members other relevant programs and organizations that can help to address the technology-related needs of parents and families of children with disabilities.

(c) *Providing information and support to the network.* The Center must develop and carry out plans for providing network members with information and resources that will enable them to better meet the assistive technology needs of the parents and families with whom they work. The Center must develop and carry out plans for fostering communication and collaboration with and among the programs and organizations in the network to better meet the assistive technology needs of the parents and families. The Center must provide for information exchange through a newsletter.

(d) *Developing strategic responses to direct inquiries from parents and families.* It is likely that the Center will receive inquiries about assistive technology directly from parents and families of children with disabilities, even though it is not intended to provide this type of direct assistance. The Center must develop a plan for referring these contacts to the appropriate members of the network, and for using them as an opportunity for developing the capacity of projects and organizations to respond to the needs expressed.

(e) *Collecting, revising, developing, and disseminating materials.* The Center must retrieve the resource review database and materials collected by the current FCTD contractor and establish a searchable online database to continue making these reviews available to the public. The Center must continue to update and expand the resource review database by removing outdated materials and adding new materials. The Center must, to the maximum extent possible, include high quality resources that are available free of charge and downloadable from the Internet. The Center must focus on materials that are useful in meeting the assistive technology needs of parents and families, and must avoid, to the maximum extent possible, duplicating the functions of other online resources such as *assitivetech.net* and *abledata.com*.

(f) *Participating in meetings, conferences, and events.* The Center must participate in meetings, conferences, and other events to improve the capacity of other projects and organizations to meet assistive technology needs of parents and families. The Center's participation may include, but is not limited to, delivering presentations, exhibiting and demonstrating materials, conducting discussions, and participating in work groups.

(g) *Maintaining an accessible Web site.* The Center must maintain an accessible site on the Web with information about the Center, the searchable resource review database, topical online discussions, links to other relevant sites, newsletters, and other resources.

(h) *Conducting evaluations.* The Center must conduct evaluations of its activities to determine if it is meeting needs effectively and efficiently. The Center must report its evaluation findings annually to the Federal project officer.

(i) *Maintaining communication with the Federal project officer.* The Center must conduct monthly phone conversations with the Federal project officer and must maintain e-mail communication as needed. The Center must submit annual performance reports and provide additional written materials as needed for the Federal project officer to monitor the Center's work.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary which review will be conducted during the last half of the project's second year in Washington, DC. Projects must budget for the travel associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center; and

(c) Evidence of the degree to which the Center's activities have contributed to a changed practice and improved student outcomes.

Absolute Priority 2—Television Access (84.327J)

This priority supports cooperative agreements to provide (1) Captioning of local news and public information television programs, and (2) captioning, description, or captioning and description of children's television programs. Only programs not previously captioned are eligible for funds for captioning under this activity. In awarding funds the Secretary will consider the extent to which the applicant or a third party shares in the cost of the project. Program hours or the costs of captioning associated with those programs that are funded by promotional billboards will not be considered as an in-kind cost, or a private sector match, for Federal funds.

A project must do the following:

(a) Include criteria for selecting programs that take into account the preference of educators, students, and parents; the diversity of the type of programming available; and the contribution of the programming to the general educational experience of students who have disabilities in the areas of vision or hearing.

(b) Identify and support a consumer advisory group, including parents and educators, that would meet at least annually.

(c) Use the expertise of this consumer advisory group to certify that each program captioned or described with project funds is educational, news, or informational programming.

(d) Identify the extent to which the programming is widely available.

(e) Identify the total number of program hours the project will make accessible and the cost per hour for description or captioning or both.

(f) For each program to be described or captioned or both, identify the source of any private or other public support, and the projected dollar amount of that support, if any.

(g) Demonstrate the willingness of program providers or owners of programs to permit and facilitate the description or captioning or both of their programs.

(h) Provide assurances from program providers or owners of programs stating that programs made accessible under this project will air, and will continue to air, with descriptions or captions or both.

(i) Implement procedures for monitoring the extent to which full accessibility is provided, and use this information to make refinements in project operations.

(j) Identify the anticipated shelf-life and range of distribution of the captioned or described programs that is possible without further costs to the project beyond the initial captioning costs.

An application may address only one type of the following programs—

(1) *Local News and Public Information Programs.* The Secretary intends to fund projects that will increase the capacity of the television captioning industry to respond to demands for accurate real-time captioning. To be funded a project must caption local news and public information programs using the real-time stenographic method preferred by consumers who are deaf or hard of hearing.

(2) *Accessible Children's Television Programs.* The Secretary intends to fund projects that will describe and caption widely available educational, news, and informational programs for children shown on broadcast, satellite, or cable systems.

Competitive Preference Priority

Within the Local News and Public Information Programs segment of this absolute priority, we award under 34 CFR 75.105(c)(2)(i) an additional 20 points to an application from an applicant that—

(a) During fiscal year 2002, was not a grantee or a subcontractor of a grantee under the Technology and Media Services for Individuals with Disabilities program; and

(b) Won't use a subcontractor who was a grantee or a subcontractor of a grantee under this program during fiscal year 2002.

Thus, an applicant meeting this competitive preference could receive a maximum possible score of 120 points.

Fiscal Information

Under this priority, we intend to make one or more awards in each of the two areas of activity identified.

Absolute Priority 3—Center on Technology and Standards-Based Reform for Students With Disabilities (84.327R)

Standards-based reform is premised on a "theory of action" in which standards, assessments, and accountability lead to improved curriculum and clear expectations for students and schools, which in turn lead to professional development and

improved teaching, which ultimately lead to higher levels of student learning (Elmore and Rothman, Eds., 1999, available at *http://www.nap.edu/catalog/9609.html*). This theory suggests that for standards-based reform to benefit students with disabilities, certain conditions must be met. Among these are the following: (1) Assessments must be accessible and valid for the widest possible range of students with disabilities (with valid and reliable alternate assessments available for students with disabilities who cannot participate in general assessments); (2) Information on assessment results must be available to all appropriate parties in a timely fashion and must be applicable to instruction as well as to accountability; (3) Coherent standards-based instruction must be delivered, and student progress toward meeting standards must be monitored; (4) Principles of universal design must be applied to standards, assessments, curriculum, and instruction; and (5) Connections must be maintained between the components of the system, including standards, assessments, reporting, instructional planning, professional development, and instruction.

Priority

This priority supports a cooperative agreement for a center to conduct research, synthesize research, collect information, disseminate information, and provide assistance to States (in collaboration with other assistance providers) on the use of technology to maximize the benefits of standards-based reform for students with disabilities. Technologies may include, but are not limited to, technology-based assessments, computerized curriculum-based measurement, technology-based instruction, and technology-based systems for managing and analyzing information. The Center's work must address a range of the conditions necessary for standards-based reform to benefit students with disabilities as presented in the Background section of this priority, as well as other important conditions that become apparent during the course of the project.

The Center's activities must include, but are not limited to:

(a) *Conducting research syntheses and needs assessments.* The Center must conduct needs assessments through such means as stakeholder focus groups that include parents, individuals with disabilities, and others; analyze current State efforts and currently available products and approaches; and synthesize research relevant to the use of technology to increase the benefits of standards-based reform for students with disabilities. The products of these activities must be disseminated by means of the Web site discussed in paragraph (f) of this section.

(b) *Developing and implementing a strategic plan.* Based on its needs assessments, analyses of State efforts, and research syntheses, the Center must develop a strategic plan that integrates its activities in research, research synthesis, information collection, dissemination, and assistance to States. The goal of the strategic plan is to ensure that the Center's efforts are coherent, targeted at high-priority needs, and likely to have widespread positive effects. The Center must submit the strategic plan for approval by the Office of Special Education Programs (OSEP), and must revise the plan as instructed.

(c) *Developing and evaluating approaches for using technology in standards-based reform.* In collaboration with State and local educational agencies and other stakeholders, the Center must develop, implement, and evaluate approaches for using technology to increase the benefits of standards-based reform for students with disabilities. These approaches must be implemented in the context of ongoing State or local efforts related to standards-based reform. Specific approaches may address specific topics, but overall the Center's activities must address a range of the conditions presented in the first paragraph of the Background section above. Outcome measures must include the performance of students with disabilities on standards-based assessments.

(d) *Providing collaborative assistance to States.* In collaboration with other projects and organizations, the Center must provide assistance to States on the use of technology to maximize the benefits of standards-based reform for students with disabilities. This assistance must be designed to help as many States as possible, and may be provided in the context of national or regional conferences, professional meetings, internet-based assistance, or similar approaches.

(e) *Coordinating with relevant Federal projects.* The Center must share information and coordinate plans with other relevant federally funded projects. These projects may include, but are not limited to, the National Center on Educational Outcomes (NCEO), the National Center on Technology Innovation (NCTI), the National Center for Research on Evaluation, Standards, and Student Testing (CRESST), National Center on Accessing the General Curriculum (NCAC), and the Technology-Based Assessment (TBA) project sponsored by the National Center for Education Statistics.

(f) *Maintaining a Web site.* The Center must maintain a Web site for the purpose of disseminating information products and maintaining communication with and among interested parties.

(g) *Conducting evaluations.* The Center must conduct evaluations of its specific activities and of the overall impact of its work. The Center must report its evaluation findings annually to the Federal project officer.

(h) *Convening an advisory committee.* The Center must: (1) form an advisory committee that represents researchers, policymakers, State and local educational personnel, developers and vendors, individuals with disabilities, and other relevant perspectives; and (2) convene the advisory committee annually in the Washington, DC area to review the Center's work and suggest future research and dissemination activities.

(i) *Maintaining communication with the Federal project officer.* The Center must conduct monthly phone conversations with the Federal project officer and must maintain e-mail communication as needed. The Center must submit annual performance reports and provide additional written materials as needed for the Federal project officer to monitor the Center's work.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) for continuation awards.

The Secretary will also consider the following:

(a) The recommendation of a review team consisting of experts selected by the Secretary. The team will conduct its review in Washington, DC during the last half of the project's second year. A project must budget for the travel associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The degree to which the project is making a positive contribution—and its strategies are demonstrating the potential for disseminating significant knowledge to State and local constituencies—to using technology to maximize the benefits of standards-based reform for students with disabilities.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT APPLICATION NOTICE FOR FISCAL YEAR 2003

CFDA number and name	Applications available	Application deadline date	Deadline for intergovernmental review	Estimated available funds	Maximum award (per year)*	Project period	Page limit	Estimated number of awards
84.324D Research Validation and Implementation Projects for Children who are Deaf-Blind.	07/28/03	08/27/03	09/29/03	$615,000	$205,000	Up to 60 mos	50	3
84.324L Center on Outcomes for Infants, Toddlers, and Preschoolers with Disabilities.	07/28/03	08/27/03	09/29/03	700,000	700,000	Up to 60 mos	70	1
84.326Q National Dropout Prevention Center for Students with Disabilities.	07/28/03	08/27/03	09/29/03	700,000	700,000	Up to 60 mos	70	1
84.326S Center on Positive Behavioral Interventions and Supports.	07/28/03	08/27/03	09/29/03	1,700,000	1,700,000	Up to 60 mos	70	1
84.327F Family Center on Technology and Disability.	07/28/03	08/27/03	09/29/03	600,000	600,000	Up to 60 mos	70	1
84.327J Television Access.	07/28/03	08/27/03	09/29/03			Up to 36 mos	50	
—Local News and Public Information Programs.				330,000	110,000			3
—Accessible Children's Television Programs.				800,000	200,000			4
84.327R Center on Technology and Standards-Based Reform for Students with Disabilities.	07/28/03	08/27/03	09/29/03	600,000	600,000	Up to 60 mos	70	1

*We will reject any application that proposes a budget exceeding the maximum award for a single budget period of 12 months.
Note: The Department of Education is not bound by any estimates in this notice.

For Applications Contact

If you want an application for any competition in this notice, contact Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, Maryland 20794–1398. Telephone (toll free): 1–877–4ED–Pubs (1–877–433–7827). FAX: 301–470–1244. Individuals who use a telecommunications device for the deaf (TDD) may call (toll free) 1–877–576–7734.

You may also contact Ed Pubs via its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify the competition by the appropriate CFDA number.

FOR FURTHER INFORMATION CONTACT: If you want an additional information about any competition in this notice, contact the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the Grants and Contracts Services Team under **FOR FURTHER INFORMATION CONTACT.** However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Intergovernmental Review

All programs in this notice (except for the Research and Innovation to Improve Services and Results for Children with Disabilities Program) are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. This document provides early notification of our specific plans and actions for these programs.

Electronic Access to This Document

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Program Authority: 20 U.S.C. 1405, 1461, 1471, 1472, 1485, and 1487.

Dated: July 22, 2003.

Loretta Petty Chittum,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–19083 Filed 7–25–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.235R]

Special Demonstration Programs—Projects for Orthotic and Prosthetic Research; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of program: To provide one-time funding in response to the Department of Education Appropriations Act, as enacted by section G of the Consolidated Appropriations Resolution for FY 2003 (ED Appropriations Act), for one or more projects designed to improve the quality of applied orthotic and prosthetic research and to help meet the increasing demand for provider services.

For FY 2003 the competition focuses on one or more projects designed to meet the priority described in the PRIORITY section of this application notice.

Eligible applicants: Public or nonprofit agencies or organizations, State vocational rehabilitation agencies, community rehabilitation programs, or Indian tribes or tribal organizations.

Applications available: July 28, 2003.

Deadline for transmittal of applications: August 27, 2003.

Deadline for intergovernmental review: September 26, 2003.

Available funds: $993,500. This amount will be reduced by an estimated $3,000 to $12,000 to cover peer reviewer costs.

Note: In no case will we make an award greater than $993,500 for a single budget period of 12 months.

Estimated number of awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project period: Up to 12 months.

Page limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. It is suggested that you limit Part III to 35 pages.

Applicable regulations: The Education Department General Administrative Regulations (EDGAR) in 34 parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Selection criteria: In evaluating an application for a new grant under this competition, we use selection criteria chosen from the general selection criteria in 34 CFR 75.209 and 75.210 of EDGAR. The selection criteria to be used for this competition will be provided in the application package for this competition.

Priority

Background

The ED Appropriations Act includes $993,500 in the Rehabilitation Services and Disability Research account for activities to improve the quality of applied orthotic and prosthetic research and to help meet the demand for provider services. In addition, the accompanying conference report states that the conferees intend that these funds be used to support an orthotics and prosthetics awareness campaign, consisting of an educational outreach initiative designed to recruit and retain professionals and a series of consensus conferences to develop best practices in the field. The Senate Committee's report accompanying the Senate bill states that the Committee expects the Department to award the funding included in the bill for this purpose through a grant competition.

Absolute Priority

This competition focuses on projects designed to meet a priority that the Rehabilitation Services Administration (RSA) has chosen from allowable activities specified in the program statute (*see* 34 CFR 75.105(b)(2)(v) and section 303(b)(4)(E) of the Rehabilitation Act of 1973, as amended, (29 U.S.C. 773(b)). For FY 2003 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

Projects must improve the quality of applied orthotic and prosthetic research and assist in meeting the increasing demand for provider services.

To meet the absolute priority requirements for special demonstration projects, the application must explain—

(1) How the project will improve the quality of applied orthotic and prosthetic research, especially research relating to the development of clinical standards of practice or care;

(2) How the project will help move research knowledge into practice;

(3) How the project will help to meet the increasing demand for provider services;

(4) How the project will support an orthotics and prosthetics awareness campaign consisting of an educational outreach initiative designed to recruit and retain professionals; and

(5) How the project plans to provide a series of consensus conferences to develop and disseminate best practices in the field to be used by both training programs and practitioners.

For applications contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html.*

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.235R.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Services (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Joyce Libby, U.S. Department of Education, 400 Maryland Avenue, SW., room 3320, Switzer Building, Washington, DC 20202–2650. Telephone: (202) 205–5392; or Theresa DeVaughn, U.S. Department of Education, 400 Maryland Avenue, SW., room 3316, Switzer Building, Washington, DC 20202–2650. Telephone: (202) 205–5392. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this notice in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact persons listed in the preceding paragraph.

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 29 U.S.C. 773(b).

Dated: July 23, 2003.

Loretta Petty Chittum,

Acting Assistant Secretary for Special Education Rehabilitative Services.

[FR Doc. 03–19084 Filed 7–25–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science; Fusion Energy Sciences Advisory Committee; Renewal

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act and in accordance with title 41 of the Code of Federal Regulations, section 102–3.65, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Fusion Energy Sciences Advisory Committee has been renewed for a two-year period beginning November 2003. The Committee will provide advice to the Director, Office of Science, on long-range plans, priorities, and strategies for demonstrating the scientific and technological feasibility of fusion energy.

The Secretary has determined that the renewal of the Fusion Energy Sciences Advisory Committee is essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Pub. L. 95–91), and implementing regulations.

Further information regarding this advisory committee can be obtained from Ms. Rachel Samuel at (202) 586–3279.

Issued in Washington, DC on July 18, 2003.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 03–19093 Filed 7–25–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Interim Management of Nuclear Materials; Savannah River Site Waste Management

AGENCY: Department of Energy.

ACTION: Amended record of decision.

SUMMARY: In 1995 the Department of Energy (DOE) prepared an environmental impact statement (EIS) for the stabilization, processing, and safe storage of nuclear materials at the Savannah River Site (SRS) entitled *Interim Management of Nuclear Materials* (IMNM EIS). The IMNM EIS analyzed several alternate methods of stabilizing, processing, or storing various types of nuclear materials. None of those alternatives envisioned disposing of any of the materials directly as waste. Based on the analysis in the IMNM EIS, DOE issued a series of records of decision (RODs) selecting a storage, stabilization, and/or processing strategy for each type of material, and DOE continues to carry out those actions.

In 1995 DOE also prepared an EIS for the treatment, storage and disposal of waste at SRS entitled *Savannah River Site Waste Management Environmental Impact Statement* (SRS WM EIS). The SRS WM EIS analyzed the management of SRS waste by general category, *i.e.*, hazardous waste, mixed waste (radioactive and hazardous), low level waste (LLW), transuranic waste (TRUW) and high level waste (HLW).

In this amended ROD, DOE is announcing that it has decided to dispose of as waste, pursuant to the SRS WM EIS, the majority of one type and a small portion of a second type of nuclear materials analyzed in the IMNM EIS. The materials will only be disposed of once it has been established that they meet the applicable waste criteria. This action will be taken in lieu of the earlier stabilization and processing decisions made for these materials. Because stabilization and processing activities result in the generation of additional waste, this decision will decrease by about 1,145 cubic meters (1,500 cubic yards) the amount of LLW, and by about 120 cubic meters (160 cubic yards) the amount of TRUW, to be managed at SRS as compared to the amounts that would have been generated under DOE's previous decisions.

FOR FURTHER INFORMATION CONTACT: For further information on the interim management of nuclear materials and radioactive waste management at the SRS, or to receive a copy of the IMNM or SRS WM EIS's, contact: Andrew R. Grainger, NEPA Compliance Officer, U.S. Department of Energy, Savannah River Operations Office, Building 730B, Room 2418, Aiken, South Carolina 29802, (800) 881–7292, Internet: *drew.grainger@srs.gov.*

For further information on the DOE NEPA process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600, or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background

Programmatic Basis for the Revised Decision

DOE's clean-up at the SRS is focused on an accelerated risk-based strategy. Under this strategy, the clean-up will be expedited by disposing of as waste all materials that are suitable for direct disposal, and by processing in the SRS canyon facilities only those materials that require such processing. This strategy will also allow DOE to reduce costs.

NEPA Reviews and Decisions

DOE prepared a final environmental impact statement, *Interim Management of Nuclear Materials* (IMNM EIS) (DOE/EIS–0220, October 1995), in accordance with the National Environmental Policy Act (NEPA) [42 U.S.C. 4321 *et seq.*], Council on Environmental Quality regulations implementing NEPA [40 CFR 1500–1508], and DOE implementing procedures [10 CFR 1021]. The IMNM EIS grouped the nuclear materials at the SRS into three categories: Stable (thousands of items in nine material types), Programmatic (three material types), and Candidates for Stabilization (seven material types). Some of the "Programmatic" and all of the "Candidates for Stabilization" materials could have presented environmental, safety, and health vulnerabilities in their then-current storage condition.

On December 12, 1995, DOE issued a ROD and Notice of Preferred Alternatives (60 FR 65300) on the interim management of several types of nuclear materials at the SRS. DOE decided to stabilize the Candidates for Stabilization material type known as

"Plutonium and Uranium Stored in Vaults" by: (1) Heating or repackaging the material into better containers, and (2) dissolving some materials in the SRS canyon facilities to chemically remove impurities or radioactive decay products, and converting the resulting purified solutions to a metal, an oxide, or a glass (*i.e.*, vitrification). On February 21, 1996, DOE issued a Supplemental ROD (61 FR 6633) announcing its decision to stabilize the Candidates for Stabilization material type known as "Other Aluminum-Clad Targets" by dissolving them in acid in the SRS canyon facilities and transferring the resulting nuclear material solution to the high-level waste (HLW) tanks for future vitrification in the Defense Waste Processing Facility.

The environmental impacts of disposing of low-level waste (LLW), and managing transuranic waste (TRUW) pending disposal, are analyzed in the *Savannah River Site Waste Management Environmental Impact Statement* (SRS WM EIS) (DOE/EIS–0217, July 1995).[1] In preparing the SRS WM EIS, DOE recognized the difficulty in trying to comprehensively identify all of the wastes that would require treatment over a 30-year period. Therefore, in providing examples of different waste types, DOE used terms such as "typical" and "includes" to clearly indicate that other materials, such as those identified in this Amended ROD, could also be considered for waste treatment, storage, and disposal as long as those other materials met the definitions of the various waste categories in the SRS WM EIS.

Action alternatives analyzed in the SRS WM EIS included three waste treatment configurations (limited, moderate, and extensive), all of which were found to protect human health and the environment, meet applicable storage and disposal requirements, and use reasonable treatment, storage, and disposal technologies. Each of these treatment configurations was analyzed in the context of multiple waste volume scenarios (expected, minimum, and maximum) which included projections of waste volumes the SRS would need to manage over a 30-year planning period (1995 through 2024). In a September 22, 1995, ROD (60 FR 55249), DOE selected the moderate treatment configuration for its waste management system. On June 28, 2001, DOE issued an Amended ROD (66 FR 34431) announcing its decision to add offsite disposal of certain SRS waste as a management method, consistent with DOE policy.

Other Aluminum-Clad Targets

The Other Aluminum-Clad Targets material type includes 771 cobalt-60 and 1 (one) thulium-170 "slugs" [2] as well as approximately 150 slugs and assemblies of other materials (*e.g.*, thorium, uranium, and plutonium).

DOE has determined that cobalt-60 and thulium-170 slugs, and potentially the remaining materials in the Other Aluminum-Clad Targets material type, may be disposed of as LLW without additional processing. One form of the Other Aluminum-Clad Targets, plutonium-242 flux monitor pins, may require disposal as TRUW rather than as LLW. In order to qualify for direct disposal the materials must meet the definition of LLW or TRUW,[3] whichever is applicable, and meet the waste acceptance criteria of the receiving, treatment, storage, or disposal facility.

Disposing of the cobalt-60 and thulium-170 slugs, and the qualifying remaining Other Aluminum-Clad Targets material type, as LLW would generate only about five cubic meters of LLW, as compared to approximately 1,150 cubic meters of LLW estimated for the processing stabilization alternative previously selected for this material type.[4] This is a net reduction of approximately 1,145 cubic meters of LLW generation. These materials are currently stored in the L-Area Disassembly Basin, the Receiving Basin for Offsite Fuels, and the Savannah River Technology Center. The materials in this category that are determined to qualify for direct disposal as LLW will be buried in a shielded container or containers at the SRS or at an offsite facility to ensure that radiation exposure is kept as low as reasonably achievable.

Plutonium and Uranium Stored in Vaults

Similarly, DOE has determined that some of the Plutonium and Uranium Stored in Vaults material type may be disposed of as TRUW without further processing. DOE has already characterized and stabilized about 90 percent of the approximately 3,000 containers of the Plutonium and Uranium Stored in Vaults material type. Characterization and stabilization of the remaining containers is scheduled to be complete by the end of Fiscal Year 2005. During characterization, DOE will determine which of the remaining approximately 300 containers can be directly disposed of as TRUW. Adding TRUW disposal as a management option does not change the characterization process. Disposing of this small portion of Plutonium and Uranium Stored in Vaults as TRUW could result in the generation of about eight cubic meters of TRUW, compared with approximately 130 cubic meters of TRUW estimated for processing this material as described in the IMNM EIS.[5] If the plutonium-242 flux monitor pins discussed in the preceding section are disposed of as TRUW rather than as LLW, less than two additional cubic meters of TRUW would require management at the SRS, resulting in the generation of less than ten cubic meters of TRUW from this decision. This is a net reduction of approximately 120 cubic meters of TRUW generation below the amount envisioned under previous RODs. In each case, the material to be directly disposed of must meet the TRUW definition and meet the applicable acceptance criteria for packaging, storage and disposal as TRUW. If any material cannot meet the applicable waste acceptance criteria, that material will be stabilized as described in previous RODs.

Potential Environmental Impacts

The IMNM EIS analyzed the potential impacts of a range of alternatives for managing all SRS nuclear materials. Summaries of potential impacts from the alternatives, including the resulting generation of LLW and TRUW, are presented in the IMNM EIS, Table 2–2 through Table 2–12 (pp. 2–48 through 2–58). As described below, the direct disposal of the materials discussed herein as waste could reduce the impacts slightly.

The impacts caused by the disposition of cobalt-60 and thulium-170 slugs, and the remaining materials in the Other Aluminum-Clad Targets material category, as LLW would be within those described in Table 2–15 of the SRS WM EIS, and remain consistent with the moderate treatment alternative selected by DOE in the October 30, 1995, ROD (60 FR 55249). The 1,145 cubic meter reduction forecast from this decision is a very small fraction of both the LLW volume forecast in the SRS WM EIS (approximately 475,000 cubic meters) and the current SRS forecast (approximately 300,000 cubic meters) resulting from program changes, waste minimization, and volume reduction activities. Any material disposed of as LLW must meet the definition of LLW and the disposal facility's waste acceptance criteria.

Some of the Plutonium and Uranium Stored in Vaults materials, and potentially the plutonium-242 flux monitor pins in the Other Aluminum-Clad Targets material type, may be determined to be TRUW. If so, they would represent a small fraction of the TRUW generated and stored at the SRS, and the potential impacts would not exceed those described for TRUW treatment and storage in Table 2–17 of the SRS WM EIS. TRUW would be stored at the SRS pending shipment to DOE's Waste Isolation Pilot Plant near Carlsbad, New Mexico, for disposal. SRS has the capacity to store 34,400 cubic meters of TRUW and has a TRUW inventory of approximately 11,000 cubic meters. The *Waste Isolation Pilot Plant Disposal Phase Supplemental EIS* (DOE/EIS–0026–FS2) evaluated the transportation and disposal of up to 23,000 cubic meters of waste originating from the SRS. The most recent estimate of SRS-originated TRUW, which includes TRUW to be generated from the Mixed Oxide Fuel Fabrication Facility, is 21,155 cubic meters. Therefore, the estimated 120 cubic meter reduction that could result from implementation of this decision is a small fraction of both the SRS storage capacity and the analyzed WIPP disposal capacity.

Decision

DOE is amending the December 12, 1995, ROD and the February 21, 1996, ROD by canceling, in part, the processing alternative selected for the Plutonium and Uranium Stored in Vaults material type and the Other Aluminum-Clad Targets material type. DOE instead will dispose of, as TRUW, that portion of the remaining Plutonium and Uranium Stored in Vaults, and possibly the plutonium-242 flux monitor pins in the Other Aluminum-Clad Target material type, which meets the criteria set forth below for TRUW. DOE also will dispose of, as LLW, the cobalt-60 and thulium-170 slugs, and any of the remaining Other Aluminum-Clad Target materials that meet the criteria set forth below for LLW. This LLW will be disposed of at the SRS, or at an offsite facility, along with other SRS LLW as discussed in the September 22, 1995, and June 28, 2001, RODs for the SRS WM EIS.

Any material disposed of as LLW or TRUW must meet the definition of the relevant waste type under DOE Guide 435.1–1, which provides guidance for implementation of DOE Order 435.1, Radioactive Waste Management. In addition, disposal of any materials would be contingent upon a demonstration that they meet the appropriate treatment, storage, or disposal facility waste acceptance criteria. The environmental impacts of treatment, storage, and disposal of LLW and TRUW at the SRS are analyzed in the SRS WM EIS (DOE/EIS–0217, July 1995).

Adding disposal as LLW or TRUW to the management methods available for Other Aluminum-Clad Targets and Plutonium and Uranium Stored in Vaults will allow DOE to optimize the use of the SRS canyon facilities to process higher priority materials. Additionally, implementing this additional management method for qualifying plutonium materials will reduce the amount of plutonium that would otherwise need to be processed to meet the plutonium storage standard (DOE-STD–3013), reduce vault storage space requirements for plutonium and the associated storage containers, and lower vault surveillance and maintenance costs. There is no programmatic need for the materials covered by this decision.

Issued in Washington, DC, July 17, 2003.

Jessie Hill Roberson,

Assistant Secretary for Environmental Management.

[FR Doc. 03–19094 Filed 7–25–03; 8:45 am]

BILLING CODE 6450–01–P

[1] Low-level radioactive waste is radioactive waste that is not high-level radioactive waste, spent nuclear fuel, transuranic waste, byproduct material (as defined in section 11e.(2) of the *Atomic Energy Act of 1954*, as amended), or naturally occurring radioactive material. Transuranic waste is radioactive waste containing more than 100 nanocuries (3700 becquerels) of alpha-emitting transuranic isotopes per gram of waste, with half-lives greater than 20 years, except for: (1) High-level radioactive waste; (2) Waste that the Secretary of Energy has determined, with the concurrence of the Administrator of the Environmental Protection Agency, does not need the degree of isolation required by the 40 CFR Part 191 disposal regulations; or (3) Waste that the Nuclear Regulatory Commission has approved for disposal on a case-by-case basis in accordance with 10 CFR Part 61. [DOE G 435.1–1, Implementation Guide for Use with DOE's Radioactive Waste Management Manual]

[2] A "slug" is generally a short cylinder, approximately 12–18 inches long by three to four inches in diameter, of fuel, target, or barrier material in the form of pellets, pins, or solid metal that is assembled with other slugs in a tube for insertion in a nuclear reactor as a single rod or combined with others to form an assembly.

[3] DOE Guide 435.1–1, Chapters III and IV, July 9, 1999.

[4] Table 2–11 of the IMNM EIS indicates that 2,300 cubic meters of LLW could result from the stabilization processing of the entire Other Aluminum-Clad Targets material type. Some of this material type has already been processed. DOE estimates the remaining Other Aluminum-Clad Targets that are the subject of this Amended ROD represent approximately 50 percent of this material type analyzed in the IMNM EIS.

[5] Table 2–8 of the IMNM EIS indicates that 1,300 cubic meters of TRUW could result from the stabilization processing of the entire Plutonium and Uranium Stored in Vaults material type. DOE estimates that processing the remaining ten percent of these materials would have a potential of generating only ten percent of this amount.

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Requirement Submitted to OMB for Emergency Review and Approval

July 22, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before August 27, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Kim A. Johnson, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–7232, or via fax at 202–395–5167 or via Internet at *Kim_A._Johnson@omb.eop.gov*, and Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judith B. Herman at 202–418–0214 or via Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION: *The Commission has requested emergency*

OMB review of this revised information collection with an approval by July 30, 2003.

OMB Control Number: 3060–1004.

Title: Wireless Telecommunications Bureau Standardizes Carrier Reporting on Wireless E911 Implementation.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local, or tribal government.

Number of Respondents: 303 respondents; 1,212 responses.

Estimated Time Per Response: 4–5 hours.

Frequency of Response: Quarterly, semi-annual and one-time reporting requirements, recordkeeping requirement, and third party disclosure requirement.

Total Annual Burden: 1,282 hours.

Total Annual Cost: N/A.

Needs and Uses: The Wireless Telecommunications Bureau takes steps to facilitate more uniform reporting of wireless Enhanced 911 (E911) deployment, in order to foster greater coordination and collaboration among various stakeholders in the implementation process. The Bureau has established a format in an Excel spreadsheet to be submitted with the wireless carrier E911 deployment quarterly reports required by the Commission. The next quarterly report is to be filed on August 1, 2003. This information was announced in a Public Notice dated June 6, 2003. DA03–1902.

Federal Communications Commisssion.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–19135 Filed 7–25–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 21, 2003.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Campbell Hill Bancshares, Inc., Campbell Hill, Illinois; to acquire 100 percent of the voting shares of Southwest Illinois Bancshares, Inc., Coulterville, Illinois, and thereby indirectly acquire voting shares of The First National Bank of Coulterville, Coulterville, Illinois.

B. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. BOK Financial Corporation, Tulsa, Oklahoma; to acquire and merge with, BOKF Merger Corporation Number Eleven, Tulsa, Oklahoma. 100 percent of the voting shares of Colorado Funding Company, Denver, Colorado, and thereby indirectly acquire Colorado State Bank and Trust, Denver, Colorado.

Board of Governors of the Federal Reserve System, July 22, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–19033 Filed 7–25–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 22, 2003.

A. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Shamrock Bancshares, Inc., Employee Stock Ownership Plan, Coalgate, Oklahoma; to acquire an additional 43.12 percent, for a total of 68.46 percent, of the voting shares of Shamrock Bancshares, Inc., and thereby indirectly acquire voting shares of Shamrock Bank, National Association, both in Coalgate, Oklahoma.

Board of Governors of the Federal Reserve System, July 23, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–19136 Filed 7–25–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

ET date	Trans No.	ET req status	Party name
09–JUN–03	20030667	G	k1 Ventures Limited.
		G	Citizens Communications Company.
		G	Citizens Communications Company.
	20030668	G	Warburg Pincus Private Equity VIII, L.P.
		G	Wellman, Inc.
		G	Wellman, Inc.
	20030669	G	TECO Energy, Inc.
		G	Panda Energy International, Inc.
		G	TECO-PANDA Generating Company, L.P.
	20030673	G	2000 Riverside Capital Appreciation Fund, L.P.
		G	The Dwyer Group, Inc.
		G	The Dwyer Group, Inc.
	20030678	G	Liberty Media Corporation.
		G	UnitedGlobalCom, Inc.
		G	UnitedGlobalCom, Inc.
	20030682	G	Tenet Healthcare Corporation.
		G	Tenet Healthcare Corporation.
		G	Tenet MetroWest Healthcare System, Limited Partnership.
11–JUN–03	20030676	G	Ness Technologies, Inc.
		G	Apar Holding Corp.
		G	Apar Holding Corp.
12–JUN–03	20030636	G	Triton PCS Holdings, Inc.
		G	Lafayette Communications Company L.L.C.
		G	Lafayette Communications Company L.L.C.
	20030672	G	Tomkins plc.
		G	The Stackpole Corporation.
		G	Stackpole Limited.
	20030679	G	Robert Bosch industrietreuhand KG.
		G	James V. Zeleski.
		G	Vetronix Corporation.
		G	Vetronix Sales Corporation.
		G	Vetronix Telematics LLC.
		G	Vetronix Japan KK.
	20030686	G	MDU Resources Group, Inc.
		G	Francis M. Young.
		G	YB Holdings, Inc.
13–JUN–03	20030616	G	Parthenon Investors II, L.P.
		G	Gemini I, LLC.
		G	Gemini Industries, Inc.
	20030660	G	AmerisourceBergen Corporation.
		G	Anderson Packaging, Inc.
		G	Anderson Packaging, Inc.
	20030683	G	Abbott Laboratories.
		G	Spinal Concepts, Inc.
		G	Spinal Concepts, Inc.
	20030689	G	Morgan Stanley.
		G	DigitalGlobe, Inc.
		G	DigitalGlobe, Inc.
16–JUN–03	20030204	G	Open Joint Stock Company MMC Norilsk Nickel.
		G	Stillwater Mining Company.
		G	Stillwater Mining Company.
17–JUN–03	20030690	G	Kenneth I. Nelkin.
		G	Marmon Holdings, Inc.
		G	Vessel One Corporation.
		G	Candy Cap, L.P. II–XX.
		G	TU Vessel Leasing Corp.
19–JUN–03	20030302	G	Automatic Data Processing, Inc.
		G	ProBusiness Services, Inc.
		G	ProBusiness Services, Inc.
20–JUN–03	20030693	G	Fox Paine Capital Fund II International, L.P.
		G	Wind River Investment Corporation.
		G	Wind River Investment Corporation.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
	20030696	G	Robert E. Rich, Jr.
		G	Dean Foods Company.
		G	Dean Foods Company.
	20030702	G	Reliance Steel & Aluminum Co.
		G	John R. Eiting.
		G	Precision Strip, Inc.
	20030704	G	Krispy Kreme Doughnuts, Inc.
		G	Greater DFW Doughnuts, Inc.
		G	Greater DFW Doughnuts, LLP.
		G	Hulen St. Doughnut Company, LLP
		G	Old Towne Doughnut Company, LLP.
		G	Grapevine Doughnut Company, LLP.
		G	Arlington Doughnut Company, LLP.
		G	Euless Doughnut Company, LLP.
		G	Frisco Doughnut Company, LLP.
	20030712	G	Cinergy Corp.
		G	Suez.
		G	Trigen-Cinergy Solutions of St. Paul, LLC.
23–JUN–03	20030688	G	Municipal Mortgage & Equity, LLC.
		G	Lend Lease Corporation Limited.
		G	Acquisition Investment Corp.
		G	Lend Lease MSR Corp.
		G	Lend Lease BFRP, Inc.
		G	The Boston Financial Group Limited Partnership.
		G	BFG Investments, LLC.
	20030699	G	Charter Municipal Mortgage Acceptance Company.
		G	Stephen M. Ross.
		G	RCC Credit Facility, L.L.C.
		G	Related Capital Company.
		G	Related S.J. SLP, Inc.
		G	Related Insured Tax Credit Partners III, Inc.
		G	Related Independence Associates Inc.
		G	Related Independence Associates III Inc.
		G	Related Housing Programs Corporation.
		G	RCC Corporate Monitoring Inc.
		G	Liberty Credit Assignor Inc.
		G	Liberty Credit Assignor III Inc.
		G	Liberty Credit Assignor II Inc.
		G	Lehigh Tax Credit Partners, Inc.
		G	Independence Assignor Inc.
		G	Freedom Assignor, Inc.
		G	CIP Associates, Inc.
		G	Related Charter L.L.C.
		G	Related Equities Corporation.
		G	Related Credit Properties, Inc.
		G	Related Credit Properties, III Inc.
		G	Related Credit Properties, II Inc.
		G	Related Beta Corporation.
		G	Related Aurora Associates, Inc.
		G	Related AMI Associates, Inc.
		G	Related Advantaged Residential Associates Inc.
		G	RCC General Corp.
		G	Related Charter LP.
		G	RCC Managing Member LLC.
24–JUN–03	20030706	G	Sanmina-SCI Corporation.
		G	Newisys, Inc.
		G	Newisys, Inc.
26–JUN–03	20030677	G	Amgen Inc.
		G	Tularik Inc.
		G	Tularik Inc.
30–JUN–03	20030274	G	Waste Management, Inc.
		G	Allied Waste Industries, Inc.
		G	Giordano Recycling Corp.
		G	Automated Modular Systems, Inc.
		G	Garafolo Brothers, Inc.
		G	Joe Diresi and Sons, Inc.
	20030685	G	Fritz Gerber.
		G	Maxygen, Inc.
		G	Maxygen, Inc.
	20030718	G	Degussa AG.
		G	Cargill, Incorporated.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Midwest Lysine LLC.
	20030720	G	United Technologies Corporation.
		G	Chubb plc.
		G	Chubb plc.
	20030722	G	Bank One Corporation.
		G	Zurich Financial Services.
		G	Federal Kemper Life Assurance Company.
		G	Zurich Life Insurance Company of America.
		G	Zurich Direct, Inc.
	20030715	G	Schneider Electric S.A.
		G	EQT Scandinavia Limited.
		G	TAC Holding AB.
	20030717	G	eBay Inc.
		G	EachNet, Inc.
		G	EachNet, Inc.
	20030721	G	Telefonica, S.A.
		G	Terra Networks, S.A.
		G	Terra Networks, S.A.
	20030728	G	Caliper Technologies Corp.
		G	The Berwind Company LLC.
		G	ZYAC Holding Corporation.
	20030735	G	CGW Southeast Partners IV, L.P.
		G	R. Wayne Penrod.
		G	Ladd Industries, Inc.
02–JUL–03	20030726	G	Liberty Mutual Holding Company Inc.
		G	Prudential Financial, Inc.
		G	Prudential Commercial Insurance Company, Inc.
		G	Prudential Property and Casualty Insurance Company.
		G	Prudential General Insurance Company.
03–JUL–03	20030595	G	The Procter & Gamble Company.
		G	Wella AG.
		G	Wella AG.
	20030687	G	Illinois Tool Works Inc.
		G	APC Senior Holdings, Inc.
		G	Acme Packaging Corporation.
	20030703	G	Patterson-UTI Energy, Inc.
		G	TMBR/Sharp Drilling, Inc.
		G	TMBR/Sharp Drilling, Inc.
	20030725	G	Quad-C Partners VI, L.P.
		G	Max Gondon, Jr. and Diana B. Gondon.
		G	Walnut Investment Corp. d/b/a Acoustical Material Services.
07–JUL–03	20030731	G	Mercury Interactive Corporation.
		G	Kintana, Inc.
		G	Kintana, Inc.
	20030732	G	Cortec Group Fund III, L.P.
		G	Jeffrey R. Haines.
		G	Royce Medical Company.
	20030738	G	TCV IV, L.P.
		G	InPhonic, Inc.
		G	InPhonic, Inc.
	20030743	G	Kroll Inc.
		G	Factual Data Corp.
		G	Factual Data Corp.
	20030744	G	B&C Privatstifung.
		G	Semperit Aktiengesellschaft Holding.
		G	Semperit Aktiengesellschaft Holding.
	20030746	G	DLJ Merchant Banking Partners III, L.P.
		G	Jostens, Inc.
		G	Jostens, Inc.
	20030748	G	American Securities Partners III, L.P.
		G	Kirtland Capital Partners III, L.P.
		G	Unifrax Corporation.
10–JUL–03	20030576	G	Konica Corporation.
		G	Minolta Co., Ltd.
		G	Minolta Co., Ltd.
	20030713	G	Warburg Pincus Private Equity VIII, L.P.
		G	Odyssey Investment Partners Fund, L.P.
		G	Transdigm Holding Company.
	20030747	G	Picnal Limited.
		G	CORNISH H E's Settlement Trust.
		G	LINPAC Group Limited.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
11-JUL-03	20030729	G	Omnicare, Inc.
		G	Sun Healthcare Group, Inc.
		G	Sunscript Pharmacy Corporation.
		G	First Class Pharmacy, Inc.
		G	HoMed Convalescent Equipment, Inc.
		G	Advantage Health Services, Inc.
	20030772	G	Willis Stein & Partners III, L.P.
		G	TWC Virginia, Inc.
		G	Baker & Taylor Corporation.
14-JUL-03	20030692	G	McCarthey Family, LLC.
		G	MediaNews Group, Inc.
		G	Kearns-Tribune, LLC.
	20030700	G	PeopleSoft, Inc.
		G	J.D. Edwards & Company.
		G	J.D. Edwards & Company.
	20030741	G	Reed Elsevier PLC.
		G	Applied Discovery, Inc.
		G	Applied Discovery, Inc.
	20030742	G	Reed Elsevier NV.
		G	Applied Discovery, Inc.
		G	Applied Discovery, Inc.
	20030755	G	Societe Generale S.A.
		G	Robert M. Bass.
		G	FEP Capital, L.P.
	20030758	G	Inergy Propane, LLC.
		G	Robert A. Pascal.
		G	United Propane, Inc.
	20030760	G	Cablevision Systems Corporation.
		G	Cablevision Systems Corporation.
		G	The Independent Film Channel LLC.
		G	American Movie Classics Company.
	20030763	G	Marathon Fund Limited Partnership IV.
		G	The Elder-Beerman Stores Corp.
		G	The Elder-Beerman Stores Corp.
	20030764	G	Callaway Golf Company.
		G	SHC, Inc.
		G	Top-Flite Golf Company.
15-JUL-03	200307	G	Cytec Industries Inc.
		G	Avecia (Jersey) Limited.
		G	Avecia Inc.
	20030770	G	Temasek Holdings (Private) Limited.
		G	Global Crossing Ltd.
		G	Global Crossing Ltd.
	20030779	G	Geac Computer Corporation Limited.
		G	Comshare, Incorporated.
		G	Comshare, Incorporated.
	20030788	G	Gas Natural SDG, S.A.
		G	Enron Corp. (Debtor-in-Possession).
		G	Enron LNG Power (Atlantic) Ltd.
		G	Buenergia Gas & Power, Ltd.
		G	El Puerto Rico Operations, Inc.
		G	LNG Power III, L.L.C.
		G	Enron Development Corp.
16-JUL-03	20030740	G	WebMD Corporation.
		G	Advanced Business Fulfillment, Inc.
		G	Advanced Business Fulfillment, Inc.
17-JUL-03	20030719	G	Northrop Grumman Corporation.
		G	XonTech, Inc.
		G	XonTech, Inc.
	20030769	G	Dearborn Holdings Corporation.
		G	Exelon Corporation.
		G	InfraSource Incorporated.
	20030773	G	Francisco Partners, L.P.
		G	Schlumberger Limited.
		G	NPTest, Inc.
	20030776	G	J.W. Childs Equity Partners III, L.P.
		G	Murray's Inc.
		G	Murray's Inc.
	20030780	G	Three Cities Fund III, L.P.
		G	US Liquids Inc.
		G	Romic Environmental Technologies Corporation.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans No.	ET req status	Party name
		G	Parallel Products of Kentucky, Inc.
		G	US Liquids of La., L.P.
		G	USL Parallel Products of California.
18-JUL-03	20030775	G	Olympus Growth Fund III, L.P.
		G	Orlando Foods, Ltd.
		G	Orlando Foods, Ltd.
	20030783	G	Wachovia Corporation.
		G	CapitalSource Inc.
		G	CapitalSource Inc.
	20030784	G	Madison Dearborn Capital Partners III, L.P.
		G	CapitalSource, Inc.
		G	CapitalSource, Inc.
	20030785	G	Farallon Capital Institutional Partners, L.P.
		G	CapitalSource, Inc.
		G	CapitalSource, Inc.
	20030786	G	Farallon Capital Partners, L.P.
		G	CapitalSource, Inc.
		G	CapitalSource, Inc.
	20030787	G	Friedman Fleischer & Lowe Capital Partners, L.P.
		G	CapitalSource, Inc.
		G	CapitalSource, Inc.
	20030790	G	Jason M. Fish.
		G	CapitalSource, Inc.
		G	CapitalSource, Inc.
	20030791	G	John K. Delaney.
		G	CapitalSource, Inc.
		G	CapitalSource, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative or Renee Hallman, Legal Technician. Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By direction the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–19149 Filed 7–25–03; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 021 0178]

Physician Network Consulting, L.L.C., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 19, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed in the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: Jeffrey Brennan, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3688.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission's rules of practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home page (for July 22, 2003), on the World Wide Web, at "*http://www.ftc.gov/os/2003/07/index.htm.*" A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed consent order with an independent practice association ("IPA") of

physicians who practice orthopedic medicine, its members physician practices, their negotiating agent, and the agent's managing director. The agreement settles charges that the respondents violated section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by orchestrating and implementing agreements to fix prices and other terms on which they would deal with a payor, and to refuse to deal with that payor except on collectively-determined terms. The respondents named in the complaint are the agent, Physician Network Consulting, L.L.C., and its managing director, Michael J. Taylor; the IPA, Professional Orthopedic Services, Inc.; and the three physician practices whose physicians are members of the IPA, The Bone & Joint Clinic of Baton Rouge, Inc., Baton Rouge Orthopaedic Clinic, L.L.C., and Orthopaedic Surgery Associates of Baton Rouge, L.L.C. The proposed consent order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify their terms in any way. Further, the proposed consent order has been entered into for settlement purposes only and does not constitute an admission by respondents that they violated the law or that the facts alleged in the complaint (other than jurisdictional facts) are true.

The Complaint Allegations

Professional Orthopedic Services consists of approximately 28 physicians who provide approximately 70 percent of the orthopedic medicine services in the Baton Rouge, Louisiana, area. To be competitively marketable in the Baton Rouge area, a payor's health insurance plan must include in its physician network members of Professional Orthopedic Services, including physicians from at least The Bone and Joint Clinic or Baton Rouge Orthopaedic Clinic.

Physician Network Consulting is an agent for Professional Orthopedic Services' members. It represents physicians in contract negotiations with health insurance firms and other third-party payors. Physician Network Consulting's client base includes physicians in approximately seven states. Michael J. Taylor is the founder and managing director of Physician Network Consulting.

As the complaint alleges, this matter involves the fixing of price terms demanded from United HealthCare of Louisiana, Inc., by Professional Orthopedic Services' members. With and through Mr. Taylor, the members agreed to terminate their respective contracts with United. They authorized Physician Network Consulting to be their common agent to negotiate more lucrative price terms with United. Although Physician Network Consulting purported to operate as a "messenger"[1]—that is, an arrangement that does not facilitate horizontal agreements on price—it engaged in various actions that reflected or orchestrated such agreements.[1]

According to the complaint, respondents succeeded in coercing United to accept their price demands, and thereby raised the cost of orthopedic services in the Baton Rouge area. Professional Orthopedic Services engaged in no efficiency-enhancing integration sufficient to justify respondents' agreement on price. By orchestrating agreements among Professional Orthopedic Services' members to deal only on collectively-determined terms, and by refusing to deal with United unless it would meet those terms, respondents violated section 5 of the FTC Act.

The Proposed Consent Order

The proposed order is designed to remedy the illegal conduct charged in the complaint and to prevent its recurrence. It is similar to recent consent orders that the Commission has issued to settle charges that physician groups engaged in unlawful agreements to raise fees they receive from health plans. The order also includes temporary "fencing-in" relief to ensure that the alleged unlawful conduct by respondents does not continue. Respondents Physician Network Consulting and Mr. Taylor conduct business in a number of states, and the order applies to their activities in all such states.

The proposed order's specific provisions are as follows:

Paragraph II. contains the proposed order's core prohibitions against collectively negotiating prices or organizing group boycotts of payors. Paragraph II.A prohibits the respondents from entering into or facilitating any agreement between or among any physicians: (1) To negotiate with payors on any physician's behalf; (2) to deal, refuse to deal, or threaten not to deal with payors; (3) on what terms to deal with any payor; or (4) not to deal individually with any payor, or not to deal with any payor through any arrangement other than Professional Orthopedic Services.

Other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits the respondents from facilitating exchanges of information among physicians concerning whether, or on what terms, to contract with a payor. Paragraph II.C bars attempts to engage in any action prohibited by Paragraphs II.A or II.B. Paragraph II.D proscribes inducing anyone to engage in any action prohibited by Paragraphs II.A through II.C.

As in other orders addressing providers' collective bargaining with health care purchasers, certain kinds of agreements are excluded from the general bar on joint negotiations.

First, respondents would not be precluded from engaging in conduct that is reasonably necessary to form or participate in legitimate joint contracting arrangements among competing physicians, whether a "qualified risk-sharing joint arrangement" or a "qualified clinically-integrated joint arrangement."

As defined in the proposed order, a "qualified risk-sharing joint arrangement" possesses two key characteristics. First, all physician participants must share substantial financial risk through the arrangement, such that the arrangement creates incentives for the participants to control costs and improve quality by managing the provision of services. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement.

A "qualified clinically-integrated joint arrangement," on the other hand, need not involve any sharing of financial risk. Instead, as defined in the proposed order, physician participants must participate in active and ongoing programs to evaluate and modify their clinical practice patterns in order to control costs and ensure the quality of services provided, and the arrangement must create a high degree of interdependence and cooperation among physicians. As with qualified risk-sharing arrangements, any agreement concerning price or other terms of dealing must be reasonably necessary to achieve the efficiency goals of the joint arrangement.

Second, because the order is intended to reach agreements among horizontal competitors, Paragraph II would not bar agreements that only involve physicians who are part of the same medical group practice (defined in Paragraph I.I).

Paragraph III, for three years, bars Physician Network Consulting and Mr. Taylor from negotiating with any payor on behalf of the other respondents, and from advising any physician who participates in Professional Orthopedic Services, or advising the respondent Physician Practices (defined in Paragraph I.G), to accept or reject any term, condition, or requirement of dealing with any payor. This temporary "fencing-in" relief will ensure that the alleged unlawful conduct by these respondents does not continue.

Paragraph IV, for three years, requires Physician Network Consulting and Mr. Taylor to notify the Commission before entering into any arrangement to act as a messenger, or as an agent on behalf of any physicians, with payors regarding contracts. Paragraph IV sets out the information necessary to make the notification complete.

Paragraph V requires Professional Orthopedic Services to send the complaint and order to all physicians who have participated in Professional Orthopedic Services, and to payors that contract with Professional Orthopedic Services.

Paragraphs VI and VII generally require Physician Network Consulting to distribute the complaint and order to physicians who have participated in any group that has been represented by Physician Network Consulting since January 1, 1999, and each payor with which Physician Network Consulting has dealt since January 1, 1999, for the purpose of contracting.

Paragraph VI.B requires Physician Network Consulting to distribute the complaint and order to present and past employees, and to each individual who has acted as a contractor for Physician Network Consulting relating to contracting or advising physicians with regard to their dealings with payors. Paragraph VI.B is intended to ensure that past as well as present employees and contractors of Physician Network Consulting are made aware of the complaint and consent in order to discourage similar illegal conduct.

In the event that Physician Network Consulting fails to comply with the requirements set forth in Paragraphs IV, VI, VII.A.2, VII.B, or VII.C, Mr. Taylor must do so pursuant to Paragraph VIII.

Paragraph IX requires the respondent Physician Practices to terminate any contract with United HealthCare at United HealthCare's request and without penalty.

Paragraphs VII.B, VII.C, X, and XI of the proposed order impose various obligations on respondents to report or provide access to information to the Commission in order to facilitate monitoring respondents' compliance with the order.

The proposed order will expire in 20 years.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–19148 Filed 7–25–03; 8:45 am]

BILLING CODE 6750–01–P

[1] Some arrangements can facilitate contracting between physicians and payors without fostering an agreement among competing physicians on fees or fee-related terms. One such approach, sometimes referred to as a "messenger model" arrangement, is described in the 1996 Statements of Antitrust Enforcement Policy in Health Care jointly issued by the Federal Trade Commission and U.S. Department of Justice. See *http://www.ftc.gov/reports/hlth3s.htm.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Meeting of the Advisory Committee on Blood Safety and Availability

AGENCY: Office of the Secretary.

ACTION: Notice of meeting.

The Advisory Committee on Blood Safety and Availability will meet on Thursday August 21, 2003, and Friday, August 22, 2003, from 8 a.m. to 5 p.m. The meeting will take place at the Hyatt Regency Hotel on Capitol Hill, 400 New Jersey Ave., NW., Washington, DC 20001. The meeting will be entirely open to the public.

The purpose of this meeting will be to examine the effect of mass smallpox vaccinations on the blood donor base and the effects of emerging infectious diseases and bioterrorism on the blood supply.

Public comment will be solicited at the meeting. Public comment will be limited to five minutes per speaker. Those who wish to have printed material distributed to Advisory Committee members should submit thirty (30) copies to the Acting Executive Secretary prior to close of business August 15, 2003. Those who wish to utilize electronic data projection in their presentation to the Committee must submit their material to the Acting Executive Secretary prior to close of business August 15, 2003. In addition, anyone planning to comment is encouraged to contact the Acting Executive Secretary at her/his earliest convenience.

FOR FURTHER INFORMATION CONTACT: CAPT Lawrence C. McMurtry, Acting Executive Secretary, Advisory Committee on Blood Safety and Availability, Department of Health and Human Services, Office of Public Health and Science, 1101 Wootton Parkway, Room 275, Rockville, MD 20852; (301) 443–4788, FAX (301) 443–4361, e-mail *lmcmurtry@osophs.dhhs.gov.*

Dated: July 18, 2003.

CAPT Lawrence C. McMurtry,

Acting Executive Secretary, Advisory Committee on Blood Safety and Availability.

[FR Doc. 03–19067 Filed 7–25–03; 8:45 am]

BILLING CODE 4150–28–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10084]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (CMS)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Design and Implementation of a Targeted Beneficiary Survey on Access to Physician Services Among Medicare Beneficiaries; *Form No.:* CMS–10084 (OMB# 0938–0890); *Use:* This survey of Medicare beneficiaries in targeted communities will be used to obtain information on whether they are experiencing problems accessing

physician services. CMS will use data collected to determine if access problems exist at all, where and why problems may arise, whom they affect, and what the consequences are for Medicare beneficiaries. CMS will also learn the extent to which physician access problems are Medicare-specific.; *Frequency:* One-time; *Affected Public:* Individuals or Households; *Number of Respondents:* 4,000; *Total Annual Responses:* 4,000; *Total Annual Hours:* 958.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 17, 2003.

Dawn Willinghan,

Acting, Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–19103 Filed 7–25–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–730 & CMS–80, CMS–2649, and CMS–R–282]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (CMS)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Employee Building Pass Application and File; *Form No.:* CMS–730 & CMS–80 (OMB# 0938–0812); *Use:* The purpose of this system is to control United States Government Building Passes issued to all Centers for Medicare & Medicaid Services (CMS) employees and non-CMS employees who require continuous access to CMS buildings in Baltimore and other CMS and HHS Buildings; *Frequency:* As needed; *Affected Public:* Federal Government and Business or other for-profit; *Number of Respondents:* 2000; *Total Annual Responses:* 2000; *Total Annual Hours:* 500.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Request for Reconsideration of Part A Medicare Claims and Supporting Regulations in 42 CFR, 405.711; *Form No.:* CMS–2649 (OMB# 0938–0045); *Use:* Section 1869 of the Social Security Act authorizes a hearing for any individual who is dissatisfied with the intermediary's determination or amount of benefit paid. This form is used so that a party may request a reconsideration of the initial determination; *Frequency:* Monthly, Quarterly, Annually; *Affected Public:* Individuals or Households and Not-for-profit institutions; *Number of Respondents:* 62,000; *Total Annual Responses:* 62,000; *Total Annual Hours:* 15,500.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare + Choice (M+C) Organization Appeals and Grievance Data Disclosure Requirements and Supporting Regulations in 42 CFR 422.64, 422.111, and 422.560–422.626; *Form No.:* CMS–R–282 (OMB# 0938–0778); *Use:* M+C organizations will collect information on appeals and grievance dispositions to help CMS monitor plan performance and to provide information to beneficiaries to help them make informed decisions about their or potential health plans' performance; *Frequency:* Semi-Annually; *Affected Public:* Business or other for-profit; *Number of Respondents:* 214; *Total Annual Responses:* 428; *Total Annual Hours:* 1284.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 17, 2003.

Dawn Willinghan,

CMS Reports Clearance Officer, Division of Regulations Development and Issuances, Office of Strategic Operations and Strategic Affairs.

[FR Doc. 03–19104 Filed 7–25–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1988N–0038]

Agency Information Collection Activities; Announcement of OMB Approval; Records and Reports Concerning Experience With Approved New Animal Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Records and Reports Concerning Experience With Approved New Animal Drugs" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 5, 2003 (68 FR 23726), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0284. The approval expires on June 30, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: July 21, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–19031 Filed 7–25–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0318]

Agency Information Collection Activities; Proposed Collection; Comment Request; Procedures for the Safe and Sanitary Processing and Importing of Fish and Fishery Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on extending the existing reporting and recordkeeping requirements for processors and importers of fish and fishery products.

DATES: Submit written or electronic comments on the collection of information by September 26, 2003.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

Procedures for the Safe Processing and Importing of Fish and Fishery Products—21 CFR Part 123 (OMB Control Number 0910–0354)—Extension

FDA regulations in part 123 (21 CFR part 123) mandate the application of hazard analysis and critical control point (HACCP) principles to the processing of seafood. HACCP is a preventive system of hazard control designed to help ensure the safety of foods. The regulations were issued under FDA's statutory authority to regulate food safety, including section 402(a)(1) and (a)(4) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(a)(1) and (a)(4)), and became effective on December 18, 1997.

Certain provisions in part 123 require that processors and importers of seafood collect and record information. The HACCP records compiled and maintained by a seafood processor primarily consist of the periodic observations recorded at selected monitoring points during processing and packaging operations, as called for in a processor's HACCP plan (e.g., the values for processing times, temperatures, acidity, etc., as observed at critical control points). The primary purpose of HACCP records is to permit a processor to verify that products have been produced within carefully established processing parameters (critical limits) that ensure that hazards have been avoided. HACCP records are normally reviewed by appropriately trained employees at the end of a production lot or at the end of a day or week of production to verify that control limits have been maintained, or that appropriate corrective actions were taken if the critical limits were not maintained. Such verification activities are essential to ensure that the HACCP system is working as planned. A review of these records during the conduct of periodic plant inspections also permits FDA to determine whether the products have been consistently processed in conformance with appropriate HACCP food safety controls.

Section 123.12 requires that importers of seafood products take affirmative steps and maintain records that verify that the fish and fishery products they offer for import into the United States were processed in accordance with the HACCP and sanitation provisions set forth in part 123. These records are also to made available for review by FDA as provided in § 123.12(c).

The time and costs of these recordkeeping activities will vary considerably among processors and importers of fish and fishery products, depending on the type and number of products involved, and on the nature of the equipment or instruments required to monitor critical control points. The burdens have been estimated using typical small seafood processing firms as a model because these firms represent a significant proportion of the industry.

The burden estimate in table 1 of this document includes only those collections of information under the

seafood HACCP regulations that are not already required under other statutes and regulations. For example, the current food manufacturing practices provisions in 21 CFR part 110 already require that all food processors ensure good sanitary practices and conditions, monitor the quality of incoming materials, monitor and control food temperatures to prevent bacterial growth, and perform certain corrective actions and verification procedures. Furthermore, the estimate does not include collections of information that are a usual and customary part of businesses' normal activities. For example, the tagging and labeling of molluscan shellfish (21 CFR 1240.60) is a customary and usual practice among seafood processors. Consequently the estimates in table 1 account only for new information collection and recording requirements attributable to part 123.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping[2]	Total Annual Records	Hours per Recordkeeper[3]	Total Hours	Total Operating and Maintenance Costs (in dollars)
123.6(a), (b), and (c)	243	1	243	16.00	3,888	58,320
123.6(c)(5)	4,850	4	19,400	0.30	5,820	87,300
123.8(a)(1) and (c)	4,850	1	4,850	4.00	19,400	291,000
123.12(a)(2)(ii)	1,000	80	80,000	0.20	16,000	240,000
123.6(c)(7)	4,850	280	1,358,000	0.30	407,400	6,111,000
123.7(d)	1,940	4	7,760	0.10	1,940	29,100
123.8(d)	4,850	47	227,950	0.10	22,795	341,925
123.11(c)	4,850	280	1,358,000	0.10	135,800	2,037,000
123.12(c)	1,000	80	80,000	0.10	8,000	120,000
123.12(a)(2)	50	1	50	4.00	200	3,000
123.10	243	1	24	24.00	5,832	87,480
Annual burden hours 627,075						9,406.125

[1] These estimates include the information collection requirements in the following sections:
§ 123.16—Smoked Fish—process controls (see § 123.6(b))
§ 123.28(a)—Source Controls—Molluscan Shellfish (see § 123.6(b))
§ 123.28(d) and (d)—Records—molluscan shellfish (see § 123.6(c)(7))
[2] Based on an estimated 280 working days per year.
[3] Estimated average time per 8 hour work day unless one time response.

Dated: July 21, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–19032 Filed 7–25–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0106]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Submission of Petitions: Food Additive, Color Additive (Including Labeling), and Generally Recognized as Safe Affirmation; and Electronic Submission Using FDA Forms 3503 and 3504

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by August 27, 2003.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Submission of Petitions: Food Additive, Color Additive (Including Labeling), and GRAS Affirmation; Electronic Submission Using FDA Forms 3503 and 3504 (OMB Control Number 0910–0016)—Extension

This notice solicits comments on a proposed collection of the following four existing submissions of petitions: (1) Food additive and food additive petitions (FAPs) (OMB control number 0910–0016), (2) affirmation of generally recognized as safe (GRAS) status (OMB control number 0910–0132), (3) labeling requirements for color additives (other than hair dyes) and petitions (CAPs) (OMB control number 0910–0185), and (4) electronic submission of food and color additive petitions (OMB control number 0910–0480).

Section 409(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(a)) provides that a food additive shall be deemed to be unsafe, unless: (1) The additive and its use, or intended use, are in conformity with a regulation issued under section 409 of the act that describes the condition(s) under which the additive may be safely used; (2) the additive and its use, or intended use, conform to the terms of an exemption for investigational use; or (3) a food contact notification submitted under section 409(h) of the act is effective. FAPs are submitted by individuals or companies to obtain approval of a new food additive or to amend the conditions of use permitted under an existing food additive regulation. Section 171.1 (21 CFR 171.1) specifies the information that a petitioner must submit in order to establish that the proposed use of a food additive is safe and to secure the publication of a food additive regulation describing the conditions under which the additive may be safely used. Parts 172, 173, 175 through 178, and 180 (21 CFR parts 172, 173, 175 through 178, and 180) contain labeling requirements for certain food additives to ensure their safe use.

Section 721(a) of the act (21 U.S.C. 379e(a)) provides that a color additive shall be deemed to be unsafe unless the additive and its use are in conformity with a regulation that describes the condition(s) under which the additive may safely be used, or the additive and its use conform to the terms of an exemption for investigational use issued under section 721(f) of the act. CAPs are submitted by individuals or companies to obtain approval of a new color additive or a change in the conditions of use permitted for a color additive that is already approved. Section 71.1 (21 CFR part 71.1) specifies the information that a petitioner must submit in order to establish the safety of a color additive and to secure the issuance of a regulation permitting its use. FDA's color additive labeling requirements in § 70.25 (21 CFR part 70.25) require that color additives that are to be used in food, drugs, devices, or cosmetics be labeled with sufficient information to ensure their safe use.

Under authority of sections 201, 402, 409, and 701 of the act (21 U.S.C. 321, 342, 348, and 371), FDA reviews petitions for affirmation as GRAS that are submitted on a voluntary basis by the food industry and other interested parties. Specifically under section 201(s) of the act, a substance is GRAS if it is generally recognized among experts qualified by scientific training and experience to evaluate its safety, to be safe through either scientific procedures or common use in food. The act has historically been interpreted to permit food manufacturers to make their own determination that use of a substance in food is GRAS. To implement the GRAS provisions of the act, FDA has issued procedural regulations under 21 CFR 170.35(c)(1).

In the **Federal Register** of July 31, 2001 (66 FR 39517), FDA announced the availability of a draft guidance for industry entitled "Providing Regulatory Submissions to Office of Food Additive Safety in Electronic Format for Food Additive and Color Additive Petitions." This guidance describes the procedures for electronic submission of FAPs and CAPs using FDA Form No. 3503, entitled "Food Additive Petition Submission Application," and FDA Form No. 3504, entitled "Color Additive Petition Submission Application."

FDA scientific personnel review food and color additive and GRAS affirmation petitions to ensure the safety of the intended use of the substance in or on food, or of a food additive that may be present in food as a result of its use in articles that contact food (or for color additives, its use in food, drugs, cosmetics, or medical devices). Respondents are businesses engaged in the manufacture or sale of food, food ingredients, color additives, or substances used in materials that come into contact with food.

In the **Federal Register** of April 4, 2003 (68 FR 16517) FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the reporting burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section/ FDA Form	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Operating and Maintenance Costs	Total Hours
CAPS						
70 25	0	1	0	0	0	0
71.1	2	1	2	1,652	$5,600	3,304
FDA Form 3504	1	1	1	1	0	1
GRAS Affirmation Petitions						
170.35	1	1	1	2,598		2,598
FAPs						
171.1	7	1	7	3,640		25,480
FDA Form 3503	2	1	2	1		2
Total					$5,600	31,385

[1] There are no capital costs associated with this collection of information.

The estimate of burden for FAPs and CAPs is based on the average number of new FAPs and CAPs received in calendar years 2000 through 2002 and the total hours expended in preparing the petitions. Although the burden varies with the type of petition submitted, an average FAP or CAP, or GRAS affirmation petition, involves analytical work and appropriate toxicological studies, as well as the work of drafting the petition itself. The burden varies depending on the complexity of the petition, including the amount and types of data needed for scientific analysis.

Electronic submissions of petitions contain the same petition information required for paper submission. The agency estimates that up to 30 percent of the petitioners for both food and color additives will take advantage of the electronic submission process. By using the guidelines and forms that FDA is providing, the petitioner will be able to organize the petition to focus on the information needed for FDA's safety review. Therefore, we estimate that petitioners will only need to spend approximately 1 hour completing the electronic submission application form (Form 3503 or 3504, as appropriate) because they will have already used the guidelines to organize the petition information needed for the submission.

The labeling requirements for food and color additives were designed to specify the minimum information needed for labeling in order that food and color manufacturers may comply with all applicable provisions of the act and other specific labeling acts administered by FDA. Label information does not require any additional information gathering beyond what is already required to assure conformance with all specifications and limitations in any given food or color additive regulation. Label information does not have any specific recordkeeping requirements unique to preparing the label. Therefore, because labeling requirements under § 70.25 for a particular color additive involve information required as part of the CAP safety review process, the estimate for number of respondents is the same for §§ 70.25 and 71.1, and the burden hours for labeling are included in the estimate for § 71.1. Also, because labeling requirements under parts 172, 173, 175 through 178, and 180 for particular food additives involve information required as part of the FAP safety review process under § 171.1, the burden hours for labeling are included in the estimate for § 171.1.

Dated: July 21, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–19075 Filed 7–25–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0034]

Agency Information Collection Activities; Announcement of OMB Approval; FDA Safety Alert/Public Health Advisory Readership Survey

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "FDA Safety Alert/Public Health Advisory Readership Survey" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 13, 2003 (68 FR 25616), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0341. The approval expires on July 31, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: July 21, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–19076 Filed 7–25–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0312]

Discussion of Animal Feed Safety System: A Comprehensive Risk-Based Safety Program for the Manufacture and Distribution of Animal Feeds; Notice of Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a meeting to discuss the potential development of a comprehensive, risk-based animal feed safety system (AFSS) describing how animal feeds (individual ingredients and mixed feeds) should be manufactured and distributed to minimize risks to animals consuming the feed and people consuming food products from animals. We are informing you (consumers, animal feed processors, animal producers, State and local officials, and other interested persons) of this meeting in an effort to solicit comments and seek your assistance in our consideration of a safety program to effectively minimize the hazards to public health, both human and animal health, posed by animal feed products.

Date and Time: The public meeting will be held on Tuesday, September 23, 2003, from 1 p.m. to 5 p.m., and Wednesday, September 24, 2003, from 8 a.m. to 3 p.m. You may submit written or electronic comments at any time, but they would be most helpful if received either before or within 30 days after the close of the meeting.

Location: The meeting will be held at the Hyatt Dulles International Airport, 2300 Dulles Corner Blvd., Herndon, VA, 1–800–233–1234 or 703–713–1234.

Comments and Electronic Access: Interested persons may submit written or electronic comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one copy. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.* Comments should be identified with docket number found in brackets in the heading of this document. A copy of the received comments will be available for public examination in the Dockets Management Division between 9 a.m. and 4 p.m., Monday through Friday. You can view comments FDA has received on the Internet at *http://www.fda.gov/ohrms/dockets/.*

For General Information Contact: George Graber, Center for Veterinary Medicine (HFV–220), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6651; FAX 301–827–1484 or e-mail: *ggraber@cvm.fda.gov.*

For Information About Registration Contact: Linda Grassie, Center for Veterinary Medicine (HFV–12), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–3796; FAX 301–827–4065 or e-mail: *Linda.Grassie@fda.gov.*

Registration: There is no registration fee for the meeting, but registration is required. Limited space is available (maximum of 200), so early registration is encouraged. You may register by phone, Fax or e-mail (see *For Information About Registration Contact*). Registration forms are also available on the Division of Dockets Management Web site at *http://www.accessdata.fda.gov/scripts/oc/dockets/meetings/meetingdocket.cfm.*

If you need special accommodations due to a disability, please contact Linda Grassie (see *For Information About Registration Contact*) at least 7 days in advance.

Transcripts: You may request a transcript of the meeting's general session in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857. The transcript will not include the individual breakout sessions, although their summaries will be included in the general session transcript. The transcript of the public meeting will be available after the meeting, at a cost of 10 cents per page. You may also examine the transcript of the meeting at the Division of Dockets Management (see *Comments and Electronic Access*) between 9 a.m. and 4 p.m., Monday through Friday and on the Center for Veterinary Medicine Web site at *http://www.fda.gov/cvm.*

SUPPLEMENTARY INFORMATION:

I. Background

The regulation of animal feed by FDA has focused on areas recognized as having an important impact on human health. Medicated feed good manufacturing practice regulations (GMPs) help prevent potentially unsafe drug residues in edible animal tissue. The regulation that prohibits the feeding of mammalian proteins to ruminant animals is intended to help prevent bovine spongiform encephalopathy in our cattle herd and the potential for variant Creutzfeldt-Jakob disease in humans. FDA believes it may be of value to develop a comprehensive preventive program for the manufacture and distribution of animal feed.

While emphasis for fostering safety has been placed on end product sampling, only a limited number of samples are tested for potential contaminants. More and more, industry is considering preventative, risk-based system controls to augment end product testing. We are exploring risk-based, preventative measures as an approach designed to help prevent feed-related hazards from occurring and to detect problems prior to distribution and sale of feed products. Control systems vary, but generally they have a number of common basic elements. These include the following elements: (1) A thorough analysis of manufacturing and distribution for each product, (2) identification of risks associated with the process and product, (3) identification and implementation of controls to effectively prevent identified risks, (4) employee training programs, (5) controls focused on critical steps, (6) assurances such steps are accurately and consistently performed, and (7) recordkeeping and validation of the system.

Although the purpose of an AFSS would be to reduce the risks associated with animal feeds, the design of a final program would consider costs, technological limitations, and other resource limitations. Some available approaches include hazard analysis and critical control points and GMPs, International Organization for Standardization procedures, statistical process controls, and standard sanitary operating procedures. These have been used by regulatory agencies and industry to help ensure the production and distribution of safe human foods.

II. Meeting

We are holding the meeting in an effort to gather information from you, our stakeholders, on the design of an effective, comprehensive, preventive, risk-based program to help minimize risks associated with animal feeds. Resources and costs are important considerations in any such undertaking, and we are receptive to suggestions about how these can be controlled or used most effectively (such as use of State inspections and self-inspections) while focusing preventive efforts on important known and emerging health risks associated with animal feeds.

The meeting will feature stakeholder and government speakers discussing safety measures currently in use and others which could be adapted to the feed industry. We plan several facilitated break-out discussion groups to explore topics such as the following:

1. What are the strengths of the current Federal and State regulatory programs for feed safety?
2. What are the weaknesses of the current Federal and State regulatory programs for feed safety?
3. What are the strengths and weaknesses of current industry feed safety programs?
4. What are the potential benefits of a comprehensive, risk-based Federal feed safety program?
5. What components should be included in an AFSS?
6. What is the potential burden (increased cost and manpower) of a comprehensive, risk-based Federal feed safety program, and what options are available to minimize the burden?

Dated: July 19, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–19030 Filed 7–25?–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0317]

Draft Guidance for Reviewers and Industry on Good Review Management Principles for Prescription Drug User Fee Act Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for reviewers and industry entitled "Good Review Management Principles for PDUFA Products." This is one in a series of guidance documents that FDA agreed to draft and implement in conjunction with the June 2002 reauthorization of the Prescription Drug User Fee Act of 1992 (PDUFA). The good review management principles (GRMPs) are intended to promote efficient and consistent management of application reviews. The GRMPs focus on the role of both reviewers and industry, emphasizing effective communication to enhance the drug development and review processes.

DATES: Submit written or electronic comments on the draft guidance by September 11, 2003. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communications, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Food and Drug Administration, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: John Jenkins, Center for Drug Evaluation and Research (HFD–020), Food and Drug Administration, 1451 Rockville Pike, Rockville, MD 20852, 301–594–3937; or Robert A. Yetter, Center for Biologics Evaluation and Research (HFM–25), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0373.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for reviewers and industry entitled "Good Review Management Principles for PDUFA Products." This document is intended to provide guidance to industry and the review staff in CDER and CBER on GRMPs for the conduct of the first-cycle review of a new drug application (NDA), a biologics license application (BLA), or an efficacy supplement under PDUFA. The GRMPs in this guidance are based on the collective experience of CDER and CBER with review of applications for PDUFA products and are intended to promote efficient and consistent management of application reviews. A key aspect of GRMPs is their emphasis on effective communication between the agency and applicants throughout the drug and biologic product development and review processes.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on GRMPs for PDUFA products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft guidance. Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: July 18, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–19026 Filed 7–25–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Council on Graduate Medical Education; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Council on Graduate Medical Education (COGME).

Dates and Times: September 17, 2003, 8 a.m.–4:45 p.m., September 18, 2003, 8 a.m.–3 p.m.

Place: Holiday Inn Select, Versailles 1, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Status: The meeting will be open to the public.

Agenda: The agenda for September 17 will include: Welcome and opening comments from the Chair of COGME and staff of the Health Resources and Services Administration. In the morning there will be a series of speakers on topics covering the physician workforce, including "Managed Care Staffing Patterns," "Small Area Variations," and the "Impact of an Aging Society on Physician Workforce Requirements." There will also be presentations on the "Impact of Residency Duty Hours Restrictions-Cost and Structural Adaptations."

In the afternoon there will be a luncheon presentation on the "University of Michigan Supreme Court Case and its Impact for Medical School Diversity Initiatives." Lunch will not be provided to the general public. Later that afternoon, the Council's three workgroups—Diversity, Graduate Medical Education Financing, and Physician Workforce—will convene.

The agenda for September 18 will include a presentation by the Gallup Organization regarding the results of the General Services Administration's Stakeholder Engagement Survey of the Council; discussion of the survey by the Council will follow. The Council's three workgroup chairs will give their reports. There will be a report on development of a framework for revised COGME physician workforce goals, with subsequent discussion of Council recommendations covering the physician workforce and graduate medical education.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: Anyone requiring information regarding the meeting should contact Stanford M. Bastacky, D.M.D., M.H.S.A., Acting Executive Secretary, Council on Graduate Medical Education, Division of Medicine and Dentistry, Bureau of Health Professions, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6326.

Dated: July 22, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–19074 Filed 7–25–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Practitioner Services Network Initiative—New—SAMHSA's Center for Substance Abuse Treatment (CSAT) plans to obtain information about the providers, care and characteristics of clients with substance abuse disorders and related co-morbidities that receive treatment from practitioners in private practice and organizational settings. This information is needed to complement available information about the substance abuse treatment provided in institutional and publicly funded settings, in order to more completely describe the full range and nature of substance abuse problems affecting the nation.

The CSAT Practitioner Services Network initiative will provide support to four of the largest behavioral health associations in the nation to design and implement surveys using representative samples of their members and the clients they serve. The membership of the selected Associations collectively represent a significant proportion of the behavioral health professionals in the country. Two additional associations, the American Psychiatric Association and the American Psychological Association, have separately functioning Internet-based PSN infrastructures; from these two groups CSAT will be able to purchase reports based on the data they have already collected.

For the American Association for Marriage and Family Therapy; the American Counseling Association; NAADAC, The Association for Addiction Professionals; and the National Association of Social Workers, CSAT will sponsor new data collection efforts to provide a core set of data elements to be collected in their upcoming membership surveys. The four Associations conduct periodic sample surveys of their memberships through their individual Practitioner Services Network infrastructures and will incorporate a common set of specific substance-abuse questions that are of importance to CSAT into these studies. CSAT will sponsor data collection and purchase, from each Association, a report that addresses the characteristics of practitioners who may be expected to encounter clients with substance abuse disorders, the characteristics of clients with behavioral and/or substance abuse disorders, and the nature of services rendered to these clients.

The reports to be purchased by CSAT will be based on the Associations' surveys of a representative sample of 500 of their members. Practitioners in the sample will abstract demographic and encounter-specific data from two of their current patients' records. No client identifying information will be collected as part of this study. Data collection methods will include mailed surveys with mailed reminders and follow-up phone calls in order to achieve a target response rate of 80 percent. This information will complement CSAT's and SAMHSA's existing data collection efforts and provide a more comprehensive view of the populations in need of services, the prevalence of substance abuse and mental health co-morbidities, and the qualifications and training of private practitioners who serve these clients. The burden estimates are summarized in the following table.

Estimated number of respondents	Responses per respondent	Estimated completion time (hours)	Total burden hours
2,000	1	.33	660

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Herron Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: (202) 395–6974.

Dated: July 21, 2003.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 03–19058 Filed 7–25–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

Agency Information Collection Activities: Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Employment Eligibility Verification; Form I–9.

The Department of Homeland Security, Bureau of Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until September 26, 2003.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the equality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Employment Eligibility Verification.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–9. Bureau of Citizenship and Immigration Services, Department of Homeland Security.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form was developed to facilitate compliance with section 274A of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, which prohibits the knowing employment of unauthorized aliens. The information collected is used by employers or by recruiters for enforcement of provisions of immigration laws that are designed to control the employment of unauthorized aliens.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 78,000,000 responses at 9 minutes (.15 hours) per response and 20,000,000 recordkeepers at 4 minutes (.066 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 13,020,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services, Bureau of Citizenship and Immigration Services, Department of Homeland Security, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Lewis Oleinick, Clearance Officer, Department of Homeland Security, Regional Office Building 3, 7th and D Streets, SW., Room 4636–26, Washington, DC 20202.

Dated: July 22, 2003.

Richard A. Sloan,

Department Clearance Officer, United States Department of Homeland Security, Bureau of Citizenship and Immigration Services.

[FR Doc. 03–19052 Filed 7–25–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG 2002–13487]

Environmental Assessment of Implementation of the Coast Guard Training Center Cape May's Integrated Natural Resources Management Plan

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability of finding of no significant impact (FONSI).

SUMMARY: The U.S. Coast Guard announces the availability of its Finding of No Significant Impact (FONSI) regarding its implementation of the Coast Guard Training Center Cape May's Integrated Natural Resources Management Plan (INRMP) in Cape May, New Jersey. The FONSI records the Coast Guard's determination that the proposed implementation would have no significant impact on the environment.

ADDRESSES: The material referenced in this notice is available for inspection at Docket Management Facility (USCG–2002–13487), U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW, Washington, DC 20590–0001 and on the Internet at *http://dms.dot.gov*. Written requests for copies of the FONSI, or requests for information, should be directed to: U. S. Coast Guard Training Center, Facilities Engineering, 1 Munro Ave., Cape May, NJ 08204.

FOR FURTHER INFORMATION CONTACT: If you have questions about the project, you may contact Mr. Christopher Hajduk, at 1 Munro Avenue, Cape May, NJ 08204, or *chajduk@tracencapemay.uscg.mil*.

SUPPLEMENTARY INFORMATION: On October 21, 2002, the Coast Guard published a notice in the **Federal Register** (67 FR 64694–64695) requesting comments on a draft Integrated Natural Resources Management Plan (INRMP) and Environmental Assessment (EA) developed for use by U.S. Coast Guard (USCG) and the USCG Training Center (TRACEN) Cape May, New Jersey in accordance with USCG Commandant Instruction (COMDTINST) M5090.3, Natural Resources Management, COMDTINST M16475.1D, National Environmental Policy Act Manual, and Department of Transportation (DOT) Order 5610.1C, Procedures for Considering Environmental Impacts.

The INRMP provides TRACEN Cape May with a description of the Installation (*e.g.*, location, history, and mission), information about the surrounding physical and biotic environment, and an assessment of the impacts to natural resources as a result of mission activities. Furthermore, the INRMP recommends various management practices, in compliance with Federal, state, and local standards, designed to mitigate negative impacts and to enhance the positive effects of the TRACEN's mission on local ecosystems.

The INRMP integrates all aspects of natural resources management with the rest of the TRACEN Cape May's mission, and therefore becomes the primary tool for managing the TRACEN's ecosystems while ensuring the successful accomplishment of the training, law enforcement, and Search and Rescue (SAR) missions at the highest possible levels of efficiency. The INRMP is a guide for the management and stewardship of all natural resources present at the TRACEN.

No comments were received during the review process.

The INRMP and EA are available for public inspection or copying at the Docket Management Facility listed in **ADDRESSES.** The Docket Management Facility is open 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

Dated: July 8, 2003.

D.S. Klipp

CDR, U.S. Coast Guard, Facilities Engineer, Coast Guard Training Center, Cape May.

[FR Doc. 03–19040 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1477–DR]

Arizona; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arizona (FEMA–1477–DR), dated July 14, 2003, and related determinations.

EFFECTIVE DATE: July 14, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 14, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Arizona, resulting from the Aspen Fire on June 17, 2003, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Arizona.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under section 408 of the Stafford Act is later warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Michael J. Hall, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following area of the State of Arizona to have been affected adversely by this declared major disaster:

Pima County for Public Assistance.

All counties within the State of Arizona are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–19109 Filed 7–25–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1476–DR]

Indiana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Indiana (FEMA–1476–DR), dated July 11, 2003, and related determinations.

EFFECTIVE DATE: July 11, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 11, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Indiana, resulting from severe storms, tornadoes, and flooding on July 4, 2003, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Indiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas, and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. If Public Assistance is later warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Thomas J. Costello, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Indiana to have been affected adversely by this declared major disaster:

Adams, Allen, Benton, Blackford, Boone, Carroll, Cass, Clinton, Fountain, Howard, Huntington, Jasper, Jay, Kosciusko, Miami, Montgomery, Noble, Pulaski, Tippecanoe, Tipton, Wabash, Warren, Wells, White, and Whitley Counties for Individual Assistance.

All counties within the State of Indiana are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–19112 Filed 7–25–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1476–DR]

Indiana; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA–1476–DR), dated July 11, 2003, and related determinations.

EFFECTIVE DATE: July 11, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Indiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a

major disaster by the President in his declaration of July 11, 2003:

Delaware, Grant, Hamilton, Hancock, Henry, Madison, Marion, Randolph, and Wayne Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–19113 Filed 7–25–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1476–DR]

Indiana; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA–1476–DR), dated July 11, 2003, and related determinations.

EFFECTIVE DATE: July 17, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Indiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 11, 2003:

Clay, Fulton, Morgan, Newton, Parke, and Vigo Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–19114 Filed 7–25–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1475–DR]

Kentucky; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Kentucky (FEMA–1475–DR), dated July 2, 2003, and related determinations.

EFFECTIVE DATE: July 2, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 2, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the Commonwealth of Kentucky, resulting from severe storms, flooding, mud and rock slides, and tornadoes on June 14, 2003, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the Commonwealth of Kentucky.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas, and Hazard Mitigation throughout the Commonwealth. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Alexander S. Wells, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Kentucky to have been affected adversely by this declared major disaster:

Boyd, Breathitt, Carter, Clay, Elliott, Floyd, Greenup, Harlan, Johnson, Knott, Lawrence, Leslie, Letcher, Lewis, Magoffin, Martin, Owsley, Perry, Pike, and Rowan Counties for Individual Assistance.

Boyd, Breathitt, Carter, Clay, Elliott, Floyd, Johnson, Knott, Knox, Lawrence, Leslie, Magoffin, Monroe, Montgomery, Owsley, Perry, Pike, and Rowan Counties for Public Assistance.

All counties within the Commonwealth of Kentucky are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–19111 Filed 7–25–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1475–DR]

Kentucky; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Kentucky (FEMA–1475–DR), dated July 2, 2003, and related determinations.

EFFECTIVE DATE: June 27, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective June 27, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–19116 Filed 7–25–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1478–DR]

Ohio; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Ohio (FEMA–1478–DR), dated July 15, 2003, and related determinations.

EFFECTIVE DATE: July 15, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 15, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Ohio, resulting from severe storms and flooding on July 4, 2003, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Ohio.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas, and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Ron Sherman, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Ohio to have been affected adversely by this declared major disaster: Auglaize, Darke, Logan, Mercer, Shelby, and Van Wert Counties for Individual Assistance.

All counties within the State of Ohio are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–19110 Filed 7–25–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1474–DR]

West Virginia; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of West Virginia (FEMA–1474–DR), dated June 21, 2003, and related determinations.

EFFECTIVE DATE: July 15, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 15, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs; 83.544, Public Assistance

Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–19115 Filed 7–25–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1474–DR]

West Virginia; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–1474–DR), dated June 21, 2003, and related determinations.

EFFECTIVE DATE: July 14, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 21, 2003:

Monongalia County for Individual Assistance and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–19117 Filed 7–25–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1474–DR]

West Virginia; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–1474–DR), dated June 21, 2003, and related determinations.

EFFECTIVE DATE: July 16, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 21, 2003: Doddridge, Harrison, and Ritchie Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–19118 Filed 7–25–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1474–DR]

West Virginia; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–1474–DR), dated June 21, 2003, and related determinations.

EFFECTIVE DATE: July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 21, 2003:

Nicholas County for Individual Assistance (already designated for Public Assistance.)

Cabell County for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–19119 Filed 7–25–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4814–N–07]

Notice of Proposed Information Collection: Comment Request, Youthbuild Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 26, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Sheila Jones, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW., Room 7232, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Phyllis Williams at telephone number (202) 708–2290 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Youthbuild Program.

OMB Control Number, if applicable: 2506–0142.

Description of the need for the information and proposed use: The Youthbuild Program was authorized under Section 164 of the Housing and Community Development Act of 1992 (42 U.S.C. 8011). Funded programs provide disadvantaged youth, predominantly high school drop outs with educational opportunities and job skills training. Information is collected from eligible applicants for a competition to determine which entities will receive grant funds.

Agency form numbers, if applicable: HUD Form 40211, SF1199A, HUD–27054.

Members of affected public: Public or private nonprofit agencies, including State or local housing agencies or authorities, State or units of local government, or any entity eligible to provide education and employment training under other Federal employment training programs.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 121,280.

Status of the proposed information collection: Since FY 2000, all grant administration and record keeping for the Youthbuild Program has been delegated to HUD Field Office jurisdictions. They have the responsibility for reviewing grant activities via Semi-Annual Reports for recipients of Youthbuild funds.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 22, 2003.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

[FR Doc. 03–19047 Filed 7–25–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–43]

Order of Succession for the Office of Policy Development and Research

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of order of succession.

SUMMARY: In this notice, the Assistant Secretary for Policy Development and Research designates the Order of Succession for the Office of Assistant Secretary for Policy Development and Research. This Order of Succession supersedes the Order of Succession for the Office of Policy and Development, published on December 1, 1998.

EFFECTIVE DATE: July 8, 2003.

FOR FURTHER INFORMATION CONTACT: Lynn B. Newkirk, Director, Management and Administrative Services, Department of Housing and Urban Development, Room 8228, 451 Seventh Street, SW, Washington, DC 20410–6000, telephone (202) 708–1812. (This is not a toll-free number.) Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Policy Development and Research is issuing this Order of Succession of officials authorized to perform the duties and functions of the Office of the Assistant Secretary when, by reason of absence, disability, or vacancy in office, the Assistant Secretary is not available to exercise the powers or perform the duties of the Office. This Order of Succession is subject to the provisions of the Vacancy Reform Act of 1998 (5 U.S.C. 3345–3349d). This publication supersedes the Order of Succession notice on December 1, 1998 (63 FR 66193).

Accordingly, the Assistant Secretary for Policy Development and Research designates the following Order of Succession:

Section A. Order of Succession

Subject to the provision of the Vacancy Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for Policy Development and Research is not available to exercise the powers or perform the duties of the Office of the Assistant Secretary for Policy Development and Research, the following officials within the Office of Policy Development and Research are hereby designated to exercise the powers and perform the duties of the Office:

(1) General Deputy Assistant Secretary.

(2) Deputy Assistant Secretary for Economic Affairs.

(3) Deputy Assistant Secretary for Research, Evaluation, and Monitoring.

(4) Deputy Assistant Secretary for Policy Development.

These officials shall perform the functions and duties of the Office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his or hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

Section B. Authority Superseded

This Order of Succession supersedes the Order of Succession for the Assistant Secretary for Policy Development and Research, published on December 1, 1998 (63 FR 66193).

Authority: Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 8, 2003.

Alberto F. Treviño,

Assistant Secretary for Policy Development and Research.

[FR Doc. 03–19122 Filed 7–25–03; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request revising and extending the information collection described below will be submitted to the Office of Management and Budge for approval under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Copies of the proposed collection instrument may be obtained by contacting the USGS clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made within 60 days directly to the USGS Clearance Officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192. Telephone 703–648–7313.

Specific public comments are requested as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the USGS, including whether the information will have practical utility;
2. The accuracy of the USGS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. The quality, utility, and clarity of the information to be collected; and
4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: The National Atlas of the United States of America®.

Current OMB approval number: 1028–0057.

Abstract: Potential customers of National Atlas products and services will be asked questions that provide (1) potential uses of these products and services; (2) types of personal computers and telecommunications used; (3) current methods of acquiring atlas-type information; (4) demographic information; (5) personal expectations from the products; (6) suggestions for improving these products and services. Survey questionnaires will be distributed by mail in a return postage-paid format, in person at National Atlas exhibits and other venues, and via the World Wide Web. Focus groups will be held at various locations across the United States and could include prototype product testing. Software usability studies will be conducted at various locations and will result in the development of products and services that are easier to use. Customer information gathered from the questionnaires, focus groups, and usability studies will be used to evaluate and improve the National Atlas of the United State based on customer responses. The proposed collection is limited in scope to the National Atlas products and the capability of the products to meet customer needs.

Bureau form number: None.

Frequency: An estimated 2–3 surveys, 2–5 focus groups, and 2–5 software usability studies per year to evaluate potential customer segments and reactions.

Description of respondents: Owners of personal computers, with Internet access. Potentially the general public, libraries, and schools.

Estimated completion time: Varies depending on the mechanism used: Approximately 0.15 minutes per survey and 1 hour per focus group session of usability test session.

Annual responses: Approximately 1,000 survey, 75 focus group responses, and 75 software usability responses.

Annual burden hours: 400.

Bureau clearance officer: John Cordyack, 703–648–7313.

Dated: July 14, 2003.

Robert A. Lidwin,

Chief of Staff for Geography.

[FR Doc. 03–19100 Filed 7–25–03; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Request for Public Comments on Proposed Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal to extend the collection of information described below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made within 60 days directly to the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192; telephone (703) 648–7313.

Specific public comments are requested as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;
2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. The quality, utility, and clarity of the information to be collected; and
4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Annual National Earthquake Hazards Reduction Program Announcement.

OMB approval number: 1028–0051.

Abstract: Respondents submit proposals to support research in earthquake hazards and earthquake prediction to earth-science data and information essential to mitigate earthquake losses. This information will be used as the basis for selection and award of projects meeting the program objectives. Annual or final reports are required on each selected performance.

Bureau form number: None.

Frequency: Annual proposals, annual or final reports.

Description of respondents: Educational institutions, profit and non-profit organizations, individuals, and agencies of local or State governments.

Annual responses: 370.

Annual burden hours: 12,800 hours.

Bureau clearance officer: John Cordyack, 703–648–7313.

Dated: July 14, 2003.

Frances W. Pierce,

Acting Associate Director for Geology.

[FR Doc. 03–19101 Filed 7–25–03; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–1020–PG: GP03–0237]

Notice of Public Meeting: Washington/Oregon Combined Resource Advisory Council Meeting for John Day/Snake, Southeast Oregon and Eastern Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) John Day Snake, Southeast Oregon and Eastern Washington Resource Advisory Councils (RACs), will meet as indicated below.

DATES: The two-day public meeting will be held at the Kah-Nee-Ta High Desert Resort, 6823 Highway 8, Warm Springs, OR on Monday, September 22, 2003 from 12:30 p.m. to 4:30 p.m. and on Tuesday, September 23, 2003 from 8 a.m. to noon and 1 p.m to 4 p.m. On September 23, a public comment period will follow the meeting, starting at approximately 4 p.m. and ending at approximately 5:30 pm.

SUPPLEMENTARY INFORMATION: The three 15-member Councils advise the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Oregon and Washington.

Meeting Topics May Include:

Rangeland Health Assessment—Wild Horses
Sustaining Working Landscapes Overview—Noxious Weeds
Recordable Disclaimers of Interest (Roads)

Meeting Procedures

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below

FOR FURTHER INFORMATION CONTACT: Virginia Gibbons at (541) 416–6700, Prineville Bureau of Land Management, 3050 NE Third Street, Prineville, OR, 97754.

Dated: July 21, 2003.

Alan Barron Bail,

District Manager.

[FR Doc. 03–19061 Filed 7–25–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NDM–88114]

Public Land Order No. 7577; Transfer of Jurisdiction; North Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order transfers jurisdiction of 640 acres of public land within the boundary of the Little Missouri National Grasslands to the United States Forest Service.

EFFECTIVE DATE: July 28, 2003.

FOR FURTHER INFORMATION CONTACT: Deborah Sorg, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107–6800, 406–896–5045, or Douglas Burger, BLM North Dakota Field Office, 2933 Third Avenue West, Dickinson, North Dakota 58601–2619, 701–227–7703.

SUPPLEMENTARY INFORMATION: This is a transfer of surface estate only. The land has been and shall remain open to mining, mineral and geothermal leasing, and mineral material sales.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land and Policy Management Act of 1976, 43 U.S.C. 1714 (1994) it is ordered as follows:

Subject to valid existing rights, jurisdiction of the following described land within the boundary of the Little Missouri National Grasslands, is hereby transferred to the United States Forest Service, to be managed as National Grasslands:

Fifth Principal Meridian, North Dakota

T. 141 N., R. 101 W.,

Sec. 10.

The area described contains 640 acres in Billings County.

Dated: July 11, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–19124 Filed 7–25–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU 42839 and UTU 42839A]

Public Land Order No. 7576; Partial Revocation of Secretarial Order Dated December 21, 1906; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a Secretarial Order insofar as it affects approximately 400 acres of National Forest System lands withdrawn for Bryant's Fork, Strawberry, and Uinta River Administrative Sites. This action will open the lands to such forms of disposition as may by law be made of National Forest System lands and to mining, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

EFFECTIVE DATE: August 27, 2003.

FOR FURTHER INFORMATION CONTACT: Marsha Fryer, Forest Service, Intermountain Region, 324–25th Street, Ogden, Utah 84401–2310, 801–625–5802.

SUPPLEMENTARY INFORMATION: The Secretarial Order dated December 21, 1906, withdrew National Forest System lands for Bryant's Fork, Strawberry, and Uinta River Administrative Sites, and several other administrative sites (ranger stations). The Forest Service has determined that the withdrawal is no longer needed on the three administrative sites listed above and has requested the partial revocation.

Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Order dated December 21, 1906, which withdrew National Forest System lands for several Forest Service administrative sites, is hereby revoked insofar as it affects the following described lands:

Uinta National Forest

Bryant's Fork Administrative Site

Uinta Special Meridian

T. 3 S., R. 12 W.,
Sec. 36, W½SE¼.

Strawberry Administrative Site

Uinta Special Meridian

T. 2 S., R. 12 W.,
Sec. 27, NE¼.

Ashley National Forest

Uinta River Administrative Site

Uinta Special Meridian

T. 2 N., R. 2 W.,
Sec. 4, E½SW¼ and W½SE¼.
The areas described aggregate approximately 400 acres.

2. At 10 a.m. on August 27, 2003, the lands shall be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: July 11, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–19125 Filed 7–25–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0138).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 206, subpart B. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements. The ICR is titled "30 CFR Part 206, Subpart B, Establishing Oil Value on Royalty Due on Indian Leases."

DATES: Submit written comments on or before August 27, 2003.

ADDRESSES: Submit written comments either by fax (202) 395–5806 or e-mail (*Ruth_Solomon@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0138). Mail or hand-carry a copy of your comments to Sharron L. Gebhardt, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3781. You may also contact Sharron Gebhardt to obtain a copy at no cost of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: "30 CFR Part 206, Subpart B, Establishing Oil Value on Royalty Due on Indian Leases."

OMB Control Number: 1010–0138.

Bureau Form Number: None.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) under the Mineral Leasing Act (30 U.S.C. 1923 and the OCS Lands Act (43 U.S.C. 1353) is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. MMS performs the royalty management functions and assists the Secretary in carrying out DOI's Indian trust responsibility.

On December 20, 1995, MMS published an Advance Notice of Proposed Rulemaking (60 FR 65610) regarding valuation of oil from Federal and Indian leases. In the notice, we asked all interested parties to submit and/or comment on alternate methodologies for valuing oil production. Additionally, we asked for comments related to "significant quantities" in valuation determinations.

Although industry generally had no comments due to pending litigation on this issue, many States and Indian organizations generally believed the current system is outdated and a new system based on either the New York Mercantile Exchange (NYMEX) or spot prices would be more appropriate. In response to these concerns, we published a proposed rule on February 12, 1998 (63 FR 7089), revising the current Indian oil valuation regulations. This proposed rule "Establishing Oil Value for Royalty Due on Indian Leases," added more certainty to valuation of oil produced from Indian lands and eliminated any direct reliance on posted prices.

Then, MMS proposed further changes to its proposed rule regarding the valuation, for royalty purposes, of crude oil produced from Indian leases by publishing a supplementary proposed rule on January 5, 2000 (65 FR 403).

This supplementary proposed rule established a new form—*Form MMS–4416,* Indian Crude Oil Valuation Report, for collecting value and value differential data. OMB approved the use of this proposed Form MMS–4416 and assigned OMB Control Number 1010–0113.

MMS is now requesting OMB to renew its approval for the reporting requirements under the proposed and supplementary proposed rules until a final rule is published. We are also seeking OMB's approval for the current requirements in 30 CFR part 206, subpart B, that were inadvertently overlooked. This notice gives the public another opportunity to comment on the reporting requirements in the proposed and supplementary proposed rules and to also comment on the current requirements.

MMS announced in the **Federal Register** on February 12, 2003 (68 FR 7086), the dates, places, and times for workshops on issues related to the existing rules adopted in March 2000 governing the valuation for royalty purposes of crude oil produced from Federal leases. The workshops, held on March 4–6, 2003, addressed, among other things, issues related to calculation of transportation allowances (including the rate of return allowed for calculating actual costs under non-arm's-length transportation arrangements), timing and application of published index prices, and calculation of location and quality differentials under certain circumstances.

Because of the substantive overlap between these issues and issues involved in the proposed rule on Indian oil valuation, and to give persons interested in Indian lease issues an opportunity to participate in the workshops, MMS reopened the comment period (68 FR 7086) for 60 days on the proposed rule on Indian oil valuation so it can include in the record any relevant comments received. MMS will then consider those comments as they might apply to the Indian oil valuation rule.

Frequency of Response: Annually and monthly.

Estimated Number and Description of Respondents: 236 Companies paying royalties on oil produced from tribal and allotted Indian leases.

- 225 respondents (proposed and supplementary proposed rules)
- 11 respondents (current regulations)

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 6,980 Hours.

- 6,680 hours (proposed and supplementary proposed rules)
- 300 hours (current regulations)

The following chart details the individual components and estimated hour burdens for the proposed rule, supplementary proposed rule, and the current reporting requirements under 30 CFR part 206, subpart B. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. Therefore, we consider these to be usual and customary and took that into account in estimating the burden.

BURDEN HOUR CHART FOR PROPOSED AND SUPPLEMENTARY PROPOSED REPORTING REQUIREMENTS

Proposed 30 CFR 206, subpart B	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
Proposed § 206.52.	You must determine the value of oil using the method that yields the highest value.	2	2,700	5,400
Proposed § 206.52(d).	On Form MMS–2014, you must initially report and pay the value of production at the higher of the index-based or gross proceeds-based values * * * You must file this report * * * you must submit an amended Form MMS–2014 with the higher value within 30 days after you receive notice from MMS of the major portion value.	Burden covered under OMB Control Number 1010–0140.		
Proposed § 206.53(a) and (b).	On request, you must make available sales and volume data for production you sold, purchased, or obtained from the designated area or from nearby fields or areas * * * You must make this data available to the authorized MMS * * * You must retain all data relevant to the determination of royalty value.	Normal records retention for targeted audit purposes—exempt from the Paperwork Reduction Act.		
Proposed § 206.54.	You may ask MMS for guidance in determining value. You may propose a value method to MMS. Submit all available data related to your proposal and any additional information MMS deems necessary.	400	2	800
Proposed/Supplementary Proposed § 206.60(b)(2).	You may ask MMS to approve a transportation allowance deduction * * * You must demonstrate that the transportation costs incurred were reasonable, actual, and necessary. Your application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant supporting documentation * * *.	Burden covered under OMB Control Number 1010–0095		
Proposed/ Supplementary Proposed § 206.61 (c)(3)(i), (ii), (iii), and (iv).	If an MMS-calculated differential * * * does not apply to your oil, either due to location or quality differences, you must request MMS to calculate a differential for you* * * After MMS publishes its annual listing of location/quality differentials, you must file your request in writing with MMS for an MMS-calculated differential. You must demonstrate why the published differential does not adequately reflect your circumstances * * *. If you file a request for an MMS-calculated differential within 30 days after MMS publishes its annual listing of location/quality differentials, * * * Send your request to: Minerals Management Service.* * *.	40	12	480
Proposed/Supplementary Proposed § 206.61(d)(4).	You must report transportation allowances, location differentials, and quality differentials as separate lines on Form MMS–2014.	Burden covered under OMB Control Number 1010–0140.		
Proposed/Supplementary Proposed § 206.61(d)(5).	You must submit information on Form MMS–4416 * * * you must file a new form each time you execute a new exchange or sales contract involving the production of oil from an Indian lease.	Burden covered under OMB Control Number 1010–0113.		
Total	.....	.....	2,714	6,680

BURDEN HOUR CHART FOR CURRENT REPORTING REQUIREMENTS IN 30 CFR PART 206, SUBPART B

Current 30 CFR 206, Subpart B	Reporting or recordkeeping requirement	Burden hours per response	Annual number of responses	Annual burden hours
	Valuation Standards			
§ 206.52(e)(1) and (2)	* * * the lessee shall retain all data relevant to the determination of royalty value * * * A lessee shall notify MMS if it has determined value. . . The notification shall be by letter to MMS . . . The letter shall identify the valuation method to be used and contain a brief description of the procedure to be followed.	20	1	20
§ 206.52(g)	The lessee may request a value determination from MMS * * * the lessee shall propose to MMS a value determination method . . . The lessee shall submit all available data relevant to its proposal.	40	1	40
	Transportation Allowances			
§ 206.54(b)(2)	Upon request of a lessee, MMS may approve a transportation allowance deduction . . . The lessee must demonstrate that the transportation costs incurred in excess of the limitation . . . were reasonable, actual, and necessary. An application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) shall contain all relevant and support documentation necessary for MMS to make a determination.	Burden covered under OMB Control Number 1010–0095.		
§ 206.55(a)(1)(i)	* * * the lessee must submit a completed page one of Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report, * * *.	Burden covered under OMB Control Number 1010–0061.		
§ 206.55(a)(2)(i)	* * * no allowance may be taken for the costs of transporting lease production which is not royalty bearing without MMS approval.	40	1	40
§ 206.55(a)(2)(ii)	* * * the lessee may propose to MMS a cost allocation method on the basis of the values of the products transported.	20	1	20
§ 206.55(a)(3)	If an arm's-length transportation contract includes both gaseous and liquid products, and the transportation costs attributable to each product cannot be determined from the contract, the lessee shall propose an allocation procedure to MMS * * * The lessee shall submit all available data to support its proposal.	40	1	40
§ 206.55(b)(1)	* * * the lessee must submit a completed Form MMS–4110 . . . A transportation allowance may be claimed retroactively for a period of not more than 3 months prior to the first day of the month that Form MMS–4110 is filed with MMS * * * MMS may direct a lessee to modify its actual transportation allowance deduction.	Burden covered under OMB Control Numbers 1010–0061 and 1010–0140.		
§ 206.55(b)(2)(iv)	After a lessee has elected to use either method for a transportation system, the lessee may not later elect to change to the other alternative without approval of MMS.	20	1	20
§ 206.55(b)(2)(iv)(A)	After an election is made, the lessee may not change methods without MMS approval.	20	1	20
§ 206.55(b)(3)(i)	* * * the lessee may not take an allowance for transporting lease production which is not royalty bearing without MMS approval.	40	1	40
§ 206.55(b)(3)(ii)	* * * the lessee may propose to MMS a cost allocation method on the basis of the values of the products transported.	20	1	20
§ 206.55(b)(4)	Where both gaseous and liquid products are transported through the same transportation system, the lessee shall propose a cost allocation procedure to MMS * * * The lessee shall submit all available data to support its proposal.	20	1	20

BURDEN HOUR CHART FOR CURRENT REPORTING REQUIREMENTS IN 30 CFR PART 206, SUBPART B—Continued

Current 30 CFR 206, Subpart B	Reporting or recordkeeping requirement	Burden hours per response	Annual number of responses	Annual burden hours
§ 206.55(b)(5)	A lessee may apply to MMS for an exception from the requirement that it compute actual costs * * *.	20	1	20
§ 206.55(c)(1)(i)	* * * the lessee shall submit page one of the initial Form MMS–4110 (and Schedule 1), Oil Transportation Allowance Report, prior to, or at the same time as, the transportation allowance determined, under an arm's-length contract, is reported on Form MMS–2014, Report of Sales and Royalty Remittance.	Burden covered under OMB Control Number 1010–0061.		
§ 206.55(c)(1)(iii) and (iv)	* * * lessees must submit page one of Form MMS–4410 (and Schedule 1) within 3 months after the applicable contract or rate terminates or is modified or amended, . . . MMS may require that a lessee submit arm's-length transportation contracts, production agreements, operating agreements, and related documents.	Burden covered under OMB Control Number 1010–0061.		
§ 206.55(c)(2)(i)	. . . the lessee shall submit an initial Form MMS–4110 prior to, or at the same time as, the transportation allowance determined under a non-arm's-length contract or no-contract situation is reported on Form MMS–2014 * * *.	Burden covered under OMB Control Number 1010–0061.		
§ 206.55(c)(2)(iii)	* * * the lessee shall submit a completed Form 4110 containing the actual costs for the previous reporting period . . . the lessee shall include on Form MMS–4110 its estimated costs for the next calendar year . . . MMS must receive the Form MMS–4110 within 3 months after the end of the previous reporting period * * *.	Burden covered under OMB Control Number 1010– 0061.		
§ 206.55(c)(2)(iv)	For new transportation facilities or arrangements, the lessee's initial Form MMS–4110 shall include estimates of the allowable oil transportation costs for the applicable period.	Burden covered under OMB Control Number 1010–0061.		
§ 206.55(c)(2)(vi)	Upon request by MMS, the lessee shall submit all data used to prepare its Form MMS–4410.	Burden covered under OMB Control Number 1010–0061.		
§ 206.55(c)(4)	Transportation allowances must be reported as a separate line item on Form MMS–2014 * * *.	Burden covered under OMB Control Number 1010–0140.		
§ 206.55(e)(2)	For lessees transporting production from Indian leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs * * *.	Burden covered under OMB Control Number 1010–0140.		
Total			11	300

Estimated Annual Reporting and Recordkeeping "Non-Hour" Cost Burden: We have identified no "non-hour" cost burdens.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Comments: Section 3506(c)(2)(A) of the PRA requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a notice in the **Federal Register** on February 28, 2003 (68 FR 9709), announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no comments in response to the notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by August 27, 2003.

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm*. We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we

withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: May 23, 2003.

Cathy J. Hamilton,

Acting Associate Director for Minerals Revenue Management.

[FR Doc. 03–19070 Filed 7–25–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0049).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under "30 CFR 250, Subpart B, Exploration and Development and Production Plans." This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by August 27, 2003.

ADDRESSES: You may submit comments either by fax (202) 395–5806 or e-mail (*Ruth_Solomon@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0049). Mail or hand carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street, Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Arlene Bajusz, Rules Processing Team, telephone (703) 787–1600. You may also contact Arlene Bajusz to obtain a copy, at no cost, of the regulations, forms, and notices that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart B, Exploration and Development and Production Plans.

OMB Control Number: 1010–0049.

Bureau Form Numbers: Forms MMS–137, MMS–138, MMS–139, and MMS–141.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Sections 11 and 25 of the amended OCS Lands Act require the holders of OCS oil and gas and sulphur leases to submit exploration plans (EPs) and development and production plans (DPPs) for approval before starting these activities. The implementing regulations and associated information collection requirements are contained in 30 CFR 250, subpart B, Exploration and Development and Production Plans. In addition, MMS has issued Notices to Lessees and Operators (NTLs) that provide supplementary guidance and procedures as applicable to each Region or nationally. These NTLs address the various surveys, reports, plans (including deepwater operations plans and conservation information), etc., that are necessary for MMS to approve exploration or development and production activities.

With this submission, we are requesting renewal of the currently approved information collection requirements of subpart B, and related forms and NTLs, and are revising form MMS–137, OCS Plan Information Form. The revised form has been redesigned and includes additional information on schedule and description of proposed activities and associated anchors with no change to the burden.

The MMS engineers, geologists, geophysicists, and environmental scientists use the information collected under subpart B, and related forms and NTLs, to analyze and evaluate the planned operations to ensure that they will not adversely affect the marine, coastal, or human environment and that they conserve the resources of the OCS. It would be impossible for the Regional Supervisor to make an informed decision on whether to approve the proposed plans, or whether modifications are necessary, without the analysis and evaluation of the required information. The affected States also review the information collected for consistency with approved Coastal Zone Management plans.

Frequency: On occasion.

Estimated Number and Description of Respondents: Approximately 150 Federal OCS oil, gas, and sulphur lessees.

Estimated Reporting and Recordkeeping "Hour" Burden: The estimated annual "hour" burden for this information collection is a total of 300,905 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 subpart B and related NTLs	Reporting and recordkeeping requirement	Hour burden	Average number annual responses	Annual burden hours
201	Notify MMS and others of preliminary activities and submit follow-up information.	10	22 notices/information	220
202	Submit conservation information documents	443	30 documents	13,290
203	Submit initial exploration plan, including surveys, reports, studies, GOM Region forms MMS–137, MMS–138, MMS–139, *etc.*, including notification requirements.	580	200 plans	116,000

Citation 30 CFR 250 subpart B and related NTLs	Reporting and recordkeeping requirement	Hour burden	Average number annual responses	Annual burden hours
203(i), (j), (k), (l), (n), (q)	Submit revised/modified exploration plan, including surveys, reports, studies, departures, *etc.*	118	220	25,960
203(o); 204(s)	Conduct surveys or monitoring programs and submit results; form MMS–141.	2	2 each for 33 wells = 66.	132
203(p); 204(t)	Submit Application for permit to Drill	Burden covered under 1010–0044		0
204	Submit initial development and production plan (or DOCD used in western GOM), including surveys, reports, studies, GOM Region forms MMS–137, MMS–138, MMS–139, *etc.*, including notification requirements.	630	110 plans	69,300
204	Submit deepwater operations plans for projects in GOM water depths greater than 1,000 feet and projects utilizing subsea production technology.	750	68 plans	51,000
204(k)	Submit preliminary plans for tracts in vicinity of a DPP that requires NEPA procedures.	2	0 plans	0
204(l), (m), (n), (o), (q), (u).	Submit revised/modified development and production plan (or DOCD), including surveys, reports, studies, departures, *etc.*	Gulf Region: 95	250 revisions	23,750
	(Pacific Region hours dramatically increased due to political issues in California).	Pacific Region: 600	1 revision	600
250.200–250.204	General departure and alternative compliance requests not specifically covered elsewhere in subpart B.	1	25	25
Reporting Subtotal			992 Responses	300,277
Supplemental NTLs	Retain original copies of surveys, studies, reports, *etc.* (**Note:** Respondents would retain these as part of usual and customary business activities. The burden is to make them available to MMS if needed.).	2	314	628
Recordkeeping Subtotal.			150 Record-keepers	628
Total Burden			1,306 Responses	300,905

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no reporting and recordkeeping "non-hour" cost burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *" Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on March 25, 2003, we published a **Federal Register** notice (68 FR 14423) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB control number for the information collection requirements imposed by the 30 CFR 250, subpart B, regulations and forms. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by August 27, 2003.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by the law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of

organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: July 3, 2003.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 03–19071 Filed 7–25–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0137).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements for the Notice to Lessees (NTL) on the Historical Well Data Cleanup (HWDC) Project. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by August 27, 2003.

ADDRESSES: You may submit comments either by fax (202) 395–5806 or e-mail (*Ruth_Solomon@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0137). Mail or hand carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Arlene Bajusz, Rules Processing Team, telephone (703) 787–1600. You may also contact Arlene Bajusz to obtain a copy, at no cost, of the regulations and NTL that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: Historical Well Data Cleanup (HWDC) Project.

OMB Control Number: 1010–0137.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

The OCSLA at 43 U.S.C. 1332(6) states that "operations in the [O]uter Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health."

The MMS's Historical Well Data Cleanup Project, NTL 98–29, Addendum 2, is currently underway and is expected to last several years to allow operators ample time to provide the missing or corrected data. The information we collect under NTL 98–29, Addendum 2, is missing data for wellbores that MMS has not assigned API numbers and other well data discovered as missing while completing the well data base cleanup project.

We are not able to manage and utilize data from drilling operations accurately without the information for the missing wells. We will use the information to identify other well data (*e.g.*, logs, surveys, tests) missing from our records, geologically map existing MMS data to the correct wellbore/location, and correctly exchange information with the operators and industry. Our geoscientists use the information to evaluate resources for lease sales for fair market value. With respect to safety concerns, we believe that there may be anywhere from 3,000 to 5,000 unidentified completed and abandoned wellbores (bypasses and sidetracks), some of which may contain stuck drill pipe or other materials. In approving permits and other operations in an area, it is important for us to know what may be adjacent to or near the vicinity of the activity we are approving to minimize the risk of blowouts, loss of well control, and endangerment to life, health, and the environment. This is particularly important as, over the years, the number of wells drilled constantly increases, thereby increasing the risk to adjacent activities if operators are not aware of what might be in the area.

Frequency: On occasion—one-time response.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil, gas, and sulphur lessees.

Estimated Reporting and Recordkeeping "Hour" Burden: The estimated annual "hour" burden for this information collection is a total of 56,250 hours for the remaining 25,000 wells based on:

¼ hour to locate/copy scout tickets for each well: .25 hour × 25,000 wells =	6,250
2 hours to retrieve/analyze each well file: 2 hours × 25,000 wells =	50,000
Total	56,250

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no reporting and recordkeeping "non-hour cost" burdens associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on February 19, 2003, we published a **Federal Register** notice (68 FR 8044) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by August 27, 2003.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by the law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: April 9, 2003.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 03–19072 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0128).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR 250, Subpart O, "Well Control and Production Safety Training." This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by August 27, 2003.

ADDRESSES: You may submit comments either by fax (202) 395–5806 or e-mail (*Ruth_Solomon@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0128). Mail or hand carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Arlene Bajusz, Rules Processing Team, telephone (703) 787–1600. You may also contact Arlene Bajusz to obtain a copy, at no cost, of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart O, Well Control and Production Safety Training.

OMB Control Number: 1010–0128.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Section 1332(6) of the OCS Lands Act (43 U.S.C. 1332) requires that "operations in the [O]uter Continental Shelf should be conducted in a safe manner by well trained personnel using technology, precautions, and other techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstructions to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property or endanger life or health." This authority and responsibility are among those delegated to the Minerals Management Service (MMS). To carry out these responsibilities, MMS issues regulations governing oil and gas or sulphur operations in the OCS.

Regulations at 30 CFR 250, subpart O, implement these safe operation requirements. The MMS uses the information collected under subpart O to ensure that workers in the OCS are properly trained with the necessary skills to perform their jobs in a safe and pollution-free manner. In some instances, MMS will conduct oral interviews of offshore employees to evaluate the effectiveness of a company's training program. The information collected is necessary to verify personnel training compliance with the requirements.

Frequency: Primarily on occasion.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS lessees.

Estimated Reporting and Recordkeeping "Hour" Burden: The estimated annual "hour" burden for this information collection is a total of 2,067 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary, and took that into account in estimating the burden.

Citation 30 CFR 250 subpart O	Reporting & recordkeeping requirement	Hour burden	Average No. annual responses	Annual burden hours
1502	Notify MMS of early implementation of revised final regulations (final program is implemented 10/15/02; requirement is no longer necessary).	0	0 Notifications	0
1503(b), (c)	Develop training plans. Note: Existing lessees/respondents already have training plans developed. This number reflects development of plans for any new lessees.	60	2 New Plans	120

Citation 30 CFR 250 subpart O	Reporting & recordkeeping requirement	Hour burden	Average No. annual responses	Annual burden hours
1503(c)	Maintain copies of training plan and employee training documentation for 5 years.	15 min. × 130 plans = 1,950 ÷ 60	130 Recordkeepers	33 (rounded)
		5 min. × 20,000 employee records = 100,000 ÷ 60		1,667 (rounded)
1503(c)	Upon request, provide MMS copies of employee training documentation or provide copy of training plan.	5	27 Submissions	135
1507(b)	Employee oral interview conducted by MMS	10 min. × 562 interviews = 5,620 ÷ 60	562 Interviews	94 (rounded)
1507(c), (d); 1508; 1509.	Written testind conducted by MMS or authorized representative.	Exempt under 5 CFR 1320.3(h)(7).		0
1510(b)	Revise training plan and submit to MMS.	4	3 Respondents	12
250.1500–1510	General departure or alternative compliance requests not specifically covered elsewhere in subpart O.	2	3 Requests	6
Total Hour Burden			727 Responses	2,067

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no paperwork "non-hour cost" burdens associated with the collection of information

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *" Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on January 30, 2003, we published a **Federal Register** notice (68 FR 4792) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, Section 250.199 provides the OMB control number for the information collection requirements imposed by 30 CFR 250, subpart O, regulations. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by August 27, 2003.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by the law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: April 22, 2003.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 03–19073 Filed 7–25–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Information Collection Activities Under OMB Review

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of data collection submission.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below (OMB No. 1006–0015) has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before August 27, 2003.

ADDRESSES: You may send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the Desk Officer for the Department of the Interior at the Office of Management and Budget, Office of Information and Regulatory Affairs, via facsimile at (202) 395–5806 or via e-mail at *Ruth_Solomon@omb.eop.gov.* A copy of your comments should also be directed to the Bureau of Reclamation, Attention Ms. Nancy DiDonato, Contract and Repayment Specialist, Lower Colorado Regional Office, PO Box 61470, Boulder City, NV 89006–1470.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the proposed collection of information, contact Ms. Nancy DiDonato at 702–293–8532.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Reclamation, including whether the information shall have practical use; (b) The accuracy of Reclamation's estimated burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Our practice is to make comments, including names and home address of respondents, available for public review. Individual respondents may request that we withheld their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public disclosure in their entirety.

Title: Diversions, Return Flow, and Consumptive Use of Colorado River Water in the Lower Colorado River Basin.

OMN No.: 1006–0015.

Abstract: Reclamation delivers Colorado River water to water users for diversion and beneficial consumptive use in the States of Arizona, California, and Nevada. Under Supreme Court order, the United States is required, at least annually, to prepare and maintain complete, detailed, and accurate records of diversions of water, return flow, and consumptive use. This information is needed to ensure that a State or a water user within a State does not exceed its authorized use of Colorado River water. Water users are obligated by provisions in their water delivery contracts to provide Reclamation information on diversions and return flows. Reclamation determines the consumptive use by subtracting return flow from diversions or by other engineering means. Without the information collected, Reclamation could not comply with the order of the United States Supreme Court to prepare and maintain detailed and accurate records of diversions, return flow, and consumptive use.

Description of respondents: The Lower Basin States (Arizona, California, and Nevada), local and tribal entities, water districts, and individuals that use Colorado River water.

Frequency: Monthly, annually, or otherwise as determined by the Secretary of the Interior.

Estimated total number of respondents: 54.

Estimated total number of annual responses: 330.

Estimated total annual burden hours: 290.

ESTIMATED BURDEN FOR EACH FORM

Form No.	Estimated number of respondents	Total responses per year	Estimated annual burden hours per form
LC–72	6	78	54
LC–72A	8	20	30
LC–72B	15	51	78
Custom Forms	25	181	128

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Reclamation will display a valid OMB control number on the forms. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on March 18, 2003 (68 FR 12932). Reclamation received comments from one entity on this collection of information during the comment period which offered ways to improve our current information collection practices. The comments were (i) publish the information collected in a more timely fashion by updating the monthly consumptive use records shown in the provisional report accessible on Reclamation's Web site at *http://www.lc.usbr.gov/g4000/use2002.pdf;* (ii) subject the information collected to a more stringent quality control process prior to publication of the provisional report; and (iii) for forms LC–72 and LC–72A delete the option on the forms of reporting less frequently than monthly as more precise forecasts of the amount of unused water potentially available to other users is necessary. For the first comment, the provisional monthly report has typically been updated on or about the 18th day of each month with the water user records available to Reclamation. However, we are in the process of implementing a real-time water use monitoring system that will provide daily estimates of water use-to-date, as well as forecasts fo end-of-year use. Although full implementation of the system is expected to take approximately 3 years, we expect to begin posting daily updates on our Web site (*http://www.usbr.gov/lc.region/*) on or about June 15 of this year, using all available daily data and estimates for those users for which daily data is not available. Automatic data collection devices will be installed over the 3-year period in priority order and will include some of the entities listed in the respondent's letter dated May 15, 2003. As automation continues, the forecast will become more precise. Since these provisional records will continue to form the basis for the final annual reporting of uses, we will be able to publish that report in a more timely fashion after year's end. In addition, we are working with the U.S. Geological Survey to provide a mid-year finalization of the priority records to further increase the accuracy of the forecasts. For the second comment, we agree that quality control is extremely important and will continue to improve our quality control processes. For the third comment, annual reporting of water use by smaller water users, when such discretion is allowed by the water delivery contracts, is consistent with the intent of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) Therefore, we do not intend to change forms LC–72 and LC–72A.

OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comment should be submitted to OMB within 30 days in order to assure maximum consideration.

Gary Palmeter,

Manager, Information Management Division.

[FR Doc. 03–19057 Filed 7–25–03; 8:45 am]

BILLING CODE 4310–MN–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 332–350 and 332–351]

Monitoring of U.S. Imports of Tomatoes and Monitoring of U.S. Imports of Peppers

AGENCY: International Trade Commission.

ACTION: Publication of monitoring reports in 2003.

SUMMARY: The Commission hereby gives notice of its intention to publish the results of its monitoring of U.S. imports of tomatoes and U.S. imports of peppers, other than chili peppers, in November 2003.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: July 21, 2003.

FOR FURTHER INFORMATION CONTACT: Timothy McCarty (202–205–3324, *mccarty@usitc.gov*) or Cathy Jabara (202–205–3309, *jabara@usitc.gov*), Agriculture and Forest Products Division, Office of Industries, U.S. International Trade Commission, 500 E Street, SW., Washington DC 20436, for general information, or William Gearhart (202–205–3091, *wgearhart@usitc.gov*), Office of the General Counsel, U.S. International Trade Commission, for information on legal aspects. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ON LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background.—Section 316 of the North American Free-Trade Agreement Implementation Act (NAFTA Implementation Act) (19 U.S.C. 3881), directs the Commission to monitor imports of fresh or chilled tomatoes (HTS heading 0702.00) and fresh or chilled peppers, other than chili peppers (HTS subheading 0709.60.00), until January 1, 2009. As a result of such monitoring, the domestic industry producing a like or directly competitive perishable agricultural product may request, in a global safeguard petition filed under section 202 of the Trade Act of 1974 or a bilateral safeguard petition filed under section 302 of the NAFTA Implementation Act, that provisional relief be provided pending completion of a full section 202 or 302 investigation. If provisional relief is requested, the Commission has 21 days in which to make its determination and to transmit any provisional relief recommendation to the President. In response to the monitoring directive, the Commission instituted investigation No. 332–350, Monitoring of U.S. Imports of Tomatoes (59 FR 1763) and investigation No. 332–351, Monitoring of U.S. Imports of Peppers (59 FR 1762).

Although section 316 of the NAFTA Implementation Act does not require that the Commission publish reports on the results of its monitoring activities, the initial notices of institution of these investigations indicated that the Commission planned to publish reports on the monitoring annually. Subsequently, the Commission has published statistical reports in those years in which it was not conducting an investigation under other statutory authority with respect to such products. The most recent monitoring reports were published in November 2001 for tomatoes and in November 2002 for peppers.

Written submissions.—The Commission does not plan to hold a public hearing in connection with preparation of the 2003 statistical reports. However, interested persons are invited to submit written statements concerning the matters to be addressed in the reports. Commercial or financial information which a submitter desires the Commission to treat as confidential must be provided on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested persons. The Commission will not include any confidential business information in its monitoring report, but may include such information in a report to the President under section 202 or 302 if a request for such an investigation were received. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission in accordance with § 201.8 of the Commission's rules at the earliest practical date and should be received no later than the close of business on August 13, 2003. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436.

By order of the Commission.

Issued: July 22, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–19126 Filed 7–25–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Service Creation Community (SCC)

Notice is hereby given that, on July 7, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Service Creation Community (SCC) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Accenture, Dallas, TX; ADC Telecommunications, Rumson, NJ; Ai Metrix, El Dorado Hills, CA; BT, Billericay, United Kingdom; Broadband Content Coalition, Guilford, United Kingdom; Current Analysis, Sterling, VA; Infonautics Consulting, Inc., Ramsey, NJ; InStat/MDR, Scottsdale, AZ; Internetwork, Inc., San Francisco, CA; IP Infusion, San Jose, CA; Juniper Networks, Sunnyvale, CA; Maranti Networks, San Jose, CA; Microsoft Corporation; Redmond, WA; Net.com, Fremont, CA; Oracle, St. Louis, MO; PacketExchange, London, United Kingdom; Paradyne, Largo, FL; Procket Networks, Milpitas, CA; Radvision, Glen Rock, NJ; Siemens, Boca Raton, FL; Telechoice, Dallas, TX; Tony Fisch Consulting, Los Angeles, CA; Wandl Inc., Bound Brook, NJ; and Yipes, San Francisco, CA have been added as parties to this venture.

Also, AirFiber, San Diego, CA; American Management Systems, Fairfax, VA; Array Networks, Campbell, CA; Convedia Corporation, Vancouver, British Columbia, Canada; Eureka Soft, Cedex, France; Kabira Technologies, San Rafael, CA; Olsen Consulting, Staten Island, NY; Pingtel, Woburn, MA; and Polycom Inc., Pleasanton, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SCC intends to file additional written notification disclosing all changes in membership.

On February 4, 2003, SCC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 16, 2003 (68 FR 26649).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–19049 Filed 7–25–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—VSI Alliance

Notice is hereby given that, on July 9, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), VSI Alliance has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Luciano Agostini (individual member), Pelotas, Brazil; Bill Ashely (individual member), Seattle, WA; Don Bouldin (individual member), Knoxville, TN; Liang T. Chen (individual member), Menlo Park, CA; Cira Nova, Inc., Campbell, CA; Dolphin Technology, Inc., San Jose, CA; Fraunhofer IPMS, Dresden, Germany; GDA Telechonogies, Inc., Bangalore, India; Stewart Goudie (individual member), Edinburgh, Scotland, United Kingdom; Diethard Mahorka (individual member), Melk, Austria; Gary Panzer (individual member), Alta Loma, CA; Cyril Rayan (individual member), San Jose, CA; Renesas Technology Corp., Tokyo, Japan; Pratul Shroff (individual member), Santa Clara, CA; Jorge Sitkewich (individual number), Los Gatos, CA; Telecom Italia S.p.A., Torino, Italy; VCX Limited, Livingston, Scotland, United Kingdom; and WIS Technologies, Inc., San Jose, CA have been added as parties to this venture.

Also, Acuid Limited, Edinburgh, Scotland, United Kingdom; Alatek, Inc., Las Vegas, NV; ATI Technologies, Inc., Markham, Ontario, Canada; CoWare, Inc., San Jose, CA; Cypress Semiconductor, Inc., San Jose, CA; Fraunhofer Institute IMS, Dresden, Germany; Fujitsu Limited, Tokoyo, Japan; Jeda Technologies, Los Altos, CA; Susan Harrison (individual member), Palo Alto, CA; Hitachi Semiconductor America, Tokyo, Japan; Improv Systems, Inc., San Jose, CA; LogicVision, Inc., San Jose, CA; LSI Systems, Inc., Kawasaki-city, Japan; Mitsubishi Electric Corporation, Itami, Japan; Silicon Design Solutions, Inc., Milpitas, CA; Telecom Italia Lab (TILAB) Torino, Italy; The Athena Group, Inc., Gainesville, FL; and Virtual Component Exchange, Livingston, Scotland, United Kingdom have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and VSI Alliance intends to file additional written notification disclosing all changes in membership.

On November 29, 1996, VSI Alliance filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 4, 1997 (62 FR 9812).

The last notification was filed with the Department on April 8, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 14, 2003 (68 FR 25906).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–19050 Filed 7–25–03; 8:45 am]

BILLING CODE 4410–11–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Combined Arts Advisory Panel—Notice of Change

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the open session for the meeting of the Combined Arts Advisory Panel, Multidisciplinary section (Creativity category) to the National Council on the Arts previously announced for August 1, 2003 from 11 a.m.–12 p.m. has been changed. The open session will instead be held from 10:10 a.m.–11:30 a.m.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: July 22, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 03–19137 Filed 7–25–03; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* "Nuclear Material Events Database (NMED)" for the Collection of Event Report, Response, Analyses, and Follow-up Data on Events Involving the Use of Atomic Energy Act (AEA) Radioactive Byproduct Material.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* Monthly or within 30 days of receipt from licensee. Events that pose significant health and safety hazards—within the next working day of notification by an Agreement States licensee.

5. *Who will be required or asked to report:* Current Agreement States and any State receiving Agreement State status in the future.

6. *An estimate of the number of annual responses:* 620.

7. *The estimated number of annual respondents:* 32.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 1,240 hours (an average of approximately 2.0 hours per response) for all existing Agreement States reporting; any new Agreement State would add approximately 19 event reports (including follow-up reports) per year or 38 burden hours.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* N/A.

10. *Abstract:* NRC regulations require NRC licensees to report incidents and events involving the use of radioactive byproduct material, and source material, such as those involving radiation overexposures, leaking or contaminated sealed source(s), release of excessive contamination of radioactive material, lost or stolen radioactive material, equipment failures, abandoned well logging sources and medical events. Agreement State licensees are also required to report these events to their individual Agreement State regulatory authorities under compatible Agreement State regulations. NRC is requesting that the Agreement States provide information on the initial notification, response actions, and follow-up investigations on events involving the use of nuclear materials regulated pursuant to the Atomic Energy Act. The event information should be provided in a uniform electronic format, for assessment and identification of any facilities/site specific or generic safety concerns that could have the potential to impact public health and safety. The identification and review of safety concerns may result in proposals for changes or revisions to technical or regulatory designs, processes, standards, guidance or requirements.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by August 27, 2003. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Bryon Allen, Office of Information and Regulatory Affairs (3150–0163), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo Shelton, 301–415–7233.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 21st day of July, 2003.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–19066 Filed 7–25–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–00044]

Notice of Consideration of Request for License Termination of Rolls-Royce Corporation License and Release of Its Facility In Indianapolis, IN; Amendment and Opportunity to Provide Comments and Request a Hearing

ACTION: Notice of consideration of amendment request to terminate Source Material License No. STB–204 and release of facility for unrestricted use.

FOR FURTHER INFORMATION CONTACT: Dr. Peter J. Lee, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region III, 801 Warrenville Road, Lisle, Illinois 60532–4351; telephone (630) 829–9870 or by e-mail at *pjl2@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an amendment to Rolls-Royce Corporation (Rolls-Royce) Source Material License No. STB–204, to terminate the License and release its facility located at 2355 South Tibbs Avenue in Indianapolis, Indiana, for unrestricted use. The site was initially licensed under the name of General Motors Corporation, Allison Division. Other names on the license were Allison Gas Turbine Division, General Motors Corporation, and Allison Engine Company, Inc., prior to the license being amended to Rolls-Royce in February 2003. In December 1956, a license was approved for the fabrication of aircraft components made of magnesium alloy containing not to exceed 4 percent by weight of thorium. Fabrication of aircraft parts containing thorium continued until 1989. In 1994, the license was amended to allow possession incident to storage only for the licensed materials. On December 3, 2002, Rolls-Royce submitted its request to the NRC to terminate its license.

The NRC staff has prepared an Environmental Assessment (EA) in support of this licensing action in accordance with the requirements of 10 CFR Part 51. The conclusion of the EA is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

II. EA Summary

The staff has examined Rolls-Royce's request and the information that the licensee has provided in support of its request, including the surveys performed by Rolls Royce to demonstrate compliance with 10 CFR 20.1402, "'Radiological Criteria for Unrestricted Use,'" to ensure that the NRC's decision is protective of the public health and safety and the environment. All machining operations for the fabrication of aircraft parts containing thorium were conducted under "wet conditions," meaning drilling, grinding, burring, etc., were performed with the castings under oil/liquid coolants intended to prevent potential fires. This industry-wide method of machining not only prevents potential fires, it prevents contamination from airborne thorium dust. The thoriated magnesium cuttings, turnings, scraps, coolants, and clean-up debris were collected and sent off-site to a low-level radioactive waste disposal site.

The licensee's final status survey did not show any residual contamination in the facility. Therefore, the staff has determined that there will be no environmental impacts associated with the release for unrestricted use of the Rolls-Royce Corporation facility.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of Rolls-Royce's proposed license amendment to release the Indianapolis facility for unrestricted use. On the basis of the EA, the staff has concluded that the environmental impacts from the proposed action would not be significant. Accordingly, the staff has determined that a FONSI is appropriate, and has determined that the preparation of an environmental impact statement is not warranted.

IV. Further Information

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," Rolls-Royce's request, the EA summarized above, and the documents related to this proposed action are available electronically for public inspection and copying from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm.html.* These documents include Rolls-Royce's letters to NRC dated December 3, 2002, and May 5, 2003, with enclosures (Accession No. ML031700067); and the EA summarized above (Accession No. ML031980587). Any questions with respect to this action should be directed to Dr. Peter J. Lee, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region III, 801 Warrenville Road, Lisle, Illinois 60532–4351; telephone (630) 829–9870 or by e-mail at *pjl2@nrc.gov.*

Dated at Lisle, Illinois, this 17th day of July, 2003.

Christopher G. Miller,

Chief, Decommissioning Branch, Division of Nuclear Materials Safety, RIII.

[FR Doc: 03–19065 Filed 7–25–03; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIME AND DATES: 9 a.m., Monday, August 4, 2003; 3:30 p.m., Monday, August 4, 2003; and 8 a.m., Tuesday, August 5, 2003.

PLACE: Portland, Maine, at the Marriott Hotel, 200 Sable Oaks Drive, in Salons D and E of the Grand Ballroom.

STATUS: August 4—9 a.m. (Closed); 3:30 p.m. (Open); August 5—8 a.m. (Closed).

MATTERS TO BE CONSIDERED:

Monday, August 4—9 a.m. (Closed)

1. Strategic Planning.
2. Financial Update.
3. Preliminary Report on Goals and Performance Assessment for Fiscal Year 2004.
4. Preliminary Fiscal Year 2004 Integrated Financial Plan and Financial Outlook.
5. Personnel Matters and Compensation Issues.

Monday, August 4—3:30 p.m. (Open)

1. Minutes of Previous Meetings, June 2, June 27, and July 21, 2003.
2. Remarks of the Postmaster General and CEO.
3. Quarterly Report on Service Performance.
4. Financing the Postal System—Cost and Revenue Analysis Report.
5. Capital Investments.
   a. Flats ID Code Sort for All Automated Flat Sorting Machines (AFSM) 100s.
   b. 354 Automatic Tray Handling Systems for the AFSM 100s.
   c. Philadelphia, Pennsylvania, Processing & Distribution Center and Vehicle Maintenance Facility.
6. Report on the Northeast Area and Maine District.
7. Tentative Agenda for the September 8–9, 2003, meeting in Washington, DC.

Tuesday, August 5—8 a.m. (Closed)

1. Strategic Planning
2. Personnel Matters and Compensation Issues.

CONTACT PERSON FOR MORE INFORMATION: William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

William T. Johnstone,

Secretary.

[FR Doc. 03–19250 Filed 7–24–03; 11:56 am]

BILLING CODE 7710–12–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In Accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

The and purpose of information collection: Job Information Report, OMB 3220–0193. In July of 1997, the Railroad Retirement Board (RRB) adopted standards for the adjudication of occupational disabilities under the Railroad Retirement Act (RRA). As part of these standards, the RRB requests job information to determine an applicant's eligibility for an occupational disability. The job information received from the railroad employer and railroad employee is compared, reconciled (if needed), and then used in the occupational disability determination process. The process of obtaining information from railroad employers used to determine an applicant's eligibility for an occupational disability is outlined in 20 CFR 220.13.

To determine an occupational disability, the RRB determines if an employee is precluded from performing the full range of duties of his or her regular railroad occupation. This is accomplished by comparing the restrictions on impairment(s) causes against an employee's ability to perform his/her normal duties. To collect information needed to determine the effect of a disability on an applicant's ability to work, the RRB needs the applicant's work history. The RRB currently utilizes Form G–251, *Vocational Report* (OMB 3220–0141), to obtain this information from the employee applicant.

Note: Form G–251 is provided to *all* applicants for employee disability annuities and to those applicants for a widow(er)'s disability annuity who indicate that they have been employed at some time.

In accordance with the standards, the RRB also requests pertinent job information from employers. The employer is given thirty days from the date of the notice to respond. The responses are not required, but are voluntary. If the job information is received timely, it is compared to the job information provided by the employee. Any material differences are resolved by an RRB disability examiner. Once resolved, the information is compared to the restrictions caused by the medical impairment. If the restrictions prohibit the performance of the regular railroad occupation, the claimant is found occupationally disabled.

The RRB uses two forms to secure job information data from the railroad employer. RRB Form G–251a, Employer Job Information (job description), is released to an employer when an application for an occupational disability is filed by an employee whose regular railroad occupation is one of the more common types of railroad jobs (locomotive engineer, conductor,

switchman, etc.) If is accompanied by a "generic job description" for that particular railroad job. The generic job descriptions describe how these select occupations are generally performed in the railroad industry. However, not all occupations are performed the same way from railroad to railroad. Thus, the employer is given an opportunity to comment on whether the job description matches the employee's actual duties. If the employer concludes that the generic job description accurately describes the work performed by the applicant, no further action will be necessary. If the employer determines that the tasks are different, it may provide the RRB with a description of the actual job tasks. The employer has thirty days from the date the form is released to reply .

Note: The generic job descriptions were prepared and approved by a joint committee consisting of representatives of railroad and railroad management.

Proposed Form G–251b, Employer Job Information (general), is released to an employer when an application for an RRB occupational disability is filed by an employee whose regular railroad occupation does not have a generic job description. It notifies the employer that the employee has filed for a disability annuity and that, if the employer wishes, it may provide the RRB with job duty information. The type of information the RRB is seeking is outlined on the form. The employer has thirty days from the date the form is released to reply.

The RRB proposes no changes to Forms G–251a and G–251b.

The completion time for Form G–251a and G–251b is estimated at 20 minutes. Completion is voluntary. The RRB estimates that approximately 125 G–251a's and 305 G–251b's are completed annually.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–19095 Filed 7–28–03; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Vocational Report; OMB 3220–0141. Section 2 of the Railroad Retirement Act (RRA) provides for payment of disability annuities to qualified employees and widow(ers). The establishment of permanent disability for work in the applicants "regular occupation" or for work in any regular employment is prescribed in 20 CFR 220.12 and 220.13 respectively.

The RRB utilizes Form G–251, Vocational Report, to obtain an applicant's work history. This information is used by the RRB to determine the effect of a disability on an applicant's ability to work. Form G–251 is designed for use with the RRB's disability benefit application forms and is provided to all applicants for employee disability annuities and to those applicants for a widow(er)'s disability annuity who indicate that they have been employed at some time. Completion is required to obtain or retain a benefit. One response is requested of each respondent.

The RRB proposes non-burden impacting formatting and editorial changes to Form G–251. The completion time for Form G–251 is estimated at between thirty and 40 minutes per response. The RRB estimates that approximately 6,000 Form G–251's are completed annually.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–19096 Filed 7–25–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48180A; File No. PCAOB–2003–03]

Public Company Accounting Oversight Board; Order Approving Proposed Rules Relating to Registration System

July 22, 2003.

Correction

In FR Document No. 03–18497, which published on July 21, 2003, beginning on page 43244, in the last paragraph of column one, correct the file number to read (File No. PCAOB–2003–03).

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–19086 Filed 7–25–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48202; File No. SR–CHX–2003–20]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Execution of Limit Orders Following Exempted ITS Trade-Through

July 21, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 17, 2003, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The proposal is intended to coincide with the Commission's extension of a *de minimis* exemption from the trade-through provisions of the Intermarket Trading System ("ITS") Plan with respect to certain transactions in the Nasdaq-100 Index ("QQQs"), the Dow Jones Industrial Average ("DIAMONDs"), and the Standard & Poor's 500 Index ("SPDRs").[3] The Commission's original exemption expired on June 4, 2003. The Exchange Rule that mirrors the Commission's exemption similarly expired on June 4, 2003.[4] The Commission recently extended the effectiveness of the exemption to March 4, 2004.[5] In order to avoid a lapse in the effectiveness of the corresponding Exchange Rule, this order is approving the Exchange's proposal to extend the rule from June 5, 2003 until March 4, 2004.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In response to the Commission's extension of a *de minimis* exemption for transactions in certain exchange-traded funds ("ETFs") from the trade-through provisions of the ITS Plan to March 4, 2004,[6] the Exchange proposes to amend certain provisions of CHX Article XX, Rule 37, which governs, among other things, execution of limit orders in a CHX specialist's book following a trade-through in the primary market. Specifically, the CHX seeks to render voluntary a CHX specialist's obligation to fill limit orders in the specialist's book following a primary market trade-through, if such trade-through constitutes an Exempted Trade-Through.[7] The text of the proposed rule change is available at the Commission and at the CHX.

[3] *See* Securities Exchange Act Release No. 46428 (August 28, 2002), 67 FR 56607 (September 4, 2002) at 56607 ("ITS Exemption Order").

[4] *See* Securities Exchange Act Release No. 46760 (November 1, 2002), 67 FR 68219 (November 8, 2002)(order approving SR–CHX–2002–29).

[5] *See* Securities Exchange Act Release No. 47950 (May 30, 2003), 68 FR 33748 (June 5, 2003)(order extending ITS Exemption Order).

[6] *Id.*

[7] An Exempted Trade-Through is a trade-through in one of the three ETFs designated in the ITS Exemption Order when the transaction is executed at a price that is no more than three cents lower than the highest bid displayed in CQS and no more than three cents higher than the lowest offer displayed in CQS.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item III below. The CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Article XX, Rules 37(a)(3) and 37(b)(6) of the CHX Rules, which govern execution of limit orders in a CHX specialist's book, provide for the execution of such orders at the limit price when certain conditions occur in the primary market. Specifically, these provisions obligate a CHX specialist to fill limit orders in his book if there is a trade-through of the limit price in the primary market.

With continued effectiveness of the ITS Exemption Order until March 4, 2004, certain primary market trade-throughs in ETFs that will trigger a CHX specialist's obligation to provide trade-through protection will constitute Exempt Trade-Throughs, and will leave the CHX specialist without recourse to seek satisfaction from the primary market. While the CHX believes that certain CHX specialists may still wish to provide trade-through protection to their limit orders for business and marketing reasons, the CHX believes that trade-through protection should no longer be mandated in the case of Exempted Trade-Throughs. The proposed rule change would continue to permit, but would not require, a CHX specialist firm to fill limit orders in his book when an Exempted Trade-Through occurs in the primary market.

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).[8] The CHX believes the proposal is consistent with section 6(b)(5) of the Act[9] in that it is designed to promote just and equitable principles of trade, to remove impediments to, and to perfect the mechanism of, a free and open market and a national market system, and, in general, to protect investors and the public interest.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2003–20 and should be submitted by August 18, 2003.

IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the proposed rule is consistent with the requirements of section 6(b)(5) of the Act[11] because it is designed to facilitate transactions in securities; to remove impediments to

[10] In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of the publication of notice thereof in the **Federal Register**, and is granting approval retroactively to June 5, 2003, the effective date of the Commission's extension of the ITS exemption so that the proposed rule change coincides with the Commission's extension of its *de minimis* trade-through exemption for certain ITS securities. The Commission believes that by extending the Exchange's proposed exemption for its members, the Exchange removes the specialist's obligation to provide trade-through protection in situations where it will not be permitted to seek satisfaction through ITS from the primary market.

This obligation was one the CHX assumed voluntarily in order to make its market more attractive to sources of order flow, not an obligation the Act imposes on a market. The Commission believes that the business decision to potentially forego order flow by no longer providing print protection is a judgment the Act allows the CHX to make.[12]

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR—CHX–2003–20) is approved on an accelerated basis and is effective retroactively to June 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jill M. Peterson

Assistant Secretary

[FR Doc. 03–19085 Filed 7–25–03; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 4421]

Bureau of Near Eastern Affairs; Gulf Educational Reform Program

AGENCY: Department of State.

ACTION: Notice.

Introduction

The Office of Public Diplomacy (NEA/PD) announces an open competition for a proposal for Gulf Educational reform program in the following countries: Bahrain, Kuwait, Qatar, UAE, Oman and Yemen. One award will be made with this announcement.

Proposals may address any area or sector within a broad range of educational reform initiatives in the aforementioned countries, including, but not limited to, the following:

- Designing and mapping curriculum,
- Developing critical thinking skills,
- Introducing modern and innovative teaching methods to the classroom,
- Consulting on accreditation for Ministries of Education for both secondary and university-level institutions.

In order to optimize the impact of the educational reform program, initiatives should target the following groups:

- Ministry of Education supervisors and inspectors,
- Curriculum developers,
- Senior teachers and staff members from as many educational districts as possible,
- Teacher trainers.

The list is not intended to be exclusive or binding, and the office of Public Diplomacy in the bureau of Near Eastern Affairs (NEA/PD) remains open to considering a broad range of educational-related NGO activities and innovative projects designed to support and encourage educational reform in the region.

Purpose

The purpose of this agreement is educational reform in the Gulf, Chapter 4 of part II of the Foreign Assistance Act of 1961, as amended (PL 107–206). Projects should focus on Bahrain, Kuwait, Qatar, the United Arab Emirates, Oman and Yemen. Regional initiatives are encouraged where appropriate (depending on local situation/level of education system). Due to staffing constraints, Public Affairs Sections of U.S. Embassies in the region will be very limited in the assistance they can provide. Organizations should, therefore, have their own network of contacts, infrastructure and resources in-country and be prepared to carry out their programs with a minimum of official support. Public Affairs Officers will be available for consultations and program planning. NEA/PD encourages direct cooperation with Ministries of Education to ensure the successful completion of the program and to foster continuing linkages to American educational institutions.

Eligible Applicants

Eligible applicants include all non-governmental and non-profit organizations.

Legislative Authority

This program is authorized by the 2002 Supplemental Appropriations Act for Further Recovery From and Response To Terrorist Attacks on the United States. PL 107–206.

Availability of Funds

The funding level for this program is $290,000.00. NEA/PD reserves the right to award less, or more, than the funds described, in the absence of worthy applications, or under such other circumstances as may be deemed to be in the best interest of the government. Program funds will be available until September 30, 2003.

Review Criteria

Eligible applications will be competitively evaluated according to the following criteria:

Results or Benefits Expected—The applicant clearly describes the results and benefits to be achieved. The applicant identifies how improvement will be measured on key indicators and provides milestones indicating progress. Proposed outcomes are tangible and achievable within the grant project period. (30 points)

Approach—The applicant must demonstrate that its strategy and plan are likely to achieve the proposed results; the proposed activities and timeframes are reasonable and feasible. The plan describes in detail how the proposed activities will be accomplished as well as the potential for the project to have a positive impact on the quality of education in the region. (25 points)

Organization Profiles—Where sub-contractors are proposed, the applicant describes the rationale for the collaboration, each partner agency's respective role, and how the sub-contractor will enhance the accomplishment of the project goals. In all cases, the applicant describes planning consultation efforts undertaken. The proposed sub-contractor is appropriate with respective roles and financial responsibilities delineated. Evidence of commitment by sub-contractors in implementing the activities is demonstrated, *i.e.*, by letters or the terms of the signed agreement among participants. The applicant or sub-contractor provide documented experience in performing the proposed services as well as adequate gender balance and constituent representation on the proposed project's advisory board. Assurance is provided that proposed services will be delivered in a manner that is linguistically and culturally appropriate to the target population. Individual organization staff must be well-qualified. The administrative and management features of the project, including a plan for fiscal and programmatic management of each activity, is described in detail with proposed start-up times, ongoing timelines, major milestones or benchmarks, a component/project organization chart, and a staffing chart. (25 points)

Budget and Budget Justification—The budget and narrative justification are reasonable in relation to the proposed activities and anticipated results and the plan for services is realistic. (20 points)

Application/Proposal Submission and Deadline

An application (Standard Form 424) with an original signature and two clearly identified copies is required. The application form (Standard Form 424) and instructions can be obtained from either:

(1) The following Web sites:
<*http://www.whitehouse.gov/omb/grants/#forms*>
<*http://www.usaid.gov/procurement_bus_opp/procurement/forms/SF–424/*>

Jessica Davies and Lavenia Holland, U.S. Department of State, NEA/PD, Room 6247, 2201 C Street NW., Washington, DC 20520, telephone (202) 647–6489, fax (202) 647–6448, e-mail *DaviesJX@state.gov* and *Hollandly@state.gov*.

Application materials must be submitted to the U.S. Department of State, Jessica Davies and Lavenia Holland, U.S. Department of State, NEA/PD, Room 6247, 2201 C Street NW., Washington, DC 20520, on or before close of business (4:30 P.M. EST) August 18, 2003. Due to delays in regular mail delivery to the State Department, applicants are strongly encouraged to hand-carry or use couriers to deliver applications to NEA/PD, between the hours of 8:30–4:30 P.M., to the attention of Jessica Davies and Lavenia Holland. Express or overnight mail services may also be used, though applicants are cautioned that express/overnight mail services do not always deliver as agreed and other delays may occur until regular mail delivery is resumed.

Applicants must also provide an electronic copy of the proposal by e-mail to Jessica Davies and Lavenia Holland at e-mail address *DaviesJX@state.gov* and *Hollandly@state.gov*. Proposals must be submitted in both hard copy and by e-mail; proposals submitted only by e-mail, or only in hard copy, will not be considered. NEA/PD must be aware that the proposal is on its way, or the package risks being considered late or turned away by Diplomatic Security.

Applications submitted by e-mail and either (1) mail (including express mail or overnight mail services), or (2) hand-carried by applicant couriers or by other representatives of the applicant, shall be considered as meeting an announced deadline if they are received on or before close of business (4:30 PM EST) August 18, 2003.

Late Applications

Applications received after the closing date and time will be classified as late. Applications which do not meet the criteria above are considered late applications. PD shall notify each late applicant that its application will not be considered in the current competition.

General Instructions for Preparing a Full Project Description

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. Applicants are encouraged to provide information on their organizational structure, staff, related experience, and other information considered relevant. Awarding offices use this and other information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, therefore, that this information be included in the application. However, in the narrative the applicant must distinguish between resources directly related to the proposed project from those that will not be used in support of the specific project for which funds are requested.

Length of Applications

Each application narrative should not exceed 25 double-spaced pages in a 12-pitch font. Attachments and appendices should not exceed 25 pages and should be used only to provide supporting documentation such as administration charts, position descriptions, resumes, and letters of intent or partnership agreements. Each page should be numbered sequentially, including the attachments or appendices. This limitation of 25 pages plus the SF 424 should be considered as a maximum, and not necessarily a goal.

Introduction

NEA/PD is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. (Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.) Applicants shall prepare the project description statement in accordance with the following instructions.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Results or Benefits Expected

Identify the results and benefits to be derived.

Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative quarterly projections of the accomplishments to be achieved for each function or activity. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Staff and Position Data

Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

Organization Profiles

Provide information on the applicant organization(s) and cooperating partners

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[12] The Commission notes that the CHX's proposed rule change will remain in effect only until the expiration of the extension of Commission's ITS Exemption Order on March 4, 2004.

[13] 15 U.S.C. 78f(b)(2).

[14] 17 CFR 200.30–3(a)(12).

such as organizational charts, financial statements, audit reports, documentation of experience in the program area, and other pertinent information.

Third-Party Agreements

Include written agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Budget and Budget Justification

Applicants must submit a comprehensive budget for the entire project. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets, sub-grant, or contract budgets for each program component, phase, location, or activity to provide clarification. Provide line item detail and detailed calculations for each budget object class identified. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424. Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs. The following guidelines are for preparing the budget and budget justification.

Personnel

Description: Costs of employee salaries and wages. Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate. Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel or travel by local program participants for training—*i.e.* teachers, Ministry of Education employees travel to the U.S. for seminars/workshops). Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances.

Equipment

Description: Costs of tangible, non-expendable, personal property, having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, an applicant may use its own definition of equipment provided that such equipment would at least include all equipment defined above. Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category. Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Justification: Attach a list of proposed contractors, indicating the names of the organizations, the purposes of the contracts, the estimated dollar amounts, and the award selection process.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, professional services costs, space and equipment rentals, printing and publication, computer use, and administrative costs. Justification: Provide computations, a narrative description and a justification for each cost under this category.

Total Direct Charges, Total Indirect Charges, Total Project Costs: Self explanatory.

Reporting Requirement

Quarterly progress and financial reports are required for all funded projects. Final reports will be due 90 days after end of project period (which should begin no later than September 30, 2004).

Where To Obtain Additional Information

Questions regarding this Request for Proposals should be directed to Jessica Davies and Lavenia Holland, U.S. Department of State, NEA/PD, Room 6247, 2201 C Street NW., Washington, DC 20520, telephone (202) 647–6489, fax (202) 647–6448, e-mail *DaviesJX@state.gov* and *Hollandly@state.gov*.

Dated: July 21, 2003.

James Larocco,

Principal Deputy Assistant Secretary, Bureau of Near Eastern Affairs, Department of State.

[FR Doc. 03–19108 Filed 7–25–03; 8:45 am]

BILLING CODE 4710–31–P

DEPARTMENT OF STATE

[Public Notice 4420]

Determination Pursuant to Section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as Amended

Pursuant to section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(b)(2), and the functions and authorities delegated to the Secretary of State, or his or her delegate, by Presidential Determination 99–6 of November 30, 1998, and subsequently redelegated to me by Delegation of Authority of January 5, 1999, I hereby designate migrants displaced from Côte d'Ivoire as qualifying for assistance under Section 2(b)(2) of that Act, and determine that such assistance will contribute to the foreign policy interests of the United States.

This determination shall be transmitted to the President and published in the **Federal Register.**

Dated: July 22, 2003.

Richard L. Greene,

Acting Assistant Secretary of State, Bureau of Population, Refugees, and Migration, Department of State.

[FR Doc. 03–19107 Filed 7–25–03; 8:45 am]

BILLING CODE 4710–33–P

TENNESSEE VALLEY AUTHORITY

Meeting Notice (Meeting No. 1546)

AGENCY: Tennessee Valley Authority

TIME AND DATE: 9 a.m. (EDT), July 30, 2003, City of Chickamauga Civic Center, 100 Euclid Avenue, Chickamauga, Georgia.

STATUS: Open.

Agenda

Approval of minutes of meeting held on May 21, 2003.

New Business

C—Energy

C1. Delegation of authority to the Executive Vice President, Fossil Power Group, to enter into a spot coal contract with Massey Utility Sales Company to supply low-sulfur coal for 17 months to Kingston Fossil Plant.

C2. Delegation of authority to the Executive Vice President, Fossil Power Group, to enter into a 3-year contract with CSX Transportation to provide rail transportation of coal to Widows Creek Fossil Plant.

C3. Delegation of authority to the Executive Vice President, Fossil Power Group, to enter into a term coal contract with Peabody Coalsales Company for sub-bituminous Powder River Basin coal to supply various TVA fossil plants.

C4. Supplement to blanket Contract Nos. 453 and 454 with Performance Contracting, Inc., and G&A Environmental to provide asbestos and nonasbestos vacuum services for various TVA fossil plants.

C5. Supplement to Contract 99999563 with Day & Zimmermann NPS, Inc., for management and craft labor for the planning and execution of modification and supplemental maintenance work and multiple selective catalytic reduction projects at TVA assigned fossil plants.

C6. Supplement to contract with Framatome ANP for nuclear fuel and fuel engineering services for Sequoyah Nuclear Plant.

C7. Supplement to contract with Flowserve Corporation for pumps and pump replacement parts at any TVA nuclear plant.

C8. Supplement to contract with Westinghouse Electric Company LLC for nuclear fuel and fuel engineering services at Watts Bar Nuclear Plant.

C9. Supplement to contract with Framatome ANP for refuel floor support services and reactor component inspections at Browns Ferry Nuclear Plant Units 2 and 3.

C10. Indefinite quantity term contract with Ritz Instrument Transformers for the supply of instrument transformers.

E—Real Property Transactions

E1. Sale of permanent easements to Richard L. Pelham, affecting approximately 0.13 acre of land on Chatuge Reservoir in Towns County, Georgia, to allow a portion of an existing condominium and sewer line to remain without future title concerns, Tract Nos. XCHR–77B and XCHR–78S.

E2. Grant of permanent easements for a raw water intake and water distribution lines to Franklin County Water Services Authority, affecting approximately 5.9 acres of land on Bear Creek Reservoir in Franklin County, Alabama, Tract No. XTBCBR–2P.

E3. Grant of a permanent easement to the State of Tennessee for a highway improvement project, affecting approximately 0.18 acre of land on Watts Bar Reservoir in Roane County, Tennessee, Tract No. XTWBR–146H.

E4. Grant of a permanent easement to the State of Tennessee for a highway improvement project, affecting approximately 1.9 acres of land on Chickamauga Reservoir in Hamilton County, Tennessee, Tract No. XTCR–201H.

E5. Sale of a noncommercial, nonexclusive permanent easement to Russell A. House for construction and maintenance of recreational water-use facilities, affecting approximately 0.15 acre of land on Tellico Reservoir in Monroe County, Tennessee, Tract No. XTELR–239RE.

E6. Grant of noncommercial, nonexclusive permanent easements to Southern Heritage, LLC, and four private property owners for construction and maintenance of recreational water use facilities, affecting approximately 7.68 acres of land on Guntersville Reservoir in Marshall and Jackson Counties, Alabama, Tract Nos. XGR–752RE, XGR–753RE, XGR–754RE, XGR–755RE, XGR–756RE, and XGR–757RE, in exchange for approximately 71 acres of land on Guntersville Reservoir in Marshall and Jackson Counties, Alabama, Tract No. GR–1882, and change in the land use allocation of the Guntersville Reservoir Land Management Plan to effect these changes.

E7. Grant of noncommercial, nonexclusive permanent easements to Scott Roberts, Ken Herrick, and Harold Daniels for construction and maintenance of recreational water use facilities, affecting approximately 1.3 acres of land on Chickamauga Reservoir in Hamilton County, Tennessee, Tract Nos. XCR–701RE, XCR–702RE, and XCR–703RE, in exchange for approximately 7.3 acres of land on Chickamauga Reservoir in Hamilton County, Tennessee, Tract No. CR–1599, and change in the land use allocation of the Chickamauga Reservoir Land Management Plan to effect these changes.

E8. Sale of approximately 116.4 acres of land to LTR Properties, Inc. (Rarity Communities), Tract No. XTELR–236, for residential and commercial recreation development; grant of noncommercial, nonexclusive permanent easements affecting approximately 273.6 acres in Loudon and Monroe Counties, Tennessee, to the Tellico Reservoir Development Agency, Tract Nos. XTTELR–44RE and XTTELR–45RE; and land allocation changes to the Tellico Reservoir Land Management Plan as follows: (1) Release the natural resource conservation and recreation allocation from the Tellico Reservoir Land Management Plan of the approximately 116.4 acres proposed to be sold to Rarity Communities; (2) Change the allocation of 7.3 acres, which is the remaining TVA property fronting the 116.4 acres from recreation to natural resource conservation, which will provide a protective buffer for wetlands and water quality; (3) Allocate the 256 acres of land to be conveyed to TVA by Rarity Communities as recreation (117 acres) and natural resource conservation (139 acres); and (4) Change the allocation of the 17.6 acres where Rarity Communities will be developing public recreational facilities as part of the mitigation from natural resource conservation to recreation at the location.

E9. Nineteen-year commercial recreation lease to South Sauty Creek Resort, Inc., affecting approximately 34 acres of land on Guntersville Reservoir in Jackson County, Alabama, Tract No. XGR–751L.

E10. Deed modification of certain deed restrictions affecting approximately 0.9 acre of former TVA land on

Chickamauga Reservoir in Rhea County, Tennessee, Tract No. XCR–188, S.5X.

F—Other

F1. Approval to file condemnation cases to acquire transmission line easements and rights of way affecting Tract Nos. SBFP–66, Sebastopol Switching Station, Scott County, Mississippi; and Tract No. WPSVT–8, Wartrace Primary-Shelbyville No. 2 (North) Tap, Bedford County, Tennessee.

Information Items

1. Approval of delegation of authority to the Chief Financial Officer and the Senior Vice President and Treasurer, or a designee(s), to enter into lease financing and related arrangements with respect to certain categories of computer and related software and equipment.

2. Approval of the issuance, sale, and delivery of TVA Power Bonds.

3. Approval of the issuance, sale, and delivery of TVA Power Bonds, and delegation of authority to amend the International Swaps and Derivatives Association, Inc., Credit Support Annex between TVA and Morgan Stanley Capital Services, Inc., and to enter into currency swap arrangements with Morgan Stanley.

4. Approval of the sale of a 30-year term easement for a natural gas pipeline to East Tennessee Natural Gas Company, affecting approximately 0. 3 acre of TVA land in Sullivan County, Tennessee, Tract No. XFHR–35P.

5. Approval of amendments to TVA's Section 26a Regulations.

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: July 23, 2003.

Maureen H. Dunn,

General Counsel and Secretary.

[FR Doc. 03–19193 Filed 7–24–03; 10:15 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular (AC) 45–23B, Identification and Registration Marking

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of AC 45–2B, Identification and Registration Marking. AC 45–2B provides information and guidance concerning the requirements for identifying aircraft and related products with identification plates, and identifying aircraft with nationality and registration marks. The requirements are detailed in Title 14, Code of Federal Regulations (14 CFR), part 45, Identification and Registration Marking.

ADDRESSES: Copies of AC 45–2B can be obtained from the following: U.S. Department of Transportation, Subsequent Distribution Office, Ardmore East Business Center, 3341 Q 7th Ave., Landover, MD 20785.

Issued in Washington, DC, on July 16, 2003.

Frank P. Paskiewicz,

Manager, Production and Airworthiness Division, AIR–200.

[FR Doc. 03–19164 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Harris County, Texas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed transportation project in Harris County, Texas.

FOR FURTHER INFORMATION CONTACT: John Mack, Federal Highway Administration, Texas Division, 826 Federal Building, 300 East 8th Street, Austin, Texas 78701, Telephone 512–536–5960.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Texas Department of Transportation (TxDOT) will prepare an environmental impact statement (EIS) for improvements in the US 290 corridor from IH 610 to FM 2920, a distance of approximately 38 miles (including the Hempstead Highway corridor and the connections to the IH 610 West Loop). The project is in Harris County, Texas, primarily within the city limits of Houston, although the corridor also extends into Jersey Village and the smaller communities of Cypress, Hockley, and Waller. A Major Investment Study (MIS) for the project was completed in 2003. The MIS evaluated modal and configuration alternatives for improvements within the study corridor and recommended a locally preferred multi-modal configuration to meet the corridor's transportation needs, while minimizing impacts to the surrounding environment.

The alternatives studied in the EIS will be variations, of the multi-modal configurations suggested in the US 290 Corridor Major Investment Study. The proposed alternative includes general-purpose lanes, managed lanes (possibly toll), and a reserve for advanced high-capacity transit (light rail/bus rapid transit). The EIS will evaluate alternative alignments for potential impacts from construction and operation of the proposed roadway including, but not limited to, the following: transportation impacts (construction detours, construction traffic, mobility improvement and evacuation improvement), air, and noise impacts from construction equipment and operation of the facilities, water quality impacts from construction area and roadway storm water runoff, impacts to waters of the United States including wetlands from right-of-way encroachment, impacts to historic and archeological resources, impacts to floodplains, and impacts and/or potential displacements to residents and businesses.

To ensure that the full range of issues relating to this proposed action are addressed, a series of public scoping meetings will be held from 6 to 9 p.m., as follows: On August 25, 2003, at Jersey Village High School (7600 Solomon, Houston, TX 77040), August 26 at Wainwright Elementary School (5330 Milwee, Houston, TX 77092), and August 27 at Ault Elementary School (21010 Maple Village Dr, Cypress, TX 77429). The purpose of the public scoping meetings will be to request comments and identify issues to be considered during evaluation of alignment alternatives and preparation of the EIS. All interested citizens are encouraged to attend these meetings. During the open house meetings, displays showing the project area and other project information will be presented and staff will be available to answer questions. In addition, a public hearing will be held in the future. Public notice will be given of the time and place of future public meetings and the public hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

Appropriate Federal, State and local agencies, and private organizations and citizens who have previously expressed or are known to have interest in this proposal will be sent letters describing the proposed action and soliciting comments.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205 Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding governmental consultation on Federal programs and activities apply to this program.)

John R. Mack,

District Engineer.

[FR Doc. 03–19097 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Salt Lake County, Utah

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for proposed transportation improvements in Salt Lake County, Utah.

FOR FURTHER INFORMATION CONTACT: Mike Morrow, Field Operations Engineer, Federal Highway Administration, 2520 West 4700 South Suite 9A, Salt Lake City, Utah 84118–1847, Telephone: (801) 963–0182.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Utah Department of Transportation will prepare an environmental impact statement on proposed transportation improvements in the 11400 South area. The proposed improvements will be developed after a study has been completed to determine the current and future transportation needs in the study area, which extends from 10400 south to 12600 south and from 700 East to Bangerter Highway. The FHWA will evaluate a reasonable range of alternatives including such alternatives as increasing capacity by other methods like changing the facilities at 12300 and/or 10600 South, expanded public transportation system, intelligent transportation system and/or traffic demand management. FHWA will fully evaluate the indirect and cumulative effects of the proposed project as required by law. The proposed project study area lies within Salt Lake County and includes portions of Draper City, Riverton City, Sandy City, and South Jordan City, Utah.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A series of public meetings, including scoping meetings, will be held in the project area. in addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure the full range of issues related to this proposed action and addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 22, 2003.

Gregory S. Punske,

Environmental Project Manager, Salt Lake City, Utah.

[FR Doc. 03–19060 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Sherburne County, MN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Tier I environmental impact statement (EIS) will be prepared for proposed highway improvements to Trunk Highway (TH) 10 from 1.0 mile east of Big Lake to 0.75 mile west of Big Lake, in Sherburne County, Minnesota. The Tier I EIS will include the analysis needed for a location decision to facilitate preservation of right-of-way.

FOR FURTHER INFORMATION CONTACT: Cheryl Martin, Federal Highway Administration, Galtier Plaza, 380 Jackson Street, Suite 500, St. Paul, Minnesota 55101, Telephone (651) 291–6120; or Claudia Dumont, Project Manager, Minnesota Department of Transportation—District 3B, 3725 12th Street North, ST. Cloud, Minnesota 56303, Telephone (320) 654–5134.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Minnesota Department of Transportation, will prepare a Tier I EIS on a proposal to improve TH 10 from 1.0 mile east of Big Lake to 0.75 mile west of Big Lake, in Sherburne County, Minnesota. The proposed action is being considered to preserve right-of-way for the proposed highway improvement. The proposed action is being considered to address future transportation demand, safety problems, access management and interregional corridor status.

The Tier I EIS will evaluate the social, economic, transportation and environmental impacts of alternatives, including: (1) No-Build, (2) Improvements to the existing TH 10 corridor, and (3) One or more new alignments south of existing TH 10.

The Tier II EIS will be prepared in approximately ten to fifteen years. At that time, design alternatives for the preferred alignment will be considered and environmental impacts and mitigation will be studied in greater detail. The construction of the preferred alternative is planned for implementation in approximately fifteen years.

It is anticipated that the "TH 10 Scoping Document/Draft Scoping Decision Document" will be published in the Fall of 2003. A press release will be published to inform the public of the document's availability. Copies of the scoping document will be distributed to agencies, interested persons and libraries for review to aid in identifying issues and analyses to be contained in the Tier I EIS. A thirty-day comment period for review of the document will be provided to afford an opportunity for all interested persons, agencies and groups to comment on the proposed action. A public scooping meeting will also be held during the comment period. Public notice will be given for the time and place of the meeting. A Tier I Draft EIS will be prepared based on the

outcome of the scoping process. Coordination has been initiated and will continue with appropriate Federal, State, and local agencies and private organizations and citizens who have previously expressed or are known to have an interest in the proposed action. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 10, 2003.

Stanley M. Graczyk,

Project Development, Team Leader, Federal Highway Administration, St. Paul, Minnesota.

[FR Doc. 03–19102 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2003–15642]

Safety Auditor Certification; Extension of Statutory Compliance Date

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of extension of statutory compliance date.

SUMMARY: The FMCSA is required by law to ensure that all safety audits or compliance reviews of motor carriers conducted after December 31, 2002 be conducted by duly certified personnel. The Secretary of Transportation is authorized to extend this deadline until December 31, 2003 by notifying Congress that implementation of this requirement cannot be achieved by the initial deadline, and stating the reasons. By this document the FMCSA is notifying the public that on July 17, 2003 the Secretary of Transportation gave notice to Congress that he is extending the deadline to December 31, 2003. The extension is necessary because of a recent Federal court decision that set aside the FMCSA rule establishing procedures for certifying personnel to conduct safety reviews.

DATES: The Secretary of Transportation has extended the statutory deadline for 49 U.S.C. 31148(b) until December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Schultz, Jr., Office of Bus & Truck Standards and Operations, (202) 366–4001, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Room 8301, Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m. EST, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

On December 9, 1999, the President signed the Motor Carrier Safety Improvement Act of 1999 (MCSIA)(Pub. L. 106–159). Section 210 of MCSIA requires that all new entrant motor carriers, both foreign and domestic, receive safety audits within 18 months of commencing operations in interstate or foreign commerce. Section 211 of MCSIA requires the Secretary of Transportation to complete a rulemaking to improve training and provide for the certification of motor carrier safety auditors to conduct safety inspection audits and reviews. The legislation also gives the Secretary oversight responsibility for these motor carrier auditors and investigators, including the authority to decertify them.

As enacted by section 211(a), 49 U.S.C. 31148(b) and (c) read as follows:

(b) CERTIFIED INSPECTION AUDIT REQUIREMENT.—Not later than one year after completion of the Rulemaking required by subsection (a), any safety inspection audit or review required by, or based on the authority of, this chapter or chapter 5, 313, or 315 of this title and performed after December 31, 2002, shall be conducted by—

(1) a motor carrier safety auditor certified under subsection (a); or

(2) a Federal or State employee who, on the date of the enactment of this section, was qualified to perform such an audit or review.

(c) EXTENSION.—If the Secretary determines that subsection (b) cannot be implemented within the 1-year period established by that subsection and notifies the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives of the determination and the reasons therefor, the Secretary may extend the deadline for compliance with subsection (b) by not more than 12 months.

On March 19, 2002, the FMCSA published an Interim Final Rule implementing section 211 (the auditor certification rule) by establishing three types of certification: (1) Certification to conduct safety audits, (2) certification to conduct compliance reviews, and (3) certification to conduct roadside inspections (67 FR 12776). This rule was primarily designed to respond to the increase in audits necessitated by the new entrant requirements of Section 210 of MCSIA. However, publication of the rule was one of several conditions imposed in the 2002 DOT Appropriations Act (Pub. L. 107–87), which had to be met before FMCSA could begin processing applications to allow Mexico-domiciled motor carriers to operate in the United States beyond the commercial zones along the United States-Mexico border in accordance with the North American Free Trade Agreement (NAFTA). Another condition imposed by the Appropriations Act was FMCSA publication of a rule implementing section 210 of MCSIA. An Interim Final Rule establishing procedures for increasing FMCSA's safety scrutiny of new entrant motor carriers, including standards and procedures regarding the safety audits mandated by section 210, was published on May 13, 2002 (67 FR 31978) and became effective on January 1, 2003.

FMCSA hired and trained over 200 people to perform compliance reviews, safety audits, and vehicle inspections. However, most audits of new entrant motor carriers are to be undertaken by State employees under the Motor Carrier Safety Assistance Program (MCSAP).

On January 16, 2003, the U.S. Court of Appeals for the Ninth Circuit set aside the auditor certification rule and two other FMCSA rules which established application and safety monitoring procedures for Mexico-domiciled motor carriers seeking authority to operate in the United States. The Court's ruling was based on its conclusion that FMCSA failed to comply with statutory environmental impact analysis requirements in developing these regulations. *Public Citizen* v. *Dept. of Transportation*, 316 F.3d 1002. The Department of Transportation filed a petition for rehearing with the Ninth Circuit, but this petition was denied on April 10, 2003. Consequently, the Court's mandate setting aside the three rules took effect on April 18, 2003.

As noted above, section 210 of the MCSIA requires that all new entrant motor carriers, both foreign and domestic, receive safety audits within 18 months of commencing operations in interstate or foreign commerce. As a result of the Ninth Circuit decision in *Public Citizen*, FMCSA and its State partners will not be able to hire and train additional personnel to conduct motor carrier safety audits, reviews or inspections, thereby impairing their ability to comply with the statutory mandate regarding new entrant motor carriers. The consequent reduction of Federal and State oversight activities will likely have an adverse impact on public safety.

For the reasons stated above, the Secretary of Transportation has determined that it is necessary to extend the compliance date established by 49 U.S.C. 31148(b) to December 31, 2003, so that FMCSA and its State partners can continue to carry out their statutory responsibilities while the Department of Transportation acts to comply with applicable environmental laws before implementing procedures for certification of safety auditors. This extension is retroactive to January 1, 2003.

On July 17, 2003, the Secretary of Transportation sent letters to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives' Committee on Transportation and Infrastructure notifying them that he had extended the deadline for complying with the requirements of 49 U.S.C. 31148(b) to December 31, 2003.

Issued on: July 22, 2003.

Annette M. Sandberg,

Acting Administrator.

[FR Doc. 03–19150 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on May 20, 2003 (67 FR 27626).

DATES: Comments must be submitted on or before August 25, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Ms. Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On May 20, 2003, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 67 FR 14766. FRA received no comments in response to this notice.

Before OMB decides whether to approve this proposed collection of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

Title: State Safety Participation Regulations and Remedial Actions.

OMB Control Number: 2130–0509.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses.

Form(s): FRA F 6180.33; FRA F 6180.61; FRA F 6180.67; FRA F 6180.96/96A; FRA F 6180.109; FRA F 6180.110; FRA F 6180.111; FRA F 6180.112.

Abstract: The collection of information is set forth under 49 CFR part 212, and requires qualified state inspectors to provide various reports to FRA for monitoring and enforcement purposes concerning state investigative, inspection, and surveillance activities regarding railroad compliance with Federal railroad safety laws and regulations. Additionally, railroads are to report to FRA actions taken to remedy certain alleged violations of law.

Annual Estimated Burden Hours: 10,359.

Title: Certification of Glazing Materials.

OMB Control Number: 2130–0525.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Abstract: FRA uses this information to assure that window glazing materials have been fully tested and are in compliance with Federal Railroad Safety Standards.

*Annual Estimated Burden Hours:*119.

ADDRESSES: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503; Attention: FRA Desk Officer.

Comments are invited on the following: Whether the proposed collections of information are necessary for the proper performance of the functions of FRA, including whether the information will have practical utility; the accuracy of FRA's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on July 21, 2003.

Kathy A. Weiner,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 03–19041 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief from the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No. FRA–2003–15369

Applicant: CSX Transportation, Incorporated, Mr. Eric G. Peterson, Assistant Chief Engineer, Signal Design and Construction, 4901 Belfort Road, Suite 130, Jacksonville, Florida 32256.

CSX Transportation, Incorporated (CSXT) seeks approval of the proposed discontinuance and removal of the automatic block and cab signal systems, on the two main tracks between CP Anacostia, milepost QL133.5 and CP Landover, milepost QL128.8, near Washington, DC, on the Baltimore Division, Landover Subdivision. The proposed changes are associated with the redesignation of this section of main track to "Other than Main Track," governed by CSXT Rule 105.

The reason given for the proposed changes is that all train operations are yard shifting and local switching movements.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on July 15, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–19044 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No. FRA–2003–15370

Applicant: CSX Transportation, Incorporated, Mr. Eric G. Peterson, Assistant Chief Engineer, Signal Design and Construction, 4901 Belfort Road, Suite 130, Jacksonville, Florida 32256.

CSX Transportation, Incorporated (CSXT) seeks approval of the proposed modification of the signal system, on the two main tracks between CP Virginia, milepost QL136.7 and CP Anacostia, milepost QL134.2, near Washington, DC, on the Baltimore Division, Landover Subdivision. The proposed changes consist of the discontinuance and removal of the cab signal system only, and conversion from the existing NORAC Operating Rules to CSXT Operating Rules, under the direction of the CSXT Dispatcher in Jacksonville, Florida.

The reason given for the proposed changes is that all train operations have changed where only through freight revenue trains now proceed from CP Virginia to the Alexandria Extension and onto the Capital Subdivision. All Amtrak and Commuter Services will continue to diverge at CP Virginia to Union Station, and do not operate between CP Virginia and CP Anacostia.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on July 15, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–19045 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number FRA–2003–14799

Applicant: CSX Transportation, Mr. N. Michael Choat, Assistant Chief Engineer of Signal Maintenance, 4901 Belfort Road, Suite 130 (J370), Jacksonville, Florida 32256.

CSX Transportation (CSXT) seeks approval to extend the temporary discontinuance of the traffic control system (TCS), on portions of the Florence Service Lane, Aberdeen Subdivision, between milepost S164.8 and milepost S241.6, for approximately one year. The request is associated with the December 6, 2002-catastrophic event in which CSXT experienced a severe ice storm over portions of the Aberdeen Subdivision. Major damage to the signal pole line resulted in the removal of the TCS from service as authorized by 49 CFR, Section 235.7(a)(4), and implementation of Direct Traffic Control (DTC), under the direction of the train dispatcher.

The reason given for the proposed changes is to allow CSXT time to file a block signal application with the Federal Railroad Administration for the proposed permanent discontinuance and removal of the existing TCS between milepost S164.8 and milepost S241.6, and installation of DTC authority for movement supplemented with CSXT's Communications Based Train Management System (CTBM). The petition process and the implementation of CBTM would be completed within the one-year time frame.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on July 21, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–19046 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement for the Spokane Regional Light Rail (South Valley Corridor) Project in Spokane, Washington Metropolitan Area

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an environmental impact statement that includes two new alternatives.

SUMMARY: The Federal Transit Administration (FTA) and the Spokane Transit Authority (STA) intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) for transit improvements in Spokane County, between downtown Spokane and Liberty Lake. The EIS will be prepared to satisfy both NEPA and the Washington State Environmental Policy Act (SEPA). This project was originally scoped as an Environmental Assessment (EA), but transitioned to an Environmental Impact Statement as a result of a second scoping meeting held on June 4, 2002. Because of the recent demonstrated need to study two additional lower cost build alternatives, an additional scoping meeting will be required.

The purpose of this Notice of Intent is to notify interested parties of the intent to prepare an EIS with two additional build alternatives and to invite participation in the study. The project proposes to implement a major high capacity transit improvement in the Spokane Metropolitan area that maintains livability, manages growth and provides a balanced transportation system. The Proposed Action is intended to contribute to implementation of a series of state, regional, and local planning policies that address air quality, sprawl, and growth. In addition to the original alternatives, two new alternatives (described below) will be evaluated in the EIS.

DATES: The public is welcome to make comments on the scope of the proposed project. Written comments should be sent to the Spokane Transit Authority within 30 days from the date of publication of this notice in the local newspaper or September 18, 2003, whichever is later. A packet on the proposed project, project alternatives, and the scoping process may be obtained from the Spokane Transit Authority. The information may also be obtained by sending an electronic request through the "Contact Us" section of the project Web site, *www.spokanelightrail.com*. A *Public Open House/Scoping Meeting* will be held on Thursday, September 4, 2003 from 5 p.m. to 7 p.m. PDT, at the Kress Gallery on the third floor of the Riverpark Square Mall, located at 808 West Main Avenue, Spokane, WA 99206. An *Agency Scoping Meeting* will be held at 1:30 p.m. PDT on Thursday, September 4, 2003, at the Spokane

Transit Authority (STA) Board Room, 1230 West Boone Avenue, Spokane, WA 99201. Both meeting locations are accessible to persons with disabilities. Any individual with a disability who requires special assistance, such as a sign language interpreter, should contact Geralyn Garberg at (509) 325–6000, ext. 196 or e-mail *ggarberg@spokanetransit.com*, at least 48 hours in advance of the meeting in order for STA to make necessary arrangements.

FOR FURTHER INFORMATION CONTACT: The Spokane Transit Authority Agency Coordination contact is Lesley Sutton, Project Executive Assistant at (509) 325–6056 or e-mail: *lsutton@spokanetransit.com*. The STA Public Information contact is Molly Myers, Project Communications Manager at (509) 325–6090 or e-mail *mmyers@spokanetransit.com*. The STA TDD number is (509) 456–4327. Written comments should be sent to: Spokane "South Valley Corridor" Project Manager, Spokane Transit Authority, 1230 West Boone Ave., Spokane, WA 99201.

The Federal agency contact is John Witmer, Federal Transit Administration, 915 Second Avenue, Suite 3142, Jackson Federal Building, Seattle, WA 98174. Phone (206) 220–7964.

SUPPLEMENTARY INFORMATION:

1. Notice of Intent

This Notice of Intent to prepare an EIS is being published to notify interested parties. The Spokane "South Valley Corridor" Project is examining two new high-capacity transit build alternatives in the south valley portion of the Spokane metropolitan area. Because the study is a transit alternatives study, FTA regulations and guidance will be used for the analysis and preparation of the South Valley Corridor Project EIS.

2. Study Area

The South Valley Corridor includes an area roughly parallel to I–90 running east through downtown Spokane, southeast Spokane, the City of Spokane Valley, unincorporated urban Spokane County, and into the City of Liberty Lake. The proposed alternatives primarily utilize existing right-of-ways along operational and former railroad corridors and roadways.

3. Alternatives

The three original alternatives are as follows: (#1) The No-Build Alternative will provide the basis for comparison of the build alternatives. The No-Build Alternative includes the existing transportation system plus projects listed in the Spokane Metropolitan Area Transportation Improvement Program (TIP). (#2) The Separate Rail Alignment Alternative includes a light rail transit line running from downtown Spokane to Liberty Lake on an exclusive alignment. (#3) The Shared Rail Alignment includes a light rail line from downtown Spokane to Liberty Lake sharing existing rail lines with the Union Pacific Railroad along portions of the alignment. This alternative would use operating time restrictions to separate light rail traffic from heavy rail traffic. Between the two termini there would be intermediate stations and associated local parking. Both the separate rail alignment and shared rail alignment Build Alternatives may use either electrified or diesel multiple unit (DMU) vehicle technology. These alternatives will also incorporate in-street operations along Riverside Avenue, between Post Street and Division Street. The rail options will utilize the former Milwaukee Road rail corridor, east of University Road.

The two new alternatives are as follows: (#4) The Rail Minimum Operable Segment (MOS) Rail alternative is similar to the Shared Rail Alignment alternative except the rail portion of the alignment has an eastern terminus at University City. The rail segment assumes the use of Diesel Multiple Unit (DMU) vehicles and a possible interface with a separate project that includes a Downtown Spokane streetcar system. The rest of the east-west corridor from University City to Liberty Lake will be served by a low-cost transit segment that will utilize Bus Rapid Transit (BRT) strategies and rubber-tired BRT vehicles on existing roadways. The second new alternative (#5) serves the entire corridor with low-cost Bus Rapid Transit (BRT) strategies using rubber-tired BRT vehicles on existing roadways.

4. Probable Effects

FTA and Spokane Transit Authority will evaluate the environmental, social and economic impacts of the alternatives and measures to mitigate any adverse impacts.

Issued on July 16, 2003.

Linda M. Gehrke,

Acting Regional Administrator, FTA Region 10.

[FR Doc. 03–19153 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–15428]

Extension of Comment Period on Whether Nonconforming 2003–2004 Micro Car Company Smart Passion (Glass Top and Convertible) Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Extension of comment period.

SUMMARY: On June 20, 2003, NHTSA published notice (at 68 FR 37040) that it had received a petition to decide that nonconforming 2003–2004 Micro Car Company Smart Passion (glass top and convertible) passenger cars are eligible for importation into the United States. The notice solicited public comments on the petition and stated that the closing date for comments is July 21, 2003.

This is to notify the public that NHTSA is extending the comment period until July 31, 2003. This extension is based on a request from Mercedes-Benz USA L.L.C. (Mercedes-Benz). In requesting the extension, Mercedes-Benz stated that "upon reviewing the record to determine if sufficient engineering data had been submitted to enable NHTSA to make a determination whether the proposed vehicle is eligible for importation, [it] found no such data." As a consequence, the company stated that it needs "additional time to prepare the analytical data [it believes] is necessary for the agency to make an informed and rational decision regarding the petition." Mercedes-Benz requested that the deadline be extended from July 21, 2003 until July 31, 2003.

DATES: Comments on the import eligibility petition must be submitted on or before July 31, 2003.

ADDRESSES: Comments are to be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the document (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–787) or you may visit *http://dms.dot.gov*.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 23, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–19154 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2002–13014; Notice 2]

Dorel Juvenile Group; Denial of Application for Decision of Inconsequential Noncompliance

Dorel Juvenile Group [Cosco] (DJG), of Columbus, Indiana, failed to comply with S5.1.1(a) of Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child Restraint Systems," and filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." DJG has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published on September 5, 2002, in the **Federal Register** (67 FR 56872), with a 30-day comment period. NHTSA received no comments.

The noncompliance reported by DJG is the separation of the tether strap and steel belt slot adjustment channel from the Cosco Alpha Omega child restraint system (CRS) seat shell produced from November 1, 2000 through January 10, 2001 (6 Models and 86,476 units).

FMVSS No. 213, S5.1.1 "Performance Requirements," requires for dynamic performance that:

S5.1.1. *Child restraint system integrity.* When tested in accordance with S6.1 each child restraint system shall meet the requirements of paragraphs (a) * * * of this section.

(a) Exhibit no complete separation of any load bearing structural element * * *.

DJG supports its application for inconsequential noncompliance with the following, as summarized by NHTSA.

DJG does not think that tether separation during sled test constitutes a complete separation of a load bearing structural element. DJG believes that the regulatory history of S5.1.1 shows that the purpose of the requirement is to reduce the likelihood of injury during collapse or disintegration of the system; therefore, the cutting of the tether strap does not present a risk of collapse or disintegration. DJG states that the agency's compliance test data show tether separation of the Alpha Omega CRS under dynamic loading provides significantly improved results compared to other Alpha Omega CRS without tether separation under dynamic loading. Therefore, DJG filed this petition on the basis that the noncompliance is inconsequential to motor vehicle safety.

The agency has reviewed DJG's application and concluded that the noncompliance is not inconsequential to motor vehicle safety for the following reasons.

First, even though the Alpha Omega CRS met other dynamic test requirements, it did not meet S5.1.1(a) when the tether strap separated from the CRS. The agency has consistently viewed tether strap separation as a load bearing structural failure.

Second, structural failure is similar to vehicle LATCH anchorage failure—a failure of either one causes a child seat to be restrained improperly.

Finally, the agency has taken enforcement action for a similar failure. In 2001, the agency notified Britax Child Safety, Inc (Britax), of a potential noncompliance due to the detachment of a tether strap during dynamic testing of one of its child restraint models. Britax initiated a recall campaign to provide owners of the affected model with repair kits.

In consideration of the foregoing, NHTSA has decided that DJG has not met its burden of persuasion that the noncompliance it describes is inconsequential to motor vehicle safety. Accordingly, DJG's application is hereby denied. Therefore, DJG must fulfill its obligation to notify and remedy under 49 U.S.C. 30118(d) and 30120(h).

Authority: 49 U.S.C. 30118(d) and 30120(h); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: July 22, 2003.

Roger A. Saul,

Director, Office of Crashworthiness Standards.

[FR Doc. 03–19152 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–98–4470]

Pipeline Safety: Meeting of the Technical Hazardous Liquid Pipeline Safety Standards Committee

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice—Meeting of Technical Hazardous Liquid Pipeline Safety Standards Committee.

SUMMARY: The Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) will convene a meeting of the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC). The purpose of the meeting is to request the Committee's input on the conceptual framework of the OPS five-year research and development program plan as required by section 12 of the Pipeline Safety Improvement Act of 2002. RSPA/OPS staff will also brief the Committee and request their advice on a possible rule change to the operator qualification standard and on a rulemaking on annual reporting.

DATES: The meeting will be held on Wednesday, August 6 from 11 a.m. to 2 p.m. Advisory Committee members will participate via telephone conference call. Notice of each Committee meeting will be published in the **Federal Register** at least 15 days in advance of the meeting, except in emergency situations. This Notice is delayed due to the complex coordination among several agencies to complete and expedite the conceptional framework of the OPS five-year research and development program plan to meet the December 2003 deadline required by the Pipeline Safety Improvement Act of 2002.

ADDRESSES: Members of the public may attend the meeting in room 4236 at the U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC.

An opportunity will be provided for the public to make short statements on the topics under discussion. Anyone wishing to make an oral statement should notify Jean Milam, (202) 493–0967, not later than August 1, 2003, on the topic of the statement and the length

of the presentation. The presiding officer at the meeting may deny any request to present an oral statement and may limit the time of any presentation.

You may submit written comments by mail or deliver to the Dockets Facility, U.S. Department of Transportation (DOT), Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. It is open from 10 a.m. to 5 p.m., Monday through Friday, except Federal holidays. You also may submit written comments to the docket electronically. To do so, log onto the following Internet Web address: *http://dms.dot.gov*. Click on "Help & Information" for instructions on how to file a document electronically. All written comments should reference docket number RSPA–98–4470. Anyone who would like confirmation of mailed comments must include a self-addressed stamped postcard.

You may search the electronic form of all comments received into any of the DOT dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (Volume 65, Number 70; pages 19477–78) or you may visit *http://dms.dot.gov*.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Jean Milam at (202) 493–0967.

FOR FURTHER INFORMATION CONTACT: Cheryl Whetsel, OPS, (202) 366–4431 or Richard Huriaux, OPS, (202) 366–4565, regarding the subject matter of this notice.

SUPPLEMENTARY INFORMATION: The agenda for this meeting of the THLPSSC will include:

1. A briefing and request for Committee comment on the conceptual framework of the OPS five-year research and development program plan.

2. A briefing and request for advice on a possible rule change to the Operator Qualification Standard.

3. A briefing on the hazardous liquid annual report rulemaking.

The THLPSSC is a statutorily mandated advisory committee that advises RSPA/OPS on proposed safety standards for liquid pipelines. The advisory committee is constituted in accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1). The committee consists of 15 members—five each representing government, industry, and the public. The THLPSSC is tasked with determining reasonableness, cost-effectiveness, and practicability of proposed pipeline regulations.

Authority: 49 U.S.C. 60102, 60115.

Issued in Washington, DC, on July 22, 2003.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 03–19151 Filed 7–25–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34378]

The Burlington Northern and Santa Fe Railway Company—Temporary Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railroad Company (UP) has agreed to grant temporary overhead trackage rights to The Burlington Northern and Santa Fe Railway Company (BNSF) on UP's Black Butte and Valley Subdivisions, between Klamath Falls, OR, at UP milepost 428.7, and Binney Junction (Marysville), CA, at UP milepost 141.9, a distance of approximately 285 miles.[1]

The transaction was scheduled to become effective on July 16, 2003, and the authorization is scheduled to expire on August 15, 2003. The purpose of the temporary rights is to allow BNSF to bridge its train service while its main lines are out of service due to certain programmed track, roadbed, and structural maintenance.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), *aff'd sub nom. Railway Labor Executives' Ass'n* v. *United States*, 675 F.2d 1248 (D.C. Cir. 1982).

This notice is filed under 49 CFR 1180.2(d)(8). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34378, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Michael E. Roper, 2500 Lou Menk Drive, P.O. Box 961039, Fort Worth, TX 76161–0039.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: July 18, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–18974 Filed 7–25–03; 8:45 am]

BILLING CODE 4915–00–P

[1] By amendment received on July 16, 2003, BNSF states that the reason there is a 1.8-mile difference between the milepost locations and the actual distance is that the railroad uses station mileposts to determine mileage. BNSF indicates that there frequently is a small distance between the station milepost and the actual location of the switch where the railroad enters or departs its trackage.

Corrections

Federal Register
Vol. 68, No. 144
Monday, July 28, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Correction

In notice document 03–18015 beginning on page 42006 in the issue of Wednesday, July 16, 2003, make the following corrections:

1. On page 42007, in the first column, under "*Docket Number*: 03–031", in the 13th line, "used in perform" should read, "used to perform".

2. On the same page, in the second column, under "*Docket Number*: 03–033", in the fifth line, "Model Tecnai ^{2}", should read, "Model Tecnai G^2"

[FR Doc. C3–18015 Filed 7–25–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Office of the Secretary

Open Meeting on Department of Defense Directive 1344.7, "Personal Commercial Solicitation on DoD Installations"

Correction

In notice document 03–18508 appearing on page 43344 in the issue of Tuesday, July 22, 2003, make the following correction:

On page 43344, in the third column, under the heading **SUPPLEMENTARY INFORMATION**, in the 12th line, in the Web site address, "*d13447wch2_021386/d13447p.pdgf*" should read, "*d13447wch2_021386/d13447p.pdf*".

[FR Doc. C3–18508 Filed 7–25–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Transporation Security Administration

Port Security Grant Program; Application Notice Describing the Category of Interest and Establishing the Closing Date for Receipt of Applications Under the Port Security Grant Program—Round 3

Correction

In notice document 03–18463 beginning on page 43152 in the issue of Monday, July 21, 2003, make the following correction:

On page 43153, in the first column, under the heading **FOR FURTHER INFORMATION CONTACT**, in the last line, "*Tony.Cario@dhs.gov*" should read, "*Tony.Corio@dhs.gov*".

[FR Doc. C3–18463 Filed 7–25–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–43]

Notice of Submission of Proposed Information Collection to OMB: Application for the Transfer of Physical Assets

Correction

In notice document 03–18180 beginning on page 42745 in the issue of Friday, July 18, 2003 make the following correction:

On page 42745, in the second column, under the **DATES** heading, in the first line, " July 18, 2003" should read, "August 18, 2003".

[FR Doc. C3–18180 Filed 7–25–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–205–AD; Amendment 39–13229; AD 2003–14–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200 and –300 Series Airplane

Correction

In rule document 03–17693 beginning on page 42583 in the issue of, Friday, July 18, 2003 make the following correction:

§39.13 [Corrected]

On page 42585, in § 39.13, under TABLE 2. –SERVICE BULLETINS, in the fourth column, the fourth line should read "April 19, 2001".

[FR Doc. C3–17693 Filed 7–25–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
July 28, 2003

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Part 214
Roadway Maintenance Machine Safety; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 214

[Docket No. FRA–2000–8156, Notice No. 2]

RIN 2130–AB28

Roadway Maintenance Machine Safety

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is amending its Railroad Workplace Safety regulations by adding a new subpart prescribing safety standards for railroad on-track roadway maintenance machines and hi-rail vehicles. The purpose of these standards is to protect roadway workers during the lawful operation of this equipment and to promote railroad safety overall.

DATES: (1) *Effective Date:* This regulation is effective September 26, 2003.

(2) Any petition for reconsideration of any portion of the rule must be submitted no later than September 26, 2003.

ADDRESSES: A petition for reconsideration (identified by DOT DMS Docket Number FRA–2000–8156) may be submitted by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket number for this rulemaking. Note that all submissions received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Regulatory Impact/Notices, below.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Allison H. MacDowell, Staff Director, Office of Safety Enforcement, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590 (telephone: 202–493–6236), or Daniel L. Alpert, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (telephone: 202–493–6026).

SUPPLEMENTARY INFORMATION:

Introduction

Background

In May 1990, the Brotherhood of Maintenance of Way Employes (BMWE) filed a petition with FRA to revise the Track Safety Standards and add to them new regulations addressing the safety of roadway workers and roadway maintenance machines. In response, FRA first initiated a negotiated rulemaking to address roadway worker safety. The final rule resulting from that rulemaking was published in December, 1996 (*see* 61 FR 65959), and the regulations addressing roadway worker safety now reside in 49 CFR part 214, subpart C.

Also in 1996, FRA requested that the newly formed Railroad Safety Advisory Committee (RSAC) develop recommendations to the Administrator on how to address by rulemaking the revision of the Track Safety Standards petitioned by the BMWE. The RSAC agreed to the task and formed a Track Working Group to draft a proposed revision. The Track Working Group decided by consensus that the draft revision would update the Track Safety Standards found at 49 CFR part 213, and that a new set of regulations addressing the safety of on-track roadway maintenance machines would be initiated in a separate rulemaking. The RSAC approved by majority consensus a draft Notice of Proposed Rulemaking (NPRM) for revision of part 213 in October, 1996. The Administrator approved and signed the NPRM, which was published on July 3, 1997. *See* 62 FR 36138. The final rule was published on June 22, 1998 (*see* 63 FR 33992), and the revised track standards became effective on September 21, 1998.

Even after the publication of the revised Track Safety Standards, the Track Working Group remained in existence to accomplish two additional tasks accepted by the RSAC: The amendment of part 213 to add safety standards for Gage Restraint Measuring Systems (GRMS), and the amendment of part 214 to add safety standards for on-track roadway maintenance machines. To accomplish the latter, the Track Working Group appointed a six-member Task Group to draft, by consensus, rule text and analysis for the preamble.

The Task Group consisted of representatives from FRA, Association of American Railroads (AAR), BMWE, Norfolk Southern Railway Co., and an equipment supplier. The Task Group met several times and conducted numerous conference calls before drafting proposed rule language to recommend to the RSAC for approval. The Task Group's recommended proposed rule was approved by the RSAC in 2000, and the proposed rule was subsequently issued by the Administrator and then published on January 10, 2001. *See* 66 FR 1930.

FRA received comments from five organizations in response to the proposed rule. The commenters included the BMWE, the AAR, Loram Maintenance of Way, Inc. (Loram), Transtar, Inc. (Transtar), and the Wisconsin Central System (Wisconsin Central). Loram recommended that FRA terminate the rulemaking because the Task Group included only one representative of the equipment industry who could not adequately represent the diversity of roadway maintenance equipment. Loram further suggested that, in the alternative, FRA should convene a task group that included at least two representatives of manufacturers and operators of roadway maintenance equipment.

In February 2002, the Task Group met with most of the commenters, as well as other representatives from the industry, to gain clarification of, and further discuss, the comments and suggestions provided by the commenters. The Task Group met with representatives of Loram, Plasser American, and the Railway Progress Institute, and then, by unanimous vote, recommended how this final rule would respond to each of the comments. (Discussion of those recommendations is detailed in the Section-by-Section Analysis segment of this document, below.) Thereafter, in May 2002, the Task Group's recommendations were unanimously approved by the full RSAC.

Categories of Equipment

When the Task Group began the task of developing a proposed rule for roadway maintenance machine safety, it initially divided roadway maintenance machines into three broad categories: on-track, on/off track (such as hi-rail vehicles), and off-track. The Task Group quickly decided to confine the regulations to on-track equipment and equipment used both on and off track. The Task Group further divided two remaining categories of roadway maintenance machines into five sub-categories: Large self-propelled equipment; medium self-propelled equipment; small "walk-along" equipment; hi-rail equipment; and motor cars.

The Task Group conducted a systematic review of various types and configurations of machinery, as well as of their current use in the railroad industry. The Task Group determined that the railroad industry is rapidly phasing out the use of motor cars, replacing them with hi-rail vehicles. In fact, motor cars have not been manufactured for use in the United States in several years. Therefore, it was decided that there was no need to write a rule covering motor cars. However, if in the future, the industry returns motor cars for widespread use as inspection vehicles, FRA may reconsider its decision to exclude motor cars from this regulation.

Next, the Task Group decided to eliminate small "walk-along" track equipment from the scope of the new regulations. "Walk-along" equipment includes small pieces of track maintenance equipment that rolls on the rails but may not be self-propelled. This type of equipment includes tie borers, nut runners, portable rail grinders and other track maintenance equipment of similar size which can be placed on, or removed from, the track with relative ease by one or more roadway workers. The Task Group determined that the great variety of this type of equipment would necessitate writing a very complicated set of regulations governing a category of equipment that does not pose a very significant safety hazard. Therefore, the Task Group decided to focus the rulemaking on the three remaining sub-categories of roadway maintenance equipment: Large on-track machines, medium on-track machines, and hi-rail vehicles.

To distinguish large on-track machines from medium-sized on-track machines, the Task Group decided to consider the light weight of the vehicles. Large equipment was designated as "Category I" equipment and included on-track self-propelled roadway maintenance machines having a light weight of 17,500 pounds or more. "Category II" machines included similar equipment whose light weight was less than 17,500 pounds but more than 7,500 pounds.

The final categorization of covered roadway maintenance machines dealt with the age of the vehicles. The Task Group determined that all of the regulations would apply to new machines. The Group decided to define "new" as any machine ordered for manufacture 90 days after the issuance of a final rule, to prevent the rule from interfering with the manufacture of new equipment already on order but not yet completed when the rule is issued.

Likewise, the Task Group believed it necessary to limit the number of older roadway maintenance machines that would need retrofitting following the issuance of a final rule. Because technology has changed and many types of roadway maintenance machines have been redesigned in more recent years, the Task Group determined that the new rule should not apply to the oldest equipment in the industry's collective fleet. Therefore, the Task Group decided that the requirements for retrofitting would not apply to any roadway maintenance machine manufactured prior to January 1, 1991.

With the parameters about types of equipment agreed upon, the Task Group then set out to determine what safety features on the machines should be covered by the regulations. The Group reviewed existing standards for work equipment issued by the Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor, and discussed the American National Standards Institute (ANSI) and the Society of Automotive Engineers (SAE) standards, which are voluntary industry standards. The Group identified 18 items on the Category I and Category II machines that should be included in the regulations:

- Operator Seating;
- Brakes;
- Horn;
- Work Lights;
- Mirrors;
- Change of Direction Alarm;
- Fire Extinguisher;
- Safety Glass;
- Power Wipers;
- Strobe Light;
- Heat and Ventilation for Non-Pressurized Cab;
- Flagging Equipment;
- Headlights;
- Turntable Positive Restraint Device;
- Equipment Light Weight Displayed;
- Heat, Ventilation, and Air Conditioning for Pressurized Cab;
- Brake Lights; and
- First-Aid Kit.

For hi-rail vehicles, the Group determined that the regulations should address:

- Operator Seating;
- Brakes;
- Horn;
- Mirrors;
- Fire Extinguisher;
- Safety Glass;
- Power Wipers;
- Heat and Ventilation for Non-Pressurized Cab;
- Headlights;
- Equipment Light Weight Displayed;
- Brake Lights;
- Change of Direction Alarm;
- Strobe Light;
- Flagging Equipment; and
- First-Aid Kit.

Because the regulations are intended to cover hi-rail vehicles only when they are being used as on-track vehicles, the Task Group determined that the regulations should not replace any Federal or State requirements covering hi-rail vehicles when they are used as roadway motor vehicles.

As the discussions continued over many months in preparation of a proposed rule, some early decisions made by the Task Group changed. For example, the Category I and II designations, which helped the Task Group early in the discussions, eventually became unnecessary as proposed requirements changed. This final rule makes the distinction between large equipment and medium-sized equipment in only two instances, making it unnecessary to maintain the designated categories for purposes of the rule.

Shunting

Early in the deliberations, the Task Group explored whether or not the regulations should require that the covered track maintenance machines be non-insulated for the purpose of shunting the track circuits. Machines capable of shunting track circuits would enable a track circuit to indicate track occupancy by the machine, affording an extra measure of protection for the track crew through the signal system, as well as protection at highway-rail crossings through the activation of warning devices at crossings so equipped.

The railroad industry has struggled many years to develop a technology that would provide reliable shunting capabilities for track maintenance machines. Even heavy equipment such as single unit self-propelled passenger cars and single unit locomotive consists without cars do not always shunt the track circuits. The Task Group discussed the advantages of current shunting technologies when the technologies work successfully, and balanced them against the possibility that the technologies might fail. Roadway workers could develop a false sense of security when using machines designed to shunt track circuits, perhaps relying too heavily on shunting as a

method of protection when the reliability of the shunting is not failsafe.

The Task Group agreed that, because present shunting technology has not advanced enough to guarantee a level of reliability necessary for track maintenance machines, this rule should not require that the machines be non-insulated. However, if FRA finds in the future that the technology has advanced to a high level of reliability for track maintenance machines, the agency may reconsider its position regarding insulation.

Noise Conservation

The Task Group considered including in the regulations a design standard that would require new roadway maintenance machines covered by the rule to maintain the noise level in the cab of the machine to no more than 85 dBA measured on the A-scale of a standard sound level meter at slow response over an eight-hour period. Hearing loss caused by exposure to loud levels of noise over an extended period of time is a significant issue among roadway workers. Workers on roadway maintenance machines are currently protected by OSHA regulations set forth in 29 CFR 1910.95, which require a covered employer to provide a hearing conservation program, hearing protection, and training for employees.

However, if FRA were to establish noise exposure standards here with a new design standard, such standards would oust OSHA's jurisdiction over hearing conservation, pursuant to section 4(b)(1) of the Occupational Safety and Health Act, 29 U.S.C. 653(b)(1). Therefore, with a design standard for new equipment, but no requirement for a hearing conservation program, personal hearing protection or employee training, the roadway workers affected by this rule would receive less protection than they receive now under OSHA regulations. In addition, an effort by FRA to enter the field of hearing conservation on some roadway maintenance machines could result in FRA displacing OSHA regulations for all roadway maintenance machines. This result would leave operators of roadway equipment not under the design standard (*i.e.*, older equipment or equipment weighing less than 7,500 pounds) with no hearing protection under Federal law whatsoever.

To prevent such an unwanted result, FRA would need to institute its own set of comprehensive regulations dealing with hearing protection, hearing conservation programs, and testing. Given the fact that OSHA currently has authority to address noise exposure and hearing loss for these employees, as well as the requisite expertise at hand to do so effectively, FRA sees no need to duplicate such a program. In fact, as FRA understands, the railroads currently follow the OSHA regulations and have established hearing conservation programs that include these employees.

Environmental Controls in Cabs

The issue of environmental controls in cabs of roadway maintenance machines, including heating, air conditioning, and protection from air contaminants like silica dust, was the topic of much discussion among Task Group members. The Task Group worked hard to find a balance between environmental controls perceived to be safety enhancements and those perceived by some to be merely "comfort" improvements. The resulting requirement in this rule is therefore designed to protect employees working on certain types of roadway machines from air contaminants that may cause respiratory health problems for employees while also protecting equipment components from the effects of temperature extremes or degradation from dust and debris. This standard will also enhance safety by reducing noise inside the cab, thereby effectuating clearer radio communications between employees. In addition, the standard will afford clearer visibility for those working inside the cab.

Under this regulation, OSHA environmental standards, which already govern the working environments of roadway maintenance machines, essentially remain in effect. By cross-referencing in this regulation the OSHA standards contained in 29 CFR 1910.1000, FRA becomes the enforcing agency as to environmental controls over the selected types of equipment, rather than OSHA. Environmental controls in equipment not covered by this rule and the limiting of exposure to employees working outside equipment remain subject to OSHA enforcement, and the regulation is the same (29 CFR 1910.1000).

It is important to note that the rule cross-references OSHA standards without limiting the references to OSHA standards in effect on a certain date. As with all regulatory agencies, OSHA from time to time revises and updates its standards. By cross-referencing the OSHA standards without limiting the references to standards in effect on a certain date, this regulation automatically references any revisions by OSHA to these standards so as to remain in conformance with any revised OSHA standards. This action prevents the undesirable result whereby operators of roadway maintenance machines covered by this regulation could receive less protection than other operators in the event that OSHA revises any of the referenced standards.

The regulation requires positive pressurized ventilation systems with temperature controls only on new roadway maintenance machines as defined in § 214.7. In addition, the requirement is limited to ballast regulators, tampers, mechanical brooms, rotary scarifiers, undercutters, and other equipment with equivalent functions. It is FRA's understanding that these types of equipment are now typically manufactured with engineering controls that prevent inhalation of hazardous substances. The regulation requires temperature controls because, by their nature, pressurized cabs require full enclosure without access to open windows or similar sources of ventilation. It becomes imperative, therefore, that the cabs also be equipped with a means to control the temperature inside the cab. If the engineering controls fail for the ventilation system of any roadway maintenance machine covered by the requirement, employees on the machine must be equipped with personal respiratory protective equipment that is operative and meets the OSHA standards contained in 29 CFR 1910.134.

To prevent confusion about which agency has enforcement authority over specific roadway maintenance machines, the rule requires railroads to maintain a roster of machinery that falls under FRA's jurisdiction for purposes of this regulation. The roster may be maintained on paper or electronically, but it must be accessible and available to FRA, OSHA, and other Federal and State agencies so that inspectors may determine which agency has responsibility for inspection of which machines. The roster is intended to prevent confusion that may otherwise cause certain machines to be inspected by two Federal agencies while other machines go uninspected altogether.

Although the regulation addresses pressurized cabs and temperature controls for only certain types of new roadway maintenance machines, railroads are not precluded from equipping other types of machinery, or older machinery, with the same features. If the railroad desires that FRA become the inspection agency for those machines so retrofitted, the railroad may simply add the designated machines to the roster. However, once added to the roster, a designated machine must remain on the roster until it is retired or its ownership changes.

Crane Safety

In 1998, the BMWE petitioned FRA to issue new regulations governing the safety of on-track railroad maintenance cranes. Currently, the safety of railroad crane operations is governed generally by OSHA regulations at 29 CFR 1910.180. Through its petition, the BMWE sought to reduce the number of railroad crane operators who are killed or seriously injured when cranes accidentally tip over due to shifting loads, excessive loads, defective equipment, supervisor misjudgment, or operator error.

However, this rule is not intended to cover crane safety as envisioned by the petition. For example, this rule does not address those elements of crane safety involving the lifting and transferring of loads. Further, FRA makes clear that this rule is not intended to displace OSHA's regulations governing crane safety at 29 CFR 1910.180. FRA has made a commitment to gather additional data and information regarding crane safety. Upon completing that effort, FRA will consult with members of the Task Group and, if appropriate, seek the advice of the RSAC about the necessity of issuing FRA regulations as called for in the BMWE's petition.

Section-by-Section Analysis

FRA is amending 49 CFR part 214 by adding a new subpart D specifically devoted to the prevention of accidents and casualties caused by the operation of on-track roadway maintenance machines and hi-rail vehicles. FRA is also amending subpart A of part 214 by adding new definitions to § 214.7 that describe and categorize the types of on-track roadway maintenance machines and hi-rail vehicles that subpart D addresses.

Section 214.7 Definitions

Section 214.7 contains additional entries which are particularly important to the understanding of the types of equipment that are to be covered by the new rule. Subpart D addresses two general types of roadway maintenance machines. "On-track roadway maintenance machines" are defined as self-propelled, rail-mounted, non-highway roadway maintenance machines whose light weight is in excess of 7,500 pounds and whose purpose is not for the inspection of railroad track. "Hi-rail vehicles" are defined as roadway maintenance machines that are manufactured to meet Federal Motor Vehicle Safety Standards and are equipped with retractable flanged wheels so that the vehicles may travel over the highway or on railroad tracks.

Both on-track roadway maintenance machines and hi-rail vehicles are further classified as "new" for the purposes of this rule. A "new" on-track roadway maintenance machine is defined as an on-track roadway maintenance machine which is ordered after December 26, 2003 *and* completed after September 27, 2004. Whereas, a "new" hi-rail vehicle is defined as a hi-rail vehicle which is ordered after December 26, 2003 or completed after September 27, 2004. The result of these somewhat different definitions is to afford new on-track roadway maintenance machines more time to be built in compliance with the rule, due to the concern that it would take longer to do so for such machines than for hi-rail vehicles. On-track roadway maintenance machines are further classified as "existing," comprising any on-track roadway maintenance machines covered by this subpart which do not meet the definition of "new" on-track roadway maintenance machines. Hi-rail vehicles are not further classified as "existing" in the text of this rule, due to the structure of the rule. However, when the term "hi-rail vehicle" is used in the rule text, in distinction to the term "new hi-rail vehicle," any hi-rail vehicle covered by this subpart is included, whether "new" or not. Nevertheless, in some portions of this rule's preamble FRA does refer to "existing" hi-rail vehicles for added clarity in explaining when a specific section of the rule addresses all hi-rail vehicles covered by this subpart.

Roadway maintenance machines not included within the scope of subpart D are "on-track roadway maintenance machines" whose light weight does not exceed 7,500 pounds, off-track equipment such as bulldozers, backhoes, and road graders, as well as that class of antiquated equipment referred to as motor cars. Although this equipment is not covered under the scope of subpart D, it nevertheless meets the general definition of "roadway maintenance machines" as defined in this section for purposes of the Roadway Worker Protection regulations contained in subpart C of this part.

In addition, it is important to note here that the term "employer" as defined in subpart A includes both railroads and contractors of railroads. In subpart D, FRA has used the term "employer" as defined; that is, both railroads and their contractors are subject to the requirements of subpart D.

One commenter, Loram, objected to the definition of "new" roadway maintenance equipment, stating that the proposed definition was confusing and provided a lead-time that is too short. The commenter also questioned the definition's apparent assumption that all roadway maintenance machines are ordered to specifications when in fact some machines are built in anticipation of future orders. The commenter suggested that the definition of "new" machines be "any machines completely manufactured more than one year after issuance of the final rule." After discussion of the comment, the Task Group voted unanimously that the definition already developed by its members and approved by the entire RSAC is a more effective definition to apply to the regulation. FRA agrees with the reasoning of the Task Group; therefore, no change has been made.

Section 214.501 Purpose and Scope

The purpose for the minimum safety standards prescribed under this subpart is the protection of roadway workers during the lawful operation of on-track roadway maintenance machines and hi-rail vehicles. This subpart prescribes minimum safety standards for on-track roadway maintenance machines and hi-rail vehicles, although railroads and railroad contractors (referred to collectively as "employer" throughout subpart D, as the term is defined in subpart A) may adopt more stringent standards as long as they are consistent with this subpart. As it has done in other regulations, FRA is including railroad contractors within the scope of this regulation. A good deal of track maintenance is performed by contractors to railroads, so it is important for those entities to fall within the requirements for safe performance of that work.

This section further states that any working condition which involves the protection of railroad employees engaged in roadway maintenance duties but which is not specifically addressed in this subpart (for example, noise exposure) continues to be governed by the regulations of OSHA. The purpose of this section is to avoid the unintentional displacement of OSHA safety regulations governing the roadway maintenance machine work environment.

Furthermore, all of the provisions set forth in subpart A to this part, which concerns the purpose and scope of this part, apply to subpart D as well.

FRA received no comments in response to this section of the proposed rule; therefore, no changes from the proposed rule have been made.

Section 214.503 Good-Faith Challenges; Procedures for Notification and Resolution

This section outlines the circumstances under which employees operating on-track roadway maintenance machines and hi-rail vehicles are guaranteed the right and have the responsibility to make challenges relative to the operation or condition of on-track roadway maintenance machines and hi-rail vehicles. In the final rule. FRA has expressly added hi-rail vehicles as roadway maintenance machines covered by the requirements of this section. Hi-rail vehicles were not intended to be treated differently and excluded from this section's requirements. It is consistent with safety to afford the operators of hi-rail vehicles the same protections- and impose on them the same obligations-under this section as the operators of on-track roadway maintenance machines.

Paragraph (a) addresses the employee's responsibility to inform the employer whenever the employee makes a good-faith determination that the on-track roadway maintenance machine or hi-rail vehicle does not comply with FRA regulations or has a condition that inhibits its safe operation. The employee should consider not only the minimum safety requirements specified in this subpart, but also the general requirements specified in § 214.341 of subpart C, which also address the safety of roadway workers who operate or work near roadway maintenance machines.

A challenge must be made in good faith in order to fall within the purview of this section.

Paragraph (b) guarantees the employee's right of refusal to operate any on-track roadway maintenance machine or hi-rail vehicle once the employee has made a good-faith determination that the machine or vehicle does not meet all the requirements of this subpart, or has a condition that inhibits its safe operation. As specified in § 214.531, this rule generally allows the employer up to seven days to repair a roadway maintenance machine or hi-rail vehicle found to be noncompliant. However, the employer cannot require an employee, who in good faith challenges the fitness of a machine or vehicle, to operate the machine or vehicle until the challenge has been resolved.

Under paragraph (c), each employer must have in place, and must adhere to, written procedures for attaining a prompt and equitable resolution of challenges resulting from good-faith determinations made in accordance with this section. The procedures shall outline the steps the employer will take to investigate each good-faith challenge. They shall also include steps to be taken when the employer's investigation shows that the challenged machine or vehicle should not be used as it is, to ensure that the challenged machine or vehicle is not used until repaired or removed from service to comply with this subpart. Further, the written procedures shall include the title and location of the employer's designated official(s) for the purpose of reporting conditions found to be in non-compliance with this subpart, to ensure that machine and vehicle operators are informed as to whom they should address any good-faith challenges. FRA's purpose in requiring these procedures is to make certain that a machine or vehicle operator who makes a good-faith challenge of a machine's or vehicle's fitness to operate receives an explanation of the employer's decision to either keep the machine or vehicle in service, repair it, or replace it. FRA will not consider an employer to be in compliance with this section if it responds to any good-faith challenge with a mere "yes" or "no" answer.

FRA envisions that operators will challenge the fitness of an assigned machine or vehicle only in good faith, and the employer likewise will respond in good faith as well. FRA realizes that an employer's fleet of roadway maintenance machines and hi-rail vehicles may be very large and that machines and vehicles may sometimes become unfit for safe use without the employer's immediate knowledge. This provision seeks to establish a system under which a machine or vehicle operator, who on any day may be in the best position to assess the safety fitness of a particular machine or vehicle, can bring to the employer's attention safety deficiencies and other defects that should be immediately addressed.

However, FRA does realize that sometimes defects can appear to be more serious than they actually are. What may appear to be a defect jeopardizing operational safety may in reality be a minor flaw that can be addressed at a later, more convenient time or location. This section allows an employer to investigate a good-faith challenge to a roadway maintenance machine's and hi-rail vehicle's safety fitness and make its own good-faith determination that the machine or vehicle may be used without immediate repairs. However, this section requires good faith on the part of all parties involved. If FRA determines that an employer has not exercised good faith in determining that a machine or vehicle need not be immediately repaired or replaced, FRA may seek enforcement action against the employer for being in violation of this section. On the other hand, FRA will not consider an employer's response to a challenge to be a violation of this section if FRA determines that the challenge was made for purposes of disrupting or delaying work or in a manner demonstrating motivations other than good faith and concern for safety.

In the final rule, FRA has modified paragraph (a) to make it more consistent with paragraphs (b) and (c) by expressly focusing the employee's good-faith challenge on the condition of the machine or vehicle, instead of on the employer's rules governing the machine or vehicle. As paragraph (a) read in the NPRM, the employee would have been required to inform the employer whenever the employer's rules governing the machine did not comply with FRA regulations. However, paragraphs (b) and (c) in the NPRM expressly focused on the safety of the machine itself. For example, paragraph (c) referred to the employer's "challenged machine"—not to the employer's "challenged rule." FRA's modification of paragraph (a) eliminates this inconsistency.

One of the commenters to the proposed rule, Loram, objected to the rule's guarantee of an employee's right to refuse to operate a roadway maintenance machine which the employee has determined in good faith to be non-compliant with the regulation. The commenter suggested that one employee could, in effect, shut down a rail operation if a single machine does not meet all of the many requirements of the rule. Loram stated that mechanisms are already in place on railroads for such disputes to be resolved. Furthermore, Loram added that the provision itself suggests that there is necessarily an adversarial relationship between employers and employees in the railroad industry. According to Loram, this regulation would add to the burden of regulations already imposed on the industry.

In considering this comment, it was noted that the language of the regulation is modeled after the good-faith challenge that is permitted of employees who are working under the roadway worker safety regulations in subpart C to this part. Since the early months of 1997 when the roadway worker safety regulations became effective, few roadway workers have exercised the good-faith challenge provision. As far as FRA is aware, in each case where the challenge has been exercised, the roadway worker sought to address a legitimate safety concern. The Task Group reiterated its belief that the provision is a necessary part of the new regulation. FRA believes that this provision is necessary for employee safety and that it does not impose an undue burden; therefore, FRA has declined to adopt Loram's comment.

Section 214.505 Required Environmental Control and Protection Systems for New On-Track Roadway Maintenance Machines

This section requires that certain types of new on-track roadway maintenance machines be equipped with enclosed cabs with positive pressurized ventilation systems that include climate control. By design, most pressurized ventilation systems do not provide a means of exchanging internal air for outside air while the roadway maintenance machine is in operation. In other words, the machine cabs with pressurized ventilation systems generally are not equipped with other means of ventilation or climate control, such as operable windows. Therefore, the requirement for positive pressurized ventilation systems necessitates that these machines also be equipped with operative heating and air conditioning systems.

The equipment covered by this section includes ballast regulators, tampers, mechanical brooms, rotary scarifiers, undercutters, and other equipment with equivalent functions. This equipment is used to perform track and roadbed maintenance and typically causes significant noise, debris, and dust. This work often occurs while employees are situated both in the cab of the equipment and along the right-of-way, in close proximity to the equipment as it is operated.

The requirements of this section provide for the safety of employer operations and employees in a variety of ways:

- The visibility of those working in the cab is improved.
- Employees working in the cab are protected from exposure to unhealthy levels of silica dust, which is prevalent in many regions of the country where track repair work is done, as well as other air contaminants.
- Equipment components are protected from temperature extremes and the degradation that may occur due to concentrations of dust and debris.
- Any combustion fumes generated by the equipment are prevented from entering the cab, so that employees are not exposed to the potential hazards of fuel exhaust.
- With diminished noise, dust, and debris in the cab, employees are better able to communicate with one another in the cab and, through the use of radios, with those employees working on the ground who might be placed at risk if the equipment moves or operates unexpectedly.

FRA is cross-referencing and enforcing OSHA environmental standards contained in 29 CFR 1910.1000. Environmental controls of on-track roadway maintenance machines not covered by § 214.505 are governed by these same OSHA regulations, but compliance continues to be enforced by OSHA. It is FRA's understanding that new roadway maintenance machines of the types covered by this section are manufactured with engineering controls that prevent the inhalation of hazardous substances, as required by OSHA standards. By adopting the OSHA regulations for such new machinery, FRA is in a position to make progressive improvements in the environmental quality of roadway equipment based upon a foundation of protection already established by OSHA.

Employers must maintain a roster of roadway maintenance machines that come under FRA's jurisdiction for purposes of this regulation. The roster, which may be electronic, must be readily available to FRA and other Federal and State agencies upon request so that inspectors may determine which agency has responsibility for enforcement of respiratory safety regulations for each roadway maintenance machine.

Employers may elect to include on the roster existing roadway maintenance machines that are equipped with engineering controls for air ventilation. These machines designated for inclusion on the roster may be ones manufactured with engineering controls for ventilation or machines retrofitted by the employer to have engineering controls. When added to the roster, a designated machine becomes subject to FRA inspection and enforcement, and it must remain on the roster until it is retired or its ownership changes.

FRA recognizes that engineering controls for ventilation may fail from time to time. Consequently, when a new or designated roadway maintenance machine of the type listed in paragraph (a), or functionally equivalent thereto, does not offer the protection required by 29 CFR 1910.1000 because the engineering controls have temporarily failed, the employer must provide employees in the cab of the machine with personal respiratory protective equipment for protection from air contaminants, in accordance with paragraph (e). Paragraph (f) specifies that the personal respiratory protective equipment must be operative and comply with standards issued by OSHA in 29 CFR 1910.134. These OSHA standards require employers to use respirators certified by the National Institute for Occupational Safety and Health (NIOSH). Employers must have in place a respiratory protection program including procedures for proper inspection and maintenance of the respirators and medical evaluations of personnel designated to use the respirators.

By referencing OSHA's regulations already in effect, FRA is not imposing a new burden on employers. Rather, FRA is simply adopting standards that are already required by another government agency. The requirement for heating, air conditioning, pressurized cabs, and personal respiratory protective equipment in these new roadway maintenance machines constitutes an exercise of FRA jurisdiction over the working condition of employee exposure to temperature extremes and air contaminants for those employees working in the cabs of this equipment. This exercise of FRA jurisdiction consequently ousts any authority or enforcement power of OSHA concerning working conditions related to the operation of air conditioning and heating systems or high levels of air contaminants in the cabs of this equipment. FRA makes clear that it is prepared to address any failure to comply with the working condition requirements, either through consultation with employers to remedy any problems or by taking enforcement action to bring about compliance.

In cross-referencing the OSHA standards, FRA makes clear that when OSHA revises the standards FRA will enforce the revised standards on those machines over which FRA has jurisdiction. This will ensure that any OSHA revision does not create an inconsistency whereby some types of roadway maintenance machines would be governed by the revised standards enforced by OSHA and others would be governed by the standards without the revisions as enforced by FRA.

FRA makes clear that it is not adopting those OSHA standards that include protection from silica dust for employees not working inside the cabs of on-track roadway maintenance machines covered by this section. The extent of FRA's adoption of OSHA standards in this section reaches only as far as the cab of the covered on-track roadway maintenance machine. As a result, when working inside the cab,

workers receive protection from FRA; when working outside the cab, workers receive protection from OSHA. For example, roadway workers working along the right-of-way will continue to receive silica dust protection as administered by OSHA. In addition, to make clearer which employees are protected by this section when the ventilation system fails on a machine, FRA has modified paragraph (e) to make clear FRA's intent that the protections of this section apply only to employees "in the cab" of the machine, and not generally to any employee "on the" machine, whether inside the cab or not, as stated in the NPRM.

FRA also makes clear that this section of the final rule does not constitute an exercise of FRA authority over noise exposure for employees working on or around equipment covered by this section. This section does not establish permissible noise exposure levels for employees working on or around this equipment. OSHA's existing standards for noise exposure at 29 CFR 1910.95 continue to apply.

Paragraph (g) applies to new on-track roadway maintenance machines with enclosed cabs that are not of the type covered by paragraph (a). These new on-track roadway maintenance machines must be equipped with operative heating and ventilation systems.

Paragraph (h) refers to new on-track roadway maintenance machines that have, in addition to the main cab, non-enclosed operator stations in other places on the machine. These stations must be equipped with a covering of some kind that protects the operator in that position from midday sun or from normal rain. Of course, there will be times during the day when the sun is in such a position in the sky that a covering will not completely protect the operator from the sun. Likewise, a cover may not completely protect an operator from very heavy or wind-driven rain. This paragraph is not intended to require coverings to protect the operator in all circumstances. The coverings are required only when the design of the machine allows for the placement of a covering. Some operators' positions may be situated such that the addition of a covering is either impossible or would obstruct another working part of the equipment. In those instances, the coverings are not required.

One of the commenters to the NPRM, Loram, noted that the proposed rule referenced silica dust as an air contaminant that would be addressed by pressurized cabs on roadway maintenance machines. Loram suggested that the final rule be directed more specifically to silica dust contamination. The Task Group disagreed. Air contaminants generated by roadway maintenance work may include more than silica. Following a discussion of the issue at a meeting with the Task Group, Loram withdrew the comment stating that it agreed that the rule should address the broader issue of contaminants.

Loram further suggested that the final rule clearly define the word "cab" as a "structure in which crews are housed and from which they operate controls required for the machine to carry out its primary function or movement." According to Loram, some machines are equipped with "work rooms, convenience areas and storage locations" which may resemble a cab. The Task Group disagreed that the word "cab" requires specific definition, and FRA has not adopted Loram's comment. FRA does not believe there should be any confusion about the term "cab." The types of compartments described by Loram as resembling a cab are typically found on rail grinders only. However, rail grinders are not covered by this section of the rule.

Loram also commented that the proposed rule did not clearly distinguish between the types of equipment requiring enclosed cabs from equipment that must be provided with an overhead covering above the operator's stand. Loram suggested that this distinction could be accomplished by listing the elements each type of feature (enclosed cab or overhead covering) is meant to shield against. The Task Group discussed this comment directly with representatives of Loram at the Task Group meeting following publication of the NPRM. Loram acknowledged that it had misread the proposed regulation and withdrew the comment from consideration.

In commenting on the NPRM, Transtar maintained that small railroads would bear an onerous burden from the requirement that personal respiratory protective equipment be supplied to employees in the event of a failure of the environmental controls in a pressurized cab. Transtar suggested that the regulation permit employers to use "engineering and/or administrative controls" when the environmental controls fail on pressurized cabs. Transtar did not identify what those engineering and administrative controls should be. The Task Group disagreed with Transtar and FRA has not adopted the comment. The provision would not present a new burden since it mirrors OSHA regulations already in effect.

Transtar also stated that the proposed regulation did not clearly describe the demarcation between FRA's jurisdiction and OSHA's jurisdiction over the working conditions of the roadway maintenance machines. The Task Group believed that this division of enforcement jurisdiction between the two agencies was discussed extensively in the preamble and recommended that the language of the proposed rule remain the same. FRA believes that it has addressed this issue in both the NPRM and this final rule.

Section 214.507 Required Safety Equipment for New On-Track Roadway Maintenance Machines

This section contains requirements for safety equipment for all new on-track roadway maintenance machines. Several of the requirements are structural in nature, such as seats and handrails, and would be best met through engineering design by the equipment manufacturer. Other requirements, like fire extinguishers and first-aid kits, can be installed either by the manufacturer or by the employer after delivery from the manufacturer.

Paragraph (a) requires that each new on-track roadway maintenance machine be equipped with a seat for each operator, unless the machine is designed to be operated by an operator in the standing position. Further, each roadway worker transported on an on-track roadway maintenance machine is required to have a safe and secure position with handholds, handrails, or a secure seat. These safe and secure positions must be located so that they offer protection from moving parts of the machine which could entangle clothing or body extremities. In the final rule, FRA has modified paragraph (a)(2) to make clear that moving parts of the machine which could entangle clothing or body extremities are not located only inside of the cab. This is consistent with the preamble to the NPRM which described the proposed protection from moving parts of the machine generally, without limiting that protection to parts located inside of the cab, and makes good safety sense.

In the NPRM, FRA offered to consider adding regulatory language to the final rule to describe "safe and secure positions" with more specificity. FRA requested comment on the need for a more specific description and asked for suggestions about what the description should include. The AAR responded to the request by stating that the phrase "safe and secure positions" needed no further definition. The BMWE suggested that a safe and secure position should have a minimum of three points of contact for a person riding in that position. Loram commented that any description of "safe and secure" should not include a definition of how seats should be mounted, as this decision should be left to the vendor's discretion. In this final rule, FRA has decided to follow the recommendation of the Task Group by not changing the proposed language, except to place the last clause of the paragraph in its own sentence for clarity. Only the comment from the BMWE could be considered as supporting a more specific requirement, and, in any event, FRA believes that the requirement is consistent with three-point protection.

Some on-track roadway maintenance machines are equipped with turntables to allow them to quickly change working direction when wye or loop tracks are not readily accessible. Paragraph (a)(3) requires that new machines equipped with turntables have a positive method of mechanical securement, through engagement of pins and hooks, to prevent the lowering of the turntable device below the head of the rail when not in use. This arrangement of pins and hooks provides a safety redundancy in case the main activation system fails or is accidentally triggered.

In commenting on the NPRM, Loram stated that the proposed rule neglected to address positive lockouts for other types of roadway maintenance equipment that may also encroach on the area below the top of the rail. The Task Group concluded that the proposed rule, which addressed positive securement of turntables for new and existing roadway maintenance machines, adequately addressed the machinery intended to be covered by this rule. FRA agrees. The rule focuses on roadway maintenance machines equipped with turntables because turntables may be held in place simply by hydraulic pressure, which may be bleed off and unintentionally lower the turntable device. Other roadway maintenance machines have pins, clamps, or other devices to positively secure equipment that may encroach on the area below the top of the rail. FRA is not aware of any other type of roadway maintenance machine, other than machines equipped with turntables, which needs to be subject to this requirement. Accordingly, FRA has not adopted the comment.

Paragraph (a)(4) requires new on-track roadway maintenance machines to have windshields made of safety glass or other material with similar properties, such as Lexan. The machinery is also required to have power windshield wipers. However, in cases where traditional windshield wipers are incompatible with the windshield material, the employer must provide a suitable alternative that offers the operator an equivalent level of vision.

Paragraph (a)(5) requires that new on-track roadway maintenance machines be equipped with primary braking systems capable of effectively controlling the movement of the machines under normal operating conditions.

Paragraphs (a)(6) and (7) together require that new on-track roadway maintenance machines must have a suitable first-aid kit and fire extinguisher readily accessible to the operator(s). The first-aid kit must comply with OSHA regulations prescribed at 29 CFR 1926.50(d)(2). Consequently, the first-aid supplies in the kits must be in individual sealed packages for each type of item and placed in a weatherproof container. Further, the OSHA regulations specify that the kits must be inspected before being sent out on each job and at least weekly to ensure that expended items are replaced. The referenced OSHA standard does not regulate the minimum contents of the first-aid kit, but it recommends as an example the description of the contents of a generic first-aid kit described in American National Standard (ANSI) Z308.1–1978, "Minimum Requirements for Industrial Unit-Type First-aid Kits." *See* Appendix A to 29 CFR 1926.50.

FRA does not intend that a railroad be required to open the first-aid kit each time to confirm that the proper supplies are in the kit. Rather, FRA would expect that railroads would apply a seal of some kind to a properly supplied first-aid kit to show that it contains the proper supplies. An employee inspecting a first-aid kit with an unbroken seal would be able to presume that the kit contains the proper supplies. As a result, the burden of inspecting the first-aid kits would be significantly minimized.

The fire extinguisher required by this section must be operative and properly charged, securely mounted near the operator's work station, and designed with a rating of 5 BC or higher. A fire extinguisher with a "BC" rating is suitable to combat fires generated by flammable liquids or electrical equipment. The "5" designation indicates the extinguisher's volume and fire-fighting capacity. A requirement of a 5 BC rating is consistent with workplace standards in other industries.

In commenting on the NPRM, Transtar stated that a requirement for first-aid kits and fire extinguishers to be on board roadway maintenance machines would be too expensive for the railroad industry, given the vulnerability of this type of equipment to vandalism and theft. Transtar suggested that the regulation require that first-aid kits and fire extinguishers be "readily available." During the development of the NPRM, the placement of first-aid kits and fire extinguishers was extensively discussed by the Task Group. The Task Group was able to reach consensus on the proposed language after lengthy debate, and the RSAC later agreed with the proposal. After discussing Transtar's comment, the Task Group recommended that FRA decline to change the language of this portion of paragraph (a). FRA agrees with the Task Group's recommendation, and has not changed the final rule in response to the comment. FRA has not found the cost of complying with the requirements to be burdensome, and in any case first-aid kits and fire extinguishers serve vital safety interests.

When new on-track roadway maintenance machines are designed to be operated with the operator in a standing position, the requirements of paragraph (a)(1) of this section do not apply. Instead, paragraph (b) requires these machines to be designed and equipped with handholds and handrails that provide the operator with a safe and secure position.

Paragraph (c) requires that each new on-track roadway maintenance machine with a light weight in excess of 32,500 pounds be equipped with a speed indicator if the machine is operated at speeds in excess of 20 mph. The speed indicator must be calibrated to be accurate within ± 5 mph of the actual speed when speeds are 10 mph or greater.

Paragraph (d) requires the manufacturer of new on-track roadway maintenance machines to display the as-built light weight of the machine. The light weight of the machine is calculated when the machine is not loaded with passengers or extraneous equipment not part of the machine itself. The light weight must be displayed in a conspicuous location on the machine and will serve to identify its proper category for the purposes of this regulation. The light weight will also provide essential information to crane operators in the event the machines are lifted on to—or loaded off of—flatbed trucks or rail cars for movement from one work site to another.

Section 214.509 Required Visual Illumination and Reflective Devices for New On-Track Roadway Maintenance Machine

This section prescribes requirements for lights and reflective devices for new on-track roadway maintenance machines. An on-track roadway maintenance machine operator must

have sufficient light to safely work or travel, especially during nighttime operations. The requirements will also help to make these machines more visible to roadway workers on the track and to vehicular traffic at highway-rail grade crossings.

This section makes several references to visibility in normal weather and atmospheric conditions. The requirement to illuminate the track ahead for a minimum distance of 300 feet is a measure to be considered under generally clement weather and atmospheric conditions. FRA understands that during periods of rain, fog, snow and other occurrences that are common in normal weather patterns, the lighting capability of the illumination devices may temporarily be unable to reach a full 300 feet. These temporary instances when full illumination is not possible will not be considered a violation of this regulation. In addition, FRA will not consider unusual weather events such as hurricanes, tornadoes, eclipses, or horizontally driven snow to be normal weather and atmospheric conditions under which the regulation must be met.

Paragraph (a) requires an illumination device, such as a headlight, capable of illuminating obstructions on the track ahead in the direction of travel for a minimum distance of 300 feet under normal weather and atmospheric conditions. In commenting on the NPRM, Loram stated that the requirement should define the area of the track and roadbed to illuminate and include a specific value of adequate illumination or a light intensity minimum. Nevertheless, the Task Group was satisfied with the language of paragraph (a) in the NPRM for purposes of its application to new on-track roadway maintenance machines. FRA has elected not to change paragraph (a). FRA believes that this performance requirement provides sufficient specificity for the regulated industry.

When on-track roadway maintenance machines are operated during the period between one-half hour after sunset and one-half hour before sunrise, or in dimly lit areas such as tunnels, they are required by paragraph (b) to be equipped with operating work lights unless equivalent lighting is otherwise provided, for example, by portable wayside lighting.

Paragraph (c) requires an operative warning light or beacon mounted to the roof of new on-track roadway maintenance machines. The light or beacon must be designed to flash intermittently while rotating 360 degrees or otherwise emitting light in a 360-degree field. Exempt from this requirement are on-track roadway maintenance machines designed without fixed roofs that have a light weight less than 17,500 pounds.

In commenting on the NPRM, Loram stated that the proposed requirement for a light that rotates 360 degrees would seem to disallow the use of strobe lights. In considering Loram's comment, the Task Group concluded that the NPRM's preamble language concerning paragraph (c) was confusing. FRA agrees with Loram and the Task Group and makes clear that, while the light or beacon required by this paragraph must emit light in a 360-degree field, it does not have to rotate to do so. The intent is that the light or beacon be visible to someone in the vicinity of the machine, whether that person is in front, back, or to the side of the machine. A strobe light that intermittently flashes light in a 360-degree field, but does not need to rotate to do so, would certainly fulfill the requirements of this paragraph.

FRA notes that in the NPRM the second sentence of paragraph (c) reads: "New roadway maintenance machines that are not equipped with fixed roofs and have a light weight greater than *7,000* pounds but less than 17,500 pounds are exempt from this requirement;" (emphasis added). The reference to "7,000 pounds" was in error and should have read "7,500 pounds." Yet, FRA is removing the reference as unnecessary because a machine having a weight of 7,500 pounds or less does not meet the definition of an "on-track roadway maintenance machine" in § 214.7 and, therefore, is not subject to the requirements of this section.

Paragraph (d) requires new on-track roadway maintenance machines to be equipped with brake lights activated by an application of the machine braking system. The brake lights must be visible for a distance of at least 300 feet under normal weather and atmospheric conditions.

In commenting on this paragraph, Loram pointed out that the regulation does not seem to consider roadway maintenance machines that move in both directions. To the extent Loram's comment concerns older equipment, FRA notes that such equipment is not covered by the requirements of this section. Rather, existing on-track roadway maintenance machines are covered by the requirements of § 214.517(d), below, which permits the use of reflective material instead of brake lights. Of course, new on-track roadway maintenance machines must be equipped with brake lights, and those new machines that move in both directions will need to have brake lights on both ends of the machines. Even if a machine that moves in both directions is wired so that the brake lights apply on both ends at the same time, FRA does not believe that this creates an operational problem that needs to be addressed as FRA has done in this rule for change-of-direction alarms. *See* § 214.511(b). In fact, this may even enhance safety in certain situations. Nevertheless, as was noted in the Task Group's discussions, a machine may be equipped with a toggle switch to allow the operator to indicate the direction of the machine's travel so that the brake lights operate only on the trailing end of the machine's movement. For the foregoing reasons, the text of paragraph (d) remains unchanged from the NPRM.

Paragraph (e) requires that new on-track roadway maintenance machines be equipped with operative rearward viewing devices, such as rearview mirrors or their functional equivalent, to enable machine operators to better see other machines or roadway workers within their immediate work zone. Video cameras and monitors may be used to comply with the requirements of this paragraph.

Section 214.511 Required Audible Warning Devices for New On-Track Roadway Maintenance Machines

This section requires audible warning devices on new on-track roadway maintenance machines to provide additional safety for roadway workers and other machine operators.

Paragraph (a) requires audible warning devices, such as horns, that produce sound loud enough to be heard by roadway workers and other machine operators within the immediate work area. The triggering mechanism for the audible warning device must be clearly identifiable and within easy reach of the machine operator.

Paragraph (b) requires automatic change-of-direction alarms that produce an audible signal that is at least three seconds long and uniquely distinguishable from any surrounding noise. Except as noted below, the change-of-direction alarm must sound automatically in each instance when the on-track roadway maintenance machine changes its designated forward direction to a reverse direction.

In commenting on the proposed rule, Loram stated that some machines, by their work function on the track, move back and forth at intervals so short that their change-of-direction alarms would sound almost continually while they are performing track work. Such a result could effectively hamper the safety of track work rather than enhance it. In response to this comment, FRA has added language to paragraph (b) permitting operators of such machines to interrupt or turn off the change-of-direction alarms on those machines when they are performing functions that would cause the alarms to sound constantly or almost constantly. Nevertheless, FRA has not found it possible to specify a precise list of machines that would typically fit these criteria. Therefore, FRA has added a sentence to paragraph (b) to indicate that FRA will presume that all machines must engage their change-of-direction alarms, unless the employer can show that the alarm on a particular machine would sound constantly or almost constantly while the machine is performing its work function. Of course, the employer has to make such a showing only in the event that FRA inquires about a particular machine.

In developing the requirement as to how loud the audible warning devices and change-of-direction alarms must be, the Task Group rejected proposing a decibel standard, choosing instead to propose simply that the warning devices be "loud enough to be heard by roadway workers and other machine operators within the immediate work area." However, FRA invited comment on whether or not the requirement should specify a particular decibel level, and if so, what level. Two commenters, AAR and Loram, stated that a standard decibel level would remove flexibility needed to address varying noise levels in different situations. Transtar disagreed, however, stating that the varying sound levels of different warning devices could result in excess noise and confusion for the work crews, especially as machines repeatedly change direction to perform their functions, and employees may ignore the warning alarms if they hear them all day long. Transtar also noted that the proposal did not specify minimum distances at which the audible warning devices need to be heard, or whether different tones should be used to help employees distinguish between different machines.

After discussing the comments, the Task Group concluded that different work situations require different decibel levels for the audible warnings and recommended that the language of the final rule not specify a decibel level for these warning devices. FRA agrees with the Task Group's reasoning and also notes that no comment was received recommending what decibel level(s) should be set. Accordingly, the final rule does not specify any decibel level(s). In regard to the concern that the rule may lead to excessive noise and confusion for work crews, the final rule provides, as noted above, that change of direction alarms may be interrupted by the machine operator when operating a machine in the work mode if the function of the machine would result in a constant, or almost constant, sounding of the device.

Section 214.513 Retrofitting of Existing On-Track Roadway Maintenance Machines; General

This section specifies a schedule of retrofit items applicable to all existing on-track roadway maintenance machines. Pursuant to § 214.7, an *existing* on-track roadway maintenance machine is defined as any on-track roadway maintenance machine other than a new on-track roadway maintenance machine. Consequently, an *existing* on-track roadway maintenance machine is any on-track roadway maintenance machine in existence or on order on or before December 26, 2003, or completed on or before September 27, 2004.

Paragraph (a) states that each roadway worker transported on an existing on-track roadway maintenance machine shall have a safe and secure position that also provides protection from moving machine parts that could entangle clothing or body extremities. These positions may include seats or foot platforms with handholds so that the roadway worker can maintain a stable and balanced position on the machine as it is moving down the track. Roadway workers are prohibited from being transported on machines on which it is not possible to provide safe and secure positions for them. In the final rule, FRA notes that it has modified paragraph (a) in the same way it has modified § 214.507(a)(2) to make clear that moving parts of the machine which could entangle clothing or body extremities are not located only inside of the cab. *See* discussion of § 214.507(a)(2), above.

In the NPRM, FRA proposed requiring in paragraph (b) that each existing machine be stenciled or have documentation on the machine to clearly identify the location of safe and secure positions for the machine operator and any roadway workers transported on the machine. In the final rule, that requirement has been revised from the NPRM and re-designated as § 214.518. Discussion of this revised requirement is included under the heading for that section in this portion of the preamble, below.

In paragraph (b) of the final rule, formerly paragraph (c) of the proposed rule, each existing on-track roadway maintenance machine is required to have a permanent or portable horn or other audible warning device by March 28, 2005. The audible warning device shall be easily accessible to the machine operator and shall produce a sound loud enough to be heard by roadway workers and other machine operators within the immediate work area.

As in the case of the similar requirement for new on-track roadway maintenance machines in § 214.511, the Task Group recommended not setting a decibel standard to address how loud the audible warning devices on existing roadway maintenance machines must be. In addition, comments received in response to the proposed requirement were the same as those received in response to § 214.511. Consequently, this paragraph's requirements are the same as those proposed in the NPRM.

Paragraph (c), formerly paragraph (d) in the proposed rule, states that by March 28, 2005, each existing on-track roadway maintenance machine shall be equipped with a permanent illumination device, such as a headlight, or a portable light source securely placed on the machine and not hand-held. The portable light does not have to be permanently affixed to the vehicle, however. FRA will consider the light source to be securely placed on the machine if it is held in place through any arrangement of screws, bolts, mounting clips, or heavy-duty magnets that maintains the light steadily in place without requiring a person to hold it. Lights are required if the machine is operated during the period between one-half hour after sunset and one-half hour before sunrise or in dimly lit areas such as tunnels. The illumination device or portable light source must be capable of illuminating obstructions on the track ahead for a distance of at least 300 feet under normal weather and atmospheric conditions.

The regulation affords employers up to twenty months after the date of publication of the final rule to retrofit existing on-track roadway maintenance machines with audible warning and illumination devices on those machines not so equipped. This is sufficient time for employers to order these safety appurtenances and fit them on machines not so equipped, and FRA expects all machines to be in compliance by the retrofit date.

Section 214.515 Overhead Covers for Existing On-Track Roadway Maintenance Machines

This section addresses the reinstallation and maintenance of overhead covers on existing on-track roadway maintenance machines, as well as the feasibility of providing overhead

covers on certain machines not originally designed and manufactured with such protection.

Paragraph (a) states that for those existing on-track roadway maintenance machines either currently or previously equipped with overhead covers for the operator's position, defective covers shall be repaired, and missing covers shall be reinstalled, by March 28, 2005, and thereafter maintained in accordance with the provisions of § 214.531. FRA has modified the text of this paragraph from that proposed in the NPRM. In the NPRM, FRA proposed that "[o]verhead covers on existing on-track roadway maintenance machines will be repaired by * * * and thereafter maintained in accordance with the provisions of § 214.531." FRA has clarified the text by stating what had been implicit: a cover does not have to be repaired if it is not defective. Further, FRA has made clear that if a machine has previously been equipped with an overhead cover that has since been removed, that cover must be reinstalled. In addition, FRA has made clear that the cover is for the operator's position. FRA believes that this paragraph more accurately reflects the intent of the Task Group as it has been revised.

Many older on-track roadway maintenance machines were not designed with overhead covers, although machine operators could greatly benefit from their presence. Paragraph (b) allows an operator assigned to operate a particular on-track roadway maintenance machine, or that operator's designated representative, to request in writing that the employer evaluate the feasibility of providing an overhead cover for the operator's position where original design specifications did not provide for one or where the overhead cover was an option that was not purchased. Under paragraph (b), the employer must respond in writing within 60 days to each such request.

If the employer finds that the addition of an overhead cover is not feasible for a particular machine, the written response must state why. There may be a number of reasons why an employer would find that the addition of an overhead cover is not feasible. There may be no room on the machine to install an effective cover or canopy to protect the operator's position, or the machine may not provide a safe place on which a cover may be mounted or attached. Employers must proceed with caution in retrofitting a cover that is supported by an additional pole or stanchion. A roadway worker may try to use a stanchion as a handhold, depending on its location. Consequently, if a stanchion is in a location identified as a safe and secure location for a roadway worker to ride on the machine, the stanchion must be securely attached to the machine so that it may serve as a handhold.

In preparing the final rule, FRA has modified the text of paragraph (b) from that proposed in the NPRM to make the requirement clearer and consistent with the changes made to paragraph (a), noted above.

As provided in paragraph (c), for purposes of this section the covers or canopies must be capable of shielding the operator from overhead sunlight, but are not expected to offer complete protection from the sun when the sun is relatively low in the sky, soon after sunrise or just before sunset. The covers must also be capable of shielding the operator from ordinary rainfall or snowfall, but are not expected to shield the operator from the effects of windblown precipitation. For clarity, FRA has added paragraph (c) to place in the rule text what FRA had proposed the covers protect against, as stated in the preamble discussion in the NPRM. In addition, FRA has used the same rule text contained in § 214.505(h), which is the counterpart to this section for new on-track roadway maintenance machines.

Section 214.517 Retrofitting of Existing On-Track Roadway Maintenance Machines Manufactured on or After January 1, 1991

This section specifies requirements for existing on-track roadway maintenance machines manufactured on or after January 1, 1991. Consequently, on-track roadway maintenance machines manufactured prior to 1991 are exempt from these requirements. Existing on-track roadway maintenance machines that are subject to the requirements of this section must conform to these requirements after March 28, 2005. As a result, such machines that are not already equipped with the safety appurtenances required by this section must have those appurtenances installed and comply with the other requirements of this section after this date.

Under paragraph (a), existing on-track roadway maintenance machines covered by this section must have a change-of-direction alarm, or rearview mirror or other rearward viewing device, if adding the device is feasible from an engineering standpoint and promotes operational safety. Among the wide variety of roadway maintenance machines, there exist some machines for which such a retrofit would be useless, unnecessary, impossible, or impractical. Under this regulation, the feasibility and usefulness of retrofitting a change-of-direction alarm or rearward viewing device to a particular roadway maintenance machine will be determined by the employer after considering available compliance options and the durability and functional quality of the proposed retrofit.

A change-of-direction alarm notifies workers near the roadway maintenance machine that its movement is about to change. A rearward viewing device assists the operator in safeguarding roadway workers in the vicinity of the machine. Both devices offer protection for roadway workers, but from two different perspectives. In the NPRM, FRA sought comment regarding whether this standard should require both a change-of-direction alarm and a rearward viewing device in order to afford adequate protection for roadway workers working in the vicinity of a roadway maintenance machine. The BMWE responded that a requirement for both devices would offer roadway workers a higher level of protection. The AAR noted that installation of a rearward viewing device may be impracticable on some older machines and, in particular, that some older machines may not have the proper electrical system to sustain a change-of-direction alarm. According to the AAR, by requiring either one device or the other, rather than both, the rule would provide employers with the kind of flexibility they may need in retrofitting old machines. The AAR also stated that either device by itself would provide an adequate level of protection for roadway workers.

Loram commented that the proper choice of either a rearward viewing device or a change-of-direction alarm, or both, depends on the particular machine. For example, Loram believed that rearward viewing devices would be of little use on large machine consists in protecting workers alongside the machines. Loram also stated that automatic change-of-direction alarms may not work on large machine consists in protecting workers alongside the machines or on certain roadway maintenance machines, such as ballast vacuum machines, which, by the nature of the work they do, move back and forth on the track at very short intervals. A change-of-direction alarm would sound almost constantly on such a machine.

The Task Group recommended that FRA add language to the regulation that would exclude certain machines for which change-of-direction alarms and rearward viewing devices would make no safety sense. FRA agrees that such an exclusion is reasonable, and as explained further the final rule includes the caveat that a change-of-direction alarm or rearward viewing device needs to add some value to the operational safety of the machine, given its function on the roadway. In other words, an employer does not have to retrofit an existing on-track roadway maintenance machine with either a change-of-direction alarm or a rearward viewing device if the machine's design or function is such that a retrofit of this nature would provide no safety value. However, FRA will presume that all existing on-track roadway maintenance machines may be retrofitted with either device in such a way that safety is enhanced. An employer who reaches a different conclusion about retrofitting a particular machine will have to demonstrate, if asked by FRA, that such a retrofit would not improve safety.

Under paragraph (b), an existing on-track roadway maintenance machine covered by this section must also have an operative heater when the ambient temperature is less than 50 degrees Fahrenheit, if the machine is or has been equipped with a heater. Roadway workers typically dress in seasonal clothes appropriate to perform work outdoors, unlike locomotive cab employees who expect to spend most of the workday inside the cab of a locomotive. Therefore, the threshold ambient temperature may be as low as 49 degrees Fahrenheit before triggering the requirement for an operative heater in a roadway maintenance machine.

In preparing the final rule, FRA modified the text of paragraph (b) to make clear that this requirement applies to machines that have previously been equipped with heaters that have since been removed. Heaters that have been removed must be reinstalled. Further, FRA has removed the text that limited the application of this section to heaters equipped by the manufacturers of the on-track roadway maintenance machines. Heaters could have been installed after the machines were manufactured, and it is not evident why heaters installed after manufacturer should not be subject to the requirements of this paragraph.

Paragraph (c) requires that the light weight of an existing on-track roadway maintenance machine covered by this section be stenciled or otherwise clearly displayed on the machine, if the light weight is known. The light weight of a machine is calculated when the machine is not loaded with passengers or extraneous equipment not part of the machine itself. It should be displayed in a conspicuous location on the machine. The light weight will identify the machine's proper category for the purposes of this regulation, as well as provide essential information to crane operators in the event the machine is lifted on to—or loaded off of—a flatbed truck or rail car for movement from one work site to another. FRA received no comment on the proposed requirement; therefore, paragraph (c) remains as proposed.

Paragraph (d) requires existing on-track roadway maintenance machines covered by this section to be retrofitted with operable brake lights or other reflective devices or material, if not already so equipped. The purpose of this requirement is to enhance the visibility of a machine to operators of other machines and to other rail traffic. FRA received no comment on the proposed requirement; therefore, paragraph (d) remains as proposed.

Paragraph (e) of the NPRM proposed that existing on-track roadway maintenance machines covered by this section be equipped with safety glass when glass is normally replaced on the machines. Because there may be a large number of existing roadway maintenance machines that do not have safety glass, FRA's approach in this paragraph is to enhance the safety of the roadway maintenance machines without creating an onerous burden in retrofitting such existing machines with safety glass. It is not the intent of the regulation to require employers to immediately replace all the glass on all existing machines covered by this section. Rather, the existing glass may remain in place until such time as it would normally be replaced, and then it must be replaced with safety glass. However, if the employer has on hand as of the effective date of this rule replacement glass that is other than safety glass and is specifically intended for use on these machines, the employer may utilize the supply of that replacement glass until it is exhausted.

Although the proposed rule did not specify standards for safety glass, FRA requested comment as to whether the final rule should include specific standards, such as requirements similar to those delineated in 49 CFR part 223 (Safety Glazing Standards) for passenger rail cars, locomotives, and cabooses. Commenters responding to this request were unanimous in believing that this final rule should not require standards similar to those contained in the Safety Glazing Standards. The AAR and Loram suggested that if any safety glass standards were set, or recommendations made, they should be restricted to automotive safety glass or its equivalent, such as Lexan. The AAR pointed out that not all roadway maintenance machines have the structural strength to accommodate the type of glass required under 49 CFR part 223. The BMWE concurred, stating that a similar OSHA standard at 29 CFR 1926.600(a)(5) requires safety glass "or equivalent." The BMWE also stated that manufacturers likely follow ANSI recommendations for safety glass. After discussing these comments, the Task Group recommended that FRA not change the requirement as proposed in the NPRM. FRA has elected to follow that recommendation and paragraph (e) remains as proposed. As noted, OSHA has a similar requirement that is no more specific, and FRA does not believe that additional requirements are necessary at this time.

Paragraph (f) of the proposed rule stated that an existing roadway maintenance machine covered by this section that is equipped with a turntable must have a turntable restraint device, such as an arrangement of pins and hooks designed to prevent an undesired lowering of the turntable device, or a warning light that would indicate to the machine operator that the turntable device is not in a normal travel position. In commenting on this proposal and its counterpart for new on-track roadway maintenance equipment in § 214.507, Loram stated that the proposed rule neglected to address other types of roadway maintenance equipment that may also encroach on the track area below the rail. As explained above in the discussion of § 214.507, FRA has not adopted Loram's comment. Yet, as a separate matter, FRA has revised paragraph (f) to make clear that the paragraph applies only to those machines equipped with turntables.

In paragraph (g) of the NPRM FRA proposed to require handholds, handrails, or a secure seat or bench for each roadway worker transported on an existing roadway maintenance machine subject to the requirements of this section. FRA also noted that it was considering specifying regulatory standards for these handholds, handrails, seats and benches, and sought comment on the need for such additional standards. None of the commenters favored the addition of such standards. The AAR stated that the wide variety of roadway maintenance machines would make it very difficult to design standards suitable for all machines, and that standards for handholds and other such safety appliances on freight cars would not be appropriate because roadway maintenance machines are typically constructed of much thinner metal. Without stating a belief that such

standards are necessary, Loram pointed out that OSHA has standards defining a good handhold or handrail, but noted that they are vague about the best means of attachment. Separately, the BMWE commented that a safe and secure position should have a minimum of three points of contact for each roadway worker riding on a roadway maintenance machine. An example of three-point contact is two feet securely positioned and one hand on a structurally sound handhold or handrail.

FRA has examined whether OSHA's regulations provide a definition of what is a good handhold or handrail for application to the requirements of this paragraph. OSHA regulations do address handrails for various work sites. However, FRA does not believe it appropriate at this time to refer to any specific OSHA regulation for application to this paragraph, and, in light of the comments received in response to this section, the paragraph remains unchanged.

Section 214.518 Safe and Secure Positions for Riders

In discussing the NPRM and the comments received on it, the Task Group noted that while § 214.513(b) of the NPRM proposed requiring employers to stencil or document the safe and secure positions for roadway workers to ride on *existing* roadway maintenance machines, no such requirement was expressly proposed for new machines. Consequently, the requirement proposed as § 214.513(b) in the NPRM has been moved here so that it may apply to any on-track roadway maintenance machine, new or existing.

Some members of the Track Working Group suggested that a systemwide operating rule prohibiting the transport of roadway workers on certain roadway maintenance machines, rather than stenciling or documentation, could serve as a more effective and efficient means of conveying information as to when it is prohibited to transport roadway workers on roadway maintenance machines. FRA expressly invited comment on this suggestion in the NPRM.

The BMWE responded to the request for comment by stating that employers should not be given the option of using an operating rule to identify those roadway maintenance machines prohibited from transporting roadway workers because it would create too great a potential for error in its application. According to the BMWE, the wide variety of types and configurations of roadway maintenance machines would cause confusion about the proper application of a broad operating rule, especially for roadway workers encountering a particular machine with which they are unfamiliar. In addition, the BMWE stated that roadway workers do not have instant or easy access to operating rules, in case a question arises about the applicability of such a rule to a particular machine.

The AAR stated that stenciling and documentation could be overlooked easily by busy roadway workers. According to the AAR, a more effective way to address the issue would be for the employers to emphasize training of employees as to operating rule restrictions on roadway maintenance machines. Transtar agreed with the AAR, as did Loram, which cautioned that an operating rule should also specify the speeds and distances workers are permitted to be transported.

In extensive discussion about the language of the proposed rule and the comments received in response to the proposal, the Task Group noted that the rule as proposed would have required that all existing roadway maintenance machines be stenciled or documented, even if the stenciling and documentation merely stated, "No riders." The Task Group concluded that a simpler way to reach the same result would be for the regulation to prohibit roadway workers, other than the machine operator(s), from riding on roadway maintenance machines (new and existing) unless the machines were stenciled or documented with information about the safe and secure riding positions.

FRA has elected to adopt the Task Group's suggestion by adding this new section to indicate this prohibition. Under the new language, employers need only identify those machines intended to carry roadway workers, in addition to the machine operator(s), by stenciling, marking, or other written notice on the machines. Roadway workers, for their part, will know that they are prohibited from riding on a machine unless it has the required stenciling, marking, or other written notice. Any employer who allows its roadway workers to ride on a roadway maintenance machine that has neither stenciling, marking, nor other written notice identifying safe and secure riding positions will be deemed in violation of the regulation.

Under § 214.513(b) as proposed, employers would have had to document or stencil each and every existing roadway maintenance machine to indicate whether riders would be permitted on each machine and, if so, where the safe and secure positions were located. The proposed rule afforded employers one year from the effective date of the final rule to accomplish this requirement. Under this final rule, however, the requirement is less burdensome, with stenciling, marking, or other written notice required only for those machines permitted to transport riders. FRA therefore has concluded that the additional one-year interval for compliance is not necessary. This requirement becomes effective on the effective date of this final rule, and any machine that is not stenciled, marked, or otherwise has written notice indicating it can accept riders will not be permitted to carry riders until that indication is in place.

FRA notes that in preparing the final rule it has clarified how the safe and secure position on each machine will be identified. The rule text provides that each such position shall be identified by "stenciling, marking, or other written notice on the machine," instead or stating by "stenciling or documentation on the machine" as proposed in the NPRM. FRA believes that the proposed language could possibly have been too restrictive in limiting the manner in which a safe and secure position is identified. FRA makes clear that a safe and secure position may certainly be identified by documentation on the machine, but such a position may also be identified by other written notice on the machine.

Section 214.519 Floors, Decks, Stairs, and Ladders for On-Track Roadway Maintenance Machines

All new and existing on-track roadway maintenance machines shall have floors, decks, stairs, and ladders that are of appropriate design. The purpose of this requirement is to provide secure footing for the machine operator and any roadway workers transported on the machine. Current industry standards specifying material such as diamond plate, rubber tile, or other slip-resistant material design will be considered appropriate for the purposes of this regulation. Accumulations of oil, grease, or other contaminants or obstructions that could create a slipping, falling, or fire hazard must be promptly removed from floors, decks, stairs, and ladders.

FRA received no comment on this section in the NPRM; therefore, the language of the final rule remains as proposed.

Section 214.521 Flagging Equipment for On-Track Roadway Maintenance Machines and Hi-Rail Vehicles

This section requires that flagging kits be available when on-track roadway maintenance machines and hi-rail vehicles are operated over trackage subject to a railroad operating rule requiring flagging. Flagging kits must comply with the requirements specified in the operating rules of the railroads over which the equipment is operated. This requirement applies to each on-track roadway maintenance machine and hi-rail vehicle that is operated alone or as the leading or trailing piece of equipment in a roadway work group operating under the same occupancy authority. Flagging kits are not required for roadway maintenance machines and hi-rail vehicles that are operated in the middle of a single roadway work group. However, the vehicles must be under the same occupancy authority to be considered part of a single group.

In commenting on the proposed rule, Transtar inquired whether employers are already required to equip roadway maintenance machines with flagging kits under the Roadway Worker Protection regulations in subpart C of this part. FRA notes that flagging kits required under this final rule are for operating rule purposes only and do not relate to any requirements under the Roadway Worker Protection regulations in subpart C. FRA received no other comments on this section; therefore, the language of the section remains as proposed.

Section 214.523 Hi-Rail Vehicles

This section prescribes certain inspection and record keeping requirements for all hi-rail vehicles, new as well as existing. It also prescribes specific requirements applicable only to new hi-rail vehicles.

By definition, hi-rail vehicles have retractable flanged wheels giving them the ability to operate over the general highway system as well as on railroad track. Operation of these vehicles over the general highway system requires them to be manufactured to meet Federal motor vehicle safety standards.

Paragraph (a) requires that all hi-rail vehicles have the safety-critical components of their hi-rail gear inspected at least once per year. At a minimum, pursuant to this inspection requirement, tram, wheel wear and gage measurements must be checked and adjusted, if necessary, to provide for continued safe operation. This requirement is not necessarily intended to coincide with a calendar year, January to December. Further, FRA has added language to this final rule that allows up to 14 months between annual inspections. What this means is that the first annual inspection of all existing hi-rail vehicles is due under this rule within one year from the effective date of this final rule. Thereafter, the inspection of such existing hi-rail vehicles comes due each year on the anniversary date of its first inspection required under this rule. However, employers are allowed up to a two-month window in which to perform the inspection once it becomes due. As new hi-rail vehicles enter service, the inspection required by this paragraph is due within one year of the date the vehicles enter service. Thereafter, the inspection of such new hi-rail vehicles comes due each year on the anniversary date of the first inspection required under this rule. Again, employers are allowed up to a two-month window in which to perform the inspection once it becomes due. Any hi-rail vehicle that has not received an annual inspection within the previous 14 months will be deemed in violation of this paragraph.

Wisconsin Central provided the only comment on this paragraph. The operator of Class II and Class III carriers in the Midwest stated that the requirement for an annual inspection of hi-rail vehicles is unnecessary because most such vehicles are assigned to one employee who knows the vehicle and immediately notices when a defect develops. The Task Group disagreed that this requirement is burdensome to railroads and it further noted that the Task Group discussed the provision at length when the proposed rule was being developed. The Group recommended that the language in the final rule remain as proposed. FRA believes that the inspection requirement is necessary as a minimum requirement to provide for the safety of hi-rail vehicles, and has not adopted the Wisconsin Central's comment.

Paragraph (b) specifies a record keeping requirement to document safety inspections. Records may be retained on paper forms devised by the employer, or they may be stored electronically in a computer database. The employer must maintain the record of the last inspection of each vehicle until the next inspection is performed. The employer may choose to keep the record on the hi-rail vehicle itself or at a designated location. In either case, the records must be made available for inspection and copying during normal business hours by representatives of FRA and States participating under part 212 of this chapter.

The requirements specific only to new hi-rail vehicles are contained in paragraph (c). Each new hi-rail vehicle shall be equipped with an automatic change-of-direction alarm or backup alarm which produces an audible signal that is at least three seconds long and uniquely distinguishable from any surrounding noise. Paragraph (c) does not specify what particular decibel level is required for the change-of-direction or backup alarms on new hi-rail vehicles. In the preamble of the NPRM, FRA proposed that these devices be "loud enough to be heard by roadway workers and other machine operators within the immediate area." Noting in the NPRM that such a standard could invite too many variables, making it difficult for FRA to enforce, FRA requested comment as to whether or not a decibel standard should be required for these devices, and, if so, what that decibel level should be. Consistent with §§ 214.511 and 214.513, the Task Group recommended not setting a decibel standard to address how loud the audible warning devices on new hi-rail vehicles must be, and comments received on this paragraph were the same as those for the other sections cited. As in those other sections, the language of this paragraph in the final rule is the same as that proposed in the NPRM.

Paragraph (c)(2) requires each new hi-rail vehicle to be equipped with an operative warning light or beacon mounted to the roof of the vehicle. The light or beacon must be designed to flash intermittently while rotating 360 degrees or otherwise emitting light in a 360-degree field.

In the NPRM, FRA requested comment about whether or not the final rule should specify a color for the warning light and, if so, what color would be appropriate. In response, the BMWE noted that orange would be an appropriate color for warning lights on hi-rail vehicles because it is the color associated with "caution." The BMWE suggested that if no color is specified, the final rule should require that equipment warning lights be uniform for each railroad. The AAR responded that the rule need not specify a color for hi-rail vehicle warning lights. According to the AAR, some lights cannot display colors as well as others, and sometimes railroads find the use of two colors to be more effective. The AAR believed that the rule should allow the marketplace to experiment and determine which color(s) would work best. In addition, Loram suggested the following specific colors to correspond to the following specific functions: blue would signify "parked'; yellow would signify "operating'; white would designate "front'; and red would designate "rear."

FRA has elected not to change the language of this paragraph from that in the proposed rule. The agency could detect no clear consensus among the commenters about which color(s) would work best. Different railroads utilize different colors. FRA can point to no clear safety benefit from a new requirement that would force railroads to change a large number of light bulbs.

Paragraph (d)(1) requires the operator of each hi-rail vehicle to inspect the vehicle for compliance with this subpart prior to using the vehicle at the start of the operator's work shift. The intent of the inspection of hi-rail equipment prior to use is to identify a condition that inhibits the safe operation of the vehicle. For hi-rail vehicles that are in constant use, such as during a construction project, it is expected that each designated employee at the beginning of his or her shift will inspect the hi-rail gear. If multiple employees use the same equipment during the same work shift, it is expected that only the first employee will inspect the equipment for that shift.

In preparing the final rule, FRA recognized that this paragraph did not expressly cover the inspection of existing hi-rail vehicles. Yet, it is not evident to FRA why only new hi-rail vehicles should be made subject to an inspection requirement for compliance with this subpart. Consequently, FRA has modified the rule to make clear that existing hi-rail vehicles must be inspected for compliance with this subpart, such as checking for flagging kits when required by § 214.521. FRA would also expect that a hi-rail vehicle operator conduct at least a visual inspection following a derailment or accident involving the hi-rail vehicle to ensure that the vehicle remains safe to operate.

In commenting on the NPRM, Transtar noted that the paragraph included no requirement for recording the performance of these inspections. Although Transtar's observation is accurate, the omission was deliberate. FRA believes that the chief purpose of a requirement for keeping records of these checks of hi-rail vehicles would be to strengthen the enforceability of this paragraph. In this regard, paragraph (d)(2) requires that each non-complying condition not immediately repaired following an inspection be tagged and reported to the employer's designated official. (Paragraph (d)(2) was formerly proposed as paragraph (e) in the NPRM.) If FRA finds a hi-rail vehicle operating with a non-complying condition that has not been properly tagged or reported, FRA will presume that the hi-rail has not received a proper inspection prior to operation that shift, unless the operator or employer can show that the defect developed after the inspection was performed. FRA believes that this presumption will provide the agency with adequate ability to enforce the provisions of the paragraph without further burdening the employer with daily record keeping requirements.

This same rationale underlies the requirements of § 214.527. Section 214.527 requires a pre-work inspection of roadway maintenance machines and the tagging and reporting of any discovered defects, but no record keeping of the inspections themselves. Of course, nothing in this paragraph or in § 214.527 prohibits an employer from maintaining records of these inspections for its own purposes.

Paragraph (d)(3) states that defective automatic change-of-direction or backup alarms and 360-degree intermittent warning lights or beacons must be repaired or replaced as soon as practicable within seven calendar days. This paragraph is consistent with § 214.531, and was formerly proposed as paragraph (f) in the NPRM.

Section 214.525 Towing With On-Track Roadway Maintenance Machines or Hi-Rail Vehicles

This section prescribes the manner in which on-track roadway maintenance machines or hi-rail vehicles may be used to tow pushcars or other on-track maintenance-of-way equipment. Paragraph (a) specifies that whenever an on-track roadway maintenance machine or hi-rail vehicle is used to tow such equipment, it must be equipped with a towing bar or other coupling device designed for that purpose that provides a safe and secure attachment.

The towing of pushcars or other on-track maintenance-of-way equipment is prohibited under paragraph (b) when it would exceed the braking capabilities of the on-track roadway maintenance machine or hi-rail vehicle doing the towing. When determining whether or not the braking capability of a machine or vehicle would be exceeded, the employer must consider the track gradient or slope in the area, as well as the number and weight of pushcars or other equipment to be towed. Paragraph (b) does not cover locomotives hauling conventional rail cars used in track maintenance work, such as ballast cars. Such locomotives must comply with the requirements in 49 CFR part 229 (Railroad Locomotive Safety Standards).

Transtar commented that the requirement for towing equipment under this section would force railroads to keep multiple towing apparatuses for towing different types of equipment. Transtar suggested that the final rule provide some relief from the requirements of this section for towing performed on an emergency basis, such as by including an exception that under emergency circumstances equipment may be towed by any safe method. In considering this comment, the Task Group believed that the language of this section is general enough to adequately cover all types of towing situations, including emergency situations. FRA agrees, and the text of the final rule remains as proposed.

Section 214.527 On-Track Roadway Maintenance Machines; Inspection for Compliance and Schedule for Repairs

This section prescribes the manner in which on-track roadway maintenance machines are to be inspected and repaired. The title of this section has been modified to make clear that it applies only to on-track roadway maintenance machines.

Paragraph (a) requires the operator of an on-track roadway maintenance machine to perform an inspection of that machine for compliance with the requirements of this subpart. The operator must perform the inspection prior to using the machine at the start of the operator's work shift. As is the case for the inspection of hi-rail vehicles pursuant to § 214.523, if multiple employees use the same equipment during the same work shift, it is expected that only the first employee will inspect the equipment for that shift.

Under paragraph (b), any non-complying condition that cannot be immediately repaired must be tagged and dated according to established employer procedures and reported to the designated official. As in § 214.523, this section does not require an employer to maintain records of each daily inspection. However, should FRA find an on-track roadway maintenance machine operating with a defect that has not been properly tagged or reported to the employer's designated official, FRA will presume that the daily inspection was not properly performed—a presumption the employer or operator may rebut by showing that the defect occurred after the inspection was performed.

Paragraph (c) allows for the continued operation of an on-track roadway maintenance machine with a reported non-complying condition subject to certain requirements:

(1) A machine with non-complying headlights or work lights may be operated only between the period from one-half hour before sunrise to one-half hour after sunset for no more than seven calendar days. In other words, it may not be operated during the darkness between sunset and sunrise. The thirty-minute periods both before sunrise (dawn) and after sunset (dusk) are thought to provide enough light for safe operation on a temporary basis.

(2) A portable horn may be substituted for a non-complying or missing horn or other audible warning device for no more than seven calendar days.

(3) A temporary, portable fire extinguisher that is readily available for use may replace a missing, defective, or discharged permanent fire extinguisher on a new on-track roadway maintenance machine for no more than seven calendar days, after which time the permanent fire extinguisher must be replaced or repaired.

(4) Non-complying change-of-direction alarms or backup alarms, and 360-degree intermittent warning lights or beacons, shall be repaired or replaced as soon as practicable within seven calendar days.

(5) A structurally defective or missing operator's seat shall be replaced or repaired within 24 hours, or by the start of the machine's next tour of duty, whichever is later. This paragraph provides flexibility for the employer in cases such as where the operator's seat is found to be defective on a Thursday afternoon and the next tour of duty for that machine is not scheduled until the following Monday. If the operator's seat becomes defective during the machine operator's tour of duty, the machine may be operated for the remainder of the operator's duty tour only if it is determined that the operation may continue in a safe manner.

In commenting on the proposed rule's requirement for repairs to be made within seven calendar days, Transtar suggested that the provision should be changed to require repairs to be made within seven working days to allow employers adequate time to contact suppliers and perform the work around weekends and holidays. The Task Group considered this comment and recommended that the language of this section remain the same as that in the proposed rule. The provisions in this section were discussed at length by the Task Group when the proposed rule was being developed, and the resulting proposal was endorsed by the RSAC. FRA does not believe that this requirement is burdensome for the railroad industry, and has not modified the final rule in response to Transtar's comment.

Section 214.529 In-Service Failure of Primary Braking System

Paragraph (a) states that in the event of a total in-service failure of an on-track roadway maintenance machine's primary braking system, the machine may be operated for the remainder of its tour of duty through the use of a secondary braking system, if the machine is so equipped, or by coupling to another on-track roadway maintenance machine. In either case, the employer must determine that continued operation of the machine is safe.

In the NPRM, FRA stated that it was considering adding to this section criteria to be used by the employer in determining the safety of continuing to use an on-track roadway maintenance machine after its primary braking system has experienced a total in-service failure. FRA sought comment about the need for such criteria and what the criteria should include. The AAR was the only commenter to respond to this request. The railroad organization stated that the judgment as to the safety of the machine's continued operation is best left to the employer in the situation and that more specific criteria is not required. FRA therefore has decided that the language in this paragraph of the final rule should remain as proposed in the NPRM.

Paragraph (b) states that in the event of a total in-service failure of an on-track roadway maintenance machine's primary braking system, when no secondary braking system is available and no other machine is available for coupling, the machine may, if it is determined to be safe to do so, travel to a clearance or repair point where it shall be placed out of service until repaired. The BMWE observed in its comments on the proposed rule that this provision would permit a roadway maintenance machine to be operated to a clearance or repair point with no braking system whatsoever. FRA notes, however, that the machine may be moved only if it is determined that such movement can be done safely. For instance, the wings and broom on a ballast regulator or the rail clamps on a tamping machine could be used to slow or stop the machine, if the operator determines that it is safe to do so in his or her particular situation. A roadway machine operator operating a machine with failed brakes may, in accordance with § 214.503, challenge in good faith the safety of any instruction to move the machine to a clearance or repair point. The good-faith challenge provision should provide the machine operator protection from an improper order by the employer to operate a machine that has no braking capability when it is unsafe to do so.

Section 214.531 Schedule of Repairs; General

This section specifies a general schedule of repairs for all on-track roadway maintenance machines and hi-rail vehicles. If an on-track roadway maintenance machine or hi-rail vehicle does not meet all of the requirements of this subpart, it shall be repaired as soon as practicable within seven calendar days.

More restrictive requirements for repairs to on-track roadway maintenance machines apply to missing or defective operator seats as prescribed in § 214.527(c)(5), and a total in-service failure of a primary braking system as prescribed in § 214.529. In the event a part necessary for the repair of a non-complying on-track roadway maintenance machine or a hi-rail vehicle is not in the employer's inventory and must be ordered, the repair schedule is governed by the requirements specified in § 214.533, which addresses the availability of repair parts.

FRA has modified the rule text in this section to make clear that it applies to both existing and new hi-rail vehicles. This is consistent with the preamble discussion of this section in the NPRM, which made no distinction between existing and new hi-rail vehicles. Further, this subpart imposes requirements on existing hi-rail vehicles. For example, § 214.521 requires hi-rail vehicles to have flagging kits as specified in that section, and makes no distinction between whether the machine is new or existing.

In commenting on the NPRM, Transtar observed that this section requires hi-rail vehicles to be removed from service if non-complying conditions are not repaired within seven days. Noting that hi-rail vehicles are frequently used off the track, Transtar suggested that the language of the rule specify that the hi-rail should be removed from track service only, since the defect may not prevent the vehicle from being safely used off the track. FRA notes that the requirements of this rule apply to roadway maintenance machines as they are used for on-track maintenance; they do not apply to service performed by the machines in another capacity off the track. To clarify this point, FRA has followed Transtar's suggestion and revised this section to read that on-track roadway maintenance machines and hi-rail vehicles must be kept out of on-track service if not repaired within seven calendar days. Consistent with this change, FRA has

modified paragraphs (b) and (c) of § 214.533, below, to read that on-track roadway maintenance machines and hi-rail vehicles not repaired in accordance with the requirements of that section must be removed from on-track service.

Section 214.533 Schedule of Repairs Subject to Availability of Parts

Under paragraph (a) of this section, when a part needed to repair a non-complying condition on an on-track roadway maintenance machine or hi-rail vehicle is not in the employer's inventory, the employer must order the necessary part by the end of the next business day following the report of the non-complying condition.

In commenting on the proposed rule, Transtar stated that, as long as a piece of equipment is removed from service so that it poses no risk to an operator, there should be no requirement that repair parts be ordered within a specified period of time. In declining to adopt this comment, FRA notes that the requirement to order repair parts is integral to the structure of this section, which provides flexibility to the employer, and cannot be viewed in isolation. By taking the step of ordering a necessary repair part that is not held in the employer's inventory, the employer is permitted to keep the machine or vehicle in on-track service if safe to do so until the part arrives. Thereafter, as specified in paragraph (b), below, the employer must repair the machine or vehicle within seven calendar days after receiving the necessary part(s). The employer may simply choose to remove the machine or vehicle from on-track service altogether. Yet, FRA does not intend to withdraw the flexibility provided to the employer to keep the machine or vehicle in on-track service by ordering the necessary part(s). Of course, if the employer wishes to remove the machine or vehicle from service altogether, it is free to forgo ordering a necessary repair part, and the machine or vehicle must be kept out of service until brought into compliance with this subpart, pursuant to paragraph (c), below.

FRA notes that, in preparing this final rule, it has modified the text of this section by using the term repair "part" in the singular, rather than as repair "parts" as proposed in the NPRM. The use of the word "parts" suggests that more than one part is necessary to repair each non-complying condition, which may not necessarily be the case. As modified, the rule text better effectuates FRA's intent. Further, as in § 214.531, FRA has modified the rule text in this section to make clear that the section applies to both existing and new hi-rail vehicles.

Paragraph (b) requires the employer to repair the non-complying on-track roadway maintenance machine or hi-rail vehicle within seven calendar days after receiving the necessary part(s). However, if the non-complying condition still exists 30 days after the initial report of the condition, regardless of the reason, the employer must remove the on-track roadway maintenance machine or hi-rail vehicle from service until the condition is brought into compliance. FRA realizes that there may be times when a part needed to repair the condition is difficult or impossible for the employer to obtain. In such case the employer may continue to use the on-track roadway maintenance machine or hi-rail vehicle with a non-complying condition until the necessary part or parts are received, subject to the requirements of § 214.503. Yet, the defective machine or hi-rail vehicle must be removed from on-track service 30 days after the defect is reported, if it is still not repaired. This provision prevents the use of a defective on-track roadway maintenance machine or hi-rail vehicle for a protracted and undetermined length of time.

In commenting on the NPRM, Wisconsin Central suggested that this provision of the regulation is overly complicated and would impose an administrative burden on employers to track the arrival of replacement parts and repair dates. Wisconsin Central recommended that the provision simply state that repairs must be made within 30 days of discovery, or the on-track roadway maintenance machine or hi-rail vehicle must be removed from track service. As an alternative, Wisconsin Central suggested that the employer be given seven days to repair an on-track roadway maintenance machine or hi-rail vehicle once the part is received where the machine is located, noting that machines may break down when they are far away from their home locations.

The Task Group disagreed with both of Wisconsin Central's suggestions. The Group found that the second (alternative) suggestion is unnecessary because machine parts can be delivered overnight to most locations. Seven days is ample time within which to repair a machine once the necessary part or parts are with the employer. The Task Group further noted that the proposed provisions of this paragraph were discussed at length when the Task Group was developing the proposed rule, and the proposed rule was endorsed by the RSAC. FRA agrees with the Task Group's reasoning and has elected not to change the rule in response to Wisconsin Central's comments.

Paragraph (c) states that if the employer fails to order a necessary repair part as required in paragraph (a) of this section, or fails to install such a repair part within seven days after receiving it as required in paragraph (b) of this section, it must remove the on-track roadway maintenance machine or hi-rail vehicle from on-track service until the equipment is brought into compliance. Of course, the equipment may continue in other service off the track, as in the case of hi-rail vehicles that may be defective for work on the track but may still operate on streets and highways.

To ensure that the provisions of this section are followed, FRA must be able to review records concerning the ordering and installation of parts necessary to repair roadway maintenance machines and hi-rail vehicles. Paragraph (d) requires the employer to maintain records for one year relating to the ordering and installation of repair parts for on-track roadway maintenance machines and hi-rail vehicles. The records must be made available to FRA and State inspectors for inspection and copying during normal business hours, yet the employer may decide how and where the records are kept. For example, the records may be kept electronically or on paper and may be stored on the machines and vehicles or in a location chosen and designated by the employer.

In commenting on the NPRM, Loram stated that the record keeping made necessary by this rule will detract from machine crews' ability to complete assigned objectives and will be costly to employers. FRA is aware of the added costs related to record keeping. However, the record keeping requirements are needed in order for FRA to enforce the rule. The additional costs created by the record keeping requirements have been factored into the cost/benefit analysis performed for this final rule. Accordingly, FRA has declined to modify the record keeping requirement in response to the comment.

Appendix A to Part 214—Schedule of Civil Penalties

Pursuant to 49 U.S.C. 20111, this final rule includes amendments to the penalty schedule contained in Appendix A to part 214. The amendments consist of the addition of penalties associated with violations of the regulations under new subpart D to part 214.

FRA's traditional practice has been to issue penalty schedules assigning to each particular regulation specific dollar amounts for initial penalty assessments. For each regulation, the schedule typically shows two amounts within the $500 to $11,000 range in separate columns, the first for ordinary violations, the second for willful violations (whether committed by railroads or individuals).

The penalty schedule constitutes a statement of agency policy, and the schedule amounts are meant to provide guidance as to FRA's policy in predictable situations, not to bind FRA from using the full range of penalty authority where extraordinary circumstances warrant. Accordingly, under this revised schedule, and regardless of the fact that a lesser amount may be shown in both columns of the schedule, FRA reserves the right to assess the statutory maximum penalty of up to $22,000 per violation where a grossly negligent violation has created an imminent hazard of death or injury. (*See* Footnote 1 in appendix A to part 214.) This authority to assess a penalty for a single violation above $11,000 and up to $22,000 is used only in very exceptional cases to penalize egregious behavior. Where FRA avails itself of this right to use the higher penalties in place of the schedule amount, it will so indicate in a penalty demand letter.

Regulatory Impact/Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures. It is considered to be non-significant under both Executive Order 12866 and DOT policies and procedures (*see* 44 FR 11034, February, 26, 1979). FRA has prepared and placed in the docket a regulatory analysis addressing the economic impact of the rule. Document inspection and copying facilities are available at 1120 Vermont Avenue, NW., Seventh Floor, Washington, DC. Photocopies also may be obtained by submitting a written request to the FRA Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590.

This rule will cost about $1,500,000 per year. About 45 percent of that or $675,000 per year will go into safety enhancements which serve to prevent accidents and acute injuries of the type usually reported to FRA. That portion will generate benefits of about $1,900,000 per year. The remainder of the rule will address long-term risks like skin cancer and chronic diseases related to silica exposure, or address event mitigation, through requiring first-aid kits and fire extinguishers. FRA does not have a good way to quantify that portion of the benefit, although existing industry practices, and the willing participation of the representatives of the railroads are substantial evidence that the burden is likely not to be very great. The almost infinite variety of equipment involved, combined with limited information collection resources and reporting detail, make it impossible to measure more accurately the problem without a substantial expenditure of resources. But in consultation with our industry partners, we have agreed that there is a risk reduction opportunity. We have, together, come up with a reasonable minimum set of precautions and measures, at a reasonable level of costs, that we believe will achieve the desired reduction in risk. Our industry partners will willingly absorb these new costs because they believe it is justified to do so.

A significant portion of the costs of environmental controls will be offset by productivity enhancements. The vast majority of new roadway maintenance machines are ordered with air conditioning because it enhances productivity. There may be some cases in which the additional productivity does not offset the cost of the environmental controls, but the there will be a safety benefit in terms of reduced long term exposure to silica dust.

FRA found one fatal accident in the years 1996–2000 which would have been prevented by the rule. In that case a contract employee fell off a crane, which then rolled over him. The rule would have required a safe place to ride on the crane and likely would have prevented the fatality. See FRA accident file CFE–4–97, June, 23, 1997, Fort Worth, Texas.

Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 13272 require a review of proposed and final rules to assess their impact on small entities. FRA has prepared and placed in the docket a Regulatory Flexibility Assessment (RFA) which assesses the small entity impact by this rule. Document inspection and copying facilities are available at the Department of Transportation Central Docket Management Facility located in Room PL–401 at the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Docket material is also available for inspection on the Internet at *http://dms.dot.gov.* Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at the Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Ave., NW., Washington, DC 20590.

"Small entity" is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a "small entity" in the railroad industry is a railroad business "line-haul operation" that has fewer than 1,500 employees and a "switching and terminal" establishment with fewer than 500 employees. SBA's "size standards" may be altered by Federal agencies, in consultation with SBA and in conjunction with public comment.

Pursuant to that authority, FRA has published a policy which formally establishes "small entities" as being railroads which meet the line haulage revenue requirements of a Class III railroad. Currently, the revenue requirements are $20 million or less in annual operating revenue. The $20 million limit is based on the Surface Transportation Board's threshold of a Class III railroad carrier, which is adjusted by applying the railroad revenue deflator adjustment (49 CFR part 1201). The same dollar limit on revenues is established to determine whether a railroad shipper or contractor is a small entity. FRA uses this alternative definition of "small entity" for this rulemaking.

FRA took steps during the proceedings for this rulemaking to minimize the adverse effects of the rule on small entities. FRA invited the American Short Line and Regional Railroad Association (ASLRRA) to be a member of the Task Group. ASLRRA declined, securing representation by the individual also representing the AAR. It appears the rule will have a minimal effect on small entities as the overwhelming majority of roadway maintenance machines owned by small entities were manufactured before 1991, and would be exempt from most of the rule's requirements. FRA was careful to limit retrofit requirements, which might have imposed an undue burden on small entities. There appears to be no substantial impact on a significant number of small entities.

FRA sought comments on the effect of the proposed rule on small entities, but received only one comment relative to small businesses. Transtar noted that small railroads would bear an onerous

burden from the requirement in Section 214.505 that personal respiratory protective equipment be supplied to employees in the event of a failure of the environmental controls in a pressurized cab. However, this requirement does not present a new burden on small entities, as it simply mirrors OSHA regulations already in effect.

The RFA concludes that this final rule will not have a significant economic impact on a substantial number of small entities. Thus, FRA certifies that this final rule is not expected to have a "significant" economic impact on a "substantial" number of small entities under the Regulatory Flexibility Act and Executive Order 13272.

Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements for Subpart D, which will be added to those of the Railroad Workplace Safety regulations (49 CFR part 214), and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
214.503—Good-Faith Challenges; Procedures for Notification and Resolution.	50,000 Roadway Workers.	250 notifications	10 minutes	42	$1,428
—Resolution Procedures	579 Railroads	20 procedures	2 hours	40	1,400
214.505—Required Environmental Control and Protection Systems For New On-Track Roadway Maintenance Machines with Enclosed Cabs.	579 Railroads	30 lists	2.5 hours	75	2,625
—Designated Machines	579 Railroads	60 designations	5 minutes	5	175
214.507—Required Safety Equipment For New On-Track Roadway Maintenance Machines.	579 Railroads	1,000 Stickers	5 minutes	83	2,822
—Display of Light Weight in Conspicuous Location					
214.511—Required Audible Warning Devices For New On-Track Roadway Maintenance Machines.	579 Railroads	3,700 mechanisms	5 minutes	308	10,472
214.513—Retrofitting of Existing On-Track Roadway Maintenance Machines; General.	579 Railroads	2,300 mechanisms	5 minutes	192	6,528
—Identification of Triggering Mechanism—Horns					
214.515—Overhead Covers For Existing On-Track Roadway Maintenance Machines.	579 Railroads	1,050 requests + 1,050 responses.	10 minutes + 20 minutes.	525	18,200
214.517—Retrofitting of Existing On-Track Roadway Maintenance Machines Manufactured After 1990.	579 Railroads	6,000 stencils	5 minutes	500	17,000
214.518—Safe and Secure Position For Riders.	579 Railroads	7,500 stencils	5 minutes	625	21,250
214.523—Hi-Rail Vehicles—Inspections—Records.	579 Railroads	2,000 records	30 minutes	1,000	34,000
—Non-Complying Conditions	579 Railroads	250 tags + 250 reports.	5 min. + 15 min	84	2,856
214.527—On Track Roadway Maintenance Machines; Inspection for Compliance and Repair Schedules.	579 Railroads	550 tags + 550 reports.	5 min. + 15 min	184	6,256
214.533—Schedule of Repairs Subject to Availability of Parts.	579 Railroads	250 records	15 minutes	63	2,205

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicited comments concerning: whether these information collection requirements are necessary for the proper performance of the function of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. FRA received no replies in response to this request for comments. For information or a copy of the paperwork package submitted to OMB, contact Robert Brogan, FRA Information Clearance Officer, at (202) 493–6292.

OMB is required to make a decision concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

Environmental Impact

FRA has evaluated these regulations in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. This final rule meets the criteria that establish this as a non-major action for environmental purposes.

Federalism Implications

FRA has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132 issued on August 4, 1999, which directs Federal agencies to exercise great care in establishing policies that have federalism implications. *See* 64 FR 43255. In the NPRM, FRA acknowledged that the rule as proposed could have federalism implications. The governance of safety of hi-rail vehicles could have an unintended effect on State laws addressing the safety of these vehicles as they are operated over roads and highways, even though the rule is meant to cover the safety of hi-rail vehicles only while they are operated on railroad tracks. Although the requirements for hi-rail vehicles are not intended to preempt any State laws addressing motor vehicles, FRA requested comment concerning what State laws, if any, could be impacted by this rule. FRA received no comment in response to the request.

The RSAC, which recommended the proposed rule, has as permanent members two organizations representing State and local interests: the American Association of State Highway and Transportation Officials (AASHTO) and the Association of State Rail Safety Managers (ASRSM). The RSAC regularly provides recommendations to the FRA Administrator for solutions to regulatory issues that reflect significant input from its State members. From the absence of further comment from these representatives, or of any other representatives of State government, FRA concludes that this final rule has no federalism implications.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law." (See Section 201). Section 202 of the Act further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement * * *" detailing the effect on State, local and tribal governments and the private sector. The final rule issued today will not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of a statement is not required.

Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." *See* 66 FR 28355; May 22, 2001. Under the Executive Order a "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this final rule in accordance with Executive Order 13211. FRA has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a "significant energy action" within the meaning of the Executive Order.

Privacy Act

Anyone is able to search the electronic form of all public submissions to any of our dockets by the name of the individual making the submission (or signing the submission, if made on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or by visiting *http://dms.dot.gov*.

List of Subjects in 49 CFR Part 214

Bridges, Occupational safety and health, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

■ In consideration of the foregoing, chapter II, subtitle B of title 49, Code of Federal Regulations is amended as follows:

PART 214—[AMENDED]

■ 1. The authority citation for part 214 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107 and 49 CFR 1.49.

■ 2. Section 214.7 is amended by adding in alphabetical order the following definitions:

§ 214.7 Definitions.

* * * * *

Designated official means any person(s) designated by the employer to receive notification of non-complying conditions on on-track roadway maintenance machines and hi-rail vehicles.

* * * * *

Hi-rail vehicle means a roadway maintenance machine that is manufactured to meet Federal Motor Vehicle Safety Standards and is equipped with retractable flanged wheels so that the vehicle may travel over the highway or on railroad tracks.

Hi-rail vehicle, new means a hi-rail vehicle that is ordered after December 26, 2003 or completed after September 27, 2004.

* * * * *

On-track roadway maintenance machine means a self-propelled, rail-mounted, non-highway, maintenance machine whose light weight is in excess of 7,500 pounds, and whose purpose is not for the inspection of railroad track.

On-track roadway maintenance machine, existing means any on-track roadway maintenance machine that does not meet the definition of a "new on-track roadway maintenance machine."

On-track roadway maintenance machine, new means an on-track roadway maintenance machine that is ordered after December 26, 2003, and completed after September 27, 2004.

* * * * *

■ 3. Subpart D is added to part 214 reading as follows:

Subpart D—On-Track Roadway Maintenance Machines and Hi-Rail Vehicles

Sec.

214.501 Purpose and scope.

214.503 Good-faith challenges; procedures for notification and resolution.
214.505 Required environmental control and protection systems for new on-track roadway maintenance machines with enclosed cabs.
214.507 Required safety equipment for new on-track roadway maintenance machines.
214.509 Required visual illumination and reflective devices for new on-track roadway maintenance machines.
214.511 Required audible warning devices for new on-track roadway maintenance machines.
214.513 Retrofitting of existing on-track roadway maintenance machines; general.
214.515 Overhead covers for existing on-track roadway maintenance machines.
214.517 Retrofitting of existing on-track roadway maintenance machines manufactured on or after January 1, 1991.
214.518 Safe and secure positions for riders.
214.519 Floors, decks, stairs, and ladders of on-track roadway maintenance machines.
214.521 Flagging equipment for on-track roadway maintenance machines and hi-rail vehicles.
214.523 Hi-rail vehicles.
214.525 Towing with on-track roadway maintenance machines or hi-rail vehicles.
214.527 On-track roadway maintenance machines; inspection for compliance and schedule for repairs.
214.529 In-service failure of primary braking system.
214.531 Schedule of repairs; general.
214.533 Schedule of repairs subject to availability of parts.

§ 214.501 Purpose and scope.

(a) The purpose of this subpart is to prevent accidents and casualties caused by the lawful operation of on-track roadway maintenance machines and hi-rail vehicles.

(b) This subpart prescribes minimum safety standards for on-track roadway maintenance machines and hi-rail vehicles. An employer may prescribe additional or more stringent standards that are consistent with this subpart.

(c) Any working condition that involves the protection of employees engaged in roadway maintenance duties covered by this subpart but is not within the subject matter addressed by this subpart, including employee exposure to noise, shall be governed by the regulations of the U.S. Department of Labor, Occupational Safety and Health Administration.

§ 214.503 Good-faith challenges; procedures for notification and resolution.

(a) An employee operating an on-track roadway maintenance machine or hi-rail vehicle shall inform the employer whenever the employee makes a good-faith determination that the machine or vehicle does not comply with FRA regulations or has a condition that inhibits its safe operation.

(b) Any employee charged with operating an on-track roadway maintenance machine or hi-rail vehicle covered by this subpart may refuse to operate the machine or vehicle if the employee makes a good-faith determination that it does not comply with the requirements of this subpart or has a condition that inhibits its safe operation. The employer shall not require the employee to operate the machine or vehicle until the challenge resulting from the good-faith determination is resolved.

(c) Each employer shall have in place and follow written procedures to assure prompt and equitable resolution of challenges resulting from good-faith determinations made in accordance with this section. The procedures shall include specific steps to be taken by the employer to investigate each good-faith challenge, as well as procedures to follow once the employer finds a challenged machine or vehicle does not comply with this subpart or is otherwise unsafe to operate. The procedures shall also include the title and location of the employer's designated official.

§ 214.505 Required environmental control and protection systems for new on-track roadway maintenance machines with enclosed cabs.

(a) The following new on-track roadway maintenance machines shall be equipped with enclosed cabs with operative heating systems, operative air conditioning systems, and operative positive pressurized ventilation systems:

(1) Ballast regulators;
(2) Tampers;
(3) Mechanical brooms;
(4) Rotary scarifiers;
(5) Undercutters; and
(6) Functional equivalents of any of the machines identified in paragraphs (a)(1) through (a)(5) of this section.

(b) New on-track roadway maintenance machines, and existing on-track roadway maintenance machines specifically designated by the employer, of the types identified in paragraphs (a)(1) through (a)(5) of this section, or functionally equivalent thereto, shall be capable of protecting employees in the cabs of the machines from exposure to air contaminants, in accordance with 29 CFR 1910.1000.

(c) An employer shall maintain a list of new and designated existing on-track roadway maintenance machines of the types identified in paragraphs (a)(1) through (a)(5) of this section, or functionally equivalent thereto. The list shall be kept current and made available to the Federal Railroad Administration and other Federal and State agencies upon request.

(d) An existing roadway maintenance machine of the type identified in paragraphs (a)(1) through (a)(5) of this section, or functionally equivalent thereto, becomes "designated" when the employer adds the machine to the list required in paragraph (c) of this section. The designation is irrevocable, and the designated existing roadway maintenance machine remains subject to paragraph (b) of this section until it is retired or sold.

(e) If the ventilation system on a new on-track roadway maintenance machine or a designated existing on-track roadway maintenance machine of the type identified in paragraphs (a)(1) through (a)(5) of this section, or functionally equivalent thereto, becomes incapable of protecting an employee in the cab of the machine from exposure to air contaminants in accordance with 29 CFR 1910.1000, personal respiratory protective equipment shall be provided for each such employee until the machine is repaired in accordance with § 214.531.

(f) Personal respiratory protective equipment provided under paragraph (e) of this section shall comply with 29 CFR 1910.134.

(g) New on-track roadway maintenance machines with enclosed cabs, other than the types identified in paragraphs (a)(1) through (a)(5) of this section or functionally equivalent thereto, shall be equipped with operative heating and ventilation systems.

(h) When new on-track roadway maintenance machines require operation from non-enclosed stations outside of the main cab, the non-enclosed stations shall be equipped, where feasible from an engineering standpoint, with a permanent or temporary roof, canopy, or umbrella designed to provide cover from normal rainfall and midday sun.

§ 214.507 Required safety equipment for new on-track roadway maintenance machines.

(a) Each new on-track roadway maintenance machine shall be equipped with:

(1) A seat for each operator, except as provided in paragraph (b) of this section;

(2) A safe and secure position with handholds, handrails, or a secure seat for each roadway worker transported on the machine. Each position shall be protected from moving parts of the machine;

(3) A positive method of securement for turntables, on machines equipped with a turntable, through engagement of pins and hooks that block the descent of turntable devices below the rail head when not in use;

(4) A windshield with safety glass, or other material with similar properties, and power windshield wipers or suitable alternatives that provide the operator an equivalent level of vision if windshield wipers are incompatible with the windshield material;

(5) A machine braking system capable of effectively controlling the movement of the machine under normal operating conditions;

(6) A first-aid kit that is readily accessible and complies with 29 CFR 1926.50(d)(2); and

(7) An operative and properly charged fire extinguisher of 5 BC rating or higher which is securely mounted and readily accessible to the operator from the operator's work station.

(b) Each new on-track roadway maintenance machine designed to be operated and transported by the operator in a standing position shall be equipped with handholds and handrails to provide the operator with a safe and secure position.

(c) Each new on-track roadway maintenance machine that weighs more than 32,500 pounds light weight and is operated in excess of 20 mph shall be equipped with a speed indicator that is accurate within ±5 mph of the actual speed at speeds of 10 mph and above.

(d) Each new on-track roadway maintenance machine shall have its as-built light weight displayed in a conspicuous location on the machine.

§ 214.509 Required visual illumination and reflective devices for new on-track roadway maintenance machines.

Each new on-track roadway maintenance machine shall be equipped with the following visual illumination and reflective devices:

(a) An illumination device, such as a headlight, capable of illuminating obstructions on the track ahead in the direction of travel for a distance of 300 feet under normal weather and atmospheric conditions;

(b) Work lights, if the machine is operated during the period between one-half hour after sunset and one-half hour before sunrise or in dark areas such as tunnels, unless equivalent lighting is otherwise provided;

(c) An operative 360-degree intermittent warning light or beacon mounted on the roof of the machine. New roadway maintenance machines that are not equipped with fixed roofs and have a light weight less than 17,500 pounds are exempt from this requirement;

(d) A brake light activated by the application of the machine braking system, and designed to be visible for a distance of 300 feet under normal weather and atmospheric conditions; and

(e) Rearward viewing devices, such as rearview mirrors.

§ 214.511 Required audible warning devices for new on-track roadway maintenance machines.

Each new on-track roadway maintenance machine shall be equipped with:

(a) A horn or other audible warning device that produces a sound loud enough to be heard by roadway workers and other machine operators within the immediate work area. The triggering mechanism for the device shall be clearly identifiable and within easy reach of the machine operator; and

(b) An automatic change-of-direction alarm which provides an audible signal that is at least three seconds long and is distinguishable from the surrounding noise. Change of direction alarms may be interrupted by the machine operator when operating the machine in the work mode if the function of the machine would result in a constant, or almost constant, sounding of the device. In any action brought by FRA to enforce the change-of-direction alarm requirement, the employer shall have the burden of proving that use of the change-of-direction alarm in a particular work function would cause a constant, or almost constant, sounding of the device.

§ 214.513 Retrofitting of existing on-track roadway maintenance machines; general.

(a) Each existing on-track roadway maintenance machine shall have a safe and secure position for each roadway worker transported on the machine and protection from moving parts of the machine.

(b) By March 28, 2005, each existing on-track roadway maintenance machine shall be equipped with a permanent or portable horn or other audible warning device that produces a sound loud enough to be heard by roadway workers and other machine operators within the immediate work area. The triggering mechanism for the device shall be clearly identifiable and within easy reach of the machine operator.

(c) By March 28, 2005, each existing on-track roadway maintenance machine shall be equipped with a permanent illumination device or a portable light that is securely placed and not hand-held. The illumination device or portable light shall be capable of illuminating obstructions on the track ahead for a distance of 300 feet under normal weather and atmospheric conditions when the machine is operated during the period between one-half hour after sunset and one-half hour before sunrise or in dark areas such as tunnels.

§ 214.515 Overhead covers for existing on-track roadway maintenance machines.

(a) For those existing on-track roadway maintenance machines either currently or previously equipped with overhead covers for the operator's position, defective covers shall be repaired, and missing covers shall be reinstalled, by March 28, 2005 and thereafter maintained in accordance with the provisions of § 214.531.

(b) For those existing on-track roadway maintenance machines that are not already equipped with overhead covers for the operator's position, the employer shall evaluate the feasibility of providing an overhead cover on such a machine if requested in writing by the operator assigned to operate the machine or by the operator's designated representative. The employer shall provide the operator a written response to each request within 60 days. When the employer finds the addition of an overhead cover is not feasible, the response shall include an explanation of the reasoning used by the employer to reach that conclusion.

(c) For purposes of this section, overhead covers shall provide the operator's position with cover from normal rainfall and midday sun.

§ 214.517 Retrofitting of existing on-track roadway maintenance machines manufactured on or after January 1, 1991.

In addition to meeting the requirements of § 214.513, after March 28, 2005 each existing on-track roadway maintenance machine manufactured on or after January 1, 1991, shall have the following:

(a) A change-of-direction alarm or rearview mirror or other rearward viewing device, if either device is feasible, given the machine's design, and if either device adds operational safety value, given the machine's function. In any action brought by FRA to enforce this requirement, the employer shall have the burden of proving that neither device is feasible or adds operational safety value, or both, given the machine's design or work function.

(b) An operative heater, when the machine is operated at an ambient temperature less than 50 degrees

Fahrenheit and is equipped with, or has been equipped with, a heater.

(c) The light weight of the machine stenciled or otherwise clearly displayed on the machine, if the light weight is known.

(d) Reflective material, or a reflective device, or operable brake lights.

(e) Safety glass when its glass is normally replaced, except that replacement glass that is specifically intended for on-track roadway maintenance machines and is in the employer's inventory as of September 26, 2003 may be utilized until exhausted.

(f) A turntable restraint device, on machines equipped with a turntable, to prevent undesired lowering, or a warning light indicating that the turntable is not in the normal travel position.

(g) Handholds, handrails, or a secure seat or bench position for each roadway worker transported on the machine.

§ 214.518 Safe and secure positions for riders.

A roadway worker, other than the machine operator(s), is prohibited from riding on any on-track roadway maintenance machine unless a safe and secure position for each roadway worker on the machine is clearly identified by stenciling, marking, or other written notice.

§ 214.519 Floors, decks, stairs, and ladders of on-track roadway maintenance machines.

Floors, decks, stairs, and ladders of on-track roadway maintenance machines shall be of appropriate design and maintained to provide secure access and footing, and shall be free of oil, grease, or any obstruction which creates a slipping, falling, or fire hazard.

§ 214.521 Flagging equipment for on-track roadway maintenance machines and hi-rail vehicles.

When being operated over trackage subject to a railroad operating rule requiring flagging, each on-track roadway maintenance machine and each hi-rail vehicle shall have on board a flagging kit that complies with the operating rules of the railroad, if the equipment is not part of a roadway work group or is the lead or trailing piece of equipment in a roadway work group operating under the same occupancy authority.

§ 214.523 Hi-rail vehicles.

(a) The hi-rail gear of all hi-rail vehicles shall be inspected for safety at least annually and with no more than 14 months between inspections. Tram, wheel wear, and gage shall be measured and, if necessary, adjusted to allow the vehicle to be safely operated.

(b) Each employer shall keep records pertaining to compliance with paragraph (a) of this section. Records may be kept on forms provided by the employer or by electronic means. The employer shall retain the record of each inspection until the next required inspection is performed. The records shall be made available for inspection and copying during normal business hours by representatives of FRA and States participating under part 212 of this chapter. The records may be kept on the hi-rail vehicle or at a location designated by the employer.

(c) A new hi-rail vehicle shall be equipped with:

(1) An automatic change-of-direction alarm or backup alarm that provides an audible signal at least three seconds long and distinguishable from the surrounding noise; and

(2) An operable 360-degree intermittent warning light or beacon mounted on the outside of the vehicle.

(d)(1) The operator of a hi-rail vehicle shall check the vehicle for compliance with this subpart, prior to using the vehicle at the start of the operator's work shift.

(2) A non-complying condition that cannot be repaired immediately shall be tagged and dated in a manner prescribed by the employer and reported to the designated official.

(3) Non-complying automatic change-of-direction alarms, backup alarms, and 360-degree intermittent warning lights or beacons shall be repaired or replaced as soon as practicable within seven calendar days.

§ 214.525 Towing with on-track roadway maintenance machines or hi-rail vehicles.

(a) When used to tow pushcars or other maintenance-of-way equipment, each on-track roadway maintenance machine or hi-rail vehicle shall be equipped with a towing bar or other coupling device that provides a safe and secure attachment.

(b) An on-track roadway maintenance machine or hi-rail vehicle shall not be used to tow pushcars or other maintenance-of-way equipment if the towing would cause the machine or hi-rail vehicle to exceed the capabilities of its braking system. In determining the limit of the braking system, the employer must consider the track grade (slope), as well as the number and weight of pushcars or other equipment to be towed.

§ 214.527 On-track roadway maintenance machines; inspection for compliance and schedule for repairs.

(a) The operator of an on-track roadway maintenance machine shall check the machine components for compliance with this subpart, prior to using the machine at the start of the operator's work shift.

(b) Any non-complying condition that cannot be repaired immediately shall be tagged and dated in a manner prescribed by the employer and reported to the designated official.

(c) The operation of an on-track roadway maintenance machine with a non-complying condition shall be governed by the following requirements:

(1) An on-track roadway maintenance machine with headlights or work lights that are not in compliance may be operated for a period not exceeding 7 calendar days and only during the period between one-half hour before sunrise and one-half hour after sunset;

(2) A portable horn may be substituted for a non-complying or missing horn for a period not exceeding seven calendar days;

(3) A fire extinguisher readily available for use may temporarily replace a missing, defective or discharged fire extinguisher on a new on-track roadway maintenance machine for a period not exceeding 7 calendar days, pending the permanent replacement or repair of the missing, defective or used fire extinguisher;

(4) Non-complying automatic change-of-direction alarms, backup alarms, and 360-degree intermittent warning lights or beacons shall be repaired or replaced as soon as practicable within 7 calendar days; and

(5) A structurally defective or missing operator's seat shall be replaced or repaired within 24 hours or by the start of the machine's next tour of duty, whichever is later. The machine may be operated for the remainder of the operator's tour of duty if the defective or missing operator's seat does not prevent its safe operation.

§ 214.529 In-service failure of primary braking system.

(a) In the event of a total in-service failure of its primary braking system, an on-track roadway maintenance machine may be operated for the remainder of its tour of duty with the use of a secondary braking system or by coupling to another machine, if such operations may be done safely.

(b) If the total in-service failure of an on-track roadway maintenance machine's primary braking system occurs where other equipment is not available for coupling, the machine may, if it is safe to do so, travel to a clearance or repair point where it shall be placed out of service until repaired.

§ 214.531 Schedule of repairs; general.

Except as provided in §§ 214.527(c)(5), 214.529, and 214.533, an on-track roadway maintenance machine or hi-rail vehicle that does not meet all the requirements of this subpart shall be brought into compliance as soon as practicable within seven calendar days. If repairs are not made within seven calendar days, the on-track roadway maintenance machine or hi-rail vehicle shall be placed out of on-track service.

§ 214.533 Schedule of repairs subject to availability of parts.

(a) The employer shall order a part necessary to repair a non-complying condition on an on-track roadway maintenance machine or a hi-rail vehicle by the end of the next business day following the report of the defect.

(b) When the employer cannot repair a non-complying condition as required by § 214.531 because of the temporary unavailability of a necessary part, the employer shall repair the on-track roadway maintenance machine or hi-rail vehicle within seven calendar days after receiving the necessary part. The employer may continue to use the on-track roadway maintenance machine or hi-rail vehicle with a non-complying condition until receiving the necessary part(s) for repair, subject to the requirements of § 214.503. However, if a non-complying condition is not repaired within 30 days following the report of the defect, the employer shall remove the on-track roadway maintenance machine or hi-rail vehicle from on-track service until it is brought into compliance with this subpart.

(c) If the employer fails to order a part necessary to repair the reported non-complying condition, or if it fails to install an available part within the required seven calendar days, the on-track roadway maintenance machine or hi-rail vehicle shall be removed from on-track service until brought into compliance with this subpart.

(d) Each employer shall maintain records pertaining to compliance with this section. Records may be kept on forms provided by the employer or by electronic means. The employer shall retain each record for at least one year, and the records shall be made available for inspection and copying during normal business hours by representatives of FRA and States participating under part 212 of this chapter. The records may be kept on the on-track roadway maintenance machine or hi-rail vehicle or at a location designated by the employer.

■ 4. Appendix A to part 214 is amended with the addition of the following new entries for subpart D:

Appendix A to Part 214—Schedule of Civil Penalties [1]

* * * * *

Section	Violation	Willful violation
. . . . .		
Subpart D—On-Track Roadway Maintenance Machines and Hi-Rail Vehicles		
214.503 Good-faith challenges; procedures for notification and resolution:		
(a) Failure of employee to notify employer that the machine or vehicle does not comply with this subpart or has a condition inhibiting safe operation		4,000
(b) Roadway worker required to operate machine or vehicle when good-faith challenge not resolved	5,000	10,000
(c) Failure of employer to have or follow written procedures to resolve good-faith challenges	5,000	10,000
214.505 Required environmental control and protection systems for new on-track roadway maintenance machines with enclosed cabs:		
(a) Failure to equip new machines with required systems	5,000	10,000
(b) Failure of new or existing machines to protect employees from exposure to air contaminants	5,000	10,000
(c) Failure of employer to maintain required list of machines or make list available	2,000	4,000
(d) Removal of "designated machine" from list before retired or sold	2,000	4,000
(e) Personal respiratory protective equipment not provided when ventilation system fails	5,000	10,000
(f) Personal respiratory protective equipment fails to meet required standards	5,000	10,000
(g) Other new machines with enclosed cabs not equipped with operable heating and ventilation systems	5,000	10,000
(h) Non-enclosed station not equipped with covering, where feasible	5,000	10,000
214.507 Required safety equipment for new on-track roadway maintenance machines:		
(a)(1)–(5) Failure to equip new machine or provide protection as specified in these paragraphs	5,000	10,000
(a)(6)–(7) Failure to equip new machine with first-aid kit or operative and charged fire extinguisher	2,500	5,000
(b) Position for operator to stand not properly equipped to provide safe and secure position	5,000	10,000
(c) New machine not equipped with accurate speed indicator, as required.	2,500	5,000
(d) As-built light weight not conspicuously displayed on new machine	2,500	5,000
214.509 Required visual illumination and reflective devices for new on-track roadway maintenance machines	2,500	5,000
214.511 Required audible warning devices for new on-track roadway maintenance machines	5,000	10,000
214.513 Retrofitting of existing on-track roadway maintenance machines; general:		
(a) Failure to provide safe and secure position and protection from moving parts 2,000 4,000 inside cab for each roadway worker transported on machine	5,000	10,000
(b) Horn or other audible warning device is missing, inoperable, or has non-compliant triggering mechanism	2,500	5,000
(c) Illumination device or portable light missing, inoperable, improperly secured, or incapable of illuminating track as required	2,500	5,000
214.515 Overhead covers for existing on-track roadway maintenance machines:		
(a) Failure to repair, reinstall, or maintain overhead cover as required	5,000	10,000
(b) Failure to provide written response to operator's request within 60 days	2,000	4,000
214.517 Retrofitting of existing on-track roadway maintenance machines manufactured on or after January 1, 1991:		
(a) Failure to equip machine with change-of-direction alarm or rearward viewing device.	5,000	10,000

[1] A penalty may be assessed against an individual only for a willful violation. The Administrator reserves the right to assess a penalty of up to $22,000 for any violation where circumstances warrant. *See* 49 CFR part 209, appendix A.

Section	Violation	Willful violation
(b) Failure to equip machine with operative heater	5,000	10,000
(c) Failure to display light weight of machine as required	2,500	5,000
(d) Failure to equip machine with reflective material, reflective device, or operable brake lights	5,000	10,000
(e) Failure to install or replace safety glass as required	5,000	10,000
(f) Failure to equip machine with turntable restraint device or warning light as required	5,000	10,000
(g) Failure to equip machine with handholds, handrails, or secure seat or bench position as required	5,000	10,000
214.518 Safe and secure position for riders	5,000	10,000
214.519 Floors, decks, stairs, and ladders for on-track roadway maintenance machines	5,000	10,000
214.521 Flagging equipment for on-track roadway maintenance machines and hi-rail vehicles	2,500	5,000
214.523 Hi-rail vehicles:		
(a) Failure to inspect hi-rail gear annually	5,000	10,000
(b) Failure to maintain inspection record or make record available to FRA	2,000	4,000
(c) Failure to equip new hi-rail vehicle with alarm and light or beacon as required	2,500	5,000
(d)(2) Failure of operator to tag, date or report non-complying condition	2,000	4,000
(d)(3) Failure to repair or replace non-complying alarms, lights or beacons as required	2,500	5,000
214.525 Towing with on-track roadway maintenance machines or hi-rail vehicles	5,000	10,000
214.527 On-track roadway maintenance machines; inspection for compliance and schedule for repairs:		
(a) Failure of operator to check on-track roadway maintenance machine for compliance	2,000	4,000
(b) Failure of oeprator to tag, date, or report noncomplying condition	2,000	4,000
(c)(1)–(4) Failure to meet requirements for operating on-track roadway maintenance machine with non-complying headlights, work lights, horn, fire extinguisher, alarm, warning light, or beacon	2,500	5,000
(c)(5) Failure to repair or replace defective or missing operator's seat within required time period	5,000	10,000
214.529 In-service failure of primary braking system	5,000	10,000
214.531 Schedule of repairs; general	2,500	5,000
214.533 Schedule of repairs subject to availability of parts:		
(a)–(c) Failure to order necessary part(s), make repair(s), or remove on-track roadway maintenance machine or hi-rail vehicle from service as required	2,500	5,000
(d) Failure to maintain record or make record available to FRA	2,000	4,000

Issued in Washington, DC, on July 18, 2003.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 03–18912 Filed 7–25–03; 8:45 am]

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Federal Register

Monday,
July 28, 2003

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 884

Classification of the Breast Lesion Documentation System and Notice of Availability of Guidance Document; Final Rule and Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 884

[Docket No. 2003P–0301]

Medical Devices; Obstetrical and Gynecological Devices; Classification of the Breast Lesion Documentation System

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the breast lesion documentation system into class II (special controls). The special controls that will apply to this device are discussed later in this document. The agency is taking this action in response to a petition submitted under the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Medical Device Amendments of 1976 (the amendments), the Safe Medical Devices Act of 1990, and the Food and Drug Administration Modernization Act of 1997 (FDAMA). The agency is classifying this device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of a guidance document that is the special control for this device.

DATES: This rule is effective August 27, 2003.

FOR FURTHER INFORMATION CONTACT: Colin Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the act (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976, the date of enactment of the amendments, generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the FDA regulations.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification.

On May 28, 2002, FDA received a petition submitted under section 513(f)(2) of the act by Assurance Medical, Inc., through Hogan & Hartson, L.L.P., seeking an evaluation of the automatic class III designation of its BREASTVIEW Visual Mapping System. In accordance with section 513(f)(1) of the act, FDA issued an order on April 30, 2002, automatically classifying the BREASTVIEW Visual Mapping System in class III because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device that was subsequently reclassified into class I or II. After reviewing information submitted in the petition, FDA determined that the BREASTVIEW Visual Mapping System can be classified in class II with the establishment of special controls. This device is intended for use in producing a surface map of the breast as an aid to document palpable breast lesions identified during a clinical breast exam. FDA believes that class II special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

FDA has identified the following risks to health associated specifically with this type of device: (1) Failure to produce an appropriate map, (2) misinterpretation of displayed images, (3) improper use, (4) skin irritation or toxicity, (5) electrical shock, (6) electromagnetic interference, and (7) tissue trauma from mechanical injury. Therefore, in addition to the general controls of the act, the device is subject to a special controls guidance document entitled "Class II Special Controls Guidance Document: Breast Lesion Documentation System."

The class II special controls guidance provides information on how to meet premarket (510(k)) submission requirements for the device, including recommendations for labeling, information on material safety, performance characteristics, bench testing, and software information. FDA believes that adherence to the class II special controls addresses the risks to health identified previously and provides a reasonable assurance of the safety and effectiveness of the device. Following the effective date of this final classification rule, any firm submitting a 510(k) premarket notification for a breast lesion documentation system will need to address the issues covered in the special control guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

Section 510(m) of the act provides that FDA may exempt a class II device from the premarket notification requirement under section 510(k) of the act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of safety and effectiveness and, therefore, the device is not exempt from the premarket notification requirements. The device is used in producing a surface map of the breast as an aid to document palpable breast lesions identified during a clinical breast exam. FDA review of key design features, data sets from bench studies and clinical trials, other relevant performance data, and labeling will ensure that acceptable levels of performance for both safety and effectiveness are addressed before marketing clearance. Thus, persons who intend to market this device must submit to FDA a premarket notification submission containing information on the breast lesion documentation system before marketing the device.

On January 31, 2003, FDA issued an order classifying the BREASTVIEW Visual Mapping System and substantially equivalent devices of this generic type into class II under the generic name, breast lesion documentation system. FDA identifies this generic type of device as a breast lesion documentation system, which is intended for use in producing a surface map of the breast as an aid to document palpable breast lesions identified during a clinical breast exam.

FDA is codifying this device by adding § 884.2990. The order also identifies a special control applicable to this device, a guidance document entitled "Class II Special Controls Guidance Document: Breast Lesion Documentation System" For the convenience of the reader, FDA is also adding § 884.1(e) to inform the reader where to find guidance documents referenced in 21 CFR part 884.

II. Electronic Access

In order to receive the guidance entitled "Class II Special Controls Guidance Document: Breast Lesion Documentation System" via your fax machine, call the CDRH Facts-on-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number (1202) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes the civil money penalty guidance documents package, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of cleared/approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at *http://www.fda.gov/cdrh*.

III. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so it is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. FDA knows of only one manufacturer of this type of device. Classification of these devices from class III to class II will relieve manufacturers of the device of the cost of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by lowering their costs. The agency, therefore, certifies that the final rule will not have a significant impact on a substantial number of small entities. In addition, this final rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate and, therefore, a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act is not required.

V. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VI. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects in 21 CFR Part 884

Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 884 is amended as follows:

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

■ 1. The authority citation for 21 CFR part 884 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 884.1 is amended by adding paragraph (e) to read as follows:

§ 884.1 Scope.

* * * * *

(e) Guidance documents referenced in this part are available on the Internet at *http://www.fda.gov/cdrh/guidance.html*.

■ 3. Section 884.2990 is added to subpart C to read as follows:

§ 884.2990 Breast lesion documentation system.

(a) *Identification.* A breast lesion documentation system is a device for use in producing a surface map of the breast as an aid to document palpable breast lesions identified during a clinical breast examination.

(b) *Classification.* Class II (special controls). The special control is FDA's guidance entitled "Class II Special Controls Guidance Document: Breast Lesion Documentation System." See § 884.1(e) for the availability of this guidance document.

Dated: July 17, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–19029 Filed 7–25–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0299]

Guidance for Industry and FDA Staff; Class II Special Controls Guidance Document: Breast Lesion Documentation System; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Class II Special Controls Guidance Document: Breast Lesion Documentation System." This guidance document describes a means by which breast lesion documentation systems may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to classify the breast lesion documentation system into class II (special controls). This guidance document is immediately in effect as the special control for the breast lesion documentation system, but it remains subject to comment in accordance with the agency's good guidance practices (GGPs).

DATES: Submit written or electronic comments on this guidance at any time.

ADDRESSES: Submit written requests for single copies on a 3.5" diskette of the draft guidance document entitled "Class II Special Controls Guidance Document: Breast Lesion Documentation System" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Colin M. Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180.

SUPPLEMENTARY INFORMATION:

I. Background

This guidance describes FDA recommendations to manufacturers of breast lesion documentation systems, which are devices that are intended for use in producing a surface pressure map of the breast as an aid to document palpable breast lesions identified during a clinical breast exam. The guidance details FDA's recommendations about software, materials, bench testing, and performance characteristics of these devices.

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule classifying the breast lesion documentation system into class II (special controls) under section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(2)). This guidance document will serve as the special control for the breast lesion documentation system. Following the effective date of the final classification rule any firm submitting a 510(k) premarket notification for a breast lesion documentation system will need to address the issues covered in the special control guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act (21 U.S.C. 360(k)) for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification. Because of the timeframes established by section 513(f)(2) of the act, FDA has determined, under § 10.115(g)(2) (21 CFR 10.115(g)(2)), that it is not feasible to allow for public participation before issuing this guidance as a final guidance document. Therefore, FDA is issuing this guidance document as a level 1 guidance document that is immediately in effect. FDA will consider any comments that are received in response to this notice to determine whether to amend the guidance document.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on breast lesion documentation systems. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

To receive "Class II Special Controls Guidance Document: Breast Lesion Documentation System" by fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1202) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of cleared or approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB control number 0910–0120). The labeling provisions addressed in the guidance have been approved by OMB under the PRA under OMB control number 0910–0485.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 17, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–19028 Filed 7–25–03; 8:45 am]

BILLING CODE 4160–01–S

Federal Register

Monday,
July 28, 2003

Part IV

Department of Education

34 CFR Part 99
Family Educational Rights and Privacy Act; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 99

RIN 1855–AA00

Family Educational Rights and Privacy Act

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend 34 CFR part 99 to implement the Department's interpretation of the Family Educational Rights and Privacy Act (FERPA) identified through administrative experience as necessary for proper program operation. These regulations would provide general guidelines for accepting "signed and dated written consent" under FERPA in electronic format.

DATES: We must receive your comments on or before September 26, 2003.

ADDRESSES: Address all comments about these proposed regulations to LeRoy Rooker, U.S. Department of Education, 400 Maryland Avenue, SW., room 2W119, Washington, DC 20202–4605. If you prefer to send your comments through the internet, use the following address: *FERPA.Comments@ED.Gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Wolan, U.S. Department of Education, 400 Maryland Avenue, SW., room 2W115, Washington, DC 20202–4605. Telephone: (202) 260–3887.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed regulations. We also invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 2W115, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Background

The Department has developed these proposed regulations in accordance with its "Principles for Regulating," which are intended to ensure that the Department regulates in the most flexible, equitable, and least burdensome way possible. The Secretary proposes these regulations and believes they are necessary to implement the law and give the greatest flexibility to local governments and schools. In addition, these regulations minimize burden while protecting the rights of parents and students.

Significant Proposed Regulations

The following is a summary of the regulatory provisions the Secretary proposes. These provisions interpret statutory text. The Secretary is not authorized to change statutory requirements. Commenters are asked to direct their comments to the regulatory provisions that would implement or interpret the statute.

Statute: FERPA provides that an agency or institution may not have a policy or practice of disclosing personally identifiable information from education records without the "written consent" of the parent or eligible student, subject to specified exceptions. 20 U.S.C. 1232g(b)(1).

Current Regulations: Regulations codified at 34 CFR 99.30 provide that written consent must be "signed and dated" and must specify the records to be disclosed, the purpose of the disclosure, and the party or class of parties to whom the disclosure may be made.

Proposed Regulations: Proposed § 99.30(d) provides general guidelines for educational agencies and institutions that choose to meet the requirements of § 99.30 with records and signatures in electronic format.

Reasons: The Department has received numerous inquiries whether some form of electronic consent and signature, including e-mail, satisfies FERPS's written consent requirement.

The requirements of a valid signature, including various forms of electronic signature, are generally established under State rather than Federal law. However, Congress has enacted at least two Federal statutes to encourage the use of electronic signatures and records. The Government Paperwork Elimination Act (GPEA), Pub. L. 105–277 (effective October 21, 1998) applies to filing forms electronically with Federal agencies. The Electronic Signatures in Global and National Commerce Act (E-Sign), Pub. L. 106–229 (effective October 1, 2000) validates and establishes general standards for use of electronic signatures and records in interstate commerce that remain in place pending a State's adoption of some form of the Uniform Electronic Transactions Act (UETA).

E-Sign, UETA (where enacted in State law), and the GPEA validate the use of electronic records and signatures in contracts and other legal transactions. The Department concludes that educational agencies and institutions may use electronic records and signatures for written consents governed by FERPA to the extent that the procedures used for creating and storing the electronic records and signatures comply with these proposed regulations.

This discussion, as well as the proposed amendment to § 99.30, constitutes general guidance for the use of electronic communications in meeting certain FERPA requirements. The proposed amendment does not specify desired methods but instead contains general guidelines, adapted from concepts contained in E-Sign, GPEA, and UETA, to help ensure that FERPA's privacy protections are not compromised when records are disclosed pursuant to electronic communications. The Family Policy Compliance Office may issue further guidance concerning electronic records and signatures.

FERPA is technology-neutral with respect to how to meet disclosure and signature requirements. In cases where FERPA requires a signed and dated written consent under § 99.30 for a disclosure, such as issuance of a transcript to an employer, there proposed regulations specify that an agency or institution may accept electronic consents and signatures when reasonable security is provided for the process. In particular, the process must:

- Establish a reasonable way to identify the individual and authenticate the identity of the particular eligible student or parent as the source of the electronic message or record requesting access or consenting to the disclosure of education records (authentication);
- Attribute the electronic signature to the unaltered message or document to prevent repudiation by the sender (attribution);
- Verify the integrity of the signed message or document in transmission and upon receipt (integrity or security of transmission); and
- Document the requester's approval of the text contained in the electronic message.

While agencies and institutions are not limited to any particular technology or method, the Department considers electronic signature standards established under the Federal student loan programs to satisfy the written consent requirement in FERPA. You may view those standards on the Internet at the following Web site: *http://www.ifap.ed.gov/dpcletters/gen0106.html*

Executive Order 12866

1. Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of these regulatory actions.

The potential costs associated with these proposed regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these regulatory actions, we have determined that the benefits would justify the costs.

Summary of Potential Costs and Benefits

FERPA requires an educational agency or institution to obtain "written and signed" consent from a parent or eligible student before the educational agency or institution discloses education records. These proposed regulations would provide additional flexibility for educational institutions and agencies in meeting the existing consent requirement. These proposed regulations would not require that an educational institution or agency participate in the electronic format option.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential Memorandum on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in these proposed regulations clearly stated?
- Do these proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of these proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would these proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 99.30 Under what conditions is prior consent required to disclose information?)
- Could the description of these proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making these proposed regulations easier to understand? If so, how?
- What else could we do to make these proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

The small entities that would be affected by these proposed regulations are small local educational agencies (LEAs) receiving Federal funds from the Department and certain 4- and 2-year colleges and for-profit postsecondary trade and technical schools with small enrollments that receive Federal funds, such as student aid programs under Title IV of the Higher Education Act of 1965. However, these regulations would not have a significant economic impact on the small LEAs affected because these regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. These regulations would provide an electronic format option for records and signatures and impose minimal requirements to ensure that LEAs comply with the educational privacy protection requirements in FERPA.

Paperwork Reduction Act of 1995

These proposed regulations do not contain any information collection requirements.

Intergovernmental Review

These proposed regulations are not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on-GPO Access at: *http://www.access.gpo/gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number does not apply.)

List of Subjects in 34 CFR Part 99

Administrative practice and procedure, Education, Information, Parents, Privacy, Records, Reporting and recordkeeping requirements, Students.

Dated: June 9, 2003.

Rod Paige,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary proposes to amend part 99 of title 34 of the Code of Federal Regulations as follows:

1. The authority citation for part 99 continues to read as follows:

Authority: 20 U.S.C. 1232g, unless otherwise noted.

PART 99—[AMENDED]

2. Section 99.30 is amended by adding a new paragraph (d) to read as follows:

§ 99.30 Under what conditions is prior consent required to disclose information?

* * * * *

(d) "Signed and dated written consent" under this part may include a record and signature in electronic form provided the educational agency or institution follows a process to—

(1) Identify the individual and authenticate the identity of the individual requesting disclosure of education records;

(2) Attribute the signature to the consent;

(3) Secure and verify the integrity of the consent in transmission and upon receipt; and

(4) Document and record the signed message.

[FR Doc. 03–19082 Filed 7–25–03; 8:45 am]

BILLING CODE 4000–01–M



Federal Register

Monday,
July 28, 2003

Part V

Department of the Interior

Fish and Wildlife Service

Fiscal Year 2003 Tribal Landowner Incentive Program and Tribal Wildlife Grants; Request for Grant Proposals and Final Policy and Implementation Guidelines; Notice

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 1018–AI59

Fiscal Year 2003 Tribal Landowner Incentive Program; Request for Grant Proposals and Final Policy and Implementation Guidelines

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of request for proposals; final policy, and implementation guidelines.

SUMMARY: We, the Fish and Wildlife Service (Service) are soliciting project proposals for Federal assistance under the Tribal Landowner Incentive Program (TLIP). This document describes how you can apply for funding under the TLIP and how we will determine which project proposals will be funded. The Department of the Interior and Related Agencies Appropriations Act of 2002 allocated $39,740,000 from the Land and Water Conservation Fund for conservation grants to States, the District of Columbia, Puerto Rico, Guam, the United States Virgin Islands, the Northern Mariana Islands, American Samoa, and Tribes under a Landowner Incentive Program. This notice sets forth guidance for the dissemination of $3,974,000 which is the amount designated for TLIP.

DATES: Project proposals must be received by the appropriate Regional Office (*see* Table 1 in **ADDRESSES**) no later than September 11, 2003.

ADDRESSES: For information regarding collection requirements, applicants should contact the Native American Liaison in the Service's Regional Office for the State in which the proposed project would occur. The contact information for each Regional Office is listed in Table 1 below. Information on the TLIP is also available from the U.S. Fish and Wildlife Service, Office of the Native American Liaison, 1849 C Street, NW., Mail Stop 3251, Washington, DC 20240, and electronically at *http://grants.fws.gov/tribal.html*.

Project proposals should be submitted to the Service's Regional Office for the State in which the proposed project would occur (*see* Table 1 under this section). You must submit one original and two copies of the complete proposal. We will not accept facsimile project proposals.

TABLE 1.—WHERE TO SEND PROJECT PROPOSALS AND LIST OF REGIONAL CONTACTS

Service region	States where the project will occur	Where to send your project proposal	Regional Native American liaison and phone No.
Region 1	Hawaii, Idaho, Oregon, Washington, Nevada, and California.	Regional Director, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, OR 97232–4181.	Scott L. Aikin (503) 231–6123.
Region 2	Arizona, New Mexico, Oklahoma, and Texas	Regional Director, U.S. Fish and Wildlife Service, 500 Gold Avenue, SW, P.O. Box 1306, Albuquerque, NM 87103–1306.	John Antonio (505) 248–6810.
Region 3	Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.	Regional Director, U.S. Fish and Wildlife Service, 1 Federal Drive, Fort Snelling, MN 55111.	John Leonard (612) 713–5108.
Region 4	Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.	Regional Director, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Rm. 410, Atlanta, GA 30345.	James D. Brown (404) 679–7125.
Region 5	Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.	Regional Director, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589.	D.J. Monette (413) 253–8662.
Region 6	Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.	Regional Director, U.S. Fish and Wildlife Service, PO Box 25486, Denver Federal Center, Denver, CO 80225–0486.	David Redhorse (303) 236–7905.
Region 7	Alaska	Regional Director, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503–6199.	Tony DeGange (907) 786–3492.

FOR FURTHER INFORMATION CONTACT: For further information, contact the Native American Liaison in the appropriate Regional Office (*see* Table 1 under **ADDRESSES**) or Patrick Durham, Office of the Native American Liaison, U.S. Fish and Wildlife Service, 1849 C Street, Mail Stop 3012 MIB, Washington, DC 20240, 202/208–4133.

SUPPLEMENTARY INFORMATION:

I. Request for Proposals

The Service invites submission of grant proposals from federally recognized Indian tribal governments (including Alaska Native Villages) for the protection and management of habitat to benefit federally listed, proposed, or candidate species, or other at-risk species. This program supports the efforts of tribal governments in programs that develop or augment the capacity to manage, conserve, or protect fish and wildlife species of concern through the provision of funding and technical support.

II. Definitions

The following definitions apply:

1. *At-Risk Species*—Any plant or animal species recognized as a species of conservation concern, such as species listed or identified by a State or a tribe.

2. *Biological Opinion*—Any document that includes: (1) The opinion of the Fish and Wildlife Service or the National Marine Fisheries Service as to whether or not a Federal action is likely to jeopardize the continued existence of listed species, or result in the destruction or adverse modification of designated critical habitat; (2) a summary of the information on which the opinion is based; and (3) a detailed discussion of the effects of the action on listed species or designated critical habitat under the provisions of the Endangered Species Act.

3. *Candidate Species*—Plant and animal taxa considered for possible addition to the List of Endangered and Threatened Species.

4. *Conservation Recommendation*—The Fish and Wildlife Service's non-binding suggestions resulting from formal or informal consultation, under the Endangered Species Act, that: (1) Identify discretionary measures a Federal agency can take to minimize or avoid the adverse effects of a proposed action on listed or candidate species, or designated critical habitat; (2) identify studies, monitoring, or research to develop new information on listed or candidate species, or designated critical habitat; and (3) include suggestions on how an agency can assist species conservation as part of their action and in furtherance of its authorities under section 7(a)(1) of the Endangered Species Act.

5. *Habitat*—The area that provides direct support for a given species, population, or community. It includes all environmental features that comprise an area such as air quality, water quality, vegetation and soil characteristics, and water supply.

6. *Listed Species*—Any species of fish, wildlife, or plant that has been determined to be endangered or threatened under section 4 of the Endangered Species Act.

7. *Mitigation*—Activities carried out under National Environmental Policy Act regulations, for the purpose of moderating, reducing, or alleviating the impacts of a proposed activity, including (a) avoiding the impact by not taking a certain action; (b) minimizing impacts by limiting the degree or magnitude of the action; (c) rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (d) reducing or eliminating the impact over time by undertaking preservation and maintenance operations during the life of the action; and (e) compensating for the impact by replacing or providing substitute resources or environments.

8. *Proposed Species*—Any species of fish, wildlife, or plant that is proposed in the **Federal Register** to be listed under Section 4 of the Endangered Species Act.

9. *Tribal Lands*—Lands held by the United States in trust for a tribe or an individual Indian; or lands legally owned in fee simple by a tribe or an individual Indian that are subject to Federal restrictions against alienation or encumbrance. Also lands for which a tribe or an individual Indian retained specific right-of-way or uses as defined by treaty or other binding agreement (including Alaska Native Corporation lands).

III. Background

The Department of the Interior and Related Agencies Appropriations Act of 2002 allocated $39,740,000 from the Land and Water Conservation Fund for conservation grants to States, the District of Columbia, Puerto Rico, Guam, the United States Virgin Islands, the Northern Mariana Islands, American Samoa, and Tribes under the Landowner Incentive Program. The Service herein provides the implementation guidance for the tribal component of the program.

In recent years, natural resource managers have increasingly recognized that private lands play a pivotal role in linking or providing important habitats for fish, wildlife, and plant species. To protect and enhance these habitats through incentives for private landowners, Congress appropriated $39,740,000 for the Service to administer a new Landowner Incentive Program (LIP) for States and tribes. The Service will award grants for actions and activities that protect and restore habitats that benefit federally listed, proposed, or candidate species, or other at-risk species on private lands. A primary objective of LIP is to establish, or supplement existing, landowner incentive programs that provide technical and financial assistance, including habitat protection and restoration, to private landowners for the protection and management of habitat to benefit federally listed, proposed, or candidate species, or other at-risk species on private lands as stated in the appropriations language. LIP complements other Federal private lands conservation programs that focus on conservation of habitat.

The Service is providing guidance to the public and, particularly, to federally recognized tribes, in the administration of the $3,974,000 allocated for TLIP. This program will provide conservation monies to federally recognized tribes for actions and activities that protect and restore habitats that benefit federally listed, proposed, or candidate species, or other at-risk species on tribal lands. TLIP was created because of the unique relationship between the Federal Government and tribes and because tribal lands are not private lands and would not be eligible for funding under a State-administered LIP with a private lands grant distribution system. Because the tribes directly administer the funds rather than distribute them further to individual landowners, the criteria used in evaluating program proposals differ to some extent from those used in the LIP. The results of both the LIP and TLIP would be similar in effect, because both encourage voluntary conservation of natural resources. A series of questions and answers follows and describes the guidelines in some detail.

IV. Implementation Guidelines

A. Eligibility

1. Who May Participate in the TLIP?

Federally recognized tribes in all parts of the United States, including: federally recognized tribes, pueblos, rancherias, and Alaska native villages or traditional councils as defined by the Alaska Native Claims Settlement Act.

2. Are State-Recognized Tribes or Petitioning Tribes Eligible To Receive Grants Under This Program?

No. Only federally recognized tribes are eligible to receive grants under this program. Federally recognized tribes are listed in the **Federal Register** (67 FR 46238; July 12, 2002).

3. Can Tribal Organizations or Other Entities (Including Individual Indian Allottees) Receive Grants Under This Program?

No. However, organizations or entities may participate as subgrantees or contractors to federally recognized tribes.

4. What Process Will the Service Use To Solicit and Receive Proposals for Funding?

The Service will request proposals through a **Federal Register** notice, direct contact, and other forms of outreach to eligible applicants. The Service's Regional Directors will receive all proposals.

5. Who Will Coordinate the Scoring of Grant Application Submissions?

The Regional Native American Liaisons of the Service will coordinate the process to screen proposals to ensure that they are complete and to score them according to nationally uniform criteria. Tribes are encouraged to contact the Native American Liaison in the appropriate Regional Office identified in Table 1 under **ADDRESSES** for additional assistance in submitting proposals.

6. How Will the Various Grant Application Submissions Be Reviewed for Funding?

A national panel will review regionally ranked proposals for recommendations to the Director of the Service (Director).

7. Who Will Serve as the National Review Panel?

The Regional Native American Liaisons will serve on the panel in addition to other Service and other Federal agency personnel, as appropriate, and as may be identified by the Director.

8. Will Tribal Representatives Be Involved in Reviewing or Ranking Proposals?

No, only Federal employees will review and rank proposals in this initial year.

9. Who Will Make the Final Determination for Grant Approval?

The Director will make the final determination for grant award.

10. How Will the Tribes Be Notified Whether or Not They Have Been Awarded Grants?

Applicants will be notified by the Director through the Regional Native American Liaison as to whether or not they have been awarded grants.

B. Application Requirements

1. Is TLIP Exempt From Federal Grant Program Compliance?

No, the TLIP program must comply with all Federal grant program compliance requirements as specified in 43 CFR part 12; OMB Circulars A–133, A–102, and A–87; and Service Manual Chapters 522 FW1 and 523 FW1, except where specifically exempted. Tribal grantees are responsible for ensuring that subgrantees and contractors adhere to these requirements.

2. What Must Proposals Include for Participation in TLIP?

Proposals must include a cover letter, program summary, program narrative, budget narrative, a completed Standard Form 424 Application for Federal Assistance (SF–424), and tribal resolution of support as described herein.

—A *cover letter* briefly states the main features of the proposed program.
—A *program summary* describes, in one-half page, the type of activity that would take place if the Service funds the proposal.
—A *program narrative* clearly identifies the problems that the proposal will correct or help solve for the protection and management of habitat to benefit federally listed, proposed, or candidate species, or other at-risk species on tribal lands, and the expected results or benefits. It must contain a needs assessment, objectives, timeline, methodology, geographic location (with maps), monitoring plan, and identification of clear, obtainable, and quantifiable goals and performance measures that will help achieve the management goals and objectives of the TLIP and relevant Service and tribal performance goals. The relevant Service goals are Goal 1 Sustainability of Fish and Wildlife Populations, including Migratory Bird Conservation (Goal 1.1), Imperiled Species (Goal 1.2), Interjurisdictional Fish (Goal 1.3), Marine Mammal Management (Goal 1.4), Species of International Concern (Goal 1.5), and Invasive Species (Goal 1.6); Goal 2, Habitat Conservation including; Habitat Conservation of Service Lands (Goal 2.3); and Mission Goal 4, Partnerships in Natural Resources, including Tribal Governments (Goal 4.1) all of which can be found in the Service's Long-Term Strategic Plan for 2000 to 2005 at *http://planning.fws.gov/USFWStrategicPlanv3.pdf*. Related Service planning and results can be found at *http://planning.fws.gov/*.
—A *budget narrative* clearly justifies all proposed costs and indicates that the grantee will provide adequate management systems for fiscal and contractual accountability, including annual monitoring and evaluation of progress toward desired project objectives, goals, and performance measures. It should include discussion of direct cost items such as salaries, equipment, consultant services, subcontracts, and travel, as well as program matching or cost sharing information. If some partners will provide in-kind matching, they must be listed in the grant proposal with a letter of commitment from each. Applicants may cover new project administrative costs and the Tribal Indirect Cost Rate, but they cannot include pre-existing administrative costs.
—An *SF–424* form will be included with the Grant Application Package and is available on the internet at *http://training.fws.gov/fedaid/toolkit/sf424-f.pdf*.
—A *resolution of support* from the appropriate tribal governing body or from an individual with delegated tribal authority stating support for the proposal. If a resolution of support is not submitted with the proposal, one will be required prior to awarding the grant.

3. Where Can Applicants Obtain a Grant Proposal Package?

Applicants can obtain a grant proposal package from the Native American Liaison in the appropriate Regional Office (*see* Table 1 under **ADDRESSES**) or at the Service's Grants Web site *http://grants.fws.gov/tribal.html*.

4. Are Matching Funds Required?

Yes, the Service requires a minimum of 25 percent non-Federal matching funds for participation in this program. This is the same matching contribution requirement States must make under the LIP.

5. Are In-Kind Contributions Eligible as Matching Funds?

Yes, in-kind contributions provided by the tribe or a third party may be counted towards the required 25 percent non-federal matching requirement. Any in-kind contributions in excess of the required 25 percent may be used as a match to improve the potential ranking of a proposal. The Federal Government has defined "in-kind" as non-cash contributions made by the tribe. In-kind contributions must be necessary and reasonable for carrying out the project, and must represent the same value that the Service would have paid for similar services or property if purchased on the open market. Allowable in-kind contributions are defined in 43 CFR 12.64. Additional information can be found at *http://training.fws.gov/fedaid/toolkit/inkind.pdf*.

6. Can a Tribe Submit More Than One Grant Proposal?

Tribes are encouraged to submit a single comprehensive grant proposal but multiple proposals are allowable.

7. What Maximum Level of Project Funding Will Be Considered Under TLIP?

The Service will award grants up to a maximum of $200,000. If more than one proposal is submitted by any one tribe, no more than $200,000 total can be awarded to that tribe. This amount is approximately 5 percent of the annual appropriation, and it allows for grants that are large enough to make a significant impact and be widely distributed.

8. What Minimum Level of Project Funding Will Be Considered Under TLIP?

There is no proposal or grant award minimum, but the Service is concerned that an excess number of small grants could result in an undue administrative burden.

C. Ranking Criteria

What Ranking Criteria Will the Service Use?

The Service will score proposals based on the following criteria: the Proposed Guidelines we assigned (67 FR 79131; December 27, 2002), specific point values to these criteria for the purpose of gaining public comment. Based on public comments and our understanding of Congressional intent in creating this program, the following criteria were assigned relative values from 1 (lowest) to 5 (highest).

Benefit: What are the probable significant outcomes to protect and restore habitats that benefit federally listed, proposed, or candidate species, or other at-risk species on tribal lands if this program is successfully completed? The Service requires that the tribe articulate how the benefits of its proposal support the goals and objectives of the TLIP and Service and tribal Performance Goals in its proposal narratives. *Relative Value:* 5.

Performance Measures: To what extent does the proposal provide obtainable and quantifiable performance measures and means to monitor, evaluate, and report on these measures compared to an initial baseline? The measures should be specific and clear and should provide demonstrable benefits to the target species of the action. These actions must support the goals and objectives of the TLIP, the Service, and the tribe. *Relative Value:* 4.

Work Plan: Are the program activities and objectives well-designed and achievable? *Relative Value:* 3.

Budget: Are all major budget items justified in relation to the program objectives and clearly explained in the narrative description? *Relative Value:* 3.

Capacity Building: To what extent does the program increase the grantee's capacity to implement actions and activities that protect and restore habitats that benefit federally listed, proposed, or candidate species, or other at-risk species on tribal lands? *Relative Value:* 3.

Contributions and Partnerships: To what extent does the applicant display commitment to the project proposal through in-kind contribution or matching funds and to what extent does it incorporate contributions from other non-Federal partners in the form of either cash or in-kind services? *Relative Value:* 3.

D. TLIP Operations and Management

1. Can Grantees Use TLIP Funds To Cover Costs of Environmental Review, Habitat Evaluation, Permit Review (*e.g.*, Section 404), and Other Environmental Compliance Activities Associated With a TLIP Project or Program?

Yes, the TLIP funds can cover these activities, provided they are directly related to the TLIP project or program being funded and are included in the budget and discussed in the program and budget narratives.

2. What Activities Are Eligible Under TLIP?

Eligible programs include those that improve, preserve, or maintain habitat for endangered, threatened, candidate, or other at-risk species. Examples of the types of projects within identified tribal programs that the Service may fund include using prescribed burning to restore grasslands that support imperiled species, fencing to exclude animals from sensitive habitats, or planting native vegetation to restore degraded habitat. Tribes may implement TLIP projects on a variety of lands, including reservations, individual allotments, fee-lands, and village corporation and regional corporation lands in Alaska. Only activities that result in the protection and management of habitat that benefit listed, proposed, candidate, or other at-risk species are eligible for funding.

3. Are Any Specific Activities Not Allowable Under the Guidance of TLIP?

A proposal cannot include activities required to comply with a Biological Opinion under the Endangered Species Act or include activities required to comply with a permit (*e.g.*, mitigation responsibilities). However, a proposal can include activities that implement conservation recommendations or to cover the costs of environmental review, habitat evaluation, permit review, and other environmental compliance activities that are required because of the TLIP project, provided they are included in the budget and discussed in the Program and Budget Narratives. Research projects or archeological projects are not eligible.

4. What Species Are Considered Endangered, Threatened, Candidate, or At-Risk?

Those species federally listed as endangered or threatened under the Endangered Species Act of 1973, as amended, or species proposed or candidates for such listing, or at-risk species (*e.g.*, species recognized as a species of conservation concern, such as species listed or identified by a State or a tribe).

5. Does the Term "Private Lands" in the Landowner Incentive Program Appropriation Language Exclude Tribal Trust Lands From Participation in TLIP?

No, tribal trust lands are not "public lands." For the purposes of inclusion under TLIP, federally recognized tribes are considered landowners and are eligible.

6. Is the TLIP Program a Continuous Revenue Source for Tribal Wildlife Programs?

No, there is no authorization for appropriation of funds beyond FY 2003. Funds appropriated in FY 2003 are available until spent.

7. Can the Grantee Hold TLIP Funds in an Interest-Bearing Account?

Funds can be held in an interest-bearing account, although any interest earned in excess of $100 must be returned to the fiscally responsible Federal agency (43 CFR 12.64).

E. Grant Award Procedures

1. What Additional Information Must Be Provided to the Service by the Grantees Once Awards Are Announced?

Once the Director notifies grantees that their proposal was selected for funding, the recipient must submit a grant agreement and attachments as required by Federal regulations. As with our other Federal programs, TLIP agreements must comply with 43 CFR part 12, the National Environmental Policy Act, Section 7 of the Endangered Species Act, the National Historic Preservation Act, and all other applicable Federal laws and regulations. This grant program is also subject to provisions of Office of Management and Budget Circulars No. A–87, A–102, and A–133 (*see http://www.whitehouse.gov/omb/circulars*).

2. Once Grants Are Awarded, Who Should the Grantee Consider as the Lead Contact Person?

Once grants have been awarded, the grantee should consider the appropriate Regional Native American Liaison as the lead contact person for all matters pertaining to the particular award. Financial matters will be delegated to the Division of Federal Aid through the Native American Liaison.

3. When Will the Service Award TLIP Grants?

Once the Service has reviewed and ranked all eligible TLIP grant proposals, the Director will make his final decision within 30 days of receiving the recommendations of the national review panel.

4. How Will Funds Be Disbursed Once the Service Has Awarded TLIP Grants?

Subsequent to funding approval, grant funds are electronically provided through the Department of Health and Human Services' SMARTLINK payment management system. Through this electronic funds transfer (EFT), grantees will be able to receive funds as needed. Some of the tribal grantees may not be EFT compliant. In order for us to ensure optimal service to potential grantees within the current Federal Aid process, grantees will need to obtain EFT capabilities compatible with the

SMARTLINK payment management system. Grantees may request an advance of no more than 25 percent of the total grant if the advance is documented in the grant agreement.

5. What Reporting Requirements Must Tribes Meet Once Funds Are Obligated Under a TLIP Grant Agreement?

Quarterly Financial Status Reports (SF–272) which can be found at *http://www.whitehouse.gov/omb/grants/sf272.pdf*, must be submitted electronically. A final Financial Status Report (SF–269) which can be found at *http://www.whitehouse.gov/omb/grants/sf269.pdf*, will be due to the Regional Office within 90 days of the grant agreement ending date. An annual performance report—including a list of project accomplishments relative to those which were planned in the grant agreement—will also be required within 90 days of the end of each 12-month period. The effectiveness of each tribe's program, as reported in the annual performance reports, will be an important factor considered during the grant award selection process in subsequent years.

6. Is There a Limitation on the Amount of Funds That May Be Used for Administrative Costs?

Yes, no more than 12 percent of program funds can be used for staff and related administrative costs. If more than 12 percent is necessary to properly and efficiently operate the program, a waiver of this limitation may be provided by the Regional Director based on a written justification explaining why such a waiver is necessary.

V. Procedural Requirements

A. Regulatory Planning and Review (Executive Order 12866)

This policy document identifies proposed eligibility criteria and selection factors that may be used to award grants under TLIP. The Service developed this policy to ensure consistent and adequate evaluation of grant proposals that are voluntarily submitted and to help prospective applicants understand how the Service will award grants. According to Executive Order 12866, this policy document is significant and has been reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below.

1. TLIP will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or State or local communities. The Department of the Interior and Related Agencies Appropriations Act for Fiscal Year (FY) 2002 allowed the Secretary to create TLIP. In addition, grants that are funded will generate other, secondary benefits, including benefits to natural systems (*e.g.*, air, water) and local economies. All of these benefits are widely distributed and are not likely to be significant in any single location. It is likely that some residents where projects are initiated will experience some level of benefit, but quantifying these effects at this time is not possible. We do not expect the sum of all the benefits from this program, however, to have an annual effect on the economy of $100 million or more.

2. We do not believe the TLIP would create inconsistencies with other agencies' actions. Congress has given the Service the responsibility to administer this program.

3. As a new grant program, the TLIP would not materially alter the budgetary impact of entitlements, user fees, loan programs, or the rights and obligations of their recipients. This policy document establishes a new grant program, authorized by Pub. L. 107–63, which should make greater resources available to applicants. The submission of grant proposals is completely voluntary, but necessary to receive benefits. When an applicant decides to submit a grant proposal, the proposed eligibility criteria and selection factors identified in this policy can be construed as requirements placed on the awarding of the grants. Additionally, we will place further requirements on grantees who are selected to receive funding under the TLIP program in order to obtain and retain the benefit they are seeking. These requirements include specific Federal financial management and reporting requirements as well as specific habitat improvements or other management activities described in the applicant's grant proposal.

4. OMB has determined that this policy raises novel legal or policy issues, and, as a result, this document has undergone OMB review.

B. Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, as amended, whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*e.g.*, small businesses, small organizations, and small government jurisdictions). Indian tribes are not considered to be small entities for purposes of the Act and, consequently, no regulatory flexibility analysis has been done.

C. Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996

This implementation guidance is not considered a major rule under the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 804(2)) because it does not have an annual effect on the economy of $100 million or more. The yearly amount of TLIP program funds is limited to $3,974,000.

This implementation guidance will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Actions under this implementation guidance will distribute Federal funds to Indian tribal governments and tribal entities for purposes consistent with activities similar to other Service programs designed to enable landowners to protect and conserve species as may be protected under the Endangered Species Act and the habitat that supports such species.

This implementation guidance does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This implementation guidance would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This guidance will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532).

E. Takings Implication Assessment (Executive Order 12630)

This implementation guidance does not have significant "takings" implications. This implementation guidance does not pertain to "taking" of private property interests, and its impact on private property would be an incentive that is totally landowner driven.

F. Executive Order 13211—Energy Effects

On May 18, 2001, the President issued Executive Order 13211, which speaks to regulations that significantly affect energy supply, distribution, and use. The Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This implementation guidance is not expected to significantly affect energy supplies, distribution, or use. Therefore, no Statement of Energy Effects has been prepared.

G. Executive Order 13132—Federalism

This implementation guidance does not have significant Federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights, and responsibilities of States.

H. Civil Justice Reform (Executive Order 12988)

This implementation guidance does not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of the Executive Order 12988.

I. National Environmental Policy Act (NEPA)

This implementation guidance does not constitute a Federal action significantly affecting the quality of the human environment. The Service has determined that the issuance of the implementation guidance is categorically excluded under the Department of the Interior's NEPA procedures in 516 DM 2, Appendix 1, and 516 DM 6, Appendix 1. The Service will be responsible for ensuring that grants funded through TLIP are in compliance with NEPA.

J. Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

Pursuant to Executive Order 13175 of November 6, 2000, "Consultation and Coordination with Indian Tribal Governments," we have committed to consulting with tribal representatives in the finalization of the implementation guidance for the TLIP. We have evaluated any potential effects on federally recognized Indian tribes and have determined that there are no potential adverse effects. This guidance expands tribal participation in Service programs and allows for opportunities for tribal wildlife management and conservation initiatives across Indian Country. We will continue to consult with tribal governments and tribal entities as a part of the policymaking process, and beyond in furthering our mutual goals for the TLIP.

K. Paperwork Reduction Act (44 U.S.C. 3501)

The information collection requirements of this program will be largely met through the Federal Aid Grants Application Booklet. Federal Aid has OMB approval for this information collection under Control Number 1018–1019. This approval applies to grants managed by the Division of Federal Aid, even if these grants are for other Divisions of the Service. We are collecting this information relevant to the eligibility, substantiality, relative value, and budget information from applicants in order to make awards of grants under these programs. We are collecting financial and performance information to track costs and accomplishments of these grant programs. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

VI. Summary of Comments and Recommendations

On December 27, 2002, the Fish and Wildlife Service (Service) published the proposed guidelines for the Tribal Wildlife Grant program (TLIP) with an open comment period of 1 month (67 FR 79133). On January 27, 2003, the Service had received a total of 41 comment submissions. Thirty tribes, 4 tribal organizations, 2 private enterprises, 1 organization, and 4 Federal entities provided suggestions for these proposed guidelines. These comments are addressed below.

In *part I,. Background*, we asked several questions of particular concern to the Service regarding a limit on the amount of funding to be made available to any one tribe, our adherence to Congressional intent in the proposed guidelines, and what type of entities were eligible to participate in the TLIP. The responses for comments are summarized in the corresponding sections below.

In *part II., Proposed Implementation Guidelines, section A., Eligibility (1–3)*, we proposed a competitive program in which only federally recognized tribes would be able to apply for funding, but stipulated that tribal organizations and other non-Federal entities may enter into grant agreements as contractors or subgrantees to federally recognized tribes. It was also proposed that non-federally recognized tribes be excluded from submitting proposals.

Seven comments specifically stated that only federally recognized tribes should be eligible to enter into grant agreements, with one asking that the term, "federally recognized tribe" be fully explained by incorporating the inclusion of federally recognized tribes; pueblos; rancherias; Alaska native villages or traditional councils as defined by the Alaska Native Claims Settlement Act; and tribal governing bodies as recognized by the Bureau of Indian Affairs (BIA), such as Indian Reorganization Act councils or tribal entities that have received Self Governance status under the Self Governance Act. No comments advocated for the inclusion of tribes that are not recognized by the Federal Government, although nine noted their agreement with their exclusion from participating in TLIP. Two comments advocated for the inclusion of individual Indian trust land allotment owners as eligible direct participants.

Five comments agreed that tribal organizations may participate as contractors or subgrantees but not as direct applicants to TLIP. Two stated that only federally recognized tribes should be eligible. Three comments advocated for the inclusion of consortia of federally recognized tribes as eligible participants in TLIP as direct applicants.

Response: Congress specified the TLIP is only for federally recognized Indian tribes, which includes Alaskan Native Villages, but Congress did not include tribal organizations or consortia. Tribal organizations, consortia, commissions, or other non-tribal entities are not directly eligible to receive grants, but may participate as subgrantees or contractors to federally recognized Indian tribes. Individual Indian allottees are not eligible grantees through TLIP but are encouraged to work with States and tribes as subgrantees or contractors.

In *part II., Proposed Implementation Guidelines, section A., Eligibility (4)*, it was proposed that the Service would request proposals through a **Federal Register** notice and other forms of outreach and that proposals be received by the respective Regional Directors. One comment suggested that proposals should be ranked and selected for approval at the Regional level, and two others simply agreed with the proposed system.

Response: The delivery of TLIP will be conducted by the Regional Native American Liaisons at the Regional level. The submission of proposals to the Regional Directors is consistent with the Regional delivery process. However, because this is a national program, the national review and screening of proposals is appropriate. The authority to make final decisions on proposals to be funded lies with the Director of the Service.

In *part II., Proposed Implementation Guidelines, section A., Eligibility (5–9)*, the Service proposed that the Native American Liaisons in each Regional Office coordinate the screening and ranking of project proposals on the basis of nationally uniform criteria. A national panel would then review the Regionally-ranked proposals for recommendation to the Director for selection. The proposed panels would be made up of Service and other Federal personnel. The Director will make the final proposal selections on the basis of these recommendations.

Four respondents noted their agreement with nationally uniform ranking criteria, and two favored regional ranking. Three advocated for a geographic or population based component to the selection of proposals.

Response: TLIP is a competitive program for federally recognized Indian tribes regardless of geographic, land, or population based components. All tribes are equally eligible to submit proposals. Therefore, the use of nationally uniform criteria is appropriate for ranking proposals at both the Regional and National levels.

The Service will screen and score proposals in the Regional Offices. A national panel will then make recommendations to the Director based on these outcomes.

The Service examined various possible formulas for selecting proposals based on land area and other factors but was unable to identify any formula that adequately considered the wide variability among tribes, including their land base, population, and distribution across the United States.

Of the comments received on the proposed makeup of the panel, 21 agreed and provided suggestions as to which other Service or other Federal personnel should be involved. One respondent stated that the Regional Native American Liaisons should act in an advisory capacity to the ranking team, and one stated that Regional Native American Liaisons should be excused from ranking Regional proposals. Fourteen submissions advocated for the inclusion of tribal representation in the ranking process; of these, two specifically identified the Native American Fish and Wildlife Society as an appropriate resource to serve this purpose.

Response: The Regional and National panels will consist of Service fish and wildlife professionals and other Federal agency personnel knowledgeable of Native American natural resource issues. The comments received will be considered in the selection of panel members. Regional Native American Liaisons will coordinate the screening and scoring of proposals and will act in an advisory capacity to the Regional panels. They will not participate in the actual screening or scoring of proposals. The Regional Native American Liaisons will serve on the national review panel along with other Service personnel to make recommendations to the Director for selection.

TLIP Proposed Guidelines state that "the Director will make the final determination for grant approval." Six respondents stated their agreement with this language. Three suggested that the national review team be capable of making the final decision on accepting proposals through consensus, and one stated that the Regional Native American Liaisons should rank and award proposals in their respective Regions. In addition to these comments, it was suggested that an appeal process should be included for proposals that are not selected.

Response: Because this is a nationally competitive program, the Secretary's authority is delegated solely to the Director, who will review recommendations and make final selections. Proposals which are not selected will receive information to improve their chances of future selection.

Part II., Proposed Implementation Guidelines, section B., Application Requirements (1), states that TLIP is not exempt from any of the Federal grant program compliance requirements as specified in 43 CFR part 12, OMB Circulars A–102 and A–87, and Service Manual Chapters 522 FW1 and 523 FW1. Two comments addressed this issue, both in agreement, but one called for the inclusion of language that identified the tribe's fiduciary responsibility over contractees.

Response: The language in the proposed notice will be amended to indicate Tribal grantees' responsibility for ensuring that subgrantees and contractors adhere to these requirements.

In *part II., Proposed Implementation Guidelines, section B,. Application Requirements (2)*, general inclusions for proposals in the TLIP program are addressed. They include a Cover Letter, Program Summary, Program Narrative, Budget Narrative, and Resolution of Support. Two general comments on this section were received; one stated approval of the proposed components of the grant proposal, and another noted the necessity of keeping the process as simple as possible to alleviate the administrative burden on the applicant.

Response: Comments noted.

No comments were received on the requirement of a *Cover Letter* or *Program Summary*.

Nine respondents commented on the requirement of a *Program Narrative*. Eight advocated for the inclusion and/or prioritization of tribal goals rather than "relevant Service Performance Goals." Two asked that Service Goals, 1.4, 1.5, 1.6, and Mission Goal in Partnerships 4.1 be included, and one respondent stated that the Service should delete this criterion or incorporate tribal goals.

Response: TLIP funding is to establish, or supplement existing, landowner incentive programs that provide technical and financial assistance, including habitat protection and restoration, to private landowners for the protection and management of habitat to benefit federally listed, proposed, or candidate species, or other at-risk species on private lands as stated in the appropriations language. The care and maintenance of the nation's fish and wildlife resources is dependent on cooperative efforts of partners. The Service's performance goals articulate the importance of tribal partnerships in Mission Goal 4.1 and the broad range of mutually beneficial resource accomplishments that can result from partnership actions. The final guidance has been modified to include Mission Goal 4.1 Tribal Partnerships, and resource-related goals, including 1.1; 1.2; 1.3; 1.4; 1.5; 1.6, Sustainability of Fish and Wildlife Populations *http://planning.fws.gov/tableofcon.html*.

No comments were received on the material under the heading *Budget Narrative*.

Seven comments were submitted regarding the requirement of a *Resolution of Support* from the appropriate tribal governing body that supports the proposed project. One expressly opposed this requirement. Six said that often it is not reasonable to expect a tribal governing body to meet during the open period for submitting grant proposals. Several comments proposed remedies that would allow for a letter of support from the "duly elected leader of the tribe" or the "tribal Chair or Councilperson."

Response: The requirement for a *Resolution of Support* is an assurance that the tribal governing body supports the proposed project and the actions necessary to realize the natural resource benefits identified in the proposal. The Service recognizes that there could be times when a tribal resolution of support for a proposal may not be logistically possible. The Service will amend the requirement to accept a letter or signed endorsement from an individual with delegated tribal authority. If a resolution of support is not submitted with the proposal, one will be required from the tribal governing body prior to the Service's awarding of the grant.

Part II., Proposed Implementation Guidelines, section B., Application Requirements (3), states that the proposal package will be made available through the Service's Regional Native American Liaisons. Two comments pointed out that they would like to be able to download the proposal package from the Internet and one comment noted support for the proposed process.

Response: The Service is required to provide access to application packages through as many sources as available. Therefore, application guidelines and packages for this grant program can be obtained through Regional Native American Liaisons as well as through the Service's Web site at *http://grants.fws.gov/tribal.html*.

Part II., Proposed Implementation Guidelines, section B., Application Requirements (4), states that matching funds are required in the amount of 25 percent derived from non-Federal sources. One respondent stated that tribal support is nonenforceable and could be used as a tool by applicants to unfairly weight their proposals (either unwittingly or intentionally) and that this criterion is not meaningful and should be waived. Fourteen comments asked that the Service eliminate or decrease matching funds requirement and cited the Service Policy on Waivers for tribal governments as justification for doing so. One asked that we implement a provision to waive this criterion for tribes with demonstrated hardship, and three agreed with the 25 percent match.

Response: The Service has identified those costs that are considered allowable as in-kind contributions or matching funds in Service Manual 522 FW 1 and in 43 CFR 12.64. A grantee can provide materials, equipment, or other services as a noncash match for portions of the grantee's matching share. The value of land may be provided, including the land proposed for restoration, enhancement, or management as a non-cash match, provided that the land or associated costs are necessary and reasonable for completing the project. We will keep the match requirement to encourage partnerships and leverage funds whenever possible.

In *part II., Proposed Implementation Guidelines, section B., Application Requirements (5)*, the Service outlines the proposed allowance for in-kind contributions as meeting a matching funds requirement and provides additional information as to how it defines in-kind Contributions. One respondent agreed, and one disagreed, stating that doing so would add no value to a proposal. Three asked that funds derived from Pub. L. 93–638 be considered as allowable for matching funds, in accordance with established BIA protocol.

Response: The Service, recognizes the benefits of partnering with private, local, or State agencies, and wishes to encourage the efforts of those that do provide partnership opportunities for the benefit of fish and wildlife resources. Funds derived from Pub. L. 93–638 can be identified to meet the matching funds requirement.

In *part II., Proposed Implementation Guidelines,.section B., Application Requirements (6)*, the Service indicated that tribes are encouraged to submit a single proposal but may submit additional proposals if all of the funds are not expended. Three comments agreed that one proposal is sufficient long as the tribe can bundle, several projects, with the understanding that portions may be rejected. One stated that a single proposal is a good target but should not exclude multiple proposals outright. Two advocated for multiple proposals and one asked the Service to definitively state whether one or multiple proposals are allowable. A final comment noted that one proposal is reasonable but should not preclude a tribe from participating if it is part of a consortium (if allowed) that has been awarded funds as a subgrantee or contractor.

Response: Tribes are encouraged to submit one proposal, but multiple proposals are allowable.

Part II., Proposed Implementation Guidelines, section B., Application Requirements (7 and 8), recommends no minimum and that a maximum of approximately 5 percent of available funds ($200,000) be implemented. Depending upon the number of proposals submitted and the relative merit of each, some applicants may receive greater amounts. One recommendation stated that a $5,000 minimum be placed on proposals to relieve administrative burden on the Service. Sixteen comments supported 5 percent as a nonbinding target but not as a strict cap. Other comments suggested a 1, 2 or 2.5 percent or a $75,000 cap on proposals. One comment advocated for a cap based on the land base of projects, but did not offer any further explanation. Three disagreed with the proposed 5 percent and advocated for no cap at all. It was also suggested that the Service state clearly if a limit is an actual cap or simply a target. Another agreed that a maximum needs to be established but offered no recommendation.

Response: The Service will award grants up to a maximum of $200,000 per proposal with no more than $200,000 total awarded to any one tribe. There is no proposal or grant award minimum but the Service is concerned that an excess number of small grants could result in an undue administrative burden.

Part II., Proposed Implementation Guidelines, section C., Ranking Criteria offers a proposed weighting system by which the Service can determine a relative score for proposals, including Benefit, Performance Measures, Work Plan, Budget, Capacity Building, Commitment, Partnerships, and Administrative Costs. One general comment on the Ranking Criteria was to make them as close as possible to those of the Service's Landowner Incentive Program (LIP). An additional comment asks that the Service better define what this program's priorities are.

Response: TLIP funds are handled differently from LIP funds because tribal lands are not predominantly private lands and because tribes are inherently different from States. Congress included tribes in the LIP program but did not provide further guidance in accounting for these inherent differences. TLIP accommodates these differences as necessary but is similar to LIP where possible. Ranking criteria will be more clearly defined in the TLIP guidance.

Regarding the *Benefit* of proposals, 13 comments advocated adding emphasis to this criterion. Two agreed, provided tribes are permitted to set their own goals and priorities to determine which species are to benefit. Two respondents stated that tribal priorities should take precedence over the Service's. One comment favored increasing the emphasis on federally listed endangered species (as identified in the Endangered Species Act), and another specifically suggested that no special preference be placed upon them. A final comment stated that preference should be given to tribes with Integrated Resource Management Plans or Natural Resource Management Plans.

Response: The cumulative maximum of 25 points for *Benefit* (0–25) and 20 points for *Performance Measures* (0–20) already places high value on the extent to which the project will benefit fish and wildlife resources. Together these criteria measure value or benefit, for a total score of 30 points. The Service agrees that benefits will be measured against tribal fish and wildlife goals. The Service requires that tribes

articulate how their proposals help support the goals and objectives of the TLIP and Service Performance Goals in their proposal narratives.

By including "activities that protect and restore habitats that benefit federally listed, proposed, or candidate species, or other at-risk species" tribes are provided with discretion to implement projects that benefit species of conservation concern and species of cultural importance. Special emphasis will not be placed on federally listed endangered species as this is not the focus of this grant program.

Under the heading *Performance Measures*, five comments called for an emphasis to this criterion. Two suggested that the Service de-emphasize it. Three comments suggested that tribal goals be included, and three others called for the inclusion of Service Goals, 1.4, 1.5, 1.6, and Mission Goal in Partnerships 4.1.

Response: The Service believes that quantifiable performance measures are an important ranking criterion. This criterion is weighted adequately in the ranking process. Tribes are required to articulate how their proposals help support the goals and objectives of the TLIP and Service and tribal Performance Goals in their proposal narratives in the *Benefit* criterion. Four comments suggested an added emphasis to the *Work Plan* criterion, and one supported the proposed emphasis on the *Budget* criterion.

Response: The Service believes these criteria are adequately emphasized in the ranking process.

Six respondents felt that emphasis should be added to the *Capacity Building* criterion, and one stated further that such projects should be favored in future funding periods. Two asked that the Service remove or de-emphasize this criterion, and two agreed with it as proposed.

Response: The Service believes that this criterion is adequately emphasized. Many tribes have limited capacity to develop and implement programs for the protection and management of habitat to benefit federally listed, proposed, or candidate species, or other at-risk species, and TLIP provides an excellent opportunity to increase their capacity. The Service believes that TLIP can enhance the capacity for all tribes to implement programs for the benefit of fish and wildlife, even tribes with relatively sophisticated fish and wildlife departments.

Under the heading *Commitment*, 17 respondents asked that the Service remove or de-emphasize this criterion, 1 agreed with it and 1 advocated for further emphasis. One final respondent suggested that if this match is a "requirement," we should consider lessening the commitment or waiving it in cases of demonstrated hardship.

Response: The Service is sensitive to the concerns expressed by many of those commenting on the matching requirements for TLIP. However, Congress specifically requires that tribes make a commitment to their projects and provide a match for these funds in order to leverage Federal dollars. The Service specifically set a low match requirement (25 percent) relative to other Federal grant programs to address this. Many grant programs now require a 100 percent match. In addition, the Service will accept a variety of forms of support from the tribes to meet the match requirement, including cash, in-kind support, equipment, and materials.

Eighteen comments on the *Partnerships* criterion ask that the Service remove or de-emphasize this criterion as proposed. One suggested that letters of support should be considered if funds for a match are not available, and one advocated for an allowance for "partnerships" that include non-Federal partners.

Response: Partnerships are an increasingly essential tool in the management of natural resources. The Service believes that tribes developing partnerships with other organizations to implement projects under TLIP should be rewarded in the proposal ranking process. The Service agrees that this criterion should be de-emphasized and has reduced the relative value of this criterion. Tribes are especially encouraged to partner with non-Federal entities in order to better leverage Federal dollars and provide greater benefit to Federal taxpayers. In the final guidance *Partnerships* and *Commitment* criteria have been combined into a new category, *Contributions and Partnerships*.

Five comments asked that the Service remove or de-emphasize the proposed *Administrative Costs* criterion, and two agreed with this criterion as proposed. Four comments advocated for not considering the tribal indirect cost rate as administrative cost, and one suggested that the Service specify an allowable amount for indirect cost rates. One comment suggested a limit on allowable administrative costs. Nine comments advocated for making an allowance for staff or seasonal employees by removing the word "staff" from the proposed language. Two agreed with the proposed emphasis on Administrative Costs.

Response: Administrative Costs is eliminated from the ranking criteria. We have, however, limited the total amount of the grant that can be used for administrative costs to 12 percent unless a waiver is granted by the Regional Director.

Under *Part II., Proposed Implementation Guidelines, section D., TLIP Operations and Management (1)*, proposes that TLIP funds can be used to cover the costs of environmental review, habitat evaluation, permit review, and other environmental compliance activities associated with a TLIP project, provided they are included in the budget and discussed in the Program and Budget Narratives. Two comments agreed with this language, and one asked that the allowable activities further specify that TLIP funds may be used to address the costs of adhering to tribal environmental compliance activities.

The Service concurs and does not specify at what level of environmental compliance (Federal, State, tribal, etc.) TLIP funds can be used, so long as they are directly related to the TLIP project or program being funded and are included in the budget and discussed in the program and budget narratives.

Part II., Proposed Implementation Guidelines, section D., TLIP Operations and Management (2), broadly defines the activities that are eligible for funding under TLIP. Three comments called for greater detail in definitions and explanation of the intent of TLIP and provided suggested language to better define tribal lands, wildlife, conservation, Tribal Fish and Game department or Tribal Fish and Wildlife department and wildlife restoration project. One other comment called for the allowance of research projects, and another advocated for the inclusion of archeological surveys by Tribal Historic Preservation Officers.

Response: Congress specified that TLIP grants are to be used to establish or supplement programs that provide technical and financial assistance, including habitat protection and restoration, to tribes for the protection and management of habitat to benefit federally listed, proposed, or candidate species, or other at-risk species on private lands. The Service believes that tribes may implement TLIP projects on a variety of lands in "Indian Country," including reservations, individual allotments, fee-lands, and village corporation and regional corporation lands in Alaska. Only activities that result in the protection and management of habitat and benefit listed, proposed, candidate, or other at-risk species are eligible for funding. Research projects or archeological projects are not eligible.

Part II., Proposed Implementation Guidelines, section D., TLIP Operations and Management (3), defines which activities are not allowable under TLIP. It states that inclusion of activities required to comply with a Biological Opinion or activities required to comply with a permit (*e.g.*, mitigation activities) is not allowable. However, a proposal can include activities that implement conservation recommendations. Two comments expressed concern that no TLIP funds should be diverted to any nontribal mandates, court directives, or Federal activities required to uphold the trust responsibility. One comment asked that "Biological Opinion" be further defined. Two comments advocated for allowing for mitigation costs associated with compliance activities related to the Endangered Species Act.

Response: All TLIP funds will be awarded to Tribes and will not be diverted to any nontribal mandates, court directives, or Federal activities required to uphold the trust responsibility. The Service appreciates the proposed language but disagrees with the inclusion of "court directive and Federal agency mandate or directive" to excluded activities because it would place additional restrictions on tribal proposals. "Biological Opinion" refers to Biological Opinions with regard to the Endangered Species Act and this is clarified in the "Definitions" section.

Part II., Proposed Implementation Guidelines, section D., TLIP Operations and Management (4), defines what species are considered endangered, threatened, candidate or, at risk. Seven respondents asked that "species at risk" be further defined. One of these suggested that the Service define "species at risk" as any federally listed, proposed, candidate animal or plant species or other species of concern as determined by a tribe or a State and, further, that species classified as such should be identified in the proposal. One respondent asked that it should be made clear whether plant species are included.

Response: For the purposes of TLIP, the Service defines "species at risk" as any federally listed, proposed, candidate animal or plant species or other species of concern as determined by a tribe or a State and, further, that species classified as such should be identified in the proposal.

Part II., Proposed Implementation Guidelines, section D., TLIP Operations and Management (5), indicates that tribal trust lands are not public lands and that federally recognized tribes are, for the purposes of participation in TLIP, considered the "landowners." Two comments stated that all tribal (land) interests be eligible for projects.

Response: TLIP project funds may be expended on all "Tribal Lands" as defined in Section II. Of this Notice.

Part II., Proposed Implementation Guidelines, section D., TLIP Operations and Management (6), states that TLIP is not a continuous revenue source. Two comments advocated for making the TLIP program a continuing source for funding.

Response: Because TLIP is an annual Congressional allocation, it is subject to further actions by Congress and cannot be considered a continuing source for funding.

Part II., Proposed Implementation Guidelines, section D., TLIP Operations and Management (7), states that TLIP funds cannot be held in an interest-bearing account. Two comments suggested otherwise.

Response: Federal law allows funds to be held in an interest-bearing account, although any interest earned on such funds in excess of $100 must be returned to the fiscally responsible Federal agency (43 CFR 12.64).

Part II., Proposed Implementation Guidelines, section E., Grant Award Procedures (1), defines what additional information must be included by the grantees once awards are announced. One comment supported the proposed language.

Part II., Proposed Implementation Guidelines, section E., Grant Award Procedures (2), states that the lead contact after award announcements should be the Native American Liaison in the grantee's respective Region. One comment advocated for a contact in the Service's Division of Federal Aid to be identified as the initial contact, and one comment agreed with the proposed language.

Response: The Native American Liaison will be the lead contact for technical implementation assistance, and the Division of Federal Aid will serve as the principal financial contact.

Part II., Proposed Implementation Guidelines, section E., Grant Award Procedures (3), states that the Service will award grants within 30 days of the recommendations provided by the national review panel. One comment suggested that a timeline be provided for acceptance and selection of awards, and one comment simply agreed with the stipulated language.

Response: A timeline for acceptance and selection of awards is included in the Grant Application Package.

Part II., Proposed Implementation Guidelines, section E., Grant Award Procedures (4), states that funds will be disbursed, subsequent to funding approval, through the Department of Health and Human Services' SMARTLINK electronic funds transfer (EFT) system. And, that in the instance of demonstrated hardship or need, grantees may request up to 25 percent of the grant award.

One comment said that the Service's Division of Federal Aid be contacted for guidance on compliance with Cash Management Act regarding "Reimbursable" as stated in the complete text. Six comments stated that if the Service has the ability to allocate 25 percent of the project funds up front, given demonstrated hardship or need, then all grantees should be eligible without demonstrating hardship or need. Two comments advocated for increasing the initial draw down, one suggested 40 percent, and the other was nonspecific.

Response: The Service will advance up to 25 percent of the total award upon request by the grantee.

Three disagreed with the proposed reimbursable mechanism, saying it presents an undue burden on tribes, and asked to have access to funds quarterly or as a lump sum transfer at the onset of a project. Two comments asked if all tribes are EFT compliant, and one suggested that the Service explore a similar process for allocating funds through contracting as in Pub. L. 93–638.

Response: Further clarification of the proposed EFT is necessary to explain that funds will be "reimbursed" as needed, rather than upon receipt of proof of expenditure. We feel that this does not place a financial burden on the tribes. All Tribes are capable of EFT. Pub. L. 93–638 is a unique mechanism that transfers funds to a tribe for programs that are specifically established for a tribe because of its status as a tribe and enables the recipient tribe to allocate such funds to address other relevant needs and is therefore not consistent with Congressional intent to use such a device.

Part II., Proposed Implementation Guidelines, section E., Grant Award Procedures (5), addresses the reporting requirements tribes must meet once funds are obligated under a TLIP grant agreement. One comment suggested that language be included to indicate that tribes will be obligated to comply with NEPA, ESA, National Historic Preservation Act, and other relevant Acts. Another comment suggested that the benefits and outcomes of the TWG program be reported to Congress.

Response: TLIP projects are subject to legal requirements of Federal regulatory Acts in the context of established Federal/Tribal protocol.

Response: A summary of benefits and outcomes of the TWG program will be made available to interested Congressional representatives.

Part III., Procedural Requirements, sections A., Regulatory Planning and Review; B., Regulatory Flexibility Act; C., Small Business Regulatory Enforcement Fairness Act; D., Unfunded Mandates Reform Act; E., Takings Implications Order; F., Energy Effects; G., Federalism; and H., Civil Justice Reform, received no comments, although two pertinent general comments suggested that a section be added to clarify how the Freedom of Information Act (FOIA) will apply to information submitted by tribes.

Response: The Service will work with the Tribes to ensure that sensitive information is protected.

Part III., Procedural Requirements, sections I., National Environmental Policy Act, drew one comment that asked the Service to better determine what is meant in the proposed guidelines by the phrase "Service will ensure that grants funded through the TLiP program are in compliance with NEPA."

Response: A completed NEPA Checklist and appropriate environmental information will be required in the Grant Narrative from the grantee for review and concurrence by the Service.

Part III., Procedural Requirements, section J., Consultation and Coordination with Indian Tribal Governments, and K., Paperwork Reduction Act, were not commented on.

Part IV., Native American Liaisons for the Fish and Wildlife Service, was not commented upon.

General Comments: Several comments did not readily fit into the above categories. The Service has responded to these comments below.

1. Three comments asked that the Service distinguish between treaty and nontreaty rights.

Response: The Service recognizes that treaty rights involve unique responsibilities defining specific rights to treaty-recognized tribes and will work to address them where appropriate within the grant processes.

2. Two general comments stated that there should be no Service administrative cost associated with implementation of this program.

Response: There is no provision to fund the Service's administrative costs incurred in the implementation of this program elsewhere. Therefore, 3 percent of the available funds may be used to cover these costs.

3. One comment suggested that the funds for FY 02 and FY 03 be lumped into one proposal period. This same comment recommends that the Service allow for multiyear projects.

Response: In the adoption of the Department of the Interior and Related Agencies Appropriations Act of 2003, FY 02 funds under the Landowner Incentive Program (including TLIP) were rescinded by Congress.

4. One respondent advocated for increasing the amount of available funds in TLIP, and three advocated for future funding.

Response: TLIP is a 10 percent internal earmark by the Service on the Landowner Incentive Program, which is a Congressional appropriation. The Service is committed under current funding conditions to continue to support the TLIP program.

5. One respondent asked that the Service define the role of public opinion in ranking/selection of proposals.

Response: The Service will work to address public comments with the intent of enhancing the administration of TLIP for the benefit of federally recognized tribes.

6. One comment suggested that the Service allow for proposals that combine TLIP and Tribal Wildlife Grant funds.

Response: The Service must administer each grant as directed by Congress, and each program differs to some degree, limiting our ability to establish identical criteria.

7. Two respondents stated that there should be no time limit on expenditure of funds.

Response: After appropriation, TLIP funds are available until expended. However, grant agreements will be written for an appropriate amount of time to complete the project. Grant agreement periods are negotiable, and funds must be expended within 90 days following the end date of the grant agreement.

8. Two respondents suggested that the Service require postmarks on proposals showing the due date.

Response: Proposals postmarked, hand-delivered or otherwise sent in by the due date will be accepted for the grant review process.

9. One comment advocated allowing funds to roll over into the next fiscal year.

Response: This is allowable under Service guidelines and is recognized as a necessary option for the success of project initiatives.

10. One comment suggested that the Service allow for an 8-week response period for the Request For Proposals (RFP).

Response: In order to address the need to expedite the selection and awarding of proposals, the Service has set the RFP period for the TLIP 45 days. The Service feels that this period is sufficient for tribes to prepare proposals.

11. One comment suggested that the Service allocate funds as quickly as possible after awards are made.

Response: It is the Service's intent to accomplish this task, and a timeline will be provided in the Grant Application Kit.

12. One comment suggested that the Service apply the same criteria to both TLIP and TWG.

Response: The Service must administer each grant as directed by Congressional appropriation language which differ to some degree for each grant, thus limiting our ability to establish identical criteria for the two grant processes.

Dated: May 3, 2003.

H. Craig Manson,

Assistant Secretary, Fish and Wildlife and Parks.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[RIN 1018–AI58]

Fiscal Year 2003 Tribal Wildlife Grants; Request for Grant Proposals and Final Policy and Implementation Guidelines

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of request for proposals; final policy, and implementation guidelines.

SUMMARY: We, the Fish and Wildlife Service (Service) are soliciting project proposals for Federal assistance under the Tribal Wildlife Grants program (TWG). This document describes how you can apply for funding under the TWG and how we will determine which project proposals will be funded. The Department of the Interior and Related Agencies Appropriations Act for Fiscal Year (FY) 2002 authorized an appropriation of $84,800,000 for wildlife conservation grants to States and to the District of Columbia, U.S. Territories, and tribes under provisions of the Fish and Wildlife Act of 1956 and the Fish and Wildlife Coordination Act, for the development and implementation of programs for the benefit of wildlife and their habitat, including species that are not hunted or fished. The Act further specified that the Service use $5 million of the funds to establish a competitive grant program available to federally recognized Indian tribes. This language allows the Secretary, through the Director of the Service, to establish a separate tribal grant program that would not be subject to the provisions of the formula-based State Wildlife Grants program, or other requirements of the State Wildlife Grants portion of Pub. L. 107–63. In FY 2003, Congress appropriated $59,800,000 for wildlife conservation grants and specified that the Service use $4,967,500 for the TWG program as well, and we will be combine this latter amount with FY 2002 funds in a single grant cycle. The Service is providing implementation guidance for this combined $9,967,500 TWG program.

DATES: Project proposals must be received by the appropriate Regional Office (see Table 1 in **ADDRESSES**) no later than September 11, 2003.

ADDRESSES: For information regarding collection requirements, applicants should contact the Native American Liaison in the Service's Regional Office for the State in which the proposed project would occur. The contact information for each Regional Office is listed in Table 1 below. Information on the TWG is also available from the U.S. Fish and Wildlife Service, Office of the Native American Liaison, 1849 C Street, NW., Mail Stop 3251, Washington, DC 20240, and electronically at *http://grants.fws.gov/tribal.html.*

Send your project proposal to the Service's Regional Office for the State in which the proposed project would occur (see Table 1 under **ADDRESSES**). You must submit one original and two copies of the complete proposal. We will not accept facsimile project proposals.

TABLE 1.—WHERE TO SEND PROJECT PROPOSALS AND LIST OF REGIONAL CONTACTS

Service region	States where the project will occur	Where to send your project proposal	Regional Native American liaison and phone No.
Region 1	Hawaii, Idaho, Oregon, Washington, Nevada, and California.	Regional Director, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, OR 97232–4181.	Scott L. Aikin (503) 231–6123.
Region 2	Arizona, New Mexico, Oklahoma, and Texas.	Regional Director, U.S. Fish and Wildlife Service, 500 Gold Avenue, SW, P.O. Box 1306, Albuquerque, NM 87103–1306.	John Antonio (505) 248–6810.
Region 3	Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.	Regional Director, U.S. Fish and Wildlife Service, 1 Federal Drive, Fort Snelling, MN 55111.	John Leonard (612) 713–5108.
Region 4	Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee.	Regional Director, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Rm. 410, Atlanta, GA 30345.	James D. Brown (404) 679–7125.
Region 5	Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.	Regional Director, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589.	D.J. Monette (413) 253–8662.
Region 6	Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.	Regional Director, U.S. Fish and Wildlife Service, PO Box 25486, Denver Federal Center, Denver, CO 80225–0486.	David Redhorse (303) 236–7905.
Region 7	Alaska	Regional Director, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503–6199.	Tony DeGange (907) 786–3492.

FOR FURTHER INFORMATION CONTACT: For further information, contact the Native American Liaison in the appropriate Regional Office (see Table 1 under **ADDRESSES**) or Patrick Durham, Office of the Native American Liaison, U.S. Fish and Wildlife Service, 1849 C Street, Mail Stop 3012 MIB, Washington, DC 20240, 202/208–4133.

SUPPLEMENTARY INFORMATION:

I. Request For Proposals

The Service invites submission of grant proposals from federally recognized Indian tribal governments (including Alaska Native Villages) for the development and implementation of programs for the benefit of wildlife and their habitat, including species that are not hunted or fished. This program supports the efforts of federally recognized tribal governments in projects that develop or augment the capacity to manage, conserve, or protect fish and wildlife resources through the provision of funding and technical support.

II. Definitions

The following definitions apply:

1. *Conservation Recommendation*—The Fish and Wildlife Service's non-binding suggestions resulting from formal or informal consultation, under the Endangered Species Act, that: (1) Identify discretionary measures a Federal agency can take to minimize or avoid the adverse effects of a proposed action on listed or candidate species, or designated critical habitat; (2) identify studies, monitoring, or research to develop new information on listed or candidate species, or designated critical habitat; and (3) include suggestions on how an agency can assist species conservation as part of their action and in furtherance of its authorities under section 7(a)(1) of the Endangered Species Act.

2. *Biological Opinion*—Any document that includes: (1) The opinion of the Fish and Wildlife Service or the National Marine Fisheries Service as to whether or not a Federal action is likely to jeopardize the continued existence of listed species, or result in the destruction or adverse modification of designated critical habitat; (2) a summary of the information on which the opinion is based; and (3) a detailed

discussion of the effects of the action on listed species or designated critical habitat under the provisions of the Endangered Species Act.

3. *Habitat*—The area that provides direct support for a given species, population, or community. It includes all environmental features that comprise an area such as air quality, water quality, vegetation and soil characteristics, and water supply.

4. *Mitigation*—Activities carried out under National Environmental Policy Act regulations, for the purpose of moderating, reducing, or alleviating the impacts of a proposed activity, including (a) avoiding the impact by not taking a certain action; (b) minimizing impacts by limiting the degree or magnitude of the action; (c) rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (d) reducing or eliminating the impact over time by undertaking preservation and maintenance operations during the life of the action; and (e) compensating for the impact by replacing or providing substitute resources or environments.

III. Background

The Department of the Interior and Related Agencies Appropriations Act for Fiscal Year (FY) 2002 (Pub. L. 107–63) authorized an appropriation of $84,800,000 for wildlife conservation grants to States and to the District of Columbia, U.S. Territories, and tribes under provisions of the Fish and Wildlife Act of 1956 and the Fish and Wildlife Coordination Act, for the development and implementation of programs for the benefit of wildlife and their habitat, including species that are not hunted or fished. The Act further specified that the Service use $5 million of the funds to establish a competitive grant program available to federally recognized tribes. This language allows the Secretary, through the Director of the Service, to establish a separate tribal grant program that would not be subject to the provisions of the formula-based State Wildlife Grant program, or other requirements of the State Wildlife Grants portion of Pub. L. 107–63. In FY 2003, Congress appropriated $59,800,000 for wildlife conservation grants and specified that the Service use $4,967,500 for the TWG program. We will combine this latter amount with FY 2002 funds in a single grant cycle. The Service is providing guidance in the administration of this combined $9,967,500 Tribal Wildlife Grant program. The Service proposed guidance in a previous **Federal Register** notice (67 FR 79136; December 27, 2002), with the intent of gathering input from the affected communities. The public comments have been carefully considered and incorporated into the following guidelines where appropriate. A series of questions and answers follows and describes the guidelines.

IV. Implementation Guidelines

A. Eligibility

1. Who May Participate in the TWG Program?

Federally recognized tribes in all parts of the United States, including federally recognized tribes, pueblos, rancherias, and Alaska native villages or traditional councils as defined by the Alaska Native Claims Settlement Act.

2. Are State-Recognized Tribes or Petitioning Tribes Eligible To Receive Grants Under This Program?

No, only federally recognized tribes are eligible to receive grants under this program. Federally recognized tribes are listed in the **Federal Register** (67 FR 46328; July 12, 2002).

3. Can Tribal Organizations or Other Entities (Including Individual Indian Allottees) Receive Grants Under This Program?

No. However, organizations or entities may participate as subgrantees or contractors to federally recognized tribes.

4. What Process Will the Service Use To Solicit and Receive Proposals for Funding?

The Service will request proposals through a **Federal Register** notice, direct contact, and other forms of outreach to eligible applicants. The Service's Regional Directors will receive all proposals.

5. Who Will Coordinate the Scoring of Grant Application Submissions?

The Regional Native American Liaisons of the Service will coordinate the process to screen proposals to ensure that they are complete and to score them according to nationally uniform criteria. Tribes are encouraged to contact the Native American Liaison in the appropriate Regional Office identified in Table 1 under **ADDRESSES** for additional assistance in submitting proposals.

6. How Will Grant Application Submissions Be Reviewed for Funding?

A national panel will review regionally scored proposals for recommendations to the Director of the Service (Director).

7. Who Will Serve as the National Review Panel?

The Regional Native American Liaisons will serve on the panel in addition to other Service and other Federal agency personnel, as appropriate and as may be identified by the Director.

8. Will Tribal Representatives Be Involved in Reviewing or Ranking Proposals?

No, only Federal employees will review and rank proposals in this initial year.

9. Who Will Make the Final Determination for Grant Approval?

The Director will make the final determination for grant award.

10. How Will the Tribes Be Notified Whether or Not They Have Been Awarded Grants.

Applicants will be notified by the Director through the Regional Native American Liaison as to whether or not they have been awarded grants.

B. Application Requirements

1. Is the TWG Program Exempt From Federal Grant Program Compliance?

No, the TWG program must comply with all Federal grant program compliance requirements as specified in 43 CFR part 12: OMB Circulars A–133, A–102, and A–87; and Service Manual Chapters 522 FW1 and 523 FW1, except where specifically exempted. Tribal grantees are responsible for ensuring that subgrantees and contractors adhere to these requirements.

2. What Must Proposals for Participation in the TWG Program Include?

Proposals must include a cover letter, program summary, program narrative, budget narrative, a completed Standard Form 424 Application for Federal Assistance (SF–424), and tribal resolution of support as described herein.

—*A cover letter* briefly states the main features of the proposed project.

—*A program summary* describes, in one-half page, the type of activity that would take place if the Service funds the proposal.

—*A program narrative* clearly identifies the problems that the proposal will correct or help solve as they relate to the development and implementation of programs for the benefit of wildlife and their habitat, including species that are not hunted or fished, and the expected results or benefits. It must contain a needs assessment, objectives, timeline, methodology, geographic location (with maps), monitoring plan, and identification of clear, obtainable, and quantifiable goals and performance measures that will help achieve the management goals and objectives of the TWG and relevant Service and tribal performance goals. The relevant Service goals are *Goal 1*, Sustainability of Fish and Wildlife Populations, including Migratory Bird Conservation (Goal 1.1), Imperiled Species (Goal 1.2), Interjurisdictional Fish (Goal 1.3), Marine Mammal Management (Goal 1.4), Species of International Concern (Goal 1.5), and Invasive Species (Goal 1.6); *Goal 2*, Habitat Conservation; including Habitat Conservation off Service Lands (Goal 2.3); and Mission *Goal 4*, Partnerships in Natural Resources, including Tribal Governments (Goal 4.1), all of which can be found in the Service's Long-Term Strategic Plan for 2000 to 2005 at *http://planning.fws.gov/USFWStrategicPlanv3.pdf*. Related Service planning and results can be found at *http://planning.fws.gov/*.

—*A budget narrative* clearly justifies all proposed costs and indicates that the grantee will provide adequate management systems for fiscal and contractual accountability, including annual monitoring and evaluation of progress toward desired project objectives, goals, and performance measures. It should include discussion of direct cost items such as salaries, equipment, consultant services, subcontracts, and travel, as well as program matching or cost sharing information. If some partners will provide in-kind matching, they must be listed in the grant proposal with a letter of commitment from each. Applicants may cover new project administrative costs and the Tribal Indirect Cost Rate, but they cannot include pre-existing administrative costs.

—*An SF–424 form* will be included with the Grant Application Package and is available on the internet at *http://training.fws.gov/fedaid/toolkit/sf424-f.pdf*.

—*A resolution of support* from the appropriate tribal governing body or from an individual with delegated tribal authority stating support for the proposal. If a resolution of support is not submitted with the proposal, one will be required prior to awarding the grant.

3. Where Can Applicants Obtain a Grant Proposal Package?

Applicants can obtain a grant proposal package from the Native American Liaison in the appropriate Regional Office (*see* Table 1 under **ADDRESSES**) or at the Service's Grants Web site *http://grants.fws.gov/tribal.html*.

4. Are Matching Funds Required?

No, Congress did not require matching funds for this appropriation. However, the Service will consider matching funds as an indication of tribal commitment to the program and to encourage partnerships.

5. Are In-Kind Contributions Eligible as Matching Funds?

Yes, in-kind contributions provided by the tribe or a third party may be used as a match to improve the potential ranking of a proposal. The Service has defined "in-kind" as noncash contributions made by the tribe. In-kind contributions must be necessary and reasonable for carrying out the program, and must represent the same value that the Service would have paid for similar services or property if purchased on the open market. Allowable in-kind contributions are defined in 43 CFR 12.64. Additional information can be found at *http://training.fws.gov/fedaid/toolkit/inkind.pdf*.

6. Can a Tribe Submit More Than One Grant Proposal?

Tribes are encouraged to submit a single comprehensive grant proposal, but multiple proposals are allowable.

7. What Maximum Level of Project Funding Will Be Considered Under the TWG Program?

The Service will award grants up to a maximum of $250,000. If more than one proposal is submitted by any one tribe, no more than $250,000 total can be awarded to that tribe. This amount is approximately 5 percent of the annual appropriation, and it allows for grants that are large enough to make a significant impact and be widely distributed.

8. What Minimum Level of Project Funding That Will Be Considered Under the TWG Program?

There is no proposal or grant award minimum, but the Service is concerned that an excess number of small grants could result in an undue administrative burden.

C. Ranking Criteria

What Ranking Criteria Will the Service Use?

The Service will score proposals based on the following criteria: The Proposed Guidelines (FR 79136; December 27, 2002) assigned specific point values to these criteria for the purpose of gaining public comment. On the basis of public comments and our understanding of Congressional intent in creating this program, we assigned the following criteria relative values from 1 (lowest) to 5 (highest).

Benefit: What are the expected benefits to fish and wildlife resources, including species that are not hunted or fished, and their habitat if this program is successfully completed? The Service requires that the tribe articulate how the benefits of its proposal support the goals and objectives of the TWG and Service and tribal Performance Goals in their proposal narratives. *Relative Value:* 5.

Performance Measures: To what extent does the proposal provide obtainable and quantifiable performance measures and a means to monitor, evaluate, and report on these measures compared to an initial baseline? The measures should be specific and clear, and should provide demonstrable benefits to the target species of the action. These actions must support the goals and objectives of the TWG, the Service and the tribe. *Relative Value:* 4.

Work Plan: Are the program activities and objectives well-designed and achievable? *Relative Value:* 3.

Budget: Are all major budget items justified in relation to the program objectives and clearly explained in the narrative description? *Relative Value:* 3.

Capacity Building: To what extent does the program increase the grantee's capacity to provide for the benefit of wildlife and their habitat? *Relative Value:* 4.

Contributions and Partnerships: To what extent does the applicant display commitment to the project proposal through in-kind contribution or matching funds and to what extent does it incorporate contributions from other non-Federal partners in the form of either cash or in-kind services? *Relative Value:* 2.

D. TWG Operations and Management

1. In the Course of Implementing a TWG Project or Program, Can Grantees Use TWG Funds to Pay for Costs of Conservation Law Enforcement or Education?

Yes, if the law enforcement or education component is a minor or incidental activity that is considered critical to the success of a project which directly contributes to the conservation of wildlife species and their habitats with the greatest conservation need and is consistent with the development or implementation of the tribe's proposal.

2. What Activities Are Included in the "Development and Implementation of Programs for the Benefit of Wildlife," as Referenced in the Department of the Interior and Related Agencies Appropriations Act for FY 2002?

Activities may include, but are not limited to, planning for wildlife and habitat conservation, ongoing and/or new fish and wildlife management actions, fish and wildlife related laboratory and field research; natural history studies, habitat mapping, field surveys and population monitoring, habitat preservation, land acquisition, conservation easements, and outreach efforts. Priority for funding from the TWG Program shall be for those species with the greatest conservation need identified by the tribe.

3. Can Grantees Use TWG Funds To Cover Costs of Environmental Review, Habitat Evaluation, Permit Review (*e.g.*, section 404), and Other Environmental Compliance Activities Associated With a TWG Project?

Yes, they can fund these activities provided they are directly related to the TWG program or project being funded and are included in the budget and discussed in the program and budget narratives.

4. Are There Any Specific Activities That Are Not Allowable Under the Guidance of TWG?

A proposal cannot include activities required to comply with a Biological Opinion under the Endangered Species Act or include activities required to comply with a permit (*e.g.*, mitigation responsibilities). However, a proposal can include activities that implement conservation recommendations or to cover the costs of environmental review, habitat evaluation, permit review, and other environmental compliance activities that are required because of the TWG project, provided they are included in the budget and discussed in the Program and Budget Narratives. Research projects or archeological projects are not eligible.

5. Is the TWG Program a Continuous Revenue Source for Tribal Wildlife Programs?

No, there is no authorization for appropriation of funds beyond FY 2003. Funds appropriated in FY 2002 and FY 2003 are available until spent.

6. Can the Grantee Hold TWG Funds in an Interest-Bearing Account?

Funds can be held in an interest-bearing account, although any interest earned in excess of $100 must be returned to the fiscally responsible Federal agency (43 CFR 12.64).

E. Grant Award Procedures

1. What Additional Information Must Be Provided to the Service by the Grantees Once Awards Are Announced?

Once the Director notifies a grantee that their proposal was selected for funding, the recipient must submit a grant agreement and attachments as required by Federal regulations. As with our other Federal programs, TWG agreements must comply with 43 CFR part 12, the National Environmental Policy Act, Section 7 of the Endangered Species Act, the National Historic Preservation Act, and all other applicable Federal laws and regulations. This grant program is also subject to provisions of Office of Management and Budget Circulars No. A–87, A–102, and A–133 (*see http://www.whitehouse.gov/omb/circulars*).

2. Once Grants Are Awarded, Who Should the Grantee Consider as the Lead Contact Person?

Once grants have been awarded, the grantee should consider the appropriate Regional Native American Liaison as the lead contact person for all matters pertaining to the particular award. Financial matters will be delegated to the Division of Federal Aid through the Native American Liaison.

3. When Will the Service Award TWG Grants?

Once the Service has reviewed and ranked all eligible TWG grant proposals, the Director will make his final decision within 30 days of the recommendations of the national review panel.

4. How Will Funds Be Disbursed Once the Service Has Awarded TWG Grants?

Subsequent to funding approval, grant funds are electronically provided through the Health and Human Services' SMARTLINK payment management system. Through this electronic funds transfer (EFT), grantees will be able to receive funds as needed. Some of the tribal grantees may not be EFT compliant. In order to ensure optimal service to potential grantees within the current Federal Aid process, grantees will need to obtain EFT capabilities compatible with the SMARTLINK payment management system. Grantees may request an advance of no more than 25 percent of the total grant if the advance is documented in the grant agreement.

5. What Reporting Requirements Must Tribes Meet Once Funds Are Obligated Under a TWG Grant Agreement?

Quarterly Financial Status Reports (SF–272), which can be found at *http://www.whitehouse.gov/omb/grants/sf272.pdf* must be submitted electronically. A final Financial Status Report (SF–269), which can be found at *http://www.whitehouse.gov/omb/grants/sf269.pdf*, will be due to the Regional Office within 90 days of the grant agreement ending date. An annual performance report—including a list of project accomplishments relative to those which were planned in the grant agreement—will also be required within 90 days of the end of each 12 month period. The effectiveness of each tribe's program, as reported in the annual performance reports, will be an important factor considered during the grant award selection process in subsequent years.

6. Is There a Limitation on the Amount of Funds That May Be Used for Administrative Costs?

Yes, no more than 12 percent of program funds can be used for staff and related administrative costs. If more than 12 percent is necessary to properly and efficiently operate the program, a waiver of this limitation may be provided by the Regional Director based on a written justification explaining why such a waiver is necessary.

V. Procedural Requirements

A. Regulatory Planning and Review (Executive Order 12866)

This policy document identifies eligibility criteria and selection factors that may be used to award grants under the TWG program. The Service developed this policy to ensure consistent and adequate evaluation of grant proposals that are voluntarily submitted and to help prospective applicants understand how the Service will award grants. According to Executive Order 12866, this policy document is significant and has been reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below.

1. The TWG will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment, public health or safety, or State or local communities. The Department of the Interior and Related Agencies Appropriations Act for Fiscal Year (FY) 2002 allowed the Secretary to create the TWG program. In addition, grants that are funded will generate

other, secondary benefits, including benefits to natural systems (*e.g.*, air, water) and local economies. All of these benefits are widely distributed and are not likely to be significant in any single location. It is likely that some residents where projects are initiated will experience some level of benefit, but quantifying these effects at this time is not possible. We do not expect the sum of all the benefits from this program, however, to have an annual effect on the economy of $100 million or more.

2. We do not believe the TWG program would create inconsistencies with other agencies' actions. Congress has given the Service the responsibility to administer this program.

3. As a new grant program, the TWG program would not materially alter the budgetary impact of entitlements, user fees, loan programs, or the rights and obligations of their recipients. This policy document establishes a new grant program, authorized by Pub. L. 107–63, which should make greater resources available to applicants. The submission of grant proposals is completely voluntary, but necessary to receive benefits. When an applicant decides to submit a grant proposal, the proposed eligibility criteria and selection factors identified in this policy can be construed as requirements placed on the awarding of the grants. Additionally, we will place further requirements on grantees that are selected to receive funding under the TWG program in order to obtain and retain the benefit they are seeking. These requirements include specific Federal financial management and reporting requirements as well as specific habitat improvements or other management activities described in the applicant's grant proposal.

4. OMB has determined that this policy raises novel legal or policy issues, and, as a result, this document has undergone OMB review.

B. Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, as amended, whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*e.g.*, small businesses, small organizations, and small government jurisdictions). Indian tribes are not considered to be small entities for purposes of the Act and, consequently, no regulatory flexibility analysis has been done.

C. Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996

This implementation guidance is not considered a major rule under the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 804(2)) because it does not have an annual effect on the economy of $100 million or more. The yearly amount of TWG program funds is limited to $5 million in FY 2002 and $4,967,500 in FY 2003.

This implementation guidance will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. Actions under this implementation guidance will distribute Federal funds to Indian tribal governments and tribal entities for purposes consistent with activities similar to programs under the Fish and Wildlife Act of 1956 and the Fish and Wildlife Coordination Act.

This implementation guidance does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This implementation guidance would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This guidance will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532).

E. Takings Implication Assessment (Executive Order 12630)

This implementation guidance does not have significant "takings" implications. This implementation guidance does not pertain to "taking" of private property interests, nor does it impact private property.

F. Executive Order 13211CEnergy Effects

On May 18, 2001, the President issued Executive Order 1321,1 which speaks to regulations that significantly affect energy supply, distribution, and use. The Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This implementation guidance is not expected to significantly affect energy supplies, distribution, or use. Therefore, no Statement of Energy Effects has been prepared.

G. Executive Order 13132CFederalism

This implementation guidance does not have significant Federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights, and responsibilities of States.

H. Civil Justice Reform (Executive Order 12988)

This implementation guidance does not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of the Executive Order 12988.

I. National Environmental Policy Act (NEPA)

This implementation guidance does not constitute a Federal action significantly affecting the quality of the human environment. The Service has determined that the issuance of the implementation guidance is categorically excluded under the Department of the Interior's NEPA procedures in 516 DM 2, Appendix 1, and 516 DM 6, Appendix 1. The Service will be responsible for ensuring that grants funded through the TWG program are in compliance with NEPA.

J. Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

Pursuant to Executive Order 13175 of November 6, 2000, "Consultation and Coordination with Indian Tribal Governments," we have committed to consulting with tribal representatives in the finalization of the implementation guidance for the TWG program. We have evaluated any potential effects on federally recognized Indian tribes and have determined that there are no potential adverse effects. This guidance expands tribal participation in Service programs and allows for opportunities for tribal wildlife management and conservation initiatives across Indian Country. We will continue to consult with tribal governments and tribal entities as a part of the policymaking process and beyond in furthering our mutual goals for the TWG program.

K. Paperwork Reduction Act (44 U.S.C. 3501)

The information collection requirements of this program will be largely met through the Federal Aid Grants Application Booklet. Federal Aid has OMB approval for this information collection under Control Number 1018–1019. This approval applies to grants managed by the Division of Federal Aid, even if these grants are for other Divisions of the Service. We are collecting this information relevant to

the eligibility, substantiality, relative value, and budget information from applicants in order to make awards of grants under these programs. We are collecting financial and performance information to track costs and accomplishments of these grant programs. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

VI. Summary of Comments and Recommendations

On December 27, 2002, the Service published the proposed guidelines for the TWG with an open comment period of 1 month (67 FR 79136). On January 27, 2003, we had received a total of 48 comment submissions. Thirty five tribes, 4 tribal organizations, 2 private enterprises, 1 organization, 5 Federal entities, and 1 unaffiliated individual provided suggestions for these proposed guidelines. These comments are addressed below.

In *part I., Background,* we asked several questions of particular concern to the Service regarding a limit on the amount of funding to be made available to any one tribe, our adherence to Congressional intent in the proposed guidelines, and what type of entities were eligible to participate in the TWG. The responses for comments are summarized in the corresponding sections below.

In *part II., Proposed Implementation Guidelines, section A., Eligibility (1–3),* we proposed a competitive program in which only federally recognized tribes would be able to apply for funding but stipulated that tribal organizations and other non-Federal entities may enter into grant agreements as contractors or subgrantees to federally recognized tribes. It was also proposed that non-federally recognized tribes be excluded from submitting proposals.

Eleven comments specifically stated that only federally recognized tribes should be eligible to enter into grant agreements, with one asking that the term "federally recognized tribe" be fully explained by including federally recognized tribes; pueblos; rancherias; Alaska Native villages or traditional councils as defined by the Alaska Native Claims Settlement Act; and tribal governing bodies as recognized by the Bureau of Indian Affairs (BIA) such as Indian Reorganization Act councils or tribal entities that have received Self Governance status under the Self Governance Act. No comments advocated for the inclusion of tribes that are not recognized by the Federal Government, although ten noted their agreement with their exclusion from participating in TWG. Two comments advocated for the inclusion of individual Indian trust land allotment owners as eligible direct participants.

Ten comments agreed that tribal organizations may participate as contractors or subgrantees but not as direct applicants to TWG. Four comments advocated for the inclusion of consortia of federally recognized tribes to be eligible participants in TWG as direct applicants. One final suggestion was to clarify the inclusion of Alaska Native Villages and to state that when there exists an agreement with Native corporation landowners to manage their properties, these lands should be eligible for TWG projects.

Response: Congress specified the TWG program is only for federally recognized Indian tribes, which includes Alaskan Native Villages, but Congress did not include tribal organizations or consortia. Tribal organizations, consortia, commissions, or other nontribal entities are not directly eligible to receive grants, but may participate as subgrantees or contractors to federally recognized Indian tribes. When an agreement to manage Native corporation lands has been approved by the corporation, these lands will be eligible for TWG projects. Individual Indian allottees are not eligible grantees through TWG but are encouraged to work with States and tribes as subgrantees or contractors.

In *part II., Proposed Implementation Guidelines, section A., Eligibility (4),* it was proposed that the Service would request proposals through a **Federal Register** notice and other forms of outreach and that proposals be received by the respective Regional Directors. There were no comments suggesting an alternative process.

In *part II., Proposed Implementation Guidelines, section A., Eligibility (5–9),* we proposed that the Native American Liaisons in each Regional Office coordinate the screening and ranking of project proposals on the basis of nationally uniform criteria. A national panel would then review the regionally ranked proposals for recommendation to the Director for selection. The proposed panels would be made up of Service and other Federal personnel. The Director will make the final proposal selections on the basis of these recommendations.

Six respondents noted their agreement with nationally uniform ranking criteria, and two favored regional ranking. Eleven advocated for a geographic, land, or population based component to the disbursement of funds or the selection of proposals.

Response: The Tribal Wildlife Grants Program is a competitive program for federally recognized Indian tribes regardless of geographic, land, or population based components. All tribes are equally eligible to submit proposals. Therefore, the use of nationally uniform criteria is appropriate for ranking proposals at both the Regional and National levels.

The Service will screen and score proposals in the Regional Offices. A national panel will then make recommendations to the Director based on these outcomes.

The Service examined various possible formulas for selecting proposals based on land area and other factors but was unable to identify any formula that adequately considered the wide variability among tribes, including their land base, population, and distribution across the United States.

Of the comments received on the proposed makeup of the panel, 18 agreed and provided further suggestions as to what other Service or other Federal personnel should be involved. One respondent stated that the Regional Native American Liaisons should act in an advisory capacity to the ranking team, and another stated that Regional Liaisons should be excused from ranking Regional proposals. Eleven comments advocated the inclusion of tribal representation in the ranking process; of these, two specifically identified the Native American Fish and Wildlife Society as an appropriate resource to serve this purpose.

Response: The Regional and National panels will consist of Service fish and wildlife professionals and other Federal agency personnel knowledgeable of Native American natural resource issues. The comments received will be considered in the selection of panel members. Regional Native American Liaisons will coordinate the screening and scoring of proposals and will act in an advisory capacity to the regional panels. They will not participate in the actual screening or scoring of proposals. The Regional Native American Liaisons will serve on the national review panel along with other Service personnel to make recommendations to the Director for selection.

The Service has not developed a process for identifying participation of tribal representatives in the ranking process and did not receive specific comments on ways to involve tribal representatives. However, the Service will use the knowledge and experience gained in this initial year and public comments to consider changing the guidelines in future years to include tribal representatives in the ranking process.

TWG proposed guidelines state that "the Director will make the final determination for grant approval." Six respondents stated their agreement with this language. One respondent disagreed. Three suggested that the national review team be capable of making the final decision on accepting proposals, and two others would like the Regional Native American Liaisons to rank and award proposals in their respective Regions. In addition to these comments, it was suggested that an appeal process should be included for proposals that are not selected.

Response: Because this is a nationally competitive program, the Secretary's authority is delegated solely to the Director, who will review recommendations and make final selections. Submitters of proposals not selected will receive information to improve their chances of future selection.

Part II., Proposed Implementation Guidelines, section B., Application Requirements (1), states that TWG is not exempt from any of the Federal grant program compliance requirements as specified in 43 CFR part 12, OMB Circulars A–102 and A–87, and Service Manual Chapters 522 FW1 and 523 FW1. Two comments addressed this issue, both in agreement, but one called for the inclusion of language that identified the tribe's fiduciary responsibility over subgrantees and contractors.

Response: The language in the proposed notice will be amended to indicate Tribal grantees' responsibility for ensuring that subgrantees and contractors adhere to these requirements.

In *part II., Proposed Implementation Guidelines, section B., Application Requirements (2),* general inclusions for proposals in the TWG program are addressed. They include a Cover Letter, Program Summary, Program Narrative, Budget Narrative, and Resolution of Support. Two general comments on this section were received: one stated approval of the proposed components of the grant proposal, and another noted the necessity of keeping the process as simple as possible to alleviate the administrative burden on the applicant.

Response: Comments noted.

No comments were received on the requirement of a *Cover Letter* or *Program Summary*.

Sixteen respondents commented on the requirement of a *Program Narrative*. Eleven advocated for the inclusion and/or prioritization of tribal goals rather than "relevant Service performance goals"; three asked that Service Goals, 1.4, 1.5, 1.6, and Mission Goal in Partnerships 4.1 be included; and one respondent would like the inclusion of fish to be clearly articulated.

Response: The Service recognizes that the tribal grant funding is for the benefit of wildlife and their habitat, including species that are not hunted or fished. The care and maintenance of the nation's fish and wildlife resources is dependent on cooperative efforts of partners. The Service's performance goals articulate the importance of tribal partnerships in Mission Goal 4.1 and the broad range of mutually beneficial resource accomplishments that can result from partnership actions. The final advice is modified to include Mission Goal 4.1, Tribal Partnerships and resource-related goals, including 1.1; 1.2; 1.3; 1.4; 1.5; 1.6, Sustainability of Fish and Wildlife Populations (*http://planning.fws.gov/tableofcon.html*).

Under the heading *Budget Narrative*, one respondent asked the Service to clarify the meaning of "administrative costs" to include or exclude indirect costs, and advocated excluding indirect costs. Another comment suggested a 15 percent maximum for Indirect Cost Rates.

Response: The Service determined that administrative costs are those that can be directly related to allowable costs as defined in 43 CFR 12.62, as well as in OMB Circular A–87 (Cost Principles for State, Local, and Indian Tribal Governments). Indirect costs are also explained in OMB Circular A–87; indirect costs are allowable as direct costs if the applicant has an approved indirect cost agreement with its cognizant agency. All costs, whether direct or indirect, must be included in the grant proposal and are subject to the grant award maximum of 25 percent.

Nine comments were submitted regarding the requirement of a *Resolution of Support* from the appropriate tribal governing body that supports the proposed project. One expressly opposed this requirement. Nine said that often it is not reasonable to expect a tribal governing body to meet during the open period for submitting grant proposals. Several comments proposed remedies that would allow for a letter of support from the "duly elected leader of the tribe" or the "Tribal Chair or Councilperson." Another suggested alternative was to allow for an extended open period to account for varying meeting schedules for tribal councils.

Response: The requirement for a *Resolution of Support* is an assurance that the tribal governing body supports the proposed project and the actions necessary to realize the natural resource benefits identified in the proposal. The Service recognizes that there could be times when a tribal resolution of support for a proposal may not be logistically possible. The Service will amend the requirement to accept a letter or signed endorsement from an individual with delegated tribal authority. If a resolution of support is not submitted with the proposal, one will be required from the tribal governing body prior to the Service's awarding of the grant.

Part II., Proposed Implementation Guidelines, section B., Application Requirements (3), states that the proposal package will be made available through the Service's Regional Native American Liaisons. Two comments pointed out that they would like to be able to download the proposal package from the Internet.

Response: The Service is required to provide access to application packages through as many sources as available. Therefore, application guidelines and packages for this grant program can be obtained through Regional Native American Liaisons as well as through the Service's Web site at *http://grants.fws.gov/tribal.html*.

Part II., Proposed Implementation Guidelines, section B., Application Requirements (4), states that matching funds are not required. However, they are encouraged and the proposed ranking criteria will consider them as an indication of commitment and to encourage partnerships. Two comments asked that the Service eliminate or decrease the value of this requirement.

Response: These comments are addressed in part II., C., Ranking Criteria.

In *part II., Proposed Implementation Guidelines, section B., Application Requirements (5),* the Service outlines the proposed allowance for in-kind contributions as meeting a matching funds requirement and provides additional information as to how it defines in-kind contributions. One respondent agreed, and one disagreed, pointing out that this would add no value to a proposal. Another asked that the Service clarify whether or not funds may be expended in multiyear projects and, if so, for how many years. One comment indicated that if matching funds are not required, then it is not fair to use them in ranking proposals for selection.

Response: The Service has identified those costs that are considered allowable as in-kind contributions or matching funds. These have been identified in Service Manual 522 FW 1

and in 43 CFR 12.64. A grantee can provide materials, equipment, or other services as a noncash match for portions of the grantee's matching share. Congress did not require matching funds for this appropriation. However, the Service will consider matching funds as an indication of tribal commitment to the program and to encourage partnerships.

In *part II., Proposed Implementation Guidelines, section B., Application Requirements (6),* the Service indicates that tribes are encouraged to submit a single proposal but may submit additional proposals if all of the funds are not expended. Three comments agreed that one proposal is sufficient as long as the tribe can bundle several projects, with the understanding that portions may be rejected. Two stated that a single proposal is a good target but that the Service should not exclude multiple proposals outright. Three advocated for multiple proposals, and one asked the Service to definitively state whether one or multiple proposals are allowable. One comment asks the Service to explain how excess funds will be handled.

Response: Tribes are encouraged to submit one proposal, but multiple proposals are allowable. The Service does not anticipate that excess funds will be available.

Part II., Proposed Implementation Guidelines, section B., Application Requirements (7 and 8), recommends no minimum and that a maximum of approximately 5 percent of available funds ($250,000) be implemented. Depending upon the number of proposals submitted and the relative merit of each proposal, some applicants may receive greater amounts. One recommendation stated that a $5,000 minimum be placed on proposals to relieve administrative burden on the Service. Eighteen comments supported 5 percent as a non-binding target but not as a strict cap. Other comments recommended a $75,000 and $100,000 limit on proposals, and four advocated for no cap at all. Others suggested a 1, 2, or 2.5 percent cap on proposals. One comment advocated for a cap based on the land base of projects but did not offer any further explanation. It was also suggested that the Service state clearly whether a suggested limit is an actual cap or simply a target.

Response: The Service will award grants up to a maximum of $250,000 per proposal with no more than $250,000 total awarded to any one tribe. There is no proposal or grant award minimum but the Service is concerned that an excess number of small grants could result in an undue administrative burden.

Several other comments were received that offered additional feedback. One suggested allowance for partial funding of proposals. Another offered that the TWG could be divided into a large and small grants program to ensure greater participation.

Response: Proposals will be scored and ranked on the relative merit of each proposal. The Service may need to partially fund one or more proposals to fully allocate the funds. Small-grant and large-grant programs may be considered in the future.

Part II., Proposed Implementation Guidelines, section C., Ranking Criteria, offers a proposed weighting system by which the Service can determine a relative score for proposals including Benefit, Performance Measures, Work Plan, Budget, Capacity Building, Commitment, Partnerships, and Administrative Costs. Two general comments on the Ranking Criteria advised the Service to make them as close as possible to those of the State Wildlife Grants program. One agreed with the proposed criteria but, encouraged consultation with tribes to ensure adequate knowledge of Service goals and strategies. An additional comment asked that the Service better define this program's priorities.

Response: Ranking criteria will be clearly defined in the TWG guidance. The State Wildlife Grants Program is not a competitive grant program and has no ranking criteria.

Regarding the *Benefit* of proposals, 12 comments advocate for adding emphasis to this criterion. Four agreed with this criterion if tribes set their own goals and priorities to determine which species are to benefit. Two respondents asked further that the Service define what is meant by the language "including species that are not hunted or fished," and stated that tribal priorities should take precedence over the Service's. One comment favored increasing the emphasis on federally listed endangered species (Endangered Species Act), and another specifically suggested that no special preference be placed on them. A final comment stated that preference should be given to tribes with Integrated Resource Management Plans (IRMPs) or Natural Resource Management Plans.

Response: The cumulative maximum of 25 points for *Benefit* (0–25) and 20 points for *Performance Measures* (0–20) already places high value on the extent to which the project will benefit fish and wildlife resources. The Service agrees that benefits will be measured against Tribal fish and wildlife goals. The Service requires that tribes articulate how their proposals help support the goals and objectives of the TWG and Service and tribal Performance Goals in their proposal narratives.

By including species that are not hunted or fished, the Service provides tribes with discretion to implement projects that benefit species of conservation concern and species of cultural importance. Special emphasis will not be placed on federally listed endangered species, as this is not the purpose of this grant program. These funds may be used to develop IRMPs (or equivalent); therefore, to give preference to those tribes that already have IRMPs is not appropriate.

Under the heading *Performance Measures,* four comments call for an emphasis to this criterion. Two suggested that the Service de-emphasize or delete it, but suggested that if tribal goals rather than the Service's goals were prioritized, "Performance Measures" would be an acceptable criterion. Four additional comments suggested that tribal goals be included, and three others call for the inclusion of Service Goals, 1.4, 1.5, 1.6, and Mission Goal in Partnerships 4.1.

Response: The Service believes that quantifiable performance measures are an important ranking criterion. This criterion is weighted adequately in the ranking process. Tribes are required to articulate how their proposals help support the goals and objectives of the TWG and Service and tribal Performance Goals in their proposal narratives in the *Benefit* criterion.

Seven comments suggested an added emphasis to the *Work Plan* criterion, and one supported the proposed emphasis on the *Budget* criterion.

Response: The Service believes these criteria are adequately emphasized in the ranking process.

Six respondents felt that emphasis should be added to the *Capacity Building* criterion, and one stated further that such projects should be favored in future funding periods. Two asked that the Service remove or de-emphasize this criterion, and one agrees with it as proposed.

Response: The Service believes that this criterion is adequately emphasized. Many tribes have limited capacity to develop and implement programs to benefit fish, wildlife, and their habitats, and the TWG program provides an excellent opportunity to increase their capacity. The Service believes that the TWG program can enhance the capacity for all tribes to implement programs for the benefit of fish and wildlife, even tribes with relatively sophisticated fish and wildlife departments.

Under the heading *Commitment,* the Service asks to what extent the applicant displays commitment to the proposed project through in-kind or matching funds. Sixteen respondents asked that the Service remove or de-emphasize this criterion, and two agreed with it as proposed.

Response: Although Congress did not include a matching requirement for the TWG program, the Service believes that tribes making a commitment in their proposals to provide a match should be rewarded in the competitive ranking process. In addition, the Service will accept other forms of support from the tribes to meet the match requirement including cash, in-kind support, equipment, and materials. Matching contributions are non-Federal (tribal or partner) cash or in-kind contributions. Funds derived from Pub. L. 93–638 contracts are allowable as matching funds.

Eighteen comments on the *Partnerships* criterion asked that the Service remove or de-emphasize this criterion, and one agreed with it as proposed. One suggested that letters of support should be considered if funds for a match are not available, and one advocated for an allowance for "partnerships" that includes non-Federal partners.

Response: Partnerships are an increasingly essential tool in the management of natural resources. The Service believes that tribes developing partnerships with other organizations to implement projects under TWG should be rewarded in the proposal ranking process. The Service agrees that this criterion should be de-emphasized and has reduced the relative value of this category. Tribes are especially encouraged to partner with non-Federal entities in order to better leverage Federal dollars and provide greater benefit to Federal taxpayers. In the final guidance, *Partnerships* and *Commitment* criteria have been combined into a new category, *Contributions and Partnerships.*

Two comments asked that the Service remove, and six asked that the Service de-emphasize, the proposed *Administrative Costs* criterion. One agreed with it as proposed. Seven comments advocated not considering tribal indirect cost rate as administrative cost, with one seeking to place a 15 percent maximum allowable for indirect cost rates. One comment suggested a limit on allowable administrative costs. Eight comments advocated making an allowance for staff or seasonal employees by removing the word "staff" from the proposed language.

Response: Administrative Costs is eliminated from the ranking criteria. We have, however, limited the total amount of the grant that can be used for administration costs to 12 percent unless a waiver is granted by the Regional Director.

Part II., Proposed Implementation Guidelines, section D., TWG Operations and Management (1), allows that TWG funds can be used to cover the costs of Conservation Law Enforcement. The Service received no comments.

Part II., Proposed Implementation Guidelines, section D., TWG Operations and Management (2), broadly outlines the activities that are eligible for funding under TWG. Three comments proposed language to better define wildlife, conservation, Tribal Fish and Game Department or Tribal Fish and Wildlife Department, and wildlife-restoration project. The respondent advocated for inserting the following: "Priority for funding from the TWG Program shall be for those species with the greatest conservation need identified by the tribe." Another comment suggested that the Service better define the purpose of the TWG program.

Response: The Service appreciates these thorough and constructive comments, and has used them in revising the program guidance and in developing a *Definitions* section. The Service agrees with and has incorporated the proposed statement.

As defined by Congress, the intent of the TWG program is "for the development and implementation of programs for the benefit of wildlife and their habitat, including species that are not hunted or fished."

One comment suggested that the Service consider a cap on land purchase and that projects with land acquisitions in the match category should be encouraged. One comment proposed that research projects should receive equal consideration in the ranking process. One requested clarification on whether TWG funds can be used for conducting archeological surveys by Tribal Historic Preservation Officers to comply with the NHPA for a TWG project; one advocated for habitat improvement projects; and one advocated "culturally acceptable projects."

Response: Land acquisition is an eligible activity under TWG. The Service has capped all projects under TWG, including lands acquired with TWG funds, at $250,000. The associated value of certain land acquisitions can be used as match to aid in the scoring of the proposal.

Research, habitat improvement, and "culturally acceptable" projects are eligible for funding given their relative applicability to the guidelines established for TWG.

Under Section 106 of the National Historic Preservation Act, projects must comply with the Act. If it is known before project implementation that an archaeological investigation is warranted, then the cost for such investigation or survey can be included in the overall project proposal when submitted to the Service.

Part II., Proposed Implementation Guidelines, section D., TWG Operations and Management (3), proposes that TWG funds can be used to cover the costs of environmental review, habitat evaluation, permit review, and other environmental compliance activities associated with a TWG project, provided they are included in the budget and discussed in the Program and Budget Narratives. One comment agreed with this proposed explanation, and two asked that the allowable activities further specify that TWG funds may be used to address the costs of adhering to tribal environmental compliance activities.

Response: TWG funds can be used to cover the costs of environmental review, habitat evaluation, permit review, and other environmental compliance activities associated with a TWG project provided they are included in the budget and discussed in the Program and Budget Narratives of the project proposal.

Part II., Proposed Implementation Guidelines, section D., TWG Operations and Management (4), defines which activities are not allowable under TWG. It states that a proposal may not include activities required to comply with a Biological Opinion or activities required to comply with a permit (*e.g.,* mitigation activities). However, a proposal can include activities that implement conservation recommendations. Several comments said that no TWG funds should be diverted to any nontribal mandates, court directives, or Federal activities required to uphold the trust responsibility and suggested that this section be strengthened by indicating so. Two comments agreed with this section, with the inclusion of "court directive and Federal agency mandate or directive" to those activities that cannot be included in a proposal. Some respondents agreed that mitigation under a Biological Opinion should not be funded through TWG. Recommended language from one comment: "A proposal cannot include activities required to comply with a BO, court directive, Federal agency mandate or directive, or include activities required to comply with a permit (mitigation

responsibilities). However, a proposal can include activities to implement conservation recommendations." One comment asked that "Biological Opinion" be further defined.

Response: All TWG funds will be awarded to tribes and will not be diverted to any nontribal mandates, court directives, or Federal activities required to uphold the trust responsibility. The Service appreciates the proposed language but disagrees with the inclusion of "court directive and Federal agency mandate or directive" as excluded activities in a grant project, because doing so would place additional restrictions on tribal proposals. "Biological Opinion" refers to Biological Opinions with regard to the Endangered Species Act and this is clarified in the "Definitions" section.

Part II., Proposed Implementation Guidelines, section D., TWG Operations and Management (5), states that TWG is not a continuous revenue source, and one comment advocated for making the TWG program a continuing source for funding.

Response: Because TWG is an annual Congressional allocation, it is subject to further actions by Congress and cannot be considered a continuing source of funding.

Part II., Proposed Implementation Guidelines, section D., TWG Operations and Management (6), stated that TWG funds cannot be held in an interest-bearing account. Two comments suggested otherwise.

Response: Federal law allows funds to be held in an interest-bearing account although any interest earned on such funds in excess of $100 must be returned to the fiscally responsible Federal agency (43 CFR 12.64).

Part II., Proposed Implementation Guidelines, section E., Grant Award Procedures (1), defines which additional information must be included by the grantees once awards are announced. The Service received no comments.

Part II., Proposed Implementation Guidelines, section E., Grant Award Procedures (2), states that the lead contact after award announcements should be the Native American Liaison in the grantee's respective Region. One comment advocated for a contact in the Service's Division of Federal Aid to be identified as the initial contact.

Response: The Native American Liaison will be the lead contact for technical implementation assistance, and the Division of Federal Aid will serve as the principle financial contact.

Part II., Proposed Implementation Guidelines, section E., Grant Award Procedures (3), stated that the Service will award grants within 30 days of the recommendations provided by the national review panel. One comment suggested that a timeline be provided for acceptance and selection of awards, and one comment simply agreed with the stipulated language.

Response: A timeline for acceptance and selection of awards is included in the Grant Application Package.

Part II., Proposed Implementation Guidelines, section E., Grant Award Procedures (4), states that funds will be disbursed, subsequent to funding approval, through the Department of Health and Human Services' SMARTLINK electronic funds transfer system (EFT). And, that in the instance of demonstrated hardship or need, grantees may request up to 25 percent of the grant award.

Four comments stated that if the Service has the ability to advance 25 percent of the project funds up front, given demonstrated hardship or need, then all grantees should be eligible without demonstrating hardship or need. Two comments advocated for increasing the initial draw down, one suggests 40 percent and the other is nonspecific.

Response: The Service will advance up to 25 percent of the total award upon request by the tribe.

Four disagreed with the proposed reimbursable mechanism, saying it presents an undue burden on tribes, and asked to have access to funds quarterly or as a lump sum transfer at the onset of a project. One comment asked if all tribes are electronic funds transfer (EFT) compliant.

Response: Further clarification of the proposed EFT is necessary to explain that funds will be "reimbursed" as needed rather than upon receipt of proof of expenditure. We feel that this does not place a financial burden on the tribes. All tribes are capable of EFT. As a grantee incurs expenses, funds to pay these can be drawn down via SMARTLINK.

Part II., Proposed Implementation Guidelines, section E., Grant Award Procedures (5), addresses the reporting requirements tribes must meet once funds are obligated under a TWG grant agreement. One comment suggested that language be included to indicate that tribes will be obligated to comply with NEPA, ESA, National Historic Preservation Act, and other relevant Acts. Another comment suggested that the benefits and outcomes of the TWG program be reported to Congress.

Response: TWG projects are subject to legal requirements of Federal regulatory Acts in the context of established Federal/Tribal protocol.

Response: A summary of benefits and outcomes of the TWG program will be made available to interested Congressional representatives.

Part III., Procedural Requirements, sections A., Regulatory Planning and Review; B., Regulatory Flexibility Act; C., Small Business Regulatory Enforcement Fairness Act; D., Unfunded Mandates Reform Act; E., Takings Implications Order; F., Energy Effects; G., Federalism; and H., Civil Justice Reform, received no comments, although two pertinent general comments suggested that a section be added to clarify how the Freedom of Information Act will apply to information submitted by the tribes.

Response: The Service will work with the tribes to ensure that sensitive information is protected.

Part III., Procedural Requirements, section I. National Environmental Policy Act, drew one comment asking that the Service better determine what is meant by the phrase "Service will ensure (that grants funded through TWG are in compliance with the National Environmental Policy Act)" in the proposed guidelines.

Response: A completed NEPA Checklist and appropriate environmental information will be required in the Grant Narrative from the grantee for review and concurrence by the Service.

Part III., Procedural Requirements, section J., Consultation and Coordination with Indian Tribal Governments, and K., Paperwork Reduction Act were not commented upon.

Part IV., Native American Liaisons for the Fish and Wildlife Service, was not commented upon.

General Comments: We received several comments that did not readily fit into the above categories. The Service has responded to these comments below.

1. Three comments asked that the Service distinguish between treaty and nontreaty rights.

Response: The Service recognizes that treaty rights involve unique responsibilities defining specific rights to treaty-recognized tribes and will work to address them where appropriate within the grant processes.

2. One respondent advocated for the inclusion of nontrust tribal lands in TWG projects.

Response: This is an allowable request under TWG.

3. Four general comments stated that there should be no Service administrative cost associated with implementation of this program's $5 million allocation.

Response: Service administrative costs will not be charged against the $5 million allocation.

4. One comment suggested that the funds for FY02 and FY03 be combined into one proposal period. This same comment recommended that the Service allow for multiple-year projects.

Response: FY02 and FY03 funds will be combined and disbursed through one proposal period. A grant award can provide for multiple-year projects. Multiple-year projects still require annual performance and financial reports. The performance reports should be submitted to the Native American Liaison and the financial reports to the Federal Aid Office.

5. One respondent asked that the Service define the role of public opinion in ranking/selection of proposals.

Response: The Service will work to address public comments with the intent of enhancing the administration of the Tribal Wildlife Grants as Congress intended for the benefit of federally recognized tribes.

6. Two respondents suggested that the Service require postmarks on proposals showing the due date.

Response: Proposals postmarked, hand-delivered, or otherwise sent in by the due date will be accepted for the grant review process.

7. A comment suggested that the Service allow for proposals that combine TWG and the Tribal-Landowner Incentive Program (TLIP) and apply the same criteria to both TLIP and TWG.

Response: The Service must administer each grant as directed by Congress, and each program differs to some degree, thus limiting our ability to establish identical criteria.

8. Three comments advocated for future funding of the TWG program and one respondent advocated for increasing the amount of available funds in the TWG program.

Response: The President's budget request to Congress for FY04 includes $5 million for TWG.

9. One respondent suggested that there should be no time limit on expenditure of funds, and a similar response advocated for allowance for rollover into the next fiscal year.

Response: After appropriation, TWG funds are available until expended. However, grant agreements will be written to allow an appropriate amount of time to complete the project. Grant agreement periods are negotiable, and funds must be expended within 90 days following the end date of the grant agreement.

10. One respondent asked that an 8 week response period be invoked for the open Request For Proposals period (RFP).

Response: In order to address the need to expedite the selection and awarding of proposals, the Service has set the RFP period for the TWG program at 45 days. The Service feels that this period is sufficient for tribes to prepare proposals.

11. One respondent asked that the Service allocate funds as quickly as possible after awards are made.

Response: It is the Service's intent to accomplish this task, and a timeline will be provided in the Grant Application Kit.

Dated: May 2, 2003.

H. Craig Manson,

Assistant Secretary, F.. h and Wildlife and Parks.

[FR Doc. 03–19121 Filed 7–25–03; 8:45 am]

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Federal Register

Monday,
July 28, 2003

Part VI

The President

Proclamation 7692—National Korean War Veterans Armistice Day, 2003

Federal Register
Vol. 68, No. 144
Monday, July 28, 2003

Presidential Documents

Title 3—

The President

Proclamation 7692 of July 24, 2003

National Korean War Veterans Armistice Day, 2003

By the President of the United States of America

A Proclamation

When North Korean troops invaded South Korea on June 25, 1950, the United States took immediate action to defend the freedom of a people unjustly attacked. Leading a coalition of 20 other countries, American and South Korean troops fought to advance liberty and opportunity and to overcome cruelty and repression. More than 1.7 million Americans faced forbidding terrain and harsh combat in battles such as Pork Chop Hill, Heartbreak Ridge, the Pusan Perimeter, and the Chosin Reservoir. Throughout the conflict, the members of our Armed Forces demonstrated extraordinary honor, skill, and courage.

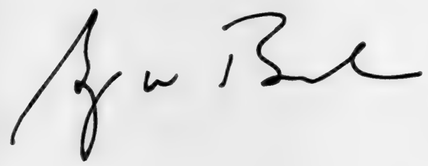
The Military Armistice Agreement of July 27, 1953, ended 3 years of bitter warfare on the Korean Peninsula and stopped the spread of Communism in Korea, signaling to the world America's resolve to stand against tyranny and totalitarian regimes. Fifty years later, our Nation remains grateful for the bravery and sacrifice of our Korean War veterans. They defended human freedom, liberated the oppressed, and selflessly protected the democratic ideals that made our Nation strong. Their efforts reflect the honorable and decent spirit of America. More than 34,000 of America's service men and women gave their lives in battle in the Korean War. As we continue our fight to extend freedom today, we remember and honor their sacrifices and those of their families.

Thanks in large measure to the veterans of the Korean War, South Korea today stands as a shining example of the economic and social benefits of democracy. As we observe the 50th anniversary of the Armistice, America looks forward to the day when the stability of the Korean Peninsula is built on peaceful reconciliation of North and South. We pledge to work with the Republic of Korea to further our shared values of democracy, human rights, and free enterprise. And we will continue to build upon the comprehensive and dynamic relationship between our two nations to promote peace and prosperity on the Korean Peninsula and in Northeast Asia.

The Congress, by Public Law 104–19 as amended (36 U.S.C. 127), has designated July 27, 2003, as "National Korean War Veterans Armistice Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim July 27, 2003, as National Korean War Veterans Armistice Day. I call upon all Americans to observe this day with appropriate ceremonies and activities that honor and give thanks to our distinguished Korean War veterans. I also ask Federal departments and agencies and interested groups, organizations, and individuals to fly the flag of the United States at half-staff on July 27, 2003, in memory of the Americans who died as a result of their service in the Korean War.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of July, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.



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LIST OF PUBLIC LAWS

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S. 709/P.L. 108–60

To award a congressional gold medal to Prime Minister Tony Blair. (July 17, 2003; 117 Stat. 862)

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 should be retained.

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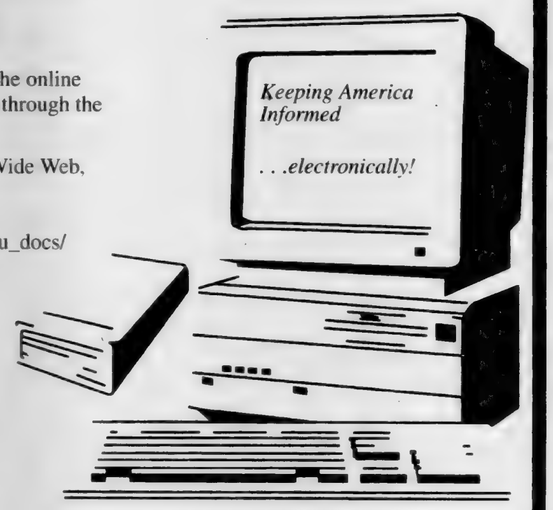
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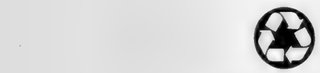
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Rules and Regulations

Federal Register
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Tuesday, July 29, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15457; Airspace Docket No. 03–ACE–55]

Modification of Class E Airspace; Waterloo, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Waterloo, IA revealed discrepancies in Waterloo, IA Class E airspace areas and their legal descriptions. This action corrects the discrepancies, modifies Class E airspace areas at Waterloo, IA to the appropriate dimensions for protecting aircraft executing instrument approach procedures at Waterloo Municipal Airport and incorporates the changes into the legal descriptions of Waterloo, IA Class E airspace areas.

DATES: This direct final rule is effective on 0901 UTC, October 30, 2003. Comments for inclusion in the Rules Docket must be received on or before August 28, 2003.

ADDRESSES: Send comments on this rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15457/Airspace Docket No. 03–ACE–55, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area designated as an extension to a Class D or Class E Surface Area at Waterloo, IA. It also modifies the Class E airspace area extending upward from 700 feet above the surface at Waterloo, IA and the legal descriptions of both airspace areas. An examination of controlled airspace for Waterloo, IA revealed discrepancies in the dimensions of Class E airspace areas and their legal descriptions. A discrepancy in the location of the collocated very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) serving Waterloo Municipal Airport and used to describe these airspace areas was also noted. This action corrects the discrepancies, modifies Class E airspace areas at Waterloo, IA to the appropriate dimensions for protecting aircraft executing instrument approach procedures at Waterloo Municipal Airport and incorporates the changes into the legal descriptions of Waterloo, IA Class E airspace areas. This action brings the legal descriptions of Waterloo, IA controlled airspace areas into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The areas will be depicted on appropriate aeronautical charts. Class E airspace areas designated as extensions to a Class D or Class E Surface Area are published in paragraph 6004 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of the same FAA Order. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–15457/Airspace Docket No. 03–ACE–55." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various

levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6004 Class E airspace areas designated as an extension to Class D or Class E surface area.

* * * * *

ACE IA E4 Waterloo, IA

Waterloo Municipal Airport, IA
(Lat. 42°33′25″ N., long. 92°24′01″ W.)
Waterloo VORTAC
(Lat. 42°33′23″ N., long. 92°23′56″ W.)

That airspace extending upward from the surface within 2.4 miles each side of the Waterloo VORTAC 079° radial extending from the 4.3-mile radius of Waterloo Municipal Airport to 7 miles east of the VORTAC and within 2.4 miles each side of the VORTAC 202° radial extending from the 4.3-mile radius of the airport to 7 miles south of the VORTAC, and within 2.4 miles each side of the VORTAC 238° radial extending from the 4.3-mile radius of the airport to 7 miles southwest of the VORTAC and within 2.4 miles each side of the VORTAC 313° radial extending from the 4.3-mile radius of the airport to 7 miles northwest of the VORTAC and within 2.4 miles each side of the VORTAC 351° radial extending from the 4.3-mile radius of the airport to 7 miles north of the VORTAC.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Waterloo, IA

Waterloo Municipal Airport, IA
(Lat. 42°33′25″ N., long. 92°24′01″ W.)
Waterloo VORTAC
(Lat. 42°33′23″ N., long. 92°23′56″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Waterloo Municipal Airport and within 2.6 miles each side of the Waterloo VORTAC 120° radial extending from the 6.8-mile radius of the airport to 8 miles southeast of the VORTAC.

* * * * *

Issued in Kansas City, MO, on July 15, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–19157 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15458; Airspace Docket No. 03–ACE–56]

Modification of Class E Airspace; Webster City, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Webster City, IA revealed discrepancies in the Webster City Municipal Airport airport reference point and in the location of the Webster City nondirectional radio beacon (NDB), both used in the legal description for the Webster City, IA Class E airspace. A discrepancy in the Webster City NDB bearing of the Class E airspace extension was also discovered. This action corrects the discrepancies by modifying the Webster City, IA Class E airspace and by incorporating the current Webster City Municipal Airport airport reference point and the current location of the Webster City NDB in the Class E airspace legal description.

EFFECTIVE DATE: This direct final rule is effective on 0901 UTC, October 30, 2003. Comments for inclusion in the Rules Docket must be received on or before August 28, 2003.

ADDRESSES: Send comments on this rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15458/Airspace Docket No. 03–ACE–56, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Municipal Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Webster City, IA. It incorporates the current airport reference point for Webster City Municipal Airport and the current location of the Webster City NDB. It corrects the bearing from the Webster City NDB of the Class E airspace extension and brings the legal description of this airspace area into compliance with FAA Order 7400.2E, Procedures for Handing Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–15458/Airspace Docket No. 03–ACE–56." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Webster City, IA

Webster City Municipal Airport, IA
(Lat. 42°26′12″N., long. 93°52′08″W.)
Webster City NDB
(Lat. 42°26′29″N., long. 93°52′09″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Webster City Municipal Airport and within 2.6 miles each side of the 153° bearing from the Webster City NDB extending from the 6.4-mile radius to 7.4 miles southeast of the airport

Issued in Kansas City, MO, on July 15, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–19158 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15459; Airspace Docket No. 03–ACE–57]

Modification of Class E Airspace; West Union, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for West Union, IA revealed a discrepancy in the dimensions of the extension to the Class E airspace area corrects the discrepancy by modifying the West Union, IA Class E airspace area and by incorporating the revised dimensions into the Class E airspace area. This action corrects the discrepancy by modifying the West Union, IA Class E airspace area and by incorporating the revised dimensions into the Class E airspace legal description.

DATES: This direct final rule is effective on 0901 UTC, October 30, 2003.

Comments for inclusion in the Rules Docket must be received on or before September 2, 2003.

ADDRESSES: Send comments on this rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15459/Airspace Docket No. 03–ACE–57, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at West Union, IA. It expands the Class E airspace extension by .4 of a mile and

brings the legal description of this airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriated aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–15459/Airspace Docket No. 03–ACE–57." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 West Union, IA

West Union, George L. Scott Municipal Airport, IA
(Lat. 42°59′06″ N., long. 91°47′26″ W.)
West Union NDB
(Lat. 42°56′38″ N., long. 91°46′57″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of George L. Scott Municipal Airport and within 2.6 miles each side of the 172° bearing from the West Union NDB extending from the 6.4-mile radius to 9.6 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on July 15, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–19162 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15460; Airspace Docket No. 03–ACE–58]

Modification of Class E Airspace; Aurora, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: Aurora Memorial Municipal Airport, Aurora, MO, has been renamed Jerry Summers Sr. Aurora Municipal Airport. The intended effect of this rule is to replace "Aurora Memorial Municipal Airport" in the legal descriptions of Aurora, MO Class E airspace area with "Jerry Summers Sr. Aurora Municipal Airport" and to bring the legal description into compliance with FAA Orders.

EFFECTIVE DATE: This direct final rule is effective on 0901 UTC, October 30, 2003. Comments for inclusion in the rules Docket must be received on or before September 2, 2003.

ADDRESSES: Send comments on this rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15460/Airspace Docket No. 03–ACE–58, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the rule, any comments received, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Aurora, MO. It replaces "Aurora Memorial Municipal Airport," the former name of the airport, with "Jerry Summers Sr. Aurora Municipal Airport," the new name of the airport, in the legal description. It brings the legal description of the airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–15460/Airspace Docket No. 03–ACE–58." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 1312.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Aurora, MO

Jerry Summers Sr. Aurora Municipal Airport, MO
(Lat. 36°57′44″ N., long. 93°41′43″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Jerry Summers Sr. Aurora Municipal Airport and within 2 miles each side of the 181° bearing from the Jerry Summers Sr. Aurora Municipal Airport extending from the 6.3-mile radius to 9.3 miles north of the airport.

* * * * *

Issued in Kansas City, MO on July 17, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–19165 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

14 CFR Part 330

[Docket OST–2001–10885]

RIN 2105–AD27

Procedures for Compensation of Air Carriers

AGENCY: Office of the Secretary, (DOT).

ACTION: Final rule.

SUMMARY: This rule adjusts the amount of compensation available to two classes of carriers under the Air Transportation Safety and System Stabilization Act. The effect of the change permits increased compensation for some small air carriers.

DATES: This rule is effective July 29, 2003.

FOR FURTHER INFORMATION CONTACT: Steven Hatley, U.S. Department of Transportation, Office of International Aviation, 400 7th Street, SW., Room 6402, Washington, DC 20590. Telephone (202) 366–1213.

SUPPLEMENTARY INFORMATION:

Background

As a consequence of the terrorist attacks on the United States on September 11, 2001, the U.S. commercial aviation industry suffered severe financial losses. These losses placed the financial survival of many air carriers at risk. Acting rapidly to preserve the continued viability of the U.S. air transportation system, President Bush sought and Congress enacted the Air Transportation Safety and System Stabilization Act.

Under section 101(a)(2)(A)–(B) of the Stabilization Act, a total of $5 billion in compensation is provided for "direct losses incurred beginning on September 11, 2001, by air carriers as a result of any Federal ground stop order issued by the Secretary of Transportation or any subsequent order which continues or renews such stoppage; and the incremental losses incurred beginning September 11, 2001 and ending December 31, 2001, by air carriers as a direct result of such attacks."

Section 103 of the Stabilization Act established the basis for determining the amount of compensation payable to each carrier. Under section 103(b), that amount, for each passenger and combination passenger-cargo carrier, was the lesser of (1) the amount of its direct and incremental losses, or (2) the product of $ 4.5 billion and the ratio of the number of available seat miles reported for the month of August 2001 by the particular carrier to the number of available seat miles of all such air carriers reported for that month.

Thereafter, a number of carriers expressed concern that the Stabilization Act's use of approximate market share ratios as one of the alternate tests for compensation—*i.e.*, measuring each carrier's available seat miles (ASMs) against the total number of industry ASMs—would not adequately compensate some classes of carriers for their losses. Since ASMs are the product of the number of seats available for revenue use and the miles they are flown, 14 CFR 330.3, these carriers pointed out that those who operate aircraft having relatively few seats and/or fly for relatively short distances, such as air ambulances and air tour operators, do not accumulate ASMs as quickly as carriers operating large aircraft and flying longer distances. They argued that an ASM ratio formula, if used as a ceiling for compensation, would place such carriers at a disadvantage to larger carriers and result in compensation payments that were well below the losses these carriers had sustained from the attacks.

Subsequently, Congress enacted Section 124(d) of the Aviation and Transportation Security Act (Pub. L. 107–71, Nov. 19, 2001), which amended section 103 of the Stabilization Act. The purpose of this amendment, according to the Conference Report (H.R. REP. No. 107–296 at 79), was "to allow for a modified system of providing compensation to air tour operators and air ambulances to better address their needs after industry-wide losses." The following is the text of this amendment:

(d) Compensation for Certain Air Carriers.—

(1) Set-Aside—The President may set aside a portion of the amount of compensation payable to air carriers under section 101(a)(2) to provide compensation to classes of air carriers, such as air tour operators and air ambulances (including hospitals operating air ambulances) for whom application of a distribution formula containing available seat miles as a factor would inadequately reflect their share of direct and incremental losses. The President shall reduce the $4,500,000,000 specified in subsection (b)(2)(A)(i) by the amount set aside under this subsection.

(2) Distribution of Amounts—The President shall distribute the amount set aside under this subsection proportionally among such air carriers based on an appropriate auditable measure, as determined by the President.

On January 2, 2002 (67 FR 263), the Department requested comments concerning whether it should utilize this discretionary authority to set-aside a portion of funds, and if so, in what manner and to what classes of air carriers. Following receipt and consideration of written comments, the Department determined that the statutory formula in the Stabilization Act did result in disproportionately smaller recoveries for smaller passenger carriers, and that it would be appropriate to use the set-aside authority to address that situation. In analyzing the financial information submitted to that point by smaller carriers, the Department found that air taxi, commuter, and regional carriers reporting fewer than 10 million ASMs would receive disproportionately less relative to their losses under the Stabilization Act formula than carriers that had higher ASM levels. Moreover, the smallest of these—those who reported an average of 10,000 or fewer per day, or 310,000 for the reporting period of August 2001—seemed to fall even further behind in compensation levels relative to their expected losses.

Therefore, in its final rule on the subject (67 FR 18468–78, April 16, 2002) the Department established a set-aside program and created two classes of small carrier for purposes of prospective compensation under that program. A Class I air carrier was defined as an air taxi, regional, or commuter air carrier that reported 310,000 or fewer available seat miles to the Department for the month of August 2001. A Class II air carrier was defined as an air taxi, regional, or commuter air carrier that reported between 310,001 and 10 million available seat miles to the Department for that month. 67 FR 18477, codified at 14 CFR 330.43. (Indirect carriers reporting 310,000 or fewer, and from 310,001 to 10 million ASMs, were added to these two classes in a final rule published on August 20, 2002, 67 FR 54058–83.) The rule further stated that compensation for Class I carriers would be calculated using a fixed ASM rate equivalent to the mean losses per ASM for all Class I carriers applying for compensation. Compensation for Class II carriers would be calculated using a graduated ASM rate equivalent to (i) the mean loss per ASM for all Class I carriers applying for compensation, for each of the first 310,000 ASMs reported and (ii) the mean loss per ASM for all Class II carriers applying for compensation for each ASM in excess of 310,000. 67 FR 18478, codified at 14 CFR 330.45(b).

Another subsection of the regulation set a "floor" for payment to qualifying set-aside carriers, equivalent to 25% of their direct and incremental transportation-related losses, to ensure that even air carriers with very high loss/ASM ratios would receive compensation at a rate more consistent with those being paid to larger carriers having high loss/ASM ratios. A further provision was necessary to ensure that carriers under the set-aside would not receive a higher percentage of compensation for losses, on average, than non set-aside carriers. Thus, we provided that compensation for set-aside carriers would not be more than an amount equivalent to the mean percentage of compensation for losses received by passenger and combination passenger-cargo air carriers that were not eligible for the set-aside funds. Finally, we provided that if a set-aside carrier would receive more compensation under the Stabilization Act formula than under the set-aside formula, it would receive compensation at the higher amount (14 CFR 330.35(c)).

Important to these calculations are, of course, the amounts that represented the mean losses per ASM for Class I and Class II carriers. In the Preamble to the April rule, the Department made clear that these amounts could be calculated only after all applications had been received from Class I and II carriers, and only after the amounts of actual losses could be verified. However, for purposes of illustration, the Department offered estimates of the basis upon which each Class would be compensated, relying upon the forecasted losses made by the air carriers that had already applied and would qualify for Class I and Class II. As an example, for Class I carriers, the Department estimated that the mean loss per ASM was $0.82, based upon this preliminary data. Thus, for Class I carriers, the Department projected that a carrier with 100,000 ASMs might receive $82,000 in total compensation if this formula were used. For Class II carriers, the average losses might be expected to be in the range of 25 to 50 cents per ASM, but to achieve consistency with the compensation rates for the Class I carriers this amount would need to be averaged over the first 310,000 ASMs and those between 310,000 and 10 million. The Department projected that if the $0.82 per ASM rate were used for the initial 310,000 ASMs, the overall mean, based on these forecast data, would be reached by applying a rate of $0.19 per ASM for those over the first 310,000 ASMs. As an example, we estimated that a carrier with 750,000 ASMs might receive approximately $337,800 in total compensation under this formula. Again, we cautioned that these were estimates, and that, depending on the actual losses and ASMs that would be validated for set-aside applicants, the ASM rates for both Class I and Class II carriers could change. *See* 67 FR 18470.

The Department has now received and processed the carrier applications under the set-aside program. We have determined that the losses incurred by Class I carriers were significantly lower than our earlier estimates, averaging only $0.42 per ASM. This was primarily due to carriers reporting actual losses lower than they had forecast earlier, although disallowance of some claimed losses also played a part. Losses for Class II carriers, on the other hand, were more consistent with earlier estimates, ranging generally from 25 to 32 cents per ASM. We also found that the smallest carriers in Class I, those reporting fewer than 75,000 ASMs, reported losses that were on average significantly higher per ASM than the larger carriers in Class I.

As a result, air carriers in Class I have been processed for payments in amounts that are often less than anticipated. Also, the smallest of the carriers, because they have, on average, reported comparatively higher losses per ASM than other set-aside eligible carriers, still seem to have received disproportionately smaller amounts relative to those other carriers. On the other hand, because the verified loss amounts on a cumulative basis have been less than those we estimated, the Department has flexibility to modify the set-aside rule to provide more equitable treatment for the smaller set-aside carriers without disadvantaging the larger ones.

The Department published a Notice of Proposed Rulemaking on May 5, 2003, at 68 FR 23627. No comments were received in response to that notice. This final rule adopts the proposed rule without change.

The Rule

This action amends the definitions for the two classes of set-aside air carrier in 14 CFR 330.43. Class I will now consist of those carriers reporting 75,000 or fewer ASMs to the Department for the month of August 2001, while Class II will consist of those reporting between 75,001 and 10 million ASMs for that month. The set-aside formula for Class I carriers will be based on a mean ASM rate for that class of $0.984 per ASM. The formula for Class II carriers will be based on the rate of $0.984 for each of the first 75,000 ASMs, and $0.24 for each ASM from 75,001 to 10 million. Use of these mean ASM rates will not reduce the payments any set-aside carrier has received. They will increase the maximum possible payment for set-aside carriers that reported 310,000 or fewer ASMs, but, primarily, will increase payments to the smallest carriers in that group.

In addition to use of this formula for compensation, the Department may utilize several other alternatives as bases for compensation of set-aside carriers. These other alternatives are currently available under 14 CFR 330.45(c), and no change is being made to that subsection. Thus, the compensation paid to qualifying set-aside carriers will not be less than an amount equivalent to 25 percent of the direct and incremental transportation-related losses that they demonstrate to the satisfaction of the Department were incurred as result of the terrorist attacks. This will ensure that there is a "floor" of compensation at the 25 percent level available for extreme cases of loss.

In that same subsection, the Department had set a ceiling rate for compensation to ensure that set-aside carriers are not compensated at levels that would be excessive relative to other carriers. Passenger and combination passenger-cargo air carriers that were not eligible for the set-aside have received compensation computed at a mean of 71 percent of their losses. Accordingly, the Department will compensate set-aside carriers at that level if the amount that would be received is less than that computed under the set-aside formula.

Finally, the Department has noted that, in some unusual circumstances, the ASM-based formula established originally under the Stabilization Act would provide a greater level of compensation to a set-aside carrier than the 71 percent calculation based on the mean level of compensation for non set-aside carriers noted above. Because Congress afforded discretion to the Department in the Security Act to assist, not disadvantage, smaller carriers, we will provide compensation in this case based on the Stabilization Act formula, up to, but not to exceed, compensation for all air transportation-related losses.

Regulatory Analyses and Notices

Regulatory Assessment

This rulemaking is a nonsignificant regulatory action under section 3(f) of Executive Order 12866 and has not been reviewed by the Office of Management and Budget under that Order. This rule is also not significant under the regulatory policies and procedures of the Department of Transportation, 44 FR 11034.

This rule does not impose unfunded mandates or requirements that will have any impact on the quality of the human environment.

Small Business Impact

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The Act requires agencies to review proposed regulations that may have a significant economic impact on a substantial number of small entities. For purposes of this rule, small entities include approximately 50 small air carriers. The Department certifies that this rule does not have a significant economic impact on a substantial number of small entities because the rule will increase payouts to such a limited number of small air

carriers. Therefore, an Initial Regulatory Flexibility Analysis has not been performed.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism Assessment

This proposed rule has been reviewed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it is determined that this action does not have a substantial direct effect on the States, or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule will not limit the policymaking discretion of the State nor preempt any State law or regulation.

Immediate Effective Date

The Department is making this rule effective immediately upon publication. The Department finds good cause to do so based on the importance of implementing this rule immediately to be able to enable the Department to make payments under the adjusted compensation formula to eligible air carriers. These eligible air carriers are typically among the smallest and most economically vulnerable participants in the industry, who have been awaiting compensation payments for many months.

List of Subjects in 14 CFR Part 330

Air carriers, Grant programs-Transportation, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Department amends 14 CFR part 330 as follows:

PART 330—[AMENDED]

■ 1. The authority citation for 14 CFR part 330 continues to read as follows:

Authority: Pub. L. 107–42, 115 Stat. 230 (49 U.S.C. 40101 note); sec. 124(d), Pub. L. 107–71, 155 Stat. 631 (49 U.S.C. 40101 note).

■ 2. Revise § 330.43 (a) and (b) as follows:

§ 330.43 What classes of air carriers are eligible under the set-aside?

* * * * *

(a) You are a Class I air carrier if you are an air taxi, regional, commuter or indirect air carrier and you reported 75,000 or fewer ASMs to the Department for the month of August, 2001.

(b) You are a Class II air carrier if you are an air taxi, regional, commuter or indirect air carrier and you reported between 75,001 and 10 million ASMs to the Department for the month of August 2001.

■ 3. Revise § 330.45 (b)(2) (i) and (ii) as follows:

§ 330.45 What is the basis on which air carriers will be compensated under the set-aside?

* * * * *

(b) * * *

(2) As a Class II carrier, your compensation will be calculated using a graduated ASM rate equivalent to—

(i) The mean loss per ASM for all Class I carriers applying for compensation, for each of the first 75,000 ASMs reported; and

(ii) The mean remaining loss per ASM for all Class II carriers applying for compensation for each ASM in excess of 75,000.

* * * * *

Issued in Washington, DC this 22nd day of July, 2003.

Michael W. Reynolds,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 03–19240 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Diego 03–025]

RIN 1625–AA00

Safety Zone; Colorado River, Laughlin, NV

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of Laughlin, Nevada in support of the Avi Resort and Casino fireworks show. This temporary safety zone is necessary to provide for the safety of the crews, spectators, participants of the event, participating vessels and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within these safety zones unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 8 p.m. (PDT) on August 31, 2003 until 10 p.m. (PDT) on August 31, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP San Diego 03–025] and are available for inspection or copying at Marine Safety Office San Diego, 2716 N. Harbor Drive, San Diego, CA 92101–1064 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer Austin Murai, USCG, c/o U.S Coast Guard Captain of the Port, telephone (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. In keeping with the requirements of 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. The precise location of the event necessitating promulgation of this safety zone and other logistical details surrounding the event were not finalized until a date close in time to the event. Delaying the effective date of this rule would be contrary to the public interest because doing such would prevent the Coast Guard from maintaining the safety of the participants of the event and users of the waterway.

Background and Purpose

The Coast Guard is establishing a temporary safety zone on the navigable waters of the Colorado River in Laughlin, Nevada in support of the Avi Resort and Casino fireworks show. The fireworks will be launched from an area on land, however, the fallout area will be over a section of the Colorado River and a safety zone on this section of the river is necessary to provide for the safety of the users of this waterway.

Discussion of Rule

The Coast Guard proposes to establish this temporary rule to provide for the safety of the participants, spectators and other users of the waterways. The temporary safety zone is specifically defined as that portion of the Colorado River 1000 yards north of Veterans Bridge. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Due to the temporary safety zone's short duration of two hours, its limited scope of implementation, and because vessels will have an opportunity to request authorization to transit, the Coast Guard expects the economic impact of this rule to be so minimal that full regulatory evaluation under paragraph 10 (e) of the regulatory policies and procedures of the DHS is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule is not expected to have a significant economic impact on any substantial number of entities, regardless of size. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Colorado River from 8 p.m. to 10 p.m. on August 31, 2003.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The temporary safety zone's short duration of two hours on one day, The late hour when traffic is low, and the ability of the COTP to authorize entry if necessary.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander Rick Sorrell, U.S. Coast Guard Marine Safety Office San Diego at (619) 683–6495.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

Under figure 2–1, paragraph (34)(g), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are required for this rule and can be viewed in the docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a new § 165.T11–043 to read as follows:

§ 165.T11–043 Safety Zone: Colorado River, Laughlin, Nevada.

(a) *Location.* The safety zone includes that portion of the Colorado River extending 1000 yards north of Veterans Bridge.

(b) *Enforcement period.* This section will be in enforced from 8 p.m. (PDT) on August 31, 2003 until 10 p.m. (PDT) on August 31, 2003. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone by all vessels is prohibited, unless authorized by the Captain of the Port, or his designated representative. Mariners requesting permission to transit through the safety zone may request authorization to do so from the designated representative. The designated representative may be contacted via VHF-FM channel 16. The designated representative for this event will be Frank Shaves of the Nevada Division of Wildlife.

Dated: July 17, 2003.

Stephen P. Metruck,

Commander, U.S. Coast Guard, Captain of the Port, San Diego.

[FR Doc. 03–19256 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–D–7543]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Montgomery.	City of Montgomery.	May 28, 2003, June 4, 2003, *Montgomery Advertiser.*	The Honorable Bobby N. Bright, Mayor of the City of Montgomery, City Hall, P.O. Box 1111, Montgomery, Alabama 36101–1111.	August 5, 2003	010174 G
Connecticut: Tolland.	Town of Coventry	June 24, 2003, *The Chronicle.*	Mr. John Elsesser, Manager of the Town of Coventry, Coventry Town Hall, 1712 Main Street, Coventry, Connecticut 06238.	September 25, 2003.	090110 C
Delaware: New Castle.	Unincorporated Areas.	July 3, 2003, July 10, 2003, *The News Journal.*	Mr. Thomas P. Gordon, New Castle County Executive, New Castle County Government Center, 87 Reads Way, New Castle, Delaware 19720.	October 9, 2003 ...	105085 G&H
Florida: Dade	City of Miami	July 7, 2003, July 14, 2003, *The Miami Herald.*	The Honorable Manuel A. Diaz, Mayor of the City of Miami, 3500 Pan American Drive, Miami, Florida 33133.	July 26, 2003	120650 J
Florida: Santa Rosa.	Unincorporated Areas.	June 4, 2003, June 11, 2003, *The Press Gazette.*	Mr. Hunter Walker, Santa Rosa County Administrator, 6495 Caroline Street, Suite D, Milton, Florida 32570–4592.	May 28, 2003	120274 C
Georgia: Bryan	Unincorporated Areas.	June 19, 2003, June 26, 2003, *Bryan County News.*	Mr. Brooks Warnell, Chairman of the Bryan County Board of Commissioners, P.O. Box 430, Pembroke, Georgia 31321.	September 25, 2003.	130016 A
Maine: Camden	Town of Camden	June 26, 2003, July 3, 2003, *The Camden Herald.*	Ms. Roberta Smith, Camden Town Manager, P.O. Box 1207, Camden, Maine 04843.	June 18, 2003	230074 B
Pennsylvania: Chester.	Township of East Fallowfield.	July 2, 2003, July 9, 2003, *Daily Local News.*	Mr. Earl Emel, Chairman of the Township of East Fallowfield Board of Supervisors, 2264 Strasburg Road, East Fallowfield, Pennsylvania 19320.	June 25, 2003	421479 D
Pennsylvania: Lebanon.	Township of North Cornwall.	June 13, 2003, June 20, 2003, *Lebanon Daily News.*	Ms. Robin Getz, Lebanon County Planning and Zoning Department, 400 South Eight Street, Lebanon, Pennsylvania 17042.	September 19, 2003.	420576 C
South Carolina: Richland.	Unincorporated Areas.	May 20, 2003, May 27, 2003, *The State.*	Mr. T. Cary McSwain, Richland County Administrator, 2020 Hampton Street, P.O. Box. 192. Columbia, South Carolina 29202.	May 12, 2003	450170 H
South Carolina: Richland.	Unincorporated Areas.	June 5, 2003, June 12, 2003, *The State.*	Mr. T. Cary McSwain, Richland County Administrator, 2020 Hampton Street, P.O. Box 192, Columbia, South Carolina 29202.	May 29, 2003	450170 H

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: July 21, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–19243 Filed 7–28–03; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective date for these modified base flood elevations are indicated on the following table and review the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each

community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to polices established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Maryland:					
Harford (FEMA Docket No. D–7535).	Unincorporated Areas.	Jan. 10, 2003, Jan. 17, 2003 *The Aegis.*	Mr. James M. Harkins, Harford County Executive, 220 South Main Street, Bel Air, Maryland 21014.	April 18, 2003	240040 D
Washington (FEMA Docket No. D–7535).	Unincorporated Areas.	Jan. 17, 2003, Jan. 24, 2003, *The Herald Mail.*	Mr. Rodney Shoop, Washington County Administrator, 100 West Washington Street, Hagerstown, Maryland 21740.	April 25, 2003	240070 B
New Jersey:					
Union (FEMA Docket No. D–7535).	Township of Berkeley Heights.	Jan. 15, 2003, Jan. 22, 2003, *The Courier-News.*	The Honorable David A. Cohen, Mayor of the Township of Berkeley Heights, 29 Park Avenue, Berkeley Heights, New Jersey 07922.	April 23, 2003	340459 E
Middlesex (FEMA Docket No. D–7537).	Borough of South Plainfield.	Feb. 21, 2003, Feb. 28, 2003, *The Observer.*	The Honorable Daniel Gallagher, Mayor of the Borough of South Plainfield, Municipal Building, 2480 Plainfield Avenue, South Plainfield, New Jersey 07080.	May 30, 2003	340279 B

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Commonwealth (FEMA Docket No. D–7535).	Puerto Rico	Jan. 7, 2003, Jan. 24, 2003, *The San Juan Star.*	The Honorable Sila Maria Calderon, Governor of the Commonwealth of Puerto Rico, Office of the Governor, P.O. Box 9020082, San Juan, Puerto Rico 00902.	April 25, 2003	720000 C
West Virginia: McDowell (FEMA Docket No. D–7535).	Unincorporated Areas.	Feb. 21, 2003, Feb. 28, 2003, *The Welch News.*	Mr. B. G. Smith, McDowell County Administrator, 90 Wyoming Street, Suite 109, Welch, West Virginia 25801.	April 16, 2003	540114 B
Wisconsin: Pierce (FEMA Docket No. D–7535).	Unincorporated Areas.	Jan. 15, 2003, Jan. 22, 2003, *Pierce County Herald.*	Mr. Richard Truax, Pierce County Board Chairman, P.O. Box 128, Ellsworth, Wisconsin 54011.	April 21, 2003	555571 B

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: July 21, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–19244 Filed 7–28–03; 8:45 am]

BILLING CODE 6718–04–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Base (1-percent-annual-chance) Flood Elevations and modified Base Flood Elevations (BFEs) are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Mary Jean Pajak, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2831.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of BFEs and modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and 44 CFR part 67.

The Federal Emergency Management Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

■ 1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) Modified ◊Elevation in feet (NAVD) Modified
Illinois	Monmouth (City) Warren County (FEMA Docket No. 7623).	Unnamed Creek		*766
Maps are available for inspection at the Zoning Office, 100 East Broadway, Monmouth, Illinois.				
Iowa	Hancock County (Unincorporated Areas) (FEMA Docket No. 7623).	Bear Creek Winnebago River.		*1,205
Maps are available for inspection at Hancock County Courthouse, 855 State Street, Garner, Iowa.				
Kansas	Manhattan (City) Riley County (FEMA Docket No. 7401).	Kansas River	Approximately 3,600 feet downstream of State Highway 177	*1,013
			Approximately 2,000 feet downstream of State Highway 177 (at County Boundary)	*1,015
			Approximately 1,600 feet upstream of State Highway 177	*1,018
		Wildcat Creek	Just downstream of the Union Pacific Railroad	*1,020
			Just upstream of K–18 Highway	*1,025
			Approximately 9,200 feet upstream of confluence with Little Kitten Creek	*1,060
		Little Kitten Creek	Approximately 1,750 feet above confluence with Wildcat Creek	*1,055
			Approximately 3,700 feet upstream of Kimball Avenue	*1,144
Kansas	Manhattan (City) Riley County (Cont'd) (FEMA Docket No. 7401).	Virginia-Nevada Tributary	At confluence with Wildcat Creek	*1,038
			At upstream side of Dickens Avenue	*1,068
		CI–CO Tributary	At Anderson Avenue	*1,051
			Approximately 1,560 feet upstream of Clafin Road	*1,076
Maps are available for inspection at the Community Development Office, 1101 Poyntz Avenue, Manhattan, Kansas.				
Kansas	Riley (City) Riley County (FEMA Docket No. 7254).	Wildcat Creek Tributary	Just downstream of Chestnut Street	*1,270
			Approximately 450 feet upstream of Walnut Street	*1,281
Maps are available for inspection at the City of Riley, City Hall, 902 North Noble, Riley, Kansas.				
Kansas	Riley County (Unincorporated Areas) (FEMA Docket No. 7401).	Kansas River	At downstream county boundary	*900
			Approximately 5,700 feet upstream of confluence with Big Blue River	*1,013
Kansas	Riley County (Cont'd) (Unincorporated Areas) (FEMA Docket No. 7401).	Kansas River	Approximately 11,800 feet downstream of the confluence with Dry Branch	*1,041
			Approximately 1,000 feet downstream of Wildcat State Highway 18	*1,048
		Wildcat Creek	At confluence with Kansas River	*1,019
			Approximately 4,600 feet upstream of confluence with Little Kitten Creek	*1,055
			Approximately 1,000 feet downstream of North Scenic Drive	*1,062
		Little Kitten Creek	At confluence with Wildcat Creek	*1,051
			Just downstream of Anderson Avenue	*1,061
	Eureka Valley Tributary	At confluence with Sevenmile Creek.		*1,034
			Approximately 300 feet upstream of State Highway 18	*1,037
			Just downstream of Wildcat Creek Road	*1,073

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) Modified ◊Elevation in feet (NAVD) Modified
Kansas	Riley County (Cont'd) Unincorporated Areas) FEMA Docket No. 7401).	CI–CO Tributary	At confluence with Wildcat Creek	*1,045
			Just upstream of Missouri, Kansas, and Texas Railroad	*1,051
Maps are available for inspection at the Riley County Planning and Zoning Office, 110 Courthouse Plaza, Manhattan, Kansas.				
Louisana	Delcambre (Town) Iberia and Vermilion Parishes (FEMA Docket No. 7609).	Gulf of Mexico	Intersection of South Railroad Street and East Charity Street	*10
			Intersection of North Railroad Street and Kirk Street	*9
Maps are available for inspection at the Office of the Mayor, Town of Delcambre, 107 N. Railroad Road, Delcambre, Louisiana.				
Wisconsin	Darlington (City) Lafayette County (FEMA Docket No. 7623).	Pecatonica River	Approximately 200 feet downstream of Main Street	*823
			At upstream corporate limit, approximately 1,650 feet upstream of the Union Pacific Railroad	*827
Maps are available for inspection at City Hall, 627 Main Street, Darlington, Wisconsin.				
Wisconsin	Lafayette County (Unincorporated Areas) (FEMA Docket No. 7623).	Pecatonica River	Approximately 1,000 feet upstream of the confluence of Vinegar Branch at the City of Darlington corporate limits	*822
			Just downstream of the Union Pacific Railroad, approximately 2,500 feet downstream of Ferndale Road	*841
Maps are available for inspection at Lafayette County Courthouse, 627 Washington Street, Darlington, Wisconsin.				

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: July 15, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–19247 Filed 7–28–03; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate, has resolved any appeals resulting from this notification.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone

areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR Part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD) •Elevation in feet (NAVD)
ALABAMA	
Pike Road (Town), Montgomery County (FEMA Docket No. D–7558)	
Little Catoma Creek:	
Approximately 1.5 miles upstream of the confluence of Little Catoma Creek Tributary 1	*226
Approximately 2.7 miles upstream of the confluence of Little Catoma Creek Tributary 1	*232
Little Catoma Creek Tributary 1:	
Approximately 4,400 feet upstream of the confluence with Little Catoma Creek	*225
Approximately 3,300 feet downstream of Carter Mill Road	*239
Maps available for inspection at the Pike Road Town Office, 915 Meriweather Road, Pike Road, Alabama.	
WEST VIRGINIA	
Smithers (Town), Fayette and Kanawha Counties (FEMA Docket No. D–7556)	
Smithers Creek:	
Approximately 60 feet upstream of confluence with Kanawha River	*626
Approximately 640 feet upstream of County Route 22	*652
Maps available for inspection at the Smithers Town Hall, 175 Michigan Avenue, Smithers, West Virginia	
WEST VIRGINIA	
White Sulphur Springs (City), Greenbrier County (FEMA Docket No. D–7564)	
Howard Creek:	
Approximately 850 feet downstream of Greenbrier Avenue	*1,839
At upstream corporate limits	*1,887
Dry Creek:	
At the confluence with Howard Creek	*1,848
Approximately 0.45 mile of Interstate Route 64	*1,883
Maps available for inspection at the White Sulphur Springs City Hall, 34 West Main Street, White Sulphur Springs, West Virginia.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: July 21, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–19245 Filed 7–28–03; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: Base (1-percent-annual-chance) Flood Elevations and modified Base Flood Elevations (BFEs) are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Mary Jean Pajak, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2831.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of BFEs and modified BFEs for each community listed.

These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and 44 CFR part 67.

The Federal Emergency Management Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and record keeping requirements.

Accordingly, 44 CFR Part 67 is amended to read as follows:

PART 67—[AMENDED]

■ 1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location of referenced elevation	*Elevation in feet (NGVD) Modified	Communities affected
Joe's Lake: Entire shoreline	*952	FEMA Docket No. 7625. City of Cambridge, OK. Isanti County, OK. (Unincorporated Areas).
Long Lake: Entire shoreline	*919	Isanti County, OK. (Unincorporated Areas).

*National Geodetic Vertical Datum
Addresses:
Unincorporated Areas of Isanti County, Minnesota:
Maps are available for inspection at Isanti County Courthouse, 555 18th Avenue SW, Cambridge, Minnesota.
City of Cambridge:
Maps are available for inspection at City Hall, 626 N. Main Street, Cambridge, Minnesota.

Grand Lake O'the Cherokees Entire shoreline	*756	(FEMA Docket No. 7619). Town of Grand Lake Towne.
Unnamed Tributary to Spavinaw Creek approximately 750 feet upstream of the confluence with Spavinaw Creek.	*637	Town of Spavinaw, OK.
Neosho River/Lake Hudson Entire shoreline	*639	Town of Strang, OK.

*National Geodetic Vertical Datum
Addresses:
Town of Grand Lake Towne:
Maps are available for inspection at the Town Hall, Grand Lake Towne, Oklahoma.
Town of Spavinaw:
Maps are available for inspection at the Town Hall, 215 Lake Avenue, Spavinaw, Oklahoma.
Town of Strang:
Maps are available for inspection at the Town Hall, Strang, Oklahoma.

Big Cabin Creek: Just upstream of the confluence with Neosho River	*639	(FEMA Docket No. 7611). Mayes County, OK. (Unincorporated Areas).
Big Cabin Creek: Approximately 550 feet upstream of Abandoned County Road	*642	(FEMA Docket No. 7611). Mayes County, OK. (Unincorporated Areas).
Lake Hudson: Entire shoreline	*637	Mayes County, OK. (Unincorporated Areas). Town of Salina, OK.
Neosho River:		

Source of flooding and location of referenced elevation	*Elevation in feet (NGVD) Modified	Communities affected
Approximately 2,500 feet downstream of Strang Road	*637	Mayes County, OK. (Unincorporated Areas).
Just downstream of Pensacola Dam	*649	Town of Langley, OK. Town of Disney, OK.
Summerfield Creek:		
At the confluence with Neosho River	*648	Mayes County, OK. (Unincorporated Areas).
Approximately 6,200 feet upstream of N4475 Road	*658	Town of Disney, OK.
Salt Branch Creek:		
Just upstream of Maple Street	*611	Mayes County, OK. (Unincorporated Areas).
Approximately 100 feet downstream of N4330 Road	*633	City of Pryor Creek, OK.

*National Geodetic Vertical Datum

Addresses:

Unincorporated Areas of Mayes County, Oklahoma:

Maps are available for inspection at the Mayes County Courthouse, Pryor Creek, Oklahoma.

City of Pryor Creek:

Maps are available for inspection at the City Hall, 6 North Adair Street, Pryor Creek, Oklahoma.

Town of Disney:

Maps are available for inspection at the Town Hall, 101 Main Street, Disney, Oklahoma.

Town of Langley:

Maps are available for inspection at City Hall, 3rd Street and Osage Avenue, Langley, Oklahoma.

Town of Salina:

Maps are available for inspection at the Town Hall, Salina, Oklahoma.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: July 15, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–19246 Filed 7–28–03; 8:45 am]

BILLING CODE 6718–04–U

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 587

[Docket No. NHTSA–03–15742]

RIN 2127–AI05

Federal Motor Vehicle Safety Standards; Side Impact Protection; Fuel System Integrity

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: Pursuant to the agency's grant of a petition for rulemaking from Mr. James E. Stocke, NHTSA updates the Federal motor vehicle safety standards on side impact protection and fuel system integrity by providing that radial tires of certain specifications, instead of bias ply tires, be used on the moving barriers specified in these standards. In conjunction with that update, NHTSA also deletes certain outdated or inaccurate specifications for the moving barriers in the fuel system integrity standard.

DATES: This final rule is effective September 29, 2003. If you wish to submit a petition for reconsideration of this rule, your petition must be received by September 12, 2003.

ADDRESSES: Petitions for reconsideration should refer to the docket number and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: *For technical and policy issues:* Dr. William Fan, Office of Crashworthiness Standards, NVS–112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–4922. Fax: (202) 366–4329.

For legal issues: Nancy Bell, Attorney Advisor, Office of the Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

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II. Summary of the Notice of Proposed Rulemaking (NPRM)
III. Summary of Comments on the NPRM
IV. Agency Decision Regarding the Final Rule
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I. Background

On February 3, 2000, Mr. James E. Stocke, a retired automotive safety engineer, submitted a petition for rulemaking requesting that NHTSA amend Federal Motor Vehicle Safety Standard (FMVSS) No. 301, *Fuel System Integrity* (49 CFR 571.301), to provide that the moving barrier assembly be equipped with P205/75R15 radial tires inflated to 207 kPa (30 psi), replacing the currently specified G78–15 bias ply tires inflated to 165 kPa (24 psi). Mr. Stocke stated that the bias tire size designation referenced in FMVSS No. 301 was outdated 15 years ago and that bias tires are no longer readily available because they have been replaced with radial tires. Mr. Stocke noted that the Society of Automotive Engineers, Inc. (SAE) J972 Recommended Practice "Moving Rigid Barrier Collision Tests" was revised (in August 1997) to specify both P205/75R15 radial tires and G78–15 bias ply tires for use on moving barriers. In a letter dated August 16, 2000, NHTSA granted Mr. Stocke's petition for rulemaking.

FMVSS No. 214, *Side impact protection* (49 CFR 571.214), and FMVSS No. 301 specify impact tests using moving barriers. Paragraph S6.10 of FMVSS No. 214 contains specifications for a 1,367 kilogram (3,000 pound) moving deformable barrier. FMVSS No. 301 contains specifications for two 1,814 kilogram (4,000 pound) moving rigid barriers: a moving flat rigid barrier (Paragraphs S7.2 and S7.3), and a moving contoured rigid barrier (Paragraph S7.5). Both FMVSS No. 301 moving barriers are used to assess vehicle fuel system integrity. The FMVSS No. 301 moving flat rigid barrier is used for testing passenger cars, multipurpose passenger vehicles, trucks and buses with a gross vehicle weight rating (GVWR) of 4,536 kilograms (10,000 pounds) or less. The FMVSS No. 301 moving contoured rigid barrier is used for testing large school buses with a GVWR greater than 4,536 kilograms (10,000 pounds). The FMVSS No. 214 moving deformable barrier is used for side impact testing of passenger cars, and multipurpose passenger vehicles, trucks and buses with a GVWR of 2,722 kilograms (6,000 pounds) or less. G78–15 bias ply tires are currently specified for the FMVSS No. 301 barriers.[1]

The tire specifications for the FMVSS No. 214 moving barrier are not specified in FMVSS No. 214. Instead, S6.10 of FMVSS No. 214 incorporates by reference the moving barrier specified in 49 CFR part 587, subpart B, Side Impact Moving Deformable Barrier. The tire specifications for that barrier are contained in Drawing DSL–1278, Sheet 2 of 2, Item -11 and Note 8. Item -11 specifies "Bias belted tire (BF Goodrich—G78–15 CLM)." In October 1991, Note 8 was added to drawing DSL–1278 that states "Bias belted tire, size P215/75B15, may be substituted for that specified in -11. Inflate to recommended pressure."

II. Summary of the Notice of Proposed Rulemaking (NPRM)

On October 10, 2001, the agency published a NPRM proposing amendments to FMVSS Nos. 214 and 301 to require radial tires of certain specifications and also proposing to delete certain outdated or inaccurate specifications for the moving barriers in FMVSS No. 301. (66 FR 51629, Docket No. NHTSA–01–10435). In that notice, NHTSA discussed several considerations regarding Mr. Stocke's petition.

First, the agency noted that with the increased use of the radial tire design over the past 30 years in the U.S., the bias ply tire design had become virtually obsolete. Consequently, bias ply tires were not currently or readily available to testing laboratories and would become even more difficult for the laboratories to obtain in the future. Also, the agency noted that the SAE J972 Recommended Practice "Moving Rigid Barrier Collision Tests" now includes specifications for radial tires as well as for bias ply tires. Both P205/75R15 and P215/75R15 radial tires are readily available at present and are widely recommended for use by vehicle manufacturers on passenger cars, small passenger vans, and small sport utility vehicles.

Another consideration discussed by the agency was the potential effect on ride height (the height of the center of gravity) and vertical motion (bounce) of a moving barrier if tires different from those currently specified in FMVSS Nos. 214 and 301 were used on those barriers. Bias ply tires and radial tires are different in design and construction; therefore, they exhibit different performance characteristics. The radial construction creates a tread that is stiffer and a sidewall that is more flexible than that of a bias ply tire. These factors would affect the performance of moving barriers.[2]

In addition to discussing considerations arising out of the petition, the agency summarized related barrier tire research conducted by Ford Motor Company (Ford) and the revised SAE J972 Recommended Practice. After careful review of the study and the SAE Recommend Practice, NHTSA tentatively concluded that the P215/75R15 radial tire inflated to 221 kPa (32 psi) would be an appropriate alternative to the G78–15 bias ply tire for use on the FMVSS No. 214 moving deformable barrier and that the P205/75R15 tires inflated to 207 kPa (30 psi) would be appropriate for use on both moving rigid barriers specified in FMVSS No. 301.

As a result of these conclusions, NHTSA proposed specifying either P215/75R15 tires inflated to 221 kPa (32 psi) or P205/75R15 tires inflated to 207 kPa (30 psi) for use on FMVSS Nos. 214 and 301 moving barriers. NHTSA stated that it would pick one of these tires and specify it in the final rule for all moving barriers.

The agency also indicated that prior to making a final decision, the agency would assess the extent to which the substitution of a tire may have unintended effects on either (1) the ride height, or (2) the impact performance of the FMVSS Nos. 214 and 301 moving barriers. For example, in attempting to find a set of appropriate radial tires (tire size and inflation pressure) for use on the FMVSS No. 214 barrier, NHTSA expressed concern that a set of four incorrectly inflated tires could result in excessive barrier vertical motion during the towing process, which could have made it difficult to stay within the +/− 20 mm (0.8 inch) vertical displacement guideline.[3] NHTSA solicited comments and laboratory test data concerning these matters.

In conjunction with the proposal, NHTSA proposed that the tread width specification be deleted from the tire specifications in FMVSS No. 301. The tread width specification for radial tires is unnecessary because the radial tire size designation is sufficient to define tread width.

Finally, the agency proposed that the moment of inertia specifications for the moving contoured barrier be removed from FMVSS No. 301 because, based on the current measurements, excepting the moments of inertia, the FMVSS No. 301 moving contoured barrier could be constructed to the barrier specifications with the dimensional drawings and the specified center of gravity. In addition, there are no moments of inertia specified for the FMVSS No. 301 moving flat barrier.

III. Summary of Comments on the NPRM

NHTSA received comments on the October 2001 NPRM from General Motors North America (GM), Ford Motor Company (Ford), and Volkswagen (VW). The comments are summarized below.

All three commenters generally supported the amendments proposed in the NPRM.

With regard to tire-type and inflation pressure, GM commented that either tire-type proposed by the agency would be appropriate for use on FMVSS Nos. 214 and 301 moving barriers and

[1] Paragraph S7.5.4 of FMVSS No. 301 specifies G78–15 bias ply tires for use on the moving contoured rigid barrier. The requirements for the FMVSS No. 301 moving flat rigid barrier do not specify bias ply tires, but, in practice, the moving flat rigid barrier utilizes the identical understructure and G78–15 bias ply tires as the moving contoured rigid barrier.

[2] The moving barrier tests in FMVSS Nos. 214 and 301 specify a static barrier ride height, an important impact parameter measurement. Further, the Laboratory Test Procedure in FMVSS No. 214 provides a guideline for barrier vertical displacement. Because a radial tire has a lower profile and a more flexible sidewall than a bias ply tire, the use of radial tires, rather than bias ply tires, on the moving barriers specified in FMVSS Nos. 214 and 301 could affect the barrier ride height (the center of gravity height and/or barrier contact height). Additionally, if an improper tire inflation pressure is used, it may affect the barrier's vertical motion as it is being towed during the test.

[3] To control the impact height in the impact test in FMVSS No. 214, NHTSA's Office of Vehicle Safety Compliance specifies a vertical displacement guideline of +/− 20 mm (0.8 inch) in its Laboratory Test Procedure. (This guideline only applies to NHTSA contractors conducting FMVSS No. 214 side impact compliance tests.)

suggested an inflation range between 179 kPa and 221 kPa (26 psi–32 psi). Ford said that either proposed tire-type and respective inflation pressure would perform satisfactorily, but recommended that the P215/75R15 tire, inflated to 221 kPa (32 psi), be adopted for use on all moving barriers specified in FMVSS Nos. 214 and 301. Both Ford and GM provided data supporting their conclusions. VW supported the use of the P205/75R15 tire inflated to 207 kPa (30 psi) on all moving barriers specified in FMVSS Nos. 214 and 301.

With respect to the tread width specification, GM and Ford supported the agency's proposal to delete the outdated specification from FMVSS No. 301.

GM and Ford both concurred with the agency's proposal to delete the inaccurate moment of inertia specified in FMVSS No. 301. GM, however, recommended that NHTSA request test laboratories to provide moments of inertia for their moving barriers for further examination. Ford recommended that NHTSA consider specifying the moments of inertia for the common carriage of moving barriers prescribed in FMVSS No. 301.

Finally, GM recommended that NHTSA standardize the language of the moving barrier standards so that the text of FMVSS No. 301 would read similarly to that of S6.10 of FMVSS No. 214.

IV. Agency Decision Regarding the Final Rule

A. Tire-type and Inflation Range

Based on test data presented by GM and Ford, tire inflation pressure, rather than tire-type, appears to be a more critical element for various test facilities conducting moving barrier tests. GM has conducted FMVSS No. 214 tests using P205/75R15 tires inflated to 193 kPa (28 psi) with satisfactory results and at present is using 215/75R15 tires inflated to 193 + − 14 kPa (28 + − 2 psi) in all of its FMVSS No. 301 moving barrier tests. Pursuant to its testing, Ford recommends P215/75R15 tires inflated to 221 kPa (32psi) for use on the FMVSS No. 214 moving barrier. However, Ford believes that either tire-type would work well. Based on the comments and the data, NHTSA concludes that either tire-type, inflated to a pressure between 179 kPa and 221 kPa (26 psi–32 psi), would perform satisfactorily. Since either tire-type is reported to do well when properly inflated and since SAE J972 has already incorporated a specification for P205/75R15 radial tires inflated to 207 kPa (30 psi) for use on moving barriers, NHTSA adopts P205/75R15 tires inflated to between 179 kPa and 221 kPa (26 psi–32 psi) for use on all moving barriers specified in FMVSS Nos. 214 and 301.

B. Tread Width Specifications

Commenters supported the agency's proposal to delete the tread width specification in FMVSS No. 301. Therefore, the agency adopts the proposal to delete the tread width specification from FMVSS No. 301.

C. Moments of Inertia

Both GM and Ford concurred with the agency's proposal to delete the inaccurate moments of inertia for the moving contoured barrier from FMVSS No. 301. However, Ford recommended that NHTSA consider specifying moments of inertia for the common carriage of the moving barriers. GM recommended that NHTSA ask test laboratories to provide the moment of inertia of their moving barriers and that NHTSA consider these specifications, as appropriate, in a future rulemaking.

In response to Ford's recommendation, NHTSA notes that the moments of inertia of the common carriage are only a part of, and do not have a critical effect on, the resultant moments of inertia of the moving flat and contoured barriers specified in FMVSS No. 301. Because the moment of inertia of a concentrated mass is the product of the mass and the square of the distance between the mass and the axis of rotation, the distance between a component mass and the center of gravity of the moving barrier is more important than the mass itself in determining the moments of inertia of the moving barrier. Because of this distance from the center of gravity of the moving barrier, components such as the contoured contact face of the barrier and the ballast weights would have a greater influence than the common carriage on the moments of inertia of the moving barrier. Therefore, the agency concludes that it is unnecessary to define the moments of inertia for the common carriage.

In response to GM's suggestion that NHTSA request test laboratories to provide moment of inertia data for further rulemaking, NHTSA does not believe that re-defining the moment of inertia of the moving contoured barriers would affect testing results. The moments of inertia of the moving contoured barrier are a dynamic structural property of, rather than a primary design criterion for, the moving barrier. Therefore, the moving barrier structure, as constructed according to FMVSS No. 301 specifications, determines the moments of inertia. FMVSS No. 301 specifies the component cross-section, the structure dimension, the weight distribution, the ballast location, and the center of gravity for the moving contoured barrier. Based on these specifications, the construction of all moving barriers is very similar. Consequently, the moments of inertia of the moving contoured barrier would also be very similar. For this reason, the agency has decided not to pursue GM's recommendation.

D. Standardizing Language

The agency believes that GM's suggestion to standardize the language in all moving barrier standards has merit. Because the agency has not considered the effects of standardizing this language, it will not adopt the suggestion in this final rule. The agency, however, will consider this suggestion in the course of future rulemakings concerning moving barriers.

V. Effective Date

The bias ply tires currently specified in FMVSS No. 301 are not readily available to testing laboratories at present and will be even more difficult to obtain in the future. Vehicle manufacturers currently recommend both P205/75R15 and P215/75R15 radial tires proposed in the NPRM for use on passenger cars, multi-purpose passenger vehicles, and light trucks. The agency has noted that certain laboratories have adopted the aforesaid radial tires for use on moving barriers specified in FMVSS Nos. 214 and 301. In view of this, the agency has decided to make that final rule effective September 29, 2003.

VI. Rulemaking Analyses and Notices

Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

This final rule has not been reviewed under E.O. 12866. After considering the impacts of this rulemaking action, we have determined that the action is not significant within the meaning of the Department of Transportation regulatory policies and procedures. The intent of the rulemaking action is to update regulatory procedures that have been in effect for over 25 years. In most cases, the effect of the proposed amendments will be to relax or eliminate burdens on regulated entities. The tires specified in the proposed rule are more readily available than those currently specified. Further, they are already widely recommended by voluntary standards organizations for use by vehicle manufacturers for testing. Accordingly, there will be no increase in the cost of tires used for testing. Further, we do not anticipate any impact on the ability to conduct valid tests or any other impact on the cost or ease of testing. Thus, the impacts are so minimal as not to warrant the preparation of a full regulatory evaluation.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), we have evaluated the effects of this rule on small entities. NHTSA certifies that this action would not have a significant economic impact on a substantial number of small entities. This action merely replaces an outdated tire specification for testing devices with an equivalent current tire specification.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et. seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. NHTSA has reviewed this final rule and determined that it does not contain collection of information requirements.

Unfunded Mandates Reform Act of 1995

This rule will not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. (2 U.S.C. 1531 *et seq.*).

Executive Order 12778 (Civil Justice Reform)

This rule will not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in our regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide explanations when we decide not to use available and applicable voluntary consensus standards. We note that the radial tire specifications contained in SAE J972 Recommended Practice "Moving Rigid Barrier Collision Tests" are a voluntary consensus standard and that we have incorporated them into FMVSS Nos. 214 and 301.

National Environmental Policy Act

The agency has analyzed this action for the purposes of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and has determined that this action will not have any effect on the quality of the environment.

Executive Order 13132 (Federalism)

E.O. 13132 requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." E.O. 13132 defines the term "Policies that have federalism implications" to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under E.O. 13132, NHTSA may not issue a regulation that has federalism implication, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the proposed regulation.

The rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in E.O. 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

VII. Regulatory Text

List of Subjects

49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, and Tires.

49 CFR Part 587

Incorporation by reference, Motor vehicle safety.

■ In consideration of the foregoing, 49 CFR parts 571 and 587 are amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30166 and 30177; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.301 is amended by revising S7.5.2, S7.5.4 and S7.5.5; by removing S7.5.6; and by adding S7.6 to read as follows:

§ 571.301 Standard No. 301, Fuel system integrity.

* * * * *

S7.5.2 The moving contoured barrier, including the impact surface, supporting structure, and carriage, has a mass of 1,814 kg ± 23 kg with the mass distributed so that 408 kg ± 11 kg is at each rear wheel and 499 kg ± 11 kg is at each front wheel. The center of gravity is located 1,372 mm ± 38 mm rearward of the front wheel axis, in the vertical longitudinal plane of symmetry, 401 mm +/− 13 mm above the ground.

* * * * *

S7.5.4 The concrete surface upon which the vehicle is tested is level, rigid, and of uniform construction, with a skid number of 75 when measured in accordance with American Society of Testing and Materials Method E: 274–65T at 64 km/h, omitting water delivery as specified in paragraph 7.1 of that method.

S7.5.5 The barrier assembly is released from the guidance mechanism immediately prior to impact with the vehicle.

S7.6 The moving barrier assemblies specified in S7.2, S7.3 and S7.5 are

equipped with P205/75R15 pneumatic tires inflated to 200 kPa +/− 21 kPa.

* * * * *

■ 3. Figure 2 at the end of section 571.301 is revised to read as follows:

BILLING CODE 4910–59–P

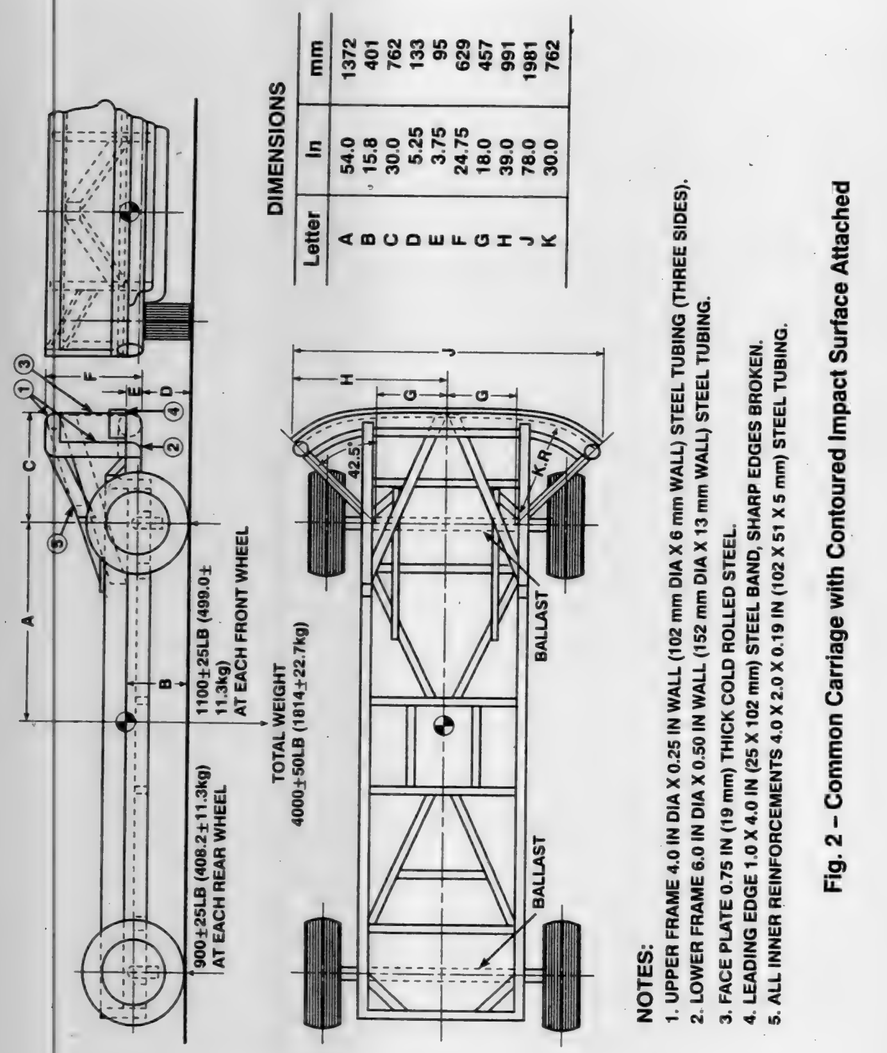


Fig. 2 – Common Carriage with Contoured Impact Surface Attached

PART 587—DEFORMABLE BARRIERS

■ 4. The authority citation for part 587 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166 and 30177; delegation of authority at 49 CFR 1.50.

■ 5. Section 587.6 is amended by revising paragraph (b)(1) to read as follows:

§ 587.6 General description.

* * * * *

(b) * * *

(1) The specifications for the final assembly of the moving deformable barrier are provided in the drawings shown in DSL–1278, dated June 2002.

* * * * *

Issued on: July 23, 2003.

Jeffrey W. Runge,

Administrator.

[FR Doc. 03–19261 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–59–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021213310–3170–02; I.D. 101702B]

RIN 0648–AP92

Individual Fishing Quota (IFQ) Program for Pacific Halibut and Sablefish; Amendment 72/64 To Revise Recordkeeping and Reporting Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement Amendment 72 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (Amendment 72) and Amendment 64 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (Amendment 64) (collectively, Amendments 72/64). This action will revise certain recordkeeping and reporting requirements for the Individual Fishing Quota (IFQ) Program for fixed gear Pacific halibut and sablefish fisheries and the Western Alaska Community Development Quota (CDQ) Program for the Pacific halibut fishery. This action is necessary to improve IFQ fishing operations, while complying with IFQ Program requirements; to improve NMFS' ability to efficiently administer the program; and to improve the clarity and consistency of IFQ Program regulations. This action is intended to meet the conservation and management requirements of the Northern Pacific Halibut Act of 1982 (Halibut Act) with respect to halibut and of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) with respect to sablefish and to further the goals and objectives of the groundfish Fishery Management Plans (FMPs).

DATES: This regulation becomes effective on August 28, 2003.

ADDRESSES: Copies of the Regulatory Impact Review/Final Regulatory Flexibility Analysis (RIR/FRFA) prepared for Amendment 72/64 may be obtained from Lori Durall, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, 907–586–7247. Send comments on collection-of-information requirements to the same address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer). Comments may also be sent via facsimile (fax) to 907–586–7465. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7228 or *patsy.bearden@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the Exclusive Economic Zone (EEZ) off Alaska according to fishery management plans (FMPs) prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Act. The FMPs are implemented by regulations at 50 CFR part 679. General regulations that also pertain to these fisheries appear in subpart H to 50 CFR part 600.

The commercial halibut fishery in and off Alaska is managed under the Individual Fishing Quota (IFQ) program and the Western Alaska Community Development Quota (CDQ) program codified at 50 CFR part 679. The IFQ Program, a limited access management system for the fixed gear Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) fisheries in and off Alaska, was approved by NMFS in January 1993 and fully implemented beginning in March 1995. The IFQ Program for the sablefish fishery is implemented by the FMPs and Federal regulations under 50 CFR part 679 under authority of the Magnuson-Stevens Act. The IFQ Program for the halibut fishery and the CDQ program for halibut are implemented by Federal regulations promulgated under the authority of the Halibut Act.

Purpose and Need for Amendment 72/64

This action amends the regulatory text for some of the Recordkeeping and Reporting (R&R) requirements for the groundfish fishery, the IFQ program for halibut and sablefish, and the CDQ program for halibut. Revisions are made to the regulatory text to accommodate the procedural changes.

IFQ Vessel Clearance

Currently, regulations require that vessels with IFQ halibut or sablefish catch leaving the jurisdiction of the Council check in with NOAA Fisheries Office for Law Enforcement (OLE) at a certified "primary" port and have the vessel's hold sealed prior to departure. OLE personnel are not currently able to effectively determine catch quantity at the primary port and are unable to seal a vessel's hold without compromising vessel safety. The requirement for a Vessel Clearance is removed with this action.

IFQ Shipment Report and Product Transfer Report (PTR)

The function of the shipment report and the PTR is to document the movement of fish product. The PTR was designed for completion by a processor manager or operator to report to NMFS the movement of groundfish. The shipment report was designed for completion by a Registered Buyer to report to NMFS the movement of IFQ halibut, CDQ halibut and IFQ sablefish. In many cases, the manager or operator of a processor is also a Registered Buyer. The regulations require that both forms be completed, regardless of any duplication of effort. This action consolidates the shipment report into the PTR. The result is that the operator or manager that is also a Registered Buyer can document all fish in a shipment on one form. The revised PTR also works for the participant that is only an operator, manager or a Registered Buyer. The result for NMFS is one standard form. This action eliminates the shipment report and allows the collection of necessary information with fewer paperwork requirements.

IFQ Prior Notice of Landing (PNOL)

In the IFQ program, fishers are required to notify OLE before IFQ species are offloaded. This requirement provides OLE agents and officers the time necessary to travel to unmanned ports throughout Alaska to monitor specific IFQ offloads and to gather specifics about a vessel's catch prior to landing. In addition, the PNOL helps International Pacific Halibut Commission (IPHC) port samplers meet and interview the skipper during the offload and allows port samplers to optimally sample the landings and collect logbook information.

The PNOL is made by toll-free telephone to OLE a minimum of six hours before landing fish. As part of the PNOL, fishers must name the Registered

Buyer to whom they plan to deliver their fish.

This rule changes the time limit for the PNOL from 6 hours to 3 hours before landing. This action relieves restrictions on vessel operators by providing them additional time to seek markets prior to reporting the time and location of a landing. This rule also changes the requirement from naming a specific Registered Buyer to naming the place of landing. Requiring vessel operators to report a "location of landing" rather than a "Registered Buyer" provides shoreside data-collection and OLE personnel with the location of the landing while not requiring a vessel to deliver to a specific processor. This provides vessels additional flexibility to market their product.

IFQ Departure Report

The departure report was created as a prerequisite notice to a vessel clearance. If a vessel operator intended to obtain a vessel clearance at Bellingham, Washington, he or she would first submit an IFQ departure report to an OLE clearing officer by toll-free telephone. The IFQ departure report was submitted only after completion of all IFQ fishing and prior to departing the waters of the EEZ adjacent to the jurisdictional waters of the State of Alaska, the territorial sea of the State of Alaska, or the internal waters of the State of Alaska. This action removes the vessel clearance, and thus changes the function of the departure report. Instead of being a prerequisite to a vessel clearance, the departure report now will be the complete report submitted to OLE by a vessel leaving the jurisdiction of the Council.

U.S. Vessel Activity Report (VAR)

A fisher is required to submit a VAR if his or her vessel is carrying fish or fish product onboard before the vessel crosses out of the jurisdiction of the Council. Some changes are made to the regulatory text for this form to incorporate "CDQ halibut" and to compensate for the removal of the vessel clearance.

Response to Comments

A Notice of Availability of Amendment 72/64 was published in the **Federal Register** on October 29, 2002 (67 FR 65941), inviting comments on the FMP amendment through December 27, 2002. NMFS received no comments. On January 24, 2003, the Secretary of Commerce approved Amendment 72/64 in its entirety.

NMFS published a proposed rule in the **Federal Register** on January 24, 2003 (68 FR 3485), which described the proposed regulatory amendment and invited comments from the public. No public comments were received on the proposed rule.

Changes from the Proposed Rule

Some technical, non-substantive changes are made in the final rule that were not presented in the proposed rule. These changes are the result of further review, intended to improve the rule for final publication. Fishery participants have requested guidance from NMFS on where to find separate R&R procedures for groundfish, IFQ and CDQ programs, as these programs become more integrated and thus more complicated. Overviews are provided of the three programs to assist the reader to find detailed information on specific programs. Clarification is provided on where to find information that already exists in different parts of the regulations.

The changes from the proposed rule are organized in three categories. Each of the three categories affects many paragraphs. The affected paragraphs are arranged below in order of appearance in the 50 CFR part 679 regulatory text.

CDQ Halibut

The IFQ and CDQ permits and cards are issued separately, under the IFQ Program and the CDQ Program. However, the IFQ halibut, CDQ halibut, and IFQ sablefish fisheries are managed and monitored by the IFQ Program. The Registered Buyer permit authorizes receipt of CDQ halibut in the same manner as receipt of IFQ halibut or IFQ sablefish. Some of the revisions clarify the administrative procedures that currently exist for halibut accounting in the IFQ Program and in the CDQ Program but which do not appear in regulatory text. Wherever CDQ halibut formerly was "understood" to be included in the phrase IFQ halibut, the regulatory text is revised to specifically state "CDQ halibut." In addition, a distinction is made between "halibut CDQ," which is a type of fish allocation and "CDQ halibut," which is a type of fish. CDQ halibut is treated the same administratively as IFQ halibut, and has been since the beginning of the CDQ halibut program. The following table 1 shows how CDQ halibut changes are incorporated into the regulatory text.

TABLE 1.—CHANGES TO REGULATORY TEXT DUE TO THE ADDITION OF "CDQ HALIBUT"

Paragraph	From	To
Revise §679.2, definition for "dockside sale".	Transfer of IFQ transfer of IFQ sablefish	Transfer of IFQ halibut, CDQ halibut or IFQ sablefish.
Revise §679.2, definition of "Transfer"	(1) *Groundfish fisheries of the GOA and BSAI* * * * of any groundfish product * * *. (2) *IFQ halibut, CDQ halibut, IFQ sablefish.* Any loading, offloading, shipment or receipt of any IFQ halibut, CDQ halibut, or IFQ sablefish product,	(1) *Groundfish fisheries of the GOA and BSAI* * * * of any IFQ groundfish product * * * (2) *IFQ halibut and CDQ halibut fisheries.* Any loading, offloading, or shipment of any IFQ halibut or CDQ halibut product,
In the proposed rule, the wording of this definition was changed to read "Any loading, offloading, shipment or receipt of any IFQ halibut, CDQ halibut, or IFQ sablefish product * * *" This is incorrect because receipt of IFQ halibut or CDQ halibut is not considered a transfer, so the text is corrected in this rule to read "Any loading, offloading, or shipment of any IFQ halibut or CDQ halibut product * * *" The two subparagraphs of the definition of "transfer" are changed such that paragraph (1) refers to IFQ sablefish and any other groundfish, while paragraph (2) refers to IFQ halibut and CDQ halibut.		
Revise §679.4(d)(3)(i)	To receive and make an IFQ landing by an IFQ permit or card holder.	To receive and make an IFQ landing by an IFQ permit or card holder or to receive and make a CDQ halibut landing by a CDQ permit or cardholder.

TABLE 1.—CHANGES TO REGULATORY TEXT DUE TO THE ADDITION OF "CDQ HALIBUT"—Continued

Paragraph	From	To
Revise §679.4(d)(3)(ii)(B)	Any person who harvests IFQ halibut or IFQ sablefish and transfers such fish.	Any person who harvests IFQ halibut, CDQ halibut or IFQ sablefish and transfers such fish.
Revise §679.4(d)(6)(ii)	Location of an IFQ landing and must be made available by the Registered Buyer's representative for inspection on request of any authorized officer.	Location of an IFQ landing or CDQ halibut landing and must be made available by an individual representing the Registered Buyer for inspection on request of any authorized officer.
Add new §679.4(e)	Add new heading "CDQ halibut permits and CDQ cards."	
Add new §679.4(e)(1)	Add new heading "Requirements."	
Add new §679.4(e)(1)(i)	The CDQ group, the operator of the vessel, the manager of a shoreside processor or stationary floating processor, and the Registered Buyer must comply with the requirements of this paragraph (e) and of §679.32(f) for the catch of CDQ halibut.	
Redesignate §679.32(f)(2)(v) as §679.4(e)(1)(ii) and revise.	The CDQ group, vessel owner or operator, and registered buyer must comply with all of the IFQ prohibitions at §679.7(f).	The CDQ group, vessel owner or operator, and Registered Buyer are subject to all of the IFQ prohibitions at §679.7(f).
Redesignate §679.32(f)(2)(i) through (iii) as §679.4(e)(2) through (4), respectively.		
Redesignate §679.32(f)(2)(iv) as §679.4(e)(5) and revise.	*Landings.* A person may land CDQ halibut only if he or she has a valid halibut CDQ card and that person may deliver halibut CDQ only to a person with a valid registered buyer permit. The person holding the halibut CDQ card and the Registered Buyer must comply with the requirements of §679.5(l)(1) and (l)(2).	*Landings.* A person may land CDQ halibut only if he or she has a valid halibut CDQ card. The person(s) holding the halibut CDQ card and the Registered Buyer must comply with the requirements of §679.5(g) and (l)(1) through (6).
Redesignate §679.5(a)(1)(i) as paragraph (a)(1)(i)(A), and revise.	*Who must comply with recordkeeping and reporting requirements?* Except as provided in paragraphs (a)(1)(iii) and (iv) of this section, the owner, operator, or manager of the following participants must comply with the recordkeeping and reporting requirements of this section.	*Groundfish.* Except as provided in paragraph (a)(1)(iii) of this section, the owner, operator, or manager of the following participants must comply with the appropriate groundfish R&R requirements provided at §679.5(a) through (k), (m), (o), and (p); §679.28(b), (f), and (g).
Add new §679.5(a)(1)(i)	*Who must comply with R&R requirements?* Participants in the groundfish fisheries, the IFQ fisheries, and the CDQ fisheries must comply with the appropriate R&R requirements of paragraphs (1)(i)(A) through (C) of this section. Sablefish are managed under both the IFQ Program and the Groundfish Program. As such, sablefish must be recorded and reported as groundfish and also as IFQ sablefish.	
Redesignate §679.5(a)(1)(i)(A) through (E) as (a)(1)(i)(A)(*1*) through (*5*), respectively.		
add new §679.5(a)(1)(i)(B)	*IFQ halibut and sablefish.* The IFQ permit holder, IFQ cardholder, or Registered Buyer must comply with the R&R requirements provided at §679.5(g), (k), and (l).	
add new §679.5(a)(1)(i)(C)	*CDQ halibut.* The CDQ permit holder, CDQ cardholder, or Registered Buyer must comply with the R&R requirements provided at §679.5(g), (k), (l)(1) through (6), (n)(1), and (n)(2).	
Revise §679.5(a)(15)	*IFQ/groundfish transfer comparison.* The operator, manager, or Registered Buyer may refer to the following table for submittal, issuance, and possession requirements for each type of IFQ or non-IFQ groundfish transfer activity. The locations of the paragraphs that describe the requirements of each activity are also given.	*Transfer comparison.* The operator, manager, or Registered Buyer must refer to the following table for submittal, issuance, and possession requirements for each type of transfer activity of non-IFQ groundfish, IFQ halibut, IFQ sablefish, and CDQ halibut.
Revise (a)(15) intext table	Column headings within intext table at (a)(15) are revised by removing "IFQ."	
Revise §679.5(a)(15)(i)	Non-IFQ groundfish and no IFQ product onboard (see §679.5(k)).	Non-IFQ groundfish and no IFQ product or CDQ halibut product onboard (see §679.5(k)).

TABLE 1.—CHANGES TO REGULATORY TEXT DUE TO THE ADDITION OF "CDQ HALIBUT"—Continued

Paragraph	From	To
Revise § 679.5(a)(15)(ii)	If a vessel leaving Alaska with IFQ sablefish or IFQ halibut, but no other non-IFQ groundfish onboard (see § 679.5(l)(4)).	If a vessel leaving Alaska with IFQ sablefish, IFQ halibut, or CDQ halibut but no other non-IFQ groundfish onboard (see § 679.5(l)(4)).
Revise § 679.5(a)(15)(iii)	If a vessel leaving Alaska with IFQ sablefish or IFQ halibut and other non-IFQ groundfish onboard (see §§ 679.5(k) and 679.5(l)(4)).	If a vessel leaving Alaska with IFC sablefish, IFQ halibut, or CDQ halibut and other non-IFQ groundfish onboard (see §§ 679.5(k) and 679.5(l)(4)).
Revise § 679.5(a)(15)(v)	Transfer of IFQ species from a Registered Buyer (see § 679.5(g)).	Transfer of IFQ species or CDQ halibut from a Registered Buyer (see § 679.5(g)).
Revise § 679.5(a)(15)(vi)	Transfer of IFQ species from IFQ Cardholder with an IFQ Registered Buyer permit in a dockside sale (see § 679.5(l)(5)).	Transfer of IFQ species from IFQ Cardholder or CDQ halibut from CDQ halibut with a Registered Buyer permit in a dockside sale (see § 679.5(l)(5)).
Revise § 679.5(a)(15)(vii)	Transfer of IFQ Transfer species from landing site to IFQ Registered Buyer's processing facility (see § 679.5(g)(l)(vi)).	Transfer of IFQ species or CDQ halibut from landing site to Registered Buyer's processing facility (see § 679.5(g)(1)(vi)).
Revise § 679.5(a)(15)(viii)	Transfer of IFQ processed product between vessels (see § 679.5(l)(3)).	Transshipment of IFQ processed product or CDQ halibut processed product between vessels (see § 679.5(l)(3)).
Revise footnote to intext table of § 679.5(a)(15).	"XX" indicates that the document must accompany the transfer of IFQ species from landing site to processor.	"XX" indicates that the document must accompany the transfer of IFQ transfer of CDQ halibut from landing site to processor.
Revise footnote to intext table of § 679.5(a)(15).	"XXXX" indicates authorization must be obtained	"XXXX" indicates authorization must be obtained 24 hours in advance.
Revise § 679.5(g)(1)(v)(A)	A person holding a valid IFQ permit, IFQ card, and IFQ Registered Buyer permit may conduct a dockside sale of IFQ halibut or IFQ sablefish to a person who has not been issued a IFQ Registered Buyer.	A person holding a valid IFQ permit, IFQ card, and Registered Buyer permit may conduct a dockside sale of IFQ halibut or IFQ sablefish with a person who has not been issued a Registered Buyer permit after all IFQ fish have been landed and reported per § 679.5(l).
Redesignate § 679.5(g)(1)(v)(B) as (C) and revise.	An IFQ Registered Buyer conducting dockside sales must issue a receipt to each individual receiving IFQ halibut or IFQ sablefish in lieu of a PTR. This receipt must include the date of sale or transfer, the IFQ Registered Buyer permit number, and the weight by product of the IFQ sablefish or IFQ halibut transferred.	A Registered Buyer conducting dockside sales must issue a receipt to each individual receiving IFQ halibut, CDQ halibut, or IFQ sablefish in lieu of a PTR. This receipt must include the date of sale or transfer, the Registered Buyer permit number, and the weight by product of the IFQ halibut, CDQ halibut or IFQ sablefish transferred. A copy of each dockside sales receipt must be maintained by the Registered Buyer as described in § 679.5(l).
Add new § 679.5(g)(1)(v)(B)	A person holding a valid halibut CDQ permit, halibut CDQ card, and Registered Buyer permit may conduct a dockside sale of CDQ halibut with a person who has not been issued a Registered Buyer permit after all CDQ halibut have been landed and reported per § 679.5(l).	
Revise § 679.5(g)(1)(vi)	*Exemption: transfer directly from the landing site to a processing facility (IFQ only).* A PTR is not required for transportation of unprocessed IFQ species directly from the landing site to a processing facility for processing the IFQ species, provided the following conditions are met:	*Exemption: transfer directly from the landing site to a processing facility (CDQ halibut or IFQ only).* A PTR is not required for transportation of unprocessed IFQ halibut, IFQ sablefish, and CDQ halibut directly from the landing site to a facility for processing, provided the following conditions are met:
Revise § 679.5(g)(1)(vi)(A)	Accompanies the offloaded IFQ species while in transit.	Accompanies the offloaded IFQ halibut, IFQ sablefish, and CDQ halibut while in transit.

TABLE 1.—CHANGES TO REGULATORY TEXT DUE TO THE ADDITION OF "CDQ HALIBUT"—Continued

Paragraph	From	To
Revise § 679.5(g)(1)(vi)(C)	For IFQ species transported in this manner, the IFQ Registered Buyer submitting the IFQ Landing Report must still complete a PTR for each transfer of IFQ halibut and IFQ sablefish from the processing facility.	For IFQ halibut, IFQ sablefish, and CDQ halibut transported in this manner, the Registered Buyer submitting the IFQ Landing Report must still complete a PTR for each transfer of IFQ halibut, CDQ halibut and IFQ sablefish from the processing facility.
Remove § 679.5(g)(3)(iii)	This paragraph referred to boxes on the PTR that the participant was to mark indicating whether the fish onboard was groundfish, IFQ species, or CDQ halibut. This proved to be unrealistic because, by the time the fish is documented on a PTR, it has lost that detail	
Revise § 679.5(l)(1)(i), (ii), (iii)(E), (iii)(F) and (iii)(G).	IFQ halibut or IFQ sablefish	IFQ halibut, CDQ halibut, or IFQ sablefish.
Revise § 679.5(l)(2)(i)(A)	*All IFQ catch debited.* All IFQ halibut, CDQ halibut, and IFQ sablefish catch must be weighed and debited from the IFQ permit holder's account under which the catch was harvested.	*All IFQ halibut, CDQ halibut and IFQ sablefish catch debited.* Except as provided in § 679.40(g), all IFQ halibut, CDQ halibut, and IFQ sablefish catch must be weighed and debited from the IFQ permit holder's account under which the catch was harvested.
	Section 679.40(g) modifies § 679.5(l)(2)(i)(A) by saying that tagged halibut and sablefish are not debited against an individual's halibut or sablefish IFQ.	
Revise § 679.5(l)(2)(iv)(D)	Cardholder's account was properly debited	Cardholder's account was properly debited. A copy of each receipt must be maintained by the Registered Buyer as described in § 679.5(l).
Revise § 679.5(l)(4)(ii)(D)	Halibut IFQ Permit numbers and sasblefish IFQ Permit numbers of IFQ cardholders on board.	Halibut IFQ, Halibut CDQ, and Sablefish IFQ Permit numbers of IFQ and CDQ cardholders on board.
Revise § 679.32(f)(1)	Must comply with the requirements of this paragraph (f) for the catch of CDQ halibut or while halibut CDQ fishing.	Must comply with the catch monitoring requirements of this paragraph (f) and with the R&R requirements of § 679.4(e) for the catch of CDQ halibut or while CDQ halibut fishing.
Remove § 679.32(f)(2).		
Redesignate § 679.32(f)(3) through (5) as § 679.32(f)(2) through (4), respectively.		

Registered Buyer

These revisions correct the term "IFQ Registered Buyer" to read "Registered Buyer." The term "IFQ" is removed from "IFQ Registered Buyer" everywhere it occurs in the regulatory text. With the inclusion of CDQ halibut regulatory text, it is necessary to make the term "Registered Buyer" more general. The Registered Buyer permit authorizes receipt of CDQ halibut in the same manner as IFQ halibut. This change is necessary to include "CDQ halibut" in the regulatory text that describes the functions of a Registered Buyer. Where only this change occurs in a paragraph, it is listed in Table 2, below. If a paragraph has more corrections than the "Registered Buyer" correction, that paragraph is included in either Tables 1 or 3.

TABLE 2.—CHANGES TO REGULATORY TEXT WHERE "IFQ" IS REMOVED FROM "IFQ REGISTERED BUYER"

Paragraph	From	To
Revise § 679.2, heading for definition of "IFQ Registered Buyer".	IFQ registered buyer	Registered buyer.
Revise heading of § 679.4(d)	IFQ Registered Buyer permits	Registered Buyer permits.
Revise § 679.5(g)(1)	IFQ Registered Buyers	a Registered Buyer.
Revise § 679.5(g)(1)(ii)	or IFQ Registered Buyer	or Registered Buyer.
Revise § 679.5(g)(1)(iv)	*Exemption: IFQ Registered Buyers:* IFQ Registered Buyers are not required to submit a PTR for "receipt" of IFQ halibut, CDQ halibut, or IFQ sablefish.	*Exemption: Registered Buyers:* Registered Buyers are not required to submit a PTR for "receipt" of IFQ halibut, CDQ halibut, or IFQ sablefish.

TABLE 2.—CHANGES TO REGULATORY TEXT WHERE "IFQ" IS REMOVED FROM "IFQ REGISTERED BUYER"—Continued

Paragraph	From	To
Revise §679.5(g)(2)	an IFQ Registered Buyer	a Registered Buyer.
Revise §679.5(g)(3)	IFQ Registered Buyer	Registered Buyer.
Revise §679.5(g)(6)	or IFQ Registered Buyer	or Registered Buyer.

Revisions and Adjustments

These revisions shown in Table 3, below, include cross reference corrections, cross reference additions, improvements in text clarity, addition of an effective date of two paragraphs, removal of obsolete text, replacing "recordkeeping and reporting" with "R&R" for clarity and brevity, and correction of a typographic error.

TABLE 3.—CHANGES TO REGULATORY TEXT RESULTING FROM CROSS REFERENCE CORRECTIONS AND ADDITIONS, CLARIFICATIONS, AND OTHER REVISIONS AND ADJUSTMENTS

Paragraph	From	To
Revise §679.2, definition for "IFQ permit holder".	as defined at §679.4(d)(1)	(see §679.4(d)(1)).
Revise §679.4(a)(1)(i)(A)	§679.4(d)(2)	§679.4(d)(3)(ii).
Revise §679.4(a)(1)(i)(A)	Specified fishing year	Until next renewal cycle.
§679.4(a)(1)(ii)(A) and (B)	§679.32(f)	§679.4(e).
Revise §679.4(d)(1)(i)	or until it is revoked	or until the permit is revoked.
Revise §679.4(d)(2)(iii)	an IFQ permit number, the name of the individual	an IFQ permit number and the name of the individual.
Revise §679.4(d)(6)(i)	*IFQ permit and card.* The IFQ cardholder must present a copy of the IFQ permit and the original IFQ card for inspection on request of any authorized officer or Registered Buyer receiving IFQ species. Nothing in this paragraph would prevent an individual who is issued an IFQ card from being absent from the vessel used to harvest IFQ halibut or IFQ sablefish from the time the vessel arrives at the point of landing and the commencement of landing".	*IFQ permit and card.* The IFQ cardholder must present a copy of the IFQ permit and the original IFQ card for inspection on request of any authorized officer or Registered Buyer receiving IFQ species.
	Removal of sentence that duplicates regulatory text found at the last sentence of §679.4(d)(2)(ii).	
Remove introductory §679.5(a)(1)(ii).		
Revise §679.5(a)(1)(ii)(A)	*Groundfish received.* A shoreside processor, stationary floating processor, mothership, or buying station subject to recordkeeping and reporting requirements must report.	*Groundfish and prohibited species received.* A shoreside processor, stationary floating processor, mothership, or buying station subject to R&R requirements must record and report.
Redesignate §679.5(a)(1)(ii)(B) as (a)(1)(ii)(C) and revise.	*Groundfish transferred.* A shoreside processor, stationary floating processor, or mothership subject to recordkeeping and reporting requirements must report.	*Groundfish and prohibited species transferred.* A shoreside processor, stationary floating processor, or mothership subject to R&R requirements must record and report.
Add new §679.5(a)(1)(ii)(B)	*Groundfish and prohibited species reported by catcher vessels and buying stations.* A shoreside processor, stationary floating processor, or mothership subject to R&R requirements must record and report all discards or disposition information of groundfish and prohibited species reported to them by catcher vessels or buying stations.	
Redesignate §679.5(g)(5)(i) as (g)(5) and revise.	or IFQ Registered Buyer must enter your representative's name, telephone number, and FAX number, check "Shipper" and:	or Registered Buyer must enter the name of the individual representing the Registered Buyer, telephone number, and FAX number, check "Shipper" and:
Redesignate §679.5(g)(5)(ii) as (g)(5)(iv).		

TABLE 3.—CHANGES TO REGULATORY TEXT RESULTING FROM CROSS REFERENCE CORRECTIONS AND ADDITIONS, CLARIFICATIONS, AND OTHER REVISIONS AND ADJUSTMENTS—Continued

Paragraph	From	To
Revise newly redesignated §679.5(g)(5)(iv)(I).	n/a/	n/a
Redesignate §679.5(g)(5)(i)(A) through (C) as (g)(5)(i) through (iii), respectively.		
Revise newly redesignated §679.5(g)(5)(ii).	IFQ Registered Buyer name and permit number	Your Registered Buyer name and permit number.
Revise newly redesignated §679.5(g)(5)(iii).	your IFQ Registered Buyer's name and permit number.	Your Registered Buyer's name and permit number.
Revise §679.5(l)(2)(ii)(D)	Once the landing operations have commenced ...	Once the landing has commenced.

Classification

The Administrator, Alaska Region, NMFS, determined that Amendments 72/64 are necessary for the conservation and management of the IFQ Pacific halibut and sablefish fisheries and that they are consistent with the Magnuson-Stevens Act, the Halibut Act, and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an RIR/Initial Regulatory Flexibility Analysis (IRFA) for the proposed amendments that describes the management background, the purpose and need for action, the management alternatives, and the socioeconomic impacts of the alternatives. The public comment period ended on February 24, 2003. No comments on the economic impacts of the proposed rule were received.

NMFS is aware of no existing relevant Federal rules which duplicate, overlap, or conflict with this final rule.

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) pursuant to Section 604(a) of the Regulatory Flexibility Act, which describes the impact this final rule may have on small entities. The FRFA incorporates the IRFA and its findings. A copy of the FRFA is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows.

The actions included in this regulatory amendment would potentially affect all individuals, corporations or partnerships, or other collective entities holding QS. This action could also affect all six of the CDQ groups that hold halibut CDQ. At the end of the 2001 IFQ season, 3,485 persons (individuals, corporations, and other entities) held halibut QS; 872 persons held sablefish QS. In addition, all six of the CDQ groups have halibut CDQ allocations. A total of 270 individuals landed CDQ halibut in 2001 and may be affected by this regulation. NMFS/RAM issued 694 permits for Registered Buyers in 2001; of these, 215 reported landings.

An examination of limits on quota share holdings indicates that all of the halibut and sablefish fishing operations are small entities. CDQ operations are small entities because they are non-profits. In the absence of data on employment and affiliation, the registered buyers have been assumed to be small entities.

This regulation does not impose new recordkeeping or reporting requirements on the regulated small entities.

Three alternatives were considered to the action modifying PNOL requirements on fishermen. The status quo, maintaining the PNOL and six hour reporting requirements, was rejected because it did not address the concerns raised by industry with the existing rule. Complete elimination of the PNOL requirement was rejected because, although it would have reduced the burden on small entities, it would adversely affect data-collection, monitoring, and enforcement operations. A third alternative would have reduced the burden on fishermen by randomly applying the PNOL requirements to a sample of vessels. This alternative was rejected because it may have required a new "hail out" report from fishermen as they left port, and communication with fishermen at sea to let them know they had been randomly selected. IPHC port sampling may be adversely affected by this alternative. NOAA enforcement efforts would be complicated.

The NPFMC and NMFS considered one alternative to the status quo "offload window" between 6 a.m. and 6 p.m. This would have extended the offload window requirements so that fishermen would have had to begin offloading between 6 a.m. and 12 a.m. This alternative would have reduced the burden on small fishing entities compared to the status quo. However, this alternative could adversely affect current port sampling techniques used by the IPHC and increase their overall staffing costs, and potentially increase the labor costs for Registered Buyers. Industry indicated to the Council during the development of this action that extending the offload window would not be necessary if the PNOL were modified.

The status quo was considered as an alternative to the action to relax the requirement that IFQ vessels check in at a NMFS certified port prior to leaving the jurisdiction of the Council, but it was rejected. The status quo would not have addressed industry concerns about the vessel clearance requirements. The preferred alternative will not compromise enforcement activity. Because enforcement personnel are not currently able to effectively determine catch quantity at the vessel clearance port and are unable to seal a vessel's hold without compromising vessel safety, no effective difference occurs between a verbal "departure report" and the verbal vessel clearance report given in a certified port.

The status quo was considered as an alternative to the consolidation of the PTR and the shipment reports, but was rejected. That alternative would not have addressed industry concerns about duplication in reporting requirements. The preferred alternative collects necessary information with fewer paperwork requirements.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB. These requirements are listed by OMB control number.

OMB No. 0648–0213: 20 minutes for a product transfer report, and 14 minutes for a vessel activity report.

OMB No. 0648–0272: 12 minutes for a prior notice of landing, 18 minutes for an IFQ/CDQ landing report, 6 minutes for IFQ dockside sales receipts, 15 minutes for an IFQ departure report, and 12 minutes for an IFQ transshipment authorization, 30 minutes for Registered Buyer's permit application, 30 minutes for CDQ halibut or IFQ landing card.

Response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number. Send comments regarding these burden estimates, or any other aspect of these data collections, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

In conclusion, these actions will improve the efficiency of data collection required under existing IFQ regulations and will implement recommendations received from industry, enforcement and management. Based on the foregoing conclusions, these revisions to R&R for the IFQ fisheries and CDQ halibut fishery will not substantively alter environmental impacts already analyzed within existing environmental documents.

The legislative authorities for these actions are the Magnuson-Stevens Fishery Conservation and Management Act, Pub. L. 94–265, 16 U.S.C. 1801 (Magnuson-Stevens Act), and the Northern Pacific Halibut Act of 1982 (NPHA) Pub. L. 97–176, 16 U.S.C. 773c (c).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: July 21, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set forth in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

■ 2. In § 679.2, the definition for "IFQ Registered Buyer" is removed; the definition for "Registered Buyer" is added; the definitions for "Authorized officer," "Clearing officer," "Dockside sale," "IFQ landing," "IFQ permit holder," and "Transfer" are revised to read in alphabetical order as follows:

§ 679.2 Definitions.

Authorized officer means:

(1) Any commissioned, warrant, or petty officer of the USCG;

(2) Any special agent or fishery enforcement officer of NMFS;

(3) Any officer designated by the head of any Federal or state agency that has entered into an agreement with the Secretary and the Commandant of the USCG to enforce the provisions of the Magnuson-Stevens Act or any other statute administered by NOAA; or

(4) Any USCG personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

* * * * *

Clearing officer means, a NOAA Fisheries Office for Law Enforcement (OLE) special agent, an OLE fishery enforcement officer, or an OLE enforcement aide.

* * * * *

Dockside sale means, the transfer of IFQ halibut, CDQ halibut or IFQ sablefish from the person who harvested it to individuals for personal consumption, and not for resale.

* * * * *

IFQ landing means the unloading or transferring of any IFQ halibut, CDQ halibut, IFQ sablefish, or products thereof from the vessel that harvested such fish or the removal from the water of a vessel containing IFQ halibut, CDQ halibut, IFQ sablefish, or products thereof.

IFQ permit holder means the person identified on an IFQ permit, at the time a landing is made (*see* § 679.4(d)(1)).

* * * * *

Registered buyer means the person identified on a Registered Buyer permit (see § 679.4(d)(3)).

* * * * *

Transfer means:

(1) *Groundfish fisheries of the GOA and BSAI.* Any loading, offloading, shipment or receipt of any IFQ sablefish or other groundfish product by a mothership, catcher/processor, shoreside processor, or stationary floating processor, including quantities transferred inside or outside the EEZ, within any state's territorial waters, within the internal waters of any state, at any shoreside processor, stationary floating processor, or at any offsite meal reduction plant.

(2) *IFQ halibut and CDQ halibut fisheries.* Any loading, offloading, or shipment of any IFQ halibut or CDQ halibut product including quantities transferred inside or outside the EEZ, within any state's territorial waters, within the internal waters of any state, at any shoreside processor, stationary floating processor, or at any offsite meal reduction plant.

* * * * *

■ 3. In § 679.4, paragraphs (a)(1)(i), (a)(1)(ii), (d), and (e) are revised to read as follows:

§ 679.4 Permits.

(a) * * *

(1) * * *

If program permit or card type is:	Permit is effective from issue date through the end of:	For more information, see * * *
(i) IFQ:		
(A) Registered Buyer	Until next renewal cycle	Paragraph (d)(3)(ii) of this section.
(B) Halibut & sablefish permits.	Specified fishing year	Paragraph (d)(3)(i)(B) of this section.
(C) Halibut & sablefish cards.	Specified fishing year	Paragraph (d)(3)(i)(C) of this section.
(ii) CDQ Halibut		
(A) Halibut permit	Specified fishing year	Paragraph (e) of this section.
(B) Halibut card	Specified fishing year	Paragraph (e) of this section.

If program permit or card type is:	Permit is effective from issue date through the end of:	For more information, see * * *
*	*	*

* * * * *

(d) *IFQ permits, IFQ cards, and Registered Buyer permits.* The permits and cards described in this section are required in addition to the permit and licensing requirements prescribed in the annual management measures published in the **Federal Register** pursuant to § 300.62 of chapter III of this title and in the permit requirements of this section.

(1) *IFQ permit.* (i) An IFQ permit authorizes the person identified on the permit to harvest IFQ halibut or IFQ sablefish from a specified IFQ regulatory area at any time during an open fishing season during the fishing year for which the IFQ permit is issued until the amount harvested is equal to the amount specified under the permit, or until the permit is revoked, suspended, or modified under 15 CFR part 904.

(ii) A legible copy of any IFQ permit that specifies the IFQ regulatory area and vessel length overall from which IFQ halibut or IFQ sablefish may be harvested by the IFQ permit holder must be carried on board the vessel used by the permitted person to harvest IFQ halibut or IFQ sablefish at all times that such fish are retained on board.

(2) *IFQ card.* (i) An IFQ card authorizes the individual identified on the card to land IFQ halibut or IFQ sablefish for debit against the specified IFQ permit until the card expires, or is revoked, suspended, or modified under 15 CFR part 904, or cancelled on request of the IFQ permit holder.

(ii) An original IFQ card issued by the Regional Administrator must be on board the vessel that harvests IFQ halibut or IFQ sablefish at all times that such fish are retained on board. Except as specified in § 679.42(d), an individual that is issued an IFQ card must remain aboard the vessel used to harvest IFQ halibut or IFQ sablefish with that card during the IFQ fishing trip and at the landing site during all IFQ landings.

(iii) Each IFQ card issued by the Regional Administrator will display an IFQ permit number and the name of the individual authorized by the IFQ permit holder to land IFQ halibut or IFQ sablefish for debit against the permit holder's IFQ. In addition, IFQ cards issued to hired masters representing permit holders in accordance with § 679.42(i) and (j) will also display the ADF&G vessel identification number of the authorized vessel.

(3) *Registered Buyer permit.* (i) A Registered Buyer permit authorizes the person identified on the permit to receive and make an IFQ landing by an IFQ permit or cardholder or to receive and make a CDQ halibut landing by a CDQ permit or cardholder at any time during the fishing year for which it is issued until the Registered Buyer permit expires, or is revoked, suspended, or modified under 15 CFR part 904.

(ii) A Registered Buyer permit is required of:

(A) Any person who receives IFQ halibut, CDQ halibut or IFQ sablefish from the person(s) who harvested the fish;

(B) Any person who harvests IFQ halibut, CDQ halibut or IFQ sablefish and transfers such fish in a dockside sale, outside of an IFQ regulatory area, or outside the State of Alaska.

(C) A vessel operator who submits a Departure Report (see § 679.5(l)(4)).

(iii) A Registered Buyer permit is issued on a 3-year cycle by the Regional Administrator to persons that have a Registered Buyer application approved by the Regional Administrator.

(iv) A Registered Buyer permit is in effect from the first day of the year for which it is issued or from the date of issuance, whichever is later, through the end of the current NMFS 3-year cycle, unless it is revoked, suspended, or modified under § 600.735 or § 600.740 of this chapter.

(4) *Issuance.* The Regional Administrator will renew IFQ permits and cards annually or at other times as needed to accommodate transfers, revocations, appeals resolution, and other changes in QS or IFQ holdings, and designation of masters under § 679.42.

(5) *Transfer.* The quota shares and IFQ issued under this section are not transferable, except as provided under § 679.41. IFQ cards and Registered Buyer permits issued under this paragraph (d) are not transferable.

(6) *Inspection*—(i) *IFQ permit and card.* The IFQ cardholder must present a copy of the IFQ permit and the original IFQ card for inspection on request of any authorized officer or Registered Buyer receiving IFQ species.

(ii) *Registered Buyer permit.* A legible copy of the Registered Buyer permit must be present at the location of an IFQ landing or CDQ halibut landing and must be made available by an individual representing the Registered Buyer for inspection on request of any authorized officer.

(7) *Validity.* An IFQ permit issued under this part is valid only if the IFQ permit holder has paid all IFQ fees that are due as a result of final agency action as specified in §§ 679.45 and 679.5(l)(7)(ii).

(e) *CDQ Halibut permits and CDQ cards*—(1) *Requirements.* (i) The CDQ group, the operator of the vessel, the manager of a shoreside processor or stationary floating processor, and the Registered Buyer must comply with the requirements of this paragraph (e) and of paragraph § 679.32(f) for the catch of CDQ halibut.

(ii) The CDQ group, vessel owner or operator, and Registered Buyer are subject to all of the IFQ prohibitions at § 679.7(f).

(2) *Halibut CDQ permit.* The CDQ group must obtain a halibut CDQ permit issued by the Regional Administrator. The vessel operator must have a copy of the halibut CDQ permit on any fishing vessel operated by, or for, a CDQ group that will have halibut CDQ onboard and must make the permit available for inspection by an authorized officer. The halibut CDQ permit is non-transferable and is issued annually until revoked, suspended, or modified.

(3) *Halibut CDQ card.* An individual must have onboard the vessel a valid halibut CDQ card issued by the Regional Administrator before landing any CDQ halibut. Each halibut CDQ card will identify a CDQ permit number and the individual authorized by the CDQ group to land halibut for debit against the CDQ group's halibut CDQ.

(4) *Alteration.* No person may alter, erase, mutilate, or forge a halibut CDQ permit, landing card, Registered Buyer permit, or any valid and current permit or document issued under this part. Any such permit, card, or document that has been intentionally altered, erased, mutilated, or forged is invalid.

(5) *Landings.* A person may land CDQ halibut only if he or she has a valid halibut CDQ card. The person(s) holding the halibut CDQ card and the Registered Buyer must comply with the requirements of § 679.5(g) and (l)(1) through (6).

* * * * *

■ 4. In § 679.5, the section heading and paragraphs (a)(1)(i), (a)(1)(ii), (a)(15), (g), (k), and (l) are revised to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

(a) *General requirements.* (1) *Applicability*—(i) *Who must comply with R&R requirements?* Participants in the groundfish fisheries, the IFQ fisheries, and the CDQ fisheries must comply with the appropriate R&R requirements of paragraphs (1)(i)(A) through (C) of this section. Sablefish are managed under both the IFQ Program and the Groundfish Program. As such, sablefish must be recorded and reported as groundfish and also as IFQ sablefish.

(A) *Groundfish.* Except as provided in paragraph (a)(1)(iii) of this section, the owner, operator, or manager of the following participants must comply with the appropriate groundfish R&R requirements provided at paragraphs (a) through (k), (m), (o), and (p) of this section; § 679.28(b), (f), and (g):

(*1*) Any catcher vessel, mothership, catcher/processor, or tender vessel, 5 net tons or larger, that is required to have a Federal fisheries permit under § 679.4.

(*2*) Any shoreside processor, stationary floating processor, mothership, or buying station that receives groundfish from vessels issued a Federal fisheries permit under § 679.4.

(*3*) Any buying station that receives or delivers groundfish in association with a mothership issued a Federal fisheries permit under § 679.4(b) or with a shoreside processor or stationary floating processor issued a Federal processor permit under § 679.4(f).

(*4*) Any shoreside processor or stationary floating processor that is required to have a Federal processor permit under § 679.4.

(*5*) For purposes of this section, "operator or manager" means "the operator of a catcher/processor or mothership, the manager of a shoreside processor or stationary floating processor, or the operator or manager of a buying station."

(B) *IFQ halibut and sablefish.* The IFQ permit holder, IFQ cardholder, or Registered Buyer must comply with the R&R requirements provided at paragraphs (g), (k), and (l) of this section.

(C) *CDQ halibut.* The CDQ permit holder, CDQ cardholder, or Registered Buyer must comply with the R&R requirements provided at paragraphs (g), (k), (l)(1) through (6), (n)(1), and (n)(2) of this section.

(ii) *What fish need to be recorded and reported?* (A) *Groundfish and prohibited species received.* A shoreside processor, stationary floating processor, mothership, or buying station subject to R&R requirements must record and report all groundfish and prohibited species received, including fish received from vessels not required to have a federal fisheries permit; and fish received under contract for handling or processing for another processor.

(B) *Groundfish and prohibited species reported by catcher vessels and buying stations.* A shoreside processor, stationary floating processor, or mothership subject to R&R requirements must record and report discard or disposition information for all groundfish and prohibited species reported to it by catcher vessels or buying stations.

(C) *Groundfish and prohibited species transferred.* A shoreside processor, stationary floating processor, or mothership subject to R&R requirements must record and report all groundfish and prohibited species transferred out of the facility or off the vessel.

* * * * *

(15) *Transfer comparison.* The operator, manager, or Registered Buyer must refer to the following table for submittal, issuance, and possession requirements for each type of transfer activity of non-IFQ groundfish, IFQ halibut, IFQ sablefish, and CDQ halibut.

	Submittal				Issue	Ppssess
	VAR	PTR	Trans-shipment authorization	Departure report	Dockside sale receipt	Landing report receipt
(i) If a catcher vessel, mothership or catcher/processor leaving or entering Alaska with non-IFQ groundfish and no IFQ product or CDQ halibut product onboard (see § 679.5(k)))	X					
(ii) If a vessel leaving Alaska with IFQ sablefish, IFQ halibut, or CDQ halibut but no other non-IFQ groundfish onboard (see § 679.5(l)(4))				X		
(iii) If a vessel leaving Alaska with IFQ sablefish, IFQ halibut, or CDQ halibut and other non-IFQ groundfish onboard (see §§ 679.5(k) and 679.5(l)(4))	X			X		
(iv) Transfer of non-IFQ groundfish (see § 679.5(g))		X				
(v) Transfer of IFQ species or CDQ halibut from a Registered Buyer (see § 679.5(g))		X				
(vi) Transfer of IFQ species from IFQ Cardholder or CDQ halibut from CDQ halibut Cardholder with a Registered Buyer permit in a dockside sale (see § 679.5(l)(5))					XXX	
(vii) Transfer of IFQ species or CDQ halibut from landing site to Registered Buyer's processing facility (see § 679.5(g)(1)(vi))						XX
(viii) Transshipment of IFQ processed product or CDQ halibut processed product between vessels (see § 679.5(l)(3))			XXXX			

"X" indicates under what circumstances each report is submitted;
"XX" indicates that the document must accompany the transfer of IFQ species from landing site to processor;
"XXX" indicates receipt must be issued to each receiver in a dockside sale;
"XXXX" indicates authorization must be obtained 24 hours in advance.

* * * * *

(g) *Product Transfer Report (PTR).*—(1) *General requirements.* Except as provided in paragraphs (g)(1)(i) through (vi) of this section, the operator of a mothership or catcher/processor or the manager of a shoreside processor or stationary floating processor must complete and submit a separate PTR for each transfer (shipment or receipt) of groundfish and donated prohibited species caught in groundfish fisheries.

In addition, a Registered Buyer must submit a separate PTR for each transfer (shipment only) of halibut or sablefish for which the Registered Buyer submitted an IFQ landing report or was required to submit an IFQ landing report. A PTR is not required to accompany a shipment or transfer.

(i) *Exemption: Bait sales (non-IFQ groundfish only).* The operator or manager may aggregate individual sales or transfers of non-IFQ groundfish to vessels for bait purposes during a day onto one PTR when recording the amount of such bait product transferred from a vessel or facility that day.

(ii) *Exemption: Retail sales.* For retail sales destined for human consumption and weighing less than 10 lb or 4.5 kilograms, the operator, manager, or Registered Buyer may aggregate and record on one PTR, the amount of such retail product transferred during one calendar day.

(iii) *Exemption: Wholesale sales (non-IFQ groundfish only).* The operator or manager may aggregate and record on one PTR, wholesale sales of non-IFQ groundfish by species when recording the amount of such wholesale species leaving a vessel or facility in one calendar day, if invoices detailing destinations for all of the product are available for inspection by an authorized officer.

(iv) *Exemption: Registered Buyers:* Registered Buyers are not required to submit a PTR for "receipt" of IFQ halibut, CDQ halibut, or IFQ sablefish.

(v) *Exemption: Dockside sales.* (A) A person holding a valid IFQ permit, IFQ card, and Registered Buyer permit may conduct a dockside sale of IFQ halibut or IFQ sablefish with a person who has not been issued a Registered Buyer permit after all IFQ fish have been landed and reported in accordance with § 679.5(l).

(B) A person holding a valid halibut CDQ permit, halibut CDQ card, and Registered Buyer permit may conduct a dockside sale of CDQ halibut with a person who has not been issued a Registered Buyer permit after all CDQ halibut have been landed and reported in accordance with § 679.5(l).

(C) A Registered Buyer conducting dockside sales must issue a receipt to each individual receiving IFQ halibut, CDQ halibut, or IFQ sablefish in lieu of a PTR. This receipt must include the date of sale or transfer, the Registered Buyer permit number, and the weight by product of the IFQ halibut, CDQ halibut or IFQ sablefish transferred. The Registered Buyer must maintain a copy of each dockside sales receipt as described in § 679.5(l).

(vi) *Exemption: transfer directly from the landing site to a processing facility (CDQ halibut, IFQ halibut, or IFQ sablefish only).* A PTR is not required for transportation of unprocessed IFQ halibut, IFQ sablefish, and CDQ halibut directly from the landing site to a facility for processing, provided the following conditions are met:

(A) A copy of the IFQ Landing Report receipt (Internet or transaction terminal receipt) documenting the IFQ landing accompanies the offloaded IFQ halibut, IFQ sablefish, and CDQ halibut while in transit.

(B) A copy of the IFQ Landing Report receipt is available for inspection by an authorized officer.

(C) The Registered Buyer submitting the IFQ Landing Report completes a PTR for each transfer from the processing facility of IFQ halibut, CDQ halibut and IFQ sablefish transferred in this manner.

(2) *Time limits and submittal.* The operator of a mothership or catcher/processor, a Registered Buyer, or manager of a shoreside processor or stationary floating processor must:

(i) *Record on PTR.* Record all product transfer information on a PTR within 2 hours of the completion of the transfer.

(ii) *Submit original PTR.* Submit by FAX or electronic file a copy of each PTR to OLE, Juneau, AK (907–586–7313), by 1200 hours, A.l.t., on the Tuesday following the end of the applicable weekly reporting period in which the transfer occurred.

(iii) *Submit revised PTR.* Ensure that, if any information on the original PTR changes prior to the first destination of the shipment, a revised PTR is submitted by FAX or electronic file to OLE, Juneau, AK (907–586–7313), by 1200 hours, A.l.t., on the Tuesday following the end of the applicable weekly reporting period in which the change occurred.

(3) *General information.* The operator, manager, or Registered Buyer must record on a PTR:

(i) Whether original or revised PTR;

(ii) Whether you are the shipper or receiver;

(4) *Receiver information.* If documenting receipt of non-IFQ groundfish, the operator or manager must check "Receiver"; enter your representative's name, telephone number, and FAX number; start and finish date and time of product transfer, position of product transfer (if applicable), port or location of transfer and:

Enter under "Receiver"	Enter under "Shipper"
Your processor's name, Federal fisheries or Federal processor permit	Other processor's name and Federal fisheries or Federal processor permit (if applicable).

(5) *Shipper information.* If documenting transfer of product away from your facility or transfer of product off of your vessel, the operator, manager, or Registered Buyer must enter the name of the individual representing the Registered Buyer, telephone number, and FAX number, check "Shipper" and:

If you are shipping . . .	Enter under "Shipper" . . .
(i) Non-IFQ groundfish	Your processor's name, Federal fisheries or Federal processor permit number.
(ii) IFQ halibut, CDQ halibut or IFQ sablefish	Your Registered Buyer name and permit number.
(iii) Both non-IFQ groundfish and IFQ halibut, CDQ halibut or IFQ sablefish on the same PTR.	Your processor's name and Federal fisheries permit number or Federal processor permit number; or your Registered Buyer's name and permit number.

(iv) Using descriptions from the following table, enter receiver information, date and time of product transfer, location of product transfer (*e.g.*, port, position coordinates, or city), mode of transportation, and intended route.

If you are the shipper and . . .	Then enter . . .			
	Receiver	Date & time of product transfer	Location of product transfer	Mode of transportation and intended route
(A) Receiver is on land and transfer involves one van, truck, or vehicle.	Receiver name and Federal fisheries or Federal processor permit number (if any).	Date and time when shipment leaves the plant.	Port or city of product transfer	Name of the shipping company; destination city and state or foreign country.
(B) Receiver is on land and transfer involves multiple vans, trucks, or vehicles.	Receiver name and Federal fisheries or Federal processor permit number (if any).	Date and time when loading of vans or trucks is completed each day.	Port or city product transfer	Name of the shipping company; destination city and state or foreign country.
(C) Receiver is on land and transfer involves one airline flight.	Receiver name and Federal fisheries or Federal processor permit number (if any).	Date and time when shipment leaves the plant.	Port or city of product transfer	Name of the airline company; destination airport city and state.
(D) Receiver is on land and transfer involves multiple airline flights.	Receiver name and Federal fisheries or Federal processor permit number (if any).	Date and time of shipment when the last airline flight of the day leaves.	Port or city of product transfer	Name of airline company(s); destination airport(s) city and state.
(E) Receiver is a vessel and transfer takes occurs at sea.	Vessel name and call sign	Start and finish dates and times of transfer.	Transfer position coordinates in latitude and longitude, in degrees and minutes.	The first destination of the vessel.
(F) Receiver is a vessel and transfer takes place in port.	Vessel name and call sign	Start and finish dates and times of transfer.	Port or position of product transfer.	The first destination of the vessel.
(G) Receiver is an agent (buyer, distributor, or shipping agent) and transfer is in a containerized van(s).	Agent name and location (city, state).	Transfer start and finish dates and times.	Port, city, or position of product transfer.	Name (if available) of the vessel transporting the van; destination port.
(H) You are aggregating individual retail sales for human consumption in quantities less than 10 lb (0.0045 mt) per sale during a day onto one PTR.	"RETAIL SALES"	Time of the first sale of the day; time of the last sale of the day.	Port or city of product transfer	n/a
(I) You are aggregating individual bait sales during a day onto one PTR (non-IFQ groundfish only).	"BAIT SALES"	Time of the first sale of the day; time of the last sale of the day.	Port or city of product transfer	n/a
(J) *Non-IFQ Groundfish only.* You are aggregating wholesale non-IFQ groundfish product sales by species during a single day onto one PTR and maintaining invoices detailing destinations for all of the product for inspection by an authorized officer.	"WHOLESALE SALES"	Time of the first sale of the day; time of the last sale of the day.	Port or city of product transfer	n/a

(6) *Products shipped or received.* The operator, manager, or Registered Buyer must record the following information for each product transferred:

(i) *Species code and product code.* The species code and product code (Tables 1 and 2 to this part).

(ii) *Species weight.* Use only if recording two or more species with two or more product types contained within the same production unit. Enter the actual scale weight of each product of each species to the nearest kilogram or pound (indicate which). If not applicable, enter "n/a" in the species weight column. If using more than one line to record species in one carton, use a brace "}" to tie the carton information together.

(iii) *Number of units.* Total number of production units (blocks, trays, pans, individual fish, boxes, or cartons; if iced, enter number of totes or containers).

(iv) *Unit weight.* Unit weight (average weight of single production unit as listed in "No. of Units" less packing materials) for each species and product code in kilograms or pounds (indicate which).

(v) *Total weight.* Total weight for each species and product code of shipment less packing materials in kilograms or pounds (indicate which).

(7) *Total or partial offload.* (i) If a mothership or catcher/processor, the operator must indicate whether the transfer is a total or partial offload.

(ii) If a partial offload, for the products remaining on board after the transfer, the operator must enter: species code, product code, and total product weight to the nearest kilogram or pound (indicate which) for each product.

* * * * *

(k) *U.S. Vessel Activity Report (VAR)*—(1) *Who needs to submit a VAR?*—(i) *Fish or fish product onboard.* Except as noted in paragraph (k)(1)(iv) of this section, the operator of a catcher vessel greater than 60 ft (18.3 m) LOA, a catcher/processor, or a mothership required to hold a Federal fisheries permit issued under this part and carrying fish or fish product onboard must complete and submit a VAR by FAX or electronic file to OLE, Juneau, AK (907–586–7313) before the vessel crosses the seaward boundary of the EEZ off Alaska or crosses the U.S.-Canadian international boundary between Alaska and British Columbia.

(ii) *Combination of non-IFQ groundfish with IFQ halibut, CDQ halibut, or IFQ sablefish.* If a vessel is carrying non-IFQ groundfish and IFQ halibut, CDQ halibut or IFQ sablefish, the operator must submit a VAR in addition to an IFQ Departure Report per paragraph (l)(4) of this section.

(iii) *Revised VAR.* If fish or fish products are landed at a port other than the one specified on the VAR, the vessel operator must submit a revised VAR showing the actual port of landing before any fish are offloaded.

(iv) *Exemption: IFQ Departure Report.* If a vessel is carrying only IFQ halibut, CDQ halibut, or IFQ sablefish onboard and the operator has submitted an IFQ Departure Report per paragraph (l)(4) of this section, a VAR is not required.

(2) *Information required.* Whether original or revised VAR; name and Federal fisheries permit number of vessel; type of vessel (whether catcher vessel, catcher/processor, or mothership); and representative information (*see* paragraph (b)(2) of this section).

(i) *Return report.* "Return," for purposes of this paragraph, means returning to Alaska. If the vessel is crossing into the seaward boundary of the EEZ off Alaska or crossing the U.S.-Canadian international boundary between Alaska and British Columbia into U.S. waters, indicate a "return" report and enter:

(A) Intended Alaska port of landing (*see* Table 14 to this part);

(B) Estimated date and time (hour and minute, Greenwich mean time) the vessel will cross;

(C) The estimated position coordinates the vessel will cross.

(ii) *Depart report.* "Depart" means leaving Alaska. If the vessel is crossing out of the seaward boundary of the EEZ off Alaska or crossing the U.S.-Canadian international boundary between Alaska and British Columbia into Canadian waters, indicate a "depart" report and enter:

(A) The intended U.S. port of landing or country other than the United States;

(B) Estimated date and time (hour and minute, Greenwich mean time) the vessel will cross;

(C) The estimated position coordinates in latitude and longitude the vessel will cross.

(iii) *The Russian Zone.* Indicate whether your vessel is returning from fishing in the Russian Zone or is departing to fish in the Russian Zone.

(iv) *Fish or fish products.* For all fish or fish products (including non-groundfish) on board the vessel, enter: Harvest zone code; species codes; product codes; and total fish product weight in lbs or to the nearest 0.001 mt.

(l) *IFQ halibut, CDQ halibut or IFQ sablefish R&R.* In addition to the R&R requirements in this section and as prescribed in the annual management measures published in the **Federal Register** pursuant to § 300.62 of this title, the following reports and authorizations are required, when applicable: IFQ Prior Notice of Landing, Product Transfer Report (*see* § 679.5(g)), IFQ Landing Report, IFQ Transshipment Authorization, and IFQ Departure Report.

(1) *IFQ Prior Notice of Landing (PNOL)*—(i) *Time limits and submittal.* (A) Except as provided in paragraph (l)(1)(iv) of this section, the operator of any vessel making an IFQ landing must notify OLE, Juneau, AK, no fewer than 3 hours before landing IFQ halibut, CDQ halibut, or IFQ sablefish, unless permission to commence an IFQ landing within 3 hours of notification is granted by a clearing officer.

(B) A PNOL must be made to the toll-free telephone number 800–304–4846 or to 907–586–7163 between the hours of 0600 hours, A.l.t., and 2400 hours, A.l.t.

(ii) *Revision to PNOL.* The operator of any vessel wishing to make an IFQ landing before the date and time (A.l.t.) reported in the PNOL or later than 2 hours after the date and time (A.l.t.) reported in the PNOL must submit a new PNOL as described in paragraphs (l)(1)(i) and (iii) of this section.

(iii) *Information required.* A PNOL must include the following:

(A) Vessel name and ADF&G vessel registration number;

(B) Port of landing and port code from Table 14 to this part;

(C) Exact location of landing within the port (*i.e.*, dock name, harbor name, facility name, or geographical coordinates);

(D) The date and time (A.l.t.) that the landing will take place;

(E) Species and estimated weight (in pounds) of the IFQ halibut, CDQ halibut or IFQ sablefish that will be landed;

(F) IFQ regulatory area(s) in which the IFQ halibut, CDQ halibut, or IFQ sablefish were harvested; and

(G) IFQ permit number(s) that will be used to land the IFQ halibut, CDQ halibut, or IFQ sablefish.

(iv) *Exemption.* An IFQ landing of halibut of 500 lb or less of IFQ weight determined pursuant to § 679.42(c)(2) and concurrent with a legal landing of salmon or a legal landing of lingcod harvested using dinglebar gear is exempt from the PNOL required by this section.

(2) *IFQ Landing report*—(i) *Requirements*—(A) *All IFQ halibut, CDQ halibut and IFQ sablefish catch debited.* Except as provided in paragraph 679.40(g) of this section, all IFQ halibut, CDQ halibut, and IFQ sablefish catch must be weighed and debited from the IFQ permit holder's account or CDQ halibut permit holder's account under which the catch was harvested.

(B) *Single offload site for halibut.* The vessel operator who lands IFQ halibut or CDQ halibut must continuously and completely offload at a single offload site all halibut on board the vessel.

(C) *Single offload site for sablefish.* The vessel operator who lands IFQ sablefish must continuously and completely offload at a single offload site all sablefish on board the vessel.

(D) *Remain at landing site.* Once the landing has commenced, the IFQ cardholder or CDQ cardholder and the harvesting vessel may not leave the landing site until the IFQ halibut, IFQ sablefish or CDQ halibut account is properly debited (as defined in paragraph (l)(2)(iv)(D) of this section).

(E) *No movement of IFQ halibut, CDQ halibut, or IFQ sablefish.* The offloaded IFQ halibut, CDQ halibut, or IFQ sablefish may not be moved from the landing site until the IFQ Landing Report is received by OLE, Juneau, AK, and the IFQ cardholder's or CDQ cardholder's account is properly debited (as defined in paragraph (l)(2)(iv)(D) of this section).

(ii) *Time limits.* (A) A landing of IFQ halibut, CDQ halibut, or IFQ sablefish may commence only between 0600 hours, A.l.t., and 1800 hours, A.l.t., unless permission to land at a different time (waiver) is granted in advance by a clearing officer.

(B) A Registered Buyer must submit a completed IFQ Landing Report within 6 hours after all IFQ halibut, CDQ halibut, or IFQ sablefish are landed and prior to shipment or transfer of said fish from the landing site.

(iii) *Information required.* The Registered Buyer must enter accurate information contained in a complete IFQ Landing Report as follows:

(A) Date and time (A.l.t.) of the IFQ landing;

(B) Location of the IFQ landing (port code or if at sea, lat. and long.);

(C) Name and permit number of the IFQ cardholder or CDQ cardholder;

(D) Name and permit number of Registered Buyer receiving the IFQ halibut, IFQ sablefish, or CDQ halibut;

(E) The harvesting vessel's name and ADF&G vessel registration number;

(F) Gear code used to harvest IFQ species;

(G) Alaska State fish ticket number(s) for the landing;

(H) ADF&G statistical area of harvest reported by the IFQ cardholder;

(I) If ADF&G statistical area is bisected by a line dividing two IFQ regulatory areas, the IFQ regulatory area of harvest reported by the IFQ cardholder;

(J) For each ADF&G statistical area of harvest:

(*1*) Except as provided in paragraph (l)(2)(iii)(J)(*2*) of this section, the species codes, product codes, and initial accurate scale weight(s) (in pounds or to the nearest thousandth of a metric ton) made at the time of offloading for IFQ halibut, IFQ sablefish, or CDQ halibut sold and retained.

(*2*) If the vessel operator is the Registered Buyer reporting the IFQ landing, the accurate weight of IFQ sablefish processed product obtained before the offload may be substituted for the initial accurate scale weight at time of offload.

(K) Initial accurate scale weight(s) with or without ice and slime, as

appropriate, of fish as offloaded from the vessel. Fish which have been washed prior to weighing or which have been offloaded from refrigerated salt water are not eligible for a 2-percent deduction for ice and slime and must be reported as fish weights without ice and slime.

(L) If IFQ halibut is incidental catch concurrent with legal landing of salmon or concurrent with legal landing of lingcod harvested using dinglebar gear.

(M) After the Registered Buyer enters the landing data in the transaction terminal or the Internet submission form(s) and receipts are printed, the Registered Buyer, or his/her representative, and the IFQ cardholder or CDQ cardholder must sign the receipts to acknowledge the accuracy of the IFQ Landing Report.

(iv) *Submittals.* Except as indicated in paragraph (l)(2)(iv)(C) of this section, IFQ landing reports must be submitted electronically to OLE, Juneau, AK, either by using an electronic transaction terminal or by using the Internet as indicated below:

(A) *Transaction terminal.* Landing Reports submitted using magnetic strip cards issued by NMFS, Alaska Region, and transaction terminals with printers driven by custom-designed software as provided and/or specified by NMFS, Alaska Region.

(*1*) The Registered Buyer must locate or procure a transaction terminal and report as required.

(*2*) The IFQ cardholder or CDQ cardholder must initiate a Landing Report by using his or her own magnetic card and personal identification number (PIN).

(B) *Internet.* Landing Reports submitted using Internet submission methods as provided and/or specified by NMFS, Alaska Region.

(*1*) The Registered Buyer must obtain at his or her own expense, hardware, software and Internet connectivity to support Internet submissions and report as required.

(*2*) The IFQ cardholder or CDQ cardholder must initiate a Landing Report by logging into the IFQ landing report system using his or her own password and must provide identification information requested by the system.

(*3*) The Registered Buyer must enter additional log-in information, including his or her password, and provide landing information requested by the system.

(C) *Manual landing report.* Waivers from the transaction terminal or Internet reporting requirement can only be granted in writing on a case-by-case basis by a local clearing officer. If a waiver is granted, manual landing instructions must be obtained from OLE, Juneau, AK, at 800–304–4846 (Select Option 1). Registered Buyers must complete and submit manual Landing Reports by FAX to OLE, Juneau, AK, at 907–586–7313. When a waiver is issued, the following additional information is required: whether the manual Landing Report is an original or revised; and name, telephone number, and FAX number of individual submitting the manual Landing Report.

(D) *Properly debited landing.* A properly concluded transaction terminal receipt, or printed Internet submission receipt, or a manual landing report receipt which is sent by FAX from OLE to the Registered Buyer, and which is then signed by both the Registered Buyer and cardholder constitutes confirmation that OLE received the landing report and that the cardholder's account is properly debited. A copy of each receipt must be maintained by the Registered Buyer as described in § 679.5(l).

(*3*) *Transshipment authorization.* (i) No person may transship processed IFQ halibut, CDQ halibut, or IFQ sablefish between vessels without authorization by a local clearing officer. Authorization from a local clearing officer must be obtained for each instance of transshipment at least 24 hours before the transshipment is intended to commence.

(ii) *Information required.* To obtain a Transshipment Authorization, the vessel operator must provide the following information to the clearing officer:

(A) Date and time (A.l.t.) of transshipment;

(B) Location of transshipment;

(C) Name and ADF&G vessel registration number of vessel offloading transshipment;

(D) Name of vessel receiving the transshipment;

(E) Product destination;

(F) Species and product type codes;

(G) Total product weight;

(H) Time (A.l.t.) and date of the request;

(I) Name, telephone number, FAX number (if any) for the person making the request.

(*4*) *IFQ Departure Report*—(i) *General Requirements*—(A) *Time limit and submittal.* A vessel operator who intends to make an IFQ landing at any location other than in an IFQ regulatory area or in the State of Alaska must submit an IFQ Departure Report, by telephone, to OLE, Juneau, AK, at 800–304–4846 or 907–586–7163 between the hours of 0600 hours, A.l.t., and 2400 hours, A.l.t.

(B) *Completion of fishing.* A vessel operator must submit an IFQ Departure Report after completion of all fishing and prior to departing the waters of the EEZ adjacent to the jurisdictional waters of the State of Alaska, the territorial sea of the State of Alaska, or the internal waters of the State of Alaska when IFQ halibut, CDQ halibut, or IFQ sablefish are on board.

(C) *Registered Buyer permit.* A vessel operator submitting an IFQ Departure Report must have a Registered Buyer permit.

(D) *First landing of any species.* A vessel operator submitting an IFQ Departure Report must submit IFQ Landing Reports for all IFQ halibut, CDQ halibut, and IFQ sablefish on board at the same time and place as the first landing of any IFQ halibut, CDQ halibut, or IFQ sablefish.

(E) *Permits on board.*—(*1*) A vessel operator submitting an IFQ Departure Report to document IFQ halibut or IFQ sablefish must ensure that one or more IFQ cardholders are on board with enough remaining IFQ balance to harvest amounts of IFQ halibut or IFQ sablefish equal to or greater than all IFQ halibut and IFQ sablefish on board.

(*2*) A vessel operator submitting an IFQ Departure Report to document CDQ halibut must ensure that one or more CDQ cardholders are on board with enough remaining CDQ halibut balance to harvest amounts of CDQ halibut equal to or greater than all CDQ halibut on board.

(ii) *Required information.* When submitting an IFQ Departure Report, the vessel operator must provide the following information:

(A) Intended date, time (A.l.t.), and location of landing;

(B) Vessel name and ADF&G registration number;

(C) Vessel operator's name and Registered Buyer permit number;

(D) Halibut IFQ, Halibut CDQ, and sablefish IFQ Permit numbers of IFQ and CDQ cardholders on board;

(E) Halibut Regulatory Areas or Sablefish Regulatory Areas of harvest or both;

(F) Estimated total weight as appropriate of IFQ halibut or CDQ halibut on board (lb/kg/mt);

(G) Estimated total weight of IFQ sablefish on board (lb/kg/mt).

(*5*) *Landing verification, inspection and record retention*—(i) *Verification and inspection.* Each IFQ landing and all fish retained on board the vessel making an IFQ landing are subject to verification and inspection by authorized officers.

(ii) Record retention. The IFQ cardholder or CDQ cardholder must retain a legible copy of all Landing Report receipts, and the Registered Buyer must retain a copy of all reports and receipts required by this section. All retained records must be available for inspection by an authorized officer:

(A) Until the end of the fishing year during which the records were made and for as long thereafter as fish or fish products recorded are retained onboard the vessel or at the facility; and

(B) Upon request of an authorized officer for 3 years after the end of the fishing year during which the records were made.

(*6*) *Sampling*—(i) Each IFQ landing and all fish retained onboard a vessel making an IFQ landing are subject to sampling by NMFS-authorized observers.

(ii) Each IFQ halibut landing or CDQ halibut landing is subject to sampling for biological information by persons authorized by the IPHC.

* * * * *

■ 5. In § 679.7, paragraphs (f)(6) and (f)(12) are revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(f) * * *

(6) *Landing*—(i) *IFQ or CDQ* card. Make an IFQ landing without an IFQ or CDQ card, as appropriate, in the name of the individual making the landing.

(ii) *Hired master, IFQ.* Make an IFQ landing without an IFQ card listing the name of the hired master and the name of the vessel making the landing.

(iii) *Hired master, CDQ halibut.* Make a CDQ halibut landing without a CDQ card listing the name of the hired master.

* * * * *

(12) Commence an IFQ landing without a Prior Notice of Landing (PNOL), before the date and time stated on the PNOL, or more than 2 hours after the date and time stated on the PNOL, except as provided in § 679.5(l)(1).

* * * * *

■ 6. In § 679.32, paragraph (f)(1) is revised; paragraph (f)(2) is removed; and paragraphs (f)(3) through (5) are redesignated as paragraphs (f)(2) through (f)(4), respectively, to read as follows:

§ 679.32 Groundfish and halibut CDQ catch monitoring.

* * * * *

(f) *Halibut CDQ*—(1) *Applicability.* The CDQ group, the operator of the vessel, the manager of a shoreside processor or stationary floating processor, and the Registered Buyer must comply with the catch monitoring requirements of this paragraph (f) and with the R&R requirements of § 679.4(e) for the catch of CDQ halibut or while CDQ halibut fishing.

* * * * *

■ 7. In § 679.42, paragraphs (a), (c)(1)(ii), (c)(1)(iv), and (c)(2)(i) are revised to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

(a) *IFQ regulatory area and vessel category.* (1) The QS or IFQ specified for one IFQ regulatory area must not be used in a different IFQ regulatory area.

(2) Except as provided in § 679.41(i)(1) of this part, the IFQ assigned to one vessel category must not be used to harvest IFQ species on a vessel of a different vessel category.

(3) Notwithstanding § 679.40(a)(5)(ii), IFQ assigned to vessel Category B must not be used on any vessel less than or equal to 60 ft (18.3 m) LOA to harvest IFQ halibut in IFQ regulatory area 2C or IFQ sablefish in the IFQ regulatory area east of 140° W. long. unless such IFQ derives from blocked QS units that result in IFQ of less than 5,000 lb (2.268 mt), based on the 1996 TACs for fixed gear specified for the IFQ halibut fishery and the IFQ sablefish fishery in each of these two regulatory areas.

* * * * *

(c) * * *

(1) * * *

(ii) Be aboard the vessel at all times during the fishing trip and present during the landing.

* * * * *

(iv) Sign the IFQ Landing Report required by § 679.5(l)(2)(iii)(M) or § 679.5(l)(2)(iv)(D).

(2) * * *

(i) Except as provided in § 679.5(l)(2)(iii)(J), if offload of unprocessed IFQ halibut, CDQ halibut or IFQ sablefish from a vessel, the scale weight of the halibut or sablefish product actually measured at the time of offload, as required by § 679.5(l)(2)(iii) to be included in the IFQ Landing Report.

* * * * *

■ 8. In § 679.43, paragraph (c) is revised to read as follows:

§ 679.43 Determinations and appeals.

* * * * *

(c) *Submission of appeals.* Appeals must be in writing and must be mailed to the: National Marine Fisheries Service, Office of Administrative Appeals (OAA), P. O. Box 21668, Juneau, AK 99802–1668, or delivered to National Marine Fisheries Service, Attention: Appeals (OAA), 709 W. 9th Street, Room 453, Juneau, AK 99801.

* * * * *

■ 9. In part 679, Table 14a is revised to read as follows:

TABLE 14A TO PART 679.—PORT OF LANDING CODES [1]

Port name	NMFS code	ADF&G code
a. Alaska:		
Adak	186	ADA
Akutan	101	AKU
Akutan Bay	102	
Alitak	103	ALI
Anchor Point	104	
Anchorage	105	ANC
Angoon	106	ANG
Aniak		ANI
Anvik		ANV
Atka	107	ATK
Auke Bay	108	
Baranof Warm Springs.	109	
Beaver Inlet	110	
Bethel		BET
Captains Bay	112	
Chefornak	189	
Chignik	113	CHG
Chinitna Bay	114	
Cordova	115	COR
Craig	116	CRG
Dillingham	117	DIL
Douglas	118	
Dutch Harbor/Unalaska.	119	DUT
Edna Bay	121	
Egegik	122	EGE
Ekuk		EKU
Elfin Cove	123	ELF
Emmonak		EMM
Excursion Inlet	124	XIP
False Pass	125	FSP
Fairbanks		FBK
Galena		GAL
Glacier Bay		GLB
Glennallen		GLN
Gustavus	127	GUS
Haines	128	HNS
Halibut Cove	130	
Hollis	131	
Homer	132	HOM
Hoonah	133	HNH
Hooper Bay	188	
Hydaburg		HYD
Hyder	134	HDR
Ikatan Bay	135	
Juneau	136	JNU
Kake	137	KAK
Kaltag		KAL
Kasilof	138	KAS
Kenai	139	KEN
Kenai River	140	
Ketchikan	141	KTN
King Cove	142	KCO
King Salmon	143	KNG
Kipnuk	144	
Klawock	145	KLA
Kodiak	146	KOD
Kotzebue		KOT
La Conner		LAC
Mekoryuk	147	
Metlakatla	148	MET
Moser Bay		MOS
Naknek	149	NAK
Nenana		NEN
Nikiski (or Nikishka).	150	NIK
Ninilchik	151	NIN
Nome	152	NOM

TABLE 14A TO PART 679.—PORT OF LANDING CODES [1]—Continued

Port name	NMFS code	ADF&G code
Nunivak Island		NUN
Old Harbor	153	OLD
Other Alaska [1]	499	UNK
Pelican	155	PEL
Petersburg	156	PBG
Point Baker	157	
Port Alexander	158	PAL
Port Armstrong		PTA
Port Bailey	159	PTB
Port Graham	160	GRM
Port Lions		LIO
Port Moller		MOL
Port Protection	161	
Portage Bay (Petersburg).	162	
Quinhagak	187	
Resurrection Bay	163	
Sand Point	164	SPT
Savoonga	165	
Seldovia	166	SEL
Seward	167	SEW
Sitka	168	SIT
Skagway	169	SKG
Soldotna		SOL
St. George	170	STG
St. Lawrence	171	
St. Mary		STM
St. Paul	172	STP
Tee Harbor	173	
Tenakee Springs	174	TEN
Thorne Bay	175	
Togiak	176	TOG
Toksook Bay	177	
Tununak	178	
Ugadaga Bay	179	
Ugashik		UGA
Unalakleet		UNA
Valdez	181	VAL

TABLE 14A TO PART 679.—PORT OF LANDING CODES [1]—Continued

Port name	NMFS code	ADF&G code
Wasilla		WAS
West Anchor Cove.	182	
Whittier	183	WHT
Wrangell	184	WRN
Yakutat	185	YAK

[1] To report a landing at a location not currently assigned a location code number: use the code for "Other" for the state or country at which the landing occurs and notify NMFS of the actual location so that the list may be updated. For example, to report a landing for Levelock, Alaska if there is currently no code assigned, use "499" "Other, AK".

TABLE 14B TO PART 679.—PORT OF LANDING CODES

Port name	NMFS code	ADF&G code
CALIFORNIA		
b. Non-Alaska (California, Oregon, Canada, Washington):		
Eureka	500	EUR
Fort Bragg		501
Other California [1]	599	
CANADA		
Port Edward	800	
Port Hardy	801	
Prince Rupert	802	PRU
Vancouver	803	
Other Canada [1]	899	
OREGON		
Astoria	600	AST
Lincoln City	602	
Newport	603	NPT
Olympia		OLY
Portland		POR
Warrenton	604	
Other Oregon [1]	699	
WASHINGTON		
Anacortes	700	ANA
Bellevue	701	
Bellingham	702	
Blaine		BLA
Edmonds	703	
Everett	704	
Fox Island	706	
Ilwaco	707	
La Conner	708	LAC
Mercer Island	709	
Nagai Island	710	
Port Angeles	711	
Port Orchard	712	
Port Townsend	713	
Rainier	714	
Seattle	715	SEA
Tacoma		TAC
Other Washington [1].	799	

[1] To report a landing at a location not currently assigned a location code number: use the code for "Other" for the state or country at which the landing occurs and notify NMFS of the actual location so that the list may be updated. For example, to report a landing for Levelock, Alaska if there is currently no code assigned, use "499" "Other, AK".

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 595

RIN 3206–AJ96

Physicians' Comparability Allowances

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing to revise the regulations governing the physicians' comparability allowance program. The proposed regulations have been converted to a question-and-answer format and rewritten to ease reader understanding and improve administration of this program.

DATES: Comments must be received on or before September 29, 2003.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Deputy Associate Director for Pay and Performance Policy, Strategic Human Resources Policy Division, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200, FAX: (202) 606–0824, or email them to *pay-performance-policy@opm.gov*.

FOR FURTHER INFORMATION CONTACT: Vicki Draper by telephone at (202) 606–2858; by fax at (202) 606–0824; or by email at *pay-performance-policy@opm.gov*.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is issuing proposed regulations to revise 5 CFR part 595, Physicians' Comparability Allowances. Unless otherwise stated, the purpose of this revision to part 595 is to make part 595 more readable, not to make substantive changes. OPM has replaced the verb "shall" with "must" in this part for added clarity and readability. OPM intends that any provision in this part using the verb "must" has the same meaning and effect as previous provisions in this part using "shall."

Finally, OPM is removing § 595.108, Reports. Section 5948(j) of title 5, United States Code, requires an annual Presidential report to Congress on the operation of the PCA program and specifies what information must be included in the report. The regulations in § 595.108 repeat what information must be included in the annual report. Since the regulations are redundant, we are proposing to remove § 595.108. In addition, since the PCA program was made permanent in 2000, the necessity for an annual report is clearly diminished. OPM plans to propose legislation to repeal 5 U.S.C. 5948(j) to delete the annual reporting requirement.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 595

Government employees, Health professions, Wages.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM is proposing to amend part 595 of title 5 of the Code of Federal Regulations as follows:

PART 595—PHYSICIANS' COMPARABILITY ALLOWANCES

1. The authority citation for part 595 continues to read as follows:

Authority: 5 U.S.C. 5948; E.O. 12109, 44 FR 1067, Jan. 3, 1979.

2. Section 595.101 is revised to read as follows:

§ 595.101 Purpose.

Section 5948 of title 5, United States Code, authorizes the payment of allowances to certain eligible Federal physicians who enter into service agreements with their agencies. These allowances are paid only to categories of physicians for which the agency is experiencing recruitment and retention problems and are fixed at the minimum amounts necessary to deal with such problems. The President has delegated regulatory responsibility for this program to the Director of OPM, acting in consultation with the Office of Management and Budget. This part contains the regulations, criteria and conditions which the Director of OPM, in consultation with the Director of the Office of Management and Budget, has prescribed for the administration of the physicians' comparability allowance program. This part supplements and implements 5 U.S.C. 5948 and should be read together with that section of law.

3. In § 595.102, the section heading and paragraphs (a) and (b) are revised to read as follows:

§ 595.102 Who is covered by this program?

(a) This program covers individuals employed as physicians under the Federal pay systems listed in 5 U.S.C. 5948(g)(1), except as provided in 5 U.S.C. 5948(b). For the purposes of this part, an individual is "employed as a physician" only if he or she is serving in a position the duties and responsibilities of which could not be satisfactorily performed by an incumbent who is not a physician.

(b) Section 5948(b) of title 5, United States Code, prohibits the payment of physicians' comparability allowances to certain physicians, including physicians who are reemployed annuitants. For the purpose of applying this prohibition, "reemployed annuitant" means an individual who is receiving or has title to and has applied for an annuity under any retirement program of the Government of the United States, or the government of the District of Columbia, on the basis of service as a civilian employee.

* * * * *

4. In § 595.103, the section heading and paragraph (a) are revised to read as follows:

§ 595.103 What requirements must agencies establish for determining which physician positions are covered?

(a) The head of each agency must determine categories of physician positions for which there is a significant recruitment and retention problem, and physicians' comparability allowances may be paid only to physicians serving in positions in such categories.

* * * * *

5. In § 595.104, the section heading and the introductory text are revised to read as follows:

§ 595.104 What criteria are used to identify a recruitment and retention problem?

The head of each agency may determine that a significant recruitment and retention problem exists for each category of physician position established under § 595.103 only if the following conditions are met with respect to the category:

* * * * *

6. In § 595.105, the section heading and paragraphs (a), (b), (d), and (e) are revised to read as follows:

§ 595.105 What criteria must be used to determine the amount of a physicians' comparability allowance?

(a) The amount of the comparability allowance payable for each category of physician positions established under § 595.103 must be the minimum amount necessary to deal with the recruitment and retention problem identified under § 595.104 for that category of positions. In determining this amount, the agency head must consider the relative earnings, responsibilities, expenses, workload, working conditions, conditions of employment, and personnel benefits for physicians in each category and for comparable physicians inside and outside the Federal Government.

(b) Agencies may not pay a physicians' comparability allowance in excess of $14,000 annually to a physician with 24 months or less of service as a Government physician. Agencies may not pay a physicians' comparability allowance in excess of $30,000 annually to a physician with more than 24 months of service as a Government physician.

* * * * *

(d) A physician who is employed on a regularly scheduled part-time basis of half-time or more is eligible to receive a physicians' comparability allowance, but any such allowance must be prorated according to the proportion of the physicians' work schedule to full-time employment.

(e) A physician who is serving with the Government under a loan repayment program must have the amount of any loan being repaid deducted from any physicians' comparability allowance for which he or she is eligible and may receive only that portion of such allowance which exceeds the amount of the loan being repaid during the period of employment required by the service agreement under the student loan repayment program.

7. Section 595.106 is revised to read as follows:

§ 595.106 What termination and refund provisions are required?

Each service agreement entered into by an agency and a physician under the comparability allowance program must prescribe the terms under which the agreement may be terminated and the amount of allowance, if any, required to be refunded by the physician for each reason for termination. In the case of each service agreement covering a period of service of more than 1 year, the service agreement must include a provision that, if the physician completes more than 1 year of service pursuant to the agreement, but fails to complete the full period of service specified in the agreement either voluntarily or because of misconduct by the physician, the physician must refund the amount of allowance he or she has received under the agreement for the 26 weeks of service immediately preceding the termination (or for a longer period, if specified in the agreement).

8. In § 595.107, the section heading and paragraphs (b) and (c) are revised to read as follows:

§ 595.107 What are the requirements for implementing a physicians' comparability allowance program?

* * * * *

(b) The agency must submit to the Office of Management and Budget a complete description of its plan for implementing the physicians' comparability allowance program, including the following:

(1) An identification of the categories of physician positions the agency has established under § 595.103, and of the basis for such categories;

(2) An explanation of the determination that a recruitment and retention problem exists for each such category, in accordance with the criteria in § 595.104; and

(3) An explanation of the basis for the amount of comparability allowance determined necessary for each category of physician position under § 595.105.

(c) The Office of Management and Budget (OMB) will review each agency's plan for implementing the physicians' comparability allowance program and determine whether the plan is consistent with 5 U.S.C. 5948 and the requirements of this part. OMB will advise the agency within 45 calendar days after receipt of the plan as to whether the plan is consistent with 5 U.S.C. 5948 and this part or what changes need to be made.

9. Section § 595.108 is removed.

§ 595.108 Reports. [Removed]

[FR Doc. 03–19088 Filed 7–28–03; 8:45 am]

BILLING CODE 6325–39–P

FARM CREDIT ADMINISTRATION

12 CFR Part 613

RIN 3052–AC20

Eligibility and Scope of Financing

AGENCY: Farm Credit Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Farm Credit Administration (FCA) is extending the comment period on our Advance Notice of Proposed Rulemaking concerning eligibility and scope of financing for farmers, ranchers, and aquatic producers or harvesters, and "moderately priced" rural housing. We are extending the comment period so all interested parties have more time to respond to our questions.

DATES: Please send your comments to the FCA by October 29, 2003.

ADDRESSES: We encourage you to send comments by electronic mail to "reg-comm@fca.gov," through the Pending Regulations section of FCA's Web site, *http://www.fca.gov*, or through the government-wide *http://www.regulations.gov* portal. You may also send comments to S. Robert Coleman, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or by facsimile to (703) 734–5784. You may review copies of all comments we receive at our office in McLean, Virginia.

FOR FURTHER INFORMATION CONTACT:

Mark L. Johansen, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434.

Or

Richard A. Katz, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION: On May 2, 2003, FCA published a notice in the **Federal Register** seeking public comment on whether it should revise its regulations governing eligibility and scope of financing for farmers, ranchers, and aquatic producers or harvesters who borrow from Farm Credit System institutions that operate under titles I or II of the Farm Credit Act of 1971, as amended. In addition, we requested public comment on whether we should modify our regulatory definition of "moderately priced" rural housing. The comment period expires on July 31, 2003. *See* 68 FR 23425, May 2, 2003.

We also held a public meeting on June 26, 2003, to hear views from the public about whether and how we should revise our regulations governing eligibility, scope of financing, and "moderately priced" rural housing. After the public meeting two members of the public requested that we extend the comment period for an additional 90 days. In response to this request, we are extending the comment period until October 29, 2003, so all interested parties have more time to respond to our questions. The FCA supports public involvement and participation in its regulatory and policy process and invites all interested parties to review and provide comments on our notice.

Dated: July 23, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–19208 Filed 7–28–03; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–170–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas airplane models. This proposal would require a one-time inspection for chafing of wiring in the left-hand tunnel area of the forward cargo compartment, repair if necessary, and coiling and stowing of excess wiring. This action is necessary to prevent wire chafing and subsequent shorting to structure in the forward cargo compartment, which could result in smoke or fire in the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 12, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–170–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–170–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–170–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–170–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of incidents of wire chafing and a subsequent short to structure in the left-hand tunnel area of the forward cargo compartment on a McDonnell Douglas Model MD–88 airplane. Investigation of the incidents revealed that excess wiring and improper routing of wiring resulted in wire chafing. Such wire chafing, if not corrected, could result in shorting to structure and consequent smoke or fire in the airplane.

The subject area on certain McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes is similar to that on the affected Model MD–88 airplane. Therefore, those airplanes may be subject to the unsafe condition revealed on the Model MD–88 airplane.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes, has reviewed all aspects of the service history of those airplanes to

identify potential unsafe conditions and to take appropriate corrective actions. This proposed airworthiness directive (AD) is one of a series of corrective actions identified during that process. We have previously issued several other ADs and may consider further rulemaking actions to address the remaining identified unsafe conditions.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD80–24A158, Revision 01, dated February 23, 2000. That service bulletin describes procedures for a one-time visual inspection for chafing of wiring in the left-hand tunnel area of the forward cargo compartment, repair if necessary, and coiling and stowing of excess wiring. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Explanation of Cost Impact

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 1,116 airplanes of the affected design in the worldwide fleet. The FAA estimates that 655 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $127,725, or $195 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Manufacturer warranty remedies may be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2000–NM–170–AD.

Applicability: Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes; certificated in any category; as listed in McDonnell Douglas Alert Service Bulletin MD80–24A158, Revision 01, dated February 23, 2000.

Compliance: Required as indicated, unless accomplished previously.

To prevent wire chafing and subsequent shorting to structure in the forward cargo compartment, which could result in smoke or fire in the airplane, accomplish the following:

Inspection and Follow-On Actions

(a) Within 1 year after the effective date of this AD, perform a one-time general visual inspection for chafing of wiring in the left-hand tunnel area of the forward cargo compartment between Y = 237.000 and Y = 256.000, per the Accomplishment Instructions of McDonnell Douglas Alert Service Bulletin MD80–24A158, Revision 01, dated February 23, 2000. Then, do paragraphs (a)(1) and (a)(2) of this AD, as applicable.

(1) If any chafing is found, before further flight, repair per the service bulletin.

(2) Before further flight, coil and stow excess wiring per the service bulletin.

Note 1: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Inspections Accomplished Per Previous Issue of Service Bulletin

(b) Actions accomplished before the effective date of this AD per McDonnell Douglas Service Bulletin MD80–24–158, dated October 27, 1995, are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on July 22, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–19194 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–253–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes. This proposal would require repetitive inspections of the control panel of the direct current (DC) generator for discrepancies, and replacement of any discrepant part. This action is necessary to prevent the loss of both DC generator systems and loss of several other airplane systems, which could lead to the pilot's inability to maintain controlled flight. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 28, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–253–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–253–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–253-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–253–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority—The Netherlands (CAA–NL), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on all Fokker Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes. The CAA–NL advises that it has received a number of reports of direct current (DC) generator overvoltages, which resulted in loss of both DC generator systems and loss of several other airplane systems. The overvoltages were caused by the incorrect installation of DC generator system parts, including bad solder joints, bad wire insulation, and incorrect functioning of relays and resistors. These conditions, if not corrected, could result in the loss of both DC generator systems and loss of several other airplane systems, which could lead to the pilot's inability to maintain controlled flight.

Explanation of Relevant Service Information

Fokker Services B.V. has issued Fokker Service Bulletin F27/24–79, dated April 28, 1999, which describes procedures for repetitive inspections of the control panel of the DC generator for discrepancies (*e.g.*, incorrect installation of DC generator system parts, including discrepant solder joints, discrepant wire insulation, and incorrect functioning relays and resistors). The service bulletin references Bendix (Allied Signal) publication R766–28, Technical Manual, Maintenance Instructions with Illustrated Parts Catalog for Generator Control Panel type no. 1539–11–B and 1539–12–B, paragraphs 2–12 through 2–15, as an additional source of service information for accomplishing the inspections and replacement of any discrepant part with a new part. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA–NL classified this service bulletin as mandatory and issued Dutch airworthiness directive 1999–093, dated June 30, 1999, to ensure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA–NL has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA–NL, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 39 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $9,360, or $240 per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker Services B.V.: Docket 2002–NM–253–AD.

Applicability: All Model F27 Mark 100, 200, 300, 400, 500, 600, and 700 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of both direct current (DC) generator systems and loss of several other airplane systems, which could lead to the pilot's inability to maintain controlled flight, accomplish the following:

Initial and Repetitive Inspections

(a) Within 60 days after the effective date of this AD, do a detailed inspection of the control panel of the DC generator for discrepancies, per the Accomplishment Instructions of Fokker Service Bulletin F27/24–79, dated April 28, 1999. Repeat the inspection thereafter at intervals not to exceed 4,000 flight hours.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(b) If any discrepancy is found during any inspection required by paragraph (a) of this AD, prior to further flight, replace any discrepant part with a new part having the same part number, per the Accomplishment Instructions of Fokker Service Bulletin F27/24–79, dated April 28, 1999.

Note 2: The service bulletin references Bendix (Allied Signal) publication R766–28, Technical Manual, Maintenance Instructions with Illustrated Parts Catalog for Generator Control Panel type no. 1539–11–B and 1539–12–B, paragraphs 2–12 through 2–15, as an additional source of service information for accomplishing the inspections and any parts replacement required by paragraphs (a) and (b) of this AD.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive 1999–093, dated June 30, 1999.

Issued in Renton, Washington, on July 22, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–19195 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–91–AD]

RIN 2120–AA64

Airworthiness Directives; Various Transport Category Airplanes on Which Cargo Restraint Strap Assemblies Have Been Installed Per Supplemental Type Certificate (STC) ST01004NY

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to various transport category airplanes on which cargo restraint strap assemblies have been installed per STC ST01004NY. This proposal would require revising the Airplane Flight Manual to include a procedure for discontinuing the use of certain cargo restraint strap assemblies that have been installed per STC ST01004NY if used as the only cargo restraint. This action is necessary to prevent shifting or unrestrained cargo in the cargo compartment, which could cause an unexpected change in the airplane's center of gravity, damage to the airplane structure and/or flight control system, a hazard to the flightcrew, and/or possible loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 12, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–91–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–91–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7523; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–91–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–91–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of incorrect installation of cargo restraint strap assemblies having part number 1519–MCIDS. These cargo restraint strap assemblies are manufactured by Airline Container Manufacturing Company, Inc., and are installed on various transport category airplanes per Supplemental Type Certificate (STC) ST01004NY. Reports also indicate the use of incorrect pallet and strap combinations, and the use of straps inappropriate for the type of cargo to be restrained. In addition, reports indicate that, upon landing, the strap assemblies were disassembled, and no record was made of the incidents. Shifting or unrestrained cargo in the cargo compartment due to such conditions could cause an unexpected change in the airplane's center of gravity, damage to the airplane structure and/or flight control system, a hazard to the flightcrew, and/or possible loss of controllability of the airplane.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to-exist or develop on other products of this same type design, the proposed AD would require revising the Limitations section of the Airplane Flight Manual (AFM) to include a procedure for discontinuing the use of certain cargo restraint strap assemblies that have been installed per STC ST01004NY if used as the only cargo restraint. The actions would be required to be accomplished per a method approved by the FAA. We have determined that, although such cargo restraint strap assemblies may not be used as the only restraint, the strap assemblies may be used as a supplemental restraint in conjunction with TSO C90c Type I cargo nets or other FAA-approved assemblies for securing cargo to pallets only.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 1,150 transport category airplanes of the affected design in the worldwide fleet. The FAA estimates that 735 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane

to accomplish the proposed AFM revision, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $47,775, or $65 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Transport Category Airplanes: Docket 2002–NM–91–AD.

Applicability: The following transport category airplanes on which cargo restraint strap assemblies have been installed per Supplemental Type Certificate (STC) ST01004NY, certificated in any category:

TABLE—MANUFACTURERS/AIRPLANE MODELS

Manufacturer	Airplane model
Aerospatiale	ATR42 and ATR72 series airplanes.
Airbus	A300 B2 and A300 B4 series airplanes; A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600) series airplanes; A310, A320, A321, A330, and A340 series airplanes.
Boeing	707–100, 707–200, 707–100B, and 707–100B series airplanes; 727, 737, 747, 757, and 767 series airplanes.
British Aerospace	BAe 146 series airplanes; Avro 146–RJ series airplanes.
Fokker	F27 and F.28 series airplanes.
Lockheed	188A and 188C airplanes, L–1011 series airplanes.
Maryland Air Industries, Inc	F–27 series airplanes, FH–227 series airplanes.
McDonnell Douglas	DC–7, DC–7B, and DC–7C airplanes; DC–8–11, DC–8–12, DC–8–21, C–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 airplanes; DC–8–51, DC–8–52, DC–8–53, and DC–8–55 airplanes; DC–8F–54 and DC–8F–55 airplanes; DC–8–61, DC–8–62, and DC–8–63 airplanes; DC–8–61F, DC–8–62F, and DC–8–63F airplanes; DC–8–71, DC–8–72, and DC–8–73 airplanes; DC–8–71F, DC–8–72F, and DC–8–73F airplanes; DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, and DC–9–15F airplanes; DC–9–21 airplanes; DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, DC–9–41, DC–9–51, DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; MD–88 airplanes; MD–90–30 airplanes; 717–200 airplanes; DC–10–10 and DC–10–10F airplanes; DC–10–15 airplanes; DC–10–30 and DC–10–30F (KDC–10) airplanes; DC–10–40 and DC–10–40F airplanes; MD–10–10F and MD–10–30F airplanes; MD–11 and MD–11F airplanes.

Compliance: Required as indicated, unless accomplished previously.

To prevent shifting or unrestrained cargo in the cargo compartment, which could cause an unexpected change in the airplane's center of gravity, damage to the airplane structure and/or flight control system, a hazard to the flightcrew, and/or possible loss of controllability of the airplane, accomplish the following:

Airplane Flight Manual (AFM) Revision

(a) Within 10 days after the effective date of this AD, revise the Limitations Section of the AFM to include the following information (this may be accomplished by inserting a copy of this AD into the AFM):

Discontinue the use of Airline Container Manufacturing Company, Inc., cargo restraint straps, part number P/N 1519–MCIDS, as the only means of securing cargo to Technical Standard Order (TSO) C90c/NAS3610 pallets. Such cargo restraint straps may continue to be used as supplemental restraints, if used with TSO C90c Type I cargo nets, or other FAA-approved cargo nets. (The subject cargo restraint straps were installed per Airline Container Manufacturing Company, Inc., Report No. 289A, Installation Instructions, Revision D, per Supplemental Type Certificate (STC) ST01004NY.)

Note 1: If the statement in paragraph (a) of this AD has been incorporated into the general revisions of the AFM, the general revisions may be incorporated into the AFM, and the copy of this AD may then be removed from the AFM.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 22, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–19196 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–28–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Cessna Aircraft Company (Cessna) Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H airplanes that are equipped with a Honeywell KAP 140 autopilot computer system installed on the center instrument control panel near the throttle. This proposed AD would require you to install an update to the operating software of the KAP 140 autopilot computer system, change the unit's part number, and change the software modification identification tab. This proposed AD is the result of reports of inadvertent and undetected engagement of the autopilot system. The actions specified by this proposed AD are intended to prevent unintentionally engaging the KAP 140 autopilot computer system, which could cause the pilot to take inappropriate actions.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before September 22, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–28–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2003–CE–28–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006 and Honeywell, Business, Regional, and General Aviation, 23500 W. 105th Street, Olathe, Kansas 66061. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Dan Withers, Aerospace Engineer, Wichita Aircraft Certification Office (ACO), FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4196; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the proposed rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the proposed rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2003–CE–28–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

We have received reports of an unsafe condition on certain Cessna Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H airplanes that are equipped with a Honeywell KAP 140 autopilot computer system.

The KAP 140 autopilot computer system is located on the lower portion of the center instrument control panel near the throttle on these Cessna airplanes. Because of this location on the instrument control panel of the affected Cessna airplanes, the Autopilot Engage (AP) button could unintentionally be depressed when the pilot pushes the throttle knob forward. The pilot could also unintentionally engage the autopilot system by inadvertently bumping the Heading (HDG) button, Altitude (ALT) mode-select button, or Autopilot Engage (AP) button on the KAP 140 computer. Unless intentionally engaged, the pilot does not know that the autopilot system is engaged.

The Honeywell KAP 140 autopilot computer system is also installed in the New Piper, Inc. Model PA–28–181 airplanes. This proposed AD would not affect these airplanes because of the location of the equipment. The equipment is installed on the center instrument panel near the throttle on the affected airplanes, but is installed in the upper half of the instrument control

panel on the Piper airplanes. The unsafe condition only exists on the Cessna airplanes.

Honeywell has updated the operating software for the KAP 140 autopilot computer system, which will now only allow the AP button on the instrument control panel to engage the autopilot system. This update also adds two voice messages if auto trim operation is detected, lengthens the amount of time that the autopilot button must be depressed in order for it to engage, and changes how the flight control display shows that the AP has been engaged.

What Are the Consequences if the Condition Is Not Corrected?

If not corrected, inadvertent and undetected engagement of the autopilot system could cause the pilot to take inappropriate actions.

Is There Service Information That Applies to This Subject?

Cessna has issued Service Bulletin SB02–22–01, dated November 25, 2002.

Honeywell has issued Service Bulletin No: KC 140–M1, dated August 2002; and Installation Bulletin No: 491, dated August 2002.

What Are the Provisions of This Service Information?

Cessna Service Bulletin SB02–22–02, dated November 25, 2002, specifies installing an update to the autopilot computer system operating software by accomplishing the actions in Honeywell Service Bulletin No: KC 140–M1, dated August 2002.

Honeywell Service Bulletin No: KC 140–M1, dated August 2002, includes procedures for:

—Installing an update to the autopilot computer system operating software;
—Changing the unit part number;
—Placing an M tag on the unit serial number tag; and
—Changing the unit's software modification tag.

Honeywell Installation Bulletin No: 491, dated August 2002, describes the operational changes the software update makes to the KC 140 autopilot computer system.

The FAA's Determination and an Explanation of the Provisions of this Proposed AD

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other Cessna Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H of the same type design;
—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and
—AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to update to the operating software of the KAP 140 autopilot computer system; change the unit's part number; and change the software modification identification tab.

How Does the Revision to 14 CFR Part 39 Affect This Proposed AD?

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 3,681 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish this proposed modification:

Labor cost	Parts cost	Total cost per airplane
7 workhours × $65 per hour = $455.	Not applicable.	$455.

Not all Cessna Models 172R, 172S, 182S, 182T, T182T, 206H, and T206H airplanes on the U.S. registry have a KAP 140 autopilot computer system installed.

Honeywell will provide warranty credit for labor and parts to the extent noted under WARRANTY INFORMATION in each specified in Honeywell Service Bulletin No: KC 140–M1, dated August 2002.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Cessna Aircraft Company: Docket No. 2003–CE–28–AD

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers that are:

(1) equipped with a KAP 140 autopilot computer system, part number (P/N) 065–00176–2602, P/N 065–00176–5402, or P/N 065–00176–7702 ; and

(2) certificated in any category:

Model	Serial numbers
172R	17280001 through 17281073, 17281075 through 17281127, and 17281130
172S	172S8001 through 172S9195, 172S9197, 172S9198, and 172S9200 through 172S9203
182S	18280001 through 18280944
182T	18280945 through 18281064, 18281067 through 18281145, 18281147 through 18281163, 18281165 through 18281167, and 18281172
T182T ...	T18208001 through T18208109, and T18208111 through T18208177
206H	20608001 through 20608183, 20608185, 20608187, and 20608188
T206H ..	T20608001 through T20608039, T20608041 through T20608367, T20608269 through T20608379, T20608381, T20608382, and T20608385

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent unintentionally engaging the KAP 140 autopilot computer system, which could cause the pilot to take inappropriate actions.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following, unless already accomplished:

Actions	Compliance	Procedures
(1) Install and update the KC 140 autopilot computer system operating software.	Within the next 100 hours time-in-service (TIS) after the effective date of this AD.	In accordance with Honeywell Service Bulletin No: KC 140–M1, dated August 2002, as specified in Cessna Service Bulletin SB02–22–01, dated November 25, 2002.
(2) Accomplish the following: (i) Change the unit part number by attaching flavor sticker, part number (P/N) 057–02203–0003, on the unit's serial tag; (ii) Attach an M decal, P/N 057–02984–0501, in front of the unit serial number (this indicates that the unit's P/N has been changed); and. (iii) Attach a software mod tag, P/N 057–05287–0301, in place of the old tag to indicate the software change to SW MOD 03/01..	Prior to further flight after installing the update to the KC 140 autopilot computer system operating software.	In accordance with Honeywell Service Bulletin No: KC 140–M1, dated August 2002, as specified in Cessna Service Bulletin SB02–22–01, dated November 25, 2002.
(3) Only install KC 140 autopilot computer systems, P/Ns 065–00176–2602, 065–00176–5402, and 065–00176–7702, that have been modified as specified in paragraphs (d)(1) and (d)(2) of this AD.	As of the effective date of this AD	Not applicable.

You may request a revised flight manual supplement from Cessna or Honeywell at the address specified in paragraph (f) of this AD.

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Wichita Aircraft Certification Office (ACO). For information on any already approved alternative methods of compliance, contact Dan Withers, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4196; facsimile: (316) 946–4107.

(f) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006 and Honeywell, Business, Regional, and General Aviation, 23500 W. 105th Street, Olathe, Kansas 66061. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on July 22, 2003.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–19197 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–133791–02 and REG–105606–99]

RINS 1545–BA88 1545–AX05

Credit for Increasing Research Activities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; notice of public hearing; and withdrawal of previously proposed regulations.

SUMMARY: This document contains proposed regulations relating to the computation and allocation of the credit for increasing research activities for members of a controlled group of corporations or a group of trades or businesses under common control. These proposed regulations reflect changes made to section 41 by the Revenue Reconciliation Act of 1989 and the Small Business Job Protection Act of 1996, which introduced the alternative incremental research credit. This document also provides notice of a public hearing on these proposed regulations and withdraws the proposed regulations published in the **Federal Register** on January 4, 2000 (65 FR 258).

DATES: Written or electronic comments must be received by October 27, 2003. Requests to speak and outlines of the topics to be discussed at the public hearing scheduled for November 13, 2003 at 10 a.m. must be received by October 23, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–133791–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand delivered Monday through Friday

between the hours of 8 a.m. and 4 p.m. to: CC:PA:RU (REG–133791–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. Alternatively, taxpayers may submit comments electronically via the Internet by submitting comments directly to the IRS Internet site at: *http://www.irs.gov/regs*. The public hearing will be held in the IRS Auditorium (7th Floor), Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning these proposed regulations, Jolene J. Shiraishi at (202) 622–3120 (not a toll-free call); concerning submissions of comments, the hearing, and to be placed on the building access list to attend the hearing, Guy Traynor at (202) 622–7180 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

On January 4, 2000, Treasury and the IRS published in the **Federal Register** (65 FR 258) proposed amendments to the regulations under section 41(f) (2000 proposed regulations) relating to the computation and allocation of the credit for increasing research activities (research credit) for members of a controlled group of corporations or a group of trades or businesses under common control (controlled group). The 2000 proposed regulations reflected changes made to section 41 by the Revenue Reconciliation Act of 1989 (the 1989 Act) and the Small Business Job Protection Act of 1996. Treasury and the IRS received written comments from two commentators. A public hearing was held on April 26, 2000. After considering the written comments and the statements at the public hearing, Treasury and the IRS are withdrawing the 2000 proposed regulations and are proposing new regulations.

Summary of Comments and Explanation of Provisions

Overview

These new proposed regulations for members of a controlled group under section 41(f) follow the research credit computation rule contained in the 2000 proposed regulations. The computation of the research credit for a controlled group (group credit) under these new proposed regulations is done by treating all of the members of a controlled group as a single taxpayer. Unlike the 2000 proposed regulations, these new proposed regulations then allocate the group credit among the members of the controlled group based on the relative amounts of each individual member's stand-alone entity credit—the credit, if any, that a member of a controlled group would be entitled to claim if it were not a member of a controlled group. These new proposed regulations generally will apply to taxable years beginning on or after the date that final regulations are published in the **Federal Register**.

Computation of the Group Credit

Section 41(f)(1)(A)(i) provides that in determining the amount of the research credit under section 41, "all members of the same controlled group of corporations shall be treated as a single taxpayer." Section 41(f)(1)(B)(i) provides a similar rule for a group of trades or businesses under common control. Accordingly, for purposes of determining the amount of the group credit, the 2000 proposed regulations applied all of the section 41 computational rules on an aggregate basis. The commentators agreed that with respect to the computation of the group credit, the 2000 proposed regulations are consistent with the provisions of section 41(f). These new proposed regulations, therefore, do not change the method for computing the group credit. These new proposed regulations, however, clarify the application of the start-up company rules under section 41(c)(3)(B) to a controlled group with respect to the computation of the group credit.

Allocation of the Group Credit Among Members of the Controlled Group

Section 41(f)(1)(A)(ii) provides that "the [portion of the group] credit (if any) allowable by this section to each such member shall be its proportionate shares of the qualified research expenses and basic research payments giving rise to the credit." Section 41(f)(1)(B)(ii) provides a similar rule for a group of trades or businesses under common control. These new proposed regulations apply these provisions by allocating the group credit based on the relative amounts of each individual member's stand-alone entity credit.

2000 Proposed Regulations

The 2000 proposed regulations allocated the group credit based on the amounts by which each individual member's qualified research expenses (QREs) exceeded a base amount for that member. An individual member's base amount, for purposes of allocating the group credit under the 2000 proposed regulations, was determined by applying the controlled group's fixed-base percentage to the member's average annual gross receipts for the four taxable years preceding the credit year. The group credit was allocated to a member having an excess amount of QREs by multiplying the group credit by a fraction having the individual member's excess amount as the numerator and the aggregate excess amount of all the members of the controlled group as the denominator. A similar allocation method was provided for the credit for basic research payments and for the alternative incremental research credit.

The preamble to the 2000 proposed regulations stated that the purpose of this method was to allocate the group credit to "those members whose share of current year qualified research expenses exceeds their share of the [controlled group's] base amount." In particular, the preamble noted that in providing a rule that reflects the incremental nature of the research credit, Treasury and the IRS declined to follow comments noting that amendments to section 41 made by the 1989 Act required that the allocation of the group credit be based on the relative amounts of total QREs incurred separately by members of the controlled group:

> In proposing rules for the allocation of the credit, Treasury and the IRS considered, but were not persuaded by, certain taxpayers' argument that the elimination of the word "increase" from the allocation rule in the statute requires that the credit be allocated on the basis of the gross amount of qualified research expenses incurred by the various members of the controlled group. Treasury and the IRS believe that elimination of the word "increase" was necessitated by the 1989 statutory amendments to the computation of the research credit, which afford a credit in certain circumstances even where the taxpayer (or each member of a controlled group) is decreasing its gross amount of qualified research expenses (*e.g.*, because the taxpayer's gross receipts also are decreasing). However, there is no indication that the elimination of the word "increase" was intended to suggest that the credit be allocated without regard to its incremental nature. To the contrary, the statutory prescription that the credit be allocated according to each member's proportionate share of the qualified research expenses "giving rise to" the credit supports a rule that allocates the credit to those members whose share of current year qualified research expenses exceeds their share of the base amount.

Comments on the 2000 Proposed Regulations

Two commentators submitted a series of comments in response to the 2000 proposed regulations. As noted above, both commentators agreed that the method for computing the group credit contained in the 2000 proposed regulations is consistent with the provisions of section 41(f). The commentators diverged significantly, however, with respect to the method for allocating the group credit. The first commentator supported the allocation rule contained in the 2000 proposed regulations. The second commentator reiterated the earlier expressed view that the allocation of the group credit should be done on the basis of each member's total QREs (gross QREs method).

The second commentator set out a number of reasons why a gross QREs method should be adopted instead of the method contained in the 2000 proposed regulations. In particular, the commentator stated that a gross QREs method is the only method consistent with the plain meaning of section 41(f). As a related point, the commentator claimed that a statutory amendment made by the 1989 Act supports its plain meaning argument. The commentator also noted that the allocation method contained in the 2000 proposed regulations, by incorporating both individual member and controlled group elements, was at odds with the computation method provided by the statute and failed to allocate rationally the group credit.

Treasury and the IRS continue to believe that, compared to a gross QREs method, an allocation method based on a group member's QREs in excess of a base amount more fully carries out the purposes of section 41 in general and the section 41(f) controlled group credit rules. The research credit is not, and has never been, a credit computed as a percentage of total qualifying expenses. Rather, the research credit generally is allowed only when a taxpayer's QREs exceed a base amount. Prior to the 1989 Act, the research credit was computed by multiplying the credit rate by the excess of the taxpayer's current year QREs over the taxpayer's average QREs for the preceding three years. The 1989 Act significantly modified the computation of the research credit while retaining the incremental approach of the pre-1989 Act credit. In general, the research credit computation is based on whether and the extent to which a taxpayer increases the proportion of its QREs relative to its recent gross receipts, compared to a historical base period. Ultimately, this computation measures the extent to which a taxpayer's current year QREs exceed a base amount.

Treasury and the IRS conclude that the controlled group allocation rules set out in section 41(f) were not intended to result in the allocation of the group credit to individual members of the group in a manner wholly at odds with the incremental nature of the research credit. The legislative history to the research credit, as originally enacted in 1981, indicates that the group credit rules were enacted to ensure that the research credit would be allowed only for actual increases in research expenditures. These rules were intended to prevent taxpayers from creating artificial increases in research expenditures by shifting expenditures among commonly controlled or otherwise related persons. H. Rep. No. 97–201, 1981–2 C.B. (Vol. 2) 364, and S. Rep. 97–144, 1981–2 C.B. (Vol. 2) 442. In effect, the group credit computation rule serves as a cap on the maximum amount of credit that the members of the group, in the aggregate, may claim. A rule that then allocates the group credit based solely on the total amount of QREs incurred by each individual member, however, would be inconsistent with the incremental nature of the credit and would not further the purpose of the section 41(f) group credit rules.

As during the consideration of the 2000 proposed regulations, Treasury and the IRS do not find persuasive the second commentator's argument that a plain reading of the statute, following the deletion of the phrase "increase in" in sections 41(f)(1)(A)(ii) and 41(f)(1)(B)(ii) by the 1989 Act, mandates a gross QREs method for allocating the group credit. Prior to the 1989 Act, for example, section 41(f)(1)(A)(ii) provided that the research credit, if any, allowable to each member of a controlled group was the member's "proportionate share of the increase in qualified research expenses giving rise to the credit." The phrase "increase in" was deleted by the 1989 Act. The commentator maintained that a gross QREs method gives effect to the phrase "giving rise to the credit" as well as to the deletion of the phrase "increase in" from the statute by the 1989 Act because "each dollar of the group's QREs gives rise to [the] excess over the group's base amount" or "(s)tated otherwise, if you eliminate a dollar of qualified research expenses from any member of the group, the group's credit will be reduced proportionately."

The reason for the deletion of the phrase "increase in" is not addressed in the legislative history to the 1989 Act. The changes to the computation of the research credit made by the 1989 Act, however, made a taxpayer's QREs for prior years, other than taxable years beginning after December 31, 1983, and before January 1, 1989 (base years), irrelevant to the computation of the credit. Instead, the amount of the research credit now depends on whether and the extent to which a taxpayer increases the proportion (compared to that of the base years) of its QREs relative to its average annual gross receipts from the prior four years. Accordingly, although the research credit is still based on the amount by which current year QREs exceed a base amount, that base amount, unlike the general research credit computation prior to the 1989 Act, is not a rolling average of QREs incurred in the three years prior to the credit year. Treasury and the IRS, therefore, conclude that the deletion of the phrase "increase in" was intended to reflect this change, and not to indicate that the allocation of the group credit was to be made using a gross QREs method.

The second commentator noted, in arguing that the allocation method in the 2000 proposed regulations impermissibly mixed controlled group and individual member calculations, that the allocation method favors those members whose current ratio of QREs to recent gross receipts exceeds the controlled group's fixed-base percentage, regardless of whether that member's ratio, in fact, was increasing or decreasing. As stated by the commentator, "[t]he group's fixed-base percentage can be wildly different from the fixed-base percentage for an individual member depending on the individual member's separate QREs and separate gross receipts during the [base years]. In other words, the amount of group credit that would be allocated to an individual member under the 2000 proposed regulations may bear little or no relationship to what the individual member would be entitled to on a stand-alone basis, depending on how similar the individual member's separate fixed-base percentage was to the group's fixed-base percentage.

Proposed Allocation Rule

After considering the statute, the legislative history, the written comments, and the statements at the public hearing, Treasury and the IRS have determined that the allocation method contained in the 2000 proposed regulations does not fully carry out the purpose of the research credit statute and, in particular, the amendments made by the 1989 Act. Treasury and the IRS continue to believe that the method for allocating the group credit must take into account the incremental nature of the credit. In considering the consequences of the allocation method contained in the 2000 proposed regulations, as highlighted by the commentators, Treasury and the IRS believe that the method may not, in certain cases, appropriately balance the purpose of the group credit computation and allocation rules contained in section 41(f) with the general purpose of the research credit, which is to encourage research activities.

Accordingly, these new proposed regulations allocate the group credit among the members of the controlled group by first computing each individual member's stand-alone entity credit and then multiplying the group credit by the ratio that the member's stand-alone entity credit bears to the sum of the stand-alone entity credits of all the members of the controlled group. This new allocation method ensures that the amount of group credit allocated to each individual member will be proportionate to the amount of research credit that the individual member would have been entitled to claim had it not been part of a controlled group. This new allocation method therefore addresses the concerns expressed by the commentators that the allocation method contained in the 2000 proposed regulations could result in individual members receiving little or no research credit—or, conversely, a disproportionately greater amount of research credit—compared to what they would have been entitled to on a stand-alone basis, solely as a result of being part of a controlled group.

Special Allocation Rule for Consolidated Groups

In the preamble to the 2000 proposed regulations, Treasury and the IRS requested comments with respect to a special rule that would treat all members of a consolidated group within a controlled group as a single member for purposes of allocating the group credit among the members of a controlled group. After considering the comments received, Treasury and the IRS have decided not to propose a special allocation rule for consolidated groups.

Effective Date

The 2000 proposed regulations provided that they would be effective, when finalized, for taxable years ending on or after the date the proposed regulations were filed with the **Federal Register** (*i.e.*, December 29, 1999). The 2000 proposed regulations, however, were proposed to be retroactive in certain instances to prevent abuse:

> To prevent taxpayers that are members of a controlled group from together claiming in excess of 100% of the credit with respect to prior taxable years, the rules for allocating the group credit would apply to any taxable year beginning after December 31, 1989, in which, as a result of inconsistent methods of allocation, the members of a controlled group as a whole claimed more than 100% of the allowable group credit. In the case of a group whose members have different taxable years and whose members used inconsistent methods of allocation, the members of the group as a whole shall be deemed to have claimed more than 100% of the allowable group credit.

The two commentators disagreed as to the appropriateness of this proposed effective date. In particular, the second commentator stated that it would be "unconscionable" for final regulations containing the allocation method set out in the 2000 proposed regulations to be applied retroactively. The second commentator therefore proposed that final regulations be applied prospectively and that for prior years, taxpayers be permitted to rely on final regulations or any other method that is reasonable, including a gross QREs method. Finally, the second commentator disputed "that there is a potential for abuse if members of a controlled group take inconsistent methods of allocation for past years. The fact that members of the same controlled group may, in the aggregate, claim more than 100% of the group's Research Credit should not make any difference."

The group credit rules in section 41(f) provide for a total group credit. There is nothing in the statute or the legislative history that suggests that it then should be permissible for the members of the controlled group to claim, in the aggregate, an amount of research credit exceeding the group credit. Treasury and the IRS continue to believe that the purpose of the section 41(f) group credit rules would be undermined if the members of a controlled group applied different allocation methods to claim more than 100 percent of the group credit. The preamble to the 2000 proposed regulations and those proposed regulations themselves eliminated any ambiguity that may have existed with respect to the Treasury and IRS position on this point.

Accordingly, Treasury and the IRS propose that final regulations be effective for taxable years beginning on or after the date that these regulations are published in the **Federal Register** as final regulations. Treasury and the IRS further propose that the final regulations be retroactive in limited circumstances to prevent abuse. Generally, a taxpayer may use any reasonable method of computing and allocating the credit for taxable years beginning before the date these regulations are published in the **Federal Register** as final regulations. However, paragraph (b) relating to the computation of the group credit and paragraph (c), relating to the allocation of the group credit, will apply to taxable years ending on or after December 29, 1999, if the members of a controlled group, as a whole, claimed more than 100 percent of the amount that would be allowable under paragraph (b). In the case of a controlled group whose members have different taxable years and whose members use inconsistent methods of allocation, the members of the controlled group shall be deemed to have, as a whole, claimed more than 100 percent of the amount that would be allowable under paragraph (b).

Special Analyses

It has been determined that these proposed regulations do not constitute a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these proposed regulations. Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Proposed Amendments to the Regulations

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG–105606–99) published in the **Federal Register** on January 4, 2000, (65 FR 258) is withdrawn.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.41–0, the table of contents is amended as follows:

1. The entry for § 1.41–6(a)(4) is revised.
2. The entries for § 1.41–6(b) through (e) are revised.
3. New entries are added for § 1.41–6(f) through (i).

The revisions and additions read as follows:

§ 1.41–0 Table of contents.

* * * * *

§ 1.41–6 Aggregation of expenditures.

(a) * * *
(4) Definition of group credit.
(b) Computation of the group credit.
(1) In general.
(2) Start-up companies.
(c) Allocation of the group credit.
(1) In general.
(2) Stand-alone entity credit.
(d) Examples.
(e) For taxable years beginning before January 1, 1990.
(f) Tax accounting periods used.
(1) In general.
(2) Special rule where timing of research is manipulated.
(g) Membership during taxable year in more than one group.
(h) Intra-group transactions.
(1) In general.
(2) In-house research expenses.
(3) Contract research expenses.
(4) Lease payments.
(5) Payment for supplies.
(i) Effective date.

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Par. 3. Section 1.41–6 is amended as follows:

1. Paragraph (a)(1) is revised.
2. Paragraph (a)(4) is revised.
3. Paragraph (b) is revised.
4. Paragraphs (c), (d), and (e) are redesignated as paragraph (f), (g), and (h), respectively.
5. New paragraphs (c), (d), and (e) are added.
6. Newly designated paragraph (f)(1) is revised.
7. New paragraph (i) is added.

The revisions and additions read as follows:

§ 1.41–6 Aggregation of expenditures.

(a) * * * (1) *In general.* To determine the amount of research credit (if any) allowable to a trade or business that at the end of its taxable year is a member of a controlled group of corporations or a group of trades or businesses under common control, a taxpayer must—

(i) Compute the group credit in the manner described in paragraph (b) of this section, and

(ii) Allocate the group credit among the members of the group in the manner described in paragraph (c) of this section.

* * * * *

(4) *Definition of group credit.* For purposes of this section, the term *group credit* means the research credit (if any) allowable to a controlled group of corporations or a group of trades or businesses under common control.

(b) *Computation of the group credit*—(1) *In general.* All members of a controlled group of corporations or a group of trades or businesses under common control are treated as a single taxpayer for purposes of computing the research credit. The group credit is computed by applying all of the section 41 computational rules on an aggregate basis.

(2) *Start-up companies.* A controlled group of corporations or a group of trades or businesses under common control is treated as a start-up company for purposes of determining the group's fixed-base percentage under section 41(c)(3)(B)(ii) only if each member of the group qualifies as a start-up company under section 41(c)(3)(B)(i).

(c) *Allocation of the group credit*—(1) *In general.* To determine the amount of the group credit (if any) computed under paragraph (b) of this section that is allocated to a member of the group, a taxpayer must—

(i) Compute the member's stand-alone entity credit; and

(ii) Multiply the group credit by the ratio that the member's stand-alone entity credit bears to the sum of the stand-alone entity credits of all the members of the group:

$$\text{group credit} \times \frac{\text{member's stand-alone entity credit}}{\text{sum of all the members' stand-alone entity credits}}$$

(2) *Stand-alone entity credit.* For purposes of this section, the term *stand-alone entity credit* means the research credit (if any) that would be allowable to a member of a group if the credit were computed without regard to section 41(f). In computing a member's stand-alone entity credit, a taxpayer must use the same method (*i.e.*, the computation method provided in section 41(a) or the elective method provided in section 41(c)(4)) that was used to compute the group credit. Therefore, if the research credit determined under section 41(a) is not allowable to the group and the group credit is computed using the alternative incremental research credit (AIRC) rules of section 41(c)(4), each member's stand-alone entity credit also must be computed using the AIRC rules, even if the research credit determined under section 41(a) would be allowable to a member if that member were not a part of the group.

(d) *Examples.* The following examples illustrate the provisions of this section:

Example 1. Research credit—(i) *Facts.* A, B, and C, all of which are calendar-year taxpayers, are members of a controlled group of corporations. Neither A, B, nor C made any basic research payments for their taxable year ending December 31, 2003. For purposes of computing the group credit for the 2003 taxable year (the credit year), A, B, and C had the following:

	A	B	C	Group aggregate
Credit Year Qualified Research Expenses (QREs)	$200x	$20x	$110x	$330x
1984–1988 QREs	$40x	$10x	$100x	$150x
1984–1988 Gross Receipts	$1,000x	$350x	$150x	$1,500x
Average Annual Gross Receipts for 4 Years Preceding the Credit Year	$1,200x	$200x	$300x	$1,700x

(ii) *Computation of the group credit*—(A) *In general.* The research credit allowable to the group is computed as if the three corporations were one taxpayer. The group credit is equal to 20 percent of the excess of the group's aggregate credit year QREs ($330x) over the group's base amount ($170x). The group credit is 0.20 × ($330x − $170x), which equals $32x.

(B) *Group's base amount*—(1) *Computation.* The group's base amount equals the greater of: the group's fixed-base percentage (10 percent) multiplied by the group's aggregate average annual gross receipts for the 4 taxable years preceding the credit year ($1,700x), or the group's minimum base amount ($165x). The group's base amount, therefore, is $170x, which is the greater of: 0.10 × $1,700x, which equals $170x, or $165x.

(2) *Group's minimum base amount.* The group's minimum base amount is 50 percent of the group's aggregate credit year QREs. The group's minimum base amount is 0.50 × $330x, which equals $165x.

(3) *Group's fixed-base percentage.* The group's fixed-base percentage is the lesser of: the ratio that the group's aggregate QREs for the taxable years beginning after December 31, 1983, and before January 1, 1989, bears to the group's aggregate gross receipts for the same period, or 16 percent (the statutory minimum). The group's fixed-base

percentage, therefore, is 10 percent, which is the lesser of: $150x/$1,500x, which equals 10 percent, or 16 percent.

(iii) *Allocation of the group credit.* The group credit of $32x is allocated among the members of the group based on the ratio that each member's stand-alone entity credit bears to the sum of the stand-alone entity credits of all the members of the controlled group. The $32x group credit is allocated as follows:

	A	B	C	Total
Stand-Alone Entity Credit	$20x	$2x	$11x	$33x
Allocation Ratio (Stand-Alone Entity Credit/Sum of Stand-Alone Entity Credits)	20/33	2/33	11/33	
Multiplied by: Group Credit	$32x	$32x	$32x	
Equals: Credit Allocated to Member	$19.39x	$1.94x	$10.67x	$32x

Example 2. Member is a start-up company—(i) *Facts.* D, E, and F, all of which are calendar-year taxpayers, are members of a controlled group of corporations. F is a start-up company under section 41(c)(3)(B)(i). D and E are not start-up companies under section 41(c)(3)(B)(i). Neither D, E, nor F made any basic research payments during the 2003 taxable year. For purposes of computing the group credit for the 2003 taxable year (the credit year), D, E, and F had the following:

	D	E	F	Group aggregate
Credit Year QREs	$200x	$20x	$50x	$270x
1984–1988 QREs	$55x	$15x	$0x	$70x
1984–1988 Gross Receipts	$1,000x	$400x	$0x	$1,400x
Average Annual Gross Receipts for 4 Years Preceding the Credit Year	$1,200x	$200x	$0x	$1,400x

(ii) *Computation of the group credit*—(A) *In general.* The research credit allowable to the group is computed as if the three corporations were one taxpayer. The group credit is equal to 20 percent of the excess of the group's aggregate credit year QREs ($270x) over the group's base amount ($135x). The group credit is 0.20 × ($270x − $135x), which equals $27x.

(B) *Group's base amount*—(*1*) *Computation.* The group's base amount equals the greater of: the group's fixed-base percentage (5 percent) multiplied by the group's aggregate average annual gross receipts for the 4 taxable years preceding the credit year ($1,400x), or the group's minimum base amount ($135x). The group's base amount, therefore, is $135x, which is the greater of: 0.05 × $1,400x, which equals $70x, or $135x.

(*2*) *Group's minimum base amount.* The group's minimum base amount is 50 percent of the group's aggregate credit year QREs. The group's minimum base amount is 0.50 × $270x, which equals $135x.

(*3*) *Group's fixed-base percentage.* Because only one member of the group, F, is a start-up company under section 41(c)(3)(B)(i), the group is not a start-up company under paragraph (b)(2) of this section. Therefore, the group's fixed-base percentage is the lesser of: the ratio that the group's aggregate QREs for the taxable years beginning after December 31, 1983, and before January 1, 1989, bears to the group's aggregate gross receipts for the same period, or 16 percent (the statutory minimum). The group's fixed-base percentage, therefore, is 5 percent, which is the lesser of: $70x/$1,400x, which equals 5 percent, or 16 percent.

(iii) *Allocation of the group credit.* The group credit of $27x is allocated among the members of the group based on the ratio that each member's stand-alone entity credit bears to the sum of stand-alone entity credits of all the members of the controlled group. The $27x group credit is allocated as follows:

	D	E	F	Total
Stand-Alone Entity Credit	$20x	$2x	$5x	$27x
Allocation Ratio (Stand-Alone Entity Credit/Sum of Stand-Alone Entity Credits)	20/27	2/27	5/27	
Multiplied by: Group Credit	$27x	$27x	$27x	
Equals: Credit Allocated to Member	$20x	$2x	$5x	$27x

Example 3. Group is a start-up company—(i) *Facts.* G, H, and I, all of which are calendar-year taxpayers, are members of a controlled group of corporations. Each of G, H, and I qualifies as a start-up company under section 41(c)(3)(B)(i). The 2003 taxable year is the fifth taxable year beginning after December 31, 1993, for which each of G, H, and I has QREs. Because each of G, H, and I qualifies as a start-up company under section 41(c)(3)(B)(i), the group is treated as a start-up company under paragraph (b)(2) of this section. The 2003 taxable year is the fifth taxable year beginning after December 31, 1993, for which the group has QREs. Neither G, H, nor I made any basic research payments during the 2003 taxable year. For purposes of computing the group credit for the 2003 taxable year (the credit year), G, H, and I had the following:

	G	H	I	Group aggregate
Credit Year QREs	$255x	$25x	$100x	$380x
1984–1988 QREs	$0x	$0x	$0x	$0x
1984–1988 Gross Receipts	$0x	$0x	$0x	$0x
Average Annual Gross Receipts for 4 Years Preceding the Credit Year	$1,600x	$340x	$300x	$2,240x

(ii) *Computation of the group credit*—(A) *In general.* The research credit allowable to the group is computed as if the three corporations were one taxpayer. The group credit is equal to 20 percent of the excess of the group's aggregate credit year QREs ($380x) over the group's base amount ($190x). The group credit is 0.20 × ($380x − $190x), which equals $38x.

(B) *Group's base amount*—(*1*) *Computation.* The group's base amount equals the greater of: the group's fixed-base percentage (3 percent) multiplied by the group's aggregate average annual gross receipts for the 4 taxable years preceding the credit year ($2,240x), or the group's minimum base amount ($190x). The group's base amount, therefore, is $190x, which is the greater of: 0.03 × $2,240x, which equals $67.2x, or $190x.

(*2*) *Group's minimum base amount.* The group's minimum base amount is 50 percent of the group's aggregate credit year QREs. The group's minimum base amount is 0.50 × $380x, which equals $190x.

(*3*) *Group's fixed-base percentage.* Each member of the group is a start-up company under section 41(c)(3)(B)(i), therefore, the group is a start-up company under paragraph (b)(2) of this section. Because the 2003 taxable year is the fifth taxable year beginning after December 31, 1993, for which the group has QREs, under section 41(c)(3)(B)(ii)(I), the group's fixed-base percentage is 3 percent.

(iii) *Allocation of the group credit.* The group credit of $38x is allocated among the members of the group based on the ratio that each member's stand-alone entity credit bears to the sum of stand-alone entity credits of all the members of the controlled group. The $38x group credit is allocated as follows:

	G	H	I	Total
Stand-Alone Entity Credit	$25.5x	$2.5x	$10x	$38x
Allocation Ratio (Stand-Alone Entity Credit/Sum of Stand-Alone Entity Credits)	25.5/38	2.5/38	10/38	
Multiplied by: Group Credit	$38x	$38x	$38x	
Equals: Credit Allocated to Member	$25.5x	$2.5x	$10x	$38x

Example 4. Group alternative incremental research credit—(i) *Facts.* J, K, and L, all of which are calendar-year taxpayers, are members of a controlled group of corporations. The research credit under section 41(a) is not allowable to the group for the 2003 taxable year because the group's aggregate QREs for the 2003 taxable year are less than the group's base amount. The group credit is computed using the AIRC rules of section 41(c)(4). For purposes of computing the group credit for the 2003 taxable year (the credit year), J, K, and L had the following:

	J	K	L	Group aggregate
Credit Year QREs	$0x	$20x	$110x	$130x
Average Annual Gross Receipts for 4 Years Preceding the Credit Year	$1,200x	$200x	$300x	$1,700x

(ii) *Computation of the group credit.* The research credit allowable to the group is computed as if the three corporations were one taxpayer. The group credit is equal to the sum of: 2.65 percent of so much of the group's aggregate QREs for the taxable year as exceeds 1 percent of the group's aggregate average annual gross receipts for the 4 taxable years preceding the credit year, but does not exceed 1.5 percent of such average; 3.2 percent of so much of the group's aggregate QREs as exceeds 1.5 percent of such average but does not exceed 2 percent of such average; and 3.75 percent of so much of such QREs as exceeds 2 percent of such average. The group credit is [0.0265 × [($1,700x × 0.015) − ($1,700x × 0.01)]] + [0.032 × [($1,700x × 0.02) − ($1,700x × 0.015)]] + [0.0375 × [$130x − ($1,700x × 0.02)]], which equals $4.10x.

(iii) *Allocation of the group credit.* The group credit is allocated to each member of the group by multiplying the group credit by the ratio that each member's stand-alone entity credit bears to the sum of the stand-alone entity credits of all the members of the group. The $4.10x group credit is allocated as follows:

	J	K	L	Total
Stand-Alone Entity Credit	$0x	$.66x	$3.99x	$4.65x
Allocation Ratio (Stand-Alone Entity Credit/Sum of Stand-Alone Entity Credits)	0/4.65	0.66/4.65	3.99/4.65	
Multiplied by: Group Credit	$4.10x	$4.10x	$4.10x	
Equals: Credit Allocated to Member	$0x	$.58x	$3.52x	$4.10x

(e) *For taxable years beginning before January 1, 1990.* For taxable years beginning before January 1, 1990, *see* § 1.41–6 as contained in 26 CFR part 1, revised April 1, 2003.

(f) *Tax accounting periods used*—(1) *In general.* The credit allowable to a member of a controlled group of corporations or a group of trades or businesses under common control is that member's share of the group credit computed as of the end of that member's taxable year. In computing the group credit for a group whose members have different taxable years, a member generally should treat the taxable year of another member that ends with or within the credit year of the computing member as the credit year of that other member. For example, M, N, and O are members of a controlled group of corporations. M and N file a calendar year consolidated return. O files a separate return using a fiscal year ending June 30. For purposes of computing the group credit at the end of the M's and N's (the computing members') calendar year on December 31, O's fiscal year ending June 30, which ends within the M's and N's calendar year, is treated as O's credit year.

* * * * *

(i) *Effective date.* Paragraphs (a)(1), (a)(4), (b), (c), (d), and (f)(1) of this section are applicable for taxable years beginning on or after the date these regulations are published in the **Federal Register** as final regulations. Generally, a taxpayer may use any reasonable method of computing and allocating the credit for taxable years beginning before the date these regulations are published in the **Federal Register** as final regulations. However, paragraph (b) relating to the computation of the group credit and paragraph (c), relating to the allocation of the group credit, will apply to taxable years ending on or after December 29, 1999, if the members of a controlled group, as a whole, claimed more than 100 percent of the amount that would be allowable under paragraph (b). In the case of a controlled group whose members have different taxable years and whose members use inconsistent methods of allocation, the members of the controlled group shall be deemed to have, as a whole, claimed more than 100 percent of the amount

that would be allowable under paragraph (b).

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 03–17870 Filed 7–28–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–03–011]

RIN 1625–AA09

Drawbridge Operation Regulation; Mississippi River, Iowa and Illinois

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulation governing the Rock Island Railroad & Highway Drawbridge, across the Upper Mississippi River at Mile 482.9, at Rock Island, Illinois. The drawbridge need not open for river traffic and may remain in the closed-to-navigation position from 7:30 a.m. to 11:30 a.m. on September 28, 2003. This proposed rule would allow the annually scheduled running of a foot race as part of a local community event.

DATES: Comments and related material must reach the Coast Guard on or before August 28, 2003.

ADDRESSES: You may mail comments and related material to Commander, Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832. Commander (obr) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room 2.107f in the Robert A. Young Federal Building at Eighth Coast Guard District, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Roger K. Wiebusch, Bridge Administrator, (314) 539–3900, extension 2378.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD08–03–011), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Eighth Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On February 19, 2003, the Department of the Army Rock Island Arsenal requested a temporary change to the operation of the Rock Island Railroad & Highway Drawbridge across the Upper Mississippi River, Mile 482.9 at Rock Island, Illinois to allow the drawbridge to remain in the closed to navigation position for a four hour period while a foot race is run across the drawbridge. Navigation on the waterway consists primarily of commercial tows and recreational watercraft that will be minimally impacted by the limited closure period of four hours. Presently, the draw opens on signal for passage of river traffic. The Rock Island Arsenal requested the drawbridge be permitted to remain closed-to-navigation from 7:30 a.m. until 11:30 a.m. on Sunday, September 28, 2003.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

The Coast Guard expects that this temporary change to operation of the Rock Island Railroad & Highway Drawbridge will have minimal economic impact on commercial traffic operating on the Upper Mississippi River. This temporary change has been written in such a manner as to allow for minimal interruption of the drawbridge's regular operation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule will be in effect for only 4 hours early on a Sunday morning, and the Coast Guard expects the impact of this action to be minimal.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch, at (314) 539–3900, extension 2378.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. Paragraph 32(e) excludes the promulgation of operating regulations or procedures for drawbridges from the environmental documentation requirements of the National Environmental Policy Act (NEPA). Since this proposed regulation would alter the normal operating conditions of the drawbridge, it falls within this exclusion. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Effective 7:30 a.m. to 11:30 a.m. on September 28, 2003, § 117.T395 is added to read as follows:

§ 117.T395 Upper Mississippi River.

Rock Island Railroad and Highway Drawbridge, Mile 482.9, Upper Mississippi River.

From 7:30 a.m. to 11:30 a.m. on September 28, 2003 the drawspan need not open for river traffic and may be maintained in the closed-to-navigation position.

Dated: July 10, 2003.

R.F. Duncan,

Rear Admiral, Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 03–19257 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AK94

Payment for Non-VA Physician Services Associated With Either Outpatient or Inpatient Care Provided at Non-VA Facilities

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend Department of Veterans Affairs (VA) medical regulations concerning payment for non-VA physician services that are associated with either outpatient or inpatient care provided to eligible VA beneficiaries at non-VA facilities. Currently, the medical regulations require all VA facilities to reimburse for non-VA physician services based upon the Centers for Medicare and Medicaid Services (CMS) physician fee schedule in effect at the time the services are provided. However, it appears that special circumstances exist in the state of Alaska. If the standard payment methodology is implemented in Alaska, VA payments will be significantly less than the usual and customary charges for the state. This, in turn, may potentially limit VA patient access to non-VA health care. Since a large portion of VA health care provided in Alaska is obtained from non-VA sources, this could negatively impact the quality of care provided veterans living in that state. Therefore, to ensure that amounts paid to physicians better represent the local cost to furnish a service, while continuing to achieve program cost reductions, we propose to establish an Alaska-specific payment methodology for inpatient and outpatient non-VA physician services within that state.

DATES: Comments must be received by VA on or before September 29, 2003.

ADDRESSES: Mail or hand-deliver written comments to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1064, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov.*

Comments should indicate that they are submitted in response to "RIN 2900–AK94." All comments received will be available for public inspection at the above address in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call 202 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Rex Gilmore, Chief Business Office (16), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–0321. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The VA Healthcare System converted to a Centers for Medicare and Medicaid Services (CMS) Resource Based Relative Value System (RBRVS) payment schedule for outpatient care purchased from community providers in 1999. At that time, because of concerns regarding the high cost of care in the state of Alaska, the state was granted an exemption that kept payments for non-VA health care in that state under the previous system. That system created a fee schedule each year based upon the 75th percentile of at least eight billed amounts received in the previous year. This resulted in significant fee schedule changes each year, and a schedule that was not comprehensive.

Following an actuarial study completed in 2001 and subsequent meetings with VA Alaska officials and community providers, VA determined that special circumstances still exist in Alaska. If the standard payment methodology is implemented in Alaska, VA payments will be significantly less than the usual and customary charges for the state. As a result, community practitioners may be unwilling to accept VA patients. Since a large portion of VA health care provided in Alaska is obtained from non-VA sources, this may limit VA patient access to health care and negatively impact the quality of care provided veterans living in that state. Therefore, to ensure that amounts paid to physicians better represent the local cost to furnish a service, VA proposes to establish a special payment methodology for inpatient and outpatient non-VA care provided in Alaska. Under the proposed methodology, the VA Fee Schedule would include, in the new § 17.56(d), a payment system for non-VA care in Alaska that does not compromise access to care for veterans, is comprehensive for all Current Procedural Terminology (CPT) codes, and accounts for the geographic and specialty care challenges of Alaska.

In Alaska, VA proposes to pay for services in accordance with a fee schedule that uses CPT codes utilized by CMS. VA would pay a specific amount for each service for which there is a corresponding CPT code. Under the VA Fee Schedule, the amount paid in Alaska for each CPT code would be 90 percent of the average amount VA actually paid in Alaska for the same services in Fiscal Year (FY) 2002. For services that VA did not have occasion to pay for in Alaska in FY 2002, and for services represented by CPT codes established after FY 2002, VA would take the CMS rate for each unpaid code and multiply it times the average percentage paid by VA in Alaska for CMS like codes. VA would increase the amounts on the VA Fee Schedule for Alaska annually in accordance with annual inflation rate adjustments published by CMS.

Finally, this document would make non-substantive revisions in paragraphs (a) and (b) of § 17.56 to reflect the name change of the former Health Care Financing Administration to Centers for Medicare and Medicaid Services.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, in 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This proposed rule would have no consequential effect on State, local, or tribal governments, or the private sector.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Executive Order 12866

The Office of Management and Budget has reviewed this document under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601 through 612. The proposed rule would not cause a significant economic impact on health care providers, suppliers, or entities since only a small portion of the business of such entities concerns VA beneficiaries. Therefore, pursuant to 5 U.S.C. 605(b), the proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance Numbers are 64.009, 64.010 and 64.011.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Government programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: April 21, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR part 17 as follows:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

2. Section 17.56 is amended by:

A. In paragraph (a), first sentence, removing "Except for anesthesia services," and adding, in its place, "Except for anesthesia services, and services provided in the State of Alaska under paragraph (d) of this section,"; removing "Department of Health and Human Services, Health Care Financing Administration (HCFA) under Medicare's participating" and adding, in its place, "Centers for Medicare and Medicaid Services' participating"; and in the third sentence, removing "calculated under Medicare's participating" and adding, in its place, "calculated under Centers for Medicare and Medicaid Services' participating".

B. In paragraph (b), removing "Medicare's participating" and adding, in its place, "Centers for Medicare and Medicaid Services' participating"; and removing "calculating the Medicare fee" and adding, in its place, "calculating the Centers for Medicare and Medicaid Services' fee".

C. Redesignating paragraphs (d) and (e) as paragraphs (e) and (f), respectively. In newly redesignated paragraph (f), removing the phrase "paragraphs (a) through (d)" and adding, in its place, "paragraphs (a) through (e)".

D. Adding a new paragraph (d).

The addition reads as follows:

§ 17.56 Payment for non-VA physician services associated with outpatient and inpatient care provided at non-VA facilities.

* * * * *

(d) In Alaska, VA will pay for services in accordance with a fee schedule that uses CPT codes utilized by Centers for Medicare and Medicaid Services. VA will pay a specific amount for each service for which there is a corresponding CPT code. Under the VA Fee Schedule the amount paid in Alaska for each CPT code will be 90 percent of the average amount VA actually paid in Alaska for the same services in Fiscal Year (FY) 2002. For services that VA did not have occasion to pay for in Alaska in FY 2002, and for services represented by CPT codes established after FY 2002, VA will take the Centers for Medicare and Medicaid Services' rate for each unpaid code and multiply it times the average percentage paid by VA in Alaska for Centers for Medicare and Medicaid Services-like codes. VA will increase the amounts on the VA Fee Schedule for Alaska annually in accordance with annual inflation rate adjustments published by Centers for Medicare and Medicaid Services. Payment for non-VA physician services in Alaska shall be the lesser of the amount billed, or the amount calculated under this subpart.

(Authority: 38 U.S.C. 513, 1703, 1728)

* * * * *

[FR Doc. 03–19174 Filed 7–28–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–D–7570]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
NORTH CAROLINA **Edgecombe County**				
Fishing Creek	Approximately 0.8 mile upstream of the confluence with Deep Creek.	None	•48	Edgecombe County (Unincorporated Areas).
	At the downstream side of Rail Road	None	•96	
Maple Swamp	Approximately 575 feet downstream of NC Highway 97	•51	•52	Edgecombe County (Unincorporated Areas).
	Approximately 0.7 mile downstream of Bethlehem Church Road.	None	•60	
Moccasin Swamp	Approximately 0.5 mile upstream of confluence with Swift Creek.	None	•75	Edgecombe County (Unincorporated Areas).
	Approximately 800 feet downstream of Morning Star Church Road.	None	•75	
Edgecombe County (Unincorporated Areas)				
Maps available for inspection at Edgecombe County (Unincorporated Areas) Planning Department, 201 Saint Andrews Street, Tarboro, North Carolina. Send comments to Mr. Lorenzo Carmon, Edgecombe County (Unincorporated Areas) Manager, 201 Saint Andrews Street, Tarboro, North Carolina 27886.				
Hollis Branch	Approximately 450 feet downstream of the Craven/Jones County boundary.	None	•35	Jones County (Unincorporated Areas).
	Approximately 800 feet upstream of the Craven/Jones County boundary.	None	•36	
Unincorporated Areas of Jones County				
Maps available for inspection at the Jones County Building and Inspections Department, 101 Market Street, Trenton, North Carolina. Send comments to Mr. Larry Meadows, Jones County Manager, P.O. Box 340, Trenton, North Carolina 28585.				
NORTH CAROLINA **Lenoir County**				
Adkin Branch	At the confluence with Neuse River	•33	•35	City of Kinston, Lenoir County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Carey Road	None	•76	
Bear Creek	At the confluence with Neuse River	•49	•52	Town of LaGrange, Lenoir County (Unincorporated Areas).
	At the Lenoir/Greene County boundary	•83	•82	
Southwest Creek	At the confluence with Neuse River	•29	•32	City of Kinston, Lenoir County (Unincorporated Areas).
	At the downstream side of railroad	•33	•34	
Moseley Creek into Falling Creek.	At the downstream LaGrange corporate limit	None	•76	Town of LaGrange.
	Approximately 150 feet upstream of State Highway 903.	None	•92	
Briery Run	Approximately 1,000 feet upstream of Rouse Road	None	•67	City of Kinston, Lenoir County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Dobbs Farm Road	None	•80	
Falling Creek	At the confluence with Neuse River	•38	•42	City of Kinston, Lenoir County (Unincorporated Areas).
	Approximately 1.6 miles upstream of Brothers Road	None	•85	

Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Taylors Branch	Approximately 300 feet upstream of Rouse Road	None	•72	City of Kinston, Lenoir County (Unincorporated Areas).
	Approximately 1.4 miles upstream of Rouse Road	None	•101	
Eagle Swamp	At the confluence with Contentnea Creek	•23	•25	Lenoir County (Unincorporated Areas).
	At the downstream side of railroad	•24	•25	
Contentnea Creek	At the confluence with Neuse River	•19	•24	Lenoir County (Unincorporated Areas).
	Approximately 2.6 miles upstream of Hugo Road	•33	•34	
Neuse River	At the confluence with Contentnea Creek	•19	•24	City of Kinston, Lenoir County (Unincorporated Areas).
	At the Lenoir/Wayne County boundary	•53	•55	
Wheat Swamp	At the Lenoir/Greene County boundary	None	•39	Lenoir County (Unincorporated Areas).
	Approximately 4 miles upstream of NC Route 58	None	•77	
Wheat Swamp Tributary	At the Lenoir/Greene County boundary	None	•40	Lenoir County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Research Farm Road.	None	•56	
Stonyton Creek	At the confluence with Neuse River	•26	•29	Lenoir County (Unincorporated Areas).
	Approximately 1,400 feet upstream of the confluence with Jerico Run.	•31	•30	
Jerico Run	At the confluence with Stonyton Creek	•27	•29	Lenoir County (Unincorporated Areas).
	Approximately 300 feet downstream of State Route 55	•28	•29	
Mosley Creek to Neuse River.	At the confluence with Neuse River	•19	•25	Lenoir County (Unincorporated Areas).
	Approximately 650 feet downstream of Griffin Road	None	•31	
Beaverdam Swamp	At the confluence with Trent River	None	•68	Lenoir County (Unincorporated Areas).
	Approximately 200 feet upstream of Rex-Howard Road	None	•95	
Deep Run	Approximately 425 feet upstream of NC State Highway 11.	None	•87	Lenoir County (Unincorporated Areas).
	Approximately 0.7 mile upstream of NC State Highway 11.	None	•95	
Horse Branch	At the confluence with Trent River	None	•71	Lenoir County (Unincorporated Areas).
	Approximately 2,120 feet upstream of Jesse Howard Road.	None	•74	
Joshua Creek	Approximately 1,200 feet upstream of Fordham Road	None	•63	Lenoir County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Vine Swamp Road.	None	•82	
Neuse River Tributary	At the confluence with Neuse River	•38	•42	City of Kinston.
	Approximately 1,400 feet upstream of railroad	None	•56	
Southwest Creek Tributary	At the confluence with Southwest Creek	•32	•34	City of Kinston, Lenoir County (Unincorporated Areas).
	Approximately 1,250 feet downstream of British Road	•33	•35	
Strawberry Branch	At the confluence with Southwest Creek	None	•39	City of Kinston, Lenoir County (Unincorporated Areas).
	Approximately 150 feet downstream of Whaley Road	None	•47	
Tracey Swamp	At the upstream side of Sand Hill Road	None	•42	Lenoir County (Unincorporated Areas).
	At the Lenoir/Craven/Jones County boundary	None	•43	
Trent River	At the Lenoir/Jones County boundary	None	•62	Lenoir County (Unincorporated Areas).
	Approximately 0.5 mile upstream of NC State Route 11	None	•123	
Neuse River Tributary 2	At the confluence with Neuse River Tributary	None	•44	City of Kinston.
	Approximately 1,800 feet upstream of railroad	None	•62	
Vine Swamp	At the Lenoir/Jones County boundary	None	•57	Lenoir County (Unincorporated Areas).
	Approximately 800 feet upstream of Parker Farm Road	None	•81	
Vine Swamp Tributary	At the confluence with Vine Swamp	None	•62	Lenoir County (Unincorporated Areas).

Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 0.5 mile upstream of Joe Williams Road	None	•67	
Tuckahoe Swamp	At the Lenoir/Jones County boundary	•77	•81	Lenoir County (Unincorporated Areas).
	Approximately 0.5 mile downstream of West Hill Pleasant Road.	•86	•87	
Rivermont Tributary	At the confluence with Neuse River	•36	•37	City of Kinston, Lenoir County (Unincorporated Areas).
	Approximately 1,200 feet Areas) upstream of Andrews Street.	•37	•39	

City of Kinston

Maps available for inspection at the City of Kinston Planning Department, 301 East King Street, Kinston, North Carolina.

Send comments to The Honorable Johnnie Mosley, Mayor of the City of Kinston, P.O. Box 339, Kinston, North Carolina 28502.

Town of La Grange

Maps available for inspection at the La Grange Town Hall, 120 East Railroad Street, La Grange, North Carolina.

Send comments to The Honorable Woodard H. Gurley, Mayor of the Town of La Grange, P.O. Box 368, La Grange, North Carolina 28551.

Lenoir County Unincorporated Areas

Maps available for inspection at the Lenoir County Building Inspector's Office, 201 East King Street, Kinston, North Carolina.

Send comments to Mr. John Bauer, Lenoir County Manager, P.O. Box 3289, Kinston, North Carolina 28502.

NORTH CAROLINA
Pamlico County

Alexander Swamp	Approximately 500 feet upstream of the confluence with Goose Creek.	None	•8	Pamlico County (Unincorporated Areas).
	Approximately 2.0 miles downstream of the confluence with Goose Creek.	None	•15	
Bay River/Vandemare Creek.	At the intersection of 1st Lane and Water Lane	None	•7	City of Mesic.
Beard Creek	Approximately 0.8 mile downstream of the confluence of Cedar Gut.	None	•8	Pamlico County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Roberts Road	None	•14	
Black Creek	Approximately 0.8 mile downstream of Prescott Road	None	•8	Pamlico County (Unincorporated Areas).
	Approximately 600 feet upstream of Prescott Road	None	•16	
Caraway Creek	Approximately 0.6 mile upstream of confluence with Beard Creek.	None	•8	Pamlico County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Marvin Field Road	None	•14	
Cedar Gut	At the confluence with Beard Creek	None	•8	Pamlico County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Neuse Road	None	•13	
Deep Run South	At the confluence with Dawson Creek	None	•8	Pamlico County (Unincorporated Areas).
	Approximately 900 feet upstream of Don Lee Road	None	•9	
Deep Run North	At the confluence with Upper Broad Creek	None	•11	Pamlico County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Upper Broad Creek.	None	•15	
Deep Run Branch	At the confluence with Goose Creek	None	•11	Pamlico County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Goose Creek.	None	•13	
East Prong	At the confluence with Beard Creek	None	•8	Pamlico County (Unincorporated Areas).
	Approximately 1.8 miles upstream of the confluence with Beard Creek.	None	•16	
Fork Run	Approximately 0.7 mile downstream of confluence of Deep South Run.	None	•8	Pamlico County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Kershaw Road	None	•11	
Goose Creek	At Neuse Road	None	•8	Pamlico County (Unincorporated Areas), Town of Grantsboro.
	Approximately 1.7 miles upstream of confluence of Deep Run Branch.	None	•15	
Granny Gut	At the confluence with Dawson Creek	None	•8	Pamlico County (Unincorporated Areas).

Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 1,500 feet upstream of Kershaw Road	None	•8	
Green's Creek	Approximately 1,750 feet west-southwest of the intersection of Harris Farm Road and Kershaw Road.	None	•9	Pamlico County (Unincorporated Areas).
Kershaw Creek	Approximately 1,500 feet north-northeast of the intersection of Harris Farm Road and Kershaw Road.	None	•7	Pamlico County (Unincorporated Areas).
Mill Creek	Approximately 1,800 feet upstream of the confluence with Neuse River.	None	•8	Pamlico County (Unincorporated Areas).
	Approximately 1.8 miles upstream of the confluence with Neuse River.	None	•9	
Neal Creek	Approximately 0.6 mile upstream of confluence with South Prong Bay River.	None	•7	Pamlico County (Unincorporated Areas).
	Approximately 1.4 miles upstream of confluence with South Prong Bay River.	None	•10	
North Prong Bay River	Approximately 1.1 miles upstream of the confluence with Bay River.	None	•7	Pamlico County (Unincorporated Areas).
	Approximately 1.1 miles upstream of Mill Pond Road	None	•10	
Pamlico River	Area within Goose Creek State Refuge	None	•6	Pamlico County (Unincorporated Areas).
	Area within Goose Creek State Refuge	None	•7	
Possum Swamp	At the confluence with Upper Broad Creek	None	•17	Pamlico County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence of Savannah Bridge Swamp.	None	•24	
Sasses Branch	At the confluence with Upper Broad Creek	None	•8	Pamlico County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with Upper Broad Creek.	None	•9	
Savannah Bridge Swamp	At the confluence with Possum Swamp	None	•19	Pamlico County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Possum Swamp.	None	•23	
South Prong Bay River	Approximately 1.0 mile upstream of Cooper Road	None	•9	Pamlico County (Unincorporated Areas), Town of Alliance, Town of Grantsboro.
	Approximately 1.6 miles upstream of Cooper Road	None	•9	
Southwest Fork Trent Creek.	Approximately 0.5 mile upstream of confluence with Trent Creek.	None	•6	Pamlico County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Isabelle Road	None	•7	
Trent Creek	At Highway 55	None	•6	Pamlico County (Unincorporated Areas).
	Approximately 2.2 miles upstream of confluence of Fork Run 1.	None	•7	
Upper Broad Creek (Neuse Basin).	At Lee Landing Road	None	•8	Pamlico County (Unincorporated Areas).
	Approximately 3.2 miles upstream of Old Cross Road	None	•29	
Upper Broad Creek (Tar-Pamlico Basin)	At the Beaufort/Pamlico County boundary	None	•31	Pamlico County (Unincorporated Areas).
	Approximately 1.8 miles downstream of the Beaufort/Pamlico County boundary.	None	•37	
Wheeler Gut	At the confluence with Fork Run	None	•8	Pamlico County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Fork Run.	None	•9	

Town of Alliance

Maps available for inspection at the Building Inspectors Office, 202 Main Street, Bayboro, North Carolina.

Send comments to The Honorable Lee Toler, Mayor of the Town of Alliance, 72 Courtland Drive, P.O. Box 1, Alliance, North Carolina 28509.

Town of Grantsboro

Maps available for inspection at the Building Inspectors Office, 202 Main Street, Bayboro, North Carolina.

Send comments to The Honorable Clifton E. Stowe, Mayor of the Town of Grantsboro, P.O. Box 83, Grantsboro, North Carolina 28529

City of Mesic

Maps available for inspection at the Building Inspectors Office, 202 Main Street, Bayboro, North Carolina.

Send comments to The Honorable Joe Ollison, Mayor of the City of Mesic, 8443 NC Highway 304, Bayboro, North Carolina 28515.

Pamlico County Unincorporated Areas

Maps available for inspection at the Building Inspectors Office, 202 Main Street, Bayboro, North Carolina.

Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Send comments to Mr. Randy Beeman, Pamlico County Manager, 302 Main Street, Bayboro, North Carolina 28515–0776.				
NORTH CAROLINA Person County				
Alderidge Creek	At the upstream side of Berry Road	None	•527	Person County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Satterfield Road	None	•536	
Alderidge Creek Tributary	At the confluence with Alderidge Creek	None	•530	Person County (Unincorporated Areas).
	Approximately 0.3 mile upstream of the confluence with Alderidge Creek.	None	•535	
Bushy Fork Creek	Approximately 600 feet downstream of Charlie Long Road.	None	•571	Person County (Unincorporated Areas).
	Approximately 1.1 miles upstream of Bradsher Road	None	•616	
Bushy Fork Creek Tributary	At the confluence with Bushy Fork Creek	None	•606	Person County (Unincorporated Areas).
	Approximately 0.38 mile upstream of the confluence with Bushy Fork Creek.	None	•622	
Byrds Creek	Approximately 850 feet upstream of the confluence with South Flat River.	None	•546	Person County (Unincorporated Areas).
	Approximately 1.0 mile upstream of the confluence with South Flat River.	None	•558	
Cub Creek Tributary 1	At the Person/Granville County boundary	None	•477	Person County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence of Cub Creek Tributary 2.	None	•499	
Cub Creek Tributary 2	At the confluence with Cub Creek Tributary 1	None	•490	Person County (Unincorporated Areas).
	Approximately 1,500 feet upstream of the confluence with Cub Creek Tributary 1.	None	•496	
Deep Creek	At the Person/Durham County boundary	None	•420	Person County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Mollie Moonie Road.	None	•561	
Deep Creek Tributary	At the confluence with Deep Creek	None	•477	Person County (Unincorporated Areas).
	Approximately 2,000 feet upstream of the confluence with Deep Creek.	None	•485	
Deep Creek Tributary 2	At the confluence with Deep Creek	None	•516	Person County (Unincorporated Areas).
	Approximately 1,000 feet upstream of the confluence with Deep Creek.	None	•520	
Dial Creek	At the Person/Durham County boundary	None	•515	Person County (Unincorporated Areas).
	Approximately 400 feet upstream of the Person/Durham County boundary.	None	•519	
Flat River Tributary 5	At the confluence with Flat River	•473	•474	Person County (Unincorporated Areas).
	At the Person/Durham County boundary	None	•496	
Lick Creek 1	At the upstream side of Ashley Road	None	•533	Person County (Unincorporated Areas).
	At the Person/Orange County boundary	None	•545	
North Flat River	Approximately 500 feet upstream of Paynes Tavern Road.	None	• 604	Person County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Paynes Tavern Road.	None	• 617	
North Flat River Tributary	Just upstream of Railroad crossing	None	• 542	City of Roxboro, (Unincorporated Areas).
	Approximately 1.0 mile upstream of U.S. Highway 158	None	• 711	
North Flat River Tributary 2	Approximately 600 feet upstream of the confluence with North Flat River.	None	• 580	City of Roxboro, Person County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Industrial Drive	North	• 701	
North Flat River Tributary 3	At the confluence with North Flat River	None	• 604	Person County (Unincorporated Areas).
	Approximately 325 feet upstream of Noah Davis Road	None	• 625	
North Flat River Tributary 5	At the confluence with North Flat River Tributary	None	• 582	Person County (Unincorporated Areas).

Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
	Approximately 0.7 mile upstream of the confluence with North Flat River Tributary.	None	• 600	
North Flat River Tributary 7	At the confluence with North Flat River Tributary 2	None	• 592	Person County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with North Flat River Tributary 2.	None	• 607	
North Flat River Tributary 8	At the confluence with North Flat River Tributary 2	None	• 595	Person County (Unincorporated Areas).
	Approximately 825 feet upstream of Hurdle Mills Road	None	• 606	
North Flat River Tributary 9	At the confluence with North Flat River Tributary 2	None	• 608	Person County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with North Flat River Tributary 2.	None	• 649	
Rock Fork	At the confluence with Deep Creek	None	• 445	Person County (Unincorporated Areas).
	Approximately 0.7 miles upstream of the confluence with Deep Creek.	None		• 453
South Flat River	At the upstream side of Jim Morton Road	*619	• 618	Person County (Unincorporated Areas).
	Approximately 1.1 miles upstream of the Jim Morton Road.	None	• 627	
South Flat River Tributary	Approximately 100 feet upstream of the confluence with South Flat River.	None	• 491	Person County (Unincorporated Areas).
	Approximately 1,000 feet upstream of U.S. Highway 501/State Route 57.	None	• 508	
South Flat River Tributary 3	Approximately 0.3 mile upstream of the confluence with South Flat River.	None	• 517	Person County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence with South Flat River.	None	• 522	
South Flat River Tributary 4	Approximately 4,100 feet upstream of the confluence with South Flat River.	None	• 593	Person County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with South Flat River.	None	• 602	
South Flat River Tributary 5	Approximately 1,200 feet upstream of the confluence with South Flat River.	None	• 603	Person County (Unincorporated Areas).
	Approximately 575 feet upstream of Briggs Road	None	• 617	
Tar River	At the Person/Granville County boundary	None	• 499	Person County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Gentry Road	None	• 551	
Tar River Tributary 5	At the confluence with the Tar River	None	• 510	Person County (Unincorporated Areas).
	Approximately 150 feet upstream of Depot Street	None	• 541	

City of Roxboro

Maps available for inspection at the Roxboro Planning Department, 105 South Lamar Street, Roxboro, North Carolina.

Send comments to The Honorable Lois Winstead, Mayor of the City of Roxboro, P.O. Box 128, Roxboro, North Carolina 27573.

Person County Unincorporated Areas

Maps available for inspection at the Person County Planning and Zoning Department, 20A Court Street, Roxboro, North Carolina.

Send comments to Mr. Steve Carpenter, Person County Manager, 304 South Morgan Street, Room 212, Roxboro, North Carolina 27573.

WISCONSIN La Crosse County				
Johns Coulee	At the confluence with Mormon Creek	None	• 725	La Crosse County (Unincorporated Areas).
	Approximately 1 mile upstream of County Route YY	None	• 827	
Mormon Creek	Approximately 0.8 mile upstream of the confluence with the Mississippi River.	None	*645	City of La Crosse, La Crosse County (Unincorporated Areas).
	Approximately 100 feet upstream of County Route M	None	*766	
Sand Lake Coulee	Approximately 200 feet downstream of County Route OT.	None	*650	Village of Holmen, La Crosse, La Crosse County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Moos Drive	None	*770	
Smith Valley Creek	Approximately 1,000 feet upstream of the confluence with La Crosse River.	*658	*659	La Crosse, La Crosse County (Unincorporated Areas).

Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) • Elevation in feet (NAVD)		Communities affected
		Existing	Modified	
Black River	Approximately 2.1 miles upstream of Kiel Coulee Road	None	*814	City of Onalaska.
	Just upstream of the dam	*648	*647	
	Approximately 1.1 miles upstream of the dam	*648	*647	
Green Coulee	Approximately 0.5 mile downstream of Main Street	None	*710	La Crosse, La Crosse County (Unincorporated Areas).
	Approximately 250 feet upstream of Main Street	None	*716	
La Crosse River	Approximately 0.9 mile downstream of 17th Avenue North.	None	*712	La Crosse, La Crosse County (Unincorporated Areas).
	Approximately 0.9 mile upstream of 17th Avenue North	None	*718	
State Road Coulee	Approximately 620 feet downstream of Stry Drive	*691	*683	La Crosse, La Crosse County (Unincorporated Areas).
	Approximately 1,000 feet downstream of Haas Farm Drive.	*702	*701	
Sand Lake Coulee	Approximately 200 feet downstream of County Route OT.	None	*650	Village of Holmen, La Crosse, La Crosse County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Moos Drive	None	*770	

La Crosse County (Unincorporated Areas)

Maps available for inspection at the La Crosse County Zoning, Planning and Land Information Department, 400 4th Street North, Room 105, La Crosse, Wisconsin.

Send comments to Mr. Steve Doyle, La Crosse County Board Chairman, 400 4th Street North, Room 101, La Crosse, Wisconsin 54601–3200.

City of La Crosse

Maps available for inspection at the La Crosse City Hall, 400 La Crosse Street, La Crosse, Wisconsin.

Send comments to the Honorable John Medinger, Mayor of the City of La Crosse, 400 La Crosse Street, La Crosse, Wisconsin 54601.

City of Onalaska

Maps available for inspection at the Onalaska City Hall, Engineering Department, 415 Main Street, Onalaska, Wisconsin.

Send comments to the Honorable James Bialecki, Mayor of the City of Onalaska, 415 Main Street, Onalaska, Wisconsin 54650.

Village of Holmen

Maps available for inspection at the Holmen Village Hall, 428 South Main Street, Holmen, Wisconsin.

Send comments to Mr. John Chapman, Holmen Village President, 428 South Main Street, Holmen, Wisconsin 54636.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: July 21, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–19248 Filed 7–28–03; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–D–7572]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	
				Existing	Modified
New Jersey	Greenwich (Township), Warren County.	Merrill Creek	Approximately 30 feet upstream of confluence with Pohatcong Creek.	*263	*262
			Approximately 150 feet downstream of North Main Street.	*336	*337
		Merrill Creek (Left Channel).	At the downstream confluence with Merrill Creek.	*271	*270
			Approximately 35 feet downstream from upstream confluence with Merrill Creek.	*342*	343

Maps available for inspection at the Greenwich Township Municipal Building, 321 Greenwich Street, Stewartsville, New Jersey.

Send comments to The Honorable Gregory Blaszka, Mayor of the Township of Greenwich, Municipal Building, 321 Greenwich Street, Stewartsville, New Jersey 08886.

New York	Victor (Village) Ontario County.	Great Brook	At the downstream corporate limits	None	*555
			Approximately 1,150 feet upstream of CONRAIL.	None	*585

Maps available for inspection at the Victor Village Office, 60 East Main Street, Victor, New York.

Send comments to The Honorable Thomas Walker, Mayor of the Village of Victor, 60 East Main Street, Victor, New York 14564.

Wisconsin	New Richmond (City), St. Croix County.	Paper Jack Creek	Approximately 650 feet downstream of abandoned railroad.	None	*960
			Approximately 0.6 mile upstream of Bilmar Avenue.	None	*980
		Willow River	Approximately 0.4 mile downstream of State Highway 64.	None	*950
			Approximately 0.8 mile upstream of the Soo Line Railroad.	None	*979

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) • Elevation in feet (NAVD)	
				Existing	Modified
Maps available for inspection at the City of New Richmond Civic Center, 156 East First Street, New Richmond, Wisconsin.					
Send comments to The Honorable David Schnitzler, Mayor of the City of New Richmond, 156 East First Street, New Richmond, Wisconsin 54017.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: July 21, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–19249 Filed 7–28–03; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 030721177–3177–01; I.D. 060903C]

RIN 0648–AQ96

Fisheries off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Annual Specifications for Pacific Mackerel

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a regulation to implement the annual harvest guideline for Pacific mackerel in the exclusive economic zone (EEZ) off the Pacific coast. The Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) and its implementing regulations require NMFS to set an annual harvest guideline for Pacific mackerel based on the formula in the FMP. This action proposes allowable harvest levels for Pacific mackerel off the Pacific coast.

DATES: Comments must be received by August 13, 2003.

ADDRESSES: Send comments on the proposed rule to Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802. The report Stock Assessment of Pacific Mackerel with Recommendations for the 2003–2004 Management Season may be obtained at this same address. An environmental assessment/regulatory impact review/initial regulatory flexibility analysis (IRFA) may be obtained at this same address.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, Southwest Region, NMFS, (562) 980–4036.

SUPPLEMENTARY INFORMATION: The CPS FMP, which was implemented by publication of the final rule in the **Federal Register** on December 15, 1999 (64 FR 69888), divides management unit species into the categories of actively managed and monitored. Harvest guidelines of actively managed species (Pacific sardine and Pacific mackerel) are based on formulas applied to current biomass estimates. Biomass estimates are not calculated for species that are only monitored (jack mackerel, northern anchovy, and market squid).

At a public meeting each year, the biomass for each actively managed species is reviewed by the Pacific Fishery Management Council's (Council) CPS Management Team (Team). The biomass, harvest guideline, and status of the fisheries are then reviewed at a public meeting of the Council's CPS Advisory Subpanel (Subpanel). This information is also reviewed by the Council's Scientific and Statistical Committee (SSC). The Council reviews reports from the Team, Subpanel, and SSC, then, after providing time for public comment, makes its recommendation to NMFS. The annual harvest guideline and season structure is published by NMFS in the **Federal Register** as soon as practicable before the beginning of the appropriate fishing season. The Pacific mackerel season begins on July 1 of each year and ends on June 30 the following year.

The Team and Subpanel meetings took place at the NMFS Southwest Regional Office in Long Beach, CA, on May 21, 2003 (68 FR 23703, May 5, 2003). The SSC meeting took place in conjunction with the June 16–20, 2003, Council meeting in Foster City, CA.

A modified virtual population analysis stock assessment model is used to estimate the biomass of Pacific mackerel. The model employs both fishery dependent and fishery independent indices to estimate abundance. The biomass was calculated through the end of 2002, then estimated for the fishing season that began July 1, 2003, based on: (1) the number of Pacific mackerel estimated to comprise each year class at the beginning of 2003, (2) modeled estimates of fishing mortality during 2002, (3) assumptions for natural and fishing mortality through the first half of 2003, and (4) estimates of age-specific growth. Based on this approach the biomass for July 1, 2003, would be 68,924 metric tons (mt). Applying the formula in the FMP would result in a harvest guideline of 10,652 mt, which is lower than last year but similar to low harvest guidelines of recent years.

The formula in the FMP uses the following factors to determine the harvest guideline:

1. *The biomass of Pacific mackerel.* For 2003, this estimate is 68,924 mt.

2. *The cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established the cutoff level at 18,200 mt. The cutoff is subtracted from the biomass, leaving 50,724 mt.

3. *The portion of the Pacific mackerel biomass that is in U.S. waters.* This estimate is 70 percent, based on the historical average of larval distribution obtained from scientific cruises and the distribution of the resource obtained from logbooks of fish-spotters. Therefore, the harvestable biomass in U.S. waters is 70 percent of 50,724 mt, that is, 35,507 mt.

4. *The harvest fraction.* This is the percentage of th e biomass above 18,200 mt that may be harvested. The FMP established the harvest fraction at 30 percent. The harvest fraction is multiplied by the harvestable biomass in U.S. waters (35,507 mt), which results in 10,652 mt.

Information on the fishery and the stock assessment are found in the report *Stock Assessment of Pacific Mackerel with Recommendations for the 2003–2004 Management Season*, which may be obtained at the address above (see **ADDRESSES**).

Following recommendations of the fishing industry and Subpanel for the 2002/2003 fishing season, a directed fishery for Pacific mackerel of 9,500 mt was set beginning July 1, 2002, followed by an incidental allowance of 40 percent of Pacific mackerel in landings of any CPS, if the 9,500 mt was harvested. A 1–mt landing of Pacific mackerel per trip would have been allowed if no other CPS (northern anchovy, Pacific sardine, jack mackerel, market squid) were landed during a trip. NMFS implemented a directed and incidental fishery last season in response to concerns about how a low harvest guideline for mackerel might interfere with the sardine fishery. Pacific mackerel is often caught with sardine; therefore, mackerel might have to be discarded, which would increase bycatch. As of May 30, 2003, approximately 3,800 mt of Pacific mackerel had been landed in the directed fishery; therefore, an incidental fishery was not necessary.

At its meeting on May 21, 2003, the Subpanel recommended for the 2003/2004 fishing season that a directed fishery of 7,500 mt and an incidental fishery of 3,152 mt be implemented. An incidental allowance of 40 percent of Pacific mackerel in landings of any CPS would become effective when 7,500 mt of Pacific mackerel is estimated to be harvested. The Subpanel also recommended to allow 1 mt of mackerel to be landed per trip while fishing for salmon or groundfish in the incidental fishery without landing any other CPS. The Subpanel recommended that an inseason review of the mackerel season be completed for the March 2004 Council meeting, with the possibility of reopening the directed fishery as an automatic action if sufficient amount of the harvest guideline reserved for the incidental fishery remains unharvested.

Public comments are requested on how the fishery might be conducted for the 2003/2004 fishing season to achieve but not exceed the harvest guideline while minimizing impacts on the harvest of other CPS.

In view of the above, the following would be implemented for the July 1, 2003, through June 30, 2004, fishing season:

Based on the estimated biomass of 68,924 mt and the formula in the FMP, a harvest guideline of 10,652 mt would be in effect for the fishery beginning on July 1, 2003. This harvest guideline would be for the fishing season beginning at 12:01 a.m. on July 1, 2003, and continue through June 30, 2004, unless the harvest guideline is attained and the fishery is closed before June 30, 2004. A directed fishery of 7,500 mt and an incidental fishery of 3,152 mt would be implemented, with an incidental allowance of 40 percent of Pacific mackerel in landings of any CPS becoming effective when 7,500 mt of Pacific mackerel is estimated to be harvested. A landing of 1 mt of Pacific mackerel per trip would be permitted during the incidental fishery without landing any other CPS.

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Public comments are also requested on the IRFA that NMFS has prepared that describes the economic impact this proposed rule, if adopted, would have on small entities. Specifically, NMFS is requesting that the public provide comments on the range of alternatives considered by NMFS and offer any additional alternatives that NMFS should consider for the Pacific mackerel fishery. The IRFA is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows:

A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** and in the **SUPPLEMENTARY INFORMATION** of this proposed rule and is not repeated here. A harvest guideline is required by the FMP to protect the resource from overfishing while allowing harvest by fishermen. For the purposes of analysis, the no action alternative has potential negative environmental and economic impacts. Failure to set a harvest guideline based on a biomass estimate could lead to overfishing. This would provide some short term economic benefits to the fishing industry through increased revenue, but a decline in the resource would lead to lower revenue in subsequent years. The alternative to not have a directed and incidental fishery is reasonable, but could have negative economic consequences, because Pacific mackerel often occur in schools of Pacific sardine; therefore, a prohibition on landing Pacific mackerel would disrupt the sardine fishery. The season structure of the 2002–2003 fishing season was reviewed, which included a directed fishery of 9,500 mt, an incidental fishery of 3,035 mt, and an incidental harvest of 40 percent following closure of the directed fishery. The lower harvest guideline and the primary goal of minimizing economic impacts on the sardine fishery during the 2003–2004 fishing season led to setting the incidental fishery at a similar level,3,152 mt, with a 40 percent incidental rate, reducing the size of the directed fishery. Many alternatives to the specific amounts of the harvest guideline allocated to the directed and incidental fisheries are possible, but the amounts essential for an efficient fishery are not predictable; therefore, changes during the fishing season may be necessary. A review of previous seasons indicated that about 3,000 mt should be reserved for an incidental fishery. Changes can be made during the fishing season, but a high incidental rate and a significant incidental fishery would likely minimize interruption of the sardine fishery and regulatory changes during the year. If a significant amount of the harvest guideline remains toward the end of the season, the directed fishery can be reopened. This proposed rule does not duplicate, overlap, or conflict with other Federal rules. There are no reporting, record-keeping, or other compliance requirements of the proposed rule.

Approximately 83 vessels harvest Pacific mackerel off the U.S. West Coast. This includes 65 vessels with limited entry permits, which are authorized to fish south of 39°N. lat. (a point north of Monterey, California). Approximately 18 vessels harvest CPS species in southern California for bait; however, little Pacific mackerel is used for bait. The primary harvesters of Pacific mackerel are the vessels with limited entry permits from Monterey, California south. Some of the vessels in Monterey, California may move south to harvest CPS, but may not relocate to harvest Pacific mackerel in all years. All of

these vessels would be considered small businesses under the Small Business Administration standards; therefore, there would be no financial impacts resulting from disproportionality between small and large vessels under the proposed action. CPS vessels typically harvest a number of other species, including anchovy, Pacific sardine, and market squid.

The average revenue from Pacific mackerel in real dollars in the last 10 years, from 1993 through 2002 is almost $1.8 million per year. This is the revenue the industry might expect on average per year given the amount of mackerel available for harvest and market demand. With a harvest guideline of 10,652 mt and an average ex-vessel price per ton of $144.55, potential revenue could be $1.5 million. The harvest guideline for the 2002–2003 fishing season was 12,535 mt; however, as of June 3, 2003, only 3,790 mt had been landed, primarily because of the lack of availability of the resource in the area of the fishing fleet. Total landings for the 2002–2003 fishing season are not likely to exceed 4,000 tons. Therefore, if the harvest guideline is reached during the 2003–2004 fishing season, there will be an increase of $960,000 in ex vessel revenue above that of the 2002–2003 fishing season. The increase would be beneficial for fishermen and processors, and will benefit the fishing communities in southern California, where virtually all Pacific mackerel is landed. Enforcement and administrative costs (primarily port sampling) remain unchanged because calls at ports of landing are designed not only to assess the status of Pacific mackerel but all species harvested during the year by the CPS fleet. Average conditions are likely to prevail during the 2003–2004 fishing season, that is, ex vessel revenue derived from Pacific mackerel will fall between $1.4 million and $1.8 million based on a real ex vessel price that has varied between $126.98/mt and $172.59/mt from 1993 to 2002.

Cost data is not available for the 65 vessels with limited entry permits; therefore, average gross revenue per vessel is used as a proxy for changes in profitability. With an estimated increase of $960,000 in gross revenue, the average gross revenue per vessel would be $14,769. Setting a harvest guideline is required by the FMP and Federal regulations; therefore, a no action alternative is not reasonable. However, for the purposes of measuring impacts, if there is sufficient biomass to allow a fishery, the fishing season begins on July 1 even if a harvest guideline is not determined. Unless action were taken to curtail the fishery, unlimited amounts of Pacific mackerel could be harvested. With such a low biomass, exceeding the MSY would be likely, which would lead to some short term economic benefits to the fishing industry, but would lower the biomass estimate the following year along with the harvest guideline, which would reduce potential future revenue to the fleet. The impact of future revenue loss is greater at the low biomass levels that have occurred in recent years, because rebuilding the resource from low biomass levels takes longer. Nevertheless, market conditions and availability of Pacific mackerel in the area of the fishery have a strong effect on landings. Since 1994, overall fleet revenue has averaged $29.9 million and revenue obtained from Pacific mackerel has averaged 7.8 percent of that total. Under the proposed alternative, revenue is likely to average less because squid landings contribute substantial revenue to the fleet and squid availability is not expected to be depressed by an El Nino during the 2003–2004 Pacific mackerel season as it was in 1998. In an unrestricted mackerel fishery, average revenue would be more likely to approach 7.8 percent. In view of the above, the relatively low harvest guideline for the 2003–2004 fishing season will provide a slight increase in revenue and will not have a substantial effect on overall vessel profitability.

The proposed alternative also divides the harvest guideline into a 7,500 mt directed fishery, a 3,152 mt incidental fishery, and a limit of 40 percent by weight of Pacific mackerel in any landing of CPS when the directed fishery is closed. The numbers chosen were based on recent experience in the fishery, primarily availability of Pacific mackerel in the area of the fishery and the recent market value of mackerel compared to other CPS fisheries. A directed fishery with no incidental fishery could lead to significant negative economic impacts by closing the sardine fishery, which provided over $10 million in revenue to the CPS fleet in 2002. Interfering with the sardine fishery leads to increased bycatch of Pacific mackerel and increased enforcement action. To minimize the impact on the CPS fleet, the season structure of the 2002–2003 fishing season was reviewed, which included a directed fishery of 9,500 mt, an incidental fishery of 3,035 mt, and an incidental harvest of 40 percent following closure of the directed fishery. The lower harvest guideline and the primary goal of minimizing economic impacts on the sardine fishery during the 2003–2004 fishing season led to setting the incidental fishery at a similar level, of 3,152 mt, with a 40 percent incidental rate, thereby, reducing the size of the directed fishery. The FMP allows up to a 45 percent incidental harvest following the closing of the directed fishery, but 45 percent was considered not likely necessary. A 40 percent incidental rate operating in combination with a relatively significant incidental fishery was considered sufficient. Although the incidental rate can be changed during the fishing season, if the rate is set too low initially, fishing operations in the sardine fishery may be interrupted by attempting to avoid the capture of Pacific mackerel occurring in schools of Pacific sardine. Misjudgement by fishermen of the amount of Pacific mackerel occurring in schools of sardine leads to discards and increases bycatch. The possibility of dramatic changes during the fishing season were recognized, which could require in-season adjustments to any of the above factors. The goal of the changes would be to minimize disruption of the sardine fishery, which would minimize economic impact on the fishing industry; however, administrative costs of implementing changes would increase in proportion to the number of changes needed. The proposed action will yield potentially lower revenue from Pacific mackerel than what otherwise might be possible under environmental conditions more favorable to Pacific mackerel (That is, a higher biomass); however, the low harvest guideline for the 2003–2004 fishing season will provide a small increase in revenue above that of the 2002–2003 fishing season and will not have a substantial effect on overall vessel profitability.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 23, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 03–19259 Filed 7–28–03; 8:45 am]

BILLING CODE 3510–JS–S

Notices

Federal Register
Vol. 68, No. 145
Tuesday, July 29, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Request for Extension of a Currently Approved Information Collection—Operating Loans; Policies, Procedures, Authorizations and Closings

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and entities on the extension and revision of a currently approved information collection used in support of the Farm Loan Programs (FLP). The collection of information from FLP applicants and commercial lenders is used to determine eligibility; financial feasibility and security positions when the applicant applies for direct loan assistance.

DATES: Comments on this notice must be received on or before September 29, 2003.

ADDRESSES: Comments concerning this notice should be addressed to: Cathy Quayle, Senior Loan Officer, USDA, Farm Service Agency, Loan Making Division, 1400 Independence Avenue, SW., Stop 0522, Washington, DC 20250–0522, and to: the Desk Office for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Comments may be submitted by email to: *cathyquayle@wdc.usda.gov.* Copies of the information collection may be obtained by contacting Cathy Quayle.

FOR FURTHER INFORMATION CONTACT: Cathy Quayle, Loan Making Division, (202) 690–4018.

SUPPLEMENTARY INFORMATION:

Title: Operating Loans; Policies, Procedures, Authorizations and Closings

OMB Control Number: 0560–0162

Expiration Date of Approval: February 29, 2004

Type of Request: Extension of a Currently Approved Information Collection.

Abstract: The information collected under OMB Control Number is 0560–0162 is necessary to effectively administer the operating loan program in accordance with the requirements in 7 CFR part 1941 as authorized by the Consolidated Farm and Rural Development Act. Specifically, the Agency uses the information to evaluate loan making or loan servicing proposals, and to process loan closings. The information is needed to evaluate an applicant's eligibility, and to determine if the operation is economically feasible and if the security offered in support of the loan is adequate.

Estimate of Respondent Burden: Public reporting burden for this collection of information is estimated to average .12 hours per response

Respondents: Individuals or households, businesses or other for profit and farms

Estimated Number of Respondents: 51,466

Estimated Number of Responses per Respondent: 1

Estimated Total Annual Burden on Respondents: 6,176

Comment is invited on: (a) Whether the collection of information is necessary for the above stated purposes and the proper performance of FSA, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information being collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the Office of Management and Budget Approval.

Signed in Washington, DC on July 16, 2003.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 03–19173 Filed 7–28–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Sawtooth National Forest, Idaho; Fisher Creek, Smiley Creek, Baker Creek, & North Fork-Boulder Allotments Management Plans Analysis

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement for sheep allotments located on the Sawtooth national Recreation Area and Ketchum Ranger District, Sawtooth National Forest, in Custer and Blaine Counties, Idaho.

SUMMARY: On May 6, 2003, the USDA Forest Service filed a notice of intent to prepare an environmental impact statement for the Fisher Creek and Smiley Creek sheep & goat allotments (**Federal Register** Volume 68, Number 87, Page 23950–23951). Also on May 6, 2003, the Forest Service filed a notice of intent to prepare an environmental impact statement for the Baker Creek and North Fork-Boulder Creek sheep & goat allotments (**Federal Register** Volume 68, Number 87, Page 23951–23952). The May 6th notice for both environmental impact statements describe the "Purpose and Need for Action", the proposed action, possible alternatives, environmental issues considered, estimated dates for filing the environmental impact statements, identified the responsible officials, and provided information concerning public participation. This information remains unchanged. This notice combines the Fisher Creek and Smiley Creek environmental impact statement with the environmental impact statement for the Baker Creek and North Fork-Boulder Creek sheep & goat allotments. Only one environmental impact statement will be prepared for the four livestock allotments and it will be known as the "North Sheep Allotment Management Plans". Publication of the Draft and

Final Environmental Impact Statements will be under that name. The livestock allotments are adjacent to one another and connected by a common sheep driveway. It is cost effective to combine them and will enhance the cumulative effects analysis for both. This notice also changes the names and addresses of the agency officials who can provide additional information for the combined environmental impact statement. Questions about the proposed project and scope of analysis should be directed to Mike O'Farrell, Team Leader, at Ketchum Ranger Station; P.O. Box 2356; Ketchum, Idaho, 83340. Faxes should be sent to 208–622–3923 and e-mails to: *comments-intermtn-sawtoot ketchum@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Questions about this revised notice or the proposed project and scope of analysis should be directed to Mike O'Farrell, Team Leader, at the above address, or phone at (208) 622–5371.

Dated: July 23, 2003.

Ruth Monahan,

Sawtooth Forest Supervisor.

[FR Doc. 03–19192 Filed 7–28–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Chairman Report/ Maintenance, (5) Update on Approved Projects, (6) General Discussion, (7) Next Agenda.

DATES: The meeting will be held on August 14, 2003 from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Conference Room A, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, PO Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by August 11, 2003 will have the opportunity to address the committee at those sessions.

Dated: July 23, 2003.

James Fenwood,

Designated Federal Official.

[FR Doc. 03–19191 Filed 7–28–03; 8:45 am]

BILLING CODE 3410–11–M

ARCTIC RESEARCH COMMISSION

Sunshine Act Meeting

July 14, 2003.

Notice is hereby given that the U.S. Arctic Research Commission will hold its 69th Meeting in Dutch Harbor, Alaska on August 4 and Anchorage, Alaska on August 5, 2003. The Business Session open to the public will convene at 9 a.m. Tuesday, August 4, in the Agenda items include:

(1) Call to order and approval of the Agenda.

(2) Approval of the Minutes of the 68th Meeting.

(3) Reports from Congressional Liaisons.

(4) Agency Reports.

The focus of the Meeting will be reports and updates on programs and research projects affecting the U.S. Arctic. Presentations include a review of the research needs for civil infrastructure in Alaska.

The Business Session will reconvene at 9 a.m. Wednesday, August 5, 2003. An Executive Session will follow adjournment of the Business Session.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters must inform the Commission in advance of those needs.

Contact Person for More Information: Dr. Garrett W. Brass, Executive Director, Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

Garrett W. Brass,

Executive Director.

[FR Doc. 03–19327 Filed 7–25–03; 11:25 am]

BILLING CODE 7555–01–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Central Region Advisory Committees

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Iowa, Kansas, Missouri, Nebraska and Oklahoma Advisory Committees will convene at 1:30 p.m. and adjourn at 3 p.m. on Thursday, August 14, 2003. The purpose of the conference call is to discuss strategic planning about meaningful/measurable outcomes.

This conference call is available to the public through the following call-in number: 1–800–473–8493, access code 17926130. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or for those made over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Jo Ann Daniels of the Central Regional Office, 913–551–1400 and TDD number 913–551–1414, by 3 p.m. on Friday, August 8, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 15, 2003.

Dawn Sweet,

Editor.

[FR Doc. 03–19347 Filed 7–25–03; 1:06 pm]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alabama and Louisiana Advisory Committees

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Alabama and Louisiana Advisory Committees will convene at 1:30 p.m. and adjourn at 3 p.m. on Tuesday, August 12, 2003. The purpose of the conference call is to discuss the civil rights "Listening Tour" meeting to be held in November.

This conference call is available to the public through the following call-in number: 1–800–923–4213, access code 18014444. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or for those made over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Jo Ann Daniels of the Central Regional Office, 913–551–1400 and TDD number 913–551–1414, by 3 p.m. on Thursday, August 7, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 15, 2003.

Dawn Sweet,

Editor.

[FR Doc. 03–19348 Filed 7–25–03; 1:06 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Office of Administration

[Docket No.: 020125021–3179–02]

Guidance to Federal Financial Assistance Recipients on the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

AGENCY: Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce (Commerce) publishes this notice to announce the adoption of its policy guidance entitled Guidance to Federal Financial Assistance Recipients on Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons.

DATES: Commerce adopts the guidance as of March 24, 2003.

ADDRESSES: For a copy of the policy guidance, please mail requests to Theresa C. Counce, Office of Civil Rights, Room 6003, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC 20230. Requests may also be submitted by e-mail to *TCounce@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Theresa C. Counce, Office of Civil Rights, telephone: 202–482–6187, TDD: 202–482–2030. Arrangements to receive the policy in an alternate format may be made by contacting the named individual.

SUPPLEMENTARY INFORMATION: On March 24, 2003, Commerce published and requested comments on a policy guidance notice entitled Guidance to Federal Financial Assistance Recipients of the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (68 FR 14180, March 24, 2003). Limited English proficient (LEP) persons are those having limited ability to read, write, speak, or understand English. Executive Order (EO) 13166 (August 16, 2000) directs each Federal agency that extends assistance subject to the requirements of Title VI of the Civil Rights Act of 1964, as amended, publish such guidance. The Office of Management and Budget (OMB) issued a report on March 14, 2002 recommending that Federal agencies issue uniform guidance for recipients, and the Department of Justice (DOJ) published model guidance 67 FR 41455 (June 18, 2002) for agencies to follow when developing agency-specific guidance. Commerce's guidance, published on March 24, 2003, adheres to DOJ's model guidance.

Commerce received only one comment in response to the March 24, 2003 notice. The organization ProEnglish, of Arlington, VA submitted 7 pages in opposition to the guidance and EO 13166. Commerce acknowledges ProEnglish's opposition to the Executive Order and to Commerce's guidance, however Commerce has been directed by the Executive Order to develop and publish its guidance. As such, the guidance published on March 24, 2003.

By this notice, Commerce is adopting the proposed system as final without changes on July 29, 2003.

Although the March 24, 2003 notice indicated that the guidance was effective on March 24, 2003, Commerce clarifies that the March 24, 2003 date was the date when Commerce would begin accepting comments. There is no effective date of this guidance, as it is policy guidance.

Dated: July 23, 2003.

Suzan J. Aramaki,

Director, Office of Civil Rights.

[FR Doc. 03–19189 Filed 7–28–03; 8:45 am]

BILLING CODE 3510–BP–P

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 99121533–3181–08]

National Technical Assistance, Training, Research, and Evaluation: University Research Parks, Technology-Led Economic Development Strategies, and Information Dissemination—Request for Proposals

AGENCY: Economic Development Administration (EDA), Department of Commerce (DOC).

ACTION: Request for grant proposals (RFP) upon availability of funds.

SUMMARY: EDA publishes this notice to reopen the application submission period for ten days to allow applicants to submit proposals addressing Section VI.B.I. entitled "Information Dissemination to Practitioners Serving Distressed Areas." EDA reopens the proposal period because the proposals that addressed "Information Dissemination to Practitioners Serving Distressed Areas," did not adequately meet the established criteria for EDA to select a proposal for funding consideration.

DATES: Prospective applicants are advised that proposals for funding will be accepted through August 8, 2003, at any of the addresses provided in the May 23, 2003, RFP. Proposals received after 4 p.m. e.d.t., on August 8, 2003, will not be considered for funding.

FOR FURTHER INFORMATION CONTACT: John J. McNamee, 202.482.4085; e-mail: *jmcnamee@eda.doc.gov.*

SUPPLEMENTARY INFORMATION: On May 23, 2003, EDA published a Notice in the **Federal Register** at 68 FR 28672, requesting proposals for several RFPs. Section VI.B.I. of that Notice requested proposals for "Information Dissemination to Practitioners Serving Distressed Areas." Proposals received in response to Section VI.B.I. did not adequately meet the established criteria for EDA to select a proposal for funding consideration. Consequently, EDA hereby reopens for ten days the proposal submission period for the information dissemination proposals only. New proposals, as well as revisions of proposals submitted earlier, will be accepted. All other requirements of the May 23, 2003, notice remain in effect.

Dated: July 23, 2003.

David A. Sampson,

Assistant Secretary for Economic Development.

[FR Doc. 03–19207 Filed 7–28–03; 8:45 am]

BILLING CODE 3510–24–U

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Technical Advisory Committees; Notice of Recruitment of Private-Sector Members

SUMMARY: Six Technical Advisory Committees (TACs) advise the Department of Commerce on the technical parameters for export controls applicable to dual-use commodities and technology and on the administration of those controls. The TACs are composed of representatives from industry and Government representing diverse points of view on the concerns of the exporting community. Industry representatives are selected from firms producing a broad range of goods, technologies, and software presently controlled for national security, non-proliferation, foreign policy, and short supply reasons or that are proposed for such controls, balanced to the extent possible among large and small firms.

TAC members are appointed by the Secretary of Commerce and serve terms of not more than four consecutive years. The membership reflects the Department's commitment to attaining balance and diversity. TAC members must obtain secret-level clearances prior to appointment. These clearances are necessary so that members can be permitted access to the classified information needed to formulate recommendations to the Department of Commerce. Each TAC meets approximately 4 times per year. Members of the Committees will not be compensated for their services.

The six TACs are responsible for advising the Department of Commerce on the technical parameters for export controls and the administration of those controls within the following areas: Information Systems TAC: Control List Categories 3 (electronics—semiconductor section), 4 (computers), and 5 (telecommunications and information security); Materials TAC: Control List Category 1 (materials, chemicals, microorganisms, and toxins); Materials Processing Equipment TAC: Control List Category 2 (materials processing); Regulations and Procedures TAC: the Export Administration Regulations (EAR) and procedures for implementing the EAR; Sensors and Instrumentation TAC: Control List Categories 3 (electronics—instrumentation section) and 6 (sensors and lasers); Transportation and Related Equipment TAC: Control List Categories 7 (navigation and avionics), 8 (marine technology), and 9 (propulsion systems, space vehicles, and related equipment).

To respond to this recruitment notice, please send a copy of your resume to the e-mail address below.

Deadline: This Notice of Recruitment will be open for one year from its date of publication in the **Federal Register**.

FOR MORE INFORMATION CONTACT: Ms. Lee Ann Carpenter on (202) 482–2583. Resumes may be e-mailed to her at *Lcarpent@bis/doc/gov.*

Dated: July 24, 2003.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 03–19206 Filed 7–28–03; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews, requests for revocation in part and deferral of administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received requests to revoke two antidumping duty orders in part and to defer the initiation of an administrative review of four companies in one antidumping duty order.

EFFECTIVE DATE: July 29, 2003.

FOR FURTHER INFORMATION CONTACT: Holly Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2002), for administrative reviews of various antidumping and countervailing duty orders and findings with June anniversary dates. The Department also received timely requests to revoke in part the antidumping duty orders on and Non-Frozen Apple Juice Concentrate and Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China. In addition, the Department received a request to defer for one year the initiation of the June 1, 2002 through May 31, 2003 administrative review of the antidumping duty order on Non-Frozen Apple Juice Concentrate from the People's Republic of China with respect to four exporters in accordance with 19 CFR 351.213(c). The Department received no objection to this request from any party cited in 19 CFR 351.213(c)(1)(ii).

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than June 30, 2004. Also, in accordance with 19 CFR 351.213(c), we are deferring for one year the initiation of the June 1, 2002 through May 31, 2003 administrative review of the antidumping duty order on Non-Frozen Apple Juice Concentrate from the People's Republic of China with respect to four exporters.

	Period to be reviewed
Antidumping Duty Proceedings	
Canada: Certain Softwood Lumber, A–122–838	05/22/02–05/31/03
Buchanan Lumber [1]	
Japan: Certain Large Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe, A–588–850	06/01/02–05/31/03
Kawasaki Steel Corporation	
Nippon Steel Corporation	
NKK Tubes	
Sumitomo Metal Industries, Ltd	

	Period to be reviewed
Taiwan: Certain Stainless Steel Butt-Weld, Pipe Fittings, A–583–816	06/01/02–05/31/03
Liang Feng Stainless Steel Fitting Co., Ltd.	
PFP Taiwan Co., Ltd.	
Ta Chen Stainless Steel Pipe, Ltd.	
Tru-Flow Industrial Co., Ltd.	
The People's Republic of China: Certain Non-Frozen Apple Juice Concentrate [2] A–570–855	06/01/02–05/31/03
Gansu Tongda Fruit Juice Beverage Co., Ltd.	
Shaanxi Hengxing Fruit Juice Co., Ltd.	
Xian Asia Qin Fruit Co., Ltd.	
Xian Yang Fuan Juice Co., Ltd.	
The People's Republic of China: Folding Metal Tables and Chairs [3] A–570–868	12/03/01–05/31/03
Feili Furniture Development Ltd.	
Feili Furniture Development Co., Ltd.	
Feili Group (Fujian) Co., Ltd.	
Feili (Fujian) Co., Ltd.	
Dongguan Shichang Metals Factory Co., Ltd.	
Dongguang Shchang Metals Factory Co.	
Maxchief Investments Ltd.	
New-Tec Integration Co., Ltd.	
Wok and Pan Industry, Inc.	
The People's Republic of China: Tapered Roller Bearings [4] A–570–601	06/01/02–05/31/03
Peer Bearing Company-Changshan	
Yantai Timken Co., Ltd.	
Shanghai United Bearing Co., Ltd.	
Countervailing Duty Proceedings	
None.	
Suspension Agreements	
None.	

[1] Inadvertently omitted from the initiation notice published July 1, 2003 (68 FR 39059).

[2] If one of the above named companies does not qualify for a separate rate, all other exporters of non-frozen apple juice concentrate from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[3] If one of the above named companies does not qualify for a separate rate, all other exporters of folding metal tables and chairs from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.

[4] If one of the above named companies does not qualify for a separate rate, all other exporters of tapered roller bearings from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.

	Period to be deferred
Deferral of Initiation of Administrative Review	
People's Republic of China: Non-Frozen Apple Juice Concentrate, A–570–855	06/01/02–05/31/03
Sanmenxia Lakeside Fruit Juice Co., Ltd.	
SDIC Zhonglu Fruit Juice Co., Ltd.	
Shaanxi Haisheng Fresh Fruit Juice Co., Ltd.	
Yantai Oriental Juice Company, Ltd.	

	Period/class or kind
Antifriction Bearing Proceedings and Firms	
France: A–427–801 [5]	05/01/02–04/30/03
Ace Bearing & Transmission Co	Ball
Acorn Industrial Service	Ball
Aktif Endustri Malzemeleri	Ball
Alphateam SPRL	Ball
Australian Bearing Pty Ltd	Ball
Baltic Bearing Supply Gmbh	Ball
Bearing & Tool Gmbh	Ball
Bearing Discount International Gmbh	Ball
Bearing Dynamics	Ball
Bearing Net	Ball
Bearing Sales Corp	Ball
BTM Bearing Trade F.C Miltner	Ball
Cantoni & C.S.N.C	Ball
CCVI Bearing Co	Ball
Comal SNC	Ball
DCD Corp	Ball
EuroLatin Ex. Services	Ball
Fair Friend Ent. Co. Ltd	Ball
Friedrich Picard Gmbh	Ball
Froklich & Dorken Gmbh	Ball

	Period/class or kind
Han Sol Tech. Corp/Yoo Shin Co	Ball
Hayley Import/Export	Ball
Heinz Knust	Ball
Hergenhan Gmbh	Ball
Hoens Industriel BV	Ball
IBD Ltd	Ball
International Bearing Pte. Ltd	Ball
Interspecies Donath Gmbh	Ball
Italcuscinetti Group	Ball
Kian Ho Bearings, Ltd	Ball
KIS Antriebs Technik Gmbh	Ball
KSM, Minamiguchi/ Bearing Manufacturing Co	Ball
Kugellager Weber	Ball
LTM Industrietechnik	Ball
M. Buchhalter Maschenmode/Hergenhan	Ball
Micaknowledge	Ball
Minetti SPA	Ball
Ming Hing Trading Co	Ball
Motion Bearing Pte. Ltd	Ball
Rodamientos Rovi	Ball
Roeirasa	Ball
Rolling Bearing Co. Pty Ltd	Ball
Rovi-Marcay	Ball
Rovi-Valencia	Ball
SKF	Spherical
Sprint Engineering	Ball
Taisho Kiko Co. Ltd	Ball
Taninaka Ltd	Ball
Top G Trading Pte Ltd	Ball
Weber Kugellager Int	Ball
Withus Technology Corp	Ball
Wyko Export, Division of Wyko Grp/Wyko-Ewb	Ball

[5] The companies listed for A–427–801 were inadvertently omitted from the intiation notice that published on July 1, 2003 (68 FR 39055).

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: July 23, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Group II for Import Administration.

[FR Doc. 03–19271 Filed 7–28–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070703C]

Marine Mammals; File No. 699–1720

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. Kathryn Ono, Department of Biological Sciences, University of New England, Marine Sciences Center, 11 Hills Beach Road, Biddeford, ME 04005, has applied in due form for a permit to take harbor seals (*Phoca vitulina concolor*), gray seals (*Halichoerus grypus*), harp seals (*Phoca groenlandica*) and hooded seals (*Cystophora cristata*) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before August 28, 2003.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371

FOR FURTHER INFORMATION CONTACT: Sarah Wilkin or Jennifer Jefferies, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The purpose of the research is to assess the health of the Northeast Atlantic harbor seal population residing along the coast of Maine. The permit would authorize the applicant to take up to 200 harbor seals annually by capture, and 20 young of the year pups would be physically restrained and have morphometric measurements, samples of blood, feces, and skin biopsies taken, and flipper tags attached. Annually, 10 pups would have satellite tags attached to allow movement tracking and behavioral analysis. Authorization of 2 accidental mortalities of harbor seals annually is requested. Accidental capture of 5 gray seals, 3 harp seals, and 3 hooded seals annually is also requested. Additionally, annual authorization for Level B Harassment is requested for 400 harbor seals, 5 grey seals, 3 harp seals and 3 hooded seals, annually. The proposed research would study movement and migration patterns for young of the year pups. The movements, disease load, survival and behavior of wild-caught pups will be compared with rehabilitated pups from the same population and cohort to determine baseline "normal" behavior. The Permit would expire 5 years after the date of issuance.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 23, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–19260 Filed 7–28–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Hong Kong

July 23, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: July 28, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (*see* **Federal Register** notice 68 FR 1599, published on January 13, 2003). *Also see* 67 FR 68566, published on November 12, 2002.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 23, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 1, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Hong Kong and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on July 28, 2003, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit[1]
Sublevels in Group II	
338/339[2] (shirts and blouses other than tank tops and tops, knit).	3,011,286 dozen.
338/339(1)[3] (tank tops and knit tops).	2,272,178 dozen.
347/348	6,980,479 dozen of which not more than 6,980,479 dozen shall be in Categories 347–W/348–W[4]; and not more than 5,290,853 dozen shall be in Category 348–W.
638/639	5,106,304 dozen.
Within Group II subgroup	
342	636,602 dozen.
351	1,239,395 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

[2] Categories 338/339: all HTS numbers except 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.

[3] Category 338/339(1): only HTS numbers 6109.10.0018, 6109.10.0023, 6109.10.0060, 6109.10.0065, 6114.20.0005 and 6114.20.0010.

[4] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–19186 Filed 7–28–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

July 23, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: July 29, 2003.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover, carryforward, swing, special shift, the allowance for 100% cotton apparel items of handloomed fabric, and the recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (*see* **Federal Register** notice 68 FR 1599, published on January 13, 2003). *Also see* 67 FR 68569, published on November 12, 2002.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 23, 2003.

Commissioner,
Bureau of Customs and Border Protection,
Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 1, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on July 29, 2003, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
218	27,049,106 square meters.
219	98,446,174 square meters.
313	71,697,337 square meters.
314	13,867,950 square meters.
315	23,292,600 square meters.
317	24,936,738 square meters.
326	13,776,970 square meters.
334/634	263,512 dozen.
335/635	1,222,862 dozen.
336/636	1,707,151 dozen.
338/339	5,777,024 dozen.
340/640	3,341,638 dozen.
341	6,636,453 dozen of which not more than 4,017,873 dozen shall be in Category 341–Y [2].
342/642	2,476,300 dozen.
345	384,415 dozen.
347/348	1,342,531 dozen.
351/651	479,170 dozen.
363	80,482,444 numbers.
369–S [3]	1,340,745 kilograms.
641	2,360,009 dozen.
647/648	1,448,882 dozen.
Group II	
200, 201, 220, 224–227, 237, 239pt. [4], 300, 301, 331pt. [5], 332, 333, 352, 359pt. [6], 360–362, 603, 604, 611–620, 624–629, 631pt. [7], 633, 638, 639, 643–646, 652, 659pt. [8], 666pt. [9], 845, 846 and 852, as a group	186,847,246 square meter equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

[2] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[5] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[6] Category 359pt.: all HTS numbers except 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[7] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[8] Category 659pt.: all HTS numbers except 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[9] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–19188 Filed 7–28–03 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Designations under the Textile and Apparel Commercial Availability Provisions of the United States-Caribbean Basin Trade Partnership Act (CBTPA)

July 23, 2003.

AGENCY: The Committee for the Implementation of Textile Agreements

ACTION: Designation

SUMMARY: The Committee for the Implementation of Textile Agreements (Committee) has determined that 100 percent cotton woven flannel fabrics, made from 21 through 36 NM single ring-spun yarns of different colors, classified in 5208.43.00 of the Harmonized Tariff Schedule of the United States (HTSUS), of 2 X 2 twill weave construction, weighing not more than 200 grams per square meter, for use in apparel articles excluding gloves, cannot be supplied by the domestic industry in commercial quantities in a timely manner. The Committee hereby designates apparel articles, excluding gloves, that are both cut and sewn or otherwise assembled in an eligible CBTPA beneficiary country, from these fabrics as eligible for quota-free and duty-free treatment under the textile and apparel commercial availability provisions of the CBTPA and eligible under HTSUS subheadings 9820.11.27, to enter free of quota and duties, provided that all other fabrics are wholly formed in the United States from yarns wholly formed in the United States.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 211 of the CBTPA, amending Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act (CBERA); Presidential Proclamation 7351 of October 2, 2000; Executive Order No. 13191 of January 17, 2001.

Background

The commercial availability provision of the CBTPA provides for duty-free and quota-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary CBTPA country from fabric or yarn that is not formed in the United States if it has been determined that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner and certain procedural requirements have been met. In Presidential Proclamation 7351, the President proclaimed that this treatment would apply to apparel articles from fabrics or yarn designated by the appropriate U.S. government authority in the Federal Register. In Executive Order 13191, the President authorized the Committee to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner.

On April 21, 2003 the Chairman of the Committee received a petition from Sandler, Travis, and Rosenberg, P.A., on behalf of the American Apparel and Footwear Association (AAFA); Intradeco, Inc. of Miami, Florida; J. C. Penney Purchasing Corporation of Plano, Texas; and Knothe Apparel Group, Inc. of Ashford, Alabama alleging that 100 percent cotton woven flannel fabrics, made from 21 through 36 NM single ring-spun yarns of different colors, classified in 5208.43.00 of the HTSUS, of 2 X 2 twill weave construction, weighing not more than 200 grams per square meter, for use in apparel articles excluding gloves, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for apparel articles that are both cut and sewn in one or more CBTPA beneficiary countries from such fabrics.

In response to a previous commercial availability request by the same petitioners on 100 percent cotton, yarn-dyed flannel fabric, the Committee requested public comments on June 17, 2002 (67 FR 41219). Also in response to the previous petition, the Committee and the U.S. Trade Representative (USTR) sought the advice of the Industry Sector Advisory Committee for Wholesaling and Retailing and the Industry Sector Advisory Committee for Textiles and Apparel regarding the proposed action on July 3, 2002. On July 3, 2002, the Committee and USTR offered to hold consultations with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (Congressional Committees) regarding the proposed action. On July 23, 2002, the U.S. International Trade Commission provided advice regarding the proposed action. Based on the information and advice received and its understanding of the industry, the Committee determined that the fabric set forth in the instant petition cannot be supplied by the domestic industry in commercial quantities in a timely manner. On May 19, 2003, the Committee and USTR submitted a report to the Congressional Committees that set forth the action proposed, the reasons for such action, and advice obtained. A period of 60 calendar days since this report was submitted has expired.

The Committee hereby designates as eligible for preferential treatment under HTSUS subheading 9820.11.27, apparel articles, excluding gloves, that are both cut and sewn or otherwise assembled in one or more eligible CBTPA beneficiary countries, from 100 percent cotton woven flannel fabrics, made from 21 through 36 NM single ring-spun yarns of different colors, classified in 5208.43.00 of the HTSUS, of 2 X 2 twill weave construction, weighing not more than 200 grams per square meter, not formed in the United States, provided that all other fabrics are wholly formed in the United States from yarns wholly formed in the United States, subject to the special rules for findings and trimmings, certain interlinings and de minimis fibers and yarns under section 112 (d) of the CBTPA, and that such articles are imported directly into the customs territory of the United States from an eligible CBTPA beneficiary country.

An "eligible CBTPA beneficiary country" means a country which the President has designated as a CBTPA beneficiary country under section 213(b)(5)(B) of the CBERA (19 U.S.C. 2703(b)(5)(B)) and which has been the subject of a finding, published in the Federal Register, that the country has satisfied the requirements of section 213(b)(4)(A)(ii) of the CBERA (19 U.S.C. 2703(b)(4)(A)(ii)) and resulting in the enumeration of such country in U.S. note 1 to subchapter XX of Chapter 98 of the HTSUS.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–19187 Filed 7–29–03; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the AFOSR Review. The purpose of the meeting is to allow the SAB leadership to advise the Director on the outcome of the AFOSR Review. Because classified and contractor-proprietary information will be discussed, this meeting will be closed to the public.

DATES: August 29, 2003.

ADDRESSES: 1560 Wilson Boulevard, 4th Floor, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Major Dwight Pavek, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington, DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–19216 Filed 7–28–03; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing; Correction

AGENCY: Department of the Navy, DOD.

ACTION: Notice; Correction.

SUMMARY: The Department of the Navy published a document in the **Federal**

Register of May 30, 2003, concerning a notice of availability of Government-owned invention; available for licensing of Navy Case No. 83860 and Navy Case No. 84146 entitled "Internal Locking Device for Use on Magazine Doors." The document contained an incorrect address and incorrect point of contact information.

FOR FURTHER INFORMATION CONTACT: Kurt Buehler, (805) 982–4886.

Correction

In the **Federal Register** of May 30, 2003, in FR Doc. 03–13585, on page 32467, in the second column, correct the **ADDRESS** and **FOR FURTHER INFORMATION CONTACT** captions to read:

ADDRESS: Requests for copies of the Navy Case Numbers cited should be directed to Kurt Buehler, NFESC, Code 423, 1100 23rd Ave., Port Hueneme, CA 93043–4370.

FOR FURTHER INFORMATION CONTACT: Kurt Buehler, Office of Research and Technology Applications, NFESC, Code 423, 1100 23rd Ave., Port Hueneme, CA 93043–4370, telephone (805) 982–4886.

Dated: July 21, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–19209 Filed 7–28–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing; Correction

AGENCY: Department of the Navy, DOD.

ACTION: Notice; correction.

SUMMARY: The Department of the Navy published a document in the **Federal Register** of May 23, 2003, concerning a notice of availability of Government-owned inventions; available for licensing; U.S Patent Application Serial No.10/390,404 entitled "A Port Security Barrier System" Navy Case No.83,881. And Navy Case No. 84,694 entitled "In Port Barrier System (IPBS)." The document contained an incorrect address and incorrect contact information.

FOR FURTHER INFORMATION CONTACT: Kurt Buehler, (805) 982–4886.

Correction

In the **Federal Register** of May 23, 2003, in FR Doc. 03–12956, on page 28200, in the third column, correct the **ADDRESS** and **FOR FURTHER INFORMATION CONTACT** captions to read:

ADDRESS: Requests for copies of the patent application cited should be directed to Kurt Buehler, NFESC, Code 423, 1100 23rd Ave., Port Hueneme, CA 93043–4370, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Kurt Buehler, Office of Research and Technology Applications, NFESC, Code 423, 1100 23rd Ave, Port Hueneme, CA 93043–4370, telephone (805) 982–4886.

Dated: July 21, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–19212 Filed 7–28–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Diversified Technology and Development, Inc; Correction

AGENCY: Department of the Navy, DOD.

ACTION: Notice; correction.

SUMMARY: The Department of the Navy published a document in the **Federal Register** of May 30, 2003, giving notice of its intent to grant to Diversified Technology and Development, Inc. a revocable, nonassignable, exclusive license in the United States, to Navy Case No. 83860 and Navy Case No. 84146 entitled "Internal Locking Device for Use on Magazine Doors." The document contained an incorrect address and incorrect point of contact information.

FOR FURTHER INFORMATION CONTACT: Kurt Buehler, (805) 982–4886.

Correction

In the **Federal Register** of May 30, 2003, in FR Doc. 03–13586, on page 32467, in the second column, correct the **ADDRESS** caption and **FOR FURTHER INFORMATION CONTACT** captions to read:

ADDRESS: Written objections are to be filed with Kurt Buehler, NFESC, Code 423, 1100 23rd Ave., Port Hueneme, CA 93043–4370.

FOR FURTHER INFORMATION CONTACT: Mr. Kurt Buehler, Office of Research and Technology Applications, NFESC, Code 423, 1100 23rd Ave., Port Hueneme, CA 93043–4370, telephone (805) 982–4886.

Dated: July 21, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–19210 Filed 7–28–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Harbor Offshore, Inc; Correction

AGENCY: Department of the Navy, DOD.

ACTION: Notice; correction.

SUMMARY: The Department of the Navy published a document in the **Federal Register** of May 23, 2003, giving notice of its intent to grant to Harbor Offshore, Inc. a revocable, nonassignable, exclusive license in the United States, to Application Serial No.10/390404 entitled "A Port Security Barrier System". As well as Navy Case No. 84694 entitled "In Port Barrier System (IPBS)." The document contained an incorrect address and incorrect contact information.

FOR FURTHER INFORMATION CONTACT: Kurt Buehler, (805) 982–4886.

Correction

In the **Federal Register** of May 23, 2003, in FR Doc. 03–12957, on pages 28200–28201, in the first column of page 28201, correct the **ADDRESS** and **FOR FURTHER INFORMATION CONTACT** captions to read:

ADDRESS: Written objections are to be filed with Kurt Buehler, NFESC, Code 423, 1100 23rd Ave., Port Hueneme, CA 93043–4370.

FOR FURTHER INFORMATION CONTACT: Mr. Kurt Buehler, Office of Research and Technology Applications, NFESC, Code 423, 1100 23rd Ave., Port Hueneme, CA 93043–4370, telephone (805) 982–4886.

Dated: July 21, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–19211 Filed 7–28–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 28, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503, or should be electronically mailed to the Internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 24, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Revision.
Title: 21st Century Community Learning Centers Annual Performance Report.
Frequency: Annually.
Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 1,125.
Burden Hours: 9,000.

Abstract: 21st Century Community Learning Center grantees must annually submit the report so the Department can evaluate the performance of grantees prior to awarding continuation grants and to assess a grantee's prior experience at the end of each budget period. An extension of the currently approved collection is necessary to collect information through the grantees' final budget period (2004).

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2277. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651; or to the e-mail address *Vivan.Reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–19254 Filed 7–28–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, August 13, 2003; 6:30 p.m.–8:30 p.m.

ADDRESSES: Pahrump Nugget Hotel and Casino, 681 South Highway 160, Pahrump, Nevada.

FOR FURTHER INFORMATION CONTACT: Kelly Kozeliski, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193–8513; phone: 702–295–2836, fax: 702–295–5300, e-mail: *kozeliskik@nv.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. The U.S. Department of Energy Environmental Management Program will provide a briefing on shipping radioactive waste from Nevada to New Mexico.
2. The Board will update the community on current committee initiatives.

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kelly Kozeliski, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Kelly Kozeliski at the address listed above.

Issued at Washington, DC, on July 24, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–19252 Filed 7–28–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, September 4, 2003; 9 a.m.–5 p.m.—Friday, September 5, 2003; 8:30 a.m.–4 p.m.

ADDRESS: Doubletree Suites Seattle, 16500 Southcenter Parkway, Seattle, WA; Phone: (206) 575–8220; Fax: (206) 575–4743.

FOR FURTHER INFORMATION CONTACT: Yvonne Sherman, Public Involvement Program Manager, Department of Energy Richland Operations Office, 825 Jadwin, MSIN A7–75, Richland, WA 99352; Phone: (509) 376–6216; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

Thursday, September 4, 2003

- Tri-Party Agreement Look Back/Look Ahead: Perspectives from Tri-Party Agreement (TPA) Senior Management.
- Discussion with Tri-Party Agreement (TPA) Senior Management on Hanford Advisory Board Priorities for the Upcoming Year.
- Process for the Determination Whether There is Transuranic Waste in Certain Tanks—Discussion and Introduction of Draft Advice.
- Overall Strategy and Approach for Groundwater Protection, Monitoring and Remediation under Tri-Party Agreement (Milestone Series-24) Discussion and Introduction of Draft Advice.
- Proposed Changes to the Tri-Party Agreement Establishing New Deadlines for Tank Waste Treatment Activities (M–62). Discussion and Introduction of Draft Advice (Tentative).

Friday, September 5, 2003

- Public Involvement and Its Role/Importance in Decision-Making: Dialogue with the Tri-Party Agreement Agencies.
- Update on Hanford Long-Term Stewardship Plan.
- Informational Session on the Hanford Natural Resource Trustee Council.
- Adoption of Draft Advice:

—Process for the Determination Whether There is Transuranic Waste in Certain Tanks

—Overall Strategy and Approach for Groundwater Protection, Monitoring and Remediation under Tri-Party Agreement (Milestone Series M–24)

—Proposed Changes to the Tri-Party Agreement Establishing New Deadlines for Tank Waste Treatment (M–62) Tentative

- Announcement of Committee Leadership
- Agenda Topics for the November Hanford Advisory Board Meeting

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Yvonne Sherman's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Yvonne Sherman, Department of Energy Richland Operation Office, 825 Jadwin, MSIN A7–75, Richland, WA 99352; or by calling her at (509) 376–1563.

Issued at Washington, DC, on July 24, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–19253 Filed 7–28–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Kangley-Echo Lake Transmission Line Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD to construct the proposed Kangley-Echo Lake Transmission Line Project in King County, Washington, based on the Kangley-Echo Lake Transmission Line Project Final Environmental Impact Statement (DOE/EIS–0317–S1, June 2003). BPA has decided to implement the Proposed Action (Alternative 1) identified in the environmental impact statement, which consists of constructing a new 9-mile 500-kilovolt (kV) transmission line from a tap point on an existing 500–kV line near Kangley, Washington, to BPA's Echo Lake Substation. BPA is taking this action to continue to provide reliable power to customers throughout the Northwest and to other regions and Canada as population grows.

ADDRESSES: Copies of the ROD and EIS may be obtained by calling toll-free 1–888–276–7790. The ROD and EIS are also available on BPA's Transmission Business Line Web site, *http://www.transmission.bpa.gov/projects.*

FOR FURTHER INFORMATION, CONTACT: Gene Lynard, Environmental Project Manager, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon, 97208–3621; toll-free telephone number 1–800–282–3713; direct telephone number 503–230–3790; fax number 503–230–5699; or e-mail *gplynard@bpa.gov.*

SUPPLEMENTARY INFORMATION: The Proposed Action, construction of a new 500–kV transmission line from Kangley, Washington, to Echo Lake Substation, will be constructed next to an existing 500-kV line. Five miles of the route will go through the Cedar River Municipal Watershed (CRW). In addition, Echo Lake Substation will be expanded about three acres to the east and new equipment will be installed to accommodate the new line. The Proposed Action will primarily use 500-kV single-circuit steel lattice structures averaging about 135 feet high. In the CRW, where the line crosses the Cedar River, two 500-kV double-circuit lattice structures will be used to hold the new 500-kV line and the existing 500-kV line. BPA will purchase easements for a new 150-foot-wide right-of-way (ROW) for the new line (except at the Cedar River crossing where BPA will use its existing ROW). Clearing of tall-growing vegetation within the ROW will be required to insure reliable transmission service. As part of the Proposed Action, BPA has decided to construct new spur roads, upgrade existing access roads, and remove from service some existing roads; and install fiber optic cable on the new line and part of the existing 500-kV line into Raver Substation. The Proposed Action also includes a commitment to a variety of mitigation measures described in the mitigation section.

Issued in Portland, Oregon, on July 21, 2003.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. 03–19251 Filed 7–28–03; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC03–716–001, FERC–716]

Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted for OMB Review

July 22, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of the current expiration date. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of May 16, 2003 (68 FR 26591–92) and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by August 21, 2003.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may be reached by contacted by fax: at 202–395–7285 or submitting comments electronically to *pamelabeverly.oirasubmission@omb.eop.gov.* A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–30, Attention: Michael Miller, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC03–716–001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on "Make an E-filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov.* Comments should not be submitted to the e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the FERRIS link. User assistance for FERRIS and the FERC Web site during normal business hours by contacting FERC Online Support by e-mail at *FERCOnlineSupport@ferc.gov* or by telephone at 866–208–3676 (toll free) or TTY at 202–502–8659 or the Public Reference at (202)-8371, TTY (202) 502–8659 or by e-mail to *public.reference.room@ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202)273–0873, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information*: FERC–716 "Good Faith Request for Transmission Services and Response by Transmitting Utility Under sections 211(a) and 213(a) of the Federal Power Act."

2. *Sponsor*: Federal Energy Regulatory Commission.

3. *Control No.*: 1902–0170.

The Commission is now requesting that OMB approve a three-year extension of the expiration date, with no changes to the existing collection. The information filed with the Commission is mandatory. Requests for confidential treatment of the information are provided for under section 388.112 of the Commission's regulations.

4. *Necessity of the Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of sections 211 and 213 of the Federal Power Act(FPA), as amended by the Energy Policy Act of 1992, 16 U.S.C. 824j and 824l. Section 211(a) allows any electric utility, Federal power marketing agency or any other person generating electric energy for sale or resale to apply for an order requiring a transmitting utility to provide transmission services to the applicant. The Commission may issue an order only if the applicant has requested the transmission services from the transmitting utility at least 60 days before applying to the Commission. Accordingly, a request for transmission services is a condition upon which the Commission may order service under section 211. Section 213(a) of the FPA requires a response by the transmitting utility to a good faith request. Unless the transmitting utility agrees to provide such services as rates, charges, terms and conditions acceptable to the person making the request, the transmitting utility, within 60 days of its receipt of the request, or other mutually agreed upon period, provides the person making the request with a detailed written explanation with specific reference to the facts and circumstances of the request including the basis for the proposed rates, charges, terms and conditions for the services as well as any physical constraints that would affect performing the services.

The information is not filed with the Commission, however, the request and response may be analyzed as part of a section 211 proceeding. This collection of information covers the information that must be contained in the request and the response.

Under the revised section 211, the Commission may order transmission services if it finds that such action would be in the public interest, would not unreasonably impair the continued reliability of electric systems affected by the order, and would meet the requirements of amended section 211 of the FPA. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 2.20.

5. *Respondent Description*: The respondent universe currently comprises 12 companies (on average) subject to the Commission's jurisdiction.

6. *Estimated Burden*: 1,000 total hours, 10 respondents(average), 1 response per respondent, 100 hours (20 hours for the transmission requestor and

80 hours for the transmitting utility's response) (average).

7. Estimated Cost Burden to respondents: 1,000 hours / 2080 hours per years × $117,041 per year = $56,270. The cost per respondent is equal to $5,627.00.

Statutory Authority: Sections 211(a), 212, 213(a) of the Federal Power Act, 16 U.S.C. 824j-l and Sections 721–723 of the Energy Policy Act of 1992. (Pub L. 102–486).

Magalie R. Salas,

Secretary.

[FR Doc. 03–19233 Filed 7–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–347–001]

Chandeleur Pipe Line Company; Notice of Compliance Filing

July 22, 2003.

Take notice that on July 16, 2003, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective July 1, 2003:

Substitute Original Sheet No. 68A.
Substitute Eighth Revised Sheet No. 69.
Substitute Seventh Revised Sheet No. 69A.
Substitute First Revised Sheet No. 69A.01.
Substitute First Revised Sheet No. 69A.02.
Substitute Third Revised Sheet No. 69B.

Chandeleur asserts that the purpose of this filing is to comply with the Commission's order issued June 30, 2003, in Docket No. RP03–347–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with ¶385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with ¶154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: July 28, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19236 Filed 7–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–332–000]

Destin Pipeline Company, L.L.C., Notice of Request Under Blanket Authorization

July 22, 2003.

Take notice that on July 14, 2003, Destin Pipeline Company, L.L.C.(Destin), 200 WestLake Park Boulevard, Houston, Texas 77079 filed in Docket No. CP03–332–000 a request pursuant to sections 157.205 and 157.208 of the Federal Energy Regulatory Commission's regulations (18 CFR sections 157.205 and 157.208) under the Natural Gas Act (NGA) for authorization to construct, own, and operate an additional compressor at Destin's Pascagoula Compressor Station in Jackson County, Mississippi, under Destin's blanket certificate issued in Docket Nos. CP96–657–000 and CP96–657–001, pursuant to section 7 of the NGA, all as more fully set forth in the application which is on file with the Commission and open for public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Destin states that it intends to install an additional compressor unit adjacent to the three existing compressor units at the Pascagoula Compressor Station. Destin asserts that the proposed modifications will occur on property currently owned by Destin. Destin further states that the additions proposed will increase operational flexibility and efficiency, provide flow assurance, and enhance reliability on the Destin System. Destin states that there will be no change in Destin's current daily design capacity or daily operating pressures.

Destin states that the total estimated cost for this proposed additional compressor project is approximately $11.6 million.

Any questions concerning this request may be directed to Bruce G. Reed, Director Regulatory Affairs, 200 WestLake Park Boulevard, Houston, Texas 77079 at (281) 366–5062.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary

[FR Doc. 03–19229 Filed 7–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–384–002]

North Baja Pipeline, LLC; Notice of Compliance Filing

July 22, 2003.

Take notice that on July 17, 2003, North Baja Pipeline, LLC (NBP), tendered for filing to be part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 177, First Revised Sheet No. 178, and Fifth Revised Sheet No. 201, to be effective August 16, 2003.

NBP states that these tariff sheets are being submitted in compliance with the Commission's June 27, 2003 Order in this docket.

NBP further states that a copy of this filing has been served on NBP's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: July 29, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19237 Filed 7–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–314–002]

Northern Natural Gas Company; Notice of Compliance Filing

July 22, 2003.

Take notice that on July 17, 2003, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with an effective date of April 28, 2003:

2nd Substitute Fifth Revised Sheet No. 291.
Substitute Original Sheet No. 291A.

Northern states that the filing is being made in compliance with the Commission's order issued on July 2, 2003 in this proceeding.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: July 29, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19235 Filed 7–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP02–510–001 and RP03–259–002]

Questar Pipeline Company; Notice of Compliance Filing

July 22, 2003.

Take notice that on July 17, 2003, Questar Pipeline Company (Questar), tendered for filing to its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective as indicated on each tariff sheet:

Substitute Fourteenth Revised Sheet No. 6, Effective October 1, 2002.
Substitute Fifteenth Revised Sheet No. 6, Effective April 7, 2003.
Eighth Revised Sheet No. 67, Effective April 7, 2003.
Substitute First Revised Sheet No. 67A, Effective April 7, 2003.

Questar states that this filing corrects language on several tariff sheets to reflect revisions resulting from the Commission's rejection and Questar's withdrawal of tariff filings in Docket Nos. RP02–210 and RP03–250, respectively.

Questar states that copies of this filing were served upon Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: July 29, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19234 Filed 7–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Document Nos. RT01–99–000, RT01–99–001, RT01–99–002, RT01–99–003 RT01–86–000, RT01–86–001 RT01–86–002, RT01–95–000, RT01–95–001, RT01–95–002, RT01–2–000, RT01–2–001, RT01–2–002, RT01–2–003, RT01–98–000 and RT02–3–000]

Regional Transmission Organizations, Bangor Hydro-Electric Company, et al., New York Independent System Operator, Inc., et al., PJM Interconnection, L.L.C., et al., PJM Interconnection, L.L.C., ISO New England, Inc., New York Independent System Operator, Inc.; Regional Transmission Organizations, et. al.; Notice

July 22, 2003.

Take notice that PJM Interconnection, L.L.C., New York Independent System Operator, Inc. and ISO New England, Inc. have posted on their internet Web sites charts and information updating their progress on the resolution of ISO seams.

Any person desiring to file comments on this information should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such comments should be filed on or before the comment date. Comments may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: August 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19138 Filed 7–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–213–000]

Southern Nevada Water Authority, Complainant, v. Nevada Power Company, Respondent; Notice of Complaint

July 22, 2003.

Take notice that on July 18, 2003 Southern Nevada Water Authority (SNWA) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Complaint Requesting Fast Track Processing against Nevada Power Company (NPC) pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e and 825e, and Rule 206 of the Commission's Rules of Practice and procedure, 18 CFR 385.206. SNWA alleges that NPC has violated section 17.7 of NPC's Open-Access Transmission Tariff (OATT) in refusing to extend the commencement date of SNWA's Service Agreement No. 101B from August 31, 2003 to August 31, 2004.

On July 21, 2003 SNWA filed an Errata to its Complaint stating that the Complaint erroneously identified August 31, 2003 as the start date of the transmission service agreement in dispute. Those same references also identify August 31, 2004 as the date that SNWA requested for an extension of service pursuant to section 17.7 of NPC's open access transmission tariff. SNWA's transmission service agreement is to commence July 31, 2003 and SNWA requested a one-year extension until July 31, 2004.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date below. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: July 31, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19231 Filed 7–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–1039–001, et al.]

AmPro Energy Wholesale, Inc., et al.; Electric Rate and Corporate Filings

July 21, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. AmPro Energy Wholesale, Inc.

[Docket No. ER03–1039–001].

Take notice that on July 16, 2003, AmPro Energy Wholesale, Inc., tendered for filing a revised Rate Schedule No. 1 amending their petition filed July 7, 2003 in Docket No. ER03–1039–000.

Comment Date: August 6, 2003.

2. Access Energy Cooperative

[Docket No. ER03–1078–000].

Take notice that on July 16, 2003, Access Energy Cooperative (AEC) tendered for filing its 2003 annual rate redetermination informational filing, pursuant to the Commission's Regulations, 18 CFR 35.13, and in accordance with Section 105 of its FERC Rate Schedule No. 1. AEC states that its filing is available for public inspection at its offices in Mt. Pleasant, Iowa.

AEC further states that copies of this filing have been served upon its transmission customer and the Iowa State Utilities Board.

Comment Date: August 6, 2003.

3. Aquila, Inc.

[Docket No. ER03–1079–000].

Take notice that on July 16, 2003, Aquila, Inc. on behalf of itself and as agent for its divisions Aquila Networks-MPS d\b\a Missouri Public Service, Aquila Networks-WPK d\b\a WestPlains Energy-Kansas, Aquila Networks-WPC d\b\a WestPlains Energy-Colorado and Aquila Networks-L&P d\b\a St. Joseph Light and Power (collectively Aquila) tendered for filing proposed changes in its FERC Electric Tariff Volumes 28 and 29. Aquila states that the proposed changes add a provision to the Aquila market-based power sales tariffs to comply with the settlement in Docket No. ER02–2170.

Comment Date: August 6, 2003.

4. Florida Power & Light Company

[Docket No. ER03–1080–000].

Take notice that on July 16, 2003, Florida Power & Light Company (FPL) filed with the Federal Energy Regulatory Commission Service Agreement No. 223 to FERC Electric Tariff, Second Revised Volume No. 6, which is an agreement to construct a control area interconnection between FPL and Seminole Electric Cooperative, Inc. (Seminole).

FPL states that a copy of this filing has been served on Seminole and the Florida Public Service Commission.

Comment Date: August 6, 2003.

5. Covanta Union, Inc.

[Docket No. ER03–1085–000].

Take notice that on July 16, 2003, Covanta Union, Inc., tendered for filing a Notice of Succession to reflect a name change from Ogden Martin Systems of Union, Inc., to Covanta Union, Inc.

Covanta Union, Inc., states that copies of the filing were served upon the Public Service Electric and Gas Company and on the PJM Interconnection, L.L.C.

Comment Date: August 6, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19232 Filed 7–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request To Use Alternative Procedures in Preparing a License Application

July 22, 2003.

Take notice that the following request to use alternative procedures to prepare a license application has been filed with the Commission.

a. *Type of Application:* Request to use alternative procedures to prepare a license application.

b. *Docket No.:* DI02–3–002.

c. *Date filed:* July 10, 2003.

d. *Applicant:* AquaEnergy Group, Ltd.

e. *Name of Project:* Makah Bay Wave Energy Pilot Project

f. *Location:* The project would be located in Makah Bay, about 1.9 nautical miles offshore of Waatch Point in Clallam County, Washington. The offshore portion of the project would occupy waters of the Olympic Coast National Marine Sanctuary, and shore-based facilities would be on tribal lands within the Makah Indian Reservation.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mary Jane Parks, P.O. Box 1276, Mercer Island, Washington 98040–1276; (626) 568–0798.

i. *FERC Contact:* Nick Jayjack at (202) 502–6073; e-mail Nicholas.Jayjack@ferc.gov.

j. *Deadline for Comments:* 30 days from the date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. The project would include four floating buoys, tethered to concrete blocks located on the ocean floor; hoses for carrying pressurized sea water; a power conversion facility located on the sea floor, where the water from the hoses would be converted to electrical energy and from alternating current to direct current; submarine electrical cables running from the conversion facility to shore and under the beach through a conduit; and a power station housing equipment for connecting the power generated by the project to an existing 12-kilovolt distribution line. Power generated by the project, expected to be about 1,500 megawatt-hours annually, would be purchased by the Clallam County Public Utility District, and used within its service territory.

l. A copy of the request to use the alternative procedures is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number (DI02–3) in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov* /esubscribenow.htm to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

m. AquaEnergy Group, Ltd. (AquaEnergy) has demonstrated that it has made an effort to contact all federal and state resources agencies, non-governmental organizations (NGO), and others affected by the project. AquaEnergy has also demonstrated that a consensus exists that the use of alternative procedures is appropriate in this case. AquaEnergy has submitted a communications protocol that is supported by the stakeholders.

The purpose of this notice is to invite any additional comments on the request to use the alternative procedures, pursuant to section 4.34(i) of the Commission's regulations. Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date. AquaEnergy will complete and file a preliminary Environmental Assessment, in lieu of Exhibit E of the license application.

This differs from the traditional process, in which an applicant consults with agencies, Indian tribes, NGOs, and other parties during preparation of the license application and before filing the application, but the Commission staff performs the environmental review after the application is filed. The alternative procedures are intended to simplify and expedite the licensing process by combining the pre-filing consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

AquaEnergy has met with Federal and State resources agencies, the U.S. Coast Guard, the Makah Tribal Council, and the public regarding the proposed project. It is expected that AquaEnergy will file 6-month progress reports during the alternative procedures process leading to the filing of a license application.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19230 Filed 7–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of

Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Workgroup on the National Health Information Infrastructure.

Time and Date: 9 a.m.–4 p.m.; August 7, 2003.

Place: Hubert H. Humphrey Building, Room 705A, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The purpose of the meeting is to review recent developments related to the national health information infrastructure, review a draft recommendation about HHS participation in advanced research and development on the national information infrastructure (Internet2, etc.) and develop the workgroup's work plan related to the personal health dimension.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Mary Jo Deering, Lead Staff Person for the NCVHS Workgroup on the National Health Information Infrastructure, Office of the Assistant Secretary for Public Health and Science, DHHS, Room 738G, Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, telephone (202) 260–2652, or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 2413, 3311 Toledo Road, Hyattsville, MD 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/*, where an agenda for the meeting will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: July 15, 2003.

James Scanlon,

Acting Director, Office of Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 03–19265 Filed 7–28–03; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Standards and Security (SSS).

Time and Date:

9 a.m. to 5 p.m., August 19, 2003.
9 a.m. to 5 p.m., August 20, 2003.
8:30 a.m. to 1 p.m., August 21, 2003.

Place: Washington Terrace Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

Status: Open.

Purpose: The agenda for Tuesday, August 19th includes discussion on Drug and Devise Terminologies. The morning session on the 20th will be devoted to reviewing the PMRI Terminology report. During the afternoon session, discussion will take place on the analysis of the impact of moving to ICD–10–CM and ICD–10–PCS. On the 21st, a wrap up of day one and two will begin the session followed by an update on Claims Attachments. Discussion of updates/issues related to the Financial and Administrative Transaction Implementation will end the day.

For Further Information Contact: Substantive program information as well as summaries of meetings and a roster of Committee members may be obtained from Karen Trudel, Senior Technical Advisor, Security and Standards Group, Centers for Medicare and Medicaid Services, MS: C5–24–04, 7500 Security Boulevard, Baltimore, MD 21244–1850, telephone: 410–786–9937; or Majorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Diseases Control and Prevention, Room 2413, 3311 Toledo Road, Hyattsville, Maryland 20782, telephone: (301) 438–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/* where an agenda for the meeting will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: July 15, 2003.

James Scanlon,

Acting Director, Office of Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 03–19266 Filed 7–28–03; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Community and Tribal Subcommittee of the Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following subcommittee meeting.

Name: Community and Tribal Subcommittee (CTS).

Times and Dates:

8:30 a.m.—4:30 p.m., August 19, 2003.
8:45 a.m.—4:30 p.m., August 20, 2003.

Place: Agency for Toxic Substances and Disease Registry, 1825 Century Center, Atlanta, Georgia 30345.

Status: Open to the public, limited by the available space. The meeting room accommodates approximately 35 people.

Purpose: This subcommittee brings to the Board advice, citizen input, and recommendations on community and tribal programs, practices, and policies of the Agency.

Matters to be discussed: Agenda items include a discussion on National Policy Dialogue on the Military Munitions Document; update on the Tribal Environmental Health Education Program; ATSDR Disease Registry Process; presentation on the CTS Evaluation Process findings and outcomes; reports from the task groups on cultural sensitivity activities, educational training and toolbox, and an evaluation of Public Health Assessment compliance to guidelines; review of Action Items and Recommendations; and an update on ATSDR activities.

Written comments are welcomed and should be received by the contact person listed below prior to the opening of the meeting.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: James E. Tullos, Jr., Designated Federal Official, CTS/ATSDR contact, ATSDR, M/S E–33, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/498–0287.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and ATSDR.

Dated: July 23, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–19199 Filed 7–28–03; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: A U.S. Clinical Trial Site To Conduct Evaluations of Topical Microbicides in Heterosexual Women and Men, Contract Solicitation Number 2003–N–00822

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): A U.S. Clinical Trial Site to Conduct Evaluations of Topical Microbicides in Heterosexual Women and Men, Contract Solicitation Number 2003–N–00822.

Times and Dates:

7 p.m.–8 p.m., August 14, 2003 (Open).
8 a.m.–8:30 a.m., August 15, 2003 (Open).
8:30 a.m.–5 p.m., August 15, 2003 (Closed).

Place: The Westin Atlanta North Perimeter Hotel, 7 Concourse Parkway, Atlanta, GA 30327, Telephone 770.395.3900.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Pub. L. 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Contract Solicitation Number 2003–N–00822.

For Further Information Contact: Andrew Vernon, Office of the Director, National Center for HIV, STD, and TB Prevention, CDC, 1600 Clifton Road, NE, MS–E07, Atlanta, GA 30333, Telephone 404.639.8006.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 23, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–19198 Filed 7–28–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH).

Time and Date: 1:30 p.m.–4:30 p.m., August 18, 2003. 8 a.m.–4:30 p.m., August 19, 2003.

Place: The Westin Cincinnati, 21 East Fifth Street, Cincinnati, Ohio 45202, telephone 513/621–7700, fax 513/852–5690.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 65 people.

Background: The Advisory Board on Radiation and Worker Health ("the Board") was established under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) of 2000 to advise the President, through the Secretary of Health and Human Services (HHS), on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the development of probability of causation guidelines which have been promulgated by HHS as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, evaluation of the scientific validity and quality of dose reconstructions conducted by the National Institute for Occupational Safety and Health (NIOSH) for qualified cancer claimants, and advice on the addition of classes of workers to the Special Exposure Cohort.

In December 2000 the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was signed on August 3, 2001 and the President has completed the appointment of members to the Board to ensure a balanced representation on the Board.

Purpose: This board is charged with (a) providing advice to the Secretary, HHS on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS on the scientific validity and quality of dose reconstruction efforts performed for this Program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Discussed: Agenda for this meeting will focus on the Program Status Report; Development of Task Order; Dose Reconstruction Workgroup Report; Status of Procurement; Status of Technical Basis Document/Site Profile Development; Oak Ridge Associated Universities Contract Support Status; and a Scientific Issues Workgroup Report.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/533–6825, fax 513/533–6826.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: July 23, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–19202 Filed 7–28–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Study Protocol To Develop a Database for Identification and Assessment of Engineering Control of Noise From Powered Hand Tools Used in the Construction Industry

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Notice of request for comments and information on study protocol to develop a database for identification and assessment of engineering control of noise from powered hand tools used in the construction industry.

SUMMARY: NIOSH invites written comments from the public on the research study protocol describing the proposed project. Copies of the study protocol document may be obtained by contacting the individual referenced below. The document may also be obtained in .pdf format at the following Web site: *http://www.cdc.gov/niosh/ext-supp-mat/powertools/powertools.html*. To view the document in .pdf format, you must have the Adobe Acrobat Reader Program. It is available free of charge at *http://www.adobe.com/support/downloads/main.html*.

DATES: Comments concerning this notice must be received on or before September 29, 2003.

ADDRESSES: Comments may be transmitted either electronically to *Chayden@CDC.gov*, by facsimile to 513/533–8139, or by regular mail or hand delivery to Mr. Charles Hayden, NIOSH Engineering Noise Control Project, Robert A. Taft Laboratories, M/S C–27, 4676 Columbia Parkway, Cincinnati, Ohio 45226. E-mail attachments should be formatted as WordPerfect 7/8/9 or Microsoft Word.

FOR FURTHER INFORMATION CONTACT: Charles Hayden, Robert A. Taft Laboratories, M/S C–27, 4676 Columbia Parkway, Cincinnati, Ohio 45226, 513/533–8152.

SUPPLEMENTARY INFORMATION: This project will develop a noise control

technology database consisting of powered hand tools used in the construction industry with respective sound power levels and workers' 8-hour time-weighted average noise exposure level. The sound power level and workers' exposure level data will be acquired in a hemi-anechoic laboratory by NIOSH researchers. The database will facilitate the use of engineering noise controls by gathering precise information on the effectiveness of existing control technology. The principal product of the study and the primary method of information dissemination will be the searchable web-site database of powered hand tools used in the construction industry with respective operational specifications, sound power levels, and workers' exposure level. This database and specific information on noise control applications also will be disseminated through practical guidelines, handbooks, and case study reports to aid safety and health professionals, noise control engineers, equipment and noise-control systems' manufacturers, and trade associations in applying effective noise control technologies.

Comments are invited on:

1. Whether the proposed database will be useful for its planned purposes;

2. Ways to enhance the quality, utility, clarity, and dissemination of the information to be collected;

3. Whether the study population is properly targeted and whether access to the study population is feasible; and

4. Whether the makes and models of powered hand tools with respective sound power level data or simply generic terms should be reported in the sound power level database.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 23, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–19201 Filed 7–28–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Medical Devices Dispute Resolution Panel of the Medical Devices Advisory Committee; Cancellation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The meeting of the Medical Devices Dispute Resolution Panel of the Medical Devices Advisory Committee scheduled for August 20, 2003, is cancelled based upon a decision by the sponsor, CardioGenesis Corp. to submit additional information for FDA review in support of their premarket approval application for the Axcis Percutaneous Myocardial Revascularization. This meeting was announced in the **Federal Register** of July 21, 2003 (68 FR 43133).

FOR FURTHER INFORMATION CONTACT: Les Weinstein, Center for Devices and Radiological Health (HFZ–5), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–7991, FAX 301–827–2565, *lsw@cdrh.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 10232.

Dated: July 23, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–19172 Filed 7–28–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG 2003–15096]

Information Collection Under Review by the Office of Management and Budget (OMB): OMB Control Numbers: 1625–0046 (Formerly 2115–0545), and 1625–0071 (Formerly 2115–0611)

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded the two Information Collection Requests (ICRs) abstracted below to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for review and comment. Our ICRs describe the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before August 28, 2003.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2003–15096] more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. (b) By mail to OIRA, 725 17th Street NW, Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Facility at 202–493–2251 and (b) OIRA at 202–395–5806, or e-mail to OIRA at *oira_docket@omb.eop.gov* attention: Desk Officer for the Coast Guard.

(4)(a) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov*. (b) OIRA does not have a Web site on which you can post your comments.

(5) Electronically through Federal eRule Portal: *http://www.regulations.gov*.

The Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 (Plaza level), 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

Copies of the complete ICRs are available for inspection and copying in public dockets. They are available in docket USCG 2003–15096 of the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the internet at *http://dms.dot.gov;* and for inspection from the Commandant (G–CIM–2), U.S. Coast Guard, room 6106, 2100 Second Street SW, Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this request for comment by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov*, and they will include any personal information you have provided. We have an agreement with DOT to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

Submitting Comments

If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2003–15096], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 [65 FR 19477], or you may visit *http://dms.dot.gov*.

Regulatory History

This request constitutes the 30-day notice required by OIRA. The Coast Guard has already published [68 FR 25898 (May 14, 2003)] the 60-day notice required by OIRA. That notice elicited no comments.

Request for Comments

The Coast Guard invites comments on the proposed collections of information to determine whether the collections are necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the Department's estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collection on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Number of the ICR addressed. Comments to DMS must contain the docket number of this request, USCG 2003–15096. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Request

1. *Title:* Financial Responsibility for Water Pollution (Vessels).

OMB Control Number: 1625–0046.

Type of Request: Extension of a currently approved collection.

Affected Public: Operators or owners of vessels over 300 gross tons.

Form: CG–5585, CG–5586, CG–5586–1, CG–5586–2, CG–5586–3, CG–5586–4, and CG–5586–5.

Abstract: The collection of information requires operators of vessels over 300 gross tons to submit to the U.S. Coast Guard evidence of their financial responsibility to meet the maximum amount of liability in case of a spill of either oil or hazardous substances.

Annual Estimated Burden Hours: The estimated burden is 2,162 hours a year.

2. *Title:* Boat Owner's Report, Possible Safety Defect.

OMB Control Number: 1625–0071.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and users of recreational boats and of items of designated associated equipment.

Form: CG–5578.

Abstract: The collection of information provides a form for consumers who believe their recreational boats or designated associated equipment either contains substantial-risk defects or fails to comply with Federal safety standards to report the deficiencies to the Coast Guard for investigation and possible remedy.

Annual Estimated Burden Hours: The estimated burden is 10 hours a year.

Dated: July 23, 2003.

Nathaniel S. Heiner,

Acting Director of Information & Technology.

[FR Doc. 03–19258 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–HY–P; AA–16670; CIA–7]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving coal, oil, and gas for conveyance pursuant to the Alaska Native Claims Settlement Act, the Act of January 2, 1976, and the Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area, as clarified August 31, 1976, will be issued to Cook Inlet Region, Inc. The lands are located in Tps. 8 and 9 N., R. 8 W., and T. 3 N., R. 11 W., Seward Meridian, Alaska, and aggregate approximately 17,156 acres. Notice of the decision will also be published four times in the *Anchorage Daily News*.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until August 28, 2003, to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land

Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Christy Favorite by phone at 907–271–5656, or by e-mail at *cfavorit@ak.blm.gov*.

Christy Favorite,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 03–19203 Filed 7–28–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[DES03–44]

Ten-Year Water Exchange Agreements With Mendota Pool Group, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of a draft environmental impact statement (EIS) and request for comment.

SUMMARY: The Department of the Interior, Bureau of Reclamation (Reclamation), has prepared a draft EIS, pursuant to the National Environmental Policy Act (NEPA), to evaluate the proposed exchange of up to 25,000 acre-feet of water per year over a 10-year period with the Mendota Pool Group.

The purpose of the proposed project is to provide water to irrigable lands on Mendota Pool Group properties in Westlands Water District and San Luis Water District to offset substantial reductions in contract water supplies attributable to the Central Valley Project Improvement Act (CVPIA), the Endangered Species Act listings and regulations, and new Bay-Delta water quality rules. This water would thereby enable the Mendota Pool Group farmers to maintain production on historically irrigated lands. The project is not intended to increase the amount of water for farming activities but would replace some of the contract water lost because of increased environmental regulations that restrict water deliveries south of the export pumps at Tracy, California.

Reclamation has obtained public input on the scope of the project and potential alternatives through comment letters and a public scoping meeting. The EIS addresses the comments received.

There are no known Indian Trust Assets or environmental justice issues associated with the proposed action.

DATES: The draft EIS is available for a 60-day public comment period ending on September 29, 2003. Submit written comments on the draft EIS on or before this date at the address provided below.

ADDRESSES: The draft EIS may be obtained by contacting Mr. David Young at the address provided below. The draft EIS is also available on the Internet at *http://www.usbr.gov* or *http://www.entrix.com*.

Written comments on the draft EIS should be sent to Mr. David Young, Bureau of Reclamation, South-Central California Area Office, 1243 N Street, Fresno CA 93721–1813; by telephone at 559–487–5127; (TDD 559–487–5933); by e-mail at *dkyoung@mp.usbr.gov*; or faxed to 559–487–5397.

FOR FURTHER INFORMATION CONTACT: Mr. Young, Environmental Specialist, at the above address or by telephone at 559–487–5127 or TDD 559–487–5933.

SUPPLEMENTARY INFORMATION: The Delta export service area of the Central Valley Project (CVP) has total contractual obligations and delivery losses of approximately 3.45 million acre-feet per year. The theoretical maximum pumping capability of CVP facilities serving this area is approximately 3.09 million acre-feet per year. Available supplies are apportioned under a hierarchy of allocation in which agricultural water service contracts, totaling about 1.85 million acre-feet per year, are provided water only after all other obligations are met. Implementation of the CVPIA (1992), Endangered Species Act (1993–1995) and revised Bay-Delta water quality standards have further reduced pumping capabilities and water supplies available to agricultural contractors. Currently these parties can expect to receive a long-term average supply of about 50 to 55 percent of contract water as compared to a pre-1992 average of 88 to 92 percent.

Alternatives identified and evaluated provide for continued agricultural production, and include the proposed project, construction of new wells, and fallowing of farmland. The project proponents propose to pump up to 269,600 acre-feet of groundwater over the 10-year period from non-CVP wells located adjacent to the Mendota Pool into the Mendota Pool to make up for a portion of the annual shortfall in the contract water to be delivered via the CVP. The actual quantity of water to be pumped would depend on whether the year is classified as wet (0 acre-feet per year), normal (maximum of 31,600 acre-feet per year), or dry (maximum of 40,000 acre-feet per year). Of the total quantity pumped each year, a maximum of 25,000 acre-feet would be exchanged with Reclamation. This water would be made available to Reclamation in the Mendota Pool to offset their existing water contract obligations. In exchange, Reclamation would make an equivalent amount of CVP water available to the members of the Mendota Pool Group for irrigation purposes at Check 13 of the Delta-Mendota Canal. Any quantity of water pumped beyond the 25,000 acre-feet exchanged would be delivered directly to other lands that are presently under irrigation around the Pool. As part of this program, a maximum of 12,000 acre-feet per year of groundwater would be pumped from deep wells (*i.e.*, screened interval greater than 130 feet deep), with the remainder coming from shallow wells (*i.e.*, screened interval less than 130 feet deep). The proposed project will comply with the terms specified in the Settlement Agreement for Mendota Pool Transfer Pumping Program, effective January 1, 2001.

The primary environmental resource issues that are evaluated in the EIS include groundwater levels, groundwater quality, subsidence, surface water quality, and biological resources. Other resource areas evaluated include cost of water, CVP operations, archaeological and cultural resources, Indian Trust assets, environmental justice, socioeconomic resources, land use, transportation, air quality, and noise.

The environmental review was conducted pursuant to NEPA, the Endangered Species Act, and other applicable laws, and analyzes the potential environmental impacts of implementing each of the feasible alternatives. The EIS is based upon previously prepared environmental reports and ongoing monitoring activities. Public input on alternatives and the criteria for evaluation of the alternatives was obtained through the initial scoping meeting and initial comment letters.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment letter. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: April 23, 2003.

Frank Michny,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 03–19264 Filed 7–28–03; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Work Group (AMWG); Notice of Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of conference call and public meetings.

SUMMARY: The Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMP provides an organization and process to ensure the use of scientific information in decision making concerning Glen Canyon Dam operations and protection of the affected resources consistent with the Grand Canyon Protection Act. The AMP has been organized and includes a federal advisory committee (AMWG), a technical work group (TWG), a monitoring and research center, and independent review panels. The TWG is a subcommittee of the AMWG and provides technical advice and information for the AMWG to act upon.

DATES: The AMWG will conduct the following conference call: Friday, August 8, 2003. The conference call will begin at 9 a.m. and conclude at 11 a.m. Mountain Time.

Agenda: The purpose of the conference call will be to seek approval from the AMWG to modify the ongoing mechanical removal of non-native fish in Grand Canyon during the remainder of Federal fiscal year 2003. The proposed modification, which would involve moving the mechanical removal effort further downstream of the Little Colorado River, was stimulated by a greater than expected success in these efforts. The involved Federal action agencies would like to initiate the change in the proposed action beginning in August and therefore need to do so prior to the AMWG meeting scheduled for August 13–14, 2003.

To Register for the conference call, please contact Linda Whetton at (801) 524–3880 at least two (2) days prior to the call. You will be given the phone number and password at that time.

Date and Location: The AMWG will conduct the following public meeting: Phoenix, Arizona—August 13 to August 14, 2003. The meeting will begin at 9:30 a.m. and conclude at 5 p.m. on the first day and will begin at 8 a.m. and conclude at noon on the second day. The meeting will be held at the Bureau of Indian Affairs—Western Regional Office, 2 Arizona Center, 400 N. 5th Street, Conference Rooms A and B (12th Floor), Phoenix, Arizona.

Agenda: The purpose of the meeting will be to discuss the FY 2004 budget, temperature control device risk assessment, proposed modification of non-native fish mechanical removal, feasibility report on humpback chub augmentation, experimental flows, basin hydrology, environmental compliance, and other administrative and resource issues pertaining to the AMP. In addition, the Humpback Chub Ad Hoc Group will present their Final Report. The Ad Hoc Committee on What's In/Out of the AMP (AHCIO) and will provide an update and the Strategic Plan Ad Hoc Committee will provide comments to the AMWG relative to their review of the Draft Tribal Consultation Plan.

Date and Location: The TWG will conduct the following public meeting: Phoenix, Arizona "October 1 to October 2, 2003. The meeting will begin at 9:30 a.m. and conclude at 5 p.m. on the first day and will begin at 8 a.m. and conclude at noon on the second day. The meeting will be held at the Bureau of Indian Affairs—Western Regional Office, 2 Arizona Center, 400 N. 5th Street, Conference Rooms A and B (12th Floor), Phoenix, Arizona.

Agenda: The purpose of the meeting will be to discuss the BioWest data for downstream of Diamond Creek, multi-attribute tradeoff process, status report on mechanical removal work, vegetation mapping by GCMRC, non-native fish control, tribal consultation plan, and re-initiation of the SCORE (The State of Natural and Cultural Resources in the Colorado River Ecosystem) Report, ad hoc group updates, basin hydrology, environmental compliance, and other administrative and resource issues pertaining to the AMP.

To allow full consideration of information by the AMWG or TWG members, written notice must be provided to Dennis Kubly, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah, 84138; telephone (801) 524–3715; faxogram (801) 524–3858; e-mail at *dkubly@uc.usbr.gov* (5) prior to the meeting. Any written comments received will be provided to the AMWG and TWG members prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Dennis Kubly, telephone (801) 524–3715; faxogram (801) 524–3858; or via e-mail at *dkubly@uc.usbr.gov*.

Dated: July 14, 2003.

Dennis Kubly,

Chief, Adaptive Management Group, Environmental Resources Division, Upper Colorado Regional Office.

[FR Doc. 03–19200 Filed 7–28–03; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–03–025]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 5, 2003 at 10 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. TA–421–3 (Market Disruption) (Certain Brake Drums and Rotors from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the President and United States Trade Representative on August 5, 2003; Commissioners' opinions and recommendations on remedy, if necessary, are currently scheduled to be transmitted to the President and United States Trade Representative on or before August 25, 2003.)
5. Inv. No. 731–TA–1046 (Preliminary) (Tetrahydrofurfuryl Alcohol from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on or before August 7, 2003; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before August 14, 2003.)
6. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: July 24, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–19325 Filed 7–25–03; 11:18 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–03–024]

Sunshine Act Meeting

AGENCY: United States International Trade Commission.

TIME AND DATE: August 4, 2003 at 1 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–1043–1045 (Preliminary) (Polyethylene Retail Carrier Bags from China, Malaysia, and Thailand)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on August 4, 2003; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before August 11, 2003.)
5. Inv. Nos. 731–TA–951–952 (Preliminary) (Remand) (Blast Furnace Coke from China and Japan)—briefing and vote. (The Commission is currently scheduled to transmit its views on remand to the United States Court of International Trade on or before August 18, 2003.)
6. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: July 24, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–19326 Filed 7–25–03; 11:18 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,283]

Advanced Micro Devices (AMD), FAB 25, Austin, TX; Notice of Revised Determination on Reconsideration

By application of April 29, 2003, a petitioner requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation under this case number was for Advanced Micro Devices (AMD), Lone Star Fab Division, Austin, Texas, and resulted in a negative determination issued on April 7, 2003, based on the finding that imports of wafers and dies did not contribute importantly to worker separations at the subject plant. The denial notice was published in the **Federal Register** on April 24, 2003 (68 FR 20177).

To support the request for reconsideration, the petitioner stated that the Department had investigated the wrong worker group. Upon further review, it was revealed that the petitioner had not worked in the Lone Star Fab (also known as Fab 14 and Fab 15) but rather Fab 25, which produced a different product (a microprocessor chip).

Having identified the appropriate worker group, the Department contacted the company regarding imports of products like or directly competitive with those produced at Fab 25. As a result, it was revealed that the subject firm shifted production from Fab 25 to a foreign source within the relevant period, and subsequently imported directly competitive products to the U.S., contributing to layoffs at the subject plant.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Advanced Micro Devices (AMD), Fab 25, Austin, Texas, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Advanced Micro Devices (AMD), Fab 25, Austin, Texas, who became totally or partially separated from employment on or after November 23, 2001, through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 9th day of July 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–19219 Filed 7–28–03; 8:45 am]

BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Employment and Training Administration

[Docket No. TA–W–52,045]

Agere Systems, Integrated Circuits Division, Reading, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 16, 2003, in response to a worker petition filed by the International Brotherhood of Electrical Workers, AFL–CIO, Local 1898 on behlaf of workers at Agere Systems, Integrated Circuits Division, Reading, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–19225 Filed 7–28–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,098]

Colonial Tanning Corporation, Gloversville, NY; Notice of Negative Determination Regarding Application for Reconsideration

By application of June 17, 2003, the Union of Needletrades, Industrial, and Textile Employees requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on May 23, 2003 and published in the **Federal Register** on June 19, 2003 (68 FR 36845).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Colonial Tanning Corporation, Gloversville, New York engaged in the production of tanned leather, was denied because the "contributed importantly" group eligibility requirement of Section 222 of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The Department conducted a survey of the subject firm's major customers regarding their purchases of competitive products in 2001 through April of 2003. The respondents reported no increased imports. The subject firm shifted production to China, but did not import tanned deerskins during the relevant period.

The union alleges that the subject firm is affiliated with two other companies and that these two companies imported tanned leather from foreign sources.

In the original investigation, one of the two companies noted by the union above was listed as a major declining customer; their survey response indicated no imports. In regard to the second company named by the union, a company official was contacted. In regard to this second company, it was revealed that one of the owners of the subject firm also owned the rights to the company name of the second company. It was also revealed that the total sales volume of this affiliated company was negligible relative to the sales volume at the subject firm, and thus any imports that occurred at the second company could not contribute importantly to layoffs at the subject firm.

The union also alleged that subject firm workers should be eligible because workers at a "direct competitor" (Johnstown Leather, TA-W–51,104) were certified eligible for trade adjustment assistance.

A review of the abovementioned case for workers at Johnstown Leather revealed that these workers were certified eligible for trade adjustment assistance based on increased customer imports. However, as Colonial Tanning Corporation has a different major declining customer base, this certification has no bearing on the eligibility of subject firm workers for TAA.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 16th day of July, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–19220 Filed 7–28–03; 8:45 am]

BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,539]

Divine Brothers Company, Utica, NY, Notice of Negative Determination Regarding Application for Reconsideration

By application of June 1, 2003, the Union of Needletrades, Industrial & Textiles Employees, Local 653–T requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on May 6, 2003 and published in the **Federal Register** on May 19, 2003 (68 FR 27107).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Divine Brothers Company, Inc., Utica, New York engaged in the production of industrial metal finishing products and supplies, was denied because criterion (2) was not met. Sales of industrial metal finishing products and supplies increased in 2002 compared to 2001 and remained relatively stable in January–March 2003 compared to the same period in 2002.

In the request for reconsideration, the union alleged that the closure of the Caster and Wheel Division (Truck Wheel) contributed to layoffs.

A company official stated that the company had made a decision to close the abovementioned division and that it closed in May of 2002. However, coinciding with the decline and ultimate closure of this division, other product lines produced by the company increased, which would explain the stable sales figures in the relevant period.

The union official also supplied information concerning allegations of layoffs of this division and bumping rights of employees under union agreements.

The petitioning workers were denied because sales and production did not decline in the relevant period, and workers are not separately identifiable, thus the information is irrelevant to a reconsideration of the original determination.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 11th day of July, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–19222 Filed 7–28–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,366]

Georgia-Pacific Corporation, Operating as James River Paper Co., Inc., Consumer Products Division, Old Town, ME; Notice of Negative Determination Regarding Application for Reconsideration

By application of June 24, 2003, a company official requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on May 16, 2003 and published in the **Federal Register** on June 3, 2003 (68 FR 33195).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Georgia-Pacific Corporation, operating as James River Paper Co., Inc., Old Town, Maine engaged in the production of toilet tissue, towels, napkin paper and converted case products, was denied because the "contributed importantly" group eligibility requirement of Section 222 of the Trade Act of 1974 was not met. The subject firm did not increase its reliance on imports of toilet tissue, towels, napkin paper and converted case products during the relevant period, nor did it shift production to a foreign source. Further, division-wide sales increased during the relevant period.

The company official alleges that, in order to remain competitive, the company was forced to upgrade the raw materials used to make its paper products, and that these raw materials are now obtained from foreign sources. The official further clarifies that, because the Old Town facility was unable to efficiently process this foreign fiber source, the company shifted production to another domestic facility with better capabilities for processing this imported raw material.

The foreign sourcing of raw materials is not a factor in determining the import impact of the finished product. In assessing import impact in connection with petitioning worker eligibility for TAA, the Department considers data regarding imports like or directly competitive with those produced at the subject firm.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 17th day of July, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–19221 Filed 7–28–03; 8:45 am]

BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,084]

Lord Corporation, Aerospace Products Division, Erie, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 18, 2003, in response to a worker petition which was filed by a company official on behalf of workers at Lord Corporation, Aerospace Products Division, Erie, Pennsylvania (TA–W–52,084).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 17th day of July, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–19226 Filed 7–28–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,625]

Motorola, Inc.; iDen Radio Support Center; Elgin, IL; Notice of Negative Determination Regarding Application for Reconsideration

By application of June 21, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Motorola, Inc., iDen Radio Support Center, Elgin, Illinois was signed on May 20, 2003, and published in the **Federal Register** on June 3, 2003 (68 FR 33195).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at Motorola, Inc., iDen Radio Support Center, Elgin, Illinois engaged in activities related to the repair of iDEN cellular radios. The petition was denied because the petitioning workers did not produce an article within the meaning of Section 222 of the Act.

The petitioner questions why the repair work performed at the subject facility does not constitute production.

The Department of Labor, has consistently considered repair work a "service". Further, the North American Industrial Classification System (NAICS), is a standard used by the Department to categorize products and services. Both the 1997 and 2002 editions of the NAICS designate the repair of telephones and two-way radios as classified within a code that signifies services (specifically NAICS 811213).

Only in very limited instances are service workers certified for TAA, namely the worker separations must be caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article and who are currently under certification for TAA.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 18th day of July, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–19223 Filed 7–28–03; 8:45 am]

BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,229]

Motorola, Inc., Global Telecom Solutions Sector (GTSS), Cellular Infrastructure Group, Fort Worth, Texas; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 3, 2003, in response to a petition filed on behalf of workers at Motorola, Inc., Global Telecom Solutions Sector (GTSS), Cellular Infrastructure Group, Fort Worth, Texas.

This petitioning group of workers is covered by an active certification issued on September 30, 2002 and which remains in effect (TA–W–41,716). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 11th day of July 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–19227 Filed 7–28–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,253]

Scope Molding, LLC, Almena, Wisconsin; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 9, 2003 in response to a petition filed on behalf of workers at Scope Molding, Inc., Almena, Wisconsin.

The petitioning group of workers is covered by an earlier petition filed on July 1, 2003 (TA–W–52,216) that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC this 18th day of July, 2003

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–19228 Filed 7–28–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,957]

Temme Mold & Engineering, Evansville, IN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 6, 2003, in response to a petition filed by a company official on behalf of workers at Temme Mold & Engineering, Evansville, Indiana.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 11th day of July, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–19224 Filed 7–28–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed revision of the collection of the Occupational Code Request (OCR) that is being renamed Occupational Code Assignment (OCA) information. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before 60 days after date of publication in the **Federal Register.**

ADDRESSES: Pam Frugoli, Office of Policy Development, Evaluation and Research, Employment Training Administration, Room N–5637, 200 Constitution Avenue, NW., Washington, DC 20210, 202/693–3643 (This is not a toll-free number), Fax 202/693–2766, and e-mail *o-net@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Analysis program developed the Occupational Code Request (OCR) form as a public service to the users of the revised Dictionary of Occupational Titles (DOT) in an effort to help them in obtaining occupational codes and titles for jobs that they were unable to locate in the DOT. With the development and release of the Occupational Information Network (O*NET) system, some modifications were needed to make the OCR form correlate more closely to the information in the O*NET system. The OCR form, with these modifications, has been renamed the Occupational Code Assignment (OCA) form.

The O*NET system classifies nearly all jobs in the United States economy. However, new specialties are constantly evolving and emerging. The use of OCA is voluntary and is provided (1) as a uniform format to the public and private sector to submit information in order to receive an occupational code, (2) to provide input to a database of alternate (lay) titles to facilitate searches for occupational information in O*NET OnLine. (*http://online.onetcenter.org*), O*NET Code Connector (*http://www.onetcodeconnector.org*) as well as America's Career InfoNet (*http://www.acinet.org*), and (3) to assist the O*NET system in identifying potential occupations that may need to be included in future O*NET data collection efforts.

The OCA process is designed to help the occupational information user relate an occupational speciality or a job title to an occupational code and title within the framework of the Standard Occupational Classification (SOC) based O*NET system. The O*NET–SOC system consists of a database that organizes the work done by individuals into approximately 1,000 occupational categories. In addition, O*NET occupations have associated data on the importance and level of a range of occupational characteristics and requirements, including Knowledge, Skills, Abilities, Tasks, and Work Activities. Since the O*NET–SOC code and title also facilitates linkage to national, state, and local occupational employment and wage estimates.

II. Review Focus

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

ETA seeks to provide both the public and private sectors with the capability to make occupational coding inquiries. Members of the public sometimes need to know where their own occupational speciality or job title fits within the O*NET–SOC system. Therefore, a continuing need exists for this service.

The occupational analyst uses the information collection in form ETA 741—Occupational Code Assignment—Part A and Occupational Code Assignment—Request for Additional Information to aid them in assigning the most appropriate occupational code and title to the job or specialty described in the information submitted.

The form was changed in order to correlate more closely with the information in the O*NET system. For example, the OCA form requests new information items including skills, physical activities, knowledge areas, interactions, education, and training and experience.

Type of Review: Revision.

Agency: Employment and Training Administration.

Title: Occupational Code Assignment.

OMB Number: 1205–0137.

Affected Public: Federal government, State and local government, business or other for-profit/not-for profit institutions, and individuals.

Cite/Reference/Form/etc.: Occupational Code Request form was form ETA 741. The "Occupational Code Assignment—Part A" is the name of the newly revised form. The "Occupational Code Assignment—Request for Additional Information" is a newly added form. It will be used only in situations where more detailed information is needed to make an occupation code assignment. See chart below.

Total Respondents: 177.

Frequency: On occasion.

Total Responses: 177.

Average Time per Response: 30 minutes for the OCA—Part A; and 40 minutes for OCA—Part A and the OCA—Request for Additional Information combined.

Estimated Total Burden Hours: 92.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response (hours)	Burden (hours)
OCA—Part A	159	On occasion	159	.5	79.5
OCA—Part A and OCA—Request for additional information.	18	On occasion	18	.67	12
Totals			177		91.5

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $95.06.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: July 22, 2003.

Maria K. Fynn,

Acting Administrator, Office of Policy Development, Evaluation and Research Employment and Training Administration.

[FR Doc. 03–19218 Filed 7–28–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs; OMB Approval of Information Collection; Federal Employees' Compensation Act, As Amended

AGENCY: Office of Workers' Compensation Programs, Employment Standards Administration, Labor.

ACTION: Notice of OMB approval under the Paperwork Reduction Act of 1995.

SUMMARY: The Office of Workers' Compensation Programs (OWCP) is announcing that the Office of Management and Budget (OMB) has approved, under the Paperwork Reduction Act of 1995, a new collection of information under the Federal Employees' Compensation Act, as amended. This notice announces both the OMB approval number and expiration date.

COMPLIANCE DATE: As of July 29, 2003, affected parties must comply with the new information collection requirements described below, which have been approved by OMB under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*

FOR FURTHER INFORMATION CONTACT: Shelby Hallmark, Director, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Room S–3524, 200 Constitution Avenue, NW, Washington, DC 20210. Telephone: 202–693–0036 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On April 11, 2003, OWCP requested OMB approval under the PRA of a new information collection for the Federal Employees' Compensation Act, as amended (FECA), 5 U.S.C. 8101 *et seq.* The new information collection requirements that needed OMB approval are derived from sections 8131 and 8132 of the FECA, and its implementing regulations at 20 CFR 10.707 and 10.710, and consist of requests for information necessary to calculate the amount of the United States' statutory right to a refund out of the proceeds of a judgment or settlement of an action against a third party liable to pay damages for an injury compensable under the FECA.

On July 14, 2003, OMB approved this information collection request for three years. The OMB control number assigned to this information collection is 1215–0200. The approval for this information collection will expire on July 31, 2006.

Signed at Washington, DC this 22nd day of July, 2003.

Shelby Hallmark,

Director, Office of Workers' Compensation Programs, Employment Standards Administration.

[FR Doc. 03–19217 Filed 7–28–03; 8:45 am]

BILLING CODE 4510–CH–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. B and B Coal Company

[Docket No. M–2003–050–C]

B and B Coal Company, 225 Main Street, Joliett, Tremont, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 75.334(a)(2), (e), and (f)(3) (Worked-out areas and areas where pillars are being recovered) to its Rock Ridge Slope (MSHA I.D. No. 36–07741) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the existing standard to permit its former ventilation system and plan to be approved and reinstated for the Rock Ridge Slope anthracite coal mine in lieu of requiring that areas be sealed or ventilated. The petitioner asserts that certain areas of the existing standard would result in risk taking for personnel at the mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Rosebud Mining Company

[Docket No. M–2003–051-C]

Rosebud Mining Company, 301 Market Street, Kittanning, Pennslyvania 16201 has filed a petition to modify the application of 30 CFR 75.1100–2(e)(2) (Quantity and location of firefighting equipment) to its Little Toby Deep Mine (MSHA I.D. No. 36–08847) located in Elk County, Pennsylvania. The petitioner proposes to use two (2) portable fire extinguishers or one fire extinguisher of twice the required capacity at all temporary electrical installations in lieu of using one fire extinguisher and 240 pounds of rock dust. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard and would not cause a diminution of safety to the miners.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to *comments@msha.gov*, or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before August 30, 2003. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia, this 22nd day of July 2003.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 03–19171 Filed 7–28–03; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–084]

NASA Advisory Council, Space Science Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC).

DATES: Monday, August 11, 2003, 8:30 a.m. to 5:30 p.m., Tuesday, August 12, 2003, 8:30 a.m. to 5:30 p.m., and Wednesday, August 13, 2003, 8:30 a.m. to Noon.

ADDRESSES: National Aeronautics and Space Administration, room 6H46, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian R. Norris, Code SB, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4452.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

• AA program Status Report.

• Division Status and Subcommittee Meeting Reports.

• Presentations and Discussion on Explorer and Discovery Program Cost Caps.

• Review of GPRA Science Theme Progress Assessments.

• Technology Management Update.

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. To expedite admittance, attendees can provide identifying information three business days in advance by contacting Ms. Marian Norris via e-mail at *mnorris@nasa.gov* or by telephone at 202/358–4452. Foreign nationals attending this meeting will be required to provide the following information by close of business August 5: full name; gender; date/place of birth; citizenship; visa/greencard information (number, type, expiration date); employer/affiliation information (name of institution, address, country, phone); title/position of attendee. Foreign nationals will be escorted at all times.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Any member of the public may file a written statement with the Committee; such statements should be provided to the contact above no later than five working days before the meeting. Visitors to the meeting will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–19170 Filed 7–28–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Meeting

TIME AND DATE: 10 a.m., Thursday, July 31, 2003.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Quarterly Insurance Fund Report.
2. Reprogramming of NCUA's Operating Budget for 2003.
3. Final Rule: Section 701.21(c)(7)(ii)(C) of NCUA's Rules and Regulations, Interest Rate Ceiling.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, July 31, 2003.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. One (1) Creditor Claim Appeal. Closed pursuant to Exemptions (6) and (8).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone: 703–518–6304.

Becky Baker,

Secretary of the Board

[FR Doc. 03–19305 Filed 7–24–03; 5:14 pm]

BILLING CODE 7533–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, August 5, 2003.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, D.C. 20594.

STATUS: The three items are Open to the Public.

MATTERS TO BE CONSIDERED:

7487A—Railroad Accident Report—Derailment of Amtrak Auto Train P052–18 on the CSXT Railroad near Crescent City, Florida, on April 18, 2002.

7575—Railroad Accident Report—Uncontrolled Movement, Collision and Passenger Fatality on the Angels Flight Railway in Los Angeles, California, on February 1, 2001.

7299A—Aviation Accident Report—Emery Worldwide Airlines, Inc., McDonnell Douglas DC–8–71F, N8079U, Rancho Cordova, California, on February 16, 2000.

News Media Contact: Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314–6305 by Friday, August 1, 2003.

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: July 25, 2003.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 03–19324 Filed 7–25–03; 11:18 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–155 & 72–043]

Consumers Energy Co., Big Rock Point Nuclear Plant; Notice of Receipt, Availability for Comment, and Meeting to Discuss License Termination Plan

The Nuclear Regulatory Commission (NRC) is in receipt of, and is making available for public inspection and comment, the License Termination Plan (LTP) for the Big Rock Point Nuclear Facility (BRP) located in Charlevoix, Michigan.

Reactor operations at the BRP ended in August 29, 1997. The reactor was defueled and all fuel moved to an independent spent fuel storage installation (ISFSI) in March 2003. In accordance with NRC regulations in effect at that time, the licensee submitted a decommissioning plan for the BRP to the NRC in February 1995. When proposed amendments to the NRC's decommissioning regulations were published in the **Federal Register** on July 29, 1996 (61 FR 39278), the licensee requested that the review of the decommissioning plan be suspended. When the amended regulations became effective on August 28, 1996, the submitted decommissioning plan, as supplemented, became the BRP Post Shutdown Decommissioning Activities Report (PSDAR) pursuant to 10 CFR 50.82, as amended. A public meeting was held in Charlevoix, Michigan, on November 13, 1997, to provide information and gather pubic comment on the PSDAR. The facility is undergoing active decontamination and dismantlement.

In accordance with 10 CFR 50.82(a)(9), all power reactor licensees must submit an application for termination of their license. The application for termination of license must be accompanied by or preceded by an LTP submitted for NRC approval. If found acceptable by the NRC staff, the LTP is approved by license amendment, subject to such conditions and limitations as the NRC staff deems appropriate and necessary. The licensee submitted the proposed LTP for the BRP by application dated April 1, 2003. In accordance with 10 CFR 20.1405 and 10 CFR 50.82(a)(9)(iii), the NRC is providing notice to individuals in the vicinity of the site that the NRC is in receipt of the BRP LTP, and will accept comments from affected parties. In accordance with 10 CFR 50.82(a)(9)(iii), the NRC is also providing notice that the NRC staff will conduct a meeting to discuss the BRP LTP on Tuesday, August 5, 2003, at 7 p.m., at the Charlevoix Stroud Hall located at 12491 Waller Road, Charlevoix, Michigan 49720.

The BRP LTP and associated environmental report are available for public inspection at NRC's Public Document Room at NRC Headquarters, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. These documents are available for public review through ADAMS, the NRC's electronic reading room, at: *http://www.nrc.gov/reading-rm/adams.html.*

Dated at Rockville, Maryland, this 21st day of July, 2003.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–19215 Filed 7–28–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–327 and 50–328]

Tennessee Valley Authority; Sequoyah Nuclear Plant, Units 1 and 2, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from title 10 of the Code of Federal Regulations (10 CFR) part 50, section 50.60 for Facility Operating License Nos. DPR–77 and DPR–79, issued to the Tennessee Valley Authority (TVA, the licensee), for operation of the Sequoyah Nuclear Plant (SQN), Units 1 and 2, located in Hamilton County, Tennessee. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would permit the use of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel (B&PV) Code, Section XI Code Case N–640, "Alternative Requirement Fracture Toughness for Development of P–T Limit Curves for ASME B&PV Code, Section XI, Code Case N–640," in lieu of 10 CFR 50, Appendix G, paragraph IV.A.2.b.

The regulation at 10 CFR part 50, section 50.60(a), requires, in part, that except where an exemption is granted by the Commission, all light-water nuclear power reactors must meet the fracture toughness requirements for the reactor coolant pressure boundary set forth in Appendix G to 10 CFR part 50. Appendix G of 10 CFR part 50 requires the establishment of pressure-temperature (P–T) limits for specific material fracture toughness requirements of the reactor coolant pressure boundary materials and mandates the use of the ASME B&PV Code, Section XI, Appendix G. The requirements in 10 CFR 50, Appendix G, establish an adequate margin to brittle failure during normal operation, anticipated operational occurrences, and system hydrostatic tests.

ASME B&PV Code, Section XI, Code Case N–640 permits the use of an alternate reference fracture toughness curve for reactor pressure vessel materials for use in determining the P–T limits. ASME Code Case N–640 permits the use of alternate reference fracture toughness (*i.e.*, use of "K_{IC} fracture toughness curve" instead of "K_{IA} fracture toughness curve," where K_{IC} and K_{IA} are "Reference Stress Intensity Factors," as defined in ASME Code, Section XI, Appendices A and G, respectively) for reactor vessel materials in determining the P–T limits. Since the K_{IC} fracture toughness curve shown in ASME Code, Section XI, Appendix A, Figure A–2200–1, provides greater allowable fracture toughness than the corresponding K_{IA} fracture toughness curve of ASME Code, Section XI, Appendix G, Figure G–2210–1, using ASME Code Case N–640 to establish the P–T limits would be less conservative than the methodology currently endorsed by 10 CFR part 50, Appendix G. Therefore, an exemption to apply ASME Code Case N–640 is required.

The proposed action is in accordance with the licensee's application dated September 6, 2002, as supplemented by letter dated December 19, 2002 and June 24, 2003.

The Need for the Proposed Action

The proposed exemption is needed to allow the licensee to implement ASME Code Case N–640 in order to revise the method used to determine the P–T limits because continued use of the present method for determining P–T limits unnecessarily restricts the P–T operating window. The two primary benefits to the licensee from the use of Code Case N–640 are:

- Challenges to the operators would be reduced since the requirements for maintaining high-vessel temperature during pressure testing would be lessened.
- Enhanced personnel safety would result because of the lower temperatures which would exist during the conduct of inspections in primary containment.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that there are no significant environmental impacts associated with the use of the alternative analysis method to support the revision of the reactor coolant system P–T limits.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types or significant increase in the amounts of effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for SQN, dated February 13, 1974.

Agencies and Persons Consulted

On July 15, 2003, the staff consulted with the Tennessee State official, Ms. Elizabeth Flannagan, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of this environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated September 6, 2002, as supplemented by letter dated December 19, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 23rd day of July 2003.

For The Nuclear Regulatory Commission.

Allen G. Howe,

Chief, Section 2, Project Directorate 2, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–19213 Filed 7–28–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–327 and 50–328]

Tennessee Valley Authority; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Tennessee Valley Authority (the licensee) to withdraw its May 22, 2003, application for proposed amendments to Facility Operating License Nos. DPR–77 and DPR–79 for the Sequoyah Nuclear Plant, Units 1 and 2, in Hamilton County, Tennessee.

The proposed amendment would have revised the limiting condition for operation for Technical Specification (TS) Section 3.7.5, "Ultimate Heat Sink." The licensee requested that the maximum emergency raw cooling water temperature requirement in TS 3.7.5.b be increased from 83 degrees Fahrenheit (°F) to 87 °F and that the minimum ultimate heat sink water elevation in TS 3.7.5.a be increased from 670 feet to 674 feet.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 8, 2003 (68 FR 40719). However, by letter dated July 17, 2003, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 22, 2003, and the licensee's letter dated July 17, 2003,

which withdrew the application for license amendments. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 23rd day of July 2003.

For the Nuclear Regulatory Commission.

Michael L. Marshall, Jr.,

Senior Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–19214 Filed 7–28–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 206(4)–3, SEC File No. 270–218, OMB Control No. 3235–0242.

Rule 206(4)–4, SEC File No. 270–304, OMB Control No. 3235–0345.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collections of information discussed below.

Rule 206(4)–3, which is entitled "Cash Payments for Client Solicitations," provides restrictions on cash payments for client solicitations. The rule requires that an adviser pay all solicitors' fees pursuant to a written agreement. When an adviser will provide only impersonal advisory services to the prospective client, the rule imposes no disclosure requirements. When the solicitor is affiliated with the adviser and the adviser will provide individualized services, the solicitor must, at the time of the solicitation, indicate to prospective clients that he is affiliated with the adviser. When the solicitor is not affiliated with the adviser and the adviser will provide individualized services, the solicitor must, at the time of the solicitation, provide the prospective client with a copy of the adviser's brochure and a disclosure document containing information specified in rule 206(4)–3. The information rule 206(4)–3 is necessary to inform advisory clients about the nature of the solicitor's financial interest in the recommendation so they may consider the solicitor's potential bias, and to protect investors against solicitation activities being carried out in a manner inconsistent with the adviser's fiduciary duty to clients. Rule 206(4)–3 is applicable to all registered investment advisers. The Commission believes that approximately 1,560 of these advisers have cash referral fee arrangements. The rule requires approximately 7.04 burden hours per year per adviser and results in a total of approximately 10,982 total burden hours (7.04 × 1,560) for all advisers.

Rule 206(4)–4, which is entitled "Financial and Disciplinary Information that Investment Advisers Must Disclose to Clients," requires advisers to disclose certain financial and disciplinary information to clients. The disclosure requirements in rule 206(4)–4 are designed so that a client will have information about an adviser's financial condition and disciplinary events that may be material to an evaluation of the adviser's integrity or ability to meet contractual commitments to clients. We estimate that approximately 1,349 advisers are subject to this rule. The rule requires approximately 7.5 burden hours per year per adviser and amounts to approximately 10,118 total burden hours (7.5 × 1,349) for all advisers.

The disclosure requirements of rules 206(4)–3 and 206(4)–4 do not require recordkeeping or record retention. The collections of information requirements under the rules are mandatory. Information subject to the disclosure requirements of rules 206(4)–3 and 206(4)–4 is not submitted to the Commission. Accordingly, the disclosures pursuant to the rules are not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 22, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–19180 Filed 7–28–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549–0004.

Extension: Rule 27f–1 and Form N–27F–1, SEC File No. 270–487, OMB Control No. 3235–0546.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350l *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collections of information under the Investment Company Act of 1940 ("Act") summarized below. The Commission plans to submit these collections of information to the Office of Management and Budget for approval.

Rule 27f–1 [17 CFR 270.27f–1] is entitled "Notice of Right of Withdrawal Required to Be Mailed to Periodic Payment Plan Certificate Holders and Exemption from Section 27(f) for Certain Periodic Payment Plan Certificates." Form N–27F–1 is entitled "Notice to Periodic Payment Plan Certificate Holders of 45 Day Withdrawal Right with Respect to Periodic Payment Plan Certificates." Form N–27F–1, which is prescribed by rule 27f–1, is used to notify recent purchasers of periodic payment plan certificates, of their right under section 27(f) of the Act to return the certificates within a specified period for a full refund. The Form N–27F–1 notice, which is sent directly to holders of periodic payment plan certificates, serves to alert purchasers of periodic payment plans of their rights in connection with their plan certificates.

Commission staff estimates that there are three issuers of periodic payment plan certificates affected by rule 27f–1. The frequency with which each of these issuers or their representatives must file Form N–27F–1 notices varies with the number of periodic payment plans sold. The Commission estimates, however, that approximately 5,907 Form N–27F–1 notices are sent out annually. The Commission estimates that all the issuers that send Form N–27F–1 notices use outside contractors to print and distribute the notices, and incur no hourly burden. The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.[1]

Complying with the collection of information requirements of rule 27f–1 is mandatory for custodian banks of periodic payment plans for which the sales load deducted from any payment exceeds 9 percent of the payment.[2] The information provided pursuant to rule 27f–1 will be provided to third parties and, therefore, will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0004.

Dated: July 22, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–19181 Filed 7–28–03; 8:45 am]

BILLING CODE 8010–01–P

[1] This estimate is based on informal conversations between the Commission staff and representatives of periodic payment plan issuers.

[2] The rule also permits the issuer, the principal underwriter for, or the depositor of, the issuer or a record-keeping agent for the issuer to mail the notice if the custodian bank has delegated the mailing of the notice to any of them or if the issuer has been permitted to operate without a custodian bank by Commission order. *See* 17 CFR 270.27f–1.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48212; File No. PCAOB–2003–01]

Public Company Accounting Oversight Board; Order Approving Proposed Rules Relating to Bylaws

July 23, 2003.

I. Introduction

On March 3, 2003, the Public Company Accounting Oversight Board ("Board" or "PCAOB") filed with the Securities and Exchange Commission ("Commission") proposed rules PCAOB–2003–01 pursuant to Sections 101 and 107 of the Sarbanes-Oxley Act of 2002 ("Act"). On April 30, 2003, the PCAOB filed amendment No. 1 to those proposed rules. Notice of the bylaws, as amended, was published in the **Federal Register** on June 18, 2003.[1] The Commission received no comment letters. For the reasons discussed below, the Commission is granting approval of the proposed rules.

II. Description

Section 101(d) of the Act directs the PCAOB to organize and achieve the capacity necessary to carry out the purposes of the Act, and Section 101(g)(1) of the Act directs the PCAOB to adopt rules to provide for the operation and administration of the Board, the exercise of its authority, and the performance of its responsibilities under the Act. In furtherance of these provisions and its general obligations under the Act, the PCAOB has adopted a set of bylaws to establish rules, standards and procedures for the conduct of the PCAOB's business affairs. The PCAOB approved the bylaws on January 9, 2003, and authorized filing them with the Commission.[2] The bylaws were filed with the Commission's Office of the Secretary in March 2003 for publication and comment pursuant to the requirements of Section 107(b) of the Act and Section 19(b) of the Securities Exchange Act of 1934 ("Exchange Act"). On April 25, 2003, the PCAOB adopted an amendment to Article VI of the bylaws to specify the powers of the PCAOB's Chair. On April 30, 2003, the PCAOB filed its Amendment No. 1 to the proposed bylaws.

The bylaws consist of nine Articles and contain, among other things:

A. Rules to determine the presence of a quorum of the PCAOB.

B. Establishment of a requirement to hold at least one public meeting per month.

C. Appointment of officers of the PCAOB.

D. Terms of indemnification of officers, employees and members of the PCAOB against claims arising from conduct in connection with the performance of their duties to the PCAOB.

E. Grant of authority to the PCAOB to purchase insurance against claims that may be asserted against officers, employees and members of the PCAOB in connection with the business relationship between such persons and the PCAOB.

F. Grant of authority to the PCAOB to adopt rules to govern the PCAOB as deemed necessary or appropriate to enable the PCAOB to discharge its responsibilities under the Act.

G. Rules under which capital expenditures and investments may be made by the PCAOB.

H. Establishment of a requirement that the PCAOB retain an accounting firm to annually audit the financial records of the PCAOB.

I. Delineation of the authority of the Chairman.

III. Discussion

The Act requires the Board, among other things, to oversee the audits of the financial statements of public companies that are subject to the securities laws in order to protect the interests of investors and further the public interest in having auditors prepare informative, accurate, and independent audit reports.[3]

Title I of the Act established the Board as a nonprofit corporation, subject to and with all the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act.[4] The Board's bylaws implement Title I of the Act by establishing a principal office in Washington, DC, and by establishing the composition of a Governing Board and the powers and duties of the Governing

[1] Securities Exchange Act Release No. 48027 (June 13, 2003); 68 FR 36614 (June 18, 2003).

[2] Under the Act, the Board's bylaws are rules that must be approved by the Commission. See Section 2(a)(13) of the Act.

[3] Section 101(a) of the Act.

[4] Section 101(b) of the Act.

Board and officers. The bylaws are an important part of the Board's governing documents and establish procedures for the business operation and administration of the Board. The bylaws are intended to facilitate fulfillment of the Board's obligations under the Act.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rules are consistent with the requirements of the Act and are necessary and appropriate in the public interest and for the protection of investors.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rules (File No. PCAOB–2003–01) be and hereby are approved.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–19178 Filed 7–28–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48210; File No. SR–CBOE–2003–15]

Self Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Relating to an Amendment to Rule 17.2 of the CBOE's Disciplinary Rules Concerning the Initiation of Investigations of Possible Violations Within the Disciplinary Jurisdiction of the Exchange

July 23, 2003.

On April 7, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend CBOE Rule 17.2 of its Disciplinary Rules concerning the initiation of investigations of possible violations within the disciplinary jurisdiction of the Exchange. On May 30, 2003, the CBOE filed Amendment No. 1.[3]

The proposed rule change was published for comment in the **Federal Register** on June 23, 2003.[4] The Commission received no comments on the proposal, as amended.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[5] and, in particular, the requirements of section 6 of the Act[6] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change, as amended, is consistent with section 6(b)(5)[7] in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The Commission also finds that the proposed rule change, as amended, is consistent with sections 6(b)(1),[8] 6(b)(6),[9] and 6(b)(7)[10] of the Act in that it requires compliance by the Exchange members and persons associated with its members with the Act, the rules and regulations thereunder, and Exchange rules; and provides a fair procedure for the disciplining of Exchange members. In particular, the Commission believes that the proposed rule change, as amended, should help to clarify and make explicit that the Exchange can initiate investigations in its disciplinary jurisdiction on its own when it believes that there is a reasonable basis to do so, and that complaints made to the Exchange alleging violations made by a complainant can either be oral or written.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (File No. SR–CBOE–2003–15), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–19183 Filed 7–28–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from J. Patrick Sexon, Assistant General Counsel, CBOE, to Sapna C. Patel, Attorney, Division of Market Regulation, Commission, dated May 29, 2003 ("Amendment No. 1").

[4] *See* Securities Exchange Act Release No. 48038 (June 16, 2003), 68 FR 37181.

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(1).

[9] 15 U.S.C. 78f(b)(6).

[10] 15 U.S.C. 78f(b)(7).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48209; File No. SR–EMCC–2003–01]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to EMCC's Capital Requirements for Members

July 22, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 8, 2003, Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by EMCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend the general continuance standards for continued membership in EMCC's Rule 2, Section 7.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. EMCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

EMCC's Rule 2 ("Members"), Section 6, ("Admission Criteria for Members") provides that if an applicant does not meet the minimum capital requirements set forth in Section 6, EMCC's Board of Directors may include for such purposes the capital of an affiliate of the applicant if the affiliate delivers to EMCC a satisfactory guaranty. The purpose of the proposed rule change is to permit any existing member of EMCC who no longer meets the capital requirements set forth in Section 6 to also have the capital of an affiliate be included in calculating the member's continuance requirements provided that the affiliate enters in a similar form of guaranty.

EMCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it will permit members to have the same standards applicable to their participation in EMCC as Applicants have.

(B) Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change would have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments from EMCC members have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–EMCC–2003–01. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail, but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of EMCC. All submissions should refer to the File No. SR–EMCC–2003–01 and should be submitted by August 19, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–19239 Filed 7–28–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48206; File No. SR–Phlx–2003–45]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Volume Threshold for the Options Specialist Shortfall Fee

July 22, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 25, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its Equity Option Specialist Deficit (Shortfall) fee ("shortfall fee") to reduce the total national monthly contract volume threshold associated with the shortfall fee from the current rate of 14 percent to 12 percent for specialists trading in any Top 120 Option.[3]

Currently, specialists[4] are required to reach a total national monthly contract volume threshold of 14 percent in order not to be charged a shortfall fee by the Phlx.[5] Under this proposal, the total national monthly contract volume threshold would be reduced to 12 percent.

The current rate of $0.35 per contract and other procedures relating to shortfall fee, including the Specialist Deficit (Shortfall Fee) Credit, remain unchanged at this time.[6]

The Exchange intends to implement the 12 percent total national monthly contract volume threshold for transactions settling on or after July 1, 2003.[7]

The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the

[3] A Top 120 Option is defined as one of the 120 most actively traded equity options in terms of the total number of contracts in that option that were traded nationally for a specified month, based on volume reflected by the Options Clearing Corporation.

[4] The Exchange uses the terms "specialist" and "specialist unit" interchangeably herein.

[5] See Securities Exchange Act Release No. 45322 (January 22, 2002), 67 FR 3927 (January 28, 2002) (SR–Phlx–2001–115).

[6] A shortfall credit of $0.35 per contract may be earned toward previously-imposed shortfall fees for each contract traded in excess of the 14 percent volume threshold during a subsequent monthly time period. See Securities Exchange Act Release No. 45322 (January 22, 2002), 67 FR 3927 (January 28, 2002) (SR–Phlx–2001–115). The Exchange intends to file a separate proposed rule change to eliminate the shortfall credit and to clarify the application of the credit while it was in effect.

[7] The shortfall fee had heretofore been eligible for a monthly credit of up to $1,000 to be applied against certain fees, dues and charges and other amounts owed to the Exchange by certain members. See Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–2001–49). This credit program expired effective May 2003. The Exchange intends to file a separate proposed rule change to remove references to the member credit throughout the entire schedule of dues, fees and charges.

proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to reduce the economic burden on specialists who are competing for order flow in the Top 120 Options and to remain competitive. The 12 percent volume threshold should continue to encourage specialists to compete for order flow in the national market, while lessening the economic burdens placed on specialists from the imposition of the shortfall fee at a higher volume threshold.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(4) of the Act,[9] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and subparagraph (f)(2) of Rule 19b–4[11] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–45 and should be submitted by August 19, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–19179 Filed 7–28–03; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78f(b).
[9] 15 U.S.C. 78f(b)(4).
[10] 15 U.S.C. 78s(b)(3)(A)(ii).
[11] 17 CFR 240.19b–4(f)(2).
[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48206; File No. SR–Phlx–2003–48]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Specialist Deficit (Shortfall) Fee Credit

July 22, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 1, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its schedule of dues, fees and charges to: (1) Eliminate the Exchange's Equity Option Specialist Deficit (Shortfall) fee credit ("shortfall credit"); and (2) clarify the application of the shortfall credit during the time period during which it was in effect.

Pursuant to the shortfall credit, a credit of $.35 per contract could be earned by options specialists for all contracts traded in excess of 14 percent of the total national monthly contract volume.[3] The credits could be applied against previously imposed Equity Option Specialist Deficit (Shortfall) fees for the preceding six months for issues that, in the month the deficit occurred, the equity option traded in excess of 10 million contracts per month.[4] The Exchange proposes to clarify that a specialist may earn a shortfall credit of $.35 per contract for all contracts traded in excess of 14 percent for previously imposed shortfall fees for the preceding six months for issues that, in the month the deficit occurred, the equity option traded in excess of 10 million contract *sides* per month.[5]

The Exchange intends to eliminate the shortfall credit for all transactions settling on or after July 1, 2003.

The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to eliminate the Exchange's shortfall credit due to recent revisions to the Exchange's Specialist Deficit (Shortfall) fee program.[6] The Exchange no longer wishes to allow for a shortfall credit due to these recent changes. However, the Exchange also seeks to clarify the application of the shortfall credit during the time period during which it was in effect in order to minimize member confusion.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[7] in general, and furthers the objectives of section 6(b)(4) of the Act,[8] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[9] and subparagraph (f)(2) of Rule 19b–4[10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–48 and should be submitted by August 19, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–19182 Filed 7–28–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] *See* Securities Exchange Act Release No. 45322 (January 22, 2002), 67 FR 3927 (January 28, 2002) (SR–Phlx–2001–115).
[4] The contract volume reflects the total number of contracts in an option that were traded nationally for a specified month, based on volume reflected by The Options Clearing Corporation.
[5] *See* Securities Exchange Act Release No. 44892 (October 1, 2001), 66 FR 51487 (October 9, 2001) (SR–Phlx–2001–83). In the proposed rule change submitted in connection with the shortfall credit, the word "sides" was inadvertently excluded from the proposal. The shortfall credit is more easily attainable if the threshold calculation is based on contract sides. For example, 10 million contracts equal 20 million contract sides.
[6] *See* SR–Phlx–2003–45, submitted on June 25, 2003 and SR–Phlx–2003–47, submitted on June 27, 2003. These filings revised the shortfall fee by decreasing the total national monthly contract volume threshold from 14 percent to 12 percent for specialists trading any Top 120 Option and imposed a limit of $10,000 to the specialist on the monthly amount of the shortfall fee for any Top 120 Option, provided certain conditions are met.
[7] 15 U.S.C. 78f(b).
[8] 15 U.S.C. 78f(b)(4).
[9] 15 U.S.C. 78s(b)(3)(A)(ii).
[10] 17 CFR 240.19b–4(f)(2).
[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48205; File No. SR–Phlx–2003–50]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Payment for Order Flow Fees for the Top 120 Options

July 22, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 11, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which the Phlx has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to establish its options payment for order flow fees imposed on the transactions of Phlx Registered Options Traders ("ROTs") for the period from August through October 2003 for the top 120 options based on volume statistics from April, May, and June 2003,[3] as set forth in the ROT Equity Option Payment for Order Flow Charges Schedule[4] and subject to certain exceptions listed below. The Phlx intends to implement the payment for order flow fees for trades settling on or after August 1, 2003 through October 31, 2003. The rate levels would not change: The top-ranked equity option would be charged a fee of $1.00 per contract; the next 49 equity options would be charged a fee of $.40 per contract;[5] and no fee would be imposed for the remaining equity options in the top 120. The ROT Equity Option Payment for Order Flow Charges Schedule is available at the Phlx and at the Commission.

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] The Exchange's payment for order flow fee is imposed on transactions in the top 120 most actively traded equity options in terms of the total number of contracts that are traded nationally, based on volume statistics provided by the Options Clearing Corporation. The measuring period for the top 120 options encompasses three months, and the Phlx files a separate proposed rule change for each three-month trading period. With respect to the payment for order flow fees imposed on trades settling on or after May 1, 2003 through July 31, 2003, for example, the measuring period for the top 120 options was based on volume statistics from January, February, and March 2003. *See* Securities Exchange Act Release No. 47805 (May 6, 2003), 68 FR 25669 (May 13, 2003) (SR–Phlx–2003–34). For the payment for order flow fees imposed on trades settling on or after August 1, 2003 through October 31, 2003, as set forth in this proposal, the measuring period for the top 120 options is based on volume statistics from April, May, and June 2003.
[4] To avoid confusion, the ROT Equity Option Payment for Order Flow Charges Schedule reflects only those options being charged more than $0.00.
[5] The fees for the equity options ranked from two through fifty recently decreased from $0.50 per contract to $0.40 per contract. *See* Securities Exchange Act Release No. 48032 (June 13, 2003), 68 FR 37194 (June 23, 2003) (SR–Phlx–2003–42).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of the statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Phlx recently reinstated its payment for order flow program.[6] Under the program, the Phlx charges ROTs a per-contract fee with respect to their transactions in the top 120 most actively traded equity options issues, subject to certain exceptions.[7] The fees are set forth in the Phlx's ROT Equity Option Payment for Order Flow Charges Schedule.

1. Purpose

The purpose of the proposed rule change is to establish the applicable payment for order flow fees for the top 120 options for trades settling on or after August 1, 2003 through October 31, 2003. The Phlx will file with the Commission a proposed rule change to address changes to the fee schedule for subsequent time periods. The Phlx is not making any other changes to its payment for order flow program at this time.

2. Statutory Basis

The Exchange believes that this proposal to amend its schedule of dues, fees and charges would be an equitable allocation of reasonable fees among Phlx members, and that the proposal is consistent with section 6(b) of the Act[8] and furthers the objectives of section 6(b)(4) of the Act.[9]

[6] *See* Securities Exchange Act Release No. 47090 (December 23, 2002), 68 FR 141 (January 2, 2003) (SR–Phlx–2002–75).

[7] The payment for order flow fee does not apply to specialist transactions or to transactions between: (1) A ROT and a specialist; (2) a ROT and a ROT; (3) a ROT and a firm; and (4) a ROT and a broker-dealer. According to the Phlx, the fee is not imposed with respect to the above-specified transactions because the primary focus of the payment for order flow program is to attract order flow from customers. The payment for order flow fee also does not apply to index or foreign currency options.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Phlx neither solicited nor received written comments on this proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act[10] and Rule 19b–4(f)(2) thereunder.[11] Accordingly, the proposal has taken effect upon filing with the Commission. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–50 and should be submitted by August 19, 2003.

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–19184 Filed 7–28–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48207; File No. SR–Phlx–2003–47]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Equity Option Specialist Deficit (Shortfall) Fee

July 22, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 27, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its schedule of dues, fees and charges to amend the Equity Option Specialist Deficit (Shortfall) fee ("shortfall fee") to impose a limit of $10,000 to the specialist[3] on the monthly amount of the shortfall fee for any Top 120 Equity Option,[4] provided that the market share effected on the Phlx for a Top 120 Option is equal to or greater than 50 percent of the current total national monthly contract volume threshold ("volume threshold") in effect. As of July 1, 2003, the volume threshold is 12 percent in most cases.[5]

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange uses the terms "specialist" and "specialist unit" interchangeably herein.

[4] A Top 120 Option is defined as one of the 120 most actively traded equity options in terms of the total number of contracts in that option that were traded nationally for a specified month, based on volume reflected by OCC.

[5] An exception to the volume threshold amount relates to a transition period for newly listed options, which is described in Footnote 9.

Currently, the Exchange imposes a fee of $0.35 per contract to be paid by the specialist trading any Top 120 Option if at least 14 percent of the total national monthly contract volume for such Top 120 Option is not effected on the Exchange in that month.[6] Effective July 1, 2003, the Exchange intends to reduce the volume threshold rate to 12 percent.[7] Therefore, as of July 1, 2003, for each month, if a specialist unit trades an amount equal to or greater than 6 percent of the total national market share, the shortfall fee will be imposed, but limited to $10,000.[8]

For example:

	Specialist market share for one month (in percent)	Full shortfall fee at 12%	Shortfall fee under new proposal
Scenario No. 1	9.1	[9]$18,976	$10,000
Scenario No. 2	8.8	14,851	10,000
Scenario No. 3	5.6	10,916	10,916
Scenario No. 4	5.4	21,944	21,944

The current rate of $0.35 per contract and other procedures relating to the shortfall fee, including the Specialist Deficit (Shortfall Fee) Credit, remain unchanged at this time.[10]

The Exchange intends to implement the monthly shortfall fee limited at $10,000, as described above, for transactions settling on or after July 1, 2003.[11]

The text of the proposed rule change is available at the Office of the Secretary, the Phlx, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[6] *See* Securities Exchange Act Release No. 45322 (January 22, 2002), 67 FR 3927 (January 28, 2002) (SR–Phlx–2001–115).

[7] The Exchange recently submitted a proposed rule change to the Securities and Exchange Commission to lower the volume threshold from the current rate of 14 percent to 12 percent, effective for transactions settling on or after July 1, 2003. *See* SR–Phlx–2003–45.

[8] Pursuant to the Exchange's current shortfall fee program, the shortfall fee is imposed in stages for newly listed options, such that the requisite volume threshold is three percent for the first full calendar month of trading and six percent for the second full calendar month of trading. Under the current proposal, the requisite volume threshold of three percent and six percent would remain unchanged, however, the $10,000 limit would apply if at least 1.5 percent of the total national monthly contract volume was reached in the first calendar month of trading and at least three percent of the total national monthly contract volume was reached in the second full calendar month of trading. *See* Securities Exchange Act Release No. 43201 (August 23, 2000), 65 FR 52465 (August 29, 2000) (SR–Phlx–00–71).

[9] For example, the detailed figures for scenario number one are as follows: with a hypothetical total volume of 1,886,569 contracts and total Phlx volume of 172,172 contracts, Phlx target of 12 percent of total national would equal 226,388 contracts (1,886,569 × 12 percent). The volume shortfall in contracts is 54,216 (226,388 − 172,172). Therefore, the shortfall fee totals $18,976 (54,216 × $.35). However, the shortfall fee owed to the Exchange by the specialist, pursuant to this proposal, would be limited to $10,000 because the specialist reached 9.1 percent, which is at least 50 percent (*i.e.* greater than 6 percent) of the total volume threshold of 12 percent.

[10] A shortfall credit of $0.35 per contract may be earned toward previously-imposed shortfall fees for each contract traded in excess of the 14 percent volume threshold during a subsequent monthly time period. *See* Securities Exchange Act Release No. 45322 (January 22, 2002), 67 FR 3927 (January 28, 2002) (SR–Phlx–2001–115). The Exchange intends to file a separate proposed rule change to eliminate the shortfall credit and to clarify the application of the credit while it was in effect.

[11] The shortfall fee had heretofore been eligible for a monthly credit of up to $1,000 to be applied against certain fees, dues and charges and other amounts owed to the Exchange by certain members. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–2001–49). This credit program expired effective May 2003. The Exchange intends to file a separate proposed rule change to remove references to the member credit throughout the entire schedule of dues, fees and charges.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to reduce the burden on specialists who are competing for order flow in the national market in the Top 120 Options. Limiting the monthly amount of the shortfall fee to $10,000, provided that the specialist unit garners at least 50 percent of the current volume threshold, should encourage specialists to continue to compete for market share in the Top 120 Options, while reducing the economic burden on specialists and eliminating a potential significant liability provided certain lower volume thresholds are achieved.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[12] in general, and furthers the objectives of section 6(b)(4) of the Act,[13] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[14] and subparagraph (f)(2) of Rule 19b–4[15] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 240.19b–4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–47 and should be submitted by August 19, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–19165 Filed 7–28–03; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3528, Amdt. 1]

State of Ohio

In accordance with the notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective July 11, 2003, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on July 4, 2003 and continuing through July 11, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is September 15, 2003, and for economic injury the deadline is April 15, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

[16] 17 CFR 200.30–3(a)(12).

Dated: July 23, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–19262 Filed 7–28–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3512, Amdt. 6]

State of West Virginia

In accordance with the notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective July 21, 2003, the above numbered declaration is hereby amended to include Preston County in the State of West Virginia as a disaster area due to damages caused by severe storms, flooding, and landslides beginning on June 11, 2003 and continuing through July 15, 2003.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Grant and Tucker in the State of West Virginia; and Garrett County in the State of Maryland may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 20, 2003, and for economic injury the deadline is March 22, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 23, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–19263 Filed 7–28–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4417]

Notice of Receipt of Application for a Presidential Permit for Pipeline Facilities To Be Constructed and Maintained on the Border of the United States

AGENCY: Department of State, Office of International Energy and Commodities Policy.

ACTION: Notice.

Notice is hereby given that the Department of State has received an application from Valero Logistics Operations, L.P. (Valero) for a Presidential permit, pursuant to Executive Order 11423 of August 16, 1968, as amended by Executive Order 12847 of May 17, 1993 and Executive Order 13284 of January 23, 2003, authorizing the construction, connection, operation, and maintenance at the U.S.-Mexican border in the vicinity of Laredo, Texas of a liquid pipeline capable of carrying liquefied petroleum gas (LPG), and related facilities.

Valero is a corporation organized and existing under the laws of the State of Texas and with its principal office located in San Antonio, Texas. The proposed new 8⅝ inch diameter pipeline would originate at an existing Valero pipeline system in Laredo, Texas and cover approximately 10.4 miles, crossing under the Rio Grande River and terminating at a new pipeline that will be constructed, owned and operated by Valero Internacional, S. de R.L. de C.V., a subsidiary of Valero, in Nuevo Laredo, Tamaulipas, Mexico. It is anticipated that initial contract deliveries of LPG to Mexico will be 150,000 barrels per month in Nuevo Laredo, but the pipeline capacity would be approximately 32,400 barrels of LPG per day in either direction.

As required by E.O. 11423, the Department of State is circulating this application to concerned federal agencies for comment.

DATES: Interested parties are invited to submit, in duplicate, comments relative to this proposal on or before August 28, 2003, to Pedro Erviti, Office of International Energy and Commodities Policy, Department of State, Washington, DC 20520. The application and related documents that are part of the record to be considered by the Department of State in connection with this application are available for inspection in the Office of International Energy and Commodities Policy during normal business hours.

FOR FURTHER INFORMATION CONTACT: Pedro Erviti, Office of International Energy and Commodities Policy (EB/ESC/IEC/EPC), Department of State, Washington, DC 20520; or by telephone at (202) 647–1291; or by fax at (202) 647–4037.

Dated: July 21, 2003.

Matthew T. McManus,

Acting Director, Office of International Energy and Commodities Policy, Department of State.

[FR Doc. 03–18999 Filed 7–28–03; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending July 18, 2003

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2003–15685.
Date Filed: July 15, 2003.
Parties: Members of the International Air Transport Association.
Subject:
PTC12 CAN–EUR 0094 dated June 17, 2003
TC12 Canada-Europe Resolutions r1–r16
Technical Correction—PTC12 CAN–EUR 0095 dated June 24, 2003
Minutes—PTC12 CAN–EUR 0096 dated July 15, 2003
Tables—PTC12 CAN–EUR Fares 0032 dated June 27, 2003
Intended effective date: November 1, 2003

Docket Number: OST–2003–15697.
Date Filed: July 16, 2003.
Parties: Members of the International Air Transport Association.
Subject:
PTC12 USA–EUR 0157 dated July 4, 2003
Mail Vote 308 r1–r18
TC12 North Atlantic USA-Europe (except between USA and Austria, Czech Republic, Finland, France, Germany, Iceland, Italy, Netherlands, Scandinavia, Switzerland)
PTC12 USA–EUR 0158 dated July 4, 2003
Mail Vote 309 r19–r34
TC12 North Atlantic USA-Europe (between USA and Austria, Czech Republic, Finland, France, Germany, Iceland, Italy, Netherlands, Scandinavia, Switzerland)
Minutes—PTC12 USA–EUR 0159 dated July 15, 2003
Tables—PTC12 USA–EUR Fares 0078 dated July 4, 2003
Intended effective date: November 1, 2003

Docket Number: OST–2003–15706.
Date Filed: July 17, 2003.
Parties: Members of the International Air Transport Association.
Subject:
Mail Vote 316
PTC123 0245 dated July 22, 2003
North, Mid, South Atlantic Passenger Amending Resolution from Sri Lanka r1–r14
Intended effective date: August 15, 2003.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 03–19241 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending July 18, 2003

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2003–6319.

Date Filed: July 16, 2003.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 6, 2003.

Description: Application of Northwest Airlines, Inc., pursuant to 49 U.S.C. 41102 and subpart B, requesting an amendment of its experimental certificate of public convenience and necessity for Route 564 (U.S.-Mexico) to incorporate authority for service between Los Angeles and Guadalajara. Northwest also requests that the Department integrate this authority with all of Northwest's existing certificate and exemption authority to the extent consistent with U.S. bilateral agreements and Department policy.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 03–19242 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003–15739]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel CAVALIER.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15739 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 28, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15739. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket

is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel CAVALIER is:

Intended Use: "Day and term charters with twelve passengers or less".

Geographic Region: "Maine to Florida Keys, and the Great Lakes."

Dated: July 22, 2003.

By order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 03–19267 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003–15740]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel PAINKILLER.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15740 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 28, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15470. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel PAINKILLER is:

Intended Use: "Crewed sailing charters."

Geographic Region: "California."

Dated: July 22, 2003.

By order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 03–19270 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003–15738]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel RAGNAR.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15738 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 28, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15738. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel RAGNAR is:

Intended Use: "Coastal, day and overnight charters in the Inland waters of the Northeastern U.S."

Geographic Region: "Maine to New York."

Dated: July 22, 2003.

By order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 03–19268 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003–15741]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel TAKE TIME.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15741 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before August 28, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15741. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel TAKE TIME is:

Intended Use: "Charter is for small groups to cruise on the boat weekends or weeks at a time. We will be going up and down the East Coast, with people that would like to cruise the waters."

Geographic Region: "The East Coast of the United States, including Florida."

Dated: July 22, 2003.

By order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 03–19269 Filed 7–28–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34377]

The Burlington Northern and Santa Fe Railway Company—Temporary Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railway Company (UP) has agreed to grant temporary overhead trackage rights to The Burlington Northern and Santa Fe Railway Company (BNSF) over UP's Memphis Subdivision lines between West Memphis, AR, at UP milepost 375.9, and Memphis, TN, at UP milepost 378.1, a distance of approximately 2.2 miles.

The transaction is scheduled to become effective on July 16, 2003, and the authorization is scheduled to expire on October 2, 2003. The purpose of the temporary trackage rights is to allow BNSF to bridge its train service while its main lines are out of service due to certain programmed track, roadbed, and structural maintenance.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), *aff'd sub nom. Railway Labor Executives' Ass'n* v. *United States*, 675 F.2d 1248 (DC Cir. 1982).

This notice is filed under 49 CFR 1180.2(d)(8). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34377, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Michael E. Roper, 2500 Lou Menk Drive, P. O Box 961039, Fort Worth, TX 76161–0039.

Board decisions and notices are available on our website at *http://www.stb.dot.gov*.

Decided: July 18, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–18973 Filed 7–29–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0571]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the burden estimates relating to customer satisfaction surveys involving the National Cemetery Administration (NCA), and the Office of Inspector General (IG).

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 29, 2003.

ADDRESSES: Submit written comments on the collection of information to Ronald Cheich, National Cemetery Administration (402A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *Ronald.cheich@mail.va.gov*. Please refer

to "OMB Control No. 2900–0571" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ronald Cheich at (202) 273–8087.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VA's functions, including whether the information will have practical utility; (2) the accuracy of VA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Generic Clearance for the National Cemetery Administration (NCA), and the Office of Inspector General (IG) Customer Satisfaction Surveys.

OMB Control Number: 2900–0571.

Type of Review: Extension of a currently approved collection.

Abstract: Executive Order 12862, Setting Customer Service Standards, requires Federal agencies and Departments to identify and survey its customers to determine the kind and quality of services they want and their level of satisfaction with existing service. NCA, and IG use customer satisfaction surveys to gauge customer perceptions of VA services as well as customer expectations and desires. The results of these information collections lead to improvements in the quality of VA service delivery by helping to shape the direction and focus of specific programs and services.

Affected Public: Individuals or households, Business or Other For-Profit and State, Local or Tribal Government.

Listing of Survey Activities: The following list of activities is a compendium of customer satisfaction survey plans by the NCA, and IG. The actual conduct of any particular activity listed could be affected by circumstances. A change in, or refinement of, our focus in a specific area, as well as resource constraints could require deletion or substitution of any listed item. If these organizations substitute or propose to add a new activity that falls under the umbrella of this generic approval, including those activities that are currently in a planning stage, OMB will be notified and will be furnished a copy of pertinent materials, a description of the activity and number of burden hours involved. NCA, and IG will conduct periodic reviews of ongoing survey activities to ensure that they comply with the PRA.

Year	Number of respondents	Estimated annual burden (hours)	Frequency
I. National Cemetery Administration			
Focus Groups With Next of Kin (10 participants per group/3 hours each session)			
2004	50	150	5 Groups Annually.
2005	50	150	5 Groups Annually.
2006	50	150	5 Groups Annually.
Focus Groups With Funeral Directors (10 participants per group/3 hours each session)			
2004	50	150	5 Groups Annually.
2005	50	150	5 Groups Annually.
2006	50	150	5 Groups Annually.
Focus Groups With Veterans Service Organizations (10 participants per group/3 hours each session)			
2004	50	150	5 Groups Annually.
2005	50	150	5 Groups Annually.
2006	50	150	5 Groups Annually.
Visitor Comments Cards (Local Use) (2,500 respondents/5 minutes per response)			
2004	2,500	208	Annually.
2005	2,500	208	Annually.
2006	2,500	208	Annually.
Next of Kin National Customer Satisfaction Survey (Mail to 10,000 respondents/30 minutes per response)			
2004	15,000	7,500	Annually.
2005	15,000	7,500	Annually.
2006	15,000	7,500	Annually.
Funeral Directors National Customer Satisfaction Survey (Mail to 1,000 respondents/30 minutes per response)			
2004	4,000	2,000	Annually.
2005	4,000	2,000	Annually.
2006	4,000	2,000	Annually.
Veterans-At-Large National Customer Satisfaction Survey (Mail to 5,000 respondents/30 minutes per response)			
2004	5,000	2,500	Annually.
2005	5,000	2,500	Annually.
2006	5,000	2,500	Annually.
Program/Specialized Service Survey (Mail to 1,000 respondents/15 minutes per response)			
2004	2,000	500	Annually.
2005	2,000	500	Annually.
2006	2,000	500	Annually.
II. Office of Inspector General			
Patient Questionnaire (1,440 respondents/10 minutes per response)			
2004	1,440	240	Annually.
2005	1,440	240	Annually.
2006	1,440	240	Annually.

Most customer satisfaction surveys will be recurring so that NCA, and IG can create and maintain ongoing measures of performance and to determine how well VA meets customer service standards. Each collection of information will consist of the minimum amount of information necessary to determine customer needs and to evaluate each organization's performance. NCA expects to conduct 15 focus groups annually involving a total of 450 hours during the approval period. In addition, NCA expects to conduct mail surveys with a total annual burden of 12,000 hours and will distribute comment cards with a total annual burden of 208 hours. NCA also plans to conduct mail surveys with customers of specific programs (*e.g.* Headstones and Markers, Presidential Memorial Certificates, State Veterans Cemeteries) to determine levels of service satisfaction. Program specific surveys are estimated at 500 burden hours annually during the approval period. The IG expects to distribute 1,440 surveys to patients with a total annual burden of 240 hours.

Dated: July 8, 2003.

By direction of the Secretary.

Loise Russell,

Acting Director, Records Management Service.

[FR Doc. 03–19175 Filed 7–28–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0319]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 28, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981, or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0319."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0319" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Fiduciary Agreement, VA Form 21–4703.

OMB Control Number: 2900–0319.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21–4703 is used as a legal binding contract between VA and Federally appointed fiduciaries. It outlines a fiduciary's responsibilities with respect to the use of funds received on behalf a beneficiary who is determined to be incompetent by VA rating, minority, or finding of legal disability by a court of proper jurisdiction.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published April 16, 2003 at page 18727.

Affected Public: Individuals or households, business or other for-profit, not-for-profit institutions, State, local or Tribal Government.

Estimated Annual Burden: 1,467 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 17,600.

Dated: July 7, 2003.

By direction of the Secretary.

Loise Russell,

Acting Director, Records Management Service.

[FR Doc. 03–19176 Filed 7–28–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0564]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment.

The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 28, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0564."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0564" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Direct Deposit Enrollment, VA Form 24–0296.

OMB Control Number: 2900–0564.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 24–0296 is used to enroll VA Compensation and Pension beneficiaries in the DD/EFT program for recurring benefits payments. The information will be used to process the payment data from VA to the beneficiary's designated financial institution.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on March 19, 2003, at page 13365.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,200 hours.

Estimated Average Burden Per Respondent: 2 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 96,000.

Dated: July 8, 2003.

By direction of the Secretary.

Loise Russell,

Acting Director, Records Management Service.

[FR Doc. 03–19177 Filed 7–28–03; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 68, No. 145

Tuesday, July 29, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Policy Board Advisory Committee

Correction

In notice document 03–17779 appearing on page 41785 in the issue of Tuesday, July 15, 2003, make the following corrections:

1. On page 41785, in the second column, under the heading **SUMMARY**, in the fifth line, "as scheduled" should read "was scheduled".

2. On the same page, in the same column, under the same heading, in the ninth line, "not meet" should read "now meet".

[FR Doc. C3–17779 Filed 7–28–03; 8:45 am]

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FEDERAL ELECTION COMMISSION

Sunshine Act Notices

Correction

In notice document 03–19043 appearing on page 43726 in the issue of Thursday, July 24, 2003 make the following correction:

On page 43726, in the third column, in the second STATUS section, in the first line, "closed" should read "open".

[FR Doc. C3–19043 Filed 7–28–03; 8:45 am]

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Federal Register

Tuesday,
July 29, 2003

Part II

Department of Justice

Antitrust Division

United States v. Mountain Health Care, P.A., Civil Action No. 1:02CV288–T (W.D.N.C.); Response to Public Comments; Notice

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Mountain Health Care, P.A., Civil Action No. 1:02CV288–T (W.D.N.C.) Response to Public Comments

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that Public Comments and the Response of the United States have been filed with the United States District Court for the Western District of North Carolina in *United States* v. *Mountain Health Care, P.A.* Civil Action No. 1:02CV288–T (W.D.N.C., filed December 13, 2002). On December 13, 2002, the United States filed a Complaint alleging that defendant, Mountain Health Care, P.A. ("MHC") and its physician owners and members, restrained competition in the sale of physician services to managed health care purchasers, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The proposed Final Judgment, filed at the same time as the Complaint, requires MHC to dissolve.

Public comment was invited within the statutory 60-day comment period. Such Comments, and the Responses thereto, are hereby published in the **Federal Register** and have been filed with the Court. Copies of the Complaint, Stipulation, proposed Final Judgment, Competitive Impact Statement, Public Comments and the Response of the United States are available for inspection in Room 4000 of the Antitrust Division, Department of Justice, 1401 H Street, NW., Washington, DC 20530 (telephone: 202–307–0001) and at the Office of the Clerk of the United States District Court for the Western District of North Carolina, Room 212, 401 West Trade Street, Charlotte, North Carolina.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, Antitrust Division.

United States District Court for the Western District of North Carolina

United States of America, Plaintiff, v. Mountain Health Care, P.A. Defendant; Response to Public Comments

[Civil No.: 1:02CV288–T; Filed]

Pursuant to the requirements of the Antitrust Policies and Procedures Act, 15 U.S.C. 16(b)–(h) (the "APPA" or "Tunney Act"), the United States responds to public comments received regarding the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Background

On December 13, 2002, the United States filed a civil antitrust complaint alleging that defendant, Mountain Health Care, P.A., ("MHC") and its physician owners and members, restrained competition in the sale of physician services to managed health care purchasers, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. MHC is a physician-owned network consisting of the vast majority of physicians practicing in the greater Asheville, North Carolina area. MHC was formed in 1994 to increase the bargaining power of its physicians with managed care insurance companies, self-insured employers, and third-party administrators (collectively, "managed care purchasers"). Complaint ¶ 8; Competitive Impact Statement ("CIS") II.B. To facilitate that objective, MHC and its physicians established a uniform fee schedule that it incorporated into contracts with certain managed care purchasers. Complaint ¶ 10. The use of that fee schedule eliminated price competition among MHC's physicians, who did not clinically or financially integrate their practices in a way that would have justified their collective price setting conduct. Complaint ¶11. This resulted in increased physician reimbursement fees to managed care purchasers in the greater Asheville area. Complaint ¶14. MHC also exclusively represented its member physicians in negotiations with certain managed care purchasers. Complaint ¶ 13.

Also on December 13, 2002, the United States filed a proposed Final Judgment and a Stipulation signed by both it and defendant MHC agreeing to entry of the Final Judgment following compliance with the Tunney Act. Pursuant to the Tunney Act, the Stipulation, proposed Final Judgment and Competitive Impact Statement ("CIS") were published in the **Federal Register** on January 10, 2003. 68 FR 7, 1478–1482. A summary of the terms of the Complaint and the proposed Final Judgment were published for seven consecutive days in the Asheville Citizen-Times from January 24 through January 30, 2003. Pursuant to U.S.C. 16(b)–(d) the 60-day period for public comments on the Proposed Final Judgment began on January 11, 2003 and expired on March 12, 2003. During that time, nine comments and one *amicus* brief were received.

II. Response to Public Comments

A. Amicus Brief Filed by S.M. Oliva, President of Citizens for Voluntary Trade, and the Comments of Citizens for Voluntary Trade

On February 15, 2003, S.M. Oliva, president of Citizens for Voluntary Trade (CVT), filed a motion for leave to file an *amicus curiae* brief. Attached to that motion was Oliva's 7-page *amicus* brief (attached, along with the motion, as Exhibit A). On March 7, 2003, Oliva submitted the 48-page Public Comments of Citizens for Voluntary Trade to the Proposed Final Judgment (Exhibit B), repeating the same arguments made in Oliva's *amicus* brief and including lengthy recitations of CVT's view of the history of the government's intervention in health care and other "background" information. On March 19, 2003, the United States filed a response to Oliva's *amicus* request, stating that it did not oppose the Court accepting his brief and treating it as another comment to the Proposed Final Judgment. On March 27, 2003 the Court ordered that Oliva's *amicus* brief be treated as a supplemental comment to the proposed Final Judgment. In this Response, the United States responds to the assertions made in both Oliva's *amicus* brief and CVT's comments.

1. CVT's and Oliva's Arguments About Why This Case Should Not Have Been Brought Are Irrelevant in a Tunney Act Proceeding

The vast majority of the comments made by CVT and Oliva relate to whether this case should have been filed in the first instance, not to whether the relief in the Proposed Final Judgment is adequate to address the harm alleged in the Complaint. *E.g.*, Exh. A at 3 ("no need for the government's proposed remedy—dissolution of MHC—because there is no illegal behavior taking place"). Oliva asks the Court to dismiss the complaint for failure to state a claim. Exh. B at 13. Because Oliva relies on factual assertions beyond the scope of the allegations in the Complaint, this request is, in effect, a motion, under Rule 56 of the Federal Rules of Civil Procedure, for summary judgment against the United States.

Comments alleging that the United States does not have sufficient evidence to support the case it has pled, and requesting dismissal of the United States' complaint, are beyond the scope of this hearing. A Tunney Act proceeding is not an opportunity for a "*de novo* determination of facts and issues," but rather is intended "to determine whether the Department of

Justice's explanations were reasonable under the circumstances" because "[t]he balancing of competing social and political interests affected by a proposed antitrust decree must be left, in the first instance, to the discretion of the Attorney General." *United States* v. *Western Elec. Co.*, 993 F.2d 1572, 1577 (D.C. Cir. 1993) (citations omitted). Courts consistently have refused to consider "contentions going to the merits of the underlying claims and defenses." *United States* v. *Bechtel*, 648 F.2d 660, 666 (9th Cir. 1981.) CVT contends that the legislative history of the Tunney Act authorizes a review of the merits of the underlying case, and not just the adequacy of the proposed relief. Exh. B at 44–45. This is incorrect. During the Senate hearings on the Act, one witness specifically urged that "as a condition precedent to * * * the entry of a consent decree in a civil case * * * the Department of Justice be required to file and make a matter of public record a detailed statement of the evidentiary facts on which the complaint * * * was predicated."[1] That recommendation, however, was rejected. Congress did not intend to turn every Tunney Act proceeding into a full-blown trial on the merits of the Untied States' complaint.

For this reason, assertions that the Untied States lacks jurisdiction, that MHC was a non-exclusive physician network, that it was really operating under a "messenger model" of contracting that has been approved by the United States, and that MHC's conduct did not cause anti-competitive effects—all of which pertain to the merits of the underlying case, but not the proposed remedy—are irrelevant to this proceeding, and should not be considered by this Court.[2] Nonetheless, the United States responds to those assertions below.

[1] The Antitrust Procedures and Penalties Act: Hearings on S. 782 and S. 1088 Before the Subcommittee on Antitrust and Monopoly of the Senate Judiciary Committee, 93d Cong., 1st Sess. 26, 57 (1973) (prepared statement of Maxwell M. Blecher, attorney).

[2] Even farther afield are the lengthy and wide-ranging attacks in CVT's comments on various other subjects: The Medicaid and Medicare statutes (Exh. B at 14); the HMO Act of 1973 (*id.* at 15); settled Supreme Court precedent, *Arizona* v. *Maricopa County Medical Society*, 457 U.S. 332 (1982), holding that price fixing by physicians is unlawful (*id.* AT 18–20); the Health Care Policy Statements issued by the Department of Justice and Federal Trade Commission (*id.* at 20–23); the "morality" of this case and others like it, which in CVT's view are not designed to protect consumers but to "deny wealth to its rightful owners" (*id.* at 23–25); and several cases against physician groups brought not by the Untied States Department of Justice, the plaintiff in this case, but by the Federal Trade Commission (*id.* at 26–36).

2. The Complaint States a Claim Upon Which Relief Can Be Granted

Even if CVT or Oliva had the right to file a motion to dismiss the Complaint under Rule 56, that motion would fail because the Complaint states a claim upon which relief can be granted. *Federal Trade Commission* v. *Indiana Federation of Dentists*, 476 U.S. 447 (1986) (A horizontal agreement by health care providers, causing an anticompetitive impact on third party payors, is an unreasonable restraint of trade). CVT and Oliva have not provided any evidence to dispute the allegations made in the Complaint. Nor do CVT or Oliva appear to have any independent knowledge of the health care market in Western North Carolina. Rather, it appears they reach their concussions on the basis of what Oliva says he learned during a telephone interview with Ellen Wells, President of defendant MHC, and from reading newspaper articles found on the defendant's Web site.[3] The interest of CVT and Oliva appear to stem less from their knowledge of the Western North Carolina physician market and more from their ideology that the antitrust laws in general are unconstitutional, and that antitrust enforcement against physicians promotes socialism.[4]

The information already disclosed in the Complaint provides sufficient basis for this Court to make a public interest determination. The request of CVT and Oliva for highly detailed market information—for example, data to "assess the state of the affected marketplace" and "empirical evidence demonstrating how the proposed remedy is likely to restore competition" (Exh. A at 5)—is not justified. As noted above, this request is not relevant in this Tunney Act proceeding to the extent it relates to whether the United States had a good faith basis for concluding that MHC's conduct was anticompetitive and violated the antitrust laws. *See supra*, Section II.A.1. The United States is not required in its Complaint or in a Tunney Act proceeding to specify in detail all of the evidence upon which it based its decision to file a case here. Indeed, Congress specifically rejected such a requirement when the Act was being considered in the Senate. *See supra* Section II.A.1. Requiring the disclosure of this kind of evidence—that akin to the kind of information that would have to be disclosed during litigation in expert reports and other filings—would substantially undermine the benefits of settling government antitrust cases. One of the major benefits of antitrust consent judgments is that they enable the government "to reallocate necessarily limited [enforcement] resources," *Microsoft Corp.*, 56 F.3d at 1459, and that benefit would be lost if the United States were forced to compile and disclose during a Tunney Act proceeding the same kind of information it is required to disclose during litigation.

a. The United States has jurisdiction to challenge Mountain Health Care's conduct in this case. CVT questions whether the United States has jurisdiction to bring this case because at least some of MHC's contracts were with businesses organized and doing business solely in North Carolina. Exh. B at 6–9. As alleged in the Complaint, MHC has contracts with out-of-state employers and those businesses "remit substantial payments to MHC physicians in North Carolina." Complaint ¶ 5. This is more than sufficient to meet the Sherman Act's expansive reach. *Summit Health, Ltd.* v. *Pinhas*, 500 U.S. 322 (1991) (interstate commerce nexus found where hospital and medical staff conspired to exclude single physician from Los Angeles market); *McLain* v. *Real Estate Board of New Orleans, Inc.*, 444 U.S. 232 (1980) (price fixing by local real estate brokers); *Hospital Building Co.* v. *Trustees of Rex Hospital*, 425 U.S. 738 (1976) (conspiracy to block relocation and expansion of rival hospital).

CVT further claims that, beyond the question of jurisdiction, this case raises the question of whether it is in the "public interest" for the United States to bring the charges because such an action infringes upon the "regulation of private health care networks" by the State of North Carolina. Exh. B at 8. Nothing about this case, or any of the relief in the Proposed Final Judgment, undermines the state's regulation of health care providers.

b. Mountain Health Care was an exclusive network with substantial market power. Based solely on hearsay, CVT and Oliva claim that MHC is not really an exclusive network, that its providers contract freely with other networks and plans, and that those patients covered by MHC contracts make up only 8% of the patients seen by MHC's providers. *E.g.*, Exh. B at 10. Whether a physician network is "exclusive" or "non-exclusive" is

[3] Exh. A at 3 n.5 and accompanying text (citing Jan. 23, 2003 telephone interview); Exh. B at 46 (relying on information "Mountain president Ellen Wells told CVT"); Exh. B Appendix A (attaching several documents from Mountain Health Care website).

[4] *See* CVT Comment at 36 ("the Sherman Act is unconstitutional in CVT's judgment"); at 48 (government's enforcement efforts moving country "closer towards the complete socialization of health care under central control").

relevant to an inquiry into the competitive effects of that network. As explained in the Health Care Policy Statements issued by the U.S. Department of Justice and Federal Trade Commission:

> In an 'exclusive' venture the network's physician participants are restricted in their ability to, or do not in practice, individually contract or affiliate with other network joint ventures or health plans. In a 'non-exclusive' venture, on the other and, the physician participants in fact do, or are available to, affiliate with other networks or contract individually with other plans.

U.S. Department of Justice and Federal Trade Commission, Statements of Enforcement Policy and Analytical Principles Relating to Health Care and Antitrust ("Health Care Policy Statements") August 1996, at 58, available at *http://www.atrnet.gov/policies/health*.[5] Those guidelines set forth "antitrust safety zones," meaning that the government would not challenge absent extraordinary circumstances, exclusive physician joint ventures comprising 20 percent or less, and non-exclusive ventures comprising 30 percent or less, of the physicians in each specialty with active hospital privileges who practice in the relevant geographic market and share substantial financial risk. *Id.* at 58–59.

In this case, MHC was a physician-owned network made up of the vast majority of physicians practicing in the Asheville area—in some specialties, 100 percent of the physicians—who did not share financial risk. Further, MHC, and members of its Board, made substantial efforts to discourage physicians from joining other networks.

The assertion that MHC's members comprise only 8 percent of the provider's patient base is misleading because that calculation includes in the denominator a substantial number of patients that are not affected by MHC's contracting practices with managed care plans: Those patients covered by Medicare and Medicaid and those patients with no insurance at all.[6]

Further, in the provision of physician network services to employers self-insuring for their employees health care benefits, MHC had nearly 100% of the market.

At a more basic level, MHC possessed substantial market power given the fact that such a high percentage of Asheville-area physicians were members. This is apparently not disputed by CVT, which concedes that, "[i]f every doctor now affiliated with Mountain were to cease practicing medicine tomorrow, the managed care companies and consumers in western North Carolina would have no recourse." Exh. B. at 43.

c. Mountain Health Care did not use a "messenger model" in contracting with managed care plans. CVT and Oliva allege—again, based solely on hearsay information—that MHC was no longer using its uniform fee schedule but rather using (or "transitioning" to) a "messenger" model in contracting with managed care purchasers. Exh. A at 3; Exh. B at 5–6. The Health Care Policy Statements describe how a physician network is able to contract with managed care purchasers on behalf of competing physicians without engaging in *per se* unlawful price fixing, by using a "messenger model". The "messenger model" is an arrangement where a third party offers each individual physician an opportunity to decide individually whether or not to accept an offer from a managed care provider. Health Care Policy Statements, August 1996, at 114, available at *http://www.atrnet.gov/policies/health*. "The key issue in any messenger model arrangement is whether the arrangement creates or facilitates an agreement among competitors on prices or price related terms." *Id.* Proper use of the messenger model may mean that a physician network's conduct may not rise to the level of *per se* illegal price fixing, but it does not mean, as Oliva and CVT appear to believe, that any agreement among physicians to "messenger fees" is insulated from antitrust challenges, when, as here, the agreement has resulted in actual anti-competitive effects.

The United States thoroughly investigated the issue of whether Mountain Health Care's conduct was causing actual anticompetitive effects, regardless of whether it was using a messenger model. It bears clarification, however, that the Complaint alleges that Mountain Health Care was not merely a messenger for its member physicians; it was their exclusive bargaining agent. Physicians bargained through MHC which developed a uniform fee schedule for use in those negotiations. That collective activity among physicians to establish and bargain with that fee schedule anticompetitively raised the prices paid for physician services and thus violated section 1 of the Sherman Act. CIS, II.C.

d. Mountain Health Care's conduct resulted in a substantial lessening of competition and increased prices paid by managed care plans. Despite the Complaint's allegations to the contrary, CVT and Oliva argue that MHC's conduct did not lessen competition or increase prices, and accuse the United States of disclosing inadequate information in its Complaint and CIS about the relevant market in which MHC competed, the prices it was charging, and how its actions actually harmed consumers. Exh. A at 4–6; Exh. B at 9–13, 37–38. These arguments lack merit.

As alleged in the Complaint, the relevant market affected by MHC's conduct is Western North Carolina, encompassing Buncombe, Burke, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Swain, Transylvania, and Yancey Counties. Complaint ¶ 2. Within that market, MHC possessed substantial market power, given that its membership included the vast majority of physicians practicing in that market, including the bulk of physicians with admitting privileges at Mission St. Joseph's Hospital, the only hospital available to the general public in the Asheville area. Complaint ¶ 8.

MHC's collective price-setting activity increased prices paid by managed care purchasers. Complaint ¶ 17. This is not surprising, given that MHC was created in 1994 for the purpose of increasing its members' bargaining leverage over managed care purchasers. Complaint ¶ 8; CIS § II.B.

3. There Are No "Determinative" Documents

CVT and Oliva assert that the United States is withholding "determinative" documents, in violation of the Tunney Act. Exh. at 4, 6; Exh. B at 38–40. The Tunney Act requires that the United States make available to the public copies of the proposed Final Judgment "and any other materials and documents which the United States considered determinative in formulating such proposal." 15 U.S.C. 16(b). The scope of documents considered determinative, however, is extremely limited. Only documents that were "a substantial inducement to the government to enter into the consent decree" are subject to disclosure. *United States* v. *Bleznak, et al.*, 153 F.3d 16, 20–21 (2d Cir. 1998). *See also Massachusetts School of Law at Andover, Inc.* v. *United States*, 118 F.3d 776, 784 (D.C. Cir. 1997) (only documents, "such as reports to the government, 'that individually had a significant impact on the government's formulation of relief—*i.e.*, on its decision to propose or accept a particular settlement'" need be disclosed). Even the one case cited by CVT recognized that the Tunney Act "does not require full disclosure of Justice Department files, or grand jury files, or defendant's files, but it does require a good faith review of all pertinent documents and materials and a disclosure of those "materials and documents that substantially contribute to the determination [by the government] to proceed by consent decree * * *." *United States* v. *Central Contracting Co.*, 537 F. Supp. 571, 577 (E.D. Va. 1982).

In this case, there are no determinative documents. The United States conducted a thorough investigation, involving the review of extensive documents from MHC as well as from MHC physicians, customers, and competitors. None were determinative in the decision to seek MHC's dissolution, nor were there any that constituted a substantial inducement to seek such relief.

4. The Dissolution of Mountain Health Care Is a Reasonable Remedy Given Its Substantial Market Power and Conduct Over the Past Nine Years

The dissolution of MHC is an appropriate remedy based upon the facts cited in the Compliant and CIS. These facts show that MHC was created in part to enhance its market power through collective negotiations, that it has effectively used that market power through the use of a common fee schedules since its creation, and continued to enter or renew contracts under that common fees schedules until shortly before agreeing to dissolve. The Count is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[7]

An argument that injunctive relief would be appropriate here, because the FTC accepted injunctive relief in other cases involving physicians, has no legal basis. The settlement in a matter between two parties is in no way binding on the manner in which a future matter between two different parties is settled, even if there are some similarities between the matters. Antitrust investigations are very fact specific matters. The particular facts in this investigation led the United States to conclude that the dissolution of MHC was likely to be far more effective than any injunctive relief would be.[8]

5. None of the Various and Inconsistent Request for Relief Made by CVT and Oliva Are in the Public Interest

In the *amicus* brief, Oliva requests the Court to require the United States to file a revised Complaint and Competitive Impact Statement, and then extend the public notice and comment period to permit third parties to comment on these revised disclosures. Exh. A at 7. In his comment on behalf of CVT, however, he makes the contradictory request that the Court reject the proposed Final Judgment, dismiss the Complaint with prejudice, and impose sanctions on the United States under Rule 11.[9] Exh. B at 46–47.

There is no justification for either of these contrary request. The United States made appropriate disclosures of all information. Further, to delay this proceeding would not be in the public interest. Mountain Health Care has been in existence for nine years, using its uniform fee schedule during that entire time. Entry of the Proposed Final Judgment would quickly remedy the competitive harm caused by this conduct.

B. Comment From Center for the Advancement of Capitalism

The Center for the Advancement of Capitalism ("CAC") submitted a comment raising, in summary form, the same arguments raised by the comment and brief filed by CVT and Oliva.[10] CAC claims, based solely on MHC's assertions, that MHC is complying with the government's Health Care Policy Statements because it is using a "messenger model." Exh. C at 1–2. It accuses the United States, in seeking to reduce health care costs, of ignoring the individual rights of Physicians and resulting in the "the partial socialization of medicine absent clear congressional authority." *Id.* at 2. It accuses the United States of specifically targeting physician groups that are unlikely to offer a defense. *Id.* at 2. And it repeats CVT's assertions that the United States has limited jurisdiction ("tenuous at best") because MHC's conduct did not affect interstate commerce. *Id.* at 2–3.

All but one of these arguments have been addressed, in detail, in response to CVT's and Oliva's comments. CAC's general accusation that the United States targets physician groups unable to defend themselves is not correct. In this matter, as in all of its matters, the United States targets conduct that is causing substantial anticompetitive effects and is harming consumers.

C. Comment From Marcia L. Brauchler, Physicians Ally, Inc.

Ms. Brauchler, who operates Physicians Ally, Inc., a consulting business which assists physicians in dealing with insurance companies and other payors, submitted a comment opposing the proposed Final Judgment. In her view, the United States "lacks insights into the practices of MHC's business," which was trying in good faith to comply with the government's Health Care Policy Statements. From her personal experience, she believes that the government claims that "no one operates the messenger model correctly," and that physicians are therefore presumed guilty from the outset of an antitrust investigation. She believes that the antitrust laws were intended to be applied to insurance companies, not physicians, who are not, in her view, the cause of rising health insurance premiums. She does not believe that anyone was hurt by MHC's practices. Like CVT and CAC, she states that physicians, as United States citizens, have an absolute right to associate with other professionals for their mutual benefit unless they implement "actual force against other individuals." Finally, she questions

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[5] The Health Care Policy Statements were originally issued by the United States Department of Justice and the Federal Trade Commission in 1993 to clarify the types of cooperative conduct that health care providers, including physician networks, could engage in without concerns of violating antitrust laws. To further clarify what cooperative conduct was permissible, the agencies committed to issuing expedited Department of Justice business reviews and FTC advisory opinions in response to requests for guidance on specific proposed conduct involving the health care industry.

[6] These numbers are substantial. In the 17 counties served by MHC, there are approximately 150,000 Medicare beneficiaries (*see www.cms.gov/healthplans/statistics/mpsct/*), and 66,000 Medicaid enrollees (*see www.dhhs.state.nc.us/dma/ca/enroll/caenrl1102.pdf*). In addition, approximately 15% of the North Carolina's population as a whole is uninsured. *www.unitedhealthfoundation.org/shr2002/components/risks/LackHealthInsurance*, citing Current Population Survey, March 2002, U.S. Bureau of the Census.

[7] *United States* v. *Bechtel Corp.*, 648 F.2d at 666 (citations omitted) (emphasis added); see *United States* v. *BNS, Inc.*, 858 F.2d 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D.Cal 1978); *United States* v. *Gillette Co.*, 406 F.Supp. at 716. *See also United States* v. *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), cert. denied, 465 U.S. 1101 (1984).

[8] CVT's allegation that the United States never consulted customers who would be affected by the dissolution of MHC during the course of the investigation is correct. The United States discussed this possible remedy with numerous MHC customers.

[9] Oliva and CVT have opposed several recent antitrust consent decrees. Many of their comments, both official and unofficial, can be read at the CVT Web site, *www.voluntarytrade.org*.

[10] Oliva is currently a senior fellow at CAC. Exh. A at 1. According to its comment, CAC is a tax-exempt organization that applies Ayn Rand's philosophy of Objectivism to contemporary public policy issues in order to identify and protect the individual rights of the American people. Exh. C at 1 n.1.

why MHC is being forced to disband while other physician groups which have been sued in the past were allowed to continue to operate. Exh. D at 1–2.

As she states in her comment, Ms. Brauchler has had personal experience in settling government antitrust cases. Exh. D at 1. She was a defendant in two antitrust actions brought by the Federal Trade Commission last year, challenging her role representing two physician groups in fee negotiations with managed care purchasers.[11] As with CVT and CAC, the vast majority of her comments relate to whether the United States had a valid basis for finding a violation and filing this case, matters not relevant to this proceeding. *See supra*, Section II.A.1. Based on its thorough investigation during the past two years, the United States believes it obtained evidence about the business practices of MHC and that evidence shows that employers, particularly those employers who opt to self-insure for their employees health care benefits, were hurt by MHC's actions. Ms. Brauchler's implication that the United States is not applying the antitrust laws to insurance companies is simply not true. The United States has brought a number of actions against firms in the health insurance industry.[12]

Finally, the argument that injunctive relief would be appropriate here, because the FTC accepted injunctive relief in other cases involving physicians, as noted in response to the CVT's comments, has no legal basis. Antitrust investigations are very fact-specific matters. The particular facts in this investigation led the United States to conclude that the dissolution of MHC is likely to be far more effective than any injunctive relief would be.

D. Comment From Anonymous "Concerned Employees"

An anonymous group of "concerned employees," submitted a comment in support of the proposed Final Judgment. This comment states that is "common knowledge" among current and former employees that Ellen Wells, MHC's chief executive officer, "purposely put off changing to Messengering because she was under the impression that the DOJ would just disappear," and because she believed that it would affect MHC's collections and impact her bonus. Exh. E. Other than expressing support for the dissolution of MHC this comment is primarily a personal criticism of Ms. Wells and raises issues that are not relevant to the relief contained in the proposed Final Judgment.

E. Comment From Anonymous Person Attaching Newspaper Advertisements

An anonymous person submitted a comment asking why MHC, if it engaged in the conduct alleged in this case, would run newspaper advertisements implying that it did nothing wrong. Exh. F. This comment does not address the substance of the proposed Final Judgment, and should be considered by the Court.

F. Comment From Janine Mazur, Mountain Health Care Department Head

Ms. Mazur submitted a comment criticizing the government's investigation and filing of this case. She states her opinion that MHC's collective rate setting has not resulted in higher physician reimbursements, claiming that MHC's fee schedule had not been changed since the start of the company. She opines that the physicians intended to provide cost-effective health care, not increase their fees. She believes that the dissolution of MHC will increase the cost of health care because it will increase the market power of national insurance carriers such as Aetna and Cigna, which have higher fee schedules than MHC's schedule. Exh. G.

Ms. Mazur is a department head of MHC, a fact that she does not disclose to the Court in her letter. Although she criticizes the proposed dissolution of MHC, her substantive comments relate entirely to the decision to bring this case in the first instance. As noted above, such comments lack any relevancy in this Tunney Act proceeding. *See supra*. Section II.A.1. Moreover, the United States conducted a thorough investigation of MHC's conduct here, and concluded that MHC's conduct reduced competition, increased prices, and that its dissolution will have a procompetitive effect on the market.

G. Comment From Steward M. Auten, President of Auten Printing, Inc.

Mr. Auten submitted a comment criticizing the government's decision to file this case. In his view, the case is based on "emotions, circumstantial evidence, hype and superficial information." He believes that MHC gives quality care and lower rates, and that the dissolution of MHC will increase health care costs in Western North Carolina. Exh. H.

Again, Mr. Auten's comment relates to the government's decision to file this case, which is not a relevant issue here. *See supra*, Section II.A.1. That decision was made after a thorough, two-year investigation of the local market. One focus of that investigation was to assess the effect that Mountain's collective rate setting conduct had on the fees paid by employers in Western North Carolina. To do that, the government interviewed numerous employers in the area and concluded that MHC's conduct was increasing their health care costs.

H. Two Comments From Individual Consumers

Two comments were received from individual consumers, Mike and Gale Grooms, who have been satisfied with the medical services they have received from Mountain Health Care. (Exh. I) Both oppose this case and the proposed dissolution of MHC. Another consumer submitted a comment that characterizes the filing of this case as "tyrannical" and questions how MHC could increase medical costs in the area given that they cover only 8% of the population. Exh. J. Even though these customers liked the service they received from Mountain Health Care, they could have received lower prices and better service with competition. These comments do not raise specific facts relevant to this Tunney Act proceeding.

III. Conclusion

After careful consideration of these public comments, the United States has concluded that entry of proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint, and is therefore in the public interest. Once these comments and this Response are published in the **Federal Register**, the United States will move the Court to enter the proposed Final Judgment.

Dated: June XX, 2003.

Respectfully submitted.

David C. Kelly,
Department of Justice, Antitrust Division, Litigation I Section, 1401 H Street, NW., Suite 4000, Washington, DC 20530, 202–616–9447.

Motion of S.M. Oliva for Leave To File Brief *Amicus Curiae*

Before: Judge Lacy Thornburg

Pursuant to 15 U.S.C. 16(f), I, S.M. Oliva, acting *pro se*, respectfully move this Court for leave to file the accompanying brief as *amicus curiae*.

I am a public policy analyst specializing in the study of federal antitrust settlements. I am currently a senior fellow at the Center for the Advancement of Capitalism in Arlington, Virginia, and president of Citizens for Voluntary Trade, a nonprofit association located in the District of Columbia. In the past year, I have filed extensive public comments on behalf of both organizations in response to antitrust consent orders negotiated by the Department of Justice and the Federal Trade Commission.

Of particular interest to my work is the impact of antitrust laws on the rights of physicians and other health care providers. In the FTC's consent orders with five separate physician groups last year, I provided the only extended and substantial public comments on the settlements. As such, I am in a unique position to present this Court with insight into the case at bar.

The proposed brief presents information that will hopefully assist the Court in determining whether the Proposed Final Judgment filed in this case on December 13, 2002, satisfies the public interest requirements of the Tunney Act. It is not the goal of this brief to comment on the particulars of the settlement, but on the lack of necessary information necessary to properly make a public interest determination. I expect to separately file substantial public comments discussing the entire case prior to the expiration of the comment period.

For these reasons, I request leave to file the accompanying brief as *amicus curiae*.

Dated: February 15, 2003.

Respectfully Submitted,

S.M. Oliva,
2000 F Street, NW., #315, Washington, DC 20006–4217, Tel: (202) 223–0071, E-mail: voluntarytrade@aol.com. Amicus Curiae

Brief of S.M. Oliva, as *Amicus Curiae*

Statement of Interest

I, S.M. Oliva, declare that I have no financial interest in this case, nor do I have a financial interest in any competitor of Mountain Health Care, P.A. The views expressed in this brief are my own, and are based on my experience as a public policy analyst in the field of antitrust and competition law.

Summary

In reviewing the Proposed Final Judgment before the Court in this case, *amicus* offers two arguments:

- The United States failed to disclose material facts in their complaint and Competitive Impact Statement (CIS).
- The United States provided insufficient information in the CIS regarding the status and role of Mountain Health Care in the relevant marketplace, as well as how Mountain's acts directly impacted competition in those markets.

A major purpose of the Tunney Act[1] is to facilitate public comments which may assist the Court in determining whether a proposed consent decree is in the public interest. The CIS, in part, is supposed to provide the public with an adequate description of the "practices or events" giving rise to an alleged antitrust violation, as well as disclosure of any "determinative materials or documents" considered by the government in preparing the proposed Final Judgment.

In this case, the CIS failed both of these tests. The United States took substantial shortcuts in complying with the Tunney Act, and in the process failed to fulfill Congress's underlying objectives. This Court, however, possesses broad statutory power to remedy this situation, by directing the United States to file a revised CIS that provides the public—and the Court—with adequate information to decide whether the proposed decree is in the public interest.

Failure To Disclose Material Facts

In the complaint, the United States asserts that Mountain "organized and directed an effort to develop a uniform fee schedule to be used to negotiate and contract for fees for physician reimbursement"[2] from a number of managed care companies and other third-party benefit providers. This fee schedule, according to the government, "unreasonably restrained competition" in violation of section 1 of the Sherman Act.[3] As a result, the United States filed suit to obtain the dissolution of Mountain "before further inquiry to consumers in North Carolina or elsewhere occurs."[4]

This "uniform fee schedule" is the nexus of the complaint and the resulting proposed Final Judgment. So long as Mountain maintains this schedule, consumers remain in danger under the Sherman Act. The only way to get rid of the schedule, in the government's view, is for Mountain to be denied its very existence. Otherwise, this fee schedule will continue to run amok, spreading its anti-competitive effects throughout western North Carolina.

But the problem is, the fee schedule the government speaks of may no longer be in play. According to statements made to *amicus* by Ellen Wells, Mountain's president and chief executive, Mountain's current "fee schedule" is nothing more than individual doctors informing an independent consultant about their general pricing terms. In other words, a third party spoke to Mountain's physicians separately, obtained independent fee requests, and passed that information along to the managed care companies and other payors. At no point, according to Wells, was there an agreement or conspiracy among Mountain physicians to create a "universal" schedule of fixed fees.[5]

Not only does this system not violate the Sherman Act, the United States expressly endorses this type of "messenger model" as a safe haven from the general prohibition on independent physicians collectively bargaining with payors. According to the 1996 revisions to the Department of Justice-Federal Trade Commission Statements of Antitrust Enforcement Policy in Health Care:

> Some networks that are not substantially integrated use a variety of "messenger model" arrangements to facilitate contracting between providers and payers and avoid price-fixing agreements among competing network providers. Arrangements that are designed simply to minimize the costs associated with the contracting process, and that do not result in a collective determination by the competing network providers on prices or price-related terms, are not per se illegal price fixing.

If Mountain's claim, then, is true, and they were employing (or transitioning to) a messenger model, there is no need for the government's proposed remedy—dissolution of Mountain—because there is no illegal behavior taking place. Yet nowhere in the complaint or CIS does the United States discuss, or even acknowledge, Mountain's claim that they employed a messenger model. The government doesn't even offer evidence to refute the claim. Instead, the complaint and CIS present a carefully edited, limited recitation of the facts, omitting a key detail that might influence the public's analysis of the case. In the absence of these disclosures, the public is left to incorrectly conclude that Mountain was simply an illegal price-fixing arrangement among physicians, and that

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[11] Docket No. C–4054, In the Matter of Physician Integrated Services of Denver, Inc., Michael J. Guese, M.D., and Marcia L. Brauchler; Docket No. C–4055, In the Matter of Aurora Associated Primary Care Physicians, L.L.C., Richard A. Patt, M.D., Gary L. Gaede, M.D., and Marcia L. Brauchler, at *http://www.ftc.gov/bc/CommissionActions/2002.htm*.

[12] *United States and Texas* v. *Aetna Inc. and The Prudential Insurance Company of America*, 1999–2 Trade Cas. (CCH) ¶ 72,730 (N.D. Texas 1999); *United States* v. *Medical Mutual of Ohio, Inc.*, 63 Fed. Reg. 52,764 (October 1, 1998); *United States* v. *Delta Dental of Rhode Island*, 943 F. Supp. 172 (D.R.I. 1996) & 1997–2 Trade Cas. (CCH) ¶ 71,860 (D.R.I. July 2, 1997); *United States* v. *Vision Service Plan*, 1996–1 Trade Cas. (CCH) ¶ 71,404 (D.D.C. 1996); *United States* v. *Oregon Dental Service*, 1995–2 Trade Cas. (CCH) ¶ 71,062 (N.D. Ca. 1995); *United States* v. *Delta Dental Plan of Arizona, Inc.*, 1995–1 Trade Cas. (CCH) ¶ 71,048 (D. Ariz. 1995).

[1] 15 U.S.C. § 16(b)–(h).

[2] Compl. ¶ 1.

[3] *Id.*

[4] *Id.*

[5] Telephone interview with Ellen Wells, President of Mountain Health Care, P.A. (Jan. 23, 2003).

they made no good faith efforts to comply with the law.

Insufficient Information

Congress acknowledged, in passing the Tunney Act, that the public has an interest in "the integrity of judicial proceedings" involving proposed antitrust settlements.[6] To that end, the United States has an obligation to disclose enough facts about a case to enable the public to form reasoned judgments about the terms of a proposed Final Judgment. Of key importance is information that details the government's analysis of the marketplace, the competitive problem arising thereto, and the selected remedy. Here, we have little to go by. The United States insists that "[t]here are no determinative materials or documents" within the Tunney Act's meaning that warranted public disclosure.[7] *Amicus* disagrees.

The complaint and CIS repeatedly argue that Mountain's actions illegally "increased physician reimbursement fees."[8] The complaint argues that customers "have paid higher prices for physician services sold through managed care purchasers than they would have paid in the absence" of Mountain's actions.[9] The CIS further states that Mountain's physicians "have not clinically or financially integrated their practices" in such a way as to justify maintaining their uniform fee schedule.[10]

None of these arguments are supported by evidence, at least not evidence that's presented for public review in the complaint or CIS. For example, the public knows nothing, from the government's disclosures, of the exact nature of the market for physician services in western North Carolina. We don't know who Mountain was competing with, what prices they were charging, or even how consumer prices fared in comparison to neighboring marketplaces. We certainly don't know if Mountain's action actually harmed any consumers. We simply don't know much of anything, beyond the government's mere allegation that there was a fee schedule, and that it was illegal.

Once again, *amicus* faces conflicting information. The United States claims that Mountain increased costs and harmed consumers. Mountain's Ellen Wells, in contrast, claims to *amicus* that Mountain's customers realized an average 14–20% savings over other service networks. Nothing in the complaint or CIS points this out.[11] Furthermore, there is no evidence in the public record that suggests any Mountain customer was dissatisfied with their services or costs. Even one customer complaint would provide valuable information to the public on the exact nature of the alleged illegal actions. But once again, we're left only with the government's word, despite the existence of evidence that refutes key points of their argument.

It's worth noting that the government's lack of disclosure is hardly unusual in a Tunney Act proceeding. In the overwhelming majority of antitrust settlements, the CIS provides little useful information about a case. In one recent proceeding, Albert Foer of the American Antitrust Institute noted: "The [Justice] Department has traditionally been reluctant to say a great deal in its CIS disclosures, presumably because it risks disclosure of confidential information, adds to the staff's workload, and opens up the door to additional inquiry."[12] All of these explanations may be applicable in this case, but none of them justify withholding relevant and material information from the public.

At an absolute minimum, the United States should provide the public with enough information to assess the state of the affected marketplace at the time the complaint is filed, and also empirical evidence demonstrating how the proposed remedy is likely to restore competition allegedly lost. The government may consider this an inconvenient burden, but the Tunney Act does not contain exceptions for official laziness.

This Court has clear authority to compel government disclosure of relevant information. Congress stated as much in the Tunney Act's legislative history, noting "the court must obtain the necessary information to make its determination that the proposed consent decree is in the public interest."[13] And in one of the few cases where a court actually employed its Tunney Act discretion, *United States* v. *Central Contracting Co.*,[14] the district judge emphasized the importance of vigorous judicial enforcement of the public's right to information:

> The need for scrutiny is important in any case, but judicial scrutiny is perhaps more important in a run-of-the-mill case on which public attention is not focused and where abuse may escape unnoticed than in a "big case" where public interest supplements the court's scrutiny. If the Court in this case doesn't scrutinize there wil be no independent scrutiny.[15]

Similarly, this "run-of-the-mill" case runs the risk of escaping public attention and scrutiny completely. Without timely intervention by this Court to procure necessary additional information, it is likely the proposed Final Judgment will be entered without any serious examination of the government's arguments. This would render the Tunney Act effectively worthless in safeguarding the public interest.

Conclusion

The public—and this Court—cannot rely on the complaint and CIS, in their present form, to make a proper determination under the Tunney Act on whether entry of the proposed Final Judgment is in the public interest. The United States omitted key facts from the complaint, and failed to disclose relevant information that would assist the public in forming reasoned judgments about this case. The Tunney Act grants the Court ample power to ensure the government's full compliance, and this case warrants exercise of that power.

Accordingly, the Court should direct the United States to file a revised complaint and CIS, addressing the objections and concerns set forth in this brief. Additionally, the Court should extend the public comment period to allow third parties adequate time to review the revised disclosures so that they may provide appropriate comments to the Court.

Dated: February 15, 2003.

Respectfully Submitted,

S.M. Oliva,
2000 F Street, NW., #315, Washington, DC 20006–4217. Tel: (202) 223–0071. E-mail: smoliva@voluntarytrade.org, Amicus Curiae.

Certificate of Service

I hereby certify that on this 15th day of February, 2003, I caused a true and correct copy of the foregoing Motion for Leave to File and Brief of Amicus Curiae to be mailed by First Class United States Mail to:

For Plaintiff United States of America:

Mark J. Botti, Antitrust Division, Litigation I Section, 1401 H Street, NW., Suite 4000, Washington, DC 20530, Tel: (202) 307–0001.

For Defendant Mountain Health Care, P.A.:

Jeff Miles, Olber, Kaler, Grimes & Shriver, 1401 H Street, NW., Washington, DC 20005;

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S.M. Oliva.

[6] H.R. Rep. No. 93–1463 (1974), reprinted in 1974 U.S.C.C.A.N. 6536, 6539.

[7] Competitive Impact Statement, 68 FR 1478, 1481 (Jan. 10, 2003).

[8] Compl. ¶14.

[9] Compl. ¶17(c).

[10] CIS, 68 FR at 1480.

[11] Telephone interview.

[12] Letter from Albert A. Foer to Roger W. Fones 2 (Dec. 27, 2002) (available at *http://antitrustinstitute.org/recent2/223a.pdf*).

[13] H.R. Rep. No. 93–1463, reprinted in 1974 U.S.C.C.A.N. at 6538 (citing S. Rep. 93–298).

[14] 537 F. Sup. 571 (E.D. Va. 1982).

[15] *Id.* at 575.

Public Comments of Citizens for Voluntary Trade to the Proposed Final Judgment

Before: Judge Graham C. Mullen

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. (b)–(h), and the notice filed by the United States in the January 10, 2003, edition of the **Federal Register,** Citizens for Voluntary Trade respectfully submits the enclosed public comments in response to the proposed Final Judgment in the above-captioned case.

Filed: March 7, 2003.

S.M. Oliva,
President, Citizens for Voluntary Trade, 2000 F Street, NW., #315, Washington, DC 20006, (202) 223–0071.

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Resolution

The Board of Directors of Citizens for Voluntary Trade,

Considering the fundamental role of judicial review in protecting the rights of Americans from the abuse of government power,

Recognizing the ever-increasing impact of antitrust law on the ability of Americans to maintain a capitalist system based on the principle of voluntary trade for mutual benefit,

Noting that the principles of capitalism are inconsistent with the enforcement of the antitrust laws,

Affirming that antitrust law is not the proper means of promoting honest competition and free trade among individuals and businesses,

Recalling the numerous abuses of federal antitrust authorities in applying the antitrust laws unjustly to the collective bargaining actions of physicians and health care providers,

Believing that the case currently pending against Mountain Health Care is baseless as a matter of fact, law, and justice,

Convinced that the only means to protect the rights of Mountain Health Care, and of Americans generally, is for immediate judicial action,

1. Directs the president of Citizens for Voluntary Trade to file timely and substantial comments with the United States opposing entry of the proposed Final Judgment against Mountain Health Care;

2. Appeals to the United States District Court for the Western District of North Carolina to reject entry of the proposed Final Judgment;

3. Urges the United States Department of Justice to dismiss its complaint against Mountain Health Care; and

4. Calls upon the United States Government to rescind its Statements of Antitrust Enforcement Policy in Health Care with all deliberate speed.

Introduction

On December 13, 2002, following a two-year investigation, the United States Department of Justice (DOJ) sued Mountain Health Care, P.A. (Mountain), a North Carolina corporation operating as a preferred-provider organization under state law. Mountain is a network of more than 1,800 health care providers, approximately 400 of whom are physician shareholders. Mountain sells access to its network to managed care purchasers and other insurers throughout the greater Asheville, North Carolina area, and generally in western North Carolina.

The DOJ alleged Mountain violated the Sherman Act by maintaining a fee schedule that effectively fixed prices for network services. Rather then contest the government's charges in court, Mountain agreed to surrender without a fight, and acquiesce in the government's demand for Mountain's immediate dissolution. A proposed Final Judgment directing this dissolution was submitted by the DOJ and Mountain to the United States District Court for the Western District of North Carolina on the same day as the government's complaint was filed.[1]

On January 10, 2003, pursuant to the federal Tunney Act, 15 U.S.C. 16, the United States published the proposed Final Judgment, along with a required Competitive Impact Statement (CIS) in the **Federal Register**, thereby commencing a 60-day comment period. Citizen for Voluntary Trade (CVT) henceforth submits the following comments in response to the proposed Final Judgment.

CVT is a national nonprofit association based in Washington, DC. CVT is organized to promote the public welfare by examining the enforcement and antitrust and competition laws against private businesses and individuals. CVT's standing policy is to file comments in all proceedings where the United States seeks to violate the individual rights of businesses through unjust and unfounded antitrust prosecutions.[2] This case presents just such a situation, where an innocent business in the form of Mountain Health Care is being punished despite the fact they committed no crime against the public interest. For the reasons stated below, CVT opposes entry of the proposed Final Judgment and respectfully requests the government withdraw its complaint against Mountain.

For the record, Citizens for Voluntary Trade does not have a financial interest in the outcome of this case, nor do we have any financial interest in any competitor of Mountain Health Care. These comments reflect the veiw of the Board of Directors of Citizens for Voluntary Trade.

Part I: Analysis of the Complaint

A. Mountain and the "Uniform Fee Schedule"

We begin our comments by examining the government's complaint against Mountain. The DOJ's central claim is that Mountain "organized and directed an effort to develop a uniform fee schedule" which Mountain allegedly used in negotiations with managed care companies and other third-party

[1] The case was initially assigned to Judge Lacy Thornburg, who recused himself on February 20, 2003, and the case was subsequently reassigned to Chief Judge Graham C. Mullen on February 25.

[2] S.M. Oliva, the present of Citizens of Voluntary Trade, filed a brief as *amicus curiae* with the Court on February 15, 2003, seeking the release of additional information from the United States on the allegations contained in the complaint. At the time of the filing, the Court has not yet ruled on Oliva's motion to file the brief or on the brief's substantive requests. A copy of the brief is included in the appendix to these comments.

insurers.[3] The DOJ claims this fee schedule violated Section 1 of the Sherman Act by "unreasonably" retraining competition among physicians in western North Carolina,[4] approximately 400 of whom were Mountain shareholders.

Mountain's alleged crimes seem to have begun at the time of their incorporation in 1994, eight years before the DOJ took action.[5] In essence, Mountain's very existence is considered by the government as *prima facie* evidence of antitrust violations simply because its provider network includes "the vast majority of private practice physicians in the greater Asheville area."[6] Of particular interest is the DOJ's belief that Mountain "has not clinically or financially integrated its physicians to create efficiencies" that would justify setting a uniform fee schedule.[7]

The government objects to Mountain's alleged fee schedule because Mountain relied "exclusively" on this schedule in contract negotiations with managed care companies, which the DOJ believes resulted in unfairly higher prices in the marketplace.[8] Since the DOJ considers this a legal injury to consumers, they allege Mountain violated Section 1 of the Sherman Act.

The nexus of the government's argument is that Mountain's fee schedule equaled a price-fixing scheme; that is, Mountain's participating physicians agreed to abide by the schedule exclusively in setting prices for their individual practices. Mountain publicly denied this was the case. Mountain claims they are not an exclusive network, and member physicians set their own office charges and may even join other provider networks and health plans not affiliated with Mountain.

Mountain does not deny that they've used non-exclusive fee schedules in the past. But as they note, such fee schedules are common to the majority of health plans operating in North Carolina. Mountain further contends that "[i]n response to existing antitrust guidelines, Mountain Health Care has transitioned to a messenger model where each payer negotiates directly with each physician."[9] The messenger model is an exception to the DOJ's general prohibition on physician collective bargaining arrangements. Under the model, a group of doctors may pass along fee information to an insurance company through a third-party "messenger," but the doctors may not speak with one another about fees or otherwise jointly discuss contract terms.

Dr. Stephan Buie, a psychiatrist and a member of the Mountain network, offered this description of Mountain's operations:

> [Mountain Health Care] works through a blind messenger system, whereby MHC negotiates a rate for services with an employer and then sends those rates to each member practice. Each practice independently decides whether to accept the rate or to counter propose a different rate. All members have been informed that it is not legal to consult with other practices about their participation or their rates. Employers were free to negotiate with other managed care organizations.[10]

Curiously, the complaint makes no mention of Mountain's messenger model claims. This omission changes the entire character of the government's case. If Mountain's claim is true, then the DOJ intentionally withheld a material fact from its complaint. Consequently, the government's view that Mountain was nothing more than a "price-setting organization"[11] would be erroneous, since the price-setting behavior itself is no longer taking place. At the very least, the DOJ should explain why Mountain's "messenger model" claim is false, why Mountain's actions still warrant the charges and remedy set forth in the complaint.

B. Jurisdictional Issues

The next problem with the complaint is the government's assertion of jurisdiction. On the one hand, the complaint's description of Mountain's actual business activities described commerce occurring exclusively within North Carolina.[12] But on the other hand, the government forcefully claims that Mountain's actions fall under interstate commerce, which is a predicate for the DOJ to bring action under the Sherman Act.[13] It is unclear whether the alleged misconduct fell within the sphere of interstate commerce. Thus, it is possible the DOJ has not met its burden to establish federal jurisdiction in this case.

Mountain is a professional corporation organized under North Carolina law. It is registered with North Carolina's commissioner of insurance as a "preferred provider organization," a tightly regulated form of physician network. Generally, regulation of health care and health insurance providers occur at the state level. If Mountain were to operate in another state, it would be subject to that jurisdiction's separate rules for health care and health insurance regulation. Since Mountain only operates in counties comprising western North Carolina[14], it is only subject to North Carolina regulation. This raises the question of whether state officials would be more competent to assess the legality of Mountain's operations than the DOJ, but we will address that point later. For purposes of assessing this Court's jurisdiction, it is only relevant to determine whether the alleged crimes involved interstate commerce.

The government claims Mountain's contract—the products of the illegal fee schedule—included arrangements with "business located outside North Carolina."[15] What is unclear is the precise identity and nature of these businesses. The government admits Mountain's doctors only render services within North Carolina boundaries.[16] The businesses receiving these services only do so within North Carolina. At all times, these intrastate transactions are conducted under the careful regulatory eye of North Carolina officials. Thus, the DOJ is asserting jurisdiction here solely because some of the businesses—and we don't know how many—Mountain provides services to may be organized outside of North Carolina.

At a minimum, some of the contracts Mountain entered into were wholly intrastate affairs; that is, Mountain provided services to businesses organized and doing business *only* in North Carolina. These arrangements are not the proper subject of a federal antitrust proceeding, but may be actionable under state law. In any case, the DOJ's complaint may not cover such acts, at least not under the Sherman Act. The complaint fails to distinguish and identify the character or Mountain's clients, however, and we are thus left with an incomplete picture.

The DOJ is overextending its reach here, at least so far as the complaint covers all contracts Mountain entered into, whether intrastate or interstate in character. Furthermore, it's also unclear whether the contracts Mountain entered into with businesses organized outside North Carolina actually involved overt acts of interstate commerce. If these contracts were between Mountain and subsidiary offices wholly operating within North Carolina, these contracts too might fall outside the reach of the Sherman Act.

In any case, there is a fundamental "public interest" question here as to whether the DOJ should be acting in a case where state authorities posses a more direct, not to mention more developed, interest in the alleged misconduct. Regulation of private health care networks remains largely a state affair, and the DOJ's actions here infringe upon the state's traditional sphere of influence. This should be a factor the Court takes notice of in reviewing the complaint and proposed Final Judgment.

C. Marketplace Description and Analysis

The complaint provides little useful information regarding the marketplace for health care services in western North Carolina. Instead, the government offers a highly generalized description of how physicians relate to managed care companies:

> Physicians frequently contract with managed care purchasers. These contracts establish the terms and conditions, including price, under which physicians will render care to the enrollees of managed care purchasers. In negotiations with managed care purchasers, physicians frequently agree to charge rates lower than their customary rates, in order to gain access to the managed care purchaser's enrollees. As a result of this lower rate, such contracts often lower the managed care purchasers' cost, and therefore lower the cost of health care for their enrollees.[17]

There are two unproven statements in this claim. The first is that physicians always seek access to the greatest number of patients for the lowest compensation. The second is that lower physician costs equals lower costs for managed care customers. Both of these statements are possibly true, but in the absence of clear and convincing evidence, they cannot simply be taken as axiomatic. The complaint includes no supplemental information that would support either claim in the context of this case. There is no description of the actual market for health care services in western North Carolina; for example, the complaint tells us nothing of who Mountain is competing with, the structure of fees in the market before and after Mountain's incorporation, or the structure of managed care contracts with individual consumers. Additionally, the complaint makes no effort to assess whether physicians prefer to accept more patients at a lower per capita reimbursement, or whether they've individually expressed a preference to see fewer patients at a non-discounted rate.

The complaint states that Mountain's network provided "access to substantially all of the physicians in Asheville and the surrounding counties."[18] While this is true, the access was apparently not exclusive. As noted above, Mountain denies they were ever an exclusive network: "[P]roviders are free to participate with any network or plan they choose. Your employer does not have to contract with Mountain Health Care in order for you to see those providers."[19]

The government believes Mountain acted as an exclusionary monopoly, unreasonably controlling the marketplace. But once again, Mountain denies this, arguing they faced more than ample competition: "Employers in the Western North Carolina market place are contracted with many different health plans. *Mountain Health Care members make up an average of only 8% of our providers patient base,* and the overwhelming majority of Mountain Health Care providers participate with other plans"[20] (emphasis added). Clearly, Mountain's operation did not leave consumers without other options.

There is simply no evidence which refutes Mountain's description of the marketplace as competitive, non-exclusionary, and otherwise free of coercive influence. In the absence of such proof, Mountain's denials should be taken at face value, since the government has the burden of establishing its case by a preponderance of the evidence, not the other way around. Having failed to meet this burden, the government's complaint is defective simply because they have not demonstrated the marketplace itself suffered from any anti-competitive effects arising from Mountain's activities.

D. Anti-Competitive Effects

Despite not proving any defects in the marketplace, the government nevertheless insists Mountain's actions harmed consumers in western North Carolina. The complaint alleges three specific harms: unreasonable restraint of price competition, denying the "benefits of free and open competition" to managed care companies and their enrollees, and forcing consumers to pay higher prices for physician services.[21] None of these allegations have merit.

As discussed above, the government never demonstrates that Mountain's fee schedule was exclusive. Mountain's own denial suggests the fee schedule was nothing more than a loose coordination of independent operators. The schedule did not cover office charges, and any patient was free to obtain services from a Mountain physician without going through the network.[22] Thus, it is unreasonable for the government to define Mountain's fee schedule as a "restraint" on price competition, since no actual restraint existed.

Next, on the question of whether Mountain denied consumers the "benefits of free and open competition," it is unclear precisely what "benefits" are at issue. The government alludes to the fact that consumers faced higher prices for physician services as the result of Mountain's actions. But that statement appears to be false. Mountain's prices apparently varied little between 1994, when the network was incorporated, and 2002, when the government filed the complaint. Indeed, as Dr. Buie noted, "Managed care organizations have taken a hard line with payment to physicians, either decreasing payments or holding them steady during the last 10 years."[23] Mountain was in the same boat as every other physician network as this respect. While it is true that premiums paid by enrollees of managed care plans have increased substantially in the past decade, even the government attributes that primarily "on larger increases in the indices for prescription drugs and hospital services,"[24] not higher physician reimbursements.

Finally, on the issue of whether consumers paid unreasonably higher prices to Mountain physicians, there is once again a lack of evidence, or even a proper standard to judge evidence. The complaint does not reveal how much Mountain charged under its fee schedule, how much non-Mountain providers charged, or how much Mountain providers charged prior to joining the network. Furthermore, there's no indication of what the government's standard is for assessing price levels. We have no indication as to what price levels are acceptable,

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[3] Compl., ¶ 1.
[4] *Id.*
[5] Compl. ¶ 15.
[6] Compl. ¶ 8.
[7] Compl. ¶ 11.
[8] Compl. ¶ 14.
[9] "Myths and Facts about Mountain Health Care." *Asheville Citizen-Times* (Jan. 6, 2003) (accessed online at *http://www.mountainhealthcare.com/pressrelease.htm.*)
[10] Stephan Buie, "Competition needs to grow between insurance companies," *Asheville Citizen-Times* (Dec. 30, 2002) (accessed online at http://www.mountainhealthcare.com/pressrelease.htm).
[11] Compl. ¶ 14.
[12] Compl. ¶ 2.
[13] Section 1 of the Sherman Act, 15 U.S.C. 1, only applies to "trade or commerce among the several States, or with foreign nations."
[14] See Compl. ¶ 5.
[15] *Id.*
[16] Compl. ¶ 2.
[17] Compl., ¶ 6.
[18] Compl., ¶ 8.
[19] "Myths and Facts about Mountain Health Care."
[20] *Id.*
[21] Compl., ¶ 17.
[22] "Myths and Facts about Moutain Health Care".
[23] *Id.*
[24] *Id.* (citing *Modern Healthcare*, Jan. 21, 2003).

either for physicians nationally or for those located within the western North Carolina marketplace. Without evidence or standards, the complaint's assertion that the physicians increased prices unreasonably is simply arbitrary and capricious.

E. Request for Relief

Since the complaint's requested relief was essentially obtained through the proposed Final Judgment, we will reserve commentary on this subject until Part IV. However, since the analysis above demonstrates the government's complaint is defective in nearly every aspect, the Court could simply dismiss the complaint for failure to state a claim entitling the government to obtain relief.[25]

Part II: Historical Background

A. Origins of Government Intervention in Healthcare

The case against Mountain ultimately has little to do with enforcing the Sherman Act and everything to do with protecting the federal government's intrusive role in the healthcare market. Indeed, if the DOJ actually believed in the type of free market they claim to be protecting here, they would be seeking to protect Mountain's right to exist rather than destroy it. But as things stand, the government maintains a direct interest in destroying Mountain, and in general preventing physicians from collectively bargaining with managed care companies. This interest is not genuinely motivated by antitrust concerns, but by simple budget politics.

In 1965, Congress brought an end to the free market that successfully served Americans for most of the republic's history. That year, Congress created Medicaid and Medicare, two programs designed to finance healthcare for the indigent and elderly, respectively.[26] The original concept was for the government to simply pay the bills for medical expenses while not interfering with physicians and the services they provided. This concept soon proved unworkable.

The core problem with Medicaid and Medicare was the divorcing of demand for services from the ability to pay. Once health care became free for certain individuals, these folks were able to spend indiscriminately. Recognizing this problem (but refusing to admit defeat), Congress responded by imposing arbitrary cost controls on Medicare and Medicaid. Originally, the two programs paid "reasonable costs" of services chosen and provided by physicians. But following passage of several amendments in 1983, Medicare and Medicaid switched to a payment system based on DRGs, or "diagnosis-related group." This change was intended to lower government spending on health care.

The DRG approach is precisely the kind of non-market price fixing the government now accuses Mountain of. A DRG divides all medical problems into a set number of categories, and then assigns a fixed, arbitrary fee for each "diagnosis," a figure that supposedly represents the average cost for treating the problem. A health care provider gets only the fixed DRG amount, regardless of actual work performed. This means that for the provider to make a profit, he must incur costs below the DRG rate.

The DRG approach is used not just under Medicare and Medicaid, but in privately owned insurance programs as well. Because the government's 1965 interventions led to an exponential rise in health care costs, Congress decided to encourage a DRG approach in private insurance by passing the HMO Act of 1973. HMOs, or health maintenance organizations, exist as comprehensive prepaid insurance plans, where providers accept a DRG-like fixed rate for medical services irrespective of actual costs. Prior to 1969, the only HMO of significant stature was Kaiser Permanente, which relied on labor unions compelling their members to join.[27] Today, of course, HMOs are the dominant provider of private health insurance coverage in the United States.

The rise of HMOs derives not from their popularity in the market, but from the 1973 law. Congress essentially rigged the market in favor of HMOs, giving them generous subsidies, and expanding tax incentives for employers that enrolled their employees in HMOs. The government's encouragement made HMOs a dominant force in the health care marketplace independent of the need to fairly compete for customers.

Indeed, it is difficult to imagine HMOs succeeding in a genuinely competitive free market. The DRG-based approach HMOs use is entirely incompatible with America's capitalist ideals. Customers generally don't voluntarily pay for what they know to be inferior service. Yet HMOs only profit by forcing costs below the level at which optimum customer service can be provided. The economic principle is egalitarian rather than capitalist: it's more important for an HMO to serve everyone than to serve everyone well. In the absence of government encouragement, few customers would voluntarily subscribe to this theory when it comes to something as essential to their life as health care.

Despite all of the government's interference, health care costs continue to rise. Rather than admit fault, the government prefers to scapegoat others for the shortcomings of Medicare, Medicaid, and managed care. Physicians are by far the easiest target. In DRG-based models, physicians are effectively stripped of their power to deal one-on-one with their patients, thus subjecting all medical judgments to the whims of government bureaucrats and HMO administrators, few of whom have any actual knowledge or experience in health care. At the same time, physicians have found their incomes restricted by non-market forces, namely the arbitrary DRG levels that bear little if any relation to actual supply and demand. Despite this, the government promotes the theory, at issue in this case, that it's the physicians that are acting illegally by trying to increase their income and their control over how they provide medical care. According to the DOJ's thinking, it is more important for the HMOs and government insurance programs to be protected from their own errors than to permit physicians even a minimal ability to defend their professions and personal livelihoods.

B. Origins of Physician Antitrust Prosecutions

For more than 80 years, the Sherman Act was not applied to the activities of physicians, attorneys, and other so-called "learned" professions. In passing the Sherman Act, Congress's target was alleged industrial trusts, such as Standard Oil and the railroads. But in 1975, the U.S. Supreme Court extended the Sherman Act's reach to independent professionals in *Goldfarb* v. *Virginia State Bar*.[28] There, the Court was asked to examine whether a minimum fee schedule for legal services constituted illegal price fixing, notwithstanding the fact a state bar itself prescribed the schedule.

A unanimous Court ruled against the bar, holding that the Sherman Act contained no exception for specific professions, even those regulated by state governments. At the same time, however, the Court noted: "In holding that certain anticompetitive conduct by lawyers is within the reach of the Sherman Act we intend no diminution of the authority of the State to regulate

[25] *See* Fed. R. Civ. Proc. 54(c).

[26] *See* 42 U.S.C. 1395, *et seq.*

[27] Scott Holleran, "What You—and Your Employer—Probably Don't Know About Your Health Plan," (Jan. 1999) (available online at *http://www.afcm.org/historyofhmos.html*).

[28] 421 U.S. 773 (1975).

its professions."[29] This is noteworthy because while the Court was mindful of protecting the federal government's exclusive authority to regulate interstate commerce, the justices also made it quite clear the states did not surrender their professional regulatory powers. In the context of the case against Mountain, this is a point worth emphasizing, since the DOJ's actions here trample on North Carolina's ability to supervise and regulate physicians and medical organizations, while not advancing a genuine interest related to interstate commerce.

Seven years after *Goldfarb*, the Supreme Court made its first—and to date only—major decision related to antitrust prosecution of physician organizations. In *Arizona* v. *Maricopa County Medical Society*,[30] a divided Court[31] held that a maximum-fee schedule adopted by a physician group was *per se* unlawful under Section 1 of the Sherman Act. The majority explicitly rejected any call to put the Medical Society's actions in proper context, citing the circular nature of the *per se* rule:

> The respondents' principal argument is that the per se rule is inapplicable because their agreements are alleged to have procompetitive justifications. The argument indicates a misunderstanding of the per se concept. The anticompetitive potential inherent in all price-fixing agreements justifies their factual invalidation even if procompetitive justifications are offered for some. Those claims of enhanced competition are so unlikely to prove significant in any particular case that we adhere to the rule of law that is justified in its general application. Even when the respondents are given every benefit of the doubt, the limited record in this case is not inconsistent with the presumption that the respondents' agreements will not significantly enhance competition.[32]

In dissent, Justice Powell preferred to actually look at the facts, and concluded:

> The medical care plan condemned by the Court today is a comparatively new method of providing insured medical services at predetermined maximum costs. It involves no coercion. Medical insurance companies, physicians, and patients alike are free to participate or not as they choose. On its face, the plan seems to be in the public interest.[33]

The situation in *Maricopa* is not dissimilar from this case. Like *Maricopa*, no coercion was involved, and the fee schedule arrangement—to the extent one actually exists here—is wholly voluntary. And if the government were to go to trial in this matter, they would almost certainly use a *per se* standard in analyzing Mountain's actions. In doing so, the government would be able to obtain a judgment against Mountain without having to prevent any substantial evidence as to the actual context of Mountain's operations or their effect on the marketplace; the government would only need to demonstrate that prices were fixed in some manner to prevail. Yet, as Justice Powell warned us in *Maricopa*, this approach often works against the supposed intent of the antitrust laws:

> It is settled law that once an arrangement has been labeled as "price fixing" it is to be condemned per se. But it is equally well settled that this characterization is not to be applied [457 U.S. 332, 362] as a talisman to every arrangement that involves a literal fixing of prices. Many lawful contracts, mergers, and partnerships fix prices. But our cases require a more discerning approach. The inquiry in an antitrust case is not simply one of "determining whether two or more potential competitors have literally 'fixed' a 'price.' * * * [Rather], it is necessary to characterize the challenged conduct as falling within or without that category of behavior to which we apply the label 'per se price fxing.' That will often, but not always, be a simple matter." *Broadcast Music, Inc.* v. *Columbia Broadcasting System, Inc.*, 441 U.S. 1, 9 (1979).
>
> Before characterizing an arrangement as a per se price-fixing agreement meriting condemnation, a court should determine whether it is a "'naked restrain[t] of trade with no purpose except stifling of competition.'" *United States* v. *Topco Associates, Inc.*, 405 U.S. 596, 608 (1972), quoting *White Motor Co.* v. *United States*, 372 U.S. 253, 263 (1963). See also *Continental T.V., Inc.* v. *GTE Sylvania Inc.*, 433 U.S. 36, 49–50 (1977). Such a determination is necessary because "departure from the rule-of-reason standard must be based upon demonstrable economic effect rather than * * * upon formalistic line drawing." *Id.*, at 58–59. As part of this inquiry, a court must determine whether the procompetitive economies that the arrangement purportedly makes possible are substantial and realizable in the absence of such an agreement.[34]

In *Maricopa*, the Medical Society's purpose was not to stifle competition, but to contain rising medical costs. Here, there is no evidence which suggests Mountain's intentions were to stifle or impair competition. Instead, Mountain's principal function was to provide patients and insurers with access to a broad network of health care providers. Superficially, at least, this would seem to be "pro-competitive."

But once again, there is substantial evidence to suggest the government's actions in cases like *Maricopa* and Mountain are about something other than antitrust.

C. The DOJ–FTC "Statements"

In the years following *Goldfarb* and *Maricopa*, the DOJ and FTC developed substantial experience going after physician organizations. The DOJ has filed five civil claims against physician groups since 1991, all of which have resulted in consent orders. None of these cases involved a remedy as drastic as the one imposed here on Mountain—outright dissolution—although in 1983, a preferred provider organization did dissolve on the eve of DOJ action. There is no record of any DOJ or FTC complaint against a physician group proceeding to trial, judgment, and appeal. Thus, there is no controlling precedent from the Supreme Court or any court of appeals on the constitutionality of the specific policies used by the government in reviewing and prosecuting physician activities.

The major policy at issue is the FTC–DOJ Statements of Antitrust Enforcement Policy in Health Care ("Statements"). The Statements were adopted by joint action of the FTC and DOJ Antitrust Division in September 1993, and revised by the agencies in 1994 and 1996. Congress never enacted the Statements into law, and thus these policies remain nothing more than the opinion of the FTC and the DOJ's Antitrust Division.

In physician network cases, the critical policy is Statement 8, which effectively labels all networks owned by nominally competing physicians as *per se* illegal. Statement 8 says these networks are only legal under the Sherman Act if the physicians "share substantial financial risk." As lawyers at the firm representing Mountain before this Court noted in 1996: "It is this requirement that has generated the most controversy. This is so not because the concept of sharing risk is unusual in the context of a legitimate joint venture. Instead, the controversy stems from the fact that the enforcement statements 'approve' only two forms of risk sharing: capitation and withholds."[35] Capitation means physicians are paid a fixed amount per month for each consumer enrolled in a given health plan; withholds means the payer keeps a certain percentage of a physician's reimbursement unless certain cost

[29] 421 U.S. at 793.

[30] 457 U.S. 332 (1982).

[31] The case was decided by a 4–3 vote, because Justices Blackmun and O'Connor were recused.

[32] 457 U.S. at 351.

[33] *Id.* at 357.

[34] *Id.* at 361.

[35] Bruce R. Stewart and E. John Steren, "Will New Guidelines Clarify Role of Antitrust Law in Health Care?" Legal Backgrounder, Vol. 11, No. 23 (June 21, 1996).

containment goals, such as reducing particular procedures. Physician networks have no choice under Statement 8 but to employ one of these two methods, despite the fact that both capitation and withholds substantially increase physician risks without providing any actual benefit to physicians or health care consumers.

If physicians don't wish to share risk under Statement 8, but still want to negotiate with insurance companies through a network, the doctors must turn to Statement 9, which authorizes the "messenger model" described earlier. The messenger, as the name implies, is not supposed to be a negotiator, but a one-way courier of information from insurance companies to independent physicians. Or, put another way, "the messenger acts essentially as a mute and blindfolded delivery boy between the payer and each physician in the network."[36]

Statements 8 and 9 create an unworkable marketplace where physicians possess no genuine bargaining power. The three tools at the physicians' disposal—capitation, withholding, and messengering—are insufficient in dealing with HMOs on a level playing field. The government is well aware of this, and maintains these options precisely for that reason. After all, HMOs are government-sponsored entities that would perish in a truly free market. The only way to maintain the HMO's viability is to eliminate the "threat" of concerted physician action. That's what Statements 8 and 9 are designed to accomplish, and they've done so quite effectively, albeit at the expense of the government's integrity in enforcing its own laws.

In the context of this case, it must be repeated that Mountain claimed to employ the messenger model system set forth in Statement 9. This claim is never addressed, because the government intentionally omitted this fact from its compliant. In past cases, however, the government claimed that even though a network employed a messenger model, it did so incorrectly. This means the government itself—which is composed of antitrust lawyers, not health care professionals—subjectively decided they didn't like the look of things. In most recent prosecutions of physician networks, the defendant argues they were following the best available legal advice in employing the messenger model. Yet in every case, this advice did not save them from the government, which changes the rules in mid-game when they don't like a particular result.

[36] *Id.*

D. Constitutional Analysis of the DOJ's Antitrust Policies

At a fundamental level, the prosecution of Mountain represents the latest attack in a full-scale war against physicians and their basic individual rights. The government's legal premise is shaky at best, since they're arguing in favor of a nebulous concept of "consumer rights" despite the complete absence of evidence that any consumer was harmed in a legal sense. But beyond that, the government's moral premise is far more troubling. In order to accept the government's argument that Mountain violated the antitrust laws, this Court must also subscribe to the notion that Mountain's physician shareholders are serfs of the HMO's (and by extension the government), since these doctors possess no individual rights whatsoever when it comes to fulfilling their economic self-interest.

By dissolving Mountain, the government seeks to deprive the physician shareholders of any ability to negotiate fairly with insurance companies. This makes it for more likely the physicians will surrender greater amounts of their professional autonomy just to ensure a steady paycheck from week-to-week. In turn, this leads to an economic relationship not unlike ancient feudalism, where the procedures generate wealth which is unjustly appropriated by feudal lords whose only claim to the wealth is the benefit of political power and patronage. HMOs do not earn their wealth through production, but through the appropriate of wealth generated by physicians. The government serves to facilitate the HMOs through policies such as this antitrust prosecution. The goal isn't to protect consumers, but to deny wealth to its rightful owners.

This feudal model will only continue to escalate in the absence of judicial intervention. And such intervention is warranted on constitutional grounds, for one of several independent reasons. First, the government is using antitrust policy in a manner that denies basic rights to some citizens but not others. Physicians aren't just treated differently than HMOs; doctors are also treated differently than almost every other class of professional in this country. Labor unions enjoy exemptions from antitrust laws, not because their acts are less likely to violate the antitrust laws, but because unions are politically well-connected in a way that physicians are not. While one could argue this is simply the nature of a democracy, the Constitution prohibits the federal government from distinguishing rights among arbitrarily selected classes of individuals. The Privileges and Immunities Clause of Article IV, the Due Process Clause of the Fifth Amendment, and the Ninth and Tenth amendments all provide ample support for the equality of physicians to every other class of American citizen.

Furthermore, Congress lacks any affirmative power to provide for the kind of professional destruction imposed by the DOJ in this case and others like it. The Commerce Clause of Article I extends only to interstate commercial acts. Mountain's actions, by the DOJ's own evidence, were wholly intrastate in their actual character, despite the alleged tangential effects on commerce outside of North Carolina. Beyond that, the Tenth Amendment recognizes North Carolina's sovereignty over the regulation of health care matters, a point not challenged by the DOJ in this case.

Ultimately, the government's case against physician networks like Mountain has more to do with moral values than legal judgments. The DOJ's position is that physicians enjoy no basic right to economically benefit from their skills—at least not when such benefits might hamper the government's efforts to ensure the triumph of HMOs in the private insurance market. This contradicts the very principles at the heart of the Constitution and the Declaration of Independence, which hold the individual right to life, liberty, property, and pursuit of happiness as paramount to any policies that force individuals—such as physicians—to sacrifice their rights for the sake of others.

Part III: Recent Cases

A. OGMC of Napa Valley

The Center for the Advancement of Capitalism (CAC)[37] first filed comments on behalf of a physician organization in May 2002, in the matter of Obstetrics & Gynecology Medical Corporation of Napa Valley (OGMC),[38] an FTC complaint against a six-physician network in California.[39] Like Mountain, OGMC was accused of injuring HMOs and health care consumers by attempting to collectively bargain for higher fees. And like the proposed settlement here, OGMC agreed to dissolve. Additionally, the individual OGMC physicians agreed to a variety of

[37] The Center for the Advancement of Capitalism is a nonprofit corporation that generally promotes the moral basis of capitalism. While CVT officials have discussed this case with CAC, this comment letter reflects only the viewpoints of CVT.

[38] FTC File No. 011–0153.

[39] The six physicians were named individually by the FTC in addition to their professional corporation.

restrictions on their personal conduct for a period of 20 years.

CAC submitted timely and extensive comments to the FTC's complaint and proposed settlement. CAC offered four principal arguments: First, OGMC's alleged collective bargaining did not violate the FTC Act, 15 U.S.C. 45, *et seq.*; second, the FTC's action against OGMC was *per se* unconstitutional under the Privileges and Immunities Clause[40] and the Fourteenth Amendment; third, the forced dissolution of OGMC would actually harm competition; and finally, that the proposed settlement itself was contrary to the public interest. CAC's comments offered extensive analysis and proof in support of its arguments, and consequently expected the FTC to seriously consider the comments prior to entering its final order against OGMC.

That did not happen. Not only did the FTC fail to seriously consider CAC's comments, they effectively failed to acknowledge or consider them at all. On May 17, 2002, the FTC announced the adoption of a final consent order against OGMC after a comment period elapsed in which "no comments were received" or considered by the Commission. This despite the fact CAC's comments were submitted to the FTC four days before the stated deadline. Upon further inquiry, FTC officials admitted their error in neglecting to consider CAC's comments. However, FTC officials then proceeded to lie to both CAC officials and OGMC's counsel, falsely claiming CAC's comments were both considered and taken into account in formulating the final order.

In documents obtained by CVT through the Freedom of Information Act (FOIA), FTC officials acknowledge they failed to initially consider CAC's comments, but prior to service of the final order on OGMC, the Commission belatedly considered and voted on a reply to CAC's comments. This is inconsistent with the statements of OGMC counsel, however, who addressed the issue to FTC counsel in a letter dated two months after the settlement was approved:

> The final Order, however, does not reflect the receipt of [CAC's] comments, nor does it address any of the substantive points that the Center made in the comments. If the facts are as a representative of the Center has described them to use, we believe that, at a minimum, our clients' procedural due process rights have been violated and, potentially, their substantive due process rights.[41]

[40] U.S. Const., art. IV, 2.

[41] Letter from Glenn Stover to Jeffrey Klurfeld, Director, FTC Western Regional Office 1–2 (July 17, 2002).

According to the FOIA documents received, the FTC denied that any violation of OGMC's rights occurred, yet the Commission has never fully explained the discrepancy between the public statement that no comments were received and the contrary representations made to CAC. CVT and CAC are currently pursuing a FOIA appeal to obtain additional information on this issue.

Procedural shenanigans aside, the substantive problem was that the reply CAC finally received from the FTC contained little substantive refutation of CAC's comments. The government made no attempt to seriously address the constitutional, practical, and ethical arguments raised. Instead, the FTC cited a broad disagreement with CAC's philosophy opposing antitrust. While that disagreement was already understood by CAC, the comments at issue addressed the government's specific conduct in prosecuting OGMC and physician groups generally. To that argument, the FTC could only muster a broad evasion.

> The analysis that the Commission issued when it accepted the consent agreement for public comment provides a detailed basis for this determination, through its extensive discussion of both the complaint and the consent order. Moreover, with respect to [CAC's] concerns about the complaint allegations, it is important to note the consent order is the product of a negotiated settlement between the Commission and the respondents.[42]

As is the case with Mountain, the FTC's complaint and analysis of their settlement with OGMC provided little useful information for the public to disseminate in analyzing the proposed order. Instead, the FTC offered a series of unproven assertions against the defendants, and expected the public to accept them at face value without even minimal scrutiny. Furthermore, the government's argument that the settlement was the product of "negotiation" with OGMC is disingenuous at best. As is the case here, the settlement forced the network's dissolution. In general, one rarely finds a party to a negotiation committing suicide as part of a mutual exchange. Indeed, as we will discuss below, the process used by the government in obtaining consent orders from physician groups is anything but a genuine "negotiation."

B. The Colorado Cases

Following on their triumph in Napa Valley, the FIC's attention next turned to three settlements with physician groups in the Denver area. While nobody was forced to dissolve, FTC officials did manage to substantially hamper several small businessmen in the greater Denver area in the name of protecting competition.

The FTC's chief target in the Denver cases was Marcia Brauchler, the president of Physician's Ally, Inc., a healthcare management consulting firm. Brauchler is an unusual monopolist, as her annual income is approximately $33,000, less than most government employees earn. Physician's Ally is run out of Brauchler's home, and consists of herself and a single part-time assistant.[43]

Despite her modest operation, the government considered Brauchler a dangerous threat to competition because of her work consulting two physician groups, Aurora Associated Primary Care Physicians (AAPCP) and Physician Integrated Services of Denver (PISD), which each consisted of about 40 physician-owners.

AAPCP and PISD both operated under the federal government's "messenger model" requirements, with Brauchler as the third-party messenger. As far as she, the doctors, and her attorneys were concerned, their operation was perfectly consistent with the DOJ–FTC guidelines. Then one day in June 2001, Brauchler received a letter from the FTC announcing they had launched an investigation of her, AAPCP, and PISD. FTC staff immediately demanded more than 13,000 pages of documents, most of which Brauchler produced using a rented photocopier in her living room.

Four months after submitting these documents, the FTC informed Brauchler that she had the option of settling immediately or facing a full-scale investigation and administrative trial. Brauchler was not informed of the actual charges against her, and the FTC said no complaint had been prepared. Nevertheless, the FTC would push for a consent order in the absence of any formal charges.

Despite the government's repeated characterization of the consent order process as a "negotiation," Brauchler's experience provides a more accurate picture. In November 2001, Brauchler was told the FTC would prepare a proposed settlement, send it to her counsel for reivew, and then expect her approval. Brauchler was repeatedly promised an opportunity to see the actual complaint against her, but the

[42] Letter from Benjamin I. Berman, FTC acting secretary, to S.M. Oliva 2 (May 30, 2002).

[43] Unless noted otherwise, all information regarding the case against Marcia Brauchler can be attributed to a series of telephone and e-mail interviews CVT conducted with Ms. Brauchler.

FTC would continually delay this, first promising the complaint in January 2002, then March, before finally delivering it in April, *after* Brauchler had agreed to a settlement.

The settlement itself was the product of coercion. The FTC simply presented a proposal and expected it to be accepted without discusssion. Brauchler describes a January 2002 "negotiation" between her attorney and FTC staff attorney Paul Nolan as follows:

> Paul was seeing red flags. Management was strongly behind the staff recommendation in this case, that there wasn't a long window for negotiations, and that the FTC would not accept much less than was in the initial settlement offer. The FTC staff, according to Mr. Nolan, was hearing some "noise" that they should start issuing subpoenas if they sensed that there was any "backsliding" on PISD's willingness to settle essentially on the terms set forth in the settlement offer. Mr. Nolan gave a short list of non-negotiable items * * * The FTC had no interest in setting up a regulatory framework that would allow PISD to continue in operation as it strove to achieve the necessary levels of integration to permit collective bargaining. Mr. Noland said the FTC would be responsive to very narrow proposals of a technical nature, but not to significant substantive changes. Mr. Noland offered that the FTC viewed the proposed settlement as a vanilla-type order.[44]

Nolan added that should the FTC be required to conduct a full investigation, "there would be more incentive to pursue disgorgement of the profits derived from the antitrust violation." In other words, if Brauchler and PISD asserted their right to a trial, the FTC would seek to punish them by demanding "disgorgement" of profits in addition to the other proposed remedies. Keep in mind, the profits Brauchler allegedly earned from these "antitrust violations" amounted to little more than $30,000 per year, while the alleged victim of her actions included some of the nation's largest health maintenance organizations.

The process Brauchler describes is not, we believe, atypical. At the same time her cases were being "settled," another Colorado-based physician consultant R. Todd Welter, was also facing the FTC's wrath. Like Brauchler, Welter is a self-employed management consultant. Like Brauchler, he was forced to sign a consent order "with a gun to my head."[45] Welter and Brauchler were both innocent victims of an FTC witch-hunt designed to placate HMO complaints.

As a result of the consent order he signed, Welter lost substantial share of his business revenue. What's notable about the Welter case is that the FTC apparently fabricated key facts of its complaint. The FTC claimed that eight physician networks that were clients of Welter were organized by him into a negotiating bloc called "Professionals in Women's Care" or PIWC. In interviews with PIWC, however, Welter maintained that PIWC was nothing more than the name of a common folder he kept certain clients in; there was never any effort made to collectively bargain on behalf of the PIWC unit.

What all three Colorado cases have in common is the government's insistence that HMOs—multi-billion dollar corporate entities—were the victim of small physician consulting firms. This is patently absurd on its face. In reality, the government decided to punish these consultants and their physician clients for rejecting the HMOs proposed contracts, which the physicians viewed as reimbursing them far below the market value for their services. It was solely a policy question, not a legal one. The government used antitrust law to decide the outcome of a private negotiation, just as the DOJ is prosecuting Mountain now because the government would prefer to see HMOs expand their network within North Carolina.

CVT filed extensive public comments in the Welter case. The FTC barely acknowledged receipt of these comments, refusing to answer the substantive arguments raised by CVT. Consequently, CVT filed a follow-up letter with the FTC asking a series of specific questions about the Welter case and the government's general policy on health care. To date, CVT has received no reply.

C. System Health Providers

At around the same time Welter's case was settled, the FTC also announced a similar deal with a substantially larger group of physicians in Texas, System Health Providers. CVT's comment letter in this case described the situation as follows:

> The facts of this care are fairly simple. Genesis Physicians Group consists of "approximately" 1,250 physicians practicing medicine in the "eastern part of the Dallas-Fort Worth metropolitan area." In 1995, GPG formed System Health Providers, a medical management company. Since 1998, GPG has been the sole owner of SHP stock.
>
> From 1996 to 1999, GPG engaged in collective bargaining with insurance companies on behalf of its members. These actions were taken under "risk-sharing arrangements" where, presumably, some clinical and financial integration of the member physicians' practices took place. These arrangements were consistent with Federal Trade Commission policy, which permits collective bargaining only under "risk-sharing" arrangements.
>
> GPG's risk-sharing activities failed miserably. They resulted in "significant losses" to the physicians, and the risk-sharing entity formed by GPG was forced to file for bankruptcy protection in 1999. Thereafter, GPG and SHP began to engage in collective bargaining via non-risk-sharing arrangements. In other words, the physicians maintained their individual practices while using a common agent to negotiate with HMOs and other insurance companies. This practice is prohibited by the FTC, because it is considered per se illegal price fixing. Consequently, the FTC began its investigation of GPG and SHP, resulting in the consent agreement now before the public record.[46]

Not only were SHP's physicians punished, they were punished for attempting to maintain the economic viability of their practices. Despite uncontroverted evidence that the business models outlined in Statements 8 and 9 of the FTC–DOJ policies failed, the government maintained they worked. Rather than face a grievous policy error, the government decided to continue blaming physicians.

One interesting note from the FTC's complaint against SHP was this explanation of how the marketplace for healthcare was supposed to work, at least in the government's opinion:

> Medicare's Resource Based Relative Value System ("RBRVS") is a system used by the United States Centers for Medicare and Medicaid Services to determine the amount to pay physicians for the services they render to Medicare patients. The RBRVS approach provides a method to determine fees for specific services. In general, it is the practice of payors in the Dallas area to make contract offers to individual physicians or groups at a fee level specified in the RBRVS, plus a markup based on some percentage of that fee (*e.g.*, "110% of 2001 RBRVS").[47]

This is a curious, but telling statement. If the goal of antitrust policy is to promote free competition, than it should not matter whether HMOs use RBRVS in negotiating their private contracts with physicians. It also shouldn't matter whether physicians adopt RBRVS as the baseline for their own reimbursement demands. After all, in a true market economy, prices are always set by the market actors, not an outside third-party. Yet here the third-party—the federal government—is arbitrarily imposing price levels on private industry. This further proves the claim that the government's antitrust prosecutions of doctors are motivated by a desire to ultimately protect Medicaid and Medicare from potentially cost-raising actions by physicians asserting their economic rights.

D. Conclusions Based on Recent Cases

While the Court cannot reexamine the government's actions in the prior cases discussed above, it is essential that the Court take judicial notice of how the government conducted these cases, and how their policy judgments are affecting the administration of justice. The cases CVT participated in gave us a clear sense that the government is not acting in good faith when they pursue physician networks and their consultants in antitrust proceedings. Quite the opposite, government ethics seem to go the way of the Spanish Inquisition when it comes to health care policy and antitrust.

Comparisons to the Inquisition may seem overwrought, but in fact the parallels are ominous. The government, much like Torquemada, is on a persistent quest to pursue and punish heresy against doctrine, despite the fact that the underlying dogma is grounded in the complete absence of fact. Much of the antitrust consent decree process is shielded from public view in secret proceedings where the public (and generally the defendants) are unable to obtain a complete understanding of the facts and arguments. The minute the government's policy is called into question, they immediately hide behind dogma or some similarly irrational pronouncement of faith in antitrust doctrine.

This has certainly been CVT's experience in submitting comment letters. Despite repeated, comprehensive, and respectful attempts to gain some insight into the government's antitrust policies and consent decree process, the DOJ and FTC offer little more than token consideration and general platitudes. Both agencies hide behind the Constitution, claiming our arguments amount to nothing more than a constitutional challenge to the Sherman Act itself. While it's true that the Sherman Act is unconstitutional in CVT's judgment, the issue in these cases, and before this Court today, is whether the government's application of the Sherman Act to the exercise of individual rights by physicians is legal and constitutional. This question has never been substantively addressed by a federal court, because if it were, CVT maintains these prosecutions would immediately cease. No rational judge would uphold the government's nonsensical and unconstitutional efforts to impose the will of a handful of bureaucrats on the nation's health care system.

At a minimum, the government should demonstrate some accountability by answering CVT's comments in a careful, rational, and thoughtful manner. This would only benefit the public by providing insight into both the government's enforcement policies as well as the consent order process. As things currently stand, however, the government comes off as an arrogant entity that can't be bothered to explain basic facets of policies that impact a significant sector of the American economy.

Part IV: Analysis of the Proposed Final Judgment

A. The Competitive Impact Statement

Turning to the Competitive Impact Statement, the government makes little effort to actually enhance the public's understanding of the complaint or the proposed judgment. Instead, the CIS largely repeats the unproven and unfounded allegations of the complaint. This approach is not surprising. Even supporters of the government's antitrust policies, such as American Antitrust Institute president Albert Foer, have expressed dismay at the DOJ's lack of candor in past cases: "The [Justice] Department has traditionally been reluctant to say a great deal in its CIS disclosures, presumably because it risks disclosure of confidential information, adds to the staff's workload, and opens up the door to additional inquiry."[48] While this may explain the lack of insight from the CIS in this case, it does not justify or excuse the government's failure to uphold their public interest mandate under Tunney Act.

As we noted with the complaint, the CIS makes no serious or credible effort to describe the marketplace Mountain competes in, or how specific customers and individuals within that market were affected by alleged Sherman Act violations. The CIS repeats the complaint's key thesis: "The physician reimbursement rates that have resulted from Mountain Health Care's negotiations with managed care purchasers are higher than those which would have resulted from individual negotiations with each competing independent physician or medical practice that participates with Mountain Health Care.[49]" Yet once again, there is nothing in the CIS that proves this statement. The DOJ could have presented a complaint from a managed care purchaser, a comparison of fees between Mountain and non-Mountain contracts, or even a basic economic analysis of the marketplace. The DOJ provided none of this. As a result, it is impossible to credibly show the complaint's allegations possess even a basic level of credibility.

The DOJ will likely take the position, in response to this criticism, that they need not prove any basic facts regarding their case, because to do so would amount to a trial, something which the proposed Final Judgment seeks to avoid. Certainly we can understand the interests of judicial economy require the Court not waste its time proving allegations that both parties have stipulated to. But at the same time, the Tunney Act requires a finding that the proposed Final Judgment is in the "public interest." This should mean the defendant's mere acquiescence to the government's position need not be the final word. Indeed, given that Mountain openly questioned the government's recitation of the facts, we suggest the court has an obligation to conduct some proceedings in order to show the government advanced their complaint and CIS in good faith.

For example, the DOJ asserts in the CIS that no "determinative materials or documents" considered by the government in "formulating the proposed Final Judgment."[50] Under the Tunney Act, such documents must be released if they exist. Curiously, in almost all antitrust settlements, the DOJ claims no such "determinative" documents exist. This is yet again proof that the government seeks to avoid any genuine scrutiny or accountability for their actions. In 1982, just a few years after the Tunney Act's passage, a federal judge concluded the DOJ was not doing its best to act in good faith where "determinative" documents were concerned:

> The Court simply cannot accept an interpretation of legislation that permits the government to assert in 172 out of 188 cases that it considered neither documents nor any other materials determinative in reaching its conclusion to enter into a consent decree.[51]

The Tunney Act does not require full disclosure of the DOJ's files, but it does require a good faith review. Only action by the Court can effectively remedy the government's failure to disclose

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[44] E-mail interview with Marcia Brauchler (Jan. 23, 2003).

[45] CVT conducted multiple telephone interviews with Mr. Welter, and any statements of fact in this section should be attributed to these interviews.

[46] Comments of Citizens for Voluntary Trade 2–3 (Sept. 18, 2002) (FTC File No. 011–0196).

[47] Complaint, *In re System Health Providers, Inc.*, and *Genesis Physicians Group, Inc.*, ¶ 10.

[48] Letter from Albert A. Foer to Roger W. Fones 2 (Dec. 27, 2002) (available at *http://antitrustinstitute.org/recent2/223a.pdf*).

[49] CIS, 68 FR 1,478, 1,480 (Jan. 10, 2003).

[50] CIS, 68 FR at 1,481.

[51] *U.S.* v. *Central Contracting Co.*, 537 F. Supp. 571, 577 (E.D. Va. 1982).

"determinative" documents, since in a case such as this one, the DOJ's mere assertion that no such documents exist is insufficient. As noted by the district court in 1982:

> The need for scrutiny is important in any case, but judicial scrutiny is perhaps more important in a run-of-the-mill case on which public attention is not focused and where abuse may escape unnoticed than in a "big case" where public interest supplements the court's scrutiny. If the Court in this case doesn't scrutinize there will be no independent scrutiny.[52]

From a public standpoint, the case against Mountain is not a "big case," at least not from a national perspective. And sadly, in the majority of antitrust settlements, there is "no independent scrutiny." This seems part of the government's design. By targeting small businesses which lack the resources to force the government to trial (or even discovery), the DOJ is able to build a track record of antitrust victories. This is not just important from a political standpoint—impressing congressional appropriators—but from a judicial one. The courts become far more perceptive towards antitrust prosecution once the government establishes "expertise" in a given field, such as physician networks. What few courts realize, however, is that this experience is built on a foundation of coercion and fraud. The government wins by never facing any serious scrutiny, and this is contrary to the intent and language of the Tunney Act.

B. The Proposed Remedy

Even if the government could prove its antitrust allegations against Mountain, the remedy contained in the proposed Final Judgment is completely inconsistent with antitrust law. The settlement requires "the complete and permanent dissolution of Mountain Health Care as an on-going business entity" and the termination of "all preexisting contracts with payers," all within either 120 days of the filing of the DOJ's complaint against Mountain, or 10 days after this Court enters the final judgment, whichever is later.

The function of the antitrust laws—at least in theory—is to restore competition lost, not to impose punitive remedies on antitrust offenders. In this case, the dissolution of Mountain and the termination of its contracts constitute a punishment, rather than a restoration of competition. For this reason alone, the proposed Final Judgment must be rejected.

In Napa Valley, the FTC required OGMC to dissolve. That case, however, only involved a small network encompassing a single specialty, and OGMC was already planning to dissolve their cooperative arrangement prior to the FTC's action. In this case, Mountain was not planning to dissolve, and its network provides far more comprehensive services to its customers.

In most of the prior antitrust cases discussed above, the government generally obtained remedies short of dissolution. These remedies took the forms of injunctions restricting the physicians' ability to jointly negotiate with payers and insurers. While these remedies were equally illegal and unjustified, they do demonstrate the excessive nature of the required dissolution of Mountain. The DOJ could simply have adopted conduct restrictions similar to those in the Colorado cases or System Health Providers. This would have, in theory, satisfied the government's antitrust concerns while not substantially disrupting the health care market in North Carolina.

Indeed, the government's arrogant disregard for Mountain's consumers is galling. By requiring Mountain to terminate their existing contracts, the DOJ manages to violate the rights of thousands of individuals, not just Mountain's shareholders. Based on the documents presented by the government, it's safe to assume these customers were never consulted as to what they wanted, or even if they had any problem with Mountain in the first place. Despite the government's assertion that antitrust laws are about protecting consumers, there is not a single piece of evidence that demonstrates consumer interest was ever taken into account here.

Finally, there is nothing in the government's filings that prove its main argument justifying this remedy—dissolving Mountain will lower consumer health care costs. The entire history of government-sponsored managed care tells us that higher costs are solely a function of government intervention and interference in the free market, and that collective bargaining action by physicians have no substantial impact on what ultimate consumers—patients—actually pay. According to the Congressional Budget Office, which studied the physician collective bargaining issue in 1999, allowing physicians the right to jointly negotiate with HMOs would only increase consumer premiums by about 1.9% annually. This is hardly a figure that justifies the massive government regulation imposed by this proposed Final Judgment. The government also never takes into account the fact that Mountain's physicians, like most doctors nationally, are facing continued reductions in HMO and federal insurance reimbursements. Indeed, Mountain argues their doctors have not experienced significant fee increases in more than 10 years. In no other marketplace would the government penalize individuals for seeking a pay raise once every decade. Of course, in no other industry does the government so blatantly tip the scales in favor of one side as they do with managed care providers.

C. Defining the "Public Interest"

The first principle of the Tunney Act is that a proposed settlement must be in the "public interest." This term is never defined in the act, nor any other statute where it is employed. The Constitution certainly never speaks of a "public interest." So we're left to divine the phrase's correct meaning.

The government's definition is simple—the "public interest" is whatever we say it is. This is why they can impose a remedy, such as dissolving Mountain by force, that noboby asked for and that yields no particular benefit for anyone aside from the government's lawyers. Obviously the Tunney Act rejects this thinking, since it requires the Court to actually scrutinize the government's action, rather than simply acting as a rubber stamp. The failure of previous courts to scrutinize antitrust judgments has, in effect, misled the government into believing in their own omnipotence.

In an individual rights republic like the United States, the more appropriate definition of the "public interest" is nothing more than the aggregate of private interests. Protecting the public from violations of individual rights should be the government's paramount aim in any case brought under the authority of the United States. In this case, as we've aptly demonstrated, the government is initiating a violation of Mountain's individual rights rather than protecting the rights of Mountain's consumers.

If every doctor now affiliated with Mountain were to cease practicing medicine tomorrow, the managed care companies and consumers in western North Carolina would have no recourse. Without any providers of medical service, the marketplace would no longer exist. Herein lays a fundamental truth that the government refuses to acknowledge—producers create and define the marketplace, not consumers. Consumers can demand all the services they want, but in the end somebody must provide those services according to mutually agreed upon terms. To do otherwise, as the government proposes here, would be to enslave producers to the whims of consumers. If that's how the DOJ defines "public interest," then its antitrust policies have more in common with Karl Marx and Benito Mussolini than they do Thomas Jefferson and Abraham Lincoln.

[52] *Id.* at 575.

D. The Court's Powers and Duties

Finally, the government, through the CIS, asks this Court to take to adopt a very selective reading of the Tunney Act in determining its role in reviewing the proposed Final Judgment. The DOJ cites case law that dissuades the Court from taking an active role in assessing the government's case. Citing the D.C. Circuit in *United States* v. *Microsoft*,[53] the DOJ argues:

> [T]he court's role * * * is limited to reviewing the remedy in relationship to the violations the United States alleges in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." * * *the court" is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into to other matters that the United States might have but did not pursue.[54]

This position essentially permits the government to present a complaint unchallenged without even minimal scrutiny, regardless of the actual merits of the government's case. This is not consistent with the letter or intent of the Tunney Act. The law gives the Court broad discretion to assess every aspect of an antitrust settlement, including the complaint, the government's good faith in bringing the case, and the impact of the proposed remedies on individual rights and welfare. If this Court finds the government's complaint or CIS is defective on key questions of fact or application of law, there is nothing in the Tunney Act which commands the Court to simply ignore that.

The legislative history of the Tunney Act supports an expansive interpretation. The House Judiciary Committee concluded "the public does have an interest in the integrity of judicial procedures incident to the filing of a proposed consent decree by the Justice Department." The House also concluded: "Nor is [the Tunney Act] intended to authorize techniques not otherwise authorized by law. The legislative language, however, is intended to isolate further and, thereby, to perclude factors identified as contributing to the rise of the so-called abuse of "judicial rubber stamping." This hardly sounds like commanding language foreclosing the Court's ability to examine the government's complaint to ensure that it conforms to actual facts and law.

It must also be pointed out that while the government cites a number of precedents in the CIS with respect to the Court's role in this proceeding, none of the cases cited emanate from the Supreme Court or the Fourth Circuit. Therefore, this Court is not bound to follow those decisions. Combined with the lack of any case law on the underlying constitutionality of the government's antitrust Statements on health care, this Court is well within its rights to act as a court of first impression on many of the issues raised in these comments.

Part V: Alternatives to the Proposed Final Judgment

For any of the numerous independent grounds cited in these comments, the Court should reject entry of the proposed Final Judgment as inconsistent with the public interest 15 U.S.C. 16(f). The Court should also dismiss the complaint with prejudice, given the government's failure to set forth any claims that would entitle them to relief under the Sherman Act, and because the government omitted material facts from the complaint in order to defraud the Court and the American people.

If the Court decides not to dismiss the complaint, than alternatively it should order a full trial on the merits. While Mountain signed the consent order in large part to avoid a trial, this action must be viewed in the context of an antitrust consent decree procedure. No actual "negotiation" took place, as the government obtained all the relief they would have sought at trial. Furthermore, Mountain's counsel advised them to settle immediately before even permitting some discovery or attempting to actually negotiate with the government. In retrospect, Mountain president Ellen Wells told CVT that Mountain now regrets signing the consent agreement, and considers the proposed Final Judgment a mistake. This Court is certainly not required to coddle a defendant's remorse in agreeing to a settlement, but given the enormous imbalance in Mountain's bargaining position relative to the government, the Court should take appropriate action to ensure the interests of justice are not comprised by the government's abuse of discretion.

If the Court were to order a full trial on the merits, the United States would likely withdraw the complaint or immediately negotiate a more equitable settlement with Mountain. The DOJ has never tested the viability of its physician network policies at trial, and we believe they're not about to start here. Thus, ordering a trial would likely produce a result more conducive to the interests of Mountain and the public generally.

Finally, given the blatant and intentional misconduct of the government in prosecuting this case, CVT asks the Court to consider imposing sanctions on the United States under Federal Rule of Civil Procedure 11. The Court, on its own initiative, may impose sanctions against a party when they make representations to the Court which have no evidentiary support. In this case, the government made numerous allegations, described above, for which there is no evidentiary support or where material facts were omitted in order to mislead the Court into reaching an erroneous conclusion. Sanctions are certainly warranted, either in the form of monetary compensation to Mountain, or in such other manner as the Court deems appropriate.

Conclusion

The government's war on physicians must end. Every day the United States spends trying to blame doctors for the failure of three decades of government policies is a day that this country moves closer towards the complete socialization of health care under central control. While the Court is not in a position to make policy pronouncements, this case presents a compelling opportunity for the judiciary to defend its rightful place in the constitutional order from government manipulations. At every turn, in this case and dozens more, the DOJ has subverted the integrity of the judicial system by advancing fraudulent and unethical antitrust "settlements" that amount to nothing more than a web of deceit. This pattern simply cannot be allowed to continue.

Mountain Health Care is the innocent victim of the United States' failure to protect the individual rights of physicians and consumers. Sanctioning the proposed Final Judgment amounts to judicial coercion, a rubber-stamping of the government's mob assault on the freedoms and liberties of physicians to join together voluntarily to preserve and promote their economic self-interest. This is not a valid use of the antitrust laws, or any laws propagated by a republican society. Rejection of the proposed Final Judgment is the only possible outcome that would serve the public interest.

[53] 56 F.3d 1148 (D.C. Cir. 1995).

[54] CIS, 68 FR at 1,481.

Appendices to the Public Comments of Citizens for Voluntary Trade

Before: Judge Graham C. Mullen

Filed: March 7, 2003.

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Appendix A—Documents From Mountain Health Care's Website

Source: *http://www.mountainhealthcare.com/pressrelease.htm.*

Mountain Health Care To Dissolve, Liquidate Assets

Asheville, NC—(Friday, Dec. 13, 2002)—Mountain Health Care (MHC), the largest preferred provider health care network in Western North Carolina, confirmed today that it has consented to the decision by the U.S. Department of Justice (DOJ) to dissolve and liquidate its assets. The company hopes to sell its assets to a new buyer that will continue to provide physicians' services to the community, which includes 22 western North Carolina counties.

The government Friday filed what's known as a complaint and consent decree in U.S. District Court in Asheville, triggering a timetable for dissolution in April, 2003.

According to Todd Guthrie, M.D., chairman and president of the board of Mountain Health Care, the filing is a result of two years' review of documents and several health care organizations in the region as part of an examination of antitrust rules that effectively prohibit physicians from operating provider networks. To date, only Mountain Health Care is affected by this ruling.

MHC is privately held, with 401 physician stockholders, and that fact alone—not the admission of any unlawful conduct—is a substantial factor for the government-ordered closure. "We are but one of numerous physician-owned organizations operating under similar business models from across the nation who are facing the same situation," Guthrie said. "While we don't find solace in that fact, it is important to know that we apparently have not been singled out."

"We are terribly saddened and shocked by this news," he said. "Since 1994, Mountain Health Care has been a vibrant, pro-competitive force in our community, helping to protect the health of nearly 70,000 of our neighbors at reasonable and competitive prices. We obviously disagree with the DOJ decision."

Mountain Health Care has more than 1,800 providers including hospitals, ancillary services, laboratories and primary and specialty care providers.

Chief Executive Officer Ellen M. Wells, said that all stockholders, third party administrators and brokers and nearly 300 employers representing about 70,000 employees, have been notified of the government's decision. She said there are no benefits in challenging the decision.

"According to our attorneys, our only opinion was to go to trial against the DOJ, and we were advised that the cost of doing so far exceeded an amount we can afford," Wells said. "Simply put, we don't have the same resources as Microsoft, for example, which did take on the government in protracted legal proceedings. It would be ethically and morally wrong for us to pass costly legal expenses on to our customers and ultimately to patients," she said.

Wells emphasized that the consent decree filing is not evidence of any wrongdoing, rather an agreement to dissolve and sell its assets to another owner. "The reason is that Mountain HealthCare is a large, physician-owned network, and government antitrust guidelines are complex and permit physicians to own and operate networks only under very narrow circumstances. They don't treat physician-owned companies like they do others owned, for example, by insurance companies. We think this is wrong."

Wells also pointed out that the government's antitrust rules for networks are not simple. "The DOJ thought Mountain HealthCare network included too many physicians—which we though benefited consumers since it gives them more physicians from which to choose, as opposed to a smaller, more restrictive network."

With respect to sale of its assets, Guthrie said the board has already discussed such a sale with a number of potential buyers who are interested in doing business in the Asheville areas. "We hope to liquidate our assets to a buyer that will continue to provide physicians' and other providers services to our community. In the meantime, we will continue to respond to the needs of our constituency." Guthrie said.

Guthrie said the review process and identity of potential buyers is confidential. "Mountain HealthCare will maintain high-quality, proficient levels of professional service to its network and employers until the assets sale process is complete", Wells said.

Competition Needs To Grow Between Insurance Companies

By M.D. Stephan Buie

Posted: Dec. 30, 2002 11:06 p.m. (Asheville Citizens Times)

The Citizen-Times reported on Dec. 14 that the U.S. Justice Department has ordered Mountain HealthCare to dissolve, based on accusations of price fixing. People interviewed in the article expressed the hope that dissolving Mountain HealthCare will lead to increased competition and lower health-care costs. What people outside health care do not understand is that for the last 10 years or more physician costs have been controlled by managed care companies and have risen at a rate lower than general inflation. The competition that is needed is among insurers, and dissolving Mountain HealthCare will decrease that competition rather than increase it.

Mountain HealthCare is an association of independent medical practices and was set up not to fix prices, but to compete with managed care organizations. It is not an insurance company, but provides a panel of physicians for insurance companies to contract with. It was established with the advice of attorneys who are experts in federal antitrust law. It works through a blind messenger system, whereby MHC negotiates a rate for services with an employer and then sends those rates to each member practice. Each practice independently decides whether to accept the rate or to counter propose a different rate. All members have been informed that it is not legal to consult with other practices about their participation or their rates. Employers were free to negotiate with other managed care organizations. The physician members also are on panels of other managed care organizations. It is not clear to me how this is price fixing, but as the article indicates, MHC, unlike Microsoft, does not have the money to battle the Department of Justice.

The article about the Mountain HealthCare dissolution stated, "local businesses were socked with premium increases of 30 percent or more this year." Insurance rates are affected by physician costs, hospital costs, drug costs, and the administrative costs of the insurance companies, whose major executives have salaries in the millions of dollars. Managed care organizations were initially created to contain costs and to increase efficiencies in health care. They were successful in decreasing costs initially, and brought increases down to the rate of general inflation. After they cut the fat out of the provider systems, though, it is not clear that they have been as effective in trimming their own fat. Their methods of controlling costs have led ot greater inefficiencies in medical practices, however, in terms of collecting for charges and excessive requirements for treatment plans. Managed care organizations have taken a hard line with payment to physicians, either decreasing payments or holding them steady during the last 10 years. The individual medical practice has no bargaining power with these large companies. It is their way or the highway. If you own a business, imagine running that business without a price increase for the last 10 years.

MHC gave local physicians an organization that provided employers what they need from a managed care organization but would be more responsive to the physicians. In fact, I have often been frustrated that MHC was not more responsive to the needs of the physicians. Their billing was often as confusing as the managed care organizations, but at least they answered the phones when we called.

More physicians are moving away from enrollment in managed care organizations and are demanding cash payment for services. Billing for our services has become extremely complex, time-consuming and costly. Each managed care organization may have several claim centers. If we send our claim to the wrong one, it is rejected without explanation. Their claim centers apparently have no cross-referencing so they can't tell us the correct center to send the claim to. The insurance staff in my office have become convinced that this confusion is intentional, as the harder it is to collect for services, the less the insurance companies have to pay. They do not want to make the system work because it is to their benefit for it not to work. We are spending more and more time chasing less and less money.

The long-term effect of this will be that insurance will be worth less even as one pays more for it. Fewer physicians will be on managed-care panels because they cannot afford to and one will have to pay out of pocket for one's medical care and submit one's own claim for insurance reimbursement. That is already happening in several local medical offices. The competition will not be among providers but among patients to see who can get medical care. My hope is that some type of reform will prevent that, while allowing physicians to collect for services provided.

Stephen Buie, M.D., is a specialist in psychiatry practicing with the Pisgah Institute in Asheville. He is also an active member of the Buncombe County Medical Society. He lives in Asheville.

Myths and Facts About Mountain Health Care

Posted: January 6, 2003 (Asheville Citizens Times)

Since the federal government's announcement of a forced dissolution of Mountain Health Care a few weeks ago, some of the facts of the case have gone unanswered. Here are answers to some of the misunderstandings and most commonly-asked questions about this issue.

Myth: Mountain Health Care is an insurance company and/or contracts with managed care companies.

Fact: Mountain Health Care is a fully credentialed network of providers (physicians, therapists, nurses and medical laboratories, to name a few) which contracts directly with self funded employers and fully insured companies. Mountain Health Care does not approve or pay claims, and has no contracts with managed care companies.

Myth: In order for an individual to see a Mountain Health Care provider his/her employer must participate with Mountain Health Care.

Fact: Since Mountain Health Care is not an exclusive network, providers are free to participate with any network or plan they choose. Your employer does not have to contract with Mountain Health Care in order for you to see those providers.

Myth: The Mountain Health Care fee schedule resulted in artificially higher reimbursements for physicians.

Fact: The majority of health plans covering lives in Western North Carolina have fee schedules, most of which offer higher total reimbursements than Mountain Health Care's fee schedule. In response to existing antitrust guidelines, Mountain Health Care has transitioned to a messenger model where each payer negotiates directly with each physician.

Myth: Mountain Health Care providers set their office charges based on the Mountain Health Care fee schedule.

Fact: Providers in WNC establish their own office charges. These charges apply to all patients seen by the provider regardless of their health plan, are set independently and are not shared with other providers.

Myth: All Mountain Health Care providers are company shareholders.

Fact: Of the 1800 participating providers in the Mountain Health Care network only 401 physicians have chosen to be stockholding members.

Myth: Mountain Health care has no competition in the Western North Carolina market.

Fact: Employers in the Western North Carolina market place are contracted with many different health plans. Mountain Care members make up an average of only 8% of our providers patient base, and the overwhelming majority of Mountain Health Care providers participate with other plans.

Myth: The federal government discovered the Mountain Health Care's fee schedule is so high is has led to higher health care costs in Western North Carolina.

Fact: Premiums have increased in all types of health care plans and in most regions across the country; the increase in healthcare costs in Western North Carolina is not unusual. There are many factors that influence overall health care costs across the nation including improved technology, rapidly escalating drug prices, an aging population, the trend toward higher jury awards in medical malpractice cases and hospital consolidations. Physician fees account for less than 22% of total health-care costs and it is difficult to see how Mountain Health Care, whose covered lives represent only 8% of our providers' patient base, could be held primarily responsible for these increases. The January 21 issue of Modern Healthcare magazine stated, "The government blamed the acceleration [of health-care costs] on larger increases in the indices for prescription drugs and hospital services," while MHC's prices, with minor exceptions, did not increase between 1994 and the present.

Myth: The doctors who formed Mountain Health Care did so in an attempt to secure comparatively higher reimbursement rates.

Fact: Mountain Health Care was formed to ensure quality, cost effective health care for the residents of western North Carolina. We hope that our members and all residents of western North Carolina, after considering all the facts, understand that the existence of Mountain Health Care did not cause your health care costs to increase. We also hope you will realize that the forced dissolution of Mountain Health Care will in no way lower or drastically alter health care costs within the region. Now, as always, Mountain Health Care and its participating providers have the best interest of our members and community at heart and will do all that we can to continue to provide cost effective, quality health care to you.

Appendix B

Brief of S.M. Oliva as *Amicus Curiae*

Statement of Interest

I, S.M. Oliva, declare that I have no financial interest in this case, nor do I have a financial interest in any competitor of Mountain Health Care, P.A. The views expressed in this brief are my own, and are based on my experience as a public policy analyst in the field of antitrust and competition law.

Summary

In reviewing the Proposed Final Judgment before the Court in this case, *amicus* offers two arguments:

- The United States failed to disclose material facts in their complaint and Competitive Impact Statement (CIS).
- The United States provided insufficient information in the CIS regarding the status and role of Mountain Health Care in the relevant marketplace, as well as how Mountain's acts directly impacted competition in those markets.

A major purpose of the Tunney Act [1] is to facilitate public comments which may assist the Court in determining whether a proposed consent decree is in the public interest. The CIS, in part, is supposed to provide the public with an adequate description of the "practices or events" giving rise to an alleged antitrust violation, as well as disclosure of any "determinative materials or documents" considered by the government in preparing the proposed Final Judgment.

In this case, the CIS failed both of these tests. The United States took substantial shortcuts in complying with the Tunney Act, and in the process failed to fulfill Congress's underlying objectives. This Court, however, possesses broad statutory power to remedy this situation, by directing the United States to file a revised CIS that provides the public—and the Court—with adequate information to decide whether the proposed decree is in the public interest.

Failure To Disclose Material Facts

In the complaint, the United States asserts that Mountain "organized and directed an effort to develop a uniform fee schedule to be used to negotiate and contract for fees for physician reimbursement" [2] from a number of managed care companies and other third-part benefit providers. This fee schedule, according to the government, "unreasonably restrained competition" in violation of section 1 of the Sherman Act.[3] As a result, the United States filed suit to obtain the dissolution of Mountain "before further injury to consumers in North Carolina or elsewhere occurs." [4]

This "uniform fee schedule" is the nexus of the complaint and the resulting proposed Final Judgment. So long as Mountain maintains this schedule, consumers remain in danger under the Sherman Act. The only way to get rid of the schedule, in the government's view, is for Mountain to be denied its very existence. Otherwise, this fee schedule will continue to run amok, spreading its anti-competitive effects throughout western North Carolina.

But the problem is, the fee schedule the government speaks of may no longer be in play. According to statements made to *amicus* by Ellen Wells, Mountain's president and chief executive, Mountain's current "fee schedule" is nothing more than individual doctors informing an independent consultant about their general pricing terms. In other words, a third party spoke to Mountain's

[1] 15 U.S.C. § 16(b)–(h).

[2] Compl. ¶ 1.

[3] *Id.*

[4] *Id.*

physicians separately, obtained independent fee requests, and passed that information along to the managed care companies and other payors. At no point, according to Wells, was there an agreement or conspiracy among Mountain physicians to create a "universal" schedule of fixed fees.[5]

Not only does this system not violate the Sherman Act, the United States expressly endorses this type of "messenger model" as a safe haven from the general prohibition on independent physicians collectively bargaining with payors. According to the 1996 revisions to the Department of Justice-Federal Trade Commission Statements of Antitrust Enforcement Policy in Health Care:

> Some networks that are not substantially integrated use a variety of "messenger model" arrangements to facilitate contracting between providers and payers and avoid price-fixing agreements among competing network providers. Arrangements that are designed simply to minimize the costs associated with the contracting process, and that do not result in a collective determination by the competing network providers on prices or price-related terms, are not per se illegal price fixing.

If Mountain's claim, then, is true, and they are employing (or transitioning to) a messenger model, there is no need for the government's proposed remedy—dissolution of Mountain—because there is no illegal behavior taking place. Yet nowhere in the complaint or CIS does the United States discuss, or even acknowledge, Mountain's claim that they employed a messenger model. The government doesn't even offer evidence to refute the claim. Instead, the complaint and CIS present a carefully edited, limited recitation of the facts, omitting a key detail that might influence the public's analysis of the case. In the absence of these disclosures, the public is left to incorrectly conclude that Mountain was simply an illegal price-fixing arrangement among physicians, and that they made no good faith efforts to comply with the law.

Insufficient Information

Congress acknowledged, in passing the Tunney Act, that the public has an interest in "the integrity of judicial proceedings" involving proposed antitrust settlements.[6] To that end, the United States has an obligation to disclose enough facts about a case to enable the public to form reasoned judgments about the terms of a proposed Final Judgment. Of key importance is information that details the government's analysis of the marketplace, the competitive problem arising thereto, and the selected remedy. Here, we have little to go by. The United States insists that "[t]here are no determinative materials or documents" within the Tunney Act's meaning that warranted public disclosure.[7] *Amicus* disagrees.

The complaint and CIS repeatedly argue that Mountain's actions illegally "increased physician reimbursement fees."[8] The complaint argues that customers "have paid higher prices for physician services sold through managed care purchasers than they would have paid in the absence" of Mountain's actions.[9] The CIS further states that Mountain's physicians "have not clinically or financially integrated their practices" in such a way as to justify maintaining their uniform fee schedule.[10]

None of these arguments are supported by evidence, at least not evidence that's presented for public review in the complaint or CIS. For example, the public knows nothing, from the government's disclosures, of the exact nature of the market for physician services in western North Carolina. We don't know who Mountain was competing with, what prices they were charging, or even how consumer prices fared in comparison to neighboring marketplaces. We certainly don't know if Mountain's actions actually harmed any consumers. We simply don't know much of anything, beyond the government's mere allegation that there was a fee schedule, and that it was illegal.

Once again, *amicus* faces conflicting information. The United States claims that Mountain increased costs and harmed consumers. Mountain's Ellen Wells, in contrast, claims to *amicus* that Mountain's customers realized an average 14–20% savings over other service networks. Nothing in the complaint or CIS points this out.[11] Furthermore, there is not evidence in the public record that suggests any Mountain customer was dissatisfied with their services or costs. Even one consumer complaint would provide valuable information to the public on the exact nature of the alleged illegal actions. But once again, we're left only with the government's word, despite the existence of evidence that refutes key points of their argument.

It's worth noting that the government's lack of disclosure is hardly unusual in a Tunney Act proceeding. In the overwhelming majority of antitrust settlements, the CIS provides little useful information about a case. In one recent proceeding, Albert Foer of the American Antitrust Institute noted: "The [Justice] Department has traditionally been reluctant to say a great deal in its CIS disclosures, presumably because it risks disclosure of confidential information, adds to the staff's workload, and opens up the door to additional inquiry."[12] All of these explanations may be applicable in this case, but none of them justify withholding relevant and material information from the public.

At an absolute minimum, the United States should provide the public with enough information to assess the state of the affected marketplace at the time the complaint is filed, and also empirical evidence demonstrating how the proposed remedy is likely to restore competition allegedly lost. The government may consider this an inconvenient burden, but the Tunney Act does not contain exceptions for official laziness.

This Court has clear authority to compel government disclosure of relevant information. Congress stated as much in the Tunney Act's legislative history, noting "the court must obtain the necessary information to make its determination that the proposed consent decree is in the public interest."[13] And in one of the few cases where a court actually employed its Tunney Act discretion, *United States*, v. *Central Contracting Co.*,[14] the district judge emphasized the importance of vigorous judicial enforcement of the public's right to information:

> The need for scrutiny is important in any case, but judicial scrutiny is perhaps more important in a run-of-the-mill case on which public attention is not focused and where abuse may escape unnoticed than in a "big case" where public interest supplements the court's scrutiny. If the Court in this case doesn't scrutinize there will be no independent scrutiny.[15]

Similarly, this "run-of-the-mill" case runs the risk of escaping public attention and scrutiny completely. Without timely intervention by this Court to procure necessary additional information, it is likely the proposed Final Judgment will be entered without any serious examination of the government's arguments. This would render the Tunney Act effectively worthless in safeguarding the public interest.

Conclusion

The public—and this Court—cannot rely on the complaint and CIS, in their present form, to make a proper determination under the Tunney Act on whether entry of the proposed Final Judgment is in the public interest. The United States omitted key facts from the complaint, and failed to disclose relevant information that would assist the public in forming reasoned judgments about this case. The Tunney Act grants the Court ample power to ensure the government's full compliance, and this case warrants exercise of that power.

Accordingly, the Court should direct the United States to file a revised complaint and CIS, addressing the objections and concerns set forth in this brief. Additionally, the Court should extend the public comment period to allow third parties adequate time to review the revised disclosures so that they may provide appropriate comments to the Court.

Respectfully Submitted,

Dated: February 15, 2003.

S.M. Oliva,
2000 F Street, NW., #315, Washington, DC 20006–4217, Tel: (202) 223–0071. E-mail: smoliva@voluntarytrade.org, Amicus Curiae.

The Center for the Advancement of Capitalism

March 10, 2003.

Mr. Mark J. Botti,
Chief, Litigation Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Room 4000, Washington, DC 20530.

Re: Public comments in United States v. Mountain Health Care

Dear Mr. Botti: Pursuant to the rights of the public under the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), I am writing to express the opposition of the Center for the Advancement of Capitalism (CAC)[1] to the proposed Final Judgment in the case of United States v. Mountain Health Care, now pending before the U.S. District Court for the Western District of North Carolina. CAC has reviewed the Competitive Impact Statement and the proposed Final Judgment and it finds that the proposed Final Judgment undermines the public interest and ought to be rejected by the Court.

1. The Proposed Final Judgment Ordering the Dissolution of Mountain Health Care Is Unjustified by the Facts

The proposed Final Judgment demands the complete dissolution of Mountain Health Care on the grounds that it illegally negotiated a uniform fee schedule with insurance companies. Such a draconian end to a company that has been in existence since 1994 and competently and caringly served the health needs of almost 70,000 North Carolinians is shocking. It clearly implies that Mountain Health Care's mere existence as a physician-owned network of healthcare providers is outside the confines of legal behavior under the government's interpretation of the antitrust laws, whatever Mountain's actual behavior. CAC rejects this implication outright. In no way did the government adequately justify its dissolution of Mountain Health Care.

Under FTC–DOJ policy, doctors may collectively bargain with health insurance companies by using three methods: capitation, withholding, and the messenger model. Capitation requires physicians accept a fixed fee per patient regardless of the actual costs of treating that patient. Withholding allows the insurer to withhold a percentage (20–30% or more) of a physician's reimbursement unless some arbitrary goal is met, such as reducing the frequency of a particular procedure. The messenger model allows a third-party to serve as a one-way conduit from the insurer to the doctors.

Mountain Health Care maintains that in accordance with the above guidelines, it now uses the messenger model in its negotiations. Yet nowhere is this critical fact mentioned in the government's Competitive Impact Statement. CAC considers this to be a galling and relevant omission.

2. The Case Against Mountain Health Care Is an Attempt on the Part of the Government To Erode the Rights of Physicians in the Name of Serving an Improperly Defined Concept of the "public interest"

The "public interest" is properly defined by the principle of individual rights as expressed in the Declaration of Independence and animated by the Constitution. The principle of individuals rights is not mere claptrap to be ignored by DOJ lawyers, but the organizing principle of legitimate government.

Yet CAC's observations of the government's antitrust actions in health-care lead it to believe that the government is simply pursuing a policy of reflexively reducing healthcare costs, even at the price of squelching the rights of physicians to pursue their legitimate economic interests via institutions able to negotiate on-par with health insurance companies.

In effect, current government policies in healthcare uses antitrust to obtain the partial socialization of medicine absent clear congressional authority, violates the rights of physicians to profit from their work, and removes the financial incentive that brings most individuals to pursue careers in the healthcare industry.

Yet every attempt CAC has made thus far to point out these glaring contradictions in other Antitrust Procedures and Penalties Act proceedings has resulted in the government's evasion of CAC's core arguments. We hold that even under the nation's system of antitrust, the government can not make literal serfs of some of its citizens because they seek to pursue their legitimate economic interests. Consumers can not possibly benefit from denying physicians the right to collectively bargain their fees.

3. The Court Ought To Use Its Authority Under the Antitrust Procedures and Penalties Act To Check the Unrestrained Government Incursion Against the Rights of Physicians

CAC notes that the complexities of antitrust proceedings are such that few of the government's targets for enforcement can afford to offer a full defense of their actions, even as they maintain their complete innocence. Mountain Health Care claims that it only agreed to the settlement because it has limited assets that preclude it from fighting the requisite court battle with the government.[2] CAC's observations of the government's antitrust actions in healthcare lead it to believe that the government specifically targets those unlikely to offer a defense. While CAC recognizes the burden on the accused to defend themselves, we nevertheless consider this pattern to be relevant in observing how the government carries out its mission of defining and defending the public interest.

4. Mountain Health Care's Business Under Review Was Not Interstate Commerce

CAC also observes that Mountain Health Care's conduct as a preferred-provider organization took place wholly within North Carolina, as outlined in the Competitive Impact Statement. The Justice Department's assertion of jurisdiction here is tenuous at best.

Conclusion

Ultimately, CAC's observations of these facts lead it to question the appropriateness of the proposed Final Judgment. Considering the impact on both Mountain Health Care doctors and their patents, CAC believes a substantive review and ultimate rejection of the proposed Final Judgment is in order. If the Antitrust Procedures and Penalties Act protects the public interest from inadequate antitrust settlements, than it is incumbent upon the Court to use it to protect the public from excessive antitrust settlements. The "reaches of the public interest" apply to both producers and consumers, and gross injustice toward producers can not be held to be in the legitimate interest of consumers.

CAC believes the government's position is clear and direct: any attempt by physicians to advance their own economic rights collectively is inherently suspect, if not outright illegal. It would be refreshing to see the government's case stand the test of a trial, but in that absence, CAC believes the Court still has it within its power to challenge the government's brazenly erroneous conclusions by rejecting the proposed Final Judgment.

Respectfully Submitted,

Nicholas P. Provenzo,
Chairman.

February 25, 2003

Mr. Mark J. Botti (via facsimile 202–307–5802),
Chief, Litigation I Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Room 4000, Washington, DC 20530.

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[5] Telephone Interview with Ellen Wells, President of Mountain Health Care, P.A. (Jan. 23, 2003).

[6] H.R. Rep. No. 93–1463 (1974), reprinted in 1974 U.S.C.C.A.N. 6536, 6539.

[7] Competitive Impact Statement, 68 FR 1,478, 1,481 (Jan. 10, 2003).

[8] Compl. ¶ 14.

[9] Compl. ¶ 17(c).

[10] CIS, 68 FR at 1,480.

[11] Telephone Interview.

[12] Letter from Albert A. Foer to Roger W. Fones 2 (Dec. 27, 2002) (available at *http://antitrustinstitute.org/recent2/223a.pdf*).

[13] H.R. Rep. No. 93–1463, reprinted in 1974 U.S.C.C.A.N. at 6538 (citing S. Rep. 93–298).

[14] 537 F. Supp. 571 (E.D. Va. 1982).

[15] *Id.* at 575.

[1] The Center for the Advancement of Capitalism is a District of Columbia corporation organized in 1998, and exempt from income tax under Section 501(c)(4) of the Internal Revenue Code. CAC's mission is to present to policymakers, the judiciary and the public analyses to assist in the identification and protection of the individual rights of the American people. CAC applies Ayn Rand's philosophy of Objectivism to contemporary public policy issues, and provides empirical studies and theoretical commentaries on the impact of legal and regulatory institutions upon the rights of American citizens. CAC has no financial interest in the outcome of this case, nor has CAC received any compensation from the defendants in connection with these comments.

[2] *http://www.mountainhealthcare.com/pressrelease.htm* on 4/10/03.

Re: Public comments in United States v. Mountain Health Care

Dear Mr. Botti: I am writing to express opposition to the proposed Final Judgment in the case of *United States v. Mountain Health Care*, now pending before the U.S. District Court for the Western District of North Carolina. The proposed judgment will not benefit the public interest, and will actually cause harm to consumers by depriving thousands of North Carolina residents of the benefits of a comprehensive, stable physician network.

In my opinion, the Justice Department lacks insights into the practices of Mountain's business to understand their good faith efforts to comply with the DOJ–FTC Statements of Antitrust Enforcement Policy in Health Care and has ignored the ramifications of the consent decree being imposed on Mountain. Through personal experience with the anti-trust settlement process, the government claims that no one operates the messenger model correctly. This presumption means physicians, and their advisors, are presumed guilty from the beginning of an investigation.

Also, the anti-trust laws, as they are being applied against physician networks, are only helping the parties that the Sherman Act was originally intended to protect the public against * * * the health plans. The modern day "robber barons" are the insurance companies, with billions of dollars in profits and unchecked power against employers and healthcare providers. Physicians have not caused rising healthcare premiums, as the standard FTC–DOJ consent language would suggest. In fact, the physician fee schedules from insurance carriers, including the largest payor, Medicare, have not even kept up with normal inflation, much less medical inflation rates since the 1970s.

The "excuse" of per se price fixing in pursuing these prosecutions is an attempt by the government to not have to prove a case. The fact that physicians, and their advisors, have no resources to sustain an FTC–DOJ investigation much less contest a settlement offer, should not be a reason for the government to continue bullying professionals into settlement after settlement without providing a reasonable means for physicians to continue to operate a practice in a world dominated by billion-dollar insurers. However, the federal government continues chalking up 'victories' in the arena of physician network dissolution under the guise of ridding the world of anti-trust offenders. I've asked repeatedly, and have not received an answer, "Who's been hurt?" in these recent cases pursued by the DOJ and FTC. I ask again, and beg for an answer, "Who's been hurt?" in this case against Mountain.

While I'm not happy to have settled anti-trust cases recently, I find the inconsistency in the application of the consent decree with Mountain disturbing. Why should one physician network be offered an opportunity to continue to operate while another is forced to disband? In either event, the physicians are forced to operate their practices with blinders on, practicing as individuals at the mercy of the health plan forced to operate their practices with blinders on, practicing as individuals at the mercy of the health plan contract offers. In both outcomes the physicians are left with no ability to do anything, having "failed" at the application of the only safe harbor offered by the government—the exclusive messenger model. How would one treatment of the organization (continue versus disband) affect the members of the patient community differently? Dissolution seems to only serve the purposes of exacting a harsher punishment.

The Justice Department has not taken into account the interests of actual consumers. Nor have they ever considered the rights of Mountain's shareholders and physicians. As citizens of the United States, they have an absolute right to freely associate with other professionals for their mutual benefit. It is not a crime to act in one's economic self-interest, so long as one does not implement actual force against other individuals. Since there's no evidence Mountain ever initiated force against its customers, there is no justification for the extreme remedy provided for in this final judgment.

For these reasons, the Justice Department should withdraw the proposed Final Judgment and dismiss its complaint against Mountain.

Please include these comments in the official record of this case, pursuant to the Tunney Act.

Sincerely,

Marcia L. Brauchler,
Physicians' Ally, Inc., P.O. Box 260661, Littleton, CO 80163–0171, (303) 346–2935.

BILLING CODE 4410–11–M

PHYSICIANS' ALLY, INC.
Health Care Consulting

2722 W. Cactus Bluff Place
Highlands Ranch, CO 80129

Fax

To:	Mark Botti	**From:**	Marcia Brauchler
Fax:	202-307-5802	**Pages:**	3
Phone:		**Date:**	3/10/2003
Re:	Mountain Health Care	**CC:**	

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

• **Comments:**

Please find following this fax cover a public comment letter.

January 25, 2003.

Dear Mr. Botti, I am writing to comment about the proposed Consent Decree relating to the dissolution of Mountain Health Care. It is common

BILLING CODE 4410–11–C

knowledge among current and former employees that the CEO, Ellen Wells, purposely put off changing to Messengering because she was under the impression that the DOJ would just disappear. She was also concerned that it might reduce the 5% withhold that MHC was charging the providers on their claims and jeopardize the collections, thus impacting her bonus. She has shown noting but total disrespect for the government and total disregard for the employers that contracted with MHC for what they thought were discounted rates from physicians. MHC deserves to dissolve and Ellen Wells deserves to be named as the primary perpetrator of this disaster.

Sincerely,

Concerned employees

January 26, 2003.

Mr. Mark Botti

Chief Litigation I Antitrust division, United States Dept. of Justice, 1401 H Street NW., Room 4000, Washington, DC 20530.

Dear Mr. Botti, If Mountain Health Care did what you say it did, why does the company run ads in the newspaper making it sound like it is totally innocent of anything? (Please read the ads that I include in this letter). I am confused.

Thank you.

Myths and Facts about Mountain Health Care

Since the federal government's announcement of a forced dissolution of Mountain Health Care a few weeks ago, some of the facts of the case have gone unanswered. Here are answers to some of the misunderstandings and most commonly-asked questions about this issue.

Myth: Mountain Health Care is an insurance company and/or contracts with managed care companies.

Fact: Mountain Health Care is a fully credentialed network of providers (physicians, therapists, nurses and medical laboratories, to name a few) which contracts directly with self funded employers and fully insured companies. Mountain Health Care does not approve or pay claims, and has no contracts with managed care companies.

Myth: In order for an individual to see a Mountain Health Care provider his/her employer must participate with Mountain Health Care.

Fact: Since Mountain Health Care is not an exclusive network, providers are free to participate with any network or plan they choose. Your employer does not have to contract with Mountain Health Care in order for you to see those providers.

Myth: The Mountain Health Care fee schedule resulted in artificially higher reimbursements for physicians.

Fact: The majority of health plans covering lives in western North Carolina have fee schedules, most of which offer higher total reimbursements than Mountain Health Care's fee schedule. In response to existing antitrust guidelines, Mountain Health Care has transitioned to a messenger model where each payer negotiates directly with each physician.

Myth: Mountain Health Care providers set their office charges based on the Mountain Health Care fee schedule.

Fact: Providers in western North Carolina establish their own office charges. These charges apply to all patients seen by the provider regardless of their health plan, are set independently and are not shared with other providers.

Myth: All Mountain Health Care providers are company shareholders.

Fact: Of the 1800 participating providers in the Mountain Health Care network only 401 physicians have chosen to be stockholding members.

Myth: Mountain Health Care has no competition in the western North Carolina market.

Fact: Employers in the western North Carolina market place are contracted with many different health plans. Mountain Health Care members make up an average of only 8% of our providers patient base, and the overwhelming majority of Mountain Health Care providers participate with other plans.

Myth: The federal government discovered that Mountain Health Care's fee schedule is so high it has led to higher health care costs in western North Carolina.

Fact: Premiums have increased in all types of health care plans and in most regions across the country; the increase in health care costs in western North Carolina is not unusual. There are many factors that influence overall health care costs across the nation including improved technology, rapidly escalating drug prices, an aging population, the trend toward higher jury awards in medical malpractice cases and hospital consolidations. Physician fees account for less than 22% of total health-care costs and it is difficult to see how Mountain Health Care, whose covered lives represent only 8% of our providers' patient base, could be held primarily responsible for these increases. The January 21, 2002 issue of Modern Healthcare, the industries leading business trade journal stated, "The government blamed the acceleration [of health-care costs] on larger increases in the indices for prescription drugs and hospital services," while Mountain Health Care's prices, with minor exceptions, did not increase between 1994 and the present.

Myth: The doctors who formed Mountain Health Care did so in an attempt to secure comparatively higher reimbursement rates.

Fact: Mountain Health Care was formed to ensure quality, cost effective health care for the residents of western North Carolina.

We hope that our members and all residents of western North Carolina, after considering all the facts, understand that the existence of Mountain Health Care did not cause your health care costs to increase. We also hope you will realize that the forced dissolution of Mountain Health Care will in no way lower or drastically alter health care costs within the region. Now, as always, Mountain Health Care and its participating providers have the best interest of our members and community at heart and will do all that we can to continue to provide cost effective, quality health care to you.

January 8, 2003.

Mark J. Botti, Chief

Litigation I, Antitrust Division, United States Department of Justice, 1401 H Street NW., Room 4000, Washington, DC 20530.

Dear Mr. Botti: In the 16 years I have been in the managed health care industry I have never heard anything as ridiculous as the accusations made by the DOJ and their decision to shut down Mountain Health Care.

The DOJ's press release states that Mountain Health Care's contracting is a practice which resulted in consumers paying increased prices to Mountain Health Care's physician members for health care services. This is ridiculous. Yes, the MHC physician's have a fee schedule, but they also have a fee schedule with Aetna, Cigna, United Health Care, BC/BS and the list goes on and on. In no way was the physician's reimbursement under the Mountain Health Care fee schedule higher than it was under any of the other managed

care contracts the physician's participated on. Their fee schedule had not been changed since the start of the company. In fact, some of the fees they were accepting were lower than Medicare & even Medicaid (both government agencies).

The physicians were not the ones benefiting from this; the community and people covered by Mountain Health Care were. And whether you realize this or not, it was the physician's intent to make sure these people had cost effective affordable health care and not that their reimbursement was higher. Aside from working in the managed health care industry, I also work in a physician's office and I can tell you how pleased the average consumer was who came in and presented their Mountain Health Care cards at the front desk with their Mountain Health Care coverage, not once did I hear a negative word.

"The Antitrust Division is committed to ensuring that consumers buying health care services receive the benefits of competition," is the statement your representative made. Having worked in the managed health care industry in Western North Carolina for the past 5 years in both the PPO side and the Physician side concurrently I can tell you that there is plenty of competition going on here.

Having been a spectator of your "investigation" into Mountain Health Care and not getting the chance to speak my mind I felt this was my only opportunity to finally speak up. It seemed to me that the moment your investigators arrived on the scene they were determined to shut Mountain Health Care down based upon information and statements given to them by the competition and it just took them two years to find a way they could make it all sound feasible to the consumers, who will be drastically affected by this.

It is sad that the press has interviewed people who have no working knowledge of the healthcare industry for their news articles who make statements about how Mountain Health Care disbanding will decrease their health insurance costs, because their is no way that is going to happen. What is going to happen is the Aetna & Cigna type companies will now move in for the kill and know that these small employer groups and family run companies will have no choice but to go with their costly plans in order to insure their employees and family members. This in itself will drive up the cost of healthcare in this region. This will actually increase the physician's reimbursements since the other company's fee schedule reimbursements are higher than Mountain Health Care's was and people will be forced to join those plans or be uninsured. This will increase their rates and their out of pocket expenses.

The only people who will benefit from your decision to close Mountain Health Care will be the other health care plans and the monopolistic PPO set up by the hospital system here in Asheville. What you have chosen to do here and the decisions you have made are wrong. The DOJ and the judge who signs the order obviously have no idea how much damage they will be doing to the people of Western North Carolina including myself and my children. The economy here is hurt enough. This is only going to make matters worse and I find it hard to believe there isn't one individual within the Department of Justice or the government who is savvy enough to see this.

Sincerely,

Janine Mazur,

301 Spartan Heights, Hendersonville, NC 28792.

Mr. Mark J. Botti,

Chief, U.S. Department of Justice, Litigation/Antitrust Division, 1401 H Street, NW., Room 4000, Washington, DC 20530.

Re: Mountain Healthcare, Asheville, NC

Dear Mr. Botti: Sometimes there is merit in antitrust action; this is NOT one of those times! This decision seems based on emotions, circumstantial evidence, hype and superficial information.

Medical care is costly enough here in Western North Carolina without the Department of Justice pushing costs higher by eliminating a group that gives quality care, lower rates and many options for treatment.

We should not be wasting our government resources on well-intentioned ventures but causing unintended consequences.

I suggest you get an experienced, educated senior official to look through the smokescreen, see the real facts and stop the damage to Western North Carolina.

Regards,

Stewart M. Auten,

President.

January 2, 2003.

Mark J. Botti,

Chief, Litigation 1, Antitrust Division, US Dept of Justice, 1401 H St. NW., Room 4000, Washington, DC 20530.

Dear Mr. Botti: Let me relate to you how concerned I am about the dissolution of Mountain Health Care. For years our family used various insurance companies that our employer contracted insurance for the employees. Never have I been more satisfied with a company as I was with Mountain Health Care. We received our annual physicals therefore cutting down on future expense by the insurance company.

Please reconsider your actions.

Thank you,

Mike and Gale Grooms.

January 9, 2003.

Dear Mr. Botti: Both my wife and I were under Mountain Health Care + we had no complaints. Your people are wrong about charging them with price fixing. How can they raise the area medical cost when they have only 8% of the area population? It is an honest and well run operation. Your action is tyrannical.

Sincerely,

(Name unreadable)

[FR Doc. 03–19051 Filed 7–28–03; 8:45 am]

BILLING CODE 4410–11–M

Federal Register

Tuesday,
July 29, 2003

Part III

Department of Agriculture

Forest Service

National Environmental Policy Act Documentation Needed for Limited Timber Harvest; Notice

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AB88

National Environmental Policy Act Documentation Needed for Limited Timber Harvest

AGENCY: Forest Service, USDA.

ACTION: Notice of final interim directive.

SUMMARY: The Forest Service gives notice of revised procedures for implementing the National Environmental Policy Act (NEPA) and Council on Environmental Quality (CEQ) regulations. These revised procedures are being issued by Interim Directive (ID) 1909.15–2003–2 to Forest Service Handbook 1909.15, Chapter 30, Section 31.2, which describes categorical exclusions, *i.e.*, categories of actions which do not individually or cumulatively have a significant effect on the human environment and therefore normally do not require further analysis in either an environmental assessment or an environmental impact statement.

This ID adds three such categories of actions to the agency's NEPA procedures that are applicable to small timber harvesting projects: Category 12 allows harvest of live trees not to exceed 70 acres with no more than ½ mile of temporary road construction; Category 13 allows the salvage of dead and/or dying trees not to exceed 250 acres with no more than ½ mile of temporary road construction; and Category 14 allows commercial and non-commercial felling and removal of any trees necessary to control the spread of insects and disease on no more than 250 acres with no more than ½ mile of temporary road construction.

EFFECTIVE DATE: This interim directive is effective July 29, 2003.

ADDRESSES: The new Forest Service categorical exclusions are set out in Interim Directive (ID) 1909.15–2003–2, which is available electronically via the World Wide Web/Internet at *http://www.fs.fed.us/im/directives*. Single paper copies are available by contacting Chris Holmes, Forest Service, USDA, Ecosystem Management Coordination Staff (Mail Stop 1104), 1400 Independence Avenue, SW., Washington, DC 20250–1104. Additional information and analysis can be found at *http://www.fs.fed.us/emc/lth*.

FOR FURTHER INFORMATION CONTACT: Chris Holmes, USDA Forest Service, Ecosystem Management Coordination Staff, (202) 205–1006. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 4 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The Forest Service is responsible for managing 192 million acres in national forests, national grasslands, and other areas known collectively as the National Forest System. The Chief of the Forest Service, through a line organization of regional foresters, forest supervisors, and district rangers, manages the surface resources and, in some instances, the subsurface resources of those lands. The Forest Service, in compliance with the Council on Environmental Quality (CEQ) regulations at Title 40, Code of Federal Regulations, sections 1507.3 and 1508.4 (40 CFR 1507.3, 1508.4), is authorized to identify categories of actions that it has found to have no individual or cumulatively significant effect on the human environment.

On January 8, 2003, the Forest Service published a proposal (68 FR 1026) to revise its directives for implementing the National Environmental Policy Act (NEPA) and CEQ regulations contained in Forest Service Handbook (FSH) 1909.15, Chapter 30, Section 31.2. This proposal would add three categories of actions to this section for limited timber harvesting. These categorical exclusions were numbered 10, 11, and 12. Since the publication of the proposal, the agency has added two new categorical exclusions for fire management activities, which were numbered 10 and 11 (68 FR 33814, June 5, 2003). Accordingly, these categorical exclusions for limited timber harvest have been renumbered 12, 13, and 14.

Category 12 allows harvest of live trees not to exceed 70 acres with no more than ½ mile of temporary road construction. The purpose of this category is to allow low-impact silvicultural treatments through timber harvest. This category cannot be used for even-aged regeneration harvest or vegetation type conversion. Even-aged regeneration harvests generally remove most of an existing stand of trees. An example would be the seed tree method of cutting where all trees in a stand are removed except for a few dominant seed-producing trees. Vegetation type conversion is designed to change existing vegetative cover to another type, such as converting a timber stand to an open field. Category 12 does not include these types of treatments. Examples of projects that could be implemented under Category 12 include thinning of overly dense stands of trees to improve the health and vigor of the remaining trees, and removing individual trees for forest products or fuelwood. Within the 70 acres, this category allows incidental removal of trees for temporary roads, landings, and skid trails as determined by the Forest Service in the timber sale contract specifications.

Category 13 allows the salvage of dead and/or dying trees not to exceed 250 acres with no more than ½ mile of temporary road construction. This categorical exclusion allows salvage harvest in areas where trees have been severely damaged by forces such as fire, wind, ice, insects, or disease and still have some economic value as a forest product. The use of Category 13 is limited to salvage of dead and dying trees by timber purchasers. Within the 250 acres, this category allows incidental removal of trees for temporary roads, landings, and skid trails as determined by the Forest Service in the timber sale contract specifications.

Category 14 allows commercial and non-commercial felling and removal of any trees necessary to control the spread of insects and disease on no more than 250 acres with no more than ½ mile of temporary road construction. This category allows the agency to apply harvest methods to control insects and disease before they spread to adjacent healthy trees. Within the 250 acres, this category allows incidental removal of trees for temporary roads, landings, and skid trails as determined by the Forest Service in the timber sale contract specifications. Noncommercial activities would not include temporary road construction.

In the development of these categorical exclusions, the Forest Service reviewed the effects of 154 projects, with actions similar to those allowed in the three categories. A few of the projects reviewed resulted in minor soil disturbance and compaction. A few other projects reviewed showed that small numbers of noxious weeds or invasive plants entered the area where the trees had been removed. Based upon a post-implementation field review of these projects by professional experts, the responsible officials found that these impacts were within forest plan standards and were not significant in the NEPA context (40 CFR 1508.27).

With the exception of one project reporting cumulative visual impacts, environmental effects were localized and of limited duration. The visual impacts of this one project were found to be cumulative with those of an old timber harvest visible from a scenic river. These visual impacts were determined to not be significant since they still met scenery management objectives for the river corridor.

Based upon their post-implementation field review of these projects along with past, present, and reasonably foreseeable future actions, the responsible officials found that the individual and cumulative effects of the projects reviewed were not significant in the NEPA context. The Forest Service, therefore, concluded that the activities described in the three categories do not individually or cumulatively have a significant effect on the human environment.

Activities conducted under these categorical exclusions must be consistent with agency and Departmental procedures and with applicable land and resource management plans, and they must comply with all applicable Federal, Tribal, and State laws for protection of the environment. These categorical exclusions shall not apply where there are extraordinary circumstances, such as potentially significant effects on the following: Federally listed threatened or endangered species or designated critical habitat, species proposed for Federal listing or proposed critical habitat, or Forest Service sensitive species; floodplains, wetlands or municipal watersheds; Congressionally designated areas such as wilderness, wilderness study areas, or national recreation areas; inventoried roadless areas; research natural areas; American Indian and Alaska Native religious or cultural sites; archaeological sites, or historic properties or areas (FSH 1909.15, ch. 30, sec. 30.3, para. 2).

These categorical exclusions differ from those recently promulgated for hazardous fuels reduction and fire rehabilitation (68 FR 33814, June 5, 2003). While some small fuel reduction projects may fit the new categories 12 and 13, most fuel reduction projects done under the auspices of the National Fire Plan will be larger in scope than would be allowed under categories 12 and 13. Most projects implementing the National Fire Plan are larger in size, and involve a combination of activities such as thinning, pruning, and prescribed burning, in addition to timber harvest. Activities using categories 12, 13, and 14 are limited to timber harvest and therefore have a more narrow application.

A 60-day comment period was provided for the proposed interim directive setting out these categorical exclusions (68 FR 1026, January 8, 2003). In addition, the Forest Service gave direct notice of the proposal and invited comment from national organizations and Federal agencies. A one-page notice was faxed to 73 interested groups. These groups included environmental organizations such as the Defenders of Wildlife, professional societies such as the American Fisheries Society, timber groups such as the Intermountain Forest Industry Association, Federal agencies such as the Environmental Protection Agency, and State organizations such as the Council of State Governments.

Approximately 16,700 comment letters were received from individuals; representatives of Federal agencies; Tribes; State and local government agencies; environmental groups; professional organizations; and both commodity and non-commodity groups. The responses were form letters as well as unique individual letters, some sent electronically and others mailed as paper copy. All suggestions and comments have been reviewed and considered in preparation of this notice of the final interim directive.

In response to comments on the proposed categorical exclusions, five revisions were made to the original proposal.

In Category 12, two changes have been made. (1) The acreage limitation has been changed from 50 to 70. This was based on comments that recommended using the mean of the acreage of the projects reviewed, as was done for the other categories. In the proposal, the rationale for 50 acres was that it was a conservative adjustment to the mean of 70. Public comment questioned the need for this reduction. Use of the mean reflected the consideration by the agency that this acreage is well within the range of acreages in the project data used to support these categories. (2) Also in Category 12, the example concerning fuel loading formerly in paragraph b was removed. Since the original proposal, the Forest Service adopted Category 10 (68 FR 33824, June 5, 2003) that better addresses situations in which this example would be used. Category 10 is found in Interim Directive (ID) 1909.15–2003–1 to Forest Service Handbook 1909.15, Chapter 30, Section 32.1.

In Category 14, the following changes have been made: (1) The restriction of two tree lengths was removed for the harvesting of healthy adjacent trees; (2) the term "green" was changed to "live, uninfested/uninfected trees" for clarification; and (3) "non-commercial" was added to make it clear that the category can apply to "cut and leave" insect and disease control activities. The removal of the restriction of two tree lengths for the harvesting of healthy adjacent trees was done because this restriction applied primarily to management for control of southern pine beetle and may not be appropriate for outbreaks of other pests such as the sudden oak death pathogen, emerald ash borer, and many bark beetle species other than southern pine beetle. The provision for noncommercial "cut and leave" activities is appropriate for situations in which felling of trees is needed to reduce populations of insects, but sales of that timber would not be economically viable.

Comments on the Proposal

Public comment on the proposal addressed a wide range of topics, many of which were directed generally at the issue of timber harvest and particularly salvage harvest on National Forest System lands. Many people supported the proposal or favored further expansion, while many others opposed the proposal or recommended further restrictions.

Comment: Some respondents voiced general agreement with the proposal. Some indicated that they think current analysis and documentation requirements are too burdensome and that the proposal would provide for more efficient management. Others believed that the proposal had appropriate limitations on the use of the categorical exclusions and that the agencies had done sufficient analysis to conclude that the categories of limited tree harvest do not have significant environmental effects.

Response: These comments were in support of the proposal and need no specific response.

Comment: A number of respondents felt that the Forest Service had not adequately demonstrated a need for the proposed timber management categorical exclusions (CEs). Some respondents requested that the agency demonstrate that the current National Environmental Policy Act (NEPA) process is unduly burdensome for these types of projects.

Response: The categorical exclusions are provided as a tool to improve planning efficiency (40 CFR 1500.4(p) and 1500.5(k)). From 1981 through 1998 the Forest Service categorically excluded some limited timber harvesting activities from documentation in an environmental assessment or environmental impact statement using the category found in Forest Service Handbook (FSH) 1909.15, section 31.2, paragraph 4 (Category 4). Small timber sales implemented through these categorical exclusions provided local managers with the flexibility to respond to localized insect

and disease infestations, improve forest health through thinning, salvage dead and dying trees, and provide merchantable forest products. This category was vacated when a District Court found that there was insufficient evidence in the agency's administrative record to support its establishment. The government did not appeal the District Court's ruling on the case. The loss of this category has resulted in small timber harvests, without the potential for significant impacts, requiring preparation of at least an environmental assessment in order to proceed. This has resulted in extended timeframes and the expenditure of undue energy and funding to complete minor timber harvesting projects.

Comment: Some respondents commented that the proposal to expand the number of categories was an attempt by the agency to circumvent NEPA compliance.

Response: The use of categorical exclusions is not a circumvention of NEPA compliance. NEPA and its implementing regulations envision a process of disclosing significant environmental impacts of major Federal actions. To avoid repetitive documentation of known non-significant effects of minor actions, the Council on Environmental Quality (CEQ) regulations provide a process for defining categories of activities whose effects are normally exempt from documentation in an environmental assessment or an environmental impact statement. The process of defining these categories is an integral part of the NEPA regulatory framework. In this case, the documented review of activities similar to those included in these categories supports the determination that the three categories defined here describe actions which do not individually or cumulatively have a significant effect on the human environment and meet the intent of the CEQ regulations that govern the establishment of categorical exclusions. The agency is establishing these categories because the appropriate implementation of NEPA requires concentrating agency analysis efforts on major Federal actions and not expending scarce resources analyzing agency actions where experience has demonstrated the insignificance of effects.

Comment: Some respondents believed that Forest Service use of these categories would allow the agency to bypass important procedural steps for projects, such as the notification and involvement of the general public, State agencies, and Tribal governments prior to implementation of proposed projects.

Response: As directed by CEQ regulations (40 CFR 1507.3), the Forest Service has developed agency policy for implementing the NEPA process. As noted in Chapter 10, section 11, of FSH 1909.15: "Although the Council on Environmental Quality (CEQ) Regulations require scoping only for EIS preparation, the Forest Service has broadened the concept to apply to all proposed actions." Chapter 30, section 30.3(3), of FSH 1909.15 further states: "Scoping is required on all proposed actions, including those that would appear to be categorically excluded." As part of the scoping process for proposals potentially covered by these categorical exclusions, the responsible official must determine the extent of interest and invite the participation of affected Federal agencies, affected Tribes, State and local agencies, and other interested parties, as appropriate. The Forest Service is committed to fulfilling its public involvement responsibilities with all parties potentially interested in projects qualifying for these categorical exclusions. The agency is working on additional methods to broaden public awareness of all proposed activities undergoing any level of NEPA review (CEs, EAs, and EISs) through electronic Web-based technology. It is the line officer's responsibility to invite participation of all interested and affected individuals and groups and to do so by whatever method or technology is effective to achieve participation of those individuals or groups.

Comment: Several respondents expressed concern that effects on Tribal governments had not been appropriately analyzed in the rulemaking process as required by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments.

Response: The Forest Service recognizes it has trust responsibilities towards Tribes and this responsibility includes a duty to consult with Tribes to obtain meaningful and timely input on agency actions having substantial direct impacts on Tribes. Executive Order 13175 defines policies that have tribal implications as regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The addition of these categorical exclusions to the agency's NEPA procedures is concerned with the level of documentation required for specific types of actions. As such, these policies do not have Tribal implications as defined in the Executive Order.

Effects on Tribal governments may occur on specific sites where the categories will be used and where there are Tribal interests. Tribes will be contacted during the scoping process and appropriate government to government consultations will be conducted on those projects with Tribal implications even though the project may be categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement.

Comment: Many respondents asked that the Forest Service adhere to various laws, Executive orders, and agency policies, such as: the Endangered Species Act, Clean Air Act, Clean Water Act, National Forest Management Act, Migratory Bird Treaty Act, National Historic Preservation Act, Forest Service Transportation System Management Policy, Northwest Forest Plan, the Grizzly Bear Recovery Plan, and Executive orders on management of floodplains and wetlands and on Tribal consultation.

Response: The Forest Service agrees. The level of NEPA documentation does not affect agency responsibility to follow other applicable laws, regulations, Executive orders, and policies. For example, categorically excluded timber sales are reviewed for their potential to impact waters listed as impaired by State water quality agencies. When appropriate, the Forest Service conducts appropriate consultation with Federal, State, and Tribal agencies for these projects. For example, agencies must also review the potential effects from these types of actions on threatened and endangered species and on designated critical habitat and consult as appropriate with the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration Fisheries. Similarly, categorically excluded actions are reviewed for potential effects on properties protected by the National Historic Preservation Act, and consultation is conducted as appropriate with State and Tribal Historic Preservation Officers. Such consultations help ensure that cumulative effects across jurisdictions will not be significant.

Comment: Numerous respondents commented on the role that "special interest groups" play in affecting the management of the national forests. Some individuals assumed that these categorical exclusions were dictated by industry groups and objected vigorously to commodity use of national forests. Others commented on the role that they saw environmental groups playing in the direction of national forest management over the past several decades, especially in reducing commodity production from national forests.

Response: NEPA and its implementing regulations outline a process by which Federal Government decision-makers consider the potential environmental impacts of proposals. The NEPA process is applied to proposed actions that are governed by both the enabling legislation and the annual appropriation acts that direct agency actions. Forest Service management of National Forest System lands is founded in legislation such as the Organic Act of 1897, the Bankhead-Jones Act, the Multiple Use Sustained Yield Act, and the National Forest Management Act.

Many comments arguing either for restriction or for expansion of the agency's categorical exclusion authority are based on differing perspectives on the appropriate uses of national forests. The agency is required to manage for multiple uses and to consider the environmental effects as required in the NEPA statute.

These categorical exclusions will allow the Forest Service to improve its efficiency by reducing the delay and paperwork for proposed actions that, in the absence of extraordinary circumstances, do not individually or cumulatively have a significant impact on the human environment (40 CFR 1500.4(p), 1500.5(k)). In addition to complying with environmental statutory requirements, the proposed projects must be consistent with all other agency legislative and regulatory direction and must be consistent with land and resource management plans that govern activities on each national forest. Those projects that are appropriately categorically excluded can therefore meet goals of the multiple-use mission without the preparation of an environmental assessment or an environmental impact statement.

Comment: Many respondents expressed opinions on the issue of subjecting decisions allowed under these categorical exclusions to the public notice, comment, and appeal process. Some respondents considered the public notice, comment, and appeal process as absolutely essential for responsive decision-making. Others felt the appeals process is unnecessarily burdensome and lengthy, leading to agency inability to conduct land management activities in a timely manner.

Response: The agency recently completed rulemaking to revise the agency's administrative appeals process at 36 CFR part 215, which is mandated by the Appeal Reform Act (ARA) of 1993. The agency's interpretation of public notice, comment, and appeal opportunity under the ARA is outlined in the **Federal Register** notice for the final rule (68 FR 33582, June 4, 2003). The agency believes that including affected and interested individuals in project planning early in the process is more effective than applying the additional procedures for notice, comment, and appeal contained in the appeals rule and that applying the provisions of the appeals rule to categorically excluded actions is neither intended nor required by the ARA. Thus, proposed activities that are categorically excluded are not subject to the requirements of the appeals rule at 36 CFR 215.4(a) and 36 CFR 215.12(f).

Comment: A number of respondents raised issues related to the possible significant cumulative impacts of projects under these categories or the impacts of implementing such projects in combination with other activities under other authorities. Most of the statements were general, but some mentioned specific impacts such as those on wildlife or water quality. Some of these respondents reiterated quotes contained in the **Federal Register** notice for the proposal (68 FR 1026, January 8, 2003) that noted that categorically excluded actions must not individually or cumulatively have a significant effect on the human environment.

Response: For each of the 154 timber sales considered in defining these categories, the question of whether there were significant cumulative effects was specifically addressed. The reviewers examined the possibility of significant cumulative effects from these activities and all other activities within the appropriate boundaries for potential resource effects. For example, based on assessment of wildlife conditions in the local habitat area, or water quality impacts relative to a watershed, significant cumulative effects were not observed.

There are many statutory requirements and agency policies and guidelines that protect the environment from both individual and cumulative environmental effects. Many of these are described in the document "Detailed Rationale for Categorical Exclusions" located at *http://www.fs.fed.us/emc/hfi/rationale.pdf*.

The previous use of Category 4 was limited (it was applied to only 0.03% of National Forest System land in 1998) due to restrictions in the event of extraordinary circumstances, as well as other factors in forest plan standards and guidelines that limit forest management activities. These same factors are expected to influence the number of projects in the future.

Some public concerns with regard to environmental effects, both individual and cumulative, include those regarding wildlife populations and water quality. Soil and water resources are protected during timber harvest projects through implementation of State and EPA approved Best Management Practices (BMPs) as described in a later response.

With regard to wildlife, the Forest Service is authorized by the Endangered Species Act (ESA) to carry out programs for the conservation of endangered and threatened species, and must ensure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of any endangered, threatened, or proposed species, or result in the destruction or adverse modification of designated critical habitat.

By regulation, the Forest Service is required to consult with the U.S. Fish and Wildlife Service (FWS) or National Oceanic and Atmospheric Administration (NOAA) Fisheries whenever any proposed actions or activities may affect an endangered or threatened species or adversely modify designated critical habitat. The Forest Service regularly coordinates and consults with the appropriate state wildlife agency, FWS, and NOAA Fisheries on species protection and conservation efforts to address potential individual and cumulative impacts of agency practices on threatened and endangered wildlife and fish species and their habitat.

It is important to note that if a proposed project may have a significant effect on a species listed or proposed to be listed on the List of Endangered and Threatened Species or may have adverse effects on designated critical habitat for these species, the action agency, under existing agency NEPA procedures, may not use a categorical exclusion.

Comment: A number of concerns were expressed with regard to retention of snags, retention of downed woody material, and old growth. These concerns related to both wildlife habitat and ecosystem structure and function. There were also concerns related to visual impacts of the activities covered in the proposed categories.

Response: Forest plan standards and guidelines address structural components of wildlife habitat; for example, snag retention, coarse woody debris left onsite, and old growth retention. They also address visual management. All Forest Service actions within a national forest, including

categorically excluded actions must by statute be consistent with the forest plan (16 U.S.C. 160–4(i)).

Comment: Several respondents asked that the agency conduct NEPA analysis for this proposal, including a cumulative effects analysis on the impacts of this proposed ID and other recent rulemakings.

Response: A response to this comment is found in the Regulatory Certifications section, titled "Environmental Impact." The Council on Environmental Quality (CEQ) does not direct agencies to prepare a NEPA analysis or document before establishing agency procedures that supplement the CEQ regulations for implementing NEPA.

Comment: Some respondents assert that the stated requirements that activities must be consistent with land and resource management plans are misleading since such plans will be categorically excluded.

Response: Forest Service NEPA procedures in FSH 1909.15 and current land and resource management planning regulations at 36 CFR part 219 do not presently provide a categorical exclusion for revisions or amendments to land and resource management plans.

The Forest Service may, if it finalizes and implements its planning rule as proposed (67 FR 72816, December 6, 2002), identify a category of plan decisions which do not individually or cumulatively have a significant effect on the human environment and may, therefore, be categorically excluded from NEPA documentation in an environmental assessment (EA) or environmental impact statement (EIS). The public would have an opportunity to review and comment on such an amendment to the Forest Service Handbook if such a categorical exclusion is proposed. It should be noted that under the proposed Forest Service planning regulations, new plans, plan revisions, and amendments continue to require a rigorous public involvement process. Categorical exclusions apply to the level of documentation required under CEQ's regulations implementing NEPA (40 CFR 1500.4(p) and 1508.4). Any action that is not consistent with an applicable land and resource management plan standards, guidelines, goals, and objectives would require a plan amendment. The Forest Service will continue to conduct the appropriate level of environmental analysis and disclosure commensurate with the significance of environmental effects, both for land and resource management plans and for project-level planning.

Comment: Some respondents said the application of extraordinary circumstances screens is insufficient and open to abuse. Others stated a belief that timber harvests automatically trigger analysis and documentation in an EA or EIS since they contain elements specifically listed as requiring this level of documentation, including "controversy," "uncertainty," and "precedent for future action" and, as such, cannot be categorically excluded.

Response: When using these three categorical exclusions, the responsible officials will consider, on a project-by-project basis, whether or not any of the Forest Service extraordinary circumstances apply. The responsible official will prepare a project file and decision memo that will be available for public review (FSH 1909.15, ch. 30, sec. 32.3). The decision memo contains the responsible official's rationale for categorically excluding an action and selecting that particular category, and includes a determination that no extraordinary circumstances exist.

Years of experience by the Forest Service with Category 4 and earlier categories, including both low-impact silvicultural and sanitation/salvage projects, indicate that categories 12, 13, and 14 would not set a precedent. In addition, 32 of the projects reviewed were documented using EAs and Findings of No Significant Impact (FONSIs). For these projects, the FONSI indicated that the effects were not significant. The EAs for these projects included an assessment of the degree of the controversy about effects, uncertainty about effects, and precedent for future action, and found them to be not significant (40 CFR 1508.27).

Comment: One request for correction of information under the USDA Information Quality Guidelines was received in response to the proposal for categorical exclusions for small timber harvest. Concerns were raised by petitioners under the Data Quality Act that "measurement" must be used instead of "observation" to comply with USDA Information Quality Guidelines. The following is a response to that concern. Both the request for correction, and a more detailed response to the request than that found below, can be found at *http://www.fs.fed.us/qoi.*

Response: The Forest Service has evaluated the assessment of the 154 projects that provides the basis for its categorical exclusions, and found that this assessment complies with the USDA Information Quality Guidelines. The USDA Information Quality Guidelines, under "Objectivity of Regulatory Information," include the following: "Use reasonably reliable and reasonably timely data and information (*e.g.*, collected data such as from surveys, compiled information, and/or expert opinion)." The expert opinion used to generate the observations in question is documented at *http://www.fs.fed.us/emc/lth.* Specifically, the use of local expertise in resource disciplines such as soils, hydrology, fisheries biology, and wildlife biology is documented in the information on the study of the 154 projects. These experts are highly trained, usually holding degrees in their specialties at the bachelor's or master's level. They are also provided ongoing training to assure currency in their discipline. They are familiar with current literature relating to their specialty and local area, as well as applicable laws, regulations, policies, and land and resource management plan standards and guidelines required for protection of the environment. They have field knowledge of local conditions. The combination of this expertise, complemented by the interdisciplinary approach used by the Forest Service in managing environmental resources, render the specialists well qualified to make site-specific judgments as to the effects of a particular practice in a particular area.

In addition, where the local biologist finds that there is potential for an effect on a federally listed species, its designated critical habitat, or species proposed for listing, the project would be evaluated by professionals from the U.S. Fish and Wildlife Service or National Oceanic and Atmospheric Administration Fisheries. A categorical exclusion would not be used if the agency determines that the action may adversely affect listed species, species proposed for listing, critical habitat, or proposed critical habitat.

The USDA Information Quality Guidelines, under "Objectivity of Regulatory Information" also includes considerations of transparency. For this interim directive, the data from the 154 projects were available to the public upon request and on the Web during the comment period.

Comment: Some respondents questioned the size of the sample and the procedures used in selecting the 154 projects evaluated in determining that these categories of activities will have insignificant effects on the human environment.

Response: The Forest Service reviewed 154 small timber sale activities which could potentially have been included in these categories. To identify projects for review, the Forest Service requested field units to review a sample of timber harvests that would have qualified under former Category 4 or were similar in size and scope. Field units were asked to send the Washington Office any results from past monitoring efforts on the effects of: (1) projects that were performed under Category 4, or (2) projects that were done with an environmental assessment (EA) or environmental impact statement (EIS) but fit the requirements of Category 4, or were similar in size and scope. In the request, there was no specific time period for the completion of projects selected.

If past monitoring data did not exist, then each forest that has historically used timber harvest CEs, or projects that are similar in size and scope to Category 4, were asked to monitor at least two randomly selected CEs or projects as defined above. Monitoring was accomplished by reviewing the site after the project was completed based on the professional observations of resource specialists and line officers. All monitoring results were submitted using Web-based forms designed specifically for this monitoring effort. Both individual and cumulative environmental effects were assessed as part of this monitoring procedure. Where forests had only one or two projects that met the request criteria, those projects were selected. Where forests had more than two projects that met the request criteria, projects were chosen using a process that was unbiased with respect to the level of potential environmental effects. A description of how each project was selected is available on the Web site *http://www.fs.fed.us/emc/lth.*

Comment: Some respondents suggested that the Forest Service monitor categorically excluded limited timber harvest activities to ensure that they do not have significant environmental effects.

Response: Monitoring would take place after the categories are established and after they are used for a particular action. Monitoring is not relied upon as a basis or rationale for establishing these categorical exclusions. Forest land and resource management plans already provide for monitoring of management activities to determine compliance with applicable laws, regulations, and standards and guidelines; effectiveness of project implementation, including any specified mitigation measures; validation of models and assumptions used in the planning processes; and environmental impacts. Projects implemented under these categories will be included in these ongoing monitoring efforts.

Comment: Some respondents suggested that, without NEPA analysis, categorically excluded actions would not consider current scientific information and managers would be unaware of extraordinary circumstances that preclude the use of a categorical exclusion.

Response: The Forest Service has repeatedly conducted NEPA analyses for timber harvest projects using the best available science. Based upon the projects reviewed for these categorical exclusions, the agency concluded that these analyses describe categories of actions which do not individually or cumulatively have a significant effect on the human environment.

Consistent with existing direction, the Forest Service must conduct sufficient review to determine that no extraordinary circumstances exist when using categorical exclusions (FSH 1909.15, sec. 30.3). This determination includes appropriate surveys, use of the best available science, appropriate consultation with Tribes, and coordination with agencies that have regulatory responsibilities under other statutes such as the Endangered Species Act, the National Historic Preservation Act, Clean Water Act, and Clean Air Act.

Comment: Some respondents believed that limited timber harvesting for salvage purposes should not be carried out at all. They said the use of heavy equipment generates noise, air and water pollution, soil compaction, vegetation and habitat changes, and ecosystem modifications greater than the event causing the mortality. Still others cited research studies (*e.g.*, Beschta, R.L.; Frissell, C.A.; Gresswell, R. [and others]. 1995. Wildfire and salvage logging: recommendations for ecologically sound post-fire salvage logging and other post-fire treatments on Federal lands in the West. Corvallis, OR: Oregon State University) that report that there is generally no ecological need to act, and that quick actions may create new problems. Some cited other research studies regarding environmental impacts of timber harvesting.

Response: Ecological reasons are not the only reasons for an agency to take action. Salvaging dead and dying timber provides commercial forest products in support of the Forest Service's legally mandated mission. Numerous laws, including the Multiple Use Sustained Yield Act and the National Forest Management Act, establish the basis for managing national forests in a manner to provide goods and services. In addition, salvage activities, in certain situations, can reduce fire hazard from excessive fuel buildup, or prevent the buildup of insect populations in accumulations of dead trees that can then attack healthy trees; *e.g.*, the spruce beetle. Severe fires and insect infestations can lead to reduced scenic, recreational, wildlife, and timber values on Federal and neighboring Tribal, State, or private land. Public comment from neighbors of Forest Service land expressed their concerns regarding risks to their property from untreated fire or insect hazards on neighboring Forest Service land.

As the Beschta *et al.* report points out, salvage activities can have negative environmental impacts, depending on the condition of the site, the harvesting system, time of the year, and many other factors. However, practices and guidelines have been developed with regard to soil and water protection and wildlife habitat, on appropriate sites that will lead to no significant effects. The Forest Service agrees with Beschta *et al.* that care should be taken in designing salvage projects, as well as other timber sale projects, and the agency has an extensive array of guidelines and procedures to prevent and mitigate negative environmental impacts during these activities.

The fact that none of the 154 sampled projects showed significant environmental impacts indicates that these practices are effective at reducing or eliminating environmental impacts. As described in the rationale for the categorical exclusion for fuels reduction projects *http://www.fs.fed.us/emc/hfi/rationale.pdf,* thinning methods are used for forest stand improvement, wildlife habitat improvement, and hazardous fuels reduction. The body of knowledge concerning these practices is mature. Scientific research and evaluations of project monitoring are reflected in laws, regulations, and agency policy related to implementation of these activities. Some of the many laws, regulations, and policies are described in the rationale document.

One example of these environmental safeguards that apply to proposed timber harvest projects that are described in categories 12, 13, and 14 is the protection of soil and water resources. This protection is provided through implementation of State and EPA approved Best Management Practices (BMPs) as well as forest plan standards and guidelines. BMPs are site-specific design and operating criteria intended to maintain soil productivity and water quality to State standards. Federal agencies incorporate BMPs into project design. For example, to minimize soil compaction, puddling, rutting, and gullying with resultant sediment production and loss of soil productivity, the project supervisor and/or Contracting Officer are responsible

for determining when the soil surface is unstable and susceptible to damage and is then responsible for suspending or terminating operations.

BMPs also establish practices for addressing soil and water quality issues associated with temporary roads. BMPs are codified in regional handbooks and provide practices for the treating and decommissioning of roads to reduce impacts on sedimentation.

EPA states that BMPs are the primary mechanism for control of non-point source pollution and compliance with the Clean Water Act. Monitoring of BMP effectiveness has historically been accomplished informally as a part of each project review. Several States also conduct their own more extensive programs to ensure the maintenance of water quality.

The harvesting practices used and mitigation measures implemented in salvage projects will be decided on a site-specific basis by technical specialists who routinely use current scientific literature and technologies, as well as their local knowledge of the soil, wildlife and other environmental conditions in an area. While individual research studies are used by technical specialists to predict environmental effects, site-specific information about practices and local conditions is necessary to make expert judgments about potential environmental effects of a project. In addition, the scope and context of a specific project are considered when determining the significance of environmental impacts of that project under NEPA (40 CFR 1508.27).

Comment: Several respondents expressed concern over the number and location of categorically excluded limited timber harvest activities that could be implemented within a given area or a limited timeframe. Some respondents raised concerns that the agency could misuse the categories by segmenting larger projects into sizes that qualify under the CEs. Some respondents noted that such segmentation would violate CEQ regulations.

Response: The responsible official is required to properly identify the characteristics of the proposed action (FSH 1909.15, ch. 10, sec. 11.2). The agency adopted the following from the CEQ regulations for all their proposals that may undergo environmental review, including the documentation for categorical exclusions, "proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement." The Forest Service also adopted the CEQ definition for determining the scope of a proposed action as defined at 40 CFR 1508.25, which discusses connected and related actions. Consequently, segmenting a larger project into smaller projects in order to meet the acreage requirements and be considered under these CEs is contrary to Forest Service guidance. Agency oversight of the application of these categories through internal reviews such as Chief's, regional, and forest reviews, emphasizes these compliance requirements and will prevent abuses.

Comment: Some respondents indicated they believe the Forest Service should set limits on the volume that may be harvested under these categories since it may be possible to exceed the volume available under the previous Category 4 authorization.

Response: In gathering data on the 154 projects used to define the limits of these categories, it was evident that potential environmental impacts are better predicted using acres treated rather than the total volume of timber removed, regardless of acreage. Harvesting a given volume of timber from one acre is likely to have different environmental impacts than harvesting the same volume from tens or hundreds of acres. In addition, timber volumes are estimated in advance of the sale, and there can be errors associated with those predictions; an acreage limit is not as subject to the uncertainties of estimation. Finally, acreage limits are easier to control and administer in the field and easier to describe to the public. It is possible that individual projects would exceed the volume limitations in the previous Category 4. The data from the 154 surveyed projects support the finding that there will be no significant environmental impacts from implementing actions within these acreage limitations.

Comment: Some respondents would prefer to see the acreage limitation of the categories decreased while others would like to see them increased.

Response: To determine the potential impacts of limited timber harvesting activities, data were gathered from 154 timber sales that could possibly have been included in one of the proposed categories. None of the projects evaluated had significant impacts on the human environment. Rather than setting the acreage limits at the limits of the range evaluated, the Forest Service believes it is prudent and conservative not to exceed the mean of acres treated under each of the proposed categories. In the original proposal, the acreage limit of 50 for Category 12 was reduced from the actual mean of 70. Public comment questioned the need for this reduction. Use of the mean reflected the consideration by the agency that the acreage is well within the range of acreages in the project data used to support these categories.

Comment: Some respondents indicated that there should be no restriction on new road construction, while others believed that no roads should be constructed, as the absence of roads indicates an activity is too far from a community. Other respondents suggested that up to ½ mile of low-standard road should be allowed, while others believed that roads should be constructed only in rare cases.

Response: In accordance with 36 CFR 212.1, new road construction is defined as an activity that results in the addition of forest classified or temporary road miles. Timber harvest activities involving the addition of forest classified road miles are not included in the proposed categorical exclusions. Proposals for timber harvest activities that involve new classified road construction would be analyzed and documented in an EA or EIS. As defined in 36 CFR 212.1, temporary roads are roads that are authorized by contract, permit, lease, other written authorization, or emergency operation, are not intended to be part of the Forest Service transportation system, and are not necessary for long-term resource management. A total of 35 of the 154 timber sales reviewed required temporary road construction. No significant effects were found in reviewing these projects. The average length of temporary road construction for these 35 sales was ½ mile. The agency elected to use this average ½ mile temporary road length as a limit for its limited timber harvest categorical exclusions.

All temporary roads constructed for timber harvest projects that qualify for categories 12, 13, and 14, will be conducted under the terms of the timber sale contract. Temporary road construction authorized under timber sale contracts must be consistent with environmental quality standards and must consider minimizing impacts on land and resources, in accordance with 36 CFR 223.30 and 36 CFR 223.38. In accordance with 36 CFR 223.37, temporary roads are treated to reestablish vegetative cover as necessary to minimize erosion. Such treatment shall be designed to reestablish vegetative cover as soon as practicable. Therefore, any potential environmental effects are short-term. Non-commercial "cut and leave" activities are the only activities that may qualify under these categories that would not involve a timber sale contract. Noncommercial activities would not include temporary road construction.

Comment: Some respondents suggested that any road construction should be carried out only following a thorough environmental analysis. Others indicated that culverts should not be replaced or upgraded without a watershed analysis.

Response: These categorical exclusions provide only for construction of temporary roads and do not propose adding additional road miles to the National Forest System. Where use of these proposed categorical exclusions involving no more than ½ mile of temporary road construction, with or without culverts, is being proposed, the responsible official must review the proposed action to ensure that the temporary road construction is consistent with environmental quality standards (36 CFR 223.30) which include minimizing increases in soil erosion and providing favorable conditions of water flow and quality. The responsible official must also determine that no extraordinary circumstances exist, and document those findings in a decision memo (FSH 1909.15, ch. 30, secs. 30.3 and 32.3).

Comment: Some respondents suggested that the categorical exclusions should specify that temporary roads will be constructed only where the roads will be reclaimed/obliterated upon activity completion.

Response: As defined in 36 CFR 212.1, temporary roads are roads that are authorized by contract, permit, lease, other written authorization, or emergency operation, are not intended to be part of the Forest Service transportation system, and are not necessary for long-term resource management. In accordance with 36 CFR 223.37, upon completion of the timber sale contract, the purchaser is required to treat temporary roads constructed or used during the authorized activity. This involves the reestablishment of vegetative cover on the roadway and other areas in order to minimize erosion from the disturbed area. Once the authorized timber sale contract is completed, the temporary road becomes unneeded as described in 36 CFR 212.5(b)2 and should be decommissioned or considered for other uses such as trails.

Decommissioning roads involves restoring roads to a more natural state. Activities used to decommission a road include, but are not limited to, the following: reestablishing former drainage patterns, stabilizing slopes, restoring vegetation, blocking the entrance to a road, installing water bars, removing culverts, reestablishing drainage-ways, removing unstable fills, pulling back road shoulders and scattering slash on the roadbed, completely eliminating the roadbed by restoring natural contours and slopes, or other methods designed to meet the specific conditions associated with the unneeded road. How temporary roads are decommissioned is a project-specific decision and therefore appropriately decided at the project level (36 CFR 212 and FSM 7703.2). The decision to convert a temporary road to another use would entail a new decision that requires additional NEPA review.

Comment: Some respondents stated that the Forest Service should comply with Executive Order 12866, Regulatory Planning and Review, by assessing the economic costs and benefits of the initiative. Respondents say that this assessment should include the non-market costs of the initiative to landowners, businesses, communities, water quality, recreation, scenery, non-traditional forest products, and game.

Response: In compliance with Executive Order 12866, the Forest Service has prepared a cost-benefit analysis and has determined that these categorical exclusions will not have an annual effect of $100 million or more on the economy or adversely affect productivity, competition, jobs, the environment, public health or safety, or State, Tribal, or local governments. The economic effect expected to result from this action is a reduction in the administrative burden of preparing unnecessary environmental assessments and findings of no significant impact, and benefits to the environment and nearby communities as a result of limited timber harvesting to improve forest health and salvage merchantable forest products. The agency estimated an annual savings of $6.4 million that would otherwise be spent on environmental assessments.

Comment: Several respondents requested clarification of the harvest treatments which could be implemented under Category 12. Some of these respondents indicated too much flexibility was provided to the local manager under uneven-aged techniques. Others believed the limitation on even-aged management treatments should be removed.

Response: The Forest Service Manual (FSM) 2470.5 contains the definitions of silvicultural practices on National Forest System lands. An uneven-aged system is defined at FSM 2470.5 as: "A silvicultural system involving manipulation of a forest to simultaneously maintain: a. Continuous high-forest cover; b. Recurring regeneration of desirable species; c. Orderly growth and development of trees through a range of diameter or age classes to provide a sustained yield of forest products." Individual tree selection and group selection are the two recognized uneven-aged cutting systems. FSM 2470.5 defines group selection cutting with the groups (openings to regenerate shade-intolerant species) as usually no more than 2 acres in size. Additional instructions may also exist in the forest plans developed for each unit. Timber harvesting activities must be consistent with the objectives of site-specific prescriptions approved by certified silviculturists (FSM 2478.03 (5)). Professional forestry standards and agency oversight ensure uneven-aged techniques are properly prescribed and implemented, including acreage limitations on opening sizes.

Uneven-aged systems (individual tree selection and group selection) maintain the canopy of a forest stand and therefore have relatively little effect on the structural and aesthetic properties of stands. Even-aged regeneration harvests, such as clearcutting, seed tree, and shelterwoods, were excluded from use in Category 12. Because the cutting operations involved in Category 12 retain the canopy of the forest, adequate regeneration of tree species is not a concern. However, because projects using this category will use the timber sale contract, they are subject to 36 CFR 223.30 (c). This requires the approving officer to ensure that each timber sale contract, permit, or other authorized form of National Forest timber disposal includes, as appropriate, requirements for regeneration of timber as may be made necessary by harvesting operations.

Comment: Some respondents disputed the need for Category 13 because of the importance of dead and dying trees to the forest ecosystem.

Response: Dead and dying material is an important component of a healthy forest ecosystem. Forest plan standards for snag density (standing dead trees) and cavity habitat will be met when salvage activities take place.

Comment: Some respondents indicated that regeneration harvesting using both even-aged and uneven-aged silvicultural systems should be allowed under Category 13.

Response: Category 13 addresses salvage harvesting. The Society of American Foresters Dictionary of Forestry defines salvage cutting as "the removal of dead trees or trees damaged or dying because of injurious agents other than competition to recover economic value that would otherwise be lost." As such, salvage harvesting is not

oriented to any specific silvicultural system.

Comment: Several respondents requested clarification of Category 14. Some of these respondents believed the language in the draft notice is excessively permissive while others believed it is too restrictive in terms of the acreage needed to deal with forest health problems.

Response: This category has been changed to clarify that it will apply to both infested/infected trees and adjacent live uninfested/uninfected trees whose removal is determined necessary to control the spread of insects or disease. In addition, the restriction of two tree lengths was removed for the harvesting of healthy adjacent trees, because this restriction applied primarily to management for control of southern pine beetle and may not be appropriate for outbreaks of other pests such as the sudden oak death pathogen, emerald ash borer, and many bark beetle species other than southern pine beetle. This provides the local manager with latitude when responding to rapidly expanding insect or disease situations. The manager, in turn, relies upon advice from professional forest entomologists and pathologists when determining the appropriate treatment. Another clarification is that noncommercial treatments, such as "cut and leave," for example, used for treatment of southern pine beetle, are covered by this category.

The projects reviewed support both salvage and sanitation operations as cutting trees in these categories have the same kind of environmental impacts. For both Category 13 and 14, regeneration of tree species will follow 36 CFR 223.30 (c), as described above for Category 12. Other restoration activities will be governed by site-specific restoration objectives and forest plan standards and guidelines.

Concerns over misuse of this category to allow more trees than those necessary to protect forest health to be harvested can be addressed through agency oversight on the application of this category.

Conclusion

The USDA Forest Service finds that the categories of action defined in the categorical exclusions presented at the end of this notice do not individually or cumulatively have a significant effect on the human environment. The agency's finding is first predicated on the reasoned expert judgment of the responsible officials who made the original findings and determinations in the timber harvest projects reviewed; the resource specialists who validated the predicted effects of the reviewed activities through monitoring or personal observation of the actual effects; and, finally, the agency's belief that the profile of past small-scale timber harvest activities represents the agency's past practices and is indicative of the agency's future activities.

These categorical exclusions will permit timely response to small timber harvest requests and to forest health problems involving small areas of National Forest System land. Additionally, they would conserve limited agency funds.

The text of the proposed categorical exclusions is set out at the end of this notice.

Regulatory Certifications

Environmental Impact

This final interim directive adds direction for three categorical exclusions to Forest Service Handbook (FSH) 1909.15 for guiding field employees regarding procedural requirements for National Environmental Policy Act (NEPA) documentation for tree harvest activities. The Council on Environmental Quality (CEQ) does not direct agencies to prepare a NEPA analysis or document before establishing agency procedures that supplement the CEQ regulations for implementing NEPA. Agencies are required to adopt NEPA procedures that establish specific criteria for, and identification of, three classes of actions: those that normally require preparation of an environmental impact statement; those that require preparation of an environmental assessment; and those that are categorically excluded from documentation in an environmental impact statement or environmental assessment (40 CFR 1507.3(b)). Categorical exclusions are one part of those agency procedures and, therefore, establishing categorical exclusions does not require preparation of a NEPA analysis or document. Agency NEPA procedures are internal procedural guidance to assist employees in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action. The requirements for establishing agency NEPA procedures are set forth at 40 CFR 1505.1 and 1507.3, and the Forest Service has provided an opportunity for public review and has consulted with the CEQ during the development of these categorical exclusions. The determination that establishing categorical exclusions does not require NEPA analysis and documentation has been upheld in *Heartwood, Inc.* v. *U.S. Forest Service*, 73 F. Supp. 2d 962, 972–73 (S.D. Ill. 1999), aff'd, 230 F.3d 947, 954–55 (7th Cir. 2000).

Regulatory Impact

The categorical exclusions in this final interim directive have been reviewed under Departmental procedures and Executive Order 12866 on Regulatory Planning and Review. The Office of Management and Budget (OMB) has determined that this is a significant regulatory action as defined by Executive Order 12866. Accordingly, this action is subject to OMB review under Executive Order 12866 and OMB has reviewed the categorical exclusions in this interim directive at both the proposed and final stages.

This action to add three categorical exclusions to the Forest Service's NEPA procedures will not have an annual effect of $100 million or more on the economy or adversely affect productivity, competition, jobs, the environment, public health or safety, or State, Tribal, or local governments. The economic analysis conducted to support this action estimates that it would result in quantifiable annual cost savings to the agency of approximately $6.4 million due to the reduced analyses that would be required for projects covered by these categorical exclusions. The economic analysis is available at *http://www.fs.fed.us/emc/lth*. This action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. This action may, however, interfere with an action taken or planned by another agency or raise new legal or policy issues.

Moreover, this action has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it is hereby certified that the categorical exclusions will not have a significant economic impact on a substantial number of small entities as defined by the act because it will not impose record-keeping requirements on them; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity, or ability to remain in the market.

The agency believes small businesses in general may benefit from a potential increase in small timber harvest opportunities as a result of these new categories. Although the Forest Service finds this increase difficult to quantify, it believes that more timber harvest opportunities may be available when using a categorical exclusion rather than an environmental assessment, resulting in an increase in the amount of timber volume available for small businesses and local mills. It is expected that there would be equal access to economic opportunities to businesses through timber sale contracts, stewardship contracts, and other contracting instruments. Additionally some of these sales are expected to be set aside for small business under the agency's small business timber set-aside program.

Federalism

The Forest Service has considered the categorical exclusions in this final interim directive under the requirements of Executive Order 13132, Federalism, and has concluded that they conform with the federalism principles set out in this Executive Order; will not impose any compliance costs on the States; and will not have substantial direct effects on the States or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no further assessment of federalism implications is necessary.

Consultation and Coordination With Indian Tribal Governments

The categorical exclusions in this final interim directive do not have Tribal implications as defined by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, and therefore advance consultation with Tribes is not required.

No Takings Implications

The categorical exclusions in this final interim directive have been analyzed in accordance with the principles and criteria contained in Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and it has been determined that the proposed categorical exclusions do not pose the risk of a taking of Constitutionally protected private property.

Civil Justice Reform

In accordance with Executive Order 12988, it has been determined that the categorical exclusions in this final interim directive do not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the order.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the agency has assessed the effects of the categorical exclusions in this final interim directive on State, local, and Tribal governments and the private sector. These categorical exclusions do not compel the expenditure of $100 million or more by any State, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Energy Effects

The categorical exclusions in this final interim directive have been reviewed under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that these categorical exclusions do not constitute a significant energy action as defined in the Executive order.

Controlling Paperwork Burdens on the Public

The categorical exclusions in this final interim directive do not contain any additional record keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use and, therefore, impose no additional paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

Dated: July 23, 2003.

Sally Collins,

Associate Chief.

Text of Final Interim Directive Setting Out Three New Categorical Exclusions

Note: The Forest Service organizes its directive system by alpha-numeric codes and subject headings. Only those sections of the Forest Service Handbook (FSH) 1909.15, Environmental Policy and Procedures Handbook, affected by this policy are included in this notice. The intended audience for this direction is Forest Service employees charged with planning and administering small timber harvest projects. Selected headings and existing text are included to assist the reader in placing the interim directive in context. Reviewers who wish to view the entire chapter 30 of FSH 1909.15 may obtain a copy from the address shown earlier in this notice and from the Forest Service home page on the World Wide Web/Internet at *http://www.fs.fed.us/im/directives/fsh/1909.15/1909.15,30.txt*.

FSH 1909.15—Environmental Policy and Procedures Handbook Chapter 30—Categorical Exclusion From Documentation

[To provide context for understanding the new categorical exclusions that are established as paragraphs 12, 13, and 14 in section 31.2, the introductory text of section 31.2 (identified by italics) follows:]

31.2—Categories of Actions for Which a Project or Case File and Decision Memo Are Required.

Routine, proposed actions within any of the following categories may be excluded from documentation in an EIS or an EA; however, a project or case file is required and the decision to proceed must be documented in a decision memo (sec. 32). As a minimum, the project or case file should include any records prepared, such as (1) the names of interested and affected people, groups, and agencies contacted; (2) the determination that no extraordinary circumstances exist; (3) a copy of the decision memo (sec. 30.5 (2)); (4) a list of the people notified of the decision; (5) a copy of the notice required by 36 CFR part 217, or any other notice used to inform interested and affected persons of the decision to proceed with or to implement an action that has been categorically excluded. Maintain a project or case file and prepare a decision memo for routine, proposed actions within any of the following categories.

* * * * *

12. *Harvest of live trees not to exceed 70 acres, requiring no more than ½ mile of temporary road construction.* Do not use this category for even-aged regeneration harvest or vegetation type conversion. The proposed action may include incidental removal of trees for landings, skid trails, and road clearing. Examples include but are not limited to:

a. Removal of individual trees for sawlogs, specialty products, or fuelwood.

b. Commercial thinning of overstocked stands to achieve the desired stocking level to increase health and vigor.

13. *Salvage of dead and/or dying trees not to exceed 250 acres, requiring no more than ½ mile of temporary road construction.* The proposed action may include incidental removal of live or dead trees for landings, skid trails, and road clearing.

Examples include but are not limited to:

a. Harvest of a portion of a stand damaged by a wind or ice event and construction of a short temporary road to access the damaged trees.

b. Harvest of fire damaged trees.

14. *Commercial and non-commercial sanitation harvest of trees to control insects or disease not to exceed 250 acres, requiring no more than ½ mile of temporary road construction, including removal of infested/infected trees and adjacent live uninfested/uninfected trees as determined necessary to control the spread of insects or disease.* The proposed action may include incidental removal of live or dead trees for landings, skid trails, and road clearing. Examples include but are not limited to:

a. Felling and harvest of trees infested with southern pine beetles and immediately adjacent uninfested trees to control expanding spot infestations.

b. Removal and/or destruction of infested trees affected by a new exotic insect or disease, such as emerald ash borer, Asian

longhorned beetle, and sudden oak death pathogen.

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S. 709/P.L. 108–60
To award a congressional gold medal to Prime Minister Tony Blair. (July 17, 2003; 117 Stat. 862)
Last List July 16, 2003

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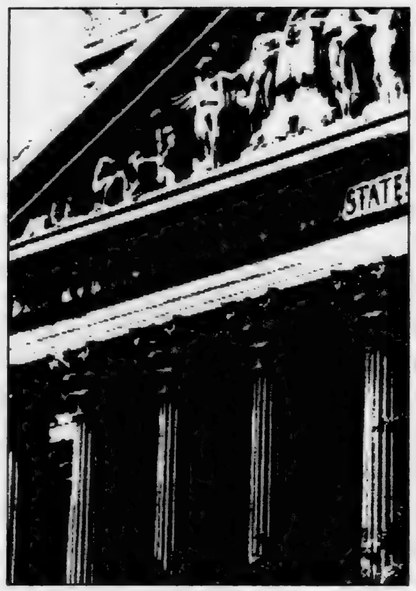
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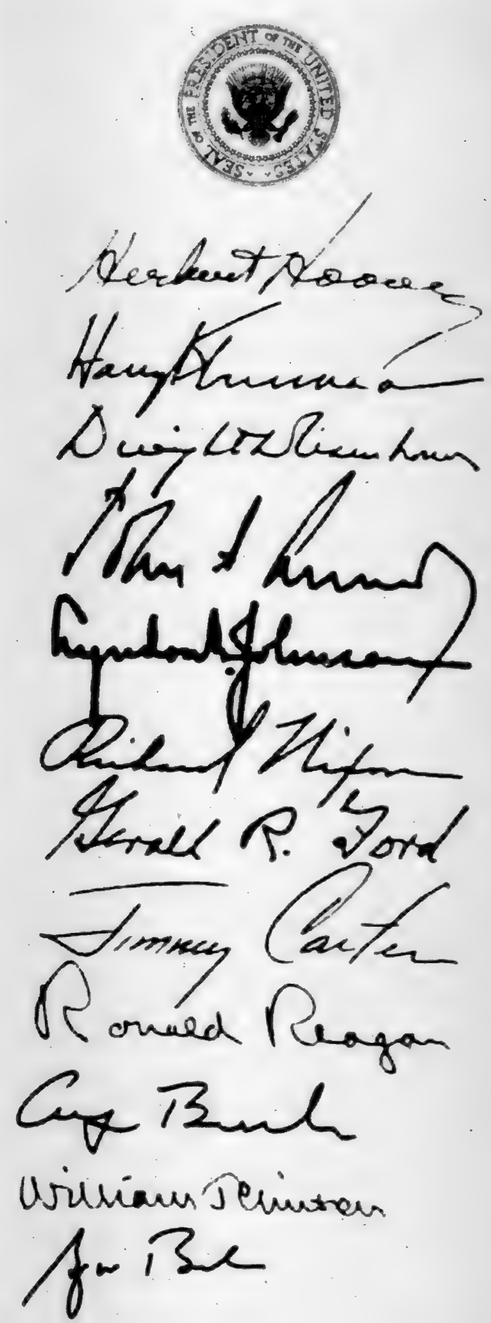
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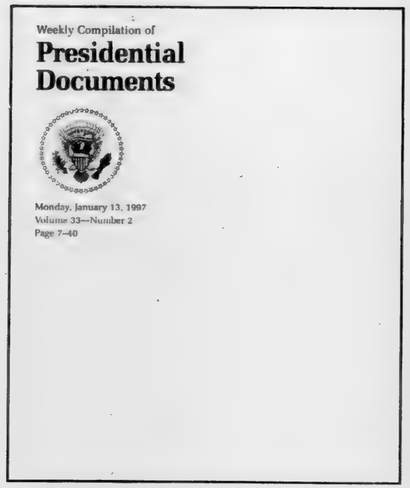
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–42–AD; Amendment 39–13250; AD 2003–15–07]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. (Formerly AlliedSignal) Model RE220 (RJ) Auxiliary Power Units

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Honeywell International Inc. (formerly AlliedSignal) model RE220 (RJ) auxiliary power units (APUs) part number (P/N) WE3800770–2. This amendment requires replacing the existing fuel nozzles with new design fuel nozzles, making reidentification updates to the APU identification plate, and operating the APU to perform a visual inspection for fuel leaks. This amendment is prompted by reports received by the FAA of cracks occurring in the existing APU fuel nozzles leading to fuel leaks. The actions specified by the AD are intended to prevent APU compartment fires and fuel vapor explosion.

DATES: Effective September 3, 2003.

ADDRESSES: Information regarding this action may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Roger Pesuit, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5251, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Honeywell International Inc. (formerly AlliedSignal) Model RE220 (RJ) auxiliary power units was published in the **Federal Register** on January 30, 2003. That action proposed to require replacing the existing fuel nozzles, P/N WE3830486–2, with new design fuel nozzles, P/N WE3830513–1, making reidentification updates to the APU identification plate, and operating the APU to perform a visual inspection for fuel leaks. The FAA also published a related AD, AD 2002–26–07, in the **Federal Register** on January 2, 2003, for Bombardier model CL–600–2C10 airplanes. That AD limits P/N WE3800770–2 APUs that have the old design fuel nozzles to ground operation only, until the new fuel nozzles are installed.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. One commenter approves of the proposal as-written. No comments were received on the the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–15–07 Honeywell International Inc. (formerly AlliedSignal): Amendment 39–13250. Docket No. 2002-NE–42–AD.

Applicability

This airworthiness directive (AD) is applicable to Honeywell International Inc. (formerly AlliedSignal) model RE220 (RJ) auxiliary power units (APUs) part number (P/N) WE3800770–2. These APUs are installed on, but not limited to Bombardier model CL–600–2C10 airplanes.

Note 1: This AD applies to each APU identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For APUs that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent APU compartment fires and fuel vapor explosion, do the following:

(a) Within six months after the effective date of this AD, replace APU fuel nozzles, P/N WE3830486–2, with new design fuel nozzles, P/N WE3830513–1. Information on fuel nozzle replacement can be found in Honeywell International Inc. alert service bulletin (ASB) RE220–49–A7714, dated November 4, 2002.

(b) Reidentify the APU as follows:

(1) Change the P/N from WE3800770–2 to WE3800770–3 on the identification plate, by removing the –2 and vibropeening or hand stamping a –3 in its place.

(2) Vibropeen or hand stamp the letter "C" after the serial number to show conversion.

(3) Vibropeen or hand stamp "Change Number 3" on the identification plate adjacent to the MOD RECORD.

(c) Start the APU and perform a visual fuel leak check after one minute of operation.

(d) After the effective date of this AD, do not install fuel nozzles P/N WE3830486–2 into any APU P/N WE3800770–3.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (LAACO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, LAACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the LAACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Effective Date

(g) This amendment becomes effective on September 3, 2003.

Issued in Burlington, Massachusetts, on July 24, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–19309 Filed 7–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–03–AD; Amendment 39–13249; AD 2003–15–06]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211 Trent 800 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Rolls-Royce plc (RR) RB211 Trent 875–17, Trent 877–17, Trent 884–17, Trent 892–17, Trent 892B–17, and Trent 895–17 turbofan engines with high pressure (HP) compressor rotor rear stage 5 and 6 discs and cone shafts, part numbers (P/Ns) FK25230 and FK27899 installed. This amendment requires removal from service of these HP compressor rotor rear stage 5 and 6 discs and cone shafts, before reaching newly reduced life limits. This amendment is prompted by three reports of crack indications in the stage 5 and stage 6 blade loading slots, found during engine overhaul. We are issuing this AD to prevent stage 5 and 6 disc crack initiation and propagation leading to uncontained disc failure and damage to the airplane.

DATES: Effective September 3, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Rolls Royce plc, P.O. Box 31, DERBY, DE24 8BJ, UK, telephone: 44 (0) 1332 242424; fax: 44 (0) 1332 249936. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299, telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to RR RB211 Trent 875–17, Trent 877–17, Trent 884–17, Trent 892–17, Trent 892B–17, and Trent 895–17 turbofan engines with HP compressor rotor rear stage 5 and 6 discs and cone shafts, part numbers (P/Ns) FK25230 and FK27899 installed was published in the **Federal Register** on March 11, 2003. That action proposed to require removal from service of these HP compressor rotor rear stage 5 and 6 discs and cone shafts, before reaching newly reduced life limits. Information on the reduced life limits of these HP compressor rotors may be found in RR mandatory service bulletin (MSB) RB.211–72–E082, Revision 2, dated November 22, 2002.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Include a Reference to RR Service Information

One commenter requests that a reference to RR MSB RB.211–72–E082, Revision 2, dated November 22, 2002, be included in the final rule. The commenter believes that the reference to the MSB is necessary for clarification and for traceability to the AD if future revisions to the MSB are issued.

The FAA agrees. The MSB reference is included in the Supplementary Information paragraph and in Compliance paragraph (a).

Request To Withdraw Unnecessary AD

One commenter states that the new life limit specified in the AD has already been included in the RB211 Trent Time Limits Manual (Chapter 5); therefore, the AD is unnecessary.

The FAA does not agree. Although the new life limits have been included in the RB211 Time Limits Manual, the reduced life limits are not enforceable unless mandated by an AD. Accordingly, the FAA will not change the AD based on this comment.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–15–06 Rolls-Royce plc: Amendment 39–13249. Docket No. 2003–NE–03–AD.

Applicability

This airworthiness directive (AD) applies to Rolls-Royce plc (RR) RB211 Trent 875–17, Trent 877–17, Trent 884–17, Trent 892–17, Trent 892B–17, and Trent 895–17 turbofan engines with high pressure (HP) compressor rotor rear stage 5 and 6 discs and cone shafts, part numbers (P/Ns) FK25230 and FK27899 installed. These engines are installed on, but not limited to Boeing 777 airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been accomplished.

To prevent stage 5 and 6 disc crack initiation and propagation leading to uncontained disc failure and damage to the airplane, do the following:

(a) Remove HP compressor rotor rear stage 5 and 6 discs and cone shafts, from service at or before accumulating 7,500 cycles-since-new (CSN). Information on the reduced life limits may be found in RR mandatory service bulletin RB.211–72–E082, Revision 2, dated November 22, 2002.

(b) After the effective date of this AD, do not install any HP compressor rotor rear stage 5 and 6 discs and cone shaft, listed in this AD, that exceed 7,500 CSN.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Note 3: The subject of this AD is addressed in CAA airworthiness directive 002–08–2002, dated November 22, 2002.

Effective Date

(e) This amendment becomes effective on September 3, 2003.

Issued in Burlington, Massachusetts, on July 23, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–19306 Filed 7–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30380; Amdt. No. 443]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, September 4, 2003.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: PO Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or

circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC on July 25, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, September 4, 2003.

PART 95—[AMENDED]

■ 1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

■ 2. Part 95 is amended to read as follows:

From	To	MEA
§ 95.1001 Direct Routes—U.S.		
Atlantic Routes—A555 Is Amended To Read in Part		
Stella Maris, BS NDB	Micas, IB FIX	2,000
Micas, IB FIX	Egann, IB FIX	5,000
Egann, IB FIX	Mayag, IB FIX	2,000
Mayag, IB FIX	Grand Turk, BS VORTAC	2,000
Atlantic Routes—G629 Is Amended By Adding		
Great Inagua, BS NDB	Cathi, OA FIX	3,000
Cathi, OA FIX	Providenciales, BS VOR/DME	1,500
Providenciales, BS VOR/DME	Egann, IB FIX	1,500
Egann, IB FIX	Raham, IB FIX	2,000
Atlantic Routes—G648 Is Amended By Adding		
Grand Turk, BS VORTAC	Providenciales, BS VOR/DME	1,500
Providenciales, BS VOR/DME	Micas, IB FIX	2,000
Bahamas Routes—63v Is Amended To Read in Part		
Turps, FL FIX	Mixae, IB FIX	3,000
Mixae, IB FIX	Halbi, BS FIX	4,000
§ 95.6001 Victor Routes U.S.		
§ 95.6014 VOR Federal Airway 14 Is Amended To Read in Part		
Will Rogers, OK VORTAC *3,000–MOCA	Totes, OK FIX	*3,700
§ 95.6017 VOR Federal Airway 17 Is Amended To Read in Part		
Milet, TX FIX *2,500–MOCA	Somer, TX FIX	*4,000
§ 95.6514 VOR Federal Airway 514 Is Amended To Read in Part		
Twentynine Palms, CA VORTAC *10,200–MCA GoFFS VORTAC NE **7,800—MOCA	*GoFFS, CA VORTAC	**12,000
§ 95.6538 VOR Federal Airway 538 Is Amended To Read in Part		
Twentynine Palms, CA VORTAC	*GoFFS, CA VORTAC	**12,000

From	To	MEA
*10,200–MCA GOFFS VORTAC NE **7,800–MOCA		
§ 95.6566 VOR Federal Airway 566 Is Amended To Read in Part		
Works, TX FIX	Belcher, LA VORTAC	3,100

From	To	MEA	MAA
§ 95.7001 Jet Routes			
§ 95.7010 Jet Route No. 10 Is Amended To Read in Part			
Twentynine Palms, CA VORTAC	Hippi, AZ FIX	23000	40000
Hippi, AZ FIX	Flagstaff, AZ VOR/DME	23000	40000
Flagstaff, AZ VOR/DME	Farmington, NM VORTAC	18000	40000
§ 95.7147 Jet Route No. 147 Is Amended To Read in Part			
Beckley, WV VORTAC	Greenbrier VOR/DME	18000	45000
Greenbrier VOR/DME	Casanova, VA VORTAC	18000	45000

[FR Doc. 03–19403 Filed 7–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Part 126

[Public Notice 4399]

RIN 1400–AB82

Bureau of Political-Military Affairs; Amendment to the International Traffic in Arms Regulations: Partial Lifting of Embargo Against Rwanda

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule amends the International Traffic in Arms Regulations (ITAR) by removing Rwanda from the list of embargoed country examples in 22 CFR 126.1(a). It further clarifies that a policy of denial will remain in place for any new license applications, requests for approval, exports or imports of defense articles or defense services destined for or originating in Rwanda other than by the Government of Rwanda.

EFFECTIVE DATE: July 30, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Sweeney, Office of Defense Trade Controls Management, Bureau of Political-Military Affairs, Department of State (202) 663–2700.

SUPPLEMENTARY INFORMATION: The President issued Executive Order 12918 (May 26, 1994) implementing United Nations Security Council Resolution 918 (May 17, 1994). Due to the civil strife in Rwanda, Resolution 918 called upon all States to impose an embargo upon Rwanda. Consequently, all licenses and other approvals authorizing the export or transfer of defense articles or services to Rwanda were suspended, and a denial policy was imposed upon all new applications or other requests for such exports or transfers to Rwanda by **Federal Register** notice of June 2, 1994. Effective August 17, 1994, section 126.1 of the ITAR was amended to add Rwanda to the exemplary list of embargoed countries.

United Nations Security Council Resolution 1011 (August 16, 1995) lifted the arms embargo only with respect to the Government of Rwanda. That Resolution retained the restriction that all States "* * * continue to prevent" transfers of "arms and related materiel of all types * * * to Rwanda, or to persons in the States neighboring Rwanda if such sale or supply is for the purpose of the use of such arms or materiel within Rwanda, other than to the Government of Rwanda * * *."

Accordingly, the policy of denial will remain in place for exports or other transfers of defense articles and defense services covered by section 38 of the Arms Export Control Act for use or originating in Rwanda other than by the Government of Rwanda. This action precludes the use in connection with non-governmental end-users in Rwanda of any exemptions from licensing or other approval requirements. Also, arms exports and transfers to or imports from Rwanda or neighboring States for use by the Government of Rwanda will continue to receive strict case-by-case review.

To implement United Nations Security Council Resolution 1011, section 126.1(a) of the ITAR is amended and section 126.1(h) is added to set forth the policy of denial with respect to Rwanda except for the Government of Rwanda.

This amendment involves a foreign affairs function of the United States and therefore, is not subject to the procedures required by 5 U.S.C. 553 and 554. It is exempt from review under Executive Order 12866 but has been reviewed internally by the Department to ensure consistency with the purposes thereof. This rule does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act. It has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Act of 1966. It will not have substantial direct effects on the States, the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant application of Executive Orders 12372 and 13123. Interested parties are invited to submit written comments to the Department of State, Directorate of Defense Trade Controls, Office of Defense Trade Controls Management, ATTN: Regulatory Change, Rwanda embargo, 12th Floor, SA–1, Washington, DC 20522–0112.

List of Subjects in 22 CFR Part 126

Arms and munitions, Exports.

■ Accordingly, for the reasons set forth above, title 22, chapter I, subchapter M, part 126, is amended as follows:

PART 126—GENERAL POLICIES AND PROVISIONS

■ 1. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2778; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2658; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899.

■ 2. Section 126.1 is amended by revising paragraph (a) and adding paragraph (h) to read as follows:

§ 126.1 Prohibited exports and sales to certain countries.

(a) *General.* It is the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in certain countries. This policy applies to Belarus, Cuba, Iran, Iraq, Libya, North Korea, Syria, and Vietnam. This policy also applies to countries with respect to which the United States maintains an arms embargo (*e.g.* Burma, China, Haiti, Liberia, Somalia, Sudan and Democratic Republic of the Congo (formerly Zaire)) or whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States. Information regarding certain other embargoes appears elsewhere in this section. Comprehensive arms embargoes are normally the subject of a State Department notice published in the **Federal Register**. The exemptions provided in the regulations in this subchapter, except §§ 123.17 and 125.4(b)(13) of this subchapter, do not apply with respect to articles originating in or for export to any proscribed countries, areas or persons in this § 126.1.

* * * * *

(h) *Rwanda.* It is the policy of the United States to deny licenses, other approvals, exports and imports of defense articles and defense services, destined for or originating in Rwanda except for the Government of Rwanda, which will be reviewed on a case-by-case basis. UN Security Council Resolution 1011 (1995) lifted the embargo only with respect to the Government of Rwanda.

Dated: June 24, 2003.

John R. Bolton,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 03–17602 Filed 7–29–03; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 11

RIN 1076–AE41

Law and Order on Indian Reservations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule and request for comments.

SUMMARY: The Bureau of Indian Affairs is amending its regulations that govern law and order on Indian reservations. This rule removes the Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony (Western Region, Nevada) from the listing of Courts of Indian Offenses. The tribe has reassumed tribal court function and has requested their removal from the list.

DATES: This rule is effective on July 30, 2003. Comments must be received on or before September 29, 2003.

ADDRESSES: Send comments on this rule to Ralph Gonzales, Office of Tribal Services, Bureau of Indian Affairs, 1951 Constitution Avenue, NW., MS 320–SIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sharlot Johnson, Tribal Government Officer, Western Regional Office, Bureau of Indian Affairs, 400 N. Fifth Street, Phoenix, Arizona, 85004, (602) 379–6786; or Ralph Gonzales, Branch of Judicial Services, Office of Tribal Services, Bureau of Indian Affairs, 1951 Constitution Avenue, NW., MS 320–SIB, Washington, DC 20240, (202) 513–7629.

SUPPLEMENTARY INFORMATION: The authority to issue this rule is vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 9; and 25 U.S.C. 13, which authorizes appropriations for "Indian judges." See *Tillett* v. *Hodel*, 730 F. Supp. 381 (W.D. Okla. 1990), *aff'd*, 931 F.2d 636 (10th Cir. 1991) *United States* v. *Clapox*, 13 Sawy. 349, 35 F. 575 (D. Ore. 1888). This rule is published in exercise of the rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs.

On September 18, 2001, the Bureau of Indian Affairs (BIA) published a temporary final rule (66 FR 48085) amending its regulations contained in 25 CFR part 11 to add the Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony (Western Region, Nevada) to the list of Courts of Indian Offenses. This amendment established a Court of Indian Offenses for a period not to exceed one year. On September 24, 2002, the BIA published a final rule (67 FR 59781) establishing the Court of Indian Offenses for an indefinite period. The purpose of establishing a Court of Indian Offenses at the Fallon Reservation and Colony was to protect persons, land, lives and property of people residing there until the tribe reassumed its Law and Order program. The tribe has reassumed the tribal court function and notified the BIA by Tribal Resolution No. 03–F–054 that it is operating the court in accordance with its Constitution, Article VI, Section 1(h), and requested the removal of their listing from 25 CFR 11.100(a).

Determination To Publish a Final Rule Effective Immediately

In accordance with the requirements of the Administrative Procedure Act (5 U.S.C. 553(B)), we have determined that publishing a proposed rule would be impractical because of the risk to public safety as well as further risk of exposure of the Federal Government to a lawsuit for failure to execute diligently its trust responsibility and to provide adequate judicial services for law enforcement on trust land. For this reason, an immediate effective date is in the public interest and in the interest of the tribe not to delay implementation of this amendment. We are therefore publishing this change as a final rule with request for comments.

BIA has determined it appropriate to make the rule effective immediately by waiving the 5 U.S.C. 553(d) requirement of publication 30 days in advance of the effective date. This is because of the critical need to ensure that uninterrupted court services are provided at the Fallon Reservation and Colony. Therefore, this final rule is effective immediately.

We invite comments on any aspect of this rule and we will revise the rule if comments warrant. Send comments on this rule to the address in the **ADDRESSES** section.

Regulatory Planning and Review (Executive Order 12866)

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. OMB makes the final determination under Executive Order 12866.

(a) This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The operational cost of the tribal court is estimated to be less than $200,000 annually. The cost associated with the operation of this court will be with the Bureau of Indian Affairs and the tribe.

(b) This rule will not create inconsistencies with other agencies' actions. The Department of the Interior, through the Bureau of Indian Affairs, has responsibility and authority to ensure that there are judicial systems in place on Indian reservations to protect persons, land, lives and property of people residing there.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This tribal court will not affect any program rights of the Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony. Its primary function will be to administer justice for people within the tribe's reservation and colony.

(d) This rule will not raise novel legal or policy issues. Tribal governments have inherent sovereign authority to establish their own form of government, including tribal justice systems (25 U.S.C. 3601).

Regulatory Flexibility Act

The Department of the Interior, BIA, certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. The amendment to 25 CFR 11.100(a) removes the Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony (Western Region, Nevada) from the listing of Courts of Indian Offenses. Accordingly, there will be no impact on any small entities.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of $100 million or more. This court's operating cost is estimated to be less than $200,000 annually. The cost associated with the operation of this court will be with the BIA and the tribe.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This is a court established specifically for the administration of justice for people located within the exterior boundaries of the Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony and will not have any cost or price impact on any other entities in the geographical region.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. This is a court established specifically for the administration of justice for people located within the exterior boundaries of the Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony, Fallon, Nevada, and will not have an adverse impact on competition, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. The tribal court will not have jurisdiction to affect any rights of small governments. Its primary function will be to administer justice for people within the Fallon Indian Reservation and Colony.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year; *i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings Implication Assessment (Executive Order 12630)

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. The amendment to 25 CFR 11.100(a) will provide for a tribal justice system with jurisdiction over people within a limited geographical area at Fallon, Nevada. Accordingly, there will be no jurisdictional basis for the tribal court to affect adversely any property interest outside of its jurisdiction.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. This rule concerns the recognition by the Federal Government of a tribe's inherent authority to establish their own justice systems and does not infringe on states' judicial systems. If the tribe chooses, they can establish their own judicial system apart from any State or local government in accordance with 25 CFR 11.100(c). The Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony (Western Region, Nevada) is acting under the purview of this provision in reassuming the judicial function on their reservation.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, it has been determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. Congress, through statutes, treaties, and the exercise of administrative authorities, has recognized the self-determination, self-reliance, and inherent sovereignty of Indian tribes to establish their own form of government, including tribal justice systems (25 U.S.C. 3601).

Paperwork Reduction Act

This regulation does not require an information collection under the Paperwork Reduction Act. The information collection is not covered by an existing OMB approval. An OMB form 83–I has not been prepared and has not been approved by the Office of Policy Analysis. No information is being collected as a result of this court exercising its limited jurisdiction over people within the exterior boundaries of the Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required. This tribal court exercises jurisdiction over people within the exterior boundaries of the Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony and does not have any impact on the environment.

Consultation and Coordination with Indian Tribal Governments (Executive Order 13175)

Pursuant to Executive Order 13175 of November 6, 2000, "Consultation and Coordination with Indian Tribal Governments," we have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects. The amendment to 25 CFR 11.100(a) does not apply to any of the 562 federally recognized tribes, except the Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony. The tribe is exercising its inherent sovereignty by

providing a judicial system for people within the exterior boundaries of the Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony. The Department of the Interior is fulfilling its trust responsibility and complying with the unique government-to-government relationship that exists between the Federal Government and Indian tribes by assisting the Paiute-Shoshone Indian Tribe of the Fallon Reservation and Colony to support this justice system.

List of Subjects in 25 CFR Part 11

Courts, Indians—law, Law enforcement, Penalties.

■ For the reasons stated in the preamble, we are amending part 11, chapter I of title 25 of the Code of Federal Regulations, as follows:

PART 11—LAW AND ORDER ON INDIAN RESERVATIONS

■ 1. The authority citation for part 11 continues to read as follows:

Authority: 5 U.S.C. 301; R.S. 463; 25 U.S.C. 2; R.S. 465; 25 U.S.C. 9; 42 Stat. 208; 25 U.S.C. 13; 38 Stat. 586; 25 U.S.C. 200.

§ 11.100 [Amended]

■ 2. In § 11.100, remove paragraph (a)(15).

Dated: July 18, 2003.

Aurene M. Martin,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 03–19314 Filed 7–29–03; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9084]

RIN 1545–AY27

Dual Consolidated Loss Recapture Events

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 1503(d) regarding the events that require the recapture of dual consolidated losses. These regulations are issued to facilitate compliance by taxpayers with the dual consolidated loss provisions. The regulations generally provide that certain events will not trigger recapture of a dual consolidated loss or payment of the associated interest charge. The regulations provide for the filing of certain agreements in such cases. This document also makes clarifying and conforming changes to the current regulations.

DATES: *Effective Dates:* These regulations are effective January 1, 2002.

FOR FURTHER INFORMATION CONTACT: Kenneth D. Allison or Kathryn T. Holman, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1583. Responses to this collection of information are required to obtain the benefit of avoiding entering into a closing agreement with the IRS.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The estimated annual burden per recordkeeper varies from 1 to 3 hours, depending on individual circumstances, with an estimated average of 2 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents might become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Final regulations implementing section 1503(d) were adopted by TD 8434 (1992–C.B. 240), on September 9, 1992, and published in the **Federal Register** at 57 FR 41079 (REG–106879–00). On August 1, 2002, proposed regulations amending the final regulations, to reduce administrative burdens in certain cases, were published in the **Federal Register** at 67 FR 49892. Three written comments were received. No public hearing was requested or held. After consideration of the comments, these final regulations are adopted by this Treasury decision. The changes and clarifications made in the final regulations in response to the comments received are discussed below.

Explanation of Provisions and Summary of Comments

Section 1503(d) generally provides that a "dual consolidated loss" of a domestic corporation cannot offset the taxable income of any other member of the corporation's consolidated group. The statute, however, authorizes the issuance of regulations permitting the use of a dual consolidated loss to offset the income of a domestic affiliate if the loss does not offset the income of a foreign corporation under foreign law.

Section 1.1503–2(g)(2)(i) currently permits a taxpayer to elect to use a dual consolidated loss of a dual resident corporation or separate unit to offset the income of a domestic affiliate by filing an agreement ((g)(2)(i) agreement) under which the taxpayer certifies that the dual consolidated loss has not been, and will not be, used to offset the income of another person under the laws of a foreign country. Section 1.1503–2(g)(2)(iii) provides that, in the year of a "triggering event," the taxpayer must recapture and report as gross income the amount of a dual consolidated loss that is subject to the (g)(2)(i) agreement and must pay the interest charge required by paragraph (g)(2)(vii). Section 1.1503–2(g)(2)(iv)(B), however, provides that specified acquisitions are not considered to be triggering events if certain conditions are satisfied. In particular, the parties to the acquisition must enter into a closing agreement with the IRS under section 7121, and the acquiring corporation or consolidated group must file a new (g)(2)(i) agreement with

The proposed regulations provided that a triggering event generally does not occur in two types of acquisitions, without any requirement to enter into a closing agreement or file a new (g)(2)(i) agreement: (1) When an unaffiliated dual resident corporation or unaffiliated domestic owner that filed a (g)(2)(i) agreement becomes a member of a consolidated group; and (2) when a dual resident corporation, or domestic owner, that is a member of a consolidated group that filed a (g)(2)(i) agreement (the acquired group) becomes a member of another consolidated group (the acquiring group) in an acquisition, so long as each member of the acquired group that is an includible corporation under section 1504(b) is included immediately after the acquisition in a consolidated U.S. income tax return filed by the acquiring group. Instead, in such cases, the proposed regulations required the filing of an information statement, whereby taxpayers would provide the IRS with most of the information that otherwise would have been provided in a new (g)(2)(i) agreement.

The proposed regulations were intended to relieve the burden of entering into a closing agreement in circumstances where the several liability imposed by § 1.1502–6, in combination with the original (g)(2)(i) agreement, would provide for liability by the acquiring group sufficiently comparable to that provided by a closing agreement. A commentator, who raised questions regarding comparable liability under § 1.1502–6 in such cases, in particular with respect to the interest charge, recommended that the regulations should retain the existing requirement for the acquiring corporation or consolidated group to enter into a new (g)(2)(i) agreement with respect to the dual consolidated loss. Although the IRS and Treasury believe that § 1.1502–6 provides an independent assurance of several liability, the recommendation to retain the existing requirement for a new (g)(2)(i) agreement has been adopted in these final regulations. The IRS and Treasury have concluded that the intended reduction in administrative burden can be accomplished through the elimination of the requirement to enter into a closing agreement in the cases specified in the proposed regulations. Moreover, with the retention of the requirement to file a new (g)(2)(i) agreement, the requirement in the proposed regulations to file a separate information statement containing essentially the same information has been eliminated. Additional changes have been made to clarify the nature of the new (g)(2)(i) agreement.

The commentators also suggested that any affiliated dual resident corporation or affiliated domestic owner should be permitted to join the acquiring group without causing a triggering event, regardless of whether all members of the consolidated group that filed the original (g)(2)(i) agreement also join the acquiring group, provided that the acquiring group files a new (g)(2)(i) agreement. This suggestion has not been adopted in these final regulations. The final regulations contain a modified description of the types of transactions for which a closing agreement no longer is required, to make clear that all members of an acquired group (or their successors-in-interest) must be members of the acquiring group immediately after the acquisition (*i.e.*, that no member of the acquired group, or its successor-in-interest, is excluded from the acquiring group due to any applicable restriction such as section 1504(a)(3) or section 1504(c)). However, the IRS and Treasury are continuing to consider this suggestion as well as other alternatives for further reducing the administrative and compliance burdens under the section 1503(d) regulations, and invite additional comments in this regard.

In order to accomplish the intended reduction in administrative burdens promptly, the final regulations are applicable with respect to transactions otherwise constituting triggering events occurring on or after January 1, 2002.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that these regulations do not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect affiliated groups of corporations that also have a foreign affiliate, which tend to be larger businesses. Moreover, the number of taxpayers affected and the average burden are minimal. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal authors of these regulations are Kenneth D. Allison and Kathryn T. Holman of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

■ **1.** The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1503–2 also issued under 26 U.S.C. 1502 * * *

■ **Par. 2.** In § 1.1503–2 paragraphs (g)(2) and (h)(1) are amended as follows:

■ 1. Paragraphs (g)(2)(iv)(B)(*1*) introductory text, and (g)(2)(iv)(B)(*1*)(*i*) are revised.

■ 2. Paragraph (g)(2)(iv)(B)(*1*)(*ii*) is removed.

■ 3. Paragraphs (g)(2)(iv)(B)(*1*)(*iii*) and (*iv*) are redesignated as paragraphs (g)(2)(iv)(B)(*1*)(*ii*) and (*iii*), respectively.

■ 4. Paragraph (g)(2)(iv)(B)(*2*) and (g)(2)(iv)(B)(*2*)(*iii*) are revised and redesignated as paragraph (g)(2)(iv)(B)(*3*) and (g)(2)(iv)(B)(*3*)(*iii*) respectively.

■ 5. Newly designated paragraph (g)(2)(4)(B)(*3*)(*iii*) is revised.

■ 6. New paragraph (g)(2)(iv)(B)(*2*) is added.

■ 7. Paragraph (g)(2)(iv)(D) is added.

■ 8. Paragraph (h)(1) is amended by adding a sentence at the end of the paragraph.

The revisions and additions read as follows:

§ 1.1503–2 Dual consolidated loss.

* * * * *

(g) * * *

(2) * * *

(iv) * * *

(B) * * * (*1*) If all the requirements of paragraph (g)(2)(iv)(B)(*3*) of this section are met, the following events shall not constitute triggering events requiring the recapture of the dual consolidated loss under paragraph (g)(2)(vii) of this section:

(*i*) An affiliated dual resident corporation or affiliated domestic owner becomes an unaffiliated domestic corporation or a member of a new consolidated group (other than in a transaction described in paragraph (g)(2)(iv)(B)(*2*)(*ii*) of this section);

* * * * *

(*2*) If the requirements of paragraph (g)(2)(iv)(B)(*3*)(*iii*) of this section are met, the following events shall not constitute triggering events requiring the recapture of the dual consolidated loss under paragraph (g)(2)(vii) of this section—

(*i*) An unaffiliated dual resident corporation or unaffiliated domestic

owner becomes a member of a consolidated group;

(*ii*) A consolidated group that filed an agreement under this paragraph (g)(2) ceases to exist as a result of a transaction described in § 1.1502–13(j)(5)(i) (other than a transaction in which any member of the terminating group, or the successor-in-interest of such member, is not a member of the surviving group immediately after the terminating group ceases to exist).

(*3*) If the following requirements (as applicable) are satisfied, the events listed in paragraphs (g)(2)(iv)(B)(*1*) and (*2*) of this section shall not constitute triggering events requiring recapture under paragraph (g)(2)(vii) of this section.

* * * * *

(iii) The unaffiliated domestic corporation or new consolidated group must file, with its timely filed income tax return for the taxable year in which the event described in paragraph (g)(2)(iv)(B)(*1*) or (*2*) of this section occurs, an agreement described in paragraph (g)(2)(i) of this section (new (g)(2)(i) agreement), whereby it assumes the same obligations with respect to the dual consolidated loss as the corporation or consolidated group that filed the original (g)(2)(i) agreement with respect to that loss. The new (g)(2)(i) agreement must be signed under penalties of perjury by the person who signs the return and must include a reference to this paragraph (g)(2)(iv)(B)(*3*)(*iii*).

* * * * *

(D) Example. The following example illustrates the application of paragraph (g)(2)(iv)(B)(*2*)(*ii*) of this section:

Example. (i) Facts. C is the common parent of a consolidated group (the C Group) that includes DRC, a domestic corporation. DRC is a dual resident corporation and incurs a dual consolidated loss in its taxable year ending December 31, Year 1. The C Group elects to be bound by the provisions of this paragraph (g)(2) with respect to the Year 1 dual consolidated loss. No member of the C Group incurs a dual consolidated loss in Year 2. On December 31, Year 2, stock of C is acquired by D in a transaction described in § 1.1502–13(j)(5)(i). As a result of the acquisition, all the C Group members, including DRC, become members of a consolidated group of which D is the common parent (the D Group).

(ii) Acquisition not a triggering event. Under paragraph (g)(2)(iv)(B)(*2*)(*ii*) of this section, the acquisition by D of the C Group is not an event requiring the recapture of the Year 1 dual consolidated loss of DRC, or the payment of an interest charge, as described in paragraph (g)(2)(vii) of this section, provided that the D Group files the new (g)(2)(i) agreement described in paragraph (g)(2)(iv)(B)(*3*)(*iii*) of this section.

(iii) Subsequent event. A triggering event occurs on December 31, Year 3, that requires recapture by the D Group of the dual consolidated loss that DRC incurred in Year 1, as well as the payment of an interest charge, as provided in paragraph (g)(2)(vii) of this section. Each member of the D Group, including DRC and the other former members of the C Group, is severally liable for the additional tax (and the interest charge) due upon the recapture of the dual consolidated loss of DRC.

* * * * *

(h) * * *

(1) * * * Paragraph (g)(2)(iv)(B)(*2*) of this section shall apply with respect to transactions otherwise constituting triggering events occurring on or after January 1, 2002.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **3.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **4.** In § 602.101, paragraph (b) is amended by adding an entry for 1.1503–2 to read as follows:

§ 602.601 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
. . . . .	.
1.1503–2	1545–1583
. . . . .	.

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

Approved: July 17, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–19366 Filed 7–29–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Paducah–03–014]

RIN 1625–AA00

Safety Zone; Upper Mississippi River, Mile Marker 51.5 to 52.5, Cape Girardeau, MO

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Upper Mississippi River from mile marker 51.5 to 52.5 near Cape Girardeau, MO. This safety zone is needed to protect vessels from the safety hazards associated with the construction operations on the Cape Girardeau Bridge. Entry into this zone is prohibited unless specifically authorized by the Coast Guard Captain of the Port Paducah or a designated representative.

DATES: This rule is effective from 8 a.m. on July 13, 2003 until 5 p.m. on August 15, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP Paducah-03–014] and are available for inspection or copying at Marine Safety Office Paducah, 225 Tully, Paducah, KY 42003 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade (LTJG) Patrick Mounsey, Marine Safety Office Paducah, Port Operations at (270) 442–1621 ext 350.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing a NPRM and delaying its effective date would be contrary to public interest because immediate action is needed to protect vessels and mariners from the hazards associated with construction operations on the Cape Girardeau Bridge.

Background and Purpose

The Captain of the Port Paducah is establishing a temporary safety zone for all waters of the Upper Mississippi River from mile marker 51.5 to 52.5 near Cape Girardeau, MO. This safety zone is needed to protect vessels and mariners from the safety hazards associated with the construction operations on the Cape Girardeau Bridge. Construction operations have been ongoing for several months with an average of one closure a week. Scheduled meetings between the contractor, industry, the Eighth Coast Guard District Bridge Branch and the Captain of the Port Paducah led to a defined process for scheduling multiple closures a week from July 13, 2003 through August 15, 2003. All closures shall be limited to one 9-hour period, typically from 8 a.m. to 5 p.m. Entry into this zone is prohibited to all vessels unless authorized by the Coast Guard Captain of the Port Paducah or a designated representative.

The Captain of the Port Paducah will announce enforcement periods via marine information broadcasts.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

This rule will only be in effect for a short period of time and notifications to the marine community will be made through broadcast notice to mariners. The impacts on routine navigation are expected to be minimal as the zone will only be enforced for a nine-hour period three days a week.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Upper Mississippi River, from Mile Marker 51.5 to 52.5 from 8 a.m. through 5 p.m. up to three days a week from July 13, 2003 through August 15, 2003. This safety zone will not have a significant economic impact on a substantial number of small entities because this rule will be in effect for only a short period of time.

If you are a small business entity and are significantly affected by this regulation please contact, LTJG Patrick Mounsey, Marine Safety Office Paducah representative, at (270) 442–1621 ext. 350.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501—3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T08–082 is added to read as follows:

§ 165.T08–082 Safety Zone; Upper Mississippi River, Mile Marker 51.5 to 52.5, Cape Girardeau, MO.

(a) *Location.* The following area is a safety zone: all waters of the Upper Mississippi River from mile marker 51.5 to 52.5, extending the entire width of the river.

(b) *Effective date.* This rule is effective from 8 a.m. on July 13, 2003 until 5 p.m. on August 15, 2003.

(c) *Enforcement period.* This section will be enforced from 8 a.m. through 5 p.m. up to 3 days a week from July 13, 2003 through August 15, 2003. The Captain of the Port Paducah will inform mariners of enforcement periods by a broadcast notice to mariners.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Paducah.

(2) Persons or vessels requiring entry into or passage through must request permission from the Captain of the Port Paducah, or a designated representative. They may be contacted on VHF Channel 13 or 16, or by telephone at (270) 442–1621 ext 350.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Paducah and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: July 13, 2003.

R.C. Johnson,

Commander, Coast Guard, Captain of the Port Paducah.

[FR Doc. 03–19405 Filed 7–29–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[Docket No. A–90–37; FRL –7538–1, E–Docket ID No. A–2001–0004 (Legacy Docket ID No. A–90–37)]

Prevention of Significant Deterioration (PSD) and Non-Attainment New Source Review (NSR): Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reconsideration of final rule; request for public comment; notice of public hearing.

SUMMARY: On December 31, 2002 and March 10, 2003, EPA revised regulations governing the major New Source Review (NSR) programs mandated by parts C and D of title I of the Clean Air Act (CAA or Act). Following these actions, the Administrator received a number of petitions for reconsideration. Today, the EPA is announcing our reconsideration of certain issues arising from the final rules of December 31, 2002. We (the EPA) are requesting public comment on six issues for which we are granting reconsideration. The issues are described in section IV of the **SUPPLEMENTARY INFORMATION** section of this preamble. We plan to issue a final decision on these issues and other issues raised in the various petitions by October 28, 2003.

We are only seeking comment on provisions of the major NSR rules as specifically identified in this notice. We will not respond to any comments addressing any other provisions of the NSR rules or program.

DATES: *Comments.* Comments must be received on or before August 29, 2003.

Public Hearing. The public hearing will convene at 9 a.m. and will end after all registered speakers have had an opportunity to speak but no later than 10 p.m. on August 14, 2003. Because of the need to resolve the issues raised in this notice in a timely manner, EPA will not grant requests for extension beyond this date. For additional information on the public hearing and requesting to speak, *see* the **SUPPLEMENTARY INFORMATION** section of this preamble.

ADDRESSES: *Comments.* Comments may be submitted by mail to U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Ave., NW., Room: B108, Mail Code: 6102T, Washington, DC, 20460, Attention E-Docket ID No. OAR–2001–0004 (Legacy Docket ID No. A–90–37). Comments may also be submitted electronically, by facsimile, through hand delivery/courier, or by phone.

Public Hearing. A public hearing will be held at the Sheraton Imperial Hotel & Convention Center, 4700 Emperor Boulevard, Durham, North Carolina 27703, telephone (919) 941–5050.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Hutchinson, Information Transfer and Program Integration Division (C339–03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5795, or electronic mail at *hutchinson.lynn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. What Are the Regulated Entities?

Entities potentially affected by the subject rule for today's action include sources in all industry groups. The majority of sources potentially affected are expected to be in the following groups.

Industry group	SIC[a]	NAICS[b]
Electric Services	491	221111, 221112, 221113, 221119, 221121, 221122
Petroleum Refining	291	324110
Industrial Inorganic Chemicals	281	325181, 325120, 325131, 325182, 211112, 325998, 331311, 325188
Industrial Organic Chemicals	286	325110, 325132, 325192, 325188, 325193, 325120, 325199
Miscellaneous Chemical Products	289	325520, 325920, 325910, 325182, 325510
Natural Gas Liquids	132	211112
Natural Gas Transport	492	486210, 221210
Pulp and Paper Mills	261	322110, 322121, 322122, 322130
Paper Mills	262	322121, 322122
Automobile Manufacturing	371	336111, 336112, 336211, 336992, 336322, 336312, 336330, 336340, 336350, 336399, 336212, 336213

Industry group	SIC[a]	NAICS[b]
Pharmaceuticals	283	325411, 325412, 325413, 325414

[a] Standard Industrial Classification.
[b] North American Industry Classification System.

Entities potentially affected by the subject rule for today's action also include State, local, and tribal governments that are delegated authority to implement these regulations.

B. How can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under E-Docket ID No. OAR–2001–0004 (Legacy Docket ID No. A–90–37). The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, (Air Docket), U.S. Environmental Protection Agency, 1301 Constitution Ave., NW., Room: B108, Mail Code: 6102T, Washington, DC, 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1742. A reasonable fee may be charged for copying.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of a portion of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. Interested persons may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, through hand delivery/courier, or by phone. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in section I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

a. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in either Docket

ID No. A–90–37 or E-Docket ID No. OAR–2001–0004 (for which A–90–37 is now a legacy number). The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

b. *E-mail.* Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epamail.epa.gov*, Attention E-Docket ID No. OAR–2001–0004 (Legacy Docket ID No. A–90–37). In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

c. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail. Send two copies of your comments to: U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Ave., NW., Room: B108, Mail Code: 6102T, Washington, DC, 20460, Attention E-Docket ID No. OAR–2001–0004 (Legacy Docket ID No. A–90–37).

3. By Hand Delivery or Courier. Deliver your comments to: EPA Docket Center, (Air Docket), U.S. Environmental Protection Agency, 1301 Constitution Ave., NW., Room: B108, Mail Code: 6102T, Washington, DC, 20460, Attention Docket ID No. A–90–37. Such deliveries are only accepted during the Docket's normal hours of operation as identified in section I.B.1.

4. By Facsimile. Fax your comments to the EPA Docket Center at (202) 566–1741, Attention Docket ID No. A–2001–0004 (Legacy Docket ID No. A–90–37).

5. By Phone. You may call and leave oral comments on a public comment phone line. The number is (919) 541–0211. EPA will log and place in E-Docket ID No. OAR–2001–0004 (Legacy Docket ID No. A–90–37) any comments received through this phone number.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: Mr. David Svendsgaard, c/o OAQPS Document Control Officer (C339–03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, Attention E-Docket ID No. OAR–2001–0004 (Legacy Docket ID No. A–90–37). You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI. (If you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI.) Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments.

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide any technical information and/or data you used that support your views.
- If you estimate potential burden or costs, explain how you arrived at your estimate.
- Provide specific examples to illustrate your concerns.
- Offer alternatives.
- Make sure to submit your comments by the comment period deadline identified.
- To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

F. What Information Should I Know About the Public Hearing?

The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the issues raised in this notice. Person interested in attending or presenting oral testimony are encouraged to register in advance by contacting Ms. Chandra Kennedy, OAQPS, Integrated Implementation Group, Information Transfer and Program Integration Division (C339–03), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number (919) 541–5319 or e-mail *kennedy.chandra@epa.gov* no later than August 11, 2003. Presentations will be limited to 5 minutes each. We will assign speaking times to speakers who make a timely request to speak at the hearing. We will notify speakers of their assigned times by August 13, 2003. We will attempt to accommodate all other persons who wish to speak, as time allows.

The EPA's planned seating arrangement for the hearing is theater style, with seating available on a first come first served basis for about 250 people. Attendees should note that the use of pickets or other signs will not be allowed on hotel property.

As of the date of this announcement, the Agency intends to proceed with the hearing as announced; however, unforeseen circumstances may result in a postponement. Therefore, members of the public who plan to attend the hearing are advised to contact Ms. Chandra Kennedy at the above referenced address to confirm the location and date of the hearing. You may also check our New Source Review Web site at *http://www.epa.gov/nsr* for any changes in the date or location.

The record for this action will remain open until September 15, 2003 to accommodate submittal of information related to the public hearing.

G. Where Can I Obtain Additional Information?

In addition to being available in the docket, an electronic copy of today's notice is also available on the World Wide Web through the Technology Transfer Network (TTN). Following signature by the EPA Administrator, a copy of today's notice will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

H. How Is This Preamble Organized?

The information presented in this preamble is organized as follows:

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II. Background

In the early 1990's, the Environmental Protection Agency ("we" or "the Agency") began an effort to revise the major NSR regulations to respond to concerns expressed by regulated industry and State and local permitting authorities that the major NSR regulations were too complex and burdensome. This effort involved the solicitation of ideas and recommendations from the Clean Air Act Advisory Committee and the public. The goal of this effort, known as NSR Reform (or NSR Improvement), was to eliminate as much of the program complexity, administrative burden and resultant project delays as possible without sacrificing the current level of environmental protection and benefits derived from the program.

On July 23, 1996 (61 FR 38250), we proposed changes to various aspects of the NSR program based primarily on consideration of recommendations provided through the NSR Reform effort, but also based on our own independent initiatives to further clarify the major NSR program. The proposed changes addressed baseline emission determinations, actual-to-future-actual emissions measurement methodology, Plantwide Applicability Limitations (PALs), Clean Units, and Pollution Control Projects (PCPs), as well as other changes.

Following the 1996 proposal, we held two public hearings and more than 50 stakeholder meetings. Environmental groups, industry, and State, local, and Federal agency representatives participated in these many discussions. We received several hundred public comments on the 1996 proposal rule. As a result of comments received and further review of the issues by the Agency, we sought further comment on some issues in the proposed rule. On July 24, 1998, we published a **Federal Register** Notice of Availability (NOA) that requested additional comment on three of the proposed changes—baseline emissions determination, the actual-to-future-actual-methodology, and PALs. We received several hundred public comments on the NOA. Following the NOA, we convened various stakeholder meetings concerning NSR Reform over a number of years. Information on these meetings can be found in Docket ID No. A–90–37.

On December 31, 2002, we issued a final rule (67 FR 80186) that revised regulations governing the major NSR programs (final rules).[1] The revisions included five major changes to the major NSR program that will reduce burden, maximize operating flexibility, improve environmental quality, provide additional certainty, and promote administrative efficiency. These elements include baseline actual emissions, actual-to-projected-actual emissions methodology, PALs, Clean Units, and PCPs. The final rules also codified our longstanding policy regarding the calculation of baseline emissions for electric utility steam generating units (EUSGUs). In addition, the final action: (1) Responded to comments we received on a proposal to adopt a methodology, developed by the American Chemistry Council (formerly known as the Chemical Manufacturers Association (CMA)) and other industry petitioners, to determine whether a major stationary source has undertaken a major modification based on its potential emissions; and (2) included a new section that spells out in one place how a major modification is determined under the various major NSR applicability options. This topic had previously been addressed primarily in the definition section of the major NSR regulations. We also clarified where to find the provisions in the revised rules and codified a definition of "regulated NSR pollutant" that clarifies which pollutants are regulated under the Act for purposes of major NSR.

On February 28, 2003, we sent notice to affected States that, consistent with our proposal in 1996, we were revising the references to 40 CFR 52.21 in delegated States' plans to reflect the December 31, 2002 changes to the Prevention of Significant Deterioration (PSD) Federal Implementation Plan (FIP) (40 CFR 52.21(a)(2) and (b) through (bb)). This FIP applies in any area that does not have an approved PSD program in the State Implementation Plan (SIP), and in all Indian country. The notice was subsequently published in the **Federal Register** on March 10, 2003 (68 FR 11316).

Following publication of the December 31, 2002 and March 10, 2003 **Federal Register** notices, the Administrator received numerous petitions, filed pursuant to section 307(d)(7)(B) of the CAA, requesting reconsideration of many aspects of the final rules.[2] The purpose of today's

[1] The December 31, 2002 first rules did not act on several issues proposed in 1996. We intend to act on some or all issues from the 1996 proposal in a subsequent **Federal Register** notice.

[2] Petitions for reconsideration of the December 31, 2002 final rule were filed by: Northeastern States (CT, ME, MD, MA, NH, NJ, NY, PA, RI, VT); South Coast Air Quality Management District (CA); and Environmental Groups (led by NRDC, Earthjustice, Clean Air Task Force, and Environmental Defense). Additional petitions joined existing petitions: The People of California and California Air Resources Board (joined South Coast and Northeastern States petitions); Yolo-Solano Air Quality Management District (CA)

Continued

notice is to initiate a process for responding to several issues raised in these petitions.

III. Today's Action

A. Grant of Reconsideration

At this time, we have decided to grant reconsideration on six issues raised by petitioners.[3] The first involves a document we released in November 2002, entitled, "Supplemental Analysis of the Environmental Impact of the 2002 Final NSR Improvement Rules."[4] This analysis provides the Agency and other interested parties with additional information on the environmental effects of the final rules. The analysis shows that the final rules will result in greater emissions reductions than the former program. Petitioners assert that the final rules are flawed because we did not rely on this document in promulgating the rule and hence that we promulgated the final rule without having adequately evaluated its environmental impacts. In the alternative, they assert that, to the extent we relied on the analysis for that assessment, we did so improperly because we did not make the analysis available for public comment. Petitioners further assert that our analysis does not properly analyze the environmental effects of the rule and did not take into account recent information about the health impacts of air pollution and the effects of the final rule on air pollutant emissions.[5]

We disagree with Petitioners' assertions. During the rulemaking process, we strived to take into consideration relevant and reliable information on environmental effects. We did in fact take account of environmental considerations in formulating the final rules, and believe the final rules are properly supported and justified in this regard. However, we want Petitioners and others to have every opportunity to comment on the work that we have done to date and to provide additional information that they believe to be relevant to the inquiry. For these reasons, we have chosen to grant the petitions as they relate to these issues. In short, we have no reason to believe our analysis of environmental effectiveness is incorrect or flawed. Nevertheless, we do think the supplemental analysis provides additional support for the final rules, so we are making it available for public comment, and we will reevaluate our conclusions in light of the comments and information submitted.

The remaining issues for which we grant reconsideration involve five narrow aspects of the final rule. For each of the five, Petitioners claim that the final provision did not sufficiently reflect the ideas set forth in the proposed rule and, therefore, that they did not have an adequate opportunity to provide input during the designated public comment period. Without prejudging the information that will be provided in response to this notice, we note that to date Petitioners have not provided information which persuades us that our final decisions are erroneous or inappropriate. While we do not agree with Petitioners' claim, we have decided to grant reconsideration on these issues in an interest of ensuring a full opportunity for comment. Each of these issues is described in detail below.

Our final decision on reconsideration for all the remaining issues in the petitions for reconsideration will be issued no later than the date by which we take final action on the issues for which we have decided to grant reconsideration. We plan to take final action on all issues no later than 90 days after publication of today's notice.

B. Request for Stay of Final Rules

We are not granting a stay of the final rules pending our reconsideration of these issues. Under sections 307(b)(1) and 307(d)(7)(B) of the Act, the effectiveness of the final rules is not automatically postponed by our granting the petitions for reconsideration on certain issues. The Administrator (or the court), however, may stay the rules pending our reconsideration for a period not to exceed three months. 42 U.S.C. 7607(d)(7)(B). Petitioning States and Environmental Groups requested that we exercise our discretion under this section and grant a stay of the final rules during reconsideration.[6]

We do not believe that a stay is warranted. We believe that the final rules are a reasonable exercise of our discretion under the CAA, and will result in greater emission reductions compared to the former program.[7] Moreover, although we have decided to reconsider certain aspects of the final rules, at this time we do not have reason to believe that the substantive decisions reflected in the final rule are erroneous. We are also concerned about the impact of a stay on facilities located in delegated States. The new requirements are currently in effect in these areas. We believe that it would be inappropriate to revert to the former program when it is likely that the current program would be reinstated 60 to 90 days later. Further, we do not believe our decision to deny a stay will have any significant effect on facilities subject to a SIP-approved major NSR program. We have provided these States up to three years to make appropriate changes to their SIP-approved programs. We intend to complete our reconsideration of the final rules regarding the issues discussed in this **Federal Register** notice quickly (*i.e.*, in approximately 90 days), thus, any uncertainty regarding the final rules caused by our partial granting of the petitions for reconsideration will be for a short period. States will still have ample time after our final decision on reconsideration to revise their SIPs to implement the rule (and any changes resulting from our reconsideration). As a result, we do not think it would be appropriate to stay the effectiveness of the rule while we address a few issues raised in the petitions.[8]

IV. Discussion of Issues

A. Analysis of Environmental Impact of Final Rule

In November 2002, we released a document entitled, "Supplemental Analysis of the Environmental Impact of the 2002 Final NSR Improvement Rules." As we noted at that time, the analysis was intended to provide the interested public with supplemental information on the potential environmental effects of the NSR Improvement rules that we were finalizing.

In the supplemental environmental analysis, we found that the overall effect of the final rule would be a net benefit to the environment compared to the former NSR rules because the final rule would result in reductions in emissions of air pollution. We found that four of the five provisions in the final rule would result in environmental benefits, and the other provision would have no significant effect. Specifically, for each of the rule's five provisions, the analysis concludes the following:

(1) The PAL provisions will result in tens of thousands of tons per year (tpy) of volatile organic compounds (VOC) reductions from just three industrial categories where PALs are likely to be used most often. Overall reductions will be greater because it is likely that PALs also will be adopted in other source categories.

(2) The Clean Unit Test will be environmentally neutral for most sources, but some sources will likely control emissions earlier or more extensively than under the former rules, and, as a result, a net benefit will occur. The amount of this benefit is uncertain nationally, but likely will be significant in individual cases, like the estimated 9,300 tpy reduction in smog-causing VOC seen in one example.

(3) The PCP Exclusion will lead to a small increase in the number of environmentally beneficial projects because it removes NSR barriers to such projects. The amount of this benefit is uncertain nationally, but will likely be relatively small.

(4) The portion of the rule addressing baseline actual emissions will not have a significant environmental impact. The former program already allowed sources to use a more representative baseline period, with the approval of the reviewing authority, instead of the two-year period before the change specifically delineated in the former rules. The final rules provide an expanded time frame from which you may select a representative baseline but eliminate the option of going beyond this period of time. While the new rules may allow a small number of existing emissions units to use higher baselines, other units will be required to use lower baselines due to the requirement to adjust the baseline downward to account for any new emission limitations at that emissions unit. The changes overall impact will be small because the portion of the rule addressing baseline actual emissions does not affect new sources, new units built at existing sources, electric utilities, and many modified sources.

(5) The change to the actual-to-projected-actual test will have a net environmental benefit, but a relatively small one. The benefit stems from removing: (1) Incentives to keep actual emissions high before making a change, and (2) barriers to projects that will reduce emissions. The size of this benefit nationally is uncertain. Its impact would be small because the change in emissions calculation methodology does not affect either of the following: (1) New sources, new units built at existing industrial facilities, and electric utilities, or (2) any modifications at existing facilities that actually result in significant increases in emissions. Historically, under the previous major NSR rule, virtually all other sources making a physical or operational change have accepted "permit limits" so as to be confident that they will not trigger major NSR. Our analysis concludes that the benefits from this aspect of the program are likewise largely unaffected because such sources must still assure that actual emissions do not significantly increase as a result of a change.

The supplemental environmental analysis uses quantitative information where possible but also notes limitations on our ability to quantify impacts of the rule. We used qualitative information to supplement the analysis when such limitations are present. We also noted that the final rules will result in economic benefits that stem from improved flexibility, increased certainty, and reduced administrative burden. These benefits are important, but were not quantified as part of this environmental analysis.

The analysis is available in the docket for today's action and is also available on the Internet at *http://www.epa.gov/nsr*. We request comment on all aspects of the environmental impact of the final rule.

B. Plantwide Applicability Limitations (PALs)

1. Background

The December 31, 2002 final major NSR rule included an innovative approach to managing major NSR applicability at major stationary sources based on actual plantwide annual emissions. Under these provisions, an owner or operator (you) of a major stationary source (source) may elect to establish a source-wide cap on emissions, known as a "plantwide applicability limitation" (PAL), based on your source's baseline actual emissions. As long as you do not exceed this "actuals PAL," a significant emissions increase has not occurred. Without a significant emissions increase, no change at your facility is considered a major modification, and you are not subject to major NSR.

Today, we are soliciting comment on two aspects of the PAL final rules. These issues are discussed below.

2. Emission Units for Which You Begin Actual Construction After the Baseline Period

In general, the PAL level is established as the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at your major stationary source. The baseline period may be any consecutive 24-month period during the preceding 10 years, but you must use the same baseline period for all existing emissions units. However, the final rules contain special provisions for an emissions unit on which you began actual construction after the 24-month baseline period. The reviewing authority must use the potential to emit (PTE) of such emissions units in establishing the PAL. *See* 40 CFR 51.165(f)(6), 51.166(w)(6), 52.21(aa)(6). This provision is intended to serve as a counterpart to the requirement to exclude from the PAL level any emissions from emissions units that were permanently shut down after the baseline period.

We included these provisions in recognition that the set of emissions units at your source at the time of PAL permit issuance may be different from the set of emissions units that existed during the baseline period. You may have constructed additional emissions units, permanently shut down previously existing emissions units, or both. The actuals PAL rule is designed to ensure that the PAL level is adjusted to reflect the present-day configuration of emissions units at your source. Thus, it instructs the reviewing authority to exclude from the PAL level emissions from permanently shut down units and to add to the PAL level the PTE of emissions units on which you began actual construction after the baseline period.

We considered applying the procedures for determining baseline actual emissions at 40 CFR 51.165(a)(1)(xxxv), 51.166(b)(47), and 52.21(b)(48); however, under these procedures the baseline actual emissions of the existing emissions units on which you began actual construction after the selected baseline period would be zero. When these procedures are used for determining applicability of the major NSR requirements, we believe this is an appropriate outcome because such determinations ordinarily involve a limited set of emissions units (those that are part of a modification) at the major stationary source and issues related to start up and shutdown of emissions

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(joined South Coast petition); Santa Barbara, Ventura, and Monterey Air Pollution Control Districts (CA); and Sacramento Air Quality Management District (CA) (joined South Coast petition). Petitions for reconsideration of the FIP rule were filed by: Delegated States (CA, CT, IL, MA, NJ, NY, DC, South Coast Air Quality Management District (CA), and Santa Barbara Air Pollution Control District (CA)); and Environmental Groups (essentially the same groups that filed petitions to reconsider the December 31, 2002 rule).

[3] In this notice, the term "petitioners" refers only to those entities that filed petitions for reconsideration with EPA.

[4] Available through our NSR website at *http://www.epa.gov/nsr* and in docket ID No. A–90–37, Document IV–A–7.

[5] *See, e.g.*, Environmental Groups petition at 25; Northeastern States petition at 5, 6.

[6] *See* Environmental Groups petition at 1, 145; Northeastern States petition at 47.

[7] *See* EPA'S Response to Emergency Motion For Stay of the New Source Review Rule (Feb. 21, 2003) (D.C. Cir. Docket No. 02–1387); *see also* Supplemental Analysis of the Environmental Impact of the 2002 Final NSR Improvement Rules (EPA Docket ID No. A–90–37; Document IV–A–7).

[8] If during the course of reconsideration we determine that significant aspects of the final NSR rules should be revised, we could reevaluate whether to stay the effectiveness of the rules, or portions thereof, pending issuance of our final decision on reconsideration.

units are typically not implicated. You have the ability to choose the 24-month baseline period that accommodates the integrated operations of this limited set of emissions units. Moreover, the baseline actual emissions are only used as a measure to determine whether a project will trigger major NSR review. It is not used as an enforceable restriction on the ability of the emissions units to operate.

In contrast, setting a PAL involves all of the emissions units at the major stationary source. Selecting a single 24-month period that accommodates the integrated operations of all of these emissions units is more difficult and will often involve emission units that start up or shut down after the baseline period. Moreover, establishing a baseline actual emissions of zero is an unrealistic reflection of how the emissions unit will be operated and could require you to unreasonably restrict operations at the major stationary source to ensure you comply with the PAL.

We also considered but rejected several other approaches. First, we considered requiring you to use the immediately preceding 24 months to establish an average annual emissions rate for such emissions units, or requiring all existing emissions units to follow this approach. However, as discussed in the December 31, 2002 preamble (67 FR 80191), this approach does not account for normal fluctuations in operations and may not be representative of source operations.

We also considered making no adjustments for either shut down emissions units or newly constructed emissions units, but this approach seemed to be least representative of a major stationary source's current operations. And finally, we considered allowing you to select different 24-month periods for each existing emissions unit at the major stationary source or allowing you to select any 24-month period since operations began for the recently constructed emissions units.

We believe that the former approach would unnecessarily complicate the procedures for establishing PALs and allow you to inappropriately maximize source-wide emissions. The latter approach has some advantage in that it provides a measure of past emissions; however, we rejected this approach in favor of using the PTE of the emissions unit. This is because we believe that most emissions units that have been constructed after the baseline period are likely to have undergone major or minor NSR review.[9] Thus, the PTE of the emissions unit reflects requirements to comply with recent control technology requirements and other emission limitations that are representative of how you intend to actually operate the emissions unit. The past emissions of such emissions units, when measured over a shortened period of time, may not be representative of intended operations.

In view of all of these considerations, we believe that including the PTE of the emissions unit in the PAL baseline is the most appropriate measure of actual operations of such emissions units for the purpose of establishing an enforceable limitation on your operations. We believe such a provision falls within the discussion of PALs in the proposed rule. Nevertheless, we request comment on this approach, the approaches we rejected, and any other method for assessing emissions from these emissions units.

3. Elimination of Synthetic Minor Limits [(r)(4) Limits]

A synthetic minor limit is a limit that is included in a permit by a reviewing authority at the request of a source to reduce the potential to emit (PTE) of a facility or emissions unit below a level that would otherwise subject the facility or emissions unit to some regulatory requirement. Such limits are often used by a facility to reduce emissions below a level that would subject a project to the major NSR requirements. (They are also used for similar purposes under other regulatory programs.)

Under the major NSR program, we refer to these emission or operational limitations as (r)(4) limits because provisions relating to these types of restrictions are contained in paragraph (r)(4) of the Federal Prevention of Significant Deterioration (PSD) Program. *See* 40 CFR 52.21(r)(4). Similar provisions are contained in the requirements for State programs. *See* 40 CFR 52.165(a)(5)(ii), 51.166(r)(2).

In the December 31, 2002 final rule, we specified that a reviewing authority can eliminate (r)(4) limits for a PAL pollutant if you previously took these limits to avoid major NSR. In the absence of a PAL, relaxation of such limits would cause you to determine major NSR applicability as if construction had not yet commenced on the new or modified emissions units. *See* 40 CFR 52.165(a)(5)(ii), 51.166(r)(2), 52.21(r)(4). Under a PAL, such limits may be relaxed or removed without triggering major NSR for the PAL pollutant. 67 FR 80210; 40 CFR 165(f)(1)(iii)(C), 166(w)(1)(ii)(c), 52.21(aa)(1)(ii)(c). The (r)(4) limits do not reappear upon PAL expiration. 67 FR 80209; 40 CFR 51.165(f)(9)(v), 51.166(w)(9)(v), 52.21(aa)(9)(v). Instead, they are reapportioned, along with the PAL, among the existing emissions units. We believe the approach adopted in the final rules reflect the purpose of a PAL, which is to maximize operational flexibility without sacrificing environmental protection.

We view the PAL as the functional substitute for any unit-specific (r)(4) limits that you may have taken to reduce emissions below a level that would subject a project to major NSR requirements. Both the PAL and the (r)(4) limits serve to keep you from triggering major NSR. Emissions from emissions units with (r)(4) limits are incorporated into the PAL at a level that is at or, in most cases, below those limits. Therefore, the PAL is an effective substitute for those limits. More importantly, we believe that removal of these limits is essential to allow you to benefit from the operational flexibility and corresponding environmental benefits that the PAL is intended to provide.

We considered reinstating (r)(4) limits if a PAL expires. However, we rejected this approach because we recognize that you may have made changes to the emissions unit or associated operations, and it may not be practical to return the emissions unit to its pre-PAL operations. Instead, the final rules ensure that the (r)(4) limitations that are incorporated into the PAL continue to play a role after PAL expiration, although not in the same form.

Before a PAL expires, you must submit a proposal for distributing the PAL among individual emissions units or groups of emissions units. The reviewing authority will make the final decision on PAL emissions distribution. Following expiration, you must ensure that the individual emissions units or groups of emissions units comply with their limits as assigned by the reviewing authority. In this way, the emission restrictions associated with an (r)(4) limitation are accounted for after PAL expiration. However, the new emission limitation(s) would not be subject to the requirements of 40 CFR 52.21(r)(4).

[9] In 1997, we conducted an informal review of several State minor NSR programs. While this report is still considered draft, it provides a good overview of the types ofr requirements contained in many State minor NSR requirements and serves to confirm our belief that many projects that are not subject to major NSR review will be required to comply with requirements under State minor NSR programs. We have included a copy of this draft report in the docket for today's action and invite comment on whether this document accurately reflects State or local requirements.

We are proposing to retain our approach for removing and superseding (r)(4) limits with a PAL. We request comment on this approach.

C. Actual-to-Projected-Actual Test

1. Background

In 1996, we proposed to allow use of the "future-actual methodology" to compute whether a physical change in or change in the method of operation of the major stationary source would result in a significant emissions increase. Previously, this methodology was only available to EUSGUs under the WEPCO rule.[10] Our 1996 notice proposed to extend a version of the WEPCO rule to all source categories. In that proposal, we sought comment on several issues including whether the 5-year reporting provision is working as intended and whether it should be changed in any way. We adopted a modified WEPCO approach in the final rules. We call this approach the "actual-to-projected-actual" applicability test. This test is similar to the WEPCO rule in that it allows you to consider "demand growth" in determining post-change emissions, but it contains recordkeeping and reporting requirements that differ from those in the WEPCO rule.[11] (There are other differences between the two approaches, but these differences are not relevant to the following discussions.)

Today, we are soliciting comments on an issue related to the recordkeeping and reporting requirements under the actual-to-projected-actual applicability test and on allowing replacement units to use the actual-to-projected-actual applicability test. These issues are discussed below.

2. Reasonable Possibility

As noted above, the recordkeeping and reporting requirements in the final rules differ from those in the WEPCO rule. The WEPCO rules required EUSGUs that relied on the actual-to-representative-future-actual-annual emissions test to submit annual emission reports. In contrast, the final rules require non-EUSGUs (that project future emissions rather than relying on potential emissions as a measure of future emissions) to: maintain certain records related to the emissions projection and records of the post-change emissions (for either 5 years or 10 years depending on the nature of the change); and report if there is a significant emission increase in post-change emissions which is inconsistent with the source's preconstruction projection.[12] For EUSGUs (that project future emissions rather than relying on potential emissions as a measure of future emissions), the final rules require you to send a copy of the information to the reviewing authority that you are required to keep relating to your projection. However, all of these reporting and recordkeeping requirements apply to non-EUSGUs and EUSGUs only if there is a "reasonable possibility" that the project will result in a significant emissions increase.

We included these changes to respond to comments we received in response to our request for comments on whether the 5-year reporting provisions of the WEPCO rule were working as intended and whether these requirements should be changed. Some commenters indicated that the 5-year recordkeeping and reporting requirements were onerous. Commenters also noted that the requirements were unnecessary because similar information is available through the title V permitting program and State emission inventories. Other commenters requested that we retain an option to use the actual-to-potential approach, which does not require recordkeeping or reporting. We retained that option within the actual-to-projected-actual applicability test.

In 1998, we solicited additional comment on an approach that would have required you to obtain a federally enforceable permit to limit your post-change emissions to your projected levels (the actual-to-future-enforceable-actual test), and again solicited comment on the appropriate recordkeeping and reporting requirements. In general, commenters were supportive of a 5-year recordkeeping requirement. Responses were mixed as to whether we should extend the requirement to 10 years if the permitting authority believed it appropriate. Again, we received comments that reporting and recordkeeping requirements were duplicative of those required by other programs. Also, we received comments from State agencies concerned with the resource burden that would be imposed by requirements of the actual-to-future-actual test.

In an effort to balance the need for information to determine compliance and the associated burden of recordkeeping and reporting, we finalized the changes to the proposed recordkeeping and reporting requirements. We included the "reasonable possibility" provision because we were concerned that without some qualifier on when you need to retain records and report, our rules would encompass any physical or operational change you undertake no matter how inconsequential and unlikely that an emissions increase would result.

We believe that, in some circumstances, the requirements to record and report emissions following completion of certain types of projects is a substantial strengthening over the former regulatory requirements that applied to non-EUSGUs. The former rules contained no reporting or recordkeeping requirements when you determined that major NSR did not apply. For example, the former rules allowed you to make your own determination as to whether major NSR applied to a project. If you determined that an emissions increase from a project was less than significant, you could proceed with the project, and there were no subsequent recordkeeping or reporting requirements under the major NSR program. The same result occurred if you determined your project would result in a significant emissions increase but you were able to "net" the project out of review. Under the revised rules, if you project future emissions rather than relying on potential emissions as a measure of future emissions, you (whether an EUSGU or non-EUSGU) are required to record and report any project for which you avoid the major NSR requirements through "netting," because you will have already determined that such projects will result in a significant emissions increase.

We are proposing to retain the "reasonable possibility" requirement for triggering the applicability of the recordkeeping and reporting provisions discussed above. We believe these provisions are appropriate based on our proposal and the comments received thereon; nevertheless, we are requesting comment on this approach.

3. Replacement Unit

The WEPCO rule precluded use of the actual-to-representative-future-actual-annual emissions test for replacement units. *See* 40 CFR 52.21(b)(921)(v)(2002). Although the

[10] *See* 57 FR 32314, July 21, 1992. This rule is called the "WEPCO rule" because a court case involving the Wisconsin Power and Electric Company (WEPCO) was the reason behind the rulemaking.

[11] We use the term "demand growth" to refer broadly to independent factors that may cause remissions increases from an emission unit, but which the emissions unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions, and that are also unrelated to the particular project.

[12] If you rely on potential emissions as a measure of future emissions, you have no recordkeeping requirements related to your applicability determination under the final rules.

1996 preamble recognized this preclusion in our discussion of extending the WEPCO rule to other industrial sectors, *see* 62 FR 38267, the proposed regulatory language removed the preclusion and would have allowed all emissions units (EUSGUs and non-EUSGUs), including replacement units, to use the actual-to-future-actual emissions test. *See* proposed 40 CFR 52.21(b)(21)(ii), 61 FR 38338.

In the final rules, we concluded we should not preclude use of the actual-to-projected-actual test either for EUSGUs or non-EUSGUs replacement units. We explained the basis for our conclusion in the final rule. *See* 67 FR 80194. Although we discussed this issue in the proposal, we are seeking comment on our determination on this issue and the basis for it set forth in the preamble to the final rules.

D. Clean Unit

1. Background

Our December 31, 2002 final rules finalize provisions that provide added flexibility to emissions units that install state-of-the-art emissions controls. Specifically, we promulgated a new type of major NSR applicability test for emissions units that are designated as Clean Units.

The Clean Unit applicability test ("Clean Unit Test") measures whether an emissions increase occurs, based on whether a project affects the Clean Unit status of the emissions unit. The Clean Unit Test provides that when you meet emission limitations based on installing state-of-the-art emissions control technologies (add-on controls, pollution prevention, or work practices) that are determined to be BACT or LAER (or comparable to BACT or LAER), you may make any physical or operational change to the unit without triggering major NSR, provided that the change does not (1) necessitate a revision in the emission limitations or work practice requirements in the permit for the unit that were adopted in conjunction with BACT, LAER, or Clean Unit determinations; or (2) alter any physical or operational characteristics that formed the basis for the BACT, LAER, or Clean Unit determination for the unit.

Today, we are requesting comment on one aspect of the final rules for Clean units. This issue is discussed below.

2. Effect of Redesignation on Clean Unit Status

The final rules allow you to maintain Clean Unit status at an emissions unit even if the area in which you are located was attainment for the pollutant at the time the emissions unit was designated clean but is subsequently redesignated to nonattainment. Our 1996 proposal did not specifically address this issue. It did, however, propose that Clean Unit status would presumptively apply for the 10 years following issuance of the major NSR permit, and it did not indicate that the presumption would be revoked if the area was redesignated. Therefore, we believe a natural implication of the proposal is that the Clean Unit status would presumptively continue to apply even if the area were redesignated.

We continue to believe that you should be allowed to maintain your Clean Unit status even if your area is redesignated from attainment to nonattainment for the pollutant for which your emissions unit is designated clean. This approach is most consistent with our current practices and fundamental to the policy of creating incentives to reduce emissions.

As a general rule, permitting decisions are not *per se* invalid, or retroactively changed by virtue of a change in an area's attainment status. For example, we do not require sources that have applied BACT to upgrade controls to comply with LAER or obtain offsets when an area's designation changes.

Moreover, a fundamental premise in creating the Clean Unit Test is to provide you with an incentive to install better emissions control technologies even when there is no State, local or Federal regulation requiring this level of control. We believe that this incentive will be undermined if you are unable to know with certainty that the added flexibility will be available to you for the full 10-year period.

We also believe that this approach is consistent with the Clean Air Act. The requirements of section 173 of the Act, including the requirements to apply LAER and obtain offsets, apply only if a project will result in an emissions increase. As long as an emissions unit maintains its status as a Clean Unit, it has not increased emissions. Thus, the provisions of section 173 do not apply to such emissions units.

Finally, because States will have established the Clean Units either through the major NSR permitting process or another permitting process, the State will be aware of which emissions units qualify as Clean Units at the time an area is redesignated. Thus, States that are concerned that Clean Units may have adverse impact on their attainment demonstrations if the full effect of their potential emissions is realized are able to make appropriate adjustments in their attainment demonstrations to account for these permitted emissions. In this respect, we believe that the Clean Unit Test provides States with a better planning tool than may otherwise exist in the absence of the Clean Unit Test.

As noted above, we proposed in 1996 that an emission unit's Clean Unit status would remain in place for 10 years, and implicitly indicated that nonattainment redesignation would not affect the unit's status during that 10 years. We, however, request comment on this approach and the rationale set forth above.

V. Statutory and Executive Order Reviews

On December 31, 2002, we finalized rule changes to the regulations governing the NSR programs mandated by parts C and D of title I of the Act. With today's action we are proposing no changes to the final rules, and are seeking additional comments on some of the provisions finalized in the December 2002 **Federal Register** notice (67 FR 80186). Accordingly, we believe that the rationale provided with the final rules is still applicable and sufficient.

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. We are not proposing any new paperwork (*e.g.*, monitoring, reporting, recordkeeping) as part of today's notice. With this action we are seeking additional comments on some of the provisions finalized in the December 2002 **Federal Register** Notice (67 FR 80186). However, OMB has previously approved the information collection requirements contained in the existing regulations [40 CFR Parts 51 and 52] under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0003, EPA ICR number 1230.11. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's notice on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards. (*See* 13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's notice on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. sections 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect, on all of the small entities subject to the rule. A Regulatory Flexibility Act Screening Analysis (RFASA), developed as part of a 1994 draft Regulatory Impact Analysis (RIA) and incorporated into the September 1995 ICR renewal analysis, showed that the changes to the NSR program due to the 1990 Clean Air Act amendments would not have an adverse impact on small entities. This analysis encompassed the entire universe of applicable major sources that were likely to also be small businesses (approximately 50 "small business" major sources). Because the administrative burden of the NSR program is the primary source of the NSR program's regulatory costs, the analysis estimated a negligible "cost to sales" (regulatory cost divided by the business category mean revenue) ratio for this source group. Currently, and as reported in the current ICR, there is no economic basis for a different conclusion.

We believe the rule changes in the December 31, 2002 final rule will reduce the regulatory burden associated with the major NSR program for all sources, including all small businesses, by improving the operational flexibility of owners and operators, improving the clarity of requirements, and providing alternatives that sources may take advantage of to further improve their operational flexibility. We do not expect that today's action will change our overall assessment of regulatory burden so substantially as to result in a significant adverse impact on any source. As a result, we do not expect that today's action will result in a significant adverse impact on any small entity.

We continue to be interested in the potential impacts of today's action on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost effective or least burdensome alternative if the Administrator publishes with the final rule an explanation as to why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan.

The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising

small governments on compliance with the regulatory requirements.

We have determined that today's notice does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Although initially the changes in the December 31, 2002 final rule are expected to result in a small increase in the burden imposed upon reviewing authorities in order for them to be included in the State's SIP, as well as other small increases in burden discussed under "Paperwork Reduction Act" in the preamble to the December 31, 2002 final rule, those revisions will ultimately provide greater operational flexibility to sources permitted by the States, which will in turn reduce the overall burden of the program on State and local authorities by reducing the number of required permit modifications. In addition, we believe the 2002 rule changes will actually reduce the regulatory burden associated with the major NSR program by improving the operational flexibility of owners and operators, improving the clarity of requirements, and providing alternatives that sources may take advantage of to further improve their operational flexibility. Because we are proposing no changes to the final rule, we believe that the same is true for today's notice. It is highly unlikely that today's action would increase regulatory burden to the extent of requiring expenditures of $100 million or more by State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Thus, today's action is not subject to the requirements of sections 202 and 205 of the UMRA.

For the same reasons stated above, we have determined that today's notice contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's action is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Today's action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. While the final rule published on December 31, 2002 will result in some expenditures by the States, we expect those expenditures to be limited to $331,250 per year. This figure includes the small increase in the burden imposed upon reviewing authorities in order for them to revise the State's SIP. However, the revisions contained in the December 31, 2002 final rule provide greater operational flexibility to sources permitted by the States, which will in turn reduce the overall burden of the program on State and local authorities by reducing the number of required permit modifications. Because we are proposing no changes to the final rules, we do not expect that today's notice would increase regulatory burden to the extent that it would result in substantial direct effects on the States. Thus, Executive Order 13132 does not apply to today's notice.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on today's action from State and local officials.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." Today's action does not have tribal implications as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

The purpose of the December 31, 2002 final rule is to add greater flexibility to the existing major NSR regulations. Those changes will benefit permitting authorities and the regulated community, including any major source owned by a tribal government or located in or near tribal land, by providing increased certainty as to when the requirements of the NSR program apply. Taken as a whole, the December 31, 2002 final rule should result in no added burden or compliance costs and should not substantially change the level of environmental performance achieved under the previous rules.

EPA anticipates that initially the changes in the December 31, 2002 final rule will result in a small increase in the burden imposed upon Reviewing Authorities in order for them to be included in the State's SIP. Nevertheless, those revisions will ultimately provide greater operational flexibility to sources permitted by the States, which will in turn reduce the overall burden of the program on State and local authorities by reducing the number of required permit modifications. In comparison, no tribal government currently has an approved tribal implementation plan (TIP) under the Clean Air Act to implement the NSR program. The Federal government is currently the NSR permitting authority in Indian country. Thus, tribal governments should not experience added burden from the December 31, 2002 final rule, nor should their laws be affected with respect to implementation of that rule. Additionally, although major stationary sources affected by the December 31, 2002 final rule could be located in or near Indian country and/or be owned or operated by tribal governments, such sources would not incur additional costs or compliance burdens as a result of that rule. Instead, the only effect on such sources should be the benefit of the added certainty and flexibility provided by that rule. For the reasons stated above, we do not believe that any changes resulting from today's notice would increase burden for tribal governments. In addition, we do not anticipate that any such changes would have substantial direct effects on sources located in or near Indian country or sources owned or operated by tribal governments.

EPA specifically solicits additional comment on today's notice from tribal officials.

G. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

Today's action is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. We believe that the December 31, 2002 final rule as a whole will result in equal or better environmental protection than provided by earlier regulations, and do so in a more streamlined and effective manner. Similarly, today's notice is not expected to change substantially the level of environmental protection provided by the December 31, 2002 final rule, and as a result, it is not expected to present a disproportionate environmental health or safety risk for children.

H. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Today's notice is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The December 31, 2002 final rule improves the ability of sources to undertake pollution prevention or energy efficiency projects, switch to less polluting fuels or raw materials, maintain the reliability of production facilities, and effectively utilize and improve existing capacity. That rule also includes a number of provisions to streamline administrative and permitting processes so that facilities can quickly accommodate changes in supply and demand. It provides several alternatives that are specifically designed to reduce administrative burden for sources that use pollution prevention or energy efficient projects. We do not expect that today's action would result in changes to the final rules that are so substantial as to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical.

Voluntary consensus standards are technical standards (for example, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's notice does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

VI. Statutory Authority

The statutory authority for this action is provided by sections 307(d)(7)(B), 101, 111, 114, 116, and 301 of the CAA as amended (42 U.S.C. 7401, 7411, 7414, 7416, and 7601). This notice is also subject to section 307(d) of the CAA (42 U.S.C. 7407(d)).

List of Subjects in 40 CFR Parts 51 and 52

Environmental protection, Administrative practice and procedure, Air pollution control, BACT, Baseline emissions, Carbon monoxide, Clean Units, Hydrocarbons, Intergovernmental relations, LAER, Lead, Major modifications, Nitrogen oxides, Ozone, Particulate matter, Plantwide applicability limitations, Pollution control projects, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: July 25, 2003.

Jeffrey Holmstead,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 03–19356 Filed 7–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–164–1–7602a; FRL–7536–8]

Approval and Promulgation of Implementation Plans; Texas; Control of Emission of Oxides of Nitrogen From Cement Kilns

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action on revisions to the Texas State Implementation Plan (SIP). These revisions concern Control of Air Pollution from Nitrogen Compounds, Cement Kilns. The EPA is approving these SIP revisions for cement kilns as they will contribute to attainment of the 1-hour ozone National Ambient Air quality Standards (NAAQS). The EPA is approving emissions of Oxides of Nitrogen (NO_X) for cement kilns in accordance with the requirements of the Federal Clean Air Act (the Act).

DATES: This rule is effective on September 29, 2003 without further notice, unless EPA receives adverse comment by August 29, 2003. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Electronic comments should be sent either to Diggs.Thomas@epa.gov or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in Final Action part of this document. Copies of the Technical Support Document (TSD) and other documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Commission on Environmental Quality (TCEQ), Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6691, and *shar.alan@epa.gov*.

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Throughout this document "we," "us," and "our" means EPA.

1. What Actions Are We Taking in This Document?

On April 30, 2000, the Governor of Texas submitted to us rule revisions to 30 TAC, Chapter 117, Control of Air Pollution From Nitrogen Compounds concerning cement kilns operations (April 30, 2000 SIP submittal). The April 30, 2000 SIP submittal specifically addressed revisions to the following sections of Chapter 117.

TABLE I.—AFFECTED SECTIONS OF THE RULE UNDER APRIL 30, 2000 SIP SUBMITTAL

Section	Title
117.260	Cement Kiln Definitions.
117.261	Applicability.
117.265	Emissions Specifications.
117.273	Continuous Demonstration of Compliance.
117.279	Notification, Recordkeeping, and Reporting Requirements.
117.283	Source Cap.
117.524	Compliance Schedule for Cement Kilns.

In CEMEX USA (CEMEX) and TXI Operations, LP (TXI) v. TCEQ, Case No. GN001480 (Travis Co. Dist. Ct. April 30, 2003), CEMEX and TXI challenged the State for adopting the above revision to Chapter 117. As a part of a negotiated settlement of the case, TCEQ issued a re-proposal to revise 30 TAC, Chapter 117, on October 24, 2002. The incorporation of the re-proposal into the SIP may result in better compliance by the regulated community and thus more certainty that the emission reductions will actually occur.

On December 9, 2002, EPA submitted comments to TCEQ concerning re-proposed revisions to Chapter 117.

On April 2, 2003, TCEQ submitted a revised Chapter 117, Control of Air Pollution from Nitrogen Compounds rule concerning cement kilns operations as a revision to the SIP (April 2, 2003 SIP submittal). The April 2, 2003 SIP submittal specifically addressed revisions to the following sections of Chapter 117.

TABLE II.—AFFECTED SECTIONS OF THE RULE UNDER APRIL 2, 2003 SIP SUBMITTAL

Section	Title
117.260	Cement Kiln Definitions.
117.265	Emissions Specifications.
117.279	Notification, Recordkeeping, and Reporting Requirements.
117.283	Source Cap.
117.524	Compliance Schedule for Cement Kilns.
117.570	Use of Credits for Compliance.

See our TSD for additional details/information and our evaluation of these submittals.

2. Why Are We Approving These SIP Revisions for Texas?

The April 30, 2000 and April 2, 2003 SIP submittals require the affected sources to reduce their NO_X emissions from cement kilns by at least thirty percent from the 1996 baseline emissions levels. The April 30, 2000 and April 2, 2003 SIP submittals also offer operational flexibility to the affected sources to comply with the NO_X emissions limitations. We are approving these revisions to the Texas SIP because they will contribute to attainment of the 1-hour ozone NAAQS, and as a measure to strengthen the SIP. We are approving these revisions to the Texas SIP as meeting the requirements of the Act.

3. What Is NO_X?

Nitrogen oxides belong to the group of criteria air pollutants. NO_X results from burning fuels, including gasoline and coal. Nitrogen oxides react with volatile organic compounds (VOC) to form ozone or smog and are also major components of acid rain.

4. What Is a SIP?

Section 110 of the Act requires States to develop air pollution regulations and control strategies to ensure that State air quality meets the NAAQS that EPA has established. Under section 109 of the Act, EPA established the NAAQS to protect public health. The NAAQS address six criteria pollutants. These criteria pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each State must submit these regulations and control strategies to us for approval and incorporation into the federally enforceable SIP. Each federally approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing State regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

5. What Are the Existing NO_X Emissions Specifications in the Texas SIP?

Currently, Texas SIP contains no federally-approved requirements for controlling NO_X emissions from cement kilns. By approving the April 30, 2000 and April 2, 2003 SIP submittals we will be strengthening the Texas SIP compliance for enforcement purposes.

6. What Do These Rule Revisions for Cement Kilns That We Are Approving Provide?

These rule revisions require at least 30% reductions of NO_X compared with the 1996 baseline emission inventory from cement kilns operating in Bexar, Comal, Ellis, Hays, and McLennan Counties (East and Central Texas). The following two tables contain a summary of these SIP revisions for cement kilns in East and Central Texas.

TABLE III.—AFFECTED SOURCES, LOCATIONS, AND NO_X EMISSIONS SPECIFICATIONS FOR CEMENT KILNS

Source	County	NO_X emission specification
Long wet kiln	Bexar, Comal, Hays, McLennan	6.0 lb NO_X/ton of clinker produced.
Long wet kiln	Ellis	4.0 lb NO_X/ton of clinker produced.
Long dry kiln	Bexar, Comal, Hays, McLennan, Ellis	5.1 lb NO_X/ton clinker of produced.
Preheater kiln	Bexar, Comal, Hays, McLennan, Ellis	3.8 lb NO_X/ton of clinker produced.
Precalciner or preheater-precalciner kiln	Bexar, Comal, Hays, McLennan, Ellis	2.8 lb NO_X/ton of clinker produced.

TABLE IV.—AFFECTED SOURCES AND THEIR COMPLIANCE SCHEDULES

Source	Compliance schedule
Cement kilns in Ellis County	May 1, 2003.
Cement kilns in Bexar, Comal, Hays, and McLennan.	May 1, 2005.

These emissions specifications meet and are in agreement with those found in our reference document EPA–453/R–94–004 for cement plants and are comparable or more stringent than emission specifications for cement kilns in a number of other federally approved State rules. See our TSD for additional information. We are of the opinion that the above listed compliance dates are practicable. We are approving the NO_X emission specifications and compliance dates for cement kilns as a part of the Texas 1-hour ozone SIP under part D of the Act because the State is relying on these NO_X control measures to demonstrate attainment of the 1-hour ozone standard in the Dallas/Fort Worth area. We are also approving these rules under sections 110 and 116 of the Act because they contribute to continued maintenance of the standard in the eastern half of the State of Texas strengthen the existing Texas SIP.

7. What Areas in Texas Will These Rules Affect?

The following table contains a list of Counties affected by today's rulemaking action.

TABLE V.—AFFECTED TEXAS COUNTIES BY THE CEMENT KILN PROVISIONS OF CHAPTER 117

Rule/source	Affected counties
Chapter 117/Cement Kilns.	Bexar, Comal, Ellis, Hays, and McLennan.

If you are in one of these Texas counties, you should refer to the Chapter 117 rules to determine if and how today's action will affect you.

Final Action

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are received. This rule will be effective on September 29, 2003 without further notice unless we receive adverse comment by August 29, 2003. If EPA receives adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

8. General Information

How Can I Get Copies of This Document and Other Related Information?

A. *The Regional Office has established an official public rulemaking file available for inspection at the Regional Office.* The EPA has established an official public rulemaking file for this action under TX–164–1–7602. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Planning Section, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202. The EPA requests that, if at all possible, you contact the rulemaking contact listed as the Further Information Contact to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal Holidays.

B. *Copies of the State submittal and EPA's Technical Support Document (TSD) are also available for public inspection during normal business hours, by appointment at the State Air Agency.* TCEQ, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

C. *Electronic Access.* You may access this Federal Register document electronically through the Regulations.gov web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number, TX–164–1–7602, in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." The EPA is not required to consider these late comments.

A. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. The EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *Electronic Mail (e-mail).* Comments may be sent by e-mail to Mr. Alan Shar (*shar.alan@epa.gov*). The EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the

comment that is placed in the official public docket, and made available in EPA's electronic public docket.

ii. *Regulations.gov.* Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov*, then select EPA at the top of the page and use the go button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section B, directly below. These electronic submissions will be accepted in WordPerfect, Word, or ASCII file format. Avoid the use of special characters and any form of encryption.

B. *By Mail.* Send your comments to: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733; Attention: TX–164–1–7602.

C. *By Hand Delivery or Courier.* Deliver your comments to: Mr. Thomas Diggs, Chief, Air Planning Section (6PD-L), 1445 Ross Avenue, Dallas, Texas 75202–2733. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal Holidays.

How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 29, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 17, 2003.

Lawrence Starfield,

Acting Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

2. In § 52.2270 the table in paragraph (c) is amended under Chapter 117, Subchapter B, by adding a new entry heading as "Division 4—Cement Kilns", adding new individual entries for sections "117.260, 117.261, 117.265, 117.273, 117.279, and 117.283"; Subchapter E, by adding a new individual entry for section 117.524 and revising the entry for section 117.570.

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
• •	•	•	•	•
Chapter 117 (Reg 7)—Control of Air Pollution From Nitrogen Compounds				
• •	•	•	•	•
Section 117.223	Source Cap	04/19/00	03/16/01,66 FR 15200	(b)(1) Requires EPA's approval.
Subchapter B—Division 4—Cement Kilns				
Section 117.260	Cement Kiln Definitions	04/30/00, 04/02/03	*July 30, 2003 and [FR page number].*	
Section 117.261	Applicability	04/30/00	*July 30, 2003 and [FR page number].*	Also finalizes 65 FR 64914.
Section 117.265	Emission Specifications	04/30/00, 04/02/03	*July 30, 2003 and [FR page number].*	
Section 117.273	Continuous Demonstration of Compliance.	04/30/00	*July 30, 2003 and [FR page number].*	Also finalizes 65 FR 64914
Section 117.279	Notification, Recordkeeping, and Reporting Requirements.	04/30/00, 04/02/03	*July 30, 2003 and [FR page number].*	
Section 117.283	Source Cap	04/30/00, 04/02/03	*July 30, 2003 and [FR page number].*	
• •	•	•	•	•
Subchapter E—Administrative Provisions				
• •	•	•	•	•
Section 117.524	Compliance Schedule for Cement Kilns.	04/30/00, 04/02/03	*July 30, 2003 and [FR page number].*	
• •	•	•	•	•
Section 117.570	Use of Emissions Credits for Compliance.	04/02/03	*July 30, 2003 and [FR page number].*	
• •	•	•	•	•

[FR Doc. 03–19279 Filed 7–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0059; FRL–7309–8]

Bacillus subtilis var. amyloliquefaciens strain FZB24; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 on all agricultural commodities when applied/used in accordance with good agricultural use practices for plant strengthening, growth enhancement, and plant disease suppression. Earth BioSciences submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from

the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24.

DATES: This regulation is effective July 30, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0059, must be received on or before September 29, 2003.

ADDRESSES: Written objections and hearing requests may be submitted by mail or through hand delivery/courier. Follow the detailed instructions as provided in Unit IX. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Robyn Rose, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9581; e-mail address: *rose.robyn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)
- Antimicrobial pesticides (NAICS 32561)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0059. The official public docket is intended to serve as a repository for materials (i.e., documents and other information) submitted to the Agency in connection with this action and/or relied upon by the Agency in taking this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805. To the extent that a particular document is not located in the official public docket, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of October 22, 2002 (67 FR 32231) (FRL–7275–7), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a(d), as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide tolerance petition (PP 2F06453) by Earth BioSciences, 451 Orange St, New Haven, CT 06511. This notice included a summary of the petition prepared by the petitioner Earth BioSciences. There were no comments received in response to the Notice of Filing.

The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24.

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is "safe." Section 408(c)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ." Additionally, section 408(b)(2)(D) of the FFDCA requires that the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Earth BioSciences, formerly Taensa, Inc., conducted the toxicology studies required under section 408(d)(2)(A) of the FFDCA to support its petition for an exemption from the requirement of tolerance for *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24. As illustrated below, the studies conducted indicate a low mammalian toxicity for *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24. In addition, no pathogenicity or infectivity was observed in any of the tests conducted with *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24. All toxicology data generated by Earth BioSciences have been reviewed by the Biopesticides and Pollution Prevention Division ("BPPD").

Toxicology data in support of the exemption from the requirement of a tolerance for *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 included studies with spores (technical) and with the formulated product (water dispersible powder) as follows:

1. *Acute toxicity and/or pathogenicity*—i. *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 Spores (Technical):

- *Acute oral toxicity/pathogenicity in rats.* ". . . does not appear to be toxic and/or pathogenic in rats when dosed at 1.3×10^8 cfu." BPPD Review of Product Chemistry and Toxicity/Pathogenicity Data Submitted by Taensa, Inc., for the Registration of TAE–022 and TAE–022 WDG, which contains *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 (Submission No.: S559221; DP Barcode: 254584; Master Record Identification (MRID) No's.: 447581–01 through 447581–20) (hereinafter referred to as "BPPD Review - December 20, 1999").
- *Acute dermal toxicity/pathogenicity in rabbits.* "The severity of irritation persisted 72 hours, and slight irritation persisted for 10 days, and all resolved by day 11. No deaths observed. The acute lethal dose (LD_{50}) is greater than 2,000 mg/kg . . . Dermal Toxicity = Toxicity III." (BPPD Review - December 20, 1999).
- *Acute inhalation toxicity in rats.* "The inhalation LC_{50} for males, females, and combined was > 0.93 mg/L. Toxicity Category III." (Submission No.: S616797; DP Barcode: 283473; MRID No's.: 456725–01 and 456725–02) (hereinafter referred to as "BPPD Review - April 25, 2002")
- *Acute pulmonary toxicity/pathogenicity in rats.* ". . . does not appear to be toxic and/or pathogenic in rats, when dosed at 1.3×10^8 cfu/animal. No total clearance is seen form the lungs of treated test animals . . . showed a distinct pattern of clearance from kidney, liver, and spleen." (BPPD Review - December 20, 1999).
- *Acute intravenous toxicity/pathogenicity in rats.* ". . . does not appear to be toxic and/or pathogenic in rats, when dosed at 1.7×10^8 cfu/animal." (BPPD Review - December 20, 1999).
- *Primary eye irritation.* ". . . showed no signs of persistent irritation into day 21, when dosed at 4.7×10^{10} cfu/right eye/animal." (BPPD Review - December 20, 1999.) The December 20, 1999 BPPD review indicated Toxicity Category I, but was amended in a March 7, 2000 review to Toxicity Category II based on a comparison of test animals showing similar recovery trends and leading to reversibility within 21 days. Addendum to Toxicity Category for TAE–022, which contains *Bacillus subtilis* var. *amyloliquefaciens* Strain FZB24 (Submission No.: S559221; DP Barcode: 254584; MRID No.: 447581–14).
- *Primary dermal irritation.* ". . . severity of irritations persisted >72 hours, but resolved by day 11. Dermal irritation = Toxicity II." (BPPD Review - December 20, 1999).
- *Hypersensitivity testing.* "Based on the submitted data . . . does not appear to be a sensitizer when dosed at 3.6×10^{10} cfu." (BPPD Review - December 20, 1999).
- *Hypersensitivity incident reporting.* "No recorded or reported hypersensitivity reaction . . . based on handling MCPA in lab control setting, equating to 55 person years. . ." (BPPD Review - December 20, 1999).
- *Immune response.* "There is no information to suggest that *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 has an effect on the immune system. The submitted toxicity/pathogenicity studies in rodents indicated that following several routes of exposure, the immune system is still intact and able to process and clear the active ingredient." (BPPD Review - December 20, 1999).
- *Potential health effects.* "Based on information given, there are no apparent negative effects . . . Cited literature on *B. subtilis* indicate and/or support the development as a biological control. . ." (BPPD Review - December 20, 1999).
- *Growth parameters.* ". . . is shown to grow at all tested temperatures (e.g., 30, 34, 37, and 50 °C). The enumeration shows a low 4.2×10^{11} cfu/g at 37 °C to a high 6.0×10^{11} cfu/g at 34 °C." (BPPD Review - December 20, 1999).

ii. *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 WDG (Formulation):

- *Acute oral LD_{50} toxicity in rats.* "Toxic/limit dose . . . is greater than 2.8 g/kg body weight (6.7×10^{10} cfu/kg). . . Toxicity Category III." (BPPD Review - December 20, 1999).
- *Acute dermal LD_{50} toxicity in rats.* "The severity of irritation persisted >72 hours, but resolved by day 11. No deaths observed. The acute dose (LD_{50}) is greater than 2,000 mg/kg. . . . Dermal irritation = Toxicity Category II; Dermal Toxicity = Toxicity Category III." (BPPD Review - December 20, 1999).
- *Acute inhalation lethal concentration (LC_{50}) toxicity in rats (Formulation).* ". . . an acute inhalation medium (LC_{50}) in male and female rats is greater than 0.93 mg/L . . . Toxicity Category III." (BPPD Review - April 25, 2002)
- *Primary eye irritation.* "No corneal opacity, and no signs of irritation by day 7, when dosed . . . at 3.6×10^{10} cfu/right eye/animal. . . . Toxicity Category III." (BPPD Review - December 20, 1999).
- *Hypersensitivity.* "Not a sensitizer when dosed at 3.6×10^{10} cfu. No hypersensitivity incidents have been reported." (BPPD Review - December 20, 1999).

Based on the data generated in accordance with the Tier I data requirements set forth in 40 CFR 158.740(c), the Tier II and Tier III data requirements were not triggered and, therefore, not required in connection with this action.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

Bacillus subtilis var. *amyloliquefaciens* strain FZB24 is a naturally-occurring microorganism and widespread in the environment. The low toxicity and non-pathogenicity/infectivity of *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 is demonstrated by the data summarized in this action. The end-use (formulated) product will be applied to all agricultural commodities as a seed treatment and via incorporation, drenching, spraying, dipping, chemigation and hydroponics.

1. *Food.* While the proposed use pattern may result in dietary exposure with possible residues on all agricultural commodities, negligible risk is expected for the general population, as well as for infants and children. Submitted acute toxicology tests (MRID Numbers 447581–08, 447581–09, 447581–10, 447581–11, 447581–12, 447581–13, 447581–14, 447581–16, and 456725–02) demonstrate that based upon the use sites, use patterns, application method, use rates, low exposure, and minimal risk of toxicity, the potential risks from dietary exposure for both the general population and infants and children are considered low.

2. *Drinking water exposure.* Although *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 spores may be found naturally in water, it is not known as an aquatic bacterium, and therefore is not expected to proliferate in aquatic

habitats. (Earth BioSciences petition from the requirement of a tolerance for *Bacillus subtilis* var.*amyloliquefaciens* strain FZB24, dated May 3, 2002.) In addition, the potential for transfer of *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 to surface or ground water during run-off associated with intended use applications is considered minimal to non-existent, due in part to its percolation through and resulting capture in soil. Most importantly, though, the risk from consumption of drinking water containing *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 is considered minimal as there is no evidence of adverse effects from oral, dermal, or inhalation exposure to this microbial agent. (See Unit III.) Accordingly, it is not considered to be a risk to drinking water.

B. Other Non-Occupational Exposure

Based on the proposed use patterns, the potential of non-dietary exposures to *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 pesticide residues for the general population, including infants and children, is unlikely. Accordingly, the Agency believes that the potential aggregate non-occupational exposure, derived from dermal and inhalation exposure through the application of *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24, should fall well below the currently tested microbial safety levels. (MRID Numbers 447581–10, 447581–11, 447581–12, and 456725–02).

1. *Dermal exposure.* Dermal exposure via the skin is a potential route of exposure resulting from applications of *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24. Unbroken skin is a natural barrier to microbial invasion of the human body. Dermal absorption could occur only if the skin were cut, if the microbe were a pathogen equipped with mechanisms for entry through or infection of the skin, or if metabolites were produced that could be dermally absorbed. Acute dermal toxicity/pathogenicity data resulted in irritation that persisted 72 hours, and slight irritation persisted for 10 days, and all resolved by day 11. No deaths were observed. The acute lethal dose (LD_{50}) is greater than 2,000 mg/kg. (BPPD Review - December 20, 1999). Accordingly, the risks anticipated for this route of exposure are considered minimal.

2. *Inhalation exposure.* Inhalation would be an additional potential route of exposure resulting from applications of *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24. However, because the pulmonary study showed no adverse effects (MRID Numbers 447581–12 and 456725–02) the risks anticipated for this route of exposure are considered minimal.

V. Cumulative Effects

The Agency has considered available information on the cumulative effects of such residues and other substances that have a common mechanism of toxicity. These considerations included the cumulative effects on infants and children of such residues and other substances with a common mechanism of toxicity. Because there is no indication of mammalian toxicity to *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24, the Agency is confident that there will not be cumulative effects from the residues of this product on all agricultural commodities. (See Unit III.)

VI. Determination of Safety for U.S. Population, Infants and Children

1. *U.S. population. Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 is a naturally occurring microorganism and *Bacillus subtilis* var. *amyloliquefaciens* is widespread in the environment. Based on the very low levels of mammalian toxicity associated with *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24, which is demonstrated by the data summarized above, and the history of safe use of *B. subtilis*, the Agency has concluded that there is a reasonable certainty that no harm will result from aggregate exposure to residues of *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 to the U.S. population. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. Accordingly, exempting *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 from the requirement of a tolerance should be considered safe and pose no significant risk.

2. *Infants and children.* FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional tenfold margin of exposure (safety) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. Margins of exposure (safety) are incorporated into EPA risk assessments either directly through the use of a margin of exposure analysis or by using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. Here, EPA concludes that the toxicity and exposure data are sufficiently complete to adequately address the potential for additional sensitivity of infants and children to residues of *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 and that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 residues. Also, for food use of microbial pesticides, the acute toxicity/pathogenicity studies have allowed for the conclusion that an exemption from the requirement of a tolerance for *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 is appropriate and adequate to protect human health, including that of infants and children.

VII. Other Considerations

A. Endocrine Disruptors

EPA is required under section 408(p) of the FFDCA, as amended by FQPA, to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or other such endocrine effects as the Administrator may designate." Following the recommendations of its Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), EPA determined that there is no scientific basis for including, as part of the screening program, the androgen and thyroid hormone systems in addition to the estrogen hormone system. EPA also adopted EDSTAC's recommendation that the program include evaluations of potential effects in wildlife. For pesticide chemicals, EPA will use Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and, to the extent that effects in wildlife may help determine whether a substance may have an effect in humans, FFDCA authority to require wildlife evaluations. As the science develops and resources allow, screening of additional hormone systems may be added to the Endocrine Disruptor Screening Program (EDSP). When the appropriate screening and/or testing protocols being considered under the Agency's EDSP have been developed, *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 may be subjected to additional screening and/or testing to better characterize effects related to endocrine disruption.

Based on available data, no endocrine system-related effects have been identified with consumption of *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24. It is a naturally occurring bacteria that is widespread in the environment. To date, there is no evidence to suggest that *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 affects the immune system, functions in a manner similar to any known hormone, or that it acts as an endocrine disruptor.

B. Analytical Method

The Agency proposes to establish an exemption from the requirement of a tolerance without any numerical limitation for the reasons stated above, including *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24's lack of mammalian toxicity. For the same reasons, the Agency has concluded that an analytical method is not required for enforcement purpose for *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24.

C. Codex Maximum Residue Level

There are no Codex maximum residue levels established for residues of *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24.

VIII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your written objections and hearing requests with the Hearing Clerk in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0059 in the subject line on the first page of your submission. All objections and hearing requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 29, 2003.

1. *Filing the request.* Your objections must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IX.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0059, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IX. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement for *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May

22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption from the tolerance requirement in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

X. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 20, 2003.

James Jones,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.1243 is added to subpart D to read as follows:

§ 180.1243 Bacillus subtilis var. amyloliquefaciens strain FZB24; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance for residues of the *Bacillus subtilis* var. *amyloliquefaciens* strain FZB24 in or on all agricultural commodities when applied/used in accordance with label directions.

[FR Doc. 03–19134 Filed 7–29–03; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0246; FRL–7319–6]

Boscalid; 3-pyridinecarboxamide, 2-chloro-N-(4'-chloro[1,1'-biphenyl]-2-yl); Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of boscalid, 3-pyridinecarboxamide, 2-chloro-N-(4'-chloro[1,1'-biphenyl]-2-yl) in or on certain commodities and establishes a tolerance for the combined residues of boscalid, 3-pyridinecarboxamide, 2-chloro-N-(4'-chloro[1,1'-biphenyl]-2-yl) and its metabolites 2-chloro-N-(4'-chloro-5-hydroxy-biphenyl-2-yl)nicotinamide and the glucuronic acid conjugate of 2-chloro-N-(4'-chloro-5-hydroxy-biphenyl-2-yl)nicotinamide in or on certain commodities. BASF Corporation requested tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective July 30, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0246, must be received on or before September 29, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Cynthia Giles-Parker, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: 703 305–7740; e-mail address: *giles-parker.cynthia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, pesticide manufacturer or formulator. Potentially affected entities may include, but are not limited to:

- •Crop production (NAICS 111)
- •Animal production (NACIS 112)
- •Food manufacturer (NAICS 311)
- •Pesticide manufacturer (NAICS 32532)]

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0246. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of February 14, 2003 (68 FR 7542) (FRL–7289– 5), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 1F6313) by BASF Corporation, P.O. Box 13528, Research Triangle Park, North Carolina 27708–2000. That notice included a summary of the petition prepared by BASF Corporation, the registrant. The Agency received one public comment and it, along with the Agency's response, can be found in Unit V.

The petition (1F6313) requested that 40 CFR 180.589 be amended by establishing a tolerance for residues of the fungicide boscalid, 3-pyridinecarboxamide, 2-chloro-N-(4'-chloro[1,1'-biphenyl]-2-yl), in or on vegetable, root, subgroup 1B at 1.0 ppm; vegetables, tuberous and corm, subgroup 1C at 0.05 ppm; vegetable, root and tuber, leaves, group 2 at 1.0 ppm; vegetable, bulb, group 3 at 3.0 ppm; vegetable, leafy, group 4, at 11.0 ppm; vegetable, Brassica leafy, subgroup 5A, at 3.0 ppm; vegetable, Brassica leafy, subgroup 5B, at 18.0 ppm; vegetable, legume, group 6, at 2.2 ppm; vegetable, legume foliage, group 7,forage at 1.5 ppm; vegetable,, legume, foliage, group 7, hay at 2.0 ppm vegetable, legume, foliage group 7, vines at 0.05 ppm; vegetable, fruiting, group 8 at 1.0 ppm; vegetable, cucurbit, group 9, at 1.5 ppm; fruit, stone, group 12 at 1.7 ppm; berries, group 13 at 3.5 ppm; nut, tree, group 14 at 0.25 ppm; almond, hulls at 3.0 ppm; pistachio at 0.65 ppm; grain, cereal, group 15 at 0.2 ppm; grain, cereal , forage, fodder, and straw, group 16, forage at 2.0 ppm; grain, cereal , forage, fodder, and straw, group 16, straw at 3.0 ppm; grain, cereal , forage, fodder, and straw, group 16, fodder at 1.5 ppm grass, forage, fodder, and hay, group 17, forage at 2.0 ppm; grass, forage, fodder, and hay, group 17, hay at 8.0 ppm; animal feed, nongrass, group 18, forage at 1.0 ppm; animal feed, nongrass, group 18, hay at 2.0 ppm; animal feed, nongrass, group 18 seed at 0.05 ppm; mint at 30.0 ppm; grape at 3.5 ppm; grape, raisin at 8.5 ppm; strawberry at 1.2 ppm; canola at 3.5 ppm; peanut at 0.05 ppm; peanut, meal at 0.15 ppm; peanut, refined oil at 0.15 ppm; cotton, undelinted seed at 0.05 ppm; cotton, gin byproducts at 0.3 ppm; soybean, seed at 0.1 ppm; soybean, hulls at 0.2 ppm; flax seed at 3.5 ppm and sunflower, seed at 3.5 ppm.

The petition (1F6313) also requested that 40 CFR 180.589 be amended by establishing a tolerance for combined residues of the fungicide 3-pyridinecarboxamide, 2-chloro-N-(4'-chloro[1,1'-biphenyl]-2-yl) and metabolites M510F01 2-chloro-N-(4'-chloro-5-hydroxy-biphenyl-2-yl) nicotinamide and M510F02 glucuronic acid conjugate of M510F01 in or on: Cow milk at 0.10 ppm; cow muscle, at 0.10 ppm; cow, fat at 0.30 ppm; cow, meat byproducts at 0.35 ppm; egg at 0.02 ppm; and poultry muscle, poultry fat, and poultry meat byproducts at 0.05 ppm.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that"there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For

further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for residues of boscalid, 3-pyridinecarboxamide, 2-chloro-N-(4'-chloro[1,1'-biphenyl]-2-yl) on: Vegetable, root, subgroup 1A, except sugar beet/garden beet/radish/turnip, at 1.0 ppm; vegetable, tuberous and corm, subgroup 1C, at 0.05 ppm; vegetable, bulb, group 3, at 3.0 ppm; lettuce, head at 6.5 ppm; lettuce, leaf at 11.0 ppm; vegetable, Brassica leafy, head and stem, subgroup 5A, at 3.0 ppm; vegetable, Brassica leafy, leafy greens, subgroup 5B, at 18.0 ppm; vegetable, legume, edible-podded, subgroup 6A, at 1.6 ppm; vegetable, legume, succulent shelled pea and bean, subgroup 6B, except cowpea, at 0.6 ppm; vegetable, legume, dried shell pea and bean (except soybean), subgroup 6C, except cowpea, field pea, and grain lupin at 2.5 ppm; vegetable, fruiting, group 8, at 1.2 ppm; vegetable, cucurbit, group 9, except cucumber, at 1.6 ppm; cucumber at 0.20 ppm; fruit, stone, group 12, at 1.7 ppm; berries, group 13, at 3.5 ppm; nut, tree, group 14, at 0.70 ppm; almond, hulls at 3.0 ppm; pistachio at 0.70 ppm; grape at 3.5 ppm; grape, raisin at 8.5 ppm; strawberry at 1.2 ppm; peanut at 0.05 ppm; peanut, meal at 0.15 ppm; peanut, refined oil at 0.15ppm; canola, seed at 3.5 ppm; canola, refined oil at 5.0 ppm; sunflower, seed at 0.60 ppm; peppermint, tops at 30.0 ppm and spearmint, tops at 30.0 ppm.

The Agency also included in this risk assessment dietary exposure (at the anticipated tolerance level) from another pesticide petition (2F6434) for boscalid use on pome fruit and hops. However, the Agency is not establishing tolerances for these commodities at this time, because the residue chemistry review for these commodities is not complete and in fact is not scheduled until the Office of Pesticide Program FY–2004 Workplan.

In addition, also consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for residues of boscalid from indirect or inadvertent residues (from rotational crop use), 3-pyridinecarboxamide, 2-chloro-N-(4'-chloro[1,1'-biphenyl]-2-yl) on: Beet, garden, roots at 1.0 ppm; radish, roots at 1.0 ppm; turnip, roots at 1.0 ppm; beet, sugar, roots at 1.0 ppm; vegetable, root and tuber, leaves, group 2 at 1.0 ppm; vegetable, leafy, group 4, except lettuce at 1.0 ppm; vegetable, legume foliage, group 7, forage at 1.5 ppm; vegetable, legume, foliage, group 7, hay at 2.0 ppm; vegetable, legume, foliage group 7, vines at 0.05 ppm; grain, cereal, group 15, at 0.20 ppm; rice, hulls at 0.50 ppm; grain, cereal , forage, fodder, and straw, group 16, fodder at 1.5 ppm; grain, cereal , forage, fodder, and straw, group 16, forage at 2.0 ppm; grain, cereal , forage, fodder, and straw, group 16, straw at 3.0 ppm; grass, forage, fodder, and hay, group 17, forage at 2.0 ppm; grass, forage, fodder, and hay, group 17, hay at 8.0 ppm; grass, forage, fodder, and hay, group 17, straw at 0.30 ppm; grass, forage, fodder, and hay, group 17, seed screenings at 0.20 ppm; animal feed, nongrass, group 18, forage at 1.0 ppm animal feed, nongrass, group 18, hay at 2.0 ppm; animal feed, nongrass, group 18 seed at 0.05 ppm; cotton, undelinted seed at 0.05 ppm; cotton, gin byproducts at 0.30 ppm; soybean, seed, 0.10 ppm; soybean, hulls at 0.20 ppm; cowpea, seed at 0.1 ppm; lupin, grain, grain, at 0.1 ppm; pea, field, seed at 0.1 ppm and flax seed at 3.5 ppm.

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for combined residues of the fungicide 3-pyridinecarboxamide, 2-chloro-N-(4'-chloro[1,1'-biphenyl]-2-yl) and metabolites M510F01 2-chloro-N-(4'-chloro-5-hydroxy-biphenyl-2-yl) nicotinamide and M510F02 glucuronic acid conjugate of M510F01 in or on milk at 0.10 ppm, cattle, meat at 0.10 ppm, cattle, fat at 0.30 ppm, cattle, meat byproducts at 0.35 ppm, egg at 0.02 ppm, poultry, meat at 0.05 ppm, poultry, fat at 0.05 ppm, poultry, meat byproducts at 0.10 ppm, goat, meat at 0.10 ppm, goat, fat at 0.30 ppm, goat, meat byproducts at 0.35 ppm, hog, meat at 0.05 ppm, hog, fat at 0.10 ppm, hog, meat byproducts at 0.35 ppm, horse, meat at 0.10 ppm, horse, fat at 0.30 ppm, horse, meat byproducts at 0.35 ppm, sheep, meat at 0.10 ppm, sheep, fat at 0.30 ppm, and sheep, meat byproducts at 0.35 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by boscalid, 3-pyridinecarboxamide, 2-chloro-N-(4'-chloro[1,1'-biphenyl]-2-yl) are discussed in Table 1 of this unit as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90-Day oral toxicity rodents(rats)	NOAEL = 34/159 milligram/kilogram/day (mg/kg/day) Male/Female. LOAEL = 137/395 mg/kg/day M/F based on [M = increases in absolute and relative thyroid weights and increased incidence of thyroid hyperplasia as well as follicular epithelial hypertrophy; F = increases in absolute and relative thyroid weights.]

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.3100	90-Day oral toxicity rodents (mice)	NOAEL: 197/2,209 mg/kg/day (M/F) LOAEL: 788/2,209 mg/kg/day (M/F): M = increased liver weights and increased incidence of marked fatty change in the liver; F = not attained
870.3150	(90-day oral toxicity in nonrodents (dogs)	NOAEL: 7.6/8.1 mg/kg/day (M/F) LOAEL: 78.1/81.7 mg/kg/day (M/F): M = based on increased alkaline phosphatase activity and hepatic weights; F = increased alkaline phosphatase activity and hepatic weights.
870.3200	21/28-Day dermal toxicity (rats)	NOAEL = 1,000 mg/kg/day highest dose tested (HDT) LOAEL = >1,000 mg/kg/day
870.3700	Prenatal developmental in rodents (rats)	Maternal NOAEL = 1,000 mg/kg/day LOAEL = cannot be established Developmental NOAEL = 1,000 mg/kg/day LOAEL = cannot be established
870.3700	Prenatal developmental in nonrodents (rabbits)	Maternal NOAEL = 300 mg/kg/day LOAEL = 1,000 mg/kg/day based on abortions or early delivery. Developmental NOAEL = 300 mg/kg/day LOAEL = 1,000 mg/kg/day based on abortions or early delivery.
870.3800	Reproduction and fertility effects (rats)	Parental/Systemic NOAEL = 112.6/1180.8 mg/kg/day M/F Parental/Systemic LOAEL = 1165.0/>1180.8 mg/kg/day M/F based on decreased body weight and body weight gain (F_1) as well as hepatocyte degeneration F_0 and F_1) in males only. Offspring systemic NOAEL = 11.2/115.8 mg/kg/day (M/F) Offspring systemic LOAEL = 112.6/1180.8 (M/F) mg/kg/day based on decreased body weight for F_2 pups in males and females of both generations. Reproductive NOAEL = 1165.0/1180.8 mg/kg/day (M/F) Reproductive LOAEL = >1165.0/1180.8 mg/kg/day (M/F)
870.4100	Chronic toxicity rodents (rat)	NOAEL = 21.9/30.0 mg/kg/day (M/F) LOAEL = 110.0/150.3 mg/kg/day (M/F) based on M = thyroid toxicity (weights and microscopic changes); F - thyroid toxicity (weights and microscopic changes. Thyroid follicular cell adenomas: M - 0/20, 0/20, 2/20, 1/20; F = 0/20, 0/20, 1/20, 0/20.
870.4100	Chronic toxicity (dogs)	NOAEL = 21.8/22.1 mg/kg/day (M/F) LOAEL = 57.4/58.3 mg/kg/day (M/F) based on M = elevated ALP activities and elevated hepatic weights; F = no effects
870.4200	Carcinogenicity (rats)	NOAEL = 23.0/29.7 mg/kg/day (M/F) LOAEL = 116.1/155.6 mg/kg/day (M/F) based on M = increased incidence of thyroid follicular cell hyperplasia and hypertrophy; F = decrease in body weight gain and increased incidence of thyroid follicular cell hyperplasia and hypertrophy. Thyroid follicular cell adenomas: M = 0/50, 0/50, 1/50, 4/50; F = 0/50, 1/50, 0/50, 3/50.
870.4200	Carcinogenicity (mice)	NOAEL: 65/443 mg/kg/day (M/F) LOAEL: 331/1804 mg/kg/day (M/F): M = decreases in body weight and body weight gains; F = decreases in body weight and body weight gains. No evidence of carcinogenicity.
870.5100	Gene Mutation bacterial reverse mutation assay	Negative without and with S-9 activation up to limit dose of 5,000 µg/plate.
870.5300	*In vitro* mammalian cell forward gene mutation assay (CHO cells/HGPRT locus)	Negative without and with S-9 activation up to limit of solubility of 25 µg/plate.
870.5375	*In vitro* mammalian cytogenetics assay in Chinese hamster V79 cells	Negative without and with S-9 activation up to 3500 µg/mL with precipitation showing at concentrations of 100 µg/mL and higher.
870.5395	Cytogenetics - mammalian erythrocyte micronucleus test in the mouse	Negative response up to 2,000 mg/kg.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.5500	*In vitro* unscheduled DNA synthesis (primary rat hepatocytes)	Negative response up to 50 µg/mL. Cytotoxicity at 100 - 500 µg/mL.
870.6200	Acute neurotoxicity screening battery (rat)	NOAEL = 2,000/1,000 mg/kg/day (M/F) LOAEL = >2,000/2,000 mg/kg/day (M/F) based on F = piloerection
870.6200	Subchronic neurotoxicity screening battery (rat)	NOAEL = 1050.0/1272.5 mg/kg/day (M/F) LOAEL = >1050.0/1272.5 mg/kg/day (M/F)
870.6300	Developmental neurotoxicity (rat)	Maternal NOAEL = 1,442 mg/kg/day LOAEL = >1,442 mg/kg/day Offspring NOAEL = 14 mg/kg/day LOAEL = 147 mg/kg/day based on deceased body weights on PND 4 and decreased body weight gain on PNDs 1-4)
870.7485	Metabolism and pharmaco-kinetics (rat)	BAS 510 was readily absorbed and excreted following single oral 50 mg/kg; at single 500 mg/kg or 15 doses of 500 mg/kg, absorption was saturated . Excretion mainly by feces (80-98%). Biliary excretion 40-50% of fecal activity at 50 mg/kg, 10% at 500 mg/kg. Urine, about 16% at 50 mg/kg, 3-5% at 500 mg/kg. Absorption about 56% at 50 mg/kg and 13-17% at 500 mg/kg. Excretory patterns similar by gender or radiolabel position. Metabolites (hydroxylation and conjugation products) were consistent with Phase I oxidation reactions followed by Phase II conjugation with glucuronic acid or sulfate, or by conjugation of the parent with glutahione with cleavage to sulfate metabolites.
870.7600	Dermal penetration (rat)	Maximum % absorption: 0.01 mg/cm^2 = 10.93 (24 hour exposure, 24 hour sacrifice) 0.10 mg/cm^2 = 3.76 (24 hour exposure, 24 hour sacrifice) 1.00 mg/cm^2 - 1.48 (10 hour exposure, 72 hour sacrifice)]
	Special studies: Hepatic enzyme induction (rat)	1. Hypertrophy of zone III hepatocytes 2. >20% increase in liver weight 3. Increase in CYP450 activity 4. Slight to extensive microscopic SER proliferation 5. Not a peroxisome proliferator 6. Enzymes in CYP450 subfamily not induced 7. No notable microscopic increase in size or number of peroxisomes CONCLUSION: Inducer of total CYP450 activity
	Special Study: Hormone and enzyme induction (rat)	1. Slight (statistically significant) decrease in circulating T_3 and T_4 only in males 2. Increase in circulating TSH levels both sexes 3. Increase in all 3 liver microsomal glucuronyltransferases CONCLUSION: disruption of thyroid homoeostasis by decreasing circulation T3 and T4 and increasing TSH; likely the result of hepatic microsomal glucuronyltransferase induction
	Special Study: Reversibility study (dietary): 4-week administration followed by 4 weeks recovery or 13 weeks recovery (rat)	4 weeks dosing: at 2500 and 15000 ppm: increase in TSH (68% and 87%) ; increase in absolute and relative thyroid weights hypertrophy of thyroid follicular epithelial cells and diffuse follicular hyperplasia, increase in absolute and relative liver weights and centrilobular hypertrophy as well as liver portal fatty changes. 4 weeks dosing + 4 weeks recovery: no increases in TSH; increase in absolute and relative thyroid weights; thyroid hypertrophy and hyperplasia decreased to control values; all liver effects reversed to control. 4 weeks dosing + 13 weeks recovery: no increases in TSH; increase in absolute and relative thyroid weights; thyroid hypertrophy and hyperplasia decreased to control values; all liver effects reversed to control. CONCLUSION: induction of liver microsomal enzyme system resulting in increased glucuronidation of thyroxine, resulting in an increase in TSH secretion as a compensatory response of the physiological negative feedback system; increased TSH resulted in increased thyroid weight.

B. Toxicological Endpoints

The dose at which the NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factors (SF) is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1 x 10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a point of departure is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for boscalid used for human risk assessment is shown in Table 2 of this unit:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR BOSCALID FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary	No appropriate endpoint identified	Not Applicable	Not Applicable
Chronic Dietary (All populations)	NOAEL= 21.8 UF = 100 Chronic RfD = 0.218 mg/kg/day	FQPA SF = 1 cPAD = chronic RfD/ FQPA SF = 0.218 mg/kg/day	Chronic rat, carcinogenicity rat and 1-year dog studies LOAEL = 57-58 mg/kg/day based on liver and thyroid effects
Incidental Oral (Short and intermediate term residential only)	NOAEL= 21.8 mg/kg/day	Residential LOC for MOE = 100	Chronic rat, carcinogenicity rat and 1-year dog studies LOAEL = 57-58 mg/kg/day based on liver and thyroid effects
Dermal (All Durations)	Oral study NOAEL=21.8 mg/kg/day (dermal absorption rate = 15%)	Residential LOC for MOE = 100	Chronic rat, carcinogenicity rat and 1-year dog studies LOAEL = 57-58 mg/kg/day based on liver and thyroid effects
Inhalation (All Durations)	Oral study NOAEL= 21.8 mg/kg/day (inhalation absorption rate = 100%)	Residential LOC for MOE = 100	Chronic rat, carcinogenicity rat and 1-year dog studies LOAEL = 57-58 mg/kg/day based on liver and thyroid effects
Cancer (oral, dermal, inhalation)	Classification: Suggestive evidence of carcinogenicity, but not sufficient to assess human carcinogenic potential.		

UF = uncertainty factor, FQPA SF = Special FQPA safety factor, NOAEL = no observed adverse effect level, LOAEL = lowest observed adverse effect level, PAD = population adjusted dose (a = acute, c = chronic) RfD = reference dose, MOE = margin of exposure, LOC = level of concern, NA = Not Applicable

* The reference to the FQPA SF refers to any additional SF retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* These are the first food uses and tolerances for residues of boscalid, in or on raw agricultural commodities. Risk assessments were conducted by EPA to assess dietary exposures from boscalid in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. There were no toxic effects attributable to a single dose. An endpoint of concern was not identified to quantitate acute-dietary risk to the general population, including infants and children, or to the subpopulation females 13-50 years old. Therefore, there is no acute reference dose (aRfD) or acute population-adjusted dose (aPAD).

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Tolerance level residues were assumed for all commodities associated with PP 1F6313 with the exception of a few crops where levels higher than the tolerance were used. The latter were due to the lowering of some tolerances to harmonize with Canadian MRL's subsequent to the dietary risk assessment. Pome fruit and hops were also included from PP 2F6434 using the likely tolerance levels. One hundred percent crop treated was assumed for all commodities. Processing factors were either empirical or the default values in DEEM.

iii. *Cancer.* The Agency determined that boscalid produced suggestive evidence of carcinogenicity, but not sufficient to assess human carcinogenic potential. This cancer classification was based on the following weight of evidence considerations. First, in male Wistar rats, there was a significant trend (but not pairwise comparison) for the combined thyroid adenomas and carcinomas. This trend was driven by the increase in adenomas. Second, in the female rats, there was only a borderline significant trend for thyroid adenomas (there were no carcinomas). Third, the mouse study was negative as were all of the mutagenic tests. Consistent with this weak evidence of carcinogenic effects, the Agency concluded that a dose-response assessment for cancer (either linear low-dose extrapolation or margin of exposure calculation) was not needed.

iv. *Anticipated residue and percent crop treated (PCT) information.* The Agency used tolerance level residues and 100% crop treated for this risk analysis.

2. *Dietary exposure from drinking water.* This is a new chemical and the Agency does not have comprehensive monitoring data. Drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of boscalid.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The SCI-GROW model is used to predict pesticide concentrations in shallow groundwater. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to boscalid they are further discussed in the aggregate risk sections in Unit III.E.

Based on the PRZM/EXAMS and SCI-GROW models the estimated environmental concentrations (EECs) of boscalid for chronic exposures are estimated to be 25.6 ug/L for surface water and 0.571 ug/L for ground water. The Agency notes that for surface and groundwater assessments, the application rate for turf was used, which represents the highest seasonal application rate (2.1 lbs. active ingredient/acre/season). The highest single application rate associated with the use of the pesticide on fruiting vegetables, did not result in EEC values higher than those calculated for turf use since the proposed total seasonal application rate for fruiting vegetables is only 1.1 lb. active ingredient/acre/season.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Boscalid is currently being registered for use on the following residential non-dietary sites: The boscalid label with turf use specifies that this product is intended for golf course use only, and not for use on residential turfgrass or turfgrass being grown for sale or other commercial use such as sod production. Although the label does not indicate that the product is applied by licenced or commercial applicators, homeowners will not be applying the product to golf courses. Therefore, a risk assessment for residential handler exposure is not required. The risk assessment was conducted using the following residential exposure assumptions: The Agency uses the term post-application to describe exposures to individuals that occur as a result of being in an environment that has been previously treated with a pesticide. There are two recreational scenarios associated with boscalid that could lead to exposures for adults and children: (i) Adults and youth golfing and (ii) adults and children picking their own fruit. These exposure durations are anticipated to be short term. Because U-pick is a one-time event (duration <1 day) and the Agency found that the oral studies indicated there were no endpoints appropriate to quantitate acute risk, the U-pick exposure/risk was not evaluated. Therefore, only the golfing scenario was evaluated with respect to non-occupational, non-dietary exposure. The dermal MOEs for adults golfing were 27,000-74,000. Although specific MOEs were not calculated for youths playing golf, the adult MOEs are considered representative since the body surface area to weight ratios for adolescents do not vary significantly from those for adults. The refined assessment is based on reliable data and is unlikely to underestimate exposure/risk.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether boscalid has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, boscalid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that boscalid has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* The Agency concluded that there are no residual uncertainties for pre- and post-natal toxicity as the degree of concern is low for the susceptibility seen in the above studies, and the dose and endpoints selected for the overall risk assessments will address the concerns for the body weight effects seen in the offspring. Although the dose selected for overall risk assessments (21.8 mg/kg/day) is higher than the NOAELs in the 2–generation reproduction study (10.1 mg/kg/day) and the developmental neurotoxicity study (14 mg/kg/day), these differences are considered to be an artifact of the dose selection process in these studies. For example, there is a 10-fold difference between the LOAEL (106.8 mg/kg/day) and the NOAEL (10.1 mg/kg/day) in the two generation reproduction study. A similar pattern was seen with regard to the developmental neurotoxicity study, where there is also a 10-fold difference between the LOAEL (147 mg/kg/day) and the NOAEL (14 mg/kg/day). There is only a 2-3 fold difference between the LOAEL (57 mg/kg/day) and the NOAEL (21.8 mg/kg/day) in the critical study used for risk assessment. Because the gap between the NOAEL and LOAEL in the 2–generation reproduction and developmental neurotoxicity studies was large and the effects at the LOAELs were minimal, the true no-observed-adverse-effect-level was probably considerably higher. Therefore, the selection of the NOAEL of 21.8 mg/kg/day from the 1–year dog study is conservative and appropriate for the overall risk assessments. In addition, the endpoints for risk assessment are based on thyroid effects seen in multiple species (mice, rats and dogs) and after various exposure durations (subchronic and chronic exposures) which were not observed at the LOAELs in either the 2–generation reproduction or the developmental neurotoxicity studies. Based on these data, the Agency concluded that there are no residual uncertainties for pre- and post-natal toxicity.

3. *Conclusion.* There is a complete toxicity data base for boscalid and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. There is no evidence of susceptibility following *in utero* exposure to rats and there is low concern and no residual uncertainties in the developmental toxicity study in rabbits, in the 2–generation reproduction study or in the developmental neurotoxicity study after establishing toxicity endpoints and traditional uncertainty factors to be used in the risk assessment. Based on these data and conclusions, EPA reduced the FQPA Safety Factor to 1X.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* As there were no toxic effects attributable to a single dose, an endpoint of concern was not identified to quantitate acute-dietary risk to the general population or to the subpopulation females 13-50 years old. Therefore, there is no acute reference dose (aRfD) or acute population-adjusted dose (aPAD) for the general population or females 13-50 years old. No acute risk is expected from exposure to boscalid.

2. *Chronic risk.* The chronic aggregate risk assessment takes into account average exposures estimates from dietary consumption of boscalid (food and drinking water) and residential uses. Since the exposure from turf grass (golf course) activities are considered short term, the chronic aggregate included food and drinking water only. The calculated chronic DWLOCs for chronic exposure to boscalid in drinking water range from 1,400 to 7,000 µg/L (ppb).). The chronic aggregate risk associated with the proposed use of boscalid does not exceed the Agency's level of concern for the general U.S. population or any population subgroups. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 3 of this unit:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON- CANCER) EXPOSURE TO BOSCALID

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.218	5	25.6	0.571	7,000

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON- CANCER) EXPOSURE TO BOSCALID—Continued

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
All Infants (< 1 year old)	0.218	24	25.6	0.571	1,700
Children 1-2 years old	0.218	35	25.6	0.571	1,400
Females 13-49 years old	0.218	5	25.6	0.571	6,200
Adults 50+ years old	0.218	6	25.6	0.571	7,200

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Boscalid is proposed for use that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for boscalid.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in an aggregate MOE of 1,200 for the general population. The short-term aggregate risk assessment takes into account average exposures estimates from dietary consumption of boscalid (food and drinking water) and residential uses. Postapplication exposures from the proposed use on golf course is considered a short term activity and applies to adults and youth. The Agency concluded that exposure from turf grass is needed to be included in the aggregate assessment. Table 4 summarizes the results. For the general population the MOE from food and residential exposure was 1,200. This MOE is also representative of the risk for youth playing golf for the reasons stated in Unit III.C.3. and the dietary exposure for youth (13-19 years old) being less than the general population. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, a short-term DWLOC was calculated and compared to the EECs for chronic exposure of boscalid in ground and surface water. The calculated short term DWLOC is 6,000 ppb. After calculating the DWLOC and comparing it to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in Table 4 of this unit:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO BOSCALID

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
General population	1,200	100	25.60	0.571	6,000

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Boscalid is not registered for use on any sites that would result in intermediate-term residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which does not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population.* The Agency has classified boscalid as, "suggestive evidence of carcinogenicity, but not sufficient to assess human carcinogenic potential," and, therefore, the quantification of human cancer risk is not recommended. See Unit III.C.iii of this document for additional details explaining why a cancer risk assessment was not required.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to boscalid residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Analytical Enforcement Method for Plants. (Method D0008; MRID 45405028). This method determines residues of boscalid. Residues are extracted using an aqueous organic solvent mixture followed by liquid/liquid partitioning and column clean-up. Quantitation is by gas chromatography/mass spectrometry (GC/MS) using selected ion monitoring. The reported limit of quantitation (LOQ) is 0.05 ppm for residues of boscalid in plant matrices.

Analytical Enforcement Method for Livestock. (Method DFG S19; MRID 45405103). This method determines residues of boscalid and two metabolites 2-chloro-N-(4'-chloro-5-hydroxy-biphenyl-2-yl)nicotinamide (M510F01) and glucuronic acid conjugate of 2-chloro-N-4'-chloro-5-hydroxy-biphenyl-2-yl)nicotinamide (M510F02)] in or on the following food commodities (as 2-chloro-N-(4'-chloro-5-hydroxy-biphenyl-2-yl)nicotinamide). Residues are extracted with methanol. The extract is treated with enzymes to release M510F02 to free M510F01. Residues are isolated by liquid/liquid partition followed by column chromatography. Total M510F01 is acetylated followed by a column clean-up. Parent and acetylated M510F01 are quantitated by GC/ECD (electron capture). The reported LOQ for each analyte is 0.01 ppm in milk and 0.025 ppm in other animal matrices.

Adequate enforcement methodology (GC/MS and GC/ECD) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

Boscalid is a new fungicide. There are currently no pending or established Codex maximum residue limits (MRLs) for boscalid, and no established Canadian or Mexican MRLs either. The US EPA and PMRA/Canada jointly reviewed this subject petition (1F6313), and the forthcoming tolerances were harmonized to the extent possible with respect to the residues of concern and tolerance levels.

C. Conditions

Any conditions of registration will be specified in the Notice of Registration for the technical grade boscalid.

V. Comments

The Agency received the following comment. The Agency's response follows.

Comment. There should be zero tolerance for ths chemical on food. We do not need more chemicals added to our food. We already have far too many approved by EPA and FDA. I say if there is anything over zero effect from this toxic, that the toxic should be denied use in the USA.

Response. The one comment received in response to the Notice of Filing contained no scientific data or evidence to rebut the Agency's conclusion that there is a reasonable certainty that no harm will result from aggregate exposure to boscalid, including all anticipated dietary exposure and all other exposures for which there is reliable information. General opposition to pesticides in food is not a sufficient reason to deny a tolerance petition.

VI. Conclusion

Therefore, tolerances are established for residues of boscalid, 3-pyridinecarboxamide, 2-chloro-N-(4'-chloro[1,1'-biphenyl]-2-yl), in or on vegetable, root, subgroup 1A, except sugar beet, garden beet, radish, and turnip at 0.7 ppm; vegetable, tuberous and corm, subgroup 1C at 0.05 ppm; vegetable, bulb, group 3 at 3.0 ppm; lettuce, head at 6.5 ppm; lettuce, leaf at 11.0 ppm; vegetable, Brassica leafy, head and stem, subgroup 5A at 3.0 ppm; vegetable, Brassica leafy, leafy greens, subgroup 5B at 18.0 ppm; vegetable, legume, edible-podded, subgroup 6A, at 1.6 ppm; vegetable, legume, succulent shelled pea and bean, subgroup 6B, except cowpea; at 0.6 ppm; vegetable, legume, dried shell pea and bean (except soybean), subgroup 6C, except cowpea, field pea, and grain lupin at 2.5 ppm; vegetable, fruiting, group 8 at 1.2 ppm; vegetable, cucurbit, group 9, except cucumber at 1.6 ppm; cucumber at 0.20 ppm; fruit, stone, group 12 at 1.7 ppm; berries, group 13 at 3.5 ppm; nut, tree, group 14 at 0.70 ppm; almond, hulls at 3.0 ppm; pistachio at 0.70 ppm; grape at 3.5 ppm; grape, raisin at 8.5 ppm; strawberry at 1.2 ppm; peanut at 0.05 ppm; peanut, meal at 0.15 ppm; peanut, refined oil at 0.15 ppm; canola, seed at 3.5 ppm; canola, refined oil at 5.0 ppm; sunflower, seed at 0.60 ppm; peppermint, tops at 30.0 ppm and spearmint, tops at 30.0 ppm.

Tolerances are established for indirect or inadvertent (crop rotation) residues of boscalid, 3-pyridinecarboxamide, 2-chloro-N-(4'-chloro[1,1'-biphenyl]-2-yl), in or on beet, garden, roots at 1.0 ppm; radish, roots, at 1.0 ppm; turnip, roots at 1.0 ppm; beet, sugar, roots at 1.0 ppm; vegetable, root and tuber, leaves, group 2 at 1.0 ppm; vegetable, leafy, group 4, except lettuce at 1.0 ppm; vegetable, legume, foliage, group 7, forage at 1.5 ppm; vegetable, legume, foliage, group 7, hay at 2.0 ppm; vegetable, legume, foliage, group 7, vines at 0.05 ppm; grain, cereal, group 15 at 0.20 ppm; rice, hulls at 0.50 ppm; grain, cereal , forage, fodder, and straw, group 16, fodder at 1.5 ppm; grain, cereal , forage, fodder, and straw, group 16, forage at 2.0 ppm; grain, cereal , forage, fodder, and straw, group 16, straw at 3.0 ppm; grass, forage, fodder, and hay, group 17, forage at 2.0 ppm; grass, forage, fodder, and hay, group 17, hay at 8.0 ppm; grass, forage, fodder, and hay, group 17, straw at 0.30 ppm; grass, forage, fodder, and hay, group 17, seed screenings at 0.20 ppm; animal feed, nongrass, group 18, forage at 1.0 ppm; animal feed, nongrass, group 18, hay at 2.0 ppm; animal feed, nongrass, group 18, seed at 0.05 ppm; cotton, undelinted seed at 0.05 ppm; cotton, gin byproducts at 0.30 ppm; soybean, seed, 0.10 ppm; soybean, hulls at 0.20 ppm; cowpea, seed at 0.1 ppm; lupin, grain, grain at 0.1 ppm; pea, field, seed at 0.1 ppm and flax seed at 3.5 ppm.

Tolerances are established for the combined residues of the fungicide 3-pyridinecarboxamide, 2-chloro-N-(4'-chloro[1,1'-biphenyl]-2-yl) and metabolites M510F01 2-chloro-N-(4'-chloro-5-hydroxy-biphenyl-2-yl) nicotinamide and M510F02 glucuronic acid conjugate of M510F01 in or on milk at 0.10 ppm; cattle, meat at 0.10 ppm; cattle, fat at 0.30 ppm; cattle, meat byproducts at 0.35 ppm; egg at 0.02 ppm; poultry, meat at 0.05 ppm; poultry, fat at 0.05 ppm; poultry, meat byproducts at 0.10 ppm; goat, meat at 0.10 ppm; goat, fat at 0.30 ppm; goat, meat byproducts at 0.35 ppm; hog, meat at 0.05 ppm; hog, fat at 0.10 ppm; hog, meat byproducts at 0.10 ppm; horse, meat at 0.10 ppm; horse, fat at 0.30 ppm; horse, meat byproducts at 0.35 ppm; sheep, meat at 0.10 ppm; sheep, fat at 0.30 ppm and sheep, meat byproducts at 0.35 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0246 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before September 29, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C),

Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall # 2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0246, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and record keeping requirements.

Dated: July 21, 2003.

James Jones,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.589 is added to read as follows:

§ 180.589 Boscalid; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the fungicide boscalid, 3-pyridinecarboxamide, 2-chloro-N-(4'-chloro[1,1'-biphenyl]-2-yl) in or on the following raw agricultural commodities:

Commodity	Parts per million
Almond hulls	3.0
Berries, group 13	3.5
Canola, refined oil	5.0
Canola, seed	3.5
Cucumber	0.20
Fruit, stone, group 12	1.7
Grape	3.5
Grape, raisin	8.5
Lettuce, head	6.5
Lettuce, leaf	11.0
Nut, tree, group 14	0.70
Peanut	0.05
Peanut, meal	0.15
Peanut, refined oil	0.15
Peppermint, tops	30.0
Pistachio	0.70
Spearmint, tops	30.0
Strawberry	1.2
Sunflower, seed	0.60
Vegetable, Brassica leafy, head and stem, subgroup 5A	3.0
Vegetable, Brassica leafy, leafy greens, subgroup 5B	18.0
Vegetable, bulb, group 3	3.0
Vegetable, cucurbit, group 9, except cucumber	1.6
Vegetable, fruiting, group 8	1.2
Vegetable, legume, dried shell pea and bean (except soybean), subgroup 6C, except cowpea, field pea, and grain lupin	2.5
Vegetable, legume, edible podded, subgroup 6A	1.6
Vegetable, legume, succulent shelled pea and bean, subgroup 6B, except cowpea	0.6
Vegetable, root, subgroup 1A , except sugar beet, garden beet, radish, and turnip	0.7
Vegetable, tuberous and corm, subgroup 1C	0.05
Sheep, meat	0.10
Sheep, meat byproducts	0.35

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registration.* [Reserved]

(d) *Indirect or inadvertent residues.* Tolerances are established for residues of the fungicide boscalid, 3-pyridinecarboxamide, 2-chloro-N-(4'-chloro[1,1'-biphenyl]-2-yl) in or on the following raw agricultural commodities when present therein as a result of application of boscalid to the growing crops in paragraph (a)(1) of this section:

Commodity	Parts per million
Animal feed, nongrass, group 18, forage	1.0
Animal feed, nongrass, group 18, hay	2.0
Animal feed, nongrass, group 18, seed	0.05
Beet, garden, roots	1.0
Beet, sugar, roots	1.0
Cotton, gin byproducts	0.30
Cotton, undelinted seed	0.05
Cowpea, seed	0.1
Flax seed	3.5
Grain, cereal, forage, fodder and straw, group 16, fodder	1.5
Grain, cereal, forage, fodder and straw, group 16, forage	2.0
Grain, cereal, forage, fodder and straw, group 16, straw	3.0
Grain, cereal, group 15	0.20
Grass, forage, fodder, and hay, group 17, forage	2.0
Grass, forage, fodder, and hay, group 17, hay	8.0
Grass, forage, fodder, and hay, group 17, seed screenings	0.20
Grass, forage, fodder, and hay, group 17, straw	0.30
Lupin, grain, grain	0.1
Pea, field, seed	0.1
Radish, roots	1.0
Rice, hulls	0.50
Soybean, hulls	0.20
Soybean, seed	0.10
Turnip, roots	1.0
Vegetable, leafy, group 4, except lettuce	1.0
Vegetable, legume, foliage, group 7, forage	1.5
Vegetable, legume, foliage, group 7, hay	2.0
Vegetable, legume, foliage, group 7, vines	0.05
Vegetable, root and tuber, leaves, group 2	1.0

(2) Tolerances are established for the combined residues of the fungicide boscalid, 3-pyridinecarboxamide, 2-chloro-N-(4'-chloro[1,1'-biphenyl]-2-yl) and metabolites 2-chloro-N-(4'-chloro-5-hydroxy-biphenyl-2-yl)nicotinamide and glucuronic acid conjugate of 2-chloro-N-(4'-chloro-5-hydroxy-biphenyl-2-yl)nicotinamide in or on the following food commodities:

Commodity	Parts per million
Cattle, fat	0.30
Cattle, meat	0.10
Cattle, meat byproducts	0.35
Egg	0.02
Goat, fat	0.30
Goat, meat	0.10
Goat, meat, byproducts	0.35
Hog, fat	0.10
Hog, meat	0.05
Hog, meat byproducts	0.10
Horse, fat	0.30
Horse, meat	0.10
Horse, meat byproducts	0.35
Milk	0.10
Poultry, fat	0.05
Poultry, meat	0.05
Poultry, meat, byproduct	0.10
Sheep, fat	0.30

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BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7537–5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste Final Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA (also, "the Agency" or "we" in this preamble) is granting petitions to exclude (or "delist") wastewater treatment plant sludge from conversion coating on aluminum generated by six automobile assembly facilities in the State of Michigan from the list of hazardous wastes. The facilities include three plants owned and operated by General Motors Corporation (GM) (Pontiac East-Pontiac, Hamtramck-Detroit, Flint Truck-Flint), one plant owned and operated by GM with an onsite wastewater treatment plant owned by the City of Lansing and operated by Trigen/Cinergy-USFOS of Lansing LLC (Lansing Grand River-Lansing), and two plants owned and operated by Ford Motor Company (Wixom Assembly Plant-Wixom, Michigan Truck/Wayne Integrated Stamping and Assembly Plant-Wayne).

Today's action conditionally excludes the petitioned wastes from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in a lined Subtitle D landfill which is permitted, licensed, or registered by a State to manage industrial solid waste. The exclusions were proposed on March 7, 2002 as part of an expedited process to evaluate these wastes under a pilot project developed with the Michigan Department of Environmental Quality (MDEQ). The rule also imposes testing conditions for wastes generated in the future to ensure that these wastes continue to qualify for delisting.

EFFECTIVE DATE: This rule is effective on July 30, 2003.

ADDRESSES: The RCRA regulatory docket for this final rule, number R5–MIECOS–03, is located at the U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, and is available for viewing from 8 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call Todd Ramaly at (312) 353–9317 for appointments. The public may copy material from the regulatory docket at $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this document, contact Todd Ramaly at the address above or at (312) 353–9317.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

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I. Background

A. What Is a Delisting Petition?

A delisting petition is a request from a generator to exclude waste from the list of hazardous wastes under RCRA regulations. In a delisting petition, the petitioner must show that waste generated at a particular facility does not meet any of the criteria for which EPA listed the waste as set forth in Title 40 Code of Federal Regulations (40 CFR) § 261.11 and the background document for the waste. In addition, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and must present sufficient information for us to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. (See 40 CFR 260.22, 42 U.S.C. 6921(f) and the background documents for a listed waste.)

Generators remain obligated under RCRA to confirm that their waste remains nonhazardous based on the hazardous waste characteristics even if EPA has "delisted" the wastes and to ensure that future generated wastes meet the conditions set.

B. What Regulations Allow a Waste To Be Delisted?

Under 40 CFR 260.20, 260.22, and 42 U.S.C. 6921(f), facilities may petition the EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. Specifically, 40 CFR 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268, and 273 of 40 CFR. 40 CFR 260.22 provides a generator the opportunity to petition the Administrator to exclude a waste on a "generator specific" basis from the hazardous waste lists.

II. The Expedited Process for Delisting

A. Why Was the Expedited Process Developed for This Waste?

Automobile manufacturers are adding aluminum to automobiles, which may result in increased fuel economy. However, when aluminum is conversion coated in the automobile assembly process, the resulting wastewater treatment sludge must be managed as EPA hazardous waste F019. A number of automotive assembly plants use a similar manufacturing process which generates a similar F019 waste likely to be nonhazardous. This similarity of manufacturing processes and the resultant wastes provides an opportunity for the automobile industry to be more efficient in submitting delisting petitions and EPA in evaluating them. Efficiency may be gained and time saved by using a standardized approach for gathering, submitting and evaluating data. Therefore, EPA, in conjunction with MDEQ, developed a pilot project to expedite the delisting process. This approach to making delisting determinations for this group of facilities is efficient while still being consistent with current laws and regulations and protective of human health and the environment.

By removing regulatory controls under RCRA, EPA is facilitating the use of aluminum in cars. EPA believes that incorporating aluminum in cars will be advantageous to the environment since lighter cars are capable of achieving better fuel economy.

B. What Is the Expedited Process To Delist F019?

The expedited process to delist F019 is an approach developed through a Memorandum of Understanding (MOU) with MDEQ for gathering and evaluating data in support of multiple petitions from automobile assembly plants. The expedited delisting process is applicable to wastes generated by automobile and light truck assembly plants in the State of Michigan which use a similar manufacturing process and generate similar F019 waste.

Based on available historical data and other information, the expedited process identified 70 constituents which might be of concern in the waste and provides that the F019 sludge generated by automobile assembly plants may be delisted if the levels of the 70 constituents do not exceed the allowable levels established for each constituent in this rulemaking. The maximum annual quantity of waste generated by any single facility which may be covered by an expedited delisting is 3,000 cubic yards, however, delisting levels were also proposed for smaller quantities of waste (1,000 and 2,000 cubic yards).

This expedited delisting process provides an opportunity for the automobile industry to be more efficient in preparing petitions and for the EPA to be more efficient in evaluating them.

III. EPA's Evaluation of These Petitions

A. What Information Was Submitted in Support of These Petitions?

Each facility submitted certification that its process was the same as the process described in the MOU with MDEQ. See 67 FR 10341, March 7, 2002. Each facility also submitted an assertion that its waste does not meet the criteria for which F019 waste was listed and there are no other factors which might cause the waste to be hazardous.

To support its petition, each facility collected 6 samples representing waste generated over 6 weeks. Each sample: (1) Was analyzed for total analyses of the 70 constituents of concern; (2) was analyzed for Toxicity Characteristic Leaching Procedure (TCLP), SW–846 Method 1311, analyses of the 70 constituents of concern; (3) was analyzed for oil and grease; (4) with more than 1% oil and grease was analyzed for leachable metals using the Extraction Procedure for Oily Wastes (OWEP), SW–846 Method 1330A, in lieu of Method 1311; (5) was analyzed for total constituent analyses for sulfide and cyanide; (6) was measured of pH and determination that waste is not corrosive (see 40 CFR 261.22); and (7) had a determination made that the waste was not reactive or ignitable. (See 40 CFR 261.21 and 40 CFR 261.23.) All sampling and analysis was done in accordance with the sampling and analysis plan which is an appendix to the MOU and is available in the docket for this rule. The data submitted included the appropriate QA/QC information as required in the sampling and analysis plan and was validated by a third party.

A few minor changes in the sampling approach were made prior to the sampling. Instead of sampling from six different roll-off boxes, which would have required multiple sampling events or long-term storage of full roll-off boxes, the facilities were allowed to fill 55-gallon drums with aliquots from each discharge from the filter press so that each drum represented a week's worth of sludge. All drums were then sampled on the same day shortly after the end of the six-week period. The maximum values of constituents detected in any sample of the waste water treatment plant sludge are summarized in the following table along with the maximum allowable concentrations in the waste. The table also includes the maximum allowable levels in groundwater, as evaluated by the Delisting Risk Assessment Software (DRAS). The groundwater levels used by DRAS are the more conservative of either the Safe Drinking Water Act Maximum Contaminant Level (MCL) or the value calculated by DRAS based on target risk levels.

Constituent	Maximum concentration detected and maximum allowable delisting level (DL)								Maximum allowable groundwater concentration (µg/L)
	Ford Wayne	Ford Wixom	GM LGR	DL (2,000 yd^3)	GM Hamtramck	GM Flint Truck	GM Pontiac	DL (3,000 yd^3)	
Constituents in Leachate (mg/L):									
acetone	0.39J	<0.1	<0.1	228	0.98	0.82	0.42	171	3,750
n-butyl alcohol	<0.2	<0.2	0.52	228	2.8	<1.0	<0.2	171	3,750
ethylbenzene	0.009	0.033	0.007	42.6	0.028	<0.01	0.003	31.9	700
formaldehyde	0.55	0.27	1.2	84.2	3	0.32	0.62	63	1,380
methyl ethyl ketone	<0.05	<0.05	<0.05	200	<0.13	0.6	<0.05	200	22,600
toluene	0.004	0.13	<0.1	60.8	<0.1	<0.1	<0.1	45.6	1,000
trichloroethene	<0.002	0.003	<0.002	0.304	<0.005	<0.01	<0.002	0.228	5.00
xylene	0.096	0.4	<0.05	608	0.23	<0.25	<0.05	456	10,000
bis (2ethylhexyl) phthalate	<0.1	<0.1	<0.1	0.0896	<0.1	<0.1	<0.1	0.0671	1.47
butyl benzyl phthalate	<0.1	<0.1	<0.1	92.9	0.013	<0.1	<0.1	69.6	1,450
naphthalene	<0.02	<0.02	<0.02	15	0.021	0.001	0.002	11.2	246
p-cresol	1.25	0.079	0.006	11.4	0.56	0.29	0.1	8.55	188
antimony	0.0088J	<0.5	<0.5	0.659	0.24	0.22	0.29	0.494	6.00
arsenic	0.0135J	0.23	0.008	0.3	0.0107	0.0071	0.0045	0.224	4.87
barium	0.59J	0.72	0.76	100	0.57	1.68	0.5	100	2,000
beryllium	<0.041	<0.005	<0.005	1.33	0.001	<0.029	<0.062	0.998	4.00
cadmium	0.016J	0.003J	0.015	0.48	0.007	0.014	0.16	0.36	5.00
chromium	0.031J	<0.05	0.043	4.95	0.056	0.53	0.28	3.71	100
cobalt	0.027J	0.009J	0.13	72.1	0.032	0.035	0.027	54	2,250
lead	0.14J	0.019J	<0.1	5	0.069	1.33	0.24	5	15.0
mercury	0.0002J	<0.0002	<0.0002	0.2	<0.0003	<0.0006	0.0004	0.2	2.00
nickel	33.4J	2.86	58.3	90.5	19	28.3	23.7	67.8	750
selenium	0.51J	<0.4	0.15	1.0	0.29	0.27	0.56	1.0	50.0
silver	0.022J	0.008J	0.019	5.0	<0.06	0.021	<0.088	5.0	187
thallium	0.0029J	<0.2	0.062	0.282	0.0014	<0.0178	0.0021	0.211	2.00
tin	6.31	<0.5	<0.5	721	19.7	9.3	16.6	540	22,500
vanadium	0.01J	<0.02	<0.02	67.6	0.008	0.017	0.03	50.6	263
zinc	6.495	0.87	23.9	998	74.1	17	5.43	673	11,300
Total Constituent Concentration in Waste (mg/kg):									
butanol	<2.5	<2.5	6.3	NS	20	22	9.8	NS	

Constituent	Maximum concentration detected and maximum allowable delisting level (DL)								Maximum allowable groundwater concentration (μg/L)
	Ford Wayne	Ford Wixom	GM LGR	DL (2,000 yd^3)	GM Hamtramck	GM Flint Truck	GM Pontiac	DL (3,000 yd^3)	
ethylbenzene	<0.5	1.5	0.62	NS	2.8	<0.5	<0.5	NS	
formaldehyde	11	5.3	24	669	60	6.4	12	535	
methyl chloride	<2.5	<2.5	0.84	3,720	<0.25	<0.25	<0.25	2,890	
methyl ethyl ketone	<2.5	<2.5	<2.5	NS	<2.5	25	<2.5	NS	
toluene	<0.5	<0.5	<0.5	NS	5.8	<0.5	1.5	NS	
xylene	2.1	11	3.3	NS	18	<1.5	<1.5	NS	
bis (2ethylhexyl) phthalate	32J	<15	18	NS	30	<15	<15	NS	
butyl benzyl phthalate	<75	<75	<38	NS	290	<75	<75	NS	
di-n-octyl phthalate	27J	<15	18	NS	31	<15	<15	NS	
p-cresol	23	<15	18	NS	<15	<15	<15	NS	
naphthalene	<15	<15	<7.5	NS	34	<15	<15	NS	
antimony	<100	<100	<30	NS	174	<20	<50	NS	
arsenic	12J	25	18	8,140	15	10	22	7,740	
barium	306	496	57	NS	253	694	139	NS	
beryllium	<1	1.3	<1	NS	<1	<1	<1	NS	
cadmium	<1	4.7	<1	NS	1.1	<1	1.1	NS	
chromium	48.5	92	758	NS	88	223	582	NS	
cobalt	2.6	4.1	5.1	NS	2.3	<1	5.1	NS	
lead	39.5	46	<10	NS	498	485	266	NS	
mercury	0.052	0.34	0.088	8.92	0.13	<0.1	0.04	6.34	
nickel	1,170	1,270	2,460	NS	551	520	901	NS	
selenium	<10	17	<20	NS	<20	<20	21	NS	
silver	<10	<10	<2	NS	1.9	<1	<8	NS	
thallium	<50	<50	<20	NS	<20	<20	<20	NS	
tin	156.5	154	2,120	NS	1,040	242	500	NS	
vanadium	<5	13	9	NS	25	6.7	19	NS	
zinc	9,810	2,660	6,230	NS	9,180	3,130	8,690	NS	
cyanide	<0.5	<0.5	0.68	NS	<0.5	11	0.76	NS	
sulfide	231	<10	<10	NS	529	69	296	NS	

NS—not specified.
J—the numerical value is an estimated quantity.
DL—delisting level.
<—not detected at the specified concentration.
Note.—These levels represent the highest constituent concentration found in any one sample and do not necessarily represent the specific levels found in one sample.

B. How Did EPA Evaluate the Information Submitted?

EPA compared the analytical results submitted by each facility to the maximum allowable levels calculated by the DRAS and set forth in the proposed rule (March 7, 2002, 67 FR 10341). All constituents compared favorably to the allowable levels, although acrylamide, arsenic, antimony and thallium required supplemental analyses to determine that they were not present at levels which would pose a threat.

Acrylamide: Samples were initially analyzed for acrylamide using SW–846 Method 8316. The levels reported using method 8316 were in excess of the delisting levels, although the data validation report stated that this analytical method was not sufficiently selective for acrylamide in the sludge. Acrylamide is a trace contaminant in the flocculant-aide used at waste water treatment plants. The facilities submitted a detailed mass balance which concluded that the maximum possible acrylamide that could be in the sludge would be much lower than the reported detections. Rather than accept a mass balance in lieu of the reported analytical results, EPA required further supplemental analyses by a more sensitive method using SW–846 Method 8032A in Selected Ion Monitoring (SIM) mode. Four additional samples representing two days of waste were collected at each facility. No acrylamide was detected above the level of concern.

Arsenic, Thallium, and Antimony: Estimated levels of leachable arsenic reported in some samples exceeded the delisting level, while estimated levels of leachable thallium and antimony in some samples, resulted in an aggregate hazard index (HI) in excess of 1.0. Samples which were reanalyzed for these constituents using the more sensitive Method 6020 were well below the allowable levels both individually and in the aggregate. The sample from GM-Lansing Grand River was not reanalyzed for thallium and when combined with the nickel in these samples, the hazard index remained in excess of one at an annual volume of 3,000 cubic yards. To assure that the total HI remains below one, GM has requested that the annual volume of delisted waste at the Lansing Grand River plant be changed to 2,000 cubic yards, since the estimated risk from this waste decreases as the volume decreases.

Hexachlorobenzene, hexachlorobutadiene, pentachlorophenol, and 2,4 dinitrotoluene: The initial detection levels for these constituents were significantly higher than the allowable levels. To achieve lower detection levels for these constituents, samples from each facility were reanalyzed by Method 8270 using selective ion monitoring (SIM) mode. These constituents were not detected using this more sensitive method, although some detection levels were still above the allowable delisting level. We believe the analysis indicates these constituents are not present in the waste.

Methyl methacrylate: Ford did not analyze the samples for methyl methacrylate. For the annual volume which Ford will be disposing, the allowable concentration for methyl methacrylate is too high to be a practical concern.

IV. Public Comments Received on the Proposed Exclusion

A. Who Submitted Comments on the Proposed Rule?

The EPA received public comments on the proposed notice published on March 7, 2002 from Alliance of Automobile Manufacturers, Honda of America Mfg., Inc., Alcoa Inc., and The Aluminum Association. All commenters were supportive of the proposal and suggested expanding the project and revising the listing.

B. Comments Received and Responses from EPA

(1) EPA should revise the F019 listing to specify that wastewater treatment sludge from zinc phosphating operations is not within the scope of the listing. Data gathered as a result of the Expedited Delisting Project together with the available historical data, should provide enough data to fully characterize this waste and to justify a revision of the listing.

The Agency is now considering revising the F019 listing. EPA is examining the data collected as a result of this project, as well as past data, as a basis for a possible revision to the F019 listing.

(2) EPA should issue an interpretive rule clarifying that zinc phosphating operations are outside the scope of the F019 listing.

An interpretive rule presents administrative and technical difficulties. A revision to the listing will require a rulemaking process. See response to comment (1) above.

(3) Automobile assembly facilities outside of Michigan would like to take advantage of the precedent set by this expedited delisting project to delist F019 generated by similar operations in other states and regions.

The Agency believes that the expedited delisting procedures and requirements set forth in this proposal are appropriate for similar automotive assembly facilities outside the State of Michigan, subject to the discretion of the regulatory agency (state or region).

(4) Alternatives to landfilling like recycling should be allowed within the petition process.

The Agency does not delist wastes which are recycled because the model used to estimate risk is based only on disposal of waste in a Subtitle D landfill. The risk which might result from any other scenario is not evaluated by the delisting program. However, the Agency encourages safe recycling, and variances and exclusions from the definition of solid and hazardous wastes are available for wastes which are recycled.

(5) Analytical methods should be specified in the pre-approved common sampling plan instead of requiring each participant to submit a site-specific list of methods.

Allowing the petitioner to choose an analytical method which meets the data quality objectives specific to the delisting petition provides flexibility. Data quality objectives will vary depending on the allowable levels which are a function of the volume of petitioned waste. The Agency believes that the flexibility of performance based methods results in better data.

(6) Detection limits should not be required prior to sampling since they cannot be adequately predicted without a way to estimate matrix effects.

Although matrix effects cannot be assessed in advance of laboratory analysis, a laboratory should be able to provide estimated detection levels and reporting levels which are lower than, or at least equal to, the allowable delisting level for each constituent.

(7) Since the process generating the sludge is extremely stable, verification sampling should be conducted on an annual, instead of quarterly, basis. The requirement that any process change be promptly reported and the exclusion suspended until EPA gives written approval that the delisting can continue is an adequate safeguard justifying the decrease in sample event frequency.

Verification data submitted in conjunction with past delistings of this waste have shown significant variation on a quarterly basis over longer periods of time. Annual sampling would not detect such variations. Once enough verification data are collected to support a statistical analysis, a change in the frequency of verification sampling and/or sampling parameters may be considered.

(8) The final **Federal Register** should make it clear that assembly plants that manufacture light trucks are also eligible for the project.

Today's notice specifically defines eligible facilities as inclusive of manufacturers of light trucks.

(9) The table of maximum allowable levels in the March 7, 2002 proposed rule contains errors in the columns for vinyl chloride.

The error was caused by a missing space or tab in the table. Although vinyl chloride was not detected in the waste at any of the six facilities, the maximum allowable concentrations proposed for 1,000 cubic yards of waste should have been a total of 178 milligrams per kilogram (mg/kg) and 0.00384 milligrams per liter (mg/L) in the TCLP. For 2,000 cubic yards of waste, 115 mg/kg total and 0.00234 mg/L TCLP were proposed. For 3,000 cubic yards of waste, 89.4 mg/kg total and 0.00175 mg/L TCLP were proposed.

V. Final Rule Granting these Petitions

A. What Decision Is EPA Finalizing?

Today the EPA is finalizing exclusions to conditionally delist wastewater treatment plant sludge from conversion coating on aluminum generated at the following facilities: (1) General Motors Corporation, Pontiac East Plant, in Pontiac, Michigan (3,000 cubic yards annually); (2) General Motors Corporation, Hamtramck Plant, in Detroit, Michigan (3,000 cubic yards annually); (3) General Motors Corporation, Flint Truck, in Flint, Michigan (3,000 cubic yards annually); (4) General Motors Corporation, City of Lansing, and Trigen/Cinergy-USFOS of Lansing LLC, Lansing Grand River Plant, in Lansing, Michigan (2,000 cubic yards annually); (5) Ford Motor Company, Wixom Assembly Plant, in Wixom, Michigan (2,000 cubic yards annually); and (6) Ford Motor Company, Michigan Truck/Wayne Integrated Stamping and Assembly Plant, in Wayne, Michigan (2,000 cubic yards annually).

On March 7,2002, EPA proposed to exclude or delist these wastewater treatment sludges from the list of hazardous wastes in 40 CFR 261.31 and accepted public comment on the proposed rule (67 FR 10341). EPA considered all comments received, and for reasons stated in both the proposal and this document, we believe that these wastes should be excluded from hazardous waste control.

B. What Are the Terms of This Exclusion?

The facilities must dispose of the waste in a lined Subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial waste. The facilities must verify on a quarterly basis that the concentrations of the constituents of concern do not exceed the allowable levels set forth in this exclusion by obtaining and analyzing a representative sample of the waste according to the current waste analysis plan modified to include the improved methodologies discussed in section III. B.

The list of constituents for verification is a subset of those initially tested for and is based on the occurrence of

constituents at the majority of facilities and the concentrations relative to the allowable levels. Since all the facilities include significant amounts of nickel in the leachate and nickel combines with thallium targeting the liver and cadmium targeting the kidney, the total hazard index from nickel and thallium combined and/or nickel and cadmium combined shall not exceed 1.0.

This exclusion applies only to the maximum annual volumes cited in section V.A. of this preamble and is effective only if all conditions contained in this rule are satisfied.

C. When Is the Delisting Effective?

This rule is effective July 30, 2003. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This rule reduces rather than increases the existing requirements and, therefore, is effective immediately upon publication under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

D. How Does This Action Affect the States?

Today's exclusion is being issued under the federal RCRA delisting program. Therefore, only states subject to federal RCRA delisting provisions would be affected. This exclusion is not effective in states which have received authorization to make their own delisting decisions. Also, the exclusion may not be effective in states having a dual system that includes federal RCRA requirements and their own requirements. EPA allows states to impose their own regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the state. Because a dual system (that is, both federal (RCRA) and state (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the state regulatory authority to establish the status of their wastes under the state law.

EPA has also authorized some states to administer a delisting program in place of the federal program, that is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states. If a participating facility transports the petitioned waste to or manages the waste in any state with delisting authorization, it must obtain a delisting from that state before it can manage the waste as nonhazardous in the state.

VI. Regulatory Impact

Under Executive Order 12866 (58 FR 51735, October 4, 1993), these rules are not of general applicability and therefore are not regulatory actions subject to review by the Office of Management and Budget. Because these rules are each of particular applicability relating to a particular facility, they are not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because each of the rules will affect only a particular facility, each rule will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of tribal governments, as specified in Executive Order 13175 (65 FR 67249, November 6, 2000). For the same reason, each rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). These rules also are not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because they are not economically significant.

These rules do not involve technical standards; thus, the requirements of section 12(c) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing these rules, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. These rules do not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. Congressional Review Act

The Congressional Review Act (5 U.S.C. 801 *et seq.*) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing these rules and other required information to the U.S. Senate, the U.S. House of Representatives, the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. Each of these rules is not a "major rule" as defined by 5 U.S.C. 804(2). These rules will become effective on the date of publication in the **Federal Register**.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, and Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: July 21, 2003.

Margaret M. Guerriero,

Acting Director, Waste, Pesticides and Toxics Division.

■ For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

■ 2. In Table 1 of Appendix IX of part 261 the following wastestreams are added in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility and address	Waste description
Ford Motor Company, Michigan Truck Plant and Wayne Integrated Stamping and Assembly Plant. —Wayne, Michigan	Waste water treatment plant sludge, F019, that is generated by Ford Motor Company at the Wayne Integrated Stamping and Assembly Plant from wastewaters from both the Wayne Integrated Stamping and Assembly Plant and the Michigan Truck Plant, Wayne, Michigan at a maximum annual rate of 2,000 cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of July 30, 2003. 1. Delisting Levels: (A) The TCLP concentrations measured in any sample may not exceed the following levels (mg/L): Antimony—0.659; Arsenic—0.3; Cadmium—0.48; Chromium—4.95; Lead—5; Nickel—90.5; Selenium—1; Thallium—0.282; Tin—721; Zinc—898; p-Cresol—11.4; and Formaldehyde—84.2. (B) The total concentrations measured in any sample may not exceed the following levels (mg/kg): Mercury—8.92; and Formaldehyde—689. (C) The sum of the ratios of the TCLP concentrations to the delisting levels for nickel and thallium and for nickel and cadmium shall not exceed 1.0. 2. Quarterly Verification Testing: To verify that the waste does not exceed the specified delisting levels, the facility must collect and analyze one waste sample on a quarterly basis. 3. Changes in Operating Conditions: The facility must notify the EPA in writing if the manufacturing process, the chemicals used in the manufacturing process, the treatment process, or the chemicals used in the treatment process significantly change. The facility must handle wastes generated after the process change as hazardous until it has demonstrated that the wastes continue to meet the delisting levels and that no new hazardous constituents listed in appendix VIII of part 261 have been introduced and it has received written approval from EPA. 4. Data Submittals: The facility must submit the data obtained through verification testing or as required by other conditions of this rule to both U.S. EPA Region 5, Waste Management Branch (DW–8J), 77 W. Jackson Blvd., Chicago, IL 60604 and MDEQ, Waste Management Division, Hazardous Waste Program Section, at P.O. Box 30241, Lansing, Michigan 48909. The quarterly verification data and certification of proper disposal must be submitted annually upon the anniversary of the effective date of this exclusion. The facility must compile, summarize, and maintain on site for a minimum of five years records of operating conditions and analytical data. The facility must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12). 5. Reopener Language—(a) If, anytime after disposal of the delisted waste, the facility possesses or is otherwise made aware of any data (including but not limited to leachate data or groundwater monitoring data) relevant to the delisted waste indicating that any constituent is at a level in the leachate higher than the specified delisting level, or is in the groundwater at a concentration higher than the maximum allowable groundwater concentration in paragraph (e), then the facility must report such data, in writing, to the Regional Administrator within 10 days of first possessing or being made aware of that data. (b) Based on the information described in paragraph (a) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (c) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify the facility in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. The facility shall have 30 days from the date of the Regional Administrator's notice to present the information. (d) If after 30 days the facility presents no further information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise. (e) Maximum Allowable Groundwater Concentrations (ug/L): Antimony—6; Arsenic—4.87; Cadmium—5; Chromium—100; Lead—15; Nickel—750; Selenium—50; Thallium—2; Tin—22,500; Zinc—11,300; p-Cresol—188; and Formaldehyde—1,380.
Ford Motor Company, Wixom Assembly Plant: —Wixom, Michigan	Waste water treatment plant sludge, F019, that is generated by Ford Motor Company at the Wixom Assembly Plant, Wixom, Michigan at a maximum annual rate of 2,000 cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR Part 258. The exclusion becomes effective as of July 30, 2003. The conditions in paragraphs (2) through (5) for Ford Motor Company—Michigan Truck Plant and Wayne Integrated Stamping Plant—Wayne, Michigan also apply. Delisting Levels: (A) The TCLP concentrations measured in any sample may not exceed the following levels (mg/L): Antimony—0.659; Arsenic—0.3; Cadmium—0.48; Chromium—4.95; Lead—5; Nickel—90.5; Selenium—1; Thallium—0.282; Tin—721; Zinc—898; p-Cresol—11.4; and Formaldehyde—84.2. (B) The total concentrations measured in any sample may not exceed the following levels (mg/kg): Mercury—8.92; and Formaldehyde—689. (C) The sum of the ratios of the TCLP concentrations to the delisting levels for nickel and thallium and for nickel and cadmium shall not exceed 1.0.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility and address	Waste description
General Motors Corporation, Flint Truck: —Flint, Michigan	Waste water treatment plant sludge, F019, that is generated by General Motors Corporation at Flint Truck, Flint, Michigan at a maximum annual rate of 3,000 cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of July 30, 2003. The conditions in paragraphs (2) through (5) for Ford Motor Company—Michigan Truck Plant and Wayne Integrated Stamping Plant—Wayne, Michigan also apply. Delisting Levels: (A) The TCLP concentrations measured in any sample may not exceed the following levels (mg/L): Antimony—0.494; Arsenic—0.224; Cadmium—0.36; Chromium—3.71; Lead—5; Nickel—67.8; Selenium—1; Thallium—0.211; Tin—540; Zinc—673; p-Cresol—8.55; and Formaldehyde—63. (B) The total concentrations measured in any sample may not exceed the following levels (mg/kg): Mercury—6.34; and Formaldehyde—535. (C) The sum of the ratios of the TCLP concentration to the delisting level for nickel and thallium and for nickel and cadmium shall not exceed 1.0.
General Motors Corporation, Hamtramck: —Detroit, Michigan	Waste water treatment plant sludge, F019, that is generated by General Motors Corporation at Hamtramck, Detroit, Michigan at a maximum annual rate of 3,000 cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of July 30, 2003. The conditions in paragraphs (2) through (5) for Ford Motor Company—Michigan Truck Plant and Wayne Integrated Stamping Plant—Wayne, Michigan also apply. A maximum allowable groundwater concentration of 3,750 μg/L for n-butyl alcohol is added to paragraph (5)(e). Delisting Levels: (A) The TCLP concentrations measured in any sample may not exceed the following levels (mg/L): Antimony—0.494; Arsenic—0.224; Cadmium—0.36; Chromium—3.71; Lead—5; Nickel—67.8; Selenium—1; Thallium—0.211; Tin—540; Zinc—673; p-Cresol—8.55; Formaldehyde—63; and n-Butyl alcohol—171. (B) The total concentrations measured in any sample may not exceed the following levels (mg/kg): Mercury—6.34; and Formaldehyde—535. (C) The sum of the ratios of the TCLP concentration to the delisting level for nickel and thallium and for nickel and cadmium shall not exceed 1.0.
General Motors Corporation, Pontiac East: —Pontiac, Michigan	Waste water treatment plant sludge, F019, that is generated by General Motors Corporation at Pontiac East, Pontiac, Michigan at a maximum annual rate of 3,000 cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR part 258. The exclusion becomes effective as of July 30, 2003. The conditions in paragraphs (2) through (5) for Ford Motor Company—Michigan Truck Plant and Wayne Integrated Stamping Plant—Wayne, Michigan also apply. Delisting Levels: (A) The TCLP concentrations measured in any sample may not exceed the following levels (mg/L): Antimony—0.494; Arsenic—0.224; Cadmium—0.36; Chromium—3.71; Lead—5; Nickel—67.8; Selenium—1; Thallium—0.211; Tin—540; Zinc—673; p-Cresol—8.55; and Formaldehyde—63. (B) The total concentrations measured in any sample may not exceed the following levels (mg/kg): Mercury—6.34; and Formaldehyde—535. (C) The sum of the ratios of the TCLP concentrations to the delisting levels for nickel and thallium and for nickel and cadmium shall not exceed 1.0.
Trigen/Cinergy-USFOS of Lansing LLC at General Motors Corporation, Lansing Grand River: —Lansing, Michigan	Waste water treatment plant sludge, F019, that is generated at General Motors Corporation's Lansing Grand River (GM-Grand River) facility by Trigen/Cinergy-USFOS of Lansing LLC exclusively from wastewaters from GM-Grand River, Lansing, Michigan at a maximum annual rate of 2,000 cubic yards per year. The sludge must be disposed of in a lined landfill with leachate collection, which is licensed, permitted, or otherwise authorized to accept the delisted wastewater treatment sludge in accordance with 40 CFR Part 258. The exclusion becomes effective as of July 30, 2003. The conditions in paragraphs (2) through (5) for Ford Motor Company—Michigan Truck Plant and Wayne Integrated Stamping Plant—Wayne, Michigan also apply. Delisting Levels: (A) The TCLP concentrations measured in any sample may not exceed the following levels (mg/L): Antimony—0.659; Arsenic—0.3; Cadmium—0.48; Chromium—4.95; Lead—5; Nickel—90.5; Selenium—1; Thallium—0.282; Tin—721; Zinc—898; p-Cresol—11.4; and Formaldehyde—84.2. (B) The total concentrations measured in any sample may not exceed the following levels (mg/kg): Mercury—8.92; and Formaldehyde—689. (C) The sum of the ratios of the TCLP concentrations to the delisting levels for nickel and thallium and for nickel and cadmium shall not exceed 1.0.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261 and 279

[RCRA–1998–0015; FRL–7537–4]

RIN 2050–AF07

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Today's final rule eliminates drafting errors and ambiguities in the used oil management standards. Specifically, this rule clarifies when used oil contaminated with polychlorinated biphenyls (PCBs) is regulated under the RCRA used oil management standards and when it is not; that mixtures of conditionally exempt small quantity generator (CESQG) waste and used oil are subject to the RCRA used oil management standards irrespective of how that mixture is to be recycled; and that the initial marketer of used oil that meets the used oil fuel specification need only keep a record of a shipment of used oil to the facility to which the initial marketer delivers the used oil.

DATES: This final rule will become effective on September 29, 2003.

ADDRESSES: Public comments and supporting materials are available for viewing in the EPA Docket Center, located at 1301 Constitution Avenue, NW, Washington, DC. The Docket ID Number is RCRA–1998–0015. The index and some supporting materials are available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Call Center at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323.

For more detailed information on specific aspects of this rulemaking, contact Mike Svizzero by mail at Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460, by phone at (703) 308–0046, or by Internet e-mail at *svizzero.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

EPA has established an official public docket for this action under Docket ID No. RCRA–1998–0015. The official public docket is the collection of materials that is available for public viewing at the OSWER Docket in the EPA Docket Center (EPA/DC), EPA West Building, Room B102, 1301 Constitution Ave NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0270.

You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above. Once in the system, select "search" and then key in the appropriate docket identification number.

Outline of Today's Document

I. Authority
II. Background and Regulatory Amendments
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  B. Mixtures of CESQG Waste and Used Oil
  C. Clarification of the Recordkeeping Requirements for Marketers of On-Specification Used Oil
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IV. Statutory and Executive Order Reviews
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V. Effective Date

I. Authority

These regulations are issued under the authority of sections 1004, 1006, 2002(a), 3001 through 3007, 3010, 3013, 3014, 3016 through 3018, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and as amended by the Used Oil Recycling Act, as amended, 42 U.S.C. 6901, 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937 through 6939 and 6974.

II. Background and Regulatory Amendments

Today's final rule reinstates, with some modifications, three amendments to the RCRA used oil management standards of 40 CFR Part 279. These amendments were issued on May 6, 1998 as a direct final rule, but were retracted on July 14, 1998 because of adverse public comment to the amendments (see 63 FR 24963 and 63 FR 25006). One of the withdrawn amendments, applicability of the used oil management standards to PCB contaminated used oil, was a clarification of the applicability of the RCRA used oil management standards to PCB contaminated used oil. This clarification was undertaken as part of a settlement agreement to resolve a lawsuit challenging a final rule promulgated on May 3, 1993, (58 FR 26420) regarding EPA's used oil regulations. *Edison Electric Institute* v. *U.S. EPA* (D.C. Circuit No. 93–1474). Specifically, the May 1993 rule corrected technical errors and provided clarifying amendments to the used oil management standards promulgated on September 10, 1992 (57 FR 41566). The other amendments reinstated today clarify (1) that mixtures of conditionally exempt small quantity generator (CESQG) waste and used oil are subject to the used oil management standards irrespective of how that mixture is to be recycled and (2) that the initial marketer of used oil that meets the used oil fuel specification need only keep a record of a shipment of used oil to the facility to which the initial marketer delivers the used oil.

A. Applicability of the Used Oil Management Standards to PCB Contaminated Used Oil

Today's rule amends 40 CFR 279.10(i) to clarify the applicability of the RCRA used oil management standards to used oil containing PCBs. The amendment clarifies that used oil that contains less than 50 ppm of PCBs is generally subject to regulation under the RCRA used oil management standards. However, the amendment notes that the

Toxic Substances Control Act (TSCA) prohibition against the dilution of PCB concentrations below regulatory thresholds (40 CFR 761.1(b)(5)) applies to the dilution of PCB-containing used oil. Used oil, therefore, that contains, or contained prior to dilution, 50 ppm or greater of PCBs is not subject to regulation under the RCRA used oil management standards, because the TSCA regulations at 40 CFR Part 761 provide comprehensive management of such used oil.

For used oil that contains PCB concentrations of 2 ppm or greater, but less than 50 ppm (other than those diluted to below 50 ppm), TSCA regulates the burning of used oil for energy recovery at 40 CFR 761.20(e). Such used oil is also regulated under the RCRA used oil management standards at 40 CFR Part 279. Table 1 shows the applicability of the RCRA and TSCA regulations as they pertain to used oil containing PCBs that is to be burned for energy recovery. Please note, under the TSCA regulations at 40 CFR 761.20(e)(2), used oil that is to be burned for energy recovery is presumed to contain 2 ppm or greater of PCBs unless shown otherwise by testing or other information. Used oil that is to be burned for energy recovery and has been shown to contain less than 2 ppm PCBs (if it has not been diluted) is subject to record keeping and retention requirements under TSCA (40 CFR 761.20(e)(2), (e)(4)) and is regulated under the RCRA used oil management standards. TSCA regulations prohibit the burning for energy recovery of used oil that contains (or contained prior to dilution) PCB concentrations of 50 ppm or greater (40 CFR 761.20(a)).

TABLE 1.—REGULATION OF USED OIL CONTAINING PCBS THAT IS TO BE BURNED FOR ENERGY RECOVERY UNDER 40 CFR PART 279 (RCRA REGULATIONS) AND 40 CFR PART 761 (TSCA REGULATIONS).

Range of PCB contamination levels in used oil (ppm)	Does RCRA regulate this used oil if it is to be burned for energy recovery? [b]	Does TSCA regulate this used oil if it is to be burned for energy recovery? [b]
Demonstrated to contain less than 2	Yes (part 279)	Yes (761.20(e)(2), (e)(4)).[a]
2 to less than 50	Yes (part 279)	Yes (761.20(e)).
50 and greater	No (part 279)	Yes (prohibited) (761.60).

[a] Used oil that is to be burned for energy recovery is presumed to contain 2 ppm or greater of PCBs unless shown otherwise by testing or other information. TSCA imposes record keeping and retention requirements.

[b] Assumes no dilution. No person may avoid any provision under TSCA specifying a PCB concentration by diluting the PCBs, unless otherwise provided. See 40 CFR 761.1(b)(5).

Used oil containing less than 50 ppm PCBs that is recycled in a manner other than being burned for energy recovery is generally excluded from TSCA requirements except where: (1) Used oil was diluted to below 50 ppm PCBs, or (2) the PCB containing used oil or source of the PCB-containing used oil to be recycled was not legally manufactured, processed, distributed in commerce or used under TSCA. See 40 CFR 761.3 (definition of "excluded PCB products"); 761.20(a)(1); and 761.20(c). However, 40 CFR 761.20(d) of the TSCA regulations prohibits the use of used oil that contains any detectable concentration of PCBs as a sealant, coating, or dust control agent. This prohibition specifically includes road oiling and general dust control. Use of used oil as a dust suppressant is also prohibited under RCRA except in a state that has received authorization from EPA to allow use of used oil as a dust suppressant. Currently no states have received such authorization. In the event that a state were authorized to use used oil as a dust suppressant pursuant to 40 CFR 279.82, the prohibition in 40 CFR 761.20(d) would still apply, however.

Dilution of PCB-Containing Used Oil

The Agency received comment on the May 6, 1998 proposal (63 FR 24963) related to the applicability of the dilution prohibition of 40 CFR 761.1(b)(5) to used oil that contains PCBs. One commenter raised a concern that the May 6, 1998 proposal was unclear as to how PCB-contaminated used oils that have been diluted (below either the 50 ppm or 2 ppm TSCA PCB regulatory thresholds) are regulated.

Used oil that contains PCBs may not be diluted under TSCA to avoid a particular regulatory requirement unless otherwise specifically provided by the TSCA regulations. The TSCA PCB regulations at 40 CFR 761.1(b)(5) prohibit the dilution of PCBs to avoid regulatory requirements. This prohibition is repeated in the definition of "excluded PCB products" in 40 CFR 761.3. Accordingly, used oil that contained PCB concentrations greater than or equal to 50 ppm and that was subsequently diluted to a concentration of less than 50 ppm PCBs, is still regulated under TSCA as used oil that contains a PCB concentration of 50 ppm or greater. This diluted used oil is subject to comprehensive management under TSCA and, therefore, is not regulated under the RCRA used oil management standards. Likewise, used oil that contained a maximum PCB concentration of 2 ppm or greater, but less than 50 ppm, which is subsequently diluted to a concentration of less than 2 ppm, is still regulated under TSCA as used oil that contains a concentration greater than 2 ppm PCBs. (Note, however, that used oils of unknown concentration can be mixed with other such used oils in a common container and subsequently tested to determine if it is less than 2 ppm PCB. See 40 CFR 761.20(e)(2) and 761.60(g)(2)).

The TSCA regulations do allow, however, for the decontamination of used oil at PCB concentrations of 50 ppm or greater to a concentration below 2 ppm if specified decontamination methods (*e.g.*, filtering) are used. Such decontaminated used oil is exempt from most TSCA management standards (other than 40 CFR 761.20(e)(2), (e)(4) and 761.79(f)) and is regulated under the RCRA used oil management standards. See 40 CFR 761.79(a)(3) and 761.79(b).

Applicability of the Used Oil Fuel Specification to PCB-Containing Used Oil

There has been confusion in the regulated community that the presence of PCBs in used oil is one of the criteria for determining whether a used oil fuel subject to the RCRA used oil management standards meets the fuel specification standard such that it may be burned for energy recovery without further regulation under RCRA. In fact, one of the comments received in response to the May 6, 1998 proposal implied that used oil that contains PCB concentrations of 2 ppm or greater, but less than 50 ppm is off-specification used oil due to its PCB content. This is incorrect. As described above, the concentration of PCBs in used oil is relevant to determining whether a used oil is subject to the RCRA used oil management standards. However, for those used oils subject to the RCRA used oil management standards, the presence of PCBs is not one of the criteria for determining whether a used oil fuel meets the used oil fuel specification.

However, used oil that contains PCB concentrations of 2 ppm or greater, but less than 50 ppm, and is burned for energy recovery is also subject to requirements under the TSCA PCB regulations, specifically 40 CFR 761.20(e). These TSCA requirements incorporate by reference certain RCRA Part 279 "off-specification" used oil requirements. (See the discussion below for an explanation of the regulation of PCB-containing used oil that is burned for energy recovery.)

RCRA Requirements

The RCRA used oil specification criteria are set forth at 40 CFR 279.11. The specification criteria establish which used oil fuels may be burned in nonindustrial burners without regulation under RCRA. The used oil fuel specification sets maximum allowable limits for arsenic, cadmium, chromium, lead, and total halogens, as well as a minimum flash point. Although the PCB regulations promulgated pursuant to TSCA are referenced in a note to Table 1 in § 279.11, the presence of PCBs in used oil is not one of the criteria for determining whether used oil that is to be burned for energy recovery meets the fuel specification for purposes of RCRA regulation.

Used oil that is to be burned for energy recovery and that meets the RCRA fuel specifications of § 279.11 ("on-specification" used oil) is not regulated under the authority of Part 279 provided that: (1) Certain conditions for used oil fuel marketers are met, and (2) the used oil is not mixed or contaminated with hazardous waste. (Applicable on-specification used oil fuel marketer requirements can be found at §§ 279.72, 279.73, and 279.74(b).) This is the case, notwithstanding that a used oil fuel may contain PCBs. Although the RCRA regulations do not identify the presence of PCBs in used oil as relevant to the determination of whether the used oil is on- or off-specification, the presence of PCBs in used oil is relevant for determining the applicability of the TSCA regulations for the burning of used oil.

TSCA Requirements

The TSCA rules (specifically, 40 CFR 761.20(e)(2)) establish a presumption that detectable quantities of PCBs are present in used oils to be burned for energy recovery. The presumption can be overcome if a marketer determines through testing or other specified procedures that the used oil fuel does not contain quantifiable levels (2 ppm) of PCBs. TSCA rules found at 40 CFR 761.20(a) also prohibit burning for energy recovery of used oil that contains (or contained prior to dilution) PCBs at concentrations of 50 ppm and greater. In addition, §§ 761.1(b)(5) prohibits dilution to attain PCB concentrations either below 50 ppm or below 2 ppm. (However, see decontamination provisions at 40 CFR 761.79(a)(3) and 761.79(b).)

The TSCA regulations establish requirements for the marketing and burning for energy recovery of used oils containing detectable quantities of PCBs at concentrations of 2 ppm or greater, but less than 50 ppm (40 CFR 761.20(e)). Some of these requirements are incorporations by reference of Part 279 requirements for the marketing and burning for energy recovery of off-specification used oil. Therefore, by operation of the TSCA rules, used oil that is on-specification under the RCRA rules may nevertheless be subject to certain requirements specified in the RCRA rules for off-specification used oil.

Specifically, for used oil burners, the TSCA rules reference some of the RCRA off-specification burner requirements of Part 279 Subpart G, including restrictions on burning, notification requirements, tracking requirements, certification requirements and record keeping requirements. (See 40 CFR 761.20(e)(3)–(4)). For used oil marketers, the TSCA rules, with limited exceptions, restrict marketing to qualified incinerators, to marketers who market off-specification used oils, and to off-specification burners as defined in the RCRA Part 279 regulations (See 40 CFR 761.20(e)(1)). The TSCA rules also reference the RCRA regulatory provisions for marketers in Part 279 Subpart H, including record retention, notification, tracking, and certification. The fact that the TSCA rules incorporate by reference these RCRA standards does not by itself mean that PCB-containing used oil is regulated under RCRA authority or that such used oil is off-specification as defined by Part 279.

B. Mixtures of CESQG Waste and Used Oil

Today's rule harmonizes the applicability of 40 CFR Part 261 and Part 279 to mixtures of conditionally exempt small quantity generator (CESQG) waste and used oil that are to be recycled. Specifically, the rule makes clear that mixtures of CESQG waste and used oil that are to be recycled are regulated as used oil under the used oil management standards.

Notwithstanding EPA's regulatory intent, the CESQG provision, 40 CFR 261.5(j), that references the applicability of the used oil management standards to mixtures of CESQG waste and used oil that are to be recycled, appears to limit the applicability of the used oil management standards to mixtures that are to be recycled by burning for energy recovery. Section 261.5(j), therefore, incorrectly suggests that mixtures of CESQG wastes and used oil that are to be recycled in a manner other than by burning for energy recovery, such as by re-refining, would not be subject to the used oil management standards. Indeed, because CESQG wastes are not regulated as hazardous wastes, § 261.5(j) would suggest that such mixtures that are re-refined would not be subject to regulation under RCRA Subtitle C or the used oil management standards.

The used oil management standards, however, apply to used oil to be recycled irrespective of what form of recycling is to be employed. By its terms, the presumption in 40 CFR 279.10(a) that used oil is to be recycled (such that used oil is presumptively subject to the used oil management standards, unless it is disposed or sent for disposal), encompasses any type of recycling. The recycling presumption does not, for instance, condition the applicability of the used oil management standards on whether used oil is recycled by burning for energy recovery or by re-refining. Since Part 279 applies to used oil that is to be recycled without regard to how the used oil is to be recycled, Part 279 also applies to mixtures of used oil and CESQG wastes that are to be recycledirrespective of how that mixture is to be recycled.

The apparent limitation contained in § 261.5(j), which would limit the applicability of the used oil management standards to mixtures to be burned for energy recovery, is an artifact of the pre-1992 used oil regulations at 40 CFR Part 266, which only regulated the burning of used oil. When the expanded used oil management standards were promulgated on September 10, 1992, the Agency inadvertently failed to amend § 261.5(j) to reflect the broader scope of the new Part 279. Indeed, the corresponding provision in Part 279 that addresses mixtures of CESQG wastes and used oil to be recycled, § 279.10(b)(3), does not contain the apparent limitation found in § 261.5(j) that would limit the

applicability of the used oil management standards to mixtures to be burned for energy recovery. Therefore, today's rule amends § 261.5(j) as it should have been amended in 1992 to reflect the greater scope of Part 279 and to eliminate any potential ambiguity over the applicability of the used oil management standards to mixtures of CESQG wastes and used oil to be recycled. This amendment does not impose additional regulatory requirements on this category of CESQG waste. These wastes have been and continue to be regulated under 40 CFR 279.10(b)(3).

The Agency received one comment opposing this amendment from a state in response to the May 6, 1998 proposal. The commenter stated that mixtures of conditionally exempt small quantity generator (CESQG) waste and used oil should only be regulated as used oil if it is to be recycled by burning for energy recovery. This comment opens up the merits of the original rule (§ 279.10(b)(3)) and that is not the intent of today's final rule. Today's final rule intends only to make certain conforming changes to § 261.5(j) to correctly reflect EPA's original intent in the September 10, 1992 Part 279 used oil management standards rule. EPA addressed the merits of the original rule in that previous rulemaking and EPA is not reopening that issue in this final rule. Even if EPA were to reopen this issue in today's rulemaking and to address the merits of this issue, EPA would come to the same conclusion as it did in the previous rulemaking. EPA is not aware of any reason for distinguishing used oil being burned for energy recovery from used oil being recycled in other ways, and the commenter did not provide any. Notwithstanding this clarification of the federal regulations, the state may regulate mixtures of CESQG waste and used oil more stringently than the federal used oil management program.

C. Clarification of the Recordkeeping Requirements for Marketers of On-Specification Used Oil

Today's rule amends 40 CFR 279.74(b) to clarify that the marketer who first claims that used oil that is to be burned for energy recovery meets the fuel specification (on-specification used oil) must only keep a record of a shipment of used oil to the facility to which the initial marketer delivers the used oil. The preamble to the November 29, 1985 rule (50 FR 49164 at 49189) clearly describes the agency's intent to only track on-specification used oil that is to be burned for energy recovery one step beyond the initial marketer. When these recordkeeping requirements were recodified at 40 CFR 279.74(b) (57 FR 41566, September 10, 1992), the regulations required that a marketer must keep a record of each shipment of used oil to an on-specification used oil burner. However, the marketer who first claims that used oil that is to be burned for energy recovery meets the fuel specification might choose not to market the used oil directly to an on-specification used oil burner (*i.e.* a non-industrial oil burner). Instead, the on-specification used oil might be marketed to a fuel oil distributor for subsequent sale as fuel oil. In this situation, § 279.74(b) could be interpreted to require the initial marketer of the on-specification used oil to keep a record of all subsequent shipments of that used oil until the on-specification used oil reaches a used oil burner. Today's rule clarifies that the initial marketer of on-specification used oil must only keep a record of a shipment of used oil to the facility to which the initial marketer delivers the used oil. The initial marketer need not keep a record of any subsequent transfers of this used oil. For example, the initial marketer would need to keep a record of a shipment of on-specification used oil to a fuel oil distributor, but the initial marketer would not need to keep records of shipments of this used oil from the fuel oil distributor to fuel oil burners or other fuel oil distributors.

The Agency received one comment opposing this amendment from a state in response to the May 6, 1998 proposal. The commenter was concerned that the proposed amendment does not require tracking of used oil that meets the used oil fuel specification to the point to which it is burned for energy recovery, and thus does not provide adequate protection. The Agency disagrees with this comment. This comment opens up the merits of the original November 29, 1985 rule and that is not the intent of today's rule. As with the issue above discussing mixtures of CESQG waste and used oil, the Agency is not reopening the merits of this issue, because the Agency addressed the merits of this issue in the preamble to the November 29, 1985 rule (50 FR 49164 at 49189). Today's amendment does not represent a change in the requirements, but only clarifies the Agency's intent that only the initial marketer of on-specification used oil must keep a record of each shipment of used oil to the facility to which it delivers the used oil. In the September 23, 1991 supplemental notice of proposed rulemaking (56 FR 48000), EPA did not propose to change the tracking requirements or the management requirements, originally promulgated in 1985 for used oil that meets the used oil fuel specification. In drafting the 1992 rule, EPA only intended to recodify the tracking requirements from the now superseded Part 266. It has always been the Agency's position that used oil that is to be burned for energy recovery that meets the used oil fuel specification is a commodity that will be properly handled like any other fuel. The Agency has always intended that used oil that is to be burned for energy recovery only be regulated under the Used Oil Management Standards until it has been determined to meet the used oil fuel specification. Once it has been determined to meet the fuel specification and the marketer complies with 40 CFR 279.72, 279.73, and 279.74(b), the used oil is no longer regulated by the Used Oil Management Standards. If the used oil is not burned for energy recovery and is recycled by other means or disposed, it is regulated as used oil under the Used Oil Management Standards. Even if the Agency were to address the merits of this issue, we would continue to take the position as we are taking in today's amendment, because, for the reasons discussed above, the Agency believes that the tracking requirements would provide adequate protection. The commenter has provided no new information or arguments that would lead us to change this long-standing position. Notwithstanding this clarification of the federal regulations, a state may regulate used oil more stringently than the federal used oil management program.

III. State Authority

Under section 3006 of RCRA, EPA may authorize a qualified State to administer and enforce a hazardous waste program within the State in lieu of the federal program, and to issue and enforce permits in the State. Following authorization, the state requirements authorized by EPA apply in lieu of equivalent Federal requirements and become Federally-enforceable as requirements of RCRA. EPA maintains independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. Authorized states also have independent authority to bring enforcement actions under state law.

A state may receive authorization by following the approval process described in 40 CFR part 271. Part 271 of 40 CFR also describes the overall standards and requirements for authorization. After a state receives initial authorization, new Federal regulatory requirements promulgated under the authority in the RCRA statute which existed prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that state until the state adopts and receives authorization for equivalent state requirements. The state must adopt such requirements to maintain authorization. In contrast, under RCRA section 3006(g), (42 U.S.C. 6926(g)), new Federal requirements and prohibitions imposed pursuant to HSWA provisions take effect in authorized states at the same time that they take effect in unauthorized States. Although authorized states still are required to update their hazardous waste programs to remain equivalent to the Federal program, EPA carries out HSWA requirements and prohibitions in authorized states, including the issuance of new permits implementing those requirements, until EPA authorizes the state to do so. Authorized states are required to modify their programs only when EPA promulgates Federal requirements that are more stringent or broader in scope than existing Federal requirements.

RCRA section 3009 allows the states to impose standards more stringent than those in the Federal program. See also 40 CFR 271.1(i). Therefore, authorized states are not required to adopt Federal regulations, either HSWA or non-HSWA, that are considered less stringent.

Today's rule corrects and clarifies the scope of certain regulatory requirements and is, therefore, considered to be no more stringent than the existing federal standards. Authorized States are only required to modify their programs when EPA promulgates federal regulations that are more stringent or broader in scope than the existing federal regulations. Therefore, States that are authorized for the used oil management standards are not required to modify their programs to adopt today's rule. However, EPA strongly urges States to do so.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden since it does not represent any change in requirements, but only clarifies the Agency's intent with respect to certain provisions in the Used Oil Management Standards. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (40 CFR Part 279) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0124 (EPA ICR No. 1286.06).

Copies of the ICR document(s) may be obtained from Susan Auby, by mail at the Office of Environmental Information, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, by email at *auby.susan@epa.gov*, or by calling (202) 260–4901. A copy may also be downloaded off the internet at *http://www.epa.gov/icr*. Include the ICR and/or OMB number in any correspondence.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that today's rule will not have a significant economic impact on a substantial number of small entities. Today's rule will not impact any small entity because it does not impose regulatory requirements or otherwise substantively change existing requirements. The rule eliminates drafting errors and ambiguities in the used oil management standards so as to clarify the Agency's intended result. Even if the rule were viewed as a change, the rule would result in lesser regulatory impact than under existing requirements.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private

sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector because it does not impose regulatory requirements or otherwise substantively change existing requirements. Today's rule eliminates drafting errors and ambiguities in the used oil management standards so as to clarify the Agency's intended result. Even if the rule were viewed as a change, the rule would result in lesser regulatory impact than under existing requirements. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. Similarly, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it does not impose regulatory requirements or otherwise substantively change existing requirements. Today's rule eliminates drafting errors and ambiguities in the used oil management standards so as to clarify the Agency's intended result. Even if today's rule were viewed as a change, it would result in lesser regulatory impact than under existing requirements. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." Today's rule does not have tribal implications, as specified in Executive Order 13175. Specifically, today's rule does not significantly or uniquely affect the communities of Indian tribal governments because it does not impose regulatory requirements or otherwise substantively change existing requirements. Today's rule eliminates drafting errors and ambiguities in the used oil management standards so as to clarify the Agency's intended result. Even if today's rule were viewed as a change, it would result in lesser regulatory impact than current requirements. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Children's Health

"Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions based on environmental health or safety risks.

H. Executive Order 13211: Energy Effects

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective September 29, 2003.

V. Effective Date

Because the regulated community does not need 6 months to come into compliance with this rule, EPA finds, pursuant to RCRA section 3010(b)(1), that this rule can be made effective in less than six months.

List of Subjects

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 279

Conditionally exempt small quantity generator (CESQG), Environmental protection, Hazardous waste, Polychlorinated biphenyls (PCBs), Solid waste, Recycling, Response to releases, Used oil, Used oil specification.

Dated: July 23, 2003.

Marianne L. Horinko,

Acting Administrator.

■ For the reasons set out in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

§ 261.5 [Amended]

■ 2. Section 261.5(j) is amended by removing both phrases, "if it is destined to be burned for energy recovery."

PART 279—STANDARDS FOR THE MANAGEMENT OF USED OIL

■ 1. The authority citation for part 279 continues to read as follows:

Authority: Sections 1006, 2002(a), 3001 through 3007, 3010, 3014, and 7004 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, and 6974); and Sections 101(37) and 114(c) of CERCLA (42 U.S.C. 9601(37) and 9614(c)).

■ 2. Section 279.10 is amended by revising paragraph (i) to read as follows:

§ 279.10 Applicability.

* * * * *

(i) *Used oil containing PCBs.* Used oil containing PCBs (as defined at 40 CFR 761.3) at any concentration less than 50 ppm is subject to the requirements of this Part unless, because of dilution, it is regulated under 40 CFR Part 761 as a used oil containing PCBs at 50 ppm or greater. PCB-containing used oil subject to the requirements of this Part may also be subject to the prohibitions and requirements found at 40 CFR Part 761, including § 761.20(d) and (e). Used oil containing PCBs at concentrations of 50 ppm or greater is not subject to the requirements of this Part, but is subject to regulation under 40 CFR Part 761. No person may avoid these provisions by diluting used oil containing PCBs, unless otherwise specifically provided for in this Part or Part 761 of this chapter.

■ 3. Section 279.74 is amended by revising paragraph (b) to read as follows:

§ 279.74 Tracking.

* * * * *

(b) *On-specification used oil delivery.* A generator, transporter, processor/re-refiner, or burner who first claims that used oil that is to be burned for energy recovery meets the fuel specifications under § 279.11 must keep a record of each shipment of used oil to the facility to which it delivers the used oil. Records for each shipment must include the following information:

(1) The name and address of the facility receiving the shipment;

(2) The quantity of used oil fuel delivered;

(3) The date of shipment or delivery; and

(4) A cross-reference to the record of used oil analysis or other information used to make the determination that the oil meets the specification as required under § 279.72(a).

* * * * *

[FR Doc. 03–19275 Filed 7–29–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021122286–3036–02; I.D. 072303B]

Fisheries of the Exclusive Economic Zone Off Alaska; Sablefish by Vessels Using Trawl Gear in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NationalOceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of sablefish by vessels using trawl gear in the Central Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of sablefish by vessels using trawl gear in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the allocation of the sablefish 2003 total allowable catch (TAC) assigned to trawl gear in this area has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 26, 2003, until 2400 hrs, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the

Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2003 TAC of sablefish for vessels using trawl gear in the Central Regulatory Area of the GOA was established as 1,288 metric tons (mt) by the final 2003 harvest specifications for groundfish in the GOA (68 FR 9924, March 3, 2003).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the allocation of the sablefish TAC assigned to trawl gear in the Central Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that further catches of sablefish by vessels using trawl gear in the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the prohibition of retention, lead to exceeding the 2003 TAC of sablefish assigned to vessels using trawl gear in the Central Regulatory Area of the GOA, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 23, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–19360 Filed 7–25–03; 2:05 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 030416087–3176–02; I.D. 032603C]

RIN 0648–AQ75

Fisheries of the Exclusive Economic Zone Off Alaska; Amendment of Eligibility Criteria for the Bering Sea and Aleutian Islands Management Area Pacific Cod Hook-and-Line and Pot Gear Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to amend eligibility criteria for Pacific cod endorsements to groundfish licenses issued under the License Limitation Program (LLP). These endorsements are necessary to participate in the Bering Sea and Aleutian Islands Management Area (BSAI) Pacific cod hook-and-line or pot gear fisheries with vessels greater than or equal to 60 feet (18.3 m) length overall (LOA). This action is necessary to allow additional participation in the BSAI Pacific cod hook-and-line or pot gear fisheries, as intended by the North Pacific Fishery Management Council (Council). The intended effect of this action is to prevent unnecessary restriction on participation in the BSAI Pacific cod hook-and-line or pot gear fisheries and to conserve and manage the Pacific cod resources in the BSAI in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Effective on August 29, 2003.

ADDRESSES: Copies of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) and the Final Regulatory Flexibility Analysis (FRFA) prepared for this action are available from NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall, telephone 907–586–7247. Copies of the Environmental Assessment (EA)/RIR/IRFA prepared for Amendment 67 and the 2002 Stock Assessment and Fishery Evaluation (SAFE) Report are available from the North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501; telephone 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, 907–586–7228, or email at *melanie.brown@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone of the BSAI under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area (FMP). The Council prepared the FMP under the authority of the Magnuson-Stevens Act. Regulations governing U.S. fisheries and implementing this FMP appear at 50 CFR parts 600 and 679.

Background

The background regarding this action is detailed in the preamble to the proposed rule published April 25, 2003 (68 FR 20360). Public comments on the proposed rule were invited through May 27, 2003. Background regarding the LLP may be found in the final rule implementing the LLP (63 FR 52642, October 1, 1998).

This action amends the regulatory language at § 679.4(k)(9)(iii)(F) to specify that a person who owns the qualifying harvest history of Pacific cod from a vessel, but who also owned a LLP-qualifying groundfish fishing history from a different vessel at the time the qualifying Pacific cod threshold harvests were made, is eligible for the Pacific cod endorsement on the person's LLP groundfish license. To prevent an increase in the number of LLP groundfish licenses, the regulations also are amended to restrict the LLP qualifying history and the Pacific cod qualifying history of any one vessel to no more than one LLP groundfish license endorsed for Pacific cod hook-and-line and/or pot gear fisheries. This amendment limits the number of vessels allowed to participate in the Pacific cod hook-and-line and/or pot gear fisheries, as intended by the Council in developing the LLP.

Comments

The only comment received on the proposed rule is summarized here.

Comment : The author of the comment supports the intent to allow additional participation in the BSAI Pacific cod hook-and-line and pot fisheries, but is concerned that part of the new regulatory amendment would be overly restrictive. The author states that the regulatory amendment would alter the effects of the existing exemptions for eligibility for a Pacific cod endorsement, including the hardship provisions. The language at § 679.4(k)(9)(iii)(F)(*3*) may be inconsistent with some circumstances of the hardship provision. The author stated that the hardship provisions allow Pacific cod harvested from a single vessel to be used to meet the eligibility criteria for a Pacific cod endorsement on more than one LLP license and that language at § 679.4(k)(9)(iii)(F)(3) may not allow for this application of the hardship provisions.

Response: NMFS has determined that the proposed regulatory language has no effect on the current exemptions for Pacific cod endorsement eligibility or on the "hardship" (unavoidable circumstance) provisions. The current regulation at § 679.4(k)(9)(v)(A) authorizes, in limited instances, the combination of qualifying harvests from a sunken vessel with harvests from a replacement vessel to satisfy the endorsement requirements. This final rule does not change that section. Section 679.4(k)(9)(v)(B), in very limited situations, allows the agency to make conjectures regarding qualifying harvests, for circumstances beyond the applicant's control, if an applicant can demonstrate on the record that qualifying harvests would have been made. This "hardship" provision is not affected by this final rule. This final rule simply clarifies, consistent with Council intent, that the fishing activities of one vessel may not give rise to Pacific cod endorsements on more than one LLP license.

Changes From the Proposed Rule

Section 679.4(k)(9)(iii)(F)(*2*) was changed in the final rule from the proposed rule to improve the clarity of the text. The phrase "by that vessel" was considered redundant and is removed. To clarify the type of endorsement-qualifying harvest history, the words "Pacific cod" were inserted before the text "endorsement-qualifying harvest." These changes provide clarity and are not substantial.

Classification

NMFS prepared a FRFA to evaluate the impact of this action on small entities, in accordance with the provisions of the Regulatory Flexibility Act of 1980, as modified by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 604(a)). The intentions of this action were explained in the preamble to the proposed rule (68 FR 20360, April 25, 2003).

An IRFA was prepared for the proposed rule and was described in the Classification section of the preamble to the proposed rule. The public comment period ended on May 27, 2003. No comments were received on the economic impacts of the proposed rule.

The entities regulated by this action are those that did not qualify for a Pacific cod endorsement under a final rule published on April 15, 2002 (67 FR 18129), and would qualify under the approach as proposed by the Council in October 2002. According to an analysis prepared to support the Council's October 2002 deliberations, six entities appear to be affected by this action. Two of these are freezer longliners (hook-and-line catcher-processor vessels); one is a pot catcher processor vessel and three are pot catcher vessels. The economic appendix to the 2002 SAFE Report (see **ADDRESSES**) indicates that 31 hook-and-line catcher processor vessels active in the BSAI harvesting of Pacific cod were worth less than $3.5 million each in 2001, while 14 harvesting of Pacific cod were worth more than $3.5 million each. All BSAI pot catcher processor vessels and pot catcher vessels are small entities. Thus, about two-thirds of the vessels in this class in the BSAI are small entities. All six entities were treated as small entities for the purpose of this analysis.

This regulation does not impose new recordkeeping or reporting requirements on the regulated small entities.

This action has no adverse economic impacts on these entities. Each of these six small entities would be allowed to claim additional annual harvests to qualify for the BSAI Pacific cod endorsements to the LLP.

A status quo alternative to the action was considered but not adopted. It does not achieve the stated objective of the Council for this action or reduce the potential adverse economic burden on the small entities identified as subject to direct regulation by this action.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: July 24, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For reasons set out in the preamble, 50 CFR part 679 is amended to read as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31; 113 Stat. 57; 16 U.S.C. 1540(f); and Sec. 209, Pub. L. 106–554.

■ 2. In § 679.4, paragraph (k)(9)(iii)(F) is revised to read as follows:

§ 679.4 Permits.

* * * * *

(k) * * *

(9) * * *

(iii) * * *

(F) Harvests within the BSAI Would count toward eligibility amounts in the table at paragraph (k)(9)(ii) of this section if:

(*1*) Those harvests were made from the vessel that was used as the basis of eligibility for the license holder's LLP groundfish license, or

(*2*) Those harvests were made from a vessel that was not the vessel used as the basis of eligibility for the license holder's LLP groundfish license, provided that, at the time the endorsement-qualifying Pacific cod harvests were made, the person who owned such Pacific cod endorsement-qualifying fishing history also owned the fishing history of a vessel that satisfied the requirements for the LLP groundfish license.

(*3*) Notwithstanding the provisions of paragraph (k)(9)(iii)(F)(*2*) of this section, the LLP groundfish license qualifying history or the Pacific cod qualifying history of any one vessel may not be used to satisfy the requirements for issuance of more than one LLP groundfish license endorsed for the BSAI Pacific cod hook-and-line or pot gear fisheries.

* * * * *

[FR Doc. 03–19425 Filed 7–29–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 146
Wednesday, July 30, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB75

Common Crop Insurance Regulations; Blueberry Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to add to 7 CFR part 457 a new § 457.166 that provides for the insurance of Blueberries. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions (Basic Provisions), which contain standard terms and conditions common to most crops. The intended effect of this action is to convert the blueberry pilot crop insurance program to a permanent insurance program administered by FCIC for the 2005 and succeeding crop years. In this rule the Risk Management Agency (RMA) particularly calls attention to, and solicits comments on the provisions contained in section 5, Cancellation and Termination Dates, and Section 7, Insurance Period, that were modified to accommodate year-round insurance coverage for blueberries.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business September 29, 2003 and will be considered when the rule is to be made final. The comment period for information collections under the Paperwork Reduction Act of 1995 continues through September 29, 2003.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133. Comments titled "Blueberry Crop Insurance Provisions" may be sent via the Internet to "*directorpdd@rm.fcic.usda.gov*." A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., CST Monday through Friday, except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: William Klein, Risk Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be Not-Significant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information for this rule have been previously approved by OMB under control number 0563–0053 through February 28, 2005.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13132

The provisions contained in this rule will not have a substantial direct effect on States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, no consultation with States is required.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. The availability of insurance for the current population of blueberry entities is limited to selected counties in nine pilot states that have significant blueberry production. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the Basic Provisions, every producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. This proposed rule does not alter those requirements. The amount of work required of insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC offered a pilot crop insurance program for blueberries beginning with the 1995 crop year in selected counties in Michigan, Mississippi, New Jersey, and North Carolina. In 1997 the pilot program was expanded to include two counties with lowbush blueberries in Maine, and in 1999 it was expanded to include five additional North Carolina counties. It was expanded to selected counties in Alabama, Florida, Georgia, and South Carolina for the 2000 crop year. For the 2002 crop year, blueberry crop insurance is available in selected counties in Alabama, Florida, Georgia, Maine, Michigan, Mississippi, New Jersey, North Carolina, and South Carolina.

The pilot program has provided a valuable risk management tool and has favorable insurance experience since the pilot program was initiated. The combined loss ratio from 1995 through the 2001 crop year has been approximately .40. The highest loss ratio for the pilot program was in 1996, at .77. Loss ratios for the other years of the pilot program were significantly lower, at .64 and below. The major causes of loss (accounting for approximately 76 percent of indemnities paid) from 1995 through 2001 were hail, freeze, frost, drought, and insufficient chilling hours.

FCIC has decided to convert the blueberry pilot program a permanent crop insurance program beginning with the 2005 crop year. To effectuate this conversion, FCIC proposes to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.166, Blueberry Crop Insurance Provisions effective for the 2005 and succeeding crop years. The blueberry pilot program is an actual production history (APH) insurance plan of multiple peril crop insurance. Insurance is provided against the standard causes of loss such as adverse weather, fire, etc., insufficient chilling hours to effectively break dormancy, and loss of quality. Unit division is limited to basic units, unless otherwise specified in the Special Provisions of Insurance. The Special Provisions allow optional units by type for the rabbiteye and highbush types in Alabama, Florida, Georgia, North Carolina, and South Carolina.

The overall participation rate has been approximately 56 percent. The number of policies earning premiums increased 77 percent from 1995 to 2001. Under the blueberry pilot crop insurance program, 2,291 policies and approximately 151,000 acres were insured for the 1995 through 2001 crop years.

During the pilot program, modifications were made to improve the loss adjustment procedures. Policy language was also added to accommodate insuring lowbush blueberry varieties, after the first two Maine counties with lowbush blueberries were added to the pilot program in 1997.

As a result of the pilot program experience and program reviews, several changes have been made to the pilot program and are incorporated in this proposed rule. The most significant changes are as follows: (1) Modified provisions to increase the number of days for insurance to attach from 10 to 20 days to allow time for companies to complete inspections; (2) added provisions to eliminate any lapse in insurance coverage between crop years to ensure that all insurable perils are covered; (3) added provisions to specify that if the insured policy is canceled or terminated for any crop year after insurance attached for that crop year, but on or before the cancellation and termination dates, whichever is later, then insurance will not be considered to have attached for that year and no premium, administrative fee, or indemnity will be due; (4) added provisions to clarify that an insurance provider may not cancel an insured's policy when an insured cause of loss has occurred after insurance attached, but prior to the cancellation and termination date; (5) added a provision that notifies the insured that they may be required to harvest a sample that the insurance provider selects for appraisal purposes to simplify the loss adjustment process; (6) added quality adjustment provisions for determining production to count for mature blueberries, harvested or unharvested, that have been damaged to the extent the blueberries cannot be sold for fresh or processing (If damaged blueberry production is sold, the production to count is determined by dividing the price received for the damaged blueberries by the applicable price election and multiplying that factor by the production sold); (7) added provisions to reduce the indemnity for affected acreage in a unit by the percentage of premium reduction specified in the Special Provisions for frost protection equipment if the insurance provider determines that the frost protection equipment was not properly utilized or not correctly reported.

The proposed provisions will be effective for the 2005 and succeeding crop years. These provisions will replace and supersede the current unpublished provisions that insure blueberries under pilot program status.

List of Subjects in 7 CFR Part 457

Crop insurance, Blueberry, Reporting and recordkeeping requirements.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. Section 457.166 is added to read as follows:

§ 457.166 Blueberry crop insurance provisions.

The Blueberry Crop Insurance Provisions for the 2005 and succeeding crop years are as follows:

FCIC policies:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Blueberry crop insurance provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Blueberry production—All mature harvested and appraised blueberries, excluding plant material and unsound blueberries eliminated during the inspection process by either wash or dry-line methods or field appraised in an equivalent manner, usually referred to as first net weight.

Direct marketing—Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, farmer's market, or permitting the general public to enter the field for the purpose of picking the crop.

Dry-line—A process by which the blueberries are run across a "sorting

belt" to allow for plant material to be blown off, the blueberries to be sized, and unsound blueberries to be removed mechanically by the belt or by hand.

Harvest—Picking mature blueberries from the bushes either by hand or machine.

Mechanical damage—Damage to the blueberries caused by machinery or tools.

Pound—Sixteen ounces avoirdupois.

Production guarantee (per acre)—The number of pounds determined by multiplying the approved yield per acre by the coverage level percentage you elect.

Prune—A cultural practice performed to increase blueberry production as follows:

(a) For lowbush blueberries, a process by which the acreage is either burned or mowed; and

(b) For all other blueberries, a process by which parts of the bush are cut off or the bush is cut back.

Unsound blueberries—Blueberry fruit that is not considered as blueberry production because it is undersized, immature, soft, overripe, damaged by insects, wildlife, disease, or mechanically damaged to the extent that the fruit is not marketable.

2. Unit Division

Notwithstanding section 34 of the Basic Provisions, blueberry acreage is limited to basic units as defined in section 1 of the Basic Provisions, unless otherwise specified in the Special Provisions.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one price election for each blueberry type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

(b) You must report (by type if applicable) by the production reporting date designated in section 3 of the Basic Provisions:

(1) For all types of blueberries: any damage; removal of bushes; change in practices, or any other circumstance that may reduce the expected yield below the yield upon which the insurance guarantee is based, and the number of affected acres; and

(2) For highbush and rabbiteye blueberry types:

(i) The number of bearing bushes on insurable and uninsurable acreage; and

(ii) The age of the bushes and the planting pattern.

(c) We will reduce the yield used to establish your production guarantee as necessary, based on our estimate of the effect of the following: removal of bushes; damage to bushes; changes in practices; and any other circumstance that may affect the yield potential of the insured crop. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee as necessary at any time we become aware of the circumstance.

(d) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer for the next year if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time you request the increase.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is August 31 preceding the cancellation date.

5. Cancellation and Termination Dates

(a) In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are November 20.

(b) If your blueberry policy is canceled or terminated by us for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year, but on or before the cancellation and termination dates, whichever is later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

(c) We may not cancel your policy when an insured cause of loss has occurred after insurance attached, but prior to the cancellation date. However your policy can be terminated if a cause for termination contained in sections 2 or 27 of the Basic Provisions exists.

6. Insured Crop

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the blueberries in the county for which a premium rate is provided in the actuarial documents:

(1) In which you have a share;

(2) That are grown on bush varieties that:

(i) Were commercially available when the bushes were set out; and

(ii) Are varieties adapted to the area of the following types:

(A) Highbush blueberries;

(B) Lowbush blueberries;

(C) Rabbiteye blueberries; or

(D) Other blueberry types listed on the Special Provisions.

(3) Are produced on bushes that have reached the minimum insurable age or have produced the minimum yield per acre designated in the Special Provisions; and

(4) If inspected, are considered acceptable by us.

(b) Lowbush blueberry plants must be pruned every other year to be eligible for insurance.

7. Insurance Period

(a) In accordance with the provisions of section 11 of the Basic Provisions:

(1) For the year of application, coverage begins on November 21 of the calendar year prior to the year the insured crop normally blooms, except that, if your application is received by us after November 1, insurance will attach on the twentieth day after your properly completed application is received in our local office, unless we inspect the acreage during the 20 day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the blueberry acreage.

(2) For each crop year subsequent to the year of application, that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring an existing policy to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(3) The calendar date for the end of insurance period for each crop year is, September 30 for Michigan and September 15 for all other states.

(4) Cancellation and termination provisions that pertain to the period after insurance has attached, but prior to the cancellation and termination date, are contained in section 5 of these crop provisions.

(b) In addition to the provisions of section 11 of the Basic Provisions:

(1) If you acquire an insurable share in any insurable acreage after coverage begins but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period. There will be no coverage of any insurable interest acquired after the acreage reporting date.

(2) If you relinquish your insurable share on any insurable acreage of blueberries on or before the acreage reporting date for the crop year, and the acreage was insured by you the previous crop year, insurance will not be considered to have attached to, and no premium or indemnity will be due for such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(iii) The transferee is eligible for crop insurance.

8. Causes of Loss

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the unit;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(5) Earthquake;

(6) Volcanic eruption;

(7) An insufficient number of chilling hours to effectively break dormancy;

(8) Wildlife, unless appropriate control measures have not been taken; and

(9) Failure of the irrigation water supply, if caused by a cause of loss specified in this section that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we will not insure against damage or loss of production due to:

(1) Failure to install and maintain a proper drainage system;

(2) Failure to harvest in a timely manner;

(3) Inability to market the blueberries for any reason other than actual physical damage to the blueberries from an insurable cause specified in this section (For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production); or

(4) Mechanical damage in excess of that normally experienced for mechanically harvested blueberries for the current crop year.

9. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 of the Basic Provisions, the following will apply:

(a) You must notify us:

(1) Within 3 days of the date harvest should have started if the crop will not be harvested.

(2) Within 24 hours if any cause of loss occurs within 15 days of harvest, or when the blueberries are mature and ready for harvest or during harvest, so we can inspect the insured acreage.

(3) Within 24 hours if any cause of loss occurs during harvest, and you do not intend to complete harvesting of the crop, so that we can inspect the acreage.

(4) At least 15 days before any production from any unit will be sold by direct marketing. We will conduct an appraisal that will be used to determine your production to count sold by direct marketing. If damage occurs after this appraisal, we will conduct an additional appraisal. These appraisals, and any acceptable records provided by you, will be used to determine your production to count. Failure to give timely notice that production will be sold by direct marketing will result in an appraised amount of production to count that is not less than the production guarantee per acre if such failure results in our inability to make the required appraisal.

(5) At least 15 days prior to the beginning of harvest if you intend to claim an indemnity on any unit, as a result of previously reported damage, so that we may inspect the damaged production.

(b) You must not sell or dispose of the damaged crop until after we have given you written consent to do so. If you fail to meet the requirements of this section, and such failure results in our inability to inspect the damaged production, all such production will be considered undamaged and included as production to count.

(c) You may be required to harvest a sample, selected by us, to be used for appraisal purposes.

10. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide acceptable production records for any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage for each type, if applicable, by its respective production guarantee;

(2) Multiplying each result in section 10(b)(1) by the respective price election, by type if applicable;

(3) Totaling the results in section 10(b)(2) if there is more than one type;

(4) Multiplying the total production to count for each blueberry type, if applicable, by the respective price election;

(5) Totaling the results in section 10(b)(4), if there is more than one type;

(6) Subtracting the result in section 10(b)(5) from the result in section 10(b)(3); and

(7) Multiplying the result in section 10(b)(6) by your share.

Example

You have 100 percent share in 25 acres of highbush blueberries with a production guarantee of 4,000 pounds per acre and a price election of $.45 per pound. You are only able to harvest 62,500 total pounds because adverse weather reduced the yield. Your indemnity would be calculated as follows:

(1) 25 acres × 4,000 pound production guarantee/acre = 100,000 pound total production guarantee;

(2) 100,000 pounds × $.45 price election = $45,000 guarantee;

(3) One type only, so same as (2) above $45,000;

(4) 62,500 pounds production to count × $.45 price election = $28,125 value of production to count;

(5) One type only, so same as (4) above $28,125;

(6) $45,000 − $28,125 = $16,875 loss; and

(7) $16,875 × 100 percent share = $16,875 indemnity payment.

End of Example

(c) The total production to count (in pounds) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) That is sold by direct marketing if you fail to meet the requirements contained in section 9;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide production records;

(ii) Production lost due to uninsured causes; and

(iii) Potential production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may

defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general in the area unless you harvest the crop, in which case we will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and

(2) All harvested production from the insurable acreage.

(3) If mature blueberries, harvested or unharvested, are damaged by an insurable cause of loss specified in section 8 of these Crop Provisions, to the extent that the blueberries can not be sold as fresh or processed blueberries, and the percent of damage to the blueberries exceeds that shown in the Special Provisions for the type, production to count for the unit or portion of a unit will be as follows:

(i) The damaged blueberries will not be counted for that acreage if the blueberries are not sold; and

(ii) The production to count for damaged blueberries that are sold will be adjusted by dividing the price received for the damaged blueberries by the applicable price election and multiplying the resulting factor times the pounds sold.

(4) If we determine that frost protection equipment, as shown on your accepted application was not properly utilized, the indemnity for the affected acreage in the unit will be reduced by the percentage reduction allowed for frost protection equipment as specified in the Special Provisions. You must, at our request, provide us records by date for each period the frost protection equipment was used.

11. Late and Prevented Planting

The late and prevented planting provisions in the Basic Provisions are not applicable.

12. Written Agreements

The written agreement provisions in the Basic Provisions are not applicable, unless provided otherwise in the Special Provisions.

Signed in Washington, DC, on July 23, 2003.

Ross J. Davidson Jr.,

Administrator, Federal Crop Insurance Corporation.

[FR Doc. 03–19344 Filed 7–29–03; 8:45 am]

BILLING CODE 3410–08–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AG42

Risk-Informed Categorization and Treatment of Structures, Systems and Components for Nuclear Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Extension of comment period.

SUMMARY: On May 16, 2003 (68 FR 26511), the Nuclear Regulatory Commission (NRC) published in the **Federal Register** for a 75-day comment period proposed 10 CFR 50.69 "Risk-Informed Categorization and Treatment of Structures, Systems, and Components for Nuclear Power Plants." The comment period for this proposed rule was to have expired on July 30, 2003. By letter dated July 3, 2003, Nuclear Energy Institute (NEI) requested a 30-day extension to the comment period. NEI indicated that this extension is to allow for the thorough review and refinement of comments developed by NEI's Option 2 task force and other constituents in the industry. In view of the importance of both the proposed rule and the industry's comments on it, the NRC has decided to extend the comment period by 30 days as requested.

DATE: The comment period has been extended and now expires on August 30, 2003. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AG42) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking web site at *http://ruleforum.llnl.gov*. Address questions about our rulemaking website to Carol Gallagher (301) 415–5905; email *cag@nrc.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking web site at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy Reed, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone (301) 415–1462; e-mail: *tar@nrc.gov*.

Dated at Rockville, Maryland this 22nd day of July, 2003.

For the Nuclear Regulatory Commission.

Annette L Vietti-Cook,

Secretary of the Commission.

[FR Doc. 03–19320 Filed 7–29–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–12–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Rolls-Royce plc (RR) RB211–22B series, RB211–524B, –524C2, –524D4, –524G2, –524G3, and –524H series, and RB211–535C and –535E series turbofan engines with high pressure compressor (HPC) stage 3 disc assemblies, part numbers (P/Ns) LK46210, LK58278, LK67634, LK76036, UL11706, UL15358, UL22577, UL22578, and UL24738 installed. This proposed AD would allow disc assemblies not modified by a certain RR service bulletin to reach their full life only after the disc assemblies are modified with anti-corrosion protection. This proposed AD is prompted by the manufacturer's reassessment of the corrosion risk on HPC stage 3 disc assemblies that have not yet been modified with sufficient application of anti-corrosion protection. The actions specified in this proposed AD are intended to prevent corrosion-induced uncontained disc failure, resulting in damage to the airplane.

DATES: We must receive any comments on this proposed AD by September 29, 2003.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–12–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov*

You may get the service information identified in this proposed AD from Rolls-Royce plc, PO Box 31, Derby, England, DE248BJ; telephone: 011–44–1332–242424; fax: 011–44–1332–245–418.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine And Propeller Directorate, 12 New England Executive Park; Burlington, MA 01803–5299; telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. 2003–NE–12–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You may get more information about plain language at *http://www.plainlanguage.gov*.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the U.K., recently notified the FAA that an unsafe condition may exist on RR RB211–22B series, RB211–524B, –524C2, –524D4, –524G2, –524G3, and –524H series, and RB211–535C and –535E series turbofan engines with HPC stage 3 disc assemblies, P/Ns LK46210, LK58278, LK67634, LK76036, UL11706, UL15358, UL22577, UL22578, and UL24738 installed. The CAA advises that numerous disc assemblies have been found at overhaul inspection having corrosion-induced pitting. RR has reassessed the risk of corrosion-induced pitting of disc assemblies that have not incorporated any revision of RR service bulletin (SB) No. RB.211–72–9434, or any revision of RR SB No. RB.211–72–5420, which rework the discs and apply anti-corrosion protection, and RR has lowered the disc lives accordingly in the Time Limits Manuals.

Relevant Service Information

We have reviewed and approved the technical contents of Rolls-Royce plc SB No. RB.211–72–9434, Revision 4, dated January 12, 2000, and SB No. RB.211–72–5420, dated February 29, 1980, which describe procedures for reworking of HP compressor stage 3 rotor disc assemblies by machining, and application of anti-corrosion protection. The CAA, which is the airworthiness authority for the U.K., classified these SBs as mandatory and issued airworthiness directive 004–01–94, dated January 4, 2002.

FAA's Determination and Requirements of the Proposed AD

These Rolls-Royce plc RR RB211–22B series, RB211–524B, –524C2, –524D4, –524G2, –524G3, and –524H series, and RB211–535C and –535E series turbofan engines are manufactured in the U.K., are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept us informed of the situation described above. We have examined the CAA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. Therefore, we are proposing this AD, which would require the following for affected HP compressor disc assemblies:

- Removing affected disc assemblies from service.
- Re-machining, inspecting, and applying anti-corrosion protection.
- Re-marking, and returning disc assemblies into service.

The proposed AD would require that these actions be done per the service information described previously.

Changes to 14 CFR Part 39—Effect on the Proposed AD

On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

There are approximately 2,000 RR RB211–22B series, RB211–524B, –524C2, –524D4, –524G2, –524G3, and –524H series, and RB211–535C and –535E series turbofan engines of the affected design in the worldwide fleet. We estimate that 1,000 engines installed

on airplanes of U.S. registry would be affected by this proposed AD. We also estimate that it would take approximately 31 work hours per engine to perform the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost approximately $38,000 per engine. Based on these figures, the total cost of the proposed AD to U.S. operators is estimated to be $40,015,000.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2003-NE-12-AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Rolls-Royce plc: Docket No. 2003–NE–12–AD.

Comments Due Date

(a) The FAA must receive comments on this airworthiness directive (AD) action by September 29, 2003.

Affected ADs

(b) None.

Applicability

(c) This AD is applicable to Rolls-Royce plc (RR) RB211–22B series, RB211–524B, –524C2, –524D4, –524G2, –524G3, and –524H series, and RB211–535C and –535E series turbofan engines with high pressure compressor (HPC) stage 3 disc assemblies, part numbers (P/Ns) LK46210, LK58278, LK67634, LK76036, UL11706, UL15358, UL22577, UL22578, and UL24738 installed. These engines are installed on, but not limited to, Boeing 747, Boeing 757, Boeing 767, Lockheed L–1011, and Tupolev Tu204 series airplanes.

Unsafe Condition

(d) This AD was prompted by the manufacturer's reassessment of the corrosion risk on HPC stage 3 disc assemblies that have not been modified sufficiently with application of anti-corrosion protection. The actions specified in this AD are intended to prevent corrosion-induced uncontained disc failure, resulting in damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Removal of HPC Stage 3 Discs

(f) Remove from service affected HPC stage 3 disc assemblies identified in the following Table 1, using one of the following criteria:

TABLE 1.—AFFECTED HPC STAGE 3 DISC ASSEMBLIES

Engine model	Rework band for cycle life accumulated on disc assemblies P/Ns LK46210 and LK58278 (pre RR service bulletin (SB) No. RB.211–72–5420)	Rework band for cycle life accumulated on disc assembly P/N LK67634 (pre RR SB No. RB.211–72–5420)	Rework band for cycle life accumulated on P/Ns LK76036, UL11706, UL15358, UL22577, UL22578, and UL24738 disc assemblies (pre RR SB No. RB.211–72–9434)
–22B series	4,000–6,200	7,000–10,000	11,500–14,000
–535E4 series	N/A	N/A	9,000–15,000
–524B–02, B–B–02, B3–02, and B4 series, Pre and SB No. 72–7730	4,000–6,000	7,000–9,000	11,500–14,000
–524B2 and C2 series, Pre SB No. 72–7730	4,000–6,000	7,000–9,000	11,500–14,000
–524B2–B–19 and C2–B–19, SB No. 72–7730	4,000–6,000	7,000–9,000	8,500–11,000
–524D4 series, Pre SB No. 72–7730	4,000–6,000	7,000–9,000	11,500–14,000
–524D4–B series, SB No. 72–7730	4,000–6,000	7,000–9,000	8,500–11,000
–524G2, G3, H, and H2 series	4,000–6,000	7,000–9,000	8,500–11,000

(1) For discs that entered into service before 1992, remove disc and rework as specified in paragraph (g)(2) of this AD, within five years from the effective date of this AD, but not to exceed the upper cyclic limit of Table 1 of this AD before rework. Discs reworked may not exceed the published cyclic limit in the manufacturer's Time Limits Manual.

(2) For discs that entered into service in 1992 or later, remove disc within the cyclic life rework bands in Table 1 of this AD, or within 17 years after the date of the disc assembly entering into service, whichever is sooner, but not to exceed the upper cyclic limit of Table 1 of this AD before rework. Discs reworked may not exceed the published cyclic life in the manufacturer's Time Limits Manual.

(3) For disc assemblies that when new, were modified with an application of anti-corrosion protection and re-marked to P/N LK76036 (not previously machined) as specified by Part 1 of the original issue of RR service bulletin (SB) No. RB.211–72–5420, dated April 20, 1979, remove RB211–22B disc assemblies before accumulating 10,000 cycles-in-service (CIS), and remove RB211–524 disc assemblies before accumulating 9,000 CIS.

(4) If the disc assembly date of entry into service cannot be determined, the date of disc manufacture may be obtained from RR and used instead.

Optional Rework of HPC Stage 3 Discs

(g) Rework HPC stage 3 disc assemblies that were removed in paragraph (f) of this AD as follows:

(1) For disc assemblies that when new, were modified with an application of anti-corrosion protection and re-marked to P/N LK76036 (not previously machined) as specified by Part 1 of the original issue of RR SB RB.211–72–5420, dated April 20, 1979, rework disc assemblies and re-mark to either LK76034 or LK78814 in accordance with paragraph 2.B. of the Accomplishment Instructions of RR SB No. RB.211–72–5420, Revision 4, dated February 29, 1980. This rework constitutes terminating action to the removal requirements in paragraph (f) of this AD.

(2) For all other disc assemblies, rework in accordance with Paragraph 3B. of the Accomplishment Instructions of RR SB No. RB.211–72–9434, Revision 4, dated January 12, 2000. This rework constitutes terminating action to the removal requirements in paragraph (f) of this AD.

Note 1: If rework is done on disc assemblies that are removed before the disc assembly reaches the lower life of the cyclic life rework band in Table 1 of this AD, artificial aging of the disc to the lower life of the rework band, at time of rework, is required.

Alternative Methods of Compliance

(h) Alternative methods of compliance must be requested in accordance with 14 CFR part 39.19, and must be approved by the Manager, Engine Certification Office, FAA.

Material Incorporated by Reference

(i) The rework must be done in accordance with the following Rolls Royce service bulletins:

Document No.	Pages	Revision	Date
RB.211–72–5420	1	4	February 29, 1980.
	2	3	January 12, 1980.
	3–8	4	February 29, 1980.
	9–10	Original	April 20, 1979.
Total pages: 8			
RB.211–72–9434	All	4	January 12, 2000.
Total pages: 20			

Approval of incorporation by reference from the Office of the Federal Register is pending.

Related Information

(j) The subject of this AD is addressed in Civil Aviation Authority airworthiness directive 004–01–94.

Issued in Burlington, Massachusetts, on July 24, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–19310 Filed 7–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 204

[Docket No. OST–03–15759]

RIN: 2105–AD25

Review of Data Filed by Certificated or Commuter Air Carriers To Support Continuing Fitness Determinations Involving Citizenship Issues

AGENCY: Office of the Secretary, DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); request for comments.

SUMMARY: In response to a report by the Inspector General of the U.S. Department of Transportation, the Department is asking for comments on two issues relating to air carrier continuing fitness determinations involving citizenship issues. First, the Inspector General identified a list of criteria the Department typically uses to determine actual control of an air carrier when evaluating the citizenship of an air carrier during a continuing fitness review. We seek comments on whether there are any other factors or criteria the Department routinely considers in its evaluations that should be added to this list. Second, the Department seeks comments on the need for a regulatory change to the requirements of 14 CFR part 204 applicable to certificated and commuter air carriers proposing to undergo a substantial change in operations, ownership, or management that may impact their U.S. citizenship status. The Inspector General found that the Department's informal process is not well-suited to complex, contentious, and controversial cases involving citizenship determinations and suggested that the Department allow greater transparency and public participation in such matters, including public notice when such a review is initiated and completed, as well as public access to information filed with the Department during such reviews.

DATES: Comments due on or before September 29, 2003. To the extent practicable, we will consider late-filed comments as we consider further action.

ADDRESSES: Submit comments to the Dockets Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh Street, SW., Washington, DC 20590–0001. Comments should identify Docket Number OST–03–15759. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. You may also submit comments by e-mail by accessing the Dockets Management System Web site at *http://dms.dot.gov* and following the instructions for submitting a document electronically.

The Dockets Management System is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You can also review comments on-line at the DOT Dockets Management System Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Patricia L. Thomas, Chief Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

SUPPLEMENTARY INFORMATION:

I. Electronic Access

An electronic copy of this document may be downloaded from the Internet using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

II. Background

Under 14 CFR 204.5, certificated and commuter air carriers that undergo or propose to undergo a substantial change in operations, ownership, or management must submit certain updated fitness information to the Department.[1] Section 204.5(c) specifies that, if such information is being filed in support of an application for new or amended certificate authority, it shall be filed in the docket seeking such authority as part of a public proceeding. For example, a certificated or commuter air carrier must apply for new or amended authority if its existing authority is not adequate for the performance of its planned service (*e.g.*, if a carrier wishes to serve a new city pair route in foreign air transportation, if a carrier holding all-cargo authority wishes to conduct passenger service, or if a carrier currently operating only small aircraft wishes to operate large aircraft). If the substantial change being proposed does not affect the carrier's authority to perform its service under its existing authority, then the information is reported directly to the Department's staff and is reviewed as part of an informal continuing fitness investigation, without a public proceeding. Examples of substantial changes that may not require a carrier to apply for new or amended authority include changes in the carrier's stockholders or management. The purpose of these informal reviews is to decide whether a more formal, public proceeding is warranted, and, thus, whether the carrier's authority should be modified, suspended, or revoked or the carrier should be subject to enforcement action.

During a continuing fitness review, Department staff may examine the carrier's ownership structure and whether the air carrier continues to satisfy all statutory citizenship tests and continues to be under the actual control of U.S. citizens. Under the control standard, we examine all of the facts to determine whether a foreign interest will have a substantial ability to influence the carrier's activities. See Acquisition of Northwest Airlines by Wings Holdings, Inc., Order 89–9–51, issued September 29, 1989, at 5; Application of Discovery Airways, Inc., Order 89–12–41, issued December 22, 1989, at 10; In the matter of USAir and British Airways, Order 93–3–17, issued March 15, 1993, at 19; and Application of North American Airlines, Inc., Order 89–11–8, issued November 6, 1989, at 6.

On March 4, 2003, the Inspector General of the U.S. Department of Transportation issued a letter to the Chairman of the House Transportation and Infrastructure Committee on the subject of the Department's procedures for making air carrier citizenship determinations in continuing fitness reviews, as well as a docketed proceeding before the Department (In the matter of the citizenship of DHL Airways, Inc., Docket OST–2002–13089). By this notice, we seek comments only on the procedural issues raised in the letter, not on the matter of DHL Airways.[2] The letter, which contains all of the Inspector General's recommendations on such procedural matters, is available in this docket at *http://dms.dot.gov*.

In the letter, the Inspector General recommended, first, that the Department should publicly address the factors used to determine whether an air carrier is under the "actual control" of U.S. citizens and, second, that the Department should consider whether to modify its procedures for reviewing an air carrier's citizenship status during a continuing fitness review.

With respect to the first recommendation, the Inspector General states, "There are seven factors that frequently recur in past orders of the Department addressing the issue of actual control. These factors, while known to Department and aviation attorneys, have not been delineated in any one public document. Good public policy would suggest that the Department address these and other factors in a document that is widely available." The seven factors cited are: (1) Control via supermajority or disproportionate voting rights; (2) negative control/power to veto; (3) buy-out clauses; (4) equity ownership; (5) significant contracts; (6) credit agreements/debt; and (7) family relationships/business relationships.

We seek comments on whether there are other factors or criteria that the Department routinely considers in addition to those listed above. However, it is important to note that, in its decisions, the Department has repeatedly stated that citizenship determinations are necessarily made on a case-by-case basis due to the fact that every case has its own unique set of circumstances. Accordingly, the Department believes that its administrative precedent, published in Civil Aeronautics Board and Department of Transportation Orders, as noted above, shows that no single list of factors and criteria will be inclusive, due to the changing legal and market circumstances faced by carriers when organizing their corporate and financial structures.

With respect to the second recommendation, the Inspector General states that "[t]he informal process used for citizenship reviews can be beneficial when the issues are not complex or contentious by providing for open dialogue between the Department and carriers to resolve matters expeditiously." However, the recommendation we seek comments on is as follows: "For the future, we believe the Department should give consideration to a more transparent and formal process in complex and contentious cases. To that end, the Department's procedures would have to be modified to provide public notice of the initiation and completion of citizenship reviews; create dockets for third-party comments; provide third-party access to confidential documents, similar to those used in the Alliance Carrier review;[3] and obtain sworn or certified statements."

III. Comments

In response to the Inspector General's letter, the Department seeks comments on the list of factors frequently used to evaluate whether an air carrier is actually controlled by U.S. citizens and the need for a regulatory change to its procedures for determining the citizenship of U.S. air carriers after a substantial change in operations, ownership, or management. Accordingly, this ANPRM requests comments on the Inspector General's proposals and on alternatives to such proposals.

Specifically, we invite commenters to submit data and information on the recommendations of the Inspector General and on the following issues as well as any other related issues that commenters believe may warrant consideration:

- The Inspector General letter identifies a list of criteria typically used to determine actual control of an air carrier (*i.e.*, (1) control via supermajority or disproportionate voting rights; (2) negative control/power to veto; (3) buy-out clauses; (4) equity ownership; (5) significant contacts; (6) credit agreements/debt; and (7) family relationships/business relationships). Are there any other factors or criteria the Department routinely considers that should be added to this list?
- Is the Department's current informal, undocketed process for reviewing the citizenship of certificated and commuter air carriers following a substantial change in operations, ownership, or management sufficient to meet the statutory goals and requirements of evaluating a carrier's continuing fitness prior to any decision to take public action?
- Should air carriers proposing a substantial change in operations, ownership, or management that may affect their citizenship status be subject to a formal, public review of their citizenship, and if so, under what circumstances?
- What are the benefits and burdens, including time, effort, or financial resources expended, to generate, maintain, or provide information that would be subject to such a docketed public review? How would an air carrier's ability to obtain timely financing be affected?
- What are the advantages and disadvantages of retaining the current rule at 14 CFR 204.5 without revision?
- Should the Department establish separate procedures for handing complex, contentious, and controversial citizenship questions that arise in the context of continuing fitness reviews? If so, what procedures would be appropriate, and what standards should be used to designate such cases?
- Should the Department issue a public notice when it initiates and/or completes a citizenship determination in the context of a continuing fitness review? How would such notice impact an air carrier's business? What impact would such notice have on the willingness of an air carrier contemplating a future change in ownership, operations, and/or management to have candid discussions with the Department before formalizing any transaction?
- How should competition issues and business confidentiality issues be addressed in any change to the current procedures?

To ensure that the Department identifies and considers a full range of issues related to any rulemaking action that may be proposed, comments and suggestions are invited from all interested parties, including certificated and commuter air carriers, industry groups, and the public.

Regulatory Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the Department will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A NPRM may be issued at any time after close of the comment period.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The Department has determined preliminarily that this document is a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, will be reviewed by the Office of Management and Budget. The Department has also determined preliminarily that this document is significant under the Department's regulatory policies and procedures given the degree of Congressional interest in this matter. It is not economically significant. At this time, the Department does not believe any proposed regulatory changes will interfere with any action taken or planned by another agency or to materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

Changes to the way citizenship issues are addressed in continuing fitness reviews may cause increased burdens on the part of the air carriers, as well as the Department. Currently, there are approximately 175 carriers that hold certificates or commuter authorizations from the Department. All of these carriers are subject to the continuing fitness requirements, and all must report substantial changes in operations, ownership, or management to the Department for review. During calendar years 2001 and 2002, the Department instituted an average of 52 new continuing fitness cases each year, some of which involved citizenship issues. Based on the information received in response to this ANPRM, the Department intends to carefully consider the costs and benefits associated with this rulemaking.

Executive Order 13132 (Federalism Assessment)

The Department has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials. The Department anticipates that any action taken will not preempt a State law or State regulation or affect the States' ability to discharge traditional State government functions. We encourage commenters to consider these issues, as well as matters concerning any costs or burdens that might be imposed on the States as a result of actions considered here.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. The Department will analyze any action that might be proposed for the purpose of the Regulatory Flexibility Act.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501–3520, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. Any action that might be contemplated in subsequent phases of this proceeding may involve a collection of information requirement for the purpose of the Paperwork Reduction Act of 1995. The Department, however, will evaluate any actions that might be considered in accordance with the terms of the Paperwork Reduction Act. We encourage commenters to consider these issues, as well as matters concerning any burdens that might be imposed as a result of actions considered here. Accordingly, the Department solicits comments on this issue.

Regulation Identifier (RIN)

A regulation identifier (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-

[1] Section 204.2(l) defines substantial change in operations, ownership, or management as including but not limited to the following events: "(1) changes in operations from charter to scheduled service, cargo to passenger service, short-haul to long-haul service, or (for a certificated air carrier) small-aircraft to large-aircraft operations; (2) the filing of a petition for reorganization or a plan of reorganization under Chapter 11 of the federal bankruptcy laws; (3) the acquisition by a new shareholder or the accumulation by an existing shareholder of beneficial control of 10 percent or more of the outstanding voting stock in the corporation; and (4) a change in the president, chief executive officer or chief operating officer, and/or a change in at least half of the other key personnel within any 12-month period or since its latest fitness review, whichever is the more recent period."

[2] On March 5, 2003, in Docket OST–2002–13089, the Department issued a notice requesting comments on the Inspector General's report as it related to the matter of the citizenship of DHL Airways, Inc.

[3] The "Alliance Carrier review" refers to the Delta/Northwest/Continental code-share and frequent-flyer program reciprocity proceeding.

reference this action with the Unified Agenda.

Unfunded Mandates Reform Act

The Department will analyze any action that might be proposed for the purpose of the Unfunded Mandates Reform Act of 1995 to assess whether a rulemaking would impose unfunded mandates.

National Environmental Policy Act

The Department will analyze any action that might be proposed for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) to determine whether there would be any effect on the quality of the environment.

(Authority: 49 U.S.C. Chapters 401, 411, 417; 14 CFR Part 204)

Dated: July 24, 2003.

Michael W. Reynolds,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 03–19155 Filed 7–25–03; 4:27 pm]

BILLING CODE 4910–62–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 600, 606, 610, and 640

[Docket No. 2003N–0211]

Revisions to Labeling and Storage Requirements for Blood and Blood Components, Including Source Plasma

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revise the labeling and storage requirements for certain human blood and blood components, including Source Plasma, by combining, simplifying, and updating specific regulations applicable to container labeling and instruction circulars, and the shipping and storage temperatures for frozen noncellular blood components. This proposed rule would facilitate the use of a labeling system using machine-readable information that would be acceptable as a replacement for the "ABC Codabar" system for labeling blood and blood components. FDA is taking this action as part of its "Blood Initiative" to comprehensively review and, as necessary, revise its regulations, policies, guidances, and procedures related to the licensing and regulation of blood products. This proposed rule is intended to help ensure the continued safety of the blood supply, and to help ensure consistency in container labeling and storage temperatures.

DATES: Submit written or electronic comments on the proposed rule by October 28, 2003. See section VIII of this document for the proposed effective date of a final rule based on this document.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Sharon A. Carayiannis, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

A. Development of the International Society for Blood Transfusion (ISBT) 128

In the **Federal Register** of August 30, 1985 (50 FR 35472), FDA published a notice of availability entitled "Guideline for the Uniform Labeling of Blood and Blood Components," which described the uniform container label for blood and blood components. The standard labels for blood and blood components recommended in the guideline incorporated barcode symbology known as "ABC Codabar."

In August 1989, the ISBT, an organization established to promote and maintain a high level of ethical, medical, and scientific standards in blood transfusion medicine and science throughout the world, recognized that "ABC Codabar," the first barcoding system adopted by the health care industry, was becoming outdated and initiated the design of a new system using the barcode symbology known as Code 128 (identified hereafter as ISBT 128).

Currently, under § 606.121(c)(13) (21 CFR 606.121(c)(13)), the container label for blood and blood components may bear encoded information in the form of machine-readable symbols approved for use by the Director, Center for Biologics Evaluation and Research (CBER). On March 23, 1995, FDA asked the Blood Products Advisory Committee (BPAC) whether FDA should support conversion from the "ABC Codabar" system to the ISBT 128 system. BPAC voted in favor of FDA supporting the transition to the new barcoding system. The change to ISBT 128 was also supported by the Department of Defense (DoD), and by the blood industry including America's Blood Centers (ABC), American Association of Blood Banks (AABB), and American National Red Cross (ARC). In December 1996, the International Council for Commonality in Blood Bank Automation (ICCBBA) held an ISBT 128 Consensus Conference in Washington, DC, to provide an opportunity for dialogue among the affected industry groups and FDA. Although consensus was obtained for use of ISBT 128, some participants expressed concerns regarding implementation timeframes and costs of implementation to hospital transfusion services. However, the updated symbology used in ISBT 128 has numerous advantages over the "ABC Codabar." In addition to other reasons, the conversion to ISBT 128 was supported because ISBT 128 is more secure, allows more flexibility in coding highly variable information, uses double-density coding to allow more information to be encoded in a limited space, and can be interpreted by some of the barcode readers used with "ABC Codabar."

The ICCBBA, including representatives from ABC, AABB, ARC, and DoD, developed and submitted to FDA a draft document that recommended that ISBT 128 replace the "ABC" Codabar system used on blood and blood component labels in the United States. ICCBBA recommended that the document entitled "United States Industry Consensus Standard for the Uniform Labeling of Blood and Blood Components Using ISBT 128," Version 1.2.0 (draft standard), serve as the basis for FDA guidance on blood and blood component labeling. On November 21, 1998, FDA made a copy of the draft standard available on its Web site for public comment. In the **Federal Register** of November 27, 1998 (63 FR 65600), FDA announced the availability of the draft standard and requested public comment on both the use of ISBT 128 and timeframes for implementation. The ICCBBA revised the draft standard in response to public comment and submitted to FDA the revised document, "United States Industry Consensus Standard for the Uniform Labeling of Blood and Blood Components Using ISBT 128," Version 1.2.0, dated November 1999 (the "Version 1.2.0 Standard").

FDA reviewed the draft standard, the comments received in response to the **Federal Register** notice of November 27, 1998, and the "Version 1.2.0 Standard," and concluded that conformance to the "Version 1.2.0 Standard," prepared and revised by ICCBBA, would help facilitate the use of a uniform container label for blood and blood components. In the **Federal Register** of June 6, 2000 (65 FR 35944), FDA announced the availability of a final guidance entitled "Guidance for Industry: Recognition and Use of a Standard for the Uniform Labeling of Blood and Blood Components" dated June 2000, which recognizes as acceptable, except where inconsistent with the regulations, use of the "Version 1.2.0 Standard" prepared by ICCBBA, and the implementation of the ISBT 128 uniform labeling system. Although FDA finds the system acceptable, FDA has identified two inconsistencies between the "Version 1.2.0 Standard" and the current requirements of § 606.121(c)(2) and (e)(1)(ii). This proposed rule would delete the current requirement of § 606.121(c)(2) to include the FDA assigned registration number on blood and blood component labels. This revision is intended to provide establishments flexibility in using the registration number or other recognized donation facility identification numbers, such as the ISBT facility code (which includes machine-readable information), as the unique facility identifier. Additionally, this proposed rule would delete the current requirement of § 606.121(e)(1)(ii) that the anticoagulant precede the proper name. However, until the date a final rule resulting from this proposal becomes effective, if a manufacturer intends to follow the "Version 1.2.0 Standard" in lieu of current § 606.121(c)(2) or (e)(1)(ii), a manufacturer would seek an approval for exceptions or alternatives under § 640.120 (21 CFR 640.120). Once the application for an alternative is approved, a manufacturer may use the "Version 1.2.0 Standard" to produce labels that meet FDA's labeling requirements.

B. Changes to Storage and Shipping Temperatures

FDA has reviewed data concerning the storage and shipping temperatures of frozen noncellular blood components, e.g., Cryoprecipitated Antihemophilic Factor and Fresh Frozen Plasma. We have determined that the current requirements for storage and shipping temperatures should be updated to ensure potency of the blood components over time and to provide more flexibility in inventory management. Therefore, we are proposing to revise the current storage and shipping temperatures for frozen noncellular blood components, both for transfusion and for further manufacturing use, to guard against degradation of the heat labile clotting factors. The proposed changes in shipping and storage temperatures are consistent with published data and current industry practice (Ref. 1).

II. Highlights of the Proposed Rule

FDA is proposing to remove, simplify, or update specific labeling regulations applicable to blood and blood components to be more consistent with current practices and to remove any unnecessary or outdated requirements. FDA is proposing to consolidate the labeling requirements for blood and blood components intended for transfusion and for blood and blood components intended for further manufacturing use. FDA is proposing to revise specific regulations to facilitate the use of a uniform container label for blood and blood components in the United States and internationally and to remove any inconsistency between the "Version 1.2.0 Standard" and the Federal regulations at § 606.121. The proposed rule would facilitate the use of a labeling system using the ISBT 128 machine-readable data. In addition, the proposal would facilitate the use of new labeling systems that may be developed in the future.

The proposed changes would also simplify the regulations by consolidating the regulations for labeling blood and blood components, including Source Plasma, into one section, making it unnecessary for blood establishments to refer to several sections of the regulations to find applicable labeling standards.

In addition to moving certain regulations to § 606.121, FDA is also proposing to revise some of the labeling provisions regarding storage and shipping temperatures for frozen noncellular blood components in proposed § 640.70(a)(3) and (b). FDA is proposing to revise storage and shipping temperatures in current §§ 600.15, 610.53, 640.34, 640.54, 640.69, and 640.76, (21 CFR 600.15, 610.53, 640.34, 640.54, 640.69, and 640.76) to help ensure the potency of the frozen noncellular blood components and for consistency between the labeling regulations and the regulations concerning shipping and storage temperatures of frozen noncellular blood components. As part of this rulemaking, FDA is proposing to update the temperature requirements and address as many labeling changes as possible at one time, thereby limiting the number of times establishments must revise container labels. Also, we have replaced "shall" with "must" in all places wherever it appears in the regulations.

A. Summary of Consolidation of Regulations in § 606.121

FDA is proposing to consolidate regulations so blood establishments may find all applicable labeling standards under one section of regulations. The regulations for labeling all blood and blood components would be moved from other sections of the regulations to § 606.121. The following table summarizes the regulations that would be revised, consolidated, and redesignated under the proposal. The table is intended to serve as a convenient reference for the consolidation of regulations; all revisions to the regulations are discussed later in this preamble. A current regulation listed in the table remaining unchanged may not be discussed further in the preamble.

Current Section:	Would be Revised, and/or Redesignated as:	Revisions Discussed in Section II of this document:
§ 606.121(a)	The Introductory paragraph of § 606.121, paragraph (a) is reserved	B
§ 606.121(b)	Revised only	B
§ 606.121(c)(1)	Revised only	B
§ 606.121(c)(2)	Revised only	C
§ 606.121(c)(3)	Revised only	B

Current Section:	Would be Revised, and/or Redesignated as:	Revisions Discussed in Section II of this document:
§ 606.121(c)(4)	Revised only	B
§ 606.121(c)(5)	§ 606.121(c)(8)(v)	B
§ 606.121(c)(6)	§ 606.121(c)(5)	B
§ 606.121(c)(7)	Unchanged	B
§ 606.121(c)(8)	Revised only	B
§ 606.121(c)(9)	§ 606.121(c)(8)(iv)	B
§ 606.121(c)(10)	§ 606.121(c)(6)	B
§ 606.121(c)(11)	§ 606.121(c)(10)	B
§ 606.121(c)(12)	§ 606.121(c)(9)	B
§ 606.121(c)(13)	Unchanged	C
§ 606.121(d)(1) to (d)(3)	Revised only	B
§ 606.121(d)(4)	Deleted	B
§ 606.121(d)(5)	§ 606.121(d)(4)	B
§ 606.121(e)(1)(i)	§ 606.121(e)(1)(ii)	B
§ 606.121(e)(1)(ii)	§ 606.121(e)(1)(i)	C
§ 606.121(e)(1)(iii)	Revised only	B
§ 606.121(e)(2)	Unchanged	B
§ 606.121(e)(3)	Deleted, see 606.121(c)(4)	B
§ 606.121(e)(4)	§ 606.121(e)(3)	B
§ 606.121(e)(5)(i)	§ 606.121(e)(4)(i)	B
§ 606.121(e)(5)(ii)	Deleted, see 606.121(e)(5)(i)	B
§ 606.121(e)(5)(iii)	§ 606.121(e)(4)(ii)	B
§ 606.121(f)	Revised only	B
§ 606.121(g)	Unchanged	B
§ 606.121(h)	Revised only	B
§ 606.121(i)(1) to (3)	Revised only, paragraph (i)(4) added	E
§ 606.121(i)(4)	§ 606.121(i)(5)	E
§ 606.121(i)(5)	§ 606.121(i)(6)	E
§ 606.121(j)	Revised only	B
§ 606.122(e), (f), and (m)	Revised only	E
§ 640.70(a), the introductory sentence	§ 606.121(e)(5)	B
§ 640.70(a)(1)	Deleted, see § 606.121(c)(1)	B
§ 640.70(a)(2)	§ 606.121(c)(10) and § 606.121(e)(5)(i)	B
§ 640.70(a)(3)	§ 606.121(e)(5)(ii)	D
§ 640.70(a)(4)	§ 606.121(e)(5)(iii)	B
§ 640.70(a)(5)	Deleted, see § 606.121(c)(3)	B
§ 640.70(a)(6)	The second sentence of § 606.121(c)(4)	B

Current Section:	Would be Revised, and/or Redesignated as:	Revisions Discussed in Section II of this document:
§ 640.70(a)(7)	§ 606.121(e)(5)(vi)	B
§ 640.70(a)(8)	§ 606.121(c)(11)	E
§ 640.70(a)(9)	§ 606.121(e)(5)(iv)	B
§ 640.70(a)(10) Deleted	see § 606.121(c)(2)	C
§ 640.70(a)(11)	§ 606.121(c)(11)	E
§ 640.70(b)	§ 606.121(e)(5)(v)	D

B. Proposed Revisions to Clarify and Consolidate Regulations, Including Source Plasma Regulations

The following proposed revisions are intended to consolidate the existing labeling regulations in § 640.70 into § 606.121. As part of the consolidation, labeling regulations in § 640.70 would be moved to § 606.121, and § 640.70 would be removed from the Code of Federal Regulations (CFR). This change would enable blood establishments to find all the labeling requirements for blood and blood components, including Source Plasma, in one section of the CFR rather than having to consult different sections of the CFR when manufacturing several products. Any redundant regulations have been eliminated. FDA is proposing minor edits for clarity.

1. Proposed Revisions to § 606.121(a)

FDA is proposing to amend § 606.121(a), which describes the container label requirements for blood and blood components, by redesignating current paragraph (a) to create an introductory paragraph under § 606.121 and reserving paragraph (a). Under the proposal, the first sentence of the introductory paragraph (current § 606.121(a)) would be revised by deleting the phrase "except Source Plasma" to provide that proposed § 606.121 applies to all blood and blood components, including Source Plasma.

2. Proposed Revisions to § 606.121(b)

FDA is proposing to amend § 606.121(b) by adding the phrase "with any appropriate modifiers and attributes" to clarify that the label may be altered under specific circumstances to adequately identify the contents of a container. Examples of appropriate modifiers include "washed," "frozen," and "liquid." Examples of attributes include "irradiated," and "divided" which indicate a process change. For consistency, FDA is proposing conforming amendments to § 606.121(c)(1) and (d)(2).

3. Proposed Revisions to § 606.121(c)

Because proposed § 606.121(c)(1) applies to the container label of all blood and blood components, including Source Plasma, FDA is proposing to delete current § 640.70(a)(1). The proposed revisions to § 606.121(c)(2) are discussed in section III.C.1 of this document.

FDA is proposing to revise § 606.121(c)(3) to require that labels include all the donor numbers or a pool number that would enable establishments to trace each individual unit in the pool to the donor. Proposed § 606.121(c)(3) includes the same requirements for container labels for pooled products found in § 640.70(a)(5); therefore, FDA is proposing to delete § 640.70(a)(5).

FDA is proposing to amend § 606.121(c)(4) to clarify the expiration date of pooled plasma and to delete § 606.121(e)(3) because it would be redundant with revised § 606.121(c)(4). Under the proposal, § 640.70(a)(6) would be revised and redesignated as the second sentence of § 606.121(c)(4). If Source Plasma intended for further manufacturing into noninjectable products is pooled, the expiration date is determined from the collection date of the oldest unit in the pool, and the pooling records must show the collection date for each unit in the pool. The proposed changes would simplify the regulations by moving the requirements for determining the expiration date of Source Plasma to the section that specifies requirements for an expiration date on the container label for blood and blood components.

Current § 606.121(c)(5) is redesignated and revised, as discussed in the following paragraph. FDA is proposing that current § 606.121(c)(6) remain unchanged and be redesignated as § 606.121(c)(5). Under the proposal, current § 606.121(c)(7) remains unchanged.

FDA is proposing to simplify the wording of § 606.121(c)(8)(i). Paragraphs 606.121(c)(8)(ii) and (c)(8)(iii) remain unchanged. FDA is proposing to redesignate § 606.121(c)(9) as § 606.121(c)(8)(iv) and to revise redesignated § 606.121(c)(8)(iv) by deleting the redundant phrase "The statement." FDA is proposing to redesignate § 606.121(c)(5) as § 606.121(c)(8)(v) and to revise redesignated § 606.121(c)(8)(v) by deleting the redundant phrase "If the product is intended for transfusion."

FDA is proposing to redesignate current § 606.121(c)(12) as § 606.121(c)(9). FDA is proposing to revise redesignated § 606.121(c)(9) by adding a phrase to clarify that the labeling requirements would apply to products intended for manufacturing use when an ABO and/or Rh designation is appropriate. In addition, FDA is proposing to update redesignated §§ 606.121(c)(9)(ii) and (c)(9)(iii) by using current terminology for a weak expression of the D antigen on red blood cells. The revised section would read "If the test using Anti-D Blood Grouping Reagent is negative but the test for weak D (formerly DU) is * * *"

Under the proposal, current § 606.121(c)(10) is redesignated as § 606.121(c)(6).

FDA is proposing to combine current § 606.121(c)(11) and part of current § 640.70(a)(2) and redesignate the combined regulations as proposed § 606.121(c)(10). FDA is proposing to revise redesignated § 606.121(c)(10) by adding a phrase to the first sentence to clarify that blood and blood components intended for further manufacturing use, and Source Plasma are subject to these requirements. Additionally, FDA is proposing to revise redesignated § 606.121(c)(10) by adding an alternative warning statement and provide for the use of "other cautionary statements as approved by CBER." These proposed changes and the alternative warning statement reflect current industry practice. FDA is proposing to delete current § 606.121(e)(5)(ii) because it

would be redundant with redesignated § 606.121(c)(10).

4. Proposed Revisions to § 606.121(d)

FDA is proposing to amend § 606.121(d) by deleting the phrase "Except for recovered plasma intended for manufacturing use or" and revise the regulation to clarify that this paragraph applies to the container labels for all blood and blood components. Additionally, § 606.121(d) is revised to remove an obsolete mail code and to provide for the use of labels printed on materials other than paper. FDA is proposing to amend § 606.121(d)(1) to clarify the labeling requirements that apply to the ABO and Rh blood grouping label. The revised regulation remains consistent with current blood establishment practice and the proposed changes are intended only to make the regulations more descriptive and precise. In addition to the conforming amendment previously discussed, proposed § 606.121(d)(2) and (d)(3) are revised to clarify the labeling requirements, as well as provide for use of a variety of labeling color schemes.

FDA is proposing to delete current § 606.121(d)(4) requiring the use of ink colors that are a visual match to the specific color samples designated by the Director, CBER, and to redesignate current § 606.121(d)(5) as § 606.121(d)(4). As proposed, redesignated § 606.121(d)(4) (current § 606.121(d)(5)) would also be revised to update the regulations consistent with current industry practice, to provide a consistent label appearance, and to facilitate the use of black and white labels produced by on-demand printers while still allowing for the use of color coded labels if blood establishments wish to continue their use. FDA believes, consistent with current industry practice, that the use of color coded labels with strict adherence to specific color samples does not increase product safety, and that the use of black and white or color coded labels without specific color samples would not have an adverse affect on identification of the ABO blood group.

5. Proposed Revisions to § 606.121(e)

FDA is proposing to redesignate current § 606.121(e)(1)(i) as § 606.121(e)(1)(ii). FDA is proposing to redesignate current § 606.121(e)(1)(ii) as § 606.121(e)(1)(i) and to amend redesignated § 606.121(e)(1)(i) as discussed in section II.C.2 of this document. FDA is proposing to revise § 606.121(e)(1)(iii) by changing "shall" to "must." Section 606.121(e)(2) remains unchanged.

FDA is proposing to delete current § 606.121(e)(3) because it is redundant with proposed § 606.121(c)(4) and redesignate current § 606.121(e)(4) as § 606.121(e)(3) and current § 606.121(e)(5) as § 606.121(e)(4). Additionally, a conforming amendment is proposed to current § 606.121(j) because it refers to the current § 606.121(e)(4). FDA is proposing to update redesignated § 606.121(e)(3) (current § 606.121(e)(4)) by changing "shall" to "must."

As proposed, redesignated § 606.121(e)(4)(i) and (e)(4)(ii) (current §§ 606.121(e)(5)(i) and (e)(5)(iii), respectively) remain unchanged. Consistent with current industry practice, FDA is proposing to add § 606.121(e)(4)(iii) to require establishments to state on the container label the type of anticoagulant from which the recovered plasma was prepared.

FDA is proposing to add new § 606.121(e)(5) to include the provisions in the introductory sentence of current § 640.70(a), part of § 640.70(a)(2), and §§ 640.70(a)(3), (a)(4), (a)(7), (a)(9), and (b). Proposed § 606.121(e)(5) would clarify and consolidate in § 606.121 labeling requirements specific for Source Plasma. As proposed, redesignated § 606.121(e)(5)(i) (part of current § 640.70(a)(2)) would be updated, consistent with proposed § 606.121(c)(10), to provide flexibility in the use of upper and lowercase types in cautionary statements. Additional revisions to redesignated §§ 606.121(e)(5)(ii) (current § 640.70(a)(3)) and 606.121(e)(5)(v) (current §§ 640.70(a)(3) and (b), respectively) are discussed in section II.D of this document. FDA is proposing to redesignate current § 640.70(a)(7) as § 606.121(e)(5)(vi). Under the proposal, FDA would update redesignated § 606.121(e)(5)(vi) (current § 640.70(a)(7)) to broaden the labeling requirements to include collections from donors who are not immunized but are in specific collection programs, such as disease associated collections from donors who have antibodies to cytomegalovirus. FDA is proposing to redesignate current § 640.70(a)(4) as § 606.121(e)(5)(iii) and current § 640.70(a)(9) as § 606.121(e)(5)(iv).

6. Proposed Revisions to §§ 606.121(f) and (h)

FDA is proposing to amend § 606.121(f) by revising the last sentence. The proposed change would clarify that all blood and blood components intended solely for further manufacturing, including recovered plasma and Source Plasma, do not need to be labeled "NOT FOR TRANSFUSION" because their intended use for further manufacturing is clearly stated on the label. Section 606.121(g) remains unchanged. Under the proposal, § 606.121(h) would be revised by changing "shall" to "must", and "640.2(f)" to read "§ 610.40(g)".

7. Summary of Consolidation of Regulations in § 640.70 into § 606.121

As previously discussed in this section, FDA is proposing to consolidate the existing labeling regulations in § 640.70 into § 606.121. As part of the consolidation, regulations that currently exist in both sections would be found only in § 606.121 as follows:

- § 640.70(a)(1) is deleted because it is redundant with proposed § 606.121(c)(1).
- § 640.70(a)(2) is revised and redesignated as proposed § 606.121(c)(10) and as proposed § 606.121(e)(5)(i).
- § 640.70(a)(4) is revised and redesignated as § 606.121(e)(5)(iii).
- § 640.70(a)(5) is removed because it is redundant with proposed § 606.121(c)(3).
- § 640.70(a)(6) is revised and redesignated as the second sentence of proposed § 606.121(c)(4).
- § 640.70(a)(7) is revised and redesignated as § 606.121(e)(5)(vi).
- § 640.70(a)(9) is revised and redesignated as § 606.121(e)(5)(iv).

C. Proposed Revisions to Clarify and Consolidate Regulations Related to Use of a Labeling System Using Machine-Readable Information

The proposed revisions discussed in this section of this document are primarily intended to allow for the use of a machine-readable encoded information system, such as ISBT 128. Those changes would allow manufacturers of blood, blood components, and Source Plasma to submit product specific labeling that is consistent with approved labeling formats, such as ISBT 128, to the Director, CBER, for approval without requesting a variance under § 640.120. Under this proposal, § 606.121(c)(13) would remain unchanged. In the **Federal Register** of March 14, 2003 (68 FR 12499) FDA issued a proposed rule entitled "Bar Code Label Requirements for Human Drug Products and Blood" (proposed Bar Code Rule), that would amend § 606.121(c)(13) to require certain human drug and biological product labels to bear bar codes and also would require the use of machine-readable information on container labels for blood and blood components intended for transfusion. The proposed Bar Code Rule specifically invites comment on whether FDA should require the use of ISBT 128, or require "machine-readable information" as approved by the Director, CBER, or some other standard or symbology. If you are interested in commenting on the use of bar codes on container labels for blood and blood components for transfusion, please refer to the proposed Bar Code Rule and submit your comments (see 68 FR 12499).

1. Proposed revisions to § 606.121(c)(2)

FDA is proposing to amend § 606.121(c)(2) by replacing "registration number" with "unique facility identifier." This change would remove the requirement to include the FDA assigned registration number on blood and blood component labels. Although the FDA assigned registration number is acceptable as a "unique facility identifier," the proposal would also provide for the use of other recognized donation facility identification numbers, such as the ISBT facility code (which includes machine-readable information). Consistent with the general provisions for licensing in 21 CFR part 601, establishments collecting Source Plasma may use their registration number or other recognized donation facility identification number as the unique facility identifier which would aid in identifying the location where the product was collected. Under the proposal, current § 640.70(a)(10) would be removed because the requirements of § 640.70(a)(10) for "name, address, and license number" on the Source Plasma label are included in proposed § 606.121(c)(2).

2. Proposed Revisions to § 606.121(e)(1)(i)

As previously discussed in section II.B of this document, FDA is proposing to amend redesignated § 606.121(e)(1)(i) (current § 606.121(e)(1)(ii)). This revision is intended to facilitate the use of a labeling system using machine-readable information, such as ISBT 128, by providing more flexibility in labeling. Specifically, this revision would remove the labeling requirements regarding the placement and prominence of the anticoagulant.

D. Proposed Revisions Related to Temperature Requirements

FDA is proposing revisions to update temperature requirements for storage and shipment of blood and blood components. The proposed changes described in this section are intended to provide consistency with data published in Europe and to help ensure the potency of blood and blood components by guarding against the degradation of heat labile clotting factors during storage and shipment (Ref. 1). Because these storage and shipping temperatures may be reflected in the product labeling, FDA is proposing to update the temperature requirements in this rulemaking to address as many labeling changes as possible as part of this rulemaking and enable establishments to make a number of revisions to labels for blood products at one time. This revision would simplify labeling of blood and blood components. Additionally, this approach is intended to reduce the burden on industry by minimizing the number of times blood container labels must be revised and reordered.

1. Proposed Revisions to §§ 610.53, 640.34, and 640.54

FDA is proposing to revise §§ 610.53, and 640.34(b) by changing "shall" to "must", and by changing the storage and shipping temperatures for Cryoprecipitated Antihemophiliac Factor (AHF) and for Fresh Frozen Plasma to -25 °C or colder if stored for 24 months after the date of collection, and -18 to -25 °C if stored for 3 months after the date of collection. FDA is proposing changes to § 640.54 for consistency with the proposed changes in shipping and storage temperatures for Cryoprecipitated AHF.

2. Proposed Revisions to §§ 640.69, 640.70, and 640.76

As previously mentioned, FDA is proposing to redesignate current § 640.70(a)(3) as § 606.121(e)(5)(ii). FDA is proposing to revise redesignated § 606.121(e)(5)(ii) (current §§ 640.70(a)(3)), 640.69(c), and 640.76(a) and (b) by changing the storage and shipping temperatures for Source Plasma to -30 °C and -15 °C, respectively, or colder. FDA is proposing to redesignate current § 640.70(b) as § 606.121(e)(5)(v), and to revise redesignated § 606.121(e)(5)(v) by changing the storage and shipping temperatures for Source Plasma diverted for Source Plasma Salvaged to -30 °C and -15 °C, respectively, or colder.

3. Proposed Revisions to § 640.34

FDA is proposing to revise § 640.34(g)(2) to clarify that frozen plasma must be stored at appropriate temperatures to ensure product potency.

E. Proposed Changes to Clarify and Consolidate Regulations Related to Communicable Disease Testing, and Autologous Donations

The proposed revisions discussed in this section of this document would require labels for blood, blood components, and Source Plasma to include the results of the communicable disease tests performed on a sample of the donor's blood obtained at the time of the blood donation. The proposed regulations would require establishments to include on product labels the results of all communicable disease testing performed as required in § 610.40. Currently in §§ 606.121 and 640.70, only the results of tests for Hepatitis B surface antigen (HBsAg) and antibody to Human Immunodeficiency Virus (anti-HIV) are required on the label. In the **Federal Register** of June 11, 2001 (66 FR 31146), FDA published a related rulemaking entitled "Requirements for Testing Human Blood Donors for Evidence of Infection Due to Communicable Disease Agents" (the testing final rule). The proposed revisions are consistent with the requirements of the testing final rule.

1. Proposed Revisions to Redesignated § 606.121(c)(11)

FDA is proposing to redesignate current §§ 640.70(a)(8) and (a)(11) as § 606.121(c)(11) and to revise redesignated § 606.121(c)(11) to require labeling statements based on communicable disease test results. The proposed change provides that the labeling requirements apply to Source Plasma and would require establishments to label products for further manufacture with the results of all required communicable disease testing performed in accordance with § 610.40.

2. Proposed Addition to § 606.121(c)(12)

As previously described in this section, FDA is proposing to redesignate current § 606.121(c)(12) as § 606.121(c)(9), and to add new § 606.121(c)(12). Proposed § 606.121(c)(12) is intended to clarify that blood establishments would be permitted under certain circumstances to use blood or blood components which test repeatedly reactive for communicable disease agents, provided the units are appropriately labeled to indicate all test results. This labeling change is consistent with the labeling requirements of § 610.40 of the testing final rule described in the previous paragraph.

3. Proposed Revisions to § 606.121(i)

FDA is proposing to revise § 606.121(i) by using more descriptive and precise terms, by replacing the word "shall" with "must" and by replacing "Whole Blood or Red Blood Cells" with "blood or blood components." Section 606.121(i)(1) would be revised consistent with industry practice by adding "date of birth" to the list of examples of information that may be used to help ensure correct identification of the autologous transfusion recipient. In addition, FDA is proposing to delete the words "blood group" from the list of information that may identify an autologous transfusion recipient in § 606.121(i)(1). No revision is proposed for § 606.121(i)(2). FDA is proposing to revise § 606.121(i)(3) to simplify the requirements and to provide consistency with current industry practice and with the requirements for appropriate donor classification proposed in redesignated § 606.121(c)(8)(v). FDA is proposing to add new paragraph (i)(4) to clarify and update the existing requirements. Accordingly, FDA is proposing to redesignate current §§ 606.121(i)(4) and (i)(5) as § 606.121(i)(5) and (i)(6), respectively.

FDA is proposing to revise redesignated § 606.121(i)(5) (current § 606.121(i)(4)) to provide that the label for blood or blood components intended for autologous transfusion must be labeled as "FOR AUTOLOGOUS USE ONLY" if obtained from a donor who is reactive to one or more tests for evidence of infection due to communicable disease agents. Current § 606.121(i)(4) is specific for the tests currently required in the regulations. Consistent with the testing final rule, the proposed revision to redesignated § 606.121(i)(5) (current § 606.121(i)(4)) would provide for appropriate labeling regardless of how testing standards may change in the future. FDA is proposing to update redesignated § 606.121(i)(6) (current § 606.121(i)(5)), revising it by replacing "homologous" with "allogeneic."

4. Proposed Revisions to § 606.122

FDA is proposing to amend § 606.122 *Instruction circular* by revising the introductory paragraph and paragraphs (e), (f), and (m). Section 606.122 requires that an instruction circular must be available for distribution if the product is intended for transfusion. The introductory paragraph would be revised to replace "shall" with "must". Current § 606.122(e) requires that the instruction circular contain statements that the product was prepared from blood that was negative when tested for antibody to human immunodeficiency virus (HIV), was nonreactive for hepatitis B surface antigen by FDA required tests and nonreactive when tested by a serological test for syphilis. Proposed § 606.122(e) would clarify that the instruction circular must contain statements regarding the results of all required infectious agent testing. By making this change, it would become unnecessary to revise the labeling regulations as testing requirements may be revised in the future. FDA is proposing to amend § 606.122(f) by updating the warning statement, which currently refers only to the hazard of transmitting hepatitis, to reflect the risk associated with the communicable disease agents for which testing is currently performed.

Note that the terms "infectious agent testing" and "communicable disease testing" (used interchangeably in this proposed rule and in guidance documents) refer to the same testing performed in accordance with § 610.40. The term "infectious agent" is used rather than "communicable disease agent" for consistency with the "Version 1.2.0 Standard."

FDA is proposing to amend the introductory phrase in § 606.122(m), and paragraphs (m)(2), (m)(3), and (m)(5) to update the information required in the instruction circular for plasma. In the introductory sentence of § 606.122(m), FDA is proposing to update the regulations by replacing the word "shall" with "must." Section 606.122(m)(1) would remain unchanged. FDA is proposing to revise § 606.122(m)(2) and (m)(3) to clarify that the instruction circular must contain instructions to thaw the frozen product at a temperature "appropriate for the product" and, when applicable, instructions to begin administration of the product within "a specified time" after thawing, respectively. The proposed changes would provide greater flexibility in the instruction circular, and would provide for various new thawing methods and procedures for administration that might be used in the future without requiring additional changes to the regulation.

FDA is proposing to amend § 606.122(m)(5), consistent with the changes in proposed redesignated § 606.122(e), to update the information in the instruction circular regarding the transfusion of plasma to warn of the risk of transmission of many communicable disease agents, rather than refer only to the hazard of transmitting hepatitis.

III. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612, and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation). Under the Regulatory Flexibility Act, unless an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, the agency must analyze regulatory options that would minimize any significant impact of a rule on small entities.

The agency has reviewed this proposed rule and believes that it is consistent with the regulatory philosophy and principles identified in the Executive order and these two statutes. The proposed rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order. No further analysis is required under the Regulatory Flexibility Act because the agency has determined that these proposed rule amendments have no compliance costs and will not have a significant effect on a substantial number of small entities. This proposed rule also does not trigger the requirements for a written statement under section 202(a) of the Unfunded Mandates Reform Act because it does not impose a mandate that results in expenditure of $100 million or more by State, local, and tribal governments in the aggregate, or by the private sector in any one year.

The purpose of the proposed rule amendments is to simplify and unify the existing labeling standards. Labeling standards are currently found in multiple sections of the regulations and these amendments would move these standards to one section of the regulations. By revising, consolidating, and redesignating these regulations, parties wishing to understand the labeling requirements will be able to refer to a single source. The proposed rule amendments also include provisions that add flexibility to the regulations that should lower the cost of compliance.

Some aspects of the proposed rule amendments do establish new label requirements and provisions. One such requirement is that the label must reflect updated testing requirements. The agency believes these requirements, including the requirement for the label to reflect updated testing requirements, conform to current industry practice and do not impose an additional burden.

The proposed rule requires a change in the instruction circular to reflect current testing practices. Existing labeling regulations do not allow the circular to reflect current required testing or to adjust to future changes in required testing or plasma thawing procedures. The agency believes the instruction circular would already be in compliance with the proposed rule amendments and reflect current requirements and practices if compliance were permitted by existing regulations. By adding flexibility to the rules regarding the instruction circular, the proposed rule lowers the overall cost of compliance. Moreover, as the instruction circular is updated regularly, the agency believes any required changes can be made in the ordinary revision cycle and that this rule will not impose an additional burden.

The proposed rule amendments also update the temperature requirements for storage and shipping of blood and blood components. The agency believes that these requirements reflect current industry practice and do not impose an additional burden.

In general, the agency believes the proposed rule will have no compliance costs, because any requirements are either industry practice or would be industry practice absent existing prohibitions. Because the agency believes these proposed rule amendments have no compliance costs, the agency certifies they will not have a significant economic impact on a substantial number of small entities.

IV. The Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As previously described, FDA is proposing to consolidate regulations so blood establishments may find all applicable labeling standards under one section of regulations. The regulations for labeling of all blood and blood components would be moved from other sections of the regulations to § 606.121. Since the agency believes the proposed rule amendments conform to current industry practice, FDA is not estimating the burden of the proposed rule. The information collection requirements under §§ 606.121 and 606.122 are approved under OMB control number 0910–0116.

V. Environmental Impact

The agency has determined under 21 CFR 25.30(j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VII. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this proposed rule. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Proposed Effective Date

The agency is proposing that any final rule that may issue based upon this proposed rule become effective 180 days after its date of publication in the **Federal Register**.

IX. Reference

The following reference has been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Krotitschke, R., "Stability of Fresh Frozen Plasma: Results of 36-Month Storage at -20 °C, -25 °C, -30 °C, and -40 °C," *Infusion Therapy and Transfusion Medicine*, 27:174–180, 2000.

List of Subjects

21 CFR Part 600

Biologics, Reporting and recordkeeping requirements.

21 CFR Part 606

Blood, Labeling, Laboratories, Reporting and recordkeeping requirements.

21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 640

Blood, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 600, 610, 606, and 640 be amended as follows:

PART 600—BIOLOGICAL PRODUCTS: GENERAL

1. The authority citation for 21 CFR part 600 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 360i, 371, 374; 42 U.S.C. 216, 262, 263, 263a, 264, 300aa–25.

2. Section 600.15 is amended in the table in paragraph (a) by revising the entries for Cryoprecipitated AHF, Fresh Frozen Plasma, and Source Plasma to read as follows:

§ 600.15 Temperatures during shipment.

* * * * *

(a) Products.

Product	Temperature
Cryoprecipitated AHF	-25 °C or colder if expiration is 24 months or -18 to -25 °C if expiration is 3 months.
. . . . .	
* * * * * * * *	

Product	Temperature
Fresh Frozen Plasma	-25 °C or colder if expiration is 24 months or -18 to -25 °C if expiration is 3 months.
Source Plasma	-15 °C or colder.

* * * * *

PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

3. The authority citation for 21 CFR part 606 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 355, 360, 360j, 371, 374; 42 U.S.C. 216, 262, 263a, 264.

4. Section 606.121 is revised to read as follows:

§ 606.121 Container label.

The container label requirements are designed to facilitate the use of a uniform container label for blood and blood components, including Source Plasma, by all blood establishments.

(a) [Reserved]

(b) The label provided by the collecting facility and the initial processing facility must not be removed, altered, or obscured, except that the label may be altered to indicate the proper name, with any appropriate modifiers and attributes, and other information required to identify accurately the contents of a container after blood components have been prepared.

(c) The container label must include the following information, as well as other specialized information as required in this section for specific products:

(1) The proper name of the product in a prominent position, with any appropriate modifiers and attributes;

(2) The name, address, unique facility identifier, and, if a licensed product, the license number of each manufacturer;

(3) The donor or lot number relating the unit to the donor. If pooled, all donor numbers, all donation numbers, or a pool number that is traceable to each individual unit comprising the pool;

(4) The expiration date, including the day, month, and year, and, if the dating period for the product is 72 hours or less, including any product prepared in a system that might compromise sterility, the hour of expiration. If Source Plasma intended for manufacturing into noninjectable products is pooled, the expiration date is determined from the collection date of the oldest unit in the pool, and the pooling records must show the collection date for each unit in the pool.

(5) For Whole Blood, Plasma, Platelets, and partial units of Red Blood Cells, the volume of the product, accurate to within ±10 percent; or optionally for Platelets, the volume range within reasonable limits.

(6) Where applicable, the name and volume of source material.

(7) The recommended storage temperature (in degrees Celsius).

(8) If the product is intended for transfusion, the statements:

(i) "Rx only."

(ii) "See Circular of Information for indications, contraindications, cautions, and methods of infusion."

(iii) "Properly identify intended recipient."

(iv) "This product may transmit infectious agents."

(v) The appropriate donor classification statement, i.e., "paid donor" or "volunteer donor," in no less prominence than the proper name of the product.

(A) A paid donor is a person who receives monetary payment for a blood donation.

(B) A volunteer donor is a person who does not receive monetary payment for a blood donation.

(C) Benefits, such as time off from work, membership in blood assurance programs, and cancellation of nonreplacement fees that are not readily convertible to cash, do not constitute monetary payment within the meaning of this paragraph.

(9) If the product is intended for transfusion or as is otherwise appropriate, the ABO group and Rh type of the donor must be designated conspicuously. For Cryoprecipitated Antihemophiliac Factor (AHF), the Rh type may be omitted. The Rh type must be designated as follows:

(i) If the test using Anti-D Blood Grouping Reagent is positive, the product must be labeled: "Rh positive."

(ii) If the test using Anti-D Blood Grouping Reagent is negative but the test for weak D (formerly Du) is positive, the product must be labeled: "Rh positive."

(iii) If the test using Anti-D Blood Grouping Reagent is negative and the test for weak D (formerly Du) is negative, the product must be labeled: "Rh negative."

(10) If the product is not intended for transfusion, a statement as applicable: "Caution: For Manufacturing Use Only," or "Caution: For Use in Manufacturing Noninjectable Products Only," or other cautionary statement as approved by the Director, Center for Biologics Evaluation and Research (CBER).

(11) If the product is intended for further manufacturing use, a statement listing the names and results of all the tests for communicable disease agents for which the donation has been tested and found negative.

(12) The blood and blood components must be labeled in accordance with § 610.40, when the donation is tested and demonstrates evidence of infection due to a communicable disease agent(s).

(13) The container label may bear encoded information in the form of machine-readable symbols approved for use by the Director, Center for Biologics Evaluation and Research (HFB-1).

(d) Unless otherwise approved by the Director, CBER, the container label must be white and print must be solid black, with the following additional exceptions:

(1) The ABO and Rh blood groups must be printed as follows:

(i) Rh positive: Use black print on white background and use solid black or other solid color for ABO.

(ii) Rh negative: Use white print on black background for Rh and use black outline for ABO.

(2) The proper name of the product, with any appropriate modifiers and attributes, the donor classification statement, and the statement "properly identify intended recipient" may be printed in solid red or in solid black.

(3) The following color scheme may be used for differentiating ABO Blood groups:

Blood group	Color of label
O	Blue
A	Yellow
B	Pink
AB	White

(4) Special labels, such as those described in paragraphs (h) and (i) of this section, may be color coded.

(e) Container label requirements for particular products or groups of products.

(1) Whole Blood labels must include:

(i) The name of the applicable anticoagulant approved for use by the Director, CBER.

(ii) The volume of anticoagulant.

(iii) If tests for unexpected antibodies are positive, blood intended for transfusion must be labeled: "Contains (name of antibody)."

(2) Except for frozen, deglycerolized, or washed Red Blood Cell products, red blood cell labels must include:

(i) The volume of Whole Blood, and the type of anticoagulant with which the product was prepared.

(ii) If tests for unexpected antibodies are positive and the product is intended for transfusion, the statement: "Contains (name of antibody)."

(3) If tests for unexpected antibodies are positive, Plasma intended for transfusion must be labeled: "Contains (name of antibody)."

(4) Recovered plasma labels must include:

(i) In lieu of an expiration date, the date of collection of the oldest material in the container.

(ii) For recovered plasma not meeting the requirements for manufacture into licensable products, the statement: "Not for Use in Products Subject to License Under Section 351 of the Public Health Service Act."

(iii) The type of anticoagulant with which the product was prepared.

(5) Source Plasma labels must include the following information:

(i) The cautionary statement, as specified in § 606.121(c)(10), must follow the proper name with any appropriate modifiers and attributes and be of similar prominence as the proper name.

(ii) The statement "Store at -30 °C or colder": Provided, That where plasma is intended for manufacturing into noninjectable products, this statement may be replaced by a statement of the temperature appropriate for manufacture of the final product to be prepared from the plasma.

(iii) The total volume or weight of plasma and total quantity and type of anticoagulant used.

(iv) When plasma collected from a donor is reactive for a serologic test for syphilis, a statement that the plasma is reactive and must be used only for the manufacturing of positive control reagents for the serologic test for syphilis.

(v) Source Plasma diverted for Source Plasma Salvaged must be relabeled "Source Plasma Salvaged" as prescribed in § 640.76 of this chapter. Immediately following the proper name of the product, with any appropriate modifiers and attributes, the labeling must conspicuously state as applicable, "STORAGE TEMPERATURE EXCEEDED -30 °C" or "SHIPPING TEMPERATURE EXCEEDED -15 °C".

(vi) A statement as to whether the plasma was collected from nonimmunized donors, or from donors in specific collection programs approved by the Director, CBER. In the case of specific collection programs the label must state the defining characteristics of the plasma.

(f) Blood and blood components determined to be unsuitable for transfusion must be prominently labeled: "NOT FOR TRANSFUSION," and the label must state the reason the unit is considered unsuitable. The provision does not apply to blood and blood components intended solely for further manufacturing.

(g) [Reserved]

(h) The following additional information must appear on the label for blood or blood components shipped in an emergency prior to completion of required tests, in accordance with § 610.40(g) of this chapter:

(1) The statement: "FOR EMERGENCY USE ONLY BY _____."

(2) Results of any tests prescribed under §§ 610.40 and 640.5(a), (b), or (c) of this chapter completed before shipment.

(3) Indication of any tests prescribed under §§ 610.40 and 640.5(a), (b), or (c) of this chapter not completed before shipment.

(i) The following additional information must appear on the label for blood or blood components intended for autologous transfusion:

(1) Information adequately identifying the patient e.g., name, date of birth, hospital, and identification number.

(2) Date of donation.

(3) The statement: "AUTOLOGOUS DONOR."

(4) The ABO and Rh blood group and type, unless exempt under § 606.121(c)(9).

(5) In place of the allogeneic blood group label, each container of blood intended for autologous use and obtained from a donor who fails to meet any of the donor suitability requirements under § 640.3 of this chapter or who is reactive to or positive for one or more tests for evidence of infection due to communicable disease agents must be prominently and permanently labeled: "FOR AUTOLOGOUS USE ONLY."

(6) Units of blood originally intended for autologous use, except those labeled as prescribed under paragraph (i)(5) of this section, may be issued for allogeneic transfusion provided the container label complies with all applicable provisions of paragraphs (b) through (e) of this section. In such case, the special label required under paragraphs (i)(1), (i)(2), and (i)(3) of this section must be removed or otherwise obscured.

(j) A tie-tag attached to the container may be used for providing the information required by paragraphs (e)(1)(iii), (e)(2)(ii), and (e)(3), (h), or (i)(1), (i)(2), and (i)(3) of this section.

5. Section 606.122 is amended by revising the introductory paragraph, and paragraphs (e), (f), (m)(2), (m)(3), and (m)(5) to read as follows:

§ 606.122 Instruction circular.

An instruction circular must be available for distribution if the product is intended for transfusion. The instruction circular must provide adequate directions for use, including the following information:

* * * * *

(e) A statement that the product was prepared from blood that was tested and found negative for evidence of infection due to the infectious agents (include the name of each infectious agent for which the blood was tested, including all FDA required tests).

(f) The statement: "Warning: The risk of communicable disease agents is present. Careful donor selection and available laboratory tests do not eliminate the hazard."

* * * * *

(m) For Plasma, the instruction circular must contain:

(1) * * *

(2) Instructions to thaw the frozen product at a temperature appropriate for the product.

(3) When applicable, instructions to begin administration of the product within a specified time after thawing.

(4) * * *

(5) A statement that this product has the same risk of transmitting communicable disease agents as Whole Blood; other plasma volume expanders without this risk are available for treating hypovolemia.

* * * * *

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

6. The authority citation for 21 CFR part 610 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360, 360c, 360d, 360h, 360i, 371, 372, 374, 381; 42 U.S.C. 216, 262, 263, 263a, 264.

7. Section 610.53 is amended by revising paragraph (c) in the table for

Cryoprecipitated AHF, and Plasma products for the item Fresh Frozen Plasma to read as follows:

§ 610.53 Dating periods for licensed biological products.

(c) * * *

* * * * *

A	B	C	D
Product	Manufacturer's storage period 1 to 5 °C (unless otherwise stated)	Manufacturer's storage period 0 °C or colder (unless otherwise stated)	Dating period after leaving manufacturer's storage when stored at 2 to 8 °C (unless otherwise stated)
* * * * *			
Cryoprecipitated AHF	do	do	24 months from the date of collection of source blood providing labeling recommends storage at -25 °C or colder or 3 months from the date of collection of source blood providing labeling recommends storage between -18 to -25 °C.
* * * * *			
Plasma products 1. Fresh Frozen Plasma	Not applicable	do	24 months from the date of collection of source blood providing labeling recommends storage at -25 °C or colder or 3 months from the date of collection of source blood providing labeling recommends storage between -18 to -25 °C.

* * * * *

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

8. The authority citation for 21 CFR part 640 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371; 42 U.S.C. 216, 262, 263, 263a, 264.

9. Section 640.34 is amended by revising paragraphs (b) and (g)(2) to read as follows:

§ 640.34 Processing.

(a) * * *

(b) *Fresh Frozen Plasma.* Fresh Frozen Plasma must be prepared from blood collected by uninterrupted venipuncture with minimal damage to and minimal manipulation of the donor's tissue. The plasma must be separated from the red blood cells, and placed in a freezer within 8 hours or within the timeframe specified in the directions for use for the blood collecting, processing, and storage system. The plasma must be stored at -25 °C or colder if the expiration is 24 months; and at -18 to -25 °C if the expiration is 3 months.

* * * * *

(g) * * *

(2) With the exception of Platelet Rich Plasma and Liquid Plasma the final product must be inspected for evidence of thawing or breakage at the time of issuance. The containers need not be stored in a manner that shows evidence of thawing if records of continuous monitoring can establish that the appropriate storage temperature recommended on the labeling for the product was maintained throughout the storage period. If continuous monitoring of the product is not available, the final product must be stored in a manner that will show evidence of thawing and must not be issued if there is any evidence of thawing.

* * * * *

10. Section 640.54 is amended by revising paragraph (a)(3) to read as follows:

§ 640.54 Processing.

(a) * * *

(3) Immediately after separation and freezing of the plasma, the plasma must be stored and maintained at the appropriate storage temperature recommended on the labeling for the product until thawing of the plasma for further processing to remove the Cryoprecipitated AHF.

* * * * *

11. Section 640.69 is amended by revising paragraph (c) to read as follows:

§ 640.69 General requirements.

* * * * *

(c) *Inspection.* Source Plasma intended for further manufacturing into injectable products must be inspected for evidence of thawing at the time of issuance, except that inspection of individual plasma containers need not be made if the records of continuous monitoring of the storage temperature establish that the temperature remained at -30 °C or colder. If there is evidence that the storage temperature has not been maintained at -30 °C or colder, the plasma may be relabeled and issued as provided in § 640.76(a) of this chapter.

* * * * *

§ 640.70 [Removed]

12. Section 640.70 *Labeling* is removed.

§ 640.76 [Amended]

13. Section 640.76 *Products stored or shipped at unacceptable temperatures* is amended as follows:

a. In paragraphs (a)(1) and (a)(2) by removing "-20 °C" and adding in its place "-30 °C" wherever it appears;

b. In paragraphs (a)(1), (a)(2), and (b) by removing "shall" and adding in its place "must" wherever it appears;

c. In paragraphs (a)(2) and (b) by removing "-5 °C" and adding in its place "-15 °C" wherever it appears.

Dated: July 12, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–19289 Filed 7–29–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–152524–02]

RIN–1545–BB38

Guidance Under Section 1502; Amendment of Waiver of Loss Carryovers From Separate Return Limitation Years; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed regulations under section 1502 of the Internal Revenue Code that permit the amendment of certain elections to waive the loss carryovers of an acquired subsidiary.

DATES: The public hearing originally scheduled for August 6, 2003, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Sonya M. Cruse of the Regulations Unit, Associate Chief Counsel (Procedure and Administration), at (202) 622–4693 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Wednesday, May 7, 2003, (68 FR 24404), announced that a public hearing was scheduled for August 6, 2003 at 10 a.m., in room 6718, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 1502 of the Internal Revenue Code.

The public comment period for these regulations expired on July 16, 2003. The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of Friday, July 25, 2003, no one has requested to speak. Therefore, the public hearing scheduled for August 6, 2003 is cancelled.

LaNita Van Dyke,

Acting Chief, Regulations Unit, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 03–19365 Filed 7–29–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–163974–02]

RIN 1545–BB77

Diversification Requirements for Variable Annuity, Endowment, and Life Insurance Contracts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes removing provisions of the Income Tax Regulations that apply a look-through rule to assets of a nonregistered partnership for purposes of satisfying the diversification requirements of section 817(h) of the Internal Revenue Code. The Treasury Department and the IRS believe that removal of these provisions will eliminate any possible confusion regarding the prohibition on ownership of interests by the public in a nonregistered partnership funding a variable contract.

DATES: Written or electronic comments and requests for a public hearing must be received by October 28, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–163974–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Comments may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:RU (REG–163974–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: James Polfer, (202) 622–3970 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 817(d) defines a variable contract as an annuity contract, a life insurance contract, or a contract that provides funding of insurance on retired lives as described in section 807(c)(6). A variable contract must provide for the allocation of all or part of the amounts received under the contract to an account that is segregated from the general asset accounts (a segregated asset account) of the company under State law. In the case of an annuity contract, the amounts paid in, or the amounts paid out, must reflect the investment return and the market value of the segregated asset account. Section 817(d)(3)(A). In the case of a life insurance contract, the amount of the death benefit (or the period of coverage) must be adjusted on the basis of the investment return and the market value of the account. Section 817(d)(3)(B). In the case of a contract for funding of insurance on retired lives, the amounts paid in, or the amounts paid out, must reflect the investment return and the market value of the account. Section 817(d)(3)(C).

Section 817(h)(1) provides that a variable contract based on a segregated asset account shall not be treated as an annuity, endowment, or life insurance contract unless the segregated asset account is adequately diversified in accordance with regulations prescribed by the Secretary. Under section 817(h)(1), if a segregated asset account fails to be adequately diversified for a period, then the contracts supported by that segregated asset account shall not be treated as annuity, endowment, or life insurance contracts for that period and subsequent periods, even if the segregated asset account is adequately diversified in those subsequent periods. Section 1.817–5(c)(1) defines period as a calendar quarter. If a segregated asset account is not adequately diversified, income earned by that segregated asset account is treated as ordinary income received or accrued by the policyholders.[1]

Section 817(h) was enacted by Congress in the Deficit Reduction Act of 1984 (Pub. L. 98–369). Congress enacted the diversification requirements of section 817(h) to "discourage the use of tax-preferred variable annuity and variable life insurance primarily as investment vehicles." H.R. Conf. Rep. No. 98–861, at 1055 (1984). In section 817(h)(1), Congress granted the Secretary broad regulatory authority to develop rules to carry out this intent. Pursuant to this authority, § 1.817–5 sets forth the standards a segregated asset account must meet to be treated as adequately diversified within the meaning of section 817(h).

Section 817(h)(4) provides a look-through rule under which taxpayers do not treat the interest in a regulated investment company (RIC) or trust as a single asset of the segregated asset account but rather apply the diversification tests by taking into account the assets of the RIC or trust. Section 817(h) further provides that the look-through rule applies only if all of the beneficial interests in a RIC or trust

[1] Section 1.817–5(a)(2) provides a mechanism for insurance companies to avoid this result if certain enumerated correction procedures are satisfied.

are held by one or more general or segregated asset accounts of insurance companies (or affiliated companies), or by fund managers (or affiliated companies) in connection with the creation or management of the RIC or trust. "In authorizing Treasury to prescribe diversification standards, the conferees intend that the standards be designed to deny annuity or life insurance treatment for investments that are publicly available to investors * * * A H.R. Conf. Rep. at 1055."

Section 1.817–5(f)(1) of the regulations implements the Congressional directive to prescribe diversification standards by providing that if look-through treatment is available, a beneficial interest in a RIC, real estate investment trust, partnership, or trust that is treated under sections 671 through 679 as owned by the grantor or another person (investment company, partnership or trust) will not be treated as a single investment of a segregated asset account for purposes of testing diversification. Instead, a pro rata portion of each asset of the investment company, partnership, or trust will be treated as an asset of the segregated asset account.

Section 1.817–5(f)(2) provides more detailed rules for determining whether look-through treatment is available. Under § 1.817-5(f)(2)(i), the look-through rule applies to any investment company, partnership, or trust if: (A) All the beneficial interests in the investment company, partnership, or trust are held by one or more segregated asset accounts of one or more insurance companies; and (B) public access to such investment company, partnership, or trust is available exclusively through the purchase of a variable contract. Section 1.817–5(f)(iii) provides exceptions to the general ownership limitations of § 1.817–5(f)(2)(i), specifically permitting life insurance company general accounts, managers of the investment company, partnership or trust, pension or retirement plan trustees, and certain individuals whose investment falls into one of two limited classes.

Under § 1.817–5(f)(2)(ii), the look-through rule applies to a partnership interest that is not registered under a Federal or State law regulating the offering or sale of securities. Unlike § 1.817–5(f)(2)(i), satisfaction of the non-registered partnership look-through rule of § 1.817–5(f)(2)(II) is not explicitly conditioned on limiting the ownership of interests in the partnership to certain specified holders.

Under § 1.817–5(f)(2)(iii), the look-through rule applies to a trust that is treated under sections 671 through 679 as owned by the grantor or another person if substantially all of the assets of the trust are represented by Treasury securities.

Section 1.817–5(g) provides examples of the application of the look-through rules of § 1.817–5(f). Example (3) of § 1.817–5(g) provides an example of the application of the § 1.817–5(f)(2)(ii) non-registered partnership look-through rule.

Explanation of Provisions

This document contains proposed amendments to 26 CFR part 1 under section 817(h). These proposed amendments would remove § 1.817–5(f)(2)(ii), which requires taxpayers to look through an interest in a nonregistered partnership, as defined in § 1.817–5(f)(2)(ii), to determine whether a segregated asset account supporting a variable contract is adequately diversified within the meaning of section 817(h) and § 1.817–5. In addition, the proposed regulations would conform the other provisions of § 1.817–5 to the removal of § 1.817–5(f)(2)(ii), and would remove Example (3) of § 1.817–5(g).

The application of § 1.817–5(f)(2)(i) to interests in nonregistered partnerships will be unchanged by the removal of § 1.817–5(f)(2)(ii). Thus, look through treatment will be available for interests in a nonregistered partnership if: (A) All the beneficial interests in the nonregistered partnership (other than those described in § 1.817-5(f)(3)) are held by one or more segregated asset accounts of one or more insurance companies; and (B) public access to such nonregistered partnership is available exclusively (except as otherwise permitted in § 1.817–5(f)(3)) through the purchase of a variable contract.

Reasons for Change

The Treasury Department and the IRS are concerned that § 1.817–5(f)(2)(ii) is not consistent with Congressional intent because it is not explicitly subject to the public availability limitation of section 817(h). The Treasury Department and the IRS believe that removal of § 1.817–5(f)(2)(ii) will eliminate any possible confusion regarding the prohibition on ownership of interests by the public in a non-registered partnership funding a variable contract.

In addition, the Treasury Department and the IRS understand that certain taxpayers are purchasing contracts invested in partnerships that rely on the nonregistered partnership rule of § 1.817–5(f)(2)(ii) to satisfy the diversification requirements of section 817(h). The Treasury Department and the IRS are concerned that these contracts are funded by interests in partnerships that are also available to certain limited classes of investors, specifically individuals that are "qualified purchasers" within the meaning of 15 U.S.C. 80a–2(a)(51) or "accredited investors" as defined in Regulation D of the Securities Act of 1933.[2] The Treasury Department and the IRS believe that Congress intended to treat qualified purchasers and accredited investors as part of the general public when determining whether an investment is available for the purchase by the general public. Elimination of § 1.817–5(f)(2)(ii) will limit access to interests in non-registered partnerships to the same holders that are permitted under § 1.817–5(f)(2)(i), which does not include either qualified investors or accredited investors.

Proposed Effective Date

The Treasury Department and the IRS intend revocation of § 1.817–5(f)(2)(ii) and Example (3) of § 1.817–5(g) to be effective on the date the final regulations are published in the **Federal Register**. The revocation will be effective for all investments in nonregistered partnerships, including investments made prior to the effective date of the revocation that relied on the look-through rule of § 1.817–5(f)(2)(ii) to satisfy the diversification requirements of section 817(h) and the regulations and do not meet the requirements of § 1.817–5(f)(2)(i). However, arrangements in existence on the effective date of the revocation of § 1.817–5(f)(2)(ii) will be considered to be adequately diversified if: (i) Those arrangements were adequately diversified within the meaning of section 817(h) prior to the revocation of § 1.817–5(f)(2)(ii) and (ii) by the end of the last day of the second calendar quarter ending after the effective date of

[2] The Treasury Department and the IRS understand that many of the partnership interests that are available under these arrangements are interests in partnerships that operate as hedge funds, often established and operated in foreign jurisdictions. In many cases, interests in these partnerships are available for purchase directly by the general public as well as through the purchase of a variable contract. Taxpayers that purchase a variable annuity or life insurance contract are indirectly investing in partnership interests that are available for direct investment by the general public. By indirectly investing in these partnership interests through the purchase of a variable contract taxpayers defer tax on partnership earnings that might otherwise be currently taxable. The Treasury Department and the IRS believe that these arrangements (often marketed as "insurance wrappers") are the type of overly investment oriented insurance and annuity arrangements that Congress sought to prevent when it enacted the diversification rules of section 817(h).

the regulation, the arrangements are brought into compliance with the final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Request for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are timely submitted to the IRS. The Treasury Department and the IRS specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

The Treasury Department and the IRS specifically request comments on: (1) Whether revocation of § 1.817–5(f)(2)(ii) necessitates other changes to the look-through rules of § 1.817–5(f), in particular whether the list of holders permitted by § 1.817–5(f)(3) should be amended or expanded, and whether a non-pro-rata distribution of the investment returns of a segregated asset account should be permitted to take account of certain bonus payments to investment managers commonly referred to as incentive payments, (2) whether § 1.817–5 should be updated to take account of changes to variable contracts since the final regulations were published in 1986, and (3) whether regulations are needed to address when a holder of a variable contract will be treated as the owner of assets held in a segregated asset account and, therefore, required to include earnings on those assets in income.[3]

Drafting Information

The principal author of these proposed regulations is James Polfer, Office of the Associate Chief Counsel (Financial Institutions and Products), Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and recordkeeping requirements.

Proposed Amendment to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX

1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Section 1.817–5 also issued under 26 U.S.C. 817(h). * * *

Authority: 26 U.S.C. 7805 * * *

§ 1.817–5 [Amended]

2. Section 1.817–5 is amended as follows:

1. Paragraphs (f)(2)(ii) and (g) *Example 3* are removed.

2. Paragraph (f)(2)(iii) is redesignated as paragraph (f)(2)(ii).

3. Paragraph (g) *Example 4* is redesignated as paragraph (g) *Example 3*.

Robert E. Wenzel,

Deputy Commissioner (Services and Enforcement).

[FR Doc. 03–19367 Filed 7–29–03; 8:45 am]

BILLING CODE 4830–01–P

[3] The Treasury Department and the IRS have issued a number of revenue rulings that provide guidance for determining whether the holder of a variable contract will be treated as the owner of assets held by a segregated asset account by virtue of the control the contract holder has over those assets. *See* Rev. Rul. 2003–92, 2003–33 I.R.B. __ (August 18, 2003); Rev. Rul. 2003–91, 2003–33 I.R.B. __ (August 18, 2003); Rev. Rul. 82–54, 1982–1 C.B. 11; Rev. Rul. 81–225, 1981–2 C.B. 12; Rev. Rul. 80–274, 1980–2 C.B. 27; Rev. Rul. 77–85, 1977–1 C.B. 12. *See also Christoffersen* v. *U.S.*, 749 F.2d 513 (8th Cir. 1984), *rev'g* 578 F. Supp. 398 (N.D. Iowa 1984). These rulings apply general concepts of ownership that have developed in case law to conclude that a contract holder was the owner of assets held in the account that supported the contract holder's annuity contract, and was therefore subject to current taxation on the earnings on those assets.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 151

[USCG–2003–14273]

RIN 1625–AA52 [Formerly RIN 2115–AG52]

Mandatory Ballast Water Management Program for U.S. Waters

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The unintentional introduction of nonindigenous species (NIS) into U.S. waters via the discharge of vessels' ballast water has had significant impacts on the nation's marine and freshwater resources, biological diversity, and coastal infrastructures. To address this continued threat, and to comply with the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, and the National Invasive Species Act of 1996, the Coast Guard proposes mandatory ballast water management practices for all vessels equipped with ballast tanks bound for ports or places within the U.S. and/or entering U.S. waters. The Great Lakes ballast water management program would remain unchanged. This proposed rulemaking would increase the Coast Guard's ability to protect U.S. waters against the introduction of NIS via ballast water discharges.

DATES: Comments and related material must reach the Docket Management Facility on or before October 28, 2003.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2003–14273), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov*.

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725

17th Street NW., Washington, DC 20503, ATTN: Desk Officer, United States Coast Guard.

The Docket Management Facility maintains the public docket for this proposed rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rulemaking, call Mr. Bivan Patnaik, Environmental Standards Division, Coast Guard, telephone 202–267–1744, e-mail: *bpatnaik@comdt.uscg.mil*. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this proposed rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this proposed rulemaking (USCG–2003–14273), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rulemaking in view of them.

Public Meeting

We do not plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this proposed rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Legislative and Regulatory History

The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (NANPCA) [Pub. L. 101–6461], enacted by Congress on November 29, 1990, established the Coast Guard's regulatory jurisdiction over ballast water management. To fulfill the directives of NANPCA, the Coast Guard published a final rule on April 8, 1993, entitled "Ballast Water Management for Vessels Entering the Great Lakes" in the **Federal Register** (58 FR 18330). This rulemaking established mandatory ballast water management procedures for vessels entering the Great Lakes in 33 CFR part 151, subpart C.

A subsequent final rule entitled, "Ballast Water Management for Vessels Entering the Hudson River", was published on December 30, 1994 in the **Federal Register** (59 FR 67632), which amended 33 CFR part 151 to extend the ballast water management requirements into portions of the Hudson River.

The National Invasive Species Act (NISA) [Pub. L. 104–3321] enacted by Congress on October 26, 1996, reauthorized and amended NANPCA. NISA reemphasized the significant role of ships' ballast water in the introduction and spread of NIS. NISA authorized the development of a voluntary national ballast water management program, and mandated the submission of ballast water management (BWM) reports without penalty provisions. The Coast Guard published an interim rule in the **Federal Register** on May 17, 1999, on this voluntary program entitled, "Implementation of the National Invasive Species Act of 1996 (NISA)" (64 FR 26672), and finalized the rule in the **Federal Register** (66 FR 5838) on November 21, 2001.

NISA also instructed the Secretary of Transportation (Secretary) to submit a Report to Congress evaluating the effectiveness of the voluntary BWM program. Congress anticipated that the Secretary might determine that either compliance with the voluntary guidelines was inadequate, or the rate of reporting was too low to allow for a valid assessment of compliance. In either case, Congress stipulated the development of additional regulations to make the voluntary guidelines a mandatory BWM program. The Secretary's report to Congress, signed June 3, 2002, concluded that compliance with the voluntary guidelines, found in 33 CFR part 151, subpart D, was insufficient to allow for an accurate assessment of the voluntary BWM regime. Accordingly, the Secretary stated his intention to make the voluntary BWM guidelines mandatory. (A copy of this Report to Congress can be found in the U.S. Coast Guard docket # 2002–13147 at *http://dms.dot.gov*.)

Related Projects

The Coast Guard is working on three projects related to addressing the NIS problems in U.S. waters.

The first project addresses the Coast Guard's ability to impose penalty provisions under NISA for non-submission of Ballast Water Management Reports, the Coast Guard published a notice of proposed rulemaking on January 6, 2003, entitled "Penalties for Non-Submission of Ballast Water Management Reports" in the **Federal Register** (68 FR 523), which would implement penalties for failure to comply with the mandatory requirements found in 33 CFR part 151 and widen the applicability of the reporting and recordkeeping requirements to all vessels bound for ports or places within the U.S., with minor exceptions. Although the current mandatory portions of 33 CFR part 151 are reporting and recordkeeping, the penalty provisions will extend to mandatory ballast water management practices once this rulemaking becomes final.

The second project involves setting a standard to evaluate the discharge from ballast water treatment systems. A notice entitled, "Potential Approaches to Setting Ballast Water Treatment Standards" (66 FR 21807), published May 1, 2001, requested comments on approaches to setting, implementing, and enforcing ballast water standards. It was followed by an advance notice of proposed rulemaking (ANPRM) entitled "Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters" (67 FR 9632), published on March 4, 2002. This ANPRM sought comments on the development of a ballast water treatment goal. The comment period on the ANPRM closed on June 3, 2002, and the Coast Guard is analyzing the comments and continuing to evaluate options for a standard.

The third project involves encouraging the installation and testing of ballast water treatment technologies on board vessels. A notice, entitled "Approval for Experimental Shipboard Installations of Ballast Water Treatment Systems" (66 FR 282131), published on May 22, 2001, requested comments on a possible means of providing incentives for vessel owners to assist in the development and testing of ballast water treatment technologies. The Coast Guard is currently working on an interim rule to establish a program through which vessel owners can apply for approval of experimental ballast water treatment systems installed and tested on board their operating vessels. This rulemaking will facilitate the development of effective ballast water treatment technology, thus creating more options for vessels seeking alternatives to ballast water exchange.

Discussion of Proposed Rulemaking

As directed by NISA and as a result of the Secretary of Transportation's Report to Congress in June 2002, the Coast Guard has determined that the voluntary BWM program is inadequate. Therefore, the Coast Guard is proposing to convert the voluntary BWM program into a mandatory BWM program. This proposed rulemaking would increase the Coast Guard's ability to protect against introductions of new NIS via ballast water discharges.

On March 1, 2003, the Coast Guard became a component of the Department of Homeland Security. As a result, the Secretary of the Department of Homeland Security assumed all duties once bestowed on the Secretary of the Department of Transportation with respect to this proposed rulemaking. The Secretary of Homeland Security concurs with the Coast Guard's proposed rule regarding the mandatory ballast water program.

This proposed rulemaking would revise 33 CFR part 151 to implement the requirements of NISA. Specifically, subpart D of 33 CFR part 151 would be revised to require a mandatory ballast water management program for all vessels equipped with ballast water tanks entering U.S. waters. The mandatory ballast water management requirements for vessels entering into the Great Lakes and Hudson River from outside the U.S. Exclusive Economic Zone (EEZ) would remain unchanged.

This mandatory program would require all vessels equipped with ballast water tanks entering U.S. waters after operating beyond the EEZ to employ at least one of the following ballast water management practices:

(a) Prior to discharging ballast water in U.S. waters, perform complete ballast water exchange in an area no less than 200 nautical miles from any shore.

(b) Retain ballast water onboard the vessel.

(c) Prior to the vessel entering U.S. waters, use an alternative environmentally sound method of ballast water management that has been approved by the Coast Guard.

(d) Discharge ballast water to an approved reception facility.

Although, the national mandatory BWM program provides vessels with the option of using one of four BWM practices, ballast water exchange is likely to be the most used practice. This is due to—

- Some vessels engaged in trade are unlikely to hold their ballast after arriving here from outside the EEZ, as this would mean they would not be able to load their cargo;
- Alternative environmentally sound methods of ballast water management are still being developed, and would likely be of limited availability in the near future; and
- The number of on-shore reception facilities is limited, and none are approved for the removal of NIS. This is likely to remain so.

Therefore, under this proposed rulemaking, the BWM practice of conducting mid-ocean ballast water exchange prior to discharging ballast in U.S. waters would be the practice most used by the majority of vessels.

A vessel would not be required to deviate from its voyage, or delay the voyage, in order to conduct a ballast water exchange. A vessel that cannot practicably meet the requirements of paragraphs (a)–(d) due to a voyage that does not take it into waters 200 nautical miles or greater from any shore for a sufficient length of time, and/or due to safety concerns, would not be prohibited from discharging its ballast water in areas other than the Great Lakes and the Hudson River. However, the vessel must discharge only the amount of ballast water operationally necessary. An entry must be made in the ballast water records supporting the reasons that the vessel could not comply with the regulatory requirements. Ballast water records must be made available to the local Captain of the Port upon request.

For example, we would not expect a passenger vessel traveling from the Bahamas to Fort Lauderdale, FL (approximately 200 miles) to travel an additional 200 miles and delay their voyage by 24 hours to conduct a ballast water exchange. This passenger vessel would discharge their ballast water at port, and make an entry in the ballast water report form stating the reasons for not complying with paragraphs (a)–(d).

The proposed rule also revises the criteria for a mid-ocean exchange by removing the constraint of exchanging ballast water in waters more than 2000 meters deep. Currently, there is not consensus on a water-depth criterion for exchange. For example, Australian legislation has a depth requirement of 200 meters, and Israel's ballast water exchange requirement has no depth restriction, while the current draft of the IMO Convention for the Control and Management of Ship's Ballast Water and Sediments has a criterion of 200 meters. At this time we believe defining mid-ocean ballast water exchange as taking place not less than 200 miles from shore allows more vessels to conduct exchange and simplifies enforceability. We welcome public comment on this proposed change in the Coast Guard program.

Failure to maintain a BWM plan onboard the vessel or to make the required ballast water reports available will result in penalties. Also, failure to employ at least one of the BWM practices outlined above would result in a penalty, unless the vessel is exempt due to safety or voyage constraints, or specifically exempted by regulation.

A BWM plan should be specific to each vessel, and should fulfill 2 purposes: (1) Show that there is a BWM strategy for the vessel; and (2) allow any master, or other ship's officer as appropriate, serving on that vessel to understand and follow the BWM strategy for that vessel. The International Maritime Organization (IMO) has issued guidelines on the content of BWM plans in IMO Resolution A.868(20) Annex 1, Chapter 7. Any plan meeting these IMO guidelines would meet the regulatory requirement laid out in § 151.2035(a)(7). This Resolution is available on the IMO's Global Ballast Water Management Programme Web site [*http://globallast.imo.org*]. For your reference, we have also placed a copy of the IMO guidelines in the docket for this proposed rulemaking at the location listed above under **ADDRESSES**.

The Coast Guard recognizes that there are two currently feasible methods of conducting an exchange:

- *An empty/refill exchange.* The tank or a pair of tanks are pumped down to the point where the pumps lose suction, and then the tank is pumped back up to the original levels.
- *A flow-through exchange.* Mid-ocean water is pumped into a full tank

while the existing coastal or fresh water is pumped or pushed out through another opening. As defined by the Coast Guard, a volume of water equal to three times the ballast tank capacity must be pumped for a flow-through exchange.

Regulatory Evaluation

This proposed rule is a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has reviewed it under that Order. It is "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). A full Regulatory Evaluation is available in the public docket for this rulemaking.

This Regulatory Evaluation identified the vessel population affected by the proposed rule and provides cost and benefit models for the current principle option of ballast water management (BWM) provided for under the rule-ballast water exchange. BWM is applicable for any vessel equipped with ballast tanks entering U.S. waters from outside the EEZ. The vessel population was categorized by vessel type under the assumption that vessels in different cargo services and of different sizes likely manage ballast water in different ways. We estimated that approximately 7,420 vessels will be affected and approximately 11,500 ballast water exchanges will be performed annually. Annual costs totaled approximately $15.8 million. The 10-year present value cost for this rule is $116.7 million.

The benefit assessment expanded on the analysis conducted for costs by focusing on the probability of viable organisms being introduced into U.S. waters through ballast discharge, both before the proposed rule and following the implementation of mandatory BWM. A probability of a reduction in the number of invasions of NIS was calculated using data on voyages, vessel types, ballast water volumes, and exchange effectiveness, as well as order-of-magnitude assumptions about the probabilities of inoculations, introductions, and invasions resulting from ballast water discharges. The calculations indicated the proposed rule may result in avoiding approximately 10 inoculations that result in invasions for each year the rule is in effect. While there is considerable uncertainty in these calculations and the order-of-magnitude assumptions (referred to as the "rule of 10s" in the Regulatory Evaluation) are admittedly an oversimplification of a complex problem, we believe their simplicity and transparency are compelling. To date, there is no national estimate of the rate of aquatic NIS, and we cannot compare our baseline invasion estimate to other, more limited estimates regarding invasions. Our findings are broadly consistent, however, with other estimates of the rate of NIS invasions. One study finds that in the San Francisco Bay and Delta, invasions have increased from one new species every 55 weeks (1851–1960) to one new species every 14 weeks (1961–1995) (Cohen and Carlton, 1998). Another study posits that invasion rates may have increased in the San Francisco Bay and the Great Lakes over the past several decades (Mills, *et al.*, 1993). Finally, some researchers believe that the increase of initial invasions is best described by an exponential function (Ruiz, *et al.*, 2000). Using our simple methodology, we found that an invasion occurs somewhere in the United States about twice every 3 weeks.

There is considerable difficulty in estimating monetized damages resulting from NIS invasions. Some species impose significant, long-term damages on marine industries and infrastructure. Other species may create subtle disturbances in ecosystems that are difficult to quantify. Still others may be relatively benign. There have been attempts to estimate monetized damages for a few species, most notably the zebra mussel. One study estimated costs to Great Lakes water users, mostly due to fouling of intake structures, of $120 million over the time period 1989 to 1994 (Hushak, 1996). Another estimated cumulative zebra mussel impacts of $750 million to $1 billion over the time period 1989 to 2000 (Carlton, 2001). Other species for which monetized damage estimates have been developed include the Asian clam ($1 billion per year, OTA, 1993) and European green crab ($44 million per year, CRS, 1999). Eight Federal agencies that sit on the Invasive Species Council collectively spent $514 million in 1999 and $631 million in 2000 for the control and management of NIS (GAO, 2000).

We have not reviewed the methodologies used to produce these estimates in detail, though all of them (except expenditures by Federal agencies) involve considerable uncertainty. They are indicative, however, of the magnitude of damages that may result from particularly destructive invasions. It is likely, however, that most invasions would result in considerably lower damages than the numbers reported in these studies. Because of the lack of data on damages potentially associated with any but the most destructive invasions, we have not tried to monetize the benefits of the proposed rule. If the proposed rule resulted in avoiding even one invasion of this magnitude over the course of several decades, however, the benefits of the rule would most likely justify the costs. The Coast Guard requests comment on its benefits estimation methodology and on possible approaches for monetizing benefits associated with avoiding future invasions.

Small Entities

Of the affected population of all vessels arriving at U.S ports, we estimate that 21 vessels of the 171 U.S. flag vessels, are owned by 10 small businesses. Approximately 35 large companies own the remaining 150 U.S. flagged vessels. We estimate all vessels will choose the alternative of conducting a mid-ocean ballast water exchange. The cost of complying with the proposed rule is the cost of exchanges performed by the vessel added to the cost of additional maintenance required for the ballast water pumping system. The cost per exchange is a function of vessel type. Each vessel's costs will be a function of the cost of exchange for that vessel type multiplied by the number of trips into U.S. waters from outside the U.S. EEZ. Thus the annual impact on the revenue for a small business will vary with the number of entries the vessel makes from outside the U.S. EEZ. In order to estimate the upper bound of that impact, we calculated the cost of exchange for the maximum number of exchanges possible for the years 1999 and 2000. We then assumed that weather conditions and transit tracks allowed exchanges for all of these entries. For the annual cost of the rule, the number of vessels owned by each small business is multiplied by the number of exchanges performed, and the resulting product is then multiplied by the cost of exchange for the particular vessel type, and added to the maintenance cost of 10 percent of the capital cost of the ballast pump. Of the 10 small businesses that own vessels affected by the rule, we found revenue for 9. For the remaining company where no revenue information was available, we assumed revenue of $1 million for the purposes of the analysis. Table 1 gives the effect of the rule on the average annual revenues for the small business affected. For more detailed information, refer to the Regulatory Evaluation in the docket.

TABLE 1.—EFFECT OF BWM ON AVERAGE ANNUAL REVENUE FOR SMALL BUSINESS ENTITIES OWNING U.S.-FLAGGED VESSELS

Percent of annual revenue that is BWM rule cost	Total small entities per impact category
0–3	8
3–5	2
> 5	0
Total	10

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Mr. Bivan Patnaik, G–MSO–4, Coast Guard, telephone 202–267–1744, email: *Bpatnaik@comdt.uscg.mil.*

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

This proposed rule affects an existing OMB approved Collection of Information (Ballast Water Management for Vessels with Ballast Tanks Entering U.S. Waters). The revised Collection of Information is as follows:

Title: Ballast Water Management for Vessels with Ballast Tanks Entering U.S. Waters.

OMB Control Number: 1625–0069 [Formerly 2115–0598.]

Summary of the Collection of Information: This rule contains collection of information requirements for 33 CFR 151 subpart D.

Need for Information: For the Coast Guard to protect U.S. waters against the introduction of nonindigenous species.

Proposed Use of Information: For the Coast Guard to verify increased ability to protect against introductions of new nonindigenous species.

Description of the Respondents: All vessels equipped with ballast water tanks entering U.S. waters.

Number of Respondents: The existing OMB-approved collection number of responses is 50,000 arrivals made by 7,420 vessels (respondents). This rule will increase the information to include a ballast water management plan for each vessel, but does not increase the number of respondents. Thus, the total number of respondents is 7,420.

Frequency of Response: The existing OMB-approved collection annual number of responses is 50,000 (responses are arrivals at U.S. ports). The ongoing Penalties for Non-Submission of Ballast Water Management Reports rulemaking [USCG–2002–13147] would increase the number by 20,000 responses. This rule will increase the number by 7,420 responses in the first year of the rule to account for every vessel developing a ballast water management plan. In subsequent years, this rule will not change the number of responses. Thus, in the first year of this rule there will be a total of 77,420 (50,000 + 20,000 + 7,420) responses, and in subsequent years the total will be 70,000 (50,000 + 20,000) responses.

Burden of Response: The existing OMB-approved collection burden of response is 40 minutes (0.666 hours) for each arrival. For each vessel, this rule will have a first-year (one-time) burden of response of 8 hours to write the BWM plan.

Estimate of Total Annual Burden: The existing OMB-approved burden is 33,500 hours. The ongoing Penalties for Non-Submission of Ballast Water Management Reports rulemaking will increase the annual burden by 13,333 hours. This rule will increase the total first year burden by 8 hours per vessel, or 59,360 hours, to a total of 106,193 hours. This rule does not affect the annual burden for subsequent years, and the total annual burden will be 46,833 hours.

Federalism

We have analyzed this proposed rulemaking under Executive Order 13132. The Aquatic Nuisance Prevention and Control Act contains a "savings provision" that saves to the states their authority to "adopt or enforce control measures for aquatic nuisance species, [and nothing in the Act would] diminish or affect the jurisdiction of any States over species of fish and wildlife." 16 U.S.C. 4725. It also requires that "all actions taken by Federal agencies in implementing the provisions of [the Act] be consistent with all applicable Federal, State and local environmental laws." Thus, the congressional mandate is clearly for a Federal-State cooperative regime in combating the introduction of aquatic nuisance species into U.S. waters from ships' ballast tanks. This makes it unlikely that preemption, which would necessitate consultation with the States under Executive Order 13132, would occur. If, at some later point in the rulemaking process we determine that preemption may become an issue, we will develop a plan for consultation with affected states/localities.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rulemaking would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rulemaking meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rulemaking under Executive Order

13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rulemaking does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rulemaking under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order. Although it is a "significant regulatory action" under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this proposed rulemaking and concluded that preparation of a Programmatic Environmental Assessment (PEA) is necessary. A draft PEA has been completed. For more detailed information, refer to the draft PEA in the docket.

This PEA is considered necessary because the proposed rulemaking would require vessels with ballast tanks entering U.S. ports around the country, subject to conditions discussed above, to have completed one of the mandatory BWM practices. Although the national mandatory BWM program provides vessels with ballast tanks the option of using one of four BWM practices, ballast water exchange is likely to be the most used practice for reasons discussed earlier. However, this PEA is necessary to ensure the potential environmental effects of the four BWM practices are considered.

List of Subjects in 33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control, Ballast water management.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 151 as follows:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

Subpart D—Ballast Water Management for Control of Nonindigenous Species in Waters of the United States

1. The authority citation for subpart D is revised to read as follows:

Authority: 16 U.S.C. 4711; Department of Homeland Security Delegation No. 0170.

§ 151.2010 [Revised]

2. Revise § 151.2010(d) by removing the phrase "and in waters more than 2,000 meters (6,560 feet, 1,093 fathoms) deep".

3. Revise § 151.2035, the section heading and the introductory text in paragraph (a), and paragraphs (a)(7), and (b) to read as follows:

§ 151.2035 What are the required ballast water management practices for my vessel?

(a) Masters, owners, operators, or persons-in-charge of all vessels equipped with ballast water tanks that operate in the waters of the United States must:

* * * * *

(7) Maintain a ballast water management plan that has been developed specifically for the vessel that will allow any ship's officer to understand and follow the vessels ballast water management strategy.

* * * * *

(b) In addition to the provisions of paragraph (a) of this section, if the vessel carries ballast water that was taken on in areas less than 200 nautical miles from any shore into the waters of the United States after operating beyond the Exclusive Economic Zone, you (the master, operator, or person-in-charge of a vessel) must employ at least one of the following ballast water management practices:

(1) Perform complete ballast water exchange in an area no less than 200 nautical miles from any shore prior to discharging ballast water in United States waters;

(2) Retain ballast water onboard the vessel;

(3) Prior to the vessel entering United States waters, use an alternative environmentally sound method of ballast water management that has been approved by the Coast Guard; or

(4) Discharge ballast water to an approved reception facility.

4. Add § 151.2036 to read as follows:

§ 151.2036 If my voyage does not take me into waters 200 nautical miles or greater from any shore must I divert to conduct a ballast water exchange?

A vessel will not be required to deviate from its voyage, or delay the voyage, in order to conduct a ballast water exchange.

5. Add § 151.2037 to read as follows:

§ 151.2037 If my vessel cannot conduct ballast water management because of its voyage and/or safety concerns, will I be prohibited from discharging ballast water?

A vessel who cannot practicably meet the requirements of paragraphs (b)(1)–(b)(4) of section § 151.2035 because its voyage does not take it into waters 200 nautical miles or greater from any shore for a sufficient length of time, and/or because of the safety concerns contained in § 151.2030, will not be prohibited from the discharge of ballast water in areas other than the Great Lakes and the Hudson River. However, the vessel must discharge only that amount operationally necessary and make ballast water records available to the local Captain of the Port upon request.

Dated: July 25, 2003.

Thomas H. Collins,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 03–19373 Filed 7–25–03; 4:33 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD08–03–029]

RIN 1625–AA11

Regulated Navigation Area; Reporting Requirements for Barges Loaded with Certain Dangerous Cargoes, Inland Rivers Eighth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes an interim rule to establish a regulated navigation area (RNA) within all inland rivers of the Eighth Coast Guard District. This RNA will apply to towing vessel operators and fleeting area managers who are responsible for the movement of barges carrying certain dangerous cargoes on inland rivers and requires them to report their position and other information to the Inland River Vessel Movement Center. This action is necessary to ensure public safety, prevent sabotage or terrorist acts, and facilitate the efforts of emergency services and law enforcement officers responding to terrorist attacks.

DATES: Comments and related material must reach the Coast Guard on or before September 15, 2003. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before September 15, 2003.

ADDRESSES: You may mail comments and related material to Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans LA 70130. Commander, Eighth Coast Guard District (m) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD08–03–029] and are available for inspection or copying at Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans LA 70130 between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays. You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

FOR FURTHER INFORMATION CONTACT: Commander (CDR) Jerry Torok, Project Manager for the Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans LA 70130, telephone (504) 589–6271.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 2, 2003, the Coast Guard published a similar temporary final rule and request for comments entitled "Regulated Navigation Area; Reporting Requirements for Barges Loaded With Certain Dangerous Cargoes, Inland Rivers, Eighth Coast Guard District" in the **Federal Register** (68 FR 23393). As of July 9, 2003, we have received six written comments on the temporary rule. The American Waterways Operators (AWO) requested a meeting with the Coast Guard regarding the temporary rule. A meeting was held on May 8, 2003, at the Hale Boggs Federal Building in New Orleans, LA.

Given that the temporary rule will expire October 31, 2003, the Coast Guard is allowing 45 days to comment on this proposed interim rule. The Coast Guard considers 45 days to be sufficient because we have already received comments from two associations—AWO and Gulf Coast Marine Association (GCMA), and two of the companies impacted by the temporary rule. As indicated in our "Discussion of Comments and Changes" section below, we have considered these comments in drafting our proposed interim rule and, where appropriate, we have made the proposed rule less burdensome than the temporary rule currently in effect. Also, this proposed rule would be issued as an interim rule with an additional comment period before we would impose any final rule.

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD08–03–029], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander, Eighth Coast Guard District (m) at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Terrorist attacks on September 11, 2001, inflicted catastrophic human casualties and property damage. These attacks highlighted the terrorists' abilities to utilize multiple means in different geographic areas thereby increasing their opportunities to maximize destruction.

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. The threat of maritime attacks is real as evidenced by the October 2002 attack on a tank vessel off the coast of Yemen and the prior attack on the USS COLE. These attacks manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002). The President found that the security of the U.S. is endangered by the September 11, 2001 attacks and terrorist attacks continue to endanger the international relations of the United States. See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); Continuation of the National Emergency with Respect to Persons Who Commit, Threaten To Commit, or Support Terrorism, (67 FR 59447, September 20, 2002). The U.S. Maritime Administration (MARAD) in Advisory 02–07 advised U.S. shipping interests to maintain a heightened state of alert against possible terrorist attacks. MARAD also issued Advisory 03–03 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attacks to the transportation community in the United States. The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert due to the Al Qaeda organization and other similar organizations who have declared their intentions to conduct armed attacks on U.S. interests worldwide.

Therefore, on April 16, 2003, the Coast Guard established a temporary RNA within the inland rivers of the Eighth Coast Guard District in order to safeguard vessels, ports and waterfront facilities from sabotage or terrorist acts. The temporary RNA remains in effect and applies to barges loaded with certain dangerous cargoes (CDCs) operating on the Mississippi River above mile 235.0, Above Head of Passes, including all its tributaries; the Atchafalaya River above mile 55.0 including the Red River; the Ohio River and all its tributaries; and the Tennessee River from its confluence with the Ohio River to mile zero on the Mobile River and all other tributaries between these two rivers. The RNA affects vessels transporting barges loaded with CDCs that if used as weapons of terrorism could result in substantial loss of life, property, environmental damage, and grave economic consequences. The temporary rule requires operators of

barges loading or loaded with CDCs within the RNA to periodically report their position and other specified information to the Inland River Vessel Movement Center (IRVMC) for the protection against sabotage and terrorist acts. The temporary final rule was published May 2, 2003, in the **Federal Register** (68 FR 23393) and expires on October 31, 2003.

The Coast Guard has determined that there is a need to continue the reporting requirements for barges loaded with CDCs operating on inland rivers and therefore we are proposing to issue an interim rule while we continue to consider alternatives to increase maritime domain awareness on the inland rivers in the Eighth Coast Guard District. The proposed rule would allow the Coast Guard to enhance maritime security, protect ports and facilities and high-density population centers (metropolitan areas), control vessel traffic, develop contingency plans, and enforce regulations.

Discussion of Comments and Changes

As of July 9, 2003, we received six written comments on the temporary rule. The American Waterways Operators requested a meeting with the Coast Guard regarding the rule. The meeting was held on May 8, 2003, at the Hale Boggs Federal Building in New Orleans, LA. All comments received focused generally on: (1) Changes and clarification of the definitions; (2) use of marine chemist certification; (3) location and amount of reporting points; (4) CDC barges in fleeting areas (5) need, use and validity of the information being collected; (6) availability of the information being collected from other sources; (7) use of technology such as electronic reporting; (8) cost and burden of the reporting requirements; (9) justification of the regulation; and (10) consistency with existing regulations. Each of these groups of comments is discussed in more detail in the following paragraphs.

Definitions. Several comments suggested some of the definitions lead to confusion and should be clarified or removed.

Three comments were received regarding the definition of "certain dangerous cargoes (CDCs)" and how they were determined. CDCs have specific characteristics that make them a higher risk compared to the other cargoes listed in 49 CFR parts 171 and 172. The list of cargoes includes cargoes that have not been traditionally carried on the river but which are not prohibited from carriage. One comment addressed the inconsistency between the CDC definition of ammonium nitrate as stated in the temporary rule and the CDC definition as stated in 33 CFR 160.204, published February 28, 2003 in *Notification of Arrival in U.S. Ports* (68 FR 9537, 9544). The CDC list published in 33 CFR 160.204 applies to packaged cargoes listed in 49 CFR chapter I, subchapter C. As such, ammonium nitrate in bulk is currently not considered a CDC. The Coast Guard proposes to use the same definition as set out in 33 CFR 160.204 with the addition of propylene oxide.

Three comments received stated that the definitions of "empty", "gas free" and "loaded" were confusing and misleading. We agree. The proposed rule will apply to barges carrying CDCs or CDC residue and the terms "empty", "gas free" and "loaded" will no longer be used. We received one comment suggesting that the definition for "final destination" could be removed if the regulation section was amended to simply require a report upon dropping off a CDC barge at a fleeting area or facility. We agree and propose to remove the term "final destination" and have changed the regulation accordingly. We received two comments stating that the definition of "operator" is vague. We agree. We propose to change the word "operator" to "towing vessel operator". Towing vessel operator would be defined as "Captain or pilot who is on watch." Also, we propose that a "company representative" or "dispatcher" may report the specific information required by the purpose of the rule to the IRVMC on behalf of the towing vessel operator or fleeting area manager.

Marine Chemist Certification. We received one comment regarding the use of a marine chemist to certify barges are "gas free." As we stated in the preceding paragraph, the terms "empty", "gas free", and "loaded" are not used in this proposed rule. We have made the proposed rule applicable only to barges carrying CDCs or CDC residue. A barge is not carrying CDCs or CDC residue when it has never carried CDCs or when it has been certified as "gas free" by a marine chemist.

Location and Number of Reporting Points. We received several comments related to the location and number of reporting points. One comment asked us why the RNA did not continue to, or beyond, New Orleans, Louisiana. The proposed RNA is the same as the regulated area in the temporary rule. The regulated area in the temporary rule does not extend below mile 235.0 on the Lower Mississippi River (Baton Rouge, Louisiana) because the NOA regulations published February 28, 2003, in the **Federal Register**, apply to all domestic barges carrying CDCs operating below mile 235.0 on the Lower Mississippi River. Making this proposed rule continue to, or beyond, New Orleans, Louisiana would result in duplicative reporting to the National Vessel Movement Center (NVMC) and the Inland River Vessel Movement Center (IRVMC). Therefore the location for the proposed RNA remains unchanged from the regulated area in the temporary rule currently in effect.

Three comments were received regarding several reporting points being located at a turn or in other hazardous areas of the waterway. The comments recommended changing the location of the reporting points. We agree. We have proposed to have a segment of the waterway serve as a reporting point (that is, the towing vessel operator would be required to report to the IRVMC when transiting upbound between mile 235.0 and mile 240.0 on the Lower Mississippi River). The proposed reporting points, based on recommendations from the waterway users, are reflected in table 165.830(e).

One comment recommended the reporting points should be the same for upbound and downbound. We agree, with the exception of seven reporting points, and the appropriate changes are reflected in the reporting points proposed in table 165.830(e).

Two comments recommended using the Captain of the Port (COTP) boundaries as reporting points because the COTP would be able to determine when a CDC barge enters and departs the zone, allowing for a reduction in the number of reporting points. We disagree. The IRVMC requires reporting within a COTP zone to monitor CDC barge movement through densely populated areas and other areas of concern. This information is disseminated to the appropriate COTP in which the CDC barge is located.

Fleeting Areas. We received two comments that the responsibility of reporting movements of CDC barges in fleeting areas was unclear. We agree and propose to change the regulatory text to specifically address CDC barges in fleeting areas. The Coast Guard proposes that fleeting managers or operators would not be required to report to the IRVMC when moving CDC barges within a fleet using a fleet towing vessel. However, they would be required to report to the IRVMC when a fleet towing vessel moves one or more CDC barges from one fleeting area to another fleeting area or to a facility. The Coast Guard also proposes to add the requirement that fleeting managers report all CDC barges in the fleeting area once a day to the IRVMC. This requirement has been determined to be necessary to ensure accountability for CDC barges located within fleeting areas in the RNA. A company representative or dispatcher would be allowed to report to the IRVMC on behalf of the fleeting area manager.

Need, Use and Validity of the Information Being Collected. We received three comments regarding the vagueness of the Coast Guard's need for the information being collected and how the Coast Guard intends to use this information. We also received one comment questioning how the Coast Guard intends to validate the information received.

The information to be collected in this proposed rule will be used for the same purposes as explained in the Collection of Information section of the temporary final rule—to enhance maritime domain awareness by tracking the movement of certain dangerous cargoes throughout the inland river system, and enable the Coast Guard to increase port safety and security and promote the uninterrupted flow of commerce within the Eighth Coast Guard District. The information will also be used to enhance maritime security, protect ports and facilities and high-density population centers (metropolitan areas), control vessel traffic, develop contingency plans, and enforce regulations.

The Coast Guard has used the information collected pursuant to the temporary final rule to maintain continuous maritime domain awareness on the inland rivers so that we may respond, as appropriate, to an actual or threatened terrorist action. We intend to validate the information received through random escorts of towing vessels with CDC barges as they transit the RNA. The Coast Guard will also address the validity of information as it explores the availability of information available from other sources that would tend to validate information reported to the Coast Guard.

Since the temporary RNA has been in effect the Coast Guard has re-evaluated the need for the information being reported to the IRVMC at the following times: (1) 4 hours prior to loading a barge with CDCs, (2) 4 hours prior to dropping off a CDC barge at a fleeting area, and (3) 4 hours prior to picking up one or more CDC barges from a fleeting area. The Coast Guard has determined that there is no longer a need for reporting to the IRVMC 4 hours prior to loading a barge with CDCs. However, the Coast Guard needs to know where a CDC barge is within the RNA at all times and proposes to change the conditions under which a report must be made to the IRVMC to: (1) Upon point of entry into the RNA with one or more CDC barges; (2) 4 hours prior to originating a voyage within the RNA with one or more CDC barges; (3) upon dropping off one or more CDC barges at a fleeting area or facility; (4) upon picking up one or more additional CDC barges from a fleeting area or facility; (5) upon moving one or more CDC barges from one fleeting area to another fleeting area; (6) once daily, report all CDC barges within a fleeting area; (7) at designated reporting points in table 165.830(e); (8) when estimated time of arrival (ETA) to a reporting point varies by 6 hours from the previously reported ETA; (9) any significant deviation from previously reported information; (10) upon departing the RNA with one or more CDC barges; and (11) when directed by the IRVMC.

Availability of the Information From Other Sources. We received four comments on the availability of the information being collected from other sources. One comment mentioned that if we needed to know where the CDC barge was we would be able to request the data at any "particular moment in time" from the vessel operators or the Army Corps of Engineers. We agree that the Army Corps of Engineers collects adequate information from towing vessel operators and we are working with the Army Corps of Engineers to access that information. Once we are authorized to receive the information and the appropriate electronic systems are in place and tested, then we will re-evaluate the reporting points that coincide with the lock and dams (L&D). Until such time we are proposing to continue requiring information at reporting points that coincide with Army Corps of Engineer's L&Ds.

There was also discussion regarding the possibility of companies submitting real-time barge movement information to the Coast Guard via computer tracking programs in lieu of reporting to the Coast Guard at individual reporting points. A number of technology issues must be addressed in this area before this could be accomplished. Therefore, the Coast Guard proposes to maintain the manual collection of information from the reporting party in the interim rule while we continue to work with other government agencies and industry partners to research and develop alternatives to collecting the information necessary for the Coast Guard to maintain continual maritime domain awareness at any threat level.

Use of Technology. We received three comments regarding the use of technology to collect information by requiring electronic delivery of the information by automatic tracking devices and the web through real-time tracking programs. In response to these comments the Coast Guard is exploring existing systems used by affected companies for the possibility of integration of these systems. Before publishing the temporary final rule that established the existing RNA, the Coast Guard established the Inland River Vessel Movement Center (IRVMC), creating one location to which reports are to be made vice requiring reports to be made to each Captain of the Port (COTP) in which the CDC barge was operating. This proposed rule keeps the IRVMC in place, alleviating the burden on the towing vessel operator, responsible for a CDC barge, of having to determine which COTP zone they are operating in and maintaining a contact list for each COTP. The IRVMC accepts telephone (toll free), facsimile (toll free), and e-mail transmissions as means of reporting the information. Persons subject to this requirement may utilize the means that most efficiently meet their needs, provided that the information and timeliness requirements are met. The Coast Guard also has a reporting form and e-mail link available on the Internet at *http://www.uscg.mil/d8/Divs/M/IRVMC.htm.*

The Coast Guard proposes to continue receiving reports as required by the temporary rule. However, the Coast Guard proposes to consider and approve alternative methods, to be used by a reporting party, to meet any reporting requirements if: (1) The reporting party submits a written request for the alternative to Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans LA 70130; and (2) the alternative provides an equivalent level of reporting to that which would be achieved by the Coast Guard with the required check-in points.

Cost and Burden of the Reporting Requirements. We received several comments regarding the cost and burden of the reporting requirements. One comment mentioned that the preparation of reports for the Coast Guard by smaller or midsize companies that do not have 24-hour dispatchers adds to the daily workload of the mariner. We have added to the proposed regulatory text that alternative reporting may be requested from the Eighth Coast Guard District Commander.

Two comments suggested that the Coast Guard could obtain this information from the Army Corps of Engineers rather than have separate reporting points for the Coast Guard thereby reducing the reporting burden. As stated earlier in this rule, we agree that the Army Corps of Engineers

collects adequate information from the towing vessel operator and we are working with the Army Corps of Engineers to access the information. However in the interim, we are proposing to continue to use locks as reporting points.

Another suggestion was made to reduce the reporting requirements to a single report every 24 hours during periods of lower Maritime Security (MARSEC) levels, and, if the MARSEC level rose, the reporting requirements would be increased. However, this would not satisfy the Coast Guard's need to maintain constant maritime domain awareness for defined areas along the river systems, nor will it provide us timely information if the MARSEC level is increased due to a threat.

Justification of the Regulation. We received two comments concerning the justification for the regulation. One questioned why we implemented the RNA when we did; one questioned the justification for the timing of the RNA because we lowered the Maritime Security Condition (MARSEC) level the day the temporary RNA was effective; and another one questioned why the normal regulatory process of a notice of proposed rulemaking was not used. The effective date of the RNA and the change in the MARSEC level were coincidental. As a component of the Department of Homeland Security, the Coast Guard has a responsibility to ensure the safety and security of our ports and waterways. The temporary RNA and the proposed RNA will allow the Coast Guard to maintain constant maritime domain awareness on the inland rivers.

Response to Comments Summary

In response to these comments the Coast Guard is (1) removing the requirement to report 4 hours prior to loading a CDC barge in the RNA; (2) removing the requirement of reporting 4 hours prior to dropping off a CDC barge at a fleeting area; (3) establishing reporting requirements specifically for fleeting area managers; (4) considering and approving requests for alternative methods of meeting reporting requirements; (5) amending or removing some reporting points that were in unsafe areas; (6) exploring a reduction in checkpoints on pooled rivers by using Army Corps of Engineers data from L&Ds; (7) researching existing systems employed by affected companies with the possibility of the integration of these systems; and (8) researching technology for automatic tracking of CDC barges.

Discussion of Proposed Rule

The Coast Guard proposes to establish a regulated navigation area for the Mississippi River above mile 235.0, above Head of Passes, including all its tributaries; the Atchafalaya River above mile 55.0, including the Red River; the Ohio River and all its tributaries; and the Tennessee River from its confluence with the Ohio River to mile zero on the Mobile River and all other tributaries between these two rivers. This proposed rule applies to: (1) Towing vessel operators responsible for one or more CDC barges within the regulated area; and (2) fleeting area managers responsible for CDC barges in a fleeting area. The terms barge, certain dangerous cargoes (CDCs), downbound, CDC barge, Eighth Coast Guard District, towing vessel operator, and upbound are defined in the regulatory section of this proposed rule.

Towing vessel operators responsible for one or more CDC barges would be required to report specific information, to the IRVMC, under the following conditions: (1) Upon point of entry into the RNA with one or more CDC barges; (2) 4 hours prior to originating a voyage within the RNA with one or more CDC barges; (3) upon dropping off one or more CDC barges at a fleeting area or facility; (4) upon picking up one or more additional CDC barges from a fleeting area or facility; (5) at designated reporting points in table 165.830(e); (6) when estimated time of arrival (ETA) to a reporting point varies by 6 hours from the previously reported ETA; (7) any significant deviation from previously reported information; (8) upon departing the RNA with one or more CDC barges; and (9) when directed by the IRVMC.

Fleeting area managers would be required to report specific information to the IRVMC under the following conditions: (1) Once daily, report all CDC barges within the fleeting area; (2) upon moving a CDC barge from one fleeting area to another or to a facility by fleeting towing vessels; (3) any significant deviation from previously reported information; and (4) when directed by the IRVMC.

A company representative or dispatcher may report the required information to the IRVMC on behalf of the towing vessel operator or fleeting area manager.

Each report made to the IRVMC, by a towing vessel operator or fleeting area manager, must contain all the information items specified in tables 165.830(f) and 165.830(g), respectively.

Reports must be made to the IRVMC, either by telephone to (866) 442–6089, by fax to (866) 442–6107, or by e-mail to *irvmc@cgstl.uscg.mil.* A reporting form and e-mail link is available at *http://www.uscg.mil/d8/Divs/M/IRVMC.htm.*

The Coast Guard proposes to consider and approve alternative reporting methods to meet any reporting requirements if: (1) The request for the alternative is submitted in writing to Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans LA 70130; and (2) the alternative provides an equivalent level of reporting to that which would be achieved by the Coast Guard with the required check-in points.

Deviation from this rule is prohibited unless specifically authorized by the Commander, Eighth Coast Guard District or designated representatives.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. We present this Regulatory Evaluation for the purposes of information.

Evaluation. The regulatory baseline for this rule is the temporary rule. The cost for complying with the rule will differ depending on the means used to make a report to the IRVMC and the type of report, either an initial report or an update. The cost of the rule presented below is based on the average number of reports received by the IRVMC in April 2003 and May 2003.

ANNUAL COST AND BENEFIT OF THE PROPOSED RULE

[2003 Dollars]

Item	Cost per initial call	Cost per update call	Total
Personnel	$9462	$17,871	$27,333
Operating Expenses	28,386	53,613	81,999
Total	37,848	71,484	109,332

This cost estimate assumes: (1) The average merchant mariner's hourly rate is $30, (2) the average initial call is 6 minutes, (3) the average update call is 2 minutes, (4) the average cost per cell phone call is $1.50 per minute, and (5) 15 percent of all responses are initial reports to the IRVMC. Therefore, based on 177 respondents, the average cost is $618 per CDC barge per year. The reporting requirements proposed are necessary to provide immediate, improved security for the public, vessels, and U.S. ports and waterways. The requirements do not alter normal barge transits. The minimal hardships that may be experienced by persons or vessels, as a result of this rule, are necessary to the national interest in protecting the public, vessels, and vessel crews from the devastating consequences of acts of terrorism, and from sabotage or other subversive acts, accidents, or other causes of a similar nature.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: Towing vessel operators and fleeting area managers responsible for CDCs barges on inland waterways within the Eighth Coast Guard District. This RNA will not have a significant economic impact on a substantial number of small entities because this rule does not require any alteration of barge operations or transits. The operational communications required by this RNA do not require towing vessel operators or fleeting area managers to obtain new equipment, and can be made toll free to the IRVMC.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact CDR Jerry Torok, Project Manager for the Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans LA 70130, telephone (504) 589–6271.

Collection of Information

This proposed rule would call for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

This proposed rule revises an existing OMB-approved collection of information (1625–0105). The new collection of information estimate is based on data gathered as a result of the information collected under the temporary rule and is based on actual reports received by the IRVMC, as well as actual observation and tracking, for April 2003 and May 2003.

Title: Regulated Navigation Areas; Reporting Requirements for Barges Loaded with Certain Dangerous Cargoes, Inland Rivers, Eighth Coast Guard District and the Illinois Waterway, Ninth Coast Guard District.

OMB Control Number: 1625–0105.

Summary of the Collection of Information: The Coast Guard requires position and intended movement reporting, and fleeting operations reporting, from barges carrying CDCs in the inland rivers within the Eighth and Ninth Coast Guard Districts. This rule will amend 33 CFR part 165 to require:

Towing vessel operators and fleeting area managers responsible for CDC barges must report the following information via toll free telephone, toll free fax, or email:

a. Name of barge and towboat;
b. Name of fleeting area and facility;
c. Estimated time of arrival (ETA) at fleeting area and facility;
d. Planned route, including estimated time of departure (ETD) from fleeting area and facility;
e. Upon entry into the covered geographical area;
f. 4 hours prior to originating a voyage with a CDC within the RNA
g. Upon picking up an additional CDC barge from a fleeting area or facility
h. Upon dropping off a CDC barge at a fleeting area or facility,
i. Upon moving a CDC barge from one fleeting area to another fleeting area or facility;
j. Once daily, all CDC barges within a fleeting area
k. ETA at approximately 105 designated reporting points within the covered geographical area;
l. At any time ETA to a reporting point varies by 6 hours from the previously reported ETA;
m. any significant deviation from previously reported information;
n. Upon departing the covered geographical area; and
o. When directed by the Coast Guard.

A company representative or dispatcher may report to the IRVMC on behalf of a towing vessel operator or fleeting area manager.

Need for Information: To ensure port safety and security and to ensure the uninterrupted flow of commerce, the

Coast Guard proposes to issue regulations requiring position and intended movement reporting and fleeting operations reporting, from barges carrying CDCs in the inland rivers within the Eighth and Ninth Coast Guard Districts.

Proposed Use of Information: The information is required to enhance maritime security, protect ports and facilities and high-density population centers (metropolitan areas), control vessel traffic, develop contingency plans, and enforce regulations. The Coast Guard has used the information to maintain continuous maritime domain awareness on the inland rivers so that we may respond as appropriate to an actual or threatened terrorist action and enhance maritime security by boarding and/or escorting CDC barges in the vicinity of high-density population areas.

Description of the Respondents: The respondents are owners, agents, masters, towing vessel operators, or persons in charge of barges loaded with CDCs or having CDC residue operating on the inland rivers located within the Eighth and Ninth Coast Guard Districts.

Number of Respondents: The existing OMB-approved collection number of respondents is 3,505. This proposed rule will decrease the number of respondents by 3,328 to a total of 177.

Frequency of Response: Towing vessel operators moving barges carrying CDCs or CDC residue will submit reports as necessary. The existing OMB-approved collection annual number of responses is 7,711. This proposed rule will increase the number of responses by 13,313 to a total of 21,024.

Burden of Response: The existing OMB-approved collection burden of response is 15 minutes (0.25 hours) (burden of response is the time required to complete the paperwork requirements of the rule for a single response). This proposed rule will decrease the burden of response by 9 minutes (0.15 hours) to a total of 6 minutes (0.10 hours).

Estimate of Total Annual Burden: The existing OMB-approved collection total annual burden is 1,928 hours (total annual burden is the time required to complete the paperwork requirements of the rule for all responses). This proposed rule will decrease the total annual burden by 1017 hours to a total of 911 hours.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this rule to the Office of Management and Budget (OMB) for its review and approval of the revised collection of information. The existing OMB-approved collection (1625–1505) expires on October 31, 2003.

We ask for public comment on the collection of information to help us determine how useful the information is, whether it can help us perform our functions better, whether it is readily available elsewhere, how accurate our estimate of the burden of collection is, how valid our methods for determining burden are, how we can improve the quality, usefulness, and clarity of the information, and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. If OMB does not approve this revised collection of information, we will publish a notice in the **Federal Register** of OMB's decision.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1 paragraph (34)(g), of the instruction, from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in NEPA. A draft "Environmental Analysis Check List" and a draft "Categorical Exclusion Determination" are available where indicated under **ADDRESSES**. Comments on this section will be considered before we make a final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposed to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 166 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.830 to read as follows:

§ 165.830 Regulated Navigation Area; reporting requirements for barges loaded with certain dangerous cargoes, inland rivers, Eighth Coast Guard District.

(a) *Regulated Navigation Area.* The following waters are a Regulated Navigation Area (RNA): the Mississippi River above mile 235.0, Above Head of Passes, including all its tributaries; the Atchafalaya River above mile 55.0 including the Red River; the Ohio River and all its tributaries; and the Tennessee River from its confluence with the Ohio River to mile zero on the Mobile River and all other tributaries between these two rivers.

(b) *Applicability.* This section applies to towing vessel operators and fleeting area managers responsible for CDC barges in the RNA. This section does not apply to:

(1) Towing vessel operators responsible for barges not carrying CDCs barges, or

(2) Towing vessel operators moving one or more CDC barges within a fleeting area.

(c) *Definitions.* As used in this section—

Barge means a non-self propelled vessel engaged in commerce, as set out in 33 CFR 160.204.

Certain Dangerous Cargo or *(CDC)* includes any of the following:

(1) Division 1.1 or 1.2 explosives as defined in 49 CFR 173.50.

(2) Division 1.5D blasting agents for which a permit is required under 49 CFR 176.415 or, for which a permit is required as a condition of a Research and Special Programs Administration exemption.

(3) Division 2.3 "poisonous gas", as listed in 49 CFR 172.101 that is also a "material poisonous by inhalation" as defined in 49 CFR 171.8, and that is in a quantity in excess of 1 metric ton per barge.

(4) Division 5.1 oxidizing materials for which a permit is required under 49 CFR 176.415 or, for which a permit is required as a condition of a Research and Special Programs Administration exemption.

(5) A liquid material that has a primary or subsidiary classification of Division 6.1 "poisonous material" as listed in 49 CFR 172.101 that is also a "material poisonous by inhalation", as defined in 49 CFR 171.8 and that is in a bulk packaging, or that is in a quantity in excess of 20 metric tons per barge when not in a bulk packaging.

(6) Class 7, "highway route controlled quantity" radioactive material or "fissile material, controlled shipment", as defined in 49 CFR 173.403.

(7) Bulk liquefied chlorine gas and Bulk liquefied gas cargo that is flammable and/or toxic and carried under 46 CFR 154.7.

(8) The following bulk liquids—

(i) Acetone cyanohydrin,
(ii) Allyl alcohol,
(iii) Chlorosulfonic acid,
(iv) Crotonaldehyde,
(v) Ethylene chlorohydrin,
(vi) Ethylene dibromide,
(vii) Methacrylonitrile,
(viii) Oleum (fuming sulfuric acid), and
(ix) Propylene Oxide.

CDC barge means a barge containing CDCs or CDC residue.

Downbound means the tow is traveling with the current.

Eighth Coast Guard District means the Coast Guard District as set out in 33 CFR part 3.40–1.

Inland River Vessel Movement Center or *(IRVMC)* means the Coast Guard office that is responsible for collecting the information required by this section.

Towing vessel operator means the Captain or pilot who is on watch.

Upbound means the tow is traveling against the current.

(d) *Regulations.* The following must report to the Inland River Vessel Movement Center (IRVMC):

(1) The towing vessel operator responsible for one or more CDC barges in the RNA must report all the information items specified in table 165.830(f), in paragraph (f) of this section, to the Inland River Vessel Movement Center (IRVMC):

(i) Upon point of entry into the RNA with one or more CDC barges;

(ii) Four hours before originating a voyage within the RNA with one or more CDC barges;

(iii) Upon dropping off one or more CDC barges at a fleeting area or facility;

(iv) Upon picking up one or more additional CDC barges from a fleeting area or facility;

(v) At designated reporting points, set forth in table 165.830(e), in paragraph (e) of this section;

(vi) When the estimated time of arrival (ETA) to a reporting point varies by 6 hours from the previously reported ETA;

(vii) Any significant deviation from previously reported information;

(viii) Upon departing the RNA with one or more CDC barges; and

(ix) When directed by the IRVMC.

(2) The fleeting area manager responsible for one or more CDC barges in the RNA must report all the information items specified in table 165.830(g), in paragraph (g) of this section, to the Inland River Vessel Movement Center (IRVMC):

(i) Once daily, report all CDC barges within the fleeting area;

(ii) Upon moving one or more CDC barges from one fleeting area to another fleeting area or facility by a fleet tow boat;

(iii) Any significant deviation from previously reported information; and

(iv) When directed by the IRVMC.

(3) Reports required by this section may be made by a company representative or dispatcher on behalf of the towing vessel operator or fleeting area manager.

(4) Reports required by this section must be made to the IRVMC either by telephone to (866) 442–6089, by fax to (866) 442–6107, or by e-mail to *irvmc@cgstl.uscg.mil.* A reporting form and e-mail link are available at *http://www.uscg. mil/d8/Divs/M/IRVMC.htm.*

(5) The general regulations contained in 33 CFR 165.13 apply to this section.

(e) *Eighth Coast Guard District Inland River RNA Reporting points.* Towing vessel operators responsible for one or more CDC barges in the RNA must make reports to the Inland River Vessel Movement Center at each point listed in table 165.830(e) of this paragraph.

TABLE 165.830(e).—EIGHTH COAST GUARD DISTRICT INLAND RIVER REPORTING POINTS

(1) Lower Mississippi River (LMR), between Mile Markers (M):
(i) M 235.0–240.0 (Entering & Exiting RNA)
(ii) M 338.0–343.0
(iii) M 430.0–435.0
(iv) M 520.0–525.0
(v) M 621.0–626.0
(vi) M 695.0–700.0
(vii) M 772.0–777.0
(viii) M 859.0–864.0
(ix) M 945.0–950.0
(2) Upper Mississippi River (UMR), between Mile Markers (M) and Departing Lock & Dam (L&D), unless otherwise indicated:
(i) L&D 3
(ii) L&D 4
(iii) L&D 8
(iv) L&D 11
(v) L&D 14
(vi) L&D 18
(vii) L&D 21
(viii) L&D 25
(ix) Arriving Melvin Price L&D (downbound)
(x) Departing Melvin Price L&D (upbound)
(xi) M 150.0–145.0
(xii) M 66.0–61.0
(3) Missouri River (MOR), between Mile Markers (M):
(i) M 54.0–56.0
(ii) M 115.0–117.0
(iii) M 208.0–210.0
(iv) M 326.0–328.0
(v) M 397.0–399.0
(vi) M 487.0–489.0
(vii) M 572.0–574.0
(viii) M 652.0–654.0
(ix) M 745.0–750.0
(4) Illinois River (ILR), at Mile Marker (M) and Lock & Dam (L&D), as indicated:
(i) M 0.0
(ii) Departing New LaGrange L&D
(iii) M 140.0
(iv) M 187.2 (Entering & Exiting RNA)
(5) Ohio River, between Mile Markers (M) and at Lock & Dam (L&D), as indicated:
(i) M 950.0–952.0
(ii) Arriving Smithland L&D
(iii) M 826.0–828.0
(iv) M 748.0–750.0
(v) M 673.0–675.0
(vi) M 628.0–630.0
(vii) M 556.0–559.0
(viii) M 511.0–513.0
(ix) Departing Capt Anthony Meldahl L&D
(x) Arriving Greenup L&D (upbound)
(xi) Departing Greenup L&D (downbound)
(xii) Departing Robert C. Byrd L&D (upbound)
(xiii) Arriving Robert C. Bryd L&D (downbound)
(xiv) Departing Belleville L&D
(xv) Departing Hannibal L&D
(xvi) Departing Montgomery L&D
(6) Allegheny River at Lock &Dam (L&D), as indicated:
(i) Departing L&D 4 (upbound)
(ii) Arriving L&D 4 (downbound)
(7) Mongahela River Departing Lock & Dam (L&D):
(i) Grays Landing L&D
(ii) L&D 3
(8) Kanawha River, at Lock & Dam (L&D), as indicated:
(i) Arriving Winfield L&D (upbound)
(ii) Departing Winfield L&D (downbound)
(9) Cumberland River, between Mile Markers (M) and Departing Lock & Dam (L&D), unless otherwise indicated:
(i) Departing Old Hickory L&D (upbound)
(ii) Arriving Old Hickory L&D (downbound)
(iii) M 127.0–129.0
(iv) Barkley L&D
(10) Tennessee River, between Mile Markers (M) and when Departing Lock & Dam (L&D), unless otherwise indicated:
(i) Fort Loudon L&D
(ii) Watts Bar L&D
(iii) Departing Chickamauga L&D (upbound)
(iv) Arriving Chickamauga L&D (downbound)

TABLE 165.830(e).—EIGHTH COAST GUARD DISTRICT INLAND RIVER REPORTING POINTS—Continued

(v) Nickajack L&D
(vi) Guntersville L&D
(vii) General Joe Wheeler L&D
(viii) Pickwick Landing L&D
(ix) M 122.0–124.0
(x) Kentucky L&D
(11) Tennessee-Tombigbee River, between Mile Markers (M) and when Departing Lock & Dam (L&D):
(i) Lock D
(ii) Aberdeen L&D
(iii) Aliceville L&D
(iv) M 202.0–203.0
(v) Coffeeville L&D
(12) Mobile River, at Mile Marker (M):
(i) 0.0 (Entering & Exiting RNA)
(13) Black Warrior River, when Departing L&D:
(i) Holt L&D
(14) Alabama River, when Departing L&D:
(i) Claiborne L&D
(ii) Henry L&D
(15) McClellan-Kerr Arkansas River Navigation System, when Departing Lock & Dam (L&D), unless otherwise indicated:
(i) Chouteau L&D
(ii) W.D. Mayo L&D
(iii) Ozark-Jeta Taylor L&D
(iv) L&D 9
(v) Arriving David D. Terry L&D (upbound)
(vi) Departing David D. Terry L&D (downbound)
(vii) L&D 2
(16) Red River, between Mile Markers (M) and when Departing Lock & Dam (L&D):
(i) L.C. Boggs L&D
(ii) Lock 3
(iii) M 178.0–180.0
(17) Atchafalaya River, at Mile Marker (M):
(i) 55.0 (Entering & Exiting RNA)

(f) *Information to be reported by towing vessel operators to the Inland River Vessel Movement Center.* Towing vessel operators responsible for one or more CDC barges in the RNA must report all the information required by this section, as set out in table 165.830(f) of this paragraph.

TABLE 165.830(f).—INFORMATION TO BE REPORTED TO THE INLAND RIVER VESSEL MOVEMENT CENTER (IRVMC) BY TOWING VESSEL OPERATORS

	24 hr contact number	Name of vessel moving the barge(s)	Barge(s) name and official number	Type name and amount of CDC onboard *	Estimated time of departure from the fleeting area or facility	Planned route, name and location of destination of CDC barge (fleeting area or facility), including estimated time of arrival	Reporting point	Estimated time of arrival (ETA) to next reporting point (if applicable)
(1) Upon point of entry into the RNA with a CDC barge.	X	X	X	X	.....	X	X	X
(2) Four hours before to originating a voyage within the RNA with one or more CDC barges.	X	X	X	X	X	X	.....	X
(3) Upon dropping off one or more CDC barges at a fleeting area or facility.	.....	X	X	.....	.....	.....	.....	.....
(4) Upon picking up one or more additional CDC barges from a fleeting area or facility.	.....	X	X	X	.....	.....	.....	.....
(5) At designated reporting points in table 165.830 (e).	.....	X	X	‖ changed	.....	‖ changed	X	X
(6) When ETA to a reporting point varies by 6 hours from previously reported ETA.	.....	X	‖ changed	‖ changed	.....	.....	.....	X
(7) Any significant deviation from previously reported information (all that apply).	X	X	X	X	X	X	X	X
(8) Upon departing the RNA with a CDC barge(s).	.....	X	X	.....	.....	.....	X	.....
(9) When directed by the IRVMC	X	X	X	X	X	X	X	X

(g) *Information to be reported to the Inland River Vessel Movement Center by fleeting area managers.* Fleeting area managers responsible for one or more CDC barges in the RNA must report the information required by this section, as set out in table 165.830(g) to this paragraph.

TABLE 165.830(g).—INFORMATION TO BE REPORTED TO THE INLAND RIVER VESSEL MOVEMENT CENTER (IRVMC) BY FLEETING AREA MANAGERS

	24 hr contact number	Barge(s) name and official number	Type, name and amount of CDC onboard	Location of CDC barge (fleeting area or facility)
(1) Once daily, all CDC barges in a fleeting area	X	X	X	X
(2) Upon moving one or more CDC barges from one fleeting area to another fleeting area or facility, by a fleet tow boat		X	X	X
(3) Any significant deviation from previously reported information (all that apply)	X	X	X	X
(4) When directed by the IRVMC	X	X	X	X

(h) *Alternative reporting.* The Eighth Coast Guard District Commander may consider and approve alternative methods to be used by a reporting party to meet any reporting requirements if:

(1) the request is submitted in writing to Commander, Eighth Coast Guard District (m), Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130; and

(2) the alternative provides an equivalent level of the reporting that which would be achieved by the Coast Guard with the required check-in points.

(i) Deviation from this section is prohibited unless specifically authorized by the Commander, Eighth Coast Guard District or the IRVMC.

Dated: July 22, 2003.

R.F. Duncan,

Rear Admiral, Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 03–19364 Filed 7–25–03; 3:54 pm]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–241]

RIN 1625–AA11

Regulated Navigation Area; Reporting Requirements for Barges Loaded With Certain Dangerous Cargoes, Illinois Waterway System Within the Ninth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes an interim rule to establish a regulated navigation area (RNA) for all portions of the Illinois Waterway System located in the Ninth Coast Guard District. This RNA will apply to towing vessel operators and fleeting area managers who are responsible for the movement of barges carrying certain dangerous cargoes on inland rivers and requires them to report their position and other information to the Inland River Vessel Movement Center. This action is necessary to ensure public safety, prevent sabotage or terrorist acts, and facilitate the efforts of emergency services and law enforcement officers responding to terrorist attacks.

DATES: Comments and related material must reach the Coast Guard on or before September 15, 2003. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before September 15, 2003.

ADDRESSES: You may mail comments and related material to Commander (m), Ninth Coast Guard District, 1240 E. Ninth Street, Cleveland, OH 44199. Commander, Ninth Coast Guard District (m) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–03–241] and are available for inspection or copying at Commander (m), Ninth Coast Guard District, 1240 E. Ninth Street, Cleveland, OH 44199 between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays. You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

FOR FURTHER INFORMATION CONTACT: Commander Michael Gardiner or Lieutenant Matthew Colmer, Ninth Coast Guard District Marine Safety Division, at (216) 902–6045.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 2, 2003, the Coast Guard published a similar temporary final rule and request for comments entitled "Regulated Navigation Area; Reporting Requirements for Barges Loaded With Certain Dangerous Cargoes, Illinois Waterway System Within the Ninth Coast Guard District" in the **Federal Register** (68 FR 23399).

The Ninth Coast Guard District did not receive any comments with regard to this rulemaking. However, since this rulemaking compliments a parallel rule published by the Eight Coast Guard District on May 2, 2003 (68 FR 23393), comments received by the Eighth District are addressed in this rulemaking as if received in response to our temporary final rule.

As of July 9, 2003, we have received six written comments on the temporary rule. The American Waterways Operators (AWO) requested a meeting with the Eighth Coast Guard District regarding the temporary rule. A meeting was held on May 8, 2003, at the Hale Boggs Federal Building in New Orleans, LA.

Given that the temporary rule will expire October 31, 2003, the Coast Guard is allowing 45 days to comment on this proposed interim rule. The Coast Guard considers 45 days to be sufficient because we have already received comments from two associations—AWO and Gulf Coast Marine Association (GCMA), and two of the companies impacted by the temporary rule. As indicated in our "Discussion of Comments and Changes" section below, we have considered these comments in drafting our proposed interim rule and, where appropriate, we have made the proposed rule less burdensome than the temporary rule currently in effect. Also, this proposed rule would be issued as an interim rule with an additional comment period before we would impose any final rule.

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD09–03–241], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander, Ninth Coast Guard District (m) at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Terrorist attacks on September 11, 2001, inflicted catastrophic human casualties and property damage. These attacks highlighted the terrorists' abilities to utilize multiple means in different geographic areas thereby increasing their opportunities to maximize destruction.

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. The threat of maritime attacks is real as evidenced by the October 2002 attack on a tank vessel off the coast of Yemen and the prior attack on the USS COLE. These attacks manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002). The President found that the security of the U.S. is endangered by the September 11, 2001 attacks and terrorist attacks continue to endanger the international relations of the United States. See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism, (67 FR 59447, September 20, 2002). The U.S. Maritime Administration (MARAD) in Advisory 02–07 advised U.S. shipping interests to maintain a heightened state of alert against possible terrorist attacks. MARAD also issued Advisory 03–03 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attacks to the transportation community in the United States. The ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports and waterways to be on a higher state of alert due to the Al Qaeda organization and other similar organizations who have declared their intentions to conduct armed attacks on U.S. interests worldwide.

Therefore, on April 16, 2003, the Coast Guard established a temporary RNA within the Illinois Waterway System within the Ninth Coast Guard District in order to safeguard vessels, ports and waterfront facilities from sabotage or terrorist acts. The temporary RNA remains in effect and applies to barges loaded with certain dangerous cargoes (CDCs) operating on the Illinois Waterway System above mile 187.2 to the Chicago Lock on the Chicago River at mile 326.7, and to the confluence of the Calumet River and Lake Michigan at mile 333.5 of the Calumet River. The RNA affects vessels transporting barges loaded with CDCs that if used as weapons of terrorism could result in substantial loss of life, property, environmental damage, and grave economic consequences. The temporary rule requires operators of barges loading or loaded with CDCs within the RNA to periodically report their position and other specified information to the Inland River Vessel Movement Center (IRVMC) for the protection against sabotage and terrorist acts. The temporary final rule was published May 2, 2003, in the **Federal Register** (68 FR 23399) and expires on October 31, 2003.

The Coast Guard has determined that there is a need to continue the reporting requirements for barges loaded with CDCs operating on inland rivers and therefore we are proposing to issue an interim rule while we continue to consider alternatives to increase maritime domain awareness on the inland rivers in the Ninth Coast Guard District. The proposed rule would allow the Coast Guard to enhance maritime security, protect ports and facilities and high-density population centers (metropolitan areas), control vessel traffic, develop contingency plans, and enforce regulations.

Discussion of Comments and Changes

The Ninth Coast Guard District did not receive any comments with regard to this rulemaking. However, since this rulemaking compliments a parallel rule published by the Eighth Coast Guard District on May 2, 2003 (68 FR 23393), those comments are addressed in this rulemaking as if received in response to our temporary final rule, request for comments.

As of July 9, 2003, the Eighth Coast Guard District received six written comments on the temporary rule. The American Waterways Operators requested a meeting with the Coast Guard regarding the rule. The meeting was held on May 8, 2003, at the Hale Boggs Federal Building in New Orleans, LA. All comments received focused generally on: (1) Changes and clarification of the definitions; (2) use of marine chemist certification; (3) location and amount of reporting points; (4) CDC barges in fleeting areas (5) need, use and validity of the information being collected; (6) availability of the information being collected from other sources; (7) use of technology such as electronic reporting; (8) cost and burden of the reporting requirements; (9) justification of the regulation; and (10) consistency with existing regulations. Each of these groups of comments is discussed in more detail in the following paragraphs.

Definitions. Several comments suggested some of the definitions lead to confusion and should be clarified or removed.

Three comments were received regarding the definition of "certain dangerous cargoes (CDCs)" and how they were determined. CDCs have specific characteristics that make them a higher risk compared to the other cargoes listed in 49 CFR parts 171 and 172. The list of cargoes includes cargoes that have not been traditionally carried on the river but which are not prohibited from carriage. One comment addressed the inconsistency between the CDC definition of ammonium nitrate as stated in the temporary rule and the CDC definition as stated in 33 CFR 160.204, published February 28, 2003 in *Notification of Arrival in U.S. Ports* (68 FR 9537, 9544). The CDC list published in 33 CFR 160.204 applies to packaged cargoes listed in 49 CFR chapter I, subchapter C. As such, ammonium nitrate in bulk is currently not considered a CDC. The Coast Guard proposes to use the same definition as set out in 33 CFR 160.204 with the addition of propylene oxide.

Three comments received stated that the definitions of "empty", "gas free"

and "loaded" were confusing and misleading. We agree. The proposed rule will apply to barges carrying CDCs or CDC residue and the terms "empty", "gas free" and "loaded" will no longer be used. We received one comment suggesting that the definition for "final destination" could be removed if the regulation section was amended to simply require a report upon dropping off a CDC barge at a fleeting area or facility. We agree and propose to remove the term "final destination" and have changed the regulation accordingly. We received two comments stating that the definition of "operator" is vague. We agree. We propose to change the word "operator" to "towing vessel operator". Towing vessel operator would be defined as "Captain or pilot who is on watch." Also, we propose that a "company representative" or "dispatcher" may report the specific information required by the purpose of the rule to the IRVMC on behalf of the towing vessel operator or fleeting area manager.

Marine Chemist Certification. We received one comment regarding the use of a marine chemist to certify barges are "gas free." As we stated in the preceding paragraph, the terms "empty", "gas free", and "loaded" are not used in this proposed rule. We have made the proposed rule applicable only to barges carrying CDCs or CDC residue. A barge is not carrying CDCs or CDC residue when it has either never carried CDCs or when it has been certified as "gas free" by a marine chemist.

Location and Number of Reporting Points. We received several comments related to the location and number of reporting points. One comment asked us why the RNA did not continue to, or beyond, New Orleans, Louisiana. The proposed RNA is the same as the regulated area in the temporary rule. The regulated area in the temporary rule does not extend below mile 235.0 on the Lower Mississippi River (Baton Rouge, Louisiana) because the NOA regulations published February 28, 2003, in the **Federal Register**, apply to all domestic barges carrying CDCs operating below mile 235.0 on the Lower Mississippi River. Making this proposed rule continue to, or beyond, New Orleans, Louisiana would result in duplicative reporting to the National Vessel Movement Center (NVMC) and the Inland River Vessel Movement Center (IRVMC). Therefore the location for the proposed RNA remains unchanged from the regulated area in the temporary rule currently in effect.

Three comments were received regarding several reporting points being located at a turn or in other hazardous areas of the waterway. The comments recommended changing the location of the reporting points. We agree. We have proposed to have a segment of the waterway serve as a reporting point (that is, the towing vessel operator would be required to report to the IRVMC when transiting upbound between mile 235.0 and mile 240.0 on the Lower Mississippi River). The proposed reporting points, based on recommendations from the waterway users, are reflected in table 165.821(e).

One comment recommended the reporting points should be the same for upbound and downbound. We agree, with the exception of seven reporting points, and the appropriate changes are reflected in the reporting points proposed in table 165.821(e).

Two comments recommended using the Captain of the Port (COTP) boundaries as reporting points because the COTP would be able to determine when a CDC barge enters and departs the zone, allowing for a reduction in the number of reporting points. We disagree. The IRVMC requires reporting within a COTP zone to monitor CDC barge movement through densely populated areas and other areas of concern. This information is disseminated to the appropriate COTP in which the CDC barge is located.

Fleeting Areas. We received two comments that the responsibility of reporting movements of CDC barges in fleeting areas was unclear. We agree and propose to change the regulatory text to specifically address CDC barges in fleeting areas. The Coast Guard proposes that fleeting managers or operators would not be required to report to the IRVMC when moving CDC barges within a fleet using a fleet towing vessel. However, they would be required to report to the IRVMC when a fleet towing vessel moves one or more CDC barges from one fleeting area to another fleeting area or to a facility. The Coast Guard also proposes to add the requirement that fleeting managers report all CDC barges in the fleeting area once a day to the IRVMC. This requirement has been determined to be necessary to ensure accountability for CDC barges located within fleeting areas in the RNA. A company representative or dispatcher would be allowed to report to the IRVMC on behalf of the fleeting area manager.

Need, Use and Validity of the Information Being Collected. We received three comments regarding the vagueness of the Coast Guard's need for the information being collected and how the Coast Guard intends to use this information. We also received one comment questioning how the Coast Guard intends to validate the information received.

The information to be collected in this proposed rule will be used for the same purposes as explained in the Collection of Information section of the temporary final rule—to enhance maritime domain awareness by tracking the movement of certain dangerous cargoes throughout the inland river system, and enable the Coast Guard to increase port safety and security and promote the uninterrupted flow of commerce within the Eighth Coast Guard District. The information will also be used to enhance maritime security, protect ports and facilities and high-density population centers (metropolitan areas), control vessel traffic, develop contingency plans, and enforce regulations.

The Coast Guard has used the information collected pursuant to the temporary final rule to maintain continuous maritime domain awareness on the inland rivers so that we may respond, as appropriate, to an actual or threatened terrorist action. We intend to validate the information received through random escorts of towing vessels with CDC barges as they transit the RNA. The Coast Guard will also address the validity of information as it explores the availability of information available from other sources that would tend to validate information reported to the Coast Guard.

Since the temporary RNA has been in effect the Coast Guard has re-evaluated the need for the information being reported to the IRVMC at the following times: (1) 4 hours prior to loading a barge with CDCs, (2) 4 hours prior to dropping off a CDC barge at a fleeting area, and (3) 4 hours prior to picking up one or more CDC barges from a fleeting area. The Coast Guard has determined that there is no longer a need for reporting to the IRVMC 4 hours prior to loading a barge with CDCs. However, the Coast Guard needs to know where a CDC barge is within the RNA at all times and proposes to change the conditions under which a report must be made to the IRVMC to: (1) Upon point of entry into the RNA with one or more CDC barges; (2) 4 hours prior to originating a voyage within the RNA with one or more CDC barges; (3) upon dropping off one or more CDC barges at a fleeting area or facility; (4) upon picking up one or more additional CDC barges from a fleeting area or facility; (5) upon moving one or more CDC barges from one fleeting area to another fleeting area; (6) once daily, report all CDC barges within a fleeting area; (7) at designated reporting points in table 165.821(e); (8) when estimated time of arrival (ETA) to a reporting point varies by 6 hours from the previously reported ETA; (9) any significant deviation from previously reported information; (10) upon departing the RNA with one or more CDC barges; and (11) when directed by the IRVMC.

Availability of the Information From Other Sources. We received four comments on the availability of the information being collected from other sources. One comment mentioned that if we needed to know where the CDC barge was we would be able to request the data at any "particular moment in time" from the vessel operators or the Army Corps of Engineers. We agree that the Army Corps of Engineers collects adequate information from towing vessel operators and we are working with the Army Corps of Engineers to access that information. Once we are authorized to receive the information and the appropriate electronic systems are in place and tested, then we will re-evaluate the reporting points that coincide with the lock and dams (L&D). Until such time we are proposing to continue requiring information at reporting points that coincide with Army Corps of Engineer's L&Ds.

There was also discussion regarding the possibility of companies submitting real-time barge movement information to the Coast Guard via computer tracking programs in lieu of reporting to the Coast Guard at individual reporting points. A number of technology issues must be addressed in this area before this could be accomplished. Therefore, the Coast Guard proposes to maintain the manual collection of information from the reporting party in the interim rule while we continue to work with other government agencies and industry partners to research and develop alternatives to collecting the information necessary for the Coast Guard to maintain continual maritime domain awareness at any threat level.

Use of Technology. We received three comments regarding the use of technology to collect information by requiring electronic delivery of the information by automatic tracking devices and the web through real-time tracking programs. In response to these comments the Coast Guard is exploring existing systems used by affected companies for the possibility of integration of these systems. Before publishing the temporary final rule that established the existing RNA, the Coast Guard established the Inland River Vessel Movement Center (IRVMC), creating one location to which reports are to be made vice requiring reports to be made to each Captain of the Port (COTP) in which the CDC barge was operating. This proposed rule keeps the IRVMC in place, alleviating the burden on the towing vessel operator, responsible for a CDC barge, of having to determine which COTP zone they are operating in and maintaining a contact list for each COTP. The IRVMC accepts telephone (toll free), facsimile (toll free), and e-mail transmissions as means of reporting the information. Persons subject to this requirement may utilize the means that most efficiently meet their needs, provided that the information and timeliness requirements are met. The Coast Guard also has a reporting form and e-mail link available on the Internet at *http://www.uscg.mil/d8/Divs/M/IRVMC.htm.*

The Coast Guard proposes to continue receiving reports as required by the temporary rule. However, the Coast Guard proposes to consider and approve alternative methods, to be used by a reporting party, to meet any reporting requirements if: (1) The reporting party submits a written request for the alternative to Commander, Ninth Coast Guard District (m), 1240 E. Ninth Street, Cleveland, OH 44199; and (2) the alternative provides an equivalent level of reporting to that which would be achieved by the Coast Guard with the required check-in points.

Cost and Burden of the Reporting Requirements. We received several comments regarding the cost and burden of the reporting requirements. One comment mentioned that the preparation of reports for the Coast Guard by smaller or midsize companies that do not have 24-hour dispatchers adds to the daily workload of the mariner. We have added to the proposed regulatory text that alternative reporting may be requested from the Commander, Ninth Coast Guard District.

Two comments suggested that the Coast Guard could obtain this information from the Army Corps of Engineers rather than have separate reporting points for the Coast Guard thereby reducing the reporting burden. As stated earlier in this rule, we agree that the Army Corps of Engineers collects adequate information from the towing vessel operator and we are working with the Army Corps of Engineers to access the information. However in the interim, we are proposing to continue to use locks as reporting points.

Another suggestion was made to reduce the reporting requirements to a single report every 24 hours during periods of lower Maritime Security (MARSEC) levels, and, if the MARSEC level rose, the reporting requirements would be increased. However, this would not satisfy the Coast Guard's need to maintain constant maritime domain awareness for defined areas along the river systems, nor will it provide us timely information if the MARSEC level is increased due to a threat.

Justification of the Regulation. We received two comments concerning the justification for the regulation. One questioned why we implemented the RNA when we did; one questioned the justification for the timing of the RNA because we lowered the Maritime Security Condition (MARSEC) level the day the temporary RNA was effective; and another one questioned why the normal regulatory process of a notice of proposed rulemaking was not used. The effective date of the RNA and the change in the MARSEC level were coincidental. As a component of the Department of Homeland Security, the Coast Guard has a responsibility to ensure the safety and security of our ports and waterways. The temporary RNA and the proposed RNA will allow the Coast Guard to maintain constant maritime domain awareness on the inland rivers.

Response to Comments Summary

In response to these comments the Coast Guard is (1) removing the requirement to report 4 hours prior to loading a CDC barge in the RNA; (2) removing the requirement of reporting 4 hours prior to dropping off a CDC barge at a fleeting area; (3) establishing reporting requirements specifically for fleeting area managers; (4) considering and approving requests for alternative methods of meeting reporting requirements; (5) amending or removing some reporting points that were in unsafe areas; (6) exploring a reduction in checkpoints on pooled rivers by using Army Corps of Engineers data from L&Ds; (7) researching existing systems employed by affected companies with the possibility of the integration of these systems; and (8) researching technology for automatic tracking of CDC barges.

Discussion of Proposed Rule

The Coast Guard proposes to establish a regulated navigation area for the Illinois Waterway System above mile 187.2 to the Chicago Lock on the Chicago River at mile 326.7, and to the confluence of the Calumet River and Lake Michigan at mile 333.5 of the Calumet River. This proposed rule applies to: (1) towing vessel operators responsible for one or more CDC barges within the regulated area, and (2) fleeting area managers responsible for CDC barges in a fleeting area. The terms barge, certain dangerous cargoes (CDCs), downbound, CDC barge, Ninth Coast

Guard District, towing vessel operator, and upbound are defined in the regulatory section of this proposed rule.

Towing vessel operators responsible for one or more CDC barges would be required to report specific information, to the IRVMC, under the following conditions: (1) Upon point of entry into the RNA with one or more CDC barges; (2) 4 hours prior to originating a voyage within the RNA with one or more CDC barges; (3) upon dropping off one or more CDC barges at a fleeting area or facility; (4) upon picking up one or more additional CDC barges from a fleeting area or facility; (5) at designated reporting points in table 165.821(e); (6) when estimated time of arrival (ETA) to a reporting point varies by 6 hours from the previously reported ETA; (7) any significant deviation from previously reported information; (8) upon departing the RNA with one or more CDC barges; and (9) when directed by the IRVMC.

Fleeting area managers would be required to report specific information to the IRVMC under the following conditions: (1) Once daily, report all CDC barges within the fleeting area; (2) upon moving a CDC barge from one fleeting area to another or to a facility by fleeting towing vessels; (3) any significant deviation from previously reported information; and (4) when directed by the IRVMC.

A company representative or dispatcher may report the required information to the IRVMC on behalf of the towing vessel operator or fleeting area manager.

Each report made to the IRVMC, by a towing vessel operator or fleeting area manager, must contain all the information items specified in tables 165.921(f) and 165.921(g), respectively.

Reports must be made to the IRVMC, either by telephone to (866) 442–6089, by fax to (866) 442–6107, or by e-mail to *irvmc@cgstl.uscg.mil*. A reporting form and e-mail link is available at *http://www.uscg.mil/d8/Divs/M/IRVMC.htm*.

The Coast Guard proposes to consider and approve alternative reporting methods to meet any reporting requirements if: (1) The request for the alternative is submitted in writing to Commander, Ninth Coast Guard District (m), 1240 E. Ninth Street, Cleveland, Ohio 44199; and (2) the alternative provides an equivalent level of reporting to that which would be achieved by the Coast Guard with the required check-in points.

Deviation from this rule is prohibited unless specifically authorized by the Commander, Ninth Coast Guard District or designated representatives.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. We present this Regulatory Evaluation for the purposes of information.

Evaluation. The regulatory baseline for this rule is the temporary rule. The cost for complying with the rule will differ depending on the means used to make a report to the IRVMC and the type of report, either an initial report or an update. The cost of the rule presented below is based on the average number of reports received by the IRVMC in April 2003 and May 2003.

ANNUAL COST AND BENEFIT OF THE PROPOSED RULE

[2003 Dollars]

Item	Cost per initial call	Cost per update call	Total
Personnel	$9462	$17,871	$27,333
Operating Expenses	$28,386	$53,613	$81,999
Total	$37,848	$71,484	$109,332

This cost estimate assumes: (1) The average merchant mariner's hourly rate is $30, (2) the average initial call is 6 minutes, (3) the average update call is 2 minutes, (4) the average cost per cell phone call is $1.50 per minute, and (5) 15 percent of all responses are initial reports to the IRVMC. Therefore, based on 177 respondents, the average cost is $618 per CDC barge per year. The reporting requirements proposed are necessary to provide immediate, improved security for the public, vessels, and U.S. ports and waterways. The requirements do not alter normal barge transits. The minimal hardships that may be experienced by persons or vessels, as a result of this rule, are necessary to the national interest in protecting the public, vessels, and vessel crews from the devastating consequences of acts of terrorism, and from sabotage or other subversive acts, accidents, or other causes of a similar nature.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: towing vessel operators and fleeting area managers responsible for CDCs barges on Illinois Waterway System within the Ninth Coast Guard District. This RNA will not have a significant economic impact on a substantial number of small entities because this rule does not require any alteration of barge operations or transits. The operational communications required by this RNA do not require towing vessel operators or fleeting area managers to obtain new equipment, and can be made toll free to the IRVMC.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact CDR Michael Gardiner, Project Manager for Commander, Ninth Coast Guard District, 1240 E. 9th Street, Cleveland, Ohio 44199, telephone (216) 902–6049.

Collection of Information

This proposed rule would call for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

This proposed rule revises an existing OMB-approved collection of information (1625–0105). The new collection of information estimate is based on data gathered as a result of the information collected under the temporary rule and is based on actual reports received by the IRVMC, as well as actual observation and tracking, for April 2003 and May 2003.

Title: Regulated Navigation Areas; Reporting Requirements for Barges Loaded with Certain Dangerous Cargoes, Inland Rivers, Eighth Coast Guard District and the Illinois Waterway, Ninth Coast Guard District.

OMB Control Number: 1625–0105.

Summary of the Collection of Information: The Coast Guard requires position and intended movement reporting, and fleeting operations reporting, from barges carrying CDCs in the inland rivers within the Eighth and Ninth Coast Guard Districts. This rule will amend 33 CFR part 165 to require:

Towing vessel operators and fleeting area managers responsible for CDC barges must report the following information via toll free telephone, toll free fax, or email:

a. Name of barge and towboat;
b. Name of fleeting area and facility;
c. Estimated time of arrival (ETA) at fleeting area and facility;
d. Planned route, including estimated time of departure (ETD) from fleeting area and facility;
e. Upon entry into the covered geographical area;
f. 4 hours prior to originating a voyage with a CDC within the RNA
g. Upon picking up an additional CDC barge from a fleeting area or facility
h. Upon dropping off a CDC barge at a fleeting area or facility,
i. Upon moving a CDC barge from one fleeting area to another fleeting area or facility;
j. Once daily, all CDC barges within a fleeting area
k. ETA at approximately 105 designated reporting points within the covered geographical area;
l. At any time ETA to a reporting point varies by 6 hours from the previously reported ETA;
m. any significant deviation from previously reported information;
n. Upon departing the covered geographical area; and
o. When directed by the Coast Guard.

A company representative or dispatcher may report to the IRVMC on behalf of a towing vessel operator or fleeting area manager.

Need for Information: To ensure port safety and security and to ensure the uninterrupted flow of commerce, the Coast Guard proposes to issue regulations requiring position and intended movement reporting and fleeting operations reporting, from barges carrying CDCs in the inland rivers within the Eighth and Ninth Coast Guard Districts.

Proposed Use of Information: The information is required to enhance maritime security, protect ports and facilities and high-density population centers (metropolitan areas), control vessel traffic, develop contingency plans, and enforce regulations. The Coast Guard has used the information to maintain continuous maritime domain awareness on the inland rivers so that we may respond as appropriate to an actual or threatened terrorist action and enhance maritime security by boarding and/or escorting CDC barges in the vicinity of high-density population areas.

Description of the Respondents: The respondents are owners, agents, masters, towing vessel operators, or persons in charge of barges loaded with CDCs or having CDC residue operating on the inland rivers located within the Eighth and Ninth Coast Guard Districts.

Number of Respondents: The existing OMB-approved collection number of respondents is 3,505. This proposed rule will decrease the number of respondents by 3,328 to a total of 177.

Frequency of Response: Towing vessel operators moving barges carrying CDCs or CDC residue will submit reports as necessary. The existing OMB-approved collection annual number of responses is 7,711. This proposed rule will increase the number of responses by 13,313 to a total of 21,024.

Burden of Response: The existing OMB-approved collection burden of response is 15 minutes (0.25 hours) (burden of response is the time required to complete the paperwork requirements of the rule for a single response). This proposed rule will decrease the burden of response by 9 minutes (0.15 hours) to a total of 6 minutes (0.10 hours).

Estimate of Total Annual Burden: The existing OMB-approved collection total annual burden is 1,928 hours (total annual burden is the time required to complete the paperwork requirements of the rule for all responses). This proposed rule will decrease the total annual burden by 1017 hours to a total of 911 hours.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this rule to the Office of Management and Budget (OMB) for its review and approval of the revised collection of information. The existing OMB-approved collection (1625–1505) expires on October 31, 2003.

We ask for public comment on the collection of information to help us determine how useful the information is, whether it can help us perform our functions better, whether it is readily available elsewhere, how accurate our estimate of the burden of collection is, how valid our methods for determining burden are, how we can improve the quality, usefulness, and clarity of the information, and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. If OMB does not approve this revised collection of information, we will publish a notice in the **Federal Register** of OMB's decision.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or

impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1 paragraph (34)(g), of the instruction, from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in NEPA. A draft "Environmental Analysis Check List" and a draft "Categorical Exclusion Determination" are available where indicated under **ADDRESSES.** Comments on this section will be considered before we make a final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposed to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191,195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 166 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.921 to read as follows:

§ 165.921 Regulated Navigation Area; Reporting Requirements for Barges Loaded with Certain Dangerous Cargoes, Illinois Waterway System, Ninth Coast Guard District.

(a) *Regulated Navigation Area.* The following waters are a Regulated Navigation Area (RNA): the Illinois Waterway System above mile 187.2 to the Chicago Lock on the Chicago River at mile 326.7 and to the confluence of the Calumet River and Lake Michigan at mile 333.5 of the Calumet River.

(b) *Applicability.* This section applies to towing vessel operators and fleeting area managers responsible for CDC barges in the RNA. This section does not apply to:

(1) Towing vessel operators responsible for barges not carrying CDCs barges, or

(2) Towing vessel operators moving one or more CDC barges within a fleeting area.

(c) *Definitions.* As used in this section—*Barge* means a non-self propelled vessel engaged in commerce, as set out in 33 CFR 160.204.

Certain Dangerous Cargo or *(CDC)* includes any of the following:

(1) Division 1.1 or 1.2 explosives as defined in 49 CFR 173.50.

(2) Division 1.5D blasting agents for which a permit is required under 49 CFR 176.415 or, for which a permit is required as a condition of a Research and Special Programs Administration exemption.

(3) Division 2.3 "poisonous gas", as listed in 49 CFR 172.101 that is also a "material poisonous by inhalation" as defined in 49 CFR 171.8, and that is in a quantity in excess of 1 metric ton per barge.

(4) Division 5.1 oxidizing materials for which a permit is required under 49 CFR 176.415 or, for which a permit is required as a condition of a Research and Special Programs Administration exemption.

(5) A liquid material that has a primary or subsidiary classification of Division 6.1 "poisonous material" as listed in 49 CFR 172.101 that is also a "material poisonous by inhalation", as defined in 49 CFR 171.8 and that is in a bulk packaging, or that is in a quantity in excess of 20 metric tons per barge when not in a bulk packaging.

(6) Class 7, "highway route controlled quantity" radioactive material or "fissile material, controlled shipment", as defined in 49 CFR 173.403.

(7) Bulk liquefied chlorine gas and Bulk liquefied gas cargo that is flammable and/or toxic and carried under 46 CFR 154.7.

(8) The following bulk liquids—
(i) Acetone cyanohydrin,
(ii) Allyl alcohol,
(iii) Chlorosulfonic acid,
(iv) Crotonaldehyde,
(v) Ethylene chlorohydrin,
(vi) Ethylene dibromide,
(vii) Methacrylonitrile,
(viii) Oleum (fuming sulfuric acid), and
(ix) Propylene Oxide.

CDC barge means a barge containing CDCs or CDC residue.

Downbound means the tow is traveling with the current.

Inland River Vessel Movement Center or *(IRVMC)* means the Coast Guard office that is responsible for collecting the information required by this section.

Ninth Coast Guard District means the Coast Guard District as set out in 33 CFR part 3.45–1.

Towing vessel operator means the Captain or pilot who is on watch.

Upbound means the tow is traveling against the current.

(d) *Regulations.* The following must report to the Inland River Vessel Movement Center (IRVMC):

(1) The towing vessel operator responsible for one or more CDC barges in the RNA must report all the information items specified in table 165.921(f), in paragraph (f) of this section, to the Inland River Vessel Movement Center (IRVMC):

(i) Upon point of entry into the RNA with one or more CDC barges;

(ii) Four hours before originating a voyage within the RNA with one or more CDC barges;

(iii) Upon dropping off one or more CDC barges at a fleeting area or facility;

(iv) Upon picking up one or more additional CDC barges from a fleeting area or facility;

(v) At designated reporting points, set forth in table 165.921(e), in paragraph (e) of this section;

(vi) When the estimated time of arrival (ETA) to a reporting point varies by 6 hours from the previously reported ETA;

(vii) Any significant deviation from previously reported information;

(viii) Upon departing the RNA with one or more CDC barges; and

(ix) When directed by the IRVMC.

(2) The fleeting area manager responsible for one or more CDC barges in the RNA must report all the information items specified in table 165.921(g), in paragraph (g) of this section, to the Inland River Vessel Movement Center (IRVMC):

(i) Once daily, report all CDC barges within the fleeting area;

(ii) Upon moving one or more CDC barges from one fleeting area to another fleeting area or facility by a fleet tow boat;

(iii) Any significant deviation from previously reported information; and

(iv) When directed by the IRVMC.

(3) Reports required by this section may be made by a company representative or dispatcher on behalf of the towing vessel operator or fleeting area manager.

(4) Reports required by this section must be made to the IRVMC either by telephone to (866) 442–6089, by fax to (866) 442–6107, or by e-mail to *irvmc@cgstl.uscg.mil.* A reporting form and e-mail link are available at *http://www.uscg.mil/d8/Divs/M/IRVMC.htm.*

(5) The general regulations contained in 33 CFR 165.13 apply to this section.

(e) *Ninth Coast Guard District Illinois Waterway System RNA Reporting points.* Towing vessel operators responsible for one or more CDC barges in the RNA must make reports to the Inland River Vessel Movement Center at each point listed in table 165.921(e) of this paragraph.

TABLE 165.921(e).—NINTH COAST GUARD DISTRICT ILLINOIS WATERWAY SYSTEM REPORTING POINTS

(1) Illinois River (ILR) Upbound, at Mile Markers (M) and when Departing Lock & Dam (L&D):
(i) M 187.2 (Southern Boundary MSO Chicago AOR)
(ii) M 271.5 Dresden L&D
(iii) M 291 Lockport L&D
(iv) M 303.5 Junction of Chicago Sanitary Ship Canal and
(v) Calumet-Sag Channel
(vi) M 326.4 Thomas S. O'Brien L&D, Calumet River
(vii) M 333.5 Confluence of Calumet River and Lake Michigan
(viii) M 326.7 Chicago L&D, Chicago River

(2) Illinois River (ILR) Downbound Reporting Points, at Mile Markers (M) and when Departing Lock & Dam (L&D):
(i) M 326.7 Chicago L&D, Chicago River
(ii) M 333.5 Confluence of Calumet River and Lake Michigan
(iii) M 326.4 Thomas S. O'Brien L&D, Calumet River
(iv) M 303.5 Junction of Chicago Sanitary Ship Canal and
(v) Calumet-Sag Channel
(vi) M 291 Lockport L&D
(vii) M 271.5 Dresden L&D
(viii) M 187.2 (Southern Boundary MSO Chicago AOR)

(f) *Information to be reported by towing vessel operators to the Inland River Vessel Movement Center.* Towing vessel operators responsible for one or more CDC barges in the RNA must report all the information required by this section, as set out in table 165.921(f) of this paragraph.

TABLE 165.921(f).—INFORMATION TO BE REPORTED TO THE INLAND RIVER VESSEL MOVEMENT CENTER (IRVMC) BY TOWING VESSEL OPERATORS

	24 hr contact No.	Name of vessel moving the barge(s)	Barge(s) name and official number	Type, name and amount of CDC onboard	Estimated time of departure from the fleeting area or facility	Planned route, name and location of destination of CDC barge (fleeting area or facility), including estimated time of arrival	Reporting point	Estimated time of arrival (ETA) to next reporting point (If applicable)
(1) Upon point of entry into the RNA with a CDC barge.	X	X	X	X	.....	X	X	X

TABLE 165.921(f).—INFORMATION TO BE REPORTED TO THE INLAND RIVER VESSEL MOVEMENT CENTER (IRVMC) BY TOWING VESSEL OPERATORS—Continued

	24 hr contact No.	Name of vessel moving the barge(s)	Barge(s) name and official number	Type, name and amount of CDC on-board	Estimated time of departure from the fleeting area or facility	Planned route, name and location of destination of CDC barge (fleeting area or facility), including estimated time of arrival	Reporting point	Estimated time of arrival (ETA) to next reporting point (If applicable)
(2) Four hours before originating a voyage within the RNA with one or more CDC barges.	X	X	X	X	X	X	.....	X
(3) Upon dropping off one or more CDC barges at a fleeting area or facility.	.....	X	X	.....	.....	.....	.....	.....
(4) Upon picking up one or more additional CDC barges from a fleeting area or facility.	.....	X	X	X	.....	.....	.....	.....
(5) At designated reporting points in table 165.921(e).	.....	X	X	If changed	.....	If changed	X	X
(6) When ETA to a reporting point varies by 6 hours from previously reported ETA.	.....	X	If changed	If changed	.....	.....	.....	X
(7) Any significant deviation from previously reported information (all that apply).	X	X	X	X	X	X	X	X
(8) Upon departing the RNA with a CDC barge(s).	.....	X	X	.....	.....	.....	X	.....
(9) When directed by the IRVMC	X	X	X	X	X	X	X	X

(g) *Information to be reported to the Inland River Vessel Movement Center by fleeting area managers.* Fleeting area managers responsible for one or more CDC barges in the RNA must report the information required by this section, as set out in table 165.921(g) to this paragraph.

TABLE 165.921(g).—INFORMATION TO BE REPORTED TO THE INLAND RIVER VESSEL MOVEMENT CENTER (IRVMC) BY FLEETING AREA MANAGERS

	24 hr contact No.	Barge(s) name and official No.	Type, name and amount of CDC on-board	Location of CDC barge (fleeting area or facility)
(1) Once daily, all CDC barges in a fleeting area	X	X	X	X
(2) Upon moving one or more CDC barges from one fleeting area to another fleeting area or facility, by a fleet tow boat.	.....	X	X	X
(3) Any significant deviation from previously reported information (all that apply)	X	X	X	X
(4) When directed by the IRVMC	X	X	X	X

(h) *Alternative reporting.* The Ninth Coast Guard District Commander may consider and approve alternative methods to be used by a reporting party to meet any reporting requirements if:

(1) The request is submitted in writing to Commander, Ninth Coast Guard District (m), 1240 E. 9th Street, Cleveland, Ohio 44199; and

(2) The alternative provides an equivalent level of the reporting that which would be achieved by the Coast Guard with the required check-in points.

(i) Deviation from this section is prohibited unless specifically authorized by the Commander, Ninth Coast Guard District or the IRVMC.

Dated: July 21, 2003.

Ronald F. Silva,

Rear Admiral, Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 03–19362 Filed 7–25–03; 3:55 pm]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–164–1–7602b; FRL–7536–7]

Approval and Promulgation of Implementation Plans; Texas; Control of Emission of Oxides of Nitrogen From Cement Kilns

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to take direct final action on revisions to the Texas State Implementation Plan. These revisions concern Control of Air Pollution from Nitrogen Compounds, Cement Kilns. The EPA is approving these SIP revisions for cement kilns as they will contribute to attainment of the 1-hour ozone National Ambient Air Quality Standards. The EPA is approving emissions of Oxides of Nitrogen for cement kilns in accordance with the requirements of the Federal Clean Air Act.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision and anticipates no adverse comment. The EPA has explained its reasons for this approval in the preamble to the direct final rule. If EPA receives no relevant adverse comments, the EPA will not take further action on this proposed rule. If EPA receives relevant adverse comment, EPA will withdraw the direct final rule and it will not take effect. The EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Electronic comments should be sent either to *Diggs.Thomas@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in our direct final rulemaking document published in the "Rules and Regulations" section of this **Federal Register**. Our Technical Support Document for this rule revision contains more information about this action.

DATES: Written comments must be received by August 29, 2003.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Texas Commission on Environmental Quality (TCEQ), Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6691, and *shar.alan@epa.gov*.

SUPPLEMENTARY INFORMATION: This document concerns Control of Air Pollution from nitrogen compounds, Cement kiln, Environmental protection, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds. For further information, please see the information provided in the direct final action that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 17, 2003.

Lawrence Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 03–19278 Filed 7–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[ID–02–003; FRL –7537–8]

Approval and Promulgation of State Implementation Plans and Designation of Areas for Air Quality Planning Purposes: Ada County/Boise, ID Area

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA, Agency, or we) proposes to rescind its earlier finding that the PM_{10} standards promulgated on July 1, 1987 and the accompanying nonattainment designation and classification are no longer applicable in the Ada County/Boise, Idaho area, and simultaneously, to approve a PM_{10} SIP maintenance plan for the Ada County/Boise Idaho area and to redesignate the area from nonattainment to attainment. PM_{10} air pollution is suspended particulate matter with a diameter less than or equal to a nominal ten micrometers.

DATES: Written comments must be received on or before August 29, 2003.

ADDRESSES: Written comments should be addressed and mailed to Donna Deneen, Office of Air Quality, (OAQ–107), EPA Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Copies of documents relevant to this action are available for public review during normal business hours (8 a.m. to 4:30 p.m.) at this same address. Comments may also be submitted electronically, or through hand delivery/courier. Detailed instructions for submitting comments are described in the **SUPPLEMENTARY INFORMATION** section, under "How can comments be made on this rulemaking?"

FOR FURTHER INFORMATION CONTACT: Donna Deneen, Office of Air Quality (OAQ–107), EPA Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101, (206) 553–6706.

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I. Background

1. What Is the Purpose of This Rulemaking?

This rulemaking proposes to take certain actions related to the PM_{10} designation and classification of the Ada County/Boise, Idaho area.[1] First, EPA is proposing to rescind the March 12, 1999 finding (64 FR 12257) that the PM10 standards promulgated on July 1, 1987 (52 FR 24634) and the accompanying designation and classification for PM_{10} no longer apply in the Ada County/Boise, Idaho area. The intended effect of this proposal is to restore the applicability of the current PM_{10} standards in the Ada County/Boise, Idaho area as well as the nonattainment designation and moderate classification associated with those standards. Secondly, EPA is proposing to approve the PM_{10}

[1] Although the State's maintenance plan and redesignation request refers to "Northern Ada County," we are using the term "Ada County/Boise, Idaho" or "Ada County/Boise, Idaho area" for consistency with 40 CFR 81.313.

maintenance plan for the Ada County/Boise, Idaho area as a SIP revision and to redesignate the area to "attainment" for PM_{10}.

The proposed redesignation to attainment is based on valid monitoring data and projections of ambient air quality made in the demonstration that accompanies the maintenance plan. EPA believes the area will continue to meet the National Ambient Air Quality Standards (NAAQS) for PM_{10} for at least ten years beyond this redesignation, as required by the Act.

2. What Is a State Implementation Plan (SIP)?

The Clean Air Act requires states to attain and maintain ambient air quality equal to or better than standards that provide an adequate margin of safety for public health and welfare. These ambient air quality standards are established by EPA and are known as the National Ambient Air Quality Standards, or NAAQS.

The state's plans for attaining and maintaining the NAAQS are outlined in the State Implementation Plan (or SIP) for that state. The SIP is a planning document that, when implemented, is designed to ensure the achievement of the NAAQS. Each state currently has a SIP in place, and the Act requires that states make SIP revisions periodically as necessary to provide continued compliance with the standards.

SIPs include, among other things, the following: (1) An inventory of emission sources; (2) statutes and regulations adopted by the state legislature and executive agencies; (3) air quality analyses that include demonstrations that adequate controls are in place to meet the NAAQS; and (4) contingency measures to take effect if an area fails to attain the standards or to make reasonable progress toward attainment by the required date.

The state must make the SIP available for public review and comment through a public hearing. It also must be adopted by the state, and submitted to EPA by the Governor or his appointed designee. After EPA approves the SIP submission, the rules and regulations are rendered federally enforceable. The approved SIP serves as the state's plan to take actions that will reduce or eliminate air quality problems. Any subsequent revisions to the SIP must go through the formal SIP revision process specified in the Act.

The Idaho Department of Environmental Quality (Idaho DEQ, the State, or Idaho) submitted a SIP for particulate matter in the Ada County/Boise, Idaho nonattainment area in three parts on November 14, 1991, December 30, 1994, and July 13, 1995 (the 1991 PM_{10} SIP) and EPA approved it on May 30, 1996. Other SIP revisions, *e.g.*, state-wide revisions affecting the area, have been submitted over the intervening years and have likewise been approved. See 40 CFR 52.670. The State submitted the maintenance plan and redesignation request for the Ada County/Boise, Idaho area to EPA on September 27, 2002, and provided supplemental information on July 10, 2003 and July 21, 2003, as a revision to the SIP.

3. What National Ambient Air Quality Standards (NAAQS) Are Considered in Today's Rulemaking?

This action by EPA pertains to Idaho's compliance with the PM_{10} NAAQS. PM_{10} is particulate matter with an aerodynamic diameter of less than ten micrometers (PM_{10}). The NAAQS are national standards for certain ambient air pollutants set by EPA to protect public health and welfare. PM_{10} is among the ambient air pollutants for which EPA has established health-based standards.

PM_{10} causes adverse health effects by penetrating deep in the lungs, aggravating the cardiopulmonary system. Children, the elderly, and people with asthma and heart conditions are the most vulnerable.

On July 1, 1987 (52 FR 24634), EPA revised the NAAQS for particulate matter with an indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). (*See* 40 CFR 50.6). The 24-hour primary PM_{10} standard is 150 micrograms per cubic meter (ug/m^3), with no more than one expected exceedance per year over a three year period. The annual primary PM_{10} standard is 50 ug/m^3 as an expected annual arithmetic mean over a three year period. The secondary PM10 standards, promulgated to protect against adverse welfare effects, are identical to the primary standards.

4. What Is the Background Information for This Action?

On August 7, 1987 (52 FR 29383), EPA identified the Ada County/Boise, Idaho area as a $PM1_{10}$ "Group I" area of concern, *i.e.*, an area with a 95% or greater likelihood of violating the PM_{10} NAAQS and requiring substantial SIP revisions. The area was subsequently designated as a moderate PM_{10} nonattainment area upon enactment of the Clean Air Act Amendments of 1990 (November 15, 1990).

The State developed a nonattainment area SIP revision designed to bring about the attainment of the PM_{10} NAAQS. This was submitted to EPA in three parts on November 14, 1991, December 30, 1994, and July 13, 1995. EPA fully approved this plan as a revision to the Idaho SIP in a **Federal Register** Notice published on May 30, 1996 (61 FR 27019).

On July 18, 1997 (62 FR 38856), EPA revised the NAAQS standard for PM_{10}. Also, on July 18, 1997, we announced that the existing PM_{10} standards and associated designations and classifications would continue to apply for an interim period. In addition, we identified the criteria for determining that the pre-existing PM_{10} NAAQS would no longer be applicable for an area. On March 12, 1999 (64 FR 12257), we issued final rules approving Idaho's request that EPA revoke the pre-existing PM_{10} NAAQS, along with the associated nonattainment designation and classification for the Ada County/Boise, Idaho area because it had met the criteria. The Environmental Defense Fund (EDF) and others filed a Petition for Review in the U.S. Court of Appeals for the 9th Circuit opposing the revocation of the existing PM_{10} standard in Idaho. Before EPA responded to the petition, in a separate legal action, the U.S. Court of Appeals for the District of Columbia vacated the revised 1997 PM_{10} standard. *American Trucking Association, et al.*, v. *EPA, et al.*, and consolidated cases. Thus, because the pre-existing PM_{10} standards were revoked for the Ada County/Boise, Idaho area, and the revised 1997 PM_{10} standards were vacated, the Ada County/Boise, Idaho area was left without federally applicable PM_{10} standards. On June 26, 2000, EPA proposed to rescind the finding that the pre-existing PM_{10} standards and the accompanying designation and classification were no longer applicable in the Ada County/Boise, Idaho area. 65 FR 39321.[2] Soon after, the EDF, Community Planning Association of Southwest Idaho, Idaho Department of Environmental Quality (Idaho DEQ) and EPA reached a settlement agreement that called for the submission of a maintenance demonstration and plan containing motor vehicle emissions budgets for the Ada County/Boise, Idaho area and other measures necessary to meet the requirements of CAA section 175A as part of a petition for redesignation of the area to attainment under section 107(d)(3)(E) of the Clean Air Act. *See* 66 FR 8229 (January 30, 1999). On September 27, 2002, Idaho DEQ submitted to EPA a maintenance plan and a request for redesignation of the area to attainment.[3] Idaho provided supplemental information on July 10, 2003 and July 21, 2003.

[2] EPA extended the comment period for this rulemaking on July 26, 2000 (65 FR 45953) and later reopened the comment period on September 11, 2000 (65 FR 54828). EPA took final action on only the portion of the proposal related to the deletion of 40 CFR 50.6(d) on December 22, 2000. 65 FR 80779.

5. What Are the Air Quality Characteristics of the Area?

The Ada County/Boise, Idaho area is located in the southwestern part of Idaho and encompasses the northern half of Ada County. For a legal description of the boundaries, see 40 CFR 81.313. The area includes the City of Boise and some, but not all, of the surrounding suburbs. The Boise Metropolitan Statistical Area, which includes Ada County and Canyon County, is currently one of the fastest growing metropolitan regions in the nation with a 2001 population of over 452,000. Four additional counties make up the remainder of a larger region known as the Treasure Valley.

Located in the Boise River Valley, the Ada County/Boise, Idaho area is prone to periods of air stagnation conditions due to atmospheric inversions, especially during the winter. Stagnation periods, combined with primary and secondary emissions of PM_{10}, have lead to exceedances of the PM_{10} NAAQS. As a result, the maintenance plan submitted by the State focuses particularly on periods of air stagnation when high levels of PM_{10} in the area are most likely.

Since 1991, only one exceedance of the 24-hour standard in the Ada County/Boise, Idaho area has been recorded. There have been six other exceedances, all measured in winter months and recorded in 1991 or earlier. There have been no exceedances of the annual PM_{10} standard since the PM_{10} standard was promulgated in 1987.

6. What Criteria Did EPA Use To Review the Redesignation Request and Maintenance Plan?

The criteria used to review the maintenance plan and redesignation request are derived from the Act, the General Preamble, and a policy and guidance memorandum from John Calcagni, September 4, 1992, *Procedures for Processing Requests to Redesignate Areas to Attainment.* Section 107(d)(3)(E) of the Act states that the EPA can be redesignate an area to attainment if the following conditions are met:

1. The Administrator has determined the area has attained the NAAQS.

2. The Administrator has fully approved the applicable implementation plan under Section 110(k).

3. The Administrator has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions.

4. The State has met all applicable requirements for the area under Section 110 and Part D.

5. The Administrator has fully approved a maintenance plan, including a contingency plan, for the area under Section 175A.

7. How Does the State Show That the Area Has Attained the PM_{10} NAAQS?

Demonstrating that an area has attained the PM_{10} NAAQS involves submission of ambient air quality data from an ambient air monitoring network representing peak PM_{10} concentrations. The data should be stored in the EPA Air Quality System. The 24-hour PM_{10} NAAQS is 150 ug/m^3. An area has attained the 24-hour standard when the average number of expected exceedances per year is less than or equal to one, when averaged over a three year period. (40 CFR 50.6) To make this determination, three consecutive years of complete ambient air quality data must be collected in accordance with federal requirements (40 CFR part 58, including appendices).

An attainment determination was made for 1999–2001 (to include the 1999 baseline inventory year) as well as 2000–2002 (to reflect most recent data). The data in EPA's Air Quality System show no exceedances of the 24-hour PM_{10} standard in the Ada County/Boise, Idaho Area during any of those four years (1999, 2000, 2001, or 2002). Therefore, the average annual number of expected exceedances of the 24 hour standard for both periods, 1999–2001 and 2000–2002 is zero. Thus, the Ada County/Boise, Idaho Area is in attainment with the 24-hour PM_{10} NAAQS.

The annual PM_{10} NAAQS is 50 ug/m^3. To determine attainment, the standard is compared to the expected annual mean, which is the average of the weighted annual mean for three consecutive years. The weighted annual mean for each year, 1999 through 2002, is below 50 ug/m^3 at all monitoring sites (it ranged from 18 ug/m^3 to 34 ug/m^3). Consequently the three year weighted annual mean is below 50 ug/m^3. Thus the Ada County/Boise, Idaho Area is in attainment with the annual PM_{10} NAAQS.

8. Does the Area Have a Fully Approved Nonattainment SIP?

States containing initial moderate PM_{10} nonattainment areas were required to submit a SIP by November 15, 1991, which implemented reasonably available control measures (RACM) by December 10, 1993, and demonstrated attainment of the PM_{10} NAAQS by December 31, 1994. The SIP for the area must be fully approved under Section 110(k) of the Act, and must satisfy all requirements that apply to the area. On May 30, 1996, (61 FR 27019), EPA fully approved the Ada County/Boise, Idaho PM_{10} nonattainment area SIP originally submitted by the State on November 14, 1991, and supplemented on December 30, 1994 and July 13, 1995. The Part D NSR rules for PM_{10} nonattainment areas were approved on July 23, 1993 (58 FR 39445) and amended on January 16, 2003 (68 FR 2217). The Ada County/Boise, Idaho PM_{10} nonattainment SIP demonstrated attainment of the PM_{10} NAAQS by December 31, 1994. Thus, the area has a fully approved nonattainment SIP.

9. Are the Improvements in Air Quality Which Warrant This Redesignation Permanent and Enforceable?

The State must be able to reasonably attribute the improvement in air quality to permanent and enforceable emission reductions. In making this showing, the State must demonstrate that air quality improvements are the result of actual enforceable emission reductions. This showing should consider emission rates, production capacities, and other related information. The analysis should assume that sources are operating at permitted levels (or historic peak levels) unless evidence is presented that such an assumption is unrealistic.

Idaho has demonstrated that the air quality improvements in the Ada County/Boise, Idaho area are the result of permanent enforceable emission reductions and not a result of either economic trends or meteorology. EPA concludes that the modeling demonstration shows that the area will meet the NAAQS, even under worst case meteorological conditions. The modeling demonstration assumes emission rates corresponding to the control measures relied on by the 1991 PM_{10} SIP for the area (which are still being implemented and relied on by the maintenance plan) as well as the terms and conditions limiting primary and secondary particulate matter emissions in newly-issued Tier II operating permits for twelve industrial sources. EPA approved the control measures relied on for the 1991 PM_{10} SIP as

[3] Title I, section 107(d)(3)(D) of the Act and the general preamble to Title I, 57 FR 13498 (April 16, 1992), allow the Governor of a State to request the redesignation of an area from nonattainment to attainment.

meeting the enforceability requirements on September 22, 1994 and May 30, 1996. 59 FR 48582 and 61 FR 27019. The Tier II Operating Permits are issued under federally-approved IDAPA 58.01.01 and are enforceable because they contain provisions that would result in penalties for not meeting the terms and conditions limiting particulate matter. Accordingly, Idaho can reasonably attribute improvement in air quality to emission reductions from these permanent and enforceable measures. Finally, with respect to economic trends, with the Ada County/Boise, Idaho area currently one of the fastest growing metropolitan regions in the nation, it is unlikely that air quality improvements are due to this factor. Even though the economic trend is positive, air quality improvements can still be expected because of the control measures that are in place in combination with motor vehicle technology improvements. In short, EPA believes that Idaho DEQ has demonstrated air quality improvements are the result of permanent enforceable emission reductions and not a result of economic trends or meteorological conditions and has met the enforceability requirements of Section 175.

10. Has the State Met All the Planning Requirements Applicable to This Area?

The September 1992 Calcagni memorandum directs states to meet all of the applicable Section 110 and Part D planning requirements for redesignation purposes. Thus, EPA interprets the Act to require state adoption and EPA approval of the applicable programs under Section 110 and Part D that were due prior to the submission of a redesignation request, before EPA may approve a redesignation request. How the State has met these requirements is discussed below.

11. How Does the State Meet Section 110 Requirements?

Section 110(a)(2) of the Act contains general requirements for nonattainment plans. These requirements include, but are not limited to, submission of a SIP that has been adopted by the State after reasonable notice and public hearing; provisions for establishment and operation of appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality; implementation of a permit program; provisions for Part C—Prevention of Significant Deterioration (PSD) and Part D—New Source Review (NSR) permit programs; criteria for stationary source emission control measures, monitoring and reporting, provisions for modeling; and provisions for public and local agency participation. See the General Preamble for further explanation of these requirements. 57 FR 13498 (April 16, 1992).

For purposes of redesignation, review of the Idaho SIP shows that the State has satisfied all requirements under the Act. Further, in 40 CFR 52.673, EPA has approved Idaho's SIP for the attainment and maintenance of the national standards under Section 110.

12. How Does the State Meet Part D Requirements?

Part D consists of general requirements applicable to all areas which are designated nonattainment based on a violation of the NAAQS. The general requirements are followed by a series of subparts specific to each pollutant. All PM_{10} nonattainment areas must meet the applicable general provisions of Subpart 1 and the specific PM_{10} provisions in Subpart 4, "Additional Provisions for Particulate Matter Nonattainment Areas." The following paragraphs discuss these requirements as they apply to the Ada County/Boise, Idaho area.

13. How Does the State Meet the Section 172(c) Plan Provisions Requirements?

Subpart 1, section 172(c) contains general requirements for nonattainment plans. A thorough discussion of these requirements may be found in the General Preamble. 57 FR 13538 (April 16, 1992). The requirements for reasonable further progress, identification of certain emissions increases, and other measures needed for attainment were satisfied with the initial attainment plan for the Ada County/Boise, Idaho area. The requirement for an emission inventory is satisfied by the completion of the inventory required for the maintenance plan. The requirements of the Part D New Source Review (NSR) program will be replaced by the Part C Prevention of Significant Deterioration (PSD) program for PM_{10} upon the effective date of this redesignation action. The federally-approved PSD regulations for Idaho can be found at IDAPA 16.01.012,07, as incorporated by reference by EPA on July 28, 1982 (47 FR 32531), and most recently amended on January 16, 2003 (68 FR 2217).

14. How Does the State Meet Subpart 4 Requirements?

Part D, Subpart 4, Section 189(a), (c) and (e) requirements apply to any moderate nonattainment area before the area can be redesignated to attainment. The requirements which were applicable prior to the submission of the request to redesignate the area must be fully approved into the SIP before redesignating the area to attainment. These requirements are discussed below:

(a) Provisions to assure that RACM was implemented by December 10, 1993;

(b) Either a demonstration that the plan provided for attainment as expeditiously as practicable but not later than December 31, 1994, or a demonstration that attainment by that date was impracticable;

(c) Quantitative milestones which were achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

(d) Provisions to assure that the control requirements applicable to major stationary sources of PM_{10} also apply to major stationary sources of PM_{10} precursors, except where the Administrator determined that such sources do not contribute significantly to PM_{10} levels which exceed the NAAQS in the area.

As previously stated, EPA approved the 1991 PM_{10} SIP for the Ada County/Boise, Idaho area containing the elements meeting requirements (a) through (d) above on May 30, 1996 (61 FR 27019). Other requirements were due at a later date.

States with PM_{10} nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM_{10} by June 30, 1992. States also were to submit contingency measures by November 15, 1993, which become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM_{10} NAAQS by the applicable statutory deadline. See Sections 172(c)(9) and 189(a) and 57 FR 13543–13544.

Idaho has presented an adequate demonstration that it has met the requirements applicable to the area under Section 110 and Part D. The Part D NSR rules for PM_{10} nonattainment areas in Idaho were approved by EPA on July 23, 1993 (58 FR 39445) and amended provisions were approved by EPA on January 16, 2003 (68 FR 2217). The Clean Air Act requires that contingency measures take effect if the area fails to meet reasonable further progress requirements or fails to attain the NAAQS by the applicable attainment date. The Ada County/Boise, Idaho area attained the NAAQS for PM_{10} by the applicable attainment date of December 31, 1994 (*i.e.*, the average annual number of expected exceedances of the 24-hour standard for the three year period 1992–1994 was less than one and the average weighted annual mean for the same period was below 50 ug/m3). Therefore, contingency measures no longer are required under Section 172(c)(9) of the Act. Contingency measures are also required for maintenance plans under Section 175A(d). Idaho has provided contingency measures in the maintenance plan for the Ada County/Boise, Idaho area to meet this requirement. The contingency measures in the maintenance plan are discussed below.

15. Has the State Submitted a Fully Approvable Maintenance Plan for the Area?

Section 107(d)(3)(E) of the Act stipulates that for an area to be redesignated to attainment, EPA must fully approve a maintenance plan which meets the requirements of Section 175A. Section 175A defines the general framework of a maintenance plan, which must provide for maintenance, *i.e.*, continued attainment, of the relevant NAAQS in the area for at least ten years after redesignation. The following is a list of core provisions required in an approvable maintenance plan.

1. The State must develop an attainment emissions inventory to identify the level of emissions in the area which is sufficient to attain the NAAQS.

2. The State must demonstrate maintenance of the NAAQS.

3. The State must verify continued attainment through operation of an appropriate air quality monitoring network.

4. The maintenance plan must include contingency provisions to promptly correct any violation of the NAAQS that occurs after redesignation of the area.

As explained below, Idaho has complied with each of these requirements in the PM_{10} maintenance plan for the Ada County/Boise, Idaho area.

16. How Has the State Met the Attainment Year Emission Inventory Requirement?

The State should develop an attainment year emissions inventory to identify the level of emissions in the area which is sufficient to attain the NAAQS. Where the State has made an adequate demonstration that air quality has improved as a result of the central measures in the SIP, the attainment inventory will generally be an inventory of actual emissions at the time the area attained the standards. This inventory should be consistent with EPA's most recent guidance on emission inventories for nonattainment areas available at the time and should include the emissions during the time period associated with the monitoring data showing attainment.

Idaho used monitoring data from 1999, 2000, and 2001 to show attainment of the NAAQS. The maintenance plan includes an attainment year emissions inventory for 1999. The State chose 1999 for the attainment year inventory because, among other things, it was the most recent year in which an air stagnation episode occurred and for which inventory data was available for collection. Based on the methodologies used to develop the inventory and EPA's review of assumptions and calculations, the inventory meets the inventory requirement in section 175a of the Act.

17. How Does the State Demonstrate Maintenance of the PM_{10} Standards in the Future?

A State may generally demonstrate maintenance of the NAAQS either by showing that future emissions of a pollutant or its precursors will not exceed the level of the attainment inventory, or by modeling to show that the future anticipated mix of sources and emission rates will not cause a violation of the NAAQS. Under the Act, PM_{10} areas were required to submit modeled attainment demonstrations to show that proposed reductions in emissions will be sufficient to attain the applicable NAAQS. For these areas, the maintenance demonstration should be based upon the same level of modeling.

Because of the contribution of precursors to the formation of PM_{10} in the Ada County/Boise, Idaho area, a dispersion model that could account for PM_{10} formation chemistry was necessary to demonstrate whether maintenance of the 24-hour standard would be achieved in the future. After evaluation of three different dispersion models, the State selected, and EPA agreed to, the selection of CAMx as an appropriate model to use for this projection. It was later shown to meet verification testing criteria.

To demonstrate attainment, Idaho used the model with meteorological conditions corresponding to a period of air stagnation experienced in 1991 in the Ada County/Boise, Idaho area. We believe that Idaho appropriately selected this event because it corresponded with one of the area's highest PM_{10} episodes. The meteorological conditions for this period, in combination with emissions projected for future years 2010, 2015, and 2020 (reflecting control measures approved under the 1991 PM_{10} SIP and newly issued Tier II operating permits for twelve industrial sources), resulted in modeling results showing no exceedances of the 24-hour PM_{10} standard of 150 ug/m^3. Thus, these results demonstrate maintenance of the 24-hour NAAQS for PM_{10} in the Ada County/Boise, Idaho area for at least ten years after redesignation to attainment.

For the PM_{10} annual standard, Idaho used a speciated linear rollback technique for the demonstration. This analysis indicates that the annual PM_{10} standard also is not expected to exceed the annual PM_{10} standard for at least ten years after redesignation to attainment.

After review and analysis of the attainment demonstration, EPA has concluded that the plan is adequate to maintain the PM_{10} standards for at least ten years from designation of the Ada County/Boise, Idaho area to attainment. See the Technical Support Document accompanying this notice for further detail.

18. How Will the State Monitor Air Quality To Verify Continued Attainment?

Once an area has been redesignated, the State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR Part 58, to verify the attainment status of the area. The maintenance plan should contain provisions for continued operation of air quality monitors that will provide such verification. In its submission, Idaho DEQ commits to continue to operate and maintain the network of PM_{10} monitoring stations necessary to verify ongoing compliance with the PM_{10} NAAQS in the Ada County/Boise, Idaho area.

19. What Contingency Measures Will the State Rely Upon to Correct Any Future Violation of the NAAQS?

Section 175A of the Act also requires that a maintenance plan include contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation. These contingency measures are distinguished from those generally required for nonattainment areas under Section 172(c)(9), which are discussed above. At a minimum, the contingency measures must include a commitment that the State will implement all measures contained in the nonattainment SIP prior to redesignation.

The maintenance plan explains how the contingency plan requirements are being met. First, the plan explains that the contingency measures used for meeting contingency requirements in the 1991 PM_{10} SIP are being carried over to the maintenance plan. In the 1991 PM_{10} SIP, these measures (the mandatory residential wood burning ban control measures and a fugitive road dust reduction agreement) qualified as contingency measures because they provided for more than the total contingency measure reductions necessary to demonstrate attainment with the NAAQS. 61 FR 27022. In the maintenance plan, these measures continue to provide for more than the total reductions necessary to demonstrate attainment with the NAAQS since neither the mandatory burn ban nor the fugitive road dust reduction agreement were relied on fully to demonstrate maintenance of the NAAQS.

The maintenance plan also identifies a list of additional measures that are being developed or can be implemented in Ada and/or Canyon counties if there is a measured exceedance of the federal PM_{10} standards. These additional measures, which are listed below, are in various stages of implementation and development.[4]

1. Adopt local ordinances that require the covering of all loads of material that may have the potential to contribute to particulate matter pollution.
2. Adopt local ordinances that require no track-out onto paved roads from sites.
3. Adopt local ordinances that require no burning of household garbage.
4. Eliminate local permits that allow any kind of uncontrolled, outdoor burning not specifically allowed under Idaho State law.
5. Expand the existing Vehicle Inspection and Maintenance Program to include the testing of all registered vehicles in Ada County.
6. Expand mandatory burning restrictions to include clean burning woodstoves during air quality alerts.
7. Adopt local ordinances that prohibit the construction of any unpaved private roads, driveways or parking lots.

See the TSD accompanying this notice for additional information on the status of each of the above measures.

By carrying over all the control and contingency measures from the 1991 PM_{10} SIP, the State has not removed or reduced the stringency of the control measures relied on to demonstrate attainment in the 1991 PM_{10} SIP. Therefore, the State meets the requirement to implement all measures contained in the nonattainment SIP prior to redesignation. In light of the control measures and contingency measures carried over from the 1991 PM_{10} SIP, the development and implementation of the additional measures listed above, and the new control measures (*i.e.*, the Tier II operating permits) relied on for demonstrating maintenance of the NAAQS, we believe the State meets the requirements for contingency measures in the maintenance plan.

20. How Does This Action Affect Transportation Conformity?

Under Section 176(c) of the Act, transportation plans, programs, and projects in nonattainment or maintenance areas that are funded or approved under the Federal Transit Act, must conform to the applicable SIPs. In short, a transportation plan is deemed to conform to the applicable SIP if the emissions resulting from implementation of that transportation plan are less than or equal to the motor vehicle emission level established in the SIP for the maintenance year and other analysis years.

In this maintenance plan, procedures for estimating motor vehicle emissions are well documented. Accordingly, we propose to approve the following motor vehicle emissions budgets (MVEB) for PM_{10} and its precursors for use in conformity determinations for PM_{10} on future Transportation Improvement Programs and Regional Transportation Plans. These mobile source emissions represent a combination of vehicle exhaust, tire wear, and road dust.

ADA COUNTY/BOISE, IDAHO AREA MOTOR VEHICLE EMISSIONS BUDGET

Year	PM_{10} (tons/day)	NO_x (tons/day)	VOC (tons/day)
1999	153.0	21.0	10.4
2010	153.0	11.2	6.1
2015	153.0	7.8	5.0

The motor vehicle emissions budget applies as a ceiling on emissions in the year for which it is defined, and for all subsequent years until another year for which a different budget is defined or until a SIP revision modifies the budget. Thus, the 1999 MVEB will apply for any conformity horizon year through 2009, and the 2010 MVEB will apply for any conformity horizon year from 2010 through 2014, and the 2015 MVEB will apply for all subsequent years. The TSD summarizes how the PM_{10} motor vehicle emissions budget meets the criteria contained in the conformity rule (40 CFR 93.118(e)(4)).

II. How Can Comments Be Made on This Rulemaking?

A. How Can I Get Copies of This Document and Other Related Information?

1. *The Regional Office has established an official public rulemaking file available for inspection at the Regional Office.* EPA has established an official public rulemaking file for this action under ID–02–003. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is available for public viewing at the Office of Air Quality (OAQ–107), EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101. A copy of the file, as it exists on the date of proposal, is available for public viewing at EPA's Idaho Operations Office at EPA Region 10, Idaho Operations Office, 1435 N. Orchard St., Boise, ID 83706. EPA requests contacting the contact listed in the "For Further Information Contact" section to schedule your inspection. EPA's official hours of business are Monday through Friday, 8:30 AM to 4:30 PM, excluding Federal Holidays.

2. *Copies of the State submission and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency.* State of Idaho Department of Environmental Quality, 1445 North Orchard, Boise, ID 83706–2239.

3. *Electronic Access.* You may access this **Federal Register** document electronically through the *Regulation.gov* Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking ID–02–003" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. E-mail. You may send comments by electronic mail (e-mail) to *r10.aircom@epa.gov*, please including the text "Public comment on proposed rulemaking ID–2002–003" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through *Regulations.gov*, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. Regulation.gov. You may use Regulation.gov as an alternative method to submit electronic comments to EPA. Go directly to *Regulations.gov* at *http://www.regulations.gov*, then select Environmental Protection Agency at the top of the page and use the "go" button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail. Send your comments to: Donna Deneen, Office of Air Quality, (OAQ–107), EPA Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Please include the text "Public comment on proposed rulemaking ID–02–003" in the subject line on the first page of your comment.

3. By Hand Delivery or Courier. Deliver your comments to: Donna Deneen, Office of Air Quality, (OAQ–107), EPA Region 10, 1200 Sixth Avenue, Seattle, Washington, 98101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

C. How Should I Submit CBI to the EPA?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA to be CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). EPA will not disclose information so marked except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely

[4] For the purposes of section 175A, the State is not required to have fully adopted contingency measures that will take effect without further action by the State in order for the maintenance plan to be approved.

affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: July 23, 2003.

Ronald A. Kreizenbeck,

Acting Regional Administrator, EPA, Region 10.

[FR Doc. 03–19355 Filed 7–29–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 030725185–3185–01; I.D.071403B]

RIN 0648–AR34

Endangered and Threatened Wildlife; Sea Turtle Conservation Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) proposes to amend the regulations that require most shrimp trawlers to use Turtle Excluder Devices (TEDs) in the southeastern Atlantic, including the Gulf of Mexico, to reduce the incidental capture of endangered and threatened sea turtles during shrimp trawling. Specifically, NMFS proposes to allow the use of a specific design of a hooped hard TED ("the Coulon TED") that is capable of releasing large loggerhead and green turtles as well as leatherback turtles.

DATES: Written comments (see **ADDRESSES**) will be accepted through August 14, 2003.

ADDRESSES: Written comments on this action should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, by regular mail to 1315 East-West Highway, Silver Spring, MD 20910 or by fax to 301–713–0376. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Robert Hoffman (ph. 727–570–5312, fax 727–570–5517, e-mail Robert.Hoffman@noaa.gov), or Barbara A. Schroeder (ph. 301–713–1401, fax 301–713–0376, e-mail *Barbara.Schroeder@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. The loggerhead (Caretta caretta) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

Sea turtles are incidentally taken and killed as a result of trawling activities in the Gulf of Mexico and along the Atlantic seaboard. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions identified in 50 CFR 223.206. The incidental taking of turtles during shrimp or summer flounder trawling is exempted from the taking prohibition of section 9 of the ESA if the conservation measures specified in the sea turtle conservation regulations (50 CFR part 223) are followed. The regulations require most shrimp trawlers and summer flounder trawlers operating in the southeastern United States (Atlantic Area, Gulf Area, and summer flounder sea turtle protection area) to have a NMFS-approved Turtle Excluder Device ("TED") installed in each net that is rigged for fishing to provide for the escape of sea turtles. TEDs currently approved by NMFS include single-grid hard TEDs and hooped hard TEDs conforming to a generic description, the flounder TED, and one type of soft TED the Parker soft TED. Hooped hard TEDs are currently approved for use only in the inshore waters of the Atlantic. Effective August 21, 2003, hooped hard TEDs will be approved for use in inshore waters of the Gulf Area as well.

TEDs incorporate an escape opening, usually covered by a webbing flap, that allows sea turtles to escape from trawl nets. To be approved by NMFS, a TED design must be shown to be 97 percent effective in excluding sea turtles during testing based upon specific testing protocols (55 FR 41092, October 9, 1990). Most approved hard TEDs are described in the regulations (50 CFR 223.207 (a)) according to generic criteria based upon certain parameters of TED design, configuration, and installation, including height and width dimensions of the TED opening through which the turtles escape.

February 21, 2003, Amendment to the Sea Turtle Conservation Regulations

On February 21, 2003, NMFS issued a final rule (68 FR 8456), amending the sea turtle conservation regulations to protect large loggerhead, green, and leatherback sea turtles. The final rule became effective April 15, 2003, with the exception of the Gulf Area where it will become effective on August 21, 2003. It requires that all shrimp trawlers fishing in the offshore waters of the southeastern United States (Atlantic Area and Gulf Area) and the inshore waters of Georgia and South Carolina use either a double cover flap TED, a single-grid hard TED with a 71–inch (180–cm) opening, or a Parker soft TED with a 96–inch (244–cm) opening in each net rigged for fishing. In inshore waters, except those of Georgia and South Carolina, the rule allows the use of a single-grid hard TED with a 44–inch (112–cm) opening, a Parker soft TED with a 56–inch (142–cm) opening, and a hooped hard TED with a 35–inch (89–cm) by 27–inch (69–cm) escape opening.

Since publication of the final rule (68 FR 8456, February 21, 2003), NMFS tested a new hooped hard TED design developed in Louisiana (this hooped hard TED is called the Coulon TED) that contains a larger escape opening than the hooped hard TED design used in inshore waters. Louisiana fishermen prefer the Coulon TED due to its higher shrimp retention, and its efficiency and quickness in releasing both turtles and fish bycatch. Because of the desire of fishermen to continue to use this style of TED and their assertion that it could indeed be made large enough to release leatherback turtles, the Southeast Fisheries Science Center's Harvesting Systems and Engineering Branch worked with the inventor of the Coulon TED and fishermen who use it to develop and test a large Coulon style TED to evaluate its ability to release large loggerhead, green, and leatherback turtles.

Large Hooped Hard TED Testing

NMFS tested the large Coulon style TED using testing protocols designed to evaluate a TED's ability to release large turtles. The protocols were developed during the testing and approval of the double cover TED (66 FR 24287, May 14, 2001). NMFS used the average carapace measurements of 15 nesting female leatherback turtles to construct a pipe-framed model of a leatherback turtle. This model measured 40 inches wide by 21 inches (102 cm by 53 cm) deep. The test was performed by a diver swimming repeatedly through the trawl with the model and pushing it through the TED opening. During these tests, the diver was able to push the model through the opening with ease. When the model was inverted (simulating the dorsal surface of the turtle oriented against the TED frame), the diver was still able to push the model through the opening with ease.

A large Coulon style TED with a hinged door covering the escape opening to within 12 inches (30 cm) from the back edge of the opening was also tested to determine its ability to release small turtles. The small turtle protocol calls for the release of 25 turtles, released one at a time, into a trawl towed at 2.5 knots. Each turtle is given 5 minutes to escape; if the turtle does not escape within 5 minutes, it is retrieved by divers and is considered to have been captured. The capture rate is then compared to that of a control TED (in this case a top opening double cover flap TED).

During the week of June 22, 2003, 25 small turtles were exposed to the large Coulon style TED with a hinged door and all 25 turtles escaped quickly and easily. The Southeast Fisheries Science Center's Harvesting Systems and Engineering Branch believes that this particular configuration of the large Coulon style TED would be the most difficult for small turtles to escape from because of the weight and size of the door. However, when compared to the control TED, the average escape times did not differ significantly; the average escape time for the control TED was 62 seconds compared to 68 seconds for the Coulon style TED with the hinged door.

Based upon the tests described above, NMFS determined that the large Coulon style TED meets the regulatory turtle release rate requirement.

Provisions of the Proposed Rule

NMFS proposes to allow a specific design of a hooped hard TED for offshore use, along with allowable modifications for hooped hard TEDs. The offshore hooped hard TED must meet certain minimum construction standards, in addition to the construction standards specified for hard TEDs generally. The frame for this TED must be made of aluminum rod a minimum of 5/8 inch (1.59 cm) in diameter or aluminum tubing a minimum of 1 inch (2.54 cm) in diameter with a minimum wall thickness of 1/8 inch (0.32 cm). The escape opening must have a horizontal measurement of no less than 40 inches (102 cm) wide and a forward measurement of no less than 35 inches (89 cm). The front hoop on an offshore hooped hard TED must have an inside horizontal measurement of at least 40 inches (102 cm) and an inside vertical measurement of at least 30 inches (76 cm). The minimum clearance between the deflector bars and the forward edge of the escape opening must be at least 23¼ inches (59 cm). The measurement between support bars must be no less than 40 inches (102 cm). The clearance between the deflector bars and the forward edge of the escape opening must be no less than 23¼ inches (59 cm)(see Figure 1 for illustrations of the offshore hooped hard TED and its dimensions).

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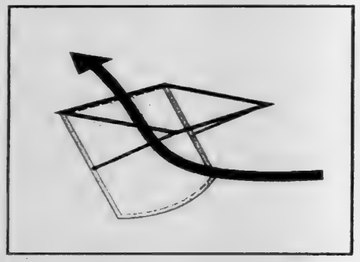


Fig. 1.A. Turtle escape path through offshore hooped hard TED.

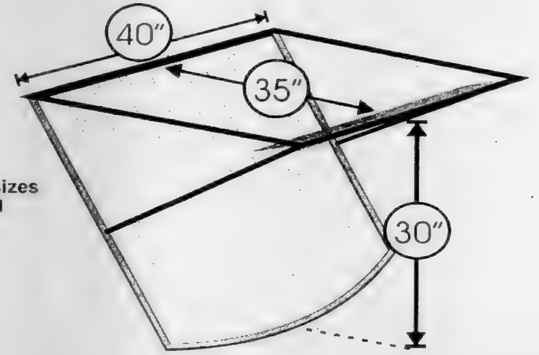


Fig. 1.B. Minimum opening sizes for offshore hooped hard TED.

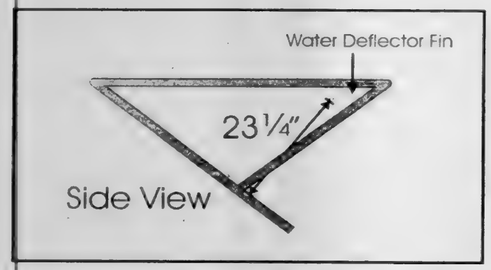


Fig. 1.C. Minimum grid clearance for offshore hooped hard TED, shown with optional water deflector fin.

Figure 1. Illustration of offshore hooped hard TED dimensions, showing optional water deflector fin.

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The proposed rule would allow three modifications for hooped hard TEDs. The first is the use of a water deflector fin used to increase shrimp retention. The original Coulon TED design incorporates such a water deflector fin. This fin can be welded onto the forward edge of the escape opening, projecting aft into the TED with an angle of 5 to 45–degrees from the normal, horizontal plane of the trawl. The fin must be constructed of a flat aluminum bar, up to 3/8 inch (0.95 cm) thick and up to 4 inches (10.2 cm) deep. The fin may be as wide as the width of the escape opening, minus 1 inch (2.5 cm).

The second allowable modification will be the use of a webbing flap. The resultant escape opening for the offshore hooped hard TED with a webbing flap must have a stretched mesh circumference of no less than 142 inches (361 cm). The end of the flap cannot extend more than 24 inches (61 cm) past the posterior edge of the frame. This is the same webbing flap allowed for use with single-grid hard TEDs with the 71–inch (180 cm) offshore opening.

The third allowable modification for hooped hard TEDs will be the use of a hinged door frame to partially cover the escape opening. The door must be at least as wide as the escape opening, may be up to 24 inches (61 cm) long, may be covered with taut mesh webbing (the size of the mesh cannot be greater than that used for the TED extension webbing), and must be connected to the forward edge of the escape opening by a hinge device that will allow the door to open upwards freely. The posterior edge of the door frame, in the closed position, must lie at least 12 inches (30 cm) forward of the posterior edge of the escape opening. A water deflector fin may be welded to the posterior edge of the door frame. This fin can be welded onto the forward edge of the escape opening, projecting aft into the TED with an angle of 5–45 degrees from the normal, horizontal plane of the trawl. The fin must be constructed of a flat aluminum bar, up to 3/8 inch (0.95 cm) thick and up to four inches (10.2 cm) deep. The fin may be as wide as the width of the escape opening, minus one inch (2.5 cm). The deflector fin must be no less than 12 inches (30 cm) forward of the posterior edge of the escape opening, when the door is in the closed position. Two stopper ropes or a hinge limiter may be used to limit the maximum opening height of the hinged door frame, as long as the minimum clearance between any part of the deflector bars and any part of the door, including a water deflector fin if installed, in its fully open position is at least 23¼ inches (59 cm) for an offshore hooped hard TED or at least 20 inches (51 cm) for an inshore hooped hard TED. The purpose of the stopper ropes or hinge limiters is to prevent the door frame from opening excessively during net deployment and haulback, possibly resulting in loss of catch or damage to the door. Any stopper ropes or hinge limiters must not restrict the free operation of the door, up to its maximum opening (i.e. the door must be able to easily swing to the required opening height before the stops or limiters affect its movement.) The hinged door cannot be used in combination with a webbing flap or with a water deflector fin attached to the forward edge of the escape opening (See Figure 2 for illustration of the optional hinged door frame, shown with water deflector fin).

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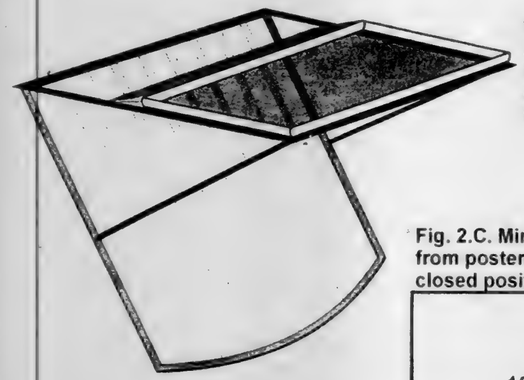


Fig. 2.A.
A perspective view of hooped hard TED with optional hinged door frame.

Fig. 2.B. Side perspective view

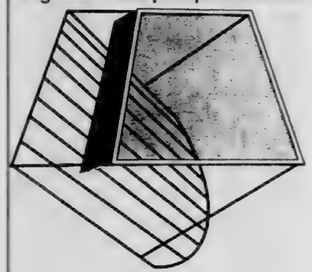
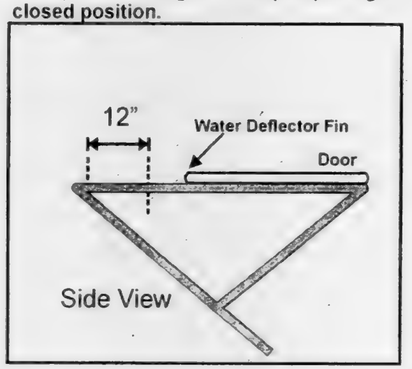


Fig. 2.C. Minimum clearance of door frame from posterior edge of escape opening in closed position.



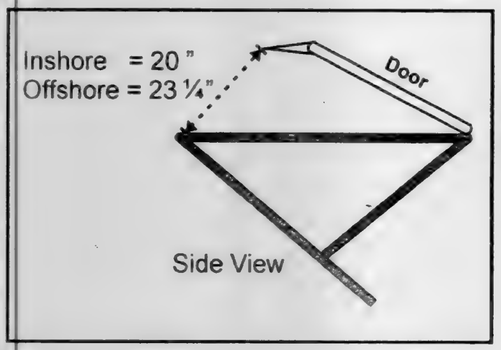


Fig. 2.D. Minimum clearance of door frame from deflector bars; door in fully open position.

Figure 2. Hooped hard TED with optional hinged door frame and water deflector fin.

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Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The National Marine Fisheries Service (NMFS) prepared an environmental assessment (EA) for this proposed rule that evaluates the potential impact on the environment that may result from the proposed rule. The EA found that the implementation of this proposed rule would not have a significant impact on the quality of the human environment and that the preparation of an environmental impact statement was not necessary. A copy of the EA is available from NMFS (see ADDRESSES).

The Endangered Species Act provides the statutory basis for this proposed rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This proposed rule, if adopted, will not have significant economic impact on a substantial number of small entities because the provisions of the proposed rule would allow fishermen the option of a hooped hard TED design to comply with the TED requirement. Hooped hard TEDs are already in use by some fishermen who prefer the Coulon TED due to its efficiency in releasing both turtles and fish bycatch, while retaining shrimp. As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: July 25, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 223 is proposed to be amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 223.207, paragraphs (a)(1), (a)(7)(i), and (a)(8)(i) are revised and paragraphs (d)(6) and (d)(7) are added to read as follows:

§ 223.207 Approved TEDs.

(a) *Hard TEDs.* Hard TEDs are TEDs with rigid deflector grids and are categorized as "hooped hard TEDs" and "single-grid hard TEDs" such as the Matagorda and Georgia TED (Figures 3 & 4 to this part). Hard TEDs complying with the following generic design criteria are approved TEDs:

(1) *Construction materials*—(i) *Single-grid and inshore hooped hard TED.* A single-grid hard TED or an inshore hooped hard TED must be constructed of one or a combination of the following materials, with minimum dimensions as follows:

(A) Solid steel rod with a minimum outside diameter of ½ inch (1.27 cm);

(B) Fiberglass or aluminum rod with a minimum outside diameter of ½ inch (1.27 cm); or

(C) Steel or aluminum tubing with a minimum outside diameter of ½ inch (1.27 cm) and a minimum wall thickness of 1/8 inch (0.32 cm) (also known as schedule 40 tubing).

(ii) *Offshore hooped hard TED.* An offshore hooped hard TED must be constructed of aluminum, with minimum dimensions as follows:

(A) Solid rod with a minimum outside diameter of 5/8 inch (1.59 cm); or

(B) Tubing with a minimum outside diameter of 1 inch (2.54 cm) and a minimum wall thickness of 1/8 inch (0.32 cm).

* * * * *

(7) * * *

(i) *Hooped hard TEDs.* * * *(A) *Escape opening for inshore hooped hard TED.* The inshore hooped hard TED escape opening must have a horizontal measurement of no less than 35 inches (89 cm) wide and a forward measurement of no less than 27 inches (69 cm). A hinged door frame may be used to partially cover the escape opening as provided in paragraph (d)(7) of this section. Alternatively, a webbing flap may be used as provided in paragraph (d)(3)(i) of this section. The resultant opening with a webbing flap must be a minimum width of 35 inches (89 cm) and a minimum height of 20 inches (51 cm), with each measurement taken simultaneously. This opening may only be used in inshore waters, except it may not be used in the inshore waters of Georgia and South Carolina.

(B) *Escape opening for offshore hooped hard TED.* The offshore hooped hard TED escape opening must have a horizontal measurement of no less than 40 inches (102 cm) wide and a forward measurement of no less than 35 inches (89 cm). A hinged door frame may be used to partially cover the escape opening as provided in paragraph (d)(7) of this section. Alternatively, a webbing flap may be used as provided in paragraph (d)(3)(ii) of this section. The resultant escape opening with a webbing flap must have a stretched mesh circumference of no less than 142 inches (361 cm).

* * * * *

(8) * * *

(i) *Hooped hard TEDs*—(A) *Inshore hooped hard TED.* The front hoop on an inshore hooped hard TED must have an inside horizontal measurement of at least 35 inches (89 cm) and an inside vertical measurement of at least 30 inches (76 cm). The minimum clearance between the deflector bars and the forward edge of the escape opening must be at least 20 inches (51 cm).

(B) *Offshore hooped hard TED.* The front hoop on an offshore hooped hard TED must have an inside horizontal measurement of at least 40 inches (102 cm) and an inside vertical measurement of at least 30 inches (76 cm). The minimum clearance between the deflector bars and the forward edge of the escape opening must be at least 23¼ inches (59 cm).

* * * * *

(d) * * *

(6) *Water deflector fin for hooped hard TEDs.* On a hooped hard TED, a water deflector fin may be welded to the forward edge of the escape opening. The fin must be constructed of a flat aluminum bar, up to 3/8 inch (0.95 cm) thick and up to 4 inches (10.2 cm) deep. The fin may be as wide as the width of the escape opening, minus 1 inch (2.5 cm). The fin must project aft into the TED with an angle between 5 and 45 from the normal, horizontal plane of the trawl. On an inshore hooped hard TED, the clearance between the deflector bars and the posterior edge of the deflector fin must be at least 20 inches (51 cm). On an offshore hooped hard TED, the clearance between the deflector bars and the posterior edge of the deflector fin must be at least 23¼ inches (59 cm).

(7) *Hinged door frame for hooped hard TEDs.* A hinged door frame may be attached to the forward edge of the escape opening on a hooped hard TED. The door frame must be constructed of materials specified at paragraphs (a)(1)(i) or (a)(1)(ii) of this section for inshore and offshore hooped hard TEDs, respectively. The door frame may be covered with a single panel of mesh webbing that is taut and securely attached with twine to the perimeter of the door frame, with a mesh size not greater than that used for the TED extension webbing. The door frame must be at least as wide as the TED escape opening. The door frame may be a maximum of 24 inches (61 cm) long. The door frame must be connected to the forward edge of the escape opening

by a hinge device that will allow the door to open outwards freely. The posterior edge of the door frame, in the closed position, must lie at least 12 inches (30 cm) forward of the posterior edge of the escape opening. A water deflector fin may be welded to the posterior edge of the hinged door frame. The fin must be constructed of a flat aluminum bar, up to 3/8 inch (0.95 cm) thick and up to four inches (10.2 cm) deep. The fin may be as wide as the width of the escape opening, minus one inch (2.5 cm). The fin must project aft into the TED with an angle between 5° and 45° from the normal, horizontal plane of the trawl, when the door is in the closed position. The clearance between the posterior edge of the escape opening and the posterior edge of the door frame or the posterior edge of the water deflector fin, if installed, must be no less than 12 inches (30 cm), when the door is in the closed position. Two stopper ropes or a hinge limiter may be used to limit the maximum opening height of the hinged door frame, as long as they do not obstruct the escape opening in any way or restrict the free movement of the door to its fully open position. When the door is in its fully open position, the minimum clearance between any part of the deflector bars and any part of the door, including a water deflector fin if installed, must be at least 20 inches (51 cm) for an inshore hooped hard TED and at least 23¼ inches (59 cm) for an offshore hooped hard TED. The hinged door frame may not be used in combination with a webbing flap specified at paragraph (d)(3) of this section or with a water deflection fin specified at paragraph (d)(6) of this section.

[FR Doc. 03–19375 Filed 7–29–03; 8:45 am]
BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 146
Wednesday, July 30, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Tuolumne County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Tuolumne County Resource Advisory Committee will meet on August 11, 2003 at the City of Sonora Fire Department, in Sonora, California. The purpose of the meeting is to discuss the function of line officer concurrence in the project approval process; develop protocol for committee members to avoid conflicts of interest when voting on proposed projects; update on Forest Service's California RAC conference; update on Tuolumne County Staff Title II funding recommendations; and voting on proposed projects.

DATES: The meeting will be held August 11, 2003, from 12 p.m. to 3 p.m.

ADDRESSES: The meeting will be held at the City of Sonora Fire Department located at 201 South Shepherd Street, in Sonora, California (CA 95370).

FOR FURTHER INFORMATION CONTACT: Pat Kaunert, Committee Coordinator, USDA, Stanislaus National Forest, 19777 Greenley Road, Sonora, CA 95370 (202) 532–3671; e-mail *pkaunert@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Discuss the function of line officer concurrence in the project approval process; (2) Develop protocol for committee members to avoid conflicts of interest when voting on proposed projects; (3) Provide update on Forest Service's California RAC conference; (4) Provide update on Tuolumne County Staff Title II funding recommendations; (5) Vote on proposed projects; (6) Public comment on meeting proceedings. This meeting is open to the public.

Dated: July 23, 2003.

Tom Quinn,

Forest Supervisor.

[FR Doc. 03–19311 Filed 7–29–03; 8:45 am]
BILLING CODE 3410–ED–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tuolumne County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tuolumne County Resource Advisory Committee will meet on August 25, 2003, at the City of Sonora Fire Department, in Sonora, California. The purpose of the meeting is to complete voting on proposed projects.

DATES: The meeting will be held August 25, 2003, from 12 p.m. to 3 p.m.

ADDRESSES: The meeting will be held at the City of Sonora Fire Department located at 201 South Shepherd Street, in Sonora, California (CA 95370).

FOR FURTHER INFORMATION CONTACT: Pat Kaunert, Committee Coordinator, USDA, Stanislaus National Forest, 19777 Greenley Road, Sonora, CA 95370; (209) 532–3671; e-mail *pkaunert@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Complete voting on proposed projects: (2) Public comment on meeting proceedings. This meeting is open to the public.

Dated: July 23, 2003.

Tom Quinn,

Forest Supervisor.

[FR Doc. 03–19312 Filed 7–29–03; 8:45 am]
BILLING CODE 3410–ED–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funds Availability (NOFA) Inviting Applications for the Rural Community Development Initiative (RCDI)

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the availability of $6 million of grant funds for the RCDI program through the Rural Housing Service (RHS), herein referred to as the Agency, USDA. Applicants must provide matching funds in an amount at least equal to the Federal grant. These grants will be made to qualified intermediary organizations that will provide financial and technical assistance to recipients to develop their capacity and ability to undertake projects related to housing, community facilities, or community and economic development. This notice lists the information needed to submit an application for these funds.

DATES: The deadline for receipt of an application is 4 p.m. e.s.t. October 28, 2003. The application date and time are firm. The Agency will not consider any application received after the deadline.

ADDRESSES: Entities wishing to apply for assistance may download the application requirements delineated in this notice from the RCDI Web site: *www.rurdev.usda.gov/rhs/rcdi/index.htm.* Applicants may also request application packages from: William Kenney, Rural Housing Service, STOP 0787, 1400 Independence Ave. SW., Washington, DC 20250–0787, Telephone (202) 720–1506, e-mail: *william:kenney@usda.gov.*

FOR FURTHER INFORMATION CONTACT: William Kenney, Senior Loan Specialist, Community Programs, RHS, USDA, STOP 0787, 1400 Independence Ave. SW., Washington, DC 20250–0787, Telephone (202) 720–1506, Facsimile (202) 690–0471, e-mail: *william.kenney@usda.gov.* You may also obtain information from the RCDI Web site: *www.rurdev.usda.gov/rhs/rcdi/index.htm.*

SUPPLEMENTARY INFORMATION:

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under Number 10.446. This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Paperwork Reduction Act

The paperwork burden has been cleared by the Office of Management and Budget (OMB) under OMB Control Number 0575–0180.

Background

Congress created the RCDI in fiscal year (FY) 2000 to develop the capacity and ability of nonprofit organizations, low-income rural communities, or Federally recognized tribes to undertake projects related to housing, community facilities, or community and economic development in rural areas. Numerous changes have been made each year since. Congress appropriated $6 million in FY 2003 for the RCDI. Qualified private and public (including tribal) intermediary organizations proposing to carry out financial and technical assistance programs will be eligible to receive the funding. The intermediary will be required to provide matching funds in an amount at least equal to the RCDI grant.

Definitions for RCDI Purposes

Agency—the Rural Housing Service (RHS) or its successor.

Beneficiary—entities or individuals that receive benefits from assistance provided by the recipient.

Capacity—the ability of a recipient to finance and implement housing, community facilities, or community and economic development projects.

Federally recognized tribes—tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs, based on the notice in the **Federal Register** published by the Bureau of Indian Affairs on July 12, 2002, volume 67, number 134, page 46328. Tribally Designated Housing Entities are eligible RCDI recipients.

Financial assistance—Funds used by the intermediary to support the recipient's program, including funds that pass through the intermediary to the recipient for eligible RCDI purposes.

Funds—the RCDI grant and matching money.

Intermediary—a qualified private, nonprofit, or public (including tribal) organization that provides financial and technical assistance to multiple recipients. The applicant entity must have been organized for a minimum of 3 years.

Low-income community—an authority, district, economic development authority, regional council, or unit of government representing an incorporated city, town, village, county, township, parish, or borough. The location of the low-income community office that will be receiving the financial and technical assistance must be in a community with a median household income at, or below, 80 percent of either the State or national median household income.

Matching funds—cash or confirmed funding commitments. Matching funds must be at least equal to the grant amount. These funds can only be used for eligible RCDI activities. In-kind contributions cannot be used as matching funds.

Nonprofit organization—a private, community-based housing or community development entity with evidence of their nonprofit status. Examples of valid documentation of nonprofit status include, but are not limited to, a letter from the Internal Revenue Service (IRS) or a confirming certificate from the Secretary of State where the entity is located.

Recipient—the entity that receives the financial and technical assistance from the intermediary. The recipient must be a nonprofit organization, a low-income rural community, or a Federally recognized tribe.

Rural and rural area—a city, town, or unincorporated area that has a population of 50,000 inhabitants or less, other than urbanized areas immediately adjacent to a city, town, or unincorporated area that has a population in excess of 50,000 inhabitants.

Technical assistance—skilled help in improving the recipient's abilities in the areas of housing, community facilities, or community and economic development. The Agency will determine whether a specific activity qualifies as technical assistance.

1. The recipient and beneficiary, but not the intermediary, must be located in an eligible rural area. The applicable Rural Development State Office can assist in determining the eligibility of an area. A listing of Rural Development State Offices is included in this notice.

2. The name and location of recipients must be included in the grant application.

3. The recipients must be nonprofit organizations, low-income rural communities, or federally recognized tribes based on the RCDI definitions of these groups.

4. Documentation must be submitted to verify recipient eligibility. Acceptable documentation varies depending on the type of recipient: A letter from the IRS, confirming certificate from the Secretary of State, or other valid documentation of nonprofit status is required for nonprofit recipients; for low-income community recipients, the Agency requires (a) evidence the entity is a public body and (b) census data verifying that the median household income of the community where the office receiving the financial and technical assistance is located is at, or below, 80 percent of the State or national median household income; for Federally recognized tribes, the Agency needs the page listing their name from the current **Federal Register** list of tribal entities recognized and eligible for funding services (see the definition of Federally recognized tribes for details on this list).

5. Individuals cannot be recipients.

6. The intermediary must provide matching funds at least equal to the amount of the grant.

7. The intermediary must provide a program of financial and technical assistance to the recipient.

8. The intermediary organization must have at least 3 years prior experience working with nonprofit organizations, low-income rural communities, or tribal organizations in the areas of housing, community facilities, or community and economic development.

9. The respective minimum and maximum grant amount per intermediary is $50,000 and $500,000.

10. Proposals must be structured to utilize the grant funds within 3 years from the date of the award.

11. Each intermediary, whether singularly or jointly, may only submit one application for RCDI funds under this NOFA unless the intermediary's participation is limited to providing all or part of the matching funds.

12. Recipients can participate in more than one RCDI application; however, after grant selections are made, the recipient can only participate in multiple RCDI grants if the type of financial and technical assistance they will receive is not duplicative.

13. The intermediary and the recipient cannot be the same entity. The recipient can be a related entity to the intermediary, if it meets the definition of a recipient.

14. A nonprofit recipient must provide evidence that it is a valid nonprofit when the intermediary applies for the RCDI grant. Organizations with pending requests for nonprofit designations are not eligible.

15. If the recipient is a low-income community, identify the unit of government to which the financial and technical assistance will be provided, *e.g.*, town council or village board. The financial and technical assistance must be provided to the organized unit of government representing that community, not the community at large.

16. Nonprofits located in a rural area that is also a census designated place (CDP) are eligible. CDPs are not considered eligible rural areas under low-income communities because they do not have a unit of government to receive the financial and technical assistance.

Eligible Fund Uses

Fund uses must be consistent with the RCDI purpose (see "Background" section of this notice). A nonexclusive list of eligible grant uses includes the following:

1. Provide financial and technical assistance to develop recipients' capacity and ability to undertake projects related to housing, community facilities, or community and economic development, *i.e.*, the intermediary hires a staff person to provide technical assistance to the recipient or the recipient hires a staff person, under the supervision of the intermediary, to carry out the financial and technical assistance provided by the intermediary.

2. Develop the capacity of recipients to conduct community development programs, *e.g.*, homeownership education or training for minority business entrepreneurs.

3. Develop the capacity of recipients to conduct development initiatives, *e.g.*, programs that support micro-enterprise and sustainable development.

4. Increase leveraging ability and access to alternative funding sources by providing training and staffing.

5. Provide the financial and technical assistance component for essential community facilities projects.

6. Assist recipients in completing pre-development requirements for housing, community facilities, or community and economic development projects by providing resources for professional services, *e.g.*, architectural, engineering, or legal.

7. Improve recipient's organizational capacity by providing training and resource material on developing strategic plans, board operations, management, financial systems, and information technology.

8. Purchase computers, software, and printers at the recipient level.

9. Provide funds to recipients for training-related travel costs and training expenses related to RCDI.

Ineligible Fund Uses

1. Funding a revolving loan fund.
2. Construction (in any form).
3. Intermediary preparation of strategic plans for recipients.
4. Funding illegal activities.
5. Grants to individuals.
6. Funding a grant where there may be a conflict of interest, or an appearance of a conflict of interest, involving any action by the Agency.
7. Paying obligations incurred before the beginning date or after the ending date of the grant agreement.
8. Purchasing real estate.
9. Improvement or renovation of the grantee's office space or for the repair or maintenance of privately owned vehicles.
10. Any other purpose prohibited in 7 CFR parts 3015, 3016, and 3019, as applicable.
11. Funds cannot be used for recipient's general operating costs.
12. Using grant or matching funds for Individual Development Accounts.

Program Examples

The purpose of this initiative is to develop or increase the recipient's capacity through a program of financial and technical assistance to perform in the areas of housing, community facilities, or community and economic development. Strengthening the recipient's capacity in these areas will benefit the communities they serve. The RCDI structure requires the intermediary (grantee) to provide a program of financial and technical assistance to recipients. The recipients will, in turn, provide programs to their communities (beneficiaries). Following are examples of eligible and ineligible purposes under the RCDI program. These examples are illustrative and are not meant to limit the activities proposed in the application. Activities that meet the objective of the RCDI program will be considered eligible.

1. The intermediary must work directly with the recipient, not the beneficiaries. As an example: The intermediary provides training to the recipient on how to conduct homeownership education classes. The recipient then provides ongoing homeownership education to the residents of the community—the ultimate beneficiaries. This "train the trainer" concept fully meets the intent of this initiative. The intermediary is providing financial and technical assistance that will build the recipient's capacity by enabling them to conduct homeownership education classes for the public. This is an eligible purpose. However, if the intermediary directly provided homeownership education classes to individuals in the recipient's service area, this would not be an eligible purpose because the recipient would be bypassed.

2. If the intermediary is working with a low-income community as the recipient, the intermediary must provide the financial and technical assistance to the entity that represents the low-income community and is identified in the application. Examples of entities representing a low-income community are a village board or a town council. If the intermediary provides technical assistance to the board of directors of the low-income community on how to establish a cooperative, this would be an eligible purpose. However, if the intermediary works directly with individuals from the community to establish the cooperative, this is not an eligible purpose. The recipient's capacity is built by learning skills that will enable them to support sustainable economic development in their communities on an ongoing basis.

3. The intermediary may provide technical assistance to the recipient on how to create and operate a revolving loan fund (RLF). The intermediary may not monitor or operate the RLF. RCDI funds, including matching funds, cannot be used to fund RLFs.

Contents of Application Package

A complete application for RCDI funds must include the following.

1. A summary page, double spaced between items, listing the following: (This information should not be presented in narrative form.)
   a. Applicant's name,
   b. Applicant's address,
   c. Applicant's telephone number,
   d. Name of applicant's contact person and telephone number,
   e. Applicant's fax number,
   f. County where applicant is located,
   g. Congressional district number where applicant is located,
   h. Amount of grant request,
   i. Applicant's Tax Identification Number,
   j. Number of recipients, and
   k. Source and amount of matching funds.

2. A detailed Table of Contents containing page numbers for each component of the application.

3. A project overview, no longer than five pages, including the following items, which will also be addressed separately and in detail under "Building Capacity" of the "Evaluation Criteria."
   a. The type of financial and technical assistance to be provided and how it will be implemented.
   b. How the capacity and ability of the recipients will be improved.
   c. The overall goal to be accomplished.
   d. The benchmarks to be used to measure the success of the program.

4. Organizational or other documents for the intermediary that confirm their existence for a minimum of 3 years as the applicant entity.

5. Verification of matching funds, *i.e.*, a copy of a bank statement if matching funds are in cash or a copy of the confirmed funding commitment from the funding source. The applicant will be contacted by the Agency prior to grant award to verify that the matching funds continue to be available. The applicant will have 10 working days

from the date of contact to submit verification of matching funds. If the applicant is unable to provide the verification within that timeframe, the application will be considered ineligible.

6. The following information for each recipient:

a. Recipient's entity name,

b. Complete address (mailing and physical location, if different),

c. County where located,

d. Number of congressional district where recipient is located,

e. Contact person's name and telephone number, and

f. Documentation on the population composition of the service area of the recipient.

7. Submit evidence the recipient entity is eligible.

a. Nonprofits—provide a valid letter from the IRS, confirming certificate from the Secretary of State, or other valid documentation of nonprofit status.

b. Low-income community—provide a copy of the 2000 census data to verify the population and evidence that the median household income is at, or below, 80 percent of either the State or national median household income. We will only accept data from *www.census.gov*. The specific instructions to retrieve data from this site are detailed under the "Evaluation Criteria" for "Population" and "Income."

c. Federally recognized tribes—provide the page listing their name from the current **Federal Register** list of tribal entities published on July 12, 2002, volume 67, number 134, page 46328.

8. Each of the "Evaluation Criteria" must be addressed specifically and individually by category. Present these criteria in narrative form. Documentation must be limited to three pages per criterion with the exception of attachments for "Population" and "Income."

9. A timeline identifying specific activities and proposed dates for completion.

10. A detailed project budget that includes the RCDI grant amount and matching funds for the duration of the grant. This should be a line-item budget, by category. Categories such as salaries, administrative, other, and indirect costs must be clearly defined. Supporting documentation listing the components of these categories must be included.

11. Form SF–424, "Application for Federal Assistance." (Do not complete Form SF–424A, "Budget Information." A separate line-item budget should be presented as described in No. 10 of this section.) The budget should be dated: Year 1, year 2, year 3. The indirect cost will be addressed in accordance with OMB Circulars A–87, A–122, and A–133.

12. Form SF–424B, "Assurances—Non-Construction Programs."

13. Form AD–1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions."

14. Form AD–1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions."

15. Form AD–1049, "Certification Regarding Drug-Free Workplace Requirements."

16. Certification of Non-Lobbying Activities.

17. Standard Form LLL, "Disclosure of Lobbying Activities," if applicable.

18. Form RD 400–1, "Equal Opportunity Agreement," for the applicant and each recipient.

19. Form RD 400–4, "Assurance Agreement," for the applicant and each recipient.

20. Identify and report any association or relationship with Rural Development employees.

The required forms and certifications can be downloaded from the RCDI Web site at: *www.rurdev.usda.gov/rhs/rcdi/index.htm*.

What and Where to Submit

The original application package must be submitted to: William Kenney, Rural Housing Service, STOP 0787, 1400 Independence Ave. SW., Washington, DC 20250–0787, and a copy of the application must be submitted to the Rural Development State Office where the applicant is located. A listing of Rural Development State Offices is included in this notice. Applications sent electronically or by facsimile will not be accepted.

When to Submit

The deadline for receipt of an application is 4 p.m. e.s.t. on October 28, 2003. The application deadline date and hour are firm and apply to submission of the original application to the National Office in Washington, DC. The Agency will not consider any application received after the deadline. A listing of Rural Development State Offices, their addresses, telephone numbers, and person to contact is provided elsewhere in this notice.

Application Selection Process

Rating and ranking. Applications will be rated and ranked by a review panel based on the "Evaluation Criteria and Weights" contained in this notice. If there is a tied score after the applications have been rated and ranked, the tie will be resolved by reviewing the scores for "Building Capacity" and the applicant with the highest score in that category will receive a higher ranking. If the scores for "Building Capacity" are the same, the scores will be compared for the next criterion, in sequential order, until one highest score can be determined.

Initial screening. The Agency will screen each application to determine eligibility during the period immediately following the application deadline. Listed below are many of the reasons for rejection from the previous funding rounds to help the applicant prepare a better application. The following reasons for rejection are not all inclusive; however, they represent the majority of the applications previously rejected.

1. Recipients were not located in eligible rural areas based on the definition in this notice.

2. Applicants failed to provide evidence of recipient's status, *i.e.*, documentation supporting nonprofit designation.

3. Application did not follow the RCDI structure with an intermediary and recipients.

4. Recipients were not identified in the application.

5. Recipients cannot be individuals.

6. Intermediary did not provide evidence it had been incorporated for at least 3 years as the applicant entity.

7. Applicants failed to address the "Evaluation Criteria."

8. The purpose of the proposal did not qualify as an eligible RCDI purpose.

9. Funds cannot be used for construction or renovations.

10. Financial and technical assistance cannot be provided directly to individuals.

Rural Development State Office Responsibilities During the Application Process

The State Office will review the application and provide the State Director's written comments and recommendations to the National Office. Comments must include the following:

1. Determine if each recipient listed in the application is located in an eligible rural area based on the RCDI definition of rural.

2. Consult with other program areas regarding their experience with the intermediary or recipients, if any.

3. Determine the compatibility of the application with the goals of the State's strategic plan.

4. Provide comments or recommendations pertaining to the application.

Comments must be submitted to William Kenney within 3 weeks from the RCDI application deadline.

Evaluation Criteria and Weights

Applications will be evaluated using the following criteria and weights:

1. Building Capacity—maximum 60 points

The applicant must demonstrate how they will improve the recipients' capacity, through a program of financial and technical assistance, as it relates to the RCDI purposes. Capacity-building technical assistance should provide new functions to the recipients or expand existing functions that will enable the recipients to undertake projects in the areas of housing, community facilities, or community and economic development that will benefit the community. The program of financial and technical assistance provided, how the program is delivered, and the measurability of the program's effectiveness will determine the merit of the application. All applications will be competitively ranked with the applications providing the most improvement in capacity development and measurable activities being ranked the highest. Capacity-building technical assistance may include, but is not limited to: training to conduct community development programs, *e.g.*, homeownership education, or the establishment of minority business entrepreneurs, cooperatives, or micro-enterprises; organizational development, *e.g.*, assistance to develop or improve board operations, management, and financial systems; instruction on how to develop and implement a strategic plan; instruction on how to access alternative funding sources to increase leveraging opportunities; staffing, *e.g.*, hiring a person at intermediary or recipient level to provide technical or financial assistance to recipients; and purchase technology equipment at the recipient level, *e.g.*, computers, printers, and software.

The narrative response must:

a. Describe the type of financial and technical assistance to be provided to the recipients and the activities that will be conducted to deliver the financial and technical assistance;

b. Explain how financial and technical assistance will develop or increase the recipient's capacity. Indicate whether a new function is being developed or if existing functions are being expanded or performed more effectively;

c. Identify which RCDI purpose areas will be addressed with this assistance: housing, community facilities, or community and economic development; and

d. Describe how the results of the financial and technical assistance will be measured. What benchmarks will be used to measure effectiveness?

Scoring—maximum of 60 points

1. Type of financial and technical assistance and implementation activities. 0–35 points

a. How well defined is the purpose of this proposal?

b. Are the implementation activities specifically defined?

c. Will the proposed implementation activities actually develop the recipient's capacity?

2.How financial and technical assistance will develop capacity. 0–10 points

a. Is a new function being developed and will it build capacity at the recipient level?

b. Is an existing function being expanded or performed more effectively and will it build capacity at the recipient level?

3. RCDI purpose. 0–5 points

a. Housing,

b. Community facilities, or

c. Community and economic development.

4. Measuring outcomes. 0–10 points

a. What benchmarks will be used to measure outcomes and effectiveness?

b. Are the proposed benchmarks an effective measurement for the type of financial and technical assistance provided?

2. Expertise—maximum 30 points

The applicant must demonstrate that it has conducted programs of financial and technical assistance and achieved measurable results in the areas of housing, community facilities, or community and economic development in rural areas. Provide the name, contact information, and amount of the financial and technical assistance the applicant organization has provided to the following for the last 5 years:

a. Nonprofit organizations in rural areas.

b. Low-income communities in rural areas, (also include the type of entity, *e.g.*, city government, town council, or village board).

c. Federally recognized tribes or any other culturally diverse organizations.

d. Organization synopsis. Scoring—maximum 30 points

1. The applicant has worked with groups in at least one of the three categories. 0–6 points

2. The types of financial and technical assistance provided are similar to the RCDI purposes. 0–15 points

3. The applicant demonstrates experience in working with the types of entities listed as recipients in the application. 0–9 points

3. Population—maximum 30 points

Population is based on the 2000 census data for the community in which the recipient is located. Community is defined for scoring purposes as a city, town, village, county, parish, borough, or census-designated place where the recipient's office is physically located. The applicant must submit a copy of the census data from the following website to verify the population figures used for each recipient. The data can be accessed on the Internet at *www.census.gov;* click on "American FactFinder" from the left menu; click on drop-down menu for "Show Me"; select "Population, Race and Hispanic or Latino under Geographic Comparison Tables (GCT)"; click on drop-down menu under "for"; select "State—and the type of State geographic subdivision"; select State from next drop-down menu; click on "Go"; print information for submission and highlight recipient locations. The average population of the recipient locations will be used and will be scored as follows:

Population Scoring 5,000 or less 30 points 5,001 to 10,000 20 points 10,001 to 20,000 10 points 20,001 to 50,000 5 points

4. Income—maximum 30 points

The average of the median household income for the communities where the recipients are physically located will determine the points awarded. Applicants may compare the average recipient median household income to the State median household income or the national median household income, whichever yields the most points. The national median household income to be used is $41,994. The applicant must submit a copy of the income data from the following website to verify the income for each recipient. The data being used is from the 2000 census. The data can be accessed from the Internet at *www.census.gov*; click on "American FactFinder" from left menu; click on drop-down menu for "Show Me"; select "Economic Characteristics: Employment, Income, Poverty and More"; click on drop-down menu under "for"; select "a city or town"; select State from next drop-down menu; select the city or town from the next drop-down menu; click on "Go"; print information for submission. Points will be awarded as follows:

Average Recipient Median Income Is: Scoring

Less than 60 percent of the State or national median household income 30 points

Between 60 and 70 percent of the State or national median household income 20 points

Greater than 70 percent of the State or national median household income 10 points

5. Innovative Approach—maximum 20 points

The applicant must demonstrate that it has developed an innovative approach that can be used by other organizations as a model. To be considered innovative, the approach must propose an easily replicated new or useful service or method of providing service to recipients that builds their capacity to improve their communities in the areas of housing, community facilities, or community and economic development. Points will be awarded to applications that have the highest score on the following factors:

a. Ease of replication by nonprofit organizations, low-income rural communities, or Federally recognized tribes;

b. Uniqueness of proposal;

c. Financial return to rural communities; and

d. Need by nonprofit organization, low-income rural community, or Federally recognized tribe.

If warranted, up to 20 applicants will be eligible to receive points in this category. The application ranking and scoring are:

Ranking Scoring 10 highest-ranking applications for this criterion 20 points

Next 10 highest-ranking applications for this criterion 10 points

If there is a tied score, it will be resolved by using the format listed under "Rating and Ranking" under "Application Selection Process" elsewhere in this notice.

6. Soundness of Approach—maximum 50 points

The applicant can receive up to 50 points for soundness of approach. The overall proposal will be considered under this criterion. Applicants must list the page numbers in the application that address these factors.

a. The ability to provide the proposed financial and technical assistance based on prior accomplishments has been demonstrated. 0–5 points b. The proposed financial and technical assistance program is clearly stated and the applicant has defined how this proposal will be implemented. The plan for implementation is viable. 0–20 points

c. Cost effectiveness will be evaluated based on the budget in the application. The proposed grant amount and matching funds should be utilized to maximize capacity building at the recipient level. 0–15 points

d. The proposal fits the objectives for which applications were invited. 0–10 points

7. Geographic Distribution Points—20 points

The applicant must provide a map that specifically describes the areas covered by the recipients. After applications have been evaluated and awarded points under the first 6 criteria, the Agency may award 20 points per application to promote a broad geographic distribution of RCDI funds.

8. Purpose Distribution Points—20 points

The applicant must state the primary purpose of the application, *i.e.*, housing, community facilities, or community and economic development.

After applications have been evaluated and awarded points under the first 6 criteria, the Agency may award 20 points per application to promote diversity of RCDI purposes.

9. Proportional Distribution Points—20 points

The applicant must state the amount of the grant request. After applications have been evaluated and awarded points under the first 6 criteria, the Agency may award 20 points per application to promote dispersion of grant awards between the range of $50,000 to $500,000.

Deliverables

Grant funds and matching funds must be used in equal proportions. This does not mean funds have to be used equally by line item. The request for reimbursement and supporting documentation must show that RCDI fund usage does not exceed the cumulative amount of matching funds used. Grant funds will be disbursed pursuant to relevant provisions of 7 CFR parts 3015, 3016, and 3019, as applicable. Matching funds must be used to support the overall purpose of the RCDI program. RCDI funds will be disbursed on a reimbursable basis only. No advances will be made. Matching funds cannot be expended prior to execution of the RCDI Grant Agreement. No reimbursement will be made for any funds expended prior to execution of the RCDI Grant Agreement unless the grantee has requested and received written Agency approval of the costs prior to the actual expenditure. This exception is applicable for up to 90 days prior to grant closing and only applies to grantees that have received written approval but have not executed the RCDI Grant Agreement. The Agency cannot retroactively approve reimbursement for expenditures prior to execution of the RCDI Grant Agreement.

Grant Amounts

In the event the applicant is awarded a grant that is less than the amount requested, the applicant will be required to modify its application to conform to the reduced amount before execution of the grant agreement. The Agency reserves the right to reduce or de-obligate the award if acceptable modifications are not submitted by the awardee within 15 working days from the date the request for modification is made. Any modifications must be within the scope of the original application.

Program Requirements

1. A Civil Rights Impact Analysis Certification must be completed by the Agency prior to grant approval.

2. A pre-award compliance review will be conducted by the Agency prior to closing the grant.

3. The intermediary and recipient must comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and Executive Order 12250.

4. The grantee must comply with policies, guidance, and requirements as described in the following applicable OMB Circulars and Code of Federal Regulations:

a. OMB Circular No. A–87 (Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments);

b. OMB Circular No. A–122 (Cost Principles for Nonprofit Organizations);

c. OMB Circular No. A–133 (Audits of States, Local Governments, and Non-Profit Organizations);

d. 7 CFR part 3015 (Uniform Federal Assistance Regulations);

e. 7 CFR part 3016 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments); and

f. 7 CFR part 3019 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations).

Program Restrictions

Meeting expenses. In accordance with 31 U.S.C. 1345, "Expenses of Meetings," appropriations may not be used for travel, transportation, and subsistence expenses for a meeting. RCDI grant funds cannot be used for these meeting-related expenses. Matching funds may be used to pay for these expenses. RCDI funds may be used to pay for a speaker as part of a program, equipment to facilitate the program, and the actual room that will house the meeting. RCDI funds can be used for travel, transportation, or subsistence expenses for training and technical assistance purposes. Any meeting or training not delineated in the application must be approved by the Agency to verify compliance with 31 U.S.C. 1345. Travel and per diem expenses will be similar to those paid to Agency employees. Rates are based upon location. Rate information can be accessed on the Internet at *http://policyworks.gov/perdiem*. Grantees and recipients will be restricted to traveling coach class on common carrier airlines. Grantees and recipients may exceed the Government rate for lodging by a maximum of 20 percent. Meals and incidental expenses will be reimbursed at the same rate used by Agency employees. Mileage and gas reimbursement will be the same rate used by Agency employees. The current mileage and gas reimbursement rate is 36.5 cents per mile.

Grantee Requirements

Grantees will be required to do the following.

1. Execute a Rural Community Development Initiative Grant Agreement, which is published at the end of this NOFA.

2. Execute Form RD 1940–1, "Request for Obligation of Funds."

3. Use Form SF 270, "Request for Advance or Reimbursement," to request reimbursements.

4. Provide financial status and project performance reports on a quarterly basis starting with the first full quarter after the grant award.

5. Maintain a financial management system that is acceptable to the Agency.

6. Ensure that records are maintained to document all activities and expenditures utilizing RCDI grant funds and matching funds. Receipts for expenditures will be included in this documentation.

7. Provide annual audits or management reports on Form RD 442–2, "Statement of Budget, Income, and Equity," and Form RD 442–3", "Balance Sheet," depending on the amount of Federal funds expended and the outstanding balance.

8. Collect and maintain data provided by recipients on race, sex, and national origin and ensure recipients collect and maintain the same data on beneficiaries. Race and ethnicity data will be collected in accordance with OMB Federal Register notice, "Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity," Vol. 62, No. 210, October 30, 1997. Sex data will be collected in accordance with Title IX of the Education Amendments of 1972. These items should not be submitted with the application, but should be available upon request by the Agency.

9. Provide a final project performance report.

10. Identify and report any association or relationship with Rural Development employees on a format provided by the Agency.

Rural Development State Offices

Note: Telephone numbers listed are not toll-free.

Alabama State Office, Suite 601, Sterling Centre, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3400, TDD (334) 279–3495, James B. Harris.

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 761–7705, TDD (907) 761–8905, Dean Stewart.

Arizona State Office, Phoenix Corporate Center, 3003 N. Central Ave., Suite 900, Phoenix, AZ 85012–2906, (602) 280–8747, TDD (602) 280–8705, Leonard Gradillas.

Arkansas State Office, 700 W. Capitol Ave., Rm. 3416, Little Rock, AR 72201–3225, (501) 301–3250, TDD (501) 301–3200, Jesse G. Sharp.

California State Office, 430 G Street, Agency 4169, Davis, CA 95616–4169, (530) 792–5810, TDD (530) 792–5848, Janice Waddell.

Colorado State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, 720–544–2903, TDD 720–544–2976, Leroy W. Cruz.

Connecticut, Served by Massachusetts State Office.

Delaware and Maryland State Office, 4607 South DuPont Highway, P.O. Box 400, Camden, DE 19934–0400, (302) 697–4300, TDD (302) 697–4303, James E. Waters.

Florida & Virgin Islands State Office, 4440 NW. 25th Place, P.O. Box 147010, Gainesville, FL 32614–7010, (352) 338–3440, TDD (352) 338–3499, Glenn E. Walden.

Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2171, TDD (706) 546–2034, Jerry M. Thomas.

Guam, Served by Hawaii State Office.

Hawaii, Guam, & Western Pacific Territories State Office, Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8380, TDD (808) 933–8321, Thao Khamoui.

Idaho State Office, 9173 West Barnes Dr., Suite A1, Boise, ID 83709, (208) 378–5617, TDD (208) 378–5600, Daniel H. Fraser.

Illinois State Office, 2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403–6200, TDD (217) 403–6240, Gerald A. Townsend.

Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100 (ext. 431), TDD (317) 290–3343, Gregg Delp.

Iowa State Office, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4663, TDD (515) 284–4858, Dorman Otte.

Kansas State Office, 1303 SW. First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2730, TDD (785) 271–2767, Gary L. Smith.

Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7415, TDD (859) 224–7300, Vernon Brown.

Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7940, TDD (318) 473–7920, Danny H. Magee.

Maine State Office, 967 Illinois Ave., Suite 4, P.O. Box 405, Bangor, ME 04402–0405, (207) 990–9106, TDD (207) 942–7331, Alan C. Daigle.

Maryland, Served by Delaware State Office.

Massachusetts, Connecticut, & Rhode Island State Office, 451 West Street, Amherst, MA 01002, (413) 253–4300, TDD (413) 253–7068, Daniel R. Beaudette.

Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5192, TDD (517) 337–6795, Philip H. Wolak.

Minnesota State Office, 410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7800, TDD (651) 602–3799, James Maras.

Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4316, TDD (601) 965–5850, Darnella Smith-Murray.

Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0995, TDD (573) 876–9480, D. Clark Thomas.

Montana State Office, 900 Technology Blvd., Suite B, Bozeman, MT 59771, (406) 585–2530, TDD (406) 585–2562, Deborah Chorlton.

Nebraska State Office, Federal Building, Room 152, 100 Centennial Mall N., Lincoln, NE 68508, (402) 437–5559, TDD (402) 437–5551, Denise Brosius-Meeks.

Nevada State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222 (ext. 26), TDD (775) 885–0633, Mike Holm.

New Hampshire State Office, Concord Center, Suite 218, Box 317, 10 Ferry Street, Concord, NH 03301–5004, (603) 223–6037, TDD (603) 223–6083, William W. Konrad.

New Jersey State Office, 8000 Midlantic Drive, 5th Floor North, Suite 500, Mt. Laurel, NJ 08054, (856) 787–7750, Michael P. Kelsey.

New Mexico State Office, 6200 Jefferson St. NE., Room 255, Albuquerque, NM 87109, (505) 761–4950, TDD (505) 761–4938, Clyde F. Hudson.

New York State Office, The Galleries of Syracuse, 441 S. Salina Street, Suite 357, Syracuse, NY 13202–2541, (315) 477–6400, TDD (315) 477–6447, Gail Giannotta.

North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2000, TDD (919) 873–2003, Phyllis Godbold.

North Dakota State Office, Federal Building, Room 208, 220 East Rosser, P.O. Box 1737, Bismarck, ND 58502–1737, (701) 530–2037, TDD (701) 530–2113, Donald Warren.
Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418, (614) 255–2400, TDD (614) 255–2554, David M. Douglas.
Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1000, TDD (405) 742–1007, Michael W. Schrammel.
Oregon State Office, 101 SW. Main, Suite 1410, Portland, OR 97204–3222, (503) 414–3300, TDD (503) 414–3387, Joe Sahlfeld (Acting).
Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 787–2299, TDD (717) 237–2261, Gary Rothrock.
Puerto Rico State Office, IBM Building—Suite 601, 654 Munos Rivera Avenue, Hato Rey, PR 00918–6106, (787) 766–5095, TDD (787) 766–5332, Ramon Melendez.
Rhode Island, Served by Massachusetts State Office.
South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 253–5163, TDD (803) 765–5697, Larry D. Floyd.
South Dakota State Office, Federal Building, Room 210, 200 Fourth Street, SW., Huron, SD 57350, (605) 352–1100, TDD (605) 352–1147, Roger Hazuka.
Tennessee State Office, Suite 300, 3322 West End Avenue, Nashvile, TN 37203–1084, (615) 783–1300, TDD (615) 783–1397, Keith Head.
Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9700, TDD (254) 742–9712, Francesco Valentin.
Utah State Office, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, P.O. Box 11350, Salt Lake City, UT 84147–0350, (801) 524–4326, TDD (801) 524–3309, Bonnie Carrig.
Vermont State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6000, TDD (802) 223–6365, Rhonda Shippee.
Virgin Islands, Served by Florida State Office.
Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1550, TDD (804) 287–1753, Carrie Schmidt.
Washington State Office, 1835 Black Lake Boulevard, SW., Suite B, Olympia, WA 98512–5715, (509) 664–0203, Sandi Boughton.
Western Pacific Territories, Served by Hawaii State Office.
West Virginia State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4860, TDD (304) 284–4836, Dianne Crysler.
Wisconsin State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7614, TDD (715) 345–7610, Mark Brodziski.
Wyoming State Office, Federal Building, Room 1005, 100 East B, P.O. Box 820, Casper, WY 82602, (307) 261–6300, TDD (307) 261–6333, Jack Hyde.

Dated: July 22, 2003.

Arthur A. Garcia

Administrator, Rural Housing Service.

United States Department of Agriculture

Rural Housing Service

Rural Community Development Initiative Grant Agreement

[OMB No. 0575–0180]

THIS GRANT AGREEMENT (Agreement), effective the date the Agency official signs the document, is a contract for receipt of grant funds under the Rural Community Development Initiative (RCDI).

BETWEEN _____

_____

a private or public or tribal organization, (Grantee or Intermediary) and the United States of America acting through the Rural Housing Service (the Agency), Department of Agriculture, (Grantor), for the benefit of recipients listed in Grantee's application for the grant.

WITNESSETH:

The principal amount of the grant is $_____ (Grant Funds). Matching funds, in an amount equal to the grant funds, will be provided by Grantee. The Grantee and Grantor will execute Form RD 1940–1, "Request for Obligation of Funds."

WHEREAS,

Grantee will provide a program of financial and technical assistance to develop the capacity and ability of nonprofit organizations, low-income rural communities, or federally recognized tribes to undertake projects related to housing, community facilities, or community and economic development in rural areas;

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0180. The time required to complete this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and reviewing the collection of information.

NOW, THEREFORE, in consideration of the grant;

Grantee agrees that Grantee will:

A. Provide a program of financial and technical assistance in accordance with the proposal outlined in the application, (see Attachment A), the terms of which are incorporated with this Agreement and must be adhered to. Any changes to the approved program of financial technical assistance must be approved in writing by the Grantor;

B. Use Grant Funds only for the purposes and activities specified in the application package approved by the Agency including the approved budget. Any uses not provided for in the approved budget must be approved in writing by the Agency in advance;

C. Charge expenses for travel and per diem that will not exceed the rates paid Agency employees for similar expenses. Grantees and recipients will be restricted to traveling coach class on common carrier airlines. Lodging rates may exceed the Government rate by a maximum of 20 percent. Meals and incidental expenses will be reimbursed at the same rate used by Agency employees, which is based upon location. Mileage and gas will be reimbursed at the existing Government rate. Rates can be accessed on the Internet at http://policyworks.gov/perdiem;

D. Charge meeting expenses in accordance with 31 U.S.C. 1345. Grant funds may not be used for travel, transportation, and subsistence expenses for a meeting. Matching funds may be used to pay these expenses. Any meeting or training not delineated in the application must be approved by the Agency to verify compliance with 31 U.S.C. 1345.

E. Request quarterly reimbursement for grant activities during the previous quarter. Reimbursement will be made on a pro rata basis with matching funds. Form SF 270, "Request for Advance or Reimbursement," will be used to request reimbursement. A project performance report, in narrative form, and a financial report, reflecting the activities conducted, must accompany the request for reimbursement. Matching fund usage must be included in all reports.

F. Provide periodic reports as required by the Grantor. A financial status report and a project performance report will be required on a quarterly basis (due 30 working days after each calendar quarter). The financial status report must show how grant funds and matching funds have been used to date. A final report may serve as the last quarterly report. Grantees shall constantly monitor performance to ensure that time schedules are being met and projected goals by time periods are being accomplished. The project performance reports shall include, but are not limited to, the following:

1. Describe the activities that the funds reflected in the financial status report were used for;

2. A comparison of actual accomplishments to the objectives for that period;

3. Reasons why established objectives were not met, if applicable;

4. Problems, delays, or adverse conditions which will affect attainment of overall program objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular objectives during established time periods. This disclosure shall be accomplished by a statement of the action taken or planned to resolve the situation;

5. Objectives and timetables established for the next reporting period;

6. If available, a summary of the race, sex, and national origin of the recipients and a summary from the recipients of the race, sex, and national origin of the beneficiaries; and

7. The final report will also address the following:

(a) What have been the most challenging or unexpected aspects of this program?

(b) What advice would you give to other organizations planning a similar program? Please include strengths and limitations of the program. If you had the opportunity, what would you have done differently?

(c) Are there any post-grant plans for this project? If yes, how will they be financed?

(d) If an innovative approach was used successfully, the grantee must describe their program in detail for replication by other organizations and communities.

G. Consider potential recipients without discrimination as to race, color, religion, sex, national origin, age, marital status, sexual orientation, or physical or mental disability;

H. Ensure that any services or training offered by the recipient, as a result of the financial and technical assistance received, must be made available to all persons in the recipient's service area without discrimination as to race, color, religion, sex, national origin, age, marital status, sexual orientation, or physical or mental disability at reasonable rates, including assessments, taxes, or fees. Programs and activities must be delivered from accessible locations. The recipient must ensure that, where there are non-English speaking populations, materials are provided in the language that is spoken;

I. Ensure recipients are required to place nondiscrimination statements in advertisements, notices, pamphlets and brochures making the public aware of their services. The Grantee and recipient are required to provide widespread outreach and public notification in promoting any type of training or services that are available through grant funds;

J. The Grantee must collect and maintain data on recipients by race, sex, and national origin. The grantee must ensure that their recipients also collect and maintain data on beneficiaries by race, sex, and national origin as required by Title VI of the Civil Rights Act of 1964 and must be provided to the Agency for compliance review purposes;

K. Upon any default under its representations or agreements contained in this instrument, Grantee, at the option and demand of Grantor, will immediately repay to Grantor any legally permitted damages together with any legally permitted interest from the date of the default. At Grantor's election, any default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Agreement may be enforced by Grantor, without regard to prior waivers of this Agreement, by proceedings in law or equity, in either Federal or State courts as may be deemed necessary by Grantor to ensure compliance with the provisions of this Agreement and the laws and regulations under which this grant is made;

L. Provide Financial Management Systems that will include:

1. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis;

2. Records that identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income related to Grant Funds and matching funds;

3. Effective control over and accountability for all funds, property, and other assets. Grantees shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes;

4. Accounting records supported by source documentation; and

5. Grantee tracking of fund usage and records that show matching funds and grant funds are used in equal proportions. The grantee will provide verifiable documentation regarding matching fund usage, *i.e.*, bank statements or copies of funding obligations from the matching source.

M. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm or photocopies or similar methods may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts, and transcripts;

N. Provide an A–133 audit report if $300,000 or more of Federal funds are expended in a 1-year period. If Federal funds expended during a 1-year period are less than $300,000 and there is an outstanding loan balance of $300,000 or more, an audit in accordance with generally accepted government auditing standards is required. If Federal funds expended during a 1-year period are less than $300,000 and there is an outstanding loan balance of less than $300,000, a management report may be submitted on Forms RD 442–2, "Statement of Budget, Income and Equity," and 442–3, "Balance Sheet";

O. Not encumber, transfer, or dispose of the equipment or any part thereof, acquired wholly or in part with Grantor funds without the written consent of the Grantor; and

P. Not duplicate other program activities for which monies have been received, are committed, or are applied to from other sources (public or private).

Grantor agrees that:

A. It will make available to Grantee for the purpose of this Agreement funds in an amount not to exceed the Grant Funds. The funds will be disbursed to Grantee on a pro rata basis with the Grantee's matching funds; and

B. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be:

1. Advisable to further the purpose of the grant or to protect Grantor's financial interest therein; and

2. Consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Both Parties Agree:

A. Extensions of this grant agreement may be approved by the Agency, in writing, provided in the Agency's sole discretion the extension is justified and there is a likelihood that the grantee can

accomplish the goals set out and approved in the application package during the extension period;

B. The Grantor must approve any changes in recipient or recipient composition;

C. The Grantor has agreed to give the Grantee the Grant Funds, subject to the terms and conditions established by the Grantor: PROVIDED, HOWEVER, That any Grant Funds actually disbursed and not needed for grant purposes be returned immediately to the Grantor. This agreement shall terminate 3 years from this date unless extended or unless terminated beforehand due to default on the part of the Grantee or for convenience of the Grantor and Grantee. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of this Agreement or the applicable regulations;

D. As a condition of the Agreement, the Grantee certifies that it is in compliance with, and will comply in the course of the Agreement with, all applicable laws, regulations, Executive Orders, and other generally applicable requirements, including those contained in 7 CFR 3015.205(b), which are incorporated into this agreement by reference, and such other statutory provisions as are specifically contained herein. The Grantee will comply with title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and Executive Order 12250;

E. The Grantee will ensure that the recipients comply with title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973 and Executive Order 12250. Each recipient must sign Form RD 400–1, "Equal Opportunity Agreement," and Form RD 400–4, "Assurance Agreement";

F. The provisions of 7 CFR part 3015, "Uniform Federal Assistance Regulations," part 3016, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," or part 3019, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," and the fiscal year 2003 "Notice of Funds Availability (NOFA) Inviting Applications for the Rural Community Development Initiative (RCDI)" are incorporated herein and made a part hereof by reference; and

G. This Agreement may be terminated for cause in the event of default on the part of the Grantee or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the program will not produce beneficial results commensurate with the further expenditure of funds.

IN WITNESS WHEREOF, Grantee has this day authorized and caused this Agreement to be executed by

Attest

By
(Grantee)
(Title)
Date

UNITED STATES OF AMERICA
RURAL HOUSING SERVICE

By
(Grantor) (Name) (Title)
Date

Attachment A

[Application proposal submitted by grantee.]

[FR Doc. 03–19316 Filed 7–29–03; 8:45 am]
BILLING CODE 3410–XV–P

ARCTIC RESEARCH COMMISSION

Sunshine Act Notice

July 28, 2003

Meeting notice in Federal Register of 29th July is corrected to read: Notice is hereby given that the U.S. Arctic Research Commission will hold its 69th Meeting in Dutch Harbor, Alaska on August 4th thru 5th and continue in Anchorage, Alaska on August 6th, 2003. The Business Session open to the public will convene at 9 a.m. Monday, August 4th. The Agenda items include:

(1) Call to order and approval of the Agenda.

(2) Approval of the Minutes of the 68th Meeting.

(3) Reports from Congressional Liaisons.

(4) Agency Reports.

The focus of the Meeting will be reports and updates on programs and research projects affecting the U.S. Arctic. Presentations include a review of the research needs for civil infrastructure in Alaska.

The Business Session will reconvene at 9 a.m. Wednesday, August 6th, 2003 in Anchorage, Alaska. An Executive Session will follow adjournment of the Business Session.

Any person planning to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs.

Contact Person for More Information: Dr. Garrett W. Brass, Executive Director, Arctic Research Commission, 703–525–0111 or TDD 703–306–0090.

Garrett W. Brass,
Executive Director.

[FR Doc. 03–19512 Filed 7–28–03; 1:36 pm]
BILLING CODE 7555–01–M

DEPARTMENT OF COMMERCE

Census Bureau

Service Annual Survey

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 29, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ruth Bramblett, U.S. Census Bureau, Room 2775–FOB 3, Washington, DC 20233–6500, (301) 763–7089 or via e-mail at *ruth.ann.bramblett@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Today, about 50 percent of all economic activity is accounted for by services that are narrowly defined to exclude retail and wholesale trade. The Census Bureau currently measures the total output of these selected service industries annually in its Service Annual Survey. This survey now covers all or some of the following eight sectors: Transportation and Warehousing; Information; Finance and Insurance; Real Estate and Rental and Leasing; Professional, Scientific, and Technical Services; Administration and Support and Waste Management and Remediation Services; Health Care and Social Assistance; Arts, Entertainment, and Recreation; and Other Services.

The Census Bureau proposes an expansion of the Service Annual Survey to provide data on product composition of service industry output and to provide data that will improve the quality of value-added measures for these service industries.

We will begin to implement, incrementally, the collection of detailed service products defined in the provisional North American Product Classification System (NAPCS) into the 2003 Service Annual Survey. Provisional NAPCS products were added to the 2001 Service Annual Survey for most of the Information Sector (NAICS 51, except 512) and Computer Systems Design and Related Services (NAICS 5415). For 2003, we plan to add provisional NAPCS products to the Motion Picture and Sound Recording Industries (NAICS 512) and to selected Financial Services (NAICS 5231 and 5239). In the 2004 Service Annual Survey, we will begin collecting NAPCS product detail for Professional, Scientific, and Technical Services (NAICS 54); Administrative Support and Waste Management and Remediation Services (NAICS 56); and Hospitals and Nursing and Residential Care Facilities (NAICS 622 and 623). We will complete NAPCS product coverage of all remaining industries in the 2005 Service Annual Survey.

We also plan to collect annual data on the cost of selected purchased services and materials in the 2003 Service Annual Survey for the following: Information (NAICS 51); selected Financial Services (NAICS 5231 and 5239); Professional, Scientific, and Technical Services (NAICS 54); Administrative and Support and Waste Management and Remediation Services (NAICS 56); and Hospitals and Nursing and Residential Care Facilities (NAICS 622 and 623). For the 2004 survey, we will begin collecting these data for all remaining industries covered in the Service Annual Survey. Key data items include the cost of materials and supplies other than for resale and contract labor; and purchased telecommunications services, software and data processing services, management and consulting services, fuels, electricity, lease and rental payments, and all other purchased services. The availability of these data will greatly improve the quality of the intermediate-inputs and value-added estimates in BEA's annual input-output and GDP by industry accounts. Annual data on purchased services and materials will also be used as indicators to update census year data collected on the Business Expenses Survey.

The Census Bureau is authorized by Title 13, United States Code, to conduct surveys necessary to furnish current data on subjects covered by the major censuses. These surveys provide continuing and timely national statistical data for the period between economic censuses.

The Bureau of Economic Analysis (BEA), the primary Federal user of these annual program statistics, uses the information in developing the national income and product accounts, compiling benchmark and annual input-output tables, and computing Gross Domestic Product (GDP) by industry. Agencies of the U.S. Department of Transportation (DOT) use the transportation related data for policy development and program management and evaluation. The Bureau of Labor Statistics (BLS) uses the data as inputs to its Producer Price Indexes and in developing productivity measurements. The Centers for Medicare and Medicaid Services (CMS) uses the health related data in the development of the National Health Expenditure Accounts. The Federal Communications Commission (FCC) uses the broadcasting and telecommunications data as a means for assessing FCC policy. The Census Bureau uses the data to provide new insight into changing structural and cost conditions that will impact the planning and design of future economic census questionnaires. Private industry also uses the data as a tool for marketing analysis.

Data are collected from all of the largest firms and from a sample of small- and medium-sized businesses selected using a stratified sampling procedure. The samples are reselected periodically, generally at 5-year intervals. The largest firms continue to be canvassed when the sample is re-drawn, while nearly all of the small- and medium-sized firms from the prior sample are replaced. We collect these data by using a mail-out/mail-back survey questionnaire.

II. Method of Collection

We collect this information by mail, fax, and telephone follow-up.

III. Data

OMB Number: 0607–0422.

Form Number: The Service Annual Survey program consists of 260 forms which are too numerous to list here.

Type of Review: Regular Submission.

Affected Public: Businesses or other for-profit organizations, not-for-profit institutions, and Government hospitals.

Estimated Number of Respondents: 50,000.

Estimated Time Per Response: On average, we expect 1 hour and 30 minutes as an estimate.

Estimated Total Annual Burden Hours: 58,249 hours.

Estimated Total Annual Cost: The cost to the respondents for fiscal year 2004 is estimated to be $1,270,993 based on the median hourly salary of $21.82 for accountants and auditors. (Occupational Employment Statistics—Bureau of Labor Statistics "2001 National Occupational Employment and Wage Estimates") *http://www.bls.gov/oes/2001/oes132011.htm.*

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code; Sections 182, 224, and 225.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 25, 2003.

Madeleine Clayton,
Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–19421 Filed 7–29–03; 8:45 am]
BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA).

ACTION: To give all interested parties an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD JUNE 21, 2003–JULY 22, 2003

Firm name	Address	Date petition accepted	Product
K & S Optics, Inc	1080 Chenango Street, Binghamton, NY 13901.	27–Jun–03	Cylindrical lenses used in optical instruments for inspecting semiconductors, telecommunication devices and astronomical instruments.
Atco Products, Inc	1002 Performance Road, Forest, VA 24551.	01–Jul–03	Seal and O-rings for the automotive and food and beverage and industrial equipment industries.
United Speaker Systems, Inc	6400 Youngerman Circle, Jacksonville, FL 32244.	01–Jul–03	Loudspeakers.
Mega Sun, Inc	3301 Locust Street, St. Louis, MO 63103.	01–Jul–03	Commercial and residential tanning beds and chemical tanning equipment.
L & R Precision Tooling, Inc	460 West & Sunburst Road, Lynchburg, VA 24502.	09–Jul–03	Machinery parts that produce parts for cellular telephones, valves and medical equipment.
Innovative Plastech, Inc	1260 Kingsland Drive, Batavia, IL 60510	09–Jul–03	Packaging trays of vacuum formed thermoplastic.
PA–TED Spring Company, Inc	137 Vincent P. Kelly Road, Bristol, CT 06010.	11–Jul–03	Springs, multiforms, and small mechanical hand and power tools for the electronics and automotive industries.
Tryco Tool & Manufacturing Co., Inc	363 South Jefferson Street, Orange, NJ 07050.	16–Jul–03	Metal stamped parts for circuit breakers, electrical panels, valves and housings, and consumer and industrial lighting.
Fast Heat, Inc	776 Oaklawn Avenue, Elmhurst, Il 60126.	16–Jul–03	Hot runner systems.
Genesee Wester, Inc. dba MetalCraft Industries, Inc.	1250 W 124th Avenue, Westminster, CO 80234.	21–Jul–03	Stamped and sheet metal products for the automotive industry.
Sunset Mold, LLC	727 Commerce Drive, Venice, FL 34292	22–Jul–03	Injection molds for rubber or plastic.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm. Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: July 23, 2003.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 03–19308 Filed 7–29–03; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Yaudat Mustafa Talyi a.k.a. Joseph Talyi, and International Business Services, Ltd., and Top Oil Tools, Ltd., and Uni-Arab Engineering and Oil Field Services, and Jaime Radi Mustafa, a.k.a. Radi Mustafa and Nureddin Shariff Sehweil, a.k.a. Dean Sehweil

Modification of Order Temporarily Denying Export Privileges

Through the Office of Export Enforcement ("OEE"), the Bureau of Industry and Security ("BIS"), U.S. Department of Commerce, has requested that I modify the order ("TDO") I issued on March 29, 2003, pursuant to Section 766.24 of the Export Administration Regulations (currently codified a 15 CFR 730–774 (2003)) ("EAR"),[1] temporarily denying all U.S. export privileges of Yaudat Mustafa Talyi, a.k.a. Joseph Talyi, 888 Cross Gates Boulevard, Slidell, Louisiana 70458 ("Talyi") and International Business Services, Ltd., 700 Gause Boulevard, Suite 304, Slidell, Louisiana 70458, 41 Chamale Cove East, Slidell, Louisiana 70460, and 2301 Covington Highway 190, Slidell, Louisiana 70460 ("IBS"). Pursuant to Sections 766.24(c) and 766.23 of the EAR, the TDO also applies to Top Oil Tools Ltd. ("Top Oil"), 41 Chamale Cove East, Slidell, Louisiana 70460, which is related to IBS and Talyi.

BIS states in its June 20, 2003 request that, based upon evidence developed since the issuance of the TDO, it believes that the following entity and individuals are also related to Talyi and IBS, and that applying the terms of the TDO to these additional related persons is necessary to prevent evasion thereof:

1. Uni-Arab Engineering and Oil Field Services ("Uni-Arab"), P.O. Box 46112, Abu Dhabi, United Arab Emirates, and, Al-Gaith Tower, Hamden Street, Flat No. 1202, Abu Dhabi, United Arab Emirates.
2. Jaime Radi Mustafa, a.k.a. Radi Mustafa ("Radi Mustafa"), 888 Cross Grates Boulevard, Slidell, Louisiana 70458, and, P.O. Box 46112, Abu Dhabi, United Arab Emirates.
3. Nureddin Shariff Sehweil, a.k.a. Dean Sehweil ("Sehweil"), 888 Cross Grates Boulevard, Slidell, Louisiana 70458, and, 106 Everest Drive, Slidell, Louisiana, 70461, and, P.O. Box 46112, Abu Dhabi, United Arab Emirates.

(Collectively, Uni-Arab, Radi Mustafa, and Sehweil are referred to as "proposed related persons.")

On July 7, 2003, attorneys representing proposed related persons filed a timely opposition to BIS's request that I modify the TDO.

On July 14, 2003, BIS filed its Reply to Respondents' Opposition.

Having reviewed all submissions, I have found the following:

- A close relationship in the conduct of trade or business existed in the past, and continues to exist, between the parties subject to the TDO and the proposed related persons;
- After the TDO was issued, the proposed related persons knew of, and participated in, attempted export transactions in violation of the TDO; and
- The proposed related persons have engaged in business activities with Libya concerning items subject to the EAR without obtaining necessary authorization.

Consequently, I have determined that it is necessary to name the above-named entity and individuals as persons related to Talyi and IBS in order to prevent evasion of the terms and conditions of the TDO.

It is therefore ordered that the terms of the TDO denying the export privileges of Talyi and his company IBS, and related person Top Oil, are hereby made applicable to Uni-Arab, Radi Mustafa, and Sehweil as related persons.

In accordance with the provisions of Section 766.23(c) of the EAR, related persons may appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

This modification of the TDO is effective immediately and shall remain in effect until the expiration of the TDO.

A copy of this modification to the TDO shall be served on Uni-Arab, Radi Mustafa, and Sehweil, and shall be published in the **Federal Register.**

Entered this 24th day of July, 2003.

Lisa A. Prager,

Acting Assistant Secretary for Export Enforcement.

[FR Doc. 03–19303 Filed 7–29–03; 8:45 am]

BILLING CODE 3510–DT–M

[1] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 CFR, 2000 Comp. 397 (2001)), continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1707 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 14, 2002 (3 CFR, 2002 Comp. 306 (2003)), has continued the EAR in effect under IEEPA.

DEPARTMENT OF COMMERCE

International Trade Administration

A-570–855

Certain Non-Frozen Apple Juice Concentrate From the People's Republic of China: Preliminary Results of New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of New Shipper Review.

SUMMARY: The Department of Commerce is currently conducting a new shipper review of the antidumping duty order on non-frozen apple juice concentrate from the People's Republic of China, covering the period June 1, 2002, through November 30, 2002.

The new shipper review covers one exporter: Yantai Golden Tide Fruits & Vegetable Food Co., Ltd. We preliminarily determine that sales of non-frozen apple juice concentrate from the People's Republic of China were made below normal value during the period of review by Yantai Golden Tide Fruits & Vegetable Food Co., Ltd.

If these preliminary results are adopted in our final results of review, we will instruct the U.S. Bureau of Customs and Border Protection to assess antidumping duties based on the difference between export price and normal value for Yantai Golden Tide Fruits & Vegetable Food Co., Ltd.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 90 days from the date of issuance of these preliminary results.

EFFECTIVE DATE: July 30, 2003.

FOR FURTHER INFORMATION CONTACT: Audrey Twyman, Stephen Cho or John Brinkmann, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3534, (202) 482–3798 or (202) 482–4126, respectively.

SUPPLEMENTARY INFORMATION:

Period of Review

The period of review ("POR") is June 1, 2002 through November 30, 2002.

Background

On December 17, 2002, the Department received a timely request from Yantai Golden Tide Fruits & Vegetable Food Co., Ltd. ("Golden Tide"), to conduct a new shipper review.

On January 30, 2003, we published a notice of initiation of a new shipper review of the antidumping duty order on non-frozen apple juice concentrate ("AJC") from the People's Republic of China ("PRC"). *See Non-Frozen Apple Juice Concentrate from the People's Republic of China: Initiation of Antidumping New Shipper Review*, 68 FR 4762 (January 30, 2003). On January 31, 2003, the Department sent a questionnaire to Golden Tide and received a response on March 21, 2003, and a response to a supplemental questionnaire on April 2, 2003.

On June 26, 2003, the Department invited interested parties to comment on surrogate country selection and to provide publicly available information for valuing the factors of production. We received a response from Golden Tide on July 11, 2003.

The Petitioners have not made any written submissions in this proceeding.[1]

Scope of the Order

The product covered by this order is certain non-frozen apple juice concentrate (≥AJC"). Certain AJC is defined as all non-frozen concentrated apple juice with a Brix scale of 40 or greater, whether or not containing added sugar or other sweetening matter, and whether or not fortified with vitamins or minerals. Excluded from the scope of this order are: frozen concentrated apple juice; non-frozen concentrated apple juice that has been fermented; and non-frozen concentrated apple juice to which spirits have been added.

The merchandise subject to this order is classified in the *Harmonized Tariff Schedule of the United States* ("HTSUS") at subheadings 2106.90.52.00, and 2009.70.00.20 before January 1, 2002, and 2009.79.00.20 after January 1, 2002. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Separate Rates Determination

The Department has treated the PRC as a nonmarket economy ("NME") country in all previous antidumping

[1] Petitioners are Tree Top, Inc., Knouse Foods Cooperative, Inc., Green Valley Packers, Mason County Fruit Packers Co-op, Inc. and Coloma Frozen Foods, Inc.

cases. In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended ("the Act"), any determination that a foreign country is an NME shall remain in effect until revoked by the Department. None of the parties to this proceeding have contested such treatment in this review. Moreover, parties to this proceeding have not argued that the PRC AJC industry is a market-oriented industry.

Therefore, we are treating the PRC as an NME country within the meaning of section 773(c) of the Act. We allow companies in NME countries to receive separate antidumping duty rates for purposes of assessment and cash deposits when those companies can demonstrate an absence of government control, both in law and in fact, with respect to export activities.

To establish whether a company operating in an NME country is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). Under the separate rates criteria, the Department assigns separate rates in NME cases only if the respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

Absence of *De Jure* Control

Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: 1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; 2) any legislative enactments decentralizing control of companies; and 3) any other formal measures by the government decentralizing control of companies.

Golden Tide has placed two documents on the record to demonstrate absence of *de jure* government control, "Foreign Trade Law of the People's Republic of China" ("Foreign Trade Law") and the "Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations" ("Administrative Regulations"). The Foreign Trade Law grants autonomy to foreign trade operators in management decisions and establishes accountability for their own profits and losses. In prior cases, the Department has analyzed the Foreign Trade Law and found that it establishes an absence of de jure control. *See, e.g.*, Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China, 60 FR 29571 (June 5, 1995); Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China, 63 FR 72255 (December 31, 1998) ("Mushrooms"). We have no new information in this segment of the proceeding which would cause us to reconsider this determination.

The Administrative Regulations safeguard social and economic order, as well as establishing an administrative system for the registration of corporations. The Department has reviewed the Administrative Regulations and concluded that they show an absence of *de jure* control by requiring companies to bear civil liabilities independently, thereby decentralizing control of companies.

According to the respondent, AJC exports are not affected by quota allocations or export license requirements. The Department has examined the record in this case and does not find any evidence that AJC exports are affected by quota allocations or export license requirements. By contrast, the evidence on the record demonstrates that the producers/exporters have the autonomy to set the price at whatever level they wish through independent price negotiations with their foreign customers and without government interference.

Accordingly, we preliminarily determine that there is an absence of *de jure* government control over export pricing and marketing decisions of the respondent.

Absence of *De Facto* Control

De facto absence of government control over exports is based on four factors: 1) whether each exporter sets its own export prices independently of the government and without the approval of a government authority; 2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; 3) whether each exporter has the authority to negotiate and sign contracts and other agreements; 4) whether each exporter has autonomy from the government regarding the selection of management (*see Silicon Carbide*, 59 FR at 22587; *Sparklers*, 56 FR at 20589).

As stated in previous cases, there is evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Mushrooms*, 63 FR at 72255. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department has reviewed the record in this case and finds the following facts about the respondent: (1) it establishes its own export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; (4) it retains the proceeds from export sales and uses profits according to its business needs without any restrictions; (5) it does not coordinate or consult with other exporters regarding pricing decisions.

The information on the record supports a preliminary finding that there is an absence of *de facto* governmental control of the export functions of this company. Consequently, we preliminarily determine that Golden Tide has met the criteria for the application of a separate rate.

Fair Value Comparisons

To determine whether sales of the subject merchandise by Golden Tide to the United States were made at prices below normal value ("NV"), we compared Golden Tide's export price to NV, as described in the "Export Price" and "Normal Value" sections of this notice, below.

Export Price

For the sale made by Golden Tide during the POR we used export price, in accordance with section 772(a) of the Act, because the subject merchandise was sold to unaffiliated purchasers in the United States prior to importation into the United States and because the constructed export price methodology was not warranted by other circumstances.

We calculated export price based on Golden Tide's selling price to an unaffiliated purchaser. In accordance with section 772(c) of the Act, we deducted from this price amounts for foreign inland freight from plant to warehouse and from warehouse to port, foreign brokerage and handling, U.S. customs broker fees, international freight, U.S. inland freight from port to warehouse, U.S. warehousing expense, and U.S. customs duty. We valued the deductions for foreign inland freight, international freight, and brokerage and handling using surrogate data, which was based on Indian freight costs. (Our surrogate-country selection is discussed in the "*Normal Value*" section of this notice, below.) Because ocean freight was provided by a PRC-owned company, we valued this deduction using amounts charged by market-economy providers.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using a factors-of-production methodology if: (1) the subject merchandise is exported from an NME country, and (2) the Department finds that the available information does not permit the calculation of NV under section 773(a) of the Act. We have no basis to determine that the available information would permit the calculation of NV using PRC prices or costs. Therefore, we calculated NV based on factors data in accordance with section 773(c) of the Act and 19 CFR 351.408(c).

Under the factors-of-production methodology, we are required to value, to the extent possible, the NME producer's inputs in a market-economy country that is at a comparable level of economic development and that is a significant producer of comparable merchandise. We chose Poland, a significant producer of non-frozen apple juice concentrate, as the primary surrogate country on the basis of the criteria set out in sections 773(c)(2)(B) and 773(c)(4) of the Act and in 19 CFR 351.408(b). Although Poland was not on the Department's list of most comparable economies, we were unable to establish that these comparable economies were significant producers of merchandise comparable to non-frozen apple juice concentrate.

We have relied upon publicly available values from Poland for the major input, juice apples, as well as for electricity, factory overhead, selling, general and administrative expenses ("SG&A"), and profit ratios. Because we were unable to obtain Polish data to value the other miscellaneous factors of production, we have valued these inputs using public information on the record for India, one of the comparable economies we identified. *See* the June 17, 2003, Memorandum to Audrey Twyman from Ron Lorentzen, "New Shipper Review for Non-frozen Apple Juice Concentrate from the People's Republic of China (PRC): Request for a List of Surrogate Countries."

Because some of the Indian data was not contemporaneous with the POR we inflated the values to the POR using the Indian wholesale price indices ("WPI") published by the International Monetary Fund. *See* the July 23, 2003, Memorandum to Jeffrey May from Susan Kuhbach, "Surrogate Selection and Valuation - Non-Frozen Apple Juice Concentrate from China: Yantai Golden Tide Fruits & Vegetable Food Co., Ltd." ("*Surrogate Country Memo*"), for a further discussion of our surrogate selection, which is on file in the Department's Central Records Unit in Room B-099 of the main Department building ("CRU").

Pursuant to the Department's factors-of-production methodology as provided in section 773(c) of the Act and 19 CFR 351.408(c), we valued Golden Tide's reported factors of production by multiplying them by the following values[2]:

Juice Apples: We have valued juice apples using prices of juice apples in Poland, covering 20 weeks of the POR. This information was provided to the Department by the Foreign Agriculture Service ("FAS") at the U.S. Embassy in Warsaw, Poland, which obtained it from the Polish Foreign Agricultural Markets Monitoring Unit/Foundation for Aid Programs for Agriculture and the Institute of Agricultural Economics. The average value of these 20 weekly prices is $45.30 per metric ton.

Processing Agents: We valued pectinex enzyme, amylase enzyme, bentonite, gelatin, silica gel, and activated carbon for the POR using the *World Trade Atlas* data for India, which is based on data reported by the DGCI&S of the Ministry of Commerce, which also supplies the same data for the *Monthly Statistics of the Foreign Trade of India, Volume II: Imports* ("Indian import statistics").

Labor: Pursuant to 19 CFR 351.408(c)(3), we valued labor using the regression-based wage rate for the PRC published by Import Administration on its website.

Electricity and Steam Coal: To value electricity, we used Polish industrial electricity rate data from the *Energy Prices & Taxes - Quarterly Statistics (Third Quarter 2000)* published by the International Energy Agency. We used the 1999 price and inflated it to the POR. We determined that the most contemporaneous and detailed information regarding steam coal was from the *Energy Data Directory & Yearbook (2001/2002)* published by Tata Energy Research Institute ("TERI"). We used the Indian data because, unlike the Polish data, the Indian price of steam coal is segregated by useful heat value ("UHV"). We used the January 2001 price and inflated it to the POR using the Indian WPI.

Factory Overhead, SG&A, and Profit: We derived ratios for factory overhead, SG&A, and profit using the 2002 financial statement of Agros, a public company in Poland that produces products similar to the subject merchandise.

Packing Materials: We calculated values for aseptic bags and labels using the *World Trade Atlas* data for India for the POR. We converted values from a per-kilogram to a per-piece basis, where necessary.

For steel drums, we could not find a reliable current Indian value. Therefore, we used a 1994 Indonesian price and inflated it using the Indonesian WPI.

Inland Freight Rates: To value truck freight rates, we used an April 2002 article from the *Iron and Steel Newsletter*, which quotes information derived from the website, www.infreight.com. We used the April 2002 price and inflated it to the POR using the Indian WPI. With regard to rail freight, we based our calculation on posted rail rates from the Indian Railways at *http://www.indianrailways.gov.in*. We calculated an average per-kilometer per-metric ton rate.

International Freight: We used rates collected from the Descartes online system to value Golden Tide's international freight.

Brokerage and Handling: The brokerage and handling amount we used in our calculations was derived from an amount charged in Indian Rupees by and Indian shipping company. This figure was taken from the public version of a U.S. sales listing reported in the questionnaire response submitted by Meltroll Engineering for *Stainless Steel Bar from India; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Partial Rescission of Administrative Review*, 65 FR 48965 (August 10, 2000) (placed on the record of this segment of the proceeding on July 23, 2003, as an attachment to the *FOP Memo*). Because this information is not contemporaneous with the POR, we adjusted the data to the POR by using the Indian WPI.

By-products: Golden Tide reported a by-product resulting from production of the subject merchandise, apple pomace. Because we were unable to find reliable values in any potential surrogate country for apple pomace we used U.S. prices. We will continue to look for an appropriate surrogate for purposes of

[2] For a complete description of the factor values used, *see* the Memorandum to Susan Kuhbach: "Factors of Production Values Used for the Preliminary Results: Yantai Golden Tide Fruits & Vegetable Food Co., Ltd." ("*FOP Memo*"), dated July 23, 2003, which is on file in the CRU.

the final results. Apple pomace was valued using an April 2000 study published by the University of Georgia.

Preliminary Results of the Review

We preliminary determine that the following dumping margin exists for the period June 1, 2002, through November 30, 2002:

Exporter	Producer	Weighted-average margin percentage
Yantai Golden Tide Fruits & Vegetable Food Co., Ltd.	Yantai Golden Tide Fruits & Vegetable Food Co., Ltd.	12.36 %

Public Comment

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 30 days of the date of publication of this notice. Any hearing, if requested, will be held approximately 42 days after the publication of this notice, or the first workday thereafter. Issues raised in hearings will be limited to those raised in the case and rebuttal briefs. Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs within 30 days of the date of publication of this notice. Furthermore, as discussed in 19 CFR 351.309(d)(2), rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this new shipper review are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included.

The Department will publish the final results of this new shipper review, including the results of its analysis of issues raised in any such written briefs or hearing, within 90 days of the date of issuance of these preliminary results, pursuant to section 751(a)(2)(B)(iv) of the Act.

Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this new shipper review, if any importer/customer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue appraisement instructions directly to the U.S. Bureau of Customs and Border Protection to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise.

For assessment purposes, we calculate importer-specific assessment rates for the subject merchandise by aggregating the dumping duties due for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. The Department will issue assessment instructions directly to the U.S. Bureau of Customs and Border Protection within 15 calendar days of the publication of the final results of this new shipper review in the **Federal Register**.

Cash Deposit Requirements for New Shipper Review

Bonding will no longer be permitted to fulfill security requirements for shipments from Golden Tide of AJC from the PRC on or after the publication date of the final results of this new shipper review. Instead, the following cash deposit requirements will be effective upon publication of the final results of the new shipper review for all shipments from Golden Tide of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date: (1) for subject merchandise manufactured and exported by Golden Tide, we will require a cash deposit at the rate established in the final results; and (2) for subject merchandise exported by Golden Tide but not manufactured by it, the cash deposit will be the PRC countrywide rate (*i.e.*, 51.74 percent).

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with section 751(a)(2)(B) ofthe Act and 19 CFR 351.214.

Dated: July 23, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Grant Aldonas, Under Secretary.

[FR Doc. 03–19430 Filed 7–29–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–821]

Certain Hot-Rolled Carbon Steel Flat Products From India: Extension of Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of countervailing duty administrative review.

EFFECTIVE DATE: July 30, 2003.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230; telephone: (202) 482–2786.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Background

On January 22, 2003, the Department published a notice of initiation of administrative review of the countervailing duty order on certain hot-rolled carbon steel flat products from India, covering the period April 20, 2001, through December 31, 2002 (*see* 68 FR 3009). The preliminary results are currently due no later than September 2, 2003.

Extension of Preliminary Results of Review

In this administrative review, we are currently reviewing new subsidy allegations; including: debt forgiveness, debt restructuring, suspension of interest payments, and debt-to-equity conversions. In addition, we are reviewing numerous programs found countervailable during the original investigation. In order to complete our analysis, we not only require additional information, but also additional time. *See* July 24, 2003, Memorandum to Holly A. Kuga, Acting Deputy Assistant Secretary, RE: Extension of Preliminary Results: Certain Hot-Rolled Carbon Steel Flat Products from India. As a result, it is not practicable to complete the preliminary results of this review within the original time limit. Therefore, the Department is extending the time limits for completion of the preliminary results until no later than December 31, 2003.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: July 24, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–19429 Filed 7–29–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071703A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of an application for an exempted fishing permit; request for comments.

SUMMARY: NMFS announces the receipt of an application for an exempted fishing permit (EFP) from Mr. Jody Symons on behalf of Florida Offshore Aquaculture, Inc. of Madeira Beach, FL. If granted, the EFP would authorize a feasibility study for 24 months of net cage culture of cobia, mahi-mahi, greater amberjack, Florida pompano, red snapper and cubera snapper at a site approximately 33 statute miles (53 km) WSW. of John's Pass, FL. According to the applicant, the purpose of the proposed study is to determine the feasibility to grow commercial quantities of native fish species in the offshore environment of the eastern Gulf of Mexico using mariculture techniques. The applicant proposes to place hatchery-raised juvenile fish in net cages, feed them, allow them to grow for approximately 4 months, harvest each cage three times annually, land them in Florida, and sell them. No wild-caught fish will be involved in this study.

DATES: Comments must be received no later than 5 p.m., eastern time, on August 29, 2003.

ADDRESSES: Comments on the application must be mailed to Peter Eldridge, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via fax to 727–570–5583. Comments will not be accepted if submitted via e-mail or Internet. The application and related documents are available for review upon written request to the address above.

FOR FURTHER INFORMATION CONTACT: Peter Eldridge, 727–570–5305; fax: 727–570–5583; e-mail: peter.eldridge@noaa.gov.

SUPPLEMENTARY INFORMATION: The EFP is requested under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and regulations at 50 CFR 600.745(b), concerning scientific research activity, exempted fishing permits, and exempted educational activity.

Florida Offshore Aquaculture, Inc., of Madeira Beach, FL intends to conduct a feasibility study for 24 months to determine if it is practical to raise commercial quantities of cobia, mahi-mahi, greater amberjack, red snapper and cubera snapper in nets at a site approximately 33 statute miles (53 km) WSW. of John's Pass, FL (27°34.79′ N. lat., 83°16.11′ W. long.; depth 109 ft (33.2 m)). An important objective of the project is to determine environmentally responsible procedures that should be employed to ensure minimal environmental impacts on native species as well as the habitat surrounding the project, which will be approximately 1 square mile in area. The proposed site is over sandy bottom and is not in a traditional fishing area for recreational and commercial fisheries. Thus, there should be minimal interaction between the mariculture site and fishermen.

Four to eight Sea Station TM cages will be deployed. These cages have a central steel support spar within a steel tubular ring with spoke lines radiating from the top and bottom of the spar to the ring and a net stretched over the outside of this spar and cable frame. This design is self-supporting and provides total encasement of the fish; each cage is 53 ft (16 m) tall and 83 ft (25 m) in diameter and will contain a maximum fish biomass of 165,000 lb (75,000 kg). The cages utilize a net made out of spectra fiber and are stretched tightly over the entire structure, which greatly reduces the possibility of entanglement by sea turtles and marine mammals. The cages will be submerged except during harvesting and should pose no foreseeable threat to sea birds. Each cage will be attached to four 2,000–kg Danforth anchors to prevent movement from the site.

The stocking schedule is as follows: Cobia will be the first species stocked. There will be four 6–month stocking phases. During the first phase, four cages will be deployed, stocked and harvested; during the second phase stocking and harvesting of the initial four cages will continue; during the third phase four additional cages will be deployed with cobia, mahi-mahi, greater amberjack, Florida pompano, red snapper and cubera snapper. During the fourth phase stocking and harvesting of all species will occur.

Disease-free fingerlings will be obtained from the Aquaculture Center of the Florida Keys (59300 Overseas Highway, Marathon, FL, phone 305–743–6135) and the Marine Science Institute of the University of Texas (750 Channel View Drive, Port Aransas, TX, phone 361–749–6795). In the event that the fish in the cages develop diseases or parasites from wild sources and treatments are indicated, they will be treated with U.S. Food and Drug Administration (FDA)-approved vaccines, drugs or antibiotics only. This will be done in their feed or, in the extreme case, the cage(s) will be enclosed with material and will be treated with U.S. FDA-approved vaccines, drugs or antibiotics in solution. If any fish are found to have commutable virus, the entire population of the affected cage will be immediately removed and destroyed. The brood stock and their spawn will be genetically tagged using the satellite DNA method. The Florida Fish and Wildlife Conservation Commission (FFWCC) facility at Port Manatee, FL, will conduct this phase of the research.

Feeds for this project will be commercially manufactured diets formulated for the species being fed from established aquaculture feed companies. The pelletized feeds will contain essential feed ingredients only and will minimize introduction of

materials not utilized in the digestive process of the grow out species. No bycatch from any fisheries will be used as a source of food for this project.

There will be a comprehensive environmental monitoring program for the project developed by the Environmental Protection Agency. The monitoring program is described in Appendix 2 of the environmental assessment prepared for granting of an EFP for the project, should the project be approved. A copy of the environmental assessment can be obtained from Peter J. Eldridge (see **ADDRESSES**).

The monitoring program will utilize a transect approach to sampling. Benthic and water quality samples will be collected at intervals on two transects passing through the center of the cluster of cages. Each transect will be 2 km in length, and the transects intersect at the center of the cage cluster. The first transect lies parallel to the predominate current direction, and the second transect lies perpendicular to the first, or the predominate current. Control samples, water and benthos unaffected by cage operations, will be collected at the end of each transect. Prior to sampling, a description of the bathymetric and topographic characteristics of the mariculture site will be conducted.

During each sampling event, at the beginning and end of the period of active sampling, sea surface conditions (wind, wave amplitude and frequency, rain, cloud cover, and air temperature) will be recorded. Also, current stocking density, feeding rate reported on a per-cage and total-farm basis, and an analysis of feed contents (feed label information) will be noted.

Physical and chemical water quality parameters will include dissolved oxygen, salinity, temperature, turbidity, total suspended solids, chlorophyll, ammonia-N, nitrite-N, nitrate-N and total phosphate. The above water quality parameters will be assessed at mid-water and a meter from the bottom at each of the water quality sampling sites. Current speed and direction will be measured at each sampling event. The results of each monthly monitoring event will be submitted to the U.S. Environmental Protection Agency within 60 working days of sample collection. Specifications in the monitoring program are subject to modification.

NMFS intends to add the following conditions to any issuance of the EFP to ensure that there are no significant impacts on the environment or on our enforcement efforts regarding existing prohibitions on the taking of these species.

Proposed Conditions

1. Applicant must notify NMFS of any changes to the list of hatcheries to be used.

2. All fingerlings must be certified by the hatchery to be disease-free prior to placement in the cages.

3. Only chemotherapeutants approved by FDA or prescribed by a qualified veterinarian may be used.

4. Use of toxic chemicals as defined in 50 CFR 622.2 to control fouling of nets is prohibited.

5. Immediate notification must be provided to NMFS if any of the following events occur:

a. damage to cages or malfunction of supporting structures;

b. large-scale escapement, i.e., loss of more than 20 percent of a cage population;

c. Major disease outbreak resulting in mortalities exceeding 10 percent; or

d. entanglements of marine mammals or endangered or threatened sea turtles.

6. Quarterly reports are required beginning 90 days after anchoring cages in site on:

a. any disease occurrence;

b. any use of chemotherapeutants approved by FDA or prescribed by a qualified veterinarian;

c. outcome of any events requiring immediate notification (see 5 above);

d. changes in faunal composition of the area around the experimental site;

e. substrate and water quality monitoring;

f. harvests of maricultured fish species.

7. The following samples/records must be maintained a minimum of at least one year after the termination of the EFP and made available for inspection:

a. sources of feed including batch codes;

b. sources of each group of fish stocked including:

1. total number of fish by species;

2. estimated size of fish;

3. date of each introduction/stocking;

4. name, address and phone number of suppliers(s);

5. disease status of supplier's facility including, name, address, and phone number of analytical facilities assessing disease status;

6. samples of frozen specimens of each group of fish including fish harvested from cages, and during any unusual morbidity or mortality events as per USDA standards; and,

7. phase one fry will be satellite DNA documented by FFWCC geneticists at Port of Manatee Hatchery.

8. Fish must be maintained intact through offloading ashore. Fish will be placed in live haul containers located on the harvest vessels, brought to shore, and loaded on live haul trucks for sale to traditional live markets. Any fish over the capacity of the live market will be processed at Double D Seafood in St. Petersburg, FL and sold. Once harvested, the maricultured fish must be reported in accordance with state and Federal reporting requirements. Sale is allowed only to dealers licensed by Florida to sell maricultured fishery products landed in Florida.

9. Not less than 24 hours prior to harvest, provide the following information to the NMFS Law Enforcement Office, Southeast Region, St. Petersburg, FL, (727–570–5344): date, port, and facility at which maricultured product will be landed and name(s) and phone number(s) of licensed dealer(s) receiving the fish.

10. NMFS retains the authority to make periodic inspections of mariculture operations and records. If the applicant becomes a certified Florida aquaculturist, the applicant must notify NMFS Law Enforcement of the annual unique serial number required on all mariculture records, including sales, and the records must be made available for inspection by authorized officers and maintained for the duration of the EFP plus 1 year.

11. NMFS has the authority to suspend or revoke the EFP if: the application is found to contain false, incomplete, or inaccurate information; the applicant fails to comply with its terms and conditions; significant new information becomes available indicating that one of the conditions for denial of the EFP application applies (See 50 CFR 600.745(b)(8)). Revocation will require a General Counsel enforcement action per 600.745(b)(8) and 15 CFR 904 regulations.

12. Issuance of the EFP does not eliminate the need for the applicant to obtain any other Federal, state, or local authorizations required by law.

Based on a preliminary review, NMFS finds that this application warrants further consideration and is considering issuing an EFP. A final decision on issuance of the EFP will depend on a NMFS review of public comments received on the application, conclusions of environmental analyses conducted pursuant to the National Environmental Policy Act, and consultations with Florida, the Gulf of Mexico Fishery Management Council, the U.S. Coast Guard and the Environmental Protection Agency. The applicant requests a 24–month effective period for the EFP.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 25, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–19376 Filed 7–29–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

July 25, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: July 30, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin board of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 68565, published on November 12, 2002.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 25, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 1, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Guatemala and exported during the period which began on January 1, 2003 and extends through December 31, 2003.

Effective on July 30, 2003, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
340/640	2,364,567 dozen.
347/348	3,189,686 dozen.
351/651	528,595 dozen.
443	83,094 numbers.
448	54,010 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–19423 Filed 7–29–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of a Specific Limit for Certain Wool Textile Products Produced or Manufactured in Mexico

July 25, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection increasing a limit.

EFFECTIVE DATE: July 30, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The limit for Category 443 is being increased for swing and carryover.

The limit does not apply to NAFTA (North American Free Trade Agreement) originating goods, as defined in Annex 300–B, Chapter 4 and Annex 401 of the agreement. In addition, this limit does not apply to textile and apparel goods, assembled in Mexico, in which all fabric components were wholly formed and cut in the United States, entered under the United States Harmonized Tariff Schedule heading 9802.00.90.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 57408, published on September 10, 2002.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

The Committee for the Implementation of Textile Agreements

July 25, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 3, 2002 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool and man-made fiber textile products, produced or manufactured in Mexico and exported during the period which began on January 1, 2003 and extends through December 31, 2003. The levels established in that directive do not apply to NAFTA (North American Free Trade Agreement) originating goods, as defined in Annex 300–B, Chapter 4 and Annex 401 of NAFTA or to textile and apparel goods, assembled in Mexico, in which all fabric components were wholly formed and cut in the United States, entered under the United States Harmonized Tariff Schedule heading 9802.00.90.

Effective on July 30, 2003, you are directed to increase the current limit for Category 443 to 249,790 numbers [1], pursuant to the provisions of the NAFTA.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

[1] The limit has not been adjusted to account for any imports exported after December 31, 2002.

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–19424 Filed 7–29–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Export Visa Arrangement for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Vietnam

July 24, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA)

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection establishing export visa requirements.

EFFECTIVE DATE: August 11, 2003.

FOR FURTHER INFORMATION CONTACT: Shikha Bhatnagar, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Pursuant to Annex C of the Bilateral Textile Agreement, dated July 17, 2003, the Governments of the United States and the Socialist Republic of Vietnam agreed to establish a new Export Visa Arrangement for certain cotton, wool and man-made fiber textiles and textile products subject to specific quota limits, as detailed in the notice and letter to the Commissioner, Bureau of Customs and Border Protection, published in the **Federal Register** on May 16, 2003 (see 68 FR 26575), produced or manufactured in Vietnam and exported from Vietnam on and after August 11, 2003.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003).

Interested persons are advised to take all necessary steps to ensure that textile products that are entered into the United States for consumption, or withdrawn from warehouse for consumption, on and after August 11, 2003 will meet the visa requirements set forth in the letter published below to the Commissioner, Bureau of Customs and Border Protection.

James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 24, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Export Visa Arrangement in Annex C of the Bilateral Textile Agreement, dated July 17, 2003, between the Governments of the United States and the Socialist Republic of Vietnam, you are directed to prohibit, effective on August 11, 2003, entry into the Customs territory of the United States (i.e., the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textiles and textile products subject to specific quota limits, as detailed in the directive dated May 12, 2003, produced or manufactured in Vietnam and exported from Vietnam on and after August 11, 2003, for which the Government of Vietnam has not issued an appropriate export visa fully described below. Should additional categories, merged categories or part categories become subject to import quota, the additional, merged or part category(s) automatically shall be included in the coverage of this visa arrangement. Merchandise in the additional, merged or part category(s) exported on or after the date the category(s) becomes subject to import quotas shall require a visa.

A visa must accompany each commercial shipment of the aforementioned textile products, in the form of a circular stamped marking in blue ink appearing on the front of the original commercial invoice or successor document. The original visa shall not be stamped on duplicate copies of the invoice. The original invoice with the original visa stamp will be required to enter the shipment into the United States. Duplicates of the invoice and/or visa may not be used for this purpose.

Each visa stamp shall include the following information:

1. The visa number. The visa number shall be in the standard nine digit letter format, beginning with one numeric digit for the last digit of the year of export, followed by the two character alpha code specified by the International Organization for Standardization (ISO) for Vietnam (the code for the Vietnam is "VN"), and a six digit numerical serial number identifying the shipment; e.g., 3VN123456.

2. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

3. The original signature and the printed name of the issuing official authorized by the Government of Vietnam.

4. The correct category(s), merged category(s), part category(s), quantity(s) and unit(s) of quantity of the shipment in the unit(s) of quantity provided for in the U.S. Department of Commerce Correlation and in the Harmonized Tariff Schedule of the United States (HTSUS), annotated, or successor documents shall be reported in the spaces provided within the visa stamp (e.g., "Cat. 340-510 DOZ").

Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Visaed quantities are rounded to the closest whole number if the quantity exported exceeds one whole unit, but is less than the next whole unit. Half units are rounded up. If the quantity visaed is less than one unit, the shipment is rounded upwards to one unit. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment. For example, quota Category 340/640 may be visaed as "Category 340/640" or if the shipment consists solely of Category 340 merchandise, the shipment may be visaed as "Category 340" but not as "Category 640."

The Bureau of Customs and Border Protection shall not permit entry if the shipment does not have a visa, or if the visa number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect, illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged to any applicable quota.

The complete name and address of the company(s) actually involved in the manufacturing process of the textile product covered by the visa shall be provided on the textile visa document.

If the visa is not acceptable then a new correct visa or a visa waiver must be presented to Customs before any portion of the shipment will be released. A visa waiver may be issued by the U.S. Department of Commerce at the request of the Government of the Socialist Republic of Vietnam through its Embassy in Washington, DC. The waiver, if used, only waives the requirement to present a visa with the shipment. It does not waive the quota requirements. Visa waivers will only be issued for classification purposes or for one-time special purpose shipments that are not part of an ongoing commercial enterprise.

If the visaed invoice is deficient, Customs will not return the original document after entry, but will provide a certified copy of that visaed invoice for use in obtaining a new correct original visaed invoice, or a visa waiver.

If a shipment from Vietnam has been allowed entry into the commerce of the United States with either an incorrect visa or no visa, and redelivery is requested but cannot be made, the shipment shall be charged to any applicable category limit whether or not a replacement visa or waiver is provided.

Other Provisions

The date of export is the actual date the merchandise leaves Vietnam. For merchandise exported by vessel or carrier, this is the date on which the merchandise leaves the last port in Vietnam.

Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S. $800 or less do not require an export visa for entry and shall not be charged to existing quota levels.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

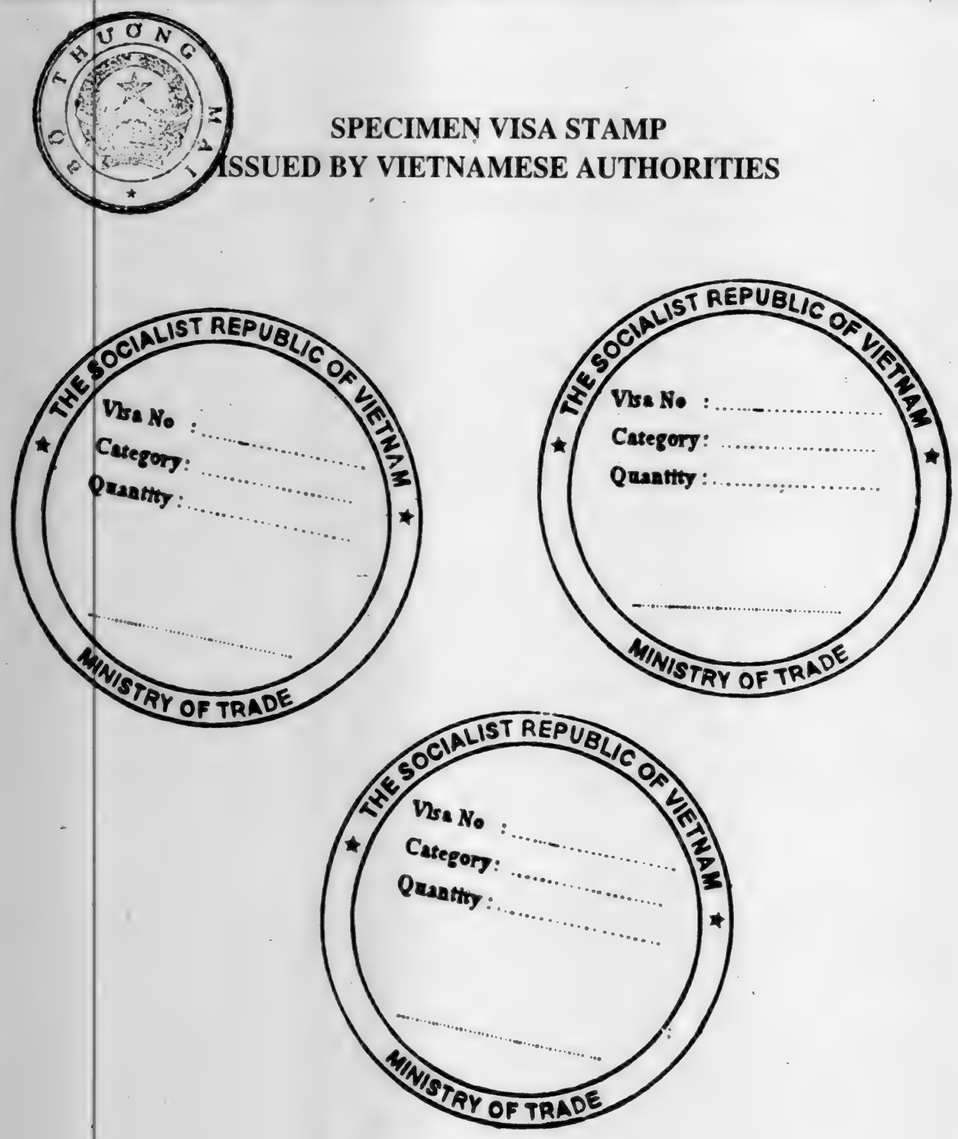
This letter will be published in the **Federal Register**.

Sincerely,
James C. Leonard III,
Chairman, Committee for the Implementation of Textile Agreements.

The Socialist Republic of Vietnam, Ministry of Trade

BILLING CODE 3510–DR–S

SPECIMEN VISA STAMP ISSUED BY VIETNAMESE AUTHORITIES



[FR Doc. 03–19422 Filed 7–29–03; 8:45 am]
BILLING CODE 3510–DR–C

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0369]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Rights in Technical Data and Computer Software

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use through November 30, 2003. DoD proposes that OMB extend its approval for use through November 30, 2006.

DATES: DoD will consider all comments received by September 29, 2003.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil*. Please cite OMB Control Number 0704–0369 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Mr. Euclides Barrera, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite OMB Control Number 0704–0369.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Mr. Euclides Barrera, (703) 602–0296. The information collection requirements addressed in this notice are available electronically via the Internet at: *http://www.acq.osd.mil/dp/dars/dfars.html*. Paper copies are available from Mr. Euclides Barrera, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION: *Title and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 227.71, Rights in Technical Data, and Subpart 227.72, Rights in Computer Software and Computer Software Documentation, and related provisions and clauses of the Defense Federal Acquisition Regulation Supplement (DFARS); OMB Control Number 0704–0369.

Needs and Uses: DFARS Subparts 227.71 and 227.72 prescribe the use of solicitation provisions and contract clauses containing information collection requirements that are associated with rights in technical data and computer software. DoD needs this information to implement 10 U.S.C. 2320, Rights in technical data, and 10 U.S.C. 2321, Validation of proprietary data restrictions. DoD uses the information to recognize and protect contractor rights in technical data and computer software that are associated with privately funded developments; and to ensure that technical data delivered under a contract is complete and accurate and satisfies contract requirements.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 1,235,970.

Number of Respondents: 54,925.

Responses Per Respondent: 26.

Annual Responses: 1,403,170.

Average Burden Per Response: .9 hours.

Frequency: On occasion.

Summary of Information Collection

DoD uses the following DFARS provisions and clauses in solicitations and contracts to require offerors and contractors to identify and mark data or software requiring protection from unauthorized release or disclosure in accordance with 10 U.S.C. 2320:

252.227–7013, Rights in Technical Data'Noncommercial Items.

252.227–7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.

252.227–7017, Identification and Assertion of Use, Release, or Disclosure Restrictions.

252.227–7018, Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program.

In accordance with 10 U.S.C. 2320(a)(2)(D), DoD may disclose limited rights data to persons outside the Government, or allow those persons to use limited rights data, if the recipient agrees not to further release, disclose, or use the data. Therefore, the clause at DFARS 252.227–7013, Rights in Technical Data—Noncommercial Items, requires the contractor to identify and mark data or software that it provides with limited rights.

In accordance with 10 U.S.C. 2321(b), contractors and subcontractors at any tier must be prepared to furnish written justification for any asserted restriction on the Government's rights to use or release data. The following DFARS clauses require contractors and subcontractors to maintain adequate records and procedures to justify any asserted restrictions:

252.227–7019, Validation of Asserted Restrictions—Computer Software.

252.227–7037, Validation of Restrictive Markings on Technical Data.

In accordance with 10 U.S.C. 2320, DoD must protect the rights of contractors that have developed items, components, or processes at private expense. Therefore, the clause at DFARS 252.227–7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, requires a contractor or subcontractor to submit a use and non-disclosure agreement when it obtains data from the Government to which the Government has only limited rights.

The provision at DFARS 252.227–7028, Technical Data or Computer Software Previously Delivered to the Government, requires an offeror to identify any technical data or computer software that it previously delivered, or will deliver, under any Government contract. DoD needs this information to avoid paying for rights in technical data or computer software that the Government already owns.

In accordance with 10 U.S.C. 2320(b)(7), a contractor that delivers or makes technical data available to the Government must furnish written assurance that the technical data is complete and accurate and satisfies contract requirements. The clause at DFARS 252.227–7036, Declaration of

Technical Data Conformity, implements this requirement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 03–19404 Filed 7–29–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

RIN 1820–ZA24

National Institute on Disability and Rehabilitation Research (NIDRR)

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a final priority for Collaborative Research Projects in Traumatic Brain Injury (TBI) under the Disability and Rehabilitation Research Projects (DRRP) Program under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal year (FY) 2003 and later years. We take this action to focus research attention on areas of national need. We intend this priority to improve the rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: This priority is effective August 29, 2003.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475 or via the Internet: *donna.nangle@ed.gov*

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP Program is to plan and conduct research, demonstration projects, training, and related activities that help to maximize the full inclusion and integration of individuals with disabilities into society and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (the Act). An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b).

General DRRP Requirements

- Involve, as appropriate, individuals with disabilities or their family members, or both, and persons who are members of groups that have traditionally been underrepresented in all aspects of the research as well as in design of clinical services and dissemination activities.
- Demonstrate knowledge of culturally appropriate methods of data collection, including understanding of culturally sensitive measurement approaches.
- Collaborate with other related projects, including the other funded Traumatic Brain Injury Model Systems (TBIMS) projects.

This priority supports the goals of President Bush's New Freedom Initiative (NFI) and is in concert with NIDRR's Long-Range Plan (the Plan). The NFI can be accessed on the Internet at: *http://www.whitehouse.gov/news/freedominitiative/freedominiative.html*

The Plan can be accessed on the Internet at: *http://www.ed.gov/offices/OSERS/NIDRR/Products.*

We published a notice of proposed priority for the Collaborative Research Projects in Traumatic Brain Injury (TBI) in the **Federal Register** on April 16, 2003 (68 FR 18601). No comments were received. There are no significant differences between the notice of proposed priority and this notice of final priority.

Note: This notice does not solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**. A notice inviting applications for FY 2003 awards was published in the **Federal Register** on May 14, 2003 (68 FR 26171). When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) Awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Background

The background statement for the following priority was published in the notice of proposed priority on April 16, 2003 (68 FR 18601).

Priority

The Assistant Secretary intends to fund Traumatic Brain Injury collaborative research projects for the purpose of generating new knowledge through research to improve treatment and services delivery outcomes for persons with TBI. A collaborative research project must:

(1) Collaborate with three or more of the 16 NIDRR TBI Model Systems projects. The three can include the lead project plus additional projects;

(2) Conduct research on questions of significance to TBI rehabilitation, using clearly identified research designs such as randomized control trials, observational research methodologies, or longitudinal studies. The research must focus on areas identified in the NFI and the Plan, ensuring that each project has sufficient sample size and methodological rigor to generate robust findings. Areas of interest include health and function, technology for function, community integration and independent living, employment, and long-term outcomes.

(3) Disseminate research findings to clinical and consumer audiences, using accessible formats.

(4) Evaluate impact of research findings on improved outcomes for persons with TBI.

Selection Criterion

The emphasis on research rigor plus the importance of the collaborative research program require a modification to the selection criteria for this program. The Secretary will add a criterion to reflect increased emphasis on research management. This criterion reads as follows: There must be a clearly delineated plan for research management, with focus on quality controls for data collection, management of research protocols, and provisions for oversight at collaborating sites.

Executive Order 12866

This notice of final priority has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of final priority are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of final priority, we have determined that the benefits of the priority justify the costs.

Summary of Potential Posts and Benefits

The potential cost associated with this priority is minimal while the benefits are significant. Grantees may anticipate costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

The benefits of the TBIMS and collaborative projects have been well established over the years that similar projects have been completed. This priority will generate new knowledge through research to improve treatment and services delivery outcomes for persons with TBI through collaborative research projects.

The benefit of this priority and application project requirements will be the establishment of new collaborative projects that generate, disseminate, and promote the use of new information that will improve the options for disabled individuals to perform regular activities in the community.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.133A, Disability Rehabilitation Research Project.)

Program Authority: 29 U.S.C. 762(g) and 764(b).

Dated: July 25, 2003.

Loretta Petty Chittum,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–19336 Filed 7–29–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

[CFDA No.: 84.326N]

Special Education—Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities—National Dissemination Center for Individuals With Disabilities (84.326N)

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2003.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services invites applications for FY 2003 under the Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities Program. This program is authorized under the Individuals with Disabilities Education Act (IDEA), as amended. This notice provides closing dates, priorities, and other information regarding the transmittal of applications.

Purpose of Program: This program provides technical assistance and information that (1) support States and local entities in building capacity to improve early intervention, educational, and transitional services and results for children with disabilities and their families; and (2) address goals and priorities for changing State systems that provide early intervention, educational, and transitional services for children with disabilities and their families.

Eligible Applicants: State educational agencies, local educational agencies, institutions of higher education, other public agencies, nonprofit private organizations, for-profit organizations, outlying areas, freely associated States, and Indian tribes or Tribal organizations.

Applications Available: July 30, 2003.

Deadline for Transmittal of Applications: August 29, 2003.

Deadline for Intergovernmental Review: September 29, 2003.

Estimated Available Funds: $1.6 million.

Maximum Awards: $1.6 million.

Note: in years 2–5 of the project period for the National Dissemination Center for Individuals with Disabilities grant, the maximum award amount is $1,900,000.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Page Limit: (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 70 pages, using the following standards:

- A "page" is 8.5" x 11", on one side only with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, references, or the letters of support. However, you must include all of the application narrative in Part III. We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Selection Criteria: In evaluating an application for a new grant under this competition, we will use selection criteria chosen from the general selection criteria in 34 CFR 75.210 of EDGAR. The specific selection criteria to be used for this competition will be provided in the application package for this competition.

General Requirements

(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients under this competition must involve qualified individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see section 661(f)(1)(A) of IDEA).

(c) If a project maintains a Web site, it must include relevant information and documents in an accessible form on the Web site.

Priority

Under 34 CFR 75.105(c)(3), we consider only applications that meet the following absolute priority:

Background

Since the early 1980s, the Office of Special Education Programs (OSEP) has funded a national clearinghouse to provide individuals and organizations throughout the Nation with information, referral, and technical assistance regarding children with disabilities and disability-related issues. Disseminating information is intended to support States and local entities in building capacity to improve early intervention, educational, and transitional services, and results for children with disabilities and their families, and to address systemic-change goals and priorities. As additional parents and professionals address issues related to the Individuals with Disabilities Education Act, as amended (IDEA), and the No Child Left Behind Act of 2001 (NCLB), the need for information will intensify and existing materials will have to be updated, revised, and improved upon.

Given the prominence and complexity of technology within our current information age and the increased demand for timely and accurate information, a central repository of information is critical to the success of a national dissemination effort. This priority will support a national center to serve as a central repository of products developed by OSEP-funded technical assistance and dissemination (TA & D) projects. The chief aim of the center, however, would be to disseminate information about IDEA and NCLB to all interested parties.

Priority

This priority will support a cooperative agreement for a national dissemination center that will (1) serve as a repository for products developed by OSEP's TA & D network, (2) maintain a database of products developed by OSEP's TA & D network, as well as scientifically-based products not developed by the TA & D network, and 3) disseminate products. This Center must be named the National Dissemination Center for Children with Disabilities.

The Center must—

(a) Conduct a semi-annual survey of all OSEP-funded TA & D centers to determine the current status of products developed and in development. The Center must report its findings to the Federal project officer.

(b) Collect and disseminate information on the programs and services affecting infants, toddlers, and children with disabilities under IDEA, NCLB, and other Federal education laws.

(c) Collect information related to research on the provision of special education and early intervention services and disseminate that information to teachers and related services professionals, early intervention personnel, teacher trainers, administrators, policy makers, and researchers through a variety of publications and conferences.

(d) Participate in programs and activities to collect and disseminate information on issues related to children with disabilities and promote networking among appropriate national, State, and local agencies and organizations that deal with issues under IDEA. The Center must coordinate its activities with Parent Training and Information Centers, Community Parent Resource Centers, the National and Regional Parent Technical Assistance Centers projects, Regional Resource Centers, and other centers supported under Part D, including research institutes and training centers, age-specific technical assistance centers, and content-specific technical assistance centers. Evidence of collaboration and proposed outcomes of the collaboration must be reported to the Federal project officer.

(e) Develop informational exchanges among the Center and other OSEP TA & D centers, and other federally-supported TA & D centers as appropriate.

(f) In addition to the above networking activities, collaborate and communicate with other OSEP-funded projects such as the State Improvement grantees, General Supervision Enhancement grantees, and the National Center for Special Education Accountability Monitoring. Evidence of collaboration and proposed outcomes of the collaboration must be reported to the Federal project officer.

(g) Establish a coordinated network and conduct outreach activities with relevant Federal, State, and local organizations aimed at disseminating relevant information on research, programs, and services.

(h) Maintain a database of all products developed by OSEP's TA & D network and other related products as appropriate. This database must include information on practices, including interventions, techniques, programs, and models. This information must be in a standard format that includes, at a minimum, the following:

(1) The specific practice and the intended audience.

(2) The extent to which clear guidelines for successful implementation of the practice are available.

(3) The extent to which the practice includes:

(i) Appropriate training for all implementers;

(ii) Systemic implementation utilizing appropriate organizational structures and processes; and

(iii) High expectations and effective assessment of student progress.

(4) Where interested individuals can see the practice in operation, producing the intended level of results.

(5) The cost to implement the practice.

(i) Develop and implement strategies to disseminate information to underrepresented groups such as those with limited English proficiency.

(j) Create and maintain a Web site that (1) links electronically to all OSEP-funded TA & D project Web sites, (2) contains a database of all OSEP-funded TA & D products, (3) contains a searchable database that includes all active OSEP discretionary projects, (4) keeps information and documents in an accessible form, and (5) is available in both English and Spanish.

The Center's product development activities must include but are not limited to the following:

(a) Developing products on IDEA legislation and NCLB as it relates to students with disabilities, as requested and approved by OSEP.

(b) Establishing a mechanism for synthesizing and disseminating research information to all interested parties. For topics that the What Works Clearinghouse does not plan to address the Center will use the What Works Clearinghouse protocols to carry out synthesis work. This process must include the involvement of researchers who will assist the Center in the synthesis of research. Topics must be approved by OSEP prior to synthesis. This activity must include but is not limited to publishing semi-annually the Research Connections in Special Education, an 8-page brief that synthesizes research results into user-friendly information for practitioners.

(c) Preparing the OSEP Digest and issuing briefs and other products designed to summarize recent research on critical issues for practitioners and other interested parties. These briefs and other reports, to the extent possible, must (1) build on an existing database of analyses of research studies (that over time will be submitted in a standard format for group designs) so that new reports will build on previous reports and (2) be available on the Web.

(e) Preparing the annual directories of OSEP-funded projects by compiling information about all OSEP-funded discretionary grants. This information must include an abstract of each grant, administrative information about the grant such as the grantee, name of project, name of project director, beginning and ending dates of grant, name of OSEP project officer, and other information as requested by OSEP. An electronic database that contains all of the information found in the directories must be maintained.

The Center must also:

(a) Maintain communication with the Federal project officer through monthly phone conversations and e-mail communication as needed. The Center must submit annual performance reports and provide additional written materials as needed for the Federal project officer to monitor the Center's work.

(b) Establish a document review board whose membership must be approved by OSEP. All OSEP TA & D projects will be required to submit proposals for new paper or electronic products to the review board prior to their development. The board must review these proposals in a timely fashion and approve for development all proposed products that are deemed necessary to meet existing information needs. The board must also identify information needs for which no product is available, and solicit proposals from OSEP's TA & D network for new products to meet these needs.

(c) Establish, maintain, and meet at least annually with an advisory committee consisting of persons with expertise in information dissemination, individuals with disabilities, parents, educators, service providers, researchers, and others as appropriate to review and provide advice on the Center's activities and plans. The members of this committee must be approved by OSEP.

(d) Evaluate the impact of the Center's activities relative to its users, the dissemination needs of its users, and the proposed outcomes of the dissemination. The Center must report its evaluation findings annually to the Federal project officer.

(e) In addition to the 2-day Project Directors' meeting listed in the General Requirements section of this notice, budget for an additional 2-day project meeting annually to attend the Research Project Directors' meeting and for at least eight 2-day trips annually as requested by OSEP to attend events such as Department briefings, Department-sponsored conferences, and other events needed to fulfill public awareness objectives.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of experts selected by the Secretary which review will be conducted in Washington, DC, during the last half of the project's second year. Projects must budget for the travel associated with this one-day intensive review;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the Center; and

(c) Evidence of the degree to which the Center's activities have contributed to changed practices and improved student outcomes.

Waiver of Proposed Rulemaking

It is generally our practice to offer interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the public comment requirements in the Administrative Procedure Act (5 U.S.C. 553) inapplicable to the priority in this notice.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In Fiscal Year 2003, the U.S. Department of Education is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities Program—CFDA #84.326N is one of the programs included in the pilot project. If you are an applicant under the Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.

3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

• We may request that you give us original signatures on all other forms at a later date.

• *Closing Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the Special Education Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities Program and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

1. You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

2. (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC, time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC, time) on the deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities Program at *http://e-grants.ed.gov*.

We have included additional information about the e-Application pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, Maryland 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: 301–470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html*.

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA 84.326N.

FOR FURTHER INFORMATION CONTACT: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: 1–202–205–8207.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document or a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the Grants and Contracts Services Team listed in this section. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Intergovernmental Review

The program in this notice is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the internet at the following site: *www.ed.gov/legislation/FedRegister*.

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at *http://www.access.gpo/nara/index.html*.

Program Authority: 20 U.S.C. 1485.

Dated: July 25, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–19337 Filed 7–29–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science; DOE/Advanced Scientific Computing Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Advanced Scientific Computing Advisory Committee (ASCAC). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, August 21, 2003, 8:30 a.m. to 5:30 p.m.; Friday, August 22, 2003, 8:30 a.m. to 1 p.m.

ADDRESSES: Hamilton Crowne Plaza Hotel, 14th and K Streets NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Melea Baker, Office of Advanced Scientific Computing Research, SC–30/Germantown Building, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290; telephone (301)–903–7486, e-mail: *Melea.Baker@science.doe.gov*.

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* The purpose of this meeting is to provide advice and guidance with respect to the advanced scientific computing research program.

Tentative Agenda: Agenda will include discussions of the following:

Thursday, August 21, 2003

Introduction
Remarks from the Director, Office of Science
Advanced Scientific Computing Research Update
Briefing on Major Facility by Oak Ridge National Laboratory
Science Case for Large-scale Simulation Workshop Presentation
Long Term Performance Measures Discussion
ASCR Strategic Plan Update
Public Comment

Friday, August 22, 2003

High End Computing Research Task Force Update
Briefing on DOE Cyber Security
New Business

Advisory Committee Open Discussion of Issues
Public Comment

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Melea Baker via FAX at 301–903–4846 or via e-mail (*Melea.Baker@science.doe.gov*). You must make your request for an oral statement at least 5 business days prior to the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585; between 9 a.m. and 4 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, on July 24, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–19342 Filed 7–29–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, August 21, 2003; 5:30 p.m.–9:30 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: W. Don Seaborg, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001; (270) 441–6806.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda:

5:30 p.m.—Informal Discussion
6 p.m.—Call to Order; Introductions; Approve July Minutes; Review Agenda
6:10 p.m.—DDFO's Comments
- ES & H issues
- Budget Update
- EM Project Updates
- CAB Recommendation Status
- Cleanup Scope Update
- Other

6:30 p.m.—Federal Coordinator Comments
6:40 p.m.—Ex-officio Comments
6:50 p.m.—Public Comments and Questions
7 p.m.—Administrative Issues
- Review of Workplan
- Review Next Agenda
- August 22 Dinner Meeting

7:20 p.m.—Review of Action Items
7:35 p.m.—Break
7:45 p.m.—Presentation
- Conflict of Interest
- Kentucky Pollutant Discharge Elimination System (KPDES) Permit Update

8:30 p.m.—Public Comments and Questions
8:55 p.m.—Task Force and Subcommittee Reports
- Water Task Force
- Waste Operations Task Force
- Long Range Strategy/Stewardship
- Community Concerns
- Public Involvement/Membership
- Ad Hoc for Chairs' Meeting

9:25 p.m.—Final Comments
9:30 p.m.—Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Dollins at the address listed above or by telephone at (270) 441–6819. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comments will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585; between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky; between 8 a.m. and 5 p.m. on Monday thru Friday or by writing to David Dollins, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001; or by calling him at (270) 441–6819.

Issued at Washington, DC, on July 24, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–19341 Filed 7–29–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency information collection activities: Proposed collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: proposed collection; comment request.

SUMMARY: The EIA is soliciting comments on the proposed three-year extension to the Form FE–781R, "Annual Report of International Electrical Export/Import Data."

DATES: Comments must be filed by September 29, 2003. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Steven Mintz. To ensure receipt of the comments by the due date, submission by FAX (202–586–9506) or e-mail *steven.mintz@hq.doe.gov* is recommended. The mailing address is Office of Coal and Power Imports and Exports, FE–27, Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Alternatively, Mr. Mintz may be contacted by telephone at 202–586–6050.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Mr. Mintz at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 et seq.) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) requires the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer-term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) under Section 3507(a) of the Paperwork Reduction Act of 1995.

The Office of Coal and Power Imports and Exports (Fossil Energy) will monitor the levels of electricity imports and exports and issue summary tabulations in a staff Annual Report. This information will be kept in the public docket files and will be available for public inspection and copying. The Office will also provide monthly tabulations of these data for use by the Energy Information Administration.

II. Current Actions

A clearance package will be submitted to the Office of Management and Budget requesting approval of a three-year extension with no change of the currently-approved collection.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

C. Can the information be submitted by the due date?

D. Public reporting burden for this collection is estimated to average 10 hours per response for those reporting annually, and 2.5 hours per response for those reporting quarterly. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

E. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

F. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

G. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information To Be Collected

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be collected?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, July 24, 2003.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 03–19343 Filed 7–29–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7536–6]

Science Advisory Board Staff Office; Request for Nominations for Additional Expertise for the Consultation on EPA's Strategy on Suspended and Bedded Sediments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office is requesting nominations to add additional expertise to the SAB Ecological Processes and Effects Committee for a panel to provide a consultation to EPA on Suspended and Bedded Sediments (SABS).

DATES: Nominations should be submitted by August 20, 2003.

ADDRESSES: Nominations should be submitted in electronic format through the Form for Nominating Individuals to Panels of the EPA Science Advisory Board provided on the SAB Web site, *www.epa.gov/sab*. To be considered, all nominations must include the information required on that form. Anyone who is unable to submit nominations via this form may contact Dr. L. Joseph Bachman, Designated Federal Officer as indicated below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Request for Nomination may contact Dr. L. Joseph Bachman, Designated Federal Officer (DFO), via telephone/voice mail at (202) 564–3968; via e-mail at *bachman.joseph@epa.gov*; or at U.S. EPA Science Advisory Board (1400A), 1200 Pennsylvania Ave NW., Washington DC 20460. General information about the SAB can be found in the SAB web site at *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION: *Summary:* The U.S. Environmental Protection Agency (EPA) Science Advisory Board Staff Office is requesting nominations to add expertise to the Science Advisory Board's Ecological Processes and Effects Committee to form a Panel on Suspended and Bedded Sediments (SABS). The EPA Office of Water is preparing a strategy for developing water quality criteria guidance for SABS, which will examine and evaluate the most promising scientific approaches for doing this. The Panel on Suspended and Bedded Sediments will provide a consultation on the Strategy, reporting through the EPA Science Advisory Board to the Agency.

The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. The SAB Staff Office provides technical and administrative support to the SAB in conducting its mission.

The project the Panel on Suspended and Bedded Sediments will undertake is expected to be a one-day consultation. Over that period, the Panel will comply with the provisions of FACA and all appropriate SAB procedural policies, including the SAB process for panel formation described in the "Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board," which can be found on the SAB's Web site at: *http://www.epa.gov/sab/pdf/ec02010.pdf*. Those selected to serve on the Panel will review the draft materials identified in this notice and respond to the charge questions provided below.

Background

Water Quality Standards: States, and Tribes with authorization to conduct a water quality standards program, are required by section 303(c) of the Clean Water Act (CWA) to adopt water quality standards. Such water quality standards must protect public health and welfare, protect designated uses, enhance the quality of water and serve the purposes of the CWA. Water quality standards consist of a designated use(s) for a water body, water quality criteria to protect the designated use(s), and an antidegradation policy. Section 101(a) of the CWA specifies that water quality standards should provide, wherever attainable, "water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water." Section 303(c) states that water quality standards should be established for water bodies taking into consideration their use and value for public water supplies; propagation of fish and wildlife, recreational, agricultural, industrial, navigation, and other purposes.

EPA, under section 304(a) of the CWA periodically publishes water quality criteria guidance for use by States and Tribes in setting water quality standards. This guidance typically contains recommended water quality criteria values or criteria development methodologies. Water quality criteria are levels of individual pollutants or water quality characteristics, or descriptions of conditions of a water body that, if met, will generally protect the designated use(s). Water quality criteria published pursuant to section 304(a) of the CWA are based solely on data and scientific judgements on the relationship between pollutant concentrations and environmental and human health effects and do not reflect consideration of economic impacts or the technological feasibility of meeting the chemical concentrations in ambient water.

States and Tribes may adopt EPA's recommended criteria into their water quality standards or they may adopt water quality criteria modified to reflect site-specific conditions, or criteria derived using other scientifically defensible methods. These criteria recommendations have been critical tools for the States, Tribes, and EPA to control most forms of pollution and improve water quality across the Nation.

Within recent years, however, the States and EPA have identified new issues that are causing significant water quality problems for which water quality criteria have yet to be published or updated. One such concern is the imbalance of suspended solids and bedded sediments (SABS) in water bodies. In many water bodies, SABS are severely out of balance due to human activities within the watershed. In most cases the problem is excessive sediments, but in some cases the problem is too little sediment.

Suspended and Bedded Sediments (SABS): Suspended and bedded sediments are defined by EPA as particulate organic and inorganic matter that suspend in or are carried by the water, and/or accumulate in a loose, unconsolidated form on the bottom of natural water bodies. This includes clean sediment, suspended sediment concentration (SSC), total suspended solids (TSS), bedload, turbidity, or in more common terms, dirt, soils or eroded materials.

In excessive amounts, SABS constitute a major ecosystem stressor. According to the National Water Quality Inventory—2000 Report, excessive sediment was the leading cause of impairment of the Nation's waters. The highest frequency of impairment was reported for rivers and streams, followed by lakes, reservoirs, ponds, and estuaries.

SABS can impair surface water designated uses in various ways. Excessive sediment deposits can severely impact aquatic-life uses by choking spawning gravels, depleting food sources for fish, filling rearing pools, and reducing beneficial habitat structure in stream channels. Sediments can impair aesthetic uses and can cause taste, odor, and other problems in drinking water supplies. Excessive sediment can block water-supply intakes and disturb treatment systems. Excessive turbidity can make swimming and other recreational uses of waters dangerous or undesirable. Turbidity can also block light transmission to the subsurface and disrupt the growth of submerged aquatic vegetation. Insufficient sediment supply can cause impairments to aquatic life uses by resulting in stream channel scour and destruction of habitat.

SABS present a water-quality problem different from that of manmade toxic compounds and similar to that of nutrients, as they naturally occur in water bodies, and in natural or background amounts, they are essential to the ecological function of a water body. These functions include transporting nutrients and replenishing sediment bedloads that create valuable micro-habitats, such as pools and sand bars. Thus, a basic premise for managing suspended and bedded sediments in water bodies to protect aquatic-life uses may be the need to maintain natural levels of SABS in water bodies.

There are also other types of designated uses of water bodies, other than aquatic life, which need to be protected from SABS. These include recreation in and on the water, shipping, drinking water sources, industrial water use and agricultural water use. The premise that SABS levels should be maintained at natural levels may not necessarily be valid for these types of uses. However, water bodies may have multiple use designations including aquatic life as well as those other uses listed above.

Water Quality Criteria for SABS: In 1976, EPA issued a water quality criteria recommendation for solids and turbidity that uses a 10% reduction of the depth of the compensation point for photosynthetic activity. For a variety of reasons, this criterion is seldom, if ever, used by the States. It is questionable whether this criterion would achieve intended protection for all different designated uses for water bodies.

Although most States currently have water quality criteria that can be applied to manage SABS, these are typically based on turbidity, suspended solids or settleable solids, and their effectiveness for dealing with all water quality impairments caused by SABS, especially as benchmarks for aquatic life protection based on natural levels, is questionable. In recent consultation with State representatives, the need for new water quality criteria for SABS or methodologies for deriving them on a site-specific basis was identified as one of the highest priorities for the water quality criteria program. As a result, the EPA Office of Water has concluded that to better manage SABS in all types of water bodies and for all designated uses, State and Tribal water quality managers need new and updated water quality criteria and information for SABS.

The potential approaches for criteria development that EPA's Office of Water is considering investigating in the Strategy for Developing Water Quality Criteria for Suspended and Bedded Sediments (SABS) include the following:

(1) State-by-State Reference Condition Criteria Derivation Approach;

(2) Conditional Probability Approach to Establishing Thresholds;

(3) Toxicological Dose-Response Approach;

(4) Relative Bed Stability and Sedimentation Approach;

(5) Rosgen Geomorphological Approach;

(6) Water Body Use Functional Approach; and

(7) Combinations of above approaches.

General information about water-quality criteria and water-quality standards can be found on the World Wide Web at *http://www.epa.gov/waterscience/standards/*. Information of obtaining a copy of the draft Strategy for Developing Water Quality Criteria for Suspended and Bedded Sediments will be provided at the time the formal meeting announcement is made for this consultation in September, or will be posted on the SAB Web site once the draft is provided to the SAB, whichever is earlier.

Proposed Charge to the Panel: While many questions and much research remain, EPA seeks the opportunity for a consultation with the Science Advisory Board to gain advice and recommendations on the best potential approaches to developing water quality criteria for suspended and bedded sediments as will be described in a draft *Strategy for Developing Water Quality Criteria for Suspended and Bedded Sediments (SABS)* to be prepared by the Office of Water. The Office of Water is also seeking recommendations on additional criteria development approaches for uses of water bodies other than aquatic life, and it is also seeking advice on any potential criteria derivation methodology not included in the Strategy.

SAB Request for Nominations: The EPA SAB is requesting nominations of individuals who are recognized, national-level experts in one or more of the following disciplines to supplement the expertise of the EPEC for this consultation: (a) Fluvial hydrogeomorphology; (b) fluvial habitat dynamics; (c) sediment and turbidity monitoring; and (d) fisheries biology.

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate qualified individuals to add expertise in the above areas for the panel for the consultation on the water quality strategy for suspended and bedded sediments.

Anyone who is unable to submit nominations in electronic format may contact Dr. L. Joseph Bachman at the mailing address given earlier in this notice under the heading **FOR FURTHER INFORMATION CONTACT.** Nominations should be submitted before August 20, 2003. Any questions concerning either this process or any other aspects of this notice should be directed to Dr. Bachman.

The EPA Science Advisory Board Staff Office will acknowledge receipt of nominations and inform nominators of the panel selected. From the nominees identified by respondents to this **Federal Register** notice (termed the "Widecast"), SAB Staff will develop a smaller subset (known as the "Short List") for more detailed consideration. Criteria used by the SAB Staff in developing this Short List are given at the end of the following paragraph. The Short List will be posted on the SAB Web site at *http://www.epa.gov/sab*, and will include, for each candidate, the nominee's name and their biosketch. Public comments will be accepted for 21 calendar days on the Short List. During this comment period, the public will be requested to provide information, analysis or other documentation on nominees that the SAB Staff should consider in evaluating candidates for the specific expertise to add to the panel for the consultation on the water quality strategy for suspended and bedded sediments.

For the EPA SAB, a balanced panel (*i.e.*, committee, subcommittee, or panel) is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. Public responses to the Short List candidates will be considered in the selection of the panel, along with information provided by candidates and information gathered by EPA SAB Staff Office independently on the background of each candidate (*e.g.*, financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluating an individual subcommittee or panel member include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) scientific credibility and impartiality; (c) availability and willingness to serve; (b) absence of financial conflicts of interest; and (e) ability to work constructively and effectively in committees.

Short List candidates will also be required to fill-out the "Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency" (EPA Form 3110–48). This confidential form, which is submitted by EPA SAB Members and Consultants, allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address: *http://www.epa.gov/sab/pdf/epaform3110-48.pdf*. Panel members will be asked to attend one public meeting in late September or early October, 2003 in addition to reviewing background material and a proposed strategy document provided by EPA.

Dated: July 22, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–19276 Filed 7–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7537–6]

Science Advisory Board Staff Office; Request for Nominations for a U.S. Environmental Protection Agency Science Advisory Board *Ad Hoc* Committee To Be Known as the Homeland Security Advisory Committee (HSAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces the formation of a new SAB *ad hoc* Committee on Homeland Security known as the Homeland Security Advisory Committee (HSAC), and is soliciting nominations for members of the Committee.

DATES: Nominations should be submitted in time to arrive by August 20, 2003.

ADDRESSES: Nominations should be submitted in electronic format through the *Form for Nominating Individuals to Panels of the EPA Science Advisory Board* provided on the SAB Web site. The form can be accessed through a link on the blue navigational bar on the SAB Web site, *www.epa.gov/sab*. To be considered, all nominations should include the information requested on that form. Anyone who is unable to access nominations on the SAB Web site can obtain a paper copy of the form by contacting Dr. Philip Sayre, Designated Federal Officer (DFO), as indicated below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Request for Nomination may contact Dr. Philip Sayre, by telephone/voice mail at (202) 564–7673, or via e-mail at *sayre.phil@epa.gov*. Those unable to access the nomination forms through the above Web site can contact Dr. Sayre at the following address: Philip Sayre, Ph.D., Science Advisory Board Staff Office, U.S. Environmental Protection Agency (Mail Code 1400A), Suite 6450–R, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001. General information about the SAB can be found in the SAB Web site at *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION: *Summary:* The EPA SAB Staff Office is announcing the formation of a new *ad hoc* Committee to help provide advice through the SAB to the Administrator, and other officials in the U.S. Environmental Protection Agency on matters pertaining to EPA's mission in protecting against the environmental and health consequences of terrorism. The SAB Staff Office is soliciting nominations for members of the new Committee.

This Committee is being formed to help provide advice to the Agency, as part of the SAB's mission, established by 42 U.S.C. 4365, to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical bases for EPA regulations.

The work of this Committee is expected to continue for approximately two to three years; the background for the effort is described below. Committee members will help provide advice to the Agency through the SAB. The EPA Administrator may determine that a particular HSAC meeting be partially or fully closed when matters under discussion are covered by one of the Government in the Sunshine Act (5 U.S.C. 552b) open meeting exceptions. The SAB is a chartered Federal Advisory Committee that reports directly to the Administrator.

The HSAC will comply with the openness provisions of the Federal Advisory Committee Act (FACA) and all appropriate SAB procedural policies, including the SAB process for panel formation described in the *EPA Science Advisory Board (SAB) Panel Formation Process: Immediate Steps To Improve Policies and Procedures*—An SAB Commentary (EPA–SAB–EC–COM–002–003), *http://www.epa.gov/sab/pdf/ecm02003.pdf*.

Background: EPA is supporting the President's National Strategy for Homeland Security and the new Department of Homeland Security in specific areas. In keeping with EPA's traditional mission of protecting human health and the environment, the Agency's mission includes protection of the country against the environmental and health consequences of acts of terrorism. EPA is responsible for assisting public and private utilities in securing the nation's drinking and wastewater infrastructure, for assisting those responsible for indoor air, for working with the Department of Homeland Security to support the enhancement of security for our chemical industry and hazardous materials sector, and for responding to and recovering from acts of biological, chemical, certain radiological, and other terrorist attacks. For example, recently EPA has monitored environmental conditions to help protect workers in and around the World Trade Center, and developed and implemented a plan for decontaminating the Hart Senate Office Building. For more information on the EPA Homeland Security Strategic Plan, please see *http://www.epa.gov/epahome/headline_100202.htm*.

The EPA organizations involved in implementation of Homeland Security include the following: The Office of Research and Development (ORD); the Office of Water (OW); the Office of Solid Waste and Emergency Response (OSWER); the Office of Air and Radiation (OAR); the Office of Pesticides, Prevention, and Toxic Substances (OPPTS); the Office of Environmental Information (OEI); and the Office of Enforcement and Compliance Assurance (OECA). Further, two new organizations within EPA have been formed to address homeland security matters: the Office of Homeland Security (OHS) which coordinates activities across the Agency, and the Office of Research and Development's (ORD's) National Homeland Security Research Center (NHSRC). The NHSRC has a 3-year mission to provide appropriate, effective and rapid risk assessment guidelines and technologies to help decision-makers prepare for, detect, contain, and decontaminate chemical and biological attacks directed against buildings and water treatment systems.

The Agency has asked the EPA Science Advisory Board to form an expert group to advise senior managers on matters related to homeland security. Examples of consultations for the Committee could include the following: (1) Detection and characterization of contaminants in water and air, response and mitigation, and prevention and protection; (2) improvements to rapid risk assessment for terrorist agents such as development of information systems and tools, risk estimates and risk communication methodologies; and (3) verification of the performance of technologies that can be used to monitor and ensure the quality of the nation's drinking water supplies, and technologies for use in monitoring indoor environments.

Charge to the Panel: When specific issues are identified for SAB advice, a charge to the Panel and the initiation of SAB HSAC activities will be announced on the SAB Web site at *http://www.epa.gov/sab/panels/paneltopics.html*.

Request for Nominations: The EPA SAB Staff Office requests nominations of individuals who are regarded as national and international level experts in homeland security to serve as Committee members. Areas of expertise sought include at least the following: (a) Atmospheric sciences and air modeling;

(b) engineering expertise for the design and operation of building systems for air treatment and handling; (c) engineering expertise for the design and operation of water treatment and dispersal systems; (d) analytical chemistry for chemical detection methodologies; (e) microbiology related to detection techniques for microbial pathogens; (f) expertise in inactivation and disposal techniques for bulk amounts of materials containing chemical, radiological, and biological agents; (g) radiation health; (h) toxicology; (i) clinical toxicology; (j) microbial pathology; (k) epidemiology; and (l) risk assessment.

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate qualified individuals to serve as committee members in the areas described above. The nominating form requests contact information about the person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's resume; and a general biosketch of the nominee indicating education, expertise, past research, recent service on other advisory committees or with professional associations, and recent grant and/or contract support.

Anyone who is unable to submit nominations through the SAB Web site, or has questions concerning any aspect of the nomination process, may contact Dr. Philip Sayre as indicated above in this FR notice. Nominations should be submitted in time to arrive no later than August 20, 2003.

The EPA Science Advisory Board Staff Office will acknowledge receipt of the nominations. From the nominees identified by respondents to this **Federal Register** notice and through other sources (termed the "Widecast"), SAB Staff Office will develop a smaller subset (known as the "Short List") for more detailed consideration. Criteria used by the SAB Staff Office in developing this Short List are given at the end of the following paragraph. The SAB Staff Office will contact individuals who are considered for inclusion in the Short List to determine whether they are willing to serve on the Committee. The Short List will be posted on the SAB Web site at: *http://www.epa.gov/sab*, and will include, for each candidate, the nominee's name and their biosketch. The Short List also will be available from Dr. Sayre at the address listed above. Public comments will be accepted for 21 calendar days on the Short List. During this comment period, the public will be requested to provide information, analysis or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates for the Committee.

For the EPA SAB, a balanced Committee is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. Public responses to the Short List candidates will be considered in the selection of the Committee members, along with information provided by candidates and information gathered by EPA SAB Staff Office independently on the background of each candidate (*e.g.*, financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluating individual nominees include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) absence of financial conflicts of interest; (c) scientific credibility and impartiality; (d) availability and willingness to serve; and (e) ability to work constructively and effectively in committees.

Those Short List candidates ultimately chosen to serve on the Committee will be appointed as Special Government Employees. Therefore, all Short List candidates will be required to fill out the "Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency" (EPA Form 3110–48). This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities as a Special Government Employee and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address: *http://www.epa.gov/sab/pdf/epaform3110-48.pdf*. Finally, some members may need to complete national security clearance forms to obtain access to sensitive or classified homeland security information. Committee members will likely be asked to attend one to two meetings and public conferences per year over the anticipated course of the advisory activity.

Dated: July 24, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–19352 Filed 7–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0258; FRL–7319–9]

Tetrahedron, Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to Tetrahedron, Inc. in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Tetrahedron, Inc. has been awarded multiple contracts to perform work for EPA, and access to this information will enable Tetrahedron, Inc. to fulfill the obligations of the contracts.

DATES: Tetrahedron, Inc. will be given access to this information on or before August 4, 2003.

FOR FURTHER INFORMATION CONTACT: Erik Johnson, FIFRA Security Officer, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7248; e-mail address: *johnson.erik@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0258. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Contractor Requirements

Under contract number 68–W–03–039, the contractor will perform the following:

The purpose of this contract is to support EPA and Agency position documents, reviews, and scientific technical assessments of potential hazards and risks of pesticides to human health and the environment. The contractor shall create Data Evaluation Reports which involve converting the studies supplied into a format specified by the program office and shall include secondary and Quality Assurance contractor reviews as specified:

- Review and evaluation of biopesticide, mammalian, non-target organisms toxicity, environmental fate, and product chemistry data.
- Review of confidential statement of formulations, manufacturing process, and labels
- Statements for compliance with United States Department of Agriculture National Organic Program Standards.
- Preliminary risk assessment for biopesticides.
- General assistance-biopesticide registration package review.

This contract involves no subcontractors.

EPA has determined that the contract described in this document involve work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contracts with Tetrahedron, Inc., prohibits use of the information for any purpose not specified in these contracts; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Tetrahedron, Inc. is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Tetrahedron, Inc. until the requirements in this document have been fully satisfied. Records of information provided to Tetrahedron, Inc. will be maintained by EPA Project Officers for these contracts. All information supplied to Tetrahedron, Inc. by EPA for use in connection with these contracts will be returned to EPA when Tetrahedron, Inc. has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: July 21, 2003.

Arnold E. Layne,

Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 03–19358 Filed 7–29–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0027; FRL–7320–3]

Endocrine Disruptor Methods Validation Subcommittee under the National Advisory Council for Environmental Policy and Technology; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: There will be a meeting of the Endocrine Disruptor Methods Validation Subcommittee (EDMVS), a Subcommittee under the National Advisory Council for Environmental Policy and Technology (NACEPT), on August 18–20, 2003. This meeting, as with all EDMVS meetings, is open to the public. Seating is on a first-come basis.

DATES: The meeting will be held on Monday, August 18, 2003, from 1:30 p.m. to 5:45 p.m.; Tuesday, August 19, 2003, from 7:45 a.m. to 2:30 p.m.; and Wednesday, August 20, 2003, from 8 a.m. to 2:45 p.m. mountain daylight time.

Individuals requiring special accommodations at the meeting, including wheelchair access, should contact Jane Smith at the address listed under **FOR FURTHER INFORMATION CONTACT** at least 5 business days prior to the meeting, so appropriate arrangements can be made.

ADDRESSES: The meeting will be held at The Table Mountain Inn, 1310 Washington, Ave., Golden, CO 80401.

Requests and comments may be submitted electronically, by telephone, fax, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Jane Smith, Designated Federal Official for the EDMVS, Exposure Assessment Coordination and Policy Division (7203M), Office of Science Coordination and Policy, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8476; fax number: (202) 564–8483; or e-mail address: *smith.jane-scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest if you produce, manufacture, use, consume, work with or import pesticide chemicals and other

substances. To determine whether you or your business may have an interest in this notice you should carefully examine section 408(p) of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996 (Public Law 104–170), 21 U.S.C. 346a(p) and amendments to the Safe Drinking Water Act (SDWA) (Public Law 104–182), 42 U.S.C. 300j–17. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0027. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other related information. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that are available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0282.

2. *Electronic access.* A meeting agenda, a list of EDMVS members and information from previous meetings are available electronically, from the EPA Internet Home Page at *http://www.epa.gov/scipoly/oscpendo/edmvs.htm*. You may also go directly to the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in docket ID number OPPT–2003–0027. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.I.

C. How Can I Request to Participate in the Meeting?

You may submit a request to participate in the meeting through electronic mail, telephone, fax, or in person. EPA would normally accept requests by mail, but in this time of delays in delivery of government mail due to health and security concerns, EPA cannot assure your request would arrive in a timely manner. Do not submit any information in your request that is considered CBI. Your request must be received by EPA on or before August 12, 2003. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2003–0027 in the subject line on the first page of your request.

1. *Electronically.* You may submit your request to participate electronically. Do not submit any information electronically that you consider to be CBI. Use WordPerfect 6.1/8.0 or ASCII file format and avoid the use of special characters and any form of encryption.

i. *EPA Docket.* You may use EPA's electronic public docket to submit a request to participate in this meeting. Go to EPA Dockets at *http://epa.gov/edocket*, and follow the online instructions for submitting materials. Once in the system, select "search," and then key in docket ID number OPPT–2003–0027.

ii. *E-mail.* Request to participate may be sent by e-mail to the person listed in **FOR FURTHER INFORMATION CONTACT**, or directly to the docket at *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2003–0027.

2. *Telephone or fax.* Send your request to participate to the individual identified in **FOR FURTHER INFORMATION CONTACT**.

D. How and to Whom Do I Submit Comments?

In accordance with the Federal Advisory Committee Act (FACA), the public is encouraged to submit written comments on the topic of this meeting. The EDMVS will have a brief period available during the meeting for public comment. It is the policy of the EDMVS to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EDMVS expects that public statements presented at its meeting will be on the meeting topic and not be repetitive of previously submitted oral or written statements.

You may submit comments electronically or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.E. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPPT–2003–0027. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2003–0027. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM by courier or package service, such as Federal Express to the address identified in Unit I.D.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2003–0027. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

E. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Background

In 1996, through enactment of the Food Quality Protection Act, which amended the Federal Food, Drug, and Cosmetic Act, Congress directed EPA to develop a screening program, using appropriate validated test systems and other scientifically relevant information, to determine whether certain substances may have hormonal effects in humans. In 1996, EPA chartered a scientific advisory committee, the Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), under the authority of the Federal Advisory Committee Act (FACA) to advise it on establishing a program to carry out Congress' directive. EDSTAC recommended a multi-step approach including a series of screens (Tier I screens) and tests (Tier II tests) for determining whether a chemical substance may have an effect in humans similar to that produced by naturally occurring hormones. EPA adopted almost all of EDSTAC's recommendations in the program that it developed, the Endocrine Disruptor Screening Program (EDSP), to carry out Congress' directive.

EDSTAC also recognized that there currently are no validated test systems for determining whether a chemical may have an effect in humans that is similar to an effect produced by naturally occurring hormones. Consequently, EPA is in the process of developing and validating the screens and tests that EDSTAC recommended for inclusion in the EDSP. In carrying out this validation exercise, EPA is working closely with, and adhering to the principles of the Interagency Coordinating Committee for the Validation of Alternate Methods (ICCVAM). EPA also is working closely with the Organization for Economic Cooperation and Development's (OECD) Endocrine Testing and Assessment Task Force to validate and harmonize endocrine screening tests of international interest.

Finally, to ensure that EPA has the best and most up-to-date advice available regarding the validation of the screens and tests in the EDSP, EPA formed the Endocrine Disruptor Methods Validation Subcommittee (EDMVS) of the National Advisory Council for Environmental Policy and Technology (NACEPT). EDMVS provides independent advice and counsel to the Agency through NACEPT, on scientific and technical issues related to validation of the EDSP Tier I screens and Tier II tests, including advice on methods for reducing animal use, refining procedures involving animals to make them less stressful, and replacing animals where scientifically appropriate.

The EDMVS has held seven meetings since its establishment in September 2001. The objectives of the first meeting, which was held in October 2001, (docket control number OPPT–42212D) were for EPA to provide:

1. An overview of EPA's Endocrine Disruptor Program.

2. Background information on test protocol validation and approaches.

3. For the EDMVS to develop a clear understanding of their scope, purpose, and operating procedures.

4. The EDMVS and the EDSP to determine the next steps.

The objectives of the December 2001 meeting (docket control number OPPT–42212E) were for the EDMVS to provide input and advice on:

1. EDMVS's mission statement and work plan.

2. The *in utero* through lactation assay detailed review paper.

3. The pubertal assay study design for the multi-dose and chemical array protocols.

4. The mammalian one-generation study design.

The objectives of the March 2002 meeting (docket control number 42212F) were for the EDMVS to provide input and advice on:

1. EPA's implementation process and practical aspects of validation.

2. The *in utero* through lactation assay protocol.

3. The fish reproduction assay detailed review paper.

4. Special studies, the fathead minnow assays, vitellogenin assay, and avian dosing protocol.

5. The steroidogenesis detailed review paper.

6. The aromatase detailed review paper.

7. A proposed standard suite of chemicals for testing in the Tier I screening assays.

8. The current efforts related to evaluating the relevance of animal data to human health.

9. EPA's approach to addressing low dose issues.

The objective of the June 2002 teleconference meeting (docket ID number OPPT–2002–0020) was for the EDMVS to provide input and advice on the steroidogenesis detailed review paper.

The objectives of the July 2002 meeting (docket ID number OPPT–2002–0029) were:

1. To review the screening criteria, recommended by EDSTAC and adopted by EDSP for screens.

2. To receive an update of the National Interagency Center for the Evaluation of Alternate Toxicological Methods (NICEATM) estrogen and androgen receptor binding efforts.

3. To discuss and provide advice on general dose setting issues; and to provide comments and advice on:

- A pubertal--special study--restricted feeding.

- A mammalian 2-generation draft propylthiouracil (PTU) special study.
- An amphibian metamorphosis detailed review paper.
- An invertebrate detailed review paper.

The objective of the December 2002 teleconference meeting (docket ID number OPPT–2002–0059) was for the EDMVS to provide input and advice on the Tier II fish life cycle assay detailed review paper.

The objectives of the June 5–6, 2003 (docket ID number OPPT–2003–0016) were for EDMVS to provide input and advice on:

1. The Tier II mammalian 2-generation special study on the one-generation extension results.

2. The Tier I steroidogenesis (sliced testes) study results.

3. The Tier I pre-optimization, substrate characterization for aromatase placental tissue study.

III. Objectives of the August 18–20, 2003 Meeting

The objectives of the August 18–20 meeting (docket ID number OPPT–2003–0027) are to:

1. Review and discuss the status/results of the prevalidation work on:

- The fish screening assay, specifically: The survey of vitellogenin methods in fathead minnow, zebrafish and medaka; the comparative evaluation of the fathead minnow assays; and the fish screen (non-spawning) assay.
- The steroidogenesis assay optimized protocol.

2. Provide input and advice on the:

- EDSP's validation plans for the fish screening assay and steroidogenesis assay.
- Strain/species white paper.
- Chemicals used in EDSP's prevalidation and validation.
- Avian detailed review paper.
- Issues related to the pubertal assays.

3. Receive an update on the amphibian workshop conducted recently.

A list of the EDMVS members and meeting materials are available on our web site (*http://www.epa.gov/scipoly/oscpendo/edmvs.htm*) and in the public docket.

List of Subjects

Environmental protection, Endocrine system, Endocrine disruptors, Endocrine disruptor screening program.

Dated: July 23, 2003.

Kathryn R. Mahaffey,

Acting Director, Office of Science Coordination and Policy, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 03–19359 Filed 7–29–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7536–5]

Science Advisory Board Staff Office; Advisory Council on Clean Air Compliance Analysis Health Effects Subcommittee; Notification of Upcoming Public Teleconference and Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board Staff Office is announcing a public teleconference and a public meeting of the Advisory Council on Clean Air Compliance Analysis (Council) Health Effects Subcommittee (HES).

DATES:

August 8, 2003. A public teleconference call meeting for the HES will be held from 11 a.m. to 12:30 p.m. (eastern time).

August 27–29, 2003. A public meeting for the HES will be held from 9 a.m. on August 27, 2003 to 2:30 p.m on August 29, 2003 (eastern time).

ADDRESSES: Participation in the teleconference meeting will be by teleconference only. The meeting location for the August 27–29, 2003, meeting of the HES will be in Washington, DC. The meeting location will be announced on the SAB Web site, *http://www.epa/sab* two weeks before the meeting.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain the call-in number and access code to participate in the teleconference meeting may contact Ms. Sandra Friedman, EPA Science Advisory Board Staff, at telephone/voice mail: (202) 564–2526; or via e-mail at *friedman.sandra@epa.gov*, or Ms. Delores Darden, EPA Science Advisory Board Staff at telephone/voice mail: (202) 564–2282; or via e-mail at *darden.delores@epa.gov*. Any member of the public wishing further information regarding the Council or the HES may contact Dr. Angela Nugent, Designated Federal Officer (DFO), U.S. EPA Science Advisory Board (1400A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; by telephone/voice mail at (202) 564–4562; or via e-mail at *nugent.angela@epa.gov*. General information about the SAB can be found in the SAB Web site at *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION:

Background. Pursuant to the Federal Advisory Committee Act, Public Law 92–463, Notice is given that the HES will hold a public teleconference, as described above, to prepare for the public meeting, also described above. The purpose of the public meeting is to advise the Agency on its plan to develop a health effects assessment for the third in a series of statutorily mandated comprehensive analyses of the total costs and benefits of programs implemented pursuant to the Clean Air Act.

Background on the Council, the HES, and on the advisory project was provided in a **Federal Register** notice published on February 14, 2003 (68 FR 7531–7534).

The HES will be providing advice, through the Council, on the review document, "Benefits and Costs of the Clean Air Act 1990–2020; Revised Analytical Plan for EPA's Second Prospective Analysis" currently found at the following Web site, maintained by EPA's Office of Air and Radiation at: *http://www.epa.gov/oar/sect812/* under the link "Study Blueprint and Charge Questions Electronic Copy." This link provides electronic access to the Revised Analytical Plan, the "change pages" given to the Council and HES in July 2003, and the detailed review charge questions.

Procedures for Providing Public Comment. It is the policy of the EPA Science Advisory Board (SAB) Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA SAB Staff Office expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For conference call meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Interested parties should contact the Designated Federal Official (DFO) at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the participants and public at the meeting. *Written Comments:* Although written comments are accepted until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the DFO at the address/contact information noted above in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

Meeting Accommodations: Individuals requiring special accommodation to access these meetings, should contact Dr. Nugent at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: July 22, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–19277 Filed 7–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0327; FRL–7284–6]

Pesticide Reregistration Performance Measures and Goals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's progress in meeting its performance measures and goals for pesticide reregistration during fiscal year 2002. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requires EPA to publish information about EPA's annual achievements in this area. This notice discusses the integration of tolerance reassessment with the reregistration process, and describes the status of various regulatory activities associated with reregistration and tolerance reassessment. The notice gives total numbers of chemicals and products reregistered, tolerances reassessed, Data Call-Ins issued, and products registered under the "fast-track" provisions of FIFRA. Finally, this notice contains the schedule for completion of activities for specific chemicals during fiscal years 2003 and 2004.

DATES: This notice is not subject to a formal comment period. Nevertheless, EPA welcomes input from stakeholders and the general public. Written comments, identified by the docket ID number [OPP–2002–0327], should be received on or before September 29, 2003.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Carol P. Stangel, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone: (703) 308–8007, e-mail: stangel.carol@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Important Information

A. Does this Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who are interested in the progress and status of EPA's pesticide reregistration and tolerance reassessment programs, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information or Copies of Support Documents?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2002–0327. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. To access information about pesticide reregistration, go to the home page for the Office of Pesticide Programs at www.epa.gov/pesticides and select "Reregistration" under "Regulating Pesticides," or go directly to www.epa.gov/pesticides/reregistration/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or

other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment, and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

2. *EPA Dockets—i.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0327. The system is an, "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2002–0327. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP– 2002–0327.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0327. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Background

EPA must establish and publish in the **Federal Register** its annual performance measures and goals for pesticide reregistration, tolerance reassessment, and expedited registration, under section 4(l) of FIFRA, as amended by the Food Quality Protection Act of 1996 (FQPA). Specifically, such measures and goals are to include:

- The status of reregistration.
- The number of products reregistered, canceled, or amended.
- The number and type of data requests or Data Call-In (DCI) notices under section 3(c)(2)(B) issued to support product reregistration by active ingredient.
- Progress in reducing the number of unreviewed, required reregistration studies.
- The aggregate status of tolerances reassessed.
- The number of applications for registration submitted under subsection (k)(3), expedited processing and review of similar applications, that were approved or disapproved.
- The future schedule for reregistrations in the current and succeeding fiscal year.
- The projected year of completion of the reregistrations under section 4.

FIFRA, as amended in 1988, authorizes EPA to conduct a comprehensive pesticide reregistration program--a complete review of the human health and environmental effects of older pesticides originally registered before November 1, 1984. Pesticides meeting today's scientific and regulatory

standards may be declared "eligible" for reregistration. To be eligible, an older pesticide must have a substantially complete data base, and must not cause unreasonable adverse effects to human health or the environment when used according to Agency approved label directions and precautions.

In addition, all pesticides with food uses must meet the safety standard of section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA) 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) of 1996. Under FFDCA, EPA must make a determination that pesticide residues remaining in or on food are "safe"; that is, "that there is reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue" from dietary and other sources. In determining allowable levels of pesticide residues in food, EPA must perform a more comprehensive assessment of each pesticide's risks, considering:

- Aggregate exposure (from food, drinking water, and residential uses).
- Cumulative effects from all pesticides sharing a common mechanism of toxicity.
- Possible increased susceptibility of infants and children; and
- Possible endocrine or estrogenic effects.

As amended by FQPA, FFDCA requires the reassessment of all existing tolerances (pesticide residue limits in food) and tolerance exemptions within 10 years, to ensure that they meet the safety standard of the law. EPA was directed to give priority to the review of those pesticides that appear to pose the greatest risk to public health, and to reassess 33% of the 9,721 existing tolerances and exemptions within 3 years (by August 3, 1999), 66% within 6 years (by August 3, 2002), and 100% in 10 years (by August 3, 2006). (Note: Although the total number of tolerances existing on August 3, 1996, and subject to FQPA reassessment was initially reported as 9,728, that number has been corrected to 9,721, based on the Agency's Tolerance Reassessment Tracking System.)

EPA is meeting the FFDCA's tolerance reassessment requirements through reregistration and several other program activities. In making reregistration eligibility decisions, the Agency also is completing much of tolerance reassessment, which is helping us meet the time frames mandated by the new law. EPA reassessed the first 33% of all food tolerances by August 3, 1999, and the second 33% of all food tolerances by August 3, 2002. EPA is focusing particularly on priority Group 1 pesticides, those identified as posing the greatest potential risks. Over half of the universe of tolerances to be reassessed are included in this category, including tolerances for the organophosphate (OP) pesticides, the Agency's highest priority for review. Carbamate, organochlorine, and B2 (probable human) carcinogen pesticides also are included in priority Group 1. Although EPA is directing most of its resources toward this group, a number of Group 1 pesticides will nevertheless be reassessed in the third 33% owing to the challenging issues they present. EPA's approach to tolerance reassessment under FFDCA, including the three priority Groups, is described fully in the Agency's document, "Raw and Processed Food Schedule for Pesticide Tolerance Reassessment" (62 FR 42020, August 4, 1997) (FRL–5734–6). In conducting the pesticide reregistration and tolerance reassessment programs at present, EPA is developing measures that show results in terms of outcomes, as well as traditional outputs, as directed by OMB.

III. FQPA and Program Accountability

One of the hallmarks of the FQPA amendments to the FFDCA is enhanced accountability. Through this summary of performance measures and goals for pesticide reregistration, tolerance reassessment, and expedited registration, EPA describes progress made during the past year in each of the program areas included in FIFRA section 4(l).

A. Status of Reregistration

During fiscal year (FY) 2002 (from October 1, 2001, through September 30, 2002), EPA made significant progress in completing risk assessments and risk management decisions for the OP pesticides, the Agency's highest priority chemicals for reregistration and tolerance reassessment, and for other pesticides. See Table 1.

TABLE 1.—REREGISTRATION/RISK MANAGEMENT DECISIONS COMPLETED: FY 2002 AND TOTAL

FY 2002: 36 Decisions	Total, End of FY 2002
7 REDs 1,4-Bis(bromoacetoxy)-2-butene Endosulfan[1] Fenamiphos (Voluntary Cancellation)[2] (HOCH2-)methyldithiocarbamate (Voluntary Cancellation) Lindane[1] Oxyfluorfen Thiabendazole	214 REDs
8 IREDs Azinphos-methyl[1,2] Diazinon[1,2] Dicrotophos[2] Disulfoton[2] Methamidophos[2] Naled[2] Oxydemeton-methyl[2] Phosmet[1,2]	21 IREDs

TABLE 1.—REREGISTRATION/RISK MANAGEMENT DECISIONS COMPLETED: FY 2002 AND TOTAL—Continued

	FY 2002: 36 Decisions	Total, End of FY 2002
21 TREDs		32 TREDs
Asulam		
Calcium hypochlorite		
Chlorine gas		
Chlorpropham		
Difenzoquat		
Diquat dibromide		
Diuron (RED to be completed in FY 2003)		
Fenarimol		
Fenbutatin-oxide		
Hexazinone		
Imazalil (RED to be completed in FY 2003)		
Linuron		
Metolachlor		
Norflurazon		
Primisulfuron-methyl		
Pronamide		
Propanil (RED to be completed in FY 2003)		
Sodium hypochlorite		
Tebuthiuron		
Tetrachlorvinphos[2]		
Urea		

[1]Subject to NRDC consent decree
[2]Organophosphate (OP) pesticide

The Agency's decisions are embodied in Reregistration Eligibility Decision (RED) documents, Interim Reregistration Eligibility Decisions (IREDs), or Reports on FQPA Tolerance Reassessment Progress and Interim Risk Management Decisions (TREDs).

1. *REDs.* Through the reregistration program, EPA is reviewing current scientific data for older pesticides (those initially registered before November 1984), reassessing their effects on human health and the environment, and requiring risk mitigation measures as necessary. Pesticides that have sufficient supporting data and whose risks can be successfully mitigated may be declared "eligible" for reregistration. EPA presents these pesticide findings in a RED document.

i. *Overall RED progress.* EPA's overall progress at the end of FY 2002 in completing Reregistration Eligibility Decisions (REDs) is summarized in Table 2.

TABLE 2.—OVERALL RED PROGRESS, END OF FY 2002

REDs completed	214 (35%)
Cases canceled	231 (38%)
REDs to be completed	167 (27%)
Total reregistration cases	612 (100%)

ii. *Profile of completed REDs.* A profile of the 214 REDs completed by the end of FY 2002 is presented in Table 3.

TABLE 3.—PROFILE OF 214 REDS COMPLETED, END-OF FY 2002

Pesticide active ingredients	313
Pesticide products	8,600+
REDs with food uses	107
Post-FQPA REDs	73
Post-FQPA REDs with food uses	54
Tolerance reassessments completed for post-FQPA REDs*	1,322

*EPA is revisiting tolerances associated with the 53 food use REDs that were completed before FQPA was enacted to ensure that they meet the safety standard of the new law, as set forth in the Agency's August 4, 1997, Schedule for Pesticide Tolerance Reassessment.

iii. *Risk reduction in REDs.* Reducing pesticide risks is an important aspect of the reregistration program. In developing REDs, EPA works with stakeholders including pesticide registrants, growers and other pesticide users, and environmental and public health interests, as well as the States, USDA, and other Federal agencies and others to develop voluntary measures or regulatory controls needed to effectively reduce risks of concern. Almost every RED includes some measures or modifications to reduce risks. The options for such risk reduction are extensive and include voluntary cancellation of pesticide products or deletion of uses; declaring certain uses ineligible or not yet eligible (and then proceeding with follow-up action to cancel the uses or require additional supporting data); restricting use of products to certified applicators; limiting the amount or frequency of use; improving use directions and precautions; adding more protective clothing and equipment requirements; requiring special packaging or engineering controls; requiring no-treatment buffer zones; employing ground water, surface water, or other environmental and ecological safeguards; and other measures.

2. *Interim REDs or IREDs.* EPA issues IREDs for pesticides that are undergoing reregistration, require a reregistration eligibility decision, and also must be included in a cumulative assessment under FQPA because they are part of a group of pesticides that share a common mechanism of toxicity. An IRED is issued for each individual pesticide in the cumulative group when EPA completes the pesticide's risk assessment and interim risk management decision. An IRED may include measures to reduce food, drinking water, residential, occupational, and/or ecological risks, to gain the benefit of these changes before the final RED can be issued following the Agency's consideration of cumulative risks. For example, EPA generally does not consider individual OP or N-methyl carbamate pesticide decisions to be completed REDs or tolerance reassessments. Instead, the Agency is issuing IREDs for these chemicals at this time. EPA will make final decisions and may issue REDs for these pesticides when the cumulative risks of the OPs or carbamates have been considered. Once the Agency completes a cumulative evaluation of the OPs, final decisions will be made and REDs may be issued for the 24 OP pesticides that initially had IREDs.

3. *Tolerance reassessment "TREDs."* EPA issues Reports on FFDCA Tolerance Reassessment Progress and Interim Risk Management Decisions, known as TREDs, for pesticides that require tolerance reassessment decisions under FFDCA, but do not require a reregistration eligibility decision at present because:

- The pesticide was first registered after November 1984 and is considered a "new" active ingredient, not subject to reregistration (e.g., fenarimol and primisulfuron-methyl in FY 2002);
- EPA completed a RED for the pesticide before FQPA was enacted (most FY 2002 TREDs are in this post-RED category); or
- The pesticide is not registered for use in the U.S. but tolerances are established that allow crops treated with the pesticide to be imported from other countries (e.g., mevinphos).

During FY 2002, EPA also completed TREDs for three pesticides (diuron, imazalil, and propanil) whose REDs are under development. The Agency expects to complete REDs for these pesticides in FY 2003.

As with IREDs, EPA will not take final action on pesticides subject to TREDs that are part of a cumulative group until cumulative risks have been considered for the group.

4. *Goals for FY 2003 and future years.* EPA's major pesticide reregistration and tolerance reassessment goals for FY 2003 and future years are as follows. In addition to achieving these traditional output-oriented goals, EPA also is working to develop measures that show results in terms of outcomes, as directed by OMB.

i. *Complete individual pesticide risk management decisions.* EPA's goal in conducting the reregistration and tolerance reassessment program is to complete 20–35 Reregistration Eligibility Decisions (REDs) and Interim REDs each year during fiscal years 2003 through 2006, giving priority to pesticides with associated tolerances. Candidate pesticides for these decisions are listed near the end of this document.

ii. *Evaluate OP and other cumulative risks.* EPA began developing methods for cumulative risk assessment and the components of a cumulative risk assessment for the OP pesticides soon after FQPA was enacted in August 1996, although the Agency had begun considering this approach earlier, when it was recommended by NAS in their 1993 report, "Pesticides in the Diets of Infants and Children." These efforts came to fruition in FY 2002. In addition to completing most of the remaining risk assessments and risk management decisions for individual OP pesticides, EPA issued the preliminary OP cumulative risk assessment in December 2001. After considering public comment, stakeholder input, and the results of additional scientific review, EPA issued a revised OP cumulative risk assessment in June 2002 and has begun risk management actions based on this revised assessment. The Agency plans to review public and SAP comments on the revised cumulative risk assessment as well as examine newly submitted data in further evaluating OP cumulative risks during 2003. The Agency then may issue final reregistration eligibility and tolerance reassessment decisions for individual OP pesticides with IREDs and TREDs. Consideration of the cumulative risks of N-methylcarbamates, chloroacetanilides, and perhaps other common mechanism groups of pesticides will follow. For further information, see EPA's cumulative risk website, http://www.epa.gov/pesticides/cumulative/.

iii. *Complete 100% of tolerance reassessment decisions.* EPA is continuing to reassess tolerances within time frames set forth in FFDCA as amended by FQPA, giving priority to those food use pesticides that appear to pose the greatest risk. Integration of the reregistration and tolerance reassessment programs has added complexity to the reregistration process for food use pesticides. The Agency successfully reached its first two tolerance reassessment milestones by completing over 33% of all tolerance reassessment decisions by August 3, 1999, and over 66% by August 3, 2002. EPA is working toward meeting the final FQPA tolerance reassessment goal: To complete 100% of all required tolerance reassessment decisions by August 3, 2006.

B. Product Reregistration; Numbers of Products Reregistered, Canceled, and Amended

At the end of the reregistration process, after EPA has issued a RED and declared a pesticide reregistration case eligible for reregistration, individual end-use products that contain pesticide active ingredients included in the case still must be reregistered. This concluding part of the reregistration process is called "product reregistration."

In issuing a completed RED document, EPA sends registrants a Data Call-In (DCI) notice requesting any product-specific data and specific revised labeling needed to make final reregistration decisions for each of the individual pesticide products covered by the RED. Based on the results of EPA's review of these data and labeling, products found to meet FIFRA and FFDCA standards may be reregistered.

A variety of outcomes are possible for pesticide products completing this final phase of the reregistration process. Ideally, in response to the DCI notice accompanying the RED document, the pesticide producer, or registrant, will submit the required product-specific data and revised labeling, which EPA will review and find acceptable. At that point, the Agency may reregister the pesticide product. If, however, the product contains multiple active ingredients, the Agency instead issues an amendment to the product's registration, incorporating the labeling changes specified in the RED; a product with multiple active ingredients may not be fully reregistered until the last active ingredient in its formulation is eligible for reregistration. In other situations, the Agency may temporarily suspend a product's registration if the registrant has not submitted required product-specific studies within the time frame specified. The Agency may cancel a product's registration because the registrant did not pay the required registration maintenance fee. Alternatively, the registrant may request a voluntary cancellation of their end-use product registration.

1. *Product reregistration actions in FY 2002.* EPA counts each of the post-RED product outcomes described above as a product reregistration action. A single pesticide product may be the subject of several product reregistration actions within the same year. For example, a product's registration initially may be amended, then the product may be reregistered, and later the product may be voluntarily canceled, all within the same year. During FY 2002, EPA completed the product reregistration actions detailed in Table 4. The program's goal is to complete 400–450 product reregistration actions in FY 2003.

TABLE 4.—PRODUCT REREGISTRATION ACTIONS COMPLETED DURING FY 2002

Product reregistration actions	77
Product amendment actions	51
Product cancellation actions	186
Total actions	314

2. *Status of the product reregistration universe.* The status of the universe of pesticide products subject to reregistration at the end of FY 2002 is shown in Table 5 below. This overall status information is not "cumulative"--it is not derived from summing up a series of annual actions. Adding annual actions would result in a larger overall number since each individual product is subject to multiple actions--it can be amended, reregistered, and/or canceled, over time. Instead, the "big picture" status information in Table 5 should be considered a snapshot in time. As registrants and EPA make marketing and regulatory decisions in the future, the status of individual products may change, and numbers in this table are expected to fluctuate.

TABLE 5.—STATUS OF THE UNIVERSE OF PRODUCTS SUBJECT TO PRODUCT REREGISTRATION, FOR FY 2002 (AS OF SEPTEMBER 30, 2002)

Products reregistered	1,637
Products amended	345
Products canceled	3,806
Products sent for suspension	12
Total products with actions completed	5,800
Products with actions pending	2,817
Total products in product reregistration universe	8,617

The universe of 8,617 products in product reregistration at the end of FY 2002 represented an increase of 745 products from the FY 2001 universe of 7,872 products. The increase consists of 324 products associated with FY 2002 REDs, and 412 products associated with IREDs, plus 9 products that were added as a result of DCI activities and processing for several previously issued REDs and IREDs.

At the end of FY 2002, 2,817 products had product reregistration decisions pending. Some pending products await science reviews, label reviews, or reregistration decisions by EPA. Others are not yet ready for product reregistration actions; they are associated with more recently completed REDs, and their product-specific data are not yet due to be submitted to or reviewed by the Agency. EPA's goal is to complete 400–450 product reregistration actions during fiscal year 2003.

C. Number and Type of DCIs to Support Product Reregistration by Active Ingredient

1. *DCIs for REDs.* The number and type of data call-in requests or DCIs that EPA is preparing to issue under FIFRA section 3(c)(2)(B) to support product reregistration for pesticide active ingredients included in FY 2002 REDs are shown in Table 6. Starting in FY 2001, for the first time, OMB clearance has been required to issue REDs and IREDs. Since the Fenamiphos and (HOCH2-)methyldithiocarbamate REDs consisted of voluntary cancellations, products containing these pesticides will not be reregistered and therefore do not require DCIs.

TABLE 6.—DCIS PREPARED TO SUPPORT PRODUCT REREGISTRATION FOR FY 2002 REDS

Case Number	Case Name	Number of Products Covered by the RED[1]	Number of Product Chemistry Studies Required[2]	Number of Acute Toxicology Studies Required[3]	Number of Efficacy Studies Required
3030	1,4-Bis(bromoacetoxy)-2-butene	2	22	12 (6 studies x 2 products)	--
0014	Endosulfan	98 (includes 4 SLN products)	22	102 (7 batches/10 not batched)	0
0333	Fenamiphos (Voluntary Cancellation)	15	N/A	N/A	N/A
3076	(HOCH2-) methyldithiocarbamate (Voluntary Cancellation)	0	N/A	N/A	N/A
0315	Lindane	29	22	126 (5 batches/16 not batched)	0
2490	Oxyfluorfen	117 (includes 8 SLN products)	22	60 (4 batches/6 not batched)	0
2670	Thiabendazole	63	22	144 (4 batches/20 not batched)	0

[1]The number of registered products containing a pesticide active ingredient can change over time. The number of products that appears in the RED document (counted when the RED is signed) may be different than the number of products that EPA is tracking for product reregistration (counted later, when the RED is issued). This table reflects the final number of products associated with each RED, as they are being tracked for product reregistration.

[2]This column shows the number of product chemistry studies that are required for each product covered by the RED.

[3]In an effort to reduce the time, resources, and number of animals needed to fulfill acute toxicity data requirements, EPA "batches" products that can be considered similar from an acute toxicity standpoint. For example, one batch could contain five products. In this instance, if six acute toxicology studies usually were required per product, only six studies (rather than 30 studies) would be required for the entire batch. Factors considered in the sorting process include each product's active and inert ingredients (e.g., identity, percent composition, and biological activity), type of formulation (e.g., emulsifiable concentrate, aerosol, wettable powder, granular), and labeling (e.g., signal word, use classification, precautionary labeling). The Agency does not describe batched products as "substantially similar," because all products within a batch may not be considered chemically similar or have identical use patterns.

2. *DCIs for IREDs.* The number and type of data requests or DCIs that EPA is preparing to issue to support product reregistration for pesticide active ingredients included in FY 2002 Interim REDs (IREDs) are shown in Table 7.

TABLE 7.—DCIS PREPARED TO SUPPORT PRODUCT REREGISTRATION FOR FY 2002 IREDS

Case Number	Case Name	Number of Products Covered by the IRED	Number of Product Chemistry Studies Required	Number of Acute Toxicology Studies Required	Number of Efficacy Studies Required
0235	Azinphos-methyl	24	22	54 (4 batches/5 not batched)	0
0238	Diazinon	182	22	186 (15 batches/16 not batched)	0
0145	Dicrotophos	3	22	6 (1 batch)	–
0102	Disulfoton	52	22	114 (4 batches/15 not batched)	0
0043	Methamidophos	47	22	24 (1 batch/3 not batched)	0
0092	Naled	35	22	78 (2 batches/11 not batched)	2
0258	Oxydemeton-methyl	19 (includes 2 SLN products)	22	12 (2 batches)	0
0242	Phosmet	40	22	42 (6 batches/1 not batched)	2

Note: FIFRA section 24(c) or Special Local Need (SLN) registrations are not included in acute toxicity batchings because they are supported by a valid parent product (section 3) registration.

3. *DCIs not needed for TREDs.* The Agency does not issue product-specific data requests or DCIs for pesticides included in tolerance reassessment decisions or TREDs because, at present, these pesticides do not require product reregistration decisions; they are subject to tolerance reassessment only.

D. Progress in Reducing the Number of Unreviewed, Required Reregistration Studies

EPA is making progress in reviewing scientific studies submitted by pesticide registrants in support of pesticides undergoing reregistration. See Table 8.

TABLE 8.—REVIEW STATUS OF STUDIES SUBMITTED FOR PESTICIDE REREGISTRATION, END OF FY 2002

Pesticide Reregistration Group or List, per FIFRA Section 4(c)(2)	Studies Reviewed + Extraneous[1]	Studies Awaiting Review	Total Studies Received
List A	11,237 + 470 = 11,707 (84%)	2,201 (16%)	13,908
List B	6,453 + 746 = 7,199 (75%)	2,408 (25%)	9,607
List C	2,271 + 239 = 2,510 (73%)	938 (27%)	3,448
List D	1,342 + 94 = 1,436 (82%)	308 (18%)	1,744
Total Lists A - D	21,303 + 1,549 = 22,852 (80%)	5,855 (20%)	28,707

[1]Extraneous studies is a term used to classify those studies that are not needed because the guideline or data requirement has been satisfied by other studies or has changed.

Studies reviewed by EPA increased (or the study review "backlog" decreased) during FY 2002. At the end of the fiscal year, over 80% of all studies received by the Agency in support of reregistration had been reviewed, compared to 79% at the end of FY 2001. During FY 2002, the Agency continued an effort to clean up the data base used to track the review status of studies submitted for reregistration. The percent of studies reviewed should continue to increase in future years.

E. Aggregate Status of Tolerances Reassessed

During FY 2002, EPA completed 2,649 tolerance reassessments and ended the fiscal year with a total of 6,499 tolerance reassessment decisions to date, addressing almost 67% of the 9,721 tolerances that require reassessment (See Table 9). Over 60% of the tolerance reassessment decisions completed were for pesticides in priority Group 1.

Just as EPA reassessed over 33% of all food tolerances by August 3, 1999, including many tolerances for pesticides identified as posing the greatest potential risks, the Agency also met the next FQPA goal during FY 2002 and completed over 66% of all required tolerance reassessment decisions by August 3, 2002. EPA's general schedule for tolerance reassessment (**Federal Register**, August 4, 1997) identified three groups of pesticides to be reviewed; this grouping continues to reflect the Agency's overall scheduling priorities. In completing tolerance reassessment, EPA continues to give priority to pesticides in Group 1.

1. *Aggregate accomplishments through reregistration and other programs.* EPA is accomplishing tolerance reassessment through the registration and reregistration programs; by revoking tolerances for pesticides that have been canceled (many as a result of reregistration); by reevaluating pesticides with pre-FQPA REDs, and through other decisions not directly related to registration or reregistration, described further below. EPA is using the Tolerance Reassessment Tracking System (TORTS) to compile this updated information and report on the status of tolerance reassessment (See Table 9).

TABLE 9.—TOLERANCE REASSESSMENTS COMPLETED POST-FQPA BY FISCAL YEAR, THROUGH FY 2002

Tolerances Reassessed Through...	During Late FY 96	During FY 1997	During FY 1998	During FY 1999	During FY 2000	During FY 2001	During FY 2002	Total, End of FY 2002
Reregistration/REDs	25	339	278	359	44	46	231	1,322
Tolerance Reassessments/TREDs	--	--	--	--	--	--	776	776
Registration	0	221	308	341	55	215	200	1,340
Tolerance revocations	3	0	812	513	22	35	545	1,930
Other decisions	0	1	0	233	0	0	897	1,131
Total tolerances reassessed	28	561	1,398	1,446	121	296	2,649	6,499

i. *Reregistration/REDs.* EPA is using the reregistration program to accomplish much of tolerance reassessment. For each of the tolerance reassessment decisions made through REDs since FQPA, the Agency has made the finding as to whether there is a reasonable certainty of no harm, as required by FFDCA. Many tolerances reassessed through reregistration remain the same while others may be raised, lowered, or revoked.

ii. *Tolerance reassessments/TREDs.* Tolerances initially evaluated through REDs that were completed before FQPA was enacted in August 1996 now are being reassessed to ensure that they meet the new FFDCA safety standard. EPA issues these post-RED tolerance reassessment decisions as TREDs. The Agency also issues TREDs summarizing tolerance reassessment decisions for some developing REDs, for new pesticide active ingredients not subject to reregistration, and for pesticides with import tolerances only. Tolerance reassessments in TREDs for pesticides that are not part of a cumulative group (i.e., pesticides that are not OPs or carbamates) may be counted at present and are included in the FY 2002 accomplishments. In completing OP IREDs and TREDs during FY 2002, the Agency also completed tolerance reassessment decisions for these pesticides. Many of these tolerance reassessments will not become final, however, until EPA completes a cumulative evaluation of the OPs.

iii. *Registration.* Like older pesticides, all new pesticide registrations must meet the safety standard of FFDCA. Many of the registration applications EPA receives are for new uses of pesticides already registered for other uses. To reach a decision on a proposed new food use of an already registered pesticide, EPA must reassess the existing tolerances, as well as the proposed new tolerances, to make sure there is reasonable certainty that no harm will result to the public from aggregate exposure from all uses. During FY 2002, the Agency has continued to discourage submission of applications and petitions for any new uses of the OP pesticides, given the need to consider cumulative risks from OP's as a group before any new uses can be fully evaluated.

iv. *Tolerance revocations.* Revoked tolerances represent uses of many different pesticide active ingredients that have been canceled in the past. Some pesticides were canceled due to the Agency's risk concerns. Others were canceled voluntarily by their manufacturers, based on lack of support for reregistration. Tolerance revocations are important even if there are no domestic uses of a pesticide because residues in or on imported commodities treated with the chemical could still present dietary risks that may exceed the FFDCA "reasonable certainty of no harm" standard, either individually or cumulatively with other substances that share a common mechanism of toxicity.

v. *Other reassessment decisions.* In addition to the types of reassessment actions described above, a total of 1,131 additional tolerance reassessment decisions have been made, not directly related to registration or reregistration. A list of these other tolerance reassessment decisions with their **Federal Register** citations is available in the docket for this **Federal Register** notice.

2. *Accomplishments for priority pesticides.* During FY 2002, EPA completed tolerance reassessment decisions for many high priority pesticides in review, including OPs, carbamates, organochlorines, and carcinogens. (See Table 10.)

TABLE 10.—TOLERANCE REASSESSMENTS COMPLETED FOR PRIORITY PESTICIDES

Pesticide Class	Tolerances to be Reassessed	Reassessed by End of FY 2002
Organophosphates	1,691	1,127 (66.65%)
Carbamates	545	303 (55.6%)
Organochlorines	253	253 (100%)
Carcinogens	2,008	1,278 (63.65%)
High hazard inerts	5	3 (60%)
Other	5,219	--
Total	9,721	6,499 (66.86%)

3. *Tolerance reassessment and the organophosphates.* EPA has developed an approach for assessing cumulative risk for the OPs as a group, as required by FFDCA, and applied this methodology in conducting the OP cumulative risk assessment during FY 2002. The Agency presented a comprehensive guidance document on cumulative risk assessment to the Scientific Advisory Panel in December 1999, issued draft guidance in 2000 for review and comment, and presented a case study on cumulative risk assessment to the SAP in December 2000. In 2001, EPA refined the methodology and began developing components of the OP cumulative preliminary risk assessment. With input from the Committee to Advise on Reassessment and Transition (CARAT) workgroup, the Agency developed a process to inform stakeholders and encourage their participation during the assessment of OP cumulative risks. At CARAT's recommendation, EPA held a series of technical briefings to explain and answer questions about the Agency's methods for assessing OP cumulative hazard, as well as exposure through drinking water, food, and in residential settings. An EPA website was established to share updated information on pesticide cumulative risk assessment with the public (http://www.epa.gov/pesticides/cumulative). In FY 2002, the Agency issued a preliminary OP cumulative risk assessment on December 3, 2001, and issued a revised OP cumulative risk assessment on June 10, 2002, both for public comment.

Through this assessment of the OP pesticides, EPA has evaluated 1,127 OP tolerances and found that most require no modification to meet the new FFDCA safety standard. The Agency's regulatory actions on individual OP pesticides during the past few years have substantially reduced the risks of these pesticides. The OP cumulative assessment strongly supports the Agency's confidence that the U.S. has one of the safest food supplies in the world.

Most of the reregistration and tolerance reassessment decisions that EPA is making for the OP pesticides at present will not be considered final until after the Agency completes its cumulative evaluation of the OPs. The results of individual OP assessments (IRED and TRED documents) include significant risk mitigation measures, however, and any resulting tolerance revocations are counted as completed tolerance reassessments. In addition, some OP tolerances make at most a minimal or negligible contribution to the cumulative risk from OP pesticides; these tolerances also were counted as reassessed during FY 2002. Once EPA completes a cumulative evaluation of the OPs, the Agency will reconsider individual OP IREDs and TREDs, and may issue final REDs and tolerance reassessments for these pesticides.

4. *Status of individual OP decisions.* The status of each of the 49 known OP pesticides at the end of FY 2002 is reflected in this discussion.

i. *OP decisions completed.* During FY 2002, through the public participation process, EPA completed risk assessments and made individual risk management decisions for 10 OP pesticides, bringing the number of OPs with individual decisions completed to 35 (See List 1).

List 1.—OP Pesticides with Individual Decisions Completed (35), End of FY 2002

20 IREDs
- Acephate
- Azinphos-methyl
- Bensulide
- Chlorpyrifos
- Diazinon
- Dicrotophos
- Disulfoton
- Ethoprop
- Fenthion
- Methamidophos
- Methidathion
- Naled
- Oxydemeton-methyl
- Phorate
- Phosmet
- Pirimiphos methyl
- Profenofos
- Propetamphos
- Terbufos
- Tribufos (DEF)

10 TREDs
- Cadusafos
- Chlorethoxyfos
- Chlorpyrifos methyl
- Coumaphos
- Fenitrothion
- Mevinphos
- Phosalone
- Phostebupirim
- Tetrachlorvinphos
- Trichlorfon

5 REDs
- Ethion
- Ethyl parathion
- Fenamiphos
- Sulfotepp
- Temephos

ii. *OP decisions pending.* Four other OP pesticides had completed most or all earlier phases of the public participation process and were awaiting individual decisions at the end of FY 2002. EPA plans to complete individual risk management decisions for these 4 pesticides during FY 2003 (See List 2).

List 2.—OP Pesticides with Individual Decisions Pending (4), End of FY 2002
- Dichlorvos (DDVP)
- Dimethoate
- Malathion
- Methyl parathion

iii. *Early OP cancellations.* Ten OP pesticides were canceled prior to or early in the pilot public participation process (See List 3).

List 3.—OPs Canceled Prior to/Early in the Pilot Public Participation Process (10)
- Chlorfenvinphos
- Chlorthiophos

Dialifor
Dioxathion
Fonofos
Isazophos
Isofenphos
Monocrotophos
Phosphamidon
Sulprofos

F. Applications for Registration Requiring Expedited Processing; Numbers Approved and Disapproved

By law, EPA must expedite its processing of certain types of applications for pesticide product registration, i.e., applications for end use products that would be identical or substantially similar to a currently registered product; amendments to current product registrations that do not require review of scientific data; and products for public health pesticide uses. During FY 2002, EPA considered and approved the numbers of applications for registration requiring expedited processing (also known as "fast track" applications) shown in Table 11.

TABLE 11.—FAST TRACK APPLICATIONS APPROVED IN FY 2002

Me-too product registrations/Fast track	368
Amendments/Fast track	3,466
Total applications processed by expedited means	3,834

Regarding numbers of applications disapproved, instead the Agency generally notifies the registrant of any deficiencies in the application that need to be corrected or addressed before the application can be approved. Applications may have been withdrawn after discussions with the Agency, but none were formally "disapproved" during FY 2002.

On a financial accounting basis, EPA devoted approximately 28.7 full-time equivalents (FTEs) in FY 2002 to reviewing and processing applications for fast track me-too product registrations and label amendments. The Agency spent approximately $2.87 million in FY 2002 in direct costs (i.e., time on task, not including administrative expenses, computer systems, management overhead, and other indirect costs) on expedited processing and reviews.

G. Future Schedule for Reregistrations

During the past several years, EPA has been conducting reregistration in conjunction with tolerance reassessment under FFDCA. That law requires the Agency to reassess all existing tolerances over a 10–year period to ensure consistency with the new safety standard, and to consider pesticides that appear to pose the greatest risk first. In prioritizing pesticides for reregistration eligibility review and tolerance reassessment, EPA is continuing to consider their potential risks, as reflected in the Agency's tolerance reassessment schedule published in the **Federal Register** on August 4, 1997. EPA is giving highest priority to pesticides in Group 1, including the OP pesticides, and the carbamates, organochlorines, and B2 (probable human) carcinogens.

1. *RED, IRED, and TRED Candidate Pesticides for FY 2003.* List 4 contains candidate pesticides for Reregistration Eligibility Decisions (REDs), Interim REDs (IREDs), and Reports on FQPA Tolerance Reassessment Progress and Interim Risk Management Decisions (TREDs) in FY 2003. As in previous years, any pesticides for which decisions are not completed during FY 2003 will automatically become candidates for decisions in FY 2004.

List 4.—FY 2003 RED, IRED, and TRED Candidate Pesticides

REDs
Chlorsulfuron
Chromated copper arsenate (CCA)
Coal tar/Creosote
Dihalodialkylhydantoins
Dinocap
Diuron
Ethoxyquin
Imazalil
MGK-326
Molinate
Oxadiazon
Pentachlorophenol
Poly(hexamethylenebiguanide) (PHMB)
Propanil
Thiophanate-methyl (completed 3–28–03)
Zinc omadine
Ziram

IREDs
Atrazine (completed 1–31–03)
Carbaryl (due 6–30–03)
Dichlorvos (DDVP)
Dimethoate
Malathion
Methyl parathion

TREDs
4-CPA (completed 4–3–03)
Dacthal (DCPA)
Ethephon
Fenridazon potassium
Potassium bromide

2. *RED, IRED, and TRED Candidate Pesticides for FY 2004.* The pesticides that are in the pipeline for RED, IRED, and TRED decisions in FY 2004 are included in List 5.

List 5.—FY 2004 RED, IRED, and TRED Candidate Pesticides

REDs
2,4-D
2,4-DB
Azadioxabicyclo-octane
Benfluralin
Benzisothiazolin-3-one (BIT)
Bioban P-1487
Busan 77
Cacodylic acid/DSMA/MSMA
Carboxin
Cycloate
Cypermethrin
Fenvalerate
Formaldehyde
Mancozeb
Maneb
MCPA
Metiram
PCNB
Sodium acifluorfen
Sodium fluoride
Thiram
Trichloromelamine
Triethylene glycol

IREDs
Aldicarb
Atrazine revised IRED (due 10–31–03)
Carbofuran
Formetanate HCl

TREDs
Amitraz
Ethylene glycol monobutyl ether
Fluazifop butyl
Lactofen
Oryzalin
Sodium xylenesulfonate
Sulfonated oleic acid, sodium salt
Trifluralin

H. Projected Year of Completion of Reregistrations

EPA is now conducting reregistration in conjunction with tolerance reassessment, which FFDCA mandates be completed by August 2006. EPA plans to complete reregistration of pesticide active ingredients with tolerances and as many others as possible in meeting the statutory deadline for completing tolerance reassessment.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 11, 2003.

Stephen L. Johnson,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 03–19353 Filed 7–29–03; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0223; FRL–7315–7]

6-Benzyladenine; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2003–0223, must be received on or before August 29, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Denise Greenway, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8263; e-mail address: *greenway.denise@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2003–0223. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA's Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk

or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0223. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp.docket@epa.gov*, Attention: Docket ID Number OPP–2003–0223. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0223.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0223. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 16, 2003.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

I. Valent BioSciences Corporation

PP 3F6586

EPA has received a pesticide petition (PP 3F6586) from Valent BioSciences Corporation, 870 Technology Way, Suite 100, Libertyville, IL. 60048, proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the biochemical pesticide 6-benzyladenine (6-BA) in or on pistachio, and to amend the existing exemption (§180.1150) for apples to expand the uses and increase the application rate.

Valent BioSciences Corporation has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Valent BioSciences Corporation and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

6-Benzyladenine is a naturally occurring plant growth regulator used on certain fruit trees and certain ornamental lily tubers. In January 1990, the Agency classified 6-BA as a biochemical pesticide because it resembles natural plant regulators and it displays a nontoxic mode of action. The new use being proposed for 6-BA is as an effective stand-alone fruitlet thinner when applied to apples in the post-bloom period at an application rate not to exceed 182 grams of active ingredient per acre per season (gram per active ingredient per acre per season). 6-Benzyladenine has also been shown to directly increase cell division of treated fruit, resulting in improvements in fruit size over what would be expected from the normal thinning effect. The frequency and timing of application will vary according to the specific growing conditions being treated. The second proposed new use is to reduce alternate bearing in pistachio and thus increase cumulative yield. The proposed maximum application rate for pistachio is 60 grams of active ingredient per acre per season.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* 6-Benzyladenine (*N*-(phenylmethyl)-1H-purin-6-amine) has been tested and residue data generated has been provided to EPA by Valent BioSciences Corporation.

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* Trials conducted in various states (New York, Pennsylvania, Virgina, Missouri, Oregon, and Washington) and on various apple cultivars, support the proposed tolerance exemption. This data has been further supported by numerous trials carried out internationally. Residue levels following the maximum number (4) of applications on apple were very close to the limit of quantitation (LOQ) of 5 parts per billion (ppb) at normal harvest, which averaged 80 days after the last application. Trials indicate rapid degradation of 6-BA residues among all the apple varieties and geographies evaluated.

The analytical methods for detection of 6-BA in apple raw agricultural and processed commodities are comprised of extraction, cleanup on a strong cation exchange (SCX) solid-phase extraction cartridge, derivatisation and quantitation by gas chromatography (GC). These were developed by Valent BioSciences Corporation and submitted to EPA, constituting a practical analytical method for detecting and measuring levels of 6-BA in or on commodities, with a LOQ of 0.005 part per million (ppm) that allows for monitoring of food, with the residues at or above the LOQ.

Residue data on 6-BA use on pistachio has been provided to EPA by Valent BioSciences Corporation. Trials were conducted in locations representing the major pistachio production area in the United States. No residues were detected following the maximum number (2) of applications at normal harvest, which averaged 60 days after the last application.

An analytical method based on extraction, clean up and derivatisation of 6-BA followed by quantitation by GC was submitted to EPA for residue determination on pistachio. This GC method is adequate for determining residues in or on pistachios with a LOQ of 0.05 ppm.

3. *Why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* Usually, a request for an exemption from the requirement of a tolerance is not accompanied by residue data and an analytical method. Valent BioSciences Corporation has provided this information to the Agency in this case. The information demonstrates that any residue is detected at levels very close to the LOQ. Although a numeric tolerance could be established, it would be very difficult to enforce, as demonstrated by the risk characterization. Valent BioSciences Corporation proposes that the submitted residue data and analytical method support their conclusion that there is a reasonable certainty that no harm to humans or the environment will result from the use of 6-BA on apples and pistachios.

C. Mammalian Toxicological Profile

1. *Acute toxicity.* The oral LD_{50} of 6-BA is estimated by probit analysis at 1.3 gram/kilogram (g/kg) in the rat. The dermal LD_{50} in the rabbit is >5.0 g/kg. The acute inhalation LC_{50} in the rat is 5.2 milligrams/Liter (mg/L)/hour. A primary eye irritation study in the rabbit showed moderate conjunctival effects which cleared within 7 days. A dermal irritation study in the rabbit showed slight dermal irritation, which lasted for 5 days. Sensitization potential has been examined, and 6-BA (99% pure) was demonstrated not to be a dermal sensitizer in guinea pigs under conditions of the study.

2. *Genotoxicity.* Mutagenicity studies including Ames test, mouse micronucleus assay, and unscheduled DNA synthesis (UDS) assay in rat were negative for mutagenic effects.

3. *Developmental toxicity.* Developmental toxicity in rats fed 6-BA (99% pure) was manifested as significantly decreased fetal body weight, increased incidence of hydrocephalas and unossified sternbrae, incompletely ossified phalanges, and malaligned sternbrae at 175 milligrams/kilogram body weight/day (mg/kg bwt/day).

Maternal toxicity was also observed at 175 mg/kg bwt/day, which was manifested as significantly decreased body weight, weight gain, and food consumption. Thus the no observed adverse effect level (NOAEL) and lowest observed adverse effect level (LOAEL) for maternal and developmental toxicity was 50 and 175 mg/kg bwt/day, respectively.

4. *Subchronic toxicity.* 6-Benzyladenine (99% pure) fed to rats for 13 weeks produced decreased weight gain at 1,500 and 5,000 ppm (121 and 322 mg/kg bwt/day) in females, and 5,000 ppm (295 mg/kg bwt/day) in males. This decreased weight gain appeared to be related to decreased food consumption. Serum alkaline phosphatase activity and blood urea nitrogen levels were increased in both sexes receiving 5,000 ppm; thus the NOAEL was 1,500 ppm (approximately 111 mg/kg bwt/day in both sexes combined) and the LOAEL was 5,000 ppm (approximately 304 mg/kg bwt/day in both sexes), based on the decreased body weight gain, food consumption, increased blood urea nitrogen, and minimal histological changes in the kidneys.

D. Aggregate Exposure

1. *Dietary exposure—i. Food.* In conducting this exposure assessment, Valent BioSciences Corporation used very conservative assumptions, 100% of all commodities were assumed to be treated, and those residues would be at twice the LOQ -- which result in a large overestimate of human exposure. The analysis assumes that all residues have the same magnitude, and the treated

commodity is 100% of a daily diet. Thus, in making a safety determination for these tolerance exemptions, Valent BioSciences Corporation took into account this very conservative exposure assessment.

The last application precedes harvest by approximately 2.5 months in apples, therefore the potential for dietary exposure is considered negligible by Valent BioSciences Corporation. Application precedes harvest by approximately 2 months in pistachios. Also pistachios have their hulls, which cover the shell, removed at harvest, therefore the potential for dietary exposure is considered negligible by Valent BioSciences Corporation. Residues are below the LOQ (LOQ = 0.05 ppm) in pistachio.

ii. *Drinking water.* The proposed uses on apples and pistachios are not expected to add potential exposure to drinking water. Soil leaching studies have suggested that 6-BA is relatively immobile, absorbing to sediment. Residues reaching surface waters from field runoff should quickly absorb to sediment particles and be partitioned from the water column. 6-Benzyladenine also has low solubility in water, 0.061 mg/mL, and detections in ground water are not expected. Valent BioSciences Corporation concludes that together these data indicate that residues are not expected in drinking water.

2. *Non-dietary exposure.* The proposed uses involve application of 6-BA to crops grown in an agricultural environment. The only non-dietary exposure expected is that to applicators. However, the protective measures prescribed by the product's label are expected to be adequate to minimize exposure and protect applicators of the chemical.

E. Cumulative Exposure

No cumulative adverse effects are expected from long-term exposure to this chemical. There is no reliable information to indicate that toxic effects produced by 6-BA would be cumulative with those of any other pesticide chemical.

F. Safety Determination

1. *U.S. population.* Chronic dietary exposure estimates were conducted for the overall U.S. population and 25 population subgroups, including infants and children. These estimated daily intakes were compared against a chronic population adjusted dose (PAD) based on a NOAEL of 50 mg/kg bwt/day from a developmental study in rats. To account for intraspecies and interspecies variation and the use of an acute toxicological endpoint for a chronic assessment, an uncertainty factor (UF) of 1,000 was applied to the acute NOAEL. This resulted in a chronic PAD of 0.05 mg/kg bwt/day. Daily exposure for the overall U.S. population was estimated to be 0.000014 mg/kg bwt/day, representing less than 0.1% of the estimated chronic PAD.

2. *Infants and children.* Estimated daily exposures, assuming that 100% of the apple and pistachio commodities in the United States are treated with 6-BA, for the most highly exposed population subgroup, non-nursing infants, was estimated to be 0.000085 mg/kg bwt/day, or 0.2% of the estimated chronic PAD.

G. Effects on the Immune and Endocrine Systems

6-Benzyladenine is a naturally occurring cytokinin which has plant growth regulator properties. There is no indication that this plant growth regulator belongs to a class of chemicals known or suspected of having adverse effects on the immune and endocrine systems. It can be concluded that based upon the existing toxicology there would be no adverse effects on the immune or endocrine systems from the use of 6-BA. Last, there is no evidence that 6-BA bioaccumulates in the environment.

H. Existing Tolerances

The plant growth regulator 6-BA is exempt from the requirement of a tolerance when used as a fruit-thinning agent at an application rate not to exceed 30 grams of active ingredient per acre in or on apples.

6-Benzyladenine is temporarily exempt from the requirement of a tolerance in or on apples at ≤182 grams of active ingredient per acre per season, and in or on pistachio at ≤60 grams of active ingredient per acre per season when used in accordance with the Experimental Use Permit 73049–EUP–2. The exemption from a tolerance will expire on January 31, 2005.

I. International Tolerances

There are no codex, Canadian, or Mexican maximum residue limits for use of 6-BA on apple or pistachio.

[FR Doc. 03–19280 Filed 7–29–03; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0256; FRL–7319–7]

Indian Meal Moth Granulosis Virus; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0256, must be received on or before August 29, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Leonard Cole, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5412; e-mail address: *cole.leonard@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0256. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0256. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0256. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0256.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0256. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 21, 2003.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

AgriVir, LLC

PP 3F6736

EPA received a pesticide petition (PP 3F6736) from AgriVir, LLC, 1901 L St., NW., Suite 250, Washington, DC 20036, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR 180.1218 to expand the tolerance exemption from the existing exemption for use on dried fruits and nuts to use on all agricultural commodities and relevant processed fractions. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not completed a review of the sufficiency of the submitted data at this time. The summary represents the views of AgriVir, LLC. EPA is still in the process of evaluating the petition. EPA has made minor edits to the summary for the purpose of clarity.

A. Residue Chemistry

Residue chemistry, *per se*, is not required in support of the proposed tolerance exemption. This is because EPA has waived this requirement for microbial pet control agents which do not trigger Tier II toxicology concerns. Indian Meal Moth Granulosis Virus (IMMGV) does not trigger Tier II toxicology concerns. A brief summary of the identity of the microbial pest control agent IMMGV follows for information purposes

EPA has previously registered AgriVir's microbial pest control product FruitGuard-V/NutGuard-V (these are alternate names for the same product), EPA Reg. No. 73176–1. This is a biological insecticide intended to control Indian meal moth, a serious pest of various stored commodities.

The Indian meal moth, is a serious cosmopolitan pest of many stored agricultural commodities and processed fractions. Infestation can occur at any time from harvest to eventual consumption of the commodity. Indian meal moth, is estimated to be responsible, for example, for approximately 90% of the damage done to dried fruits and nuts in storage. In facilities where susceptible commodities are handled, fragments and other debris from the commodities gets into cracks, crevices, and other places and Indian meal moth, propagates on this material. This establishes a general infestation and reservoir for the Indian meal moth in such facilities.

Control of Indian meal moth by FruitGuard-V/NutGuard-V is by means of a naturally occurring microbial pest control agent (MPCA) which is contained in the product.

The MPCA used in NutGuard-V/FruitGuard-V is a granulosis virus which infects the larvae of the Indian meal moth. This virus is designated IMMGV in the balance of this summary. The MPCA contained in NutGuard-V/FruitGuard-V is a naturally occurring isolate of the IMMGV. It has not been genetically modified.

IMMGV has no hosts other than larvae of the Indian meal moth and acts by making the Indian meal moth larvae sick, rather than by a toxic mechanism (i.e., IMMGV does not produce any specific toxin which kills the larvae).

Indian meal moth larvae succumb to granulosis disease due to serious damage to one of their major organs for storage of nutrients.

The above-cited products are equivalent to a technical grade of IMMGV. They are prepared without isolation of IMMGV and, as such, the MPCA which is the subject of the present petition consists, therefore, of IMMGV occlusion bodies (viral particles) and Indian meal moth larval parts mixed into a production larval diet containing wheat bran, brewer's yeast, vitamins, methyl paraben, and sorbic acid.

B. Toxicological Profile

The mode of action for IMMGV in its host, the larval stage of *P. interpunctella*, is pathogenic in nature. IMMGV produces granulosis disease in the larvae of *P. interpunctella*. "Granulosis" disease is so named because cells in infected tissue sections, when observed under light microscopy, are full of minute, refractile bodies termed "granules." The initial signs of granulosis disease occur several days after larval ingestion of the viral occlusion bodies and consist of sluggishness and loss of appetite. These initial signs are followed by a change in the appearance of the larvae. They are normally light brown and semilucent but when infected become opaque and white. This change is the result of the massive accumulation of viral occlusion bodies in the fat body of the infected larva. The fat body is the site of intermediary metabolism in these larvae and it is in the fat body that fat, protein, and glycogen are primarily stored. The pathogenicity of IMMGV to the larva results from the mode of viral release from cells of the fat body. As discussed above, this occurs by rupture of the cells of the fat body, thereby leading to degeneration and necrosis of the fat body and, ultimately, death of the infected larva.

The above-cited mode of action is distinct from a toxicity based mode of action. That is, unlike some microbial pest control agents which produce endo- or exo-toxins which act to kill the target pest, IMMGV produces no toxins as part of its mode of action.

1. *Hazard potential to mammals.* IMMGV poses no hazard potential to mammals via ingestion, dermal contact, or inhalation. There is no baculovirus (the type of virus which IMMGV is) known to infect or replicate in any vertebrate host. Among invertebrates, IMMGV itself has no known host other than larvae of *P. interpunctella* and has been shown not to cross-infect lepidopteran or other insects other than *P. interpunctella*.

A number of studies on the toxicity of baculoviruses, inclusive of granulosis viruses, to animals have shown that these agents are non-toxic by the oral, dermal, inhalation, and injection routes of exposure and that no effects on overall health, gross or micro pathology, hematology, clinical chemistry, and antibody stimulation occur in test animals. These studies have been published in the open literature and were submitted as part of AgriVir, LLC's petition.

Cell culture studies (submitted by AgriVir as part of its submission) have shown that IMMGV which is actively infective and pathogenic to IMM larva does not produce cytotoxicity nor does it replicate in or produce pathogenicity in the following mammalian cell lines:

WI-38 (ATTC CCL 75: human lung (embryonic))

WS1 (ATTC CRL 1502: human endothelium (embryonic skin))

CV-1 (ATTC CCL 70: African green monkey, renal)

These cell culture studies further support the already established fact that IMMGV poses no hazard to mammals.

Due to the physical properties of the final product and of the bran carrier, the technical MPCA does have a mild to moderate, reversible eye irritation potential.

2. *Hazard potential to the environment.* The only potential environmental effect of IMMGV is on the population of Indian meal moths. This is because, as discussed above, IMMGV has no hosts other than larvae of the Indian meal moth and acts by a pathogenicity mechanism rather than a toxicity mechanism (i.e., IMMGV does produce any specific toxin). Since IMMGV is a naturally occurring virus which has naturally infected Indian meal moth larvae for at least decades and probably longer, its use on Indian meal moth larvae which may infest dried fruits and nuts and other stored commodities cannot reasonably be expected to endanger the Indian meal moth population as a whole.

Therefore, there are no reasonably anticipated or likely environmental effects of use of IMMGV for protection of agricultural commodities from Indian meal moth damage.

3. *Hazard potential to non-target species.* There is no hazard potential to non-target species. As above-noted, there is no baculovirus known to infect or replicate in any vertebrate host. Among invertebrates, IMMGV itself has no known host other than larvae of *P. interpunctella* and has been shown not to cross-infect lepidopteran or other insects other than *P. interpunctella*.

C. Aggregate Exposure

1. *Dietary exposure–*i. *Food.* The levels of residues in treated commodities will be very low. The application rates for IMMGV are from 1 to 5 ounces of formulated (i.e., technical) MPCA per ton of commodity to be treated. Therefore, dietary exposure is insignificant.

ii. *Drinking water.* The proposed use patterns for IMMGV are for indoor food and non-food uses. Therefore, there is no potential for drinking water exposure associated with the approval of this petition.

2. *Non-dietary exposure.* IMMGV only has any pest control utility in the treatment of various commodities for control of Indian meal moth. Therefore, the only potential for non-dietary exposure is to applicators and to mixer/loaders who will use product containing IMMGV. These non-dietary exposures are not covered within FQPA and they are expected to be low. Information already in EPA's data bases which had been cited by AgriVir, LLC indicates that workers involved with baculovirus production and use do not experience adverse effects as a result of these exposures.

D. Cumulative Effects

Due to its mechanism of action and extremely limited host specificity, it can be reliably stated that IMMGV does not share a common mechanism of action with any other conventional, biochemical, or microbial pesticide.

E. Endocrine Effects

There is no reliable information to indicate that IMMGV has a potential to produce endocrine effects. The available studies suggest that IMMGV is essentially biologically inactive in any organism other than its natural host, the larva of the Indian meal moth.

F. Safety Determination

1. *U.S. population.* Since the available information reliably supports that IMMGV will not produce adverse effects in humans of any age as a result of exposure by ingestion, dermal contact, or inhalation, AgriVir, LLC concludes that there is a reasonable certainty that no harm to the general adult population will result from dietary exposure to residues which could occur as a result of approval of this petition.

2. *Infants and children.* Since the available information reliably supports that IMMGV will not produce adverse effects in humans of any age as a result of exposure by ingestion, dermal

contact, or inhalation, AgriVir, LLC concludes that there is a reasonable certainty that no harm to infants and children will result from dietary exposure to residues which could occur as a result of approval of this petition.

3. *Sensitive individuals.* Since the available information reliably supports that IMMGV will not produce adverse effects in humans of any age as a result of exposure by ingestion, dermal contact, or inhalation, and indeed that IMMGV appears to be biologically inactive in other than its natural host, AgriVir, LLC concludes that there is a reasonable certainty that no harm to sensitive persons will result from dietary exposure to residues which could occur as a result of approval of this petition.

G. International Tolerances

There are no Codex maximum residue levels established for residues of IMMGV. IMMGV containing products are presently not registered for pest control outside of the U.S.

[FR Doc. 03–19354 Filed 7–29–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7537–7]

Framework for Application of the Toxicity Equivalence Methodology for Polychlorinated Dioxins, Furans, and Biphenyls in Ecological Risk Assessment (External Review Draft); Notice of Availability

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability and opportunity for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing a 60-day public comment period for the draft document titled Framework for Application of the Toxicity Equivalence Methodology for Polychlorinated Dioxins, Furans, and Biphenyls in Ecological Risk Assessment. The document is intended to describe a methodology for assessing ecological risks associated with complex mixtures of dioxins, furans, and dioxin-like PCBs in the environment. EPA will consider the public comments in revising the document.

DATES: Comments must be received by September 29, 2003.

ADDRESSES: The draft is available via the Internet at *http://cfpub.epa.gov/ncea/raf/recordisplay.cfm?deid=55669.* Comments may be submitted electronically, by mail, or in person, as described in the instructions under Supplementary Information. Comments may be viewed at EPA Dockets at *http://www.epa.gov/edocket* (under Docket ID No. ORD–2003–0002).

FOR FURTHER INFORMATION CONTACT: Marilyn Brower, U.S. EPA, ORD National Center for Environmental Assessment, Risk Assessment Forum Staff (8601D), 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: 202–564–3363; fax: 202–565–0062; e-mail: *brower.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Submission of Comments

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number (ORD–2003–0002) in the subject line on the first page of your comment. Please note that all comments received in response to this notice will be placed in a public record. For that reason, comments should not contain personal information (such as medical data or home address), Confidential Business Information, or information protected by copyright.

A. Electronically to EPA Dockets

Your use of EPA's electronic public docket (EPA Dockets) to submit comments is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket* and follow the online instructions for submitting comments. Once in the system, select "search," and then key in Docket ID No. ORD–2003–0002. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it. EPA recommends that you include your name and contact information in the body of your comment to ensure that you can be identified as the submitter of the comment and to allow EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment.

B. By Mail

Comments may be sent to: Office of Environmental Information Docket, Environmental Protection Agency, Mailcode: 28220T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, Attention Docket ID No. ORD–2003–0002.

C. By Hand Delivery or Courier

Deliver your comments to: Office of Environmental Information Docket, EPA West, Room B102, 1301 Constitution Ave. NW, Washington, DC, Attention Docket ID No. ORD–2003–0002. Such deliveries are only accepted during the Docket's normal hours of operation from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the docket is 202–566–1752.

II. Background

Polychlorinated dioxins (PCDDs), furans (PCDFs), and biphenyls (PCBs) commonly occur as complex mixtures in the environment. For more than a decade, EPA and other organizations have estimated the combined risks that such mixtures pose to human health using a method known as the toxicity equivalence methodology. The methodology is based on findings that certain PCDDs, PCDFs, and PCBs share a common mechanism of action for their effects but differ in potency. The methodology uses potency factors (such as Toxicity Equivalence Factors, or TEFs) assigned to each chemical in the mixture as a way of integrating the risks from the entire mixture. Application in ecological risk assessments has proceeded more slowly than in human health risk assessment, in part because of the variety of species from different taxonomic classes (*e.g.*, fish, birds, and mammals) to be considered.

As both data and experience with the methodology have accumulated, however, experts have concluded that the toxicity equivalence methodology can strengthen assessments of ecological risks. At a World Health Organization consultation in 1997, international consensus TEFs for PCDDs, PCDFs, and PCBs were reviewed and the toxicity equivalence methodology expanded to include class-specific TEFs for mammals, birds and fish. In 1998, EPA and the U.S. Department of Interior sponsored a workshop that recommended the development of further guidance on application of the toxicity equivalence methodology. This draft framework has been developed in direct response to that workshop recommendation by a technical panel under EPA's Risk Assessment Forum.

Organized in accordance with EPA's *Guidelines for Ecological Risk Assessment* (63 FR 26846), this framework is intended to assist EPA scientists in using the methodology, as well as to inform EPA decision makers, other agencies, and the public about this methodology. It provides ecological risk assessors with an understanding of the uncertainties associated with the application of the methodology in general and with situation-specific decisions made in applying the methodology within their risk assessments. The draft framework also discusses several potential advantages of the toxicity equivalence methodology compared with alternative methods for estimating risks from mixtures of dioxin-like chemicals.

The document is undergoing peer review concurrent with the public comment period described in this notice. This framework is not a regulation nor is it intended to substitute for federal regulations. It does not establish any substantive "rules" under the Administrative Procedure Act or any other law and will have no binding effect on EPA or any regulated entity.

Dated: July 23, 2003.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 03–19351 Filed 7–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRC–7537–9]

Lexington County Landfill Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: The United States Environmental Protection Agency is proposing to enter into an Administrative Agreement for recovery of Future Response Costs pursuant to section 122(h) (1) of the Comprehensive Environmental Response, Compensation and Liability Act of the 1980 (CERCLA), as amended regarding the Lexington County Landfill Superfund Site located in Cayce, Lexington County, South Carolina. This Agreement is made and entered into by EPA and by Lexington County, South Carolina ("Setting Parties"). EPA will consider Public comments on the proposed settlement until August 29, 2003.

EPA may withdraw from or modify the proposed settlement should such comments disclose fact or considerations which indicate the proposed settlement is appropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. EPA, Region 4; Sam Nunn Atlanta Federal Center, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within thirty (30) calendar days of the date of this publication.

Dated: July 14, 2003.

Archie Lee,

Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 03–19350 Filed 7–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7537–3]

Proposed Agreement Pursuant to Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) for the Sybill Used Oil Processing Plant Site in Detroit, MI

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice and request for public comment on proposed CERCLA 122(h)(1) agreement with General Motors Corporation (GM), Ford Motor Company, Detroit Diesel Corporation, Rouge Steel Company, Sybill, Inc. and the Chapter 7 Bankruptcy Trustee for V.C. Madias addressing contamination at the Sybill used oil processing plant in Detroit, Michigan.

SUMMARY: In accordance with section 122(i)(1) of CERCLA, notification is hereby given of a proposed administrative settlement agreement concerning the Sybill used oil processing plant at 111 Military Street in Detroit, Wayne County, Michigan (the "Site"). EPA proposes to enter into this agreement under the authority of sections 122(h) and 107 of CERCLA. The proposed agreement has been executed by GM, Ford Motor Company, Detroit Diesel Corporation, Rouge Steel Company, Sybill, Inc. and the Chapter 7 Bankruptcy Trustee for V.C. Madias (the "Settling Parties"). Under the proposed agreement, the Settling Parties will implement a removal action to address waste oil contamination at the used oil processing facility formerly owned and operated by Sybill, Inc. and located in Detroit, Michigan. Also, the Settling Parties will pay to the Hazardous Substances Superfund all of the Agency's future oversight costs to be incurred in overseeing the work under the agreement. In addition, under this agreement, EPA waives all of its past response costs incurred at the Sybill Site ($56,000). EPA incurred these past response costs mitigating an imminent and substantial endangerment to human health or the environment present or threatened by hazardous substances present at the Site. For thirty days following the date of publication of this notice, the EPA will receive written comments relating to this proposed agreement. EPA will consider all comments received and may decide not to enter this proposed agreement if comments disclose facts or considerations which indicate that the proposed agreement is inappropriate, improper or inadequate.

DATES: Comments on the proposed agreement must be received by EPA on or before August 29, 2003.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, and should refer to: In the Matter of Sybill, Inc., EPA Docket No. V-W–03-C–746.

FOR FURTHER INFORMATION CONTACT: Thomas J. Martin, U.S. Environmental Protection Agency, Office of Regional Counsel, C–14], 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, (312) 886–4273. A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region 5 Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. Additional background information relating to the settlement is available for review at the EPA's Region 5 Office of Regional Counsel.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601–9675.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 03–19284 Filed 7–29–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–03–51–B (Auction No. 51); DA 03–1994]

Auction of Regional Narrowband PCS Licenses Scheduled for September 24, 2003; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, Package Bidding and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the procedures and minimum opening bids for the upcoming auction of six regional narrowband Personal Communications Services ("narrowband PCS") licenses

in the 900 MHz band scheduled for September 24, 2003 (Auction No. 51). This document is intended to familiarize prospective bidders with the procedures and minimum opening bids for this auction.

DATES: Auction No. 51 is scheduled to begin on September 24, 2003.

FOR FURTHER INFORMATION CONTACT: Auctions and Industry Analysis Division, WTB: Legal questions: Christopher Shields at (202) 418–0660, or General auction questions: Lisa Stover at (717) 338–2888, Questions about package bidding: Martha Stancill at (202) 418–0660 or Craig Bomberger at (202) 418–0660. Media Contact: Press inquiries: Meribeth McCarrick at (202) 418–0654. Commercial Wireless Division, WTB: Service rule questions: Amal Abdallah at (202) 418–7307, Evan Baranoff at (202) 418–7142, JoAnn Epps at (202) 418–0620 or Dwain Livingston at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 51 Procedures Public Notice* released on June 18, 2003. The complete text of the *Auction No. 51 Procedures Public Notice*, including attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Auction No. 51 Procedures Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*. The Auction No. 51 Procedures Public Notice is also available on the Internet at the Commission's Web site: http://wireless.fcc.gov/auctions/51/.

I. General Information

A. Introduction

1. The *Auction No. 51 Procedures Public Notice* announces the procedures and minimum opening bids for the upcoming auction of six regional narrowband Personal Communications Services ("narrowband PCS") licenses in the 900 MHz band scheduled for September 24, 2003 (Auction No. 51). On April 3, 2003, in accordance with the Balanced Budget Act of 1997, the Bureau released a public notice seeking comment on reserve prices or minimum opening bids and the procedures to be used for the auction of six regional narrowband PCS licenses. The Bureau received no comments and no reply comments in response to the *Auction No. 51 Comment Public Notice*, 68 FR 18642 (April 16, 2003).

i. Licenses To Be Auctioned

2. Auction No. 51 will offer six regional narrowband PCS licenses. The spectrum to be auctioned was previously associated with licenses that were awarded based on Auction No. 3 but have since been cancelled or terminated. A complete list of licenses available in Auction No. 51 and their descriptions is included in Attachment A of the *Auction No. 51 Procedures Public Notice*.

3. The following table describes the licenses that will be auctioned:

Region	Channel No.	Channel description	Frequency bands (MHz)	Bandwidth (kHz)
Northeast	17	12.5 kHz/50 kHz paired	901.8250–901.8375, 930.70–930.75	62.5
South	16	12.5 kHz/50 kHz paired	901.8125–901.8250, 930.65–930.70	62.5
South	17	12.5 kHz/50 kHz paired	901.8250–901.8375, 930.70–930.75	62.5
Midwest	17	12.5 kHz/50 kHz paired	901.8250–901.8375, 930.70–930.75	62.5
Central	17	12.5 kHz/50 kHz paired	901.8250–901.8375, 930.70–930.75	62.5
West	17	12.5 kHz/50 kHz paired	901.8250–901.8375, 930.70–930.75	62.5

B. Rules and Disclaimers

i. Relevant Authority

4. Prospective bidders must familiarize themselves thoroughly with the Commission's rules relating to narrowband PCS, contained in title 47, part 24 and part 90 of the Code of Federal Regulations, and those relating to application and auction procedures, contained in title 47, part 1 of the Code of Federal Regulations. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "terms") contained in the *Auction No. 51 Procedures Public Notice;* the *Auction No. 51 Comment Public Notice;* the *Part 1 Fifth Report and Order*, 65 FR 52401 (August 29, 2000), (as well as prior and subsequent Commission proceedings regarding competitive bidding procedures); the *Narrowband PCS R&O/Further Notice*, 62 FR 27507 (May 20, 1997), the *Narrowband Second Report and Order and Second Further Notice of Proposed Rule*, and the *Third Narrowband Report and Order and Order on Reconsideration.*

5. The terms contained in the Commission's rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in its public notices at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at *http://wireless.fcc.gov/auctions.* Additionally, documents are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554, or may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.* When ordering documents from Qualex, please provide the appropriate FCC document number (for example, FCC 01–135 for the *Third Narrowband Report and Order and Order on Reconsideration).*

ii. Prohibition of Collusion

6. To ensure the competitiveness of the auction process, the Commission's rules prohibit applicants for any of the same or overlapping geographic license areas from communicating with each other during the auction about bids, bidding strategies, or settlements. The Bureau has previously stated that auction applicants who have applied for licenses in any of the same geographic areas, and who are also applicants for licenses in the same or competing services must affirmatively avoid all discussions with each other that affect, or in their reasonable assessment have the potential to affect their bidding or their bidding strategy. Accordingly, the prohibition in Section 1.2105(c) applies to communications between Auction No. 50 and Auction No. 51 applicants who have applied for licenses in any of the same or overlapping geographic license areas. This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction. Applicants for licenses in any of the same or overlapping geographic license areas are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants and conveys information concerning the substance of bids or bidding strategies between the applicants he or she is authorized to represent in the auction. A violation could similarly occur if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm or consulting firm). In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.

7. However, the Bureau cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted. The Commission's anti-collusion rules allow applicants to form certain agreements during the auction, provided the applicants have not applied for licenses covering the same geographic areas. Note that Auction No. 51 applicants and Auction No. 50 applicants for licenses in the same or overlapping geographic license areas will not be able to take advantage of these rule provisions, even though the licenses are not completely co-extensive. For example, assume that one applicant applies for several Major Trading Area ("MTA") licenses in its Auction No. 50 FCC Form 175 and that a second applicant applies for a regional license in its Auction No. 51 FCC Form 175. If the first applicant selects licenses for MTAs that are within the region covered by the regional license selected by the second applicant, the two parties will have applied for licenses covering the same geographic areas. Consequently, unlike applicants who have applied for licenses that do not cover the same geographic areas, these two applicants will not be permitted to form a consortium or bid jointly for licenses after they file FCC Form 175. However, all applicants may enter into bidding agreements *before* filing their FCC Form 175, as long as they disclose the existence of the agreement(s) in their Form 175. If parties agree in principle on all material terms prior to the short-form filing deadline, those parties must be identified on the short-form application pursuant to section 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the filing deadline, an applicant would not include the names of those parties on its application, and may not continue negotiations with other applicants for licenses covering any of the same geographic areas. By signing their FCC Form 175 short-form applications, applicants are certifying their compliance with section 1.2105(c).

8. In addition, section 1.65 of the Commission's rules requires an applicant to *maintain* the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. Thus, sections 1.65 and 1.2105 require an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders therefore are required to make such notification to the Commission immediately upon discovery.

9. A summary listing of documents issued by the Commission and the Bureau addressing the application of the anti-collusion rules may be found in Attachment G of the *Auction No. 51 Procedures Public Notice.*

iii. Due Diligence

10. Potential bidders seeking licenses for regions that are in the border area of Canada or Mexico will be subject to the terms of the coordination arrangements/protocols currently in effect with those respective countries.

11. Potential bidders also should be aware that certain applications (including those for modification), petitions for rulemaking, requests for special temporary authority ("STA") waiver requests, petitions to deny, petitions for reconsideration, and applications for review may be pending before the Commission and relate to particular applicants or incumbent licensees. In addition, certain judicial proceedings that may relate to particular applicants or incumbent licensees or the licenses available in Auction No. 51 may be commenced, may be pending, or may be subject to further review. We note that resolution of these matters could have an impact on the availability of spectrum in Auction No. 51. Some of these matters (whether before the Commission or the courts) may not be resolved by the time of the auction.

12. Potential bidders are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses available in Auction No. 51.

13. Potential bidders may obtain information about licenses available in Auction No. 51 through the Bureau's licensing databases on the World Wide Web at *http://wireless.fcc.gov/uls.* Potential bidders should direct questions regarding the search capabilities to the FCC Technical Support hotline at (202) 414–1250 (voice) or (202) 414–1255 (TTY), or via e-mail at *auctech@fcc.gov.* The hotline is available to assist with questions Monday through Friday, from 8 a.m. to 6 p.m. ET. In order to provide better service to the public, *all calls to the hotline are recorded.* The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database. Potential bidders are strongly encouraged to physically inspect any sites located in, or near, the region for which they plan to bid.

iv. Bidder Alerts

14. All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

15. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants and interested parties should perform their own due

diligence before proceeding, as they would with any new business venture.

16. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 51 to deceive and defraud unsuspecting investors. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific proposals regarding Auction No. 51 may also call the FCC Consumer Center at (888) CALL–FCC ((888) 225–5322).

v. National Environmental Policy Act ("NEPA") Requirements

17. Licensees must comply with the Commission's rules regarding the National Environmental Policy Act (NEPA). The construction of a wireless antenna facility is a federal action and the licensee must comply with the Commission's NEPA rules for each such facility.

C. Auction Specifics

i. Auction Date

18. The auction will begin on Wednesday, September 24, 2003. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all licenses and packages will be conducted on each business day until bidding has stopped on all licenses and packages.

ii. Auction Title

19. Auction No. 51 "Regional Narrowband PCS.

iii. Bidding Methodology

20. The bidding methodology for Auction No. 51 will be simultaneous multiple round with package bidding (or "package bidding"). The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. As a contingency plan, bidders may also dial in to the FCC Wide Area Network. Qualified bidders are permitted to bid telephonically or electronically.

iv. Pre-Auction Dates and Deadlines

21. The following is a list of important dates related to Auction No. 51:

Auction Seminar	July 31, 2003.
Short-Form (FCC Form 175) Filing Window Opens.	July 31, 2003; 12 p.m. ET.
Short-Form (FCC Form 175) Application Deadline.	August 8, 2003; 6 p.m. ET.
Upfront Payments (via wire transfer).	August 26, 2003; 6 p.m. ET.
Mock Auction	September 17 and 18, 2003.
Auction Begins	September 24, 2003.

v. Requirements for Participation

22. Those wishing to participate in the auction must:

- Submit a short-form application (FCC Form 175) electronically by 6 p.m. ET, August 8, 2003.
- Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) by 6 p.m. ET, August 26, 2003.
- Comply with all provisions outlined in this public notice.

vi. General Contact Information

23. The following is a list of general contact information related to Auction No. 51:

General Auction Information

General Auction Questions; Seminar Registration: FCC Auctions Hotline, (888) 225–5322, Press Option #2, or direct (717) 338–2888, Hours of service: 8 a.m.–5:30 p.m. ET Monday through Friday

Technical Support

Electronic Filing; FCC Automated Auction System: FCC Auctions Technical Support Hotline (202) 414–1250 (Voice), (202) 414–1255 (TTY) Hours of service: 8 a.m.–6 p.m. ET, Monday through Friday

FCC Forms

(800) 418–3676 (outside Washington, DC), (202) 418–3676 (in the Washington Area), *http://www.fcc.gov/formpage.html*

FCC Internet Sites

http://www.fcc.gov, http://wireless.fcc.gov/auctions, http://wireless.fcc.gov/uls

II. Short-Form (FCC Form 175) Application Requirements

24. Guidelines for completion of the short-form (FCC Form 175) are set forth in Attachment C of the *Auction No. 51 Procedures Public Notice.*

A. Ownership Disclosure Requirements (FCC Form 175 Exhibit A)

25. The Commission indicated in the *Broadcast First Report and Order,* 63 FR 48615 (September 11, 1998), that, for purposed of determining eligibility to participate in a broadcast auction, the uniform part 1 ownership disclosure standards would apply. Specifically, in completing FCC Form 175, all applicants will be required to provide information required by sections 1.2105 and 1.2112 of the Commission's rules.

B. Consortia and Joint Bidding Arrangements (FCC Form 175 Exhibit B)

26. Applicants will be required to identify on their short-form applications any parties with whom they have entered into any consortium arrangements, joint ventures, partnerships or other agreements or understandings which relate in any way to the licenses being auctioned, including any agreements relating to post-auction market structure. Applicants will also be required to certify on their short-form applications that they have not entered into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified, regarding the amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid.

27. While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, bidders are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.

C. Eligibility

i. Bidding Credit Eligibility (FCC Form 175 Exhibit C)

28. A bidding credit represents the amount by which a bidder's winning bids are discounted. The size of the bidding credit depends on the average of the aggregated annual gross revenues for each of the preceding three years of the bidder, its affiliates, its controlling interests, and the affiliates of its controlling interests.

29. In the *Narrowband Second Report and Order,* the Commission adopted two tiers of bidding credits to promote and facilitate the participation of small businesses in the competitive bidding for licenses in the narrowband PCS service. Therefore, bidding credits are available to small and very small businesses, or consortia thereof, as follows for Auction No. 51:

- A bidder with attributed average annual gross revenues of not more than $40 million for the preceding three years ("small business") will receive a 15 percent discount on its winning bids;
- A bidder with attributed average annual gross revenues of not more than $15 million for the preceding three years ("very small business") will receive a 25 percent discount on its winning bids.

30. Bidding credits are not cumulative; a qualifying applicant receives either the 15 percent or 25 percent bidding credit on its winning bid, but only one credit per license.

ii. Tribal Land Bidding Credit

31. To encourage the growth of wireless services in federally recognized tribal lands the Commission has implemented a tribal land bidding credit. *See* section V.E. of the *Auction No. 51 Procedures Public Notice.*

iii. Applicability of Part 1 Attribution Rules

32. *Controlling interest standard.* On August 14, 2000, the Commission released the *Part 1 Fifth Report and Order,* in which the Commission, *inter alia,* adopted a "controlling interest" standard for attributing to auction applicants the gross revenues of their investors and affiliates in determining small business eligibility for future auctions. The Commission observed that the rule modifications adopted in the various Part 1 orders would result in discrepancies and/or redundancies between certain of the new Part 1 rules and existing service-specific rules, and the Commission delegated to the Bureau the authority to make conforming edits to the Code of Federal Regulations (CFR) consistent with the rules adopted in the Part 1 proceeding. More recently, the Commission made further modifications to its rules governing the attribution of gross revenues for purposes of determining small business eligibility. These changes included exempting the gross revenues of the affiliates of a rural telephone cooperative's officers and directors from attribution to the applicant if certain specified conditions are met. The Commission also clarified that in calculating an applicant's gross revenues under the controlling interest standard, the personal net worth, including personal income, of its officers and directors will not be attributed to the applicant.

33. Eligibility for small business preferences will be determined based on the attribution rules in effect at the short-form application deadline. Accordingly, the "controlling interest" standard as recently modified, and the part 1 rules that superseded inconsistent service-specific rules, will control in Auction No. 51.

34. *Control.* The term "control" includes both *de facto* and *de jure* control of the applicant. Typically, ownership of at least 50.1 percent of an entity's voting stock evidences de jure control. *De facto* control is determined on a case-by-case basis. The following are some common indicia of *de facto* control:

- The entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- The entity has authority to appoint, promote, demote, and fire senior executives that control the day-to-day activities of the licensee; or
- The entity plays an integral role in management decisions.

35. *Attribution for small and very small business eligibility.* In determining which entities qualify as small or very small businesses, the Commission will consider the gross revenues of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests. The Commission does not impose specific equity requirements on controlling interest holders. Once the principals or entities with a controlling interest are determined, only the revenues of those principals or entities, the affiliates of those principals or entities, the applicant and its affiliates, will be counted in determining small business eligibility.

36. A consortium of small or very small businesses is a "conglomerate organization formed as a joint venture between or among mutually independent business firms," each of which *individually* must satisfy the definition of small or very small business in Sections 1.2110(f) and 24.321. Thus, each consortium member must disclose its gross revenues along with those of its affiliates, its controlling interests, and the affiliates of its controlling interests. We note that although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for small or very small business credits, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

iv. Supporting Documentation

37. Applicants should note that they will be required to file supporting documentation to their FCC Form 175 short-form applications to establish that they satisfy the eligibility requirements to qualify as small or very small businesses (or consortia of small or very small businesses) for this auction.

38. Applicants should further note that submission of an FCC Form 175 application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, has read the form's instructions and certifications, and that the contents of the application and its attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

39. *Small or very small business eligibility (Exhibit C).* Entities applying to bid as small or very small businesses (or consortia of small or very small businesses) will be required to disclose on Exhibit C to their FCC Form 175 short-form applications, *separately and in the aggregate,* the gross revenues for the preceding three years of each of the following: (i) The applicant, (ii) its affiliates, (iii) its controlling interests, and (iv) the affiliates of its controlling interests. Certification that the average annual gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, a schedule of gross revenues for each of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying as a consortium of small or very small businesses, this information must be provided for each consortium member.

D. Provisions Regarding Defaulters and Former Defaulters (FCC Form 175 Exhibit D)

40. Each applicant must certify on its FCC Form 175 application that it is not in default on any Commission licenses and that it is not delinquent on any non-tax debt owed to any Federal agency. In addition, each applicant must attach to its FCC Form 175 application a statement made under penalty of perjury indicating whether or not the applicant, its affiliates, its controlling interests, or the affiliates of its controlling interest have ever been in default on any Commission licenses or have ever been delinquent on any non-tax debt owed to any Federal agency. The applicant must provide such information for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, as defined by Section 1.2110 of the Commission's rules. Applicants must include this statement as Exhibit D of the FCC Form 175.

41. "Former defaulters"—*i.e.,* applicants, including their attributable interest holders, that in the past have defaulted on any Commission licenses or been delinquent on any non-tax debt owed to any Federal agency, but that have since remedied all such defaults and cured all of their outstanding non-

tax delinquencies—are eligible to bid in Auction No. 51, provided that they are otherwise qualified. However, as discussed *infra* in section III.D.iii, former defaulters are required to pay upfront payments that are fifty percent more than the normal upfront payment amounts.

E. Installment Payments

42. Installment payment plans will not be available in Auction No. 51.

F. Other Information (FCC Form 175 Exhibits E and F)

43. Applicants owned by minorities or women, as defined in 47 CFR 1.2110(c)(2), may attach an exhibit (Exhibit E) regarding this status. This applicant status information is collected for statistical purposes only and assists the Commission in monitoring the participation of "designated entities" in its auctions. Applicants wishing to submit additional information may do so on Exhibit F.

G. Minor Modifications to Short-Form Applications (FCC Form 175)

44. After the short-form filing deadline (August 8, 2003), applicants may make only minor changes to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.*, change their license selections, change the certifying official or change control of the applicant or change bidding credits). *See* 47 CFR 1.2105. Permissible minor changes include, for example, deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Applicants should make these modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division, at the following address: *auction51@fcc.gov*. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 51. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

45. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338–2850.

H. Maintaining Current Information in Short-Form Applications (FCC Form 175)

46. Applicants have an obligation under 47 CFR1.65, to maintain the completeness and accuracy of information in their short-form applications. Amendments reporting substantial changes of possible decisional significance in information contained in FCC Form 175 applications, as defined by 47 CFR 1.2105(b)(2), will not be accepted and may in some instances result in the dismissal of the FCC Form 175 application.

III. Pre-Auction Procedures

A. Auction Seminar

47. On Thursday, July 31, 2003, the FCC will sponsor a free seminar for Auction No. 51 at the Federal Communications Commission, located at 445 12th Street, SW, Washington, DC. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, the FCC Automated Auction System, and the narrowband PCS and auction rules.

B. Short-Form Application (FCC Form 175)—Due August 8, 2003

48. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be submitted electronically and received at the Commission no later than 6 p.m. ET on August 8, 2003. Late applications will not be accepted.

49. There is no application fee required when filing an FCC Form 175.

i. Electronic Filing

50. Applicants must file their FCC Form 175 applications electronically. Applications may generally be filed at any time beginning at noon ET on July 31, 2003, until 6 p.m. ET on August 8, 2003. Applicants are strongly encouraged to file early and are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on August 8, 2003.

51. Applicants must press the "SUBMIT Application" button on the "Submission" page of the electronic form to successfully submit their FCC Form 175s. Any form that is not submitted will not be reviewed by the FCC. Information about accessing the FCC Form 175 is included in Attachment C of the *Auction No. 51 Procedures Public Notice*. Technical support is available at (202) 414–1250 (voice) or (202) 414–1255 (text telephone (TTY)); hours of service Monday through Friday, from 8 AM to 6 PM ET. In order to provide better service to the public, all calls to the hotline are recorded.

ii. Completion of the FCC Form 175

52. Applicants should carefully review 47 CFR 1.2105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment D of the *Auction No. 51 Procedures Public Notice*.

iii. Electronic Review of FCC Form 175

53. The FCC Form 175 electronic review system may be used to locate and print applicants' FCC Form 175 information. There is no fee for accessing this system. *See* Attachment C of the *Auction No. 51 Procedures Public Notice* for details on accessing the review system.

54. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications.

Note: Applicants should not include sensitive information (*i.e.*, TIN/EIN) on any exhibits to their FCC Form 175 applications.

C. Application Processing and Minor Corrections

55. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (i) Those applications accepted for filing; (ii) those applications rejected; and (iii) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

D. Upfront Payments—Due August 26, 2003

56. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159 that can be printed and faxed to Mellon Bank in Pittsburgh, PA. All upfront payments must be received at Mellon Bank by 6 p.m. ET on August 26, 2003. For specific details regarding upfront payments, *see* section III. D of the *Auction No. 51 Procedures Public Notice*.

i. Making Auction Payments by Wire Transfer

57. Wire transfer payments must be received by 6 p.m. ET on August 26, 2003. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline.

58. Applicants must fax a completed FCC Form 159 (Revised 2/00) to Mellon Bank at (412) 209–6045 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction Event No. 51." In order to meet the Commission's upfront payment deadline, an applicant's payment must be credited to the Commission's account by the deadline. Applicants are responsible for obtaining confirmation from their financial institution that Mellon Bank has timely received their upfront payment and deposited it in the proper account. Detailed instructions for completion of FCC Form 159 are included in Attachment E of the *Auction No. 51 Procedures Public Notice*.

ii. Amount of Upfront Payment

59. In the *Part 1 Order* the Commission delegated to the Bureau the authority and discretion to determine appropriate upfront payment(s) for each auction. In addition, in the *Part 1 Fifth Report and Order*, the Commission ordered that "former defaulters," *i.e.*, applicants that have ever been in default on any Commission license or have ever been delinquent on any non-tax debt owed to any Federal agency, be required to pay upfront payments fifty percent greater than non-"former defaulters." In the *Auction No. 51 Comment Public Notice*, the Bureau proposed that the amount of the upfront payment would determine the initial maximum eligibility (as measured in bidding units) for each bidder. Each license is assigned a specific number of bidding units equal to the upfront payment, on a bidding unit per dollar basis. For a package, the Bureau proposed to calculate the bidding units by adding together the bidding units of the individual licenses that make up the package. In order to bid on a license or package, otherwise qualified bidders that applied for the license(s) on Form 175 must have an eligibility level that meets or exceeds the number of bidding units assigned to the license or package. At a minimum, therefore, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on Form 175, or else the applicant will not be eligible to participate in the auction. An applicant does not have to make an upfront payment to cover all licenses for which the applicant has applied on Form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to bid (via bids on licenses and/or packages) at any given time.

60. In the *Auction No. 51 Comment Public Notice*, the Bureau proposed to calculate upfront payments on a license-by-license basis using the following formula:

$.00001 * kHz * License Area Population rounded.

The Bureau received no comments on this issue. Therefore, the Bureau adopts its proposed upfront payments. The specific upfront payments and bidding units for each license are set forth in Attachment A of the *Auction No. 51 Procedures Public Notice*.

61. In calculating its upfront payment amount, an applicant should determine the bidding units of all the licenses it may wish to win at one time and submit an upfront payment covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all of these licenses. Applicants should check their calculations carefully, as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

EXAMPLE: UPFRONT PAYMENTS AND BIDDING FLEXIBILITY

Market No.	Channel No.	Market name	Bidding units	Upfront payment
RPC001	17	Northeast	34,000	$34,000
RPC002	17	South	38,000	38,000

If a bidder wishes to bid on both licenses in a round or on a package of both licenses, it must have selected both on its FCC Form 175 and purchased at least 72,000 bidding units (34,000 + 38,000). If a bidder only wishes to bid on one license, but not both, purchasing 38,000 bidding units would meet the requirement for either license. The bidder would be able to bid on either license, *but not both at the same time*. If the bidder purchased only 34,000 bidding units, it would have enough eligibility for the Northeast license but not for the South license.

62. Former defaulters should calculate their upfront payment for all licenses by multiplying the number of bidding units they wish to purchase by 1.5. In order to calculate the number of bidding units to assign to former defaulters, the Commission will divide the upfront payment received by 1.5 and round the result up to the nearest bidding unit.

Note: An applicant may, on its FCC Form 175, apply for every applicable license being offered, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment.

iii. Applicant's Wire Transfer Information for Purposes of Refunds of Upfront Payments

63. The Commission will use wire transfers for all Auction No. 51 refunds. To ensure that refunds of upfront payments are processed in an expeditious manner, the Commission is requesting that all pertinent information as listed be supplied to the FCC. Applicants can provide the information electronically during the initial short-form filing window after the form has been submitted. Wire Transfer Instructions can also be manually faxed to the FCC, Financial Operations Center, Auctions Accounting Group, ATTN: Gail Glasser or Tim Dates, at (202) 418–2843 by August 26, 2003. All refunds will be returned to the payer of record as identified on the FCC Form 159 unless the payer submits written authorization instructing otherwise. For additional information, please call Gail Glasser at (202) 418–0578 or Tim Dates at (202) 418–0496. Name of Bank, ABA Number, Contact and Phone Number, Account Number to Credit, Name of Account Holder, FCC Registration Number (FRN), Taxpayer Identification Number, Correspondent Bank (if applicable), ABA Number, Account Number.

E. Auction Registration

64. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and have timely submitted upfront payments sufficient to make them eligible to bid on at least one of the licenses for which they applied.

65. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, one containing the confidential bidder identification number (BIN) and the

other containing the SecurID cards, both of which are required to place bids. These mailings will be sent only to the contact person at the contact address listed in the FCC Form 175.

66. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Monday, September 15, 2003, should contact the Auctions Hotline at (717) 338–2888. Receipt of both registration mailings is critical to participating in the auction, and each applicant is responsible for ensuring it has received all of the registration material.

67. Qualified bidders should note that lost bidder identification numbers or SecurID cards can be replaced only by appearing *in person* at the FCC headquarters, located at 445 12th St., SW, Washington, DC 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacements. Qualified bidders requiring replacements must call technical support prior to arriving at the FCC.

F. Remote Electronic Bidding

68. The Commission will conduct this auction over the Internet, and telephonic bidding will be available as well. As a contingency plan, bidders may also dial in to the FCC Wide Area Network. Qualified bidders are permitted to bid telephonically or electronically. Each applicant should indicate its bidding preference—electronic or telephonic—on the FCC Form 175. In either case, each authorized bidder must have its own SecurID card, which the FCC will provide at no charge. For security purposes, the SecurID cards and the FCC Automated Auction System user manual are only mailed to the contact person at the contact address listed on the FCC Form 175. Each SecurID card is tailored to a specific auction; therefore, SecurID cards issued for other auctions or obtained from a source other than the FCC will not work for Auction No. 51. The telephonic bidding phone number will be supplied in the first overnight mailing, which also includes the confidential bidder identification number.

69. SecurID cards can be recycled, and the Bureau encourages bidders to return the cards to the FCC. The Bureau will provide pre-addressed envelopes that bidders may use to return the cards once the auction is over.

G. Mock Auction

70. All qualified bidders will be eligible to participate in a mock auction on Wednesday, September 17, and Thursday, September 18, 2003. The mock auction will enable applicants to become familiar with the FCC Automated Auction System prior to the auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

IV. Auction Event

71. The first round of bidding for Auction No. 51 will begin on Wednesday, September 24, 2003. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction.

A. Auction Structure

i. Simultaneous Multiple Round Auction With Package Bidding

72. In the *Auction No. 51 Comment Public Notice*, the Bureau proposed to award all licenses in Auction No. 51 in a simultaneous multiple round auction with package bidding. The Bureau received no comments on this issue. The Bureau concludes that it is operationally feasible and appropriate to auction the regional narrowband PCS licenses through a simultaneous multiple round auction with package bidding. Unless otherwise announced, bids will be accepted on all individual licenses and on packages of licenses in each round of the auction. The Bureau believes this approach allows bidders to express complementarities among licenses, and the Bureau believes this approach does not unreasonably disadvantage bidders who do not wish to win packages of licenses. The Bureau also believes this approach is administratively efficient.

ii. Maximum Eligibility

73. In the *Auction No. 51 Comment Public Notice*, the Bureau proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder. The Bureau received no comments on this issue.

74. For Auction No. 51 the Bureau adopts this proposal. The amount of the upfront payment submitted by a bidder determines the maximum eligibility (in bidding units) for each bidder. The total upfront payment defines the initial maximum number of bidding units on which the applicant will be permitted to bid in a given round. As there is no provision for increasing a bidder's eligibility during the course of an auction, prospective bidders are cautioned to calculate their upfront payments carefully. The total upfront payment does not affect the total dollars a bidder may bid on any given license or package.

iii. Activity Rule

75. In order to ensure that the auction closes within a reasonable period of time, an activity rule provides incentives for bidders to participate throughout the auction. The activity rule requires each bidder to have active bids in each round that account for a specified fraction of the bidder's current eligibility, as measured in bidding units. A bidder that does not satisfy the activity rule will either use an activity rule waiver (if any remain) or lose bidding eligibility for the next round. Losing eligibility matters to bidders because a bidder's bidding activity cannot exceed its current eligibility.

76. In the *Auction No. 51 Comment Public Notice*, the Bureau proposed to measure a bidder's *bidding activity* in a round as the maximum number of bidding units the bidder can win considering new bids placed and provisionally winning bids renewed in that round. Thus, when a bidder submits bids in a round the FCC Automated Auction System will determine the set of bids, among the bidder's new bids and renewed provisionally winning bids, that contains the most bidding units and has no overlap among the licenses. The Bureau also proposed that a bidder be considered active if the bidder has provisionally winning bids from the previous round. A bidder's bids made in different rounds will be considered mutually exclusive, so the bidding units associated with provisionally winning bids must be viewed independently from the bidding units associated with current round bids. The Bureau proposed to define a bidder's *eligibility activity* in a round as the greater of (i) its bidding activity in the round and (ii) the bidding units associated with the bidder's provisionally winning bids from the prior round.

77. For Auction No. 51, we proposed that, in each round of the auction, a bidder desiring to maintain its current eligibility would be required to have eligibility activity equal to sixty percent (three-fifths) of its current eligibility. For a bidder that failed to meet the activity requirement in a given round, the Automated Auction System would reduce the bidder's eligibility for the next round to five-thirds times its eligibility activity in the current round. Thus, a bidder's eligibility in the current round is equal to either its eligibility in the previous round (bidder met the activity requirement) or five-thirds of its eligibility activity in the previous round (bidder did not meet the activity requirement), whichever is less:
Eligibility (t) = Min (Eligibility (t − 1), 5/3 * Eligibility Activity (t − 1))

78. Activity rule waivers provide an exception to this rule and are discussed in the next section, "Activity Rule Waivers and Reducing Eligibility."

79. In addition, the Bureau proposed to retain the discretion to increase to eighty percent (four-fifths) the proportion of bidding units on which bidders must be active to retain their current eligibility. Any such change will be announced to bidders prior to the beginning of the round in which the change takes effect. For a bidder that failed to meet an eighty percent activity requirement in a given round, the Automated Auction System would reduce the bidder's eligibility for the next round to five-fourths times its eligibility activity in the current round.

Caution: If the Bureau exercises its discretion to increase the activity requirement to eighty percent, bidders must carefully check their current activity during the bidding period of the first round following the change. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity after an increase in the activity requirement. Bidders may check their activity against the required activity level by using the bidding system's bidding module.

80. The Bureau received no comments on these proposals. Because employing an activity rule has proven successful in maintaining proper pace in previous auctions, the Bureau adopts its proposal for Auction No. 51.

iv. Activity Rule Waivers and Reducing Eligibility

81. Each bidder will be provided five activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's eligibility activity in the current round being below the required level. An activity rule waiver applies to an entire round of bidding and not to a particular license or package.

82. The FCC Automated Auction System assumes that bidders with insufficient eligibility activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any round where a bidder's eligibility activity is below the activity requirement unless: (i) The bidder has no activity rule waivers remaining; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements. If a bidder has no waivers remaining and does not satisfy the activity requirement, its current eligibility will be permanently reduced, possibly eliminating the bidder from further bidding in the auction.

83. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the "reduce eligibility" function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in "Activity Rule" (*see* section IV.A.iii discussion). Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

84. Finally, the Bureau adopts its proposal not to permit bidders to submit an activity rule waiver proactively as a means to keep the auction open absent bidding activity.

v. Auction Stopping Rules

85. For Auction No. 51, the Bureau proposed to employ a two-round simultaneous stopping rule; that is, the auction would close after two consecutive rounds with no new bids. The Bureau also proposed that, for purposes of the stopping rule, last and best bids would be considered new bids (*i.e.*, would keep the auction open) but renewed bids would not.

86. In addition, the Bureau proposed that it reserve the right to declare that the auction will end after a designated number of additional rounds ("special stopping rule"). The Bureau proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the activity requirement (where bidders will be required to maintain a higher level of bidding activity), increasing the number of rounds per day, and/or adjusting the minimum acceptable bids and bid increments for the licenses.

87. The Bureau received no comment on this issue. The Bureau adopts the proposals. Auction No. 51 will begin under the two-round simultaneous stopping rule, and the Bureau will retain the discretion to invoke the special stopping rule.

vi. Auction Delay, Suspension, or Cancellation

88. Public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair conduct of competitive bidding. Because this approach has proven effective in resolving exigent circumstances in previous auctions, we adopt our proposed auction cancellation rules. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety.

B. Bidding Procedures

i. Round Structure

89. The initial bidding schedule will be announced in the public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. Each bidding round is followed by the release of round results. Multiple bidding rounds may be conducted in a given day.

90. The FCC has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

ii. Packages

91. The Bureau proposed that, in addition to bidding on individual licenses, bidders be permitted to create and bid on up to twelve different packages of their own choosing during the course of the auction. A bid on an individual license does not count as a bid on a package; packages consist of two or more licenses. Bidders will not be required to identify or create their packages before the start of the auction, but may create their packages as the auction progresses. A bidder may modify or delete a package it has created up until the point where it has bid on the package and the round has closed. If the bidder submits a bid on a package and subsequently removes the bid during the same round, the bidder has

the option of also deleting or modifying the package. However, once a bidder bids on a package and the round closes, the package may not be modified or deleted and counts as one of the bidder's twelve allowable packages.

92. The Bureau received no comments on this issue. The Bureau adopts the proposals regarding packages.

iii. Reserve Price or Minimum Opening Bid

93. For Auction No. 51, the Bureau proposed the following license-by-license formula for calculating minimum opening bids: $.00001 * kHz * License Area Population, rounded.

94. For a package, the Bureau proposed to calculate the minimum opening bid by adding together the minimum opening bids of the individual licenses that make up the package.

95. The Bureau received no comments on this issue. Consequently, the Bureau adopts its proposed minimum opening bids for Auction No. 51. The minimum opening bids the Bureau adopts for Auction No. 51 are reducible at the discretion of the Bureau. The Bureau emphasizes, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureau will not entertain any requests to reduce the minimum opening bid on specific licenses.

96. The specific minimum opening bids for each license available in Auction No. 51 are set forth in Attachment A of the *Auction No. 51 Procedures Public Notice*.

iv. Minimum Acceptable Bids and Bid Increments

97. In the *Auction No. 51 Comment Public Notice*, the Bureau proposed that in each round, eligible bidders will be able to place bids on a given license or package in any of nine different amounts. The Automated Auction System interface will list the nine acceptable bid amounts for each license and package. In the first round of the auction, the minimum acceptable bid for a license or package will be equal to its minimum opening bid. The Bureau proposed that in all subsequent rounds, the minimum acceptable bid for a license or package will be the greatest of: (i) The minimum opening bid; (ii) the bidder's own previous high bid on a license or package plus x%, where the Bureau will specify the value of x in each round; and (iii) the *current price estimate* of the license plus z%, or for a package, the sum of the current price estimates for the licenses in the package plus z%, where the Bureau will specify the value of z in each round.

98. Current price estimates are estimates of the individual prices of the licenses being auctioned. The estimates take into account the minimum opening bids for the licenses as well as all the bids placed in the auction and, therefore, reflect all available information that has been revealed in the auction about the relative demands for the licenses. For a provisionally winning package, the current price estimates for the licenses that make up the package are set such that the sum of those current price estimates equals the provisionally winning bid on the package. These estimates are generated during round results following every round of the auction as part of the mathematical optimization process used by the Bureau to determine the provisionally winning bids. The precise methodology used to calculate current price estimates is described in Attachment F of the *Auction No. 51 Procedures Public Notice*. Until a bid is placed on a license or on a package containing that license, by any bidder in any round, the current price estimate is the FCC bid amount.

99. The Bureau proposed to retain an exception to part (iii) for calculating the minimum acceptable bid for a "global" package—a package consisting of all six of the licenses available in the auction. After the first round of the auction, part (iii) of the minimum acceptable bid rule for a global package will always be the revenue generated by the provisionally winning bid set in the previous round plus w%, where the Bureau will specify the value of w in each round.

100. The result of the minimum acceptable bid calculation will be rounded using our standard rounding procedure. The Bureau proposed to initially set x at ten, z at five and w at five, and to retain the discretion to adjust these variables during the course of the auction.

101. For bids higher than the minimum acceptable bid—*i.e.*, multi-increment bids—the Bureau proposed to define the amount of the additional bid increments as v% of the minimum acceptable bid, where the minimum acceptable bid is determined. The Bureau proposed to initially set v at ten and to retain the discretion to adjust the amount during the course of the auction. Thus, when v equals ten, a bidder will be able to place multi-increment bids of the minimum acceptable bid plus approximately 10%, 20%, etc. with the maximum bid being approximately equal to the minimum acceptable bid plus 80%.

102. The Bureau received no comments on these issues. The Bureau adopts the proposals. The Bureau retains the discretion to change minimum acceptable bids, and to do so on a license-by-license and package-by-package basis, if circumstances so dictate. If the Bureau exercises this discretion, it will announce any change in the Automated Auction System.

v. Winning and Provisionally Winning Bids

103. In the *Auction No. 51 Comment Public Notice*, the Bureau proposed the procedures set forth.

104. *Winning bids* in a package bidding auction are the set of "consistent" bids (non-overlapping, and for each winning bidder, only bids made or renewed in the same round) on individual licenses and packages that maximizes total revenue when the auction closes. *Provisionally winning bids* are the set of consistent bids that maximizes total revenue in a particular round (they would win if the auction were to close in that round), assigning each license to either a bidder or the FCC. When determining winning and provisionally winning bids, all bids made in every round throughout the course of the auction (except for bids that are placed and subsequently removed during the same round) will be considered. In addition, each license is treated as having a bid placed by the FCC at $1000 less than the minimum opening bid. This procedure will ensure that a bid on a license or package at the minimum opening bid always beats the FCC bid.

105. Since there can be more than one set of consistent bids that produces the maximum revenue, we proposed to use a procedure that randomly selects among these tied sets when determining the provisionally winning bids. This tie breaking procedure involves two steps: (i) The assignment of a *selection number* to each bid, and (ii) the determination of, among all tied bid sets, the set that produces the *maximum sum of selection numbers*.

106. A bid's *selection number* is the sum of n pseudo-random numbers where n is the number of licenses comprising the bid's package. A bid's selection number will be included in the publicly-available round results released after each round.

107. Selection numbers will be generated for each license in each bid in each round. In the event that more than one set of consistent bids produces the maximum revenue, the second step of the tie breaking procedure will determine the provisionally winning bid set. Computer software will be used to determine the consistent set that produces the maximum revenue and the maximum sum of selection numbers. Each license in each bid will be assigned a new selection number in every round. Consequently, if there are ties, the set of provisionally winning bids may change even after a round in which there are no new bids. The solver will not be run after the last round of the auction, so that the winning set is the same as the set of provisional winners generated after the next-to-the-last round (*i.e.*, there won't be any surprise winners).

108. Please note that it is possible that a provisionally winning bid might not be the highest bid on the particular license or package. This possibility is primarily due to each bidder's bids being considered mutually exclusive across rounds. For example, if one bidder has placed the highest bid on each of two different licenses in two different rounds (and did not renew the earlier of the two bids), then those two bids are considered as mutually exclusive and only one of them can be a provisionally-winning bid.

109. The Bureau received no comments on these proposals. The Bureau adopts the procedures regarding winning and provisionally winning bids.

vi. Last and Best Bids

110. In the *Auction No. 51 Comment Public Notice*, the Bureau proposed to allow bidders that wish to drop out of the auction or that believe they are about to lose their bidding eligibility to have an opportunity before they drop out to place up to two mutually exclusive sets of "last and best" bids on any licenses or packages for which they remain eligible. This is a limited exception to minimum acceptable bids and to click-box bidding. Such bids may be of any amount (in thousand dollar increments) between the bidder's previous high bid on the license or package and the amount of the highest acceptable bid for the license or package in the current round (the eighth increment above the minimum acceptable bid). If a bidder chooses this option, it will not be permitted to make any further bids during the auction.

111. The Bureau received no comments on this issue. Therefore, we adopt our proposal.

vii. Renewed Bids

112. Without regard to the minimum acceptable bid requirement, the Bureau proposed to allow a bidder to "renew" in the current round the highest previous bid it made on any license or package; that is, it may resubmit the bid without increasing the amount bid. No eligibility activity or bidding activity is conferred for renewing a non-provisionally winning bid. Renewed provisionally winning bids confer bidding activity (non-renewed provisionally winning bids count toward eligibility activity). Renewed bids will be treated as being made in the current round.

113. Renewals provide bidders a means to ensure that bids from previous rounds are considered *in addition to* the bids placed in the current round. Otherwise, bids made in different rounds are treated as mutually exclusive, so that the bidder may win some or all of the bids from the current round, or a previous round, but not both.

114. The Bureau received no comments on this issue. Therefore, the Bureau adopts its proposal.

viii. Bidding

115. During a round, a bidder may submit new bids or renewed bids for as many licenses and packages as it wishes (subject to eligibility requirements, its FCC Form 175 license selection, and the twelve package limitation); remove bids placed in the same bidding round; or permanently reduce eligibility. Bidders also have the option of making multiple submissions in each round. If a bidder submits multiple bids for a single license or package in the same round, the system takes the last bid entered as that bidder's bid for the round. Bidders should note that the bidding units associated with licenses for which the bidder has removed its bid do not count towards the bidder's activity at the close of the round.

116. Bidding is constrained by the eligibility and activity rules, which determine both minimum and maximum permissible levels of bidding, as measured in bidding units. As previously discussed, minimum bidding, as measured in bidding units, is constrained by the activity rules. In each round, a bidder desiring to maintain its current eligibility and not use an activity rule waiver must be active, based on eligibility activity, on licenses associated with enough bidding units to meet the activity requirement for the current round. For more details, please refer to section IV.A.iii. "Activity Rule."

117. Maximum bidding, as measured in bidding units, is constrained by the eligibility rules. *Bidding activity* for a round, defined as the maximum number of bidding units a bidder can win considering new bids and renewed provisionally winning bids placed in that round, cannot exceed current eligibility. That is, when a bidder submits a set of bids in a round, the system will not accept the set of bids if it determines that the bidding activity generated by those bids exceeds the bidder's current eligibility. Bidding in a round is further limited by the requirement that a bidder's *bidding exposure* in a round must be less than or equal to its initial eligibility. Bidding exposure is the maximum number of bidding units a bidder can win considering all the bids (new, renewed provisionally winning or non-provisionally winning) placed in the round. Similarly, when a bidder submits a set of bids in a round, the system will not accept the set of bids if it determines that the bidding exposure generated by those bids exceeds the bidder's initial eligibility. In either case, if a set of bids is rejected, the system will notify the bidder that its bids have not been accepted and report which rule is in violation.

118. Bidders are permitted only to bid on the specific licenses they selected on their FCC Form 175. Any packages they create must be comprised entirely of licenses selected on their Form 175. The bid submission screens are customized using the bidder's Form 175 information, and will not permit bidding on non-selected licenses (or packages of those licenses).

119. Please note that all bidding will take place remotely either through the FCC Automated Auction System or by telephonic bidding. Telephonic bidders are therefore reminded to allow sufficient time to bid by placing their calls well in advance of the close of a round.

120. In order to access the bidding functions of the FCC Automated Auction System, bidders must be logged in during the bidding round using the bidder identification number provided in the registration materials, and the passcode generated by the SecurID card. Bidders are strongly encouraged to print bid confirmations for each round *after* they have completed all of their activity for that round.

121. In each round, eligible bidders will be able to place bids on a given license or package in any of nine different amounts. Bidders may use the drop-down box to select from among the nine bid amounts; to renew any bids (if applicable); or to remove any bids made within the current round.

122. Finally, bidders are cautioned in selecting their bid amounts because, as explained in the following section, bidders are not permitted to withdraw bids from a previous round, even if mistakenly or erroneously made. As explained previously, when

determining winning and provisionally winning bids, the Bureau considers all bids made throughout the course of the auction.

ix. Bid Removal and Bid Withdrawal

123. In the *Auction No. 51 Comment Public Notice*, the Bureau proposed not to allow any bid withdrawals in Auction No. 51. The Bureau received no comments on this issue. Therefore, the Bureau adopts its proposal.

124. Bid Removal Procedures. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bid" function in the bidding system, a bidder may effectively "unsubmit" any bid placed within that round. Removing a bid will affect a bidder's activity for the round in which it is removed, *i.e.*, a bid that is removed does not count towards bidding activity. This procedure will enhance bidder flexibility during the auction, and therefore, the Bureau adopts these procedures for Auction No. 51.

x. Round Results

125. Bids placed during a round will not be made public until the conclusion of that bidding period. After a round closes, the Bureau will compile reports of all bids made in that round, the set of bids considered when determining the current provisionally winning bids, current price estimates, new minimum acceptable bids for all bidders, current provisionally winning bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities for Auction No. 51 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding. Details regarding round results formats and locations will be included in a subsequent public notice.

xi. Auction Announcements

126. The FCC will use auction announcements to announce items such as schedule changes. All FCC auction announcements will be available by clicking a link on the FCC Automated Auction System.

xii. Default

127. The Commission recently adopted a special rule for calculating default payments in connection with package bidding. In the event a winning bidder defaults on payments due after an auction closes or is disqualified after the auction, a default payment will be assessed. The default payment will consist of a deficiency portion and an additional 25% payment. The special default rule is modeled on the default rule used in other auctions. However, there are substantial differences, perhaps most significantly in the amount of the additional payment. The default rule used in other auctions sets the additional payment at three percent (3%) of the lesser of the subsequent winning bid and the defaulted bid. In contrast, the default rule for use with package bidding sets the additional payment at twenty-five percent (25%) of the lesser of the subsequent winning bid and the defaulted bid.

128. The deficiency portion will make up any loss to the Commission that results when defaulted bid(s) are replaced by subsequent winning bid(s). If the subsequent winning bid(s) exceed the defaulted bid(s), no deficiency portion will be assessed. Even in the absence of a deficiency portion, however, an additional 25% payment will be due. Where a defaulting bidder held winning bids on individual licenses (*i.e.*, not as part of a package), and in a subsequent auction the licenses are also won individually, the deficiency portion will be calculated by subtracting the subsequent winning bid from the defaulted bid. The deficiency portion for such bids will be calculated on a license-by-license basis (*i.e.*, in the event of defaults on multiple bids, the differences between the amounts originally bid and the amounts subsequently bid will not be aggregated to determine a net amount owed).

129. Where a defaulting bidder won licenses in package(s), and in a subsequent auction the licenses are won either (a) In the same package(s), or (b) in smaller packages or as individual licenses that correlate to the defaulted package(s), the deficiency portion will be determined on a package-by-package basis. In the event a defaulting bidder defaults on more than one such bid, the differences between the amount originally bid and the amount(s) subsequently bid will not be aggregated to determine a net amount owed. Thus, in this situation, the deficiency portion will be calculated in a manner analogous to where the licenses are sold individually. However, with regard to each individual package, where the licenses are subsequently sold individually or as part of smaller packages, the amounts received in the subsequent auction will be aggregated in order to determine any deficiency.

130. Where a defaulting bidder or bidders won licenses either individually or as part of packages, and in a subsequent auction the licenses are won as larger packages or different packages (not including the situation described in the preceding paragraph), the deficiency portion will be calculated by subtracting the aggregate amount originally bid for the licenses from the aggregate amount bid in the subsequent auction for the licenses. Thus, in this situation, the deficiency portion will not be calculated on a bid-by-bid basis.

131. If, in a situation requiring that bids be aggregated in order to determine the deficiency portion of the default payments for the bids, there are multiple defaulting bidders, the default payment (both the deficiency portion and the additional 25% payment portion) will be allocated to the defaulting bidders in proportion to their share of the aggregated default bids.

132. In the event that a bidding credit applies to any applicable bid(s), the Bureau will assess the deficiency portion of the default payment using the lesser of the difference between gross bids and the difference between net bids. (In the event that a bidder does not have a bidding credit, the bidder's gross bid and net bid are the same.) In other words, the Bureau will compare (i) The sum of the gross defaulted Auction No. 51 bid(s) minus the gross subsequent winning bid(s) and (ii) the sum of the net defaulted Auction No. 51 bid(s) minus the net subsequent winning bid(s). The Bureau will impose the lesser of (i) and (ii) as the deficiency portion.

133. As noted at the outset, the default payment consists of the deficiency portion and an additional 25% payment. The additional payment will be 25% of the lesser of the subsequent winning bid(s) and the defaulted bid(s). The Bureau will use the same gross or net bid(s) that it used to calculate the deficiency portion when assessing the additional 25% payment. That is, the Bureau will compare the defaulted and subsequent bid(s) according to the methods described for calculation of the deficiency portion of the default payment when determining whether the defaulted bid(s) or the subsequent winning bid(s) is the lesser amount. Should there be no difference between the gross or net bid(s) for purposes of assessing the deficiency portion, the Bureau will assess the additional 25% payment using the lesser of the gross or net bid(s).

xiii. Maintaining the Accuracy of FCC Form 175 Information

134. As noted in section II.G, after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. Applicants must make these modifications to their FCC Form 175 electronically and submit a letter, briefly summarizing the changes, by electronic mail to the attention of Margaret Wiener, Chief, Auctions and Industry Analysis Division at the following address: *auction51@fcc.gov*. The electronic mail summarizing the changes must include a subject or caption referring to Auction No. 51. The Bureau requests that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

135. A separate copy of the letter should be faxed to the attention of Kathryn Garland at (717) 338–2850. Questions about other changes should be directed to Christopher Shields of the Auctions and Industry Analysis Division at (202) 418–0660.

V. Post-Auction Procedures

A. Down Payments

136. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying winning bidders and down payments due.

137. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction No. 51 to 20 percent of its net winning bids (actual bids less any applicable small or very small business bidding credits).

B. Auction Discount Voucher

138. On June 8, 2000, the Commission awarded Qualcomm, Inc. a transferable Auction Discount Voucher ("ADV") in the amount of $125,273,878.00. Subject to the terms and conditions set forth in the Commission's Order, Qualcomm or its transferee could use this ADV, in whole or in part, to adjust a winning bid in any spectrum auction prior to June 8, 2003. On April 28, 2003, the Bureau granted Qualcomm an additional year, until June 8, 2004, to use the remaining amount of its ADV. Qualcomm transferred $10,848,000.00 of the ADV to a winning bidder in FCC Auction No. 35. The transferee used this amount to pay a portion of one of its winning bids in Auction No. 35. Qualcomm also transferred $50,536,998.75 of the ADV to an assignee of broadband PCS licenses that requests this amount be applied to pay the unpaid principal and interest accrued on the licenses. The remaining $63,888,879.25 of Qualcomm's ADV could be used to adjust winning bids in another FCC Auction, including Auction No. 51.

C. Long-Form Application (FCC Form 601)

139. Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application (FCC Form 601) and required exhibits for each license won through Auction No. 51. Winning bidders that are small or very small businesses must include an exhibit demonstrating their eligibility for small or very small business bidding credits. *See* 47 CFR 1.2112(b). Further filing instructions will be provided to auction winners at the close of the auction.

D. Ownership Disclosure Information Report (FCC Form 602)

140. At the time it submits its long-form application (FCC Form 601), each winning bidder also must comply with the ownership reporting requirements as set forth in 47 CFR 1.913, 1.919, and 1.2112. Applicants are reminded that the FCC Form 602 must now be filed electronically. Accordingly, forms filed manually will not be accepted. Winning bidders without a current Form 602 already on file with the Commission must submit a properly completed Form 602 at the time they submit their long-form applications. Further filing instructions will be provided to auction winners at the close of the auction.

E. Tribal Land Bidding Credit

141. A winning bidder that intends to use its license(s) to deploy facilities and provide services to federally-recognized tribal lands that are unserved by any telecommunications carrier or that have a telephone service penetration rate equal to or below 70 percent is eligible to receive a tribal land bidding credit as set forth in 47 CFR 1.2107 and 1.2110(f). A tribal land bidding credit is in addition to, and separate from, any other bidding credit for which a winning bidder may qualify.

142. Unlike other bidding credits that are requested prior to the auction, a winning bidder applies for the tribal land bidding credit after winning the auction when it files its long-form application (FCC Form 601). When filing the long-form application, the winning bidder will be required to advise the Commission whether it intends to seek a tribal land bidding credit, for each market won in the auction, by checking the designated box(es). After stating its intent to seek a tribal land bidding credit, the applicant will have 90 days from the close of the long-form filing window to amend its application to select the specific tribal lands to be served and provide the required tribal government certifications. Licensees receiving a tribal land bidding credit are subject to performance criteria as set forth in 47 CFR 1.2110(f).

143. For additional information on the tribal land bidding credit, including how the amount of the credit is calculated, applicants should review the Commission's rule making proceeding regarding tribal land bidding credits and related public notices. Relevant documents can be viewed on the Commission's Web site by going to *http://wireless.fcc.gov/auctions* and clicking on the *Tribal Land Credits* link.

F. Default and Disqualification

144. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidder (in descending order) at their final bid. In addition, if a default or disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant.

G. Refund of Remaining Upfront Payment Balance

145. All applicants that submitted upfront payments but were not winning bidders for a license in Auction No. 51 may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. All refunds will be returned to the payer of record, as identified on the FCC Form 159, unless the payer submits written authorization instructing otherwise.

146. At the end of the auction, those bidders who are eligible for a refund must submit a written refund request. If you have completed the refund instructions electronically, then only a written request for the refund is necessary. If not, the request must also include wire transfer instructions, Taxpayer Identification Number (TIN) and FCC Registration Number (FRN). Send refund request to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Gail Glasser or Tim Dates, 445 12th Street, SW., Room 1–C863, Washington, DC 20554.

147. Bidders are encouraged to file their refund information electronically using the refund information portion of the FCC Form 175, but bidders can also fax their information to the Auctions Accounting Group at (202) 418–2843. Once the information has been approved, a refund will be sent to the party identified in the refund information.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Gail Glasser at (202) 418–0578 or Tim Dates at (202) 418–0496.

Federal Communications Commission.

Margaret Wiener,

Chief, Auctions and Industry Analysis Division.

[FR Doc. 03–19405 Filed 7–29–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC, offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 010099–039.

Title: International Council of Containership Operators.

Parties: A.P. Moller-Maersk Sealand; ANL Limited; American President Lines, Ltd.; APL Co. Pte. Ltd.; Atlantic Container Line AB; Australia-New Zealand Direct Line; Canada Maritime Limited; Cast Line Limited; CMA CGM, S.A.; Companhia Libra de Navegacao; Compania Sud-Americana de Vapores S.A.; Contship Containerlines; COSCO Container Lines Company Limited; CP Ships; Crowley Maritime Corporation; Evergreen Marine Corporation, Ltd.; Hamburg-Sud; Hanjin Shipping Co., Ltd.; Hyundai Merchant Marine Co., Ltd.; Italia di Navigazione, S.p.A.; Kawasaki Kisen Kaisha, Ltd.; Lykes Lines Limited, LLC; Malaysian International Shipping Company S.A.; Mediterranean Shipping Company S.A.; Mitsui O.S.K. Lines, Ltd.; Montemar Maritima S.A.; Neptune Orient Lines, Ltd.; Nippon Yusen Kaisha; Norasia Container Lines Limited; Orient Overseas Container Line, Limited; Pacific International Lines (Pte.) Ltd.; P&O Nedlloyd B.V.; P&O Nedlloyd Limited; Senator Lines GmbH; TMM Lines Limited, LLC; United Arab Shipping Company; Wan Hai Lines Ltd.; Zim Israel Navigation Co., Ltd.

Synopsis: The amendment removes Senator Lines as a participating party to the agreement.

Agreement No.: 011823–003.

Title: Contship/P&O Nedlloyd Vessel Sharing Agreement.

Parties: P&O Nedlloyd Limited/P&O Nedlloyd B.V. (as one party) Contship Containerlines, a division of CP Ships (UK) Limited.

Synopsis: The amendment adds provisions relating to the sale or sub-charter of unused capacity on an *ad hoc* basis to third parties and the sale of slots to (or slot purchases from) third parties on a more significant and permanent basis.

Dated: July 25, 2003.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–19420 Filed 7–29–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 13, 2003.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. Banco Bilbao Vizcaya Argentaria, S.A., Bilbao, Spain, and Grupo Financiero BBVA Bancomer, S.A., DE C.V., Mexico City, Mexico; to engage *de novo* through its subsidiaries, Bancomer Transfer Services, Inc., Houston, Texas; BBVA Bancomer Foreign Exchange, Inc., Houston, Texas; Bancomer Financial Services, Inc., Houston, Texas; and Bancomer Payment Services, Inc., Houston, Texas, in domestic and international money transmission, (*Popular, Inc.*, 84 Fed. Res. Bull. 481 (1997) (Popular) and *Norwest Corp.*, 81 Fed. Res. Bull. 974 (1995) and 81 Fed. Res. Bull. 1130 (1995)); check cashing, *Popular and Midland Bank, PLC*, 76 Fed. Res. Bull. 860, 863 (1990)), and in bill payments, (*Popular and BancOne Corp.*, 80 Fed. Res. Bull. 139 (1994)), and to engage in issuing and selling money orders, traveler's checks, and prepaid telephone cards, pursuant to section 225.28(b)(13), and buying and selling foreign exchanges agent and as principal, pursuant to sections 225.28(b)(7) and (8)(ii)(A) of Regulation Y.

Board of Governors of the Federal Reserve System, July 24, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.03–19292 Filed 7–29–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Monday, August 4, 2003.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR MORE INFORMATION PLEASE CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: July 25, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–19460 Filed 7–25–03; 4:37 pm]

BILLING CODE 6210–01–M

GENERAL SERVICES ADMINISTRATION

[FMR Bulletin 2003–B4]

Federal Management Regulation; Redesignations of Federal Buildings

AGENCY: Public Buildings Service (P), GSA.

ACTION: Notice of a bulletin.

SUMMARY: The attached bulletin announces the redesignations of eleven (11) Federal Buildings.

EXPIRATION DATE: This bulletin expires October 28, 2003.

However, the building redesignations announced by this bulletin will remain in effect until canceled or superseded.

FOR FURTHER INFORMATION CONTACT: Paul Chistolini, General Services Administration, Public Buildings Service (P), Washington, DC 20405; telephone (202) 501–1100, e-mail, *paul.chistolini@gsa.gov*.

Dated: June 23, 2003.

Stephen A. Perry,

Administrator of General Services.

General Services Administration

[FMR Bulletin 2003–B4]

Federal Management Regulation; Redesignations of Federal Buildings

To: Heads of Federal Agencies

Subject: Redesignations of Federal Buildings

1. What is the purpose of this bulletin? This bulletin announces the redesignations of 11 Federal Buildings.

2. When does this bulletin expire? This bulletin expires October 28, 2003. However, the building redesignations announced by this bulletin will remain in effect until canceled or superseded.

3. Redesignations. The former and new names of the buildings being redesignated are as follows:

Former name	New name
Federal Building, 5500 Veterans Drive, Charlotte Amalie, VI 00801	Ron de Lugo Federal Building, 5500 Veterans Drive, Charlotte Amalie, VI 00801
Federal Building, 143 West Liberty Street, Medina, OH 44256	Donald J. Pease Federal Building, 143 West Liberty Street, Medina, OH 44256
Federal Building and United States Courthouse, 501 Bell Street, Alton, IL 62002	William L. Beatty Federal Building and United States Courthouse, 501 Bell Street Alton, IL 62002
Federal Building and United States Courthouse, 400 North Main Street, Butte, MT 59701	Mike Mansfield Federal Building and United States Courthouse, 400 North Main Street, Butte, MT 59701
Federal Building and United States Courthouse, 2015 15th Street, Gulfport, MS 39501	Judge Dan M. Russell, Jr. Federal Building and United States Courthouse, 2015 15th Street Gulfport, MS 39501
United States Courthouse, 100 Federal Plaza, Central Islip, NY 11722	Alfonse M. D'Amato United States Courthouse, 100 Federal Plaza, Central Islip, NY 11722
Federal Building and United States Courthouse, 10 East Commerce Street, Youngstown, OH 44503	Nathaniel R. Jones Federal Building and United States Courthouse, 10 East Commerce Street, Youngstown, OH 44503
United States Courthouse, 600 West Capitol Avenue, Little Rock, AR 72201	Richard Sheppard Arnold United States Courthouse, 600 West Capitol Avenue, Little Rock, AR 72201
United States Courthouse, 501 West 10th Street, Ft. Worth, TX 76102	Eldon B. Mahon United States Courthouse, 501 West 10th Street, Ft. Worth, TX 76102
Memorial Building, 1244 Speer Boulevard, Denver, CO 80204	Cesar E. Chavez Memorial Building, 1244 Speer Boulevard, Denver, CO 80204
Federal Building, 290 Broadway, New York, NY 10007	Ted Weiss Federal Building, 290 Broadway, New York, NY 10007

4. Who should we contact for further information regarding redesignations of these Federal Buildings?

General Services Administration, Public Buildings Service, Office of the Commissioner, Attn: Paul Chistolini, 1800 F Street, NW., Washington, DC 20405. Telephone Number: (202) 501–1100, E-mail Address: *paul.chistolini@gsa.gov*

[FR Doc. 03–19426 Filed 7–29–03; 8:45 am]

BILLING CODE 6820–23–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

[HRSA–03–040]

Fiscal Year 2003 Competitive Application Cycle for Health Center Network Planning and Development Grants; CFDA Number 93.224

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of up to $7,900,000 for fiscal year 2003 to support: (1) The planning and development of practice management networks or managed care networks or plans through the Integrated Services Development Initiative (ISDI); (2) development of an integrated management information system through the Shared Integrated Management Information System program (SIMIS); and (3) development of a technology infrastructure to integrate uniform technical information with business systems and care management through integrated information communication and technology development projects (ICT).

Authorizing Legislation: Section 330(c)(1)(B) of the Public Health Service Act (Act), as amended, authorizes support to health centers to plan and develop a managed care network or plan. Section 330(c)(1)(C) of the Act authorizes support for the planning and development of practice management networks.

DATES: The timelines for application receipt, review, and award are as follows:

Application Deadline: August 29, 2003.

Grant awards announced: September 28, 2003.

Applications will be considered on time if they are received by 5 p.m. Eastern Standard Time on August 29, 2003, or before the established deadline date. Applications that are not received by the deadline will be returned to the applicant.

Applicants should note that HRSA is accepting grant applications online in the last quarter of the Fiscal Year (July through September). Please refer to the HRSA grants schedule at *http://www.hrsa.gov/grants.htm* for more information.

How To Request and Where To Send an Application: To obtain a complete application kit, (*i.e.*, application instructions, necessary forms, and application review criteria), call toll free 1–877–HRSA–123 (1–877–477–2123). When contacting the HRSA Grants Application Center (GAC) please refer to the program announcement number HRSA–03–040 and the name of this program. An original and two copies of the applications must be submitted to the HRSA GAC: HRSA Grants Application Center, 901 Russell Avenue, Suite 450, Gaithersburg, Maryland 20879, Fax: 1–877–HRSA–345 (1–877–477–2345), e-mail: *hrsagac@hrsa.gov*.

Applicants will receive a letter acknowledging receipt of their applications.

Eligible Applicants: The following entities are eligible to apply for funding under this announcement:

1. A health center that has received section 330(e) funding for 2 consecutive years is eligible to apply for funding for the planning and development of a managed care network and plan under the ISDI program.

2. Health centers (Community Health Center, Migrant Health Center, Health Care for the Homeless, Public Housing Primary Care and School-Based Health Centers) that receive assistance under section 330 are eligible to apply for funding for the planning and development of a practice management network under the ISDI project.

3. Health centers (Community Health Center, Migrant Health Center, Health Care for the Homeless, Public Housing Primary Care and School-Based Health Centers) that receive assistance under section 330 or Primary Care Associations receiving support under section 330(m) that are applying on behalf of health centers in a State or marketplace are eligible to apply for funding for an integrated management information system.

4. A health center (Community Health Center, Migrant Health Center, Health Care for the Homeless, Public Housing Primary Care and School-Based Health Centers) that has received assistance under section 330 or a Primary Care Association receiving support under section 330(m) that is applying on behalf of health centers in a State or marketplace is eligible to apply for funding for an integrated information and communication technology development project.

Matching or Cost Sharing Requirement: Grantees must provide at least 20 percent (for planning grants) or 40 percent (for developmental grants) of the total approved costs of the project. The total approved cost of the project is the sum of the HRSA share and the non-Federal share. Applications must demonstrate that at least 5 percent (for planning grants) or 10 percent (for developmental grants) of the cost sharing requirement is met through cash contributions for planning or development projects respectively. The remaining non-Federal share may be met by cash or in-kind contributions.

Application Review and Funding Criteria: All eligible applications that are responsive to the requirements and received in time for orderly processing will be reviewed by an Objective Review Committee comprised of non-Federal reviewers using the following review criteria:

ISDI Planning Projects

1. Appropriateness in meeting expectations of the ISDI—extent to which the application effectively promotes the integration and coordination of primary care across business and clinical functions through the planning phase.

2. Readiness for Network Development—the extent to which the application demonstrates both an appropriate multi-year strategic planning process and financial plan.

3. Strength of Proposed Collaboration—extent to which the application demonstrates that all health centers in the marketplace are collaborating in the planning project.

4. Capacity of the Network to Integrate—extent to which the application demonstrates that network members are planning to collaborate, share, and/or integrate functions or components of their systems.

5. Appropriateness to State Environment and Marketplace—the extent to which the applications demonstrates how the project will strengthen the position of health centers in the state environment and/or market place.

ISDI Developmental Projects

1. Appropriateness in meeting expectations of the ISDI—extent to which the application effectively promotes the integration and coordination of primary care across business and clinical functions among network members.

2. Readiness for Network Development—the extent to which the application demonstrates both an appropriate multi-year strategic planning process and commitment (as evidenced by the contribution of time, resources, cash, etc.) by each of the collaborators in the strategic planning process, work plan, budget spreadsheet, and memorandum of agreement.

3. Strength of Proposed Collaboration—extent to which the application demonstrates that all health centers in the marketplace are collaborating, including, the level of involvement of key management staff, clinical personnel, boards among the network members in the development, implementation and/or performance of the project.

4. Capacity of the Network to Integrate—extent to which the application demonstrates that network members will collaborate, share, and/or integrate functions or components of their systems.

5. Appropriateness to State Environment and Marketplace—the extent to which the application demonstrates how the network will strengthen the position of health centers in the state environment and/or marketplace.

SIMIS Projects

1. Readiness for SIMIS Development—extent to which the application demonstrates that it has a multi-year strategic planning process that provides the network's initial assessments, including completed market and organizational assessments, agreement among the network members on the mission, goals, objectives and timetable for the project, and planning for the SIMIS.

2. Strength of Proposed Collaboration—extent to which all health centers in the State are collaborating, including the extent to which: (a) Key management staff of the network members are involved in the development, implementation and/or performance of the project; (b) the proposed project is suited to the organizational/administrative capacity of the network members based on the organizational assessment; and (c) economies of scale are achieved by the other than information system means, *e.g.*, centralized billing/collection.

3. Technical Capacity of the Network to Integrate—extent to which: (a) Network members will collaborate, share, and/or integrate functions or components of their systems to facilitate centralize data integration (*e.g.*, common business rules/practices, data structure, practice management software); and (b) current business and clinical practices will be altered or improved as a result of the SIMIS network.

ICT Projects

1. Effectiveness—extent to which application describes how health outcomes and systems of care would be improved through integrating the health disparities collaborative care model with information and communications technology.

2. Efficiency—extent to which application demonstrates how inefficiencies such as lost medical records, lab results, and ineffective appointment systems will be eliminated through combining information and communications technology with the care model.

3. Safety and Risk Management—extent to which application demonstrates how decision support would be used throughout the delivery system; such as how primary care provider order entry will prevent medication or lab errors.

4. Patient-Family Centeredness—extent to which the application documents how patients will be connected to their health information and describes support/educational tools, such as disease management patient information and on-line support groups.

5. Equity—extent to which the application demonstrates that all populations, including racial and ethnic minorities and uninsured populations, are receiving high quality care and care that is customized to meeting their needs.

6. Timeliness—extent to which the application demonstrates electronic communication between providers and clinicians, for example, a cutting edge appointment system developed for rapid responses to patient needs.

Funding Preference: A funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories of applications. A preference will be given to approved applications proposing to serve sparsely populated rural or frontier areas.

Funding Priorities

A funding priority is defined as the favorable adjustment of aggregate review scores of individually approved applications. Applications for grant support may be submitted without requesting a funding priority; however, approval of a funding priority will enhance an applicant's competitive score.

ISDI, SIMIS and ICT Projects

1. Programs Demonstrating Appropriate Use of Technological Improvements

Because significant efficiencies in the delivery of health care services can be realized through the appropriate use of technological improvements, a priority will be placed on applications that incorporate such improvements to enhance the quality of care, increase the efficiency and effectiveness of operations, and reduce costs. Applicants are encouraged to consider how their proposals might use telehealth and/or new emerging technologies to achieve their project goals. The advent of communication tools such as distance learning, remote patient monitoring, personal data assistants (PDAs), interactive video, satellite broadcasting, and store-and-forward technology are just some of the many health-care focused technological applications that can help improve access to care either directly or indirectly by improving the efficiency of health care providers. Applicants that propose such improvements will receive 2 additional points.

ICT Projects Only

Priority will be given to those applicants with public/private collaborators with an existing track record in the development or support of ICT, networks, and health disparities collaboratives for health centers working collaboratively with the State PCA. Applicants meeting this priority will receive 3 additional points.

Priority will be given to projects that address a technical methodology and approach that meets current technology capabilities and marketplace standards, as specified by the two BPHC documents, Functional Requirements for Practice Management Systems and Functional Requirements for Electronic Medical Records (available on Web site: *http://www.bphc.hrsa.gov/chc/*). Applicants meeting this priority will receive 3 additional points.

Estimated Amount of Available Funds: For fiscal year 2003, approximately $600,000 will be available for ISDI planning projects; approximately $1,800,000 will be available to support ISDI development projects; approximately $2,500,000 will be available through the SIMIS; and approximately $3,000,000 will be available to support ICT development projects.

Estimated Project Period: ISDI Planning Projects—up to 2 years; ISDI Development Projects—up to 4 years; SIMIS Projects—up to 3 years; and ICT Projects—up to 3 years.

Estimated Number of Awards: It is anticipated that the following number of awards will be made: ISDI Planning Projects—3 to 6 awards; ISDI Development Projects—10 to 15 awards; SIMIS Projects—4 to 6 awards; and ICT Projects—up to 5 awards.

Estimated Average Size of Each Award: The estimated costs are expected to vary considerably. Award will range from $75,000 to $200,000 for ISDI Planning Projects;—$150,000–$525,000 for ISDI Developmental Projects; $150,000 to $500,000 for SIMIS Projects and $450,000 to $750,000 for ICT Projects.

FOR FURTHER INFORMATION CONTACT: Applicants may contact the following individuals:

For ISDI: Lisa Dolan-Branton at *LDolan@hrsa.gov* or (301) 594–4306.

For SIMIS: Jayne Bertovich at *JBertovich@hrsa.gov* or (301) 594–4318.

For ICT: Lisa Dolan-Branton at *LDolan@hrsa.gov* or (301) 594–4306.

Paperwork Reduction Act: The application for the Integrated Services Development Initiative has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB clearance number is 0920–0428.

Public Health System Reporting Requirements: Under these requirements (approved by the Office of Management and Budget under OMB number 0937–0195), a community-based non-governmental applicant must prepare and submit a Public Health System Impact Statement to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date. This statement must include:

1. A copy of the face page of the application (SF 424) and

2. A summary of the project, not to exceed one page, which provides:

a. A description of the population to be served,

b. A summary of the services to be provided, and

c. A description of the coordination planned with the appropriate State and local health agencies.

Executive Order 12372: These programs have been determined to be subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate health planning agencies, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under

certain Federal programs. The application packages pursuant to this notice will contain a listing of States with review systems and will provide a single point of contact (SPOC) in the State for review. A list of SPOC contacts is also available at *http://www.whitehouse.gov/omb/grants/spoc.html*. Applicants (other than federally-recognized Indian tribal governments) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State.

Except in unusual circumstances, the due date for State process recommendations is at least 60 days from the deadline date established by the Secretary. 45 CFR 100.8(a)(2). In this instance, there are less that 90 days before the end of the 2003 fiscal year (on September 30, 2003). Due to this unusual circumstance, HRSA is establishing a 30-day due date for State process recommendations, to assure timely consideration of such recommendations. The granting agency does not guarantee that it will accommodate or explain its responses to State process recommendations received after the due date. (See "Intergovernmental Review of Federal Programs," Executive Order 12372, and 45 CFR part 100, for a description of the review process and requirements.)

Dated: July 25, 2003.

Dennis P. Williams,

Deputy Administrator.

[FR Doc. 03–19504 Filed 7–28–03; 1:43 pm]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Research Infrastructure.

Date: July 28, 2003.

Time: 8 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: One Democracy Plaza, 6701 Democracy Blvd., 9th Floor Conference Room, Bethesda, MD 20892.

Contact Person: Sheryl K. Brining, PhD, Director, Office of Review, National Center for Research Resources, National Institutes of Health, One Rockledge Center, MSC 7965, 6705 Rockledge Drive, Suite 6018, Bethesda, MD 20892, 301–435–0809, *brinings@ncrr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Research Centers in Minority Institutions.

Date: July 28, 2003.

Time: 2 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Democracy One Plaza, 6701 Democracy Blvd., Room 1068, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eric H. Brown, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., MSC 4874, Room 1068, Bethesda, MD 20892–4874, 301–435–0815, *browne@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: July 22, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–19298 Filed 7–29–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material; and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, NHLBI Mentored Patient Oriented Research Career Development Awards.

Date: September 25–26, 2003.

Time: 7 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Robert B Moore, PhD, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7178, MSC 7924, Bethesda, MD 20892, 301/435–0725.

(Catalog of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 21, 2003

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–19299 Filed 7–29–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material; and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, AA–1 conflict Special Emphasis Panel.

Date: July 31, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Wilco Building, 6000 Executive Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, (301) 443–2926, *skandasa mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: July 22, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–19300 Filed 7–29–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, SBIR.

Date: July 29, 2003.

Time: 2 p.m to 3:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Mark Czarnolewski, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mczarnol@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, SBIR Phase II: Topic 27.

Date: July 31, 2003.

Time: 2 p.m to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Mark Czarnolewski, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mczarnol@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 22, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–19301 Filed 7–29–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning indivudals associated with the grant application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Treatment for Anxiety Disorders.

Date: July 30, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sara K Goldsmith, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9608, Bethesda, MD 20892-9608.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health, National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 22, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–19302 Filed 7–29–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 VACC 03: R21 applications: AIDS Vaccines.

Date: July 29, 2003.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Salmonella Physiology.

Date: July 29, 2003.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Melody Mills, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7808, Room 3206, Bethesda, MD 20892, 301–435–0903.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Emphasis Panel, ZRG1 VACC 05—AIDS Vaccines.

Date: July 29, 2003.

Time: 4 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 VACC 01: Vaccines of Infectious Diseases.

Date: July 30–31, 2003.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892 (301) 435–1165.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 VACC 04: Viral Vaccines.

Date: July 31, 2003.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892 (301) 435–1165.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 VACC 10: Small Business—Infectious Disease Vaccines.

Date: August 1, 2003.

Time: 8:30 a.m. to 5 p.m

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892 (301) 435–1165.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Immunology.

Date: August 19, 2003.

Time: 1 p.m to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Calbert A. Laing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892 (301) 435–1221, *laingc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Toll Receptors in Innate Immunity.

Date: August 19, 2003.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Tina McIntyre, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892 (301) 594–6375, *mcintyrt@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.893, National Institutes of Health, HHS)

Dated: July 22, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–19297 Filed 7–29–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Instrumentation Systems and Associated Reagents for High Speed Parallel Molecular Nucleic Acid Sequencing for Performing Single Molecule Nucleic Acid Analysis

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the invention embodied in Patent Applications U.S. 60/151,580, filed August 29, 1999, PCT/US00/23736, filed August 29, 2000, and U.S. 10/070,053, filed June 10, 2002, entitled "High Speed Parallel Molecular Nucleic Acid Sequencing", to LI-COR, Inc., having a place of business in Lincoln, NE. The patent rights in this invention have been assigned to the United States of America.

DATES: Only written comments and/or application for a license that are received by the NIH Office of Technology Transfer on or before September 29, 2003, will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Cristina Thalhammer-Reyero, Ph.D., M.B.A., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; E-mail: *ThalhamC@mail.nih.gov*; Telephone: 301–435–4507; Facsimile: 301–402–0220.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. § 209 and 37 CFR § 404.7.

The invention relates to a method and apparatus for DNA sequencing, also known as Two Dye Sequencing (TDS). This invention is based on Fluorescence Resonance Energy Transfer (FRET), a technology increasingly in use for several molecular analysis purposes. In particular, the method consists of: (1) Attachment of engineered DNA polymerases labeled with a donor fluorophore to the surface (chamber) of a microscope field of view, (2) addition to the chamber of DNA with an annealed oligonucleotide primer, which is bound by the polymerase, (3) further addition of four nucleotide triphosphates, each labeled on the base with a different fluorescent acceptor dye, (4) excitation of the donor fluorophore with light of a wavelength specific for the donor but not for any of the acceptors, resulting in the transfer of the energy associated with the excited state of the donor to the acceptor fluorophore for a given nucleotide, which is then radiated via FRET, (5) identification of the nucleotides most recently added to the chamber by recording the fluorescent spectrum of the individual dye molecules at specific locations in the microscope field, and (6) converting the sequential spectrum into a DNA sequence for each DNA molecule in the microscope field of view.

The field of use may be limited to instrumentation systems and associated reagents for performing single molecule nucleic acid analysis.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: July 17, 2003.

Steven M. Ferguson,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 03–19296 Filed 7–29–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

[BCIS No. 2207–02]

Redesign of Form I–327, Permit to Reenter the United States, and Form I–571, Refugee Travel Document

AGENCY: Bureau of Citizenship and Immigration Services, U.S. Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice announces that during fiscal year 2003 the Bureau of Citizenship and Immigration Services (BCIS) will begin issuing a new single passport-style travel document that, depending on the circumstances, will either contain the Form I–327, Permit to Reenter the United States, or Form I–571, Refugee Travel Document. Development of the redesigned travel document is intended to reduce production time, improve customer service and strengthen the booklet's security features. Enhanced technologies, similar to those used in the production of the United States Passport, will be employed in printing the BCIS travel document to prevent counterfeiting, tampering and other fraudulent schemes. The new document will be produced at the BCIS Nebraska Service Center in Lincoln, NE, where the two separate travel booklets are currently prepared. On March 1, 2003, the Immigration and Naturalization Service (INS) transferred from the Department of Justice to the Department of Homeland Security (DHS), pursuant to the Homeland Security Act of 2002 (Pub. L. 107–296). The INS adjudications functions transferred to the Bureau of Citizenship and Immigration Services of DHS.

DATES: This notice is effective July 30, 2003.

FOR FURTHER INFORMATION CONTACT: Sandra Schatz Landis, Chief, Immigration Card Production Services (ICPS) Branch, Bureau of Citizenship and Immigration Services, 800 K Street, Room 1000, Washington, DC 20536, telephone (202) 305–8010.

SUPPLEMENTARY INFORMATION:

Background

Who Uses the Forms I–327 and I–571?

Form I–327, Permit to Reenter the United States. The Form I–327 allows a lawful permanent or conditional permanent resident of the United States to apply for admission into the United States upon returning from abroad without having to obtain a returning resident visa.

Form I–571, Refugee Travel Document. A refugee travel document is issued pursuant to Article 28 of the United Nations Convention of July 29, 1951, for the purpose of travel. It may be issued to a person who is in the United States as a refugee pursuant to section 207 of the Immigration and Nationality Act (Act), as an asylee pursuant to section 208 of the Act, or as a permanent resident who received such status as a direct result of refugee or asylee status. A lawfully obtained, currently valid Form I–571, shall be accepted in lieu of any travel document which otherwise would be required from such person under the Act.

How Can a Person Apply for Forms I–327 or I–571?

An application for a Form I–327 or Form I–571 must be filed on Form I–131, Application for Travel Document, with the fee as required in 8 CFR 103.7(b)(1) and with the initial evidence required on the application form. The applicant must state the length of intended absence or absences, and the reasons for travel. Except as provided in 8 CFR 223.2(b)(2)(ii), the application may be approved if filed by an eligible person who is within the United States at the time of submission.

Will the fee For Filing Form I–131 Change?

Until the BCIS conducts a new fee study, the current fee of $110 will not change as a result of issuing the single passport-style travel document.

Where Should the Form I–131 Be Filed?

Applicants must file the application according to the instructions on Form I–131 at the Nebraska Service Center.

May an Applicant Request Expedited Processing of the Travel Document in an Emergency?

To deal fairly and equitably with applicants for travel documents, it is BCIS policy that cases be processed in chronological order by date of receipt.

However, an exception may be permitted in emergency situations if the request is approved by the Nebraska Service Center director, deputy director or an official acting in such capacity.

How Does the BCIS Plan To Implement the Production of the New Travel Document?

The document will be produced at the Nebraska Service Center where the separate travel booklets are now prepared.

What Will the New Travel Document Look Like?

Other than a new light green cover, the redesigned travel document will look similar to a United States Passport. The title, "Travel Document Issued by the U.S. Department of Homeland Security, Bureau of Citizenship and Immigration Services," will appear on the front cover. The type of travel document issued will appear on the inside page of the front cover, showing either Form I–327, Permit to Reenter the United States, or Form I–571, Refugee Travel Document. Biographical information and a photograph related to the approved applicant that appears on the current Forms I–327 or I–571 will also be shown in the new travel document. The remaining pages will look similar to the current Forms I–327 and I–571.

How Will the Travel Document Be Issued?

Once the appropriate travel document is produced, the Nebraska Service Center will mail it to the approved applicant according to his or her instructions.

Except as provided in 8 CFR 223.3(b)(2), while an applicant must be physically present in the United States at the time of filing, the Nebraska Service Center may mail the travel document in care of a United States embassy or consulate or a BCIS overseas office, if the applicant requests such service at the time of filing.

What Is the Validity of the Travel Document?

Permit To Reenter the United States. Except as provided in 8 CFR 223.2(c)(2), Form I–327 issued to a Permanent Resident shall be valid for 2 years from the date of issuance. Form I–327 issued to a *conditional permanent resident* shall be valid for 2 years from the date of issuance, or until the date the conditional permanent resident must apply for removal of the conditions on his or her status, whichever date is earlier.

Refugee travel document. Form I–571 shall be valid for one year, or until the date the refugee or asylee status expires, whichever date is earlier.

Will Those Who Possess Unexpired Forms I–327 or I–571 Be Required To Apply for a New Travel Document When BCIS Starts Producing the Newly Designed Document?

No. Authorized users may continue to travel on their previously issued Form I–327 or Form I–571 until its expiration date. If an applicant applies thereafter for a travel document, he or she will be issued the newly designed document.

Can a Travel Document Be Extended?

No. A permit to reenter the United States or refugee travel document cannot be extended.

Will the New Travel Document Affect the Process for Applying for Advance Parole?

No. Applicants will continue to use the Form I–131 to apply for advance parole. Upon BCIS approval of the application, a Form I–512, Authorization of Parole of an Alien Into the United States, shall be issued to the applicant.

Eduardo Aguirre, Jr.,

Acting Director, Bureau of Citizenship and Immigration Services.

[FR Doc. 03–19338 Filed 7–29–03; 8:45 am]

BILLING CODE 4410–10–P.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[COTP Houston–Galveston–03–003]

Notice and Request for Comments; Letter of Recommendation, LHG or LNG, Freeport, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice and request for public comment.

SUMMARY: The U.S. Coast Guard Captain of the Port, Houston-Galveston (COTP), is preparing a letter of recommendation as to the suitability of the Brazos River waterway for liquefied hazardous gas (LHG) or liquefied natural gas (LNG) marine traffic. The COTP is looking for comments and related material pertaining specifically to the Maritime Operation, Waterways Management, and Port Security aspects of the proposed LHG and LNG Facility.

DATES: Comments and related material pertaining specifically to the Maritime Operation, Waterways Management, and Port Security aspects of the proposed LNG Facility must reach the Coast Guard on or before August 29, 2003.

ADDRESSES: You may mail comments and related material to: Commanding Officer, U.S. Coast Guard Marine Safety Unit, PO Box 0149, Galveston, TX 77553–0149, ATTN: Marine Transportation Branch.

You may send comments and related material by fax to: U.S. Coast Guard Marine Safety Unit (MSU) Galveston, Attention: Marine Transportation Branch, at (409) 766–5468.

U.S. Coast Guard Marine Safety Unit (MSU) Galveston maintains a file for this notice. Comments and material received from the public during the comment period will become part of this file and will be available for inspection or copying at U.S. Coast Guard MSU Galveston, Marine Transportation Branch, between the hours of 8 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Ben Allen at U.S. Coast Guard MSU Galveston, at (409) 766–5437.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate by submitting comments and related material pertaining specifically to the Maritime Operation, Waterways Management, and Port Security aspects of the proposed liquefied natural gas (LNG) Facility. If you do so, please include your name and address, identify the docket number [COTP Houston-Galveston–03–003], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. For a returned receipt, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. The recommendation made by this office may be affected by comments received.

Public Meeting

We do not now plan to hold public meetings or hearings. But you may submit a request for meetings or hearing by writing to Commanding Officer, U.S. Coast Guard MSU Galveston at the address under **ADDRESSES** explaining why they would be beneficial. If we determine that public hearings or meetings would benefit the recommendation process, we will hold them at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

In accordance with the requirements in 33 CFR 127.009, the U.S. Coast Guard Captain of the Port, Houston-Galveston (COTP), is preparing a letter of recommendation as to the suitability of the Brazos River waterway for liquefied hazardous gas (LHG) or liquefied natural gas (LNG) marine traffic. The letter of recommendation is in response to a Letter of Intent to operate a LNG facility in Freeport, Texas. This facility would consist of an LNG import terminal and storage facilities and 9.38 miles of 36-inch-diameter pipeline in Brazoria County.

Freeport LNG Development LP proposes to build a new LNG import, storage, and vaporization terminal on Quintana Island, southeast of Freeport, Texas; and a natural gas pipeline to transfer up to 1.5 billion cubic feet per day of imported natural gas to the Texas market. Construction of the proposed LNG facility would require about 45.7 acres of land for the marine terminal. Freeport LNG Development LP seeks authority to construct and operate the following new facilities at its proposed site:

- LNG ship docking and unloading facilities with a protected single berth equipped with mooring and breasting dolphins, three liquid unloading arms, and one vapor return arm;
- Two 26-inch-diameter (32-inch outside diameter) LNG transfer lines and one 16-inch-diameter vapor return line;
- Service lines (instrument air, nitrogen, potable water, and firewater);
- Fire response system, flare, construction dock, utilities, buildings, and service facilities;
- 9.38 miles of 36-inch-diameter natural gas pipeline extending from the LNG import terminal to a proposed Stratton Ridge Meter Station, and;
- Other structures and facilities not related specifically to the Marine Transfer aspect of this Facility.

Freeport LNG Development LP is requesting approval such that the terminal and pipeline are completed and placed into service in time to meet natural gas demand during the 2006–2007 winter heating season. Construction of the facilities would take about 3 years.

In preparation for issuance of the letter of recommendation, the COTP will consider all information submitted by the owner or operator under the requirements of 33 CFR 127.007, as well as comments received from the public.

Additional Information

Additional information can be found in the Federal Energy Regulatory Commission Document entitled "Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Freeport LNG Project and Request for Comments on Environmental Issues and Notice of Public Scoping Meeting and Site Visit", Docket No. CP03–75–000 dated May 13, 2003, which is available for download at *http://www.ferc.gov*.

Dated: July 9, 2003.

Kevin S. Cook,

Captain, U.S. Coast Guard, Captain of the Port, Houston-Galveston, Eighth Coast Guard District.

[FR Doc. 03–19412 Filed 7–29–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species.

DATES: Written data, comments or requests must be received by August 29, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–074558

Applicant: Larry B. Higgins, Gaylord, MI

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–074551

Applicant: Jay W. Furney, Pueblo, CO

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–074557

Applicant: Scott F. Garrett, Houston, TX

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–071994

Applicant: Corinne L. Richards, Ann Arbor, MI

The applicant requests a permit to import biological samples of Panamanian golden frogs (*Atelopus zeteki* and *Atelopus varius*) for the purpose of enhancement of the species through scientific research. This notification covers activities to be conducted by the applicant over a five year period.

PRT–073403, 073404 and 005821

Applicant: Ferdinand & Anton Fercos Hantig, Las Vegas, Nevada

The applicant requests permits to export leopard *(Panthera pardus)* to worldwide locations for the purpose of enhancement of the species through conservation education. The permit numbers and animals are: 073403—Sherni, 073404—Picasso, 005821—Ferdinand. This notification covers activities to be conducted by the applicant over a three-year period and the import of any potential progeny born while overseas.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: July 18, 2003.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–19415 Filed 7–29–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Recovery Plan for the Sierra Nevada Bighorn Sheep

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability for review and comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the Draft Recovery Plan for the Sierra Nevada Bighorn Sheep (*Ovis canadensis californiana;* bighorn sheep) for public review. The species occurs primarily on lands managed by the U.S. Forest Service, Inyo National Forest, and the National Park Service, Yosemite National Park in the Sierra Nevada in western Inyo and Mono Counties, California. This draft recovery plan describes the status, current management, recovery objectives and criteria, and specific actions needed to reclassify the bighorn sheep from endangered to threatened, and to ultimately delist it. We solicit review and comment from local, State, and Federal agencies, and the public on this draft recovery plan.

DATES: Comments on the draft recovery plan must be received on or before September 29, 2003 to receive our consideration.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following location: U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003 (telephone 805–644–1766). Requests for copies of the draft recovery plan and written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. An electronic copy of this draft recovery plan is also available at *http://www.r1.fws.gov/ecoservices/endangered/recovery/default.htm.*

FOR FURTHER INFORMATION CONTACT: Carl Benz, Fish and Wildlife Biologist, at the above address.

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of our endangered species program. To help guide the recovery effort, we are working to prepare recovery plans for most listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. We will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plan. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plan, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individual responses to comments will not be provided.

This draft recovery plan was developed by the Sierra Nevada Bighorn Sheep Recovery Team. We coordinated with the California Department of Fish and Game, and a team of stakeholders, which included ranchers, landowners and managers, agency representatives, and non-government organizations.

The population of bighorn sheep in the Sierra Nevada of California was listed as an endangered species on January 3, 2000, (65 FR 20) following emergency listing on April 20, 1999, (64 FR 19300). At the time of listing, the bighorn sheep population was very small, with only about 125 adults known to exist among 5 geographic areas, with little probability of interchange among those areas. The bighorn sheep is threatened primarily by transmission of disease from domestic sheep and goats, and predation by mountain lions. Key elements for immediate action are: (1) Predator management; (2) augmentation of small herds with sheep from larger ones; and (3) elimination of the threat of a pneumonia epizootic resulting from contact with domestic sheep or goats. Actions needed to recover the bighorn sheep include: (1) Protection of bighorn sheep habitat; (2) increase population growth by enhancing survivorship and reproductive output of bighorn sheep; (3) increase the numbers of herds, and thereby the number of bighorn sheep; (4) develop and implement a genetic management plan to maintain genetic diversity; (5) monitor status and trends of bighorn sheep herds and their habitat; (6) research; and (7) providing information to the public.

Public Comments Solicited

We solicit written comments on the draft recovery plan described. All comments received by the date specified above will be considered in developing a final recovery plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 4, 2003.

Steve Thompson,

Manager, California/Nevada Operations Office, Region 1 , U.S. Fish and Wildlife Service.

[FR Doc. 03–19315 Filed 7–29–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Environmental Assessment for the Management Plan for Endangered Fishes in the Yampa River Basin

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The public is invited to comment on a draft Environmental Assessment for the Management Plan for Endangered Fishes in the Yampa River Basin. The Fish and Wildlife Service (Service) has prepared a draft Environmental Assessment under regulations implementing the National Environmental Policy Act of 1969 (NEPA). Council on Environmental Quality adopted regulations in 40 CFR 1501.3(b) state that an agency "may prepare an environmental assessment on any action at any time in order to assist agency planning and decision making." The proposed action of the Service is to enter into a cooperative agreement with the States of Colorado and Wyoming to implement provisions of the Management Plan for Endangered Fishes in the Yampa River Basin. Future actions that may be undertaken pursuant to this management plan may be subject to additional NEPA documentation requirements on a case-by-case basis.

DATES: Written comments on this draft Environmental Assessment and Management Plan must be received by August 31, 2003. In lieu of or in addition to written comments, comments may be submitted at any of the three public meetings to be held in August 2003. Public meetings are scheduled Monday, August 11, 2003, in Baggs, Wyoming; Tuesday, August 12, 2003, in Steamboat Springs, Colorado; and Wednesday, August 13, 2003, in Craig, Colorado. All meetings are scheduled from 7 p.m. to 9 p.m.

ADDRESSES: Public meetings will be held at the Little Snake River Valley Library, 105 2nd Street, Baggs, Wyoming; Centennial Hall, 124 10th Street, Steamboat Springs, Colorado; and Shadow Mountain Clubhouse, 1055 County Road 7, Craig, Colorado.

Copies of the draft Environmental Assessment and Management Plan are available online at *http://www.r6.fws.gov/crrip/yampa.htm* or at the following Yampa Valley locations—Bud Werner Memorial Library, 1289 Lincoln Avenue, Steamboat Springs, Colorado; Hayden Town Hall, 178 W. Jefferson Avenue, Hayden, Colorado; Moffat County Public Library, 570 Green Street, Craig, Colorado; Little Snake River Valley Library, 105 2nd Street, Baggs, Wyoming.

Copies of the draft Environmental Assessment and Management Plan, either printed and bound or on CD-ROM, also are available by request. Requests for copies and written comments may be sent to Dr. Robert Muth, Director, by postal mail at Upper Colorado River Endangered Fish Recovery Program, U.S. Fish and Wildlife Service, P.O. Box 25486, DFC, Denver, Colorado, 80225–0486; by fax at (303) 969–7327; or by e-mail at *ColoradoRiverRecovery@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Robert Muth, Director, at telephone (303) 969–7322 (extension 268); Mr. Gerry Roehm, Instream Flow Coordinator (extension 272); Ms. Debra Felker, Information and Education Coordinator (extension 227); or at the postal and e-mail addresses above.

SUPPLEMENTARY INFORMATION: The Upper Colorado River Endangered Fish Recovery Program (Program) was established in 1988 by a cooperative agreement among the governors of Wyoming, Colorado, and Utah, Secretary of the Department of the Interior, and Administrator of the Western Area Power Administration for the purpose of recovering four endangered fish species endemic to the Colorado River Basin—the humpback chub (*Gila cypha*), bonytail (*Gila elegans*), Colorado pikeminnow (*Ptychocheilus lucius*), and razorback sucker (*Xyrauchen texanus*). In August 2002, the Service completed recovery goals for these species, which identify five threat factors that led to their decline. These factors, which include—(1) Destruction, modification, or curtailment of the species' habitat or range; (2) overutilization; (3) disease and predation; (4) inadequacy of existing regulatory mechanisms; and (5) other natural or manmade factors, must be removed or abated to ensure the species' recovery. The recovery goals specify that certain recovery actions be taken to achieve the demographic criteria necessary for the species' downlisting and eventual delisting. Flow modification, obstructions to fish passage, and the presence of competitive and predatory nonnative fishes are considered to present the most significant threats to recovery. Consistent with the recovery goals, Program participants developed a Management Plan for Endangered Fishes in the Yampa River Basin to facilitate recovery of listed fishes as water continues to be depleted from the river to serve the needs of the people of the Yampa Basin now and into the foreseeable future. This management plan identifies a package of recovery actions to be implemented in the Yampa River Basin, including instream flow augmentation, fish passage, and management of nonnative fish populations. The Service proposes to enter into a cooperative agreement to implement the plan. This Federal action requires that the Service fulfill the requirements of the NEPA, for which an Environmental Assessment has been prepared.

Dated: March 27, 2003.

Elliott N. Sutta,

Acting Regional Director, Denver, Colorado.

[FR Doc. 03–17696 Filed 7–29–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permits subject to certain conditions set forth therein.

MARINE MAMMALS

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
070056	John M. Gebbia	68 FR 20402, April 25, 2003	June 27, 2003.
070534	Walter P. Mays	68 FR 22409, April 28, 2003	June 27, 2003.

Dated: July 18, 2003.
Monica Farris,
Senior Permit Biologist, Branch of Permits, Division of Management Authority.
[FR Doc. 03–19414 Filed 7–29–03; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–EU–24 1A]

OMB Approval Number 1004–0004; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has sent a request to extend the current approved information collection to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). On July 11, 2002, the BLM published a notice in the **Federal Register** (67 FR 45984) requesting comment on this information collection. The comment period ended on September 9, 2002. BLM received no comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be directed within 30 days to the Office of Management and Budget, Interior Department Desk Officer (1004–0004), at OMB–OIRA via facsimile to (202) 395–5806 or e-mail to *Ruth_Solomon@omb.eop.gov*. Please provide a copy of your comments to the Bureau Information Collection Clearance Office (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility.

2. The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

3. Ways to enhance the quality, utility and clarity of the information we collect; and

4. Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Desert-Land Entry (43 CFR 2520).

OMB Approval Number: 1004–0004.

Bureau Form Number: 2520–1.

Abstract: We use the information to determine if an individual is eligible to make a desert-land entry to reclaim, irrigate, and cultivate arid and semiarid public lands administered by the BLM in the Western States. The provisions of the Desert Land Act of March 3, 1877 as amended (43 U.S.C. 231, 321 *et seq.*), and the regulations in 43 CFR 2520 establish guidelines and procedures for the orderly and timely processing of applications for desert-land entries.

Frequency: Once.

Description of Respondents: Individuals, small businesses, and large corporations.

Estimated Completion Time: 2 hours.

Annual Response: 3.

Application Fee Per Response: $15.00.

Annual Burden Hours: 6.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: July 11, 2003.
Michael H. Schwartz,
Bureau of Land Management, Information Collection Clearance Officer.
[FR Doc. 03–19339 Filed 7–29–03; 8:45 am]
BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–ES–24 1A]

OMB Approval Number 1004–0012; Information Collection Submitted to the Office of Management and Budget Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has sent a request to extend the current approved information collection to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). On July 11, 2002, the BLM published a notice in the **Federal Register** (67 FR 45986) requesting comment on this information collection. The comment period ended on September 9, 2002. The BLM received no comments. You may obtain copies of the collection of information and related forms and explanatory material by contacting the BLM Information Collection Clearance Officer at the telephone number listed below.

The OMB must respond to this request within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirement should be directed within 30 days to the Office of Management and Budget, Interior Department Desk Officer (1004–0012), at OMB–OIRA via facsimile to (202) 395–5806 or e-mail to *Ruth Solomon@omb.eop.gov*. Please provide a copy of your comments to the Bureau Information Collection Clearance Officer (WO–630), Bureau of Land Management, Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

Nature of Comments: We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

2. The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

3. Ways to enhance the quality, utility and clarity of the information we collect; and

4. Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Recreation and Public Purposes Act (43 CFR 2740).

OMB Approval Number: 1004–0012.

Bureau Form Number: 2740–1.

Abstract: We use the information to determine if States and local governments, and nonprofit corporations and associations are eligible to lease or purchase public lands administered by the BLM for recreational and public purposes under the terms of the Recreation and Purpose Act of June 14, 1926 (R&PP) as amended (43 U.S.C. 869 *et seq.*). The 43 CFR parts 2740 and 2912 provide guidelines and procedures to sell lease or sell certain public lands under the Act.

Frequency: Once.

Description of Respondents: States and local governments, and nonprofit corporations and associations.

Estimated Completion Time: 40 hours.

Annual Responses: 20.

Application Fee Per Response: $100.

Annual Burden Hours: 800.

Bureau Clearance Officer: Michael Schwartz, (202) 452–5033.

Dated: July 11, 2003.
Michael H. Schwartz,
Bureau of Land Management, Information Collection Clearance Officer.
[FR Doc. 03–19340 Filed 7–29–03; 8:45 am]
BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Sacramento River Water Reliability Study

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact statement/environmental impact report (EIS/EIR) and notice of scoping meetings.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation) and the Placer County Water Agency (PCWA) propose to prepare a joint EIS/EIR for the Sacramento River Water Reliability Study (SRWRS). Reclamation is the Lead Federal Agency for NEPA and PCWA is Lead State Agency for CEQA. PCWA, Sacramento Suburban Water District (SSWD), and the cities of Roseville, and Sacramento are cost-sharing partners.

DATES: A series of public scoping meetings will be held to solicit public input on the alternatives, concerns, and issues to be addressed in the EIS/EIR as follows:

- Monday, September 15, 2003, 10 a.m. to 12 p.m., Sacramento, CA.
- Monday, September 15, 2003, 6 p.m. to 8 p.m., Sacramento, CA.
- Wednesday, September 17, 2003, 6 p.m. to 8 p.m., Willows, CA.
- Monday, September 22, 2003, 6 p.m. to 8 p.m., Yuba City, CA.
- Tuesday, September 23, 2003, 6 p.m. to 8 p.m., Stockton, CA.
- Wednesday, September 24, 2003, 6 p.m. to 8 p.m., Rocklin, CA.

Written comments on the scope of the EIS/EIR may be mailed to Reclamation or PCWA at the addresses below by Monday, October 12, 2003.

ADDRESSES: The meeting locations are:

- In Sacramento, Best Western Expo Inn, 1413 Howe Avenue, Expo Room.
- In Willows, Memorial Hall, 525 West Sycamore.
- In Yuba City, Sutter County Veterans Hall, 1425 Veterans Memorial Drive.
- In Stockton, Radisson Hotel, Delta IV Room, 2323 Grand Canal Blvd., Stockton, CA 95207.
- In Rocklin, Rocklin City Council Chambers, 3970 Rocklin Road, Rocklin, CA 95677.

Written comments on the scope of the EIS/EIR should be sent to: Ms. Mona Jefferies-Soniea, Bureau of Reclamation, 2800 Cottage Way, MP–700, Sacramento, CA 95825 or Mr. Steve Yaeger, c/o Ms. Darcy Granieri, Placer County Water Agency, P.O. Box 6570, Auburn, CA 95604–6570.

FOR FURTHER INFORMATION CONTACT: Ms. Jefferies-Soniea at the above address, at 916–978–5068, or via fax at 916–978–5094 or e-mail at *mjefferies-soniea@mp.usbr.gov;* or Mr. Yaeger at the above address or at 530–823–4962. Additional information is available online at *http://www.usbr.gov/mp/srwrs.* If special assistance is required, please call Ms. Sammie Cervantes, Reclamation, at 915–978–5104, TDD 916–978–5608, or via e-mail at *scervantes@mp.usbr.gov* no less than 5 working days prior to the meetings.

SUPPLEMENTARY INFORMATION: The SRWRS cost-sharing partners have identified their long-term needs for additional water supplies to meet growing water supply demands and reliability objectives in their respective service areas. The goal of the SRWRS is to develop a water supply plan that is consistent with the Water Forum Agreement (April 24, 2000) objectives of pursuing a Sacramento River diversion to meet water supply needs of the Placer-Sacramento region and promoting ecosystem preservation along the lower American River. The project location is the greater Sacramento metropolitan area, encompassing portions of southern Sutter County, northern Sacramento County, and western and southern Placer County.

Project Description

To meet the water supply needs of the cost-sharing partners, the SRWRS will identify a package of water supply infrastructure components, including new or expanded diversion(s) from the Sacramento, Feather, or American Rivers, and new or expanded water treatment and pumping facilities, storage tanks, and major transmission and distribution pipelines.

The SRWRS will include a feasibility study and an EIS/EIR for identified water supply alternatives as the basis for seeking necessary biological opinions and permits from the responsible resource agencies to allow execution of necessary agreements and construction of the recommended water supply infrastructure. Development of the SRWRS will be consistent with the following principles:

- Satisfying requirements stipulated in Public Law 106–554, the congressional authorizing legislation for this study, to complete a feasibility study for a Sacramento River diversion that is consistent with the Water Forum Agreement and includes the following components: (1) Development of a range of reasonable options, (2) an environmental evaluation, and (3) consultation with Federal and state resource management agencies regarding potential impacts and mitigation measures. Furthermore, the Congress requires the SRWRS to be developed in coordination with CALFED.
- Observing existing applicable laws, regulations, water rights, contracts and legal agreements, and Federal planning guidelines, including, but not limited to, NEPA, "Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies," guidelines, CEQA, California Water Laws, obligations of the cost-sharing partners in their charters, and as defined in California laws.
- Minimizing overall impact on the environment to the extent feasible, being cost-effective, and complementing and enhancing the overall reliability of the Placer-Sacramento region's water supply system through increased interconnectivity and source redundancy.

The SRWRS plan will be consistent with the Water Forum Agreement in pursuing a Sacramento River diversion to accomplish the following objectives envisioned in the agreement: (1) Meeting the needs of planned future growth within the Placer-Sacramento region, (2) maintaining a reliable water supply while reducing diversions of surface water from the American River in future dry years to preserve the river ecosystem, and (3) enhancing groundwater conjunctive management to help sustain the quality and availability of groundwater for the future.

Project Alternatives

The proposed project (Elkhorn Diversion alternative) encompasses constructing a joint diversion from the Sacramento River and treatment facilities to serve the cost-sharing partners. The diversion facility would consist of expanding the existing Elkhorn Diversion owned by the Natomas Mutual Water Company (NMWC) on the east bank of the Sacramento River, upstream of the mouth of the American River at approximately river mile 73.3, or constructing a new diversion near the existing Elkhorn Diversion. Water

treatment, storage, and pumping facilities would be located near the river. Also, a transmission line would connect to the west end of the existing Cooperative Transmission Pipeline/ Northridge Transmission Pipeline in Antelope to serve SSWD, and an extension of that line would be built north to the service areas of Roseville and PCWA. A separate transmission line would extend south to connect to Sacramento's existing distribution system.

The five alternatives currently under consideration in the SRWRS include the No Project/No Action Alternative and four additional alternatives. For these four alternatives, the partners may share facilities to a greater or lesser degree.

- The No Project/No Action Alternative would include only currently approved and permitted surface water resources for the cost-sharing partners. To meet projected water supply demands, the cost-sharing partners would reallocate available surface water and groundwater resources between municipal and industrial (M&I) and agricultural uses (PCWA only), and among different wholesale and retail areas.
- A Sankey Diversion alternative assumes that PCWA, SSWD, and Roseville would divert water from the Sacramento River near the confluence of the Sacramento River and the Natomas Cross Canal and build separate treatment, storage, and transmission facilities to meet their needs. This diversion would be located at or near the second diversion that NMWC is developing under its CALFED-supported diversion consolidation effort. Sacramento would use groundwater to meet projected unmet demand or would divert separately from the Sacramento River at the Elkhorn site, and construct its own treatment and transmission facilities to serve its needs.
- A Feather River alternative assumes that PCWA, SSWD, and Roseville would divert water from the Feather River and build separate treatment, storage, and transmission facilities to meet their needs. Sacramento would use groundwater to meet projected unmet demand or would divert separately from the Sacramento River at the Elkhorn site, and construct its own treatment and transmission facilities to serve its needs.
- An American River Pump Station alternative assumes that PCWA would expand its American River Pump Station near Auburn and construct new treatment and transmission facilities to serve its needs. SSWD would divert from the existing San Juan Water District (SJWD) diversion facilities at Folsom Dam. Roseville would increase use of groundwater to satisfy its needs in this alternative, but not have any additional surface water diversions. Sacramento would use groundwater to meet projected unmet demand or would divert separately from the Sacramento River at the Elkhorn site, and construct its own treatment and transmission facilities to serve its needs.
- A Folsom Dam alternative assumes that PCWA and SSWD would use the existing or expanded diversion, treatment, and transmission facilities of SJWD at Folsom Dam. Roseville would increase use of groundwater to satisfy its needs in this alternative, but not have any additional surface water diversions. Sacramento would use groundwater to meet projected unmet demand or would divert separately from the Sacramento River at the Elkhorn site, and construct its own treatment and transmission facilities to serve its needs.

Changes in Entitlements

Implementing a Sacramento River diversion for the cost-sharing partners would require a change in the point of diversion for PCWA's Central Valley Project contract and for Sacramento's Sacramento River water right permit, and an exchange agreement between PCWA and Reclamation for Roseville and SSWD diversions under their contract entitlements from PCWA's Middle Fork Project.

Water Delivery Quantities

The additional water supplies considered in the SRWRS for each cost-sharing partner include: (1) Additional water supply of up to 35,000 acre-feet for PCWA's M&I demand with a treatment capacity of 65 million gallons per day (mgd), (2) additional water supply of up to 29,000 acre-feet in Water Forum average, drier, and driest years for SSWD's M&I demand and groundwater stabilization program with a treatment capacity of 15 mgd, (3) additional water supply of up to 7,100 acre-feet for Roseville's M&I demand with a treatment capacity of 10 mgd, and (4) additional water supply of up to 58,000 acre-feet (see note below) with a water treatment capacity of 165 mgd for Sacramento's M&I demand.

Note on Sacramento's additional diversion: The Water Forum Agreement does not establish a volumetric limitation for Sacramento's total diversion, and the estimated additional water supply to meet its projected demand is about 58,000 acre-feet, based on the difference between the demand and the projected average diversion for Sacramento that could be realized in 2020 level of development using then-existing diversion facilities on the American and Sacramento rivers. (The 2030 level of statewide demand projection is currently under development by California Department of Water Resources.) However, Sacramento could divert up to 81,800 acre-feet under its water rights on the Sacramento River at the Elkhorn site by reducing the diversion under its Sacramento River water rights at its existing Sacramento River Water Treatment Plant downstream of the confluence with the American River.

Indian Trust Assets

There are Indian Trust Assets located in Placer County, held in trust by the United States for the United Auburn Indian Community of the Auburn Rancheria. Direct association between these assets and the proposed action are unknown at this time. There are no assets located in the greater Sacramento metropolitan area, southern Sutter County, or northern Sacramento County.

Written comments, including names and home addresses of respondents, will be made available for public review. Individual respondents may request that their home address be withheld from public disclosure, which will be honored to the extent allowable by law. There may be circumstances in which respondents' identity may also be withheld from public disclosure, as allowable by law. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comment. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Dated: July 2, 2003.

Robert Eckart,

Chief, Environmental Compliance Branch, Mid-Pacific Region.

[FR Doc. 03–19307 Filed 7–29–03; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–495]

Certain Breath Test Systems for the Detection of Gastrointestinal Disorders and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on June 24, 2003, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Meretek Diagnostics, Inc. of Lafayette, Colorado, and Medquest PTY, Ltd. of Perth, Australia. Supplements to the complaint were filed on July 11, 2003, and July 18, 2003. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain breath test systems for the detection of gastrointestinal disorders and components thereof by reason of infringement of claims 1, 2, 3, and 5 of U.S. Patent No. 4,830,010. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint and supplements, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's ADD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: David O. Lloyd, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2576.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2003).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on July 22, 2003, *Ordered* That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain breath test systems for the detection of gastrointestinal disorders or components thereof by reason of infringement of claims 1, 2, 3, or 5 of U.S. Patent No. 4,830,010 and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Meretek Diagnostics, Inc., 2655 Crescent Dr., Ste. C, Lafayette, CO 80026.

Medquest PTY, Ltd., 59 Ellesmere St., Mount Hawthorn, Perth, Western Australia.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Oridion Systems, Ltd., 7 HaMarpe St., Har Hotzvim Science Based Industrial Park, POB 45025, 91450 Jerusalem, Israel.

Oridion Medical 1987 Ltd., 7 HaMarpe St., Har Hotzvim Science Based Industrial Park, POB 45025, 91450 Jerusalem, Israel.

Oridion BreathID Ltd., 7 HaMarpe St., Har Hotzvim Science Based Industrial Park, POB 45025, 91450 Jerusalem, Israel.

Oridion BreathID Inc., 21 Highland Circle, Needham, MA 02494.

(c) David O. Lloyd, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to that respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against that respondent.

Issued: July 24, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–19304 Filed 7–29–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Policing Services; Agency Information Collection Activities; Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review; COPS Universal Hiring Program (UHP) and COPS in Schools (CIS) and Homeland Security Overtime Program Grant Applications.

The Department of Justice (DOJ), Office of Community Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 219, page 68885 on November 13, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow an additional 30 days for public comment until August 29, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in each notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Revision to a currently approved collection.

(2) *The title of the form/collection:* Universal Hiring Program and COPS in Schools and Homeland Security Overtime Program Grant Applications.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number: none. Sponsoring component: Office of Community Oriented Policing Services, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, local and tribal governments. Other: none. The COPS Office requests OMB approval of a revision to a currently approved collection. The Universal Hiring Program (UHP), COPS in Schools (CIS) program, and Homeland Security Overtime Program (HSOP) all promote the practice of community policing and use essentially the same application, with only minor differences in the types of questions asked due to the different focuses of the programs. The UHP and CIS programs allow law enforcement agencies to supplement their current law enforcement forces or establish a new "start-up" municipal law enforcement agency. CIS grantees are required to place any officer positions awarded in the local schools for at least 75% of their normal duty shift. HSOP permits applicants to supplement their current overtime budget for homeland security training sessions and other law enforcement activities that are designed to help prevent acts of terrorism.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* An estimated 6,300 respondents will submit applications for either the UHP, CIS, or HSOP program. COPS estimates it will take respondents approximately 5 hours to complete their applications.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total public burden is estimated at 31,500 annual burden hours for this combined application kit.

FOR FURTHER INFORMATION CONTACT: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: July 24, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–19293 Filed 7–29–03; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Executive Office for United States Attorneys; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: Office of Legal Education Nomination/Confirmation Form.

The Department of Justice (DOJ), Executive Office for United States Attorneys, (EOUSA,) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until September 29, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Michele Zozom, (202) 616–6969, Executive Office for United States Attorneys, U.S. Department of Justice, 600 E Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Existing collection in use without an OMB control number.

(2) *The title of the form/collection:* Office of Legal Education Nomination Form.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* DOJ Form Number, none. Office of Legal Education, Executive Office for United States Attorneys, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Respondents will be current and potential users of agency training services. Respondents may represent Federal agencies, as well as State, local, and tribal governments. The Executive Office for United States Attorneys will use the collected information to select class participants, arrange for transportation and reserve rooms; have an address to contact the participant, and an emergency contact.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that there will be 2,140 responses annually. It is estimated that each form will take 5 minutes to complete.

(6) *An estimate of the total public burden (in hours) associated with the collection:* An estimate of the total hour burden to conduct this survey is 1,750 hours.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: July 24, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–19295 Filed 7–29–03; 8:45 am]

BILLING CODE 4410–07–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: State and Local Training Registration Request.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until September 29, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Don Robinson, Chief, State and Local Training Branch, 800 K Street, NW., Suite 600, Washington, DC 20091.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* State and Local Training Registration Request.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 6400.1. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, local, or Tribal Government. Other: None. The Bureau of Alcohol, Tobacco, Firearms and Explosives provides arson and explosives investigative techniques training to State and local investigators. The registration request form will be used by prospective students.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 500 respondents will complete a 6 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are 50 estimated total annual burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: July 24, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–19294 Filed 7–29–03; 8:45 am]

BILLING CODE 4410–FB–P

DEPARTMENT OF LABOR

Office of the Secretary

Colombian Trade Union Training Program; Correction

AGENCY: Bureau of International Labor Affairs, Department of Labor.

ACTION: Correction.

SUMMARY: In notice document 03–16545 beginning on page 39111 in the issue of Tuesday, July 1, 2003, make the following corrections:

1. On page 39111 in the third column, the closing date for receipt of applications is listed as Friday, August 8, 2003. This should be changed to Friday, August 15, 2003.

2. On page 39112 in the third column, replace the last paragraph of Section II.A. with the following paragraph, "Please note that to be eligible, grant applicants classified under the Internal Revenue Code as a 501(c)(4) entity (*see* 26 U.S.C. 501(c)(4)), may not engage in lobbying activities. According to the Lobbying Disclosure Act of 1995, as amended by 2 U.S.C. 1611, an organization, as described in section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant, or loan."

3. On page 39112 in the third column, paragraph 2 of Section II.B., add the following sentence, to the end of the paragraph, "The application should include the name, address, telephone and fax numbers, and e-mail address (if applicable) of a key contact person at the applicant's organization in case questions should arise."

4. On page 39113 in the first column, paragraph 2 of Section II.C., the date "Friday, August 8, 2003" should be changed to "Friday, August 15, 2003."

5. On page 39113 in the first column, paragraph 2 of Section II.C., the phrase "[Enter Date]" should be changed to "the closing date" (the replacement occurs in two different places in the paragraph).

Signed at Washington, DC, this 22nd day of July 2003.

Lawrence J. Kuss,

Grant Officer.

[FR Doc. 03–19322 Filed 7–29–03; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Office of the Secretary

Developing a Serbian Labor Inspectorate for the 21st Century; Correction

AGENCY: Bureau of International Labor Affairs, Department of Labor.

ACTION: Correction.

SUMMARY: In notice document 03–16546 beginning on page 39132 in the issue of Tuesday, July 1, 2003, make the following corrections:

1. On page 39132 in the first column, the closing date for receipt of applications is listed as Friday, August 8, 2003. This should be changed to Friday, August 15, 2003.

2. On page 39132 in the third column, replace the last paragraph of Section II.A. with the following paragraph, "Please note that to be eligible, grant applicants classified under the Internal Revenue Code as a 501(c)(4) entity (*see* 26 U.S.C. 501(c)(4)), may not engage in lobbying activities. According to the Lobbying Disclosure Act of 1995, as amended by 2 U.S.C. 1611, an organization, as described in section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant, or loan."

3. On page 39133 in the first column, paragraph 2 of Section II.B., add the following sentence, to the end of the paragraph, "The application should include the name, address, telephone and fax numbers, and e-mail address (if applicable) of a key contact person at the applicant's organization in case questions should arise."

4. On page 39133 in the second column, paragraph 2 of Section II.C., the date "Friday, August 8, 2003" should be changed to "Friday, August 15, 2003."

5. On page 39133 in the second column, paragraph 2 of Section II.C., the phrase "[Enter Date]" should be changed to "the closing date" (the replacement occurs in two different places in the paragraph).

Signed at Washington, DC, this 22nd day of July, 2003.

Lawrence J. Kuss,

Grant Officer.

[FR Doc. 03–19323 Filed 7–29–03; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0190(2003)

Standards on Electrical Protective Equipment (29 CFR 1910.137) and Electric Power Generation, Transmission, and Distribution (29 CFR 1910.269); Extension of the Office of Management and Budget's Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA requests comment concerning its proposed extension of the information collection requirements specified by its standards on Electrical Protective Equipment (29 CFR 1910.137) and Electric Power Generation, Transmission, and Distribution (29 CFR 1910.269).

The collections of information are needed to help employers ensure that electrical protective equipment is maintained in a safe, reliable condition and employees have received the training required by § 1910.269. The information will also be provided to OSHA compliance officers during inspections.

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be submitted (postmarked or received) by September 29, 2003.

Facsimile and electronic transmission: Your comments must be received by September 29, 2003.

ADDRESSES:

I. Submission of Comments

Regular mail, express delivery, hand-delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Docket No. ICR 1218–0190 (2003), Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., e.s.t.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number, ICR 1218–0199 (2003), in your comments.

Electronic: You may submit comments, but not attachments, through the Internet at *http://ecomments.osha.gov/*.

You may submit comments in response to this document by (1) hard copy, (2) FAX transmission (facsimile), or (3) electronically through the OSHA Web page. Please note you cannot attach materials such as studies or journal articles to electronic comments. If you have additional materials, you must submit three copies of them to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject and docket number so we can attach them to your comments. Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery, and messenger service.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) (PRA–95). This program ensures that information is in the desired format, reporting burden (time and costs) is minimized, collection instruments are understandable, and OSHA's estimate of the information collection burden is correct.

Under § 1910.137(b)(2)(xii), employers must certify that the electrical protective equipment used by their employees passed the tests specified in paragraphs (b)(2)(viii), (b)(2)(ix), and (b)(2)(xi) of the standard. The certification must identify the equipment that passed the tests and the dates of the tests. This provision helps ensure that electrical protective equipment is reliable and safe for employee use and will provide adequate protection against electric shock. In addition, certification helps OSHA to determine if employers are in compliance with the equipment-testing requirements of the standard.

II. Obtaining Copies of the Supporting Statement for the Information Collection Request

The Supporting Statement for the Information Collection Request (ICR) is available for downloading from OSHA's Web site at *www.osha.gov*. The complete ICR, containing the OMB–83–I Form, Supporting Statement, and attachments, is available for inspection and copying in the OSHA Docket Office, at the address listed above. A printed copy of the ICR can be obtained by contacting Theda Kenney at (202) 693–2222.

Section 1910.269(a)(2)(vii) requires employers to certify that each employee received the training specified in paragraph (a)(2) of the standard. Employers must provide certification after an employee demonstrates proficiency in the work practices involved.

The training conducted under paragraph (a)(2) of the standard ensures that: Employees are familiar with the safety-related work practices, safety procedures, and other procedures, as well as any additional safety requirements in the standard, that pertain to their respective job assignments; employees are familiar with any other safety practices, including applicable emergency procedures (such as pole top and manhole rescue), addressed specifically by this standard that relate to their work and are necessary for their safety; and qualified employees have the skills and techniques necessary to distinguish exposed live parts from other parts of electric equipment, can determine the nominal voltage of the exposed live parts, know the minimum approach distances specified by the standard for voltages when exposed to them, and understand the proper use of special precautionary techniques, personal protective equipment, insulating and shielding materials, and insulated tools for working on or near exposed and energized parts of electric equipment.

Employees must receive additional training or retraining if: The supervision and annual inspections required by the standard indicate that they are not complying with the required safety-related work practices; new technology or equipment, or revised procedures, require the use of safety-related work practices that differ from their usual safety practices; and they use safety-related work practices that are different than their usual safety practices while performing job duties.

The training requirements of this standard inform employees of the safety hazards of electrical exposure and provide them with the understanding required to minimize these safety hazards. In addition, employees receive proper training in safety-related work practices, safety procedures, and other safety requirements specified in the standard. The required training, therefore, provides information to employees that enables them to recognize how and where electrical and other hazardous exposures occur, and what steps to take, including work practices, to limit such exposure. The certification requirement specified by paragraph (a)(2)(vii) of the standard helps employers monitor the training their employees received and helps OSHA determine if employers provided the required training to their employees.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA proposes to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified by the standards on Electrical Protective Equipment (29 CFR 1910.137) and Electric Power Generation, Transmission, and Distribution (29 CFR 1910.269). The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information collection requirements.

Type of Review: Extension of a currently-approved information collection requirement.

Title: Electrical Protective Equipment (29 CFR 1910.137) and Electric Power Generation, Transmission, and Distribution (29 CFR 1910.269).

OMB Number: 1218–0190.

Affected Public: Business or other for-profit; not-for-profit institutions; State, local or tribal government; Federal Government.

Number of Respondents: 12,195.

Frequency of Recordkeeping: On occasion; semi-annually; annually.

Average Time per Response: Varies from one minute (.02 hour) to 15 minutes (.25 hour).

Total Annual Hours Requested: 22,685.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC on July 25, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–19345 Filed 7–29–03; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0108 (2003)]

Standard on Ethylene Oxide (EtO) (29 CFR 1910.1047); Extension of the Office of Management and Budget's (OMB) Approval of Information–Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Request for comment.

SUMMARY: OSHA requests comment concerning its proposed extension of the information-collection requirements contained in the Ethylene Oxide Standard (the "EtO Standard") (29 CFR 1910.1047).

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be submitted (postmarked or received) by September 29, 2003.

Facsimile and electronic transmission: Your comments must be received by September 29, 2003.

ADDRESSES:

I. Submission of Comments

Regular mail, express delivery, hand-delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Docket No. ICR 1218–0108 (2003), Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., est.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–648. You must include the docket number, ICR 1218–0108 (2003), in your comments.

Electronic: You may submit comments, but not attachments, through the Internet at *http://ecomments.osha.gov/.*

You may submit comments in response to this document by (1) hard copy, (2) FAX transmission (facsimile), or (3) electronically through the OSHA web page. Please not you cannot attach materials such as studies or journal articles to electronic comments. if you have additional materials, you must submit three copies of them to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject and docket number so we can attach them to your comments. Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

II. Obtaining Copies of the Information Collection Request

The Supporting Statement of the Information Collection Request (ICR) is available for downloading form OSHA's web site at *www.osha.gov.* The complete ICR, containing the OMB83–I Form, Supporting Statement, and attachments, is available for inspection and copying in the OSHA Docket Office, at the address listed above. A printed copy of the ICR can be obtained by contacting Todd Owen at (202) 693–2222.

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and Respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments clearly understood, and OSHA's estimate of the information burden is correct. The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act of for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The information-collection requirements specified in the EtO Standard protect employees from the adverse health effects that may result from their exposure to EtO. The major information-collection requirements of the EtO Standard include notifying employees of their EtO exposures, implementing a written compliance program, providing examining physicians with specific information, ensuring that employees receive a copy of their medical-examination results, maintaining employees' exposure-monitoring and medical records for specific periods, and providing access to these records by OSHA, the National Institute for Occupational Safety and Health, the affected employees, and their authorized representatives.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

Whether the proposed information-collection requirements are necessary for the proper performance of the Agency's functions to protect workers, including whether the information is useful;

- The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA proposes to decrease the existing burden-hour estimate, and to extend OMB's approval, of the collection-of-information requirements contained in the EtO Standard. The Agency is decreasing its previous estimate of 49,200 hours to 43,991 hours. This 5,209 hour decrease mainly results from the 313 new hospitals identified in the previous ICR completing one time activities such as initial exposure-monitoring and initial employee medical examinations. The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information-collection requirements.

Type of Review: Extension of currently approved information-collection requirement.

Title: Ethylene Oxide Standard (29 CFR 1910.1047).

OMB Number: 1218–0108.

Affected Public: Business or other for-profit; Federal government, state, local or tribal government.

Number of Respondents: 5,667.

Frequency: On occasion.

Total Responses: 232,564.

Average Time per Response: Varies from 5 minutes to provide information to the examining physician to 2 hours for employees to receive medical examinations.

Estimated Total Burden Hours: 43,991.

Estimated Cost (Operation and Maintenance): $6,595,597.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on July 25, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–19346 Filed 7–29–03; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–086)]

NASA Advisory Council, Biological and Physical Research Advisory Committee Audio Teleconference

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Biological and Physical Research Advisory Committee.

DATES: Thursday, August 14, 2003, from 11 a.m. until 1 p.m.

ADDRESSES: NASA Headquarters, 300 E Street SW., Room 8E26, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Bradley Carpenter, Code UG, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0826.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capability of the meeting room. Due to the increased security at NASA facilities, any members of the public who wish to attend this meeting of the Biological and Physical Research Advisory Committee must provide their name, date and place of birth, citizenship, social security number, or passport and visa information (number, country of issuance and expiration), business address and phone number, if any. This information is to be provided at least 72 hours (11 a.m. EDT on August 11, 2003) prior to the date of the public meeting. Identification information is to be provided to Dr. Bradley Carpenter at 202/358–0826 or via e-mail at *bcarpenter@hq.nasa.gov.* Failure to timely provide such information may result in denial of attendance. Photo identification may be required for entry into the building. Persons with disabilities who require assistance should indicate this in their message. Due to limited availability of seating, members of the public will be admitted on a first-come, first-serve basis. News media wishing to attend the meeting should follow standard accreditation procedures. Members of the press who have questions about these procedures should contact the NASA Headquarters newsroom (202/358–1600). The agenda for the meeting is as follows:

- Performance Measures

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–19370 Filed 7–29–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–087)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that the Keymaster Technologies, Inc., a Delaware corporation, has applied for an exclusive license to practice the inventions disclosed in NASA Case Nos. MFS–31898–1 entitled "Methods for Identification and Verification Using Vacuum XRF System" and MFS–31886–1 entitled Methods for Identification and Verification Using Digital Equivalent Data System." Written objections to the prospective grant of a license should be sent to Mr. James J. McGroary, Patent Counsel/LS01, Marshall Space Flight Center, Huntsville, AL 35812. NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

DATES: Responses to this notice must be received by August 14, 2003.

FOR FURTHER INFORMATION CONTACT: Sammy A. Nabors, Technology Transfer Department/CD30, Marshall Space Flight Center, Huntsville, AL 35812, telephone (256) 544–5226.

Dated: July 17, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–19369 Filed 7–29–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (03–085)]

Availability for Comment; Draft Test Protocol for Detecting Possible Biohazards in Martian Samples Returned to Earth

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Availability for comment.

SUMMARY: NASA has prepared a draft protocol for the testing and evaluation of samples that may be returned from Mars by future missions in its Mars exploration program. This protocol is designed to provide a model method whereby such samples can be tested for possible biohazards that could be present if life exists on Mars. The protocol has been prepared as a draft to guide the development of both a final protocol to accomplish biohazard and life-detection testing, and to aid in the eventual design of the facility or facilities that will be required to accomplish that testing. Public comment on this draft protocol is sought to provide for refinement of the draft and to provide information for future NASA planning efforts.

A Mars sample return mission is not currently scheduled or funded by NASA, but is being considered as one option in planning future pathways for the exploration of Mars. The draft protocol is a pre-decisional document with respect to planning for a future sample return mission.

This notice informs the public of the availability of the draft protocol for electronic distribution, and solicits public comment.

During the comment period, an electronic version (.pdf) of the NASA Conference Publication, "A Draft Test Protocol for Detecting Possible Biohazards in Martian Samples Returned to Earth," NASA/CP–2002–211842, is available via internet at *http://spacescience.nasa.gov/admin/pubs/marssamples/index.htm,* and a limited number of print copies (one per addressee until the supply is exhausted) is available by writing to the address below.

DATES: Interested parties are invited to submit comments on this document in writing on or before November 28, 2003, to assure full consideration during future planning for Mars exploration missions involving surface or subsurface sample return missions.

ADDRESSES: Written comments should be addressed to Dr. John D. Rummel, NASA Headquarters, Code S, Washington, DC 20546–0001. Comments may also be sent by electronic mail to: *marssamples@hq.nasa.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. John D. Rummel, Code S, NASA Headquarters, Washington, DC 20546–0001; 202–358–0702; electronic mail: *marssamples@hq.nasa.gov.*

John D. Rummel,

Planetary Protection Officer.

[FR Doc. 03–19287 Filed 7–29–03; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL SCIENCE FOUNDATION

Notice of Plan for Collection of Meteorites Issued Under the Antarctic Conservation Act of 1978, as Amended

AGENCY: National Science Foundation.

ACTION: Notice of availability of a plan for collection of meteorites; invitation for comments.

SUMMARY: On March 31, 2003, the National Science Foundation (NSF) issued a final rule that authorized the collection of meteorites in Antarctica for scientific purposes only. These regulations implement Article 7 of the

Protocol on Environmental Protection to the Antarctic Treaty and are issued pursuant to Section 6 of the Antarctic Conservation Act, as amended by the Antarctic Science, Tourism and Conservation Act of 1996. The regulations require appropriate collection, handling, and curation of Antarctic meteorites to preserve their scientific value. Antarctic expeditions planning to collect meteorites in Antarctica are required to submit their plans for the collection, handling, and curation of the meteorites to the National Science Foundation. NSF is providing notice of availability of a meteorite collection plan and inviting comments on the plan.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: A meteorite collection plan has been received from Dr. Ralph Harvey of Case Western Reserve University. Interested parties are invited to submit written data, comments, or views with respect to this plan by August 14, 2003. This plan may be inspected by interested parties at the Permit Office, address listed above.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 03–19349 Filed 7–29–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of July 28, August 4, 11, 18, 25, September 1, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 28, 2003

There are no meetings scheduled for the Week of July 28, 2003.

Week of August 4, 2003—Tentative

There are no meetings scheduled for the Week of August 4, 2003.

Week of August 11, 2003—Tentative

There are no meetings scheduled for the Week of August 11, 2003.

Week of August 18, 2003—Tentative

There are no meetings scheduled for the Week of August 18, 2003.

Week of August 25, 2003—Tentative

Wednesday, August 27, 2003

9:30 a.m. Briefing on License Renewal Program, Power Uprate Activities, and High Priority Activities (Public Meeting) (Contact: Ho Nieh, 301–415–1721).

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

Week of September 1, 2003—Tentative

There are no meetings scheduled for the Week of September 1, 2003.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: July 24, 2003.

D.L. Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–19486 Filed 7–28–03; 10:09 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

State of Wisconsin: Discontinuance of Certain Commission Regulatory Authority Within the State

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of agreement with the State of Wisconsin.

SUMMARY: On July 1, 2003, Dr. Nils J. Diaz, Chairman of the U.S. Nuclear Regulatory Commission (NRC) signed an Agreement and on July 3, 2003, Governor Jim Doyle of the State of Wisconsin signed the Agreement as authorized by Section 274b of the Atomic Energy Act, as amended (Act). The Agreement provides for the Commission to discontinue its regulatory authority over source, byproduct materials as defined in Section 11e.(1) of the Act and special nuclear materials (in quantities not sufficient to form a critical mass) in the State of Wisconsin, and for Wisconsin to assume the regulatory authority. Under the Agreement, a person in Wisconsin possessing these materials is exempt from certain Commission regulations. The exemptions have been previously published in the **Federal Register** and are codified in the Commission's regulations as 10 CFR part 150. The Agreement is published here as required by Section 274e of the Act.

FOR FURTHER INFORMATION CONTACT: Lloyd A. Bolling, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 415–2327 or e-mail *lab@nrc.gov.*

The draft Agreement was published in the **Federal Register** for comment once a week for four consecutive weeks (*see, e.g.* 68 FR 17090, April 8, 2003) as required by the Act. The public comment period ended on May 8, 2003. A total of two comment letters were received and were considered by the NRC staff. After considering the comments, the request for an Agreement by the Governor of Wisconsin, the supporting documentation submitted with the request for an Agreement, and its interactions with the staff of the Wisconsin Department of Health and Family Services, Division of Public Health, the NRC staff completed an assessment of the Wisconsin program. Based on the staff's assessment, the Commission determined on June 30, 2003, that the proposed Wisconsin program for the control of radiation hazards is adequate to protect public health and safety, and that it is compatible with the Commission's program.

The NRC maintains an Agency-wide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Copies of the comment analysis by the NRC staff, the staff assessment, and the Commission's decision are also available for public inspection in the NRC's Public Document Room—ADAMS Accession Numbers: ML031530264 and ML031810191. Copies of these documents may be viewed at the NRC website at, *http://www.nrc.gov/reading-rm/doc-collections/commission/secys/2003/secy2003–0096/2003–0096scy.html* and, *http://www.nrc.gov/reading-rm/doc-collections/commission/srm/2003/2003–0096srm.html.*

Dated at Rockville, Maryland, this 22nd day of July, 2003.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

Attachment—Agreement Between the United States Nuclear Regulatory Commission and the State of Wisconsin for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, the United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into Agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e. (1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, the Governor of the State of Wisconsin is authorized under s. 254.335 (1), Wisconsin Statutes, to enter into this Agreement with the Commission; and,

Whereas, the Governor of the State of Wisconsin certified on August 21, 2002, that the State of Wisconsin (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory authority for such materials; and,

Whereas, the Commission found on June 30, 2003 that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

Whereas, the State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, the Commission and the State recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

Whereas, this Agreement is entered into pursuant to the provisions of the Act: Now, Therefore, It is hereby agreed between the Commission and the Governor of the State, acting on behalf of the State, as follows:

Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

A. Byproduct materials as defined in Section 11e. (1) of the Act;

B. Source materials;

C. Special nuclear materials in quantities not sufficient to form a critical mass.

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to:

A. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;

B. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

C. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear material wastes as defined in the regulations or orders of the Commission;

D. The regulation of the disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed without a license from the Commission;

E. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;

F. The regulation of the land disposal of byproduct, source, or special nuclear material waste received from other persons;

G. The extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material.

Article III

With the exception of those activities identified in Article II, paragraphs A through D, this Agreement may be amended, upon application by the State and approval by the Commission, to include the additional areas specified in Article II, paragraphs E, F and G, whereby the State can exert regulatory authority and responsibility with respect to those activities and materials.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

Article VI

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that Commission and State programs for protection against hazards of radiation will be coordinated and compatible. The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and will assure that the State's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

Article VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement state. Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the State has not complied with one or more of the requirements of Section 274 of the Act. The Commission may also, pursuant to Section 274j of the Act, temporarily suspend all or part of this Agreement if, in the judgement of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review this Agreement and actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act which requires a State program to be adequate to protect public health and safety with respect to the

materials covered by the Agreement and to be compatible with the Commission's program.

Article IX

This Agreement shall become effective on August 11, 2003, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Dated at Rockville, Maryland, in triplicate, this 1st day of July, 2003.

For the United States Nuclear Regulatory Commission.

Nils J. Diaz,
Chairman.

Dated at Madison, Wisconsin, in triplicate, this 3rd day of July, 2003.

For the State of Wisconsin.

Jim Doyle,
Governor.

[FR Doc. 03–19319 Filed 7–29–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Form S–2, OMB Control No. 3235–0072 and SEC File No. 270–060.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for approval.

Form S–2 (OMB Control No. 3235–0072; SEC File No. 270–060) is used by certain issuers to register securities under the Securities Act of 1933. The Form S–2 provides investors with the necessary information to make investment decisions regarding securities offered to the public. The likely respondents will be public companies. The information collected must be filed with the Commission and is publicly available. Form S–2 takes approximately 470 burden hours to prepare and is filed by 101 respondents for a total of 47,470 burden hours. It is estimated that 25% of the 47,470 total burden hours (11,868 hours) is prepared by the company. The remaining 75% of the burden hours is attributed to outside cost.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comment to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

Dated: July 22, 2003.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–19331 Filed 7–29–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27702]

Filings Under the Public Utility Holding Company Act of 1935, As Amended ("Act")

July 24, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 18, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After August 18, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Entergy Mississippi, Inc. (70–9757)

Entergy Mississippi, Inc. ("EM"), 308 Pearl Street, Jackson, Mississippi 39201, an electric utility subsidiary of Entergy Corporation, a public utility holding company registered under the Act, has filed a post effective amendment to an application-declaration previously filed under sections 6(a), 7, 9(a), 10, and 12(d) of the Act and rules 44 and 53 under the Act.

By order dated December 26, 2000 (HCAR No. 27317) ("2000 Order"), EM was authorized, among other things, to issue and sell up to $540 million of EM's first mortgage bonds ("Bonds") and/or EM's debentures ("Debentures") through December 31, 2003 ("Authorization Period") with fees and commissions associated with the sale of Bonds or Debentures not to exceed 2% of the principle amount to be sold. By order dated October, 2, 2002 (HCAR No. 27527) ("2002 Order"), EM was authorized to increase the amount of fees and commissions associated with the sale of Bonds or Debentures to 3.25% of the principle amount to be sold.

EM now proposes to increase the aggregate limit of Bonds and/or Debentures it may issue to $740 million through the Authorization Period under the same terms and conditions as those granted in the 2000 Order and the 2002 Order. EM states that the use of proceeds from the additional issuance will be used to prefund certain series of near-term maturing debt and refund certain series of longer-term maturing debt early.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–19328 Filed 7–29–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48219; File No. SR–Amex–2003–51]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Option Fee Reductions

July 23, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 29, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On July 3, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its options fee schedule by eliminating the options fee for specialist and registered options traders ("ROTs") transactions in their allocated options resulting from broker-dealer Auto-Ex trades. In addition, this proposal also seeks an increase of $0.06 per option trade in the current options fee rebate for QQQ option trades by specialists, ROTs and non-member broker-dealers in connection with accommodation trades as well as trades that are part of reversals and conversions, dividend spreads, box spreads and butterfly spreads. The text of the proposed rule change is available at the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Specialist Fee Rebate. The Amex proposes to eliminate options fees for specialist and ROT transactions in their allocated options resulting from broker-dealer trades, including trades of away market makers,[4] in connection with the Exchange's Broker-Dealer Auto-Ex Program.[5] Specialists and ROTs are currently subject to fees in connection with executing Broker-Dealer Auto-Ex orders of $0.36 for equity options, $0.36 plus any applicable licensing fee for ETF options and $0.31 plus any applicable licensing fee for index options.[6]

The Exchange recently increased a number of member fees to better align its fees with the actual cost of delivering services as well as to reduce subsidies of these services. As a result, specialists have seen an increase in their fees for transactions executed at the Amex. This change to the Exchange's option fee structure better reflects the cost to the Exchange of operating the options floor. However, consistent with assuring the continued economic vitality of the Exchange, the Exchange believes the fee specialists and ROTs pay for executing broker-dealer orders in connection with the Broker-Dealer Auto-Ex Program should be eliminated. The option fees eliminated for specialists and ROTs executing Broker-Dealer Auto-Ex orders consist of the options transaction fee, the options comparison fee, the options floor brokerage fee and the options licensing fee (if applicable).[7] The elimination of these fees amounts to $0.36 for equity options, $0.36 plus any applicable options licensing fee for ETF options and $0.31 plus any applicable options licensing fee for index options. In this manner, the Exchange believes that it can better contribute to the continued success of the options floor and the Broker-Dealer Auto-Ex Program. The Exchange further believes that the proposal will provide specialists and ROTs with an incentive to attract away market maker order flow to the Exchange.

Options Fee Rebate Increase for QQQ Options. The Commission in June 2002 approved an Exchange proposal providing for an options fee rebate for accommodation trades[8] as well as trades entered into as part of a reversal and conversion,[9] dividend spread[10] and box spread[11] so that the increase in fees of $0.12 per contract side were reimbursed.[12] The Exchange in this proposal seeks to increase for QQQ option trades the rebate from $0.12 per contract side to $0.18 per contract side as well as to include the "butterfly spread"[13] as an additional strategy subject to the rebate.

The Exchange believes that in connection with the trading of QQQ options, the increase in the options fee rebate should encourage specialists and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange submitted a new Form 19b–4, which replaces and supersedes the original filing in its entirety.

[4] An "away market maker" is a member of another national securities exchange registered as a market maker in an options class(es).

[5] On June 21, 2002, the Exchange filed with the Commission a proposal to permit broker-dealer orders to be executed through Auto-Ex. *See* Securities Exchange Act Release No. 46479 (September 10, 2002), 67 FR 58654 (September 17, 2002).

[6] Broker-dealer orders executed through Auto-Ex are subject to a $0.50 options transaction fee as well as an options comparison fee and options floor brokerage fee so that the total fee for broker-dealer Auto-Ex trades designated as broker-dealer or firm is $0.57. *See* Securities Exchange Act Release No. 47216 (January 17, 2003), 68 FR 5059 (January 31, 2003).

[7] The options marketing fee of $0.40 per contract on specialist and ROT transactions is only imposed on transactions involving customer orders from firms accepting payment for order flow. Accordingly, the options marketing fee does not apply to transactions of specialists and ROTs in connection with executing Broker-Dealer Auto-Ex orders. *See* Securities Exchange Act Release No. 48053 (June 17, 2003), 68 FR 37880 (June 25, 2003).

[8] An "accommodation" or "cabinet" trade refers to trades in listed options on the Exchange that are worthless and not actively traded. The Exchange's procedure for engaging in accommodation or cabinet trades is set forth in Amex Rule 959.

[9] A "conversion" is a strategy in which a long put and a short call with the same strike price and expiration date are combined with long underlying stock to lock in a nearly riskless profit. A "reversal" is a strategy in which a short put and long call with the same strike price and expiration date are combined with short stock to lock in a nearly riskless profit.

[10] A "dividend spread" is any trade done within a defined time frame in which a dividend arbitrage can be achieved between any two deep-in-the-money options.

[11] A "box spread" is a spread strategy that involves a long call and short put at one strike price as well as a short call and long put at another strike price. This is a synthetic long stock position at one strike price and a synthetic short stock position at another strike price.

[12] *See* Securities Exchange Act Release No. 46026 (June 4, 2002), 67 FR 40034 (June 11, 2002). Pursuant to this order, the Exchange began providing the options fee rebate in December 2001. *See also* Securities Exchange Act Release No. 45783 (April 18, 2002), 67 FR 20851 (April 26, 2002).

[13] A "butterfly spread" is an option strategy that has both limited risk and limited profit potential, constructed by combining a bull spread and a bear spread having the same expiration date for all options. Three strike prices are involved, with the lower two strikes being utilized in the bull spread and the higher two strikes in the bear spread. The strategy may be established with either puts or calls.

ROTs to provide liquidity by keeping fees low for these special types of trades and option strategies. In addition, the Exchange believes that the increase in the options fee rebate will help to attract greater order flow to the floor of the Exchange by making our fee structure more competitive with the other options exchanges.

In order to collect the options fee rebate, within thirty calendar days of the particular transaction date, a Fee Reimbursement Form must be completed and submitted to the Exchange. Upon acceptance, the Exchange will deliver to that member's clearing firm a reimbursement check in the amount of the transaction, clearance and brokerage fees (a total of $0.18) charged on QQQ option contracts executed pursuant to an accommodation trade or one of the strategies described above.

2. Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and with Section 6(b)(4),[15] of the Act in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective immediately because it has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[16] and Rule 19b–4(f)(2)[17] thereunder. At any time within 60 days of the filing of Amendment No. 1 to the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR–Amex–2003–51 and should be submitted by August 20, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[18]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–19290 Filed 7–29–03; 8:45 am]

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[14] *See* 15 U.S.C. 78f(b).

[15] *See* 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

[17] 17 CFR 240.19b–4(f)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48221; File No. SR–DTC–2001–13]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Amending The Depository Trust Company's Policy Statement on the Admission of Non-U.S. Entities as Direct Depository Participants

July 23, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 23, 2001, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC is proposing to amend its Policy Statement on the Admission of Non-U.S. Entities as Direct Depository Participants ("Policy Statement") to eliminate the requirement that the foreign entity deposit with or pledge to DTC special collateral having a value (after the imposition of specified haircuts) equal to 50% of the entity's net debit cap ("special collateral requirement").[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the place specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Policy Statement was adopted by DTC to establish admissions criteria that would permit a well-qualified foreign entity to obtain direct access to DTC's services without requiring the foreign entity to obtain financial guarantees.[4] The Policy Statement contains a number of requirements that are designed to address the unique risks posed by the admission of foreign entities. Under the proposed rule change, all of these requirements, except for the special collateral requirement, would be retained.

The special collateral requirement provides that except for U.S. Treasury securities, securities posted as special collateral receives a haircut of 50% of their market value. Most importantly, the foreign entity does not receive credit for this special collateral in DTC's collateral monitor; that is, any net debit or collateral needs have to be supported by the value of other, non-special collateral (including securities received by the participant reflecting DTC's customary haircuts).

DTC's collateral monitor systematically prevents a participant from accruing a net debit that exceeds the value of the collateral in its account by blocking any transaction that would have that effect. For this purpose, collateral includes: (1) The participant's deposit to the participants fund, (2) the value of securities in the participant's account that it has designated as collateral, and (3) the value of securities that are the subject of deliveries from other participants. The collateral value attributed to securities is equal to their market value minus a "haircut" determined by DTC. DTC believes that the collateral monitor and its other risk management controls and procedures applicable to all participants, together with the other requirements of the Policy Statement, adequately limit DTC's exposure in the event of the failure to settle and insolvency of a foreign participant, without the need for the special collateral requirement.

DTC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC since the proposed rule change will eliminate an unnecessary barrier to admission as participants by well-qualified foreign entities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no adverse impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not sought or received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–DTC–2001–13. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the File No. SR–DTC–2001–13 and should be submitted by August 20 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

J. Lynn Taylor,

Assistant Secretary.

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[1] 15 U.S.C. 78s(b)(1).

[2] A copy of the text of DTC's proposed rule change and attachment is available at the Commission's Public Reference Room or through DTC.

[3] The Commission has modified parts of these statements.

[4] DTC's Policy Statement on its admission criteria for non-U.S. entities was first temporarily approved on May 9, 1997. Securities Exchange Act Release No. 38600 (May 9, 1997), 62 FR 27086. Since then, the non-U.S. admission criteria have been temporarily approved several times. Securities Exchange Act Release Nos. 40064 (June 3, 1998), 63 FR 31818; 41466 (May 28, 1999), 64 FR 30077; 42865 (May 30, 2000), 65 FR 36188; and 44470 (June 22, 2001), 66 FR 34972.

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48220; File No. SR–GSCC–2002–03]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to the Revision of the Comparison-Only Membership Application Approval Process

July 23, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 22, 2002, Government Securities Clearing Corporation ("GSCC")[2] filed with the Securities and Exchange Commission ("Commission") and on June 25, 2002, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow GSCC's management to approve or reject comparison-only membership applications.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B),

[1] 15 U.S.C. 78s(b)(1).

[2] On January 1, 2003, MBS Clearing Corporation ("MBSCC") was merged into the Government Securities Clearing Corporation ("GSCC") under New York law, and GSCC was renamed the Fixed Income Clearing Corporation ("FICC"). The functions previously performed by GSCC are now performed by the Government Securities Division ("GSD") of FICC, and the functions previously performed by MBSCC are now performed by the Mortgage-Backed Securities Division ("MBSD") of FICC. The GSD succeeded to the GSCC proposed rule change upon the merger of MBSCC and GSCC. To avoid confusion and maintain consistency with the Notice, in this Order, we will continue to refer to GSCC instead of the GSD of FICC. Securities Exchange Act Release No. 47015 (December 17, 2002), 67 FR 78531 [File Nos. SR–GSCC–2002–09 and SR–MBSCC–2002–01].

and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In the beginning of 2002, GSCC implemented various rule changes that effectuated GSCC's new governance structure resulting from the integration of GSCC with The Depository Trust & Clearing Corporation.[4] As part of the new structure, the newly formed GSCC/MBSCC Membership and Risk Management Committee ("Committee") was given the authority to approve or reject comparison-only and netting membership applications. Upon further review, GSCC has determined that it would be more appropriate for GSCC management to approve or reject applications for comparison-only membership.[5]

The proposed rule change will permit GSCC to effectively balance the interests involved in the membership approval process, including the need for a prudent review of membership applicants as well as the need to admit members on a timely basis. This goal is most appropriately met by having management approve GSCC comparison-only membership applicants.[6] GSCC believes that, given the difference in the level of risk posed by the two types of GSCC membership applicants, only applications to become members of GSCC's netting service should require the Committee's review and approval.[7]

GSCC will activate membership for qualified applicants upon completion of the requisite financial and/or other operational reviews and upon receipt of all membership documentation as is provided in GSCC's rules. In addition, management will provide the Committee with a listing of comparison-only firms being considered for approval by management prior to activating any firm's comparison-only membership.

Consistent with these changes and in order to clarify relevant terms for members, GSCC is also expanding the current definition of "Corporation" in its Rules. Going forward, "Corporation" will also mean "Management," unless otherwise indicated, and these terms will be used interchangeably.

The proposed rule change is consistent with the requirements of Section 17A of the Act[8] and the rules and regulations thereunder applicable to GSCC because it involves a change in GSCC's governance structure that will streamline GSCC's membership application process. In doing so, it will allow GSCC to prudently and more appropriately assess the risk posed by a particular applicant and will allow GSCC to review and approve applicants in a timelier manner.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–GSCC–2002–03. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR–GSCC–2002–03 and should be submitted by August 20, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

J. Lynn Taylor,

Assistant Secretary.

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[3] The Commission has modified the text of the summaries prepared by GSCC.

[4] Securities Exchange Act Release No. 45378 (January 31, 2002), 67 FR 6064 [File No. SR–GSCC–2001–13].

[5] The Committee voted to delegate the authority to approve comparison-only membership applicants to management during its March 7, 2002 meeting. The purpose of this rule filing is to allow GSCC's to implement this change. The term "comparison-only member" means a member that is a member only of the comparison system.

[6] This is consistent with the process currently employed by the National Securities Clearing Corporation ("NSCC"). The President of NSCC, or a Managing Director of NSCC Risk Management, may authorize a Vice President of NSCC Risk Management to approve non-guaranteed service applicants that meet membership requirements. The NSCC Membership and Risk Management Committee receives a list showing the name of each approved non-guaranteed service member.

[7] GSCC's netting service provides for GSCC's guarantee of settlement. GSCC's comparison-only service does not do so.

[8] 15 U.S.C. 78q–1.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48215; File No. SR–NASD–2003–75]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Relating to Requests for Underwriting Activity Reports

July 23, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 29, 2003, the National Association of Securities Dealers, Inc. ("NASD") submitted to the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by NASD. On May 28, 2003, NASD submitted Amendment No. 1 to the proposed rule change.[3] On July 9, 2003, NASD submitted Amendment No. 2 to the proposed rule change.[4] NASD has designated the proposed rule change as concerned solely with administration of the self regulatory organization under Section 19(b)(3)(A)(iii) of the Act[5] and Rule 19b–4(f)(3) thereunder,[6] which renders the proposed rule change effective upon filing with the Commission.[7] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend NASD Rules to require members to submit requests for Underwriting Activity Reports ("UARs") to the Market Regulation Department rather than the Corporate Finance Department. NASD is also proposing to amend NASD Rule 0120 to change the definition of "NASD." The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

0120. Definitions

When used in these Rules, unless the context otherwise requires:

(a) through (i) No Change.

(j) "NASD"

The term "NASD" means, *collectively, NASD Inc., NASD Regulation, Nasdaq, and NASD Dispute Resolution* [NASD, Inc].

(k) through (q) No Change.

* * * * *

2710. Corporate Financing Rule—Underwriting Terms and Arrangements

(a) No Change.

(b) Filing Requirements

(1) General

No member or person associated with a member shall participate in any manner in any public offering of securities subject to this Rule, Rule 2720 or Rule 2810 unless documents and information as specified herein relating to the offering have been filed with and reviewed by *NASD* [the Association].

(2) Means of Filing

Documents or information required by this Rule to be filed with NASD [the Association][*] shall be considered to be filed only upon receipt by its Corporate Financing Department.*

(3) Confidential Treatment

NASD [The Association] shall accord confidential treatment to all documents and information filed pursuant to this Rule and shall utilize such documents and information solely for the purpose of review to determine compliance with the provisions of applicable *NASD* [Association] Rules or for other regulatory purposes deemed appropriate by *NASD* [the Association].

(4) Requirement for Filing

(A) Unless filed by the issuer, the managing underwriter, or another member, a member that anticipates participating in a public offering of securities subject to this Rule shall file with *NASD* [the Association] the documents and information with respect to the offering specified in subparagraphs (5) and (6) below no later than one business day after the filing of any of such documents:

(i) through (iv) No Change.

(B) No offering of securities subject to this Rule shall commence unless:

(i) The documents and information specified in subparagraphs (5) and (6) below have been filed with and reviewed by *NASD* [the Association]; and

(ii) *NASD* [the Association] has provided an opinion that it has no objections to the proposed underwriting and other terms and arrangements or an opinion that the proposed underwriting and other terms and arrangements are unfair and unreasonable. If *NASD's* [the Association's] opinion states that the proposed underwriting and other terms and arrangements are unfair and unreasonable, the member may file modifications to the proposed underwriting and other terms and arrangements for further review.

(C) Any member acting as a managing underwriter or in a similar capacity that has been informed of an opinion by *NASD* [the Association], or a determination by the appropriate standing committee of the Board of Governors, that the proposed underwriting terms and arrangements of a proposed offering are unfair or unreasonable, and the proposed terms and arrangements have not been modified to conform to the standards of fairness and reasonableness, shall notify all other members proposing to participate in the offering of that opinion or determination at a time sufficiently prior to the effective date of the offering or the commencement of sales so the other members will have an opportunity as a result of specific notice to comply with their obligation not to participate in any way in the distribution of a public offering containing arrangements, terms and conditions *that* [which] are unfair or unreasonable.

(5) Documents To Be Filed

(A) The following documents relating to all proposed public offerings of securities that are required to be filed under subparagraph (b)(4) above shall be filed with *NASD* [the Association] for review:

(i) No Change.

(ii) Three copies of any proposed underwriting agreement, agreement among underwriters, selected dealers agreement, agency agreement, purchase agreement, letter of intent, consulting agreement, partnership agreement, underwriter's warrant agreement, escrow agreement, and any other document *that* [which] describes the underwriting or other arrangements in connection with or related to the distribution, and the terms and conditions relating thereto; and any other information or documents *that* [which] may be material to or part of the said arrangements, terms and conditions and *that* [which] may have a bearing on *NASD's* [the Association's] review;

(iii) No Change.

[3] See letter dated May 28, 2003, from Stephanie Dumont, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission ("Amendment No. 1"). In Amendment No. 1, NASD amended the proposal to redefine the term "NASD" in the proposed rule text and to revise and clarify its discussion of the purpose of the proposed rule change. The changes to the purpose section were subsequently amended by Amendment No. 2.

[4] See letter dated July 7, 2003, from Stephanie Dumont, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, to Katherine A. England, Assistant Director, Division, Commission ("Amendment No. 2"). In Amendment No. 2, NASD amended the proposal to include additional amendments to the proposed rule text by, in part, deleting references to NASD Regulation, Inc., and to revise and clarify its discussion of the purpose of the proposed rule change.

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(f)(3).

[7] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on July 9, 2003, the date NASD filed Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).

* This Department is located at 9509 Key West Avenue, Rockville, Maryland 20850.

(iv) Three copies of the final registration statement declared effective by the Commission or equivalent final offering document and a list of the members of the underwriting syndicate, if not indicated therein, and one copy of the executed form of the final underwriting documents and any other document submitted to *NASD* [the Association] for review.

(B) All documents that are filed with the Commission through the Commission's Electronic Data Gathering and Retrieval System shall be treated as filed with *NASD* [the Association].

(6) Information Required To Be Filed

(A) Any person filing documents that are required to be filed under paragraph (b)(4) above shall provide the following information with respect to the offering through *NASD's* [the Association's] electronic filing system:

(i) through (v) No Change.

(vi) A detailed explanation and any documents related to the modification of any item of underwriting compensation subsequent to the review and approval of such compensation by *NASD* [the Association]; and

(vii) Any other information required by *NASD's* [the Association's] electronic filing system.

(B) Any person filing documents pursuant to subparagraph (b)(5) above shall notify *NASD* [the Association] through its electronic filing system that the offering has been declared effective or approved by the Commission or other agency no later than one business day following such declaration or approval or that the offering has been withdrawn or abandoned within three business days following the withdrawal or decision to abandon the offering.

(7) Offerings Exempt From Filing

Notwithstanding the provisions of subparagraph (1) above, documents and information related to the following public offerings need not be filed with *NASD* [the Association] for review, unless subject to the provisions of Rule 2720. However, it shall be deemed a violation of this Rule or Rule 2810, for a member to participate in any way in such public offerings if the underwriting or other arrangements in connection with the offering are not in compliance with this Rule or Rule 2810, as applicable:

(A) through (G) No Change.

(8) No Change.

(9) Offerings Required To Be Filed

Documents and information relating to all other public offerings including, but not limited to, the following must be filed with *NASD* [the Association] for review:

(A) through (J) No Change.

(10) Request for Underwriting Activity Report

Notwithstanding the availability of an exemption from filing under subparagraph (b)(7) of this Rule, a member acting as a manager (or in a similar capacity) of a distribution of a publicly traded subject [security] or reference security that is subject to SEC Rule 101 or an "actively-traded" security under SEC Rule 101 (except for a security listed on a national securities exchange) shall submit a request to the *Market Regulation* [Corporate Financing] Department for an Underwriting Activity Report with respect to the subject security and/or reference security in order to facilitate compliance with SEC Rules 101, 103, or 104, and other distribution-related *NASD* Rules [of the Association]. The request shall be submitted at the time a registration statement or similar offering document is filed with the *Corporate Financing* Department, the SEC, or other regulatory agency or, if not filed with any regulatory agency, at least two (2) business days prior to the commencement of the restricted period under SEC Rule 101. The request shall include a copy of the registration statement or similar offering document (if not previously submitted pursuant to subparagraph (b)(5) of this Rule). If no member is acting as managing underwriter of such distribution, each member that is a distribution participant or an affiliated purchaser shall submit a request for an Underwriting Activity Report, unless another member has assumed responsibility for compliance with this subparagraph. For purposes of subparagraphs (b)*(10)* [(11)] and *(11)* [(12)], SEC Rules 100, 101, 103, and 104 are rules of the Commission adopted under Regulation M and the following terms shall have the meanings as defined in SEC Rule 100: "distribution," "distribution participant," "reference security," "restricted period," and "subject security."

(11) Submission of Pricing Information

A member acting as a manager (or in a similar capacity) of a distribution of securities that are listed on a national securities exchange and considered a subject security or reference security that is subject to SEC Rule 101 or an "actively-traded" security under SEC Rule 101 or a distribution of any other securities that are considered "actively-traded" under SEC Rule 101 shall provide written notice to the Market Regulation Department [of NASD Regulation, Inc.], no later than the close of business the day the offering terminates, that includes the date and time of the pricing of the offering, the offering price, and the time the offering terminated, which notice may be submitted on the Underwriting Activity Report.

(c) Underwriting Compensation and Arrangements

(1) through (2) No Change.

(3) Items of Compensation

(A) No Change.

(B) Expenses customarily borne by an issuer, such as printing costs; SEC, "blue sky" and other registration fees; *NASD* [Association] filing fees; and accountant's fees, shall be excluded from underwriter's compensation whether or not paid through an underwriter.

(4) Determination of Whether Compensation Is Received in Connection With the Offering

(A) All items of value received or to be received by the underwriter and related persons during the twelve (12) month period immediately preceding the filing of the registration statement or similar document, and at the time of and subsequent to the public offering, will be examined to determine whether such items of value are underwriting compensation in connection with the offering and, if received during the six (6) month period immediately preceding the filing of the registration statement or similar document, will be presumed to be underwriting compensation received in connection with the offering, provided, however, that such presumption may be rebutted on the basis of information satisfactory to *NASD* [the Association] to support a finding that the receipt of an item is not in connection with the offering and shall not include cash discounts or commissions received in connection with a prior distribution of the issuer's securities.

(B) through (D) No Change.

(E) Notwithstanding the provisions of subparagraph (3)(A)(vi) above, financial consulting and advisory fees may be excluded from underwriting compensation upon a finding by *NASD* [the Association], on the basis of information satisfactory to it, that an ongoing relationship between the issuer and the underwriter and related person has been established at least twelve (12) months prior to the filing of the registration statement or similar document or that the relationship, if established subsequent to that time, was not entered into in connection with the offering, and that actual services have been or will be rendered *that* [which] were not or will not be in connection with or related to the offering.

(5) Valuation of Non-Cash Compensation

For purposes of determining the value to be assigned to securities received as underwriting compensation, the following criteria and procedures shall be applied:

(A) No underwriter and related person may receive a security or a warrant for a security as compensation in connection with the distribution of a public offering that is different than the security to be offered to the public unless the security received as compensation has a bona fide independent market, provided, however, that:

(i) In exceptional and unusual circumstances, upon good cause shown, such arrangement may be permitted by *NASD* [the Association]; and

(ii) No Change.

(B) through (D) No Change.

(6) Unreasonable Terms and Arrangements

(A) No member or person associated with a member shall participate in any manner in a public offering of securities after any arrangement proposed in connection with the public offering, or the terms and conditions relating thereto, has been determined to be unfair or unreasonable pursuant to this Rule or inconsistent with any By-Law or any Rule or regulation of *NASD* [the Association].

(B) Without limiting the foregoing, the following terms and arrangements, when proposed in connection with the distribution of a public offering of securities, shall be unfair and unreasonable:

(i) through (iv) No Change.

(v) Any "tail fee" arrangement granted to the underwriter and related persons that has a duration of more than two (2) years from the date the member's services are terminated, in the event that the offering is not completed in accordance with the agreement between the issuer and the underwriter and the issuer subsequently consummates a similar transaction, except that a member may demonstrate on the basis of information satisfactory to *NASD* [the Association] that an arrangement of more than two (2) years is not unfair or unreasonable under the circumstances.

(vi) through (xv) No Change.

(C) No Change.

(7) through (8) No Change.

(d) Exemptions. Pursuant to the Rule 9600 Series, *NASD* [the Association] may exempt a member or person associated with a member from the provisions of this Rule for good cause shown.

* * * * *

4200. Definitions

(a) For purposes of the Rule 4000 Series, unless the context requires otherwise:

(1) through (29) No Change.

(30) "Normal unit of trading" means 100 shares of a security unless, with respect to a particular security, *NASD* [the Association] determines that a normal unit of trading shall constitute other than 100 shares. If a normal unit of trading is other than 100 shares, a special identifier shall be appended to the issuer's Nasdaq symbol.

(31) through (36) No Change.

(37) "Underwriting Activity Report" is a report provided by the *Market Regulation Department* [Corporate Financing Department of NASD Regulation, Inc.] in connection with a distribution of securities subject to SEC Rule 101 pursuant to Rule 2710(b)(11) and includes forms that are submitted by members to comply with their notification obligations under Rules 4614, 4619, and 4623.

(b) No Change.

* * * * *

6540. Requirements Applicable to Market Makers

(a) Market-maker participation in the OTCBB is voluntary and open to any *NASD* [Association] member firm that satisfies the financial/operational requirements applicable to member firms engaged in over-the-counter market making; subscribes to Level 3 Nasdaq Workstation service; and demonstrates compliance with (or qualifies for an exception from) SEC Rule 15c2–11 at the time of initiating (or resuming) the quotation of any OTCBB-eligible security in the Service. Rule 6740 sets forth the procedure for demonstrating compliance with SEC Rule 15c2–11.

(b) through (c) No Change.

(d) OTCBB-eligible securities that meet the frequency of quotation requirement for the so called "piggyback" exception in SEC Rule 15c2–11(f)(3)(i) are identified in the Service as "active" securities. A member can commence market making in any active security by registering as a market maker through a Nasdaq Workstation at the firm. In all other instances, a member must follow the procedure contained in this Rule to become qualified as a market maker in a particular OTCBB-eligible security."

* No change to text of footnote.

(1) Permissible Quotation Entries

(A) through (C) No Change.

(D) Any member that intends to be a distribution participant in a distribution of securities subject to SEC Rule 101, or is an affiliated purchaser in such distribution, and is entering quotations in an OTCBB-eligible security that is the subject security or reference security of such distribution shall, unless another member has assumed responsibility for compliance with this paragraph:

(i) and (ii) No Change.

(iii) Provide written notice to the Corporate Financing Department [of NASD Regulation, Inc.] of its intention to impose a penalty bid or to conduct syndicate covering transactions pursuant to SEC Rule 104 prior to imposing the penalty bid or engaging in the first syndicate covering transaction. Such notice shall include information as to the date the penalty bid or first syndicate covering transaction will occur; and

(iv) Provide written notice to the Market Regulation Department [of NASD Regulation, Inc.] by the close of business on the day the offering terminates that includes the date and time of the pricing of the offering, the offering price, and the time the offering terminated.

(E) The written notice required by subparagraphs *(d)*[(b)](1)(D)(i), (iii) and (iv) of this Rule may be submitted on the Underwriting Activity Report provided by the *Market Regulation Department.* [Corporate Financing Department of NASD Regulation, Inc.]

(F) For purposes of subparagraph *(d)*[(b)](1)(D), SEC Rules 100, 101, 103 and 104 are rules of the Commission adopted under Regulation M and the following terms shall have the meanings as defined in SEC Rule 100: "affiliated purchaser," "distribution," "distribution participant," "penalty bid," "reference security," "restricted period," "stabilizing," "subject security," and "syndicate covering transaction."

(2) Impermissible Quotation Entries

(A) No Change.

(B) No member or person associated with a member shall enter into the Service a priced bid and/or offer, an unpriced indication of interest (including "bid wanted" or "offer wanted" indications), or a bid or offer accompanied by a modifier to reflect unsolicited customer interest in any security of an issuer that does not make filings with the [Securities and Exchange] Commission through the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system (or in

paper format, if specifically permitted by Commission Rules) unless the member:

(i) Notifies *NASD* [the Association] of the issuer of the security's schedule for the filing of all periodic reports or financial reports required pursuant to the Act or regulatory authority, respectively, and the identity of the regulatory authority with which such reports are filed, or ensures that such notice is provided; and

(ii) Provides to *NASD* [the Association] the issuer's periodic reports required pursuant to the Act, or the issuer's financial reports required by regulatory authority, prior to the expiration of the grace period described in Rule 6530(a)(3), or ensures that the required periodic reports are provided to *NASD* [the Association] within that time period.

(3) No Change.

(4) More Than One Trading Location

In cases where a market maker has more than one trading location, a fifth character, geographic indicator shall be appended to the market maker's identifier for that security. Indicators are established by *NASD* [the Association] and published from time to time in the Nasdaq/CQS symbol directory.

(5) No Change.

(e) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Rules currently require a member acting as the lead manager of a distribution of a publicly traded security that is subject to SEC Rule 101 of Regulation M to submit a request for a UAR to the Corporate Financing Department. A UAR, among other things, provides information to members to assist them in complying with the restricted periods of SEC Rule 101. A member must request a UAR at the time a registration statement or similar offering document is filed with the Corporate Financing Department, the Commission, or other regulatory agency or, if not filed with any regulatory agency, at least two business days prior to the commencement of the restricted period under SEC Rule 101.

Since June 2002, NASD staff has asked that members submit their requests for UARs to the Market Regulation Department rather than the Corporate Financing Department. NASD staff believes that the Market Regulation Department is better suited to handle member UAR requests because the Market Regulation Department has more timely access to market information. Accordingly, NASD staff is proposing amendments to NASD Rules to require that members submit a request for a UAR to the Market Regulation Department instead of the Corporate Financing Department. NASD represents that the proposed rule change would not affect the substantive content of UAR requests, the manner in which a request can be submitted (*e.g.*, via mail, e-mail, or fax), or the time period associated with a request.

Finally, NASD no longer refers to itself or its subsidiary, NASD Regulation, Inc., using their full corporate names, "the Association," "the NASD" or "NASD Regulation, Inc." Instead, NASD uses "NASD" unless otherwise appropriate for corporate or regulatory reasons. Accordingly, NASD proposes to replace several references to "the Association" and "the NASD" in the text of the proposed rule change with "NASD" and to delete several references to "NASD Regulation, Inc." Although NASD is proposing to delete the name "NASD Regulation, Inc.," NASD represents that NASD Regulation, Inc. will continue to perform the functions described in the rule.[8]

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change will improve processing of UAR requests by NASD.

[8] *See* Amendment No. 2, *supra* note 4.

[9] 15 U.S.C. 78*o*–3(b)(6).

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NASD has designated the proposed rule change as administrative under Section 19(b)(3)(A) of the Act [10] and subparagraph (f)(3) of Rule 19b–4 thereunder,[11] which renders the proposal effective upon filing with the Commission. At any time within 60 days of the filing, the Commission may summarily abrogate this proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(3).

[12] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on July 9, 2003, the date NASD filed Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).

the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–75 and should be submitted by August 20, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–19291 Filed 7–29–03; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4426]

Culturally Significant Objects Imported for Exhibition Determinations: "The Circle of Bliss: Buddhist Meditational Art"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "The Circle of Bliss: Buddhist Meditational Art," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Los Angeles County Museum of Art, Los Angles, CA, from on or about October 5, 2003, to on or about January 4, 2004 and the Columbus Museum of Art, Columbus, OH, from on or about February 8, 2004, to on or about May 9, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6529). The address is U.S. Department of State, SA–44, 301 4th Street SW., Room 700, Washington, DC 20547–0001.

Dated: July 22, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–19433 Filed 7–29–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4427]

Culturally Significant Objects Imported for Exhibition; Determinations: "El Greco"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "El Greco," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, NY from on or about September 29, 2003 to on or about January 11, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6981). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: July 25, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–19419 Filed 7–29–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4425]

Culturally Significant Objects Imported for Exhibition Determinations: "The Heart of Spain"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "The Heart of Spain," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Alexandria Museum of Art, Alexandria, LA, from on or about September 1, 2003, to on or about November 30, 2003, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: July 22, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–19432 Filed 7–29–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice: 4423]

United States-Egypt Science and Technology Joint Board; Public Announcement of a Science and Technology Program for Competitive Grants To Support International, Collaborative Projects in Science and Technology Between U.S. and Egyptian Cooperators

August 4, 2003.

AGENCY: U.S. Department of State.

ACTION: Notice.

EFFECTIVE DATE: August 4, 2003.

FOR FURTHER INFORMATION, CONTACT: Joan Mahoney, Program Administrator, U.S.—Egypt Science and Technology Grants Program, U.S. Embassy, Cairo/ECPO, Unit 64900, Box 6, APO AE 09839–4900; phone: 011–(20–2) 797–2925; fax: 011–(20–2) 797–3150; E-mail: *mahoneyjm@state.gov*.

The 2003 Program Announcement, including proposal guidelines, will be available starting August 4, 2003 on the Joint Board Web site: *www.usembassy.egnet.net/usegypt/joint-st.htm*.

SUPPLEMENTARY INFORMATION: Authority: This program is established under 22 U.S.C. 2656d and the Agreement for Scientific and Technological Cooperation between the Government of the United States of America and the Government of the Arab Republic of Egypt. A solicitation for this program will begin August 4, 2003. This program will provide modest grants for successfully competitive proposals for binational collaborative projects and other activities submitted by U.S. and Egyptian experts. Projects must help the United States and Egypt utilize science and apply technology by providing opportunities to exchange ideas, information, skills, and techniques, and to collaborate on scientific and technological endeavors of mutual interest and benefit. Proposals which fully meet the submission requirements as outlined in the Program Announcement will receive peer reviews. Proposals considered for funding in Fiscal Year 2004 must be postmarked by November 4, 2003. All proposals will be considered; however, special consideration will be given to proposals that address priority areas defined/approved by the Joint Board. These include priorities in the areas of information technology, environmental technologies, biotechnology, energy, standards and metrology, and manufacturing technologies. More information on these priorities and copies of the Program Announcement/Application may be obtained by request.

Dated: July 25, 2003.

Kay Anske,

Director, Office of Science and Technology Cooperation, Bureau of Oceans and International Environmental and Scientific Affairs and, Chair, U.S.–Egypt S&T Joint Board, Department of State.

[FR Doc. 03–19428 Filed 7–29–03; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice: 4424]

United States-Egypt Science and Technology Joint Board; Public Announcement of a Science and Technology Program for Competitive Grants to Support Junior Scientist Development Visits by U.S. and Egyptian Scientists

August 11, 2003.

AGENCY: Department of State.

ACTION: Notice.

EFFECTIVE DATE: August 11, 2003.

FOR FURTHER INFORMATION, CONTACT: Joan Mahoney, Program Administrator, U.S.—Egypt Science and Technology Grants Program, U.S. Embassy, Cairo/ECPO, Unit 64900, Box 6, APO AE 09839–4900; phone: 011-(20–2) 797–2925; fax: 011–(202) 797–3150; E-mail: *mahoneyjm@state.gov*

The 2003 Program guidelines for Junior Scientist Development visits will be available starting August 11, 2003 on the Joint Board web site: *http://www.usembassy.egnet.net/usegypt/joint-st.htm*.

SUPPLEMENTARY INFORMATION:

Authority: This program is established under 22 U.S.C. 2656d and the Agreement for Scientific and Technological Cooperation between the Government of the United States of America and the Government of the Arab Republic of Egypt.

A solicitation for this program will begin August 11, 2003. This program will provide modest grants for successfully competitive proposals for development visits by Junior American Scientists to Egypt; and Junior Egyptian Scientists to the United States.

Applicants must be scientists who have received their PhD within the past ten years or for U.S. applicants only may be currently enrolled in a PhD program. Proposals considered for funding must be postmarked by October 28, 2003. All proposals, which fully meet the submission requirements, will be considered; however, special consideration will be given to proposals in the areas of Biotechnology, Standards and Metrology, Environmental Technologies, Energy, Manufacturing Technologies and Information Technology. More information on these priorities and copies of the Program Announcement/Application may be obtained upon request.

Dated: July 25, 2003.

Kay Anske,

Director, Office of Science and Technology Cooperation, Bureau of Oceans and International Environmental and Scientific Affairs, and Chair, U.S.—Egypt S&T Joint Board, Department of State.

[FR Doc. 03–19431 Filed 7–29–03; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 4428]

Bureau of Nonproliferation; Imposition of Nonproliferation Measures on an Entity in China, Including a Ban on U.S. Government Procurement

AGENCY: Bureau of Nonproliferation, Department of State.

ACTION: Notice.

SUMMARY: The U.S Government has determined that a foreign entity has engaged in missile technology proliferation activities that require the imposition of measures pursuant to Executive Order 12938 of November 14, 1994, as amended by Executive Order 13094 of July 28, 1998.

EFFECTIVE DATE: July 30, 2003.

FOR FURTHER INFORMATION CONTACT: On general issues: Vann H. Van Diepen, Office of Chemical, Biological, and Missile Nonproliferation, Bureau of Nonproliferation, Department of State, (202–647–1142). On import ban issues: Rochelle Stern, Chief, Policy Planning and Program Management, Office of Foreign Assets Control, Department of the Treasury, (202–622–2500). On U.S. Government procurement ban issues: Gladys Gines, Office of the Procurement Executive, Department of State, (703–516–1691).

SUPPLEMENTARY INFORMATION: Pursuant to the authorities vested in the President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), the Arms Export Control Act (22 U.S.C. 2751 *et seq.*), and section 301 of title 3, United States Code, and Executive Order 12938 of November 14, 1994, as amended, the U.S. Government determined on July 21, 2003, that the following Chinese person has engaged in proliferation activities that require the imposition of measures pursuant to sections 4(b), 4(c), and 4(d) of Executive Order 12938: China Precision Machinery Import/Export Corporation (CPMIEC)

Accordingly, pursuant to the provisions of Executive Order 12938, the following measures are imposed on this entity, its subunits, and successors:

1. All departments and agencies of the United States Government shall not procure or enter into any contract for the procurement of any goods, technology, or services from these entities including the termination of existing contracts;

2. All departments and agencies of the United States Government shall not provide any assistance to these entities, and shall not obligate further funds for such purposes;

3. The Secretary of the Treasury shall prohibit the importation into the United States of any goods, technology, or services produced or provided by these entities, other than information or informational materials within the meaning of section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)).

These measures shall be implemented by the responsible departments and agencies as provided in Executive Order 12938.

In addition, pursuant to section 126.7(a)(1) of the International Traffic in Arms Regulations, it is deemed that suspending the above-named entity from participating in any activities subject to Section 38 of the Arms Export Control Act would be in furtherance of the national security and foreign policy of the United States.

Therefore, until further notice, the Department of State is hereby suspending all licenses and other approvals for: (a) Exports and other transfers of defense articles and defense services from the United States; (b) transfers of U.S.-origin defense articles and defense services from foreign destinations; and (c) temporary import of defense articles to or from the above-named entity.

Moreover, it is the policy of the United States to deny licenses and other approvals for exports and temporary imports of defense articles and defense services destined for this entity.

Dated: July 24, 2003.

Susan F. Burk,

Acting Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 03–19417 Filed 7–29–03; 8:45 am]

BILLING CODE 4710–25–U

DEPARTMENT OF STATE

[Public Notice 4422]

Notice of Receipt of Application for Presidential Permit for the Construction of a New International Border Crossing

Notice is hereby given that the Department of State has received an application from the Maine Department of Transportation for a Presidential Permit seeking authorization for the construction, operation and maintenance of an international bridge between Calais, Maine and St. Stephen, New Brunswick, Canada. The proposed four lane bridge would be located approximately 1.5 miles from the existing Milltown international crossing.

The Department's jurisdiction with respect to this application is based upon Executive Order 11423, dated August 16, 1968, as amended, and the International Bridge Act of 1972, (33 U.S.C. 535 *et seq.*).

As required by E.O. 11423, the Department is circulating this application to concerned agencies for comment.

Interested persons may submit their views regarding this application in writing by September 10, 2003 to Ms. Evelyn Wheeler, Economic Officer, Office of Canadian Affairs, Room 3917, Department of State, 2201 C St. NW., Washington, DC 20520.

The application and related documents made part of the record to be considered by the Department of State in connection with this application are available for review in the Office of Canadian Affairs during normal business hours throughout the comment period.

Any questions related to this notice may be addressed to Ms. Wheeler at the above address or by fax at (202) 647–4088.

Dated: July 25, 2003.

Terry A. Breese,

Director, Office of Canadian Affairs, Department of State.

[FR Doc. 03–19427 Filed 7–29–03; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular; Turbine Engine Continued Rotation and Rotor Locking

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of advisory circular.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of Advisory Circular (AC) Number 33.74/92–1A, Turbine Engine Continued Rotation and Rotor Locking.

DATES: The Engine and Propeller Directorate, Aircraft Certification Service, issued AC 33.74/92–1A on July 23, 2003.

FOR FURTHER INFORMATION CONTACT: Marc Bouthillier, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA 01803; telephone: (781) 238–7120; fax: (781) 238–7199; e–mail: *marc.bouthillier@faa.gov*. The subject AC is available on the Internet at the following address: *http://www.airweb.faa.gov/rgl*.

SUPPLEMENTARY INFORMATION: The FAA published a notice in the **Federal Register** on July 23, 2002 (67 FR 48246) to announce the availability of the proposed AC and invite interested parties to comment.

Background

This AC provides guidance and acceptable methods, but not the only methods, that may be used to demonstrate compliance with the continued rotation and rotor locking requirements of §§ 33.74 and 33.92.

(Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.)

Issued in Burlington, Massachusetts, on July 23, 2003.

Francis A. Favara,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–19407 Filed 7–29–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICR) abstracted below have been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collections. The ICR describes the nature of the information collections and the expected burden. The **Federal**

Register notices with a 60-day comment period soliciting comments on the following collections of information were published on April 17, 2003 on page 19066.

DATES: Comments must be submitted on or before August 29, 2003.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

1. Title: Type Certification Procedures for Changed Products.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0657.

Forms(s): N/A

Affected Public: A total of 2,558 applicants.

Abstract: This collection requires that applicants comply with the latest regulations in effect on the date of application for amended Type Certificates or Supplemental Type Certificates for aeronautical products. They now may incur an additional incremental administrative cost to determine the level of significance of the product change.

Estimated Annual Burden Hours: An estimated 16,815 hours annually.

2. Title: Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0659.

Forms(s) N/A.

Affected Public: A total of 10 applicants.

Abstract: Sections A36.5.2 and A36.5.2.5 of the Federal Aviation Administration (FAA) noise certificate standards for subsonic jet airplanes and subsonic transport category large airplanes (14 CFR part 36) contain information collection requirements. The information collected is needed for the applicant's noise certification compliance report in order to demonstrate compliance with part 36.

Estimated Annual Burden Hours: An estimated 1,350 hours annually.

3. Title: Flight Operational Quality Assurance (FOQA) Program.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0660.

Forms(s): N/A.

Affected Public: A total of 30 air carriers.

Abstract: FOQA is a voluntary program for the routine collection and analysis of digital flight data from airplane operations. The purpose is to enable early corrective action for potential threats to safety. This NPRM codifies protection from punitive enforcement action based on FOQA information, and requires participating air carriers to provide aggregate FOQA data to the FAA.

Estimated Annual Burden Hours: An estimated 360 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the function of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on responders, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on July 22, 2003.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF–100.

[FR Doc. 03–19400 Filed 7–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Environmental Impact Statement: Philadelphia International Airport Runway 17–35 Extension Project, Philadelphia, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FAA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for the Philadelphia International Airport Runway 17–35 Extension Project. In 2002, although the Philadelphia International Airport (PHL or the Airport) was the 12th busiest airport in the United States in terms of the annual number of aircraft operations (departures and arrivals), it was the 5th most delayed airport in the country. The FAA has also identified PHL as a "pacing" airport—an airport that contributes to delays throughout the national airports system. An airfield modeling and capacity/delay analysis performed during the Airport's on-going Master Plan Update process determined that the average annual delay in 2000 at PHL was nearly 10 minutes per aircraft operation. This level of delay has not abated significantly since that time. Without improvements, the Master Plan Update forecasts that this average annual delay would increase to nearly 20 minutes per operations by 2010. Furthermore, it was determined that one of the major causes of the delay is inadequate airfield capacity because of the current configuration of the airfield. As a result, the City of Philadelphia is proposing major improvements to the Airport to increase airfield capacity at PHL in order to reduce existing and forecast delays. The FAA has concurred that a capacity and delay problem exists at PHL and that projects for alleviating this problem are subject to the preparation of an EIS under the National Environmental Policy Act (NEPA). The City proposes two projects to address immediate and long-term needs. One project, known as the Runway 17–35 Extension Project (the Runway 17–35 Project), which is the subject of this Notice of Intent, would provide a more immediate delay reduction for several years by extending the length of Runway 17–35. The second project, referred to as the Capacity Enhancement Program, is a major airfield redevelopment project that would provide greater relief from delay over a much longer period and is the subject of a separate Notice of Intent. The FAA, as lead federal agency, at the City of Philadelphia's request, has opted to prepare a separate EIS for each project because the Runway 17–35 Project will address the short-term need for delay reduction at PHL while the Capacity Enhancement Program will provide more comprehensive and longer-term delay reduction. The FAA will prepare the EISs concurrently and will take into account the potential cumulative impacts of each project, but a separate Public Scoping Meeting will be held for the Capacity Enhancement Program.

The U.S. Secretary of Transportation has chosen these proposed improvements as one of thirteen high priority transportation projects for expedited environmental review under Executive Order 13274, *Environmental Stewardship and Transportation Infrastructure Project Review.* The FAA and the environmental review agencies will be collaborating to undertake environmental streamlining and stewardship on both the Capacity Enhancement Program and the Runway 17–35 Project.

FOR FURTHER INFORMATION CONTACT: James B. Byers, Environmental Specialist, Federal Aviation Administration, Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, PA 17011. Telephone (717) 730–2833.

SUPPLEMENTARY INFORMATION: The FAA, in cooperation with the City of Philadelphia Department of Aviation, will prepare an EIS for the proposed project. The EIS for the Runway 17–35 Project will address a range of alternatives that would reduce existing and forecasted delays at PHL, including a No Build Alternative, a build alternative that would extend Runway 17–35 to the north by 600 feet and to the south by 440 feet, to a total length of 6,500 feet, as well as a range of other alternatives such as demand management alternatives and alternatives that are not within the jurisdiction of PHL or FAA, such as greater use of regional airports or other transportation modes. The EIS will also evaluate alternatives identified during the Scoping process that would reduce existing and forecasted delays at PHL. The FAA intends to use the preparation of this EIS to comply with Section 106 of the National Historic Preservation Act of 1966, as amended and any other applicable laws having public involvement requirements. Comments addressing this issue should be addressed to the listed contact person.

The FAA intends to conduct a Scoping process to gather input from all interested parties to help identify any issues of concern associated with the proposed project. In addition to this notice, Federal, State, and local agencies, which have jurisdiction by law or have special expertise with respect to any potential environmental impacts associated with the proposed project, will be notified by letter of an Agency Scoping Meeting to be held on August 19, 2003 from 8:30 a.m. to 4 p.m. at the Airport Executive Offices in Terminal E at the Philadelphia International Airport in Philadelphia, Pennsylvania. To notify the general public of the Scoping process, a legal notice will be placed in newspapers having general circulation in the project area describing proposed project. The newspaper notice will notify the public that a Scoping Meeting will be held to gain their input concerning the proposed project. The public scoping meeting is scheduled for 5 p.m. to 9 p.m. on August 12, 2003 at the Sheraton Suites and Four Points, Philadelphia Airport Complex, 4101 Island Avenue in Philadelphia, Pennsylvania. The format of the meeting will be an open house with project information displayed and representatives from the FAA and the Airport available to answer questions. A formal presentation will be held at 6 p.m. and repeated at 8 p.m. Written and oral comments will be accepted at each of the meetings. The public comment period on this initial Scoping phase of the EIS will end on September 3, 2003. Written comments will be accepted if postmarked on or before September 3, 2003 and should be sent to the address above.

The purpose of the Scoping Meeting is to receive comments from the public and answer questions regarding the scope and process related to the EIS.

Issued on: July 21, 2003.

James White,

Acting Manager, Airports Division, Eastern Region.

[FR Doc. 03–19402 Filed 7–29–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Environmental Impact Statement: Philadelphia International Airport Capacity Enhancement Program, Philadelphia, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FAA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for the Philadelphia International Airport Capacity Enhancement Program (Capacity Enhancement Program). In 2002, although the Philadelphia International Airport (PHL or the Airport) was the 12th busiest airport in the United States in terms of the annual number of aircraft operations (departures and arrivals), it was the 5th most delayed airport in the country. The FAA has also identified PHL as a "pacing" airport—an airport that contributes to delays throughout the national airports system. An airfield modeling and capacity/delay analysis performed during the Airport's on-going Master Plan Update process determined that the average annual delay in 2000 at PHL was nearly 10 minutes per aircraft operation. This level of delay has not abated significantly since that time. Without improvements, the Master Plan Update forecasts that this average annual delay would increase to nearly 20 minutes per operation by 2010. Furthermore, it was determined that one of the major causes of the delay is inadequate airfield capacity because of the current configuration of the airfield. As a result, the City of Philadelphia is proposing major improvements to increase airfield capacity at the Airport to reduce existing and forecast delays. The FAA has concurred that a capacity and delay problem exists at PHL and that projects for alleviating this problem are subject to the preparation of an EIS under the National Environmental Policy Act (NEPA). The City proposes two projects to address immediate and long-term needs. One project, known as the Runway 17–35 Extension Project (the Runway 17–35 Project) would provide a more immediate delay reduction for several years by extending the length of Runway 17–35 and is the subject of a separate Notice of Intent. The second project, referred to as the Capacity Enhancement Program, which is the subject of this Notice of Intent, is a major airfield redevelopment project that would provide greater relief from delay over a much longer period. The FAA, as lead federal agency, at the City of Philadelphia's request, has opted to prepare a separate EIS for each project because the Runway 17–35 Project will address the need for delay reduction at PHL in the short term while the Capacity Enhancement Program will provide a more comprehensive and longer-term delay reduction. The EISs will be prepared concurrently, but a separate Public Scoping Meeting will be held for the Runway 17–35 Project. The U.S. Secretary of Transportation has chosen these proposed improvements as one of thirteen high priority transportation projects for expedited environmental review under Executive Order 13274, Environmental Stewardship and Transportation Infrastructure Project Review. The FAA and the environmental review agencies will be collaborating to undertake environmental streamlining and stewardship on both the Capacity Enhancement Program and the Runway 17–35 Project.

FOR FURTHER INFORMATION CONTACT: James B. Byers, Environmental Specialist, Federal Aviation Administration, Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, PA 17011. Telephone (717) 730–2833.

SUPPLEMENTARY INFORMATION: The FAA, in cooperation with the City of Philadelphia Department of Aviation, will prepare an EIS for the proposed project. The EIS for the Capacity Enhancement Program will address a range of alternatives that would reduce existing and forecasted delays at PHL, including demand management alternatives and alternatives that are not within the jurisdiction of PHL or FAA, such as greater use of regional airports or other transportation modes. Within

this range, the alternatives being considered for the Capacity Enhancement Program are the No Build Alternative and two build alternatives developed in the Master Plan Update: the Parallel Concept and Diagonal Concept, both which increase airfield capacity at PHL. The EIS will also evaluate alternatives identified during the Scoping process that would reduce existing and forecasted delays at PHL. The Parallel Concept is an expansion of the existing runway configuration that would be completed in two phases. It involves extending two of the four existing runways and constructing a new runway, as well as other changes to make the airfield more efficient in this configuration and minor changes to gate facilities and around the existing terminal complex. The Diagonal Concept would also be phased and would ultimately provide four parallel runways in a northwest-southeast configuration that would be capable of supporting four independent arrival or departure streams in good weather conditions and two independent arrival streams plus two independent departure streams in poor weather conditions. The Diagonal Concept involves other changes to the airfield to accommodate the new configuration and ultimately, the construction of new centerfield terminals to replace the existing terminals.

The FAA intends to use the preparation of this EIS to comply with section 106 of the National Historic Preservation Act of 1966, as amended, and any other applicable laws having public involvement requirements. Comments addressing this issue should be addressed to the listed contact person.

The FAA intends to conduct a Scoping process to gather input from all interested parties to help identify any issues of concern associated with the proposed project. In additional to this notice, Federal, state, and local agencies, which have jurisdiction by law or have special expertise with respect to any potential environmental impacts associated with the proposed project, will be notified by letter of an Agency Scoping Meeting to be held on August 19, 2003 from 8:30 a.m. to 4 p.m. at the Airport Executive Offices of the Philadelphia International Airport in Terminal E in Philadelphia, Pennsylvania.

To notify the general public of the Scoping process, a legal notice will be placed in newspapers having general circulation in the project area describing the proposed project. The newspaper notice will notify the public that Scoping Meetings will be held to gain their input concerning the proposed project. The Public Scoping Meetings are scheduled for the evenings of August 18, 19, 20, 2003 from 5 p.m. to 9 p.m. at locations in the project area. The format of the meetings will be an open house with project information displayed and representatives from the FAA and the Airport available to answer questions. A formal presentation will be held at 6 p.m. and repeated at 8 p.m. written and oral comments will be accepted at each of the meetings. The public comment period on this initial Scoping phase of the EIS will end on September 3, 2003. The purpose of the Scoping Meetings is to receive input from the public and answer questions regarding the scope and process related to the EIS.

Issued in Jamaica, New York, July 21, 2003.

James White,

Acting Manager, Airports Division, Eastern Region.

[FR Doc. 03–19401 Filed 7–29–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Standard Content and Format for the Installation Instructions and Limitations Required by TSO–C127a, Rotorcraft, Transport Airplane, and Normal and Utility Airplane Seating Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability and requests for public comments.

SUMMARY: This notice announces the availability of and request comments on a draft policy memorandum. The draft policy memorandum recommends a standardized content and format for the installation instructions and limitations required by Technical Standard Order (TSO)—C127a, Rotorcraft, Transport Airplane, and Normal and Utility Airplane Seating Systems.

DATES: All comments must be received on or before August 28, 2003.

ADDRESSES: Send all comments on the draft policy memorandum to: Federal Aviation Administration, Aircraft Certification Service, Room 815, 800 Independence Avenue, SW., Washington, DC 20591. ATTN: Mr. Hal Jensen, AIR–120. Or, deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Hal Jensen, Aerospace Engineer, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Technical Programs Branch, AIR–120, Room 815, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267–8807; fax: (202) 267–5340; e-mail *hal.jensen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the draft policy memorandum listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the draft policy memorandum may be examined, before and after the comment closing date, in Room 815, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final policy.

Background

In 2000, the FAA and industry formed a team to explore ways to streamline certifying airplane seats. Since that first effort the team developed a plan that included reestablishing the TSOs for seats as a valid design approval and to the extent possible, maximize their content toward meeting the applicable airworthiness standards. The team determined that using standardized installation instructions and limitations (IIL) for TSO–C127a will help when TSO holders provide complete IILs that clearly define issues about the TSO installation. When using an IIL, the person(s) approving the installation needs only to determine the installed TSO article is correct. The proposed policy also recommends the use of a standardized format designed to help the person(s) approving the installation to understand the instructions.

How To Obtain Copies

A copy of the draft policy memorandum may be obtained via the Internet at, *http://www.airweb.faa.gov/RGL,* or by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on July 25, 2003.

David W. Hempe,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 03–19409 Filed 7–29–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–98–4334, FMCSA–2000–7918, FMCSA–2001–9258, FMCSA–2001–9561]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: This notice publishes the FMCSA decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 24 individuals. The FMCSA has statutory authority to exempt individuals from vision standards if the exemptions granted will not compromise safety. The agency has concluded that granting these exemptions will provide a level of safety that will equal or exceed the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective August 8, 2003. Comments from interested persons should be submitted by August 29, 2003.

ADDRESSES: You may submit comments identified by DOT DMS Docket Numbers FMCSA–98–4334, FMCSA–2000–7918, FMCSA–2001–9258, and FMCSA–2001–9561 by any of the following methods.

- *Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room Pl–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m/, Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

Instructions: All submissions must include the agency name and docket numbers for this notice. For detailed instructions on submitting comments and additional information on the rulemaking process, *see* the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: *Public Participation:* The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help guidelines under the "help" section of the DMS web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments on-line.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Exemption Decision

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may renew an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381. This notice addresses 24 individuals who have requested renewal of their exemptions in a timely manner. The FMCSA has evaluated these 24 applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period. They are:

Roger D. Anderson
Joey E. Buice
Ronald D. Danberry
Paul W. Dawson
Lois E. De Souza
Tomie L. Estes
Jay E. Finney
Steven A. Garrity
Chester L. Gray
Waylon E. Hall
Larry M. Hawkins
Britt D. Hazelwood
Steve L. Hopkins
Jeffery M. Kimsey
Richard L. Leonard
Gerald L. Phelps, Jr.
Thomas G. Raymond
Tim M. Seavy
Kim L. Seibel
Randy D. Stanley
Lee T. Taylor
James M. Tayman, Sr.
Wesley E. Turner
John C. Young

These exemptions are extended subject to the following conditions: (1) That each individual have a physical exam every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for 2 years unless rescinded earlier by the FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e).

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than 2 years from its approval date and may be renewed upon application for additional 2-year periods. In accordance with 49 U.S.C. 31315 and 31136(e), each

of the 24 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 66226, 64 FR 16517, 66 FR 41656, 65 FR 66286, 66 FR 13825, 66 FR 17743, 66 FR 33990, 66 FR 30502, 66 FR 41654). Each of these 24 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, the FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

Comments

The FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31315 and 31136(e). However, the FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by August 29, 2003.

In the past the FMCSA has received comments from Advocates for Highway and Auto Safety (Advocates) expressing continued opposition to the FMCSA's procedures for renewing exemptions from the vision requirement in 49 CFR 391.41(b)(10). Specifically, Advocates object to the agency's extension of the exemptions without any opportunity for public comment prior to the decision to renew, and reliance on a summary statement of evidence to make its decision to extend the exemption of each driver.

The issues raised by Advocates were addressed at length in 66 FR 17994 (April 4, 2001). The FMCSA continues to find its exemption process appropriate to the statutory and regulatory requirements.

Issued on: July 24, 2003.

Pamela M. Pelcovits,

Acting Associate Administrator, Policy and Program Development.

[FR Doc. 03–19410 Filed 7–29–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–03–14793; Notice No. 03–9]

Safety Advisory: Improper Marking of Compressed Gas Cylinders

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Safety advisory notice.

SUMMARY: This is to notify the public that we ("RSPA") have obtained information concerning high-pressure compressed gas cylinders that appear to have been requalified improperly by Sooner Cylinder Service, Inc. ("Sooner"), 1032 SE 25th Street, Oklahoma City, OK 73129. Based on our review of Sooner's records, Sooner has marked, certified and returned to service an undetermined number of high-pressure DOT specification and exemption cylinders as having been properly tested in accordance with the Hazardous Materials Regulations (HMR), when it appears that the cylinders were hydrostatically retested using equipment that was not verified to be accurate as required. In addition, it appears that some cylinders were marked, certified, and returned to service when they may have been required to be removed from service and condemned.

A hydrostatic retest and visual inspection, conducted as prescribed in the HMR, are used to verify the structural integrity of a cylinder. If the hydrostatic retest and visual inspection are not performed in accordance with the HMR, a cylinder with compromised structural integrity may be returned to service when it is required to be condemned. Extensive property damage, serious personal injury, or death may result from rupture of a cylinder. Cylinders that have not been retested in accordance with the HMR may not be charged or filled with compressed gas or other hazardous material and offered for transportation in commerce.

FOR FURTHER INFORMATION CONTACT: Billy C. Hines, Jr., Chief, Southwest Region, Office of Hazardous Materials Enforcement, Research and Special Programs Administration, U.S. Department of Transportation, 2320 La Branch Street, Room 2100, Houston, TX 77004. Telephone: (713) 718–3950, Fax: (713) 718–3952.

SUPPLEMENTARY INFORMATION: The Hazardous Materials Regulations (HMR), 49 CFR parts 171–180, prescribe requirements for the periodic retesting and requalification of cylinders used to transport compressed gases and acetylene. In order to perform hydrostatic retesting of compressed gas cylinders and visual inspections of acetylene cylinders, a person (including a company) must obtain an approval and Requalifier Identification Number (RIN) from RSPA. 49 CFR 180.205(b), 107.805. RSPA issued RIN C762 to Sooner on February 28, 1994, which was renewed on April 8, 1999, authorizing Sooner to requalify high-pressure cylinders and acetylene cylinders.

Based on our investigation, RSPA has concluded that, over the past three years, Sooner has marked, certified and returned to service an undetermined number of high-pressure cylinders as having been properly tested in accordance with the HMR when retesting was performed on test equipment that was not verified to be accurate as required. RSPA also suspects that Sooner may have returned to service cylinders that should have been condemned and the DOT specification or exemption marking removed or obliterated. The high-pressure cylinders in question are stamped with Sooner's RIN C762 in the following pattern:

C 7
M Y
26

M is the month of retest (*e.g.*, 01, 02, etc), and Y is the last two digits of the year of the retest (*e.g.*, 01, 02, 03).

All high-pressure cylinders that have been marked and certified as having been hydrostatically tested by Sooner since August 2000 may pose a safety risk to the public and should not be considered safe for use in hazardous materials service until retested by a DOT-authorized facility. This advisory notice does not include any DOT specification 8 or 8AL acetylene cylinders marked and certified by Sooner during this time period.

Anyone who has a high-pressure cylinder that has been hydrostatically tested by Sooner between August 2000 and July 2003, and has not had the cylinder tested by a DOT-authorized facility since then, should consider the cylinder unsafe and not fill it with a hazardous material unless the cylinder is first properly retested by a DOT-authorized retest facility. Cylinders described in this safety advisory that are filled with an atmospheric gas should be vented or otherwise safely discharged, and then taken to a DOT-authorized cylinder retest facility for proper retest to determine compliance with the HMR and their suitability for continuing service. Cylinders described in this safety advisory that are filled with a material other than an atmospheric gas should not be vented, but instead should be safely discharged, and then taken to a DOT-authorized cylinder retest facility for proper retest to determine compliance with the HMR and their suitability for continuing service. Mr. Billy C. Hines, Jr., Chief, Southwest Region, can provide a list of authorized retest facilities in your area, or you may obtain the list at the following Web site: *http://hazmat.dot.gov*. Under no circumstance should a cylinder described in this safety advisory be filled, refilled or used for its intended purpose until it is reinspected and retested by a DOT-authorized retest facility.

RSPA requests that any person possessing a cylinder described in this safety advisory telephone or provide a facsimile to Mr. Hines with the following information for each cylinder: (1) The cylinder manufacturer's name, (2) the serial number of the cylinder, (3) the DOT specification or exemption information for the cylinder, and (4) the month and year of the last marked retest by Sooner Cylinder Service, Inc.

Issued in Washington, DC on July 24, 2003.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 03–19371 Filed 7–29–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–57 (Sub–No. 53X)]

Soo Line Railroad Company—Abandonment Exemption—in Racine County, WI

Soo Line Railroad Company (Soo) has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to abandon approximately 7.5 miles of its line of railroad between milepost 18.43±(near Kansasville) and milepost 25.93±(in Burlington), in Racine County, WI. The line traverses United States Postal Service Zip Codes 53139 and 53105.

Soo has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) all overhead traffic has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 29, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 11, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 19, 2003, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to Soo's representative: Diane P. Gerth, Esq., Leonard, Street and Deinard Professional Association, 150 South Fifth St., Suite 2300, Minneapolis, MN 55402.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Soo has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by August 4, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), Soo shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by Soo's filing of a notice of consummation by July 30, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at: *http://www.stb.dot.gov*.

Decided: July 23, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–19332 Filed 7–29–03; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 17, 2003.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before August 29, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0228.
Form Number: IRS Form 6252.
Type of Review: Extension.
Title: Installment Sale Income.
Description: Information is needed to figure and report an installment sale for a casual or incidental sale of personal property, and a sale of real property by

someone not in the business of selling real estate. Data is used to determine whether the installment sale has been properly reported and the correct amount of profit is included in income on the taxpayer's return.

Respondents: Business or other for-profit, individuals or households, not-for-profit institutions, Farms.

Estimated Number of Respondents/Recordkeepers: 782,848.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—1 hr., 18 min.
Learning about the law or the form—24 min.
Preparing the form—1 hr., 0 min.
Copying, assembling, and sending the form to the IRS—20 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 2,395,515 hours.

OMB Number: 1545–1826.

Form Number: IRS Form 8876.

Type of Review: Extension.

Title: Excise Tax on Structured Settlement Factoring Transactions.

Description: Form 8876 is used to report structured settlement transactions and pay the applicable excise tax.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents/Recordkeepers: 100.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—3 hr., 6 min.
Learning about the law or the form—1 hr., 12 min.
Preparing and sending the form to the IRS—1 hr., 17 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 560 hours.

OMB Number: 1545–1833.

Revenue Procedure Number: Revenue Procedure 2003–37.

Type of Review: Extension.

Title: Documentation Provisions for Certain Taxpayers Using the Fair Market Value Method of Interest Expense Apportionment.

Description: Revenue Procedure 2003–37 describes documentation and information a taxpayer that uses the fair market value method of apportionment of interest expense may prepare and make available to the Service upon request in order to establish the fair market value of the taxpayer's assets to the satisfaction of the Commissioner as required by section 1.861–9T(g)(1)(iii). It also sets forth the procedures to be followed in the case of elections to use the fair market value method.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 125.

Estimated Burden Hours Per Respondent/Recordkeeper: 5 hours.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 625 hours.

OMB Number: 1545–1834.

Revenue Procedure Number: Revenue Procedure 2003–39.

Type of Review: Extension.

Title: Section 1031 LKE (Like-Kind Exchanges) Auto Leasing Programs.

Description: Revenue Procedure 2003–39 provides safe harbors for certain aspects of the qualification under section 1031 of certain exchanges of property pursuant to LKE Programs for federal income tax purposes.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 8,600.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 8,600 hours.

Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 03–19288 Filed 7–29–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountability Act (HIPPA) of 1996. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary received information during the quarter ending June 30, 2003.

Abegunde, Sunday Felix
Agusta, Corrado Claudio
Albury, Mary
Allison, Kevin Andrew
Andersen, Mary Ann
Angelicoussis, Maria
Ballard, Archibald Curtis
Barkema, Murray Richard
Barrios, Mali Miyashita-Trece
Barsamian, Lucy George
Basombrio, Miguel Angel Manuel
Becsey, Nadja Katerina
Beker, April Thomas
Beldi, Mario Aldo
Bergic, Doris Leonore
Birchard, Ronald William Thomas
Blackwood, Graeme C
Bogen, Linda Astrid
Bonnet, Christilla Marie
Bonney, Young Suk
Bonte-Friedheim, Michael Fritz Herbert
Boone, Geoffrey Lynn
Brandt, Tatyana Victoria
Brathen, Helen Elaine
Briquet, Beatrice Norton
Broman, David Nathanael
Bry, Daniela Lang
Burrows, Susan Teresa
Carr-Harris, Marianna Catherine
Castiglioni, Anthony Peter
Castiglioni, Attila Imre
Chan, Daisy Fook May
Charles, Elmore
Chen, William
Chen, Daisy
Chi, Patrick
Chiang, Peng-Kuen
Christensen, Allan Conrad
Christensen, Erik J
Christiano, Eugene Richard
Coulter, Gertraud
Cressman, Jerry Ann
Cronrath, Wolfgang Ernst
Dahinden, Max Christoph
Dale, Amy Lee
De Coninck Bigbie, John Eric
De Hoog, Gertruida J
De Hoog, Jan
De La Valette, Michael Parisot
De Rham, Christophe Bernard Olivier
de Seze, Amelie
Deichmann, Nicholas Carl
Devi, Lila Smaranam
Ding, Jian
Dohmen, Martina
Dorrance IV, John Thompson
Du Preez, Cecilia Karin Margareta
Edis, Jamie Edward
Edwards, Benjamin Franklin
Evans Jr., Charles Lee
Fabricant, Arthur E
Feldman, Jerome Edwin
Fretwell, Stanley Cecil
Fretwell, Carol Janeen
Fries, Marianne Ursula
Froelicher, Martin Andreas Otto
Fure, Kari-Ann Hatch
Georgulas, Nikos
Gering, Claudia Annamarie Elizabeth
Gomez, Eduardo X
Goodwin, Deann Marie
Guibert, Florence Gabrielle
Hagemann, Peter Hans

Hahl, Cindy Maria
Halvorson, David Travis
Hammel, Nilguen Sabiha
Hayes, Mari
Hediger, Margrit
Herrle, Klaus
Hickman, Jeanette Yvonne
Hofmann, Suzel De Jean
Holowesko, Stephen Geoffrey
Hosking, John Geir
Hussey, Marc J
Hyde, Diana W
Hyde, Geoffrey L
Illner, Walter
Islar, Roland Roger
Jaecklin, Stefan Andri
Jen-Tung Liu, James Alexander
Jeong, Munjae
Jobes, Carmen M.
Johnson, Joyce Marie
Jung, Young Hwa
Justesen, Abigail Esther
Karlsson, Mikael Marlies
Keller, George Andreas
Kerr, Eldon John
Kilmurry, Kathleen Joan
Kirschenbaum, Lester
Kline, Geoffrey Murdoch
Korff, Tawyna Lynn
Krag, Stephen Rosenstjerne
Kristensen, Elizabeth Edna Suzuki
Kusenbach, Patricia Ann
La Bagh, Damion Vincent
Lamotte, Mattias Ivan
Landen, Serge Max
Langoux, Camillia Marie Olivia
Lazzara, John
Levin II, Eric John
Lewis, Christopher Gene
Licht, Jeffrey Nicholas
Lindberg, Ronald Charles
Liu, Jialin
Luckett, Dwight Harreld
Luckyn-Malone, Phoebe Elizabeth Laura
Manosso, Marcos
Manousek, Claudia E
Manousek, Wolfgang
Markoulis, Jon Angelo
Martin, Caroline Genevieve
Mattson, Sara Maria
Maynard, Michael Sven
McCarthy, Erin Moira
McIver, Robert David Fraser
McCarville, Dennis Charles
McGraw Swearinger, Andrew
McKnight, Vanessa Patrice
Melzer, Marc Lawrence
Menuhin, Jeremy Louis Eugene
Meyer, Fredrik Carsten
Mileski, Stephen William
Miller, Martina Charlotte
Miller Jr., Thomas Denelle
Mitchell, Aaron Ferderal
Moltedo, Gabriele Corto
Monime, Armand
Moore, Sheila Sarah
Muller, Barbara Betty
Nagant de Deuxchaisnes, Didier C.
Nash, Kenneth H
Nash, Helen M
Neumann, David Michael
Newton, Warren Arthur
O'Reilly, Kevin Joseph
Ortiz, Marco A
Paek(nee Choi), Jung Sook
Pascoe, Ricardo Andres
Pedrazzini, Jean Pierre
Peterson, Arvid Curt
Phipps(nee Sternberg), Diana Frances
Piemontese, David Stefano
Poon, Stella Fong-Man
Poujol, Irene Florence
Pracht, Elizabeth Anne
Price, Nathaniel Clayton
Rechucher, George E
Reed, Sandra Shaw
Reinsurance Limited, Imagine International
Riggs, Marlene Sonja
Riscanu, Dragos
Ritter, Robert
Rix, Petra Simon
Rothbarth, Eric Walter
Roudette, Tanya Solina
Rutledge, Robert Frank
Saari, Thor
Saint-Brisson de Araujo Castro, Luiz Augusto
Schlaich, Michael Jon
Searcy, Carren Reyene Margarete
Segal, Erich Wolf
Sevini, Perla Bruna
Smith, Sydney Lanier
Spieler, Penelope
Stensrod, Solveig Berg
Straub, Helga Erika
Striker, Edward Franklin
Sturge, Joan Claire
Suchet, Bonnie Lee
Sweet, Astri Ingrid
Takao, Sunao
Thomas, James Lewis
Trejos, Emilia Maria
Turner, Walter Vernon
Turner, James Allen
Van Bruggen, Ariena H. C.
Van Der Pers-King, Bonnie M
Van Veen, Astrid Renata
Varne, Lloyd
Vea Gabrielsen, Ingrid Marie
Velay, Valentine
Viermetz, Kurt F
Watt, David Forbes
Watt Jr., David Stanley
Wendlandt, Gerhart Stephan
Wenzel, Celine Neumann
Whiteleather, Gerald Kerr
Wieler, Aram Tobias
Wilkinson, Barbara Elizabeth
Wilkinson, Thomas Patrick
Williams, Diana Kathryn
Williams, Ariadne Noel
Young, Christopher Joseph
Yu, Jun Okuyama
Zane 3rd, Lewis Earl
Zimmerman, Rita Charlotte
Zimmerman, John Ernest
Zimmerman, Fiona Diane

Dated: July 21, 2003.

Tracy Harmon,

Acting Team Manager—Examination Operation, Philadelphia Compliance Services.

[FR Doc. 03–19368 Filed 7–29–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit issue committee will be conducted in Atlanta, Georgia to discuss various IRS issues. The public is invited to make oral comments.

DATES: The meeting will be held Wednesday, August 27, 2003.

FOR FURTHER INFORMATION CONTACT: Mrs. Marisa Knispel at telephone number 888–912–1227 (toll-free), or 718–488–3557 (non toll-free).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Wednesday, August 27, 2003 from 1 p.m. to 4 p.m. EDT in Atlanta, GA. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. Notification of intent to attend the meeting must be made with Marisa Knispel. Mrs. Knispel may be reached at telephone number 888–912–1227 or 718–488–3557, or, write Marisa Knispel at: TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post your comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: July 25, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–19411 Filed 7–29–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self Employed—Schedule C Non-Filers Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self Employed—Schedule C Non-Filers Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The TAP will be discussing issues pertaining to increasing compliance and lessoning the burden for Small Business/Self Employed individuals. Recommendations for IRS systemic changes will be developed.

DATES: The meeting will be held Tuesday, August 19, 2003.

FOR FURTHER INFORMATION CONTACT: Mary O'Brien at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed—Schedule C Non-Filers Committee of the Taxpayer Advocacy Panel will be held Tuesday, August 19, 2003 from 11 a.m. EST to 12:30 p.m. EST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary O'Brien. Ms O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: July 25, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–19413 Filed 7–29–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the State of California)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 7 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Monday, August 18, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Peterson O'Brien at 1–888–912–1227 or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that an open meeting of the Area 7 Taxpayer Advocacy Panel will be held Monday, August 18, 2003, from 8 a.m. Pacific time to 9 a.m. Pacific time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6098, or write to Mary Peterson O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary Peterson O'Brien. Ms. O'Brien can be reached at 1–888–912–1227 or 206–220–6098.

The agenda will include the following: Various IRS issues.

Dated: July 25, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–19416 Filed 7–29–03; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas, and Tennessee)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Friday, August 22, 2003, from 11 a.m. e.d.t. to 12:30 p.m. e.d.t.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227 or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Friday, August 22, 2003, from 11 a.m. e.s.t. to 12:30 p.m. e.s.t. via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979. The agenda will include the following: various IRS issues.

Dated: July 25, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–19418 Filed 7–29–03; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Wednesday,
July 30, 2003

Part II

Department of Housing and Urban Development

24 CFR Part 200

Distribution of Tax Credit Proceeds; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

[Docket No. FR–4792–I–01]

RIN 2502–AH91

Distribution of Tax Credit Proceeds

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule amends the Department's regulations with respect to funding for project completion. The current regulations require that funds provided by the mortgagor must be disbursed in full for project work, material, and incidental charges and expenses before any disbursement of the mortgage proceeds. An exception is made for federal, state, or local government or instrumentality grants or loans. These grants or loans need not be fully disbursed before the disbursement of mortgage proceeds, upon approval of the Assistant Secretary for Housing-Federal Housing Commissioner. This interim rule adds to the exception. This rule provides that the mortgagor's equity from the sale of low-income housing tax credits or historic tax credits, or both, need not be fully disbursed before the distribution of mortgage proceeds.

DATES: *Effective date:* August 29, 2003.

Comment Due Date: September 29, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (Fax) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Michael McCullough, Director, Office of Multifamily Development, Office of the Deputy Assistant Secretary for Multifamily Housing, Room 6148, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000. Telephone (202) 708–1142, ext. 5426 (this is not a toll-free number). Hearing- or speech-impaired persons may access this number by calling the Federal Information Relay Service at 1–800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Department's regulations at 24 CFR 200.54 describe the project funding completion requirements with respect to FHA insured multifamily projects. Paragraph (a) of § 200.54 states that funds provided by the mortgagor must be disbursed in full for project work, material, and incidental charges and expenses before disbursement of any mortgage proceeds. The existing regulations at § 200.54(b) provide that, with the approval of the Assistant Secretary for Housing-Federal Housing Commissioner, funds provided by a grant or loan to the mortgagor from a governmental agency do not have to be fully disbursed to complete a project before disbursement of the mortgage proceeds. A grant or loan from a federal agency does not include the proceeds from the sale of low-income housing tax credits or historic tax credits. Historic tax credit proceeds are generated from the financing of the preservation of historic properties that receive special tax treatment under the Internal Revenue Code. Syndication involves sale of historic properties to investors who share in the tax benefits that accrue to each investor in proportion to his/her investment in the property. The investors' cash investment is used to fund the preservation costs (*i.e.*, the cost of rehabilitating an historic property).

Tax credits are usually syndicated and sold to investors. The proceeds from the sale of low-income housing tax credits often amount to between forty and fifty percent of the cost of construction of the project. Because of the large amount of equity resulting in a substantially reduced mortgage, rents can be fixed at levels that may make them affordable to very low-income families. Historic tax credits are given for up to twenty percent of the cost of rehabilitation of a qualified historic building, thus encouraging the rehabilitation and preservation of historic buildings.

Investors in Ginnie Mae securities anticipate a date certain for initial distribution of mortgage proceeds. If the mortgagor's equity is substantial and it must be fully distributed before distribution of mortgage proceeds, as is currently required, then the distribution of mortgage proceeds will not begin until months after the date of closing. With delayed distribution of mortgage proceeds, the borrower would have to pay extension fees to the Ginnie Mae investor. These extension fees can be expensive. By allowing the pro-rata distribution of the required borrower equity and of the mortgage proceeds, this rule helps to meet the Secretary's goal of simplifying the use of tax credits with the FHA mortgage insurance programs.

To mitigate the effects of the delayed distribution of mortgage proceeds, the Assistant Secretary for Housing has issued over a dozen waivers this year to permit the pro-rata distribution of tax credits equity and the FHA mortgage insurance proceeds. The availability of funds for completion of the project is assured because the borrower equity, including tax credit proceeds, and the FHA mortgage proceeds, are placed into the lender's escrow account from which advances of the mortgage proceeds may be made only with the approval of the Multifamily Hub or Multifamily Program Center. If the borrower defaults and the lender files a claim for insurance benefits, all funds remaining in the lender's escrow are used to offset the claim.

II. This Interim Rule

This interim rule would amend 24 CFR 200.54(b) to allow the proceeds from syndication of low-income housing tax credits and historic tax credits to be treated in the same manner as loan or grant funding provided through federal, state, or local government agencies. This amendment eliminates the need for a waiver of the regulation as obtained in the past, thereby eliminating the additional cost to the project resulting from the delays associated with receiving a waiver of the regulation. As amended, § 200.54(b) reads as follows:

(b) Low-income housing tax credit syndication proceeds, historic tax credit syndication proceeds, or funds provided by a grant or loan from a federal, state, or local governmental agency or instrumentality under requirements of this section need not be fully disbursed before the disbursement of mortgage proceeds, where approved by the Commissioner in accordance with terms, conditions, and standards established by the Commissioner.

III. Findings and Certifications

Justification for Interim Rulemaking

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide for exceptions from that general rule where HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR part 10).

HUD finds that good cause exists to publish this interim rule for effect without first soliciting public comment, in that prior public procedure is contrary to the public interest. The reason for HUD's determination is that this rule eliminates the need for projects funded with tax credits to seek a waiver from HUD to allow mortgage proceeds to be disbursed before the distribution of the mortgagor's equity from the sale of low-income housing tax credits or historic tax credits. This change will result in savings in time and money for projects funded with tax credits, thereby making rents more affordable in these projects.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this rule is a "significant regulatory action" as defined in section (3)(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the Regulations Division, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Environmental Review

A Finding of No Significant Impact with respect to the environment for this rule has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This interim rule does not impose a federal mandate that will result in expenditure by state, local, or tribal governments, within the meaning of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities, and there are no unusual procedures that would need to be complied with by small entities. Although HUD has determined that this interim rule will not have a significant economic impact on a substantial number of small entities, HUD welcomes comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Order. This interim rule does not have federalism implications and will not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Order.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for 24 CFR part 200 are 14.135 and 14.139.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Lead poisoning, Loan programs-housing and community development, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 200 to read as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

■ 1. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: 12 U.S.C. 1702–1715z–21; 42 U.S.C. 3535 (d).

■ 2. Amend § 200.54 by revising paragraph (b) to read as follows:

§ 200.54 Project completion funding.

* * * * *

(b) Low-income housing tax credit syndication proceeds, historic tax credit syndication proceeds, or funds provided by a grant or loan from a federal, state, or local governmental agency or instrumentality under requirements of this section need not be fully disbursed before the disbursement of mortgage proceeds, where approved by the Commissioner in accordance with terms, conditions, and standards established by the Commissioner.

Dated: June 30, 2003.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 03–19286 Filed 7–29–03; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Wednesday,
July 30, 2003

Part III

The President

Proclamation 7693—Parents' Day, 2003

Executive Order 13309—Amendments to Executive Order 12994, and Renaming the President's Committee on Mental Retardation as the President's Committee for People with Intellectual Disabilities

Executive Order 13310—Blocking Property of the Government of Burma and Prohibiting Certain Transactions

Federal Register
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Wednesday, July 30, 2003

Presidential Documents

Title 3—

The President

Proclamation 7693 of July 25, 2003

Parents' Day, 2003

By the President of the United States of America

A Proclamation

Children are a daily reminder of the blessings and responsibilities of life and a source of joy, pride, and fulfillment. Parents, stepparents, adoptive parents, and foster parents have the important responsibility of providing for, protecting, nurturing, teaching, and loving their children. On Parents' Day, we honor America's mothers and fathers and celebrate the values that bind families from one generation to the next and help define us as a Nation.

As a child's first teachers, parents are the most influential and effective instructors in a child's life. Through their words, actions, and sacrifices, parents are living examples for children. Young boys and girls watch their parents closely and imitate their behavior. Parents play a critical role in instilling responsibility, integrity, and other life lessons that shape the lives of America's future leaders.

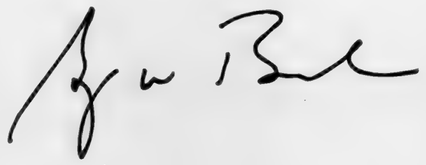
My Administration is committed to supporting our Nation's families. We are working with faith-based and community organizations to promote healthy marriages, responsible parenting, and education. And we are committed to fully funding and supporting the Promoting Safe and Stable Families Program, which helps strengthen family bonds, promote adoption, and provide help for vulnerable children across our country.

Volunteer service is one way parents can spend time with their children while encouraging them to learn the value of helping others. The USA Freedom Corps' "How I Spent My Summer" initiative includes volunteer opportunities where parents and children can work together to meet the needs of their communities. This initiative offers ideas such as collecting food for local food banks or school supplies for children in need. In addition, families can volunteer at one of our Nation's parks or recreation areas creating trails, assisting with archeological digs, or building and restoring houses. Teaching by example, parents can help their children become responsible citizens.

Parenting is one of the most rewarding and challenging endeavors in life. On this special day, we recognize the hard work and compassion of America's parents and celebrate the mothers and fathers who are positive role models for their children. I encourage parents to spend more time reading, talking, and volunteering with their children. I also urge parents to share the joys and wisdom of parenthood with new families in their communities and those planning families for the future.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States and consistent with Public Law 103–362, as amended, do hereby proclaim Sunday, July 27, 2003, as Parents' Day. I encourage all Americans to express their respect and appreciation to parents everywhere for their contributions to their children, families, communities, and our Nation. I also call upon citizens to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of July, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.



[FR Doc. 03–19571
Filed 7–29–03; 8:57 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13309 of July 25, 2003

Amendments to Executive Order 12994, and Renaming the President's Committee on Mental Retardation as the President's Committee for People with Intellectual Disabilities

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to change the name of the "President's Committee on Mental Retardation" to the "President's Committee for People with Intellectual Disabilities" (the "Committee") and expand the membership of the Committee, it is hereby ordered as follows:

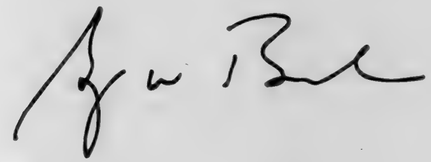
Section 1. The President's Committee on Mental Retardation is hereby renamed the President's Committee for People with Intellectual Disabilities.

Sec. 2. Executive Order 12994 of March 21, 1996, is hereby amended by deleting the words "mental retardation" and inserting the words "intellectual disabilities" in lieu thereof throughout the text of that order, except in the title, the first line of the preamble, and section 1 of that order.

Sec. 3. Section 1 of Executive Order 12994 is amended by deleting the words "(the "Committee")" and adding after "responsibilities," the words "and renamed the President's Committee for People with Intellectual Disabilities (the "Committee"),".

Sec. 4. Section 2 of Executive Order 12994 is amended by inserting after "(5) The Secretary of Housing and Urban Development;" the following: "(6) The Secretary of Commerce; (7) The Secretary of Transportation; (8) The Secretary of the Interior; (9) The Secretary of Homeland Security;" and renumbering former subsections (6) through (9) as subsections (10) through (13).

Sec. 5. The Committee is continued until September 30, 2005.



THE WHITE HOUSE,
July 25, 2003.

[FR Doc. 03–19572
Filed 7–29–03; 8:57 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13310 of July 28, 2003

Blocking Property of the Government of Burma and Prohibiting Certain Transactions

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), the Burmese Freedom and Democracy Act of 2003 (July 28, 2003), and section 301 of title 3, United States Code, and in order to take additional steps with respect to the Government of Burma's continued repression of the democratic opposition in Burma and with respect to the national emergency declared in Executive Order 13047 of May 20, 1997;

I, GEORGE W. BUSH, President of the United States of America, hereby order:

Section 1. Except to the extent provided in section 203(b)(1), (3), and (4) of IEEPA (50 U.S.C. 1702(b)(1), (3), and (4)), the Trade Sanctions Reform and Export Enhancement Act of 2000 (title IX, PublicLaw 106–387) (TSRA), or regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order, all property and interests in property of the following persons that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(a) the persons listed in the Annex attached and made a part of this order; and

(b) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State,

(i) to be a senior official of the Government of Burma, the State Peace and Development Council of Burma, the Union Solidarity and Development Association of Burma, or any successor entity to any of the foregoing; or

(ii) to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.

Sec. 2. Except to the extent provided in section 203(b) of IEEPA (50 U.S.C. 1702(b)), the TSRA, or regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order, the following are prohibited:

(a) the exportation or reexportation, directly or indirectly, to Burma of any financial services either (i) from the United States or (ii) by a United States person, wherever located; and

(b) any approval, financing, facilitation, or guarantee by a United States person, wherever located, of a transaction by a foreign person where the transaction by that foreign person would be prohibited by this order if performed by a United States person or within the United States;

Sec. 3. Beginning 30 days after the effective date of this order, and except to the extent provided in section 8 of this order and in regulations, orders,

directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to 30 days after the effective date of this order, the importation into the United States of any article that is a product of Burma is hereby prohibited.

Sec. 4. (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 5. For purposes of this order:

(a) the term "person" means an individual or entity;

(b) the term "entity" means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) the term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States; and

(d) the term "Government of Burma" means the Government of Burma (sometimes referred to as Myanmar), its agencies, instrumentalities and controlled entities, and the Central Bank of Burma.

Sec. 6. I hereby determine that the making of donations of the type specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by or to persons whose property and interests in property are blocked pursuant to section 1 of this order would seriously impair my ability to deal with the national emergency declared in Executive Order 13047, and hereby prohibit such donations as provided by section 1 of this order.

Sec. 7. For those persons whose property and interests in property are blocked pursuant to section 1 of this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render these measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in Executive Order 13047, there need be no prior notice of a listing or determination made pursuant to this order.

Sec. 8. Determining that such a waiver is in the national interest of the United States, I hereby waive the prohibitions described in section 3 of the Burmese Freedom and Democracy Act of 2003 with respect to any and all articles that are a product of Burma to the extent that prohibiting the importation of such articles would conflict with the international obligations of the United States under the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, the United Nations Headquarters Agreement, and other legal instruments providing equivalent privileges and immunities.

Sec. 9. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and sections 3(a) and 4 of the Burmese Freedom and Democracy Act of 2003, other than the authority to make the determinations and certification to the Congress that Burma has met the conditions described in 3(a)(3) of the Act, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. The Secretary of State is authorized to exercise the functions and authorities conferred upon the President by section 3(b) of the Burmese Freedom and Democracy Act of 2003 and to redelegate these functions and authorities consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 10. The Secretary of the Treasury, in consultation with the Secretary of State, is authorized to determine, subsequent to the issuance of this order, that circumstances no longer warrant inclusion of a person in the Annex to this order and that the property and interests in property of that person are therefore no longer blocked pursuant to section 1 of this order.

Sec. 11. Nothing in this order is intended to affect the continued effectiveness of any rules, regulations, orders, licenses, or other forms of administrative action issued, taken, or continued in effect heretofore or hereafter under 31 C.F.R. chapter V, except as expressly terminated, modified, or suspended by or pursuant to this order.

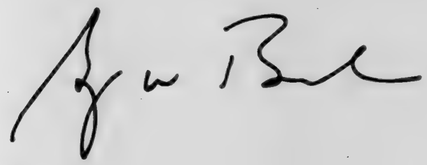
Sec. 12. Sections 1 through 7 of Executive Order 13047 are hereby revoked to the extent they are inconsistent with this order. All delegations, rules, regulations, orders, licenses, and other forms of administrative action made, issued, or otherwise taken under Executive Order 13047, not inconsistent with section 3 of this order and not revoked administratively, shall remain in full force and effect under this order until amended, modified, or terminated by proper authority. The revocation of any provision of Executive Order 13047 pursuant to this section shall not affect any violation of any rules, regulations, orders, licenses, or other forms of administrative action under that order during the period that such provision of that order was in effect.

Sec. 13. All provisions of this order other than section 3 shall not apply to any activity, or any transaction incident to an activity, undertaken pursuant to an agreement, or pursuant to the exercise of rights under such an agreement, that was entered into by a United States person with the Government of Burma or a nongovernmental entity in Burma prior to 12:01 a.m. eastern daylight time on May 21, 1997.

Sec. 14. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

Sec. 15. This order is effective on 12:01 a.m. eastern daylight time on July 29, 2003.

Sec. 16. This order shall be transmitted to the Congress and published in the **Federal Register**.



THE WHITE HOUSE,
July 28, 2003.

Billing code 3195–01–P

Annex

The State Peace and Development Council of Burma

Myanma Foreign Trade Bank (a.k.a. Myanmar Foreign Trade Bank)

Myanma Investment and Commercial Bank (a.k.a. MICB; a.k.a. Myanmar Investment and Commercial Bank)

Myanma Economic Bank (a.k.a. Myanmar Economic Bank)

[FR Doc. 03–19573
Filed 7–29–03; 8:57 am]
Billing code 3110–01–M

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV03–989–7 IFR]

Raisins Produced From Grapes Grown in California; Reduction in Additional Storage Payments Regarding Reserve Raisins Intended for Use as Cattle Feed

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule reduces the additional holding and storage payments regarding 2002 Natural (sun-dried) Seedless reserve raisins that are carried into the 2003 crop year and intended for use as cattle feed. The crop year runs from August 1 through July 31. Such payments are authorized under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (RAC). This action will reduce expenses incurred by the 2002 reserve pool and thereby help improve returns to 2002 equity holders, primarily raisin producers.

DATES: Effective August 1, 2003. Comments received by September 29, 2003, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule reduces the additional holding and storage payments regarding 2002 NS reserve raisins that are carried into the 2003 crop year and intended for use as cattle feed. The crop year runs from August 1 through July 31. Under the order, handlers are compensated for receiving, storing, fumigating, and handling reserve tonnage raisins acquired during a crop year. The order also authorizes additional payments for reserve raisins held beyond the crop year of acquisition. The RAC met on July 2, 2003, and unanimously recommended that additional payments for reserve raisins intended for use as cattle feed accrue beginning September 13, 2003, rather than August 1, 2003. This action will reduce expenses incurred by the 2002 reserve pool and thereby help improve returns to 2002 equity holders, primarily raisin producers.

Volume Regulation Provisions

The order provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in a reserve pool (reserve) for the account of the RAC. Reserve raisins are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the RAC to handlers for free use or to replace part of the free tonnage they exported; carried over as a hedge against a short crop the following year; or may be disposed of in other outlets not competitive with those for free tonnage

raisins, such as government purchase, distilleries, or animal feed. Net proceeds from sales of reserve raisins are ultimately distributed to the reserve pool's equity holders, primarily producers.

Costs Regarding Holding and Storage of Reserve Raisins

Section 989.66(f) of the order specifies that handlers be compensated for receiving, storing, fumigating, and handling that tonnage of reserve raisins determined by the reserve percentage of a crop year and held by them for the account of the RAC, in accordance with a schedule of payments established by the RAC and approved by the Secretary. Further, the RAC must pay rent to producers or handlers for boxes used in storing reserve raisins held beyond the crop year of acquisition. As previously mentioned, the crop year runs from August 1 through July 31.

Section 989.401(b) of the order's rules and regulations specifies additional payments to handlers for storing, handling, and fumigating reserve raisins held beyond the crop year of acquisition. Specifically, handlers must be compensated for such raisins at a rate of $2.30 per ton for the first 3 months (August through October), and at a rate of $1.18 per ton per month for the remaining 9 months (November through July).

Section 989.401(c) specifies further payment of rental on boxes and bins containing raisins held beyond the crop year of acquisition. Specifically, persons who furnish boxes or bins used for storing reserve raisins held for the account of the RAC on August 1 are compensated for the use of such containers as follows: For boxes, 2½ cents per day, not to exceed a total payment of $1.00 per box per year, per average net weight of raisins in a sweatbox, with equivalent rates for raisins in boxes other than sweatboxes; and for bins, 20 cents per day per bin, not to exceed a total of $10.00 per bin per year.

Disposal Program

Pursuant to § 989.67(b) of the order, the RAC is implementing a program to dispose of 40,000 tons of 2002 NS reserve raisins for use as cattle feed. The tonnage is stored at handler facilities and will be adulterated to ensure that the raisins remain in non-commercial channels. The program is intended to help the industry reduce its burdensome oversupply of raisins. It will also help make available bins for storing raisins during the new crop year, which begins August 1, 2003. Barring unforeseen circumstances, reserve tonnage intended for use as cattle feed should be removed from handler premises by mid-September 2003.

RAC Recommendation

The RAC met on July 2, 2003, and unanimously recommended reducing the additional holding and storage payments regarding 2002 NS reserve raisins held by handlers on August 1, 2003, and intended for use as cattle feed. Specifically, additional payments for such raisins will accrue beginning September 13, 2003, rather than August 1, 2003. Thus, additional costs will only be incurred for such tonnage that remains at handler premises after September 12, 2003. Payments for storing and holding reserve raisins are deducted from reserve pool proceeds, and net proceeds are ultimately distributed to equity holders. Thus, reducing the expenses for 2002 NS reserve tonnage intended for use as cattle feed will help improve returns to 2002 equity holders.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

This rule reduces the additional holding and storage payments specified in paragraphs (b) and (c) of § 989.401 regarding 2002 NS reserve raisins that are intended for use as cattle feed. Specifically, additional payments for such raisins will accrue beginning September 13, 2003, rather than August 1, 2003. Under the order, handlers are compensated for receiving, storing, fumigating, and handling reserve tonnage raisins acquired during a crop year. The order also authorizes additional holding and storage payments for reserve raisins held beyond the crop year of acquisition. This action reduces these additional payments for 2002 NS reserve raisins held by handlers on August 1, 2003, that are intended for use as cattle feed. Authority for this action is provided in § 989.66(f) of the order.

Regarding the impact of this rule on affected entities, handlers and producers, the order provides that handlers store reserve raisins for the account of the RAC. Net proceeds from sales of such reserve raisins are distributed to the reserve pool's equity holders, primarily producers. Handlers are compensated from reserve pool funds for their costs in receiving, storing, fumigating, and handling reserve raisins during the crop year of acquisition and for the subsequent crop year. Compensation is also paid for the use of bins and boxes for storing reserve raisins held beyond the crop year of acquisition.

Under the disposal program, it is estimated that about 22,500 tons of reserve raisins will remain at handler premises after August 1, 2003. If 634 tons were removed per day, costs to store, handle, and fumigate the tonnage at the current rate of $2.30 per day between August 1 and September 12, 2003, would be $59,133.00. Bin-rental costs for the same period at the current rate of $0.20 per day per bin would be $161,966.00. Thus, the RAC would incur an estimated $221,000 for holding and storing 2002 reserve raisins that are intended for use as cattle feed between August 1 and September 12, 2003. This rule will reduce these costs to zero and thereby reduce expenses incurred by the 2002 NS reserve pool. Handlers, however, will not be compensated this amount for holding and storing this tonnage.

Regarding alternatives to this action, one option would be to maintain the status quo and have the 2002 reserve pool incur these costs. However, this would not help to improve returns to 2002 equity holders. Another alternative would be to reduce the payments for the period August 1 through September 12, 2003, to figures lower than those currently specified in § 989.401. However, all RAC members supported reducing the additional holding and storage payments for 2002 reserve raisins intended for use as cattle feed so that such payments will accrue beginning September 13, 2003, rather than August 1, 2003.

This rule imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the RAC's Administrative Issues Subcommittee and RAC meetings on July 2, 2003, where this action was deliberated were both public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations. Finally, all interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 60-day comment period is invited to allow interested persons to respond to this rule. All written comments timely received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the information and recommendation submitted by the RAC and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action needs to be in place by August 1, 2003, so that additional payments regarding reserve raisins held by handlers on August 1, 2003, and intended for cattle feed will be incurred beginning September 13, 2003, rather than August 1 2003; (2) handlers and producers are aware of this action which was recommended by the RAC at a public meeting; (3) the action was recommended by a unanimous vote of the RAC; and (4) this interim final rule provides a 60-day comment period for written comments and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 989.401, paragraphs (b) and (c) are revised to read as follows:

§ 989.401 Payments for services performed with respect to reserve tonnage raisins.

* * * * *

(b) *Additional payment for reserve tonnage raisins held beyond the crop year of acquisition.* Additional payment for reserve tonnage raisins held beyond the crop year of acquisition shall be made in accordance with this paragraph. Each handler holding such raisins for the account of the Committee on August 1 shall be compensated for storing, handling, and fumigating such raisins at the rate of $2.30 per ton per month, or any part thereof, between August 1 and October 31, and at the rate of $1.18 per ton per month, or any part thereof, between November 1 and July 31: *Provided,* That handlers holding 2002–03 Natural (sun-dried) Seedless reserve raisins on August 1, 2003, that are intended for use as cattle feed shall be compensated for storing, handling, and fumigating such raisins at the rate of $2.30 per ton per month, or any part thereof, between September 13 and October 31, 2003, and at the rate of $1.18 per ton per month, or any part thereof, between November 1, 2003, and July 31, 2004. Such services shall be completed so that the Committee is assured that the raisins are maintained in good condition.

(c) *Payment of rental on boxes and bins containing raisins held beyond the crop year of acquisition.* Payment of rental on boxes and bins containing reserve tonnage raisins held beyond the crop year of acquisition shall be made in accordance with this paragraph. Each handler, producer, dehydrator, and other person who furnishes boxes or bins in which such raisins are held for the account of the Committee on August 1, shall be compensated for the use of such boxes and bins: *Provided,* That persons holding 2002–03 Natural (sun-dried) Seedless reserve raisins on September 13, 2003, that are intended for use as cattle feed shall be compensated for the use of such boxes and bins, and that no compensation shall be accrued for such raisins held between August 1 and September 12, 2003. The rate of compensation shall be: For boxes, two and one-half cents per day, not to exceed a total payment of $1 per box per year, per average net weight of raisins in a sweatbox, with equivalent rates for raisins in boxes other than sweatboxes; and for bins 20 cents per day per bin, not to exceed a total of $10 per bin per year. For purposes of this paragraph, *box* means any container with a capacity of less than 1,000 pounds, and *bin* means any container with a capacity of 1,000 pounds or more. The average net weight of raisins in each type of box shall be the industry average as computed by the Committee for the box in which the raisins are so held. No further compensation shall be paid unless the raisins are so held in the boxes on the succeeding August 1.

* * * * *

Dated: July 25, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–19492 Filed 7–28–03; 1:04 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 319

[Docket No. 01–018F]

Definitions and Standards of Identity or Composition: Elimination of the Pizza with Meat or Sausage Standards

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is rescinding the regulatory standards of identity for "pizza with meat" and "pizza with sausage." FSIS has determined that the standards no longer serve their original purpose of protecting the public from economic deception. Furthermore, FSIS believes that the standards may be

inhibiting manufacturers of federally inspected pizzas from producing and marketing the styles of pizzas that today's consumers demand. Once this rule becomes effective, products may be identified with a common or usual name that includes the term "pizza;" identifies the meat or poultry component, *e.g.*, "pepperoni;" and declares other components as a feature that distinguishes them from the other pizza product, e.g. "pizza—garlic sauce, tomatoes, reduced-fat cheese, and seasoned beef strips on a crust."

FSIS is also amending the meat and poultry products inspection regulations to require, for a limited time, that the labels of products identified as meat or poultry pizzas in their common or usual names include the percent of meat or poultry in the product in a parenthetical statement that is contiguous to the ingredients statement. This labeling requirement will expire after three years. FSIS is adopting this requirement because, based on comments received in response to the proposed rule, the Agency has concluded that some consumers still rely on the standards to ensure that a product identified as a meat or poultry "pizza" contains a certain amount of meat or poultry. FSIS will allow pizza manufacturers to exhaust their remaining packaging inventory before they will be required to comply with the new labeling requirement. Requiring percent labeling of the meat or poultry content of non-standardized pizzas for a limited time is a transitional step to allow these consumers to understand the nature of the food.

DATES: This rule is effective October 22, 2003. Sections 317.8(b)(40) and 381.129(f) shall expire October 24, 2006.

FOR FURTHER INFORMATION CONTACT: Robert C. Post, Ph.D., Director, Labeling and Consumer Protection Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; (202) 205–0279.

SUPPLEMENTARY INFORMATION:

Background

On November 2, 2001, FSIS published a proposed rule in the **Federal Register** to amend part 319 of the Federal meat inspection regulations to rescind the standards of identity for "pizza with meat" and "pizza with sausage" (66 FR 55601). The proposed rule was in response to a petition submitted on February 4, 1999, by the National Frozen Pizza Institute (NFPI). In support of its petition, NFPI submitted data to demonstrate that the pizza standards are restricting the development of new products by the frozen pizza industry, including pizzas with reductions in constituents that are of health concern to some people, such as fat and cholesterol. NFPI also presented evidence that, due to product innovation in the food service industry, consumers' expectations of what is meant by the term "pizza" are broader that what is prescribed by the current standards.

Once this final rule becomes effective, products identified as meat or sausage pizzas will no longer be required to contain tomato sauce, cheese, and a bread-based crust, as prescribed by the standards under 9 CFR 319.600. In addition, manufacturers of pizza products will be permitted to reduce the minimum meat content from 12 percent cooked or 15 percent raw to 2 percent cooked or 3 percent raw, the level of meat required for a product to be considered a meat food product subject to USDA jurisdiction.

In the preamble to the proposed rule, FSIS mentioned that although the regulations do not contain a standard of identity for pizza products that contain poultry, FSIS has treated these products as "like products" to pizza with meat or sausage. The Agency's policy has been that these products must contain at least 12 percent cooked poultry meat. Once this final rule becomes effective, the policy that pizzas that contain poultry must have a minimum poultry content will also be revoked.

As discussed in the preamble to the proposed rule, rescinding the meat and sausage pizza standards of identity does not mean that the names for products identified as "pizzas" will be unregulated. Under 9 CFR 317.2(c)(1) and 381.117(a), non-standardized meat and poultry products must be identified by the common or usual name of the product, or if the product has no common or usual name, a truthful, descriptive designation. FSIS has determined that, in the absence of a regulatory standard of identity, the term "pizza" represents the appropriate common or usual name for the class of products that have been traditionally formulated with the components stipulated in the regulatory standard prescribed by 9 CFR 319.600, i.e., tomato sauce, cheese, and meat topping on a bread-based crust. Products that contain these ingredients may be identified by a common or usual name that includes the term "pizza;" identifies the meat or poultry component, *e.g.*, pepperoni; and declares any other components or features that distinguish it from traditional pizzas, *e.g.*, "pizza—garlic sauce, tomatoes, reduced-fat cheese, and seasoned beef strips on a crust."

In the preamble to the proposed rule, FSIS requested comments on whether the product names of non-standardized pizzas should be required to include the percent of meat or poultry. Based on the comments received in response to this question, FSIS has concluded that some consumers still rely on the standards to ensure that a meat or poultry product identified as a "pizza" contains a certain amount of meat or poultry. To prevent these consumers from being misled about the meat or poultry content of non-standardized pizzas, the Agency is requiring that the labeling of products that are identified in their common or usual names as pizzas that contain a meat or poultry component (e.g. "pizza with meat," "sausage, green pepper, and mushroom pizza," "Thai pizza—chicken, peanut sauce, and vegetables on a crust") include a parenthetical statement of the percent of meat or poultry in the product that is contiguous to the ingredients statement. This labeling requirement will be effective for three years to allow consumers to become familiar with variations in the meat or poultry content that will be permitted in pizzas as non-standardized foods. FSIS will allow manufacturers of meat and poultry pizzas to exhaust their remaining packaging inventory before they will be required to comply with the new labeling requirement.

Comments and Responses

The comment period for the proposed rule closed on January 2, 2002. However, in response to comments requesting that FSIS extend the comment period, on March 14, 2002, the Agency reopened and extended that comment period for an additional 30 days. Thus, the comment period closed on April 15, 2002.

FSIS received 36 comments in response to the proposed rule from consumers, consumer advocacy organizations, members of the frozen pizza industry, academia, industry consultants, and trade and professional associations representing livestock producers, meat processors, food processors, seasoning manufacturers, soy product producers, and dietitians. Most of the commenters supported eliminating the standards of identity for meat and sausage pizzas. In general, the supporters agreed that the standards are restricting the development of new products by the frozen pizza industry, and that consumers, expectations of what is meant by the term "pizza" are broader that what is prescribed by the current standards. Eight commenters opposed the proposed rule, mainly because they believe that the current

standards still serve their intended purpose of protecting consumers from economic deception, particularly with regard to the meat content of products identified as meat or sausage pizzas. Three commenters, a trade association representing the frozen foods industry, a trade association representing meat processors, and a large company that manufactures a variety of food products, including frozen pizzas, took no position on whether FSIS should eliminate the existing pizza standards but submitted comments on certain aspects of the proposed rule. Summaries of issues raised by commenters and Agency responses follow.

Comment: As mentioned above, in the preamble to the proposed rule, FSIS stated that, if it were to rescind the pizza standards, it had tentatively determined that required labeling features, such as the product name, ingredients statement, and nutrition facts panel, will provide adequate information for consumers to make informed choices when purchasing federally inspected pizza products (66 FR 55601, 55602). In particular, the Agency concluded that the product name would become a descriptive feature to convey to the consumer the components of the product. The Agency went on to request comments on whether the product name of non-standardized pizzas should be required to include the percent of meat or poultry in the product. Almost all commenters that supported eliminating the pizza standards opposed this proposed requirement. Following is a summary of the reasons for their opposition.

- The product names of pizzas sold by restaurants and delivery services would not be required to contain the percent of meat or poultry in the product, thereby re-establishing different regulatory treatment for the retail and frozen pizza industries.
- Percentage labeling of a specific ingredient is not required for other products regulated by FSIS or the Food and Drug Administration (FDA).
- If the product name for non-standardized pizzas must include the percent of meat or poultry in the product, then it should also be required to include the percent of other characterizing ingredients, such as mushrooms or seasonings, as well.
- Requiring that the percent of meat or poultry in a non-standardized pizza product be included as part of the product name is not necessary because existing required labeling features, including mandatory ingredient and nutrition information, already provide sufficient information about a product's meat or poultry content.
- Requiring percent labeling of the meat content implies that meat is the most valuable ingredient in the product. The amount of meat topping is not the determining characteristic of the product. Consumers also look at overall cost and quality of ingredients used.
- Unlike some other products, the meat content of a pizza is readily apparent with even a superficial visual exam, which allows consumers to assess the value of the product for the price.
- Such information would have little meaning to consumers and could lead to counter productive competitive labeling contests, which would not serve consumers' best interests.
- Percent meat content labeling assumes that all meat toppings are equivalent in cost, which is not an accurate assumption.
- Pizzas subject to FDA and FSIS jurisdiction should be marketed and regulated similarly. FDA has no such specific requirement or any standards for pizzas subject to FDA's jurisdiction.
- Few consumers have a working knowledge of the current standards. Therefore, it is not relevant to require the labeling to include the percentage of meat or poultry in the pizza.
- Requiring percent labeling of the meat or poultry content would require manufacturers to disclose proprietary information, including trademark recipes. Manufacturers who wish to provide this information voluntarily could do so if they believed that communicating the percent of meat in the product provided them an advantage.
- Percent ingredient labeling, including a requirement for meat or poultry percent ingredient labeling, is not in keeping with historical U.S. government policy regarding standards that suggest percentage ingredient labeling of foods in international trade. For a number of years, the U.S. delegation to the Codex Committee on Food Labeling opposed a European Union (EU) proposal to require labeling of percent fish core in fish sticks. Importantly, unlike frozen pizza, fish sticks do have one characterizing ingredient.

One commenter, a representative of a consumer advocacy organization, stated that requiring that the product names of non-standardized pizzas include the percent of meat or poultry in the product, although well intentioned, seems clumsy and extreme. A better solution, suggested the commenter, is to identify the percent of meat or poultry in a product somewhere outside the ingredients statement, but not as part of the product name.

Another commenter, a trade association representing meat processors, noted that if the meat and sausage pizza standards are rescinded, it is important that FSIS give consideration to alternative ways to provide truthful information about the meat or sausage component of products identified as "pizza."

Response: The Agency was not persuaded by the comments that opposed percent labeling of the meat or poultry content of non-standardized pizzas because many of these comments are misleading or inaccurate. Requiring percent labeling of the meat or poultry content for packaged pizzas will not re-establish different regulatory requirements for retail and frozen pizza industries, as suggested by the comments. Even with the elimination of the pizza standards, restaurant pizzas and packaged pizzas will still be subject to different regulatory requirements. For example, nutrition labeling is required for packaged pizzas but not for restaurant pizzas.

The statement that percent labeling of a specific ingredient is not required for any other products regulated by FSIS and FDA also is not accurate. FDA regulations require that the common or usual name of a food contain the percentage of any characterizing ingredients when the proportion of such ingredients in the food has a material bearing on price or consumer acceptance, or when the labeling or appearance of the food may create the erroneous impression that the ingredient is present in an amount greater than is actually the case (21 CFR 102.5(b)). Thus, contrary to what was suggested in the comments, requiring percent labeling of the meat or poultry component of a meat or poultry pizza with a common or usual name is consistent with FDA regulations.

Although it is true that the meat content of pizza is readily apparent when examining the pizza itself, the meat content is not readily apparent if there is a solid cover on the package. Furthermore, FSIS disagrees that percent meat content labeling promotes unproductive labeling contests. The Agency believes that it could promote consumer choice and fair competition.

Upon further consideration of the issue, FSIS has determined that required labeling features, such as the nutrition facts panel and ingredients statement, do not provide sufficient information about the meat or poultry content of products identified as "pizza." Although ingredients must be listed in order of predominance, there could be such a wide range of ingredients in a pizza that such a listing does not

effectively convey the proportion of meat or poultry in the product. FSIS agrees with the comment that, once the standards are rescinded, the Agency should consider alternative ways to provide truthful information about the meat or poultry content of products identified as "pizza." It also agrees that the percent of meat or poultry in products identified as "pizza" need not appear as part of the product name and can be conveyed somewhere else on the product label.

Therefore, FSIS has decided to require, for three years from the effective date of this final rule, that products that are identified as "pizza" and whose common or usual name identify a meat or poultry component state the percent of meat or poultry in the product in a parenthetical statement contiguous to the ingredients statement. If consumers find this information useful, and believe that it should appear on the product labeling permanently, they may petition the Agency to rescind the expiration date of this part of the regulation.

Comment: Most of the commenters who opposed eliminating the meat and sausage pizza standards did so because, as previously mentioned, without the standards a product identified as a "meat pizza" or a "sausage pizza" would be permitted to contain as little as 2 percent cooked or 3 percent raw meat instead of the 12 percent cooked or 15 percent raw meat prescribed by the standards. These commenters noted that meat is the most expensive ingredient in a meat pizza, and that without standards, manufacturers would be able to significantly reduce the meat content of meat pizzas without consumers' knowledge. They also asserted that descriptors of meat or sausage imply that a product contains some minimum amount of these ingredients, and that consumers' expectations are that this amount is greater than two percent. Thus, the commenters argued, removing the meat and sausage pizza standards would lead to economic deception of consumers that purchase non-standardized pizzas.

Response: As discussed above, FSIS believes that these comments demonstrate that some consumers rely on the pizza standards of identity to ensure that a product identified as a meat or poultry pizza contains a certain amount of meat. However, the Agency does not believe that retaining the regulatory pizza standards of identity is necessary to address the concerns expressed by these comments. As discussed above, to address concerns that consumers could be misled about the meat content of non-standardized pizzas, the Agency is requiring temporary supplemental labeling of the meat or poultry content for products that are identified as "pizzas" and whose product name includes a meat or poultry component.

Furthermore, FSIS does not agree that rescinding the meat and sausage pizza standards will lead to economic deception of consumers that purchase non-standardized pizzas. FSIS has determined that over the years consumer expectations, industry creativity, and technological innovation have created new types of pizza products that fall outside the realm of the traditional or standardized pizza of several decades ago. The existing pizza standards inhibit the production and marketing by Federal establishments of new pizza products. Examples of new pizza products found at retail and food service establishments include: "deep dish pizzas" that provide a smaller surface area for toppings, "white pizzas" that do not have a traditional tomato-based sauce, and ethnic-oriented pizzas that often reduce the meat component to permit a greater amount of vegetable toppings. The current standards for meat and sausage pizzas require that the products contain tomato sauce, cheese, and a bread-based crust, in addition to a minimum percentage of meat or poultry. Thus, the current standards impede the development and marketing of these new and innovative products.

Comment: Many commenters that opposed the proposed rule stated that eliminating the meat and sausage pizza standards of identity is not necessary for companies to produce pizzas with nutritional profiles more consistent with nutritional guidance (*e.g.*, lower in fat). They stated that nutritionally improved products can and should be achieved by using lower fat ingredients, not less of fat-containing ingredients, such as meat and cheese. One commenter, an individual consumer, stated that even if the pizza standards were eliminated, it would not likely result in more lower-fat frozen meat or sausage pizzas. To support his argument, the commenter noted that of all the restaurant menus that NFPI presented in support of its petition, not one contained a meat or sausage pizza advertised as being a healthier or lower fat product.

Supporters of the proposal felt that the current standards are obstructing producers' ability to create meat pizzas lower in fat, saturated fat, and cholesterol in response to changing consumer tastes. They stated that eliminating the standards will give manufacturers the flexibility to offer pizzas with less meat, sausage, and fat, and will permit the production of frozen pizzas with reduced-fat cheese or no cheese, provided there is disclosure on the product's label. One commenter noted that it is not always economical to use leaner meats, which are more expensive on a per pound basis, when a manufacturer has to comply with a percentage minimum weight.

Response: FSIS does not disagree that once this final rule is effective, many pizza manufacturers will continue to market the traditional pizza products that are available to consumers today. However, these manufacturers will also have greater flexibility to produce meat and poultry pizzas with reductions in constituents that are of health concern to some people, such as calories and fat. While it is true, as noted in some of the comments, that the standards permit the production of pizzas with improved nutritional profiles through the use of lower fat ingredients, removing the standards will give pizza manufacturers additional flexibility to produce and market nutritionally improved packaged pizzas.

Removal of the pizza standards will not only permit greater use of lower fat ingredients in meat pizza products, such as vegetables and soy-based and other reduced-fat cheeses, it will also permit reductions in the amount of fat-containing ingredients, such as meat and cheese, which will result in a wider selection of pizza products that meet nutrient content claims such as "lower fat," "healthy," and "lean." As noted by one commenter, using leaner meats to reduce the fat content of a pizza product that must comply with a minimum meat content is not always economical because leaner meats are more expensive on a per pound basis. Thus, eliminating the standard will permit pizza manufacturers to provide packaged pizza products with improved nutritional profiles at a variety of pricing levels.

Comments: Some of the commenters that opposed eliminating the pizza standards asserted that changes in standards should be based on consumer research. They pointed out that, while NFPI presented restaurant menu data to support its petition, it did not provide research to indicate that consumers liked the new styles of pizzas presented on the menus. One commenter noted that neither FSIS nor the petitioner presented strong evidence of consumer confusion or dissatisfaction with the current standards.

A few commenters presented their own consumer research that they contended provides evidence that consumers are satisfied with the pizza standards. Two commenters, trade associations representing livestock producers, submitted a consumer research report from a consumer focus group study on the meaning of food names and the assumptions underlying them. The report concluded, among other things, that the identities of certain foods, such as bologna and beef stew, are so distinct to consumers, and consumers are so used to the products being labeled as such, that consumers have difficulty grasping the concept of a simulated change to the names or composition of the product. The research report also concluded that changing the composition of a commonly named food product is equivalent to changing the meaning of the name itself. These findings, the commenters asserted, are evidence that consumers rely on product standards to ensure product integrity and prevent economic adulteration.

Another commenter, a manufacturer and distributor of frozen prepared food products that supported removal of the portion of the pizza standards that prescribes the four basic components (meat, cheese, tomato sauce and bread based crust) but opposed elimination of the minimum meat content requirement, submitted a consumer survey that questioned consumers about the meat content of specific meat pizza products produced by the commenter's company. A majority of the consumers surveyed felt that the meat content of each product involved in the survey was "just about right." The commenter stated that these results indicate that consumers are satisfied with the meat content requirements imposed by the current standards and that the standards still "promote honesty and fair dealing in the interest of the consumer."

Another commenter, a multinational manufacturer and marketer of consumer branded meat and food products, submitted the results of a survey conducted after publication of the proposed rule in which the company contacted over 1,000 consumers by telephone. The survey asked consumers how they felt about the U.S. Government's proposal "to change the minimum amount of meat for frozen meat pizza to two percent of the cooked weight or three percent of the raw weight." The commenter's survey found that consumers' were overwhelmingly against the proposed change.

Response: The restaurant menu data submitted by NFPI in support of its petition demonstrate that many products identified as "pizza" that are purchased by consumers in restaurants do not meet the Agency's standards. Thus, even without consumer survey data, it is no longer reasonable to assume that consumer expectations with regard to what constitutes a pizza mirror the standards for FSIS-inspected products. Restaurants would not be offering such a variety of pizza products if consumers were not interested in purchasing such products.

Although FSIS does not dispute the findings of the consumer studies submitted by the commenters, the Agency disagrees that these findings demonstrate a need to retain the meat and sausage pizza standards of identity. The consumer focus group study that examined the meaning of common names for meat products submitted by the two trade associations questioned consumers about their expectations regarding the composition of a variety of products that have regulatory standards of identity, including bacon and bologna. However, it did not question consumers about their expectations regarding the composition of products identified as "pizza."

The data submitted by NFPI in support of its petition indicate that, unlike consumer perceptions of products that were the subject of the consumer focus group studies, such as bacon or bologna, consumer perceptions of what a product identified as a "pizza" is have changed dramatically in recent years to include a wide variety of non-traditional, non-standard versions of pizzas. Thus, it is unlikely that changing the composition of a product identified as a "pizza" will result in consumer confusion as to the characteristics of the product. FSIS does not completely disagree with the commenters' conclusion that the study results support the notion that consumers rely on product standards to ensure product integrity and prevent economic adulteration. However, when a product standard no longer reflects consumer expectations about the composition of the product, the standard is not serving its purpose and should be rescinded.

The survey conducted by the frozen foods manufacturer that found that a majority of the consumers surveyed felt that the meat content of a variety of meat pizza products was "just about right," and the survey conducted by the multinational manufacturer of meat products that asked consumers how they felt about the U.S. Government's proposal "to change the minimum amount of meat for frozen meat pizza to two percent of the cooked weight or three percent of the raw weight," both imply that the sole effect of eliminating the pizza standards would be a reduction in the minimum meat content and that once the standards are rescinded every pizza manufacturer will reduce the meat content of frozen pizzas to 2 percent cooked or 3 percent raw meat.

Rescinding the pizza standards involves more that permitting a reduction in the minimum meat content requirement for meat food products identified as "pizza." It also involves permitting the use of sauces other than tomato-based sauces, crusts other than bread-based crusts, and components other than standardized cheese and cheese food products in federally inspected pizzas. Thus, in addition to permitting a reduction in the meat content of a meat or sausage pizza, eliminating the pizza standards provides the opportunity for the development and marketing of non-traditional pizza products, such as pizza with no sauce or cheese component. None of the consumer research studies submitted by the commenters questioned consumers on how they felt about this aspect of eliminating the pizza standards.

Furthermore, the fact that consumers state that they are satisfied with the meat content of certain products does not necessarily mean that that meat content must be prescribed by regulation. As discussed above, to allow consumer to become familiar with the variations that will be permitted in the meat content of non-standardized pizzas, the Agency is requiring that products identified as "pizza" that include a meat or poultry component as part of the product name bear temporary supplemental labeling that conveys the percent of meat or poultry in the products. Furthermore, in the absence of a prescribed meat content requirement, companies are likely to continue to manufacture pizzas with an amount of meat that consumers desire because if they do not they will lose their market share to companies that do.

As demonstrated by the studies discussed above, consumer research can be greatly affected by the manner in which questions are posed to consumers. Thus, the results of the consumer surveys submitted in response to the proposed rule have not persuaded FSIS to retain the pizza standards of identity.

Comment: One commenter stated that policy interpretations on the regulations made by FSIS over the years provide frozen pizza manufacturers with sufficient flexibility to produce and market "non-traditional" meat pizzas, and therefore, there is no need to eliminate the pizza standards. The commenter cited FSIS's interpretive policies related to the pizza standards, including the policy that permits certain products to be identified as "white

pizza," the policy that defines "tomato sauce" as any sauce that contains two percent tomatoes, the policy that liberally interprets "bread-based crust" to include most every kind of flour-based component, and the policy that allows for percentage meat labeling on pizza products that do not otherwise comply with the minimum meat content prescribed by the standards.

Response: In addition to allowing pizza manufacturers to produce the "non-traditional" products that are currently described in FSIS policy documents, rescinding the standards of identity for meat and sausage pizza will provide pizza manufacturers with the flexibility to create new and novel styles of pizza products without having to approach FSIS for new policy interpretations or regulatory changes.

Comment: Several commenters requested that FSIS clarify whether it will permit generic label approval for meat and poultry pizza products once the pizza standards are rescinded.

Response: Modifications made to incorporate the percent meat or poultry content declaration prescribed by this final rule into the labels of existing meat or poultry pizza products will be generically approved pursuant to 9 CFR 317.5(b)(1) and 9 CFR 381.133(b)(1). These provisions of the FSIS regulations allow generic approval of the labeling for products that have product standards as specified in the meat and poultry inspection regulations or in the FSIS Standards and Labeling Policy Book (the Policy Book). In addition to those products produced in accordance with the regulatory pizza standards in 9 CFR 319.600, many of the meat and poultry pizza products on the market today qualify for generic label approval because they are produced under informal standards described in the Policy Book.

Although meat and poultry pizza products will not be subject to prescribed product standards once this final rule becomes effective, for labeling approval purposes, FSIS will consider existing meat or poultry pizza products whose labels were generically approved prior to the effective date of this final rule as products that qualify for generic label approval under 9 CFR 317.5(b)(1) and 9 CFR 381.133(b)(1).

New meat and poultry pizza products that are developed and marketed after the effective date of this final rule will not qualify for generic label approval under 9 CFR 317.5(b)(1) and 9 CFR 381.133(b)(1) because these products are not subject to a product standard. Thus, unless they qualify for generic label approval under a provision other than 9 CFR 317.5(b)(1) or 9 CFR 381.133(b)(1), the labels of such products must be submitted for formal approval from FSIS.

Once the labels of non-standardized pizza products have been approved as sketch labeling, certain modifications made to the final labeling may be generically approved pursuant to 9 CFR 317.5(b)(9) and 381.133(b)(9). For example, under 9 CFR 317.5(b)(9)(vii) and 9 CFR 381.133(b)(9)(vii), changes made to the percent meat or poultry declaration statement may qualify for generic approval if the modification reflects a change in the quantity of the meat or poultry ingredient shown in the formula without a change in the order of predominance shown on the label. Also, once the three-year effective date for the meat or poultry content labeling requirement has expired, the meat or poultry content declaration will become a non-mandatory feature. Deletions of non-mandatory features qualify for generic labeling approval under 9 CFR 317.5(b)(9)(xxiii) and 9 CFR 381.133(b)(9)(xxiii).

Comment: Several commenters requested that, in conjunction with this rulemaking, FSIS modify the policies contained in the Food Standards and Labeling Policy book and in the FSIS Policy Memoranda that are associated with the regulatory pizza standards of identity. Most of the requested modifications were to eliminate the references to 9 CFR 319.600 in these policies.

Response: Most of the FSIS policies for products identified as "pizza" require that these products comply with the minimum meat content requirement prescribed by 9 CFR 319.600. Once this final rule becomes effective, products with standards specified in the Policy Book will no longer be subject to this requirement. However, like all products identified as "pizza" with a meat or poultry component as part of the product name, the labels of pizza products that had been subject to standards specified in the Policy Book will be required to bear a statement contiguous to the ingredients statement that conveys the percent of meat of poultry in the product.

Comment: Several commenters requested that, in the preamble to the final rule, FSIS provide clarification as to what it considers to be appropriate descriptive names for non-standardized pizza products. These commenters agreed with the Agency's statements in the preamble to the proposed rule that products with the four "traditional" pizza ingredients should be identified by the term "pizza" with a designation of the meat component (*e.g.* "pizza with sausage"). These commenters also agreed that the labeling of products that vary in terms of the four traditional components should bear a descriptive qualifier following "pizza" that specifies the principal components (*e.g.*, "pizza with sausage and pesto sauce"). However, the commenters believed that the descriptive qualifier for products with "non-traditional" components should not list the ingredients in order of predominance but in the order that best characterizes the non-traditional product. These commenters also suggested that a description of the crust not be required to be included in the descriptive qualifier unless the crust is different from the traditional dough-based crust.

Response: An appropriate descriptive name for a non-standardized pizza product that contains components that differ from those stipulated in the regulatory standard prescribed by 9 CFR 319.600 (*i.e.*, tomato sauce, cheese, and meat topping on a bread-based crust) would be a listing of the components used at levels that characterize the product. Historically, the Agency has considered food and ingredient components used at levels above two percent of product formulation to be "characterizing." While all characterizing components must be listed in the descriptive product name, they need not be listed in order of predominance. As suggested by the commenter, they may be listed in an order that best characterizes the non-traditional product. The descriptive name should list all characterizing components of the non-standardized pizza product, including crust even if the crust is a traditional dough-based crust. This is consistent with descriptive labeling requirements for other non-standardized products such as stuffed sandwiches or meat fillings wrapped in dough.

Comment: One commenter felt that the examples of acceptable descriptive names for products that do not comply with the traditional standards but that purport to be pizzas provided by FSIS in the preamble to the proposed rule are unwieldy, cumbersome, and in direct contradiction to the goals of the proposed rule. The commenter stated that listing names of ingredients in the name of the pizza, as suggested by the Agency, duplicates the information listed in the ingredients statement.

Response: The examples of descriptive names for non-standardized pizzas provided by FSIS in the preamble to the proposed rule list all characterizing components of the non-standardized pizza product. This is consistent with descriptive labeling requirements for other non-standardized meat and poultry products.

Comment: One commenter suggested that rather than rescind the pizza standards, FSIS should decline jurisdiction over pizzas made with processed meat products. The commenter felt that inspection of these products is a waste of resources that could be better directed to overseeing the slaughter of animals and preparation of raw meat products. The commenter stated that legally FSIS could declare that food products that contain less than 50 percent cooked meat are not considered "meat food products" and therefore, are not subject to FSIS jurisdiction.

Response: Under section 1(j) of the FMIA, the Secretary of Agriculture, and FSIS by delegation, may exempt from the definition of "meat food products" those products that contain meat only in relatively small proportions or that have not been considered by consumers as products of the meat food industry (21 U.S.C. 601(j)). FSIS does not believe that products that consist of up to 49 percent cooked meat contain meat in relatively small proportions as contemplated by the FMIA. Furthermore, FSIS is not aware of any evidence to indicate that consumers do not consider meat pizzas as products of the meat food industry. Therefore, FSIS disagrees that it should decline jurisdiction over meat pizzas and other products that contain less than 50 percent cooked meat.

Comment: One commenter suggested that in addition to eliminating the pizza standards, FSIS should examine the wisdom of its remaining regulatory standards. Another commenter stated that standards reform should not be delayed. This commenter felt that continued adherence to the standards by FSIS impedes product innovation to the detriment of consumers and food industry alike. Another commenter stated that rather than eliminating regulatory standards of identity for meat and poultry products, FSIS should implement them in a more harmonious way. The commenter stated that the regulatory standards governing the amount of poultry in processed food products that contain poultry are substantially different from those governing the meat content of similar processed products that contain meat.

Response: FSIS and FDA are jointly developing a proposed rule whose goal is to establish "general principles" that outside parties can apply in requesting changes to food standards. The proposed rule, "Food Standards; General Principles and Standards Modernization" (the "General Principles" proposal) will address all Federal food standards of identity, whether under FSIS jurisdiction or that of the FDA. Following the conclusion of this rulemaking, parties interested in pursuing changes to the regulatory standards of identity may petition the Agency to initiate rulemaking to make the requested changes.

Comment: One commenter noted that in the preamble to the proposed rule, FSIS stated that consumers" understand the term "pizza" to mean "an open-faced crust with one or more of a variety of ingredients" (66 FR 55601). The commenter noted that it produces pizza stuffed sandwiches that are required to comply with the pizza standards and requested that FSIS recognize that the term "pizza" is not limited to products with open-faced crusts.

Response: Products such as "pizza rolls" or "pizza pockets" are non-standardized products that must be identified by descriptive names. Those products that were required to comply with the minimum meat content prescribed by the standards will no longer be required to do so once the standards are eliminated. However, any product identified as "pizza" product that lists a meat or poultry component as part of the product name, including a product identified as a "meat pizza roll," must comply with the meat or poultry content labeling requirement prescribed by this final rule.

Comment: One commenter stated that in the proposed rule's analysis under the Regulatory Flexibility Act, FSIS failed to discuss the impact that elimination of the pizza standards will have on small businesses that make meat toppings for pizzas.

Response: The four companies that supply most of the meat toppings, such as pepperoni, sausage, and chopped meat, to both major and contract pizza manufacturers are large businesses. There are some small regional companies that supply meat toppings to regional manufacturers. However, this final rule is not likely to have a significant economic impact on these small businesses. Once the standards are rescinded, FSIS has no information to indicate that in the absence of the minimum meat content requirement prescribed by the standards companies will significantly reduce the amount of meat or poultry in products identified as "pizza". As discussed above, companies are likely to continue to manufacture pizzas with an amount of meat that consumers desire because if they do not they will lose their market share to companies that do. Therefore, FSIS does not believe that this final rule will have an adverse impact on the small businesses that supply meat toppings for packaged pizza products.

The Final Rule

As proposed, FSIS is rescinding the regulatory standards of identity for pizza by removing 9 CFR 319.600 from the federal meat inspection regulations. In addition, the Agency is amending 9 CFR 317.8 and 9 CFR 381.129 by adding new paragraphs (b)(40) and (f), respectively, to require that the labeling of meat or poultry products identified as "pizza" that contain a meat or poultry component as part of the product name convey the percent of the meat or poultry in the product in a parenthetical statement contiguous to the ingredients statement. The percentage of meat or poultry in the product must be calculated on the weight of the cooked, dried, or cured meat or poultry in the product (as opposed to the weight of the raw meat or poultry) in relation to all components of the product. This labeling requirement will expire three years after the effective date of this rule. Pizza manufacturers are permitted to exhaust their remaining packaging inventory before they will be required to comply with the new labeling requirement.

Executive Order 12866 and Unfunded Mandates Reform Act

I. Executive Order 12866: Cost-benefit Analysis

This action has been reviewed for compliance with Executive Order (EO) 12866. EO 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when a regulation is necessary, to select the regulatory approach that maximizes net benefits (including potential economic, environmental, public health and safety, and other advantages, distributive impacts, and equity). We have determined that this final rule maximizes net benefits to consumers by removing the standard of identity for "pizza with meat" and "pizza with sausage."

EO 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues. This final rule has been designated as non-significant as defined by EO 12866 and therefore has not been reviewed by the Office of Management and Budget.

II. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4), requiring cost-benefit and other analyses, in section 1531 (a) defines a significant rule as "a Federal mandate that may result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100,000,000 (adjusted annually for inflation) in any 1 year." This final rule is not a significant rule under the Unfunded Mandates Reform Act.

III. Industry Profile

The meat and poultry pizza industry affected by this final rule consists of manufacturers who produce refrigerated pizzas, frozen pizzas, pizza kits, and mixes. Because frozen pizzas are the dominant products of this industry, making up 99 percent of the affected market, FSIS is focusing on this segment of the industry in this analysis.

It is estimated that there are about 155 manufacturers of frozen pizzas [1] (manufacturers of both brand and private label frozen pizzas) and these consist of 6 major manufacturers, 20 private-label manufacturers, and approximately one hundred twenty nine regional contract manufacturers.[2] The major manufacturers produce brand-named frozen pizzas on a national basis and the contract manufacturers produce brand-named frozen pizzas on a regional basis. Some restaurants make pizzas, freeze them, and then sell them to the local grocery stores on a contractual basis. Finally, there are several companies, like chain supermarkets, warehouse clubs, restaurants, and franchises, that contract out the production of frozen meat pizzas to approximately 20 private label manufacturers and regional contract manufacturers.

Four major suppliers to pizza manufacturers supply meat toppings, such as pepperoni, sausage, and chopped meat, to both major and contract pizza manufacturers. There are also some small regional companies that supply meat toppings to regional manufacturers. FSIS has determined that the suppliers of meat pizza toppings will most likely not be adversely affected by the final rule because even though pizza manufacturers may reduce the amount of meat toppings on pizzas, these suppliers can still supply other markets with their meat toppings, *e.g.* deli, frozen dinners, etc. In addition, these suppliers offer several product lines of pizza toppings other than meat, and they may experience an increase in demand for these other toppings. The agency believes, however, that as a direct result of the final rule, the overall demand for frozen pizzas will increase, and therefore the total demand for pizzas with meat toppings will also increase.

IV. Benefits

The final rule removes the standard of identity for meat and sausage pizza and requires that for a 3-year period, the labeling of products identified as pizza that lists a meat or poultry component as part of the product name will bear a statement that conveys the percent of meat or poultry in the product. The percentage statement must appear contiguous to the ingredients statement.

The following sections contain qualitative descriptions of consumer and manufacturer benefits that will ensue from eliminating the meat and sausage pizza standards of identity.

A. Consumer Benefits

The final rule will allow consumers to choose from a greater variety of meat and poultry pizzas, some of which may have improved nutritional profiles. Consumers will have a greater opportunity to improve their diets, should they desire to do so, because manufacturers will now be able to market meat and poultry pizzas that contain less meat or poultry and may contain non-meat toppings such as soy-based toppings,[3] and other innovative toppings that contain a lesser amount of meat than the amount of meat (12% cooked or 15% raw) that they are currently required to contain.

Consumers may also benefit because they may be able to purchase less costly meat and poultry pizzas. In addition, some consumers may be willing to pay more for some pizzas if they perceive that these meat and poultry pizzas are healthier than other pizzas. In either case, consumers will benefit because both the low and high end of the market can be expanded.

Under the final rule, consumers will also be protected from any misrepresentations of the amount of meat or poultry contained in pizzas. Percentage labeling of meat and poultry in pizzas, which is required for the next three years, will benefit those consumers who have come to expect a certain amount of meat or poultry on pizzas (*i.e.*, consumers who rely on standards) by allowing them to become familiar with and accustomed to a variation in meat or poultry amount on pizzas. Percentage labeling will also help reduce any confusion consumers may experience when they are comparing the amounts of meat or poultry in pizzas. During the 3-year period, consumers will be able to reduce their search costs when comparing pizzas because when selecting meat or poultry pizzas, they will be able to readily ascertain the amount of meat or poultry in different products. Consumers will be able to make choices consistent with their desire to have more or less meat or poultry on pizzas, and the percentage labeling will help them make accurate selections.

Finally, consumers, who live in areas where there are very few restaurants, or in areas where the restaurants do not sell pizzas, or in areas where pizza delivery is limited, will benefit because they will have access to a greater variety of non-traditional pizzas in their local supermarkets.

B. Manufacturer Benefits

Manufacturers of pizzas containing meat or poultry will benefit from the final rule because the elimination of the traditional FSIS pizza standards of identity will make them more competitive with non-meat and non-poultry containing pizza producers and retail outlets. Currently, manufacturers of FDA-regulated pizzas and pizzas sold by restaurants and carry out/delivery services, whether frozen or fresh, are able to experiment with innovative recipes and ingredient profiles, in offering consumers new products. These innovative pizzas that are sold in retail stores need not contain cheese or tomato sauce, as FSIS requires.

Manufacturers of non-traditional pizzas will potentially experience an increase in sales and therefore revenues, when they achieve economies of scale while producing a large variety of these pizzas. Since the manufacturers will not be restricted to manufacturing a prescribed recipe pizza, they can become more innovative and create new markets by offering new products and mass producing them. Also, these manufacturers can use less costly ingredients and eliminate or reduce certain ingredients, thereby offering more economically priced meat and poultry pizzas. For some manufacturers, this may increase their market share and revenues.

[1] Final rule affects all meat and poultry pizzas produced in federally inspected establishments.

[2] The exact number of regional contract manufacturers is unknown.

[3] One large manufacturer has begun producing Smart Pizza for the school lunch program. Smart Pizza is the first of its kind to utilize soy protein. By utilizing soy in the pizzas, sodium is reduced by up to 22 percent and total fat is lowered by as much as 35 percent.

V. Costs

A. Pre-printed Package Labels

This final rule does not mandate changes in the way meat or poultry products are produced. However, it does impose a new labeling requirement, for a limited time, on firms that manufacture and market products identified as pizzas that list meat or poultry components as part of the product name. When this rule becomes effective, all companies that produce products identified as pizzas that list a meat or poultry component as part of the product name will be required to modify their product labels by adding a statement contiguous to the ingredients statement that states the percent of meat or poultry in the product. Companies must consequently redesign their product labels by adding the required information to their existing label designs, or by applying a separate sticker with the required information to their existing labels. FSIS will permit companies to use their remaining packaging inventory before they will be required to comply with the new labeling requirement so that they will not have to discard any unused packaging.

Manufacturing of pre-printed packaging is generally contracted out to third-party firms. Costs to redesign product labels or add information to existing label designs are one-time costs and include costs associated with internal administrative activities, assessing the meat or poultry amounts, altering the graphic design, conducting prepress activities, and changing engraving plates or cylinders.[4]

1. One-Time Costs

FDA's Labeling Cost Model was originally developed by researchers at RTI International for various consumer food products and was adapted for egg products, which are primarily shipped to foodservice and further food manufacturers. RTI adapted the model to determine the cost of the new regulation of placing the statements "keep refrigerated" or "keep frozen" on all egg products that require special handling to maintain their wholesome condition. Additionally such statements had to be printed on the principal display panel of the product. In determining the cost of the proposed egg products rule, the model was used to determine the cost of placing refrigeration labels, the cost of the labels, and the cost of the labeling equipment needed and the average size of the containers requiring the labels. FSIS believes that this is a reasonable and valid model to use to estimate the cost of the final rule for changing the labels on frozen meat and poultry pizzas.

Using the FDA Labeling Cost Model, the following table provides the costs associated with changing labeling information for frozen and refrigerated pizzas packaging using the offset lithography printing method [5] for each universal product code (UPC) that needs to be changed. A UPC is a unique code assigned to every consumer package good and is read by a scanner when purchased.[6]

TABLE 1.—ONE-TIME COSTS TO CHANGE LABELS FOR FROZEN AND REFRIGERATED PIZZAS, KITS, AND MIXES USING OFF-SET LITHOGRAPHY PRINTING METHOD

Cost Type	Per UPC Costs		
	Low	Medium	High
Administrative	$132	$308	$484
Graphic Design ...	330	495	660
Total	462	803	1,144

Source: FDA Labeling Cost Model (Muth, Gledhill, and Karns, 2001).
[1] Estimated for 2001.

It is estimated that the cost per UPC will range from a low of $462 to a high of $1,144, with the more likely cost being $803 [7] as depicted in the above table.

In 2001, there were 1,603 UPC's associated with refrigerated and frozen pizzas including a small percentage of pizza kits and mixes, of which 1,042 were from brand name labels and 561 were from private labels. When all these costs are considered, the estimated one-time cost to modify pre-printed pizza packaging labels for 1,603 UPC, as shown in the table below is $741 thousand ($462 × 1,603 UPCs) to $1.8 million ($1,144 × 1,603 UPC),[8] with the more likely cost being $1.3 million ($803 × 1,603 UPCs).

TABLE 2.—ONE-TIME COSTS, FROZEN AND REFRIGERATED PIZZAS, KITS, AND MIXES FOR ESTIMATED 1,603 UPC CHANGES [1]

Cost Type	For Estimated 1,603 UPC Changes		
	Low	Medium	High
Administrative	$211,636	$493,636	$775,997
Graphic Design	529,089	793,634	1,058,178
Total	740,725	1,287,270	1,834,175

Source: FDA Labeling Cost Model (Muth, Gledhill, and Karns, 2001).
[1] Estimated for 2001

[4] In this analysis, there will be no costs associated with assessing the meat or poultry contents of pizzas because companies will be producing meat and poultry pizzas based on a formula. The final rule requires companies to calculate the weight of the meat or poultry toppings in relation to all components of the pizzas, which FSIS believes will result in no new incremental costs. There will not be any prepress activities and changing the engraving plates costs because these costs will be incurred during their normal business cycle.

[5] The FDA Labeling Cost Model assumes that either the offset lithography or flexography printing method will be used. In this analysis the offset lithography printing method is assumed to be used because of its relative advantages in quality, simplicity, and cost. The complexity of the label change determines the level of effort for artwork, stripping or image assembly, and engraving. It also determines the number of plates or cylinders that must be modified or replaced. Typically, when companies use offset lithography printing, many companies engrave new lettering onto an existing printing plate to save time and resources. Other companies, however, order new printing plates regardless of how minor the line copy change may be.

[6] UPC is a 10 digit code where the first five digits are assigned to the vendor and the last 5 digits are specific to the item.

[7] For each component of cost in this model, RTI obtained a range of estimates for each printing method. The lowest of these estimates is considered the limit of the low range, and the highest of the estimates is considered the limit of the high range. The low and high range of total cost is calculated by adding together all of the low and high range estimates of each component cost, so the low and high range estimates of this model are unlikely.

[8] Source: Muth, M.K., E.C. Gledhill, and S.A. Karns. 2001. "FDA Labeling Cost Model." Prepared for the U.S. Department of Health and Human Services. Research Triangle Park, NC: RTI.

2. Annual Costs

a. *Administrative.*

The total cost of administrative activities is the dollar value of the incremental effort expended in order to comply with the final rule. Administrative costs consist of activities such as interpreting the rule in relation to the firm's products, determining the scope and coverage related to product labels, establishing a corporate position, formulating a method for compliance, and managing the compliance method.

TABLE 3.—TOTAL ANNUAL COSTS OF FROZEN, REFRIGERATED PIZZAS, KITS, AND MIXES [1]

Year	Cost level	Admin cost	Graphic design cost	Total cost	Disc factor 7%	Total disc cost
1	Low	$211,636	$529,089	$740,725	0.93	$688,874
	Medium	493,816	793,634	1,287,450		1,197,329
	High	775,997	1,058,178	1,834,175		1,705,783

[1] Costs are over a three year period, even though the industry does not incur costs during the second and third year.

FSIS estimates that the administrative costs over the three-year period of compliance for the industry will range between $212 thousand and $776 thousand, ($197 thousand and $722 thousand, discounted at the 7% rate) [9] as depicted in Table 3, with the mid-point being at $494 thousand and the per company cost being $3,186 at the mid-point ($493,816/155 firms). These administrative costs of changing labels for pre-printed packages will only be incurred in the first year of the rule.

b. Graphic Design

The graphic design costs are being counted as a direct cost of the final rule, range from $529 thousand to $1.1 million, with the mid-point being at $794 thousand, as depicted in Table 3, and the per company cost is $5,120 at the mid-point ($793, 634/155 firms). The cost depends upon the type of printing processes used, the complexity of the label change, and the length of the compliance period. The graphic design costs will be incurred in the first year only, and no additional costs are expected because companies will need to print labels regardless of whether this rule is promulgated.

c. Stickers

Companies will also have the option of supplying the required information by applying a separate sticker to existing product labels. It should be noted that the meat and poultry pizza manufacturers of brand-name and private-label pizzas who regularly use stickers to convey product information already incur these costs. Thus, these costs are not expected to be a direct effect of the final rule for all meat and poultry pizza manufacturers. Table 4 depicts the costs of changing and applying stickers to pizza packages for 2,068 UPC,[10] ranging from a low of $6.9 million to a high of $18 million, with the mid-point being at $12.6 million.

TABLE 4.—TOTAL INDUSTRY COSTS ASSOCIATED WITH USING INDIVIDUAL STICKERS TO MODIFY PRODUCT LABELING [1]

Cost type	Low	Medium	High
Administrative	$273,009	$637,021	$1,001,033
Graphic Design	$682,523	$1,023,784	$1,365,045
Stickers	$5,926,137	$10,981,288	$15,654,141
Total	$6,881,669	$12,642,093	$18,020,219

Source: FDA Labeling Cost Model (Muth, Gledhill, and Karns, 2001).
[1] Estimated for 2001.

The use of pre-printed stickers to modify the product labels also has recurring labor costs, assuming that the stickers are manually applied. Estimated sticker application costs range from $0.014 to $0.034 per package[11], which is included in the cost for stickers given in Table 4, ranging from $6 million to $16 million, with the mid-point being $11 million. Stickers' application costs comprised 87 percent of the total costs for stickers.

In most cases, FSIS believes that it will not be practical for meat and poultry pizza manufacturers to use these stickers to incorporate the required information on the product label because they are small and difficult to apply. Moreover, FSIS believes that the cost of using stickers for longer than six month is unrealistic because the costs associated with stickers are expected to be higher than the alternative of printing packages. For example, the FDA Labeling Cost Model shows that the total cost of applying stickers to frozen and refrigerated pizzas as depicted in the Table 5 below is over 8 times higher than the costs of changing the labels on packages. The total costs depicted for printing stickers in the table include both labor and the one-time redesign cost.

[9] The discount factor of 7 percent is used to calculate the present worth of a future value at the end of a 3 year period.

[10] The number of UPCs increased from 1,603 for pre-printed packages to 2,068 for stickers because the FDA Labeling Cost Model assumes that the companies which use stickers will have six months to comply. In those six months, the companies will print the stickers until they are set up to print their packages. Therefore the number of UPCs will increase.

[11] Muth, Gledhill, and Karns, 2001.

TABLE 5.—FROZEN AND REFRIGERATED PIZZAS: COMPARISON OF TOTAL COSTS OF PRINTING STICKERS AND PACKAGES [1]

[In thousands]

Product category	Packages			Stickers		
	Cost level			Cost level		
	Low	Medium	High	Low	Medium	High
Frozen & refrigerated pizzas	740	1,287	1,834	6,880	12,642	17,940

Source: RTI Labeling Cost Model (Muth, Gledhill, and Karns, 2001).
[1] Estimated for 2001.

d. Labeling Approval

FSIS will generically approve the necessary modifications made to labels of existing pizza products needed to make these products compliant with the new labeling requirement. Thus, for existing pizza products, there will be no additional costs associated with the submission of labels for approval from FSIS, Also, once the three-year effective date for the labeling requirement has expired, manufacturers will be able to remove the meat or poultry content statement because the statement will be a non-mandatory feature. Therefore, there will be no incremental cost attributed to the final rule.

3. Other Costs

Other costs associated with the rule are voluntary. Companies that chose to develop and market new styles of pizza will incur the normal costs of production, labeling, and marketing as before. Labels for new pizza products may require formal approval from FSIS if they do not qualify for generic approval. Thus, manufacturers of new pizza products may incur costs to obtain formal label approval from FSIS. Companies that chose to identify products with a descriptive name rather than as a "pizza", *e.g.*, "sausage, cheese, and sauce on a crust," will not be subject to the meat or poultry content labeling requirement.

Additionally, when the three-year effective date for the final rule has elapsed, companies that chose to remove the percent meat or poultry statement from their product labels will incur similar administrative and graphic design costs to modify their labels should they choose to remove this statement. However, companies will remove the percent meat or poultry statement from their product labels, if they believe that the benefits exceed the costs of removing the statement. FSIS does not believe that this is a cost of the final rule.

4. Total Costs

The total cost associated with the requirement that the percent of meat or poultry be conveyed on the labeling of meat or poultry pizzas is estimated at the mid-range point of $1,287,270 industry-wide or $8,305 (administrative cost—$3,185 and graphic design costs—$5,120) per firm for the three-year period. The actual costs will be lower than the estimated total costs because the analysis included the cost of changing the labels for all pizzas including cheese and vegetable and cheese pizzas that are not affected by the final rule. The final rule will be cost-beneficial because FSIS believes that the non-quantifiable benefits of providing consumers a greater variety of meat pizzas that have varied and potentially improved nutritional profiles and protecting consumers from any potential misrepresentation of the amount of meat and poultry content of pizzas justifies the cost to companies of providing the percent label of meat and poultry content on pizzas.

VI. Effect on Small Entities

FSIS has examined the economic implications of the final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires that the regulatory options that would lessen the economic effect of the rule on small entities be analyzed. FSIS has determined that the final rule will not have a significant impact on a substantial number of small entities.

FSIS has estimated the annualized cost impact on 149 small entities potentially affected by the final rule. The annualized costs to small meat and poultry pizza manufacturers are estimated to be approximately $8,640 over three years, or $2,880 annualized. The annualized cost of this final rule does not exceed $6,711 which equates to 1 percent of the average small entity annual revenue, and therefore the impact of the final rule is considered not significant.

In addition, the cost of modifying the label is offset by the fact that manufacturers will be permitted to exhaust their current inventory of pre-printed packages and therefore will not experience any additional cost of retiring unused packages.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule: (1) Preempts State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule. However, the administrative procedures specified in 9 CFR 306.5, 381.35, and 590.320 through 590.370 must be exhausted before any judicial challenge of the application of the provisions of this rule, if the challenge involves any decision of an FSIS employee relating to inspection services provided under the FMIA or PPIA.

Paperwork Requirements

FSIS has reviewed the paperwork and recordkeeping requirements in this final rule in accordance with the Paperwork Reduction Act and has determined that the paperwork requirements have already been accounted for in the Marking, Labeling, and Packaging Material information collection approved by the Office of Management and Budget (OMB). The OMB approval number for the Marking, Labeling, and Packaging Material information collection is 0583–0092.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this final rule, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS web page located at *http://www.fsis.usda.gov.* The update is

used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience than would otherwise be possible.

For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the "Constituent Update" page on the FSIS Web site at *http://www.fsis.usda.gov/oa/update/update.htm*. Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

List of Subjects

9 CFR Part 317

Food labeling, Meat inspection.

9 CFR Part 319

Food grades and standards, Food labeling, Meat inspection.

9 CFR Part 381

Food labeling, Poultry and poultry products.

■ For the reasons stated in the preamble, FSIS amends 9 CFR Chapter III as follows:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

■ 1. The authority citation for part 317 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

■ 2. Section 317.8 is amended by adding a new paragraph (b)(40) to read as follows:

§ 317.8 False or misleading labeling or practices generally; specific prohibitions and requirements for labels and containers.

(b) * * *

(40) Products identified as "pizza" that list a meat component as part of the product name must bear a parenthetical statement contiguous to the ingredients statement that conveys the percent of the cooked, cured, or dried meat component in the product. This paragraph shall expire on October 30, 2006.

* * * * *

PART 319—DEFINITIONS AND STANDARDS OF IDENTITY OR COMPOSITION

■ 3. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

§ 319.600 Removed and Reserved]

■ 4. Section 319.600 is removed and reserved.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

■ 5. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

■ 6. Section 381.129 is amended by adding a new paragraph (f) to read as follows:

§ 381.129 False or misleading labeling or containers.

* * * * *

(f) Products identified as "pizza" that list a poultry component as part of the product name must bear a parenthetical statement contiguous to the ingredients statement that conveys the percent of the cooked, cured, or dried poultry component in the product. This paragraph shall expire on October 30, 2006.

Done at Washington, DC: July 28, 2003.

Linda Swacina,

Acting Administrator.

[FR Doc. 03–19505 Filed 7–30–03; 8:45 am]

BILLING CODE 3410–DM–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

RIN 3150–AH21

General License for Import of Major Nuclear Reactor Components

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is confirming the effective date of August 11, 2003, for the direct final rule that appeared in the **Federal Register** of May 28, 2003 (68 FR 31587). This direct final rule amended the NRC's regulations to issue a general license for the import of major components of utilization facilities for end-use at NRC-licensed reactors. This document confirms the effective date of the direct final rule.

DATES: The effective date of August 11, 2003, is confirmed for this direct final rule.

ADDRESSES: Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, Room O–1F23, 11555 Rockville Pike, Rockville, MD. These same documents may also be viewed and downloaded electronically via the rulemaking Web site (*http://ruleforum.llnl.gov*). For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher (301) 415–5905; email: *CAG@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Grace H. Kim, Senior Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–3605, email *GHK@nrc.gov*.

SUPPLEMENTARY INFORMATION: On May 28, 2003 (68 FR 31587), the NRC published in the **Federal Register** a direct final rule amending its regulations in 10 CFR Part 110 to issue a general license for the import of major components of utilization facilities for end-use at NRC-licensed reactors. The amendment facilitates imports of major components of domestic nuclear reactors in furtherance of protection of public health and safety and reduces unnecessary regulatory burdens related to the maintenance of NRC-licensed reactors. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on the date noted above. The NRC did not receive any comments that warranted withdrawal of the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 25th day of July, 2003.

For the Nuclear Regulatory Commission.

Betty K. Golden,

Acting Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 03–19489 Filed 7–30–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–66–AD; Amendment 39–13248; AD 2003–15–05]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain EMBRAER Model EMB–120 series airplanes, that currently requires repetitive visual checks or inspections to verify that the flight idle stop system circuit breakers are closed, and functional tests to determine if the backup flight idle stop system is operative. This amendment requires modification of the secondary flight idle stop system (SFISS), which terminates the repetitive actions. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent inadvertent or intentional operation with the power levers below the flight idle stop during flight for airplanes that are not certificated for in-flight operation, which could result in engine overspeed and consequent loss of controllability of the airplane.

DATES: Effective September 4, 2003.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of September 4, 2003.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of September 23, 1992 (57 FR 40838, September 8, 1992).

ADDRESSES: The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 92–16–51, amendment 39–8355 (57 FR 40838, September 8, 1992), which is applicable to certain EMBRAER Model EMB–120 series airplanes, was published as a second supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on May 15, 2002 (67 FR 34641). That action proposed to continue to require repetitive visual checks or inspections to verify that the flight idle stop system circuit breakers are closed, and functional tests to determine if the backup flight idle stop system is operative. That action proposed to remove one airplane from the applicability, and add new inspections and corrective actions if necessary. Additionally, that action proposed to require modification of the secondary flight idle stop system (SFISS), which would terminate the repetitive actions.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received to the second supplemental NPRM.

Request To Withdraw Proposed AD

One commenter states that an AD addressing the in-flight reversing issue is unjustified and inappropriate, and suggests that the proposed AD be withdrawn. The commenter asserts that an AD is unjustified because the subject unsafe condition is a pilot training issue and that, by adding further complexity to the propeller reversing controls, the proposed AD would only increase the opportunities for mechanical malfunction instead of improving safety. The commenter suggests that, instead of issuing an AD to address the unsafe condition, the FAA require operators to provide proper pilot training and oral testing specifically addressing the in-flight reversing issue.

The FAA does not agree that the AD be withdrawn or that the proposed actions would increase the opportunities for mechanical malfunction of the SFISS. We do not consider this unsafe condition to be simply a result of inadequate pilot training. Operational experience has shown that the existing SFISS is vulnerable to certain maintenance-originated failure modes, which could affect the operational reliability of the system. In addition, such failure modes do not result in a visual indication to the flightcrew of an inoperable condition. We find that these reliability concerns necessitate mandating installation of a more reliable SFISS design, one that also provides flightcrews with a real-time indication of the system's operability. We have determined that this design change adds more reliability and does not add significant complexity to the SFISS. Therefore, we find it necessary to issue the AD as proposed.

Request To Add Service Information for Certain Repair Procedures

The other commenter, the manufacturer, states that EMBRAER Service Bulletins 120–76–0018 and 120–76–0022 will be revised to include procedures for the bellcrank bolt hole repair provided in paragraph (e) of the second supplemental NPRM. The commenter also states that the revised service bulletins would eliminate the need for operators to contact the FAA or the Departmento de Aviacao Civil (DAC) (or its delegated agent) for approved methods of accomplishing the repair.

We agree. Since the issuance of the second supplemental NPRM, the manufacturer has issued EMBRAER Service Bulletins 120–76–0018, Change 06, dated August 9, 2002; and 120–76–0022, Change 03, dated August 9, 2002. The second supplemental NPRM specified that the FAA or DAC (or its delegated agent) be contacted for an approved method of compliance for the proposed repair. We have reviewed and approved these revised service bulletins and find that they do contain the appropriate repair instructions. Accordingly, we have revised paragraph (e) of this final rule to add those revised service bulletins as additional options for accomplishing the repair. However, we have not removed the provision for contacting the FAA or DAC (or its delegated agent) from that paragraph. Changing the requirements in such a manner would require us to issue a third supplemental NPRM, and we find that further delay in issuing this AD would be inappropriate in light of the identified unsafe condition.

Request To Remove Reference to Certain Service Information

The same commenter suggests that reference to EMBRAER Service Bulletin 120–76–0015 be removed from the proposed requirements because it is applicable to only one airplane (serial number (S/N) 120068), currently

operated under Brazilian registry, and therefore, does not affect the U.S. fleet.

We do not agree. We consider that those requirements with reference to Service Bulletin 120–76–0015 are necessary to be included in this AD to ensure that the unsafe condition is addressed in the event that the subject airplane is imported and placed on the U.S. Register in the future. No change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the second supplemental NPRM regarding that material.

Labor Rate Increase

After the second supplemental NPRM was issued, we reviewed the figures we use to calculate the labor rate to do the required actions. To account for various inflationary costs in the airline industry, we find it appropriate to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

Cost Impact

The FAA estimates that 230 EMBRAER Model EMB–120 series airplanes of U.S. registry will be affected by this AD.

The actions that are currently required by AD 92–16–51 take approximately 5 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of that AD on U.S. operators is estimated to be $69,000, or $300 per airplane, per inspection cycle.

The approximate cost, at an average labor rate of $65 per work hour, for the modifications required by this AD, are listed in the following table:

ESTIMATED COSTS

Service bulletin	Work hours	Parts cost	Cost per airplane
120–76–0015:			
Part I	5	$4,376	$4,701
Part II	3	14,331	14,526
Part III	1	53	118
120–76–0018:			
Part I	130	22,218	30,668
Part II	1	(1)	(1)
120–76–0022:			
Part I	3	14,456	14,651
Part II	3	2,465	2,660
Part III	3	14,525	14,720
Part IV	1	53	118

[1] Cost varies with configuration.

Therefore, based on the figures included in the table above, the cost impact of the modification required by this AD on U.S. operators is estimated to range from $118 to $30,668 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–8355 (57 FR 40838, September 8, 1992), and by adding a new airworthiness directive (AD), amendment 39–13248, to read as follows:

2003–15–05 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–13248. Docket 2000–NM–66–AD. Supersedes AD 92–16–51, Amendment 39–8355.

Applicability: Model EMB–120 series airplanes, certificated in any category; serial number 120004, and serial numbers 120006 through 120354 inclusive.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent or intentional operation with the power levers below the flight idle stop during flight for airplanes that are not certificated for in-flight operation, which could result in engine overspeed and consequent loss of controllability of the airplane, accomplish the following:

Restatement of Certain Requirements of AD 92–16–51

Checks/Inspections

(a) For all airplanes: Within 5 days after September 23, 1992 (the effective date of AD 92–16–51, amendment 39–8355), and thereafter prior to the first flight of each day until the requirements of paragraph (d) of this AD have been accomplished, accomplish paragraph (a)(1) or (a)(2) of this AD, as applicable:

(1) For airplanes on which an inspection window has been installed on the left lateral console panel that permits visibility of the flight idle stop solenoid circuit breakers: Using an appropriate light source, perform a visual check to verify that both "FLT IDLE STOP SOL" circuit breakers CB0582 and CB0583 for engine 1 and engine 2 are closed.

Note 2: This check may be performed by a flightcrewmember.

Note 3: Instructions for installation of an inspection window can be found in EMBRAER Information Bulletin 120–076–0003, dated November 19, 1991; or EMBRAER Service Bulletin 120–076–0014, dated July 29, 1992.

(2) For airplanes on which an inspection window has not been installed on the left lateral console panel: Perform a visual inspection to verify that both "FLT IDLE STOP SOL" circuit breakers CB0582 and CB0583 for engine 1 and engine 2 are closed.

(b) As a result of the check or inspection performed in accordance with paragraph (a) of this AD: If circuit breakers CB0582 and CB0583 are not closed, prior to further flight, reset them and perform the functional test specified in paragraph (c) of this AD.

Functional Test

(c) Within 5 days after September 23, 1992, and thereafter at intervals not to exceed 75 hours time-in-service, or immediately following any maintenance action where the power levers are moved with the airplane on jacks, until the requirements of paragraph (d) of this AD have been accomplished, conduct a functional test of the backup flight idle stop system for engine 1 and engine 2 by performing the following steps:

(1) Move both power levers to the "MAX" position.

(2) Turn the aircraft power select switch on.

(3) Open both "AIR/GROUND SYSTEM" circuit breakers CB0283 and CB0286 to simulate in-flight conditions with weight-off-wheels. Wait for at least 15 seconds, then move both power levers back toward the propeller reverse position with the flight idle gate triggers raised. Verify that the power lever for each engine cannot be moved below the flight idle position, even though the flight idle gate trigger on each power lever is raised.

(4) If the power lever can be moved below the flight idle position, prior to further flight, restore the backup flight idle stop system to the configuration specified in EMBRAER 120–076–0009, Change No. 4, dated November 1, 1990; and perform a functional test.

Note 4: If the power lever can be moved below flight idle, this indicates that the backup flight idle stop system is inoperative.

(5) Move both power levers to the "MAX" position.

(6) Close both "AIR/GROUND SYSTEM" circuit breakers CB0283 and CB0286. Wait for at least 15 seconds, then move both power levers back toward the propeller reverse position with the flight idle gate triggers raised. Verify that the power lever for each engine can be moved below the flight idle position.

(7) If either or both power levers cannot be moved below the flight idle position, prior to further flight, inspect the backup flight idle stop system and the flight idle gate system, and accomplish either paragraph (c)(7)(i) or (c)(7)(ii) of this AD, as applicable:

(i) If the backup flight idle stop system is failing to disengage with weight-on-wheels, prior to further flight, restore the system to the configuration specified in EMBRAER Service Bulletin 120–076–0009, Change No. 4, dated November 1, 1990.

(ii) If the flight idle gate system is failing to open even though the trigger is raised, prior to further flight, repair in accordance with the EMBRAER Model EMB–120 maintenance manual.

(8) Turn the power select switch off. The functional test is completed.

New Requirements of This AD

Terminating Action

(d) Within 18 months or 4,000 flight hours after the effective date of this AD, whichever occurs earlier, modify the secondary flight idle stop system (SFISS), as required by paragraph (d)(1), (d)(2), or (d)(3) of this AD; as applicable. Accomplishment of the modification constitutes terminating action for the requirements of this AD.

(1) For airplanes having serial number 120004, and serial numbers 120006 through 120067 inclusive, and 120069 through 120344 inclusive; as listed in EMBRAER Service Bulletin 120–76–0018, Change 04, dated March 30, 2001: Accomplish the actions required by either paragraph (d)(1)(i) or (d)(1)(ii) of this AD, as applicable.

(i) If the actions specified by EMBRAER Service Bulletin 120–76–0018, Change 01, dated September 9, 1999; or Change 02, dated November 22, 1999; have not been accomplished: Modify the SFISS per the Accomplishment Instructions of EMBRAER Service Bulletin 120–76–0018, Change 03, dated May 26, 2000; or Change 04, dated March 30, 2001; or

(ii) If the actions specified by EMBRAER Service Bulletin 120–76–0018, Change 01 or Change 02 have been accomplished: Perform additional inspections per Part II of the Accomplishment Instructions of EMBRAER Service Bulletin 120–76–0018, Change 04.

(2) For the airplane having serial number 120068: Modify the SFISS per the Accomplishment Instructions of EMBRAER Service Bulletin 120–76–0015, Change 06, dated October 3, 2000.

(3) For airplanes having serial numbers 120345 through 120354 inclusive: Modify the SFISS per the Accomplishment Instructions of EMBRAER Service Bulletin 120–76–0022, Change 01, dated October 9, 2000; or Change 02, dated February 8, 2001.

Note 5: This AD references the following service information for applicability, inspection, and modification information: EMBRAER Service Bulletin 120–76–0015, Change 06, dated October 3, 2000; EMBRAER Service Bulletin 120–76–0018, Change 01, dated September 9, 1999; EMBRAER Service Bulletin 120–76–0018, Change 02, dated November 22, 1999; EMBRAER Service Bulletin 120–76–0018, Change 04, dated March 30, 2001; EMBRAER Service Bulletin 120–76–0022, Change 01, dated October 9, 2000; and EMBRAER Service Bulletin 120–76–0022, Change 02, dated February 8, 2001. In addition, this AD specifies compliance time requirements beyond those included in Brazilian airworthiness directive 90–07–04R4, dated October 4, 1999; and the service information. Where there are differences between this AD and previously referenced documents, this AD prevails.

Note 6: Accomplishment of the requirements of paragraph (d) of this AD does not remove or otherwise alter the requirement to perform the repetitive (400-flight-hour) CAT 8 task checks specified by the Maintenance Review Board.

Corrective Actions

(e) During any visual check or inspection required by this AD, if any countersunk-head

bolt was not used to attach the power control cable to the bellcrank, or if any hex-head bolt was used to attach the cable to the bellcrank: Prior to further flight, repair per a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Departmento de Aviacao Civil (DAC) (or its delegated agent). Accomplishment of the repair per EMBRAER Service Bulletin 120–76–0018, Change 06, dated August 9, 2002; or EMBRAER Service Bulletin 120–76–0022, Change 03, dated August 9, 2002; as applicable; is acceptable for compliance with the requirements of this paragraph.

Alternative Methods of Compliance

(f)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously for paragraphs (a), (b), and (c) of AD 92–16–51, are considered to be approved as alternative methods of compliance with the inspection requirements of paragraphs (a), (b), and (c) of this AD. No alternative methods of compliance have been approved per AD 92–16–51 as terminating action for this AD.

Note 7: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(g) Special flight permits may be issued per sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) Unless otherwise specified by this AD, the actions shall be done in accordance with the applicable EMBRAER service bulletins listed in Table 1 of this AD as follows:

TABLE 1.—APPLICABLE SERVICE BULLETINS

Service bulletin	Page numbers	Change number shown on page	Date shown on page
120–076–0009, Change No. 4, November 1, 1990	1–87	4	November 1, 1990
120–76–0015, Change 06, October 3, 2000	1–44	06	October 3, 2000
120–76–0018, Change 03, May 26, 2000	1–117	03	May 26, 2000
120–76–0018, Change 04, March 30, 2001	1–117	04	March 30, 2001
120–76–0018, Change 06, August 9, 2002	1, 2, 7–10, 13–26, 31, 32, 115–119	06	August 9, 2002
	5, 6	04	March 30, 2001
	3, 4, 11, 12, 27–30, 33–114	03	May 26, 2000
120–76–0022, Change 01, October 9, 2000	1–43	01	October 9, 2000
120–76–0022, Change 02, February 8, 2001	1, 2, 43	02	February 8, 2001
	3–42	01	October 9, 2000
120–76–0022, Change 03, August 9, 2002	1	02	February 8, 2001
	2, 8, 14, 15, 17–19, 27, 28, 34–36, 42–45	03	August 9, 2002
	3–7, 9–13, 16, 20–26, 29–33, 37–41	01	October 9, 2000

(1) The incorporation by reference of EMBRAER service bulletins 120–76–0015, Change 06; 120–76–0018, Change 03; 120–76–0018, Change 04; 120–76–0018, Change 06; 120–76–0022, Change 01; 120–76–0022, Change 02; and 120–76–0022, Change 03; as stated in the table above; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of EMBRAER Service Bulletin 120–076–0009, Change No. 4, dated November 1, 1990, was approved previously by the Director of the Federal Register as of September 23, 1992 (57 FR 40838, September 8, 1992).

(3) Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 8: The subject of this AD is addressed in Brazilian airworthiness directive 90–07–04R4, dated October 4, 1999.

Effective Date

(i) This amendment becomes effective on September 4, 2003.

Issued in Renton, Washington, on July 22, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–19055 Filed 7–30–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. FAA–02–ANM–07]

Establishment of Class E5 Airspace at Afton Municipal Airport, Afton, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will establish Class E5 airspace at Afton, WY. Recently developed Area Navigation (RNAV)/Global Positioning System (GPS) Standard Terminal Arrival Routes (STARs) and Departure Procedures (SIDs) have made this proposal necessary. The establishment of Class E5 airspace is for containment of aircraft executing Instrument Flight Rule (IFR) operations at Afton Municipal Airport within controlled airspace. The intended effect of this action is to provide an increased level of safety for aircraft executing IFR operations between the terminal and en route phase of flight at Afton Municipal Airport, Afton, WY.

EFFECTIVE DATE: 0901 Coordinated Universal Time (UTC), October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Ed Haeseker, ANM–520.7, Federal Aviation Administration, Docket No. 02–ANM–07.

SUPPLEMENTARY INFORMATION:

History

Effective November 29, 2002, the FAA proposed to amend Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by establishing Class E5 airspace at Afton Municipal Airport, Afton, WY. This was necessary to provide an increased level of safety for aircraft executing IFR operations between the terminal and en route phase of flight at Afton Municipal Airport, Afton, WY. Interested parties were invited to participate in this rule making proceeding by submitting written comments on the proposal. No comments were received.

The Rule

This amendment to 14 CFR part 71, establishes Class E5 airspace at Afton, WY. Class E airspace is necessary to provide adequate controlled airspace for IFR operations at Afton Municipal Airport. The FAA establishes Class E airspace where necessary to contain IFR aircraft transitioning between the terminal and en route environments. By this action, the FAA intends to provide for the safe and efficient use of the navigable airspace, and to promote safe flight operations under IFR conditions at the Afton Municipal Airport, Afton, WY.

The new Class E5 airspace will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E5 airspace areas extending upward from 700 feet above the surface of the earth, are published in Paragraph 6005, of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E5 airspace designation listed in this document will be published subsequently in the Order. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation, Incorporated by reference, navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS [AMENDED]

■ The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E5 airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM UT E5 Afton, WY [New]

Afton Municipal Airport, WY
(Lat. 42°42′41″ N., long. 110°56′32″ W.)

That airspace extending upward from 700 feet above the surface of the earth within a 6.5 mile radius of the Afton Municipal Airport, and within 2 miles either side of the 341° (355° True) bearing from the airport extending from the 6.5 mile radius to 7.5 miles north of the airport, and within 2 miles either side of the 171° (185° True) bearing from the airport extending from the 6.5 mile radius to 19.3 miles south of the airport.

Issued in Seattle, Washington on July 17, 2003.

ViAnne Fowler,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 03–19406 Filed 7–30–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15461; Airspace Docket No. 03–ACE–59]

Modifications of Class E Airspace; Beatrice, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Beatrice, NE indicates it does not comply with criteria set forth in FAA Orders. A discrepancy in the location of the Shaw nondirectional radio beacon (NDB), used in the legal description for the Beatrice, NE Class E airspace, was also detected. This action corrects the discrepancies by modifying the Beatrice, NE Class E airspace and by incorporating the location of the Shaw NDB in the Class E airspace legal description.

DATES: This direct final rule is effective on 0901 UTC, October 30, 2003.

Comments for inclusion in the Rules Docket must be received on or before September 4, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the Docket number FAA–2003–15461/ Airspace Docket No. 03–ACE–59, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Beatrice, NE. It expands the south extension of this airspace area an additional 2.4 miles to provide appropriate controlled airspace for aircraft executing the NDB–A Standard Instrument Approach Procedure (SIAP) to Beatrice Municipal Airport. It modifies the northwest extension of this airspace area by defining it with the Beatrice very high frequency omnidirectional radio range (VOR) 320° radial versus the current 325° radial. It incorporates the current location of the Shaw NDB and brings the legal description of this airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the

earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the dates specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–15461/Airspace Docket No. 03–ACE–59." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Beatrice, NE

Beatrice Municipal Airport, NE
(Lat. 40°18′05″ N., long. 96°45′15″ W.)
Beatrice VOR
(Lat. 40°18′05″ N., long. 96°45′17″ W.)
Shaw NDB
(Lat. 40°15′54″ N., long. 96°45′25″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Beatrice Municipal Airport and within 4.4 miles each side of the Beatrice VOR 320° radial extending from the 6.6-mile radius of the airport to 7 miles northwest of the VOR and within 3.1 miles each side of the 185° bearing from the Shaw NDB extending from the 6.6-mile radius of the airport to 7 miles south of Shaw NDB.

Issued in Kansas City, MO, on July 21, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–19408 Filed 7–30–03; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33–8255; 34–48204; 35–27700; 39–2409; IC–26013]

RIN 3235–AG96

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the Commission) is adopting revisions to the EDGAR Filer Manual to reflect updates to the EDGAR system made primarily to improve the functionality of the SEC's Online Forms website. The website is currently used for preparing and submitting ownership reports, Forms 3, 4, 5 and their amendments, Forms 3/A, 4/A and 5/A, required under section 16(a) of the Securities Exchange Act of 1934, generally as required by section 403 of the Sarbanes-Oxley Act of 2002. Some of the improved functionality includes the ability to list holdings of securities separately from securities transactions; facilitating the reporting of gift, phantom stock plan and similar transactions; automatic entry of the filer's address by the system based on the filer's CIK number and the ability to change the address for the filing[1]; and XML schema and stylesheet updates to support these changes. In addition, the new release will include support for extended EDGAR filing and dissemination to 6 a.m., as a trial to assess its usefulness to filers; same day acceptance and dissemination of Form 3, 4 and 5 filings and Securities Act of 1933, Rule 462(b) filings, MEF form types, received on business days on or before 10 p.m., eastern standard time; Form 8–K Items 10, 11, 12, and 13; new form types N–CSRS, N–PX and N–Q; and rescinded form types BW–2 and BW–3. The revisions to the Filer Manual reflect these changes within Volumes I, II and III, entitled "EDGAR Release 8.6 EDGARLink Filer Manual", "EDGAR Release 8.6 Filer Manual N-SAR Supplement", and "EDGAR Release 8.6 OnlineForms Filer Manual" respectively. The updated manual will be incorporated by reference into the Code of Federal Regulations.

EFFECTIVE DATE: July 31, 2003. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of July 31, 2003.

FOR FURTHER INFORMATION CONTACT: In the Office of Information Technology, Rick Heroux at (202) 942–8800; for questions concerning Investment Management company filings, Ruth Armfield Sanders, Senior Special Counsel, or Shaswat K. Das, Senior Counsel, Division of Investment Management, at (202) 942–0978; and for questions concerning Corporation Finance company filings, Herbert Scholl, Office Chief, EDGAR and Information Analysis, Division of Corporation Finance, at (202) 942–2940.

SUPPLEMENTARY INFORMATION: Today we are adopting an updated EDGAR Filer Manual (Filer Manual). The Filer Manual describes the technical formatting requirements for the preparation and submission of electronic filings through the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system.[2] It also describes the requirements for filing using modernized EDGARLink.[3]

The Filer Manual contains all the technical specifications for filers to submit filings using the EDGAR system. Filers must comply with the applicable provisions of the Filer Manual in order to assure the timely acceptance and processing of filings made in electronic format.[4] Filers should consult the Filer Manual in conjunction with our rules governing mandated electronic filing when preparing documents for electronic submission.[5]

We will implement EDGAR Release 8.6 on July 28, 2003, to improve the functionality of the SEC's Online Forms website, to support new extended EDGAR filing and dissemination hours to 6 a.m., to support same day acceptance and dissemination of Form 3, 4 and 5 filings and Securities Act of 1933, Rule 462(b) filings, MEF form types, received on business days on or before 10 p.m., to support recent rulemaking activity related to the addition of the new Form 8–K Items 10, 11, 12, and 13, new form types N–CSRS, N–PX and N–Q and rescinded form types BW–2 and BW–3. This release also includes minor updates to submission Templates 1, 2, 3, and 5, and the EDGARLink software, to allow for new exhibit types: EX–31 and EX–32 and exhibits for use with Form N–CSR (submission types N–CSR and N–CSRS): EX–99.906CERT, EX–99.CERT and EX–99.CODE ETH; to disallow the use of exhibit types, EX–99.102P3 CERT, EX–99.133 CERT, EX–99.77Q3 CERT; to disallow the use of form types BW–2 and BW–3; to allow for the use of new form types N–CSRS and N–CSRS/A (for submission of certified semi-annual shareholder report of registered management investment companies); N–PX and N–PX/A (for submission of annual report of proxy voting record of registered management investment companies); and N–Q and N–Q/A (for submission of quarterly schedule of portfolio holdings of registered management investment company if and when the Commission adopts form N–Q); and to allow for the use of Form 8–K Items 10, 11, 12, and 13.

EDGAR 8.6 supports backward compatibility of the 8.5 templates as long as the reporting requirements for specific form types have not changed. EDGAR 8.6 server software supports all of the field identifiers that were valid in the 8.5 version of the PureEdge templates. Notice of the update has previously been provided on the EDGAR filing Web site and on the Commission's public website. The discrete updates are reflected on the filing Web site and in the updated Filer Manual Volumes.

Along with adoption of the Filer Manual, we are amending Rule 301 of Regulation S–T to provide for the incorporation by reference into the Code of Federal Regulations of today's revisions. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51.

You may obtain paper copies of the updated Filer Manual at the following address: Public Reference Room, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549–0102. We will post electronic format copies on the Commission's Web site; the address for the Filer Manual is *http://www.sec.gov/info/edgar.shtml*. You may also obtain copies from Thomson Financial Inc, the paper and microfiche contractor for the Commission, at (800) 638–8241.

Since the Filer Manual relates solely to agency procedures or practice, publication for notice and comment is not required under the Administrative Procedure Act (APA).[6] It follows that the requirements of the Regulatory Flexibility Act [7] do not apply.

The effective date for the updated Filer Manual and the rule amendments is July 31, 2003. In accordance with the APA,[8] we find that there is good cause to establish an effective date less than 30 days after publication of these rules. The EDGAR system upgrade to Release 8.6 is scheduled to occur on July 26, 2003, becoming available on July 28, 2003. The Commission believes that it is necessary to coordinate the effectiveness of the updated Filer Manual with the scheduled system upgrade.

Statutory Basis

We are adopting the amendments to Regulation S–T under Sections 6, 7, 8, 10, and 19(a) of the Securities Act,[9] Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act of 1934,[10] Section 20 of the Public Utility Holding Company Act of 1935,[11] Section 319 of the Trust Indenture Act

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[1] Changes of address will be effective for that filing only. EDGAR filers are reminded of their responsibility to ensure that their address of record, as reflected in the EDGAR database, is kept current. This can be done by selecting the Information Exchange—Retrieve/Edit Data option from the EDGAR OnlineForms Website.

[2] We originally adopted the Filer Manual on July 1, 1993, with an effective date of July 26, 1993. Release No. 33–6986 (Apr. 1, 1993) [58 FR 18638]. We implemented the most recent update to the Filer Manual on April 30, 2003. *See* Release No. 33–8224 (May 7, 2003) [66 FR 24345].

[3] This is the filer assistance software we provide filers filing on the EDGAR system.

[4] *See* Rule 301 of Regulation S–T (17 CFR 232.301).

[5] *See* Release Nos. 33–6977 (Feb. 23, 1993) [58 FR 14628], IC–19284 (Feb. 23, 1993) [58 FR 14848], 35–25746 (Feb. 23, 1993) [58 FR 14999], and 33–6980 (Feb. 23, 1993) [58 FR 15009] in which we comprehensively discuss the rules we adopted to govern mandated electronic filing. *See also* Release No. 33–7122 (Dec. 19, 1994) [59 FR 67752], in which we made the EDGAR rules final and applicable to all domestic registrants; Release No. 33–7427 (July 1, 1997) [62 FR 36450], in which we adopted minor amendments to the EDGAR rules; Release No. 33–7472 (Oct. 24, 1997) [62 FR 58647], in which we announced that, as of January 1, 1998, we would not accept in paper filings that we require filers to submit electronically; Release No. 34–40934 (Jan. 12, 1999) [64 FR 2843], in which we made mandatory the electronic filing of Form 13F; Release No. 33–7684 (May 17, 1999) [64 FR 27888], in which we adopted amendments to implement the first stage of EDGAR modernization; Release No. 33–7855 (July 24, 2000) [65 FR 24788], in which we implemented EDGAR Release 7.0; Release No. 33–7999 (August 7, 2001) [66 FR 42941], in which we implemented EDGAR Release 7.5; Release No. 33–8007 (September 24, 2001) [66 FR 42829], in which we implemented EDGAR Release 8.0; Release No. 33–8224 (May 7, 2003) [66 FR 24345], in which we implemented EDGAR Release 8.5.

[6] 5 U.S.C. 553(b).

[7] 5 U.S.C. 601–612.

[8] 5 U.S.C. 553(d)(3).

[9] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

[10] 15 U.S.C. 78c, 78*l*, 78m, 78n, 78o, 78w, and 78*ll*.

[11] 15 U.S.C. 79t.

of 1939,[12] and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940;[13]

List of Subjects in 17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

Text of the Amendment

■ In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The authority citation for Part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

■ 2. Section 232.301 is revised to read as follows:

§ 232.301 EDGAR Filer Manual.

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The requirements for filers using modernized EDGARLink are set forth in the EDGAR Release 8.6 EDGARLink Filer Manual Volume I, dated July 2003. Additional provisions applicable to Form N–SAR filers and Online Forms filers are set forth in the EDGAR Release 8.6 Filer Manual Volume II N–SAR Supplement, dated July 2003, and the EDGAR Release 8.6 OnlineForms Filer Manual Volume III, dated July 2003. All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. You must comply with these requirements in order for documents to be timely received and accepted. You can obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0102 or by calling Thomson Financial Inc at (800) 638–8241. Electronic format copies are available on the Commission's Web site. The address for the Filer Manual is *http://www.sec.gov/info/edgar.shtml*. You can also photocopy the document at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

By the Commission.

Dated: July 22, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–19087 Filed 7–30–03; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 77sss.

[13] 15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 526

Intramammary Dosage Forms; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for three approved new animal drug applications (NADAs) from Pfizer, Inc., to Schering-Plough Animal Health Corp.

DATES: This rule is effective July 31, 2003.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6967, e-mail: *dnewkirk@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, has informed FDA that it has transferred ownership of, and all rights and interest in, the following three approved NADAs to Schering-Plough Animal Health Corp., 1095 Morris Ave., Union, NJ 07083:

NADA No.	Trade Name
55–069	ORBENIN DC (cloxacillin benzathine)
55–070	DARICLOX (cloxacillin sodium)
55–100	AMOXI–MAST (amoxicillin trihydrate)

Accordingly, the agency is amending the regulations in 21 CFR 526.88, 526.464b, and 526.464c to reflect the transfer of ownership.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 526

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 526 is amended as follows:

PART 526—INTRAMAMMARY DOSAGE FORMS

■ 1. The authority citation for 21 CFR part 526 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 526.88 [Amended]

■ 2. Section 526.88 *Amoxicillin trihydrate for intramammary infusion* is amended in paragraph (b) by removing "000069" and by adding in its place "000061".

§ 526.464b [Amended]

■ 3. Section 526.464b *Cloxacillin benzathine for intramammary infusion, sterile* is amended in paragraph (d) by removing "000069" and by adding in its place "000061".

§ 526.464c [Amended]

■ 4. Section 526.464c *Cloxacillin sodium for intramammary infusion, sterile* is amended in paragraph (b) by removing "000069" and by adding in its place "000061".

Dated: July 18, 2003.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–19445 Filed 7–30–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA79

TRICARE; Elimination of Nonavailability Statement and Referral Authorization Requirements and Elimination of Specialized Treatment Services Program

AGENCY: Office of the Secretary, DoD

ACTION: Interim final rule.

SUMMARY: This rule implements Section 735 of the National Defense Authorization Act for Fiscal Year 2002 (NDAA–02) (Public Law 107–107). It also implements Section 728 of the National Defense Authorization Act for Fiscal Year 2001 (NDAA–01) (Public Law 106–398). Section 735 of NDAA–02 eliminates the requirement for TRICARE Standard beneficiaries who live within a 40-mile radius of a military medical treatment facility (MTF) to obtain a nonavailability statement (NAS) or preauthorization from an MTF before receiving inpatient care (other than mental health services) or maternity care from a civilian provider in order that TRICARE will cost-share for such services. Further, this section eliminates the NAS requirement for specialized treatment services (STSs) for TRICARE Standard beneficiaries who live outside the 200-mile radius of a designated STS facility. This rule portrays the Department's decision to eliminate the STS program entirely. Finally, Section 728 of NDAA–01 requires that prior authorization before referral to a specialty care provider that is part of the contractor network be eliminated under any new TRICARE contract. The Department is publishing this rule as an interim final rule with comment period as an exception to our standard practice of soliciting public comments prior to issuance in order to implement the statutory requirements. Public comments, however, are invited and will be considered for possible revisions to this rule.

DATES: This rule is effective: December 28, 2003.

Comment Date: Written comments will be accepted until September 29, 2003.

ADDRESSES: Forward comments to Medical Benefits and Reimbursement Systems, TRICARE Management Activity, 16401 East Centretech Parkway, Aurora, CO 80011–9066.

FOR FURTHER INFORMATION CONTACT: Tariq Shahid, TRICARE Management Activity, telephone (303) 676–3801.

SUPPLEMENTARY INFORMATION:

I. Elimination of Nonavailability Statement Requirement and Specialized Treatment Service Program

The National Defense Authorization Act for Fiscal Year 2002 (NDAA–02) was signed into law on December 28, 2001. Section 735 of NDAA–02 amends Section 721 of the NDAA–01 with respect to the nonavailability statement (NAS) elimination requirements and eliminates the requirement for non-enrolled TRICARE beneficiaries who live within a 40-mile radius of a military medical treatment facility (MTF) to obtain an NAS or preauthorization from an MTF before receiving nonemergent inpatient or obstetrical (inpatient or outpatient) services from a civilian provider in order that TRICARE will cost-share for such services. A non-enrolled TRICARE beneficiary is a beneficiary who has not enrolled in TRICARE Prime, but who has chosen to use the TRICARE Standard and TRICARE Extra options. Section 735 retains MTF NAS authority for inpatient mental health services within the usual 40-mile catchment area. The section establishes that the NAS elimination requirements are to take effect on the earlier of the date the health care services are provided under new TRICARE contracts or the date that is two years after the date of the enactment of NDAA–02. As the health care services under new TRICARE contracts will not be available until after March 2004, the NAS requirements will be eliminated for admissions occurring on or after December 28, 2003, which is the date that is two years after the date of enactment of NDAA–02. For obstetrical care, the NAS requirement will be eliminated for maternity episodes wherein the first prenatal visit occurs on or after December 28, 2003. An NAS is required when the first prenatal visit occurs before December 28, 2003, by 10 U.S.C. 1080(b). The NAS for inpatient mental health care will continue to be required.

With the exception of maternity care, Section 735 of NDAA–02 gives the Secretary of DoD the authority to waive the NAS elimination requirements if: (a) Significant costs would be avoided by performing specific procedures at the affected military treatment facility (MTF); (b) a specific procedure must be provided at the affected MTF to ensure the proficiency levels of the practitioners at the facility; or (c) the lack of NAS data would significantly interfere with TRICARE contract administration. When this waiver authority will be exercised, the Department will notify the affected beneficiaries by publishing a notice in the **Federal Register** and notify the Congress.

Section 735 of NDAA–02 furthermore eliminates the multi-regional and national NAS requirement for specialized treatment services (STSs) for TRICARE Standard beneficiaries who live outside the 200-mile radius of a STS facility STS facilities are those designated facilities with regional, multi-regional or national catchment areas which provide complex medical and surgical services as currently provided in 32 CFR 199.4(a)(10). Since the Department has decided to terminate the STS program no later than June 1, 2003, all regional, multi-regional, and national NAS requirements for STSs will be eliminated before that date. The rationale behind the termination of the STS program is that this program was not based upon nationally developed consensus or evidenced-based criteria for clinical quality (there were none at the inception of this program) and had not consistently demonstrated cost-benefit to the government. In addition, the NAS requirement for STSs has placed an unreasonable burden on our beneficiaries who have had to travel extended distances to the STS facilities. This would provide for enhanced continuity of care for TRICARE Standard beneficiaries who generally receive most medical and surgical services from civilian providers of their choice. This rule gives notice of the Department's decision to terminate the STS program entirely no later than June 1, 2003.

II. Elimination of Prior Authorization Before Referrals to Specialty Care Providers

This rule will implement Section 728 of the National Defense Authorization Act for Fiscal Year 2001 (NDAA–01) (Pub. L. 106–398) which was enacted on October 30, 2000. Section 728 requires that prior authorization (or more precisely, preauthorization as defined in 32 CFR 199.2(b)) before referral to a specialty care provider that is part of the network be eliminated as part of any new TRICARE contracts entered into by the Department of Defense after the date of the enactment of the Act. This means that medical necessity preauthorization will not be required when primary care or specialty care providers refer TRICARE Prime patients for consultation appointment services, which are provided within the contractors' network of providers. Only TRICARE Prime patients require preauthorization for obtaining consultation appointment services. TRICARE Prime beneficiaries are required to use network providers if available. This rule removes the requirement to obtain a medical necessity determination when the consultation services are provided within the contractor's network. Section 728 of NDAA–01 does not eliminate the requirement for medical necessity preauthorizations for specific procedures or other health care services which specialty providers may recommend for beneficiaries as a result of the original consultation appointment or the need for preauthorization referral to non-network providers. For example, a consultation might result in a recommendation for a high cost surgical procedure on a nonemergent basis. The specialist's intent to perform this procedure may still be subjected to medical necessity preauthorization based upon utilization review criteria as

has been TRICARE policy for years in conformance with the peer review organization program in section 199.15.

In summary, under new TRICARE contracts, requests for consultation appointment services will not be subjected to medical necessity preauthorization though other health care services may continue to require preauthorization. TRICARE contractors may determine which other categories of health care services (procedures, nonemergent admissions) will require medical necessity preauthorization in accordance with their best business practices.

Regulatory Procedure

Executive Order 12866 requires certain regulatory assessments for any significant regulatory action, defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts. The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have significant impact on a substantial number of small entities.

This rule is not a significant regulatory action under E.O. 12866 that could potentially add more than $100 million in estimated annual costs for DoD. This rule does not require a regulatory flexibility analysis as the policy action was taken by Congress and the rule merely puts it into effect. The policy of the Regulatory Flexibility Act that agencies adequately evaluate all potential options for an action does not apply when Congress has already dictated the action.

This rule will not impose significant additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511).

This rule is being issued as an interim final rule, with comment period, as an exception to our standard practice of soliciting public comments prior to issuance. This is because there is no discretion being exercised. The NDAA–02 (Pub. L. 107–107) mandated elimination of the NAS for maternity care entirely, and for inpatient care unless it met very restrictive criteria, and there is no discretion on the effective data. The Assistant Secretary of Defense (Health Affairs) has determined that following the standard practice in this case would be unnecessary, impractical, and contrary to the public interest.

Public comments are invited. All comments will be carefully considered. A discussion of the major issues received by public comments will be included with the issuance of the final rule.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

■ Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; and 10 U.S.C. Chapter 55.

■ 2. Section 199.2(b) is amended by revising the definition for "Preauthorization," by removing the definition for "Specialized Treatment Service Facility," and by adding the definitions for "Consultation appointment" and "Medically or psychologically necessary preauthorization" and placing them in alphabetical order to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

* * * * *

Consultation appointment. An appointment for evaluation of medical symptoms resulting in a plan for management which may include elements of further evaluation, treatment and follow-up evaluation. Such an appointment does not include surgical intervention or other invasive diagnostic or therapeutic procedures beyond the level of very simply office procedures, or basic laboratory work but rather provides the beneficiary with an authoritative opinion.

* * * * *

Medically or psychologically necessary preauthorization: A pre (or prior) authorization for payment for medical/surgical or psychological services based upon criteria that are generally accepted by qualified professionals to be reasonable for diagnosis and treatment of an illness, injury, pregnancy, and mental disorder.

* * * * *

Preauthorization. A decision issued in writing, or electronically by the Director, TRICARE Management Activity, or a designee, that TRICARE benefits are payable for certain services that a beneficiary has not yet received. The term prior authorization is commonly substituted for preauthorization and has the same meaning.

* * * * *

■ 3. Section 199.4 is amended by revising paragraphs (a)(9) and (a)(9)(i)(B), by removing paragraph (a)(9)(i)(C), by revising paragraph (a)(9)(iv). by adding a new paragraph (a)(9)(vii), by removing and reserving paragraph (a)(10), and by revising paragraphs (e)(16)(i) and (e)(16)(ii) to read as follows:

§ 199.4 Basic program benefits.

(a) * * *

(9) *Nonavailability Statements within a 40-mile catchment area.* In some geographic locations, it is necessary for CHAMPUS beneficiaries not enrolled in TRICARE Prime to determine whether the required inpatient mental health care can be provided through a Uniformed Service facility. If the required care cannot be provided, the hospital commander, or a designee, will issue a Nonavailability Statement (NAS) (DD Form 1251). Except for emergencies, as NAS should be issued before inpatient mental health care is obtained from a civilian source. Failure to secure such a statement may waive the beneficiary's rights to benefits under CHAMPUS/TRICARE.

(i) * * *

(B) For CHAMPUS beneficiaries who are not enrolled in TRICARE Prime, an NAS is required for services in connection with nonemergency hospital inpatient mental health care if such services are available at a military treatment facility (MTF) located within a 40-mile radius of the residence of the beneficiary, except that a NAS is not required for services otherwise available at an MTF located within a 40-mile radius of the beneficiary's residence when another insurance plan or program provides the beneficiary's primary coverage for the services. This requirement for an NAS does not apply to beneficiaries enrolled in TRICARE Prime, even when those beneficiaries use the point-of-service option under § 199.17(n)(3).

* * * * *

(iv) *Nonavailability Statement (DD Form 1251) must be filed with applicable claim.* When a claim is submitted for TRICARE benefits that includes services for which an NAS was issued, a valid NAS authorization must be on the DoD required system.

* * * * *

(vii) With the exception of maternity services, the Assistant Secretary of Defense for Health Affairs (ASD(HA)) may require an NAS prior to TRICARE cost-sharing for additional services from civilian sources if such services are to be provided to a beneficiary who lives within a 40-mile catchment area of an MTF where such services are available and the ASD(HA):

(A) Demonstrates that significant costs would be avoided by performing specific procedures at the affected MTF or MTFs; or

(B) Determines that a specific procedure must be provided at the affected MTF or MTFs to ensure the proficiency levels of the practitioners at the MTF or MTFs; or

(C) Determines that the lack of NAS data would significantly interfere with TRICARE contract administration; and

(D) Provides notification of the ASD(HA)'s intent to require an NAS under this authority to covered beneficiaries who receive care at the MTF or MTFs that will be affected by the decision to require an NAS under this authority; and

(E) Provides at least 60-day notification to the Committees on Armed Services of the House of Representatives and the Senate of the ASD(HA)'s intent to require an NAS under this authority, the reason for the NAS requirement, and the date that an NAS will be required.

(10) [Reserved].

* * * * *

(e) * * *

(16) * * *

(i) *Benefit.* The CHAMPUS Basic Program may share the cost of medically necessary services and supplies associated with maternity care which are not otherwise excluded by this part.

(ii) *Cost-share.* Maternity care cost-share shall be determined as follows:

* * * * *

■ 4. Section 199.7 is amended by revising paragraph (a)(7)(i) to read as follows:

§ 199.7 Claims Submission, Review, and Payment

(a) * * *

(7) * * *

(i) *Rules applicable to issuance of Nonavailability Statement.* The ASD(HA) may issue a DoD Instruction to prescribe rules for the issuance of Nonavailability Statement.

* * * * *

■ 5. Section 199.15 is amended by revising paragraph (b)(4)(i) and by adding a new paragraph (b)(4)(ii)(D) to read as follows:

§ 199.15 Quality and Utilization Review Peer Review Organization Program

* * * * *

(b) * * *

(4) * * *

(i) *In general.* all health care services for which payment is sought under TRICARE are subject to review for appropriateness of utilization as determined by the Director, TRICARE Management Activity, or a designee.

(A) The procedures for this review may be prospective (before the care is provided), concurrent (while the care is in process), or retrospective (after the care has been provided). Regardless of the procedures of this utilization review, the same generally accepted standards, norms and criteria for evaluating the medical necessity, appropriateness and reasonableness of the care involved shall apply. The Director, TRICARE Management Activity, or a designee, shall establish procedures for conducting reviews, including types of health care services for which preauthorization or concurrent review shall be required. Preauthorization or concurrent review may be required for categories of health care services. Except where required by law, the categories of health care services for which preauthorization or concurrent review is required may vary in different geographical locations or for different types of providers.

(B) For healthcare services provided under TRICARE contracts entered into by the Department of Defense after October 30, 2000, medical necessity preauthorization will not be required for referrals for specialty consultation appointment services required by primary care providers or specialty providers when referring TRICARE Prime beneficiaries for specialty consultation appointment services within the TRICARE contractor's network. However, the lack of medical necessity preauthorization requirements for consultative appointment services does not mean that non-emergent admissions or invasive diagnostic or therapeutic procedures which in and of themselves constitute categories of health care services related to, but beyond the level of the consultation appointment service, are also not subject to medical necessity prior authorization. In fact many such health care services may continue to require medical necessity prior authorization as determined by the Director, TRICARE Management Activity, or a designee. TRICARE Prime beneficiaries are also required to obtain preauthorization before seeking health care services from a non-network provider.

(ii) * * *

(D) For healthcare services provided under TRICARE contracts entered into by the Department of Defense after October 30, 2000, medical necessity preauthorization for specialty consultation appointment services within the TRICARE contractor's network will not be required. However TRICARE contractors shall determine, based upon best-business practice, utility and cost-savings, the categories of other health care services which are best served by medical necessity prior (or pre) authorization and may request a waiver from the Director, TRICARE Management Activity, or designee, from compliance with previously established requirements for medical necessity prior (or pre) authorization.

* * * * *

■ 6. Section 199.17 is amended by revising paragraph (n)(2)(ii) to read as follows:

§ 199.17 TRICARE Program

* * * * *

(n) * * *

(2) * * * (ii) For any necessary specialty care and nonemergent inpatient care, the primary care manager or the Health Care Finder will assist in making an appropriate referral.

(A) For healthcare services provided under managed care support contracts entered into by the Department of Defense before October 30, 2000, all such nonemergency specialty care and inpatient care must be preauthorized by the primary care manager or the Health Care Finder.

(B) For healthcare services provided under TRICARE contracts entered into by the Department of Defense on or after October 30, 2000, referral requests (consultation requests) for specialty care consultation appointment services for TRICARE Prime beneficiaries must be submitted by primary care managers. Such referrals will be authorized by Health Care Finders (authorizations numbers will be assigned so as to facilitate claims processing) but medical necessity preauthorization will not be required by referral consultation appointment services within the TRICARE contractor's network. Some health care services subsequent to consultation appointments (invasive procedures, nonemergent admissions and other health care services as determined by the Director, TRICARE Management Activity, or a designee) will require medical necessity preauthorization. Though referrals for specialty care are generally the responsibility of the primary care managers, subject to discretion exercised by the regional Lead Agents, and established in regional policy or memoranda of understanding, specialist providers may be permitted to refer patients for additional specialty consultation appointment services within the TRICARE contractor's network without prior authorization by primary care managers or subject to medical necessity preauthorization.

* * * * *

Dated: July 24, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–19452 Filed 7–30–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN–0720–AA72

TRICARE Program; Waiver of Certain TRICARE Deductibles; Clarification of TRICARE Prime Enrollment Period; Enrollment in TRICARE Prime Remote for Active Duty Family Members

AGENCY: Office of the Secretary, DoD.

ACTION: Interim final rule.

SUMMARY: A proposed rule to implement section 714 of the National Defense Authorization Act (NDAA) for Fiscal Year 2000 was published on April 18, 2002 (67 FR 19141) to authorize the Secretary of Defense to waive the TRICARE deductible in certain cases for care provided to a dependent of a member of a Reserve Component or the National Guard who is called to active duty for more than 30 days but less than one year. The proposed rule also established circumstances under which eligible beneficiaries may enroll in TRICARE Prime for a period of less than one year. The proposed rule is withdrawn and instead is implemented along with section 702 of the NDAA for FY 2003, which establishes circumstances under which dependents of Reserve Component and National Guard members called to active duty in support of contingency operations may enroll in TRICARE Prime Remote for Active Duty Family Members, and dependents of TRICARE Prime Remote service members who are enrolled in TRICARE Prime Remote for Active Duty Family Members may remain enrolled when the service member receives orders for an unaccompanied follow-on assignment. This interim final rule authorizes the Secretary of Defense to waive the TRICARE deductible in certain cases for care provided to a dependent of a member of a Reserve Component or the National Guard who is called to active duty for more than 30 days but less than 1 year. It establishes circumstances under which eligible beneficiaries may enroll in TRICARE Prime for a period of less than 1 year.

EFFECTIVE DATE: This interim final rule is effective September 29, 2003.

ADDRESSES: TRICARE Management Activity (TMA), Medical Benefits and Reimbursement Systems, 16401 East Centretech Parkway, Aurora, CO 80011–9043.

FOR FURTHER INFORMATION CONTACT: Stephen E. Isaacson, Medical Benefits and Reimbursement Systems, TMA, (303) 676–3572.

SUPPLEMENTARY INFORMATION:

I. Summary of Interim Final Rule Provisions

The reader should refer to the proposed rule that was published on April 18, 2002, (67 FR 19141) for more detailed information regarding these changes. This interim final rule describes the circumstances under which eligible dependents of active duty members, and eligible dependents of Reserve Component and National Guard members called to active duty in support of contingency operations may enroll in TRICARE Prime Remote for Active Duty Family Members. In addition, this interim rule describes the circumstances under which eligible dependents of TRICARE Prime Remote service members who are enrolled in the TRICARE Prime Remote for Active Duty Family Member program may remain enrolled when the service member receives a follow-on accompanied assignment and the dependents continue to reside in the TRICARE Prime Remote location.

Changes to the provisions for TRICARE Prime Remote for Active Duty Family Members (TPRADFM) are required by Section 702 of P.L. 107–314 (the NDAA for FY 2003). First, family members who are enrolled in TPRADFM may continue their enrollment when the member has relocated without the family members pursuant to orders for a permanent change of duty station, if the orders do not authorize dependents to accompany the member to the new duty station at the expense of the United States, and if the family members continue to reside at the same location at which they were enrolled in TPRADFM. Second, family members of a reserve component member ordered to active duty for a period of more than 30 days may enroll in TPRADFM if they reside with the member and if the residence is more than fifty (50) miles, or approximately one hour driving time, from the nearest military medical treatment facility adequate to provide the needed care.

The changes related to TPRADFM were not included in the original proposed rule, but, since they are statutorily required and also require a change to a paragraph of 32 CFR Part 199.17 that was being revised pursuant to the proposed rule, we are including all of the changes in this interim final rule.

II. Public Comments

We provided a 60-day comment period on the proposed rule. We received no public comments.

III. Changes in the Interim Final Rule

In both paragraph (f)(2)(i)(H) of Section 199.4 and paragraph (o)(2) of Section 199.17, we have clarified that these provisions apply only to members of the National Guard who are ordered to federal active duty under authority of the President and not to those members who are ordered to active duty under the authority of a governor of a state. In addition, in paragraph (f)(2)(i)(H) of Section 199.4, we have changed "the Secretary of Defense, or a designee," to "the Director, TRICARE Management Activity" as the authority to waive the annual fiscal year deductible. This is only a wording change and not a substantive change, since the Secretary of Defense, through 32 CFR 199.1(c)(2) and 32 CFR part 367, has delegated authority to the Assistant Secretary of Defense (Health Affairs), who has delegated authority to the Director, TRICARE Management Activity, to provide policy guidance, management control, and coordination as required by CHAMPUS.

The proposed rule would have established in the regulation an administrative authority for Reservists and members of the National Guard who are called or ordered to active duty for a period of 179 days or more to enroll in TRICARE Prime. We are changing that provision in this interim final rule.

Reserve components (including both reservists and members of the National Guard) participate in military conflicts and peacekeeping missions in areas such as Bosnia, Kosovo, and southwest Asia, and assist in homeland security. The operational tempo following the events of September 11, 2001, showed a dramatic increase in the number of reservists activated for these requirements. These reservists receive varying levels of medical benefits according to their primary residence location, length of call up, and type of activation order. For example, the Department established a demonstration in order to ease the burden imposed on the large number of reserve component members who have been activated in response to September 11 under Operations Noble Eagle and Enduring Freedom (66 FR 55928). This demonstration which is called the TRICARE Reserve Family Member Demonstration Project (TRFMDP) provides three enhancements to the TRICARE Standard benefit for their family members: the annual deductible was waived, the requirement to obtain a non-availability statement was waived, and TRICARE will pay up to fifteen percent above the TRICARE maximum allowable charge for services received from nonparticipating providers. However, the demonstration is due to expire on November 1, 2003, although large numbers of individuals continue to be activated. In addition, family members of reserve component members who are activated under other authorities do not receive these enhanced benefits.

In order to eliminate these discrepancies while continuing to provide some enhanced benefits to family members of activated reserve component members, the Department has authorized family members of activated reserve component members who live in military treatment facility catchment areas to enroll in TRICARE Prime if the member is activated for more than 30 days rather than for 179 days or more. A catchment area is established by zip codes, but is generally a home residence within 50 miles, or approximately one hour driving time, from the nearest military treatment facility adequate to provide care. This change accomplishes three goals. First, it provides family members of these activated reserve component members with substantially the same benefits available to family members of activated reserve component members under the TRFMDP. Second, it provides these family members with the same benefits available to family members who live outside catchment areas under the TPRADFM through the provisions of Section 702 of P.L. 107–314. Third, it ensures that the medical benefits available to family members of activated reservists are as similar as possible to those available to family members of active duty members.

This interim final rule establishes specific regulatory authority for this provision.

IV. Regulatory Procedures

Executive Order 12866 requires that a regulatory impact analysis be performed on any major rule. A "major rule" is defined as one that would result in the annual effect on the national economy of $100 million or more, or have other substantial impact. The Regulatory Flexibility Act (RFA) requires that each Federal Agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues regulations which would have a significant impact on a substantial number of small entities.

This interim final rule is not major rule under the Congressional Review Act. The changes set forth in this interim final rule are minor revisions to existing regulation. The changes made in this interim final rule involve an expansion of TRICARE benefits. In addition, this interim final rule will have minor impact and will not significantly affect a substantial number of small entities. In light of the above, no regulatory impact analysis is required.

This rule has been designated as significant and has been reviewed by the Office Management and Budget as required under the provisions of E.O. 12866.

This interim final rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 55).

List of Subjects in 32 CFR Part 199

Claims, handicapped, health insurance, and military personnel.

PART 199—[AMENDED]

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. Chapter 55.

■ 2. Section 199.4 is amended by adding a new paragraph (f)(2)(i)(H) as follows:

§ 199.4 Basic program benefits.

(f) * * *

(2) * * *

(i) * * *

(H) The Director, TRICARE Management Activity, may waive the annual individual or family fiscal year deductible for dependents of a Reserve Component member who is called or ordered to active duty for a period of more than 30 days but less than one year or a National guard member who is called or ordered to full-time federal National guard duty for a period of more than 30 days but less than one year, in support of a contingency operation (as defined in 10 U.S.C. 101(a)(13)). For purposes of this paragraph, a dependent is a lawful husband or wife of the member and a child as defined in paragraphs (b)(2)(ii)(A) through (F) and (b)(2)(ii)(H)(*1*), (*2*) and (*4*) of Part 199.3.

* * * * *

■ 3. Section 199.17 is amended by revising paragraphs (g)(3), (o) and (o)(2) as follows:

§ 199.17 TRICARE Program.

(g) * * *

(3) Eligibility.

(i) An active duty family member is eligible for TRICARE Prime Remote for Active Duty Family Members if he or she is eligible for CHAMPUS and, on or after December 2, 2003 meets the criteria of either (g)(3)(i)(A) and (B), or (g)(3)(i)(C):

(A) The family member's active duty sponsor has been assigned permanent duty as a recruiter; as an instructor at an educational institution, an administrator of a program, or to provide administrative services in support of a program of instruction for the Reserve Officers' Training Corps; as a full-time adviser to a unit of a reserve component; or any other permanent duty designated by the Director, TRICARE Management Activity that the Director determines is more than 50 miles, or approximately one hour driving time, from the nearest military treatment facility that is adequate to provide care.

(B) The family members and active duty sponsor, pursuant to the assignment of duty described in paragraph (g)(3)(i)(A) of this section, reside at a location designed by the Director, TRICARE Management Activity, that the Director determines is more than 50 miles, or approximately one hour driving time, from the nearest military medical treatment facility that is adequate to provide care.

(c) The family member, having resided together with the active duty sponsor while the sponsor served in an assignment described in (g)(3)(i)(A), continues to reside at the same location after the sponsor relocates without the family member pursuant to orders for a permanent change of duty station, and the orders do not authorize dependents to accompany the sponsor to the new duty station at the expense of the United States.

(ii) A family member who is a dependent of a reserve component member is eligible for TRICARE Prime Remote for Active Duty Family members if he or she is eligible for CHAMPUS and meets all of the following additional criteria:

(A) The reserve component member has been ordered to active duty for a period of more than 30 days.

(B) The family member resides with the member.

(C) The Director, TRICARE Management Activity, determines the residence of the reserve component member is more than 50 miles, or approximately one hour driving time, from the nearest military medical treatment facility that is adequate to provide care.

(D) "Resides with" is defined as the TRICARE Prime Remote residence

address at which the family resides with the activated reservist upon activation.

* * * * *

(o) TRICARE program enrollment procedures. There are certain requirements pertaining to procedures for enrollment in Prime and TRICARE Prime Remote for Active Duty Family Members. (These procedures do not apply to active duty members, whose enrollment is mandatory).

(1) * * *

(2) Enrollment period. The following provisions apply to enrollment periods on or after March 10, 2003.

(i) Beneficiaries who select the TRICARE Prime option or the TRICARE Prime Remote for Active Duty Family Members option remain enrolled for 12 months increments until: they take action to disenroll; they are no longer eligible for enrollment in TRICARE Prime or TRICARE Prime Remote for Active Duty Family Members; or they are disenrolled for failure to pay required enrollment fees if applicable. For those who remain eligible for TRICARE Prime enrollment, no later than 15 days before the expiration date of an enrollment, the sponsor will be sent a written notification of the pending expiration and renewal of the TRICARE Prime enrollment. TRICARE Prime enrollments shall be automatically renewed upon the expiration of the enrollment unless the renewal is declined by the sponsor. Termination of enrollment for failure to pay enrollment fees is addressed in paragraph (o)(3) of this section.

(ii) Exceptions to the 12-month enrollment period.

(A) Beneficiaries who are eligible to enroll in TRICARE Prime but have less than one year of TRICARE eligibility remaining.

(B) The dependents of a reservist who is called or ordered to active duty or of a member of the National Guard who is called or ordered to full-time federal National Guard duty for a period of more than 30 days.

* * * * *

Dated: July 24, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–19453 Filed 7–30–03; 8:45 am]

BILLING CODE 5001–05–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–03–105]

RIN 1625–AA08

Special Local Regulations for Marine Events; Patapsco River, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Coast Guard is implementing the special local regulations at 33 CFR 100.515 during the 189th Defender's Day Celebration fireworks display to be held September 13, 2003, over the waters of the Patapsco River at Baltimore, Maryland. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the fireworks display. The effect will be to restrict general navigation in the regulated area for the safety of spectators and vessels transiting the event area.

EFFECTIVE DATE: 33 CFR 100.515 is effective from 5:30 p.m. to 11 p.m. on September 13, 2003.

FOR FURTHER INFORMATION CONTACT: Ronald Houck, Marine Information Specialist, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, at (410) 576–2674.

SUPPLEMENTARY INFORMATION: The City of Baltimore will sponsor the 189th Defender's Day Celebration fireworks display on September 13, 2003 over the waters of the Patapsco River, Baltimore, Maryland. The fireworks display will be launched from a barge positioned within the regulated area. A fleet of spectator vessels is expected to gather nearby to view the aerial display. In order to ensure the safety of spectators and transiting vessels, 33 CFR 100.515 will be in effect for the duration of the event. Under provisions of 33 CFR 100.515, a vessel may not enter the regulated area unless it receives permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel.

In addition to this notice, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Dated: July 22, 2003.

Sally Brice-O'Hara,

Rear Admiral, Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 03–19497 Filed 7–30–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–03–101]

RIN 1625–AA08

Special Local Regulations for Marine Events; Atlantic Ocean, Point Pleasant Beach to Bay Head, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for the "Point Pleasant OPA/NJ Offshore Grand Prix", a marine event to be held on the waters of the Atlantic Ocean between Point Pleasant Beach and Bay Head, New Jersey. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the regulated area during the event.

DATES: This rule is effective from 9:30 a.m. to 3:30 p.m. on August 15, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket CGD05–03–101 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S. L. Phillips, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM would be impracticable. The event will take place on August 15, 2003. There is not sufficient time to allow for a notice and comment period prior to the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, spectator craft and other vessels transiting the event area. However, advance notifications will be made to affected users of the waterway via marine information broadcasts and area newspapers.

Background and Purpose

On August 15, 2003, the Offshore Performance Association and the New Jersey Offshore Racing Association will sponsor the "Point Pleasant OPA/NJ Offshore Grand Prix". The event will consist of approximately 35 offshore powerboats racing along an oval course on the waters of the Atlantic Ocean. A fleet of approximately 200 spectator vessels is expected to gather near the event site to view the competition. To provide for the safety of participants, spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during the races.

Discussion of Rule

The Coast Guard is establishing temporary special local regulations on specified waters of the Atlantic Ocean and the Manasquan River. The temporary special local regulations will be in effect from 9:30 a.m. until 3:30 p.m. on August 15, 2003. The effect will be to restrict general navigation in the regulated area during the event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. The Patrol Commander will allow non-participants to transit the regulated area between races. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation prevents traffic from transiting a portion of the Atlantic Ocean and Manasquan River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts and area newspapers so mariners can adjust their plans accordingly. Additionally, vessel traffic will be allowed to transit through the regulated area between races.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the effected portions of the Atlantic Ocean and Manasquan River during the event.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only a short period, from 9:30 a.m. to 3:30 p.m. on August 15, 2003. Vessel traffic will be allowed to transit the regulated area between races, when the Patrol Commander determines it is safe to do so. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this temporary rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.**

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and

will not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial and direct effect on one or more Indian tribes, on the relationship between the Federal Governments and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under those sections. Under figure 2–1, paragraph (34)(h), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; Department of Homeland Security Delegation No. 0170.1, 33 CFR 100.35.

■ 2. Add a temporary § 100.35–T05–101 to read as follows:

§ 100.35–T05–101 Atlantic Ocean, Point Pleasant Beach to Bay Head, New Jersey.

(a) *Definitions.*

(1) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Atlantic City.

(2) *Official Patrol.* The Official Patrol is any vessel with a commissioned, warrant, or petty officer of the Coast Guard on board and displaying a Coast Guard ensign.

(3) *Regulated Area.* The regulated area includes all waters of the Manasquan River from the New York and Long Branch Railroad to Manasquan Inlet, together with all waters of the Atlantic Ocean bounded by a line drawn from the end of the South Manasquan Inlet Jetty, easterly to Manasquan Inlet Lighted Buoy "2M", then southerly to a position at latitude 40°04′26″ N, longitude 074°01′30″ W, then westerly to the shoreline. All coordinates reference Datum NAD 1983.

(b) *Special local regulations.*

(1) No person or vessel may enter or remain in the regulated area unless participating in the event or authorized by the sponsor or Official Patrol. The sponsor or Official Patrol may intermittently authorize general navigation to pass through the regulated area. Notice of these opportunities will be given via Marine Safety Radio Broadcast on VHF–FM marine band radio, Channel 22 (157.1 MHz).

(2) No vessel shall proceed at a speed greater than six (6) knots while in Manasquan Inlet during the effective period.

(3) All persons and vessels shall comply with the instructions of the Official Patrol. The operator of a vessel in the regulated area shall stop the vessel immediately when instructed to do so by the Official Patrol and then proceed as directed.

(c) *Effective period.* This section is effective from 9:30 a.m. to 3:30 p.m. on August 15, 2003.

Dated: July 22, 2003.

Sally Brice-O'Hara,

Rear Admiral, Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 03–19498 Filed 7–30–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CGD01–02–129]

RIN 1625–AA01

Anchorage Regulations: Rockland, ME

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard hereby amends the anchorage regulations for Rockland Harbor by re-designating anchorage ground "C" as a special anchorage area and reorienting anchorage ground "A". This action is necessary to alert mariners that vessels moored within special anchorage "C", are not required to sound signals or display anchor lights or shapes, and provide a wider navigable channel between the two anchorages. This action is intended to increase the safety of life and property on navigable waters, improve the safety of anchored vessels in both anchorage "A" and the special anchorage area, and provide for the overall safe and efficient flow of vessel traffic and commerce.

DATES: This rule is effective September 2, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD01–02–129), and are available for inspection or copying at room 628, First Coast Guard District Boston, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. J. J. Mauro, Commander (oan), First Coast Guard District, 408 Atlantic Ave., Boston, MA 02110, Telephone (617) 223–8355, e-mail: *jmauro@d1.uscg.mil.*

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 1, 2003, we published a notice of proposed rulemaking (NPRM) entitled "Anchorage Regulations: Rockland, Maine" in the **Federal Register** (68 FR 15691). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

A request was made by the City of Rockland and Hartley Marine Services, Rockland, Maine, to accommodate the increased number of vessels mooring in Penobscot Bay, Rockland Harbor, and provide for safe navigation between the anchorages within the harbor. This rule will re-designate anchorage ground "C", identified in 33 CFR 110.132(a)(3), as a special anchorage area and reorient anchorage "A", identified in 33 CFR 110.132(a)(1).

The Coast Guard determined that the small commercial and recreational vessels now anchoring in anchorage "C" do not have the ability to maintain anchor lights sufficient to meet anchorage ground requirements. Vessel traffic, as well as users of anchorage "C", will transit and anchor more safely when anchorage "C" is designated a special anchorage area, limited to vessels less than 20 meters in length, since transiting vessels will neither expect sound signals nor anchor lights or shapes from all moored vessels. Establishing this special anchorage area will better meet future vessel traffic expectations of that area when it is re-designated as such and limited to vessels no greater than 20 meters in length.

In order to facilitate the safe and efficient flow of vessel traffic and commerce between anchorages "A" and the newly designated special anchorage area, the Coast Guard intends to reorient anchorage "A". Reorienting anchorage "A" will provide a wider channel between the two above-mentioned anchorages. Additionally, a wider channel will allow safer passage for vessels anchoring in anchorage "A" and the special anchorage area as well as vessel traffic transiting via Atlantic Point.

The Coast Guard has defined the anchorage areas contained herein with the advice and consent of the Army Corps of Engineers, New England District, located at 696 Virginia Rd., Concord, MA 01742.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under regulatory policies and procedures of DHS is unnecessary.

This finding is based on the fact that this rule conforms to the changing needs of the harbor, the changing needs of recreational, fishing and commercial vessels, and to make the best use of the available navigable water. This rule is in the interest of safe navigation and protection of the Port of Rockland and the marine environment.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact John J. Mauro at the address listed in **ADDRESSES** above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Federalism A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 34(f), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.** This rule fits paragraph 34(f) as it revises one anchorage ground and establishes a special anchorage area.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Regulations

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471; 1221 through 1236, 2030, 2035 and 2071; 33 CFR 1.05–1(g), and Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 110.4 to subpart A to read as follows:

§ 110.4 Penobscot Bay, Maine.

(a) *Rockland Harbor.* Beginning at a point bearing 244°, 1,715 yards, from Rockland Breakwater Light; thence 260°, 490 yards, to a point bearing 248° from Rockland Breakwater Light; thence 350°, 580 yards, to a point bearing 263° from Rockland Breakwater Light; thence 83°, 480 yards, to a point bearing 263° from Rockland Breakwater Light; and thence 169°, 550 yards, to the point of beginning. This area is limited to vessels no greater than 20 meters in length.

Note to paragraph (a): This area is primarily for use by yachts and other recreational craft. Temporary floats or buoy for marking the location of the anchor may be used. All moorings shall be so placed that no vessel, when anchored, shall at any time extend beyond the limits of the area. All anchoring in the area shall be under the supervision of the local harbormaster or such authority as may be designated by authorities of the City of Rockland, Maine. Requests for placement of mooring buoys shall be directed to the local government. Fixed mooring piles or stakes are prohibited.

(b) [Reserved].

■ 3. In § 110.132 revise paragraph (a)(1), remove paragraph (a)(3), and revise paragraphs (b)(1) and (b)(2) to read as follows:

§ 110.132 Rockland Harbor, Maine.

(a) *The anchorage grounds.*—(1) *Anchorage A.* Beginning at a point bearing 158°, 1,075 yards, from Rockland Breakwater Light; thence 252°, 2,020 yards, to a point bearing 224° from Rockland Breakwater Light; thence 345°, 740 yards, to a point bearing 242° from Rockland Breakwater Light; thence 72°, 1,300 yards, to a point bearing 222° from Rockland Breakwater Light; and thence 120°, 1,000 yards, to the point of beginning.

* * * * *

(b) *The regulations.* (1) Anchorages A and B are general anchorage grounds reserved for merchant vessels, commercial vessels or passenger vessels over 65 feet in length. Fixed moorings, piles or stakes are prohibited.

(2) A distance of approximately 500 yards shall be left between Anchorages A and B for vessels entering or departing from the Port of Rockland. A distance of approximately 100 yards shall be left between Anchorage A and the Special Anchorage Area for vessels entering or departing facilities in the vicinity of Atlantic Point. Any vessel anchored in these anchorages shall be capable of moving and when ordered to move by the Captain of the Port shall do so with reasonable promptness.

* * * * *

Dated: July 17, 2003.

John L. Grenier,

Captain, Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 03–19372 Filed 7–30–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–03–023]

RIN 1625–AA00

Safety Zone Regulations, Seafair Blue Angels Performance, Lake Washington, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of Lake Washington, Seattle, Washington. The Coast Guard is taking this action to safeguard the participants and spectators from the safety hazards associated with the Seafair Blue Angels Performance. Entry into this zone is prohibited unless authorized by the Captain of the Port, Puget Sound or his designated representatives.

DATES: This rule is effective from 8:30 a.m. on July 31, 2003 through 4 p.m. on August 3, 2003.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the U.S. Coast Guard Marine Safety Office Puget Sound, 1519 Alaskan Way South, Building 1, Seattle, Washington 98134. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Jeff Morgan, c/o Captain of the Port Puget Sound, at (206) 217–6231.

SUPPLEMENTARY INFORMATION:

Background and Purpose

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. (b)(B) the Coast Guard finds that good cause exists for not publishing an NPRM. The airshow poses several dangers to the public including excessive noise and objects falling from any accidents. Accordingly, prompt regulatory action is needed in order to provide for the safety of spectators and participants during the event. If normal notice and comment procedures were followed, this rule would not become effective until after the date of the event.

For the same reasons, under 5 U.S.C. (d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Discussion of Rule

The Coast Guard is adopting a temporary safety zone regulation on the waters of Lake Washington, Seattle, Washington, for the Seafair Blue Angels Performance. The Coast Guard has determined it is necessary to close the area in the vicinity of the air show in order to minimize the dangers that low-flying aircraft present to persons and vessels. These dangers include, but are not limited to excessive noise and the risk of falling objects from any accidents associated with low flying aircraft. In the event that aircraft require emergency assistance, rescuers must have immediate and unencumbered access to the craft. The Coast Guard, through this action, intends to promote the safety of personnel, vessels, and facilities in the area. Entry into this zone will be prohibited unless authorized by the Captain of the Port or his representative. This safety zone will be enforced by Coast Guard personnel. The Captain of the Port may be assisted by other federal, state, or local agencies.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the fact that the regulated area established by the regulation would encompass an area near the middle of Lake Washington, not frequented by commercial navigation. The regulation is established for the benefit and safety of the recreational boating public, and any negative recreational boating impact is offset by the benefits of allowing the Blue Angels to fly. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit this portion of Lake Washington during the time this regulation is in effect. The zone will not have a significant economic impact due to its short duration and small area. The only vessels likely to be impacted will be recreational boaters and small passenger vessel operators. The event is held for the benefit and entertainment of those above categories. Because the impacts of this rule are expected to be so minimal, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian tribal governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from

further environmental documentation. A Categorical Exclusion is provided for temporary safety zones of less than one week in duration. This rule establishes a temporary safety zone of limited duration that will be within the one-week timeframe.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons set out in the preamble, the Coast Guard amends part 165 of Title 33, Code of Federal Regulations, as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. From 8:30 a.m. on July 31, 2003 through 4 p.m. on August 3, 2003, a temporary § 165.T13–014 is added to read as follows:

§ 165.T13–014 Safety Zone Regulations, Seafair Blue Angels Performance, Seattle, WA.

(a) *Location.* The following area is a safety zone: All waters of Lake Washington, Washington State, enclosed by the following points: Starting at the northwest corner of Faben Point at 47°35′34.5″ N, 122°15′13″ W; thence to 47°35′48″ N, 122°15′45″ W; thence to 47°36′02.1″ N, 122°15′50.2″ W; thence to 47°35′56.6″ N, 122°16′29.2″ W; thence to 47°35′42″ N, 122°16′24″ W; thence to the east side of the entrance to the west highrise of the Interstate 90 bridge; thence easterly along the south side of the bridge to a point 1130 yards east of the western terminus of the bridge; thence southerly to a point in Andrews Bay at 47°33′06″ N, 122°15′32″ W; thence northeast along the shoreline of Bailey Peninsula to its northeast point at 47°33′44″ N, 122°15′04″ W; thence easterly along the east-west line drawn tangent to Bailey Peninsula; thence northerly along the shore of Mercer Island to the point of origin.[Datum: NAD 1983]

(b) *Regulations.* In accordance with the general regulations in § 165.23 of this part, no person or vessel may enter or remain in the zone except for participants in the event, supporting personnel, vessels registered with the event organizer, or other vessels authorized by the Captain of the Port or his designated representatives.

(c) *Enforcement periods.* This section will be enforced from 8:30 a.m. until 4 p.m., Pacific Daylight Time, on July 31 and August 1, 2, 3, 2003.

Dated: July 18, 2003.

D. Ellis,

Captain, Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 03–19525 Filed 7–30–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–207]

RIN 1625–AA01

Tall Ships 2003, Navy Pier, Chicago, IL, July 30–August 4, 2003

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is increasing the size of the Regulated Navigation Area (RNA) for the Chicago Tall Ships 2003 event at Navy Pier. These regulations are necessary to control vessel traffic in the immediate vicinity for the protection of both participant and spectator vessels during the 2003 Tall Ships Challenge and Parade of Ships. These regulations are intended to restrict vessel traffic in a portion of Lake Michigan in the vicinity of Chicago Harbor for the duration of the event. This change will expand the size of the RNA in order to improve the level of safety for both participant and spectator vessels during the 2003 Tall Ships Challenge and Parade of Ships and will also extend the effective date by one day.

DATES: This rule is effective from 8 p.m. on Wednesday, July 30, 2003 until 5 p.m. on Monday, August 4, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD09–03–207 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Chicago, 215 W. 83rd Street, Suite D, Burr Ridge, IL 60527, between 8 a.m. and 4 p.m. Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: MST2 Kenneth Brockhouse, MSO Chicago, at (630) 986–2155.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 17, 2003, we published a temporary final rule entitled Tall Ships 2003, Navy Pier, Chicago, IL, July 30–August 4, 2003 in the **Federal Register** (68 FR 42285). In that regulation, we suspended some anchorage regulations, established a moving safety zone, as well as a Regulated Navigation Area (RNA). However, in this rulemaking, the size of that RNA is being increased.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments with regard to this event. The Coast Guard, along with planning officials for the Chicago Tall Ships 2003 from the State of Illinois and the City of Chicago, have decided that a larger RNA is necessary to ensure safety and protection during this event.

For the same reasons, under 5 U.S.C.(b)(B) the Coast Guard finds that good cause exists for not publishing an NPRM.

Background and Purpose

During the Chicago Tall Ships event, tall ships will be participating in a Tall Ships Parade and then mooring in Chicago harbor and in the Chicago River. While a moving safety zone is being established to ensure the safety of official participant vessels during the parade, an RNA is also being established that encompasses portions of both the Chicago Harbor as well as the Chicago River. This RNA is to ensure the safety of spectator vessels and official participant vessels, as well as those boarding the tall ships, from vessels transiting at excessive speeds creating large wakes, and also to prevent obstructed waterways. The RNA will be established on July 30, 2003 and terminate on August 4, 2003 after all the tall ships have departed the area.

Discussion of Comments and Changes

No comments were received regarding this rule. The following change is being made from the previous temporary rule: the regulated navigation area (RNA) is being expanded in order to improve the level of safety for both participant and spectator vessels during the 2003 Tall Ships Challenge and Parade of Ships.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 on Regulatory Planning and Review and therefore does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that order. It is non-significant under Department of Homeland Security regulatory policies and procedures. We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone.

Small Entities

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612) has determined that this rule will not have a significant impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This final rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of an activated safety zone. The safety zone and suspended anchorage area would not have a significant economic impact on a substantial number of small entities for the following reasons. Vessel traffic can safely pass outside the proposed safety zone during the event. Traffic would be allowed to pass through the safety zone only with the permission of the Captain of the Port or his on-scene representative which will be the Patrol Commander. In addition, before the effective period, the Coast Guard would issue maritime advisories widely available to users who might be in the affected area.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact MSO Chicago (*see* **ADDRESSES**).

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a state, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 32(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 70; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

§ 165.T09–207 [Amended]

■ 2. In § 165.T09–207 remove and reserve paragraph (a).

■ 3. Add § 165.T09–257 to read as follows:

§ 165.T09–257 Tall Ships 2003, Navy Pier, Lake Michigan; Chicago, IL.

(a) *Regulated navigation area; location.* The following is a regulated navigation area: starting at the Alder Planetarium at 41°52′00″ N, 87°36′22″ W; then east to 41°52′00″ N, 087°35′26″ W; then north to the southern most end of the outer Chicago Harbor break wall at 41°52′48″ N, 087°35′26″ W; then north and then northwest following the outer Chicago Harbor break wall to 41°54′11″ N, 087°36′29″ W; then southeast to the north-east tip of the Central District Filtration Plant; then following the shoreline including up the Chicago River to the eastern side of the Michigan Avenue bridge back to the point of origin (NAD 83).

(b) *Effective period.* This section is effective from 6 p.m. on Wednesday, July 30, 2003 until 5 p.m. on Monday, August 4, 2003.

(c) *Special regulations.* Vessels within the RNA shall not exceed 5 miles per hour or shall proceed at no-wake speed, whichever is slower. Vessels within the RNA shall not pass within 20 feet of a moored tall ship. Vessels within the RNA must adhere to the direction of the Patrol Commander or other official patrol craft.

Dated: July 24, 2003.

Ronald F. Silva,

Rear Admiral, Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 03–19542 Filed 7–28–03; 4:08 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[DOT Docket No. NHTSA–2002–13704]

RIN: 2127–AH23

Federal Motor Vehicle Safety Standards; Definition of Multifunction School Activity Bus

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule establishes a new class of school buses, multifunction school activity buses, for use in transporting children on trips other those than between home and school. We anticipate that this final rule will also facilitate efforts by the Federal Transit Administration to provide funding to Head Start programs and coordinated transportation providers to purchase the school buses. Currently, that Administration is prohibited from providing financial assistance to purchase regular yellow school buses that exclusively transport students and school personnel in competition with a private school bus operator. We anticipate that the new buses will be used for coordinated transportation purposes by State and local social services agencies, which may, for example, use the new buses to transport children from Head Start facilities to school in the morning, and to transport senior citizens later in the day. Finally, enabling schools and other institutions to choose the new buses instead of a 15-passenger van will provide them with a safer transportation alternative.

DATES: *Effective date:* The effective date for the final rule is: September 2, 2003. Manufacturers are provided optional early compliance with this final rule beginning July 31, 2003. *Petitions for reconsideration:* Petitions for reconsideration of the final rule must be received not later than September 15, 2003.

ADDRESSES: Petitions for reconsideration of the final rule must refer to the docket and notice number set forth above and be submitted to the Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC, 20590, with a copy to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

For non-legal issues, you may call Mr. Charles Hott, Office of Crashworthiness Standards at (202) 366–0247. His FAX number is (202) 493–2739.

For legal issues, you may call Ms. Dorothy Nakama, Office of the Chief Counsel at (202) 366–2992. Her FAX number is (202) 366–3820.

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590.

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

This final rule establishes a new class of school buses, multifunction school activity buses (MFSABs), for use in transporting children on trips other those than between home and school.

Under current Federal law, dealers cannot sell a bus for the purpose of transporting school-age students to or from school or related events unless it meets all requirements in all Federal motor vehicle safety standards for school buses. Among those requirements are ones requiring all school buses to be equipped with control traffic (*i.e.*, flashing lights and stop arms) designed to avoid crashes and injuries to pedestrians. The standards require those devices to deploy automatically when the front entrance door is opened.

Those traffic control devices are primarily intended to be used on trips involving picking school children up from or dropping them off at a roadside location at or near home. However, not all school children trips involve picking children up from or dropping them off at such locations. For example, some trips involve taking children from a before-school facility to a school or from a school to an after-school facility. State laws do not permit the use of the traffic control devices on those trips.

This rulemaking excludes MFSABS from the requirements for the traffic control devices. This exclusion resolves the conflict between the NHTSA standards that previously required all new school buses to be equipped with traffic control devices, and State laws that do not permit the use of the traffic control devices on the types of trips that the new buses will be making. The new buses are not required to have those devices since the buses, unlike regular yellow school buses, are not intended for the roadside picking up and dropping off of children during service between home and school. While the MFSABs are not required to be equipped with the traffic control devices, they are, however, required to meet all requirements in the school bus crashworthiness standards, all other requirements in the school bus crash avoidance safety standards, and all post-crash school bus standards.

We anticipate that this final rule will also facilitate efforts by the Federal Transit Administration to provide funding to Head Start programs and coordinated transportation providers to purchase the school buses. Currently, that Administration is prohibited from providing financial assistance to purchase regular yellow school buses that exclusively transport students and school personnel in competition with a private school bus operator. We anticipate that the new buses will be used for coordinated transportation purposes by State and local social services agencies, which may, for example, use the new buses to transport children from Head Start facilities to school in the morning, and to transport senior citizens later in the day.

Finally, enabling schools and other institutions to choose the new buses instead of a 15-passenger van will provide them with a safer transportation alternative since the new buses comply with all school bus requirements in the Federal Motor Vehicle Safety Standards except those relating to traffic control devices.

II. Background—Relevant NHTSA Laws and Policies

NHTSA's statute requires any person selling or leasing a new vehicle to sell or lease a vehicle that meets all applicable standards issued by the agency. Under our regulations, a "bus" is any vehicle (including a van) that has a seating capacity of 11 persons or more. The statute defines a "school bus" as any vehicle that is designed for carrying 11 or more persons and that is likely to be "used significantly to transport preprimary, primary, and secondary students *to or from school* or an event related to school." (Emphasis added.) 49 U.S.C. 30125.

More broadly, we deem a bus likely to be used significantly to transport preprimary, primary, or secondary students to or from school or school-related events if, for example, it will be used for any of the following purposes on a regular basis: Pick students up from home to take them to school; pick them up from a place other than home (*e.g.*, a before-school care facility) and drop them off at school; or pick them up from school and drop them off at home or a place other than home (*e.g.*, an after-school care facility). The term "school" does not include pre-school (nursery) centers, or Head Start programs.

We have informed motor vehicle dealers that new buses sold to child-care providers and other entities that routinely drop students off at school or pick them up from school are required to be buses that meet the school bus safety standards, even though the purchasing organizations are not schools themselves. (*See, e.g.*, July 23, 1998 letter to Mr. Don Cote, Northside Ford, filed in this docket at 13704–51)

In our interpretations of Section 30125, we have stated that a bus that is sold for school transportation must meet all standards applicable to school buses, including the four-way/eight-way alternating flashing lights required by FMVSS No. 108 and the stop-arm required by FMVSS No. 131.[1] Thus, even if school buses will be used only to transport children on activity trips or other trips that do not include home-to-school transportation, dealers currently cannot sell a school bus unless those buses are equipped with flashing lights and stop arms. This is true even if these devices are not likely to be used on such trips. It is also true even if State law does not allow them to be used on such trips or requires them to be removed before making such trips.

One reason we are issuing this final rule is that after selling or leasing school buses, dealers cannot remove the four-way/eight-way flashing lights and stop-arms from them. Under 49 U.S.C. Section 30122, "Making safety devices and elements inoperative," manufacturers, distributors, dealers, or motor vehicle repair businesses may not "knowingly make inoperative" any part of a device or element of design installed on or in a motor vehicle or motor vehicle equipment in compliance with an applicable motor vehicle safety standard. Before the issuance of this final rule, all school buses had to be equipped with the four-way/eight-way flashing lights and stop arms. Since it does not appear to make sense to have dealers sell school buses with equipment that the buyer wants removed, we are defining a new category of school buses without four-way/eight-way flashing lights and stop arms.

[1] The flashing lights are required by FMVSS No. 108 to operate automatically when the bus entrance door is opened. The stop arm is required by FMVSS No. 131 to operate automatically when the lights are flashing, except that a manual override device may be provided by the vehicle manufacturer.

III. Notice of Proposed Rulemaking

On November 5, 2002 (67 FR 67373) (DOT Docket No. NHTSA–2002–13704), we published in the **Federal Register** a notice of proposed rulemaking (NPRM) to create a new school bus category, the "Multifunction School Activity Bus" (MFSAB). We proposed to except the new category from the requirement for school bus warning lamps at S5.1.4 of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, reflective devices and associated equipment*, 49 CFR 571.108, and from the requirement for stop signal arms in FMVSS No. 131, *School bus pedestrian safety devices*, 49 CFR 571.131. We proposed to limit the category to buses with a gross vehicle weight rating of 6,804 kilograms (15,000 pounds) or less, and invited comment as to whether the new buses should have a label warning drivers that the buses were not for home-to-school service. We denied aspects of the Rabun-Gap petition relating to seat strength, seat spacing, and seat width for reasons set forth in the NPRM. A full explanation of why we granted or denied aspects of Rabun-Gap's petition is in the November 5, 2002 NPRM at 67 FR 67373.

IV. Public Comments to the NPRM and NHTSA's Response

NHTSA received a total of 48 public comment submissions in response to the NPRM. Some commenters commented more than once, and several submissions had identical or similar wording. We received comments from Alabama Department of Education, Amalgamated Transit Union (ATU), American Academy of Pediatrics (AAP), Black Gold Regional Schools Educational Authority, Blue Bird Body Company, Brownsville Independent School District (of Brownsville, Texas), Department of California Highway Patrol, Correctrack Inc., Transportation Consultant John Fairchild, Ford Motor Company, Hurst-Euless-Bedford Independent School District (of Bedford, Texas), IC Corporation, Indiana Department of Education, Kibois Area Transit System (of Stigler, Oklahoma), Les Entreprises Michel Corbeil Inc. (Corbeil), Maine Department of Education, National Association of Independent Schools (NAIS), National Association of State Directors of Pupil Transportation Services (NASDPTS), National Automobile Dealers

Association (NADA), National Child Care Association (NCCA), National School Transportation Association (NSTA), National Transportation Safety Board (NTSB), Public Schools of North Carolina, Public Citizen, Pupil Transportation Safety Institute, Inc., Rabun Gap Nacoochee School (Rabun), Texas Association for Pupil Transportation, Texas Department of Public Safety, Thomas Built Buses, U.S. Bus Corporation, Utah State Office of Education, Virginia Association for Pupil Transportation (VAPT), Wisconsin Department of Transportation, and many private citizens. The following summarizes the comments, and our response to the comments.

A. Should the Multifunction School Activity Bus Subcategory Be Created?

Most commenters wrote in favor of the proposed new school bus category. However, some individual citizens, the state of Maine and AAP wrote against the proposal. The state of Maine commented that creating a new subcategory of school buses without traffic control features "creates a level of complexity and potentially an elevated hazard level * * * without producing a significant offsetting benefit." AAP expressed concern about the MFSAB classification, stating that the traffic control features on a school bus "are meant to protect pedestrians, who account for significantly more school bus related fatalities than school bus passengers." In its May 1996 Policy Statement on School Transportation Safety (R9616), regarding deaths to children as a result of school-bus related events, AAP stated that the "majority of pedestrians killed were young children who were struck by their own school buses." NHTSA notes that activated traffic control devices on a school bus make surrounding motorists aware that children are outside and around a school bus and that the motorists should take extra precautions for the children. NHTSA and the States have other measures and programs (including school bus driver training) to lessen the chances that school children will be struck by their school buses.

NHTSA has decided to adopt the multifunction school activity bus vehicle classification, as proposed. NHTSA is conducting this rulemaking to promote flexibility in the choice of vehicles. NHTSA emphasizes that the MFSAB is not to be used by schools or school districts to transport school children on regular school bus route transportation. Because of this limitation, school children will not be exposed as pedestrians to traffic situations that stop arm and four-way/eight-way traffic control devices are designed to control, and we have concluded that the MFSAB will not lead to an increase in school children pedestrian fatalities as the AAP comments suggested. NHTSA agrees with Maine that creating a new category of school bus adds an additional level of complexity for school districts because it creates a school bus category that cannot be used for normal home-to-school transportation. However, NHTSA does not agree that this new school bus category will increase the risk of injuries or fatalities for the reasons explained above and below.

As explained in the NPRM, this final rule makes it easier for transportation providers other than schools or school districts to buy the MFSAB, which will be a safer transportation alternative to the 15-passenger van and motor coach bus for use by Head Start programs or senior citizens. If, after carefully considering all possible bus types, the transportation provider decides that the persons it transports are best served by a school bus with traffic control features, it is free to buy such a school bus rather than the MFSAB.

B. Should the MFSAB Be a "Bus" or "School Bus?"

NADA and NCCA recommended that the new vehicle category should be a "multifunction activity bus," rather than a "multifunction school activity bus." NADA suggested that the MFSAB does not suit its intended purpose and recommended that the multifunction activity bus be defined as "a bus that is designed for purposes that include transporting students to and from school, but not to and from home." NADA stated that this definition has the advantage of avoiding the use of the term "*school bus,* which has a number of legal and practical Federal, State and local ramifications." NADA further suggested that NHTSA should redefine the term "school bus" more narrowly and establish a new "bus" subcategory. They suggested that NHTSA should redefine "school bus" (in 49 CFR 571.3 "Definitions") to read "a bus that is designed for purposes that include carrying students between home and school, but not a bus designed for operation as a common carrier in urban transportation." [2] NADA also stated that the "sold or introduced in interstate commerce" language in the present definition of school bus, "places an undue focus on the new vehicle sale or lease transaction and inherently requires sellers or lessors to ascertain a purchaser's intended use," and that the primary burden of standards compliance should be placed on manufacturers of these vehicles.

For the following reasons, NHTSA has decided not to adopt NADA's and NCCA's recommendations for the redefinitions of "school bus" and "bus." First, redefining these terms would be outside the scope of the rulemaking, as NHTSA in the NPRM proposed a definition of "multifunction school activity bus," not redefinitions of "school bus" or "bus." Second, statutory language specifies that only a new school bus may be sold "significantly to transport preprimary, primary, and secondary school students to or from school or an event related to school." (*See* 49 U.S.C. 30125(a)). This statutory definition takes precedence over any regulatory definition, and amending 49 CFR 571.3 ("Definitions") would not alter the statute. Therefore, defining the MFSAB as a "bus" would put NHTSA in the anomalous situation of fining sellers and lessors that sell or lease new "buses" to child care centers or other transportation providers that use the MFSAB to take children to and from school or on school-related activities. Thus, defining the MFSAB as a "bus" would defeat the purpose of this rulemaking.

Third, NHTSA does not agree that in ensuring that nonconforming new buses are not sold for school transportation purposes, the emphasis on sellers or lessors of new motor vehicles poses a burden on sellers or lessors or on NHTSA. NHTSA's position was explained in an interpretation letter of May 9, 2001 to Collins Bus Corporation, a bus manufacturer. When a day care center wished to purchase a bus to transport children to their homes, Collins asked for guidance about assurances the day care center had to provide a dealer or manufacturer that the intended use does not dictate a school bus. Collins noted that the user is the only person who can actually know how the bus will be used during its life. As part of our answer, we stated that although NHTSA does not currently presume that day care centers universally are engaged in the transportation of children to and from school:

> * * * where it is likely that the purchaser or lessor of a new bus is a day care center, in light of the widespread publicity that has surrounded the issue, we expect a dealer to inquire as to whether the vehicle would also be used to drop off or pick up students from school. If it appears that a vehicle will be used significantly for student transportation, the requirement to sell a certified school bus that meets the Federal motor vehicle safety standards for school buses would apply. Confirmation in writing would appear to be prudent.

Thus, if the present definition of "school bus" does not include the term "sold, or introduced in interstate commerce," NHTSA's enforcement efforts to ensure that dealers and lessors of new vehicles do not sell or lease nonconforming buses for school transportation purposes may be frustrated.[3] Therefore, when this final rule takes effect, where it is likely that the purchaser or lessor of a new MFSAB is a State agency, private or public school, or school district, we expect a dealer to inquire as to whether the vehicle will also be used to drop off or pick up students from school. If it appears that the MFSAB will be "used significantly" for transportation between children's homes and school, the requirement to sell a school bus that meets the Federal motor vehicle safety standards for school buses, including FMVSSs No. 108 and No. 131 would apply. NHTSA also notes that changing the "school bus" and "bus" definitions would not affect dealers' and lessors' statutory responsibilities in ensuring that they do not sell new nonconforming buses for school transportation purposes.

C. Other Vehicle Classification Issues

Public Citizen stated that it recognized Head Start programs' need to purchase vehicles that meet the crashworthiness and crash avoidance protection of school buses and did not object to NHTSA's proposal. However, Public Citizen urged NHTSA to go further and create a new category of buses called the "Multi-Function Activity Buses" to ensure that all buses weighing less than 15,000 pounds GVWR, including 15-passenger vans, meet the school bus crash avoidance, crashworthiness, and post-crash requirements required for school buses. The NPRM did not propose to apply the school bus requirements to buses that are not used to transport school children. Public Citizen's recommendation is thus outside the scope of the present rulemaking. However, the adoption of this final rule will give transportation providers the alternative for a safer transportation choice.

The California Highway Patrol recommended that the MFSAB be defined as a school bus whose purpose does not include transporting students to and from home "or a school bus stop." The rationale for this suggestion was that school buses often pick children up at designated school bus stops, rather than at their homes. Specifying the school bus stop in the definition would make explicit that children should not be picked up from their homes or from school bus stops when transported in a MFSAB. NHTSA agrees that specifying that children should not be picked up from school bus stops would eliminate a potential ambiguity. Thus, in this final rule, the definition of MFSAB states: "a school bus whose purposes do not include transporting students to and from home or school bus stops."

D. Limits on Gross Vehicle Weight Rating for the MFSAB

The majority of commenters on this issue, including NTSB, recommended that NHTSA not adopt the 6,804 kg (15,000 pound) gross vehicle weight rating (GVWR) limitation on the MFSAB. NTSB stated that it did not believe the risk of misuse is significant because using vehicles other than school buses to pick up and drop off children at home "is generally prohibited." NTSB stated that it is not aware of evidence that school districts are misusing vehicles in this manner.

Blue Bird Body Company stated that removing the GVWR weight limitations would meet the need for safety, in that more organizations would be encouraged to buy MFSABs in lieu of non-school buses. Blue Bird noted the increasing public awareness that school buses are safer than non-school buses, and reported increases in requests for school buses (including larger school buses) from churches and colleges to replace the "vans" that had been used. Blue Bird also noted that many schools own used motorcoaches, especially in the western states where travel distances are greater. Blue Bird stated that there is a market demand for a "school activity bus" that is more comfortable than a "typical school bus." Since the motorcoaches do not meet school bus safety standards, the students are unnecessarily placed at risk. Blue Bird stated its belief that having no weight restrictions on the MFSABs will encourage the schools to buy MFSABs "that meet the school bus crashworthiness standards of construction."

NASDPTS cautioned that the proposed 15,000 pound GVWR limitation "would eliminate larger buses from the potential of federal funding under the Federal Transit Administration," possibly frustrating coordinated transportation providers' efforts in meeting the needs of its customers. It also noted that it would not be practicable to expect a school, child care center, Head Start program, or coordinated transportation provider to purchase two or more small MFSABs in lieu of one large MFSAB because of the additional costs that would be incurred for more drivers, additional maintenance, and insurance.

The Texas Department of Public Safety stated that if MFSABs included all sizes of school buses, Texas could change its definition of a "school activity bus" to include the MFSAB. This would mean a school district could buy a vehicle as safe as a school bus to transport students on activity trips.

NSTA, on the other hand, supported the limitation of the MFSAB to buses not larger than 15,000 pounds GVWR. NSTA expressed concern about the possibility of misuse, especially by private schools that often come under less scrutiny by state agencies than do public schools. NSTA also noted that coordinated transportation systems could combine adult and student passenger loads and stage pick-ups at curbside bus stops. Although this would not constitute home-to-school transportation, students could be endangered because there would be roadside loading and offloading without the benefit of the school bus traffic control devices. NSTA also expressed concern that school student safety would be compromised because the large MFSAB would not require a school bus driver, that the MFSAB driver would need only a passenger endorsement, without the additional safety training of a school bus driver.

Regarding the potential misuse of the MFSAB by home to school transportation providers, NHTSA shared this concern. However, every State has laws that require school bus drivers to activate the warning lamps and stop signal arm whenever the school bus is stopped to pick up or discharge students on public roads. A driver failing to activate these devices would be in violation of State law. Thus, every State already has a law that prohibits school districts from using a MFSAB to transport children to and from school, since it would be picking up or discharging students without activating warning lamps and the school bus stop arm. The misuse issue is discussed in greater detail in Section I., "State Law Issues."

These State laws have also persuaded NHTSA that it is unlikely that larger

[2] At present, "school bus" is defined at 49 CFR Section 571.3 as "a bus that is sold, or introduced in interstate commerce, for purposes that include carrying students to and from school or related events, but does not include a bus designed and sold for operation as a common carrier in urban transportation."

[3] *See* 49 U.S.C. Section 30112 "Prohibition on manufacturing, selling, and importing noncomplying motor vehicles and equipment."

MFSABs would be misused, and therefore, weight limitations for MFSABs are not necessary. Hence, NHTSA has decided to not adopt the 6,804 kg (15,000 pound) GVWR limitation on MFSABs.

Removing a weight limitation on MFSABs would also further NHTSA's goal of promoting choice for transportation providers since it would mean that those whose transportation choices are now buses over 6,804 kg or school buses over 6,804 kg would have an alternative bus over 6,804 kg (*i.e.*, the MFSAB) that provides the same crashworthiness, crash avoidance and post-crash safety protection as does a school bus, without the traffic control features that are not used.

NSTA's concern about coordinated transportation systems where children could be loaded and offloaded without the benefit of school bus traffic control devices is an issue of vehicle use, regulated by the States. Some areas in the U.S. may not be financially able to provide a school bus system for school transportation and a separate bus system for everyone else. Transportation systems using MFSABs would offer all riders more protection than if non-school buses were used.

NSTA's concern that a large MFSAB would not require a school bus driver is a matter that would be addressed by State law. State law would determine the type of license (bus v. school bus) a driver would need to drive the MFSAB.

E. FMVSS No. 222, School Bus Passenger Seating and Crash Protection

Although the NPRM denied those aspects of the Rabun-Gap petition pertaining to school bus seats, several comments addressed the issue of seating. Blue Bird Body Company recommended that FMVSS No. 222, *School bus passenger seating and crash protection*, be amended to make the provisions that presently apply to school buses 10,000 pounds GVWR and under to also apply (at the option of the manufacturer) to MFSABs over 10,000 pounds GVWR.

Blue Bird stated that many schools want their "school activity buses" to have reclining seats, wider seat width for each passenger, and more seat separation so that tall and large students are more comfortable on long trips. They stated that FMVSS No. 222 "compartmentalization" requirements restrict school bus manufacturers' ability to meet comfort requirements, especially for school buses over 10,000 pounds GVWR. Blue Bird noted that FMVSS No. 222 requires that small school buses (10,000 pounds GVWR or under) be equipped with Type 1 or Type 2 seat belts and does not require that they meet S5.2, Restraining Barrier Requirements, of FMVSS No. 222. Thus, MFSABs with a GVWR of 10,000 pounds or less would not be restricted as to the requirement for a restraining barrier forward of a passenger seat and, therefore, would not be constrained as to a maximum allowable seat spacing.

Blue Bird went on to note that if MFSABs over 10,000 pounds GVWR, when equipped with seat belts, were excepted (as small school buses are now excepted) from S5.2, then seat spacing would no longer be an issue. Blue Bird therefore recommended that manufacturers of large MFSABs be allowed to meet the provisions of FMVSS No. 222 as they apply to school buses 10,000 pounds GVWR or under.

Blue Bird also recommended that S4.1 of FMVSS No. 222 be amended to permit a manufacturer of MFSABs to install only two seat belts on any seat that is between 22.5 inches and 39 inches in width, "to meet customer requirements for no more than two passengers per seat on a MFSAB." Blue Bird cited market demand for more seating room on school bus bench seats and stated that "something will need to be changed to permit the installation of only two seat belts on a 39-inch wide seat in a MFSAB."

Rabun addressed NHTSA's discussion in the NPRM that the MFSAB could be equipped with reclining motorcoach style seating and still meet FMVSS No. 222 because the standard specifies that when the school bus is tested, adjustable seat backs are to be "adjusted to its most upright position." (*See* NPRM at 67 FR 67378.) Rabun responded that its discussions with school bus manufacturers have led them to believe that "such seats, when in the reclined position, do not meet the intent of FMVSS No. 222 and are therefore not available for sale in buses certified as school buses." Rabun recommended the use of combination lap/shoulder belts since they believed "a passenger who is seated behind a seat in the reclining position and who is wearing a lap/shoulder restraint would be better protected in a frontal collision than if the passenger did not have seat belts, even if the seating system was certified to meet the requirements of FMVSS No. 222." Rabun also expressed the view that if each passenger was provided a lap/shoulder restraint and was required to use it, the issue of compartmentalization and seat spacing would be "correspondingly insignificant."

AAP expressed concern that the proposed rule did not require seating positions to be equipped with lap/shoulder belts and LATCH. AAP called on NHTSA to "move in the direction of ensuring greater safety of children on school buses by requiring them to be equipped with lap/shoulder belts." John Fairchild recommended that NHTSA should at least "encourage" every MFSAB to provide Type II lap/shoulder seat belt systems at every seating position, and to provide "appropriate securement systems for the child restraint devices Head Start specifies, and could serve other paratransit clients as well."

Since none of these suggested amendments were proposed in the NPRM, we are unable to adopt them without further notice and opportunity for comment. We are aware of the continuing interest in possible improvements to school bus seating. In May 2002, we reported to Congress on prospective improvements for occupant protection in school buses, as required by the Transportation Equity Act for the 21st Century (TEA–21)(P.L. 105–178).[4]

NHTSA is in the process of developing test procedures for voluntarily installed lap/shoulder belts in school buses over 4,536 kg (10,000 pounds) gross vehicle weight rating. We expect to propose some improvements in this area in the next year or so.

F. Warning Labels

Commenters on this issue expressed skepticism about the efficacy of interior labels warning that MFSABs should not be used to transport school children between home and school. NASDPTS questioned the benefit of a warning label on the MFSAB as to its intended use. That organization stated that using the MFSAB to transport students to and from school would violate laws in every state. It noted that if "someone with this knowledge is pre-conditioned to violate state laws, and expose themselves and their school district to extreme liability risks, it does not seem reasonable to assume that the addition of a warning label will change that individual's mind." NASDPTS also noted that there are already "a large number" of labels on school buses, and that at some point, there are diminishing returns of adding even more warning labels. NASDPTS recommended that any potential MFSAB misuse be addressed through school bus driver training rather than by another warning label.

[4] Section 2007(b) of TEA–21 states: "School Bus Occupant Safety Study—The Secretary shall conduct a study to assess occupant safety in school buses. The study shall examine available information and occupant safety and analyze options for improving occupant safety."

John Fairchild recommended the adoption of a "performance standard for an interior warning device that specifies the vehicle's current operational status." Fairchild suggested that the device or label should at a minimum indicate whether the vehicle is in use as a school activity bus, Head Start AAV, or other type of service. Vehicles dedicated to a single use would need to provide "only the one appropriate indicator related to its defined activity."

The Department of California Highway Patrol recommended a warning label stating: "This vehicle is not intended for daily school-bus route use," that would be placed in a general location such as the driver's compartment where it would be easily visible by the driver or any passenger who enters or exits the vehicle.

NAIS "sees no harm" in placing a warning label, and suggested a label in the driver's view that "the MFSAB should not load or unload passengers if the passengers are not protected from traffic."

VAPT recommended that a warning label be placed in a prominent spot and that the label state: "No loading once the trip begins. No unloading until reaching the destination. [Head Start Only—monitor shall accompany students crossing the road.]" NSTA also supported the requirement for a warning label.

The Utah State Office of Education recommended a warning label near the front of the occupant compartment stating: "This Bus Is Not To Be Used To Bus Students To or From School or Home."

In the NPRM, NHTSA did not propose a specific warning label, but did ask for comments on this issue. In particular, NHTSA asked whether MFSAB manufacturers should be required to place a prominent warning near the front of the occupant compartment, warning the driver and passengers that the bus was not intended to be used to pick children up from and drop them off at places such as home and bus stops. If commenters believed that such a warning was appropriate, NHTSA asked for comment on standardized wording, size and other appearance requirements and location.

A number of commenters addressed the general question of whether or not a warning label was appropriate, without addressing the more specific questions. Commenters who did not believe a label was appropriate expressed concerns about such a label distracting attention from other warning labels or stated that State laws and liability concerns would prevent misuse of the MFSAB. Most of those supporting a label did not give specific information about why a label would be helpful; however, a few did express concern about the possibility of misuse.

A few commenters provided specific comment about the form a warning label should take if required. One commenter, John Fairchild, recommended the adoption of a "performance standard for an interior warning device that specifies the vehicle's current operational status," *i.e.*, school activity bus, Head Start AAV, etc. Other commenters offered specific language indicating either that the MFSAB was not to be used for school bus routes or that there should be no unloading before reaching the final destination, but each commenter's suggested language differed from the others.

Only one commenter addressed the issues of size and location. Les Entreprises Michel Corbeil, Inc. indicated that if a warning label were found to be necessary, the "label should be as small as possible but clearly visible to the drivers and to passengers seated in at least the first three rows."

After carefully considering the public comments, NHTSA has decided not to specify a warning label in the final rule. NHTSA is not convinced that a warning label would be necessary to convey the message that the MFSAB should not be used for regular school bus use. As NASDPTS noted, using the MFSAB to transport students to and from school would violate laws in every state. Further, as many commenters pointed out, there are already a large number of labels in school buses. For these reasons, and because NHTSA did not propose a specific label, NHTSA has decided to monitor the use of the MFSAB. If misuse occurs, NHTSA will reconsider the warning label at a later date.

G. Passenger Restraints

U.S. Bus Corporation asked for clarification of whether the MFSAB with a GVWR of 10,000 pounds or less must meet passenger restraint system requirements in FMVSS No. 208, *Occupant crash protection* or in FMVSS No. 222, *School bus passenger seating and crash protection*. NHTSA's response is that as a school bus category, all MFSABs, including those that are 10,000 pounds GVWR or under, must meet FMVSS No. 222.

H. Emergency Exits

U.S. Bus Corporation also noted that FMVSS No. 217, *Bus emergency exits and window retention and release*, has different requirements for emergency exit windows and emergency exit doors for buses versus school buses. They asked for clarification of which set of FMVSS No. 217 requirements the MFSAB must meet. Because the MFSAB would be a category of school bus, it would have to meet all of the emergency exit requirements specified in FMVSS No. 217 for school buses.

I. State Law Issues

Commenters offered these additional comments on issues that fall within the purview of State law.

Potential Misuse by Home to School Transportation Providers

In the NPRM, NHTSA explained that it proposed a size limitation on MFSABs because it was concerned about the possibility of misuse, *i.e.*, the possibility that schools would purchase school buses without traffic control devices as a means of saving money on buses used to pick children up from and drop them off at home. In its comments, NASDPTS addressed NHTSA's concern. NASDPTS stated that every State has laws that require school bus drivers to activate the warning lamps and stop signal arm whenever the school bus is stopped to pick up or discharge students on public roads. A driver failing to activate these devices would be in violation of State law. Further, if a school district used a MFSAB to transport children to and from school, it would be violating its State laws since it would be picking up or discharging students without activating warning lamps and the stop signal arm. NASDPTS noted: "Such actions would not only be punishable under state law, but would also expose the school district, school board, state department of education, etc. to extreme liability risks that would far outweigh any savings that might accrue from ordering a MFSAB rather than a "school bus.'"

VAPT stated its belief that the possibility of misuse is lessened because state agencies that oversee the operations and specifications for school buses used in the public schools do a very good job of educating and training its members. VAPT stated that these state agencies responsible for pupil transportation can also distribute information to other state agencies, or can notify its member schools about any new classification and ask the individual school district directors to distribute notices locally.

NAIS suggested that NHTSA consider requiring schools using MFSABs to load and unload students in protected areas out of roadways, whether in a parking space, parking lot, or turnaround area. NAIS suggested that such a rule "may be a more appropriate reminder on a sticker in the bus than one reminding

users that students should not be dropped off at home or other bus stops." NHTSA does not have the statutory authority to regulate where and how students are to be picked up or dropped off. Operational requirements such as this are matters of State law.

The Amalgamated Transit Union encouraged NHTSA to prohibit school districts from using passenger vans to transport children to and from school and school-related activities. Because regulation of vehicle use is a matter of State law, NHTSA cannot adopt this recommendation. However, NHTSA and the National Transportation Safety Board have been on record as recommending that school children be transported in school buses (including the MFSAB), and not in buses that do not meet NHTSA's school bus standards.

School Bus Color

Corbeil (a school bus and bus manufacturer), the National Child Care Association, John Fairchild, and U.S. Bus Corporation recommended that the final rule contain a provision prohibiting the MFSAB from being painted National School Bus Glossy Yellow. This recommendation will not be adopted because NHTSA did not propose to regulate MFSAB color in the NPRM and thus, the issue is outside the scope of this rulemaking. Although NHTSA does not at present regulate school bus color, all States require school buses that provide home-to-school transportation to be painted National School Bus Glossy Yellow, as recommended in Highway Safety Program Guideline No. 17, "Pupil Transportation Safety."

NHTSA is also aware that some States allow "activity buses" used by schools to be painted a color other than National School Bus Glossy Yellow. When this final rule takes effect, each State will determine whether MFSABs used by schools for activity trips, child care facilities for point-to-point school transportation, or coordinated transportation systems for various transportation services, must be painted a color other than National School Bus Glossy Yellow. NHTSA is not aware of any safety problems associated with color identification in buses that are already performing these services. Should it appear that there is a safety need, NHTSA will consider regulating school bus color.

School Bus Driver Training

John Fairchild recommended that NHTSA develop specific training materials related to operational issues for the MFSAB drivers and riders. NASDPTS recommended that any potential MFSAB misuse be addressed through school bus driver training rather than by a warning label.

School bus driver training is primarily a responsibility of State and local governments. However, NHTSA will consider developing educational materials, to be used voluntarily by school transportation trainers, that discuss restrictions on the use of MFSABs, especially involving to and from school transportation for school children.

V. Final Rule

After reviewing the public comments, NHTSA has decided to adopt a new school bus category, the "multifunction school activity bus," with the following characteristics:

1. The MFSAB is classified as a "school bus," not a "bus."
2. There is no upper weight limit on the MFSAB.
3. The MFSAB must meet FMVSS No. 222, as FMVSS No. 222 is presently written.
4. The MFSAB must meet all warning label requirements applicable to school buses. There is no label unique to the MFSAB.
5. Because school bus color is regulated by State law, NHTSA does not prohibit the MFSAB from being painted National School Bus Glossy Yellow.

VI. How This Final Rule Affects Other Federal Agencies

A. U.S. Department of Health and Human Services (DHHS)—Head Start Bureau

With this final rule, we intend to create a subcategory of school buses that qualify as "allowable alternate vehicles" under DHHS' Head Start regulations, 45 CFR 1310.12, and thus could be used to transport Head Start Program participants.

B. Federal Transit Administration (FTA)

We anticipate that creation of the MFSAB will aid the efforts of Regional Transit Authorities (which must serve the general public) and Head Start both to meet State law and to satisfy the limitations on the availability of funding from the FTA. Since the MFSABs do not have the school bus flashing lights and stop arms, NHTSA expects that transit authorities and other transportation providers can readily obtain FTA funding to buy MFSABs, provided that such vehicles are not used as school buses to provide home-to-school service. Further, as noted above, in many States, the flashing lights and stop arms are permitted only on "school buses" (as defined by State law).

C. National Transportation Safety Board (NTSB)

By making available a category of school bus that may be somewhat less expensive than the school bus with traffic control devices, NHTSA anticipates that the final rule will help child transportation providers in implementing the NTSB's recommendation that children be transported in buses that "meet the school bus structural standards or the equivalent set forth in *49 Code of Federal Regulations Part 571*."

VII. Leadtime

All public commenters addressing the leadtime issue urged that this final rule take effect as soon as possible. Accordingly, this final rule is effective thirty days from the date this document is published in the **Federal Register**. Optional early compliance with this final rule is provided as of the date this document is published in the **Federal Register**.

VIII. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." The rulemaking action is also not considered to be significant under the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

For the following reasons, we believe that this final rule will not increase vehicle manufacturers' costs to provide school buses for uses other than transportation of students between home and school. In order to manufacture a "multifunction school activity bus," vehicle manufacturers need only manufacture a school bus and omit including the four-way/eight-way alternating flashing lights and stop arm.

For the following reasons, depending on how the new "multifunction school activity bus" is priced, NHTSA believes that organizations that at present purchase school buses for transportation purposes other than to and from home to school might realize a cost benefit as a result of this rulemaking.

As earlier discussed, this final rule creates a subcategory of school buses that need not meet requirements for flashing four-way/eight-way alternating flashing lights or a stop arm. Estimates supplied by Blue Bird Body Company (a school bus manufacturer) indicate that the average cost of the four-way/eight-way alternating flashing lights is approximately $417 per school bus and the average cost of the stop-arm is approximately $560. Estimates supplied by Thomas Built Buses (another school bus manufacturer) indicate that the cost for the four-way/eight-way alternating flashing lights ranges from $175 for the least expensive four-way system to $2,300 for the most expensive eight-way system and the cost for stop-arms ranges from $250 to $720. Based on those figures, the cost of adding stop-arms and alternating flashing lights ranges from $425 to $3020 per school bus.

The Annual Fact Book published by *School Transportation News* reports a strong increase in sales of "Type A" school buses (approximately 4,536 kg (10,000 pounds) GVWR); increasing from 6,389 in the 1995–1996 school year to 10,475 in the 1998–1999 school year. The agency notes that from 1990 through 1997, approximately 6,000 "Type A" school buses were sold each year. The agency believes that the increase in the sales of small school buses for years following 1997 is mostly due to purchases by organizations such as day care centers and Head Start, which provide child transportation. The agency does not have any data to indicate what percentages of the "Type A" school buses are sold to organizations that provide transportation other than between home and school. We note that since approximately 6,000 small "Type A" school buses were sold per year prior to 1997, a reasonable assumption would be that about 4,000 of these buses are sold to day care centers and others for transportation purposes other than to and from home to school.

Based on the cost figures discussed above and the conservative estimate of 4,000 Type A school buses sold each year, we estimate that this final rule may save child transportation providers approximately $3.9 million dollars per year in the small "Type A" school bus market. However, this estimate assumes that school bus manufacturers will reduce the prices of the "multifunction school activity bus" by the amount of money saved as a result of not having to install four-way/eight-way alternating flashing lights or stop arms on those vehicles.

Because the economic impacts of this proposal are so minimal (*i.e.*, the annual effect on the economy is less than $100 million), no further regulatory evaluation is necessary.

B. Executive Order 13132 (Federalism)

Executive Order 13132 requires us to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, we may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or unless we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation with Federalism implications and that preempts State law unless we consult with State and local officials early in the process of developing the proposed regulation.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The reason is that this final rule, applies to motor vehicle manufacturers, not to the States or local governments. This final rule assists child transportation providers by making available a school bus that meets the traffic control laws of States and local governments. Thus, the requirements of Section 6 of the Executive Order do not apply to this final rule.

C. Executive Order 13045 (Economically Significant Rules Disproportionately Affecting Children)

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This final rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866 and does not involve decisions based on environmental, health or safety risks that disproportionately affect children. However, this final rule makes a school bus vehicle type available for transportation purposes other than to and from home to school. Although we do not have any estimates of the extent or nature of the practice throughout the country, the agency is informed by the National Child Care Association that at present, in many cases, children provided transportation to and from child care facilities are transported in 15-passenger vans or other buses that do not meet the special requirements for school buses. This final rule increases the chances that children are transported in MFSABs, rather than in buses that are not school buses and the children's safety is thereby enhanced.

D. Executive Order 12778 (Civil Justice Reform)

Pursuant to Executive Order 12778, "Civil Justice Reform," we have considered whether this final rule has any retroactive effect. We conclude that it does not have such an effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except

to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use.

49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

E. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule would not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

The agency Administrator has considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and certifies that this final rule will not have a significant economic impact on a substantial number of small entities. We believe that this final rule benefits small businesses, small nonprofits and small local governments slightly because they are now able to purchase a school bus without traffic control devices on them, potentially saving $977 per school bus (using figures provided by Blue Bird Body Company), and saving small entity providers of transportation other than to and from home to school transportation approximately $3.9 million dollars per year. This cost savings assumes that school bus manufacturers (some of which are small businesses) pass on to customers the cost savings resulting from not installing the traffic control devices on the school buses.

Accordingly, the agency believes that this final rule has a small beneficial cost effect on small motor vehicle manufacturers considered to be small business entities, on small businesses (that presently transport children in school buses with the four-way/eight-way alternating flashing lights and stop arms) providing transportation other than to and from home to school, or child care, small nonprofits, and small local governmental entities.

F. National Environmental Policy Act

We have analyzed this rule for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

G. Paperwork Reduction Act

NHTSA has determined that this final rule will not impose any "collection of information" burdens on the public, within the meaning of the Paperwork Reduction Act of 1995 (PRA). This rulemaking action will not impose any filing or recordkeeping requirements on any manufacturer or any other party.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in our regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

After conducting a search of available sources, we have determined that there are not any voluntary consensus standards applicable to this rulemaking.

I. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

This final rule will not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

J. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?

—Are the requirements in the rule clearly stated?

—Does the rule contain technical language or jargon that is not clear?

—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?

—Would more (but shorter) sections be better?

—Could we improve clarity by adding tables, lists, or diagrams?

—What else could we do to make this rulemaking easier to understand?

K. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

■ In consideration of the foregoing, the Federal Motor Vehicle Safety Standards (49 CFR part 571), are amended as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.3 is amended by adding a definition of "Multifunction school activity bus" to paragraph (b), in the appropriate alphabetical order, to read as follows:

§ 571.3 Definitions.

* * * * *

(b) * * *

Multifunction school activity bus (MFSAB) means a school bus whose purposes do not include transporting students to and from home or school bus stops.

* * * * *

■ 3. Section 571.108 is amended by revising the introductory sentence in S5.1.4 to read as follows:

§ 571.108 Standard No. 108, Lamps, reflective devices, and associated equipment.

* * * * *

5.1.4 Except for multifunction school activity buses, each school bus shall be equipped with a system of either:

* * * * *

■ 4. Section 571.131 is amended by revising S3 to read as follows:

§ 571.131 Standard No. 131, School bus pedestrian safety devices.

* * * * *

S3. *Application.* This standard applies to school buses other than multifunction school activity buses.

* * * * *

Issued on: July 21, 2003.

Jeffrey W. Runge,

Administrator.

[FR Doc. 03–19457 Filed 7–28–03; 10:13 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 68, No. 147
Thursday, July 31, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 212

RIN 3206–AJ75

Competitive Service and Competitive Status

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing a plain language rewrite of its regulations on the definitions of competitive service and competitive status as part of a broader review of OPM's regulations. The purpose of the revision is to make these definitions consistent with law and civil service rules.

DATES: Comments must be received on or before September 29, 2003.

ADDRESSES: Send, deliver or fax comments to Ellen Tunstall, Deputy Associate Director for Talent and Capacity Policy, U.S. Office of Personnel Management, Room 6551, 1900 E Street, NW., Washington, DC 20415–9700; e-mail *employ@opm.gov*; fax: 202–606–2329.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Jacobs on (202) 606–0960, by TDD on is (202) 418–3134, by fax on (202) 606–2329, or by e-mail at *kkjacobs@opm.gov*.

SUPPLEMENTARY INFORMATION: We are revising the format of Part 212 and eliminating subparts that merely restate the provisions of 5 U.S.C. 2102 and Civil Service Rules 1.2 and 1.3 of this chapter. The purpose of these revisions is not to make substantive changes but, rather, to make the definitions in this part consistent with the definitions found in statute and in the civil service rules of this chapter.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because the regulations apply only to appointment procedures for certain employees in Federal agencies.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 1866.

List of Subjects in 5 CFR Parts 212

Government employees.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM proposes to revise 5 CFR part 212 as follows:

PART 212—COMPETITIVE SERVICE AND COMPETITIVE STATUS

Sec.

212.101 Definitions.
212.102 Effect of competitive status on a position.

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp. p. 218.

§ 212.101 Definitions.

In this chapter:

Competitive service has the meaning given that term by section 2102 of title 5, United States Code, and sections 1.2 and 1.3 of this chapter.

Competitive status has the meaning given that term by section 1.3 of this chapter.

Competitive position has the meaning given that term by section 1.3 of this chapter.

§ 212.102 Effect of competitive status on a position.

An employee shall be considered as being in the competitive service when the employee meets the conditions established by section 1.3 of this chapter.

[FR Doc. 03–19470 Filed 7–30–03; 8:45 am]

BILLING CODE 6325–38–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–13–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc (RR) RB211–22B, RB211–524, and RB211–535 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM); reopening of comment period.

SUMMARY: This notice revises an earlier proposed airworthiness directive (AD), applicable to (RR) RB211–535E4 series turbofan engines. That proposal would have required disassembling and inspecting all the engine mounts for cracks, refurbishing the engine mounts, and replacing the front mount thrust link spherical bearing. That proposal was prompted by reports of corrosion and fatigue cracks in the mount pins, the spherical bearings, and the support links and their respective spherical bearings. This action revises the proposed rule by expanding the applicability from RB211–535E4 series turbofan engines to include RB211–22B, RB211–524, and RB211–535 series turbofan engines, and by requiring the installation of a front engine mount housing and link support assembly that has a serialized, life limited spherical bearing installed. This action also revises the proposed rule by eliminating the requirements for disassembling and inspecting all the engine mounts for cracks, and refurbishing the engine mounts. The actions specified by this proposed AD are intended to prevent failure of the front engine mount housing and link support assembly due to cracks, that could result in loss of the engine.

DATES: Comments must be received by September 29, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–13–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in the proposed rule may be obtained from Rolls-Royce plc, P.O. Box 31 Derby, DE24 8BJ, United Kingdom; telephone 011–44–1332–242424; fax 011–44–1332–249936. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Antonio Cancelliere, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7751; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NE–13–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–13–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to RB211–535E4 series turbofan engines, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on February 26, 2002 (67 FR 8739). That NPRM would have required disassembling and inspecting all engine mounts for cracks, refurbishing the engine mounts, and replacing the front mount thrust link spherical bearing. That NPRM was prompted by reports of corrosion and fatigue cracks in the mount pins, the spherical bearings, and the support links and their respective spherical bearings. That condition, if not corrected, could result in failure of the engine mounts due to cracks that could result in loss of an engine.

Since that NPRM was issued, the FAA has become aware that the Civil Aviation Authority (CAA), which is the aviation authority for the U.K., has cancelled AD 004–08–2000, which addresses the subject of the NPRM, and that RR has downgraded the category of Service Bulletin (SB) RB.211–71–5291, Revision 14, dated March 13, 2001, which required compliance of that SB in the NPRM, to recommended. RR has since issued a mandatory SB RB.211–71–D437, Revision 1, dated February 28, 2003, which introduces a serialized, life-limited, spherical bearing for the engine front mount housing and link support assembly and introduced the inspection requirements of the engine front and rear mounts in the Time Limit Manual. Therefore, the compliance with the requirements of the SB RB.211–71–5291 is no longer required.

The CAA has also issued AD 005–04–2002, dated April 2002, to mandate compliance with the new requirements as per the RR Service Bulletin (SB) RB.211–71–D437, Revision 1, dated February 28, 2003.

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Manufacturer's Service Information

The FAA has reviewed and approved the technical contents of RR SB RB.211–71–D437, Revision 1, dated February 28, 2003, that introduces new production engine front mount housing and link support assemblies and describes procedures for reworking existing engine front mount housing and link support assemblies by installing a new serialized bearing.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on RR RB211–22B, RB211–524, and RB211–535 series turbofan engines installed on U.S. registered aircraft, the proposed AD would require the installation of a front engine mount housing and link support assembly that has a serialized, life limited spherical bearing installed, by either installing a new assembly or reworking the existing assembly. The actions must be done at the next Module 04 shop visit after the effective date of the AD but no later than April 1, 2011, in accordance with the MSB described previously.

Economic Analysis

There are approximately 2,214 RR RB211–22B, RB211–524, and RB211–535 series turbofan engines of the affected design in the worldwide fleet. The FAA estimates that about 620 RB211–535 engines, and about 45 RB211–524 and RB211–22B engines installed on airplanes of U.S. registry, would be affected by this proposed AD. The FAA also estimates that no additional labor costs would be incurred to perform the proposed actions. The FAA anticipates that the new hardware will be installed while the module is inducted into the shop for routine maintenance inspection before the compliance expiration date of this AD. The cost of a new serialized spherical bearing is approximately $592 for RB211–535 engines, $895 for RB211–524 engines, and $1,990 for RB211–22B engines. Based on these figures, the total cost of the proposed AD to U.S. operators is estimated to be $493,975.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44

FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Rolls-Royce plc: Docket No. 2001–NE–13–AD.

Applicability This airworthiness directive (AD) is applicable to Rolls-Royce plc (RR) RB211–22B, RB211–524, and RB211–535 series turbofan engines. These engines are installed on, but not limited to Boeing 747, 757, 767, Lockheed L–1011, and Tupolev Tu204–120 airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent failure of the front engine mount due to cracks, that could result in loss of the engine, do the following at the next Module 04 shop visit after the effective date of this AD, but no later than April 1, 2011:

(a) Replace existing engine front mount housing and link support assembly listed in Table 1 of this AD with new production part number (P/N) front mount housing and link support assembly, or with a reworked assembly, in accordance with paragraph 3 of Accomplishment Instructions of Mandatory Service Bulletin (MSB) No. RB211–71–D437, Revision 1, dated February 28, 2003. Table 1 follows:

TABLE 1.—FRONT MOUNT HOUSING AND LINK SUPPORT ASSEMBLY EXISTING P/NS AND REWORKED P/NS

Existing P/N	New production or reworked P/N
LK83038	FW18695
LK83047	FW18686
LK83057	FW18691
LK83072	FW18696
LK83110	FW18697
LK83114	FW18698
UL10472	FW18694
UL25694	FW18688
UL27054	FW18687
UL27601	FW18693
UL27612	FW18689
UL27613	FW18684

(b) Mark the Modules 04 after the rework with new P/N as specified in the following Table 2:

TABLE 2.—MODULE 04 REWORKED P/N

Existing P/N	Reworked P/N
MO7127	MO7159
MO7130	MO7156
MO7133	MO7153
MO7134	MO7152
MO7135	MO7154
MO7149	MO7158
MO7150	MO7155
MO7151	MO7157
MO7202	MO7214
MO7206	MO7216
MO7207	MO7215
MO7208	MO7213

(c) Information on engine front mount housing and link support assembly disassembly, inspection, replacement of the time limited spherical bearing, and reassembly, can be found in RR Engine Manual, section 71–21–01.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Note 3: The subject of this AD is addressed in CAA airworthiness directive 005–04–2002, dated April 2002.

Issued in Burlington, Massachusetts, on July 24, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–19482 Filed 7–30–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–131997–02]

RIN 1545–BA85

Section 42 Carryover and Stacking Rule Amendments; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Change of location of public hearing.

SUMMARY: This document changes the location of a public hearing on proposed regulations relating to section 42 carryover and stacking rules.

DATES: The public hearing scheduled in room 2615 on Tuesday, September 23, 2003 is rescheduled to be held in room 4718 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, contact Guy R. Traynor at (202) 622–3693 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that was published in the **Federal Register** on July 7, 2003 (68 FR 40218), announced that a public hearing on proposed regulations relating to section 42 carryover and stacking rules, would be held on Tuesday, September 23, 2003, beginning at 10 a.m., in room 2615 of the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

The location of the public hearing has changed. The public hearing for proposed regulations (REG–131997–02) will be held in room 4718, beginning at 10 a.m., in the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Because of controlled access restrictions, attendees are not admitted beyond the lobby of the Internal Revenue Building until 9:30 a.m. The IRS will prepare an agenda showing the scheduling of the speakers after the outlines are received from the persons testifying and make copies available free of charge at the hearing.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel, (Procedure & Administration).

[FR Doc. 03–19538 Filed 7–30–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–208199–91]

RIN 1545–BC55

Suspension of Running of Period of Limitations During a Proceeding To Enforce or Quash a Designated or Related Summons

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations regarding the use of designated summonses and related summonses and the effect on the period of limitations on assessment when a case is brought with respect to a designated or related summons. These proposed regulations reflect changes to section 6503 of the Internal Revenue Code of 1986 made by the Omnibus Budget Reconciliation Act of 1990 and the Small Business Job Protection Act of 1996. This regulation affects corporate taxpayers that are examined under the coordinated issue case (CIC) program and are served with designated or related summonses. This regulation also affects third parties that are served with designated or related summonses for information pertaining to the corporate examination.

DATES: Written or electronic comments and requests for a public hearing must be received by October 29, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–208199–91), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 4 p.m. to: CC:PA:RU (REG–208199–91), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Taxpayers may also submit electronic comments directly to the IRS Internet site at *www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Rawlins, (202) 622–3630 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations amending the Procedure and Administration Regulations (26 CFR part 301) under section 6503 of the Internal Revenue Code of 1986. Section 11311 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508, 104 Stat. 1388) (1990 Act) amended section 6503(k) to suspend the period of limitations on assessment when a case is brought with respect to a designated or related summons. Section 6503(k) was redesignated as section 6503(j) by section 1702(h)(17)(A) of the Small Business Job Protection Act of 1996 (Public Law 104–188, 110 Stat. 1874).

Explanation of Provisions

These proposed regulations generally provide that the period of limitations on assessment provided for in section 6501 is suspended with respect to any return of tax by a corporation that is the subject of a designated or related summons if a court proceeding to enforce or quash is instituted with respect to that summons.

Designated Summonses and Related Summonses

A designated summons is a summons issued to determine the amount of any internal revenue tax of a corporation for which a return was filed if certain additional requirements are satisfied. A designated summons may only be issued to a corporation (or any other person to whom such corporation has transferred records) if the corporation is being examined under the IRS' coordinated examination program "or any successor program." The existing successor program to the coordinated examination program is the coordinated issue case (CIC) program.

Section 6503(j)(2)(A)(i) requires that the issuance of the summons be preceded by a review by the regional counsel of the Office of Chief Counsel for the region in which the examination of the corporation is being conducted. Because the prior regional structure of the IRS no longer exists, these proposed regulations provide that the review must by completed by the Division Commissioner and the Division Counsel of the Office of Chief Counsel for the organizations that have jurisdiction over the corporation whose liability is the subject of the summons. The summons also must be issued at least 60 days before the day on which the statute of limitations on assessment under section 6501 would otherwise expire. Finally, the summons must clearly state that it is a designated summons for purposes of section 6503(j).

A related summons is any other summons that is issued with respect to the same tax return of the corporation as a designated summons and is issued during the 30-day period that begins on the date the designated summons is issued.

Suspension of Period of Limitations on Assessment

Section 6503(j)(1) suspends the period of limitations on assessment under section 6501 for the applicable tax period when a court proceeding is brought with respect to a designated or related summons. For purposes of these proposed regulations, a court proceeding is a proceeding brought in a United States district court either to quash a designated or related summons under section 7609(b)(2) or to enforce a designated or related summons under section 7604. The court proceeding must be brought within the otherwise applicable period of limitations in order to suspend that period under section 6503(j).

The proposed regulations provide that the suspension begins on the day that a court proceeding is brought and continues until there is a final resolution as to the summoned party's response to the summons (discussed in the next section), plus an additional 120 days if the court requires any compliance with the summons at issue. If the court does not require any compliance, then the period of limitations on assessment resumes running on the day following the date of the final resolution and in no event shall expire before the 60th day following the date of final resolution.

Final Resolution of a Summoned Party's Response to a Summons

Under section 6503(j)(3)(B), the length of the suspension under section 6503(j) depends on when "final resolution" of a summoned party's response to the designated or related summons occurs. The term "final resolution" is not defined in the statute. The legislative history to the 1990 Act states that the term "final resolution" has the same meaning it has under section 7609(e)(2)(B), relating to third-party summonses. H.R. Conf. Rep. No. 101–964 (1990). Specifically, the conference report to the 1990 Act states that final resolution means that no court proceeding remains pending and that the summoned party has complied with

the summons to the extent required by the court.

Accordingly, the proposed regulations provide that final resolution occurs when the summoned party complies with a summons to the extent required by the court and all court proceedings and times for appeals applicable to those proceedings have terminated. If the summoned party has complied with the summons to the extent required by a court but there still remains time to appeal that order, final resolution occurs when the time for appeal has expired. (Were final resolution deemed to occur before that point, the period of limitations on assessment might resume running even though a later order after appeal might require additional compliance.) If all appeal periods have expired but the summoned party has not complied with the summons to the extent required by the court order, the proposed regulations provide that final resolution does not occur until the summoned party has complied with the summons to the extent required by the court order.

Whether a party has complied with the terms of the summons as enforced by the court cannot be determined until the completeness of the materials produced and the testimony given have been evaluated. In cases where the court wholly denies enforcement or orders that the summons in its entirety be quashed, the date of compliance with the court's order is treated as occurring on the date when all appeals are disposed of or when all appeal periods expire.

In cases where the court orders the summons enforced in whole or in part, the determination of whether the summoned party has complied with the order will be made by the Commissioner or his delegate (Commissioner). This determination will be made as soon as practicable after the summoned party has given testimony or produced books, papers, records, or other data as required by the court order. Notification of a favorable determination, and the date of such determination, will be made in writing and sent to the summoned party (and the taxpayer if the taxpayer is not the summoned party) within five days after the date the determination is made. If the period to appeal the court's order has already run, the date of the favorable determination shall be the date of final resolution for purposes of determining the length of the suspension under section 6503(j).

The proposed regulations provide that the Commissioner is not required to give notice that the court's order has not been complied with prior to instituting a collateral proceeding challenging whether the testimony given or the production made by the summoned party fully satisfies the court order and requesting that sanctions be imposed against the summoned party for a failure to testify or produce. The proposed regulations further provide that if such a collateral proceeding is instituted, then the collateral proceeding shall be treated as a continuation of the original proceeding.

Statement of Compliance

A summoned party also may request a determination from the IRS that it has fully complied with a designated or related summons to the extent required by court order. Under this procedure, if the summoned party believes that it has complied, the summoned party may submit a written statement (statement of compliance) to the IRS that the summoned party has fully complied with the court order. The statement of compliance must be properly addressed and sent by registered or certified mail. The statement of compliance must contain the summoned party's current contact information and information specifically identifying the applicable summons and court order.

To prevent the filing of premature or repetitious statements of compliance, the proposed regulations provide that a statement of compliance will be disregarded as a nullity if it is submitted before production or the giving of testimony (or the last act of production when there is a mutual agreement that production will be accomplished in stages) or before the IRS has responded to a previously-submitted statement of compliance. A statement of compliance also will be treated as a nullity if it is submitted by the summoned party while a referral to the Department of Justice for a collateral proceeding with respect to the court order or an appeal of the court order is pending.

Unless the IRS, within 180 days of the receipt of a statement of compliance, or within the time agreed to by the IRS and the summoned party, mails to the summoned party by registered or certified mail notification that it has not fully satisfied the designated or related summons, the summons will be treated as having been fully complied with as of the 180th day following the date the IRS received the statement. The date on which the statement of compliance was mailed by registered or certified mail will be treated as the date on which the IRS received the statement.

Other Rules

These proposed regulations provide additional rules regarding the number of designated and related summonses that may be issued with respect to a return for any taxable period, the time within which a court proceeding must be brought to enforce or quash a designated or related summons, the computation of the suspension period in cases of multiple court proceedings, and the computation of the 60-day period for assessment when the last day falls on a weekend or holiday.

The proposed regulations also address the relationship of the suspension period provided for in section 6503(j) with other suspension provisions in the Code. The proposed regulations first provide that if a designated or related summons also could be subject to the suspension rules governing third-party summonses under section 7609(e), then the suspension rules in section 6503(j) govern. In addition, the section 6503(j) suspension period is independent of, and may run concurrently with, any other period of suspension, such as the suspension period for third-party summonses under section 7609(e) if a separate third-party summons also was issued in a case. Examples of these rules are contained in the proposed regulations.

Proposed Effective Date

These regulations are proposed to be applicable on the date final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Elizabeth Rawlins of the Office of the Associate Chief Counsel, Procedure and Administration (Collection, Bankruptcy and Summonses Division), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

Lists of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6503(j)–1 is added to read as follows:

§ 301.6503(j)–1 Suspension of running of period of limitations; extension in case of designated and related summonses.

(a) *General rule.* The running of the applicable period of limitations on assessment provided for in section 6501 is suspended with respect to any return of tax by a corporation that is the subject of a designated or related summons if a court proceeding is instituted with respect to that summons.

(b) *Period of suspension.* The period of suspension is the time during which the running of the applicable period of limitations on assessment provided for in section 6501 is suspended under section 6303(j). If the court requires any compliance with a designated or related summons by ordering that any record, document, paper, object, or items be produced, or the testimony of any person be given, the period of suspension consists of the judicial enforcement period plus 120 days. If the court does not require any compliance with a designated or related summons, the period of suspension consists of the judicial enforcement period, and the period of limitations on assessment provided in section 6501 shall not expire before the 60th day after the judicial enforcement period.

(c) *Definitions*—(1) *Designated summons.* A designated summons is a summons issued to a corporation (or to any other person to whom the corporation has transferred records) with respect to any return of tax by such corporation for a taxable period for which such corporation is being examined under the coordinated industry case program or any other successor to the coordinated examination program—

(i) If the Division Commissioner and the Division Counsel of the Office of Chief Counsel (or their successors) for the organizations that have jurisdiction over the corporation whose tax liability is the subject of the summons have reviewed the summons before it is issued;

(ii) If the IRS issues the summons at least 60 days before the day the period prescribed in section 6501 for the assessment of tax expires (determined with regard to extensions); and

(iii) If the summons states that it is a designated summons for purposes of section 6503(j).

(2) *Related summons.* A related summons is any summons issued that—

(i) Relates to the same return of the corporation under examination as the designated summons; and

(ii) Is issued to any person, including the person to whom the designated summons was issued, during the 30-day period that begins on the day the designated summons is issued.

(3) *Judicial enforcement period.* The judicial enforcement period is the period that begins on the day on which a court proceeding is instituted with respect to a designated or related summons and ends on the day on which there is a final resolution as to the summoned person's response to that summons.

(4) *Court proceeding*—(i) *In general.* For purposes of this section, a court proceeding is a proceeding filed in a United States district court either to quash a designated or related summons under section 7609(b)(2) or to enforce a designated or related summons under section 7604 and includes any collateral proceeding to that proceeding such as a civil contempt proceeding.

(ii) *Date when proceeding is no longer pending.* A proceeding to quash or to enforce a designated or related summons is no longer pending when all appeals are resolved, or after the expiration of the period in which an appeal may be taken or a request for further review may be made. If, however, following an enforcement order, a collateral proceeding is brought challenging whether the testimony given or production made by the summoned party fully satisfied the court order and whether sanctions should be imposed against the summoned party for a failure to so testify or produce, the proceeding to quash or to enforce the summons shall include the time from which the proceeding to quash or to enforce the summons was brought until the decision in the collateral proceeding becomes final. The decision becomes final on the date when all appeals are disposed of or when the period in which an appeal may be taken or a request for further review may be made expires. Any collateral proceeding to the original proceeding shall be considered to be a continuation of the original proceeding.

(5) *Compliance*—(i) *In general.* Compliance is the giving of testimony or the performance of an act or acts of production, or both, in response to a court order concerning the designated or related summons and the determination that the terms of the court order have been satisfied.

(ii) *Date compliance occurs.* Compliance with a court order that wholly denies enforcement of a designated or related summons is deemed to occur on the date when all appeals are disposed of or when the period in which an appeal may be taken or a request for further review may be made expires. Compliance with a court order that grants enforcement, in whole or in part, of a designated or related summons, occurs on the date the Commissioner or his delegate (Commissioner) determines that the testimony given, or the books, papers, records, or other data produced, or both, by the summoned party fully satisfy the court order concerning the summons. The determination whether there has been compliance will be made as soon as practicable after the testimony is given or the materials are produced.

(6) *Final resolution.* Final resolution means that compliance with a court order concerning the designated or related summons has occurred and that court proceedings are no longer pending.

(d) *Special rules*—(1) *Number of summonses that may be issued*—(i) *Designated summons.* Only one designated summons may be issued in connection with the examination of a specific taxable year or other period of a corporation. A designated summons may cover more than one year or other period of a corporation. The designated summons may seek information that was previously sought in a summons

(other than a designated summons) that was issued in the course of the examination of that particular corporation.

(ii) *Related summonses.* There is no restriction on the number of related summonses that may be issued in connection with the examination of a corporation. As provided in paragraph (c)(2) of this section, however, a related summons must be issued within the 30-day period that begins on the date on which the designated summons to which it relates is issued and must relate to the same return as the designated summons. A related summons may request the same information as the designated summons.

(2) *Time within which court proceedings must be brought.* In order for the period of limitations on assessment to be suspended under section 6503(j), a court proceeding to enforce or to quash a designated or related summons must be instituted within the period of limitations on assessment provided in section 6501 otherwise applicable to that tax return.

(3) *Computation of suspension period if multiple court proceedings are instituted.* If multiple court proceedings are instituted to enforce or to quash a designated or one or more related summonses concerning the same tax return, the period of limitations on assessment is suspended for the entire period beginning on the day the first court proceeding is brought and ending on the last day of the last-ending suspension period resulting from the court proceedings that were brought.

(4) *Effect on other suspension periods*—(i) *In general.* The periods of suspension on the running of the period of limitations under section 6501 provided for under sections 7609(e)(1) and (2) are not applicable with respect to any summons that is issued pursuant to section 6503(j). The suspension under section 6503(j) on the running of the period of limitations on assessment under section 6501 is independent of, and may run concurrent with, any other period of suspension of the period of limitations on assessment applicable to the tax return to which the designated or related summons relates.

(ii) *Examples.* The rules of paragraph (d)(4)(i) of this section are illustrated by the following examples:

Example 1. The period of limitations on assessment against Corporation P for its calendar 1997 return is scheduled to end on March 15, 2001. On January 3, 2001, a designated summons is issued to Corporation P concerning its 1997 return. On March 1, 2001 (14 days before the period of limitations on assessment would otherwise expire with respect Corporation P's 1997 tax return), a court proceeding is brought to enforce the designated summons issued to Corporation P. On June 5, 2001, the court orders Corporation P to comply with the designated summons. Corporation P does not appeal the court's order. On September 3, 2001, agents for Corporation P deliver material that they state are the records requested by the designated summons. On October 15, 2001, a final resolution to Corporation P's response to the designated summons occurs when the Commissioner determines that Corporation P has fully complied with the court's order. The suspension period applicable with respect to the designated summons issued to Corporation P consists of the judicial enforcement period (March 1, 2001, through October 15, 2001) and an additional 120-day period under section 6503(j)(1)(B), because the court required Corporation P to comply with the designated summons. Thus, the suspension period applicable with respect to the designated summons issued to Corporation P would begin on March 1, 2001, and end on February 12, 2002. Under the facts of this example, the period of limitations on assessment against Corporation P would be extended to February 26, 2002, to account for the additional 14 days that remained on the period of limitations on assessment under section 6501 when the suspension period under section 6503(j) began.

Example 2. Assume the same facts set forth in *Example 1.* On April 3, 2001, a summons concerning Corporation P's calendar 1997 return is issued and served on individual A, a third party. This summons is not a related summons because it was not issued during the 30-day period that began on the date the designated summons was issued. The third-party summons served on individual A is subject to the notice requirements of section 7609(a). If there is no final resolution of individual A's response to this summons by October 3, 2001, *i.e.*, six months from the date of service of the summons, the period of limitations on assessment against Corporation P would be suspended under section 7609(e)(2) to the date on which there is a final resolution to that response for the purposes of section 7609(e)(2). If a final resolution to the summons served on individual A occurs after February 12, 2002, the end of the suspension period for the designated summons, the period of limitations on assessment against Corporation P expires 14 days after the date that the final resolution as provided for in section 7609(e)(2) occurs with respect to the summons served on individual A.

(5) *Computation of 60-day period when last day of assessment period falls on a weekend or holiday.* For purposes of paragraph (c)(1)(ii) of this section, in determining whether a designated summons has been issued at least 60 days before the date on which the period of limitations on assessment prescribed in section 6501 expires, the provisions of section 7503 apply when the last day of the assessment period falls on a Saturday, Sunday, or legal holiday.

(6) *Determination of compliance with designated and related summonses if a court proceeding has been instituted*—(i) *In general.* The Commissioner will determine, in an expeditious manner, whether a summoned party has fully complied with any court order if the designated or related summons is the subject of a court proceeding to quash or to enforce. The determination will be made as soon as practicable after the later of—

(A) The giving of any testimony required to be given by a summoned party; or

(B) The act of production (or the last act of production in the case of production that is accomplished in parts or in stages pursuant to a mutual agreement between the summoned party and the Commissioner) by the summoned party.

(ii) *Procedure for a favorable determination.* If the Commissioner determines that the summoned party has fully complied with the court order, the Commissioner will mail notice of that determination within 5 business days after the date of the determination, which will be sent by certified or registered mail, to the summoned party and the taxpayer under examination (if the taxpayer is not the summoned party).

(iii) *Notification of favorable determination.* The written notification that the summoned party has fully complied with the court order will contain the following information—

(A) The name and address of the summoned party;

(B) The name, address, type of tax, and taxable period of the taxpayer corporation with respect to which testimony or records, or both, were sought by the summons; and

(C) The date on which the Commissioner made the determination that the summoned party fully complied with court order.

(iv) *Effective date of favorable determination.* The Commissioner's determination that the summoned party has fully complied with the court order will be effective on the date the determination is stated to have been made in the written notification sent to the summoned party.

(7) *Statement of compliance with a court order*—(i) *In general.* In the case of a court order to which paragraph (d)(6)(i) of this section applies, the summoned party may submit a statement in writing that the summoned party has fully complied with the court order to the office identified on the summons (marked for the attention of the Internal Revenue Service employee who issued the summons to which the order relates).

(ii) *Form.* The statement of compliance shall be sent by registered or certified mail and shall include—

(A) The name, current address, current home and work telephone numbers of the person making the statement and any convenient times that person can be contacted;

(B) A specific identification of the court order with which compliance has been achieved and the summons to which the order relates; and

(C) The signature of the summoned party or the duly authorized representative.

(iii) *Response.* (A) As soon as practicable after receipt of such a statement of compliance, but in no event later than 180 days after such receipt, the Commissioner will mail a response to the summoned party (and a copy of the response to the taxpayer, if the summoned party is not the taxpayer) by registered or certified mail. The date on which the summoned person mails the statement of compliance shall be deemed to be the date on which the Commissioner receives it. The Commissioner's response will notify the summoned party—

(*1*) That a determination of compliance with the court order has been made and the date of that determination; or

(*2*) That a determination of noncompliance has been made and the date of that determination.

(B) The Commissioner is not required to give notice that the court order has not been complied with prior to instituting a collateral proceeding challenging whether the testimony given or the production made by the summoned party fully satisfies the court order and requesting that sanctions be imposed against the summoned party for a failure to comply with the order. The institution of a collateral proceeding shall constitute notice of a determination of noncompliance.

(C) The summoned party may, in writing, grant the Commissioner additional time within which to notify it regarding compliance or noncompliance with the summons.

(iv) *Failure to respond within 180 days.* If the Commissioner fails to respond to a properly submitted statement of compliance within the 180-day period, described in paragraph (d)(7)(iii)(A) of this section, or such longer period as agreed to in writing by the summoned party, then the court order with respect to which the summoned party submitted a statement of compliance shall be deemed complied with as of the expiration of 180 days or such longer period.

(v) *Limitations.* The Commissioner may treat as a nullity and return to the summoned party without action, as described in paragraph (d)(7)(iii) of this section, a statement of compliance that is filed in the following circumstances—

(A) Before the summoned party has provided testimony, or books, papers, records, or other data, or both in response to the court order (or before the last act of production in the case of production that is accomplished in stages pursuant to a mutual agreement);

(B) Before the Commissioner has issued a determination pursuant to paragraph (d)(7)(iii) of this section with respect to a previously-tendered statement of compliance or before the expiration of 180 days from the date such statement of compliance was received by the Commissioner, whichever is earlier; or

(C) While a referral to the Department of Justice for a collateral proceeding with respect to the court order or an appeal of that order is pending.

(e) *Effective date.* This section is applicable on the date final regulations are published in the **Federal Register**.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 03–19537 Filed 7–30–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 250 and 254

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Incident Reporting; Notice of Meeting

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces that MMS and the U.S. Coast Guard (USCG) will hold a public meeting to discuss the Notice of Proposed Rulemaking (NPR) for Incident Reporting Requirements that was published on July 8, 2003 (68 FR 40585).

DATES: The meeting will be held on September 3, 2003, from 1 p.m. to approximately 4 p.m. at the location listed in the **ADDRESSES** section.

ADDRESSES: The meeting will be held at the MMS Gulf of Mexico Regional office (Room 111), 1201 Elmwood Park Blvd., New Orleans, LA 70123. Please submit pre-meeting written questions by mail or fax to Melinda Mayes at:

(1) *Mailing address:* Minerals Management Service, 381 Elden Street, MS 4022, Herndon, VA 20170.

(2) *Fax number:* (703) 787–1555.

FOR FURTHER INFORMATION CONTACT: Melinda Mayes, MMS, Engineering and Operations Division, at (703) 787–1063 or Staci Atkins, MMS, Engineering and Operations Division, at (703) 787–1620.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to explain the Proposed Rule for Incident Reporting Requirements and allow participants to ask questions. On July 8, 2003, MMS published a proposed rule for Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Incident Reporting (68 FR 40585). In developing this NPR, MMS worked with the USCG with the goal of making the reporting requirements between the two agencies more consistent. The MMS and USCG are also developing an electronic reporting system to help eliminate duplicative reporting between the two agencies.

The agenda for the meeting on September 3, 2003, is as follows:

- General welcome and overview from MMS and the USCG;
- Presentation of the rulemaking history and relationship of the MMS NPR to USCG requirements;
- Presentation of the MMS NPR;
- Question and answer session; and
- Concluding remarks.

The MMS and USCG encourage you to submit questions in advance and attend the meeting. We will consider your questions in preparing our presentations so we can focus on key topics. Questions must reach the MMS office by close of business on August 22, 2003. You may also pose questions during the question and answer session at the meeting.

We remind meeting participants that any comments you make at the meeting that you wish for us to consider during the rulemaking must be submitted in writing before the comment period closes.

There is no fee to attend the meeting and registration is not required. To obtain information on facilities or services for individuals with disabilities or to request that we provide special assistance at the meeting, please contact Melinda Mayes as soon as possible.

Dated: July 25, 2003.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 03–19458 Filed 7–30–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 250 and 254

RIN 1010–AC57

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Incident Reporting Requirements

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Extension of comment period for proposed rule.

SUMMARY: This document extends to December 5, 2003, the previous deadline of October 6, 2003, for submitting comments on the proposed rule published on July 8, 2003, (68 FR 40585), that describes MMS Incident Reporting Requirements.

DATES: We will consider all comments received by December 5, 2003, and we may not fully consider comments received after December 5, 2003.

ADDRESSES: Mail or hand-carry written comments (three copies) to the Department of the Interior; Minerals Management Service; 381 Elden Street; Mail Stop 4024; Herndon, Virginia 20170–4817; Attention: Rules Processing Team.

FOR FURTHER INFORMATION CONTACT: Melinda Mayes, MMS Engineering and Operations Division, Herndon, VA, at (703) 787–1068 or Staci Atkins, MMS Engineering and Operations Division, Herndon, VA, at (703) 787–1620.

SUPPLEMENTARY INFORMATION: The MMS published a proposed rulemaking on July 8, 2003 (68 FR 40585) to revise the requirements for lessees/operators to report incidents associated with Outer Continental Shelf activities. In developing this Notice of Proposed Rulemaking, MMS worked with the U.S. Coast Guard (USCG) with the goal of making the reporting requirements between the two agencies consistent. The MMS and USCG also are developing an electronic reporting system to help eliminate duplicative reporting between the two agencies.

In a letter to MMS dated July 14, 2003, the International Association of Drilling Contractors has requested that we extend the comment period. The IADC stated that the additional time was necessary to develop their response and coordinate it with their sister trade associations, particularly in view of the time that must also be devoted to the recent Maritime Security rules issued by the USCG.

On September 3, 2003, MMS and the USCG will hold a meeting to explain the proposed rule and allow meeting participants to ask questions. The original proposed rule comment due date is just over one month after this meeting. We believe that additional time to develop comments after the meeting should be provided. Therefore, we are extending the comment period for 60 days and this notice extends the comment period to December 5, 2003.

Public Comments Procedures

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: July 25, 2003.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 03–19459 Filed 7–30–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–091–FOR]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: We are reopening the comment period to provide the public an opportunity to review and comment on a document submitted by the State of West Virginia which further clarifies a proposed amendment to the State's regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The program amendment consists of changes to the West Virginia Surface Mining Reclamation Regulations as contained in House Bill 2663. The amendment is intended to improve the effectiveness of the West Virginia program.

DATES: We will accept written comments on this amendment until 4 p.m. (local time), on August 15, 2003.

ADDRESSES: You should mail or hand-deliver written comments to Mr. Roger W. Calhoun, Director, Charleston Field Office at the address listed below.

You may review copies of the West Virginia program, the amendment, the clarification document, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment and the State's clarification by contacting OSM's Charleston Field Office.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301, Telephone: (304) 347–7158. E-mail: *chfo@osmre.gov*.

West Virginia Department of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759–0510.

In addition, you may review copies of the proposed amendment and the related document during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, PO Box 886, Morgantown, West Virginia 26507, Telephone: (304) 291–4004. (By Appointment Only)

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 323 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255–5265.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, Telephone: (304) 347–7158. Internet: *chfo@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "* * *

State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Description of the Proposed Amendment

By letter dated May 2, 2001, the West Virginia Department of Environmental Protection (WVDEP) sent us a proposed amendment to its program (Administrative Record Number WV–1209) under SMCRA (30 U.S.C. 1201 *et seq.*). The program amendment consisted of changes to the West Virginia Surface Mining Reclamation Regulations at 38 Code of State Regulations (CSR) Series 2 as amended by House Bill 2663. The proposed amendment responded, in part, to the required program amendments codified in the Federal regulations at 30 CFR 948.16(xx), (qqq), (zzz), (ffff), (gggg), (hhhh), (jjjj), (nnnn), and (pppp). In order to expedite our review of the State's responses to the required amendments, we separated those amendments from the current amendment and we published our approval of those amendments in the **Federal Register** on May 1, 2002 (67 FR 21904).

On February 26, 2003, we sent the State a list of questions to help us better understand the remaining proposed amendments (Administrative Record Number WV–1365). The State responded by letter dated July 1, 2003 (Administrative Record Number WV–1365). The State's response is quoted below.

The following is additional clarification to Office of Surface Mining in answer to questions posed by OSM concerning the deletion of the definition for "cumulative impact," the addition of a definition of "material damage to the hydrologic balance outside the permit area," and the addition of a provision qualifying certain coal removal during reclamation as government financed construction exempt from a permit. These rules were passed in the 2001 Legislative session and were submitted to OSM as program amendments in May 2001. The rationale for these changes are to provide a narrative standard for reviewers to utilize when making findings relative to the hydrologic balance in and around the area of the proposed mining operation and to make the State delegated program language more similar to the Federal regulations. [Material Damage and Cumulative Impact at CSR 38–2–3.22.e and CSR 38–2–2.39, respectively.]

The changes in the West Virginia Surface Mining Reclamation Rules relative to the added phrase defining "material damage to the hydrologic balance outside the permit area" and deleting the defined term "cumulative impact" are addressed together. These changes were made to set forth some objective criteria to use in making the determination required by SMCRA that a proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area. The added definition in the West Virginia rules provides a narrative standard, based upon use, for the reviewer to apply to make the required findings rather than leaving the threshold(s) to be assigned to the unguided discretion of an individual reviewer.

The Federal regulations at 30 CFR 773.15(e) requires [a determination that the proposed operation has been designed to prevent] material damage to the offsite hydrologic balance. The Federal program does not currently contain a standard, narrative or otherwise, to ascertain when such material damage would occur. Rather, the Federal program appears to leave this call to the discretion of the States. However, the Federal program does contain material damage criteria for the effects of mining associated with subsidence and alluvial valley floors based upon functionality and use (*See* 30 CFR 701.5). The definition submitted as a program amendment establishes a narrative threshold for material damage to the hydrologic balance, which is patterned after related definitions in the federal program, and is based upon the use of State waters. Additionally, the proposed definition is consistent with the administration and implementation of the State counterpart to the Clean Water Act in that the use of State waters established under the water program is recognized when the State SMCRA authority makes the assessment of cumulative hydrologic impacts.

Including the narrative threshold for material damage to the hydrologic balance obviates the need for the definition for "cumulative impact." Even though the definition of "cumulative impact" is deleted, the defined term "cumulative impact area" remains. In addition, other sections of the WV rules require the applicant to show no material damage outside of the permit area and to assess the cumulative impacts within the cumulative impact area.

The reviewer of a proposal to conduct mining operations must delineate the area to be considered in assessing hydrologic consequences in accordance with the statute, rules and 1999 CHIA Writing Guidelines utilizing the actual or designated use and parameters designed to protect the same, as established by the WVDEP Division of Water Resources. The uses are outlined in the West Virginia Legislative rules 46CSR1 and include the propagation and maintenance of fish and other aquatic life. Water quality standards were designed to protect established uses. A review process wherein the SMCRA authority would develop or utilize thresholds/parameters for effluent discharges other than those established by the Clean Water Act program would likely result in interfering with the administration of the CWA. The WVDEP approach considers the numerical limits and water resource use designated by the water quality programs to make the assessment required by the mining program, thus precluding such interference.

[Exemption for Government-Financed Construction at CSR 38–2–3.31.c.]

The change to allow coal removal in conjunction with a reclamation project is designed to encourage/result in low cost or no-cost reclamation as provided for in the federal program (see 30 CFR 707.5). The state rule contains the same language as the federal regulations, except the State refers to the WV code and the federal counterpart refers to Title IV. The WV Code 22–3–28(e) is a subsection of 22–3–28. It is the only subsection that mentions government-financed reclamation. Therefore, it is obvious that subsection (e) is the only applicable subsection to which 38CSR2–3.31(c) could apply.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment, as further clarified in the State's clarification letter dated July 1, 2003, satisfies the applicable program

approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the West Virginia program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We may not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see* **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Charleston Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII, Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SATS NO. WV–091—FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Charleston Field office at (304) 347–7158.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The basis for this determination is our decision is on a State regulatory program and does not involve a Federal regulation involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 18, 2003.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 03–19436 Filed 7–30–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AL60

Sensori-Neural Aids

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document amends Department of Veterans Affairs (VA) medical regulations concerning sensori-neural aids. An existing regulation authorizes VA to provide sensori-neural aids (*i.e.*, eyeglasses, contact lenses, hearing aids) to seven specific groups of veterans identified in the regulation. The first four groups consist of veterans with the highest priority for care under VA's enrollment system, generally those with compensable service-connected disabilities, former prisoners of war, and those receiving increased VA pension based on their being housebound or in need of regular aid and attendance. Subsequent to promulgating the regulation, Congress changed the law to provide that veterans awarded the Purple Heart should have priority equal to former prisoners of war under VA's enrollment system. To be consistent, VA is proposing to amend the sensori-neural aids regulation to allow veterans in receipt of a Purple Heart to also receive sensori-neural aids.

DATES: Comments must be received on or before September 29, 2003.

ADDRESSES: Mail or hand-deliver written comments to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1064, Washington, DC 20420; or fax comments to (202) 273–9026; or e-mail comments to *OGCRegulations@mail.va.gov*. Comments should indicate that they are submitted in response to "RIN 2900–AL60." All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Frederick Downs, Jr., Chief Consultant, Prosthetics and Sensory Aids Service Strategic Healthcare Group (113), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8515. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The "Veterans' Health Care Eligibility Reform Act of 1996," Public Law No. 104–262 (Eligibility Reform Act) made major changes in the laws governing eligibility for VA health care benefits. That law amended 38 U.S.C. 1710, authorizing VA to furnish virtually all needed hospital care and medical services (*i.e.*, outpatient care) to veterans, including prosthetic devices and similar appliances. Prior to enactment of the Eligibility Reform Act, VA was generally prohibited from furnishing prosthetic devices and similar appliances on an outpatient basis. Although Congress expanded VA's authority to furnish veterans with prosthetic devices and similar appliances, it expressly provided in the law that with respect to sensori-neural aids (*i.e.*, eyeglasses, contact lenses, hearing aids), VA could exercise that authority only in accordance with guidelines prescribed by the Secretary. 38 U.S.C. 1707(b) (previously codified as 38 U.S.C. 1701(6)(A)(i)). The purpose of that proviso in the law was to permit VA to decide that it would not furnish eyeglasses and hearing aids to all veterans. In 1997, VA published an interim final rule establishing guidelines for the provision of sensori-neural aids. 62 FR 30240 (June 3, 1997). The final rule was effective on December 9, 1997 (62 FR 64722).

The Eligibility Reform Act also directed VA to establish a system of annual patient enrollment (38 U.S.C. 1705). The purpose of the enrollment system was to provide a mechanism for prioritizing the provision of VA health care if available resources were insufficient to provide all needed care to all veterans who sought it. The law initially established seven priority categories, although Congress subsequently expanded that to eight categories. The eight specific categories are enumerated in 38 U.S.C. 1705(a).

The guidelines that VA promulgated to govern the provision of sensori-neural aids specifically listed groups of veterans who could receive such devices. Listed were the veterans included in enrollment categories 1 through 4, and certain other veterans with unique vision and hearing needs. Veterans in enrollment priority categories 1 through 4, who are also specifically made eligible for sensori-neural aids under the guidelines, are veterans with compensable service-connected conditions, former prisoners of war, and nonservice-connected veterans in receipt of increased pension based on the need for regular aid and attendance or by reason of being permanently housebound.

In 1999, some 2 years after VA promulgated the rule governing sensori-neural aids, Congress passed Public Law No. 106–117, the "Veterans Millennium Health Care and Benefits Act" (Millennium Act). The Millennium Act amended the law establishing the enrollment priority categories. In this Act, Congress added to enrollment priority category 3, those veterans who were awarded the Purple Heart. Those veterans were, in short, given enrollment priority status at the same level as service-connected veterans rated 10 percent or 20 percent and former POWs. In order to be consistent with that change in law, VA believes it appropriate to also provide that those veterans be eligible for sensori-neural aids. Accordingly, we propose to amend the guidelines to include in § 17.149(b), veterans who received the Purple Heart.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This proposed amendment would have no such effect on State, local, or tribal governments, or the private sector.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary of Veterans Affairs (VA) hereby certifies that this proposed regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed amendment would affect only veterans receiving certain VA benefits and does not affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this proposed amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance Numbers are 64.009, 64.010, 64.011, and 64.013.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Government programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: June 25, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR part 17 as follows:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

2. Section 17.149, is amended by:

a. Redesignating paragraphs (b)(3) through (b)(7) as paragraphs (b)(4) through (b)(8), respectively; and

b. Adding a new paragraph (b)(3).

The addition reads as follows:

§ 17.149 Sensori-neural aids.

* * * * *

(b) * * *

(3) Those awarded a Purple Heart;

* * * * *

[FR Doc. 03–19441 Filed 7–30–03; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[FRL–7537–2]

Outer Continental Shelf Air Regulations; Consistency Update for California

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Proposed rule—consistency update.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf ("OCS") Air Regulations. Requirements applying to OCS sources located within 25 miles of States' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by the Clean Air Act, as amended in 1990 ("the Act"). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the South Coast Air Quality Management District (South Coast AQMD) is the designated COA. The intended effect of approving the OCS requirements for the above District is to regulate emissions from OCS sources in accordance with the requirements onshore. The changes to the existing requirements discussed below are proposed to be incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations.

DATES: Comments on the proposed update must be received on or before September 2, 2003.

ADDRESSES: Comments must be mailed (in duplicate if possible) to: EPA Air Docket (Air–4), Attn: Docket No. A–93–16 Section XXVIII, Environmental Protection Agency, Air Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

Docket: Supporting information used in developing the rule and copies of the documents EPA is proposing to incorporate by reference are contained in Docket No. A–93–16 Section XXVIII. This docket is available for public inspection and copying Monday–Friday during regular business hours at the following locations:

EPA Air Docket (Air–4), Attn: Docket No. A–93–16 Section XXVIII, Environmental Protection Agency, Air Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

EPA Air Docket (LE–131), Attn: Air Docket No. A–93–16 Section XXVIII, Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Air Division (Air–4), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947–4125.

I. Background Information

A. Why Is EPA Taking This Action?

On September 4, 1992, EPA promulgated 40 CFR part 55,[1] which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a State's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to § 55.12 of the OCS rule, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent under § 55.4; or (3) when a State or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This proposed action is being taken in response to the submittal of rules by a local air pollution control agency. Public comments received in writing within 30 days of publication of this document will be considered by EPA before publishing a final rule.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's State implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

II. EPA's Evaluation

A. What Criteria Were Used To Evaluate Rules Submitted To Update 40 CFR Part 55?

In updating 40 CFR part 55, EPA reviewed the rules submitted for inclusion in part 55 to ensure that they are rationally related to the attainment or maintenance of Federal or State ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12 (e). In addition, EPA has excluded administrative or procedural rules,[2] and requirements that regulate toxics which are not related to the attainment and maintenance of Federal and State ambient air quality standards.

B. What Rule Revisions Were Submitted To Update 40 CFR Part 55?

After review of the rules submitted by South Coast AQMD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following new rule applicable to OCS sources for which the South Coast AQMD is designated as the COA (note: no requirements that are not related to the attainment and maintenance of federal and state ambient air quality standards will be incorporated to regulate toxics):

Rule No.	Rule names	Adoption date
1113	Architectural Coatings	12/06/02
1122	Solvent Degreasers	12/06/02
1173	Control of Volatile Organic Compound Leaks and Releases from Components at Petroleum Facilities and Chemical Plants.	12/06/02
1302	Definitions	12/06/02
1303	Requirements	12/06/02
1306	Emission Calculations	12/06/02

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal

[2] Each COA which has been delegated the authority to implement and enforce part 55, will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. 40 CFR 55.14(c)(4).

government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on a State rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

E. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because consistency updates do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the consistency update approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

H. Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant action under Executive Order 12866.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Continental shelf, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: July 8, 2003.

Wayne Nastri,

Regional Administrator, Region IX.

Title 40 of the Code of Federal Regulations, part 55, is proposed to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Pub. L. 101–549.

2. Section 55.14 is proposed to be amended by revising paragraph (e)(3)(ii)(G) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States seaward boundaries, by State.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(G) *South Coast Air Quality Management District Requirements Applicable to OCS Sources.*

* * * * *

Appendix to Part 55—[Amended]

3. Appendix A to CFR part 55 is proposed to be amended by revising paragraph (b)(7) under the heading "California" to read as follows:

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State.

* * * * *

California

* * * * *

(b) Local requirements.

* * * * *

(7) *The following requirements are contained in South Coast Air Quality Management District Requirements Applicable to OCS Sources* (Part I, II and III):

Rule 102 Definition of Terms (Adopted 10/19/01)
Rule 103 Definition of Geographical Areas (Adopted 1/9/76)
Rule 104 Reporting of Source Test Data and Analyses (Adopted 1/9/76)
Rule 108 Alternative Emission Control Plans (Adopted 4/6/90)
Rule 109 Recordkeeping for Volatile Organic Compound Emissions (Adopted 8/18/00)
Rule 112 Definition of Minor Violation and Guidelines for Issuane of Notice to Comply (Adopted 11/13/98)
Rule 118 Emergencies (Adopted 12/7/95)
Rule 201 Permit to Construct (Adopted 1/5/90)
Rule 201.1 Permit Conditions in Federally Issued Permits to Construct (Adopted 1/5/90)
Rule 202 Temporary Permit to Operate (Adopted 5/7/76)

Rule 203 Permit to Operate (Adopted 1/5/90)
Rule 204 Permit Conditions (Adopted 3/6/92)
Rule 205 Expiration of Permits to Construct (Adopted 1/5/90)
Rule 206 Posting of Permit to Operate (Adopted 1/5/90)
Rule 207 Altering or Falsifying of Permit (Adopted 1/9/76)
Rule 208 Permit and Burn Authorization for Open Burning (12/21/01)
Rule 209 Transfer and Voiding of Permits (Adopted 1/5/90)
Rule 210 Applications and Regulation II—List and Criteria Identifying Information required of Applicants Seeking a Permit to Construct from the SCAQMD (Adopted 4/10/98)
Rule 212 Standards for Approving Permits (Adopted 12/7/95) except (c)(3) and (e)
Rule 214 Denial of Permits (Adopted 1/5/90)
Rule 217 Provisions for Sampling and Testing Facilities (Adopted 1/5/90)
Rule 218 Continuous Emission Monitoring (Adopted 5/14/99)
Rule 218.1 Continuous Emission Monitoring Performance Specifications (Adopted 5/14/99)
Rule 218.1 Attachment A—Supplemental and Alternative CEMS Performance Requirements (Adopted 5/14/99)
Rule 219 Equipment Not Requiring a Written Permit Pursuant to Regulation II (Adopted 11/17/00)
Rule 220 Exemption—Net Increase in Emissions (Adopted 8/7/81)
Rule 221 Plans (Adopted 1/4/85)
Rule 301 Permit Fees (Adopted 5/11/01) except (e)(7) and Table IV
Rule 304 Equipment, Materials, and Ambient Air Analyses (Adopted 5/11/01)
Rule 304.1 Analyses Fees (Adopted 5/11/01)
Rule 305 Fees for Acid Deposition (Adopted 10/4/91)
Rule 306 Plan Fees (Adopted 5/11/01)
Rule 309 Fees for Regulation XVI Plans (Adopted 5/11/01)
Rule 401 Visible Emissions (Adopted 11/9/01)
Rule 403 Fugitive Dust (Adopted 12/11/98)
Rule 404 Particulate Matter—Concentration (Adopted 2/7/86)
Rule 405 Solid Particulate Matter—Weight (Adopted 2/7/86)
Rule 407 Liquid and Gaseous Air Contaminants (Adopted 4/2/82)
Rule 408 Circumvention (Adopted 5/7/76)
Rule 409 Combustion Contaminants (Adopted 8/7/81)
Rule 429 Start-Up and Shutdown Provisions for Oxides of Nitrogen (Adopted 12/21/90)
Rule 430 Breakdown Provisions, (a) and (e) only (Adopted 7/12/96)
Rule 431.1 Sulfur Content of Gaseous Fuels (Adopted 6/12/98)
Rule 431.2 Sulfur Content of Liquid Fuels (Adopted 9/15/00)
Rule 431.3 Sulfur Content of Fossil Fuels (Adopted 5/7/76)
Rule 441 Research Operations (Adopted 5/7/76)
Rule 442 Usage of Solvents (Adopted 12/15/00)
Rule 444 Open Burning (Adopted 12/21/01)
Rule 463 Organic Liquid Storage (Adopted 3/11/94)
Rule 465 Vacuum Producing Devices or Systems (Adopted 8/13/99)
Rule 468 Sulfur Recovery Units (Adopted 10/8/76)
Rule 473 Disposal of Solid and Liquid Wastes (Adopted 5/7/76)
Rule 474 Fuel Burning Equipment-Oxides of Nitrogen (Adopted 12/4/81)
Rule 475 Electric Power Generating Equipment (Adopted 8/7/78)
Rule 476 Steam Generating Equipment (Adopted 10/8/76)
Rule 480 Natural Gas Fired Control Devices (Adopted 10/7/77)
Addendum to Regulation IV (Effective 1977)
Rule 518 Variance Procedures for Title V Facilities (Adopted 8/11/95)
Rule 518.1 Permit Appeal Procedures for Title V Facilities (Adopted 8/11/95)
Rule 518.2 Federal Alternative Operating Conditions (Adopted12/21/01)
Rule 701 Air Pollution Emergency Contingency Actions (Adopted 6/13/97)
Rule 702 Definitions (Adopted 7/11/80)
Rule 708 Plans (Rescinded 9/8/95)
Regulation IX New Source Performance Standards (Adopted 5/11/01)
Reg. X National Emission Standards for Hazardous Air Pollutants (NESHAPS) (Adopted 5/11/01)
Rule 1106 Marine Coatings Operations (Adopted 1/13/95)
Rule 1107 Coating of Metal Parts and Products (Adopted 11/9/01)
Rule 1109 Emissions of Oxides of Nitrogen for Boilers and Process Heaters in Petroleum Refineries (Adopted 8/5/88)
Rule 1110 Emissions from Stationary Internal Combustion Engines (Demonstration) (Adopted 11/14/97)
Rule 1110.1 Emissions from Stationary Internal Combustion Engines (Adopted 10/4/85)
Rule 1110.2 Emissions from Gaseous- and Liquid-Fueled Internal Combustion Engines (Adopted 11/14/97)
Rule 1113 Architectural Coatings (Adopted 12/06/02)
Rule 1116.1 Lightering Vessel Operations-Sulfur Content of Bunker Fuel (Adopted 10/20/78)
Rule 1121 Control of Nitrogen Oxides from Residential-Type Natural Gas-Fired Water Heaters (Adopted 12/10/99)
Rule 1122 Solvent Degreasers (Adopted 12/06/02)
Rule 1123 Refinery Process Turnarounds (Adopted 12/7/90)
Rule 1125 Metal Containers, Closure, and Coil Coating Operations (adopted 1/13/95)
Rule 1132 Further Control of VOC Emissions from High-Emitting Spray Booth Facilitites (Adopted 1/19/01)
Rule 1134 Emissions of Oxides of Nitrogen from Stationary Gas Turbines (Adopted 8/8/97)
Rule 1136 Wood Products Coatings (Adopted 6/14/96)
Rule 1137 PM10 Emission Reductions from Woodworking Operations (Adopted 2/01/02)
Rule 1140 Abrasive Blasting (Adopted 8/2/85)
Rule 1142 Marine Tank Vessel Operations (Adopted 7/19/91)
Rule 1146 Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 11/17/00)
Rule 1146.1 Emission of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 5/13/94)
Rule 1146.2 Emissions of Oxides of Nitrogen from Large Water Heaters and Small Boilers (Adopted 1/9/98)
Rule 1148 Thermally Enhanced Oil Recovery Wells (Adopted 11/5/82)
Rule 1149 Storage Tank Degassing (Adopted 7/14/95)
Rule 1168 Adhesive and Sealant Applications (Adopted 6/07/02)
Rule 1171 Solvent Cleaning Operations (Adopted 08/2/02)
Rule 1173 Fugitive Emissions of Volatile Organic Compounds (Adopted 12/06/02)
Rule 1176 VOC Emissions from Wastewater Systems (Adopted 9/13/96)
Rule 1178 Further Reductions of VOC Emissions from Storage Tanks at Petroleum Facilities (Adopted 12/21/01)
Rule 1301 General (Adopted 12/7/95)
Rule 1302 Definitions (Adopted 12/06/02)
Rule 1303 Requirements (Adopted 12/06/02)
Rule 1304 Exemptions (Adopted 6/14/96)
Rule 1306 Emission Calculations (Adopted 12/06/02)
Rule 1313 Permits to Operate (Adopted 12/7/95)
Rule 1403 Asbestos Emissions from Demolition/Renovation Activities (Adopted 4/8/94)
Rule 1605 Credits for the Voluntary Repair of On-Road Vehicles Identified Through Remote Sensing Devices (Adopted 10/11/96)
Rule 1610 Old-Vehicle Scrapping (Adopted 2/12/99)
Rule 1612 Credits for Clean On-Road Vehicles (Adopted 7/10/98)
Rule 1612.1 Mobile Source Credit Generation Pilot Program (Adopted 3/16/01)
Rule 1620 Credits for Clean Off-Road Mobile Equipment (Adopted 7/10/98)
Rule 1701 General (Adopted 8/13/99)
Rule 1702 Definitions (Adopted 8/13/99)
Rule 1703 PSD Analysis (Adopted 10/7/88)
Rule 1704 Exemptions (Adopted 8/13/99)
Rule 1706 Emission Calculations (Adopted 8/13/99)
Rule 1713 Source Obligation (Adopted 10/7/88)
Regulation XVII Appendix (effective 1977)
Rule 1901 General Conformity (Adopted 9/9/94)
Rule 2000 General (Adopted 5/11/01)
Rule 2001 Applicability (Adopted 2/14/97)
Rule 2002 Allocations for Oxides of Nitrogen (NO_X) and Oxides of Sulfur (SO_X) Emissions (Adopted 5/11/01)
Rule 2004 Requirements (Adopted 5/11/01) except (l)
Rule 2005 New Source Review for RECLAIM (Adopted 4/20/01) except (i)
Rule 2006 Permits (Adopted 5/11/01)
Rule 2007 Trading Requirements (Adopted 5/11/01)

Rule 2068 Mobile Source Credits (Adopted 10/15/93)
Rule 2010 Administrative Remedies and Sanctions (Adopted 5/11/01)
Rule 2011 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO_x) Emissions (Adopted 5/11/01)
Appendix A Volume IV—(Protocol for oxides of sulfur) (Adopted 3/10/95)
Rule 2012 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_x) Emissions (Adopted 5/11/01)
Appendix A Volume V—(Protocol for oxides of nitrogen) (Adopted 3/10/95)
Rule 2015 Backstop Provisions (Adopted 5/11/11) except (b)(1)(G) and (b)(3)(B)
Rule 2020 RECLAIM Reserve (Adopted 5/11/01)
Rule 2100 Registration of Portable Equipment (Adopted 7/11/97)
Rule 2506 Area Source Credits for NO_x and SO_x (Adopted 12/10/99)
XXX Title V Permits
Rule 3000 General (Adopted 11/14/97)
Rule 3001 Applicability (Adopted 11/14/97)
Rule 3002 Requirements (Adopted 11/14/97)
Rule 3003 Applications (Adopted 3/16/01)
Rule 3004 Permit Types and Content (Adopted 12/12/97)
Rule 3005 Permit Revisions (Adopted 3/16/01)
Rule 3006 Public Participation (Adopted 11/14/97)
Rule 3007 Effect of Permit (Adopted 10/8/93)
Rule 3008 Potential To Emit Limitations (3/16/01)
XXXI Acid Rain Permit Program (Adopted 2/10/95)

* * * * *

[FR Doc. 03–19283 Filed 7–30–03; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 072303A]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2–day Council meeting on August 13–14, 2003, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Wednesday and Thursday, August 13 and 14, 2003. The meeting will begin at 9:00 a.m. on Wednesday and 8:30 a.m. on Thursday.

ADDRESSES: The meeting will be held at the Peabody Marriott Hotel, 8A Centennial Drive, Peabody, MA 01960; telephone (978) 977–0010. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Wednesday and Thursday, August 13 and 14, 2003

Following introductions, the Council will consider final approval of management measures for inclusion in Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan, based on public comments on the associated Draft Supplemental Environmental Impact Statement. The action may include alternatives to improve scallop yield through area rotation or other measures; to minimize impacts on essential fish habitat and bycatch; to revise the management and permitting process for scallop fishing with general category permits; to modify or introduce new procedures to collect fishery data; to conduct and fund habitat research through set-asides; and to make management changes through the framework adjustment process. The Council also will consider revising the scallop overfishing definition to be compatible with area rotation and long-term closures, as well as changing the fishing year. Any other outstanding business will be addressed before adjournment of the meeting.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: July 25, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–19519 Filed 7–30–03; 8:45 am]
BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 147
Thursday, July 31, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation (ACHP) will meet on Friday, August 15, 2003. The meeting will be held at the Regent Hotel, 55 Wall Street, New York City, New York, beginning at 9 a.m.

The ACHP was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The ACHP's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Defense, and Transportation; the Administrators of the Environmental Protection Agency and General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native Hawaiian; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome
II. Swearing in of New Members
III. Presentation of Chairman's Awards for Federal Achievement in Historic Preservation
IV. Signing of Interagency Partnership
V. Report of the Executive Committee
VI. Preserve America Program Development
VII. Preserve America Executive Order Implementation
VIII. Revision of ACHP Strategic Plan
IX. Report of the Preservation Initiatives Committee
X. Report of the Federal Agency Programs Committee
XI. Report of the Communications, Education, and Outreach Committee
XII. Chairman's Report
XIII. Executive Director's Report
XIV. New Business
XV. Adjourn

Note: The meetings of the ACHP are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., Room 809, Washington, DC, (202) 606–8503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., #809, Washington, DC 20004.

Dated: July 25, 2003.

John M. Fowler,

Executive Director.

[FR Doc. 03–19468 Filed 7–30–03; 8:45 am]
BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lost River and Challis Ranger Districts, Salmon-Challis National Forest; Idaho; Lost River/Lemhi Grazing Allotments Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Lost River and Challis Ranger Districts propose to update the livestock grazing plans for twenty-one grazing allotments. These include fifteen Cattle and Horse grazing allotments and five Sheep and Goat grazing allotments on the Lost River Ranger District and one Sheep and Goat grazing allotment on the Challis Ranger District. The allotments are located in the Lost River and Lemhi Mountain Ranges and are within a 35-mile radius of Mackay, Idaho.

DATES: Comments concerning the scope of the analysis must be received by September 5, 2003. The draft environmental impact statement is expected January 2005 and the final environmental impact statement is expected May 2005.

ADDRESSES: Send written comments to Tony Beke, Planning, Salmon-Challis National Forest, 50 Hwy 93 South, Salmon, Idaho 83467.

For further information, mail correspondence to Tony Beke, Planning, Salmon-Challis National Forest, 50 Hwy 93 South, Salmon, Idaho 83467, or e-mail, *tbeke@fs.fed.us.*

A public meeting will be conducted at the Arco-Butte Business Center, 159 N Idaho, Arco, Idaho on August 19, 2003 starting at 6 p.m.

FOR FURTHER INFORMATION CONTACT: Tony Beke, Civil Engineer, Salmon-Challis National Forest, USDA Forest Service (see address above).

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

This proposal, in part, is to comply with Public Law 104–19, Section 504(a): establish and adhere to a schedule for the completion of National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) analysis and decision on all grazing allotments within the National Forest System unit for which NEPA is needed (Pub. L. 104–19, General Provision 1995). Upon completion of the NEPA analysis and decisions for the allotments, the terms and conditions of existing grazing permits will be modified, as necessary, to conform to such NEPA analysis. In addition, the purpose of the proposed action is to improve range condition and trend and achieve desired conditions within the project area through livestock grazing.

Proposed Action

The proposed action is to authorize continued livestock grazing, provide analysis and data to update allotment management plans (AMPs), and allow permitted livestock grazing that meets or moves existing resource conditions toward desired conditions on national forest grazing allotments while complying with applicable statutes. Adaptive management, which allows flexibility during the implementation of the grazing strategy, would allow managers to make adjustments and corrections to management based on monitoring. Three of the five Sheep and Goat grazing allotments in the Lost River Mountain Range are proposed to be converted to Cattle and Horse grazing allotments to resolve conflicts between domestic and bighorn sheep, if this use

is determined to be appropriate. Range improvements may be necessary to make this conversion. The conflict between domestic and bighorn sheep is a virus that can be transmitted from domestic sheep if they come in contact with bighorn sheep. A forest plan amendment will be necessary to modify management direction for range management within Management Area 16, Borah Peak.

Possible Alternatives

No Grazing and No Action alternatives will be analyzed to the proposed action during the NEPA process. The No Grazing alternative would eliminate domestic livestock grazing on allotments. The No Action alternative would allow continued livestock grazing as it is currently being managed. Other alternatives, arising from issues identified through scoping, could be analyzed as well.

Responsible Official

George Matejko, Forest Supervisor, 50 Hwy 93 South, Salmon, ID 83467.

Nature of Decision To Be Made

The Forest Supervisor will decide whether to authorize continued livestock grazing on the allotments' suitable rangelands in accordance with the standards in the proposed action or as modified by additional mitigation measures and monitoring requirements. The proposed action, or as modified by this analysis, will require a Forest Land and Resource Management Plan Amendment.

Scoping Process

This analysis is for twenty-one grazing allotments. The decision will have limited environmental effects outside the allotment boundaries, and the economic impacts are localized. Scoping will include:

- Review scoping comments from previous efforts
- Publish notice in the Challis Messenger and Salmon Recorder Herald, the newspapers of record, and the Arco Advertiser, another local newspaper, announcing the public meeting and requesting comments
- Mail scoping letters to interested public and grazing permittees describing the proposed action and preliminary issues
- Conduct public meeting in Arco, Idaho on August 19, 2003
- Notify consulting agencies and request comments
- Publish in the Quarterly Schedule of Proposed Actions (SOPA) notice and mail to interested individuals and groups, and put on the Forest's internet site
- Contact and consult with the Shoshone-Bannock Tribes

A public meeting is scheduled for August 19, 2003 at 6 p.m. at the Arco-Butte Business Center, 159 N Idaho, Arco, Idaho.

Preliminary Issues

Concerns identified internally and from previous scoping include:

- Riparian and aquatic habitat
- Terrestrial wildlife
- Effects to other Forest users
- Effects on vegetation structure and composition
- Tribal Treaty Rights

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. Substantive comments and objections to the proposed action will be considered during this analysis.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. City of Angoon v. Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986) and Wisconsin Heritages, Inc. v. Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: July 24, 2003.

Lyle E. Powers,

Acting Forest Supervisor.

[FR Doc. 03–19481 Filed 7–30–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Klamath Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Klamath Provincial Advisory Committee will meet on August 13–14, 2003, at Shasta College, 11555 Old Oregon Trail, Redding, California. The meeting will start at 1 p.m. and adjourn at 5 p.m. on August 13, and start at 8 a.m. and adjourn at 12 noon on August 14. Agenda items for the meeting include: (1) Discussion on topics of general interest to the PAC (Implementation Monitoring Field Trips); (2) Stewardship Contracting; (3) Vegetative Treatments in Late Successional Reserves; (4) Burning for Cultural Benefits; and (5) Public Comment Periods. All Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Jan Ford, USDA, Klamath National Forest, 1312 Fairlane Road, Yreka, California 96097; telephone 530–841–4483 (voice), TDD 530–841–4573.

Dated: July 24, 2003.

Margaret J. Boland,

Designated Federal Official, Klamath PAC.

[FR Doc. 03–19476 Filed 7–30–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–847]

Persulfates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on persulfates from the People's Republic of China in response to a request by the petitioner, FMC Corporation, and one exporter of subject merchandise, Shanghai Ai Jian Import and Export Corporation. The period of review is July 1, 2001, through June 30, 2002.

We have preliminarily determined that U.S. sales have been made at not less than normal value. If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to assess no antidumping duties on the exports subject to this review.

EFFECTIVE DATE: July 31, 2003.

FOR FURTHER INFORMATION CONTACT: Mike Strollo or Gregory E. Kalbaugh, AD/CVD Enforcement, Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0629 and (202) 482–3693, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 2, 2002, the Department published in the **Federal Register** a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on persulfates from the People's Republic of China (PRC) covering the period July 1, 2001, through June 30, 2002. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 67 FR 44172 (July 1, 2002).

On July 31, 2002, in accordance with 19 CFR 351.213(b), the petitioner, FMC Corporation, requested an administrative review of Shanghai Ai Jian Import & Export Corporation. In addition, on July 31, 2002, in accordance with 19 CFR 351.222(b), Shanghai Ai Jian Import and Export Corporation and Shanghai Ai Jian Reagent Works (collectively, Ai Jian) requested an administrative review. In its request for an administrative review, Ai Jian also requested that the Department partially revoke the antidumping duty order on persulfates with respect to Ai Jian's sales of subject merchandise. We published a notice of initiation of this review on August 27, 2002. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 55000 (August 27, 2002) (Persulfates Initiation).

On August 1, 2002, we issued an antidumping questionnaire to Ai Jian. We received Ai Jian's timely responses to sections A, C and D of the questionnaire on October 15, 2002.

We issued a supplemental questionnaire to Ai Jian on December 10, 2002. We received Ai Jian's response to this supplemental questionnaire on January 6, 2003.

On January 10, 2003, the petitioner submitted publicly available information for consideration in valuing the factors of production. On January 17, 2003, Ai Jian provided rebuttal comments regarding the surrogate values submitted by the petitioner.

On February 12, 2003, we issued a second supplemental questionnaire to Ai Jian.

On February 19, 2003, the petitioners submitted information regarding the purported impact revocation of the antidumping duty order on Ai Jian would have upon the domestic industry.

On February 27, 2003, Ai Jian submitted a response to the second supplemental questionnaire.

On March 11, 2003, we issued a third supplemental questionnaire to Ai Jian. Ai Jian submitted its response on March 19, 2003.

Also, on March 19, 2003, Ai Jian withdrew its request for revocation. Accordingly, we have not considered this request further in this segment of the proceeding.

Scope of Review

The products covered by this review are persulfates, including ammonium, potassium, and sodium persulfates. The chemical formula for these persulfates are, respectively, $(NH_4)_2S_2O_8$, $K_2S_2O_8$, and $Na_2S_2O_8$. Potassium persulfates are currently classifiable under subheading 2833.40.10 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Sodium persulfates are classifiable under HTSUS subheading 2833.40.20. Ammonium and other persulfates are classifiable under HTSUS subheadings 2833.40.50 and 2833.40.60. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this review is dispositive.

Separate Rates

It is the Department's policy to assign all exporters of the merchandise subject to review in non-market-economy (NME) countries a single rate, unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to exports. To establish whether an exporter is sufficiently independent of government control to be entitled to a separate rate, the Department analyzes the exporter in light of the criteria established in the *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Evidence supporting, though not requiring, a finding of de jure absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. With respect to evidence of a de facto absence of government control, the Department considers the following four factors: (1) Whether the respondent sets its own export prices independently from the government and other exporters; (2) whether the respondent can retain the proceeds from its export sales; (3) whether the respondent has the authority to negotiate and sign contracts; and (4) whether the respondent has autonomy from the government regarding the selection of management. *See Silicon Carbide*, 59 FR at 22587; *see also Sparklers*, 56 FR at 20589.

With respect to Ai Jian, for purposes of our final results covering the period of review (POR) July 1, 2000, through June 30, 2001, the Department determined that there was an absence of de jure and de facto government control of its export activities and determined that it warranted a company-specific dumping margin. *See Persulfates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 68 FR 6712, (February 10, 2003) (*Persulfates Fourth*

Review Final). For purposes of this POR, Ai Jian has responded to the Department's request for information regarding separate rates. We have found that the evidence on the record is consistent with the final results in *Persulfates Fourth Review Final* and continues to demonstrate an absence of government control, both in law and in fact, with respect to Ai Jian's exports, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. Therefore, we have granted Ai Jian a separate rate for purposes of this administrative review.

Export Price

For Ai Jian, we calculated export price (EP) in accordance with section 772(a) of the Tariff Act of 1930, as amended (the Act), because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and constructed export price methodology was not otherwise warranted based on the facts of record. We calculated EP based on packed, cost-insurance-freight (CIF) U.S.-port, or free-on-board, PRC-port prices to unaffiliated purchasers in the United States, as appropriate. We made deductions from the starting price, where appropriate, for ocean freight services which were provided by market economy suppliers. We also deducted from the starting price, where appropriate, an amount for foreign inland freight, foreign brokerage and handling, and marine insurance expenses. As these movement services were provided by NME suppliers, we valued them using Indian rates. For further discussion of our use of surrogate data in an NME proceeding, as well as selection of India as the appropriate surrogate country, see the "Normal Value" section of this notice, below.

For foreign inland freight, we obtained publicly-available information which was published in the February through June 2002 editions of *Chemical Weekly*. For foreign brokerage and handling expenses, we used price quotes obtained by the Department in the 1998–1999 antidumping duty investigation and recently used in the 2001–2002 antidumping duty administrative review of synthetic indigo from the People's Republic of China. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Synthetic Indigo From the People's Republic of China*, 64 FR 69723 (December 14, 1999)[1] and *Synthetic Indigo From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 11371, 11372 (March 10, 2003). We inflated the per kilogram price quote (in rupees) to the POR using WPI data. For marine insurance, we valued marine insurance using price quotes obtained from Roanoke Trade Services, Inc., a provider of marine insurance. *See* the memorandum to the File from Gregory Kalbaugh entitled "Marine Insurance Rates," in the administrative review of sebacic acid from the PRC, dated July 9, 2002, and the memorandum to the File from Michael Strollo entitled "Preliminary Valuation of Factors of Production for the Preliminary Results of the 2000–2001 Administrative Review of Persulfates from the People's Republic of China," dated July 31, 2002 (FOP Memo), which are on file in the Central Records Unit (CRU), Room B–099 of the main Commerce building.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the normal value (NV) using a factors-of-production methodology if: (1) The merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value (CV) under section 773(a) of the Act.

The Department has treated the PRC as an NME country in all previous antidumping cases. Furthermore, available information does not permit the calculation of NV using home market prices, third country prices, or CV under section 773(a) of the Act. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Therefore, we treated the PRC as an NME country for purposes of this review and calculated NV by valuing the factors of production in a surrogate country.

Section 773(c)(4) of the Act and 19 CFR 351.408 direct us to select a surrogate country that is at a level of economic development comparable to that of the PRC. On the basis of per capita gross domestic product (GDP), the growth rate in per capita GDP, and the national distribution of labor, we find that India is at a level of economic development comparable to that of the PRC. *See* the November 20, 2002, memorandum from Jeffrey May to Louis Apple entitled "Surrogate Country Selection," which is on file in the CRU.

Section 773(c)(4) of the Act also requires that, to the extent possible, the Department use a surrogate country that is a significant producer of merchandise comparable to persulfates. For purposes of the most recent segment of this proceeding, we found that India was a producer of persulfates based on information submitted by the respondent. *See Persulfates From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Partial Rescission*, 67 FR 50866, 50868 (August 6, 2002).[2] For purposes of this administrative review, we continue to find that India is a significant producer of persulfates based on information submitted by both the respondent and the petitioner. We find that India fulfills both statutory requirements for use as the surrogate country and continue to use India as the surrogate country in this administrative review. We have used publicly available information relating to India to value the various factors of production.

For purposes of calculating NV, we valued PRC factors of production in accordance with section 773(c)(1) of the Act. Factors of production include, but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital cost, including depreciation. In examining surrogate values, we selected, where possible, the publicly available value which was: (1) An average non-export value; (2) representative of a range of prices within the POR or most contemporaneous with the POR; (3) product-specific; and (4) tax-exclusive. For a more detailed explanation of the methodology used in calculating various surrogate values, see the FOP Memo. In accordance with this methodology, we valued the factors of production as follows:

To value ammonium sulfate, caustic soda, and sulfuric acid, we used public information from the Indian publication *Chemical Weekly*, as provided by the petitioner in its January 10, 2003, submission. For caustic soda and sulfuric acid, because price quotes reported in *Chemical Weekly* are for chemicals with a 100 percent concentration level, we made chemical purity adjustments according to the particular concentration levels of caustic soda and sulfuric acid used by Shanghai Ai Jian Reagent Works (AJ works), Ai Jian's PRC supplier. Where necessary, we adjusted the values reported in *Chemical Weekly* to exclude sales and excise taxes. For potassium sulfate and anhydrous ammonia, we relied on import prices contained in the *Monthly Statistics of the Foreign Trade of India* (*Monthly Statistics*). All values were contemporaneous with the POR; therefore, it was not necessary to adjust for inflation.

During the POR, AJ Works self-produced ammonium persulfates, which is a material input in the production of potassium persulfates and sodium persulfates. In order to value ammonium persulfates, we calculated the sum of the materials, labor, and energy costs based on the usage factors submitted by AJ Works in its questionnaire responses. Consistent with our methodology used in *Persulfates Fourth Review Final*, we then applied this value to the reported consumption amounts of ammonium persulfates used in the production of potassium and sodium persulfates.

We valued labor based on a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3).

To value electricity, we used the 2000–2001 average rate for industrial consumption as published in the Government of India's Planning Commission report, *The Working of State Electricity Boards & Electricity Departments Annual Report (2001–02)*. For further discussion, see the FOP Memo.

To value water, we relied on public information reported in the October 1997 publication of *Second Water Utilities Data Book: Asian and Pacific Region*. To value coal, we relied on import prices contained in the March 2001 annual volume of *Monthly Statistics*. We adjusted the values to reflect inflation up to the POR using the WPI published by the IMF.

For the reported packing materials—polyethylene bags, woven bags, polyethylene sheet/film and liner, fiberboard, paper bags, and wood pallets—we relied upon Indian import data from the *Monthly Statistics*.

We made adjustments to account for freight costs between the suppliers and AJ Works' manufacturing facilities for each of the factors of production identified above. In accordance with our practice, for inputs for which we used CIF import values from India, we calculated a surrogate freight cost using the shorter of the reported distances either from the closest PRC ocean port to the factory or from the domestic supplier to the factory. *See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China*, 62 FR 61964, 61977 (November 20, 1997) and the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States*, 117 F.3d 1401 (Fed. Cir. 1997).

For factory overhead, selling, general, and administrative expenses (SG&A), and profit, we relied on the experience of a producer of identical merchandise, Gujarat Persalts (P) Ltd. (Gujarat), as reflected in its 2000–2001 financial statements.[3] *See* the FOP Memo. Consistent with our practice, we did not rely on the 2001–2002 financial statements of a producer of comparable merchandise (*i.e.*, National Peroxide Ltd.), as requested by the petitioner, because this producer did not produce persulfates during its fiscal year.[4] *See Persulfates Fourth Review Final* and accompanying decisionmemorandum at *Comments 8, 9, and 10*. Because the petitioner has provided no new information which would cause us to reconsider our decision on this issue, we do not find any reason to alter our decision in the instant review.

Preliminary Results of Review

We preliminarily determine that the following margins exist for the period July 1, 2001, through June 30, 2002:

Manufacturer/exporter	Margin (percent)
Shanghai Ai Jian Import & Export Corporation	0.00

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. Interested parties may request a hearing within 30 days of the publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written briefs, within 120 days of the publication of these preliminary results.

The Department will determine and the U.S. Bureau of Customs and Border Protection (BCBP) shall assess antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the BCBP upon completion of this review. The final results of this review will be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties.

For assessment purposes in this case, we do not have the information to calculate entered value. Therefore, we have calculated importer-specific duty assessment rates for the merchandise by aggregating the dumping margins calculated for all U.S. sales and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis* (*i.e.*, less than 0.50 percent), in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* ratios based on the EPs.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Ai Jian will be that established in the final results of this administrative review; (2) for any company previously found to be entitled to a separate rate and for which no review was requested, the cash deposit rate will be the rate established in the most recent review of that company; (3) the cash deposit rate for all other PRC exporters will be 119.02 percent, the PRC-wide rate established in the less than fair value investigation; and (4) for all other non-PRC exporters of subject merchandise from the PRC to the United States, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

[1] This was unchanged in the final determination. *See Synthetic Indigo From the People's Republic of China: Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 25706 (May 3, 2000).

[2] This finding was unchanged in the final results. *See Persulfates Fourth Review Final.*

[3] Because we believe that SG&A labor is not classified as part of the SG&A costs reflected on Gujarat's financial statements, we have accounted for SG&A labor hours by calculating a dollar-per-MT labor hours amount and adding this amount to SG&A. For further discussion, see the July 31, 2003, memorandum from the Team, entitled "U.S. Price and Factors of Production Adjustments for the Preliminary Determination."

[4] As explained in *Persulfates Fourth Review Final*, although the Department generally prefers data which is more contemporaneous with the POR, contemporaneity is not the only criterion taken into consideration. The Department's NME practice establishes a preference for selecting surrogate value sources that are producers of identical merchandise. *See id.*

Notification of Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 25, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Grant Aldonas, Under Secretary.

[FR Doc. 03–19516 Filed 7–30–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588–046]

Notice of Initiation of Antidumping Duty Changed Circumstances Review: Polychloroprene Rubber from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(b) of the Tariff Act of 1930, as amended, (the Act) and 19 CFR 351.216 (2003), Showa Denko Elastomers K.K. (SDEL) and Showa Denko K.K. (SDK) requested that the Department of Commerce (the Department) conduct an expedited changed circumstances review of the antidumping duty finding on polychloroprene rubber (PR) from Japan. In response to this request, the Department is initiating a changed circumstances review of the above-referenced finding.

EFFECTIVE DATE: July 31, 2003.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Ronald Trentham, AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4114 or (202) 482–6320, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 6, 1973, the Department of Treasury published in the **Federal Register** (38 FR 33593) the antidumping finding on PR from Japan. On June 17, 2003, SDEL and SDK submitted a letter stating that they are the successor-in-interest to Showa DDE Manufacturing KK (SDEM) and DDE Japan Kabushiki Kaisha (DDE Japan) and, as such, entitled to receive the same antidumping treatment as these companies have been accorded. Accordingly, SDEL/SDK requested that the Department conduct an expedited changed circumstances review of the antidumping duty finding on PR from Japan pursuant to section 751(b)(1) of the Act and 19 CFR 351.221(c)(3)(ii) of the Department's regulations.

Scope of Review

Imports covered by this review are shipments of PR, an oil resistant synthetic rubber also known as polymerized chlorobutadiene or neoprene, currently classifiable under items 4002.42.00, 4002.49.00, 4003.00.00, 4462.15.21 and 4462.00.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). HTSUS item numbers are provided for convenience and for U.S. Burea of Customs and Border Protection (BCBP). The Department's written descriptions of the scope remain dispositive.

Initiation of Antidumping Duty Changed Circumstances Review

Pursuant to section 751(b)(1) of the Act, the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty finding which shows changed circumstances sufficient to warrant a review of the order. Information submitted by SDEL/SDK regarding a change in ownership of the prior SDEM/DDE Japan joint venture shows changed circumstances sufficient to warrant a review. *See* 19 CFR 351.216(c) (2003).

In antidumping duty changed circumstances reviews involving a successor-in-interest determination, the Department typically examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See Brass Sheet and Strip from Canada: Notice of Final Results of Antidumping Administrative Review*, 57 FR 20460, 20462 (May 13, 1992) (*Canadian Brass*). While no single factor or combination of factors will necessarily be dispositive, the Department generally will consider the new company to be the successor to the predecessor company if the resulting operations are essentially the same as those of the predecessor company. *See, e.g., Industrial Phosphoric Acid from Israel: Final Results of Changed Circumstances Review*, 59 FR 6944, 6945 (February 14, 1994), and *Canadian Brass*, 57 FR 20460. Thus, if the record evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, the Department may assign the new company the cash deposit rate of its predecessor. *See, e.g., Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changes Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (March 1, 1999). Although SDEL/SDK submitted information indicating, allegedly, that with respect to subject merchandise, it operates in the same manner as its predecessor, SDEM/DDE Japan, that information is lacking any supporting documents. See Memoranda from Zev Primor to The File "Polychloroprene Rubber from Japan: Request for Additional Information for Changed Circumstances Review" dated June 30 and July 15, 2003.

Concerning SDEL/SDK's request that the Department conduct an expedited antidumping duty changed circumstances review, the Department has determined that it would be inappropriate to expedite this action by combining the preliminary results of review with this notice of initiation, as permitted under 19 CFR 351.221(c)(3)(ii). Because of the absence of evidence to support SDEL/SDK's claims, the Department finds that an expedited proceeding is impracticable. Therefore, the Department is not issuing the preliminary results of its antidumping duty changed circumstances review at this time.

The Department will publish in the **Federal Register** a notice of preliminary results of antidumping duty changed circumstances review, in accordance with 19 CFR 351.221(b)(4) and 19 CFR 351.221(c)(3)(I). This notice will set forth the factual and legal conclusions upon which our preliminary results are based and a description of any action proposed based on those results. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results of review. In accordance with 19 CFR 351.216(e), the Department will issue the final results of its antidumping duty changed circumstances review not later than 270 days after the date on which the review is initiated.

During the course of this antidumping duty changed circumstances review, we will not change the cash deposit requirements for the merchandise subject to review. The cash deposit will only be altered, if warranted, pursuant to the final results of this review.

This notice of initiation is in accordance with sections 751(b)(1) of the Act and 19 CFR 351.221(b)(1) of the Department's regulations.

Dated: July 24, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Grant Aldonas, Under Secretary.

[FR Doc. 03–19515 Filed 7–30–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071003D]

Marine Mammals; Notice Announcing Preparation of an Environmental Assessment for a Take Reduction Plan for the Western North Atlantic Coastal Stock of Bottlenose Dolphins

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice announcing preparation of an Environmental Assessment(EA).

SUMMARY: NMFS announces its intention to prepare a draft EA, in accordance with the National Environmental Policy Act (NEPA), for the development of a Bottlenose Dolphin Take Reduction Plan (BDTRP) to reduce the incidental mortality and serious injury of the western North Atlantic coastal stock of bottlenose dolphins (bottlenose dolphin) in commercial fisheries to below the potential biological removal(PBR)level for the stock. Through a previous notice, NMFS informed the public of the agency's intent to prepare an Environmental Impact Statement (EIS). NMFS has since received information indicating that in this case an EA is a more appropriate analysis under NEPA.

DATES: See **SUPPLEMENTARY INFORMATION** section for information on the comment period for the EA.

ADDRESSES: For additional information on the BDTRP, contact Katie Moore, NMFS Southeast Regional Office, 9721 Executive Center Drive N, St. Petersburg, FL 33702, fax: 727–570–5517; Brian Hopper, NMFS Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930–2298, fax: 978 281–9394; or Tanya Dobrzynski, NMFS Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, fax: 301–713–0376.

FOR FURTHER INFORMATION CONTACT: Katie Moore, phone: 727–570–5312; or Tanya Dobrzynski, phone: 301–713–2322. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

For additional information on western North Atlantic coastal bottlenose dolphins, refer to the final 2002 Atlantic and Gulf of Mexico Marine Mammal Stock Assessment Reports (SARs). The reports can be accessed via the Internet at: *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program.html*. For more information on the BDTRP, access the BDTRP site at: *http://www.nmfs.noaa.gov/prot_res/PR2/Health_html*.

On July 22, 2002, NOAA Fisheries published in the **Federal Register** a Notice of Intent (NOI) to Prepare an Environmental Impact Statement(EIS)(67 FR 47772) for the development of a BDTRP. At that time, given the best available information, NMFS believed that the regulations to implement the BDTRP would have a significant adverse impact on participants in the related fisheries, as well as a significant beneficial impact on the western North Atlantic coastal stock of bottlenose dolphin. On September 19, 2002, NMFS published a notice reopening the comment period for an additional 45 days to ensure that the public had ample opportunity to provide comments. Since publication of the NOI, NMFS has received additional information on the status of the western North Atlantic Bottlenose Dolphin stock complex. New abundance estimates indicate an increase in stock abundance and an associated increase in potential biological removal (PBR) for 6 of the 8 management units within the bottlenose dolphin stock complex. Because of this new information, NMFS believes that take reduction measures necessary to reach PBR are much less likely to significantly impact either the stock or the related fisheries, as previously believed.

Pursuant to the National Oceanic and Atmospheric Administration (NOAA's) Administrative Order 216–6, when the agency determines not to pursue a proposed action after a notice of intent has been published, a second notice should be published to inform the public of the change. Through this action, NMFS is providing notice that it will prepare an EA rather than an EIS as previously announced. The purpose of an EA is to determine whether significant environmental impacts could result from a proposed action. If the action is determined not to be significant, the EA and resulting Finding of No Significant Impact will be the final environmental documents required by the NEPA. If the EA reveals that significant environmental impacts may be reasonably expected to occur, then the agency will prepare an EIS. Through comments received on the NOI for the EIS and the associated public review process for the draft EA and proposed rule to implement the BDTRP, the agency will receive feedback on its determination of significance.

NMFS intends to develop and implement a BDTRP pursuant to section 118 of the Marine Mammal Protection Act (MMPA). The purpose of the proposed action is to reduce the incidental mortality and serious injury of the western North Atlantic coastal stock of bottlenose dolphins in commercial fisheries to below the PBR level for the stock. The BDTRP will address mortality and serious injury of western North Atlantic coastal bottlenose dolphins incidentally taken in the following Category I and II commercial fisheries: Mid-Atlantic coastal gillnet; North Carolina inshore gillnet; Southeast Atlantic gillnet; Southeastern U.S. Atlantic shark gillnet; Atlantic blue crab trap/pot; Mid-Atlantic haul/beach seine; North Carolina long haul seine; North Carolina roe mullet stop net; and Virginia pound net. The take reduction plan is being developed pursuant to the process described in section 118(f) of the MMPA.

Section 118(f) of the MMPA requires NMFS to convene a take reduction team to assist in the recovery and prevent the depletion of each strategic stock that interacts with Category I or II fisheries. The western North Atlantic coastal stock of bottlenose dolphins is a strategic stock. For more information about the stock, consult the SAR, as described in the Electronic Access portion of this notice. Strategic status was initially assigned because the stock is designated as depleted under the MMPA as a result of a large-scale mortality event that occurred in 1987–1988 (58 FR 17789, April 6, 1993). The stock also qualifies as strategic because mortality and serious injury of this stock incidental to commercial fishing exceeds the PBR level of the stock.

The immediate goal of a take reduction plan for a strategic stock of marine mammals is to reduce, within 6

months of plan implementation, the incidental mortality or serious injury of marine mammals taken in the course of commercial fishing operations to levels less than the PBR level (16 U.S.C. 1387). The long-term goal of the plan is to reduce, within 5 years of its implementation, the incidental mortality or serious injury of marine mammals taken in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fishery, the availability of existing technology, and existing state or regional fishery management plans (16 U.S.C. 1387).

The Secretary of Commerce (Secretary) shall establish a take reduction team to address mortality or serious injury of strategic stocks of marine mammals interacting with Category I or II fisheries. Not later than 6 months after the date of establishment of a take reduction team, the Team is required to submit a draft take reduction plan for such stock to the Secretary, consistent with the other provisions of section 118 of the MMPA. The Secretary is required to take the draft take reduction plan submitted by the team into consideration and publish in the **Federal Register** the draft plan submitted by the team, any changes proposed by the Secretary with an explanation of the reasons therefor, and proposed regulations to implement such plan, for public review and comment.

Public Scoping Process

The BDTRT was established on November 7, 2001. A **Federal Register** notice announcing the convening of the BDTRT and its first meeting was published on October 24, 2001 (66 FR 53782). The Team met a total of five times before delivering consensus recommendations for the BDTRP to NMFS on May 7, 2002, and also met in April 2003 to review updated bottlenose dolphin abundance information and to augment the original recommendations where they did not meet the statutory requirements of the MMPA. The dates of the six meetings were: November 7–8, 2001; January 23–25, 2002; February 27–March 1, 2002; March 27–28, 2002; April 23–25, 2002; and April 1–3, 2003. Team meetings were open to the public and a public comment period was held following each day of meetings. Additionally, NMFS held three public meetings with potential Team members and other interested members of the public on May 15–16, 2001; July 11–12, 2001; and November 6, 2001. No additional scoping meetings are scheduled.

NMFS hired a commercial fisheries liaison to engage the commercial fishing sector by sharing information about the purpose of the Team, meeting dates and locations, and the discussion topics for upcoming meetings. The liaison used dockside visits, commercial fishing publications, and a commercial fishing expo to disseminate the information. NMFS generated and distributed a fact sheet about the Team and upcoming Team meetings, developed a Web site regarding the issue, and used mail and electronic mail to distribute information about meeting logistics and summaries to over 200 interested persons.

Analysis of Alternatives

NMFS will be analyzing alternatives that are reasonably expected to reduce mortality and serious injury of western North Atlantic coastal bottlenose dolphins to less than the PBR level within 6 months of implementation of the BDTRP. NMFS will be analyzing all reasonable alternatives, which include a status quo alternative and the recommendations submitted by the Team. The Team's recommendations can be obtained by contacting Katie Moore or Tanya Dobrzynski (see **FOR FURTHER INFORMATION CONTACT**).

NMFS will provide an opportunity for comment on the draft EA in conjunction with publication of the proposed regulations to implement the BDTRP. At that time, NMFS will also consider public comments received during the public comment period on the NOI to prepare an EIS for the BDTRP.

Dated: July 25, 2003.

Rebecca Lent,

Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–19521 Filed 7–30–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072403B]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Herring Advisory Panel in August, 2003.

DATES: The meeting will held on Wednesday, August 20, 2003, at 10 a.m.

ADDRESSES: The meeting will be held at the Sheraton South Portland, 363 Main Mall Road, South Portland, ME 04106; telephone: (207) 775-6161.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465-0492.

SUPPLEMENTARY INFORMATION: The panel will review progress to date on development of alternatives for analysis in Amendment 1 to the Herring Fishery Management Plan (FMP). They will also develop Advisory Panel recommendations for the Herring Committee to consider regarding the range of alternatives for analysis in Amendment 1.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: July 25, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–19518 Filed 7–30–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072403A]

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Improved Retention/Improved Utilization Technical Committee will meet in Seattle, WA.

DATES: The meetings will be held on August 25, 26, 2003, from 9 a.m. to 5 p.m., and August 27, 2003, from 9 a.m. to noon.

ADDRESSES: The meetings will be held at the Alaska Fisheries Science Center, 7600 Sand Point Way NE, Building 9 (Auditorium), Seattle, WA 98115.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, Phone: 907–271–2809.

SUPPLEMENTARY INFORMATION: The Committee is scheduled to discuss implementation aspects of a minimum groundfish retention standard, and development of fishery cooperatives, including the following: (1) review action on Amendment C and discuss implementation issues; (2) ID options to achieve pollock maximum retainable bycatch allowance (adjustment) objectives; (3) discuss and develop options for the <125′ Head & Gut boats; and (4) review discussion paper/ alternatives/analytical approach for Amendment A and provide recommendations in October.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: July 25, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–19517 Filed 7–30–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061003A]

Fisheries of the Exclusive Economic Zone off Alaska; Groundfish of the Gulf of Alaska; Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of an Exempted Fishing Permit (EFP).

SUMMARY: NMFS announces the issuance of EFP 03–01 to Mr. John Gauvin, principal investigator, and Mr. Brent Paine, Executive Director of the United Catcher Boats Association (applicants). The EFP authorizes the applicants to conduct an experiment in the Bering Sea that will test the effectiveness of salmon excluder devices to reduce salmon bycatch rates in the pollock trawl fishery without significantly lowering catch rates of pollock. This EFP is necessary to provide information not otherwise available through research or commercial fishing operations. The intended effect of this action is to promote the purposes and policies of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

ADDRESSES: Copies of the EFP and the Environmental Assessment (EA) prepared for the EFP are available from Lori J. Durall, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, 907–586–7228 or *melanie.brown@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area authorizes the issuance of EFPs to fish for groundfish in a manner that would otherwise be prohibited under existing regulations. The procedures for issuing EFPs are set out at 50 CFR 679.6 and 600.745(b).

On April 15, 2003, NMFS announced in the **Federal Register** the receipt of an application for an EFP (68 FR 18187). The applicants requested authorization to test the effectiveness of salmon excluder devices intended to reduce salmon bycatch rates in the pollock trawl fishery, without reducing the catch of pollock. The purpose of this research is to assist industry in developing gear modifications that will reduce the bycatch of salmon in the pollock fishery in the Bering Sea. This EFP will provide information not otherwise available through research or commercial fishing operations because it is not economically feasible for vessels to participate in an experiment of this extent and rigor during the commercial fisheries.

The Regional Administrator has approved the EFP application and has issued EFP 03–01 to the applicants. Details of the experiment are in the environmental assessment prepared for this action (see **ADDRESSES**). The experiment will take place in two parts to allow for testing of devices specific to chum salmon and chinook salmon for approximately 12–15 days each. The chum salmon field test portion of the EFP is expected to occur mid-September through October 2003. The chinook salmon excluder test is expected to occur January 20, 2004, through March 31, 2004. The location for the test will be the common areas for catcher vessels to fish for pollock in the Bering Sea at those times of the year.

In order to conduct the test in accordance with the experimental design developed in cooperation with NMFS Alaska Fisheries Science Center, the applicants are exempted from several groundfish fisheries regulations at 50 CFR part 679. Salmon taken during the experiment will not be counted toward the chinook and non-chinook bycatch limits under 50 CFR 679.21(e)(1)(vii) and (viii). The majority of the non-chinook salmon taken is chum salmon. The taking of salmon during the experiment is crucial for determining the effectiveness of the device. The potential exists that the amount of pollock trawl salmon bycatch taken by the industry during the EFP period will approach or exceed the salmon bycatch limits. The additional salmon taken during the experiment would create an additional burden on the pollock trawl industry, if the EFP salmon is counted toward the salmon bycatch limits.

Groundfish taken under the EFP will not be applied to the total allowable catch (TAC) limit specified in the annual harvest specifications (§ 679.20). The amount taken is expected to result in total harvests well below the acceptable biological catch (ABC) amounts for the BSAI. The applicants have also requested an exemption from closures of the Chinook Salmon Savings Area and the Chum Salmon Savings Area. (§§ 679.21(e)(7)(vii) and (viii), and 679.22(a)(10)). The experiment must be conducted in areas of salmon concentration to ensure a sufficient sample size. Known concentrations of

salmon occur in the salmon savings areas which provide ideal locations for conducting the experiment and ensuring the vessel encounters concentrations of salmon.

Because a large portion of the Chinook Salmon Savings Area and Chum Salmon Savings Area falls within the Steller Sea Lion Conservation Area (SCA), the EFP also allows for an exemption from the sector specific closure of the SCA (§ 679.22(a)(7)(vii)). This exemption applies only until the combined harvest of all sectors in the SCA exceeds the combined 28 percent of the annual TAC before April 1 (§ 679.20(a)(5)(i)(B). In 2003 nearly 80,000 mt of pollock SCA quota was not harvested. The experiment will harvest approximately 1,300 mt of groundfish (mostly pollock) during the spring. Catcher vessels over 99 ft (30.2 m) length overall (LOA) harvested all of the 2003 quota available to its sector. The vessel used for the research may be a catcher vessel over 99 ft (30.2 m) LOA, the sector that is likely to be closed out of the SCA based on reaching its quota. Because of the large amount of SCA pollock quota that will likely remain unharvested and limitations on the exemption if the combined sector SCA quota is reached, the exemption from the SCA sector specific closure will have no effect on Steller sea lions.

The EFP also exempts the permit holders from the closure of the Catcher Vessel Operating Area (CVOA) at 50 CFR 679.22(a)(5)(ii). All of the Chum Salmon Savings Area is in the CVOA because of the high rates of chum salmon bycatch that are known to occur in this area. The CVOA is closed to catcher/processors during the pollock B season, June 10 through November 1. If a catcher/processor is chosen to conduct the chum salmon portion of the research, it will need access to the CVOA during the pollock B season to ensure enough chum salmon is encountered to provide a sufficient sample size for the experiment.

The EFP authorizes harvests up to 2,270 mt of groundfish in the Bering Sea in the fall of 2003 and the spring of 2004. These groundfish harvests will not be applied toward the groundfish TAC limits in 2003 or 2004. Approximately 98 percent of the groundfish harvested will be pollock. The 2003 Bering Sea pollock TAC is 1,491,760 metric tons (mt) (68 FR 9907, March 3, 2003) and the 2004 TAC is likely to be over one million mt. The 2003 pollock acceptable biological catch (ABC) for the Bering Sea is 2.33 million mt, well above the TAC and additional harvest anticipated from the experiment. The vessel selected for participation will retain all pollock and may retain other groundfish species in accordance with the maximum retainable incidental catch amounts at § 679.20(e) and (f), using only pollock as the basis species.

Approximately 200 chum salmon and 30 chinook salmon are required to support the experiment, well below the BSAI limits of 33,000 chinook salmon in 2003, 29,000 chinook salmon in 2004, and the annual limit of 42,000 non-chinook salmon (§ 679.21(e)(1)(vii) and (viii)). The authorized salmon bycatch for this experiment is 2,183 non-chinook salmon and 217 chinook salmon. This is above the amount needed to support the experiment, but is necessary to ensure the experiment is not prematurely ended before a sufficient amount of data are collected under conditions of higher than expected rates of salmon bycatch. If the salmon is of acceptable quality, the salmon bycatch will be retained for the Prohibited Species Donation Program under § 679.26. Otherwise, the salmon will be discarded in accordance with § 679.21(b).

The Regional Administrator may terminate the experiment if the groundfish or salmon bycatch limits specified in the permit are exceeded. To ensure no likelihood of adverse effects on Steller sea lions, the experiment may not be conducted in Steller sea lion protection areas that are closed to pollock trawling (68 FR 204, January 2, 2003, corrected 68 FR 24615, May 8, 2003), except as provided for in the SCA. A final report of the result of the experiment will be made available to the public at the end of 2004.

Failure of the permittees to comply with the terms and conditions of the EFP and all applicable provisions of 50 CFR parts 600 and 679, the Magnuson-Stevens Act, or any regulations promulgated thereunder, or any other applicable laws, may be grounds for revocation, suspension, or modification of this permit as well as civil or criminal sanctions imposed under those laws.

Classification

This action is exempt from review under Executive Order 12866 and the Regulatory Flexibility Act (RFA). The analytical requirements of the RFA are inapplicable because prior notice and opportunity for public comment are not required for this notification.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 25, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–19520 Filed 7–30–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Availability of the Ground-Based Midcourse Defense Extended Test Range Final Environmental Impact Statement

AGENCY: Missile Defense Agency, Department of Defense and Federal Aviation Administration, Department of Transportation.

ACTION: Correction notice for the notice of availability.

SUMMARY: This notice amends the notice published in the **Federal Register** on July 15, 2003, (68 FR 41784) on "Ground-Based Midcourse Extended Test Range Environmental Impact Statement Notice of Availability (NOA)." This notice revises the published closure date to reflect the original NOA publication date in the **Federal Register** by the U.S. Environmental Protection Agency on July 11, 2003 (68 FR 41338). The corrected NOA closure date is August 11, 2003. All other information remains unchanged.

DATES: A Record of Decision will be issued no earlier than 30 days from July 11, 2003.

FOR FURTHER INFORMATION CONTACT: Please call Mr. Rick Lehner, MDA Director of Communications at (703) 697–8997.

Dated: July 24, 2003.

L.M. Bynum,

Alternate OSD Federal Liaison Officer, Department of Defense.

[FR Doc. 03–19451 Filed 7–30–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board Task Force on Quarantining Guidance for the Severe Acute Respiratory Syndrome (SARS) Epidemic will meet in open session September 15, 2003, from 0930–1200 and from 1300–1500. The Task Force will meet at SAIC, 4001 N. Fairfax Drive, Suite 500, Arlington, VA. The Task Force will review the impact quarantining may have on DoD planning and operations by preventing the flow of personnel and material to areas of concern, eroding relationships with host countries, and impacting our forces through anxieties about family members.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Defense Science Board Task Force will review and evaluate the Department's ability to provide information to integrate public health needs, on behalf of national security. Specifically, the Task Force will review: Existing doctrine and processes by which quarantine policy is generated; required cooperation with non-DoD agencies and non-U.S. government entities, including other countries; the capacity of local commanders to rapidly survey disease status, and establish need, ways and means for quarantine in relation to their assigned missions; methods, technologies and doctrine to allow safe transport of personnel through quarantine areas, and restriction of movement where needed; sample scenarios; coordination and allocation of DoD and non DoD resources to combat SARS; identification and tracking of individuals potentially exposed to SARS; and features of the SARS guidance which may be applicable to future infectious disease outbreaks.

FOR FURTHER INFORMATION CONTACT: CDR David Waugh, USN, Defense Science Board, 3140 Defense Pentagon, Room 3D865, Washington, DC 20301–3140, via e–mail at *david.waugh@osd.mil*, or via phone at (703) 695–4158.

SUPPLEMENTARY INFORMATION: Members of the public who wish to attend the meeting must contact CDR Waugh no later than September 5, 2003, for further information about admission as seating is limited. Additionally, those who wish to make oral comments or deliver written comments should also request to be scheduled, and submit a written text of the comments by September 5, 2003, to allow time for distribution to Task Force members prior to the meeting. Individual oral comments will be limited to five minutes, with the total oral comment period not exceeding 30 minutes.

Dated: July 23, 2003.

Patricia Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–19450 Filed 7–30–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability (NOA) of the Draft Environmental Impact Statement (DEIS) for the Transformation of the 2d Armored Cavalry Regiment (ACR) and Installation Mission Support, Joint Readiness Training Center (JRTC) and Fork Polk, LA, and Long-Term Military Training Use of Kisatchie National Forest Lands

AGENCY: Department of the Army, DOD; Forest Service, USDA; Federal Aviation Administration, DOT.

ACTION: Notice of availability.

SUMMARY: The Department of the Army, the USDA Forest Service, and the Federal Aviation Administration (FAA) announce the availability of the DEIS for the Transportation of the 2d Armored Cavalry Regiment and Installation Mission Support, Joint Readiness Training Center (JRTC) and Fort Polk, Louisiana, and Long-Term Military Training Use of Kisatchie National Forest Lands. The DEIS evaluates environmental impacts associated with the Army's proposal for implementation force transformation and mission capability enhancements at the installation and at England Industrial Airpark, along with long-term military training use of Kisatchie National Forest lands. The Army's proposed action involves fielding of new vehicles and equipment; construction and improvement of firing ranges, roads, stream crossings, and support facilities; land use agreements and leases; training and deployment of Army troops; and continued environmental stewardship. In addition, the DEIS considers a Forest Service proposal to thin approximately 21,500 acres of upland pine stands on the Vernon Unit, Calcasieu Ranger District of the Kisatchie National Forest to improve habitat conditions for the endangered red-cockaded woodpecker. The FAA proposes to approve amendment of the Alexandria International Airport Layout Plan as influenced by proposed Army projects and activities at England Industrial Airpark.

DATES: The comment period for the DEIS will end 45 days after publication of the NOA in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: Written comments or requests for copies of the DEIS may be submitted to: Dan Nance, Fort Polk Public Affairs Office, 7073 Radio Road, Fort Polk, LA 71459–5342; phone: (337) 531–7203; fax: (337) 531–6041; e-mail: *eis@polk.army.mil*.

FOR FURTHER INFORMATION CONTACT: Questions about the DEIS may be directed to: Stacy Basham-Wagner, Joint Agency Liaison, Attention: AFZX–PW–E (Basham-Wagner), 1799 23rd Street, Fort Polk, LA 71459; telephone (337) 531–7458, fax: (337) 531–2627.

SUPPLEMENTAL INFORMATION: In support of Army initiatives to meet evolving security requirements, the Army has designated the 2d ACR to transform as an element of the Interim Force to the 2d Cavalry Regiment, a medium-weight force that will be strategically responsive and more rapidly deployable by air. In addition to transformation of the 2d ACR, other Interim Force units stationed at other Army installations would participate in exercises at JRTC and Fort Polk on a rotational basis. To these ends, the Army proposes to implement force transformation and installation mission support activities at the JRTC and Fort Polk with respect to home station training (maneuver and gunnery exercises for Army units assigned to Fort Polk), rotational unit exercises, and facilities construction. The Army also proposes renewal of a Special Use Permit agreement with the Forest Service for continued use of Kisatchie National Forest lands to support military training. The areas of the Kisatchie National Forest proposed for Army use are known as the Intensive Use Area and Limited Use Area of the Vernon Unit, Calcasieu Ranger District and the Special Limited Use Area (also known as Horse's Head) of the Kisatchie Ranger District.

Proposals for installation mission support involve 20 construction projects that would occur on Army lands, national forest lands, and at England Industrial Airpark in Alexandria, Louisiana. The projects include 13 facilities in the Fort Polk cantonment area, digitization and expansion of the Multi-Purpose Range Complex on Fort Polk's main post, road construction/

improvements and construction of a sniper range in the Intensive Use Area, construction of 20 stream crossings in the Limited Use Area, and 3 deployment support facilities at England Industrial Airpark. The JRTC and Fort Polk also propose to create additional helicopter training areas and to conduct limited types of non-live fire training on private lands. Over a 10-year period, the Forest Service proposes to thin approximately 21,500 acres of upland pine stands in there Intensive Use Area to enhance habitat conditions for the endangered red-cockaded woodpecker.

The Army is the lead agency in preparing the DEIS and the Forest Service and FAA are cooperating agencies. The decision to be made by the Army, based on the results of the EIS and upon consideration of all relevant factors (including mission, cost, technical factors, and environmental considerations), is how to provide for military training, readiness, and facilities requirements while ensuring the sustained use of resources entrusted to the stewardship of the Army. The decision to be made by the Forest Service is what military activities and land uses may occur on national forest lands and how to balance military and non-military uses while sustaining resources entrusted to Forest Service stewardship. The FAA intends to relay on analyses in this EIS to make decisions concerning the Alexandria International Airport Layout Plan as it may be affected by three Army projects proposed to occur at the airport and consequent movement of aircraft, materiel, and personnel through that facility.

The DEIS identifies eight alternatives, two of which are analyzed in detail: (1) The proposed action, summarized above, and (2) a no action alternative.

Comments on the DEIS received during the 45-day comment period will be considered in preparing the Final EIS. Public meetings to solicit comments on the DEIS will be held Baton Rouge, Leesville, and Alexandria, Louisiana. Notification of the times and locations for the public meetings will be published in local newspapers at least 15 days in advance.

Copies of the DEIS are available for review at the following libraries: Allen Parish Library (Oberlin Branch), 320 S. Sixth Street, Oberlin; Beauregard Parish Library, 205 South Washington Avenue, DeRidder, Calcasieu Public Library, 301 W. Claude Street, Lake Charles; East Baton Rouge Parish Library, 7711 Goodwood Boulevard, Baton Rouge; Lafayette Public Library, 301 W. Congress Street, Lafayette; Lincoln Parish Library, 609 West Alabama Avenue, Ruston; Natchitoches Parish Library, 431 Jefferson Street, Natchitoches; New Orleans Public Library (Orleans Parish), 219 Loyola Avenue, New Orleans; New Orleans Public Library (Algiers Point Branch), 725 Pelican Avenue, New Orleans; Ouachita Parish Library, 1800 Stubbs Avenue, Monroe; Rapides Parish Library, 411 Washington Street, Alexandria; Vernon Parish Library, 1401 Nolan Trace, Leesville; and Shreve Memorial Library (Caddo Parish), 424 Texas Street (71101), Shreveport, Louisiana. The DEIS, as well as additional information concerning the EIS process, may be reviewed at *http://notes.tetratech-ffx.com/PolkEIS.nsf.*

Dated: July 24, 2003.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA(I&E).

[FR Doc. 03–19477 Filed 7–30–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The following invention is assigned to the U.S. Government as represented by the Secretary of the Navy and is made available for licensing by the Department of the Navy. U.S. Patent Application Serial Number 10/283,352 entitled "Nitrate-Hydrogen Peroxide Chemical Adducts and Use Thereof."

ADDRESSES: Requests for copies of the Patent Application cited should be directed to the Indian Head Division, Naval Surface Warfare Center, Code O5T, 101 Strauss Avenue, Indian Head, MD 20640–5035.

FOR FURTHER INFORMATION CONTACT: Dr. J. Scott Deiter, Head, Technology Transfer Office, Naval Surface Warfare Center Indian Head Division, Code 05T, 101 Strauss Avenue, Indian Head, MD 20640–5035, telephone (301) 744–6111.

Dated: July 21, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–19499 Filed 7–30–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC03–716A–001, FERC–716A]

Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted for OMB Review

July 23, 2003.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice.

SUMMARY: In compliance with the requirements of Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of the current expiration date. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of May 16, 2003 (68 FR 26592–93) and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by August 20, 2003.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may be reached by fax at 202–395–7285 or by e-mail at *pamelabeverly.oira submission@omb.eop.gov.*

A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–30, Attention: Michael Miller, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC03–716A–001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on "Make an E-filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov.* Comments should not be submitted to the e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the FERRIS link. For user assistance contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659 or the Public Reference at (202)–8371, or by e-mail to *public.reference.room@ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202)502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC–716A "Application for Transmission Services under section 211 of the Federal Power Act."

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.* 1902–00168.

The Commission is now requesting that OMB approve a three-year extension of the expiration date, with no changes to the existing collection. The information filed with the Commission is mandatory. Requests for confidential treatment of the information are provided for under § 388.112 of the Commission's regulations.

4. *Necessity of the Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of the Federal Power Act (FPA), 16 U.S.C. 824j as amended and added by the Energy policy Act of 1992 (Pub. L. 102–468). The Commission uses the information collected to ensure that the requirements set forth in Section 211(a) of the FPA have been met, *i.e.*, that a request for transmission service has been made by the applicant to the transmitting utility at least 60 days prior to filing the application with the Commission and that all affected parties have been notified. Specifically, section 211(a) as provided for by the Energy Policy Act of 1992, authorizes the Commission to issue an order directing transmission service only after a person applying for the order has requested the transmission service from the transmitting utility at least 60 days prior to applying to the Commission. Section 211 allows any electric utility, Federal power marketing agency or any other person generating electric energy for sale or resale to apply for an order requiring a transmitting utility to provide transmission services to the applicant.

The applicant is required to provide a form of notice suitable for publication in the **Federal Register**, and notify the affected parties. The Commission uses the information to carry out its responsibilities under part II of the Federal Power Act. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 36.

5. *Respondent Description:* The respondent universe currently comprises approximately 10 public utilities, federal power marketing agencies or any other person generating electric energy for sale or resale to apply for an order requiring a transmitting utility to provide transmission services to the applicant.

6. *Estimated Burden:* 25 total hours, 10 respondents (average), 1 response per respondent, 2.5 hours per response (average).

7. *Estimated Cost Burden to respondents:* 25 hours/2080 hours per years × $117,041 per year = $1,407. The cost per respondent is equal to $141.00.

Statutory Authority: Sections 211(a), 212, 213(a) of the Federal Power Act, 16 U.S.C. 824j–l, and sections 721–723 of the Energy Policy Act of 1992. (PL. 102–486).

Magalie R. Salas,

Secretary.

[FR Doc. 03–19385 Filed 7–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–335–000]

Calpine Corporation and Otay Mesa Generating Company, LLC; Notice of Application

July 24, 2003.

Take notice that on July 15, 2003, Calpine Corporation (Calpine) and Otay Mesa Generating Company, LLC (Otay Mesa) (the Applicants), both at 50 West San Fernando Street, San Jose, California 95113, filed, pursuant to Section 3 of the Natural Gas Act (NGA) and part 153 of the Commission's regulations, an application in Docket No. CP03–335–000, to amend the Section 3 authorization and Presidential Permit issued to Otay Mesa in Docket No. CP01–145–000 to insert Calpine's name in lieu of Otay Mesa, as more fully described in the application. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The Applicants state that Otay Mesa's border crossing facilities authorized in Docket No. CP01–145–000 are located near San Diego, California at the United States/ Mexico border and are intended to import natural gas to fuel Otay Mesa's new power generation plant located 1.5 miles north of the border crossing facilities. Applicants explain that Otay Mesa, a wholly-owned subsidiary of Calpine, will be merged with and into Calpine as part of an internal restructuring of Calpine assets necessary to secure additional financing. Applicants further state that Calpine will be the successor to Otay Mesa's interest in the border crossing facilities with no change in the terms and conditions of the Section 3 authorization and Presidential Permit.

Applicants also state that they did not conclusively determine that the merger would occur until July 9, 2003, and that the merger was expected to occur on or about July 16, 2003. Section 3 authorization and Presidential Permit are not transferrable, thus, Applicants request that the Commission waive the prior authorization requirements because the merger and the collateral thus provided for a needed bond sale is important to maintaining the financial strength of Calpine and constitute extraordinary circumstances which justify the requested waiver.

Any questions regarding this application should be directed to Daniel M. Adamson, Davis Wright Tremaine LLP, 1500 K Street, NW., Suite 450, Washington, DC 20005, or call (202) 508–6640 or FAX (202) 508–6699.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal

Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project.

This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Protests and interventions may be filed electronically via the internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: August 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19379 Filed 7–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP02–562–005]

CenterPoint Energy-Mississippi River Transmission Corporation; Notice of Compliance Filing

July 24, 2003.

Take notice that on July 18, 2003, CenterPoint Energy-Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective August 1, 2003:

Forty-Eighth Revised Sheet No. 5
Forty-Eighth Revised Sheet No. 6
Forty-Fifth Revised Sheet No. 7

MRT states that the purpose of this filing is to comply with the Commission's order issued July 11, 2003 in Docket Nos. RP02–562–003 and RP02–562–004.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: July 30, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19395 Filed 7–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–336–000]

CenterPoint Energy Gas Transmission Company; Notice of Request Under Blanket Authorization

July 24, 2003.

Take notice that on July 17, 2003, CenterPoint Energy Gas Transmission Company (CEGT), 1111 Louisiana Street, Houston, Texas 77079 filed in Docket No. CP03–336–000 a request pursuant to §§ 157.205 and 157.216 of the Federal Energy Regulatory Commission's regulations (18 CFR 157.205 and 157.216) under the Natural Gas Act (NGA) for authorization to abandon by sale and transfer certain facilities in Coal and Pontotoc Counties in Oklahoma, under CEGT's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001, pursuant to section 7 of the NGA, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

CEGT states that it intends to abandon, by sale and transfer at net book value to CenterPoint Energy Arkla (Arkla), Lines 635–14 and 634–16.

CEGT asserts that Line 635–14 consists of 10,266 feet of 2-inch diameter (dia.) plastic pipe located in Coal County, Oklahoma and Line 634–16 consists of 373 feet of 1.3-inch dia. plastic pipe located in Pontotoc County, Oklahoma. CEGT states that Arkla will incorporate these lines into Arkla's existing low pressure distribution system in Oklahoma.

CEGT states that facilities were sold to Arkla at net book value at the time of sale, which was $18,571.18 on December 31, 2002.

Any questions concerning this request may be directed to: Lawrence O. Thomas, Director, Rate and Regulatory, CenterPoint Energy Gas Transmission Company, PO Box 21734, Shreveport, Louisiana 71151; Tel. (318) 429–2804, Fax (318) 429–3133.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19380 Filed 7–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–326–004, RP00–605–004, and RP02–39–006]

Columbia Gulf Transmission Company; Notice of Compliance Filing

July 24, 2003.

Take notice that on July 18, 2003, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, bearing a proposed effective date of July 1, 2003, and tariff sheets listed on Appendix B to the filing, bearing a proposed effective date of April 1, 2004.

Columbia Gulf states it is making this filing in compliance with the Commission's July 3, 2003 Order (July 3 Order) in the above-referenced dockets. Columbia Gulf explains that in the July 3 Order, the Commission held that Columbia Gulf's October 28, 2002 filing to comply with the Commission's September 26, 2002 order, was generally in compliance. The September 26 Order addressed Columbia Gulf's requirement to comply with Order Nos. 637, 587–G, and 587–L. Columbia Gulf further explains that the July 3 Order also required that Columbia Gulf make certain compliance changes by filing actual tariff sheets within 15 days of the date of issuance of the July 3 Order. The Commission directed Columbia Gulf that those tariff sheets should have a July 1, 2003 effective date. In addition, Columbia Gulf explains, the Commission identified other compliance changes that were to have an effective date of April 1, 2004. Columbia Gulf states that these revised tariff sheets reflect the changes required by the Commission in the July 3 Order.

Columbia Gulf states that copies of its filing have been mailed to all firm customers, interruptible customers and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: July 30, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19393 Filed 7–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP01–76–006, CP01–77–006, RP01–217–003, and CP01–156–003]

Dominion Cove Point LNG, LP; Notice of Compliance Filing

July 24, 2003.

Take notice that on July 16, 2003, Dominion Cove Point LNG, LP. (Cove Point) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets and requests an effective date of August 16, 2003:

Third Revised Sheet No.229
First Revised Sheet No.230
First Revised Sheet No. 231
First Revised Sheet No. 232
Second Revised Sheet No. 233
First Revised Sheet No. 234
First Revised sheet No. 235
First Revised Sheet No. 236
First Revised Sheet No. 237

Cove Point states that the purpose of the filing is to change the interchangeability indices and adjustment gas as recommended by the TIAX study that was required by the Amendment to the January 2001 Settlement filed in Docket No. CP01–76 and approved by the Commission on February 27, 2003.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission

strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: July 28, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19377 Filed 7–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–550–000]

Dominion Transmission, Inc.; Notice of Tariff Filing

July 24, 2003.

Take notice that on July 18, 2003, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 1019, with an effective date of August 17, 2003.

DTI states that the purpose of its filing is to revise one element of the gas quality specifications applicable to all receipts of natural gas by DTI by increasing the maximum acceptable level of nitrogen from three percent to four percent.

DTI explains that the change in quality specifications is motivated by the impending reactivation of the LNG import terminal of Dominion Cove Point LNG, L.P., which is interconnected with DTI.

DTI states that the proposed change will facilitate the movement of gas across pipelines in response to market need, promote access to a new supply of natural gas, and eliminate an inconsistency between DTI's quality specifications and those of other pipelines in the region.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 30, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19396 Filed 7–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–361–011]

Gulfstream Natural Gas System, L.L.C.; Notice of Compliance Filing

July 24, 2003.

Take notice that on July 21, 2003, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets:

Fourth Revised Sheet No. 8
Original Sheet No. 8.01
Original Sheet No. 8I
Original Sheet No. 8J

Fourth Revised Sheet No. 8 and Original Sheet No. 8.01 reflect an effective date of December 1, 2002. Original Sheet Nos. 8I and 8J reflect an effective date of July 16, 2003.

Gulfstream states that it is making this filing in compliance with the Commission's June 9, 2003 order, 103 FERC § 61,312. Gulfstream states that the tariff sheets filed herewith implement three of the negotiated rates approved by the June 9, 2003 order.

Gulfstream states that copies of its filing have been mailed to all affected customers and interested state commissions, as well as parties on the Official Service List compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: July 30, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19396 Filed 7–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–361–011]

Gulfstream Natural Gas System, L.L.C.; Notice of Compliance Filing

July 24, 2003.

Take notice that on July 21, 2003, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets:

Fourth Revised Sheet No. 8
Original Sheet No. 8.01
Original Sheet No. 8I
Original Sheet No. 8J

Fourth Revised Sheet No. 8 and Original Sheet No. 8.01 reflect an effective date of December 1, 2002. Original Sheet Nos. 8I and 8J reflect an effective date of July 16, 2003.

Gulfstream states that it is making this filing in compliance with the Commission's June 9, 2003 order, 103 FERC § 61,312. Gulfstream states that the tariff sheets filed herewith implement three of the negotiated rates approved by the June 9, 2003 order.

Gulfstream states that copies of its filing have been mailed to all affected customers and interested state commissions, as well as parties on the Official Service List compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: August 4, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19394 Filed 7–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–215–000]

North Hartland, LLC, Complainant, v. Central Vermont Public Service Corp., Respondent; Notice of Complaint

July 24, 2003.

Take notice that on July 22, 2003, the North Hartland, LLC (NHL) tendered for filing with the Federal Energy Regulatory Commission (Commission), pursuant to Rule 206 of the Commission's Rules of practice and procedure, 18 CFR 385.206, a Complaint Requesting Fast Track Processing. NHL filed the Complaint against Central Vermont Public Service Corporation (CV) and states that CV has refused to comply with its obligations under the Public Utility Regulatory Policies Act (PURPA). Specifically, it alleges CV has refused to produce avoided costs data and CV has refused to purchase Qualifying Facility (QF) offered electricity from a QF known as the North Hartland Hydroelectric Project, P–2816.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: August 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19382 Filed 7–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–216–000]

Northeast Utilities Service Company and Select Energy, Inc., Complainant, v. ISO New England Inc. and New England Power Pool, Respondent; Notice of Complaint

July 24, 2003.

Take notice that on July 23, 2003, Northeast Utilities Service Company, on behalf of the Northeast Utilities Operating Company (NUSCO) and Select Energy, Inc. (Select Energy) tendered for filing a complaint against ISO New England Inc. (ISO–NE) and New England Power Pool (NEPOOL) regarding the collection and disbursement of the transmission loss component of the locational marginal prices under NEPOOL's standard market design alleging violations of the Federal Power Act and the Commission's regulations.

NUSCO and Select Energy state that copies of this filing have been served on ISO–NE, NEPOOL, and affected state regulatory commissions.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date below. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: August 12, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19383 Filed 7–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–4–005]

Northwest Pipeline Corporation; Notice of Amendment

July 24, 2003.

Take notice that on July 14, 2003, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah, 84158, filed in Docket No. CP02–4–005, an application, pursuant to section 7(c) of the Natural Gas Act and part 157 of the Federal Energy Regulatory Commission's regulations to amend the certificate of public convenience and necessity issued June 27, 2002, in Docket Nos. CP02–4–000 and –001, as amended May 7, 2003, in Docket No. CP02–002, for Northwest's Evergreen Expansion project. This application is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

By this application, Northwest requests the Commission to approve the following changes to the previously certificated scope of work for the Evergreen Expansion project: (1) The elimination two of the three originally certificated sound walls at the Sumas Compressor Station in Whatcom County, Washington; (2) the elimination of the originally certificated installation of smaller replacement pistons on one of the two Clark TCV–12 reciprocating compressor units at the Sumas Compressor Station "B" plant; (3) the installation of a check valve and control system modifications to partially automate the operation of the two Clark TCV–12 units at the Sumas Compressor Station "B" plant in series mode; and (4) the elimination of the originally certificated valve assemblies for potential future tie-ins of the new Auburn and Covington loop pipelines, located in Pierce and King Counties, Washington to the South Seattle and North Tacoma Laterals.

Northwest states that it has installed one sound wall and has determined that noise levels for the Sumas Compressor Station will comply with applicable standards without installation of the other two certificated sound walls. Northwest also states that it has installed smaller pistons in one compressor and has determined that foregoing such installation in the other compressor will maximize operational flexibility. Additionally, Northwest states that the installation of facilities to allow the compressor units to run in series mode will also enhance operational flexibility. Further, Northwest states that it has determined that, since the South Seattle and North Tacoma laterals are already connected to Northwest's mainline facilities, the certificated tie-in facilities are not required. Finally, Northwest states that the proposed modifications will not alter the certificated capacity for the Evergreen Expansion Project, and that elimination of the installation of the potential tie-in facilities will eliminate

approximately $100,000 of costs that otherwise would be rolled-in, while, for the Sumas Compressor Station, the costs of proposed new control facilities will be offset by the cost reductions for the proposed elimination of certificated facilities.

Northwest requests that the Commission issue the amended certificate order by September 15, 2003, so the proposed modifications for the Sumas Compressor Station can be completed by October 1, 2003.

Any questions concerning this application may be directed to Gary K. Kotter, Manager, Certificates and Tariffs-3C1, Northwest Pipeline Corporation, PO Box 58900, Salt Lake City, Utah 841580900, at (801) 584–7117 or fax (801) 584–7764.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Protests and interventions may be filed electronically via the internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: August 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19378 Filed 7–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT95–11–004]

Southern Star Central Gas Pipeline, Inc.; Notice of Refund Report

July 24, 2003.

Take notice that on June 5, 2003, Southern Star Central Gas Pipeline, Inc. (Southern Star), formerly Williams Gas Pipelines Central, Inc., tendered for filing a report of activities regarding collection of Kansas Ad Valorem taxes in Southern Star's Docket No. GT95–11.

Southern Star states that this filing is being made in compliance with a Commission order directing that the pipelines file reports concerning their activities to collect and flow through refunds of the taxes at issue. Southern Star states that this filing reflects amounts still due to Southern Star in Docket No. GT95–11 as a result of the Kansas Ad Valorem tax refunds ordered by the Commission in 1993 and related to tax payments originally made in 1988 and after.

Southern Star states that a copy of its filing was served on all parties included on the official service list maintained by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: July 31, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19384 Filed 7–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–52–047]

Southern Star Central Gas Pipeline, Inc.; Notice of Refund Report

July 24, 2003.

Take notice that on June 5, 2003, Southern Star Central Gas Pipeline, Inc. (Southern Star), formerly Williams Gas Pipelines Central, Inc., tendered for filing its report of activities regarding collection of Kansas Ad Valorem taxes.

Southern Star states that this filing is being made in compliance with Commission order issued September 10, 1997, in Docket Nos. RP97–369–000, et.al. Southern Star states that the September 10 order requires first settlers to make refunds for the period October 3, 1983 through June 28, 1988. Southern Star further states that the Commission directed that pipelines file reports concerning their activities to collect and flow through refunds of the taxes at issue.

Southern Star states that a copy of its filing was served on all parties included on the official service list maintained by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: July 31, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19398 Filed 7–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–551–000]

Wisconsin Gas Company, Complainant, v. Viking Gas Transmission Company, Respondent; Notice of Complaint

July 23, 2003.

Take notice that on July 21, 2003, Wisconsin Gas Company (Wisconsin Gas) tendered for filing with the Federal Energy Regulatory Commission (Commission), a Complaint Requesting Fast Track Processing against Viking Gas Transmission Company (Viking) pursuant to Section 5 of the Natural Gas Act, 15 U.S.C. 717d, and Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206.

Wisconsin Gas alleges that Viking has unduly discriminated against Wisconsin Gas by refusing to enter into a negotiated rate agreement with Wisconsin Gas similar to the agreements Viking entered with Northern States Power Company (NSP), to whom Wisconsin Gas states it is similarly situated, and who was Viking's affiliate at the time the Viking-NSP agreements were executed and went into effect.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date below. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: August 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19397 Filed 7–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC98–40–003, et al.]

American Electric Power Company, et al.; Electric Rate and Corporate Filings

July 22, 2003

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. American Electric Power Company

[Docket Nos. EC98–40–003, ER98–2770–004, and ER98–2786–004]

Take notice that on July 17, 2003, the Market Monitor filed Market Monitoring of American Electric Power: Twelfth Quarterly Report to Federal Energy Regulatory Commission.

Comment Date: August 7, 2003.

2. The Clark Fork and Blackfoot, LLC

[Docket No. EG03–83–000]

Take notice that on July 18, 2003, The Clark Fork and Blackfoot, LLC (CFB) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

The (CFB) states that it owns and operates a hydroelectric facility with a total capacity of 3 MW, known as the Milltown Dam Facility (located near Missoula, Montana).

Comment Date: August 12, 2003.

3. PPL Electric Utilities Corporation

[Docket No. ER00–1712–003]

Take notice that on July 17, 2003, PPL Electric Utilities Corporation filed with the Federal Energy Regulatory Commission (Commission) an updated market power analysis pursuant to the Commission's order in Pennsylvania

Power & Light Company, 80 FERC ¶ 61,053.

PPL Electric Utilities Corporation states it has served a copy of this filing on the parties on the Commission's service list in Docket No. ER97–3055–000.

Comment Date: August 7, 2003.

4. California Independent System Operator Corporation

[Docket No. ER03–683–003]

Take notice that on July 18, 2003, the California Independent System Operator Corporation (ISO) submitted an addendum to its filing in Docket No. ER03–683–002 made on June 20, 2003 filing in compliance with the Commission's May 30, 2003 Order issued in Docket No. ER03–683–000, 103 FERC ¶ 61,265. The ISO states it has served copies of this filing upon all entities that are on the official service list for this proceeding.

Comment Date: August 8, 2003.

5. Mid American Energy Company

[Docket No. ER03–825–001]

Take notice that on July 17, 2003, MidAmerican Energy Company (MidAmerican), filed an amendment to its May 7, 2003 filing in Docket No. ER03–825–000 concerning a Construction and Expense Reimbursement Agreement with the City of Ames, Iowa (Ames) dated April 30, 2003.

MidAmerican requests an effective date of May 8, 2003, for the Agreement with Ames, and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican states it has served a copy of the filing on Ames, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment Date: August 7, 2003.

6. Salko Energy Services, Inc.

[Docket No. ER03–1063–000]

Take notice that on July 14, 2003, Salko Energy Services, Inc., filed a Notice of Cancellation of its market based rate tariff. Salko Energy Services, Inc., states that it was dissolved effective December 31, 200, and has not entered into any contracts to sell power.

Comment Date: August 1, 2003.

7. National Power Marketing Company, LLC

[Docket No. ER03–1073–000]

Take notice that on July 10, 2003, National Power Marketing Company, LLC, (National) filed a Notice of Cancellation of its market-based rate tariff to be effective January 1, 2002. National states that it has not used its market-based rate authority and does not foresee entering into any contracts to sell power.

Comment Date: August 1, 2003.

8. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–1081–000]

Take notice that on July 17, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to section 205 of the Federal Power Act and Section 35.12 of the Commissions' regulations, 18 CFR 35.12, submitted for filing an unexecuted Interconnection and Operating Agreement among Otter Tail Power Company, FPL Energy North Dakota Wind II and the Midwest Independent Transmission System Operator, Inc.

Midwest ISO states that a copy of this filing was served on Otter Tail Power Company and FPL Energy Hancock County Wind, LLC.

Comment Date: August 7, 2003.

9. Southern California Edison Company

[Docket No. ER03–1082–000]

Take notice that on July 17, 2003, Southern California Edison Company (SCE) tendered for filing a Service Agreement for Wholesale Distribution Service under SCE's Wholesale Distribution Access Tariff and an Interconnection Facilities Agreement (Agreements) between SCE and WM Energy Solutions, Inc. (WMES). SCE respectfully requests the Agreements become effective on July 8, 2003.

WMES states that it intends to develop the Simi Valley Landfill Energy Project, a 2.7 MW gas engine generating facility to be located at 2801 North Madera Road in Simi Valley, California (Simi Valley Landfill Energy Project). WMES also states that these Agreements specify the terms and conditions under which SCE will interconnect the Simi Valley Landfill Energy Project to its electrical system and provide wholesale Distribution Service for up to 2.56 MW of power produced by the Project.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and WMES.

Comment Date: August 7, 2003.

10. Southern California Edison Company

[Docket No. ER03–1083–000]

Take notice that on July 17, 2003, Southern California Edison Company (SCE) tendered for filing revised rate sheets (Revised Sheets) to the Service Agreement between SCE and the City of Colton, under the Wholesale Distribution Access Tariff, FERC Electric Tariff, Original Volume No.5. SCE states that the Revised Sheets reflect a four month extension of the Service Agreement.

SCE requests an effective date of July 18, 2003. SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and the City of Colton.

Comment Date: August 7, 2003.

11. Aurora Power Resources, Inc.

[Docket No. ER03–1084–000]

Take notice that on July 17, 2003, Aurora Power Resources, Inc., (Aurora), tendered for filing a Notice of Cancellation of its Market-based rate tariff to the effective April 24, 2003. Aurora states that it is not currently selling energy, nor does it have any future plans to do so.

Comment Date: August 7, 2003.

12. PJM Interconnection, L.L.C.

[Docket No. ER03–1086–000]

Take notice that on July 17, 2003, PJM Interconnection, L.L.C. (PJM) submitted revisions to the PJM Open Access Transmission Tariff (Tariff) and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (Operating Agreement) to expand and clarify the provisions in PJM's market rules pertaining to lost opportunity cost compensation to generators.

PJM requests waiver of Section 35.3 of the Commission's regulations (18 CFR 35.3) to permit an effective date of July 18, 2003 for the proposed revisions. PJM states that copies of the filing were served on all PJM members and on the utility regulatory commissions in the PJM region.

Comment Date: August 7, 2003.

13. AES Mohave, LLC

[Docket No. ER03–1087–000]

Take notice that, on July 17, 2003, AES Mohave, LLC (AES Mohave) filed a Notice of Cancellation of its FERC Electric Tariff, Original Volume No. 1. AES Mohave requests that this Notice of Cancellation be effective as of July 17, 2003.

AES Mohave states that a copy of the Notice of Cancellation has been sent to Nevada Power Company.

Comment Date: August 7, 2003.

14. Direct Energy Marketing Inc.

[Docket No. ER03–1088–000]

Take notice that on July 17, 2003, Direct Energy Marketing Inc. (DEMI) tendered for filing an application for authority to sell electric energy, capacity and certain ancillary services at market-based rates under section 205(a) of the Federal Power Act, 16 U.S.C.824d(a), and accompanying requests for certain blanket approvals and for the waiver of certain Commission regulations. DEMI also seeks authorization to reassign any transmission rights it may obtain. DEMI requests that the Commission accept its FERC Electric Tariff, Original Volume No. 1 for filing.

Comment Date: August 7, 2003.

15. New England Power Pool

[Docket No. ER03–1089–000]

Take notice that on July 18, 2003, the New England Power Pool (NEPOOL) submitted the Ninety-Seventh Agreement Amending New England Power Pool Agreement, which NEPOOL states updates and corrects certain information in section 25D of the Restated NEPOOL Open Access Transmission Tariff (the NEPOOL Tariff) and in Attachments G and G–1 and the accompanying Addendum (collectively, Attachment G) of the NEPOOL Tariff. NEPOOL has requested a September 15, 2003 effective date for these changes.

NEPOOL states that copies of these materials were sent to the NEPOOL Participants, Non-Participant Transmission Customers and the New England state governors and regulatory commissions.

Comment Date: August 8, 2003.

16. California Independent System Operator Corporation

[Docket No. ER03–1090–000]

Take notice that on July 18, 2003, the California Independent System Operator Corporation (ISO), tendered for filing a Participating Generator Agreement between the ISO and Energia Azteca X, S. de R.L. de C.V. (EAX) for acceptance by the Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective July 15, 2003.The ISO states that this filing has been served on EAX and the California Public Utilities Commission.

Comment Date: August 8, 2003.

17. The Potomac Edison Company

[Docket No. ER03–1092–000]

Take notice that on July 18, 2003, Allegheny Energy Service Corporation on behalf of The Potomac Edison Company, doing business as Allegheny Power, tendered for filing pursuant to the Federal Energy Regulatory Commission's regulations, 18 CFR 35.15, a Notice of Termination of The Potomac Edison Company, Rate Schedule FERC Nos. 56 through 59 consisting of Power Service Agreements with the City of Hagerstown and the Towns of Thurmont, Front Royal and Williamsport, respectively. The Agreements terminated by their own terms effective 11:59 p.m. on June 30, 2003.

The Potomac Edison Company states that copies of the filing have been provided to each jurisdictional customer and their counsel of record, the Maryland Public Service Commission and the Virginia State Corporation Commission.

Comment Date: August 8, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19381 Filed 7–30–03; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12379–000]

Lake Dorothy Hydro, Inc., Alaska; Notice of Ava

July 24, 2003.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486; 52 FR 47897), the staff of the Office of Energy Projects has reviewed the application for license for the Lake Dorothy Hydroelectric Project, located at Lake Dorothy on Dorothy Creek, near Juneau, Alaska, and has prepared a Final Environmental Assessment (FEA) for the project. The project would occupy approximately 1,790 acres of land within the Tongass National Forest administered by the U.S. Forest Service.

On June 4, 2003, the Commission staff issued a draft environmental assessment (DEA) for the project and requested that comments be filed with the Commission within 30 days. Comments on the DEA were filed by July 3, 2003, and are addressed in the FEA.

The FEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the FEA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19388 Filed 7–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1025–054]

Safe Harbor Water Power Corporation; Notice of Availability of Environmental Assessment

July 23, 2003.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486; 52 FR 47897), the staff of the Office of Energy Projects has prepared an Environmental Assessment (EA) for an application requesting Commission approval to allow the York Water Company use of the Safe Harbor Project lands and waters to withdraw 12 million gallons-per-day from Lake Clarke on the Susquehanna River for a municipal water supply. The project is located on the Susquehanna River in Lancaster and York Counties, Pennsylvania. The subject land does not involve federal or tribal lands.

The EA was attached to the Order Approving Non-Project Use of Project Lands and Water, issued on July 17, 2003. The EA contains the staff's analysis of the potential environmental impacts of the proposal and concludes that approval of the proposal would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room, or it may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number (prefaced by P– and excluding the last three digits, in the docket number field to access the document. For assistance, call contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659.

For further information, contact Hillary Berlin at 202–502–8915.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19386 Filed 7–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

July 23, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12335–000.

c. *Date filed:* August 13, 2002 and Supplemented on February 7, 2003.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name and Location of Project:* The Rome Dam Hydroelectric Project would be located on the West Branch Ausable River in Clinton and Essex Counties, New York, at the existing Rome Dam owned by Mr. Stan Kivort. The proposed project would not utilize federal or tribal lands.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

g. *Applicant contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, Telephone (330) 535–7115.

h. *FERC Contact:* Mr. Lynn R. Miles, (202) 502–8763.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an interyener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed run-of-river project would consist of: (1) An existing 180-foot-long, 40-foot-high concrete dam, (2) an impoundment with a surface area of 8 acres and a storage capacity of 150 acre-feet at normal maximum water surface elevation of 628 feet m.s.l., (3) four proposed 80-foot-long, 2.2-foot-diameter penstocks, (4) a proposed powerhouse containing four generating units with a combined installed capacity of 7.75 megawatts, (5) a proposed 300-foot-long, 14.7-kv transmission line, and (6) appurtenant facilities. The project would have an average annual generation of 46 GWh.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

s. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19387 Filed 7–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12380–000]

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

July 24, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12380–000.

c. *Date filed:* October 1, 2002 (Supplemented March 20, 2003).

d. *Applicant:* Mokelumne River Water and Power Authority.

e. *Name of Project:* Conjunctive Use Project.

f. *Location:* On the Mokelumne River, in Calaveras and San Joaquinn Counties, California. The existing dam is owned by the East Bay Municipal Utility District. The Applicant is proposing to study the development of additional capacity to and in a way that would not affect the operation of the currently licensed Lower Mokelumne River Project FERC No. 2916 operated by East Bay Municipal Utility District.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Tom Flinn, Secretary, Mokelumne River Water and Power Authority, PO Box 1810, 1810 E. Hazelton Avenue, Stockton, CA 95201, (209) 468–3000 , and Ms. Elizabeth W. Whittle, Nixon Peabody LLP, Market Square North, 401 9th Street NW., Suite 900, Washington, DC 20004, (202) 585–8338.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) A proposed diversion-intake structure at the Pardee Reservoir, (2) a proposed 10,300-foot-long tunnel 12 to 15 feet in diameter, (3) a proposed 57,400-foot-long, 10.5-foot-diameter steel penstock, (4) a proposed powerhouse containing two generating units having a total installed capacity of 6 MW, (5) the proposed Duck Creek Reservoir formed by a 130-foot-high, 5,700-foot-long dam plus dikes and having a surface area of 2,980 acres, with storage capacity of 100,000 acre-feet and normal water surface elevation of 274 feet msl, (6) a proposed 1320-foot-long 12 kV transmission line and (7) appurtenant facilities.

The applicant estimates that the average annual generation would be 15 GWh and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely

notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and eight copies to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper;*See* 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19389 Filed 7–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12451–000]

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

July 24, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12451–000.

c. *Date filed:* March 3, 2003.

d. *Applicant:* SAF Hydroelectric LLC.

e. *Name of Project:* Lower St. Anthony Falls Project.

f. *Location:* On the Mississippi River, in Hennepin County, Minnesota, utilizing the Lower St. Anthony Falls Dam which is administered by the U.S. Army Corps of Engineers. The proposed project would be for additional capacity at the already licensed St. Anthony Falls Project FERC No. 2056 and would be developed in such a way as to not affect Northern States Power licensed project.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Douglas A. Spaulding, SAF Hydroelectric LLC., C/O Spaulding Consultants, 1433 Utica Avenue South, Suite 162, Minneapolis, MN, 55416 (952) 544–8133.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. Deadline for filing comments, protests, and motions to intervene: 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project utilizing the U. S. Army Corps of Engineers's Lower St. Anthony Falls Dam and would consist of: (1) A proposed powerhouse containing a generating unit having an installed capacity of 9.6 MW, (2) a proposed 13.8 kV transmission line, and (3) appurtenant facilities.

The applicant estimates that the average annual generation would be 59 GWh and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person

to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper;*See* 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19390 Filed 7–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application and Applicant-Prepared EA Accepted for Filing, Soliciting Motions to Intervene and Protests, and Soliciting Comments, and Final Recommendations, Terms and Conditions, and Prescriptions

July 23, 2003.

Take notice that the following hydroelectric application and applicant-prepared environmental assessment has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2169–020.

c. *Date Filed:* February 21, 2003.

d. *Applicant:* Alcoa Power Generating Inc (APGI).

e. *Name of Project:* Topoco Project.

f. *Location:* On the Little Tennessee and Cheoah Rivers in Graham and Swain Counties, North Carolina and Blount and Monroe Counties, Tennessee. The project affects Federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Norman L. Pierson, Property and Relicensing Manager, Alcoa Power Generation Inc., Tapoco Division, 300 North Hall Road, Alcoa, TN 37701–2516, (865) 977.3326

i. *FERC Contact:* Randy Yates at (770) 452–3784, or *lorance.yates@ferc.gov*.

j. Deadline for filing motions to intervene and protests, comments, and final recommendations, terms and conditions, and prescriptions is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application has been accepted for filing.

1. The proposed Tapoco Project includes four developments: Santeetlah Development consisting of: (1) 1,054-foot-high and 216-foot-high concrete arch dam; (2) 25,176 foot long tunnel/pipeline; (3) 2,881-acre reservoir; (4) powerhouse with two generating units and total original installed capacity of 45-MW and with proposed upgraded 47-MW; and (5) 750-foot-long 161 kV transmission line.

Cheoah Development consisting of: (1) 750-foot-long and 229-foot high curved concrete gravity dam; (2) 644-acre reservoir; (3) powerhouse with 4 vertical Francis turbine units directly connected to generators and 1-independent Francis turbine unit added in 1949; and (4) with total original installed capacity of 110-MW and with proposed upgrades, 144.7-MW total installed capacity.

Calderwood Development consisting of: (1) 916-foot-long and 230-foot-high concrete arch dam; (2) 570-acre reservoir; (3) 2,050-foot-long tunnel; and (4) powerhouse with 3 Francis turbine units, which have been upgraded to a total installed capacity of 140.4-MW.

Chilhowee Development consisting of: (1) 1,483-foot-long and 88.5-foot-high concrete gravity dam; (2) 1.734-acre reservoir; and (3) powerhouse with 3 Kaplan turbine units with total installed capacity of 48-MW

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS"

link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

The application will be processed according to the following revised Hydro Licensing Schedule. Other revisions to the schedule may be made as appropriate.

Deadline for Agency Recommendations: September 2003.

Deadline for Reply Comments: November 2003.

Notice of the availability of the EA: January 2004.

Public Comments on EA due: March 2004.

Ready for Commission's decision on the application: July 2004.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19391 Filed 7–30–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2485–021]

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

July 23, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of Recreation Plan.

b. *Project No:* 2485–021.

c. *Date Filed:* May 28, 2003.

d. *Applicant:* Northeast Generation Company.

e. *Name of Project:* Northfield Mountain Pumped Storage Project.

f. *Location:* The project is located on the Connecticut River in Franklin County, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r) and 799 and 801.

h. *Applicant Contact:* Catherine E. Shively, Senior Counsel, Northeast Utilities Service Company, 780 North Commercial Street, P.O. Box 330, Manchester, NH 03105 (603) 634–2326.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Heather Campbell at (202) 502–6182 or e-mail address: *heather.campbell@ferc.gov.*

j. *Deadline for filing comments and or motions:* August 25, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2485–021) Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

k. *Description of the Application:* Northeast Utilities Service Company is requesting an amendment of its approved recreation plan to permanently suspend public tours of the project's powerhouse and upper reservoir. Tours would be provided to groups specifically invited by the licensee. No other public access areas would be affected.

l. *Locations of the Application:* This filing is available for review at the Commission in the Public Reference Room or may viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19392 Filed 7–30–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0089; FRL–7538–4]

Agency Information Collection Activities; Submission of EPA ICR Number 1712.04 (OMB Number 2060–0330) to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NESHAP for Shipbuilding and Ship Repair Facilities (Surface Coating) (40 CFR part 63, subpart II). This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 2, 2003.

ADDRESSES: Follow the detailed instructions under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Leonard Lazarus, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–6369; fax number: (202) 564–0050; e-mail address: *lazarus.leonard@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 26, 2002 (67 FR 60672), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2003–0089, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to OMB and EPA within 30 days of this notice, and according to the following detailed instructions: (1) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503, and (2) submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code: 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

Title: NESHAP for Shipbuilding and Ship Repair Facilities (Surface Coating) (40 CFR part 63, subpart II) (OMB Control Number 2060–0330, EPA ICR Number 1712.04). This is a request to renew an existing approved collection that is scheduled to expire on August 31, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The respondents are owners or operators of Shipbuilding and Ship Repair Facilities. Operations covered include: primer and top coat application in manufacturing processes and in ship repair processes. The NESHAP regulation 40 CFR part 63, subpart II, was promulgated on December 15, 1995. In order to ensure compliance with the standards adequate record keeping and reporting is necessary. In the absence of such information, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

These standards rely on the reduction of Hazardous Air Pollutant (HAP) emissions by using coatings which comply with the volatile organic compound (VOC) limits set forth in this Maximum Achievable Control Technology (MACT) standard. In some cases, the control of emissions of HAP from surface coating at shipbuilding and repair facilities also requires the installation of properly designed equipment, and the operation and maintenance of that equipment. The required notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The implementation plans from facilities are needed as these are the Agency's record of a source's initial capability to comply with the emission standard, and serve as a record of the operating conditions under which compliance was achieved. In addition, the semiannual reports are used for problem identification, as a check on source operation and maintenance, and for compliance determinations. Record keeping and reporting are mandatory under this regulation. Records must be maintained for 5 years.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 255 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/operators of shipbuilding and ship repair facilities.

Estimated Number of Respondents: 56.

Frequency of Response: Initial, semiannual.

Estimated Total Annual Hour Burden: 28,594 (rounded) hours.

Estimated Total Capital and Operations & Maintenance (O & M) Annual Costs: $0.

Changes in the Estimates: There is an increase of 6,445 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The adjustment increase in burden is due to more accurate estimates of existing and anticipated new sources, and an improved calculation of burden for the reporting requirements.

Dated: July 23, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–19501 Filed 7–30–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[SFUND–2003–0003; FRL–7538–3]

Agency Information Collection Activities; Submission of EPA ICR No. 1428.06 (OMB No. 2050–0078) to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Trade Secret Claims for Emergency Planning and Community Right-to-Know (EPCRA Section 322). This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 2, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Sicy Jacob, Chemical Emergency Preparedness and Prevention Office (CEPPO), OSWER, Mailcode 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8019; fax number: (202) 564–8233; e-mail address: *jacob.sicy@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 6, 2003 (68 FR 10721), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA did not receive any comments.

EPA has established a public docket for this ICR under Docket ID No. SFUND–2003–0003, which is available for public viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Superfund Docket is (202) 566–0276. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *superfund.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Superfund Docket, Mailcode 5202T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

Title: Trade Secret Claims for Emergency Planning and Community Right-to-Know and Emergency Planning (EPCRA Section 322), (OMB Control Number 2050–0078, EPA ICR Number 1428.06). This is a request to renew an existing approved collection that is scheduled to expire on September 30, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: This information collection request pertains to trade secrecy claims submitted under section 322 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), also known as Title III of SARA, the Superfund Amendments and Reauthorization Act. Title III contains provisions requiring facilities to report to State and local authorities, and EPA, the presence, use and release of extremely hazardous substances (described in sections 302 and 304) and hazardous and toxic chemicals (described in sections 311, 312 and 313 respectively). Section 322 of Title III allows a facility to withhold the specific chemical identity from these Title III reports if the facility asserts a claim of trade secrecy for that chemical identity. The provision establishes the requirements and procedures that facilities must follow to request trade secrecy treatment of chemical identities, as well as the procedures for submitting public petitions to the Agency for review of the "sufficiency" of trade secrecy claims. EPA published the trade secrecy regulations on July 29, 1988 (58 FR 28772), codified in 40 CFR Part 350.

Trade secrecy protection is provided for specific chemical identities contained in reports submitted under each of the following Title III sections: (1) 303 (d)(2)—Facility notification of changes that have or are about to occur; (2) 303 (d)(3)—Local Emergency Planning Committee (LEPC) requests for facility information to develop or implement emergency plans; (3) 311—Material Safety Data Sheets (MSDSs) submitted by facilities, or lists of those chemicals submitted in place of the MSDSs; (4) 312—Tier II emergency and hazardous chemical inventory forms; and, (5) 313—Toxic chemical release inventory forms.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 10 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Facilities that may want to claim trade secret for specific chemical identity contained in reports submitted under EPCRA sections 303(d)(2) and (d)(3), 311, 312, and 313; members of the general public submitting petitions for trade secrets claimed by facilities; and State governors or State Emergency Response Commissions and Health Professionals requesting facilities for information on the health effects of trade secret chemicals in non-emergency and preventative measure situations.

Estimated Number of Respondents: 357.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 3,483 hours.

Estimated Total Annual Cost: $147,543. No capital or operation and maintenance costs are associated with any requirements in this ICR.

Changes in the Estimates: There is an increase of 362 hours in the total annual estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This is due to an increase in the number of claims submitted under sections 303(d)(2), (d)(3), 311 and 312 of EPCRA. Trade secret claims under section 313 have decreased from previous ICR.

Dated: July 23, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–19502 Filed 7–30–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0018, FRL–7538–2]

Agency Information Collection Activities; Submission of EPA ICR No. 1626.08 (OMB No. 2060–0256) to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: National Refrigerant Recycling and Emissions Reduction Program. This ICR describes the nature of the information collection and its expected burden and cost.

DATES: Additional comments may be submitted on or before September 2, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Julius Banks, Global Programs Division, Office of Air and Radiation, Office of Atmospheric Programs; Mail Code 6205J; Environmental Protection Agency; 1200 Pennsylvania Ave., NW; Washington, DC 20460; telephone number: (202) 564–9870; fax number: (202) 565–2096; e-mail address: *banks.julius@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 10, 2003 (68 *FR* 11389), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OAR–2003–0018, which is available for public viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at: *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to OMB and EPA within 30 days of this notice, and according to the following detailed instructions: (1) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB),

Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503, and (2) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to: *a-and-r-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center (6102T), 1200 Pennsylvania Ave., NW, Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: National Refrigerant Recycling and Emissions Reduction Program (OMB Control Number 2060–0256, EPA ICR Number 1626.08). This is a request to renew an existing approved collection that is scheduled to expire on July 31, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: EPA has developed regulations under the Clean Air Act Amendments of 1990 (the Act) establishing standards and requirements regarding the use and disposal of class I and class II ozone-depleting substances used as refrigerants during the service, maintenance, repair, or disposal of refrigeration and air-conditioning equipment. Section 608(c) of the Act states that effective July 1, 1992, it is unlawful for any person in the course of maintaining, servicing, repairing, or disposing of refrigeration or air-conditioning equipment to knowingly vent or otherwise knowingly release or dispose of any class I or class II substance used as a refrigerant in the equipment in a manner which permits the substance to enter the environment.

During 1993, EPA promulgated regulations under section 608 of the Act for the recycling of ozone-depleting refrigerants recovered during the servicing and disposal of air-conditioning and refrigeration equipment. These regulations were published on May 14, 1993 (58 FR 28660) and codified in 40 CFR part 82, subpart F (82.150 *et seq.*).

The regulations require persons servicing refrigeration and air-conditioning equipment to observe certain service practices that reduce emissions of ozone depleting refrigerants. The regulations also establish certification programs for technicians, recycling and recovery equipment, and off-site refrigerant reclaimers. In addition, EPA requires that ozone depleting refrigerants contained "in bulk" in appliances be removed prior to disposal of the appliances and that all refrigeration and air-conditioning equipment, except for small appliances and room air conditioners, be provided with a servicing aperture that facilitates recovery of the refrigerant. Moreover, the Agency requires that substantial refrigerant leaks in equipment be repaired when they are discovered. These regulations significantly reduce emissions of ozone depleting refrigerants, and therefore aid U.S. and global efforts to minimize damage to the ozone layer and the environment as a whole.

To facilitate compliance with and enforcement of section 608 requirements, EPA requires reporting and record keeping requirements of technicians; technician certification programs; equipment testing organizations; refrigerant wholesalers and purchasers; refrigerant reclaimers; refrigeration and air-conditioning equipment owners; and other establishments that perform refrigerant removal, service, or disposal. The record keeping requirements and periodic submission of reports, to EPA's Office of Air and Radiation, Office of Atmospheric Programs, occur on an annual, biannual, onetime, or occasional basis depending on the nature of the reporting entity and the length of time that the entity has been in service. Specific reporting and record keeping requirements were published in 58 FR 28660 and codified under 40 CFR part 82, subpart F (82.166). These reporting and recordkeeping requirements also allow EPA to evaluate the effectiveness of the refrigerant regulations, and help the Agency determine if we are meeting the obligations of the United States, under the 1987 Montreal Protocol, to reduce use and emissions of ozone-depleting substances to the lowest achievable level.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average: 18 hours for the two EPA-approved refrigerant recovery/recycling equipment testing organizations; 3,375 hours for an estimated 2,250 service establishments that will change ownership or enter the market; 375 hours for an estimated 375 disposal establishments that change ownership or enter the market; 67,500 hours for the maintenance of copies of signed statements by an estimated 7,500 disposal establishments; 20 hours for certification of an estimated 4 refrigerant reclaimers that change ownership or enter the market; 275 hours for reclaimer reporting from an estimated 55 respondents; 40,000 hours for an estimated 5,000 refrigerant wholesalers to maintain records of refrigerant sales transactions; 150 hours for an estimated 5 technician certification programs applying for first-time approval; 1,552 hours for 97 technician certification programs to maintain records; 90,000 hours for an estimated 30,000 technicians acquiring certification for the first time and maintaining certification cards; 6,000 hours for an estimated 300,000 previously certified technicians to maintain their certification cards; 56 hours for an estimated 10 owners of industrial process refrigeration equipment (appliances) who request a 30-day extension to the 30-day leak repair requirement or the retrofit requirement; 1,360 hours for an estimated 310 owners of industrial process refrigeration and commercial and comfort cooling equipment (appliances) who maintain information on purged/destroyed refrigerant that they wish to exclude from their leak rate calculations, records on the calculation of the full charge using a range, or plans to retire or retrofit their appliances.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially regulated by this action are those that recover, recycle, reclaim, sell, or distribute in interstate commerce refrigerants that contain chlorofluorocarbons (CFCs) and/or hydrochlorofluorocarbons (HCFCs); and those that service, maintain, repair, or dispose of appliances containing CFC or HCFC-refrigerants. In addition, the owners or operators of appliances containing CFC or HCFC-refrigerants may be potentially regulated.

Estimated Number of Respondents: 345,608.

Frequency of Response: Reporting requirements under this rulemaking are primarily required on an annual basis, with the exception of technician testing organizations who are required to report biannually. The frequency of recordkeeping requirements under this rulemaking vary depending upon the actions of the respondent but are generally required on a transactional basis.

Estimated Total Annual Hour Burden: 210,681.

Estimated Total Annual Cost: $6,973,541, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 208,865 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is not due to a change in any program requirement. The adjustment is the result of changes in EPA's estimates of labor rates, time required to submit reports and maintain records, and the overall number of respondents.

Dated: July 22, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–19503 Filed 7–30–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0009; FRL–7313–5]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of test data on dibasic esters (DBEs) (CAS Nos. 106–65–0, 627–93–0, and 1119–40–0). These data were submitted pursuant to an enforceable testing consent agreement (ECA)/Order issued by EPA under section 4 of the Toxic Substances Control Act (TSCA).

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are concerned about data on health and/or environmental effects and other characteristics of this chemical. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2002–0009. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at EPA's Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. EPA's Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. EPA's Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Test Data Submissions

Under 40 CFR 790.60, all TSCA section 4 ECAs/Orders must contain a statement that results of testing conducted pursuant to ECAs/Orders will be announced to the public in accordance with section 4(d) of TSCA.

Test data for DBEs were submitted by the DBE Group comprised of the following companies: Aceto Corporation, DuPont Textiles and Interiors (formally E.I. du Pont de Nemours and Company), and Solutia, Inc. These data were submitted pursuant to a TSCA section 4 ECA/Order and were received by EPA on April 1, 2003 and April 22, 2003. The submission includes a final report titled "Dibasic Esters: *In vitro* Dermal Permeability Coefficients (Kp) in Rat and Human Skin (for each DBE and for a 1:3:1 blend of dimethyl succinate (DMS, CAS #106–65–0); dimethyl glutarate (DMG, CAS #1119–40–0); and dimethyl adipate (DMA, CAS #627–93–0)." A second final report was received by EPA titled "Dimethyl Glutarate (DMG, CAS #1119–40–0) Inhalation Developmental Toxicity Study in Rabbits." DBEs are component chemicals of solvent mixtures used in paint stripping formulations that are sold to the general public. Consumers can be significantly exposed to DBEs during use of these formulations.

EPA has initiated its review and evaluation process for this submission. At this time, the Agency is unable to

provide any determination as to the completeness of the submission.

Authority: 15 U.S.C. 2603.

List of Subjects

Environmental protection, Hazardous substances, Toxic substances.

Dated: June 23, 2003.

Philip S. Oshida,

Acting Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 03–19500 Filed 7–30–03; 8:45 am]

BILLING CODE 6560–50–S

COUNCIL ON ENVIRONMENTAL QUALITY

White House Task Force on Energy Project Streamlining; Public Organization Meeting of the Proposed Rocky Mountain Energy Council

AGENCY: Council on Environmental Quality.

ACTION: Notice of meeting.

SUMMARY: The White House Task Force on Energy Project Streamlining will host a public meeting to solicit stakeholder input on the proposed formation of the Rocky Mountain Energy Council at the Sheraton Denver West hotel in Lakewood, Colorado.

DATES: Tuesday, August 26, 2003, from 8 a.m. to 12 p.m.

ADDRESSES: The Sheraton Denver West, 360 Union Boulevard, Lakewood, Colorado 80228, telephone (303) 987–2000.

FOR FURTHER INFORMATION CONTACT: Ms. Annette West at the White House Task Force on Energy Project Streamlining, 1000 Independence Avenue, WH–1, Washington, DC 20585; telephone (202) 586–3464; electronic mail at *annette.west@hq.doe.gov* (please note that Postal Service mail is delayed due to additional screening at the above address).

SUPPLEMENTARY INFORMATION: The proposed Rocky Mountain Energy Council is intended to be a State and Federal partnership that will allow a more effective management strategy for environmentally responsible renewable and nonrenewable energy production as well as cooperative development of energy policies on Federal and State public lands in the Rocky Mountain region. The Council will be responsible for fostering Federal/State partnerships and early collaboration for Federal and State Government decision-making on energy issues facing the Rocky Mountain region and the Nation. It is intended that the Council take a broader geographic and longer-term perspective on managing renewable and nonrenewable public energy resources, including their identification, production, and transmission to the market. The responsibility of the Council is to address and resolve issues affecting the environmentally responsible development of the valuable public energy resources.

State and Federal managers held a government to government planning and organization meeting on July 8–9, 2003. Participants included representatives from the States of Utah, Wyoming, Colorado, Montana, and those Federal Agencies with responsibilities for managing, authorizing, reviewing, consulting on, or certifying different aspects of energy projects on Federal lands. The objective of this meeting was to evaluate the benefits of creating a Rocky Mountain Energy Council (RMEC) and, if desired, determine what steps would be needed to organize and implement the RMEC. Participants agreed on the need for a Council to develop streamlined and forward-looking decision processes with respect to energy projects while preserving existing environmental protections.

Three functions for the RMEC were identified:

1. To develop Federal/State partnerships for the long-term management of renewable and nonrenewable energy resources on State and Federal public lands.

2. To allow more forward looking and strategic planning—on a regional basis—for the environmentally responsible development, production, and distribution of the Nation's valuable energy resources.

3. To develop processes for early collaboration and consultation among the State and Federal Agencies responsible for managing, authorizing, consulting on, reviewing, or certifying renewable and nonrenewable energy projects on public land.

Discussions at the July organizational meeting were largely exploratory, and focused on identifying impediments and possible solutions to the following issue areas: how to effectively foster Federal/State partnerships, processes for early collaboration, information sharing, decision processes, conflict resolution, and strategic planning. Issues identified included limited resources, conflicting agency mandates, regulatory and jurisdictional conflicts. A broad agreement was developed that this type of collaborative effort is necessary to address the cross cutting issues raised by energy development on public lands in the west.

The next step in the organizational process is to assure that the proposed Council has input from all interested stakeholders, including the public, industry, local organizations, and Tribal governments. The intent is to build upon the initial organizational discussions of the Council by collecting information and expectations from stakeholders, allowing a first official public meeting of the RMEC to be held by the end of 2003. The meeting is open to the public. Approximately 200 visitors can be accommodated on a first-come-first-served basis.

Upon request, interested parties may make oral or written presentations to the Federal and State managers. Such requests should be made no later than August 20, 2003, to Annette West. We request that oral statements be accompanied by a written summary of the statement to be made, which will be included in the minutes of the meeting. Please see the **FOR FURTHER INFORMATION CONTACT** section for the contact address and telephone number.

Minutes of the August 26, 2003, meeting will be available for public inspection and downloading at *http://www.etf.energy.gov* by September 26, 2003. Hard copies of the minutes can be requested at the **FOR FURTHER INFORMATION CONTACT** section above.

Dated: July 25, 2003.

James L. Connaughton,

Chairman, Council on Environmental Quality.

[FR Doc. 03–19471 Filed 7–30–03; 8:45 am]

BILLING CODE 3125–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 25, 2003.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. The Siwooganock Holding Company, Inc., Lancaster, New Hampshire; to become a bank holding company by acquiring 100 percent of the voting shares of The Siwooganock Bank, Lancaster, New Hampshire.

In connection with this application, Applicant also has applied to acquire 10 percent of the voting shares of Lancaster National Bank, Lancaster, New Hampshire.

Board of Governors of the Federal Reserve System, July 25, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–19461 Filed 7–30–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality; Notice of Meetings

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meetings.

A Special Emphasis is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meetings listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications are to be reviewed and discussed at these meetings. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

1. SEP Meeting on: Limited Competition for AHRQ Research Infrastructure and Capacity Program: Phase II (BRIC).

Date: August 18, 2003 (open on August 18 from 8 a.m. to 8:15 a.m. and closed for the remainder of the meeting).

Place: Quality Suites and Conference Center, 3 Research Court, Rockville, MD 20850.

2. SEP Meeting on: Coordinating Center for the AHRQ Centers for Education and Research on Therapeutics Program and Limited Competition for AHRQ Centers for Education and Research on Therapeutics Program (CERTS).

Date: August 29, 2003 (open on August 29 from 8 a.m. to 8:15 a.m. and closed for the remainder of the meeting).

Place: Quality Suites and Conference Center, 3 Research Court, Rockville, MD 20850.

3. SEP Meeting on: Building the Evidence to Promote Bioterrorism and Other Public Health Emergency Preparedness in Health Care Systems.

Date: September 4–5, 2003 (open on September 4 from 8 a.m. to 8:15 a.m. and closed for the remainder of the meeting).

Place: Quality Suites and Conference Center, 3 Research Court, Rockville, MD 20850.

4. SEP Meeting on: Safe Practices Implementation Challenge Grants.

Date: September 4–5, 2003 (open on September 4 from 8 a.m. to 8:15 a.m. and closed for the remainder of the meeting).

Place: Quality Suites and Conference Center, 3 Research Court, Rockville, MD 20850.

5. SEP Meeting on: Small Research Grants for Primary Care Practice-Based Research Networks (PBRNs).

Date: September 11–12, 2003 (open on September 4 from 8 a.m. to 8:15 a.m. and closed for the remainder of the meeting).

Place: Quality Suites and Conference Center, 3 Research Court, Rockville, MD 20850.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of these meetings should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education, and Priority Populations, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850. Telephone (301) 427–1554.

Agenda items for these meetings are subject to change as priorities dictate.

Dated: July 24, 2003.

Carolyn M. Clancy,

Director.

[FR Doc. 03–19463 Filed 7–30–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Delegation of Authority

Notice is hereby given that I have delegated to the Administrator, Health Resources and Services Administration (HRSA), authority vested in the Secretary of Health and Human Services under the Smallpox Emergency Personnel Protection Act of 2003 (Pub. L. 108–20), enacting the following authority: Part C, title II of the Public Health Service Act, as amended.

This delegation shall be exercised under the Department's existing delegation of authority and policy on regulations

This delegation is effective upon signature. In addition, I hereby affirm and ratify any actions taken by the HRSA Administrator or other HRSA officials, which involved the exercise of this authority prior to the effective date of the delegation.

Dated: July 10, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–19513 Filed 7–30–03; 8:45 am]

BILLING CODE 4165–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Request for Additional Hospital CAHPS® (HCAHPS) Test Sites

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of Request.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) in partnership with the Centers for Medicare and Medicaid Services (CMS) is soliciting volunteer sites for the additional testing of a draft Hospital CAHPS (HCAHPS) instrument. The mutual goals of AHRQ and CMS are to develop a standardized survey that is reliable and valid, that will reside in the public domain, and that will make comparative non-identifiable

information on hospital patients' perspectives on care widely available. While there are many good survey tools available to hospitals, there is currently no nationally used or universally accepted survey instrument that allows comparisons across all hospitals. To this end, at the request of CMS, AHRQ and the CAHPS®II grantees developed a draft HCAHPS instrument with input from the various stakeholders in the industry. Initial testing of the survey is being done as part of a CMS three-State pilot by hospitals in Arizona, Maryland, and New York.

On June 27th, 2003, CMS published a Federal Register Notice (vol. 68, no. 124, pages 38346–38358) soliciting input into implementation options and the draft HCAHPS survey. To take advantage of the input received, AHRQ and CMS are interested in conducting additional testing of the HCAHPS instrument, sampling and data collection processes to assess issues involved in survey implementation. To accomplish these tasks we plan to conduct very quickly, additional testing at a limited number of hospitals that volunteer to work with AHRQ and CMS. This notice describes an opportunity for volunteering for additional testing for refining the HCAHPS survey and the nature of the implementation procedures. Most of this additional testing will occur between September and December 2003.

This is a separate initiative from "The Quality Initiative: A Public Resource on Hospital Performance". (For more information about that initiative, please see the Supplemental Information section of this notice).

Types of Studies To Be Conducted During Additional Testing

A. Survey Method Issues

The following are some examples of the type of Methodological studies that AHRQ and CMS would like to conduct. These will be finalized once we have received public input at the close of the comment period for the June 27th **Federal Register** Notice.

1. Test of mode effects (mail versus telephone) within hospitals using randomly assigned split samples. Because HCAHPS, when finally implemented, may be fielded in by both mail and telephone it is important to test and revise the instrument so that there is comparability across these modes.

2. Test the effect of intervening stays in other facilities. A proportion of patients will be discharged from the hospital in question to another facility before they go home. It is important to test the effect of intervening stays in other facilities on HCAHPS scores for the acute care hospital from which the patient was sampled.

3. Psychometric analyses to evaluate the equivalence of English and the Spanish HCAHPS forms.

4. Test the effect of lag time on HCAHPS scale scores. Due to logistical delays in obtaining up-to-date discharge lists, there will almost certainly be a lag between hospital discharge and survey administration. Long time lags between discharge and survey administration may bias survey responses. For example, time since discharge may affect the survey scores because respondents' memories of their experience degrade with time or because the composition of the respondent pool changes with time (the less healthy patients may be less likely to respond or can not respond because they are too ill or have expired).

5. Test the effect on response rate of different survey materials, taking into account incremental changes in cost. There is some evidence in the survey research literature that response rate can be influenced by the type of survey materials that are sent out. In general impersonal materials from lower status sources will result in lower response rates than personalized materials sent out by higher status sources. However, personalized materials may cost more to produce.

6. Evaluate the covariation of HCAHPS scores with clinical indicators of hospital performance, such as those required by CMS in the 7th scope of work for Quality Improvement Organizations (QIOs) *i.e., see www.cms.gov* for more information on QIOs and the 7th scope of work statement. These analyses would constitute an expansion of the construct validity analyses for HCAHPS scores in the CMS Pilot.

7. Evaluate HCAHPS instrument psychometrically including the following characteristics:

- Quality of item responses (missing item rates, skip pattern errors);
- Factors associated with item response rates;
- Factors associated with survey response rates;
- Construct validity of composites and ratings;
- Internal consistency;
- Hospital level reliability;
- Components of variance; and
- Case mix adjustment.

B. Implementation Issues

AHRQ and CMS also seek to study the processes for implementation of HCAHPS. Topics include:

1. Sampling procedures that worked well or caused problems.

2. Survey operations procedures that worked well or caused problems.

3. How easily or readily can HCAHPS be integrated into a hospital's existing sampling and survey operations procedures.

Criteria for Additional Site Selection

While AHRQ and CMS would like to provide wide access to the survey for testing, there are limited agency resources for coordinating the testing and analysis of data. Therefore, it is necessary to seek volunteer acute care sites that are able to provide the resources for data collection using the HCAHPS survey, and agree to submit the data to a central repository for analysis. Hospitals may volunteer to participate in the testing program individually or in a group in cooperation with a hospital association, chain or other coalition. Potential testing sites will be selected that best meet the analytic needs of the HCAHPS development effort. Thus, selection from among potential candidate sites will be made using the practical criteria set out below. Criteria for selection of the additional sites are designed to achieve additional diversity in the characteristics of test sites, obtain the most reliable and valid data possible, and to maximize the use of resources allotted for this work.

The criteria for selection are as follows. The test site must:

1. Be able to pay the full cost of data collection and database creation using specifications provided by AHRQ;

2. Be able to field the survey within the timeframe specified by AHRQ to be determined at the time of selection (Most of the testing will occur between September and December 2003, but additional testing may be done in early 2004. Applicants should indicate their ability to carry out the work during those periods in response to Information Item 12 below);

3. Employ a survey vendor with an established record of hospital patient survey experience;

4. Be able to provide an adequate sample size to meet the needs of analyses;

5. Be able to adapt survey implementation as requested by AHRQ, to meet the needs of the experimental design; and

6. Be able to provide a person to coordinate the test site work with AHRQ.

Selection of additional test sites will be determined at the sole discretion of the AHRQ and CMS.

Information Requirements: To volunteer to participate as an additional testing site, please provide the following information:

1. Volunteer site9s) name(s) and location(s).

2. Contact person information including name and title, address, telephone number, fax number and e-mail address.

3. Coordinator for site data collection information (if different from contact person) including name and title, address, telephone number, fax number and e-mail address.

4. The following are examples of the types of studies that may be useful. Additional ones may be identified as a result of the June 27th Federal Register Notice. Please provide information about what types of studies you will or will not be willing to participate in.

a. Test of mode effects (mail versus telephone).

b. Test the effect of intervening stays in other facilities.

c. Psychometric analyses to evaluate the equivalence of English and Spanish HCAHPS forms.

d. Test the effect of lag time on HCAHPS scale scores.

e. Test the effect on response rate of different survey materials (*e.g.*, personalized cover letters), taking into account incremental changes in cost.

f. Evaluate the covariation of HCAHPS scores with clinical indicators of hospital performance.

g. Evaluate HCAHPS instrument psychometrically.

h. Sampling procedures that worked well or caused problems.

i. Survey operations procedures that worked well or caused problems.

j. How easily or readily HCAHPS is integrated into a hospital's existing sampling and survey operations procedures.

5. Number of hospitals proposed for inclusion in the testing.

6. Evidence that hospital(s) is/are willing to participate (*i.e.*, acknowledgement or confirmation from CEO).

7. Average number of discharges per month from participating hospitals, and the average number of discharges for each of the following services: medical, surgical, and obstetrics.

8. Name of current surveys being used in the site and modes of administration of each survey used.

9. Name of current survey vendors working with the site(s).

10. Name of survey vendor who has the largest share of the hospital market in which the volunteer facility, organization or association operates.

11. Statement or affidavit indicating authorization to commit the organization(s) to pay the specific estimated cost of sample selection, data collection, database preparation and coordination with AHRQ.

12. Current schedule for data collection of patient survey data, if you have one.

13. Process and schedule for selecting a vendor for the proposed testing or name of vendor already selected.

DATES: Please submit requested information on or before September 2, 2003.

ADDRESSES: Submissions should include a brief cover letter and the requested information about the potential site(s). They may be in the form of an e-mail with attachments, or a letter, preferably with an electronic file in a standard word processing format, (*e.g.*, Microsoft Word or Word Perfect) on a 3½ inch diskette. E-mail submissions are preferred and will be acknowledged upon receipt.

E-mail Responses to this request should be submitted to: *hospital-cahps@ahrq.gov*. Written or faxed responses should be submitted to:

Charles Darby, Agency for Healthcare Research and Quality, Center for Quality Improvement @ Patient Safety, 540 Gaither Road, Rockville, MD 20850. Phone: (301) 427–1324; Fax: (301) 427–1341.

In order to facilitate handling of submissions, please include all requested information about the candidate facilities. Please do not use acronyms. Electronic submissions are strongly encouraged.

FOR FURTHER INFORMATION CONTACT: Charles Darby, Center for Quality Improvement and Patient Safety, Agency for Healthcare Research and Quality; Phone: (301) 427–1324; Fax: (301) 427–1341; E-mail *cdarby@ahrq.gov*.

SUPPLEMENTARY INFORMATION: The Agency for Healthcare Research and Quality (AHRQ) has been a leading proponent and supporter of the development of instruments for measuring patient experiences within the healthcare system of the United States. Through prior CAHPS® patient survey development efforts, AHRQ has been able to provide valuable information to consumers and purchasers alike. The CAHPS survey for health plans is widely accepted as an industry standard. Therefore, as the research partner of CMS, AHRQ is charged with the development of a hospital patient experience of care instrument as well as the development of reporting strategies to maximize the utility of the survey results. In an effort to provide a firm foundation of evidence-based research for the HCAHPS instrument, the AHRQ is requesting voluntary participation from acute care facilities as potential sites for additional field-testing of the draft HCAHPS survey instrument to provide analytic data that will complement the results of the pilot testing done by QIOs for CMS.

Once HCAHPS is finalized, it will be made available to "The Quality Initiative: A Public Resource on Hospital Performance", which is a public/private partnership that includes the major hospital associations, government, consumer groups, measurement and accrediting bodies, and other stakeholders interested in reporting on hospital quality. In the first phase of the partnership (which has already begun), hospitals are voluntarily reporting the results of their performance on ten clinical quality measures for three medical conditions: acute myocardial infarction, heart failure, and pneumonia. HCAHPS reporting will comprise the second phase of the effort.

For more information or to participate in the Quality Initiative please visit *http://www.aha.org* under "Quality and Patient Safety, Quality Initiative," or at *http://www.fah.org*, under "Issues/Advisories," or at *http://www.aamc.org* by going to "Government Affairs," "Teaching Hospitals" and then "Quality."

Dated: July 24, 2003.

Carolyn M. Clancy,

Director.

[FR Doc. 03–19462 Filed 7–30–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality Contract Review Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), announcement is made of an Agency for Healthcare Research and Quality (AHRQ) Technical Review Committee (TRC) meeting. This TRC's charge is to review contract proposals and provide recommendations to the Director, AHRQ, with respect to the technical merit of proposals submitted in response to a Request for Proposals (RFP) regarding "Communications Support". The RFP was published in the Federal Business Opportunities on June 3, 2003.

The upcoming TRC meeting will be closed to the public in accordance with

the Federal Advisory Committee Act (FACA), section 10(d) of 5 U.S.C., Appendix 2, implementing regulations, and procurement regulations, 41 CFR 101–6.1023 and 48 CFR 315.604(d). The discussions at this meeting of contract proposals submitted in response to the above-referenced RFP are likely to reveal proprietary information and personal information concerning individuals associated with the proposals. Such information is exempt from disclosure under the above-cited FACA provision and procurement rules that protect the free exchange of candid views and facilitate Department and Committee operations.

Name of TRC: The Agency for Healthcare Research and Quality-"Communications Support".

Date: August 18, 2003 (Closed to the public).

Place: Agency for Healthcare Research & Quality, 540 Gaither Road, Conference Room 1, Rockville, Maryland 20850.

Contact Person: Anyone wishing to obtain information regarding this meeting should contact Kevin Murray, Office of Communications and Knowledge Transfer, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, Maryland, 20850, 301–427–1853.

Dated: July 23, 2003

Carolyn M. Clancy,

Director.

[FR Doc. 03–19539 Filed 7–30–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Evaluation of Web-Based HIV Risk Behavior Surveillance Among Men Who Have Sex With Men, Program Announcement Number 03095

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Evaluation of Web-Based HIV Risk Behavior Surveillance Among Men Who Have Sex With Men, Program Announcement Number 03095.

Times and Dates: 7 p.m.–8 p.m., August 20, 2003 (Open). 8 a.m.–08:30 a.m., August 21, 2003 (Open). 8:30 a.m.–5 p.m., August 21, 2003 (Closed).

Place: The Westin Atlanta Airport Hotel, 4736 Best Road, Atlanta, GA 30337, Telephone 404.762.7676.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement Number 03095.

Contact Person for More Information: Beth Wolfe, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, 1600 Clifton Road, NE, MS–E07, Atlanta, GA 30333, Telephone 404.639.8531.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 23, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–19480 Filed 7–30–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF/HS–2003–15]

Fiscal Year 2003 Discretionary Announcement for Head Start Partnerships With Historically Black Colleges and Universities; Availability of Funds and Requests for Applications; Corrections

AGENCY: Administration for Children and Families (ACF), HHS.

ACTION: Correction Notice for Head Start Historically Black Colleges and Universities Program Announcement No. ACYF/HHS–2003–15

SUMMARY: The is a correction notice for the Head Start Historically Black Colleges and Universities funding notice FR Doc 03–18165 that was published on July 21, 2003 (68 FR 43113). The document contained incorrect due dates for receipt of applications.

FOR FURTHER INFORMATION CONTACT: The Head Start Discretionary Grant Support Team (1–800–351–2293) is available to answer questions concerning application requirements and to refer you to the appropriate contact person in ACYF for programmatic questions. You may e-mail your questions to : *HSB@esilsg.org*. When contacting ACYF directly with programmatic questions please send to William F. Wilson, Grants Officer 330 C Street, SW., Washington, DC 20447, (202) 205–8913, *wwilson@acf.hhs.gov*. In order necessary, if you plan to submit an application you are requested to send a post card or call with the following information: the name, address, telephone and fax numbers, and e-mail addresses of the college/university at least four weeks prior to the submission deadline date to: ACYF Operations Center, Historically Black Colleges and Universities, 1150 Connecticut Avenue, NW., Suite 1100, Washington DC 20036, Telephone: 1–800–351–2293, e-mail: *HSB@esilsg.org*. An application kit including the necessary application forms and appendices can be obtained by contacting the above address, and/or visiting the ACYF Web site at: *http://www.acf.hhs.gov/programs/hsb/grant/fundingopportunities/fundopport.htm*.

Correction: In the **Federal Register** of July 21, 2003 in FR Doc 03–18165, on page 43119 the due date for receipt of applications is August 20, 2003. Please use this deadline date for submissions of applications for funding opportunities available for the FY '03 Head Start Historically Black Colleges and Universities program.

Dated: July 25, 2003.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 03–19456 Filed 7–23–03; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002E–0339]

Determination of Regulatory Review Period for Purposes of Patent Extension; BENICAR

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for BENICAR and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product BENICAR (olmesartan medocomil). BENICAR is indicated for the treatment of hypertension. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for BENICAR (U.S. Patent No. 5,616,599) from Sankyo Company, Ltd., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated December 30, 2002, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of BENICAR represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for BENICAR is 2,522 days. Of this time, 1,882 days occurred during the testing phase of the regulatory review period, while 640 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355)(i) became effective:* June 1, 1995. The applicant claims May 2, 1995, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was June 1, 1995, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act:* July 25, 2000. FDA has verified the applicant's claim that the new drug application (NDA) for BENICAR (NDA 21–286) was initially submitted on July 25, 2000.

3. *The date the application was approved:* April 25, 2002. FDA has verified the applicant's claim that NDA 21–286 was approved on April 25, 2002.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 756 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by September 29, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by January 27, 2004. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comment are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 14, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–19446 Filed 7–30–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0294]

Anesthetic and Life Support Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Anesthetic and Life Support Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 9 and 10, 2003, from 8 a.m. to 5 p.m. Interested persons and organizations may submit written or electronic comments until October 10, 2003, to the Division of Dockets Management (*see* **ADDRESSES**).

Addresses: Electronic comments should be submitted to *http://www.fda.gov/dockets/ecomments*. Select "2003N–0294—Opiate Risk Management" and follow the prompts to submit your statement. Written comments should be submitted to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Location: Holiday Inn, Versailles Ballrooms, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Johanna M. Clifford, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm.

1093), Rockville, MD 20857, 301–827–7001, or e-mail: *cliffordj@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12529. Please call the Information Line for up-to-date information on this meeting.

Agenda: On September 9, 2003, the committee will discuss Risk Management Plans for opiate analgesic drug products with particular attention to modified-release products. On September 10, 2003, the committee will discuss the abuse liability of and Risk Management Plans for Palladone, a modified-release hydromorphone drug product indicated for the treatment of moderate to severe pain in opioid tolerant patients.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 2, 2003. Oral presentations from the public will be scheduled between approximately 1:15 p.m. and 1:45 p.m. on September 9, and between 11:30 a.m. and 12 noon on September 10, 2003. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 2, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Angie Whitacre at 301–827–7001 at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 23, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–19506 Filed 7–30–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Additives and Ingredients Subcommittee of the Food Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Additives and Ingredients Subcommittee of the Food Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on August 26 and 27, 2003, from 8:30 a.m. to 4:30 p.m., and August 28, 2003, from 8:30 a.m. to 12 noon.

Location: St. Regis Hotel (Crystal Ballroom), 923 16th St., NW, Washington, DC 20006, 202–638–2626.

Contact Person: Richard E. Bonnette, Center for Food Safety and Applied Nutrition (HFS–255), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3034, 202–418–3030, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 10564. Please call the Information Line for up-to-date information on this meeting.

Agenda: A small percentage of the population is allergic to natural rubber latex. FDA has received reports of sensitized people experiencing allergic reactions upon eating food they believed was prepared by food handlers wearing natural rubber latex gloves. The purpose of this meeting is to gather information and to provide advice and recommendations to the agency relating to reported allergic reactions to food prepared by workers wearing latex food service gloves.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by August 20, 2003. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 noon on August 27, 2003. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before August 20, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Richard E. Bonnette at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 23, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–19448 Filed 7–30–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

Proposed Project: Ryan White Comprehensive AIDS Resources Emergency (CARE) Act: CARE Act Data Report (CADR) Form: (OMB No. 0915–0253)—Revision

The CARE Act Data Report (CADR) form, created in 1999 by the HIV/AIDS Bureau of the Health Resources and Services Administration (HRSA), is designed to collect information from grantees, as well as their subcontracted service providers, funded under Titles I, II, III and IV of the Ryan White (CARE) Act of 1990, as amended by the Ryan White CARE Act Amendments of 1996 and 2000 (codified under Title XXVI of the Public Health Services Act). All Titles of the CARE Act specify HRSA's responsibilities in the administration of grant funds, the allocation of funds, the evaluation of programs for the population served, and the improvement of the quantity and quality of care. Accurate records of the providers receiving CARE Act funding, the services provided, and the clients served continue to be critical to the implementation of the legislation and thus are necessary for HRSA to fulfill its responsibilities.

CARE Act grantees are required to report aggregate data to HRSA annually. The CADR form is used by grantees and their subcontracted service providers to report data on six different areas: Service provider information, client information, services provided/clients served, demographic information, AIDS Pharmaceutical Assistance and AIDS Drug Assistance Program, and the Health Insurance Program. The primary purposes of the CADR are to: (1) Characterize the organizations from which clients receive services; (2) provide information on the number and characteristics of clients who receive CARE Act services; and (3) enable HAB to describe the type and amount of services a client receives. In addition to meeting the goal of accountability to Congress, clients, advocacy groups, and the general public, information collected on the CADR is critical for HRSA, State and local grantees, and individual providers to assess the status of existing HIV-related service delivery systems.

The estimated response burden for grantees is estimated as:

Title under which grantee is funded	Number of grantee respondents	Responses per grantee	Hours to coordinate receipt of data reports from	Total hour burden
Title I Only	51	1	40	2,040
TitleII Only	59	1	40	2,360
Title III Only	337	1	8	2,696
Title IV Only	90	1	16	1,440
Subtotal	537			8,536

The estimated response burden for service providers is estimated as:

Title under which grantee is funded	Number of respondents	Responses per provider	Hours per response	Total hour burden
Title I Only	1,175	1	24	28,200
Title II Only	995	1	40	39,800
Title III Only	248	1	40	9,920
Title IV Only	98	1	40	3,920
Funded under	394	1	48	18,912
Subtotal	2,782			100,752
Total	3,319			109,288

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number, 202–395–6974.

Dated: July 24, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–19444 Filed 7–30–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)-443–1129.

Proposed Project: 340B Drug Pricing Program Survey—NEW

Section 340B of the Public Health Act provides that a manufacturer that sells outpatient drugs to covered entities must agree to charge a price that will not exceed the amount determined under a statutory formula. The entities eligible to access such drug pricing (*i.e.*, certain HHS grantees, certain disproportionate share hospitals, and other specified categories of entities) total approximately 10,000 sites. Most of these safety net providers serve the economically disadvantaged or medically uninsured.

A customer survey is being developed to collect information by mail on various aspects of the 340B Drug Pricing Program, including whether information on the program is reaching the covered entities, reasons some entities are not participating, satisfaction with the savings realized, and interest in possible

modifications to the program. Both participating and nonparticipating entities will be included in the survey. The results will be used to improve the design and management of the program.

The estimated response burden is as follows:

Respondents	Number of respondents	Responses per respondent	Total responses	Minutes per response	Total burden hours
Non-participation	283	1	283	0.2	57
Participation	567	1	567	1	567
Total	850		850		624

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503. Fax Number, 202–395–6974.

Dated: July 24, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–19447 Filed 7–30–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

[Announcement Number: HRSA–04–003]

Rural Health Network Development Planning Grant Program—CFDA Number 93.912

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA), Office of Rural Health Policy (ORHP), announces that approximately $1,000,000 in fiscal year (FY) 2004 funds is available to fund between 10 and 15 Rural Health Network Development Planning Grants. Eligibility is open to rural public or rural non-profit private entities as the lead applicant on behalf of a formative network or consortium of rural health providers. The proposed rural health network or consortium supported by the grant must include three or more health care providers, which may be nonprofit or for-profit entities. These grants will be awarded for a 1-year period.

DATES: Applications (PHS–5161–1 and supplemental material) will be available in July 2003 from the HRSA Grants Application Center (GAC) and must be received in the HRSA GAC at the address below by the close of business, September 10, 2003. Applications will meet the deadline if they are either: (1) Received on or before the deadline date; or (2) postmarked on or before the deadline date, and received in time for submission to the objective review panel. A legible, dated receipt from a commercial carrier or U.S. Postal Service will be accepted instead of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Applicants should note that HRSA anticipates having the capability to accept grant applications online in the last quarter of the Fiscal Year (July through September). Please refer to the HRSA grants schedule at *http://www.hrsa.gov/grants.htm* for more information.

ADDRESSES: To receive a complete application kit, applicants may telephone the HRSA Grants Application Center at 1–877–477–2123 and present the announcement number HRSA–04–003. All applications should be mailed or delivered to: Grants Management Officer, HRSA Grants Application Center, 901 Russell Avenue, Suite 450, Gaithersburg, MD 20879, telephone: 1–877–477–2123, e-mail: *hrsagac@hrsa.gov.*

FOR FURTHER INFORMATION CONTACT: Michele Pray-Gibson, 301–443–0835 (for questions specific to project activities of the program and program objectives); and Stephannie Young, 301–594–1246 (for grants policy, budgetary, and business questions.)

SUPPLEMENTARY INFORMATION:

Program Purpose/Objectives

This Rural Health Network Development (RHND) Planning Grant Program supports one year of planning to develop integrated health care networks in rural areas. The program is designed to support organizations that wish to develop formal collaborative relationships among health care providers to integrate systems of care administratively, clinically, financially, and technologically. The goal of the RHND Program is to achieve efficiencies; expand access to, coordinate, and improve the quality of essential health care services; and strengthen the rural health care system as a whole. The RHND Planning Grant Program supports this overall program goal by providing support to entities in the formative stages of planning and organizing a rural health network.

The RHND Planning Grant Program provides support to rural entities that seek to develop a formal health care network and that do not have a significant history of collaboration. Formative networks are not sufficiently evolved to apply for a 3-year RHND implementation grant and do not have a formalized structure. Existing networks that seek to expand services or expand their service area are not eligible to apply.

Applicants must propose to use the grant to develop rural health networks that bring together at least three separately owned health care providers. The applicant must demonstrate the need for the network and have identified one or more problems or issues that the network will address. The applying entity must have identified potential network partners and include a letter of support from each of the potential partners of the formative network.

The ultimate goal of the grant program is to strengthen the rural health care delivery system by improving the viability of the individual providers in the network. Networks funded through this program may also include entities that support the delivery of health care services like social service agencies, faith-based organizations, charitable organizations, educational institutions, employers, local governmental agencies or other entities. At least three of the partners that plan to participate in the network, however, must be health service providers. Grant funds may not be used for the direct delivery of services.

The grant support provided under the RHND Planning Grant program may be sufficient to jumpstart a network into becoming operational and developing strategies for becoming sustainable. Grantees of this program will be eligible to apply for up to three years of funding from the Rural Health Network Development Grant Program at a future time but are not required to do so. Applicants are not required to provide matching funds for the grant but are encouraged to engage the proposed network partners to participate in cost-sharing as demonstration of mutual commitment to the network.

Authorization

Awards will be made under the program authority of section 330A of the Public Health Service Act, 42 U.S.C. 254c.

Eligibility

To be eligible to receive a grant under this program, an applicant must be a rural public or rural non-profit private entity. To ascertain rural eligibility, please refer to *http://ruralhealth.hrsa.gov/funding/eligibility.htm*. The applicant must include letters of support from at least three or more health care providers that may be nonprofit or for-profit entities, that together intend to develop a rural health network. Under the President's initiative, faith-based and community-based organizations that are otherwise eligible and believe they can contribute to HRSA's program objectives are urged to apply to this program.

Funding Level/Project Period:

Contingent upon funding, approximately $1,000,000 in FY 2004 will be available to support the award of 10 to 15 grants for a one-year project period. Award amounts will range from $25,000 to $100,000 each.

Review Criteria

Applications that are complete and responsive to the guidance will be evaluated by an objective review panel specifically convened for this solicitation and in accordance with applicable policies and procedures. Applications for this grant program will be reviewed using the following criteria:

I. Statement of Need (30 Points)

A. The applicant demonstrates the need for Federal funding to support network development activities by describing the environment in which the network will develop and the appropriateness of applying for Federal funding at this point. The applicant provides evidence of the health care needs/problems in the community that the network proposes to address. The applicant utilizes appropriate data sources (*e.g.*, local, state, federal) in their analysis of the environment in which the network is functioning.

If the purpose of the network is to strengthen health providers' ability to serve their community(ies), please include data that demonstrates the providers' needs for greater support in remaining healthy and sustainable.

B. The applicant clearly describes the primary goals and problems/issues to be addressed by the network. The applicant describes how the local community or region to be served will benefit from and be involved in the activities carried out by the network. If the network's primary goal is to strengthen health providers in the community, the applicant describes how providers will benefit from and be involved in the activities carried out by the network.

C. The applicant describes how the local community or region to be served will experience increased or more stable/consistent access to quality health care services across the continuum of care as a result of the integration and coordination of activities carried out by the network.

II. Identification of Potential Network Partners (30 Points)

A. The applicant provides a list or table listing each potential network partner. The table should include each partner's organization name, address, primary contact person, current role in the community/region, and current annual operating expenditure.

B. The applicant explains why these are the appropriate collaborators and why other organizations are not included as part of the formative network at this time. It is recognized that the purpose of the grant is to support development of the network; therefore, discussion could include identification of organizations not yet engaged but that might be candidates for collaboration should the grant be awarded.

C. The applicant describes any history of informal collaboration between the potential partners of the network and provides information regarding the impetus for the network's creation.

D. The applicant provides a map that shows the locations of potential network partners, and/or describes the geographic area that will be served by the network and any other information that will help reviewers visualize and understand the scope of the proposed project.

E. The applying entity must include a letter of support from each of the potential partners of the formative network. These letters should confirm each organization's interest in becoming part of a rural health network and indicate in their own words the organization's understanding of the benefits that the network would bring to itself and the community encompassed by the network. The letter should also include a statement indicating that the potential partner understands that the grant funds would be used for the development of a health care network and are not to be used for the exclusive benefit of any one network partner.

F. The applicant identifies the key person who will be accountable for ensuring grant-funded activities will be carried out. This person will serve to facilitate/convene potential network partners, set meeting agendas, assign and track tasks, etc.

G. The applicant includes a resume for the key person identified in II.E.

H. The applicant identifies the name and affiliation of the person(s) who wrote and prepared the grant application.

III. Statement of Project Workplan (25 Points)

A. The applicant includes a detailed workplan that describes how the grant funds will be used:

Part One: The applicant provides a matrix that carefully integrates goals, strategies, activities, and measurable outcomes and process measures. The matrix outlines the individual responsible for carrying out each activity and includes a timeline for the duration of the project. A sample matrix template will be provided in the application instructions.

Part Two: The applicant explains how the goals and activities outlined in the matrix will be accomplished in narrative format.

B. The applicant's workplan should either include a task that addresses each of the following four areas (or describes how each area is being addressed):

(1) Identifies potential collaborating network partners in addition to those already named in the grant application that provided letters of support.

(2) Convenes potential collaborating network partners.

(3) Conducts planning activities:

a. Conducts a needs assessment to ensure a complete understanding of the health care and provider-related challenges faced by the community/region to be served, and by the potential network partners.

b. Identifies the needs of potential network partners.

c. Identifies factors that will lead to the network's sustainability. This could include:

• Examining the benefits that may accrue to network members and the community they serve as a result of

collaborative action and potential effects of inaction.

• Examining the strengths, weaknesses, and opportunities of potential network members and the communities they serve. d.Develops a business, operational, or strategic plan. e.Develops a plan for the network's sustainability. f.Carries out organizational development activities *e.g.*, creating a formal Memorandum of Agreement/Understanding (MOA/MOU); establishing a network board; establishing bylaws; applying for 501(c)3 status, etc.

(4) Begins carrying out network activities, including activities to promote the network's sustainability.

Models That Work: If the application proposal is based upon another program that has worked in another community, please describe that program, why you think it will succeed in your community, what elements will be different in your community and how it was funded. There is particular interest in programs that may have received funding from the Department of Health and Human Services.

(5) *Project Monitoring:* The applicant describes measures to be implemented for assuring effective performance of the proposed project. The applicant describes on-going quality assurance/quality improvement strategies that will assist in the early identification and modification of ineffective project activities. For example, if one of the network's key strategies for reaching a network goal turns out to be ineffective, the applicant describes the measures in place to identify and address this situation.

IV. Budget (15 Points)

Applicants must provide details and justification for all items in the budget and explain the relevance of each cost to the overall goals and activities of the project. This includes a budget spreadsheet and a descriptive narrative justification that provides details for each budget item including contractual costs. The applicant illustrates that proposed grant funds will not be used to supplant funds already in place. The applicant is encouraged to include a description of funds already expended in support of networking activities.

V. Network Characteristics (5 Points)

Applicants that can demonstrate that their projects address any of the following criteria will receive a maximum of five additional points:

A. Projects that use telehealth and/or new and emerging technologies to help achieve their project goals. The advent of advanced communication tools such as distance learning, remote patient monitoring, personal data assistants (PDAs), interactive video, satellite broadcasting and store-and-forward technology are just some of the many health care focused technological applications that can help improve access to care either directly or indirectly by improving the efficiency of local health care providers; or

B. Projects that significantly address oral health care needs of the community to be served; or

C. Projects that significantly address mental health service needs of the community to be served; or

D. Projects in which the proposed network includes at least one Critical Access Hospital; or

E. Projects in which the proposed network does not include a facility that currently receives a DHHS-sponsored grant.

Funding Preference

The authorizing legislation for Network Development Planning Grants provides a funding preference for some applicants. Applicants receiving a preference will be placed in a more competitive position among the applications that can be funded. A funding preference will be given to any qualified applicant that can demonstrate either of the following two criteria:

A. Those applicants for which at least 50 percent of the proposed rural health network's service area is located in officially designated health professional shortage areas (HPSAs) or medically underserved communities (MUCs) or serve medically underserved populations (MUPs).

To ascertain HPSA and MUP designation status, please refer to the following Web site: *http://bhpr.hrsa.gov/shortage/index.htm.*

To qualify as a Medically Underserved Community (MUC), at least 50 percent of the network's participation must include facilities that are federally designated as any of the following:

(a) Community Health Centers,
(b) Migrant Health Centers,
(c) Health Care for the Homeless Grantees,
(d) Public Housing Primary Care Grantees,
(e) Rural Health Clinics,
(f) National Health Service Corps sites,
(g) Indian Health Service Sites,
(h) Federally Qualified Health Centers,
(i) Primary Medical Care Health Professional Shortage Areas,
(j) Dental Health Professional Shortage Areas,
(k) Nurse Shortage Areas,
(l) State or Local Health Departments,
(m) Ambulatory practice sites designated by State Governors as serving medically underserved communities; or

B. Those applicants whose projects focus on primary care, and wellness and prevention strategies.

To receive a funding preference, applicants must clearly identify and demonstrate which preference they are requesting as instructed in the program guidance and application instructions.

Executive Order 12372

This grant program is subject to Executive Order 12372, which requires applicants to seek comments on the application from their State Single Point of Contact (SPOC) unless the applicant is a Federally recognized Indian tribal government or the State does not participate in this process. A list of State SPOCs and the non-participating States is included with the application kit and is also available at *http://www.whitehouse.gov/omb/grants/spoc.html.* In general, SPOCs are State agents that review grant applications to determine if they are in accordance with State policy. Applicants in States with a SPOC must contact the SPOC about the application and receive any instructions on the State process. Further, applicants in participating States must submit a copy of the application to the SPOC no later than the Federal application receipt deadline.

Dated: July 3, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–19443 Filed 7–30–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2003 Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of intent to award a Single Source Cooperative Agreement to the Ohio Department of Alcohol and Drug Addictions Services' (ODADAS) Rehabilitation and Restitution project in Cuyahoga County, Ohio.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT) is publishing this notice to provide information to the public concerning a planned single source cooperative agreement in the amount of $600,000 in FY 2003 to the Ohio Department of Alcohol and Drug Addictions Services' (ODADAS) Rehabilitation and Restitution project in Cuyahoga County, Ohio. This is not a formal request for applications. Assistance will be provided only to the above named agency based on the receipt of a satisfactory application that is approved by an independent review group.

Funding Opportunity Number: TI 03–013.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.243

Authority/Justification: Section: 509 of the Public Health Service Act, as amended and subject to the availability of funds. Only the Ohio Department of Alcohol and Drug Addiction Services (ODADAS)/Cuyahoga County is eligible to apply for supplemental funding.

SAMHSA/CSAT's Rehabilitation and Restitution Program (RRP), announced in 2001, is a unique program containing some previously untested program elements and approaches. RRP is limited to applicants in States that have laws permitting the sealing of the records of most convicted, first-time, non-violent ex-felons within 5 years of the end of post-release supervision. This restriction is essential because SAMHSA/CSAT grants are no longer than 5 years in length, and consequently, States requiring longer waiting periods cannot provide the results needed within a 5-year project period. Only 4 applications were received due to this limitation.

Two Ohio projects were funded in 2002, ODADAS/Cuyahoga County and the Clermont County Treatment Alternatives for Safe Communities (TASC). Uncertainty about appropriate program costs and the uniqueness and importance of the program resulted in a requirement that grantees go through a planning year to design their projects. The ODADAS/Cuyahoga County project has, in the planning year, demonstrated management skills necessary to implement the project, entered into close collaborative relationships with other agencies essential to the successful completion of the project, and demonstrated the ability to recruit the required 1200 eligible project participants. However, other unanticipated gaps in their comprehensive project could jeopardize its success. These result in a need to increase, among other things:

• Residential treatment capacity;
• Employment and educational training components;
• Case management services; and
• Treatment services after the initial treatment period, typically beginning when the offender ends probation or parole.

Supplemental funding is critically necessary to address these gaps in services and ensure the success of the ODADAS/Cuyahoga County project. Project results will inform the national substance abuse field: (1) Whether comprehensive substance abuse treatment and other services and case management available for up to 5 years will reduce relapse and recidivism compared to programs that are much shorter; (2) Whether this program will increase the percentage of persons who have their first offense non-violent felony records sealed in States which permit this; and (3) whether the possibility of having felony records sealed significantly alters client behavior with respect to educational and job choices, relapse, and recidivism.

Contact for Additional Information: Bruce Fry, Government Project Officer, Division of Services Improvement, SAMHSA/CSAT, Rockwall II, 5600 Fishers Lane, Suite 740, Rockville, MD 20857; (301) 443–0128, *bfry@samhsa.gov*

Dated: July 25, 2003.

Anna Marsh,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–19507 Filed 7–30–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Blackstone River Valley National Heritage Corridor Commission; Notice of Meeting

Notice is hereby given in accordance with section 552b of Title 5, United States Code, that a meeting of the John H. Chafee, Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, September 18, 2003.

The Commission was established pursuant to Pub. L. 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene on September 18, 2003 at 7 p.m. in Lincoln Town Hall located at 100 Old River Road, Lincoln, Rhode Island, for the following reasons:

1. Approval of Minutes.
2. Chairman's Report.
3. Executive Director's Report.
4. Financial Budget.
5. Public Input.

It is anticipated that about twenty-five people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Michael Creasey, Executive Director, John H. Chafee, Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, Tel.: (401) 762–0250.

Further information concerning this meeting may be obtained from Michael Creasey, Executive Director of the Commission at the aforementioned address.

Michael Creasey,

Executive Director BRVNHCC.

[FR Doc. 03–19483 Filed 7–30–03; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; Alaska Subsistence Household Survey

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service has submitted the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. If you wish to obtain copies of the proposed information collection requirement, related forms, or explanatory material, contact the Service Information Collection Officer at the address listed below.

DATES: We will accept comments until September 2, 2003.

ADDRESSES: Submit your comments on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA via facsimile or e-mail using the following fax number or e-mail address: (202) 395–5806 (fax); *ruth_solomon@omb.eop.gov* (e-mail). Please provide a copy of your comments to the Fish and Wildlife Service's Information Collection Officer, 4401 N. Fairfax Dr., MS 222 ARLSQ, Arlington, VA 22207; (703) 358–2269 (fax); or *anissa_craghead@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information, or related forms, contact Anissa Craghead by phone at (703) 358–2445 or by e-mail at *anissa_craghead@fws.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested parties and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* CFR 1320.8(d)). The U.S. Fish and Wildlife Service (we, or the Service) has submitted a request to OMB for approval of a collection of information related to the subsistence migratory bird harvest in Alaska. We are requesting a 3-year term of approval for this collection activity. Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The Migratory Bird Treaty Act (16 U.S.C. 703–711) and the Fish and Wildlife Act of 1956 (16 U.S.C. 742d) designate the Department of the Interior as the key agency responsible for the management of migratory bird populations frequenting the United States and for the setting of harvest regulations that allow for the conservation of those populations. These responsibilities include gathering accurate geographical and temporal data on various characteristics of migratory bird harvest. We use that data to promulgate harvest regulations. Annually, we adjust harvest regulations as needed to provide a maximum of subsistence harvest opportunity while keeping migratory bird populations at desired levels.

The Migratory Bird Treaty Act Protocol Amendment (1995) (Amendment) provides for the customary and traditional use of migratory birds and their eggs for subsistence use by indigenous inhabitants of Alaska. The Amendment, however, states that it is not the intent of the Amendment to cause significant increases in the take of species of migratory birds relative to their continental population sizes. A May 20, 1996, letter of submittal from the Department of State to the White House, which officially accompanied the Amendment, specifies the need for harvest monitoring and states that harvest estimates will be collected cooperatively by the Service, the State Department of Fish and Game, and Native organizations within the subsistence eligible areas. Harvest survey data help ensure that customary and traditional use of migratory birds and their eggs for subsistence use by indigenous inhabitants of Alaska does not significantly increase the take of species of migratory birds relative to their continental population sizes.

We have monitored the subsistence harvest in Alaska for the past 14 years through the use of annual household surveys in the most heavily used subsistence harvest areas (*e.g.*, Yukon-Kuskokwim Delta). Continuation of this monitoring would enable tracking of any significant changes or trends in levels of harvest and user participation after legalization of the harvest. The harvest survey method and forms that we used to collect information were not approved by OMB. We are requesting that OMB approve these forms and that the public comment on this information collection. We will not conduct or sponsor any surveys until we obtain OMB approval of this information collection.

This collection helped, and would help, us gather information on the annual subsistence harvests of 49 species of birds, including geese, ducks, swans, cranes, loons, seabirds, shorebirds, and upland game birds. The survey was, and would be, conducted by local village resident surveyors in the subsistence-eligible areas of Alaska, under the guidance of Service employees and contractors (such as Alaska Native organizations and the Alaska Department of Fish and Game). The local village surveyors annually provided, and would provide, us lists of all households in each village. Randomly selected households then received, and would receive, survey forms from the village surveyor. The household either completed, and would complete, the form independently, or the village surveyor helped, and would help, the household complete the form. Forms were then, and would be, turned in to us. The resulting estimates of harvest per household were, and would be, combined with the complete list of households in the subsistence-eligible areas to provide estimates of the total annual harvest of the 49 species of birds.

On March 3, 2003, we published in the **Federal Register** (68 FR 10024) a notice informing the public that we plan to request OMB approval under the Paperwork Reduction Act of the forms described. We requested public comment on the information collection for 60 days, ending May 2, 2003. By that date we did not receive any comments. This notice provides an additional 30 days in which to comment on the following information.

Title: List of All Occupied Households, with Hunting Category Noted.

Approval Number: 1018–xxxx.

Form number: 7–FW–100.

Frequency of Collection: Once per year.

Description of Respondents: Local village surveyors.

Total Annual Responses: 188. We estimate one form for each of the 188 communities, which amounts to 188 forms annually.

Total Annual Burden Hours: 433 hours. We estimate the reporting burden at one minute for each of the total 26,000 households in 188 communities, or 433 hours total.

Note: This form is maintained by the local village surveyor. This form does not record, nor is it arranged or retrieved, by personal identifier.

Title: Households Separated by Hunting Category.

Approval Number: 1018–xxxx.

Form number: 7–FW–101.

Frequency of Collection: Once per year.

Description of Respondents: Local village surveyors.

Total Annual Responses: 188. We estimate one form for each of the 188 communities, which amounts to 188 forms annually.

Total Annual Burden Hours: 94 hours. We estimate it takes each surveyor an average of one-half hour to transfer the information from Form 7–FW–100 to Form 7–FW–101. With an estimated 188 surveyors in up to 188 communities, we estimate 94 hours total annual burden.

Note: The local village surveyor provides this form to us. This form does not record, nor is it arranged or retrieved, by personal identifier.

Title: Permission slip for participation in the survey.

Approval Number: 1018-xxxx.

Form number: 7–FW–102.

Frequency of Collection: Once per year.

Description of Respondents: Households within the subsistence eligible areas of Alaska (50 CFR Part 92.5).

Total Annual Responses: 16,000. We estimate up to 13,000 of the approximately 26,000 households in the subsistence eligible areas will participate in the survey. Up to 16,000 households will have to be asked permission in order to get a sample size of 13,000 households.

Total Annual Burden Hours: 1,333 hours. It will take the surveyor an average of 5 minutes per household to determine whether or not that household agrees to participate in the subsistence harvest survey. With an estimated 16,000 households responding to the permission slip, this amounts to 1,333 hours total annual burden.

Note: This form is maintained by the local village surveyor. The surveyor asks each household if that household will participate in the subsistence harvest survey. The surveyor then notes a "yes" or a "no" on a permission slip. Each household with a "yes" permission slip is given a survey form (described below). This form does not record, nor is it arranged or retrieved, by personal identifier.

Title: Migratory Bird Subsistence Harvest Household Survey.

Approval Number: 1018-xxxx.

Form number: 7–FW–103.

Frequency of Collection: Three times per year—spring, summer, and fall.

Description of Respondents: Households within the subsistence eligible areas of Alaska (50 CFR Part 92.5).

Total Annual Responses: 39,000. We estimate up to 13,000 of the approximately 26,000 households in the subsistence eligible areas will participate in the survey, responding three times annually.

Total Annual Burden Hours: 3,250 hours. We estimate the reporting burden to average 5 minutes per respondent for the Migratory Bird Subsistence Harvest Household Survey. With an estimated 13,000 respondents filling out the form three times annually, the annual burden hours total 3,250 hours.

Note: The local village surveyor provides completed survey forms to us. The survey form consists of three pages, one page each for spring, summer, and fall. Each page has 51 bird illustrations, with spaces beside each illustration to mark down numbers of birds and eggs taken. This form does not record, nor is it arranged or retrieved, by personal identifier; the household number is written on each page of the survey form, along with a village number. The results of this annual survey help us understand the effect of subsistence hunting on migratory bird populations, while also evaluating the effects of newly established spring/summer season dates, species closures, and methods and means prohibitions.

We again invite comments on this proposed information collection on the following: (1) Whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection on respondents.

Dated: July 28, 2003.

Anissa Craghead,

Information Collection Officer, Fish and Wildlife Service.

[FR Doc. 03–19490 Filed 7–30–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Renewal Under the Paperwork Reduction Act; Special Use Permit Applications for National Wildlife Refuges in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service has submitted a request to OMB to renew approval, under the provisions of the Paperwork Reduction Act of 1995, of the collection of information for special use permit applications on national wildlife refuges in Alaska. An estimate of the information collection requirement is included with this notice.

DATES: You must submit comments on or before September 2, 2003.

ADDRESSES: Submit your comments on this information collection renewal to the Desk Officer for the Department of the Interior at OMB-OIRA via facsimile or e-mail using the following fax number or e-mail address: (202) 395–5806 (fax); *ruth_solomon@omb.eop.gov* (e-mail). Please provide a copy of your comments to the Fish and Wildlife Service's Information Collection Clearance Officer, 4401 N. Fairfax Dr., MS 222 ARLSQ, Arlington, VA 22207; (703) 358–2269 (fax); or *anissa_craghead@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information, or related forms, contact Anissa Craghead at (703) 358–2445; or electronically to *anissa_craghead@fws.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). We submitted the following request to OMB to renew approval of the collection of information needed for special use permit applications for national wildlife refuges in Alaska. OMB has up to 60 days to approve or disapprove this information collection but may respond after 30 days. To ensure maximum consideration, send your comments to OMB by the date listed in the **DATES** section near the beginning of this notice. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

On February 14, 2003, we published a notice in the **Federal Register** (68 FR 7578) inviting the public to comment on this information collection. We did not receive any comments.

The National Wildlife Refuge Administration Act of 1966, as amended (16 U.S.C. 668dd–ee) (Administration Act) authorizes us to permit uses, including commercial visitor services, on national wildlife refuges only when we find the activity to be compatible with the purposes for which the refuge was established. The National Wildlife Refuge System Improvement Act of 1997 (Pub. L. 105–57) (Improvement Act) amended the Administration Act and established "organic legislation" for the National Wildlife Refuge System with a unifying mission. It also modified the process for determining compatible uses on refuges and required that we determine the use of refuge lands to be compatible with the mission of the Refuge System, as well as the refuge purposes. We published proposed regulations for determining if a use is compatible in the **Federal Register** on September 9, 1999 (64 FR 49056), along with a draft compatibility policy.

The Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3101 *et seq.*) was signed into law on December 2, 1980. Its broad purpose is to provide for the disposition and use of a variety of federally owned lands in Alaska. Section 303 of ANILCA established the purposes for each Alaska refuge, and Section 304 requires that all uses we authorize on Alaska refuges first be found to be compatible with the refuge purposes. You can find regulations for administering special use permits on Alaska refuges in 50 CFR part 36.41.

Section 810 of ANILCA (16 U.S.C. 3120) requires that we evaluate the effect of any proposed use of refuge lands on subsistence uses and needs in determining whether to permit such uses. It restricts us from permitting a use which would significantly restrict

subsistence uses unless we give notice to the appropriate State agency and local committees and regional councils, hold a hearing in the vicinity of the area involved, and determine that such a restriction of subsistence uses is necessary; is consistent with sound management principles, is for the utilization of public lands, will involve the minimum amount of public lands necessary, and will include reasonable steps to minimize adverse impacts.

Sections 1303 and 1315 of ANILCA (16 U.S.C. 3193; 3203–3204) allow the Secretary of Interior to permit construction, use, and occupancy of cabins in national wildlife refuges in Alaska under certain conditions. Section 1303(b)(3) of ANILCA states that we will issue no special use permits for cabins unless the permit applicant provides certain items of information. You can find regulations issued to implement these provisions in 50 CFR part 36.33.

Section 1307 of ANILCA (16 U.S.C. 3197) contains two provisions concerning persons and entities to whom we are to give special rights and preferences with respect to providing "visitor services" on refuges in Alaska. Section 1307 defines "visitor services," as "* * * any service made available for a fee or charge to persons who visit a conservation system unit, including such services as providing food, accommodations, transportation, tours and guides, excepting the guiding of sport hunting and fishing." You may find regulations issued to implement these activities in 50 CFR part 36.37.

We will provide the permit applications as requested by interested Alaska citizens. We will use information provided on the required written forms and/or verbal applications to determine if the proposed activity is compatible with refuge purposes and to ensure that the applicant is eligible for a permit, or in the case of competitively awarded permits, we will use the information to determine the most qualified applicant to receive benefits of a refuge permit. In the case of permits awarded under section 1307 of ANILCA, we will use the information to determine whether the applicant is: A member of a Native Corporation; a local resident; and/or was engaged in adequately providing visitors services on or before January 1, 1979; or is eligible to receive Cook Inlet Region rights.

We make provision in our general refuge regulations for public entry for specialized purposes, including economic activities such as the operation of guiding and other visitor services on refuges by concessionaires or cooperators under appropriate contracts or legal agreements (found in 50 CFR part 25.61) or special use permits (found in 50 CFR parts 36.37, 36.41, 26.22(b) and 26.25). These rules provide the authorities and procedures for selecting permittees on Alaska refuges, the vast majority of which are providers of services and facilities to the public. We will issue permits for a specific period as determined by the type and location of the use or visitor service provided.

We have made several minor revisions to the special use permit application form we use for Alaska refuges (USFWS Form 3–2001), and we explain the changes as follows:

1. On the page one, item 2, we added the phrase, "* * * and are not inconsistent with public safety" to the end of the first sentence to be consistent with Service regulations and policy requirements that we consider public safety, as well as the other factors listed, before authorizing uses on national wildlife refuges.

2. On page one, item 3, we corrected the last sentence to state that permit applicants must provide their social security number or taxpayer identification number for activities subject to collection of fees by the Service, and we provided the legal citation for this requirement.

3. On page one, item 6, we modified the first sentence to reflect our revised estimates of the public reporting burden.

4. On page 2, we modified the application to provide the applicant the option to provide his/her taxpayer identification number or social security number.

5. On page 2, we requested "valid dates" for the alternate phone number.

6. On page 3, we replaced a confusing table with a list of Alaska refuges and types of uses in order to simplify the application. On the revised application, the applicant only needs to identify the refuge and the proposed activities applicable to his/her application by marking with an "X" on the lists provided on the application form. By eliminating the table, we also provided more space on the application to provide a description and location of the proposed activity or use.

7. We rearranged the permit information required on page 4 into a more logical sequence and format in order to simplify the application. We also added a statement of reference to an enclosed Insurance Information Sheet for minimum insurance requirements.

8. On page 5, item 14, we added language to clarify that we need copies of only those State or Federal licenses, certifications, and registrations that are required for the activity the applicant proposes to conduct on the refuge.

In addition to the revisions identified above, we made a few minor editorial changes to the application form for clarification and plain language requirements. The editorial changes do not affect the information requirements of the application.

We revised the estimated number of respondents reported in the **Federal Register** notice published on February 14, 2003 (68 FR 7578), but we did not revise our estimated number of responses or our total annual burden estimate. We previously estimated the annual number of respondents (applicants) to be the same as the number of responses (applications). We reduced the estimated number of applicants because many individuals submit separate applications for different types of activities and/or for difference refuges.

Title: Special Use Permit Applications for National Wildlife Refuges in Alaska.

OMB Control Number: 1018–0014.

Service Form Number: 3–2001.

Frequency of collection: On occasion.

Description of the respondents: Individuals and households; business and other for-profit institutions; farms; and State, local or Tribal governments.

Total Annual Number of respondents (applicants): 200.

Total Annual Number of responses (applications): 350 (180 competitive permit applications and 170 non-competitive permit applications).

Information Collection Burden Estimate:

Type of permit application	Annual number of responses	Completion time (hours)	Annual burden (hours)
Competitively issued permit	180	30	5,400
Non-competitively issued permit	170	1.5	255
Combined Total	350		5,655

We invite comments concerning this renewal on: (1) Whether the collection of information is necessary for the proper performance of our functions, including whether the information will have practical utility; (2) The accuracy of our estimate of the burden of the collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on respondents. This information collection is part of a system of record covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: July 28, 2003.

Anissa Craghead,

Information Collection Officer, Fish and Wildlife Service.

[FR Doc. 03–19491 Filed 7–30–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Comprehensive Conservation Plan and Environmental Assessment for Mark Twain National Wildlife Refuge Complex in Iowa, Illinois and Missouri

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to the Refuge Improvement Act of 1997, the U.S. Fish and Wildlife Service has published a draft Comprehensive Conservation Plan and Environmental Assessment for Mark Twain National Wildlife Refuge Complex (Complex). This Plan describes how the Service intends to manage the Refuge Complex for the next 15 years.

DATES: Comments must be received by September 30, 2003. All comments should be addressed to Mark Twain National Wildlife Refuge Complex, Attention: CCP Comment, 1704 North 24th Street, Quincy, Illinois 62301, or direct e-mail to *r3planning@fws.gov*. Comments may also be submitted through the Service's regional Web site at *http://midwest.fws.gov/planning*.

ADDRESSES: A draft Plan or summary may be obtained by writing to the Service or submitting a request electronically. These documents will also be made available in portable document format (pdf) on the U.S. Fish and Wildlife Service Web site at *http://midwest.fws.gov/planning*. Address requests to: U.S. Fish & Wildlife Service, Branch of Ascertainment and Planning, Attn: CCP Comment, BHW Federal Building, 1 Federal Drive, Ft. Snelling, MN, 55111; or direct e-mail to *r3planning@fws.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information on the draft comprehensive conservation plan and environmental assessment, contact Dick Steinbach, Complex Manager, at the address above or call the Refuge at 217/224–8580.

SUPPLEMENTARY INFORMATION: In 1997, Congress mandated that the Service prepare a comprehensive conservation plan for each refuge within the National Wildlife Refuge System. Comprehensive conservation plans guide management decisions over the course of 15 years. The Mark Twain NWR Complex includes Port Louisa NWR, Great River NWR, Clarence Cannon NWR, Two Rivers NWR, and Middle Mississippi River NWR, which are all located along the Upper Mississippi River. The Draft Plan identifies goals and objectives for habitat management, land protection and wildlife-dependent recreation, as well as strategies for achieving those goals and objectives.

Dated: September 6, 2002.

William F. Hartwig,

Regional Director.

[FR Doc. 03–19484 Filed 7–30–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

North American Wetlands Conservation Act: Request for Small Grants Proposals for Year 2004

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of request for proposals.

SUMMARY: The purpose of this notice is to advise the public that we, the U.S. Fish and Wildlife Service (Service) and the North American Wetlands Conservation Council (Council), are currently entertaining proposals that request match funding for wetland and wetland-associated upland conservation projects under the Small Grants program. Projects must meet the purposes of the North American Wetlands Conservation Act of 1989, as amended. We will give funding priority to projects from new grant applicants with new partners, where the project ensures long-term conservation benefits. However, previous Act grantees are eligible to receive funding and can compete successfully on the basis of strong project resource values.

DATES: Proposals must be postmarked no later than Friday, November 28, 2003.

ADDRESSES: Address proposals to: Division of Bird Habitat Conservation, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop 4075, Arlington, Virginia 22203, Attn: Small Grants Coordinator.

FOR FURTHER INFORMATION CONTACT: Dr. Keith A. Morehouse, Small Grants Coordinator, or Office Secretary, Division of Bird Habitat Conservation, 703.358.1784; facsimile 703.358.2282.

SUPPLEMENTARY INFORMATION: The purpose of the 1989 North American Wetlands Conservation Act (NAWCA), as amended (16 U.S.C. 4401 *et seq.*) is, through partnerships, to promote long-term conservation of North American wetland ecosystems and the waterfowl and other migratory birds, fish and wildlife that depend upon such habitats. Principal conservation actions supported by NAWCA are acquisition, enhancement and restoration of wetlands and wetlands-associated upland habitat.

Initiated in 1996, the underlying objective of the NAWCA-based Small Grants program is to promote long-term wetlands conservation activities through encouraging participation by new grantees and partners who may not otherwise be able to compete in the Standard Grants program. We also hope that successful participants in the Small Grants program later will be encouraged to participate as a grantee or partner in the Standard Grants program. Over the first seven years of the Small Grants program, about 630 proposals requesting a total of approximately $24.1 million competed for funding. Ultimately, 206 projects were funded over this period for about $8.7 million. For 2004, with the approval of the Migratory Bird Conservation Commission, we have made the Small Grants program operational at approximately $2.0 million. That is, up to $2.0 million in Small Grants wetland projects may be funded. However, ultimately, the level of Small Grant funding depends upon the quality of the pool of grant proposals.

To be considered for funding in the 2004 cycle, proposals must have a grant request no greater than $50,000. We will accept all wetland conservation proposals that meet the requirements of the Act. However, considering appropriate proposal resource values, we will give funding priority to projects from new grant applicants (individuals or organizations who have never received a NAWCA grant) with new partners, where the project ensures

long-term conservation benefits. This priority system does not preclude former NAWCA grant recipients from receiving Small Grants funding; ultimately, project resource value is the critical factor in deciding which projects receive funding. Also, projects are likely to receive a greater level of attention if they are part of a broader related or unrelated effort to bring or restore wetland or wetland-associated upland conservation values to a particular area or region.

In addition, proposals must represent on-the-ground projects, and any overhead in the project budget must constitute 10 percent or less of the grant amount. The anticipated magnitude of wetlands and wildlife resources benefits that will result from project execution is an important factor in proposal evaluation, and there should be a reasonable balance between acreages of wetlands and wetland-associated uplands. As per the Act, mitigation-related projects are not considered for funding.

Please keep in mind that NAWCA and matching funds may be applied only to wetlands acquisition, creation, enhancement, and/or restoration; they may not be applied to signage, displays, trails or other educational features, materials and equipment, even though the goal of the project may ultimately be to support wetland conservation education curricula. Projects oriented toward education are not ordinarily eligible for NAWCA funding because education is not a primary purpose of the Act. However, acceptable project outcomes can include educational benefits resulting from conservation actions. Research is also not a primary purpose of the Act, and research proposals are not considered for funding.

Even though we require less total application information for Small Grants than we do for the Standard Grants program, Small Grant proposals must have clear explanations and meet the basic purposes given above and the 1:1 or greater non-Federal matching requirements of the NAWCA. Small Grants projects must also be consistent with Council-established guidelines, objectives and policies. All non-Federal matching funds and proposed expenditures of grant funds must be consistent with Appendix A of the Small Grants instructions, "Eligibility Requirements for Match of NAWCA Grant and Non-Federal Funds." Applicants must submit a completed Standard Form 424, Application For Federal Assistance. Hard copies of Small Grant instructions (booklets) are no longer provided, except under special circumstances. However, the NAWCA Program website, birdhabitat.fws.gov, contains instructions for completing and submitting a Small Grant application, as well as forms and instructions for the Standard Form 424.

Small Grant proposals may be submitted prior to the due date but must be postmarked no later than Friday, November 28, 2003. Address submitted proposals as follows: Division of Bird Habitat Conservation, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop MSBP4075, Arlington, VA 22203, Attn: Small Grants Coordinator.

Applicants must submit *complete* grant request packages to the Division of Bird Habitat Conservation (DBHC), including *all* of the documentation of partners (partner letters) with funding pledge amounts. Information on funding in partner letters, *i.e.*, amounts and description regarding use, must correspond with budget amounts in the budget table and any figures provided in the narrative.

With the volume of proposals received, we usually are not able to contact proposal sources to verify and/or request supplemental data and/or materials. Thus, those proposals lacking required information or containing conflicting information are subject to being declared ineligible and not further considered for funding.

For more information, call the DBHC office secretary at 703.358.1784, facsimile 703.358.2282, or send e-mail to *dbhc@fws.gov*. Small Grant application instructions may be available by E-mail as a WordPerfect© file, upon special request.

In conclusion, we require that, upon arrival in the DBHC, proposal packages must be: complete with regard to the information requested, presented in the format requested, and be presented according to the established deadline.

The Service submitted information collection requirements to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1995, Public Law 104–13. On August 28, 2002, OMB gave its approval for this information collection and confirmed the approval number as 1018–0100; this approval expires on August 31, 2005. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The information collection solicited: is necessary to gain a benefit in the form of a grant, as determined by the North American Wetlands Conservation Council and the Migratory Bird Conservation Commission; is necessary to determine the eligibility and relative value of wetland projects; results in an approximate paperwork burden of 80 hours per application; and does not carry a premise of confidentiality. The information collections in this program will not be part of a system of records covered by the Privacy Act (5 U.S.C. 552(a)).

Starting October 1, 2003, applicants are required to provide a DUNS number when submitting applications for a Federal Government grant. Thus, this requirement will be in effect for the November 28, 2003, postmarking deadline of the Small Grants applications for 2004 funding. A DUNS number is a 9-digit unique identifier available from Dun and Bradstreet, either through the Web site at *http://www.dunandbradstreet.com* or by phone at 1.866.705.5711.

Dated: July 17, 2003.

Matt Hogan,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 03–19523 Filed 7–30–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–080–1030–PH]

Notice of Public Meeting, Upper Columbia-Salmon Clearwater Resource Advisory Council Meeting; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Upper Columbia-Salmon Clearwater (UCSC) District Resource Advisory Council (RAC) will meet as indicated below.

DATES: September 4, 2003 beginning at 8 a.m. Pacific Daylight Time and end at approximately 12:01 p.m. The public comment period will be from 11 a.m. to 12:01 p.m. The meeting will be held via conference call from the following Idaho BLM Offices:

- Coeur d'Alene—located at 1808 N. Third Street
- Salmon—located at 50 Highway 93 South
- Challis—located at 801 Blue Mountain Road
- Cottonwood—located at House 1, Butte Drive

RAC members may call from any location and participate in the conference call. The public may join in the conference call from any of the four locations listed above.

FOR FURTHER INFORMATION CONTACT: Stephanie Snook, RAC Coordinator, BLM UCSC District, 1808 N. Third Street, Coeur d'Alene, Idaho 83814 or telephone (208) 769–5004.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho. The following topics will be discussed during the September 4th conference call:

- Sustaining Working Landscapes policy
- Idaho BLM Organization Refinement
- Status of RAC Nominations and review and approval of minutes from previous meetings

All meetings are open to the public. The public may present written comments to the Council at the Coeur d'Alene, Salmon, Challis or Cottonwood locations during the public comment period. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the BLM as provided above.

Dated: July 25, 2003.

Fritz U. Rennebaum,

District Manager.

[FR Doc. 03–19479 Filed 7–30–03; 8:45 am]

BILLING CODE 4310–GG–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–491]

Certain Display Controllers and Products Containing Same; Notice of Commission Decision Not To Review an Initial Determination Amending the Complaint and Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") (Order No. 5) amending the complaint and notice of investigation. The Commission understands the ALJ's statement summarizing complainant's argument, at page 2 of the ID, as implicitly including the following italicized language: "In its motion, Genesis contends that it did not become aware of MStar's allegedly infringing product in the United States until April 18, 2003, when it purchased a Sony monitor containing an MStar MST9011 display controller from a retailer in California."

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone (202) 205–3012. Copies of the public version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 14, 2003, based on a complaint filed on behalf of Genesis Microchip (Delaware) Inc. ("complainant") of Alviso, Calif. 68 FR 17,964 (Apr. 14, 2003). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, sale for importation, and sale within the United States after importation of certain display controllers and products containing same by reason of infringement of claims 13 and 15 of U.S. Patent No. 6,078,361 ("the 361 patent"); claims 19–22 of U.S. Patent No. 5,953,074 ("the '074 patent"); and claims 1 and 9 of U.S. Patent No. 6,177,922. The notice of investigation identified three respondents: Media Reality Technologies, Inc. of Taipei, Taiwan; Media Reality Technologies, Inc. of Sunnyvale, Calif. (collectively "MRT"); and Trumpion Microelectronics, Inc. ("Trumpion") of Taipei City, Taiwan. *Id.*

On May 30, 2003, complainant moved pursuant to Commission rule 210.14(b) to amend the complaint and notice of investigation to name MStar Semiconductor, Inc. ("MStar") as an additional respondent and to assert against MStar claims 13 and 15 of the '361 patent, claims 15–22 of the '074 patent, and claims 1–3, 5, 6, 9, 12, 13, 16, 17, 33–36, 38, and 39 of U.S. Patent No. 5,739,867 ("the '867 patent). Thus, complainant sought to add claims 15–18 of the '074 patent and selected claims of the '867 patent to the investigation. On June 11, 2003, the Commission investigative attorney ("IA") filed a response in support of the motion. On June 19, 2003, MStar filed an opposition to the motion. No responses were filed by MRT or Trumpion.

On June 20, 2003, the ALJ issued an ID (Order No. 5) granting the motion, thereby amending the complaint and notice of investigation to add claims 15–18 of the '074 patent and claims 1–3, 5, 6, 9, 12, 13, 16, 17, 33–36, 38, and 39 of the '867 patent, and to add MStar as an additional respondent. On June 26, 2003, MStar filed a petition for review of the ID. On July 3, 2003, responses opposing the petition were filed by the IA and complainant.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's rules of practice and procedure (19 CFR 210.42).

Issued: July 18, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–19437 Filed 7–30–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Amended Clean Water Act Consent Decree With Icicle Seafoods, Inc.

AGENCY: Department of Justice.

ACTION: Notice of availability for public comment.

SUMMARY: Notice is hereby given that on July 18, 2003, an Amended Consent Decree in *United States* v. *Icicle Seafoods, Inc.*, Docket No. A03–0142 CV (JWS), was lodged with the United States District Court for the District of Alaska. In this action brought pursuant to section 309 of the Clean Water Act, as amended, 33 U.S.C. 1319, the United States has requested the imposition of civil penalties and injunctive relief on Icicle Seafoods, Inc. (Icicle). This action arose out of Icicle's operation of its Seward Fisheries Facility in Seward,

Alaska. The United States has alleged that Icicle discharged seafood processing waste from that facility to waters of the United States without a permit on various days in 2000 and 2001 and that the company failed to meet several of the discharge and reporting requirements of its authorization to discharge under the general National Pollutant Discharge Elimination System permit for seafood processors in Alaska (General Permit) on numerous days between January of 1998 and October of 2001, all in violation of section 301 of the Clean Water Act, 33 U.S.C. 1311.

Like the Consent Decree that was lodged with the court on June 26, 2003, the Amended Consent Decree requires Icicle to pay an $85,000 civil penalty and perform several measures of injunctive relief at the Seward Fisheries Facility. The first element of injunctive relief, requiring that Icicle render salmon heads and waste salmon carcasses into fish meal during the 2003 processing season and provide related reporting to the Environmental Protection Agency (EPA), allowed Icicle to barge that salmon processing waste to an EPA-approved at-sea discharge location when the fish meal plant was inoperative and Icicle could not freeze that waste or dispose of it by means other than marine discharge. The Amended Consent Decree allows an additional exception for at-sea discharges of such waste during the period July 11—July 31, 2003. This exception may be invoked if the fish meal plant is operating at full capacity and Icicle cannot freeze or dispose of salmon heads and waste salmon carcasses by means other than marine discharge. The other injunctive relief measures Icicle is to implement remain the same. They concern the reduction of foam generated by the transfer of fresh seafood from catcher vessels to the Seward Fisheries Facility for processing; means to prevent the introduction of fish hooks into the grinders used to chop seafood processing waste into ½" pieces that can be discharged under the General Permit; the monitoring of the underwater waste pile created by discharges from the Seward Fisheries Facility prior to 2002; and improvement of internal operating procedures.

DATES: The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree.

ADDRESSES: Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United states Department of Justice and sent to 801 B Street, Suite 504, Anchorage, Alaska 99501–3657. Comments should refer to *United States* v. *Icicle Seafoods, Inc.*, D.J. Ref. #90–5–1–1–07395. During the public comment period, the Decree may be examined during business hours at the same address by contacting Lorraine Carter (907–271–5452) or on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. The Amended Consent Decree may also be examined at the Office of the Regional Counsel, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, by contacting Meg Silver (206) 553–1476). A copy of the Amended Consent Decree may be obtained by contacting Lorraine Carter in writing at the address above or via electronic mail (*lorraine.carter@usdoj.gov*). In requesting a copy by mail, please enclose a check in the amount of $5.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Authority: 28 CFR 50.7.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–19438 Filed 7–30–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Pursuant to 28 CFR 50.7, notice is hereby given that on July 17, 2003, a proposed Consent Decree ("Consent Decree") in *United States* v. *South Haven Sewer Works, Inc.*, Civil Action No. 2:03 CV 290, was lodged with the United States District Court for the Northern District of Indiana.

The United States' complaint in this action asserts claims against South Haven Sewer Works, Ind. ("South Haven") for injunctive relief and civil penalties for violations of the Clean Water Act, 33 U.S.C. 1251 *et seq.* (the "Act"), and a National Pollutant Discharge Elimination System Permit regulating discharges of pollutants into Salt Creek, from South Haven's privately owned wastewater treatment plant and sanitary sewer system in South Haven, Indiana.

The proposed Consent Decree requires South Haven to comply with the effluent limitations as well as all other requirements of South Haven's NPDES permit. In addition, the proposed Consent Decree requires South Haven to implement compliance measures valued at between $6 and $7 million, including: (i) Installation of monitoring and sampling devices and a standby power generator; (ii) construction of an improved outfall; (iii) identification and elimination of defects in the collection system and wastewater treatment plant that cause or contribute to bypasses and sanitary sewer overflows ("SSOs"); (iv) development and implementation or procedures for minimizing the impacts of SSOs on the environment and human health; and (v) development and implementation of a preventative maintenance program. The proposed Consent Decree also prohibits South Haven from accepting non-municipal waste and expanding its service area or sewer connections until it has met certain requirements. Under the proposed Consent Decree South Haven will also pay a civil penalty of $250,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *South Haven Sewer Works, Inc.*, D.J. Ref. 90–5–1–1–06888.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 5400 Federal Plaza, Suite 1500, Hammond, Indiana 46320, and at U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604. During the public comment period, the proposed Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html*. A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $14.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–19439 Filed 7–30–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities: Current Collection; Comment Requested

ACTION: 60-day notice of information collection under review; flexible deployment assistance guide.

The Department of Justice, Federal Bureau of Investigation has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until September 29, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Richard Thompson, Federal Bureau of Investigation, U.S. Department of Justice, ESTS, 14800 Conference Center Drive, Suite 300, Chantilly, Virginia 20151.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have the practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *Title of the form/collection:* Flexible Deployment Assistance Guide.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. Federal Bureau of Investigation, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. The Flexible Deployment Assistance Guide has been developed to assist the telecommunications industry in meeting its obligations under the Communications Assistance for Law Enforcement Act 47 U.S.C. 1001–1010 (1994).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The average time burden of the approximately 5,000 respondents to provide the information requested is approximately four hours and fifteen minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to provide the information requested by the Flexible Deployment Assistance Guide is approximately 21,250 hours.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: July 25, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–19467 Filed 7–30–03; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: Semi-annual progress report for grants to encourage arrest policies and enforcement of protection orders program.

The Department of Justice (DOJ), Office of Justice Programs (OJP), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until September 29, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Cathy Poston, Attorney/Advisor, Office of Violence Against Women, Office of Justice Programs, 810 7th Street NW., Washington, DC 20531; or facsimile at (202) 305–2589.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* New collection.

(2) *Title of the form/collection:* Semi-Annual Progress Report for Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: none. Office on Violence Against Women, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief*

abstract: Primary: The affected public includes approximately 200 grantees of the Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program (Arrest Program) whose eligibility is determined by statute. The Arrest Program was authorized through the Violence Against Women Act (VAWA) and reauthorized and amended by the Violence Against Women Act of 2000 (VAWA 2000). The Arrest Program promotes mandatory or pro-arrest policies and encourages jurisdictions to treat domestic violence as a serious crime, establish coordinated community responses and facilitate the enforcement of protection orders. By statute, eligible grantees for the Arrest Program are States, Indian tribal governments, State and local courts including juvenile courts, tribal courts, and units of local government. For the purpose of the Program, a unit of local government is any city, county, township, town, borough, parish, village, or other general-purpose political subdivision of a State; an Indian tribe that performs law enforcement functions as determined by the Secretary of the Interior; or, for the purpose of assistance eligibility, any agency of the District of Columbia government or the United States Government performing law enforcement functions in and for the District of Columbia, and any Trust Territory of the U.S.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that it will take the 200 respondents (Arrest Program grantees) approximately one hour to complete a semiannual progress report. The semiannual progress report is divided into sections that pertain to the different types of activities that grantees may engage in, *i.e.*, law enforcement agencies, prosecutors' offices, courts, victim services agencies, *etc.* An Arrest Program grantee will be required to complete those sections of the form that pertain to their own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden to complete the data collection forms is 400 hours. Two hundred grantees will complete a form twice a year with an estimated completion time of one hour per form.

If additional information is required, contact Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: July 25, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–19449 Filed 7–30–03; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Maritime Advisory Committee on Occupational Safety and Health

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Reestablishment of the Maritime Advisory Committee for Occupational Safety and Health (MACOSH); Appointment of Committee Members.

SUMMARY: The Secretary of Labor has re-established the charter of the Maritime Advisory Committee for Occupational Safety and Health (MACOSH), which expired on March 10, 2002. The Committee has been chartered for a two year term. The purpose of MACOSH is to provide advice for the Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) on all matters relevant to the safety and health of workers in that sector. The Assistant Secretary will seek the advice of this Committee, which consists of a broad range of representatives from the maritime industry, on activities in the maritime industry related to the Agency's overall priorities, including: Strong, fair, and effective enforcement; expanded compliance assistance, guidance, and outreach; expanded partnerships and voluntary programs; leadership in the national dialogue on occupational safety and health; and regulatory matters affecting the maritime industry, as appropriate. The Committee is diverse and balanced, both in terms of segments of the maritime industry represented (*i.e.*, shipyard and marine cargo handling industries), and in the views or interests represented by the members (employer, employee, government organizations with interests or activities related to the maritime industry, the states, and the public). The Agency expects to announce, in the near future, a notice of the first meeting of the new Committee. The public is encouraged to attend these meetings.

Mail comments, views, or statements in response to this notice to Paul Bolon, Director, Office of Maritime, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210. Phone: (202) 693–2086; Fax: (202) 693–1667.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, OSHA, Office of Public Affairs, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: (202) 693–1999.

SUPPLEMENTARY INFORMATION:

I. Background

On June 21, 2002, the Secretary of Labor announced her intention to re-establish a Maritime Advisory Committee for Occupational Safety and Health (67 FR 42292). The maritime industries have historically had a high incidence of illnesses and injuries in their workforces. The types of work performed can be quite different in various parts of the industries, ranging from steel fabrication and outfitting operations in shipyards to intermodal container handling or grain handling in longshoring operations. OSHA has targeted the maritime industries for special attention because of the incidence of illnesses and injuries and the specialized nature of much of the work. This targeting has included development of guidance and outreach materials specific to the industry, as well as rulemaking to update requirements and other activities to help focus actions on the industry and to help reduce the occurrence of illnesses and injuries in these industries. This Committee will be used to advise OSHA on these ongoing activities, as well as in any new areas in which the Agency seeks to pursue or expand its programs and projects to further address these specific needs. The advice of the Committee will help the Agency in terms of substantive input on conditions in the industry, ideas that may be implemented to reduce illnesses and injuries, and feedback on Agency initiatives in the maritime industry.

II. Establishment

The Committee will function solely as an advisory body, and in compliance with the provisions of Section 7(b) of the OSH Act (29 U.S.C. 656), the Federal Advisory Committee Act (5 U.S.C. App. 2), and 41 CFR part 102–3.

III. Appointment of Committee Members

Fifty-three nominations of highly qualified individuals were received in response to the Agency's request for nominations. The Secretary has selected the following individuals who have a wide range of experience concerning the issues to be examined by the Committee:

Jim Burgin, National Maritime Safety Association;
Keith D. Cameron, U.S. Coast Guard;
Albert Cernadas, International Longshore Association;
Michael Flynn, International Association of Machinists and Aerospace Workers;
Mike E. Freese, International Longshore and Warehouse Union;
Stephen D. Hudock, NIOSH;
William McGill, International Brotherhood of Electrical Workers;
Captain John McNeill, Pacific Maritime Association;
Dan Nadeau, Bath Iron Works;
Captain Teresa Preston, Atlantic Marine;
James Thornton, Northrop Grumman Newport News Shipyard; and
Earnest Whelan, International Union of Operating Engineers.

IV. Authority

This notice was prepared under the direction of John L. Henshaw, Assistant Secretary for Occupational Safety and Health. It is issued under 7(b) of the OSH Act (29 U.S.C. 656), the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2), GSA's FACA Regulations (41 CFR part 102–3), and DLMS 3 Chapter 1600.

Signed at Washington, DC, this 28th day of July, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–19514 Filed 7–30–03; 8:45 am]

BILLING CODE 4510–26–M

MERIT SYSTEMS PROTECTION BOARD

Agency Information Collection Activities; Proposed Collection

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*), this notice announces that the Merit Systems Protection Board (MSPB or the Board) has forwarded to the Office of Management and Budget (OMB) for approval the following proposed information collection: e-Appeal, a new electronic application for filing an appeal with the Board, and MSPB Form 185 (7/03), a revised MSPB paper Appeal Form.

On September 4, 2002, MSPB published in the **Federal Register** (67 FR 56600) a notice of its intent to submit this proposed information collection to OMB for approval. The notice advised the public that MSPB had revised and expanded its approved MSPB Appeal Form (Optional Form 283, OMB Control Number 3124–0009) to create a new MSPB Appeal Forms Package. The expanded package of forms included additional questions necessitated by the enactment of new laws and changes in the Board's regulations since the MSPB Appeal Form was last revised in 1994. The notice further advised the public that MSPB planned to develop a new electronic application for filing an appeal with the Board, based on the MSPB Appeal Forms Package. Public comments suggested that, in paper form, the expanded MSPB Appeal Forms Package was too long and too complicated, particularly for *pro se* appellants. The comments also noted that the majority of appellants would not need many of the forms in the package. Accordingly, MSPB revised its approach to this information collection.

As now proposed, this information collection will consist of two MSPB-provided options for filing an appeal with the Board. The first option, e-Appeal, is an electronic application based on the comprehensive MSPB Appeal Forms Package. It will permit an appellant to file any type of appeal over which the Board has jurisdiction and to raise any additional claims that the Board may consider in the particular type of appeal being filed. An appellant will access the e-Appeal application via the MSPB Web site and will be guided through the process in an interview format. The questions presented to each appellant will be those applicable to the particular type of appeal being filed.

The second option is a simplified paper MSPB Appeal Form (MSPB Form 185). This form will include only questions applicable to the majority of appeals filed with the Board, *i.e.*, appeals of an agency personnel action or a decision affecting the appellant's retirement rights or benefits. Other claims, such as claims that the appealed action or decision was the result of prohibited discrimination or that the agency committed harmful procedural error in taking it, can be raised with the appeal if the appellant provides the required information to support each claim as an attachment. (Alternatively, such claims can be raised later in the process.) The form can also be used to file an Individual Right of Action (IRA) appeal under the Whistleblower Protection Act, a Uniformed Services Employment and Reemployment Rights Act (USERRA) appeal, or a Veterans Employment Opportunities Act (VEOA) appeal if the appellant provides the additional information required for those types of appeals as an attachment.

The MSPB Form 185 will replace the current OF–283 and will be the form that an agency provides when it takes an action or makes a decision that is appealable to the Board. The majority of appellants will be able to file their appeals using the simplified MSPB Form 185 without having to provide additional information as an attachment. Use of the form is not mandatory. An appellant who chooses to file on paper may do so in any written format, including letter form, as long as the appeal provides the information required by the Board's regulations and otherwise complies with those regulations.

The two MSPB-provided options for filing an appeal with the Board are available for review on the MSPB Web site at *http://www.mspb.gov/e-appeal.html.*

In this regard, we are soliciting comments on the public reporting burden. The reporting burden for this collection of information is estimated to vary from 20 minutes to 4 hours per response, with an average of 60 minutes, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

ESTIMATED ANNUAL REPORTING BURDEN

5 CFR section	Annual number of respondents	Frequency per response	Total annual responses	Hours per response (average)	Total hours
1201, 1208 and 1209	6,300	1	6,300	1	6,300

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the address shown below. Please refer to

OMB Control No. 3124–0009 in any correspondence.

DATES: Comments must be received on or before September 2, 2003.

ADDRESSES: Comments concerning the paperwork burden should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for MSPB, 725 17th Street NW., Washington, DC 20503, with a copy to Mr. Arlin Winefordner, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419 (or by e-mail to *Arlin.Winefordner@mspb.gov*).

Dated: July 25, 2003.

Matthew Shannon,

Counsel to the Clerk of the Board.

[FR Doc. 03–19434 Filed 7–30–03; 8:45 am]

BILLING CODE 7400–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 03–093]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Mr. Harry Lupuloff, Code GP, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Application for a Patent License.

OMB Number: 2700–0039.

Type of review: Extension of a currently approved collection.

Need and Uses: An application for a license under a patent or a patent application owned by NASA is required by 35 U.S.C. 209 and 37 CFR part 404. The information supplied by an applicant for a patent license is used NASA to make agency determinations that NASA should either grant or deny a request for a patent license, and whether the license should be exclusive, partially exclusive, or nonexclusive.

Affected Public: Business or other for-profit; Individuals or households.

Number of Respondents: 85.

Responses Per Respondent: 1.

Annual Responses: 85.

Hours Per Request: 8.

Annual Burden Hours: 680.

Frequency of Report: Once.

Patricia L. Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03–19531 Filed 7–30–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 03–092]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Mr. Harry Lupuloff, Code GP, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Patent License Report.

OMB Number: 2700–0010.

Type of review: Extension of a currently approved collection.

Need and Uses: All federal agencies are authorized under 35 U.S.C. 209 and 37 CFR 404.5 to require patent licensees to periodically submit reports which describe the steps taken to achieve and maintain practical application of the licensed inventions. The information is used by NASA attorneys and technology transfer specialists to determine if a licensee is achieving and maintaining practical application of the licensed inventions as required by its license agreement.

Affected Public: Business or other for-profit; Individuals or households.

Number of Respondents: 90.

Responses Per Respondent: 1.

Annual Responses: 90.

Hours Per Request: ½ hour.

Annual Burden Hours: 45.

Frequency of Report: Annually.

Patricia L. Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03–19532 Filed 7–30–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 03–091]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted on or before September 29, 2003.

ADDRESSES: All comments should be addressed to Ms. Celeste Dalton, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Uncompensated Overtime.

OMB Number: 2700–0080.

Type of review: Extension of a currently approved collection.

Need and Uses: Information collected is required to evaluate the use of "uncompensated overtime" in bids and proposals submitted to NASA for the award of contracts for technical and professional services in support of NASA's mission and in response to contractual requirements. The requirement is based on Section 834 of PL 101–510 (10 U.S.C. 2331) and FAR 37.115.

Affected Public: Business or other for-profit.

Number of Respondents: 300.

Responses Per Respondent: 1.

Annual Responses: 300.

Hours Per Request: 3.25.

Annual Burden Hours: 975.

Frequency of Report: On occasion.

Patricia L. Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03–19533 Filed 7–30–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 03–090]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted on or before September 29, 2003.

ADDRESSES: All comments should be addressed to Ms. Celeste Dalton, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Mentor-Protege Program-Small Business and Small Disadvantaged Business Concerns.

OMB Number: 2700–0078.

Type of review: Extension of a currently approved collection.

Need and Uses: Information is required by NASA to monitor the performance and progress of both the mentor and the protege firms in this developmental assistance program, as delineated in the Mentor-Protege Agreement. Semi-annual reports will serve as an internal control measure to achieve Agency objectives and by serving as a check and balance against undesired action or consequences. This requirement is codified at 48 CFR subpart 1819.72.

Affected Public: Business or other for-profit.

Number of Respondents: 26.

Responses Per Respondent: 2.

Annual Responses: 52.

Hours Per Request: 1.5.

Annual Burden Hours: 78.

Frequency of Report: Semi-annually.

Patricia L. Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03–19534 Filed 7–30–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 03–089]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted on or before September 29, 2003.

ADDRESSES: All comments should be addressed to Ms. Celeste Dalton, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Patents—Grants and Cooperative Agreements.

OMB Number: 2700–0048.

Type of Review: Extension of a currently approved collection.

Need and Uses: The information collected is required to ensure the proper disposition of rights to inventions made in the course of NASA-funded research. The requirement is codified in 14 CFR 1260.28.

Affected Public: Not-for-profit institutions; business or other for-profit; State, local, or tribal government.

Number of Respondents: 9082.

Responses Per Respondent: 1.

Annual Responses: 9082.

Hours Per Request: 20–60 minutes each.

Annual Burden Hours: 16,150.

Frequency of Report: Annually.

Patricia L. Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03–19535 Filed 7–30–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 03–088]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Schaffer Test Products, Inc. has applied for a partially exclusive patent license to practice the invention described and claimed in KSC–12220 entitled "Current Signature Sensor," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Randall M. Heald, Assistant Chief Counsel/Patent Counsel, and John F. Kennedy Space Center.

DATES: Responses to this notice must be received within August 15, 2003.

FOR FURTHER INFORMATION CONTACT: Randall M. Heald, Assistant Chief Counsel/Patent Counsel, John F. Kennedy Space Center, Mail Code: CC–A, Kennedy Space Center, FL 32899, telephone (321) 867–7214.

Dated: July 25, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–19536 Filed 7–30–03; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* Policy Statement on Cooperation with States at Commercial Nuclear Power Plants and Other Production or Utilization Facilities.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* On occasion—when a State wishes to observe NRC inspections or perform inspections for NRC.

5. *Who will be required or asked to report:* Those States interested in observing or performing inspections.

6. *An estimate of the number of annual responses:* Maximum of 50, although not all States have participated in the program.

7. *The estimated number of annual respondents:* Maximum of 50, although not all States have participated in the program.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* An average estimate of 10 hours per State or 500 hours if all States participated in the program.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* N/A.

10. *Abstract:* States wishing to enter into an agreement with NRC to observe or participate in NRC inspections at nuclear power facilities are requested to provide certain information to the NRC to ensure close cooperation and consistency with the NRC inspection program, as specified by the Commission's Policy on Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC Worldwide Web Site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by September 2, 2003. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Bryon Allen, Office of Information and Regulatory Affairs (3150–0163), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 24th day of July, 2003.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–19488 Filed 7–30–03; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comments Requested

AGENCY: Office of Management and Budget (OMB).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The Office of Federal Financial Management, Office of Management and Budget (OMB) has recently submitted to OMB for review the following proposal for collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

DATES: Interested persons are invited to submit comments on or before September 2, 2003.

FOR FURTHER INFORMATION CONTACT: Written comments should be submitted to the Office of Information and Management Affairs, Attention: Lauren Wittenberg via fax at (202) 395–6974 or by e-mail at: *Lauren_Wittenberg@omb.eop.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

In a **Federal Register** notice published April 8, 2003 [68 FR 17090], OMB proposed using as the standard set of data elements and definitions for applications as the existing Standard Form 424 (SF–424), Application for Federal Assistance, data elements and definitions and five additional data elements. After consultation with the public, OMB is adding four of the five proposed data elements to the SF–424 and intends to establish this data set as the standard for grant applications. The use of the standard data elements will be implemented through the electronic grants application process of Grants.gov for E–APPLY, which is scheduled for October 2003 deployment and is part of the implementation of the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107).

Based upon the 22 comments received, OMB has determined there is a need for further evaluation of the comments regarding several matters including the proposed assurance language, "Type of Applicant" information, and the budget section of the SF–424. Therefore, OMB is requesting the SF–424A, SF–424B, SF–424C and SF–424D be extended while these comments are being considered and addressed. OMB is requesting a revision to the SF–424 to add four data elements (DUNS number; e-mail address; facsimile number; and Applicant Type, Not-for-Profit). In addition, OMB recognizes that a transition period is needed to provide agencies time to adapt their applications to the revised SF–424 form and phase out the use of the old forms; OMB is seeking a transition period. Upon completion of the analysis of the comments and recommendations from the grants community, the SF–424 suite of forms will be revised accordingly. OMB will publish a new 60-day notice to solicit comments on the revised SF–424 suite of forms.

B. Comments and Responses

OMB received 22 comments on the proposed standard set of data elements and the proposed assurance statement. Comments were received from 11 Federal agencies, four non-profit organizations, two state governments, four universities and university-related organizations, and one individual. Overall the comments supported the establishment of application data standards and indicated there is still a need for more evaluation and consideration of the comments to ensure a well-defined SF–424 is available for use.

A number of comments received suggest further analysis is needed for clarification or the addition of more contact points to the forms. In addition, comments submitted by Federal agencies identified the need for additional "Type of Applicant" data and also suggested alignment to other Federal sources, *e.g.*, Catalog of Federal Domestic Assistance (CFDA) and the Financial Assistance Award Data System (FAADS). OMB will evaluate these comments and conduct an analysis on "Type of Applicant" information. The analysis must be done in context with the process of applying for Federal assistance to ensure definitions and applicant data are consistent. The comments will be reviewed, addressed and submitted for public comment.

Some Federal comments focused on changing the budget format of the SF–424 based upon Federal program needs. Comments from the public sector recommended more consistency between financial accounting terms and development of budget for grant applications. The comments are significant enough that a separate evaluation needs to be done to determine if the budget categories and forms need to be adjusted to meet the needs of the grants community. The review shall determine what action or change, if any, may be made to the SF–424A and SF–424C. Any change would be reflected in a proposed notice requesting public comment.

The proposed consolidated assurance language included on the SF–424, as proposed in the April 8, 2003 **Federal Register** notice, raised several significant comments. These comments are being evaluated separately and will be addressed in a separate notice for public comment. The assurance language is currently found on the SF–424B and SF–424D and can be considered separately and will have no impact upon the implementation of the SF–424 for the October E–APPLY deployment. OMB is beginning the process of review of the assurance language at this time and will submit the proposed resolution for public comment.

Action to further evaluate the comments is being undertaken by OMB. It is the intention of OMB to continue to work with the public and Federal agencies to address the comments and to ensure the Federal government is developing standard data application packages that are simplified and streamlined in a manner intended by Pub. L. 106–107.

Sheila O. Conley,

Acting Deputy Controller.

[FR Doc. 03–19510 Filed 7–30–03; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF MANAGEMENT AND BUDGET

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comments Requested

AGENCY: Office of Management and Budget (OMB).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The Office of Federal Financial Management, Office of Management and Budget (OMB) has recently submitted to OMB for review the following proposal for collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

DATES: Interested persons are invited to submit comments on or before September 2, 2003.

FOR FURTHER INFORMATION CONTACT: Written comments should be submitted to the Office of Information and Management Affairs, Attention: Lauren Wittenberg via fax at (202) 395–6974 or by email at *Lauren_Wittenberg@omb.eop.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

In a **Federal Register** notice published April 8, 2003 [68 FR 17091–17105], OMB proposed consolidating several existing financial reporting forms (the SF–269, 269A, 272 and 272A) into a single financial report to be used by the Federal agencies and grant recipients. The purpose of the consolidated Federal Financial Report (FFR) is to provide grant recipients with a standard format and consistent requirements across agencies in reporting financial information for grants and cooperative agreements. The Federal grant-making agencies, after public consultation with the grantee community, jointly developed this form as part of the implementation of the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107).

Based on the nearly 200 comments received, OMB has determined there is a need for further evaluation of the issues involved in implementing the new form. Therefore, OMB has requested that the SF–269, 269A, 272 and 272A be extended while these comments are being considered and addressed. We also recognize that a transition period will be necessary to provide agencies and grantees with time to adapt their processes to the new form and phase out the use of old ones. When the FFR is complete, the SF–269, 269A, 272 and 272A will continue to be accepted for a period of time after the FFR has been approved. OMB will publish a new 60-day notice to solicit comments on the updated FFR and instructions when it is closer to being finalized.

B. Comments and Responses

During the public comment period 198 comments were received. Federal agencies submitted 70 comments. State, local, tribal and nonprofit organizations submitted 115 comments, and universities provided 13 comments. Responses to general concerns expressed in the comments are provided.

Comments received from a number of Federal agencies require further analysis. In many instances, Federal agencies were concerned with the process of automating the form. More analysis needs to be done to understand what changes are needed to Federal payment systems so that they can accept the new form electronically. Sufficient time is needed to ensure the FFR is fully automated before the existing forms are phased out.

Many comments indicated there is a need for further evaluation of the information required and the proposed instructions. Further consideration of these comments is needed to ensure that the form is streamlined and the instructions are simplified in the manner intended by Pub. L. 106–107. OMB will continue to work with the Federal agencies in addressing these concerns.

Sheila O. Conley,

Deputy Controller.

[FR Doc. 03–19511 Filed 7–30–03; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: RI 25–41

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 25–41, Initial Certification of Full-Time School Attendance, is used to determine whether a child is unmarried and a full-time student in a recognized school. OPM must determine this in order to pay survivor annuity benefits to children who are age 18 or older.

Approximately 1,200 RI 25–41 forms are completed annually. It takes approximately 90 minutes to complete the form. The annual burden is 1,800 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251, or via e-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received by September 2, 2003.

ADDRESSES: Send or deliver comments to—

Ronald W. Melton, Chief, Operations Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540;

and

Allison Eydt, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

For Information Regarding Administrative Coordination— Contact: Cyrus S. Benson, Team Leader, Publications Team, Center for Retirement and Insurance Services, RIS Support Services/Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–19469 Filed 7–30–03; 8:45 am]

BILLING CODE 6325–50–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Form F–2 OMB Control No. 3235–0257 SEC File No. 270–250

Form 18–K OMB Control No. 3235–0120 SEC File No. 270–108

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget request for extensions of the previously approved collections of information discussed below.

Form F–2 is a registration statement used by foreign issuers to register securities pursuant to the Securities Act of 1933. The information collected is intended to ensure the adequacy of information available to investors in the registration of securities and assures public availability. The information provided is mandatory. Form F–2 is a public document. Form F–2 takes approximately 559 hours per response and is filed by approximately 5 respondents for a total burden of 2,795 hours. It is estimated that 25% of the total burden hours (699 reporting burden hours) is prepared by the company. Also, persons who respond to the collection of information contained in Form F–2 are not required to respond unless the form displays a currently valid control number.

Form 18–K is an annual report form used by foreign governments and political subdivisions with securities listed on a United States exchange. The information to be collected is intended to ensure the adequacy of information available to investors in the registration of securities and assures public availability. The information provided is mandatory. Form 18–K is a public document. Approximately 40 respondents filed Form 18–K at an estimated 8 hours per response for a total annual reporting burden of 320 hours. Also, persons who respond to the collection of information contained in Form 18–K are not required to respond unless the form displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 25, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–19493 Filed 7–30–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26110]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

July 25, 2003.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of July 2003. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 19, 2003, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549–0506.

Nuveen Municipal Money Market Fund, Inc. [File No. 811–3531], Nuveen Taxable Funds, Inc. [File No. 811–3770], Nuveen Money Market Trust [File No. 811–9267]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. By August 24, 2001, each applicant had made a liquidating distribution to its shareholders, based on net asset value. Expenses of approximately $10,686 and $42,744 were incurred by Nuveen Municipal Money Market Fund, Inc. and Nuveen Money Market Trust, respectively, in connection with the liquidations and were paid by Nuveen Investments, principal underwriter to each applicant. Nuveen Taxable Funds, Inc. incurred no expenses in connection with its liquidation.

Filing Dates: The applications were filed on April 25, 2003, and amended on July 7, 2003.

Applicants' Address: 333 West Wacker Dr., Chicago, IL 60606.

The Wachovia Funds [File No. 811–6504]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 7, 2002, and June 14, 2002, fifteen of applicant's eighteen series transferred their assets to corresponding series of Evergreen Equity Trust, Evergreen Select Equity Trust, Evergreen International Trust, Evergreen Select Fixed Income Trust, and Evergreen Select Money Market Trust, based on net asset value. Between June 14, 2002, and June 16, 2002, applicant's remaining three series made a liquidating distribution to their shareholders, based on net asset value. Expenses of $275,785 incurred in connection with the reorganization and liquidation of applicant were paid by Evergreen Investment Management Company, LLC, applicant's investment adviser.

Filing Dates: The application was filed on November 20, 2002, and amended on July 7, 2003.

Applicant's Address: Federated Investors Tower, 1001 Liberty Ave., Pittsburgh, PA 15222–3779.

The Wachovia Municipal Funds [File No. 811–6201]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 7, 2002, applicant transferred its assets to corresponding series of Evergreen Municipal Trust, based on net asset value. Expenses of $275,785 incurred in connection with the reorganization and liquidation of applicant were paid by Evergreen Investment Management Company, LLC, applicant's investment adviser.

Filing Dates: The application was filed on November 20, 2002, and amended on July 7, 2003.

Applicant's Address: Federated Investors Tower, 1001 Liberty Ave., Pittsburgh, PA 15222–3779.

Seligman Tax-Aware Fund, Inc. [File No. 811–10297]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 24, 2003, applicant transferred its assets to Seligman Growth Fund, Inc., based on net asset value. Expenses of $98,500 incurred in connection with the reorganization were paid by J. & W. Seligman & Co. Incorporated, applicant's investment adviser.

Filing Date: The application was filed on July 16, 2003.

Applicant's Address: 100 Park Ave., New York, NY 10017.

The Simms Funds [File No. 811–8871]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 28, 2003, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $24,956 incurred in connection with the liquidation were paid by Simms Capital Management, Inc., applicant's investment adviser.

Filing Date: The application was filed on July 9, 2003.

Applicant's Address: 55 Railroad Ave., Greenwich, CT 06830.

Integrity Small-Cap Fund of Funds, Inc. [File No. 811–9023]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 25, 2003, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on July 21, 2003.

Applicant's Address: 1 Main St. N., Minot, ND 58703.

Market Street Fund [File No. 811–4350]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 28, 2003, pursuant to an agreement approved by the applicant's shareholders, applicant distributed all of its assets to its shareholders based on net asset value. Expenses of approximately $288,308 were incurred in connection with the merger and were paid by Gartmore Mutual Fund Capital Trust, the investment adviser of the applicant.

Filing Date: The application was filed on May 20, 2003.

Applicant's Address: 1000 Chesterbrook Boulevard, Berwyn, Pennsylvania 19312–1181.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–19472 Filed 7–30–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of August 4, 2003:

Closed Meetings will be held on Tuesday, August 5, 2003 at 2 p.m. and Thursday, August 7, 2003 at 11 a.m., and Open Meetings will be held on Wednesday, August 6, 2003 at 10 a.m. and Thursday August 7, 2003 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (6), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

The subject matter of the Closed Meeting scheduled for Tuesday, August 5, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions;

Formal Orders; and

Adjudicatory matter.

The subject matter of the Open Meeting scheduled for Wednesday, August 6, 2003 will be:

The Commission will consider whether to propose amendments to Item 7 of Schedule 14A under the Exchange Act of 1934. The amendments would require expanded disclosure related to the operation of board nominating committees and new disclosure concerning security holder communications with board members.

For further information, please contact Lillian Cummins, Division of Corporation Finance, at (202) 942–2900.

The subject matter of the Open Meeting scheduled for Thursday, August 7, 2003 will be:

The Commission will hear oral argument on an appeal by Carroll A. Wallace, C.P.A. from the decision of an administrative law judge. During the period covered by this Commission proceeding, Wallace was a partner in the Denver, Colorado office of the accounting firm of KMPG LLC.

Wallace has appealed the law judge's findings that Wallace recklessly engaged in improper professional conduct in violation of the Commission's Rule of Practice 102(e), 17 U.S.C. 201.102(e), with respect to KMPG's audits of The Rockies Fund, an investment company, for the years 1994 and 1995.

Among the issues likely to be argued are:

1. Whether respondent recklessly engaged in improper professional conduct; and
2. If respondent did recklessly engage in improper professional conduct, whether sanctions should be imposed in the public interest.

The subject matter of the Closed Meeting scheduled for Thursday, August 7, 2003 will be: Post-argument discussion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been

added, deleted, or postponed, please contact the Office of the Secretary at (202) 942–7070.

Dated: July 29, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–19614 Filed 7–29–03; 11:41 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48223; File No. SR–CBOE–2003–26]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated Relating to Its Fiscal Year 2004 Fee Schedule

July 24, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 1, 2003, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The CBOE filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(2)[4] thereunder, in that the proposed rule change establishes or changes a due fee or other charge, which renders the proposal effective upon filing with the Commission. The CBOE filed via facsimile Amendment No. 1 on July 23, 2003.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make certain changes to its Fee Schedule for Fiscal Year 2004. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* July 23, 2003 letter from Chris Hill, Attorney, CBOE to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, CBOE removed one of the fee changes and made revisions to the Fee Schedule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to make certain fee reductions, additions and changes. The proposed amendments are the product of the Exchange's annual budget review. The fee changes were approved by the Exchange Board of Directors pursuant to CBOE Rule 2.22 and will take effect on July 1, 2003. The Exchange proposes to amend the following fees.

(i) Index Order Book Official Execution Fee Reduction and Simplification

The Exchange proposes to significantly reduce and simplify the Index Customer Order Book Official Execution Fees ("Index OBO fees"). The Exchange represents that these are the rates charged when a floor broker or market maker buys or sells index option contracts out of the order book. Currently, there is a sliding scale of index OBO fee rates that change based on both the size of the order and the amount of the per-contract premium. The new per-contract Index OBO fee rate will be flat rates (regardless of order size) of $.60 per book contract for book contracts with a premium greater than or equal to $2 and $.40 per contract for Book contracts with premiums less than $2.

As in prior years, OBO fees will continue to be waived for market orders sent to the book prior to the opening and executed during opening rotation. In the OEX option class, fees will continue to be waived for market and limit orders sent to the book prior to the opening and executed during opening rotation. Cabinet/accommodation/liquidation trades will continue to be charged $.10 per contract.

The Exchange estimates that the overall effect of the changes will be a reduction of approximately 33% in Index OBO fees.

(ii) Customer Large Trade Discounts

The Exchange proposes to establish a pilot program providing a customer large trade discount in the form of a cap on customer transaction fees, to be in effect for the period July through December 2003 for most CBOE index option products.[6] The Exchange determined the contract size at which the cap would be implemented after reviewing recent trading activity in each of the index products. Trade match and floor brokerage fees are not subject to the cap on fees.

Regular customer transaction fees will only be charged up to the following quantity of contracts per order, for the following underlying indexes:

1. Dow Jones indexes (including DIA)—charge only the first 7,500 contracts;
2. SPX—charge only the first 5,000 contracts;
3. OEX (including XEO and OEF), NDX and other indexes (not including MNX)—charge only the first 3,000 contracts.

(iii) Non-OCC Firm Booth Fees and Booth Rental Incentive Plan

The Exchange proposes to reduce monthly rental rates for most of the booths[7] that the Exchange leases to member organizations that are not members of the OCC ("non-OCC firms") by $250, to a new rate of $300 per month. OCC member firms will continue to be assessed at $165 per month.

In an effort to increase booth space rentals, the Exchange will also establish a booth rental incentive plan that will be in effect for the period July 2003 through June 2004. Pursuant to this plan, all Members and Member Firms, both OCC and non-OCC, will be permitted to lease additional perimeter and Green Room booth space at a reduced rate of $100 per month per additional booth. The discounted price is only applicable to booths leased in excess of the quantity that the Member or Firm had been leasing as of June 1, 2003. For new Members and Member Firms, the first four booths will be assessed at the normal rate effective as of July 1, 2003, and any additional booths in excess of the initial four will be assessed at the reduced lease rate during the incentive period. All booth fees discounted under the incentive plan will revert to regular rates on July 1, 2004.

[6] The MNX option class will not be included in this program since MNX customer fees were significantly reduced in June 2002 to a flat rate of $.15 per contract. *See* Securities Exchange Act Release No. 46045 (June 6, 2002), 67 FR 41284 (June 17, 2002) (noticing SR–CBOE–2002–28).

[7] Specifically, the reduced rates will apply to booths around the perimeter of the main 4th floor trading floor ("perimeter booths") and those in the "Green Room" (the second floor trading area.) Booth rates will not change for those booths designated as OEX, OEX book, or Dow Jones/MNX booths.

(iv) Continuation of Market Share Incentive Program (MIP)

The MIP pilot program was initiated March 1, 2003.[8] The Exchange proposes to extend the program for an additional six-month period from July through December 2003. As set forth in the initial filing, the program will continue to reduce transaction fees for Market Makers and DPMs in the top 300 equities and QQQs if certain monthly market share targets or increases in market share in these option classes are achieved.

(v) Discontinuation of Prospective Fee Reduction Program

The Exchange proposes to discontinue the Prospective Fee Reduction Program ("PFRP") for index option classes. The MIP Program previously replaced the PFRP for the equities and QQQ options classes, and the Exchange will similarly end the PFRP for index option classes in order to help fund various service enhancements for the index option classes.

(vi) Dow Jones Products Market Maker Transaction Fees

The Exchange proposes to increase market-maker transaction fees in Dow Jones option classes by $.10 per contract, to $.29 per contract, to partially recover the Exchange's costs to license Dow Jones products. This is consistent with similar fee surcharges that the Exchange has previously implemented to recover licensing costs for the MNX[9] and RUT[10] option classes.

(vii) RAES Access Fees for Non-Customer Orders

In March 2003, the Exchange implemented a pilot program temporarily suspending the $.30 per contract access fee for non-customer RAES orders in equity option classes through June 30, 2003.[11] The Exchange proposes to discontinue the pilot program, and reinstate the fee for equity option classes. The fee will also continue unchanged for non-equity option classes.

[8] *See* Securities Exchange Act Release No. 47508 (March 14, 2003), 68 FR 13972 (March 21, 2003) (noticing SR–CBOE–2003–06).

[9] *See* Securities Exchange Act Release No. 43226 (August 29, 2000), 65 FR 54332 (September 7, 2000) (noticing SR–CBOE–2000–33).

[10] *See* Securities Exchange Act Release Nos. 47169 (January 13, 2003), 68 FR 2596 (January 17, 2003) (noticing SR–CBOE–2002–73) and 47170 (January 13, 2003), 68 FR 2595 (January 17, 2003) (noticing SR–CBOE–2002–72).

(viii) Data Lines Installation, Relocation and Removal

The Exchange has not changed its fees for these services since Fiscal Year 1993. The Exchange proposes to increase fees in this area to fully recover labor costs associated with this service. The new fees will be as follows:

1. Installation for (i) Lines from local carrier to trading floor and (ii) lines between Communications Center and trading floor will increase from $263 to $350;
2. Installation between local carrier and Communications Center will increase from $158 to $200;
3. Relocation on the trading floor will increase from $315 to $425;
4. Removal of (i) Lines from local carrier to trading floor and (ii) lines between Communications Center and trading floor will increase from $158 to $200;
5. Removal of lines between local carrier and Communications Center—will increase from $79 to $100.

(ix) Russell 2000 DPM Supplemental Transaction Fee

Due to the fact that the DPM in the Russell 2000 has been paying a significant periodic fee to CBOE to recover the Exchange's additional costs to license the product,[12] the Exchange has determined that it no longer needs to also impose the $.16 per contract fee charged to the DPM for each Russell 2000 DPM contract.[13] The Exchange therefore proposes to eliminate the $.16 per contract fee.

(x) Floor Broker Workstation (FBW)

The Exchange proposes to charge a monthly fee of $425 to place a new FBW functionality on desktop terminals, equal to the rate currently assessed for ILX devices. If the application resides on a workstation that has the ILX, TNT (both proprietary terminal functionalities) and FBW functionalities, an additional $100 fee will be assessed. Mobile FBWs will not be assessed a fee at this time in order to encourage their greater usage.

[11] *See* Securities Exchange Act Release No. 47559 (March 21, 2003), 68 FR 15252 (March 28, 2003) (noticing SR–CBOE–2003–10).

[12] *See* Securities Exchange Act Release No. 47169 (January 13, 2003), 68 FR 2596 (January 17, 2003) (noticing SR–CBOE–2002–73).

[13] *See* Securities Exchange Act Release No. 47170 (January 13, 2003), 68 FR 2595 (January 17, 2003) (noticing SR–CBOE–2002–72).

(xi) Pass Through of Additional NASD Fingerprinting Fee

On August 2, 2002, the Exchange entered into a Memorandum of Understanding with the NASD, whereby the registration of associated persons of CBOE member organizations would be processed through Web CRD.[14] This process includes the fingerprinting of associated persons. The NASD has informed the Exchange that beginning on July 14, 2003, it intends to assess a new fee of $13 for the processing of fingerprint results submitted by members or member firms on behalf of their associated persons who have had their prints processed through a self-regulatory organization other than the NASD. The NASD will be applying this fee equally to all self-regulatory organizations, and will retain the fee proceeds.

The Exchange proposes to pass these costs through to the appropriate member firms. Specifically, CBOE member firms would be charged an additional $13 for each associated person that is fingerprinted directly through a self regulatory organization other than NASD (for instance, CBOE). CBOE notes that the NASD intends to raise its fee from $10 to $13 for CBOE members that are fingerprinted directly by the NASD.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)[15] of the Act, in general, and furthers the objectives of section 6(b)(4)[16] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[14] *See* Securities Exchange Act Release No. 46062 (June 11, 2002), 67 FR 41552 (June 18, 2002) (noticing SR–CBOE–2001–66).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act[17] and subparagraph (f)(2) of Rule 19b–4 thereunder.[18] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[19]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number SR–CBOE–2003–26 and should be submitted by August 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–19473 Filed 7–30–03; 8:45 am]

BILLING CODE 8010–01–P

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(2).

[19] For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on July 23, 2003, the date the CBOE filed Amendment No. 1.

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48227; File No. SR–NASD–2003–74]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Regarding the Regulation of Activities of Members Experiencing Financial and/or Operational Difficulties

July 25, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 16, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. On June 17, 2003, NASD submitted Amendment No. 1 to the proposed rule change.[3] On July 9, 2003, NASD submitted Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend NASD Rules 3130, 3131 and the Rule 9410 Series to expand NASD's authority to take expedited action against all member firms with capital deficiencies and to permit NASD to suspend a member that operates for any period of time with inadequate net capital. In addition, NASD proposes to delete subparagraph (g) of NASD Rule 9160 because the Department of Member Regulation staff does not participate as an adjudicator in a Rule 9410 decision.

The text of the proposed rule change is set forth below. Proposed new language is in *italics;* proposed deletions are in [brackets].[5]

* * * * *

3130. Regulation of Activities of Members Experiencing Financial and/or Operational Difficulties

(a) Application—For the purposes of this Rule, the term "member" shall be limited to any *NASD* member [of the Association who] *that* is not designated to another self-regulatory organization by the Commission for financial responsibility pursuant to Section 17 of the Act and SEC Rule 17d-1 thereunder. Further, the term shall not be applicable to any member [who] *that* is [subject to paragraphs (a)(2)(iv), (a)(2)(v) or (a)(2)(vi) of SEC Rule 15c3–1, or is otherwise exempt from the provisions of said rule or is] subject to Rule 3131.

(b) Each member subject to SEC Rule 15c3–1 shall comply with the net capital requirements prescribed therein and with the provisions of this Rule.

[(b)]*(c)* A member, when so directed by [the Association] *NASD,* shall not expand its business during any period in which:

(1) Any of the following conditions continue to exist, or have existed, for more than 15 consecutive business days:

(A) A firm's net capital is less than 150 percent of its net capital minimum requirement or such greater percentage thereof as may from time to time be prescribed by [the Association] *NASD;*

(B) If subject to the aggregate indebtedness requirement under SEC Rule 15c3–1, a firm's aggregate indebtedness is more than 1,000 per centum of its net capital;

(C) If, in lieu of paragraph [(b)]*(c)*(1)(B) above, the specified percentage of the aggregate debit items in the Formula for Determination of Reserve Requirements for Brokers and Dealers under SEC Rule 15c3–3 (the alternative net capital requirement) is applicable, a firm's net capital is less than 5 percent of the aggregate debit items thereunder; or

(D) The deduction of capital withdrawals including maturities of subordinated debt scheduled during the next six months would result in any one of the conditions described in subparagraph (A), (B) or (C).

(2) [The Association] *NASD* restricts the member for any other financial or operational reason.

[(c)]*(d)* A member, when so directed by [the Association] *NASD,* shall forthwith reduce its business:

(1) to a point [enabling its available capital to comply with the standards] *at which the member would not be subject to a prohibition against expansion of its business as* set forth in paragraph [(b)]*(c)*(1)(A), (B) or (C) of this Rule if any of the following conditions continue to exist, or have existed, for more than [fifteen (15)] *15* consecutive business days:

(A) A firm's net capital is less than 125 percent of its net capital minimum requirement or such greater percentage thereof as may from time to time be prescribed by [the Association] *NASD;*

(B) No Change.

(C) If, in lieu of paragraph [(c)]*(d)*(1)(B) above, the specified percentage of the aggregate debit items in the Formula for Determination of Reserve Requirements for Brokers and Dealers, under SEC Rule 15c3–3 (the alternative net capital requirement) is applicable, a firm's net capital is less than 4 percent of the aggregate debit items thereunder; or

(D) If the deduction of capital withdrawals including maturities of subordinated debt scheduled during the next six months would result in any one of the conditions described in paragraph [(c)]*(d)*(1)(A), (B) or (C) of this Rule.

(2) As required by [the Association] *NASD* when it restricts a member for any other financial or operational reason.

(e) A member shall suspend all business operations during any period of time when the member is not in compliance with applicable net capital requirements as set forth in SEC Rule 15c3–1. The Department of Member Regulation may issue a notice to such member directing it to suspend all business operations; however, the member's obligation to suspend all business operations arises from its obligations under SEC Rule 15c3–1 and is not dependent on any notice that may be issued by the Department of Member Regulation.

(f) Any notice directing a member to limit or suspend its business operations shall be issued by the Department of Member Regulation pursuant to Rule 9412.

* * * * *

3131. Regulation of Activities of Section 15C Members Experiencing Financial and/or Operational Difficulties

(a) Application—For the purposes of this Rule, the term "member" shall be limited to any member of [the Association] *NASD* registered with the Commission pursuant to Section 15C of the Act that is not designated to another self-regulatory organization by the Commission for financial responsibility pursuant to Section 17 of the Act and Rule 17d–1 thereunder. [Further, the term shall not be applicable to any member that is subject to Section 402.2(c) of the rules of the Treasury Department, or is otherwise exempt from the provisions of said rule].

(b) Each member subject to Section 402.2 of the rules of the Treasury Department shall comply with the capital requirements prescribed therein and with the provisions of this Rule.

[(b)]*(c)* A member, when so directed by [the Association] *NASD,* shall not expand its business during any period in which:

(1) Any of the following conditions continue to exist, or have existed, for more than [fifteen (15)] *15* consecutive business days:

(A) A firm's liquid capital is less than 150 percent of its net capital minimum requirement or such greater percentage thereof as may from time to time be prescribed by [the Association] *NASD;*

(B) No Change.

(C) If, in lieu of paragraph [(c)]*(d)*(1)(B) above, the specified percentage of the aggregate debit items in the Formula for Determination of Reserve Requirements for Brokers and Dealers, under SEC Rule 15c3–3 (the alternative net capital requirement) is applicable, a firm's net capital is less than 4 percent of the aggregate debit items thereunder; or

(D) If the deduction of capital withdrawals including maturities of subordinated debt scheduled during the next six months would result in any one of the conditions described in paragraph [(c)]*(d)*(1)(A), (B) or (C) of this Rule.

(2) As required by [the Association] *NASD* when it restricts a member for any other financial or operational reason.

(e) A member shall suspend all business operations during any period of time when the member is not in compliance with applicable net capital requirements as set forth in Section 402.2 of the rules of the Treasury Department. The Department of Member Regulation may issue a notice to such member directing it to suspend all business operations; however, the member's obligation to suspend all business operations arises from its obligations under Section 402.2 of the rules of the Treasury Department and is not dependent on any notice that may be issued by the Department of Member Regulation.

(f) Any notice directing a member to limit or suspend its business operations shall be issued by the Department of Member Regulation pursuant to Rule 9412.

* * * * *

9160. Recusal or Disqualification

No person shall participate as an Adjudicator in a matter governed by the Code as to which he or she has a conflict of interest or bias, or circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case the person shall recuse himself or herself, or shall be disqualified as follows:

(a) through (f) No change.

[(g) NASD Regulation Staff as Adjudicator]

[The President of NASD Regulation shall have authority to order the disqualification of a member of the staff of the Department of Member Regulation participating in a Rule 9410 Series decision.]

* * * * *

9400. [LIMITATION] PROCEDURES *FOR ACTIONS TAKEN* UNDER RULES 3130 AND 3131

* * * * *

Rule 9412. Notice [of Limitations]

The Department of Member Regulation may issue a notice directing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* letter from Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated June 17, 2003 ("Amendment No. 1"). In Amendment No. 1, NASD proposed the following changes: (i) to revise NASD Rules 3130(e) and 3131(e) to state that the Department of Member Regulation may issue a notice to members that are not in compliance with applicable net capital requirements set forth in SEC Rule 15c3–1 or Section 402.2 of the rules of the Treasury Department, as applicable, directing such member to suspend all business operations, but that the obligation to suspend all business operations arises from the SEC Rule 15c3–1 or Section 402.2 of the rules of the Treasury Department, as applicable, and not from the notice issued by the Department of Member Regulation; (ii) to add new Rules 3130(f) and 3131(f) to provide that any notice directing a member to limit or suspend its business operations will be issued by the Department of Member Regulation pursuant to Rule 9412; and (iii) to make certain non-substantive technical changes to correct the rule language and the markings indicating changes thereto.

[4] *See* letter from Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated July 8, 2003 ("Amendment No. 2"). In Amendment No. 2, NASD proposed the following changes: (i) to revise NASD Rule 9412 to delete a reference to the Department of Member Regulation; (ii) to change a reference in NASD Rule 9415(d); and (iii) to delete subparagraph (g) of NASD Rule 9160. The Commission notes that Amendment No. 2 contains a typographical error with regards to the reference to NASD Rule 9515(k)(2) in the letter. The reference should be to NASD Rule 9413(k)(2), as set forth in the proposed rule text. The Commission notes further that in Amendment No. 2, NASD incorrectly states that it is amending NASD Rule 9412. Amendment No. 2 makes no additional changes to NASD Rule 9412. Telephone conversation between Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, and Ann E. Leddy, Attorney, Division, Commission (July 21, 2003).

[5] The Commission has included proposed rule language set forth in the original filing that NASD inadvertently omitted from Amendment No. 2. Telephone conversation between Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, and Ann E. Leddy, Attorney, Division, Commission (July 17, 2003).

a member to [limit] *restrict* its business activities, *either by limiting or ceasing to conduct those activities*, if the Department of Member Regulation has reason to believe that [any] *a* condition specified in *Rule* 3130 or Rule 3131 exists. The notice shall specify the grounds on which such [action is being taken] *restrictions are being imposed*, the nature of the [limitations] *restrictions* to be imposed, the effective date of the *restrictions* [limitations], a fitting sanction that will be imposed if the member fails to comply with any [the] *restrictions* [limitations] set forth in the notice, and the conditions for terminating such [limitations] *restrictions*. The effective date of the [limitations] *restrictions* shall be at least seven days after the date of service of the notice. The notice also shall inform the member that it may request a hearing before the [Department of Member Regulation] *Office of Hearing Officers* under Rule 9413. The Department of Member Regulation shall serve the notice by facsimile or overnight courier.

9413. Hearing Panel Review

(a) Request for a Hearing

A member subject to a notice issued under Rule 9412 may file a written request for hearing before a Hearing Panel with the Office of Hearing Officers. The request shall state the specific grounds for withdrawing or modifying *any of* the [limitations] *restrictions* specified in the notice. The request shall be filed pursuant to Rules 9135, 9136, and 9137 within five days after service of the notice under Rule 9412. The member may withdraw its request at any time by filing a written notice with the Office of Hearing Officers pursuant to Rules 9135, 9136, and 9137. The time limits set forth herein are to be strictly construed and cannot be modified except for good cause shown.

(b) No Change

(c) Stay

Unless otherwise ordered by the NASD Board Executive Committee, the [initiation of a review under this paragraph shall stay the decision of the Department of Member Regulation or an uncontested notice until a decision constituting final action of the Association is issued] *request for a hearing shall stay the effective date of the notice.*

(d) through (h) No Change

(i) Evidence Not Admitted

Evidence that is proffered but not admitted during the hearing shall not be part of the record, but shall be retained by the custodian of the record until the date when [the Association's] *NASD's* decision becomes final or, if applicable, upon the conclusion of any review by the Commission or the federal courts.

(j) Failure to Request Hearing

If a member does not request a hearing under paragraph (a), the [limitations] *restrictions* specified in the notice shall become effective on the date specified in the notice. Unless the Executive Committee calls the notice for review under Rule 9415, the [limitations] *restrictions* specified in the notice shall remain in effect until the Department of Member Regulation reduces or removes the [limitations] *restrictions* pursuant to Rule 9417(b).

(k) Decision

(1) Within seven days after the hearing, the Hearing Panel shall issue a written decision approving, modifying, or withdrawing the [limitations] *restrictions* specified in the notice. If the decision imposes [limitations] *restrictions*, the decision shall state the grounds for the [limitations] *restrictions*, the conditions for terminating such [limitations] *restrictions*, and provide for a fitting sanction to be imposed under Rule 9416 if the member fails to comply with the [limitations] *restrictions*. The Office of Hearing Officers shall promptly serve the decision by facsimile or overnight courier pursuant to Rules 9132 and 9134. The [limitations] *restrictions* imposed shall become effective upon service of the decision.

(2) Contents of Decision

The decision shall include:

(A) a description of the Department of Member Regulation's [decision] *notice*, including its rationale;

(B) a description of the principal issues regarding the imposition of [limitations] *restrictions* raised in the review and a statement supporting the disposition of such issues;

(C) No Change

(D) a statement of whether the Department of Member Regulation's [decision] *notice* is affirmed, modified, or reversed, and a rationale therefor; and

(E) if any *restrictions* [limitations] are imposed:

(i) a description of the [limitations] *restrictions* and a statement describing a fitting sanction that will be imposed under Rule 9416 if the member fails to comply with any of the [limitations] *restrictions;* and

(ii) the conditions for terminating the [limitations] *restrictions.*

(l) Issuance of Decision After Expiration of Call for Review Period

The Hearing Panel shall provide its proposed written decision to the NASD Board Executive Committee. The NASD Board Executive Committee may call the proceeding for review pursuant to Rule 9415. If the NASD Board Executive Committee does not call the proceeding for review, the proposed written decision of the Hearing Panel shall constitute the final action of [the Association] *NASD.*

(m) Ex Parte Communications

The prohibitions against ex parte communications in Rule 9143 shall become effective under the Rule 9410 Series when [Association] *NASD* staff has knowledge the NASD Board Executive Committee intends to review a decision on its own motion under this Rule.

9414. No change

9415. Discretionary Review by the NASD Board Executive Committee

(a) through (c) No Change

(d) Decision of NASD Board Executive Committee, Including Remand

After review, the NASD Board Executive Committee may affirm, modify, or reverse the proposed written decision of the Hearing Panel. Alternatively, the NASD Board Executive Committee may remand the proceeding with instructions. The NASD Board Executive Committee shall prepare a written decision that includes all of the elements described in Rule [9414(k)(2)] *9413(k)(2).*

(e) Issuance of Decision

The NASD Board Executive Committee shall issue and serve its written decision on the member and the Department of Member Regulation pursuant to Rules 9132 and 9134. The decision shall be effective upon service. The decision shall constitute the final action of [the Association] *NASD,* unless the NASD Board Executive Committee remands the proceeding.

9416. Enforcement of Sanctions

(a) Order

If the Department of Member Regulation determines that a member has failed to comply with any [limitations] *restrictions* imposed by a decision or an effective notice under the Rule 9410 Series that has not been stayed, the Department of Member Regulation shall issue an order imposing the sanctions set forth in the decision or notice and specifying the effective date and time of such sanctions. The Department of Member Regulation shall serve the order on the member by facsimile or overnight courier.

(b) through (c) No Change

(d) Decision

Within four days after the hearing, the Hearing Panel shall affirm, modify, or reverse the order issued under paragraph (a). The Office of Hearing Officers shall serve the decision on the member pursuant to Rules 9132 and 9134. The decision shall become effective upon service and shall constitute final action of [the Association] *NASD.*

9417. Additional [Limitations] *Restrictions*; Reduction or Removal of [Limitations] *Restrictions*

(a) Additional [Limitations] *Restrictions*

If a member continues to experience financial or operational difficulty specified in Rule 3130 or 3131, notwithstanding an effective notice or decision under the Rule 9410 Series, the Department of Member Regulation may impose additional [limitations] *restrictions* by issuing a notice under Rule 9412. The notice shall state that the member may apply for relief from the additional [limitations] *restrictions* by filing a written application for a hearing under Rule 9413 and that the procedures in Rules 9413 through 9416 shall be applicable. An application for a hearing also shall include a detailed statement of the member's objections to the additional [limitations] *restrictions.*

(b) Reduction or Removal of [Limitations] *Restrictions*

If the Department of Member Regulation determines that any [limitations] *restrictions* previously imposed under the Rule 9410 Series should be reduced or removed, the Department of Member Regulation shall serve a written notice on the member pursuant to Rules 9132 and 9134.

9418. Application to Commission for Review

The right to have any action taken by [the Association] *NASD* pursuant to this Rule Series reviewed by the Commission is governed by Section 19 of the Act. The filing of an application for review shall not stay the effectiveness of the action taken by [the Association] *NASD,* unless the Commission otherwise orders.

9419. Other Action Not Foreclosed

Action by [the Association] *NASD* under the Rule 9410 Series shall not foreclose action by [the Association] *NASD* under any other Rule.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

Currently, NASD can take expedited action against a member when its Department of Member Regulation has reason to believe that the member maintains inadequate capital levels given the scope and nature of the firm's business. However, NASD is currently limited to taking action with respect to only those firms that must maintain a minimum net capital of greater than $50,000 and can only issue notices (and institute an expedited proceeding when these notices are contested) requiring that such firms either limit their business or not expand their business in order to maintain appropriate net capital levels. Further, NASD's current rules do not address the capacity of NASD to suspend a firm from business on an expedited basis when it fails to maintain minimum net capital.[6]

NASD believes that enhanced tools are required to enable it to better address any situation where a member is not satisfying applicable capital requirements. Accordingly, NASD proposes amendments to Rules 3130, 3131 and the Rule 9410 Series as described below. These amendments would (i) expand NASD's authority to take expedited action against all member firms with capital deficiencies, (ii) permit NASD to suspend a member that operates for any period of time with inadequate net capital, and (iii) make non-substantive clarifications to the language of the rules. In addition, NASD proposes to delete subparagraph (g) of NASD Rule 9160 because the Department of Member Regulation staff does not participate as an adjudicator in a Rule 9410 decision.

Current NASD Rules Regarding Members Experiencing Financial Difficulties

NASD Rules 3130 and 3131 regulate the activities of members that are (1) required to maintain net capital in excess of $50,000; and (2) experiencing certain financial and/or operational deficiencies.[7] These rules provide that NASD may prescribe certain remedial courses of action for members experiencing financial or operational deficiencies, such as requiring them to limit their activities. NASD's Rule 9410 Series provides a procedural framework for actions taken under these provisions. Pursuant to the Rule 9410 Series, a member experiencing financial and operational difficulties as described in Rules 3130 and 3131 receives a notice of limitations describing the grounds for the notice, the effective date of the limitations described in the notice, and a fitting sanction that will be imposed if the member fails to comply with the limitations set forth in the notice. The member then has five days from the date of service of the notice to request a hearing. If a hearing is not requested, the limitations prescribed in the notice become effective at least seven days after the date of service of the notice. Following the hearing, if one is requested, any remedial action ordered by the Hearing Panel becomes effective. If a member does not comply with the limitations described in any effective notice or remedial action imposed by the Hearing Panel, NASD staff may order the sanction set forth in the notice or specified in the Hearing Panel decision against the member. The member has the opportunity to request a second hearing if such sanctions are ordered.

[6] NASD Rule 9512 ("Summary Proceedings") is available to address severe financial or operational difficulties. However, because this procedure allows NASD to suspend a member before a hearing is held, and requires authorization from the Board of Governors, NASD represents that it is reserved for the most serious of circumstances and generally would be inappropriate to address most instances of net capital deficiencies.

[7] Rule 15c3–1 under the Act requires that firms maintain certain specified levels of net capital. 17 CFR 240.15c3–1. Section 402.2 of the Treasury Department rules contains liquid capital requirements for government securities broker/dealers. 17 CFR 402.2. NASD represents that it does not set net capital requirements, but enforces these provisions as part of its regulatory function. However, NASD Rules 3130 and 3131 effectively allow NASD to require net capital and liquid capital requirements in excess of those respective capital requirements stated above.

Application of Rules to All Member Firms

NASD Rules 3130 and 3131 generally provide that NASD may direct a member not to expand its business or to reduce its business if certain conditions are present for a period of 15 consecutive business days or more. NASD Rule 3130 exempts member firms with net capital requirements of $50,000 or less; NASD Rule 3131 exempts government securities member firms with liquid capital requirements of $50,000 or less.

NASD believes that these provisions should apply to all member firms regardless of their minimum capital requirements. NASD believes that, because capital compliance is fundamental to operating a broker-dealer, every firm that operates with inadequate capital poses a risk to other members and the investing public, and NASD believes that it should be able to take prompt action against any member that operates with inadequate capital. Accordingly, NASD proposes amendments to expand the scope of Rules 3130 and 3131 to include members with capital requirements of $50,000 or less.

Suspension of Members for Net Capital Violations

As described above, NASD Rules 3130 and 3131 allow NASD to require a member to take certain remedial actions if it is experiencing certain financial and/or operational deficiencies. The remedial actions could impose limitations on a member's business operations such that the member complies with net capital requirements applicable to the member's reduced business operations. However, in certain instances, NASD notes that a member may be operating with capital that is so inadequate that no limitation on its business activities could be imposed that would bring the firm into capital compliance. Alternatively, a member firm that is not in compliance with capital requirements may have such minimal operations that NASD could impose no meaningful limitation on the member's operations. As a result, NASD is proposing to expand the remedies available to it to address capital violations. Specifically, NASD proposes amendments that would require a member to suspend its business operations for any period of time during which it is not in compliance with applicable net capital requirements.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Specifically, NASD believes that the proposed rule change is intended to ensure that investors, the securities industry and the general public are not put at risk by members operating securities businesses without appropriate levels of capital.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NASD. All submissions should refer to File No. SR-NASD–2003–74 and should be submitted by August 21, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–19494 Filed 7–30–03; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78*o*-3(b)(6).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before September 29, 2003.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Sandra Johnston, Program Analyst, Office of Financial Assistance, Small Business Administration, 409 3rd Street SW., Suite 8300, Washington, DC 20416

FOR FURTHER INFORMATION CONTACT: Sandra Johnston, Program Analyst, 202–205–7528 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION:

Title: "Statement of Personal History".

Form No: 1081.

Description of Respondents: Certified Development Companies.

Annual Responses: 300.

Annual Burden: 75.

Title: "Reports to SBA; Provisions of 13 CFR 120 472".

Form No: N/A.

Description of Respondents: Small Business Lending Companies.

Annual Responses: 14.

Annual Burden: 1,120.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 03–19464 Filed 7–30–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P011]

State of Nebraska

As a result of the President's major disaster declaration for Public Assistance on July 21, 2003, the U.S. Small Business Administration is activating its disaster loan program only for private non-profit organizations that provide essential services of a governmental nature. I find that Cedar, Douglas, Greeley, Howard, Jefferson, McPherson, Perkins, Platte, Stanton, and Thayer Counties in the State of Nebraska constitute a disaster area due to damages caused by severe storms and tornadoes occurring from June 9, 2003 and continuing through July 14, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 19, 2003, at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

The interest rates are:

For physical damage:	Percent
Non-profit Organizations Without Credit Available Elsewhere	2.953
Non-profit Organizations With Credit Available Elsewhere	5.500

The number assigned to this disaster for physical damage is P01111.

(Catalog of Federal Domestic Assistance Program Nos. 59008).

Dated: July 24, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–19465 Filed 7–30–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3531, Amdt. 1]

State of Texas

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective July 23, 2003, the above numbered declaration is hereby amended to include Bee, Brazoria, Galveston and Goliad counties as disaster areas due to damages caused by Hurricane Claudette occurring on July 15, 2003, and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Chambers, Fort Bend, Harris, Karnes, and Live Oak in the State of Texas may be filed until the specified date at the previously designated location. Colorado County has also been determined to be contiguous to a previously declared county and applications for economic injury loans from small businesses may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is September 16, 2003, and for economic injury the deadline is April 19, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: July 24, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–19466 Filed 7–30–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et. seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on April 17, 2003, on page 19066.

DATES: Comments must be submitted on or before September 2, 2003. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION: Federal Aviation Administration (FAA)

Title: Financial Responsibility for Licensed Launch Activities.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0661.

Forms(s): NA.

Affected Public: A total of 40 public agencies controlling medium or large hub airports.

Abstract: This information is needed to meet the requirements of Title 49, Section 40117(k), Competition Plans, and to carry out a passenger facility charge application. No Passenger Facility Charge (PFC) may be approved for a covered airport and no Airport Improvement Program (AIP) grant may be made for a covered airport unless the airport has submitted a written competition plan in accordance with the statute. The affected public includes public agencies controlling medium or large hub airports.

Estimated Annual Burden Hours: An estimated 3,240 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collection; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: Issued in Washington, DC, on July 24, 2003.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF–100.

[FR Doc. 03–19526 Filed 7–30–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–05–C–00–EUG To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Mahlon Sweet Field, Submitted by the City of Eugene, Mahlon Sweet Field, Eugene, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Mahlon Sweet Field under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 2, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington 98055–4506.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert Noble, Airport Manager, at the following address: 28855 Lockheed Drive, Eugene, Oregon 97402.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Mahlon Sweet Field, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Lee-Pang, (425) 227–2654, Seattle Airports District Office, SEA–AD0; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250, Renton, Washington 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 03–05–C–00–EUG to impose and use PFC revenue at Mahlon Sweet Field, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 25, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by City of Eugene, Mahlon Sweet Field, Eugene, Oregon, was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 25, 2003.

The following is a brief overview of the application: Level of the proposed PFC: $4.50. Proposed charge effective date: January 1, 2004. Proposed charge expiration date: October 31, 2005. Total requested for use approval: $2,032,935. Brief description of proposed project: Parallel runway 16L/34R construction, Construct and expand apron.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Operations by Air Taxi/Commercial Operators utilizing aircraft having a maximum seating capacity of less than twenty passengers when enplaning revenue passengers in a limited, irregular/non-scheduled, or special service manner. Also exempted are operations by Air Taxi/Commercial Operators, without regard to seating capacity, for revenue passengers transported for student instruction, non-stop sightseeing flights that begin and end at the airport and are conducted within a 25 mile radius of the same airport, fire fighting charters, ferry or training flights, air ambulance/medivac flights and aerial photography or survey flights.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Mahlon Sweet Field.

Issued in Renton, Washington on July 25, 2003.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 03–19529 Filed 7–30–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Policy Statement on Standardization of Application Regarding Hazardous Misleading Heading Information for Attitude-Heading Reference Systems (AHRS); PS–ACE100–2002–003

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of policy.

SUMMARY: This document announces the issuance of PS–ACE100–2002–003. The purpose of this policy statement is to clarify Federal Aviation Administration certification policy on the application of AC 23.1309–1C, Equipment, Systems, and Installations in Part 23 Airplanes, regarding hazardous misleading heading information.

DATES: PS–ACE100–2002–003 was issued by the Manager, Small Airplane Directorate on May 30, 2003.

ADDRESSES: A paper copy of PS–ACE100–2002–003 may be obtained by contacting Mr. Erv Dvorak, Standards Office, Small Airplane Directorate, Aircraft Certification Service, Kansas City, Missouri 64106, telephone (816) 329–4123, fax (816) 329–4090. The policy will also be available on the Internet at *http://www.airweb.faa.gov/policy.*

Issued in Kansas City, Missouri on July 15, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–19528 Filed 7–30–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–15783]

Decision That Certain Nonconforming Motor Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of decision by NHTSA that certain nonconforming motor vehicles are eligible for importation.

SUMMARY: This document announces decisions by NHTSA that certain motor vehicles not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are either (1) substantially similar to vehicles originally manufactured for importation into and/or sale in the United States and certified by their manufacturers as complying with the safety standards, and they are capable of being readily altered to conform to the standards, or (2) they have safety features that comply with, or are capable of being altered to comply with, all such standards.

DATES: These decisions are effective as of the date of their publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

NHTSA received petitions from registered importers to decide whether the vehicles listed in Annex A to this notice are eligible for importation into the United States. To afford an opportunity for public comment, NHTSA published notice of these petitions as specified in Annex A. The reader is referred to those notices for a thorough description of the petitions. No comments were received in response to these notices. Based on its review of the information submitted by the petitioners, NHTSA has decided to grant the petitions.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. Vehicle eligibility numbers assigned to vehicles admissible under this decision are specified in Annex A.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that each motor vehicle listed in Annex A to this notice, which was not originally manufactured to comply with all applicable Federal motor vehicle safety standards, is either (1) substantially similar to a motor vehicle manufactured for importation into and/or sale in the United States, and certified under 49 U.S.C. 30115, as specified in Annex A, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards or (2) has safety features that comply with, or are capable of being altered to comply with, all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A). (a)(1)(B), and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 28, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

Annex A

Nonconforming Motor Vehicles Decided To Be Eligible for Importation

1. Docket No. NHTSA–2003–15172

Nonconforming Vehicle: 2001–2003 Mercedes Benz Type 463 short wheel base (SWB) Gelaendewagen Multi-Purpose Passenger Vehicles (Cabriolet and the Three Door Models)

Because there are no substantially similar U.S.-certified versions of the 2001–2003 Mercedes Benz Type 463 short wheel base (SWB) Gelaendewagen, the petition sought import eligibility under 49 U.S.C. 30141(a)(1)(B).

Notice of Petition Published at: 68 FR 28877 (May 27, 2003)

Vehicle Eligibility Number: VCP–25

2. Docket No. NHTSA–2003–15353

Nonconforming Vehicles: 2002 BMW Z8 Passenger Cars

Substantially similar U.S.-certified vehicle: 2002 BMW Z8 Passenger Cars

Notice of Petition Published at: 68 FR 34477 (June 9, 2003)

Vehicle Eligibility Number: VSP–406

3. Docket No. NHTSA–2003–15386

Nonconforming Vehicle: 2001 Ducati Monster 600 Motorcycles

Substantially similar U.S.-certified vehicle: 2001 Ducati Monster 600 Motorcycles

Notice of Petition Published at: 68 FR 35773 (June 16, 2003)

Vehicle Eligibility Number: VSP–407

[FR Doc. 03–19524 Filed 7–30–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Notice of Public Information Collection Submitted to OMB for Review

AGENCY: Surface Transportation Board, DOT.

ACTION: Extension of a currently approved collection.

SUMMARY: The Surface Transportation Board has submitted to the Office of Management and Budget for review and approval the following proposal for collection of information as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. Chapter 35).

Title: Financial Assistance of Railroad Lines.

OMB Form Number: 2140–0003.

No. of Respondents: 9.

Total Burden Hours: 315.

DATES: Persons wishing to comment on this information collection should submit comments by September 2, 2003.

ADDRESSES: Direct all comments to the Surface Transportation Board, Room 705, 1925 K Street, NW., Washington, DC 20423. When submitting comments refer to the OMB number and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Barbara G. Saddler, (202) 565–1656. Requests for copies of the information collection may be obtained by contacting Barbara G. Saddler (202) 565–1656.

SUPPLEMENTARY INFORMATION: The Surface Transportation Board is, by statute, responsible for the economic regulation of surface transportation carriers operating in interstate and foreign commerce. The ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803 (1995), which took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred the responsibility for regulating rail transportation, including the proposed abandonment and discontinuance of rail lines, to the Surface Transportation Board. The Board needs, in each abandonment exemption proceeding, a detailed map of the rail line, depicting its relation to other rail lines, roads,

water routes, and population centers. The Board will use the information concerning the value of the property involved if necessary to set the fair market value of the property and conditions of sale or the terms of the subsidy. Interested parties have a statutory right to file offers of financial assistance. The Board has the Congressionally mandated responsibility to handle offers of financial assistance. The consequences of failure to collect data related to offers of financial assistance will be an inability to fulfill responsibilities under 49 U.S.C. 10904.

Dated: July 28, 2003.

Vernon A. Williams,

Secretary.

[FR Doc. 03–19434 Filed 7–30–03; 8:45 am]

BILLING CODE 4195–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Notice of Public Information Collection Submitted to OMB for Review

AGENCY: Surface Transportation Board, DOT.

ACTION: Extension of a currently approved collection.

SUMMARY: The Surface Transportation Board has submitted to the Office of Management and Budget for review and approval the following proposal for collection of information as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. Chapter 35).

Title: Maps To Be Submitted in Abandonment Exemption Proceedings.

OMB Form Number: 2140–0008.

No. of Respondents: 54.

Total Burden Hours: 54.

DATES: Persons wishing to comment on this information collection should submit comments by September 2, 2003.

ADDRESSES: Direct all comments to the Surface Transportation Board, Room 706, 1925 K Street, NW., Washington, DC 20423. When submitting comments refer to the OMB number and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Barbara G. Saddler, (202) 565–1656. Requests for copies of the information collection may be obtained by contacting Barbara G. Saddler (202) 565–1656.

SUPPLEMENTARY INFORMATION: The Surface Transportation Board is, by statute, responsible for the economic regulation of surface transportation carriers operating in interstate and foreign commerce. The ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803 (1995), which took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred the responsibility for regulating rail transportation, including the proposed abandonment and discontinuance of rail lines, to the Surface Transportation Board. The Board needs, in each abandonment exemption proceeding, a detailed map of the rail line, depicting its relation to other rail lines, roads, water routes, and population centers. The Board will use this information to facilitate informed decision making. Respondents will be railroads initiating abandonment exemption proceedings.

Dated: July 28, 2003.

Vernon A. Williams,

Secretary.

[FR Doc. 03–19435 Filed 7–30–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Notice of Public Information Collection Submitted to OMB for Review

AGENCY: Surface Transportation Board, DOT.

ACTION: Extension of a currently approved collection.

SUMMARY: The Surface Transportation Board has submitted to the Office of Management and Budget for review and approval the following proposal for collection of information as required by the Paperwork Reduction Act of 1995, Pub. L. 04–13 (44 U.S.C. chapter 35).

Title: System Diagram Maps.

OMB Form Number: 2140–0003.

No. of Respondents: 13.

Total Burden Hours: 58.5.

DATES: Persons wishing to comment on this information collection should submit comments by September 2, 2003.

ADDRESSES: Direct all comments to the Surface Transportation Board, Room 705, 1925 K Street, NW., Washington, DC 20423. When submitting comments refer to the OMB number and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Barbara G. Saddler, (202) 565–1656. Requests for copies of the information collection may be obtained by contacting Barbara G. Saddler (202) 565–1656.

SUPPLEMENTARY INFORMATION: The Surface Transportation Board is, by statute, responsible for the economic regulation of surface transportation carriers operating in interstate and foreign commerce. The ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803 (1995), which took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred the responsibility for regulating rail transportation, including the proposed abandonment and discontinuance of rail lines, to the Surface Transportation Board. All railroads are required to keep current system diagram maps on file. These maps designate all lines in a particular railroad's system according to various categories. Carriers are obligated to amend these maps as the need to change the categories of particular lines arises. If no amendment had taken place within a 1-year period, a verified statement to that effect must be filed with the Board. The Board will use this information to facilitate informed decision making. Respondents will be railroads initiating abandonment exemption proceedings.

Dated: July 28, 2003.

Vernon A. Williams,

Secretary.

[FR Doc. 03–19496 Filed 7–30–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease Development of Property at the Department of Veterans Affairs Medical Center, Syracuse, NY

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent to designate.

SUMMARY: The Secretary of the Department of Veterans Affairs (VA) intends to designate approximately 0.57 acres of land at the Department of Veterans Affairs Medical Center, Syracuse, New York, for an enhanced-use leasing development. The Department intends to enter into a 75-year lease of real property with a selected lessee/developer who will finance, design, develop, maintain and manage a biotechnology research facility, at no cost to VA.

FOR FURTHER INFORMATION CONTACT: Vanessa Chambers, Capital Asset Management and Planning Service (182C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–6554.

SUPPLEMENTARY INFORMATION: 38 U.S.C. section 8161 *et seq.* specifically provides that the Secretary may enter into an enhanced-use lease if he determines that at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely affect the mission of the Department; and the lease will enhance the property or result in improved services to veterans. This project meets these requirements.

Approved: July 23, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 03–19442 Filed 7–30–03; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 68, No. 147
Thursday, July 31, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF/HS–2003–16]

Fiscal Year 2003 Discretionary Announcement for Head Start—Higher Education Hispanic/Latino Service Partnerships: Availability of Funds and Request for Applications

Correction

In notice document 03–18166 beginning on page 43120 in the issue of Monday, July 21, 2003 make the following correction:

On page 43120, in the first column, in the DATES section, in the fourth line, "August 18, 2003" should read "August 20, 2003".

[FR Doc. C3–18166 Filed 7–30–03; 8:45 am]
BILLING CODE 1505–01–D



Federal Register

Thursday,
July 31, 2003

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 171, et al.

Harmonization With the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 175, 176, 178 and 180

[Docket No. RSPA–2002–13658 (HM–215E)]

RIN 2137–AD41

Harmonization With the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: RPSA is amending the Hazardous Materials Regulations (HMR) to maintain alignment with international standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations and vessel stowage requirements. Because of recent changes to the International Maritime Dangerous Goods Code (IMDG Code), the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), and the United Nations Recommendations on the Transport of Dangerous Goods (UN Recommendations), these revisions are necessary to facilitate the transport of hazardous materials in international commerce.

DATES: *Effective Date:* The effective date of these amendments is October 1, 2003.

Voluntary Compliance Date: RSPA is authorizing immediate voluntary compliance. However, RSPA may further revise this rule as a result of appeals it may receive for this rule.

Delayed Compliance Date: Unless otherwise specified, compliance with the amendments adopted in this final rule is mandatory October 1, 2004.

Incorporation by Reference Date: The incorporation by reference of the publication adopted in § 171.7 of this final rule has been approved by the Director of the Federal Register as of October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Joan McIntyre, Office of Hazardous Materials Standards, telephone (202) 366–8553, or Shane Kelley, International Standards, telephone (202) 366–0656, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On December 3, 2002, the Research and Special Programs Administration (RSPA, we) published a notice of proposed rulemaking (NPRM) (67 FR 72034) under Docket HM–215E. The NPRM proposed changing the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180, to align it with updates and revisions to the UN Recommendations, the IMDG Code and the ICAO Technical Instructions with respect to hazard communication, classification, and packaging requirements. Our intent was to facilitate the international transportation of hazardous materials by ensuring a basic consistency between the HMR and international standards, while at the same time ensuring the safe transportation of hazardous materials.

On January 8, 2003, we published a final rule under Docket HM–215E (68 FR 1013) authorizing the use of the 2003–2004 edition of the ICAO Technical Instructions, Amendment 31 to the IMDG Code, and the twelfth revised edition of the UN Recommendations beginning January 1, 2003, the effective date of the international standards.

The UN Recommendations are not regulations, but rather are recommendations issued by the UN Committee of Experts on the Transport of Dangerous Goods. These recommendations are amended and updated biennially by the UN Committee of Experts. They serve as the basis for National, regional, and international modal regulations; specifically, the IMDG Code developed by the International Maritime Organization (IMO) Dangerous Goods, Solid Cargoes and Containers Subcommittee, and the ICAO Technical Instructions developed by the ICAO Dangerous Goods Panel. Subject to certain conditions and limitations, § 171.12 of the HMR authorizes domestic transportation of hazardous materials shipments prepared in accordance with the IMDG Code if all or part of the transportation is by vessel. Subject to certain conditions and limitations, § 171.11 of the HMR authorizes the offering, acceptance and transport of hazardous materials by aircraft, and by motor vehicle either before or after being transported by aircraft, provided the shipment is in accordance with the ICAO Technical Instructions.

On December 21, 1990, RSPA published a final rule (Docket HM–181; 55 FR 52402) based on the UN Recommendations, which comprehensively revised the HMR for harmonization with international standards. Since publication of the 1990 final rule, we have issued four additional international harmonization final rules (Dockets HM–215A, 59 FR 67390; HM–215B, 62 FR 24690; HM–215C, 64 FR 10742; and HM–215D, 66 FR 33316). The rules provided additional harmonization with international transportation requirements by more fully aligning the HMR with the corresponding biennial updates of the UN Recommendations, the IMDG Code and the ICAO Technical Instructions.

The large volume of hazardous materials transported in international commerce warrants the harmonization of domestic and international requirements to the greatest extent possible. Harmonization serves to facilitate international transportation, reduces cost to industry, and ensures the safety of people, property and the environment. While the intent of the harmonization rulemakings is to align the HMR with international standards, we review and consider each amendment on its own merit. Each amendment is considered on the basis of the overall impact on transportation safety and the economic implications associated with its adoption into the HMR. Our goal is to harmonize without sacrificing the current HMR level of safety and without imposing undue burdens on the regulated public. In our efforts to continue to align the HMR with international requirements, this final rule makes changes to the HMR based on the twelfth revised edition of the UN Recommendations, Amendment 31 to the IMDG Code, and the 2003–2004 ICAO Technical Instructions, which became effective January 1, 2003. Petitions for rulemaking concerning harmonization with international standards and the facilitation of international transportation are also addressed in this final rule and serve as the basis of certain amendments. Other amendments are based on feedback from the regulated industry, other DOT modal administrations and our initiative. Also included are various editorial clarifications. Unless otherwise stated, the revisions are for harmonization with international standards.

Various commenters raised issues that are beyond the scope of this rulemaking. Such issues will not be addressed in this final rule and must first be addressed in an NPRM to afford industry and the public opportunity to comment.

II. Overview of Changes in this Final Rule

Amendments to the HMR in This final rule include, but are not limited to the following:

- Amendments to the Hazardous Materials Table (HMT) which add, revise or remove certain proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, bulk packaging requirements, passenger and cargo aircraft maximum quantity limitations and vessel stowage provisions.
- Amendments to the List of Marine Pollutants.
- Revisions and additions of special provisions. Included is the addition of a special provision for assignment to aerosol entries setting forth the criteria for classifying aerosols.
- Addition of a requirement to enter the subsidiary hazard class or subsidiary division number on shipping papers.
- Addition of a requirement to indicate the number and types of packagings on shipping papers.
- Addition of an alternative basic description sequence on shipping papers.
- Revision of marking requirements for limited quantities.
- Addition of an air eligibility marking requirement.
- Revision of requirements in § 173.27 for packagings intended for transportation by aircraft, including revision of requirements for use of absorbent material for such packagings.
- Revision to the classification of air bag modules, air bag inflators and seat-belt pretensioners from Division 2.2 to Class 9.
- Revision of the non-liquefied and liquefied compressed gases descriptions, and the addition of high pressure and low pressure liquefied gases categories.
- Revisions and additions to the Self-Reactive Materials Table.
- Revisions and additions to the Organic Peroxide Table.
- Revision of the net weight restrictions for explosives in freight containers exceeding 20 ft (6 m) in length.

III. Summary of Regulatory Changes by Section

Part 171

Section 171.6. We are revising the table in paragraph (b)(2) to incorporate a new information collection, OMB No. 2137–0613, "Subsidiary Hazard Class and Number/Type of Packagings," and the affected sections, §§ 172.202 and 172.203.

Section 171.7. We are adding Regulation 19 of an IMO standard titled "International Convention for the Safety of Life at Sea," 1974, as amended, Chapter II–2. Regulation 19 is incorporated into a new paragraph (f) in § 176.63 to address hatchless container ship requirements.

Section 171.8. In the definition for "Large packaging," we are adding the words "Chapter 6.6" to let readers know the location in the UN Recommendations for the construction, testing and marking of such packagings.

Section 171.11. We are revising paragraphs (c), (d)(5) and (d)(17) to address certain limitations for the use of the ICAO Technical Instructions.

In paragraph (c), for hazardous materials being transported in accordance with the ICAO Technical Instructions, the restrictions for the use of the Instructions are revised to include hazardous materials that are forbidden by passenger and cargo aircraft, as designated in Columns (9A) and (9B) of the § 172.101 HMT. Prior to this revision, the paragraph restricted materials that are forbidden according to § 173.21 and Column (3) of the HMT only.

In paragraph (d)(5), we are removing the wording "except for Division 2.2" relating to shipping paper requirements for air bag inflators, air bag modules and seat-belt pretensioners. This amendment is consistent with the removal of the Division 2.2 air bag inflator, air bag module and seat-belt pretensioner entry in the HMT (see § 172.101).

Paragraph (d)(17) is revised to clarify the current requirement that, in addition to organic peroxides, self-reactive substances not specifically identified by name in § 173.224(b) also must be approved by the Associate Administrator in accordance with the requirements in § 173.124(a)(2)(iii).

Section 171.12. We are revising paragraphs (b)(3), (b)(19), and (b)(20).

In paragraph (b)(3), we are removing certain viscous flammable liquids as an example of a material designated as a hazardous material subject to the HMR, but not subject to the IMDG Code. The IMO removed the exception in Amendment 31 to the IMDG Code.

In paragraph (b)(19), we are removing the wording "except for Division 2.2" relating to shipping paper requirements for air bag inflators, air bag modules and seat-belt pretensioners. This revision is consistent with the removal of the Division 2.2 air bag inflator, air bag module and seat-belt pretensioner entry in the HMT (see § 172.101).

In paragraph (b)(20), we are clarifying the current requirement that, in addition to organic peroxides, self-reactive substances not specifically identified by name in § 173.224(b) must also be approved by the Associate Administrator in accordance with the requirements in § 173.124(a)(2)(iii).

For the readers' information, recently adopted amendments to the International Convention for the Safety of Life at Sea (SOLAS), 1974, as amended, will require mandatory of the use of the IMDG Code effective January 1, 2004. This issue will be addressed under a separate rulemaking.

Section 171.12a. We are revising paragraph (b)(18) to clarify the existing requirement that, in addition to organic peroxides, self-reactive substances not specifically identified by name in § 173.224(b) also must be approved by the Associate Administrator in accordance with the requirements in § 173.124(a)(2)(iii).

Section 171.14. We are revising paragraphs (d), (d)(1), (d)(2), (d)(4), and (d)(5). We received several comments concerning the proposed transitional provisions. Several commenters requested that we implement an overall two-year transition period from the October 1, 2003 effective date, and several commenters requested an overall three-year transition period. In the NPRM, we proposed a mandatory compliance date of October 1, 2004.

While we do not agree that all amendments require an additional extended compliance date, we do agree that certain amendments warrant the additional time. We are, therefore, authorizing an October 1, 2007 mandatory compliance date for the new requirement in § 172.202(a)(5) to include the number and types of packagings on shipping papers. This requirement was identified by commenters as requiring additional time to offset any associated burden. Additionally, we are adopting an October 1, 2007 transition date for modifications to package markings that will change as a result of changes to certain proper shipping names. We are also adopting an October 1, 2005 compliance date for use of proper shipping names that did not identify specific isomers by numbers or letters preceding the chemical name. Finally, we are authorizing an October 1, 2005 mandatory compliance date for the requirement to include the subsidiary hazard class or division number on shipping papers.

We are revising paragraphs (d) and (d)(1) to authorize an October 1, 2004 implementation date for the amendments in this final rule.

We are revising paragraph (d)(2) to authorize certain intermixing of old and new requirements until October 1, 2004.

We are revising paragraph (d)(4) to allow until June 1, 2010, DOT

Specification 51 portable tanks to conform with the T Codes (Special Provisions) in effect on September 30, 2001.

We are revising paragraph (d)(5) to allow proper shipping names that included the word "inhibited" prior to the June 21, 2001 final rule, to continue to be shown on packagings and shipping papers in place of the word "stabilized" until October 1, 2007. Additionally, the October 1, 2007 date applies to the proper shipping names in this final rule that are revised by removing the word "compressed" (see § 172.101, HMT).

Paragraph (d)(6) authorizes use of the shipping paper requirement to include the total quantity of packages on shipping papers until October 1, 2007.

Paragraph (d)(7) authorizes use of the non-mandatory provision to include the subsidiary hazard class or division number on shipping papers until October 1, 2003.

Paragraph (d)(8) authorizes the marking of certain other proper shipping names on packagings until October 1, 2003. The proper shipping names are those that are revised to include the position identifiers of the substituents, such as 2-Ethylbutyl acetate (see § 172.101, HMT preamble discussion).

Part 172

Section 172.101. In the regulatory text preceding the Hazardous Materials Table, the following changes are made:

Paragraph (c)(15) is revised by removing the words "of inorganic substances." Prior to this revision, unless a hydrate was specifically listed in the HMT, only hydrates of inorganic substances were authorized to be identified using the proper shipping name for the equivalent anhydrous substance, provided the hydrates met the same hazard class, division, subsidiary risk(s) and packaging group. With the removal of the phrase "of inorganic substances," paragraph (c)(15) applies to all hydrates.

Section 172.101 Hazardous Materials Table (HMT). We are making various amendments to the HMT. Readers should review all changes for a complete understanding of the Table amendments. For purposes of the Government Printing Office's typesetting procedures, changes to the HMT will appear under three sections of the Table, "remove," "add" and "revise." Certain entries in the HMT, such as those with revisions to the proper shipping names, will appear as a "remove" and "add." Amendments to the HMT for the purpose of harmonizing with international standards, unless otherwise stated, include, but are not limited to the following:

• *"Accumulators, pressurized, pneumatic or hydraulic (containing non-flammable gas), see* Articles, pressurized, pneumatic *or* hydraulic *(containing non-flammable gas)"* is added as a "see" entry into the HMT to aid the reader in locating the updated entry. This action is based on feedback we received from users of the HMR after we removed the domestic entry ("Accumulators, pressurized, pneumatic," UN1956), as well as certain other domestic entries from the HMT in a final rule, HM–215D (66 FR 33316), published June 21, 2001. The entries were removed because we determined that they were no longer necessary considering the HMT already includes equally appropriate international entries. (Also see § 173.306(f) for a related editorial revision.)

• "Air bag inflators, compressed gas *or* Air bag modules, compressed gas *or* Seat-belt pretensioners, compressed gas," Division 2.2, UN3353 is removed. All air bag inflators, air bag modules and seat-belt pretensioners currently classified as Division 2.2 may be reclassified as Class 9. We are also incorporating into the HMR a provision to allow this reclassification without further testing (see § 173.166). In line with the removal of this entry, Special Provision 133 is also removed. We are aware that removal of the UN3353 entry will require repackaging, remarking and relabeling of all compressed gas air bag assemblies. We received a comment from the North American Automotive Hazmat Action Committee (NAAHAC) expressing this concern; however, the NAAHAC stated that the proposed mandatory compliance date of October 1, 2004, would be sufficient time to implement the new requirements. We also believe that the mandatory compliance date of October 1, 2004, and the transitional provisions in § 171.14(d)(2), authorizing certain intermixing of old and new requirements, will offer sufficient time and flexibility to implement the new requirements and reduce the costs of meeting this requirement.

• "Air bag inflators, *pyrotechnic* or Air bag modules, *pyrotechnic or* Seat-belt pretensioner, *pyrotechnic*" UN0503, Division 1.4G, is amended by removing the word "pyrotechnic" from the proper shipping names in Column (2), revising Columns (8A) and (8C) to read "None," revising Column (8B) to read "§ 173.62" (also see § 173.62), adding new Special Provision 161 (see § 172.102), and revising the vessel stowage columns (10A) and (10B). We are adding Special Provision 161 because we believe that a more appropriate name is "Articles, pyrotechnic *for technical purposes,*" UN0431. We believe that an article meeting the criteria for Division 1.4G should be considered a pyrotechnic article and not an air bag. We received a comment from NAAHAC supporting this revision and stating that if an inflator does not pass the UN Recommendations' Series 6 test criteria, it is considered a pyrotechnic article and not an airbag. (Also see Special Provision 161.)

• "Air bag inflators, *pyrotechnic* or Air bag modules, *pyrotechnic or* Seat-belt pretensioner, *pyrotechnic,*" UN3268, Class 9, is amended by removing the descriptive word "pyrotechnic" and adding new Special Provision 160 (see § 172.102). NAAHAC requested that we retain the word "pyrotechnic" as a descriptive word in the shipping name to provide time for depletion of existing inventories. Although we are removing the word "pyrotechnic" in this rulemaking, we believe that extending the mandatory compliance date from October 1, 2004, as proposed in the NPRM, to October 1, 2005, as adopted in this final rule (see § 173.166(d)(5)), will provide the necessary time requested by the commenters.

• "Ammonium nitrate, *with not more than 0.2% combustible substances, including any organic substance calculated as carbon to the exclusion of any other added substance,*" UN1942 is amended by editorially correcting the italicized portion of the proper shipping name by adding the word "total" after "0.2%."

• "Ammonium nitrate fertilizers," UN2071, and "Ammonium nitrate fertilizers," UN2067 are amended by removing the italicized portion of the proper shipping names, adding new Special Provision 150 to the UN2067 entry, and revising Special Provision 132 which applies to the UN2071 entry (see § 172.102 for Special Provision amendments).

• "Ammonium nitrate fertilizers," NA2072 and "Ammonium nitrate mixed fertilizers," NA2069 are removed. We believe that the international entry "Ammonium nitrate fertilizers," UN2067 can be used in place of the domestic entries, which do not provide any additional exceptions.

• A new entry, "Ammonium nitrate emulsion *or* Ammonium nitrate suspension *or* Ammonium nitrate gel, *intermediate for blasting explosives,*" UN3375 (also see § 172.102, Special Provisions 52 and 147) is added.

• For the entry "Calcium hypochlorite, hydrated *or* Calcium hypochlorite, hydrated mixtures, *with not less than 5.5 percent but not more than 10 percent water,*" UN2880, the wording *"not more than 10 percent water"* is revised to read *"not more than 16 percent water."*

• Four proper shipping names are revised by adding the position identifiers of the substituents. The proper shipping names are "Diethylaminopropylamine," position identifier "3"; "Dimethylcyclohexylamine," position identifiers "N,N"; "Ethylbutyl acetate," position identifier "2"; "Propyl chloride" which is replaced by "1-Chloropropane," and "Tetrachloroethane," position identifiers "1,1,2,2,". Also, see § 171.14(d)(6) for the continued use provision of these proper shipping names.

• The entry "Hydrazine hydrate *or* Hydrazine aqueous solutions, *with not less than 37 percent but not more than 64 percent hydrazine, by mass,*" UN2030 and "Hydrazine, anhydrous *or* Hydrazine aqueous solutions *with more than 64 percent hydrazine, by mass,*" UN2029 are removed and "Hydrazine aqueous solution, *with more than 37% hydrazine, by mass,*" UN2030 and "Hydrazine, anhydrous," UN2029" are added.

• Eleven entries are revised by removing the qualifying word "compressed." This action is consistent with the revisions to proper shipping names for compressed and liquefied gases that were incorporated into the Twelfth Edition of the UN Recommendations and which we are adopting into the HMR (see § 173.115 for additional discussion). The eleven entries are "Boron trifluoride, compressed," UN1008; "Carbonyl fluoride, compressed," UN2417; "Diborane, compressed," UN1911; "Ethylene, compressed," UN1962; "Hexafluoroethane, compressed *or* Refrigerant gas R 116," UN2193; "Nitrogen trifluoride, compressed," UN2451; "Phosphorus pentafluoride, compressed," UN2198; "Silane, compressed," UN2203; "Silicon tetrafluoride, compressed," UN1859; "Tetrafluoromethane, compressed *or* Refrigerant gas R 14," UN1982; and "Xenon, compressed," UN2036. Also, see § 171.14(d)(6) for the continued use provision of these proper shipping names.

• For the proper shipping name "Lighters *or* Lighter refills *cigarettes; containing flammable gas,*" UN1057, the word "cigarettes" is removed.

• The proper shipping name "Lithium hydroxide, monohydrate *or* Lithium hydroxide, solid," UN2680 is revised to read "Lithium hydroxide."

• For the entry "Medicine, liquid, toxic, n.o.s.," UN1851, we are adding Special Provision 36. The special provision, which limits the maximum net quantity per package to 5 L (1 gal) for liquids and 5 kg (11 lbs) for solids, is currently assigned to "Medicine, liquid, flammable, toxic, n.o.s.," UN3248 and "Medicine, solid, toxic, n.o.s.," UN3249.

• For the entry "Motor fuel anti-knock mixtures," UN1649, we are removing the subsidiary risk hazard from the labeling requirement, and adding new Special Provision 151. This action is based on a petition for rulemaking (P–1420) we received (see discussion under § 172.102).

• The proper shipping name "Uranium nitrate hexahydrate solution," UN2980 is corrected by replacing the word "Uranium" with "Uranyl." The typographical error occurred in the April 3, 2002 document published in the **Federal Register** (67 FR 15736).

• The entry "Xylidines, solution," UN1711 is revised to read "Xylidines, liquid."

• In addition to those entries identified above, we are adding the following new entries: "Chlorosilanes, toxic, corrosive, n.o.s.," UN3361; "Chlorosilanes, toxic, corrosive, flammable, n.o.s.," UN3362; "Ethylene glycol diethyl ether," UN1153; "Fibers, animal *or* fibers, vegetable *burnt, wet or damp,*" UN1372; "Fibers, vegetable, dry," UN3360; "4-Nitrophenylhydrazine, *with not less than 30% water, by mass,*" UN3376; "Organometallic compound, solid, water-reactive, flammable, n.o.s.," UN3372; "Rags, oily," UN1856; "Rubber scrap *or* Rubber shoddy, *powdered or granulated, not exceeding 840 microns and rubber content exceeding 45%,*" UN1345; "Sodium dinitro-o-cresolate, wetted, *with not less than 10% water by mass,*" UN3369; "Textile waste, wet," UN1857; "Trinitrobenzene, wetted, *with not less than 10% water by mass,*" UN3367; "Trinitrobenzoic acid, wetted, *with not less than 10% water by mass,*" UN3368; "Trinitrochlorobenzene (picryl chloride), wetted, *with not less than 10% water by mass,*" UN3365; "Trinitrophenol (picric acid), wetted, *with not less than 10% water by mass,*" UN3364; "Trinitrotoluene (TNT), wetted, *with not less than 10% water by mass,*" UN3366 and "Wool waste, wet," UN1387.

• Various entries are amended by revising the vessel stowage columns (10A) and/or (10B). The entries include the following: the five "Aerosols," UN1950 entries; "Ammunition, smoke *with or without burster, expelling charge or propelling charge,*" UN0303; "Battery fluid, alkali," UN2797; "Methacrylic acid, stabilized," UN2531; "Sulfur, molten," UN2448; and "Urea, nitrate, *wetted with not less than 20 percent water, by mass,*" UN1357.

Also, see § 172.102 for additional HMT amendments.

Appendix B to § 172.101. In Appendix B to § 172.101, List of Marine Pollutants, we are revising paragraphs "4" and "5" to update the location in the IMDG Code for the "Guidelines for the Identification of Harmful Substances in Packaged Form." This update is based on the IMDG Code's change in location from the General Introduction to Chapter 2.10.

In addition, we are removing the entries "Alkylphenols, liquid, n.o.s. *(including C2–C12 homologues),*" "Alkylphenols, solid, n.o.s. *(including C2–C12 homologues),*" "Chlorophenols, liquid," and "Chlorophenols, solid," from the List of Marine Pollutants. We are revising the entry "Alkylbenzenesulphonates, branched and straight chain" by adding a qualifying phrase to clarify that C11-C13 straight chain or branched chain homologues are not regulated as marine pollutants. Finally, we are adding the entry "Decyl acrylate."

Section 172.102. We are amending § 172.102, Special Provisions, as follows:

• Special Provisions 7 and 10 are removed. These special provisions are assigned to the entries "Ammonium nitrate mixed fertilizers," NA2069 and "Ammonium nitrate fertilizers," NA2072, respectively, which we are removing (see § 172.101, HMT).

• Special Provision 15, which is assigned to "Chemical kits," UN3316 and "First aid kits," UN3316, is revised for consistency with packagings authorized for limited quantity exceptions. We are also relocating the authorized packagings to § 173.161. Revised Special Provision 15 specifies (1) which chemical and first aid kits are properly described by the entries; (2) that materials forbidden by air may not be included in the kits when they are transported by air; and (3) that kits carried on board transport vehicles for first aid or operating purposes are not subject to the HMR.

• Special Provision 30 is revised to include an exception from the placarding requirements for "Sulfur, molten" UN2448 and "Sulfur," UN1350. Prior to this change, the domestic entries "Sulfur, molten," NA2448 and "Sulfur," NA1350 did not require placards because both entries are Class 9 materials and meet the placarding exceptions for the hazard

class in § 172.504(f)(9). Revised Special Provision 30 provides the same placarding exceptions for the international entries provided the bulk packagings are marked in accordance with § 172.325.

• Special Provision 52 is editorially revised by removing the wording specific to fertilizers. The special provision, which is currently applied to "Ammonium nitrate fertilizers," UN2067, is added to the new entry "Ammonium nitrate emulsion *or* Ammonium nitrate suspension *or* Ammonium nitrate gel, *intermediate for blasting explosives*," UN3375. The special provision states that a material using the assigned entries may not exhibit explosive properties of Class 1 (explosive) when tested in accordance with the UN Manual of Tests and Criteria, Part I, Test Series 1 and 2.

• Special Provision 130, which excepts dry batteries from the HMR, is revised by adding a requirement that such batteries must be securely packed and protected against short circuits and by clarifying that dry batteries specifically named in the § 172.101 Table are not eligible for the exception.

• Special Provision 132 is revised to add the criteria for use of this special provision. The special provision is added to the revised entry "Ammonium nitrate," UN2071, Class 9.

• Special Provision 133 is removed. This special provision was assigned to the entry "Air bag inflators, compressed gas *or* Air bag modules, compressed gas *or* Seat-belt pretensioners, compressed gas" UN3353, Division 2.2, which is removed from the HMT by this final rule (see discussion under § 172.101, HMT.)

• Existing Special Provision 134 is revised to include vehicles powered by lithium batteries. This revision is based on comments from Argonne National Laboratories and the Conference on Safe Transportation of Hazardous Articles.

• New Special Provision 145 is added to the existing entry "Hydrogen peroxide and peroxyacetic acids mixtures, stabilized, *with acids, water and not more than 5 percent peroxyacetic acid*," UN3149. The special provision describes the formulations for which this entry apply.

• New Special Provision 146 is added to the entries "Environmentally hazardous substances, liquid, n.o.s.," UN3082 and "Environmentally hazardous substances, solid, n.o.s.," UN3077 to clarify that the entries may be used to describe a material that poses a hazard to the environment if it is designated as environmentally hazardous by the Competent Authority of the country of origin, transit or destination, even if it is not an environmentally hazardous substance under the HMR.

• New Special Provision 147 is added to the new entry, "Ammonium nitrate emulsion *or* Suspension *or* Gel, *intermediate for blasting explosives*," UN3375. The special provision describes the composition of the material for which the use of the entry is authorized and prohibits the material from being classified and transported unless approved by the Associate Administrator.

• New Special Provision 149 is added to the Packing Group II entries for 13 existing proper shipping names. The special provision allows the maximum net capacity for inner packagings to be increased to no more than 5 L (1.3 gal) when the material is transported as a limited quantity. The National Paint and Coatings Association (NPCA) supports the increase for inner packagings, stating that the potential for errors will be greatly reduced by allowing the same quantity limits for PG II and PG III materials. However, NPCA, along with the Association of Hazmat Shippers and PPG Industries, requests that we clarify that the special provision is applicable to consumer commodities as well as limited quantities. We revised the special provision accordingly. The 13 entries are: "Adhesives, *containing a flammable liquid*," UN1133; "Coating solution *(includes surface treatments or coatings used for industrial or other purposes such as vehicle undercoating, drum or barrel lining)*," UN1139; "Extracts, aromatic, liquid," UN1169; "Extracts, flavoring, liquid," UN1197; "Printing ink, *flammable or* Printing ink related material *(including printing ink thinning or reducing compound), flammable*," UN1210; "Paint *including paint, lacquer, enamel, stain, shellac solutions, varnish, polish, liquid filler, and liquid lacquer base*," UN1263; "Paint related material *including paint thinning, drying, removing, or reducing compound*," UN1263; "Perfumery products *with flammable solvents*," UN1266; "Rubber solution," UN1287; "Wood preservatives, liquid," UN1306; "Resin solution, *flammable*," UN1866; "Tars, liquid *including road asphalt and oils, bitumen and cut backs*," UN1999; and "Polyester resin kit," UN3269 for Packing Group II resin kits as specified in Special Provision 40.

• New Special Provision 150 is added to the entry "Ammonium nitrate based fertilizer," UN2067 to authorize the use of the entry for uniform mixtures containing ammonium nitrate as the main ingredient within certain composition limits.

• New Special Provision 151 is added to the new entry "Hydrazine aqueous solution, *with more than 37% hydrazine, by mass*" UN2030, Packing Group I and to the existing entry "Motor fuel anti-knock mixtures," UN1649. This special provision requires a packaging containing a material meeting the definition of a flammable liquid to display a FLAMMABLE LIQUID label, and it requires a Class 3 subsidiary hazard to be shown on shipping papers.

With regard to the entry "Motor fuel anti-knock mixtures," UN1649, as discussed in the NPRM, we received a petition for rulemaking (P–1420) requesting that we remove the flammable subsidiary risk for this entry. The petitioner stated that the international standards do not assign the entry a flammable subsidiary risk and that the inconsistency with the HMR causes a regulatory compliance burden when transporting the material internationally. The petitioner stated that removing the subsidiary risk is additionally justified because motor fuel anti-knock mixtures containing tetramethyl lead, with fire points greater than 54 °C (129.2 °F), are no longer manufactured or transported. Although the UN Recommendations, the ICAO Technical Instructions and the IMDG Code do not assign a flammable subsidiary risk to the entry, all three standards assign a special provision stating that mixtures with a flashpoint of less than 60.5 °C (141 °F) must bear a flammable liquid subsidiary risk label. We are removing the flammable subsidiary risk from the label requirements in Column (6) of the HMT for "Motor fuel anti-knock mixtures," UN1649 and adding a new Special Provision 151 to require a FLAMMABLE LIQUID subsidiary label only when the mixtures have a flashpoint of less than 60.5 °C (140.9 °F). Also, see preamble text under the § 172.101 Table changes.

• New Special Provision 153 is added to the five "Aerosols," UN1950 entries to provide the criteria for classifying aerosols.

• New Special Provision 155 is added to two entries, "Fish meal, stabilized *or* Fish scrap, stabilized," UN2216 and "Fish meal, unstabilized *or* Fish scrap, unstabilized," UN1374. The special provision specifies that the fish scrap or fish meal may not be transported if the temperature of fish scrap at the time of loading either exceeds 35 °C (95 °F), or exceeds 5 °C (41 °F) above the ambient temperature, whichever is higher. Also see § 173.218 for additional discussion.

• New Special Provision 156 is added to three entries, "Blue asbestos (*Crocidolite*) or Brown asbestos (*amosite, mysorite*)," UN2212, "White asbestos (*chrysotile, actinolite, anthophyllite, tremolite*)," UN2590, and "Asbestos," NA2212. The special provision provides an exception from the HMR for certain asbestos. Prior to this change, the exception was located in § 173.216(b) and excepted asbestos immersed or fixed in a natural or artificial binder material and asbestos contained in manufactured products. Before the development of the HM–215E NPRM, we received comments that § 173.216 was not an appropriate location for this exception because it is referenced in the non-bulk column of the HMT, leading readers to believe that the exception applies to non-bulk packagings only. To clarify that this exception applies to both non-bulk and bulk packagings, we are moving the exception from § 173.216(b) to new Special Provision 156.

• New Special Provision 157 is added to the entries "Vehicle, flammable gas powered," and "Vehicle, flammable liquid powered," each of which is assigned to UN3166. The new special provision specifies that the entries include hybrid electric vehicles powered by both internal combustion engines and wet, sodium or lithium batteries. NAAHAC agrees with the adoption of Special Provision 157, and requests that we clarify whether we are addressing all wet batteries. We do intend for the entries "Vehicle, flammable gas powered" and "Vehicle, flammable liquid powered," and Special Provision 157 to apply to all wet batteries. While we are not aware of any hybrid vehicles that utilize wet batteries as a source of propulsion power, we included the reference in order to provide flexibility to encompass all wet batteries contained in the vehicle.

• New Special Provision 159 is added to the entry "5-tert-Butyl-2,4,6-trinitro-m-xylene *or* Musk Xylene," UN2956. The special provision requires this material to be protected from direct sunshine and kept in a cool, well-ventilated place away from sources of heat.

• New Special Provision 160 is added to the entry "Air bag inflators, *or* Air bag modules, *or* Seat-belt pretensioner," UN3268, Class 9. The special provision includes the requirement that air bag inflators and modules must be tested in accordance with Test series 6 (c) of Part I of the UN Manual of Tests and Criteria, and also includes an exception from testing air bag modules that contain an inflator that has been previously approved for transportation. We received a comment from NAAHAC supporting adoption of this special provision.

• New Special Provision 161 is added to the entry "Air bag inflators, *pyrotechnic or* Air bag modules, *pyrotechnic or* Seat-belt pretensioners, *pyrotechnic*," UN0503, Division 1.4G. One commenter stated that the addition of this special provision poses an unnecessary burden for international shippers by requiring the use of the proper shipping name, "Articles, pyrotechnic *for technical purposes*," UN0431. Special Provision 161 applies only to domestic shipments. Shipments offered and transported in accordance with the provisions of §§ 171.11 and 171.12 are not subject to this special provision. The special provision specifies that the UN0503 entry may not be used for domestic shipments and that the more appropriate description is "Articles, pyrotechnic *for technical purposes*," UN0431. We believe that describing articles meeting the Class 1.4G criteria as air bags is misleading and may cause confusion for emergency responders. The wording "or seat belt pretensioners" was inadvertently omitted from the NPRM's regulatory text and is added in this final rule. Also, see § 172.102, HMT, which includes the amendment to remove the italicized word "pyrotechnic" from the UN0503 entry.

• New Special Provision 162 is added to eight new entries and two existing entries. The Special Provision authorizes the material to be transported under the provisions of Division 4.1, only if it is packed so that at no time during transport will the percentage of diluent fall below the percentage that is specified in the proper shipping name. The new entries are "4-Nitrophenylhydrazine, *with not less than 30% water, by mass*," UN3376; "Sodium dinitro-o-cresolate, wetted, *with not less than 10% water by mass*," UN3369; "Trinitrobenzene, wetted, *with not less than 10% water by mass*," UN3367; "Trinitrobenzoic acid, wetted, with not less than 10% water by mass, UN3368; "Trinitrochlorobenzene (picryl chloride), wetted, *with not less than 10% water by mass*," UN3365; "Trinitrophenol (picric acid), wetted, with not less than 10% water by mass," UN3364; "Trinitrotoluene (TNT), wetted, *with not less than 10% water by mass*," UN3366; and "Urea nitrate, wetted, *with not less than 10% water by mass*," UN3370. The two existing entries are "Barium azide, wetted *with not less than 50 percent water, by mass*," UN1571 and "Dipicryl sulfide, wetted *with not less than 10 percent water, by mass*," UN2852.

• New Special Provisions A54 and A55 are added to address certain requirements for the transportation of lithium batteries by aircraft. Special Provision A54 provides for an approval provision that authorizes lithium batteries and lithium batteries contained in equipment or packed with equipment to exceed the quantity limits as specified in Column (9B) of the HMT when transported by cargo aircraft, if approved by the Associate Administrator. Based on a comment we received from the Portable Rechargeable Battery Association (PRBA) stating that we did not take into account large lithium batteries contained in equipment, we are increasing the quantity in the HMT for lithium batteries contained in equipment from 5 kg to 35 kg for consistency with the maximum quantity per package specified for lithium batteries packed with equipment. Additional comments submitted by PRBA are beyond the scope of this rulemaking. Special Provision A55 provides for an approval provision to authorize prototype batteries to be transported by cargo aircraft, if approved by the Associate Administrator. We are assigning Special Provisions A54 and A55 to the entries "Lithium battery," UN3090, "Lithium batteries, contained in equipment," UN3091 and "Lithium batteries packed with equipment," UN3091.

• New Special Provision A56 is added to address the air transport of radioactive material with subsidiary hazards of Division 4.2, PG I, and Divisions 2.1 or 2.3. Division 4.2, PG I subsidiary hazard materials are authorized for transportation by aircraft in Type B packagings only. Materials with a 2.1 subsidiary hazard are prohibited from transport aboard passenger aircraft. The special provision is in alignment with the ICAO Technical Instruction's Special Provision A78, with regard to radioactive materials with Division 2.1 subsidiary hazard but not the Division 4.2, PG I packaging requirement or the Division 2.3 subsidiary hazard approval provision. New Special Provision A56 includes Division 4.2, PG I because we believe it was inadvertently omitted in ICAO's Special Provision A78, and we understand that steps are being taken to address the matter with the ICAO Dangerous Goods Panel. See the § 172.101 HMT in the regulatory text of this rule for specific entries.

• Special Provision IB3 is revised by excepting "Ammonia solutions, *relative density between 0.880 and 0.957 at 15 degrees C in water, with more than 10 percent but not more than 35 percent ammonia*," UN2672 from the Special Provision's "Additional Requirement" that authorizes liquids with a vapor pressure less than or equal to 110 kPa

at 50 °C (1.1 bar at 122 °F), or 130 kPa at 55 °C (1.3 bar at 131 °F). New Special Provision IP8 is also added to the UN2672 entry.

• Special Provision IB52 (Table 2) is revised by adding additional packaging authorizations for certain entries and correcting various typographical errors. The entry "Dicumyl peroxide," UN3110 is corrected by adding "2000" as the maximum quantity in liters. In addition, we are moving the approval provision for formulations not covered in Special Provision IB52 to § 173.225(e)(5). Section 173.225(e) currently contains an approval provision for portable tanks, and we believe this paragraph is a more appropriate location for the IB52 approval provision.

• New Special Provision IP8 (Table 3) is added to the existing entry "Ammonia solutions, *relative density between 0.880 and 0.957 at 15 degrees C in water, with more than 10 percent but not more than 35 percent ammonia,*" UN2672 (see Special Provision IB3). We received a comment from the Industrial Packaging Alliance of North America supporting this addition. The special provision authorizes ammonia solutions to be transported in rigid or composite plastic intermediate bulk containers (IBCs) (31H1, 31H2 and 31HZ1), if the rigid plastic and composite IBCs have successfully passed, without leakage or permanent deformation, the hydrostatic test specified in § 178.814 at a test pressure that is not less than 1.5 times the vapor pressure of the contents at 55 °C (131 °F).

• New Special Provision N83 is added to the new entry "Urea nitrate, wetted, *with not less than 10% water by mass,*" UN3370. This special provision limits the quantity of this material to no more than 11.5 kg (25.4 lbs) per package.

• New Special Provision N84 is added to six new entries and one existing entry. The special provision limits the quantity per package to no more than 500 g (1.1 lbs.). The six new entries are: "Trinitrophenol (picric acid), wetted, *with not less than 10% water by mass,*" UN3364; Trinitrochlorobenzene (picryl chloride), wetted, *with not less than 10% water by mass,*" UN3365; "Trinitrotoluene (TNT), wetted *with not less than 10% water by mass,*" UN3366; "Trinitrobenzene, wetted, *with not less than 10% water by mass,*" UN3367; "Trinitrobenzoic acid, wetted, *with not less than 10% water by mass,*" UN3368; and Sodium Dinitro-o-cresolate, wetted, *with not less than 10% water by mass,*" UN3369. The existing entry is Dipicryl sulfide, wetted *with not less than 10 percent water, by mass,*" UN2852.

• New Special Provision N85 is added to two existing entries, "Isosorbide dinitrate mixture *with not less than 60 percent lactose, mannose, starch or calcium hydrogen phosphate,*" UN2907 and "Pentaerythrite tetranitrate mixture, desensitized, solid, n.o.s. *with more than 10 percent but not more than 20 percent PETN, by mass,*" UN3344. The special provision prohibits the material from being transported in packagings conforming to the requirements of Part 178 of the HMR at the Packing Group I performance level. This action addresses over-confinement hazards associated with these materials by prohibiting the use of packagings meeting the Packing Group I performance criteria.

• Special Provision T23 is revised to correct typographical errors for the entries "tert-Butyl peroxyacetate, not more than 32% in diluent type B" and "tert-Butyl peroxypivalate, not more than 27% in diluent type B." The word "tyupe" is corrected to read "type" and the control temperature, "–5 °C," is corrected to read "+5 °C."

• Special Provision TP3 is editorially revised for clarity.

Section 172.202. We are revising paragraphs (a)(2), (a)(5) and (b) as discussed below.

Requirement To Include the Subsidiary Hazard on Shipping Papers

In paragraph (a)(2), we are requiring the subsidiary hazard class(es) or subsidiary division number(s) to be entered in parentheses following the primary hazard class or division number on shipping papers. Prior to this amendment, the requirement only applied to transportation by vessel. As discussed in the NPRM, this amendment responds to four petitions for rulemaking, P–1363, P–1398, P–1402 and P–1418. One petitioner (P–1363) stated that the lack of such a requirement poses problems for motor carriers concerning segregation, separation and placarding requirements and poses a safety hazard. The petitioner pointed out that when the hazardous materials being transported include a subsidiary hazard such as "dangerous when wet" or a subsidiary hazard requiring more stringent requirements than the primary hazard, there is no indication of the subsidiary hazards on the shipping papers and no indication of the subsidiary risks on placards. The petitioner stated that when motor vehicles are being loaded at a dock, labels are not enough to alert hazardous materials employees loading the vehicles or emergency responders of the subsidiary risks of materials contained in the vehicle.

Two petitions (P–1398 and P–1402) were specific to Division 4.3 materials. The petitioners requested that we require the shipping paper to contain the words "dangerous when wet" following the basic description for hazardous materials classed as Division 4.3 or having a Division 4.3 subsidiary hazard. The petitioners stated that the additional information would aid emergency responders by more clearly identifying the hazard.

We agree with the petitioners and we are adding a requirement to identify all subsidiary risks of a hazardous material on the shipping paper.

We do not agree with the petitioner's (P–1363) suggestion to provide an exception from the revised requirement to include the subsidiary hazard on shipping papers when the subsidiary hazard is identified in the proper shipping name (for example, "Flammable liquid, toxic, n.o.s."). This suggested approach is inconsistent with the UN Recommendations and would result in the addition of a domestic exception that would not enhance hazard communication.

Some commenters supported the requirement to indicate the subsidiary hazard in the basic shipping description; however, other commenters asked that we provide a delayed implementation date in order to minimize associated costs resulting from changes that will need to be made to computer generated shipping forms. One commenter estimates that adding subsidiary hazard information to shipping papers will necessitate modifications to 80,000 active data profiles and case-by-case updates to possibly 200,000 additional data profiles. Another commenter suggests that our cost estimates in the NPRM understate the actual costs that shippers will incur, stating that its costs to comply with the shipping paper revisions proposed in the NPRM will total about $3,600,000. Other commenters agree that substantial time and resources, including modifications to systems and training programs, will be required to implement the new requirements. We agree that additional time is necessary and are extending the mandatory compliance date for this change until October 1, 2005 (*See* § 171.14). This date provides industry two years from the effective date of this final rule to implement the requirement and should help to reduce the implementation burden and costs of compliance with the change.

Requirement To Include Number and Types of Packages on Shipping Papers

We are also revising paragraph (a)(6) regarding the indication on shipping papers of the total quantity of hazardous materials. The amendment makes it mandatory for shippers to include on shipping papers the number and types of packages, such as drums, boxes, jerricans, *etc.*, being used to transport hazardous materials by all modes of transportation. In the NPRM, we proposed a one-year implementation period and requested comments specific to this issue, including suggestions to minimize any impacts that would be associated with the change, such as providing an extended transition period. A number of the commenters suggested that because of the costs associated with implementing the changes, such as to computer programs and systems, we should extend the compliance date. Most commenters suggested that a two or three-year implementation period would be sufficient. We agree that this new requirement warrants additional time to implement. To help reduce the implementation burden and associated costs, we are authorizing use of the current requirements until October 1, 2007 (*see* § 171.14). This date will provide companies four years from the effective date of this final rule.

One commenter requested that we justify the requirement to indicate package types and numbers on shipping papers. We believe that the requirement to indicate types and numbers of packages will enhance the safety and security of hazardous materials transportation while enhancing international harmonization. When incidents occur during transportation, it is essential to know the number of packages present in a given shipment. For example, emergency responders at the scene of an incident would use the information to be certain that they have accounted for all of the packages. After a release of hazardous materials from a motor vehicle involved in a highway traffic accident, it is important for the emergency responders to quickly ascertain the number and types of packages when determining their emergency response actions.

From a security perspective, an indication of the number and type of packages facilitates accountability of the packages. With today's heightened risk of terrorism, the requirement to include the number and types of packages on shipping papers is an effective tool in promoting public safety by allowing carriers, transportation workers, emergency responders and law enforcement personnel to quickly determine whether packages may be missing, such as from theft. The requirement will assist law enforcement personnel in identifying questionable shipments where further investigation may be warranted. The requirement will help deter and prevent hazardous materials in transportation from being used in a criminal manner, such as weapons of terrorism.

Finally, for ease of compliance with the appropriate regulations, international carriers engaged in the transportation of hazardous materials by aircraft generally elect to comply with the ICAO Technical Instructions, while vessel operators generally elect to comply with the IMDG Code. Because the ICAO Technical Instructions and the IMDG Code currently require the number and types of packages to be included on shipping papers, shippers complying with these international regulations are presently subject to conformance with this requirement. Consistency between international regulations and the HMR with respect to requiring the number and types of packages to be included on shipping papers is another step towards our goal of international uniformity.

One commenter requested that we allow the newly required indication of package types and numbers information to be entered before or after the basic description. We agree and have adopted this placement in this final rule.

Several commenters asked whether we would allow abbreviations for package type, noting that EPA allows certain abbreviations on the hazardous waste manifest. We agree that abbreviations may be used for package types and have revised paragraph (a)(6) accordingly.

We reformatted paragraph (a)(5) in response to a comment from the Dangerous Goods Advisory Council (DGAC) requesting clarification on the structure of paragraph. For the purpose of consolidation, we also transferred to paragraph (a)(5) the existing additional requirements for transportation by vessel currently located in § 172.203(i)(1), (i)(2), (i)(3) and (i)(6).

Optional Sequence of Information

Paragraph (b) is revised to allow an alternative to the basic description sequence currently required in this paragraph. Under the alternate format, the identification number is listed first, followed by the proper shipping name, the hazard class and subsidiary risk, and packing group number. Several commenters stated that authorizing a new sequence of information will cause confusion, and two commenters requested that a single sequence of information be adopted at the international level. While we believe that the new sequence is necessary for harmonization with international regulations, we are making it optional, rather than requiring it in this final rule. We agree that it would be beneficial to work with the appropriate international bodies to adopt on a single sequence of information.

Structure of 172.202(a)(5)

One commenter requested that 172.202(a)(5) be restructured to clarify the requirements. We agree and have made the necessary changes.

Description of Cylinders on Shipping Papers

One commenter requested that cylinders not be excepted from the requirement to indicate the total quantity on the shipping paper. This comment is outside the scope of this rulemaking as it addresses an existing requirement. Another commenter requested that we clarify § 172.202(a)(5) to indicate that cylinders may be described by a net or gross quantity, in addition to by number of cylinders. The commenter is correct that a net or gross mass may be used to describe cylinders and that this information is not mandatory. As previously discussed, however, we are requiring that the number and types of packages be included on shipping papers. This final rule, therefore, continues to allow the option of indicating the mass of cylinders, but makes mandatory the indication of the number of cylinders in a shipment. One commenter questioned whether airbags containing compressed gas cylinders would be subject to this requirement. We do not consider cylinders employed for use in airbags or other articles to be in the package, so the requirement does not apply in this instance. In the case of airbags and other articles containing cylinders, the package containing the airbag or article is considered to be the package.

Requirement To Indicate Net or Gross Mass

One commenter noted that the removal of the words "as otherwise appropriate" implies that shippers can no longer use other more relevant units of radioactivity to account for the quantity of radioactive materials in a consignment. This was not our intent, and we have specifically added text to allow the use of units more appropriate to radioactive material shipments.

Several commenters suggested that we eliminate the words "net mass" and "gross mass" from the example "1box, net mass, 30 kg" or "2 drums, gross

mass, 200 kg." We agree that the example may be misleading and have removed the example from the section.

Several commenters noted that the sentence "Abbreviations may be used to specify the unit of measurement for the total quantity" is redundant because it is permitted in 172.202(c). We agree and have removed the sentence.

One commenter requested we retain the current phrase "* * * of the hazardous material covered by the description * * *" and not adopt the new phrase "* * * of each hazardous material bearing a different proper shipping name, UN number or packing group * * *." We agree that the existing wording is adequate considering each element of the proposed language is a part of the "description" and have retained the current text.

One commenter suggested we use the term "packages containing only residue" rather than the term "empty packagings." This comment is outside the scope of this rulemaking.

One commenter requested that we require a gross mass, and not a net mass or volume, due to placarding requirements. Because this was not proposed in the NPRM, the comment is beyond the scope of this final rule.

Section 172.203. We are removing and relocating paragraphs (i)(1), (i)(2), (i)(3) and (i)(6). With adoption of the requirement to indicate types of packagings on shipping papers in § 172.202, we are consolidating the four vessel requirements in § 172.203(i) by moving them to the description requirements in § 172.202(a)(5). The paragraphs address additional shipping paper requirements for the identification of the type, number and gross mass of packagings, and the identification of subsidiary hazards consistent with international standards. The current paragraphs (i)(4) and (i)(5) are redesignated (i)(1) and (i)(2).

Section 172.301. Paragraph (a)(1) is revised to reflect the new alternative marking requirement in § 172.315 for packages containing limited quantities of hazardous materials. Packages containing limited quantities of hazardous materials must be marked with the proper shipping name in accordance with § 172.301, or in accordance with the new alternative marking in § 172.315 that consists of an identification number placed within a diamond. (See § 172.315). Several commenters requested that we allow a shipment to be transported solely via highway and rail when marked and labeled for transport by aircraft. These comments, however, were based on the NPRM text which proposed to incorporate the marking as a mandatory requirement. Because we are adopting the marking as an alternative to the current requirements, a limited quantity package prepared for air transport is also acceptable for transportation solely by highway and rail without adding the marking as specified by § 172.315.

Section 172.312. A new paragraph (c)(6) is added to allow packages containing liquid infectious substances in primary receptacles not exceeding 50 ml (1.7 oz) to be excepted from the requirements in § 172.312(a). Section 172.312(a) requires liquid hazardous materials packaged in non-bulk combination packagings to be packed with closures upward and to be legibly marked with orientation markings.

Section 172.315. A new section, § 172.315, is added as an alternative marking requirement for packagings containing limited quantities of hazardous materials. This section allows limited quantity packagings to be marked with the identification (ID) number placed within a diamond. After considering the comments discussed below, we are incorporating the diamond marking into the HMR as an alternative to, rather than a replacement of, the existing marking requirements for limited quantities. In addition, the UN Committee of Experts on the Transport of Dangerous Goods will be addressing requirements for limited quantities and consumer commodities during their 2003–2004 work program. While we are not aware of any proposals to change the package marking for limited quantities, there is a possibility that changes may be discussed and adopted, and therefore, replacing the existing requirement would be premature at this time.

Not all commenters support adopting the requirement. Several commenters opposed the requirement because the diamond marking is not contained in the ICAO Technical Instructions. One commenter incorrectly stated that the requirement is not contained in any of the international standards, including the IMDG Code, and asked us to explain our purpose for proposing the limited quantity marking. Currently, the diamond marking is contained in Chapter 3.4.5.1.2 of the IMDG Code and in Chapter 3.4 of the UN Recommendations. By incorporating the marking as an alternative requirement, persons have the flexibility to continue using the current limited quantity package marking.

With respect to the ICAO Technical Instructions, we agree with the commenters' argument that incorporating the marking requirement will create unnecessary problems. Several commenters noted that under the current limited quantity requirements, they may mark and label packages containing limited quantities prepared for air transport and also ship them domestically by ground. URS Corporation stated that if we adopted this requirement, packages prepared for air transport displaying a hazard label and marked with the ID number and proper shipping name would need to be additionally marked with the new limited quantity marking when also transported by highway or rail. This would preclude shippers from using a single system of marking and labeling when packages marked and labeled for air transport are also being transported by highway or rail. We agree that applying the new limited quantity marking for packages prepared for air transport would be redundant. The commenters requested that we allow a shipment to be shipped via ground when marked and labeled for air transport, regardless of whether any portion of the transport includes transportation by air. In response to the commenters' request, we are revising the regulatory text in paragraph (a) by adding the words "Except for transportation by aircraft."

Some commenters requested an extended transition period, until October 1, 2006, for the continued use of the existing limited quantity requirement. The commenters pointed out that the October 1, 2004 delayed implementation date may not afford industry enough time to clear their stocks of packagings marked in accordance with the current marking requirements. With the adoption of this requirement as an option, the current limited quantity marking is retained and, therefore, an extended transition period is not necessary.

The Florida Department of Environmental Protection, Bureau of Emergency Response (FDEP–BER) believes that all packages should display the proper shipping name in order to determine the contents. FDEP–BER stated that ID numbers are not as easy and quick to identify as proper shipping names. In addition, using the ID number instead of a proper shipping name may require a person to consult reference materials to determine the contents of the packages because certain ID numbers apply to more than one chemical or reference only a generic shipping description that lacks the specific composition of the material. While we recognize the concerns of the commenters, we do not agree that indicating the UN number in lieu of the proper shipping name will compromise safety. We believe the proper shipping name can be quickly determined using the Emergency Response Guidebook's section containing ID numbers.

One commenter requested a clarification regarding color specification for the limited quantity marking. Consistent with the UN Recommendations and the IMDG Code, we are not restricting the marking to a specific color.

Two commenters requested early voluntary compliance, as of January 1, 2003, with the new limited quantity marking. Because the NPRM did not include this requirement together with the proposed early compliance date for the incorporation-by-reference materials, the request is considered beyond the scope of this final rule. We are, however, authorizing immediate voluntary compliance upon the date of publication of this final rule.

Based on the above discussion, we are adding a new section, § 172.315, as an alternative marking requirement for packages containing limited quantities of hazardous materials. When marked in accordance with this section, limited quantity packages must be marked with the identification (ID) number placed within a square-on-point. Marking the proper shipping name on limited quantity packages is not required when using this marking, but is permissible. The line forming the square-on-point must be at least 2 mm thick and the height of the ID number no less than 6 mm. For packages containing more than one limited quantity of hazardous materials with different ID numbers, the packaging must be marked with either individual diamonds bearing a single ID number, or a single diamond large enough to include each applicable ID number. The marking must be durable, legible and of a size relative to the packaging as to be readily visible.

Section 172.321. A new section, § 172.321, is added to incorporate an air eligibility marking requirement into the HMR for non-bulk packages offered for transportation by aircraft. Section 172.321 replaces the proposed § 172.323 as the location for this requirement because § 172.323 is now the marking section for infectious substances. The marking certifies compliance with all the applicable air transport requirements that apply to a package containing hazardous materials that is offered for transport by air, including pressure differential requirements, package markings and labels, inner packaging limits, selection of appropriate types of packagings, use of closure instructions for inner packagings, use of absorbent materials, application of the cargo aircraft handling label (when applicable), and proper classification of the contents of the packaging.

We received approximately 10 comments addressing the proposed air eligibility mark. Some commenters are in favor of the marking, but request certain revisions, while other commenters are opposed to the adoption of the mark altogether.

Several commenters addressed the distinction between the use of the words "package" and "packaging." The ICAO's use of the word "package" in the Technical Instructions and our use of the word "package" as proposed in the NPRM has led to misunderstandings of the meaning and applicability of the air eligibility mark. One commenter suggested that we postpone adoption of this requirement until ICAO has considered this issue. Another commenter suggested that we submit a variation to ICAO if we adopt the air eligibility mark as proposed. We interpret the current ICAO text that states shipments must "meet all the applicable requirements for air transport" to include the packaging plus its contents (the "package") and not the packaging alone. On the basis of a proposal to ICAO to revise the Technical Instructions by clarifying that the certification marking applies to the package, the ICAO Dangerous Goods Panel recently agreed to amend the ICAO Technical Instructions to indicate that the air eligibility mark is an indication that the shipper has determined that the "package" meets the applicable air transport requirements. Based on the foregoing, the text, as proposed, will be consistent with the ICAO Technical Instructions. Therefore, we believe it is appropriate to adopt this change at this time.

The Air Transport Association (ATA), the Air Line Pilots Association (ALPA) and Delta Airlines stated that the wording "each person" in paragraph (a) suggests that any person, including the carrier and the forwarder would be responsible for marking the package with the air eligibility mark. ALPA maintains that it is important for the marking to be applied when the package is being prepared. We agree that the offeror is the appropriate person to assume responsibility for the mark and that the carrier is responsible for ensuring that the mark is present. We are revising paragraph (a) by replacing the wording "each person who offers for transportation or transports" with "each person who offers for transportation." This revision also responds to a comment that we received from DGAC in which DGAC cited the Federal hazardous materials transportation law concerning "Representation" and questioned the authority to place the air eligibility marking on a package. DGAC stated that, as proposed, requiring the mark to represent total certification of compliance would suggest that the only person who may "display the marking on a package would be the same person making the certification" in accordance with § 172.204. DGAC went on to question whether a packaging manufacturer may pre-certify compliance because there is no signature involved in the display of the marking. As discussed in the paragraph above, it is the offeror who is responsible for the certification. The packaging manufacturer is not certifying that the package is in compliance with all applicable requirements. The marking has no significance as a certification until the package is offered for transportation. With respect to the statement suggesting that only a signature can represent certification, the commenter is incorrect. Although the air eligibility mark, as a form of certification, does not waive the shipping paper certification, the air eligibility mark certifies that the package meets all applicable requirements for air transport. This is consistent with existing regulatory text in § 172.316 that states the ORM–D marking is the certification that the material is properly described, classed, packaged, marked and labeled.

Several commenters disagree with allowing the air eligibility mark to be hand drawn. Currently, the HMR does not prohibit any markings from being hand drawn provided all applicable specifications are met. We did not propose a specific graphic for the marking and do not believe it is necessary to single out the air eligibility mark from being hand drawn as long as it clearly depicts an airplane in a circle and says "Air Eligible." However, we may consider proposing a specific graphic for the air eligibility marking in future rulemaking, preferably based on a consensus standard.

Dupont, the Air Transport Association (ATA), ALPA and Delta Airlines disagree with allowing the air eligibility mark to be preprinted on packages. The commenters believe that preprinted packages can inadvertently be used for shipments that are not suitable for air transport. Currently, the HMR authorizes UN markings and other package markings to be preprinted and we view the air eligibility mark as similar. In certain instances it may be more cost effective for the shipper to preprint the mark. It is our position that it is the responsibility of the offeror to ensure that every package bearing the

mark is air eligible, regardless of whether it is preprinted or not.

One commenter incorrectly questions why we except dry ice from the air eligibility mark when the ICAO Technical Instructions do not provide the exception. The ICAO Technical Instructions contain the same exception in the dry ice packing instruction (see ICAO Technical Instruction 904).

One commenter opposing the incorporation of the air eligibility mark is concerned that currently marked shrink-wrapped packages will be required to be remarked. As discussed earlier in this preamble, we are providing an extended transition period, until October 1, 2004, which will allow sufficient time for such packages to be transported as they are currently marked.

One commenter believes there is not enough space for another marking and states that if the package has been tested under UN certification, "it is fit for air." We disagree. The size requirement specifies only that mark be visible. Meeting the UN packaging test requirements is not an assurance that the package is suitable for its contents or that it complies with the applicable air transport requirements.

Several commenters are opposed to the air eligibility marking stating that our interpretation of what the air eligibility mark certifies is too broad or that the mark is unnecessary because the certification statement on the shipping paper is sufficient. We disagree. The air eligibility mark communicates the certification directly on the package. In addition to consistency with the ICAO Technical Instructions, we believe that the use of an air eligibility mark will be beneficial in heightening shipper awareness and responsibility for meeting the additional air transport package requirements. Adoption of this requirement will reduce the inadvertent acceptance for transportation by aircraft of packages that conform only to highway, rail or vessel requirements.

Based on the above discussion, we are incorporating the air eligibility marking requirement into the HMR for all non-bulk packages offered for transportation or transported by aircraft with certain exceptions. The shipper is responsible for the application of the marking, but is not required to physically place it on the package. The marking can be applied by using a durable sticker or label, preprinting it on the packaging, or drawing it on the package by hand. The marking must be durable, legible, and of such size relative to the packaging as to be readily visible. Preprinting by the packaging manufacturer requires the manufacturer and the shipper to closely coordinate to ensure that the package meets the applicable air transport requirements. The shipper is responsible for ensuring that the package meets the applicable air transport requirements.

A number of changes to the proposed text are made in this final rule to clarify the purpose of the marking and requirements. The text of paragraph (a) is revised to more clearly identify the purpose of the mark as certification by the person offering a package that the package meets requirements for air transportation and to provide examples of those requirements. A sentence is added to § 172.321(a) to clarify that the air eligibility mark does not eliminate a requirement for a certification on a shipping paper. Paragraph (b) is reformatted and a sentence is added to clarify that an overpack or outer packaging containing a cylinder must be marked rather than the cylinder. Paragraph (c) is revised editorially and to clarify that packagings which are excepted from marking requirements are not subject to the air eligibility marking. A new paragraph (d) is added to clearly indicate that the air eligibility marking may not be displayed on a package which does not meet requirements for air transportation.

Section 172.411. We are revising the section heading and paragraphs (b) and (d), and adding new paragraphs (e) and (f). In the June 21, 2001 HM–215D final rule, we removed the requirement to differentiate between primary and subsidiary labels by requiring the class number to be displayed on both types of labels. The primary explosive label, but not the explosive subsidiary label, required the appropriate division number and compatibility group to be displayed. This disparity was an oversight, and we are correcting this section by adding the pictorial of the explosive subsidiary label and revising the text accordingly.

Section 172.504. Based on an oral comment we received from a shipper, paragraph (g) is editorially revised to explain the distinction between the words "explosive articles" and "explosive substances." The commenter stated that the paragraph is often misinterpreted because the two phrases are not understood as having different meanings.

Part 173

Section 173.2a. In paragraph (b), the second line of the title of the Precedence of Hazard Table is editorially revised to include the word "division." In addition, the Table is revised for the first three entries by inserting "4.3" under the Division 4.3 column to indicate that Division 4.3 takes precedence over Class 3 when classifying a material having more than one hazard.

Section 173.21. In paragraph (f)(3)(ii), we are updating the location reference to the control temperature requirements in the IMDG Code to its current location in Chapter 7.7.

Section 173.22. We are revising paragraph (a)(4) to clarify that, in addition to complying with the Part 178 requirements, the shipper is responsible for ensuring that packages comply with the Part 173 requirements. This revision is consistent with the new amendments to § 173.24a relative to closures, and to § 173.27 relative to packages intended for air transport.

Section 173.24. Certain comments that we received are beyond the scope of this rulemaking and will not be addressed in this final rule. In the NPRM we proposed to add a new paragraph (b)(4) and revise paragraph (f)(1). Paragraph (b)(4) proposed general requirements applicable to the integrity of packagings. It also proposed to specify that packagings must be closed in accordance with the closure instructions provided by the manufacturer. Prior to this final rule, § 178.2 required packaging manufacturers to provide closure instructions. Although implied under the requirements of §§ 173.22a(2) and 173.24(d) and (f)(2), there was no specific requirement that shippers follow closure instructions. Also in the NPRM, paragraph (f)(1) proposed to revise requirements for the construction and design of closures.

The National Solid Wastes Management Association (NSWMA) submitted a comment supporting the requirement that packages be closed in accordance with the manufacturer's instructions. The Reusable Industrial Packaging Association (RIPA) also supported the proposal, but requested a revision to permit shippers to close packages in a manner that differs from the closure instructions in § 173.28 provided such procedures are fully documented. RIPA states that the word "must" is restrictive for the requirement that packages must be closed in accordance with the manufacturer's instructions and suggests the word be replaced with "should." The commenter further stated that it is impossible for a packaging manufacturer to anticipate every climatic and work condition in which filling may take place and that the manner in which packages are closed often varies from plant to plant. The commenter recommends that closure procedures varying from the manufacturer's instructions be authorized.

We agree that there may be cases in which certain deviations from the specific closing instructions provided by the manufacturer may be warranted, and note that certain changes are currently permitted under packaging variations in Subpart M of Part 178. We do not agree with revising the word "must" to "should." Where the manufacturer has specified closure instructions, those instructions may be critical to performance of the packaging in transportation. We understand the commenter's concerns that a shipper should be able to vary from the closure instructions if an equivalent level of safety is achieved and the procedure is documented. However, to the extent that such changes are not currently permitted and were not proposed in the NPRM, we consider them outside the scope of this rulemaking.

RIPA's concerns highlight the need for collaboration between packaging manufacturer and customer in the design, testing and use of packagings. There is a need for manufacturers of hazardous materials packagings to take into account the various conditions of transport that the packaging may experience. If a packaging has limited capability under specific conditions, then the manufacturer's instructions should indicate these limitations. Effective communication of the packagings' capabilities will serve to avoid the potential for a shipper to inadvertently use a packaging that was not intended for certain transport environments. The closure instructions should provide specifics relative to the packagings' capabilities when specific conditions of transport would impact the packagings' capability to contain hazardous materials.

RIPA commented that several different gasket configurations may need to be used dependent on the filling and transport conditions. If this is the case, and the different gasket configurations were taken into account in the packaging design qualification, the closure instructions should provide appropriate closure information with respect to all of the gasket configurations that were approved according to the design type testing.

Shippers should not be arbitrarily changing closure devices without coordination with the packaging manufacturer or conducting additional testing to verify that the packaging integrity has not been compromised. As specified in Subpart M of Part 178, the substitution of closures or gaskets (for example, changing from a metal bung closure to a plastic bung closure on a closed head steel drum) may change the packaging design type for purposes of UN performance design qualification testing. Closure changes are permitted according to the selective testing variations in accordance with § 178.601(g)(1) and (g)(5). Only when the conditions of the selective testing conditions have been met (including the specified limited additional testing according to § 178.601(g)(5)), if applicable, may a different closure or gasket be used without the packaging being considered a new design requiring the full UN performance testing prescribed in Part 178. The regulatory text we are adopting in this final rule does not negate the ability of the shipper to use different closures consistent with the selective testing provisions.

The instructions provided by the manufacturer should indicate variations to closure procedures that would compensate for environmental conditions or conditions based on the types of materials that are contained in the packaging. To ensure proper closure of packagings and to avoid leaks in transport, shippers and manufacturers need to work in coordination to ensure that the closure methods used will provide an effective seal taking into account the various conditions involved during transport.

Additionally, RIPA commented that (b)(4) and (f)(1) should use consistent wording, and that the text in (f)(1) concerning the requirement for closures to be designed in a manner that make improper closure unlikely should be removed. We do not agree with RIPA's proposed editorial revisions that suggest adding wording such as "reasonable changes in temperature," "normal altitude variations" or "normal vibration ranges." We believe this wording is vague and will not enhance the clarity of either paragraph. We agree that the sentence, as proposed in the NPRM, requiring the closure device to be so designed that it is unlikely to be incorrectly or incompletely closed may not be realistic and may be subject to a range of interpretation. We are not, therefore, including the requirement in this final rule.

We believe that the amendments to this section will enhance safety by ensuring that adequate consideration is given to the effects of transportation conditions on packages and that packages are securely and effectively closed.

Section 173.25. In paragraph (a)(2), we are including the air eligibility marking as part of the marking requirements pertaining to overpacks.

Section 173.27. We are revising paragraph (e) and adding a new paragraph (i). Paragraph (e) is revised to require packagings with plastic and metal inner packagings to be packaged using absorbent material when Packing Group I or II liquids of Class 3, 4 or 8 or Division 5.1, 5.2 or 6.1 are offered for transport by passenger or cargo aircraft. Prior to this amendment, the requirement to use absorbent material applied to Packing Group I and II materials when offered for transport by passenger aircraft, and to Packing Group I materials when offered for transport by cargo aircraft. We are applying this requirement to Packing Group II materials offered for transport by cargo aircraft. Existing absorbent material requirements apply when inner packagings are constructed of glass or earthenware. Prior to this final rule, the absorbent material requirement did not apply to Division 5.2 liquids. The amendments are consistent with the 2003–2004 edition of the ICAO Technical Instructions.

We received four comments concerning the absorbent material requirement in paragraph (e). Two commenters suggested that we clarify or remove paragraph (e)(5), which provides an exception from the use of absorbent materials when the inner packagings are not fragile. Paragraph (e)(5) is existing text that was not proposed to be revised in the NPRM. However, we agree that this exception needs to be reconsidered and we have submitted a working paper to the ICAO Dangerous Goods Panel to address it. One commenter, addressing paragraph (e)(2), believes that one absorbent material requirement should apply to transportation by passenger and cargo aircraft. Because these are existing requirements that we did not address in the NPRM, the comment is beyond the scope of this rulemaking.

The Conference on Safe Transportation of Hazardous Articles (COSTHA) stated that the proposed regulatory text is broader than that contained in the ICAO Technical Instructions because it requires absorbent material for all liquid hazardous materials except Class 9. The commenter suggests that we align the paragraph with the wording in the ICAO Technical Instructions by specifically stating that the applicability of the requirement is for liquids in Classes 3, 4, 8 and Divisions 5.1, 5.2 and 6.1. It was not our intent to differ from the requirements of the ICAO Technical Instructions. We agree and are revising the regulatory text accordingly.

We are also adding a new paragraph (i) to refer the reader to new section § 172.321 for the air eligibility marking

requirement for packagings containing hazardous materials being transported by aircraft. See § 172.321 for the discussion on this requirement.

Section 173.62. In § 173.62, in the paragraph (b) Explosives Table, the entry "UN0503" is added to the packing instruction P135. This is consistent with international regulations. UN0503 is assigned to the proper shipping name "Air bag inflators, *or* Air bag modules, *or* Seat-belt pretensioners," Division 1.4G (also see § 172.101, HMT). The Class 9 "Air bag inflators, *or* Air bag modules, *or* Seat-belt pretensioners" entry continues to be packaged in accordance with § 173.166.

In addition, the obsolete ID number UN0223 is removed from the packing instruction 112(b) in the Explosives Packing Instructions Table. The entry was removed from the § 172.101 Table in a previous rulemaking.

Section 173.115. In paragraphs (d) and (e), we are amending the regulatory text that describes "non-liquefied compressed gas" and "liquefied compressed gas." The amendment revises the reference temperature from 20 °C to −50 °C, consistent with internationally accepted definitions for gases and consistent with the twelfth edition of the UN Recommendations.

We are also dividing compressed liquefied gases into high and low pressure categories. The UN Subcommittee revised the terminology for gases to align it with the terminology used in the International Organization for Standardization (ISO) Standard 10286. This standard establishes the terminology applicable to gas cylinders and provides definitions for gases. The new regulatory text affects 11 entries in the § 172.101 Table by removing the word "compressed" from the proper shipping names. Under a separate rulemaking, we will address whether the affected gases should be reassigned to more appropriate packagings sections, such as revising the packaging authorization from § 173.302 to § 173.304 in Column (8B) in the § 172.101 Table. We will also address the use of the high- and low-pressure compressed liquefied gas designations.

Sections 173.152, 173.153 and 173.154. The following sections are revised by increasing the inner packaging net capacity limit for Packing Group III liquids from 4 L (1.1 gal) to 5 L (1.3 gal): § 173.152(b)(2), exceptions for Division 5.1 oxidizers and Division 5.2 organic peroxides; § 173.153(b)(1), exceptions for Division 6.1 poisonous materials; and § 173.154(b)(2), exceptions for Class 8 corrosive materials. Section 173.152(b)(4)(ii) is also revised by raising the net capacity of inner packagings containing PG II flammable liquids in polyester resin kits from 1 L (0.3 gal) to 5 L (1.3 gal) each.

Section 173.159. A new sentence is added to paragraph (a) requiring packagings for certain batteries to include an acid/alkali proof liner or a supplementary packaging with sufficient strength and adequate sealant to prevent leakage of electrolyte fluid in the event of spillage. This requirement applies to packagings transported by aircraft and containing electric storage batteries with electrolyte acid or alkaline corrosive battery fluid.

A new paragraph (d)(4) is added to require non-spillable batteries, that are excepted from all other requirements of the HMR, to meet the condition that at a temperature of 55 °C (131 °F), the electrolyte will not flow from a ruptured or cracked case and there is no free, unabsorbed liquid in the battery.

Section 173.161. We are revising this section to specify the packaging requirements for chemical and first aid kits consistent with international standards. We received several comments stating that in paragraph (b), as proposed, the first sentence suggests we are requiring specification packaging for air transport. This was not our intent. The "except when offered by air" phrase was intended to apply only to labeling. Therefore, we are revising the first sentence to indicate chemical and first aid kits are excepted from specification packagings for all modes of transportation.

Section 173.166. This section is revised consistent with the removal of the Division 2.2 entry for "Air bag inflators, compressed gas or Air bag modules, compressed gas or Seat-belt pretensioners, compressed gas," UN3353 (see § 172.101, HMT). We are authorizing reclassification to Class 9 without further testing for air bag inflators, air bag modules and pretensioners previously approved for transportation as Division 2.2. We received comments from NAAHAC supporting the adoption of this revision.

Section 173.185. Paragraphs (e)(4) and (e)(7) are revised and a new paragraph (k) is added. We are combining paragraphs (e)(4) and (e)(5) into one paragraph, (e)(4), and removing and reserving paragraph (e)(5).

The revised paragraph (e)(4) allows the use of dividers or other suitable means as alternative methods to inner packagings for effective means of preventing short circuits of lithium cells and batteries.

Based on a comment that was beyond the scope of the HM–215D final rule, we are revising paragraph (e)(7) by applying the prohibition to offer for transportation or transport certain cells and batteries to only those with a liquid cathode containing sulfur dioxide, sulfuryl chloride or thionyl chloride. Prior to this amendment, any cell or battery with a cell that has been discharged to the extent that the open circuit voltage is less than 2 volts, or less than two-thirds of the open circuit voltage of the fully charged cell, whichever is less, is prohibited from being offered for transportation or transported. We are including sulfuryl chloride in this amendment. The UN Recommendations do not include this prohibition. The reduced voltage condition was included in the HMR to address lithium sulfur dioxide, sulfuryl chloride and lithium thionyl chloride primary batteries on the basis of safety issues with low-voltage cells. The lithium sulfur dioxide batteries present hazards in transportation when the sulfur dioxide is depleted. The depletion can cause the removal or breakdown of the passivation film on the lithium anode which could result in a undesirable exothermic reaction of the lithium metal and the electrolyte solvent leading to high temperatures, cell venting, cell rupture, and fires. In addition, a new paragraph (k) is added to allow batteries with a mass of 12 kg or greater and having strong, impact-resistant outer casings to be packed in strong outer packagings, protective enclosures, or unpacked on pallets. Packaging in this mannermay be transported by cargo-only aircraft and is permitted only with the approval of the Associate Administrator.

Additional amendments to the requirements for lithium batteries are being addressed in a separate rulemaking, under Docket HM–224C (NPRM published on April 2, 2002, 67 FR 15510). One of the proposals under Docket HM–224C addresses a reorganization of § 173.185.

Section 173.216. We are moving the exceptions for asbestos in paragraph (b) to a new special provision (see Special Provision 156 in § 172.102). Paragraph (b) excepts asbestos immersed or fixed in a natural or artificial binder material and also excepts asbestos contained in manufactured products. We understand that because the exception is located in § 173.216 and referenced in Column (7) of the HMT for non-bulk packagings, the exception appears to be limited to non-bulk packagings. To clarify the applicability, we are removing and reserving paragraph (b) and transfering the exception to new Special Provision 156. The exception continues to apply to three entries, "Blue asbestos (Crocidolite) or Brown asbestos (amosite, mysorite)," UN2212, "White asbestos (chrysotile, actinolite, anthohyllite, tremolite)," UN2590, and "Asbestos," NA2212.

Section 173.218. Paragraph (a) introductory text is revised and paragraph (b) is removed. Paragraph (a) introductory text is editorially revised to reflect the relocation of the requirement previously contained in paragraph (b). In paragraph (b), the requirement for the maximum temperature at which fish meal or fish scrap may not be offered for transportation is revised from 49 °C (120 °F) to 35 °C (95 °F), or 5 °C (41 °F) above ambient temperature, whichever is higher, and relocated to Special Provision 155 (see § 172.102).

Section 173.220. We are adding a new paragraph to include additional requirements for certain engines and vehicles. Existing paragraph (e) is redesignated (f) and the new paragraph becomes paragraph (e). The new paragraph includes several additional requirements for internal combustion engines and vehicles equipped with certain devices when transported by aircraft or vessel. When engines are shipped separately, we are requiring that all fuel, coolant, hydraulic fluids or any other hazardous materials that meet the definition of a hazardous material, must be drained as far as practicable, must have disconnected fluid pipes sealed with leak-proof caps that are positively retained, and for transportation by aircraft, any installed theft-protection devices, radio communications equipment or navigational systems must be disabled.

We received several comments to the proposed new paragraph. UPS supports the revisions and believes the new paragraph will help eliminate confusion when offering or transporting engines. URS Corporation stated that the last sentence requiring certain equipment to be disabled should be omitted because it is not contained in the UN Recommendations. The commenter is correct that the requirement is not contained in the UN Recommendations, however, because it is contained in the ICAO Technical Instructions, we are revising the sentence to apply to air shipments only.

Lynden Incorporated, which represents several tug/barge operators, commented that the terminology "internal combustion engine" has become synonymous with the term "vehicle." Lynden Incorporated states that as proposed, paragraph (e) may lead to confusion with respect to which engines must be drained of fluids and must have disconnected fluid pipes sealed with leak-proof caps. Although the words "shipped separately" in the proposed text were intended to mean that we are not referring to engines that are installed in a vehicle or machinery, we have decided to further revise the sentence by specifying that the paragraph pertains to engines that are not installed in vehicles or equipment.

Finally, COSTHA requested that paragraphs (a)(2) and (c) be aligned with new Special Provision 157 and the current Special Provision 134 by specifically referencing sodium and lithium batteries. We agree and are making the revisions accordingly.

Section 173.223. We are adding a new packaging section, § 173.223, for musk xylene. Prior to this amendment, the authorized packaging section for musk xylene, § 173.214, required approval by the Associate Administrator. We are adding a new section that is consistent with the UN packing instruction P409 assigned to musk xylene, so that approval by the Associate Administrator is no longer necessary.

Section 173.224. In paragraph (b)(4), the incorrect reference for bulk packaging authorizations, § 173.225(d), is corrected to read § 173.225(e). In the Self-Reactive Materials Table following paragraph (b)(7), five entries in Column (1) are revised and four new entries are added. The five revised entries appear first as "removes" and then "adds" in the regulatory text section of this rulemaking. For the entry "2,2′-Azodi(isobutryonitrile) as a water based paste," the misaligned column entries are corrected. A new Note 4 is added following the table for assignment to the new entry "2-Diazo-1Naphthol sulphonic acid ester mixture, Type D."

Section 173.225. We are amending the paragraph (b) Organic Peroxide Table, the Notes following the Table, and paragraphs ¶ (e)(3)(xii) and (e)(5). The amendments to the Organic Peroxide Table include the addition of bulk and IBC packaging authorizations for certain entries, the addition of several new entries and various corrections to certain entries.

Note 9 following the Table is revised by correcting the paragraph reference "(e)(3)(ii)" to read "(e)(3)(xii)." A new Note 27 is added for the new entry "Peroxyacetic acid, distilled, Type F, stabilized," UN3110. A new Note 28 is added to clarify that "Peroxyacetic acid" and Peracetic acid" are synonymous.

Paragraph (e)(3)(xii) is revised to clarify that DOT Specification 57 portable tanks are not subject to any other requirements in paragraph (e).

We are also moving the approval provisions contained in the § 172.102(c)(4) Table 2, Special Provision IB52, to paragraph (e)(5). We believe this is a more appropriate section for the approval provisions, which we are expanding to provide for the use of IBCs other than those indicated in the IB52 Table when approved by the Associate Administrator.

Section 173.244. We are revising paragraph (c) by adding a clarification that UN portable tanks are also authorized for use if a T code is specified in Column (7) of the HMT for the specific hazardous material.

Section 173.306. We are revising the paragraph heading in § 173.306(f) by adding the proper shipping name "Articles, pressurized, pneumatic *or* hydraulic containing *non-flammable gas.*" The revision is based on the proper shipping name replacing the domestic entry "Accumulators, pressurized, pneumatic *or* hydraulic (*containing non-flammable gas*)," which was removed in HM–215D published on June 21, 2001. We received oral comments requesting the addition to the paragraph heading to clarify the intent of the paragraph.

We are also adding a new paragraph (j) to reference the exception for certain compressed gases in § 173.307.

Section 173.307. We are adding a new paragraph (a)(5) to except Division 2.2 gas aerosols with a capacity of not more than 50 ml and with a pressure not exceeding 970 kPa (141 psig) from the HMR.

Section 173.418. Consistent with the addition of Special Provision A56, which requires pyrophoric Class 7 (radioactive) materials to be shipped in Type B packages when transported by aircraft, we are amending § 173.418 to reflect this change.

Section 173.422. We are revising the certification statements in paragraphs (a)(2), (a)(3) and (a)(4) to reflect the updated proper shipping names and UN identification numbers currently authorized in the § 172.101 Table for excepted packages of radioactive materials.

Part 175

Section 175.10. We are adding a new sentence to paragraph (a)(4)(iv) to clarify that the paragraph (a)(4) passenger or crew member personal use exceptions apply to aircraft operators when transporting baggage that has been separated from a passenger or crew member before reaching its final destination, including transfer to another air carrier for delivery. The exceptions were included in the HMR to accommodate the needs of the traveling public to allow passengers and crew members to carry certain quantities and types of articles, such as medicines and toiletries, in checked and carry-on

baggage. The existing regulatory text does not clearly indicate that baggage may be transported when not accompanied by the crew member or passenger, such as when the baggage has been separated from the crew member or passenger due to misroutings, delays, etc. Rather than adding a new paragraph (c) as proposed, we are including this clarifying language at the end of paragraph (a)(4).

We received a comment from Alaska Airlines requesting that this exception be clarified to include scenarios in which the baggage is offered to another carrier by adding the words "or offering" to the paragraph. Alaska Airlines suggested replacing the words "when transporting passenger or crew member baggage" with "when transporting or offering passenger baggage." Alaska Airlines also requested that we extend the passenger or crew member personal use exceptions to carriers in other modes of transportation to accommodate such instances when the passengers' or crew members' bags are transported to their intended destination by a mode of transportation other than aircraft. We do not agree that the addition of the words "or offering" is the most appropriate means of addressing the situation whereby one carrier provides separated checked baggage to another carrier for transport to its intended destination. In this scenario, the carrier that provides the baggage to another carrier is not the offeror. The passenger or crew member is the offeror and is responsible for the contents of the baggage. The passenger or crew member is responsible for ensuring compliance with the HMR when the baggage is offered to the carrier.

We agree with Alaska Airlines that the exceptions should apply when an air operator arranges with another carrier to transport the baggage to its intended destination, including by modes other than air. Although we do not agree that the words "or offering" should be added as requested by the commenter, we are including revised regulatory text to clarify that the exceptions also apply when a carrier provides the baggage to another carrier for the purpose of reuniting the baggage with the passenger or crew member who offered it.

We are also revising paragraph (a)(25) to allow two small carbon dioxide cartridges fitted in self-inflating life jackets and two spare cartridges to be carried by a passenger or crew member in checked or carry-on baggage. Prior to this amendment, paragraph (a)(25) allowed, with the approval of the aircraft operator, one small carbon dioxide cylinder fitted into a self-inflating life-jacket, plus one spare cartridge.

Section 175.30. We are adding a new paragraph (a)(5) requiring that the air eligibility marking requirement in § 172.321 must be met before a person may accept hazardous materials for transportation by aircraft.

Section 175.90. We are revising paragraphs (b) and (c). Paragraph (b) is revised to include amendments relative to an aircraft operator's responsibility concerning packagings, baggage or cargo that have become contaminated by leaking hazardous materials. This amendment is consistent with the 2003–2004 edition of the ICAO Technical Instructions and is in response to a National Transportation Safety Board (NTSB) recommendation (A–96–30) issued to the Federal Aviation Administration. The NTSB recommendation resulted from an incident involving an undeclared shipment of a hydrogen peroxide solution that leaked, resulting in injuries to airline personnel and a potential fire hazard aboard a passenger aircraft. Paragraph (c) prohibits a person from placing a damaged packaging aboard an aircraft. We are revising the paragraph by including the words "baggage or cargo" when referring to damaged or leaking cargo.

Part 176

Section 176.27. In paragraph (c)(2), we are removing the words "of 49 CFR 176.27(c)" at the end of the certification statement and adding the words "of 49 CFR" or "of the IMDG Code."

Section 176.63. We are adding a new paragraph (f) to include the conditions for the authorized stowage of containers on board hatchless container ships.

Section 176.83. We are adding a new paragraph (l) to include the requirements for the segregation of containers on board hatchless container ships. Paragraph (f) is revised to reflect the addition of the new paragraph.

Section 176.84. In the paragraph (b) Table of Provisions, we are adding nine new provisions (codes) for certain stowage and segregation requirements for hazardous materials that are transported by vessel. The terms "separated from" and "away from" in the codes are defined in § 176.83 of the HMR.

Code 124 is added to the entry "Ammonium nitrate emulsion *or* Ammonium nitrate suspension *or* Ammonium nitrate gel, *intermediate for blasting explosives,*" UN3375 and requires the material to be stowed "separated from" bromates.

Code 125 is added to the new entry "Chlorosilanes, toxic, corrosive, flammable, n.o.s.," UN3362 and requires segregation to be the same as for flammable liquids; however, also requires UN3362 to be "away from" flammable solids.

Code 126 is added to the five current UN1950 aerosol entries and requires segregation to be the same as for Class 9 miscellaneous hazardous materials.

Code 127 is added to "5-tert-Butyl-2,4,6-trinitro-m-xy-xylene," UN2956 and requires packagings carrying a subsidiary risk of Class 1 (explosives) to be segregated as required for Class 1, Division 1.3.

Code 128 is added to "Fish meal, stabilized," UN2216 and "Fish meal, unstabilized," UN1374 and requires stowage to be in accordance with the IMDG Code, sub-section 7.1.10.3.

Code 129 is added to "Radioactive material, low specific activity (LSA–I) *non fissile or fissile-excepted,*" UN2912 (the international entry); "Radioactive material, low specific activity, n.o.s. *or* Radioactive material, LSA, n.o.s.," UN2912 (the domestic entry); "Radioactive material, low specific activity (LSA–II) *non fissile or fissile-excepted,*" UN3321; and "Radioactive material, low specific activity (LSA–III) *non fissile or fissile excepted,*" UN3322. This code requires stowage to be in accordance with Stowage Category A, with certain exceptions noted.

Code 130 is added to "Radioactive material, Type A package *non-special form, non fissile or fissile-excepted,*" UN2915 to require Stowage Category A. Certain exceptions are noted.

Code 131 is added to "Radioactive material, Type A package, fissile *non-special form,*" UN3327 to require Stowage Category A, with certain exceptions noted.

Code 132 is added to "Uranium hexafluoride, fissile (*with more than 1 percent U–235*)," UN2977; "Uranium hexafluoride, *fissile excepted or non-fissile,*" UN2978; "Radioactive material, uranium hexafluoride, fissile," UN2977; and "Radioactive material, uranium hexafluoride *non fissile or fissile-excepted,*" UN2978. This code requires stowage to be in accordance with Stowage Category A and notes that any supplementary requirements specified in the transport documents must be considered.

Section 176.140. The reference to the IMDG Code in paragraph (b) is updated by removing the wording "General Introduction."

Section 176.170. Paragraph (b) is removed and reserved. For alignment with a revision made in Amendment 31 of the IMDG Code, we are removing the

requirement that prohibits freight containers exceeding 6 m (20 feet) in length from carrying more than 5000 kg (11,023 lbs) net explosive weight of most explosive substances. This provision was removed from the IMDG Code because it placed an inconsistent and unnecessary restriction on containers exceeding 6 m (20 ft) in length, while placing no such restriction on smaller containers. We received a comment from the Sporting Arms and Ammunition Manufacturers' Institute supporting this revision.

Sections 176.410 and 176.415. We are updating these sections for consistency with international standards and with the prior removal of ammonium nitrate fertilizer proper shipping names from the HMR.

Part 178

Section 178.2. Paragraph (c)(1)(ii) is revised by clarifying the information that the packaging manufacturer and each subsequent distributor are required to provide to packaging users. We received several comments concerning this revision. DGAC supports the revision stating that the clarification recognizes the flexibility necessary for effective communication between the manufacturer and packaging user. RIPA supports the general intent of the revision and stated that it is consistent with the UN Model Regulations and should result in ensuring that shippers do a better job of closing packages. RIPA believes that packaging manufacturers and distributors should be required to clearly describe the complete closure system needed for proper closure, including inner packagings, and closure procedures used in passing the applicable performance tests. We agree with this statement and believe that the text, as proposed, adequately addressed these intentions.

RIPA also states we should recognize that shippers often diverge from the manufacturer's instructions to accommodate site-specific conditions, and that "recommended closure torque values may safely be expressed as minimum values, median values, or a range of values." In response to RIPA's comment about allowing shippers to deviate from the closure instructions, our intent, as stated in the NPRM, was to clarify the information that the packaging manufacturer must provide. We did not propose provisions for deviating from closure instructions and considered these recommendations beyond the scope of this rulemaking. For the same reasons, we disagree with RIPA's recommendation to use the phrase "procedural guidelines for closure recommended by the packaging manufacturer" instead of "procedures to be followed." RIPA's proposal that we add a new paragraph (c)(1)(ii)(A) to allow the use of torque values is not necessary because current requirements do not preclude ranges of values from being specified in the closure instructions.

RIPA also states that "the manner in which shippers (*i.e.* fillers) close packagings will often vary from plant to plant" and provides an example indicating "that some shippers will tighten drum plugs just prior to shipping to account for possible expansion of the metal or plastic that results from heat exposure that occurs from the time the drum is filled and the time it is placed on a transport vehicle and that other plants have found no need for such a practice." Our position is that the manufacturer could easily and realistically include guidance in the closure instructions to indicate, for example, that "after filling and prior to transport, the shipper should check the tightness of closures to determine if the effects of heating, cooling or gasket relaxation have resulted in the need to tighten the closure." While we agree that the shipper has the responsibility for determining the suitability of packagings for the hazardous materials offered for transport, and for ensuring that a package is assembled, closed, or otherwise prepared for transport in compliance with the applicable specifications and requirements for the applicable packaging design type, we believe that the manufacturer needs to provide specific information to allow the shipper to fulfill his responsibilities. The amendments to this section are intended to improve the quality of information provided by manufacturers to shippers in order to enhance safety.

PPG Industries submitted a comment requesting that the last sentence concerning the package being capable of withstanding the pressure differential requirements be removed. PPG Industries indicated that the pressure-differential capability needed by a given packaging is dependent on the material packaged, and that the packaging manufacturer cannot determine full compliance. Single packages for containing liquids are tested and marked with a pressure test rating, which may or may not be suitable for air shipment. It is up to the shipper to determine whether a packaging is suitable for air shipments based on it size, and to determine the appropriate pressure test capability to contain the particular hazardous material packaged. While we agree that the shipper must determine that the package is suitable for the intended hazardous material to be transported, we do not agree that the requirement for the manufacturer to provide guidance to assist the shipper in ensuring that the packaging meets the relevant air transport pressure differential requirement is beyond the capability of the packaging manufacturer. For example, the instruction could indicate that the inner packaging was successfully tested to a pressure differential test at 95 kPa and clearly describe the complete closure system needed for proper closure and the closure procedures used in passing the applicable performance tests. While some hazardous materials may require a different pressure differential, the closure instructions should be sufficient to allow the shipper to determine whether the packaging is suitable for the material, modes of transport and transport conditions. The closure instructions should provide sufficient details relevant to the procedures for closures consistent with the procedure necessary to enable the packaging to meet the pressure differential for which it was tested. Considering this information, the shipper would be able to properly determine whether the package was suitable for the material and for air transport. Based on the foregoing, we are adopting the revised paragraph with editorial changes for clarity.

Section 178.274. Based on oral comment submitted to HM–215D, in paragraph (j)(6) the size of the "NOT FOR RAIL TRANSPORT" marking is revised from 20 cm (8 inches) to no less than 10 cm (4 inches) in height. We agree with the commenter's reasoning that 8 inches is excessive for portable tanks in that it could require a decal as long as 14 feet, 3 inches.

Section 178.705. We are correcting the paragraph (c)(1)(iv)(A) wall thickness table for metal IBCs. During the typesetting process of the HM–215D final rule (66 FR 33316), the headings for the IBC types were misaligned, and we are correcting them as presented in the HM–215D NPRM (65 FR 63294) published on October 23, 2000.

Section 178.812. In § 178.812(b)(1), we are adding the words "with the load being evenly distributed," consistent with the wording in § 178.812(b)(2). This text is necessary to clarify that the test must not be conducted with the load unequally applied to an individual lifting device. Although we discussed this revision in the preamble of the NPRM, the word "evenly" was inadvertently omitted from the regulatory text.

Part 180

Section 180.350. We are amending § 180.350 by revising the section heading from "Applicability" to "Applicability and definitions" and by adding definitions for "Remanufactured IBCs," "Repaired IBCs" and "Routine Maintenance of IBCs."

Section 180.352. Two paragraphs are revised and one new paragraph is added. Paragraph (d)(1)(i) is revised to specify that a repaired IBC must be retested and inspected in accordance with the applicable requirements in this section. Paragraph (f) is revised to require that a record of such tests performed on repaired IBCs must be kept by the IBC owner or lessee. Two commenters, DGAC and COSTHA, noted that with the proposed revision of paragraph (f), a portion of the existing text was omitted from the regulatory text. The unintentionally omitted text, which addresses record retention, is included in this final rule. In addition, as proposed, a new paragraph (d)(1)(iv) is added to specify a requirement for marking repaired IBCs. One commenter requested that we incorporate a provision from the UN Model Regulations to specify that tests performed in conjunction with repairs may be used to satisfy periodic testing requirements. Because the HMR currently does not prohibit tests in conjunction with repairs from being used to satisfy the periodic testing requirements, we do not believe this amendment is necessary. Several commenters asked that we include a marking requirement consistent with the UN Recommendations that applies to the routine maintenance of IBCs. Such a marking was not proposed in the NPRM and inclusion of such a requirement in the HMR is beyond the scope of this final rule.

Section 180.605. Paragraph (k) is revised to restore the inadvertently omitted inspection and test marking requirements for Specification DOT 51, 56, 57 and 60 portable tanks. The text, which was previously located in § 173.32, was omitted during the process of consolidating certain requirements and moving them to part 180 in the final rule, HM–215D. For the height of the marking when displayed on the portable tank, we are also revising the "0.5 inches" conversion for 12 mm to "0.47" inches consistent with § 178.3.

IV. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866. However, this final rule was informally reviewed by the Office of Management and Budget. This final rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034]. Benefits resulting from the adoption of the amendments in this final rule include enhanced transportation safety resulting from the consistent domestic and international hazard communications requirements, and continued access to foreign markets by domestic shippers of hazardous materials. This rulemaking applies to offerors and carriers of hazardous materials, such as chemical manufacturers, chemical users and suppliers, packaging manufacturers, distributors, battery manufacturers, and radiopharmaceutical companies.

The majority of amendments in this final rule should result in cost savings and ease the regulatory compliance burden for shippers engaged in domestic and international commerce, including trans-border shipments within North America. For example, cost savings will be realized by shippers and carriers as a result of the following:

- Eliminating the differences between proper shipping names, UN number assignments and hazard classification, including subsidiary hazards, between the HMR and international regulations. As a result of these changes, shippers and carriers would not have to re-mark or repackage hazardous materials that are offered in both domestic and international transportation.
- Providing certain exceptions including a placarding exception for sulfur and molten sulfur when the UN number is displayed on bulk packagings, and providing a packaging exception for large, hard-cased robust lithium batteries.

We are authorizing a delayed effective date and a one-year transition period to allow for training of employees and to ease any burden on entities affected by the amendments.

In addition, we recognize that there may be costs associated with two of the shipping paper amendments and we are providing extended compliance dates to minimize any costs associated with those amendments. We are authorizing an extended compliance date, until October 1, 2007, for the amendment requiring the types and numbers of packaging(s) (§ 172.202(a)(5)) to be entered on shipping papers. We are authorizing, until October 1, 2005, an extended transition period for the amendments requiring the subsidiary hazard class or division number to be entered on shipping papers (§ 172.202(a)(2)). We are also providing an extended compliance date of October 1, 2007, for package, marking and shipping paper requirements requiring replacement of the word "inhibited" with the word "stabilized," and until October 1, 2005 for the proper shipping names affected by the removal of the word "compressed."

Many companies involved in domestic, as well as international operations, will realize economic benefits as a result of the adoption of amendments in this rulemaking. If the changes are not adopted, U.S. companies will be at an economic disadvantage by being forced to comply with a dual system of regulations. The total net increase in costs to businesses in implementing this rulemaking is considered to be minimal and a regulatory evaluation is available for review in the Docket.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This rulemaking preempts State, local and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous material transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject items (1), (2), (3), and (5) above and would preempt State, local, and Indian tribe requirements not meeting the "substantively the same" standard. This final rule is necessary to incorporate changes adopted in international standards, effective January 1, 2003. If the changes in this final rule were not adopted in the HMR, U.S. companies, including numerous small entities competing in foreign markets, would be at an economic disadvantage. These companies would be forced to comply with two systems of regulations. The changes in this rulemaking are intended to avoid this result. Federal hazardous materials transportation law provides at section 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of this final rule and not later than two years after the date of issuance. The effective date of Federal preemption is October 29, 2003.

C. Executive Order 13175

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not have tribal implications, does not impose substantial direct compliance costs, and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities, unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This final rule would serve to facilitate the transportation of hazardous materials in international commerce by providing consistency with international standards. This final rule applies to offerors and carriers of hazardous materials, some of whom are small entities, such as chemical users and suppliers, packaging manufacturers, distributors, and battery manufacturers. As discussed above, under *Executive Order 12866,* the majority of amendments in this final rule should result in cost savings and ease the regulatory compliance burden for shippers engaged in domestic and international commerce, including trans-border shipments within North America.

Many companies will realize economic benefits as a result of the amendments. If the changes in this final rule were not adopted, U.S. companies, including small entities competing in foreign markets, will be forced to comply with two systems of regulations to their economic disadvantage. Therefore, I certify that these amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities.

This final rule has been developed in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

E. Paperwork Reduction Act

Information collection and recordkeeping requirements contained in this final rule were submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995, Section 1320.8(d). Title 5, Code of Federal Regulations requires us to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. Under the Paperwork Reduction Act, no person is required to an information collection unless it has been approved by OMB and displays a valid OMB control number.

The new information collection requirements in this rule requiring additional shipping paper documentation, was submitted to OMB for review and approval on June 24, 2003. OMB approved this new information collection under OMB No. 2137–0613, "Subsidiary Hazard Class and Number/Type of Packagings" on June 25, 2003 until June 30, 2006. This new information collection, OMB Control Number 2137–0613, requiring the subsidiary hazard class or division number and number and type of packagings to be included on shipping papers increased the information collection burden. RSPA currently has an approved information collection under OMB Control Number 2137–0557, "Approvals for Hazardous Materials" with 18,405 burden hours and $415,237.40. There were minor editorial revisions for section designations with no change in the burden for OMB Control Number 2137–0557 under this rule. OMB approved this information collection request under OMB No. 2137–0557, "Approvals for Hazardous Materials" as proposed under this rule on December 20, 2002, until December 31, 2005.

OMB approved this information collection request under OMB No. 2137–0613, "Subsidiary Hazard Class and Number/Type of Packagings" as adopted under this rule on June 25, 2003, until June 30, 2006. We estimated total information collection and recordkeeping burden resulting from additional information required on shipping papers under the following new information collection to be:

"Subsidiary Hazard Class & Number/Type of Packagings"

OMB No. 2137–0613.
Total Annual Number of Respondents: 250,000.
Total Annual Responses: 6,337,500.
Total Annual Burden Hours: 17,604.
Total Annual Burden Cost: $216,705.
Total First Year Start Up Burden Hours: 45,705.
Total First Year Annual Start Up Cost: $1,115,992.

OMB approved the editorial changes under this rule with no increase in burden for OMB No. 2137–0557, "Approvals for Hazardous Materials." The total information collection and recordkeeping burden is estimated as follows:

"Approvals for Hazardous Materials"

OMB Number: 2137–0557.
Total Annual Number of Respondents: 3,523.
Total Annual Responses: 3,874.8.
Total Annual Burden Hours: 18,405.
Total Annual Burden Cost: $415,237.40.

Requests for a copy of this information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8422, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

F. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

G. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100

million or more to either State, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

H. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. We developed an assessment to determine the effects of these revisions on the environment and whether a more comprehensive environmental impact statement may be required. Our findings conclude that there are no significant environmental impacts associated with this rule. Consistency in the regulations for the transportation of hazardous materials aids in the shipper's understanding of what is required and permits shippers to more easily comply with safety regulations and avoid the potential for environmental damage or contamination. An environmental assessment is available in the public docket.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 2. In § 171.6, in paragraph (b)(2), the Table is amended by adding a new entry in numerical order to read as follows:

§ 171.6 Control numbers under the Paperwork Reduction Act.

* * * * *

(b) * * *

(2) * * *

Current OMB control No.	Title	Title 49 CFR part or section where identified and described
.	.	.
2137–0613	Subsidiary Hazard Class and Number/Type of Packagings	§§ 172.202, 172.203

■ 3. In § 171.7, in the paragraph (a)(3) table, under the entry "International Maritime Organization", a new entry is added in alphabetical order to read as follows:

§ 171.7 Reference material.

(a) * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
.	.
International Maritime Organization,	
.	.
International Convention for the Safety of Life at Sea, (SOLAS) Amendments 2000, Chapter II–2/Regulation 19, 2001.	176.63
.	.

* * * * *

■ 4. In § 171.8, in the definition "Large packaging", in paragraph (5), the wording "UN Recommendations" is removed and "UN Recommendations, Chapter 6.6 (incorporated by reference; see § 171.7)" is added in its place.

■ 5. In § 171.11, paragraphs (c), (d)(5) and (d)(17) are revised to read as follows:

§ 171.11 Use of ICAO Technical Instructions.

* * * * *

(c) Is not a forbidden material or package according to § 173.21 of this subchapter; is not a forbidden material as designated in Column (3) of the § 172.101 Table of this subchapter; and is not forbidden by Column 9(A) of the § 172.101 Table of this subchapter when transported on passenger aircraft, or is not forbidden by Column 9(B) of the § 172.101 Table of this subchapter when transported by cargo aircraft.

(d) * * *

(5) For air bag inflators, air bag modules, or seat-belt pretensioners, the shipping paper description must conform to the requirements of § 173.166(c) of this subchapter.

* * * * *

(17) A self-reactive substance that is not identified by technical name in the Self-reactive Materials Table in § 173.224(b) of this subchapter must be approved by the Associate Administrator in accordance with the requirements of § 173.124(a)(2)(iii) of this subchapter. An organic peroxide that is not identified by a technical name in the Organic Peroxide Table in § 173.225(b) of this subchapter must be approved by the Associate Administrator in accordance with the requirements of § 173.128(d) of this subchapter.

■ 6. In § 171.12, paragraphs (b)(3), (b)(19) and (b)(20) are revised to read as follows:

§ 171.12 Import and export shipments.

* * * * *

(b) * * *

(3) A material that is designated as a hazardous material under this subchapter, but is not subject to the requirements of the IMDG Code (see § 171.12 of this subchapter) may not be transported under the provisions of this section and is subject to the requirements of this subchapter. Examples of such materials include flammable gas powered vehicles and combustible liquids.

* * * * *

(19) For air bag inflators, air bag modules, or seat-belt pretensioners, the shipping paper description must conform to the requirements of § 173.166(c) of this subchapter.

(20) A self-reactive substance that is not identified by technical name in the Self-reactive Materials Table in § 173.224(b) of this subchapter must be approved by the Associate Administrator in accordance with the requirements of § 173.124(a)(2)(iii) of this subchapter. An organic peroxide that is not identified by a technical name in the Organic Peroxide Table in § 173.225(b) of this subchapter must be approved by the Associate Administrator in accordance with the requirements of § 173.128(d) of this subchapter.

* * * * *

■ 7. In § 171.12a, paragraph (b)(18) is revised to read as follows:

§ 171.12a Canadian shipments and packagings.

* * * * *

(b) * * *

(18) A self-reactive substance that is not identified by a technical name in the Self-reactive Materials Table in § 173.224(b) of this subchapter must be approved by the Associate Administrator in accordance with the requirements of § 173.124(a)(2)(iii) of this subchapter. An organic peroxide that is not identified by a technical name in the Organic Peroxide Table in § 173.225(b) of this subchapter must be approved by the Associate Administrator in accordance with the requirements of § 173.128(d) of this subchapter.

* * * * *

■ 8. In § 171.14, paragraphs (d) introductory text, (d)(1), (d)(2) introductory text, (d)(4) and (d)(5) are revised, and paragraphs (d)(6), (d)(7) and (d)(8) are added to read as follows:

§ 171.14 Transitional provisions for implementing certain requirements.

* * * * *

(d) A final rule published in the **Federal Register** on July 31, 2003, effective October 1, 2003; resulted in revisions to this subchapter. During the transition period, until October 1, 2004, as provided in paragraph (d)(1) of this section, a person may elect to comply with either the applicable requirements of this subchapter in effect on September 30, 2003, or the requirements published in the July 31, 2003 final rule.

(1) *Transition dates.* The effective date of the final rule published on July 31, 2003 is October 1, 2003. Delayed compliance is authorized until October 1, 2004. Unless otherwise specified, on and after October 1, 2004, all applicable regulatory requirements adopted in the final rule in effect on October 1, 2003 must be met.

(2) *Intermixing old and new requirements.* Marking, labeling, placarding, and shipping paper descriptions must conform to either the old requirements of this subchapter in effect on September 30, 2003, or the new requirements of this subchapter in this final rule without intermixing communication elements, except that intermixing is permitted during the applicable transition period for packaging, hazard communication, and handling provisions, as follows:

* * * * *

(4) Until January 1, 2010, a hazardous material may be transported in an IM, IMO, or DOT Specification 51 portable tank in accordance with the T Codes (Special Provisions) assigned to a hazardous material in Column (7) of the § 172.101 Table in effect on September 30, 2001.

(5) Proper shipping names that included the word "inhibited" prior to the June 21, 2001 final rule in effect on October 1, 2001 are authorized on packagings and shipping papers in place of the word "stabilized" until October 1, 2007. Proper shipping names that included the word "compressed" prior to the final rule published on July 31, 2003 and effective on October 1, 2003 may continue to be shown on packagings and shipping papers until October 1, 2007.

(6) The shipping paper requirement for total quantity indication in § 172.202(a)(6), that was in effect on September 30, 2003, is authorized until October 1, 2007.

(7) Except for transport by vessel, the non-mandatory shipping paper provision to include the subsidiary hazard class or division number in accordance with § 172.202(a)(2), in effect on September 30, 2003, is authorized until October 1, 2005.

(8) Until October 1, 2005, proper shipping names that did not identify specific isomers by numbers or letters preceding the chemical name prior to the final rule published on July 31, 2003 and effective on October 1, 2003, may continue to be marked on packagings and are authorized on shipping papers in place of the proper shipping names revised in the July 31, 2003 final rule.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

■ 9. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 10. In § 172.101, the following amendments are made:

■ a. paragraph (c)(15) is revised;

■ b. in the Hazardous Materials Table, entries are removed, as set forth below;

■ c. in the Hazardous Materials Table, entries are added, as set forth below; and

■ d. in the Hazardous Materials Table, entries are revised, as set forth below:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(c) * * *

(15) Unless a hydrate is specifically listed in the Table, a proper shipping name for the equivalent anhydrous substance may be used, if the hydrate meets the same hazard class or division, subsidiary risk(s) and packing group.

* * * * *

§ 172.101.—HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Nonbulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Remove:												
	Air bag inflators, compressed gas *or* Air bag modules, combressed gas *or* Seat-belt pretensioners, compressed gas.	2.2	UN3353		2.2	133	166	166	166	75 kg	150 kg	A	
	Air bag inflators, *pyrotechnic or* Air bag modules, *pyrotechnic or* Seat-belt pretensioner, *pyrotechnic.*	1.4G	UN0503	II	1.4G		166	166	166	Forbidden	75 kg	02	24E
	Air bag inflators, *pyrotechnic or* Air bag modules, *pyrotechnic or* Seat-belt pretensioner, *pyrotechnic.*	9	UN3268	III	9		166	166	166	25 kg	100 kg	A	
D	Ammonium nitrate fertilizers	5.1	NA2072	III	5.1	7, IB8	152	213	240	25 kg	100 kg	B	48, 59, 60, 117
	Ammonium nitrate fertilizers; *uniform non-segregating mixtures of ammonium nitrate with added matter which is inorganic and chemically inert towards ammonium nitrate, with not less than 90 percent ammonium nitrate and not more than 0.2 percent combustible material (including organic material calculated as carbon), or with more than 70 percent but less than 90 percent ammonium nitrate and not more than 0.4 percent total combustible material.*	5.1	UN2067	III	5.1	52, IB8, IP3	152	213	240	25 kg	100 kg	B	48, 59, 60, 117
A W	Ammonium nitrate fertilizers: *uniform non-segregating mixtures of nitrogen/phosphate or nitrogen/postash types or complete fertilizers of nitrogen/phosphate/postash type, with not more than 70 percent ammonium nitrate and not more than 0.4 percent total added combustible material or with not more than 45 percent ammonium nitrate with unrestricted combustible material.*	9	UN2071	III	9	132,IB8	155	213	240	200 kg	200 kg	A	
	Ammonium nitrate mixed fertilizers	5.1	NA2069	III	5.1	10, IB8	152	213	240	25 kg	100 kg	B	48, 59, 60, 117
	Ammonium nitrate, *with not more than 0.2 percent of combustible substances, including any organic substance calculated as carbon, to the exclusion of any other added substance.*	5.1	UN1942	III	5.1	A1, A29, IB8, IP3.	152	213	240	25 kg	100 kg	A	48, 59, 60, 116

	Boron trifluoride, compressed	2.3	UN1008		2.3	2, B9, B14	None	302	314, 315.	Forbidden	Forbidden	D	40
	Calcium hypochlorite, hydrated *or* Calcium hypochlorite, hydrated mixtures, *with not less than 5.5 percent but not more than 10 percent water.*	5.1	UN2880	II	5.1	IB8, IP2, IP4, W9.	152	212	240	5 kg	25 kg	D	4, 5, 25, 48, 56, 58, 69
	Carbonyl fluoride, compressed	2.3	UN2417		2.3, 8	2	None	302	None	Forbidden	Forbidden	D	40
+	Chlorodinitrobenzenes	6.1	UN1577	II	6.1	IB8, IP2, IP4, T7, TP2.	None	212	242	25 kg	100 kg	A	91
	Cigar and cigarette lighters, charged with fuel, see Lighters for cigars, cigarettes, *etc*												
	Cresols	6.1	UN2076	II	6.1, 8	IB8, IP2, IP4, T7, TP2.	None	202	243	1 L	30 L	B	
	Diborane, compressed	2.3	UN1911		2.3, 2.1.	1	None	302	None	Forbidden	Forbidden	D	40, 57
	Diethylamino-propylamine	3	UN2684	III	3, 8	B1, IB3, T4, TP1.	150	203	242	5 L	60 L	A	
	Dimethylcyclo-hexylamine	8	UN2264	II	8, 3	B2, IB2, T7, TP2.	154	202	243	1 L	30 L	A	40
	Ethyl methacrylate	3	UN2277	II	3	IB2, T4, TP1	150	202	242	5 L	60 L	B	
	Ethylbutyl acetate	3	UN1177	III	3	B1, IB3, T2, TP1.	150	203	242	60 L	220 L	A	
	Ethylene, compressed	2.1	UN1962		2.1		306	304	302	Forbidden	150 kg	E	40
	Hexafluoroethane, compressed *or* Refrigerant gas R 116.	2.2	UN2193		2.2		306	304	314, 315.	75 kg	150 kg	A	
	Hydrazine, anhydrous *or* Hydrazine aqueous solutions *with more than 64 percent hydrazine, by mass.*	8	UN2029	I	8, 3, 6.1.	A3, A6, A7, A10, B7, B16, B53.	None	201	243	Forbidden	2.5 L	D	21, 40, 42, 100
	Hydrazine hydrate *or* Hydrazine aqueous solutions, *with not less than 37 percent but not more than 64 percent hydrazine, by mass.*	8	UN2030	II	8, 6.1	B16, B53, IB2, T7, TP2, TP13.	None	202	243	Forbidden	30 L	D	40, 42, 82
	Lighters *or* Lighter refills *cigarettes, containing flammable gas.*	2.1	UN1057		2.1	N10	None	21, 308	None	1 kg	15 kg	E	40
	Lithium hydroxide, monohydrate *or* Lithium hydroxide, solid.	8	UN2680	II	8	IB8, IP2, IP4	154	212	240	15 kg	50 kg	A	
	Nitrogen trifluoride, compressed	2.2	UN2451		2.2, 5.1		None	302	None	75 kg	150 kg	D	40
	Phosphoric acid, *liquid or solid*	8	UN1805	III	8	A7, IB3, IP3, N34, T4, TP1.	154	203	241	5 L	60 L	A	
	Phosphorus pentafluoride, compressed.	2.3	UN2198		2.3, 8	2, B9, B14	None	302, 304	314, 315	Forbidden	Forbidden	D	40
	Propyl chloride	3	UN1278	II	3	IB2, IP8, N34, T7, TP2.	None	202	242	Forbidden	60 L	E	
	Refrigerating machines, *containing non-flammable, non-toxic, liquefied gas or ammonia solution (UN2672).*	2.2	UN2857		2.2	A53	306, 307.	306	306, 307.	450 kg	450 kg	A	
	Silane, compressed	2.1	UN2203		2.1		None	302	None	Forbidden	Forbidden	E	40, 57, 104
	Silicon tetrafluoride, compressed	2.3	UN1859		2.3, 8	2	None	302	None	Forbidden	Forbidden	D	40
	Tetrachloroethane	6.1	UN1702	II	6.1	IB2, N36, T7, TP2.	None	202	243	5 L	60 L	A	40
	Tetrafluoromethane, compressed *or* Refrigerant gas R 14.	2.2	UN1982		2.2		None	302	None	75 kg	150 kg	A	
D	Uranium nitrate hexahydrate solution	7	UN2980		7, II		421, 427.	415, 416, 417.	415, 416, 417.			D	95
	Xenon, compressed	2.2	UN2036		2.2		306	302	None	75 kg	150 kg	A	
	Xylidines, solution	6.1	UN1711	II	6.1	IB2, T7, TP2	None	202	243	5 L	60 L	A	

§ 172.101.—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Nonbulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Add: *Accumulators, pressurized, pneumatic or hydraulic (containing non-flammable gas)* see Articles pressurized, pneumatic or hydraulic (*containing non-flammable gas*)												
I	Air bag inflators, *or* Air bag modules, *or* Seat-belt pretensioners.	1.4G	UN0503	II	1.4G	161	None	62	None	Forbidden	75kg	02	
	Air bag inflators, *or* Air bag modules, *or* Seat-belt pretensioners.	9	UN3268	III	9	160	160	166	166	25 kg	100	A	
	Ammonium nitrate emulsion *or* Ammonium nitrate suspension *or* Ammonium nitrate gel, *intermediate for blasting explosives.*	5.1	UN3375	II	5.1	52, 147	None	214	214	Forbidden	Forbidden	D	48, 59, 60, 124
	Ammonium nitrate based fertilizer	5.1	UN2067	III	5.1	52, 150, IB8, IP3.	152	213	240	25 kg	100 kg	B	48, 59, 60, 117
AW	Ammonium nitrate based fertilizer	9	UN2071	III	9	132, IB8	155	213	240	200 kg	200 kg	A	
	Ammonium nitrate, *with not more than 0.2% total combustible material, including any organic substance, calculated as carbon to the exclusion of any other added substance.*	5.1	UN1942	III	5.1	A1, A29, IB8, IP3.	152	213	240	25 kg	100 kg	A	48, 59, 60, 116
	Boron trifluoride	2.3	UN1008		2.3	2, B9, B14	None	302	314, 315.	Forbidden	Forbidden	D	40
	Calcium hypochlorite, hydrated *or* Calcium hypochlorite, hydrated mixtures, *with not less than 5.5 percent but not more than 16 percent water.*	5.1	UN2880	II	5.1	IB8, IP2, IP4, W9.	152	212	240	5 kg	25 kg	D	4, 5, 25, 48, 56, 58, 69
	Carbonyl fluoride	2.3	UN2417		2.3, 8	2	None	302	None	Forbidden	Forbidden	D	40
+	Chlorodinitrobenzenes, liquid	6.1	UN1577	II	6.1	IB2, T11,TP2, TP27.	None	202	243	5 L	60 L	B	91
+	Chlorodinitrobenzenes, solid	6.1	UN1577	II	6.1	IB8, IP4, T7, TP2.	None	212	242	25 kg	100 kg	A	91

	1-Chloropropane	3	UN1278	II	3	IB2, N34, T7, TP2.	None	202	242	Forbidden	60 L	E	
	Chlorosilanes, toxic, corrosive, n.o.s.	6.1	UN3361	II	6.1, 8	IB1, T11, TP2, TP13.	None	202	243	1 L	30 L	C	40
	Chlorosilanes, toxic, corrosive, flammable, n.o.s.	6.1	UN3362	II	6.1, 3, 8	IB1, T11, TP2, TP13.	None	202	243	1 L	30 L	C	40, 125
	Cigar and cigarette lighters, charged with fuel, see Lighters *or* Lighter refills *containing flammable gas*												
	Cresols, liquid	6.1	UN2076	II	6.1, 8	IB8, IP2, IP4, T7, TP2.	None	202	243	1 L	30 L	B	
	Cresols, solid	6.1	UN2076	II	6.1, 8	IB8, IP2, IP4, T7, TP2.	None	202	243	1 L	30 L	B	
	Diborane	2.3	UN1911	2.3	2.1	1	None	302	None	Forbidden	Forbidden	D	40, 57
	3-Diethylamino-propylamine	3	UN2684	III	3, 8	B1, IB3, T4, TP1.	150	203	242	5 L	60 L	A	
	N,N-Dimethylcyclo-hexylamine	8	UN2264	II	8, 3	B2, IB2, T7, TP2.	154	202	243	1 L	30 L	A	40
	Ethyl methacrylate, stabilized	3	UN2277	II	3	IB2, T4, TP1	150	202	242	5 L	60 L	B	
	2-Ethylbutyl acetate	3	UN1177	III	3	B1, IB3, T2, TP1.	150	203	242	60 L	220 L	A	
	Ethylene	2.1	UN1962		2.1	306	304	302	Forbidden.	150kg	E		40
	Ethylene glycol diethyl ether	3	UN1153	II	3	IB2, T4, TP1	150	202	242	5 L	60 L	A	
A, I, W	Fibers, animal *or* Fibers, vegetable *burnt, wet or damp.*	4.2	UN1372	III	4.2		151	213	240	Forbidden	Forbidden	A	
I, W	Fibers, vegetable, dry	4.1	UN3360	III	4.1	137	151	213	240	No limit	No limit	A	
	Hexafluoroethane, *or* Refrigerant gas R116.	2.2	UN2193		2.2		306	304	314, 315.	75 kg	150	A	

§ 172.101.—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging (§ 173.***) Exceptions	Nonbulk	Bulk	(9) Quantity limitations Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Hydrazine, anhydrous	8	UN2029	I	8, 3, 6.1	A3, A6, A7, A10, B7, B16, B53.	None	201	243	Forbidden	2.5 L	D	40, 125
	Hydrazine aqueous solution, *with more than 37% hydrazine, by mass.*	8	UN2030	I	8, 6.1	151	None	201	243	Forbidden	2.5 L	D	40
				II	8, 6.1		None	202	243	Forbidden	30 L	D	40
				III	8, 6.1		154	203	241	5 L	60 L	D	40
	Hydrobromic acid, with more than 4 percent hydrobromic acid 9.	8	UN1788										
	Lighters *or* Lighter refills *containing flammable gas.*	2.1	UN1057		2.1	N10	None	21, 308	None	1 kg	15 kg	B	40
	Lithium hydroxide	8	UN2680	II	8	IB8, IP2, IP4	154	212	240	15 kg	50 kg	A	
	2-Methylbutanal	3	UN3371	II	3	IB2, T4, TP1	150	202	242	5 L	60 L	B	
	Nitrogen trifluoride	2.2	UN2451		2.2, 5.1		None	302	None	75 kg	150 kg	D	40
	4-Nitrophenylhydrazine, *with not less than 30% water, by mass.*	4.1	UN3376	I	4.1	162, A8, A19, A20, N41.	None	211	None	Forbidden	Forbidden	E	36
G	Organometallic compound, solid, water-reactive, flammable, n.o.s..	4.3	UN3372	I	4.3, 4.1	IB4, N40	None	211	242	Forbidden	15 kg	E	40
				II	4.3, 4.1	IB4	151	212	242	15 kg	50 kg	E	40
				III	4.3, 4.1	IB6	151	213	241	25 kg	100 kg	E	40
	Phosphoric acid, liquid	8	UN1805	III	8	A7, IB3, IP3, N34, T4, TP1.	154	203	241	5 L	60 L	A	
	Phosphoric acid, solid	8	UN1805	III	8	IB8, IP3, T3, TP1.	154	213	240	25 kg	100 kg	A	
	Phosphorus pentafluoride	2.3	UN2198		2.3, 8	2, B9, B14	None	302, 304.	314, 315.	Forbidden	Forbidden	D	40

	Propyl chloride see 1-Chloropropane.												
A, W	Rags, oily	4.2	UN1856	III	4.2		151	213	240	Forbidden	Forbidden	A	
	Refrigerating machines, *containing non-flammable, non-toxic, liquefied or compressed gas or ammonia solution (UN2672).*	2.2	UN2857		2.2	A53	306, 307.	306	306, 307.	450 kg	450 kg	A	
	Rubber scrap *or* Rubber shoddy, *powdered or granulated, not exceeding 840 microns and rubber content exceeding 45%.*	4.1	UN1345	II	4.1	IB8, IP2, IP4	151	212	240	15 kg	50 kg	A	
	Silane	2.1	UN2203		2.1		None	302	None	Forbidden	Forbidden	E	40, 57, 104
	Silicon tetrafluoride	2.3	UN1859		2.3, 8	2	None	302	None	Forbidden	Forbidden	D	40
	Sodium dinitro-o-cresolate, wetted, *with not less than 10% water by mass.*	4.1	UN3369	I	4.1	162, A8, A19, N41, N84.	None	211	None	0.5 kg	0.5 kg	E	36
	1,1,2,2-Tetrachloroethane	6.1	UN1702	II	6.1	IB2, N36, T7, TP2.	None	202	243	5 L	60 L	A	40
	Tetrafluoromethane, *or* Refrigerant gas R 14.	2.2	UN1982		2.2		None	302	None	75 kg	150 kg	A	
A, I, W	Textile waste, wet	4.2	UN1857	III	4.2		151	213	240	Forbidden	Forbidden	A	
	Trinitrobenzene, wetted, *with not less than 10% water by mass.*	4.1	UN3367	I	4.1	162, A8, A19, N41, N84.	None	211	None	0.5 kg	0.5 kg	E	36
	Trinitrobenzoic acid, wetted, *with not less than 10% water by mass*	4.1	UN3368	I	4.1	162, A8, A19, N41, N84.	None	211	None	0.5 kg	0.5 kg	E	36
	Trinitrochlorobenzene (picryl chloride), wetted, *with not less than 10% water by mass.*	4.1	UN3365	I	4.1	162, A8, A19, N41, N84.	None	211	None	0.5 kg	0.5 kg	E	36
	Trinitrophenol (picric acid), wetted, *with not less than 10% water by mass.*	4.1	UN3364	I	4.1	162, A8, A19, N41, N84.	None	211	None	0.5 kg	0.5 kg	E	36

§ 172.101.—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Nonbulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Trinitrotoluene (TNT), wetted, *with not less than 10% water by mass.*	4.1	UN3366	I	4.1	162, A8, A19, N41, N84.	None	211	None	0.5 kg	0.5 kg	E	36
D	Uranyl nitrate hexahydrate solution	7	UN2980		7, 8		421, 427.	415, 416, 417.	415, 416 417.			D	95
	Urea nitrate, wetted, *with not less than 10% water by mass.*	4.1	UN3370	I	4.1	162, A8, A19, N41, N83.	None	211	None	0.5 kg	0.5 kg	E	36
A, I, W	Wool waste, wet	4.2	UN1387	III	4.2		151	213	240	Forbidden	Forbidden	A	
	Xenon	2.2	UN2036		2.2		306	302	None	75 kg	150 kg	A	
	Xylidines, liquid	6.1	UN1711	II	6.1	IB2, T7, TP2	None	202	243	5 L	60 L	A	
	Revise:												
	Adhesives, *containing a flammable liquid.*	3	UN1133	II	3	149, B52, IB2, T4, TP1, TP8.	150	173	242	5 L	60 L	B	
	Aerosols, *corrosive, Packing Group II or III, (each not exceeding 1 L capacity).*	2.2	UN1950		2.2, II	153, A34	306	None	None	75 kg	150 kg	A	48, 87, 126
	Aerosols, *flammable, (each not exceeding 1 L capacity).*	2.1	UN1950		2.1	153, N82	306	None	None	75 kg	150 kg	A	48, 87, 126
	Aerosols, flammable, n.o.s. *(engine starting fluid) (each not exceeding 1 L capacity).*	2.1	UN1950		2.1	153, N82	306	304	None	Forbidden	150 kg	A	48, 87, 126
	Aerosols, *non-flammable, (each not exceeding 1 L capacity).*	2.2	UN1950		2.2	153	306, 307.	None	None	75 kg	150 kg	A	48, 87, 126
	Aerosols, poison, *each not exceeding 1 L capacity.*	2.2	UN1950		2.2	153	306	None	None	Forbidden	Forbidden	A	48, 87, 126
	Alkylsulfuric acids	8	UN2571	II	8	B2, IB2, T8, TP2, TP12, TP13, TP28.	154	202	242	1 L	30 L	C	14

	Ammonia solutions, *relative density between 0.880 and 0.957 at 15 degrees C in water, with more than 10 percent but not more than 35 percent Ammonia.*	8	UN2672	III	8	IB3, IP8, T7, TP1.	154	203	241	5 L	60 L	A	40, 65
	Ammunition, smoke *with or without burster, expelling charge or propelling charge.*	1.2G	UN0015	II	1.2G			62	None	Forbidden	Forbidden		8E, 17E, 20E
	Ammunition, smoke *with or without burster, expelling charge or propelling charge.*	1.3G	UN0016	II	1.3G			62	None	Forbidden	Forbidden		8E, 17E, 20E
	Ammunition, smoke *with or with burster, expelling charge or propelling charge.*	1.4G	UN0303	II	1.4G			62	None	Forbidden	75 kg		7E, 8E, 14E, 15E, 17E
	Arsenic compounds, liquid, n.o.s *inorganic, including arsenates, n.o.s.; arsenites, n.o.s.; arsenic sulfides, n.o.s.; and organic compounds of arsenic, n.o.s.*	6.1	UN1556	I	6.1	T14, TP2, TP9, TP13, TP27.	None	201	243	1 L	30 L	B	40
				II	6.1	IB2, T11, TP2, TP13, TP27.	None	202	243	5 L	60 L	B	40
				III	6.1	IB3, T7, TP2, TP28.	153	203	241	60 L	220 L	B	40
D	Asbestos	9	NA2212	III	9	156, IB8, IP2, IP4.	155	216	240	200 kg	200 kg	A	34, 40
	Barium azide, wetted *with not less than 50 percent water, by mass.*	4.1	UN1571	I	4.1, 6.1	162, A2	None	182	None	Forbidden	0.5 kg	D	28
	Battery fluid, alkali	8	UN2797	II	8	B2, IB2, N6, T7, TP2, TP28.	154	202	242	1 L	30 L	A	26
I	Blue asbestos *(Crocidolite* or Brown asbestos *(amosite, mysorite).*	9	UN2212	II	9	156, IB8, IP2, IP4.	155	216	240	Forbidden	Forbidden	A	34, 40
	5-tert-Butyl-2,4,6-trinitro-m-xylene *or* Musk xylene.	4.1	UN2956	III	4.1	151	None	223	None	Forbidden	Forbidden	D	12, 25, 48, 127
	Chemical kits	9	UN3316		9	15	161	161	None	10 kg	10 kg	A	
	Chloroacetic acid, molten	6.1	UN3250	II	6.1, 8	IB1, T7, TP3, TP28.	None	202	243	Forbidden	Forbidden	C	40

§ 172.101.—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Nonbulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	4-Chloro-o-toluidine hydrochloride	6.1	UN1579	III	6.1	IB8, IP3, T4, TP1.	153	213	240	100 kg	200 kg	A	
	Coating solution *(includes surface treatments or coatings used for industrial or other purposes such as vehicle undercoating, drum or barrel lining).*	3	UN1139	II	3	149, IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B	
	Dichlorodimethyl ether, symmetrical	6.1	UN2249	I	6.1, 3		None	201	243	Forbidden	Forbidden	D	40
	Dipicryl dulfide, wetted *with not less than 10 percent water, by mass.*	4.1	UN2852	I	4.1	162, A2, N41, N84.	None	211	None	Forbidden	0.5 kg	D	28
G	Environmentally hazardous substances, liquid, n.o.s.	9	UN3082	III	9	8, 146, IB3, T4, TP1, TP29.	155	203	241	No limit	No limit	A	
G	Environmentally hazardous substances, solid, n.o.s.	9	UN3077	III	9	8, 146, B54, IB8, N20.	155	213	240	No limit	No limit	A	
	Extracts, aromatic, liquid	3	UN1169	II	3	149, IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B	
	Extracts, flavoring, liquid	3	UN1197	II	3	149, IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B	
	First aid kits	9	UN3316		9	15	161	161	None	10 kg	10 kg	A	
W	Fish meal, stabilized *or* Fish scrap, stabilized.	9	UN2216	III		155, IB8	155	218	218	No limit	No limit	B	88, 122, 128
	Fish meal, unstabilized *or* Fish scrap, unstabilized.	4.2	UN1374	II	4.2	155, A1, A19, IB8, IP2.	None	212	241	15 kg	50 kg	B	88, 122, 128
G	Flammable liquids, n.o.s.	3	UN1993	I	3	T11, TP1, TP27	150	201	243	1 L	30 L	E	
	Hydrobromic acid, *with not more than 49 percent hydrobromic acid.*	8	UN1788	III	8	IB3, T4, TP1	154	203	241	5 L	60 L	C	8
	Hydrocarbons, liquid, n.o.s.	3	UN3295	I	3	T11, TP1, TP8, TP28.	150	201	243	1 L	30 L	E	

	Hydrogen peroxide and peroxyacetic acid mixtures, stabilized *with acids, water and not more than 5 percent peroxyacetic acid.*	5.1	UN3149	II	5.1, 8	145, A2, A3, A6, B53, IB2, IP5, T7, TP2, TP6, TP24.	None	202	243	1 L	5 L	D	25, 66, 75, 106
	Iodine pentafluoride	5.1	UN2495	I	5.1, 6.1, 8.		None	205	243	Forbidden	Forbidden	D	25, 40, 66, 90
	Isosorbide dinitrate mixture *with not less than 60 percent lactose, mannose, starch or calcium hydrogen phosphate.*	4.1	UN2907	II	4.1	IB6, IP2, N85	None	212	None	15 kg	50 kg	E	
	Lithium batteries, contained in equipment.	9	UN3091	II	9	29, A54, A55	185	185	None	5 kg	35kg	A	
	Lithium batteries packed with equipment.	9	UN3091	II	9	29, A54, A55	185	185	None	5 kg gross	35 kg gross.	A	
	Lithium battery	9	UN3090	II	9	29, A54, A55	185	185	None	5 kg gross	35 kg gross.	A	
	Medicine, liquid, toxic, n.o.s.	6.1	UN1851	II	6.1	36	153	202	243	5 L	5 L	C	40
				III	6.1	36	153	203	241	5 L	5 L	C	40
	Methacrylic Acid, stabilized	8	UN2531	II	8	IB3, T4, TP1, TP18, TP 30.	154	202	242	1 L	30 L	C	40
	Methyl bromide	2.3	UN1062		2.3	3, B14, T50, 153.	None	193	314, 315.	Forbidden	Forbidden	D	40
	Morpholine	8	UN2054	I	8, 3	T10, TP2	None	201	243	.5 L	2.5 L	A	
I	Motor fuel anti-knock mixtures	6.1	UN1649	I	6.1	14, 151, B9, B90, T14, TP2, TP13.	None	201	244	Forbidden	30 L	D	25, 40
G	Organic peroxide type F, solid, temperature controlled.	5.2	UN3120	II	5.2	IB52, T23	None	225	225	Forbidden	Forbidden	D	2
	Organochlorine pesticides, liquid, toxic, flammable, *flash point not less than 23 degrees C.*	6.1	UN2995	III	6.1, 3	B1, IB3, T7, TP2, TP28.	153	203	242	60 L	220 L	A	40
	Organophosphorus compound, toxic, flammable, n.o.s.	6.1	UN3278	I	6.1, 3	5, T14, TP2, TP13, TP27.	None	201	243	1 L 30	L	B	40

§ 172.101.—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Nonbulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Paint *including paint, lacquer, enamel, stain, shellac solutions, varnish, polish, liquid filler, and liquid lacquer base.*	3	UN1263	II	3	149, B52, IB2, T4, TP1, TP8.	150	173	242	5 L	60 L	B	
	Paint related material *including paint thinning, drying, removing, or reducing compound.*	3	UN1263	II	3	149, B52, IB2, T4, TP1, TP8.	150	173	242	5 L	60 L	B	
	Pentaerythrite tetranitrate mixture, desensitized, solid, n.o.s. *with more than 10 percent but not more than 20 percent PETN, by mass.*	4.1	UN3344	II	4.1	118, N05	None	214	None	Forbidden	Forbidden	E	
	Perfumery products *with flammable solvents.*	3	UN1266	II	3	149, IB2, T4, TP1, TP8.	150	202	242	15 L	60 L	B	
	Phosphorus, white dry *or* Phosphorus, white, under water *or* Phosphorus white, in solution or Phosphorus yellow dry *or* Phosphorus, yellow, under water *or* Phosphorus, yellow, in solution.	4.2	UN1381	I	4.2, 6.1	B9, B26, N34, T9, TP3, TP31.	None	188	243	Forbidden	Forbidden	E	
	Piperazine	8	UN2579	III	8	IB8, IP3, T4, TP1, TP30.	154	213	240	25 kg	100	A	12
	Polyester resin	3	UN3269		3	40, 149	152	225	None	5 kg	5 kg	B	
	Potassium	4.3	UN2257	I	4.3	A19, A20, B27, IB1, IP1, N6, N34, T9, TP3, TP7, TP31.	None	211	244	Forbidden	15 kg	D	
	Potassium sodium alloys	4.3	UN1422	I	4.3	A19, B27, IB4, IP1, N34, N40, T9, TP3, TP7, TP31.	None	211	244	Forbidden	15 kg	D	

	Printing ink, *flammable or* Printing ink related material *(including printing ink thinning or reducing compound), flammable.*	3	UN1210	II	3	149, IB2, T4, TP1, TP8.	150	173	242	5 L	60 L	B	
D	Radioactive material, fissile, n.o.s.	7	UN2918		7	A56	453	417	417			A	95, 105
I	Radioactive material, low specific activity (LSA–I) *non fissile or fissile-excepted.*	7	UN2912		7	A56, T5, TP4, W7.	421, 422, 428.	427	427			A	95, 129
I	Radioactive material, low specific activity (LSA–II) *non fissile or fissile-excepted.*	7	UN3321		7	A56, T5, TP4, W7.	421, 422, 428.	427	427			A	95, 129
I	Radioactive material, low specific activity (LSA–III) *non fissile or fissile excepted.*	7	UN3322		7	A56, T5, TP4, W7.	421, 422, 428.	427	427			A	95, 129
D	Radioactive material, low specific activity, n.o.s. *or* Radioactive material, LSA, n.o.s.	7	UN2912		7	A56, T5, TP4	421, 428.	427	427			A	95, 129
D	Radioactive material, n.o.s	7	UN2982		7	A56	421, 428.	415, 416.	415, 416.			A	95
D	Radioactive material, special form, n.o.s.	7	UN2974		7	A56	421, 424.	415, 416.	415, 416.			A	95
D	Radioactive material, surface contaminated object *or* Radioactive material, SCO.	7	UN2913		7	A56	421, 424, 426.	427	427			A	95
I	Radioactive material, surface contaminated objects (SCO–I *or* SCO–II) *non fissile or fissile-excepted.*	7	UN2913		7	A56	421, 422, 428.	427	427			A	95
I	Radioactive material, transported under special arrangement, *non fissile or fissile excepted.*	7	UN2919		7	A56, 139						A	95, 105
I	Radioactive material, transported under special arrangement, fissile.	7	UN3331		7	A56, 139						A	95, 105
I	Radioactive material, Type A package, fissile *non-special form.*	7	UN3327		7	A56, W7, W8	453	417	417			A	95, 105, 131
I	Radioactive material, Type A package *non-special form, non fissile or fissile-excepted.*	7	UN2915		7	A56, W7, W8		415	415			A	95, 130
I	Radioactive material, Type A package, special form *non fissile or fissile-excepted.*	7	UN3332		7	A56, W7, W8		415, 476.	415, 476.			A	95
I	Radioactive material, Type A package, special form, fissile.	7	UN3333		7	A56, W7, W8	453	417, 476.	417, 476.			A	95, 105
I	Radioactive material, Type B(M) package, fissile.	7	UN3329		7	A56	453	417	417			A	95, 105
I	Radioactive material, Type B(M) package *non fissile or fissile-excepted.*	7	UN2917		7	A56		416	416			A	95, 105
I	Radioactive material, Type B(U) package, fissile.	7	UN3328		7	A56	453	417	417			A	95, 105
I	Radioactive material, Type B(U) package *non fissile or fissile-excepted.*	7	UN2916		A56	416	416					A	95, 105

§ 172.101.—HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Nonbulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
I	Radioactive material, uranium hexafluoride *non fissile or fissile-excepted.*	7	UN2978		7, II		423	420, 427.	420, 427.			A	95, 132
	Radioactive material, uranium hexafluoride, fissile.	7	UN2977		7, II		453	417, 420.	417, 420.			A	95, 132
	Resin solution, *flammable*	3	UN1866	II	3	149, B52, IB2, T4, TP1, TP8.	150	173	242	5 L	60 L	B	
	Rubber solution	3	UN1287	II	3	149, IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B	
G	Self-reactive liquid type F	4.1	UN3229	II	4.1	T23	None	114	None	10 L	25L	D	61
	Silver picrate, wetted *with not less than 30 percent water, by mass.*	4.1	UN1347	I	4.1	23	None	211	None	Forbidden	Forbidden	D	28, 36
	Sludge, acid	8	UN1906	II	8	A3, A7, B2, IB2, N34, T8, TP2, TP12, TP28.	None	202	242	Forbidden	30 L	C	14
	Sodium	4.3	UN1428	I	4.3	A7, A8, A19, A20, B9, B48, B68, IB4, IP1, N34, T9, TP3, TP7, TP31, TP46.	None	211	244	Forbidden	15 kg	D	
D	Sulfur, molten	9	NA2448	III	9	30, IB3, T1, TP3	None	213	247	Forbidden	Forbidden	C	61
I	Sulfur, molten	4.1	UN2448	III	4.1	30, IB1, T1, TP3	None	213	247	Forbidden	Forbidden	C	74
	Tars, liquid *including road asphalt and oils, bitumen and cut backs.*	3	UN1999	II	3	149, B13, IB2, T3, TP3, TP29.	150	202	242	5 L	60 L	B	
D	Thorium metal, pyrophoric	7	UN2975		7, 4.2	A56	None	418	None				95
D	Thorium nitrate, solid	7	UN2976		7, 5.1		None	419	None	Forbidden	15 kg	A	95

D	Uranium hexafluoride, *fissile excepted or non-fissile.*	7	UN2978		7, II		423	420,, 427.	420, 427.			A	95, 132
D	Uranium hexafluoride, fissile (*with more than 1 percent U–235*).	7	UN2977		7, II		453	417, 420.	417, 420.			A	95, 132
D	Uranium metal, pyrophoric	7	UN2979		7, 4.2	A56	None	418	None			D	95
D	Uranyl nitrate, solid	7	UN2981		7, 5.1		None	419	None	Forbidden	15 kg	A	95
	Urea nitrate, weted *with not less than 20 percent water, by mass.*	4.1	UN1357	I	4.1	23, 39, A8, A19, N41.	None	211	None	1 kg	15 kg	E	28, 36
	Vehicle, flammable gas powered	9	UN3166		9	135, 157	220	220	220	Forbidden	No limit	A	
	Vehicle, flammable liquid powered	9	UN3166		9	135, 157	220	220	220	No limit	No limit	A	
I	White asbestos (*chrysotile, actinolite, anthophyllite, tremolite*).	9	UN2590	III	9	156, IB8, IP2, IP3.	155	216	240	200 kg	200 kg	A	34, 40
	Wood preservatives, liquid	3	UN1306	II	3	149, IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B	

■ 11. In Appendix B to § 172.101, paragraphs 4. and 5. are revised and the List of Marine Pollutants is amended by removing 5 entries, and adding 2 entries in appropriate alphabetical order to read as follows:

Appendix B to § 172.101—List of Marine Pollutants.

* * * * *

4. If a material is not listed in this appendix and meets the criteria for a marine pollutant as provided in Chapter 2.10 of the IMDG Code, "Guidelines for the Identification of Harmful Substances in Packaged Form" (incorporated by reference; see § 171.7 of this subchapter), the material may be transported as a marine pollutant in accordance with the applicable requirements of this subchapter.

5. If a material listed in this appendix does not meet the criteria for a marine pollutant as provided in Chapter 2.10 of the IMDG Code, "Guidelines for the Identification of Harmful Substances in Packaged Form" (incorporated by reference; see § 171.7 of this subchapter), it may be excepted from the requirements of this subchapter as a marine pollutant if that exception is approved by the Associate Administrator.

* * * * *

LIST OF MARINE POLLUTANTS

	S, M, P (1)	(2)
[Remove:]		
		Alkylbenzenesulphonates, branched and straight chain
		Alkylphenols, liquid, n.o.s. *(including C2–C12 homologues)*
		Alkylphenols, solid, n.o.s. *(including C2–C12 homologues)*
		. . . . .
		Chlorophenols, liquid
		Chlorophenols, solid
[Add:]		
		. . . . .
		Alkybenzenesulphonates, branched and straight chain *(excluding C11–C13 straight chain or branched chain homologues)*
		. . . . .
		Decyl acrylate
		. . . . .

■ 11a. In § 172.102:

■ a. In paragraph (c)(1), Special Provisions 15, 30, 52, 130, 132 and 134 are revised; Special Provisions 7, 10 and 133 are removed; and Special Provisions 145, 146, 147, 149, 150, 151, 153, 155, 156, 157, 159, 160, 161 and 162 are added.

■ b. In paragraph (c)(2), Special Provisions A54, A55 and A56 are added.

■ c. In paragraph (c)(4), the text is revised: in Table 1, Special Provision IB3 is revised; in Table 2, the Table heading is revised, 1 entry is removed, 4 entries are added, and 1 entry is revised; and in Table 3, Special Provision IP8 is added.

■ d. In paragraph (c)(5), Special Provisions N83, N84 and N85 are added.

■ e. In paragraph (c)(7)(iii), Portable Tank Code T23 is amended by removing 2 entries, adding 4 entries, and revising 2 entries.

■ e. In paragraph (c)(7)(viii), Special Provision TP3 is revised.

The additions and revisions read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

15 This entry applies to "Chemical kits" and "First aid kits" containing one or more compatible items of hazardous materials in boxes, cases, etc. that are used for medical, analytical, diagnostic or testing purposes. For transportation by aircraft, materials forbidden for transportation by passenger aircraft or cargo aircraft may not be included in the kits. The quantity of hazardous materials in any inner packaging must not exceed the limited quantity inner packaging limits specified for each hazardous material in the applicable limited quantity sections (§ 173.150 through § 173.155, and § 173.306) in part 173 of this subchapter. Each package must conform to the packaging requirements of subpart B of part 173 and must not exceed 30 kg (66 lbs.) gross weight. Chemical kits and first aid kits are excepted from the specification packaging requirements of this subchapter when packaged in combination packagings. Chemical kits and first aid kits are also excepted from the labeling and placarding requirements of this subchapter, except when offered for transportation or transported by air. Chemical and first aid kits may be transported in accordance with the consumer commodity and ORM exceptions in § 173.156, provided they meet all required conditions. Kits that are carried on board transport vehicles for first aid or operating purposes are not subject to the requirements of this subchapter.

* * * * *

30 Sulfur is not subject to the requirements of this subchapter if transported in a non-bulk packaging or if formed to a specific shape (for example, prills, granules, pellets, pastilles, or flakes). A bulk packaging containing sulfur is not subject to the placarding requirements of subpart F of this part, if it is marked with the appropriate identification number as required by subpart D of this part. Molten sulfur must be marked as required by § 172.325 of this subchapter.

* * * * *

52 This entry may only be used for substances that do not exhibit explosive properties of Class 1 (explosive) when tested in accordance with Test Series 1 and 2 of Class 1 (explosive) in the UN Manual of Tests and Criteria, Part I (incorporated by reference; see § 171.7 of this subchapter).

* * * * *

130 For other than a dry battery specifically covered by another entry in the § 172.101 Table, "Batteries, dry" are not subject to the requirements of this subchapter when they are securely packaged and offered for transportation in a manner that prevents the dangerous evolution of heat (for example, by the effective insulation of exposed terminals) and protects against short circuits.

* * * * *

132 This entry may only be used for uniform, ammonium nitrate-based fertilizer mixtures, containing nitrogen, phosphate or potash, meeting the following criteria: (1) Contains not more than 70% ammonium nitrate; and (2) Contains not more than 0.4% total combustible, organic material-calculated as carbon or with not more than 45% ammonium nitrate and unrestricted combustible material. Fertilizers within these composition limits are only subject to the requirements of this subchapter when transported by aircraft or vessel, and are not subject to the requirements of this subchapter if shown by a trough test, as specified in the UN Manual of Tests and Criteria, Part III, sub-section 38.2 (incorporated by reference; see § 171.7 of this subchapter), not to be liable to self-sustaining decomposition.

* * * * *

134 This entry only applies to vehicles, machinery and equipment which are powered by wet batteries, sodium batteries, or lithium batteries and which are transported with these batteries installed. Examples of such items are electrically-powered cars, lawn mowers, wheelchairs and other mobility aids. A self-propelled vehicle which also contain an internal combustion engine must be consigned under the entry "Vehicle, flammable gas powered" or "Vehicle, flammable liquid powered", as appropriate.

* * * * *

145 This entry applies to formulations that neither detonate in the cavitated state nor deflagrate in laboratory testing, show no effect when heated under confinement, exhibit no explosive power, and are thermally stable (self-accelerating decomposition temperature (SADT) at 60 °C (140 °F) or higher for a 50 kg (110.2 lbs.) package). Formulations not meeting these criteria must be transported under the provisions applicable to the appropriate entry in the Organic Peroxide Table in § 173.225 of this subchapter.

146 This description may be used for a material that poses a hazard to the environment but does not meet the definition for a hazardous waste or a hazardous substance, as defined in § 171.8 of this subchapter, or any hazard class as defined in Part 173 of this subchapter, if it is designated as environmentally hazardous by the Competent Authority of the country of origin, transit or destination.

147 This entry applies to non-sensitized emulsions, suspensions and gels consisting primarily of a mixture of ammonium nitrate and a fuel intended to produce a Type E blasting explosive only after further processing. The mixture typically has the following composition: 60—85% ammonium nitrate; 5—30% water; 2—8% fuel; 0.5—4% emulsifier or thickening agent; 0—10% soluble flame suppressants; and trace additives. Other inorganic nitrate salts may replace part of the ammonium nitrate. These substances may not be classified and transported unless approved by the Associate Administrator.

149 When transported as a limited quantity or a consumer commodity, the maximum net capacity specified in § 173.150(b)(2) of this subchapter for inner packagings may be increased to 5 L (1.3 gallons).

150 This description may be used only for uniform mixtures of fertilizers containing ammonium nitrate as the main ingredient within the following composition limits:

a. Not less than 90% ammonium nitrate with not more than 0.2% total combustible, organic material calculated as carbon, and with added matter, if any, that is inorganic and inert when in contact with ammonium nitrate; or

b. Less than 90% but more than 70% ammonium nitrate with other inorganic materials, or more than 80% but less than 90% ammonium nitrate mixed with calcium carbonate and/or dolomite, and not more than 0.4% total combustible, organic material calculated as carbon; or

c. Ammonium nitrate-based fertilizers containing mixtures of ammonium nitrate and ammonium sulphate with more than 45% but less than 70% ammonium nitrate, and not more than 0.4% total combustible, organic material calculated as carbon such that the sum of the percentage of compositions of ammonium nitrate and ammonium sulphate exceeds 70%.

151 If this material meets the definition of a flammable liquid in § 173.120 of this subchapter, a FLAMMABLE LIQUID label is also required and the basic description on the shipping paper must indicate the Class 3 subsidiary hazard.

153 The following applies to aerosols:

a. Division 2.1 applies when the aerosol is flammable according to § 173.306(i) of this subchapter.

b. Division 2.2 applies when the contents of the aerosol do not meet the criteria for Division 2.1, or Division 2.3.

c. Division 2.3 gases may not be used in an aerosol dispenser.

d. When the contents are classified as Division 6.1 or Class 8, the aerosol must have a subsidiary risk of Division 6.1 or Class 8.

e. Aerosols with contents meeting the criteria for PG I and PG II for Division 6.1 or Class 8 are forbidden for transportation.

f. Aerosols must meet the definition of aerosols in § 171.8 of this subchapter.

155 Fish meal or fish scrap may not be transported if the temperature at the time of loading either exceeds 35 °C (95 °F), or exceeds 5 °C (41 °F) above the ambient temperature, whichever is higher.

156 Asbestos that is immersed or fixed in a natural or artificial binder material, such as cement, plastic, asphalt, resins or mineral ore, or contained in manufactured products is not subject to the requirements of this subchapter.

157 This entry includes hybrid electric vehicles powered by both an internal combustion engine and wet, sodium or lithium batteries, transported with one or more batteries installed. Vehicles containing an internal combustion engine must be described as "Vehicle, flammable gas powered," UN3166, or "Vehicle, flammable liquid powered," UN3166, as appropriate.

159 This material must be protected from direct sunshine and kept in a cool, well-ventilated place away from sources of heat.

160 This entry applies to articles that are used as life-saving vehicle air bag inflators, air bag modules or seat-belt pretensioners containing Class 1 (explosive) materials or materials of other hazard classes. Air bag inflators and modules must be tested in accordance with Test series 6(c) of Part I of the UN Manual of Tests and Criteria (incorporated by reference; see § 171.7 of this subchapter), with no explosion of the device, no fragmentation of device casing or pressure vessel, and no projection hazard or thermal effect that would significantly hinder fire-fighting or other emergency response efforts in the immediate vicinity. If the air bag inflator unit satisfactorily passes the series 6(c) test, it is not necessary to repeat the test on the air bag module.

161 For domestic transport, air bag inflators, air bag modules or seat belt pretensioners that meet the criteria for a Division 1.4G explosive must be transported using the description, "Articles, pyrotechnic *for technical purposes*," UN0431.

162 This material may be transported under the provisions of Division 4.1 only if it is packed so that at no time during transport will the percentage of diluent fall below the percentage that is stated in the shipping description.

(2) * * *

Code/Special Provisions

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A54 Lithium batteries or lithium batteries contained or packed with equipment that exceed the maximum gross weight allowed by Column (9B) of the § 172.101 Table may only be transported on cargo aircraft if approved by the Associate Administrator.

A55 Prototype lithium batteries and cells that are packed with not more than 24 cells or 12 batteries per packaging that have not completed the test requirements in Sub-section 38.3 of the UN Manual of Tests and Criteria (incorporated by reference; see § 171.7 of this subchapter) may be transported by cargo aircraft if approved by the Associate Administrator and provided the following requirements are met:

a. The cells and batteries must be transported in rigid outer packagings that conform to the requirements of Part 178 of this subchapter at the Packing Group I performance level; and

b. Each cell and battery must be protected against short circuiting, must be surrounded by cushioning material that is non-combustible and non-conductive, and must be individually packed in an inner packaging that is placed inside an outer specification packaging.

A56 Radioactive material with a subsidiary hazard of Division 4.2, Packing Group I, must be transported in Type B packages when offered for transportation by aircraft. Radioactive material with a subsidiary hazard of Division 2.1 is forbidden from transport on passenger aircraft.

* * * * *

(4) *Table 1, Table 2, and Table 3—IB Codes, Organic Peroxide IBC Code, and IP Special IBC Packing Provisions.* These provisions apply only to transportation in IBCs. When no IBC code is assigned in the § 172.101 Table for a specific proper shipping name, an IBC may be authorized when approved by the Associate Administrator. When only certain types of IBCs are authorized in Table 2 (IBC Code IB52), alternative types of IBCs may be authorized when approved by the Associate Administrator. The letter "Z" shown in the marking code for composite IBCs must be replaced with a capital code letter designation found in § 178.702(a)(2) of this subchapter to specify the material used for the outer packaging. Tables 1, 2, and 3 follow:

TABLE 1.—IB CODES (IBC CODES)

IBC code	Authorized IBCs
IB3	*Authorized IBCs:* Metal (31A, 31B and 31N); Rigid plastics (31H1 and 31H2); Composite (31HZ1 and 31HA2, 31HB2, 31HN2, 31HD2 and 31HH2). *Additional Requirement:* Only liquids with a vapor pressure less than or equal to 110 kPa at 50 °C (1.1 bar at 122 °F), or 130 kPa at 55 °C (1.3 bar at 131 °F) are authorized, except for UN2672 (also see Special Provision IP8 in Table 3 for UN2672).

TABLE 2.—ORGANIC PEROXIDE IBC CODE (IB52)

UN No.	Organic peroxide	Type of IBC	Maximum quantity (liters)	Control temperature	Emergency temperature
	REMOVE:				
3109	Di-tert-butyl peroxide, not more than 52% in diluent type A.	31A 31HA1	1250 1000		
	ADD:				
3109	Dicumyl peroxide, less than or equal to 100%.	31A 31HA1	1250 1000		
3109	Di-tert-butyl peroxide, not more than 52% on diluent type B.	31A 31HA1	1250 1000		
	Peroxyacetic acid, with not more than 26% hydrogen peroxide.	31A 31HA1	1500 1500		
	Peroxyacetic acid, type F, stabilized.	31A 31HA1	1500 1500		
3110	REVISE:				
	Dicumyl peroxide, less than or equal to 100%.	31A	2000		

TABLE 2.—ORGANIC PEROXIDE IBC CODE (IB52)—Continued

UN No.	Organic peroxide	Type of IBC	Maximum quantity (liters)	Control temperature	Emergency temperature

TABLE 3.—IP CODES

IP8	Ammonia solutions may be transported in rigid or composite plastic IBCs (31H1, 31H2 and 31HZ1) that have successfully passed, without leakage or permanent deformation, the hydrostatic test specified in § 178.814 of this subchapter at a test pressure that is not less than 1.5 times the vapor pressure of the contents at 55 °C (131 °F).

(5) * * *

Code/Special Provisions

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N83 This material may not be transported in quantities of more than 11.5 kg (25.4 lbs) per package.

N84 The maximum quantity per package is 500 g (1.1 lbs.).

N85 Packagings certified at the Packing Group I performance level may not be used.

* * * * *

(7) * * *

(iii) * * *

PORTABLE TANK CODE T23

[Portable tank code T23 applies to self-reactive substances of Division 4.1 and organic peroxides of Division 5.2.]

UN No.	Hazardous material	Minimum test pressure (bar)	Minimum shell thickness (mm-reference steel) See . . .	Bottom opening requirements See . . .	Pressure-relief requirements See . . .	Filling limits	Control temperature	Emergency temperature
	REMOVE:							
3119	tert-Butyl peroxyacetate, not more than 32% in diluent Type B.	4	§ 178.274(d)(2)	§ 178.275(d)(3)	§ 178.275(g)(1)	Not more than 90% at 59 °F (15 °C).	+30 °C	+35 °C
3120	Organic peroxide Type F, solid, temperature controlled.	4	§ 178.274(d)(2)	§ 178.275(d)(3)	§ 178.275(g)(1)	Not more than 90% at 59 °F (15 °C).	As approved by Assoc. Admin.	As approved by Assoc. Admin
	ADD:							
3109	Dicumyl peroxide, less than or equal to 100% in diluent Type B.	4	§ 178.274(d)(2)	§ 178.275(d)(3)	§ 178.275(g)(1)	Not more than 90% at 59 °F (15 °C).		
3119	tert-Butyl peroxyacetate, not more than 32% in diluent Type B.	4	§ 178.274(d)(2)	§ 178.275(d)(3)	§ 178.275(g)(1)	Not more than 90% at 59 °F (15 °C).	+30 °C	+35 °C
	Peroxyacetic acid, distilled, stabilized, not more than 41%.	4	§ 178.274(d)(2)	§ 178.275(d)(3)	§ 178.275(g)(1)	Not more than 90% at 59 °F (15 °C).	+30 °C	+35 °C
3120	Organic peroxide Type F, solid, temperature controlled.	4	§ 178.274(d)(2)	§ 178.275(d)(3)	§ 178.275(g)(1)	Not more than 90% at 59 °F (15 °C).	As approved by Assoc. Admin.	As approved by Assoc. Admin
	REVISE:							

PORTABLE TANK CODE T23—Continued

[Portable tank code T23 applies to self-reactive substances of Division 4.1 and organic peroxides of Division 5.2.]

UN No.	Hazardous material	Minimum test pressure (bar)	Minimum shell thickness (mm-reference steel) See . . .	Bottom opening requirements See . . .	Pressure-relief requirements See . . .	Filling limits	Control temperature	Emergency temperature
3110	Dicumyl peroxide less than r equal to 100% with inert solid. Maximum quantity per portable tank 2,000 kg.	4	§ 178.274(d)(2) ..	§ 178.275(d)(3) ..	§ 178.275(g)(1) ..	Not more than 90% at 59 °F (15 °C).		
3119	tert-Butyl peroxypivalate, not more than 27% in diluent Type B.	4	§ 178.274(d)(2) ..	§ 178.275(d)(3) ..	§ 178.275(g)(1) ..	Not more than 90% at 59 °F (15 °C).	+5 °C	+10 °C

(viii)* * *

Code/Special Provisions

* * * * *

TP3 For materials transported under elevated temperatures, the maximum degree of filling is determined by the following:

$$\left(\text{Degree of filling} = 95\frac{d_t}{d_f}\right).$$

Where:

d_t is the density of the material at the maximum mean bulk temperature during transport; and

d_f is the density of the material at the temperature in degrees celsius of the material during filling; and

* * * * *

■ 12. In § 172.202, paragraphs (a)(2), (a)(5) and (b) are revised and (a)(6) is added to read as follows:

§ 172.202 Description of hazardous material on shipping papers.

(a) * * *

(2) The hazard class or division number prescribed for the material, as shown in Column (3) of the § 172.101 Table. Except for combustible liquids, the subsidiary hazard class(es) or subsidiary division number(s) must be entered in parentheses immediately following the primary hazard class or division number. The words "Class" or "Division" may be included preceding the primary and subsidiary hazard class or division numbers. The hazard class need not be included for the entry "Combustible liquid, n.o.s.";

* * * * *

(5) The total quantity of hazardous materials covered by the description must be indicated (by mass or volume, or by activity for Class 7 materials) and must include an indication of the applicable unit of measurement. For example, "200 kgs." or "50 L." The following provisions also apply:

(i) For Class 1 materials, the quantity must be the net explosive mass.

(ii) For hazardous materials in salvage packaging, an estimate of the total quantity is acceptable.

(iii) The following are excepted from the requirements of paragraph (a)(5) of this section:

(A) Bulk packages, provided some indication of the total quantity is shown, for example, "1 cargo tank" or "2 IBCs."

(B) Cylinders, provided some indication of the total quantity is shown, for example, "10 cylinders".

(C) Packages containing only residue.

(6) The number and type of packages must be indicated. The type of packages may be indicated by description and by packaging specification number when applicable (for example, "12 drums", "12 UN 1A1", "15 4G", or "2 UN 3H1 jerricans." Abbreviations may be used for indicating packaging types (for example, cyl. for cylinder), provided the abbreviations are commonly accepted and recognizable.

(b) Except as provided in this subpart, the basic description specified in paragraphs (a)(1), (2), (3) and (4) of this section must be shown in sequence with no additional information interspersed. For example, "Cyclobutyl chloroformate, 6.1, (8,3), UN2744, PG II". Alternatively, the basic description may be shown with the identification (ID) number listed first. For example, "UN2744, Cyclobutyl chloroformate, 6.1, (8, 3), PG II."

* * * * *

§ 172.203 [Amended]

■ 13. In § 172.203, paragraphs (i)(1), (i)(2), (i)(3) and (i)(6) are removed and paragraphs (i)(4) and (i)(5) are redesignated (i)(1) and (i)(2), respectively.

■ 14. In § 172.301, paragraph (a)(1) is revised to read as follows:

§ 172.301 General marking requirements for non-bulk packagings.

(a) * * *

(1) Except as otherwise provided by this subchapter, each person who offers a hazardous material for transportation in a non-bulk packaging must mark the package with the proper shipping name and identification number (preceded by "UN" or "NA," as appropriate) for the material as shown in the § 172.101 Table. Identification numbers are not required on packagings that contain only ORM–D materials or limited quantities, as defined in § 171.8 of this subchapter, except for limited quantities marked in accordance with the marking requirements in § 172.315.

* * * * *

15. In § 172.312, a new paragraph (c)(6) is added to read as follows:

§ 172.312 Liquid hazardous materials in non-bulk packagings.

* * * * *

(c) * * *

(6) Packages containing liquid infectious substances in primary receptacles not exceeding 50 ml (1.7 oz.).

■ 16. A new section § 172.315 is added to read as follows:

§ 172.315 Packages containing limited quantities.

Except as otherwise provided in this subchapter, a package containing a limited quantity of hazardous materials is not required to be marked with the proper shipping name provided it is marked with the identification (ID) number, preceded by the letters "UN" or "NA," as applicable, for the entry as shown in the § 172.101 Table, and placed within a square-on-point border in accordance with the following:

(a) The ID number marking must be durable, legible and of such a size relative to the package as to be readily visible. The width of line forming the square-on-point must be at least 2 mm and the height of the ID number must be at least 6 mm. The marking must be applied on at least one side or one end of the outer packaging.

(b) When two or more hazardous materials with different ID numbers are contained in the package, the packaging must be marked with either individual square-on-points bearing a single ID number, or a single square-on-point large enough to include each applicable ID number.

■ 17. A new section § 172.321 is added to read as follows:

§ 172.321 Air eligibility mark.

(a) *General.* Except as otherwise specified in this subchapter, each person who offers for transportation by aircraft a hazardous material in a non-bulk package must mark the package as required by this section to indicate that it meets the applicable requirements for air transport. The marking is a certification that the person offering the package for transportation has determined that it meets the air transport requirements of this subchapter; such as, the package is authorized and properly marked and labeled, its contents are properly classed and within quantity limits for air transport, and it conforms to all relevant packaging provisions such as those pertaining to closures, compatibility, pressure differential, and use of absorbent materials.

(b) *Location and design.* The marking must—

(1) Be placed adjacent to the markings prescribed in § 172.301(a);

(2) Be durable, legible and of a size relative to the package so as to be readily visible;

(3) Include an aircraft within a circle and may include the words "Air Eligible" in conjunction with the mark, such as:



Air Eligible

(c) *Exceptions from the air eligibility mark.* The air eligibility mark is not required for—

(1) Packages that are transported in accordance with the small quantity exceptions in § 173.4 of this subchapter;

(2) Packages that contain solid carbon dioxide (dry ice) and no other materials subject to the requirements of this subchapter;

(3) Except when overpacked, hazardous materials contained in articles that are not required to be packaged according to the requirements of this subchapter.

(4) Cylinders, except for those which are required to be overpacked or placed in an outer packaging, in which case the overpack or outer packaging must be marked with the air eligibility marking; and

(5) Packages or articles which are excepted from the marking requirements of this subchapter (for example, non-spillable batteries, vehicles); and

(d) *Prohibited display.* The air eligibility marking may not appear on a package containing a hazardous material which does not meet the requirements of this subchapter for air transport.

■ 18. In § 172.411, the section heading and paragraphs (b) and (d) are revised, and new paragraphs (e) and (f) are added to read as follows:

§ 172.411 EXPLOSIVE 1.1, 1.2, 1.3, 1.4, 1.5 and 1.6 labels, and EXPLOSIVE Subsidiary label.

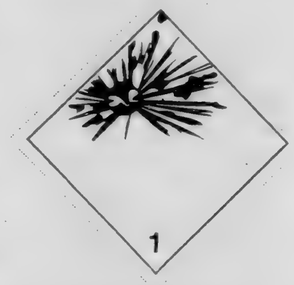
* * * * *

(b) In addition to complying with § 172.407, the background color on the EXPLOSIVE 1.1, EXPLOSIVE 1.2 and EXPLOSIVE 1.3 labels must be orange. The "**" must be replaced with the appropriate division number and compatibility group letter. The compatibility group letter must be the same size as the division number and must be shown as a capitalized Roman letter.

* * * * *

(d) In addition to complying with § 172.407, the background color on the EXPLOSIVE 1.4, EXPLOSIVE 1.5 and EXPLOSIVE 1.6 label must be orange. The "*" must be replaced with the appropriate compatibility group. The compatibility group letter must be shown as a capitalized Roman letter. Division numbers must measure at least 30 mm (1.2 inches) in height and at least 5 mm (0.2 inches) in width.

(e) An EXPLOSIVE subsidiary label is required for materials identified in Column (6) of the HMT as having an explosive subsidiary hazard. The division number or compability group letter may be displayed on the subsidiary hazard label. Except for size and color, the EXPLOSIVE subsidiary label must be as follows:



(f) The EXPLOSIVE subsidiary label must comply with § 172.407.

■ 19. In § 172.504, paragraph (g) introductory text is revised to read as follows:

§ 172.504 General placarding requirements.

* * * * *

(g) For shipments of Class 1 (explosive materials) by aircraft or vessel, the applicable compatibility group letter must be displayed on the placards, or labels when applicable, required by this section. When more than one compatibility group placard is required for Class 1 materials, only one placard is required to be displayed, as provided in paragraphs (g)(1) through (g)(4) of this section. For the purposes of paragraphs (g)(1) through (g)(4), there is a distinction between the phrases *explosive articles* and *explosive substances. Explosive article* means an article containing an explosive substance; examples include a detonator, flare, primer or fuse. *Explosive substance* means a substance contained in a packaging that is not contained in an article; examples include black powder and smokeless powder.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 20. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.53.

■ 21. In § 173.2a, in the paragraph (b) Precedence of Hazard Table, the title of the table and the first three entries in Precedence of Hazard Table are revised to read as follows:

§ 173.2a Classification of a material having more than one hazard.

* * * * *

(b) * * *

PRECEDENCE OF HAZARD TABLE

[Hazard class or division and packing group]

	4.2	4.3	5.1 I[4]	5.1 II[4]	5.1 III[4]	6.1, I dermal	6.1, I oral	6.1 II	6.1 III	8, I liquid	8, I solid	8, II liquid	8.1 II solid	8, III liquid	8, III, solid
3 I[2]		4.3				3	3	3	3	3	[3]	3	[3]	3	[3]
3 II[2]		4.3				3	3	3	3	8	[3]	3	[3]	3	[3]
3 III[2]		4.3				6.1	6.1	6.1	3[4]	8	[3]	8	[3]	3	[3]

[2] Materials of Division 4.1 other than self-reactive substances and solid desensitized explosives, and materials of Class 3 other than liquid desensitized explosives.
[3] Denotes an impossible combination.
[4] For pesticides only, where a material has the hazards of Class 3, Packing Group III, and Division 6.1, Packing Group III, the primary hazard is Division 6.1, Packing Group III.

■ 22. In § 173.21, paragraph (f)(3)(ii) is revised to read as follows:

§ 173.21 Forbidden materials and packages.

* * * * *

(f) * * *

(3) * * *

(ii) For transportation by vessel, shipments are authorized in accordance with the control temperature requirements in Chapter 7.7 of the IMDG Code (incorporated by reference; see § 171.7 of this subchapter).

* * * * *

■ 23. In § 173.22, paragraph (a)(4) is revised to read as follows:

§ 173.22 Shipper's responsibility.

(a) * * *

(4) For a DOT Specification or UN standard packaging subject to the requirements of part 178 of this subchapter, a person must perform all functions necessary to bring the package into compliance with parts 173 and 178 of this subchapter, as identified by the packaging manufacturer or subsequent distributor (for example, applying closures consistent with the manufacturer's closure instructions) in accordance with § 178.2 of this subchapter.

* * * * *

■ 24. In § 173.24, paragraphs (b) and (f) are revised to read as follows:

§ 173.24 General requirements for packagings and packages.

* * * * *

(b) Each package used for the shipment of hazardous materials under this subchapter shall be designed, constructed, maintained, filled, its contents so-limited, and closed, so that under conditions normally incident to transportation—

(1) Except as otherwise provided in this subchapter, there will be no identifiable (without the use of instruments) release of hazardous materials to the environment;

(2) The effectiveness of the package will not be substantially reduced; for example, impact resistance, strength, packaging compatibility, etc. must be maintained for the minimum and maximum temperatures, changes in humidity and pressure, and shocks, loadings and vibrations, normally encountered during transportation;

(3) There will be no mixture of gases or vapors in the package which could, through any credible spontaneous increase of heat or pressure, significantly reduce the effectiveness of the packaging;

(4) There will be no hazardous material residue adhering to the outside of the package during transport.

* * * * *

(f) Closures. (1) Closures on packagings shall be so designed and closed that under conditions (including the effects of temperature, pressure and vibration) normally incident to transportation—

(i) Except as provided in paragraph (g) of this section, there is no identifiable release of hazardous materials to the environment from the opening to which the closure is applied; and

(ii) The closure is leakproof and secured against loosening. For air transport, stoppers, corks or other such friction closures must be held in place by positive means.

(2) Except as otherwise provided in this subchapter, a closure (including gaskets or other closure components, if any) used on a specification packaging must conform to all applicable requirements of the specification and must be closed in accordance with information, as applicable, provided by the manufacturer's notification required by § 178.2 of this subchapter.

* * * * *

■ 25. In 173.25, paragraph (a)(2) is revised to read as follows:

§ 173.25 Authorized packagings and overpacks.

(a) * * *

(2) The overpack is marked with the proper shipping name and identification number, the air eligibility marking, when applicable, and is labeled as required by this subchapter for each hazardous material contained therein, unless markings and labels representative of each hazardous material in the overpack are visible.

* * * * *

■ 26. In § 173.27, paragraph (e) is revised, and a new paragraph (i) is added to read as follows:

§ 173.27 General requirements for transportation by aircraft.

* * * * *

(e) Absorbent materials. Except as otherwise provided in this subchapter, liquid hazardous materials of Class 3, 4, or 8, or Division 5.1, 5.2 or 6.1 that are packaged and offered for transport in glass, earthenware, plastic or metal inner packagings must be packaged using absorbent material as follows:

(1) Packing Group I liquids on passenger aircraft must be packaged using materials capable of absorbing the entire contents of the inner packagings.

(2) Packing Group I liquids on cargo aircraft, and Packing Group II liquids including Division 5.2 liquids on passenger and cargo aircraft, must be packaged using a sufficient quantity of absorbent material to absorb the entire contents of any one of the inner packagings containing such liquids. When the inner packagings are of different sizes and quantities, sufficient absorbent material must be used to absorb the entire contents of the inner packaging with the greatest volume of liquid.

(3) When absorbent materials are required and the outer packaging is not liquid tight, a means of containing the liquid in the event of a leakage must be provided in the form of a leakproof liner, plastic bag or other equally efficient means of containment.

(4) Absorbent material must not react dangerously with the liquid (see §§ 173.24 and 173.24a.).

(5) Absorbent material is not required if the inner packagings are so protected that they are unlikely to break and leak their contents from the outer packaging under normal conditions of transportation.

* * * * *

(i) Air eligibility marking. Each person who offers for transportation a hazardous material by aircraft must mark the packages containing the hazardous materials with an air eligibility mark as specified in § 172.321 of this subchapter.

■ 27. In § 173.62, the following changes are made:

■ a. In paragraph (b), in the Explosives Table, a new entry is added in appropriate numerical order; and

■ b. In paragraph (c), in the Table of Packing Methods, in the first column, for the packing instruction entry 112(b), in the last sentence, the wording "3. For UN 0222 and UN 0223" is removed and "3. For UN 0222" is added in its place.

■ The new entry to be added to the paragraph (b) Explosives Table reads as follows:

§ 173.62 Specific packaging requirements for explosives.

* * * * *

(b) * * *

EXPLOSIVES TABLE

ID No.	PI
. . . . .	
UN0503	135
. . . . .	

* * * * *

■ 28. In § 173.115, paragraphs (d) and (e) are revised to read as follows:

§ 173.115 Class 2, Divisions 2.1, 2.2, and 2.3—Definitions.

* * * * *

(d) *Non-liquefied compressed gas.* A gas, which when packaged under pressure for transportation is entirely gaseous at −50 °C (−58 °F) with a critical temperature less than or equal to −50 °C (−58 °F), is considered to be a non-liquefied compressed gas.

(e) *Liquefied compressed gas.* A gas, which when packaged under pressure for transportation is partially liquid at temperatures above −50 °C (−58 °F), is considered to be a liquefied compressed gas. A liquefied compressed gas is further categorized as follows:

(1) *High pressure liquefied gas* which is a gas with a critical temperature between −50 °C (−58 °F) and + 65 °C (149 °F), and

(2) *Low pressure liquefied gas* which is a gas with a critical temperature above + 65 °C (149 °F).

* * * * *

■ 29. In § 173.152, paragraphs (b)(2) and (b)(4)(ii) are revised to read as follows:

§ 173.152 Exceptions for Division 5.1 (oxidizers) and Division 5.2 (organic peroxides).

* * * * *

(b) * * *

(2) For oxidizers in Packing Group III, inner packagings not over 5 L (1.3 gallons) net capacity each for liquids or not over 5.0 kg (11 lbs) net capacity each for solids, and packed in strong outer packagings.

* * * * *

(4) * * *

(ii) The flammable liquid component must be packed in inner packagings not over 5 L (1.3 gallons) net capacity each for Packing Group II or III liquid; and

* * * * *

■ 30. In § 173.153, in paragraph (b) introductory text, a new first sentence is added, and paragraph (b)(1) is revised to read as follows:

§ 173.153 Exceptions for Division 6.1 (poisonous materials).

* * * * *

(b) *Limited quantities of Division 6.1 materials.* The exceptions in this paragraph do not apply to poison-by-inhalation materials. * * *

(1) For poisonous liquids in Packing Group III, inner packagings not over 5 L (1.3 gallons) net capacity each, packed in strong outer packagings; and

* * * * *

■ 31. In § 173.154, paragraph (b)(2) is revised to read as follows:

§ 173.154 Exceptions for Class 8 (corrosive materials).

* * * * *

(b) * * *

(2) For corrosive materials in Packing Group III, in inner packagings not over 5.0 L (1.3 gallons) net capacity each for liquids, or not over 5.0 kg (11 lbs) net capacity each for solids, and packed in strong outer packagings.

* * * * *

■ 32. In § 173.159, in paragraph (a), a second sentence is added, and a new paragraph (d)(4) is added to read as follows:

§ 173.159 Batteries, wet.

(a) * * * For transportation by aircraft, the packaging for wet cell batteries must incorporate an acid-or alkali-proof liner, or include a supplementary packaging with sufficient strength and adequately sealed to prevent leakage of electrolyte fluid in the event of spillage.

* * * * *

(d) * * *

(4) At a temperature of 55 °C (131 °F), the battery must not contain any unabsorbed free-flowing liquid, and must be designed so that electrolyte will not flow from a ruptured or cracked case.

* * * * *

■ 33. Section 173.161 is revised to read as follows:

§ 173.161 Chemical kits and first aid kits.

(a) Chemical kits and First aid kits must conform to the following requirements:

(1) The kits may only contain hazardous materials for which packaging exceptions are provided in column 8(A) the § 172.101 Table of this subchapter.

(2) The kits must be packed in a strong outer packaging conforming to the packaging requirements of subpart B of this subchapter.

(3) The kits must include sufficient absorbent material to completely absorb the contents of any liquid hazardous materials contained in the kits. The contents must be separated, placed, or packed, and closed with cushioning material to protect them from damage.

(4) The contents of the kits must be packed so there will be no possibility of the mixture of contents causing dangerous evolution of heat or gas.

(5) The packing group assigned to the kits as a whole must be the most stringent packing group assigned to any individual substance contained in the kits.

(6) Inner receptacles containing hazardous materials within the kits must not contain more than 250 ml for liquids or 250 g for solids per receptacle.

(7) The total quantity of hazardous materials in any one outer package must not exceed either 10 L or 10 kg.

(b) Chemical kits and First aid kits are excepted from the specification packaging requirements of this subchapter. Chemical kits and First aid kits are also excepted from the labeling requirements of this subchapter except when offered for transportation or transported by air. In addition, Chemical kits and First aid kits are not subject to subpart F of part 172 of this subchapter (Placarding), part 174 (Carriage by rail) of this subchapter except § 174.24 (Shipping papers), and part 177 (Carriage by highway) of this subchapter except § 177.817 (Shipping

papers). Kits that meet the definition for a consumer commodity in § 171.8 of this subchapter may be transported in accordance with the exceptions for ORM materials in § 173.156.

■ 34. In § 173.166, paragraphs (b), (c), (d)(2), (e) introductory text and (f) are revised; paragraph (d)(3) is redesignated as paragraph (d)(4) and revised; and new paragraphs (d)(3), (d)(5), and (e)(5) are added to read as follows:

§ 173.166 Air bag inflators, air bag modules and seat-belt pretensioners.

* * * * *

(b) *Classification.* An air bag inflator, air bag module, or seat-belt pretensioner may be classed as Class 9 (UN3268) if:

(1) The manufacturer has submitted each design type air bag inflator, air bag module, or seat-belt pretensioner to a person approved by the Associate Administrator, in accordance with § 173.56(b), for examination and testing. The submission must contain a detailed description of the inflator or pretensioner or, if more than a single inflator or pretensioner is involved, the maximum parameters of each particular inflator or pretensioner design type for which approval is sought and details on the complete package. The manufacturer must submit an application, including the test results and report recommending the shipping description and classification for each device or design type to the Associate Administrator, and must receive written notification from the Associate Administrator that the device has been approved for transportation and assigned an EX number; or,

(2) The manufacturer has submitted an application, including a classification issued by the competent authority of a foreign government to the Associate Administrator, and received written notification from the Associate Administrator that the device has been approved for transportation and assigned an EX number.

(c) *EX numbers.* When offered for transportation, the shipping paper must contain the EX number or product code for each approved inflator, module or pretensioner in association with the basic description required by § 172.202(a) of this subchapter. Product codes must be traceable to the specific EX number assigned to the inflator, module or pretensioner by the Associate Administrator. The EX number or product code is not required to be marked on the outside package.

(d) * * *

(2) An air bag module containing an inflator that has been previously approved for transportation is not required to be submitted for further examination or approval.

(3) An air bag module containing an inflator that has previously been approved as a Division 2.2 material is not required to be submitted for further examination to be reclassed as a Class 9 material.

(4) *Shipments for recycling.* When offered for domestic transportation by highway, rail freight, cargo vessel or cargo aircraft, a serviceable air bag module or seat-belt pretensioner removed from a motor vehicle that was manufactured as required for use in the United States may be offered for transportation and transported without compliance with the shipping paper requirement prescribed in paragraph (c) of this section. However, the word "Recycled" must be entered on the shipping paper immediately after the basic description prescribed in § 172.202 of this subchapter. No more than one device is authorized in the packaging prescribed in paragraph (e)(1), (2) or (3) of this section. The device must be cushioned and secured within the package to prevent movement during transportation.

(5) Until October 1, 2005, approved "Air bag inflators, compressed gas, *or* Air bag modules, compressed gas *or* Seat-belt pretensioners, compressed gas," UN3353, packaged in a non-specification packaging before October 1, 2003, may be transported or offered for domestic transportation when described, marked, and labeled as a Division 2.2 material in accordance with the HMR in effect on September 30, 2003.

(e) *Packagings.* Rigid, outer packagings, meeting the general packaging requirements of part 173, and the packaging specification and performance requirements of part 178 of this subchapter at the Packing Group III performance level are authorized. The packagings must be designed and constructed to prevent movement of the articles and inadvertent operation.

* * * * *

(5) Packagings specified in the approval document issued by the Associate Administrator in accordance with paragraph (e) of this section are also authorized.

(f) *Labeling.* Notwithstanding the provisions of § 172.402 of this subchapter, each package or handling device must display a CLASS 9 label. Additional labeling is not required when the package contains no hazardous materials other than the devices.

■ 35. In § 173.185, paragraph (e)(4) is revised, paragraph (e)(5) is removed and reserved, paragraph (e)(7) is revised, and a new paragraph (k) is added to read as follows:

§ 173.185 Lithium batteries and cells.

* * * * *

(e) * * *

(4) Authorized outer packagings: rigid outer packagings that conform to the general packaging requirements of part 173 and the packaging specification and performance requirements of part 178 of this subchapter at the Packing Group II performance level. Cells and batteries must be packed in such a manner as to effectively prevent short circuits through the use of inner packagings, dividers, or other suitable means.

(5) [Reserved]

* * * * *

(7) Except as provided in paragraph (h) of this section, cells and batteries with a liquid cathode containing sulfur dioxide, sulfuryl chloride or thionyl chloride may not be offered for transportation or transported if any cell has been discharged to the extent that the open circuit voltage is less than two volts, or is less than two-thirds of the voltage of the fully charged cell, whichever is less.

* * * * *

(k) Batteries employing a strong, impact-resistant outer casing and exceeding a gross mass of 12 kg (26.5 lbs.), and assemblies of such batteries, may be packed in strong outer packagings, in protective enclosures (for example, in fully enclosed wooden slatted crates) or on pallets. Batteries must be secured to prevent inadvertent movement, and the terminals may not support the weight of other superimposed elements. Batteries packaged in this manner may only be transported by cargo aircraft and must be approved by the Associate Administrator.

§ 173.216 [Amended]

■ 36. In § 173.216, paragraph (b) is removed and reserved.

■ 37. In § 173.218, paragraph (a) introductory text is revised and paragraph (b) is removed and reserved to read as follows:

§ 173.218 Fish meal or fish scrap.

(a) Except as provided in Column (7) of the HMT in § 172.101 of this subchapter, fish meal or fish scrap, containing at least 6%, but not more than 12% water, is authorized for transportation by vessel only when packaged as follows:

* * * * *

(b) [Reserved]

* * * * *

■ 38. In § 173.220, paragraph (a)(2) is revised; in paragraph (c), the first sentence is revised; paragraph (e) is redesignated as paragraph (f); and a new paragraph (e) is added to read as follows:

§ 173.220 Internal combustion engines, self-propelled vehicles, mechanical equipment containing internal combustion engines, and battery powered vehicles or equipment.

(a) * * *

(2) It is equipped with a wet electric storage battery other than a non-spillable battery, or with a sodium or lithium battery; or

* * * * *

(c) *Battery powered or installed.* Batteries must be securely installed, and wet batteries fastened in an upright position. * * *

* * * * *

(e) *Additional requirements for internal combustion engines and vehicles with certain electronic equipment when transported by aircraft or vessel.* When an internal combustion engine that is not installed in a vehicle or equipment is offered for transportation by aircraft or vessel, all fuel, coolant or hydraulic systems remaining in the engine must be drained as far as practicable, and all disconnected fluid pipes that previously contained fluid must be sealed with leak-proof caps that are positively retained. When offered for transportation by aircraft, vehicles equipped with theft-protection devices, installed radio communications equipment or navigational systems must have such devices, equipment or systems disabled.

* * * * *

■ 39. A new § 173.223 is added to read as follows:

§ 173.223 Musk xylene.

(a) Packagings for "Musk xylene" or "5-tert-Butyl-2,4,6-trinitro-m-xylene," when offered for transportation or transported by rail, highway, or vessel, must conform to the general packaging requirements of subpart B of part 173, and to the requirements of part 178 of this subchapter at the Packing Group III performance level and may only be transported in the following packagings:

(1) Fiberboard box (4G) with a single inner plastic bag, and a maximum net mass of not more than 50 kg (110 lbs).

(2) Fiberboard box (4G) or fiber drum (1G), with a plastic inner packaging not exceeding 5 kg (11 lbs), and a maximum net mass of not more than 25 kg (55 lbs).

(3) Fiber drum (1G), and a maximum net mass of not more than 50 kg (110 lbs), that may be fitted with a coating or lining.

(b) [Reserved]

■ 40. In § 173.224, in paragraph (b)(4), the fourth sentence is revised; in the table following paragraph (b)(7), 5 entries are removed, 9 entries are added, and 1 entry is revised in appropriate alphabetical order; and in the "NOTES" immediately following the Table, a new Note "4" is added in appropriate numerical order to read as follows:

§ 173.224 Packaging and control and emergency temperatures for self-reactive materials.

* * * * *

(b) * * *

(4) * * * Bulk packagings are authorized as specified in § 173.225(e) for Type F self-reactive substances.

* * *

* * * * *

(7) * * *

SELF-REACTIVE MATERIALS TABLE

Self-reactive substance	Identification No.	Concentration (%)	Packing method	Control temperature (°C)	Emergency temperature	Notes
(1)	(2)	(3)	(4)	(5)	(6)	(7)
• • •	•	•	•	•	•	
[REMOVE:]						
Benzene-1,3-disulphohydrazide, as a paste	3226	52	OP7			
Benzene sulphohydrazide	3226	100	OP7			
2-Diazo-1-Naphthol-4-sulphochloride	3222	100	OP5			
2-Diazo-1-Naphthol-5-sulphochloride	3222	100	OP5			
Diphenyloxide-4,4'-disulphohydrazide	3226	100	OP7			
[ADD:]						
• • •	•	•	•	•	•	
Benzene-1,3-disulphonylhydrazide, as a paste	3226	52	OP7			
Benzene sulphohydrazide	3226	100	OP7			
• • •	•	•	•	•	•	
2-Diazo-1-Naphthol sulphonic acid ester mixture	3226	<100	OP7			4
2-Diazo-1-Naphthol-4-sulphonyl chloride	3222	100	OP5			
2-Diazo-1-Naphthol-5-sulphonyl chloride	3222	100	OP5			
2,5-Dibutoxy-4-(4-morpholinyl)-Benzenediazonium, tetrachlorozincate (2:1)	3228	100	OP8			
• • •	•	•	•	•	•	
2,5-Diethoxy-4-(4-morpholinyl)-benzenediazonium sulphate	3226	100	OP7			
• • •	•	•	•	•	•	
4-(Dimethylamino)-benzenediazonium trichlorozincate (-1)	3228	100	OP8			
• • •	•	•	•	•	•	
Diphenyloxide-4,4'-disulphonylhydrazide	3226	100	OP7			
• • •	•	•	•	•	•	
[REVISE:]						
2,2'-Azodi(isobutyronitrile) as a water based paste	3224	≤50	OP6			

* * * * *

Notes:

* * * * *

4. This entry applies to mixtures of esters of 2-diazo-1-naphthol-4-sulphonic acid and 2-diazo-1-naphthol-5-sulphonic acid.

■ 41. In § 173.225, paragraph (b)(6) is revised; in the Organic Peroxide Table, 1 entry is removed, 9 entries are added, and 21 entries are revised in appropriate alphabetical order; in the "Notes" immediately following the Table, Note "9" is revised, and two new notes, "27" and "28" are added in appropriate numerical order; in paragraph (e)(3)(xii), the last sentence is revised; and paragraph (e)(5) is revised to read as follows:

§ 173.225 Packaging requirements and other provisions for organic peroxides.

* * * * *

(b) * * *

(6) *Packing method.* Column 6 specifies the highest packing method (largest packaging capacity) authorized for the organic peroxide. Lower numbered packing methods (smaller packaging capacities) are also authorized. For example, if OP3 is specified, then OP2 and OP1 are also authorized. The designation "IBC" means Special Provision IB52 in § 172.102 of this subchapter applies. The designation "Bulk" means paragraph (e) of this section applies. When an IBC or bulk packaging is authorized and meets the requirements of paragraph (e) of this section, lower control temperatures than those specified for non-bulk packagings may be required. The Table of Packing Methods in paragraph (d) of this section defines the non-bulk packing methods.

* * * * *

(8) * * *

ORGANIC PEROXIDE TABLE

Technical name	ID No.	Concentration (mass %)	Diluent (mass %) A	B	I	Water (mass %)	Packing method	Temperature (°C) Control	Emergency	Notes
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
[REMOVE:]										
Peracetic acid with not more than 20% hydrogen peroxide.										
[ADD:]										
tert-Butyl peroxyneodecanoate [as a stable dispersion in water].	UN3119	≤42					OP8, IBC	−5	+5	
Di-tert-butyl peroxide	UN3109	≤32	≥68				Bulk			14
Diisopropyl peroxydicarbonate	UN3115	≤28	≥72				OP7	−15	−5	
Di-n-Propyl peroxydicarbonate	UN3113	≤100					OP3	−25	−15	
Di-(3,5,5-trimethylhexanoyl) peroxide	UN3119	≤38	≥62				Bulk	−5	+5	14
Peroxyacetic acid *with not more than 20% hydrogen peroxide.*	Exempt	≤6				≥60	Exempt			28
Peroxyacetic acid *with not more than 26% hydrogen peroxide.*	UN3109	≤17					OP8, IBC			13, 20, 28
Peroxyacetic acid *with 7% hydrogen peroxide.*	UN3107	≤36				≥15	OP8			13, 20, 28
Peroxyacetic acid, distilled, Type F, stabilized.	UN3119	≤41					Bulk	+30	+35	14, 27, 28
[REVISE:]										
tert-Butyl hydroperoxide	UN3109	≤72				≥28	OP8, IBC, Bulk			13, 14
tert-Butyl peroxyacetate	UN3109	≤32	≥68				OP8, IBC			
tert-Butyl peroxyacetate	UN3109	≤32		≥68			OP8			
tert-Butyl peroxyneodecanoate [as a stable dispersion in water].	UN3117	≤52					OP8, IBC	0	+10	
tert-Butyl peroxyneodecanoate	UN3119	≤32	≥68				OP8, IBC	0	+10	
tert-Butyl peroxy-3,5,5- trimethylhexanoate	UN3109	≤32	≥68				OP8, IBC			

ORGANIC PEROXIDE TABLE—Continued

Technical name	ID No.	Concentration (mass %)	Diluent (mass %) A	B	I	Water (mass %)	Packing method	Temperature (°C) Control	Emergency	Notes
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
Cumyl hydroperoxide	UN3109	≤90	≥10				OP8, IBC, Bulk			13, 14, 15
Dibenzoyl peroxide [as a stable dispersion in water].	UN3109	≤42					OP8, IBC			
Di-(4-tert-butylcyclothexyl) peroxydicarbonate [as stable dispersion in water].	UN3119	≤42					OP8, IBC	+30	+35	
Di-tert-butyl peroxide	UN3109	≤52		≥48			OP8, IBC, Bulk			14, 24
1,1-Di-(tert-butylperoxy) cyclohexane	UN3109	≤42	≥58				OP8, IBC			
Dicetyl peroxydicaronate [as a stable dispersion in water].	UN3119	≤42					OP8, IBC	+30	+35	
Dicumyl peroxide	UN3109	>52–100		≤48			OP8, IBC, Bulk			9, 11, 14
Dicumyl peroxide	UN3110	>52–100		≤48			OP8, IBC, Bulk			9, 11, 14
Dilauroyl peroxide [as a stable dispersion in water].	UN3109	≤42					OP8, IBC			
Di-(3,5,5-trimethylhexanoyl)peroxide [as a stable dispersion in water].	UN3119	≤52					OP8, IBC	+10	+15	
Isopropylcumyl hydroperoxide	UN3109	≤72	≥28				OP8, IBC, Bulk			13, 14
p-Menthyl hydroperoxide	UN3109	≤72	≥28				OP8, IBC, Bulk			14
Peroxyacetic acid, type F, stabilized	UN3109	≤43					OP8, IBC			13, 20, 28
Pinanyl hydroperoxide	UN3109	<56	>44				OP8, Bulk			14
1,1,3,3-Tetramethylbutyl peroxyneodecanoate [as a stable dispersion in water].	UN3119	≤52					OP8, IBC	−5	+5	

Notes:

* * * * *

9. For domestic shipments, this material may be packaged in bulk packagings under the provisions of paragraph (e)(3)(xii) of this section.

* * * * *

27. Formulations derived from distillation of peroxyacetic acid originating from peroxyacetic acid in a concentration of not more than 41% with water, total active oxygen less than or equal to 9.5% (peroxyacetic acid plus hydrogen peroxide).

28. For the purposes of this section, the names "Peroxyacetic acid" and "Peracetic acid" are synonymous.

* * * * *

(e) * * *

(3) * * *

(xii) * * * These portable tanks are not subject to any other requirements of paragraph (e) of this section.

* * * * *

(5) *IBCs.* IBCs are authorized subject to the conditions and limitations of this section if the IBC type is authorized according to Special Provision IB52 (see § 172.102(c)(4) of this subchapter), as applicable, and the IBC conforms to the requirements in subpart O of part 178 of this subchapter at the Packing Group II performance level. The additional requirements in paragraphs (e)(5)(i) and (e)(5)(ii) of this section also apply. Type F organic peroxides or self-reactive substances that are not authorized for a specific IBC may be transported in IBCs other than those specified in IB52 if approved by the Associate Administrator.

* * * * *

■ 42. In § 173.244, paragraph (c) is revised to read as follows:

§ 173.244 Bulk packaging for certain pyrophoric liquids (Division 4.2), dangerous when wet (Division 4.3) materials, and poisonous liquids with inhalation hazards (Division 6.1).

* * * * *

(c) *Portable tanks:* DOT 51 portable tanks and UN portable tanks that meet the requirements of this subchapter, when a T code is specified in Column (7) of the § 172.101 Table of this subchapter for the specific hazardous material, are authorized.

■ 43. In § 173.306, the paragraph (f) heading is revised and a new paragraph (j) is added to read as follows:

§ 173.306 Limited quantities of compressed gases.

* * * * *

(f) *Accumulators (Articles, pressurized pneumatic or hydraulic containing non-flammable gas).* * * *

* * * * *

(j) For certain compressed gases not subject to the requirements of this subchapter, see § 173.307(a)(5).

■ 44. In § 173.307, a new paragraph (a)(5) is added to read as follows:

§ 173.307 Exceptions for compressed gases.

(a) * * *

(5) *Aerosols with a capacity of less than 50 ml.* Aerosols, as defined in § 171.8 of this subchapter, with a capacity not exceeding 50 ml and with a pressure not exceeding 970 kPa (141 psig) at 55 °C (131 °F), containing no hazardous materials other than a Division 2.2 gas, are not subject to the requirements of this subchapter.

* * * * *

■ 45. In § 173.418, a new paragraph (e) is added to read as follows:

§ 173.418 Authorized packages-pyrophoric Class 7 (radioactive) materials.

* * * * *

(e) Pyrophoric Class 7 (radioactive) materials transported by aircraft must be packaged in Type B packages, as authorized in Column (8) of the § 172.101 Table of this subchapter.

■ 46. In § 173.422, paragraphs (a)(2), (a)(3), and (a)(4) are revised to read as follows:

§ 173.422 Additional requirements for excepted packages containing Class 7 (radioactive materials).

(a) * * *

(2) "This package conforms to the conditions and limitations specified in 49 CFR 173.424 for radioactive material, excepted package-instruments or articles, UN 2911";

(3) "This package conforms to the conditions and limitations specified in 49 CFR 173.426 for radioactive material, excepted package-articles manufactured from natural uranium or depleted uranium or natural thorium, UN 2909"; or

(4) "This package conforms to the conditions and limitations specified in 49 CFR 173.428 for radioactive material, excepted package-empty packaging, UN 2908."

* * * * *

PART 175—CARRIAGE BY AIRCRAFT

■ 47. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 48. In § 175.10, paragraph (a)(4)(v) is added, and paragraph (a)(25) is revised to read as follows:

§ 175.10 Exceptions.

(a) * * *

(4) * * *

(iv) * * *

(v) The provisions of this paragraph (a)(4) also apply to an aircraft operator when transporting passenger or crew member baggage to its intended destination, if the baggage has been separated from the passenger or crew member, including transfer to another carrier for transport to its intended destination.

* * * * *

(25) With approval of the aircraft operator, a passenger or crew member may carry in checked or carry-on baggage no more than two small gas cartridges containing no hazardous material other than a Division 2.2 gas that are fitted into a self-inflating life-jacket for inflation purposes, plus no more than two spare cartridges.

* * * * *

■ 49. In § 175.30, a new paragraph (a)(5) is added to read as follows:

§ 175.30 Accepting and inspecting shipments.

* * * * *

(a) * * *

(5) Marked with the air eligibility marking in accordance with § 172.321 of this subchapter, unless excepted from marking.

* * * * *

■ 50. In § 175.90, paragraphs (b) and (c) are revised to read as follows:

§ 175.90 Damaged shipments.

* * * * *

(b) Except as provided in § 175.700, the operator of an aircraft must remove from the aircraft any package, baggage or cargo that appears to be leaking or contaminated by a hazardous material. In the case of a package, baggage or cargo that appears to be leaking, the operator must ensure that other packages, baggage or cargo in the same shipment are in proper condition for transport aboard the aircraft and that no other package, baggage or cargo has been contaminated or is leaking. If an operator becomes aware that a package, baggage or cargo not identified as containing a hazardous material has been contaminated, or the operator has cause to believe that a hazardous material may be the cause of the contamination, the operator must take reasonable steps to identify the nature and source of contamination before proceeding with the loading of the contaminated baggage or cargo. If the contaminating substance is found or suspected to be a hazardous material, the operator must isolate the package, baggage or cargo and take appropriate steps to eliminate any identified hazard before continuing the transportation of the item by air.

(c) No person may place aboard an aircraft, a package, baggage or cargo that is contaminated with a hazardous material or appears to be leaking.

* * * * *

PART 176—CARRIAGE BY VESSEL

■ 51. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 52. In § 176.27, paragraph (c)(2) is revised to read as follows:

§ 176.27 Certificate.

* * * * *

(c) * * *

(2) The certification may appear on a shipping paper or on a separate document as a statement, such as "It is declared that the packing of the container has been carried out in accordance with the applicable provisions [of 49 CFR], [of the IMDG Code], or [of 49 CFR and the IMDG Code].".

■ 53. In § 176.63, a new paragraph (f) is added to read as follows:

§ 176.63 Stowage locations.

* * * * *

(f) *Stowage of containers on board hatchless container ships* (1) Containers holding a hazardous material may be stowed in or vertically above a hatchless container hold if the following conditions are met:

(1) All hazardous materials are permitted for *under deck* stowage as specified in the Table in § 172.101 of this subchapter; and

(2) The hatchless container hold is in full compliance with the provisions of IMO's "International Convention for the Safety of Life at Sea (SOLAS)," Regulation II–2/19 of SOLAS 1974, as amended (incorporation by reference; see § 171.7 of this subchapter), applicable to enclosed container cargo spaces, as appropriate for the cargo transported.

■ 54. In § 176.83, paragraph (f) is revised and a new paragraph (l) is added to read as follows:

§ 176.83 Segregation.

* * * * *

(f) *Segregation of containers on board container vessels:* (1) Except for hatchless container ships, this paragraph applies to the segregation of freight containers that are carried on board container vessels, or on other types of vessels, provided these cargo spaces are properly fitted for permanent stowage of freight containers during transport.

(l) *Segregation of containers on board hatchless container ships:* (1) This paragraph applies to the segregation of containers that are transported on board hatchless container ships provided that the cargo spaces are properly fitted to give permanent stowage of the cargo transport units during transport.

(2) For partly hatchless container ships that have spaces suitable for breakbulk cargo, conventional container stowage, or any other method of stowage, the appropriate requirements of this section apply to the relevant cargo space.

(3) *Segregation Table:* Table § 176.83(l)(3) sets forth the general requirements for segregation of containers on board hatchless container vessels.

(4) In Table § 176.83(l)(3), a container space means a distance of not less than 6 m (20 feet) fore and aft or not less than 2.5 m (8 feet) athwartship.

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TABLE 176.83(i)—SEGREGATION OF CONTAINERS ON BOARD HATCHLESS CONTAINER SHIPS

SEGREGATION REQUIREMENT		HORIZONTAL											
		CLOSED VERSUS CLOSED		CLOSED VERSUS OPEN				OPEN VERSUS OPEN					
		ON DECK		UNDER DECK				ON DECK		UNDER DECK			
		ON DECK		UNDER DECK				ON DECK		UNDER DECK			
		FORE AND AFT	ATHWARTSHIPS	FORE AND AFT	ATHWARTSHIPS	FORE AND AFT	ATHWARTSHIPS	FORE AND AFT	ATHWARTSHIPS	FORE AND AFT	ATHWARTSHIPS	FORE AND AFT	ATHWARTSHIPS
"AWAY FROM" 1.		NO RESTRICTION	NO RESTRICTION	NO RESTRICTION	NO RESTRICTION	NO RESTRICTION	NO RESTRICTION	ONE CONTAINER SPACE	ONE CONTAINER SPACE	ONE CONTAINER SPACE OR ONE BULKHEAD	ONE CONTAINER SPACE	ONE BULKHEAD	ONE BULKHEAD
"SEPARATED FROM" 2.		ONE CONTAINER SPACE	ONE CONTAINER SPACE	ONE CONTAINER SPACE OR ONE BULKHEAD	ONE CONTAINER SPACE	ONE CONTAINER SPACE AND NOT IN OR ABOVE SAME HOLD	ONE CONTAINER SPACE AND NOT IN OR ABOVE SAME HOLD	ONE CONTAINER SPACE AND NOT IN OR ABOVE SAME HOLD	ONE CONTAINER SPACE AND NOT IN OR ABOVE SAME HOLD	TWO CONTAINER SPACES AND NOT IN OR ABOVE SAME HOLD	TWO CONTAINER SPACES AND NOT ABOVE SAME HOLD	TWO CONTAINER SPACES AND NOT IN OR ABOVE SAME HOLD	TWO CONTAINER SPACES AND NOT ABOVE SAME HOLD
"SEPARATED BY A COMPLETE COMPARTMENT OR HOLD FROM" 3.		ONE CONTAINER SPACE AND NOT IN OR ABOVE SAME HOLD	TWO CONTAINER SPACES AND NOT ABOVE SAME HOLD	TWO CONTAINER SPACES	TWO CONTAINER SPACES	ONE BULKHEAD	ONE BULKHEAD	ONE BULKHEAD	ONE BULKHEAD	ONE BULKHEAD	ONE BULKHEAD	ONE BULKHEAD AND MINIMUM HORIZONTAL DISTANCE OF 24 M*	MINIMUM HORIZONTAL DISTANCE OF 24 M AND NOT ABOVE SAME HOLD
"SEPARATED LONGITUDINALLY BY AN INTERVENING COMPLETE COMPARTMENT OR HOLD FROM" 4.		MINIMUM HORIZONTAL DISTANCE OF 24 M AND NOT IN OR ABOVE SAME HOLD	PROHIBITED	PROHIBITED	PROHIBITED	PROHIBITED	PROHIBITED	PROHIBITED	PROHIBITED	PROHIBITED	PROHIBITED	TWO BULKHEADS	PROHIBITED

SEGREGATION REQUIREMENT	VERTICAL	
	CLOSED VERSUS CLOSED	OPEN VERSUS OPEN
"AWAY FROM" 1.	ONE ON TOP OF THE OTHER PERMITTED	NOT IN THE SAME VERTICAL LINE
"SEPARATED FROM" 2.	NOT IN THE SAME VERTICAL LINE	AS FOR "OPEN VERSUS OPEN"
"SEPARATED BY A COMPLETE COMPARTMENT OR HOLD FROM" 3.		
"SEPARATED LONGITUDINALLY BY AN INTERVENING COMPLETE COMPARTMENT OR HOLD FROM" 4.	FROHIBITED	

* Containers not less than 6 m (20 feet) from intervening bulkhead.
Note: All bulkheads and decks must be resistant to fire and liquid.

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■ 55. In § 176.84, in paragraph (b), Table of provisions, nine new entries are added in appropriate numerical order to read as follows:

§ 176.84 Other requirements for stowage and segregation for cargo vessels and passenger vessels.

* * * * *

(b) * * *

Code	Provisions
.	.
124	Stow "separated from" bromates.
125	Segregation same as for flammable liquids, but also "away from" flammable solids.
126	Segregation same as for Class 9, miscellaneous hazardous materials.
127	For packages carrying a subsidiary risk of Class 1 (explosives), segregation same as for Class 1, Division 1.3.
128	Stow in accordance with the IMDG Code, Sub-section 7.1.10.3 (incorporated by reference; see § 171.7 of this subchapter).
129	Stowage Category A applies, except for uranyl nitrate hexahydrate solution for which Category D applies.
130	Stowage Category A applies, except for uranyl nitrate hexahydrate solution, uranium metal hexahydrate solution, uranium metal pyrophoric and thorium metal pyrophoric for which Category D applies.
131	Stowage Category A applies, except for uranyl nitrate hexahydrate solution, uranium metal pyrophoric and thorium metal pyrophoric for which Category D applies, and taking into account any supplementary requirements specified in the transport documents.
132	Stowage A applies, taking into account any supplementary requirements specified in the transport documents.
.	.

* * * * *

■ 56. In § 176.140, in paragraph (b), the first sentence is revised to read as follows:

§ 176.140 Segregation from other classes of hazardous materials.

* * * * *

(b) Class 1 (explosive) materials must be segregated from bulk solid dangerous cargoes in accordance with the IMDG Code (incorporated by reference; see § 171.7 of this subchapter).* * *

§ 176.170 [Removed and Reserved]

■ 57. In § 176.170, paragraph (b) is removed and reserved.

■ 58. In § 176.410, paragraph (a)(2) is revised; paragraphs (a)(3), (a)(5) and (a)(6) are removed; and current paragraph (a)(4) is redesignated (a)(3) to read as follows:

§ 176.410 Division 1.5 materials, ammonium nitrate and ammonium nitrate mixtures.

(a) * * *

(2) Ammonium nitrate, Division 5.1 (oxidizer), UN1942.

* * * * *

■ 59. In § 176.415, paragraphs (a) introductory text, (a)(1), (a)(2), (b)(1), (c)(1) and (c)(2) are revised; paragraphs (b)(3), (b)(4) and (c)(5) are removed; and paragraphs (b)(5) and (b)(6) are redesignated (b)(3) and (b)(4), respectively to read as follows:

§ 176.415 Permit requirements for Division 1.5, ammonium nitrates, and certain ammonium nitrate fertilizers.

(a) Except as provided in paragraph (b) of this section, before any of the following material is loaded on or unloaded from a vessel at any waterfront facility, the owner/operator must obtain written permission from the Captain of the Port (COTP).

(1) Ammonium nitrate UN1942, ammonium nitrate fertilizers containing more than 70% ammonium nitrate, or Division 1.5 compatibility group D materials packaged in a paper bag, burlap bag, or other nonrigid combustible packaging, or any rigid packaging with combustible inside packagings,

(2) Any other ammonium nitrate or ammonium nitrate fertilizer not listed in § 176.410(a) or (b).

(b) * * *

(1) Ammonium nitrate, Division 5.1 (oxidizer) UN1942, in a rigid packaging with a noncombustible inside packaging.

* * * * *

(c) * * *

(1) If the material is Explosives, blasting, type E, Division 1.5 compatibility group D, UN0332 in a combustible packaging or in a rigid packaging with a combustible inside packaging, it must be loaded or unloaded at a facility remote from populous areas, or high-value or high-hazard industrial facilities, so that in the event of fire or explosion, loss of lives and property may be minimized;

(2) If the material is a Division 1.5 compatibility group D material in a non-rigid combustible packaging and loaded in a freight container or transport vehicle, it may be loaded or unloaded at a non-isolated facility if the facility is approved by the COTP.

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 60. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 61. In § 178.2, paragraph (c)(1)(ii) is revised to read as follows:

§ 178.2 Applicability and responsibility.

* * * * *

(c) * * *

(1) * * *

(ii) With information specifying the type(s) and dimensions of the closures, including gaskets and any other components needed to ensure that the packaging is capable of successfully passing the applicable performance tests and the general packaging requirements in § 173.24 and for transportation by aircraft, if applicable, § 173.27 of this subchapter. This information must include any procedures to be followed, including closure instructions for inner packagings and receptacles, to effectively assemble and close the packaging for the purpose of preventing leakage in transportation. For packagings intended for transportation by aircraft, this information must include relevant guidance to ensure that the packaging, as prepared for transportation, will withstand the pressure differential requirements in § 173.27 of this subchapter.

* * * * *

§ 178.274 [Amended]

■ 62. In § 178.274, in paragraph (j)(6), in the fourth sentence, the wording "20 cm (8 inches) on at least two sides" is removed and "10 cm (4 inches) on at least two sides" is added in its place.

■ 63. In § 178.705, paragraph (c)(1)(iv)(A) is revised to read as follows:

§ 178.705 Standards for metal IBCs.

* * * * *

(c) * * *

(1) * * *

(iv) * * *

(A) For a reference steel having a product of Rm × Ao = 10,000, where Ao

is the minimum elongation (as a percentage) of the reference steel to be used on fracture under tensile stress (Rm × Ao = 10,000 × 145; if tensile strength is in U.S. Standard units of pounds per square inch), the wall thickness must not be less than:

Capacity (C) in liters [1]	Wall thickness (T) in mm			
	Types 11A, 11B, 11N		Types 21A, 21B, 21N, 31A, 31B, 31N	
	Unprotected	Protected	Unprotected	Protected
C≤1000	2.0	1.5	2.5	2.0
1000<C≤2000	T=C/2000 + 1.5	T=C/2000 + 1.0	T=C/2000 + 2.0	T=C/2000 + 1.5
2000<C≤3000	T=C/2000 + 1.5	T=C/2000 + 1.0	T=C/1000 + 1.0	T=C/2000 + 1.5

* * * * *

■ 64. In § 178.812, paragraph (b)(1) is revised to read as follows:

§ 178.812 Top lift test.

* * * * *

(b) *Special preparation for the top lift test.* (1) Metal, rigid plastic, and composite IBC design types must be loaded to twice the maximum permissible gross mass with the load being evenly distributed.

* * * * *

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

■ 65. The authority citation for part 180 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 66. Section 180.350 is revised to read as follows:

§ 180.350 Applicability and definitions.

This subpart prescribes requirements, in addition to those contained in parts 107, 171, 172, 173 and 178 of this subchapter, applicable to any person responsible for the continuing qualification, maintenance, or periodic retesting of an IBC. The following definitions apply:

(a) *Remanufactured IBCs* are metal, rigid plastic or composite IBCs produced as a UN type from a non-UN type, or are converted from one UN design type to another UN design type. Remanufactured IBCs are subject to the same requirements of this subchapter that apply to new IBCs of the same type (also see § 178.801(c)(1) of this subchapter for design type definition).

(b) *Repaired IBCs* are metal, rigid plastic or composite IBCs that, as a result of impact or for any other cause (such as corrosion, embrittlement or other evidence of reduced strength as compared to the design type), are restored so as to conform to the design type and to be able to withstand the design type tests. For the purposes of this subchapter, the replacement of the rigid inner receptacle of a composite IBC with a receptacle conforming to the original manufacturer's specification is considered repair. Routine maintenance of IBCs (see definition in paragraph (c) of this section) is not considered repair. The bodies of rigid plastic IBCs and the inner receptacles of composite IBCs are not repairable.

(c) *Routine maintenance of IBCs* is the routine performance on metal, rigid plastic or composite IBCs of operations such as:

(1) Cleaning;

(2) Removal and reinstallation or replacement of body closures (including associated gaskets), or of service equipment conforming to the original manufacturer's specifications provided that the leaktightness of the IBC is verified; or

(3) Restoration of structural equipment not directly performing a hazardous material containment or discharge pressure retention function so as to conform to the design type (for example, the straightening of legs or lifting attachments), provided the containment function of the IBC is not affected.

■ 67. In § 180.352, paragraphs (d)(1)(i) and (f) are revised and a new paragraph (d)(1)(iv) is added to read as follows:

§ 180.352 Requirements for retest and inspection of IBCs.

* * * * *

(d) * * *

(1) * * *

(i) The repaired IBC conforms to the original design type, is capable of withstanding the applicable design qualification tests, and is retested and inspected in accordance with the applicable requirements of this section;

* * * * *

(iv) The person performing the tests and inspections after the repair must durably mark the IBC near the manufacturer's UN design type marking to show the following:

(A) The country in which the tests and inspections were performed;

(B) The name or authorized symbol of the person performing the tests and inspections; and

(C) The date (month, year) of the tests and inspections.

* * * * *

(f) *Record retention.* The owner or lessee of the IBC must keep records of periodic retests, initial and periodic inspections, and tests performed on the IBC if it has been repaired. Records must include design types and packaging specifications, test and inspection dates, name and address of test and inspection facilities, names or name of any persons conducting tests or inspections, and test or inspection specifics and results. Records must be kept for each packaging at each location where periodic tests are conducted, until such tests are successfully performed again or for at least 2.5 years from the date of the last test. These records must be made available for inspection by a representative of the Department on request.

■ 68. In § 180.605, paragraph (k) is revised to read as follows:

§ 180.605 Requirements for periodic testing, inspection and repair of portable tanks.

* * * * *

(k) *Inspection and test markings.* (1) Each IM or UN portable tank must be durably and legibly marked, in English, with the date (month and year) of the last pressure test, the identification markings of the approval agency witnessing the test, when required, and the date of the last visual inspection. The marking must be placed on or near the metal identification plate, in letters and numerals of not less than 3 mm (0.118 inches) high when on the metal identification plate, and 12 mm (0.47 inches) high when on the portable tank.

(2) Each Specification DOT 51, 56, 57 or 60 portable tank must be durably and legibly marked, in English, with the date (month and year) of the most recent periodic retest. The marking must be placed on or near the metal certification plate and must be in accordance with § 178.3 of this subchapter. The letters and numerals must not be less than 3 mm (0.118 inches) high when on the metal certification plate, and 12 mm (0.47 inches) high when on the portable tank, except that a portable tank manufactured under a previously authorized specification may continue to be marked with smaller markings if originally authorized under that specification (for example, DOT Specification 57 portable tanks).

* * * * *

Issued in Washington, DC on July 21, 2003, under authority delegated in 49 CFR part 1.

Samuel G. Bonasso,

Acting Administrator.

[FR Doc. 03–19016 Filed 7–30–03; 8:45 am]

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Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 25, 91, et al.
Improved Flammability Standards for Thermal/Acoustic Insulation Materials Used in Transport Category Airplanes; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25, 91, 121, 125, and 135

[Docket No. FAA–2000–7909; Amdt. Nos. 25–110, 91–275, 121–289, 125–43, 135–85]

RIN 2120–AG91

Improved Flammability Standards for Thermal/Acoustic Insulation Materials Used in Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting upgraded flammability standards for thermal and acoustic insulation materials used in transport category airplanes. These standards include new flammability tests and criteria that address flame propagation and entry of an external fire into the airplane. This action is necessary because the current standards do not realistically address situations in which thermal or acoustic insulation materials may contribute to the propagation of a fire. This action is intended to enhance safety by reducing the incidence and severity of cabin fires, particularly those in inaccessible areas where thermal and acoustic insulation materials are installed, and providing additional time for evacuation by delaying the entry of post-crash fires into the cabin.

DATES: This final rule is effective on September 2, 2003.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, FAA Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2136, facsimile (425) 227–1149, e-mail: *jeff.gardlin@faa.gov*.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy of this final rule using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm*; or

(3) Accessing the **Federal Register's** Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at our site, *http://www.faa.gov/avr/arm/sbrefa.htm*. For more information on SBREFA, e-mail us at *9-AWA-SBREFA@faa.gov*.

Background

On September 20, 2000, the FAA published a Notice of Proposed Rulemaking (NPRM) in which we proposed to adopt upgraded flammability standards for thermal and acoustic insulation materials used in transport category airplanes. See 65 FR 56992. The NPRM included the following:

- A test to measure the propensity of the insulation to spread a fire; and
- A test to measure the fire penetration resistance of the insulation.

Readers should refer to the NPRM for information about the background of this rulemaking, including descriptions of the following:

- The types of insulation materials used in airplanes;
- Other FAA regulations relating to insulation materials;
- Past incidents involving insulation materials; and
- Fire safety research activities and findings.

The background material in the NPRM also contains the basis and rationale for these requirements and, except where we have specifically expanded on the background elsewhere in this preamble, supports this final rule as if it were contained here. That is, any future discussions regarding the intent of the requirements may refer to the background in the NPRM as though it was in the final rule itself. It is therefore not necessary to repeat the background in this document.

The comment period on the NPRM extended 120 days and closed on January 18, 2001. We received comments on the NPRM from twenty-six commenters, including aircraft manufacturers, insulation manufacturers, aviation industry associations, a labor union, and individuals. None of the commenters disagree with the objectives of the proposal. Ten of the commenters expressed explicit support for the objectives of the NPRM or for the NPRM in general. We discuss specific, substantive comments in the "Discussion of the Final Rule" section later in this preamble.

Legal Basis for the Final Rule

The FAA's authorizing legislation gives the agency general authority to take actions necessary to carry out the law, including prescribing regulations (49 U.S.C. 40113). The FAA is responsible for promoting safety in civil aviation and, in carrying out that responsibility, has the authority to prescribe minimum standards for the design, material, and construction of aircraft, among other things (49 U.S.C. 44701).

The regulations we are adopting today are intended to enhance the safety of civil aviation by reducing the possibility that insulation materials used in airplanes will contribute to either the spread of fire within airplanes or the penetration of external fire into airplanes. This final rule requires new airplane type designs to include insulation that passes improved flammability tests. It also requires manufacturers of new airplanes that enter service after a phase-in period to equip them with insulation that passes improved flammability tests. Finally, it requires air carriers, operating under part 121, to use insulation meeting the new flame propagation requirements when they replace insulation.

The flammability tests we are adopting today will not eliminate all damage to, or losses of, airplanes by fire, nor prevent all injuries or deaths from airplanes fires. The improved tests will, however, ensure that insulation used in airplanes will resist the propagation of fire and thereby reduce the severity of fires or the speed with which fires spread. They will also ensure that insulation will delay the penetration of the airplanes by fire from outside. These effects will give flight crews additional time to safely land or taxi, as well as giving both passengers and crew more time to safely evacuate airplanes.

This final rule is focused on the goal of enhancing the safety of civil aviation. The regulations adopted today have their origin in incidents described in the NPRM where insulation that met our previous flammability standards may have contributed to airplane fires. Since we published the NPRM, there have been two more incidents where in-flight fires occurred that involved thermal or acoustic insulation. The flammability tests and criteria adopted today represent the outcome of research conducted by our technical center in cooperation with acknowledged experts in the field. We believe these tests and criteria are the minimum necessary for future designs to provide an adequate level of civil aviation safety.

This final rule enhances safety while at the same time considering the impact on the aviation industry. For example, we are adopting regulations that become effective for existing type designs after a phase-in period. This phase-in period gives manufacturers time to plan for changes in designs, manufacturing processes, and sources of supply. The flammability test criteria we are adopting are reasonable, as shown by research and development and the availability of materials that meet the new standards. The flammability test requirements we are adopting are flexible. Both the flame propagation test and the burnthrough test requirements allow for the development and use of approved equivalent tests.

We acknowledge that this final rule has cost implications for airplane manufacturers. There are costs associated with testing, obtaining, and installing upgraded insulation. Our analysis of the costs and benefits of this final rule shows that the benefits (in the form of reduced property damage, injury, and loss of life) outweigh the costs. For more information on costs and benefits, see the "Economic Evaluation" section of this preamble and the Regulatory Evaluation for this final rule, which we have placed in the docket for this rulemaking. Based on our analysis of the issues involved, taking into account our responsibility for civil aviation safety, and the administrative record for this rulemaking, including the comments we received on the NPRM, this final rule is a proper and reasonable means of carrying out our responsibility to enhance civil aviation safety.

Discussion of the Final Rule

This part of the preamble describes in general terms some of the major features of the final rule. A reader who is interested in a quick overview of the final rule may find this part useful. If you are looking for a detailed description of the final rule, you should look at the section-by-section analysis, which appears later in this preamble, or the regulatory text itself, which appears at the end of this document.

This final rule requires thermal/acoustic insulation material installed in the fuselage of transport category airplanes to pass a flame propagation test. The test involves exposing samples of thermal/acoustic insulation to a radiant heat source and a propane burner flame for 15 seconds. The tested insulation must not propagate flame more than 2 inches away from the burner. The flame time after removal of the burner must not exceed 3 seconds on any specimen. See final part VI of Appendix F to Part 25 for more details.

For airplanes with a passenger capacity of 20 or greater, this final rule also requires insulation materials installed in the lower half of the airplane to pass a test of resistance to flame penetration. The test involves exposing samples of thermal/acoustic insulation blankets mounted in a test frame to a burner for four minutes. The insulation blankets must prevent flame penetration for at least four minutes and must limit the amount of heat that passes through the blanket during the test. See final part VII of Appendix F to Part 25 for more details.

This final rule requires all transport category airplanes manufactured more than two years after the effective date of this final rule to comply with the new flame propagation test. This applies to airplanes operating under parts 91, 121, 125, and 135. This means that manufacturers have two years after the effective date of the final rule to begin installing more flame resistant insulation materials in new airplanes. This final rule requires all transport category airplanes with a passenger capacity of 20 or greater manufactured more than four years after the effective date of this final rule to comply with the new test of resistance to flame penetration. This applies to airplanes operating under part 121.

Airplanes must also comply with the new flame propagation test when thermal/acoustic insulation materials installed in the fuselage are replaced more than two years after the effective date of this final rule. This requirement applies only to the materials that are replaced.

Both service history and laboratory testing demonstrate that the current flammability requirements applicable to thermal/acoustic insulation materials may not be providing the intended protection against the spread of fires. Additionally, we consider that increased protection against external fire penetrating the fuselage can be provided by proper selection of the same material. We consider that the new test methods described earlier will not only provide for increased in-flight fire safety, by reducing the flammability of thermal/acoustic insulation blankets, but will also provide increased time for evacuation during externally fed, post-crash fires by increasing fuselage burnthrough resistance.

Section-by-Section Analysis

Proposed §§ 25.853(a) and 25.855(d)

Existing § 25.853(a) requires that materials in airplane compartment interiors meet the flammability test prescribed in part I of Appendix F to Part 25. Existing § 25.855(d) requires materials used in construction of cargo or baggage compartments meet the same test. In the NPRM, we proposed to add specific exceptions to these provisions for "thermal/acoustic insulation materials." The intent of this proposal was to make it clear that thermal acoustic insulation was not required to meet the requirements of Appendix F, part I, in addition to the requirements of Appendix F, parts VI and VII. However, as discussed below, this action might have confused the issue of whether or not "small parts" required testing. We have therefore decided not to adopt these proposed changes. As proposed in the NPRM, we are deleting language from part I of Appendix F to Part 25 that addresses thermal/acoustic insulation materials. This action has the same effect as the two proposed additions would have had.

Section 25.856 Thermal/Acoustic Insulation Materials

Final § 25.856(a) requires thermal/acoustic insulation material installed in the fuselage to meet the flame propagation test requirements of part VI of Appendix F to Part 25, or other approved equivalent test requirements. This requirement does not apply to "small parts," as defined in part I of Appendix F to Part 25.

The current flammability requirements focus almost exclusively on materials located in occupied compartments (§ 25.853) and cargo compartments (§ 25.855). The potential for an in-flight fire is not limited to those specific compartments. Thermal/acoustic insulation is installed throughout the fuselage in other areas, such as electrical/electronic compartments or surrounding air ducts, where the potential exists for materials to spread fire as well. The final rule accounts for insulation installed in areas that might not otherwise be considered within a specific compartment. Final § 25.856(a) is applicable to all transport category airplanes, regardless of size or passenger capacity, since the consequences of an in-flight fire are not related to these factors. We are developing advisory material to describe test sample configurations to address

design details such as tapes and hook-and-loop fasteners.

One commenter recommended that we exclude "small parts," as defined in part I of Appendix F to Part 25, from the requirement that insulation materials pass the upgraded flame propagation test. The commenter pointed out that there is a "small parts" exception to the flammability test in part I of Appendix F to Part 25.

The FAA agrees that "small parts" would not be practical to test in the flame propagation test apparatus specified in part VI of Appendix F to Part 25. In response, we have added to final § 25.856(a) an exception for "small parts" from the requirement to pass the upgraded flame propagation test. Under paragraph I(a)(v) of Appendix F to Part 25, the FAA considers "small parts" to be things that would not contribute significantly to a fire, including knobs, handles, rollers, fasteners, clips, grommets, rub strips, pulleys, and small electrical parts. In addition, "small parts" should not be installed in proximity to each other. As a result of this change, "small parts" will continue to be governed by existing §§ 25.853 and 25.855 and part I of Appendix F to Part 25.

One commenter suggested that, based on the language of proposed § 25.856, thermal/acoustic insulation not installed in the fuselage might also have to pass the upgraded flame propagation test.

The FAA agrees that the proposed language could allow this unintended interpretation. For this reason, we changed final § 25.856(a) to specify that thermal/acoustic insulation *installed in the fuselage* must meet the flame propagation test requirements.

A commenter stated that certain interior panels perform both thermal and acoustic attenuation functions to some extent and might therefore be categorized as thermal/acoustic insulation in the absence of a more precise definition.

The FAA does not intend to require interior panels to comply with final § 25.856. These panels are subject to existing heat release and smoke emissions requirements in parts IV and V of Appendix F to Part 25, which are more relevant to the role of interior panels in fire safety. This final rule is aimed at ensuring that thermal/acoustic insulation materials, which are usually installed in inaccessible areas, do not propagate fire. Their inaccessibility is what creates the hazard, especially with regard to in-flight fires. Interior panels are accessible and are clearly not exposed to the same threat. Thus, we do not apply the final rule to them.

A commenter stated that certain interior panels often receive acoustic damping treatments which, by virtue of their function, could be interpreted as requiring compliance under the proposal. The commenter recommended that these treatments be required to comply.

The FAA agrees in part. To the extent that acoustic damping treatments applied to the inaccessible sides of interior panels could permit fire propagation, they are required to pass the flame propagation test. On the other hand, it is clear that the many possible combinations of treatments and panels could result in large amounts of testing. We intend to investigate whether compliance for such treatments can be substantiated by tests on a generic panel, or whether testing of the actual panel is necessary. Up to now, we have not evaluated acoustical damping treatments in the context of the NPRM. Based on comments, it appears that they are typically aluminum based, so the adhesive used to bond the treatment to the panel is probably the component of concern. We will evaluate any treatments provided for review to develop guidance. As proposed in the NPRM, however, this final rule requires that thermal/acoustic insulation installed in the fuselage pass the flame propagation test. This includes material installed on the pressure shell, ducts, floor panels, and within equipment bays.

Final § 25.856(b) requires, for airplanes with a passenger capacity of 20 or greater, thermal/acoustic insulation materials (including the means of fastening the materials to the fuselage) installed in the lower half of the airplane fuselage to meet the flame penetration resistance test requirements of part VII of appendix F of Part 25, or other approved equivalent test requirements.

Final § 25.856(b) applies only to airplanes with a passenger capacity of 20 or greater. This effectively excludes the smaller transport category airplanes, as well as airplanes operating in an all-cargo mode. The primary reason for this is that airplanes with small passenger capacities are not expected to realize a significant benefit from enhanced burnthrough protection owing to their very rapid evacuation capability. That is, they have a favorable exit-to-passenger ratio. Since enhanced burnthrough protection will impose additional cost, there must be a commensurate benefit to justify the requirement. We do not consider that such benefits are substantial for airplanes with low passenger capacities. We chose the 20-passenger threshold to be consistent with other occupant safety regulations, such as those for interior materials and cabin aisle width. The enhanced burnthrough protection provided by this final rule will increase the evacuation capability of airplanes with 20 or more passengers, regardless of the exit arrangement.

Final § 25.856(b) applies to insulation materials installed in the lower half of the fuselage because that area is most susceptible to burnthrough from an external fuel fire. Flames from an external fuel fire typically impinge on the fuselage from below. Therefore, the lower half of the fuselage derives the most benefit from enhanced burnthrough protection. We chose this approach based on full-scale fire test data, as documented in the reports referenced in the NPRM, and the potential for an airplane to be off its landing gear. When the landing gear collapse, an airplane can roll significantly, and the area most susceptible to burnthrough can be correspondingly higher on the fuselage than when the airplane is on its gear. By providing burnthrough protection for the lower half of the fuselage (as opposed to just the underside), the final rule takes this situation into account.

This final rule establishes a standard for the ability of thermal/acoustic insulation to resist penetration by an external flame, rather than a standard for fuselage burnthrough per se. This distinction is important, since fuselage burnthrough is a complex process, dependent on many variables. For example, the ability of the fuselage to resist penetration from an external fuel fire is directly related to the thickness and material of the skin. Skin thickness varies considerably, and essentially means that each airplane type has different burnthrough resistance. In addition, factors internal to the airplane can also affect penetration of an external fire into the occupied areas. For example, differences in the air return grills can influence the time required for an external fire to penetrate the occupied area. Therefore, establishing a minimum standard for fuselage burnthrough resistance and identifying possible means of compliance would be a highly complex undertaking.

This final rule adopts a simple standard that increases the time it takes for a fire to penetrate the airplane beyond what currently exists, regardless of the specific capability that currently exists. Since this increase in time can be achieved by addressing thermal/acoustic insulation material, and this rule revises the standard for insulation to address flame propagation anyway, it is in the public interest to incorporate

criteria that enhance the overall level of safety and that can be achieved with reasonable cost. Therefore, this rule addresses two aspects of fire safety related to insulation material.

We intend this final rule to enhance the overall level of safety of the airplane when insulation that meets the upgraded flammability tests is installed. Because of the need to provide a suitable thermal and acoustical environment inside the airplane, we consider it extremely unlikely that insulation would be removed as a means to avoid having to comply with this rule. In fact, we considered requiring the removal of insulation material as an option to address flame propagation issues, but rejected it since it would effectively diminish the burnthrough capability that currently exists. Should removal of insulation become a common practice, we will revisit the need for a specific fuselage burnthrough standard.

A commenter asserted that the NPRM was ambiguous with regard to whether materials installed in the lower half of the fuselage would have to pass the fire penetration test. The commenter assumed that only those materials installed near the exterior skin of the fuselage would have to comply. Other commenters were concerned that the proposed requirement would apply to any thermal/acoustic insulation installed in the lower half, whether or not it would play a role in burnthrough.

The FAA's intent is that final § 25.856(b) applies to all thermal/acoustic insulation installed in the lower half of the fuselage that contributes to delaying burnthrough. For example, insulation on ducts in the lower half of the fuselage does not have to comply. To clarify this point, we added to final § 25.586(b) a statement that it does not apply to thermal/acoustic insulation installations that the FAA finds would not contribute to fire penetration resistance.

One commenter recommended that the flame penetration test not be limited to airplanes with 20 or more passenger seats. The commenter cited an accident involving an airplane with fewer than 20 seats, where improved insulation might have provided a benefit.

The FAA does not agree with the commenter's assessment of the potential role of insulation materials in the cited accident. The accident involved a non-transport category airplane that does not meet the other safety requirements of part 25. Thus, considering the addition of insulation materials apart from the other requirements of part 25 is not an accurate way to assess potential benefits. As noted in the NPRM, we have assessed the potential benefits of requiring insulation materials to pass the flame penetration test and have concluded that smaller airplanes, with their greater evacuation capability, would not realize a benefit commensurate with the costs of compliance. Readers should note, however, that this final rule does not preclude manufacturers from installing upgraded insulation materials on smaller airplanes, if they so choose.

Several commenters recommended that the requirement for flame penetration resistance be applied to insulation materials installed in the entire fuselage, not just the lower half. One commenter stated that upgraded insulation materials installed in the entire fuselage would help protect airplanes from events such as lightning strikes, which usually come from above or to the side of the airplane. These commenters noted that the NPRM stated that providing such protection would not result in great cost. Conversely, several other commenters asked that the term "lower half" be better defined, or that the requirement be changed to something related to the airplane design, such as the window line, or the main deck cabin floor.

The FAA has carefully considered whether insulation materials installed in the entire fuselage should have to pass the flame penetration test. As discussed in the preamble to the NPRM, the main issue is that the benefits of such a requirement would be negligible. While a scenario can be envisaged where materials in the upper fuselage would provide a benefit, the conditions would be extremely rare, and were not evident in the benefit study used to develop the proposal. For materials in the upper fuselage to be beneficial, the airplane would have to be rolled an extreme amount (by specifying the lower half, the requirement already accounts for significant roll), and still be intact. While this scenario may not be far-fetched, there must also be post-crash fire for there to be any benefit from the materials. An accident that causes a combination of severe roll attitude, no fuselage rupture, but with a post-crash fire, is extremely rare if even feasible and is not considered a reasonable basis on which to base a requirement. In addition, while the NPRM characterized the increased costs as "not great," it should be noted that they are also not trivial. Any added weight would effectively be doubled, and the costs of materials would also rise. Since these costs would not be balanced by benefit, it would not be appropriate to mandate that the entire fuselage be fitted with thermal/acoustic insulation that meets the flame penetration requirement. Regarding threats from other in-flight occurrences, such as lightning, the flame propagation test required by final § 25.856(a), which is applicable to all thermal/acoustic insulation installed in the airplane, will provide added protection.

Final § 235.586(b) applies to thermal/acoustic insulation installed in the "lower half of the airplane fuselage." This phrase means the area below a horizontal line that bisects the cross section of the fuselage, as measured with the airplane in a normal attitude on the ground. We have looked at the accident history, as well as research testing, and concluded that benefits will be realized with the lower half of the fuselage protected. Using another measure, such as the window line, or the main cabin floor, would not provide the intended benefit, unless those locations were in the upper half of the fuselage. We realize that thermal/acoustic insulation installations are not typically tied to the upper or lower half of the airplane, so this requirement will probably result in either changes to insulation installation approaches, or use of the complying material over somewhat more than half of the fuselage. Since new installations of insulation materials will likely be required for compliance anyway, this is not considered to be a significant point.

The FAA has determined that future design possibilities, such as blended wing-body configurations, would have to be addressed specifically, if the concept of the lower half is not appropriate.

As discussed above, final § 25.856(b) applies to thermal/acoustic insulation installed near the outer skin of the lower half of the airplane fuselage. The intent of the rule, however, is to provide a barrier that will delay entry of a post-crash fire into the occupied areas of the airplane. Therefore, if an airplane were to incorporate insulation not on the fuselage shell, but along the underside of the floor, this insulation would be subject to the flame penetration test of final § 25.856(b). In the case where insulation is installed in both places, an applicant may choose which insulation would be subject to the flame penetration test. This will be discussed and illustrated in more depth in a forthcoming Advisory Circular.

Both final 25.856(a) and 25.856(b) include a provision that allows a manufacturer to substitute approved equivalent methods for the tests specified in final parts VI and VII of Appendix F to Part 25. These provisions allow for the incorporation of improvements to the test methods as

they are identified, without requiring specific findings of equivalent level of safety under 14 CFR 21.21. Experience has shown that such improvements frequently originate with the International Aircraft Fire Test Working Group (IAMFTWG) and are readily adopted by the industry. The IAMFTWG consists of experts in the materials and fire testing specialties who help refine and support the development of test methods used in aviation, and includes representatives from the airlines, airframe manufacturers, material suppliers, and regulatory authorities, among others. A representative from the FAA Technical Center chairs this group. The IAMFTWG is a technical peer group that contributes to FAA research, but its activities are not regulatory in nature. Readers should note that final parts VI and VII of Appendix F to Part 25 constitute the basic requirements, and that such equivalent methods that might be developed would have to be adopted in total. It is not acceptable to selectively adopt portions of a modified test method that has been found to be equivalent and not all of the modified method. We will make the determination of an acceptable equivalent method.

In proposed § 25.856, we stated that these equivalent test methods would be "FAA-approved." One commenter suggested that, for the sake of consistency with existing regulations, including § 25.853, this simply read "approved." The FAA agrees that the suggested language is consistent with § 25.853. We believe that specifying "FAA-approved" adds no value. Therefore, we have accepted the suggestion and changed the wording of final § 25.856(a) and (b) to allow for "approved equivalent test requirements." We consider this a non-substantive, editorial change.

Two commenters, representing the major airframe manufacturers in the United States and Europe, urged that the FAA withdraw proposed part VII of appendix F to Part 25 and propose instead a general requirement for fuselage fire penetration resistance. Other commenters stated that the FAA must address areas that currently have no insulation, or areas where insulation might be removed. Some commenters stated that insulation should be required as part of this rule.

The FAA disagrees with the comments. As noted in the NPRM, we elected to propose a standard related to thermal/acoustic insulation, since this approach is known to yield improved fire penetration resistance. A requirement related to protection of the fuselage in general involves many variables and would be much more complicated to define. We recognize that removal of insulation would avoid complying with the requirement. This possibility was discussed in the preamble, and we noted our intent to monitor this possible course of action. We agree that an ideal standard would simply require that the cabin be protected from a post-crash fire of specified intensity for an additional four minutes, and permit the manufacturer to develop his own design approach. At present, we do not have a proposal or test standard to address the overall resistance of the fuselage to fire penetration.

In addition, a proposal of that nature would go beyond the scope of the NPRM, since the NPRM only addressed a material standard for thermal/acoustic insulation. Nonetheless, it appears that industry is considering alternatives that might address the issue more generally, and we do not want to dismiss this possibility. A more general requirement would also address concerns with areas that do not currently have insulation, or where insulation is removed. Nevertheless, we consider that there is a need to adopt a standard that will provide added post-crash fire protection now, and will proceed with adoption of the final rule. Based on the comments, however, we consider it appropriate to review the industry's proposal to approach burnthrough protection as an airplane performance requirement and, if such a standard can be developed, consider it as an alternative means of compliance. Therefore, we are considering assigning the Aviation Rulemaking Advisory Committee (ARAC) the task of developing a recommendation to the FAA for a fuselage burnthrough standard. In the meantime, this regulation will be in effect, but will not actually require compliance for newly manufactured airplanes until four years after the effective date of the rule. If ARAC is successful in developing an alternative approach, we will consider whether a change to the regulations is appropriate or whether approval as an equivalent level of safety under § 21.21(b)(1) is sufficient. Regardless, under the provisions of § 21.21(b)(1), any applicant that wishes to do so can propose an alternative standard and design features meeting the objectives of the requirement at any time.

As noted in the NPRM, we have no plans to require installation of thermal/acoustic insulation in areas that currently do not have this insulation installed. Our intent is to take advantage of materials that are typically installed to affect a safety improvement, and requiring thermal/acoustic insulation to be installed in such areas would not be consistent with this intent. In fact, this approach would be more consistent with a general requirement for burnthrough protection, as discussed above. Therefore, this issue will necessarily be addressed in the proposed ARAC activity discussed above.

Part VI of Appendix F to Part 25—Flame Propagation Test

Final part VI of Appendix to Part 25 consists of a method of evaluating the flammability and flame propagation characteristics of thermal/acoustic insulation materials when exposed to both a radiant heat source and a flame. The test method we are adopting today includes specific instructions for constructing the test apparatus, calibrating instruments, and conducting the test. It also includes the standards the insulation must meet. The test involves exposing samples of thermal/acoustic insulation to a radiant heat source and a propane burner flame for 15 seconds. The tested insulation must not propagate flame more than 2 inches away from the burner. The flame time after removal of the burner must not exceed 3 seconds on any specimen.

This test method is based on American Society of Testing and Materials (ASTM) test method E 648, which uses a modest ignition source combined with exposure to radiant heat to determine fire propagation performance. This test method represents a realistic fire threat and imposes realistic success criteria, considering the state of the art of insulation materials. The test method we are adopting today is substantially the same as the one included in the NPRM, with the exception of the burn-length and after-flame standards. We discuss the changes to the standards below in the responses to comments. We have also made minor editorial changes to the language of the test method for clarity. These editorial changes are not substantive.

One commenter questioned the rationale for applying the flame propagation test to all forms of thermal/acoustic insulation, rather than just a thin film-encapsulated batting type of thermal/acoustic insulation.

The FAA's intent is to address thermal/acoustic insulation in general because of its location and quantity in inaccessible areas of the fuselage. The flame propagation test represents a realistic in-flight fire threat, and a method of assessing the tendency for materials to spread fire. We recognize that there may be different material/

installation schemes for which the flame propagation test is not well suited. However, up to now, all currently used and prospective materials that we have tested have been accommodated by the flame propagation test, with no obvious incompatibilities. If an applicant identifies an instance where this is not the case, the applicant is free to propose an alternative method of compliance that shows equivalent level of safety. However, based on the experience gathered to date, this would not seem necessary.

Several commenters addressed specific details of the test apparatus, or the test method itself, that are intended to simplify and improve the reliability of the tests. These range from correcting conversion of measurement units to test sample size to the type of radiant panel used.

The FAA has reviewed the commenters suggested improvements and adopted several of the suggested changes as appropriate; those that are not adopted verbatim are addressed in principle. Since publication of the NPRM, the FAA Technical Center has been working to improve the test methods for determining the flammability and flame propagation characteristics of thermal/acoustic insulation materials. We have revised the test methods in Appendix VI to include these improvements. A copy of the Technical Center's report, which includes a summary of the improvements, is included in the public docket for this rulemaking.

We received several comments on proposed paragraph VI(h)(1), which would have allowed no flaming beyond two inches to the left of the centerline of the point of pilot flame application to the specimen tested. One commenter noted that the designation "to the left" was not clear, and should specify a frame of reference. Other commenters noted that the two-inch limit was not specified as an average, or a not-to-exceed value for a sample. One commenter proposed that it must be an average to be viable. This commenter noted that virtually any material will eventually exhibit a burn length greater than two inches if enough samples are tested.

The FAA does not agree that the flame propagation length should be adjusted. The intent of the proposal (and this final rule) is to require materials that will not propagate a fire. The requirement that the flame not propagate more than two inches along the sample is intended to account for the damage that occurs as a result of the pilot burner, but not to allow any additional flame propagation. We have conducted hundreds of tests since issuance of the NPRM, and determination of propagation distance has not been a problem. The requirement of this rule is not the same as the traditional Bunsen burner requirements for "burn length." For a burn-length determination, no distinction is made between burning caused by the burner itself and self-sustained combustion of the material. The Bunsen burner is oriented in the same (vertical) direction as the burn length determination, and making a distinction would be difficult at best.

For this rule, the issue is propagation of a flame beyond the damage caused by the pilot burner. The pilot burner is oriented at a right angle to the direction of measured flame propagation, making the distinction much clearer. A two-inch limit will adequately account for the damage caused by the burner, and materials that exceed this limit exhibit some tendency to propagate flame. Determination of the extent of propagation requires that a person actually watch the test, however. An after-the-fact determination is not reliable, and would probably result in failure determinations of materials that were, in fact, acceptable. Based on all of the data gathered to date, we are satisfied that the criteria are readily achievable, and that samples that exceed two inches indicate the need for corrective action. Therefore, we are adopting the burn-length standard as proposed.

We received several comments on proposed paragraph VI(h)(2), which would have allowed one of three specimens tested to have an after flame, which could not have exceeded three seconds in duration. One commenter believed that no sample should be permitted to flame after removal of the pilot burner. Several other commenters stated that the presence of such an "after flame" is highly dependent on the ability of the person conducting the test to remove the pilot flame at precisely 15 seconds, and that slight variation can influence whether there is a short after flame. Several commenters recommended an average after flame for three samples. Some suggested a maximum total after flame time for all samples, with a maximum for any one sample. One commenter stated that an average must be allowed, since a single sample can effectively prohibit a material from use, regardless of how many other samples are tested with satisfactory results.

The FAA agrees that we should adjust the pass/fail standard. We also believe we can adjust the standard without affecting the intent of the requirement, which is to prevent insulation materials from spreading a fire. Based on the comments and a review of the test data acquired to date, we agree that materials that meet the intent of the requirement can sometimes fail the test, as proposed. (The proposed test standard would have required two of the three test samples to have no after flame whatsoever). As noted by commenters, this could be due to operator variations in detailed test procedures, material variability, or a combination of the two. While we have made every effort to remove operator variables from the test method, the stringency of the requirement tends to magnify whatever slight variations exist. Similarly, slight material variations are inevitable, even with the best materials. In light of the above, we have determined that we should adjust the pass/fail standard for after-flame time to account for slight variations. Therefore, we have revised final paragraph VI(h)(2) of appendix F to Part 25 to permit after flame on any sample, but require that none of the three samples have an after flame time of greater than three seconds. This change allows small variability in all of the samples, but retains the intent of the requirement that the material not continue to burn after the pilot flame is removed.

Several commenters addressed the fact that insulation materials frequently consist of more than a film-covered batting material. These commenters point out that tapes and hook-and-loop fastening systems are often used on insulation to perform various functions. Some commenters state that these additional features must be included in the requirement, while others only question how they would be tested if they were to be included.

Final part VI of Appendix F to Part 25 applies to the thermal/acoustic insulation assembly, which includes tapes or hook-and-loop fasteners that are affixed to the film. In addition, research testing has shown that these details can have a pronounced effect on the flame propagation characteristics of the insulation. We are developing advisory material that will explain an acceptable test sample configuration to address those details. We recognize that the use of tapes, for example, is quite variable, and it may not be possible to address each production configuration with a single test sample configuration. We hope to be able to establish a critical case that may be used to qualify other configurations, and plan to outline this approach in the advisory material.

One commenter noted that, for air ducts in particular, the test criteria do not provide sufficient detail as to how they should be tested. The commenter contends that we did not give adequate

consideration to ducting when the proposal was developed, since insulation on air ducts is frequently different than that attached to the fuselage.

The FAA agrees that insulation on air ducts has not been addressed to the same extent as other insulation. However, the concerns with fire propagation are the same, and insulation on air ducts should meet the same standard, as noted in the NPRM. We are developing advisory material that will include discussion of insulation on air ducts, and the proper method of configuring test samples. This might require modification to some of the installation practices that are currently employed. For example, complete surface bonding of film to the batting material requires a large amount of adhesive, and adhesives have been shown to be problematic for flame propagation. However, other methods are available that will comply.

The commenter also noted that acoustic treatments are sometimes applied to the interior of ducts, and that this treatment should not be required to comply since it is not exposed.

The FAA agrees that this requirement would not apply to acoustic treatment completely enclosed by ducts. However, we are studying all materials in inaccessible areas, and intend to develop standards for such materials that are consistent with the threat level established to develop the flame propagation test. In that case, it is likely that the duct construction itself would be included.

Under the current requirements, parts too large to be considered "small parts" require testing, and the basic requirements for the test sample construction will be no different under this final rule. The major difference is the size of the test sample. Parts that are smaller than the test sample size could be addressed on a case-by-case basis. We have reduced the sample size from that in proposed paragraph VI(c)(2), based on data acquired since publication. See final paragraph VI(C)(3). We encourage use of materials and constructions that meet the radiant panel test for all such parts, no matter how small.

Part VII of Appendix F to Part 25—Flame Penetration Test

Final part VII of Appendix to Part 25 consists of a method for evaluating the burnthrough resistance characteristics of aircraft thermal/acoustic insulation materials when exposed to a high-intensity open flame. The test method we are adopting today includes specific instructions for constructing the test apparatus, calibrating instruments, and conducting the test. It also includes the standards the insulation must meet. The test involves use of a kerosene burner apparatus that realistically simulates the thermal characteristics of a post-crash fire. The test stand and specimen are configured to simulate a small section of fuselage frame and stringers with insulation material mounted over them. Fuselage skin is not represented in this test since the delay in burnthrough afforded by the skin is not directly related to the performance of the insulation. The test is intended to measure the performance of the insulation installation itself. The test involves exposing samples of thermal/acoustic insulation blankets mounted in a test frame to a burner for four minutes. The insulation blankets must prevent flame penetration for at least four minutes and must limit the amount of heat that passes through the blanket during the test.

For new designs, the new burnthrough test method is applicable to the insulation as installed on the airplane. Thus, consistent with similar flammability testing of other installed materials, the means intended to be used for fastening the insulation to the fuselage must be accounted for when performing tests. For consistency, the test method imposes a standard methodology for fastening. In addition, we are developing advisory material concerning the installation of insulation that would enable the installer to avoid a specific test on the fasteners, etc. Although failures of fasteners or seams during this test may not exacerbate flame propagation characteristics, such failures could adversely affect the burnthrough protection capability. Since research has shown practical fastening means are available for ensuring that the insulation material remains in place, we have determined that fastening means must be considered for newly manufactured airplanes.

The test method we are adopting today is substantially the same as the one included in the NPRM. We discuss changes to the test method below in the responses to comments. We have also made minor editorial changes to the language of the test method for clarity. These editorial changes are not substantive.

Some commenters asserted the test method has not been demonstrated to be repeatable.

The FAA has sponsored three round-robin test series to date and has made refinements to the test method and apparatus as a result. One significant problem with the test equipment that has been rectified is the use of various shapes and sizes of airflow vanes (stators) inside the burner draft tube. For reasons unknown, this inconsistency in fabrication developed and significantly contributed to the scatter of data obtained during inter-laboratory comparisons. Since all laboratories now have the identical stators installed, the inter-laboratory test correlation should be much better. All test results are currently displayed on the IAMFTWG Web site at *http://www.fire.tc.faa.gov*. The repeatability of results has improved with each successive round robin, and we are satisfied that the test is sufficiently repeatable for use in the final rule.

One commenter specifically addressed the effects of altitude as not being accounted for in the test method, and proposes that this variable among test facilities must be addressed.

Regarding the potential effects due to altitude of the test facility, the FAA agrees that this is possible. In fact, the test results seen in the round robin tests discussed above strongly suggest that the effects of altitude are responsible for much of the variation. It should be noted that the fuel and airflow prescribed in this test method are meant to reflect an actual pool fire condition in which the fuel/air ratio is typically not stoichiometric. The conditions are representative of a large pool fire with respect to the two main criteria of temperature and heat flux. Therefore, the differences in combustion using the specified airflow and fuel flow values at different altitudes would also not be expected to result in a stoichiometric process. We agree that an altitude correction factor could be implemented in order to obtain more repeatable test results from labs located at various altitudes. An applicant would be free to propose an alternative method, with supporting data. If requested, we will work with an applicant to establish the proper correction.

Several commenters addressed specific details of the test method and test apparatus. One commenter stated that the calibration parameters are too narrowly specified to permit reliable calibration. The commenter proposed tolerances on the fuel flow and air intake. One commenter advised that the combined heat flux/thermocouple calibration rig is not practical and separate rigs should be used. Another commenter requested clarification of the term "assembly processes" for sample fabrication.

The FAA has considered detailed comments on the test apparatus itself, and these have been adopted for the most part. The new apparatus details are specified in final part VII of Appendix F to Part 25, and do not change the scope or intent of the test. As noted above, a significant clarification is the use of a standard stator vane assembly for the burner draft tube.

With respect to the calibration requirements, the test method prescribes the use of a highly dynamic fire source, the characteristics of which are highly transient. Testing has shown that the set-up (configuration) of the test burner plays a major role in the performance of many materials. The parameters with which to control the burner flame, (namely fuel flow rate, air intake velocity, as well as the positioning of the components necessary for firing the fuel/air mix (stators and igniter set)) must be very tightly controlled in order to minimize error between testing facilities. A tolerance of ±1 gallon per hour fuel flow rate is well beyond the limit that is necessary to eliminate fluctuation between testing facilities. Similarly, a tolerance of ±100 ft/min air velocity is excessive, and will only result in increased fluctuation of test results between testing facilities.

The accuracy of the heat flux measurement of the burner flame is highly dependent on the condition of the heat flux transducer, its position, and its accuracy. However, we agree that a minimum heat flux value (rather than a range, as proposed) is sufficient to establish whether a material performs acceptably, and have revised the test method accordingly.

The term "assembly processes" is intended to address the way in which the thermal/acoustic insulation components are built up. For example, for a traditional batting encapsulated in a moisture barrier, there may be seams that are heat sealed, or stitched, or utilize a hook and loop type closure. These must be included in the test sample. However, features added to the surface of the thermal/acoustic insulation would not need to be included in the test sample if they do not affect the fire penetration resistance. For example, use of tapes on the moisture barrier will not require assessment in the fire penetration test. Note that these same features will require assessment in the flame propagation test of part VI of Appendix F to Part 25.

Some commenters proposed that the burnthrough time be increased to five or six minutes to provide a margin for the desired four minutes, or to account for more fire resistant materials. Other commenters questioned the heat flux value specified, and proposed that it be reduced.

The FAA does not agree that the burnthrough time should be extended to five or six minutes. In the benefit study conducted on behalf of the FAA by Cherry & Associates,[1] a four-minute extension in evacuation time is shown to provide a measurable improvement in survivability. Beyond four minutes, there is little benefit. Although a product may provide more than four minutes of burnthrough protection, this does not justify a requirement if no additional benefit is provided.

Regarding comments that the time should be extended to provide a margin of safety that will ensure four minutes of protection, we agree that a certification requirement cannot assure that every material lot and batch will perform identically. However, this would be true regardless of the time specified in the regulation. We consider that the rule should not account for variation in material lot or batch. The certification requirement is intended to address the basic material and installation scheme in accordance with the type design. The manufacturer will need to develop quality control procedures to ensure consistent performance of the material.

The heat flux measurement provision is included in the pass/fail criteria to account for materials that behave similarly to a flame arrestor, and do not inhibit heat transfer. The heat flux measurement provides an indication of the hazard inside the airplane, but supplements, rather than replaces, the basic requirement to resist flame penetration. Flame penetration time is the fundamental concern. This can be described as the time at which the test burner flames directly cause a breach to form in the insulation material, thereby allowing the flames to pass through from the front to the back face. For some materials, the failure event is catastrophic and the occurrence can be measured quite accurately. However, it can be difficult to measure the event for other longer-lasting materials, as the failure does not occur instantaneously, but rather gradually over time. These materials typically allow a very small breach to occur initially, and the breach gradually increases in size as the test progresses. As a guideline, a material can be considered to fail when the size of the breach reaches 0.25 inch in diameter.

There have been instances where tested insulation materials (insulation and film) have ignited on the back face and caused surface propagation to occur. This surface propagation is not considered a burnthrough and would be acceptable, provided the heat flux level measured behind the sample does not exceed 2.0 Btu/ft^2 sec at any time during the test. However, since the same materials will also be required to meet the flame propagation standard of part VI of Appendix F to Part 25, it is likely that a material exhibiting this type of back face ignition would be screened out by that test.

There have been other instances whereby flames can reach the back side of the insulation materials by passing through passageways created between blankets or between the sample and the test frame. This typically occurs between clamping locations, and is generally not a function of the material's flame penetration resistance, but rather a result of improper mounting. This occurrence should not be considered a failure, provided the material is not breached when inspected after the test. We will address issues related to material overlap and installation in a forthcoming Advisory Circular.

Several commenters addressed the issue of attachment of thermal/acoustic insulation to the fuselage. Some commenters noted what they consider to be a conflict between proposed § 25.856 and proposed part VII of Appendix F to Part 25, since the regulation requires that the means of attachment comply, but the appendix specifies an attachment scheme for test. Several commenters state that advisory material is needed to establish acceptable means of attachment, and stress its importance in providing burnthrough protection.

The FAA does not agree that the wording of proposed § 25.856 and part VII of Appendix F to Part 25 are in conflict. As noted in the NPRM, the test fixture is intended to test the material system in a manner that will ensure its retention since, for the sake of simplicity, the fixture does not replicate any specific airplane. In other words, the installation must meet the requirement, but, for simplicity, the test method does not include installation details. We have participated in a research program with the Civil Aviation Authority (CAA) in the United Kingdom to assess acceptable installation methods. Acceptable methods can only be established using representative airframe structure, since the interaction between the attachment and the airframe will influence the performance of an otherwise acceptable material. In addition to the collaborative effort with the CAA, we have conducted additional full-scale fire tests to assess

[1] FAA Office of Aviation Research, U.S. Dept. of Transportation, Fuselage Burnthrough Protection for Increased Postcrash Occupant Survivability: Safety Benefit Analysis Based on Past Accidents, DOT/FAA/AR–99/57, Sept. 1999. Available at *http://www.tc.faa.gov/its/worldpac/techrpt/ar99-57.pdf*.

the sensitivity of burnthrough performance to minor installation variations. As a result of this research, we are developing an advisory circular that describes acceptable methods of installation. The advisory circular addresses attachment schemes, overlap between the insulation and airframe structure and overlap of more than one insulation blanket. We recognize that other methods of installation may be equally acceptable, or necessary, particularly with insulation systems that are different from those described in the AC. However, an applicant would need to demonstrate that alternative approaches provide an equivalent level of safety. Such demonstrations would require testing of a scale appropriate to the feature being investigated.

One commenter disagrees with discussing detailed installation methods in an advisory circular. The commenter states that installation methods should be part of the rule, and not separated into an AC.

The FAA does not agree. The installation methods are, in fact, part of the regulation. However, in order to address the installation methods in the certification test method, the test fixture would have to be modified for each installation, which is impractical and could lead to a lack of standardization. In addition, it is doubtful that the scale of the oil burner test could adequately assess certain installation issues that would be significant in a post crash fire. For these reasons, we have elected to simplify the test method, and provide guidance on acceptable installation methods. An applicant is free to propose testing that would substantiate the actual installation, but we do not intend to require this when the advisory material covers the installation methodology.

One commenter states that the test method does not adequately address "non-conforming" materials, such as rigid foams, and could result in the placement of a fire barrier that is closer to the calorimeter than is the case for traditional blanket materials. The commenter contends that the relationship of the barrier to the calorimeter can affect the test results.

The FAA agrees that the relative position of the fire barrier and the calorimeter can influence the test results. However, we do not agree that moving the barrier closer to the calorimeter will always have negative effects. The relationship of the burner to the calorimeter is constant, so the relative performance of the barrier material, whatever it is, is based on the effect of the burner at the calorimeter location. To vary this relationship would compromise the standardization of the test method. We recognize that the test method is only representative of, and not identical to, the actual fire threat. Therefore, an applicant would be free to demonstrate that a particular design approach provides the same level of safety if the applicant believes that the test setup does not adequately evaluate the design.

Operating Requirements in Parts 91, 121, 125, and 135

Newly Manufactured Airplanes

This final rule requires transport category airplanes operating under parts 91, 121, 125, and 135 to comply with the new standards relative to flame propagation in final § 25.856(a). This portion of the final rule applies to airplanes manufactured more than two years after the effective date of this final rule. These requirements are found in final §§ 91.613(b)(2), 121.312(e)(2), 125.113(c)(2), and 135.170(c)(2). We are adopting these requirements exactly as proposed in the NPRM except for adding the words "in the fuselage" to make clear that only thermal/acoustic insulation materials installed *in the fuselage* are subject to the requirements.

Since there are materials currently available that will meet the new standards, these requirements impose minimal additional costs. These requirements are applicable to airplanes manufactured more than two years after the effective date of the final rule. Two years is considered sufficient time to allow for material production capacity to be developed and for disposition of existing inventory.

Readers should note that these requirements differ from previous rulemaking related to flammability of materials in that the applicability to newly manufactured airplanes is not limited to operations under part 121. The reasons for this are that the rule adds minimal cost and the potential for an in-flight fire is not limited to air carrier operations.

In accordance with § 21.17, these new standards are applicable to new type certificates for which application is made after the effective date of the final rule. In addition to changing the design standards for future type certificate applications, we consider that the benefits from improved flammability standards can be realized for existing designs as well. The technology exists today so that these benefits can be obtained in a cost-effective manner by applying the standards under some circumstances to newly manufactured airplanes and to existing airplanes when insulating materials are replaced. Our means for obtaining benefits earlier than would be provided by changing design standards is to revise the operating rules. Requirements for newly manufactured airplanes become a basic airworthiness requirement for those airplanes and apply throughout their service life. Requirements for the existing fleet relate to materials that are replaced in service. This latter aspect of the rule does not affect newly manufactured airplanes, since they are already required to comply by virtue of their date of manufacture.

Replacement of Existing Insulation

This final rule requires that thermal/acoustic insulation materials, when installed as replacements more than two years after the effective date of this final rule, meet the new flame propagation test requirements of final § 25.856(a). This requirement applies to existing transport category airplanes operating under parts 91, 121, 125, and 135 and to the same types of airplanes manufactured within two years of the effective date of this final rule. See final §§ 91.613(b)(1), 121.312(e)(1), 125.113(c)(1), and 135.170(c)(1). We are adopting these requirements exactly as proposed in the NPRM except for adding the words "in the fuselage" to make clear that only thermal/acoustic insulation materials installed *in the fuselage* are subject to the requirements.

This action provides for the gradual attrition of materials installed under earlier standards. Since there are existing materials that meet the new standards, and since those materials cost and weigh only marginally more than other materials, this should result in negligible additional cost to operators.

As with newly manufactured airplanes, it is appropriate to address not only those airplanes operated in part 121 air carrier service, but other operations as well, since the flame propagation portion of this final rule enhances safety over the current regulatory requirements, and can be done inexpensively.

Although it is difficult to quantify the benefits of piecemeal replacement of materials, the cost of replacement is low and adds minimal burden. This final rule allows time for attrition of current inventories and acquisition of new materials. Replacement insulation does not have to comply until two years after the effective date of this final rule. We expect this requirement to have little impact since only a relatively small amount of insulation materials are replaced every year.

Larger Airplanes Operating Under Part 121

This final rule requires newly manufactured airplanes with a passenger capacity of 20 or greater operating under part 121 to comply with the burnthrough protection standards in final § 25.856(b). See final § 121.312(e)(3). This requirement applies to airplanes manufactured more than four years after the effective date of the final rule. Although there are materials currently available that will meet the standards, these materials are not widely used. Therefore, we expect the burnthrough portion of the rule to require both material and, in many cases, design changes. As discussed in the context of the part 25 changes, these design changes relate primarily to the means of fastening the insulation to the fuselage structure. For those airplanes that require design changes, we recognize that adequate time is necessary to perform the necessary engineering and to obtain approval for the changes. We consider four years to be a reasonable time to implement any design changes and configuration control measures required to account for the new standard and to allow for material availability.

Generally, airplanes operated under parts 91, 125, and 135 carry fewer passengers than airplanes operating under parf 121 and can, as a result, be evacuated more quickly. Therefore, we consider that the additional evacuation time provided by enhanced fuselage burnthrough protection would not provide the same increase in safety for these airplanes. In light of the costs associated with requiring compliance with the burnthrough standard, imposing the requirement would have a negligible benefit. This conclusion is similar to the conclusion, discussed in the context of the proposed part 25 burnthrough standard, not to impose the new standard for airplanes with fewer than 20 passengers. However, since transport category airplanes can be operated under different regulatory requirements throughout their service life, it is likely that most, if not all, affected newly manufactured transport category airplanes will comply, to account for potential future part 121 operations.

Replacement

This final rule does not require installation of materials complying with the burnthrough test standards in all transport category airplanes because it would not provide a substantial benefit. If the fuselage is subjected to an external fire, it is unlikely that insulation complying with this standard that has been installed in a portion of the fuselage would significantly delay burnthrough if the rest of the fuselage contains insulation that does not comply with the new standard. As discussed previously, in order to be effective against burnthrough, new insulation materials would also have to be installed in a manner that would allow them to remain in place when exposed to an external fire. Requiring that the means of fastening, and the associated engineering necessary to incorporate design changes, be accounted for on a material replacement basis would be very expensive, with negligible benefit.

Date of Manufacture

For the purposes of this final rule, we consider the date of manufacture to be the date on which inspection records show that an airplane is in a condition for safe flight. This is not necessarily the date on which the airplane is in conformity with the approved type design, or the date on which a certificate of airworthiness is issued, since some items not relevant to safe flight, such as passenger seats, may not be installed at that time. It could be earlier, but would be no later, than the date on which the first flight of the airplane occurs. This definition has been used in previous rulemaking, including the preamble to our February 2, 1995, final rule entitled Improved Flammability Standards for Materials Used in the Interiors of Transport Category Airplane Cabins (60 FR 6616, 6617).

Compliance Time

Commenters were divided as to whether more or less time should be allowed for compliance by newly manufactured airplanes with the flame propagation requirement of final § 25.856(a). No commenter provided any data to support this position. although one commenter noted that it might be required to make part number changes in order to facilitate a material changeover, which will take time. Another commenter noted that a longer compliance period for retrofit of non-compliant insulation on air ducts on a particular airplane type was permitted in accordance with an airworthiness directive, and this seems inconsistent with the proposal.

With respect to comments that the compliance period for newly manufactured airplanes should be adjusted either up or down, in the absence of any data to support either position, the FAA cannot justify a change. While we agree that part number changes might be necessary, it is not the only method to assure configuration control. Any other method in which configuration control is assured would be acceptable. Therefore, a change to the compliance time is not justified on this basis.

Finally, the comment that the proposed compliance time does not coincide with a similar airworthiness directive is not relevant to this rule. The airworthiness directive requires retrofit of airplanes that are already in service. This is a much more labor intensive and complicated process than incorporating a different material in production. Therefore no change is made to the compliance time for flame propagation.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C 3507(d)), we have determined that there are no requirements for information collection associated with this final rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. We have determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Economic Evaluation, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency proposing or adopting a regulation to first make a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this act requires agencies to consider international standards, and use them where appropriate as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs and benefits and other effects of proposed and final rules. An assessment must be prepared only for rules that impose a Federal mandate on State, local, or tribal governments, or on

the private sector, likely to result in a total expenditure of $100 million or more in any one year (adjusted for inflation).

In conducting these analyses, the FAA has determined that this rule has benefits that justify its costs. This rulemaking does not impose costs sufficient to be considered "significant" under the economic standards for significance under Executive Order 12866. Due to public interest, however, it is considered significant under the Executive Order and DOT policy. This rule will not have a significant impact on a substantial number of small entities. This rule has no affect on trade-sensitive activity. This rule does not impose an unfunded mandate on state, local, or tribal governments, or on the private sector. The FAA has placed these analyses in the docket and summarized them below.

Benefits and Costs

Benefits

This rule will generate safety benefits by averting accidents that involve propagation of flame on the film bags that encase thermal acoustic insulation batting, and by mitigating accidents that involve fire burning through from outside an airplane into its cabin. Over a 20-year analysis period the rule is expected to avert one catastrophic accident and a recoverable accident. The estimated present value of the combined flame propagation and burnthrough benefits is about $222.6 million in constant 2001 dollars.

Flame Propagation Benefits

When an in-flight fire that propagates on insulation in an inaccessible area is detected soon enough, diversion of the flight is likely, thus averting death, injury, and damage to the airplane. However, if such a fire is not detected until it grows beyond the capacity of the aircrew to control, a catastrophic accident with 100 percent fatalities and the complete loss of the airplane can result. The estimate of the expected benefits of complying with the flame propagation requirements is based on averting such a catastrophic accident. The components of this estimate include (1) averting the deaths; (2) averting the loss of the airplane; and (3) averting the costs of investigating the accident.

An example of a potential future averted accident (basis accident) is the catastrophic accident that occurred on September 2, 1998, when Swissair Flight 111 crashed off the coast of Nova Scotia, Canada, with the loss of 229 lives. Although the Transportation Safety Board of Canada has not released its final investigative report, on August 28, 2001, that agency issued Aviation Safety Recommendations, stating that "* * *The most significant material flammability deficiency discovered has been the inappropriate flammability characteristics of the MPET-covered thermal acoustic insulation blankets* * *"

In September 2001, the Fire Safety Section of the FAA's William J. Hughes Technical Center provided its professional engineering opinion that "* * *this rule change will likely prevent one catastrophic in-flight accident over a twenty-year period after implementation."

The Section supports its judgment as follows:

"During the study period from 1967 through 1998 three fatal in-flight fires occurred on 121 carriers in North America and an additional six throughout the rest of the world in which the fire was in an inaccessible area and the thermal/acoustic film may have played an important role. A review of recent incident, accident, and service difficulty reports indicates that there are between three and five in-flight fires causing serious damage on part 121 aircraft in the U.S. per year. Most of those occurrences included the spread of fire on the thermal/acoustic film. *Preliminary information obtained on one accident (Air Tran Airways, DC–9–32 on November 29, 2000, at Atlanta, Georgia) indicates that had the fire started a little later in the flight the aircraft would not have been able to make it back to the airport.*

Given the above, it is estimated that one catastrophic in-flight fire accident will occur every ten years in the U.S. Thermal acoustic insulation film makes up a large percentage of the surface area in the inaccessible areas of airplanes. If this rule change were fully implemented, it would eliminate 50% of the annual 3 to 5 in-flight fires, thus halving the likelihood of a catastrophic accident to one in every 20 years." (emphasis added)

The expected present-value benefits from averting a catastrophic accident are estimated to include: averting fatalities ($110 million); averting the loss of an airplane hull ($16 million); and averting the costs of an accident investigation ($1 million). These benefits total to $127 million.

Burnthrough Benefits

The estimated burnthrough benefits of this rule are based in the September 1999 report "Fuselage Burnthrough Protection for Increased Postcrash Occupant Survivability: Safety Benefit Analysis Based on Past Accidents," DOT/FAA/AR–99/57 (*http://www.tc.faa.gov/its/act141/reportpage.html*), hereafter referred to as the Cherry Study. This study concludes that four minutes of additional resistance to burnthrough will result in averting 10.1 fatalities and 13.5 injuries per year over the worldwide fleet of passenger-carrying airplanes. The FAA adjusted these fatalities and injuries so as to apply only to part 25 airplanes in part 121 service over the forecast period. The present value total benefit of $95 million includes $50 million from averted fatalities, $34 million from averted injuries, and $11 million from averted accident investigations

Benefit Summary

Thus, over the 20-year period of analysis examined in this evaluation, the estimated total present value of flame propagation and burnthrough benefits is $222.6 million.

SUMMARY OF BENEFITS

	Monetary benefits derived by averting deaths	Monetary benefits derived by averting loss of aircraft or injuries	Monetary benefits derived by averting accident investigations	Total monetary benefits
Flame Propagation	$110.3	loss of aircraft—$15.6	$1.4	$127.3
Burnthrough	50.5	Injuries—33.9	10.8	*95.3
Total	160.8	49.5	12.2	*222.6

*Rounded

Estimates of Costs

This evaluation examines four components of cost: (1) The acquisition of test apparatus used to establish the new testing standards; (2) the installation and the maintenance of insulating material to meet the flame propagation requirement; (3) the installation of insulating material to meet the burnthrough requirement; and (4) engineering costs, including those of configuration management, which includes changing (also called "rolling") parts numbers.

Final rule evaluation estimates differ from those of the NPRM evaluation with respect to cost components (1), (2) and (4), as follow:

- The cost of test apparatus was excluded;
- Costs of material to be installed and replaced for the flame propagation requirement were added;
- The cost of a fuel-weight penalty for burnthrough compliance was added;
- The engineering cost of possible changes in design and installation of insulation blankets was eliminated;
- Costs of the engineering work of configuration management were greatly increased.

Each of the four components of the cost estimate is considered in turn below.

The cost of test apparatus was excluded because this cost of compliant insulation is expected to include the cost of test apparatus. To include the cost of test apparatus will result in counting the cost of test apparatus twice.

This final rule evaluation found that flame propagation material requirements is expected to add cost and weight that was not considered in the NPRM evaluation. While neither installation during manufacture nor replacement during maintenance is expected to add to labor costs, each will add to cost of material and to weight. The incremental cost of the insulation is $2.05 per square yard. The additional weight will result in additional fuel cost.

Unlike the NPRM this final rule evaluation assigns a minimal cost to the design and installation expense. This change in approach results from FAA technical opinions that became available after the completion of the NPRM evaluation. FAA technical opinions state that the common method of installation shown *will* meet burnthrough requirements *if* a layer of ceramic paper is laminated inside the outboard layer (the layer next to the aluminum skin of the airplane) of the metalized polyvinylfloride film. As the method of installation will not change, there will be no additional engineering expense for design and installation.

While one commenter stated that the FAA's NPRM estimate of engineering costs was greatly overstated, this final rule evaluation finds that the NPRM estimate of the costs of the engineering work of configuration management costs was low. Considering other comments and clarifications about the formalization, technical and regulatory requirements, and organizational complexity involved in managing aviation parts nomenclature, the FAA revised its NPRM cost estimate upward.

The agency accepts the industry estimate that as much as eight hours can be required to fully effect changes in nomenclature for each aviation part involved in compliance. These eight hours make up the time needed for work that begins with the initiation of a change in (or with the introduction of new) nomenclature, and that ends with the completion of the authorized and documented release of that nomenclature to all appropriate holders.

Summary of Cost

Flame propagation present-value compliance costs are estimated to be approximately $76.2 million. The burnthrough present-value compliance costs are expected to be approximately $32.2 million. Thus the total cost for this rule is $108.4 million (total does not add due to rounding). The specific cost elements for flame propagation and burnthough are present in the Summary of Costs table.

SUMMARY OF COSTS

	New installation material cost	Maintenance driven replacement cost	Added fuel weight cost	Engineering costs	Total costs
Flame Propagation	$13.8	$2.8	$1.5	$58.1	$76.2
Burnthrough	20.6		2.0	9.6	32.2
Total					108.4

Comparison of Benefits and Costs

When discounted at 7 per cent annually, the present value of the overall benefits of this final rule is about $222.6 million in constant 2001 dollars. Estimated overall costs are about $108.4 million in 2001 dollars. Thus, taken as a whole, the rule is cost effective. The discounted present values of the benefits of the flame propagation requirements are about $127.3 million, and comparable costs are about $76.2 million. The discounted present values of benefits of the burnthrough requirements are about $95.3 million, and comparable costs are about $32.2 million. Thus, each part of the rule, considered separately, is cost effective.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA conducted the required review of this final rule, and finds the following:

(1) Engineering and manufacturing costs of this rule apply to manufacturers of part 25 airplanes. No such manufacturer is a small business;

(2) In December 2000, the FAA identified 28 airlines that were small businesses. This evaluation assumes each will replace about 2.8% of the insulation in each of its airplanes with rule compliant insulation yearly, on a maintenance-driven basis. Fleet sizes of those 27 carriers still in business range from 2 to 24. The FAA believes the average annual cost of compliance for these carriers will approximate $60 per airplane. Based on fleet size, the annual costs incurred by average small business carrier is estimated at $420. This amount is less than an hour of annual operating cost for the airplanes affected by this rule;

(3) Because the FAA believes that manufacturers will pass along their increased compliance costs to the airlines the agency reviewed the scope and significance of these costs to operators. The discounted present (2001) value of the average airplane newly delivered in 2006 (the first year both flame propagation and burnthrough requirements will be implemented) is about $34.8 million in constant 2001 dollars. Assuming the manufacturer spreads engineering costs (for each requirement) over a 10-year production run, about $12,000 will be added to the cost of the average airplane. Material costs for both requirements will add another $11,000. Thus, about $23,000, or just under seven one-hundredths of one percent is added to the cost of the average airplane that might be acquired by the average small business airline. The FAA believes a small business airline that will acquire, or will secure the use of a $34.8 million capital asset will not be burdened by this small increment.

Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of this final rule and has determined that it will impose the same costs on domestic and international manufacturing entities, and will impose minimal operating costs on domestic operators. The agency believes this final rule will approximate a neutral impact on trade.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate."

A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain any significant Federal intergovernmental or private sector mandate. Therefore, the analytical requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

In estimating the costs associated with this final rule, we refined the analysis that we prepared for the September 20, 2000 NPRM. See 65 FR 56998. At that time, we estimated the total discounted costs of the NPRM to be $68.2 million. As stated above, we estimate the total discounted cost of the final rule to be $108.4 million. The primary reason for the increase in the cost estimate is that we believe that the NPRM cost estimate of configuration management was too low. Based on comments we received on the NPRM about the complexity of managing aviation parts nomenclature, we revised the cost estimate upward.

Several commenters on our estimates of the costs of the proposed rule address our use of a particular commercial product in the cost and benefit assessment. Some commenters note that the material discussed is actually a family of materials, rather than a single product, and it could be misleading to imply that only one material is being considered. Other commenters object to the use of any trade name, and state that this implies that the FAA is endorsing a particular product.

As discussed in the NPRM, the FAA specifically requested information on materials that manufacturers would use to comply with the requirement. This was because we could not obtain definitive information on the optimal means of compliance, and were forced to rely on information available to make an assessment of the costs of compliance. In so doing, we used as an example a product where the performance and cost information could be readily obtained. This is not a product endorsement, or even a suggestion of a preferred means of compliance. It is merely an example that could be quantified to illustrate what the cost of compliance could be. In order for this information to be of any value, the particular product has to be mentioned. Otherwise, there would be no way for the public to comment on the validity of our estimates.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We have determined that this action will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this final rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of this final rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this final rule applies to the certification of future designs of transport category airplanes and their subsequent operation, it could affect intrastate aviation in Alaska. Because no comments were received regarding this regulation affecting intrastate aviation in Alaska, we will apply the rule in the same way that it is being applied nationally.

List of Subjects

14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 91

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 121

Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation

14 CFR Part 125

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 135

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends parts 25, 91, 121, 125, and 135 of Title 14, Code of Federal Regulations as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, and 44704.

■ 2. Add § 25.856 to read as follows:

§ 25.856 Thermal/Acoustic insulation materials.

(a) Thermal/acoustic insulation material installed in the fuselage must meet the flame propagation test requirements of part VI of Appendix F to this part, or other approved equivalent test requirements. This requirement does not apply to "small parts," as defined in part I of Appendix F of this part.

(b) For airplanes with a passenger capacity of 20 or greater, thermal/acoustic insulation materials (including the means of fastening the materials to the fuselage) installed in the lower half of the airplane fuselage must meet the flame penetration resistance test requirements of part VII of Appendix F to this part, or other approved equivalent test requirements. This requirement does not apply to thermal/acoustic insulation installations that the FAA finds would not contribute to fire penetration resistance.

■ 3. Amend appendix F to part 25 as follows:

■ a. In part I, paragraph (a)(1)(ii), by removing the words "thermal and acoustical insulation and insulation covering" and "insulation blankets" from the first sentence.

■ b. In part I, by removing and reserving paragraph (a)(2)(i).

■ c. By adding parts VI and VII to read as follows:

Appendix F to Part 25—[Amended]

* * * * *

Part VI—Test Method To Determine the Flammability and Flame Propagation Characteristics of Thermal/Acoustic Insulation Materials

Use this test method to evaluate the flammability and flame propagation characteristics of thermal/acoustic insulation when exposed to both a radiant heat source and a flame.

(a) *Definitions.*

"Flame propagation" means the furthest distance of the propagation of visible flame towards the far end of the test specimen, measured from the midpoint of the ignition source flame. Measure this distance after initially applying the ignition source and before all flame on the test specimen is extinguished. The measurement is not a determination of burn length made after the test.

"Radiant heat source" means an electric or air propane panel.

"Thermal/acoustic insulation" means a material or system of materials used to provide thermal and/or acoustic protection. Examples include fiberglass or other batting material encapsulated by a film covering and foams.

"Zero point" means the point of application of the pilot burner to the test specimen.

(b) *Test apparatus.*

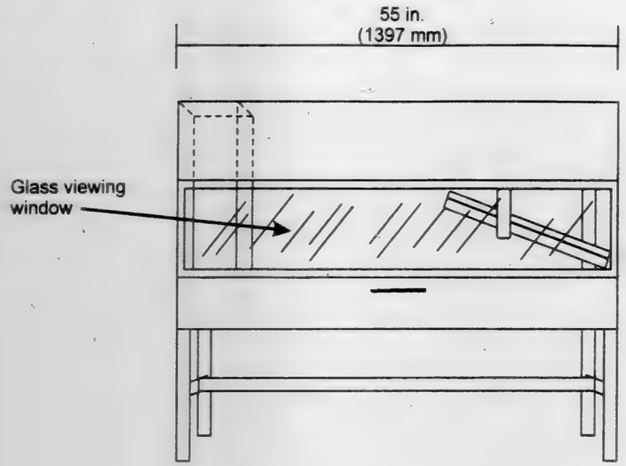


Figure 1 - Radiant Panel Test Chamber

(1) *Radiant panel test chamber.* Conduct tests in a radiant panel test chamber (see figure 1 above). Place the test chamber under an exhaust hood to facilitate clearing the chamber of smoke after each test. The radiant panel test chamber must be an enclosure 55 inches (1397 mm) long by 19.5 (495 mm) deep by 28 (710 mm) to 30 inches (maximum) (762 mm) above the test specimen. Insulate the sides, ends, and top with a fibrous ceramic insulation, such as Kaowool M™ board. On the front side, provide a 52 by 12-inch (1321 by 305 mm) draft-free, high-temperature, glass window for viewing the sample during testing. Place a door below the window to provide access to the movable specimen platform holder. The bottom of the test chamber must be a sliding steel platform that has provision for securing the test specimen holder in a fixed and level position. The chamber must have an internal chimney with exterior dimensions of 5.1 inches (129 mm) wide, by 16.2 inches (411 mm) deep by 13 inches (330 mm) high at the opposite end of the chamber from the radiant energy source. The interior dimensions must be 4.5 inches (114 mm) wide by 15.6 inches (395 mm) deep. The chimney must extend to the top of the chamber (see figure 2).

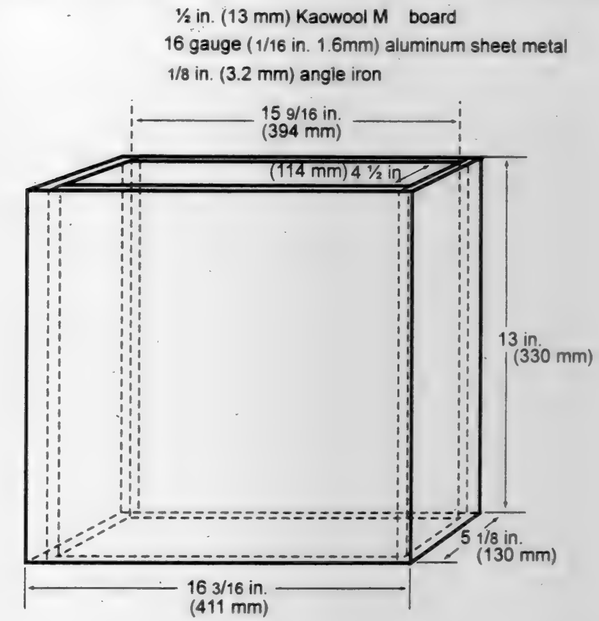


Figure 2 - Internal Chimney

(2) *Radiant heat source.* Mount the radiant heat energy source in a cast iron frame or equivalent. An electric panel must have six, 3-inch wide emitter strips. The emitter strips must be perpendicular to the length of the panel. The panel must have a radiation surface of 12⅞ by 18½ inches (327 by 470 mm). The panel must be capable of operating at temperatures up to 1300°F (704°C). An air propane panel must be made of a porous refractory material and have a radiation surface of 12 by 18 inches (305 by 457 mm). The panel must be capable of operating at temperatures up to 1,500°F (816°C). *See* figures 3a and 3b.

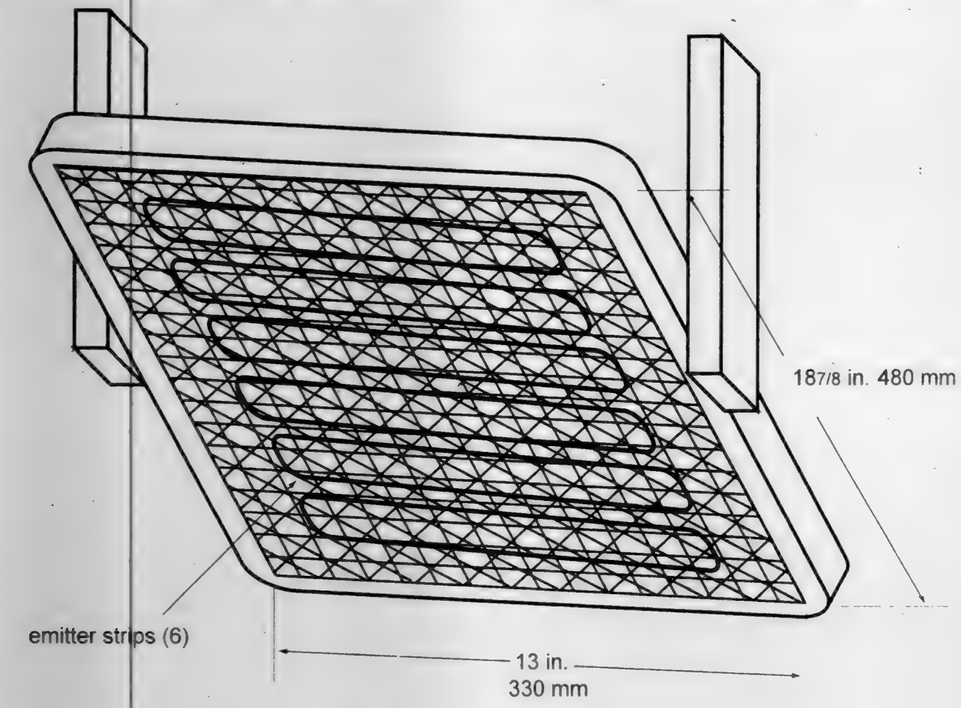


Figure 3a – Electric Panel

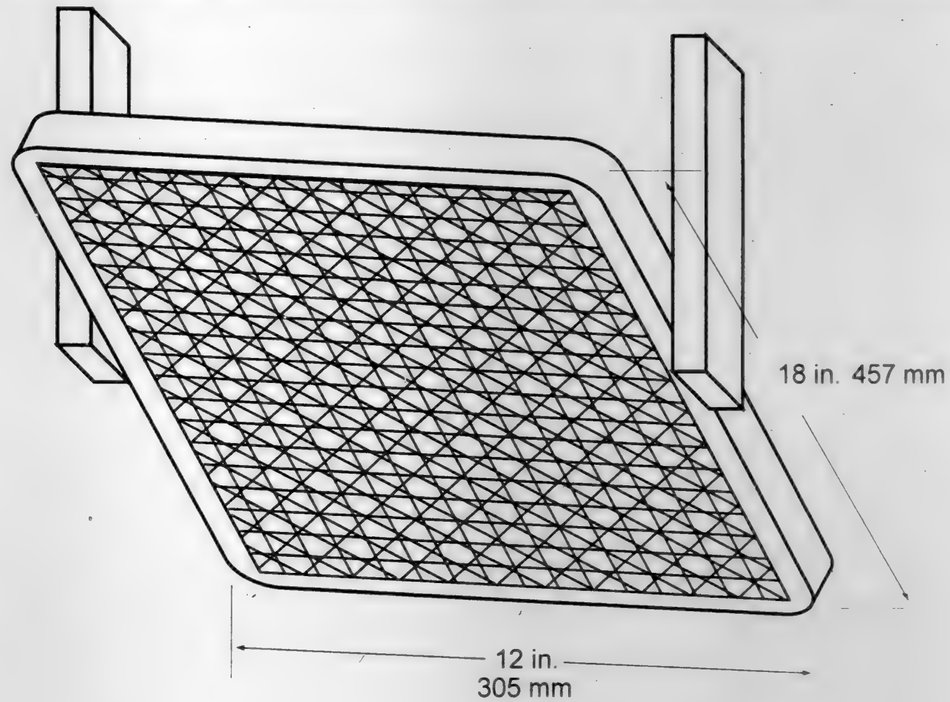


Figure 3b – Air Propane Radiant Panel

(i) *Electric radiant panel.* The radiant panel must be 3-phase and operate at 208 volts. A single-phase, 240 volt panel is also acceptable. Use a solid-state power controller and microprocessor-based controller to set the electric panel operating parameters.

(ii) *Gas radiant panel.* Use propane (liquid petroleum gas—2.1 UN 1075) for the radiant panel fuel. The panel fuel system must consist of a venturi-type aspirator for mixing gas and air at approximately atmospheric pressure. Provide suitable instrumentation for monitoring and controlling the flow of fuel and air to the panel. Include an air flow gauge, an air flow regulator, and a gas pressure gauge.

(iii) *Radiant panel placement.* Mount the panel in the chamber at 30° to the horizontal specimen plane, and 7½ inches above the zero point of the specimen.

(3) *Specimen holding system.*

(i) The sliding platform serves as the housing for test specimen placement. Brackets may be attached (via wing nuts) to the top lip of the platform in order to accommodate various thicknesses of test specimens. Place the test specimens on a sheet of Kaowool M™ board or 1260 Standard Board (manufactured by Thermal Ceramics and available in Europe), or equivalent, either resting on the bottom lip of the sliding platform or on the base of the brackets. It may be necessary to use multiple sheets of material based on the thickness of the test specimen (to meet the sample height requirement). Typically, these non-combustible sheets of material are available in ¼ inch (6 mm) thicknesses. See figure 4. A sliding platform that is deeper than the 2-inch (50.8mm) platform shown in figure 4 is also acceptable as long as the sample height requirement is met.

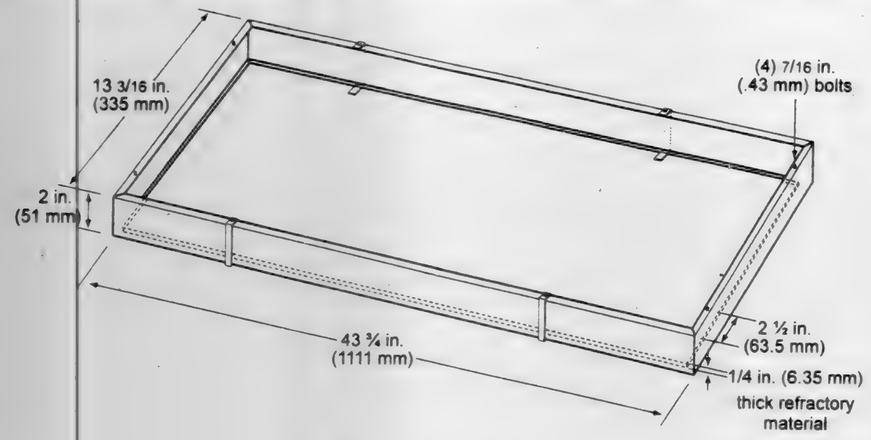


Figure 4 - Sliding Platform

(ii) Attach a ½ inch (13 mm) piece of Kaowool M™ board or other high temperature material measuring 41½ by 8¼ inches (1054 by 210 mm) to the back of the platform. This board serves as a heat retainer and protects the test specimen from excessive preheating. The height of this board must not impede the sliding platform movement (in and out of the test chamber). If the platform has been fabricated such that the back side of the platform is high enough to prevent excess preheating of the specimen when the sliding platform is out, a retainer board is not necessary.

(iii) Place the test specimen horizontally on the non-combustible board(s). Place a steel retaining/securing frame fabricated of mild steel, having a thickness of ⅛ inch (3.2 mm) and overall dimensions of 23 by 13⅛ inches (584 by 333 mm) with a specimen opening of 19 by 10¾ inches (483 by 273 mm) over the test specimen. The front, back, and right portions of the top flange of the frame must rest on the top of the sliding platform, and the bottom flanges must pinch all 4 sides of the test specimen. The right bottom flange must be flush with the sliding platform. See figure 5.

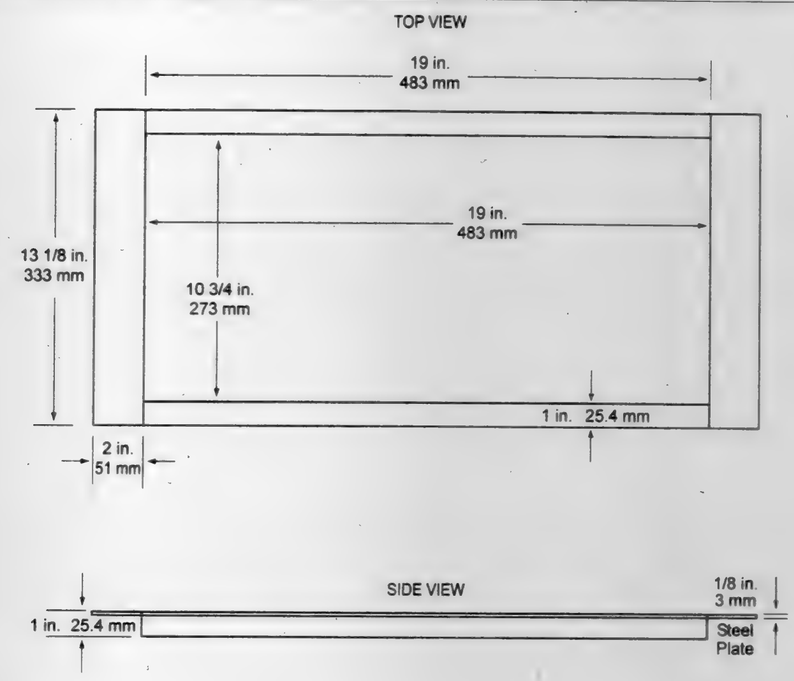


Figure 5: 3 views

(4) *Pilot Burner.* The pilot burner used to ignite the specimen must be a Bernzomatic™ commercial propane venturi torch with an axially symmetric burner tip and a propane supply tube with an orifice diameter of 0.006 inches (0.15 mm). The length of the burner tube must be 2⅞ inches (71 mm). The propane flow must be adjusted via gas pressure through an in-line regulator to produce a blue inner cone length of ¾ inch (19 mm). A ¾ inch (19 mm) guide (such as a thin strip of metal) may be soldered to the top of the burner to aid in setting the flame height. The overall flame length must be approximately 5 inches long (127 mm). Provide a way to move the burner out of the ignition position so that the flame is horizontal and at least 2 inches (50 mm) above the specimen plane. See figure 6.

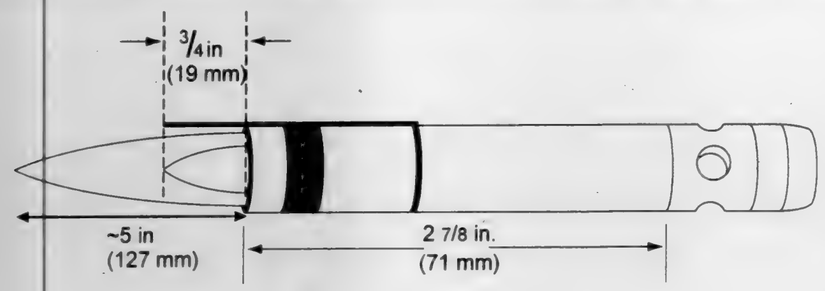


Figure 6 – Propane Pilot Burner

(5) *Thermocouples.* Install a 24 American Wire Gauge (AWG) Type K (Chromel-Alumel) thermocouple in the test chamber for temperature monitoring. Insert it into the chamber through a small hole drilled through the back of the chamber. Place the thermocouple so that it extends 11 inches (279 mm) out from the back of the chamber wall, 11½ inches (292 mm) from the right side of the chamber wall, and is 2 inches (51 mm) below the radiant panel. The use of other thermocouples is optional.

(6) *Calorimeter.* The calorimeter must be a one-inch cylindrical water-cooled, total heat flux density, foil type Gardon Gage that has a range of 0 to 5 BTU/ft²-second (0 to 5.7 Watts/cm²).

(7) *Calorimeter calibration specification and procedure.*

(i) *Calorimeter specification.*

(A) Foil diameter must be 0.25 +/ − 0.005 inches (6.35 +/ − 0.13 mm).

(B) Foil thickness must be 0.0005 +/ − 0.0001 inches (0.013 +/ − ;0.0025 mm).

(C) Foil material must be thermocouple grade Constantan.

(D) Temperature measurement must be a Copper Constantan thermocouple.

(E) The copper center wire diameter must be 0.0005 inches (0.013 mm).

(F) The entire face of the calorimeter must be lightly coated with "Black Velvet" paint having an emissivity of 96 or greater.

(ii) *Calorimeter calibration.*

(A) The calibration method must be by comparison to a like standardized transducer.

(B) The standardized transducer must meet the specifications given in paragraph VI(b)(6) of this appendix.

(C) Calibrate the standard transducer against a primary standard traceable to the National Institute of Standards and Technology (NIST).

(D) The method of transfer must be a heated graphite plate.

(E) The graphite plate must be electrically heated, have a clear surface area on each side of the plate of at least 2 by 2 inches (51 by 51 mm), and be ⅛ inch +/ − 1/16 inch thick (3.2 +/ − 1.6 mm).

(F) Center the 2 transducers on opposite sides of the plates at equal distances from the plate.

(G) The distance of the calorimeter to the plate must be no less than 0.0625 inches (1.6 mm), nor greater than 0.375 inches (9.5 mm).

(H) The range used in calibration must be at least 0–3.5 BTUs/ft² second (0–3.9 Watts/cm²) and no greater than 0–5.7 BTUs/ft² second (0–6.4 Watts/cm²).

(I) The recording device used must record the 2 transducers simultaneously or at least within 1/10 of each other.

(8) *Calorimeter fixture.* With the sliding platform pulled out of the chamber, install the calorimeter holding frame and place a sheet of non-combustible material in the bottom of the sliding platform adjacent to the holding frame. This will prevent heat losses during calibration. The frame must be 13⅛ inches (333 mm) deep (front to back) by 8 inches (203 mm) wide and must rest on the top of the sliding platform. It must be fabricated of ⅛ inch (3.2 mm) flat stock steel and have an opening that accommodates a ½ inch (12.7 mm) thick piece of refractory board, which is level with the top of the sliding platform. The board must have three 1-inch (25.4 mm) diameter holes drilled through the board for calorimeter insertion. The distance to the radiant panel surface from the centerline of the first hole ("zero" position) must be 7½ +/ − ⅛ inches (191 +/ − 3 mm). The distance between the centerline of the first hole to the centerline of the second hole must be 2 inches (51 mm). It must also be the same distance from the centerline of the second hole to the centerline of the third hole. *See* figure 7. A calorimeter holding frame that differs in construction is acceptable as long as the height from the centerline of the first hole to the radiant panel and the distance between holes is the same as described in this paragraph.

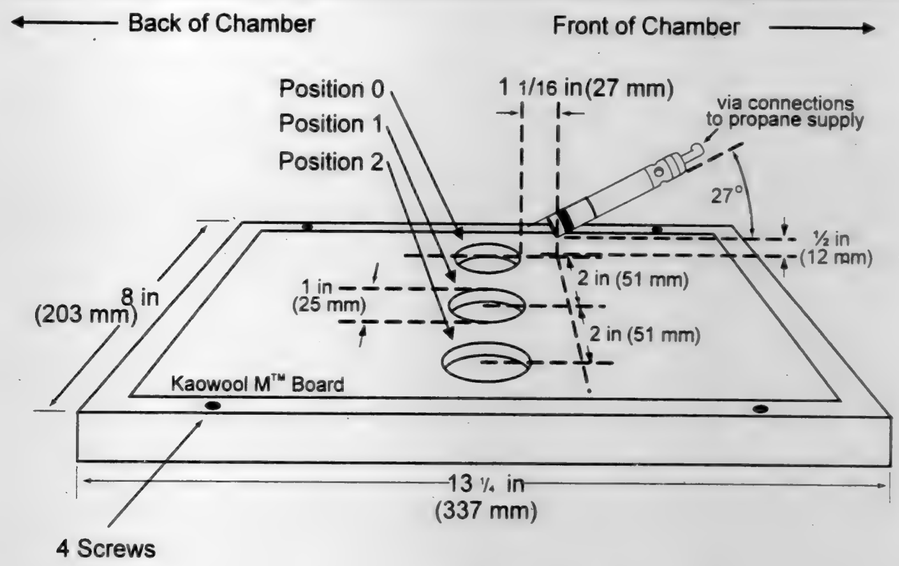


Figure 7 - Calorimeter Holding Frame

(9) *Instrumentation.* Provide a calibrated recording device with an appropriate range or a computerized data acquisition system to measure and record the outputs of the calorimeter and the thermocouple. The data acquisition system must be capable of recording the calorimeter output every second during calibration.

(10) *Timing device.* Provide a stopwatch or other device, accurate to +/ − 1 second/hour, to measure the time of application of the pilot burner flame.

(c) *Test specimens.*

(1) *Specimen preparation.* Prepare and test a minimum of three test specimens. If an oriented film cover material is used, prepare and test both the warp and fill directions.

(2) *Construction.* Test specimens must include all materials used in construction of the insulation (including batting, film, scrim, tape *etc.*). Cut a piece of core material such as foam or fiberglass, and cut a piece of film cover material (if used) large enough to cover the core material. Heat sealing is the preferred method of preparing fiberglass samples, since they can be made without compressing the fiberglass ("box sample"). Cover materials that are not heat sealable may be stapled, sewn, or taped as long as the cover material is over-cut enough to be drawn down the sides without compressing the core material. The fastening means should be as continuous as possible along the length of the seams. The specimen thickness must be of the same thickness as installed in the airplane.

(3) *Specimen Dimensions.* To facilitate proper placement of specimens in the sliding platform housing, cut non-rigid core materials, such as fiberglass, 12½ inches (318mm) wide by 23 inches (584mm) long. Cut rigid materials, such as foam, 11½ +/ − ¼ inches (292 mm +/ − 6mm) wide by 23 inches (584mm) long in order to fit properly in the sliding platform housing and provide a flat, exposed surface equal to the opening in the housing.

(d) *Specimen conditioning.* Condition the test specimens at 70 +/-5°F (21 +/ − 2°C) and 55% +/ − 10% relative humidity, for a minimum of 24 hours prior to testing.

(e) *Apparatus Calibration.*

(1) With the sliding platform out of the chamber, install the calorimeter holding frame. Push the platform back into the chamber and insert the calorimeter into the first hole ("zero" position). *See* figure 7. Close the bottom door located below the sliding platform. The distance from the centerline of the calorimeter to the radiant panel surface at this point must be 7.½ inches +/ − ⅛ (191 mm +/ − 3). Prior to igniting the radiant panel, ensure that the calorimeter face is clean and that there is water running through the calorimeter.

(2) Ignite the panel. Adjust the fuel/air mixture to achieve 1.5 BTUs/ft²-second +/ − 5% (1.7 Watts/cm² +/ − 5%) at the "zero" position. If using an electric panel, set the power controller to achieve the proper heat flux. Allow the unit to reach steady state (this may take up to 1 hour). The pilot burner must be off and in the down position during this time.

(3) After steady-state conditions have been reached, move the calorimeter 2 inches (51 mm) from the "zero" position (first hole) to position 1 and record the heat flux. Move the calorimeter to position 2 and record the heat flux. Allow enough time at each position for the calorimeter to stabilize. Table 1 depicts typical calibration values at the three positions.

TABLE 1.—CALIBRATION TABLE

Position	BTU's/ft²sec	Watts/cm²
"Zero" Position	1.5	1.7
Position 1	1.51–1.50–1.49	1.71–1.70–1.69
Position 2	1.43–1.44	1.62–1.63

(4) Open the bottom door, remove the calorimeter and holder fixture. Use caution as the fixture is very hot.

(f) *Test Procedure.*

(1) Ignite the pilot burner. Ensure that it is at least 2 inches (51 mm) above the top of the platform. The burner must not contact the specimen until the test begins.

(2) Place the test specimen in the sliding platform holder. Ensure that the test sample surface is level with the top of the platform. At "zero" point, the specimen surface must be 7½ inches +/ − ⅛ inch (191 mm +/ − 3) below the radiant panel.

(3) Place the retaining/securing frame over the test specimen. It may be necessary (due to compression) to adjust the sample (up or down) in order to maintain the distance from the sample to the radiant panel (7½ inches +/ − ⅛ inch (191 mm+/ − 3) at "zero" position). With film/fiberglass assemblies, it is critical to make a slit in the film cover to purge any air inside. This allows the operator to maintain the proper test specimen position (level with the top of the platform) and to allow ventilation of gases during testing. A longitudinal slit, approximately 2 inches (51mm) in length, must be centered 3 inches +/ − ½ inch (76mm+/ − 13mm) from the left flange of the securing frame. A utility knife is acceptable for slitting the film cover.

(4) Immediately push the sliding platform into the chamber and close the bottom door.

(5) Bring the pilot burner flame into contact with the center of the specimen at the "zero" point and simultaneously start the timer. The pilot burner must be at a 27° angle with the sample and be approximately ½ inch (12 mm) above the sample. *See* figure 7. A stop, as shown in figure 8, allows the operator to position the burner correctly each time.

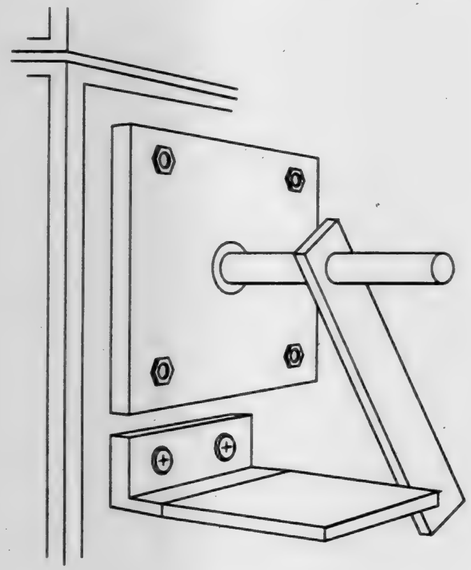


Figure 8 - Propane Burner Stop

(6) Leave the burner in position for 15 seconds and then remove to a position at least 2 inches (51 mm) above the specimen.

(g) Report.

(1) Identify and describe the test specimen.

(2) Report any shrinkage or melting of the test specimen.

(3) Report the flame propagation distance. If this distance is less than 2 inches, report this as a pass (no measurement required).

(4) Report the after-flame time.

(h) *Requirements.*

(1) There must be no flame propagation beyond 2 inches (51 mm) to the left of the centerline of the pilot flame application.

(2) The flame time after removal of the pilot burner may not exceed 3 seconds on any specimen.

Part VII—Test Method To Determine the Burnthrough Resistance of Thermal/Acoustic Insulation Materials

Use the following test method to evaluate the burnthrough resistance characteristics of aircraft thermal/acoustic insulation materials when exposed to a high intensity open flame.

(a) *Definitions.*

Burnthrough time means the time, in seconds, for the burner flame to penetrate the test specimen, and/or the time required for the heat flux to reach 2.0 Btu/ft²sec (2.27 W/cm²) on the inboard side, at a distance of 12 inches (30.5 cm) from the front surface of the insulation blanket test frame, whichever is sooner. The burnthrough time is measured at the inboard side of each of the insulation blanket specimens.

Insulation blanket specimen means one of two specimens positioned in either side of the test rig, at an angle of 30° with respect to vertical.

Specimen set means two insulation blanket specimens. Both specimens must represent the same production insulation blanket construction and materials, proportioned to correspond to the specimen size.

(b) *Apparatus.*

(1) The arrangement of the test apparatus is shown in figures 1 and 2 and must include the capability of swinging the burner away from the test specimen during warm-up.

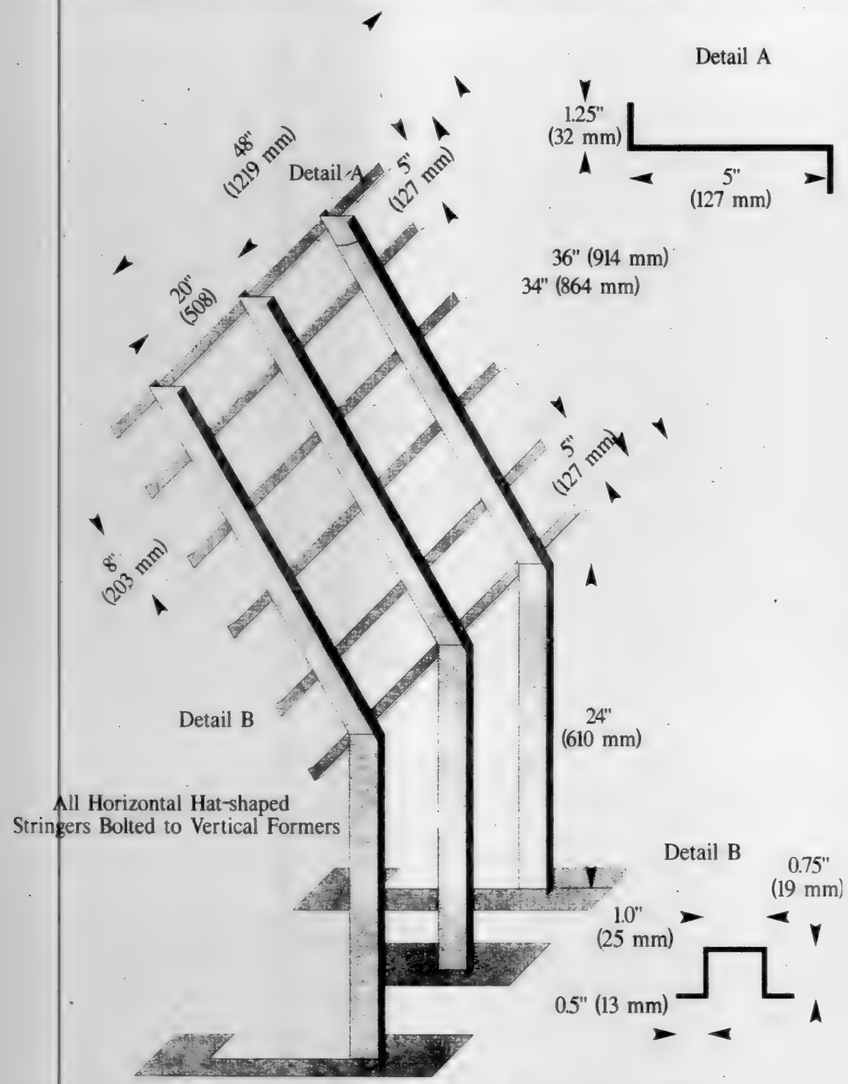


Figure 1 - Burnthrough Test Apparatus Specimen Holder

(2) *Test burner.* The test burner must be a modified gun-type such as the Park Model DPL 3400. Flame characteristics are highly dependent on actual burner setup. Parameters such as fuel pressure, nozzle depth, stator position, and intake airflow must be properly adjusted to achieve the correct flame output.

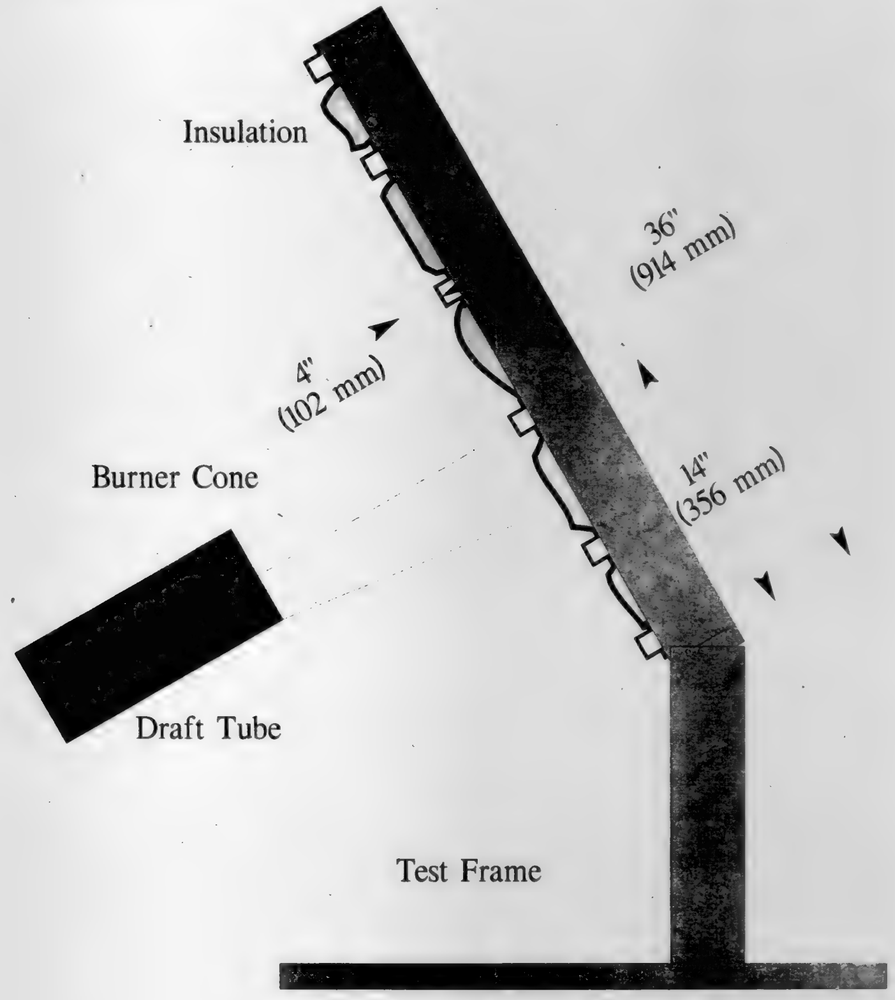


Figure 2 – Burnthrough Test Apparatus

(i) *Nozzle.* A nozzle must maintain the fuel pressure to yield a nominal 6.0 gal/hr (0.378 L/min) fuel flow. A Monarch-manufactured 80° PL (hollow cone) nozzle nominally rated at 6.0 gal/hr at 100 lb/in² (0.71 MPa) delivers a proper spray pattern.

(ii) *Fuel Rail.* The fuel rail must be adjusted to position the fuel nozzle at a depth of 0.3125 inch (8 mm) from the end plane of the exit stator, which must be mounted in the end of the draft tube.

(iii) *Internal Stator.* The internal stator, located in the middle of the draft tube, must be positioned at a depth of 3.75 inches (95 mm) from the tip of the fuel nozzle. The stator must also be positioned such that the integral igniters are located at an angle midway between the 10 and 11 o'clock position, when viewed looking into the draft tube. Minor deviations to the igniter angle are acceptable if the temperature and heat flux requirements conform to the requirements of paragraph VII(e) of this appendix.

(iv) *Blower Fan.* The cylindrical blower fan used to pump air through the burner must measure 5.25 inches (133 mm) in diameter by 3.5 inches (89 mm) in width.

(v) *Burner cone.* Install a 12 +0.125-inch (305 ±3 mm) burner extension cone at the end of the draft tube. The cone must have an opening 6 ±0.125-inch (152 ±3 mm) high and 11 ±0.125-inch (280 ±3 mm) wide (see figure 3).

(vi) *Fuel.* Use JP–8, Jet A, or their international equivalent, at a flow rate of 6.0 ±0.2 gal/hr (0.378 ±0.0126 L/min). If this fuel is unavailable, ASTM K2 fuel (Number 2 grade kerosene) or ASTM D2 fuel (Number 2 grade fuel oil or Number 2 diesel fuel) are acceptable if the nominal fuel flow rate, temperature, and heat flux measurements conform to the requirements of paragraph VII(e) of this appendix.

(vii) *Fuel pressure regulator.* Provide a fuel pressure regulator, adjusted to deliver a nominal 6.0 gal/hr (0.378 L/min) flow rate. An operating fuel pressure of 100 lb/in² (0.71 MPa) for a nominally rated 6.0 gal/hr 80° spray angle nozzle (such as a PL type) delivers 6.0 ±0.2 gal/hr (0.378 ±0.0126 L/min).

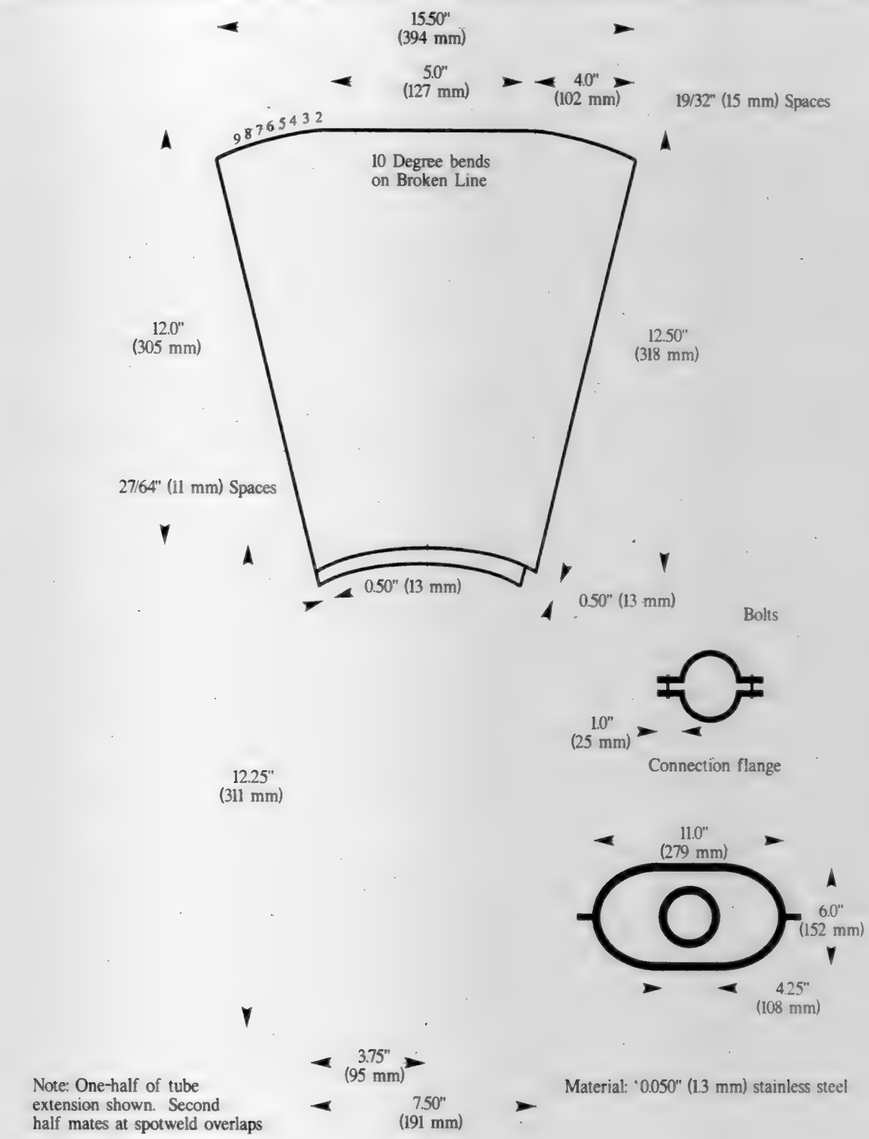


Figure 3 – Burner Draft Tube Extension Cone Diagram

(3) *Calibration rig and equipment.*

(i) Construct individual calibration rigs to incorporate a calorimeter and thermocouple rake for the measurement of heat flux and temperature. Position the calibration rigs to allow movement of the burner from the test rig position to either the heat flux or temperature position with minimal difficulty.

(ii) *Calorimeter.* The calorimeter must be a total heat flux, foil type Gardon Gage of an appropriate range such as 0–20 Btu/ft^2-sec (0–22.7 W/cm^2), accurate to ±3% of the indicated reading. The heat flux calibration method must be in accordance with paragraph VI(b)(7) of this appendix.

(iii) *Calorimeter mounting.* Mount the calorimeter in a 6- by 12- ±0.125 inch (152- by 305- ±3 mm) by 0.75 ±0.125 inch (19 mm ±3 mm) thick insulating block which is attached to the heat flux calibration rig during calibration (figure 4). Monitor the insulating block for deterioration and replace it when necessary. Adjust the mounting as necessary to ensure that the calorimeter face is parallel to the exit plane of the test burner cone.

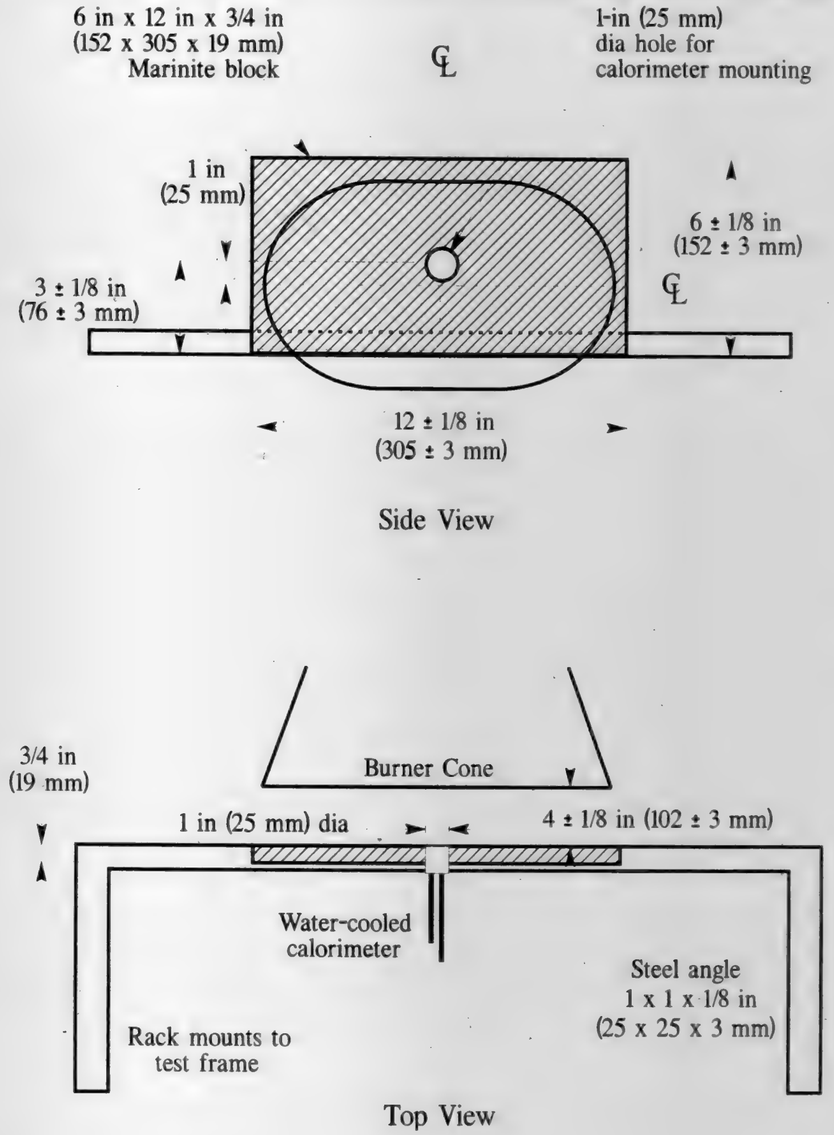


Figure 4 - Calorimeter Position Relative to Burner Cone

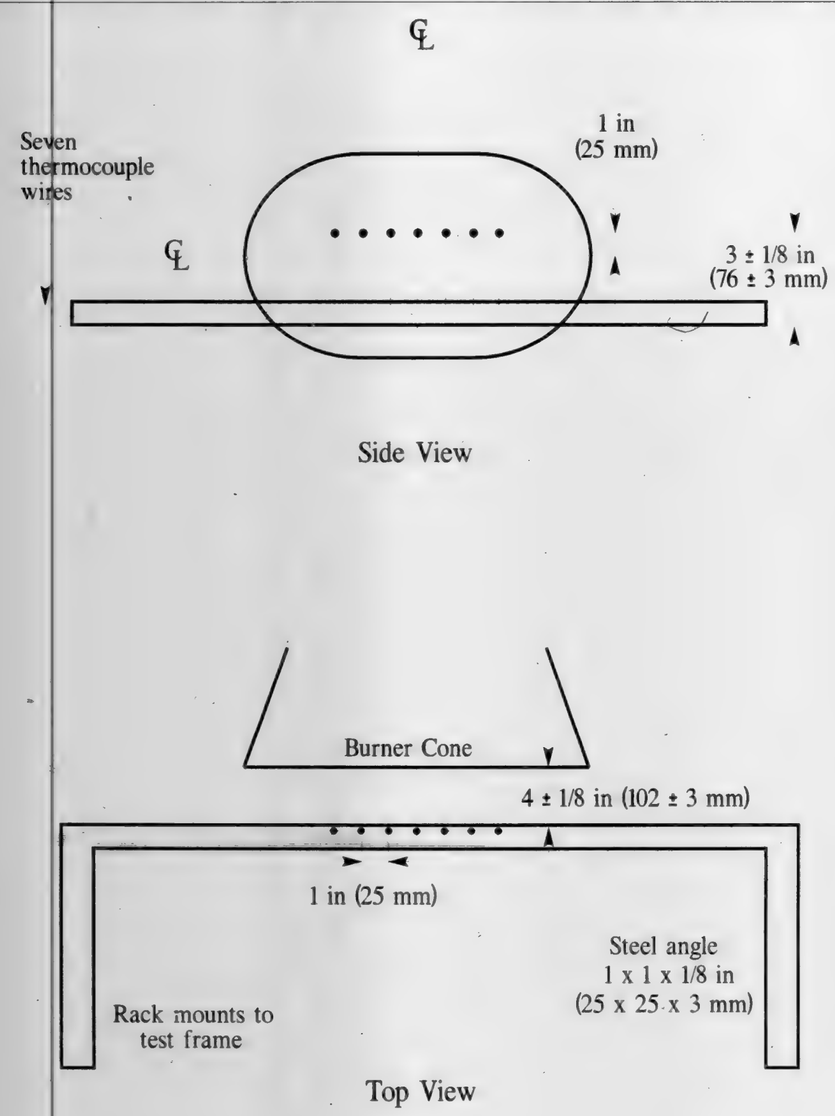


Figure 5 – Thermocouple Rake Position Relative to Burner Cone

(iv) *Thermocouples.* Provide seven 1/8-inch (3.2 mm) ceramic packed, metal sheathed, type K (Chromel-alumel), grounded junction thermocouples with a nominal 24 American Wire Gauge (AWG) size conductor for calibration. Attach the thermocouples to a steel angle bracket to form a thermocouple rake for placement in the calibration rig during burner calibration (figure 5).

(v) *Air velocity meter.* Use a vane-type air velocity meter to calibrate the velocity of air entering the burner. An Omega Engineering Model HH30A is satisfactory. Use a suitable adapter to attach the measuring device to the inlet side of the burner to prevent air from entering the burner other than through the measuring device, which would produce erroneously low readings. Use a flexible duct, measuring 4 inches wide (102 mm) by 20 feet long (6.1 meters), to supply fresh air to the burner intake to prevent damage to the air velocity meter from ingested soot. An optional airbox permanently mounted to the burner intake area can effectively house the air velocity meter and provide a mounting port for the flexible intake duct.

(4) *Test specimen mounting frame.* Make the mounting frame for the test specimens of 1/8-inch (3.2 mm) thick steel as shown in figure 1, except for the center vertical former, which should be 1/4-inch (6.4 mm) thick to minimize warpage. The specimen mounting frame stringers (horizontal) should be bolted to the test frame formers (vertical) such that the expansion of the stringers will not cause the entire structure to warp. Use the mounting frame for mounting the two insulation blanket test specimens as shown in figure 2.

(5) *Backface calorimeters.* Mount two total heat flux Gardon type calorimeters behind the insulation test specimens on the back side (cold) area of the test specimen mounting frame as shown in figure 6. Position the calorimeters along the same plane as the burner cone centerline, at a distance of 4 inches (102 mm) from the vertical centerline of the test frame.

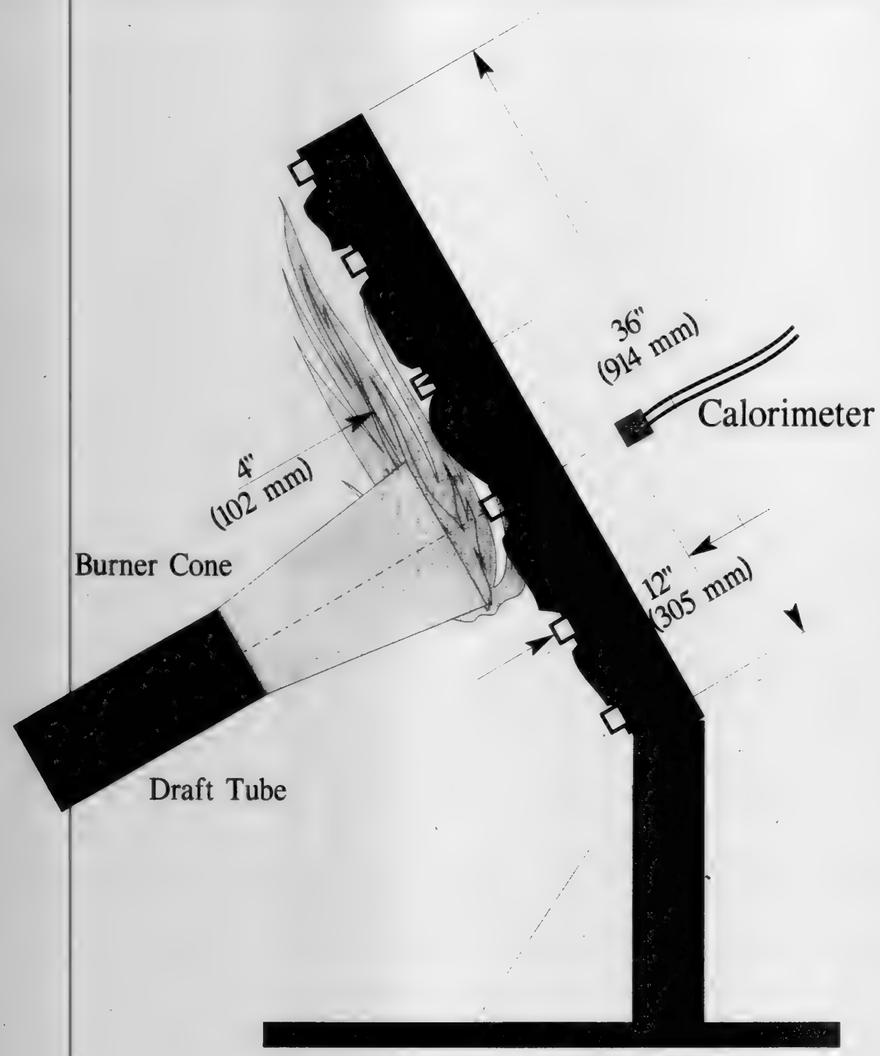


Figure 6 - . Position of Backface Calorimeters Relative to Test Specimen Frame

(i) The calorimeters must be a total heat flux, foil type Gardon Gage of an appropriate range such as 0–5 Btu/ft²-sec (0–5.7 W/cm²), accurate to ±3% of the indicated reading. The heat flux calibration method must comply with paragraph VI(b)(7) of this appendix.

(6) *Instrumentation.* Provide a recording potentiometer or other suitable calibrated instrument with an appropriate range to measure and record the outputs of the calorimeter and the thermocouples.

(7) *Timing device.* Provide a stopwatch or other device, accurate to ±1%, to measure the time of application of the burner flame and burnthrough time.

(8) *Test chamber.* Perform tests in a suitable chamber to reduce or eliminate the possibility of test fluctuation due to air movement. The chamber must have a minimum floor area of 10 by 10 feet (305 by 305 cm).

(i) *Ventilation hood.* Provide the test chamber with an exhaust system capable of removing the products of combustion expelled during tests.

(c) *Test Specimens.*

(1) *Specimen preparation.* Prepare a minimum of three specimen sets of the same construction and configuration for testing.

(2) *Insulation blanket test specimen.*

(i) For batt-type materials such as fiberglass, the constructed, finished blanket specimen assemblies must be 32 inches wide by 36 inches long (81.3 by 91.4 cm), exclusive of heat sealed film edges.

(ii) For rigid and other non-conforming types of insulation materials, the finished test specimens must fit into the test rig in such a manner as to replicate the actual in-service installation.

(3) *Construction.* Make each of the specimens tested using the principal components (*i.e.*, insulation, fire barrier material if used, and moisture barrier film) and assembly processes (representative seams and closures).

(i) *Fire barrier material.* If the insulation blanket is constructed with a fire barrier material, place the fire barrier material in a manner reflective of the installed arrangement For example, if the material will be placed on the outboard side of the insulation material, inside the moisture film, place if the same way in the test specimen.

(ii) *Insulation material.* Blankets that utilize more than one variety of insulation (composition, density, etc.) must have specimen sets constructed that reflect the insulation combination used. If, however, several blanket types use similar insulation combinations, it is not necessary to test each combination if it is possible to bracket the various combinations.

(iii) *Moisture barrier film.* If a production blanket construction utilizes more than one type of moisture barrier film, perform separate tests on each combination. For example, if a polyimide film is used in conjunction with an insulation in order to enhance the burnthrough capabilities, also test the same insulation when used with a polyvinyl fluoride film.

(iv) *Installation on test frame.* Attach the blanket test specimens to the test frame using 12 steel spring type clamps as shown in figure 7. Use the clamps to hold the blankets in place in both of the outer vertical formers, as well as the center vertical former (4 clamps per former). The clamp surfaces should measure 1 inch by 2 inches (25 by 51 mm). Place the top and bottom clamps 6 inches (15.2 cm) from the top and bottom of the test frame, respectively. Place the middle clamps 8 inches (20.3 cm) from the top and bottom clamps.

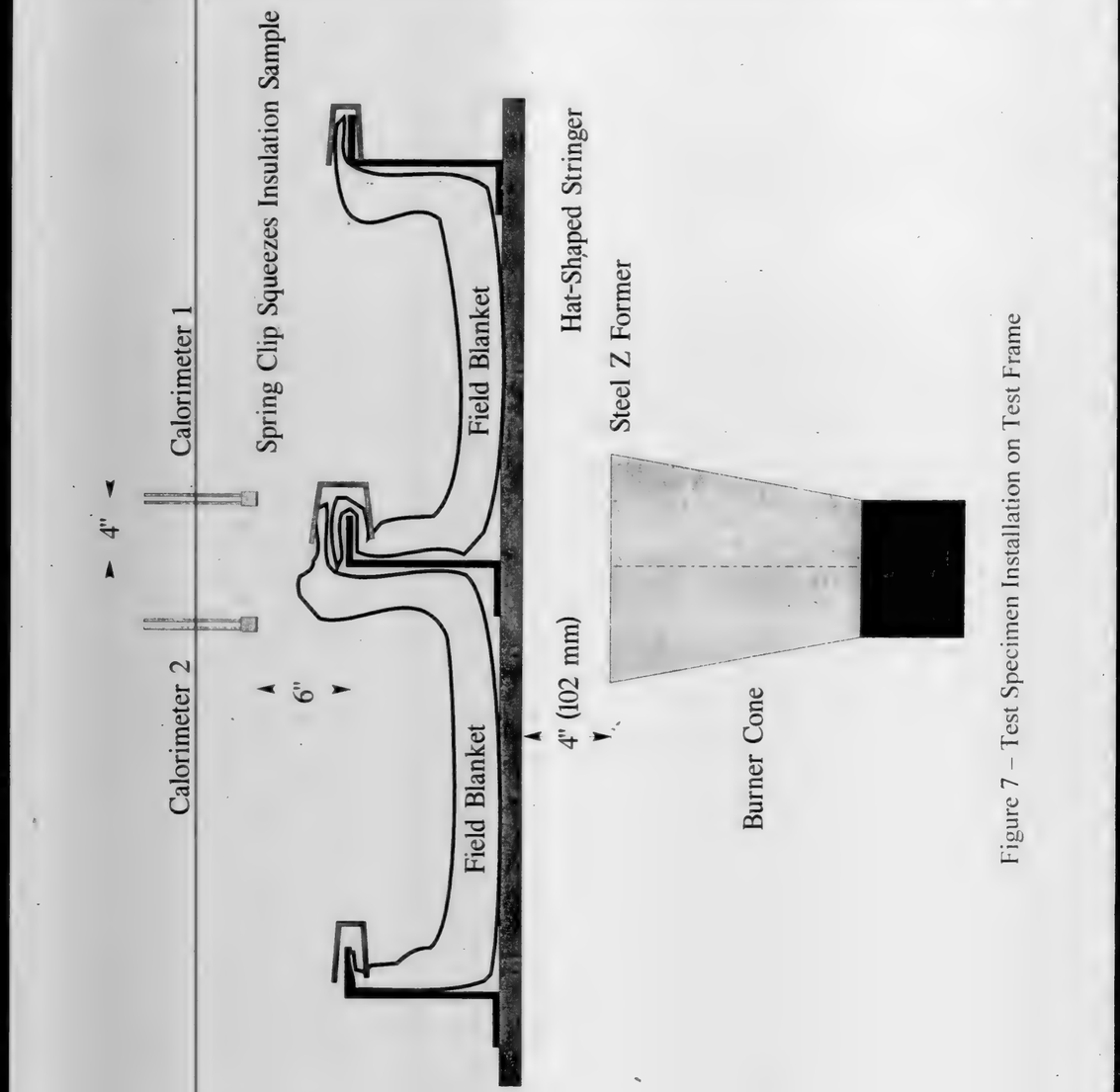


Figure 7 – Test Specimen Installation on Test Frame

(Note: For blanket materials that cannot be installed in accordance with figure 7 above, the blankets must be installed in a manner approved by the FAA.)

(v) *Conditioning.* Condition the specimens at 70° ±5°F (21° ±2°C) and 55% ±10% relative humidity for a minimum of 24 hours prior to testing.

(d) *Preparation of apparatus.*

(1) Level and center the frame assembly to ensure alignment of the calorimeter and/or thermocouple rake with the burner cone.

(2) Turn on the ventilation hood for the test chamber. Do not turn on the burner blower. Measure the airflow of the test chamber using a vane anemometer or equivalent measuring device. The vertical air velocity just behind the top of the upper insulation blanket test specimen must be 100 ±50 ft/min (0.51 ±0.25 m/s). The horizontal air velocity at this point must be less than 50 ft/min (0.25 m/s).

(3) If a calibrated flow meter is not available, measure the fuel flow rate using a graduated cylinder of appropriate size. Turn on the burner motor/fuel pump, after insuring that the igniter system is turned off. Collect the fuel via a plastic or rubber tube into the graduated cylinder for a 2-minute period. Determine the flow rate in gallons per hour. The fuel flow rate must be 6.0 ±0.2 gallons per hour (0.378 ±0.0126 L/min).

(e) *Calibration.*

(1) Position the burner in front of the calorimeter so that it is centered and the vertical plane of the burner cone exit is 4 ±0.125 inches (102 ±3 mm) from the calorimeter face. Ensure that the horizontal centerline of the burner cone is offset 1 inch below the horizontal centerline of the calorimeter (figure 8). Without disturbing the calorimeter position, rotate the burner in front of the thermocouple rake, such that the middle thermocouple (number 4 of 7) is centered on the burner cone.

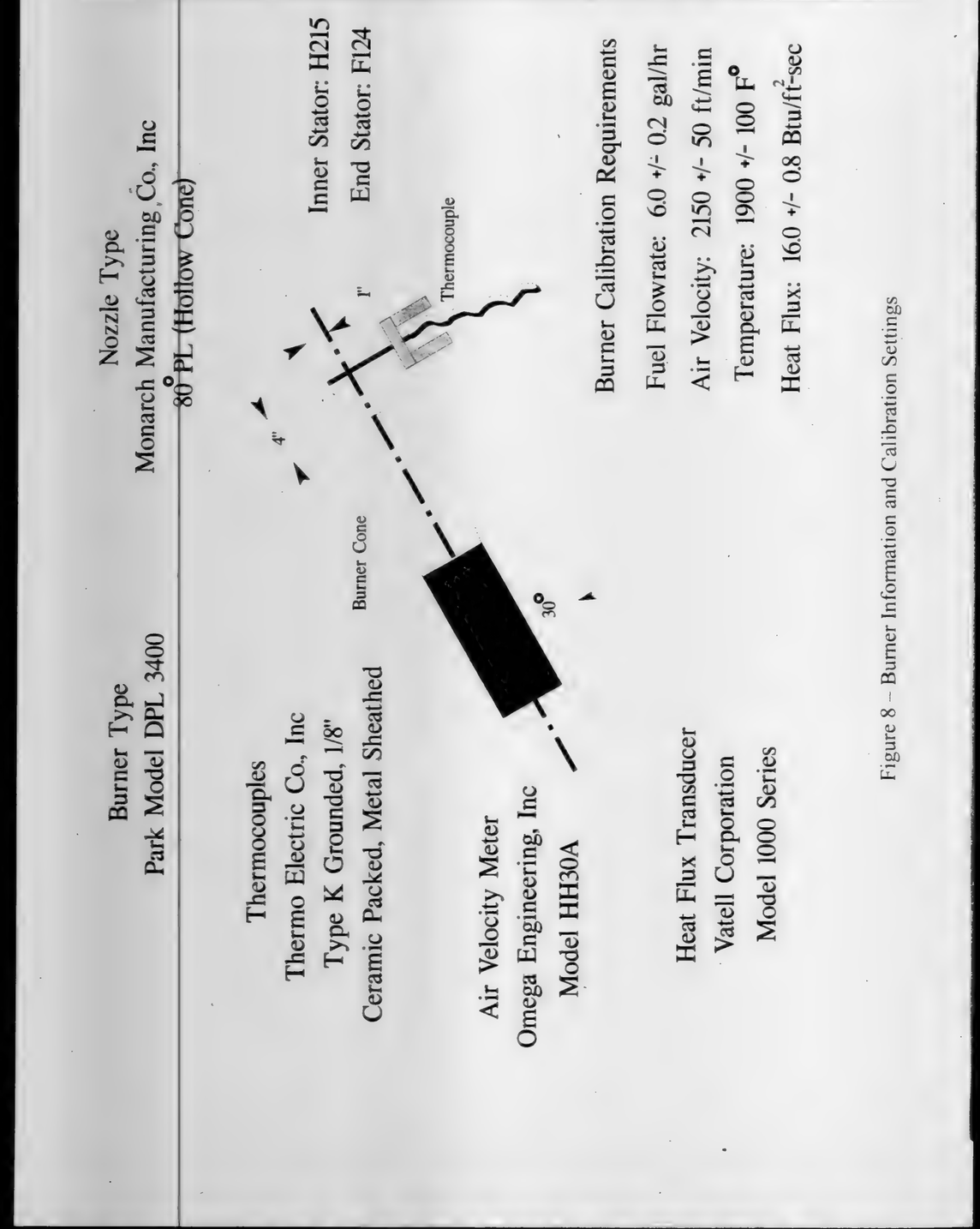


Figure 8 – Burner Information and Calibration Settings

Ensure that the horizontal centerline of the burner cone is also offset 1 inch below the horizontal centerline of the thermocouple tips. Re-check measurements by rotating the burner to each position to ensure proper alignment between the cone and the calorimeter and thermocouple rake. (Note: The test burner mounting system must incorporate "detents" that ensure proper centering of the burner cone with respect to both the calorimeter and the thermocouple rakes, so that rapid positioning of the burner can be achieved during the calibration procedure.)

(2) Position the air velocity meter in the adapter or airbox, making certain that no gaps exist where air could leak around the air velocity measuring device. Turn on the blower/motor while ensuring that the fuel solenoid and igniters are off. Adjust the air intake velocity to a level of 2150 ft/min, (10.92 m/s) then turn off the blower/motor. (Note: The Omega HH30 air velocity meter measures 2.625 inches in diameter. To calculate the intake airflow, multiply the cross-sectional area (0.03758 ft^2) by the air velocity (2150 ft/min) to obtain 80.80 ft^3/min. An air velocity meter other than the HH30 unit can be used, provided the calculated airflow of 80.80 ft^3/min (2.29 m^3/min) is equivalent.)

(3) Rotate the burner from the test position to the warm-up position. Prior to lighting the burner, ensure that the calorimeter face is clean of soot deposits, and there is water running through the calorimeter. Examine and clean the burner cone of any evidence of buildup of products of combustion, soot, *etc.* Soot buildup inside the burner cone may affect the flame characteristics and cause calibration difficulties. Since the burner cone may distort with time, dimensions should be checked periodically.

(4) While the burner is still rotated to the warm-up position, turn on the blower/motor, igniters and fuel flow, and light the burner. Allow it to warm up for a period of 2 minutes. Move the burner into the calibration position and allow 1 minute for calorimeter stabilization, then record the heat flux once every second for a period of 30 seconds. Turn off burner, rotate out of position, and allow to cool. Calculate the average heat flux over this 30-second duration. The average heat flux should be 16.0 ±0.8 Btu/ft^2 sec (18.2 ±0.9 W/cm^2).

(5) Position the burner in front of the thermocouple rake. After checking for proper alignment, rotate the burner to the warm-up position, turn on the blower/motor, igniters and fuel flow, and light the burner. Allow it to warm up for a period of 2 minutes. Move the burner into the calibration position and allow 1 minute for thermocouple stabilization, then record the temperature of each of the 7 thermocouples once every second for a period of 30 seconds. Turn off burner, rotate out of position, and allow to cool. Calculate the average temperature of each thermocouple over this 30-second period and record. The average temperature of each of the 7 thermocouples should be 1900°F ± 100°F (1038 ± 56°C).

(6) If either the heat flux or the temperatures are not within the specified range, adjust the burner intake air velocity and repeat the procedures of paragraphs (4) and (5) above to obtain the proper values. Ensure that the inlet air velocity is within the range of 2150 ft/min ±50 ft/min (10.92 ±0.25 m/s).

(7) Calibrate prior to each test until consistency has been demonstrated. After consistency has been confirmed, several tests may be conducted with calibration conducted before and after a series of tests.

(f) *Test procedure.*.

(1) Secure the two insulation blanket test specimens to the test frame. The insulation blankets should be attached to the test rig center vertical former using four spring clamps positioned as shown in figure 7 (according to the criteria of paragraph (c)(4) or (c)(4)(i) of this part of this appendix).

(2) Ensure that the vertical plane of the burner cone is at a distance of 4 ±0.125 inch (102 ±3 mm) from the outer surface of the horizontal stringers of the test specimen frame, and that the burner and test frame are both situated at a 30° angle with respect to vertical.

(3) When ready to begin the test, direct the burner away from the test position to the warm-up position so that the flame will not impinge on the specimens prematurely. Turn on and light the burner and allow it to stabilize for 2 minutes.

(4) To begin the test, rotate the burner into the test position and simultaneously start the timing device.

(5) Expose the test specimens to the burner flame for 4 minutes and then turn off the burner. Immediately rotate the burner out of the test position.

(6) Determine (where applicable) the burnthrough time, or the point at which the heat flux exceeds 2.0 Btu/ft^2-sec (2.27 W/cm^2).

(g) *Report.*

(1) Identify and describe the specimen being tested.

(2) Report the number of insulation blanket specimens tested.

(3) Report the burnthrough time (if any), and the maximum heat flux on the back face of the insulation blanket test specimen, and the time at which the maximum occurred.

(h) *Requirements.*

(1) Each of the two insulation blanket test specimens must not allow fire or flame penetration in less than 4 minutes.

(2) Each of the two insulation blanket test specimens must not allow more than 2.0 Btu/ft^2-sec (2.27 W/cm^2) on the cold side of the insulation specimens at a point 12 inches (30.5 cm) from the face of the test rig.

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 4. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

■ 5. Amend § 91.613 by redesignating the existing text as paragraph (a), and adding paragraph (b) to read as follows:

§ 91.613 Materials for compartment interiors.

* * * * *

(b) Thermal/acoustic insulation materials. For transport category airplanes type certificated after January 1, 1958:

(1) For airplanes manufactured before September 2, 2005, when thermal/acoustic insulation materials are installed in the fuselage as replacements after September 2, 2005, those materials must meet the flame propagation requirements of § 25.856 of this chapter, effective September 2, 2003.

(2) For airplanes manufactured after September 2, 2005, thermal/acoustic insulation materials installed in the fuselage must meet the flame propagation requirements of § 25.856 of this chapter, effective September 2, 2003.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 6. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

■ 7. Amend § 121.312 by adding paragraph (e) to read as follows:

§ 121.312 Materials for compartment interiors.

* * * * *

(e) Thermal/acoustic insulation materials. For transport category airplanes type certificated after January 1, 1958:

(1) For airplanes manufactured before September 2, 2005, when thermal/acoustic insulation materials are installed in the fuselage as replacements after September 2, 2005, those materials must meet the flame propagation requirements of § 25.856 of this chapter, effective September 2, 2003.

(2) For airplanes manufactured after September 2, 2005, thermal/acoustic insulation materials installed in the fuselage must meet the flame propagation requirements of § 25.856 of this chapter, effective September 2, 2003.

(3) For airplanes with a passenger capacity of 20 or greater, manufactured after September 3, 2007, thermal/acoustic insulation materials installed in the lower half of the fuselage must meet the flame penetration resistance requirements of § 25.856 of this chapter, effective September 2, 2003.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

■ 8. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

■ 9. Amend § 125.113 by adding paragraph (c) to read as follows:

§ 125.113 Cabin interiors.

* * * * *

(c) Thermal/acoustic insulation materials. For transport category airplanes type certificated after January 1, 1958:

(1) For airplanes manufactured before September 2, 2005, when thermal/acoustic insulation materials are installed in the fuselage as replacements after September 2, 2005, those materials must meet the flame propagation requirements of § 25.856 of this chapter, effective September 2, 2003.

(2) For airplanes manufactured after September 2, 2005, thermal/acoustic insulation materials installed in the fuselage must meet the flame propagation requirements of § 25.856 of this chapter, effective September 2, 2003.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 10. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

■ 11. Amend § 135.170 by adding paragraph (c) to read as follows:

§ 135.170 Materials for compartment interiors.

* * * * *

(c) Thermal/acoustic insulation materials. For transport category airplanes type certificated after January 1, 1958:

(1) For airplanes manufactured before September 2, 2005, when thermal/acoustic insulation materials are installed in the fuselage as replacements after September 2, 2005, those materials must meet the flame propagation requirements of § 25.856 of this chapter, effective September 2, 2003.

(2) For airplanes manufactured after September 2, 2005, thermal/acoustic insulation materials installed in the fuselage must meet the flame propagation requirements of § 25.856 of this chapter, effective September 2, 2003.

Issued in Washington, DC on July 14, 2003.

Marion Blakey,

Administrator.

[FR Doc. 03–18612 Filed 7–30–03; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Thursday,
July 31, 2003

Part IV

Nuclear Regulatory Commission

Yucca Mountain Review Plan, NUREG–1804, Revision 2, Final Report; Notice

NUCLEAR REGULATORY COMMISSION

Yucca Mountain Review Plan, NUREG–1804, Revision 2, Final Report

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability and public comments and responses.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is announcing the availability of "Yucca Mountain Review Plan, NUREG–1804, Revision 2, Final Report," public comments on that document and NRC response to comments. The "Yucca Mountain Review Plan" provides guidance to NRC staff for evaluating a potential license application to receive and possess high-level radioactive waste at a geologic repository constructed or operated at Yucca Mountain, Nevada.

ADDRESSES: Copies of any documents related to this action may be examined at the NRC Public Document Room, One White Flint North, Public File Area O1–F21, 11555 Rockville Pike, Rockville, Maryland. Documents are also available electronically at NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm.html*. From this site, the public can gain entry into NRC's Agencywide Documents Access and Management System, which provides text and image files of NRC's public documents. For more information, contact NRC's Public Document Room Reference staff by telephone at (800) 397–4209: (301) 415–4737: or e-mail: *pdr@nrc.gov*.

The document is also available at NRC's Web site at: *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1804/*. A hard copy may also be purchased from one of these two sources: (1) The Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328, Internet: *http://bookstore.gpo.gov*. Telephone: 202–512–1800, Fax: 202–512–2250; or (2) The National Technical Information Service, Springfield, VA 22161–0002, Internet: *http://www.ntis.gov*. Telephone: 1–800–553–6847 or 703–605–6000. A copy of the "Yucca Mountain Review Plan, NUREG–1804, Revision 2, Final Report" is also available for inspection, and copying for a fee, in NRC's Public Document Room, One White Flint North, Public File Area O1–F21, 11555 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Ciocco, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T–7F3, Washington, DC 20555–0001, telephone (301) 415–6391, e-mail: *jac3@nrc.gov*.

SUPPLEMENTARY INFORMATION: In preparing "Yucca Mountain Review Plan, NUREG–1804, Revision 2, Final Report," the U.S. Nuclear Regulatory Commission (NRC) staff carefully reviewed and considered more than 900 discrete comments received during the public comment period in about 35 individual letters and extracted from the transcripts of three public meetings. To facilitate the analysis, NRC staff grouped all written and oral comments on the Yucca Mountain Review Plan into the following 11 major topic areas:

(1) Introduction;
(2) Acceptance Review;
(3) General Information;
(4) Preclosure Period;
(5) Postclosure Period;
(6) Research and Development Program to Resolve Safety Issues;
(7) Performance Confirmation;
(8) Administrative and Programmatic Areas;
(9) Structure of the Yucca Mountain Review Plan;
(10) Selected Topics; and
(11) Other Comments.

Throughout this response to public comments, references to Yucca Mountain Review Plan sections use the section numbering that was in Revision 2, "Draft Report for Comment," published in March 2002. As a result of changes to address public comments, Chapter 1 of the draft Yucca Mountain Review Plan is now Appendix A in Revision 2, "Final Report," and Chapter 2 is now Appendix B. Consequently, Chapter 1 is the "Review Plan for General Information," and the "Review Plan for Safety Analysis Report" is now Chapter 2. The numbering of sections throughout the plan has been modified accordingly. For example, Section 3.2.1 in the "Draft Report for Comment" is now Section 1.2.1 in the "Final Report," and Section 4.2.1.3.7 in the "Draft Report for Comment" is Section 2.2.1.3.7 in the "Final Report."

1 Introduction

1.1 The U.S. Nuclear Regulatory Commission Staff Licensing Review

Issue 1: Will NRC staff conduct a thorough licensing review?

Comment. A number of commenters expressed concern about the statement in the Yucca Mountain Review Plan "Introduction" that NRC staff would conduct limited in-depth, detailed analyses and would not seek scientific precision. Commenters disagreed with the statement, in the Yucca Mountain Review Plan "Introduction," that a licensing review is not intended to be a detailed evaluation of all aspects of facility operations.

Another commenter stated the Yucca Mountain Review Plan appeared to be a menu of options rather than a plan for a thorough regulatory review using a risk-informed, performance-based decision process to review the Yucca Mountain license application.

Commenters stated that the Yucca Mountain Review Plan is subjective in nature and appears to be the same, or more lenient than, the process used for power reactors. Other commenters noted the lack of a performance history to support establishing defense-in-depth measures and safety margins, and suggested that any assumptions must be adequately supported and justified.

A commenter stated the risk-informed basis of the review plan and the lack of definitive criteria allows the U.S. Department of Energy (DOE) to determine the level of importance of almost all aspects of the repository program and allows DOE to determine the level of NRC review effort. A commenter also stated that the licensing review process must not only identify discrepancies but must also document them.

Response. NRC implements a licensing process in which a license applicant has the responsibility to demonstrate that nuclear material can be safely received and possessed, and a nuclear facility can be safely operated, in accordance with regulations. NRC staff licensing review determines whether this demonstration of compliance with regulations is adequate. The regulatory standard for a high-level waste repository at Yucca Mountain is "reasonable assurance" for preclosure matters, and "reasonable expectation" for postclosure matters. NRC regulations require a license applicant to provide information that is supported by a sound scientific and technical basis.

While NRC staff reviews the entire license application, the amount of information required to demonstrate that regulatory requirements are met may vary depending on the importance of the information. Specifically, for a risk-informed, performance-based regulatory program, NRC staff focuses on those areas that have been shown to have the greatest importance to public health and safety. Areas requiring detailed, NRC staff independent analyses are determined by NRC staff and reviewed to the level necessary to confirm analyses in order to make a reasonable assurance or reasonable expectation determination.

The Yucca Mountain Review Plan facilitates a risk-informed, performance-based review and allows for flexibility in the level of detail required for this review. The Commission addressed the use of a risk-informed, performance-based review for a potential Yucca Mountain repository licensing proceeding in its "Statement of Considerations" for 10 CFR part 63 (66 FR 55732, 55736–55737, November 2, 2001) as follows.

> In developing these criteria, the Commission sought to establish a coherent body of risk-informed, performance-based criteria for Yucca Mountain that is compatible with the Commission's overall philosophy of risk-informed, performance-based regulation ["Use of Probabilistic Risk Assessment Methods in Nuclear Regulatory Activities—Final Policy Statement" (60 FR 42622; August 16, 1995)]. Stated succinctly, risk-informed, performance-based regulation is an approach in which risk insights, engineering analysis and judgment (*e.g.*, defense in depth), and performance history are used to: (1) Focus attention on the most important activities, (2) establish objective criteria for evaluating performance, (3) develop measurable or calculable parameters for monitoring system and licensee performance, (4) provide flexibility to determine how to meet the established performance criteria in a way that will encourage and reward improved outcomes, and (5) focus on the results as the primary basis for regulatory decision-making.

Relevant defense-in-depth, safety margin, and performance history information from other facilities can be applied to a high-level waste repository. Many aspects of design and performance for nuclear facilities are analogous to those that would be used for a high-level waste repository. For example, there is extensive regulatory guidance on design and implementation of radiation health physics programs at nuclear facilities. Because this information would be used in review of a license application for a proposed repository at Yucca Mountain, the Yucca Mountain Review Plan references such regulatory guidance.

To clarify the risk-informed, performance-based review, the "Introduction" section of the draft Yucca Mountain Review Plan (now Appendix A) and the "Acceptance Review" section (now Appendix B) have been modified, as appropriate, to clarify the scope of NRC staff's licensing review.

Issue 2: Does the Yucca Mountain Review Plan assume that all licensing issues will be resolved and a license for a high-level waste repository at Yucca Mountain will be approved?

Comment. A commenter was concerned that the statement in the draft Yucca Mountain Review Plan "Introduction" that NRC staff will resolve issues using its technical understanding implied that all issues will be resolved in favor of licensing.

Response. The language in the draft Yucca Mountain Review Plan "Introduction" was not intended to suggest that NRC staff had prejudged the acceptability of a license application for Yucca Mountain. A conclusion as to whether all licensing issues are resolved is premature. NRC staff must first conduct a detailed technical review of the license application and consider whether information in DOE's application satisfies regulatory requirements and demonstrates that public health and safety, and environment can be protected.

NRC staff revised the language in the Yucca Mountain Review Plan to clarify this point.

Issue 3: Does NRC have adequate authority to impose license conditions?

Comment. Two commenters expressed concern that NRC lacked authority to impose and enforce license conditions because the "Introduction" of the draft Yucca Mountain Review Plan states that an applicant must agree to any license conditions. The commenters are concerned that applicants can reject or negotiate license conditions with the party having the greater political power having the advantage. The commenters also expressed concern with the statement in the Yucca Mountain Review Plan "Introduction" that the Commission has no authority to compel an applicant to come forward with or prepare a different proposal.

Response. The language in the "Introduction" was intended to state that license conditions should be discussed with the licensee and imposed only as necessary to meet the reasonable assurance or reasonable expectation standard. It was not intended to suggest that the Commission lacks the authority to impose license conditions. In fact, 10 CFR 63.42 provides that the "Commission shall include any license conditions, including license specifications, it considers necessary to protect the health and safety of the public, the common defense and security, and environmental values" in any license issued under 10 CFR part 63.

The Commission has authority to require regulatory compliance and protection of public health and safety and the environment. The Commission, however, cannot mandate that an applicant submit an application or adopt a specific design or analysis. The Commission has the authority to deny an application, grant an application, or grant an application with conditions. Unless the Commission concludes that regulations will be complied with and a facility will be safely operated and material safely received and possessed, a license will not be granted.

The "Introduction" section of the Yucca Mountain Review Plan has been modified to clarify NRC's authority.

Issue 4: When will the Yucca Mountain Review Plan be finalized?

Comment. One commenter stated that NRC should consider and incorporate the comments received as soon as practicable after the close of the comment period on the Yucca Mountain Review Plan.

Response. Consistent with the comment and NRC's responsibility to provide guidance on a timely basis, this **Federal Register** notice indicates the availability of the Yucca Mountain Review Plan, NUREG–1804, Revision 2, Final Report, well in advance of the projected December 2004 DOE license application.

2 Acceptance Review

2.1 Acceptance Review Process

Issue 1: Will an acceptance review of a license application for a high-level waste repository at Yucca Mountain be adequate?

Comment. Commenters expressed concern about the statement in the "Acceptance Review" section of the draft Yucca Mountain Review Plan that NRC staff does not determine the technical adequacy of information during the acceptance review and the potential for NRC staff to accept biased and erroneous information and the need for NRC to determine the accuracy and adequacy of information.

Response. The purpose of the acceptance review is to determine whether the application can be docketed, that is, whether the application is complete and contains sufficient information to enable NRC staff to conduct its detailed licensing review. The acceptance review does not presuppose what that licensing decision will be and, therefore, does not evaluate the technical adequacy of the information. If the license application passes the acceptance review, the application would be docketed, and the detailed technical review would begin. During the detailed technical review, NRC staff would determine whether the submitted information is accurate and demonstrates that regulatory requirements are met. If the license application fails the acceptance review (for example, it is incomplete and lacks sufficient information to support the

detailed licensing review), the license application would be rejected and returned to DOE, or NRC would identify the deficiencies and request additional information from DOE.

To allow NRC staff sufficient time to conduct a thorough acceptance review, NRC anticipates that the review can reasonably be completed within 90 days after the submission of the license application. During that time, the NRC staff will determine whether the application is complete and contains sufficient information for the NRC staff to conduct a detailed technical review. If the application is found acceptable for docketing, a notice would published in the **Federal Register** offering an opportunity for a formal adjudicatory hearing and public participation in the licensing process.

The "Acceptance Review" section of the Yucca Mountain Review Plan has been modified to clarify the purpose of the acceptance review.

Issue 2: What does completeness of information mean with respect to the acceptance review?

Comment. One commenter questioned the validity of the option "Accept, request additional information" that is contained within the checklist in the draft Yucca Mountain Review Plan section on Acceptance Review. The commenter expressed concerned that this option could lead to the incorrect impression that specific issues had been resolved, when in fact, more information is required for the detailed technical review.

Another commenter stated that use of the term "complete," in the Acceptance Review section of the draft Yucca Mountain Review Plan is confusing and recommended that this section be clarified to state that the degree of information available and appropriate for specific subject areas in the review plan may vary with the stage of repository development.

Response. The use of the option "accept, request additional information" is consistent with other NRC regulatory programs and the purpose of an acceptance review.

An acceptance review is conducted to determine whether the application is acceptable for docketing, that is, whether the application is complete and contains sufficient information to support a detailed licensing review. An application could be found deficient in an acceptance review due to the failure to submit required documents, or because there are omitted sections, illegible figures, or missing analyses.

If deficiencies are limited, NRC staff can proceed with a detailed licensing review while awaiting additional specific information from the applicant, provided the applicant provides omitted information in a timely manner.

The NRC staff decision, at the acceptance review stage, to accept or reject an application would be based on consideration of the submitted information and the importance of the missing information for beginning the detailed technical review.

The "Acceptance Review" section of the Yucca Mountain Review Plan has been modified to clarify the purpose of the acceptance review.

3 General Information

3.1 Content of the General Information Section of the Yucca Mountain Review Plan

Issue: What is the nature of the inspection and testing, of waste forms and waste packages listed in the "General Information" section of the draft Yucca Mountain Review Plan?

Comment. One commenter asked the purpose of the inspection and testing of waste forms and waste packages included in the "General Information" section of the Yucca Mountain Review Plan. Another commenter asked whether Naval reactor fuel would be inspected.

Response. Section 3.1, "General Information," of the draft Yucca Mountain Review Plan provides procedures and acceptance criteria for review of general information that is required to be in a license application for a high-level waste repository at Yucca Mountain in accordance with 10 CFR 63.21(b)(1). Review Method 2, "General Nature of the Geologic Repository Operations Area Activities," of this section provides guidance to NRC staff to confirm that DOE has provided a summary description of the proposed geologic repository operations area operations, including information on plans for the inspection and testing of waste forms and waste packages as they are received. The associated Acceptance Criterion 2 specifies that these plans should have been provided. The "Review Method" indicates that a detailed technical review of this information would be conducted using Section 4.5.6, "Plans for Conduct of Normal Activities, Including Maintenance, Surveillance, and Periodic Testing," of the draft Yucca Mountain Review Plan.

The purpose of the inspection and testing plans is to ensure that waste forms and waste packages arriving at a repository are intact and are functioning properly. Should waste forms or waste packages not be intact or not functioning properly, DOE would be required to take actions to place them in a safe condition.

DOE has the authority and the responsibility to characterize, inspect, and monitor Naval reactor fuel. Additionally, the characteristics of Naval fuel and its associated materials and compounds must be considered in DOE's demonstration of compliance with preclosure and postclosure performance objectives.

No changes to the Yucca Mountain Review Plan were made as a result of this comment.

3.2 Adequacy of Site Characterization

Issue 1: Would there be a need for additional site characterization work once a license application for a potential high-level waste repository at Yucca Mountain is submitted?

Comment. Commenters expressed concern about Acceptance Criterion 3 in Section 3.5, "Description of Site Characterization Work," of the draft Yucca Mountain Review Plan. This acceptance criterion addresses limitations that would qualify the descriptions of site characterization work and notes that the license application would have to identify any "additional site characterization work necessary to increase basic scientific understanding of any significant feature, event, and process." The commenters asked why a license application would be accepted if the applicant had not finished site characterization work or did not have a scientific understanding of any feature, event, or process. Other commenters noted that other licenses issued for shorter period are not granted until the applicants have completed their evaluations and that incomplete site characterization should not be relegated to the "Performance Confirmation Program" or to the "Research and Development Program to Resolve Safety Questions."

Response. A license for a potential high-level waste repository at Yucca Mountain can not be granted unless the applicant has demonstrated, and NRC has determined, regulatory requirements are met. Under 10 CFR 63.15, DOE is required to conduct a program of site characterization, with respect to the Yucca Mountain site, before DOE submits a license application. The statement in the review plan acknowledges that knowledge about the site and repository will evolve over the life-cycle of a repository as the required performance confirmation program continues in accordance with 10 CFR 63, subpart F. The objectives of the performance confirmation program is to confirm the assumptions, data and analyses that led to the findings that permitted construction of the repository and subsequent emplacement of waste. Per the requirements of 10 CFR 63.131, the program must provide data that indicate, where practicable, whether "[a]ctual subsurface conditions encountered and changes to those conditions during construction and waste emplacement operations are within the limits assumed in the licensing review." Also, the performance confirmation program must be started during site characterization and continue until permanent closure.

This section of the Yucca Mountain Review Plan has been modified to clarify the site characterization description.

Issue 2: Should the definition of the location and characteristics of the reasonably maximally exposed individual be clarified?

Comment. One commenter stated that Review Method 2 of draft Yucca Mountain Review Plan, Section 3.5, "Description of Site Characterization Work," incorrectly stated that the location and characteristics of the reasonably maximally exposed individual had already been specified by regulation. The commenter argued that it is the responsibility of DOE to propose these details in its license application.

Response. The Yucca Mountain Review Plan text has been revised consistent with 10 CFR 63.312 to reflect the required location and characteristics of the reasonably maximally exposed individual.

3.3 Material Control and Accounting Program

Issue 1: What level of detail is appropriate for the material control and accounting program for a construction authorization?

Comment. One commenter noted that the information on material control and accounting activities may be in rudimentary form and not as detailed as other areas at the construction authorization stage. Commenters concluded that the related information would not need to be complete at the time of construction authorization application. Commenters further suggested that the license application should describe the material control and accounting program and contain a commitment to meet the requirements at 10 CFR 63.78.

Response. Pursuant to 10 CFR part 63, there are specific requirements for the material control and accounting program that go beyond a simple commitment at the time of application for a construction authorization. Pursuant to 10 CFR 63.21(b), a license application must contain a description of the material control and accounting program to meet the requirements of 10 CFR 63.78, including design basis information, an assessment of potential impact of the material control and accounting program on design features, and a description of physical aspects of the material control and accounting program.

The introductory paragraph to Section 3.4, "Material Control and Accounting Program," of the draft Yucca Mountain Review Plan has been modified to clarify these requirements.

Issue 2: How will spent nuclear fuel and high-level radioactive waste in storage be inventoried?

Comment. One commenter noted that there are no specific guidelines in the Yucca Mountain Review Plan for a detailed inventory process of spent nuclear fuel and high-level radioactive waste after the waste is placed within sealed disposal canisters. Another commenter stated that inventory of emplaced waste would be ensured by controlling access to the subsurface.

Response. The Yucca Mountain Review Plan states, in accordance with 10 CFR 63.21, that the applicant must provide a description of how physical inventories of the repository will be planned, conducted, assessed, and reported. Consistent with the performance-based regulations in 10 CFR part 63, the Yucca Mountain Review Plan does not prescribe the methods for a demonstration of compliance. Accordingly, the applicant has the flexibility to design and implement a material control and accounting program that meets regulatory requirements.

No changes have been made to the Yucca Mountain Review Plan in response to this comment.

Issue 3: Under what conditions would spent nuclear fuel or high-level waste be transferred out of the geologic repository operations area?

Comment. One commenter asked for a definition of conditions that would require movement of waste from a repository.

Response. The geologic repository operations area is defined by 10 CFR part 63 as a high-level radioactive waste facility that is part of a geologic repository, including both surface and subsurface areas, where waste handling activities are conducted. As the Commission has previously indicated (66 FR 55732, 55743, November 2, 2001) "[w]aste retrieval is intended to be an unusual event only to be undertaken to protect public health and safety."

No changes were made to the Yucca Mountain Review Plan as a result of this comment.

Issue 4: Should the Yucca Mountain Review Plan define the quantity of material that would initiate reporting the loss of nuclear materials?

Comment. One commenter suggested that the review methods and acceptance criteria of draft Yucca Mountain Review Plan Section 3.4, "Material Control and Accounting Program," that address reporting requirements for lost nuclear material should apply not only to a significant quantity, but to any quantity of material that may be missing. Another commenter asked who would be responsible for preventing theft of special nuclear material.

Response. NRC must be notified of any loss of special nuclear material.

As is the case for other NRC-licensed facilities, the licensee, in this case DOE, is responsible for the safe and secure operation of the facility and for safe receipt and possession, including prevention of theft of nuclear material. NRC staff will review the license application to determine whether DOE has adequate physical protection and material control and accountability programs. Additionally, if a license is issued, NRC staff would conduct inspections to verify whether physical protection, and material control and accountability programs, are being properly implemented.

The term "significant quantity" was deleted from this section of the Yucca Mountain Review Plan.

Issue 5: Should the Yucca Mountain Review Plan address storage of emplaced waste?

Comment. One commenter expressed concern that the statement "the reviewer should consider that emplaced waste is stored until the repository is closed" in the Yucca Mountain Review Plan implies (because of requirements in 10 CFR 72.72) that physical inventory would be required at least yearly for waste packages in the subsurface. The commenter suggested deleting this statement, arguing that 10 CFR 63.2 defines disposal as "the emplacement of radioactive waste in a geologic repository with the intent of leaving it there permanently," which distinguishes disposal from storage operations. The commenter believes that the inventory aspect of the material control and accounting program could be met by controlling access to the subsurface, in conjunction with the use of Material Status Reports and the requirements in 10 CFR 63.71(b) for a record of movement of wastes within the geologic repository operations area.

Response. DOE has the flexibility to demonstrate appropriate techniques for meeting material control and accounting requirements. The statement addressing storage of emplaced waste has been removed.

3.4 Physical Protection

Issue 1: How would sensitive physical security plan information be protected?

Comment. Numerous commenters expressed concern about the level of protection from public access that would be provided for Yucca Mountain physical protection plans, programs, and procedures.

Response. Yucca Mountain physical protection plan information submitted to NRC staff for review and approval would be handled as Safeguards Information. Safeguards Information is protected from unauthorized disclosure in accordance with NRC regulations at 10 CFR 73.21. Access would be limited to those persons with an established "need to know."

No changes were made to the Yucca Mountain Review Plan in response to this comment.

Issue 2: Will NRC staff require a physical protection plan to be submitted with the license application?

Comment. Numerous comments were received regarding whether a physical protection plan must be submitted with a license application. The commenters were concerned that there would not be adequate information in the plan and that the plan should be a complete and comprehensive document at the time of application submission.

Response. Pursuant to 10 CFR 63.21(b)(3), DOE must submit "A description of the detailed security measures for physical protection of high-level radioactive waste in accordance with section 73.51 of this chapter. This plan must include the design for physical protection, the licensee's safeguards contingency plan, and security organization personnel training and qualification plan. The plan must list tests, inspections, audits, and other means to be used to demonstrate compliance with such requirements." The applicant must be knowledgeable as to the requirements in 10 CFR 73.51 and must design the requirements into the facility during the engineering and design phase of the project. After the issuance of a construction authorization, the applicant would submit a baseline physical protection plan for technical review to enable the NRC staff to determine whether the requirements of 10 CFR 73.51 are met. Revisions to the physical protection plan will be submitted for technical review as needed should requirements or design specifications warrant a change in security methods and procedures.

Modifications were made to the Yucca Mountain Review Plan to clarify the requirements for physical protection information.

Issue 3: Are physical protection requirements appropriately reflected in the Yucca Mountain Review Plan?

Comment. One commenter stated that the draft Yucca Mountain Review Plan sets forth physical protection requirements beyond those required by regulations. For example, 10 CFR 73.51(d)(4) requires daily random patrols for the protected area, but the draft Yucca Mountain Review Plan adds that a minimum of two patrols per security duty work shift should be conducted, unless the facility is in a remote area where more patrols may be necessary. Also, 10 CFR 73.51(d)(8) requires redundant communications capability, but the draft Yucca Mountain Review Plan adds a requirement that diverse systems should be used to ensure communications. In addition, the commenter recommends that the Yucca Mountain Review Plan simply state that DOE should commit to implementing the requirements of 10 CFR 73.51.

Response. The Yucca Mountain Review Plan is a guidance document and cannot impose regulatory requirements. The Yucca Mountain Review Plan has been revised consistent with the requirements in 10 CFR 73.51.

Issue 4: Should the Yucca Mountain Review Plan indicate that a designated response force could be used for security response?

Comment. One commenter suggested that for consistency with regulations, the Yucca Mountain Review Plan should indicate that DOE may use a designated response force rather than a local law enforcement authority in response to physical security threat.

Response. The Yucca Mountain Review Plan was modified to allow use of a designated response force, consistent with 10 CFR part 73.

Issue 5: Does the Yucca Mountain Review Plan include realistic measures for verifying the effectiveness of the physical protection system?

Comment. One commenter noted that the draft Yucca Mountain Review Plan statement in Section 3.5, "Physical Protection Plan," that verification of the physical protection system should be conducted on-site by the reviewer before plan approval should be deleted. The commenter noted that on-site verifications cannot be performed at the construction authorization stage and that this statement was inconsistent with other Yucca Mountain Review Plan statements that address only how the system will be designed, tested, and maintained.

Response. The Yucca Mountain Review Plan was modified to remove the statement that on-site verification of the physical protection system was required before plan approval at the construction authorization stage.

4 Preclosure Period

4.1 Preclosure Operations

Issue 1: What procedures will be used to control processes and event sequences during the operational phase of a repository?

Comment. One commenter questioned control of processes and events that might occur during operations at a repository. The commenter asked for details of procedures that would be implemented in specific cases.

Response. As is the case for other facilities regulated by NRC, operations related to safety or waste isolation must be performed using formal procedures. These procedures must address routine operations as well as emergencies. At a high-level waste repository, the procedures would also reflect the results of the preclosure safety analysis, to the extent applicable, which includes hazards identification, consequence evaluation, and risk assessment.

Operating procedures would be evaluated before approval for receipt and possession of waste and would continue to be evaluated under the NRC inspection program that would be in place during the entire operational period of a repository.

No changes were made to the Yucca Mountain Review Plan as a result of this comment.

Issue 2: What are specific operating limits, parameters, or design criteria for the repository preclosure period?

Comment. Commenters asked questions relating to specific operating limits, parameters, or design criteria for the operating period of a repository. Commenters also asked how NRC could evaluate the adequacy of a preclosure safety analysis if the design contained in the license application was not final.

Response. Specific operating limits, parameters, and design criteria are not included in the Yucca Mountain Review Plan. DOE must define these parameters. The review methods and acceptance criteria in the Yucca Mountain Review Plan are flexible rather than prescriptive because the regulations at 10 CFR part 63 are risk-informed and performance-based.

Pursuant to 10 CFR 63.21, the application must be as complete as possible in the light of information that is reasonably available at the time of docketing. The regulations also require that DOE update the application to permit a timely review before the issuance of a license. These requirements also apply to the repository design.

No changes were made to the Yucca Mountain Review Plan in response to this comment.

Issue 3: What is the meaning of the term "operational period"?

Comment. One commenter asked for a definition of the term "operational period" as used in Section 4.1.1.1, "Site Description as It Pertains to Preclosure Safety Analysis," of the draft Yucca Mountain Review Plan. The commenter asked whether the term includes emplacement only or also post-emplacement performance monitoring.

Response. A definition of the term "operational period" is found in 10 CFR 63.102(c), which states:

* * * A period of operations follows the Commission's issuance of a license. The period of operations includes the time during which emplacement of waste occurs; any subsequent period before permanent closure during which the emplaced wastes are retrievable; and permanent closure, which includes sealing openings to the repository. Permanent closure represents the end of the performance confirmation program; final backfilling of the underground facility, if appropriate; and the sealing of shafts, ramps, and boreholes.

Since this definition is included in 10 CFR part 63, no changes were made to the Yucca Mountain Review Plan.

4.2 Waste Retrieval Operations

Issue 1: Does the Yucca Mountain Review Plan adequately address waste retrieval operations?

Comment. Commenters raised questions regarding waste retrieval. One commenter asked for: (i) Any assumptions associated with waste retrieval; (ii) the time frame after closure for retrieval; and (iii) the number of years after closure during which it would be possible to retrieve waste. The same commenter stated that once waste retrieval criteria are established, they must not be watered down. A commenter stated that a "high-speed, fast and dirty" retrieval procedure should be established to respond to sudden, catastrophic events. Other commenters stated that the Yucca Mountain Review Plan should require DOE to physically show it can remotely emplace and retrieve disposal canisters.

Response. The Commission has previously addressed issues related to retrievability of waste from a high-level waste repository at Yucca Mountain (66 FR 55743, November 2, 2001) and indicated that a physical demonstration of retrievability would not be necessary for a construction authorization.

Some commenters were concerned that NRC's proposed regulations required DOE to submit plans for retrievability, but did not require an actual demonstration that the plans were feasible. Some commenters suggested that the NRC should require DOE to demonstrate the feasibility of its retrieval plans. * * * If necessary to protect public health and safety, waste package retrieval in a deep geologic repository would be a first-of-a-kind endeavor with unique engineering and geotechnical challenges. The Commission recognizes that the retrieval operation would be an unusual event, and may be an involved and expensive operation (U.S. Nuclear Regulatory Commission, "Staff Analysis of Public Comments on Proposed Rule10 CFR part 60, 'Disposal of High-Level Radioactive Wastes in Geologic Repositories,'" Office of Nuclear Regulatory Research, NUREG–0804, December 1983; p. 11). As such, DOE can expect that its plans and procedures in this area will receive extensive, detailed review by the NRC staff as part of any construction authorization review. The feasibility and reasonableness of DOE's retrieval plans will be reviewed by the NRC staff at the time of the license application submittal. * * * However, the Commission does not envision that DOE will need to build full-scale prototypes of its retrieval systems to demonstrate that its retrieval plans are practicable at the time of construction authorization. Rather, DOE needs to design (and build) the repository in such a way that the retrieval option is not rendered impractical or impossible.

With regard to the time frame for waste retrieval, the Commission stated (66 FR 55743, November 2, 2001):

Some commenters expressed a belief that the period of waste package retrieval could be accomplished beyond 50 years, and there should be flexibility for extending the period of retrievability to longer time periods. One commenter suggested that the repository should be monitored to determine if there will be problems (*e.g.*, too high a temperature, too much water inflow) that would require the waste to be retrieved. The same commenter suggested that stewardship of the waste be maintained (indefinitely) so that waste could be made available for future energy needs. * * * The 50-year limit on waste retrieval operations was adopted from the generic requirements found at Part 60. At the time Part 60 was first promulgated, the Commission solicited comment on what was then a proposed 100-year retrieval period (46 FR 35282; July 8, 1981). However, after an analysis of public comments, it was determined that the Commission's earlier proposal was excessive, and the shorter 50-year period was decided [up]on (U.S. Nuclear Regulatory Commission, "Staff Analysis of Public Comments on Proposed Rule 10 CFR part 60, 'Disposal of High-Level Radioactive Wastes in Geologic Repositories,'" Office of Nuclear Regulatory Research, NUREG–0804, December 1983). In specifying this time period, the Commission noted that the 50-year period was "provisional" and subject to possible modification (*i.e.*, longer periods) in light of both the planned waste emplacement schedule and completion of the performance confirmation program and a review of those results. After 50 years of waste emplacement operations and performance confirmation, the Commission previously reasoned, it is likely that significant technical uncertainties will be resolved, thereby providing greater assurance that the performance objectives will be met. It should be noted that DOE is free to design the repository for retrieval periods greater than 50 years. In fact, the Commission understands that DOE is contemplating working designs that may provide for a retrieval period of up to 300 years. * *. * Thus, as recommended in this comment, allowance for longer waste retrieval periods greater than 50 years is permitted under the regulation. As for longer retrieval periods that would permit the recovery of the high-level waste as a potential resource, the Commission has previously noted that its retrieval provision is not intended to facilitate recovery. Waste retrieval is intended to be an unusual event only to be undertaken to protect public health and safety.

The Commission also generally addressed assumptions about waste retrieval (66 FR 55743, November 2, 2001):

One commenter inquired as to the disposition of the waste if it is determined that retrieval is necessary. * * * Part 63 does not specifically address any required actions for the handling of retrieved waste from an operating geologic repository, but * * * Section 63.21(c)(7) [in the final rule] does require that DOE's Safety Analysis Report include a description of its plans for the alternate storage of the radioactive wastes, should retrieval be necessary. Retrieved waste would need to be controlled in compliance with applicable regulations at the time of retrieval.

DOE must justify in a license application any assumptions used in its plans for waste retrieval. DOE must demonstrate that the repository is designed to allow retrieval in a manner that would protect health and safety as well as keeping radiation exposures as low as is reasonably achievable. Neither the Nuclear Waste Policy Act nor 10 CFR part 63 include a requirement for an expedited retrieval in case of sudden catastrophic events, however, NRC would require actions necessary to protect health and safety.

No changes were made to the Yucca Mountain Review Plan in response to this comment.

Issue 2: Does the Yucca Mountain Review Plan adequately address plans for alternate storage of waste?

Comment. One commenter stated that DOE did not address alternate storage of waste in the Yucca Mountain Final Environmental Impact Statement. The commenter asked whether, by including

alternative storage in the Yucca Mountain Review Plan, NRC is inferring its expectation that a license application for a high-level waste repository at Yucca Mountain would cover alternate storage. The commenter noted the Yucca Mountain Review Plan is specific about assumed elements of the repository system, but does not describe such elements earlier in the review plan. The commenter suggested that the Yucca Mountain Review Plan be revised to include NRC expectations of the specific elements of the repository system that would be the subject of a license application.

Response. A review of DOE plans for alternate storage of waste is included within the Yucca Mountain Review Plan because these plans are specifically required by 10 CFR 63.21(c)(7), which requires that DOE's Safety Analysis Report include a description of plans for the alternate storage of the radioactive wastes should retrieval be necessary. Retrieved waste would need to be controlled in compliance with applicable regulations at the time of retrieval. Beyond requiring such plans, the regulations have no specific requirements on this subject. Accordingly, the three components of the related Review Method and Acceptance Criterion for reviewing plans for alternative storage of waste (*i.e.*, the physical location and boundary of the proposed alternate storage area are adequately defined; the proposed alternate storage area is sufficient to hold the waste; and the area is adequate to protect workers and the public during the transport of the waste to alternate storage) are sufficient.

No changes have been made to the Yucca Mountain Review Plan in response to this comment.

4.3 Criticality

Issue: What equipment would be available for addressing criticality accidents?

Comment. One commenter asked what equipment would be available in a repository for high-level waste at Yucca Mountain to deal with criticality accidents.

Response. Pursuant to 10 CFR 63.112(e)(6), DOE must address the potential for criticality accidents during the preclosure period of operations. After any criticality risks have been established, NRC will evaluate whether equipment should be provided to deal with such accidents.

No changes were made to the Yucca Mountain Review Plan in response to this comment.

4.4 Preclosure Safety Analysis

Issue 1: Is the definition of probability associated with Category 2 event sequences adequate?

Comment. One commenter stated that the use of one chance in 10,000 over 300 years is illogical and non-conservative considering the trillions of curies that would be present in a high-level waste repository at Yucca Mountain. The commenter stated that if the criteria for excluding events from Category 2 are based on opinion and speculation, the information could be biased, erroneous, or misleading. The commenter stated that the criteria for Category 2 must be broadened to overcome these inadequacies and that NRC staff needs to be careful when excluding catastrophic events from Category 2.

Response. A licensing review for a high-level waste repository at Yucca Mountain will be conducted in an objective manner to determine whether information is accurate and regulatory standards are met. Error in analyses will be addressed in NRC staff's review of analysis, design, and operations.

The Commission addressed the Category 2 criteria in the "Statement of Considerations" for 10 CFR part 63 (66 FR 55741–55742, November 2, 2001) as follows.

The Commission agrees that the basis for determining the probability for design basis events and what initiating events should be considered in the safety analysis should be clarified. * * * the Commission has revised the rule for clarity as follows: (1) A new term "initiating event" is defined; (2) the present term "design basis event" is replaced with a new term "event sequence"; and (3) Section 63.102(f) is revised to clarify the scope of the preclosure safety analysis and the requirements for the inclusion or exclusion of specific, naturally-occurring, and human-induced hazards in the safety analysis.

Initiating events are to be considered for inclusion in the preclosure safety analysis for determining event sequences only if they are reasonable (*i.e.*, based on the characteristics of the geologic setting and the human environment, and are consistent with precedents adopted for nuclear facilities with comparable or higher risks to workers and the public).

* * * * *

Within the context of the ISA (PSA), DOE is expected to identify the relevant initiating events and event sequences and estimate potential radiologic exposures. Part 63 provides flexibility to DOE in selecting an appropriate approach for estimating doses, including selection of pertinent exposure pathways and the degree of conservatism or realism to include in the analysis. DOE will need to defend and support whatever approach it selects for identifying initiating events and analyzing event sequences. In the selection of a particular approach, DOE will need to consider the uncertainties and limitations associated with a particular method of analysis and data.

Regulation of nuclear facilities requires realistic or reasonably conservative approaches that take into account importance to safety, technical complexity, and the degree and nature of any associated uncertainty. These concepts underlie the "reasonable assurance" and "reasonable expectation" determinations that would be applied in reviewing the DOE license application. However, the Yucca Mountain Review Plan recognizes that, consistent with a risk-informed, performance-based approach, DOE has the flexibility to select an approach that could include reasonably conservative analyses.

The Commission addressed the issue of conservatism in the "Statement of Considerations" for 10 CFR part 63 (66 FR 55739–55740, November 2, 2001).

Confidence that DOE has, or has not, demonstrated compliance with EPA's standards is the essence of NRC's licensing process * * *. The Commission does not believe that NRC's use of "reasonable assurance," as a basis for judging compliance, causes focus on extreme values (*i.e.*, tails of distributions) for representing the performance of a Yucca Mountain repository. Further * * * if the Commission is called on to make a decision * * * the Commission will consider the full record before it. That record will include many factors in addition to whether the site and design comply with the performance objectives (both preclosure and postclosure performance standards) * * *. The Commission could consider the QA program, personnel training program, emergency plan and operating procedures, among others, in order to determine whether it has confidence that there is no unreasonable risk to the health and safety of the public.

The Commission is satisfied that a standard of "reasonable expectation" allows it the necessary flexibility to account for inherently greater uncertainties in making long-term projections of a repository's performance. The Commission agrees with EPA and others that it is important to not exclude important parameters from assessments and analyses simply because they are difficult to precisely quantify to a high degree of confidence * * *. The Commission expects that the required analyses of postclosure performance will focus on the full range of defensible and reasonable parameter distributions, and that they should not be constrained only to extreme physical situations and parameter values. For other determinations regarding compliance of the repository with preclosure objectives, the Commission will retain a standard of "reasonable assurance" consistent with its practice for other licensed operating facilities subject to active licensee oversight and control.

No changes were made to the Yucca Mountain Review Plan as a result of this comment.

Issue 2: Has an evaluation of the characteristics of the controlled area been included in the Yucca Mountain Review Plan?

Comment. One commenter stated that no mention could be found in the Yucca Mountain Review Plan of the size and location of the controlled area. The commenter argued that specification of the controlled area is a key factor in the licensing process and must be addressed in a license application and in the NRC review.

Response. The controlled area is defined by 10 CFR part 63.302. This is addressed in Section 4.1.1.1, "Site Description as It Pertains to Preclosure Safety Analysis", of the draft Yucca Mountain Review Plan.

The Yucca Mountain Review Plan was modified to include reference to the controlled area, where appropriate.

Issue 3: Does the Yucca Mountain Review Plan adequately evaluate radiation exposures during the preclosure operations at a potential high-level waste repository at Yucca Mountain?

Comment. One commenter noted that the Yucca Mountain Final Environmental Impact Statement indicated that the predominant radiological impacts during the preclosure period would be from radon releases. The commenter stated that the Yucca Mountain Review Plan does not address radiological safety associated with potential radon releases and associated worker exposures. The commenter suggests that these potential safety issues be added to the review.

Response. Safety issues related to radiation exposure, including radon, during the preclosure period are covered in the Yucca Mountain Review Plan. DOE is required by 10 CFR 63.111 to use a preclosure safety analysis to evaluate compliance with performance objectives for the preclosure period. A preclosure safety analysis proceeds from an identification of hazards, events, and event sequences to assessments of consequence and risk. This process includes an evaluation of radiation hazards and risks. The Yucca Mountain Review Plan reflects a thorough review of DOE's preclosure safety analysis as set forth in Section 4.1.1, "Preclosure Safety Analysis," of the draft Yucca Mountain Review Plan.

No changes were made to the Yucca Mountain Review Plan in response to this comment.

4.5 Structures, Systems, and Components of the Subsurface Facility

Issue: Will the design, construction, control, and quality assurance of the waste canisters be adequate?

Comment. Commenters expressed a number of concerns about the standards to be used for waste canisters. One commenter raised a number of concerns regarding how the quality assurance requirements would be met for structures, systems, and components important to safety, safety controls, and measures to ensure availability of safety systems.

Response. If the waste canisters are important both to safety and to waste isolation, their design, manufacture, and performance would be subject to NRC's quality assurance requirements. These requirements are defined in 10 CFR part 63, subpart G, and are consistent with NRC's quality assurance standards for other nuclear facilities. DOE must satisfy these quality assurance requirements by performing planned and systematic actions necessary to provide confidence that the geologic repository and its structures, systems, and components will perform satisfactorily.

The regulations require that quality assurance requirement for systems, structures, and components be evaluated during a licensing review for a high-level waste repository at Yucca Mountain. NRC staff would use the quality assurance requirements in 10 CFR part 63, subpart G to determine whether the program was adequate.

No changes were made to the Yucca Mountain Review Plan as a result of this comment.

4.6 Alternative Designs

Issue: Should alternative designs be examined in a license application for a high-level waste repository at Yucca Mountain?

Comment. One commenter was concerned that nowhere in the Yucca Mountain Review Plan is there clear direction to NRC staff reviewers to ensure that DOE, in its application and supporting documents, has adequately considered alternative repository designs. The commenter noted that the subject is touched on in draft Yucca Mountain Review Plan Section 4.3, "Research and Development Program to Resolve Safety Questions," however, this section does not specifically address alternative designs, outside of the scope of the research and development program, to resolve safety questions.

The commenter noted that because DOE's design could be contested during licensing, and Nye County, Nevada, the Nuclear Waste Technical Review Board, and others believe that a cooler repository would reduce uncertainties in long-term performance, NRC staff reviewers should take steps to ensure that the DOE license application is complete and of high quality on that issue. The commenter concluded that a thorough and comprehensive test of DOE's design, specifically with respect to reducing thermal effects and the potential for water to contact the waste packages, should be a minimum test of the adequacy and completeness of a DOE license application for a high-level waste repository at Yucca Mountain.

Response. The question as to whether DOE must consider alternative repository designs was previously addressed by the Commission in its "Statement of Considerations" for 10 CFR part 63 (66 FR 55748–55749, November 2, 2001) as follows:

The Commission agrees with the comments and has removed [this requirement to evaluate alternative designs] from the regulations. The NRC review should focus on the safety aspects of DOE's proposed approach. DOE should only be required to propose alternatives from its proposed approach in areas where the NRC review determines DOE's approach is deficient. When developing proposed part 63, the NRC staff adopted this requirement from 10 CFR part 60, the existing generic NRC high-level waste disposal regulation, which contains a similar requirement in 10 CFR 60.21(c)(1)(ii)(D). At the time of the issuance of part 60, DOE objected to this specific requirement with basically the same argument presented for Part 63. In the "Statement of Considerations" for part 60 (published in [the] **Federal Register** [notice] on June 21, 1983; 48 FR 28194), the Commission justified the requirement by stating "If the Commission finds, on the basis of its review, that the adoption of some alternative design feature would significantly increase its confidence that the performance objectives would be satisfied, and that the costs of such an approach are commensurate with the benefits, it should not hesitate to insist that the alternative be adopted."

The decision to require DOE to submit alternatives for certain site design features was a discretionary action on the part of the Commission as nothing (in either the Atomic Energy Act of 1954, as amended, or the Nuclear Waste Policy Act of 1982, as amended) required the Commission to obtain information on alternative designs at the site level. At the time part 60 was initially published (1983), the Commission implemented an appropriate regulatory framework for a generic program facing many uncertainties. Multiple sites with very different geological settings were under consideration. The NRC's generic HLW regulations had to address the resolution of a large number of technical issues in the relative short licensing review period established by the Nuclear Waste Policy Act of 1982. With all the uncertainties in the program, the Commission believed it was important to require design alternatives be submitted with the application to increase the probability of NRC approval of the license application within the three-year schedule mandated by Congress.

The Commission has revisited the decision to require submission of alternative designs. Specifically, the Commission no longer believes this information should be submitted with a license application and, accordingly, has removed this requirement. To protect public health and safety and the common defense and security, which is the NRC's mandate under the Atomic Energy Act of 1954 as amended, the Commission will closely scrutinize the design proposed by DOE. Consistent with this mandate, the new part 63 is designed to be a risk-informed, performance-based regulation which establishes overall repository performance objectives. DOE must demonstrate that the repository meets the performance objectives. The NRC review is an audit of DOE's demonstration to determine if we agree that the performance objectives have been met. If the NRC believes that the site does not meet the performance objectives within uncertainties addressed in the analysis, then it is DOE's responsibility to either defend its current design or propose an alternative design that can meet the NRC acceptance criteria.

Because thermal effects and the potential for water to contact the waste packages may be important considerations in the design of a potential high-level waste repository at Yucca Mountain, DOE would need to provide an assessment of the thermal operating range for a design in its license application. The NRC staff will determine, before docketing, whether the information provided is sufficient for NRC to conduct its review.

No changes have been made to the Yucca Mountain Review Plan in response to this comment.

5 Postclosure Period

5.1 Consistency With Postclosure Requirements in 10 CFR Part 63

Issue 1: Should the text in the postclosure sections of the Yucca Mountain Review Plan be modified to more closely reflect the language of 10 CFR part 63?

Comment. Several commenters identified places where the text of the Yucca Mountain Review Plan could be revised to better reflect the language of postclosure requirements in 10 CFR part 63, subpart L. One commenter noted several places where text should be modified to refer to the dose to the reasonably maximally exposed individual rather than more general terms such as average annual dose. Another commenter noted incorrect citations in Section 4.2.1.3.14.4 of the draft Yucca Mountain Review Plan. Additional comments indicated several locations where the draft Yucca Mountain Review Plan text on postclosure public health and environmental protection (Section 4.2.1.4) could be modified to be more consistent with the requirements of 10 CFR part 63, subpart L.

Response. The text in the Yucca Mountain Review Plan should accurately reflect the language and intent of 10 CFR part 63.

The Yucca Mountain Review Plan has been modified, as appropriate, to provide correct references to the postclosure requirements in 10 CFR part 63. Text citations for the required characteristics of the reference biosphere [10 CFR 63.305(a–d)] have been corrected as needed. Also, text in Section 4.2.1.4 of the draft Yucca Mountain Review Plan has been modified to improve consistency between the review methods and acceptance criteria and the postclosure public health and environmental standards specified in 10 CFR part 63, subpart L.

Issue 2: Is the description of the representative volume consistent with NRC regulations in 10 CFR 63.312?

Comment. Several commenters stated that the use of a representative volumes of groundwater in Sections 4.2.1.3.12, "Representative Volume," and 4.2.1.4.3, "Analysis of Repository Performance that Demonstrates Compliance with Separate Ground-Water Protection Standards," of the draft Yucca Mountain Review Plan is not consistent with U.S. Environmental Protection Agency and NRC implementation regulations at 10 CFR part 63.

Response. Section 4.2.1.3.12 of the draft Yucca Mountain Review Plan confuses the concept of water demand for the postclosure individual protection standard with the concept of the representative volume of water for the postclosure ground-water protection standard.

The postclosure individual protection standard at 10 CFR 63.111 requires that DOE demonstrate the reasonably maximally exposed individual would receive an annual cumulative effective dose equivalent of no more than 150 microsieverts. Under 10 CFR 63.312(c), the reasonably maximally exposed individual will use "well water with concentrations of radionuclides based on an annual water demand of 3,000 acre-feet." 10 CFR part 63 also mandates use of the representative volume of water concept in demonstrating compliance with the separate ground-water protection standards. The definition of the representative volume of water also specifies a volume of 3,000 acre-feet per year; however, the applicant must also define the dimensions of this volume using one of two specified methods.

The Yucca Mountain Review Plan has been modified to clarify these requirements.

Issue 3: Are the review methods and acceptance criteria for evaluating the demonstration of compliance with the human-intrusion standard adequate?

Comment. One commenter stated that the review methods and acceptance criteria for evaluating the demonstration of compliance with the human-intrusion standard are not complete or consistent with NRC regulations at 10 CFR part 63. For example, the commenter expressed concern that the review methods in Section 4.2.1.4.2.1, "Demonstration of Compliance with the Human Intrusion Standard," of the draft Yucca Mountain Review Plan indicate that the review need only confirm that performance assessment for human intrusion is performed during the 10,000-year regulatory time period. The commenter also noted that, if the projected doses from an intrusion reach the reasonably maximally exposed individual after the 10,000-year regulatory time period, 10 CFR 63.321 requires DOE to include the results of the analysis and its basis in the Yucca Mountain environmental impact statement. The commenter also stated that the draft Yucca Mountain Review Plan does not call for DOE to identify the specific mechanism for radionuclide transport from a breached waste package to the saturated zone.

Response. The review methods in Section 4.2.1.4.2.2 of the draft Yucca Mountain Review Plan have been modified to clarify that the human-intrusion performance assessment should be conducted regardless of the estimated time of the intrusion. The review methods have also been modified to note that 10 CFR 63.321 requires that exposures to the reasonably maximally exposed individual that might result from human intrusion and occur after the 10,000-year regulatory time period are to be included in the Yucca Mountain environmental impact statement. In addition, the regulations at 10 CFR 63.322 require that DOE consider the transport of radionuclides in ground water through the borehole to the saturated zone. The Yucca Mountain Review Plan, however, is guidance for NRC staff safety review and will not be used to review DOE's environmental impact statement. Environmental reviews would be performed according to the requirements of 10 CFR 51.109, and applicable guidance.

The review methods in Section 4.2.1.4.2.2 of the draft Yucca Mountain Review Plan have been modified for clarification.

5.2 Multiple Barriers

Issue 1: Will the Yucca Mountain Review Plan consider limitations of each barrier's capability?

Comments. Commenters argued that numerous unresolved questions remain with respect to the engineered and natural barriers (*e.g.*, durability of the waste package, amount of water flowing into repository drifts) that raise concerns regarding how the Yucca Mountain Review Plan considers the limitations in barrier capabilities. Commenters asked a number of questions regarding how specific systems, subsystems, and components of the repository would perform.

Response. In accordance with 10 CFR 63.115, NRC staff's review of the capability of each barrier relied upon by DOE will include consideration of uncertainty in the behavior of the barriers. Additionally, the barrier capability is to be described in terms of the approaches used in the performance assessment, which include potential limitations in barrier capabilities, through consideration of uncertainty in parameters; alternative conceptual models; and degradation, deterioration, and alteration processes of the engineered barriers. Each of the model abstractions (*i.e.*, degradation of engineered barriers, flow paths in the saturated zone) in the Yucca Mountain Review Plan includes consideration of potential limitations in the representation of the repository barriers. The Yucca Mountain Review Plan supports a detailed review of repository barriers and provides understanding of the intended function of each of the barriers and of the potential limitations regarding individual barrier performance. The concerns noted in the comment must be adequately addressed in a DOE license application for a high-level waste repository at Yucca Mountain.

Section 4.2.1.1, "System Description and Demonstration of Multiple Barriers," of the draft Yucca Mountain Review Plan indicates that: (i) There are no quantitative limits placed on individual barriers or categories of barriers; and (ii) the intent of the review is to understand the capability of each barrier to perform its intended function and the relationship of that barrier's role to limiting radiological exposure in the context of the overall performance assessment.

Issue 2: Does the Yucca Mountain Review Plan appropriately describe potential barrier functions?

Comment. The commenter recommended that the exact wording from the definition of barrier in 10 CFR part 63 (that is, prevents or substantially reduces the rate of movement of water or radionuclides from the Yucca Mountain repository to the accessible environment, or prevents the release or substantially reduces the release rate of radionuclides from the waste) be used to describe the potential functions of the barriers in Sections 4.2.1.1.1; "System Description and Demonstration of Multiple Barriers," of the draft Yucca Mountain Review Plan.

Response. Use of the exact wording from the definition of barrier in 10 CFR 63.2 to describe the potential functions of the barriers in the Yucca Mountain Review Plan is appropriate and the Yucca Mountain Review Plan has been modified accordingly.

Issue 3: Should the Yucca Mountain Review Plan specify that a specific natural or engineered barrier be the primary barrier for the repository?

Comment. Some commenters were concerned that current expectations for the waste package to be corrosion-resistant for more than 10,000 years reduce the requirement that the repository include natural or geologic barriers. One commenter requested that the repository be required to be substantially geologic. Another commenter asked that Section 4.2.1.1, "System Description and Demonstration of Multiple Barriers," of the draft Yucca Mountain Review Plan clarify that neither natural nor engineered barriers need be the primary barriers for containing radionuclides, reflecting that overall performance of the repository is important, rather than subsystem requirements.

Response. The regulations at 10 CFR 63.115 require DOE to identify the barriers of the repository system, describe the capabilities of the barriers, and provide the technical basis for each barrier's capability. The Yucca Mountain Review Plan addresses this requirement.

No changes have been made to the Yucca Mountain Review Plan in response to this comment.

5.3 Screening Features, Events, and Processes

Issue 1: How will NRC determine whether the appropriate features, events, and processes have been included in a postclosure performance assessment?

Comment. Several commenters expressed concern whether DOE would provide a complete evaluation of features, events, and processes, in developing its postclosure performance assessment (similar in concept to the Category 1 and 2 initiating events in the preclosure section of the Yucca Mountain Review Plan). One commenter proposed establishing a Category 3 that would encompass natural and man-made events and stated that the total system performance assessment should include an analysis of climate changes over 10,000 years. Additional comments on specific potential disruptive scenarios included were provided.

Several commenters cited the current DOE design plans calling for titanium drip shields as evidence that the Yucca Mountain environment contains significant amounts of water, and expressed concern that this water and the geochemically oxidizing environment for the proposed repository would lead to corrosion of the waste packages. Commenters also expressed concern about the performance of Alloy C–22 and cladding, and requested specific technical information on engineered materials performance.

Another commenter expressed concern that if the consequence of an event were high, it must be considered in the performance assessment, regardless of the probability of its occurrence. The same commenter took exception to the use of the term "credible natural events," arguing that this was an artificial means of removing disruptive events from further consideration for mitigation. One commenter asked whether microbial influenced events were being evaluated.

Response. Consideration of features, events, and processes, especially those with potentially adverse effects, is a key part of the performance assessment process. A number of features, events, and processes have been or are being considered relevant to the performance of the proposed repository at Yucca Mountain. DOE has the responsibility to prepare the postclosure performance assessment and demonstrate compliance with the postclosure performance objectives of 10 CFR 63.113. In meeting the performance objectives, the regulations in 10 CFR 63.114 require DOE to consider pertinent features, events, and processes. As described in Section 4.2.1.2, "Scenario Analysis and Event Probability," of the draft Yucca Mountain Review Plan, it is anticipated that DOE would screen an initial list of features, events, and processes that include the issues raised by the commenters. The purpose of the screening is for DOE to develop a final list that will be considered in detail in its postclosure performance assessment. DOE must provide a technical basis for the inclusion or exclusion of features, events, and processes from the performance assessment. As defined in 10 CFR 63.114(d), one of the screening

criteria is to establish as credible only those events with a probability of occurrence of one chance in 10,000 per year over 10,000 years. As discussed in Section 4.2.1.2 of the draft Yucca Mountain Review Plan, DOE must provide the technical basis for screening events based on probability.

Based on prelicensing exchanges and on earlier iterative performance assessments provided by DOE, NRC anticipates that DOE would include many of the features, events, and processes identified by the commenters (*e.g.*, climate change, volcanic disruption, seismic activity, glaciation, groundwater transport) in its performance assessment. If other features, events, and processes identified by the commenter are excluded from the postclosure performance assessment, DOE must include the technical bases for the exclusions as expressed by 10 CFR 63.114(e). Part of this technical basis must include site characterization information such as groundwater chemistry, location of faults and igneous features, and geomorphology.

To support the postclosure performance assessment, DOE is required to submit data on the hydrology, geochemistry, and geology of the Yucca Mountain site by 10 CFR 63.114(a). Specific information of the type identified in several comments (groundwater temperature, fluoride concentration, C–22 alloy performance) is the responsibility of DOE. NRC staff will evaluate the adequacy of this information as part of a licensing review, using the review methods and acceptance criteria presented in the Yucca Mountain Review Plan.

No changes were made to the Yucca Mountain Review Plan in response to these comments.

Issue 2: Why do the review methods in the Yucca Mountain Review Plan specify time and extent of past patterns of natural events?

Comment. A comment stated that review methods for probability models refer to site-specific information that NRC staff should consider during a review of a license application. The commenter argued that this information is too prescriptive and based on NRC judgements of what is important for probability models. The commenter asks for a more generalized discussion in Review Methods 2 and 3 of Section 4.2.1.2.2, "Identification of Events with Probabilities Greater Than 10^{-8} Per Year," of the draft Yucca Mountain Review Plan. The same commenter also expressed concern that the past patterns of natural events in the Yucca Mountain region provide overly prescriptive information for NRC staff review of probability models.

Response. In using Acceptance Criterion 2 of Section 4.2.1.2.2, NRC staff would consider the past patterns of natural events in the Yucca Mountain region. This acceptance criterion is used considering the range of information that NRC staff may consider with respect to the timing and general extent of past events. Thus, Review Method 2 provides general guidance regarding the timing (*e.g.*, "past igneous activity since about 12 million years") and extent (*e.g.*, "within about 50 kilometers of the proposed repository site") of past natural events to provide a basis for use of Acceptance Criterion 2. DOE is not restricted to these general definitions for past patterns of natural events and may provide any technical basis that it believes demonstrates compliance with the requirements of 10 CFR 63.114(a)(4).

As noted in Acceptance Criterion 2, an appropriate technical basis for probability estimates would be based on past patterns of natural events in the Yucca Mountain region. Acceptable probability models would be based on past events in the Yucca Mountain region; however, these models may incorporate additional considerations, as deemed appropriate by DOE. These additional considerations would be reviewed by NRC staff in a licensing review.

No changes were made to the Yucca Mountain Review Plan as a result of this comment.

Issue 3: Why do the review methods call for use of independently developed probability models?

Comment. A commenter stated that Section 4.2.1.2.2, "Identification of Events with Probabilities Greater Than 10^{-8} Per Year," of the draft Yucca Mountain Review Plan, refers to the use of independently developed probability models. The commenter noted that more specific guidance to reviewers is needed for the use of independent probability models, and that use of independent models would bias NRC staff reviews.

Response. In its licensing review, NRC staff considers information submitted by the license applicant and results of independent NRC staff analyses. The use of independent probability models enables NRC staff to focus on those areas that are most important to risk consistent with a risk-informed, performance-based approach.

Guidance on the use of independent models in Review Method 3 of Section 4.2.1.2.2 has been modified.

Issue 4: Is it appropriate to relate igneous activity to other geologic processes?

Comment. One commenter asserted that igneous activity is incorrectly related to other geologic processes. The commenter also stated that the use of tectonic models in Acceptance Criterion 3 and Review Method 3 of Section 4.2.1.2.2, "Identification of Events with Probabilities Greater Than 10^{-8} Per Year," of the draft Yucca Mountain Review Plan is overly prescriptive and that the consideration of information from comparable volcanic systems outside the Yucca Mountain region in Review Method 4 of Section 4.2.1.2.2 also appears overly prescriptive.

Response. Review Method 3 in Section 4.2.1.2.2 states "Assess whether igneous-activity probability models are consistent with the range of tectonic models used to assess other geological processes, such as seismic source characterization, site geological models, and patterns of ground-water flow." This statement does not relate igneous activity to other geologic processes through tectonic processes. Rather, it instructs reviewers to evaluate the consistency between tectonic models used in igneous activity probability models with tectonic models used to evaluate other geologic processes. Consistent use of tectonic models for different, relevant geologic processes may provide support for probability models.

Not all parameters used in a probabilistic volcanic hazard assessment for Yucca Mountain would necessarily need to consider information from comparable volcanic systems. Paragraph 2 of Review Method 4 of Section 4.2.1.2.2 has been rewritten to clarify this point.

Issue 5: Does the Yucca Mountain Review Plan contain excessively prescriptive requirements with regard to the use of analog information to assess the effects of igneous activity on repository performance?

Comment. The commenter argued that use of analog information "to the extent possible" as discussed in Acceptance Criterion 3 of Section 4.2.1.2.2 is overly prescriptive and suggested use of analog information only "to the extent appropriate." The same commenter also suggested changing requirements for the accuracy of probability models to avoid excess prescriptiveness.

Response. DOE may submit any information it believes will satisfy the requirements of 10 CFR 63.114(a)(4). The use of information from analog volcanic fields, to the extent appropriate, could be used as a basis for model justification.

The text of the Yucca Mountain Review Plan has been modified to clarify that analog information should be used to the extent appropriate.

5.4 Model Abstraction

Issue 1: What site characterization information would be included in the postclosure performance assessment?

Comment. A number of commenters provided examples of features, events, and processes that they contended should be included in the postclosure performance assessment. These included general lists of information on characteristics of the geologic and hydrologic setting, an inventory of potential corrosives from waste canisters, and climatologic information. One commenter stated that the performance assessment should include types of indirect information that may indicate the occurrence of past natural disruptive events. The same commenter noted that the general description should include trends in seismic and volcanic activity, as well as a study of volcanically active regions in the Cascade Mountains, and should evaluate the possibilities of similar activity at Yucca Mountain.

Response. DOE has the responsibility to prepare the postclosure performance assessment and demonstrate compliance with the performance objectives of 10 CFR 63.113. 10 CFR 63.114 requires DOE to provide a technical basis for the inclusion or exclusion of features, events, and processes in the performance assessment. This technical basis would include site characterization information.

No changes were made to the Yucca Mountain Review Plan as a result of this comment.

Issue 2: How would uncertainty be addressed in the model abstractions used in the postclosure performance assessment?

Comment. A number of comments were provided on uncertainties related to the engineered barriers and natural system, and how these uncertainties would be addressed in the review of a postclosure performance assessment. One commenter expressed concern that there were inconsistencies in how the alternative conceptual models are to be used in evaluating uncertainty in the postclosure performance assessment. Another commenter asked how NRC would consider uncertainties in reviewing DOE's performance assessment and requested more detail on the role uncertainty would play in establishing priorities for the licensing decision. Another commenter noted concerns about the basis for performance assessment model abstractions expressed in letters from the Advisory Committee on Nuclear Waste to NRC Chairman Richard Meserve (September 28, 2001; and January 17, 2002).

Response. Accounting for uncertainty in estimating repository performance is an important factor in the evaluation of DOE's license application. The regulations at 10 CFR 63.114 and 63.304 require the performance assessment to provide for the full range of defensible and reasonable parameters and models, and account for uncertainty. NRC staff review will evaluate the nature and magnitude of the uncertainties and the impact of uncertainty on repository performance. Consideration of alternative models is one means of evaluating the conceptual model uncertainty in performance assessment. The postclosure performance assessment requirements in 10 CFR 63.114(c) require DOE to consider alternative conceptual models of features and processes that are consistent with available data and current scientific understanding and to evaluate the effects that alternative conceptual models have on the performance of the geologic repository. The Yucca Mountain Review Plan provides guidance regarding review of these requirements and that DOE has the flexibility to demonstrate compliance, consistent with a risk-informed, performance-based licensing approach.

As discussed in the "Statement of Considerations" for 10 CFR part 63 (66 FR pp. 55747–55748, November 2, 2001), the Commission recognizes "* * * the uncertainties inherent in evaluating a first-of-a-kind facility like the repository and in estimating system performance over very long time periods (*i.e.*, 10,000 years)." In response to these uncertainties, NRC modified 10 CFR part 63 to require that DOE include uncertainty in its postclosure performance assessment and provides sufficient information to allow NRC to evaluate DOE's uncertainty analysis. For example, 10 CFR 63.114(b) requires DOE to account for uncertainties and parameter variability, and to provide the technical bases for its treatment of uncertainty in the postclosure performance assessment. In addition, DOE is required by 10 CFR 63.114(c) to provide additional assurances that uncertainty in the information (*e.g.*, evaluation of site characterization data) used to develop the performance assessment has been evaluated by consideration of alternative conceptual models of features and processes that are consistent with available data and current scientific understanding. The regulation at 10 CFR 63.113(g) provides that DOE conduct corroborative testing of its performance assessment to the extent feasible, and for DOE to use additional bases beyond performance assessment to compensate for uncertainty and to provide confidence that the postclosure performance objectives of 10 CFR 63.113 are met. For example, 10 CFR part 63, subpart F, requires that a performance confirmation program confirm that the behavior of the barriers of the repository system is consistent with assumptions in the performance assessment. Further, 10 CFR 63.113 and 10 CFR part 63, subpart G, require use of multiple barriers and a quality assurance program.

As described in the "Statement of Considerations" for 10 CFR part 63 (66 FR 55747–55748, November 2, 2001):

> The Commission will consider all these requirements in determining whether it has sufficient confidence (*i.e.*, reasonable expectation) that DOE has demonstrated or has not demonstrated the safety of the repository. Specification of an acceptable level of uncertainty is neither practical nor appropriate due to the limited knowledge currently available to support any such specification and the range of uncertainties that would need to be addressed. The Commission believes the approach to performance assessment in the proposed rule, which includes the treatment of uncertainty, is appropriate and has retained this approach in the final rule.
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> If NRC were to specify an acceptable level of uncertainty, the specified value would be somewhat arbitrary because: (1) Understanding of the site is evolving as site studies continue; (2) repository design options are still being evaluated; and (3) differences in the types of uncertainties (*e.g.*, variability in measured parameters, modeling assumptions, expert judgment, *etc.*) complicate the specification.
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> * * * * *
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> Although the Commission does not require an "accurate" prediction of the future, uncertainty in performance estimates cannot be so large that the Commission cannot find a reasonable expectation that the postclosure performance objectives will be met (*see* discussion under "Reasonable Expectation") [Section 1.4, 66 FR 55739–55740]. At this time, the Commission is not aware of any information that suggests the uncertainties are so large that NRC will be unable to make a regulatory decision regarding the safety of a potential repository at Yucca Mountain.

Each of the performance assessment model abstractions, provided in Section 4.2.1.3, "Model Abstraction," of the draft Yucca Mountain Review Plan, provides specific review methods and acceptance criteria that address both data uncertainty (parameter variability) and model uncertainty (whether the model is adequate and appropriate). Therefore, the review methods and

acceptance criteria in the Yucca Mountain Review Plan provide sufficient guidance to evaluate DOE's treatment of uncertainty against the requirements of 10 CFR part 63.

Suggested editorial changes were made to the Yucca Mountain Review Plan in response to these comments.

5.5 Compliance With Postclosure Public Health and Environmental Standards

Issue: What is the expected groundwater contamination from the repository?

Comment. One commenter expressed concern that the proposed repository at Yucca Mountain could have long-term impacts on groundwater quality.

Response. The groundwater pathway is a potential exposure pathway as identified in previous DOE and NRC performance assessments for a proposed high-level waste repository at Yucca Mountain. Groundwater will be protected provided DOE can demonstrate that the groundwater protection standard in 10 CFR part 63.331 and 63.332 are met.

Several Sections 4.2.1.3.6, "Flow Paths in the Unsaturated Zone," 4.2.1.3.7, "Radionuclide Transport in the Unsaturated Zone," 4.2.1.3.8, "Flow Paths in the Saturated Zone," and 4.2.1.3.9, "Radionuclide Transport in the Saturated Zone," of the draft Yucca Mountain Review Plan provide specific review methods and acceptance criteria to evaluate whether DOE's abstraction of groundwater flow and radionuclide transport satisfies the postclosure performance objectives at 10 CFR 63.113. In addition, as discussed in the "Statement of Considerations" for 10 CFR part 63 (66 FR 55758, November 2, 2001):

> The Commission has commented previously that an individual, all-pathway dose limit of either 0.15–mSv (15–mrem) or 0.25–mSv (25–mrem) TEDE ensures that the risks from all radionuclides and all exposure pathways, including the ground-water pathway, are acceptable and protective. The EPA itself acknowledged, in publishing final standards for Yucca Mountain, that an "* * * Individual Protection Standard is adequate in itself to protect public health and safety." However, ultimately, the EPA had to make the decision whether to include separate requirements for groundwater protection and the final EPA standards for Yucca Mountain include such requirements for the purpose of protecting groundwater. Therefore, as required by law, final Part 63 requirements incorporate final U.S. Environmental Protection Agency standards for Yucca Mountain at 40 CFR part 197, including separate ground-water protection requirements. These requirements, sections 197.30 and 197.31, appear in the final 10 CFR part 63 regulations as sections 63.331 and 63.332, respectively.

The Yucca Mountain Review Plan has been revised to ensure consistency with the groundwater protection standards in 10 CFR 63.331 and 10 CFR 63.332. These changes, combined with the review methods and acceptance criteria in Section 4.2.1.3, "Model Abstraction," of the draft Yucca Mountain Review Plan, will ensure that the NRC review of DOE's license application takes into account DOE's demonstration of compliance with the applicable postclosure performance objective and groundwater protection standards.

5.6 Postclosure Monitoring

Issue: Would there be control over the Yucca Mountain site after permanent closure and license termination?

Comment. Several commenters expressed concern about the extent of NRC oversight activities after permanent closure of a high-level waste repository at Yucca Mountain. One commenter asked about plans for monitoring ambient radiation in the drifts and tunnels after permanent closure. Another commenter requested information on security and physical protection plans for the repository after permanent closure. Other commenters asked NRC to provide a postclosure plan for waste retrieval and whether the Yucca Mountain Review Plan addressed possible postclosure terrorist problems and the postclosure performance assessment.

Response. If DOE is granted a license, it may seek an amendment under 10 CFR 63.51 for permanent closure of a high-level waste repository at Yucca Mountain. As part of its amendment request, DOE must submit its program for continued oversight, including a description of a program for postclosure monitoring of the repository, and a detailed description of measures to regulate or prevent activities that could impair the long-term performance of the repository. NRC will review the adequacy of DOE's programs for continued oversight following permanent closure and decontamination of surface facilities.

DOE may also apply for license amendment to terminate the license pursuant to 10 CFR 63.52. NRC will terminate the license if it finds that final waste disposition conforms to DOE's plan, as amended and approved as part of the license, and the geologic repository operations area conforms to plans for permanent closure and decontamination or decontamination and dismantlement of surface facilities.

Section 122 of the Nuclear Waste Policy Act provides for retrieval of any spent fuel for any reason pertaining to public health and safety, or the environment, or for the purpose of permitting the recovery of the economically valuable contents of spent fuel. The implementing regulations at 10 CFR part 63 provide for retrieval of waste before permanent closure of the repository. During a period of waste disposal that may extend over several decades, DOE is required by license to maintain performance confirmation, monitoring, and security programs to ensure that the natural and engineered components assumed to operate as barriers during permanent closure of the repository are functioning as intended and anticipated at the time of license application. Thus, it is DOE that must legally provide security for the Yucca Mountain site. NRC staff will evaluate whether the security measures would be adequate to protect the site.

NRC will conduct an inspection program to ensure that DOE complies with its license. DOE is not required to have plans in place for retrieval or security after permanent closure of the repository.

The draft Yucca Mountain Review Plan Section 4.5.8, "Controls to Restrict Access and Regulate Land Uses," examines compliance with the requirements for ownership and control of interests in land. The scope of these regulatory requirements includes, among others, land acquisition and withdrawal, acceptability of controls through and for permanent closure, control over surface and subsurface estates, and design of monuments to identify the site. Draft Yucca Mountain Review Plan Section 4.5.9, "Uses of the Geologic Repository Operations Area for Purposes Other Than Disposal of Radioactive Wastes," examines procedures for conduct and continuing oversight of proposed activities. These two sections of the Yucca Mountain Review Plan enable NRC staff to determine whether adequate security would be provided for the site after permanent closure.

No changes were made to the Yucca Mountain Review Plan in response to this comment.

6 Research and Development Program To Resolve Safety Issues

6.1 Scope of the Research and Development Program To Resolve Safety Questions

Issue: What is the appropriate scope of the research and development program to resolve safety issues?

Comment. One commenter expressed concern about the text in the "Areas of Review" for Section 4.3, "Research and Development Program to Resolve Safety Questions," of the draft Yucca Mountain Review Plan. The commenter stated that the research and development program was not intended to address the adequacy of site characterization or natural barriers, as the review plan currently states. The commenter argued that the adequacy of information on these two topics should be demonstrated in the license application as submitted and that it is not acceptable to use the research and development program to resolve safety questions to complete work that should have been done before the submittal of the license application.

Response. The applicable regulation, 10 CFR 63.21(c)(16), states that the license application shall contain "an identification of those structures, systems, and components of the geologic repository, both surface and subsurface, that require research and development to confirm the adequacy of design. For structures, systems, and components important to safety and for the engineered and natural barriers important to waste isolation, DOE shall provide a detailed description of the programs designed to resolve safety questions, including a schedule indicating when these questions would be resolved."

The research and development program to resolve safety questions should be used appropriately to address questions as appropriate. The regulation recognizes that some research and development programs are confirmatory in nature while others resolve safety questions. The license application should contain sufficient information on site characterization and natural barriers to enable NRC staff to conduct a detailed review of the application.

The text of Section 4.3 of the draft Yucca Mountain Review Plan has been revised to narrow the scope of the research and development program to resolve safety questions.

7 Performance Confirmation

7.1 Performance Confirmation Program

Issue 1: Are the acceptance criteria for performance confirmation monitoring and testing too prescriptive?

Comment. Commenters stated that Section 4.4, "Performance Confirmation Program," of the draft Yucca Mountain Review Plan is more prescriptive than 10 CFR part 63 regarding specific performance confirmation testing and monitoring citing specific examples including cases where the language used in Section 4.4 was not identical to language used in subpart F of 10 CFR part 63. One commenter stated that Section 4.4, like 10 CFR part 60, is prescriptive with regard to requirements for particular barriers, and inconsistent with the risk-informed, performance-based approach in 10 CFR part 63. Commenters stated that DOE would determine the parameters, measurements, and observations that are appropriate for inclusion in the performance confirmation program based on their importance to confirming repository performance and to the uncertainties in that performance.

Response. DOE has the responsibility to determine the parameters, measurements, and observations to be included in a performance confirmation program. As stated in "Statement of Considerations" for final 10 CFR part 63 (66 FR 55745, November 2, 2001) "The Commission believes that it is DOE's responsibility to specify the important geotechnical and design parameters to be evaluated through observation and measurement during construction and operation, subject to NRC approval through review and evaluation of the license application. DOE will provide this information in their performance confirmation plan included in the license application. If necessary, NRC staff will provide guidance to DOE in this area through pre-licensing interactions and/or the Yucca Mountain Review Plan."

With respect to the examples of inconsistency with language in subpart F of 10 CFR part 63, the recommended changes were accepted, and Section 4.4 has been modified accordingly. However, the fact that a specific parameter or process is not mentioned in the regulation, does not necessarily mean that parameter or process should not be considered for inclusion in the performance confirmation program. Such decisions should be made using risk-informed, performance-based approach. In developing 10 CFR part 63, the Commission chose not to adopt an approach that would prescribe in detail the specifics and limits of a performance confirmation program to allow DOE the flexibility to develop a focused and effective performance confirmation program (66 FR 55745, November 2, 2001).

Section 4.4 of the draft Yucca Mountain Review Plan has been modified for consistency with 10 CFR part 63.

Issue 2: Are the acceptance criteria for procedures supporting the performance confirmation program too prescriptive?

Comment. Commenters stated that the draft Yucca Mountain Review Plan is more prescriptive than 10 CFR part 63 regarding procedures supporting the performance confirmation program. A commenter stated that DOE should have the flexibility to determine the context in which procedures need to be developed and that such procedures may be developed after a license application for construction authorization is submitted. There were also a number of detailed comments specifically related to procedures supporting a performance confirmation plan.

Response. The Yucca Mountain Review Plan recognizes that DOE has the flexibility to devise the performance confirmation program consistent with regulations, including how to document its methods or procedures (whether directly in a performance confirmation plan or indirectly by reference to another document). Any procedures referenced would be subject to either NRC staff review or inspections.

Accordingly, Section 4.4 of the draft Yucca Mountain Review Plan has been revised to delete the word procedures and to be less prescriptive regarding this subject.

8 Administrative and Programmatic Areas

8.1 Record-Keeping Requirements

Issue: What are the requirements for keeping records of the repository and its operations?

Comment. A commenter asked about the plan for keeping records over the 10,000-year life span of a repository at Yucca Mountain and requested that records on private shippers of waste to a repository should include "* * * liability information, accident records, breached or leaking cask records, judgments, accusations, and penalty records."

Response. There are a number of record keeping requirements which relate to the repository which address many of the items identified by the commenter. NRC regulations at 10 CFR part 63, subpart D, specify the requirements for maintaining records at a Yucca Mountain high-level waste repository, including those required by the conditions of the license or by rules, regulations, and orders of the Commission, pursuant to 10 CFR 63.71(b). Records of the receipt, handling, and disposition of radioactive waste at a geologic repository operations area must contain sufficient information to provide a history of the movement of the waste from the shipper through all phases of storage and disposal. The records must be placed in the archives and land-record systems of local, State, and Federal government agencies, and archives elsewhere in the world. The

records are to identify the location of the geologic repository operations area, including the underground facility, boreholes, shafts ramps, and the boundaries of the site, and the nature and hazards of the waste.

DOE must also meet the 10 CFR 63.72 requirement to maintain records of construction in a manner that ensures their usability for future generations. These construction records must include surveys; a description of materials encountered; geologic maps and cross sections; locations and amount of seepage; details of equipment, methods, progress, and sequence of work; construction problems; anomalous conditions encountered; instrument locations, readings, and analyses; location and description of structural support systems; location and description of dewatering systems; details, methods of emplacement, and locations of seals used; and facility design records.

DOE must also maintain the records required by 10 CFR part 72, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater than Class C Waste," Subpart D, Sections 72.72, 72.74, 72.76, and 72.78. These additional records include material balance, inventory, and records requirements for stored material; reports of accidental criticality or loss of special nuclear material; material status reports; and nuclear material transfer reports.

DOE would also have to comply with U.S. Department of Transportation requirements for shipment of high-level radioactive waste and with NRC regulations at 10 CFR part 71, "Packaging and Transportation of Radioactive Material."

No changes were made to the Yucca Mountain Review Plan in response to this comment.

8.2 Land Ownership and Use

Issue 1: Does the land that might be used for a high-level waste repository at Yucca Mountain belong to Native American Tribes?

Comment. A commenter asked whether, for the purpose of controlling access to a repository at Yucca Mountain, the government was sure that the land does not belong to Native American Tribes. Another commenter asked where the Yucca Mountain Review Plan addressed the requirements for DOE to prove ownership and title to the land. A third commenter contended that the Ruby Valley Treaty of 1863 is being violated because land around the Yucca Mountain site belongs to the Western Shoshone Nation.

Response. NRC regulations at 10 CFR 63.121 require that the geologic repository operations area must be located in and on lands that are either acquired lands under the jurisdiction and control of DOE, or lands permanently withdrawn and reserved for its use. The land must also be free from significant encumbrances such as mining rights, right-of-ways, or rights of entry. DOE must satisfy these regulations in order to be granted a license for a high-level waste repository at Yucca Mountain. In its review of the license application, NRC staff would determine whether DOE has provided information that demonstrates compliance with these requirements. This review is addressed in Section 4.5.8, "Controls to Restrict Access and Regulate Land Uses," of the draft Yucca Mountain Review Plan (Review Method 1 and Acceptance Criterion 1). In addition, the Commission addressed tribal claims regarding Yucca Mountain in the Statement of Considerations for 10 CFR part 63 (66 FR 55766, November 2, 2001):

> The NRC is aware that the Western Shoshone National Council disputes the claim of the United States to have legal title to land that includes the Yucca Mountain site. However, there are Federal court decisions which have addressed these land claim issues and which are binding on both DOE and NRC. Section 63.121 requires that, before NRC licensing of a waste repository at the Yucca Mountain site, DOE must establish that the geologic repository operations area and the site are located in and on land that is either acquired land under the jurisdiction and control of DOE, or lands permanently withdrawn and reserved for DOE's use.

No changes have been made to the Yucca Mountain Review Plan as a result of this comment.

Issue 2: What uses may be made of a geologic repository operations area other than disposal of radioactive waste?

Comment. One commenter was concerned that there might be plans to use a geologic repository operations area for purposes other than disposal of radioactive wastes and stated that building a monitored retrievable storage facility at Yucca Mountain is specifically prohibited by the Nuclear Waste Policy Act.

Response. Section 4.5.9, "Uses of Geologic Repository Operations Area for Purposes Other than Disposal of Radioactive Wastes," of the draft Yucca Mountain Review Plan would be used to evaluate compliance with the 10 CFR 63.21(c)(22)(vii) requirement that a license application must contain "Plans for uses of the geologic repository operations area at the Yucca Mountain site for purposes other than disposal of radioactive wastes, with an analysis of the effects, if any, that such uses may have on the operation of the structures, systems, and components important to safety and the engineered and natural barriers important to waste isolation."

The regulations require DOE to identify uses that are unrelated to waste disposal. Section 141 of the Nuclear Waste Policy Act prohibits the construction of a monitored retrievable storage facility at Yucca Mountain.

NRC staff will evaluate any such proposed uses if included in a license application for a high-level waste repository at Yucca Mountain, and determine whether such uses are contrary to the Nuclear Waste Policy Act.

No changes were made to the Yucca Mountain Review Plan as a result of this comment.

8.3 Expert Elicitation

Issue: What is the appropriate scope for the use of expert elicitation?

Comment. A commenter expressed concerns about the use of expert elicitation in a license application for a high-level radioactive waste repository at Yucca Mountain. The commenter stated that because DOE has had 20 years to obtain data to evaluate the suitability of the Yucca Mountain site, DOE use of expert elicitation should be limited and should not be a substitute for information obtainable during site characterization. The commenter also stated that NRC staff should not allow DOE to substitute expert opinion for data that it was afraid to collect.

Response. It is not acceptable to use expert elicitation as a substitute for information that could have been reasonably obtained during site characterization or to avoid collection of relevant data. The regulations at 10 CFR 63.21(c)(19) requires "an explanation of how expert elicitation was used."

Section 4.5.4, "Expert Elicitation," of the draft Yucca Mountain Review Plan uses NUREG–1563, "Branch Technical Position on the Use of Expert Elicitation in the High-Level Radioactive Waste Program" (NRC, 1996). The NUREG–1563 states, in part:

> In matters important to the demonstration of compliance, the use of formal expert elicitation should be considered whenever one or more of the following conditions exist:
> (a) Empirical data are not reasonably obtainable, or the analyses are not practical to perform;
> (b) Uncertainties are large and significant to a demonstration of compliance;
> (c) More than one conceptual model can explain, and be consistent with, the available data; or
> (d) Technical judgments are required to assess whether bounding assumptions or calculations are appropriately conservative.

NRC staff will apply this guidance in evaluating an application for the construction of a high-level waste repository at Yucca Mountain.

The Yucca Mountain Review Plan text has been modified to specifically state the cited items from NUREG–1563.

8.4 U.S. Department of Energy Organizational Structure

Issue: Should the Yucca Mountain Review Plan discussion of DOE responsibilities for project management be expanded?

Comment. One commenter noted that the license application should contain an evaluation of DOE's procedures for assuring that delegated activities are carried out in accordance with the license and with the Commission's regulations. The commenter noted that DOE would be responsible for safe repository operations, even if certain activities are delegated to a contractor. The commenter stated it is unclear regarding the procedures that DOE must use to manage the overall project, including the delegated activities.

Response. Draft Yucca Mountain Review Plan Section 4.5.3.1, "DOE Organizational Structure as it Pertains to Construction and Operation of Geologic Repository Operations Area," provides guidance to NRC staff to determine whether DOE's procedures governing its project management responsibilities are adequate.

No changes were made to the Yucca Mountain Review Plan in response to this comment.

8.5 Water Rights

Issue: Does the Yucca Mountain Review Plan adequately evaluate whether DOE has obtained the necessary water rights for operation of a high-level waste repository at Yucca Mountain?

Comment. One commenter questioned whether DOE would need to have obtained water rights to accomplish the purposes of the geologic repository operations area. The commenter noted that the phrase "water rights" has specific meaning in Nevada and suggests that the Yucca Mountain Review Plan clarify whether DOE is required to have water rights as granted by the State of Nevada or to simply demonstrate that an adequate supply of water is available for the site.

Response. The provisions in Section 4.5.8 of the draft Yucca Mountain Review Plan are based on the requirements regarding water rights specified in 10 CFR 63.121. DOE must obtain "such water rights as may be needed to accomplish the purpose of the geologic repository operations area." In addition, for permanent closure, DOE "* * * shall exercise any jurisdiction and control over surface and subsurface estates necessary to prevent adverse human actions that could significantly reduce the geologic repository's ability to achieve isolation. The rights of DOE may take the form of appropriate possessory interests, servitudes, or withdrawals from location or patent under the general mining laws."

No changes were made to the Yucca Mountain Review Plan as a result of this comment.

8.6 License Conditions

Issue: Should the list of proposed license conditions for a high-level waste repository at Yucca Mountain include mitigating actions from the environmental impact statement?

Comment. One commenter expressed concern that the list of areas for which NRC believes DOE should propose license conditions is unnecessarily limited and is not consistent with conditions contained in licenses for other nuclear facilities. The commenter cites, for example, the absence of a provision for adequate off-site emergency response and medical capabilities. The commenter suggested that the revised plan provide a much more comprehensive listing, for consideration of possible license conditions, which would include all measures to mitigate repository system impacts identified within the Yucca Mountain Final Environmental Impact Statement and impact reports prepared by others.

Response. Mitigating actions that might be required as a result of potential environmental impacts of a repository at Yucca Mountain must be addressed by DOE in the Yucca Mountain Final Environmental Impact Statement. The content of the Yucca Mountain Final Environmental Impact Statement is outside the scope of the safety review encompassed by the Yucca Mountain Review Plan. NRC staff will evaluate the Yucca Mountain Final Environmental Impact Statement in accordance with Commission regulations at 10 CFR part 51 and applicable regulations. If appropriate, mitigating actions may be identified as license conditions.

The list of areas for potential license conditions presented in the Yucca Mountain Review Plan guidance is not all-inclusive. Under 10 CFR 63.42, the Commission will impose any conditions, including license specifications, it considers necessary to protect public health and safety, the common defense and security and the environment. NRC staff has modified the section in the Yucca Mountain Review Plan to make reviewers aware that the listing is not intended to be complete. License conditions will be imposed on a high-level waste repository at Yucca Mountain determined based on a review of information presented in the license application, as well as the environmental impact statement, as needed to reach the reasonable assurance or reasonable expectation standard for the repository.

8.7 Quality Assurance

Issue 1: Are Yucca Mountain Review Plan quality assurance acceptance criteria consistent with 10 CFR part 63 requirements and relevant regulatory guidance?

Comment 1. A commenter stated that the draft Yucca Mountain Review Plan applies quality assurance acceptance criteria that seem to exceed or expand on 10 CFR part 63 requirements and relevant regulatory guidance, such as NRC-endorsed consensus standards, American Society of Mechanical Engineers Standard NQA–1, other nuclear facility review plans, and standard industry practice as implemented under 10 CFR parts 21, 50, 70, and 72. The commenter stated that the draft Yucca Mountain Review Plan, therefore, unnecessarily constrains the license applicant's ability to establish quality assurance program implementation methods by setting expectations for specific compliance or implementation methods that are rigid and differ significantly from those applicable to other nuclear facilities regulated by NRC.

Another commenter stated that the draft Yucca Mountain Review Plan quality assurance acceptance criteria are too restrictive, are inconsistent with other NRC criteria for quality assurance program descriptions, and would require continual application of the quality assurance program description change process.

The commenters specified a number of places in the Yucca Mountain Review Plan related to their concerns.

Response 1. The Yucca Mountain Review Plan quality assurance acceptance criteria are consistent with 10 CFR part 63, subpart G, requirements and relevant regulatory guidance. In preparing the Yucca Mountain Review Plan, NRC staff considered many sources of information including consensus standards, American Society of Mechanical Engineers Standard NQA–1, other nuclear facility standard review plans, and standard industry

practice. NRC staff tailored information from those sources to the unique requirements specifically applicable to a Yucca Mountain repository.

As stated in Section 4.5.1, "Quality Assurance Program," of the draft Yucca Mountain Review Plan, DOE has flexibility in defining methods and controls while still satisfying pertinent regulations, and DOE may adopt exceptions and alternatives to the 18 acceptance criteria in the Yucca Mountain Review Plan, provided DOE can otherwise show it satisfies the requirements in 10 CFR part 63.

No changes have been made to the Yucca Mountain Review Plan as a result of this comment.

Comment 2. Two commenters questioned whether quality assurance acceptance Criteria 19–22, that address software, sample control, scientific investigation, and field surveys, respectively, are necessary and whether these areas are already adequately covered by quality assurance acceptance criteria 1–18.

Response 2. The Yucca Mountain Review Plan quality assurance acceptance criteria are consistent with the quality assurance criteria of 10 CFR part 50, appendix B, which apply to nuclear power plants and fuel reprocessing plants. Criteria 19–22 clarify certain quality assurance requirements in 10 CFR part 50, appendix B, for application to the Yucca Mountain repository. However, these four acceptance criteria did not expand the scope of applicability for quality assurance.

To maintain consistency between the structure in the Yucca Mountain Review Plan and quality assurance requirements in 10 CFR part 63, subpart G, NRC staff has consolidated specific acceptance criteria 19–22 into specific acceptance criteria 3, 8, and 10 as follows: Acceptance Criterion 19, "Software," and Acceptance Criterion 21, "Scientific Investigation," have been consolidated into Acceptance Criterion 3, "Design Control"; Acceptance Criterion 20, "Sample Control," has been consolidated into Acceptance Criterion 8, "Identification and Control of Materials, Parts, and Components"; and Acceptance Criterion 22, "Field Surveys," has been consolidated into Acceptance Criterion 10, "Inspection."

Issue 2: Are Yucca Mountain Review Plan quality assurance acceptance criteria and review methods more prescriptive than appropriate for a risk-informed, performance-based regulatory approach?

Comment. A commenter argued that many of the quality assurance acceptance criteria and review methods prescribe quality assurance program features more narrowly than is consistent with risk-informed, performance-based principles. The commenter stated that this approach limits the license applicant to a program that is not based on common nuclear industry practice and would place an unnecessary burden on the applicant to justify deviation from the specified approach. The commenter further stated that this approach would result in a description of implementation details in the quality assurance program description that may be more appropriate for inclusion in detailed implementing procedures.

The commenter identified a number of specific locations in the Yucca Mountain Review Plan that are related to these comments.

Response. The Yucca Mountain Review Plan quality assurance acceptance criteria are appropriate for a risk-informed, performed-based quality assurance program. The Yucca Mountain Review Plan quality assurance acceptance criteria provide guidance on issues associated with the uniqueness of the geologic repository. Exceptions from Yucca Mountain Review Plan approaches are acceptable, so long as the quality assurance requirements in 10 CFR part 63 are satisfied. Exceptions and alternatives to the acceptance criteria contained in the Yucca Mountain Review Plan may be adopted by DOE, provided DOE demonstrates that it can otherwise satisfy the requirements of part 63.

A quality assurance program description written in compliance with 10 CFR part 63, subpart G, is specifically tailored to the proposed high-level waste repository at Yucca Mountain and the Yucca Mountain Review Plan incorporates appropriate NRC quality assurance guidance. The Yucca Mountain Review Plan states that, where appropriate, the quality assurance program description may reference a commitment to comply with certain provisions of documents identified in Section 4.5.1.5 of the draft Yucca Mountain Review Plan and need not repeat the text of the document in the quality assurance program description.

No changes have been made to the Yucca Mountain Review Plan as a result of this comment.

Issue 3: Should certain text from quality assurance standards that is included in the Yucca Mountain Review Plan be replaced by references to the corresponding text in those standards?

Comment. A commenter stated that many of the more prescriptive acceptance criteria appear to be direct or modified excerpts from references that could be more simply identified as NRC-endorsed sources, allowing the license applicant to maintain flexibility in developing implementation methods, consistent with risk-informed, performance-based principles. The commenter argued that the Yucca Mountain Review Plan should only reference these sources as acceptable means to implement NRC's quality assurance regulations.

A number of specific locations in the Yucca Mountain Review Plan where these comments apply were identified.

Response. Several quality assurance standards referenced in the Yucca Mountain Review Plan were written for a 10 CFR part 50, appendix B-type quality assurance program. Although 10 CFR part 50, appendix B requirements are similar to 10 CFR part 63 quality assurance requirements, unique considerations associated with a geologic high-level waste repository that relies on both natural and engineered barriers pose major differences. Therefore, the Yucca Mountain Review Plan includes text from these quality assurance standards, modified as necessary, in order to provide clear guidance during a license application review. This approach provides guidance on, and background for, the quality assurance elements unique to the geologic repository in one document. Section 4.5.1, "Quality Assurance Program" of the draft Yucca Mountain Review Plan states, "Where appropriate, the quality assurance program description may reference a commitment to comply with certain provisions of a document identified in Section 4.5.1.5 of the draft Yucca Mountain Review Plan and not repeat the text of the document in the quality assurance program."

No changes were made to the Yucca Mountain Review Plan in response to this comment.

Issue 4: Should the Yucca Mountain Review Plan reference more recent quality assurance standards?

Comment. Three commenters recommended using a more recent edition of standard NQA–1 rather than NQA–1–1983 and revising the text of the Yucca Mountain Review Plan accordingly. Another commenter suggested incorporating Nuclear Safety Standards from July 2002.

Response. NRC endorses standards through the use of regulatory guides. These regulatory guides provide sufficient detail to ensure that programs and activities governed by such standards comply with the applicable regulations.

Licensees with 10 CFR part 50, appendix B, quality assurance programs have committed to using quality assurance standard NQA–1–1983, the latest edition endorsed by NRC in Regulatory Guide 1.28 or committed to the ANSI 45.2 series standards. More recent editions of NQA–1 do not contain sufficient detail to describe how the applicable NRC quality assurance requirements would be satisfied. For example, in NQA–1–1997, many detailed provisions have either been removed from the standard or relocated to a non-mandatory appendix.

However, Section 4.5.1, "Quality Assurance Program," of the draft Yucca Mountain Review Plan provides that "Exceptions and alternatives to these acceptance criteria and the documents and positions contained in Section 4.5.1.5 of the draft Yucca Mountain Review Plan may be adopted by DOE, provided the applicant can otherwise demonstrate compliance with quality assurance program requirements in 10 CFR part 63." Therefore, DOE may propose alternatives to the Yucca Mountain Review Plan quality assurance acceptance criteria, provided adequate justification is submitted to demonstrate that the proposed alternatives adequately describe how the quality assurance requirements of 10 CFR Part 63 will be satisfied.

No changes have been made to the Yucca Mountain Review Plan in response to this comment.

Issue 5: Which nonmandatory requirements of NQA–1–1983 must be followed?

Comment. A commenter stated that the Yucca Mountain Review Plan is not clear on the use of the "non-mandatory guidance" in NQA–1–1983.

Response. Guidance on the use of nonmandatory requirements in NQA–1–1983 is sufficiently clear in the Yucca Mountain Review Plan. Commitment to NQA–1–1983 requirements is subject to exceptions, clarifications, or modifications provided in the Yucca Mountain Review Plan quality assurance acceptance criteria or Paragraph C of "Regulatory Position," of Regulatory Guide 1.28. Any nonmandatory requirements identified in NQA–1–1983 that are not addressed in either the Yucca Mountain Review Plan quality assurance acceptance criteria or Paragraph C of Regulatory Guide 1.28 need not be followed.

No changes have been made to the Yucca Mountain Review Plan in response to this comment.

Issue 6: Which elements of the quality assurance program should be in place at the time of license application submittal?

Comment. A commenter recommended that the Yucca Mountain Review Plan clearly state which elements of DOE's quality assurance program should be in place at the time of license application submittal. The commenter stated an expectation that, as for nuclear power reactor licensing activities, the quality assurance program description would be submitted to NRC separately from the Safety Analysis Report, well before the quality assurance program is fully implemented. Field procedures would be in place, with follow-on commitments to ensure that planned programmatic activities are implemented.

Response. The time frame for implementation of the quality assurance program is sufficiently clear in the Yucca Mountain Review Plan. Section 4.5.1.3, "Acceptance Criteria," states that "The DOE quality assurance program and associated quality assurance program controls and implementing procedures regarding activities performed must be in place before activities begin." These activities include site characterization; acquisition, control, and analysis of samples and data; tests and experiments; scientific studies; facility and equipment design and construction; and performance confirmation.

Section 4.5.1.3 of the draft Yucca Mountain Review Plan has been modified to identify these activities.

Issue 7: Should the step-wise licensing approach be applied to the review of the quality assurance program description?

Comment. A commenter recommended that the step-wise licensing approach be applied to the content and level of detail of the quality assurance program description required for the different phases of repository licensing. Another commenter stated that, typically, a quality assurance program description that encompasses all phases of repository construction, operation, and closure, as required by the Yucca Mountain Review Plan quality assurance acceptance criteria, is prepared in stages (*i.e.*, there are specific elements of the quality assurance program description required to be submitted and reviewed for the design and construction phase/activities, whereas others are required to be submitted and reviewed for the operations phase). This commenter also stated that, although some of the elements of the quality assurance program descriptions are similar among licensing steps, there are different policies, organizations, programs, and procedures that will be implemented for each step.

Response. A step-wise licensing approach should be applied to the review of the quality assurance program description. Section 4.5.1.3 of the Yucca Mountain Review Plan has been modified to state the following:

> The U.S. Department of Energy shall establish a quality assurance program to include all activities up to the time of receipt of high-level radioactive waste for disposal in the geologic repository. These activities include site characterization; acquisition, control, and analysis of samples and data; tests and experiments; scientific studies; facility and equipment design and construction; and performance confirmation. The Yucca Mountain Review Plan will be modified, at the appropriate time, to include facility operation, permanent closure, and decontamination and dismantling of surface facilities. The U.S. Nuclear Regulatory Commission staff should assure that the scope of the Yucca Mountain Review Plan includes those activities described in the U.S. Department of Energy quality assurance program under review. Appropriate conditions should be imposed on quality assurance program and Yucca Mountain Project approvals that reflect the scope of activities described in the quality assurance programs and applications submitted for U.S. Nuclear Regulatory Commission review and approval by the U.S. Department of Energy.

Issue 8: Why are quality assurance program references (Section 4.5.1.5) divided into two groups?

Comment. A commenter stated that the rationale is not clear for division of quality assurance references" between "commitments" and "noncommitments."

Response. Identifying the scope of potentially applicable information will facilitate a licensing review and preparation of a more complete license application. The "commitments" listing of references is mandatory. Commitments are required to be addressed by DOE. The "noncommitments" are not mandatory, but guidance documents that may be used by both DOE and NRC staff reviewers as a source of additional guidance. If noncommitment documents are identified in the license application, NRC staff can refer to these same documents during the review process.

No changes were made to the Yucca Mountain Review Plan in response to this comment.

Issue 9: Is it necessary to have both general and specific acceptance criteria for the review of the quality assurance program description?

Comment. A commenter argued that because there are no "general" quality assurance requirements identified in the applicable NRC regulations, it is inappropriate to have "general" quality

assurance acceptance criteria, in addition to "specific" quality assurance acceptance criteria, in the Yucca Mountain Review Plan. The commenter requested clarification as to the difference between the general and specific acceptance criteria and provided specific recommendations for revisions.

Response. The general acceptance criteria in Section 4.5.1.3 of the draft Yucca Mountain Review Plan provide NRC staff with a broad view of the overall quality assurance requirements and the specific criteria provide the details of the individualized quality assurance requirements. Reiteration of the requirements is useful to promote consistency in NRC staff review.

No changes were made to the Yucca Mountain Review Plan in response to this comment.

Issue 10: Is the Yucca Mountain Review Plan guidance for review of the quality assurance program description appropriate for performance assessment?

Comment. A commenter recommended revisions to reflect a quality assurance program geared to performance assessment, rather than only experimental activities and calculations.

Response. A preclosure safety analysis and a postclosure performance assessment regulatory requirements are important components in evaluating the Yucca Mountain project. The quality assurance terminology is appropriate and adequate for performance assessment because it has been proven effective in a wide range of applications.

No changes were made to the Yucca Mountain Review Plan in response to this comment.

Issue 11: How much overlap is appropriate between acceptance criteria in Section 4.5.1, "Quality Assurance Program," and Section 4.2.1.3, "Model Abstraction"?

Comment. A commenter stated that the data and model criteria in Acceptance Criterion 21 of Section 4.5.1.3, "Acceptance Criteria" appear to be redundant or inconsistent with the technical requirements in Section 4.2.1.3, "Model Abstraction."

Response. In response to other comments, Acceptance Criterion 21, "Scientific Investigation," has been consolidated into Acceptance Criterion 3, "Design Control." This change has not changed the scope of the quality assurance requirements.

Issue 12: How should quality assurance software requirements be applied?

Comment. Two commenters requested clarification as to which types of software were subject to quality assurance software requirements. One commenter argued that quality assurance software requirements should apply only to software developed to support a safety or waste isolation function.

Response. Section 4.5.1, "Quality Assurance Program," of the Yucca Mountain Review Plan has been modified to specify that it applies to software developed to support functions important to safety or to waste isolation.

Issue 13: Should the discussion of the corrective action program be clarified?

Comment. Two commenters recommended that the discussion of the corrective action program be clarified with respect to terminology, procedures, and the role of quality assurance staff in the program.

Response. The discussion of the corrective action program in Section 2.5.13 of the draft Yucca Mountain Review Plan is appropriate as written because it is consistent with widely accepted and proven approaches to corrective action in quality assurance programs.

No changes have been made to the Yucca Mountain Review Plan in response to this comment.

Issue 14: Is the review of quality control and certification for nuclear waste transportation canisters and casks and their fabrication included in the review of the quality assurance program description?

Comment. A commenter asked whether NRC will review the quality control for the manufacturing processes used to produce nuclear waste transportation canisters and casks. The commenter also asked whether NRC will specify conditions or criteria for certification of canisters and whether manufacturing processes, construction, and quality control issues are periodically reviewed by NRC to ensure adherence to approved certification criteria and that canisters are constructed to required specifications.

Response. Under 10 CFR part 71, NRC is responsible for certifying the designs of shipping casks that may be used to move commercial nuclear waste by truck or rail to Yucca Mountain. NRC will also review the manufacturing processes used to produce transportation canisters and will periodically inspect the manufacturing processes and construction to ensure that design criteria are adhered to and that transportation canisters are constructed to applicable specifications.

No changes were made to the Yucca Mountain Review Plan in response to this comment.

Issue 15: What is the scope of license applicant qualification information that should be covered in the review of the quality assurance program description?

Comment. A commenter recommended that NRC provide for a thorough review of the background, experience, management capability, and track record of the license applicant in the Yucca Mountain Review Plan.

Response. DOE, in accordance with 10 CFR 63.21(c)(22), is required to include information about its organizational structure as it pertains to construction and operation of the repository, and the personnel qualifications and training requirements. NRC has a program in place to observe detailed technical and programmatic audits of DOE's Yucca Mountain project and its contractors. Various aspects of DOE's quality assurance program, specifically with regard to the Yucca Mountain project, are routinely evaluated by NRC. However, only the license applicant activities specifically related to a Yucca Mountain repository fall under the scope of the regulatory requirements in 10 CFR part 63.

No changes were made to the Yucca Mountain Review Plan in response to this comment.

Issue 16: Should the text be revised to address various consistency, clarification, editorial, and format issues?

Comment. A commenter provided several comments on various consistency, clarification, editorial, format, and other miscellaneous issues.

Response. Section 4.5.1, "Quality Assurance Program" of the draft Yucca Mountain Review Plan has been modified, as appropriate, to incorporate various editorial changes for consistency, clarification, and format issues related to this comment.

9 Structure of the Yucca Mountain Review Plan

9.1 Level of Detail

Issue: Is the level of detail in the Yucca Mountain Review Plan appropriate to guide the review of a license application?

Comment. Commenters noted that the degree of specification in review methods varies substantially throughout the Yucca Mountain Review Plan. In some sections, presumptions are made as to what is important to safety or waste isolation by including discussion of specific design solutions (*e.g.*, backfill). The commenters consider these assumptions to be inconsistent with the risk-informed, performance-based regulations at 10 CFR part 63. The commenters suggested that the Yucca Mountain Review Plan be revised to clarify that the applicant will specify structures, systems, and components important to safety and natural and engineered barriers important to waste isolation, compatible with the risk-informed, performance-based regulations. The commenters noted that since these presumptions occur throughout the document, a general discussion in the Yucca Mountain Review Plan "Introduction" could address the issue.

One commenter stated that the general description of the geologic repository must include detailed descriptions of surface and interim storage facilities. The commenter also stated that the general information review should focus on natural threats to repository integrity and identified a number of such specific potential threats. Another commenter requested more detailed information on the status of activities to meet requirements for ownership and control of interests in land and on the schedule for meeting these requirements.

Another commenter stated that the general information section of the Yucca Mountain Review Plan indicates that information be presented at the level of an "executive summary," but the actual level of detail requested is more appropriate for discussion in the safety analysis report rather than in an executive summary.

Response. DOE has the responsibility to specify structures, systems, and components that are important to safety and multiple barriers both natural and engineered important to waste isolation. This responsibility is noted in several places in the Yucca Mountain Review Plan. The Yucca Mountain Review Plan makes no presumptions regarding these structures, systems, components, or barriers, and mentions specific design features only as examples or to restate language in NRC's regulations.

The general information submitted with a license application, as required by 10 CFR 63.21(b)(1) and (2), need not contain detailed descriptions of surface and interim storage facilities and other features, events, and processes that might exist or occur at a repository for high-level radioactive waste at Yucca Mountain, or of the status of compliance with specific regulatory requirements. The general information portion of a license application includes a description of the proposed repository at Yucca Mountain, including an identification of the location of the repository operations area, the general character of proposed activities, proposed schedules for construction, receipt and emplacement of waste. This information should be at a level of detail to provide the reviewer enough background information to provide a context for detailed reviews of information using, for example, Chapter 4, "Review Plan for Safety Analysis Report," of the draft Yucca Mountain Review Plan. Reviews conducted using Chapter 4 of the plan will require detailed descriptions of surface and interim storage facilities proposed in the facility design as well as evaluations of the features, events, and processes that might occur at a repository. It is not necessary that such information be duplicated in the "General Information" section of the Yucca Mountain Review Plan.

In the general information section of the Yucca Mountain Review Plan, material should be addressed at the level of a summary and should not duplicate the detailed information required to be stated in the safety analysis report.

The Yucca Mountain Review Plan has been modified to clarify the purpose of the general information section is to request descriptive information (except with respect to the detailed security plan measures that are required by 10 CFR part 63), and to reflect in the Introduction section (now Appendix A) that NRC staff has made no presumptions regarding which items contribute to performance.

9.2 Information and Level of Detail Required for Each Licensing Step

Issue: Should the Yucca Mountain Review Plan more clearly acknowledge the step-wise licensing process and define the level of detail that would be applicable for each licensing step for a repository at Yucca Mountain.

Comment. Commenters stated that regulations in 10 CFR part 63 confirm that repository licensing will occur in steps and that the level of detail required to proceed with each licensing step will increase as more information is obtained. According to one commenter, in developing this step-wise approach to repository licensing, NRC drew on decades of experience in licensing nuclear reactors in discrete steps under regulations at 10 CFR part 50.

The commenters argued that the Yucca Mountain Review Plan should clearly acknowledge that a step-wise licensing approach is applicable to a repository and that the license application should include not only a description of the robustness of the system and an assessment of performance, but also an acknowledgment that additional information will continue to be developed.

The commenters stated that the draft Yucca Mountain Review Plan does not clearly and consistently differentiate the information needed for the different steps of licensing. Accordingly, the plan does not differentiate how the areas of review, review methods, and acceptance criteria should vary for each of the licensing steps.

One commenter stated that, although DOE is expected to develop a sufficiently robust and well-documented license application that would permit NRC to independently determine the safety of a repository, DOE is not expected to have resolved all design and long-term repository performance issues at the construction authorization step. However, one commenter expressed a concern that the draft Yucca Mountain Review Plan inappropriately allows the DOE to simply commit to complying with certain regulatory requirements rather than to demonstrate actual compliance.

The commenter identified locations in the draft Yucca Mountain Review Plan that are related to these comments.

Response. The regulations at 10 CFR 63.21(a) require that "[T]he application must be as complete as possible in the light of information that is reasonably available at the time of docketing." The Commission addressed the step-wise licensing approach in its "Statement of Considerations" for 10 CFR part 63 (66 FR 55738–55739, November 2, 2001) in which it stated:

> Part 63 provides for a multi-staged licensing process that affords the Commission the flexibility to make decisions in a logical time sequence that accounts for DOE collecting and analyzing additional information over the construction and operational phases of the repository. The multi-staged approach comprises four major decisions by the Commission: (1) Construction authorization; (2) license to receive and emplace waste; (3) license amendment for permanent closure; and (4) termination of license. The time required to complete the stages of this process (*e.g.*, 50 years for operations and 50 years for monitoring) is extensive and will allow for generation of additional information. Clearly, the knowledge available at the time of construction authorization will be less than at the subsequent stages. However, at each stage, [the] DOE must provide sufficient information to support that stage. DOE has stated its intent to submit, and NRC expects to receive, a reasonably complete application at the time of construction authorization to allow the Commission to make a construction authorization decision. This is reflected in the requirement at Section 63.24(a) that the application be as complete as possible in light of information that is reasonably available at the time of docketing. The

Commission believes the regulations, as proposed, provide the necessary flexibility for making licensing decisions consistent with the amount and level of detail of information appropriate to each licensing stage. However, we agree with DOE that the proposed requirement at Section 63.24(a) speaks to the content of the initial application, as well as to all subsequent updates, and, therefore, it has been included at the end of Section 63.21(a).

The information provided at each stage should be sufficient for NRC staff to make the requisite findings for the licensing action being contemplated, whether, for example, it be issuance of a construction authorization or a license to receive and possess waste.

The Yucca Mountain Review Plan has been revised, as appropriate, to clarify the step-wise approach to licensing a geologic repository for high-level waste at Yucca Mountain and the information required for each licensing step.

9.3 Organization of the Yucca Mountain Review Plan

Issue 1: Should the Yucca Mountain Review Plan be reorganized to better support both preparation of an application and a licensing review?

Comment. Commenters noted that having a license application correspond to the structure of the Yucca Mountain Review Plan is important for NRC staff's review. Similarly, since the DOE will have to prepare and maintain a safety analysis report throughout the lifetime of a repository, a structure that most efficiently presents the required information is also important. The commenters suggested that a Yucca Mountain Review Plan more similar in structure to a reactor license application would facilitate license preparation by DOE, review of the application by NRC, and maintenance of the safety evaluation report over the lifetime of the facility. The commenters also suggested that restructuring of some areas of the Yucca Mountain Review Plan, such as the performance confirmation section, would enhance the transparency and traceability to DOE's supporting technical information. Specific recommendations to achieve this restructuring were provided for the preclosure safety; postclosure safety; and general information sections of the plan. The commenters also suggested that NRC state in the Yucca Mountain Review Plan that DOE may use a format different from that presented in the Yucca Mountain Review Plan.

With respect to the preclosure safety section of the Yucca Mountain Review Plan, one commenter suggested that a logical format would be to present design information followed by the preclosure safety analysis. This format would allow design information relevant to each structure, system, and component to be presented in its own subsection, rather than being split into separate areas as in the Yucca Mountain Review Plan. The commenter noted that as low as is reasonably achievable requirements are typically addressed as a design requirement for normal operations rather than as a consequence of hazards. Therefore, the commenter recommended that the as low as is reasonably achievable requirements be addressed in a new subsection of the Yucca Mountain Review Plan that provides a comprehensive review of the radiation protection program proposed for the facility. This new section would cover the as low as is reasonably achievable design aspects as well as the commitment to these principles during operations.

With respect to the postclosure safety section of the draft Yucca Mountain Review Plan, commenters noted that the draft Yucca Mountain Review Plan structure differs from that used previously by DOE and could make it difficult to present a cohesive story regarding total system performance while demonstrating compliance with the five acceptance criteria for each model abstraction. The commenter recommended that the Yucca Mountain Review Plan be rewritten to generally state that the five review methods (and corresponding acceptance criteria) are to be applied to the model abstractions as DOE determines. The commenter notes that, in previous documents, DOE communicated its postclosure safety approach in terms of the movement of water from the surface through the mountain to the accessible environment, which is different from the structure currently presented in the Yucca Mountain Review Plan.

Commenters identified locations in the draft Yucca Mountain Review Plan relevant to their concerns.

Response. The Yucca Mountain Review Plan should provide a structure for the license application as a means to promote efficiency in both preparation of an application by DOE and the license application review by NRC staff. Long-term maintenance of the safety analysis report might also be enhanced. The structure of the Yucca Mountain Review Plan was intended to provide this structure and to inform the prospective applicant as to the preferred organizational structure of the license application.

Organization of the application along the lines of a power reactor application may not be appropriate for a potential repository for high-level waste. Among the considerations that defined the structure of the Yucca Mountain Review Plan are: (i) The requirements for the content of a license application at 10 CFR 63.21; (ii) the need to focus a licensing review on compliance with risk-informed, performance-based performance objectives being implemented in 10 CFR part 63; and (iii) the specification, in 10 CFR part 63, of techniques to be used to demonstrate compliance both during operations and after permanent closure.

Because regulatory guidance cannot impose regulatory requirements, DOE is not required to use the format presented in the Yucca Mountain Review Plan, however, a different format could prolong the duration of the NRC licensing review.

As for the suggestion that the preclosure safety section (Section 4.1 of the draft Yucca Mountain Review Plan) first present design information followed by the preclosure safety analysis, the approach currently in the plan is consistent with the steps required for a preclosure safety analysis. These techniques are based on hazard and consequence analysis methodologies that are widely accepted for complex facilities. The purpose of the preclosure safety analysis is to determine whether the preclosure performance objectives will be met. Consequently, the review steps in the Yucca Mountain Review Plan logically lead from hazard identification through consequence analyses to assessment of compliance with performance objectives. Related to this approach is the need to use risk information to focus the NRC staff review. The preclosure safety analysis will be used by DOE to identify those structures, systems, and components important to safety. Since these structures, systems, and components have not yet been identified, the Yucca Mountain Review Plan is not structured around the design of the repository.

As low as is reasonably achievable requirements are typically addressed as a design requirement for normal operations rather than as a consequence of hazards. However, for a preclosure safety analysis for a repository meeting these requirements can appropriately be linked to the radiological risks of a repository. Since these risks will be evaluated as part of the preclosure safety analysis process, NRC staff prefers to evaluate them as part of its review of DOE's preclosure safety analysis.

Comments on the postclosure safety section of the Yucca Mountain Review Plan may have misinterpreted the review approach. NRC staff is aware that the current DOE Total System Performance Assessment uses nine process level models (similar to NRC's model abstractions) that are based on the flow of water through a repository to the location of the reasonably maximally exposed individual. In light of the key role performance assessment will play in demonstrating and determining compliance, NRC staff has been developing an independent performance assessment capability for a Yucca Mountain repository and discussed the published results with DOE at numerous public meetings. The NRC total system performance assessment incorporates 14 model abstractions that represent its independent conceptual model of a Yucca Mountain site. The Yucca Mountain Review Plan describes how NRC staff will determine compliance, and its independently developed total system performance assessment code will be an important tool in assessing whether DOE has satisfied regulatory requirements. Therefore, the Yucca Mountain Review Plan facilitates the use of this tool in the license application review. DOE's compliance demonstration method may use similar, or different, conceptual models. NRC staff review, based on its 14 model abstractions, is described in detail in the Yucca Mountain Review Plan. This detail is useful because NRC staff has learned a great deal about the features, events, and processes of the Yucca Mountain site, and this knowledge is reflected in the technical information specific to each of the 14 model abstractions.

Although specific details of the postclosure portion of the Yucca Mountain Review Plan have been revised to address this comment, the general structure has not been changed. The Yucca Mountain Review Plan was revised, as appropriate, to clarify the matters raised in these comments.

Issue 2: Should quality assurance requirements be specifically addressed in each section of the Yucca Mountain Review Plan?

Comment. One commenter stated that quality assurance requirements should be identified and specified in the review methods and acceptance criteria for each section of the Yucca Mountain Review Plan. The commenter argued that Section 3.2, "Proposed Schedules for Construction, Receipt, and Emplacement of Waste," Review Method 1, and Acceptance Criterion 1, of the draft Yucca Mountain Review Plan, should explicitly mention quality assurance compliance, since state-of-the-art quality assurance begins with preliminary scheduling and includes impacts on schedules, work interdependence, and work flow, particularly during construction. The commenter also suggested four specific changes to this section of the Yucca Mountain Review Plan that would incorporate quality assurance requirements.

Response. The quality assurance requirements in 10 CFR part 63 apply to aspects of repository construction, operation, or closure that are important to safety or to waste isolation. While quality assurance is an integral part of almost all aspects of a licensing review for a high-level waste repository, the Yucca Mountain Review Plan includes a single section on quality assurance, which will be applied to each of the other review activities.

To clarify the importance of quality assurance, the Yucca Mountain Review Plan integrates quality assurance into the entire licensing review by using the review methods and acceptance criteria in the "Quality Assurance Program" section of the Yucca Mountain Review Plan and applying them to reviews conducted for other Yucca Mountain Review Plan sections.

No changes to the Yucca Mountain Review Plan were made as a result of this comment.

Issue 3: Should the distinction between a licensing review and inspection activities be specifically addressed in each section of the Yucca Mountain Review Plan?

Comment. One commenter stated that the distinction between licensing review and inspection activities should be highlighted in each section of the Yucca Mountain Review Plan.

Another commenter suggested that NRC staff conduct a comprehensive review of the plan to ensure that the level of detail being specified is appropriate for a licensing review, rather than an inspection review. The commenter also suggested that Figure 1.1 in the plan be clarified for this purpose and that the "Introduction" to the Yucca Mountain Review Plan be revised to more explicitly outline this principle.

Response. It is not necessary to draw a distinction between licensing review and inspection in each section of the Yucca Mountain Review Plan in that it would substantially lengthen the review plan without adding significant benefit or clarity to the licensing review. This approach would also be inconsistent with other agency review plans.

As part of NRC's inspection program for a high-level waste repository at Yucca Mountain, NRC staff would prepare an Inspection Manual inspection procedures and would train additional inspectors. Inspection would thus be addressed separately.

No changes have been made to the Yucca Mountain Review Plan as a result of this comment.

Issue 4: Is the Yucca Mountain Review Plan excessively redundant and difficult to understand?

Comment. One commenter stated that although the Yucca Mountain Review Plan meets the purpose for which it was written and explains the bases for activities and roles of various entities, it is repetitive particularly with respect to "Areas of Review," "Review Methods," "Acceptance Criteria," "Evaluation Findings," and "References." The commenter noted that such headings, along with common verbiage, is repeated for topics, which are separately discussed for both preclosure and postclosure safety reviews. Although the commenter indicated that this approach may support the uniformity of the NRC review, it makes the document quite long. The commenter suggested that a table could be used as an abbreviated form of what currently appears as narrative under the headings (*e.g.*, "Acceptance Criteria," "Evaluation Findings," *etc.*) for each of the topics involved and for each major section of the review plan.

Response. The Yucca Mountain Review Plan is lengthy and somewhat redundant. The structure and format of the review plan, however, is intended to guide NRC staff reviewers from various disciplines to perform an efficient and complete review in discrete areas and provide the relevant information in each section. The structure of the Yucca Mountain Review Plan is also consistent with other NRC review plans.

No changes were made to the Yucca Mountain Review Plan in response to this comment.

Issue 5: Should the Yucca Mountain Review Plan include an example of how a review would be completed and the results documented?

Comment. One commenter noted that the Yucca Mountain Review Plan sections dealing with postclosure issues reflect the risk perspectives of 10 CFR part 63 appropriately, but cautioned that implementation of the Yucca Mountain Review Plan will determine whether a risk perspective is followed. The commenter noted that the review plan identifies the need to maintain flexibility in review guidelines at the expense of specificity and acceptance criteria contain guidance to NRC staff for evaluating such aspects as: (1) Whether sufficient data are available to adequately define relevant parameters and conceptual models; (2) whether models use parameter values, assumed

ranges, probability distributions, and bounding assumptions that are technically defensible; and (3) whether the technical bases for the parameter values are consistent with data from the Yucca Mountain region. The commenter argued that the critical issue will be how items such as data sufficiency and model adequacy are determined and suggested adding an appendix to the Yucca Mountain Review Plan, which provides an abbreviated illustration of a review of a specific issue. This might be achieved using one of the integrated subissues, with specific reference to the prelicensing agreements between NRC staff and DOE staff as to how questions about sufficiency and adequacy would be addressed in the review process. The commenter noted that such an example might be very useful. In providing such an example, NRC staff could clarify what might lead to a conclusion that the license application was inadequate.

Response. An example of a review and the documentation of the results would be helpful to users of the Yucca Mountain Review Plan. One has been incorporated in Appendix A.

Issue 6: Will the Yucca Mountain Review Plan be revised in the future?

Comment. One commenter acknowledged that the Yucca Mountain Review Plan is a living document and agreed that physical protection is a potential area of change. The commenter questioned whether, considering the expected length of time between initial emplacement of waste and repository closure, it is reasonable to anticipate and accommodate change.

Response. Because the document is intended to address several steps in licensing of a high-level waste repository, the Yucca Mountain Review Plan will be revised in the future, if appropriate.

No changes to the Yucca Mountain Review Plan were made as a result of this comment.

9.4 Content of Yucca Mountain Review Plan Glossary

Issue: Should the Yucca Mountain Review Plan glossary include terms that are not defined in the text?

Comment. One commenter identified approximately forty terms that are used in the Yucca Mountain Review Plan text, but are not defined. The commenter suggested that these terms be added to the glossary.

Response. The glossary should define the terms used in the Yucca Mountain Review Plan. The glossary, however, provides general definitions and is not intended to be exhaustive as to all technical terms that may be used by a reviewer of a license application.

In response to this comment, the glossary has been revised to add terms that would be useful to a general reader.

9.5 Use of a Risk-Informed, Performance-Based Yucca Mountain Review Plan

Issue 1: Is the Yucca Mountain Review Plan sufficiently risk-informed, and performance-based?

Comment. One commenter noted the NRC commitment to conduct a risk-informed, performance-based licensing review for a potential high-level waste repository at Yucca Mountain. However, the commenter stated that the application of risk-informed, performance-based principles in the Yucca Mountain Review Plan was uneven. The commenter cited examples from the "Introduction" (now Appendix A) to the Yucca Mountain Review Plan that indicated risk-informed, performance-based principles were applied only where there was some reason to do so. The commenter argued that application of such principles should be a fundamental part of all NRC review activities. The commenter cited several specific examples from the Introduction to make the point that risk-informed, performance-based principles were unevenly applied in the Yucca Mountain Review Plan.

In addition, the commenter defined three items needed to consistently apply risk-informed, performance-based principles in the Yucca Mountain Review Plan: (i) Recognition that DOE has the latitude to make risk-informed, performance-based judgments as to what should be included in a license application and that NRC will determine whether it agrees with these judgments; (ii) revision of sections of the Yucca Mountain Review Plan that contain an excessive level of detail, particularly those sections dealing with repository design and Commission assumptions about the relative importance of specific features, events, and processes; and (iii) recognition that risk-informed, performance-based principles are especially important in a step-wise licensing process.

In support of these arguments, that commenter stated that consistent application of risk-informed, performance-based licensing principles would allow flexibility and would encourage the learning and development that would occur over a repository lifetime, thereby improving the protection of health and safety.

Finally, the commenter identified specific locations in the draft Yucca Mountain Review Plan that are inconsistent with risk-informed, performance-based principles; contain an excessive level of detail or prescription; or preclude necessary licensee flexibility. These locations are summarized here.

(1) Section 3, "Review Plan for General Information," is, in general, overly detailed and prescriptive.

(2) Section 3 does not adequately recognize that, at the construction authorization stage, information in some areas may not be as highly developed as in others.

(3) Section 4.2.1.3, "Model Abstraction," could be significantly streamlined. Rather than redundantly repeating the five generic Acceptance Criteria and related guidance, this material could be stated once and then applied to each of the 14 model abstractions. (This comment was made by another commenter on the review plan as well). The commenter stated that making this change would require a rewrite of the entire section, resulting in approximately 10 pages, rather than 109 pages, which could be applied with improved consistency and flexibility.

(4) Section 4.4, "Performance Confirmation Program," is inconsistent with the risk-informed, performance-based nature of 10 CFR Part 63, would be impractical to implement, and contradicts what has been learned about total system performance assessment and subsystem performance requirements by placing detailed stipulations on the specific scientific and technical measures that must be taken to meet the already stated expectations of the "Performance Confirmation Program." (Responses to comments received on Section 4.4 of the draft Yucca Mountain Review Plan are consolidated in Section 7 of this comment response document).

(5) Section 4.5.1, "Quality Assurance," is too restrictive, inconsistent with other NRC criteria for Quality Assurance Program Descriptions, and will necessitate continual implementation of the Quality Assurance Program Description change process. (Responses to comments received on Section 4.5.1 of the draft Yucca Mountain Review Plan are consolidated in Section 8 of this comment response document.)

One commenter suggested that "risk-informed," and "performance-based" be specifically defined in the Yucca Mountain Review Plan.

Response. Changes have been made throughout the Yucca Mountain Review Plan to address these and other comments. For example, the review plan explains that DOE may make risk-informed, performance-based judgments as to what should be included in a license application, and NRC has to assess these judgments. NRC staff has revised sections of the Yucca Mountain Review Plan that contain an excessive level of detail, particularly those sections dealing with repository design and NRC assumptions about the relative importance of specific features, events, and processes. The Yucca Mountain Review Plan recognizes that risk-informed, performance-based principles are especially important in a step-wise licensing process.

Some specific comments, however, were not incorporated.

Regulations at 10 CFR part 63 were specifically written to implement a risk-informed, performance-based approach to licensing. Quantitative performance measures for the repository are found in the radiation health and protection standards that are implemented in 10 CFR part 63. In addition, 10 CFR part 63 specifies use of multiple barriers, performance confirmation, and other requirements in demonstrating performance. There are some techniques, programs, and guidance for regulating the use of radioactive material, however, that have proven to be efficient and effective for a wide range of licensees and that were adopted in 10 CFR part 63. Among these areas are operational health physics, material control and accountability, and emergency preparedness. For these reasons, the Yucca Mountain Review Plan does not reflect major changes in the way these programs would be implemented at other facilities regulated by NRC.

An applicant may propose approaches to areas such as operational health physics, physical protection, material control and accountability, and emergency preparedness that depart from those outlined in the guidance of the Yucca Mountain Review Plan. If DOE otherwise demonstrates it satisfies regulatory requirements, that is, that the public health and safety, as well as the environment, would be protected, NRC staff would find those approaches acceptable.

Section 4.2.1.3, "Model Abstraction," of the draft Yucca Mountain Review Plan is lengthy and somewhat redundant, but was structured to best reflect how NRC staff would conduct its licensing review. Each of the 14 model abstractions has its unique technical and regulatory issues. Although the five generic acceptance criteria are applicable to each of the model abstraction reviews, for the convenience of the reviewer, the review procedures and acceptance criteria are listed separately for each model abstraction. Accordingly, the multidisciplinary team that conducts each model abstraction review will be able to use a separate section of the review plan.

In summary, changes have been made throughout the Yucca Mountain Review Plan to more effectively implement a risk-informed, performance-based licensing review, but brevity has not been the primary goal.

Issue 2: To what extent should NRC staff rely on the applicant in developing risk insights?

Comment. One commenter noted that findings of compliance or noncompliance will need to be substantiated, suggesting that NRC staff performs a detailed review or a simplified review of a particular feature will be decided by how important DOE's safety analysis considers the feature to be to the overall repository performance. On the other hand, the Yucca Mountain Review Plan contains language that suggests that the scope of the review will be determined in part by what DOE deems important, but also in part by risk insights developed by NRC staff from using its own knowledge of the site and its own analyses of performance assessment models. The commenter strongly favored the latter approach.

The commenter urged NRC staff not to be guided solely by the applicant on the depth of the review of an application and to continue to build agency insights about important contributors to risk at the proposed repository.

Response. One purpose of the Yucca Mountain Review Plan is to provide guidance to NRC staff on how to conduct a risk-informed, performance-based licensing review for a potential high-level waste repository at Yucca Mountain. The review plan, as revised, clarifies that the risk-informed, performance-based review, is not dictated solely by DOE.

Issue 3: How will risk-informed, performance-based principles be applied in a Yucca Mountain licensing review?

Comment. Several comments addressed the use of risk insights, to focus the review on those areas most important to repository performance. One commenter asked how NRC would decide which areas are most important to repository performance, and how the extent of the review of a given portion of the license application would be determined.

One commenter noted that Section 4.2.1.2.2, "Identification of Events with Probabilities Greater Than 10^{-8} Per Year," of the draft Yucca Mountain Review Plan does not mention the risk-informed, performance-based review approach, and suggested that this section should be combined with Section 4.2.1.2.1, "Scenario Analysis," of the draft Yucca Mountain Review Plan.

Another commenter asked whether NRC staff was aware that DOE's results were being probability weighted.

Response. Practical experience in conducting iterative performance assessments for the Yucca Mountain site has provided NRC staff with valuable insight regarding areas that are most likely to be important to health and safety. Until DOE submits a license application, however, it is premature to identify those areas of the postclosure performance assessment that would require the most detailed review. The review of DOE's scenario analysis and event probability described in Section 4.2.1.2 of the draft Yucca Mountain Review Plan would provide an initial foundation for focusing on credible events affecting repository performance. The review methods and acceptance criteria in Section 4.2.1.3, "Model Abstraction," of the draft Yucca Mountain Review Plan provide a mechanism for evaluating the different sections of DOE's postclosure performance assessment. NRC staff would focus its review accordingly based on information in the DOE application and the areas that are most important to health and safety.

The concept of a risk-informed, performance-based review has been reiterated in this section and the text has been modified to clarify that establishing a probability range is an aspect of a risk-informed approach.

Section 4.2.1.2.2 has not been combined with Section 4.2.1.2.1. Section 4.2.1.2.2 addresses the specific requirements of 10 CFR 63.114(a)(4), and Section 4.2.1.2.1 addresses the specific requirements of 10 CFR 63.114(a)(5) and (6).

NRC staff review will determine whether probability weighting of results is mathematically and technically used appropriately in the license application.

Section 4.2.1.2.2 of the Yucca Mountain Review Plan has been clarified and modified in response to this comment.

9.6 Use of Guidance and Experience From Regulating Other Nuclear Facilities

Issue: To what extent should NRC rely on guidance and experience from regulating other nuclear facilities when evaluating a license application for a potential high-level waste repository at Yucca Mountain?

Comment. One commenter expressed concern that, because 10 CFR part 63 does not have performance objectives for administrative and programmatic

aspects, NRC staff relied on experience from regulating other nuclear facilities, including nuclear power plants, in developing these parts of the Yucca Mountain Review Plan. The commenter also noted that some of the preclosure sections of the draft Yucca Mountain Review Plan apparently rely on experience with fuel cycle facilities and nuclear power plants, but urged that the operations at the proposed Yucca Mountain repository have little in common with nuclear power plants and, hence, many reactor-related guidance documents may not be transferable. The commenter argued that repeated references to reactor-based documents (*e.g.*, NUREGs–1300 and 1278; Regulatory Guides 1.109 and 8.38; and references to the design of systems that are important to safety) support the observation that the Yucca Mountain Review Plan relies heavily on NRC documents prepared for and used in conjunction with the licensing of nuclear power plants.

The commenter suggested that NRC staff reevaluate inclusion of material from nuclear power plant reviews, and delete material and requirements that are not relevant to the safety of the proposed Yucca Mountain repository. For material deemed relevant, NRC staff should explain in the Yucca Mountain Review Plan, the use and relevance of reactor-based guides and policies, and should indicate where use of such material has been modified to account for differences between high-level waste disposal and nuclear power plant operation.

Response. The Yucca Mountain Review Plan has been modified to clarify that only applicable guidance, or portions of that guidance, are proposed for use in a licensing review for a high-level waste repository.

9.7 Use of Graphics

Issue: Could use of graphics clarify the purposes and use of the Yucca Mountain Review Plan?

Comment. Commenters stated that a process diagram that illustrates how decisions are made and how inadequacies are addressed would be helpful. Commenters noted that Figure 1–3 in "Components of Performance Assessment Review" provided information on how the potential for engineered barrier failure would be addressed and asked how other topics would be addressed.

One commenter recommended the use of tables, charts, and graphics to give the reader a high-level overview of activities under the Yucca Mountain Review Plan. The commenter suggested that an "activity network," which diagrams how the Yucca Mountain Review Plan would be used would help identify linkages among plan sections. The commenter argued that an activity network diagram would also help communicate the completeness of the Yucca Mountain Review Plan and make the report more understandable to stakeholders.

Another commenter suggested that an appendix that referenced requirements from 10 CFR part 63 to the Yucca Mountain Review Plan would be useful.

Response. Graphics could be useful in promoting understanding of the Yucca Mountain Review Plan, and two have been added. One depicts the steps of the licensing process, and one describes how review of a license application section would be conducted using the Yucca Mountain Review Plan. Accompanying text in the review plan explains the graphics.

An appendix that cross-references requirements from 10 CFR part 63 to the Yucca Mountain Review Plan was not included because the related regulatory requirements are already identified in the evaluation findings portion of each review plan section.

Changes to address aspects of these comments were added to the new Appendix A (Licensing Review and the Yucca Mountain Review Plan) of the review plan.

9.8 Completeness of the Yucca Mountain Review Plan

Issue: Is the scope of the Yucca Mountain Review Plan adequate to evaluate the health and safety of a potential high-level waste repository at Yucca Mountain?

Comment. Several commenters had concerns regarding the adequacy of the scope of the Yucca Mountain Review Plan. The concerns included omission of potentially significant features, events, and processes; the nature of information that would be reviewed using the Review Plan for General Information; requirements for the size of restricted areas; the adequacy of the scope of a preclosure safety analysis; specificity of required design information; and the possibility that acceptance criteria were too lenient and subjective.

Response. The scope of the Yucca Mountain Review Plan is adequate and allows flexibility to evaluate whatever methods DOE might choose to demonstrate compliance.

The purpose of the "Review Plan for General Information" section of the Yucca Mountain Review Plan is to ensure that the requirements of 10 CFR 63.21(b) have been met. The General Information section of a license application should provide a general understanding of the engineering design concept for the repository and of the aspects of the Yucca Mountain site and its environs that influence repository design and performance. Information provided by DOE in response to the requirements of 10 CFR 63.21(b) for the General Information section should be at the level of an executive summary and is not expected to be detailed. The level of detail requested for the site characterization description in the General Information section of the Yucca Mountain Review Plan has been substantially reduced. Detailed information would be evaluated with respect to its importance to health and safety in sections that address review of DOE's Safety Analysis Report.

The probability and consequences of features, events, and processes would be subjected to a detailed review using review methods and acceptance criteria in the section of the Yucca Mountain Review Plan that examines Repository Safety After Permanent Closure.

There is no regulatory requirement mandating the size of restricted areas. However, general practice is that these areas are as small as operationally feasible to facilitate monitoring and control. A DOE physical protection plan would have maps and diagrams associated with physical protection methods and procedures inside restricted areas as required by 10 CFR 73.51.

The Yucca Mountain Review Plan identifies the methods and criteria NRC staff would use to determine regulatory compliance. The review methods and acceptance criteria in the Yucca Mountain Review Plan are flexible rather than prescriptive because: (i) NRC regulations at 10 CFR part 63 are risk-informed and performance-based, (ii) prescriptive review methods and acceptance criteria could foreclose the license applicant from using the most effective approaches to regulatory compliance, and (iii) DOE has not yet presented a preclosure safety analysis.

The Yucca Mountain Review Plan has been modified throughout, as appropriate, to clarify the scope of the risk-informed, performance-based review methods and acceptance criteria.

10 Selected Topics

10.1 Consistency With Regulations

Issue 1: Should the terminology in the Yucca Mountain Review Plan be made more consistent with regulations and be used in a more consistent manner?

Comment. Several commenters stated that the draft Yucca Mountain Review Plan uses terms that are inaccurate or are inconsistent with the applicable regulations. The commenters recommended that the Yucca Mountain Review Plan be revised to more closely reflect the applicable regulations to minimize questions of interpretation. The commenters also suggested that the Yucca Mountain Review Plan directly reference appropriate regulations rather than paraphrasing them.

For example, the term "safety case" is used throughout the draft Yucca Mountain Review Plan, but is not defined either within the review plan or in 10 CFR part 63. One commenter stated that this term generally addresses more than a compliance demonstration, and confusion about its use may adversely affect both preparation and review of an application.

Commenters noted that terms used in the draft Yucca Mountain Review Plan were confused with common industry terms. For example, the terms "technical specifications" and "license specifications" are erroneously used interchangeably. "License specifications" is used and defined in 10 CFR part 63 and its use in the Yucca Mountain Review Plan should be consistent with this definition. Also, the term "license conditions" is used interchangeably with the term "license specifications." In 10 CFR 63.43, license specification is defined in terms of license condition, but the Yucca Mountain Review Plan does not provide sufficient distinction between the two terms.

One commenter recommended replacing the term "performance-based" with "experimental" due to the lack of experience in storage for thousands of years. The commenter noted that use of the phrases "risk-informed" and "performance-based" was problematic because risk should mean probability times consequence, but this was not apparent in the Yucca Mountain Review Plan. The commenter further noted that the phrase "risk-informed, performance-based," as applied over a period of thousands or millions of years require a workable definition.

Two commenters expressed concern with the discussion of "open items" or "confirmatory items" that might result from the licensing review. One argued that these items could be used to inappropriately accommodate licensing deficiencies and asked for assurance that such action would be prevented.

Another commenter requested that the term "important to performance" be defined consistent with 10 CFR part 63 and that the terms "important to safety" and "important to waste isolation" be included in the Yucca Mountain Review Plan glossary.

The commenters included a number of additional suggestions for improving Yucca Mountain Review Plan consistency and the effectiveness of the glossary.

Response. Terminology should be used consistently throughout the Yucca Mountain Review Plan and should be consistent with regulations. Revisions were made to the Yucca Mountain Review Plan, as appropriate, to address terminology concerns raised by commenters.

The term "safety case" has been removed from the Yucca Mountain Review Plan and, generally, has been replaced with the term "license application." This change is more consistent with language in 10 CFR part 63; however, the removal of the term "safety case" should not be viewed as a lessening of an emphasis on health and safety for the repository.

Discussion and use of the terms "technical specifications," "license specifications," and "license conditions" have been clarified throughout the Yucca Mountain Review Plan to be consistent with 10 CFR 63.42 and 62.43. License conditions include license specifications that are derived from analyses and evaluations included in the application.

In developing 10 CFR part 63 and the Yucca Mountain Review Plan, NRC staff sought to establish a coherent body of risk-informed, performance-based criteria for Yucca Mountain that is compatible with the Commission's overall philosophy of risk-informed, performance-based regulations. ["Use of Probabilistic Risk Assessment Methods in Nuclear Regulatory Activities—Final Policy Statement" (60 FR 42622, August 16, 1995).] Stated succinctly, risk-informed, performance-based regulation is an approach in which risk insights, engineering analysis and judgment (*e.g.*, defense in depth), and performance history are used to: (i) Focus attention on the most important activities; (ii) establish objective criteria for evaluating performance; (iii) develop measurable or calculable parameters for monitoring system and licensee performance; (iv) provide flexibility to determine how to meet the established performance criteria in a way that will encourage and reward improved outcomes; and (v) focus on the results as the primary basis for regulatory decision-making.

NRC defines risk as probability times consequence. Further, 10 CFR part 63 establishes the regulatory period of interest for a Yucca Mountain repository at 10,000 years, consistent with the Nuclear Waste Policy Act.

With respect to the concerns about possible misuse of "open" and "confirmatory" items, NRC will review the application to determine whether the requisite regulatory showing has been made and impose conditions, as necessary to address confirmatory items. "Open" items that relate to information required for regulatory findings must be addressed by DOE during the review.

The term "important to performance" has been replaced with "important to safety" or "important to waste isolation," as appropriate, consistent with 10 CFR part 63.

These and other changes were made throughout the Yucca Mountain Review Plan to clarify the guidance and provide consistency with regulatory requirements.

Issue 2: Is the Yucca Mountain repository program being conducted consistent with legal requirements?

Comment. One commenter stated that the Yucca Mountain Review Plan violates a number of legislative mandates, Federal laws, an executive order, State and local constitutions, and an international treaty. Such documents include: The Nuclear Waste Policy Act; the National Environmental Policy Act; the Federal Administrative Procedures Act; the Safe Drinking Water Act; the Federal Facilities Management Act; Executive Order 12898 ("Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population"); the Ruby Valley Treaty of 1863; and regulations related to uncompensated takings.

Response. The Yucca Mountain Review Plan is a guidance document that sets forth an approach for NRC staff to determine whether the regulatory requirements of 10 CFR part 63 have been met. The regulations at 10 CFR part 63 were adopted in accordance with the laws of the United States. Any challenges to those regulations should be raised in the appropriate forum and are not appropriate for comment here.

No changes have been made to the Yucca Mountain Review Plan as a result of this comment.

10.2 Nature of Wastes To Be Disposed of in a High-Level Waste Repository

Issue: What types of radioactive wastes may be emplaced in a repository for high-level radioactive waste at Yucca Mountain?

Comment. One commenter asked several questions regarding the types and forms of waste that would be eligible for disposal in a repository for high-level radioactive waste at Yucca Mountain, Nevada. The questions included: (i) Whether liquid wastes could be interred; (ii) whether low-level or intermediate-level wastes could be interred; (iii) whether contaminated

operations equipment could be disposed of; (iv) whether radioactive chemical wastes could be interred; and (v) whether contaminated soils or contaminated mine tailings could be disposed of.

Response. The types and forms of waste that could be disposed of in a repository for high-level radioactive waste at Yucca Mountain are based on Section 2 of the Nuclear Waste Policy Act, as amended, and are defined in NRC regulations at 10 CFR 63.2. High-level waste means: (i) The highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material, derived from such liquid waste, that contains fission products in sufficient concentrations; (ii) irradiated reactor fuel; and (iii) other highly radioactive material that the Commission, consistent with existing law, determines, by rule, requires permanent isolation. Also, 10 CFR 63.2 defines radioactive waste as high-level waste and radioactive materials other than high-level waste that are received for emplacement in a geologic repository.

The Commission addressed the question of liquid wastes in its "Statement of Considerations" for 10 CFR part 63 (66 FR 55773, November 2, 2001), which states:

> Because of processing in the nuclear fuel cycle, some high-level waste can occur in the liquid (aqueous) state. However, this waste type is not expected to be disposed of at Yucca Mountain. Rather, liquid high-level waste will be vitrified—mixed with molten glass and solidified—to reduce the actual volume of waste and make it easier to handle.

DOE would have to demonstrate in its license application that wastes that are not the highly radioactive material resulting from the reprocessing of spent nuclear fuel (including liquid waste produced directly in reprocessing and solid material derived from such liquid waste that contains fission products in sufficient concentrations) or irradiated reactor fuel, are wastes that the Commission, consistent with existing law, determines, by rule, requires permanent isolation.

No changes were made to the Yucca Mountain Review Plan as a result of this comment.

10.3 The Meaning of Safety

Issue: Will results of a review conducted using the Yucca Mountain Review Plan adequately protect health and safety?

Comment: One commenter questioned whether a licensing review for a high-level waste repository at Yucca Mountain that is based on the regulatory requirements in 10 CFR part 63, and that uses the review methods and acceptance criteria in the Yucca Mountain Review Plan, would protect health and safety.

The commenter referred to a dictionary definition of safety as meaning free from danger and involving no risk. The commenter contended that this is the public interpretation of safety, and that agencies of the Federal government use different definitions since the Yucca Mountain Review Plan glossary does not define safety. The commenter assumed that the dictionary definition applies.

The commenter further noted that, when Yucca Mountain was selected as the sole site for characterization as a geologic repository, officials of DOE promised not to build the site if it was unsafe. The commenter stated that DOE often referred citizens to site suitability guidelines that included qualifying and disqualifying conditions. Also, NRC regulations included sub-system requirements that would ensure the site could be licensed only if safety could be assured. The commenter noted that these regulatory provisions have been eliminated and that a safety decision would now be based on the results of performance assessment. The commenter also stated that DOE has redefined safe in terms of satisfying regulations.

Response. A decision on whether to authorize construction of a high-level waste repository at Yucca Mountain will be based on whether DOE demonstrates it has satisfied applicable regulatory requirements. The standards for issuance of a construction authorization, for example, include a determination that (1) There is reasonable assurance that the types and amounts of radioactive materials described in the application can be received in the repository without unreasonable risk to public health and safety and (2) there is reasonable expectation that materials can be disposed of without unreasonable risk to public health and safety.

Among the requirements that must be met are the preclosure and postclosure performance objectives that are defined in NRC regulations at 10 CFR part 63. Simply stated, these performance objectives are quantitative radiation exposure limits. The Commission addressed the adequacy of performance assessment for evaluating compliance in its "Statement of Considerations" for 10 CFR part 63 (66 FR 55746–55747, November 2, 2001) as follows.

> Although repository postclosure performance is evaluated with respect to a single performance measure for individual protection, the NRC considers a broad range of information in arriving at a licensing decision. In the case of the proposed repository at Yucca Mountain, Part 63 contains a number of requirements (*e.g.*, qualitative requirements for data and other information, the consideration and treatment of uncertainties, the demonstration of multiple barriers, performance confirmation program, and QA program) designed to increase confidence that the postclosure performance objective is satisfied. The Commission will rely on the performance assessment as well as DOE's compliance with these other requirements in making a decision, if DOE submits a license application for disposal of HLW at Yucca Mountain. The Commission believes the approach for performance assessment in the proposed rule is appropriate and it is retained in the final rule. However, requirements for QA, multiple barriers, and performance confirmation have been revised to clarify the Commission's intent for these requirements * * *
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> The Commission believes that there have been significant advances in, and experience with, risk assessment in the past 20 years (see Commission's white paper on Risk-Informed and Performance-Based Regulation, March 1999). The Commission continues to believe that a performance assessment, developed with sufficient credibility, is the best means to provide useful information to the Commission for making an informed, reasonable licensing decision. The Commission recognizes, however, the uncertainties inherent in evaluating a first-of-a-kind facility like the repository and in estimating system performance over very long time periods (*i.e.*, 10,000 years). Thus, proposed Part 63 contained requirements to ensure that: (1) Uncertainties inherent in any performance assessment are thoroughly articulated and analyzed or addressed; (2) DOE's performance assessment is tested (corroborated) to the extent practicable; and (3) there are additional bases, beyond the performance assessment, that provide confidence that the postclosure performance objectives will be met.

In essence, safety is defined by 10 CFR part 63. A determination as to whether a repository for high-level radioactive waste at Yucca Mountain can be operated safely will be based on the information presented in a license application, and the evidence presented in the adjudicatory proceeding before the NRC.

No changes have been made to the Yucca Mountain Review Plan in response to this comment.

10.4 Reasonable Assurance and Reasonable Expectation

Issue: Does the difference in the meanings of the terms "reasonable assurance" and "reasonable expectation" need to be clarified?

Comment. One commenter asked that the meanings of the terms reasonable assurance and reasonable expectation be clarified. The commenter stated that, as used in the draft Yucca Mountain Review Plan, these terms seem to mean approximately the same thing. The commenter argued that this was not the intent of NRC when it promulgated 10 CFR part 63.

The commenter agreed that use of reasonable assurance as a measure of compliance for preclosure safety was appropriate and consistent with NRC regulation of other nuclear facilities. However, the commenter opined that reasonable expectation implies a different standard that recognizes the inherent uncertainties in predicting repository performance far into the future. The differences include the need for realistic, rather than bounding, modeling approaches, and for taking into account the stepwise nature of repository licensing. According to the commenter, a reasonable expectation standard should allow for considerable information to be added after a license is initially granted, but before repository closure. The commenter argued that reasonable expectation should allow gaps in understanding to exist at the time a license is initially granted, provided adequate efforts to address these gaps are implemented.

The commenter added that the U.S. Environmental Protection Agency defined reasonable expectation in 40 CFR part 197 with the intent that it be explicitly different from reasonable assurance and allowed NRC the flexibility to determine how the term would be applied. Since the Yucca Mountain Review Plan is the key NRC implementation guidance, the distinction between reasonable assurance and reasonable expectation should be clear in the Review Plan.

Response. The Commission addressed its adoption and use of the reasonable expectation and reasonable assurance regulatory compliance standards in its "Statement of Considerations" for 10 CFR part 63 (66 FR 55739–55740, November 2, 2001) where it stated:

> Confidence that DOE has, or has not, demonstrated compliance with EPA's standards is the essence of NRC's licensing process. It is the Commission's responsibility to determine whether DOE has or has not demonstrated compliance. The Commission does not believe that NRC's use of "reasonable assurance" as a basis for judging compliance compels focus on extreme values (*i.e.*, tails of distributions) for representing the performance of a Yucca Mountain repository. Further, if DOE is authorized to file a license application, and if the Commission is called on to make a decision, irrespective of the term used, the Commission will consider the full record before it. That record will include many factors in addition to whether the site and design comply with the performance objectives (both preclosure and postclosure performance standards) contained in Subparts E, K, and L. The Commission could consider the QA program, personnel training program, emergency plan and operating procedures, among others, in order to determine whether it has confidence that there is no unreasonable risk to the health and safety of the public. To avoid any misunderstanding and to achieve consistency with final EPA standards, the Commission has decided to adopt EPA's preferred criterion of "reasonable expectation" for purposes of judging compliance with the postclosure performance objectives. The Commission is satisfied that a standard of "reasonable expectation" allows it the necessary flexibility to account for the inherently greater uncertainties in making long-term projections of a repository's performance. The Commission agrees with EPA and others that it is important to not exclude important parameters from assessments and analyses simply because they are difficult to precisely quantify to a high degree of confidence. By adopting what EPA has characterized as a more flexible standard of "reasonable expectation" for determining compliance with postclosure performance objectives, the Commission hopes to make clear its expectations. The Commission expects that the required analyses of postclosure performance will focus on the full range of defensible and reasonable parameter distributions, and that they should not be constrained only to extreme physical situations and parameter values. For other determinations regarding compliance of the repository with preclosure objectives, the Commission will retain a standard of "reasonable assurance," consistent with its practice for other licensed operating facilities subject to active licensee oversight and control.
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> As stated previously, in order to avoid further misunderstanding of its intent, the Commission will adopt EPA's preferred standard of "reasonable expectation" for purposes of judging compliance with the numerical postclosure performance objectives. However, the Commission wants to make clear that its proposed use of "reasonable assurance" as a basis for judging compliance was not intended to imply a requirement for more stringent analyses (*e.g.*, use of extreme values for important parameters) or for comparison with a potentially more stringent statistical criteria (*e.g.*, use of the 95th percentile of the distribution of the estimate of dose).

No changes have been made to the Yucca Mountain Review Plan as a result of this comment.

11 Other Comments

11.1 Codes and Standards

Issue: Should the Yucca Mountain Review Plan identify specific codes and standards to be used by the applicant?

Comment. One commenter stated that the draft Yucca Mountain Review Plan refers to codes and standards that are not compatible with the risks from a geologic repository. The commenter recommended that the Yucca Mountain Review Plan be revised to clarify that the applicant has the flexibility to use codes, standards, and methodologies it demonstrates to be applicable. Another commenter noted that some referenced codes and standards were outdated.

Commenters identified locations in the draft Yucca Mountain Review Plan related to their concerns.

Response. The risk-informed, performance-based regulations at 10 CFR part 63 give the applicant the responsibility to select codes, standards, and methodologies; demonstrate that they are appropriate for use with a geologic repository for high-level waste; and then use them appropriately. When specific codes, standards, or methodologies were listed in the Yucca Mountain Review Plan, they were included only as examples or to indicate the kinds of approaches that have been successfully used in other licensing programs.

The Yucca Mountain Review Plan has been revised to clarify that references to specific codes, standards, methodologies, or outdated codes have been deleted.

11.2 General Comments on the License Application and the Licensing Process

Issue 1: Will NRC ignore mistakes in a DOE license application?

Comment. Two commenters asked whether NRC would ignore mistakes in DOE's license application and how the Commission would address major problems in DOE's work. One commenter also stated that NRC must have the power to reject a license application.

Response. A DOE license application must demonstrate compliance with applicable regulations. Editorial mistakes that prevent NRC from understanding the compliance demonstration may have to be corrected. Technical mistakes could even invalidate a DOE analysis to demonstrate compliance. The nature, extent, and effects of mistakes in a license application would be considered in the NRC review.

NRC has the statutory authority as well as the responsibility to reject a license application if the applicant fails to show that applicable regulatory requirements are satisfied.

No changes to the Yucca Mountain Review Plan were made in response to this comment.

Issue 2: Does a DOE license application exist?

Comment. One commenter asked whether a DOE license application already existed.

Response. It is NRC's understanding that DOE had not yet prepared a license application.

No changes to the Yucca Mountain Review Plan were made in response to this comment.

Issue 3: Will NRC hold DOE to appropriate standards in a licensing review?

Comment. One commenter asked whether NRC would hold DOE to the same standards that produced failures of high-level waste storage at other sites. Other commenters asked whether DOE's past research, organizational structure, and organizational culture would be considered in a licensing review for a high-level waste repository at Yucca Mountain.

Response. NRC has promulgated regulatory requirements for a high-level waste repository at 10 CFR part 63. These regulations require protection of public health and safety, and the environment. If DOE's license application demonstrates compliance with regulatory requirements at 10 CFR part 63, and applicable requirements in 10 CFR part 51, for high-level radioactive waste repository at Yucca Mountain, NRC staff would recommend issuance of a construction authorization or license to receive and possess waste, as appropriate.

DOE organization and qualifications are addressed in the following three sections of the draft Yucca Mountain Review Plan: (i) 4.5.3.1, "DOE Organizational Structure as it Pertains to Construction and Operation of Geologic Repository Operations Area"; (ii) 4.5.3.2, "Key Positions Assigned Responsibility for Safety and Operations of Geologic Repository Operations Area"; and (iii) 4.5.3.3, "Personnel Qualifications and Training Requirements." A licensing review using these sections of the Yucca Mountain Review Plan would support a conclusion as to whether DOE may receive a license for a high-level waste repository at Yucca Mountain.

No changes to the Yucca Mountain Review Plan were made in response to this comment.

Issue 4: Will NRC regulations be rewritten to accommodate a Yucca Mountain license application?

Comment. One commenter asked whether NRC would change its regulations to accommodate a Yucca Mountain license application. One commenter asked whether performance bases are expected to change as waste is processed and interred at a repository. Another commenter stated that NRC modified the standards for Yucca Mountain because DOE could not meet them.

Response. NRC regulations at 10 CFR part 63 were promulgated to specifically address an application for a potential repository at Yucca Mountain and were developed through a public rulemaking process. There are no plans to revise these regulations.

No changes were made to the Yucca Mountain Review Plan in response to this comment.

Issue 5: What level of conservatism is appropriate in licensing a high-level waste repository at Yucca Mountain?

Comment. One commenter stated the statement in the draft Yucca Mountain Review Plan "Introduction" (now Appendix A) that NRC cannot require a different or additional proposal if the application satisfies applicable regulations to encourage an applicant to demonstrate compliance using non-conservative methods. The commenter noted that this approach is unacceptable for a repository with a disposal period of 10,000 years, and that the U.S. Department of Energy should be required to use the most conservative approach for demonstrating compliance.

Another commenter expressed the opposite concern that the very reliance on the use of "bounding values" is not consistent with a reasonable expectation compliance standard. The commenter noted that it may be necessary to use expert judgement in some cases and that the Yucca Mountain Review Plan should explicitly allow use of such judgement, or other accepted techniques, in certain circumstances. The commenter suggested that NRC staff adopt an "expected behavior approach" similar to that used by the commercial nuclear power industry, noting the similarities and differences in power reactor and repository licensing issues and acknowledging that the time and spatial scales for a repository limit the use of direct frequency data. To address this concern, the commenter suggested the use of natural analogue data, and the collection of data over longer time periods, to confirm models.

The same commenter suggested a dual modeling approach that uses the "expected behavior" model followed by application of conservative assumptions in areas where it might be difficult to accurately define the expected conditions. The intent would be that a conservative model would be used for the licensing decision, while the expected behavior model would be used to provide regulatory insight.

Response. NRC's regulations at 10 CFR part 63, are protective of health and safety and the environment. Therefore, ensuring compliance with them would protect health and safety and the environment and accomplish the mission of NRC.

Regulation of nuclear facilities requires realistic or reasonably conservative approaches that take into account importance to safety, technical complexity, and the degree and nature of associated uncertainty. These concepts underlie the "reasonable assurance" and "reasonable expectation" bases that would be applied in NRC staff's review of a license application for a high-level waste repository at Yucca Mountain.

The Commission addressed the issue of conservatism in the "Statements of Considerations" for 10 CFR part 63 (66 FR 55732, November 2, 2001). In "Statements of Considerations," the Commission stated, in part

> Confidence that DOE has, or has not, demonstrated compliance with EPA's standards is the essence of NRC's licensing process * * *. The Commission does not believe that NRC's use of "reasonable assurance," as a basis for judging compliance compels focus on extreme values (*i.e.*, tails of distributions) for representing the performance of a Yucca Mountain repository. Further * * * if the Commission is called on to make a decision * * * the Commission will consider the full record before it. That record will include many factors in addition to whether the site and design comply with the performance objectives (both preclosure and postclosure performance standards) * * * The Commission could consider the QA program, personnel training program, emergency plan and operating procedures, among others, in order to determine whether it has confidence that there is no unreasonable risk to the health and safety of the public.
>
> The Commission is satisfied that a standard of "reasonable expectation" allows it the necessary flexibility to account for the inherently greater uncertainties in making long-term projections of a repository's performance. The Commission agrees with EPA and others that it is important to not exclude important parameters from assessments and analyses simply because they are difficult to precisely quantify to a high degree of confidence * * *. The Commission expects that the required analyses of postclosure performance will focus on the full range of defensible and reasonable parameter distributions, and that they should not be constrained only to extreme physical situations and parameter values. For other determinations regarding compliance of the repository with preclosure objectives, the Commission will retain a standard of "reasonable assurance" consistent with its practice for other licensed operating facilities subject to active licensee oversight and control.

Changes have been made throughout the Yucca Mountain Review Plan, as necessary, to ensure that the use of conservatism is clearly stated.

Issue 6: How should requests for additional information be managed?

Comment. Commenters expressed concern about the NRC staff goal to limit requests for additional information to one round. One commenter stated that it is unacceptable for NRC staff to impose such a limit. Considering the complexity of issues associated with a potential high-level waste repository at Yucca Mountain, NRC staff should prepare requests for additional information as necessary until the licensing information is adequate. One commenter stated that DOE's performance record implies that one round will not be sufficient and asked (1) If a limited number of requests for additional information would be allowed and (2) if NRC would allow DOE to submit an incomplete license application and then tell it how to make it acceptable. Another commenter asked for information on how DOE's responses to requests for additional information would be addressed.

Response. Imposing a limit of one round of requests for additional information is not necessary. The Yucca Mountain Review Plan does not impose such a limit, but provides guidance that the goal is to complete an effective review with only a single round of requests for additional information. This is a goal in other NRC regulatory programs as well.

DOE responses to requests for additional information would be evaluated during the NRC licensing review.

The Yucca Mountain Review Plan has been revised to clarify that preparing a single round of requests for additional information is a goal for the licensing review.

Issue 7: Is there a timing constraint on the NRC licensing review and preparation of a safety evaluation report?

Comment. One commenter stated that it would be premature to publish a draft safety evaluation report before the licensee has produced the information necessary for a license. The commenter went on to state that early publication of a safety evaluation report would indicate a rush to judgement before necessary information is available. Two commenters questioned the schedule for a high-level waste repository licensing review. One commenter asked when the 3-year time limit begins. Another commenter noted that DOE should be prepared for one or more application rejections if the application is inadequate and that the licensing process could require several 3-year cycles.

Response. The NRC detailed technical licensing review begins after the license application is found acceptable for review and is docketed. NRC plans to decide whether to docket the tendered application within 90 days from the receipt of the license application. If the license application is incomplete and not sufficient to support a detailed technical review, the application could be rejected or DOE could be informed of the deficiencies and given an opportunity to correct them. If DOE is unable to correct them within a reasonable period, the license application could be rejected. Section 114 of the Nuclear Waste Policy Act requires the Commission to issue a final decision approving or disapproving the issuance of a construction authorization not later than the expiration of three years after the date of submission of an application. A one-year extension from Congress may be requested by the NRC.

Preparation of a safety evaluation report depends on whether NRC staff has reached conclusions regarding whether the applicant has satisfied applicable regulatory requirements. The entire detailed licensing review need not be complete before NRC staff may begin preparation of the safety evaluation report. Conclusions on compliance with discrete regulatory requirements may be possible early in the review period and associated portions of the safety evaluation report may be prepared if those conclusions can be independently reached. Conclusions related to regulatory requirements that require complex, multidisciplinary, or integrated assessment may not be possible until late in the licensing review and would be documented in a safety evaluation at that time.

A safety evaluation report could conclude that a license should not be granted. In any event, a draft safety evaluation report, if published, would not contain final NRC staff conclusions on regulatory compliance and would be subject to revision.

The Yucca Mountain Review Plan text has been modified, as necessary, to clarify provisions regarding preparation of a safety evaluation report.

Issue 8: Would a license for a high-level waste repository at Yucca Mountain include an option to store wastes temporarily?

Comment. One commenter asked whether a license for a high-level waste repository at Yucca Mountain would include an option to store wastes temporarily.

Response. Since the NRC has not yet received a license application for a high-level waste repository at Yucca Mountain, it would be speculation to state whether the license would authorize temporary storage of wastes.

No changes have been made to the Yucca Mountain Review Plan in response to this comment.

Issue 9: What would be the term of a license for a high-level waste repository at Yucca Mountain and would the license be renewable?

Comment. One commenter asked that NRC define the period over which a license for a high-level waste repository at Yucca Mountain would be in effect and to state whether license renewal would be allowed.

Response. Requirements for issuance of a license for a high-level waste repository at Yucca Mountain are specified in 10 CFR part 63, subpart B. There are no provisions for renewal of a license. Rather, unless such a license is revoked or suspended, it would be in effect until an application for license termination satisfies the requirements of 10 CFR 63.52(c). At that time, NRC would terminate the license and NRC oversight of the site would end.

No changes have been made to the Yucca Mountain Review Plan in response to this comment.

Issue 10: Would a licensing review conducted using the Yucca Mountain Review Plan adequately consider available information about the Yucca Mountain site?

Comment. Two commenters expressed several concerns regarding the potential for and effects of the Yucca Mountain site failing to perform properly. The commenters noted a concern, shared by farmers in Amargosa Valley, that the potential damage from contaminated groundwater to the agricultural resource in well-irrigated land around Yucca Mountain has not been adequately evaluated, especially considering that the population is expected to double in 40 years.

The commenters stated that DOE ignored results of water surveys, by Lawrence Livermore National Laboratory, that proved the existence of interbasin groundwater flow from an aquifer under Yucca Mountain to the water supplies for Los Angeles and Las Vegas.

In a related concern, one commenter stated that DOE scientists had objected to the recent Yucca Mountain site recommendation because they needed at least six more years to complete enough scientific work to make a responsible rejection or recommendation. The commenter also urged that NRC consider the concerns of the Nuclear

Waste Technical Review Board, and Dr. Victor Gilinsky that deep geologic disposal of nuclear waste carries with it the possibility of irretrievable and irremediable error. The commenter stated that NRC, under the Nuclear Waste Policy Act, should reject the license application, because Yucca Mountain is unsuitable as a repository site because of water issues and earthquakes.

Response. NRC will evaluate the information submitted in a license application and any accompanying documents to determine whether the application satisfies regulatory requirements, *i.e.*, whether health and safety, and the environment will be protected. The regulations in 10 CFR part 63 and 10 CFR part 51 are protective of health and safety and the environment.

No changes have been made to the Yucca Mountain Review Plan in response to this comment.

Issue 11: Have the key technical issues related to the Yucca Mountain site been omitted from the scope of the Yucca Mountain Review Plan?

Comment: Two commenters expressed concern that the key technical issues that were supposed to be addressed by DOE have been omitted from the Yucca Mountain Review Plan.

Response. Nine key technical issues which were identified during the prelicensing consultation period are largely centered on individual scientific or engineering disciplines. The Yucca Mountain Review Plan has 14 physical processes (called model abstractions) that NRC staff considers most important to health and safety. These 14 model abstractions are multidisciplinary and are derived from the uncertainties associated with the key technical issues.

NRC staff would use these 14 model abstractions as the foundation for conducting its assessment of DOE's performance assessment during a licensing review. Therefore, the portion of the Yucca Mountain Review Plan that examines postclosure performance has been structured around these abstractions. Technical concerns associated with the key technical issues have been incorporated in the model abstractions.

No changes to the Yucca Mountain Review Plan have been made in response to this comment.

Issue 12: Is there a difference between requests for additional information prepared during an acceptance review and those prepared during a detailed technical review?

Comment. One commenter noted that Section 1.2.1, "Acceptance Review Objectives," (now Appendix A, Section A1.2.1) of the Yucca Mountain Review Plan directs NRC staff to identify additional information needed to make the application complete. The commenter noted that Section 1.2, "General Review Procedure," (now Appendix A, Section A1.2) states that gaps in information necessary to make a licensing conclusion should serve as the basis for NRC staff requests for additional information. The commenter asked if there are differences between these two types of information needs.

Response. These two types of information request have slightly different purposes. Requests for information stemming from an acceptance review generally would identify deficiencies in the application and ask the DOE to provide information that would make a license application complete enough to begin a detailed technical review. Examples might be missing maps of facility structure locations or missing historical meteorological data.

Requests for additional information prepared during detailed technical review would provide NRC staff with sufficient information to determine whether regulatory requirements have been met.

No changes were made to the Yucca Mountain Review Plan as a result of this comment.

Issue 13: How can information from prelicensing interactions be used during a licensing review for a high-level waste repository at Yucca Mountain?

Comment. One commenter noted that the many years of DOE and NRC prelicensing interactions have given NRC a considerable opportunity to review the breadth and depth of DOE's work related to a Yucca Mountain repository. The commenter suggested that the Yucca Mountain Review Plan explicitly recognize the progress made during prelicensing reviews and communicate the extent to which NRC staff should consider the results of these prelicensing interactions.

Response. During prelicensing issue resolution activities with DOE, NRC staff has become knowledgeable about technical issues associated with the repository and prepared to conduct a licensing review. No licensing decisions have been reached during prelicensing interactions. NRC staff will conduct a licensing review for a proposed high-level waste repository at Yucca Mountain and make findings based on the information and compliance demonstrations presented in the license application and any other information submitted by DOE.

No changes have been made to the Yucca Mountain Review Plan in response to this comment.

Issue 14: Will NRC staff have adequate resources to conduct a licensing review for a potential high-level waste repository at Yucca Mountain?

Comment. One commenter expressed concern regarding whether NRC staff would have adequate numbers of qualified staff to conduct a licensing review for a potential high-level waste repository at Yucca Mountain. Other commenters expressed concerns that NRC would be unable to obtain qualified reviewers or that all qualified reviewers would retire by the time a license application is submitted.

Response. NRC is taking steps to ensure that it has qualified staff sufficient to conduct a licensing review for a potential high-level waste repository at Yucca Mountain.

No changes have been made to the Yucca Mountain Review Plan in response to this comment.

Issue 15: Are requirements on DOE for data traceability, transparency, retrievability, reproducibility, and consistency adequate?

Comment. One commenter raised several concerns related to requirements on DOE for data traceability, transparency, retrievability, reproducibility, and consistency. These concerns included: (i) Whether the license application would be hypertext linked to supporting documentation; (ii) whether access to DOE data tracking numbers is adequate; (iii) whether reference materials are kept updated and interrelated; (iv) whether historically defined quality system weaknesses are to be corrected; (v) whether data can be located; (vi) whether calculation or modeling results can be duplicated; and (vii) whether adequate technical bases will be available. The commenter suggested the use of DOE "road maps," to help resolve these concerns.

Response. There is a publicly available record of NRC and DOE interactions during the prelicensing consultations on the commenter's concerns. Responses to similar comments on the Quality Assurance Program section of the Yucca Mountain Review Plan are addressed in response to issues above. Separate guidance is under development addressing the usage of hyperlinks in the license application.

NRC staff will continue to observe DOE's quality assurance program and will require compliance with quality assurance requirements in 10 CFR part 63, subpart G, "Quality Assurance Program" during the license application review.

No changes were made to the Yucca Mountain Review Plan in response to this comment.

Issue 16: What are the penalties for exceeding radiation exposure limits?

Comment. One commenter asked what the penalties would be for exceeding radiation protection limits. The commenter also asked for the criteria for revocation of a repository license.

Response. NRC has a rigorous inspection and enforcement program for licensed facilities. The enforcement program reflects a hierarchy of violations and penalties based on the severity of a violation. Depending on the circumstances, enforcement actions could include the imposition of civil penalties or revocation of a license. If warranted, violations would be referred to the U.S. Department of Justice for prosecution. Information on the NRC inspection program can be obtained by visiting NRC's Web site at *http://www.nrc.gov.*

No changes were made to the Yucca Mountain Review Plan as a result of this comment.

Issue 17: What enforcement action will be taken if the DOE violates NRC regulations?

Comment. One commenter asked whether the Yucca Mountain Review Plan states the actions NRC would take if DOE violated regulations or was untruthful.

Response. The Yucca Mountain Review Plan is guidance for the NRC staff review of a DOE license application and does not address possible enforcement actions. Pursuant to 10 CFR 63.10, information provided to NRC, or required to be maintained by law, by a license, or license applicant, must be complete and accurate in all material aspects. Deliberate violations of NRC requirements are addressed in 10 CFR 63.11. Enforcement action depends on the severity of a violation and could range from issuance of a notice of violation to the issuance of an order to impose a civil penalty (or to modify, suspend, or revoke a license), or other appropriate action.

No changes were made to the Yucca Mountain Review Plan in response to this comment.

Issue 18: What would be the extent of NRC on-site presence at the repository and the NRC staff role after the licensing process?

Comment. One commenter stated that NRC should provide personnel for site monitoring on a continuous basis from the time the Yucca Mountain project starts until it is completed. The commenter also asked whether NRC staff conducted unexpected on-site inspections during the various stages of a project. One commenter asked that NRC staff specify its role after the licensing process.

Response. The Commission discussed the nature of its on-site activities at Yucca Mountain in its "Statement of Considerations" for 10 CFR part 63 (66 FR 55768, November 2, 2001) by stating:

> The NRC maintains a local onsite representative's office, with a small staff, in Las Vegas, Nevada, as a means of keeping abreast of DOE activities and interacting with other stakeholders. This office allows our onsite representatives physical proximity to the site and the opportunity to interact on various site characterization activities. At this time, the NRC has no plans to expand the size of the onsite representative's office. However, the size of the office, as well as the scope of NRC's activities conducted there, is [are] subject to reexamination.

If a license is granted for a high-level waste repository at Yucca Mountain, NRC staff will carry out its statutory and regulatory responsibilities to ensure adequate protection of health and safety, to promote the common defense and security, and to protect the environment. NRC staff plans to have onsite representatives based in Las Vegas, Nevada, and would implement an inspection program that would continue for the operational lifetime of a repository. These measures are similar to those employed at other nuclear facilities.

No changes were made to the Yucca Mountain Review Plan in response to this comment.

Issue 19: What is NRC staff's plan if it cannot complete the licensing review for a high-level waste repository at Yucca Mountain within the legally mandated time frame?

Comment. One commenter asked whether NRC staff had a plan for the possibility that it might not complete a Yucca Mountain licensing review within the legally mandated time frame.

Response. NRC staff plans to complete its review of an application for a proposed repository at Yucca Mountain in sufficient time to enable the Commission to decide whether to issue a construction authorization within the legally mandated three-four year time frame. If additional time is needed to fully consider issues raised in the adjudicatory proceeding, NRC will seek appropriate relief.

No changes were made to the Yucca Mountain Review Plan in response to this comment.

Issue 20: How will NRC staff handle a change to repository design or operations during the licensing proceeding?

Comment. One commenter asked how NRC staff would respond if, during the licensing process, DOE requested more space for a larger repository footprint.

Response. NRC response to this hypothetical situation would depend on whether the change was encompassed by the analysis in the license application and was addressed in the environmental impact statement. NRC would expect DOE to revise or supplement its application to address such changes. NRC would then determine whether the application, as revised, satisfies regulatory requirements.

No changes were made to the Yucca Mountain Review Plan in response to this comment.

Issue 21: Why would radioactive wastes be generated during operations at a high-level waste repository at Yucca Mountain?

Comment. One commenter expressed concern that NRC is expecting DOE to reprocess spent fuel or to operate a nuclear reactor at a Yucca Mountain repository. The commenter cites a portion of Review Method 1 in the draft Yucca Mountain Review Plan, Section 4.1.1.6, "Identification of Structures, Systems, and Components Important to Safety, Safety Controls, and Measures to Ensure Availability of the Safety Systems," which notes that a license application must include adequate consideration of "* * * means to control radioactive waste and radioactive effluents * * * such as: * * * liquid waste management system to handle the expected volume of potentially radioactive liquid waste generated during normal operations * * *." The commenter stated that the public does not expect the Yucca Mountain site to be generating radioactive waste during normal operations and asked if there was another explanation for this review method.

Response. A license for a geologic repository at Yucca Mountain would not authorize the reprocessing of spent fuel or operation of a nuclear power reactor at the site. Experience from other nuclear facilities where high-level radioactive waste and spent fuel handling and packaging take place, however, indicates that small amounts of radioactive waste (*e.g.*, gloves) will be generated during fuel handling, packaging, testing, and decontamination activities. These materials generally may be classified as low-level waste and would be disposed of appropriately. This review method addresses a regulatory requirement at 10 CFR 63.112, "Requirements for Preclosure Safety Analysis of the Geologic

Repository Operations Area," Subsection (e)(10), which requires an analysis that includes "* * * means to control radioactive waste and radioactive effluents, and permit prompt termination of operations and evacuation of personnel during an emergency * * *."

No changes were made to the Yucca Mountain Review Plan as a result of this comment.

Issue 22: Would emergency response capability to respond to potential radiological accidents at a high-level waste repository at Yucca Mountain be adequate?

Comment. One commenter expressed several concerns regarding emergency response planning including: (i) Whether local emergency response personnel would have to be mobilized to respond to radioactive waste spills; (ii) whether NRC intends to fund the purchase of equipment necessary to neutralize the effects of a radiation spill; (iii) whether NRC will educate the public on self-protection during radiation emergencies; and (iv) whether drills would be conducted for evacuation of a large population threatened by radiation exposure.

Response. The Commission addressed issues related to emergency preparedness and response in its "Statement of Considerations" for 10 CFR part 63 (66 FR 55745–55746, November 2, 2001) as follows:

> Part 63 (Subpart I) requires DOE to submit an emergency plan for coping with radiological accidents. NRC's review of DOE's emergency plan will evaluate the adequacy of the plan including such things as the capability to respond to accidents and medical assistance for treatment of radiological injuries. Where DOE's emergency plan is found to be inadequate, NRC, if necessary, can impose license conditions that require DOE to correct any deficiencies. * * *
>
> Additionally, U.S. Federal Emergency Management Agency (FEMA) regulations, as well as DOE orders, require that DOE have an emergency response capability that is adequate to meet anticipated accidents, including potential radiological accidents. DOE is responsible for ensuring that the emergency treatment capability exists and is documented in its emergency plan, which is subject to NRC review in accordance with Section 63.161.

In response to a comment regarding the required scope of emergency plans the Commission stated (66 FR 55746, November 2, 2001):

> The rule requires DOE to have plans to cope with radiological accidents (emergency planning at section 63.161) and provide for physical protection (Section 63.21(b)(3)). These plans are required to address a number of criteria to ensure that DOE is prepared to respond, both on site and off site, to accidents, and that DOE has the capability to detect and respond to unauthorized access and activities that could threaten the physical protection of high-level waste. As noted * * *, NRC and [U.S. Federal Emergency Management Agency] regulations, as well as DOE orders, require that DOE have adequate plans and procedures in placé to address any potential accidents and incidents. DOE's emergency plan and physical protection plan are subject to NRC review. The Commission believes that the requirements for DOE's plans for emergencies and physical protection expressed in the proposed Part 63 are appropriate and has retained them in the final rule. In light of the terrorist attacks of September 11, 2001, the Commission has directed the staff to conduct a comprehensive reevaluation of NRC physical security requirements. If this effort indicates that NRC's regulations or requirements warrant revision, such changes would occur through a public rulemaking or other appropriate methods.
>
> Section 63.161 requires DOE to develop an emergency plan based on the criteria of Section 72.32 (*i.e.*, criteria provided for an Emergency Plan for an Independent Spent Fuel Storage Installation (ISFSI)). The required Emergency Plan includes: Identification of each type of accident; description of the means of mitigating the consequences of each type of accident; prompt notification of offsite response organizations; and adequate methods, systems, and equipment for assessing and monitoring actual or potential consequences of a radiological emergency condition. If particular types of accidents require evacuation procedures to ensure the protection of public health and safety, they will be included in the Emergency Plan.
>
> Section 63.21(b)(3) requires DOE to submit a detailed plan to provide physical protection of HLW in accordance with § 73.51 (requirements for physical protection of stored spent nuclear fuel and HLW). The requirements for physical protection include: (1) Capabilities to detect and assess unauthorized access or activities and protect against loss of control of the facility; (2) limiting access to HLW by means of two physical barriers; (3) providing continual surveillance of the protected area in addition to protection by an active intrusion alarm; and (4) providing a primary alarm station located within the protected area and have [having] bullet-resisting walls, doors, ceiling, and floor. These requirements provide high assurance that physical protection of the repository includes appropriate measures to prevent and respond to unauthorized access and activities, including the potential for armed intruders (*e.g.*, terrorist activity).

The Commission also addressed infrastructure requirements for emergency response (66 FR 55746, November 2, 2001).

> Section 180(c) of the Nuclear Waste Policy Act requires DOE to provide technical assistance and funding for training State and local governments and Tribes for safe routine transportation and emergency response. However, NRC's responsibility for oversight and review of DOE's emergency plans * * * does not include responsibility for how DOE provides for technical assistance and funding. Additionally, under NEPA, the potential for (environmental) impacts due to transportation, including accidents, is the responsibility of DOE to assess and mitigate.

Section 4.5.7, "Emergency Planning," of the draft Yucca Mountain Review Plan provides guidance regarding the review of DOE's application with respect to emergency planning regulations.

No changes were made to the Yucca Mountain Review Plan as a result of this comment.

11.3 Issue Resolution

Issue: When will the 293 agreements regarding key technical issues be resolved?

Comment. Commenters asked when the 293 identified unresolved issues would be resolved and whether the repository would be licensed if the issues were unresolved. One commenter stated that if NRC staff uses the technical understanding and basis for issue resolution developed during prelicensing, it must explicitly reference to the supporting documentation. One commenter was concerned that haste in issue resolution would result in some issues not being properly resolved. Another commenter stated that DOE's site recommendation is premature and that years are still required to amass information necessary for a license application. Another commenter asked whether issues identified by the U.S. Government Accounting Office would be included in the licensing process.

Response. In 293 agreements with NRC, DOE agreed to provide additional information to NRC regarding key technical issues as part of the prelicensing issue resolution process. NRC staff expects that this prelicensing issue resolution will continue up to the time that DOE submits an application for a construction authorization for a repository at Yucca Mountain and that DOE will address the 293 agreements before submitting the application. During prelicensing interactions with DOE, NRC staff has stayed informed on issues related to DOE's site characterization and the repository design process and identified concerns regarding these issues in public meetings and documents. Issues identified by the U.S. Government Accounting Office were taken from issues raised by NRC staff.

NRC staff has made clear that a licensing decision will be based on information contained in the DOE application. Issues may be reopened, or new issues may be identified, during the review of the license application. A construction authorization for a repository at Yucca Mountain will not be issued unless DOE demonstrates, and NRC staff determines, that applicable regulatory requirements have been met. NRC staff will document the basis for its conclusions on the application in a safety evaluation report.

No changes were made to the Yucca Mountain Review Plan in response to this comment.

11.4 Public Participation

Issue 1: What is the public role in activities under the Nuclear Waste Policy Act related to Yucca Mountain?

Comment. Commenters identified approximately 20 questions about the nature and extent of public participation in a Yucca Mountain licensing proceeding and questioned whether the public participation process was valid. Some commenters asked about the extent of public participation in the process and others argued that public participation was required. One commenter stated expectations that NRC staff will adequately advertise public hearings in advance. Another commenter stated that all interactions between NRC and DOE should be in public meetings or by conference calls that include the public.

Other commenters urged that there be a continuing program of interaction, training, and progress reviews for the public and questioned whether the public has adequate access to the Yucca Mountain site.

Response. NRC staff has offered numerous opportunities for the public to stay informed about activities related to the proposed repository at Yucca Mountain. The extensive program of public involvement has included meetings in Nevada on the mission of NRC, the development of 10 CFR part 63, the review of DOE's draft environmental impact statement, and the development of the Yucca Mountain Review Plan. Formal periods of public comment were provided for development of 10 CFR part 63 and the Yucca Mountain Review Plan. NRC has had public interactions with DOE consistent with a prelicensing agreement and the Commission's Open Meeting Policy (59 FR 48340, September 20, 1994; 65 FR 56964, September 20, 2000), and the public has been given the opportunity to ask questions. Notice of public meetings with DOE is provided in advance and that practice will continue.

In addition, as required by NRC regulations in 10 CFR part 2, "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders," an opportunity for a formal adjudicatory hearing will be provided on the license application for high-level waste repository at Yucca Mountain. Members of the public, including representatives of the State of Nevada, local counties, and Indian Tribes, may participate in a hearing on the application provided they are admitted as parties or interested governmental participants to the proceeding.

Substantial documentary material related to the license application will be available to the public and participants in the licensing proceeding via the Licensing Support Network, which is accessible over the Internet, as required by 10 CFR part 2, subpart J, "Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository."

If the Yucca Mountain Review Plan is revised or updated in the future, NRC will decide, depending on the nature and extent of the changes, whether to circulate it for public comment.

No changes were made to the Yucca Mountain Review Plan in response to these comments

Issue 2: What assistance will NRC staff provide to Native American Tribes with respect to the licensing of the potential high-level waste repository at Yucca Mountain?

Comment. A commenter stated that NRC staff was not interested in helping or working with members of Native American Tribes and asked that the hearing process be extended for 10–15 years to enable tribal members to prepare to participate in the proceeding.

Response. NRC recognizes the unique status of Native American Tribes. Consistent with the Nuclear Waste Policy Act, NRC regulations in 10 CFR part 63, subpart C, require that any "affected Indian Tribe" (a status conferred by the Department of the Interior) be kept informed concerning activities regarding the proposed repository and also provide opportunities for affected Indian Tribes to participate in the review of the license application under certain circumstances. Further, as noted in response to Issue 1, above, Indian Tribes may also seek permission to participate in the adjudicatory proceeding pursuant to 10 CFR part 2, subpart J.

As a general matter, representatives of Indian Tribes, as well as other members of the public, have been notified of public interactions concerning the proposed repository and have had access to the Yucca Mountain Review Plan and other documents related to the repository.

The requested, lengthy extension of the hearing process would be inconsistent with three- to four-year statutory deadline for a NRC decision on the construction authorization for the proposed repository.

No changes were made to the Yucca Mountain Review Plan in response to this comment.

11.5 U.S. Department of Energy Responsibilities

Issue 1: What are DOE's responsibilities at the proposed repository?

Comment. One commenter asked whether DOE would be allowed to transfer responsibilities and liabilities to corporate vendors.

Response. Under NRC regulations, the license applicant or licensee is responsible for safety and regulatory compliance with NRC regulations, even if some activities are performed by a contractor. Thus, DOE is responsible for ensuring that the proposed repository is constructed, and waste handling and disposal activities are conducted, in compliance with NRC requirements, NRC will conduct the necessary inspection and review activities to determine compliance with NRC regulations, and take action, as necessary, to enforce those requirements, including modifying, suspending or revoking any license issued, if warranted.

No changes to the Yucca Mountain Review Plan were made in response to this comment.

Issue 2: Who is financially responsible for the safe operation of a repository?

Comment. One commenter asked who would be financially responsible for limiting radioactive release from the repository. Another commenter expressed concern that the costs of cleaning up after an accident or sabotage would be astronomical and asked who would be responsible for these costs. Another commenter stated that there are no stewardship funds for Yucca Mountain.

Response. Federal statutes provide that DOE would be licensed by NRC, if appropriate, to construct and operate the high-level waste repository at Yucca Mountain. Thus, DOE, an agency of the Federal Government, would be financially responsible for ensuring that activities at the repository are conducted safely.

As the Commission stated in its "Statement of Considerations" for 10 CFR part 63 (66 FR 55771, November 2, 2001):

> Part 63 does not alter whatever liability the Federal Government may have for damage to

health or property caused by its activities. It is possible that compensation could be available for certain types of damage to health or property under Federal law, but it would be speculative to suggest that compensation would be available in any particular case.

No changes to the Yucca Mountain Review Plan were made in response to this comment.

Issue 3: How does DOE provide material control and accountability for nuclear materials at the Nevada Test Site?

Comment. One commenter asked about the material control and accounting by DOE at the Nevada Test Site.

Response. The Nevada Test Site is under DOE jurisdiction and is not regulated by NRC. The commenter should contact DOE for information regarding material control and accounting at the Nevada Test Site.

No changes were made to the Yucca Mountain Review Plan as a result of this comment.

Issue 4: Who is responsible for identifying structures, systems, and components important to safety?

Comment. One commenter expressed concern that the Yucca Mountain Review Plan directs that NRC staff should focus its review proportionally on high-risk-significant structures, systems, and components important to safety. The commenter argued that NRC, as the regulator, should not defer to DOE judgments as to which components are most important to safety, and should perform a separate analysis of what the Commission views as high-risk-significant structures, systems, and components important to safety.

Response. Regulations at 10 CFR 63.142(c)(1) require DOE to identify the structures, systems, and components to be covered by the quality assurance program. DOE must identify structures, systems, and components important to safety or to waste isolation and to assess their risk significance. NRC will evaluate whether DOE has adequately performed this identification and assessment.

Commensurate with implementation of risk-informed, performance-based regulation for a high-level waste repository, NRC staff would focus its review proportionately on those structures, systems, and components that are important.

NRC staff has developed an independent capability to conduct a preclosure safety analysis. Consistent with risk-informed, performance-based regulation, this independent capability will be focused on those structures, systems, and components important to health and safety.

No changes were made to the Yucca Mountain Review Plan as a result of this comment.

11.6 Role of the Licensing Support System Advisory Review Panel (Now the Licensing Support Network Advisory Review Panel)

Issue: What is the role of the Licensing Support Network Advisory Review Panel in the review of licensing issues?

Comment. One commenter asked whether the Licensing Support System Advisory Review Panel (now the Licensing Support Network Advisory Review Panel) will continue to perform a review role on licensing issues.

Response. Under 10 CFR 2.1011(e), the Licensing Support Network Advisory Review Panel provides advice to NRC on issues related to, among other things, the type of computer system necessary to access the Licensing Support Network, and computer format standards for providing electronic access to the documentary material made available via the Licensing Support Network, and procedures and formats for electronic transmission of filings and orders in the adjudicatory proceeding on the DOE application. The Licensing Support Network Advisory Review Panel basically provides advice on issues related to the means by which information about the proposed high-level waste repository will be made electronically available and has no role in the review of DOE's application.

No changes have been made to the Yucca Mountain Review Plan in response to this comment.

11.7 The U.S. Department of Energy Environmental Impact Statement

Issue: How will the Yucca Mountain Review Plan provide for review of a Yucca Mountain environmental impact statement?

Comment. Several commenters questioned whether the Yucca Mountain Review Plan adequately addressed review of the Yucca Mountain environmental impact statement.

Some commenters questioned the adequacy of the environmental impact statement in evaluating property values along the transportation routes, flooding analysis, environmental justice, cumulative effects, impacts on affected Native American Tribes (economic, cultural, and social) and responses to public comments on the environmental impact statement.

Other commenters recommended modification of the environmental impact statement to incorporate designs presented in the license application, the preparation of a Record of Decision, and any need to prepare a supplemental environmental impact statement.

Response. Comments regarding DOE's Final Environmental Impact Statement are not related to the Yucca Mountain Review Plan, which is a guidance document for NRC staff to use to conduct a review of whether the DOE license application, if submitted, satisfies NRC regulations in 10 CFR part 63.

Under Section 114 of the Nuclear Waste Policy Act, NRC (in connection with the issuance of a construction authorization and license for a repository) is required to adopt, to the extent practicable, any environmental impact statement prepared in connection with a repository. If the DOE submits an application, NRC staff would publish a notice of hearing in the **Federal Register** and state whether it is practicable to adopt DOE's environmental impact statement. The notice would provide a 30-day opportunity for parties and petitioners to file contentions regarding whether it is practicable to adopt the environmental impact statement. The presiding officer in the hearing would rule on any petition to intervene and, to the extent raised by an admitted contention, resolve disputes concerning NRC staff determination regarding adoption of the environmental impact statement. The decision of the presiding officer would be reviewable by the Commission.

The standards, set forth in 10 CFR 51.109(c), require that NRC find it practicable to adopt any environmental impact statement prepared by DOE unless: (1) The action proposed to be taken by the Commission differs from the action proposed in the DOE license application and this difference may significantly affect the quality of the human environment, or (2) Significant and substantial new information or new considerations render DOE's final environmental impact statement inadequate.

Unless either of the above criteria were met, NRC would find it practicable to adopt the environmental impact statement.

No changes were made to the Yucca Mountain Review Plan were made in response to these comments.

11.8 Transportation

Issue: Are transportation concerns, including protection of nuclear materials during transport, adequately addressed in the Yucca Mountain Review Plan?

Comments. Several commenters identified issues relating to U.S. Department of Transportation and NRC transportation regulations and the adequacy of DOE's Environmental Impact Statement in evaluating the transportation of storage casks to a geologic repository at Yucca Mountain.

A number of commenters also expressed concerns about physical protection and security during transport of nuclear materials from current storage locations to Yucca Mountain.

Response. The Yucca Mountain Review Plan is guidance for NRC staff in conducting a review of the license application submitted under 10 CFR part 63. Reviews of transportation of nuclear materials is addressed by other NRC guidance. Section 180 of the Nuclear Waste Policy Act, 42 U.S.C. 10175, requires DOE to use NRC-certified package designs to transport spent nuclear fuel and high-level waste to a permanent geologic repository. The design of casks that would be used by DOE to transport spent nuclear fuel to a proposed repository must be reviewed and approved by NRC in accordance with 10 CFR part 71. The applicable NRC review guidance is in NUREG–1617, the "Standard Review Plan for Transportation Packages for Spent Nuclear Fuel." If and when DOE submits a design, or designs, for shipping casks, NRC would perform a safety review, and if the designs are found to comply with NRC regulations, then NRC would issue a Certificate of Compliance that is a license to use the cask(s) for shipping the specified fuel contents.

Review of transportation activities for Yucca Mountain will depend on whether they will be conducted by an NRC licensee other than DOE. If DOE takes custody of spent fuel at the site of an NRC licensee, DOE regulations would govern the security of spent fuel shipments. If an NRC licensee ships spent fuel to the geologic repository, 10 CFR part 71, 10 CFR part 73, and U.S. Department of Transportation regulations apply. The impacts of transportation to and from the facility have been evaluated in the DOE environmental impact statement that may be adopted by NRC under 10 CFR 51.109.

NRC's regulations for physical protection of the shipment of irradiated reactor fuel (*i.e.*, spent nuclear fuel) by NRC licensees are located in 10 CFR 73.37. Shipments made by NRC licensees to a future high-level waste repository would be subject to NRC security regulations. NRC staff would review the proposed routes for shipments. For shipments that are subject to NRC's authority, the regulations in 10 CFR 73.37 require licensees to develop and implement security procedures to meet performance objectives, including minimizing the possibilities for radiological sabotage. These procedures provide information on how licensees comply with NRC's spent nuclear fuel shipment physical protection requirements, including advance notification of each shipment to Governors, the establishment of redundant communication capability with the shipment vehicle, the arrangement of law enforcement contacts along the route, and provisions for armed escorts. Section 180 of the Nuclear Waste Policy Act requires DOE to abide by NRC's advance notifications to state and local governments associated with transporting spent fuel and high level waste.

For NRC-licensed shipments, NRC reviews and approves in advance the routes used for road and rail shipments of irradiated reactor fuel, with respect to physical protection requirements. The U.S. Department of Transportation regulations at 49 CFR part 397 establish the requirements for the designation of preferred routes for highway shipment of hazardous material (*e.g.*, spent nuclear fuel). A shipper must choose routes that meet U.S. Department of Transportation-specified criteria that are intended to minimize the risk of exposure of the public to radiation. There is no formal U.S. Department of Transportation route approval processes as long as routes are consistent with U.S. Department of Transportation guidelines. The U.S. Department of Transportation regulations set the standards for packaging, transporting, and handling radioactive materials (including labeling, shipping documents, placarding, loading, and unloading), and specify training that is required for personnel who handle and transport hazardous materials.

Since the events of September 11, 2001, NRC has taken actions to impose additional security requirements on shippers of spent nuclear fuel. In addition, NRC is sponsoring vulnerability studies to determine the potential effects on a cask subject to attack, by terrorists, beyond current regulatory assumptions, including the crash of a jumbo jet filled with fuel. NRC staff would use results of this study to determine if its security regulations should be modified.

No changes were made to the Yucca Mountain Review Plan in response to this comment.

11.9 Terrorism

Issue: Does the Yucca Mountain Review Plan adequately address terrorism and related acts?

Comment. One commenter questioned whether NRC staff was going to mandate "mock attack" drills on the Yucca Mountain site as a test of the physical protection system. Another commenter inquired whether NRC staff was going to consider protection from insider threats as well as the outsider threat to a repository. Other commenters questioned the perceived lack of security at nuclear facilities in the wake of the September 11, 2001, attacks and argued that the Yucca Mountain site would be a prime target for terrorists. A commenter asked that the schedule for the U.S. Nuclear Regulatory Comprehensive review of physical security be placed in the Yucca Mountain Review Plan.

One commenter stated that the technical bases and assumptions for identifying initiating events need to include acts of terrorism, sabotage, and acts of war. The same commenter stated that for calculating Category 2 event sequences, sabotage in the repository, acts of war directed at the repository, sabotage in the operations area, acts of war in the operations area, accidental criticality, intentional criticality, dirty bombs, and permanent contamination of the operations area need to be considered.

Response. NRC staff has taken actions regarding security at NRC-licensed facilities in the wake of the September 11, 2001, attacks. Numerous security advisories have been issued to site security managers keeping them updated on the threat environment. NRC staff monitors the threat environment and shares information and analysis with other law enforcement and intelligence agencies. Compensatory Measures have been issued to NRC licensees outlining mandatory enhancements to physical protection in areas such as access control, physical barriers, detection, assessment, and response. The Compensatory Measures are designed to enhance and strengthen physical protection until the Commission-ordered comprehensive review of physical protection is complete.

The purpose of the Yucca Mountain Review Plan is to ensure the quality and uniformity of NRC staff licensing reviews under 10 CFR part 63. The NRC comprehensive review of safeguards and security is a separate activity. The NRC safeguards and security review encompasses all types of licensed facilities and includes information and

personnel security programs. Additionally, the review schedule may need to be modified based on the changing threat environment. NRC staff review of the physical protection aspects of a license application for a high-level waste repository at Yucca Mountain would be consistent with results from the comprehensive review.

Protection against terrorism and sabotage were discussed by the Commission in the "Statement of Considerations" for 10 CFR part 63 (66 FR 55771, November 2, 2001):

> As regards the potential risk of radiological sabotage to the repository during the preclosure phase of operations, the Commission's regulations for Yucca Mountain at Section 63.21(b)(3) require that licensees have in place adequate physical security plans and attendant procedures to protect against radiological sabotage, consistent with Section 73.51—NRC's requirements for the physical protection of stored spent nuclear fuel and high-level radioactive waste. In light of the terrorist attacks of September 11, 2001, the Commission has directed the staff to conduct a comprehensive reevaluation of NRC physical security requirements. If this effort indicates that NRC's regulations or requirements warrant revision, such changes would occur through a public rulemaking or other appropriate methods.

The physical security plan required by 10 CFR 63.21(b) and 10 CFR 73.51 would not be made publicly available, but would be reviewed to determine whether the regulatory requirements are met.

The technical bases and assumptions for identifying initiating events and evaluating Category 2 event sequences do not need to include acts of war. As the Commission stated in issuing 10 CFR part 63 (66 FR 55776, November 2, 2001), "[c]onsideration of the effects of wars and military actions is beyond the scope of NRC's responsibility. NRC has not taken into account the effects of war in developing Part 63."

Events such as criticality and contamination of the operations area are addressed in responses to other comments.

No changes were made to the Yucca Mountain Review Plan in response to this comment.

11.10 Editorial Comments

Issue: Will editorial corrections be made to the Yucca Mountain Review Plan?

Comment. Several commenters suggested editorial improvements to the Yucca Mountain Review Plan.

A partial list of these comments follows.

(1) Remove review plan Section 1, "Introduction," and Section 2, "Acceptance Review," from the front of the plan and include them as appendixes, to avoid detracting from the actual licensing review.

(2) Change the bullet and dash system to a numerical outline format similar to that in other NRC staff guidance documents.

(3) Clarify the language of Review Method 3 in Section 3.1, "General Description," of the draft Yucca Mountain Review Plan, regarding the basis for the Commission's licensing authority.

(4) Make specific provisions in the Yucca Mountain Review Plan for evaluating information that is classified, such as the characteristics of naval fuel.

(5) Update the Yucca Mountain Review Plan to reflect the current status of activities under the Nuclear Waste Policy Act.

Response. NRC staff has incorporated those editorial comments that add clarity to the Yucca Mountain Review Plan.

Dated at Rockville, Maryland, this 23rd day of July 2003.

For the Nuclear Regulatory Commission.

Janet R. Schlueter,

Chief, High-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–19321 Filed 7–30–03; 8:45 am]

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Federal Register

Thursday,
July 31, 2003

Part V

Environmental Protection Agency

40 CFR Part 68

Accidental Release Prevention Requirements: Risk Management Program Requirements Under Clean Air Act Section 112(r)(7); Amendments to the Submission Schedule and Data Requirements; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 68

[OAR–2003–0044; FRL–7536–9]

RIN 2050–AF09

Accidental Release Prevention Requirements: Risk Management Program Requirements Under Clean Air Act Section 112(r)(7); Amendments to the Submission Schedule and Data Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On June 20, 1996, EPA published risk management planning regulations mandated under the accidental release prevention provisions of the Clean Air Act (CAA). These regulations require owners and operators of stationary sources to submit risk management plans (RMPs) to be made available to federal, state and local emergency planning and response agencies and to the public though a central location. The first submissions were received in early 1999. EPA is now proposing to modify the re-submission schedule under the risk management program for sources who have significant accidents and for those who change the information for the emergency contacts. EPA is also proposing to add three data elements to the RMP, make several revisions to the submission format for the RMP, and remove the regulatory requirement to discuss the off-site consequence analysis in the executive summary of the RMP. EPA intends to issue a final rule addressing all of these proposed changes in time for the majority of facilities to complete their 5-year anniversary re-submissions by June 21, 2004. The modifications proposed today seek to improve the accident prevention and reporting programs of regulated sources, and to assist federal, state, and local RMP implementation in light of new homeland security concerns.

DATES: Comments must be submitted on or before September 15, 2003. If requested within 7 days from publication date, EPA will hold a public hearing on August 15, 2003 to discuss the modifications in this proposed rule. Consult the sources of information in **FOR FURTHER INFORMATION CONTACT** for the time and location of the hearing, if such hearing is requested.

ADDRESSES: Comments may be submitted by electronic mail (e-mail) to *a-and-r-Docket@epa.gov*, Attention Docket ID No. OAR–2003–0044. Submit comments by postal mail to: U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Ave., NW., Room B108, Mail Code 6102T, Washington, DC 20460, Attention Docket ID No. OAR–2003–0044. Follow the detailed instructions, and find more options, provided in section I.C of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Emergency Planning and Community Right-to-Know Hotline at (800) 424–9346; in the Washington, DC metropolitan area, contact (703) 412–9810. The Telecommunications Device for the Deaf (TDD) Hotline number is (800) 535–7672. You may also access general information online at the Hotline Internet site, *http://www.epa.gov/epaoswer/hotline/*. For questions on the contents of this notice contact Vanessa Rodriguez, Chemical Emergency Preparedness and Prevention Office, Mail Code 5104A, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20004, (202) 564–7913, Fax (202) 564–8233, *rodriguez.vanessa@epa.gov*. You may also wish to visit the Chemical Emergency Preparedness and Prevention Office (CEPPO) Internet site at *http://www.epa.gov/ceppo*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. What Are the Affected or Regulated Entities?

Entities potentially affected by this action are those stationary sources that are subject to the chemical accident prevention requirements at 40 CFR part 68. Affected categories and entities include:

CATEGORY EXAMPLES OF AFFECTED ENTITIES

Chemical Manufacturers	Basic chemical manufacturing, petrochemicals, resins, agricultural chemicals, pharmaceuticals, paints, cleaning compounds.
Petroleum	Refineries.
Other Manufacturing	Paper, electronics, semiconductors, fabricated metals, industrial machinery, food processors.
Agriculture	Agricultural retailers.
Public Sources	Drinking water and waste water treatment systems.
Utilities	Electric utilities.
Other	Cold storage, warehousing, and wholesalers.
Federal Sources	Military and energy installations.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether a stationary source is affected by this action, carefully examine the provisions associated with the list of substances and thresholds under 40 CFR 68.130 and the applicability criteria under § 68.10. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OAR–2003–0044. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.B.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in section I.D. Do not use EPA Dockets (EPA's electronic public docket and comment system) or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. OAR–2003–0044. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *a-and-r-Docket@epa.gov*, Attention Docket ID No. OAR–2003–0044. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* When mailing comments through the U.S. Postal Service, send 2 copies of your comments to: U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Ave., NW., Room: B108, Mail Code 6102T, Washington, DC 20460, Attention Docket ID No. OAR–2003–0044.

3. *By Hand Delivery or Courier.* When mailing comments through Federal Express, UPS, or other courier services, deliver 2 copies of your comments to: EPA Docket Center (Air Docket), U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room: B108, Mail Code 6102T, Washington, DC 20004, Attention Docket ID No. OAR–2003–0044. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.B.

4. *By Facsimile.* Fax your comments to: 202–566–1741, Attention Docket ID. No. OAR–2003–0044.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the

following address: Dorothy Mcmanus, Mail Code 5104A, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OAR–2003–0044. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

The information in this proposed rule is organized as follows:

I. Introduction
A. Statutory Authority
B. Background
II. Discussion of Proposed Changes
A. Changes to Reporting Schedule
1. Five-Year Accident History
2. Emergency Contact Information
B. Changes to Executive Summary
C. New Data Elements
1. Emergency Contacts E-mail Address
2. Reason for Subsequent RMP Submissions
3. Contractor Information
D. Revisions to RMP Submit Format
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A. Executive Order 12866: Regulatory Planning and Review
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C. Regulatory Flexibility Act
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F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act

I. Introduction

A. Statutory Authority

This notice of proposed rulemaking (NPRM) is being issued under section 112(r) of the Clean Air Act (CAA or Act) as amended (42 U.S.C. 7412, 7601).

B. Background

The 1990 CAA Amendments added, among other things, section 112(r) to provide for the prevention and mitigation of accidental releases of extremely hazardous substances. Section 112(r) calls for EPA to list the most dangerous substances and a threshold quantity for each substance. It also directs EPA to issue regulations requiring any stationary source with more than a threshold quantity of a listed substance to develop and implement a risk management program. EPA published a final rule creating the list of regulated substances and establishing thresholds on January 31, 1994 (59 FR 4478) (the "List Rule"), and a final rule establishing the accidental release prevention regulations on June 20, 1996 (61 FR 31668) (the risk management program regulations or "RMP Rule"). Together, these two rules are codified as part 68 of title 40 of the Code of Federal Regulations (40 CFR part 68).

Sources subject to the RMP rule are required to develop and implement a risk management program that includes, for covered processes, a five-year accident history, an offsite consequence analysis, a prevention program, and an emergency response program. Sources must also submit to EPA a risk management plan (RMP) describing the source's risk management program. The deadline for submitting RMPs was June 21, 1999, for sources subject to the program by that date. Approximately 15,000 sources have submitted RMPs.

The RMP rule requires sources to update and re-submit their RMPs at least every five years or sooner if any of the changes specified in section 68.190(b)(2) of the rule occur. The specified changes currently include the following conditions: (1) No later than three years after the date on which a regulated substance is first listed under § 68.130, (2) no later than the date on which a new regulated substance is first present in an already covered process above a threshold quantity, (3) no later than the date on which a regulated substance is first present above a threshold quantity in a new process, (4) within 6 months of a change that requires a revised PHA or hazard review, (5) within 6 months of a change that requires a revised off-site consequence analysis as provided in § 68.36, and (6) within six months of a change that alters the Program level that applied to any covered process. Updates and re-submissions entail the review and revision of all sections of the RMP as needed to bring the RMP up to date. They must be accompanied by a new certification letter for the entire RMP. If a source re-submits its RMP for any of the aforementioned reasons, the five-year anniversary date for resubmitting the RMP is reset.

Sources may wish to revise their RMPs for other reasons, as well. The Agency distinguishes among the re-submissions discussed above and other various types of revisions, namely corrections, de-registrations (revised registrations) and withdrawals. A correction is a change only to individual data elements that a source wishes to change or correct, and requires a new certification letter covering that change. Corrections may be required if the implementing agency or the reporting center discovers the submission was incomplete based on a validation/error report. The source may initiate a correction if it discovers an error, needs to make minor administrative changes (*e.g.*, correction of a phone number or contact name), or changes owners but covered process operations do not change. Corrections do not entail the review and revision of all nine sections of the RMP, nor do they affect the five-year anniversary date for updating and resubmitting the RMP.

De-registrations (or revised registrations as these are referred to in section 68.190(c)) occur when the source is no longer covered by the program (*e.g.*, the source no longer uses any regulated substances or no longer holds regulated substances in amounts that exceed the threshold quantities). The source submits a letter requesting de-registration, with the RMP being retained in the reporting system database for 15 years.

A withdrawal occurs when a source that was never subject to the program submits an RMP in error. Such a source submits a letter requesting a withdrawal, and its RMP is taken out of the reporting system database altogether.

Sources subject to the rule on June 21, 1999, were required to submit an RMP by that date. For those sources that submitted an RMP on June 21, 1999, their five-year anniversary date will be June 21, 2004. Other sources that submitted an RMP before the original deadline, have re-submitted an RMP since, or have become subject to the RMP rule since June 21, 1999, will have different anniversary dates.

II. Discussion of Proposed Changes

A. Changes to RMP Submission Requirements

1. Five-Year Accident History

EPA proposes that facilities who have an accident that meets the criteria for the five-year accident history be required to update and re-submit their RMP within six months of the date of the accident.

The five-year accident history element for the RMP (40 CFR 68.42) requires the owner or operator of a stationary source to record information in their RMP on all accidental releases from covered processes in the past five years that resulted in deaths, injuries, or significant property damage on site, or known offsite deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage. This requirement includes the release of any chemical from a covered process, not just the release of a regulated substance from that covered process. During the first year of RMP submissions, approximately 1,150 sources reported in their five-year history that their facility had an accidental release that met the criteria for including information on these releases in their RMP.

The regulations require that each time a source re-submits its RMP, the five-year accident history is updated. Information on accidental releases in the previous RMP submission that are now outside the five-year time frame is removed while information on recent accidental releases is added. However, unless a source re-submits its RMP sooner than the five-year anniversary date, information on more recent accidental releases will not be submitted in an RMP for potentially 5 years. The five-year accident history is valuable information for chemical accident prevention and preparedness efforts by not only industry but by many stakeholders, including emergency responders. Consequently, EPA is proposing to require that sources update and re-submit their RMP within six months of an accidental release that meets the five-year accident history reporting criteria.

EPA believes this proposed requirement would help spur significant improvements in the accident prevention and reporting programs of sources at which reportable releases occur. Accidents can be caused by failures in a source's accident prevention program. This new re-submission trigger would require the source to review its accident prevention program in light of the accident, and to update its RMP with any changes to the program. While all physical or procedural improvements may not be finished and completely implemented within the 6-month accident reporting deadline, the Agency believes that review of the process hazard analysis and other elements of the program can be completed within six months. The Agency also believes that sources would benefit greatly from the prompt scrutiny of the accident, allowing the findings of an accident investigation to better influence any safety recommendations.

EPA also believes the proposed requirement would have the additional benefit of improving reporting of accidental releases. By providing the details of the accident soon after the accident takes place, the source would be likely to provide more complete and accurate information in its accident reporting. Current requirements allow sources to compile an accident report for the RMP up to 5 years after the accident occurs.

The proposed submission requirement would also allow EPA and interested stakeholders to determine on an annual basis if the rate of accidents is increasing or decreasing, rather than waiting five years to see such data. It would also enable all involved in chemical accident prevention to identify trends in accident causes, examine if there are problem areas or a need for assistance in specific industry sectors, and identify effective prevention measures that could be shared so that other sources may avoid similar accidents.

This change would modify the schedule for updating and re-submitting an RMP, but it should not significantly change the associated burden. If a source had a reportable accident, it would need to update and re-submit an RMP within 6 months. However, the source would not need to resubmit again, provided there are no other accidents or major changes, for another 5 years.

An alternative that was also considered would require sources with new accidents that meet the criteria for reporting in the 5-year accident history to update their RMP on a fixed date every year. This option would have the Agency receiving RMPs at the same time from all of the sources who have had accidents that meet the criteria during the previous 12 months. This option would provide EPA with an annual report of all of the significant accidents that have occurred at reporting sources, and the changes that were made due to these accidents. EPA is not proposing this option at this time, because the Agency prefers to give the same amount of time for reporting (six months) to all sources. For example, if the fixed date for annual accident reporting was established as June 21, a source having an accident on June 15 would have no time to significantly investigate the accident and provide a meaningful report. Nonetheless, EPA is requesting comment on this option and whether it is preferable to requiring the re-submissions within six months of a significant accident.

2. Emergency Contact Information

EPA proposes to require that facilities correct their emergency contact information within one month of a change in the information.

The RMP has become a primary source of information for the federal government's efforts in the homeland security area. The emergency contact information is important not only to state and local responders, but also for the federal government. Under current requirements, if the information for the emergency contact becomes outdated (*e.g.*, change of emergency contact's phone number, emergency contact leaves the position, etc.), the source may take up to five years to report these changes. Implementing agencies that have audited RMPs report that much of the information for emergency contacts is outdated or otherwise inaccurate. For these reasons, EPA is proposing to require that facilities correct their emergency contact information within one month of a change in the information. Explained in the following section in detail is also a proposal for an

additional email address data element; this would also trigger the requirement to correct emergency information within one month of a change. These changes to emergency contact information would be considered corrections and would not require a complete updating and re-submission of the RMP. EPA requests comment on this proposal.

B. Changes to Executive Summary

EPA proposes to remove the requirement for sources to briefly describe the off-site consequence analysis (i.e, worst-case accidental release scenario(s) and the alternative accidental release scenario(s) within the executive summary of the RMP.

Section 112(r)(7) of the Clean Air Act requires sources subject to the risk management program requirements to conduct an off-site consequence analysis (OCA) for one or more hypothetical accidental worst case and alternative release scenarios and report the results of the analysis in the RMP. In 1999, Congress passed the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (CSISSFRRA), governing the distribution of "off-site consequence [OCA] information." The statute defines "OCA information" as the OCA sections of the RMP (sections 2 through 5) and any EPA database derived from those sections, but expressly excludes the executive summary section of the RMP. Under CSISSFRRA, EPA and the Department of Justice jointly issued regulations restricting access to OCA information and certain related information. This regulation (40 CFR part 1400) was published in the **Federal Register** on August 4, 2000 (65 FR 48108).

Promulgated prior to the passage of CSISSFRRA, § 68.155(c) of the RMP rule currently requires sources to briefly describe in their RMP executive summary "the worst-case release scenario(s) and the alternative release scenario(s), including administrative controls and mitigation measures to limit the distances for each reported scenario." EPA, along with federal law enforcement agencies, believes that due to its sensitive nature, this information should not be included in executive summaries, which are available to the public without restriction under 40 CFR part 1400. For this reason, EPA is proposing to remove the requirement to summarize OCA results, and requests that sources not voluntarily provide this specific information, in the executive summary. Facilities must continue to provide details of the OCA in sections 2 through 5 of the RMP. The public would continue to have restricted access to OCA information in the manner required by the regulations at 40 CFR part 1400. EPA requests comment on this proposed change.

C. New Data Elements

1. Emergency Contacts E-Mail Address

EPA proposes to add a mandatory data element to the RMP for sources to provide the e-mail address (if any) for the emergency contact.

Section 68.160(b)(6) of the RMP rule currently requires facilities to provide the name, title, telephone number, and a 24-hour telephone number of an emergency contact person. Similarly, § 68.160(b)(14) allows facilities to optionally provide an e-mail address for the source or parent company. From time to time, EPA is made aware of specific hazards. For example, in the Hazardous Materials Accident Report: Hazardous Materials Release From Railroad Tank Car With Subsequent Fire at Riverview, Michigan, July 14, 2001, the National Transportation Safety Board (NTSB) included the following recommendation:

> "[EPA should] notify all facilities that are required to submit risk management plans to the Environmental Protection Agency that tank car excess flow valves cannot be relied upon to stop leaks that occur during tank car loading and unloading operations and that those companies that have included reliance on such valves in their risk management plans should instead identify and implement other measures that will stop the uncontrolled release of product in the event of a transfer line failure during tank car loading or unloading." (NTSB, R–02–17)

Having an e-mail address for the emergency contact would allow the Agency to quickly and directly communicate hazard information such as that provided above by the NTSB. Providing such notifications in a timely manner to all sources subject to RMP requirements would improve sources access to critical process safety information.

Additionally, RMPs have become a critical source of information for the federal government's homeland security efforts. In our new environment of heightened security, it may become necessary for an RMP implementing agency to communicate directly and on short notice with sources subject to the RMP program, or with a portion of that universe. The e-mail address for a source's emergency contact would be a necessary piece of information for this to occur.

As noted above, EPA is also proposing that any change to the email address for a source's emergency contact be followed by a corresponding change to the source's RMP within a month of the address change. This requirement would trigger a correction; a re-submission would not be required for this particular change. The Agency requests comments on this proposal and also on the extent to which sources may not have an e-mail address. Some sources, such as small agricultural retailers or fertilizer warehouses, may not have e-mail capability.

2. Reason for Subsequent RMP Submissions

EPA is proposing to add a mandatory data element to the RMP for sources to identify the purpose of submissions that revise or otherwise affect their previously filed RMPs.

As noted above, sources are required to submit, update and resubmit their RMP by the schedule specified in section 68.190 of the RMP rule. Since the initial June 1999 reporting deadline, EPA has received thousands of submissions containing corrections, re-submissions, de-registrations (revised registrations) or withdrawals of previously submitted RMPs. However, at this time the RMP electronic submission program does not have an entry that provides the reason for the submission, making it difficult at times for RMP implementing agencies to determine their purpose.

This proposal would add a new data element in the RMP for sources to indicate what they are submitting and why. For example, a source that modifies its RMP to correct minor technical errors, make minor administrative changes (*i.e.*, updates to contact names, addresses, telephone numbers, e-mail addresses), fill in missing data elements, or reflect facility ownership changes, would indicate that it was making such a correction. Similarly, a source that revised the RMP for its update and re-submission as required every five years or when certain changes are made, such as introducing a regulated substance in a process, would indicate that it was sending an RMP re-submission and why. A source that was previously required to submit an RMP, but due to changes in operations was no longer required to report, would indicate why it was submitting a de-registration (revised registration) of the chemical or process. Sources that had originally submitted an RMP in error (*i.e.* they were never subject to RMP regulation) would indicate why they were withdrawing their RMP from the national database. To help sources provide this information, we would anticipate adding to the RMP electronic submission program a pop-up menu of typical reasons for submissions. Sources would simply click on the appropriate menu item or, if none is appropriate, briefly state the reason for the change.

This additional reporting element is intended to assist the Agency and other implementing agencies in understanding the reason a source is submitting a revised RMP or asking to remove an existing one. This information would also provide a check on the RMP submission to ensure that information is provided accurately. Further, this proposed reporting requirement would provide important information on changes occurring in industry, providing insight into chemical usage and process safety management. For example, monitoring the number of sources de-registering their RMPs because they have substituted the regulated substance for a non-regulated substance, or decreasing the quantity of a regulated substance in a process, would provide some indication of the extent to which inherently safer or alternative technologies are being utilized by the sources subject to the RMP. This information would be of interest to sources that could learn from identified trends and industry practices in the area of chemical process safety management. The Agency is requesting comments on this proposal.

The Agency also recognizes that the terminology used to identify the various types of submissions may cause some confusion, and is requesting comments that may help clarify those terms. Specifically, the Agency is considering changing the term revised registrations to de-registrations, which more clearly conveys the action being taken and is the term used in the implementation materials for the RMP.

3. Contractor Information

EPA is proposing to add a mandatory data element in the RMP for sources that use a contractor to help prepare their RMPs to so indicate.

Through RMP audits, implementing agencies have learned that many RMPs have been prepared in large part by contractors. Use of contractors for this purpose is allowed under the RMP rule. However, some implementing agencies have noted potential systemic errors in the way some contractors prepare RMPs. Concern has also been raised that, in some cases, sources whose RMPs are largely prepared by contractors are not sufficiently familiar with the contents of their RMPs. EPA is proposing to require an additional data element in the RMP for sources who use a contractor to help develop and fill out the RMP. Those sources would be required to provide the name of the contractor who helped prepare the RMP and a phone number to contact the contractor.

This new data would allow the implementing agencies to monitor the use of contractors for RMP preparation and provide appropriate follow-up. For example, RMP auditors could use the information to more easily identify systemic errors linked to a particular contractor, and could then share this information with the source submitting the RMP, thus improving the overall quality of the sources' safety management programs. Ultimate responsibility for RMP implementation would continue to reside on the stationary source's owner or operator. EPA requests comments on this new requirement.

D. Revisions to RMP Submit Format

Uncontrolled/Runaway Reactions

EPA is proposing to expand the list of possible causes of accidental releases to the reporting of sources' five-year accident history so an owner or operator can indicate whether an accident involved an uncontrolled/runaway reaction.

In its report, Improving Reactive Hazard Management (December 2002), the U.S. Chemical Safety and Hazard Investigation Board (CSB) recommended that EPA "[m]odify the accident reporting requirements in RMP*Info to define and record reactive incidents. Consider adding the term 'reactive incident' to the four existing 'release events' in EPA's current 5-year accident reporting requirements (Gas Release, Liquid Spill/Evaporation, Fire, and Explosion). Structure this information collection to allow EPA and its stakeholders to identify and focus resources on industry sectors that experienced the incidents; chemicals and processes involved; and impact on the public, the workforce, and the environment" (CSB recommendation 2001–01–H–R4).

Based on this recommendation, EPA is proposing to revise RMP reporting of the five-year accident history (40 CFR 68.42) to allow the owner or operator to indicate whether the accident involved an uncontrolled/runaway reaction.

The new element would provide sources with an additional choice to more accurately report accidents that involved uncontrolled or runaway reactions. This information is important when measuring whether the accidents involved simple releases of the chemical (*e.g.*, broken valve, broken pipe) or were the result of a process upset. This new information would provide a better understanding of the types of accidents occurring at regulated sources.

III. Other Issues

Collection of OSHA Occupational Injury and Illness Data in Conjunction With the RMP Filing Required Under 112(r) of the CAA

EPA and others use the information reported in the RMP accident history in combination with other data to better understand accident risks and to gauge the trends with respect to risk and accident prevention across various industry sectors. Health and safety indicators could also provide information to industry, government, and other researchers in understanding the factors that affect chemical accident prevention. Under 29 CFR part 1904, the Occupational Safety and Health Administration (OSHA) requires employers to maintain logs of employee reportable injury and illness statistics (OII) for every calendar year. Employers need to have these records available for compliance officers to review upon inspections, and the records for each year must be kept for 5 years.

Three of these records are of special interest to EPA: (1) Total Incidence Rate, (2) Workdays Lost to Injuries, and (3) Illness and Workdays under Restricted Duties. EPA is considering whether future RMP submissions should be required to include data for these three records, aggregated for five most recent calendar years. With renewed emphasis on quantifying the risks and benefits related to chemical accidents, and on the trends in key sectors covered by existing regulations, these data, if collected, would allow an objective analysis of any statistical relationship between levels of reported injuries and illnesses, accidental releases and a variety of other elements driving chemical industry preparedness and prevention activities. The ability to link to injury and illness data and the indicators they provide on health and safety at chemical facilities could provide extremely valuable information both to EPA and to industry for understanding the factors that underlie chemical process safety. Given that RMPs are submitted by a large number of chemical facilities, providing OSHA OII data in RMPs would greatly facilitate analysis of trends in the U.S. chemical industry on accidental releases and the relationship of these, if any, to facility safety levels.

RMP submitters could provide the aggregate statistics requested with only minimal additional effort in filling out the RMP. For the government to obtain this data by other means would require significant effort. The Bureau of Labor Statistics (BLS) only collects this data from a representative sample of

companies/facilities and not from the entire set of facilities covered under RMP; linking BLS data to the RMP records outside of the RMP data collection would require a significant expenditure of time and resources even though it would lack a complete data set. EPA would expect little additional burden on industry for the collection of this information since OSHA already requires that it be maintained. EPA is requesting comments on the practicability and burden of adding these data elements to RMP reporting requirements, and on the potential value they may yield. EPA is also requesting comments with respect to other data elements that may serve this purpose.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order." It has been determined that this proposal is not considered to be a "significant regulatory action" within the meaning of the Executive Order and is therefore not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 1656.10.

EPA is proposing to add three data elements to the Risk Management Plan (RMP), to modify one data element, and to remove the obligation to discuss the off-site consequence analysis in the executive summary of the RMP. EPA is also proposing to modify the submission schedule under the risk management program for sources who have significant accidents, and for those who change the information for the emergency contacts. This action may increase some burden on facilities that currently submit risk management plans to EPA.

The most recently recorded number of sources subject to this proposed action, if adopted, is 14,930. The public reporting burden estimated for familiarizing with this rule amendment is 2.0 hours for each source. Estimated unit burden for the new RMP data elements is 0.25 hours. The burden for change in submission schedule for RMP due to significant accidents ranges from 3.0 hours for wholesale to 9.0 hours for large chemical manufacturers. The burden for change in submission schedule for RMP due to change in emergency contact information is 0.1 hour for each source.

The total annual burden for rule familiarization, addition of new elements to the RMP, and for the change in RMP submission schedule is 33,943 hours (101,829 hours for 3 years), with an annual cost of $992,400 ($2,977,200 for 3 years).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this ICR under Docket ID number OAR–2003–0052. The public docket is available for viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566-1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number OAR–2003–0052. Also, you can send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 31, 2003, a comment to OMB is best assured of having its full effect if OMB receives it by September 2, 2003. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et. seq*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, a small entity is defined as: (1) A small business that is defined by the Small Business Administration by category of business using North American Industrial Classification System (NAICS) and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, we have concluded that this action would not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule would not contain a Federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. The nationwide capital cost for these rule amendments is estimated to be zero and the annual nationwide costs for these amendments are estimated to be less than $1 million. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Act. EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. The new data elements and submission requirements would impose only minimal burden on these entities.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rule focuses on requirements for regulated facilities without affecting the relationships between governments in its implementation. Thus, Executive Order 13132 does not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with State and local officials and implementing agencies in developing this rule. EPA held a RMP Implementing Agency meeting in Atlanta, October 21 and 22, 2002. State and local implementing agencies in attendance included representatives from Alabama, California, Colorado, Delaware, Florida, Georgia, Hawaii, Iowa, Kentucky, Louisiana, Mississippi, New Jersey, North Carolina, Ohio, Pennsylvania, and South Carolina. Participants were invited to provide feedback regarding the program and related software, as well as suggestions for improvements.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. The proposed rule focuses on requirements for all regulated sources without affecting the relationships between tribal governments in its implementation, and applies to all regulated sources, without distinction of the surrounding populations affected. Thus, Executive Order 13175 does not apply to this rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

The Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be economically significant under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposal is not subject to Executive Order 13045 because it does not involve regulatory decisions that are based on

public health or safety risks, nor would it establish environmental standards intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

Lists of Subjects in 40 CFR Part 68

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: Sec. 112(r) of the Clean Air Act.

Dated: July 23, 2003.

Marianne L. Horinko,

Acting Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 68 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 68—CHEMICAL ACCIDENT PREVENTION PROVISIONS

1. The authority citation for part 68 continues to read as follows:

Authority: 42 U.S.C. 7412(r), 7601(a)(1), 7661–7661f.

2. Section 68.155 is amended by removing paragraph (c) and redesignating paragraphs (d) through (g) as paragraphs (c) through (f).

3. Section 68.160 is amended by revising paragraph (b)(6), redesignating paragraphs b(14) through b(18) as paragraphs b(15) through b(19), and adding a new paragraph b(14) as follows:

§ 68.160 Registration.

* * * * *

(b) * * *

(6) The name, title, telephone number, 24-hour telephone number, and the e-mail address (if an e-mail address exists) of the emergency contact;

* * * * *

(14) The name, the mailing address, and the telephone number of any contractor who helped prepare the RMP;

* * * * *

5. Section 68.190 is amended by revising paragraphs (b)(6) and (b)(7), by adding a new paragraph (b)(8), by redesignating paragraph (c) as paragraph (d), and by adding new paragraphs (c) and (e) to read as follows:

§ 68.190 Updates.

* * * * *

(b) * * *

(6) Within 6 months of a change that requires a revised offsite consequence analysis as provided in § 68.36;

(7) Within 6 months of a change that alters the Program level that applied to any covered process; and

(8) Within 6 months of the date of an accidental release of any chemical from a covered process, where the accidental release meets the criteria for reporting in the 5-year accident history as provided in § 68.42(a).

(c) The owner or operator of a stationary source shall submit a correction to the RMP for any change in the emergency contact information required by § 68.160 (b)(6) within one month of the change.

* * * * *

(e) Following submission of an initial RMP, an owner or operator submitting any subsequent version or revision of the RMP shall identify the type of submission being made and the reason for it. The types of submission include:

(1) Corrections (*e.g.*, changes to fix minor technical errors, update administrative information, provide missing data elements or reflect facility ownership changes) which do not require an update and revision of the RMP under this section;

(2) Re-submissions under paragraph (b) of this section;

(3) De-registrations (revised registrations) under paragraph (c) of this section; and

(4) Withdrawals of an RMP for any facility that was erroneously considered subject to part 68.

* * * * *

[FR Doc. 03–19281 Filed 7–30–03; 8:45 am]

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Federal Register

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July 31, 2003

Part VI

Federal Trade Commission

16 CFR Part 310

Telemarketing Sales Rule Fees; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Part 310

Telemarketing Sales Rule Fees

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (the "Commission" or "FTC") is issuing this Final Rule to amend the FTC's Telemarketing Sales Rule ("TSR") by adding a new Section 310.8 that would impose fees on entities accessing the National Do Not Call Registry.

EFFECTIVE DATE: Section 310.8 ("the Final Fee Rule") will become effective September 1, 2003, the first day that entities engaged in telemarketing will be able to access the National Do Not Call Registry.

ADDRESSES: Requests for copies of this Final Fee Rule should be sent to: Public Reference Branch, Federal Trade Commission, Room 130, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The complete record of this proceeding is also available at that address, and on the Internet at: *http://www.ftc.gov/bcp/rulemaking/tsr/tsrrulemaking/index.htm.*

FOR FURTHER INFORMATION CONTACT: David M. Torok, (202) 326–3075, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

On January 30, 2002, the FTC published a Notice of Proposed Rulemaking to amend the FTC's TSR and to request public comment on the proposed changes. 67 FR 4492 (Jan. 30, 2002) ("the Rule NPRM"). Among other provisions, the Rule NPRM proposed to establish a National Do Not Call Registry, to be maintained by the FTC, that would permit consumers who prefer not to receive telemarketing calls to register on one centralized list. On May 29, 2002, the FTC published another Notice of Proposed Rulemaking to further amend the TSR by imposing user fees on sellers and telemarketers to access the proposed registry. 67 FR 37362 (May 29, 2002) ("the User Fee NPRM"). In drafting the User Fee NPRM, the Commission was guided by the Independent Offices Appropriations Act of 1952, 31 U.S.C. 9701, and Office of Management and Budget Circular No. A–25. The Commission received 34 comments in response to the User Fee NPRM.

The Commission issued final amendments to the TSR on December 18, 2002. 68 FR 4580 (Jan. 29, 2003). Among the changes made to the TSR, the Commission adopted the proposal to establish a National Do Not Call Registry, permitting consumers to register, via either a toll-free telephone number or the Internet, their preference not to receive telemarketing calls. The Amended TSR requires telemarketers to refrain from calling consumers who have placed their numbers on the national registry, starting October 1, 2003, the date by which full compliance with the "do-not-call" registry provisions of the Amended TSR, 16 CFR 310.4(b)(1)(iii)(B), is required. *See* 68 FR 16238, 16245 (April 3, 2003). To comply with this requirement, telemarketers will be required to access the national registry at least once every three months to remove from their telemarketing lists the telephone numbers of those consumers who have placed their numbers on the registry. 16 CFR 310.4(b)(3)(iv). When it promulgated the Amended TSR, the Commission reserved its decision on the issues raised in the User Fee NPRM, stating that it would seek further comment in a revised Notice of Proposed Rulemaking. *See* 68 FR 4580, 4640 n. 716.

On February 20, 2003, the President signed into law the Consolidated Appropriations Resolution of 2003, Pub. L. 108–7 (2003) ("the Appropriations Act"), which appropriated funds for the operation of the FTC during fiscal year 2003. In the Appropriations Act, Congress also authorized the agency to collect fees sufficient to implement and enforce the "do-not-call" provisions of the Amended TSR. Congress further estimated the costs for fiscal year 2003 at $18,100,000. *Id.* at Division B, Title II. *See also* The Do-Not-Call Implementation Act, Pub. L. 108–10 (2003) ("the Implementation Act") at sec. 2. Pursuant to the Appropriations Act and the Implementation Act, as well as the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101–08 ("the Telemarketing Act"), the FTC issued a Revised Fee Notice of Proposed Rulemaking ("the Revised Fee NPRM"). 68 FR 16238 (April 3, 2003). The Commission received 35 comments in response to the Revised Fee NPRM.[1]

On July 3, 2003, the Federal Communication Commission ("FCC") issued its Report and Order in the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 ("the FCC Rules").[2] Among numerous other provisions, the FCC Rules prohibit any "person or entity" from "initiating any telephone solicitation" to a "residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the federal government."[3]

Based on its review of the record in this proceeding, and on its law enforcement experience in this area, the Commission hereby promulgates this Final Rule establishing fees for entities accessing the National Do Not Call Registry.

II. Constitutionality

Some commenters, principally ATA and DMA, contended that both the National Do Not Call Registry and its associated fees would violate telemarketers' First Amendment rights.[4] The Commission was mindful of the First Amendment implications of the national registry while amending the TSR,[5] and throughout this rulemaking has carefully considered the constitutionality of the proposed Fee Rule.[6]

Relying primarily on case law addressing speech entitled to full First Amendment protection, ATA contended the registry's fees are unconstitutional in part because by "making purchase of the list a precondition for engaging in telemarketing, the Commission has structured the list as a prior restraint on protected speech."[7] The Commission disagrees and believes that the registry fee provision is constitutional. To the extent the fee imposes a restraint on speech, it restrains only commercial speech. The Supreme Court has "observed that commercial speech is such a sturdy brand of expression that traditional prior restraint doctrine may not apply to it." *See Central Hudson Gas & Elec.* v. *Pub. Serv. Comm. of N.Y.*, 447 U.S. 557, 571 n.13 (1980) (quoting *Virginia Pharmacy Bd.* v. *Virginia Citizens Consumer Council*, 425 U.S. 748, 771–72 n.24 (1976)). Moreover, the Final Fee Rule ensures that the fee is collected from the telemarketing industry through procedures that safeguard against unbridled discretion in the hands of a government official or agency.[8] The registry fees are more akin to the registration fees or business licenses that are commonly imposed upon businesses before they can engage in commercial speech. A regulatory fee on speech is constitutionally permissible when it is related sufficiently to the costs of administering and enforcing that regulation.[9]

III. Access to the National Do Not Call Registry

A. Entities That Are Allowed Access

In Section 310.8(e) of the Revised Fee NPRM, the Commission proposed to allow access to the national registry by telemarketers, sellers, others engaged in or causing others to engage in telephone calls for commercial purposes, and service providers acting on behalf of such persons.[10] The Commission stated that such access to the National Do Not Call Registry may be necessary to effectuate more fully the purpose of the "do-not-call" regulations; namely, to enable consumers to stop unwanted telemarketing calls. Such access would allow those entities that are exempt from the FTC's jurisdiction, but that want to scrub their calling lists as a matter of customer service, to obtain the information necessary to do so. It also would allow sellers to obtain access, as well as other entities that have traditionally provided service to the telemarketing industry. The Commission further stated that the information in the national registry should be used for no other purpose than to stop unwanted telemarketing calls. Thus, the Commission proposed that, prior to gaining access to the national registry, a person would be required to certify, under penalty of law, that the person is accessing the registry solely to comply with the provisions of this Rule or to otherwise prevent calls to telephone numbers on the registry.

A number of commenters supported the Commission's proposal to allow for such broad access to the national registry.[11] Others suggested that nonprofit organizations soliciting donations also should be allowed to access the national registry. For example, DMA noted that such access would "effectuate the purposes of the do-not-call regulations" by allowing such entities to voluntarily scrub their calling lists.[12] The Commission agrees that nonprofit organizations that wish to obtain access to the national registry to prevent calling consumers whose telephone numbers are on the registry, even though they are not required by rule to do so, should be allowed the opportunity. As a result, the Commission is amending Section 310.8(e) by eliminating the phrase "commercial purposes" from this provision, and instead allowing access to the national registry to entities "engaged in or causing others to engage in telephone calls to consumers." As previously stated, each entity will be required to certify, under penalty of law, that it is accessing the registry solely to comply with the provisions of this Rule or to otherwise prevent calls to telephone numbers on the registry.

B. Entities Required To Pay the Fee

The Revised Fee NPRM proposed requiring each seller to pay, on an annual basis, the appropriate fee for accessing the National Do Not Call Registry prior to initiating, or causing a telemarketer to initiate, an outbound telephone call. After paying the appropriate fee each annual period, the seller would be provided with a unique account number that it could use to gain direct access to the national registry at any time during its annual period.[13] In addition, the seller could provide its account number to any telemarketer or service provider with which it does business. That unique account number would permit the telemarketer or service provider to gain access to the information to which the seller has subscribed. The Commission noted that under this revised fee structure, each seller would be charged only one time annually for access to the information included in the national registry, and would be allowed to transfer its ability to access the national registry to whatever telemarketers or service providers it wished to employ on its behalf.

A number of commenters noted that the proposed rule would require certain sellers to pay for access to the national registry, even if they do not have to gain such access under the Amended TSR.[14] Specifically, under the Amended TSR, a seller that calls only persons with whom the seller has an established business relationship, or from whom the seller has obtained the express written agreement to call, is not required to access the national registry prior to engaging in those calls.[15] Nonetheless, as proposed, the Revised Fee NPRM would require such sellers to pay the annual fee prior to making such calls. ATA described this aspect of the proposed fees as a "particularly invidious prior restraint" and thus a violation of the First Amendment because telemarketers are forced to "pay a fee even where they have no use for information in the registry."[16] As VISA noted, the FTC should "clarify in the final rule that if a seller is not required to access the registry pursuant to an exemption or otherwise, the seller

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[1] A list of the commenters in this proceeding, and the acronyms used to identify each, is attached hereto as Appendix A. Comments submitted in response to the Revised Fee NPRM will be cited in this Notice as "[Acronym of Commenter]-Revised Fee at [page number]." Comments submitted in response to the User Fee NPRM will be cited as "[Acronym of Commenter]-User Fee at [page number]."

[2] The FCC Rules may be found at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-03-153A1.pdf.

[3] 47 CFR 64.1200(c)(2), amended July 3, 2003.

[4] *See* ATA-Revised Fee at 1–16; DMA-Revised Fee at 6–7. *See also* ICL-Revised Fee at 5–6 (asserting simply "Given that the nondeceptive and nonmisleading telemarketing activity is protected commercial speech, the decision to charge some persons, corporate or individual, more than others with no relation to furtherance of residential privacy is unconstitutional."); DB-Revised Fee; JJ-Revised Fee; BP-Revised Fee; GS-Revised Fee; JS-Revised Fee; & SS-Revised Fee at 1–2 (individuals voicing concerns about freedom of speech).

[5] *See, e.g.*, 68 FR 4580, 4634–37 (January 29, 2003).

[6] To the extent that ATA and DMA challenge the constitutionality of the National Do Not Call Registry itself, and not the fee proposal, the rulemaking on the registry is closed and the parties are briefing the matter for the courts to decide.

[7] ATA-Revised Fee at 3–6. *See also* DMA-Revised Fee at 6 n.11 (contending "the Court took a dim view of permits to engage in constitutionally protected speech whose issuance depended on the payment of a license tax because it acted as a prior restraint on speech").

[8] ATA and DMA also challenge the fee size and structure. *See, e.g.*, ATA-Revised Fee at 10 (categorizing the registry's fee structure as "irrationally differentiated"); DMA-Revised Fee at 1. Because Congress's guidance on the amount of the fees to be collected and the Commission's efforts to tailor the fee structure are best understood in context, these First Amendment concerns will be addressed throughout the remaining sections of this Statement.

[9] *See, e.g., Coalition for Abolition of Marijuana Prohibition* v. *City of Atlanta*, 219 F.3d 1301, 1324 n.16 (11th Cir. 2000); *National Awareness Foundation* v. *Abrams*, 50 F.3d 1159, 1164–1168 (2d Cir. 1995).

[10] Proposed Section 310.8(e) also permitted access to the national registry by any government agency that has the authority to enforce a federal or state "do-not-call" statute or regulation. Such agencies will access information in the national registry through Consumer Sentinel, a dedicated, secure website available only to law enforcement agencies. The Commission is expanding this provision of the Final Fee Rule to allow access to the national registry to any "government agency that has law enforcement authority." This revised language more effectively mirrors the list of law enforcement agencies that currently have access to Consumer Sentinel, and that therefore will have access to the national registry data.

[11] *See* ARDA-Revised Fee at 2; BOA-Revised Fee at 1; Household-Revised Fee at 2; NCL-Revised Fee at 1 ("Entities that are exempt from the FTC's jurisdiction should not be prevented from voluntarily accessing the registry to avoid calling consumers who do not wish to receive telemarketing solicitations.").

[12] DMA-Revised Fee at 15–16. *See also* NCL-Revised Fee at 1.

[13] As set forth in Section 310.8(d) of the Revised Fee NPRM and the Final Fee Rule, the "annual period" is defined as the twelve months following the first day of the month in which the person paid the fee. For example, a seller who pays its annual fee on September 15, 2003, has an "annual period" that runs from September 1, 2003 through August 31, 2004.

[14] *See* ABA-Revised Fee at 1; ATA-Revised Fee at 5–6; VISA-Revised Fee at 1–2.

[15] *See* 16 CFR 310.4(b)(1)(iii)(B)(i) and (ii).

[16] ATA-Revised Fee at 5–6.

should not be required to pay a user fee provided the seller does not access the registry for other reasons."[17]

The Commission agrees that sellers engaged solely in calls to persons with whom they have an established business relationship or from whom they have obtained express written agreement to call, and who do not otherwise want to access the national registry, should not have to pay an annual fee. As a result, the Commission is amending Section 310.8(a) to make clear that sellers do not have to pay for access to the National Do Not Call Registry if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to the exemptions set forth in Amended TSR §§ 310.4(b)(1)(iii)(B)(*i*) or (*ii*), and the seller does not access the National Do Not Call Registry for any other purpose. A similar change is being made to Section 310.8(b), regarding telemarketer access to the national registry.

Some commenters requested clarification that sellers exempt from the Amended TSR are not required to access the National Do Not Call Registry and pay the annual fee.[18] With the adoption of the FCC Rules, the list of sellers exempt from the requirements of the National Do Not Call Registry under federal law is considerably narrowed. Any such exempt seller, however, is not required to access the national registry or pay the annual fee. For example, solicitations to induce charitable contributions via outbound telephone calls are not covered by the National Do Not Call Registry requirements of the TSR.[19] As a result, sellers involved only in such solicitations would not be required to pay a fee or access the national registry. In addition, entities engaged solely in conducting surveys are not seeking to induce the purchase of goods or services and therefore are not engaged in "telemarketing" nor subject to the TSR.[20] Similarly, political fund raising is not "telemarketing" and is not covered.[21] Of course, any of those entities may access the national registry if they voluntarily wish to prevent calling telephone numbers that are on the registry, or if they are required by other laws or regulations to gain such access.

DMA stated that nonprofit organizations voluntarily accessing the national registry to avoid calling potential donors who do not want to receive telemarketing calls should not be charged for such access.[22] The Commission agrees that such charges are unwarranted. Section 310.8(c) is amended to provide that there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing the national registry without being required under this Rule, the FCC Rules, or any other federal law.[23] Such persons must provide all information required of other entities accessing the registry, must certify, under penalty of law, that they are accessing the registry solely to prevent telephone calls to telephone numbers on the registry, and must further certify that they are accessing the registry without being required under this Rule, the FCC Rules, or any other federal law. Affording these persons such access to the registry will enable them to abide by consumers' choices not to be called by commercial telemarketers. At the same time, the certification requirement—under penalty of law—will enable the Commission to take appropriate steps against those who misuse the registry.

The Commission also proposed in the Revised Fee NPRM that telemarketers who are not also sellers—*i.e.*, entities that engage in telemarketing only on behalf of others—would not have to pay a separate fee for their access to the national registry. Similarly, list brokers or other service providers who develop and/or scrub the calling lists for their seller-clients would not have to pay for their individual access to the national registry. Instead, such telemarketers and service providers would be required to ensure that their seller-clients have paid for access to the National Do Not Call Registry prior to initiating outbound telephone calls, or providing services, on their behalf. Telemarketers and service providers would gain this assurance by obtaining and using the seller's unique account number to access the national registry.

DMA opposed this "seller pays" model for the National Do Not Call Registry.[24] Instead, DMA suggested that the FTC "should leave the issue of who pays for the List to the contractual provisions between service bureaus and sellers."[25] IMC stated that a "more workable proposal would be to require each calling entity, third party *or* seller using in house callers to purchase and implement the list. Thus, IMC could purchase access to the registry once and call on behalf of all its clients."[26] The Commission does not believe such a system would equitably spread the fees for the national registry among all entities that engage in telemarketing. As the Commission explained in the Revised Fee NPRM, sellers are the ultimate beneficiaries of telemarketing campaigns, and covered sellers must gain access to the information in the national registry to remain in compliance with the "do-not-call" provisions of the Amended TSR. As a result, all such sellers should pay an appropriate fee for that access. Moreover, by charging only telemarketers for access to the national registry, and charging them only once for their access on behalf of multiple clients, IMC's proposed fee structure would inequitably benefit those sellers that employ a telemarketer with multiple clients. This inequitable advantage is created because those sellers would bear less of the cost of access to the same information than sellers that engage in their own telemarketing without hiring a telemarketer. Thus, the Commission will require sellers, and not their telemarketers or service providers, to pay for access to the national registry.[27]

The FCC Rules recognize that allowing telemarketers and others to share the information obtained from the national registry "would threaten the financial support for maintaining the database."[28] In fact, the FCC Rules specifically prohibit any entity that accesses the national registry from "participat[ing] in any arrangement to share the cost of accessing the national

[17] VISA-Revised Fee at 1–2.

[18] *See* FSR-Revised Fee at 1–2; VISA-Revised Fee at 1–2.

[19] 16 CFR 310.6(a). *See also* 47 CFR 64.1200(f)(9)(iii), amended July 3, 2003 (FCC Rules defining a "telephone solicitation" as not including a call or message "by or on behalf of a tax-exempt nonprofit organization."

[20] The Amended TSR defines "telemarketing" as a "plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones, and which involves more than one interstate telephone call." 16 CFR 310.2(cc).

[21] Sellers that engage solely in intrastate telemarketing, or that engage in businesses outside of the jurisdictional limitations of the FTC, are not required by the Amended TSR to access the National Do Not Call Registry or pay for such access. However, such companies are required by the FCC Rules to access the national registry and pay for such access. *See* FCC Rules at ¶ 27.

[22] *See* DMA-Revised Fee at 15–16.

[23] Such persons consist solely of entities engaged in outbound telephone calls to consumers to induce charitable contributions, for political fund raising, or to conduct surveys.

[24] See DMA-Revised Fee at 7–8.

[25] Id.

[26] IMC-Revised Fee at 5.

[27] The FCC Rules require all entities "making telephone solicitations (or on whose behalf telephone solicitations are made)" to "purchase[] access to the relevant do-not-call data from the administrator of the national database." 47 CFR 64.1200(c)(2)(i)(E), amended July 3, 2003. The Commission will deem all telemarketers or service providers who are not also sellers to have "purchased access" to the national registry by providing the unique account number of the seller on whose behalf the telemarketer or service provider is gaining access.

[28] FCC Rules at ¶ 32, n.129.

database, including any arrangement with telemarketers who may not divide the costs to access the national database among various client sellers."[29] The Commission agrees with the FCC, and believes such a prohibition is appropriate to include in the Final Fee Rule as well. As a result, the Commission is including similar prohibitory language in Section 310.8(c).[30]

The Revised Fee NPRM did not permit any entity, other than a seller, to purchase the list of numbers in the national registry. A number of commenters noted that telemarketers calling on behalf of exempt entities would be in the "untenable position" of being required to comply with the "do-not-call" provisions of the Amended TSR, but not having the ability to access the national registry without their exempt seller-clients having paid for access.[31] To address this potential problem, some commenters suggested allowing telemarketers direct access to the national registry.[32] Convergys, a large telemarketer commenter, described a number of other situations when telemarketers may want to subscribe to the national registry although their seller-client is not required to do so, or has already purchased the list. For example, the telemarketer may want to scrub the calling list of a client calling customers with an existing business relationship, or "to help guard against errors or omissions" in the sellers' lists and to re-verify the accuracy of those lists.[33]

For the reasons set forth in these comments, the Commission agrees that allowing independent access to the national registry by telemarketers or other service providers is appropriate. As a result, telemarketers or service providers will be allowed to gain access to the national registry on their own behalf, without being limited solely to the access allowed for their seller-clients. To maintain the fairness of the fee structure, however, telemarketers and service providers will be required to pay the appropriate fee for such independent access. Moreover, covered sellers still will be required to pay the fee prior to engaging in, or causing a telemarketer to engage in, outbound telephone calls for which access to the "do-not-call" registry is required by the Amended TSR. This "covered seller pays" requirement remains in place regardless of whether the telemarketer or service provider employed by the seller independently and voluntarily pays for access to the national registry. In addition, telemarketers and service providers paying for such independent access must certify that they are accessing the national registry solely to comply with the provisions of the Amended TSR, or otherwise to prevent telephone calls to telephone numbers on the national registry. Finally, such telemarketers or service providers are not permitted to use the information they obtain from the national registry on behalf of any entity, covered seller or exempt, unless that entity has paid the appropriate fee for access to the information or, for exempt sellers, has submitted the appropriate certification to gain access to the national registry.

C. Other Registry Access Issues

Commenters raised three other issues regarding access to the national registry. First, commenters suggested allowing sellers and telemarketers to allocate responsibility among themselves for obtaining access to the national registry. The Revised Fee NPRM anticipated that all covered sellers would initially access the national registry on their own behalf, pay the appropriate fee and acquire an account number, which they could then provide to any telemarketer or service provider that they wish to hire. Commenters noted, however, that telemarketers and service bureaus frequently access state "do-not-call" lists on behalf of their seller-clients.[34] These commenters maintained that sellers should be permitted to access the national registry either directly, or permit a third party, such as a telemarketer or list broker, to enroll and access on the seller's behalf. "In either event, a unique account number could be assigned for each seller, thereby allowing it the flexibility to change telemarketers/service providers, or use multiple telemarketers, once an access fee has been paid on its behalf."[35]

The Commission is persuaded that such flexible access is appropriate. Sellers may contract with telemarketers or other service providers to access the national registry on their behalf to satisfy the rule's requirements. In this way, sellers and their agents can allocate the responsibility for accessing the registry, although the seller remains ultimately liable for calls made on its behalf, and telemarketers remain liable for ensuring that their covered sellers have paid the appropriate fee. A unique account number still will be provided in the seller's name, for use by the seller throughout its annual period. As a result, §§ 310.8(a), (b), and (d) are amended to allow sellers to pay the annual fee "either directly or through another person."

The second issue raised by commenters regarding access to the national registry concerns the frequency of that access. Convergys stated that the fee rule should require telemarketers to access the data quarterly, regardless of the number of new clients they might acquire during that period. Telemarketers could then update their access and their registration information (with identities of new sellers) on a quarterly basis.[36] Similarly, DMA stated that it is inefficient to require a service bureau to access the registry separately in the event it signed up a new client, even though it has a current version of the telephone numbers in the registry.[37] Convergys also noted that current telemarketer systems are designed to allow telemarketers to access data directly and use it for more than one client. According to Convergys, limiting access to varying levels paid for by various clients would require significant modifications, burdens and costs.[38]

The Commission never proposed requiring telemarketers or service bureaus to access the national registry or download data separately for each client. There are two requirements in effect that mandate the frequency of access to the national registry. First, § 310.4(b)(3)(iv) of the Amended TSR requires sellers and telemarketers to employ a version of the national registry obtained from the Commission no more than three months prior to the date any call is made. Second, § 310.8(a) of the revised fee rule requires sellers to pay the annual fee prior to initiating, or causing a telemarketer to initiate, outbound telephone calls to persons whose numbers are on the registry. As a result, a telemarketer need only access the national registry once every three months, assuming it can scrub all of its calling lists by using that frequency of access.[39] It can call on behalf of all of

[29] 47 CFR 64.1200(c)(2)(i)(E), amended July 3, 2003.

[30] Inclusion of this prohibition in the Fee Rule also will "maximize consistency" between the FTC and FCC Rules. *See* Do Not Call Implementation Act, § 3.

[31] *See* ABA-Revised Fee at 1–2; BOA-Revised Fee at 1–2; Convergys-Revised Fee at 3–5; FSR-Revised Fee at 1–2.

[32] *See* BOA-Revised Fee at 1–2; Convergys-Revised Fee at 5.

[33] *See* Convergys-Revised Fee at 2–5.

[34] *See* ERA-Revised Fee at 3–5; MPA-Revised Fee at 4–5; West-Revised Fee at 1–2.

[35] ERA-Revised Fee at 4.

[36] Convergys-Revised Fee at 6–8.

[37] DMA-Revised Fee at 8.

[38] Convergys-Revised Fee at 6.

[39] The Commission has developed the "do not call" rules to allow sellers and telemarketers to determine when and how frequently they need to access the national registry to remain in compliance. Unlike many state systems, the national registry is continuously updated as

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its clients during that period, scrubbing from all of its calling lists those numbers that were included in the national registry at the time the telemarketer accessed the registry. If the seller-client agrees to allow the telemarketer to use the information already in the telemarketer's files from a prior download from the national registry within the previous three months, there is no rule violation for the telemarketer to do so. In other words, telemarketers and service providers acting on behalf of sellers may use one download from the national registry on behalf of multiple clients, as long as the fee for each of the seller-clients is paid.

The third access issue raised by commenters is an objection to the requirement that telemarketers and list brokers must identify their clients when accessing the national registry. According to DMA, these "contractual relationships are proprietary information and bear no relationship to consumer privacy."[40] Convergys stated: "For any business, customer identity is inherently sensitive, proprietary data and there is no basis in the record for requiring telemarketers to disclose it routinely and in the absence of substantial complaints or other evidence to suggest there have been violations."[41] The Commission understands the likely proprietary nature of these business relationships, and notes that, to the extent, if any, such information constitutes trade secrets or other confidential or privileged commercial or financial information, it would not be subject to mandatory public disclosure by the Commission.[42] Nevertheless, this information is critical for effective law enforcement of the "do not call" registry provisions of the Amended TSR, as well as for effective collection of the required fees. Typically, consumers reporting "do-not-call" complaints will have only the name of the seller provided to the consumer during the call. As part of the investigation of such complaints, law enforcement may seek to determine whether the seller made that call on its own behalf, or used the services of a telemarketer. Information provided by sellers and telemarketers to gain access to the national registry is highly relevant to law enforcement. Querying the registry is faster, less expensive, and a potentially more reliable method of obtaining that information than traditional discovery tools, which also likely would eventually result in the disclosure of the same proprietary information. Equally important, to ensure that all sellers pay their appropriate share of the registry fees, it is critical to know the identity of each seller that pays the fee, and on whose behalf each telemarketer or service provider is accessing the national registry. Thus, the Commission will continue to require, in § 310.8(e), that if a person is accessing the national registry on behalf of other sellers, that person must identify each of the other sellers.

D. Seller and Telemarketer Liability

In the Revised Fee NPRM, the Commission proposed, in Section 310.8(a) of the Rule, to make sellers directly liable for initiating, or causing a telemarketer to initiate, an outbound telephone call without first paying the appropriate fee for access to the national registry. The Commission also proposed, in Section 310.8(b), to make telemarketers directly liable for initiating an outbound telephone call on behalf of a seller without first ensuring that their seller-clients have paid for up-to-date access to the National Do Not Call Registry. The Commission proposed imposing this liability under the authority of the Appropriations Act and the Implementation Act, in addition to the Telemarketing Act, which provides the authority for the other portions of the Amended TSR.

This proposed liability engendered a wide range of comment. For example, NCL stated: "The FTC's proposal to hold sellers and any entities acting on their behalf directly liable for compliance with the fee requirements is absolutely crucial to prevent abuses in this regard."[43] On the other hand, IMC maintained that liability should not exist unless a seller or telemarketer calls a consumer who had placed their number on the registry. According to IMC, liability for simply failing to purchase the list is unrelated to any consumer privacy interest and is unconstitutional.[44]

As the Commission stated in the Revised Fee NPRM, direct liability on sellers and telemarketers is necessary to effectuate fairly the mandate of the Appropriations Act and the Implementation Act, which authorize the Commission to collect fees sufficient to cover the costs of implementing and enforcing the "do-not-call" provisions of the Amended TSR. Without such direct liability, the Commission remains concerned that not all entities that obtain information from the national registry will pay their fair share of the fees for that information, resulting in increased fees for those entities that do pay. The Commission continues to believe that the most effective way to ensure that all covered sellers pay their fair share of the registry fees is to impose direct liability upon them if they initiate, or cause a telemarketer to initiate, a call to a consumer without first paying the appropriate annual fee.

As for telemarketer liability, a number of commenters suggested that "where a service bureau has reasonably relied on evidence that its seller clients have paid for access, the service bureau should not be held liable for the seller's lack of compliance."[45] The Commission agrees that telemarketers can rely on the registry for proof of payment as long as that reliance is reasonable given the totality of the circumstances. If a telemarketer or list broker accesses the national registry on behalf of a seller-client and presents that seller-client's unique account number, the telemarketer will be able to determine whether the seller's account is paid up to date, and the extent of access allowed by that payment. The telemarketer or service provider may rely on that information as proof of the seller's payment.

Thus, Sections 310.8(a) and (b) continue to impose direct liability on sellers and telemarketers. The failure of a covered seller to pay the appropriate fee prior to initiating or causing another entity to initiate an outbound telephone call and the failure of a telemarketer to ensure that a covered seller has paid the appropriate fee prior to initiating an outbound telephone call on its behalf are violations of the Amended TSR, and subject the seller and telemarketer to all remedies available for such violations.

E. Corporate Divisions, Subsidiaries, and Affiliates

In the Revised Fee NPRM, the Commission proposed to treat each separate division, subsidiary, or affiliate of a corporation as a separate seller for purposes of Section 310.8. The Commission rejected comments suggesting that separate subsidiaries, divisions, or affiliates of the same corporation be treated as a single seller, stating that such treatment could greatly diminish the number of entities that will pay for access to the national registry, provide an unjust advantage to larger, multi-divisional corporations, and potentially increase the fees required to be paid by smaller, less complex corporate entities.

NCL agreed with the Commission's proposal, stating that allowing separate subsidiaries, divisions, and affiliates "to be considered as one seller, even though they would likely be conducting telemarketing campaigns for quite different products or services, would create an inequitable situation for smaller companies and threaten the financial viability of the registry."[46] On the other hand, this proposal was significantly criticized by industry commenters.[47] They noted that companies organize into affiliated entities for tax, regulatory and historical reasons, often beyond their control.[48] For example, SBC noted that due to statutory and regulatory requirements, it would be required to pay over 44 separate annual fees, even though the services provided by its separate subsidiaries and affiliates are similar and consumers have a reasonable expectation that they are dealing with one company.[49] West stated that the proposal would cause it problems, since telemarketers such as itself would need to understand the corporate divisional structure of their seller-clients, which is not always clear.[50] In addition, a number of commenters noted that this proposal appeared contrary to the Commission's assertion, stated in the Revised Fee NPRM, that the agency did not want to charge the same company multiple times for access to the national registry.[51]

Many commenters suggested, as an alternative, that the Commission should use the "consumer expectation" factors set forth in the Amended TSR Statement of Basis and Purpose that apply to the established business relationship exemption to determine whether separate divisions, subsidiaries, or affiliates must pay the annual fee; namely, would consumers reasonably perceive the entity as a single seller based on the nature and type of goods or services sold and the identity of the division, subsidiary or affiliate.[52] On the other hand, another commenter noted that such factors do not provide sufficient notice as to whether any particular division would be required to separately purchase access to the national registry, and that the final rule must provide "a more definitive definition of the circumstances that would subject multiple divisions to separate fee obligations."[53]

The Commission agrees that, for purposes of assessing a fee, the test to determine who must pay must be more specific and clear cut than the "consumer expectation" test established for the established business relationship exemption. The "consumer expectation" test works for determining whether a company has violated the established business relationship exemption because it is consumers themselves who will state, in their complaints, that they did not believe the company that called was related to the company with which they had done business in the past. There will be no such consumer arbiters to determine who should pay the fee. The Commission does agree, however, that those factors are appropriate ones to consider in determining which divisions, subsidiaries, or affiliates should pay a fee.

To develop a more bright line test for which entities must pay, while taking the consumer expectation factors into consideration, the Commission will require separate divisions, subsidiaries, or affiliates to pay a separate annual fee for access to the national registry under the following circumstances: (1) The entity is separately incorporated or, for a non-corporate entity such as a partnership, is a similarly distinct legal entity; and (2) the entity has or markets under a different name. If the name difference reflects only a geographic distinction, that will not be sufficient to require the entity to pay a separate fee for access. For example, "ABC Marketer of Oklahoma, Inc." would not be considered a separate seller, for purposes of the Fee Rule, from its affiliate, "ABC Marketer of Texas, Inc." On the other hand, if the name difference reflects some other distinction, such as product or service, then the separately-incorporated entity would be required to pay a separate fee for access. For example, "John's Books and Games, Inc." would be considered a separate seller from its subsidiary, "John's Computers, Inc."[54]

IV. Calculation of Fees

A. Number of Entities Accessing the National Registry

The first step in establishing the appropriate fees to charge entities that access consumer telephone numbers included in the national registry is to estimate the number of such entities that would be required to pay the fee. In both the User Fee NPRM and the Revised Fee NPRM, the Commission acknowledged that this step is among the most difficult, given the dearth of information about the number of companies currently in the marketplace who make outbound telemarketing calls to consumers.[55] In the User Fee NPRM, the Commission determined, after examining relevant industry literature and the record in this and past TSR rulemaking proceedings, that the most pertinent information for determining the number of firms that would be required to pay the proposed user fee would be the number of firms that access state do-not-call registries. At that time, the most telemarketing firms that accessed any individual state registry was 2,932. Thus, to propose a realistic fee structure that would ensure sufficient funds would be collected to cover the costs of a national registry, the Commission estimated in the User Fee NPRM that 3,000 entities would pay for access to the information in the national registry. The Commission sought comment and evidence to determine

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consumers register. As a result, telemarketers obtain the most up-to-date list of telephone numbers each time they access the registry. This allows consumers to see a decrease in telemarketing calls from the first day they register, rather than having to wait for their numbers to be published in a quarterly list. This caused some concern for one commenter, West, that stated: "Without a defined update schedule, the potential exists for numbers to be missed in the three-month window. It takes approximately twenty to twenty-four hours to update the West system with a do-not-call registry consisting of one million records because the upload happens on a real time basis. Given this, there is the potential for a number that is added one day after West downloads the do-not-call registry to be missed in the three month window. This would require West to actually download the list more than quarterly to avoid this potential problem." West-Revised Fee at 2. It is up to the individual seller or telemarketer to determine how frequently it must access the national registry to remain in compliance with the requirement that it use a version of the registry obtained from the Commission not more than three months prior to the date any call is made.

[40] DMA-Revised Fee at 7–8.

[41] Convergys-Revised Fee at 5–6.

[42] *See* Freedom of Information Act Exemption 4, 5 U.S.C. 552(b)(4); FTC Act § 6(f), 15 U.S.C. 46(f).

[43] NCL-Revised Fee at 1–2.

[44] IMC-Revised Fee at 5–6.

[45] DMA-Revised Fee at 15. *See also* IMC-Revised Fee at 6 (suggesting the Final Fee Rule should "allow a telemarketer to legally rely on a seller providing a working access number as conclusive proof that the seller has properly purchased access to the registry"); ARDA-Revised Fee at 3.

[46] NCL-Revised Fee at 2.

[47] *See, e.g.*, ARDA-Revised Fee at 4; BOA-Revised Fee at 2; DMA-Revised Fee at 11–12; ERA-Revised Fee at 5–6; Household-Revised Fee at 2; IMC-Revised Fee at 5; MPA-Revised Fee at 3–4; SBC-Revised Fee at 2–4; Verizon-Revised Fee at 1–4; VISA-Revised Fee at 2.

[48] *See* BOA-Revised Fee at 2; SBC Revised Fee at 2–4; VISA-Revised Fee at 2.

[49] SBC-Revised Fee at 2. See also Verizon-Revised Fee at 1–4 (Verizon includes roughly two dozen separate corporations that engage in telemarketing).

[50] West-Revised Fee at 3.

[51] *See, e.g.*, MPA-Revised Fee at 3–4; SBC-Revised Fee at 2–4.

[52] ARDA-Revised Fee at 4; ERA-Revised Fee at 5–6; MPA-Revised Fee at 3–4; SBC-Revised Fee at 2–4.

[53] BOA-Revised Fee at 2.

[54] The Commission does not believe these changes to the treatment of corporate subsidiaries and affiliates warrant any change to the estimate of the number of entities that will pay for access to the national registry, discussed below. There is no evidence on the record to indicate that the types of subsidiaries and affiliates which no longer will be considered separate sellers under the Final Fee Rule are numerous or widespread throughout the telemarketing industry.

[55] *See* User Fee NPRM, 67 FR at 37363–64, Revised Fee NPRM, 68 FR at 16241.

whether this estimate was realistic and appropriate.

Of the 34 comments received in response to the User Fee NPRM, only one commenter provided any information relevant to this inquiry, stating the number of clients for which it would have to obtain access to the national registry. In addition, a second commenter provided some company-specific information. Based on these comments, the Commission proposed a new estimate of the number of firms that will access the national registry, developed through a calculation using the limited information provided in the comments, combined with relevant industry-wide data available and the Commission's knowledge of the industry. Based on this detailed calculation, set out in the Revised Fee NPRM, the Commission estimated that the total number of firms that would access the national registry would be 7,500.[56]

As the Commission stated in the Revised Fee NPRM, this calculation made a number of significant assumptions based on the best information available to the agency at that time. The Commission asked specific questions about each of these assumptions, seeking information as to their reliability. The Commission also asked commenters to provide any information they could about any and all of these assumptions, including company-specific information and data that could help the agency to refine its estimates of the number of firms that will need to access the national registry.

Once again, the Commission received virtually no comments providing information on the validity of the Commission's assumptions. One "leading teleservices company" stated that one of the Commission's assumptions—sellers that use third-party telemarketers on average employ three different telemarketers to make calls to consumers over the course of a year—was "generally accurate."[57] Two telemarketer commenters stated that most of their clients market nationwide.[58] Otherwise, the comments provided no information on this question whatsoever. Instead, the major industry association commenters faulted the Commission's calculations, claiming that they are "largely without empirical foundation,"[59] "speculative and largely unsupported" and "completely arbitrary."[60]

As previously stated, the Commission's calculations are based on the best information available to the agency at this time. Although the Commission has requested information on this issue on a number of prior occasions, the very entities that have access to such information have rebuffed the agency at every stage. The Commission has no obligation to "conduct a comprehensive study of the telemarketing industry" to determine the proper fees, as suggested by the DMA.[61] In fact, it has reason to doubt such a study would be productive, given the industry's ongoing reticence in this area. The Commission has undertaken substantial efforts to determine the number of entities that will be required to access the national registry. It has scoured industry literature, reviewed and analyzed numerous rounds of comments on this issue, and used its knowledge of the industry to make basic assumptions about its operation. Given this review and analysis, and the limited information provided in the comments, the Commission continues to believe that its original estimate that 7,500 entities will be required to pay for access to the national registry is reasonable and appropriate.

However, given the new FCC Rules, additional entities, originally exempt from the Amended TSR, now will be required to access the national registry. In the Revised Fee NPRM, the Commission estimated that a total of 10,900 firms engage in outbound telemarketing to consumers.[62] The Commission reduced that number to account for firms that are engaged in charitable solicitations, firms that are calling directly from sellers exempt from FTC regulation, and firms that make only intrastate calls. Of that group, after the adoption of the FCC Rules, only firms that engage in charitable solicitations remain exempt from the requirement to access the national registry. The Commission estimates that 900 entities engage exclusively in such charitable solicitations, resulting in our revised estimate that 10,000 entities will be required to access the national registry.

B. Access by Area Code; Small Business Access

In both the User Fee NPRM and the Revised Fee NPRM, the Commission proposed a fee structure based on the number of different area codes of data that an entity wished to use annually.[63] The Commission received no comments on this issue in response to the Revised Fee NPRM. As a result, the Commission will continue to charge for access to the national registry based on the number of area codes of information an entity requests.

As for small business access to the national registry, the Commission proposed, in both the User Fee NPRM and the Revised Fee NPRM, to provide free registry access to any firm wishing to obtain data from only one to five area codes.[64] The Commission proposed such free access to limit the burden placed on small businesses that only require access to a small portion of the national registry. The Commission noted that its proposal was consistent with the mandate of the Regulatory Flexibility Act, 5 U.S.C. 601, which requires that to the extent, if any, a rule is expected to have a significant economic impact on a substantial number of small entities, agencies should consider regulatory alternatives to minimize such impact.[65] In the Revised Fee NPRM, the Commission sought comment on other alternatives that would balance the burdens faced by small businesses with the need to raise appropriate fees to fund the registry in an equitable manner, as well as on the appropriate level of free access.

The Commission received few comments in response to this proposal in the Revised Fee NPRM. NCL found the Commission's proposal "reasonable."[66] S&K, on the other hand, stated that the Commission should grant access to five or maybe even ten area codes for free, and "employ a graduated system that places the majority of the fees on the largest scale sellers or telemarketers, as determined by a mixture of revenues, profits, subsidiaries and overall cost structure."[67] In contrast, ATA contended that the proposed fee was unconstitutional precisely because it would impose differential treatment, shift the burden to certain sellers to pay for fees in excess of the benefits they would receive, and thus target and penalize the largest entities more than simply favor small businesses.[68] ATA also expressly warned that a fee justified largely by the gross revenue of paying sellers would not survive judicial scrutiny.[69] ARDA suggested that the Commission should make access to the first five area codes free for all sellers. According to ARDA, the "small business that purchases that sixth area code is punished by having to pay for the first five. The small-to-medium business would be less inclined to circumvent the fee requirement if it were only required to pay an incremental cost ($29) for the sixth and seventh and so forth area codes rather than $174 for one additional area code."[70]

After evaluating all of the comments received in this proceeding, the Commission continues to believe that providing access to five area codes of data for free is an appropriate compromise between the goals of equitably and adequately funding the national registry, on the one hand, and providing appropriate relief for small businesses, on the other.[71] Moreover, the Commission is persuaded that it would be more equitable to provide all firms free access to up to five area codes, rather than to only those firms that access five or fewer area codes. It is true that a relatively small firm could need to access six area codes of data. It does not seem fair to charge that firm the full cost for all six area codes, simply because it needed access to one area code more than another small firm. The marginal cost of that sixth area code should not be so high. As a result, the Commission will provide the first five area codes of data from the national registry free to all entities that gain access. Section 310.8 of the Fee Rule is revised accordingly.

C. Fees for Access

As set forth in the Background Section of this Statement, both the Appropriations Act and the Implementation Act authorize the Commission to assess fees sufficient to cover the costs of implementing and enforcing the do-not-call provisions of the Amended TSR, estimated at $18.1 million for fiscal year 2003. The Commission continues to anticipate that it will need to raise the entire estimated $18.1 million authorized to cover the costs associated with those efforts in this fiscal year. A number of commenters claimed that the Commission failed to provide any indication how it intends to spend the $18.1 million, and that the costs are not justified or necessary.[72] The Commission disagrees.

As stated in the Revised Fee NPRM, costs for the National Do Not Call Registry fall primarily into three broad categories.[73] First are the actual estimated contract costs along with associated agency costs to develop and operate the national registry. This includes items such as handling consumer registration and complaints, the transfer of registration information from state lists to the registry, telemarketer access to the registry, and the management and operation of law enforcement access to appropriate information. The second category of costs relates generally to enforcement efforts. These costs will include law enforcement initiatives, both domestic and international, to identify targets and challenge alleged violators. Enforcement costs also include consumer and business education, which are critical complements to enforcement in securing compliance with the "do-not-call" provisions. The third category of costs covers agency infrastructure and administration costs, including information technology structural supports. In particular, the Consumer Sentinel system (the agency's repository for all consumer fraud-related complaints) and its attendant infrastructure are being upgraded to handle the anticipated increased demand from state law enforcers for access to "do-not-call" complaints. Further, the Consumer Sentinel system will require substantial changes so that it can handle the significant additional volume of complaints that is expected.

To raise $18.1 million this fiscal year, and assuming that 10,000 firms will pay for that access,[74] the Commission will charge an annual fee of $25 for each area code of data accessed.[75] There will be no fee charged to any entity for access to the first five area codes of data. In addition, the Commission will place a cap of $7,375 as the maximum annual fee that will be charged an entity that wants access to the entire national database. The maximum fee will now be charged for accessing 300 area codes of data or more.[76] As a result of this Fee Rule, examples of fees that will be charged for various levels of access to the national registry are as follows: obtaining up to five area codes of data would have no charge; six area codes of data would cost $25; seven area codes would cost $50; thirty area codes would cost $625; two hundred area codes would cost $4,875; and access to the data from all area codes would be capped at $7,375 annually.[77]

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[56] *See* Revised Fee NPRM, 68 FR at 16241–42.

[57] IMC-Revised Fee at 1, 4.

[58] Id. at 4–5; West-Revised Fee at 3.

[59] DMA-Revised Fee at 8.

[60] ERA-Revised Fee at 7–8. See also MPA-Revised Fee at 6.

[61] DMA-Revised Fee at 8–10.

[62] *See* Revised Fee NPRM, 68 FR at 16242.

[63] *See* User Fee NPRM, 67 FR at 37364; Revised Fee NPRM, 68 FR at 16242.

[64] *See* User Fee NPRM, 67 FR at 37364; Revised Fee NPRM, 68 FR at 16243–44.

[65] *See also* Section VII, below, where the Commission determines that the instant proposed Rule would not have a significant economic impact on a substantial number of small entities.

[66] NCL-Revised Fee at 2.

[67] S&K-Revised Fee at 2.

[68] ATA-Revised Fee at 10–11.

[69] *Id.* at 12.

[70] ARDA-Revised Fee at 6. *See also* ATA-Revised Fee at 8. The FCC Rules note that thirty-three states currently have five or fewer area codes. *See* FCC Rules at ¶ 54.

[71] The Commission continues to believe, as stated in the Revised Fee NPRM, that providing small businesses with exemptive relief more directly tied to size status would not balance the private and public interests at stake any more reasonably than the approach selected. Any reduced fee schedule based on a small business' size, revenues, or profits would require a certification and determination of that status to implement and enforce, and thus would present greater administrative, technical, and legal costs and complexities than the approach selected by the Commission, which does not require proof or verification of small business status. *See* Revised Fee NPRM, 68 FR at 16243, n.52.

[72] *See* DMA-Revised Fee at 2–6; ERA-Revised Fee at 6–7; MPA-Revised Fee at 5–6.

[73] *See* Revised Fee NPRM, 68 FR at 16244.

[74] A number of commenters continued to suggest that consumers should pay a portion of the costs to implement and operate the national registry. *See, e.g.*, ARDA-Revised Fee at 7; IMC-Revised Fee at 7; MPA-Revised Fee at 7; PDS-Revised Fee at 1–3. As stated in the User Fee NPRM, the Commission does not believe it is appropriate to charge consumers to protect their privacy from unwanted and abusive telemarketing calls. *See* User Fee NPRM, 67 FR at 37363. In addition, the Implementation Act clearly authorizes the Commission to raise the appropriate fees from the industry, and not from consumers.

[75] In the Revised Fee NPRM, the Commission assumed that, on average, sellers will pay to obtain information from 83 area codes of data in the national registry. *See* Revised Fee NPRM, 68 FR at 16244, n. 56. The addition of entities making intrastate calls will reduce the average number of area codes entities will pay to obtain from the national registry, as will our decision to allow all entities to obtain five area codes of data for free. As a result, the Commission is now estimating that the average entity accessing the national registry will purchase 73 area codes of data.

[76] The Commission is capping the maximum amount that will be charged for access to the entire national registry to ease the administrative burdens of operating the system and those faced by the largest users of the registry. There are currently 317 area codes included in the national registry, and more area codes are added on an irregular schedule If there were no maximum fee for access to the national registry, every time a new area code were added, all entities that had paid for access to the entire database would be required to pay an additional fee prior to being able to download the national list. The Commission does not consider the limited additional fees that such a requirement would generate to outweigh this burden. More limited users, on the other hand, who have asked for a specific list of area codes of data, will need to change the scope of their access if they wish to obtain any newly added area codes. Because they already will be asking for a change in their access rights, it will be less of an administrative burden to charge those entities for the additional area codes. Thus, contrary to ATA's suggestion, the cap in the proposed fee structure is sufficiently related to a consideration of the actual administrative costs of the registry to justify its use. *See* ATA-Revised Fee at 9.

[77] DMA contends that while "a nominal fee unrelated to content of the speech may be permissible under certain circumstances."... "a much lower fee [than the Commission has proposed] is also needed to conform with Supreme Court First Amendment jurisprudence on monetary restrictions on speech." DMA-Revised Fee at 1–2, 6–7. *See also* ATA-Revised Fee at 15. Contrary to the DMA's comment, the fee need not be "nominal" so long as it is related sufficiently to the costs of administration and enforcement. Moreover, "[n]ominal is necessarily a relative term, to be judged by how substantial something is when

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As stated above and in the Revised Fee NPRM, these fees are based on certain assumptions and estimates. The Commission anticipates that these fees may need to be reexamined periodically and adjusted, in future rulemaking proceedings, to reflect actual experience with operating the registry.

V. Operation of the National Registry for the Telemarketing Industry

The Commission is developing a fully-automated, secure website dedicated to providing members of the telemarketing industry with access to the registry's list of telephone numbers, sorted by area code. The first time an entity accesses the system, it will be asked to provide certain limited identifying information, such as company name and address, company contact person, and the contact person's telephone number and email address. If an entity is accessing the registry on behalf of a seller-client, the entity also will need to identify that client.

The only consumer information that companies will receive from the national registry is a registrant's telephone number. Those telephone numbers will be sorted and available by area code. Companies will be able to access as many area codes as desired, by selecting, for example, all area codes within a certain state. Of course, companies also will be able to access the entire national registry, if desired. In addition, after providing the required identifying information and paying the appropriate fee, if any, companies will be allowed to check, via interactive Internet pages, a small number of telephone numbers (less than ten) at a time to permit small volume callers to comply with the national registry requirements of the TSR without having to download a potentially large list of all registered telephone numbers within a particular area.

As previously stated, sellers, telemarketers and other service providers will be allowed to access the national registry. When a seller first submits an application to access registry information, the company will be asked to specify the area codes that it wants to access. As discussed above, each seller accessing the registry data will be required to pay an annual fee, based on the number of area codes of data the seller accesses. Fees will be payable via credit card (which will permit the real-time transfer of data) or electronic funds transfer (which will require the seller to wait approximately three days for the funds to clear before data access will be provided). A seller must pay these fees prior to gaining access to the registry, and may do so either directly or through another entity to which the seller has provided the necessary authority.

Sellers will be able to access data as often as they like during the course of one year (defined as their "annual period") for those area codes for which they have paid. However, to protect system integrity, an account number will support a download of the entire national registry only once in any 24-hour period. If, during the course of their annual period, sellers need to access data from more area codes than those initially selected, they would be required to pay for access to those additional area codes. For purposes of these additional payments, the annual period is divided into two semi-annual periods of six months each. Obtaining additional data from the registry during the first semi-annual, six month period will require a payment of $25 for each new area code. During the second semi-annual, six month period, the charge of obtaining data from each new area code requested during that six-month period is $15. These payments for additional data would provide sellers access to those additional areas of data for the remainder of their annual term.

After payment is processed, the seller will be given a unique account number and permitted access to the appropriate portions of the registry. That account number will be used in future visits to the website, to shorten the time needed to gain access. On subsequent visits to the website, sellers will be able to download either a full updated list of numbers from their selected area codes, or a more limited list, consisting only of changes to the registry that have occurred since the company's last download. This would limit the amount of data that a company needs to download during each visit.

Telemarketers and other service providers working on behalf of sellers may obtain access to the registry either directly or through the use of their seller-client's unique account number. If access is gained directly, *i.e.*, the telemarketer or service provider decides to obtain the information on its own behalf, either voluntarily or to satisfy other legal requirements, that telemarketer or service provider will need to comply with all requirements placed on sellers accessing the registry, as previously discussed in this Section. Such telemarketers and service providers will be provided a unique account number that can be used only by that company, *i.e.*, that account number will not authorize other companies to access the registry on behalf of the telemarketer or service provider. On the other hand, if telemarketers or service providers are accessing the registry through the use of their seller-client's account number, the extent of their access will be limited to the area codes requested and paid for by their seller-clients. They also will be permitted to access the registry as often as they wish for no additional cost, once the annual fee has been paid by their seller-clients.[78] As indicated in the Rule NPRM discussion of Section 310.4(b)(3)(iv), however, the Rule requires a seller or telemarketer to employ a version of the do-not-call registry obtained from the Commission no more than three months prior to the date any telemarketing call is made.

Data will be available from the national registry using Internet-based formats and download methods that serve both small and large businesses. Data also will be available in three different sets: full lists, change lists, and small list lookups. For the full lists and the change lists, downloads may be accomplished via a web browser or a programmatic web service. For the small list lookup, a web page will allow a person to enter from one to ten telephone numbers on a form. After entering the numbers and clicking a button, the national registry will display on the web page the list of numbers entered and whether each number is in the national registry or not.

With a web browser, a person will access a secure web page that will allow the person to select: a national download (all area codes), all area codes from individual states, or individual area codes.[79] After selecting the area codes, the person will choose a flat text file or an XML tagged data file. The person also will choose a zipped or unzipped file. After making these selections, the person will click a "download" button and be prompted to save the file to his or her company computer. If the person chooses the full list, the flat file will contain just ten-digit telephone numbers, with a single number on each line. For the change list in flat file format, each line of the file will contain a telephone number, the date of the change, and an "A" (for Added) or "D" (for Deleted). The change list data will be fixed-width fields.

The alternative to web browser downloads will be programmatic web services using XML tagged data. This will assist larger companies in automating downloads of the national registry. The XML tags will include the following: a login and encrypted password; the name and email address of the company contact person; certification that access to the registry is solely to comply with the provisions of this Rule; the account number(s) for which the download is being performed; the area code of the telephone numbers to be downloaded; and whether a full list or change list is to be downloaded.

Entities that select a change list will be provided all telephone numbers that have been added to, or deleted from, the registry since the date of their previous access. Change lists, for both flat files and XML tagged data, will be available to provide changes on a daily basis (representing the additions and deletions from the day before).

The telemarketer website on the national registry will have a help desk available during regular business hours via a secure electronic form.

VI. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* ("PRA"), the Commission sought public comments on the information collection activities contained in the Final Fee Rule. *See* 67 FR 37362 (May 29, 2002); 68 FR 16238 (April 3, 2003). The Commission received no comments on its PRA analysis nor has it modified its proposal in any manner that necessitates revising its original burden estimates for the Final Fee Rule.[80] The Commission additionally sought clearance from OMB for those information collection requirements, and obtained it on July 24, 2003, under OMB Control No. 3084–0097.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires the agency to provide an Initial Regulatory Flexibility Analysis ("IRFA") with its proposed rule, and a Final Regulatory Flexibility Analysis ("FRFA") with its final rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. As explained in the User Fee NPRM, the Revised Fee NPRM, and this Statement, the Commission does not expect that its Fee Rule will have the threshold impact on small entities. Nonetheless, the Commission published an IRFA with the User Fee NPRM, and is also publishing a FRFA with its Final Fee Rule below, in the interest of further explaining its determination, even though the Commission continues to believe that it is not required to publish such analyses.

1. Reasons for Consideration of Agency Action

The Final Fee Rule has been considered and adopted pursuant to the requirements of the Implementation Act and the Appropriations Act, which authorize the Commission to collect fees sufficient to implement and enforce the "do-not-call" provisions of the Amended TSR.

2. Objectives of and Legal Basis for the Final Rule

As explained above, the objective of the Final Fee Rule is to collect fees from entities engaged in telemarketing, pursuant to the legal authority set forth in the Implementation Act and Appropriations Act.

3. Description and Estimate of Number of Small Entities Affected by the Final Rule

As explained in the Revised Fee NPRM, comments submitted by the Small Business Administration cited to information from the North American Industry Classification System ("NAICS"), suggesting that there are 2,305 firms identified as "telemarketing bureaus," and that 1,279 of those firms may qualify for small business status, *i.e.*, annual receipts of $5 million or less.[81] Because sellers, and not "telemarketing bureaus," constituted the relevant small entities affected by the Revised Fee NPRM, the Commission sought further public comment and information on the number of small business sellers engaged in outbound telemarketing and subject to the FTC's jurisdiction, since the NAICS classification system does not provide this level of detail.[82] The Commission received no further information in response to this request for comment. As a result, the agency is unable at this time to provide a reliable estimate of the number of affected sellers. In any event, as explained elsewhere in this Statement, the Commission believes that, to the extent the Final Fee Rule has an economic impact on small business, the Commission has adopted an approach that minimizes that impact to ensure that it is not substantial, while fulfilling the legal mandate of the Implementation Act and Appropriations Act to ensure that the telemarketing industry supports the cost of the National Do Not Call Registry.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

These requirements were discussed in the Revised Fee NPRM section regarding agency information collection activities subject to OMB approval under the PRA.[83] The information collection activities at issue consist principally of the requirement that firms, regardless of size, that access the national registry submit minimal identifying and payment information, which is necessary for the agency to collect the required fees.

Compliance requirements of the Final Fee Rule, other than information collection requirements within the meaning of the PRA, are discussed elsewhere in this document and in the User Fee NPRM and Revised Fee NPRM. In sum, as noted earlier, small entities and all other entities subject to the Final Fee Rule are required to pay and obtain access to the National Do Not Call Registry in order to reconcile their calling lists with the phone numbers maintained in the national registry.

5. Duplication With Other Federal Rules

None.

6. Description of Any Significant Alternatives to the Final Rule

As discussed in the User Fee NPRM, the Commission considered a number of alternatives to the proposed fees.[84] In both the User Fee NPRM and Revised Fee NPRM, the Commission solicited comment on any significant alternatives that would further minimize the impact on small entities consistent with the objectives stated in those Notices, the Appropriations Act and the Implementation Act. As discussed

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viewed in its context." *National Awareness Foundation* v. *Abrams*, 812 F.Supp. 431, 433 (S.D.N.Y. 1994), *aff'd* 50 F.3d 1159 (2d Cir. 1995). The Commission believes that the $25 fee per area code is nominal, as is the maximum fee of $7,375 for nationwide access, when considered in the context of an annual fee for members of the telemarketing industry engaged in commercial speech. Cf. *Cox* v. *New Hampshire*, 312 U.S. 569, 577 (1949)(upholding a fee up to $300, in 1938 dollars, for a one-day permit to engage in fully protected speech).

[78] Telemarketers and service providers working on behalf of sellers also will be limited to downloading the entire national registry only once in any 24-hour period.

[79] When new area codes are added, the "by state" display temporarily will show a new area code proximate to but separate from its state, to ensure that the new area code has been paid for.

[80] While the Commission is increasing its estimate of the number of entities that must pay for access to the national registry, that increase is created by the FCC Rules, which require entities exempt from the FTC's jurisdiction to gain access. Accordingly, the paperwork burden faced by those entities will be reported by the FCC, rather than the FTC. In addition, entities that access the national registry solely because of the FCC Rules are not required to comply with the recordkeeping provisions of the Amended TSR. As a result, the increase in the Commission's estimate of the number of entities required to access the national registry does not affect that aspect of the Commission's prior PRA burden estimates.

[81] *See* 66 FR at 16246 n.65.

[82] *Id.*

[83] *See* Revised Fee NPRM, 68 FR at 16245.

[84] *See* User Fee NPRM, 67 FR at 37367.

elsewhere in this Statement, the Commission finds that no significant alternatives are available consistent with those objectives.

List of Subjects in 16 CFR Part 310

Telemarketing, Trade practices.

VIII. Final Rule

■ Accordingly, for the reasons set forth above, the Commission hereby amends part 310 of title 16 of the Code of Federal Regulations as follows:

PART 310—TELEMARKETING SALES RULE

■ 1. The authority citation for part 310 continues to read as follows:

Authority: 15 U.S.C. 6101–6108.

■ 2. Add § 310.8 to read as follows:

§ 310.8 Fee for access to the National Do Not Call Registry.

(a) It is a violation of this Rule for any seller to initiate, or cause any telemarketer to initiate, an outbound telephone call to any person whose telephone number is within a given area code unless such seller, either directly or through another person, first has paid the annual fee, required by § 310.8(c), for access to telephone numbers within that area code that are included in the National Do Not Call Registry maintained by the Commission under § 310.4(b)(1)(iii)(B); *provided*, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§ 310.4(b)(1)(iii)(B)(*i*) or (*ii*), and the seller does not access the National Do Not Call Registry for any other purpose.

(b) It is a violation of this Rule for any telemarketer, on behalf of any seller, to initiate an outbound telephone call to any person whose telephone number is within a given area code unless that seller, either directly or through another person, first has paid the annual fee, required by § 310.8(c), for access to the telephone numbers within that area code that are included in the National Do Not Call Registry; *provided*, however, that such payment is not necessary if the seller initiates, or causes a telemarketer to initiate, calls solely to persons pursuant to §§ 310.4(b)(1)(iii)(B)(*i*) or (*ii*), and the seller does not access the National Do Not Call Registry for any other purpose.

(c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is $25 per area code of data accessed, up to a maximum of $7,375; *provided*, however, that there shall be no charge for the first five area codes of data accessed by any person, and *provided further*, that there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing the National Do Not Call Registry without being required under this Rule, 47 CFR 64.1200, or any other federal law. Any person accessing the National Do Not Call Registry may not participate in any arrangement to share the cost of accessing the registry, including any arrangement with any telemarketer or service provider to divide the costs to access the registry among various clients of that telemarketer or service provider.

(d) After a person, either directly or through another person, pays the fees set forth in § 310.8(c), the person will be provided a unique account number which will allow that person to access the registry data for the selected area codes at any time for twelve months following the first day of the month in which the person paid the fee ("the annual period"). To obtain access to additional area codes of data during the first six months of the annual period, the person must first pay $25 for each additional area code of data not initially selected. To obtain access to additional area codes of data during the second six months of the annual period, the person must first pay $15 for each additional area code of data not initially selected. The payment of the additional fee will permit the person to access the additional area codes of data for the remainder of the annual period.

(e) Access to the National Do Not Call Registry is limited to telemarketers, sellers, others engaged in or causing others to engage in telephone calls to consumers, service providers acting on behalf of such persons, and any government agency that has law enforcement authority. Prior to accessing the National Do Not Call Registry, a person must provide the identifying information required by the operator of the registry to collect the fee, and must certify, under penalty of law, that the person is accessing the registry solely to comply with the provisions of this Rule or to otherwise prevent telephone calls to telephone numbers on the registry. If the person is accessing the registry on behalf of sellers, that person also must identify each of the sellers on whose behalf it is accessing the registry, must provide each seller's unique account number for access to the national registry, and must certify, under penalty of law, that the sellers will be using the information gathered from the registry solely to comply with the provisions of this Rule or otherwise to prevent telephone calls to telephone numbers on the registry.

By direction of the Commission.

Donald S. Clark,

Secretary.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix A

List of Acronyms for the TSR Revised Fee Proposal Commenters

Commenter—Acronym
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American Resort Development Association—ARDA
American Teleservices Association—ATA
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Bank of America—BOA
Bouffard, David L.—DB
Brown, Jarrett—JB
Citigroup Inc.—Citi
Convergys Corporation—Convergys
Direct Marketing Association—DMA
Electronic Retailing Association—ERA
Financial Services Roundtable—FSR
Girty, John—JG
Goldstein, Mitchell P.—MG
Greene, Shawn—SG
Household Bank (SB), N.A.—Household
Infocision Management Corporation—IMC
Jamtgaard, O. G. Jr.—OJ
Johnson, Jeff—JJ
Lamonds, Cheryl E.—CL
Magazine Publishers of America—MPA
McGowan, Dilton—DM
National Consumers League—NCL
Phone Data Strategies—PDS
Pressley, Bob—BP
Samuels, Sara—SS
SBC Communications Inc.—SBC
Scheid, Justin & Matt Kiverts—S&K
Scott, Richey L.—RS
Smith, Jenna—JS
Stora, Christine—CS
Stutes, Gerald—GS
The Verizon companies—Verizon
VISA U.S.A.—VISA
West Corporation—West

[FR Doc. 03–19568 Filed 7–30–03; 8:45 am]
BILLING CODE 6750–01–P

Federal Register

Thursday,
July 31, 2003

Part VII

The President

Proclamation 7694—Death of Bob Hope
Executive Order 13311—Homeland Security Information Sharing
Executive Order 13312—Implementing the Clean Diamond Trade Act

Federal Register
Vol. 68, No. 147
Thursday, July 31, 2003

Presidential Documents

Title 3—

The President

Proclamation 7694 of July 28, 2003

Death of Bob Hope

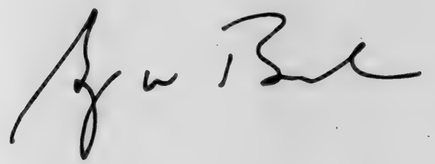
By the President of the United States of America

A Proclamation

Today, America mourns the loss of one of its great treasures. A gifted comedian who entertained audiences for decades with his unique talents, Bob Hope brought joy and laughter to our Nation. By tirelessly entertaining America's troops, he demonstrated his extraordinary love of country and devotion to the men and women who have served in our military.

As a mark of respect for the memory of Bob Hope, I hereby order, by the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, that on the day of his interment, the flag of the United States shall be flown at half-staff at the White House and upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset on such day. I also direct that the flag shall be flown at half-staff for the same period at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of July, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.



[FR Doc. 03–19674
Filed 7–30–03; 9:18 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13311 of July 29, 2003

Homeland Security Information Sharing

By the authority vested in me by the Constitution and the laws of the United States, including sections 892 and 893 of the Homeland Security Act of 2002 (the "Act") (6 U.S.C. 482 and 483) and section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. *Assignment of Functions.* (a) The functions of the President under section 892 of the Act are assigned to the Secretary of Homeland Security (the "Secretary"), except the functions of the President under subsections 892(a)(2) and 892(b)(7).

(b) Subject to section 2(b) of this order, the function of the President under section 893 of the Act is assigned to the Secretary.

(c) Procedures issued by the Secretary in the performance of the function of the President under section 892(a)(1) of the Act shall apply to all agencies of the Federal Government. Such procedures shall specify that the President may make, or may authorize another officer of the United States to make, exceptions to the procedures.

(d) The function of the President under section 892(b)(7) of the Act is delegated to the Attorney General and the Director of Central Intelligence, to be exercised jointly.

(e) In performing the functions assigned to the Secretary by subsection (a) of this section, the Secretary shall coordinate with the Secretary of State, the Secretary of Defense, the Attorney General, the Secretary of Energy, the Director of the Office of Management and Budget, the Director of Central Intelligence, the Archivist of the United States, and as the Secretary deems appropriate, other officers of the United States.

(f) A determination, under the procedures issued by the Secretary in the performance of the function of the President under section 892(a)(1) of the Act, as to whether, or to what extent, an individual who falls within the category of "State and local personnel" as defined in sections 892(f)(3) and (f)(4) of the Act shall have access to information classified pursuant to Executive Order 12958 of April 17, 1995, as amended, is a discretionary determination and shall be conclusive and not subject to review or appeal.

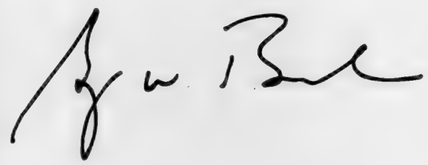
Sec. 2. *Rules of Construction.* Nothing in this order shall be construed to impair or otherwise affect:

(a) the authority of the Director of Central Intelligence under section 103(c)(7) of the National Security Act of 1947, as amended (50 U.S.C. 403–3(c)(7)), to protect intelligence sources and methods from unauthorized disclosure;

(b) the functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals; or

(c) the provisions of Executive Orders 12958 of April 17, 1995, as amended, and 12968 of August 2, 1995, as amended.

Sec. 3. *General Provision.* This order is intended only to improve the internal management of the Federal Government and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.



THE WHITE HOUSE,
July 29, 2003.

[FR Doc. 03–19675
Filed 7–30–03; 9:18 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13312 of July 29, 2003

Implementing the Clean Diamond Trade Act

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Clean Diamond Trade Act (Public Law 108–19) (the "Act"), the International Emergency Economic Powers Act, as amended (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c), and section 301 of title 3, United States Code, and in view of the national emergency described and declared in Executive Order 13194 of January 18, 2001, and expanded in scope in Executive Order 13213 of May 22, 2001,

I, GEORGE W. BUSH, President of the United States of America, note that, in response to the role played by the illicit trade in diamonds in fueling conflict and human rights violations in Sierra Leone, the President declared a national emergency in Executive Order 13194 and imposed restrictions on the importation of rough diamonds into the United States from Sierra Leone. I expanded the scope of that emergency in Executive Order 13213 and prohibited absolutely the importation of rough diamonds from Liberia. I further note that representatives of the United States and numerous other countries announced in the Interlaken Declaration of November 5, 2002, the launch of the Kimberley Process Certification Scheme (KPCS) for rough diamonds, under which Participants prohibit the importation of rough diamonds from, or the exportation of rough diamonds to, a non-Participant and require that shipments of rough diamonds from or to a Participant be controlled through the KPCS. The Clean Diamond Trade Act authorizes the President to take steps to implement the KPCS. Therefore, in order to implement the Act, to harmonize Executive Orders 13194 and 13213 with the Act, to address further threats to international peace and security posed by the trade in conflict diamonds, and to avoid undermining the legitimate diamond trade, it is hereby ordered as follows:

Section 1. *Prohibitions.* Notwithstanding the existence of any rights or obligations conferred or imposed by any contract entered into or any license or permit granted prior to July 30, 2003, the following are, except to the extent a waiver issued under section 4(b) of the Act applies, prohibited:

(a) the importation into, or exportation from, the United States on or after July 30, 2003, of any rough diamond, from whatever source, unless the rough diamond has been controlled through the KPCS;

(b) any transaction by a United States person anywhere, or any transaction that occurs in whole or in part within the United States, that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this section; and

(c) any conspiracy formed to violate any of the prohibitions of this section.

Sec. 2. *Assignment of Functions.* (a) The functions of the President under the Act are assigned as follows:

(i) sections 4(b), 5(c), 6(b), 11, and 12 to the Secretary of State; and

(ii) sections 5(a) and 5(b) to the Secretary of the Treasury.

(b) The Secretary of State and the Secretary of the Treasury may reassign any of these functions to other officers, officials, departments, and agencies within the executive branch, consistent with applicable law.

(c) In performing the function of the President under section 11 of the Act, the Secretary of State shall establish the coordinating committee as part of the Department of State for administrative purposes only, and shall, consistent with applicable law, provide administrative support to the coordinating committee. In the performance of functions assigned by subsection 2(a) of this order or by the Act, the Secretary of State, the Secretary of the Treasury, and the Secretary of Homeland Security shall consult the coordinating committee, as appropriate.

Sec. 3. *Amendments to Related Executive Orders.* (a) Section 1 of Executive Order 13194 of January 18, 2001, is revised to read as follows:

"**Section 1.** Except to the extent provided by section 2 of this order, and notwithstanding the existence of any rights or obligations conferred or imposed by any contract entered into or any license or permit granted prior to the effective date of this order, the importation into, or exportation from, the United States of any rough diamond from Sierra Leone, on or after July 30, 2003, is prohibited."

(b) Section 2 of Executive Order 13194 is revised to read as follows: "**Sec. 2.** The prohibitions in section 1 of this order shall not apply to the importation or exportation of any rough diamond that has been controlled through the Kimberley Process Certification Scheme."

(c) Sections 4(c), (d), and (e) of Executive Order 13194 are deleted, and the word "and" is added after the semicolon at the end of section 4(a).

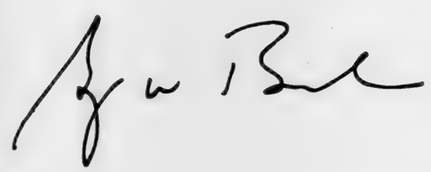
(d) Section 1 of Executive Order 13213 of May 22, 2001, is revised to read as follows: "**Section 1.** Notwithstanding the existence of any rights or obligations conferred or imposed by any contract entered into or any license or permit granted prior to the effective date of this order, the direct or indirect importation into the United States of all rough diamonds from Liberia, whether or not such diamonds originated in Liberia, on or after July 30, 2003, is prohibited."

Sec. 4. *Definitions.* For the purposes of this order and Executive Order 13194, the definitions set forth in section 3 of the Act shall apply, and the term "Kimberley Process Certification Scheme" shall not be construed to include any changes to the KPCS after April 25, 2003.

Sec. 5. *General Provisions.* This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

Sec. 6. *Effective Date and Transmittal.* (a) Sections 1 and 3 of this order are effective at 12:01 a.m. eastern daylight time on July 30, 2003. The remaining provisions of this order are effective immediately.

(b) This order shall be transmitted to the Congress and published in the **Federal Register**.



THE WHITE HOUSE,
July 29, 2003.

[FR Doc. 03–19676
Filed 7–30–03; 9:18 am]
Billing code 3195–01–P

Federal Register

Thursday,
July 31, 2003

Part VIII

The President

Memorandum of July 8, 2003—Delegation of Authority Under Section 204(a) of the Notification and Federal Employee Antidiscrimination Act of 2002 (Public Law 107–174)

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Thursday, July 31, 2003

Presidential Documents

Title 3—

The President

Memorandum of July 8, 2003

Delegation of Authority Under Section 204(a) of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (Public Law 107–174)

Memorandum for the Director of the Office of Personnel Managment

By the authority vested in me by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to the Director of the Office of Personnel Management (OPM) the authority vested in the President by section 204(a) of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (the "Act") (Public Law 107–174). The Director of OPM shall ensure that rules, regulations, and guidelines issued in the exercise of such authority take appropriate account of the needs of executive agencies in the accomplishment of their respective missions, specifically including the specialized needs of agencies with diplomatic, military, intelligence, law enforcement, security, and protective missions. The Director shall consult the Attorney General and such other officers of the executive branch as the Director of OPM may determine appropriate in the exercise of authority delegated by this memorandum.

This memorandum is intended to improve the internal management of the Federal Government and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity or otherwise against the United States, its departments, agencies, instrumentalities, entities, officers or employees, or any other person.

You are authorized and directed to publish this memorandum in the **Federal Register**.

THE WHITE HOUSE,
Washington, July 8, 2003.

[FR Doc. 03–19706
Filed 7–30–03; 11:27 am]
Billing code 6325–48–P

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Schering-Plough Animal Health Corp.; published 7-31-03

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Lake Washington, Seattle, WA; safety zone; published 7-31-03

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McDonnell Douglas; published 7-16-03

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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H.R. 255/P.L. 108–62
To authorize the Secretary of the Interior to grant an easement to facilitate access to the Lewis and Clark Interpretive Center in Nebraska City, Nebraska. (July 29, 2003; 117 Stat. 871)

H.R. 733/P.L. 108–63
To authorize the Secretary of the Interior to acquire the McLoughlin House in Oregon City, Oregon, for inclusion in Fort Vancouver National Historic Site, and for other purposes. (July 29, 2003; 117 Stat. 872)

H.R. 1577/P.L. 108–64
To designate the visitor center in Organ Pipe Cactus National Monument in Arizona as the "Kris Eggle Visitor Center", and for other purposes. (July 29, 2003; 117 Stat. 874)

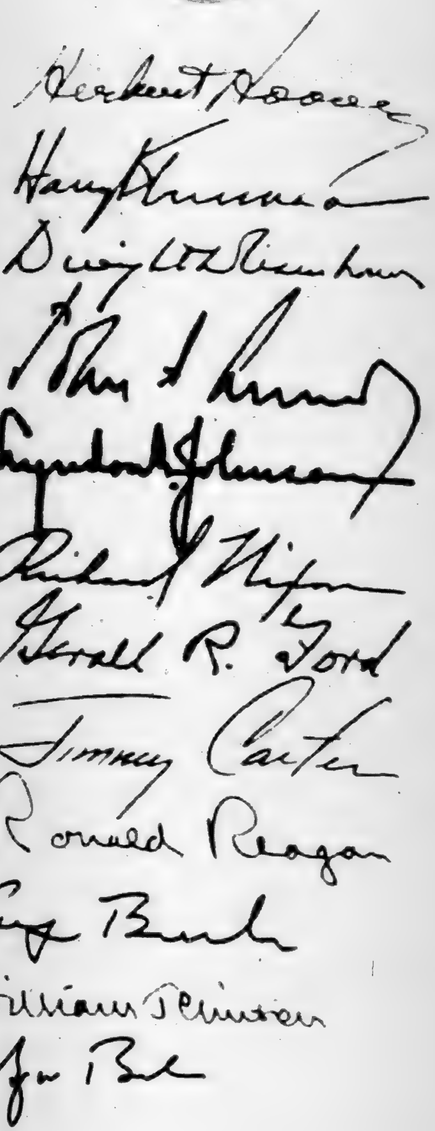
S. 1399/P.L. 108–65
To redesignate the facility of the United States Postal Service located at 101 South Vine Street in Glenwood, Iowa, as the "William J. Scherle Post Office Building". (July 29, 2003; 117 Stat. 875)

Last List July 30, 2003

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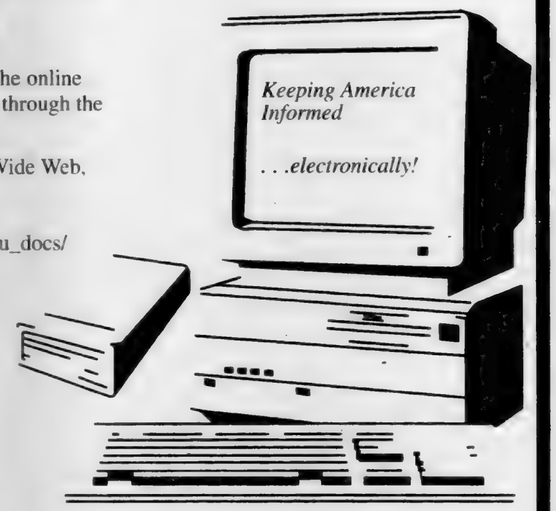
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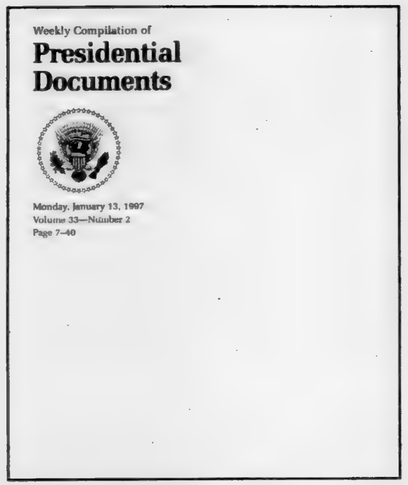
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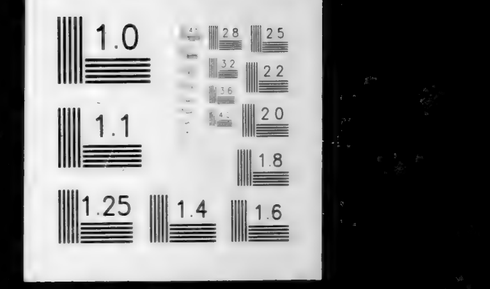
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1794

RIN 0572–AB73

Environmental Policies and Procedures

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) hereby amends its existing environmental regulations, Environmental Policies and Procedures, which have served as RUS' implementation of the National Environmental Policy Act (NEPA) in compliance with the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the NEPA. Based on a greater use of small-scale and distributed generation and renewable resources, and the agency's experience and review of its existing procedures, RUS has determined that several changes are necessary for its environmental review process to operate in a more effective and efficient manner.

EFFECTIVE DATE: August 1, 2003.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Wolfe, Senior Environmental Protection Specialist, Engineering and Environmental Staff; Rural Utilities Service, Stop 1571, 1400 Independence Ave., SW., Washington, DC 20250–1571. Telephone (202) 720–1784. E-mail address: *lwolfe@rus.usda.gov.*

This rule and the guidance bulletin described in this rule are available on the Internet via the RUS home page at *http://www.usda.gov/rus/.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which requires consultation with State and local officials. See the final rule related notice titled "Department Programs and Activities Excluded from Executive Order 12372" (50 FR 47034) advising that RUS loans and loan guarantees were not covered by Executive Order 12372.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all State and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to this rule, and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeals procedures, if any are required, must be exhausted before an action against the Department or its agencies.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Administrator of RUS has determined that this rule, if adopted, would not have significant impact on a substantial number of small entities. The rule serves to clarify the existing regulation and to change the existing classification of selected minor actions to generally streamline the environmental review process for such actions. Most of the changes in the rule should result in modest cost savings and ease the regulatory compliance burden for affected applicants.

Information Collection and Recordkeeping Requirements

This rule contains no additional information collection or recordkeeping requirements under OMB control number 0572–0117 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments of the private sector. Thus, this proposed rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act.

National Environmental Policy Act Certification

RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) Therefore, this action does not require an environmental impact statement or assessment.

Program Affected

The program described by this rule is listed in the Catalog of Federal Domestic Assistance programs under number 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the U.S. Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

Background

On December 11, 1998, the Rural Utilities Service (RUS) published 7 CFR part 1794, Environmental Policies and Procedures, as a final rule in the **Federal Register** (63 FR 68648) covering the actions of the electric, telecommunications, and water and waste programs. Based on a greater emphasis within the electric industry on the use of small-scale and distributed generation and renewable resources, and the agency's experience and review of its existing procedures, RUS determined that several changes were necessary for its environmental review process to operate in a more effective and efficient manner.

This rule contains a variety of changes from the provisions of the current rule. Most of these revisions are minor or merely intended to clarify existing RUS policy and procedure and to ensure that procedures are consistent among the three RUS programs. Other revisions expand upon the existing types of actions that are subject to environmental review or reclassify actions within

categories. The more significant changes are discussed below.

Within subpart A, the term "distributed generation" has been added to the list of definitions and the term "Environmental Analysis (EVAL)" has been deleted from the list of definitions in § 1794.6. A bulletin was issued in early 2002 that provides guidance in preparing for and carrying out scoping for electric generation and transmission projects that require either an environmental assessment with scoping or an environmental impact statement. Further information on the RUS guidance bulletins is provided in § 1794.7.

Within subpart B, language clarifying RUS policy regarding the completion of RUS environmental review process for certain categories of actions has been added to § 1794.15(a).

Within subpart C, a number of additional listings to the existing classification and changes to selected listings within the existing classification have been made. These reclassifications involve minor actions proposed by applicants, which rarely, if ever, result in significant environmental impact or public interest. These changes will streamline environmental review of minor actions, and will allow the agency to focus its resources on larger projects. RUS believes that the changes and existing procedures will provide adequate safeguards to identify any unusual circumstances that may require additional agency scrutiny.

Within § 1794.21(b), RUS added separate categories for generating facilities of less than 100 kilowatts and the co-firing of bio-fuels and refuse derived fuels at existing fossil-fueled generating stations. Within § 1794.22(a), RUS modified the capacity thresholds for distributed generation facilities at existing sites. A new category involving adding combined cycle facilities at existing combustion turbine sites was added to § 1794.22(a).

In addition to including fuel cell and combined cycle generation in the same listings as combustion turbines, RUS added two new categories of proposals within § 1794.23. One new category covers the construction of a natural gas pipeline to serve an existing gas-fueled generating facility. The other new category involves a higher capacity threshold for adding combined cycle facilities at existing combustion turbine sites. Other capacity threshold changes within § 1794.23 reflect changes that were made in § 1794.22(a). Within §§ 1794.24 and 1794.25 the only change adds fuel cell and combined cycle generation in the same listing as combustion turbines.

RUS has modified its procedures in subpart E of this part. In §§ 1794.43 and 1794.44, RUS eliminated the requirement to publish in the **Federal Register**, a notice of Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) availability for electric and telecommunications proposed actions described in § 1794.23. RUS has determined that no appreciable benefit has resulted from publishing a separate **Federal Register** notice for proposals in that category. By this change, the notice requirements for all three RUS programs would be consistent for all EA proposals described in § 1794.23. Electric proposals described in § 1794.24 would still be subject to this requirement.

In subpart G of this part, RUS has modified its policy regarding the use of a contractor prepared Environmental Impact Statement (EIS). Under the existing regulation, the EIS would either be developed by RUS from an applicant prepared Environmental Analysis (EVAL) or prepared with the assistance of a consultant selected by RUS. Based on its experience in recent years, RUS expects to utilize the services of a consultant selected by and working for RUS for all actions requiring the preparation of an EIS. RUS does not contemplate preparing a draft or final EIS relying on an applicant prepared EVAL, as currently stated in § 1794.61(b). Therefore, RUS has deleted § 1794.61(b). Also, the applicant submitted document for all proposals will be titled an Environmental Report (ER). Previously, the applicant supplied document for a § 1794.24 proposal was an EVAL. These changes affect §§ 1794.50, 1794.52 through 1794.54, and 1794.61.

Preparation of the Rulemaking

The proposed rule amending 7 CFR part 1794 was published in the **Federal Register** on January 15, 2003 (68 FR 1988). Public comment was invited for a 30-day period ending on February 14, 2003. The only public comments received were from a rural electric cooperative. Those comments supported the changes being proposed. Comments received from the President's Council on Environmental Quality (CEQ) have resulted in changes to two listings. Item § 1794.22(a) (13) "Construction of a natural gas pipeline (ten miles or less in length) to serve an existing gas-fueled generating station," has been deleted. Listing § 1794.23(c) (13) has been modified by deleting the (more than 10 miles in length) threshold. As recommended by CEQ, § 1794.54 was expanded to better clarify the RUS policy of publishing notices in the **Federal Register** for proposals listed in § 1794.24.

List of Subjects in 7 CFR Part 1794

Environmental impact statements, Reporting and recordkeeping requirements.

■ Therefore RUS amends chapter XVII of title 7 of the Code of Federal Regulations as follows:

PART 1794—ENVIRONMENTAL POLICIES AND PROCEDURES

■ 1. The authority citation for part 1794 continues to read as follows:

Authority: 7 U.S.C. 6941 *et seq.*, 42 U.S.C. 4321 *et seq.*; 40 CFR Parts 1500–1508.

■ 2. Section 1794.6 is amended by:
■ A. Removing the definition for "Environmental Analysis (EVAL)";
■ B. Adding the definition for "Distributed Generation", and
■ C. Amending the definition for "Environmental Report (ER) by revising the first sentence.

These amendments read as follows:

§ 1794.6 Definitions.

* * * * *

Distributed Generation. The generation of electricity by a sufficiently small electric generating system as to allow interconnection of the system near the point of service at distribution voltages or customer voltages. A distributed generating system may be fueled by any source, including but not limited to renewable energy sources.

* * * * *

Environmental Report (ER). The environmental documentation normally submitted by applicants for proposed actions subject to compliance with §§ 1794.22 through 1794.24. * * *

* * * * *

■ 3. Section 1794.7(a) is revised to read as follows:

§ 1794.7 Guidance.

(a) *Electric and Telecommunications Programs.* For further guidance in the preparation of public notices and environmental documents, RUS has prepared a series of program specific guidance bulletins. RUS Bulletin 1794A–600 provides guidance in preparing the ER for proposed actions classified as categorical exclusions (CEs) (§ 1794.22(a)); RUS Bulletin 1794A–601 provides guidance in preparing the ER for proposed actions which require EAs (§ 1794.23(b) and (c)); and RUS Bulletin 1794A–603 provides guidance in conducting scoping for proposed actions classified as requiring an EA with scoping or an EIS. Copies of these bulletins are available upon request by contacting the Rural Utilities Service, Publications Office, Program Development and Regulatory Analysis, Stop 1522, 1400 Independence Avenue, SW., Washington, DC 20250–1522.

* * * * *

■ 4. Section 1794.15 is amended by:
■ A. Adding a new sentence to the end of paragraph (a), and
■ B. Adding new paragraphs (a)(1), (a)(2), and (a)(3).

These amendments read as follows:

§ 1794.15 Limitations on actions during the NEPA process.

(a) * * * The RUS environmental review process is concluded when:

(1) A categorical exclusion determination has been made for proposals listed under §§ 1794.21 and 1794.22.

(2) Applicant notices announcing the RUS FONSI determination have been published for proposals listed under §§ 1794.23 and 1794.24.

(3) Applicant notices announcing the RUS Record of Decision have been published for proposals listed under § 1794.25.

* * * * *

■ 5. Section 1794.21 is amended by adding new paragraphs (b)(25) and (26) to read as follows:

§ 1794.21 Categorically excluded proposals without an ER.

* * * * *

(b) * * *

(25) Electric generating facilities of less than 100 kilowatts at any one site for the purpose of providing service to customers or facilities such as stock tanks and irrigation pumps.

(26) New bulk commodity storage and associated handling facilities within existing fossil-fueled generating station boundaries for the purpose of co-firing bio-fuels and refuse derived fuels. A description of the facilities to be constructed shall be provided to RUS.

* * * * *

■ 6. Section 1794.22 is amended by revising paragraphs (a)(8) and (9) and by adding new paragraph (a)(12) to read as follows:

§ 1794.22 Categorically excluded proposals requiring an ER.

(a) * * *

(8) Construction of distributed generation totaling 10 MW or less at an existing utility, industrial, commercial or educational facility site. There is no capacity limit for a generating facility located at or adjacent to an existing landfill site that is powered by refuse derived fuel. All new associated facilities and related electric power lines shall be covered in the ER;

(9) Installation of new generating units or the replacement of existing generating units at a hydroelectric facility or dam which result in no change in the normal maximum surface area or normal maximum surface elevation of the existing impoundment. All new associated facilities and related electric power lines shall be covered in the ER;

* * * * *

(12) Installing a heat recovery steam generator and steam turbine with a rating of 200 MW or less on an existing combustion turbine generation site for the purpose of combined cycle operation. All new associated facilities and related electric power lines shall be covered in the ER.

* * * * *

■ 7. Section 1794.23 is amended by:
■ A. Revising paragraph (c)(1), (c)(2), and (c)(3), and
■ B. Adding new paragraphs (c)(12) and (c)(13)

The revision and additions read as follows:

§ 1794.23 Proposals normally requiring an EA.

* * * * *

(c) * * *

(1) Construction of fuel cell, combustion turbine, combined cycle, or diesel generating facilities of 50 MW (nameplate rating) or less at a new site (no existing generating capacity) except for items covered by § 1794.22(a)(8). All new associated facilities and related electric power lines shall be covered in the EA;

(2) Construction of fuel cell, combustion turbine, combined cycle, or diesel generating facilities of 100 MW (nameplate rating) or less at an existing generating site, except for items covered by § 1794.22(a)(8). All new associated facilities and related electric power lines shall be covered in the EA;

(3) Construction of any other type of new electric generating facility of 20 MW (nameplate rating) or less, except for items covered by § 1794.22(a)(8). All new associated facilities and related electric power lines shall be covered in the EA;

* * * * *

(12) Installing a heat recovery steam generator and steam turbine with a rating of more than 200 MW on an existing combustion turbine generation site for the purpose of combined cycle operation. All new associated facilities and related electric power lines shall be covered in the EA.

(13) Construction of a natural gas pipeline to serve an existing gas-fueled generating facility.

■ 8. Section 1794.24(b)(2) is revised to read as follows:

§ 1794.24 Proposals normally requiring an EA with scoping.

* * * * *

(b) * * *

(2) Construction of fuel cell, combustion turbine, combined cycle, and diesel generating facilities of more than 50 MW at a new site or more than 100 MW at an existing site; and the construction of any other type of electric generating facility of more than 20 MW but not more than 50 MW (nameplate rating). All new associated facilities and related electric power lines shall be covered in any EA or EIS that is prepared.

* * * * *

■ 9. Section 1794.25(a)(1) is revised to read as follows:

§ 1794.25 Proposals normally requiring an EIS.

* * * * *

(a) * * *

(1) New electric generating facilities of more than 50 MW (nameplate rating) other than fuel cell, combustion turbine, combined cycle, or diesel generators. All new associated facilities and related electric power lines shall be covered in the EIS; and

* * * * *

§ 1794.43 [Amended]

■ 10. Amend § 1794.43 by:
■ A. Removing paragraph (b), and
■ B. Amending paragraph (a) by removing the paragraph designation and the heading "General".
■ 11. Section 1794.44 is revised to read as follows:

§ 1794.44 Timing of agency action.

RUS may take its final action on proposed actions requiring an EA (§ 1794.23) at any time after publication of applicant notices that a FONSI has been made and any required review period has expired. When substantive comments are received on the EA, RUS may provide an additional period (15 days) for public review following the publication of its FONSI determination. Final action shall not be taken until this review period has expired.

■ 12. Section 1794.50 is revised to read as follows:

§ 1794.50 Normal sequence.

For proposed actions covered by § 1794.24 and other actions determined by the Administrator to require an EA with scoping, RUS and the applicant will follow the same procedures for scoping and the requirements for notices and documents as for proposed

actions normally requiring an EIS through the point where project scoping has been completed. Following project scoping, RUS will make a judgment to have an EA prepared or contract for the preparation of an EIS.

■ 13. Section 1794.51(a) is revised to read as follows:

§ 1794.51 Preparation for scoping.

(a) As soon as practicable after RUS and the applicant have developed a schedule for the environmental review process, RUS shall have its notice of intent to prepare an EA or EIS and schedule scoping meetings (§ 1794.13) published in the **Federal Register** (see 40 CFR 1508.22). The applicant shall have published, in a timely manner, a notice similar to RUS' notice.

* * * * *

■ 14. Section 1794.52(d) is amended by removing the last sentence and adding two new sentences at the end of the paragraph to read as follows:

§ 1794.52 Scoping meetings.

* * * * *

(d) * * * The applicant or its consultant shall prepare a record of the scoping meeting. The record shall consist of a transcript when a traditional meeting format is used or a summary report when an open house format is used.

* * * * *

■ 15. Section 1794.53 is revised to read as follows:

§ 1794.53 Environmental report.

(a) After scoping procedures have been completed, RUS shall require the applicant to develop and submit an ER. The ER shall be prepared under the supervision and guidance of RUS staff and RUS shall evaluate and be responsible for the accuracy of all information contained therein.

(b) The applicant's ER will normally serve as the RUS EA. After RUS has reviewed and found the ER to be satisfactory, the applicant shall provide RUS with a sufficient number of copies of the ER to satisfy the RUS distribution plan.

(c) The ER shall include a summary of the construction and operation monitoring and mitigation measures for the proposed action. These measures may be revised as appropriate in response to comments and other information, and shall be incorporated by summary or reference into the FONSI.

■ 16. Section 1794.54 is revised to read as follows:

§ 1794.54 Agency determination.

Following the scoping process and the development of a satisfactory ER by the applicant or its consultant that will serve as the agency's EA, RUS shall determine whether the proposed action is a major Federal action significantly affecting the quality of the human environment. If RUS determines the action is significant, RUS will continue with the procedures in subpart G of this part. If RUS determines the action is not significant, RUS will proceed in accordance with §§ 1794.42 through 1794.44. For proposals subject to the procedures of subpart F, RUS shall publish notices in the **Federal Register** that announce the availability of the EA and solicit public comments on the EA (refer to § 1794.42) and the RUS finding and the availability of the EA and FONSI (refer to § 1794.43).

§ 1794.61 [Amended]

■ 17. Section 1794.61 is amended by:

■ A. Removing paragraph (b).

■ B. Removing the heading *General* from paragraph (a); redesignating paragraph (a) as the introductory text; paragraph (a)(1) as (a); paragraph (a)(2) as (b); and paragraph (a)(3) as (c).

Dated: July 11, 2003.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 03–19619 Filed 7–31–03; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 911

[Docket No.: 030220035–3035–01]

RIN 0648–AQ55

Policies and Procedures Concerning Use of the NOAA Space-Based Data Collection Systems

AGENCY: National Environmental Satellite, Data, and Information Service (NESDIS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations setting forth policies and procedures regarding space-based data collection systems (DCS) to allow expanded use of the NOAA DCS for government interests and to permit greater flexibility in utilizing these vital U.S. data collection assets in support of homeland security, National security, law enforcement, and humanitarian operations.

DATES: Effective September 2, 2003.

ADDRESSES: Copies of supporting documents may be obtained from Kay Metcalf, NOAA, NESDIS, Direct Services Division, E/SP3, Room 3320, FB–4, 5200 Auth Road, Suitland, Maryland 20746–4304.

FOR FURTHER INFORMATION CONTACT: Kay Metcalf at (301) 457–5681, e-mail: *Kay.Metcalf@noaa.gov;* or Glenn Tallia at 301–713–1337, e-mail: *Glenn.E.Tallia@noaa.gov.*

SUPPLEMENTARY INFORMATION: NOAA enacted 15 CFR part 911, effective June 5, 1998, to revise its policies and procedures for authorizing the use of the space-based DCS that operate on NOAA's Geostationary Operational Environmental Satellites (GOES) and on its Polar-orbiting Operational Environmental Satellites (POES). For general background on NOAA DCS, refer to the notice of final rulemaking published in the **Federal Register** on May 6, 1998, at 63 FR 24917.

The background and rationale for the revisions to the DCS regulations were provided in the preamble to the proposed rule published in the **Federal Register** on April 8, 2003, at 68 FR 16993, and are not repeated here.

NOAA received no comments on the proposed rule and, therefore, is adopting the proposed rule as a final rule without change.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities as that term is defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The factual basis for this certification was published in the proposed rule and is not repeated here. No comments were received regarding the economic impact of this rule. As a result, no final regulatory flexibility analysis was prepared.

Paperwork Reduction Act of 1995 (35 U.S.C. 3500 et seq.)

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB under control number 0648–0157. Public reporting burden for these requirements is estimated to average 3 hours per GOES agreement and 1 hour per Argos agreement, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NESDIS (*see* **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

Publication of the final regulations does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

Executive Order 12866

This rule has been determined to be not significant for purposes of E.O. 12866.

Gregory W. Withee,

Assistant Administrator for Satellite and Information Services, National Oceanic and Atmospheric Administration, United States Department of Commerce.

List of Subjects in 15 CFR Part 911

Scientific equipment, Space transportation and exploration.

■ For the reasons set out in the preamble, 15 CFR Part 911 is amended as follows:

■ 1. The authority citation for Part 911 continues to read as follows:

Authority: 15 U.S.C. 313, 49 U.S.C. 44720; 15 U.S.C. 1525; 7 U.S.C. 450b; 5 U.S.C. 552.

■ 2. Section 911.3 is amended by revising paragraphs (p), (q), (r), and (s) and adding paragraph (t) to read as follows:

§ 911.3 Definitions.

* * * * *

(p) *Sensitive use* means the use of the NOAA DCS where the users' requirements dictate the use of a governmental system such as National security, homeland security, law enforcement and humanitarian operations.

(q) *Testing use* means the use of the NOAA DCS by manufacturers of platforms for use in conjunction with the NOAA DCS, for the limited purpose of testing and certifying the compatibility of new platforms with the technical requirements of the NOAA DCS.

(r) *User* means the entity and/or organization that owns or operates user platforms for the purpose of collecting and transmitting data through the NOAA DCS, or the organization requiring the collection of the data.

(s) *User platform* means device designed in accordance with the specifications delineated and approved by the Approving Authority used for the in-situ collection and subsequent transmission of data via the NOAA DCS. Those devices which are used in conjunction with the GOES DCS are referred to as data collection platforms (DCP) and those which are used in conjunction with the Argos DCS are referred to as Platform Transmitter Terminals (PTT). For purposes of these regulations, the terms "user platform," "DCP", and "PTT" are interchangeable.

(t) *User requirement* means the requirement expressed and explained in the System Use Agreement.

■ 3. Section 911.4 is amended by revising paragraphs (c)(3) and (c)(4) to read as follows:

§ 911.4 Use of the NOAA Data Collection Systems.

* * * * *

(c) * * *

(3) Except as provided in paragraph (c)(4) of this section, non-environmental use of the NOAA DCS is only authorized for government use and non-profit users where there is a government interest. The NOAA DCS will continue to be predominantly used for environmental applications. Non-environmental use of the system shall be limited to sensitive use, and to episodic use as defined below in paragraph (c)(4) of this section.

(4) Episodic use of the NOAA DCS may also be authorized in specific instances where there is a significant possibility for loss of life. Such use shall be closely monitored.

* * * * *

■ 4. Section 911.5 is amended by revising paragraphs (c) and (e)(1), and adding new paragraphs (e)(3) and (e)(4) to read as follows:

§ 911.5 NOAA Data Collection Systems Use Agreements.

* * * * *

(c) The Director shall evaluate user requests for System Use Agreements and renewals and conclude agreements for use of the NOAA DCS.

* * * * *

(e) * * *

(1) Agreements for the collection of environmental data, by the GOES DCS, shall be valid for 5 years from the date of initial in-situ deployment, and may be renewed for additional 5-year periods.

* * * * *

(3) Agreements for the collection of non-environmental data, via the GOES DCS, by government agencies, or non-profit institutions where there is a government interest, shall be valid for 1 year from the date of initial *in-situ* deployment of the platforms, and may be renewed for additional 1-year periods.

(4) Agreements for the episodic collection of non-environmental data, via the GOES DCS under § 911.4(c)(4), shall be of short, finite duration not to exceed 1 year without exception, and usually shall not exceed 6 months. These agreements shall be closely monitored and shall not be renewed.

■ 5. Section 911.6 is revised to read as follows:

§ 911.6 Treatment of data.

(a) All NOAA DCS users must agree to permit NOAA and other agencies of the U.S. Government the full, open, timely, and appropriate use as determined by NOAA, of all environmental data collected from their platforms; this may include the international distribution of environmental data under the auspices of the World Meteorological Organization.

(b) Raw data from the NOAA space segment is openly transmitted and accessible.

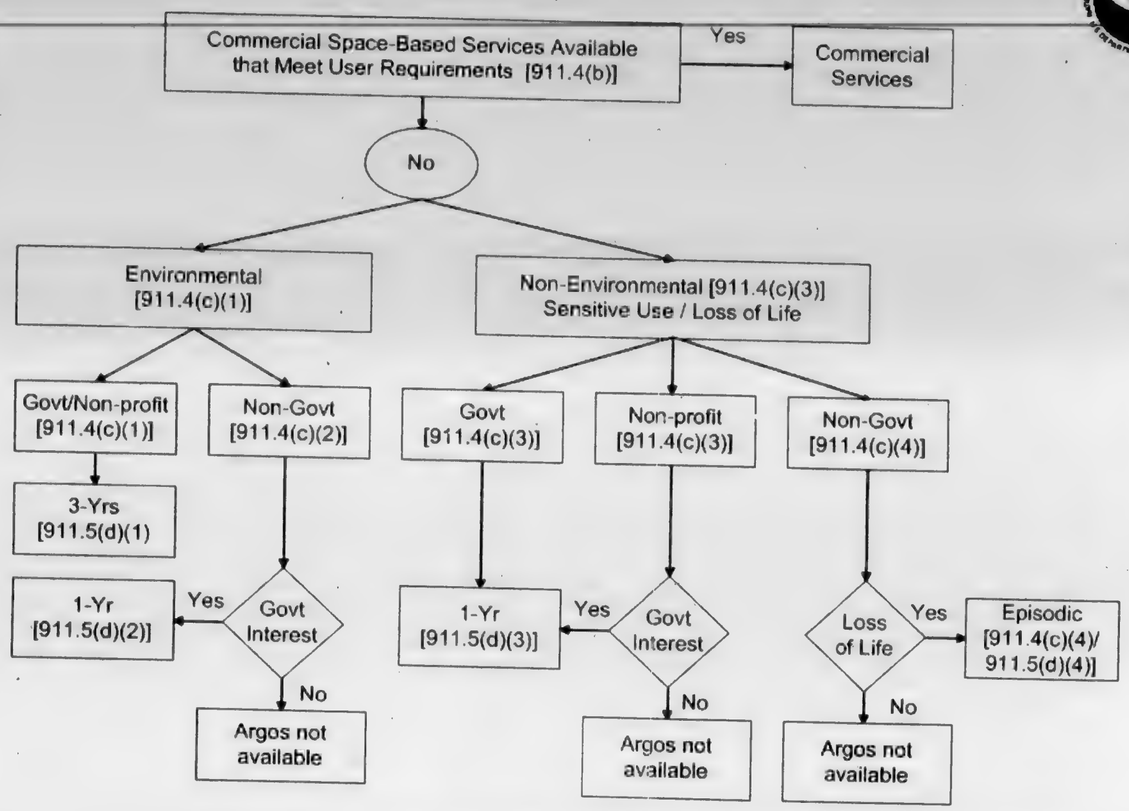
(c) Accessibility of the NOAA DCS processed data from the ground segment is handled in accordance with the users specifications and system design limitations, subject to the provisions stated in paragraph (a) of this section.

■ 6. Revise appendix A to part 911 as follows:

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■ 7. Revise appendix B to part 911 as follows:

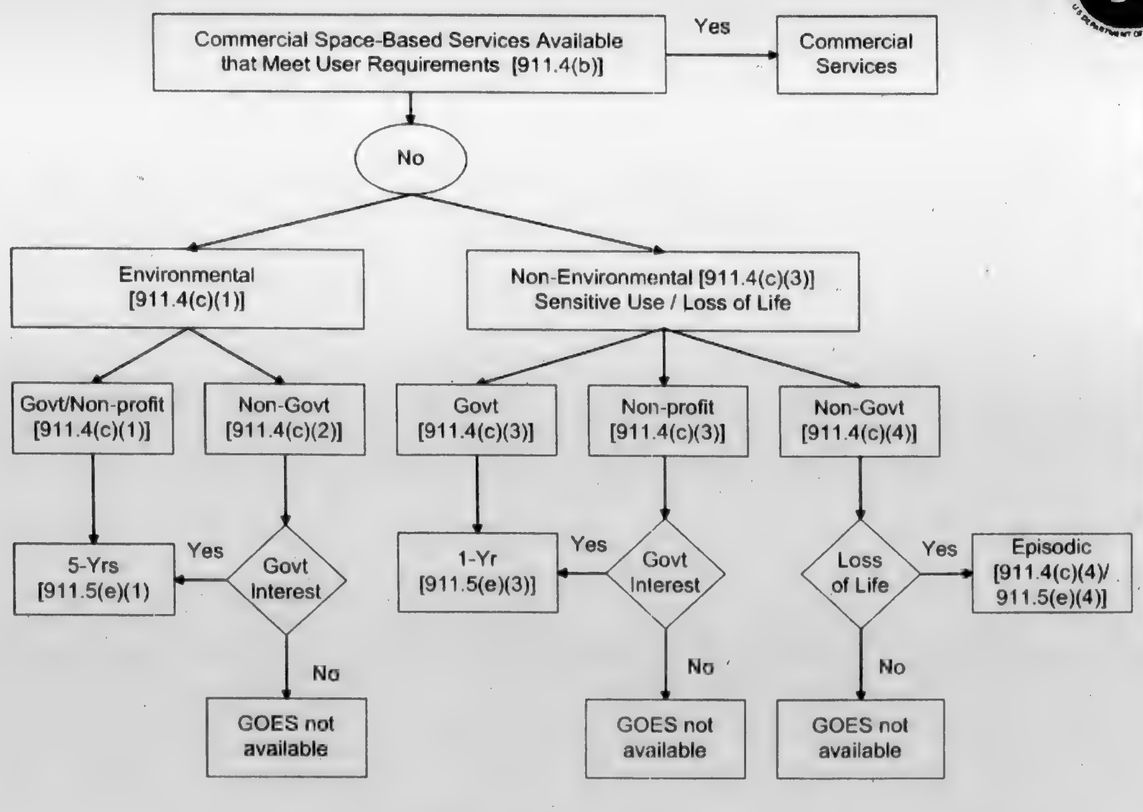
Argos DCS Use Policy Diagram



Note: Testing Use permitted as per [911.4(c)(5)] for up to 1-Yr [911.5(d)(5)] Appendix A

Appendix A to Part 911 - Argos DCS Use Policy Diagram

GOES DCS Use Policy Diagram



Note: Testing Use permitted as per [911.4(c)(5)] for up to 1-Yr [911.5(e)(2)] Appendix A

Appendix B to Part 911 - GOES DCS Use Policy Diagram

[FR Doc. 03–19478 Filed 7–31–03; 8:45 am]
BILLING CODE 3510–HP–C

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–03–102]

RIN 1625–AA00

Safety and Security Zones; Chesapeake Bay, Maryland and Tributaries

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing moving and fixed safety and security zones on the waters of the Chesapeake Bay and its tributaries for vessels carrying Liquefied Natural Gas (LNG) in the Captain of the Port (COTP) Baltimore zone. These zones are necessary to provide for the safety and security of these vessels in response to potential terrorist acts. This rule enhances public and maritime safety and security by requiring vessel traffic to maintain a safe distance from these vessels while they are transiting, anchored, or moored in the COTP Baltimore zone.

DATES: This rule is effective from 8 a.m. local time on July 24, 2003 through August 20, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–03–102 and are available for inspection or copying at Commander, U.S. Coast Guard Activities, 2401 Hawkins Point Road, Building 70, Port Safety, Security and Waterways Management Branch, Baltimore, Maryland, 21226–1791, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Charles Bright, at Coast Guard Activities Baltimore, Port Safety, Security and Waterways Management Branch, at telephone number (410) 576–2676 or (410) 576–2693.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 20, 2003, we published a notice of proposed rulemaking (NPRM) entitled "Safety and Security Zones; Chesapeake Bay, Maryland and Tributaries" in the **Federal Register** (68 FR 13649). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The final rule was published in the **Federal Register** (68 FR 43309) on July 22, 2003, but is not effective until August 21, 2003. However, imminent arrival of affected vessels creates an immediate need for this temporary rule until the final rule becomes effective.

Background and Purpose

In light of the terrorist attacks on the World Trade Center buildings in New York, NY and the Pentagon in Arlington, VA on September 11, 2001, safety and security zones are being established to safeguard certain types of vessels and the public from sabotage or other subversive acts, accidents, or other events of a similar nature, and to protect persons, vessels, and others in the maritime community from the hazards associated with the transit and limited maneuverability of these vessels. These safety and security zones prohibit entry into or movement within the specified areas.

This rule establishes safety and security zones around vessels carrying LNG while underway, anchored, or moored in the waters of the Chesapeake Bay and its tributaries. This rule creates safety and security zones within navigable waters of the United States in the COTP Baltimore zone, as defined in 33 CFR 3.25–15. While the COTP anticipates some impact on vessel traffic due to this regulation, these safety and security zones are deemed necessary for the protection of life, property, and the safety and security of navigation within the COTP Baltimore zone.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This finding is based on the limited size of the zones, the minimal time that vessels will be restricted from the zones, and vessels may transit around the zones. In addition, vessels that may need to enter the zones may request permission on a case-by-case basis from the COTP Baltimore or his designated representatives.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit in a portion of the Chesapeake Bay and its tributaries near a vessel encompassed by the safety and security zones. Because the zones are of limited size and duration, it is expected that there will be minimal disruption to the maritime community. In addition, smaller vessels, which are more likely to be small entities, may transit around the zones and request permission from the COTP Baltimore on a case-by-case basis to enter the zones.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because this rule establishes a safety and security zone. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" will be available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–102 to read as follows:

§ 165.T05–102 Safety and Security Zones; Chesapeake Bay, Maryland.

(a) *Definition.* Liquefied Natural Gas (LNG) means a material defined in 33 CFR 127.005.

(b) *Location.* The following areas are a safety and security zone: All waters of the Chesapeake Bay and its tributaries, from surface to bottom, within a 500 yard radius around vessels transporting LNG while transiting, anchored, or moored within the COTP Baltimore zone.

(c) *Regulations.* (1) The COTP will notify the maritime community of periods during which the safety and security zones will be enforced by providing notice in accordance with 33 CFR 165.7.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard COTP, Baltimore, Maryland or his designated representative.

(3) Persons desiring to transit the area of the security zone may contact the COTP at telephone number 410–576–2693 or on VHF channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the COTP or his or her designated representative.

Dated: July 23, 2003.

Curtis A. Springer,

Captain, Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 03–19544 Filed 7–31–03; 8:45 am]
BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–03–103]

RIN 1625–AA00

Safety and Security Zone; Cove Point Liquefied Natural Gas Terminal, Chesapeake Bay, Maryland

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety and security zone at the Cove Point Liquefied Natural Gas (LNG) Terminal under 33 CFR 165.502. This is in response to the re-opening of the terminal by Dominion Power scheduled for July 2003. This safety and security zone is necessary to help ensure public safety and security. The zone will prohibit vessels and persons from entering a well-defined area of 500

yards in all directions around the Cove Point LNG Terminal.

DATES: This rule is effective from 8 a.m. local time on July 25, 2003 until September 26, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CG05–03–103] and are available for inspection or copying at Commander, U.S. Coast Guard Activities, 2401 Hawkins Point Road, Building 70, Port Safety, Security and Waterways Management Branch, Baltimore, Maryland, 21226–1791 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Charles Bright, at Coast Guard Activities Baltimore, Port Safety, Security and Waterways Management Branch, at telephone number (410) 576–2676.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 15, 2003, we published a notice of proposed rulemaking (NPRM); notice of public meeting; reopening of comment period entitled *Safety and Security Zone; Cove Point Natural Gas Terminal, Chesapeake Bay, MD,* in the **Federal Register** (68 FR 26247). We received 6 letters commenting on the proposed rule. A public hearing was requested, and was held on June 5, 2003, and the comment period was re-opened and extended to June 12, 2003. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard is currently reviewing the additional comments received during the re-opened comment period and public meeting and requires more time to develop the final rule based on these additional comments. Additionally, the Coast Guard believes it is in the best interest of public safety to establish this temporary rule while it continues to consider comments that may affect the final rule.

Background and Purpose

In preparation for the re-opening of the LNG terminal at Cove Point, MD, the Coast Guard is evaluating the current safety zone established in 33 CFR 165.502. This safety zone was established during the initial operation of the terminal in 1979 and includes both the terminal and associated vessels. To better manage the safety and security of the LNG terminal, this temporary rule incorporates necessary security provisions and changes the size of the zone. This rule establishes a 500 yard combined safety zone and security zone in all directions around the LNG terminal at Cove Point.

Based on the September 11, 2001 terrorist attacks on the World Trade Center buildings in New York, NY and the Pentagon building in Arlington, VA, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Cove Point LNG Terminal. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Espionage Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) ("Magnuson Act"), section 104 of the Maritime Transportation Security Act of November 25, 2002, and by implementing regulations promulgated by the President in subparts 6.01 and 6.04 of Part 6 of Title 33 of the Code of Federal Regulations.

Discussion of Rule

The Coast Guard is establishing a temporary safety and security zone on specified waters of the Chesapeake Bay near the Cove Point Liquefied Natural Gas Terminal to reduce the potential threat that may be posed by vessels or persons that approach the terminal. The zone will extend 500 yards in all directions from the terminal. The effect will be to prohibit vessels or persons entry into the security zone, unless specifically authorized by the Captain of the Port, Baltimore, Maryland. Federal, state and local agencies may assist the Coast Guard in the enforcement of this rule.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). This regulation is of limited size, and vessels may transit around the zone.

There may be some adverse effects on the local maritime community that has been using the area as a fishing ground. Since the terminal has not been in operation, the Coast Guard has not enforced the current zone under 33 CFR 165.502. Commercial vessel operators have been using the area on a regular basis for commercial fishing, passenger tours, and fishing parties. Enforcement of the proposed zone or the current zone would prohibit these commercial vessel operators from using this area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Chesapeake Bay near the Cove Point LNG Terminal.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine, compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because this rule establishes a security zone. A final "Categorical Exclusion Determination" will be available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064, Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–103 to read as follows:

§ 165.T05–103 Safety and Security Zone; Cove Point Liquefied Natural Gas Terminal, Chesapeake Bay, Maryland.

(a) *Location.* The following area is a safety and security zone: All waters of the Chesapeake Bay, from surface to bottom, encompassed by lines connecting the following points, beginning at 38°24′27″ N, 076°23′42″ W, thence to 38°24′44″ N, 076°23′11″ W, thence to 38°23′55″ N, 076°22′27″ W, thence to 38°23′37″ N, 076°22′58″ W, thence to beginning at 38°24′27″ N, 076°23′42″ W. These coordinates are based upon North American Datum (NAD) 1983. This area is 500 yards in all directions from the Cove Point LNG terminal structure.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 and § 165.33 of this part, entry into or movement within this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Baltimore, Maryland or his designated representative. Designated representatives include any Coast Guard commissioned, warrant, or petty officer.

(2) Persons desiring to transit the area of the zone may contact the Captain of the Port at telephone number (410) 576–2693 or via VHF Marine Band Radio channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his designated representative.

(c) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, local, and private agencies.

Dated: July 23, 2003.

Curtis A. Springer,

Captain, Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 03–19545 Filed 7–31–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 71

[CA 098–NOA; FRL–7537–1]

Part 71 Federal Operating Permits Program for California Agricultural Sources, Announcement of a New Deadline for Application Submittal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; delay of application deadline.

SUMMARY: In connection with EPA's implementation of a part 71 program for state-exempt major stationary agricultural sources in California, EPA is announcing a new deadline of November 13, 2003 instead of August 1, 2003 for submittal of part 71 operating permit applications for all state-exempt stationary agricultural sources except those that are major due solely to emissions from diesel-powered engines.

DATES: This action is effective August 1, 2003.

FOR FURTHER INFORMATION CONTACT: If you have any questions on this notice contact Gerardo Rios, EPA Region 9, Air

Division, Permits Office (AIR–3), at (415) 972–3974 or *rios.gerardo@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

Background: On October 15, 2002 we partially withdrew approval of part 70 Operating Permit Programs in California and announced a part 71 Federal Operating Permits Program for major stationary agricultural sources in California (67 FR 63551). At that time we also announced in the preamble of the final rule the deadlines for submittal of part 71 operating permit applications for these sources, as defined in 40 CFR 71.2. These deadlines were May 14, 2003 for sources that were major due to diesel-powered engine emissions, and August 1, 2003 for any remaining state-exempt major stationary agriculture sources (*See* 67 FR 63560 in Section IV). Today we are announcing that the second deadline is changed to November 13, 2003.

Description of Today's Action

Pursuant to 40 CFR 71.5(a)(1)(i), major stationary sources that do not have an existing operating permit issued by a State (or local permitting authority) under an approved part 70 program, and that are applying for a part 71 permit for the first time, must submit an application within 12 months after becoming subject to the permit program or on or before such earlier date as the permitting authority may establish. Section 71.5(a)(1)(i) further provides that sources required to submit permit applications earlier than 12 months after becoming subject to part 71 shall be notified of the earlier submittal date at least 6 months in advance of the deadline. EPA previously met this requirement by publishing a Notice in the **Federal Register** on October 15, 2002. 67 FR 63551. That notice established a deadline of May 14, 2003 for state-exempt stationary agricultural sources that are major sources, as defined in 40 CFR 71.2, due to emissions from diesel-powered engines, and a deadline of August 1, 2003 for all remaining state-exempt major stationary agricultural sources. We are today notifying this second category of sources that the deadline to submit part 71 permit applications to the EPA Region IX Permits Office has been changed from August 1, 2003 to November 13, 2003.

Dated: July 21, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 03–19282 Filed 7–31–03; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1806, 1807, 1811, 1814, 1815, 1817, 1819, 1825, 1827, 1844, 1852, and 1872

RIN 2700–AC72

Conformance with Federal Acquisition Circular (FAC) 2001–14 and Miscellaneous Administrative and Editorial Changes

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This final rule revises the NASA FAR Supplement (NFS) to conform to changes made to the Federal Acquisition Regulation (FAR) by Federal Acquisition Circular 2001–14 and to make administrative and editorial changes needed to update the designated agency competition advocate, update and remove outdated references, add URL citations, and clarify the term "NASA workforce" as used in the instruction for drafting an announcement of opportunity.

EFFECTIVE DATE: August 1, 2003.

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, NASA, Office of Procurement, Contract Management Division (Code HK); (202) 358-1645; e-mail: *Celeste.M.Dalton@nasa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

Federal Acquisition Circular 2001–14 clarified the use of the term "United States," and made changes to the cost principles at FAR 31.205–10, Cost of Money. A change is required in NFS 1815.404–471–5, Facilities capital cost of money, to update the cross-reference to the revised FAR 31.205–10. NFS section 1825.7001 is amended to remove the phrase "its possessions, and Puerto Rico" since it is no longer necessary based on the definition of "United States" contained in FAR Part 25. Administrative changes are made to the agency designated competition advocate and the individual the competition advocate will report to. Additionally, editorial changes are made to update and remove outdated references, clarify what is meant by the NASA workforce when used in the instructions for drafting an announcement of opportunity, and add URL citations.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comment is not required. However, NASA will consider comments from small entities concerning the affected NFS Parts 1806, 1807, 1811, 1814, 1815, 1817, 1819, 1825, 1827, 1844, 1852, and 1872 in accordance with 5 U.S.C. 610.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1806, 1807, 1811, 1814, 1815, 1817, 1819, 1825, 1827, 1844, 1852, and 1872

Government procurement.

Charles W. Duff II,

Acting Assistant Administrator for Procurement.

■ Accordingly, 48 CFR parts 1806, 1807, 1811, 1814, 1815, 1817, 1819, 1825, 1827, 1844, 1852, and 1872 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 1806, 1807, 1811, 1814, 1815, 1817, 1819, 1825, 1827, 1844, 1852, and 1872 continues to read as follows:

Authority : 42 U.S.C. 2473(c)(1).

PART 1806—COMPETITION REQUIREMENTS

■ 2. In section 1806.501, revise paragraph (1) to read as follows:

1806.501 Requirement.

(1) The Director, Program Operations Division, Code HS, is the agency competition advocate, reporting to the Assistant Administrator for Procurement on issues related to competition of NASA acquisitions.

* * * * *

PART 1807—ACQUISITION PLANNING

1807.7000 [Amended]

■ 3. In the last sentence of section 1807.7000, remove the URL "(*http://procurement.nasa.gove/cgi-bin/CCI/first.cgi*)" and add "(*http://prod.nais.nasa.gov/cgi-bin/cci/first.cgi*)" in its place.

PART 1811—DESCRIBING AGENCY NEEDS

■ 4. Section 1811.600 is added to read as follows:

1811.600 Scope of subpart.

The Defense Priorities and Allocations System (15 CFR part 700) may be viewed at *http://www.doc-bxa.bmpcoe.org/dpas-docs/dpasreg.pdf*.

PART 1814—SEALED BIDDING

1814.407–3 [Amended]

■ 5. In paragraph (e) of section 1814.407–3, add the abbreviation "FAR" immediately before 14.407–3(a).

PART 1815—CONTRACTING BY NEGOTIATIONS

1815.404–471–5 [Amended]

■ 6. In paragraph (a) of section 1815.404–471–5, remove "FAR 31.205–10(a)(2)" and add "FAR 31.205–10(b)" in its place.

PART 1817—SPECIAL CONTRACTING METHODS

1817.7002 [Amended]

■ 7. In paragraph (b) of section 1817.7002, remove "1817.504(b)(4)" and add "1817.7203" in its place.

PART 1819—SMALL BUSINESS PROGRAMS

■ 8. Revise paragraph (a) of section 1819.7002 to read as follows:

1819.7002 Contracting officer responsibility.

(a) Contracting officers must seek out as potential sources small disadvantaged business concerns, women-owned small business concerns, historically black colleges or universities and minority institutions, and give full consideration to these entities to satisfy NASA requirements. The participation of NASA prime contractors is also essential to meeting the Agency's 8 percent goal.

* * * * *

PART 1825—FOREIGN ACQUISITION

1825.7001 [Amended]

■ 9.–10. in paragraph (a) of section 1825.7001, remove the phrase ", its possessions, and Puerto Rico".

1825.7002 [Amended]

■ 11. In section 1825.7002, amend paragraph (b)(1)(ii) by adding "(pursuant to NPD 1050.1) "after the word involved".

PART 1827—PATENTS, DATA, AND COPYRIGHTS

■ 12. In section 1827.404, paragraph (g)(3)(B)(c) is revised to read as follows:

1827.404 Basic rights in data clause.

* * * * *

(g) * * *

(3) * * *

(B) * * *

(c) The concurrence of the Headquarters Office of Aerospace Technology, Commercial Technology Division (Code RC) is obtained.

PART 1844—SUBCONTRACTING POLICIES AND PROCEDURES

1844.302–71 [Amended]

■ 13. Amend section 1844.302–71 by removing paragraph (a) and redesignating paragraphs (b) and (c) as (a) and (b) respectively.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.246–72 [Amended]

■ 14. Amend the clause at 1852.246–72 by—

(a) Revising the date of the clause to read "August 2003"; and

(b) Removing "1846.672–1" from the first sentence of paragraph (b) and adding "1846.6" in its place.

PART 1872—ACQUISITIONS OF INVESTIGATIONS

■ 15. In section 1872.705, revise paragraph II (3) to read as follows:

1872.705 Format of Announcement of Opportunity (AO).

* * * * *

II. NASA's Safety Priority.

* * * * *

(3) The NASA workforce (including contractor employees working on NASA contracts); and

* * * * *

[FR Doc. 03–19640 Filed 7–31–03; 8:45 am]

BILLING CODE 7510–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 030617153–3188–02; I.D. 061203E]

RIN 0648–AR29

Atlantic Highly Migratory Species (HMS) Fisheries; Vessel Monitoring Systems

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Final rule; reinstatement.

SUMMARY: This document reinstates the requirement to have a NOAA-approved, Vessel Monitoring System (VMS) unit installed and operating on any vessel leaving port to fish for HMS with pelagic longline gear on board, effective September 1, 2003.

DATES: Section 635.69 was stayed indefinitely on October 1, 2000 (66 FR 1907, January 10, 2001), and is reinstated effective September 1, 2003.

ADDRESSES: To obtain copies of the list of NOAA-approved VMS mobile transmitting units and NOAA-approved VMS communications service providers, write to NMFS Office for Law Enforcement (OLE), 8484 Georgia Avenue, Suite 415, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: For information regarding the requirement contact Chris Rilling, Highly Migratory Species Management Division (F/SF1), Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, phone 301–713–2347. For current listing of approved VMS units contact Mark Oswell, Outreach Specialist, phone 301–427–2300, fax 301–427–2055. For questions regarding VMS installation and activation checklists, contact Jonathan Pinkerton, National VMS Program Manager, phone 301–427–2300, fax 301–427–2055.

The public may acquire this notice, installation checklist, and relevant updates via the "fax-back" service, or at the OLE Web site *http://www.nmfs.noaa.gov/ole/vms.html*.

SUPPLEMENTARY INFORMATION: On May 28, 1999, NMFS issued a regulation (64 FR 29090) codified at 50 CFR 635.69(a), requiring all commercial pelagic longline vessels fishing for Atlantic HMS to install a NMFS-approved VMS unit. Due to litigation, the requirement was stayed indefinitely on October 1, 2000 (66 FR 1907, January 10, 2001). On October 15, 2002, the U.S. District Court for the District of Columbia issued a final order upholding the VMS regulation. Following the favorable court ruling, NMFS began working to reinstate the VMS requirement.

On March 11, 2003, NMFS published a notice in the **Federal Register** (68 FR 11534) and corrected it on March 27, 2003 (68 FR 14949), to provide a list of the NMFS-approved VMS units for use by pelagic longline vessels in the Atlantic Highly Migratory Species (HMS) Fisheries and set forth relevant features of each VMS. The notification was issued to update and replace the approval notice published on September 9, 1999. An additional type approval notice was published on May 1, 2003 (68 FR 23285).

NMFS also submitted a request to the Office of Management and Budget

(OMB) to reinstate approval for VMS information collection under the provisions of the Paperwork Reduction Act. A notice regarding this collection was published in the **Federal Register** on November 18, 2002 (67 FR 69506). The second notice of OMB review was published in the **Federal Register** on March 19, 2003 (68 FR 13280). OMB approved the VMS information collection request on May 10, 2003.

The placement of VMS units on fishing vessels in this fishery will enable NMFS to determine vessel locations and will complement the Agency's efforts to monitor and enforce compliance with applicable regulations. NMFS originally published an amendment of effective date on June 25, 2003 (68 FR 37772), to notify fishermen of its intent to have the VMS requirement (50 CFR 635.69(a)) be effective on September 1, 2003, and to provide fishermen approximately 60 days to purchase and install VMS to come into compliance. At that time, NMFS notified affected fishermen of the intended September 1, 2003, effective date via the HMS fax notice, NMFS' electronic newsletter, and the HMS web page. NMFS also mailed the fax notice and information regarding approved VMS units and service providers to permit holders during the month of July. This final rule reinstates § 635.69 effective September 1, 2003.

Classification

This action is published under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. The Assistant Administrator (AA) has determined that implementation of a VMS program in the pelagic longline fishery is necessary to monitor and enforce closed areas implemented to reduce bycatch. The AA finds that good cause exists to waive the requirement to provide prior notice and the opportunity for comment, pursuant to authority set forth at 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. This action establishes a new effective date for the HMS VMS rule, which had been suspended due to litigation. NMFS provided for prior notice and comment before promulgating the HMS VMS rule in 1999, then provided for additional public comment pursuant to a court order. The court upheld the rule on all counts and issued a final order in October, 2002. Subsequently, NMFS renewed its Paperwork Reduction Act (PRA) approval, which included additional public comment on the information collection under the rule, and completed type approvals for VMS units for the fishery. This action does not change any substantive provisions of the HMS VMS rule, but provides a new effective date, as the original date was suspended because of the court case. Further delay of this rule to provide additional opportunity for public comment is contrary to the public interest because fishing is currently underway, and VMS would facilitate efficient allocation of limited enforcement resources to meet management objectives, including time and area closures established to protect juvenile fish and protected species. U.S. Atlantic pelagic longline vessels operate in fishing areas in the Atlantic Ocean, Caribbean Sea, and Gulf of Mexico, and given increased commitments to homeland security, VMS will play an important role in determining deployment of at-sea resources.

This rule refers to collection-of-information requirements subject to the PRA and which have been approved by OMB under control number 0648–0372. Public reporting burden for these requirements is estimated to average 4 hours for installation of equipment, 2 hours for annual maintenance of the equipment (beginning in the second year), 0.3 seconds per automated position report from the automated equipment, and 5 minutes to complete and return a one-time installation checklist. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **FOR FURTHER INFORMATION CONTACT**) and OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties..

Dated: July 30, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–19700 Filed 7–30–03; 11:36 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021122286–3036–02; I.D. 072803B]

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for northern rockfish in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2003 total allowable catch (TAC) of northern rockfish in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 29, 2003, through 2400 hrs, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–2778.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2003 TAC of northern rockfish for the Central Regulatory Area was established as 4,640 metric tons (mt) by the final 2003 harvest specifications for groundfish in the GOA (68 FR 9924, March 3, 2003).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2003 TAC for northern rockfish in the Central Regulatory Area will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 4,390 mt, and is setting aside the remaining 250 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for northern rockfish in the Central Regulatory Area of the GOA.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the 2003 TAC for northern rockfish in the Central Regulatory Area of the GOA, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 28, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–19633 Filed 7–29–03; 4:02 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 148
Friday, August 1, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 30

RIN 3150–AH06

Security Requirements for Portable Gauges Containing Byproduct Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations governing the use of byproduct material in specifically licensed portable gauges. The proposed rule would require a portable gauge licensee to provide a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal whenever the portable gauges are not under the control and constant surveillance of the licensee.

DATES: The comment period expires October 15, 2003. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH06) in the subject line of your comments. Comments on rulemaking submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attn: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking website at *http://ruleforum.llnl.gov*. Address questions about our rulemaking website to Carol Gallagher at (301) 415–5905; e-mail *cag@nrc.gov*.

Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone: (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be reviewed and downloaded electronically via the NRC rulemaking website at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Lydia Chang, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6319, e-mail *lwc1@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Background

Uses of Licensed Material in Portable Gauges

Portable gauges are devices containing licensed material that are used to determine physical properties (such as density and moisture content of soil, concrete, and other materials) in a field setting. The most typical portable gauges in use today contain two encapsulated sources of radioactive materials. The first is a sealed gamma source containing 0.30 to 0.37 gigabecquerels (8 to10 millicuries) of cesium-137 (Cs-137) used to measure density. The second source is a sealed neutron source containing 1.48 to 1.85 gigabecquerels (40 to 50 millicuries) of americium-241/beryllium (Am-241/Be) used to measure moisture content. Other radioactive materials have also been used in portable gauges. Under the Atomic Energy Act of 1954, as amended, NRC regulates byproduct, source, and special nuclear material used in portable gauges. NRC does not, however, regulate naturally occurring radioactive material such as radium-226 (Ra-226) used in portable gauges because it is not a byproduct, source, or special nuclear material. Gauges containing Ra-226 may be regulated by individual States.

Portable gauges are of many different designs based on their intended use. Two basic methods of measuring the property of materials with these gauges are direct transmission and backscatter. For the direct transmission method, the source is located on a source rod. When the gauge is in use, the rod is extended and inserted beneath the surface material through an access hole. Radiation emitted by the source beneath the surface material is measured by a detector in the base of the gauge. For the backscatter method, both the source and the detector remain on top of the surface material to be tested. Radiation is directed into the surface and some is reflected back to the gauge detector by the surface material.

When not in use, portable gauges are generally stored in a permanent storage location within a licensed facility. However, portable gauges are often also stored at a temporary jobsite if the job requires more than one day. When transporting a portable gauge from a licensed facility to a temporary jobsite in a vehicle, the gauge is often placed in a transportation case, and then is secured in or onto the vehicle. Sometimes, portable gauges are stored at a temporary storage location or on a vehicle.

NRC and Agreement States Licenses

As authorized by section 274(b) of the Atomic Energy Act of 1954, as amended, 32 States have assumed responsibility for regulating certain activities related to radioactive material by entering into agreements with the NRC. The activities regulated by these "Agreement States" include the use of byproduct material in portable gauges. Each Agreement State issues licenses to persons who use radioactive material in portable gauges in that State. The NRC issues licenses to persons using radioactive material in portable gauges in non-Agreement States. Requirements that are specific to the safe use of portable gauges are included as license conditions.

NRC and Agreement States issue specific licenses and certain general licenses. General licenses do not include an individual license document, and usually authorize only small quantities of licensed material. The subject of this rulemaking is for portable gauges that are specifically licensed. There are approximately 1100 NRC portable gauge specific licensees and an additional 4000 Agreement State specific licensees. Portable gauge licensees often possess multiple portable gauges under the same license, and may conduct business outside of their home States under the reciprocity provisions of 10 CFR 150.20 or equivalent Agreement State regulations. There are an estimated 22,000 to 25,000 portable gauges in use in the United States.

Current Regulatory Practices

Specific licenses for portable gauges are governed by NRC regulations in 10 CFR Part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material." However, other NRC requirements in 10 CFR parts 2, 19, 20, 21, 71, 150, 170, and 171 also apply to a portable gauge licensee. In addition, all such portable gauge licensees must also comply with other applicable Federal, State, and local regulations (*e.g.*, Department of Transportation (DOT) regulations, local zoning requirements for a storage location, etc.). At present, NRC reviews a licensee's program as described in the license application, and incorporates certain requirements into the license as license conditions. Equivalent State regulations apply to Agreement State portable gauge licensees. Agreement States follow a similar approach. In addition, certain Agreement States, such as Florida, have specific additional requirements in their regulations for the possession and use of sealed sources in portable gauges. Other States, including Texas and Washington, have issued orders imposing specific additional requirements for their portable gauge licensees.

Storage and Control of Licensed Material

NRC regulations in 10 CFR part 20, "Standards for Protection Against Radiation," contain requirements applicable to activities conducted under licenses issued by the NRC. Subpart I of Part 20 addresses storage and control of licensed material. Specifically, § 20.1801, "Security of stored material," requires licensees to secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas. Section 20.1802, "Control of material not in storage," requires licensees to control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage. Despite these requirements, theft of portable gauges, as described below, continues.

Theft of Portable Gauges

Reports in the NRC's Nuclear Materials Events Database (NMED) reveal that there have been approximately 450 gauges stolen since 1990. More than two-thirds of these stolen gauges were taken from vehicles while parked at locations other than the licensees' storage facilities or temporary jobsites. In most of these incidents, the gauge was in a DOT "Type A" transportation case, which was then secured with a metal chain to the open bed of a pickup truck. Frequently, the chain was cut and the gauge was stolen along with its transportation case. The remaining one-third of the gauges were stolen from a licensed facility or a temporary jobsite, stolen along with a vehicle, or taken by a disgruntled employee.

It is true that the number of incidents reported per year is small when compared to the total number of gauges in use, that the amount of radioactive material used in a portable gauge is relatively small, and that the radioactive material is encapsulated in stainless steel. Nevertheless, the theft of portable gauges still poses a concern if the gauge is abandoned in the environment, is recycled in a steel mill, or is used inappropriately.

In light of these concerns, NRC has issued several "Information Notices" (IN–2001–11, IN–98–01, IN–93–18, IN–88–02, IN–87–55, and IN–86–67) to remind licensees of their responsibilities concerning the security of portable gauges. However, the yearly number of reported incidents has not significantly decreased in response to these notices and the potential still exists for public health and safety risks. In addition, given the heightened sensitivity following the events of September 11, 2001, it is necessary to enhance security for portable gauges by reducing the opportunity for theft. Therefore, NRC is proposing additional security requirements for specifically licensed portable gauges in addition to the general requirements for security and control of licensed material in 10 CFR 20.1801 and 20.1802. A working group was formed in August 2002 to explore various options and requirements for the rulemaking. Personnel from the Agreement States of Florida and Arkansas represented the Organization of Agreement States and participated as members of the working group along with NRC staff in formulating this proposed rule. The proposed rule language was coordinated with DOT hazardous material transportation staff due to the intrinsic portability (*i.e.*, transportation) of the portable gauge during the course of its utilization by licensees.

Discussion of Proposed Amendment

NRC is proposing to amend its regulations in § 30.34, Terms and conditions of licenses, to impose specific security requirements for portable gauges to reduce the opportunity for theft. Specifically, NRC proposes revising this section by adding § 30.34(i) to the list of terms and conditions of licenses issued pursuant to 10 CFR part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material." This paragraph would require persons using portable gauges under specific licenses to use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

This rule would apply to a licensee with a portable gauge regardless of the location, situation, and activities involving the portable gauge. At all times, the licensee would be required to either maintain control and constant surveillance of the portable gauge or use a minimum of two independent physical controls to secure the portable gauge. The NRC staff expects that the physical controls would be designed and constructed of material suitable for securing the gauges from unauthorized removal. In addition, the NRC staff's expectation is that both of these controls must be defeated for the portable gauge to be removed to deter a theft by requiring a more determined effort to remove the gauge.

Securing a Portable Gauge at a Licensed Facility

Long term storage of a portable gauge is usually at a permanent facility listed in the license or license application. Routine storage of a portable gauge in a

vehicle or at temporary or permanent residential quarters is usually reviewed and may be authorized by NRC or the applicable Agreement State during the licensing process. Under the proposed regulation, when a portable gauge is stored at a licensed facility, the licensee would be specifically required to use a minimum of two independent physical controls to secure the gauge. Examples of two independent physical controls to secure a portable gauge when stored at a licensed facility are—

1. The portable gauge or transportation case containing the portable gauge is stored inside a locked storage shed within a secured outdoor area, such as a fenced parking area with a locked gate;

2. The portable gauge or transportation case containing the portable gauge is stored in a room with a locked door within a secured building for which the licensee controls access by lock and key or by a security guard;

3. The portable gauge or transportation case containing the portable gauge is stored inside a locked, non-portable cabinet inside a room with a locked door if the building is not secured;

4. The portable gauge or transportation case containing the portable gauge is stored in a separate secured area inside a secured mini-warehouse or storage facility; or

5. The portable gauge or transportation case containing the portable gauge is physically secured to the inside structure of a secured mini-warehouse or storage facility.

Securing a Portable Gauge in a Vehicle

Licensees commonly use a chain and a padlock to secure a portable gauge in its transportation case to the open bed of a pickup truck while using the vehicle for storage. Because the transportation case is portable, a theft could occur if the chain is cut and the transportation case with the portable gauge in it is taken. If the licensee simply loops the chain through the handles of the transportation case, a thief could open the transportation case and take the portable gauge without removing the chain or the case. Because the transportation case is also portable, it must be protected by two independent physical controls if the portable gauge is inside. A lock on the transportation case or a lock on the portable gauge source rod handle would not be sufficient under the proposed requirements because the case and the gauge are portable.

A vehicle should be used for storage only for a short period of time when a gauge is in transit. A portable gauge should only be kept in a vehicle overnight if it is not practicable to provide temporary storage in a permanent structure. Under the proposed regulation, when a portable gauge is being stored in a vehicle, the licensee would be specifically required to use a minimum of two independent physical controls to secure the gauge. Examples of two such independent physical controls to secure portable gauges in these situations are—

1. The locked transportation case containing the portable gauge is physically secured to a vehicle with brackets, and a chain or steel cable (attached to the vehicle) is wrapped around the transportation case such that the case can not be opened unless the chain or cable is removed. In this example, the locked transportation case would count as one control because the brackets would prevent easy removal of the case. The chain or cable looped only through the transportation case handle is not acceptable;

2. The portable gauge or transportation case containing the portable gauge is stored in a box physically attached to a vehicle, and the box is secured with (1) two independent locks; (2) two separate chains or steel cables attached independently to the vehicle in such a manner that the box cannot be opened without the removal of the chains or cables; or (3) one lock and one chain or steel cable is attached to the vehicle in such a manner that the box cannot be opened without the removal of the chain or cable; or

3. The portable gauge or transportation case containing the portable gauge is stored in a locked trunk, camper shell, van, or other similar enclosure and is physically secured to the vehicle by a chain or steel cable in such a manner that one would not be able to open the case or remove the portable gauge without removal of the chain or cable. In this example, the transportation case would not count as one control because it could be easily removed.

Securing a Portable Gauge at a Temporary Jobsite or at Locations Other Than a Licensed Facility

When a job requires storage of a portable gauge at a temporary jobsite or at a location other than a licensed facility, the licensee should use a permanent structure for storage if practicable to do so. When storing a portable gauge in temporary or permanent residential quarters, the licensee should limit access by storing the gauge in a separate room away from residents and other members of the public. The licensee must also meet the radiation exposure limits specified in 10 CFR part 20.

Under the proposed regulation, when a portable gauge is stored at a temporary jobsite or at a location other than an authorized facility, the licensee would also be required to use a minimum of two independent physical controls to secure the gauge. Examples of two independent physical controls to secure portable gauges at these locations are—

1. At a temporary job site, the portable gauge or transportation case containing the portable gauge is stored inside a locked building or in a locked non-portable structure (*e.g.*, construction trailer, sea container, *etc.*), and is physically secured by a chain or steel cable to a non-portable structure in such a manner that an individual would not be able to open the transportation case or remove the portable gauge without removing the chain or cable. A lock on the transportation case or a lock on the portable gauge source rod handle would not be sufficient because the case and the gauge are portable;

2. The portable gauge or transportation case containing the portable gauge is stored inside a locked room within temporary or permanent residential quarters, and is physically secured by a chain or steel cable to a permanent or non-portable structure (*e.g.*, large metal drain pipe, support column, etc.) such that an individual would not be able to open the transportation case or remove the portable gauge without removing the chain or cable;

3. The portable gauge or transportation case containing the portable gauge is stored in a locked garage, and is within a locked vehicle or is physically secured by a chain or steel cable to the vehicle in such a manner that an individual would not be able to open the transportation case or remove the portable gauge without removing the chain or cable; or

4. The portable gauge or transportation case containing the portable gauge is stored in a locked garage, and is within a locked enclosure or is physically secured by a chain or steel cable to a permanent or non-portable structure in such a manner that an individual would not be able to open the transportation case or remove the portable gauge without removing the chain or cable.

Controlling and Maintaining Constant Surveillance of a Portable Gauge

Under the proposed regulation, when a portable gauge is not secured with a minimum of two independent physical controls, the licensee would be required to control and maintain constant surveillance of the gauge. This proposed rule would more specifically address the current requirements in 10 CFR 20.1801 for security, and satisfy the requirements of 10 CFR 20.1802, which states that the licensee shall control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage. Control and constant surveillance is required when the gauge is not in storage, *e.g.*, is in use or undergoing maintenance. The NRC staff interprets "control and maintain constant surveillance" of portable gauges to mean being immediately present or remaining in close proximity to the portable gauge so as to be able to prevent unauthorized removal of the gauge.

Criminal Penalties

For the purpose of Section 223 of the Atomic Energy Act (AEA), the Commission is proposing to amend 10 CFR Part 30 under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this proposed rule would be a matter of compatibility between the NRC and the Agreement States, thereby providing consistency among the Agreement State and NRC requirements. The NRC staff analyzed the proposed rule in accordance with the procedure established within Part III, "Categorization Process for NRC Program Elements," of Handbook 5.9 to Management Directive 5.9, "Adequacy and Compatibility of Agreement State Programs" (a copy of which may be viewed at *http://www.hsrd.ornl.gov/nrc/home.html*). The NRC staff has determined that proposed 10 CFR 30.34(i) is classified as Compatibility Category "C." An Agreement State should adopt the essential objectives of the Compatibility Category "C" program elements to avoid conflict, duplication, gaps, or the conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis.

The NRC determined that the essential objective of proposed 10 CFR 30.34(i) is to reduce the opportunity for theft of a portable gauge by requiring a portable gauge licensee to provide a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal whenever portable gauges are not under the control and constant surveillance of the licensee.

The NRC believes that the proposed rule does not conflict with any existing State regulatory requirement. Personnel from Agreement States of Florida and Arkansas represented the Organization of Agreement States and participated as members of a working group along with NRC staff in the development of this proposed rule.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled "Plain Language in Government Writing," directed that the Government's writing be in plain language. This memorandum was published June 10, 1998 (63 FR 31883). The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113), requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC would revise 10 CFR part 30 to add certain requirements for the security of portable gauges containing byproduct material. This action does not constitute the establishment of a standard that contains generally applicable requirements.

Environmental Assessment and Finding of No Significant Environmental Impact

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in Subpart A of 10 CFR part 51, that this proposed rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment; therefore, an environmental impact statement is not required. The Commission has concluded on the basis of an environmental assessment that these requirements would not have any effects on the environment in which portable gauges are currently regulated under 10 CFR part 30. The proposed rule would increase requirements to prevent the theft of portable gauges containing byproduct material.

The determination of this environmental assessment is that there will be no significant impact on the public from this action. However, the general public should note that the NRC is seeking public participation. Comments on any aspect of this environmental assessment may be submitted to the NRC as indicated under the **ADDRESSES** heading.

The NRC has sent a copy of the environmental assessment and this proposed rule to every State Liaison Officer and requested their comments on the environmental assessment. The environmental assessment may also be examined at the NRC Public Document Room, Public File Area O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Single copies of the environmental assessment are available from Lydia Chang, Office of Nuclear Material Safety and Safeguards, telephone (301) 415–6319, e-mail *lwc1@nrc.gov*.

Paperwork Reduction Act Statement

This proposed rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0017.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of various alternatives. In addition to the proposed regulation, the NRC staff also considered alternatives such as: prohibiting unattended storage of portable gauges in or on vehicles; prohibiting unattended storage at locations other than licensed facilities; or requiring use of a metal enclosure and a lock with a shielded/protected shackle. However, these alternatives were found to be overly prescriptive and excessively burdensome for most NRC licensees. The option selected is requiring a minimum of two independent physical controls whenever the portable gauge is not under the control and constant surveillance of the licensee. This proposed rule would enhance the current level of security and control (*e.g.*, the requirements in 10 CFR

20.1801 and 20.1802) of portable gauges while providing sufficient flexibility for licensees to implement the requirements without an unreasonable burden.

The Commission requests public comment on the draft regulatory analysis specifically on the costs to licensees. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading. The draft regulatory analysis is available for inspection in the NRC Public Document Room, Public File Area O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Single copies of the draft regulatory analysis are available from Lydia Chang, Office of Nuclear Material Safety and Safeguards, telephone (301) 415–6319, e-mail *lwc1@nrc.gov*.

Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities. The proposed rule would affect about 1100 portable gauge specific licensees and an additional 4000 Agreement State specific licensees. These licenses are issued principally to companies involved in road constructions and maintenance. Many portable gauge licensees would qualify as small business entities as defined by 10 CFR 2.810. However, the proposed rule is not expected to have a significant economic impact on these licensees. Based on the draft regulatory analysis conducted for this action, the costs of the proposed amendments for affected licensees are estimated at $200 per gauge. The NRC believes that the selected alternative reflected in the proposed amendment is the least burdensome, most flexible alternative that would accomplish the NRC's regulatory objective. The draft regulatory analysis also notes that the proposed requirements would result in potential cost savings for portable gauge licensees, particularly for the replacement of stolen gauges. These savings would offset the implementation costs for portable gauge licensees. The NRC staff also notes that several Agreement States have imposed similar or more stringent requirements on their portable gauge licensees either by rule, order, or license condition.

Because of the widely differing conditions under which portable gauge users operate, the NRC is specifically requesting public comment from licensees concerning the impact of the proposed regulation. The NRC particularly desires comment from such licensees, who qualify as small businesses, as to how the proposed regulation will affect them and how the regulation may be tiered or otherwise modified to impose less stringent requirements on small entities while still adequately protecting the public health and safety. Comments on how the regulation could be modified to take into account the differing needs of small entities should specifically discuss—

(a) The size of the business and how the proposed regulation would result in a significant economic burden upon it as compared to a larger organization in the same business community;

(b) How the proposed regulation could be further modified to take into account the business's differing needs or capabilities;

(c) The benefits that would accrue, or the detriments that would be avoided, if the proposed regulation was modified as suggested by the commenter;

(d) How the proposed regulation, as modified, would more closely equalize the impact of NRC regulations as opposed to providing special advantages to any individuals or groups; and

(e) How the proposed regulation, as modified, would still adequately protect the public health and safety.

Comments should be submitted as indicated under the **ADDRESSES** heading.

Backfit Analysis

The NRC has determined that the backfit rules (§§ 50.109, 70.76, 72.62, or 76.76) do not apply to this proposed rule because this amendment would not involve any provisions that would impose backfits as defined in 10 CFR Chapter 1. Therefore, a backfit analysis is not required.

List of Subjects in 10 CFR part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 30.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 30.34, paragraph (i) is added to read as follows:

§ 30.34 Terms and conditions of licenses.

* * * * *

(i) *Security requirements for portable gauges.* Each portable gauge licensee shall use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

Dated at Rockville, Maryland, this 28th day of July, 2003.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 03–19588 Filed 7–31–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–57–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 402C and 414A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of the comment period.

SUMMARY: This document provides additional time for the public to comment on a proposal to supersede Airworthiness Directive (AD) 2000–23–01, which applies to all Cessna Aircraft Company (Cessna) Model 402C airplanes. AD 2000–23–01 currently requires repetitive inspections of the forward, aft, and auxiliary wing spars for cracks, and repair or replacement as necessary. Cessna has performed fatigue and crack growth analyses of the wings of these airplanes, and the Federal Aviation Administration (FAA) has evaluated this information and determined that a wing spar modification and inspections are necessary on the Model 414A airplanes as well as the Model 402C airplanes. This proposed AD would require you to inspect the wing spar caps for fatigue cracks with any necessary repair or replacement and to incorporate a spar strap modification on each wing spar. Comments received on the original NPRM (68 FR 26244, May 15, 2003) specify additional time to respond to the proposed action. The actions specified by this proposed AD are intended to prevent wing spar cap failure due to undetected fatigue cracks. Such failure could result in loss of a wing with consequent loss of airplane control.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before September 8, 2003. This is extended from August 8, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–57–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2002–CE–57–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from the Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Paul Nguyen, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4125; facsimile: (316) 946–4107.

Issued in Kansas City, Missouri, on July 28, 2003.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–19585 Filed 7–31–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–05–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 401, 401A, 401B, 402, 402A, 402B, 411, and 411A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM); extension of the comment period.

SUMMARY: This document provides additional time for the public to comment on a proposal to supersede Airworthiness Directive (AD) 79–10–15 R2, which applies to all Cessna Aircraft Company (Cessna) Models 401, 401A, 401B, 402, 402A, 402B, 411, and 411A airplanes. AD 79–10–15 R2 currently requires repetitive inspections of the right and left wing spar lower cap areas for fatigue cracks and requires wing spar cap repair or replacement as necessary. Cessna has performed fatigue and crack growth analyses of the wings of these airplanes, and the Federal Aviation Administration (FAA) has evaluated this information and determined that a wing spar modification is necessary as well as periodic inspections. This proposed AD would require you to repetitively inspect the wing spar caps for fatigue cracks with any necessary repair or replacement on all airplanes and incorporate a spar strap modification on each wing spar on certain airplanes. Comments received on the original NPRM (68 FR 26239, May 15, 2003) specify additional time to respond to the proposed action. The actions specified by this proposed AD are intended to prevent wing spar cap failure due to undetected fatigue cracks. Such failure could result in loss of a wing with consequent loss of airplane control.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before September 8, 2003. This is extended from August 8, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–05–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2002–CE–05–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from the Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277: telephone: (316) 517–5800; facsimile: (316) 942–9006. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Paul Nguyen, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4125; facsimile: (316) 946–4107.

Issued in Kansas City, Missouri, on July 28, 2003.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–19584 Filed 7–31–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of Insular Affairs

15 CFR Part 303

[Docket No. 030707164–3164–01]

RIN 0625–AA63

Changes in the Insular Possessions Watch, Watch Movement and Jewelry Program

AGENCIES: Import Administration, International Trade Administration, Department of Commerce; Office of Insular Affairs, Department of the Interior.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Departments of Commerce and the Interior (the Departments) propose amending their regulations governing watch duty-exemption allocations and the watch and jewelry duty-refund benefits for producers in the United States insular possessions (the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana

Islands). The proposed rule would amend existing regulations, due to changes in the industry, by updating the watch assembly requirements for purposes of the duty refund. We also propose amending the regulations to reflect the new designations that were created with the addition of the Department of Homeland Security.

DATES: Written comments must be received on or before September 2, 2003.

ADDRESSES: Address written comments to Faye Robinson, Acting Director, Statutory Import Programs Staff, FCB, Suite 4100W, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 482–3526, same address as above.

SUPPLEMENTARY INFORMATION: The insular possessions watch industry provision in section 110 of Pub. L. 97–446 (96 Stat. 2331) (1983), as amended by section 602 of Pub. L. 103–465 (108 Stat. 4991) (1994); additional U.S. Note 5 to chapter 91 of the Harmonized Tariff Schedule of the United States ("HTSUS"), as amended by Pub. L. 94–241 (90 Stat. 263)(1976) requires the Secretary of Commerce and the Secretary of the Interior ("the Secretaries"), acting jointly, to establish a limit on the quantity of watches and watch movements which may be entered free of duty during each calendar year. The law also requires the Secretaries to establish the shares of this limited quantity which may be entered from the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands ("CNMI"). After the Departments have verified the data submitted on the annual application (Form ITA–334P), the producers' duty-exemption allocations are calculated from the territorial share in accordance with 15 CFR 303.14 and each producer is issued a duty-exemption license. The law further requires the Secretaries to issue duty-refund certificates to each territorial watch and watch movement producer based on the company's duty-free shipments and creditable wages paid during the previous calendar year.

Pub. L. 106–36 (113 Stat. 127) (1999) authorizes the issuance of a duty-refund certificate to each territorial jewelry producer for any article of jewelry provided for in heading 7113 of the HTSUS which is the product of any such territory. The value of the certificate is based on creditable wages paid and duty-free units shipped into the United States during the previous calendar year. Although the law specifically mentions the U.S. Virgin Islands, Guam and American Samoa, the issuance of the duty-refund certificate would also apply to the CNMI due to the Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America (Pub. L. 94–241), which states that goods from the CNMI are entitled to the same tariff treatment as imports from Guam. See also 19 CFR 7.2(a). In order to be considered a product of such territories, the jewelry must meet the U.S. Customs Service substantial transformation requirements (the jewelry must become a new and different article of commerce as a result of production or manufacture performed in the territory). To receive duty-free treatment, the jewelry must also satisfy the requirements of General Note 3(a)(iv) of the HTSUS and applicable Customs Regulations (19 CFR 7.3).

Proposed Amendments

We propose amending the definitions for Creditable wages and Non-91/5 watches and watch movements, subpart A § 303.2(a)(13) and (14) respectively, to allow wages to be creditable towards the duty refund for watches containing preassembled movements provided (1) that the producer is unable to purchase the movements unassembled and (2) that it completes in the insular possession all other assembly operations required to make the movement into a watch (see discussion, below).

The watch and jewelry program was designed to spur local employment by giving producers benefits based upon creditable wages paid to permanent residents of the insular possessions. For purposes of determining whether wages are creditable, the Departments' current regulations require producers to purchase unassembled movements so that the movement assembly process will take place in the insular possessions. However, it has come to the Departments' attention that due to recent changes in the watch industry, it has become increasingly difficult, if not impossible, for producers to purchase the desired movements in an unassembled condition. Adoption of our proposed rule will afford producers greater flexibility in dealing with such market realities. Thus, the effect of the proposed revision will be to give producers the ability to continue to choose those movements best suited to their particular needs without losing the duty refund benefit, thereby allowing producers to continue to provide meaningful and substantial work for permanent residents in the insular possessions. Notwithstanding the proposed revision to the regulations, assembly operations required to be performed in the insular possession for purposes of the duty refund would still include casing, assembling the dial on the movement, adding the battery to the movement, setting the hands, cutting the stem and assembling the crown, attaching the clasps, buckles and bands and performing all quality control operations. Our proposal would not affect the watch assembly requirements of the Bureau of Customs and Border Protection (formerly the U.S. Customs Service). If those requirements are not satisfied, the producer must pay applicable duties.

In order for wages to be considered creditable for watch assembly operations which incorporate preassembled movements, we also propose amending subpart A § 303.5(b)(6) to require producers who completely assemble watches in the insular possessions, with the exception of the movement, to maintain documentation that demonstrates that the preassembled movement the insular producer purchased could not have been purchased in an unassembled condition. This documentation must be available, along with other relevant company records, for review during the annual audit and verification of the data from the Annual Application (Form ITA–334P). Producers would still be required to meet the Bureau of Customs and Border Protection and the Departments' assembly requirements for purposes of the duty exemption.

Pursuant to section 403 of the Homeland Security Act of 2002 (Pub. L. 107–296) (2002), the U.S. Customs Service was transferred from the Department of the Treasury to the Department of Homeland Security ("DHS"). Under the DHS" Reorganization Plan (Nov. 25, 2002), this transfer became effective as of March 1, 2003. The former Customs Service has now been redesignated as the Bureau of Customs and Border Protection. As a result of this reorganization, we propose amending 15 CFR Part 303 by replacing "U.S. Customs Service" throughout the regulations with its new designation, "Bureau of Customs and Border Protection". We also propose replacing "Department of the Treasury" wherever it occurs in the regulations with "Department of Homeland Security" which is now the appropriate designation for purposes of the insular watch and jewelry program.

Administrative Law Requirements

Regulatory Flexibility Act. In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chief Counsel for Regulation at the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule, if promulgated as final, will not have a significant economic impact on a substantial number of small entities. There are currently three watch companies in the insular program. This rulemaking would update the watch assembly requirements for purposes of the duty refund. The change is being proposed due to the increasing difficulty in purchasing unassembled movements. Adoption of this rule would afford an overall positive economic benefit to watch producers by providing greater flexibility in their selection of movements which may lead to increased sales and employment. Although the proposed rule requires a producer who uses preassembled or partially assembled movements to have available, for the annual audit, documentation that the supplier would not sell the movement unassembled, such documentation would almost certainly be part of the normal ordering process. Consequently, the producer would merely be saving such documentation from the supplier stating that it does not sell the desired movement unassembled. The cost of saving the documentation would be, at most, probably $5 a year for no more than the fifteen minutes a year spent on filing the information. Therefore, there would be little or no economic impact, particularly in light of the fact that it would only be required when preassembled or partially assembled movements were purchased.

This proposed rule would not have significant economic impact on a substantial number of small entities because the rule would only increase reporting or record keeping requirements by fifteen minutes a year per company at most if the producer chose to purchase preassembled or partially assembled movements and would not increase reporting or record keeping at all if the producer purchased only unassembled movements. These changes will also not duplicate, overlap or conflict with other laws or regulations. Consequently, these changes in the regulations are not expected to meet of the RFA criteria of having a "significant" economic effect on a "substantial number" of small entities, as stated in 5 U.S.C. 603 *et seq.* Therefore, a regulatory flexibility analysis was not prepared.

Paperwork Reduction Act. This proposed rulemaking contains revised collection of information requirements that have been submitted to the Office of Management and Budget (OMB) for review and approval. The rule would allow watch producers the flexibility to use preassembled movements in situations where the desired movement could not be purchased unassembled and still receive the duty refund benefit. However, if producers purchase preassembled movements they would be required to save the documentation from the supplier that demonstrates that the preassembled movement could not have been purchased unassembled. The documentation would be required to be available for the annual audit of information contained on form ITA–334P. We would estimate the burden to be, at most, fifteen minutes a year to file the piece of paper provided by the supplier. There would be no burden for the producers who continued to use unassembled movements. Collection activities are currently approved by the Office of Management and Budget under control numbers 0625–0040 and 0625–0134. Public comment is sought regarding: whether the proposed collection of information requirement are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and the ways to minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology. Send comments regarding the burden estimate or any other aspect of the collection of information to U.S. Department of Commerce, ITA Information Officer, Washington, DC 20230 and the Office of Information and Regulations Officer, Office of Management and Budget, Washington, DC 20503 (Att: OMB Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information unless it displays a currently valid OMB Control Number.

E.O. 12866. It has been determined that the proposed rulemaking is not significant for purposes of Executive Order 12866.

List of Subjects in 15 CFR Part 303

Administrative practice and procedure, American Samoa, Customs duties and inspection, Guam, Imports, Marketing quotas, Northern Mariana Islands, Reporting and record keeping requirements, Virgin Islands, Watches and jewelry.

For reasons set forth above, the Departments propose to amend 15 CFR Part 303 as follows:

PART 303—WATCHES, WATCH MOVEMENTS AND JEWELRY PROGRAM

1. The authority citation for 15 CFR Part 303 reads as follows:

Authority: Pub. L. 97–446, 96 Stat. 2331 (19 U.S.C. 1202, note); Pub. L. 103–465, 108 Stat. 4991; Pub. L. 94–241, 90 Stat. 263 (48 U.S.C. 1681, note); Pub. L. 106–36, 113 Stat.167.

2. Title 15 CFR Part 303 is amended by:

a. Removing "U.S. Customs Service" or "Customs Service" wherever it appears and adding "Bureau of Customs and Border Protection" in its place; and

b. Removing "Department of the Treasury" wherever it appears and adding "Department of Homeland Security" in its place.

3. Section 303.2 is amended by revising the first sentence of paragraph (a)(13) and revising paragraph (a)(14) to read as follows:

§ 303.2 Definitions and forms.

(a) * * *

(13) *Creditable wages* means all wages, up to an amount equal to 65% of the contribution and benefit base for Social Security as defined in the Social Security Act for the year in which the wages were earned, paid to permanent residents of the territories employed in a firm's 91/5 watch and watch movement assembly operations, plus wages paid for the repair of non-91/5 watches up to an amount equal to 50% of the firm's total creditable wages, and for wages paid for the complete assembly of watches in the insular possession, with the exception of the movement, only in situations where the desired movement cannot be purchased in an unassembled condition. * * *

(14) *Non-91/5 watches and watch movements* include, but are not limited to, watches and movements which are liquidated as dutiable by the Bureau of Customs and Border Protection but do not include, for purposes of the duty refund, watches that are completely assembled in the insular possessions, with the exception of a desired movement if the movement can not be purchased in an unassembled condition; contains any material which is the product of any country with respect to which Column 2 rates of duty apply; are ineligible for duty-free treatment pursuant to law or regulation; or are units the assembly of which the Departments have determined not to involve substantial and meaningful

work in the territories (as elsewhere defined in these regulations).

* * * * *

4. Section 303.5(b)(6) is revised to read as follows:

§ 303.5 Application for annual allocation of duty-exemptions.

* * * * *

(b) * * *

(6) Records on purchases of components, including documentation on the purchase of any preassembled movements, which demonstrate that such movements could not have been purchased from the vendor in an unassembled condition, and records on the sales of insular watches and movements, including proof of payment; and

* * * * *

Joseph A. Spetrini,

Acting Assistant Secretary for Grant Aldonas, Under Secretary, Department of Commerce.

David B. Cohen,

Deputy Assistant Secretary for Insular Affairs, Department of the Interior.

[FR Doc. 03–19272; Filed 7–31–03; 8:45 am]

BILLING CODE 3510–DS–P; 4310–93–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960—AF86

Continuation of Benefit Payments to Certain Individuals Who Are Participating in a Program of Vocational Rehabilitation Services, Employment Services, or Other Support Services

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to revise our regulations, which provide for the continuation of benefit payments to certain individuals who recover medically while participating in a vocational rehabilitation program with a State vocational rehabilitation agency. We are proposing these changes because of statutory amendments, which extend eligibility for these continued benefit payments to certain individuals who recover medically while participating in another appropriate program of vocational rehabilitation services. These include individuals participating in the Ticket to Work and Self-Sufficiency Program or another program of vocational rehabilitation services, employment services, or other support services approved by the Commissioner of Social Security.

These proposed regulations would affect the payment of Social Security disability benefits under title II of the Social Security Act (the Act) and the payment of Supplemental Security Income (SSI) disability or blindness benefits under title XVI of the Act.

DATES: To be sure your comments are considered, we must receive them by September 30, 2003.

ADDRESSES: You may give us your comments: by using our Internet site facility (*i.e.*, Social Security Online) at *http://www.socialsecurity.gov*; by e-mail to *regulations@ssa.gov*; by telefax to (410) 966–2830; or by letter to the Commissioner of Social Security, PO Box 17703, Baltimore, MD 21235–7703. You may also deliver them to the Office of Disability and Income Security Programs, Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site. You also may inspect the comments on regular business days by making arrangements with the contact person shown in the preamble.

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.access.gpo.gov/su_docs/aces/aces140.html*. It is also available on the Internet site for the Social Security Administration (*i.e.* Social Security Online): *http://www.socialsecurity.gov/regulations/*.

FOR FURTHER INFORMATION CONTACT: Suzanne DiMarino, Social Insurance Specialist, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, e-mail to *regulations@ssa.gov*, or telephone (410) 965–1769 or TTY (410) 966–5609 for information about these rules. For information on eligibility or filing for benefits, call our national toll-free number 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Background

Statutory Background

The Social Security Disability Amendments of 1980

The Social Security Disability Amendments of 1980 (the 1980 Amendments), Pub. L. 96–265, amended titles II and XVI of the Act to provide for the continuation of payment of disability benefits under the Social Security or SSI program to certain individuals whose disability medically ceases while the individual is engaged in a program of vocational rehabilitation. Section 301 of the 1980 Amendments added sections 225(b) and 1631(a)(6) of the Act to provide that the payment of benefits based on disability shall not be terminated or suspended because the physical or mental impairment, on which the individual's entitlement or eligibility is based, has or may have ceased, if:

- The individual is participating in an approved vocational rehabilitation program under a State plan approved under title I of the Rehabilitation Act of 1973, and
- The Commissioner of Social Security determines that completion of the program, or its continuation for a specified period of time, will increase the likelihood that the individual may be permanently removed from the disability benefit rolls.

The purpose of these benefit continuation provisions is to encourage individuals to continue participating in the approved vocational rehabilitation program in which they are engaged at the time their disability ceases in "those exceptional cases where the administration is able to determine that continuation in a vocational rehabilitation program will increase the likelihood of the individual's being permanently removed from the disability rolls." Report of the Senate Committee on Finance on the 1980 Amendments, S. Rep. No. 408, 96th Cong., 1st Sess. 50 (1979).

Our regulations implementing the provisions of the Act added by section 301 of the 1980 Amendments provide that we may continue an individual's benefits (and, when the individual receives benefits as a disabled worker, the benefits of his or her dependents) after the individual's impairment is no longer disabling if:

- The individual's disability did not end before December 1980, the effective date of the provisions of the Act added by section 301 of the 1980 Amendments;
- The individual is participating in an appropriate program of vocational rehabilitation, that is, one that has been approved under a State plan approved under title I of the Rehabilitation Act of 1973 and which meets the requirements outlined in 34 CFR part 361 for a rehabilitation program;
- The individual began the program before his or her disability ended; and
- We have determined that the individual's completion of the program, or his or her continuation in the program for a specified period of time, will significantly increase the likelihood that the individual will not have to return to the disability benefit rolls.

Our regulations provide that these continued benefits generally will be stopped with the month the individual completes the program, stops participating in the program for any reason, or we determine that the individual's continuing participation in the program will no longer significantly increase the likelihood that the individual will be permanently removed from the disability benefit rolls.

The Omnibus Budget Reconciliation Act of 1987

Section 9112 of the Omnibus Budget Reconciliation Act of 1987 (OBRA 1987), Pub. L. 100–203, amended section 1631(a)(6) of the Act to extend eligibility for continued benefits under that section to individuals who receive SSI benefits based on blindness and whose blindness ends while they are participating in an approved State vocational rehabilitation program. This amendment was effective April 1, 1988. We implemented this amendment through the issuance of operating instructions reflecting the extension of eligibility for continued benefits under section 1631(a)(6) of the Act to individuals receiving SSI blindness benefits. In addition, when we added §§ 416.2201(b) and 416.2212 to our regulations governing payments under the vocational rehabilitation cost reimbursement program, we included rules in §§ 416.2201(b) and 416.2212 to reflect the expanded scope of the benefit continuation provision under section 1631(a)(6) of the Act resulting from the amendment made by section 9112 of OBRA 1987.

The Omnibus Budget Reconciliation Act of 1990

Section 5113 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990), Pub. L. 101–508, amended sections 225(b) and 1631(a)(6) of the Act to permit the continuation of benefit payments on account of an individual's participation in a non-State vocational rehabilitation program. Section 5113 amended sections 225(b) and 1631(a)(6) of the Act to allow the continuation of payment of Social Security disability benefits or SSI disability or blindness benefits to an individual whose disability or blindness ends while he or she is participating in a program of vocational rehabilitation services approved by us. These amendments extended to Social Security disability beneficiaries and SSI disability or blindness beneficiaries who medically recover while participating in an approved non-State vocational rehabilitation program the same benefit continuation rights applicable to individuals participating in an approved State vocational rehabilitation program. The amendments made by section 5113 of OBRA 1990 were effective for benefits payable for months beginning on or after November 1, 1991, and applied to individuals whose disability or blindness ended on or after that date. We implemented these amendments through the issuance of operating instructions reflecting the extension of eligibility for continued benefits under sections 225(b) and 1631(a)(6) of the Act to individuals who medically recover while participating in an approved non-State vocational rehabilitation program.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, amended section 1614(a)(3) of the Act to require redeterminations of the eligibility for SSI benefits based on disability of individuals who attain age 18 (*i.e.*, age-18 redeterminations). The law requires us to redetermine the eligibility of individuals who attain age 18 and who were eligible for SSI benefits for children based on disability for the month before the month in which they attained age 18. In these disability redeterminations, the law requires us to use the rules for determining initial eligibility for adults (individuals age 18 or older) filing new applications for benefits. The medical improvement review standard used in continuing disability reviews does not apply to these redeterminations.

In § 416.987(b) of our regulations, we explain the rules for adult applicants that we use in redetermining the eligibility of an individual who has attained age 18. If we find that the individual is not disabled, we will find that his or her disability has ended as explained in § 416.987(e). For an individual whose disability has ended as a result of a redetermination using the rules described in § 416.987(b), and who is participating in a program of vocational rehabilitation services when disability ends, our operating guides provide that we will consider the individual for eligibility for continued benefits under section 1631(a)(6) of the Act. For benefits to continue, the individual must be participating in an approved program of vocational rehabilitation services. In addition, the completion or continuation of the program must satisfy the test of increasing the likelihood of the individual's permanent removal from the benefit rolls. Also, the individual must meet all of the other requirements of SSI eligibility.

The Ticket to Work and Work Incentives Improvement Act of 1999

On December 17, 1999, the Ticket to Work and Work Incentives Improvement Act of 1999, Pub. L. 106–170, became law. Section 101(a) of this law added a new section 1148 of the Act to establish the Ticket to Work and Self-Sufficiency Program (Ticket to Work program). The purpose of the Ticket to Work program is to expand the universe of service providers available to beneficiaries with disabilities who are seeking employment services, vocational rehabilitation services, or other support services to assist them in obtaining, regaining, and maintaining self-supporting employment.

Under the Ticket to Work program, the Commissioner of Social Security may issue a ticket to Social Security disability beneficiaries and disabled or blind SSI beneficiaries for participation in the program. Each beneficiary has the option of using his or her ticket to obtain services from a provider known as an employment network or from a State vocational rehabilitation agency. The beneficiary will choose the employment network or State vocational rehabilitation agency, and the employment network or State vocational rehabilitation agency will provide services. Employment networks will also be able to choose whom they serve.

We published final regulations implementing the Ticket to Work program in the **Federal Register** on December 28, 2001 (66 FR 67370). The final regulations were effective January 28, 2002. Under the provisions of these final regulations, service providers that provide vocational rehabilitation services, employment services, or other support services can qualify as employment networks and serve beneficiaries under the Ticket to Work program. The expansion of options available to beneficiaries to obtain these services are intended to enhance the choices of beneficiaries in getting the services they need to obtain, regain and/or maintain employment.

Section 101(b) of the Ticket to Work and Work Incentives Improvement Act of 1999 amended sections 225(b)(1) and 1631(a)(6)(A) of the Act by deleting "a program of vocational rehabilitation services" and inserting in its place "a program consisting of the Ticket to Work and Self-Sufficiency Program under section 1148 or another program of vocational rehabilitation services, employment services, or other support

services." The amended provisions of these sections now expressly authorize the continuation of benefit payments under section 225(b) or 1631(a)(6) of the Act to an individual whose disability or blindness ceases when the individual is participating in a program consisting of the Ticket to Work program under section 1148 of the Act or another program of vocational rehabilitation services, employment services, or other support services approved by the Commissioner of Social Security. The amendments did not change the requirement in sections 225(b)(2) and 1631(a)(6)(B) of the Act that, for an individual to qualify, the Commissioner of Social Security must determine that the completion of the program, or its continuation for a specified period of time, will increase the likelihood that the individual may be permanently removed from the disability or blindness benefit rolls.

The Individuals with Disabilities Education Act

The Individuals With Disabilities Education Act Amendments of 1997 (IDEA 97), Pub. L. 105–17, was enacted on June 4, 1997. In the final regulations published by the Secretary of Education (the Secretary) in the **Federal Register** on March 12, 1999 (64 FR 12406), the Secretary stated that "The purposes of this part are * * *" "(t)o ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living; * * *" IDEA requires a coordinated set of activities for a student with a disability that promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment, continuing and adult education, adult services, independent living, or community participation. Each State can receive a grant of assistance under IDEA for serving a child with a disability birth through age 21.

In order for a State to receive assistance under part B of IDEA, an individualized education program (IEP) must be developed, reviewed and revised for each child with a disability. The IEP must be developed, reviewed and, if appropriate, revised by a team including, among others, the student, if appropriate, and his or her parents, a special education teacher, the student's regular education teacher, if the child is or may be participating in the regular education environment, and other individuals who have knowledge or special expertise concerning the child. For each student with a disability beginning at age 16 (or younger if determined appropriate by the IEP team), the IEP must include a statement of needed transition services for the student that promotes movement from school to post-school activities including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. Based on the individual student's needs, transition services might include postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. Each student's IEP must be reviewed periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and must be revised, as appropriate, to: address any lack of expected progress toward the annual goals and in the general curriculum; the results of any reevaluation; information about the child provided to, or by, the parents; the child's anticipated needs; or other matters.

Other Background

The National Longitudinal Transition Study

The National Longitudinal Transition Study (NLTS) was mandated by the U.S. Congress in 1983, and describes the experiences and outcomes of youth with disabilities nationally during secondary school and early adulthood. It was conducted from 1987 through 1993 by SRI International under contract number 300–87–0054 with the Office of Special Education Programs, U.S. Department of Education. (The electronic file of this document is available at *http://www.sri.com/policy/cehs/publications/dispub/nlts/nltssum.html.*)

The NLTS provides evidence of the importance of supporting students with disabilities to stay in school. The study showed that:

- Students with disabilities who stay in school have better post-school outcomes than their peers who dropped out of school.
- Students with disabilities who stayed in school were more likely to enroll in postsecondary vocational or academic programs.
- There was a consistently positive relationship between staying in school and employment success.

In addition, the NLTS documented the importance of vocational education and work experience programs in school:

- Students with disabilities who took occupationally-oriented vocational education were significantly less likely to drop out of school than students who did not.
- Students with disabilities who participated in work experience programs missed significantly less school and were less likely to fail a course or drop out of high school.
- For the majority of students with disabilities (those with learning, speech or emotional disabilities or mild mental retardation) vocational education in high school was related to a higher probability of finding competitive jobs and higher earnings.
- For students with orthopedic or health impairments, participation in high school work experience programs translated into a higher likelihood of employment and higher earnings after high school.

The NLTS also documented that the post-school paths of youths with disabilities reflected their transition goals. Twelfth-graders who had a transition goal related to competitive employment or to postsecondary education were more likely to find jobs or go on to postsecondary schools than students who did not.

The NLTS suggests that any efforts that encourage students with disabilities to stay in school and complete their educational and vocational training are important to improving post-school outcomes for students with disabilities. It indicates that students with disabilities drop out of school at a higher rate than students in the general population (38 percent vs. 25 percent).

The New Freedom Initiative

On February 1, 2001, President George W. Bush announced his New Freedom Initiative to promote the full participation of people with disabilities in all areas of society by increasing access to assistive and universally designed technologies, expanding educational and employment opportunities, and promoting full access to community life. Because a solid education is critical to ensuring that children with disabilities have an equal chance to succeed, the New Freedom Initiative includes goals of expanding access to quality education for youth with disabilities, ensuring that they receive support to transition from school to employment, and improving the high school graduation rates of students with disabilities. These proposed rules fully support the education and employment goals embodied in the New Freedom Initiative.

Explanation of Proposed Changes

The proposed rules would update our regulations to reflect amendments to sections 225(b) and 1631(a)(6) of the Act. They also would make certain other changes to our regulations regarding eligibility for continued benefit payments under these sections of the Act.

Extension of Eligibility for Continued Benefit Payments to Individuals Who Receive SSI Benefits Based on Blindness

We propose to revise §§ 416.1321(d), 416.1331(a) and (b), 416.1338(a) and (b), and 416.1402(j) to reflect the OBRA 1987 amendment which extended the scope of section 1631(a)(6) of the Act to cover individuals receiving SSI benefits based on blindness. We propose to revise these sections to indicate that an individual whose eligibility for SSI benefits is based on blindness and whose blindness ends due to medical recovery while he or she is participating in a program of vocational rehabilitation services, employment services, or other support services may be eligible for continued benefits under section 1631(a)(6) of the Act. We also are reflecting this expanded scope of the statute in proposed new § 416.1338(e), which we discuss later in this preamble.

Individuals Whose Disability Is Determined To Have Ended as a Result of an Age-18 Redetermination of SSI Eligibility

We propose to revise the introductory text of § 416.1338(a) to indicate that children who receive SSI benefits based on disability and whose disability is determined to have ended under the rules in § 416.987(b) and (e)(1) in an age-18 redetermination may have their benefit payments continued under section 1631(a)(6) of the Act if the individual meets all other requirements for continued benefits.

Students Participating in an Individualized Education Program

As noted above, the NLTS documented the importance of vocational education and work experience programs in school. An IEP that addresses needed transition services is developed, reviewed and, if appropriate, revised on a regular basis by the IEP team for a student with a disability beginning at age 16 (or younger, if determined appropriate by the IEP team). Therefore, we are proposing rules to provide that we will consider a student's completion of or continuation in such a program to be analogous to the individualized determination that completion of or continuation in other approved programs of vocational rehabilitation services will improve an individual's level of education, work experience, or skills so that he or she would be more likely to be able to do other work that exists in the national economy, despite a possible future reduction in his or her residual functional capacity. On this basis, under the rules we are proposing to add as §§ 404.328 and 416.1338(e), we will determine that participation in such a program will increase the likelihood that an individual who is engaged in such a program at the time his or her disability ceases will not have to return to the disability rolls.

The NLTS also demonstrated that there was a consistently positive relationship between staying in school and employment success, and suggested that any efforts that encourage students with disabilities to stay in school and complete their educational and vocational training are important to improving post-school outcomes for students with disabilities. We, therefore, propose to amend our rules to encourage young people with disabilities to stay in school and complete their educational and vocational training, and to encourage the families of students with disabilities to support them in preparing for employment and self-sufficiency. This is consistent with the goals of the President's New Freedom Initiative to expand access to quality education for youth with disabilities, ensure that they receive support to transition from school to employment, and improve the high school graduation rates of students with disabilities. Specifically, we are proposing that, if a student age 18 through 21 is receiving services under an IEP, and if the student's disability ceases as a result of a continuing disability review or a redetermination of his or her eligibility at age 18 under the rules for determining initial eligibility as adults (*i.e.*, age 18 redeterminations), we will consider that the student's completion of or continuation in the IEP will increase the likelihood that he or she will not have to return to the disability or blindness benefit rolls.

We are proposing benefit continuation on this basis for students beginning at age 18, who are receiving services under IEPs when their disabilities cease as a result of continuing disability reviews or age-18 redeterminations, in order to encourage young people with disabilities to stay in school and complete their educational and vocational training, and to encourage their families to support them in preparing for employment and self-sufficiency, regardless of the possible outcome of continuing disability reviews or age 18 redeterminations. We are proposing benefit continuation on this basis for students with disabilities through age 21, since each State can receive a grant of assistance under IDEA for serving a child with a disability through age 21.

Individuals Participating in the Ticket to Work Program or Another Program of Vocational Rehabilitation Services, Employment Services, or Other Support Services Approved by Us

We propose to revise and update our regulations regarding the type of program in which an individual must be participating in order to qualify for continued benefits. Our existing regulations, which are based on the original provisions of sections 225(b) and 1631(a)(6) of the Act, indicate that an individual whose impairment is no longer disabling may be considered for eligibility for continued benefits if he or she is participating in a vocational rehabilitation program provided by a State vocational rehabilitation agency. The amendments to sections 225(b)(1) and 1631(a)(6)(A) of the Act, made by OBRA 1990, extended consideration for continued benefits under sections 225(b) and 1631(a)(6) of the Act to individuals in approved non-State vocational rehabilitation programs.

We implemented the amendments made by OBRA 1990 by publishing operating instructions in 1992. These instructions identified an approved non-State vocational rehabilitation program as any non-State vocational rehabilitation service provider who meets one of the following criteria:

- Is licensed, certified, accredited, or registered, as appropriate, to provide vocational rehabilitation services in the State in which it provides services; or
- Is an agency of the Federal government (*e.g.*, the Department of Veterans Affairs); or
- Is a provider approved to provide services under a Social Security Administration research or demonstration project.

The amendments to sections 225(b)(1) and 1631(a)(6)(A) of the Act, made by section 101(b) of Pub. L. 106–170, further expanded the type of program in which an individual must be participating to qualify for continued benefits. These sections of the Act now provide that an individual may be considered for eligibility for continued benefits if she or he is participating in a program consisting of the Ticket to Work program or another program of

vocational rehabilitation services, employment services, or other support services approved by the Commissioner of Social Security.

We propose to revise §§ 404.316(c)(1), 404.337(c)(1), 404.352(d)(1), 404.902(s), 404.1586(g)(1), 404.1596(c)(4), 404.1597(a), 416.1321(d)(1), 416.1331(a) and (b), 416.1338(a), and 416.1402(j) to take account of the amendments to sections 225(b)(1) and 1631(a)(6)(A) of the Act. In the proposed revisions to these sections of the regulations, we are proposing to use the term "an appropriate program of vocational rehabilitation services, employment services, or other support services" to refer to the program in which an individual must be participating in order to be considered for eligibility for continued benefits under sections 225(b) and 1631(a)(6) of the Act, as amended.

We also propose to amend our regulations by adding new §§ 404.327(a) and 416.1338(c) to explain the term "an appropriate program of vocational rehabilitation services, employment services, or other support services." We explain that an appropriate program of vocational rehabilitation services, employment services, or other support services means one of the following:

- A program carried out under an individual work plan with an employment network under the Ticket to Work program;
- A program carried out under an individualized plan for employment with a State vocational rehabilitation agency operating under a State plan approved under title I of the Rehabilitation Act of 1973, as amended;
- A program which is carried out by an organization administering a Vocational Rehabilitation Services Project for American Indians with Disabilities authorized under section 121 of part C of title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 750 *et seq.*).
- A program of vocational rehabilitation services, employment services, or other support services carried out under a similar individualized employment plan with another provider of services approved by us; or
- An individualized education program (IEP) developed under policies and procedures approved by the Secretary of Education for assistance to States for the education of children with disabilities under the Individuals with Disabilities Education Act (IDEA), as amended (20 U.S.C. 1400 *et seq.*).

We also propose to include an appropriate cross-reference to § 404.327(a) or § 416.1338(c) in the sections of the regulations which state the basic requirement that the individual must be participating in an appropriate program.

Definition of "Participating" in the Program

We propose to amend our regulations to add new §§ 404.327(b) and 416.1338(d) to explain when an individual will be considered to be "participating" in the program. Sections 225(b) and 1631(a)(6) of the Act and our existing regulations do not define the term "participating."

Our existing operating instructions (published in 1986) use the term "actively involved" in a vocational rehabilitation program and define active participation in a State vocational rehabilitation program as placement in one of four State vocational rehabilitation agency status codes: vocational rehabilitation plan developed and approved; counseling and guidance; physical restoration; and training, including vocational and college training. Any other State vocational rehabilitation agency status codes are not considered active participation for purposes of continued benefit payments. Other providers of vocational rehabilitation services, employment services, or other support services do not use these codes and several State vocational rehabilitation agencies no longer use them.

Our operating instructions on demonstrating participation in a non-State vocational rehabilitation program require that we obtain information regarding the individual's status, such as whether the individual is actively receiving services such as counseling and guidance, physical restoration, or academic, business, vocational, or other training. We use this information to determine on a case-by-case basis whether the individual's status is equivalent to the State vocational rehabilitation status codes used to determine participation.

In proposed new §§ 404.327(b) and 416.1338(d), we explain the criteria we will use to determine whether an individual is "participating" in the program for purposes of continued benefit payments. We explain that for a program which is carried out under an individual work plan with an employment network, an individualized plan for employment with a State vocational rehabilitation agency, or a similar, individualized, written employment plan with another provider of services approved by us, we will consider the individual to be participating in the program if the individual is engaging in the activities outlined in his or her plan. If the individual is age 18 through 21 and receiving services under an IEP developed under policies and procedures approved by the Secretary of Education for assistance to States for the education of children with disabilities under the Individuals with Disabilities Education Act, we will consider the individual to be participating in the program if he or she is taking part in the activities or services outlined in his or her IEP. To meet our requirements for participation, the individual must be taking part in the activities outlined in his or her plan or program.

Determining Increased Likelihood of Permanent Removal From the Disability Benefit Rolls

We propose to amend our regulations to add new §§ 404.328 and 416.1338(e) to explain how we will determine whether an individual's completion of or continuation in an appropriate program of vocational rehabilitation services, employment services, or other support services will increase the likelihood that the individual will not have to return to the disability benefit rolls. Sections 225(b) and 1631(a)(6) of the Act provide for continued benefits to persons who are no longer disabled due to medical recovery and who are participating in an appropriate program only if SSA can determine that completion or continuation of the program "will increase the likelihood" that the individual will remain permanently off the disability benefit rolls. As the individual is not disabled and, by definition, is able to engage in substantial gainful activity without the need for the program, there is already a "likelihood" that the individual will stay off the disability benefit rolls. Benefits may be continued to the individual only if completion or continuation of the program will "increase" this likelihood. For this reason, proposed new §§ 404.328 and 416.1338(e) will require, that, in order that we will make a determination that a program will increase the likelihood that an individual will not have to return to the disability benefit rolls, we must determine that completion of or participation in the program will provide the individual with:

- An improvement in the individual's work experience so that he or she would be more likely to be able to do past relevant work, despite a possible future reduction in his or her residual functional capacity; or
- An improvement in any of the vocational factors of education, work experience, or skills so that he or she would be more likely to be able to do other work that exists in the national economy, despite a possible future reduction in his or her residual functional capacity.

We are also proposing a rule in §§ 404.328 and 416.1338(e) for students age 18 through 21 who are participating in an individualized education program developed under policies and procedures approved by the Secretary of Education for assistance to States for the education of children with disabilities under the Individuals with Disabilities Education Act, as amended (20 U.S.C. § 1400 *et seq.*). Under the proposed rule, we will find that these students' completion of or continuation in the program will increase the likelihood that they will not have to return to the disability or blindness benefit rolls.

As a result of our proposed revisions regarding how we will make a likelihood determination, we propose to eliminate the examples provided in §§ 404.316(c)(1)(iv) and 416.1338(a)(4) regarding making a "likelihood" decision because these examples do not directly illustrate the rules we are proposing. Additionally, in §§ 404.316(c), 404.337(c), 404.352(d), 404.902(s), 404.1586(g), 404.1596(c), 404.1597(a), 416.1321(d), 416.1331(b), 416.1338(a), and 416.1402(j), we are proposing to remove the modifier "significantly" from the phrase "significantly increase the likelihood" in the existing provisions to make the regulations conform more closely to the language of sections 225(b)(2) and 1631(a)(6)(B) of the Act.

Summary of Proposed Revisions to the Regulations on Continuation of Social Security Disability and SSI Disability or Blindness Benefits

We propose to revise §§ 404.316(c)(1), 404.337(c)(1), 404.352(d)(1), 404.1586(g)(1), 404.1596(c)(4), 416.1321(d) and 416.1338(a) to indicate that an individual's benefits may be continued after his or her impairment is no longer disabling (or, for SSI blindness benefits, after his or her blindness ends due to medical recovery) if:

- The individual is participating in an appropriate program of vocational rehabilitation services, employment services, or other support services, as described in proposed new § 404.327(a) and (b) or in proposed new § 416.1338(c) and (d);
- The individual began participating in the program before the date his or her disability or blindness ended; and
- We have determined under proposed new § 404.328 or proposed new § 416.1338(e) that the individual's completion of the program, or continuation in the program for a specified period of time, will increase the likelihood that the individual will not have to return to the disability or blindness benefit rolls.

In the proposed revision of § 416.1338(a), we also explain that an individual whose disability is determined to have ended as a result of an age-18 redetermination may continue to receive SSI benefits if the requirements described above are met.

We propose to revise §§ 404.316(c)(2), 404.337(c)(2), 404.352(d)(2), 404.1586(g)(2) and 416.1338(b) to indicate that we will stop an individual's benefits with the earliest of these months:

- The month in which the individual completes the program;
- the month in which the individual stops participating in the program for any reason; or
- The month in which we determine under proposed new § 404.328 or proposed new § 416.1338(e) that continued participation will no longer increase the likelihood that the individual will not have to return to the disability or blindness benefit rolls.

We propose to revise the *Exception* in §§ 404.316(c)(2), 404.337(c)(2), 404.352(d)(2), and 404.1586(g)(2) by inserting the phrase "provided you meet all other requirements for entitlement to and payment of benefits through such month" following the word "ends." We propose to add new §§ 404.327, 404.328 and 416.1338(c), (d) and (e) to our regulations. In proposed new §§ 404.327(a) and 416.1338(c), we explain what we mean by "an appropriate program of vocational rehabilitation services, employment services, or other support services." In proposed new §§ 404.327(b) and 416.1338(d), we explain when we will consider an individual to be "participating" in the program.

We propose to add new §§ 404.328 and 416.1338(e) to explain when we will find that an individual's completion of or continuation in an appropriate program of vocational rehabilitation services, employment services, or other support services will increase the likelihood that the individual will not have to return to the disability or blindness benefit rolls.

We propose to revise § 404.902(s) by removing reference to "an appropriate vocational rehabilitation program" and inserting in its place "an appropriate program of vocational rehabilitation services, employment services, or other support services." We propose to make this same change in the heading of § 404.1586(g).

We propose to revise § 404.1597(a) to eliminate the references to November 1980 and December 1980, to remove reference to "an appropriate vocational rehabilitation program" and inserting in its place "an appropriate program of vocational rehabilitation services, employment services, or other support services," and to indicate that the individual must have started participating in the program before the date his or her disability ended.

We propose to revise § 416.1331(a) and (b). We propose to combine the discussion of the rules in the first and third sentences of § 416.1331(a) into a single sentence to indicate that the last month for which we can pay SSI benefits based on disability or blindness is the second month after the month in which the individual's disability or blindness ends. We explain that § 416.1338 provides an exception to this rule for certain individuals who are participating in an appropriate program of vocational rehabilitation services, employment services, or other support services. We also are proposing to add to § 416.1331(a) appropriate cross-references to the sections of the SSI regulations which explain when disability or blindness ends. In addition, we propose to remove from § 416.1331(a) the cross-reference to § 416.261 which discusses special SSI benefits for working individuals who have a disabling impairment. We believe that inclusion of this cross-reference in § 416.1331 is inappropriate since § 416.1331 is concerned with the termination of SSI benefits in cases when an individual's disability or blindness has ended.

We propose to revise § 416.1331(b) by removing reference to "an appropriate vocational rehabilitation program" and inserting in its place "an appropriate program of vocational rehabilitation services, employment services, or other support services." In addition, we propose to revise § 416.1331(b) by inserting the term "or blind" following the term "disabled" and inserting the term "or blindness" following the term "disability."

In addition to the other revisions to § 416.1338, discussed previously, we propose to revise the section heading to read: "If you are participating in an appropriate program of vocational rehabilitation services, employment services, or other support services."

We propose to revise § 416.1402(j) by removing "an appropriate vocational rehabilitation program" and inserting in its place "an appropriate program of vocational rehabilitation services, employment services, or other support

services," and by adding references to "blindness" and "blind."

Regulatory Procedures

Clarity of These Proposed Rules

Executive Order 12866, as amended by Executive Order 13258, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make these proposed rules easier to understand.

For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these proposed rules would meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were subject to OMB review.

Regulatory Flexibility Act

We certify that these proposed rules would not have a significant economic impact on a substantial number of small entities because they would primarily affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Federalism

We have reviewed these proposed rules under the threshold criteria of Executive Order 13132, "Federalism," and determined that they do not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government.

Paperwork Reduction Act

These proposed rules contain reporting requirements at §§ 404.316(c), 404.327, 404.328, 404.337(c), 404.352(d), 404.1586(g), 404.1596, 404.1597(a), 416.1321(d), 416.1331(a) and (b), and 416.1338. We have been collecting the information using form SSA–4290, Vocational Rehabilitation "301" Program Development, under Office of Management and Budget (OMB) Number 0960–0282, which expires on March 31, 2006. However, the changed reporting requirements described in the sections listed above will require revision of this form. Therefore, an information collection request will be submitted to OMB for clearance under the Paperwork Reduction Act of 1995. We estimate that it will take 15 minutes for approximately 9,000 respondents to provide the information for an estimated annual burden of 2,250 hours.

We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments should be submitted to OMB and the Social Security Administration at the following fax numbers and/or address:

Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202–395–6974.

Social Security Administration, Attn: SSA Reports Clearance Officer, 1338 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, Fax Number: 410–965–6400.

Comments can be received from between 30 and 60 days after publication of this notice and will be most useful if received by SSA within 30 days of publication. You can obtain a copy of the collection instrument by calling the SSA Reports Clearance Officer at 410–965–0454.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security, Vocational rehabilitation.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Vocational rehabilitation.

Dated: July 23, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend parts 404 and 416 of chapter III of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart D—[Amended]

1. The authority citation for subpart D of part 404 continues to read as follows:

Authority: Secs. 202, 203(a) and (b), 205(a), 216, 223, 225, 228(a)–(e), and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403(a) and (b), 405(a), 416, 423, 425, 428(a)–(e), and 902(a)(5)).

2. Section 404.316 is amended by revising paragraph (c) to read as follows:

§ 404.316 When entitlement to disability benefits begins and ends.

* * * * * *

(c)(1) Your benefits, and those of your dependents, may be continued after your impairment is no longer disabling if—

(i) You are participating in an appropriate program of vocational rehabilitation services, employment services, or other support services, as described in § 404.327(a) and (b);

(ii) You began participating in the program before the date your disability ended; and

(iii) We have determined under § 404.328 that your completion of the program, or your continuation in the program for a specified period of time, will increase the likelihood that you will not have to return to the disability benefit rolls.

(2) We generally will stop your benefits with the earliest of these months:

(i) The month in which you complete the program; or

(ii) The month in which you stop participating in the program for any reason (see § 404.327(b) for what we mean by "participating" in the program); or

(iii) The month in which we determine under § 404.328 that your continuing participation in the program will no longer increase the likelihood that you will not have to return to the disability benefit rolls.

Exception: In no case will we stop your benefits within a month earlier than the second month after the month your disability ends, provided that you meet all other requirements for entitlement to and payment of benefits through such month.

* * * * * *

3. A new undesignated centered heading and new §§ 404.327 and 404.328 are added following § 404.325 to read as follows:

Rules Relating to Continuation of Benefits After Your Impairment Is No Longer Disabling

§ 404.327 When you are participating in an appropriate program of vocational rehabilitation services, employment services, or other support services.

(a) *What is an appropriate program of vocational rehabilitation services, employment services, or other support services?* An appropriate program of vocational rehabilitation services, employment services, or other support services means—

(1) A program which is carried out under an individual work plan with an employment network under the Ticket to Work and Self-Sufficiency Program under part 411 of this chapter;

(2) A program which is carried out under an individualized plan for employment with a State vocational rehabilitation agency (*i.e.*, a State agency administering or supervising the administration of a State plan approved under title I of the Rehabilitation Act of 1973, as amended) under 34 CFR part 361;

(3) A program which is carried out by an organization administering a Vocational Rehabilitation Services Project for American Indians with Disabilities authorized under section 121 of part C of title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 750 *et seq.*).

(4) A program of vocational rehabilitation services, employment services, or other support services which is carried out under a similar, individualized, written employment plan with another provider of services approved by us; or

(5) An individualized education program developed under policies and procedures approved by the Secretary of Education for assistance to States for the education of children with disabilities under the Individuals with Disabilities Education Act, as amended (20 U.S.C. § 1400 *et seq.*); you must be age 18 through age 21 for this provision to apply.

(b) *When are you participating in the program?*

(1) You are participating in the program described in paragraph (a)(1), (a)(2) or (a)(3) of this section when you are taking part in the activities and services outlined in your individual work plan, your individualized plan for employment, or your similar, individualized, written employment plan, as appropriate.

(2) If you are a student age 18 through age 21 receiving services under an individualized education program described in paragraph (a)(4) of this section, you are participating in your program when you are taking part in the activities and services outlined in your individualized education program.

§ 404.328 When your completion of the program, or your continuation in the program for a specified period of time, will increase the likelihood that you will not have to return to the disability benefit rolls.

(a) We will determine that your completion of the program, or your continuation in the program for a specified period of time, will increase the likelihood that you will not have to return to the disability benefit rolls if your completion of or your continuation in the program will provide you with—

(1) Work experience (*see* § 404.1565) so that you would be more likely able to do your past relevant work (*see* § 404.1560(b)), despite a possible future reduction in your residual functional capacity (*see* §§ 404.1545, 404.1561, and 404.1567); or

(2) Education, work experience, or skills so that you would be more likely able to do other work which exists in the national economy, despite a possible future reduction in your residual functional capacity (*see* §§ 404.1545, 404.1561, and 404.1567).

(b) If you are a student age 18 through age 21 participating in an individualized education program described in § 404.327(a)(4), we will find that your completion of or continuation in the program will increase the likelihood that you will not have to return to the disability benefit rolls.

4. Section 404.337 is amended by revising paragraph (c) to read as follows:

§ 404.337 When does my entitlement to widow's and widower's benefits start and end?

* * * * * *

(c)(1) Your benefits may be continued after your impairment is no longer disabling if—

(i) You are participating in an appropriate program of vocational rehabilitation services, employment services, or other support services, as described in § 404.327(a) and (b);

(ii) You began participating in the program before the date your disability ended; and

(iii) We have determined under § 404.328 that your completion of the program, or your continuation in the program for a specified period of time, will increase the likelihood that you will not have to return to the disability benefit rolls.

(2) We generally will stop your benefits with the earliest of these months:

(i) The month in which you complete the program; or

(ii) The month in which you stop participating in the program for any reason (*see* § 404.327(b) for what we mean by "participating" in the program); or

(iii) The month in which we determine under § 404.328 that your continuing participation in the program will no longer increase the likelihood that you will not have to return to the disability benefit rolls.

Exception: In no case will we stop your benefits with a month earlier than the second month after the month your disability ends, provided that you meet all other requirements for entitlement to and payment of benefits through such month.

* * * * * *

5. Section 404.352 is amended by revising paragraph (d) to read as follows:

§ 404.352 When does my entitlement to child's benefits begin and end?

* * * * * *

(d)(1) Your benefits may be continued after your impairment is no longer disabling if—

(i) You are participating in an appropriate program of vocational rehabilitation services, employment services, or other support services, as described in § 404.327(a) and (b);

(ii) You began participating in the program before the date your disability ended; and

(iii) We have determined under § 404.328 that your completion of the program, or your continuation in the program for a specified period of time, will increase the likelihood that you will not have to return to the disability benefit rolls.

(2) We generally will stop your benefits with the earliest of these months:

(i) The month in which you complete the program; or

(ii) The month in which you stop participating in the program for any reason (*see* § 404.327(b) for what we mean by "participating" in the program); or

(iii) The month in which we determine under § 404.328 that your continuing participation in the program will no longer increase the likelihood

that you will not have to return to the disability benefit rolls.

Exception: In no case will we stop your benefits with a month earlier than the second month after the month your disability ends, provided that you meet all other requirements for entitlement to and payment of benefits through such month.

* * * * *

Subpart J—[Amended]

6. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 204(f), 205(a), (b), (d)–(h), and (j), 221, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)–(h), and (j), 421, 425, and 902(a)(5)); 31 U.S.C. 3720A; sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note).

7. Section 404.902 is amended by revising paragraph (s) to read as follows:

§ 404.902 Administrative actions that are initial determinations.

* * * * *

(s) Whether your completion of, or continuation for a specified period of time in, an appropriate program of vocational rehabilitation services, employment services, or other support services will increase the likelihood that you will not have to return to the disability benefit rolls, and thus, whether your benefits may be continued even though you are not disabled;

* * * * *

Subpart P—[Amended]

8. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

9. Section 404.1586 is amended by revising paragraph (g) to read as follows:

§ 404.1586 Why and when we will stop your cash benefits.

* * * * *

(g) *If you are in an appropriate program of vocational rehabilitation services, employment services, or other support services.*

(1) Your benefits, and those of your dependents, may be continued after your impairment is no longer disabling if—

(i) You are participating in an appropriate program of vocational rehabilitation services, employment services, or other support services, as described in § 404.327(a) and (b);

(ii) You began participating in the program before the date your disability ended; and

(iii) We have determined under § 404.328 that your completion of the program, or your continuation in the program for a specified period of time, will increase the likelihood that you will not have to return to the disability benefit rolls.

(2) We generally will stop your benefits with the earliest of these months:

(i) The month in which you complete the program; or

(ii) The month in which you stop participating in the program for any reason (*see* § 404.327(b) for what we mean by "participating" in the program); or

(iii) The month in which we determine under § 404.328 that your continuing participation in the program will no longer increase the likelihood that you will not have to return to the disability benefit rolls.

Exception: In no case will we stop your benefits with a month earlier than the second month after the month your disability ends, provided that you meet all other requirements for entitlement to and payment of benefits through such month.

10. In § 404.1596, the heading and introductory text of paragraph (c) are republished, and paragraph (c)(4) is revised to read as follows:

§ 404.1596 Circumstances under which we may suspend your benefits before we make a determination.

* * * * *

(c) *When we will not suspend your cash benefits.* We will not suspend your cash benefits if—

(4) Even though your impairment is no longer disabling,

* * * * *

(i) You are participating in an appropriate program of vocational rehabilitation services, employment services, or other support services, as described in § 404.327(a) and (b);

(ii) You began participating in the program before the date your disability ended; and

(iii) We have determined under § 404.328 that your completion of the program, or your continuation in the program for a specified period of time, will increase the likelihood that you will not have to return to the disability benefit rolls.

11. Section 404.1597 is amended by revising paragraph (a) to read as follows:

§ 404.1597 After we make a determination that you are not now disabled.

(a) *General.* If we determine that you do not meet the disability requirements of the law, your benefits generally will stop. We will send you a formal written notice telling you why we believe you are not disabled and when your benefits should stop. If your spouse and children are receiving benefits on your social security number, we will also stop their benefits and tell them why. The notices will explain your right to reconsideration if you disagree with our determination. However, your benefits may continue even though your impairment is no longer disabling, if you are participating in an appropriate program of vocational rehabilitation services, employment services, or other support services (*see* § 404.327). You must have started participating in the program before the date your disability ended. In addition, we must have determined that your completion of the program, or your continuation in the program for a specified period of time, will increase the likelihood that you will not have to return to the disability benefit rolls. (*See* §§ 404.316(c), 404.328, 404.337(c), 404.352(d), and 404.1586(g)). You may still appeal our determination that you are not disabled even though your benefits are continuing because of your participation in an appropriate program of vocational rehabilitation services, employment services, or other support services. You may also appeal a determination that your completion of the program, or your continuation in the program for a specified period of time, will not increase the likelihood that you will not have to return to the disability benefit rolls and, therefore, you are not entitled to continue to receive benefits.

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart M—[Amended]

12. The authority citation for subpart M of part 416 is revised to read as follows:

Authority: Secs. 702(a)(5), 1129A, 1611–1615, 1619, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1320a–8a, 1382–1382d, 1382h, and 1383).

13. Section 416.1321 is amended by revising paragraph (d) to read as follows:

§ 416.1321 Suspensions; general.

* * * * *

(d) *Exception.* Even though conditions described in paragraph (a) of this section apply because your impairment is no longer disabling or you are no longer blind under § 416.986(a)(1), (a)(2) or (b), we will not suspend your benefits for this reason if—

(1) You are participating in an appropriate program of vocational rehabilitation services, employment services, or other support services, as described in § 416.1338(c) and (d);

(2) You began participating in the program before the date your disability or blindness ended; and

(3) We have determined under § 416.1338(e) that your completion of the program, or your continuation in the program for a specified period of time, will increase the likelihood that you will not have to return to the disability or blindness benefit rolls.

14. Section 416.1331 is amended by revising paragraphs (a) and (b) to read as follows:

§ 416.1331 Termination of your disability or blindness payments.

(a) *General.* The last month for which we can pay you benefits based on disability or blindness is the second month after the month in which your disability or blindness ends. (*See* §§ 416.987(e), 416.994(b)(6) and 416.994a(g) for when disability ends, and § 416.986 for when blindness ends.) *See* § 416.1338 for an exception to this rule if you are participating in an appropriate program of vocational rehabilitation services, employment services, or other support services. You must meet the income, resources, and other eligibility requirements to receive any of the benefits referred to in this paragraph. We will also stop payment of your benefits if you have not cooperated with us in getting information about your disability or blindness.

(b) *After we make a determination that you are not now disabled or blind.* If we determine that you do not meet the disability or blindness requirements of the law, we will send you an advance written notice telling you why we believe you are not disabled or blind and when your benefits should stop. The notice will explain your right to appeal if you disagree with our determination. You may still appeal our determination that you are not now disabled or blind even though your payments are continuing because of your participation in an appropriate program of vocational rehabilitation services, employment services, or other support services. You may also appeal a determination that your completion of, or continuation for a specified period of time in, an appropriate program of vocational rehabilitation services, employment services, or other support services will not increase the likelihood that you will not have to return to the disability or blindness benefit rolls and, therefore, you are not eligible to continue to receive benefits.

* * * * *

15. Section 416.1338 is revised to read as follows:

§ 416.1338 If you are participating in an appropriate program of vocational rehabilitation services, employment services, or other support services.

(a) *When may your benefits based on disability or blindness be continued?* Your benefits based on disability or blindness may be continued after your impairment is no longer disabling, you are no longer blind as determined under § 416.986(a)(1), (a)(2) or (b), or your disability has ended as determined under § 416.987(b) and (e)(1) in an age-18 redetermination, if—

(1) You are participating in an appropriate program of vocational rehabilitation services, employment services, or other support services, as described in paragraphs (c) and (d) of this section;

(2) You began participating in the program before the date your disability or blindness ended; and

(3) We have determined under paragraph (e) of this section that your completion of the program, or your continuation in the program for a specified period of time, will increase the likelihood that you will not have to return to the disability or blindness benefit rolls.

(b) *When will we stop your benefits?* We generally will stop your benefits with the earliest of these months:

(1) The month in which you complete the program; or

(2) The month in which you stop participating in the program for any reason (*see* paragraph (d) of this section for what we mean by "participating" in the program); or

(3) The month in which we determine under paragraph (e) of this section that your continuing participation in the program will no longer increase the likelihood that you will not have to return to the disability or blindness benefit rolls.

Exception: In no case will we stop your benefits with a month earlier than the second month after the month your disability or blindness ends, provided that you are otherwise eligible for benefits through such month.

(c) *What is an appropriate program of vocational rehabilitation services, employment services, or other support services?* An appropriate program of vocational rehabilitation services, employment services, or other support services means—

(1) A program which is carried out under an individual work plan with an employment network under the Ticket to Work and Self-Sufficiency Program under part 411 of this chapter;

(2) A program which is carried out under an individualized plan for employment with a State vocational rehabilitation agency (*i.e.*, a State agency administering or supervising the administration of a State plan approved under title I of the Rehabilitation Act of 1973, as amended) under 34 CFR part 361;

(3) A program which is carried out by an organization administering a Vocational Rehabilitation Services Project for American Indians with Disabilities authorized under section 121 of part C of title I of the Rehabilitation Act of 1973, as amended (29 U.S.C. 750 *et seq.*).

(4) A program of vocational rehabilitation services, employment services, or other support services which is carried out under a similar, individualized, written employment plan with another provider of services approved by us; or

(5) An individualized education program developed under policies and procedures approved by the Secretary of Education for assistance to States for the education of children with disabilities under the Individuals with Disabilities Education Act, as amended (20 U.S.C. 1400 *et seq.*); you must be age 18 through age 21 for this provision to apply.

(d) *When are you participating in the program?*

(1) You are participating in the program described in paragraph (c)(1), (c)(2), or (c)(3) of this section when you are engaging in the activities outlined in your individual work plan, your individualized plan for employment, or your similar, individualized, written employment plan, as appropriate.

(2) If you are a student age 18 through age 21 taking part in services and activities under an individualized education program described in paragraph (c)(4) of this section, you are participating in your program when you are taking part in the activities and services outlined in your individualized education program.

(e) *How will we determine whether or not your completion of the program, or your continuation in the program for a specified period of time, will increase the likelihood that you will not have to return to the disability or blindness benefit rolls?*

(1) We will determine that your completion of the program, or your continuation in the program for a specified period of time, will increase the likelihood that you will not have to return to the disability or blindness

benefit rolls if your completion of or your continuation in the program will provide you with—

(i) Work experience (*see* § 416.965) so that you would be more likely able to do your past relevant work (*see* § 416.960(b)), despite a possible future reduction in your residual functional capacity (*see* §§ 416.945, 416.961, and 416.967); or

(ii) Education (*see* § 416.964), work experience, or skills (see § 416.968) so that you would be more likely able to do other work which exists in the national economy, despite a possible future reduction in your residual functional capacity (*see* §§ 416.945, 416.961, and 416.967).

(2) If you are a student age 18 through age 21 participating in an individualized education program described in paragraph (c)(4) of this section, we will find that your completion of or continuation in the program will increase the likelihood that you will not have to return to the disability or blindness benefit rolls.

Subpart N—[Amended]

16. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b).

17. Section 416.1402 is amended by revising paragraph (j) to read as follows:

§ 416.1402 Administrative actions that are initial determinations.

* * * * *

(j) Whether your completion of, or continuation for a specified period of time in, an appropriate program of vocational rehabilitation services, employment services, or other support services will increase the likelihood that you will not have to return to the disability or blindness benefit rolls, and thus, whether your benefits may be continued even though you are not disabled or blind;

* * * * *

[FR Doc. 03–19541 Filed 7–31–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CGD07–03–110]

RIN 1625–AA01

Special Anchorage Area; Okeechobee Waterway, St. Lucie River, Stuart, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to extend the special anchorage area that begins on the Okeechobee Intracoastal Waterway between mile markers 7 and 8 on the St. Lucie River in Stuart, Florida to include 17 additional moorings. This proposed rule would improve safety for vessels anchoring within and transiting through this high traffic area and also reduce negative impacts on the ecosystem by providing a designated safer area for vessels to anchor.

DATES: Comments and related material must reach the Coast Guard on or before September 30, 2003. .

ADDRESSES: You may mail comments and related material to Commander, Seventh Coast Guard District, Aids to Navigation Branch, 909 SE. First Avenue, Miami, Florida 33131–3050. Commander, Seventh Coast Guard District, Aids to Navigation Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander, Seventh Coast Guard District, Aids to Navigation Branch, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Embres, Seventh Coast Guard District, Aids to Navigation Branch, at (305) 415–6750.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD07–03–110), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander, Seventh Coast Guard District, Aids to Navigation Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The City of Stuart has asked the Coast Guard to extend the current special anchorage field that begins on the Okeechobee Intracoastal Waterway between mile markers 7 and 8 on the St. Lucie River. The City would like to extend the anchorage area by adding 9.73 acres and installing 17 additional moorings. The proposed rule is intended to reduce the risk of vessel collisions by enlarging the current anchorage area and to provide notice to mariners of the additional 9.73 acres. This proposed rule would allow vessels 65 feet in length and under to anchor without exhibiting anchor lights as required by the navigation rules at 33 CFR 109.10. The City of Stuart has coordinated with the Florida Department of Environmental Protection (DEP) regarding this proposal. The DEP determined that properly managed mooring and anchorage fields located in appropriate areas will encourage vessels to utilize them for safety purposes, and, as a side benefit, the ecosystem will incur less detrimental impacts.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(à)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities, because the moorings are limited in number and size (17 moorings totaling 9.73 acres).

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888-REG-FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for no new collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order, because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(f), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(f), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035 and 2071; Department of Homeland Security Delegation No. 0170.1 and 33 CFR 1.05–1(g).

2. Section § 110.73c is revised to read as follows:

§ 110.73c Okeechobee Waterway, St. Lucie River, Stuart, FL.

The following is a special anchorage area: Beginning on the Okeechobee Intracoastal Waterway between mile marker 7 and 8 on the St. Lucie River, bounded by a line beginning at 27°12′06.583″ N, 80°15′33.447″ W; thence to 27°12′07.811″ N, 80°15′38.861″ W; thence to

27°12'04.584" N, 80°15'41.437" W; thence to 27°11'49.005" N, 80°15'44.796" W; thence to 27°11'47.881" N, 80°15'38.271" W; thence to 27°11'46.82" N, 80°15'37.9647" W; thence to 27°11'43.49" N, 80°15'40.74" W; thence to 27°11'40.44" N, 80°15'44.64" W; thence to 27°11'41.40" N, 80°15'47.70" W; thence to 27°11'42.51" N, 80°15'49.36" W; thence to 27°11'47.99" N, 80°15'44.78" W; thence to the point of beginning. All coordinates reference Datum NAD:83.

Dated: July 22, 2003.

H.E. Johnson, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 03–19647 Filed 7–31–03; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 111

Destination Delivery Unit Rate Bound Printed Matter Mailer Requirements for Entry

AGENCY: Postal Service.

ACTION: Proposed rule; correction.

SUMMARY: The Postal Service™ proposes a revision to the *Domestic Mail Manual* (DMM) that would change the preparation requirements for bulk Bound Printed Matter (BPM) by requiring mailers to prepare destination delivery unit (DDU) rate BPM items by 5-digit scheme (optional) and 5-digit sorts. Currently, there is no requirement for mailers to unload and present bulk BPM mail by 5-digit sorts, as is the requirement for Parcel Select™ mailings prepared for the DDU rate. DMM E752.5.2 inadvertently omitted this requirement from the final ruling.

All costing documentation and assumptions for this particular category of mail were based on the requirement that mailers would unload the drop shipment and, in multiple ZIP Code delivery units, separate the BPM items by 5-digit bundles. Specifically, separation by 5-digit ZIP Code or optional 5-digit scheme would be required for bedloaded packages, sacks, pallets, and pallet boxes containing a mixture of 5-digit ZIP Code packages destined for a specific delivery unit.

DATES: Submit comments on or before September 2, 2003.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 1735 N. Lynn St., Room 3025, Arlington, VA 22209–6038. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the Postal Service Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor North, Washington, DC. Comments may also be submitted via fax to 202–268–5293, ATTN: Daniel Leonard.

FOR FURTHER INFORMATION CONTACT: Dan Leonard at 202–268–4656.

SUPPLEMENTARY INFORMATION: Current Postal Service standards for preparation of DDU rate mail for Package Services Destination Entry, prepared by 5-digit or 5-digit schemes, require parcels to be separated by 5-digit for DDU entry, upon request. The requirement for vehicle unloading of Parcel Select DDU drop shipments is in DMM E751.4.10c. This requirement was inadvertently missing from the requirements for DDU rate BPM mailings when they were published in *Postal Bulletin* 22039a (12–21–00, page 12). Both Parcel Select and BPM are subclasses of Package Services mail. The processing and handling costs and the need for separation by 5-digit ZIP Codes is the same for both at the delivery unit. If the mail is not separated by the driver into 5-digit containers provided by Postal Service employees, then the Postal Service will be forced to absorb the directly attributable costs associated with processing and handling this category of Package Services mail, which will raise costs in the future.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following section of the DMM as set forth below:

Domestic Mail Manual (DMM)

* * * * *

E Eligibility

* * * * *

E700 Package Services

* * * * *

E750 Destination Entry

* * * * *

E752 Bound Printed Matter

* * * * *

6.0 Deposit

* * * * *

6.9 Vehicle Unloading

Uploading of destination entry mailings is subject to these conditions:

* * * * *

[*Revise the last sentence of item c to read as follows:*]

* * * The driver may be required to place bedloaded packages, pieces, sacks, and the contents of mixed 5-digit pallets in containers provided by the delivery unit in order to maintain separation by 5-digit ZIP Codes or to place containerized mail so as to maintain the separation of 5-digit ZIP Codes.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 03–19553 Filed 7–31–03; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7528–6]

Idaho: Proposed Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Idaho has applied to EPA for final authorization of certain changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Idaho's application, has preliminarily determined that these changes satisfy all requirements needed to qualify for final authorization, and is proposing to authorize the state's changes.

DATES: Comments on this proposed rule must be received in writing by September 15, 2003.

ADDRESSES: Send written comments to Jeff Hunt, U.S. Environmental Protection Agency Region 10, Office of Waste and Chemicals (WCM–122), 1200 Sixth Ave, Seattle, Washington 98101. You can view and copy Idaho's application during normal business hours at the following addresses: U.S. Environmental Protection Agency Region 10, Office of Waste and Chemicals, 1200 Sixth Ave, Seattle, Washington, contact: Jeff Hunt, phone number: (206) 553–0256; or Idaho Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho, contact: John Brueck, phone number (208) 373–0458.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, U.S. Environmental Protection Agency Region 10, Office of Waste and Chemicals (WCM–122), 1200 Sixth Ave, Seattle, Washington 98101, phone number: (206) 553–0256.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the federal program. As the federal program changes, states must change their programs and ask EPA to authorize the changes. Changes to state programs may be necessary when federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Preliminary Decisions Have We Made in This Rule?

EPA has preliminarily determined that Idaho's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we are proposing to grant Idaho final authorization to operate its hazardous waste program with the changes described in the authorization application. Idaho will have responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New federal requirements and prohibitions imposed by federal regulations that EPA promulgates under the authority of HSWA take effect in authorized states before the states are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Idaho, including issuing permits, until the State is granted authorization to do so.

C. What Will Be the Effect if Idaho Is Authorized for These Changes?

If Idaho is authorized for these changes, a facility in Idaho subject to RCRA will have to comply with the authorized State requirements in lieu of the corresponding federal requirements in order to comply with RCRA. Additionally, such persons will have to comply with any applicable federally-issued requirements, such as, for example, HSWA regulations issued by EPA for which the State has not received authorization, and RCRA requirements that are not supplanted by authorized State-issued requirements. Idaho continues to have enforcement responsibilities under its state hazardous waste management program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, the authority to:

- Conduct inspections; require monitoring, tests, analyses or reports;
- Enforce RCRA requirements; suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

The action to approve these revisions would not impose additional requirements on the regulated community because the regulations for which Idaho will be authorized are already effective under State law and are not changed by the act of authorization.

D. What Happens If EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will address those comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

E. What Has Idaho Previously Been Authorized for?

Idaho initially received final authorization on March 26, 1990, effective April 9, 1990 (55 FR 11015) to implement the RCRA hazardous waste management program. EPA granted authorization for changes to their program on April 6, 1992, effective June 5, 1992 (57 FR 11580), June 11, 1992, effective August 10, 1992 (57 FR 24757), April 12, 1995, effective June 11, 1995 (60 FR 18549), October 21, 1998, effective January 19, 1999 (63 FR 56086), and July 1, 2001, effective July 1, 2001 (67 FR 44069).

F. What Changes Are We Proposing?

On June 6, 2003, Idaho submitted a complete program revision application, seeking authorization for all delegable federal hazardous waste regulations codified as of July 1, 2001, as incorporated by reference in IDAPA 58.01.05.(002)–(016) and 58.01.05.997, except specific portions of the post closure rule noted in the paragraphs below [1]. We have preliminarily determined that Idaho's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization, and EPA is proposing to authorize the state's changes.

In this program revision application, Idaho is seeking partial authorization of the Post Closure Rule promulgated on October 22, 1998 (63 FR 56710). Idaho is not seeking authorization for 40 CFR 270.1(c)(7), Enforceable documents for post-closure care, 40 CFR 265.121 Post-closure requirements for facilities that obtain enforceable documents in lieu of post-closure permits, 40 CFR 265.110(c), and 40 CFR 265.118(c)(4). These provisions are described in the rule preamble at 63 FR 56712 section a. Post-closure care under alternatives to permits. Idaho is seeking authorization for 40 CFR 264.90(f), 264.110(c), 264.140(d), 265.90(f), 265.110(d), and 265.140(d), as described in the rule preamble at 63 FR 56713, b. Remediation requirements for land-based units with releases to the environment. Idaho is also seeking authorization of 40 CFR 270.28, as described in the rule preamble at 63 FR 56713, c. Post-closure permit information submission requirements.

Idaho is seeking authorization for 40 CFR 264.90(e), 264.90(f), 264.110(c), 264.112(b)(8), 264.112(c)(2)(iv), 264.118(b)(4), 264.118(d)(2)(iv), 264.140(d), 265.90(f), 265.110(d), 265.112(b)(8), 265.118(c)(5), 265.140(d), 270.1(c) introduction, and 270.28, except where those sections reference the use of enforceable documents. Idaho does not seek authorization for language in those sections which states as follows: "* * * or in an enforceable document (as defined in 270.1(c)(7)."

G. Who Handles Permits After the Authorization Takes Effect?

Idaho will issue permits for all the provisions for which it is authorized and will administer the permits it issues. All permits issued by EPA prior to EPA authorizing Idaho for these revisions will continue in force until the effective date of the State's issuance or denial of a State RCRA permit, or until the permit otherwise expires or is revoked. However, EPA will administer any RCRA hazardous waste permits or portions of permits which EPA issued prior to the effective date of this authorization and until such time as Idaho's is effective and EPA's has expired. EPA will not issue any more

[1] Sections of the Federal hazardous waste program are not delegable to the states. These sections are 40 CFR part 262, subparts. E, F, & H; 40 CFR 268.5; 40 CFR 268.42(b); 40 CFR 268.44(a)–(g); and 40 CFR 268.6. Authority for implementing the provisions contained in these sections remains with EPA.

new permits or new portions of permits for provisions for which Idaho is authorized after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Idaho is not yet authorized.

H. What Is Codification and Is EPA Codifying Idaho's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. Through three codification actions dated December 6, 1990 (55 FR 50327), June 11, 1992 (57 FR 24757), and June 25, 1999 (64 FR 34180) the EPA codified at 40 CFR part 272, subpart N all authorization actions for the State of Idaho RCRA program, except the most recent authorization revision published on July 1, 2001.

We reserve the amendment of 40 CFR part 272, subpart N for this authorization of Idaho's program changes until a later date.

I. How Would Authorizing Idaho for These Revisions Affect Indian Country (18 U.S.C. 1151) in Idaho?

Idaho is not authorized to carry out its hazardous waste program in Indian country, as defined in 18 U.S.C. 1151. Indian country includes:

1. All lands within the exterior boundaries of Indian reservations within or abutting the State of Idaho;
2. Any land held in trust by the U.S. for an Indian tribe; and
3. Any other land, whether on or off an Indian reservation that qualifies as Indian country. Therefore, this action has no effect on Indian country. EPA retains the authority to implement and administer the RCRA program in Indian country.

J. Statutory and Executive Order Reviews

1. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant," and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined that this proposed Rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

2. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, is intended to minimize the reporting and recordkeeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by OPM. Since the proposed Rule does not establish or modify any information or recordkeeping requirements for the regulated community, it is not subject to the provisions of the Paperwork Reduction Act.

3. Regulatory Flexibility

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), 5 U.S.C. 601 *et. seq.*, generally requires federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business, as codified in the Small Business Size Regulations at 13 CFR part 121; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA has determined that this action will not have a significant impact on small entities because the proposed Rule will only have the effect of authorizing pre-existing requirements under State law. After considering the economic impacts of today's proposed rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

4. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why the alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. The proposed rule authorizes pre-existing requirements under State law and imposes no new enforceable duty on any State, local or tribal governments or the private sector. Similarly, EPA has also determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 of the UMRA do not apply to this rule.

5. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government, as specified in Executive Order 13132. This proposed rule only authorizes existing State rules as part of the State RCRA hazardous waste program.

6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. The rule proposes to authorize existing state rules and does not establish any regulatory policy with tribal implications. Thus, Executive Order 13175 does not apply to this proposed rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

7. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866 and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed action present a disproportionate risk to children.

8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a "significant regulatory action" as defined under Executive Order 12866.

9. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTAA directs EPA to provide Congress, through the OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve "technical standards" as defined by the NTAA. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This proposed action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 9, 2003.

Ronald Kreizenbeck,

Acting Regional Administrator, Region 10.

[FR Doc. 03–18738 Filed 7–31–03; 8:45 am]

BILLING CODE 6560–50–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

41 CFR Parts 51–3 and 51–4

Miscellaneous Amendments to Committee Regulations

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed rule.

SUMMARY: The Committee is proposing to change the dates by which the annual certifications by participating nonprofit agencies are due to the central nonprofit agencies and the Committee.

DATES: Submit comments on or before September 2, 2003.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: G. John Heyer (703) 603–0665. Copies of this notice will be made available on request in computer diskette format.

SUPPLEMENTARY INFORMATION: The Committee is proposing to revise 41 CFR 51–3.2(m) and 51–4.3(a) to change the dates on which the Annual Certifications (Committee Form 403 or 404) submitted at the end of each Federal fiscal year by nonprofit agencies participating in the Committee's program are due to the central nonprofit agencies and the Committee. The purpose of this change is to ensure that the data is received in a more timely manner than is currently the case. The Committee is proposing to change the date the certification forms are due to the central nonprofit agencies from November 15 of each year to November 1, and the date the forms are due to the Committee from December 15 to December 1.

Regulatory Flexibility Act

I certify that this proposed revision of the Committee regulations will not have a significant economic impact on a

substantial number of small entities because the revision clarifies program policies and does not essentially change the impact of the regulations on small entities.

Paperwork Reduction Act

The Paperwork Reduction Act does not apply to this proposed rule because it contains no new information collection or recordkeeping requirements as defined in that Act and its regulations.

Executive Order No. 12866

The Committee has been exempted from the regulatory review requirements of the Executive Order by the Office of Information and Regulatory Affairs. Additionally, the proposed rule is not a significant regulatory action as defined in the Executive Order.

List of Subjects

41 CFR Part 51–3

Government procurement, Handicapped.

41 CFR Part 51–4

Reporting and recordkeeping requirements.

For the reasons set out in the preamble, parts 51–3 and 51–4 of title 41, chapter 51 of the Code of Federal Regulations are proposed to be amended as follows:

1. The authority citation for parts 51–3 and 51–4 continues to read as follows:

Authority: 41 U.S.C. 46–48c.

PART 51–3—CENTRAL NONPROFIT AGENCIES

2. Section 51–3.2 is amended by revising paragraph (m) to read as follows:

§ 51–3.2 Responsibilities under the JWOD Program.

* * * * *

(m) Review and forward to the Committee by December 1 of each year a completed original copy of the appropriate Annual Certification (Committee Form 403 or 404) for each of its participating nonprofit agencies covering the fiscal year ending the preceding September 30.

* * * * *

PART 51–4—NONPROFIT AGENCIES

3. Section 51–4.3 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 51–4.3 Maintaining qualification.

(a) * * * In addition, each such nonprofit agency must submit to its central nonprofit agency by November 1 of each year, two completed copies of the appropriate Annual Certification (Committee Form 403 or 404) covering the fiscal year ending the preceding September 30.

* * * * *

Dated: July 28, 2003.

Louis R. Bartalot,

Director, Program Analysis and Evaluation.

[FR Doc. 03–19630 Filed 7–31–03; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 635

[Docket No. 030721180–3180–01; I.D. 010903D]

RIN 0648–AQ95

Atlantic Highly Migratory Species; Atlantic Shark Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; notice of availability of draft Amendment 1 to the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (Amendment 1); request for comments.

SUMMARY: This proposed rule and Amendment 1 are necessary to ensure that shark regulations are based on the results of the 2002 stock assessments for large coastal sharks (LCS) and small coastal sharks (SCS). The results of these stock assessments indicate that the LCS complex continues to be overfished, and overfishing is occurring; that sandbar sharks are not overfished, but overfishing is occurring; that blacktip sharks are rebuilt and healthy; that the SCS complex is healthy; and that finetooth sharks are not overfished, but overfishing is occurring. Based on these results, NMFS proposes to revise the rebuilding timeframe for LCS to 27 years from 2004, to change the commercial regulations, to change the recreational regulations, to remove the deepwater/other sharks from the management unit, to establish criteria regarding adding or removing sharks from the prohibited species group, and to establish a display permit for fishermen who wish to harvest sharks only for public display. In Amendment 1, NMFS also proposes updates to essential fish habitat (EFH) identifications for sandbar, blacktip, finetooth, dusky, and nurse sharks.

DATES: Comments must be received no later than 5 p.m. on September 30, 2003.

Section 635.69 is currently stayed. However, NMFS intends to lift the stay and reinstate § 635.69 before the final rule is published.

Public hearings on this proposed rule will be held in August and September 2003. Specific dates and times for the public hearings will be announced in a separate document published in the **Federal Register**.

ADDRESSES: Written comments on the proposed rule should be submitted to Christopher Rogers, Chief, Highly Migratory Species (HMS) Management Division (SF/1), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Comments also may be sent via facsimile (fax) to 301–713–1917. Comments will not be accepted if submitted via e-mail or Internet. Comments regarding the collection-of-information requirements contained in this proposed rule should be sent to the HMS Management Division, 1315 East-West Highway, Silver Spring, MD 20910, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer). For copies of the Draft Environmental Impact Statement/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (DEIS/RIR/IRFA), contact Karyl Brewster-Geisz at 301–713–2347.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz, Heather Stirratt, or Chris Rilling at 301–713–2347 or fax 301–713–1917 or Greg Fairclough at 727–570–5741 or fax 727–570–5656.

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), The Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), finalized in 1999, is implemented by regulations at 50 CFR part 635.

Management History

NMFS has managed shark fisheries in the Atlantic Ocean, the Gulf of Mexico, and the Caribbean Sea under an FMP since 1993. Since 1997, management actions have been challenged in several lawsuits from commercial, recreational, and environmental interest groups. In December 2000, the court approved a settlement agreement regarding two lawsuits with the commercial industry. Consistent with the court-approved settlement agreement, among other things, NMFS conducted a non-NMFS peer review of the 1998 LCS stock assessment, conducted a new LCS stock assessment after considering the results of the peer review, and conducted a non-NMFS peer review of the new LCS stock assessment.

The peer review of the 1998 LCS stock assessment found that the scientific conclusions and scientific management recommendations contained in the 1998 LCS stock assessment were based neither on scientifically reasonable uses of the appropriate fisheries stock assessment techniques nor on the best available (at the time of the 1998 LCS stock assessment) biological and fishery information relating to LCS. Because of this conclusion, NMFS determined that the 1998 LCS stock assessment was not an appropriate basis for any prior or subsequent rulemaking and that a new stock assessment was needed in order to revise the regulations that were based on the 1998 LCS stock assessment and implemented in the 1999 HMS FMP.

In 2002, NMFS conducted both an SCS stock assessment (67 FR 30879, May 8, 2002) and an LCS stock assessment (67 FR 69180, October 17, 2002). The SCS stock assessment was the first SCS stock assessment since 1992. It found that the SCS complex was not overfished and that overfishing was not occurring. Additionally, it found that Atlantic sharpnose, bonnethead, and blacknose sharks were not overfished and that overfishing was not occurring. It also found that finetooth sharks, while not overfished, are experiencing overfishing.

The 2002 LCS stock assessment found that the LCS complex is still overfished and that overfishing is still occurring. Additionally, it found that sandbar sharks are rebuilt but are still experiencing overfishing and that blacktip sharks are rebuilt and are not experiencing overfishing. The peer reviews of the 2002 LCS stock assessment supported the assessment and concluded that the models and methodology used were appropriate.

On November 15, 2002 (67 FR 69180), NMFS announced its intent to prepare an environmental impact statement and amend the HMS FMP as a result of these two stock assessments. In February and March 2003, NMFS held seven scoping meetings, including one at the Highly Migratory Species (HMS) Advisory Panel meeting, to discuss and collect comments on an Issues and Options Paper (68 FR 31987, January 27, 2003). NMFS received many comments, which were considered to develop the alternatives considered in the pre-DEIS for draft Amendment 1. On April 21, 2003, NMFS released a pre-draft document to the consulting parties (Fishery Management Councils, the commissioners and advisory groups of the International Commission for the Conservation of Atlantic Tunas (ICCAT), and the HMS and Billfish Advisory Panels established under the Magnuson-Stevens Act) and subsequently received and considered comments in developing draft amendment 1 and the proposed rule.

At this time, NMFS is not proposing any specific management measures for pelagic sharks. The International Commission for the Conservation of Atlantic Tunas (ICCAT) is planning to conduct a pelagic shark stock assessment for several pelagic sharks in 2004, and NMFS will likely consider specific pelagic sharks measures thereafter. However, to the extent that all shark management is interrelated, it is possible that the management measures proposed here would affect pelagic sharks. For instance, while NMFS is not proposing to change the pelagic shark quota at this time, depending on the results of the 2004 pelagic shark assessment, NMFS may use the same quota basis for setting the pelagic shark quota in the future.

NMFS is also proposing to remove and reserve § 635.16. This section of the regulations pertain only to the issuance of initial limited access permits (ILAPs). At this time, all appeals and lawsuits regarding ILAPs are complete, and the regulations are no longer relevant.

The following is a summary of the preferred alternatives analyzed in the DEIS for Amendment 1 and the revised rebuilding timeframe for LCS. These elements are arranged in the following sections: LCS rebuilding timeframe, commercial management measures, recreational management measures, bycatch reduction measures, and other proposed management measures.

1. LCS Rebuilding Timeframe

In the 1999 HMS FMP, NMFS established separate rebuilding timeframes for ridgeback and non-ridgeback LCS. These rebuilding timeframes, using sandbar and blacktip sharks as proxies for ridgeback and non-ridgeback LCS, respectively, were based on the projections from the 1998 LCS stock assessment. As a result of the peer review of the 1998 LCS stock assessment and the change of status in sandbar and blacktip sharks, NMFS is proposing to revise the timeframe to rebuild LCS. Because the proposed timeframe is based on the results of the 2002 stock assessment regarding the LCS complex, the proposed timeframe would be appropriate for overfished LCS regardless of whether NMFS finalizes the preferred LCS classification alternative, described below, to aggregate the ridgeback and non-ridgeback LCS species groups, or takes no action and maintains the ridgeback/non-ridgeback split.

The 2002 LCS stock assessment found that the LCS complex is overfished and experiencing overfishing. The stock assessment indicated that a zero landings policy would have, on average, a 68–percent chance of rebuilding the LCS complex to maximum sustainable yield (MSY) within 10 years. Thus, even prohibiting fishing for 10 years does not quite give a 70–percent chance of rebuilding the complex to MSY (this is the level of confidence identified in the HMS FMP associated for shark management). Assuming a linear relationship between the results at 10 and 20 years, it appears that the LCS complex has approximately a 70–percent chance of rebuilding to MSY under a zero fishing policy in approximately 11 years. Given the results of the 2002 LCS stock assessment and the requirements of the Magnuson-Stevens Act, NMFS believes that the rebuilding timeframe for the LCS complex should be the amount of time it would take to rebuild under a zero fishing policy plus one mean generation time.

Using the average of the several LCS species, the mean generation time for the LCS complex is approximately 16 years. NMFS used the average generation time of several species instead of picking one species because of the wide biological diversity of sharks and because the stock assessment did not state that there was any one species that was of particular concern.

Thus, the rebuilding timeframe for the LCS complex is as follows: 11 years (time to reach MSY under a zero fishing policy) + 16 years (mean generation time of LCS species) = 27 years. The projections in the 2002 LCS stock assessment indicate that the stock could be rebuilt 27 years from 2002, which is within the same time period projected under the 1999 HMS FMP. If the measures proposed in this action are implemented in 2004, the LCS complex would still have approximately a 70–percent chance of rebuilding within 27 years based on the stock assessment projections.

2. Proposed Commercial Management Measures

The measures analyzed in this category include the following issues: LCS classification, shark quota administration, shark quota basis, and minimum size restrictions. The alternatives for these issues are described below.

A. LCS Classification

In the 1999 HMS FMP, NMFS finalized measures that split the LCS complex into two species groups: ridgeback and non-ridgeback LCS. These groups used sandbar and blacktip sharks as proxies for the ridgeback and non-ridgeback species, respectively, and, due to the presence of a ridge on the back of the shark, these groups could be easily distinguished from one another. Because of this split, NMFS was able to set different quota levels based on the results of the stock assessment and close the fisheries for these groups at different times. Due to delays caused by litigation, this measure was implemented for the first time in 2003 (67 FR 78990, December 27, 2002).

Since implementation, environmental groups and commercial fishermen raised multiple concerns regarding closing these groups at different times and the potential for increased bycatch due to the mixed nature of the fishery. Additionally, NMFS heard that, because sandbar and blacktip sharks had similar status designations as the complex in 1998 (i.e., overfished and overfishing occurring), using them as proxies for other species was acceptable in 1998; however, given their current status compared with the status of the LCS complex, NMFS should no longer use those species as proxies because it could lead to further overfishing on the LCS species that have not yet recovered under the management program.

After considering these comments, the LCS stock assessment, the peer reviews, and potential ecological, social, and economic impacts, NMFS is proposing to re-aggregate the LCS complex and establish one closure date. While re-aggregating the LCS complex could result in a lower quota level and, therefore, have additional economic impacts compared with some of the other alternatives considered, the preferred alternative reduces the burden of fishermen regarding sorting; maintains historical fishing practices and, therefore, reduces the chance of confusion over when the seasons are open or closed; and does not result in additional regulatory discards. Over time, as the LCS complex rebuilds, it is likely that quota levels based on the aggregate could be increased. Additionally, unlike some of the other classification methods, the aggregate classification fully considers the ability of all species, including the secondary species, to rebuild.

NMFS also considered alternatives that would keep the ridgeback/non-ridgeback LCS split and close the fishery at the same time; aggregate the LCS complex and close the fishery based on the landings of the most vulnerable species; and establish more species-specific quota levels. NMFS did not prefer the first two alternatives because while they could rebuild the fishery, they could also lead to a situation where one group's or one species' quota was continually not being landed. The species-specific alternative was not preferred because, while the resulting quotas could be higher thus mitigating economic and social impacts, due to the mixed nature of the fishery and problems regarding identification of sharks, this alternative would likely lead to increased discard and bycatch levels.

B. Shark Quota Administration

Since 1993, Atlantic shark fisheries have been managed via two semi-annual fishing seasons: January through June and July through December. Under this management measure, the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea close to shark fishing once the quota is reached. While this management measure provides a straightforward administration of the fishing seasons, it does not give NMFS the flexibility to manage the fisheries based on differences between regions or based on different pupping seasons for different species. In order to give NMFS that flexibility, NMFS proposes changing the semi-annual seasons to trimester seasons and establishing regional quotas.

The quota would be split equally between trimesters, and regional quotas would be based on historical fishing effort for each species group. However, in the future, NMFS could change the trimester and regional quotas in order to ensure that the fishery has the opportunity to harvest the annual quota and/or to protect pupping seasons, as necessary. Thus, in the future, if one region usually reaches or exceeds the quota from one trimester and rarely reaches the quota for another trimester, NMFS could adjust the quotas for each trimester so both quotas are reached. Additionally, if one region often exceeds its annual quota while another region does not, NMFS could decide to adjust the regional quotas to facilitate the harvest of the entire annual quota.

Similarly, if a particular species of shark needs additional protection during its pupping season and/or for its pupping grounds, NMFS could adjust trimester and regional quotas, as appropriate.

NMFS also considered quarterly seasons but did not prefer that alternative because under this alternative most pupping seasons would be split across two different fishing seasons. Thus, under the preferred trimester alternative, NMFS could, if needed, close one trimester and stop fishing during the majority of the pupping seasons. However, under a quarterly season, NMFS would need to close two quarterly seasons to stop fishing during the majority of pupping seasons.

C. Shark Quota Basis

As described in the 1993 Shark FMP, the 1993 LCS shark quota was established based on an estimate of MSY. The pelagic shark quota was based on average landing estimates because an estimate of MSY was not available. In 1997, based on a 1996 LCS stock assessment, NMFS, assuming that a 50–percent reduction in fishing mortality was approximately a 50–percent reduction in catch, reduced the quota accordingly. Also in 1997, NMFS established a SCS quota level based on estimates of MSY from the 1992 stock assessment. As described in the HMS FMP, NMFS established the 1999 LCS quotas, in part, by reducing the 1997 quotas levels by fishing mortality reductions recommended by the LCS stock assessment. Thus, in recent years, except for 2003, the commercial quotas for LCS and SCS have been based on older estimates of MSY as reduced several times by different recommended levels of fishing mortality reductions. This recent practice of setting quotas has led to confusion over where and when in the process discards and state landings after federal closures should be accounted.

To alleviate this confusion, NMFS is proposing a process that bases the starting level on the MSY level estimated in the stock assessment. That level is then reduced, as appropriate, to ensure that optimum yield (OY) can be harvested from the fishery. For stocks that are not overfished (e.g., SCS complex), OY is MSY reduced by 25 percent. For stocks that are overfished (e.g., LCS complex), MSY is reduced by the amount recommended in the stock assessment, tempered by other management measures that could decrease shark mortality. The commercial quota is the proportion of OY that is equal to the proportion of commercial landings in recent years by federal and state fishermen. The proportion of recreational landings and dead discards from OY is not included in the commercial quota. Thus, under this procedure, MSY, adjusted to ensure OY, is similar to a total allowable catch level and dead discards are accounted for before the commercial quota is established. Landings by state fishermen after a Federal closure would be counted against the established quota. Under this process and using the LCS classification alternative described above, the proposed quota level for LCS is 1,109 metric tons (mt) dressed weight (dw) and for SCS is 454 mt dw.

The LCS quota levels under this process change, depending on which classification alternative is used. For example, if the ridgeback and non-ridgeback LCS split is maintained (the no action classification alternative), the LCS quota would be 1,109 mt dw for ridgeback LCS and 555 mt dw for non-ridgeback LCS. Total quota levels for LCS using the MSY basis ranged from 1,109 mt dw for the aggregate (the preferred classification alternative) to 3,200 mt dw for a more species-specific classification.

NMFS also considered basing the quota on recent landings adjusted to account for any recommendations by the stock assessments. The same method was used in the emergency rule that established quotas for the 2003 fishing year (67 FR 78990, December 27, 2002; extended by 68 FR 31987, May 29, 2003). Under this method, the quota would be considered the total allowable catch level, and both dead discards and state landings after a federal closure would be counted against the established quota. Total quota levels for LCS using the average landings method ranged from 1,016 mt dw for the aggregate (the preferred classification alternative) to 1,725 mt dw for a more species-specific classification. The quota level for SCS using the average landings method would be 300 mt dw.

D. Minimum Size Restrictions

In the HMS FMP, NMFS established a minimum size limit of 4.5 ft (137 cm) fork length (FL) for all ridgeback LCS. This size limit was based on the size of maturity of the sandbar shark and was finalized in order to reduce fishing mortality of the sandbar shark, particularly on juveniles, and to mitigate the possible quota reductions that would be necessary without that size limit. At the time, NMFS noted that this management measure, which was suspended due to litigation, was a type of moving time/area closure in that it could offer protection to small sharks in any area but that it could also result in dead discards of sandbar sharks and other species. A size limit was not placed on non-ridgeback LCS because, unlike sandbar sharks, blacktip sharks do not segregate based on size.

Given the results of the 2002 LCS stock assessment, particularly the fact that sandbar sharks are no longer overfished, NMFS concludes that, at this time, a minimum size would not significantly reduce mortality and would not contribute to rebuilding LCS. This is especially true given the possibility of increasing dead discards if the minimum size were kept in place and in consideration of the proposed time/area closure (described below) to protect juvenile sandbar and dusky sharks.

NMFS also considered other minimum sizes such as a 5–ft (152–cm) FL minimum size for all LCS; a 5–ft (152–cm) FL for ridgeback LCS and a 4.5–ft (137–cm) FL for non-ridgeback LCS; and regional minimum sizes. These alternatives were not preferred due to concerns regarding identification problems and concerns that they could increase dead discards, particularly for sharks such as blacktip sharks, that do not segregate by size.

3. Proposed Recreational Management Measures

The measures analyzed in this category include the following issues: retention limit, minimum size restrictions, and authorized gears. The alternatives for these issues are described below.

A. Retention Limit

In the 1999 HMS FMP, NMFS established a recreational retention limit of one shark of any species per vessel per trip with an additional allowance of one Atlantic sharpnose shark per person per trip. This retention limit was established in order to reduce the harvest of LCS by recreational fishermen by over 80 percent and prevent an increase in harvest of SCS. Additionally, establishing one limit for all species, except for Atlantic sharpnose, would simplify the regulations and improve compliance with the regulations by avoiding misidentification problems.

NMFS is proposing to maintain this retention limit and also allow for one bonnethead shark per person per trip. Based on the results of the SCS stock assessment, NMFS feels that additional mortality of bonnethead sharks should not result in an overfished condition. Additionally, bonnethead sharks are easily identified and are not likely to be confused with juvenile LCS. Allowing the retention of bonnethead sharks may also afford some economic and social benefits for tournament or charter/headboat operators. Due to apparent non-compliance issues, the limit of one shark per vessel per trip has not led to a reduction in the harvest of LCS by recreational fishermen. However, with the new permit requirement for recreational shark fishermen, NMFS believes that compliance and enforcement of the recreational retention and size limit should increase because the new permit requirement will allow NMFS to send regulatory information to a known universe of anglers and improve monitoring of catches. If compliance does increase, maintaining the one shark per vessel per trip in combination with the size limit (discussed below) should reduce fishing mortality to levels recommended in the 2002 LCS stock assessment and therefore would contribute to rebuilding LCS. If compliance does not increase, NMFS would consider other alternatives in the future.

NMFS also considered adding an allowance for one pelagic shark per vessel per trip; adding an allowance for additional sharks for vessels participating in registered HMS tournaments or for vessels that have been issued an HMS Charter/Headboat permit; requiring catch-and-release fishing for all sharks; and removing all retention limits for sharks. The first two alternatives were not preferred because NMFS does not have a current stock assessment for pelagic sharks and therefore could not analyze the impacts of increasing the retention of pelagic sharks. Additionally, the second alternative could increase the number of LCS harvested by anglers, contrary to the rebuilding plan for LCS. The third alternative was not preferred because NMFS believes that this alternative may have significant social and economic impacts on the recreational fishery and increasing compliance on the current regulations should contribute to rebuilding of LCS. However, if compliance does not improve, NMFS may need to implement this type of alternative. The last alternative was not preferred because that would increase the harvest of LCS, contrary to the rebuilding plan.

B. Minimum Size Restrictions

In the HMS FMP, NMFS established a recreational size of 4.5 ft (137 cm) FL for all sharks except Atlantic sharpnose. This size limit is based on the age of first maturity for sandbar sharks. While this size limit essentially created a catch-and-release fishery for SCS, it allows for landings of LCS and pelagic sharks while protecting juvenile LCS. NMFS established this size limit to protect juvenile LCS and to ensure rebuilding of LCS.

In this action, NMFS proposes to maintain the current size limit and extend the exception for Atlantic sharpnose sharks to bonnethead sharks. Keeping this size limit would afford some protection to juvenile LCS, as recommended by the 2002 LCS stock

assessment. Most bonnethead sharks caught do not reach the current size limit. Because bonnethead sharks are not experiencing overfishing, are not overfished, and are easily identified, NMFS does not believe that the removing the size limit for bonnethead sharks would cause them to be overfished or would impede the rebuilding of LCS.

As described above, NMFS believes that if compliance with the retention limit and the size limit increases, that these two management measures would meet the recreational fishing mortality reductions needed to rebuild LCS within the proposed timeframe. If compliance is not increased, NMFS may need to consider other alternatives.

Other alternatives considered for this proposed rule include: increasing the size limit to 5 ft(152.4 cm) fl; establishing different size limits for ridgeback LCS and non-ridgeback LCS and other species; establishing regional size limits for ridgeback and non-ridgeback LCS; and no size limit. These alternatives were not preferred due to concerns regarding misidentification of sharks.

C. Authorized Gears

The current regulations state that sharks can only be possessed if they were caught with handgear, longline, or gillnet. The regulations, however, do not specify which gears types are considered recreational and which gear types are commercial. This rule proposes to limit the allowable gears in the recreational shark fishery to rod and reel and handline, which are typically used for recreational fishing in HMS fisheries.

This change would make the allowable gears for the shark recreational fishery consistent with allowable gears for the Atlantic tunas and billfish fisheries and could aid in compliance with the retention and size limits. This limitation is not expected to have any ecological or economic impacts because the majority of, if not all, recreational fishermen already use these gears to fish for sharks. Additionally, these gear types are thought to have lower post-release mortality rates than some of the commercial gears. Thus, any sharks caught above the retention limit or under the minimum size would have a greater chance of surviving after release. Vessels that have been issued an HMS Charter/Headboat permit and a shark LAP, would be able to use commercial gear types as long as the vessel is not engaged in a for-hire recreational trip.

4. Proposed Bycatch Reduction Management Measures

The measures analyzed in this category include the following issues: gear restrictions and time/area closures. The alternatives for these issues are described below.

A. Gear Restrictions

Currently, NMFS has several management measures designed to reduce bycatch and bycatch mortality of sea turtles and marine mammals including net checks and a time/area closure in the gillnet fishery and posting handling and release guidelines in the bottom longline fishery. NMFS is proposing several additional gear restrictions in order to further reduce bycatch and bycatch mortality in shark fisheries.

i. Strikenet only

NMFS proposes to allow only strikenetting and prohibit drift gillnetting, in the shark gillnet fishery. While drift gillnets have been observed to catch several different species of sea turtles and marine mammals, strikenets have not. Additionally, over 90 percent of the catch of observed strikenets have been of the target shark species and only three teleost and ray species have been observed caught.

While switching to strikenet is expensive and may be cost-prohibitive for some vessels, NMFS knows that three of the six vessels that are currently in the shark gillnet fishery have used strikenet. Additionally, once a vessel is using strikenet, because it is so efficient at catching just the target species, compared to drift gillnet, reductions in sorting time and time spent fishing may reduce the overall cost of fishing.

Many shark gillnet fishermen participate in non-HMS drift gillnet fisheries during a LCS closure. Additionally, many gillnet fishermen in non-HMS drift gillnet fisheries catch sharks. In order to reduce any regulatory discards of incidental takes of sharks in non-HMS fisheries that result from the prohibition of drift gillnet, this proposed management measure would allow vessels issued a shark LAP to land a limited number of sharks (5 LCS and 16 SCS and pelagic sharks combined, per trip), consistent with the quota and closure regulations, if they are using drift gillnet in a non-HMS fishery.

ii. VMS

NMFS is also proposing a VMS requirement for vessels with gillnet and bottom longline gear on board. Under this management measure, owners with strikenet gear on board their vessel and a directed LAP for sharks would, consistent with the large whale take reduction plan, need to have a working VMS unit installed whenever the vessel is away from port from November 15 through March 31 (right whale calving season). Owners with bottom longline gear on board and a directed LAP for sharks would need to have a working VMS unit installed whenever the vessel is operating between 32° N. lat and 38° N. lat from January 1 through July 31 for bottom longline vessels (see proposed time/area closure discussion below).

To determine whether the entire HMS bottom longline fleet needed VMS installed, NMFS analyzed the fishing reports of current permit holders and found that approximately 80 percent of permit holders fished in an area near to the homeport provided on the application for their permits. The result was the same regardless of the vessel size. Thus, because bottom longline fishermen do not appear to fish in many different areas, NMFS concludes that only fishermen operating in an area and time around the proposed closed area would need VMS installed on their vessel. If additional closed areas are implemented or if the mobility of the fleet increases, NMFS may require VMS on more vessels.

VMS would aid NMFS in enforcing the regulations for time/area closures while allowing vessels to transit closed areas to reach homeports and could provide vessels some safety benefits. In the case of strikenet vessels, VMS may reduce the amount of observer coverage required in the fishery during that time period. In the case of bottom longline vessels, VMS could allow vessels with sharks on board to transit the closed area.

However, installing and maintaining VMS can be expensive. Based on the cost of VMS for pelagic longline fishermen, the initial installation of VMS could be approximately $1,900 to $3,250 and each unit could have an average maintenance cost of $500 per year. To mitigate these costs, NMFS hopes to develop a range of possible units and service providers similar to what was done for the pelagic longline fleet. If NMFS does not implement a time/area closure for bottom longline fishermen, bottom longline fishermen would not be required to have VMS on board their vessel.

iii. Other gear requirements

NMFS is also proposing several requirements for bottom longline fishermen that are similar to the requirements for pelagic longline fishermen. These include requiring the use of non-stainless steel corrodible hooks, the possession of release equipment (line cutters, dipnets, and, when approved, dehooking devices), and a requirement that vessels move 1 nautical mile after an interaction with a marine mammal or a sea turtle. If used correctly, the hook and release equipment requirements could be effective in reducing post-release mortality of sea turtles, marine mammals, sharks, and other species. The cost for this equipment should be minimal and would be a one-time expense.

Moving after an interaction with a marine mammal or sea turtle could help prevent additional interactions with protected species. This management measure could result in additional cost per trip for fishermen including the cost of fuel; however, because few sea turtles or marine mammals have been observed caught in the bottom longline fishery, NMFS does not expect this requirement to affect more than a few trips for all vessels combined, each year.

In addition to the preferred alternatives outlined in sections i, ii, and iii, NMFS also considered (1) prohibiting the use of gillnet; (2) limiting the length of bottom longline gear; (3) limiting the soak time for bottom longline gear; (4) requiring the use of circle hooks; (5) requiring the retention of all sharks (i.e, no discards allowed); and (6) requiring recreational and commercial fishermen to attend bycatch reduction workshops. The first alternative would have larger social and economic impacts and would not be much more beneficial in reducing bycatch than the preferred alternative of strikenet only. The second and third alternatives could have positive ecological benefits. However, it would be difficult to ensure compliance and these alternatives could cause fishermen to fish in an unsafe manner. The fourth alternative might have positive ecological benefits but NMFS is not sure of what the impacts of circle hooks would be on the shark fishery or how many vessels already use circle hooks. While the fifth alternative would eliminate regulatory discards in the shark fishery, it could result in fishermen targeting species of sharks on the prohibited species list that cannot withstand fishing pressure. The sixth alternative could have ecological benefits but could also have economic impacts on fishermen.

B. Time/Area Closure

In the HMS FMP, NMFS did not finalize any time/area closures to protect juvenile sharks because most shark nursery or pupping grounds are within state waters (outside of NMFS' jurisdiction). Also, the State of North Carolina had recently closed state waters, which, at the time of developing the HMS FMP, was estimated to be sufficient to reduce juvenile sandbar and dusky shark mortality. In addition, the commercial minimum size finalized in the HMS FMP was considered to be as effective as a time/area closure.

In this action, NMFS proposes to close an area approximately 38,200 nmi2 off the coasts of Virginia, North Carolina, and South Carolina to vessels issued directed shark LAPs with bottom longline gear on board from January 1 through July 31. This area encompasses areas that have been identified in the HMS FMP and Amendment 1 as EFH for sandbar and dusky sharks and as an habitat area of particular concern for sandbar sharks.

Observer data from 1994 through 2003 for the bottom longline fishery indicates that 85 percent of all dusky sharks observed have been caught in this area and 92 percent of those were juvenile or neonate sharks. Additionally, 66 percent of all sandbar sharks observed have been caught in this area and 54 percent of those were juvenile or neonate sharks. In areas outside the proposed time/area closure, only 7 percent of sandbar sharks were juveniles, and no neonates were observed caught.

If effort is redistributed to other open areas in the Atlantic, analyses using the full observer database indicate that 79 percent fewer dusky sharks would be caught and 48 percent fewer sandbar sharks would be caught. In total, using all observer data from 1994 through 2003, the analyses indicate that 27 percent fewer LCS could be caught as a result of the closure. The estimated reductions change if a more recent timeframe (i.e., 2000 through 2003) is used. However, due to the uncertain regulations in the shark fishery from 1999 through the present as a result of ongoing litigation, NMFS believes that a longer time period is more indicative of what could happen as a result of the time/area closure. Given the historically short seasons, it is likely that shark fishermen would still catch the full quota even with the closed area. Thus, NMFS expects that the closure would protect dusky and juvenile sharks in the area but would not reduce the overall LCS landed.

This closure would likely have large negative economic and social impacts on the communities, fishermen, and dealers who live near the closed area. Fishermen who have traditionally fished the proposed closed area could go out of business or leave the fishery from January through July of each year, relocate to a different homeport during the closure, relocate permanently to another homeport, or continue to fish from their current homeport and transit the closed area. Currently, there are approximately 34 directed shark LAPs (14 percent of all directed shark LAPs) issued to fishermen in Virginia, North Carolina, and South Carolina. These 34 fishermen and their dealers would be directly affected by the closure. The fishermen who remain in the fishery would experience additional fishing costs including the cost of fuel, potentially longer trips, and potentially the need to find a new dealer. VMS might help minimize the economic and social impacts because fishermen could transit the area to offload fish. In other words, they could continue to use their traditional dealers and would not have to be away from their families or communities for as long as they would if they could not transit the closed area.

Fishermen and dealers outside the area could experience some benefits because more of the quota would be caught outside the closed area. However, there could also be some negative impacts if relocating fishermen add more pressure to a community that already has many fishermen.

NMFS also considered other closures including closing all EFH for neonate and juvenile sharks during pupping season and a closure for finetooth EFH in St. Andrews Bay area, Florida. The first alternative was not preferred because it could close large portions of the Economic Exclusive Zone (EEZ) for large periods of time and therefore could put many shark fishermen out of business. The second alternative was not preferred because finetooth EFH is located almost exclusively in state waters, over which NMFS would not have jurisdiction.

5. Other Proposed Management Measures

The measures analyzed in this category include the following issues: deepwater and other sharks, prohibited species, and exempted fishing permits (EFPs). The alternatives for these issues are described below.

A. Deepwater and Other Sharks

In the 1993 Shark FMP, NMFS decided that some species of sharks did not need management at that time but that data should be collected on these species. These species are currently in the group called "Deepwater and Other Sharks" and include species such as smooth dogfish, the catsharks, the lanternsharks, and the gulper sharks.

In the 1999 HMS FMP, NMFS added those species to the management unit with the express purpose of bringing them under the regulations to protect

them from finning. There are no other regulations on these species; fishermen do not currently need a permit to fish for them and are not limited in the number of fish that are taken. In most cases, the sharks in this management group are only taken as bycatch in some trawl fisheries. With the implementation of the Shark Finning Prohibition Act (67 FR 6194, February 11, 2002), these sharks are protected against finning. Given that the finning protection is no longer needed under the HMS FMP, NMFS is proposing to remove these species from the management unit. NMFS would continue to collect data for these species. NMFS does not expect any ecological, economic, or social impacts as a result of removing these species from the management unit.

B. Prohibited Species

In 1997, NMFS prohibited commercial and recreational fishermen from possessing or landing five species of sharks: white, whale, basking, sandtiger, and bigeye sandtiger. These species were identified as highly susceptible to overexploitation and the prohibition was seen as a precautionary measure to ensure that directed fisheries on these species did not develop.

In the 1999 HMS FMP, NMFS prohibited 14 additional species including, but not limited to, dusky, night, Atlantic angel, Caribbean reef, longfin mako, and sevengill sharks. These species were added as a result of a change in policy from one where a species could be caught unless it was shown to be susceptible to overfishing to one where possession of certain species was allowed only if that species was known or expected to be able to withstand specified levels of fishing mortality. Thus, species that were rarely caught (e.g., Caribbean reef) or that ones where NMFS had little biological data available (i.e., Atlantic angel) were added to the list. Additionally, species such as dusky or night sharks, that were candidates for listing under the Endangered Species Act (ESA) or that had become depleted, were also added to the list.

The 1999 HMS FMP possession limits on prohibited species went into effect for recreational fishermen in 1999 and for commercial fishermen on June 21, 2000 (65 FR 38440). Since that time, NMFS has had numerous questions regarding why certain species are or are not on the list and requests to add or remove certain species to or from the prohibited species list. To address these requests, NMFS is proposing a mechanism where, through the regulatory framework adjustment process in the 1999 HMS FMP, species could be added to or removed from the prohibited species list.

Under the proposed rule, species could be added to the prohibited species list if at least two of the following criteria are met: (1) There is sufficient biological information to indicate the stock warrants protection, such as indications of depletion or low reproductive potential or the species is on the ESA candidate list; (2) the species is rarely encountered or observed caught in HMS fisheries; (3) the species is not commonly encountered or observed caught as bycatch in fishing operations; or (4) the species is difficult to distinguish from other prohibited species (i.e., look-alike issue). Alternatively, a species could be removed from the prohibited species list if it meets only one of the criteria. Under the proposed alternative, NMFS does not expect any ecological, economic, or social impacts but the alternative could clarify the reason for species being added or removed and allow for more rapid and adaptive management of the species.

NMFS is not proposing to change the current prohibited species list at this time. However, NMFS would continue to issue EFPs or scientific research permits (SRPs), as appropriate, to fishermen or researchers who would like to collect information to indicate that a certain species of shark does or does not meet the above criteria. NMFS may remove some of the current species in the future using the proposed mechanism.

NMFS also considered alternatives for adding or removing certain species from the list including adding finetooth sharks, adding deepwater and other sharks, returning to the original five species, and removing dusky sharks. While these alternatives could have merit, NMFS believes it is not appropriate to change the list until a formal mechanism is approved.

C. EFPs

Under 50 CFR part 600, NMFS may authorize for limited testing, public display, and scientific data collection purposes, the harvest of species managed under an FMP or fishery regulations that would otherwise be prohibited. This exempted fishing may only be conducted if authorized by an EFP or SRP. In the 1999 HMS FMP, NMFS established a 60–mt whole weight (ww) shark public display quota for the purpose of collecting sharks for aquariums and other instances of public display. To collect sharks under this quota, vessel owners must be issued an EFP.

In this action, NMFS is proposing an administrative change where vessel owners who collect sharks or HMS for public display would be issued a "public display permit" instead of an EFP. At this time, the application and issuance procedures for a public display permit would be the same as those for an EFP. Sharks taken with a public display permit would still be counted against the 60 mt ww public display quota. The conditions of the permit would depend on the proposal submitted by the vessel owner. Changing the permit name should not have any ecological, economic, or social impacts but would clarify the purpose for which the permit was issued.

NMFS may consider other changes to the EFP/SRP/pubic display permitting system in the future. These changes could include a requirement for background checks regarding previous fisheries violations, a mandatory application form, or specific quotas for all HMS regarding public display or scientific research. NMFS welcomes any comments on these potential alternatives.

6. EFH Update

Under the Magnuson-Stevens Act, each FMP must describe EFH for the fishery, minimize to the extent practicable adverse effects on that EFH caused by fishing, and identify other actions to encourage the conservation and enhancement of EFH. In the 1999 HMS FMP, NOAA Fisheries identified EFH for all actively managed species of sharks and two habitat areas of concern. Under the EFH regulations, NMFS must review EFH areas every five years and update EFH areas if there is a change of status or if new information becomes available. Because the new stock assessments resulted in a change of status for blacktip, sandbar, and finetooth sharks, NMFS must update EFH for those species. NMFS is also updating EFH for nurse and dusky sharks due to new information. NMFS will review EFH for all HMS over the next year.

In updating EFH identifications, NMFS is proposing two methods to identify EFH: (1) Identify EFH for each species and life stages as those habitats necessary for spawning, breeding, feeding, or growth to maturity and (2) increase or decrease existing EFH areas for individual species based on special needs. The first alternative would help to ensure identified EFH does not include marginal habitat. The second alternative would allow changes to the geographic scope of EFH based on the specific needs of the species. For example, an overfished species may need a greater percentage of habitat identified as EFH to ensure its ability to rebuild compared to a species that is not overfished. NMFS also considered identifying EFH based on the entire geographic range of a species.

To update EFH identified for sandbar, blacktip, finetooth, nurse, and dusky sharks, NMFS considered updated fishery dependent and independent data for these species and considered new information regarding the biology of these species. NMFS also considered changes in fishing practices and areas since the 1999 HMS FMP. As a result, NMFS is proposing slight changes to the EFH identified for individual life stages and slight changes to the size ranges used to define each life stage. Maps and specific changes are fully described in the DEIS for Amendment 1.

Classification

This proposed rule is published under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801 *et seq.*

As required under the Regulatory Flexibility Act, NMFS has prepared an IRFA. The IRFA examines the impacts of the preferred alternatives and any significant alternatives to the proposed rule that could minimize any significant economic impacts on small entities. A summary of the information presented in the IRFA is below. Amendment 1 provides further discussion of the economic impacts of all the alternatives considered. NMFS does not believe that the proposed regulations would conflict with any relevant regulations, federal or otherwise (5 U.S.C. 603(b)(5)).

NMFS considers all commercial permit holders to be small entities according to the Small Business Administration's size standard for defining a small entity (5 U.S.C. 603(b)(3)). NMFS estimates that, as of October 2002, there are approximately 251 directed shark permit holders and 376 incidental shark permit holders for a total of 627 commercial permit holders who are authorized to fish for and sell sharks commercially and who could be affected by the preferred alternatives outlined in the proposed rule. Only 120 of these vessels (approximately 20 percent of all permit holders) reported landings of shark during 2001. These 120 vessels could be affected by all proposed commercial requirements including managing LCS as one group, the proposed quota level, regional quotas, trimester quotas, and bycatch reduction methods. There are 34 permit holders (approximately 5 percent of all permit holders) located in Virginia, South Carolina and North Carolina. These permit holders could be directly affected by the proposed time/area closure in the mid-Atlantic Bight. Additionally, NMFS knows of fewer than 11 shark fishermen who have used drift gillnet gear at some point in the past and only six in recent years. These six vessels could be affected by the shark gillnet gear requirements of the proposed rule including prohibiting drift gillnet gear while allowing strikenet gear and requiring VMS during right whale calving season.

The proposed recreational requirements could also affect all recreational HMS permit holders including HMS Angling category permit holders (approximately 9,372 as of May 2003) and HMS Charter/Headboat permit holders (approximately 2,412 as of May 2003) because some of these permit holders target sharks. While there are a number of permit holders in these categories, these permit holders can target any HMS; few actually target sharks.

Other sectors of HMS fisheries such as dealers, processors, bait houses, and gear manufacturers might be affected by the proposed regulations, particularly the shift to trimester seasons for commercial fisheries, reduction in commercial LCS quota/ increase in commercial SCS quota, and time/area closure off North Carolina during the winter commercial fishery. However, the proposed rule does not apply directly to them. Rather it applies only to permit holders and fishermen. As such, the economic impacts on these other sectors are discussed in Amendment 1 but not in the IRFA.

Some of the preferred alternatives in this document may result in additional reporting, recordkeeping, and compliance requirements (5 U.S.C. 603(b)(4)). The proposed rule includes a requirement that would require approximately six gillnet shark fishing vessels and approximately 10 directed category bottom longline shark fishing vessels (22 vessels have reported fishing in the area but 12 of those would likely already have VMS due to a requirement in the pelagic longline fishery) to install VMS units at an initial average cost of approximately $1,900–3,250 ($1,600–2,500 per unit and $300–750 installation fee), an average annual maintenance cost of approximately $500/year, and approximately $1.44/day for position reports. This alternative would likely increase costs but should not increase the needed skill level required for HMS fisheries.

Some of the proposed regulations such as defining the recreational authorized gear, prohibiting drift gillnet gear, implementing a time/area closure, installing VMS, obtaining gear to reduce bycatch or bycatch mortality, and applying for display permits could change compliance regarding the way and areas in which fishermen fish and set their gear and could require an increase in the skill level needed to participate in HMS fisheries. However, only the time/area closure, installing VMS, and the prohibition on drift gillnet gear would be likely to have significant negative economic impacts on some permit holders because these measures have definite expenditures or costs associated with them. Permit holders that are not directly affected by the proposed closure could experience some economic benefits as a result of the closure because more of the quota from January through July could be harvested in their area. Prohibiting drift gillnet gear would likely result in negative economic impacts for some of the six vessels actively fishing in the gillnet fishery, but overall would not directly affect the vast majority of the shark fishing fleet because these six vessels make up a small percentage of participants in the fishery. The other alternatives listed that could change compliance and/or reporting requirements would likely only have minor, if any, economic impacts on small entities.

One of the requirements of an IRFA is to describe any alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant economic impacts (5 U.S.C. 603 (c)). Additionally, the Regulatory Flexibility Act (5 U.S.C. 603 (c) (1)-(4)) lists four categories for alternatives that should be discussed. These categories are: (1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage of the rule for small entities.

As noted earlier, NMFS considers all permit holders to be small entities. In order to meet the objectives of this proposed rule, consistent with the Magnuson-Stevens Act, NMFS cannot exempt small entities or change the reporting requirements only for small entities. Additionally, many of the proposed measures such as quotas for the fishing season, retention limits for the recreational fishery, and gear restrictions would not be as effective with different compliance and reporting requirements. Thus, there are no alternatives available under the first and fourth categories listed above.

Alternatives under the second and third categories are discussed below.

The group of proposed measures for commercial minimum size and quotas was designed to minimize economic impacts incurred on fishermen while also, consistent with the Magnuson-Stevens Act and other domestic laws, enhancing equity among user groups, allowing healthy stocks to be managed at optimum yield, and allowing overfished stocks to rebuild. For example, eliminating the minimum size could increase profits for individual fishermen by reducing costs associated with the lengthening of trips (i.e., fuel, bait, and ice). Maintaining the minimum size could result in decreased profits due to the costs incurred taking longer trips and the time taken to sort through the catch. The proposed measure to aggregate LCS into one management group also simplifies compliance and reporting requirements under the proposed rule for small entities.

While NMFS considered other commercial quota-related alternatives that could, in combination with other alternatives, result in larger quotas and, therefore, fewer negative economic impacts or greater profits for individual fishermen. These alternatives included establishing the LCS quotas on a more species-specific basis, establishing the LCS and SCS quotas based on recent landings, maintaining the commercial minimum size, and not establishing regional quotas. These alternatives could also increase confusion for fishery participants by establishing several different closure dates and requiring greater skill at species identification. Additionally, these alternatives could result in delays in rebuilding LCS, contrary to the Magnuson-Stevens Act and the goals of the proposed rule.

NMFS is also proposing several management measures designed, consistent with the Magnuson-Stevens Act, to reduce, to the extent practicable, bycatch and bycatch mortality of HMS, protected species, and other fish in shark fisheries. Specifically, the alternative that prohibits drift gillnet gear and allows strikenet gear is likely to result in negative economic impacts for a limited number of small entities (i.e., three of the six vessels actively fishing in the shark gillnet fishery). Because of the one-time costs involved, switching to strikenet gear could put these fishermen out of business. However, NMFS knows that three of these vessels already use strikenet gear and strikenet gear has almost no bycatch while drift gillnet gear has interactions with many different species including sharks, fish, and sea turtles. Once the switch to strikenet is made, it is possible that profits could increase due to less time taken to sort the catch. No other measure, other than banning gillnet gear altogether, would be as effective at minimizing bycatch in the gillnet fishery. The no action alternative would minimize the economic impacts on individual fishermen but would not address bycatch issues in this fishery and therefore would not be consistent with the Magnuson-Stevens Act.

NMFS is proposing a time/area closure for sandbar and dusky shark nursery and pupping areas off North Carolina during the winter fishery. This alternative is designed to reduce bycatch of neonate and juvenile sandbar and dusky sharks and is likely to have significant impacts on 34 permit holders by closing large sections of coastal waters to shark fishing. This amounts to a direct economic impact on 14 percent of the directed shark fleet.

During 2001, only 13 permit holders with home ports located in South Carolina, North Carolina, and Virginia reported shark landings. These vessels reported gross revenues totaling $351,600 during that year. Economic analyses indicate that, if effort is not redistributed, the proposed time/area closure would result in a 4–percent reduction in total gross revenues for the fishery as a whole and in a 27–percent reduction of revenues for the small entities directly affected by the proposed closure. Fishermen would be directly impacted by a reduction in catch and income from areas that they have traditionally relied upon. Fishing practices and behavior of fishermen would also be affected by requiring fishermen to travel further offshore. Due to greater distances traveled, fishermen would spend more time at sea, and associated costs of food, fuel, and labor could increase and profits decrease. This could cause some fishermen to go out of business, move to new areas, or alter fishing patterns in other ways. This alternative could result in a change in the distribution of benefits and costs, with the financial costs of operating in the fishery increasing and benefits decreasing. However, the preferred alternative may result, once LCS rebuild, in slight benefits for fishery participants that are not directly affected by the closure and it minimizes the economic impacts compared to the other time/area closure alternatives considered. The no action alternative could also minimize the impacts but that alternative would not minimize bycatch and bycatch mortality, to the extent practicable, consistent with the Magnuson-Stevens Act, and would not protect juvenile sharks as recommended by the LCS stock assessment. Without the protection of juvenile sharks, rebuilding of LCS could be delayed, contrary to the provision of the Magnuson-Stevens Act.

NMFS does not know of any performance standards or design specifications that would help reduce bycatch of sandbar, dusky, juvenile, or other sharks in this fishery. However, NMFS could issue EFPs to fishermen or scientists who want to conduct research on this issue, similar to what is being done in the Northeast Distant Statistical Area with the pelagic longline fishery.

NMFS is also proposing to require vessels that use strikenet gear during right whale calving season, consistent with the large whale take reduction plan, or bottom longline gear in the south- and mid-Atlantic regions during the time/area closure to install VMS units. This would result in increased costs in the short-term. However, in the long-term, VMS could result in increased revenues by preventing more burdensome regulations and allowing more fishing time. Additionally, under this alternative, bottom longline vessels would be able to traverse closed area and gillnet vessels might require less observer coverage. The VMS units for the HMS pelagic longline fleet have an initial average cost of approximately $1,900–3,250 ($1,600–2,500 per unit and $300–750 installation fee), an average annual maintenance cost of approximately $500/year, and approximately $1.44/day for position reports.

An economic analyses of the impacts associated with VMS requirements indicate that only 6 percent of the fleet would be affected and that this would result in a 9–percent reduction in total gross revenues for fishery as a whole and a one time 31–percent reduction in total gross revenues for the vessels directly affected by this proposed requirement as a result of the purchase and installation of the units. To provide vessel owners with flexibility and help minimize costs, NMFS would type-approve several different VMS units and manufacturers for use, similar to the units approved for use in the pelagic longline fisheries. No VMS units have been type-approved yet specifically for use in the Atlantic shark fisheries as of this date. Based on the range of VMS units commercially available, NMFS expects any VMS unit type-approved for Atlantic shark fisheries to be similar or identical to those type-approved for the pelagic longline fisheries. Once the type-approval is complete, it is likely that this alternative will result in simplification of compliance and reporting requirements under the proposed rule for such small entities.

VMS would only be needed if there is a time/area closure in order to ensure adequate compliance with the closure. Not requiring VMS could result in inadequate enforcement of a time/area closure that minimizes bycatch and aids in rebuilding LCS. Thus, not requiring VMS is not consistent with the objectives of this proposed rule or the Magnuson-Stevens Act.

The other proposed bycatch measures would require vessels to buy release equipment or gear that would reduce post-release mortality. In addition, vessels would be required to move one nautical mile away immediately after interacting with a protected species. These measures would likely result in minor economic impacts to small entities, primarily because the cost associated with purchasing release equipment is minimal and is a one time cost. The requirement to move one nautical mile after an interaction with a marine mammal or sea turtle would likely increase fuel costs due to increased time transiting to another fishing area and increased time needed to fish if alternate fishing grounds are not as productive for target species. However, because few marine mammals or sea turtles have been observed caught, NMFS does not believe that this requirement would affect more than a few trips for all vessels combined, each year. Not requiring the release equipment or movement after a protected species interaction would not minimize bycatch and bycatch mortality as is required under the Magnuson-Stevens Act and the Endangered Species Act.

The proposed recreational retention limit (existing size and bag limit plus one bonnethead shark per person per trip with no minimum size) was also designed to minimize the economic impacts on recreational fishermen while also allowing for healthy stocks to be managed at optimum yield and overfished stocks to rebuild. Because this alternative relieves a previous restriction by allowing for more sharks to be harvested, this alternative may increase revenues to charter/headboats and other small entities who rely on the recreational shark fishery for income and could increase the willingness to pay and angler consumer surplus. While some other retention limit alternatives considered could further relieve restrictions to the recreational fishery and increase profitability of charter/headboat fishermen, those alternatives may not allow for overfished LCS to rebuild, as required under the Magnuson-Stevens Act.

In addition to the management measures described above, NMFS is also proposing several management measures that are likely to result in minor, if any, economic costs or benefits on small entities. Some of these measures may simplify existing compliance and reporting requirements. These measures are: limiting the authorized gear in the shark recreational fishery to handline and rod and reel (most fishermen already use these gear types); removing the species group "deepwater and other sharks" from the management unit and specifying these species for data collection purposes only; retaining the current 19 prohibited species and establishing criteria for the addition/removal of other species to/from the prohibited species group; updating identified EFH; and changing the name of a permit.

This proposed rule contains new collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). The following requirements and estimated times per response have been submitted to OMB for approval: 4 hours for installation of a VMS, 5 minutes for completion of a VMS certification statement, 2 hours per year for VMS maintenance, and 0.3 seconds for an automated position report from a VMS.

This proposed rule also contains collection-of-information requirements that have already been approved by OMB under control number 0648–0471. These requirements and their estimated response times are 30 minutes for an application for a shark display permit, and 5 minutes for a catch report from a holder of a shark display permit.

Public comment is sought regarding: whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the HMS Division and to OMB at the ADDRESSES above.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

These proposed regulations are not expected to increase endangered species or marine mammal interaction rates. A Biological Opinion (BiOp) issued June 14, 2001, concluded that continued operation of the Atlantic pelagic longline fishery is likely to jeopardize the continued existence of endangered and threatened sea turtle species under NOAA Fisheries jurisdiction, and that other HMS fisheries would adversely affect, but were not likely to jeopardize, the continued existence of endangered and threatened marine mammal or sea turtle populations. On July 9, 2002 (67 FR 45393), NOAA Fisheries implemented the reasonable and prudent alternative required by the BiOp. Regarding the pelagic longline fishery, these proposed regulations would not have any additional impact on sea turtles as these actions would not change pelagic longline fishery regulations and therefore, would not change pelagic longline fishing effort or patterns. Regarding the shark bottom longline, gillnet, and recreational fisheries, these proposed regulations are expected to decrease bycatch and bycatch mortality of protected species by reducing fishing effort (e.g., reducing the LCS commercial quota, implementing a bottom longline time and area closure, expanding the restriction for gillnet vessels to strikenet at all times, requiring vessel monitoring systems (VMS) on gillnet and bottom longline vessels to enforce time and area closures, increasing outreach and enforcement of recreational retention and size limits, and requiring vessels with bottom longline gear to move 1 nmi after an interaction) and decreasing post-release mortality (requiring non-stainless steel hooks, dipnets, line cutters, and dehooking devices).

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects

50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: July 25, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 600 and 635 are proposed to be amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

1. The authority citation for 50 CFR part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

2. In § 600.725, section IX of the list of authorized fisheries and gears in paragraph (v) is revised to read as follows:

§ 600.725 General prohibitions.

* * * * *

(v) * * *

Fishery	Authorized gear types
. . . . .	
IX. SECRETARY OF COMMERCE	
1. Atlantic Tunas, Swordfish, and Sharks Fisheries (FMP):	
A. Swordfish handgear fishery	A. Rod and reel, harpoon, handline, bandit gear
B. Pelagic longline fishery	B. Longline
C. Shark gillnet fishery	C. Strikenet
D. Shark bottom longline fishery	D. Longline
E. Shark handgear fishery	E. Rod and reel, handline, bandit gear
F. Shark recreational fishery	F. Rod and reel, handline
G. Tuna purse seine fishery	G. Purse seine
H. Tuna recreational fishery	H. Rod and reel, handline
I. Tuna handgear fishery	I. Rod and reel, harpoon, handline, bandit gear
J. Tuna harpoon fishery	J. Harpoon
2. Atlantic Billfish Fishery (FMP):	
Recreational fishery	Rod and reel
3. Commercial Fisheries (Non-FMP)	Rod and reel, handline, longline, gillnet, harpoon, bandit gear, purse seine
. . . . .	

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

3. The authority citation for 50 CFR part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

4. In § 635.2, the definition of "Management unit," under paragraph (5), is revised and new definitions for "Display permit," "Mid-Atlantic shark closed area," and "Strikenet or to fish with strikenet gear" are added in alphabetical order to read as follows:

§ 635.2 Definitions.

* * * * *

Display permit means a permit issued in order to catch and land sharks for the purpose of public display pursuant to § 635.32.

* * * * *

Management unit means in this part:

* * * * *

(5) *For sharks,* means all fish of these species in the western north Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, excluding those species listed in Table 2 of Appendix A.

* * * * *

Mid-Atlantic shark closed area means the Atlantic Ocean area seaward of the inner boundary of the U.S. EEZ from a point intersecting the inner boundary of the U.S. EEZ at 37°30′ N. lat. near Wachapreague Inlet, Virginia, and proceeding due east to connect by straight lines the following coordinates in the order stated: 37°30′N. lat., 74°15′ W. long.; 33°00′ N. lat., 74°15′ W. long.; then proceeding due west to intersect the inner boundary of the U.S. EEZ at 33°00′ N. lat. near Cape Romain, South Carolina.

* * * * *

Strikenet or to fish with strikenet gear means a gillnet with webbing of 5 inches or greater stretched mesh that is designed so that, when it is deployed, it encircles or encloses an area of water either with the net or by utilizing the shoreline to complete encirclement, or to fish with such a net and method.

* * * * *

5. In § 635.3, paragraph (d) is revised to read as follows:

§ 635.3 Relation to other laws.

* * * * *

(d) An activity that is otherwise prohibited by this part may be conducted if authorized as scientific research activity, exempted fishing or exempted educational activity, or for public display, as specified in § 635.32.

* * * * *

6. In § 635.5, paragraph (e) is revised to read as follows:

§ 635.5 Recordkeeping and reporting.

* * * * *

(e) *Inspection.* Any person authorized to carry out enforcement activities under the regulations in this part has the authority, without warrant or other process, to inspect, at any reasonable time, catch on board a vessel or on the premises of a dealer, logbooks, catch reports, statistical records, sales receipts, or other records and reports required by this part to be made, kept, or furnished. An owner or operator of a fishing vessel that has been issued a permit under § 635.4 or § 635.32 must allow NMFS or an authorized person to inspect and copy any required reports and the records, in any form, on which the completed reports are based, wherever they exist. An agent of a person issued a vessel or dealer permit under this part, or anyone responsible for offloading, storing packing, or selling regulated HMS for such permittee, shall be subject to the inspection provisions of this section.

* * * * *

§ 635.16 [Reserved]

7. Remove and reserve § 635.16.

8. In § 635.20, paragraph (e) is revised to read as follows:

§ 635.20 Size limits.

* * * * *

(e) *Sharks.* All sharks landed under the recreational retention limits specified at § 635.22(c) must have the head, tail, and fins attached and be at least 54 inches (137 cm) FL, except that the minimum size limit does not apply for Atlantic sharpnose sharks or for bonnethead sharks.

* * * * *

9. In § 635.21, paragraph (d) is redesignated as paragraph (e), a new paragraph (d) is added, and the newly redesignated paragraphs (e)(3)(i) through (e)(3)(iv) are revised to read as follows:

§ 635.21 Gear operation and deployment restrictions.

* * * * *

(d) *Bottom longlines.* For the purposes of this part, a vessel is considered to have bottom longline gear on board when a power-operated longline hauler, a mainline, weights and/or anchors capable of maintaining contact of the mainline with the ocean bottom, and leaders (gangions) with hooks are on board. Removal of any one of these elements constitutes removal of bottom longline gear. If a vessel issued a permit under this part is in a closed area designated under paragraph (d)(1) of this section with bottom longline gear on board, it is a rebuttable presumption that fish on board such a vessel were taken with bottom longline in the closed area.

(1) If bottom longline gear is on board a vessel issued a permit under this part, persons aboard that vessel may not fish or deploy any type of fishing gear in the mid-Atlantic shark closed area from January 1 through July 31 each calendar year.

(2) When a marine mammal or sea turtle is hooked or entangled by bottom longline gear, the operator of the vessel must immediately release the animal, retrieve the bottom longline gear, and move at least 1 nm (2 km) from the location of the incident before resuming fishing. Reports of marine mammal entanglements must be submitted to NMFS consistent with regulations in § 229.6 of this title.

(3) The operator of a vessel required to be permitted under this part and that has bottom longline gear on board must:

(i) Undertake the same bycatch mitigation measures as specified in paragraphs (c)(5)(i), (ii), and (iii)(B) of this section to release sea turtles, prohibited sharks, and other animals, as appropriate.

(ii) Possess and use a dehooking device that meets the minimum design standards. The dehooking device must be carried on board and must be used to remove the hook from any hooked sea turtle, prohibited shark, or other animal, as appropriate. NMFS will file with the Office of the **Federal Register** for publication the minimum design standards for approved dehooking devices. NMFS may also file with the Office of the **Federal Register** for publication any additions and/or amendments to the minimum design standards.

(e) * * *

(3) * * *

(i) No person issued a shark LAP under § 635.4 may possess a shark in the EEZ if the shark was taken from its management unit by any gear other than rod and reel, handline, bandit gear, longline, or strikenet, except that such sharks taken incidentally while fishing with drift gillnet may be retained subject to restrictions specified in § 635.24 (a)(2). No person issued an HMS Angling permit or an HMS Charter/headboat permit under § 635.4 may possess a shark in the EEZ if the shark was taken from its management unit by any gear other than rod and reel or handline, except that persons on a vessel issued both an HMS Charter/headboat permit and a shark LAP may possess sharks taken with bandit gear, longline, or strikenet if the vessel is not engaged in a for-hire recreational fishing trip.

(ii) No person may fish for sharks with a strikenet with a total length of 2.5 km or more. No person may have on board a vessel a gillnet with a total length of 2.5 km or more.

(iii) Provisions on gear deployment for the southeast U.S. shark gillnet fishery to implement the Atlantic Large Whale Take Reduction Plan are set forth in § 229.32(f) of this title.

(iv) While fishing for Atlantic sharks with a strikenet, the strikenet must remain attached to at least one vessel at one end, except during net checks.

* * * * *

10. In § 635.22, paragraph (c) is revised as follows:

§ 635.22 Recreational retention limits.

* * * * *

(c) *Sharks.* One shark from either the large coastal, small coastal, or pelagic group may be retained per vessel per trip, subject to the size limits described in § 635.20(e), and, in addition, one Atlantic sharpnose shark and one bonnethead shark may be retained per person per trip. Regardless of the length of a trip, no more than one Atlantic sharpnose shark and one bonnethead shark per person may be possessed on board a vessel. No prohibited sharks listed in table 1(d) of appendix A to this part may be retained. The recreational retention limit for sharks applies to a person who fishes in any manner, except to a person aboard a vessel who has been issued an Atlantic shark LAP under § 635.4. If an Atlantic shark quota is closed under § 635.28, the recreational retention limit for sharks may be applied to persons aboard a vessel issued an Atlantic shark LAP under § 635.4, only if that vessel has also been issued an HMS Charter/Headboat permit issued under § 635.4 and is engaged in a for-hire trip.

* * * * *

11. In § 635.24, paragraph (a)(2) is revised to read as follows:

§ 635.24 Commercial retention limits for sharks and swordfish.

* * * * *

(a) * * *

(2) Persons who own or operate a vessel that has been issued an incidental LAP for sharks may retain, possess or land no more than 5 LCS and 16 SCS and pelagic sharks, combined, per trip. Persons aboard a vessel that has been issued a LAP for shark, that has a drift gillnet on board, and upon which non-HMS fish constitute not less than 75 percent by weight of the total fish on board or offloaded may retain, possess, or land no more than 5 LCS and 16 SCS and pelagic sharks, combined, per trip.

* * * * *

12. In § 635.27, paragraph (b) is revised to read as follows:

§ 635.27 Quotas.

* * * * *

(b) *Sharks.* (1) Commercial quotas. The commercial quotas for sharks specified in paragraphs (b)(1)(i) through (b)(1)(vi) of this section apply to sharks harvested from the management unit, regardless of where harvested. Commercial quotas are specified for each of the management groups of large coastal sharks, small coastal sharks, and pelagic sharks. No prohibited sharks listed in table 1(d) of appendix A to this part may be retained except as authorized under § 635.32.

(i) *Fishing seasons.* The commercial quotas for large coastal sharks, small coastal sharks, and pelagic sharks are split between three fishing seasons: January 1 through April 30, May 1 through August 30, and September 1 through December 31.

(ii) *Regions.* The commercial quotas for large coastal sharks, small coastal sharks, and pelagic sharks are split between three regions. The regions are: Gulf of Mexico, South Atlantic, and North Atlantic. For the purposes of this section, the Gulf of Mexico region includes all waters of the U.S. EEZ west and north of the boundary stipulated at 50 CFR 600.105(c). The South Atlantic region includes all waters east of the Gulf of Mexico up to 36°30′ N. lat., including the waters surrounding the Caribbean. The North Atlantic region includes all waters north of 36°30′ N. lat.

(iii) *Large coastal sharks.* The annual commercial quota for large coastal sharks is 1,109 mt dw (unless otherwise specified in the **Federal Register** as provided in paragraph (b)(1)(vi) of this section). This annual quota is split between the regions as follows: 42 percent to the Gulf of Mexico, 54 percent to the South Atlantic, and 4 percent to the North Atlantic. The length of each fishing season will be determined based on the projected catch rates, available quota, and other relevant factors. At least 30 days prior to the beginning of the season, NMFS will file with the Office of the **Federal Register** for publication the length of each season.

(iv) *Small coastal sharks.* The annual commercial quota for small coastal shark is 454 mt dw, (unless otherwise specified in the **Federal Register** as provided in paragraph (b)(1)(vi) of this section). This annual quota is split between the regions as follows: 4 percent to the Gulf of Mexico, 83 percent to the South Atlantic, and 13 percent to the North Atlantic.

(v) *Pelagic sharks.* The annual commercial quotas for pelagic sharks are 92 mt dw for porbeagle sharks, 273 mt dw for blue sharks, and 488 mt dw for pelagic sharks other than porbeagle or blue sharks (unless otherwise specified in the **Federal Register** as provided in paragraph (b)(1)(vi) of this section).

(vi) *Annual adjustments.* (A) NMFS will adjust the next year's fishing season quotas for large coastal, small coastal, and pelagic sharks to reflect actual landings during any fishing season in any particular region. For example, a commercial quota underharvest or overharvest in the fishing season in one region that begins January 1 will result in an equivalent increase or decrease in the following year's quota for that region for the fishing season that begins January 1. NMFS will file any adjustment with the Office of the **Federal Register** for publication at least 30 days prior to the start of the next fishing season.

(B) NMFS will reduce the annual commercial quota for pelagic sharks by the amount that the blue shark quota is exceeded at least 30 days prior to the start of the next fishing season.

(C) Sharks taken and landed from state waters are counted against the fishery quota for the applicable region and time period.

(2) *Public display and research quota.* The annual quota for persons who collect sharks from any of the management groups under a display permit or EFP is 60 mt whole weight (43 mt dw). All sharks collected under the authority of a display permit or EFP, subject to restrictions at § 635.32, will be counted against this quota.

* * * * *

13. In § 635.28, paragraph (b) is revised to read as follows:

§ 635.28 Closures.

* * * * *

(b) *Sharks.* (1) The commercial fishery for large coastal sharks will remain open in each region under the fishing seasons and regional quotas, as specified at § 635.27(b)(1). From the effective date and time of a season closure in a particular region until additional quota becomes available, the fishery for large coastal sharks in that particular region is closed, and sharks of that species group may not be retained on board a fishing vessel issued a commercial permit pursuant to § 635.4 in that particular region.

(2) When the fishing season quota for small coastal sharks or pelagic sharks specified in § 635.27(b)(1) for a particular region is reached, or is projected to be reached, NMFS will file with the Office of the **Federal Register** for publication a notice of closure at least 14 days before the effective date. From the effective date and time of the closure until additional quota becomes available, the fishery in that particular region for the appropriate shark species group is closed, and sharks of that species group may not be retained on board a fishing vessel issued a commercial permit pursuant to § 635.4 in that particular region.

(3) When the fishery in a particular region for a shark species group is closed, a fishing vessel issued an Atlantic Sharks LAP pursuant to § 635.4 may not possess or sell a shark of that species group, except under the conditions specified in § 635.22 (a) and (c), and a permitted shark dealer may not purchase or receive a shark of that species group from a vessel issued an Atlantic Sharks LAP, except that a permitted shark dealer or processor may possess sharks that were harvested, off-loaded, and sold, traded, or bartered, prior to the effective date of the closure and were held in storage.

* * * * *

14. In § 635.32, paragraph (a) is revised; paragraph (c)(2) is removed; paragraphs (c)(3) and (c)(4) are redesignated as paragraphs (c)(2) and (c)(3), respectively; and paragraph (d) is added to read as follows:

§ 635.32 Specifically authorized activities.

(a) *General.* Consistent with the provisions of § 600.745 of this chapter, except as indicated in this section, NMFS may authorize for the conduct of scientific research or the acquisition of information and data, for the enhancement of safety at sea, for the purpose of collecting animals for public education or display, or for investigating the reduction of bycatch, economic discards or regulatory discards, activities otherwise prohibited by the regulations contained in this part. Activities subject to the provisions of this section include, but are not limited to, scientific research resulting in, or likely to result in, the take, harvest or incidental mortality of Atlantic HMS, exempted fishing and exempted educational activities, or programs under which regulated species retained in contravention to otherwise applicable regulations may be donated through approved food bank networks. Such activities must be authorized in writing and are subject to all conditions specified in any letter of acknowledgment, exempted fishing permit, scientific research permit, or display permit issued in response to requests for authorization under this section. For the purposes of all regulated species covered under this part, NMFS has the sole authority to issue permits, authorizations, and acknowledgments. If a regulated species landed or retained under the authority of this section is subject to a quota, the fish shall be counted against the quota category as specified in the written authorization. Inspection requirements specified in § 635.5(e) of this part apply to the owner or operator of a fishing vessel that has been issued a exempted fishing permit, scientific research permit, or display permit.

* * * * *

(d) *Display permits.* (1) For activities consistent with the purposes of this section and § 600.745(b)(1) of this chapter, NMFS may issue display permits. Application procedures shall be as indicated under § 600.745(b)(2) of this chapter, except that NMFS may consolidate requests for the purposes of obtaining public comment. In such cases, NMFS may file with the Office of the **Federal Register** for publication notification on an annual or, as necessary, more frequent basis to report on previously authorized public display fishing activities and to solicit public comment on anticipated public display fishing requests.

(2) Notwithstanding the provisions of § 600.745 of this chapter and other provisions of this part, a valid display permit is required to fish for, take, retain, or possess a shark in or from the Atlantic EEZ for the purposes of public display under the shark public display and research quota specified in § 635.27(b)(2). A valid shark display permit must be on board the harvesting vessel, must be available when the shark is landed, must be available when the shark is transported to the display facility, and must be presented for inspection upon request of an authorized officer. A shark display permit is valid for the specific time, area, gear, and species specified on it.

(3) To be eligible for a shark display permit, a person must provide all information concerning his or her identification, numbers by species of sharks to be collected, when and where they will be collected, vessel(s) and gear to be used, description of the facility where they will be displayed, and any other information that may be necessary for the issuance or administration of the permit, as requested by NMFS.

(4) Written reports on fishing activities and disposition of catch must be submitted to NMFS at an address designated by NMFS, for each fish collected within 5 days of the collection. An annual written summary report of all fishing activities and disposition of all fish collected under the permit must also be submitted to NMFS at an address designated by NMFS. NMFS will provide specific conditions and requirements, consistent with the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks in the display permit.

* * * * *

15. In § 635.34, paragraph (b) is revised and paragraph (c) is added to read as follows:

§ 635.34 Adjustment of management measures.

* * * * *

(b) In accordance with the framework procedures in the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks and the Fishery Management Plan for Atlantic Billfishes, NMFS may establish or modify for species or species groups of Atlantic HMS the following management measures: maximum sustainable yield or optimum yield levels based on the latest stock assessment or updates in the SAFE report; domestic quotas; recreational and commercial retention limits, including target catch requirements; size limits; fishing years or fishing seasons; shark fishing regions or regional quotas; species in the management unit and the specification of the species groups to which they belong; species in the prohibited shark species group; classification system within shark species groups; permitting and reporting requirements; Atlantic tunas Purse Seine category cap on bluefin tuna quota; time/area restrictions; allocations among user groups; gear prohibitions, modifications, or use restrictions; effort restrictions; essential fish habitat; and actions to implement ICCAT recommendations, as appropriate.

(c) NMFS may add species to the prohibited shark species group specified in Table 1 of Appendix A if, after considering the criteria in paragraphs (c)(1) through (4) of this section, the species is determined to meet at least two of the criteria. Alternatively, NMFS may remove species from the prohibited shark species group and place them in the appropriate shark species group in Table 1 of Appendix A if, after considering the criteria in paragraphs (c)(1) through (4) of this section, NMFS determines the species only meets one criterion.

(1) Biological information indicates that the stock warrants protection.

(2) Information indicates that the species is rarely encountered or observed caught in HMS fisheries.

(3) Information indicates that the species is not commonly encountered or observed caught as bycatch in fishing operations for species other than HMS.

(4) The species is difficult to distinguish from other prohibited species.

* * * * *

16. In § 635.69, paragraphs (a), (e), and (h) are revised to read as follows:

§ 635.69 Vessel monitoring systems.

(a) *Applicability.* To facilitate enforcement of time-area and fishery closures, an owner or operator of a commercial vessel permitted to fish for Atlantic HMS under § 635.4 and that fishes with a pelagic or bottom longline or strikenet gear is required to install a NMFS-approved vessel monitoring system (VMS) unit on board the vessel and operate the VMS unit whenever the vessel leaves port with pelagic longline gear on board; whenever the vessel leaves port with bottom longline gear on board, is operating between 32° N. lat and 38° N. lat, and the mid-Atlantic shark closed area is closed to bottom longline fishing as specified in § 635.21(d)(1)(i); or whenever the vessel leaves port with a strikenet on board during the right whale calving season specified in the Large Whale Take Reduction Plan in § 229.32 (f) of this title. A vessel is considered to have pelagic longline gear on board for the purposes of this section, when gear as specified at § 635.21(c) is on board. A vessel is considered to have bottom longline gear on board for the purposes of this section, when gear as specified at § 635.21(d) is on board. A vessel is considered to have strikenet gear on board for the purposes of this section, when strikenet, as defined, is on board a vessel that has been issued a shark LAP.

* * * * *

(e) *Operation.* Owners or operators of vessels permitted, or required to be permitted, to fish for HMS that have pelagic or bottom longline gear or strikenet gear on board, and that are required to have a VMS unit installed, as specified in paragraph (a), must activate the VMS to submit automatic position reports beginning 2 hours prior to leaving port and not ending until the vessel returns to port. While at sea, the unit must operate without interruption and no person may interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS, or attempt any of the same. Vessels fishing outside the geographic area of operation of the installed VMS will be in violation of the VMS requirement.

* * * * *

(h) As a condition to obtaining a LAP for Atlantic swordfish, sharks, or tunas, all vessel owners or operators using pelagic or bottom longline or strikenet gear subject to the VMS provisions of this section must allow NMFS, the USCG, and their authorized officers and designees access to the vessel's position data obtained from the VMS at the time of or after its transmission to the vendor or receiver, as the case may be.

* * * * *

17. In § 635.71, paragraphs (a)(1), (a)(2), (a)(7), (a)(14), (a)(17), (a)(18), (a)(23), (a)(26), (a)(34), (a)(36), and (a)(37); (b)(7) and (b)(8); (c)(1); and (d)(10), (d)(12), and (d)(13) are revised, and paragraphs (a)(39) and (a)(40) are added to read as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(1) Falsify information required on an application for a permit submitted under § 635.4 or § 635.32.

(2) Fish for, catch, possess, retain, or land an Atlantic HMS without the appropriate valid vessel permit, LAP, EFP, or display permit on board the vessel, as specified in §§ 635.4 and 635.32.

* * * * *

(7) Fail to allow an authorized agent of NMFS to inspect and copy reports and records, as specified in § 635.5(e) or § 635.32.

* * * * *

(14) Fail to install, activate, repair, or replace a vessel monitoring system prior to leaving port with pelagic longline gear, bottom longline gear, or strikenet gear on board the vessel as specified in § 635.69.

* * * * *

(17) Fish for Atlantic tunas, swordfish, or sharks with a gillnet or possess Atlantic tunas, swordfish, or sharks on board a vessel with a gillnet on board, as specified in § 635.21 (b), (e)(1), (e)(3), and (e)(4)(ii).

(18) Fail to retrieve fishing gear and move after an interaction with a marine mammal or sea turtle, as specified in § 635.21 (c)(3) or (d)(2).

* * * * *

(23) Fail to comply with the restrictions on use of a pelagic longline, bottom longline, or shark strikenet as specified in § 635.21 (c), (d), or (e)(3)(ii), (iii), and (iv).

* * * * *

(26) Violate the terms and conditions or any provision of an exempted fishing permit, scientific research permit, or display permit issued under the authority of § 635.32.

* * * * *

(34) Fail to disengage any hooked or entangled sea turtle with the least harm

possible to the sea turtle as specified at § 635.21 (c)(5) or (d)(3).

* * * * *

(36) Fish with bottom or pelagic longline and shark strikenet gear for HMS without adhering to the gear operation and deployment restrictions required in § 635.21.

(37) Fail to report to NMFS, at the number designated by NMFS, the incidental capture of listed whales with shark strikenet gear and sea turtle mortalities associated with pelagic longline gear as required by § 635.5.

* * * * *

(39) Deploy or fish with any fishing gear from a vessel with a bottom longline on board in any closed area during the time periods specified at § 635.21(d)(1).

(40) Deploy or fish with any fishing gear from a vessel with bottom longline gear on board without carrying a dipnet, line clipper, and dehooking device as specified at § 635.21(d)(3).

(b) * * *

(7) Fish for, catch, retain, or possess a BFT with gear not authorized for the category permit issued to the vessel or to have on board such gear when in possession of a BFT, as specified in § 635.21(e)(1).

(8) Fail to request an inspection of a purse seine vessel, as specified in § 635.21(e)(1)(vi)(B).

* * * * *

(c) * * *

(1) Retain a billfish on board a vessel with a pelagic longline on board or harvested by gear other than rod and reel, as specified in § 635.21(e)(2).

* * * * *

(d) * * *

(10) Retain, possess, sell, or purchase a prohibited shark, as specified under § 635.22(c) and § 635.27 (b)(1) or fail to disengage any hooked or entangled prohibited shark with the least harm possible to the animal as specified at § 635.21(d)(3) .

* * *

(12) Fish for Atlantic sharks with unauthorized gear or possess Atlantic sharks on board a vessel with unauthorized gear on board as specified in § 635.21 (e)(3).

(13) Fish for Atlantic sharks with a gillnet or possess Atlantic sharks on board a vessel with a gillnet on board, except as specified in § 635.21 (e)(3).

* * * * *

[FR Doc. 03–19522 Filed 7–31–03; 8:45 am]
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Notices

Federal Register
Vol. 68, No. 148
Friday, August 1, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 28, 2003.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@OMB.EOP.GOV*, or fax (202) 395–5806; and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Economic Research Service

Title: Evaluation of Three Models Designed to Increase Participation of Eligible Elderly in the Food Stamp Program.

OMB Control Number: 0536-NEW.

Summary of Collection: Reaching the poor elderly has been a persistent issue in the Food Stamp Program (FSP). Each month, millions of eligible, poor elderly individuals go without food stamp benefits. Fewer than one-third of eligible elderly individuals have participated in the FSP. These low participation rates are troublesome, because the elderly have unique nutritional needs. To help improve their health and nutritional status, the United States Department of Agriculture (USDA) wants to identify ways to increase participation rates among eligible elderly. In response to concerns over the low participation rates, USDA has funded the Elderly Nutrition Demonstrations. These demonstrations to increase elderly participation in the FSP are based on three models: Alternative food stamps commodity benefit, Simplified eligibility and benefit determination, and Application assistance for eligible elderly. The Economic Research Service (ERS) will collect information using surveys and focus groups.

Need and Use of the Information: ERS will collect information to reduce the barriers to FSP participation that the elderly face, by providing food stamp benefits as commodities rather than as traditional payment on an electronic benefit transfer (EBT) card, simplifying the application process, increasing eligible elderly individuals' understanding of the program, and assisting elderly individuals with the application process. ERS will also collect information to determine the appeal of commodity demonstrations to elderly individuals and the aspects of the demonstration they like or dislike. Comparisons of the characteristics of demonstration participants with those of nonparticipants will show whether the demonstration is appealing to certain types of elderly individuals.

Description of Respondents: Individuals or households.

Number of Respondents: 748.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 352.

Farm Service Agency

Title: County Committee Election.

OMB Control Number: 0560–NEW.

Summary of Collection: The Farm Security and Rural Investment Act of 2002 requires that the Secretary prepare a report of election that includes, among other things, "the race, ethnicity and gender of each nominee, as provided through the voluntary self-identification of each nominee". The information will be collected using form FSA–669–A, "Nomination Form for County FSA Committee Election". Completion of the form is voluntary; however, if the form is not completed, the Farm Service Agency (FSA) will make note of the nominee's race/ethnicity and gender on the basis of visual observation or surname.

Need and Use of the Information: FSA will collect information on race, ethnicity and gender of each nominee as provided through the voluntary self-identification of each nominee agreeing to run for a position. The information will be sent to Kansas City for preparation of the upcoming election. The Secretary will review the information annually. If the information is not collected in any given year, the Secretary would not be able to prepare the report that the Department has been charged with preparing.

Description of Respondents: Individuals or households; farms.

Number of Respondents: 10,000.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 6,700

Animal Plant and Health Inspection Service

Title: Select Agent Registration.

OMB Control Number: 0579–0213.

Summary of Collection: The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 were signed into law June 12, 2002. This law is designed to prevent, prepare for and respond to bioterrorism and other public health emergencies. The law requires persons possessing agents or toxins deemed a severe threat to animal or plant health, or to animal or plant products, to be registered with the Secretary of Agriculture unless they have been specifically exempted. The registration process entail the use of a

number of separate forms designed to obtain critical information concerning persons or facilities in possession of certain agents or toxins, as well as the specific characteristics of the agents or toxins-including name, strain, and genetic information.

Need and Use of the Information: The Animal and Plant Health Inspection Service will collect information to ensure that appropriate safeguard, containment, and disposal requirements commensurate with the risk of the agent or toxin are in place, thus preventing access to such agents and toxins for use in domestic or international terrorism. If the information is not collected, APHIS efforts to more aggressively prevent a bioterrorism event in the United States would be compromised.

Description of Respondents: Business or other for profit; State, local and Tribal Government; not-for-profit institutions.

Number of Respondents: 652.

Frequency of Responses: Recordkeeping; reporting: On occasion.

Total Burden Hours: 25,460.

Animal Plant and Health Inspection Service

Title: Sapote Fruit Fly.

OMB Control Number: 0579–0222.

Summary of Collection: The Sapote fruit fly is a destructive pest of fruits and vegetables, including apples, avocados, grapefruits, mangoes, peaches, pears, and tangerines. This pest can cause economic losses by lowering the yield and quality of these fruits and vegetables and, in some cases, by damaging seedlings and young plants. Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or movement of plants and plant pest to prevent the introduction of plant pest into the United States or their dissemination with the United States.

Need and Use of the Information: The Animal Plant and Health Inspection Service (APHIS) will collect information using APHIS form PPQ 519, "Compliance Agreement", for the convenience of persons who are involved in the growing, handling, or moving of regulated articles from quarantined areas. Failure to collect this information would cripple APHIS' ability to ensure that citrus and many other types of fruit do not carry Sapote fruit flies.

Description of Respondents: Business or other for profit; State, local and Tribal government.

Number of Respondents: 700.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 112.

Food and Nutrition Service

Title: Food Distribution Forms.

OMB Control Number: 0584–0293.

Summary of Collection: The Food distribution Programs of the Department of Agriculture assist American Farmers and needy people by purchasing commodities and delivering them to State agencies that in turn, distribute them to organizations for use in providing food assistance to those in need. The commodities help to meet the nutritional needs of: (a) Children from preschool age through high school and children in nonprofit summer camps, (b) needy person in households on Indian reservations, (c) needy household in the nuclear affected islands, (d) needy persons served by charitable institutions, (e) pregnant and breastfeeding women, infants, and children, and elderly persons, (f) low-income, unemployed or homeless people provided foods through household distributions or meals through soup kitchens, (g) pre-school, school-age children, elderly and functionally impaired adults enrolled in child and adult day care centers, and (h) victims of Presidential-declared disasters and other situation of distress. The Food and Nutrition Service (FNS) will collect information from state and local agencies using several FNS forms.

Need and Use of the Information: FNS will collect the following information from state and local agencies: (a) Number of households or meals served in the programs, (b) the kinds of commodities most acceptable to recipients, (c) the quantities of foods ordered and where the food is to be delivered, (d) verification of the receipt of a food order, and (e) the amounts of commodities in inventory.

Description of Respondents: Not-for-profit institutions; individual or households; business or other for-profit; Federal Government; State, local or tribal government.

Number of Respondents: 368,499.

Frequency of Responses: Recordkeeping; reporting: On occasion; quarterly; biennially; semi-annually; monthly; annually.

Total Burden Hours: 1,154,152.

Forest Service

Title: Forest Service Ride-Along Application.

OMB Control Number: 0596–NEW.

Summary of Collection: The Forest Service (FS) ride-along program will allow the general public or other interested person to accompany agency law enforcement personnel as they conduct their normal field duties, including access to and discussions about agency law enforcement vehicles, procedures, and facilities. The purpose is to enhance public understanding and support of the agency program and to increase agency understanding of public and community concerns. The program also aids the agency's recruitment program by allowing interested persons to observe a potential career choice or to participate in innovative intern-type programs, and by allowing the agency to showcase the quality of its program and services.

Need and Use of the Information: Information will be collected from any person who voluntarily approaches the FS and wishes to participate in the program. The FS 5300–33 program application form will be used to conduct a minimal background check and the FS 5300–34 is a liability waiver form that requires the applicant's signature and their written assurance that they have read and understood the form. The information collected from the forms will be used by FS and, in appropriate part, by any person or entity needed and authorized by the FS to provide the needed background information (primarily applicable local law enforcement agencies, state criminal justice agencies maintaining state justice records, and by the FBI). If the information is not collected, the program could not operate.

Description of Respondents: Individuals or households; Federal Government; State, local or Tribal government.

Number of Respondents: 100.

Frequency of Responses: Reporting: Other (per applicant).

Total Burden Hours: 16.

Animal Plant and Health Inspection Service

Title: Irradiation Phytosanitary Treatment of Fresh Fruits and Vegetables.

OMB Control Number: 0579–0155.

Summary of Collection: The Plant Protection Act (7 U.S.C. 7701–7772) authorizes the Secretary of Agriculture to regulate the importation of plants, plant products, and other articles into the United States to prevent the introduction of injurious plant pests and noxious weeds. Regulations in 7 CFR 305 provide for the use of irradiation as a phytosanitary treatment for certain fruits and vegetables imported in the United States. The irradiation treatment provides protection against 11 species of fruit flies and mango seed weevil.

Need and Use of the Information: The Animal and Plant Health Inspection Service (APHIS) will collect information using a compliance agreement, 24-hour notification, labeling requirements, dosimetry recordings, requests for dosimetry device approval, recordkeeping, requests for facility approval, trust fund agreement, and annual work plan. Without the collection of this information, APHIS would have no practical way of determining that any given commodity had actually been irradiated.

Description of Respondents: Business or other for profit; individuals or households; farms.

Number of Respondents: 125.

Frequency of Responses: Recordkeeping; reporting: On occasion.

Total Burden Hours: 10,305.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 03–19552 Filed 7–31–03; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Request for Extension of a Currently Approved Information Collection—National Nonprofit Humanitarian Program

AGENCY: Commodity Credit Corporation.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Commodity Credit Corporation (CCC) to request extension of a currently approved information collection. The collection is used to conduct a National Nonprofit Humanitarian Program 501(c)(3) for purposes of expanding current disposition options for surplus nonfat dry milk (NDM) to help feed the hungry in the United States. This action will expedite the sale of NDM to nonprofit organizations and relieve regulatory burdens imposed upon current domestic feeding programs.

DATES: Comments on this notice must be received on or before September 30, 2003, to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Beatrice Dove, Agricultural Marketing Specialist, Procurement and Donations Division, Commodity Operations Branch, Farm Service Agency, USDA, Stop 0551, 1400 Independence Avenue SW., Washington, DC 20520; telephone (202) 401–4652; e-mail *Beatrice.Dove@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: National Nonprofit Humanitarian Program.

OMB Control Number: 0560–0227.

Date of Expiration: September 30, 2003.

Abstract: The Commodity Credit Corporation (CCC) has acquired approximately 1.2 billion pounds of nonfat dry milk (NDM) through its Milk Price Support Program. Limited shelf life for this commodity has prompted USDA's Farm Service Agency (FSA) to propose implementation of a 501(c)(3) program further utilizing CCC-owned NDM by selling the product to religious and non-religious nonprofit organizations in the United States. Under this proposal, CCC will deliver a minimum of four truckload quantities U.S. Extra Grade NDM or U.S. Extra Grade instantized fortified nonfat dry milk (INDM) to authorized recipients for the nominal fee of $20 per truckload. A minimum of two truckloads must be received per delivery period with each truckload consisting of one package size and product type (NDM or INDM). Recipients must demonstrate capability to store and handle the product in full compliance with applicable State and local health and food safety requirements to assure product wholesomeness. Recipients shall distribute the NDM or INDM in a timely manner for human consumption in the United States and shall not export, resell, exchange, or barter the product. Nonprofit organizations currently receiving NDM as a donated product from the U.S. Department of Agriculture, Food and Nutrition Service (FNS), under the Emergency Food Assistance Program (TEFAP) may also receive NDM under this program.

Estimate of Burden: Public reporting burden for this information collection is estimated to average 30 minutes per response.

Respondents: Nonprofit organizations.

Estimated Number of Respondents: 220.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 321 hours.

Proposed topics for comments include: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information collected; or (d) ways to minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Beatrice Dove, Agricultural Marketing Specialist, Procurement and Donations Division, Commodity Operations Branch, Farm Service Agency, USDA, Stop 0551, 1400 Independence Avenue SW., Washington, DC 20250; telephone (202) 401–4652.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Signed at Washington, DC, on July 24, 2003.

Verle E. Lanier,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 03–19551 Filed 7–31–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Intergovernmental Advisory Committee Meeting, Northwest Forest Plan

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Intergovernmental Advisory Committee (IAC), Northwest Forest Plan (NWFP), will meet on August 5, 2003, at the Sheraton Portland Airport, located at 8235 NE Airport Way in Portland, Oregon. The meeting is scheduled to begin at 10 a.m. and adjourn at approximately 4:45 p.m. In general, the purpose of the meeting is to continue committee discussions related to NWFP implementation. Particular meeting agenda items include, but are not limited to, a report on the recent Forest Service Region 5 (California) meeting reviewing local NWFP implementation, a report on the recent "Innovations in Species Conservation Symposium," a presentation on Aquatic Monitoring issues and potential Federal/State collaboration opportunities, Stewardship Contracting, progress reports on several implementation initiatives (including supplemental environmental impact statements for Survey and Manage, Aquatic Conservation Strategy), and Fish and Wildlife Service's Five-Year Review of Northern Spotted Owl and Marbled Murrelet. The meeting is open to the public and will be fully accessible for people with disabilities. A 15-minute time slot is reserved following

lunch for public comments. Interpreters are available upon request at least 10 days prior to the meeting. Written comments may be submitted for the meeting record. Interested persons are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Questions regarding this meeting may be directed to Kath Collier, Management Analyst, Regional Ecosystem Office, 333 SW First Avenue, P.O. Box 3623, Portland, OR 97208 (Phone: 503–808–2165).

Dated: July 9, 2003.

Anne Badgley,

Designated Federal Official.

[FR Doc. 03–19625 Filed 7–31–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

2003 Forest Legacy Program Implementation Guidelines

AGENCY: Forest Service, USDA.

ACTION: Notice of availability of program guidelines.

SUMMARY: The Forest Service is issuing a notice of the availability for the 2003 Forest Legacy Program Implementation Guidelines. These guidelines were last updated in 1996. The Cooperative Forestry Assistance Act of 1978 (CFAA) authorizes the Secretary of Agriculture, through the Forest Service to develop, in cooperation with interested States, a Forest Legacy Program to identify and protect environmentally important private forest lands that are threatened by conversion to non-forest uses. The Federal Agricultural Improvement and Reform Act of 1996 amended the CFAA to provide for optional grants for States to carry out the program.

DATES: The 2003 Forest Legacy Program Implementation Guidelines were effective June 30, 2003.

ADDRESSES: Copies of the 2003 Forest Legacy Program Implementation Guidelines are available by contacting Rick Cooksey, Cooperative Forestry Staff, USDA Forest Service, Mail Stop Code 1123, 1400 Independence Avenue, SW., Washington, DC 20250–1123; via telephone at (202) 205–1469; via facsimile at (202) 205–1271; or via the world-wide web Internet: *http://www.fs.fed.us/spf/coop/library/fpl_guidelines.pdf.*

FOR FURTHER INFORMATION CONTACT: Rick Cooksey, USDA Forest Service, Cooperative Forestry Staff, (202) 205–1469; or *rcooksey@fs.fed.us.*

SUPPLEMENTARY INFORMATION:

Background

The Cooperative Forestry Assistance Act (CFAA) of 1978, as amended, (16 U.S.C. 2101 *et seq.*) provides authority for the Secretary of the U.S. Department of Agriculture (Secretary) to provide financial, technical, educational, and related assistance to States, communities, and private forest landowners. Section 1217 of Title XII of the Food, Agriculture, Conservation and Trade Act of 1990 (Pub. L. 101–624:104 Stat. 3359; 16 U.S.C. 2103c), also referred to as the 1990 Farm Bill, amends the CFAA and directs the Secretary to establish the Forest Legacy Program (FLP) to protect environmentally important forest areas that are threatened by conversion to nonforest uses. Through the 1996 Farm Bill (Federal Agricultural Improvement and Reform Act of 1996; Pub. L. 104–127; Title III—Conservation; Subtitle G—Forestry; Section 374, Optional State Grants for Forest Legacy Program), the Secretary is authorized, at the request of a participating State, to make a grant to the State to carry out FLP in that State, including the acquisition by the State of lands and interests in lands. Under section 6 of the Act of March 1, 1911, (16 U.S.C. 515), and section 11(a) of the Department of Agriculture Organic Act of 1956 (7 U.S.C. 428(a)), the Secretary of Agriculture continues to have authority to acquire environmentally important forest lands and interests therein for Federal acquisition, including conservation easements and rights of public access, with title vested in the U.S. Government. Both the State grant and the Federal acquisition programs operate on a willing seller and a willing buyer basis.

In 1996, the Forest Service issued the Forest Legacy Program Implementation guidelines, which were an update of the 1992 guidelines. In 2000, the Forest Service embarked on an effort to update the 1996 Guidelines, to provide clear and current direction to meet the needs of a rapidly growing national program. As part of the process, several drafts were circulated with open public comment periods resulting in hundreds of comments received and integrated into a draft document. However, in November 2001, when the revision was almost complete, the Surveys and Investigations Staff of the House of Representatives Appropriations Committee launched a 6-month investigation of the program. After a thorough review of FLP, the Congressional investigation findings required the Forest Service to develop additional direction related to key areas of the program, including: (1) The appraisal and appraisal review process, (2) the project selection process, (3) the process for redirecting and reprogramming project funds, and (4) the monitoring requirements for conservation easements.

General Information

The final 2003 Forest Legacy Program Implementation Guidelines reflect the work of a team of representatives from State lead agencies and Forest Service Washington Office and Regional offices. This team considered and integrated, to the extent practicable, all comments received throughout the process as well as the findings from the Congressional investigation. The guidelines will improve program operation, provide clarity on definitions, policy, and process, and respond to the findings of the Congressional report and direction.

The Forest Legacy Program Implementation Guidelines have four components:

Part 1—General Program Guidelines: Program direction applicable to all aspects of FLP, including Assessment of Need development, eligibility criteria, project selection process, process for redirection and reprogramming of funds, cost share requirements, landowner participation, appraisal and appraisal review, and conservation easement information.

Part 2—State Grant Program Guidelines: Program direction applicable to States and Forest Service Regions, Areas, and the International Institute of Tropical Forestry where a State has elected the State grant option and where ownership of lands or interests in lands is vested in a State or a subdivision of a State.

Part 3—Federal Acquisition Program Guidelines: Program direction applicable to States and Forest Service Regions, Areas, and the International Institute of Tropical Forestry selecting the Federal acquisition and ownership process, where ownership of lands or interests in lands is vested in the United States.

Appendices: Numerous appendices that provide supplemental information such as references to Office of Management and Budget circulars, qualifications required of an appraiser or review appraiser, an example cost share calculations, and a sample of FLP graphics.

The revised 2003 Forest Legacy Program Implementation Guidelines were mailed to State lead agencies, State Foresters (when different from the State lead agency), national partners, and Forest Service Regions, Areas, and the International Institute of Tropical Forestry.

Dated: July 24, 2003.

Robin L. Thompson,

Associate Deputy Chief, State and Private Property.

[FR Doc. 03–19567 Filed 7–31–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Advance Request for Proposals (Advance RFP) Inviting Applications for Agriculture Innovation Center Demonstration Program Grants

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBS or Agency) provides advance notice of the possible availability of up to $10,000,000 in fiscal year (FY) 2003 to fund the establishment of agriculture innovation centers that are to provide assistance to agriculture producers in the development of value-added businesses. Availability of FY 2003 funding is contingent on the publication of the final Agriculture Innovation Centers grant regulation in FY 2003 with sufficient time for applications to be submitted and acted on by the Agency during FY 2003. We anticipate that the publication date for the related final rule will provide a very limited amount of time to submit applications.

Accordingly, this Advance RFP lists the information needed to submit an application for these funds to the extent the details can be provided today; the deadline for receipt and any substantive changes required by the final rule will be the subject of a future notice published as part of the final rule or in a contemporaneously published notice.

DATES: The deadline for receipt of an application is 4 p.m. e.s.t. on date which is five days after the publication date of the related final Agriculture Innovation Center rule in the **Federal Register**.

ADDRESSES: Hand-delivered applications or applications submitted using an express mail or overnight courier service should be sent to: Marc Warman, USDA Rural Business-Cooperative Service, 1400 Independence Ave., SW., Room 4016, Washington, DC 20250; Telephone: (202) 720–8460. Applications sent via the U.S. Postal Service must be sent to: Marc Warman, USDA Rural Business-Cooperative Service, STOP 3252, 1400 Independence Ave., SW., Washington, DC 20250–3252. Applications sent via e-mail attachment must be sent to: *marc.warman@usda.gov.* Please note that due to recent security concerns, packages sent to the Agency have suffered significant delays. Entities wishing to apply for assistance should contact Marc Warman to receive further information and copies of the application package.

FOR FURTHER INFORMATION CONTACT: Jim Haskell, Acting Deputy Administrator, Rural Business-Cooperative Service, USDA, Stop 3250, Room 4016, 1400 Independence Ave., SW., Washington, DC 20250–3250, telephone: (202) 720–8460, or e-mail: *james.haskell@usda.gov.*

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Approval for the information collection requirements described in this Advance RFP was requested of the Office of Management and Budget (OMB) pursuant to a new collection request submitted before the publication of a related proposed rulemaking to provide for the policies and procedures relating, in part, to the agriculture innovation center demonstration program. This proposed regulation, and the related notice and request for comment on this information collection were published in the **Federal Register** on June 13, 2003, at 68 FR 35321 ("Proposed Rule"). An OMB control number would ordinarily be published concurrent with publication of the related final rule ("Final Rule") after consideration of comments received in response to this paperwork notice. Accordingly, no OMB control number has been assigned at this time and the paperwork requirements included in this Advance RFP will not be effective until such time as the collection is approved and the control number assigned.

The deadline for the receipt of the application materials set forth in this RFP may not be earlier than the date the information collection is approved and the Final Rule is published. There is no guarantee that the information collection will be approved or that the related Final Rule will be published in time to obligate the funds available for Fiscal Year 2003.

In the event that a final rule has been promulgated and the information collect has been approved by awards cannot be made by September 30, 2003, it is USDA's intention that applications submitted after the effective date of the final rule will be held and considered for the award of Fiscal 2004 funds if and when Fiscal 2004 funds become available for this purpose.

Notice of Intent To Participate; Relationship Between This Advance RFP and the Proposed Rule

The policies and procedures proposed for this new demonstration program are outlined in the Proposed Rule. This Advance RFP must be read in conjunction with the Proposed Rule. Until such time as the policies and procedures are published as a final rule and the associated paperwork requirements are approved OMB, RBS may not accept applications.

Parties interested in applying under this program are encouraged, but not required, to send a notice of intent to participate to the Agency conforming to the suggested template provided at the end of this Advance RFP ("Notice of Intent"). Those who submit a Notice of Intent will be sent an e-mail or fax by the Agency when the Final Rule is published and the Agency will accept applications. Submission of a Notice of Intent does not obligate a prospective applicant to apply. If a prospective applicant elects to avail themselves of this courtesy notification, the Notice of Intent to participate must be e-mailed to *marc.warman@usda.gov.*

This Advance RFP calls for applications that meet the requirements published in the Proposed Rule and includes cross references to the Proposed Rule in order to minimize a duplication of published material. In the event the RBS is not able to timely obligate FY 2003 funds, applications received will be held for consideration for FY 2004 funding as and when available. It is not contemplated that a revised RFP will be issued for FY 2004 except as provided below. Only applications that are timely received in response to this Advance RFP will be eligible for either FY 2003 or FY 2004 funding, as applicable.

In the event the Agency is successful in making FY 2003 awards, and is later in a position to make FY 2004 awards, a new RFP will be issued for FY 2004 funding. Applications received in response to this Advance RFP will be held and considered for FY 2004 funding if and only if it is not possible to make timely FY 2003 awards.

Performance Criteria

The Proposed Rule contemplates that applicants will be asked to suggest performance goals against which the performance of their Centers and successes of their value added projects are to be measured. The Proposed Rule also sets forth evaluation criteria that are to be used in evaluating grant applications. It provides that a given RFP may supplement these evaluation

criteria. In this Advance RFP, USDA has included one supplemental evaluation criterion. This evaluation criterion looks at the quality of the performance criteria suggested by the applicant for evaluating the success of the proposed Center. Criteria which are ambitious, readily quantifiable and reflect serious consideration and seriousness of purpose will result in more points scored than proposed performance criteria that are superficial, reflect little or no challenge, and do not incorporate variables that reflect value-added results.

Background

Section 6402 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) (2002 Farm Bill) authorizes the Secretary of Agriculture to establish up to 10 agriculture innovation demonstration centers (Agriculture Innovation Centers or AICs) in Fiscal Year 2003. The purpose of these centers is to foster the ability of agricultural producers to reap the benefits of producing and marketing value-added products.

The Proposed Rule sets forth the proposed policies and procedures for this program. The Agency has elected not to wait until publication of a Final Rule before publishing this Advance RFP in order to alert potential applicants of the anticipated limited timing for the filing of application packages so as to maximize the possibility of awarding grants in FY 2003. While comments to the Proposed Rule may effect substantive changes to the final promulgated rule, it is the intention of this Advance RFP to give potential applicants as much lead time as possible to develop applications.

Restrictions on Awards

1. RBS will not make more than ten grant awards for FY 2003.

2. RBS will not make a grant to more than one entity in any one State.

3. A grant award may not exceed the lesser of $1,000,000 or twice the dollar amount (in cash or in kind) of the resources committed to the Center's operations apart from the program grant funds.

Evaluation Criteria and Weights

The reader is referred to the Proposed Rule for the proposed evaluation criteria listed there. Each criterion may be awarded up to five (5) points. This Advance Request for Proposals provides for the following, seventh, evaluation criterion:

Performance Criteria

Criteria suggested by the applicant pursuant to proposed § 4284.1009(c)(5)(v) that are ambitious, relevant and quantifiable and reflect serious consideration and seriousness of purpose will score more points than superficial performance criteria that reflect little or no challenge or that do not incorporate variables that reflect value-added results.

In the event of a tied score between two or more applications, the scores for the first individual criterion listed in the Proposed Rule will be compared, and the highest score for that individual criterion will break the tie. If the scores for the first criterion are tied, the scores for the second criterion will be compared, and so on.

Contents of Application Package

Under the Proposed Rule at § 4284.1009, applicants must file an original and one copy of the required forms and proposal.

Form of Submission

After the information collection has been approved by OMB and the Proposed Rule becomes final, applicants are encouraged, but not required, to submit applications and reports in electronic form. A complete, original application may be electronically sent as an e-mail attachment to *marc.warman@usda.gov*. If applications are submitted electronically, a signature page must be submitted via facsimile to the attention of Marc Warman at (202) 720–4641 or in hard copy to Marc Warman at the address provided at the beginning of this notice. Alternatively, an original application package plus one paper copy may be submitted to the addresses provided at the beginning of this notice.

Dated: July 25, 2003.

Thomas C. Dorr

Under Secretary, Rural Development.

Notice of Intent To Participate Suggested Template

Agriculture Innovation Center Grant Program

The undersigned hereby expresses interest in applying for an agriculture innovation center grant pursuant to the Request for Proposals published by the USDA Rural Business-Cooperative Service (RBS) for Fiscal Year 2003. The purpose of this notice is solely to facilitate courtesy communication from RBS regarding the publication timing of the anticipated Final Rulemaking related to the Agriculture Innovation Center Grant Program.

Applicant Entity: _____

Applicant Address: _____

_____

Applicant Telephone: _____

Name of Individual Representative: _____

Title: _____

Firm (if different from the Applicant): _____

Address (if different than the Applicant): _____

_____

The applicant must indicate the method by which notification will be sent and the complete address. Choose only one method. The Agency will not be responsible for any failure of the applicant to receive notifications sent by the selected method.

Telephone: _____

Email: _____

Fax number:

(Attention): _____

[FR Doc. 03–19618 Filed 7–31–03; 8:45 am]

BILLING CODE 3410–XY–Y

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition and Deletions

AGENCY: Committee for Purchase from people Who Are Blind or Severely Disabled.

ACTION: Additions to deletions from procurement list.

SUMMARY: This action adds to the Procurement List a product to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities, and deletes from the Procurement List services previously furnished by such agencies.

EFFECTIVE DATE: August 31, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions

On May 30, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 FR 32458) of proposed addition to the Procurement List. After consideration of the material presented to it concerning capability of the qualified nonprofit agency to provide the product and impact of the addition on the current or most recent contractor, the Committee has determined that the product list below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product to the Government.

2. The action will result in authorizing small entities to furnish the product to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product proposed for addition to the Procurement List.

(End of Certification)

Accordingly, the following product is added to the Procurement List:

Product

Product/NSN: Belt, Women's Cotton Web, Black w/Gold Clip, 8445–01–501–0232.

NPA: Travis Association for the Blind, Austin, Texas.

Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

Deletions

On May 30, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 FR 32459) of proposed deletions to the Procurement List. After consideration of the relevant matter presented, the committee has determined that the services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services deleted from the Procurement List.

Accordingly, the following services are deleted from the Procurement List:

Services

Service Type/Location: Janitorial/Custodial, Petroglyph National Monument Headquarters, 6001 Unser Boulevard NW, Albuquerque, New Mexico.

NPA: RCI, Inc., Albuquerque, New Mexico.

Contract Activity: Department of Interior.

Service Type/Location: Janitorial/Custodial, Social Security Administration, Data Operations Center and Annex, Albuquerque, New Mexico.

NPA: Adelante Development Center, Inc., Albuquerque, New Mexico.

Contract Activity: Social Security Administration, Baltimore, Maryland.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–19629 Filed 7–31–03; 8:45 am]

BILLING CODE 6353–01–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Addition and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a service to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

DATES: Comments must be received on or before August 31, 2003.

ADDRESSES: Committee for Purchase from People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Addition

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each service will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

(End of Certification)

The following service is proposed for addition to Procurement List for production by the nonprofit agency listed:

Service

Service Type/Location: Administrative Service, Federal Office Building, Martinsburg, West Virginia.
NPA: Job Squad, Inc., Clarksburg, West Virginia.
Contract Activity: GSA, Public Buildings Service, Philadelphia, Pennsylvania.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action will result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-

O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

(End of Certification)

The following products are proposed for deletion from the Procurement List:

Products

Product/NSN: Cushion, Chair, 7210–00–205–1173, 7210–00–205–1175.
NPA: None currently authorized.
Contract Activity: GSA, Southwest Supply Center, Fort Worth, Texas.
Product/NSN: Gown, Patient Examining, 6532–00–421–7828.
NPA: Riverside Industries, Inc., Easthampton, Massachusetts.
Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.
Product/NSN: Sheet, Bed—Disposable, 7210–00–144–6082.
NPA: Riverside Industries, Inc., Easthampton, Massachusetts.
Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 03–19628 Filed 7–31–03; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (2002) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review: Not later than the last day of August 2003, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in August for the following periods:

	Period
Antidumping Duty Proceeding	
Argentina: Oil Country Tubular Goods, A–357–810	8/1/02—7/31/03
Argentina: Seamless Line and Pressure Pipe, A–357–809	8/1/02—7/31/03
Australia: Corrosion-Resistant Carbon Steel Flat Products, A–602–803	8/1/02—7/31/03
Belgium: Cut-to-Length Carbon Steel Plate, A–423–805	8/1/02—7/31/03
Brazil: Cut-to-Length Carbon Steel Plate A–351–817	8/1/02—7/31/03
Brazil: Seamless Line and Pressure Pipe, A–351–826	8/1/02—7/31/03
Canada: Corrosion-Resistant Carbon Steel Flat Products, A–122–822	8/1/02—7/31/03
Canada: Pure Magnesium, A–122–814	8/1/02—7/31/03
Czech Republic: Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4½ Inches), A–851–802	8/1/02—7/31/03
Finland: Cut-to-Length Carbon Steel Plate, A–405–802	8/1/02—7/31/03
France: Corrosion-Resistant Carbon Steel Flat Products, A–427–808	8/1/02—7/31/03
France: Industrial Nitrocellulose, A–427–009	8/1/02—7/31/03
Germany: Corrosion-Resistant Carbon Steel Flat Products, A–428–815	8/1/02—7/31/03
Germany: Cut-to-Length Carbon Steel Plate, A–428–816	8/1/02—7/31/03
Germany: Seamless Line and Pressure Pipe, A–428–820	8/1/02—7/31/03
Italy: Grain Oriented Electrical Steel, A–475–811	8/1/02—7/31/03
Italy: Oil Country Tubular Goods, A–475–816	8/1/02—7/31/03
Italy: Granular Polytetrafluoroethylene Resin, A–475–703	8/1/02—7/31/03
Japan: Brass Sheet & Strip, A–588–704	8/1/02—7/31/03
Japan: Corrosion-Resistant Carbon Steel Flat Products, A–588–824	8/1/02—7/31/03
Japan: Oil Country Tubular Goods, A–588–835	8/1/02—7/31/03
Japan: Granular Polytetrafluoroethylene Resin, A–588–707	8/1/02—7/31/03
Japan: Tin Mill Products, A–588–854	8/1/02—7/31/03
Mexico: Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Over 4½ Inches), A–201–827	8/1/02—7/31/03
Mexico: Gray Portland Cement and Cement Clinker, A–201–802	8/1/02—7/31/03
Mexico: Cut-to-Length Carbon Steel Plate, A–201–809	8/1/02—7/31/03
Mexico: Oil Country Tubular Goods, A–201–817	8/1/02—7/31/03
Poland: Cut-to-Length Carbon Steel Plate, A–455–802	8/1/02—7/31/03
Republic of Korea: Corrosion-Resistant Carbon Steel Flat Products, A–580–816	8/1/02—7/31/03
Republic of Korea: Oil Country Tubular Goods, A–580–825	8/1/02—7/31/03
Republic of Korea: Structural Steel Beams, A–580–841	8/1/02—7/31/03
Romania: Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4½ Inches), A–485–805	8/1/02—7/31/03
Romania: Cut-to-Length Carbon Steel Plate, A–485–803	8/1/02—7/31/03
Spain: Cut-to-Length Carbon Steel Plate, A–469–803	8/1/02—7/31/03
Sweden: Cut-to-Length Carbon Steel Plate, A–401–805	8/1/02—7/31/03
The People's Republic of China: Petroleum Wax Candles A–570–504	8/1/02—7/31/03
The People's Republic of China: Sulfanilic Acid, A–570–815	8/1/02—7/31/03
The United Kingdom: Cut-to-Length Carbon Steel Plate, A–412–814	8/1/02—7/31/03
Turkey: Aspirin, A–489–602	8/1/02—7/31/03
Countervailing Duty Proceedings	
Belgium: Cut-to-Length Carbon Steel Plate, C–423–806	1/1/02—12/31/02
Brazil: Cut-to-Length Carbon Steel Plate, C–351–818	1/1/02—12/31/02
Canada: Pure Magnesium, C–122–815	1/1/02—12/31/02
Canada: Alloy Magnesium, C–122–815	1/1/02—12/31/02

	Period
France: Corrosion-Resistant Carbon Steel, C–427–810	1/1/02—12/31/02
France: Stainless Steel Sheet and Strip in Coils, C–427–815	1/1/02—12/31/02
Germany: Corrosion-Resistant Carbon Steel, C–428–817	1/1/02—12/31/02
Germany: Cut-to-Length Carbon Steel Plate, C–428–817	1/1/02—12/31/02
Italy: Oil Country Tubular Goods, C–475–817	1/1/02—12/31/02
Italy: Stainless Steel Sheet and Strip in Coils, C–425–825	1/1/02—12/31/02
Mexico: Cut-to-Length Carbon Steel Plate, C–201–810	1/1/02—12/31/02
Republic of Korea: Corrosion-Resistant Carbon Steel Plate, C–580–818	1/1/02—12/31/02
Republic of Korea: Stainless Steel Sheet and Strip in Coils, C–580–835	1/1/02—12/31/02
Republic of Korea: Structural Steel Beams, C–580–841	1/1/02—12/31/02
Spain: Cut-to-Length Carbon Steel Plate, C–469–804	1/1/02—12/31/02
Sweden: Cut-to-Length Carbon Steel Plate, C–401–804	1/1/02—12/31/02
The United Kingdom: Cut-to-Length Carbon Steel Plate, C–412–815	1/1/02—12/31/02

Suspension Agreements

None.

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 69 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. See also the Import Administration Web site at *http://www.ia.ita.doc.gov*.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(1)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of August 2003. If the Department does not receive, by the last day of August 2003, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: July 28, 2003.

Holly A. Kuga,
Acting Deputy Assistant Secretary, Group II, for Import Administration.
[FR Doc. 03–19648 Filed 7–31–03; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Five-Year (Sunset) Reviews.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating five-year ("sunset") reviews of the antidumping and countervailing duty orders listed below. The International Trade Commission ("the Commission") is publishing concurrently with this notice its notice of *Institution of Five-Year Review*, which covers these same orders.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–5050, or Mary Messer, Office of Investigations, U.S. International Trade Commission, at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of sunset reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating sunset reviews of the following antidumping and countervailing duty orders:

	DOC case No.	ITC case No.	Country	Product
A–475–820		731-TA–770	Italy	Stainless Steel Wire Rod.
C–475–821		701-TA–373	Italy	Stainless Steel Wire Rod.
A–588–843		731-TA–771	Japan	Stainless Steel Wire Rod.
A–580–829		731-TA–772	South Korea	Stainless Steel Wire Rod.
A–469–807		731-TA–773	Spain	Stainless Steel Wire Rod.
A–401–806		731-TA–774	Sweden	Stainless Steel Wire Rod.
A–583–828		731-TA–775	Taiwan	Stainless Steel Wire Rod.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the Department's regulations regarding sunset reviews (19 CFR 351.218) and *Sunset Policy Bulletin*, the Department's schedule of sunset reviews, case history information (*i.e.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists, available to the public on the Department's sunset Internet website at the following address: *http://ia.ita.doc.gov/sunset/*.

All submissions in these sunset reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303. Also, we suggest that parties check the Department's sunset website for any updates to the service list before filing any submissions. The Department will make additions to and/or deletions from the service list provided on the sunset website based on notifications from parties and participation in this review. Specifically, the Department will delete from the service list all parties that do not submit a substantive response to the notice of initiation.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties (defined in 19 CFR 351.102(6)) wishing to participate in these sunset reviews must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the sunset review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic interested parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: July 29, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Grant Aldonas, Undersecretary.

[FR Doc. 03–19649 Filed 7–31–03; 8:45 am]

BILLING CODE 3510–DS–P

[1] A number of parties commented that these interim-final regulations provided insufficient time for rebuttals to substantive responses to a notice of initiation. 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration, National Marine Fisheries Service

[I.D. 072403C]

Availability of the Humboldt Bay Municipal Water District Habitat Conservation Plan for its Mad River Operations, Implementation Agreement, and Draft Environmental Assessment, Humboldt County, California

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Availability; request for comments.

SUMMARY: The Humboldt Bay Municipal Water District of Humboldt County, California (District) has applied for an Incidental Take Permit (ITP) from the National Marine Fisheries Service (NMFS) pursuant to the Endangered Species Act, as amended (ESA). In conjunction with this application, the District has prepared a Habitat Conservation Plan for its Mad River Operations (Plan) and an Implementation Agreement (IA). NMFS has prepared and announces the availability of a draft Environmental Assessment (EA) for the District's ITP application. The District's ITP application is related to their managed release and diversion of flow in the Mad River, located in Humboldt County, CA, and to their operation and maintenance of facilities associated with this activity. The duration of the proposed ITP and Plan is 50 years.

NMFS is providing this notice in order to allow other agencies and the public an opportunity to review and comment on the ITP application, Plan, IA, and draft EA, to scope alternatives and impacts to be considered, and to comment on effects to cultural and historic properties. All comments received will become part of the public record and will be available for review pursuant to the ESA.

DATES: Public meetings will be held on August 20, 2003, from 1 p.m. to 3 p.m. and 5 p.m. to 7 p.m. in Eureka, CA. Written comments on the ITP application, Plan, IA, and draft EA, the scope of alternatives and impacts, and effects to cultural and historic properties must be received on or before September 2, 2003 to be considered.

ADDRESSES: Public meetings will be held at the District office, located at 828 Seventh Street, Eureka, CA 95501. Oral and written comments will be received at the meetings. Written comments may also be sent to Mr. Sam Flanagan, National Marine Fisheries Service, 1655 Heindon Road, Arcata, CA 95521 or sent by facsimile to (707) 825–4840. NMFS will not accept comments via the Internet. Documents are available for viewing and download on the Internet at *http://swr.nmfs.noaa.gov* or may be obtained by calling NMFS at (707) 822–7201. Hard bound copies are also available for viewing, or partial or complete duplication at several Humboldt and Trinity county libraries. See the Supplementary Information section of this notice for a list of libraries and their locations.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Flanagan, NMFS Southwest Region, Protected Resources Division, (707) 825–5173.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the "taking" of a species listed as endangered or threatened. The term take is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Harm is defined by NMFS to include significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, feeding, and sheltering (50 CFR 222.102).

Two types of permits may be issued by NMFS under section 10(a) of the ESA to non-Federal landowners to take listed species, under certain terms and conditions. These regulations governing NMFS' permits for threatened and endangered species are promulgated at 50 CFR 222.307. The first of these permits is the Enhancement of Survival Permit, which is authorized under section 10(a)(1)(A) of the ESA. The second of these permits is the ITP, which is authorized under section 10(a)(1)(B) of the ESA.

An application for an ITP must be accompanied by a Habitat Conservation Plan for which the Secretary of Commerce finds that: (1) the taking will be incidental; (2) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking; (3) the applicant will ensure that adequate funding for the conservation plan will be provided; (4) the taking will not appreciably reduce the likelihood of survival and recovery of the species in the wild; and (5) such other measures NMFS may require as necessary or appropriate for the purposes of the HCP. HCPs can address both listed and currently unlisted species.

The District has applied to NMFS for an ITP under Section 10(a)(1)(B) of the ESA for its Mad River operations. The District is the sole supplier of domestic and "raw" industrial water to the greater Humboldt Bay area. The District sells treated water for domestic consumption on a wholesale basis to the cities of Eureka, Arcata, and Blue Lake, and to the Humboldt, McKinleyville, Fieldbrook, and Manila Community Services Districts. The District also sells untreated "raw" water on a wholesale basis to industrial users on the Samoa Peninsula, located on the north spit of Humboldt Bay. The District obtains its water through diversions from the Mad River.

The District's diversion facilities are located approximately 8 river miles (13 km) upstream from the mouth of the Mad River, near the town of Essex. The District diverts water utilizing two separate systems: (1) A domestic system, which supplies treated drinking water; and (2) an industrial system, which supplies untreated "raw" water. Water for the domestic system is withdrawn using four Ranney collectors situated in the Mad River. These collectors withdraw subsurface water from 60 to 90 ft (18 to 27 m) below the surface of the river bed. Water for the industrial system is withdrawn using a surface diversion facility referred to as Station 6. The District also manages flow releases from Matthews Dam at Ruth Lake, a 48,000 acre-feet (592 million Hectoliter) reservoir located approximately 85 river miles (137 km) upstream from the mouth of the Mad River. The District releases water from Matthews Dam during the low flow summer months to meet its diversion needs at the Essex facilities and its in-stream flow obligations below the Essex facilities.

The District has developed the Plan, with technical assistance from NMFS, to obtain an ITP for their activities related to the diversion of water from the Mad River. Activities proposed for ITP coverage include: (1) Releasing flow from Matthews Dam; (2) maintaining adequate capacity in the Matthews Dam tailrace and spillway pools; (3) diverting water from the Mad River in the vicinity of Essex (subsurface via Ranney collectors and surface via direct diversion facility (Station 6)); (4) gaining access to and maintaining Ranney collectors; (5) operation of Station 6 and its associated fish screens; (6) dredging the Station 6 forebay; (7) maintaining adequate flow to Station 6; (8) maintaining adequate water surface elevation at Station 6 during low flow months; (9) protecting banks and structures by repairing existing rock structures and/or revetments; and (10) bypassing flows below diversion facilities in the vicinity of Essex. The ITP and Plan will also cover required monitoring activities. The duration of the proposed ITP and Plan is 50 years.

The proposed ITP would authorize take, incidental to otherwise lawful activities, of fish in three evolutionarily significant units (ESUs) that are currently listed as threatened: the California Coastal chinook salmon (Oncorhynchus tshawytscha) ESU (CC chinook), the Southern Oregon/Northern California Coasts coho salmon (O. kisutch) ESU (SONCC coho), and the Northern California steelhead (O. mykiss) ESU (NC steelhead). NMFS anticipates implementation of the Plan may result in take of juvenile CC chinook, SONCC coho, and NC steelhead in the form of impingement or entrainment during diversion of surface flow and stranding, crushing, entombment, or modification of rearing habitat as a result of instream construction and operation of equipment.

NMFS prepared a draft Environmental Assessment concerning the proposed Plan and ITP and has made a preliminary determination that preparation of an Environmental Impact Statement is not necessary.

NMFS invites comment on the Plan, IA, and draft EA, the scope of alternatives and impacts to be considered, and effects to cultural and historic properties during the 30–day comment period which ends September 2, 2003. Comments should focus on the merits of the Plan, IA, and draft EA, ITP issuance requirements, the scope of alternatives and impacts to be considered, and effects to cultural and historic properties. Comments on other issues will be considered as beyond the scope of the decision associated with the ITP and Plan.

Hard bound copies of the ITP Application, Plan, IA, and draft EA are also available for viewing, or partial or complete duplication at the following libraries: (1) Eureka Main Library,1313 Third Street, Eureka, CA; Telephone (707) 269–1900; (2) Fortuna Branch, Humboldt County Library; 775

Fourteenth Street, Fortuna, CA; Telephone (707) 725–3460; (3) Arcata Branch, Humboldt Library, 500 Seventh Street, Arcata, CA; Telephone (707) 822–5954; (4) Weaverville Branch, Trinity Library, 211 North Main St., Weaverville, CA; Telephone (530) 623–1373; 5) Hayfork Branch, Trinity Library, Hyampom Rd., Hayfork, CA; Telephone (530) 628–5427. These documents are also available on the Internet at *http://swr.nmfs.noaa.gov*.

This notice is provided pursuant to section 10(c) of the ESA, National Environmental Policy Act (NEPA) regulations, and National Historic Preservation Act (NHPA) regulations. NMFS will evaluate the ITP application, associated documents, and submitted comments to determine whether the ITP application and associated documents meet the requirements of the ESA, NMFS' regulations for implementing NEPA (40 CFR 1506.6), and NHPA section 106 regulations (36 CFR 800). NMFS is furnishing this notice to allow other agencies and the public an opportunity to review and comment on these documents, to scope alternatives and impacts to be considered, and comment on effects to cultural and historic properties. All comments received will be available for review pursuant to section 10(c) of the ESA. The final ITP decision will be made no sooner than 30 days after date of publication of this notice in the **Federal Register**.

July 28, 2003.

Laurie K. Allen,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–19634 Filed 7–31–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072503B]

Vessel Monitoring Systems (VMS); Pilot Program for Testing of VMS Unit for Certification in Northeast Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Request for participants in a pilot program.

SUMMARY: NMFS' Northeast Office for Law Enforcement (OLE) is seeking potential participants for a voluntary, limited-duration pilot program to field test the Thrane & Thrane TT–3026M VMS unit currently being considered for certification for use in Northeast fisheries that require the use of VMS units for reporting and monitoring of fishing activity.

DATES: Individuals interested in participating in this pilot program should apply by August 29, 2003.

ADDRESSES: Application information may be obtained from and applications should be submitted to: Northeast Office for Law Enforcement, National Marine Fisheries Service, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "VMS Pilot Program." Or, you may fax an application to: 978–281–9317.

FOR FURTHER INFORMATION CONTACT: Northeast Office for Law Enforcement, VMS Program, at 978–281–9213.

SUPPLEMENTARY INFORMATION: Regulations at 50 CFR 648.9 set forth VMS requirements for fisheries in the northeastern United States that require the use of VMS for fishery monitoring and/or reporting. Specifically, § 648.9(b) lists minimum VMS performance criteria that a VMS unit must meet in order to be certified for use. If and when a new or modified unit becomes available, the Administrator, Northeast Region, NMFS (Regional Administrator) may, under the provisions of § 648.9(a), certify that unit for use, if it meets the minimum performance criteria.

The Thrane & Thrane TT–3026M VMS unit is being evaluated for certification in Northeast fisheries that require the use of VMS. In order to provide field-testing information to the Regional Administrator, OLE has designed a voluntary pilot program. Specific focus of the pilot program will be the at-sea testing on the setting of the Days-at-Sea (DAS) activity codes using the freeform e-mail capability of the TT–3026M unit.

The pilot program duration will be from 30 to 60 days, and will utilize six vessels of various sizes and configurations in the Northeast multispecies (groundfish) and Atlantic sea scallop fisheries. One unit has already been installed and activated on a local groundfish vessel that will be included in the pilot program. Therefore, five additional vessels are being sought to participate in the pilot program. Participant selection will be based upon vessel length, mast configuration, available power sources, principal port, permit type, personal computer (PC) knowledge level of the operator, and the anticipated fishing activity during the pilot program period. Applicants for the pilot program may provide this information to OLE by requesting, completing and returning a single-page application (see **ADDRESSES**). All expenses related to the installation and operation of the unit, within the scope of the pilot program, will be paid by OLE.

Once participant selection is finalized, the VMS units will be installed on selected vessels in accordance with the manufacturer's guidelines; using local marine electronic vendors. The installer will be required to make the appropriate connections to the PC onboard the vessel and to load the easyMail software, which comes with the TT–3026M. OLE will provide laptop PCs for those vessels that do not already have PCs on board. Once the VMS unit is installed and powered up, the installer will send a test message to OLE and then contact the OLE VMS staff to verify that the message was received and that the VMS unit is operating normally.

The vessel operator will be provided an information packet from OLE that contains instructions for communications with OLE via the VMS unit and step-by-step instructions for sending and receiving activity code changes via the easyMail program. OLE will also provide contact information, so that unforeseen difficulties with the VMS unit or software can be resolved in a timely manner. A test script will be provided to the pilot program vessels to test specific functionality of the system used by OLE to process DAS Activity Code changes. OLE will review the test results and perform any necessary system adjustments.

At the conclusion of the pilot program, interviews with the vessel operators will be conducted to solicit feedback and to obtain suggestions for system changes or enhancements. The VMS unit, along with any ancillary equipment, will be removed from the vessel. The vessel owner will have the option of retaining the control cable, if so desired; otherwise, it will be removed.

Dated: July 28, 2003.

Bruce G. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–19636 Filed 7–31–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.102000B]

Endangered Species; Permit No. 1144

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Scientific research permit modification.

SUMMARY: Notice is hereby given that a request for modification of scientific research permit no. 1144 submitted by Michael Bresette has been granted.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289, fax (301)713–0376;

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Patrick Opay, (301)713–1401 or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: The requested amendment has been granted under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the provisions of 50 CFR 222.306 of the regulations governing the taking, importing, and exporting of endangered and threatened fish and wildlife (50 CFR 222–226).

The modification extends the expiration date of the Permit from July 31, 2003, to July 31, 2004, for takes of green (*Chelonia mydas*), loggerhead (*Caretta caretta*), and Kemp's ridley (*Lepidochelys kempii*) sea turtles. It also updates Special Condition C.10. (the net check interval) and adds Special Condition C.12 (sterile research procedures) to the permit to reflect current recommended protocols in order to ensure the safety and health of the sea turtles taken by the research activities.

Issuance of this amendment, as required by the ESA was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the threatened and endangered species which are the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 28, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–19635 Filed 7–31–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by September 2, 2003.

Title, Forms, and OMB Number: Medical Screening of Military Personnel; DD Form 2807–1 and DD Form 2807–2; OMB Number 0704–0413.

Type of Request: Extension.

Number of Respondents: 850,000.

Responses Per Respondent: 1.

Annual Responses: 850,000.

Average Burden Per Response: 10 minutes.

Annual Burden Hours: 135,833.

Needs and Uses: Title 10 U.S.C. 504, 505, 507, 532, 978, 1201, 1202, and 4346, require military applicants to meet medical accession standards for enlistment, induction, and appointment to the Armed Forces. This information collection is the basis for determining medical eligibility of applicants for entry in the Armed Forces. Information is needed to determine the medical qualifications of applicants based upon their current and past medical history. The DD Form 2807–1, "Report of Medical History" and the DD Form 2807–2, "Medical Prescreen of Medical History Report," will be the forms used to collect the necessary data needed from the military applicants to elicit a more accurate picture of their well being and medical history. The information obtained on the DD Form 2807–2 will also identify any medical disqualifying condition(s) prior to the application process and meets the Congressional requirements to obtain the applicant's Health Care provider and Insurance provider.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jackie Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing. Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: July 25, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–19547 Filed 7–31–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Advisory Panel To Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the next meeting of the Panel To Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction. Notice of this meeting is required under the Federal Advisory Committee Act. (Pub. L. 92–463).

DATES: September 3–4, 2003.

ADDRESSES: 3650 Schriever Avenue, Mather, CA 19406.

FOR FURTHER INFORMATION CONTACT: RAND provides information about this Panel on its Web site at *http://www.rand.org/organization/nsrd/terrpanel;* it can also be reached at (703) 413–1100, extension 5683.

SUPPLEMENTARY INFORMATION:

Proposed Schedule and Agenda

Panel To Assess the Capabilities for Domestic Response to Terrorist Attacks Involving Weapons of Mass Destruction will meet from 9 a.m. until 5 p.m. on September 3, 2003 and from 8:30 a.m. until 12 p.m. on September 4, 2003. Time will be allocated for public comments by individuals or organizations at the end of the meeting on September 4.

Public comment presentations will be limited to two minutes each and must be provided in writing prior to the meeting. Mail written presentations and requests to register to attend the open public session to: Hillary Peck, RAND, 1200 South Hayes Street, Arlington, VA 22202–5050. Public seating for this meeting is limited, and is available on a first-come, first-served basis.

Dated: July 25, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–19550 Filed 7–31–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

DATES: September 10, 2003 from 8 a.m. to 5:35 p.m.; September 11, 2003 from 8 a.m. to 4:15 p.m. and September 12, 2003 from 8 a.m. to 2:20 p.m.

ADDRESSES: SERDP Program Office, 901 North Stuart Street, Suite 804, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Ms. Veronica Rice, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2119.

SUPPLEMENTARY INFORMATION:

Matters To Be Considered

Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

Dated: July 25, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–19548 Filed 7–31–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of revised non-foreign overseas per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 233. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 233 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

DATES: August 1, 2003.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 232. Distribution of Civilian Personnel Per Diem Bulletins by main was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows:

Dated: July 24, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
THE ONLY CHANGES IN CIVILIAN BULLETIN 233 ARE CORRECTIONS TO M&IE RATES FOR ANCHORAGE, ALASKA AND UPDATES TO THE RATES FOR THE VIRGIN ISLANDS.						
ALASKA						
ADAK	120		79		199	07/01/2003
ANCHORAGE [INCL NAV RES]						
05/01 - 09/15	170		88		258	08/01/2003
09/16 - 04/30	85		81		166	08/01/2003
BARROW	159		95		254	05/01/2002
BETHEL	129		66		195	05/01/2002
CLEAR AB	80		55		135	09/01/2001
COLD BAY	90		73		163	05/01/2002
COLDFOOT	135		71		206	10/01/1999
COPPER CENTER						
05/16 - 09/15	109		63		172	07/01/2003
09/16 - 05/15	99		63		162	07/01/2003
CORDOVA	90		75		165	07/01/2003
CRAIG	100		53		153	04/01/2003
DEADHORSE	95		67		162	05/01/2002
DELTA JUNCTION	79		60		139	04/01/2003
DENALI NATIONAL PARK						
06/01 - 08/31	115		41		156	04/01/2003
09/01 - 05/31	80		38		118	04/01/2003
DILLINGHAM	95		69		164	05/01/2002
DUTCH HARBOR-UNALASKA	120		86		206	04/01/2003
EARECKSON AIR STATION	80		55		135	09/01/2001
EIELSON AFB						
05/01 - 09/15	149		83		232	04/01/2003
09/16 - 04/30	75		76		151	04/01/2003
ELMENDORF AFB						
05/01 - 09/15	170		88		258	08/01/2003
09/16 - 04/30	85		81		166	08/01/2003
FAIRBANKS						
05/01 - 09/15	149		83		232	04/01/2003
09/16 - 04/30	75		76		151	04/01/2003
FOOTLOOSE	175		18		193	06/01/2002
FT. GREELY	79		60		139	04/01/2003
FT. RICHARDSON						
05/01 - 09/15	170		88		258	08/01/2003
09/16 - 04/30	85		81		166	08/01/2003
FT. WAINWRIGHT						
05/01 - 09/15	149		83		232	04/01/2003
09/16 - 04/30	75		76		151	04/01/2003
GLENNALLEN						
05/01 - 09/30	137		61		198	09/01/2001
10/01 - 04/30	89		56		145	09/01/2001
HEALY						
06/01 - 08/31	115		41		156	04/01/2003
09/01 - 05/31	80		38		118	04/01/2003
HOMER						

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
05/15 - 09/15	109	72	181	04/01/2003
09/16 - 05/14	76	68	144	04/01/2003
JUNEAU	99	75	174	04/01/2003
KAKTOVIK	165	86	251	05/01/2002
KAVIK CAMP	150	69	219	05/01/2002
KENAI-SOLDOTNA				
04/01 - 10/31	110	83	193	04/01/2003
11/01 - 03/31	69	75	144	04/01/2003
KENNICOTT	179	81	260	04/01/2003
KETCHIKAN				
05/01 - 09/30	110	82	192	04/01/2003
10/01 - 04/30	89	80	169	04/01/2003
KING SALMON				
05/01 - 10/01	225	91	316	05/01/2002
10/02 - 04/30	125	81	206	05/01/2002
KLAWOCK	100	53	153	04/01/2003
KODIAK	90	83	173	04/01/2003
KOTZEBUE				
05/01 - 08/31	141	91	232	04/01/2003
09/01 - 04/30	125	89	214	04/01/2003
KULIS AGS				
05/01 - 09/15	170	88	258	08/01/2003
09/16 - 04/30	85	81	166	08/01/2003
MCCARTHY	179	81	260	04/01/2003
METLAKATLA				
05/30 - 10/01	98	48	146	05/01/2002
10/02 - 05/29	78	47	125	05/01/2002
MURPHY DOME				
05/01 - 09/15	149	83	232	04/01/2003
09/16 - 04/30	75	76	151	04/01/2003
NOME	115	91	206	04/01/2003
NUIQSUT	180	53	233	05/01/2002
POINT HOPE	130	70	200	03/01/1999
POINT LAY	105	67	172	03/01/1999
PORT ALSWORTH	135	88	223	05/01/2002
PRUDHOE BAY	95	67	162	05/01/2002
SEWARD				
05/01 - 09/30	189	67	256	06/01/2003
10/01 - 04/30	79	56	135	06/01/2003
SITKA-MT. EDGECUMBE				
05/01 - 09/30	110	81	191	06/01/2003
10/01 - 04/30	99	80	179	06/01/2003
SKAGWAY				
05/01 - 09/30	110	82	192	04/01/2003
10/01 - 04/30	89	80	169	04/01/2003
SPRUCE CAPE	90	83	173	04/01/2003
ST. GEORGE	105	55	160	05/01/2003
TALKEETNA	100	89	189	07/01/2002
TANANA	115	91	206	04/01/2003
TOGIAK	100	39	139	07/01/2002

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
TOK				
05/01 - 09/30	81	76	157	04/01/2003
10/01 - 04/30	60	74	134	04/01/2003
UMIAT	150	98	248	04/01/2003
UNALAKLEET	79	80	159	04/01/2003
VALDEZ				
05/01 - 10/01	139	91	230	04/01/2003
10/02 - 04/30	79	86	165	04/01/2003
WAINWRIGHT	120	83	203	05/01/2002
WASILLA	99	68	167	04/01/2003
WRANGELL				
05/01 - 09/30	110	82	192	04/01/2003
10/01 - 04/30	89	80	169	04/01/2003
YAKUTAT	110	68	178	03/01/1999
[OTHER]	80	55	135	09/01/2001
AMERICAN SAMOA				
AMERICAN SAMOA	85	67	152	03/01/2000
GUAM				
GUAM (INCL ALL MIL INSTAL)	135	80	215	07/01/2003
HAWAII				
CAMP H M SMITH	112	82	194	05/01/2003
EASTPAC NAVAL COMP TELE AREA	112	82	194	05/01/2003
FT. DERUSSEY	112	82	194	05/01/2003
FT. SHAFTER	112	82	194	05/01/2003
HICKAM AFB	112	82	194	05/01/2003
HONOLULU (INCL NAV & MC RES CTR)	112	82	194	05/01/2003
ISLE OF HAWAII: HILO	100	80	180	06/01/2003
ISLE OF HAWAII: OTHER	150	79	229	06/01/2003
ISLE OF KAUAI	158	88	246	05/01/2003
ISLE OF MAUI	159	89	248	06/01/2002
ISLE OF OAHU	112	82	194	05/01/2003
KEKAHA PACIFIC MISSILE RANGE FAC	158	88	246	05/01/2003
KILAUEA MILITARY CAMP	100	80	180	06/01/2003
LANAI	395	138	533	05/01/2003
LUALUALEI NAVAL MAGAZINE	112	82	194	05/01/2003
MCB HAWAII	112	82	194	05/01/2003
MOLOKAI	101	98	199	05/01/2003
NAS BARBERS POINT	112	82	194	05/01/2003
PEARL HARBOR [INCL ALL MILITARY]	112	82	194	05/01/2003
SCHOFIELD BARRACKS	112	82	194	05/01/2003
WHEELER ARMY AIRFIELD	112	82	194	05/01/2003
[OTHER]	72	61	133	01/01/2000
JOHNSTON ATOLL				
JOHNSTON ATOLL	0	14	14	05/01/2002
MIDWAY ISLANDS				
MIDWAY ISLANDS [INCL ALL MILITAR	150	47	197	02/01/2000
NORTHERN MARIANA ISLANDS				
ROTA	129	88	217	07/01/2003
SAIPAN	121	90	211	07/01/2003
TINIAN	85	72	157	07/01/2003

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
[OTHER]	55	72	127	04/01/2000
PUERTO RICO				
BAYAMON				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
CAROLINA				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
FAJARDO [INCL CEIBA & LUQUILLO]	82	54	136	01/01/2000
FT. BUCHANAN [INCL GSA SVC CTR,				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
HUMACAO	82	54	136	01/01/2000
LUIS MUNOZ MARIN IAP AGS				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
MAYAGUEZ	85	59	144	01/01/2000
PONCE	96	69	165	01/01/2000
ROOSEVELT RDS & NAV STA	82	54	136	01/01/2000
SABANA SECA [INCL ALL MILITARY]				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
SAN JUAN & NAV RES STA				
04/11 - 12/23	155	71	226	01/01/2000
12/24 - 04/10	195	75	270	01/01/2000
[OTHER]	62	57	119	01/01/2000
VIRGIN ISLANDS (U.S.)				
ST. CROIX				
04/15 - 12/14	98	83	181	08/01/2003
12/15 - 04/14	135	87	222	08/01/2003
ST. JOHN				
04/15 - 12/14	110	91	201	08/01/2003
12/15 - 04/14	185	98	283	08/01/2003
ST. THOMAS				
04/15 - 12/14	163	95	258	08/01/2003
12/15 - 04/14	220	99	319	08/01/2003
WAKE ISLAND				
WAKE ISLAND	60	32	92	09/01/1998

[FR Doc. 03–19549 Filed 7–31–03; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF EDUCATION

[CFDA No. 84.170A]

Office of Postsecondary Education; Jacob K. Javits Fellowship Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Purpose of Program: The purpose of the Jacob K. Javits (JKJ) Fellowship Program is to award fellowships to eligible students of superior ability, selected on the basis of demonstrated achievement, financial need, and exceptional promise, to undertake graduate study in selected fields in the arts, humanities, and social sciences leading to a doctoral degree or to a master's degree in those fields in which the master's degree is the terminal highest degree awarded in the selected field of study at accredited institutions of higher education. The selected fields in the arts are: creative writing, music performance, music theory, music composition, music literature, studio arts (including photography), television, film, cinematography, theater arts, playwriting, screenwriting, acting, and dance. The selected fields in the humanities are: art history (including architectural history), archeology, area studies, classics, comparative literature, English language and literature, folklore, folk life, foreign languages and literature, history, linguistics, philosophy, religion, excluding study of religious vocation, speech, rhetoric, and debate. The selected fields in the social sciences are: anthropology, communications and media, economics, ethnic and cultural studies, geography, political science, psychology (excluding clinical psychology), public policy and public administration, and sociology (excluding the master's and doctoral degrees in social work).

Eligible Applicants: Individuals who at the time of application: (1) Have not completed their first full year of study for a doctoral degree or a master's degree in those fields in which the master's degree is the terminal highest degree awarded in the selected field of study, or (2) will be entering a doctoral degree program or a master's degree program in those fields in which the master's degree is the terminal highest degree awarded in the selected field of study in academic year 2004–2005; (3) are eligible to receive grant, loan, or work assistance pursuant to section 484 of the Higher Education Act, as amended; and, (4) intend to pursue a doctoral or master's degree in fields selected by the JKJ Fellowship Board at accredited U.S. institutions of higher education. An individual must be a citizen or national of the United States, a permanent resident of the United States, in the United States for other than a temporary purpose and intending to become a permanent resident, or a citizen of any one of the Freely Associated States.

Note: An individual who has had a JKJ Fellowship in any field of study is ineligible.

Applications Available: August 11, 2003.

Deadline for Transmittal of Applications: October 3, 2003 for the JKJ Fellowship Program. January 31, 2004 for the Free Application for Federal Student Aid (FAFSA).

Estimated Available Funds: $738,000.

Estimated Average Size of Awards: $42,000.

Estimated Number of Awards: 18.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75 (except as provided in 34 CFR 650.3(b)), 77, 82, 85, 86, 97, 98 and 99; and (b) the regulations for this program in 34 CFR part 650.

Performance Measures: The effectiveness of the JKJ Fellowship Program will be measured by the enrollment rate of talented graduate students, with demonstrated financial need, who are pursuing the highest degree available in their designated fields of study. Institutions of higher education wherein the fellows are enrolled will be expected to submit an annual report. This report will document the fellows' satisfactory academic progress and the determined financial need. The Department will use the reports to assess the program's success in assisting fellows in completing their course of study and receiving their degree.

SUPPLEMENTARY INFORMATION:

Stipend Level: The Secretary will determine the JKJ fellowship stipend for the academic year 2004–2005 based on the level of support provided by the National Science Foundation (NSF) graduate fellowships as of February 1, 2004, except that the amount will be adjusted as necessary so as not to exceed the JKJ fellow's demonstrated level of financial need.

Institutional Payment: The Secretary will determine the institutional payment for the 2004–2005 academic year by adjusting the previous academic year institutional payment, which is $11,296 per fellow, by the U.S. Department of Labor's Consumer Price Index for the 2003 calendar year. The institutional payment will be reduced by the tuition and fees the institution charges and collects from a JKJ fellow.

For Applications Contact: Federal Student Aid Information Center, P.O. Box 84, Washington DC 20044–0084. Telephone (toll free): 1–800–433–3243, FAX: (319) 358–4316. The application may also be accessed on the JKJ Fellowship Program Web site: *http://www.ed.gov/offices/OPE/HEP/iegps/javits.html.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Note: The FAFSA may be obtained from the institution of higher education's financial aid office or accessed at: *http://www.fafsa.ed.gov.*

FOR FURTHER INFORMATION CONTACT: Carmen Gordon, Jacob K. Javits Fellowship Program, U.S. Department of Education, International Education and Graduate Programs Service, 1990 K St., NW., Suite 6000, Washington, DC 20006–8521. Telephone: (202) 502–7542 or via Internet: *ope_javits_program@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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Program Authority: 20 U.S.C. 1134–1134d.

Dated: July 28, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–19624 Filed 7–31–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.326C]

Office of Special Education and Rehabilitative Services; Special Education—Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities—Projects for Children and Young Adults Who Are Deaf-Blind

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2003; Correction.

SUMMARY: On July 3, 2003, we published in the **Federal Register** (68 FR 39902) a notice inviting applications and providing other information for certain FY 2003 grant competitions authorized under the Individuals with Disabilities Education Act (IDEA), as amended.

On page 39903, first column, the Deadline for Intergovernmental Review is corrected to read "September 5, 2003."

FOR FURTHER INFORMATION CONTACT: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207.

If you use a telecommunications device for the deaf (TTD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the Grants and Contracts Services Team listed in this section.

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at *http://www.access.gpo/nara/index.html.*

Dated: July 25, 2003.

Loretta Petty Chittum,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–19645 Filed 7–31–03; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

National Committee on Foreign Medical Education and Accreditation; Meeting

AGENCY: National Committee on Foreign Medical Education and Accreditation, Department of Education.

What Is the Purpose of This Notice?

The purpose of this notice is to announce the upcoming meeting of the National Committee on Foreign Medical Education and Accreditation. Parts of this meeting will be open to the public, and the public is invited to attend those portions.

When and Where Will the Meeting Take Place?

We will hold the public meeting on September 11–12, 2003 in the Foggy Bottom/Capitol Hill Rooms at The Hilton Garden Inn, 815 14th Street, NW., Washington, DC 20005. On Thursday, September 11, the meeting will convene at 9:30 a.m. and end at 5 p.m., and on Friday, September 12, the meeting will convene at 8:30 a.m. and adjourn at 12:30 p.m. You may call the hotel reservations desk at (202) 783–7800 or fax the hotel at (202) 783–7801 to inquire about room accommodations.

What Assistance Will Be Provided to Individuals With Disabilities?

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.*, interpreting service, assistive listening device, or materials in an alternate format) notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Who Is the Contact Person for the Meeting?

Please contact Ms. Bonnie LeBold, the Executive Director of the National Committee on Foreign Medical Education and Accreditation, if you have questions about the meeting. You may contact her at the U.S. Department of Education, room 7007, MS 7563, 1990 K St. NW., Washington, DC 20006, telephone: (202) 219–7009, fax: (202) 219–7008, e-mail: *Bonnie.LeBold@ed.gov.*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339.

What Are the Functions of the National Committee?

The National Committee on Foreign Medical Education and Accreditation was established by the Secretary of Education under section 102 of the Higher Education Act of 1965, as amended. The Committee's responsibilities are to:

- evaluate the standards of accreditation applied to applicant foreign medical schools; and
- determine the comparability of those standards to standards for accreditation applied to United States medical schools.

What Items Will Be on the Agenda for Discussion at the Meeting?

The National Committee on Foreign Medical Education and Accreditation will review the standards of accreditation applied to medical schools by several foreign countries to determine whether those standards are comparable to the standards of accreditation applied to medical schools in the United States. Discussions of the standards of accreditation will be held in sessions open to the public. Discussions that focus on specific determinations of comparability are closed to the public in order that each country may be properly notified of the decision. The countries tentatively scheduled to be discussed at the meeting include the Cayman Islands, Denmark, Dominica, the Dominican Republic, Grenada, Ireland, Mexico, the Philippines, Poland, Saba, Serbia, Taiwan, Uganda, and the United Kingdom. Beginning August 24, you may call the contact person listed above to obtain the final listing of the countries whose standards will be discussed during this meeting. The listing of countries will also be posted on the Department of Education's Web site at the following address: *http://www.ed.gov/offices/OPE/ncfmea/ncfmeetings.html.*

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Authority: 5 U.S.C. Appendix 2.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 03–19530 Filed 7–31–03; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah; Notice of Meeting

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Friday, August 22, 2003 7 p.m.–9:30 p.m.

ADDRESSES: Tribeca Mexican Cuisine Restaurant, 127 Market House Square, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: W. Don Seaborg, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6806.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda:

7 p.m.—Call to Order; Review Agenda; DDFO Comments; Ex-officio Comments.

7:10 p.m.—Public Comments and Questions.

7:15 p.m.—Annual Work Plan.

8:15 p.m.—Self Evaluation Survey.

9:15 p.m.—Board Participation.

9:25 p.m.—Final Comments.

9:30 p.m.— Adjourn.

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Dollins at the address listed above or by telephone at (270) 441–6819. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comments will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday thru Friday or by writing to David Dollins, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6819.

Issued at Washington, DC on July 29, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–19627 Filed 7–31–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC03–585–001, FERC–585]

Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted for OMB Review

July 25, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of the current expiration date. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of May 16, 2003 (68 FR 26590–91) and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by August 25, 2003.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may be reached by fax at 202–395–7285 or by e-mail at *pamelabeverly.oira submission@omb.eop.gov.* A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–30, Attention: Michael Miller, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE. Washington, DC 20426 and should refer to Docket No. IC03–585–001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://*

www.ferc.gov and click on "Make an E-filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to the e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the FERRIS link. User assistance for FERRIS and the FERC's Web site during business hours by contacting, FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC–585 "Reporting of Electric Energy Shortages and Contingency Plans under PURPA 206."

2. *Sponsor:* Federal Energy Regulatory Commission.

3. Control No. 1902–0138.

The Commission is now requesting that OMB approve a three-year extension of the expiration date, with no changes to the existing collection. The information filed with the Commission is mandatory. Requests for confidential treatment of the information are provided for under Section 388.112 of the Commission's regulations.

1. *Necessity of the Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of Section 206 of the Public Utility Regulatory Policies Act of 1978 (PURPA) (Pub. L. 95–617, 92 Stat. 3117) which amended Section 202 of the Federal Power Act by adding subsection (g). Section 202(g) requires public utilities to report to the Commission, and appropriate State agencies, any unanticipated shortages of electric energy or capacity which would affect the utility's ability to serve its wholesale customers and to report and periodically revise, their contingency plans for such occurrences which would equitably accommodate both retail and wholesale customers.

The Commission uses the contingency plan information to evaluate and formulate appropriate options for action in the event an anticipated shortage is reported or materializes. The Commission also uses this information ensure itself and firm power wholesale customers that both are kept informed about utility contingency plans and anticipated shortages of energy and capacity and to ensure that direct and indirect customers would be treated without undue prejudice or disadvantage during actual shortages.

If the contingency plan data is not provided, the statutory provisions of the FPA and PUPRA will not have been complied with, and information will not be available to assess whether utilities have planned for shortage conditions and/or developed plans with due consideration for equitable customer treatment, as required by the established statute. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 294.

5. *Respondent Description:* The respondent universe currently comprises approximately 170 public utilities. In the normal course of a public utility's operations, contingency plans are prepared and usually reviewed and updated periodically. However, the burden on each utility will vary primarily with respect to the number and size of wholesale customers and utility system customers supplied by the reporting utility. The number of respondents is based on the actual number of responses that were received by the Commission since the last OMB submission.

6. *Estimated Burden:* 511 total hours, 7 respondents (average), 1 response per respondent, 73 hours per response (average).

7. *Estimated Cost Burden to respondents:* 511 hours/2080 hours per years × $117,041 per year = $28,753.

Statutory Authority: Sections 206 of the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 (Pub. L. 95–617) and Section 202 of the Federal Power Act (16 U.S.C. 824a (g)).

Magalie R. Salas,

Secretary.

[FR Doc. 03–19599 Filed 7–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–965–000]

ACN Utility Services, Inc.; Notice of Issuance of Order

July 25, 2003.

ACN Utility Services, Inc. (ACN) filed an application for market-based rate authority, with accompanying tariffs. The proposed tariffs provide for sales of capacity and energy at market-based rates. ACN also requested waiver of various Commission regulations. In particular, ACN requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by ACN.

On July 17, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by ACN should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 18, 2003.

Absent a request to be heard in opposition by the deadline above, ACN is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of ACN, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of ACN's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19597 Filed 7–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–879–000, ER03–880–000, and ER03–882–000]

D.E. Shaw Plasma Trading, L.L.C., D.E. Shaw Plasma Power, L.L.C., and D.E. Shaw & Co. Energy, L.L.C; Notice of Issuance of Order

July 25, 2003.

D.E. Shaw Plasma Power, L.L.C., D.E. Shaw Plasma Trading, L.L.C., and D.E. Shaw & Co. Energy, L.L.C. (together, "Applicants") filed respective applications for market-based rate authority, with an accompanying tariffs. The proposed tariffs provide for sales of capacity, energy, and ancillary services at market-based rates and the resale of transmission rights. Applicants also requested waiver of various Commission regulations. In particular, Applicants requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Applicants.

On July 23, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 22, 2003.

Absent a request to be heard in opposition by the deadline above, Applicants are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Applicants, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Applicant's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19595 Filed 7–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM96–1–024, RM96–1–024, RP03–443–001, RP03–442–001, RP03–444–001, RP03–403–002, RP03–445–001, and RP03–525–001]

Garden Banks Gas Pipeline, LLC, Mississippi Canyon Gas Pipeline , LLC, Nautilus Pipeline Company, L.L.C., PG&E Gas Transmission, Northwest Corporation, Stingray Pipeline Company, L.L.C., Western Gas Interstate Company: Standards For Business Practices of Interstate Natural Gas Pipelines; Notice of Compliance Filings

July 25, 2003.

Take notice that the above-referenced pipelines filed revised tariff sheets to comply with Commission orders in regarding compliance with Order No. 587–R, Docket No. RM96–1–024 issued by the Commission on March 12, 2003.[1]

These revised tariff sheets are to be effective July 1, 2003.

On March 12, 2003, the Commission issued Order No. 587–R, which among other things, amended 18 CFR 284.12 of its regulations to incorporate by reference the most recent version of the standards promulgated by the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB), *i.e.*, NAESB Standards Version 1.6, and the Wholesale Gas Quadrant's standards governing partial day recalls (Recommendations R02002 and R02002–2), adopted October 31, 2002. Each of the pipelines listed above filed tariff sheets to comply with Order No. 587–R, and the Commission issued orders requiring further modifications to the tariff sheets. The instant filings reflect modifications to comply with the Commission's orders.

Protests cannot be filed jointly in all dockets, but must be filed individually in each docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: August 4, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19601 Filed 7–31–03; 8:45 am]

BILLING CODE 6717–01–P

[1] Standards for Business Practices of Interstate Natural Gas Pipelines, Order No. 587–R, 102 FERC ¶61,273, 68 FR 13813 (March 21, 2003), III FERC Stats. & Regs. Regulations, ¶31,141 (March 12, 2003).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–409–000]

Gulfstream Natural Gas System, L.C.C.; Notice of Technical Conference

July 25, 2003.

The Commission, in its order issued May 30, 2003,[1] directed that a technical conference be held to investigate Gulfstream's proposal to increase its percentage of gas for Transporter's Use, its plan to defer implementation of its System Balancing Adjustment charge, and to address the concerns raised in the protests of the parties.

Take notice that a technical conference will be held on Wednesday August 13, 2003, at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested parties and staff are permitted to attend.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19603 Filed 7–31–03; 8:45 am]

BILLING CODE 6717–01–P

[1] Gulfstream Natural Gas System, L.L.C., 103 FERC & 61,264 (2003).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–951–000]

Moraine Wind LLC; Notice of Issuance of Order

July 25, 2003.

Moraine Wind LLC (Moraine) filed an application for market-based rate authority, with an accompanying tariff. The proposed tariff provides for sales of capacity and energy at market-based rates. Moraine also requested waiver of various Commission regulations. In particular, Moraine requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Moraine.

On July 17, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Moraine should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 18, 2003.

Absent a request to be heard in opposition by the deadline above, Moraine is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Moraine, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Moraine's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19596 Filed 7–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–1101–000]

PJM Interconnection, L.L.C.; Notice of Filing

July 25, 2003.

Take notice that on July 22, 2003, PJM Interconnection, L.L.C. (PJM) submitted tariff sheets reflecting proposed revisions to its pre-existing creditworthiness standards. PJM states that the tendered tariff sheets are designed to address an emergent problem associated with the recent increase in uncleared virtual bids into PJM's day-ahead energy market. PJM requests that the tariff sheets become effective the day after the Commission's order approving the changes, but in no event later than September 20, 2003.

PJM states that copies of this filing have been served on all PJM members and the regulatory commissions in PJM's region.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: August 5, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–19598 Filed 7–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–782–000 and ER03–782–001]

Rayo Energy LLP; Notice of Issuance of Order

July 25, 2003.

Rayo Energy LLP (Rayo) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed rate schedule provide for sales of capacity, energy and ancillary services at market-based rates and the reassignment of transmission capacity. Rayo also requested waiver of various Commission regulations. In particular, Rayo requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Rayo.

On July 17, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Rayo should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is August 18, 2003.

Absent a request to be heard in opposition by the deadline above, Rayo is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Rayo, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Rayo's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19594 Filed 7–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–330–000]

Tennessee Gas Pipeline Company; Notice of Application

July 25, 2003.

Take notice that on June 30, 2003, Tennessee Gas Pipeline Company (Tennessee), tendered for filing in Docket No. CP03–330–000, an application pursuant to section 7(b) of the Natural Gas Act (NGA), as amended, and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), requesting that the Commission issue an Order authorizing Tennessee's re-acquisition of capacity entitlement granted to Gulf Oil Corporation (Gulf), predecessor to Chevron U.S.A., Inc. (Chevron), and the abandonment of exchange service established under Rate Schedule T–139 between Tennessee and Gulf.

Tennessee states that upon issuance of the Commission's Order authorizing Tennessee's re-acquisition of the capacity entitlement and abandonment of the associated rate schedule, Chevron and Tennessee plan to execute the exhibits to an agreement to exchange and transfer assets. Pursuant to the agreement and exhibits, Tennessee is to abandon by sale its interest in VK Pipelines in exchange for Chevron's abandonment of capacity entitlement in Tennessee's Project Sabine Pipeline and from a portion of Tennessee's capacity entitlement in Transcontinental Gas Pipeline Corporations' Southwest Louisiana Gathering System. Tennessee's abandonment of its interest in the VK Pipelines will be accomplished under its Blanket Certificate and will facilitate Chevron's and Tennessee's plans to consolidate offshore holdings.

Any questions concerning this application may be directed to Jacques Hodges, Tennessee Gas Pipeline Company, call (832) 676–5509, fax (832) 676–2251.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at FERC OnlineSupport@ferc.gov or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages intervenors to file electronically.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: August 8, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–19593 Filed 7–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–468–013, RP01–25–012 and RP03–175–007]

Texas Eastern Transmission, LP; Notice of Supplemental Compliance Filing

July 25, 2003.

Take notice that on July 23, 2003, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, Second Sub First Revised Sheet No. 555, effective September 2, 2003.

Texas Eastern states that the purpose of this filing is to supplement its June 19, 2003 filing (June 19 Compliance Filing) submitted in compliance with the "Order on Rehearing and Compliance Filings" issued on June 4, 2003 in Texas Eastern's Order No. 637 proceeding in the captioned dockets. [103 FERC ¶ 61,278 (2003)] Texas Eastern states that copies of this filing have been mailed to all affected customers and interested state commissions, as well as to all parties on the official service lists compiled by the Secretary of the Commission in these proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with ¶ 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: August 4, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19602 Filed 7–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Settlement Agreement and Soliciting Comments

July 25, 2003.

Take notice that the following settlement agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Settlement Agreement.

b. *Project No.:* 2009–018.

c. *Date Filed:* July 15, 2003.

d. *Applicant:* Virginia Electric and Power Company (d/b/a Dominion Virginia Power/North Carolina Power).

e. *Name of Project:* Roanoke Rapids and Gaston Hydroelectric Project.

f. *Location:* Located on the Roanoke River, near the town of Roanoke Rapids, North Carolina. The project is located in Brunswick and Mechlenburg Counties, Virginia, and Northampton, Halifax and Warren Counties, North Carolina. No federal lands are occupied by the project works or located with the project boundary.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contact:* Mr. Jim Thorton, Dominion Generation, 500 Dominion Blvd., Glenn Allen, VA. 23060; (804) 273–3257.

i. *FERC Contact:* Allan Creamer at (202) 502–8365, or by e-mail at *allan.creamer@ferc.gov.*

j. *Deadline for Filing Comments:* The deadline for filing comments on the Settlement Agreement is 20 days from the date of this notice. The deadline for filing reply comments is 30 days from the date of this notice. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions of the Commission's Web site (*http://www.ferc.gov*) under the "e-filing" link.

k. Dominion filed the Comprehensive Settlement Agreement on behalf of itself and 13 other stakeholders. The purpose of the Settlement Agreement is to resolve, among the signatories, all issues related to Dominion's pending Application for New License for the Roanoke Rapids and Gaston Hydroelectric Project. The issues resolved through the settlement relate to project operations, flood control and municipal water withdrawls, minimum flows, reservoir fluctuations, water quality, environmental restoration and enhancement measures (*e.g.*, fish passage, shoreline management), cultural resource management, and recreational enhancements. Dominion requests that the Commission approve the Settlement Agreement and incorporate the proposed license articles in Appendix A of the Settlement Agreement into a new 40-year license for the project.

l. A copy of the Settlement Agreement is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at http://www.ferc.gov, using the "FERRIS" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects.

For assistance, contact FERC Online Support.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19600 Filed 7–31–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL01–118–000 and EL01–118–001]

Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations; Order Addressing Application of Ex Parte Rule and Requests for Extension of Time

Issued: July 25, 2003.

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell. 104 FERC ¶ 61,132.

1. This order addresses requests related to the Commission's earlier order in these dockets, issued June 26, 2003, under Section 206 of the Federal Power Act,[1] requesting comments on a proposal to condition all new and existing market-based rate tariffs and authorizations to include a provision prohibiting the seller from engaging in anticompetitive behavior or the exercise of market power. Order Seeking Comments on Proposed Revisions to Market-Based Rate Tariffs and Authorizations, 103 FERC ¶ 61,349 (2003). The Commission has received two requests that it find that its *ex parte* rule[2] does not apply, from the Electric Power Supply Association (EPSA) and jointly from the Edison Electric Institute and the Alliance of Energy Suppliers (EEI/AES). EEI/AES also requests an extension of the time for comments and the scheduling of a technical conference.

Background

2. The Commission issued its June 26 order as part of the electric dockets indicated in the caption above. The order proposed market behavior rules that would apply to all market-based tariffs and rate authorizations. 103 FERC ¶ 61,349, ¶ 16. The Commission solicited comments from all interested entities. Id., ¶ 52.

3. On the same date, the Commission issued a proposal to amend the blanket certificates for unbundled gas sales services by interstate natural gas pipelines and the blanket marketing certificates held by persons making sales for resale of gas at negotiated rates. This proposal was similar in intent to the electric proposal issued in this proceeding: the Commission proposed to require that pipelines and all sellers for resale adhere to a code of conduct with respect to gas sales. The gas proposals was issued in a new docket, which was designated as a rulemaking docket, No. RM03–10–000. Amendments to Blanket Sales Certificates, 103 FERC ¶ 61,350 (2003). Like the June 26 electric order, the gas order sought comment from interested persons. Id., ¶ 31.

Discussion

4. EPSA and EEI/ESA both request that the Commission treat this proceeding as a rulemaking, thus making its *ex parte* rule inapplicable. *See* 385.2201(c)(1)(ii) (ex parte rules do not apply to notice-and-comment rulemakings). EEI/ESA note that the electric proposal is generic in nature, and state that treatment as a rulemaking will better facilitate open discussion between the Commission and interested parties. EEI/ESA Motion at p.3. EPSA points out that the only effective difference between the electric and gas proposals, for purposes of the comment procedures, is the differing docket designations. EPSA states that, because the Commission in this proceeding is contemplating measures that would apply generally, and not just to specific parties in a contested proceeding, the purposes of the *ex parte* rules would not be served by their application here. EPSA Motion at pp. 2–4.

5. The Commission concludes that the approach adopted in the June 26 order is the functional equivalent of a rulemaking with respect to the applicability of Rule 2201. The order seeks comments and reply comments from interested entities, and does not limit participation to parties. To that end, the order was published in the **Federal Register**, as is the case with notice-and-comment rulemakings. More to the point, the Commission is not conducting an adjudication between parties, and intends the outcome here to have generic effect. *See* 103 FERC ¶ 61,349, ¶ 6, note 5.[3] Therefore, for the reasons that the Commission found appropriate when it excluded rulemakings from the coverage of the prohibitions on off-the-record proceedings, the Commission believes that this proceeding should also be excluded from the coverage of Rule 2201.[4] In particular, the Commission believes that robust debate in what is essentially a legislative proceeding will be enhanced by removing the restrictions of the *ex parte* rule.

6. EEI/ESA made two further requests. They asked that the Commission extend the deadlines for comments by 60 days. Currently, initial comments are due on August 8, 2003, and reply comments on September 8. EEI/ESA state that an extension will allow interested parties sufficient time to prepare detailed and constructive comments. EEI/ESA Motion at pp. 2–3. EEI/ESA also ask that the Commission schedule a technical conference. *Id.* at p. 4.

7. The Commission does not believe that the requested extension is warranted and does not wish to delay proceedings significantly. However, it will grant a limited extension as follows. Comments will be due on August 18, 2003. Reply comments will be due on September 18, 2003.

The Commission orders:

(A) The requests to treat this proceeding as a rulemaking for the purposes of the applicability of Rule 2201, are granted;

(B) The motions for extension are granted as discussed;

(C) The Commission will determine at a later time whether to convene a technical conference;

(D) The Secretary shall promptly publish this Order in the **Federal Register**.

By the Commission.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–19609 Filed 7–31–03; 8:45 am]

BILLING CODE 6717–01–P

[1] 16 U.S.C. 824e (2000).

[2] 18 CFR 385.2201 (2003) (Rule 2201).

[3] The Commission still does not intend, however, to amend Title 18 of the Code of Federal Regulations. The approach proposed in the June 26 order focuses on changes to the sellers' tariffs, and does not include regulatory changes.

[4] See Order No. 607, 88 FERC ¶ 61,225 (1999), at pp. 15–16.

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6642–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed July 21, 2003 through July 25, 2003

Pursuant to 40 CFR 1506.9.

EIS No. 030341, Draft EIS, IBR, CA, Lower Santa Ynez River Fish Management Plan and Cachuma Project, Biological Opinion for

Southern Steelhead Trout, To Improve Habitat Conditions for the Endangered Southern Steelhead, Santa Barbara County, CA, Comment Period Ends: September 15, 2003, Contact: David Young (559) 487–5127.

EIS No. 030342, Draft EIS, NOA, Atlantic Tunas, Swordfish, and Sharks Fishery Management Plan, To Prevent Overfishing and Rebuild Overfished Species, Update Essential Fish Habitat, Atlantic, Gulf of Mexico and Caribbean Sea, Comment Period Ends: September 23, 2003, Contact: Christopher Rogers (301) 713–2347.

EIS No. 030343, Final EIS, AFS, UT, Duck Creek—Swains Access (Duck/Swains), Management Project, Wildlife Habitat, Soil and Watershed Conditions and Motorized Vehicle Use Management Improvements, Dixie National Forest, Cedar City Ranger District, Iron, Garfield and Kane Counties, UT, Wait Period Ends: September 2, 2003, Contact: Ronald S. Wilson (435) 865–3200.

EIS No. 030344, Final EIS, AFS, AK, Finger Mountain Timber Sales, Timber Harvesting, Implementation, U.S. Coast Guard, NPDES and COE Section 10 and 404 Permits, Tongass National Forest, Sitka Ranger District, AK, Wait Period Ends: September 2, 2003, Contact: Rick Abt (907) 747–4226.

EIS No. 030345, Final EIS, AFS, WA, Gardin—Taco Ecosystem Restoration Projects, Implementation, Vegetative Restoration, Road Closures, and Decommissioning, and other Road Improvements, Colville National Forest, Newport Ranger District, Pend Oreille and Stevens Counties, WA, Wait Period Ends: September 2, 2003, Contact: Lynn Kaney (509) 447–7300.

EIS No. 030346, Final EIS, FHW, WV, New River Parkway Project, Design, Construction and Management, between I–64 Interchanges to Hinton, Raleigh and Summers Counties, WV, Wait Period Ends: September 19, 2003, Contact: Greg Akers (304) 558–2885.

EIS No. 030347, Draft EIS, NRS, OK, Cavalry Creek Watershed Supplemental Plan for Floodwater Retarding Structure No. 6, Washita River Basin, Washita County, OK, Comment Period Ends: September 15, 2003, Contact: M. Darrel Dominick (405) 742–1206.

EIS No. 030348, Draft EIS, IBR, CA, Mendota Pool 10-Year Exchange Agreements, To Provide Water to Irrigable Lands, Central Valley Project Improvement (CVPIA), Fresno and Madera Counties, CA, Comment Period Ends: September 30, 2003, Contact: David Young (559) 487–5127. This document is available on the Internet at: *http://www.usbr.gov* or *http://www.entrix.com*.

EIS No. 030349, Draft EIS, NOA, PR, VI, Generic Essential Fish Habitat Amendment To: Spiny Lobster, Queen Conch, Reef Fish and Coral Fishery Management Plans, Implementation, U.S. Caribbean, Extending to U.S. Exclusive Economic Zone (NEZ), Virgin Islands and Puerto Rico, Comment Period Ends: October 30, 2003, Contact: David Dale (727) 570–5317.

EIS No. 030350, Final EIS, BLM, ID, North Rasmussen Ridge Mine, Agrium Conda Phosphate Operations, Proposal to Extend the Existing Mining Operations, Federal Phosphate Leases I–04375 and I–07619 within the Caribou-Targhee National Forest, and State Lease I–9313, Soda Springs, Caribou County, ID, Wait Period Ends: September 2, 2003, Contact: Wendell Johnson (208) 478–6353.

EIS No. 030351, Final EIS, JUS, CA, 14-Mile Border Infrastructure System Completion along the United States and Mexico Border, Areas I, V and VI, Pacific Ocean to just east of Tin Can Hill, San Diego County, CA, Wait Period Ends: September 2, 2003, Contact: Kevin Feeney (202) 353–9412.

EIS No. 030352, Second Draft EIS (TIERING) FHW, MI, MI–59 Livingston County Widening Project, between I–96 and U.S. 23, Practical Alternative and a No Build Alternative for Consideration in the Right-of-Way Preservation Corridor, Funding, NPDES and U.S. Army COE Section 404 Permits Issuance, Livingston County, MI, Comment Period Ends: September 15, 2003, Contact: Abdelmoez Abdalla (517) 702–1820.

EIS No. 030353, Draft EIS, USA, LA, 2nd Armored Cavalry Regiment Transformation and Installation Mission Support, Joint Readiness Training Center (JRTC) Stryker Brigade Combat Team, Long-Term Military Training Use of Kisatchie National Forest Lands, Fort Polk, LA, Comment Period Ends: September 15, 2003, Contact: Stacy Basham-Wagner (337) 531–7458.

Amended Notices

EIS No. 030194, Draft EIS, AFS, SD, Sioux Ranger District Oil and Gas Leasing Project, Implementation, Sioux Ranger District, Custer National Forest, Harding County, SD, Comment Period Ends: August 7, 2003, Contact: Laurie Waters-Clark (605) 707–4432. Revision of FR Notice Published on 5/9/2003: CEQ Comment Period Ending 7/8/2003 has been Extended to 8/7/2003.

EIS No. 030283, Draft EIS, AFS, ID, North Enid Sheep Allotment Management Plan (AMP) Revision, Proposal to Authorize Continued Livestock Use, Caribou-Targhee National Forest, Soda Springs Ranger District, Caribou and Bonneville Counties, ID, Comment Period Ends: August 18, 2003, Contact: Derek Hinckley (208) 547–4356. Revision of FR Notice Published on 6/20/2003: CEQ Comment Period Ending on 8/4/2003 has been Extended to 8/18/2003.

Dated: July 28, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–19641 Filed 7–31–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6642–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 4, 2003 (68 FR 16511).

Draft EISs

ERP No. D–AFS–J65383–MT Rating EC2, Logan Creek Ecosystem Restoration Project, Hazardous Fuel Reduction across the Landscape and Vegetation Management Restoration or Maintenance, Flathead National Forest, Tally Lake Ranger District, Flathead County, MT.

Summary: EPA expressed environmental concerns with public health and safety issues and recommended the final EIS include a comprehensive risk notification and communication program for the community. The final EIS should also include additional information on facility design, safety features and risk assessment and analysis.

ERP No. D–AFS–K65256–NV Rating EO2, Jarbidge Canyon Project, Road Management Plan Implementation, Water Projects Construction along Charleston-Jarbidge Road and South Canyon Road Reconstruction, Humbolt-Toiyabe National Forest, Jarbidge Ranger District, Elko County, NV.

Summary: EPA expressed environmental objections on the Proposed Action due to projected violations of Federally approved water quality standards and potential impacts to waters of the United States (including special aquatic sites) regulated under the Clean Water Act Section 404. EPA requested that the Final EIS include appropriate water quality mitigation to avoid violating water quality standards and to address the project's consistency with Section 404.

ERP No. D–CGD–G03021–LA Rating LO, Port Pelican Deepwater Port Construction and Operation, License Approval, Vermillion Lease Block 140 on the Continental Shelf in the Gulf of Mexico southwest of Freshwater City, LA.

Summary: EPA had no objection to the preferred alternative. ERP No. D–NIH–J81012–MT Rating EC2, Rocky Mountain Laboratories (RML) Integrated Research Facility, Construction and Operation, To Improve the Nation's Ability to Study and Combat Emerging Infectious Disease and to Protect Public Health, Hamilton, Ravalli County, MT.

Summary: EPA expressed environmental concerns regarding the need to better address public health and safety concerns, and recommended development of a comprehensive risk notification and communication program for the local community. EPA also believes additional information on risk assessment and analysis should be disclosed, and questions, comments, and concerns on alternatives and on facility design and safety features should be addressed in the final EIS.

ERP No. DC–FHW–D40118–00 Rating EC1, Appalachian Corridor H Project, Construction of a 10-mile Highway between the Termini of Parsons and Davis, New Information concerning One or More Alignment Shifts for the Thomas-Davis Section of the Parsons-to-Davis Project, Funding and US Army COE Section 404 Permit Issuance, Tucker County, WV.

Summary: EPA has environmental concerns regarding the proposed project with respect to the endangered West Virginia Northern Flying Squirrel. Potential habitat exists within the entire study area. EPA encourages the continued coordination already underway with U.S. Fish and Wildlife Service to identify the most appropriate alternative to limit the impact to such an important species as well as valued resources.

Final EISs

ERP No. F–MMS–E02012–00; Eastern Gulf of Mexico Outer Continental Shelf Oil and Gas Lease Sales 189 (proposed for 2003) and 197 (proposed for 2005) Leasing Program 2002–2007, Eastern Planning Area, Counties and Parishes of TX, LA, MS, AL and FL.

Summary: While EPA has no objection to the proposed action since previous issues have been resolved, EPA did request clarification regarding presentation of deep drilling parameters and the importance of complete quantification of impacts from discharges of drilling muds and cuttings.

ERP No. F–NOA–E91011–00 Northeast Skate Complex Fishery Management Plan, Implementation of Management Measures, Magnuson-Stevens Fishery Conservation and Management Act, New England Fishery Management Council.

Summary: EPA expressed a lack of objection to the strategies as proposed in the FEIS.

ERP No. F–NPS–H65011–MO Wilson's Creek National Battlefield General Management Plan, Implementation, Battle of Wilson's Creek Commemoration and Associated Battlefield Preservation, Greene and Christian Counties, MO.

Summary: EPA did not express objections to the preferred Management Plan.

ERP No. FS–AFS–J65334–MT Keystone-Quartz Ecosystem Management Plan, Implementation, Updated Information on Alternatives, Beaverhead-Deerlodge National Forest, Wise River Ranger District, Beaverhead County, MT.

Summary: While EPA supports the Forest Service's preferred alternative to manage and treat Douglas-fir, lodgepole pine and aspen forest we expressed environmental concerns with potential impacts to water quality from existing low standard roads.

ERP No. FS–AFS–L65300–ID Goose Creek Watershed Project, Reviewing and Updating Information Regarding the Pileated Woodpecker and Soil Impacts, Payette National Forest, New Meadows Ranger District, Adam County, ID.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FS–AFS–L65325–ID Sloan-Kennally Timber Sale Project, Reviewing and Updating Information Regarding the Pileated Woodpecker and Soil Impacts, Payette National Forest, McCall Ranger District, Adam County, ID.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FS–AFS–L65336–ID Brown Creek Timber Sale Project, Reviewing and Updating Information Regarding the Pileated Woodpecker and Soil Impacts, Payette National Forest, New Meadow Ranger District, Adam County, ID.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FS–AFS–L65346–ID Middle Fork Weiser River Watershed Project, Reviewing and Updating Information Regarding the Pileated Woodpecker and Soil Impacts, Payette National Forest, Council Ranger District, Adam County, ID.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FS–AFS–L65379–ID Little Weiser Landscape Vegetation Management Project, Reviewing and Updating Information Regarding the Pileated Woodpecker and Soil Impacts, Payette National Forest, Adam County, ID.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FS–NOA–A64058–00 Pelagic Sargassum Habitat Fishery Management Plan, Implementation, Updated Information concerning the Public's Opportunity to Comment on Proposed Actions, South Atlantic Region.

Summary: EPA expressed environmental concerns regarding the harvest of Sargassum due to the loss of its nursery habitat value for endangered juvenile species such as sea turtle hatchlings, small sized species and pelagic adult species.

Dated: July 29, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–19642 Filed 7–31–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL –7538–5]

Science Advisory Board Staff Office; Notification of Upcoming Science Advisory Board Meeting of the Computational Toxicology Framework Consultation Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA's Science Advisory Board (SAB) Staff Office is announcing a public meeting of the SAB's Computational Toxicology Framework Consultation Panel (CTF) that will conduct a consultation with the Agency on its Computational Toxicology Framework.

DATES: September 12, 2003—The public meeting for the SAB Panel will begin at 9 a.m. and adjourn no later than 5:30 p.m. (eastern time).

ADDRESSES: The public meeting of the Panel will be held in the Washington, DC, metropolitan area. The final meeting site will be announced, along with the agenda and final charge questions, on the SAB Web site *http://www.epa.gov/sab/agendas.htm* ten days before the meeting. For further information concerning the public meeting, please contact Dr. James Rowe, Designated Federal Officer (DFO) (*see* contact information below).

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding the public meeting may contact Dr. James Rowe, Designated Federal Officer (DFO), U.S. EPA Science Advisory Board Staff Office (1400A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone/voice mail: (202) 564–6488, Fax (202) 501–0582, or via e-mail at *rowe.james@epa.gov*. Requests to present oral comments must be *in writing* (e-mail, fax, or mail) and received by Dr. Rowe no later than noon eastern time on September 5, 2003. General information about the SAB can be found in the SAB Web site at *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION: *Summary:* Pursuant to the Federal Advisory Committee Act, Public Law 92–463, Notice is hereby given that the Panel will hold a public meeting to provide advice to the EPA on the Agency's Computational Toxicology Framework. The date and time for the meeting are provided above.

Background: Background on the Panel and the focus of the meeting described in this notice was provided in a **Federal Register** notice published on April 30, 2003 (68 FR 23131–23132). A draft document, "A Framework for a Computational Toxicology Research Program at ORD" can be found on the EPA Web site at *http://www.epa.gov/nheerl*.

Availability of Meeting Materials: Copies of any available meeting materials, including a draft agenda, will be posted on the SAB Web site for this panel at *http://www.epa.gov/sab/panels/ctfcpanel.html* approximately 10 days before the meeting.

Providing Oral or Written Comments at SAB Meetings: It is the policy of the EPA Science Advisory Board (SAB) Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA SAB Staff Office expects that public statements presented at its meetings will not be repetitive of previously-submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although written comments are accepted until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to Dr. Rowe at the address/contact information noted above in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format)). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

Meeting Accommodations: Individuals requiring special accommodation to access the public meetings listed above, should contact Dr. Rowe at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: July 24, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–19637 Filed 7–31–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting Notice; Announcing a Partially Open Meeting of the Board of Directors

TIME AND DATE: The open portion of the meeting of the Board of Directors is scheduled to begin at 10 a.m. on Wednesday, August 6, 2003. The closed portion of the meeting will follow immediately the open portion of the meeting.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

STATUS: The first portion of the meeting will be open to the public. The final portion of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED AT THE OPEN PORTION OF MEETING:

Capital Plan Amendments for the Federal Home Loan Bank of Boston. Consideration of amendments to the Boston Bank capital plan that would reduce the required notice or "opt out" period for members that choose to withdraw from membership before the plan's effective date; change the approach to the repurchase of excess stock at conversion and provide more flexibility for members; and allow the Bank to hold general stock offerings.

Capital Plan Amendments for the Federal Home Loan Bank of San Francisco. Consideration of amendments to the San Francisco Bank capital plan that would reduce the required notice period for members that choose to withdraw from membership before the plan's effective date; reduce the mortgage asset component of the initial activity-based stock purchase requirement; establish an initial cap of $25 million per member on the membership stock purchase requirement; give the Bank's board of directors discretion to change the cap within a range of $10 million to $50 million; and make other changes to clarify various plan provisions.

Approval of Restated Organization Certificate of the Federal Home Loan Bank of New York. The New York Bank seeks approval of a restated Organization Certificate that reflects the Bank's new capital structure implemented in response to the Gramm-Leach-Bliley Act amendments to the capital requirements for the Federal Home Loan Banks.

MATTER TO BE CONSIDERED AT THE CLOSED PORTION OF MEETING:

Periodic Update of Examination Program Development and Supervisory Findings from the First and Second Quarters of 2003.

FOR FURTHER INFORMATION CONTACT: Janice A. Kaye, Senior Attorney-Advisor, Office of General Counsel, by telephone at 202/408–2505 or by electronic mail at *kayej@fhfb.gov*.

Dated: July 29, 2003.

By the Federal Housing Finance Board.

Arnold Intrater,

General Counsel.

[FR Doc. 03–19731 Filed 7–30–03; 12:45 Pm]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 15, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Frank E. Powers, Defiance, Iowa; to acquire voting shares of Union Bancorporation, Defiance, Iowa, and thereby indirectly acquire voting shares of Defiance State Bank, Defiance, Iowa.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Darryl L. Woods, Kristy L. Woods, and the Darryl L. Woods Living Trust, all of Ashland, Missouri; to acquire voting shares of Calvert Financial Corporation, Jefferson City, Missouri, and thereby indirectly acquire voting shares of Mainstreet Bank, Bunceton, Missouri.

Board of Governors of the Federal Reserve System, July 28, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–19569 Filed 7–31–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 25, 2003.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. BCAC, Inc., Rosiclare, Illinois; to become a bank holding company by acquiring 66.7 percent of the voting shares of Banterra Corp., Eldorado, Illinois, and thereby indirectly acquire First of Murphysboro Corp., Murphysboro, Illinois, The First Bank and Trust Company of Murphysboro, Murphysboro, Illinois, and Banterra Bank, Marion, Illinois.

Board of Governors of the Federal Reserve System, July 28, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–19570 Filed 7–31–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Presidential Advisory Council on HIV/AIDS

AGENCY: Office of the Secretary, Office of Public Health and Science.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the Presidential Advisory Council on HIV/AIDS (PACHA) will hold a meeting. The meeting will be open to the public.

DATES: The meeting will be held on August 7, 2003, from 9 a.m. to 5 p.m., and August 8, 2003, from 9 a.m. to 11:30 a.m. and from 2:30 p.m. to 4 p.m.

ADDRESSES: Hubert H. Humphrey Building, Room 800; 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Josephine Robinson, Acting Executive Director, Presidential Advisory Council on HIV/AIDS, U.S. Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 701H, Washington, DC 20201; (202) 690–5560. Information about PACHA and the draft meeting agenda will be posted on the Council's Web site at *http://www.pacha.gov*.

SUPPLEMENTARY INFORMATION: PACHA was established by Executive Order 12963, dated June 14, 1995, as amended by Executive Order 13009, dated June 14, 1996. The Council was established to provide advice, information, and recommendations to the Secretary regarding programs and policies intended to (a) promote effective prevention of HIV disease, (b) advance research on HIV and AIDS, and (c) promote quality services to persons living with HIV disease and AIDS. PACHA was established to serve solely as an advisory body to the Secretary of Health and Human Services. The Council is composed of not more than 35 members. Council membership is selected by the Secretary from individuals who are considered authorities with particular expertise in, or knowledge of, matters concerning HIV/AIDS.

The agenda for this Council meeting will include the following topics: Implementation of new HIV/AIDS prevention guidelines and HIV/AIDS international issues.

Public attendance at the meeting is limited to space available. Individuals must provide a photo ID for entry into the meeting. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person. Members of the public will have the opportunity to provide comments at the meeting. Preregistration is required for public comment. Any individual who wishes to participate in the public comment session should call the telephone number listed in the contact information to register. Public comment will be limited to five minutes per speaker. Any members of the public who wish to have printed material

distributed to PACHA members should submit materials to the Acting Executive Director, PACHA, whose contact information is listed above prior to close of business August 4, 2003.

This notice is being published less than 15 days in advance of the meeting due to issues pertaining to technical arrangements.

Dated: July 25, 2003.

Josephine B. Robinson,

Acting Executive Director, Presidential Advisory Council on HIV/AIDS.

[FR Doc. 03–19566 Filed 7–31–03; 8:45 am]

BILLING CODE 4159–28–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–56–03]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: Risk Factors for Microbial Contamination of Produce: A Field Study of Domestic and Imported Produce in Packing Sheds (OMB No. 0920–0487)—Reinstatement—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background

Foodborne diseases are common; an estimated 6–33 million cases occur each year in the United States. Although most of these infections cause mild illness, severe infections and serious complications do occur. The public health challenges of foodborne diseases are changing rapidly. In recent years, new and emerging foodborne pathogens have been described and changes in food production have led to new food safety concerns. Foodborne diseases have been associated with many different foods, including recent outbreaks linked to contaminated fresh fruits (*e.g.*, cantaloupe, strawberries) and vegetables (*e.g.*, leaf lettuce, alfalfa sprouts).

NCEH proposes to conduct a study to determine what specific produce processing practices are associated with fecal contamination of fruits and vegetables. Handling and processing methods used in the produce industry may increase the risk that these foods will become contaminated with fecal matter. The study will describe the chain of processing-shipping practices for five vulnerable produce groups (leafy greens, leafy herbs, green onions, cabbage, melon/cantaloupe). Critical practices where contamination with foodborne pathogens is likely will be identified by measuring the microbial quality of produce at each step during processing. Sources of fecal contamination will be determined by measuring the microbial quality of process water, measuring fecal indicator organisms on hand rinses from packing shed laborers, and conducting sanitary surveys of sources of human and animal feces in and around the processing areas.

CDC, National Center for Environmental Health is requesting a three-year clearance. The total burden hours is estimated to be 172.5.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden/ response (in hours)
Packing Facility Recruiting visit	25	1	30/60
Packing Shed Manager Interview (in person)	20	6	30/60
Hand Rinse Sample Collection	100	6	10/60

Dated: July 24, 2003.

Laura Y. Martin,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–19576 Filed 7–31–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–57–03]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: AIDS Prevention Surveillance Project Reports (OMB No. 0920–0208)—Extension—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention. CDC proposes to continue the collection of data for the AIDS Prevention and Surveillance Project Reports, OMB No. 0920–0208, for an additional three years. This request is for a three-year extension. There are currently 65 cooperative agreements for HIV prevention projects (50 states, 6 cities, 7 territories, Washington, DC, and Puerto Rico) and 54 community based organizations to support HIV counseling, testing, and referral programs funded by CDC. Program initiatives such as HIV counseling, testing, and referral services in STD clinics, Women's Health Centers, Drug Treatment Centers, and other health facilities have been described as a primary prevention strategy of the national HIV prevention program. The funded public health departments and community based organizations have increased the provision of HIV counseling, testing, and referral activities to those at increased risk for acquiring or transmitting HIV, as well as minority communities and women of child bearing age.

CDC is responsible for monitoring and evaluating HIV prevention programs conducted under the HIV Prevention cooperative agreements. HIV counseling, testing, and referral services are a major component of HIV prevention programs. Without data to measure the impact of HIV counseling, testing, and referral programs, HIV prevention program priorities cannot be assessed and redirected to prevent further spread of the virus in the general population. CDC needs information from all grantees describing the number of HIV tests completed for at-risk persons and the number HIV-positive test results for at-risk persons. The HIV counseling and testing report form provides a simple yet complete means to collect this information.

Public health departments will be able to use either a summary form, a scan form, or a form unique to their jurisdiction. All reporting to the CDC will take place electronically. Sixteen (16) respondents (public health departments) will use the summary data collection tool. It takes approximately 2 hours to complete the form. The respondents will complete the form 4 times each year for a total burden of 8 hours per year per project area. Thirty (30) respondents (public health departments) will use a scan form provided by CDC. Nineteen (19) respondents (public health departments) will use a form unique to their jurisdiction. It will take approximately 15 minutes for each respondent using either the scan or unique formats to transfer data to CDC electronically on a quarterly basis for a total burden per project area of 1 hour per year. The total annual burden hours for this data collection is 177 hours.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Manual Form Project Areas	16	4	8
Scan or Unique Form Project	49	4	15/60

Dated: July 24, 2003.

Laura Y. Martin,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–19577 Filed 7–31–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–58–03]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: Centers for Disease Control and Prevention's Performance Evaluation Program for Mycobacterium Tuberculosis and Non-Tuberculosis Mycobacterium (NTM) Drug Susceptibility Testing—New—Public Health Practice Program Office (PHPPO), Centers for Disease Control and Prevention (CDC).

As part of the continuing effort to support both domestic and global public health objectives for treatment of tuberculosis (TB), prevention of multi-drug resistance and surveillance programs, the Division of Laboratory Systems seeks to collect information from domestic private clinical and public health laboratories twice per year. Participation and information collections from international laboratories will be limited to those which have public health responsibilities for tuberculosis drug susceptibility testing and approval by their national tuberculosis program. While the overall number of cases of TB in the U.S. has decreased, rates still remain high among foreign-born persons, prisoners, homeless populations, and individuals infected with HIV in major metropolitan areas. The rate of TB cases detected in foreign-born persons has been reported to be almost nine times higher than the rate among the U.S. born population. CDC's goal to eliminate TB will be virtually impossible without considerable effort in assisting heavy disease burden countries in the reduction of tuberculosis. The *M. tuberculosis/NTM* program supports this role by monitoring the level of performance and practices among laboratories performing *M. tuberculosis* susceptibility within the U.S. as well as internationally to ensure high-quality laboratory testing, resulting in accurate and reliable results.

Information collected in this program will include the susceptibility test results of primary and secondary drugs, concentrations, and test methods performed by laboratories on a set of challenge isolates sent twice yearly.

A portion of the response instrument will collect demographic data such as laboratory type and the number of tests performed annually. By providing an evaluation program to assess the ability of the laboratories to test for drug resistant *M. tuberculosis* and selected strains of NTM, laboratories will also have a self-assessment tool to aid in maximizing their skills in susceptibility testing. Information obtained from laboratories on susceptibility testing practices and procedures will assist with determining variables related to good performance, with assessing areas for training and with developing practice standards. There are no costs to respondents.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Private Clinical and Public Health Laboratories	165	2	30/60

Dated: July 24, 2003.

Laura Y. Martin,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–19578 Filed 7–31–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[60Day–03–101]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Agency for Toxic Substances and Disease Registry (ATSDR) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404)498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Evaluation of Customer Satisfaction of the Agency for Toxic Substances and Disease Registry (ATSDR) Web Site (OMB No. 0923–0028)—Reinstatement—ATSDR proposes to conduct customer satisfaction research for its Internet site. Information on the site focuses on prevention of exposure and adverse human health effects and diminished quality of life associated with exposure to hazardous substances from waste sites, unplanned releases, and other sources of pollution present in the environment. The site is designed to serve the general public, persons at risk for exposure to hazardous substances, and health professionals.

Approval for a similar Customer Satisfaction Survey was requested in 2002 jointly with the Centers for Disease Control and Prevention (OMB No. 0920–0449, Expiration Date 09/30/2003). The new survey is solely for ATSDR and is significantly shorter and would require less time to complete.

This research will ensure that targeted audiences find the information easy to access, clear, informative, and useful. Specifically, the research will examine whether the information is presented in an appropriate technological format and whether it meets the needs, wants, and preferences of visitors or "customers" to the Web site. Results from the previous survey were utilized to redesign the ATSDR Web site—making improvements to architecture, links, organization, and content. Results from the new survey will assist ATSDR in making more improvements to the Web Site in order to better serve its customers/visitors. There will be no costs to respondents.

Respondents	Number of respondents	Number of responses/respondent	Average Burden per response (in hrs.)	Total Burden (in hrs.)
Visitors to ATSDR Web site	1,000	1	5/60	83

Dated: July 28, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–19579 Filed 7–31–03; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–102]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404)498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Data Collection and Analysis to Determine the Reliability and Validity of Current and Proposed Oral Health Questions, Behavioral Risk Factor Surveillance System—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

The National Center for Chronic Disease Prevention and Health Promotion, Division of Oral Health, proposes to support data collection and analysis to determine the reliability and validity of current and proposed Oral Health questions for the Behavioral Risk Factor Surveillance System (BRFSS). At the request of the Association of State and Territorial Dental Directors (ASTDD), the Division of Oral Health (DOH) provided technical assistance in standardization of questions to monitor the oral health of adults. Three questions appeared on the BRFSS core in 1999, and were included again in 2002; They permit state dental programs to track progress toward Healthy People (HP) objectives for adults (HP 2010: 21–3, 21–4, 21–10), to monitor reported use of a key preventive service for adults (teeth cleaning), and to examine the relationship of oral health indicators to general health status, conditions, and behaviors.

As more state dental programs consider the oral health of adults, states have requested that a bank of additional standardized questions be created to monitor other oral health indicators. CDC/DOH has been reluctant to provide additional technical assistance, without firm data on the reliability and validity of questions. Because all BRFSS questions require self-report by respondents about their own oral health status or behaviors, recall bias and errors in perception exist. To accomplish estimates of response error, answers to existing and proposed BRFSS questions (limit = 10 content questions, plus 7 demographic questions) must be compared to the "True" situation of that individual, *i.e.*, that is found in patient charts or other clinical records.

The proposed data collection and analysis will be conducted through the Alliance of Community Health Plans by research foundations affiliated with two dental plans, Kaiser Permanente Northwest, Portland, OR and Health Partners, Minneapolis, MN. The proposed telephone survey, similar to BRFSS, of a convenience sample of 400 dental plan members (200 from each respective HMO) would occur only once. Neither published studies nor informal discussions with dental researchers regarding work in progress uncovered any information that would eliminate the need for this data collection. All work on this project, including linkages between health plan records and responses to the BRFSS questions, will be conducted at the research foundations associated with the respective health plans. CDC will receive only a report on the validity of the questions, and will not have access to the database constructed for the contract.

Study findings will allow CDC to respond to state requests for inclusion of additional standardized questions in an optional oral health module for BRFSS and ensure that any such questions are reliable, valid, and useful for state program planning and evaluation. There is no cost to respondents.

Health plan respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total burden (in hours)
Kaiser Northwest	200	1	15/60	50
Health Partners	200	1	15/60	50
Total				100

Dated: July 28, 2002.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–19580 Filed 7–31–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003E–0036]

Determination of Regulatory Review Period for Purposes of Patent Extension; SPECTRACEF

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for SPECTRACEF and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product SPECTRACEF (cefditoren pivoxil). SPECTRACEF is indicated for treatment of acute exacerbation of chronic bronchitis, pharyngitis/tonsillitis, and uncomplicated skin and skin structure infections. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for SPECTRACEF (U.S. Patent No. 4,839,350) from Meiji Seika Kaisha, Ltd., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 4, 2003, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of SPECTRACEF represented the first permitted commercial marketing or use of the

product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for SPECTRACEF is 1,461 days. Of this time, 851 days occurred during the testing phase of the regulatory review period, while 610 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: August 31, 1997. The applicant claims August 30, 1997, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was August 31, 1997, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: December 29, 1999. FDA has verified the applicant's claim that the new drug application (NDA) for SPECTRACEF (NDA 21–222) was initially submitted on December 29, 1999.

3. *The date the application was approved*: August 29, 2001. FDA has verified the applicant's claim that NDA 21–222 was approved on August 29, 2001.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,032 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by January 29, 2004. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by January 29, 2004. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Copies are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 14, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–19621 Filed 7–31–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Establishment of Medical Device User Fee Rates for Fiscal Year 2004

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fee rates and payment procedures for medical device user fees for fiscal year (FY) 2004. The Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device User Fee and Modernization Act of 2002 (MDUFMA) authorizes FDA to collect user fees for certain medical device applications. The FY 2004 fee rates are provided in this notice. For all applications submitted on or after October 1, 2003, and through September 30, 2004, fees must be paid at the FY 2004 rates at the time that applications are submitted to FDA. It is the date that the application is received by FDA, not the date that the check is received, that governs the fee that must be paid. This notice provides details on how fees for FY 2004 were determined and payment procedures for those submitting medical device applications subject to user fees.

FOR FURTHER INFORMATION CONTACT:

For further information on MDUFMA: Visit the FDA Web site at *http://www.fda.gov/oc/mdufma.*

For questions relating to this notice: Frank Claunts, Office of Management and Systems (HFA–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4427.

SUPPLEMENTARY INFORMATION:

I. Background

Section 738 of the act (21 U.S.C. 379j), establishes fees for different kinds of medical device applications. Fees are assessed on certain types of medical device applications and supplements. When certain conditions are met, FDA may waive or reduce fees (21 U.S.C. 379j(d) and (e)).

For FY 2003 through FY 2007, MDUFMA (Public Law 107–250) establishes revenue amounts for the aggregate of all application fee revenues. Revenue amounts established for years after FY 2003 are subject to adjustment for inflation, workload, and compensation for revenue shortfalls from previous years. Fees for applications are to be established each year by FDA so that revenues will approximate the levels established in the statute, after those amounts have been first adjusted for inflation, workload, and, if required, revenue shortfalls from previous years.

This notice establishes fee rates for FY 2004. These fees are effective on October 1, 2003, and will remain in effect through September 30, 2004.

II. Revenue Amount for FY 2004, and Adjustments for Inflation, Workload, and Compensation for Revenue Shortfalls from Previous Fiscal Years

A. Statutory Fee Revenue Amount

MDUFMA specifies that the fee revenue amount for FY 2004 is $27,255,000, before any adjustments are made (21 U.S.C. 379j(b)).

B. Inflation Adjustment to Fee Revenue Amount

MDUFMA provides that fee revenue amounts for each FY after 2003 shall be adjusted for inflation. The adjustment must reflect the greater of: (1) The total percentage change that occurred in the Consumer Price Index (CPI) (all items; U.S. city average) during the 12-month period ending June 30 preceding the FY for which fees are being set, or (2) the total percentage pay change for the previous FY for Federal employees stationed in the Washington, DC metropolitan area. MDUFMA provides for this annual adjustment to be cumulative and compounded annually after 2003 (see 21 U.S.C. 379j(c)(1)).

The inflation adjustment for FY 2004 is 4.27 percent. This is the greater of the CPI increase during the 12-month period ending June 30 preceding the FY for which fees are being set (June 30, 2003—which was 2.11 percent) or the increase in pay for the previous FY (2003) for Federal employees stationed in the Washington, DC metropolitan area (4.27 percent). No compounding is applied to this amount because there was no inflation increase applied in FY 2003.

The inflation-adjusted revenue amount for FY 2004 is the statutory fee amount ($27,255,000) increased by 4.27 percent, the inflation adjuster for FY 2004. The FY 2004 inflation-adjusted revenue amount is $28,418,789.

C. Workload Adjustment to Inflation Adjusted Fee Revenue Amount

For each FY beginning in FY 2004, MDUFMA provides that fee revenue amounts, after they have been adjusted for inflation, shall be further adjusted to reflect increases in workload for the process for the review of medical device applications (see 21 U.S.C. 379j(c)(2)). FDA's current assessment reflects that the change in total review workload as defined in MDUFMA has changed by less than 1 percent. Based on this assessment, FDA is not applying a workload adjustment to the FY 2004 inflation-adjusted revenue amount of $28,418,789. The need for workload adjustment will be assessed anew next year when FY 2005 fees are established.

D. Compensating Adjustment to Fee Revenue Amount Once Adjustments for Inflation and Workload Have Been Made

For each FY beginning in FY 2004, MDUFMA provides that fee revenue amounts, after they have been adjusted for inflation and workload, shall be further adjusted, if necessary, to compensate for the cumulative shortfall in fee revenue from previous years (see 21 U.S.C. 379j(c)(3)). In FY 2003, FDA had expected to collect a total of $25,125,000 in MDUFMA fees, the fee revenue amount stated in the statute (see 21 U.S.C. 379j(b)). As of June 30, 2003, for 9 months of the fiscal year, total fee collections were $14,360,304. If fee collections in the last 3 months are proportional to collections in the first 9 months, FDA will collect another $4,786,768 million—for a total of about $19,147,000 million for the year. In addition FDA expects to collect about $500,000 of outstanding accounts receivable, for a FY 2003 estimated total fee collection of $19,647,000. This is $5,478,000 million less than the statutory revenue amount for FY 2003.

In implementing the compensating adjustment provision, FDA will increase the FY 2004 revenue amount by the amount of the revenue shortfall in FY 2003, $5,478,000. Accordingly, adding $5,478,000 to the inflation-adjusted revenue amount of $28,418,789 derived above (see section II.B of this document), provides a final adjusted revenue amount for FY 2004 of $33,896,789. Fees for FY 2004 are being set to generate this amount of revenue.

III. Fee Calculations for FY 2004

A. Estimating Numbers of Applications That Will Pay Fees

Under MDUFMA, the amount of fee revenue collected is a function of two factors—the fee rate for the application and the number of applications that will pay each type of fee.

To set fees for FY 2004, FDA must first estimate the number of applications that will pay each type of fee. For FY 2003, before MDUFMA was enacted, FDA estimated the number of applications that would pay each type of fee. That estimate was based on the average number of each category of applications over the 5-year period before MDUFMA was enacted, FY 1997 through FY 2001. These estimates took into account FDA's estimates of the number of applications that would qualify for a small business reduction or exemption. (It should be noted that the two-tier fee structure for 510(k)'s is to begin in FY 2004.) The original FY 2003 estimates are shown in Table 1 of this document.

TABLE 1.—ORIGINAL ESTIMATES OF NUMBERS OF FEE-PAYING APPLICATIONS

Type of Fee-Paying Application	Full Year Numbers Based on Original Estimates		
	Full Fee	Reduced Fee	Waived
Original Premarket Applications (PMAs)/Product Development Protocols (PDPs)/Premarket Reports (PMRs)/Biologics License Applications (BLAs) and Full Fee Supplements	58	10	10
180-Day PMA/PDP Supplements to PMAs	171	24	
Real Time Supplements to PMAs	86	14	
Premarket Notifications (510(k)s)	880	3,120	

The reason that MDUFMA fee revenues are projected to fall approximately $5,478,000 short of the revenue target in FY 2003 is that FDA collected fewer full fees than projected for Original PMAs and BLAs and their full-fee supplements, and fewer fees for 180-day supplements. The major reasons for this are twofold. A number of the applications were "bundled," using guidance developed after MDUFMA was enacted, and did not have to pay separate fees. In addition, the agency received fewer full PMAs, BLAs and 180-day supplements in the first 9 months of FY 2003 than the 5-year averages estimated. Because of this, FDA considered basing fees for FY 2004 on lower estimates of the number of full PMA/BLA fees and 180-day supplement fees. This would have resulted in even higher fees for FY 2004.

The agency decided against revising estimated numbers of fee-paying applications in setting the FY 2004 fees, however, because such a revision would have been based on data from too brief a period—the 3 months from April 1 through June 30, 2003, during which applications were not accepted for filing unless the fee was paid. Instead, the agency will continue to use its original estimate of the numbers of fee-paying applications (see Table 1 of this document) again in setting fees for FY 2004.

FDA will reassess whether or not it needs to adjust its original estimates of the number of each type of fee-paying application a year from now when it sets fees for FY 2005. At that time the agency will have 15 months of data to use to determine whether its original estimates for annual numbers of applications were too high.

B. Determining The Fee Rates

Under MDUFMA, all fees are set as a percent of the full fee for a PMA (see 21 U.S.C. 379j(a)(1)(A)). In order to generate $33,896,789 in FY 2004, using the above estimates of the numbers of each type of application that will pay a fee at each rate (see Table 1 of this document), the rate for a full PMA will be $206,811 for FY 2004. For all applications other than premarket notification submissions, the small business rate is 38 percent of the full fee rate (see 21 U.S.C. 379j(d)(2)(C)). For premarket notification submissions (510(k)'s), the small business rate is 80

percent of the full rate for premarket notification submissions (see 21 U.S.C. 379j(e)(2)(C)(i)). The FY 2004 fee rates for all application categories are set out in Table 2 of this document.

TABLE 2.—FEE TYPES, PERCENT OF PMA FEE, AND FY 2004 FEE RATES

Application Fee Type	Full Fee Amount as a Percent of PMA Fee	FY 2004 Full Fee	FY 2004 Small Business Fee
PMA (submitted under section 515(c)(1) or 515(f) of the act or section 351 of the Public Health Service (PHS Act)		$206,811	$78,588
PMR (submitted under section 515(c)(2) of the act)	100%	$206,811	$78,588
Panel Track Supplement (to an approved PMA or PMR that requests a significant change in design or performance of the device, or a new indication for use of the device, and for which clinical data are generally necessary to provide reasonable assurance of safety and effectiveness)	100%	$206,811	$78,588
Efficacy Supplement (to an approved premarket application under section 351 of the PHS Act)	100%	$206,811	$78,588
180–Day Supplement (to an approved PMA or PMR that is not a panel track supplement and requests a significant change in components, materials, design, specification, software, color additives, or labeling)	21.5%	$44,464	$16,896
Real Time Supplement (to an approved PMA or PMR that is not a panel track supplement and requests a minor change to the device, such as a minor change to the design of the device, software, manufacturing, sterilization, or labeling, and for which the applicant has requested and the agency has granted a meeting or similar forum to jointly review and determine the status of the supplement)	7.2%	$14,890	$5,658
Premarket Notification (submitted under section 510(k) of the act)	1.42% in aggregate	$3,480	$2,784

IV. Adjustment for Excess Collections in Previous Years

Under the provisions of MDUFMA, if the agency collects more fees than were provided for in appropriations in any year, FDA is required to reduce its anticipated fee collections in a subsequent year by that amount (21 U.S.C. 379j(h)(4)). No adjustments under this provision are required for fees assessed in FY 2004. If fees assessed in FY 2004 should inadvertently result in excess collections in FY 2004, then when fees are set for FY 2005 a reduction in fee rates for FY 2005 will be made for any excess collections that may have occurred in FY 2004.

V. Small Business Qualification for Purposes of MDUFMA Fees

Firms with annual gross sales and revenues of $30 million or less, including gross sales and revenues of all affiliates, partners, and parent firms, may qualify for a fee waiver for their first PMA, and for lower rates for subsequent PMA's, premarket reports, supplements, and premarket notification submissions.

Even if a firm qualified under MDUFMA as a small business in FY 2003, it must obtain a new small business certification and decision number for FY 2004 and for each subsequent fiscal year. This can be initiated any time after the publication of this notice. For FY 2004, firms that have not received a FY 2004 small business qualification decision number from FDA will not be permitted to submit the reduced small business fees. FDA urges firms to apply for this qualification 60 days before they intend to submit their application and fee.

To qualify, you are required to submit the following:

- Certified copies of your Federal Income Tax Return for the most recent taxable year (2002 or later), including certified copies of the income tax returns of your affiliates, partners, and parent firms.
- A certified list of all parents, partners, and affiliate firms since October 1, 2002.

You can find information for determining if an applicant qualifies for a small business first-time PMA waiver and lower rates for subsequent applications on the FDA Web site at *http://www.fda.gov/oc/mdufma*. At that Web site, under the heading "Guidance Documents," click on the link "Qualifying as a Small Business." This Web site provides detailed instructions and the address for mailing documentation to support qualification as a small business under MDUFMA.

VI. Procedures for Paying Application Fees

Any application or supplement subject to fees under MDUFMA that is received on or after October 1, 2003, through September 30, 2004, is subject to the FY 2004 fee rate. It is the date that the application is received in the reviewing center's document room that determines whether the fee rates for FY 2003 or FY 2004 apply—not the date that FDA receives the payment. FDA must receive the correct fee at the time that an application is submitted, or the application will not be accepted for filing or review.

FDA requests that you follow the steps below before submitting a medical device application subject to a fee. Please pay close attention to these procedures to ensure that FDA links the fee with the correct application. (Note: In no case should the check for the fee be submitted to FDA with the application.)

A. Step One—Secure a Payment Identification Number and Medical Device User Fee Cover Sheet From FDA Before Submitting Either the Application or the Payment. Note: FY 2004 Fee Rates Will be Available on the Cover Sheet Beginning on August 25, 2003.

Log onto the MDUFMA Web site at *http://www.fda.gov/oc/mdufma* and, under the forms heading, click on the link "User Fee Cover Sheet." Complete the Medical Device User Fee Cover Sheet. Be sure you choose the correct application submission date range. (Two choices will be offered from August 25, 2003, until the middle of October 2003. One choice is for applications that will be received on or before September 30, 2003, which will be subject to FY 2003 fee rates. A second choice is for applications that will be received on or after October 1, 2003, which will be subject to FY 2004 fee rates.) After completing data entry, print a copy of the Medical Device User Fee Cover Sheet and note the unique Payment Identification Number located in the upper right-hand corner of the printed cover sheet.

B. Step Two—Electronically Transmit a Copy of the Printed Cover Sheet with the Payment Identification Number to FDA's Office of Financial Management

Once you are satisfied that the data on the cover sheet is accurate, electronically transmit that data to FDA according to the instructions on the screen. Since electronic transmission is possible beginning on August 25, 2003, it will no longer be necessary to fax a copy of the sheet to FDA. After August 25, 2003, applicants will be required to set up a user account and use passwords to assure data security in the creation and electronic submission of Cover Sheets.

C. Step Three—Mail Payment and a Copy of the Completed Medical Device User Fee Cover Sheet to the Saint Louis Address Specified Below

- Make the payment in U. S. currency by check, bank draft, or U.S. Postal money order payable to the Food and Drug Administration. (The tax identification number of the Food and Drug Administration is 53–0196965, should your accounting department need this information.)
- Please write your application's unique Payment Identification Number, from the upper right-hand corner of your completed Medical Device User Fee Cover Sheet, on your check, bank draft, or U.S. Postal money order.
- Mail the payment and a copy of the completed Medical Device User Fee Cover Sheet to: Food and Drug Administration, P.O. Box 956733, Saint Louis, MO, 63195–6733.

If you prefer to send a check by a courier such as FEDEX or UPS, the courier may deliver the checks to: US Bank, Attn: Government Lockbox 956733, 1005 Convention Plaza, St. Louis, Missouri 63101.

(Note: This address is for courier delivery only. Contact the US Bank at 314–418–4821 if you have any questions concerning courier delivery.)

It is helpful if the fee arrives at the bank at least 1 day before the application arrives at FDA. FDA records the official application receipt date as the later of the following:

- The date the application was received by FDA.
- The date US Bank notifies FDA that payment has been received. US Bank is required to notify FDA within 1-working day, using the Payment Identification Number described previously.

D. Step Four—Submit your Application to FDA With a Copy of the Completed Medical Device User Fee Cover Sheet

Please submit your application and a copy of the completed Medical Device User Fee Cover Sheet to one of the following addresses:

- Medical device applications should be submitted to: Food and Drug Administration, Center for Devices and Radiological Health, Document Mail Center (HFZ–401), 9200 Corporate Blvd., Rockville, MD 20850.
- Biologic applications should be sent to: Food and Drug Administration, Center for Biologics Evaluation and Research, Document Control Center (HFM–99), suite 200N, 1401 Rockville Pike, Rockville, MD 20852–1448.

Dated: July 29, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–19655 Filed 7–31–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Establishment of Prescription Drug User Fee Rates for Fiscal Year 2004

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rates for prescription drug user fees for fiscal year (FY) 2004. The Federal Food, Drug, and Cosmetic Act (the act), as amended by the Prescription Drug User Fee Amendments of 2002 (PDUFA III), authorizes FDA to collect user fees for certain applications for approval of drug and biological products, on establishments where the products are made, and on such products. Revenue amounts for application fees, establishment fees, and product fees for FY 2004 were established by PDUFA III. Fees for applications, establishments, and products are to be established each year by FDA so that revenues from each category will approximate the levels established in the statute, after those amounts have been first adjusted for inflation and workload. This notice establishes fee rates for FY 2004 for application fees ($573,500 for an application requiring clinical data, and $286,750 for an application not requiring clinical data or a supplement requiring clinical data), establishment fees ($226,800), and product fees ($36,080). These fees are effective on October 1, 2003, and will remain in effect through September 30, 2004. For applications and supplements that are submitted on or after October 1, 2003, the new fee schedule must be used. Invoices for establishment and product fees for FY 2004 will be issued in August 2003, using the new fee schedule.

FOR FURTHER INFORMATION CONTACT: Frank Claunts, Office of Management and Systems (HFA–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4427.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 735 and 736 of the act (21 U.S.C. 379g and h), establish three different kinds of user fees. Fees are assessed on: (1) Certain types of applications and supplements for approval of drug and biological products, (2) certain establishments where such products are made, and (3) certain products (see 21 U.S.C. 379h(a)). When certain conditions are met, FDA may waive or reduce fees (see 21 U.S.C. 379h(d)).

For FY 2003 through FY 2007 revenue amounts for application fees, establishment fees, and product fees are established by PDUFA III (the Prescription Drug User Fee Amendments of 2002, title 5 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002). Revenue amounts established for years after FY 2003 are subject to adjustment for inflation and workload. Fees for applications, establishments, and products are to be established each

year by FDA so that revenues from each category will approximate the levels established in the statute, after those amounts have been first adjusted for inflation and workload. The revenue levels established by PDUFA III continue the arrangement under which one-third of the total user fee revenue is projected to come from each of the three types of fees: Application fees, establishment fees, and product fees.

This notice establishes fee rates for FY 2004 for application, establishment, and product fees. These fees are effective on October 1, 2003, and will remain in effect through September 30, 2004.

II. Revenue Amount for FY 2004, and Adjustments for Inflation and Workload

A. Statutory Fee Revenue Amounts

PDUFA III specifies that the fee revenue amount for FY 2004 for each category of fees (application, product, and establishment) is $77,000,000, before any adjustments are made, for a total of $231,000,000 from all three categories of fees (see 21 U.S.C. 379h(b)).

B. Inflation Adjustment to Fee Revenue Amount

PDUFA III provides that fee revenue amounts for each FY after 2003 shall be adjusted for inflation. The adjustment must reflect the greater of: (1) The total percentage change that occurred in the consumer price index (CPI) (all items; U.S. city average) during the 12-month period ending June 30 preceding the FY for which fees are being set, or (2) the total percentage pay change for the previous FY for Federal employees stationed in the Washington, DC, metropolitan area. PDUFA III provides for this annual adjustment to be cumulative and compounded annually after FY 2003 (see 21 U.S.C. 379h(c)(1)).

The inflation adjustment for FY 2004 is 4.27 percent. This is the greater of the CPI increase during the 12-month period ending June 30 preceding the FY for which fees are being set (June 30, 2003—which was 2.11 percent) or the increase in pay for the previous FY (2003 in this case) for Federal employees stationed in the Washington, DC, metropolitan area (4.27 percent). No compounding is applied to this amount because there was no inflation increase applied in FY 2003.

The inflation-adjusted revenue amount for each category of fees for FY 2004 is the statutory fee amount ($77,000,000) increased by 4.27 percent, the inflation adjuster for FY 2004. The FY 2004 inflation-adjusted revenue amount is $80,287,900 for each category of fee, for a total inflation-adjusted fee revenue amount of $240,863,700 in FY 2004.

C. Workload Adjustment to Inflation Adjusted Fee Revenue Amount

For each FY beginning in FY 2004, PDUFA III provides that fee revenue amounts, after they have been adjusted for inflation, shall be further adjusted to reflect changes in workload for the process for the review of human drug applications (see 21 U.S.C. 379h(c)(2)).

The conference report accompanying the PDUFA III, House of Representatives report number 107–481, provides additional instructions on how the workload adjustment provision of PDUFA III is to be implemented. Following that guidance, FDA calculated the average number each of the four types of applications specified in the workload adjustment provision (human drug applications, commercial investigational new drug applications, efficacy supplements, and manufacturing supplements) received over the 5-year period that ended on June 30, 2002 (base years), and the average number of each of these types of applications over the most recent 5-year period that ended June 30, 2003.

The results of these calculations are presented in the first 2 columns of table 1 of this document Column 3 reflects the percent change in workload over the two 5-year periods. Column 4 shows the weighting factor for each type of application, reflecting how much of the total FDA drug review workload was accounted for by each type of application in the table during the most recent 5 years. This weighting factor was developed by applying data generated in a 2002 KPMG study of FDA's drug review workload to submission data for the most recent 5-year period. Column 5 of table 1 of this document, is the weighted percent change in each category of workload, and was derived by multiplying the weighting factor in each line in column 4 by the percent change from the base years in column 3. At the bottom right of the table the sum of the values in column 5 is added, reflecting a total change in workload of negative 1.4 percent for FY 2004.

TABLE 1.—WORKLOAD ADJUSTER CALCULATION

Application Type	Summary of Workload Adjustment Calculations				
	Column 1 5-year Avg. Base Years	Column 2 Latest 5-year Avg.	Column 3 % Change	Column 4 Weighting Factor	Column 5 Weighted % Change
New Drug Applications/Biological License Applications	119.8	116.6	-2.7%	45.0%	-1.2%
Commercial Investigational New Drug Exemptions	629.8	617.8	-1.9%	40.7%	-0.8%
Efficacy Supplements	159.2	164.8	3.5%	5.7%	0.2%
Manufacturing Supplements	2100.6	2193.0	4.4%	8.7%	0.4%
FY 2004 Workload Adjuster					-1.4%

PDUFA III specifies that the workload adjuster may not result in fees that are less than the inflation-adjusted revenue amount. For this reason, the workload adjustment will not be applied in FY 2004, and the inflation-adjusted revenue amount for each category of fees for FY 2004 ($80,287,900) becomes the revenue target for fees in FY 2004, for a total inflation-adjusted fee revenue target in FY 2004 of $240,863,700 for fees from all three categories.

III. Application Fee Calculations

PDUFA III provides that the rates for application, product, and establishment fees be established 60 days before the beginning of each FY (see 21 U.S.C. 379h(c)(4)). The fees are to be established so that they will generate the fee revenue amounts specified in the statute, as adjusted for inflation and workload.

A. Application Fee Revenues and Application Fees

The application fee revenue amount that PDUFA III established for FY 2004 is $80,287,900, as calculated in the previous section. Application fees will be set to generate this amount.

B. Estimate of Number of Fee-Paying Applications and Establishment of Application Fees

For FY 2003 through FY. 2007, FDA will estimate the total number of fee-paying full application equivalents (FAEs) it expects to receive the next FY by averaging the number of fee-paying FAEs received in the five most recent fiscal years. This use of the rolling average of the five most recent fiscal years is the same method that was applied in making the workload adjustment.

In estimating the number of fee-paying FAEs that FDA will receive in FY 2004, the 5-year rolling average for the most recent 5 years will be based on actual counts of fee-paying FAEs received for fiscal years 1999 through 2003. For FY 2003, FDA is estimating the number of fee-paying FAEs for the full year based on the actual count for the first 9 months and estimating the number for the final 3 months.

Table 2 of this document shows, in column 1, the total number of each type of FAE received in the first 9 months of FY 2003, whether fees were paid or not. Column 2 shows the number of FAEs for which fees were waived or exempted during this period, and column 3 shows the number of fee-paying FAEs received through June 30, 2003. Column 4 estimates the 12-month total fee-paying FAEs for FY 2003 based on the applications received through June 30, 2003. All of the counts are in FAEs. A full application requiring clinical data counts as one FAE. An application not requiring clinical data counts one-half an FAE, as does a supplement requiring clinical data. An application that is withdrawn or refused for filing counts as one-fourth of an FAE if it initially paid a full application fee, or one-eighth of an FAE if it initially paid one-half of the full application fee amount.

TABLE 2.—FY 2003 FAES RECEIVED THROUGH JUNE 30, 2003 AND PROJECTED THROUGH SEPTEMBER 30, 2003

Application or Action	Column 1 Total FAEs Received Through June 30, 2003	Column 2 Fee Exempt or Waived FAEs Through June 30, 2003	Column 3 Total Fee Paying FAEs Through June 30, 2003	Column 4 12-Month Projection for Fee Paying FAEs
Applications Requiring Clinical Data	65.0	17.0	48.0	64.0
Applications Not Requiring Clinical Data	6.5	0.5	6.0	8.0
Supplements Requiring Clinical Data	40.0	6.0	34.0	45.3
Withdrawn or Refused to File	0.0	0.0	0.0	0.0
Total	111.5	23.5	88.0	117.3

In the first 9 months of FY 2003 FDA received 111.5 FAEs, of which 88 were fee-paying. Based on data from the last 7 FYs, on average, 25 percent of the applications submitted each year come in the final 3 months. Dividing 88 by 3 and multiplying by 4, extrapolates the amount to the full 12 months of the FY and projects the number of fee-paying FAEs in FY 2003 at 117.3.

All pediatric supplements, which had been exempt from fees prior to January 4, 2002, were required to pay fees effective January 4, 2002. This is the result of section 5 of the Best Pharmaceuticals for Children Act that repealed the fee exemption for pediatric supplements effective January 4, 2002. Thus, in estimating FY 2004 fee-paying receipts, we must add all the pediatric supplements that were previously exempt from fees prior to January 4, 2002. The exempted number of FAEs for pediatric supplements for FY 1999, FY 2000, FY 2001, and FY 2002 respectively were 5.3, 12.5, 19, and 4.5. Since fees on these supplements will be paid for pediatric applications submitted in FY 2004, the number of pediatric supplement FAEs exempted from fees each year from FY 1999 through FY 2002 (the years in the table when fees were exempted) are added to the total of fee-paying FAEs received each year.

As table 3 shows, the average number of fee-paying FAEs received annually in the most recent 5-year period, assuming all pediatric supplements had paid fees, and including our estimate for FY 2003, is 140.0 FAEs. FDA will set fees for FY 2004 based on this estimate as the number of full application equivalents that will pay fees.

TABLE 3.—FAES 5-YEAR AVERAGE

Year	1999	2000	2001	2002	2003	5-year Avg.
Fee-Paying FAEs	118.7	153.0	107.6	127.6	117.3	131.8
Exempt Pediatric Supplement FAEs	5.3	12.5	19.0	4.5	0.0	8.2
Total	158.3	165.9	126.6	132.1	117.3	140.0

The FY 2004 application fee is estimated by dividing the estimated number of full applications that will pay fees, 140, into the fee revenue amount to be derived from application fees in FY 2004, $80,287,900. The result, rounded to the nearest one hundred dollars, is a fee of $573,500 per full application requiring clinical data, and

$286,750 per application not requiring clinical data or per supplement requiring clinical data.

IV. Adjustment for Excess Collections in Previous Years

Under the provisions of PDUFA, as amended, if the agency collects more fees than were provided for in appropriations in any year after 1997, FDA is required to reduce its anticipated fee collections in a subsequent year by that amount (see 21 U.S.C. 379h(g)(4)).

In FY 1998, Congress appropriated a total of $117,122,000 to FDA in PDUFA fee revenue. To date, collections for FY 1998 total $117,737,470—a total of $615,470 in excess of the appropriation limit. This is the only fiscal year since 1997 in which FDA has collected more in PDUFA fees than Congress appropriated.

FDA also has some requests for waivers or reductions of FY 1998 fees that have been decided but that are pending appeals. For this reason, FDA is not reducing its FY 2004 fees to offset excess collections at this time. An offset will be considered in a future year, if FDA still has collections in excess of appropriations for FY 1998 after the pending appeals for FY 1998 waivers and reductions have been resolved.

V. Fee Calculations for Establishment and Product Fees

A. Establishment Fees

At the beginning of FY 2003, the establishment fee was based on an estimate that 354 establishments would be subject to and would pay fees. By the end of FY 2003, FDA estimates that 379 establishments will have been billed for establishment fees, before all decisions on requests for waivers or reductions are made. FDA again estimates that a total of 25 establishment fee waivers or reductions will be made for FY 2003, for a net of 354 fee-paying establishments. FDA will use this number, 354, for its FY 2004 estimate of establishments paying fees, after taking waivers and reductions into account. The fee per establishment is determined by dividing the adjusted total fee revenue to be derived from establishments ($80,287,900) by the estimated 354 establishments, for an establishment fee rate for FY 2004 of $226,800 (rounded to the nearest one hundred dollars).

B. Product Fees

At the beginning of FY 2003, the product fee was based on an estimate that 2,293 products would be subject to and pay product fees. By the end of FY 2003, FDA estimates that 2,260 products will have been billed for product fees, before all decisions on requests for waivers or reductions are made. Assuming that there will be about 35 waivers and reductions made, FDA estimates that 2,225 products will qualify for product fees in FY 2003, after allowing for waivers and reductions, and will use this number for its FY 2004 estimate. Accordingly, the FY 2004 product fee rate is determined by dividing the adjusted total fee revenue to be derived from product fees ($80,287,900) by the estimated 2,225 products for a FY 2004 product fee of $36,080 (rounded to the nearest ten dollars).

VI. Fee Schedule for FY 2004

The fee rates for FY 2004 are set out in table 4 of this document:

TABLE 4.

FEE CATEGORY	FEE RATES FOR FY 2004
APPLICATIONS	
Requiring clinical data	$573,500
Not requiring clinical data	$286,750
Supplements requiring clinical data	$286,750
ESTABLISHMENTS	$226,800
PRODUCTS	$36,080

VII. Implementation of Adjusted Fee Schedule

A. Application Fees

The appropriate application fee established in the new fee schedule must be paid for any application or supplement subject to fees under PDUFA that is submitted after September 30, 2003. Payment must be made in U.S. currency by check, bank draft, or U.S. postal money order payable to the order of the Food and Drug Administration. Please include the user fee identification (ID) number on your check. Your check can be mailed to: Food and Drug Administration, P.O. Box 360909, Pittsburgh, PA 15251–6909

If checks are sent by a courier that requests a street address, the courier can deliver the checks to: Food and Drug Administration (360909), Mellon Client Service Center, rm. 670, 500 Ross St., Pittsburgh, PA 15262–0001. (Note: This Mellon Bank address is for courier delivery only.)

Please make sure that the FDA post office box number (P.O. Box 360909) is on the enclosed check. The tax ID number of the FDA is 530 19 6965.

B. Establishment and Product Fees

By August 31, 2003, FDA will issue invoices for establishment and product fees for FY 2004 under the new Fee Schedule. Payment will be due on October 1, 2003. FDA will issue invoices in October 2004 for any products and establishments subject to fees for FY 2004 that qualify for fees after the August 2003 billing.

Dated: July 29, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–19654 Filed 7–31–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0325]

Guidance for Industry on 180-Day Exclusivity When Multiple Abbreviated New Drug Applications Are Submitted on the Same Day; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "180-Day Exclusivity When Multiple ANDAs Are Submitted on the Same Day." This guidance explains how FDA intends to determine eligibility for 180-day exclusivity when multiple substantially complete abbreviated new drug applications (ANDAs) that contain a paragraph IV certification to the same patent(s) are submitted on the same day or when paragraph IV certifications are submitted in an amendment or supplement on the same day.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Cecelia Parise, Center for Drug Evaluation and Research (CDER) (HFD–600), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–5845.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "180-Day Exclusivity When Multiple ANDAs Are Submitted on the Same Day." This guidance document provides information to sponsors and/or applicants regarding how the agency intends to determine eligibility for 180-day exclusivity under section 505(j)(5)(B)(iv) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C 355(j)(5)(B)(iv)) when multiple ANDA applicants submit a paragraph IV certification to a listed patent on the same day and no paragraph IV certification to the patent has been submitted on any previous day.

A. Statute and Regulations

A new drug application (NDA) applicant must include in its NDA information about any patents that claim the drug product that is the subject of the NDA or the use of such drug product (section 505(b)(1) and (c)(2) of the act). FDA publishes this patent information upon approval of the NDA or a supplemental NDA in "Approved Drug Products with Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book."

An ANDA applicant must include in its ANDA a patent certification as described in section 505(j)(2)(A)(vii) of the act. The certification must make one of the following statements: (1) Such patent information has not been filed; (2) such patent has expired; (3) the date on which such patent expires; or (4) such patent is invalid or will not be infringed by the manufacture, use, or sale of the drug product for which the ANDA is submitted. This last certification is known as a paragraph IV certification. The ANDA applicant must provide appropriate notice of a paragraph IV certification to each owner of the patent that is the subject of the certification and to the holder of the approved NDA to which the ANDA refers (section 505(j)(2)(B)(i) of the act (part 314 (21 CFR part 314))).

The act provides an incentive for generic drug manufacturers to file paragraph IV certifications and challenge listed patents as invalid or not infringed, thereby permitting generic drugs to reach the market more quickly. Section 505(j)(5)(B)(iv) of the act provides for a 180-day period of marketing protection for certain ANDA products as follows:

> If the [ANDA] contains a [paragraph IV certification] and is for a drug for which a previous application has been submitted under this subsection continuing [sic] such a certification, the application shall be made effective not earlier than one hundred and eighty days after-
>
> (I) the date the Secretary receives notice from the applicant under the previous [ANDA] of the first commercial marketing of the drug under the previous [ANDA], or
>
> (II) the date of a decision of a court in [a patent infringement action] holding the patent which is the subject of the certification to be invalid or not infringed, whichever is earlier (emphasis added).

The statute does not further define the phrase "for which a previous application has been submitted." In its regulation at § 314.107(c), FDA uses both the terms "previously submitted" and "first" in implementing this provision of the statute. It adopts the phrase "for which one or more substantially complete abbreviated new drug applications were previously submitted" to restate the conditions under which exclusivity will apply. The regulation at § 314.107(c)(1)(i) states that exclusivity may begin to run from "[t]he date the applicant submitting the first application first commences commercial marketing of its drug product." The phrase "applicant submitting the first application" is defined in the regulation as "the applicant that submits an application that is both substantially complete and contains a certification that the patent was invalid, unenforceable, or not infringed prior to the submission of any other application for the same listed drug that is both substantially complete and contains the same certification." (§ 314.107(c)(2)) Thus, the agency has adopted the terms "previous," "first," and "prior" to identify the ANDA eligible for exclusivity. However, the agency has not elaborated on how these terms should be applied when more than one applicant submits a paragraph IV certification to the same patent on the same day.

B. 180-Day Exclusivity and Different Day Patent Certifications

The statute and the regulations at § 314.107(c) are straightforward to apply when ANDAs, amendments, or supplements are submitted to FDA on different days. An ANDA submitted on the day before another application is submitted, when no application has been submitted on an earlier day, is clearly the "previous," the "prior" and the "first" application. To date, FDA's exclusivity decisions have involved applications or amendments submitted on different days, and thus have not required additional interpretation of the statute or regulations on this point.

Recently, FDA has had to consider how to apply the 180-day exclusivity provision when multiple challenges to the same patent are submitted on the same "first" day. After the decisions in *Mova Pharmaceuticals, Inc.* v. *Shalala*, 140 F.3d 1060 (D.C.Cir. 1998) and *Granutec, Inc.* v. *Shalala*, 46 U.S.P.Q.2d 1398 (4th Cir. 1998), the first applicant who submits a substantially complete ANDA containing a paragraph IV certification to a listed patent is eligible for 180-day generic drug exclusivity.[1] As noted in a 1999 citizen petition response,[2] many of the current regulations were adopted prior to the *Mova* decision, when the agency interpreted the statute to require that an ANDA applicant had to be sued and win its patent litigation to qualify for 180-day exclusivity. FDA's pre-*Mova* interpretation limited the number of times 180-day exclusivity was awarded because an ANDA applicant had to be first to challenge a patent and then win the patent litigation to be eligible for 180-day exclusivity. The chance of

[1] The regulatory history of this issue has been previously described in the June 1998 CDER guidance for industry entitled "180-Day Generic Drug Exclusivity Under the Hatch-Waxman Amendment to the Federal Food, Drug, and Cosmetic Act."

[2] See response to 99P–1271/PSA1 and PSA2 issued August 2, 1999.

having multiple ANDA applicants qualify for 180-day exclusivity was extremely low, as evidenced by the number of times that 180-day exclusivity was granted.[3] By contrast, after the *Mova* decision, it is now relatively easy to qualify for 180-day exclusivity. As a result, FDA has had to address a number of new issues, including eligibility for exclusivity when multiple paragraph IV certifications are submitted on the same day.

Congress did not address the possibility that multiple applicants would submit patent challenges to FDA on the same day in the 180-day exclusivity provisions of the act. Similarly, FDA regulations now in effect do not address this specific situation. However, in an August 1999 proposed rule addressing 180-day exclusivity issues, FDA proposed an approach whereby all applicants submitting a paragraph IV certification to a patent on the first day such a certification is submitted are "first applicants" for 180-day exclusivity purposes (64 FR 42873, August 6, 1999). FDA received comments both for and against this approach (see Docket No. 85N–0214). The August 1999 proposed rule was withdrawn in November 2002 for reasons unrelated to the merits of the multiple first applicant approach (67 FR 66593, November 1, 2002). When the proposed rule was withdrawn, the agency noted it would continue to regulate directly from the statute and any applicable regulations, and make decisions on an issue-by-issue basis. The agency continues to believe that the approach to multiple first day patent challenges described in the proposed rule is a reasonable and appropriate interpretation of the statute. Two citizen petitions have specifically asked the agency to follow the approach described in the proposed rule when addressing 180-day exclusivity in cases where there are multiple ANDAs containing challenges to the same patent(s) submitted on the same day (see Docket Nos. 00P–1445 and 03P–0217).

Same day patent challenges generally occur when the expiration of 4 years of a 5-year exclusivity period under section 505(j)(5)(D)(ii) of the act permits submission of ANDAs containing a paragraph IV certification as of a specific date, and multiple applicants vie to be first to make such a submission. Multiple submissions on the same day may also occur when a new patent is issued by the Patent and Trademark Office and submitted to FDA by the NDA sponsor after ANDAs have been submitted. Because new patents must be submitted to FDA within 30 days of issuance, ANDA applicants position themselves to be the first to submit a paragraph IV certification as soon as the patent is submitted to FDA, often exactly 30 days after patent issuance.

Implementation of a rule that determined eligibility for 180-day exclusivity by the minute or second of submission would be problematic for several reasons. First, applications arrive at CDER by different means and at different locations. They are delivered by U.S. mail, delivery service, courier, and in person by the applicant or its agent.[4] They may be delivered to mailrooms at FDA's Parklawn Bldg. or at its Metro Park North Bldg., which have different zip codes and are miles apart (§ 314.440). Second, when multiple ANDAs are delivered to the mailrooms on the same day, there is no effective way to determine in what order the documents were submitted. Also, when more than one application is present in a given delivery, the order in which the applications are date-stamped by the document room is random and reflects only the application's arbitrary place in the pile of mail. Moreover, a submission delivered to the agency early in the day may, in fact, be date-stamped after a submission delivered later in the day because the former submission was underneath the latter in the mail pile. Third, some ANDA applicants have assumed that hand delivery would be the best way to secure the "first" application slot. Applicants have arrived outside of an FDA-occupied building on or before the date on which ANDAs may be submitted. Recently, there have been a number of cases in which multiple ANDA applicants or their representatives have camped out adjacent to an FDA-occupied building for periods ranging from 1 day to more than 3 weeks to await the first date on which applications could be submitted to the agency. FDA does not have a system for determining which of those multiple applicants who are present either before the date of submission, or at 12:01 a.m. on the date of submission, or when FDA opens its doors to receive submissions, should be considered "first." The order of applicants in a line that has formed before applications may be submitted is as random as the location of an application in a pile of mail in the mailroom.

Where multiple applicants are simultaneously present to submit patent certifications on the first day that such submissions are made, rewarding only the first applicant in line does not further any of the goals of the Hatch-Waxman amendments. Even if it were reasonable to argue that someone who is willing to stand in line for days or months should benefit by being considered the first to submit a patent challenge, security and other concerns have foreclosed that option.

The agency can no longer permit applicants to line up outside FDA-occupied buildings in advance of the date ANDA submissions are permitted. For example, when an applicant arrived outside of the FDA-occupied building in mid-May 2003 to establish first place for a number of ANDA submissions, one of which could not be submitted until mid-December 2003, the owner of the government-leased building informed FDA in a June 4, 2003, letter that the 24-hour presence of the pharmaceutical company representatives violated the policy described in the rules and regulations governing the use of the property. In addition, the owner noted its serious liability concerns regarding safety and security. Because of the owner's concerns, FDA directed the waiting ANDA applicant representative to leave the premises.

Furthermore, measuring submissions by the minute or second would be inconsistent with CDER's general administrative practices. CDER conducts its business by calendar day, not by the hour, minute, or second. For example, NDA review times under the Prescription Drug User Fee Act are based upon the date an application was submitted, and approvals are effective as of the date of the issuance of the approval letter (§ 314.105). In addition, 180-day exclusivity runs for 180 calendar days from the date of a commercial marketing or court decision triggering event, without regard to the precise time of day the exclusivity was triggered (§ 314.107(c)(1)). CDER considers most documents, including NDAs, ANDAs, and application amendments and supplements, to have been submitted to FDA as of the date-stamped on the document by the appropriate CDER document room.

In considering how to apply the 180-day exclusivity provisions to multiple patent challenges, FDA reviewed a number of possible approaches. First, the agency examined whether there was a safe and practical way to determine whose patent challenge is actually submitted to the agency first. The only way to ensure the order of submission would be to require all submissions to be made in person, with the establishment of some kind of monitored line. The owner of the FDA-occupied building has given the agency the option of permitting applicants to line up outside the building at 12:01 a.m. on the morning submissions may be accepted. However, such lines would raise issues of security and fairness for applicants and could lead to evidentiary disputes over which applicant, if any, was in line first. FDA is already aware of at least one instance in which an applicant videotaped its arrival on government property in an attempt to document that it was first to submit a patent challenge. Thus, this approach could lead to administrative proceedings and litigation over tie-breaking virtually simultaneous submissions. In addition, such an approach would disadvantage applicants who do not make submissions in person, because mail deliveries are likely to be made to FDA after the door opens for in person submissions.

The agency also considered requiring submission by mail and then date- and time-stamping submissions based on the order they were processed by the mailroom and document room. This approach would require FDA to determine, from among the various submissions made in the same delivery, which submission was first, itself an arbitrary process. Is the first submission the first ANDA to be removed from the mail bag, or the document on top of the pile after the mail is removed from the delivery container?

The agency even considered adopting a lottery approach, in which one ANDA would be chosen at random from among all the eligible ANDAs submitted on the same first day. This approach, although appealing in its simplicity and no less random than mail delivery or an applicant's place in line, has no support in the statute.

Finally, FDA considered permitting submission by facsimile. However, this approach raises many practical concerns involving after-hours submissions, jammed fax machines, and disputes over submission order. In sum, all of these approaches were rejected because they raise safety concerns, are administratively unworkable, or would arbitrarily and unfairly distinguish between similarly situated applicants. In addition, none of them addresses the fundamentally arbitrary nature of declaring any one patent challenge made on a certain day to be previous to all other challenges made on that day.

C. 180-Day Exclusivity and Multiple Same Day Patent Challenges

FDA intends to interpret the phrase "for which a previous application has been submitted" in section 505(j)(4)(B)(iv) of the act to mean an ANDA that has been submitted on a previous day. Thus, when multiple ANDAs containing paragraph IV challenges to patents are submitted to FDA on the same day—and no paragraph IV certification to that patent has been submitted on a previous day—FDA intends to consider none of the patent challenges to be previous to other challenges to the same patent submitted on the same day and all of those challenges as previous to paragraph IV certifications to the same patent submitted on a subsequent day. This is the general interpretation described in the 1999 proposed rule.

Under this approach, all of the applicants submitting substantially complete ANDAs, amendments, or supplements containing a paragraph IV certification for a listed patent on the same first day would be eligible for 180-day exclusivity. That exclusivity would begin to run for all of the applicants eligible for 180-day exclusivity from the earlier of the initial commercial marketing of the drug by any of the first applicants or by a court decision finding the specific patent as to which the applicants were first to file paragraph IV certifications invalid, unenforceable, or not infringed. During the exclusivity period, FDA may approve any other first applicant's ANDA, but no other ANDAs. Any first applicant's ANDA approved after the exclusivity has been triggered will share in the remaining period of exclusivity. Once the 180-day exclusivity period has run, FDA may approve all subsequent ANDAs.

The agency believes that this exclusivity approach is consistent with the statutory language in that, under at least one reasonable reading of section 505(j)(5)(B)(iv) of the act, none of the applications submitted on the same day is "previous" to any other application submitted on the same day, and all applications submitted on the same day are previous to any application submitted on any day thereafter.

This interpretation is also consistent with the intent of both the 180-day exclusivity provision, in particular, and the Hatch-Waxman Amendments, in general. Instead of giving exclusivity to a single applicant who may be first only by dint of jockeying for a better place in line, or by the happenstance of location within a pile of mail, this approach recognizes that all of the applicants who challenged a patent on the first day such a challenge is submitted challenged the patent at essentially the same time, and rewards them accordingly.

The approach maintains the incentive to be first to submit a patent challenge but, in the case where there are multiple applicants submitting patent challenges on the same first day, it will provide an equal chance at the benefits of exclusivity to all of those applicants. The approach will also provide the opportunity to be the sole beneficiary of exclusivity if an applicant obtains approval of its ANDA and begins to market at least 180 days before any of the other first applicants begins to market.

Finally, this approach will permit applicants to submit ANDAs by U.S. mail, courier, delivery service, or in person on a more reasonable timetable; preserve the safety and security of the applicants and FDA property and staff; and prevent time-consuming disputes over "who's first," which rely on video and other evidence.

This guidance is being issued as a level 1 guidance for immediate implementation, consistent with FDA's good guidance practices regulation (21 CFR 10.115). The agency believes that given the need for public guidance on this pressing issue and existing liability, safety, and security concerns, public comment is neither feasible nor appropriate before implementing this guidance. Comments on the guidance are welcome at any time.

FDA intends to implement this approach immediately for all applicable 180-day exclusivity determinations made by FDA on or after the date of the notice announcing the availability of this guidance (including for patent certifications that were submitted prior to the date of the notice where the exclusivity determination has not yet been made). The approach described in this guidance will remain in effect until superseded. As noted in this section I, to date, FDA's exclusivity decisions have only involved applications or amendments submitted on different days.

This guidance represents the agency's current thinking on 180-day exclusivity when multiple ANDAs are submitted on the same day. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic

[3] In the years from 1984 to 1998, only three ANDA applicants qualified for 180-day exclusivity. Since the *Mova* decision in 1999, more than 60 ANDAs have received 180 days of exclusivity.

[4] FDA does not consider submission by facsimile or e-mail official for purposes of determining the date of submission.

comments on the guidance at any time. Two paper copies of mailed comments are to be submitted, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: July 25, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–19590 Filed 7–31–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002D–0228]

Medical Devices; Guidance for Industry and FDA Staff; Implantable Middle Ear Hearing Device; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Guidance for Industry and FDA Staff; Implantable Middle Ear Hearing Device." This guidance document represents the agency's current thinking on the technical content and clinical considerations for a premarket approval application (PMA) for an implantable middle ear hearing device (IMEHD). This guidance provides information to consider for developing the clinical studies and generating the scientific evidence that will provide reasonable assurance of safety and effectiveness of the IMEHD for its intended use.

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies on a 3.5" diskette of the guidance document entitled "Guidance for Industry and FDA; Implantable Middle Ear Hearing Device" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Eric Mann, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2080, ext. 187.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 12, 2002 (67 FR 40318), FDA announced the availability of the draft guidance entitled "Guidance for Industry and FDA; Implantable Middle Ear Hearing Device." FDA invited interested persons to comment on the draft guidance by September 10, 2002. On August 16, 2002, FDA held a meeting of the Ear, Nose, and Throat Devices Panel of the Medical Devices Advisory Committee to discuss the draft guidance.

FDA received seven comments. In general, most comments suggested various clarifications throughout the document. FDA revised the document accordingly. One comment stated that the standard entitled "ANSI/IEEE C63.19–2001 American National Standard for Methods of Measurement of Compatibility Between Wireless Communications Devices and Hearing Aids" was developed for air conduction hearing aids and that the standard requires measurements that have been difficult to reproduce in these conventional hearing aids. FDA agrees, however, the agency believes that portions of this standard may be useful. Therefore, the guidance has been revised to recommend that manufacturers use test methods cited in this standard that are applicable to their device designs. There were two comments requesting a more precise definition for the "control condition" in the suggested clinical study design for IMEHDs. FDA agrees and will replace the term "state-of-the-art" with "appropriately fit conventional air conduction hearing aids." Another comment suggested that measuring aided baseline performance is not necessary as a control condition. FDA disagrees. The agency believes that it is important to compare IMEHD performance to both appropriately fit conventional air conduction hearing aid performance and unaided performance for the benefit of clinicians and prospective IMEHD recipients.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on premarket approval applications for IMEHDs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

To receive "Guidance for Industry and FDA Staff; Implantable Middle Ear Hearing Device" by fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1406) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket approval applications (21 CFR part 814, OMB control number 0910–0231). The labeling provisions addressed in the guidance have been approved by OMB under the PRA under OMB control number 0910–0485.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 16, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–19622 Filed 7–31–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1998N–1109]

Mercury Compounds in Drugs and Food; List

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is updating a list of drug and biologic products that contain intentionally introduced mercury compounds, e.g., phenylmercuric acetate, phenylmercuric nitrate, thimerosal. This list is part of the implementation of the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: Comments may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the document entitled "Mercury in Drug and Biologic Products; 2003 Update" to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Copies of the document are available on the Internet at *http://www.fda.gov/cder/fdama/mercury300.htm*. Submit written comments on the document to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Gerald M. Rachanow, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

FDAMA (Public Law 105–115) was enacted on November 21, 1997. Section 413 of FDAMA, entitled "Food and Drug Administration Study of Mercury Compounds in Drugs and Food," required FDA to: (1) Compile a list of drugs and foods that contain intentionally introduced mercury compounds, and (2) provide a quantitative and qualitative analysis of the mercury compounds in this list. The statute did not differentiate whether the mercury compound was present in the products as an active or an inactive ingredient and required FDA to compile the list and provide the analysis within 2 years after the date of its enactment.

FDA prepared this list and announced its availability in the **Federal Register** of November 19, 1999 (64 FR 63323). The list is entitled "Mercury in Drug and Biologic Products" and is available on the Internet at *http://www.fda.gov/cder/fdama/mercury300.htm*.

Five manufacturers and distributors subsequently informed FDA that 10 products had been reformulated to delete the mercury ingredients or were no longer being marketed. However, FDA did not update the list at that time.

II. Updating the List

In the **Federal Register** of February 3, 2003 (68 FR 5299), FDA published a notice requesting information to update this list. FDA was aware that other manufacturers or distributors with products on the list had reformulated their products since 1999. FDA requested any affected manufacturer or distributor to inform us which product(s) on the list had been reformulated and no longer contain mercury ingredients. Eleven manufacturers provided information, which resulted in 39 additional products being deleted from the list and one product being added to the list. The new list now includes 171 products. The list continues to provide information and does not set forth any requirements.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the list and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 24, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–19620 Filed 7–31–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Agricultural Health Study—A Prospective Cohort Study of Cancer and Other Diseases Among Men and Women in Agriculture

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Agricultural Health Study—A Prospective Cohort Study of Cancer and Other Diseases Among Men and Women in Agriculture. *Type of Information Collection Request:* Extension of a currently approved collection (0925–0406, expiration 11/31/03). *Need and Use of Information Collection:* The Agricultural Health Study is in its fifth year of follow-up data collection for a prospective cohort of 89,658 farmers, their spouses, and commercial applicators of pesticides from Iowa and North Carolina. Follow-up is not yet

complete for a segment of the cohort, commercial applicators (n=4,916). An extension until November 30, 2005 is requested to complete this data collection. *Frequency of Response:* Single time reporting. *Affected Public:* Individuals. *Type of Respondent:* Commercial pesticide applicators. The annual reporting burden is as follows: *Estimated Number of Respondents:* 2,458; *Estimated Number of Responses per Respondent:* 1.0; *Average Burden Hours Per Response:* 1.66; and *Estimated Total Annual Burden Hours Requested:* 2,940. The annualized cost to respondents is estimated at: $29,400. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

For Further Information: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Michael C.R. Alavanja, Dr. P.H., Epidemiology and Biostatistics Program, Division of Cancer Etiology, National Cancer Institute, EPN 8000, 6120 Executive Boulevard, Rockville, MD 20852; or call (301) 435–4720; or e-mail your request, including your address to: *alavanjam@mail.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received on or before September 29, 2003.

Dated: July 24, 2003.

Reesa Nichols,

NCI Project Clearance Liaison.

[FR Doc. 03–19558 Filed 7–31–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Lung Tissue Research Consortium.

Date: August 13, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Arthur N. Freed, Phd., Review Branch, Room 7186, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892, (301) 435–0280.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: July 24, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–19562 Filed 7–31–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The Meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging, Special Emphasis Panel, Aging Disease Studies.

Date: August 5–6, 2003

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton La Jolla Torrey Pines, 10950 N. Torrey Pines, La Jolla, CA 92037.

Contact Person: Ramesh Vemuri, PhD., National Institute on Aging, the Bethesda Gateway Building, 7201 Wisconsin Ave., Suite 2C212, Bethesda, MD 20892, 301–402–7700, *rv23@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel, T–32 TRANS/NIH Neurosciences

Date: August 15, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: William Cruce, PhD., Scientific Review Administrator, National Institute on Aging, National Institutes of Health, Scientific Review Office, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7704, *crucew@nia.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 24, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–19561 Filed 7–31–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Multigenotypic Breeding Colony.

Date: August 11, 2003.

Time: 2 p.m. to 4:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Gateway Building, Rm. 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Arthur D. Schaerdel, DVM, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 24, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–19563 Filed 7–31–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, August 5, 2003, 2 p.m. to August 5, 2003, 3 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20814, which was published in the **Federal Register** on July 21, 2003, 68 FR 43141–43142.

The meeting will be held on August 6, 2003, from 9 a.m. to 10 a.m. The location remains the same. The meeting is closed to the public.

Dated: July 24, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–19559 Filed 7–31–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, August 7, 2003, 8 a.m. to August 8, 2003, 5 p.m., Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815, which was published in the **Federal Register** on July 21, 2003, 68 FR 43141–43142.

The meeting will be held on August 25–26, 2003. The meeting times and location remain the same. The meeting is closed to the public.

Dated: July 24, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–19560 Filed 7–31–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The Meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS Clinical Studies and Epidemiology Study Section.

Date: July 28–29, 2003.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

Contact Person: Ranga V. Srinivas, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 435–1167, *srinivar@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Peer Relations and School Success.

Date: July 28, 2003.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Deborah L. Young-Hyman, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7808, Bethesda, MD 20892, (301) 451–8008, *younghyd@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Stem Cell applications.

Date: July 28, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carole L. Jelsema, PhD., Scientific Review Administrator and Chief, MDCN Scientific Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jelsemac@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Family Studies.

Date: July 29, 2003.

Time: 3:15 p.m. to 4:45 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695, *hardyan@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SEP to Review AARR Member Conflicts.

Date: August 4, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eduardo A. Montalvo, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Wingless Transduction, Regulation of IQGAPs, Synaptic Signaling and Genetics.

Date: August 7, 2003.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gillian Einstein, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5198, MSC 7850, Bethesda, MD 20817, (301) 435–4433, *einsteig@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Exercises Physiology.

Date: August 8, 2003.

Time: 8 a.m. to 8:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SEP to Review AARR Member Conflicts.

Date: August 11, 2003.

Time: 2:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eduardo A. Montalvo, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, AIDS-associated infections.

Date: August 12, 2003.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eduardo A. Montalvo, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Genetic Investigations of Psychiatric Diseases.

Date: August 14, 2003.

Time: 3:30 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: David J. Remondini, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7890, Bethesda, MD 20892, (301) 435–1038, *djr@helix,nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Synaptic Biochemistry, Neurosecretion, Neuronal Cell Biology, Cytoskeleton, and Protein and Membrane Trafficking.

Date: August 18, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carl D. Banner, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, (301) 435–1251, *bannerc@drg.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Allorecognition in Protochordate,

Date: August 20, 2003.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Betty Hayden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, (301) 435–1223, *haydenb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Wound Healing and Immunobiology.

Date: August 20, 2003.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Betty Hayden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, (301) 435–1223, *haydenb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Peptide Structure Function.

Date: August 21, 2003.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carl D. Banner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, (301) 435–1251, *bannerc@drg.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Leprosy Immunity.

Date: August 27, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 24, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–19565 Filed 7–31–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Opioid Drugs in Maintenance and Detoxification Treatment of Opioid Addiction—42 CFR part 8 (OMB No. 0930–0206; Revision)—This regulation establishes a certification program managed by SAMHSA's Center for Substance Abuse Treatment (CSAT). The regulation requires that Opioid Treatment Programs (OTPs) be certified. "Certification" is the process by which SAMHSA determines that an OTP is qualified to provide opioid treatment under the Federal opioid treatment standards established by the Secretary of Health and Human Services. To become certified, an OTP must be accredited by a SAMHSA-approved accreditation body. The regulation also provides standards for such services as individualized treatment planning, increased medical supervision, and assessment of patient outcomes. This submission seeks continued approval of the information collection requirements in the regulation and of the forms used in implementing the regulation.

SAMHSA currently has approval for the Application for Certification to Use Opioid Drugs in a Treatment Program Under 42 CFR 8.11 (Form SMA–162); the Application for Approval as Accreditation Body Under 42 CFR 8.3(b) (Form SMA–163); and the Exception Request and Record of Justification Under 42 CFR 8.12 (Form SMA–168), which may be used on a voluntary basis by physicians when there is a patient care situation in which the physician must make a treatment decision that differs from the treatment regimen required by the regulation. Form SMA–168 is a simplified, standardized form to facilitate the documentation, request, and approval process for exceptions. Minor changes are being made to Form SMA–162 to account for newly approved opioid treatment drugs, to provide structures space on the form for required information and to make it more compatible with electronic submission.

The tables that follow summarize the annual reporting burden associated with the regulation, including burden associated with the forms.

ESTIMATED ANNUAL REPORTING REQUIREMENT BURDEN FOR ACCREDITATION BODIES

42 CFR citation	Purpose	Number of respondents	Responses/ respondents	Hours/ response	Total hours
8.3(b)(1–11)	Initial approval (SMA–163	1	1	6.0	6.0
8.3(c)	Renewal of approval (SMA–163)	2	1	1.0	2.0
8.3(e)	Relinquishment notification	1	1	0.5	0.5
8.3(f)(2)	Non-renewal notification to accredited OTP's	1	90	0.1	9.0
8.4(b)(1)(ii)	Notification to SAMHSA for seriously noncompliant programs.	2	2	1.0	4.0
8.4(b)(1)(iii)	Notification to OTP for serious noncompliance	2	10	1.0	20.0
8.4(d)(1)	General documents and information to SAMHSA upon request.	6	5	0.5	15.0
8.4(d)(2)	Accreditation survey to SAMHSA upon request	6	75	0.02	9.0
8.4(d)(3)	List of surveys, surveyors to SAMHSA upon request	6	6	0.2	7.2
8.4(d)(4)	Report of less than full accreditation to SAMHSA	6	5	0.5	15.0
8.4(d)(5)	Summaries of Inspections	6	50	0.5	150.0
8.4(e)	Notifications of Complaints	6	6	0.5	18.0
8.6(a)(2) and (b)(3)	Revocation notification to Accredited OTP's	1	185	0.3	55.5
8.6(b)	Submission of 90-day Corrective plan to SAMHSA	1	1	10	10.0
8.6(b)(1)	Notification to accredited OTP's of Probationary Status.	1	185	0.3	55.0
Total		7			376.2

ESTIMATED ANNUAL REPORTING REQUIREMENT BURDEN FOR OPIOID TREATMENT PROGRAMS

42 CFR citation	Purpose	Number of respondents	Responses/ respondents	Hours/ response	Total hours
8.11(b)	New programs approval (SMA–162)	75	1	1.50	112.50
8.11(b)	Renewal of approval (SMA–162)	370.00	1	1.00	370

ESTIMATED ANNUAL REPORTING REQUIREMENT BURDEN FOR OPIOID TREATMENT PROGRAMS—Continued

42 CFR citation	Purpose	Number of respondents	Responses/ respondents	Hours/ response	Total hours
8.11(b)	Relocation of Program (SMA–162)	35	1	1.17	40.95
8.11(d)	Application for transitional certification (SMA–162)*	0	0	0	0
8.11(e)(1)	Application for provisional certification	75	1	1	75.00
8.11(e)(2)	Application for extension of provisional certification	30	1	.25	7.50
8.11(f)(5)	Notification of sponsor or medical director change (SMA–162).	60	1	.1	6.00
8.11(g)(2)	Documentation to SAMHSA for interim maintenance	1	1	1	1.00
8.11(h)	Request to SAMHSA for Exemption from 8.11 and 18.12 (SMA–168).	1,110	7	.152	1181.04
8.11(i)(1)	Notification to SAMHSA Before Establishing Medication Units (SMA–162).	10	1	.25	2.5
8.12(j)(2)	Notification to State Health Officer When Patient Begins Interim Maintenance.	1	20	.33	6.6
8.24	Contents of Appellant Request for Review of Suspension.	2	1	.25	.50
8.25(a)	Informal Review Request	2	1	1.00	2.00
8.26(a)	Appellant's Review File and Written Statement	2	1	5.00	10.00
8.28(a)	Appellant's Request for Expedited Review	2	1	1.00	2.00
8.28(c)	Appellant Review File and Written Statement	2	1	5.00	10.00
Total		1,100			1827.6

*This is a one-time requirement that was fully met during the first three years of approval for the final rule.

SAMHSA believes that the recordkeeping requirements in the regulation are customary and usual practices within the medical and rehabilitative communities and has not calculated a response burden for them. The recordkeeping requirements set forth in 42 CFR 8.4, 8.11 and 8.12 include maintenance of the following: 5-year retention by accreditation bodies of certain records pertaining to accreditation; documentation by an OTP of the following: a patient's medical examination when admitted to treatment, a patient's history, a treatment plan, any prenatal support provided the patient, justification of unusually large initial doses, changes in a patient's dosage schedule, justification of unusually large daily doses, the rationale for decreasing a patient's clinic attendance, and documentation of physiologic dependence.

The rule also includes requirements that OTPs and accreditation organizations disclose information. For example, 42 CFR 8.12(e)(1) requires that a physician explain the facts concerning the use of opioid drug treatment to each patient. This type of disclosure is considered to be consistent with the common medical practice and is not considered an additional burden. Further, the rule requires, under 8.4(i)(1) that accreditation organizations shall make public their fee structure; this type of disclosure is standard business practice and is not considered a burden.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Herron Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: July 25, 2003.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 03–19586 Filed 7–31–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) published in the **Federal Register** on April 11, 1988 (53 FR 11970), and revised in the **Federal Register** on June 9, 1994 (59 FR 29908) and on September 30, 1997 (62 FR 51118). A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from HHS' National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2, Room 815, Rockville, Maryland 20857; 301–443–6014 (voice), 301–443–3031 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards that laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification, a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines, the following laboratories meet the minimum standards set forth in the Mandatory Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–6870, (Formerly: Jewish Hospital of Cincinnati, Inc.)

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

Diagnostic Services Inc., dba DSI, 12700 Westlinks Dr., Fort Myers, FL 33913, 239–561–8200/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr. Valdosta, GA 31602, 912–244–4468

DrugProof, Division of Dynacare/ Laboratory of Pathology, LLC 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2661/800–898–0180, (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories*, 10150–102 St., Suite 200, Edmonton, Alberta, Canada T]5 5E2, 780–451–3702/800–661–9876

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 662–236–2609

Express Analytical Labs, 3405 7th Ave., Suite 106, Marion, IA 52302, 319–377–0500

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ONT, Canada N6A 1P4, 519–679–1630

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6225

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Laboratory Specialists, Inc.)

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/ 800–873–8845, (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings, 7207 N. Gessner Rd., Houston, TX 77040, 713–856–8288/ 800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Dr., Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 10788 Roselle St., San Diego, CA 92121, 800–882–7272, (Formerly: Poisonlab, Inc.)

Laboratory Corporation of America Holdings, 1120 Stateline Rd. West, Southaven, MS 38671, 866–827–8042/ 800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734

MAXXAM Analytics Inc., 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555, (Formerly: NOVAMANN (Ontario) Inc.)

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Dr., Minneapolis, MN 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515

Northwest Drug Testing, a division of NWT Inc., 1141 E. 3900 S., Salt Lake City, UT 84124, 801–293–2300/800–322–3361, (Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.)

One Source Toxicology Laboratory, Inc., 1705 Center St., Deer Park, TX 77536 713–920–2559, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–687–2134,

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/ 800–541–7891x8991

PharmChem Laboratories, Inc., 4600 N. Beach, Haltom City, TX 76137, 817–605–5300, (Formerly: PharmChem Laboratories, Inc., Texas Division; Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590/800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 800–824–6152, (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750, (Formerly: Associated Pathologists Laboratories, Inc.)

Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010, (Formerly: SmithKline Beecham Clinical Laboratories; International Toxicology Laboratories)

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520, (Formerly: SmithKline Beecham Clinical Laboratories)
Scientific Testing Laboratories, Inc., 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130,
Sciteck Clinical Laboratories, Inc., 317 Rutledge Rd., Fletcher, NC 28732, 828–650–0409,
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x276
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507/800–279–0027
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus 1210 W. Saginaw Lansing, MI 48915. 517–377–0520. (Formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052
Sure-Test Laboratories, Inc., 2900 Broad Ave., Memphis, TN 38112, 901–474–6026
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085,

The following laboratory withdrew from the National Laboratory C certification Program on July 14, 2003:

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave. Springfield, MO 65802, 800–876–3652/417–269–3093, (Formerly: Cox Medical Centers)

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on June 9, 1994 (59 FR 29908) and on September 30, 1997 (62 FR 51118). After receiving DOT certification, the laboratory will be included in the monthly list of HHS certified laboratories and participate in the NLCP certification maintenance program.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 03–19581 Filed 7–31–03; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Statement of Organization, Functions, and Delegations of Authority

Part M of the Substance Abuse and Mental Health Services Administration (SAMHSA) Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services as amended most recently at 68 FR 12929, March 18, 2003 is amended to: Replace the functional statement of the Division of the Center for Mental Health Services (CMHS), the Division of Prevention, Traumatic Stress and Special Programs. The changes are to update the significant growth of its existing program areas which has assumed several new initiatives and to strengthen and better manage the mission of SAMHSA. The changes are as follows:

Section M.20, Functions is amended as follows:

Under the heading, *Division of Prevention, Traumatic Stress and Special Programs (MSC),* delete the functional statement and substitute the following functional statement:

The Division of Prevention, Traumatic Stress and Special Programs (DPTSSP): (1) Serves as the focal point in planning for alcohol, drug abuse, and mental health services during national disasters; (2) cooperates with the Office of Emergency Response and the Federal Emergency Management Agency (FEMA) and other Federal agencies to coordinate disaster assistance, community response, and other mental health emergency services as a consequence of national disasters or mass criminal events, such as terrorism and school shootings; (3) serves as a focal point for refugee mental health programs, including liaison with other Federal agencies; (4) conducts program development activities and engages with the faith community, when appropriate, to promote effective programs and policies to special populations including women, minorities, youth in juvenile justice facilities, and elderly persons living in rural areas; and (5) administers youth violence and suicide prevention programs, trauma and terrorism/bio-terrorism initiatives, and programs that prevent mental and behavioral disorders and promote mental health and resilience across the life cycle.

Section M.40, Delegations of Authority. All delegations and redelegations of authority to officers and employees of SAMHSA which were in effect immediately prior to the effective date of this reorganization shall continue in them.

These organizational changes are effective June 20, 2003.

Dated: July 8, 2003.

Charles G. Curie,

Administrator.

[FR Doc. 03–19626 Filed 7–31–03; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–15731]

Great Lakes Pilotage Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Great Lakes Pilotage Advisory Committee (GLPAC) will meet to discuss various issues relating to pilotage on the Great Lakes. The meeting will be open to the public.

DATES: The GLPAC will meet on Tuesday, August 19, 2003, from 2 p.m. to 5:30 p.m. and on Wednesday, August 20, 2003, from 8 a.m. to 4 p.m. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before August 15, 2003. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before August 15, 2003.

ADDRESSES: GLPAC will meet at the Maritime Institute of Technology Training and Conference Center, 5700 Hammonds Ferry Road, Linthicum Heights, MD 21090, in Room 8 North located in Building 1. Parking is available in Lots A and B. Send written material and requests to make oral presentations to Margie Hegy, Commandant (G-MW), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov* in docket USCG–2003–15731.

FOR FURTHER INFORMATION CONTACT: Margie Hegy, Executive Director of GLPAC, telephone 202–267–0415, fax 202–267–4700.

SUPPLEMENTARY INFORMATION: Notice of the meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda: The agenda includes the following:

(1) Ratemaking Methodology Development—What are the proper factors/indicators that should be used to determine if the rate should be increased or decreased?
(2) Update on Pilot Attrition.
(3) Briefing on Maritime Security on the Great Lakes.
(4) Develop Notice for Public Input on Cost Saving Reform Strategies for Great Lakes Pilotage.
(5) Acting Director of Great Lakes Pilotage Report.
(6) Briefing on Determining Pilotage Rate by Vessel Size.
(7) Solicitation of Seventh Member.
(8) Brainstorming Session on the Use of Non-Association Pilots.
(9) Promoting Great Lakes Ports—what are the constraints to having a 12-month shipping season?
(10) Overview of Public Comments on the Bridge Hour Study.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Executive Director no later than August 15, 2003. Written material for distribution at the meeting should reach the Coast Guard no later than August 15, 2003. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 10 copies to Margie Hegy at the address in the **ADDRESSES** section no later than August 11, 2003.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Executive Director as soon as possible.

Dated: July 24, 2003.

T.H. Gilmour,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 03–19646 Filed 7–31–03; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. DHS/TSA–2003–1]

Privacy Act of 1974: System of Records

AGENCY: Transportation Security Administration (TSA), Department of Homeland Security (DHS).

ACTION: Notice of status of system of records; Interim final notice; Request for further comments.

SUMMARY: The Transportation Security Administration (TSA) proposed in January 2003 to establish a new system of records under the Privacy Act, known as "Passenger and Aviation Security Screening Records." This system of records would be established primarily to support the development of a new version of the Computer Assisted Passenger Prescreening System, or "CAPPS II." This notice is to inform the public that substantial comments were received in response to the prior Privacy Act notice (68 FR 2101, January 15, 2003); that significant changes have been made to date to the proposed CAPPS II system and to the CAPPS II Privacy Act notice in light of these comments; that limited developmental technical testing will occur with test data, including personal information on U.S. persons available from commercial databases, including those within and affiliated with the travel industry; and that concerns raised will continue to be considered during the testing and evaluation periods. Additional comments are sought on the modifications made to this Privacy Act notice. A further Privacy Act notice will be published in advance of any active implementation of the CAPPS II system.

DATES: This notice is effective on August 1, 2003. Comments due on September 30, 2003.

ADDRESSES: Please address your comments to the Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528. You must identify the docket number DHS/TSA–2003–1 at the beginning of your comments, and you should submit two copies of your comments. You may also submit comments via e-mail at *privacy@dhs.gov*. Please reference the docket number DHS/TSA–2003–1 in the subject line of the e-mail. If you wish to receive confirmation that DHS received your comments, please include a self-addressed, stamped postcard. DHS will make the comments available online at *http://www.dhs.gov*.

FOR FURTHER INFORMATION CONTACT: Privacy Office, Department of Homeland Security, Washington, DC 20528. Phone: 202–282–8000. Fax: 202–772–9738.

SUPPLEMENTARY INFORMATION:

Background

While still a part of the Department of Transportation, in January 2003, the Transportation Security Administration (TSA) proposed establishing a new system of records under the Privacy Act, known as "Aviation Security Screening Records." TSA intends to use this system of records to facilitate TSA's passenger and aviation security screening program under the Aviation and Transportation Security Act. TSA intends to use the CAPPS II system to conduct risk assessments to ensure passenger and aviation security.

Prior to March 1, TSA was an operating administration within the Department of Transportation (DOT). While part of the DOT, TSA published for public comment proposed system of records DOT/TSA 010. *See* 68 FR 2101 and 2002, Jan. 15, 2003. On March 1, 2003, TSA became a component of the Department of Homeland Security (DHS) and is now continuing work towards the system of records DHS/TSA 010.

Substantial comments were received in response to the prior Privacy Act notice. Those comments can be reviewed online at *http://dms.dot.gov/*, by entering the docket number "1437" under "Simple Search." Significant changes have been made to date to the proposed CAPPS II system in light of these comments, and the comments and concerns raised will continue to be considered during the testing and evaluation periods. Accordingly, we are publishing an Interim Final Notice of System of Records, modified to address public comment thus far, which is effective for and applicable to the internal test activity described herein. With the publication of this notice,

internal systems testing will begin, using this System of Records.

The CAPPS II system is still under consideration and development and certain elements of the technological systems are proposed for testing with attention to the issues raised in the comments received, particularly the accuracy, efficiency, and privacy impact of the proposed CAPPS II system. Results of the current technological tests, as well as the comments received, will inform the design of the final CAPPS II system. A further Privacy Act notice will be published in advance of any active implementation of the CAPPS II system for real-time passenger screening.

Proposed CAPPS II System

TSA is establishing this system of records, now entitled "Passenger and Aviation Security Screening Records," to support the function of TSA's CAPPS II system. CAPPS II is intended to conduct risk assessments and authentications for passengers traveling by air to, from or within the United States.

Sources of Information Contained in the CAPPS II System; Process Flow

Under the proposed CAPPS II system, TSA will obtain electronically, either from airlines or from Global Distribution Systems, a passenger's "passenger name record" (PNR) as collected from the passenger by a reservation system. PNR includes the routine information collected at the time a passenger makes a flight reservation. A PNR may include each passenger's full name, home address, home telephone number, and date of birth, as well as some information about that passenger's itinerary. No additional information beyond this data is required to be collected from passengers for the operation of CAPPS II.

The CAPPS II system will access PNRs prior to the departure of the passenger's flight. Selected information will be securely transmitted to commercial data providers, for the sole purpose of authenticating passenger identity. This authentication will be accomplished not by a permanent co-mingling of data, but merely by the commercial data providers transmitting back to TSA a numeric score, which is an indication of the percentage of accuracy of the match between the commercial data and the data held by TSA. This will enable TSA to have a reasonable degree of confidence that each passenger is who he or she claims to be. TSA recognizes that inaccuracies in the commercial data may exist and that the CAPPS II system must allow for and compensate for such inaccuracies; this test phase is intended to test and further develop such capabilities in the system.

Commercial data providers will receive a limited amount of identifying information from TSA with regard to each passenger, and will provide TSA with an authentication score and code indicating a confidence level in that passenger's identity. The commercial data providers will not provide TSA with any additional information about the individual. They will not acquire ownership of the data, nor will they be permitted to retain the data in any commercially usable form. TSA will not permit the commercial data providers to use this data for any purpose other than in connection with the CAPPS II program. Importantly, the commercial data provider will not retain information about the response they provide to TSA in any record about the individual that they maintain. Further, no persistent link between an individual's records in the private sector and that person's records within the CAPPS II system will be created.

Once CAPPS II has authenticated a passenger's identity, it will conduct its risk assessment. The risk assessment function is conducted internally within the U.S. government and will determine the likelihood that a passenger is a known terrorist, or has identifiable links to known terrorists or terrorist organizations. National security information from within the Federal Government, as well as information reflecting Federal officials with high levels of security clearance, will be part of this analysis function.

After the CAPPS II system becomes operational, it is contemplated that information regarding persons with outstanding state or Federal arrest warrants for crimes of violence may also be analyzed and applied in the context of this system. At or after such time as the system becomes operational, where there is an indication of a serious violation of criminal law (as described in the Routine Use section, below), such information may be shared between law enforcement agencies and the Department of Homeland Security and appropriate action may be taken. It is further anticipated that CAPPS II will be linked with the U.S. Visitor and Immigrant Status Indicator Technology (US-VISIT) program at such time as both programs become fully operational, in order that the processes at both border and airport points of entry and exit are consistent. Any such linkages will be performed in full compliance with the Privacy Act of 1974, including any applicable requirement for additional notice.

It is important to note the CAPPS II system is designed to determine the likelihood that a passenger is a known terrorist, or has identifiable links to known terrorists or terrorist organizations, including both foreign and domestic terrorist organizations.

Lastly, it is anticipated that dynamic inputs to the system from intelligence sources will allow the system to respond to current threat conditions and information on a timely basis.

Impact on Traveling Public

Based upon the combination of information derived from commercial sources, national security sources, and dynamic intelligence data, each traveling passenger will be identified with a "risk score," indicating whether that person's information leads to a determination of low, high, or unknown risk to passenger and aviation security.

In the vast majority of cases, passengers will be identified as "low risk," and will simply pass through the ordinary airport security screening process to their flights.

In a small percentage of cases, passengers may be found to present an elevated, uncertain or "unknown risk" of terrorism. In such cases, the passengers in question will be subjected to heightened security screening prior to boarding their flights. Once these passengers have successfully completed this screening, they will proceed to their flights in the normal manner; they will not be penalized, nor will additional information about them be retained within the CAPPS II system.

Where a passenger is found to be "high risk"—to have identifiable links to terrorism, law enforcement or other appropriate authorities will be notified for appropriate action. It is anticipated that the number of passengers so identified as high risk will be extremely small, but any so identified may be critically significant in the context of homeland security.

Privacy Practices

The Department of Homeland Security is committed to working with airlines and the travel industry to provide greater understanding and awareness of the purposes for and the scope of CAPPS II. Consistent with fair information principles, The Department of Homeland Security will work towards adequate notice to the passenger when that passenger provides information that will be used for security purposes.

Further, DHS is committed to providing access to the information that is contained in the CAPPS II system to the greatest extent feasible consistent with national security concerns. As detailed below, passengers can request a copy of most information contained about them in the system from the CAPPS II passenger advocate. Further, DHS is currently developing a robust review and appeals process, to include the DHS privacy office.

System Testing of CAPPS II

At this point, partly in response to concerns raised by the public about the viability and function of the CAPPS II program, TSA plans to test certain portions of the system, including the technological communications between the CAPPS II system and the various data sources, as well as the identity authentication programs. These tests are intended to respond to public concerns about speed, accuracy, and efficiency of the system. Testing will be concerned with the accuracy of public and private information contained in the system, particularly in the authentication process; the speed of response of the system; identifying and minimizing the data necessary to effectively conduct the operation of CAPPS II; and the overall ability of the system to identify risk levels effectively. During these tests, TSA will use and retain PNR data for the duration of the test period. It is anticipated that the test duration may be as long as 180 days. A persistent link to law enforcement databases will not be created for the purposes of the test, nor will data from the test be transmitted to airport screeners or used for screening purposes during the test period. If, however, an indication of terrorist or potential terrorist activity is revealed during the test period, appropriate action will be taken. A final Privacy Act notice will be published before the CAPPS II system is deployed.

Public Comments

TSA received well over 200 comments on proposed system of records DOT/TSA 010—"Aviation Security Screening Records." Comments generally expressed concern that the proposed CAPPS II system was too broad in scope and would prove invasive to passengers' privacy. Several commenters stated that the proposed system of records contained too wide a variety of personal information and allowed for the collection and retention of too much information on private citizens. Commenters also expressed concern about the quality of data contained in commercial databases, and that such data could be used to prevent them from traveling by air. Some commenters stated that the proposed retention of data for up to 50 years was too long. Another concern expressed was the broad variety of "routine uses," which, in the opinion of some commenters, allowed TSA far too much discretion to disseminate private information. One commenter expressed the view that the CAPPS II system would lead to the misallocation of security resources.

TSA respects the concerns raised by commenters and has modified the proposed system of records to address many of those concerns. The test of the technological systems responds, in part, to concerns of accuracy, efficiency, and effectiveness, which are among the underpinnings of evaluating such a system's impact on an individual's privacy. Any subsequent modifications to the system that arise from the knowledge gained from these tests will be published in a subsequent notice.

This system notice reduces the extent to which TSA will maintain or disseminate personal information on airline passengers. At the same time, however, TSA must ensure that it collects information sufficient to carry out its security screening functions in an efficient and effective manner, consistent with its legislative mandate to ensure passenger and aviation security. In establishing the parameters of the Passenger and Aviation Security Screening Records system, TSA has attempted to address privacy interests of passengers and the public, while simultaneously working towards increased transportation security.

Responses to Comments; Modifications to System

As discussed above, several commenters objected to the amount of personal information that TSA proposed to maintain in the proposed system of records. Under this system notice, TSA will not retain significant amounts of personal information after completion of a passenger's itinerary. TSA eliminated language in the proposed notice that could be read to mean that TSA will collect and maintain large amounts of information about individuals.

Concerns have been raised about the retention of data after a passenger's travel. In response, TSA is working to minimize the length of time any data about passengers will be retained. In response to concerns, the proposal to maintain information about certain individuals for up to 50 years has been deleted. Under the final CAPPS II program, when active, it is anticipated that TSA will delete all records of travel for U.S. citizens and lawful permanent resident aliens not more than a certain number of days after the safe completion of their travel itinerary. At this time, the amount of information about non-U.S. persons and the length of time for which that information will be kept when the CAPPS II system is deployed are matters still under consideration.

The limited test data used during the test period will be retained solely for the duration of the test; at the conclusion of the test, DHS expects that all data from the test will be destroyed, unless otherwise required by law. In either case, such data will not be included in the live activation of CAPPS II.

Commenters also objected to the broad description of the types of data to be collected from passengers. Specifically, commenters stated that there was no clear explanation of what TSA meant by "associated data" in the reference to TSA's collection of PNR and "associated data." In response, TSA has deleted the phrase "associated data."

Some commenters objected to the large variety of different types of data that TSA proposed to maintain in the system of records. TSA has significantly reduced the variety of data to be maintained in the system. For the vast majority of passengers, the CAPPS II system, when active, will maintain only the routine information that all individuals provide when making reservations, as contained in the PNR, including full name, date of birth, home address and home phone number, to the extent available. In addition, the CAPPS II system will contain authentication scores and codes, and a TSA-generated risk assessment score. The system will also contain some information derived from governmental databases containing information on, or pertinent to, the detection of terrorists and their associates and the detection of the serious criminal violations detailed in this notice, as well as information on government officials and other persons holding security clearances or positions of trust such as not to warrant heightened scrutiny. However, in response to specific concerns regarding the use of information about an individual's creditworthiness or individual health records, TSA will not use measures of creditworthiness, such as FICO scores, and individual health records in the CAPPS II traveler risk determination.

Other commenters raised concerns that large numbers of people would be prevented from flying as a result of the use of inaccurate commercial records. One of TSA's primary purposes in creating this new system is to avoid the kind of miscommunication and improper identification that has, on

occasion, occurred under the systems currently in use. During the test period, TSA hopes to confirm that the use of the CAPPS II program will significantly reduce improper identification.

Routine Uses

In response to the comments received that expressed concerns about the further dissemination of passenger information, TSA has narrowed several routine uses in the proposed notice, and eliminated others in their entirety, as follows:

Proposed Routine Use 1 (to Federal, State, local, international, or foreign agencies) (now Routine Use 1) has been narrowed to pertain to specified violations of criminal law.

Proposed Routine Use 3 (now Routine Use 3) has been modified to specify immigration and intelligence agencies.

Proposed Routine Uses 4 (to individuals and organizations), 5 (to government agencies in connection with employment, contract or benefit matters) and 6 (to news media) have been deleted.

Proposed Routine Use 2 (now Routine Use 2) and proposed Routine Use 9 (now Routine Use 4) have been modified slightly to make the language consistent with the routine uses in other TSA systems of records. These changes are not substantive and do not expand or narrow the scope of the routine uses.

Proposed Routine Use 10 (now Routine Use 5) has been modified slightly to allow for disclosures to airports and aircraft operators only to the extent required in the interests of counterterrorism or passenger or aviation security.

Proposed Routine Use 11 (now Routine Use 6) has been modified to permit disclosure to the General Services Administration (GSA), in addition to the National Archives and Records Administration (NARA), for purposes of records management inspections. Both GSA and NARA have the statutory authority under 44 U.S.C. 2904 and 2906 to conduct inspections or surveys of TSA records, which was not reflected in the proposed routine use. This modification corrects the omission.

DHS/TSA 010

SYSTEM NAME:

Passenger and Aviation Security Screening Records.

SECURITY CLASSIFICATION:

Classified, sensitive.

SYSTEM LOCATION:

Records are maintained at the Transportation Security Administration (TSA), Department of Homeland Security, P.O. Box 597, Annapolis Junction, MD 20701–0597.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals traveling to, from or within the United States by passenger air transportation; known terrorists and individuals on terrorism watch lists; persons with outstanding federal or state warrants for crimes of violence; government officials or other persons holding requisite security clearances, positions of trust and confidence, or otherwise deemed not to require heightened scrutiny.

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) Passenger Name Records (PNRs) obtained from airlines, Global Distribution Systems and Computer Reservation Systems (the specific contents of PNRs often vary by airline, but will include at least the following passenger information: Full name, date of birth, home phone number, home address, and travel itinerary); other information in PNR may include payment information, and frequent flier number (if any);

(b) Authentication scores and codes obtained from commercial data providers;

(c) Numerical "risk scores" generated by the CAPPS II system;

(d) Watch lists and government databases containing information on known terrorists and terrorist associates, or other information pertinent to the detection of terrorists and their associates, or pertinent to the detection of outstanding state or federal warrants for crimes of violence.

(e) Names of and other identifying information about government officials or other persons holding security clearance or positions of trust and confidence, such as not to warrant heightened scrutiny.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 114, 44901, and 44903.

PURPOSE(S):

The system will be used to facilitate the development, testing, and conduct of the Computer Assisted Passenger Prescreening System II (CAPPS II). The purpose of CAPPS II is to minimize threats to passenger and aviation security by determining which passengers should be afforded additional scrutiny prior to boarding an aircraft. In addition, CAPPS II is designed to determine the likelihood that a passenger is a known terrorist, or has identifiable links to known terrorists or terrorist organizations, including both foreign and domestic terrorist organizations, or otherwise poses a threat to passenger or aviation security.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) To appropriate Federal, State, local, international, or foreign agencies or authorities responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, or order, or in accordance with law or international agreements, where DHS becomes aware of an outstanding state or federal arrest warrant for a crime of violence.

(2) To contractors, grantees, experts, or consultants when necessary to perform a function or service related to the CAPPS II system or this system of records for which they have been engaged. Such recipients are required to comply with the Privacy Act, 5 U.S.C. 552a, as amended.

(3) To Federal, State, local, international, or foreign agencies or authorities, including those concerned with law enforcement, visas and immigration, and to agencies in the Intelligence Community, or in accordance with law or international agreements, with respect to persons who may pose a risk of air piracy or terrorism or who may pose a threat to aviation, passenger safety or national security.

(4) To the Department of Justice or other Federal agencies conducting litigation, or in a proceeding before a court, adjudicative or administrative body, when: (a) TSA, or (b) any employee of TSA in his/her official capacity, or (c) any employee of TSA in his/her individual capacity where DOJ or TSA has agreed to represent the employee, or (d) the United States or any agency thereof, is a party to litigation or has an interest in such litigation, and TSA determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which TSA collected the records.

(5) To airports and aircraft operators, only to the extent the disclosure is deemed required for counterterrorism or passenger or aviation security purposes.

(6) To the General Services Administration and the National Archives and Records Administration (NARA) in records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored electronically at a TSA secure facility. The records are stored on magnetic disc, tape, digital media, CD-ROM, and may also be retained in hard copy format in secure file folders.

RETRIEVABILITY:

Data are retrievable by the individual's name or other identifier, as well as non-identifying information, such as flight number.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable rules and policies, including any applicable DHS automated systems security and access policies. The computer system from which records could be accessed is policy and security based, meaning access is limited to those individuals who require it to perform their official duties. The system also maintains a real-time auditing function of individuals who access the system. Classified information is appropriately stored in a secured facility, and secured databases and containers and in accordance with other applicable requirements, including those pertaining to classified information.

RETENTION AND DISPOSAL:

A request is pending for NARA approval for the retention and disposal of records in this system. For U.S. persons, (*i.e.*, citizens and lawful permanent resident aliens), records will be deleted within a set number of days after the safe completion of the travel to which the record relates. The duration of data retention for other persons is still under consideration. Factors to be considered in determining data retention for those persons will include the extent of information required to accurately authenticate passenger identity and the amount of data available from commercial data on non-U.S. persons, relative to U.S. persons. Existing records obtained from other government agencies, including intelligence information, watch lists, and other data, will be retained for three years, or until superseded.

Passenger data used for purposes of system development and testing will be deleted upon completion of the test phase.

SYSTEM MANAGER(S) AND ADDRESS:

Director, CAPPS II, TSA, PO Box 597, Annapolis Junction, MD 20701–0597.

NOTIFICATION PROCEDURES:

Pursuant to 5 U.S.C. 552a(k), this system of records may not be accessed for purposes of determining if the system contains a record pertaining to a particular individual.

RECORD ACCESS PROCEDURES:

Although the system is exempt from record access procedures pursuant to 5 U.S.C. 552a(k), DHS has determined that all persons may request access to records containing information they provided by sending a written request to the CAPPS II Passenger Advocate (P.O. Box 597, Annapolis Junction, MD 20701–0597). To the greatest extent possible and consistent with national security requirements, such access will be granted. In the case of air passengers, this data is contained in the PNR. Individuals requesting access must comply with the Department of Homeland Security Privacy Act regulations on verification of identity (6 CFR 5.21(d)). Individuals must submit their full name, current address, and date and place of birth. You must sign your request and your signature must either be notarized or submitted by you under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. As noted above, however, in order to protect passenger privacy, PNR data is not retained for any significant time in this system. Accordingly, in most cases, the response to a record access request will very likely be that no record of the passenger exists in the system.

CONTESTING RECORD PROCEDURES:

A passenger who, having accessed his or her records in this system, wishes to contest or seek amendment of those records should direct a written request to the CAPPS II Passenger Advocate, at P.O. Box 597, Annapolis Junction, MD, 20701–0597. The request should include the requestor's full name, current address and date of birth, as well as a copy of the record in question, and a detailed explanation of the change sought. If the matter cannot be resolved by the CAPPS II Passenger Advocate, further appeal for resolution may be made to the DHS Privacy Office. While non-U.S. persons are not covered by the Privacy Act, such persons will still be afforded the same access and redress remedies. These remedies for all persons will more fully detailed in the CAPPS II privacy policy, which will be published before the system becomes fully operational.

RECORD SOURCE CATEGORIES:

Pursuant to 5 U.S.C. 552a(k), this system is exempt from publishing the categories of sources of records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system are exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) pursuant to 5 U.S.C. 552a(k)(1) and (k)(2).

Issued in Washington, DC, on July 22, 2003.

Tom Ridge,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 03–19574 Filed 7–31–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application of Endangered Species Recovery Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We announce our receipt of an application to conduct certain activities pertaining to scientific research and enhancement of survival of endangered species.

DATES: Written comments on this request for a permit must be received September 2, 2003.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director-Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486; telephone 303–236–7400, facsimile 303–236–0027.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone 303–236–7400.

SUPPLEMENTARY INFORMATION: The following applicant has requested issuance of a scientific research and enhancement of survival permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

TE–050706

Applicant: David Young, Western Ecosystems Technology, Inc., Cheyenne, Wyoming

The applicant requests a permit to take American burying beetles (*Nicrophorus americanus*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Dated: July 11, 2003.

Ralph O. Morgenweck,

Regional Director, Denver, Colorado.

[FR Doc. 03–19582 Filed 7–31–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; 5-Year Review of the Delta Smelt

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a 5-year review of the delta smelt (*Hypomesus transpacificus*) under section 4(c)(2)(A) of the Endangered Species Act of 1973 (Act) (16 U.S.C. 1531 *et seq*). The purpose of reviews conducted under this section of the Act is to ensure that the classification of species as threatened or endangered on the List of Endangered and Threatened Wildlife and Plants (List) is accurate.

The 5-year review is an assessment of the best scientific and commercial data available at the time of the review. Therefore, we are requesting submission of any new information (best scientific and commercial data) on the delta smelt since its original listing as a threatened species in 1993. If the present classification of this species is not consistent with the best scientific and commercial information available, we may, at the conclusion of this review, initiate a separate action to propose changes to the List accordingly.

DATES: To allow us adequate time to conduct this review, we must receive your information no later than September 30, 2003.

ADDRESSES: Submit information to the Field Office Supervisor, Attention: Delta Smelt 5-year Review, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, California 95825–1846. Information received in response to this notice and review results will be available for public inspection by appointment, during normal business hours, at the above address. New information regarding the delta smelt may be sent electronically to *Lawrence_Host@fws.gov*.

FOR FURTHER INFORMATION CONTACT: For the delta smelt, contact Harry McQuillen or Larry Host at the above address, or at 916/414–6547.

SUPPLEMENTARY INFORMATION:

Why Is a 5-Year Review Conducted?

Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. We are then, under section 4(c)(2)(B) and the provisions of subsections (a) and (b), to determine, on the basis of such a review, whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened, or threatened to endangered. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the delta smelt.

Why Is the Review Being Conducted for the Delta Smelt at This Time?

Conducting a 5-year review for the delta smelt at this time was agreed to in connection with the settlement of two lawsuits, *California Farm Bureau Federation et al.* v. *U.S. Department of the Interior et al.*, Case No. 1:02CV02328 (D.D.C., Nov. 22, 2002) and *San Luis & Delta Mendota Water Authority et al.* v. *U.S. Department of the Interior et al.*, Case No. CIV–F–02–6461 REC. D.B. (E.D. Cal., Nov. 22, 2002). The settlement agreement was signed by the DC district court on June 13, 2003, and by the federal district court in Fresno, California on June 19, 2003.

What Information Is Considered in the Review?

The 5-year review considers all new information available at the time of the review. This review will consider the best scientific and commercial data that has become available since the current listing determination or most recent status review, such as:

A. Species biology including, but not limited to, population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions including, but not limited to, amount, distribution, and suitability;

C. Conservation measures that have been implemented that benefit the species;

D. Threat status and trends (*see* five factors under heading "How do we determine whether a species is endangered or threatened?"); and

E. Other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

How Is the Delta Smelt Currently Listed?

The List is found in 50 CFR 17.11 (wildlife) and 17.12 (plants). Amendments to the List through final rules are published in the **Federal Register**. The List is also available on our Internet site at *http://endangered.fws.gov/wildlife.html#Species*. In Table 1 below, we provide a summary of the listing information for the delta smelt.

TABLE 1.—SUMMARY OF THE LISTING INFORMATION FOR THE DELTA SMELT

Common name	Scientific name	Status	Where listed	Final listing rule
delta smelt	*Hypomesus transpacificus*	Threatened	U.S.A. (CA)	58 FR 12863 (05–MAR–93).

Definitions Related to This Notice

The following definitions are provided to assist those persons who contemplate submitting information regarding the species being reviewed:

A. *Species* includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate, which interbreeds when mature.

B. *Endangered* means any species that is in danger of extinction throughout all or a significant portion of its range.

C. *Threatened* means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

How Do We Determine Whether a Species Is Endangered or Threatened?

Section 4(a)(1) of the Act establishes that we determine whether a species is endangered or threatened based on one or more of the five following factors:

A. The present or threatened destruction, modification, or curtailment of its habitat or range;

B. Overutilization for commercial, recreational, scientific, or educational purposes;

C. Disease or predation;

D. The inadequacy of existing regulatory mechanisms; or

E. Other natural or manmade factors affecting its continued existence.

Section 4(a)(1) of the Act requires that our determination be made on the basis of the best scientific and commercial data available.

What Could Happen as a Result of This Review?

If we find that there is new information concerning the delta smelt indicating a change in classification may be warranted, we may propose a new rule that could do one of the following: (a) Reclassify the species from threatened to endangered; or (b) remove the species from the List. If we determine that a change in classification is not warranted, the delta smelt will remain on the List under its current status.

What Will Happen if No New Information Is Submitted for the Species Under Review?

If there is no new information no changes will be made to the classification of the delta smelt under this review. However, we are not limited to reviewing listed species only during a 5-year review. We may review a species at any time, and may initiate reclassification or delisting whenever the best available scientific and commercial information indicates that such action is warranted.

Public Solicitation of New Information

We request any new information concerning the status of the delta smelt. New information is considered to be scientific and commercial data that has become available since the time of the species' current listing determination. In particular, we are seeking information such as:

A. Species biology including, but not limited to, population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions including, but not limited to, amount, distribution, and suitability;

C. Conservation measures that have been implemented that benefit the species;

D. Threat status and trends (see five factors under heading "How do we determine whether a species is endangered or threatened?"); and

E. Other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Information submitted should be supported by documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

Authority: This document is published under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: July 16, 2003.

Matt Hogan,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 03–19587 Filed 7–31–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–075–03–1330–EO]

Notice of Availability of Supplemental Mine and Reclamation Plan, North Rasmussen Ridge Mine, Final Environmental Impact Statement, Caribou County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Final Environmental Impact Statement (FEIS).

SUMMARY: Pursuant to Council on Environmental Quality regulations and Bureau of Land Management policy, this notice announces the publication of the Final Environmental Impact Statement for the Supplemental Mine and Reclamation Plan for the North Rasmussen Ridge phosphate mine, Caribou County, Idaho.

In accordance with the National Environmental Policy Act 102(2)(C) of 1969, the environmental impact statement was prepared to assess the impacts of implementing the Supplemental Mine and Reclamation Plan, and to disclose those impacts to the public and the lead agency decision-maker.

The environmental impact statement analyzes the potential impacts related to the expansion of mining at Agrium's North Rasmussen Ridge Mine in southeast Idaho. The Proposed Action includes developing two mine pits and a haul road. Use of existing support and transportation systems would continue. Existing operations at the Central Rasmussen Ridge Mine were approved in a 1997 Record of Decision. This environmental analysis reviews potential impacts from selenium and updates the previous impact analyses for other resources. Alternatives to the Proposed Action are also analyzed and site-specific mitigation measures developed. The agency Preferred Alternative is the Proposed Action because it disturbs the least acreage of the action alternatives and all waste material is backfilled to the pits.

DATES: A 30-day availability period will start when the Environmental Protection Agency publishes its notice of availability and filing of the FEIS in the **Federal Register**. The public can comment on the FEIS during that 30-day period. Upon completion of the 30-day availability period, the BLM will consider the comments received on the FEIS and then will issue a Record of Decision (ROD).

FOR FURTHER INFORMATION CONTACT: To request a copy of the document, please call (208) 478–6353, or write or e-mail Mr. Wendell Johnson, BLM Pocatello Field Office, 1111 North 8th Avenue, Pocatello, Idaho 83201, or e-mail *ID_NRasmussen_EIS@blm.gov*.

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare an Environmental Impact Statement was published in the **Federal Register** on May 18, 2001. A Notice of Availability of the Draft Environmental Impact Statement (DEIS) was published in the **Federal Register** on March 7, 2003. In addition to the Proposed Action (the Agencies Preferred Alternative) of continuing mining along the strike of the ore while backfilling previously mined-out pits, two additional alternatives are being considered—Alternative 1 is similar to the proposed alternative, but includes impermeable capped backfilled wastes—Alternative 2 is described as the No-Action Alternative and would not allow mineral extraction to occur on the approved leases. Two additional alternatives were identified and considered in comments received on the DEIS—the first additional alternative suggested in the comments included a redesign of the partially backfilled pit bottom to allow water to drain to one end of an impermeable layer lined pit. The water collected within the pit could then be pumped to adjacent wetlands. The second alternative identified from

comments in the DEIS was to mine and transport ore from Utah to supply Agrium's fertilizer plant in Idaho. The FEIS is published in an abbreviated format that responds to comments received on the DEIS.

Phil Damon,

Field Office Manager.

[FR Doc. 03–19204 Filed 7–31–03; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–115–2824–OB; HAG 3–0167]

Notice of Availability of the Timbered Rock Fire Salvage and Elk Creek Watershed Restoration Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the Timbered Rock Fire Salvage and Elk Creek Watershed Restoration Draft Environmental Impact Statement (DEIS).

SUMMARY: In accordance with section 202 of the National Environmental Policy Act of 1969, a DEIS has been prepared by the Bureau of Land Management (BLM), Medford District, to analyze possible salvage opportunities resulting from the Timbered Rock Fire and proposed restoration projects designed to move resource conditions closer to the desired future conditions identified in the Northwest Forest Plan, Elk Creek Watershed Analysis, and the South Cascades Late-Successional Reserve Assessment. The subject lands were designated Late-Successional Reserve in the Northwest Forest Plan. Restoration projects are designed to accelerate establishment or protection of late-successional forest conditions. The DEIS addresses whether to pursue salvage, levels of snags and coarse wood debris to be retained, and restoration projects on BLM-administered lands within and adjacent to the Late-Successional Reserve and Elk Creek Watershed.

DATES: Written comments on the DEIS will be accepted for 60 days from the date the Environmental Protection Agency publishes its Notice of Availability of the DEIS in the **Federal Register**. Oral and/or written comments may also be presented at public meetings/open houses. These public meetings/open houses will be announced at least 15 days in advance through public notices, media news releases, the Medford District Web site, and/or mailings.

ADDRESSES: Written comments on the document should be addressed to Timbered Rock EIS, 3040 Biddle Road, Medford, Oregon, 97504; or e-mail *or110treis@or.blm.gov*. Copies will be available at the Jackson and Josephine County libraries, and on the Timbered Rock Fire Salvage and Elk Creek Watershed Restoration Web site at *http://www.or.blm.gov/Medford/TimbrockEIS/index.htm*. Copies of the DEIS will be mailed to individuals, agencies, or companies who previously requested copies. A limited number of copies of the document will be available at the Medford District Office, 3040 Biddle Road, Medford, Oregon, 97504. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety. Comment letters may be reprinted in the Final Environmental Impact Statement (FEIS).

FOR FURTHER INFORMATION CONTACT: Jean Williams at (541) 944–6620 or John Bergin at (541) 840–9989.

SUPPLEMENTARY INFORMATION: The DEIS addresses alternatives for possible salvage opportunities and proposed restoration projects designed to move resource conditions closer to the desired future conditions identified in the Northwest Forest Plan, Elk Creek Watershed Analysis, and the South Cascades Late-Successional Reserve Assessment (LSRA). Two types of salvage, area and roadside, are discussed in Alternatives C through G. Alternatives A and B propose no salvage. Alternatives C through G were designed using specific guidance relating to post-fire salvage and/or Late-Successional Reserve guidelines. Research could be incorporated within each of the salvage alternatives. Included in the design of Alternative G is a study of the effects of various snag retention levels on wildlife species. Roadside salvage is designed to reduce existing or potential public safety concerns while recovering economic value of these dead trees.

Four levels of restoration projects are proposed in the six action alternatives: Focused, moderate, extensive, and focused within the fire perimeter only. The restoration varies by the scope of the projects (acres, miles of roads, *etc.*), intensity of the treatments, and location of the treatments. Restoration projects are located both within the Timbered Rock Fire perimeter and outside the fire area. Most projects are located within the Elk Creek Watershed; however, a proposed eagle nest project and some fuel management zone projects are located on ridge tops within adjacent watersheds. Projects are based on recommendations presented in the Late-Successional Reserve Assessment and/or Elk Creek Watershed Analysis, or were developed to address specific issues.

Projects proposed within the fire area focus on road projects to reduce existing and potential sedimentation from the road network, fish improvement projects, development of Fuel Management Zones, and reducing future hazardous fuel conditions within existing Northern Spotted Owl activity centers. Reforestation of the burned area was assessed in the Emergency Stabilization/Rehabilitation Plan Environmental Assessment. Alternatives A and E follow these recommendations. Other approaches to reforestation are presented in Alternatives B, C, D, F, and G. A reforestation study is included which would evaluate a variety of planting densities, species, and follow-up treatments in both salvage and unsalvaged areas. This reforestation research could be incorporated into any alternative.

Alternative A (No Action, Continuation of current management) follows the Emergency Stabilization/Rehabilitation Plan as planned for the Timbered Rock Fire. No restoration projects are proposed, but rehabilitation and stabilization projects proposed in the Timbered Rock Fire Rehabilitation/Stabilization Project Environmental Assessment would be implemented.

Emphasis of Alternative B (No Salvage and Focused Restoration Emphasis) is placed on reducing non-commercial size vegetative competition in over-stocked stands with density management treatments, fuels reduction treatments, and pine habitat restoration. Areas proposed for treatment are generally those in most need of reducing competing vegetation. Within the fire perimeter, restoration would focus on high priority road work. Restoration actions would focus on non-commercial projects, designed to accelerate the growth of trees in stands to promote late-successional conditions with a variety of size classes. Species diversity would be maintained to promote connectivity between owl activity sites and develop late-successional forest characteristics.

In Alternative C (Salvage Following South Cascade Late-Successional Reserve Assessment Guidelines and Moderate Restoration Emphasis), area salvage emphasis is proposed in high and moderate burn severity areas greater than 10 acres where the fire resulted in a stand-replacement event. Alternative C salvage is based on guidelines from the Late-Successional Reserve Assessment for snag and coarse woody debris retention. Restoration projects include fish habitat improvement, Late-Successional Reserve thinning, pine and oak woodlands restoration, reforestation of stand-replacement areas greater than 5 acres, fuels reduction along ridgelines, wildlife habitat enhancement projects, and road improvement projects.

In Alternative D (Late-Successional Reserve Guidelines for Salvage Using DecAID Wood Advisor Tool for Snags and Coarse Woody Debris (CWD) and Moderate Restoration Emphasis), area salvage emphasis is proposed in high and moderate burn severity areas greater than 10 acres where the fire resulted in a stand-replacement event. Instead of following LSRA salvage guidelines, snag and coarse woody debris retention levels in this alternative are based on the DecAID Wood Advisor tool. Restoration projects would be the same as Alternative C.

In Alternative E (High Level of Salvage and Extensive Restoration Emphasis), area salvage emphasis is proposed in high, moderate, low and very low burned severity areas. Snag retention levels within the high and moderate burn severity areas would be 6–14 snags/acre. This is based on study by Haggard and Gaines (2001) which found the highest diversity in cavity nesting species and the highest number of nests where snag densities ranged from 6–14 snags/acre. Snag retention within the low and very low burn severity areas with canopy cover greater than 40 percent would be 4 snags/acre. The course woody debris level in this alternative would be a minimum of 120 linear feet/acre. Extensive restoration would increase the scope of the projects (acres, miles of roads, etc.), intensity of the treatments, and location of the treatments identified in Alternative C and D. Alternative E also proposes seasonal closure of some roads.

In Alternative F (Salvage Logging and Post-fire rehabilitation actions consistent with report on *Recommendations for Ecologically Sound Post-Fire Salvage Management and Other Post-Fire Treatments on Federal Lands in the West* (Beschta *et al.*, 1995)), area salvage emphasis is based on recommendations to avoid severely burned areas, erosive sites, fragile soils, riparian areas, steep slopes, or sites where accelerated erosion is possible. Existing snags and course woody debris levels would be retained on all these areas. Salvage would occur in 3–10 acre patches of fire-killed trees. Within each of these patches, a minimum of 2 acres would be reserved from salvage. The Beschta *et al.* report does not address actions outside of a burned area. As a result, no Late-Successional Reserve restoration actions are proposed. However, restoration projects within the fire perimeter, consistent with Beschta *et al.* report are proposed.

In Alternative G (Preferred Alternative—Salvage Including Research and Moderate Restoration Emphasis), area salvage emphasis is based on research to study the effects of various snag levels on selected wildlife species. Sixteen units were selected to be included in this study. These units are generally 30 acres or greater and would be salvaged at various levels. In addition, four control units would not be salvaged. Stand replacement areas (high and moderate burn severity) outside of research units greater than 10 acres would also be considered for salvaging. Snag and course woody debris levels would meet DecAid Wood Advisor recommendations, as well as, other local and regional recommendations. A reforestation study is also included, which would evaluate a variety of planting densities, species, and follow-up treatments in both salvaged and unsalvaged areas. Restoration projects would be the same as Alternatives C and D. Alternative G also proposes seasonal closure of some roads.

It is not the intent of this project to change land use allocations, nor Standard and Guidelines made through the Northwest Forest Plan and later adopted through the Medford District Resource Management Plan. The Preferred Alternative has been determined to be consistent with the Northwest Forest Plan and Medford District Resource Management Plan. However, if alternative E or F is selected as the Preferred Alternative in the Final EIS, a plan amendment may be required.

Mary Smelcer,

Acting District Manager.

[FR Doc. 03–19205 Filed 7–31–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–930–1020–AC]

Notice of Public Meetings: Northwest California Resource Advisory Council; Northeast California Resource Advisory Council; Central California Resource Advisory Council; California Desert District Advisory Council

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U. S. Department of the Interior, Bureau of Land Management (BLM) Northwest California Resource Advisory Council; Northeast California Resource Advisory Council; Central California Resource Advisory Council and California Desert District Advisory Council will meet as indicated below.

DATES: Northwest California Resource Advisory Council—September 3, 2003, 10 a.m. to 3 p.m., Holiday Inn, 1900 Hilltop Dr., Redding, CA. The council will discuss the Sustaining Working Landscapes initiative. Public comment will be received at 1 p.m.

Northeast California Resource Advisory Council—September 26–27, 2003. On September 26, the meeting begins at 8 a.m. at the BLM Eagle Lake Field Office, 2950 N. State St., Susanville, CA. The council will discuss the Sustaining Working Landscapes initiative and will receive public comment beginning at 1 p.m. Additional agenda items include juniper management and land use updates. A Public land improvement project field tour will be conducted on September 27, 2003. Members of the public are welcome. They must provide their own transportation and lunch.

California Desert District Advisory Council: September 19–20, 2003, at the Kerr McGee Center, 100 West California Avenue, Ridgecrest, CA. The Council will discuss a variety of agenda topics on Friday, September 19. Saturday, September 20 will include a briefing and overview of the Sustaining Working Landscapes initiative from 8 a.m. to 10 a.m. followed by public comment from 10:15 a.m. to 12 noon and 1:30 p.m. to 3:30 p.m., followed by comments/recommendations from Council members. A court reporter will record all public comments. The meeting will adjourn 5 p.m.

Central California Resource Advisory Council—October 3–4, 2003 in the

conference room of the BLM Bakersfield Field Office, 3801 Pegasus Avenue, Bakersfield, CA. On October 3, the council will discuss the Sustaining Working Landscapes initiative and will receive public comment beginning at 3 p.m. On October 4, the council will continue discussion on Sustaining Working Landscapes. Other Central California land management issues will be discussed as time allows.

FOR FURTHER INFORMATION CONTACT: For Northwest and Northeast Advisory Councils, contact BLM Public Affairs Officer Jeff Fontana, Eagle Lake Field Office, Susanville, CA, (530) 252–5332.

California Desert District Advisory Council, contact BLM Public Affairs Officer Doran Sanchez, California Desert District Office, Moreno Valley, CA, (909) 697–5220.

Central California Resource Advisory Council, contact BLM Folsom Field Office Manager Deane Swickard, or Community Planner John Scull at (916) 985–4474.

SUPPLEMENTARY INFORMATION: The members of the councils advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in California. At these meetings, the major agenda topics will be the Sustaining Working Landscapes initiative in which the Bureau is considering new management approaches intended to promote better partnerships with grazing permittees, advance the long-term health and productivity of the public lands, provide for sustainable ranching and improve BLM's business practices. The councils will discuss the initiative and receive public comments. All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: July 28, 2003.

J. Anthony Danna,

Deputy State Director, Resources.

[FR Doc. 03–19583 Filed 7–31–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The human remains were removed from Middlesex and Worcester Counties, MA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Peabody Museum of Archaeology and Ethnology professional staff in consultation with officials of Nipmuc Nation (a nonfederally recognized Indian group) and Wampanoag Repatriation Confederation, representing Wampanoag Tribe of Gay Head (Aquinnah), Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group).

In 1878, human remains representing one individual were collected by A.F. Aldrich from Uxbridge, Worcester County, MA, and were donated by Mr. Aldrich to the Peabody Museum of Archaeology and Ethnology. No known individual was identified. No associated funerary objects are present.

Osteological characteristics indicate that the individual is Native American. Museum documentation indicates that a tin box containing cloth and a thimble were located with the human remains; these objects date the interment to the Historic or Contact periods (post-A.D. 1500). The objects are not in the possession of the Peabody Museum of Archaeology and Ethnology and their location is unknown. Archeological, historical, and ethnographic sources, along with consultation with regional Native American groups, indicate that this region of Massachusetts was the aboriginal homelands of the Nipmuc Nation during the Historic and Contact periods.

In 1890, human remains representing one individual were collected by Adams Tolman from Concord, Middlesex County, MA, and were donated by Mr. Tolman to the Peabody Museum of Archeology and Ethnology. No known individual was identified. No associated funerary objects are present.

Osteological characteristics indicate that the individual is Native American. The pattern of copper stains present on the human remains indicates that they were interred sometime after European contact (circa A.D. 1500). Archeological, historical, and ethnographic sources, along with consultation with regional Native American groups, indicate that during the Historic and Contact periods this area of Massachusetts was the border region between the Nipmuc Nation and the Massachusett people. Because there is no known present-day tribe representing the Massachusett people, shared group identity may be reasonably traced only to the Nipmuc Nation.

The Peabody Museum of Archaeology and Ethnology has determined that the human remains described in this notice cannot be affiliated with an Indian tribe according to the definition of cultural affiliation at 25 U.S.C. 3001 (2), and are considered culturally unidentifiable. According to the Native American Graves Protection and Repatriation Review Committee's charter, the Review Committee is responsible for recommending specific actions for disposition of culturally unidentifiable human remains. In October 1998, the Peabody Museum of Archaeology and Ethnology presented a disposition proposal to the Review Committee to repatriate two culturally unidentifiable human remains to the Nipmuc Nation. The proposal was considered by the Review Committee at its December 1998 meeting.

The Review Committee recommended disposition of the human remains to the Nipmuc Nation contingent upon the museum's meeting two requirements. A January 11, 2000, letter from the National Park Service to the Peabody Museum of Archaeology and Ethnology requested that the museum publish a Notice of Inventory Completion in the Federal Register, and that it consider documentation compiled as part of the inventory process as public information and available for educational and scientific uses. The two requirements will have been met with the publication of this notice in the Federal Register.

Officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of two individuals of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Nipmuc Nation.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Diana Loren, Acting Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 495-4125, before September 2, 2003. Repatriation of the human remains to the Nipmuc Nation may proceed after that date if no additional claimants come forward.

Peabody Museum of Archeology and Ethnology is responsible for notifying Nipmuc Nation (a nonfederally recognized Indian group) and Wampanoag Repatriation Confederation, representing Wampanoag Tribe of Gay Head (Aquinnah), Mashpee Wampanoag Indian Tribe (a nonfederally recognized Indian group), and Assonet Band of the Wampanoag Nation (a nonfederally recognized Indian group) that this notice has been published.

Dated: May 29, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–18705 Filed 7–31–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0115, 1029–0116, and 1029–0117

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collections of information for 30 CFR parts 773, 774 and 778.

DATES: Comments on the proposed information collection must be received by September 30, 2003, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 210—SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783 or at the e-mail address listed above.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8 (d)). This notice identifies information collections that OSM will be submitting to OMB for extension. These collections are contained in 30 CFR part 773 (Requirements for permits and permit processing), part 774 (Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights), and part 778 (Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information).

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will be included in OSM's submissions of the information collection requests to OMB.

The following information is provided for each information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: Requirements for Permits and Permit Processing, 30 CFR 773.

OMB Control Number; 1029–0115.

Summary: The collection activities for this part ensure that the public has the opportunity to review permit applications prior to their approval, and that applicants for permanent program permits or their associates who are in violation of the Surface Mining Control and Reclamation Act do not receive surface coal mining permits pending resolution of their violations.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Applicants for surface coal mining and reclamation permits and State governments and Indian Tribes.

Total Annual Responses: 324.

Total Annual Burden Hours: 11,058.

Title: Revisions; Renewals; and Transfer, Assignment, or Sale of Permit Rights—30 CFR 774.

OMB Control Number; 1029–0116.

Summary: Sections 506 and 511 of Public Law 95–87 provide that persons seeking permit revisions, renewals, transfer, assignment, or sale of their permit rights for coal mining activities submit relevant information to the regulatory authority to allow the regulatory authority to determine whether the applicant meets the requirements for the action anticipated.

Bureau Form Number: None.

Frequency of Collection: On occasion.

Description of Respondents: Surface coal mining permit applicants and State regulatory authorities.

Total Annual Responses: 6,498.

Total Annual Burden Hours: 49,164.

Title: Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information—30 CFR 778.

OMB Control Number: 1029–0117.

Summary: Section 507(b) of Public Law 95–87 provides that persons conducting coal mining activities submit to the regulatory authority all relevant information regarding ownership and control of the property affected, their compliance status and history. This information is used to insure all legal, financial and compliance requirements are satisfied prior to issuance or denial of a permit.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Surface coal mining permit applicants and State regulatory authorities.

Total Annual Responses: 301.

Total Annual Burden Hours: 6,436.

Dated: July 29, 2003.
Richard G. Bryson,
Chief Division of Regulatory Support.
[FR Doc. 03–19592 Filed 7–31–03; 8:45 am]
BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Commission has submitted an emergency request for approval of questionnaires to the Office of Management and Budget (OMB) for review. The Commission has requested OMB approval by August 15, 2003.

EFFECTIVE DATE: July 29, 2003.

Purpose of Information Collection

The forms are for use by the Commission in connection with investigation No. 332–453, Conditions of Competition for Milk Proteins in the U.S. Market, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation was requested by the Senate Committee on Finance. The Commission expects to deliver the results of its investigation to the Committee by May 14, 2004.

Summary of Proposal

(1) *Number of forms submitted:* three.
(2) *Title of form:* Conditions of Competition for Milk Proteins in the U.S. Market-Questionnaires for U.S. Purchasers, Importers, and Foreign Producers.
(3) *Type of request:* new.
(4) *Frequency of use:* Purchasers, Importers, and Foreign Producers questionnaire, single data gathering, scheduled for August 20—September 19, 2003.
(5) *Description of respondents:* U.S. firms which purchase, import or produce milk protein products.
(6) *Estimated number of respondents:*
250 (Purchaser questionnaire)
185 (Importer questionnaire)
25 (Foreign Producer questionnaire)
(7) *Estimated total number of hours to complete the forms:* 9,075.
(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

FOR FURTHER INFORMATION CONTACT: Copies of the forms and supporting documents may be obtained from Jonathan Coleman (USITC, telephone no. (202) 205–3465). Comments about the proposals should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503, ATTENTION: Desk Officer for International Trade Commission. All comments should be specific, indicating which part of the questionnaire is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.
DATES: To be assured of consideration, written comments must be submitted to OMB and to the Commission by August 11, 2003.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TTD terminal (telephone no. 202–205–1810). General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

Issued: July 29, 2003.
By order of the Commission.
Marilyn R. Abbott,
Secretary to the Commission.
[FR Doc. 03–19612 Filed 7–31–03; 8:45 am]
BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–752 (Review)]

Crawfish Tail Meat From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty order on crawfish tail meat from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on August 2, 2002 (67 FR 50459) and determined on November 4, 2002, that it would conduct a full review (67 FR 6957, November 18, 2002). Notice of the scheduling of the Commission's review and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on January 24, 2003 (68 FR 5046). The hearing was held in Washington, DC, on June 3, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this review to the Secretary of Commerce on July 28, 2003. The views of the Commission are contained in USITC Publication 3614 (July 2003), entitled Crawfish Tail Meat from China: Investigation No. 731–TA–752 (Review).

By order of the Commission.
Issued: July 28, 2003.
Marilyn R. Abbott,
Secretary to the Commission.
[FR Doc. 03–19610 Filed 7–31–03; 8:45 am]
BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–488]

In the Matter of Certain Screen Printing Machines, Vision Alignment Devices Used Therein, and Component Parts Thereof; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") terminating the above-captioned investigation in its entirety based on a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General saCounsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone (202) 205–3115. Copies of the public version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone (202) 205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on February 26, 2003, based on a complaint filed by Speedline Technologies, Inc. ("Speedline") against EKRA America, Inc., and EKRA Eduard Kraft GmbH (collectively, "EKRA"). The complaint alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, sale for importation, and/or sale within the United States after importation of certain screen printing machines, vision alignment devices used therein, and component parts thereof by reason of infringement of claims 1, 2, 3, 4, and 18 of U.S. Patent No. 5,060,063. 68 FR 8924 (Feb. 26, 2003).

On June 27, 2003, complainant Speedline and respondents EKRA filed a joint motion to terminate the investigation based upon a settlement agreement. On July 9, 2003, the Commission investigative attorney filed a response supporting the joint motion. On July 10, 2003, the presiding ALJ issued an ID (Order No. 10) granting the joint motion. No party petitioned for review of the ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.42 of the Commission's rules of practice and procedure (19 CFR 210.42).

Issued: July 28, 2003.
By order of the Commission.
Marilyn R. Abbott,
Secretary to Commission.
[FR Doc. 03–19605 Filed 7–31–03; 8:45 am]
BILLING CODE 7020–00–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–373 and 731–TA–770–775 (Review)]

Stainless Steel Wire Rod From Italy, Japan, Korea, Spain, Sweden, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the countervailing duty and antidumping duty orders on stainless steel wire rod from Italy, Japan, Korea, Spain, Sweden, and Taiwan.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty order on stainless steel wire rod from Italy and the antidumping duty orders on stainless steel wire rod from Italy, Japan, Korea, Spain, Sweden, and Taiwan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission,[1] to be assured of consideration, the deadline for responses is September 22, 2003. Comments on the adequacy of responses may be filed with the Commission by October 14, 2003. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: August 1, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On September 15, 1998, the Department of Commerce issued a countervailing duty order on imports of stainless steel wire rod from Italy (63 FR 49334–49335) and antidumping duty orders on imports of stainless steel wire rod from Italy, Japan, Korea, Spain, Sweden, and Taiwan (63 F.R. 49327–49334). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Italy, Japan, Korea, Spain, Sweden, and Taiwan.

(3) *The Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission found one Domestic Like Product consisting of all stainless steel wire rod corresponding to the scope of Commerce's investigations.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the Domestic Industry as consisting of all domestic producers of stainless steel wire rod.

(5) The *Order Date* is the date that the countervailing and antidumping duty orders under review became effective. In

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 03–5–076, expiration date June 30, 2005. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments, regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E. Street, SW, Washington, DC 20436.

these reviews, the Order Date is September 15, 1998.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the "same particular matter" as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was "personal and substantial." However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is September 22, 2003. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is October 14, 2003. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information to be Provided in Response to this Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing and antidumping duty orders on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Countries that currently export or have exported Subject Merchandise to the United States or other countries since 1997.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 2002 (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 2002 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from each of the Subject Countries accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from each of the Subject Countries; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from each of the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 2002 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in each of the Subject Countries accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from each of the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: July 25, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–19650 Filed 7–31–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–483]

In the Matter of Certain Tool Holders, Tool Sets, and Components Therefor; Notice of Commission Decision Not To Review An Initial Determination Finding No Violation of Section 337 of the Tariff Act of 1930 and Terminating the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") finding no violation of section 337 of the Tariff Act of 1930 and terminating the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3012. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation by notice published in the **Federal Register** on December 27, 2002, in response to a complaint filed on behalf of Allen-Pal, LLC of San Jose and Los Gatos, California. 67 FR 79,148 (2002).

The complaint, as supplemented, alleged violations of section 337 in the importation into the United States and the sale within the United States after importation of certain tool handles, tool holders, tool sets, and components therefor by reason of infringement of claims 1, 2, 11, 12, 23, 24, 28, 29, and 30 of U.S. Patent No. 5,911,799 ("the '799 patent") and claims 1, 14, 18, 19, 34, 37, 40, and 41 of U.S. Patent No. 6,311,587 ("the '587 patent"). Id. The Commission named two respondents, Danaher Corporation of Washington, DC, and Danaher Tool Group of Hunt Valley, Maryland (collectively, "Danaher").

On April 22, 2003, the ALJ issued an ID (Order No. 7) terminating the investigation with respect to claims 2, 28, 29, and 30 of the '799 patent and with respect to claim 18 of the '587 patent. On April 24, 2003, the ALJ issued an ID (Order No. 8) amending the complaint and notice of investigation to add as respondents Hi-Five Products Developing Company of Taichung, Taiwan ("Hi-Five"), and Bobby Hu, of Taichung, Taiwan. Those IDs were not reviewed by the Commission.

On May 27, 2003, the Commission investigative attorney ("IA") moved, pursuant to Commission rule 210.15(a), for a summary determination of no violation based upon non-infringement of asserted claims 1, 11, 12, 23, and 24 of the '799 patent and asserted claims 1, 14, 19, 34, 37, 40, and 41 of the '587 patent, the only claims remaining in issue, by the accused tool handles, tool holders, and tool sets imported into and sold in the United States by Danaher. The IA noted that these are the same products that respondents Hi-Five and Hu are accused of selling.

On June 10, 2003, complainant and Danaher filed a joint motion pursuant to Commission rule 210.21(a) and (b) to terminate Danaher as a respondent on the basis of a settlement agreement. On June 11, 2003, Danaher filed a response stating that it would not submit a substantive response to the IA's motion for summary determination in light of the pending joint motion for termination of the investigation based on a settlement agreement. On June 11, 2003, complainant filed its opposition to the IA's motion for summary determination. On June 13, 2003, the IA filed a motion for leave to reply to complainant's opposition with attached reply. On June 18, 2003, complainant filed a reply opposition.

On June 20, 2003, the ALJ issued an ID (Order No. 14) granting the IA's motion for summary determination and terminating the investigation. The ID found no violation of section 337 by reason of no infringement by any respondent of any of the 12 patent claims remaining in issue in the investigation. The ALJ noted that the June 10, 2003, joint motion for termination was pending before him. ID at 1 n.2. On June 26, 2003, complainant filed a motion for extension of time to file a petition for review of the ID. On June 27, 2003, the Chairman granted the motion and extended complainant's deadline for filing a petition for review until July 3, 2003. On July 2, 2003, the Commission extended the deadline for determining whether to review the ID until Wednesday, August 13, 2003. No petitions for review of the ID were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's rules of practice and Procedure (19 CFR 210.42).

Issued: July 28, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–19611 Filed 7–31–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA")

Notice is hereby given that on July 11, 2003, a proposed Consent Decree in *United States* v. *BNZ Materials, Inc. et al.*, Civil Action No. 00–527–M ("Consent Decree"), was lodged with the United States District Court for the District of New Hampshire.

The proposed Consent Decree resolves the United States' claims against four defendants for the recovery of costs incurred by the United States in response to releases and threatened releases of friable asbestos, a hazardous substance at the Site pursuant to sections 107(a) and 113 of the Comprehensive Environmental Response, Compensation, and Recovery Act, as amended ("CERCLA"), 42 U.S.C. § 9607(a) and 9613 pertaining to the Johns Manville Manufacturing Plant Superfund Site, located in Nashua, New Hampshire (the "Site"). The United States incurred approximately $4,600,000 in past response costs, including enforcement costs and interest, relating to the Site. Under this Consent Decree, the defendants will pay $2,500,000 plus interest within 30 days of entry of the Consent Decree, to resolve their liability for past costs at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice Washington, DC 20044–7611, and should refer to *United States* v. *BNZ Materials, Inc. et al.*, D.J. Ref. 90–11–2–07309.

The Consent Decree may be examined at the Office of the United States Attorney, 55 Pleasant Street, Concord, New Hampshire 03301–3904 (contact Civil Chief, Assistant U.S. Attorney Gretchen Witt), and at the U.S. EPA Region I, One Congress Street, Boston, Massachusetts, 02114 (contact Assistant Regional Attorney Steven Schlang). During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $7.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ron Kluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–19440 Filed 7–31–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

George Minor Meredith, II, M.D. Revocation of Registration

On April 22, 2002, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to George Minor Meredith, M.D. (Respondent) of Great Bend, Kansas, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AM8703995 under 21 U.S.C. 824(a), and deny any pending applications for renewal or modification of that registration. As a basis for revocation, the Order to Show Cause alleged that on December 8, 2001, the Board of Healing Arts of the State of Kansas (Board) revoked Respondent's medical license. Accordingly, the Respondent is not currently authorized to handle controlled substances in Kansas, the state in which he practices. The order also notified Respondent that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent by certified mail to Respondent at his registered location in Grand Bend, Kansas. DEA received a signed receipt indicating that the Order to Show Cause was received by Respondent on or around May 2, 2002. The receipt noted that Respondent has changed his address to Virginia Beach, VA.

Respondent requested a hearing. On July 31, 2002, DEA filed a Motion for Summary Disposition and Request for Stay of the Filing of Prehearing Statement. In its Motion, the Government alleged that Respondent lacks authority to handle controlled substances in Kansas, the state in which he currently maintains his DEA registration. The Government further stated that Respondent's state medical license had been revoked by the Board on December 10, 2001, and appended a copy of the Board's Final Order to the Motion. The Final Order indicated that Respondent's license had been suspended on June 11, 2001, and remained suspended up to the time the Final Order was executed.

The Administrative Law Judge Gail A. Randall (ALJ) assigned to this case issued an Order on August 2, 2002, affording Respondent an opportunity to file his opposition to the Government's motion by August 16, 2002. Respondent filed a "Prehearing Statement," on August 23, 2002, apparently in response to the ALJ's Order. Even though the filing was received past the deadline set forth in the ALJ's order, the ALJ accepted the document into the record. In his filing, Respondent presented no evidence in opposition to the Government's contention that he lacked state authority to practice medicine or to handle controlled substances in Kansas.

On September 16, 2002, the ALJ certified and transmitted the record in this matter to the Acting Administrator, along with her Opinion and Recommended Decision. In her Decision, the ALJ granted DEA's Motion for Summary Disposition and recommended that Dr. Meredith's DEA registration be revoked.

The Acting Administrator has carefully reviewed the entire record in this matter, as defined above, and hereby issues this final order as prescribed by 21 CFR 1301.43 and 21 CFR 1301.46 based upon the following findings and conclusions. The Acting Administrator adopts the Opinion and Recommended Decision of the ALJ, and his adoption is in no manner diminished by any recitation of facts, issues and conclusions, herein, or of any failure to mention a matter of fact or law.

The Acting Administrator finds that Respondent possessed DEA Certificate of Registration AM8703995. The Acting Administrator further finds that an investigation by DEA revealed that on December 8, 2001, the Kansas Board of Healing Arts issued a Final Order revoking Respondent's license to practice medicine in Kansas.

DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts business. *See* 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See* Muttaiya Darmarajeh, M.D., 66 FR 52936 (2001); Damonick A. Ricci, M.D., 58 FR 51104 (1993); Bobby Watts, M.D., 53 FR 11919 (1988).

Here, it is clear that Respondent is not licensed to handle controlled substances in the State of Kansas where he is registered with DEA. Therefore, he is not entitled to a DEA registration in that state.

Accordingly, the Acting Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AM8703995, issued to George Minor Meredith, M.D. be, and it hereby is, revoked. The Acting Administrator further orders that any pending applications for renewal or modification of such registration be, and they hereby are, denied. This order is effective September 2, 2003.

William B. Simpkins,

Acting Administrator.

[FR Doc. 03–19631 Filed 7–31–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29

CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I
None
Volume II
None
Volume III
None
Volume IV
None
Volume V
None
Volume VI
None
Volume VII
None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov)* of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive help desk support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, this 24 day of July, 2003.

Carl Poleskey,

Chief, Branch, of Construction Wage Determinations.

[FR Doc. 03–19317 Filed 7–31–03; 8:45 am]

BILLING CODE 4510–27–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Search Committee for LSC President and Inspector General

TIME AND DATE: The Search Committee for LSC President and Inspector General of the Legal Services Corporation's Board of Directors will meet on August 6, 2003 The meeting will begin at 2 p.m. and continue until conclusion of the Committee's agenda.

LOCATION: 3333 K Street, NW., Washington, DC, Room 4214.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of the Board of Directors to hold an executive session. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c)(2), (4) & (6)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR 1622.5(a), (c) & (e)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Consider and act on proposed time line for the selection process.
3. Public Comment.
4. Consider and act on other business.

Closed Session

5. Review request for proposals from selected search firms.
6. Consider and act on selecting a search firm to conduct a search for an LSC President and Inspector General.

Open Session

7. Consider and act on adjournment of meeting.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel and Corporate Secretary, at (202) 295–1500.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 295–1500.

Dated: July 29, 2003.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel, and Corporate Secretary.

[FR Doc. 03–19667 Filed 7–29–03; 4:06 pm]

BILLING CODE 7050–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission (NRC) has issued a revision of a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in its review of applications for permits and licenses, and data needed by the NRC staff in its review of applications for permits and licenses.

Revision 4 of Regulatory Guide 1.101, "Emergency Planning and Preparedness for Nuclear Power Reactors," provides guidance to licensees and applicants on methods acceptable to the NRC staff for complying with the NRC's regulations for emergency response plans and preparedness at nuclear power reactors.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Questions on the content of this guide may be directed to Mr. T.B. Blount, (301) 415–1501; e-mail *txb1@nrc.gov*.

Regulatory guides are available for inspection or downloading at the NRC's Web site at *http://www.nrc.gov* under Regulatory Guides and in NRC's Electronic Reading Room (ADAMS System) at the same site. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289, or by e-mail to *distribution@nrc.gov*. Issued guides may also be purchased from the National Technical Information Service (NTIS) on a standing order basis. Details on this service may be obtained by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161; telephone 1–800–553–6847; *http://www.ntis.gov/*. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, MD, this 28th day of July, 2003.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Office of Nuclear Regulatory Research.

[FR Doc. 03–19589 Filed 7–31–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26141; 812–12991]

JF International Management Inc. et al.; Notice of Application and Temporary Order

July 28, 2003.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 ("Act").

SUMMARY OF APPLICATION: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against J.P. Morgan Chase & Co. ("JPMC") on July 28, 2003 by the United States District Court for the Southern District of Texas (the "Injunction"), until the Commission takes final action on an application for a permanent order. Applicants also have applied for a permanent order.

APPLICANTS: JF International Management Inc., J.P. Morgan Alternative Asset Management, Inc., J.P. Morgan Fleming Asset Management (London) Limited, J.P. Morgan Fleming Asset Management (USA) Inc., J.P. Morgan Investment Management Inc., and Robert Fleming Inc. (together, the "Applicants").[1]

FILING DATES: The application was filed on July 28, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 25, 2003, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Mark E. Segall, Esq., J.P. Morgan Chase & Co., Legal Department, One Chase Manhattan Plaza, New York, NY 10081.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, or Todd F. Kuehl, Branch Chief, at 202–942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone 202–942–8090).

Applicants' Representations

1. JPMC is a holding company that, through its subsidiaries and affiliates, provides investment, financing, advisory, banking and related products and services on a global basis. JPMC is the ultimate parent company of the Applicants, each of which is an investment adviser registered under the Investment Advisers Act of 1940. Each Applicant serves as investment adviser or sub-adviser to certain registered investment companies ("Funds").

2. On July 28, 2003, the United States District Court for the Southern District of Texas entered the Injunction against JPMC in a matter brought by the Commission.[2] The Commission alleged in the complaint ("Complaint") that JPMC aided and abetted violations of section 10(b) of the Securities Exchange Act of 1934 and rule 10b–5 thereunder by Enron Corp. ("Enron"). The alleged violations occurred in connection with Enron's financial statement disclosure of transactions with one or more affiliates of JPMC between 1997 and 2001. Without admitting or denying any of the allegations in the Complaint, except as to jurisdiction, JPMC consented to the entry of the Injunction as well as the payment of disgorgement, civil penalties and interest.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment

[1] Applicants request that any relief granted pursuant to the application also apply to any other existing company of which JPMC is an affiliated person within the meaning of section 2(a)(3) of the Act and to any other company of which JPMC may become an affiliated person in the future (together with Applicants, "Covered Persons").

[2] *Securities and Exchange Commission* v. *J.P. Morgan Chase & Co.*, No. H–03–2877 (S.D. Tx. filed July 28, 2003).

trust or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that JPMC is an affiliated person of each of the Applicants within the meaning of section 2(a)(3) of the Act. Applicants state that, as a result of the Injunction, they would be subject to the prohibitions of section 9(a).

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting them from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standards for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that none of their current or former officers or employees who are engaged in the provision of investment advisory services to the Funds participated in any way in the conduct underlying the Injunction. Certain Funds held securities issued by Enron at the time of the conduct underlying the Injunction. Applicants state that as far as they are aware, none of the officers, portfolio managers or any other investment personnel employed by Applicants had any knowledge of any non-public information relating to, or had any involvement in, the conduct underlying the Injunction. Applicants further state that they had, and continue to have, policies and procedures in place designed to prohibit or restrict communications with other JPMC employees.

5. Applicants state that the inability to continue providing advisory services to the Funds would result in potentially severe hardships for the Funds and their shareholders. Applicants also state that they have distributed, or will distribute as soon as reasonably practical, written materials, including an offer to meet in person to discuss the materials, to the boards of directors or trustees of the Funds (the "Boards"), including the directors who are "interested persons," as defined in section 2(a)(19) of the Act, of such Funds and their independent legal counsel as defined in rule 0–1(a)(6) under the Act, if any, regarding the Injunction, any impact on the Funds and the application. Applicants will provide the Boards with all information concerning the Injunction and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants also assert that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. Applicants state that they have committed substantial resources to establish an expertise in advising and subadvising Funds. Applicants state that they have not received any orders under section 9(c) of the Act in the past. Applicants recently applied for an exemption pursuant to section 9(c) of the Act for conduct relating to certain research analysts' conflicts of interest.[3]

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Applicants, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly, *It is hereby ordered*, pursuant to section 9(c) of the Act, that Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Injunction, subject to the condition in the application, until the date the Commission takes final action on an application for a permanent order.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–19617 Filed 7–31–03; 8:45 am]

BILLING CODE 8010–01–P

[3] J.P. Morgan Securities Inc. *et al.*, File No. 812–12959.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48229; File No. SR–BSE–2003–04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to the Creation of Boston Option Exchange Regulation, L.L.C.

July 25, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 17, 2003, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On July 25, 2003, the Exchange amended the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to create a new options regulatory subsidiary, Boston Option Exchange Regulation, L.L.C. ("BOXR"). The text of the proposed rule change is set forth below. Proposed new language is in *italics*.

* * * * *

Rules of the Board of Governors

* * * * *

Chapter XXXVI

SEC. 1 Delegation, Authority and Access

(a) The Boston Stock Exchange, Inc., delegates to its subsidiary (Boston Options Exchange Regulation, L.L.C, hereinafter "BOXR") the authority to act on behalf of the Exchange as set forth in a Plan of Allocation and Delegation adopted by the Board of Governors and approved by the Securities and Exchange Commission pursuant to its authority under the Securities Exchange Act of 1934 ("Act").

(b) Notwithstanding any delegation of authority to BOXR pursuant to this rule, the staff, books, records and premises of BOXR are the staff, books, records and premises of the Exchange subject to oversight pursuant to the Act, and all officers, directors, employees and agents of BOXR are the officers, directors, employees and agents of the Exchange for purposes of the Act.

SEC. 2 Plan of Delegation of Functions and Authority by the Boston Stock Exchange, Inc., to Boston Options Exchange Regulation, LLC

The Boston Stock Exchange, Inc. ("BSE" or "Exchange"), the registered national securities exchange pursuant to Section 6 of the Act, is the parent company of the wholly-owned subsidiary BOXR. The Boston Options Exchange ("BOX") is a facility of the BSE pursuant to Section 3(a) of the Act operated by Boston Options Exchange Group, L.L.C. ("BOX LLC")

A. Functions and Authority of the BSE

The BSE shall have ultimate responsibility for the rules and regulations of the Exchange and its operation and administration. As set forth below, the BSE has delegated certain authority and functions to its subsidiary, BOXR. Actions taken pursuant to delegated authority, however, remain subject to review, ratification or rejection by the BSE Board of Governors in accordance with procedures established by that Board. Any function or responsibility of the BSE as a registered national securities exchange under the Act, or as set forth in the Certificate of Incorporation of the Exchange, the Constitution, the By-laws, the BSE Rules, or the L.L.C. Agreement of Boston Options Exchange Group, is hereby reserved, except as expressly delegated to BOXR. In addition, the BSE expressly retains the following authority and functions:

1. To exercise overall responsibility for ensuring that BSE's statutory and self-regulatory obligations and functions are fulfilled.

2. To delegate authority to BOXR to take actions on behalf of the Exchange.

3. To appoint the BOXR Options Officials (an "Options Official" is "an officer of BOXR vested by the BOXR Board with certain authority to supervise option trading on BOX." See Rules of the Boston Options Exchange Facility, Chapter I, Section 1).

4. To review the rulemaking and disciplinary decisions of BOXR.

5. To coordinate actions of BOXR and BOX as necessary.

6. To resolve any regulatory disputes among BOXR and BOX LLC.

7. To administer common overhead and technology of BOXR and BSE.

8. To administer internal reviews of BOX LLC and BOXR as deemed necessary.

9. To manage external BSE relations on major regulatory policy and/or surveillance issues regarding the BOX options market.

10. To direct BOXR and BOX LLC to take action necessary to effectuate the purposes and functions of BOX as a facility of the Exchange.

11. In the BSE's role as the sole owner of BOXR, to incorporate in its Board of Governors and Nominating Committee responsibilities, a process to elect the Board of Directors of BOXR ("BOXR Board") pursuant to the BOXR L.L.C. Agreement and BOXR By-Laws.

12. To take action in an area of responsibility delegated to BOXR below.

B. Access to and Status of Books, Records, Premises, Officers, Directors, Agents and Employees of BOX LLC.

1. Notwithstanding the delegation of authority to BOXR, as set forth below, the books, records, premises, officers, directors, agents and employees of BOX LLC shall be the books, records, premises, officers, directors, agents and employees of BSE for purposes of and subject to oversight pursuant to the Securities Exchange Act. The books and records of BOX LLC shall be subject at all times to inspection and copying by the BSE, BOXR and the Securities and Exchange Commission ("Commission").

2. BOX LLC is required to maintain all books and records related to BOX within the United States.

3. Paragraph (1) above shall not create any rights or benefits for any person or entity other than the Commission, the BSE and BOXR.

C. Delegation of Responsibilities and Functions

Subject to Section A(12) above and the review, ratification, or rejection by the BSE Board, the BSE hereby delegates to BOXR and BOXR assumes the following responsibilities and functions with respect to the options business of the Exchange:

1. To interpret rules and regulations including, but not limited to, trading rules, fees, access to and use of system facilities and participation requirements.

2. To determine regulatory and trading policies, including developing and recommending necessary or appropriate rule changes to the BSE Board, relating to the business conduct, trading activities and sales practices of BOX Participants and associated persons with respect to, but not limited to, (i) financial responsibility, (ii) qualifications for BOX participation and association with BOX Participants, (iii) clearance and settlement of securities transactions and other financial responsibility and operational matters affecting BOX Participants in general and the securities listed on BOX, (iv) BOX Participant advertising practices, (v) administration, interpretation and enforcement of the Rules of the Boston Options Exchange Facility ("BOX Rules"), including determination of appropriate exemptions for BOX Participants (vi) administration and enforcement of the Options Clearing Corporation ("OCC") rules, the federal securities laws, and other laws, rules and regulations that the BSE has the authority to administer or enforce and (vii) standards of proof for violations and sanctions imposed on BOX Participants and associated persons in connection with disciplinary actions.

3. To take necessary or appropriate action to assure compliance with BSE and BOX policies and rules, the federal securities laws, and other laws, rules and regulations that the BSE has the authority to administer or enforce, through examination, surveillance, investigation, enforcement, disciplinary, and other programs.

4. To administer programs and systems for the surveillance and enforcement of rules governing BOX Participants' conduct and trading activities in BOX.

5. To examine and investigate BOX Participants and associated persons to determine if they have violated BSE or BOX rules, the federal securities laws, and other laws, rules, and regulations that the BSE has the authority to administer, interpret, or enforce.

6. To administer the BOXR's enforcement and disciplinary programs regarding BOX Participants, including investigations, adjudication of cases, and the imposition of fines and other sanctions.

7. To conduct qualification examinations and continuing education programs.

8. To determine whether applicants for BOX participation have met the requirements for participation established by the BSE.

9. To place restrictions on the business activities of BOX Participants consistent with the public interest, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See facsimile from John Boese, Vice President, Legal and Compliance, Exchange, to Deborah Flynn, Assistant Director, Division of Market Regulation, Commission, dated July 25, 2003 ("Amendment No. 1"). Amendment No. 1 supersedes and replaces the proposed rule change in its entirety.

protection of investors, and the federal securities laws.

10. To determine whether persons seeking to register as BOX Participants have met such qualifications for participation as may be established by the BSE, including whether statutorily disqualified persons will be permitted to associate with particular BOX Participants and the conditions of such association.

11. To oversee all trading activities on BOX.

12. To propose and assess fees and other charges on BOX Participants, associated persons and others using the products, services or facilities of the Exchange.

13. To develop, administer and enforce policies and rules of BOX governing listing standards applicable to securities traded on BOX.

14. To establish the annual budget and business plan for BOXR.

15. To determine allocation of BOXR resources.

16. To administer the Exchange's involvement in National Market System Plans related to BOX.

17. To manage external relations on enforcement, regulatory, and other policy issues regarding BOX and BOX Participants with Congress, the Commission, state regulators, other self-regulatory organizations, business groups, and the public.

18. To establish internal procedures for considering complaints by Participants, associated persons, and members of the public who request an investigation or disciplinary action by BOXR.

D. Rule Filings

The BSE Board shall review and ratify a rule change recommended by the BOXR Board before the rule change becomes a final action of the Exchange.

E. Supplemental Delegation Regarding Management and Committees

The BOXR Board may designate the Chief Executive Officer, another designated officer or one or more committees and delegate to such person or committee such powers and authority, as necessary and appropriate, to act on behalf of the BOXR Board in carrying out the functions and authority delegated to BOXR by the BSE. Such delegations shall be in conformance with law and the By-laws of BOXR and the BOX Rules. Any action taken by a BOXR officer or committee pursuant to delegated authority shall be subject to review, ratification or rejection by the BOXR Board in accordance with procedures established by the BOXR Board.

* * * * *

Boston Options Exchange Regulation, L.L.C.

By-Laws

Definitions

When used in these By-Laws, unless the context otherwise requires, the term.

(a) "Act" shall mean the Securities Exchange Act of 1934, as amended;

(b) "Associated person" means a person who is a partner, officer, director, or employee of a Participant, or any person directly or indirectly controlling, controlled by or under common control with a Participant.

(c) "Board" means the Board of Directors of Boston Options Exchange Regulation, L.L.C.;

(d) "BOX" means the Boston Options Exchange Facility;

(e) "BOXR" means the Boston Options Exchange Regulation, L.L.C.;

(f) "BOX Rules" means the Rules of the Boston Options Exchange Facility;

(g) "broker" shall have the same meaning as in Section 3(a)(4) of the Act;

(h) "BSE Rules" means the Constitution and the Rules of the Board of Governors of the Boston Stock Exchange, Inc;

(i) "Commission" means the Securities and Exchange Commission;

(j) "day" means calendar day;

(k) "dealer" shall have the same meaning as in Section 3(a)(5) of the Act;

(l) "Delegation Plan" means the "Plan of Delegation of Functions and Authority by the Boston Stock Exchange, Inc. to Boston Options Exchange Regulation, L.L.C." as approved by the Commission and amended from time to time;

(m) "Director" means a member of the Board;

(n) "L.L.C. Agreement" means the "Boston Options Exchange Group L.L.C. Operating Agreement";

(o) "Options Participant" or "Participant" means a firm, or organization that is registered with the Exchange pursuant to Chapter II of the BOX Rules for purposes of participating in options trading on BOX as an "Order Flow Provider" and/or "Market Maker".

(p) "Public Director" means a director who has no material business relationship with a broker, dealer, the BSE, BOX or BOXR.

(q) "Regulatory Services Agreement" means the Regulatory Services Agreement entered into between BSE and Boston Options Exchange Group, L.L.C.;

Location

SEC. 1 Boston Options Exchange Regulation, L.L.C., shall maintain a registered office in the State of Delaware as required by law. BOXR may also have offices and/or trading facilities at other places, within or without the State of Delaware, as the Board of Directors may from time to time determine or as the business of BOXR may require.

General Powers

SEC. 2 The property, business and affairs of BOXR shall be managed by or under the direction of the Board. The Board may exercise all such powers of BOXR and have the authority to perform all such lawful acts as are permitted by law, the L.L.C. Agreement, the Regulatory Services Agreement, these By-Laws, or the Delegation Plan to assist the BSE in fulfilling its self regulatory responsibilities as set forth in Section 6(b) of the Act, and to support such other initiatives as the Board may deem appropriate. To the fullest extent permitted by applicable law, the L.L.C. Agreement, the Regulatory Services Agreement, and these By-Laws, the Board may delegate any of its powers to a committee appointed pursuant to Section 14 of the By-Laws, or to the BOXR staff in a manner not inconsistent with the Delegation Plan.

Number of Directors

SEC. 3 The Board shall consist of no fewer than seven nor more than thirteen Directors, the exact number to be determined by resolution adopted by the BSE Board from time to time. The BSE Board shall appoint directors to the BOXR Board, 50% of whom will serve until the first annual meeting of the BOXR Board, and 50% of whom will serve until the second consecutive annual meeting of the BOXR Board, in accordance with Section 5, below. In accordance with Section 4, below, the Chief Executive Officer of the BSE will be considered a member of the Board of Directors for voting purposes, but not for qualification percentage purposes. The General Counsel of the BSE will not be considered a member of the Board of Directors for voting purposes or qualification percentage purposes.

Qualifications

SEC. 4 Directors need not be Participants of BOX, or members of BSE. Industry Directors must be representatives of the securities industry as provided in Article II of the BSE Constitution. At least fifty percent (50%) of the Directors will be Public Directors. The Board shall include the Chief Executive Officer of the BSE, who will not be considered for the purposes of determining the qualification percentages for the Board set forth herein. The General Counsel of the BSE shall act as an advisor to the Board for all legal and regulatory matters, and shall not be a member or director of the Board. At least twenty percent (20%) of the Directors (but no fewer than two (2) Directors) will be officers or directors of a firm approved as a BOX Option Participant. An officer or director of a facility of the BSE may serve on the Board of Directors. The term of office of a Director shall not be affected by any decrease in the authorized number of Directors.

As soon as practicable, following the annual appointment of Directors, the Board shall elect from its members a Chair and Vice Chair and such other persons having such titles as it shall deem necessary or advisable to serve until the next annual appointment or until their successors are chosen and qualify. The persons so elected shall have such powers and duties as may be determined from time to time by the Board. The Board, by resolution adopted by a majority of Directors then in office, may remove any such person from such position at any time.

Appointment and Term of Directors

SEC. 5 Directors of BOXR shall be appointed, as necessary, each year by the BSE Board, at its next annual meeting after the BOXR Nominating Committee presents its candidates for the two BOX representatives on the BOXR Board each October. Directors shall be appointed for no more than four consecutive two-year terms, with the exception of the initial Board of Directors, 50% of whom will be appointed by the BSE Board to one year terms, and 50% of whom will be appointed by the BSE Board to two year terms, with the percentages of each apportioned as evenly as practicable between Public Directors and non-Public Directors in accordance with Section 4, above.

Resignation

SEC. 6 Any Director may resign at any time either upon written notice of resignation to the Chairman of the Board, the President, or the Secretary. Any such resignation shall take effect at the time specified therein or, if the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

Removal

SEC. 7 Unless otherwise restricted by the L.L.C. Agreement, these By-Laws, the BSE Rules or the BOX Rules, any or all of the Directors may be removed from office at any time, with cause, only if a determination is reasonably and promptly made by the BSE Board by a majority vote, that, based upon the facts known to the BSE Board at the time such determination is made that the Director sought to be removed (i) acted in bad faith; or (ii) did not act in a manner in the best interests of BOXR; or (iii) engaged in conduct which was unlawful; or (iv) deliberately breached his or her duty to BOXR.

Disqualification

SEC. 8 The term of office of a Director shall terminate immediately upon a determination by the Board, by a majority vote of the remaining Directors, that: (a) the Director no longer satisfies classification for which the Director was elected; and (b) the Director's continued service as such would violate the compositional requirements of the Board as set forth in Section 4 of these By-Laws. If the term of office of a Director terminates under this section, and the remaining term of office of such Director at the time of termination is not more than six months, during the term of vacancy the Board shall not be deemed to be in violation of Section 4 by virtue of such vacancy.

Filling of Vacancies

SEC. 9 If a Director position becomes vacant for any reason, the BSE Board or Executive Committee shall appoint a person to satisfy the classification (e.g. Industry or Public) for the directorship, except that if the remaining term of office for the vacant Director position is not more than six months, no replacement shall be required.

Quorum and Voting

SEC. 10 At all meetings of the Board, unless otherwise set forth in these By-Laws or required by law, a quorum for the transaction of business shall consist of the presence of a majority of the number of Directors fixed by Section 3. In the absence of a quorum, a majority of the Directors present may adjourn the meeting until a quorum is present. The vote of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board.

Regulation

SEC. 11 The Board may adopt such rules, regulations, and requirements for the conduct of the business and management of BOXR not inconsistent with the law, BSE and BOX Rules, L.L.C. Agreement, Regulatory Services Agreement, or these By-Laws, as the Board may deem proper. A Director shall, in the performance of such Director's duties, be fully protected in relying in good faith upon the books of accounts or reports made to BOXR by any of its officers, by an independent professional (e.g. attorney, certified public accountant, business consultant) or in relying in good faith upon other records of BOXR.

Meetings

SEC. 12 (a) An annual meeting of the Board shall be held for the purpose of organization, election of officers, and transaction of any other business. The annual meeting of the Board shall be held immediately following the BSE Board's first regularly scheduled meeting following October 1 of each year or any adjournment thereof, at the place where the BSE Board's regularly scheduled meeting following October 1 of each year was held or at such other time and place as a majority of the Directors determine. If a quorum is then present, no notice of the meeting shall be necessary. If the annual meeting is not so held, it shall be called and held in the manner provided herein for special meetings of the Board.

(b) Regular meetings of the Board, other than the annual meeting, may be held without notice at such time and place, within or without the State of Delaware, as determined from time to time by the Board.

(c) Special meetings of the Board may be called by the Chairman of the Board, by the President, or by at least one-third of the Directors then in office. Adequate notice shall be provided to all Board members of the time and place of any Special Meetings.

(d) A Director or member of any committee appointed by the Board may participate in a meeting of the Board or of such committee through the use of a telephone or similar communications equipment by means of which all persons participating in the meeting may hear one another, and such participation shall constitute presence in person at such meeting for all purposes.

Notice of Meetings; Waiver of Notice

SEC. 13 (a) Notice of any meeting of the Board shall be deemed to be duly given to a Director if (i) mailed to the address last made known in writing to BOXR by such Director as the address to which such notices are to be sent, at least seven days before the day on which such meeting is to be held; (ii) sent to the Director at such address by telegraph, telefax, cable, radio, or wireless, not later than the day before

the day on which such meeting is to be held; or (iii) delivered to the Director personally or orally, by telephone or otherwise, not later than the day before the day on which such meeting is to be held. Each notice shall state the time and place of the meeting and the purpose(s) thereof.

(b) Notice of any meeting of the Board need not be given to any Director if waived by that Director in writing whether before or after the holding of such meeting, or if such Director is present at such meeting.

(c) Any meeting of the Board shall be a legal meeting without any prior notice if all Directors then in office shall be present.

Committees

SEC. 14 (a) The Board may, by resolution or resolutions adopted by a majority of the whole Board, appoint one or more committees. Each committee shall include one or more Public Directors; provided that there are Public Directors who are both willing to accept appointment to such committee and are not otherwise an interested director with respect to the responsibilities of such committee. Except as herein provided, vacancies in membership of any committee shall be filled by the vote of a majority of the whole Board. The Board may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another Director to act at the meeting in the place of any such absent or disqualified member. Members of a committee shall hold office for such period as may be fixed by a resolution adopted by a majority of the whole Board. Any member of a committee may be removed from such committee only after a majority vote of the whole Board, after appropriate notice, for refusal, failure, neglect, or inability to discharge such member's duties.

(b) The Board may, by resolution or resolutions adopted by a majority of the whole Board, delegate to one or more committees the power and authority to act on behalf of the Board in carrying out the functions and authority delegated to BOXR by the BSE under the Delegation Plan. Such delegation shall be in accordance with applicable law, the L.L.C. Agreement, the Regulatory Services Agreement, and the Delegation Plan. Action taken by a committee pursuant to such delegated authority shall be subject to review, ratification, or rejection by the Board. In all other matters, the Board may, by resolution or resolutions adopted by a majority of the whole Board, delegate to one or more committees that consist solely of one or more Directors the power and authority to act on behalf of the Board in the management of the business and affairs of BOXR to the extent permitted by law and not inconsistent with the Delegation Plan.

(c) Unless otherwise provided by these By-Laws, a majority of a committee shall constitute a quorum for the transaction of business, and the vote of a majority of the members of such committee present at a meeting at which a quorum is present shall be an act of such committee.

(d) The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by Delaware Law and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of BOXR between meetings of the Board. The Executive Committee shall consist of five Directors, including at least two Public Directors, and at least one Options Participant Director. The Chief Executive Officer of the BSE shall be a member of the Executive Committee, and the General Counsel of the BSE will act in advisory role to the Executive Committee on legal and regulatory matters. Executive Committee members shall hold office for a term of one year. At all meetings of the Executive Committee, a quorum for the transaction of business shall consist of a majority of the Executive Committee, including at least fifty percent of the Public Directors and at least one Options Participant Director.

(e) Nominating Committee. The Nominating Committee shall nominate Participant representatives to the BOXR Board and the BSE Board of Governors and members for each vacant position on the Nominating Committee.

(i) Composition of Nominating Committee. There shall be elected by ballot six persons to serve on the BOXR Nominating Committee which shall consist of a total of seven persons, five of whom shall represent broker-dealer Participant organizations of BOX (at least one of which shall be a BOX Market Maker), and two of whom shall be public representatives (one of whom will be a "Public Director" of the BOXR Board, and appointed to the Nominating Committee by the BOXR Board, as set forth in Paragraph (a) of this Section 14).

(ii) Nomination, Appointment, and Election of Nominating Committee Members. All members of the Committee shall serve a term of two years. The terms of Nominating Committee members shall be staggered, so that each year elections will be held for three open positions on the Nominating Committee, as well as to fill any vacancies on the Committee. No member of the Committee shall be eligible to serve two consecutive terms, and any vacancy on the Committee may be filled until the next annual election by a majority vote of the remaining members. The Committee shall elect its own Chairman, and shall be broadly representative of the Participants of BOX.

(A) Meeting of Nominating Committee. The Nominating Committee shall hold at least one meeting, prior to or in the month of June, at which time the committee shall elect its own Chairman. The Chairman shall designate a date in the month of July, due notice of which shall be posted electronically to Participants, inviting them to attend said meeting for the purpose of suggesting one nominee to fill each open position during the next term of the Nominating Committee. Such Committee shall notify the Secretary of the Exchange (or in his absence an Officer appointed by the Chairman), on or before the last Monday in August, of the nominees for such open positions on the Nominating Committee. The names of nominees shall be posted forthwith electronically to Participants. The Secretary shall prepare ballots reflecting such nominees for use in the annual election.

(B) Independent nominations. On the written and signed petition of five Participants of BOX, additional nominations may be made for the open positions on the Nominating Committee to be elected at the annual election. These nominations shall be filed with the Secretary of the Exchange (or in his absence an Officer appointed by the Chairman) on or before the third Monday in September and forthwith posted to Participants. The ballots as prepared by the Secretary shall include such nominations.

(C) No person shall be a candidate for election to the Nominating Committee at the annual election who is not nominated in accordance with the provisions of this Section.

(D) Notice of annual election. Notice of the annual election of Participants shall be mailed or delivered to each Participant of BOX at his business address registered with the Exchange by the Secretary (or in his absence by an Officer appointed by the Chairman) not more than twenty-five nor less than twenty days before the date of the election, which shall occur no later than the last day of October. Such notice shall specify the time and date of the election, and the persons nominated (both by the Nominating Committee and by petition of Participants).

(E) Annual Election. Voting by Participants shall be by secret ballot, which may be delivered in person or by electronic or physical mail to the Secretary (or in his absence to an Officer appointed by the Chairman). The Secretary (or in his absence an Officer appointed by the Chairman) shall collect all ballots and tally all votes for the specified nominee. The nominees receiving the highest number of votes for the open positions on the Nominating Committee shall be declared elected thereto. Tie votes shall be decided by the BOXR Board at its first meeting following the election.

(F) The terms of office will begin on January 1 of each year.

(iii) Nomination, Appointment, and Election of Representatives to the BSE Board of Governors and the BOXR Board.

(A) Meeting of Nominating Committee. The Nominating Committee Chairman shall designate a date in the month of July, due notice of which shall be posted electronically to Participants, inviting them to attend said meeting for the purpose of suggesting one nominee for each open position for BOX participant representatives for the BOXR Board and the one nominee for the BSE Board of Governors that are to be filled at the annual election. The Nominating Committee shall notify the Secretary of the Exchange (or in his absence an Officer appointed by the Chairman), on or before the last Monday in August, of the nominees for such offices. The names of nominees shall be posted forthwith electronically to Participants. The Secretary shall prepare ballots reflecting such nominees for use in the annual election.

(B) Independent nominations. On the written and signed petition of five Participants of BOX, additional nominations may be made for the two positions on the BOXR Board reserved for representatives of Participants and the Participant representative on the Board of Governors. These nominations shall be filed with the Secretary of the Exchange (or in his absence an Officer appointed by the Chairman) on or before the third Monday in September and forthwith posted to Participants. The ballots as prepared by the Secretary shall include such nominations.

(C) No person shall be a candidate for election to any office at the annual election who is not nominated in accordance with the provisions of this Section.

(D) Notice of annual election. Notice of the annual election of Participants shall be mailed or delivered to each Participant of BOX at his business address registered with the Exchange by the Secretary (or in his absence by an Officer appointed by the Chairman) not more than twenty-five nor less than twenty days before the date of the election, which shall occur no later than the last day of October. Such notice shall specify the time and date of the election, and the persons nominated (both by the Nominating Committee and by petition of Participants).

(E) Annual Election. Voting by Participants shall be by secret ballot, which may be delivered in person or by electronic or physical mail to the Secretary (or in his absence to an Officer appointed by the Chairman). The Secretary (or in his absence an Officer appointed by the Chairman) shall collect all ballots and tally all votes for the specified nominee. In each case, the two nominees receiving the highest number of votes for the BOXR Board and the one nominee receiving the highest number of votes for the BSE Board of Governors shall be declared elected thereto. Tie votes shall be decided by the respective Board at its first meeting following the election.

(F) At the conclusion of the election, the successful candidates thereof for the two positions on the BOXR Board reserved for representatives of Participants and the Participant representative on the Board of Governors shall be presented to the BSE Board for appointment, in accordance with Article II, Section 4, of the BSE Constitution. Such presentation to the BSE Board shall be administered by the Chairman of the BOXR Nominating Committee and shall occur prior to or during the next regularly scheduled annual meeting of the BSE Board of Governors.

(G) The terms of office will begin on January 1 of each year.

(f) Hearing Committee. Promptly after the annual meeting of BOXR, the Chairman of the Board of BOXR, shall appoint a Hearing Committee composed of such number of Participants and non-Participants as the Chairman of BOXR shall deem necessary, none of whom shall be members of the BOXR Board of Directors or the BSE Board of Governors. This Committee or any panel thereof shall have at least one Options Participant member and shall have exclusive jurisdiction to conduct hearings on disciplinary proceedings brought by BOXR against any Participant, or any person employed by or associated with any Participant for any alleged violation of the Securities Exchange Act of 1934, the Rules and Regulations thereunder, the Constitution or Rules of the Board of Governors of the Boston Stock Exchange, Inc., the Rules of Boston Options Exchange, LLC, the By-Laws of Boston Options Exchange Regulation, or the interpretations and stated policies of either the BSE Board of Governors or the Board of Directors of BOXR.

(i) If a Participant, or person employed by or associated with a Participant is adjudged guilty in any disciplinary proceeding, the Committee or any panel thereof shall be empowered to impose one or more of the following disciplinary sanctions: fine, censure, suspension, expulsion, limitation or termination as to activities, functions, operations or association with a BSE member or Participant, or any other appropriate sanction with respect to each charge as to which guilt is determined. Any Participant or person adjudged guilty in any disciplinary proceeding by the Committee or any panel thereof shall have the right to appeal such decision to the BOXR Board. Any decision of the BOXR Board may subsequently be appealed to the BSE Board of Governors, which shall have the discretion whether to hear such appeal. If the BSE Board of Governors does not order review of a decision of the BOXR Board, or, in its discretion, elects not to hear an appeal of a decision of the BOXR Board, then the decision of the BOXR Board shall be deemed to be the final action of the Exchange. Any decision of the BSE Board of Governors, or the BOXR Board (in cases where the BSE Board in its discretion has elected not to hear the appeal) may be ultimately appealed to the Commission.

(ii) The foregoing jurisdiction, function and powers shall be exercised by the Committee in accordance with the provision of the Rules of the Board of Governors of the BSE, as set forth in Chapter XXX therein. With respect to the reference to "members", "member organizations", "membership" or similar terms in the BSE Rules, the applicability of the relevant sections inures to BOX "Participants".

(iii) Appellate Review of the Committee's Decision by the BOXR Board. The decision of the Committee or any panel thereof shall be subject to appellate review by the BOXR Board, either on the BOXR Board's own motion within thirty days after issuance (or within thirty days of when the BOXR Board receives written notice from the Committee of such decision of the

Committee), or upon written petition of any party to the Proceeding filed within fifteen business days after issuance. The following procedures shall apply to reviews by the BOXR Board:

Procedure Following Petition for Appellate Review by the BOXR Board.

(A) Additional Submissions and Appointment of the Appellate Review Panel. Petitions for appellate review of Hearing Committee decisions shall be referred to the BOXR Board which shall be furnished with all material considered by the Committee or panel thereof. Parties may submit a written statement to the BOXR Board and may request an opportunity to make an oral presentation before the BOXR Board; the BOXR Board, in its discretion, may grant or deny the request for oral presentation. In the absence of a request for such a presentation, or at any time, the BOXR Board may require an oral presentation. Whether appellate review is conducted by hearing or by review on the papers alone, the matter shall be referred to an appropriate Appellate Review Panel appointed by the BOXR Board. A transcript shall be made of any oral presentation and shall become part of the record.

(B) Decision of the BOXR Appellate Review Panel. Appellate Review by the BOXR Board pursuant to paragraph (f)(iii) shall be made upon the material furnished it by the Committee or panel thereof as well as by the parties, and shall be made after such further proceedings as the BOXR Board shall order. The BOXR Board may confirm, reverse or modify in whole or in part the decision of the Committee or panel thereof and may make any findings or conclusions which in its judgment are proper. The decision of the BOXR Board shall be in writing, shall contain a concise statement of the findings and conclusions of the BOXR Board and the reasons in support thereof, and shall be sent to the parties to the Proceedings.

(iv) Appellate Review of the BOXR Board's Decision by the BSE Board. The decision of the BOXR Board or any panel thereof, shall be subject to appellate review by the BSE Board, either on the BSE Board's own motion within thirty days after issuance (or within thirty days of when the BSE Board receives written notice from the BOXR Board of such decision of the BOXR Board), or upon written petition of any party to the Proceeding filed within fifteen business days after issuance. If the BSE Board does not order review of a decision of the BOXR Board, or, in its discretion, elects not to hear an appeal of a decision of the BOXR Board, then the decision of the BOXR Board shall be deemed to be the final action of the Exchange. The following procedures shall apply to reviews by the BSE Board:

Procedure Following Petition for Appellate Review by the BSE Board.

(A) Additional Submissions and Appointment of the BSE Board Appellate Review Panel. Petitions for appellate review of BOXR Board decisions shall be referred to the BSE Board which shall be furnished with all material considered by the BOXR Board or panel thereof. Parties may submit a written statement to the BSE Board and may request an opportunity to make an oral presentation before the BSE Board; the BSE Board, in its discretion, may grant or deny the request for oral presentation. In the absence of a request for such a presentation, or at any time, the BSE Board may require an oral presentation. Whether appellate review is conducted by hearing or by review on the papers alone, the matter shall be referred to an appropriate Appellate Review Panel appointed by the BSE Board. A transcript shall be made of any oral presentation and shall become part of the record.

(B) Decision of the BSE Board Appellate Review Panel. Appellate Review by the BSE Board pursuant to paragraph (f)(iv) shall be made upon the material furnished it by the BOXR Board or panel thereof as well as by the parties, and shall be made after such further proceedings as the BSE Board shall order. The BSE Board may confirm, reverse or modify in whole or in part the decision of the BOXR Board or panel thereof and may make any findings or conclusions which in its judgment are proper. The decision of the BSE Board shall be in writing, shall contain a concise statement of the findings and conclusions of the BSE Board and the reasons in support thereof, and shall be sent to the parties to the Proceedings.

Action Without Meeting

SEC. 15 Any action required or permitted to be taken at a meeting of the Board or of a committee may be taken with or without a meeting if all Directors or all members of such committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or the committee.

Expenses

SEC. 16 Funds to meet the regular expense of each committee shall be provided by the Board, and all such expenses shall be subject to the approval of the Board.

Officers

SEC. 17 (a) The Board shall elect the officers of BOXR, which may include a President, a Secretary, and such other executive or administrative officers as it shall deem necessary or advisable, including a Chief Regulatory Officer. All officers shall have such titles, powers, and duties, and shall be entitled to such compensation, as shall be determined from time to time by the Board. The terms of office of such officers shall be at the pleasure of the Board, which by affirmative vote of a majority of the Board, may remove any such officer at any time. One person may hold the offices and perform the duties of any two or more of such offices, except the offices and duties of President and any other office or duties. None of the officers, except the President, need be Directors of BOXR.

(b) The Chairman of the Board of the BSE or the President of BOXR may be the Chief Executive Officer of BOXR, as the Board of Directors may from time to time determine. Subject to the control of the Board, the Chief Executive Officer, or such other officer or officers as may be designated by the Board, shall have general executive charge, management and control of the properties, business and operations of BOXR with all such powers as may be reasonably incident to such responsibilities; may agree upon and execute all leases, contracts, evidences of indebtedness and other obligations in the name of the Company; and shall have such other powers and duties as designated in accordance with these By-Laws and as from time to time be assigned by the Board.

Absence of the President

SEC. 18 In the case of the absence or inability to act of the President of BOXR, or in the case of a vacancy in such office, the Board may appoint its Chairman or such other person as it may designate to act as such officer pro tem, who shall assume all the functions and discharge all the duties of the President.

Agents and Employees

SEC. 19 In addition to the officers, BOXR may employ such agents and employees as the Board may deem necessary or advisable, each of whom shall hold office for such period and exercise such authority and perform such duties as the Board, the President, or any officer designated by the Board from time to time determine. Agents and employees of BOXR shall be under the supervision and control of the officers of BOXR, unless the Board, by resolution, provides that an agent or employee shall be under the supervision and control of the Board.

Delegation of Duties of Officers

SEC. 20 The Board may delegate the duties and powers of any officer of BOXR to any other officer or to any Director for a specified period of time and for any reason that the Board may deem sufficient.

Resignation and Removal of Officers

SEC. 21 (a) Any officer may resign at any time upon written notice of resignation to the Board or the President. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. The acceptance of a resignation shall not be necessary to make the resignation effective.

(b) Any officer of BOXR may be removed, with or without cause, by resolution adopted by a majority of the Directors then in office at any regular or special meeting of the Board or by a written consent signed by all of the Directors then in office. Such removal shall be without prejudice to the contractual rights of the affected officer, if any, with BOXR.

Bond

SEC. 22 BOXR may secure the fidelity of any or all of its officers, agents, or employees by bond or otherwise.

Compensation of Board and Committee Members

SEC. 23 The Board may provide for reasonable compensation of the Chairman of the Board, the Directors, and the members of any committee of the Board. The Board may also provide for reimbursement of reasonable expenses incurred by such persons in connection with the business of BOXR.

Indemnification of Directors, Officers, Employees, Agents, and Committee Members

SEC. 24 (a) BOXR shall indemnify, and hold harmless, to the fullest extent permitted by Delaware law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such person) who, by reason of the fact that he or she is or was a Director, officer, or employee of BOXR, or committee member, or is or was a Director, officer, or employee of BOXR who is or was serving at the request of BOXR as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, is or was a party, or is threatened to be made a party to:

(i) any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, against expenses (including attorneys' fees and disbursements), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with any such action, suit, or proceeding; or

(ii) any threatened, pending, or completed action or suit by or in the right of BOXR to procure a judgment in its favor against expenses (including attorneys' fees and disbursements) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit.

(b) BOXR shall advance expenses (including attorneys' fees and disbursements) to persons described in subsection (a); provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Section or otherwise.

(c) BOXR may, in its discretion, indemnify and hold harmless, to the fullest extent permitted by Delaware law as it presently exists or may thereafter be amended, any person (and the heirs, executors, and administrators of such persons) who, by reason of the fact that he or she is or was an agent of BOXR or is or was an agent of BOXR who is or was serving at the request of BOXR as a director, officer, employee, or agent of another corporation, partnership, trust, enterprise, or non-profit entity, including service with respect to employee benefit plans, was or is a party, or is threatened to be made a party to any action or proceeding described in subsection (a).

(d) BOXR may, in its discretion, pay the expenses (including attorneys' fees and disbursements) reasonably and actually incurred by an agent in defending any action, suit, or proceeding in advance of its final disposition; provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Section or otherwise.

(e) Notwithstanding the foregoing or any other provision of these By-Laws, no advance shall be made by BOXR to an agent or non-officer employee if a determination is reasonably and promptly made by the Board by a majority vote of those Directors who have not been named parties to the action, even though less than a quorum, or, if there are no such Directors or if such Directors so direct, by independent legal counsel, that, based upon the facts known to the Board or such counsel at the time such determination is made: (1) the person seeking advancement of expenses (i) acted in bad faith, or (ii) did not act in a manner that he or she reasonably believed to be in or not opposed to the best interests of BOXR; (2) with respect to any criminal proceeding, such person believed or had reasonable cause to believe that his or her conduct was unlawful; or (3) such person deliberately breached his or her duty to BOXR.

(f) The indemnification provided by this Section in a specific case shall not be deemed exclusive of any other rights to which a person seeking indemnification may be entitled, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director, officer, or committee member, employee, or agent and shall inure to the benefit of such person's heirs, executors, and administrators.

(g) Notwithstanding the foregoing, but subject to subsection (j), BOXR shall be required to indemnify any person identified in subsection (a) in connection with a proceeding (or part thereof) initiated by such person only if the initiation of such proceeding (or part thereof) by such person was authorized by the Board.

(h) BOXR's obligation, if any, to indemnify or advance expenses to any person who is or was serving at its request as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity shall be reduced by any amount such person may collect as indemnification or advancement from such other corporation, partnership, joint venture, trust, enterprise, or non-profit entity.

(i) Any repeal or modification of the foregoing provisions of this Section shall not adversely affect any right or protection hereunder of any person respecting any act or omission occurring prior to the time of such repeal or modification.

(j) If a claim for indemnification or advancement of expenses under this Article is not paid in full within 60 days

after a written claim therefor by an indemnified person has been received by BOXR, the indemnified person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action, BOXR shall have the burden of proving that the indemnified person is not entitled to the requested indemnification or advancement of expenses under Delaware law.

Indemnification Insurance

SEC. 25 BOXR shall have the power to purchase and maintain insurance on behalf of any person who is or was a Director, officer, or committee member, employee or agent of BOXR, or who is or was serving as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not BOXR would have the power to indemnify such person against such liability hereunder.

Fiscal Year

SEC. 26 The fiscal year of BOXR shall begin on the first day of October in each year, or such other month as the BSE Board may determine by resolution.

Waiver of Notice

SEC. 27 (a) Whenever notice is required to be given by law, or these By-Laws, a written waiver thereof, signed by the person or persons entitles to such notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Directors, or members of a committee of a Directors need be specified in any written waiver of notice.

(b) Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the purposes of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Execution of Instruments, Contracts, etc.

SEC. 28 (a) All checks, drafts, bills of exchange, notes, or other obligations or orders for the payment of money shall be signed in the name of BOXR by such officer or officers or person or persons as the Board, or a duly authorized committee thereof, may from time to time designate. Except as otherwise provided by law, the Board, any committee given specific authority in the premises by the Board, or any committee given authority to exercise generally the powers of the Board during intervals between meetings of the Board, may authorize any officer, employee, or agent, in the name of and on behalf of BOXR, to enter into or execute and deliver deeds, bonds, mortgages, contracts, and other obligations or instruments, and such authority may be general or confined to specific instances.

(b) All applications, written instruments, and papers required by any department of the United States Government or by any state, county, municipal, or other governmental authority, may be executed in the name of BOXR by any principal officer or subordinate officer of BOXR, or, to the extent designated for such purpose from time to time by the Board, by an employee or agent of BOXR. Such designation may contain the power to substitute, in the discretion of the person named, one or more other persons.

Form of Records

SEC. 29 Any records maintained by BOXR in the regular course of business, including its books of account and minute books, may be kept on, or be in the form of, magnetic tape, computer disk, or any other information storage device, provided that the records so kept can be converted into clearly legible form within a reasonable time.

Alteration of By-Laws by Directors

SEC. 30 To the extent permitted by law, these By-Laws, BSE Rules, BOX Rules, the L.L.C. Agreement or the Regulatory Services Agreement, these By-Laws may be altered, amended, repealed, or new By-Laws adopted by approval of a majority of the BSE Board at any regular or special meeting of the BSE Board.

Emergency By-Laws

SEC. 31 The Board may adopt emergency By-Laws subject to repeal or change by action of the BSE Board that shall, notwithstanding any different provision of law, the L.L.C. Agreement, the Regulatory Services Agreement, or these By-Laws, be operative during any emergency resulting from any nuclear or atomic disaster, an attack on the United States or on a locality in which BOXR conducts its business or customarily holds meetings of the Board, any catastrophe, or other emergency condition, as a result of which a quorum of the Board or a committee thereof cannot readily be convened for action. Such emergency By-Laws may make any provision that may be practicable and necessary under the circumstances of the emergency.

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Boston Stock Exchange, Inc. Constitution

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Article II

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Board of Governors

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Composition of the Board

SEC. 1. The government of the Exchange shall be vested in a Board of Governors composed of the Chairman, Vice Chairman and twenty others, ten of whom shall be representatives from the securities industry and ten of whom shall be representatives of the public. Of the ten securities industry representatives, all must represent broker-dealer members of the Exchange, *at least one shall represent BOX Participants*, and at least five shall represent firms active on the trading floor (*each of whom may satisfy more than one of these criteria*). Of the floor representation, two must be active as specialists. Of the ten representatives of the public, at least five shall be from financial institutions not directly associated with a member organization or broker-dealer, and at least one shall be an officer or director of a company which has a class of stock listed on the Exchange.

The Chairman shall be appointed by the Board of Governors to serve at its pleasure. The Vice Chairman shall be a representative from a member organization and shall be elected to serve a one-year term. Neither the Chairman nor the listed company representative shall be associated with a member of the Exchange or a broker or dealer. All are to be elected in the manner hereinafter provided, except no governor other than the Chairman and the Vice Chairman may serve more than four consecutive terms.

* * * * *

Specific Powers

SEC. 4. The Board of Governors, in furtherance of its powers specified in Section 1 of this Article, shall entertain appeals from the decisions of the Market Performance Committee and may hold hearings on any such appeal; shall have the entire control of the property and finances of the Exchange; including the authority to purchase and cancel memberships in the Exchange, shall fix the amount of fees and compensation, if any, to be paid to any member of the Board or of any other committee; and shall fix dues, fees, assessments and other charges to be paid by members, allied members, member firms and member corporations. It shall regulate the making and performance of Exchange contracts; transactions on the Exchange; access to and conduct upon the floor of the Exchange and the use of Exchange facilities; the formation, continuance and interests of members in member firms and corporations; business conduct; capital requirements and insolvency of members, member firms and member corporations; arbitration procedures; transfers of memberships and disposition of the proceeds of the sale of such memberships; the listing and delisting of and the suspension of trading in securities on the Exchange; activities of specialists and odd lot dealers; matters relating to quotations and price reports; use of ticker services; and means of communication with non-members. It may examine the financial condition and business conduct of members, member firms and member corporations and business conduct of allied members and may require any member, allied member or officer or employee of any member firm or corporation to appear before it to testify as to such financial condition or business conduct; may require that transactions in securities admitted to dealing on the Exchange be executed on the Exchange; may credit a portion of the income of the Exchange for any current year to the members proportionately in settlement of the contribution which members are obligated to make in connection with the Gratuity Fund of the Exchange; and may require that officers, appointees or employees of the Exchange give good and sufficient bonds for the faithful performance of their duties.

At the Board of Governors' next meeting after the BOXR Nominating Committee presents its candidates for the two positions reserved on the BOXR Board for representatives of BOX Participants, and its candidate for the position on the BSE Board of Governors reserved for a representative of BOX Participants, in October of each year, the Board of Governors shall select and appoint the Board of Directors of BOXR for the following year, as set forth in the Plan of Delegation of Functions and Authority by the Boston-Stock Exchange, Inc. to Boston Options Exchange Regulation, L.L.C., and in accordance with the qualification provisions set forth in Section 4 of the By-Laws of Boston Options Exchange Regulation, L.L.C., including the appointment of the candidates presented by the BOXR Nominating Committee for the two BOXR Board positions reserved for representatives of BOX Participants. The Board of Governors shall also select and appoint as Governor the candidate put forth by the BOXR Nominating Committee for the position on the Board of Governors reserved for a representative of BOX Participants. Additionally, the Board of Governors shall appoint the initial Board of Directors of BOXR, in accordance with the term provisions set forth in Section 5 of the By-Laws of Boston Options Exchange Regulation, L.L.C., and the number of Directors provisions set forth in Section 3 of the By-Laws of Boston Options Exchange Regulation, L.L.C.

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II. *Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In order to create a new options regulatory subsidiary, the BSE proposes to transfer to BOXR, a Delaware limited liability company and a wholly-owned subsidiary of the BSE, all of the assets and liabilities that solely support the regulation of the standardized equity options trading business of the BSE. Upon this transfer, however, the BSE would continue to be the self-regulatory organization ("SRO") for BOXR and the Boston Options Exchange ("BOX"), the BSE's proposed new exchange facility for the trading of standardized equity options securities.[4] BOX would provide automatic order execution capabilities to BOX Options Participants ("Options Participants") for standardized equity options securities listed or traded on the BSE. BOX would be operated by Boston Options Exchange Group, L.L.C. ("BOX LLC"). The proposed rule change for implementing the creation of BOXR includes: (i) Changes to the BSE Rules of the Board of Governors; (ii) the proposed Plan of Delegation of Functions and Authority by the Boston Stock Exchange, Inc., to Boston Options Exchange Regulation, L.L.C. ("Delegation Plan"); (iii) proposed By-Laws for BOXR; and (iv) amendments to the BSE Constitution.

(I) Delegation Plan

(A) *Relationship of BSE, BOXR and BOX LLC*

The BSE is a founding and controlling member of BOX LLC. Pursuant to contractual agreement, the BSE has the right to appoint two representatives to the board of BOX LLC. In addition to its ownership stake in BOX LLC, the BSE has entered into various agreements with BOX LLC under which BOX LLC would operate BOX as a facility of the BSE.[5] Pursuant to these agreements, the BSE, through BOXR, would maintain responsibility for all regulatory functions related to the facility, and BOX LLC would be responsible for the business operations of the facility to the extent those activities are not inconsistent with the regulatory and oversight functions of the BSE and BOXR. This means that BOX LLC would not interfere with the BSE's self-regulatory responsibilities or those delegated to BOXR.

The BSE wholly owns BOXR as a subsidiary of the Exchange and proposes to delegate certain regulatory authority to BOXR for oversight of the BOX market. Under the proposal, BOXR would use its own regulatory staff, and not the employees of BOX LLC, to perform its regulatory oversight duties. In addition, BOXR would conduct all necessary surveillance of the trading effected through the BOX facility as well as enforcement of the BOX Rules, applicable BSE Rules and the federal securities laws and the rules thereunder.[6] Pursuant to the proposed Delegation Plan and contractual agreements, BOXR would have regulatory oversight authority over BOX LLC and its officers, directors, agents and employees, each of whom would be

[4] *See* Securities Exchange Act Release No. 47186 (Jan. 14, 2003), 68 FR 3062 (Jan. 22, 2003) (SR–BSE–2002–15) ("BOX Proposing Release").

[5] Under the Act, "the term 'facility' when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service." *See* 15 U.S.C. 78c(a)(2).

[6] *See* BOX Proposing Release.

required to cooperate with BOXR in the fulfillment of its regulatory obligations.

The relationship between the BSE, BOXR, BOX LLC and BOX is explained further in the Delegation Plan.[7] The BSE is proposing to adopt the Delegation Plan which sets forth the purpose, function, governance, procedures and responsibilities of the BSE and BOXR following approval of the Delegation Plan. The Delegation Plan describes the options regulatory subsidiary, BOXR; sets forth the delegation of authority to BOXR by the BSE; and describes the purpose, function, authority and responsibilities of BOXR, including the procedures for proposed rule change recommendations in regard to BOX and BOXR.

Through the adoption of new Chapter XXXVI and the Delegation Plan, BOXR and BOX LLC would also be subject to Commission oversight and examination. The Commission would oversee the premises, personnel, and records of BOXR and BOX LLC to the same extent that it currently oversees the premises, personnel, and records of the BSE. Under section 1(b) and section 2(B)(1) of the proposed Delegation Plan, the books, records, premises, officers, directors, agents and employees of BOXR and BOX LLC would be the books, records, premises, officers, directors, agents and employees of the BSE for purposes of, and subject to, oversight pursuant to the Act. The books and records of BOXR and BOX LLC would be subject at all times to inspection and copying by the BSE and the Commission. BOXR and BOX LLC would be required to maintain all books and records related to BOX within the United States. Also, by delegated authority, the books and records of BOX LLC would be subject at all times to inspection and copying by BOXR. However, as set forth in the proposed Section 2(B)(3) of the Delegation Plan, proposed section 2(B)(1) would not create any rights or benefits for any person or entity other than the BSE, BOXR and the Commission. The Commission and the BSE's access to and oversight of BOX LLC as the operating company of BOX is further solidified in the private contracts related to BOX. The text of Section 2(B) of the Delegation Plan is included in various contractual agreements between the BSE and BOX LLC. Therefore, BOX LLC has not only a regulatory obligation to abide by the Delegation Plan, but a private contractual obligation as well.

[7] The BSE notes that the Delegation Plan is based on PCX Equities Rule 14.3 of the PCX Plan of Delegation and the NASD's Plan of Allocation and Delegation of Functions by NASD to Subsidiaries.

(B) *BOXR*

(1) *Corporate Status*

BOXR would be operated as a Delaware limited liability company. All of the issued shares of stock of BOXR would be owned by the BSE. Current BSE members would retain their memberships, and thus, their ownership interests in the BSE.

(2) *Governing Documents and Rules*

BOXR's By-Laws, the BOX Rules and the applicable BSE Rules would govern its activities. The BOX Rules and the BOXR By-Laws would reflect the status of BOXR as a wholly-owned subsidiary of BSE, under management of the BOXR Board of Directors ("BOXR Board") and its designated officers, ultimately subject to the self-regulatory authority of the BSE.

(3) *Regulation of BOXR*

BOXR would operate as a subsidiary of BSE, which is a national securities exchange registered under section 6 of the Act.[8] The BSE, as the SRO, retains ultimate responsibility for compliance by its members with the provisions of the Act and the rules and regulations thereunder. As set forth in the proposed BOX Rules, Options Participants are required to comply with all the BOX Rules as well as those BSE Board of Governors Rules specifically cross-referenced and incorporated by reference in the BOX Rules. For such purposes of cross-referencing, interpreting and applying the Rules of the BSE to Options Participants, any reference to "member" of the BSE in such cross-referenced rules is to be read as a synonym for "Participant" on BOX, whether OFP, Market Maker or both.[9] For this reason, BOX Options Participants would be statutory "members" of BSE. Pursuant to the proposed BOX Rules, Options Participants are granted trading rights for options listed on the Exchange and traded on BOX.[10] Options Participant status does not confer on the Options Participant any right to participate in trading on the BSE other than options trading on BOX, nor shall Options Participants be entitled to all the rights and responsibilities regarding the governance of the BSE as other BSE Members.[11] They do not have ownership interests in the BSE, however, as discussed more fully below, they would have certain voting and representations rights.[12]

The BSE Board is currently composed of the BSE Chairman, Vice Chairman and 20 governors. The composition of the BSE Board would be modified as part of the restructuring to include one governor representing Options Participants to provide input on the BSE Board. This governor ("Options Participant Governor") would be nominated by the BOXR Nominating Committee and must be either an officer or director of an Options Participant.[13] Pursuant to the proposed amendments to the BSE Constitution, the BSE Board would be required to appoint the candidate presented by the BOXR Nominating Committee.[14]

As a registered national securities exchange and the parent company of BOXR, the BSE would continue to carry out its statutory responsibilities to enforce compliance by Options Participants with the provisions of the federal securities laws and rules thereunder, as well as the BSE and BOX Rules, and to govern the administration of BOXR. In particular, to be effective, any changes to the BOX Rules and governing documents of BOXR must be ultimately approved by the BSE. The Exchange proposes that the Delegation Plan become part of the Rules of the BSE and, thus, may only be amended upon Commission approval. Moreover, changes to the BOXR By-Laws and the BOX Rules must be filed with the Commission pursuant to Section 19(b) of the Act[15] and Rule 19b–4[16] thereunder and must be submitted by the BSE.[17]

While ultimately responsible, the BSE proposes to delegate specific self-regulatory responsibilities to BOXR, pursuant to a Delegation Plan. Specifically, BOXR would assume responsibility with respect to the options business of the Exchange for, among other things: (i) Establishing and interpreting rules governing the activities of Options Participants: (ii) determining regulatory and trading policies relating to the business activities of Options Participants; (iii) assuring compliance with BOX Rules

[8] 15 U.S.C. 78f.

[9] *See* Chapter I, Section 2(c) of the Proposed BOX Rules in the BOX Proposing Release.

[10] *See* BOX Proposing Release Chapter II, Section 1(a).

[11] *See* BOX Proposing Release Chapter II, Section 1(e).

[12] Under section 6(b)(3) of the Act, the rules of an exchange must assure that its members are fairly represented in the selection of its directors and administration of its affairs. 15 U.S.C. 78f(b)(3).

[13] *See* discussion of the proposed BOXR Nominating Committee below.

[14] *See* discussion of the proposed amendments to the BSE Constitution below.

[15] 15 U.S.C. 78s(b).

[16] 17 CFR 240.19b–4.

[17] The BSE Board must review and ratify all BOXR proposed rule changes before they are submitted to the Commission. *See* Section 2D of the Delegation Plan.

and the federal securities laws; (iv) administering surveillance programs and systems for enforcing rules governing the conduct and trading activities of Options Participants and their associated persons on BOX; (v) examining and investigating Options Participants and their associated persons to determine if they have violated the BOX Rules or the federal securities laws; (vi) administering the BOXR disciplinary programs; (vii) determining whether applicants meet the requirements for an Options Participant; (viii) placing restrictions on the business activities of Options Participants and their associated persons consistent with the public interest, the protection of investors and the federal securities laws; (ix) proposing fees and charges; (x) overseeing the operation of the BOX trading facilities; (xi) collecting and consolidating information for the surveillance audit trail; (xii) developing rule changes for the collection, processing and dissemination of quote and transaction information; (xiii) developing and adopting rules, interpretations and policies to maintain and enhance the integrity, fairness, efficiency and competitiveness of BOX; (xiv) administering the Exchange's involvement in the national market system ("NMS") plans for options; and (xv) developing, administering and enforcing listing standards for securities traded on BOX.

While BOXR would have extensive delegated authority to regulate and oversee the options trading business, the BSE would retain the ultimate responsibility for the Rules and regulations of BOX, as well as for the operation and administration of its subsidiary, BOXR. As part of its self-regulatory responsibilities, the BSE would review rulemaking and disciplinary decisions of BOXR and direct BOXR to take action that may be necessary to effectuate the purposes and functions of the Act. The BSE believes that these types of checks and balances should ensure that the BSE remains aware of the affairs of its options business conducted through BOXR, and that its options business is conducted in a manner consistent with the Act. Thus, while BOXR would be a separate entity, it would still remain under the self-regulatory authority of the BSE.

(4) Agreement Between BSE and BOXR

Under the proposal, the BSE's equities and options regulatory functions would share certain infrastructure and personnel. After the completion of the restructuring, these shared assets would remain the property of BSE and the shared personnel would continue to be employed by BSE. In each case, however, BOXR would have access to those resources through inter-company contracts with BSE. In particular, BSE would contract to provide BOXR with certain management and support services and staff. The contract would include services for administration, membership, technology, finance and accounting, human resources and legal and regulatory services. The agreement between BSE and BOXR would allocate charges for these services and staff between BSE and BOXR.

(5) *National Market System Plans*

The BSE currently is a participant in various NMS plans, including the Consolidated Tape Association ("CTA") Plan, the Consolidated Quotation System ("CQS") Plan, the Nasdaq Unlisted Trading Privileges Plan ("UTP") Plan, and the Intermarket Trading System Plan, as well as a conditional participant, subject to Commission approval, in several options NMS plans, including the Options Price Reporting Authority ("OPRA") Plan, the Options Listing Procedures ("OLPP") Plan and the Intermarket Options Linkage Plan.[18] These plans are joint industry plans for SROs that address last sale reporting, quotation reporting, listing procedures, and intermarket trading. Following the creation of BOXR, BSE, in its continuing role as the SRO, would continue to serve as the voting member of these NMS Plans. Nevertheless, BSE expects that, for those plans that relate to options trading, *i.e.*, the OPRA Plan, the OLPP Plan and the Intermarket Options Linkage Plan, a BOXR representative would serve as the BSE's representative in dealing with these plans.

(II) *BOXR By-Laws*

The BOXR By-Laws would reflect the status of BOXR as a wholly-owned subsidiary of BSE, ultimately subject to the self-regulatory authority of the BSE. As a separate corporate entity, BOXR would have its own board of directors and officers that would administer its day-to-day operations.

(A) *BOXR Board of Directors*

The BOXR Board would consist of no fewer than 7 or more than 13 directors. Currently, the Exchange contemplates that there would be 7 directors. The composition of the BOXR Board would be as follows:

- The Chief Executive Officer ("CEO") of BSE (who will be considered a member of the Board for voting purposes, but not for qualification percentage purposes);
- At least 50% Public Directors;[19]
- At least 20%, but no fewer than 2, nominees of Options Participants (the "Options Participant Directors").

The BSE, as the founder and sole member, would appoint the initial BOXR Board. Subsequently, the BOXR Board would be nominated by the sitting BOXR Board, subject to the nominating procedures set forth below[20] for the selection of at least twenty percent, but no fewer than two Options Participant Directors. The BOXR Board would be elected by the BSE Board, as the BSE is the sole shareholder of BOXR. The BSE would have the right to approve, remove, and replace any member of the BOXR Board by virtue of its status as sole shareholder, subject to the By-Laws. Any vacancy on the BOXR Board would be filled with a person who satisfies the classification associated with the vacant seat, *i.e.*, a member of the public or a representative of an Options Participant.

To the extent that the number of BOXR Board seats is changed from the initially contemplated 7 members, at least 50 percent of the BOXR Board must be Public Directors and at least 20 percent, but no fewer than two, representatives of Options Participants. The BSE believes that this provision would ensure that the public interest is adequately represented in the Exchange's decision-making process pursuant to section 6(b)(3) of the Act.[21] Further, the Exchange acknowledges that public representatives help to ensure that no single group of market participants has the ability to systemically disadvantage other market participants through the exchange governance process. The BSE believes that Public Directors can provide unique, unbiased perspectives, which should enhance the ability of the BOXR Board to address issues in a non-discriminatory fashion and foster the integrity of BOXR. In this way, the Public Directors may help to prevent unfair discrimination between customers, brokers, or dealers in the administration of BOXR, and protect investors and the public interest,

[18] The BSE is also a conditional participant in the Options Self-Regulatory Council ("OSRC"). The OSRC Plan is not an NMS plan under Section 11A of the Act, but rather a plan to allocate regulatory responsibilities under Rule 17d–2 under the Act. 17 CFR 240.17d–2.

[19] "Public Director" is defined as a Director who has no material business relationship with a broker or dealer, or the BSE, BOX, or BOXR. *See* BOXR By-Laws, Definition (p).

[20] *See* discussion of the proposed BOXR Nominating Committee below.

[21] 15 U.S.C. 78f(b)(3).

consistent with the provisions of Section 6(b)(5) of the Act.[22]

The proposed BOXR By-Laws provide that at least 20 percent (but no fewer than two directors) must be directors who are officers or directors of an Options Participant and are elected by plurality vote of Options Participants, following a nomination process which involves the BOXR Nominating Committee.[23] The Options Participant Directors would be nominated by the BOXR Nominating Committee or by petition of at least 5 Options Participants. When a vote is held, the candidates selected by Options Participants must be supported by a plurality of the Options Participants who cast votes in order to be selected as a candidate for the BOXR Board. Pursuant to the proposed amendments to the Constitution, the BSE, as the sole member, would be required to appoint the Options Participant Directors so chosen and put forth to the BSE Board by the BOXR Nominating Committee.[24]

(B) *Management*

BOXR would have a Chairman of the Board and may have a President, either of whom may be the CEO of BOXR. In addition, BOXR would have a Chief Regulatory Officer who would be appointed by, and serve at the pleasure of, the BOXR Board. The officers of BOXR would manage the business and affairs of BOXR, subject to the oversight of the BOXR Board, and, in some cases, subject to the approval of BSE as the sole member and SRO.

(C) *BOXR Committees*

In an effort to streamline its management, the BSE has chosen to commence BOXR operations with only two administrative committees, although there are specific provisions in the proposed By-Laws permitting the appointment of additional committees by the BOXR Board, as necessary. There would be a BOXR Nominating Committee and a BOXR Hearing Committee, both of which would provide Options Participant involvement in the administration of the day-to-day operations of BOX.

(1) *Nominating Committee*

The BOXR Nominating Committee would be responsible for nominating two candidates for the BOXR Board, one candidate for the BSE Board, and members for any vacant positions on the Nominating Committee. These candidates would represent Options Participants on the respective Boards. The BOXR Nominating Committee would consist of seven members, six of whom would be elected by ballot. The seventh would be appointed by the BOXR Board, and must be one of that Board's existing Public Directors. Of the six elected members, five shall represent broker-dealer Options Participants of BOX (at least one of which shall also represent a Market Maker on BOX), and one shall be a representative of the public. Thus, of the seven total members of the committee, there would be two members who are representatives of the public. The BOXR Nominating Committee would propose a slate of two eligible nominees for the BOXR Board, one eligible nominee for the BSE Board and the nominees for the BOXR Nominating Committee.

The BSE has also set forth a proposed provision which it believes ensures further fair representation of Options Participants in the nominating process. Options Participants would be able to submit additional nominees for each of the available positions by way of petition for independent nominations. In recognition of the fact that BOX would be an electronic marketplace with geographically diverse Options Participants, the Exchange has proposed that independent nominations may take place by petition of only five Options Participants. This is in contrast to the independent nomination process for the BSE, which requires fifteen BSE Member signatures for an independent nomination to be effected. By lowering the number of signatures required for an independent nomination from Options Participants, the Exchange believes it is encouraging independent nominations, thereby enhancing the potential for more effective representation of Options Participants. This process is proposed for not only the position reserved on the BSE Board for the Options Participant Governor, but for the two positions reserved on the BOXR Board for Options Participant representatives and the nominees for the BOXR Nominating Committee as well.

Furthermore, and perhaps most importantly, Options Participants alone would vote, by plurality, to choose the individuals who would represent them. Only after this vigorous and full nomination and electoral process concludes would the chosen candidates be presented, by the BOXR Nominating Committee, to the BSE Board for appointment. In accordance with the proposed Constitutionally established standards and the proposed BOXR By-Laws, the BSE Board is then charged with appointing the BOXR Board, as well as accepting the Options Participant Governor candidate for the BSE Board of Governors.

The Exchange believes that its proposal is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(3),[25] in particular, in that it is consistent with the fair representation principles set forth in the Act. Under section 6(b)(3), the rules of an exchange must assure that its members are fairly represented in the selection of its directors and administration of its affairs. The fair representation requirement of section 6(b)(3) allows statutory members to have a voice in an exchange's use of its self-regulatory authority. This statutory requirement also helps ensure that exchange members are protected from unfair, unfettered actions by an exchange pursuant to its rules, and that, in general, an exchange is administered in a way that is equitable to all those who trade on its market or through its facilities. The BSE believes that the proposals contained in this filing would ensure that Options Participants are treated in a manner consistent with the requirements of section 6(b)(3).

In addition, to make sure that the public interest is adequately represented in an exchange's decision-making process, section 6(b)(3) of the Act states that an exchange's rules must provide that one or more of its directors be representative of issuers and investors, and not associated with a member of the exchange, or with any broker-dealer. The Exchange's proposal would allow a representative of Options Participants to be on the BSE Board, but would not alter the composition of the BSE Board. In particular, the Exchange notes that the 50% public representation on the BSE Board is not affected. The Exchange is in agreement with a long established belief expressed by the Commission on this regard that the inclusion of public representatives on exchange oversight bodies is critical to ensuring that an exchange works to protect the public interest in the exchange governance process. The Exchange values unique, unbiased perspectives on the BSE Board and other governing bodies. In this regard, the proposed nominating process for Options Participant representatives has been made less stringent so as to permit and encourage greater participation by what would be a diverse group of Participants in the BOX marketplace. Therefore, by the combination of Board composition and the nominating/election process, the Exchange believes it is assuring that Options Participants are represented fairly in the selection of the BSE and BOXR Boards, and thereby in the administration of Exchange affairs and in the affairs of the Exchange subsidiary, BOXR, which would most directly affect them.

(2) *Hearing Committee*

The BOXR disciplinary process would be similar to the existing BSE disciplinary process, and would be governed by a BOXR Hearing Committee. The BOXR Hearing Committee would be appointed by the Chairman of the Board of BOXR. Membership of the committee shall be comprised of at least one Options Participant member and such number of non-Participant members as the Chairman may deem necessary.

The BOXR Chief Regulatory Officer, or his staff, would authorize the initiation of disciplinary hearings and proceedings. The BOXR Hearing Committee would conduct hearings, render decisions and impose sanctions. Decisions of the BOXR Hearing Committee may be appealed for review to the BOXR Board. Any decision of the BOXR Board may subsequently be appealed to the BSE Board of Governors, which shall have the discretion whether to hear such appeal. If the BSE Board of Governors does not order review of a decision of the BOXR Board, or, in its discretion, elects not to hear an appeal of a decision of the BOXR Board, then the decision of the BOXR Board shall be deemed to be the final action of the Exchange. Any decision of the BSE Board of Governors, or the BOXR Board (in cases where the BSE Board in its discretion has elected not to hear the appeal) may be ultimately appealed to the Commission. As with all BSE decisions, the Commission has the authority to review final disciplinary sanctions imposed by BOXR or the BSE on Options Participants, including sanctions imposed for violations of BOX rules.

The Exchange believes that its Hearing Committee, BOXR Board and BSE Board of Governors Appeals process is consistent with the Act, and in particular section 6(b)(7) thereunder, in that the Exchange has established fair procedures for disciplining Options Participants. The BSE Board of Governors has appellate jurisdiction of sanctions and findings of the BOXR Hearing Committee and the BOXR Board for violations of the rules and regulations of the Act, the Constitution and Rules of the BSE, the BOX Rules, the BOXR By-Laws, and the interpretations and stated policies of either the BSE Board of Governors or the Board of Directors of BOXR. Moreover, aggrieved Options Participants may appeal the decision of the BSE Board of Governors to the Commission.

(III) *Changes to the Boston Stock Exchange Constitution*

The proposed changes to the BSE Constitution have two primary purposes. First, the proposed amendment to Article II, Section 1, reserves a seat on the BSE Board for a representative of BOX Options Participants. Although the proposal would permit a representative of Options Participants to serve on the BSE Board, the proposal would not alter the overall BSE Board composition. The BSE Board would continue to be comprised of fifty percent Public Directors (at least five of which shall be from financial institutions not directly associated with a member organization or broker-dealer). Also, the BSE Board would continue to consist of twenty directors, in addition to the Chairman and Vice-Chairman of the Exchange.

Second, in section 4 of the same Article IV, the BSE has proposed to ensure that the candidates elected by Options Participants are seated by the BSE Board. Specifically, this applies to both the Options Participant Governor elected to serve on the BSE Board, as well as the two Options Participant representatives elected to serve on the BOXR Board. Such a process is consistent with the established process in which BSE Board members are elected by BSE Members, and subsequently selected and appointed both by and to the BSE Board.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b)[26] of the Act, in general, and furthers the objectives of section 6(b)(5),[27] in particular, in that it is designed to facilitate transactions in securities; to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–2003–04 and should be submitted by August 22, 2003.

[22] 15 U.S.C. 78f(b)(5).

[23] See discussion of the proposed BOXR Nominating Committee below.

[24] See discussion of the proposed amendments to the BSE Constitution below, which requires the BSE to elect the slate submitted by the BOXR Nominating Committee.

[25] 15 U.S.C. 78f(b)(3).

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–19615 Filed 7–31–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48226; File No. SR–ISE–2003–19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange, Inc., To Provide for the Trading of Options on Fixed-Income Exchange-Traded Funds

July 25, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 22, 2003, the International Securities Exchange, Inc. ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. ISE filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Rule 500(h) to allow the listing of options on fixed-income exchange-traded funds. Below is the text of the proposed rule change. New text is in *italics*. Proposed deletions are in [brackets].

* * * * *

Rule 500. Criteria for Underlying Securities

* * * * *

(h) Securities deemed appropriate for options trading shall include shares or other securities ("Fund Shares") that represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that are principally traded on a national securities exchange or through the facilities of a national securities association and reported as "national market" securities, and that hold portfolios of securities comprising or otherwise based on or representing investments in broad-based indexes or portfolios of securities (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities) ("Funds"); provided that all of the following conditions are met:

(1) any non-U.S. component *securities* [stocks] of the index or portfolio on which the Fund Shares are based that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio;

(2) *securities* [Stocks] for which the primary market is in any one country that is not subject to a comprehensive surveillance agreement do not represent 20% or more of the weight of the index;

(3) *securities* [stocks] for which the primary market is in any two countries that are not subject to comprehensive surveillance agreements do not represent 33% or more of the weight of the index; and

(4) the Fund Shares either (i) meet the criteria and guidelines set forth in paragraphs (a) and (b) above; or (ii) the Fund Shares are available for creation or redemption each business day from or through the Fund in cash or in kind at a price related to net asset value, and the Fund is obligated to issue Fund Shares in a specified aggregate number even if some or all of the securities required to be deposited have not been received by the Fund, subject to the condition that the person obligated to deposit the securities has undertaken to deliver the securities as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the Fund, all as described in the Fund's prospectus.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange states that it proposes to amend its rules to allow the trading of options on fixed-income exchange-traded funds. This rule change is consistent with a change to the rules of the Chicago Board of Options Exchange ("CBOE") previously approved by the Commission.[5] Specifically, under ISE Rule 500(e), the Exchange may list options on Fund Shares provided that certain conditions are met with respect to the components of the underlying exchange-traded fund. The Exchange proposes to amend the conditions contained in Rule 500(h) to refer to the component "securities" of a fund, rather than the component "stocks" of the fund, so that fixed-income funds will be covered by the Rule.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5)[6] to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The ISE provided the SEC with written notice of its intention to file the proposed rule change at least five business days before its filing. Moreover, the ISE has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. Therefore, the foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

Pursuant to Rule 19b–4(f)(6)(iii) under the Act,[9] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The ISE has requested that the Commission waive the 30-day operative date so that the proposed rule change will become immediately effective upon filing.

The Commission believes that waiving the 30-day operative date is consistent with the protection of investors and the public interest.[10] Accelerating the operative date will allow the ISE to implement immediately listing standards similar to ones already in place at the CBOE, and allow customers greater choices in their order routing decisions.[11] For these reasons, the Commission designates that the proposed rule change as effective and operative immediately.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–2003–19 and should be submitted by August 22, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Jill M. Peterson,

Assistant Secretary.

[FR Doc: 03–19616 Filed 7–31–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48225; File No. SR–NASD–2003–101]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Time Limits for Submission of Claims in Arbitration

July 25, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 19, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend the Rule 10304 of the NASD Code of Arbitration Procedure governing time limits for submission of claims in arbitration. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

* * * * *

10000. Code of Arbitration Procedure

* * * * *

Rule 10304. Time Limitation Upon Submission

(a) No dispute, claim, or controversy shall be eligible for submission to arbitration under this Code where six (6) years have elapsed from the occurrence or event giving rise to the act or dispute, claim or controversy. *The panel will resolve any questions regarding the eligibility of a claim under this Rule.* [This Rule shall not extend applicable statutes of limitations, nor shall it apply to any case which is directed to arbitration by a court of competent jurisdiction.]

(b) Dismissal of a claim under this Rule does not prohibit a party from pursuing the claim in court. By requesting dismissal of a claim under this Rule, the requesting party agrees that if the panel dismisses a claim under the Rule, the party that filed the dismissed claim may withdraw any remaining related claims without prejudice and may pursue all of the claims in court.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 10304 of the NASD Code of Arbitration Procedure ("Code") provides that a claim is ineligible for arbitration in the NASD forum if six or more years have elapsed from the occurrence or event giving rise to the claim. The rule does not provide expressly whether the eligibility of a claim is determined by arbitrators or by the courts. Under current NASD practice, arbitrators resolve questions concerning whether a particular claim

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[28] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Release No. 34–46435 (August 29, 2002), 67 FR 57046 (September 6, 2002) (File No. SR–CBOE–2002–47).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] *See* n. 5, *supra*.

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

falls within the six year time limit. However, this issue has generated a significant amount of collateral litigation, with a number of courts ruling that, in absence of more specific guidance from NASD, courts should determine the eligibility of a claim under the rule. Collateral litigation over the eligibility rule has been expensive and time-consuming, and has caused uncertainty and confusion among forum users.

In December 2002, the United States Supreme Court ruled in *Howsam* v. *Dean Witter Reynolds, Inc.*,[3] that the issue of whether a claim is time-barred under Rule 10304 is presumptively a matter for arbitrators to decide. To conform the Code to the Court's ruling, and to provide additional notice and guidance to parties on this issue, NASD proposes to amend Rule 10304 to state explicitly that eligibility determinations are made by the arbitrators.

Rulings that claims are ineligible under Rule 10304 have also generated significant collateral litigation. Some courts, relying on the election of remedies doctrine, have held that claims ineligible in arbitration may not be litigated in court. To make express that, under NASD rules, the ineligibility of a claim under Rule 10304 is not intended to prevent a party from filing the claim in court, NASD proposes to further amend Rule 10304 to make clear that dismissal of a claim on eligibility grounds is without prejudice to the parties' judicial rights and remedies.

In addition, the current eligibility rule provides that the rule does not apply to claims ordered to arbitration by a court. This provision is now inconsistent with the Supreme Court's decision in *Howsam* that eligibility is an issue for the arbitrators, and not the courts, to resolve, as the effect of the provision would be that the eligibility rule could not be applied either by the court or the arbitrators to any claims compelled to arbitration by a court. Therefore, NASD proposes to delete this provision from Rule 10304.

Finally, because this provision was intended to protect parties from having to litigate related claims in two forums at the same time, NASD also proposes to amend Rule 10304 to provide that by requesting dismissal of a claim on eligibility grounds in the NASD forum, the requesting party is agreeing that the claimant may withdraw all related claims without prejudice and may pursue all of the claims in court. This provision will provide significant protection against involuntary bifurcation of claims, but will continue to allow arbitrators to decide questions of eligibility under the Rule.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[4] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that, by clarifying the scope and application of Rule 10304, the proposed rule change will reduce the cost and delay caused by collateral litigation, and streamline the administration of arbitrations in NASD's forum.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD.

All submissions should refer to File No. SR–NASD–2003–101 and should be submitted by August 26, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–19557 Filed 7–31–03; 8:45 am]

BILLING CODE 8010–01–P

[3] 537 U.S. 79 (Dec. 10, 2002).

[4] 15 U.S.C. 78o–3(b)(6).

[5] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3532]

State of Minnesota

Renville County and the contiguous Counties of Brown, Chippewa, Kandiyohi, McLeod, Meeker, Nicollet, Redwood, Sibley, and Yellow Medicine in the State of Minnesota constitute a disaster area due to damages caused by multiple tornadoes in the City of Buffalo Lake that occurred on June 22 through 24, 2003. Applications for loans for physical damage may be filed until the close of business on September 23, 2003, and for economic injury until the close of business on April 26, 2004, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.625
Homeowners Without Credit Available Elsewhere	2.812
Businesses With Credit Available Elsewhere	5.906
Businesses and Non-profit Organizations Without Credit Available Elsewhere	2.953
Others (Including Non-profit Organizations) With Credit Available Elsewhere	5.500
For Economic Injury: Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	2.953

The number assigned to this disaster for physical damage is 353212 and for economic injury is 9W5300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 25, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–19639 Filed 7–31–03; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities; Proposed Request and Notice of Office of Management and Budget (OMB) Approvals

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the OMB in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the SSA Reports Clearance Officer listed below:

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex Bldg., 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. *Statement for Determining Continuing Eligibility, Supplemental Security Income Payment—20 CFR, subpart B, 416.204—0960–0145.* SSA uses from SSA–8202–BK to conduct low- and middle-error-profile (LEP–MEP) telephone or face-to-face redetermination (RZ) interviews with Supplemental Security Income (SSI) recipients and representative payees. The information collected during the interview is used to determine whether SSI recipients have met and continue to meet all statutory and regulatory requirements for SSI eligibility and whether they have been, and are still receiving, the correct payment amount. Form SSA–8202–OCR–SM (Optical Character recognition-Self Mailer) collects information similar to that collected on Form SSA–8202–BK. However it is used exclusively in LEP RZ cases on a 6-year cycle. The respondents are recipients of SSI benefits or their representative payees.

Type of Request: Extension of an OMB-approved information collection.

	Respondents	Frequency of response	Average burden per response (min.)	Estimated annual burden (hours)
SSA–8202–F6	920,000	1	19	291,333
SSA–8202–OCR–SM	800,000	1	9	120,000
Total Burden				411,333

2. *Statement for Determining Continuing Eligibility; Supplemental Security Income Payment(s)—20 CFR, subpart B, 416.204–0960–0416.* SSA uses the information collected on form SSA–8203–BK for high-error-profile (HEP) redeterminations of disability to determine whether SSI recipients have met and continue to meet all statutory and regulatory requirements for SSI eligibility and whether they have been, and are still receiving, the correct payment amount. The information is normally completed in field offices by personal contact (face-to-face or telephone interview) using the automated Modernized SSI CLaim System (MSSICS). The respondents are recipients of title XVI SSI benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 920,000.

Frequency of Response: 1.

Average Burden Per Response: 19 minutes.

Estimated Annual Burden: 291,333 hours.

3. *Vocational Rehabilitation Provider Claim—20 CFR, subpart V, 404.2104, 404.2108, 404.2113, 404.2117, 404.2121, 416.2204, 416.2208, 416.2213 and 416.2217–0960–0310.* The information collected on Form SSA–199–U2 and through these current rules is used by SSA to determine if State vocational rehabilitation agencies are providing appropriate services, including referrals when necessary and whether those claims for services should be paid. The respondents are the 80–100 State vocational rehabilitation agencies and alternate participants who offer vocational and employment services for SSA beneficiaries.

Type of Request: Extension of an OMB-approved information collection.

CFR sections	Number of respondents	Frequency of response	Average burden per response (min.)	Estimated annual burden (hours)
404.2108 & 416.2208 SSA–199	90	145 (on average)	23	5,003
404.2117 & 416.2217	80	1	160	200
404.2121 & 416.2221	90 (500 total responses for all participants)	1	100	833

Total burden hours for this request—5,916.

4. *Information Collections conducted by State Disability Determination Services (DDS) on Behalf of SSA—20 CFR, subpart P, 404.1503a, 404.1512, 404.1513, 404.1514 404.1517, 404.1519; 20 CFR subpart Q, 404.1613, 404.1614, 404.1624; 20 CFR subpart I, 416.903a, 416.912, 416.913, 416.914, 416.917, 416.919 and 20 CFR subpart J, 416.1013, 416.1024, 416.1014–0960–0555.* The State DDS's collect certain information to administer SSA's disability program. The information collected is as follows: (1) Medial evidence of record (MER)—DDS's use MER information to determine a person's physical and/or mental status prior to making a disability determination; (2) consultative exam (CE) medical evidence—DDS's use CE medical evidence to make disability determinations when the claimant's own medical sources cannot or will not provide the information; (3) CE claimant forms—The DDS's request that claimants complete and authorization form for the release of consultative exam information to a personal physician and to complete and appointment form to confirm scheduled CE appointments; (4) CE provider information—DDS's use the CE provider information to verify medical providers' credentials and licenses before hiring them to conduct CEs; (5) activities of daily living (ADL)—this information and other medical evidence are part of the evidentiary documentation used by the DDS's in evaluating a person's disability; and (6) pain information—this information is used by the DDS's to assess the effects of symptoms on functioning for determining disability. The respondents are medical providers, other sources of MER and disability claimants.

Type of Request: Extension of an OMB-approved information collection.

(1) MER (Respondents-Medical Providers and Other Sources)

Number of Responses: 6,052,494.
Frequency of Response: Unknown.
Average Burden Per Response: 15 minutes.
Estimate Annual Burden: 1,513,124.

(2) CE Medical Evidence (Respondents-Medical Providers)

Number of Responses: 1,640,269.
Frequency of Response: Unknown.
Average Burden Per Response: 30 minutes.
Estimated Annual Burden: 820,135 hours.

(3) CE Forms (Respondents—Claimants)

	Appointment form	Medical release
Number of Respondents	820,134	1,640,269
Frequency of Response	1	1
Average Burden Per Response	5	5
Estimated Annual Burden (in hours)	68,345	136,689

(4) CE Providers (Respondents—Medical Providers)

Number of Responses: 3,000.
Frequency of Response: 1.
Average Burden: 20 minutes.
Estimated Annual Burden: 1,000 hours.

(5) ADL Forms (Respondents—Claimants)

Number of Responses: 2,000,000.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 500,000 hours.

(6) Pain Forms (Respondents—Claimants)

Number of Responses: 1,000,000.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 250,000 hours.

II. Notice of OMB Approval

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Social Security Administration (SSA) is providing notice of OMB's. approval of the following information collections:

1. 20 CFR 404 subpart J & 416 subpart N—Video Teleconferencing Appearances before Administrative Law Judges, associated form SSA—504. The OMB Number is 0960–0671, which expires November 30, 2004.

2. 20 CFR parts 404.617 and 416.327—Claimant Identification Pilot Project. The OMB Number is 0960–0664, which expires May 31, 2006.

In accordance with the Paperwork Reduction Act, persons are not required to respond to an information collection unless it displays a valid Office of Management and Budget control number.

Dated: July 25, 2003.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 03–19474 Filed 7–31–03; 8:45 am]

BILLING CODE 4191–02–M

DEPARTMENT OF STATE

[Public Notice 4429]

Bureau of Near Eastern Affairs: Middle East Partnership Initiative (MEPI)

AGENCY: Department of State.

ACTION: Notice.

Introduction

The Office of Partnership Initiative (NEA/PI), announces an open competition for proposals for the production, distribution, and placement of Arabic-language early reading books throughout the Middle East. Multiple awards may be made from this announcement.

Purpose

The purpose of this program is to respond to the urgent need for options in primary and basic Arabic-language literacy for young Arabic-speaking readers in the Middle East. The primary objective is to provide access to Arabic-language reading materials for young readers, and provide accompanying preparatory teacher training and curriculum materials to maximize the effectiveness of the reading materials in the classroom.

Background

This program for Arabic reading books has evolved from the Bureau of Near Eastern Affairs, Office of Partnership Initiative, NEA/PI. NEA/PI coordinates the Middle East Partnership Initiative (MEPI). A primary component of MEPI is a focus on Education. To bridge the "knowledge gap," MEPI seeks to improve the quality, quantity, and relevance of education in the Middle East (to include North Africa and the Gulf) through the implementation of programs that highlight, inter alia, improved digital readiness and increased literacy, especially for girls. More information about MEPI can be found at: *http://www.state.gov/p/nea/rt/mepi.*

In the context of the Education component of MEPI, President Bush announced plans to launch a major new effort to provide resources for the Arabic translation of early reading books for use in primary schools in the region. The program is intended to encourage independent reading, thinking, and analytical skills in young readers; train teachers; engage parents and local communities in the support of independent reading by young readers; and, provide sustainable resources for classrooms. This Notice seeks to initiate the MEPI Arabic-language early reading program, with a beginning focus on third and fourth (3rd and 4th) grades. Guiding parameters for proposals include that the program:

- Establish school-based libraries in approximately 5,000 schools in the Middle East.
- Each school to receive two libraries, one each for the 3rd and 4th grades.
- Each library to have 40 titles; five (5) copies of each title = 200 books.
- Each library to be accompanied by related teacher training programs and materials.

Books should be ready for placement in schools by January 1, 2004. All Arabic-language reading books should be of high-quality; titles and texts must be carefully vetted and translated to assure cultural appropriateness. Because the impact of this program should be deep and sustained, it is likely that the initial program plan will introduce early reading books in a handful of (TBD) countries in the Middle East. Proposals should, however, contemplate an expansion of the successful completion of this initial phase, and include budget and strategy plans for future years. The expansion must consider the growth of the initial project (3rd and 4th grades) into more schools and in more countries, and also possible program growth into higher grades. Successful applicants must demonstrate an ability to work throughout the Middle East and in the context of a broad range of contrasting political, religious, and cultural views.

Proposals must also address:

—Applicant's experience in working with foreign governments and in the Middle East.
—Cost-sharing by applicant (to include in-kind goods and services contributions such as discounts on U.S. retail prices of books, etc.).
—Explanation of the handling of copyright issues.
—An effective, timely, and cost-effective distribution system for the books throughout the region.
—Related teacher training programs and materials.
—Availability of accessory materials/opportunities for teachers, students, and parents (*i.e.*, posters, take-home exercise, web-based/interactive programs.)
—Integrated roles for parental and community involvement.
—Program monitoring and evaluation standards and methods.
—Public Diplomacy/outreach activities to engage the public in the region.
—Variety of titles available.
—Process by which book titles and texts will be vetted for appropriateness (*i.e.*, cultural and educational).

All products/services bought or produced as a result of this cooperative agreement must clearly acknowledge the U.S. Middle East Partnership Initiative (MEPI). Similarly, all related written materials, public statements/press or media releases or events must acknowledge MEPI. The grantee will also allow for Internet connectivity with the MEPI Web site.

Successful applicants will be expected to coordinate closely with the Department of State, NEA/PI, in the implementation of all aspects of this program.

The ideal applicant has extensive experience in the business of producing, publishing, and distributing children's reading books into classroom settings. In addition, the ideal applicant will have the tools and experience necessary to develop and implement a program that also engages teachers and parents, and has the flexibility to accommodate and meet the varying and changing levels of learning among young students. As a result of this project, Arabic-speaking children in the Middle East will gain greater access to recreational reading materials through which they will increase their overall literacy, independent thinking, and analytical skills. Teachers will have an enhanced understanding of the need for and a developed capacity to impart the values of independent, recreational reading. In addition, teachers will receive up-to-date training and materials.

Legislative Authority

The authorization for MEPI is Public Law 108–11, Emergency Wartime Supplemental Appropriations Act for Fiscal Year 2003, and chapter 4 of part II of the Foreign Assistance Act of 1961, as amended.

Eligible Applicants

Eligible applicants include all non-governmental institutions, private organizations, and commercial entities.

NEA encourages single applications from partnerships or consortia of more than one organization. In this context, NEA is defining partnership as a negotiated arrangement among organizations that provides for a substantive, collaborative role for each of the partners in the planning and implementation of the project. Applications that represent a coalition of providers should include a signed partnership agreement stating a commitment or an intent to commit or receive resources from the prospective partner(s) contingent upon receipt of funds. The agreement should state how the partnership arrangement relates to the objectives of the project. The applicant should also include: Supporting documentation identifying the resources, experience, and expertise of the partner(s); evidence that the partner(s) has been involved in the planning of the project; and a discussion of the role of the partner(s) in the implementation of the project.

Funding Availability—NEA expects to award at least $5.0 million in FY 2003 supplemental ESF through this announcement. NEA will award one or more cooperative agreements.

NEA reserves the right to award less, or more, than the funds described, in the absence of worthy applications, or under such other circumstances as may be deemed to be in the best interest of the government.

Project and Budget Periods—This announcement invites applications for project periods up to three years. Awards, on a competitive basis, will be for a the initial budget period although the full project may indicate Federal Assistance needs for additional budget periods up to three years total. Applications for continuation grants funded under these awards, beyond the initial budget period, but within the three-year project period, will be entertained on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Department of State.

Review Criteria

Eligible applications will be competitively evaluated according to the following criteria:

Results or Benefits Expected—The applicant clearly describes the results and benefits to be achieved. The applicant identifies how improvement will be measured on key indicators and provides milestones indicating progress. Proposed outcomes are tangible and achievable within the grant project period. (30 points)

Approach—The applicant must demonstrate that its strategy and plan are likely to achieve the proposed results; the proposed activities, including Public Diplomacy/outreach component, and timeframes are reasonable and feasible. The plan describes in detail how the proposed activities will be accomplished as well as the potential for the project to have a positive impact on the quality of education in the Middle East. (25 points)

Organization Profiles—Where collaborative partners are proposed, the applicant describes the rationale for the collaboration, each partner agency's respective role, and how the coalition

will enhance the accomplishment of the project goals. In all cases, the applicant describes planning consultation efforts undertaken. The proposed coalition is appropriate with respective roles and financial responsibilities delineated. Evidence of commitment of coalition partners in implementing the activities is demonstrated, *i.e.*, by letters or the terms of the signed agreement among participants. The applicant or coalition partners provide documented experience in performing the proposed services as well as adequate gender balance and constituent representation on the proposed project's advisory board. Assurance is provided that proposed services will be delivered in a manner that is linguistically and culturally appropriate to the target population. Individual organization staff including volunteers are well-qualified. The administrative and management features of the project, including a plan for fiscal and programmatic management of each activity, is described in detail with proposed start-up times, ongoing timelines, major milestones or benchmarks, a component/project organization chart, and a staffing chart. (25 points)

Budget and Budget Justification—The budget and narrative justification are reasonable in relation to the proposed activities and anticipated results and the plan for services is realistic. (20 points)

Application/Proposal Submission and Deadline

An application (Standard Form 424) with an original signature and two clearly identified copies is required. The application form (Standard Form 424) and instructions can be obtained from either:

(1) the following Web sites:

http://www.whitehouse.gov/omb/grants/#forms

http://www.usaid.gov/procurement_bus_opp/procurement/forms/SF-424/

(2) Anna Mary Portz, Grants Officer, U.S. Department of State, NEA/PI Room 4241, 2201 C Street NW., Washington, DC, 20520, telephone (202) 647–6111, fax (202) 736–4464, e-mail *portzam,@state.gov*.

Application materials must be submitted to the U.S. Department of State, Anna Mary Portz, Grants Officer, NEA/PI, Room 4241, 2201 C Street NW., Washington, DC, 20520 on or before close of business (4:30 p.m. EST) August 15, 2003. Due to delays in regular mail delivery to the State Department, applicants are strongly encouraged to hand-carry or use couriers to deliver applications to NEA/PI, between the hours of 8:30 a.m.–4:30 p.m., to the attention of Anna Mary Portz. Express or overnight mail services may also be used, though applicants are cautioned that express/overnight mail services do not always deliver as agreed and other delays may occur until regular mail delivery is resumed.

Applicants must also provide an electronic copy of the proposal by e-mail to Anna Mary Portz, Grants Officer at e-mail address *portzam@state.gov*. Proposals must be submitted in both hard copy and by e-mail; proposals submitted only by e-mail, or only in hard copy, will not be considered. The Grants Officer must be aware that the proposal is on its way, or the package risks being considered late or turned away by Diplomatic Security.

Applications submitted by e-mail and either (1) mail (including express mail or overnight mail services), or (2) hand-carried by applicant couriers or by other representatives of the applicant, shall be considered as meeting an announced deadline if they are received on or before close of business (4:30 p.m. EST) August 15, 2003.

Late Applications

Applications received after the closing date and time will be classified as late. Applications which do not meet the criteria above are considered late applications. NEA/PI shall notify each late applicant that its application will not be considered in the current competition.

General Instructions for Preparing a Full Project Description

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. Applicants are encouraged to provide information on their organizational structure, staff, related experience, and other information considered relevant. Awarding offices use this and other information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, therefore, that this information be included in the application. However, in the narrative the applicant must distinguish between resources directly related to the proposed project from those that will not be used in support of the specific project for which funds are requested.

Length of Applications

Each application narrative should not exceed 25 double-spaced pages in a 12-pitch font. Attachments and appendices should not exceed 25 pages and should be used only to provide supporting documentation such as administration charts, position descriptions, resumes, and letters of intent or partnership agreements. Each page should be numbered sequentially, including the attachments or appendices. This limitation of 25 pages plus the SF 424 should be considered as a maximum, and not necessarily a goal.

Reporting Requirement

Quarterly progress and financial reports are required for all funded projects. One-page, web-ready summaries of each program, for posting on MEPI-related sites, are due, updated, on a quarterly basis. Final reports, including an assessment of the impact of the project in the context of MEPI goals/objectives, will be due 90 days after end of project period.

Where To Obtain Additional Information

Questions regarding this Request for Proposals should be directed to Anna Mary Portz, Grants Officer, Department of State, NEA/PI, Room 4241, 2201 C Street NW., Washington, DC 20520, telephone (202) 647–5281, fax (202) 736–4464, e-mail *portzam,@state.gov*.

Dated: July 29, 2003.

Alina L. Romanowski,

Director, Office of the Middle East Partnership Initiative, Bureau of Near Eastern Affairs, Department of State.

[FR Doc. 03–19632 Filed 7–31–03; 8:45 am]

BILLING CODE 4710–31–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–276]

WTO Dispute Settlement Proceeding Regarding Canadian Measures Relating to Exports of Wheat and the Treatment of Imported Grain

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice of the establishment of dispute settlement panels under the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement") concerning measures of the Government of Canada relating to the export of wheat and to the treatment of imported grain. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept comments received throughout the course of the dispute settlement proceedings, comments should be received on or before August 22, 2003, to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted either (i) electronically, to *fr0078@ustr.gov*, with "Canada-Wheat Dispute" in the subject line, or (ii) by fax, to Sandy McKinzy at 202–395–3640 with a confirmation copy sent electronically to the e-mail address above.

FOR FURTHER INFORMATION CONTACT: William Busis, Associate General Counsel, (202) 395–3150; or Sharon Bomer Lauritsen, Deputy Assistant USTR for Agricultural Affairs, (202) 395–6127.

SUPPLEMENTARY INFORMATION: Pursuant to section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)), USTR is providing notice that, at the request of the United States, the WTO Dispute Settlement Body (DSB) has established panels to examine Canadian measures relating to exports of wheat and treatment of imported grain. The three persons that compose the panels have been selected pursuant to the procedures established in the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes.

The United States panel requests explained that the United States considers that certain measures of the Government of Canada are inconsistent with Canada's obligations under the General Agreement on Tariffs and Trade 1994 ("GATT 1994") and the Agreement on Trade-Related Investment Measures ("TRIMs Agreement"):

(1) *Canadian Wheat Exports:* The Government of Canada has established the Canadian Wheat Board ("CWB"), and has granted to this enterprise exclusive and special privileges. These exclusive and special privileges include the exclusive right to purchase western Canada wheat for export and domestic human consumption at a price determined by the Government of Canada and the CWB; the exclusive right to sell western Canadian wheat for export and domestic human consumption; and government guarantees of the CWB's financial operations, including the CWB's borrowing, the CWB's credit sales to foreign buyers, and the CWB's initial payments to farmers.

The laws, regulations and actions of the Government of Canada and the CWB appear to be inconsistent with the obligations of the Government of Canada under Article XVII of the GATT 1994. In particular, the laws, regulations and actions of the Government of Canada and the CWB related to exports of wheat appear to be:

- Inconsistent with paragraph 1(a) of Article XVII of the GATT 1994, pursuant to which the Government of Canada has undertaken that the CWB, in its purchases or sales involving wheat exports, shall act in a manner consistent with the general principles of non-discriminatory treatment prescribed in the GATT 1994; and
- Inconsistent with paragraph 1(b) of Article XVII of the GATT 1994, pursuant to which the Government of Canada has undertaken that the CWB shall make such purchases or sales solely in accordance with commercial considerations and shall afford the enterprises of other WTO Members adequate opportunity, in accordance with customary business practice, to compete for such purchases or sales.

The apparent inconsistency with Canada's obligations under Article XVII of the GATT 1994 includes the failure of the Government of Canada to ensure that the CWB makes such purchases or sales in accordance with the requirements set forth in paragraphs 1(a) and 1(b) of Article XVII.

(2) *Treatment of Imported Grain:* With regard to the treatment of grain that is imported into Canada, Canadian measures discriminate against imported grain, including grain that is the product of the United States.

- Under the Canada Grain Act and Canadian grain regulations, imported grain must be segregated from Canadian domestic grain throughout the Canadian grain handling system; imported grain may not be received into grain elevators; and imported grain may not be mixed with Canadian domestic grain being received into, or being discharged out of, grain elevators. These measures accord to imported grain less favorable treatment than that accorded to like Canadian grain, and thus appear to be inconsistent with the obligations of Canada under Article III:4 of the GATT 1994 and Article 2 of the TRIMs Agreement.
- Canadian law caps the maximum revenues that railroads may receive on the shipment of Canadian domestic grain, but not revenues that railroads may receive on the shipment of Canadian domestic grain, but not revenues that railroads may receive on the shipment of imported grain. In addition, in allocating railcars used for the transport of grain, Canada provides a preference for domestic grain over imported grain. These measures concerning rail transportation accord to imported grain less favorable treatment than that accorded to like domestic grain, and thus appear to be inconsistent with the obligations of Canada under Article III:4 of the GATT 1994 and Article 2 of the TRIMs Agreement.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised by the United States in this dispute. Persons submitting comments may either send one copy by fax to Sandy McKinzy at 202–395–3640, or transmit a copy electronically to *fr0078@ustr.gov*, with "Canada-Wheat Dispute" in the subject line. For documents sent by fax, USTR requests that the submitter provide a confirmation copy electronically. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not a separate files.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page of the submission.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page of the submission; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include nonconfidential comments received by USTR from the public with respect to the dispute; the U.S. submissions to the panel in the dispute, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 03–19554 Filed 7–31–03; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–285]

WTO Dispute Settlement Proceeding Regarding Federal, State, and Territorial Laws Affecting the Cross-Border Provision of Gambling and Betting Services From Antigua and Barbuda

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice that on June 13, 2003, the government of Antigua and Barbuda requested the establishment of a WTO dispute settlement panel pursuant to Article 6 of the World Trade Organization ("WTO") Dispute Settlement Understanding ("DSU") to consider its allegations that measures applied by the U.S. federal government and all 50 states, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands affecting the cross-border supply of gambling and betting services are inconsistent with U.S. obligations under Articles VI, VIII, XI, XVI, and XVII of the WTO General Agreement on Trade in Services ("GATS") and its schedule of specific commitments. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before August 29, 2003, to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) Electronically, to *fr0087@ustr.gov*, with "Gambling and Betting Dispute (DS285)" in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395–3640, with a confirmation copy sent electronically to the electronic mail address above, in accordance with the requirements for submission set out below.

FOR FURTHER INFORMATION CONTACT: Stanford K. McCoy, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395–3581.

SUPPLEMENTARY INFORMATION: Pursuant to Section 127(b) of the Uruguay Round Agreements Act ("URAA") (19 U.S.C. 3537(b)(1)) USTR is providing notice that, on June 12, 2003, the United States received a request from the government of Antigua and Barbuda for the establishment of a WTO dispute settlement panel to examine U.S. federal and state measures affecting cross-border gambling and betting services. Consultations with Antigua and Barbuda failed to resolve the matter. The panel was established pursuant to the DSU on July 21, 2003. It will hold its meetings in Geneva, Switzerland, and is expected to issue a report on its findings and recommendations within six to nine months after the date of establishment.

Major Issues Raised and Legal Basis of the Panel Request

The government of Antigua and Barbuda alleges that the Federal, state and territorial legislation and other legal materials listed below violate U.S. specific commitments under the GATS, as well as Articles VI, VIII, XI, XVI, and XVII of the GATS, to the extent that these laws and other materials prevent or can prevent operators from Antigua and Barbuda from lawfully offering gambling and betting services in the United States. In support of its claims, the government of Antigua and Barbuda alleges, *inter alia*, that U.S. authorities (1) Allow operators of U.S. origin to offer gambling and betting services in the United States but do not allow foreign operators to obtain authorizations to provide such services from abroad; and (2) restrict international transfers and payments relating to gambling and betting services offered from outside the United States.

A. Federal Legislation: 15 U.S.C. 3001 to 3007; 18 U.S.C. 2; 18 U.S.C. 1081, 1084; 18 U.S.C. 1301 to 1307; 18 U.S.C. 1952; 18 U.S.C. 1953; 18 U.S.C. 1955; 28 U.S.C. 3701 to 3704; 39 U.S.C. 3005.

B. State, District of Columbia, and Territorial Legislation and Constitutional Provisions: Ala. Code 13A–12–20 to 13A–12–31 (1977); Alaska Stat. 05.15.180 (1997); Alaska Stat. 11.66.200 to 11.66.280 (1978); Ariz. Rev. Stat. Ann. 13–3301 to 13–3312 (2001); Ark. Stat. Ann. 5–66–101 to 5–66–119 (1987); Cal. Penal Code 319–337z (West Supp. 2003); Cal. Bus. & Prof. Code 19800–19807 (West. Supp. 2003); Colo. Const. art. XVIII, 2; Colo. Rev. Stat. 18–10–101 to 18–10–108 (1999); Colo. Rev. Stat. 12–47.1–101 to 12–47.1–106 (1996); Conn. Gen. Stat. 53–278a to 53–278g (2001); Del Const. art. 2, 17; Del. Code Ann. tit. 11, 1401–32, 1470–73 (2002); D.C. Code Ann. 22–1701 to 22–1712 (2001); Fla. Stat. 849.01 to 849.46 (2000); Ga. Const. art. 1, 2; Ga. Code Ann. 16–12–20 to 16–12–62 (2003); Haw. Rev. Stat. Ann. 712–1220 to 712–1231 (Michie 1973); Idaho Const. art. III, 20; Idaho Code 18–3801 to 18–3810 (1992); Ill. Rev. Stat. ch. 720, 5/28–1 to 5/28–9 (1993); Ind. Code 35–45–5–1 to 35–45–5–8 (1998); Iowa Code 725.5 to 725.16 (1993); Kan. Crim. Code Ann. 21–4303 to 21–4308 (1995); Ky. Rev. Stat. Ann. 528.010 to 528.120 (Baldwin's 1974); La Const. art. XII, 6; La. Rev. Stat. Ann. 14:90.–.4 (West 1986); Me. Rev. Stat. Ann., tit. 17, 330–347 (1983); Me. Rev. Stat. Ann., tit. 17, 2305–2306 (1983); Md. Code Ann., Crim. Law, 12–101 to 12–307 (2002); Mass. Gen. Laws Ann. ch. 271, 1–50 (West 2000); Mich. Comp. Laws Ann. 750.301–750.315a (West 1990); Minn. Stat. Ann. 609.75–609.763 (Supp. 2003); Miss. Code Ann. 97–33–1 to 97–33–203 (1999); Mo. Ann. Stat. 572.010–572.125 (West 1995); Mont. Const. art. III, 9; Mont. Code Ann. 23–5–101 to 23–5–810 (1993); Neb. Rev. Stat 28–1101 to 28–1117 (1995); Nev. Rev. Stat. 202.450 (1999); Nev. Rev. Stat. 463.160 (2001); N. H. Rev. Stat. Ann. 647:2 (1999); N.J. Const. art. IV, 7; N.J. Stat. Ann. 2A:40–1 to 2A:40–9 (2000); N.J. Stat. Ann. 2C:37–9 to 2C:37–9 (1995); N.J. Stat. Ann. 5:5–63 (1996); N.J. Stat. Ann. 5:12–1 to 5:12–210 (1996); N.M. Stat. Ann. 30–19–1 to 30–19–15 (1978); N.Y. Const. art. I, 9; N.Y. Executive Law 430–439a (McKinney 1996); N.Y. Penal Law 225.00–225.40 (McKinney 1999); N.Y. General Obligation Law 5–401 to 5–423 (McKinney 2001); N.C. Gen. Stat. 14–289 to 14–309.4 (1994); N.D. Const. art. 11, 25; N.D. Cent. Code 12.1–28–01 to 12.1–28–02 (1987); Ohio Const. art. XV, 6; Ohio Rev. Code Ann. 2915.01–2915.06 (1996); Okla. Stat. Ann. tit. 3A, 205.6 (West 1993); Okla. Stat. Ann. tit. 21, 941.993 (West 2002); Or. Rev. Stat. 167.108–167.170 (2001); Pa. Stat. Ann. tit. 18, 911 (Purdon 1998); Pa. Stat. Ann. tit. 18, 5513 (Purdon 2000); Pa. Stat. Ann. tit. 66, 2902 (Purdon 2000); R.I. Const. art. Vi, 22; R.I. Gen. Laws 11–19–1 to 11–19–45 (1993); R.I. Gen. Laws 11–51–1 to 11–51–2 (1979); S.C. Code Ann. 16–19–10 to 16–19–160 (Law Co-op. 1996); S.D. Codified Laws 22–25–1 to 22–25–51 (Michie 1976); S.D. Codified Laws 22–25A–1 to 22–25A–15 (Michie 2000); Tenn. Const. art. XI, V; Tenn. Code Ann. 39–17–501 to 39–17–509 (1989); Tex. Penal Code Ann. 47.01 to 47.10 (West 2003); Utah Code Ann. 76–10–1101 to 76–10–1109 (1998); Vt. Stat. Ann. tit. 13, 2133–2156 (1957); Va. Code Ann. 18.2–325 to 18.2–340 (Michie 1992); Wash. Rev. Code Ann. 4.24.070 (West 1988); Wash. Rev. Code Ann. 9.46.010 to 9.46.903 (West 1998); W. Va. Code 61–10–1 to 61–10–5 (1970); Wis. Const. art. IV, 24; Wis. Stat. Ann. 945.01–945.13 (West 2001); Wyo. Stat. 6–7–101 to 6–7–104 (1996); 9 Guam Code Ann. 64.10 to 64.22A (2003); P.R. Laws Ann. tit. 33, 1241 to 1259 (1949); V.I. Code Ann. tit. 14, 1224–1226 (1985); V.I. Code Ann. tit. 32, 602–646 (2001).

C. Other Materials: *United States* v. *Cohen*, 260 F.3d 68 (2nd Cir. 2001), cert. denied, 122 S. Ct. 2587 (2002); Florida Attorney General, Press Release: Western Union Cuts Off Sports Betting Accounts (December 23, 1997); Kansas; Op. Att'y Gen. No. 96–31 (March 25, 1996); Kansas Attorney General, Internet Gambling Warning (visited March 13, 2003); *http://www.accesskansas.org/ksag/contents/consumer/internetwarning.htm;* Michigan Gaming Control Board, Frequently Asked Questions: Is it Legal to Gamble Over the Internet in Michigan *http://www.michigan.gov/mgcb/0,1607,7–120–7863–19182—F,00.html;* Minnesota Attorney General, Statement of Minnesota Attorney General on Internet Jurisdiction (visited March 13, 2003) *http://www.jmls.edu/cyber/docs/minn-ag.html;* Vacco ex rel. *People* v. *World Interactive Gaming Corp.*, 714 N.Y.S.2d 844, 854 (N.Y. Sup. Ct. 1999); New York Attorney General, Press Release: Ten Banks End Online Gambling With Credit Cards + Spitzer Hails Establishment of New Banking Industry Standard (11 February 2003); New York Attorney General, Press Release: Agreement Reached with PayPal to Bar New Yorkers from Online Gambling + Campaign Against Illegal Gambling Web Site in New York Continues (21 August 2002); Attorney General of the State of the New York, Internet Bureau, In the matter of PayPal, Inc., Assurance of Discontinuance (16 August 2002); New York Attorney General, Press Release: Financial Giant Joins Fight Against Online Gambling + Leading Credit Card Issuer Agrees to Block Key Internet Transactions (14 June 2002); Attorney General of the State of New York, Internet Bureau, In the matter of Citibank (South Dakota), N.A., Assurance of Discontinuance (21 June 2002).

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons submitting comments may either send one copy by fax to Sandy McKinzy at (202) 395–3640, or transmit a copy electronically to *fr0087@ustr.gov*, with "Gambling and Betting Dispute (DS285)" in the subject line. For documents sent by fax, USTR requests that the submitter provide a confirmation copy to the electronic mail address listed above.

USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page of the submission.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitting person believes that information or advice may qualify as such, the submitting person—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of each page of the cover page and each succeeding page; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket No. WT/DS–285, Gambling and Betting Dispute) may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 03–19555 Filed 7–31–03; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–267]

WTO Dispute Settlement Proceeding Regarding United States Subsidies to Upland Cotton

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that on March 18, 2003, a dispute settlement panel was established at the request of the Government of Brazil under the Marrakesh Agreement Establishing the World Trade Organization ("WTO") to examine "subsidies provided to U.S. producers, users and/or exporters of upland cotton." Brazil alleges that these subsidies are inconsistent with the obligations of the United States under the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), the Agreement on Agriculture ("Agriculture Agreement"), and the Agreement on Subsidies and Countervailing Measures ("Subsidies Agreement"). USTR invites

written comments from the public concerning the issues raised in this dispute.

DATES: Although the USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before August 15, 2003, to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) Electronically, to *fr0088@ustr.gov*, Attn: "United States—Subsidies on Upland Cotton" in the subject line, or (ii) by fax, to Sandy McKinzy (Attn: United States—Subsidies on Upland Cotton) at 202–395–3640, with a confirmation copy sent electronically to the e-mail address above.

FOR FURTHER INFORMATION CONTACT: Juan A. Millán, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC (202) 395–3581, or Sharon Bomer Lauritsen, Deputy Assistant USTR for Agricultural Affairs, (202) 395–6127.

SUPPLEMENTARY INFORMATION: Pursuant to Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), USTR is providing notice that on February 6, 2003, Brazil requested the establishment of a WTO dispute settlement panel to examine Brazil's allegations concerning "subsidies provided to U.S. producers, users and/or exporters of upland cotton." On March 18, 2003, a WTO dispute settlement panel was established to consider this matter, and on May 19, 2003, the panel was composed by the WTO Direct General. The panel, which will hold its meetings in Geneva, Switzerland, is expected to issue a report on its findings and recommendations in January 2004. Argentina, Australia, Benin, Canada, Chad, China, Chinese Taipei, the European Communities, India, New Zealand, Pakistan, Paraguay, and Venezuela have notified the WTO of their intention to participate as third parties.

Major Issues Raised by Brazil

Brazil has challenged alleged "prohibited and actionable subsidies provided [by the United States] to U.S. producers, users and/or exporters of upland cotton, as well as legislation, regulations and statutory instruments and amendments thereto providing such subsidies (including export credit guarantees), grants, and any other assistance to the U.S. producers, users and exporters of upland cotton ('U.S. upland cotton industry')." Specific programs identified by Brazil include marketing loans, loan deficiency payments, commodity certificates, direct payments, counter-cyclical payments, Step 2 certificate payments, export credit guarantees, and crop insurance.

Brazil contends that these U.S. measures, as such and as applied, are inconsistent with the obligations of the United States under Articles III:4, XVI:1, and XVI:3 of the GATT 1994; Articles 3.3, 7.1, 8, 9.1, and 10.1 of the Agriculture Agreement; and Articles 3.1(a), 3.1(b), 3.2, 5(a), 5(c), 6.3(b), 6.3(c), 6.3(d), and item (j) of the Illustrative List of Export Subsidies of the Subsidies Agreement.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Persons submitting comments may either send one copy by fax to Sandy McKinzy at 202–395–3640, or transmit a copy electronically to *fr0088@ustr.gov*, with "United States—Subsidies on Upland Cotton" in the subject line. For documents sent by fax, USTR requests that the submitter provide a confirmation copy electronically. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail.

Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself and not as separate files.

A person requesting that information contained in a comment submitted by that person by treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page of the submission.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page of the submission; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; the U.S. submissions to the panel in the dispute, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file may be made by calling the Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 03–19556 Filed 7–31–03; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a petition submitted by Mr. Jon Welch, dated February 15, 2003, and received by the NHTSA's Office of Defects Investigation (ODI) on March 10, 2003, under 49 U.S.C. 30162, requesting that the agency commence a proceeding to determine the existence of a defect related to motor vehicle safety with respect to the air bag system in model year (MY) 1999 Hyundai Sonata vehicles. After a review of the petition and other information, NHTSA has concluded that further expenditure of the agency's investigative resources on the issues raised by the petition does not appear to be warranted. The agency accordingly has denied the petition. The petition is hereinafter identified as DP03–001.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher J. Wiacek, Defects Assessment Division, Office of Defects Investigation, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–7042.

SUPPLEMENTARY INFORMATION: By letter dated February 15, 2003, Mr. Jon Welch submitted a petition requesting that the agency investigate the performance of the frontal air bag system of MY 1999 Hyundai Sonata vehicles (subject vehicles). The petitioner alleges that the front air bags do not deploy when a vehicle is subjected to certain frontal crashes. Mr. Welch petitioned the agency after his vehicle was involved in a frontal crash in which the air bags did not deploy and the driver sustained injuries.

ODI requested information from Hyundai America Technical Center, Inc. (Hyundai), pertaining to the air bag system in MY 1999 through 2001 Sonata vehicles. The subject vehicle was a new design for MY 1999. According to Hyundai, MY 2000 and 2001 Sonatas employ the same frontal air bag system. Hyundai has produced for sale in the United States 119,469 MY 1999 through 2001 Sonata vehicles, including 23,988 MY 1999, 49,397 MY 2000, and 46,084 MY 2001 vehicles. Hyundai stated in its response that it has received 49 reports of the frontal air bags in MY 1999 Sonata vehicles not deploying in a crash. These reports include two of the four reports that ODI has received directly from consumers. Hyundai received 84 allegations of the air bags not deploying in the MY 2000 vehicles and 63 such allegations with respect to the MY 2001 vehicles.

Hyundai stated in its response, "Many owners do not realize that air bag deployment is not required or beneficial in any and all collisions. Many of these owners believe that an air bag should deploy in any collision event, regardless of collision speed, angles or the type of object that was struck. These owners believe that the existence of any collision-induced damage is proof that air bags should have deployed in a collision."

Each manufacturer designs its vehicles so the air bags will deploy if the severity of a crash exceeds a certain threshold. However, there is no Federal requirement establishing a particular threshold. Most manufacturers design their frontal air bags to deploy when the crash severity is in the range of an 8 to 14 mph crash into a fixed solid barrier. This severity is about the same as a crash into another vehicle of equivalent weight at 16 to 28 mph. In lower speed crashes, where the air bag does not deploy, occupant protection is provided by the design of the interior surfaces in the vehicle, as well as by the safety belts provided at each seating position.

In a crash, a number of factors, other than crash severity, can affect whether an air bag will deploy; *e.g.*, the angle of impact, the speed of the other vehicle, and the amount of force absorbed by the other vehicle or object that is impacted. Only an expert in crash reconstruction can provide an educated opinion as to whether the air bag in a vehicle should have deployed in a specific crash.

Hyundai included in its response police accident reports, crash analyses, photographs, and other information with respect to many of the consumer complaints. This information indicates that there have not been any reports of front seat occupants sustaining fatal or incapacitating injuries as a result of any of these incidents. The injuries were relatively minor, such as bruising, lacerations, and whiplash.

From the narrative complaint data, police accident reports, and photographs of the crashed vehicles, it appears that most of the incidents involved minor bumper or under-ride damage where the vehicle's front structure was not impacted. In those cases where Hyundai inspected the air bag electronic control module for a possible system failure, there were no diagnostic fault codes found. According to Hyundai, the modules appeared to have been operating properly in those vehicles.

Some of the vehicle owners stated that the driver's frontal air bag deployed, but the passenger's frontal air bag did not. In those instances in which the front passenger seat was unoccupied, the vehicle performed as designed. The subject vehicles are equipped with a front passenger occupant detection system and will only deploy the passenger air bag when the passenger seat is occupied.

Hyundai has recalled the subject vehicles (Recall numbers 01V347000, 02V105000 and 01V15002) to address safety defects related to the side impact air bag system. Recall 01V347000 pertained to the air bag warning light illuminating due to motion of the side impact air bag wiring harness and the side impact air bag wiring harness connector. According to Hyundai, if the air bag light is illuminated as a result of this issue or the recall remedy was not performed, it would not affect the performance of the frontal air bag system. Recalls 02V105000 and 01V15002 also concern the side impact air bag wiring harness connector not being securely fastened to the side impact air bag wiring harness. If the connection is not secure, the air bag warning light could illuminate, and the side impact air bags may not deploy in an appropriate crash. Again, these recalls are unrelated to the performance of the frontal air bags in these vehicles.

In view of the foregoing, it is unlikely that the NHTSA would issue an order for the notification and remedy of the alleged defect as defined by the petitioner at the conclusion of the investigation requested in the petition. Therefore, in view of the need to allocate and prioritize the NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Issued: July 28, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–19546 Filed 7–31–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–15681]

Notice of Receipt of Petition for Decision That Nonconforming 2003 Ferrari 360 Spider and Coupe Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2003 Ferrari 360 Spider and Coupe passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2003 Ferrari 360 Spider and Coupe passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) They are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is September 2, 2003.

ADDRESSES: Comments should refer to the docket number and notice number,

and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9 a.m. to 5 p.m). Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California ("G&K") (Registered Importer 90–007) has petitioned NHTSA to decide whether 2003 Ferrari 360 Spider and Coupe passenger cars are eligible for importation into the United States. The vehicles which G&K believes are substantially similar are 2003 Ferrari 360 Spider and Coupe passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2003 Ferrari 360 Spider and Coupe passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

G&K submitted information with its petition intended to demonstrate that non-U.S. certified 2003 Ferrari 360 Spider and Coupe passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2003 Ferrari 360 Spider and Coupe passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 135 *Passenger Car Brake Systems*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of the word "Brake" for the ECE warning symbol as markings for the brake failure indicator lamp; (b) modification of the speedometer to read in miles per hour. The petitioner states that the instrument cluster will be modified by installing U.S.-version software information which will result in the seat belt warning symbol and other warning emblems reading appropriately in English.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model front and rear sidemarker assemblies; (b) modification of the tail lamp assembly wiring (by welding the circuit in the tail lamp assembly) so that the tail lamps will operate in the same manner as those on the vehicle's U.S.-certified counterpart.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* Inscription of the required warning statement on the face of the passenger side rearview mirror.

Standard No. 114 *Theft Protection:* Downloading of U.S.-version software information so that the vehicle complies with the standard.

Standard No. 118 *Power Window Systems:* Inspection of all vehicles and installation, on vehicles that are not already so equipped, of a relay in the power window control circuit so that the window transport mechanism is inoperative when the ignition switch is in the "off" position.

Standard No. 201 *Occupant Protection in Interior Impact:* Inspection of all vehicles and installation, on vehicles that are not already so equipped, of trim components that are necessary to comply with the upper interior impact requirements of the standard.

Standard No. 208 *Occupant Crash Protection:* Inspection of all vehicles and replacement of the driver's and passenger's air bags, knee bolsters, air bag control units, and seat belts if they are not identical to the U.S.-model components. The petitioner states that the vehicles are equipped with Type 2 combination lap and shoulder belts which are identical to those installed on the U.S. certified counterpart vehicle. According to the petitioner, these seat belts are automatic, self-tensioning, and capable of being released by means of a single red push button.

Standard No. 209 *Seat Belt Assemblies:* Inspection of all vehicles and replacement of the seat belt assemblies with U.S.-model components on vehicles that are not already so equipped.

Standard No. 210 *Seat Belt Assembly Anchorages:* Inspection of all vehicles and replacement of the seat belt assembly anchorages and components with U.S.-model tether anchorage components on vehicles that are not already so equipped.

Standard No. 214 *Side Impact Protection:* Inspection of all vehicles and installation of U.S.-model doors on vehicles that are not equipped with factory installed door beams.

Standard No. 225 *Child Restraint Anchorage Systems:* Installation of U.S.-model tether anchorages in Coupe.

Standard No. 301 *Fuel System Integrity:* Replacement of the charcoal canister, air pump, fuel filler neck, and rollover valve with U.S.-model components, providing a sufficient connection between the fuel tank and the U.S.-model fuel filler neck.

Standard No. 401 *Interior Trunk Release:* Modification of the hood latch by installing an extra cable so that the trunk can be released from the inside. The petition states that in order to meet the requirement of the standard that became effective on September 2002, an actuator will be installed.

Petitioner states that the front and rear bumper on the non-U.S.certified 2003 Ferrari 360 Spider and Coupe must be reinforced to meet the requirements of the Bumper Standard found in 49 CFR part 581. Petitioner claims that these reinforcements will achieve compliance with the standard based on testing submitted to the agency in conjunction with a previous petition.

The petitioner also states that all vehicles will be inspected prior to importation to ensure that all required anti-theft devices identical to those found on the U.S. certified counterpart vehicles are installed. Any modifications necessary to achieve compliance with the Theft Prevention Standard in 49 CFR part 541 will be made at that time.

In addition, the petitioner states that a vehicle identification number (VIN) plate must be affixed to the vehicles so that it is readable from outside the driver's windshield pillar, and a reference and certification label must be affixed to the edge of the driver's side door or to the latch post nearest the driver to meet the requirements of 49 CFR part 565.

Lastly, the petitioner states that a certification label will be affixed to the driver's side doorjamb to meet the requirements of the vehicle certification regulations in 49 CFR part 567.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St. SW, Washington, DC 20590. Docket hours are from 9 a.m. to 5 p.m. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 14, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–18606 Filed 7–31–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 638X)]

CSX Transportation, Inc.—Abandonment Exemption—In Knox County, OH

On July 14, 2003, CSX Transportation, Inc. (CSXT), filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon an approximately 6.37-mile line of railroad, in CSXT's Midwest Region, Louisville Division, Lake Erie Subdivision, extending from milepost BQ–25.90, at Mt. Vernon, to milepost BQ–32.27, at Fredericktown, in Knox County, OH. The line traverses United States Postal Service Zip Codes 43019 and 43050, and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in CSXT's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by October 31, 2003.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than August 21, 2003. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–55 (Sub-No. 638X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Natalie S. Rosenberg, Counsel, 500 Water Street—J150, Jacksonville, FL 32202. Replies to the CSXT petition are due on or before August 21, 2003.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary), prepared by SEA, will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days after the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: July 24, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–19334 Filed 7–31–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–295 (Sub–No. 5X)]

The Indiana Rail Road Company—Abandonment and Discontinuance of Trackage Rights Exemption—in Monroe County, IN

The Indiana Rail Road Company (INRD) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 0.97-mile line of railroad, known as the Bloomington Southern, extending from milepost B 1.71 south to milepost B 2.68 in Bloomington, IN, and to discontinue trackage rights over approximately 2.87 miles of a CSX Transportation, Inc. (CSXT) line in Bloomington, extending from CSXT milepost 219.0 to CSXT milepost

221.87, and over approximately 150 feet of CSXT's track no. 68 and approximately 285 feet of CSXT's track no. 21 in CSXT's McDoel Yard in Bloomington, in Monroe County, IN.[1] The line traverses U.S. Postal Service Zip Codes 47403 and 47404 and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in INRD's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by October 31, 2003.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than August 21, 2003. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–295 (Sub-No. 5X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423–0001; and (2) John H. Broadley, John H. Broadley & Associates, P.C., 1054 31st Street, NW, Suite 200, Washington, DC 20007. Replies to the INRD petition are due on or before August 21, 2003.

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.)

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at: *http://www.stb.dot.gov*.

Decided: July 24, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–19495 Filed 7–31–03; 8:45 am]

BILLING CODE 4915–00–P

[1] In a proceeding filed on July 1, 2003, CSXT seeks an exemption under 49 U.S.C. 10502 from the provisions of 49 U.S.C. 10903 to abandon a 2.95-mile line of railroad in CSXT's Western Region, Great Lakes Division, over which INRD's trackage rights run. In its petition, CSXT describes the line as extending from milepost 00Q–219.55 to milepost 00Q–222.50 in Bloomington, Monroe County, IN. *See CSX Transportation, Inc.—Abandonment Exemption—in Monroe County, IN*, STB Docket No. AB–55 (Sub-No. 634X) (STB served and published on July 21, 2003) (68 FR 43255).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 171X)]

Union Pacific Railroad Company—Abandonment Exemption—in Washington County, IL

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon an 18.10-mile line of railroad, known as the Sparta Branch, extending from milepost 41.1 near Oakdale to the end of the track at milepost 23.0 near Hoyleton, in Washington County, IL. The line traverses United States Postal Service Zip Codes 62263, 63368, and 62803.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment-Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 2, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 11, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 21, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to UP's representative: Mack H. Shumate, Jr., Senior General Attorney, Union Pacific Railroad Company, 101 North Wacker Drive, Room 1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

UP has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by August 8, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by August 1, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: July 24, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–19335 Filed 7–31–03; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 23, 2003.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 2, 2003 to assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0144.
Form Number: IRS Form 2438.
Type of Review: Extension.
Title: Undistributed Capital Gains Tax Return.
Description: Form 2438 is used by regulated investment companies to figure capital gains tax on undistributed capital gains designated under Internal Revenue Code (IRC) section 852(b)3(D). IRS uses this information to determine the correct tax.
Respondents: Business of other for-profit.
Estimated Number of Respondents/Recordkeepers: 100.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—7 hr., 39 min.
Learning about the law or the form—24 min.
Preparing and sending the form to the IRS—32 min.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 859 hours.
OMB Number: 1545–0940.
Regulation Project Number: LR–185–84 Final.
Type of Review: Extension.
Title: Election of $10 Million Limitation on Exempt Small Issues of industrial Development Bonds; Supplemental Capital Expenditure Statements.
Description: The regulation liberalizes the procedure by which the state or local government issuer of an exempt small issue to tax-exempt bonds elects the $10 million limitation upon the size of such issue and deletes the requirement to file certain supplemental capital expenditure statements.
Respondents: State, Local or Tribal Government.
Estimated Number of Recordkeepers: 10,000.
Estimated Burden Hours Per Recordkeeper: 6 minutes.
Estimated Total Recordkeeping Burden: 1,000 hours.
OMB Number: 1545–1069.
Regulation Project Number: EE–175–86 Final and REG–108639–99 NPRM.
Type of Review: Extension.
Title: EE–175–86 Final: Certain Cash or Deferred Arrangements and Employee and Matching Contributions Under Employee Plans; REG–108639–99 NPRM: Retirement Plans; Cash or Deferred Arrangements Under section 401(k) and Matching Contributions or Employee Contributions or Employee Contributions Under section 401(m).
Description: The IRS needs this information to insure compliance sections 401(k), 401(m), and 4979 of the Internal Revenue Code. Certain additional taxes may be imposed if sections 401(k) and 401(m) are not complied with.
Respondents: Business or other for-profit, Not-for-profit institutions, Farms, State, Local or Tribal Government.
Estimated Number of Respondents/Recordkeepers: 355,500.
Estimated Burden Hours Per Respondent/Recordkeeper: 3 hours.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 1,060,000 hours.
Clearance Officer: Glenn Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–19604 Filed 7–31–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 03–13]

Strategic Plan

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC) hereby gives notice that a draft of its Fiscal Year 2003–2008 Strategic Plan is available at *http://www.occ.treas.gov/spln2003.pdf*. Certain high level aspects of this strategic plan have been summarized in the draft strategic plan of the Department of Treasury, in compliance with the Government Performance and Results Act. Copies of the OCC draft strategic plan have also been submitted to committees of Congress for consultation purposes. This OCC draft strategic plan will help guide the operations of OCC, and may be revised through the annual performance plans sent to Congress.

DATES: Comments must be received on or before August 15, 2003.

ADDRESSES: Written comments should be sent to the Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, 250 E Street, SW., Attention: Docket 03–13, Washington, DC 20219. Due to delays in paper mail delivery in the Washington area, commenters are encouraged to submit comments by fax or e-mail when possible. Comments may be sent by fax to (202) 874–4448, or by e-mail to *regs.comments@occ.treas.gov*. Comments may be inspected and photocopied at the OCC's Public Information Room. You may make an appointment to inspect comments by calling (202) 874–5043.

FOR FURTHER INFORMATION CONTACT: Susan Chew, Financial Management

Division, Office of the Comptroller of the Currency, (202) 874–4765.

Dated: July 11, 2003.

Paul R. Gentille,

Deputy Chief Financial Officer, Office of the Comptroller of the Currency.

[FR Doc. 03–18768 Filed 7–31–03; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Discontinuance of Magnetic Tape Processing for Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return and Form 941, Employer's Quarterly Federal Tax Return (FICA) for All Users

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This announcement serves as notice that the Internal Revenue Service plans to discontinue processing of Magnetic Tape for Form 940/941 at all sites for the 2004 filing season, with a final date of February 2004. This announcement is in line with our agreement to keep businesses informed as we continue to move toward modernized technology.

ADDRESSES: Questions or concerns should be directed to Lillie H. Price, Senior Program Analyst, IRS, Small Business/Self-Employed Division, SE:CAS:S:SP:PBR, 5000 Ellin Road, Room C–4 258, Lanham, MD 20706.

FOR FURTHER INFORMATION CONTACT: Questions or concerns will also be taken over the telephone. Call Lillie Price-202–283–0563 (not a toll-free number). You may e-mail responses entitled 940/941 Discontinuance Of Magnetic Tape Processing to *Lillie.H.Price@irs.gov*.

SUPPLEMENTARY INFORMATION: This information pertains to current magnetic tape filers, who are transmitting business returns to the Andover and Fresno Submission Processing Centers.

Dated: July 23, 2003.

Peter J. Stipek,

Deputy Director Submission Processing, Customer Account Services, Small Business/Self-Employed.

[FR Doc. 03–19643 Filed 7–31–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 68, No. 148

Friday, August 1, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

RAILROAD RETIREMENT BOARD

20 CFR Parts 218 and 225

RIN 3220–AB54

Retirement Age

Correction

In rule document 03–16532 beginning on page 39009 in the issue of Tuesday, July 1, 2003 make the following corrections:

1. On page 39010, in the first column, in the second paragraph, in the last line, ""retirement age"' should read, ""retirement age"".

§§ 218.9, 218.12, 218.13, 218.16, 218.17, 218.36, 218.40, 218.43, and 218.44 [Corrected]

2. On the same page, in the second column, in §§ 218.9, 218.12, 218.13, 218.16, 218.17, 218.36, 218.40, 218.43, and 218.44, in amendatory instruction 2, in the last two lines, ""full retirement age"' should read, "full retirement age".".

§ 225.34 [Corrected]

3. On the same page, in the third column, in § 225.34, in amendatory instruction a., in the third line, ""full retirement age"' should read, ""full retirement age"".

§ 225.34 [Corrected]

4. On the same page, in the same column, in § 225.34, in the table, in the second column, the column heading "Delayed retirement (%) credit" should read, "Delayed retirement credit percent".

5. On page 39011, in the first column, in the same section, in the table, in the second column, the column heading "Delayed retirement credit (%)" should read, "Delayed retirement credit percent".

[FR Doc. C3–16532 Filed 7–31–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
August 1, 2003

Part II

Department of Housing and Urban Development

Federal Property Suitable as Facilities To Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–31]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Shirley Kramer, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Army:* Ms. Julie Jones-Conte, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, Attn: DAIM–MD, Room 1E677, 600 Army Pentagon, Washington, DC 20310–600; (703) 692–9223; (These are not toll-free numbers).

Dated: July 24, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report for 8/1/03

Suitable/Available Properties

Buildings (by State)

Alabama

Bldg. 02915
Fort Rucker
Ft. Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 21200310050
Status: Excess
Comment: 1224 sq. ft., most recent use—bath house, off-site use only

Alaska

Bldgs. 09100, 09104–09106
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020158
Status: Unutilized
Comment: various sq. ft., concrete, most recent use—hazard bldg., off-site use only

5 Bldgs.
Fort Richardson 09108, 09110–09112, 09114
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020159
Status: Unutilized
Comment: various sq. ft., concrete, most recent use—hazard bldg., off-site use only

Bldgs. 09128, 09129
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020160
Status: Unutilized
Comment: various sq. ft., concrete, most recent use—hazard bldg., off-site use only

Bldgs. 09151, 09155, 09156
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020161
Status: Unutilized
Comment: various sq. ft., concrete, most recent use—hazard bldg., off-site use only

Bldg. 09158
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020162
Status: Unutilized
Comment: 672 sq. ft., most recent use—storage shed, off-site use only

Bldgs. 09160–09162
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020163
Status: Unutilized
Comment: 11520 sq. ft., concrete, most recent use—NCO–ENL FH, off-site use only

Bldgs. 09164, 09165
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020164
Status: Unutilized
Comment: 2304 & 2880 sq. ft., most recent use—storage, off-site use only

Bldg. 10100
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200020165
Status: Unutilized
Comment: 4688 sq. ft., concrete, most recent use—hazard bldg., off-site use only

Bldg. 00390
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030067
Status: Excess
Comment: 13,632 sq. ft., off-site use only

Bldgs. 01200, 01202
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030068
Status: Excess
Comment: 4508 & 6366 sq. ft., most recent use—hazard bldg., off-site use only

Bldg. 01204
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030069
Status: Excess
Comment: 5578 sq. ft., most recent use—VOQ transient, off-site use only

Bldgs. 01205–01207
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030070
Status: Excess
Comment: various sq. ft., most recent use—hazard bldg., off-site use only

Bldgs. 01208, 01210, 01212
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030071
Status: Excess
Comment: various sq ft., most recent use—hazard bldg., off-site use only

Bldgs. 01213, 01214
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030072
Status: Excess
Comment: 11964 & 13740 sq. ft., most recent use—transient UPH, off-site use only

Bldgs. 01218, 01230
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030073
Status: Excess
Comment: 480 & 188 sq. ft., most recent use—hazard bldgs., off-site use only

Bldgs. 01231, 01232
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030074
Status: Excess
Comment: 458 & 4260 sq. ft., most recent use—hazard bldgs., off-site use only

Bldg. 01234
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030075
Status: Excess
Comment: 615 sq. ft., most recent use—admin., off-site use only

Bldg. 01237
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200630076
Status: Excess
Comment: 408 sq. ft., most recent use—fuel/pol bldg., off-site use only

Bldg. 01272
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030077
Status: Excess
Comment: 308 sq. ft., most recent use—storage, off-site use only

Bldg. 08109
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030080
Status: Excess
Comment: 1920 sq. ft., most recent use—storage, off-site use only

Bldg. 21001
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030081
Status: Excess
Comment: 3200 sq. ft., most recent use—family housing, off-site use only

Bldg. 22001
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030082
Status: Excess
Comment: 1448 sq. ft., most recent use—family housing, off-site use only

Bldg. 22002
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21200030083
Status: Excess
Comment: 1508 sq. ft., most recent use—family housing, off-site use only

Armory
NG Noorvik
Noorvik Co: AK 99763–
Landholding Agency: Army
Property Number: 21200110075
Status: Unutilized
Comment: 1200 sq. ft., most recent use—armory, off-site use only

Bldg. 00229
Fort Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200120085
Status: Excess
Comment: 13,056 sq. ft., off-site use only

Arizona

Bldg. 30012, Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 21199310298
Status: Excess
Comment: 237 sq. ft., 1-story block, most recent use—storage

Bldg. S–306
Yuma Proving Ground
Yuma Co: Yuma/La Paz AZ 85365–9104
Landholding Agency: Army
Property Number: 21199420346
Status: Unutilized
Comment: 4103 sq. ft., 2-story, needs major rehab, off-site use only

Bldg. 503, Yuma Proving Ground
Yuma Co: Yuma AZ 85365–9104
Landholding Agency: Army
Property Number: 21199520073
Status: Underutilized
Comment: 3789 sq. ft., 2-story, major structural changes required to meet floor loading & fire code requirements, presence of asbestos, off-site use only

2 Bldgs.
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Location: 15542, 15546
Landholding Agency: Army
Property Number: 21200010082
Status: Unutilized
Comment: 552 & 400 sq. ft., presence of asbestos/lead paint, most recent use—restrooms, off-site use only

2 Bldgs.
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Location: 15544, 15552
Landholding Agency: Army
Property Number: 21200010083
Status: Unutilized
Comment: 9713 & 2895 sq. ft., presence of asbestos/lead paint, most recent use—classrooms, off-site use only

Bldg. 15543
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 21200010084
Status: Unutilized
Comment: 416 sq. ft., presence of asbestos/lead paint, most recent use—rec. shelter, off-site use only

California

Bldgs. 204–207, 517
Presidio of Monterey
Monterey Co: CA 93944–5006
Landholding Agency: Army
Property Number: 21200020167
Status: Unutilized
Comment: 4780 & 10950 sq. ft., presence of asbestos/lead paint, most recent use—classroom/admin/storage, off-site use only

Bldgs. 18026, 18028
Camp Roberts
Monterey Co: CA 93451–5000
Landholding Agency: Army
Property Number: 21200130081
Status: Excess
Comment: 2024 sq. ft. & 487 sq. ft., concrete, poor condition, off-site use only

Colorado
Bldg. F–107
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130082
Status: Unutilized
Comment: 10,126 sq. ft., poor condition, possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–108
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130083
Status: Unutilized
Comment: 9000 sq. ft., poor condition, possible asbestos/lead paint, most recent use—storage, off-site use only
Bldg. T–209
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130084
Status: Unutilized
Comment: 400 sq. ft., poor condition, possible asbestos/lead paint, most recent use—maint. shop, off-site use only
Bldg. T–217
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130085
Status: Unutilized
Comment: 9000 sq. ft., poor condition, possible asbestos/lead paint, most recent use—maint., off-site use only
Bldg. T–218
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130086
Status: Unutilized
Comment: 9000 sq. ft., poor condition, possible asbestos/lead paint, most recent use—maint., off-site use only
Bldg. T–220
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130087
Status: Unutilized
Comment: 690 sq. ft., poor condition, possible asbestos/lead paint, most recent use—heat plant, off-site use only
Bldg. T–6001
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200130088
Status: Unutilized
Comment: 4372 sq. ft., poor condition, possible asbestos/lead paint, most recent use—vet clinic, off-site use only
Bldg. S6263
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200310051
Status: Unutilized
Comment: 24,902 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—offices, off-site use only
Bldg. S6265
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200310052
Status: Unutilized
Comment: 19,499 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—child development center, off-site use only
Bldg. S6266
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200310053
Status: Unutilized
Comment: 27,286 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office, off-site use only
Bldg. S6267
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200310054
Status: Unutilized
Comment: 20,075 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—child development center, off-site use only
Bldg. S6286
Fort Carson
Ft. Carson Co: El Paso CO 80913–
Landholding Agency: Army
Property Number: 21200310055
Status: Unutilized
Comment: 13,128 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—armory, off-site use only
Georgia
Bldg. 2285
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199011704
Status: Unutilized
Comment: 4574 sq. ft.; most recent use—clinic; needs substantial rehabilitation; 1 floor.
Bldg. 1252, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220694
Status: Unutilized
Comment: 583 sq. ft., 1 story, most recent use—storehouse, needs major rehab, off-site removal only
Bldg. 4881, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220707
Status: Unutilized
Comment: 2449 sq. ft., 1 story, most recent use—storehouse, need repairs, off-site removal only
Bldg. 4963, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220710
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storehouse, need repairs, off-site removal only
Bldg. 2396, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220712
Status: Unutilized
Comment: 9786 sq. ft., 1 story, most recent use—dining facility, needs major rehab, off-site removal only
Bldg. 4882, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220727
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storage, need repairs, off-site removal only
Bldg. 4967, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220728
Status: Unutilized
Comment: 6077 sq. ft., 1 story, most recent use—storage, need repairs, off-site removal only
Bldg. 4977, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220736
Status: Unutilized
Comment: 192 sq. ft., 1 story, most recent use—offices, need repairs, off-site removal only
Bldg. 4944, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220747
Status: Unutilized
Comment: 6400 sq. ft., 1 story, most recent use—vehicle maintenance shop, need repairs, off-site removal only
Bldg. 4960, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220752
Status: Unutilized
Comment: 3335 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only
Bldg. 4969, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220753
Status: Unutilized
Comment: 8416 sq. ft., 1 story, most recent use—vehicle maintenance shop, off-site removal only
Bldg. 4884, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220762
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only
Bldg. 4964, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220763
Status: Unutilized
Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only
Bldg. 4966, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220764
Status: Unutilized

Comment: 2000 sq. ft., 1 story, most recent use—headquarters bldg., need repairs, off-site removal only
Bldg. 4965, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220769
Status: Unutilized
Comment: 7713 sq. ft., 1 story, most recent use—supply bldg., need repairs, off-site removal only
Bldg. 4945, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220779
Status: Unutilized
Comment: 220 sq. ft., 1 story, most recent use—gas station, needs major rehab, off-site removal only
Bldg. 4979, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199220780
Status: Unutilized
Comment: 400 sq. ft., 1 story, most recent use—oil house, need repairs, off-site removal only
Bldg. 4023, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199310461
Status: Unutilized
Comment: 2269 sq. ft., 1–story, needs rehab, most recent use—maintenance shop, off-site use only
Bldg. 4024, Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199310462
Status: Unutilized
Comment: 3281 sq. ft., 1–story, needs rehab, most recent use—maintenance shop, off-site use only
Bldg. 11813
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199410269
Status: Unutilized
Comment: 70 sq. ft.; 1 story; metal; needs rehab.; most recent use—storage; off-site use only
Bldg. 21314
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199410270
Status: Unutilized
Comment: 85 sq. ft.; 1 story; needs rehab.; most recent use—storage; off-site use only
Bldg. 12809
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199410272
Status: Unutilized
Comment: 2788 sq. ft.: 1 story; wood; needs rehab.; most recent use—maintenance shop; off-site use only
Bldg. 10306
Fort Gordon
Fort Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199410273
Status: Unutilized
Comment: 195 sq. ft.; 1 story; wood; most recent use—oil storage shed; off-site use only
Bldg 4051
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199520175
Status: Unutilized
Comment: 967 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only
Bldg. 322
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720156
Status: Unutilized
Comment: 9600 sq. ft., needs rehab, most recent use—admin., off-site use only
Bldg. 1737
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720161
Status: Unutilized
Comment: 1500 sq. ft., needs rehab, most recent use—storage, off-site use only
Bldg. 2593
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720167
Status: Unutilized
Comment: 13644 sq. ft., needs rehab, most recent use—parachute shop, off-site use only
Bldg. 2595
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720168
Status: Unutilized
Comment: 3356 sq. ft., needs rehab, most recent use—chapel, off-site use only
Bldg. 4476
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720184
Status: Unutilized
Comment: 3148 sq. ft., needs rehab, most recent use—vehicle maint. shop, off-site use only
8 Bldgs.
Fort Benning
4700–4701, 4704–4707, 4710–4711
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720189
Status: Unutilized
Comment: 6433 sq. ft. each, needs rehab, most recent use—unaccompanied personnel housing, off-site use only
Bldg. 4714
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720191
Status: Unutilized
Comment: 1983 sq. ft., needs rehab, most recent use—battalion headquarters bldg., off-site use only
Bldg. 4702
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720192
Status: Unutilized
Comment: 3690 sq. ft., needs rehab, most recent use—dining facility off-site use only
Bldgs. 4712–4713
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199720193
Status: Unutilized
Comment: 1983 sq. ft. and 10270 sq. ft., needs rehab, most recent use—company headquarters bldg., off-site use only
Bldg. 305
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810268
Status: Unutilized
Comment: 4083 sq. ft., most recent use—recreation center, off-site use only
Bldg. 318
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810269
Status: Unutilized
Comment: 374 sq. ft., poor condition, most recent use—maint. shop, off-site use only
Bldg. 1792
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810274
Status: Unutilized
Comment: 10,200 sq. ft., most recent use—storage, off-site use only
Bldg. 1836
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810276
Status: Unutilized
Comment: 2998 sq. ft., most recent use—admin., off-site use only
Bldg. 4373
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810286
Status: Unutilized
Comment: 409 sq. ft., poor condition, most recent use—station bldg. off-site use only
Bldg. 4628
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199810287
Status: Unutilized
Comment: 5483 sq. ft., most recent use—admin., off-site use only
Bldg. 92
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199830278
Status: Unutilized
Comment: 637 sq. ft., needs rehab, most recent use—admin., off-site use only
Bldg. 2445
Fort Benning

Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199830279
Status: Unutilized
Comment: 2385 sq. ft., needs rehab, most recent use—fire station, off-site use only

Bldg. 4232
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199830291
Status: Unutilized
Comment: 3720 sq. ft., needs rehab, most recent use—maint. bay, off-site use only

Bldg. 39720
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199930119
Status: Unutilized
Comment: 1520 sq. ft., concrete block, possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. 492
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930120
Status: Unutilized
Comment: 720 sq. ft., most recent use—admin./maint., off-site use only

Bldg. 880
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930121
Status: Unutilized
Comment: 57,110 sq. ft., most recent use—instruction, off-site use only

Bldg. 1370
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930122
Status: Unutilized
Comment: 5204 sq. ft., most recent use—hdqts. bldg., off-site use only

Bldg. 2288
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930123
Status: Unutilized
Comment: 2481 sq. ft., most recent use—admin., off-site use only

Bldg. 2290
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930124
Status: Unutilized
Comment: 455 sq. ft., most recent use—storage, off-site use only

Bldg. 2293
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930125
Status: Unutilized
Comment: 2600 sq. ft., most recent use—hdqts. bldg., off-site use only

Bldg. 2297
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930126
Status: Unutilized
Comment: 5156 sq. ft., most recent use—admin.

Bldg. 2505
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930127
Status: Unutilized
Comment: 10,257 sq. ft., most recent use—repair shop, off-site use only

Bldg. 2508
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930128
Status: Unutilized
Comment: 2434 sq. ft., most recent use—storage, off-site use only

Bldg. 2815
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930129
Status: Unutilized
Comment: 2578 sq. ft., most recent use—hdqts. bldg., off-site use only

Bldg. 3815
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930130
Status: Unutilized
Comment: 7575 sq. ft., most recent use—storage, off-site use only

Bldg. 3816
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930131
Status: Unutilized
Comment: 7514 sq. ft., most recent use—storage, off-site use only

Bldg. 5886
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930134
Status: Unutilized
Comment: 67 sq. ft., most recent use—maint/storage, off-site use only

Bldgs. 5974–5978
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930135
Status: Unutilized
Comment: 400 sq. ft., most recent use—storage, off-site use only

Bldg. 5993
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930136
Status: Unutilized
Comment: 960 sq. ft., most recent use—storage, off-site use only

Bldg. 5994
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930137
Status: Unutilized
Comment: 2016 sq. ft., most recent use—storage, off-site use only

Bldg. T–1003
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030085
Status: Excess
Comment: 9267 sq. ft., poor condition, most recent use—admin., off-site use only

Bldgs. T–1005, T–1006, T–1007
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030086
Status: Excess
Comment: 9267 sq. ft., poor condition, most recent use—storage, off-site use only

Bldgs. T–1015, T–1016, T–1017
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030087
Status: Excess
Comment: 7496 sq ft., poor condition, most recent use—storage, off-site use only

Bldgs. T–1018, T–1019
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030088
Status: Excess
Comment: 9267 sq. ft., poor condition, most recent use—storage, off-site use only

Bldgs. T–1020, T–1021
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030089
Status: Excess
Comment: 9267 sq. ft., poor condition, most recent use—storage, off-site use only

Bldg. T–1022
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030090
Status: Excess
Comment: 9267 sq. ft., poor condition, most recent use—supply center, off-site use only

Bldg. T–1027
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030091
Status: Excess
Comment: 9024 sq ft., poor condition, most recent use—storage, off-site use only

Bldg. T–1028
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030092
Status: Excess
Comment: 7496 sq. ft., poor condition, most recent use—storage, off-site use only

Bldgs. T–1035, T–1036, T–1037
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030093
Status: Excess
Comment: 1626 sq ft., poor condition, most recent use—storage, off-site use only

Bldgs. T–1038, T–1039
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030094
Status: Excess
Comment: 1626 sq. ft., poor condition, most recent use—storage, off-site use only

Bldgs. T–1040, T–1042
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030095
Status: Excess
Comment: 1626 sq. ft., poor condition, most recent use—storage, off-site use only

Bldgs. T–1086, T–1087, T–1088
Fort Stewart
Hinesville Co: Liberty GA 31514–
Landholding Agency: Army
Property Number: 21200030096
Status: Excess
Comment: 7680 sq. ft., poor condition, most recent use—storage, off-site use only

Bldg. 223
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21200040044
Status: Unutilized
Comment: 21,556 sq. ft., most recent use—gen. purpose

Bldg. 228
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21200040045
Status: Unutilized
Comment: 20,220 sq. ft., most recent use—gen. purpose

Bldg. 2051
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21200040046
Status: Unutilized
Comment: 6077 sq. ft., most recent use—storage

Bldg. 2053
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21200040047
Status: Unutilized
Comment: 14,520 sq. ft., most recent use—storage

Bldg. 2677
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21200040048
Status: Unutilized
Comment: 19,326 sq. ft., most recent use—maint. shop

Bldg. 02301
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21200140075
Status: Unutilized
Comment: 8484 sq. ft., needs major rehab, potential asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T0130
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230041
Status: Excess
Comment: 10,813 sq. ft., off-site use only

Bldg. T0157
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230042
Status: Excess
Comment: 1440 sq. ft., off-site use only

Bldg. T0251
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230043
Status: Excess
Comment: 27,254 sq. ft., off-site use only

Bldgs. T291, T292
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230044
Status: Excess
Comment: 5220 sq. ft. each, off-site use only

Bldg. T0295
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230045
Status: Excess
Comment: 5220 sq. ft., off-site use only

Bldg. T0470
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230046
Status: Excess
Comment: 27,254 sq. ft., off-site use only

Bldg. T1191
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230047
Status: Excess
Comment: 9386 sq. ft., off-site use only

Bldg. T1192
Fort Stewart
Hinesville Co: Liberty GA 31314–5136
Landholding Agency: Army
Property Number: 21200230048
Status: Excess
Comment: 3992 sq. ft., off-site use only

Hawaii

P–88
Aliamanu Military Reservation
Honolulu Co: Honolulu HI 96818–
Location: Approximately 600 feet from Main Gate on Aliamanu Drive.
Landholding Agency: Army
Property Number: 21199030324
Status: Unutilized
Comment: 45,216 sq. ft. underground tunnel complex, pres. of asbestos clean-up required of contamination, use of respirator required by those entering property, use limitations

Bldg. T–337
Fort Shafter
Honolulu Co: Honolulu HI 96819–
Landholding Agency: Army
Property Number: 21199640203
Status: Unutilized
Comment: 132 sq. ft., most recent use—storage, off-site use only

Bldg. 06508
Schofield Barracks
Wahiawa Co: HI 96786–
Landholding Agency: Army
Property Number: 21200220106
Status: Unutilized
Comment: 1140 sq. ft., most recent use—office, off-site use only

Illinois

Bldg. 54
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299–
Landholding Agency: Army
Property Number: 21199620666
Status: Unutilized
Comment: 2000 sq. ft., most recent use—oil storage, needs repair, off-site use only

Bldg. AR112
Sheridan Reserve
Arlington Heights Co: IL 60052–2475
Landholding Agency: Army
Property Number: 21200110081
Status: Unutilized
Comment: 1000 sq. ft., off-site use only

Kansas

Bldg. 00498
Fort Leavenworth
Ft. Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21200230050
Status: Unutilized
Comment: 208 sq. ft., most recent use—shed, off-site use only

Louisiana

Bldg. 8423, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21199640528
Status: Underutilized
Comment: 4172 sq. ft., most recent use—barracks

Maryland

Bldg. 2837
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200120101
Status: Unutilized
Comment: 7670 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 00313
Aberdeen Proving Ground
Aberdeen Co: Harford MD 22005–5001
Landholding Agency: Army
Property Number: 21200120104
Status: Unutilized
Comment: 983 sq. ft., most recent use—storage, off-site use only

Bldg. 00340
Bldg. 00340
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120105
Status: Unutilized
Comment: 384 sq. ft., most recent use—storage, off-site use only

Bldg. 0459B
Aberdeen Proving Ground

Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120106
Status: Unutilized
Comment: 225 sq. ft., poor condition, most recent use—equipment bldg., off-site use only

Bldg. 00785
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120107
Status: Unutilized
Comment: 160 sq. ft., poor condition, most recent use—shelter, off-site use only

Bldg. E3728
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120109
Status: Unutilized
Comment: 2596 sq. ft., presence of asbestos/lead paint, most recent use—testing facility, off-site use only

Bldg. 05213
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120112
Status: Unutilized
Comment: 200 sq. ft., poor condition, most recent use—storage, off-site use only

Bldg. E5239
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120113
Status: Unutilized
Comment: 230 sq. ft., most recent use—storage, off-site use only

Bldg. E5317
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120114
Status: Unutilized
Comment: 3158 sq. ft., presence of asbestos/lead paint, most recent use—lab, off-site use only

Bldg. E5637
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200120115
Status: Unutilized
Comment: 312 sq. ft., presence of asbestos/lead paint, most recent use—lab, off-site use only

Bldg. 503
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200130092
Status: Unutilized
Comment: 14,244 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—training, off-site use only

Bldg. 8481
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200130098
Status: Unutilized
Comment: 7718 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—heat plant, off-site use only

Bldg. 219
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200140078
Status: Unutilized
Comment: 8142 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 229
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200140079
Status: Unutilized
Comment: 2250 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 287
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200140080
Status: Unutilized
Comment: 2892 sq. ft., presence of asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. 294
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200140081
Status: Unutilized
Comment: 3148 sq. ft., presence of asbestos/lead paint, most recent use—entomology facility, off-site use only

Bldg. 949
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200140083
Status: Unutilized
Comment: 2441 sq. ft., presence of asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. 979
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200140084
Status: Unutilized
Comment: 2331 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 1007
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200140085
Status: Unutilized
Comment: 3108 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 00546
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200220109
Status: Unutilized
Comment: 5659 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 00939
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200220110
Status: Unutilized
Comment: 8185 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 02207
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200220112
Status: Unutilized
Comment: 6855 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 02271
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200220114
Status: Unutilized
Comment: 10,080 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 04675
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200220115
Status: Unutilized
Comment: 1710 sq. ft., possible asbestos/lead paint, most recent use—rental store, off-site use only

Bldg. 2050A
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200230051
Status: Unutilized
Comment: 200 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 2214
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200230054
Status: Unutilized
Comment: 7740 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 2217
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200230055
Status: Unutilized
Comment: 7710 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—admin/warehouse, off-site use only

Bldg. 2253
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200230056
Status: Unutilized
Comment: 18,912 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only

Bldg. 2275
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–

Landholding Agency: Army
Property Number: 21200230057
Status: Unutilized
Comment: 10,080 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. 2276
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200230058
Status: Unutilized
Comment: 10,080 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. 2273
Ft. George G. Meade
Ft. Meade Co: MD 20755–5115
Landholding Agency: Army
Property Number: 21200320105
Status: Unutilized
Comment: 54 sq. ft., most recent use—storage, off-site use only

Bldg. 2456
Ft. George G. Meade
Ft. Meade Co: MD 20755–5115
Landholding Agency: Army
Property Number: 21200320106
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—clinic, off-site use only

Bldg. 00375
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320107
Status: Unutilized
Comment: 64 sq. ft., most recent use—storage, off-site use only

Bldg. 0384A
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320108
Status: Unutilized
Comment: 130 sq. ft., most recent use—ordnance facility, off-site use only

Bldg. 00385
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320109
Status: Unutilized
Comment: 5517 sq. ft., most recent use—storage, off-site use only

Bldg. 0385A
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320110
Status: Unutilized
Comment: 944 sq. ft., off-site use only

Bldg. 00442
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320111
Status: Unutilized
Comment: 900 sq. ft., most recent use—storage, off-site use only

Bldg. 00443
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320112
Status: Unutilized
Comment: 1488 sq. ft., off-site use only

Bldg. 00523
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320113
Status: Unutilized
Comment: 3897 sq. ft., most recent use—paint shop, off-site use only

Bldg. 00524
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320114
Status: Unutilized
Comment: 240 sq. ft., most recent use—storage, off-site use only

Bldg. 0645A
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320115
Status: Unutilized
Comment: 64 sq. ft., most recent use—storage, off-site use only

Bldg. 00649
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320116
Status: Unutilized
Comment: 1079 sq. ft., most recent use—storage, off-site use only

Bldg. 00650
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320117
Status: Unutilized
Comment: 4215 sq. ft., most recent use—storage, off-site use only

Bldgs. 00654, 00655
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320118
Status: Unutilized
Comment: 1110 sq. ft., off-site use only

Bldg. 00657
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320119
Status: Unutilized
Comment: 1048 sq. ft., most recent use—bunker, off-site use only

Bldgs. 00679, 00705
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320120
Status: Unutilized
Comment: 119/100 sq. ft., most recent use—safety shelter, off-site use only

Bldg. 0700B
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320121
Status: Unutilized
Comment: 505 sq. ft., off-site use only

Bldg. 00741
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320122
Status: Unutilized
Comment: 894 sq. ft., most recent use—storage, off-site use only

Bldg. 00768
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320123
Status: Unutilized
Comment: 97 sq. ft., most recent use—observation bldg., off-site use only

Bldg. 00786
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320124
Status: Unutilized
Comment: 1600 sq. ft., most recent use—ordnance bldg., off-site use only

Bldgs. 00900, 00911
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320125
Status: Unutilized
Comment: 225/112 sq. ft., most recent use—safety shelter, off-site use only

Bldg. 01101
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320126
Status: Unutilized
Comment: 6435 sq. ft., most recent use—storage, off-site use only

Bldg. 1102A
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320127
Status: Unutilized
Comment: 1416 sq. ft., most recent use—storage, off-site use only

Bldg. 01113
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320128
Status: Unutilized
Comment: 1012 sq. ft., off-site use only

Bldgs. 01124, 01132
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320129
Status: Unutilized
Comment: 740/2448 sq. ft., most recent use—lab, off-site use only

Bldgs. 02373, 02378
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320130
Status: Unutilized
Comment: 8359 sq. ft., most recent use—training, off-site use only

Bldg. 03328
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–

Landholding Agency: Army
Property Number: 21200320131
Status: Unutilized
Comment: 1628 sq. ft., most recent use—exchange, off-site use only

Bldg. 03512
Aberdeen Proving Grounds
Aberdeen Co: Harford MD
Landholding Agency: Army
Property Number: 21200320132
Status: Unutilized
Comment: 10,944 sq. ft., most recent use—storage, off-site use only

Bldg. 03558
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320133
Status: Unutilized
Comment: 18,000 sq. ft., most recent use—storage, off-site use only

Bldgs. 05258, 05260
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320135
Status: Unutilized
Comment: 10067 sq. ft., most recent use—storage, off-site use only

Bldg. 05262
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320136
Status: Unutilized
Comment: 864 sq. ft., most recent use—storage, off-site use only

Bldg. 05608
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320137
Status: Unutilized
Comment: 1100 sq. ft., most recent use—maint bldg., off-site use only

Bldg. E1387
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320138
Status: Unutilized
Comment: 433 sq. ft., most recent use—woodworking shop, off-site use only

Bldg. E1415
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320139
Status: Unutilized
Comment: 730 sq. ft., most recent use—lab, off-site use only

Bldg. E1416
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320140
Status: Unutilized
Comment: 120 sq. ft., most recent use—safety shelter, off-site use only

Bldgs. E1420, E1429
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320141
Status: Unutilized
Comment: 220/150 sq. ft., most recent use—test range/storage, off-site use only

6 Bldgs.
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Location: E1432, E1444, E1446, E1447, E1449, E1453
Landholding Agency: Army
Property Number: 21200320142
Status: Unutilized
Comment: various sq. ft., most recent use—range shelter, off-site use only

Bldgs. E1481, E1482
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320143
Status: Unutilized
Comment: 100 sq. ft., most recent use—observation bldg., off-site use only

Bldg. E1484
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320144
Status: Unutilized
Comment: 256 sq. ft., most recent use—admin., off-site use only

Bldgs. E2363, E2610
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320145
Status: Unutilized
Comment: 138/133 sq. ft., most recent use—storage, off-site use only

Bldgs. E3328, E3540, E4261
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320146
Status: Unutilized
Comment: various sq. ft., most recent use—test facilities, off-site use only

Bldg. E5108
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320147
Status: Unutilized
Comment: 5155 sq. ft., most recent use—recreation center, off-site use only

Bldg. E5483
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320148
Status: Unutilized
Comment: 2140 sq. ft., most recent use—vehicle storage, off-site use only

Bldg. E5602
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320149
Status: Unutilized
Comment: 238 sq. ft., most recent use—storage, off-site use only

Bldg. E5645
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320150
Status: Unutilized
Comment: 548 sq. ft., most recent use—storage, off-site use only

Bldg. E7228
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320151
Status: Unutilized
Comment: 441 sq. ft., off-site use only

Missouri
Bldg. T2171
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199340212
Status: Unutilized
Comment: 1296 sq. ft., 1-story wood frame, most recent use—administrative, no handicap fixtures, lead base paint, off-site use only

Bldg. T1497
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199420441
Status: Underutilized
Comment: 4720 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T2139
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199420446
Status: Underutilized
Comment: 3663 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T–2191
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199440334
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks

Bldg. T–2197
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199440335
Status: Excess
Comment: 4720 sq. ft., 2 story wood frame, off-site removal only, to be vacated 8/95, lead based paint, most recent use—barracks

Bldg. T2385
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Landholding Agency: Army
Property Number: 21199510115
Status: Excess
Comment: 3158 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only

Bldg. 1650
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810311
Status: Unutilized
Comment: 1676 sq. ft., presence of asbestos/lead paint, most recent use—union hall, off-site use only

Bldg. 2170
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199810313
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 2167
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820179
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldgs. 2169, 2181, 2182, 2183
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820180
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. 2186
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820181
Status: Unutilized
Comment: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 2187
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820182
Status: Unutilized
Comment: 2892 sq. ft., presence of asbestos/lead paint, most recent use—dayroom, off-site use only

Bldgs. 2192, 2196, 2198
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 21199820183
Status: Unutilized
Comment: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

Montana

Bldg. 00405
Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636
Landholding Agency: Army
Property Number: 21200130099
Status: Unutilized
Comment: 3467 sq. ft., most recent use—storage, security limitations

Bldg. T0066
Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636
Landholding Agency: Army
Property Number: 21200130100
Status: Unutilized
Comment: 528 sq. ft., needs rehab, presence of asbestos, security limitations

New Jersey

Bldg. 178
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740312
Status: Unutilized
Comment: 2067 sq. ft., most recent use—research, off-site use only

Bldg. 732
Armament R&D Engineering Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199740315
Status: Unutilized
Comment: 9077 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 816C
Armament R, D, & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21200130103
Status: Unutilized
Comment: 144 sq. ft., most recent use—storage, off-site use only

New Mexico

Bldg. 34198
White Sands Missile Range
Dona Ana Co: NM 88002–
Landholding Agency: Army
Property Number: 21200230062
Status: Excess
Comment: 107 sq. ft., most recent use—security, off-site use only

New York

Bldg. T–181
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130129
Status: Unutilized
Comment: 3151 sq. ft., needs rehab, most recent use—housing mnt., off-site use only

Bldg. T–201
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130131
Status: Unutilized
Comment: 2305 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. T–203
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130132
Status: Unutilized
Comment: 2284 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. T–252
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130133
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, most recent use—housing, off-site use only

Bldgs. T–253, T–256, T–257
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130134
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, most recent use—housing, off-site use only

Bldgs. T–271, T–272, T–273
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130135
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, most recent use—housing, off-site use only

Bldg. T–274
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130136
Status: Unutilized
Comment: 2750 sq. ft., needs rehab, most recent use—BN HQ, off-site use only

Bldgs. T–276, T–277, T–278
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130137
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, most recent use—housing, off-site use only

Bldg. T–1030
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130139
Status: Unutilized
Comment: 15606 sq. ft., needs rehab, most recent use—simulator bldg., off-site use only

Bldg. P–2159
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130140
Status: Unutilized
Comment: 1948 sq. ft., needs rehab, most recent use—waste/water treatment, off-site use only

Bldg. T–2443
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200130142
Status: Unutilized
Comment: 793 sq. ft., needs rehab, most recent use—vet facility, off-site use only

Bldgs. T–401, T–403
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210042
Status: Unutilized
Comment: 2305/2284 sq. ft., needs repair, most recent use—battalion hq bldg., off-site use only

Bldgs. T–404, T–406, T–407

Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210043
Status: Unutilized
Comment: 2000/1144 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only

Bldg. T–430
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210044
Status: Unutilized
Comment: 2731 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only

4 Bldgs.
Fort Drum
T–431, T–432, T–433, T–434
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210045
Status: Unutilized
Comment: 1144 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only

Bldg. T–435
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210046
Status: Unutilized
Comment: 2731 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only

Bldgs. T–437, T–438
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210047
Status: Unutilized
Comment: 1144 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only

Bldgs. T–439, T–460
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210048
Status: Unutilized
Comment: 2588/2734 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only

4 Bldgs.
Fort Drum
T–461, T–462, T–463, T–464
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210049
Status: Unutilized
Comment: 1144 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only

Bldg. T–465
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210050
Status: Unutilized
Comment: 2734 sq. ft., needs repair, most recent use—Co Hq Bldg., off-site use only

Bldgs. T–405, T–408
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210051
Status: Unutilized
Comment: 1296 sq. ft., needs repair, most recent use—storage, off-site use only

6 Bldgs.
Fort Drum
T–410, T–411, T–412, T–416, T–417, T–418
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210052
Status: Unutilized
Comment: 4720 sq. ft., needs repair, most recent use—enlisted barracks AN TR, off-site use only

Bldgs. T421, T–422
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210053
Status: Unutilized
Comment: 2510 sq. ft., needs repair, most recent use—enlisted barracks AN TR, off-site use only

Bldgs. T–423, T–424
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210054
Status: Unutilized
Comment: 4720 sq. ft., needs repair, most recent use—enlisted barracks AN TR, off-site use only

7 Bldgs.
Fort Drum
T–441, T–442, T–443, T–444, T–446–T–448
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210055
Status: Unutilized
Comment: 4720 sq. ft., needs repair, most recent use—enlisted barracks AN TR, off-site use only

6 Bldgs.
Fort Drum
T–451, T–452, T–453, T–454, T–456, T–458
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210056
Status: Unutilized
Comment: 4720 sq. ft., needs repair, most recent use—enlisted barracks AN TR, off-site use only

5 Bldgs.
Fort Drum
T–471, T–472, T–473, T–474, T–477
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210057
Status: Unutilized
Comment: 4720 sq. ft., needs repair, most recent use—enlisted barracks AN TR, off-site use only

Bldgs. T–420, T–445, T–470
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210058
Status: Unutilized
Comment: 2510 sq. ft., needs repair, most recent use—dining facility, off-site use only

Bldgs. T–440, T–450
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210059
Status: Unutilized
Comment: 2360 sq. ft., needs repair, most recent use—dining facility, off-site use only

Bldg. T–478
Fort Drum
Ft. Drum Co: Jefferson NY 13602–
Landholding Agency: Army
Property Number: 21200210060
Status: Unutilized
Comment: 4720 sq. ft., needs repair, most recent use—classroom, off-site use only

5 Bldgs.
Orangeburg USARC
#206, 207, 208, 218, 223
Orangeburg Co: Rockland NY 10962–2209
Landholding Agency: Army
Property Number: 21200310061
Status: Unutilized
Comment: various sq. ft., need major repairs, presence of lead paint, most recent use—admin/storage, off-site use only

North Carolina

Bldg. C5536
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–5000
Landholding Agency: Army
Property Number: 21200130150
Status: Unutilized
Comment: 600 sq. ft., single wide trailer w/ metal storage shed, needs major repair, presence of asbestos/lead paint, off-site use only

Oklahoma

Bldg. T–838, Fort Sill
838 Macomb Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199220609
Status: Unutilized
Comment: 151 sq. ft., wood frame, 1 story, off-site removal only, most recent use—vet facility (quarantine stable)

Bldg. T–954, Fort Sill
954 Quinette Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199240659
Status: Unutilized
Comment: 3571 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—motor repair shop

Bldg. T–3325, Fort Sill
3325 Naylor Road
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199240681
Status: Unutilized
Comment: 8832 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—warehouse

Bldg. T1652, Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199330380
Status: Unutilized
Comment: 1505 sq. ft., 1-story wood, possible asbestos, most recent use—storage, off-site use only

Bldg. T–4226
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 21199440384
Status: Unutilized

Comment: 114 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only

Bldg. P–1015, Fort Sill
Lawton Co: Comanche OK 73501–5100
Landholding Agency: Army
Property Number: 21199520197
Status: Unutilized
Comment: 15402 sq. ft., 1-story, most recent use—storage, off-site use only

Bldg. P–366, Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 21199610740
Status: Unutilized
Comment: 482 sq. ft., possible asbestos, most recent use—storage, off-site use only

Building T–2952
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710047
Status: Unutilized
Comment: 4,327 sq. ft., possible asbestos and leadpaint, most recent use—motor repair shop, off-site use only

Building P–5042
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199710066
Status: Unutilized
Comment: 119 sq. ft., possible asbestos and leadpaint, most recent use—heatplant, off-site use only

4 Buildings
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location: T–6465, T–6466, T–6467, T–6468
Landholding Agency: Army
Property Number: 21199710086
Status: Unutilized
Comment: various sq. ft., possible asbestos and leadpaint, most recent use—range support, off site use only

Bldg. T–810
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730350
Status: Unutilized
Comment: 7205 sq. ft., possible asbestos/lead paint, most recent use—hay storage, off-site use only

Bldgs. T–837, T–839
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730351
Status: Unutilized
Comment: approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. P–934
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730353
Status: Unutilized
Comment: 402 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–1177
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730356
Status: Unutilized
Comment: 183 sq. ft., possible asbestos/lead paint, most recent use—snack bar, off-site use only

Bldgs. T–1468, T–1469
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730357
Status: Unutilized
Comment: 114 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–1470
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730358
Status: Unutilized
Comment: 3120 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–1940
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730360
Status: Unutilized
Comment: 1400 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–1954, T–2022
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730362
Status: Unutilized
Comment: approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–2184
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730364
Status: Unutilized
Comment: 454 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–2186, T–2188, T–2189
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730366
Status: Unutilized
Comment: 1656–3583 sq. ft., possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only

Bldg. T–2187
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730367
Status: Unutilized
Comment: 1673 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–2291 thru T–2296
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730372
Status: Unutilized
Comment: 400 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–3001, T–3006
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730383
Status: Unutilized
Comment: approx. 9300 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–3314
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730385
Status: Unutilized
Comment: 229 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldgs. T–4401, T–4402
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730393
Status: Unutilized
Comment: 2260 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. T–5041
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730409
Status: Unutilized
Comment: 763 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–5420
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730414
Status: Unutilized
Comment: 189 sq. ft., possible asbestos/lead paint, most recent use—fuel storage, off-site use only

Bldg. T–7775
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199730419
Status: Unutilized
Comment: 1452 sq. ft., possible asbestos/lead paint, most recent use—private club, off-site use only

4 Bldgs.
Fort Sill
P–617, P–1114, P–1386, P–1608
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910133
Status: Unutilized
Comment: 106 sq. ft., possible asbestos/lead paint, most recent use—utility plant, off-site use only

Bldg. P–746
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910135

Status: Unutilized
Comment: 6299 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldgs. P–2581, P–2773
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910140
Status: Unutilized
Comment: 4093 and 4129 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. P–2582
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910141
Status: Unutilized
Comment: 3672 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldgs. P–2912, P–2921, P–2944
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910144
Status: Unutilized
Comment: 1390 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. P–2914
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910146
Status: Unutilized
Comment: 1236 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. P–5101
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910153
Status: Unutilized
Comment: 82 sq. ft., possible asbestos/lead paint, most recent use—gas station, off-site use only

Bldg. S–6430
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910156
Status: Unutilized
Comment: 2080 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only

Bldg. T–6461
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910157
Status: Unutilized
Comment: 200 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only

Bldg. T–6462
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910158
Status: Unutilized
Comment: 64 sq. ft., possible asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. P–7230
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21199910159
Status: Unutilized
Comment: 160 sq. ft., possible asbestos/lead paint, most recent use—transmitter bldg., off-site use only

Bldg. S–4023
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200010128
Status: Unutilized
Comment: 1200 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. P–747
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120120
Status: Unutilized
Comment: 9232 sq. ft., possible asbestos/lead paint, most recent use—lab, off-site use only

Bldg. P–842
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120123
Status: Unutilized
Comment: 192 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–911
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120124
Status: Unutilized
Comment: 3080 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. P–1672
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120126
Status: Unutilized
Comment: 1056 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. S–2362
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120127
Status: Unutilized
Comment: 64 sq. ft., possible asbestos/lead paint, most recent use—gatehouse, off-site use only

Bldg. P–2589
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120129
Status: Unutilized
Comment: 3672 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–3043
Fort Sill
Lawton Co: Comanche OK 73503–5100
Landholding Agency: Army
Property Number: 21200120130
Status: Unutilized
Comment: 80 sq. ft., possible asbestos/lead paint, most recent use—guard shack, off-site use only

South Carolina

Bldg. 3499
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 21199730310
Status: Unutilized
Comment: 3724 sq. ft., needs repair, most recent use—admin.

Bldg. 2441
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 21199820187
Status: Unutilized
Comment: 2160 sq. ft., needs repair, most recent use—admin.

Bldg. 3605
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 21199820188
Status: Unutilized
Comment: 711 sq. ft., needs repair, most recent use—storage

Bldg. 1765
Fort Jackson
Ft. Jackson Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 21200030109
Status: Unutilized
Comment: 1700 sq. ft., need repairs, presence of asbestos/lead paint, most recent use—training bldg., off-site use only

Texas

Bldg. 7137, Fort Bliss
El Paso Co: El Paso TX 79916–
Landholding Agency: Army
Property Number: 21199640564
Status: Unutilized
Comment: 35,736 sq. ft., 3-story, most recent use—housing, off-site use only

Bldg. 919
Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 21199920212
Status: Unutilized
Comment: 11,800 sq. ft., needs repair, most recent use—Bde. Hq. Bldg., off-site use only

Bldg. 92043
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200020206
Status: Unutilized
Comment: 450 sq. ft., most recent use—storage, off-site use only

Bldg. 92044
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200020207

Status: Unutilized
Comment: 1920 sq. ft., most recent use—admin., off-site use only

Bldg. 92045
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200020208
Status: Unutilized
Comment: 2108 sq. ft., most recent use—maint., off-site use only

Bldg. 1281
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200110091
Status: Unutilized
Comment: 25,027 sq. ft., most recent use—cold storage, off-site use only

Bldg. 7133
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200110095
Status: Unutilized
Comment: 11,650 sq. ft., most recent use—storage, off-site use only

Bldg. 7136
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200110096
Status: Unutilized
Comment: 11,755 sq. ft., most recent use—vet facility, off-site use only

Bldg. 7146
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200110097
Status: Unutilized
Comment: most recent use—oil storage, off-site use only

Bldg. 7147
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200110098
Status: Unutilized
Comment: most recent use—oil storage, off-site use only

Bldg. 7153
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200110099
Status: Unutilized
Comment: 11924 sq. ft., most recent use—bowling center, off-site use only

Bldg. 7162
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200110100
Status: Unutilized
Comment: 3956 sq. ft., most recent use—development center, off-site use only

Bldg. 11116
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200110101
Status: Unutilized
Comment: 20,100 sq. ft., most recent use—storage, off-site use only

Bldg. 7113
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200220132
Status: Unutilized
Comment: 8855 sq. ft., presence of asbestos/lead paint, most recent use—child development center, off-site use only

Bldg. T5900
Camp Bullis
San Antonio Co: Bexar TX 78257–
Landholding Agency: Army
Property Number: 21200220133
Status: Excess
Comment: 9876 sq. ft., possible lead paint, most recent use—theater/training bldg., off-site use only

Bldg. T6111
Camp Bullis
San Antonio Co: Bexar TX 78257–
Landholding Agency: Army
Property Number: 21200220134
Status: Excess
Comment: 521 sq. ft., possible lead paint, most recent use—gas station, off-site use only

Bldgs. 107, 108
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220136
Status: Unutilized
Comment: 13,319 & 28,051 sq. ft., most recent use—admin., off-site use only

Bldg. 120
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220137
Status: Unutilized
Comment: 1450 sq. ft., most recent use—dental clinic, off-site use only

Bldg. 134
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220138
Status: Unutilized
Comment: 16,114 sq. ft., most recent use—auditorium, off-site use only

Bldg. 56305
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220143
Status: Unutilized
Comment: 2160 sq. ft., most recent use—admin., off-site use only

Bldg. 56402
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220144
Status: Unutilized
Comment: 2680 sq. ft., most recent use—recreation center, off-site use only

Bldgs. 56403, 56405
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220145
Status: Unutilized
Comment: 480 sq. ft., most recent use—shower, off-site use only

Bldgs. 56620, 56621
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220146
Status: Unutilized
Comment: 1120 sq. ft., most recent use—shower, off-site use only

Bldgs. 56626, 56627
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220147
Status: Unutilized
Comment: 1120 sq. ft., most recent use—shower, off-site use only

Bldg. 56628
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220148
Status: Unutilized
Comment: 1133 sq. ft., most recent use—shower, off-site use only

Bldgs. 56630, 56631
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220149
Status: Unutilized
Comment: 1120 sq. ft., most recent use—shower, off-site use only

Bldgs. 56636, 56637
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220150
Status: Unutilized
Comment: 1120 sq. ft., most recent use—shower, off-site use only

Bldg. 56638
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220151
Status: Unutilized
Comment: 1133 sq. ft., most recent use—shower, off-site use only

Bldgs. 56703, 56708
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220152
Status: Unutilized
Comment: 1306 sq. ft., most recent use—shower, off-site use only

Bldgs. 56750, 56751
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220153
Status: Unutilized
Comment: 1120 sq. ft., most recent use—shower, off-site use only

Bldg. 56758
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220154
Status: Unutilized
Comment: 1133 sq. ft., most recent use—shower, off-site use only

Bldg. P6202
Fort Sam Houston

San Antonio Co: Bexar TX 78234–
Landholding Agency: Army
Property Number: 21200220156
Status: Excess
Comment: 1479 sq. ft., presence of asbestos/lead paint, provider responsible for hazard abatement, most recent use—officer's family quarters, off-site use only

Bldg. P6203
Fort Sam Houston
San Antonio Co: Bexar TX 78234–
Landholding Agency: Army
Property Number: 21200220157
Status: Excess
Comment: 1381 sq. ft., presence of asbestos/lead paint, provider responsible for hazard abatement, most recent use—military family quarters, off-site use only

Bldg. P6204
Fort Sam Houston
San Antonio Co: Bexar TX 78234–
Landholding Agency: Army
Property Number: 21200220158
Status: Excess
Comment: 1454 sq. ft., presence of asbestos/lead paint, provider responsible for hazard abatement, most recent use—military family quarters, off-site use only

Bldg. 5000
Fort Bliss
El Paso Co: TX 79916–
Landholding Agency: Army
Property Number: 21200320167
Status: Unutilized
Comment: 16,183 sq. ft., presence of asbestos, most recent use—museum, off-site use only

Bldg. P2657
Fort Sam Houston
San Antonio Co: Bexar TX 78234–
Landholding Agency: Army
Property Number: 21200320171
Status: Excess
Comment: 7500 sq. ft., possible asbestos/lead paint, most recent use—lab, off-site use only

Virginia

Bldg. T246
Fort Monroe
Ft. Monroe Co: VA 23651–
Landholding Agency: Army
Property Number: 21199940047
Status: Unutilized
Comment: 756 sq. ft., needs repair, possible lead paint, most recent use—scout meetings, off-site use only

Bldgs. 1516, 1517, 1552, 1567
Fort Eustis
Ft. Eustis Co: VA 23604–
Landholding Agency: Army
Property Number: 21200130154
Status: Unutilized
Comment: 2892 & 4720 sq. ft., most recent use—dining/barracks/admin, off-site use only

Bldg. 1559
Fort Eustis
Ft. Eustis Co: VA 23604–
Landholding Agency: Army
Property Number: 21200130156
Status: Unutilized
Comment: 2892 sq. ft., most recent use—storage, off-site use only

Bldg. T0058
Fort Monroe
Stillwell Dr.
Ft. Monroe Co: VA
Landholding Agency: Army
Property Number: 21200310057
Status: Excess
Comment: 7875 sq. ft., presence of asbestos/lead paint, most recent use—housing, off-site use only

Bldg. 18
Defense Supply Center
Richmond Co: Chesterfield VA 23875–
Landholding Agency: Army
Property Number: 21200320174
Status: Unutilized
Comment: 6962 sq. ft., most recent use—office/warehouse, off-site use only

Washington

Bldg. CO909, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630205
Status: Unutilized
Comment: 1984 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 1164, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630213
Status: Unutilized
Comment: 230 sq. ft., possible asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. 1307, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630216
Status: Unutilized
Comment: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 1309, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630217
Status: Unutilized
Comment: 1092 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 2167, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630218
Status: Unutilized
Comment: 288 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. 4078, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630219
Status: Unutilized
Comment: 10200 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. 9599, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21199630220
Status: Unutilized
Comment: 12366 sq. ft., possible asbestos/lead paint, most recent use—warehouse, off-site use only

Bldg. A1404, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199640570
Status: Unutilized
Comment: 557 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. A1419, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199640571
Status: Unutilized
Comment: 1307 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. EO347
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199710156
Status: Unutilized
Comment: 1800 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. B1008, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199720216
Status: Unutilized
Comment: 7387 sq. ft., 2-story, needs rehab, possible asbestos/lead paint, most recent use—medical clinic, off-site use only

Bldgs. B1011–B1012, Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199720217
Status: Unutilized
Comment: 992 sq. ft. and 1144 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—office, off-site use only

Bldgs. CO509, CO709, CO720 Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199810372
Status: Unutilized
Comment: 1984 sq. ft., possible asbestos/lead paint, needs rehab, most recent use—storage, off-site use only

Bldg. 5162
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830419
Status: Unutilized
Comment: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. 5224
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199830433
Status: Unutilized
Comment: 2360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—educ. fac., off-site use only

Bldg. U001B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920237
Status: Excess
Comment: 54 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U001C

Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920238
Status: Unutilized
Comment: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, off-site use only

10 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U002B, U002C, U005C, U015I, U016E, U019C, U022A, U028B, 0091A, U093C
Landholding Agency: Army
Property Number: 21199920239
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

6 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U003A, U004B, U006C, U015B, U016B, U019B
Landholding Agency: Army
Property Number: 21199920240
Status: Unutilized
Comment: 54 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U004D
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920241
Status: Unutilized
Comment: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, off-site use only

Bldg. U005A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920242
Status: Unutilized
Comment: 360 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

7 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location:
U014A, U022B, U023A, U043B, U059B, U060A, U101A
Landholding Agency: Army
Property Number: 21199920245
Status: Excess
Comment: needs repair, presence of asbestos/lead paint, most recent use—ofc/tower/support, off-site use only

Bldg. U015J
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–Landholding Agency: Army
Property Number: 21199920246
Status: Excess
Comment: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U018B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920247
Status: Unutilized
Comment: 121 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U018C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920248
Status: Unutilized
Comment: 48 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U024D
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920250
Status: Unutilized
Comment: 120 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—ammo bldg., off-site use only

Bldg. U027A
Fort Lewis
Ft. Lewis Co: Pierce WA
Landholding Agency: Army
Property Number: 21199920251
Status: Excess
Comment: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tire house, off-site use only

Bldg. U031A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920253
Status: Excess
Comment: 3456 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—line shed, off-site use only

Bldg. U031C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920254
Status: Unutilized
Comment: 32 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U040D
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920255
Status: Excess
Comment: 800 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldgs. U052C, U052H
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920256
Status: Excess
Comment: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldgs. U035A, U035B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920257
Status: Excess
Comment: 192 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. U035C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920258
Status: Excess
Comment: 242 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U039A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920259
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U039B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920260
Status: Excess
Comment: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—grandstand/bleachers, off-site use only

Bldg. U039C
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920261
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

Bldg. U043A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920262
Status: Excess
Comment: 132 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U052A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920263
Status: Excess
Comment: 69 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U052E
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920264
Status: Excess
Comment: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. U052G
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920265
Status: Excess
Comment: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

3 Bldgs.
Fort Lewis

Ft. Lewis Co: Pierce WA 98433–
Location: U058A, U103A, U018A
Landholding Agency: Army
Property Number: 21199920266
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. U059A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920267
Status: Excess
Comment: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U093B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920268
Status: Excess
Comment: 680 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

4 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U101B, U101C, U507B, U557A
Landholding Agency: Army
Property Number: 21199920269
Status: Excess
Comment: 400 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U110B
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920272
Status: Excess
Comment: 138 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

6 Bldgs.
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Location: U111A, U015A, U024E, U052F, U109A, U110A
Landholding Agency: Army
Property Number: 21199920273
Status: Excess
Comment: 1000 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support/shelter/mess, off-site use only

Bldg. U112A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920274
Status: Excess
Comment: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. U115A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920275
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U507A
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920276
Status: Excess
Comment: 400 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

Bldg. C0120
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920281
Status: Excess
Comment: 384 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—scale house, off-site use only

Bldg. A0334
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920284
Status: Excess
Comment: 1092 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

Bldg. 01205
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920290
Status: Excess
Comment: 87 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storehouse, off-site use only

Bldg. 01259
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920291
Status: Excess
Comment: 16 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 01266
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920292
Status: Excess
Comment: 45 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shelter, off-site use only

Bldg. 1445
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920294
Status: Excess
Comment: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—generator bldg., off-site use only

Bldgs. 03091, 03099
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920296
Status: Excess
Comment: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

Bldg. 4040
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920298
Status: Excess
Comment: 8326 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shed, off-site use only

Bldgs. 4072, 5104
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920299
Status: Excess
Comment: 24/36 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. 4295
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920300
Status: Excess
Comment: 48 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 5170
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920301
Status: Excess
Comment: 19,411 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—store, off-site use only

Bldg. 6191
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920303
Status: Excess
Comment: 3663 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—exchange branch, off-site use only

Bldgs. 08076, 08080
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920304
Status: Excess
Comment: 3660/412 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. 08093
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920305
Status: Excess
Comment: 289 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—boat storage, off-site use only

Bldg. 8279
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920306
Status: Excess
Comment: 210 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—fuel disp. fac., off-site use only

Bldgs. 8280, 8291
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920307

Status: Excess
Comment: 800/464 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 8956
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920308
Status: Excess
Comment: 100 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 9530
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920309
Status: Excess
Comment: 64 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

Bldg. 9574
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920310
Status: Excess
Comment: 6005 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—veh. shop., off-site use only

Bldg. 9596
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–
Landholding Agency: Army
Property Number: 21199920311
Status: Excess
Comment: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—gas station, off-site use only

Land (by State)

Georgia

Land (Railbed)
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199440440
Status: Unutilized
Comment: 17.3 acres extending 1.24 miles, no known utilities potential

South Carolina

One Acre
Fort Jackson
Columbia Co: Richland SC 29207–
Landholding Agency: Army
Property Number: 21200110089
Status: Underutilized
Comment: approx. 1 acre

Suitable/Unavailable Properties

Buildings (by State)

Alabama

Bldgs. 1001–1006, 1106–1107
Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 21200210027
Status: Unutilized
Comment: approx. 9000 sq. ft., poor condition, lead paint present, most recent use—warehouses, off-site use only

Bldg. 01433
Fort Rucker
Ft. Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 21200220098
Status: Excess
Comment: 800 sq. ft., most recent use—office, off-site use only

Bldg. 24220
Fort Rucker
Ft. Rucker Co: Dale AL 36362–
Landholding Agency: Army
Property Number: 21200320093
Status: Unutilized
Comment: 2128 sq. ft., needs repair, most recent use—scout bldg., off-site use only

Alaska

Bldgs. 345, 347
Ft. Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200320094
Status: Excess
Comment: 9456 sq. ft., needs rehab, off-site use only

Bldgs. 354, 357, 359
Ft. Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200320095
Status: Excess
Comment: 9456 sq. ft., needs rehab, off-site use only

Bldg. 368
Ft. Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200320096
Status: Excess
Comment: 12,642 sq. ft., needs rehab, off-site use only

Bldg. 370
Ft. Richardson
Ft. Richardson Co: AK 99505–6500
Landholding Agency: Army
Property Number: 21200320097
Status: Excess
Comment: 9456 sq. ft., needs rehab, off-site use only

Georgia

Bldg. 4090
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199630007
Status: Underutilized
Comment: 3530 sq. ft., most recent use—chapel, off-site use only

Bldg. 2410
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21200140076
Status: Unutilized
Comment: 8480 sq. ft., needs rehab, potential asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 20802
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21200210078
Status: Unutilized
Comment: 740 sq. ft., needs repair, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–920
Fort Stewart
Hinesville Co: Liberty GA 31314–
Landholding Agency: Army
Property Number: 21200240083
Status: Excess
Comment: 13,337 sq. ft., most recent use—office, off-site use only

Indiana

Bldg. 301
Fort Benjamin Harrison
Indianapolis Co: Marion IN 45216–
Landholding Agency: Army
Property Number: 21200320098
Status: Unutilized
Comment: 1564 sq. ft., possible asbestos/lead paint, most recent use—storage shed, off-site use only

Bldg. 302
Fort Benjamin Harrison
Indianapolis Co: Marion IN 46216–
Landholding Agency: Army
Property Number: 21200320099
Status: Unutilized
Comment: 400 sq. ft., possible asbestos/lead paint, most recent use—switch station, off-site use only

Bldg. 303
Fort Benjamin Harrison
Indianapolis Co: Marion IN 46216–
Landholding Agency: Army
Property Number: 21200320100
Status: Unutilized
Comment: 462 sq. ft., possible asbestos/lead paint, most recent use—heat plant bldg., off-site use only

Bldg. 304
Fort Benjamin Harrison
Indianapolis Co: Marion IN 46216–
Landholding Agency: Army
Property Number: 21200320101
Status: Unutilized
Comment: 896 sq. ft., possible asbestos/lead paint, most recent use—heat plant bldg., off-site use only

Bldg. 334
Fort Benjamin Harrison
Indianapolis Co: Marion IN 46216–
Landholding Agency: Army
Property Number: 21200320102
Status: Unutilized
Comment: 652 sq. ft., possible asbestos/lead paint, off-site use only

Bldg. 337
Fort Benjamin Harrison
Indianapolis Co: Marion IN 46216–
Landholding Agency: Army
Property Number: 21200320103
Status: Unutilized
Comment: 675 sq. ft., possible asbestos/lead paint, off-site use only

Maryland

Bldg. 2282C
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200230059
Status: Unutilized
Comment: 46 sq. ft., needs rehab, most recent use—sentry tower, off-site use only

Bldg. 05257
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200320134
Status: Unutilized
Comment: 10067 sq. ft., most recent use—maint shop, off-site use only

Missouri

Bldg. 2172
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–8994
Landholding Agency: Army
Property Number: 21200040059
Status: Unutilized
Comment: 2892 sq. ft., most recent use—operations, off-site use only

New York

Bldgs. 1511–1518
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996–
Landholding Agency: Army
Property Number: 21200320160
Status: Unutilized
Comment: 2400 sq. ft. each, needs rehab, most recent use—barracks, off-site use only

Bldgs. 1523–1526
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996–
Landholding Agency: Army
Property Number: 21200320161
Status: Unutilized
Comment: 2400 sq. ft. each, needs rehab, most recent use—barracks, off-site use only

Bldgs. 1704–1705, 1721–1722
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996–
Landholding Agency: Army
Property Number: 21200320162
Status: Unutilized
Comment: 2400 sq. ft. each, needs rehab, most recent use—barracks, off-site use only

Bldg. 1723
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996–
Landholding Agency: Army
Property Number: 21200320163
Status: Unutilized
Comment: 2400 sq. ft., needs rehab, most recent use—day room, off-site use only

Bldgs. 1706–1709
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996–
Landholding Agency: Army
Property Number: 21200320164
Status: Unutilized
Comment: 2400 sq. ft. each, needs rehab, most recent use—barracks, off-site use only

Bldgs. 1731–1735
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996–
Landholding Agency: Army
Property Number: 21200320165
Status: Unutilized
Comment: 2400 sq. ft. each, needs rehab, most recent use—barracks, off-site use only

North Carolina

Bldgs. A2245, A2345
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310
Landholding Agency: Army
Property Number: 21200240084
Status: Excess
Comment: 3444 sq. ft. each, possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only

Bldg. A2544
Fort Bragg
Ft. Bragg Co: Cumberland NC–
Landholding Agency: Army
Property Number: 21200240085
Status: Excess
Comment: 4000 sq. ft., possible asbestos/lead paint, most recent use—admin. facility, off-site use only

Bldg. D2826
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–
Landholding Agency: Army
Property Number: 21200240086
Status: Excess
Comment: 41,520 sq. ft., possible asbestos/lead paint, most recent use—barracks, off-site use only

Bldg. N4116
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–
Landholding Agency: Army
Property Number: 21200240087
Status: Excess
Comment: 3944 sq. ft., possible asbestos/lead paint, most recent use—community facility, off-site use only

103 Bldgs.
Fort Bragg
Ft. Bragg Co: Cumberland NC 28310–5000
Location: WS001–WS02A, PE001–PE031, 002F1–02F36, 00651, 1101, DT001–DT035, DT052–DT056, 09051
Landholding Agency: Army
Property Number: 21200240088
Status: Excess
Comment: multi-use structures, various sq ft., possible asbestos/lead paint, off-site use only

Tennessee

Bldgs. 01551, 01552
Fort Campbell
Ft. Campbell Co: Montgomery TN 42223–
Landholding Agency: Army
Property Number: 21200230076
Status: Unutilized
Comment: 2052 sq. ft.

Texas

Bldgs. 4219, 4227
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220139
Status: Unutilized
Comment: 8056 & 10,500 sq. ft., most recent use—admin., off-site use only

Bldgs. 4229, 4230, 4231
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220140
Status: Unutilized
Comment: 9000 sq. ft., most recent use—hq. bldg., off-site use only

Bldgs. 4244, 4246
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220141
Status: Unutilized
Comment: 9000 sq. ft., most recent use—storage, off-site use only

Bldgs. 4260, 4261, 4262
Fort Hood
Ft. Hood Co: Bell TX 76544–
Landholding Agency: Army
Property Number: 21200220142
Status: Unutilized
Comment: 7680 sq. ft., most recent use—storage, off-site use only

Virginia

Bldg. T2827
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 21200320172
Status: Unutilized
Comment: 3550 sq. ft., presence of asbestos, most recent use—dining, off-site use only

Bldg. T2841
Fort Pickett
Blackstone Co: Nottoway VA 23824–
Landholding Agency: Army
Property Number: 21200320173
Status: Unutilized
Comment: 2950 sq. ft., presence of asbestos, most recent use—dining, off-site use only

Washington

Bldg. 03272
Fort Lewis
Tacoma Co: Pierce WA 98335–
Landholding Agency: Army
Property Number: 21200220160
Status: Unutilized
Comment: 21,373 sq. ft., most recent use—hangar, off-site use only

Bldg. 04180
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21200240091
Status: Excess
Comment: 72 sq. ft., most recent use—guard shack, off-site use only

Bldg. 05904
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21200240092
Status: Excess
Comment: 82 sq. ft., most recent use—guard shack, off-site use only

Bldgs. 9003, 9517
Fort Lewis
Ft. Lewis Co: Pierce WA 98433–9500
Landholding Agency: Army
Property Number: 21200240093
Status: Excess
Comment: 80 and 82 sq. ft., most recent use—guard shack, off-site use only

Land (by State)

North Carolina

.92 Acre—Land
Military Ocean Terminal, Sunny Point
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army

Property Number: 21199610728
Status: Underutilized
Comment: municipal drinking waterwell, restricted by explosive safety regs., New Hanover County Buffer Zone

10 Acre—Land
Military Ocean Terminal, Sunny Point
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 21199610729
Status: Underutilized
Comment: municipal park, restricted by explosive safety regs., New Hanover County Buffer Zone

257 Acre—Land
Military Ocean Terminal, Sunny Point
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 21199610730
Status: Underutilized
Comment: state park, restricted by explosive safety regs., New Hanover County Buffer Zone

24.83 acres—Tract of Land
Military Ocean Terminal, Sunny Point
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 21199620685
Status: Underutilized
Comment: 24.83 acres, municipal park, most recent use—New Hanover County explosive buffer zone

Unsuitable Properties

Buildings (by State)

Alabama

69 Bldgs.
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200040001–21200040012, 21200120018, 21200220003–21200220004, 21200240007–21200240023, 21200320006, 21200330001–2120330004
Status: Unutilized
Reason: Secured Area; Extensive deterioration

22 Bldgs., Fort Rucker
Ft. Rucker Co: Dale AL 36362
Landholding Agency: Army
Property Number: 219740006, 21200010010, 21200040013, 21200220001, 21200240001–21200240005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 28152
Rucker
Hartford Co: Geneva AL 36344
Landholding Agency: Army
Property Number: 21200230002
Status: Unutilized
Reason: Extensive deterioration

Alaska

10 Bldgs., Fort Wainwright
Ft. Wainwright AK 99703
Landholding Agency: Army
Property Number: 219710090, 219710195–219710198, 219810002, 219810007, 21199920001, 21200320005
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured area; Floodway (Some are extensively deteriorated)

13 Bldgs., Fort Richardson
Ft. Richardson Co: AK 99505
Landholding Agency: Army
Property Number: 21200320001–21200320004
Status: Excess
Reason: Extensive deterioration

Arizona

32 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–
Location: 12 miles west of Flagstaff, Arizona on I–40
Landholding Agency: Army
Property Number: 219014560–219014591
Status: Underutilized
Reason: Secured Area

10 properties: 753 earth covered igloos; above ground standard magazines
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–
Location: 12 miles west of Flagstaff, Arizona on I–40.
Landholding Agency: Army
Property Number: 219014592–219014601
Status: Underutilized
Reason: Secured Area

7 Bldgs.
Navajo Depot Activity
Bellemont Co: Coconino AZ 86015–5000
Location: 12 miles west of Flagstaff on I–40
Landholding Agency: Army
Property Number: 219030273–219030274, 219120177–219120181
Status: Unutilized
Reason: Secured Area

9 Bldgs.
Camp Navajo
Bellemont Co: AZ 86015
Landholding Agency: Army
Property Number: 21200140002–21200140010
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 15348, 15333
Fort Huachuca
Ft. Huachuca Co: Cochise AZ 85613
Landholding Agency: Army
Property Number: 21200240024, 21200320005
Status: Excess
Reason: Extensive deterioration

Arkansas

189 Bldgs., Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219630019, 219630021, 219630029, 219640462–219640477, 21200110001–21200110017, 21200140011–21200140014
Status: Unutilized
Reason: Extensive deterioration

California

Bldg. 18
Riverbank Army Ammunition Plant 5300 Claus Road
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219012554
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

11 Bldgs., Nos. 2–8, 156, 1, 120, 181
Riverbank Army Ammunition Plant
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219013582–219013588, 219013590, 219240444–219240446
Status: Underutilized
Reason: Secured Area

Bldgs. 13, 171, 178 Riverbank Ammun Plant
5300 Claus Road
Riverbank Co: Stanislaus CA 95367–
Landholding Agency: Army
Property Number: 219120162–219120164
Status: Underutilized
Reason: Secured Area

40 Bldgs.
DDDRW Sharpe Facility
Tracy Co: San Joaquin CA 95331
Landholding Agency: Army
Property Number: 219610289, 21199930021, 21200030005–21200030015, 21200040015, 21200120029–21200120039, 21200130004, 21200240025–21200240030, 21200330007
Status: Unutilized
Reason: Secured Area

Bldgs. 29, 39, 73, 154, 155, 193, 204, 257
Los Alamitos Co: Orange CA 90720–5001
Landholding Agency: Army
Property Number: 219520040
Status: Unutilized
Reason: Extensive deterioration

10 Bldgs.
Sierra Army Depot
Herlong Co: Lassen CA 96113
Landholding Agency: Army
Property Number: 21199840015 21199920033–21199920036, 21199940052–21199940056
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

449 Bldgs.
Camp Roberts
Camp Roberts Co: San Obispo CA
Landholding Agency: Army
Property Number: 21199730014, 219820192–219820235
Status: Excess
Reason: Secured Area; Extensive deterioration

27 Bldgs.
Presidio of Monterey Annex
Seaside Co: Monterey CA 93944
Landholding Agency: Army
Property Number: 21199940051, 21200130005
Status: Unutilized
Reason: Extensive deterioration

46 Bldgs.
Fort Irwin
Ft. Irwin Co: San Bernardino CA 92310
Landholding Agency: Army
Property Number: 21199920037–21199920038, 21200030016–21200030018, 21200040014, 21200110018–21200110020, 21200130002–21200130003, 21200210001–21200210005, 21200240031–21200240033
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Bldg. 00720
Fort Hunter Liggett
Jolon Co: Monterey CA 93928
Landholding Agency: Army
Property Number: 21200330006

Status: Unutilized
Reason: Extensive deterioration

Colorado

Bldgs. T–317, T–412, 431, 433
Rocky Mountain Arsenal
Commerce Co: Adams CO 80022–2180
Landholding Agency: Army
Property Number: 219320013–219320016
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area
Extensive deterioration
7 Bldgs. Fort Carson
Ft. Carson Co: El Paso CO 80913–5023
Landholding Agency: Army
Property Number: 219830024, 21200130006–21200130011
Status: Unutilized
Reason: Extensive deterioration
Bldgs. 00087, 00088, 00096
Pueblo Chemical Depot
Pueblo CO 81006–9330
Landholding Agency: Army
Property Number: 21200030019–21200030021
Status: Unutilized
Reason: Extensive deterioration

Georgia

Fort Stewart
Sewage Treatment Plant
Ft. Stewart Co: Hinesville GA 31314–
Landholding Agency: Army
Property Number: 219013922
Status: Unutilized
Reason: Sewage treatment
Facility 12304
Fort Gordon
Augusta Co: Richmond GA 30905–
Location: Located off Lane Avenue
Landholding Agency: Army
Property Number: 219014787
Status: Unutilized
Reason: Wheeled vehicle grease/inspection rack
154 Bldgs.
Fort Gordon
Augusta Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 219220269, 219410050–219410051, 219410071–219410072, 219410100, 219410109, 219630044–219630063, 219640011–219640024, 219830038–219830067, 21199910012, 21200210061–21200210073, 21200220007–21200220010, 21200230007–21200230015
Status: Unutilized
Reason: Extensive deterioration
Bldg. 2872, Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219220337
Status: Unutilized
Reason: Detached lavatory
20 Bldgs., Fort Benning
Ft. Benning Co: Muscogee GA 31905
Landholding Agency: Army
Property Number: 219520150, 219610320, 219720017–219720019, 219810028, 219810030, 219810035, 219830073, 219830076, 21199930031–21199930037, 21200030023–21200030027, 21200330008–21200330010
Status: Unutilized
Reason: Extensive deterioration
18 Bldgs.
Fort Gillem
Forest Park Co: Clayton GA 30050
Landholding Agency: Army
Property Number: 219620815, 21199920044–21199920050, 21200140016,21200220011–21200220012,21200230005
Status: Unutilized
Reason: Extensive deterioration; Secured Area
Bldg. P8121, Fort Stewart
Hinesville Co: Liberty GA 31314
Landholding Agency: Army
Property Number: 21199940060
Status: Unutilized
Reason: Extensive Deterioration
3 Bldgs., Hunter Army Airfield
Savannah Co: Chatham GA 31409
Landholding Agency: Army
Property Number: 219630034, 219830068, 21200120042
Status: Unutilized
Reason: Extensive deterioration
4 Bldgs., Fort McPherson
Ft. McPherson Co: Fulton GA 30330–5000
Landholding Agency: Army
Property Number: 21200040016–21200040018, 21200230004
Status: Unutilized
Reason: Secured Area

Hawaii

13 Bldgs.
Schofield Barracks
Wahiawa Co: Wahiawa HI 96786–
Landholding Agency: Army
Property Number: 219014836–219014837, 219030361, 21200330011
Status: Unutilized
Reason: Secured Area (Most are extensively deteriorated)
4 Bldgs.
Fort Shafter
Honolulu Co: HI 96819
Landholding Agency: Army
Property Number: 21200240034, 21200310001
Status: Unutilized
Reason: Extensive deterioration

Illinois

13 Bldgs.
Rock Island Arsenal
Rock Island Co: Rock Island IL 61299–5000
Landholding Agency: Army
Property Number: 219110104–219110108, 219210100, 219620427, 219620428, 21200140043–21200140046
Status: Unutilized
Reason: Some are in a secured area; Some are extensively deteriorated
Some are within 2000 ft. of flammable or explosive material
15 Bldgs.
Charles Melvin Price Support Center
Granite City Co: Madison IL 62040
Landholding Agency: Army
Property Number: 219820027, 21199930042–21199930053
Status: Unutilized
Reason: Secured Area; Extensive deterioration; Floodway
Bldgs. 111, 145
Col. Schulstad Memorial
USARC
Arlington Heights Co: Cook IL 60005
Landholding Agency: Army
Property Number: 21200320012
Status: Unutilized
Reason: Extensive deterioration

Indiana

173 Bldgs.
Newport Army Ammunition Plant
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219011584, 219011586–219011587, 219011589–219011590, 219011592–219011627, 219011629–219011636, 219011638–219011641, 219210149, 219430336, 219430338, 219530079-219530096, 219740021–219740026, 219820031–219820032, 21199920063, 21200330015–21200330016
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated)
2 Bldgs.
Atterbury Reserve Forces Training Area
Edinburgh Co: Johnson IN 46124–1096
Landholding Agency: Army
Property Number: 219230030–219230031
Status: Unutilized
Reason: Extensive deterioration
Bldg. 300
Fort Benjamin Harrison
Indianapolis Co: Marion IN 46216
Landholding Agency: Army
Property Number: 21200320011
Status: Unutilized
Reason: Contamination

Iowa

105 Bldgs.
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638–
Landholding Agency: Army
Property Number: 219012605–219012607, 219012609, 219012611, 219012613, 219012620, 219012622, 219012624, 219013706–219013738, 219120172–219120174, 219440112–219440158, 219520002, 219520070, 219610414, 219740027, 21200220022, 21200230019–21200230023, 21200330012–21200330014
Status: Unutilized
Reason: (Many are in a Secured Area) (Most are within 2000 ft. of flammable or explosive material)
27 Bldgs.
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638
Landholding Agency: Army
Property Number: 219230005–219230029, 219310017, 219340091
Status: Unutilized
Reason: Extensive deterioration

Kansas

37 Bldgs.
Kansas Army Ammunition Plant
Production Area
Parsons Co: Labette KS 67357–
Landholding Agency: Army
Property Number: 219011909–219011945
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material)
121 Bldgs.
Kansas Army Ammunition Plant

Parsons Co: Labette KS 67357
Landholding Agency: Army
Property Number: 219620518–219620638
Status: Unutilized
Reason: Secured Area
Bldg. P–417
Fort Leavenworth
Leavenworth KS 66027
Landholding Agency: Army
Property Number: 219740029
Status: Unutilized
Reason: Extensive deterioration; Sewage pump station
4 Bldgs.
Fort Riley
Ft. Riley Co: Riley KS 66442
Landholding Agency: Army
Property Number: 21200310007, 21200310013-21200310015
Status: Unutilized
Reason: Extensive deterioration

Kentucky

Bldg. 126
Lexington—Blue Grass Army Depot
Lexington Co: Fayette KY 40511–
Location: 12 miles northeast of Lexington, Kentucky
Landholding Agency: Army
Property Number: 219011661
Status: Unutilized
Reason: Secured Area; Sewage treatment facility
Bldg. 12
Lexington—Blue Grass Army Depot
Lexington Co: Fayette KY 40511–
Location: 12 miles Northeast of Lexington Kentucky
Landholding Agency: Army
Property Number: 219011663
Status: Unutilized
Reason: Industrial waste treatment plant
474 Bldgs.
Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 21200130026–21200130029, 21200220030–21200220055, 21200240035–21200240045, 21200320013–21200320014
Status: Unutilized
Reason:
Extensive deterioration
44 Bldgs.,
Fort Campbell
Ft. Campbell Co: Christian KY 42223
Landholding Agency: Army
Property Number: 21200110030–21200110049, 21200140048, 21200140053, 21200220029, 21200230029–21200230030, 21200320018, 21200330017–21200330022
Status: Unutilized
Reason: Extensive deterioration

Louisiana

528 Bldgs.
Louisiana Army Ammunition Plant
Doylin Co: Webster LA 71023
Landholding Agency: Army
Property Number: 219011714–219011716, 219011735–219011737, 219012112, 219013863–219013869, 219110131, 219240138–219240147, 219420332, 219610049–219610263, 219620002–219620200, 219620749–219620801, 219820047–219820078
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material)(Some are extensively deteriorated)
38 Bldgs., Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 21199920070, 21199920078, 21199940074, 21199940075, 21200120058, 21200130030-21200130043
Status: Unutilized
Reason: Extensive deterioration (Some are in Floodway)

Maryland

49 Bldgs.
Aberdeen Proving Ground
Aberdeen City Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219011417, 219012610, 219012637–219012642, 219012658–219012662, 219013773, 219014711, 219610489–219610490, 219730077, 219810070–219810121, 219820090–219820096, 21200120059–21200120060, 21200330024–21200330025
Status: Unutilized
Reason: Most are in a secured area. (Some are within 2000 ft. of flammable or explosive material) (Some are in a floodway) (Some are extensively deteriorated)
73 Bldgs. Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755
Landholding Agency: Army
Property Number: 219710186, 219740068–219740076, 219810065, 21199910019, 21199940084, 21200140059–21200140060, 21200240046–21200240053, 21200310017, 21200330023
Status: Unutilized
Reason: Extensive deterioration
12 Bldgs.
Woodstock Military Rsv
Granite Co: Baltimore MD 22163
Landholding Agency: Army
Property Number: 21200130044–21200130052
Status: Unutilized
Reason: Extensive deterioration
Bldgs. 00602, 00605
Adelphi Lab Center
Adelphi Co: MD 20783
Landholding Agency: Army
Property Number: 21200220056–21200220057
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area
Bldg. 00211
Curtis Bay Ordnance Depot
Baltimore Co: MD 21226
Landholding Agency: Army
Property Number: 21200320024
Status: Unutilized
Reason: Extensive deterioration

Massachusetts

Bldg. 3462, Camp Edwards
Massachusetts Military Reservation
Bourne Co: Barnstable MA 024620–5003
Landholding Agency: Army
Property Number: 219230095
Status: Unutilized
Reason: Secured Area; Extensive deterioration
Bldg. 1211 Camp Edwards
Massachusetts Military Reservation
Bourne Co: Barnstable MA 02462–5003
Landholding Agency: Army
Property Number: 219310020
Status: Unutilized
Reason: Secured Area
Facility No. 0G001
LTA Granby
Granby Co: Hampshire MA
Landholding Agency: Army
Property Number: 219810062
Status: Unutilized
Reason: Extensive deterioration

Michigan

Bldgs. 5755–5756
Newport Weekend Training Site
Carleton Co: Monroe MI 48166
Landholding Agency: Army
Property Number: 219310060–219310061
Status: Unutilized
Reason: Secured Area; Extensive deterioration
13 Bldgs.
Fort Custer Training Center
2501 26th Street
Augusta Co: Kalamazoo MI 49102–9205
Landholding Agency: Army
Property Number: 21200220058–21200220062
Status: Unutilized
Reason: Extensive deterioration
10 Bldgs.
Selfridge ANG Base
Selfridge Co: MI 48045
Landholding Agency: Army
Property Number: 21199930059, 21199940089–21199940093, 21200110052–21200110055
Status: Unutilized
Reason: Secured Area
Bldgs. 08625, 8639
Poxin USAR Center
Southfield Co: Oakland MI 48034
Landholding Agency: Army
Property Number: 21200330026–21200330027
Status: Unutilized
Reason: Extensive deterioration

Minnesota

160 Bldgs.
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219120166, 219210014–219210015, 219220227–219220235, 219240328, 219310056, 219320152–219320156, 219330096–219330106, 219340015, 219410159–219410189, 219420198–219420283, 219430060–219430064, 21200130053–21200130054
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material.) (Some are extensively deteriorated)

Missouri

83 Bldgs.
Lake City Army Ammo. Plant
Independence Co: Jackson MO 64050–
Landholding Agency: Army
Property Number: 219013666–219013669, 219530134–219530136, 21199910023–21199910035, 21199920082, 21200030049

Status: Unutilized
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material)
9 Bldgs.
St. Louis Army Ammunition Plant
4800 Goodfellow Blvd.
St. Louis Co: St. Louis MO 63120–1798
Landholding Agency: Army
Property Number: 219120067–219120068, 219610469–219610475
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated)
26 Bldgs.
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Landholding Agency: Army
Property Number: 219430070–219430075, 21199910020–21199910021, 21200320025–21200320032, 21200330028–21200330031
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material (Some are extensively deteriorated.)
Bldg. P4122
U.S. Army Reserve Center
St. Louis Co: St. Charles MO 63120–1794
Landholding Agency: Army
Property Number: 21200240055
Status: Unutilized
Reason: Extensive deterioration
Bldgs. P4074, P4072, P4073
St. Louis Ordnance Plant
St. Louis Co: St. Charles MO 63120–1794
Landholding Agency: Army
Property Number: 21200310019
Status: Unutilized
Reason: Extensive deterioration

Nevada

Bldg. 292
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415—
Landholding Agency: Army
Property Number: 219013614
Status: Unutilized
Reason: Secured Area
39 Bldgs.
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415–
Landholding Agency: Army
Property Number: 219012013, 219013615–219013643
Status: Underutilized
Reason: Secured Area (Some within airport runway clear zone; many within 2000 ft. of flammable or explosive material)
Group 101, 34 Bldgs.
Hawthorne Army Ammunition Plant
Co: Mineral NV 89415–0015
Landholding Agency: Army
Property Number: 219830132
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

New Jersey

164 Bldgs.
Picatinny Arsenal
Dover Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219010444–219010474, 219010639–219010664, 219010680–219010715, 219012428, 219012430, 219012433–219012465, 219012469, 219012475, 219012765, 219014306, 219014311, 219014317, 219140617, 219230123, 219420006, 219530147, 219540005, 219540007, 219740113–219740127, 21199940094–21199940099, 21200130057–21200130063, 21200220063, 21200230071–21200230075, 21200330047–21200330063
Status: Excess
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material.) (Some are extensively deteriorated) (Some are in a floodway)
4 Bldgs.
Ft. Monmouth
Ft. Monmouth Co: NJ 07703
Landholding Agency: Army
Property Number: 21200330033–21200330036
Status: Unutilized
Reason: Extensive deterioration
12 Bldgs.
Fort Dix
Ft. Dix Co: Burlington NJ 08640–5506
Landholding Agency: Army
Property Number: 21200320034, 21200330037–21200330046
Status: Unutilized
Reason: Extensive deterioration

New York

Bldgs. 110, 143, 2084, 2105, 2110
Seneca Army Depot
Romulus Co: Seneca NY 14541–5001
Landholding Agency: Army
Property Number: 219240439, 219240440–219240443
Status: Unutilized
Reason: Secured Area: Extensive deterioration
Bldgs. 12, 134
Watervliet Arsenal
Watervliet NY
Landholding Agency: Army
Property Number: 219730099, 21199840068
Status: Unutilized
Reason: Extensive deterioration Secured Area
13 Bldgs.
Youngstown Training Site
Youngstown Co: Niagara NY 14131
Landholding Agency: Army
Property Number: 21200220064–21200220069
Status: Unutilized
Reason: Extensive deterioration
Bldg. 1716
U.S. Military Academy
West Point Co: NY 10996
Landholding Agency: Army
Property Number: 21200330064
Status: Unutilized
Reason: Extensive deterioration

North Carolina

75 Bldgs. Fort Bragg
Ft. Bragg Co: Cumberland NC 28307
Landholding Agency: Army
Property Number: 219620480, 219640074, 219710102–219710111, 219710224, 219810167, 21199930063–21199930066, 21200040035, 21200140064
Status: Unutilized
Reason: Extensive deterioration
5 Bldgs.
Military Ocean Terminal
Southport Co: Brunswick NC 28461–5000
Landholding Agency: Army
Property Number: 219530155, 219810158–219810160, 21200330032
Status: Unutilized
Reason: Secured Area

North Dakota

Bldgs. 440, 455, 456, 3101, 3110
Stanley R. Mickelsen
Nekoma Co: Cavalier ND 58355
Landholding Agency: Army
Property Number: 21199940103–21199940107
Status: Unutilized
Reason: Extensive deterioration

Ohio

354 Bldgs.
Ravenna Army Ammunition Plant
Ravenna Co: Portage OH 44266–9297
Landholding Agency: Army
Property Number: 21199840069–21199840104, 21200240064, 21200320040–21200320045
Status: Unutilized
Reason: Secured Area
7 Bldgs.
Lima Army Tank Plant
Lima OH 45804–1898
Landholding Agency: Army
Property Number: 219730104–219730110
Status: Unutilized
Reason: Secured Area

Oklahoma

5 Bldgs.
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 219510023, 21200330065–21200330067
Status: Unutilized
Reason: Extensive deterioration

Oregon

11 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838–
Landholding Agency: Army
Property Number: 219012174–219012176, 219012178–219012179, 219012190–219012191, 219012197–219012198, 219012217, 219012229
Status: Underutilized
Reason: Secured Area
34 Bldgs.
Tooele Army Depot
Umatilla Depot Activity
Hermiston Co: Morrow/Umatilla OR 97838–
Landholding Agency: Army
Property Number: 219012177, 219012185–219012186, 219012189, 219012195–219012196, 219012199–219012205, 219012207–219012208, 219012225, 219012279, 219014304–219014305, 219014782, 219030362–219030363, 219120032, 21199840108–21199840110, 21199920084–21199920090
Status: Unutilized
Reason: Secured Area

Pennsylvania

59 Bldgs.
Fort Indiantown Gap
Annville Co: Lebanon PA 17003–5011

Landholding Agency: Army
Property Number: 219640337, 219730122–219730128, 219740137, 219810178–219810193
Status: Unutilized
Reason: Extensive deterioration
28 Bldgs.
Defense Distribution Depot
New Cumberland Co: York PA 17070–5001
Landholding Agency: Army
Property Number: 21199940109–21199940112, 21200030060, 21200110058–21200110063, 21200130070–21200130072, 21200220072–21200220073, 21200330070–21200330076
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated)
Bldg. 01006
Tobyhanna Army Depot
Tobyhanna Co: Monroe PA 18466
Landholding Agency: Army
Property Number: 21200330068
Status: Unutilized
Reason: Extensive deterioration
Bldg. 01003
C.E. Kelly Support Facility
Neville Island Co: Allegheny PA 15225
Landholding Agency: Army
Property Number: 21200330069
Status: Unutilized
Reason: Extensive deterioration

Puerto Rico

74 Bldgs.
Fort Buchanan
Guaynabo Co: PR 00934
Landholding Agency: Army
Property Number: 21200330077–21200330092
Status: Unutilized
Reason: Secured Area

Rhode Island

Bldg. 104
Army Aviation
North Kingstown Co: Washington RI 02852
Landholding Agency: Army
Property Number: 21200120064
Status: Unutilized
Reason: Extensive deterioration

South Carolina

40 Bldgs., Fort Jackson
Ft. Jackson Co: Richland SC 29207
Landholding Agency: Army
Property Number: 219440237, 219440239, 219620312, 219620317, 219620348, 219620351, 219640138–219640139, 21199640148–21199640149, 219720095, 219720097, 219730130, 219730132, 219730145–219730157, 219740138, 219820102–219820111, 219830139–219830157
Status: Unutilized
Reason: Extensive deterioration

Tennessee

79 Bldgs.
Holston Army Ammunition Plant
Kingsport Co: Hawkins TN 61299–6000
Landholding Agency: Army
Property Number: 219012304– 219012309, 219012311–219012312, 219012314, 219012316–219012317, 219012319, 219012328, 219012330, 219012332, 219012334, 219012337, 219013790, 219140613, 219440212–219440216, 219510025–219510028, 21200230035, 21200310038–21200310042, 21200320054–21200320074, 21200330093
Status: Unutilized
Reason: Secured Area (Some are within 2000 ft. of flammable or explosive material)
10 Bldgs.
Milan Army Ammunition Plant
Milan Co: Gibson TN 38358
Landholding Agency: Army
Property Number: 219240447–219240449, 219320182–219320184, 219330176–219330177, 219520034, 219740139
Status: Unutilized
Reason: Secured Area
Bldg. Z–183A
Milan Army Ammunition Plant
Milan Co: Gibson TN 38358
Landholding Agency: Army
Property Number: 219240783
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material
37 Bldgs.
Fort Campbell
Ft. Campbell Co: Montgomery TN 42223
Landholding Agency: Army
Property Number: 21200220023–21200220025, 21200230031–21200230034, 21200240065, 21200320046, 21200330094–21200330100
Status: Unutilized
Reason: Extensive deterioration

Texas

20 Bldgs.
Lone Star Army Ammunition Plant
Highway 82 West
Texarkana Co: Bowie TX 75505–9100
Landholding Agency: Army
Property Number: 219012524, 219012529, 219012533, 219012536, 219012539–219012540, 219012542, 219012544–219012545, 219030337–219030345
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area
225 Bldgs.
Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75661–
Location: State highway 43 north
Landholding Agency: Army
Property Number: 219012546, 219012548, 219610555–219610584, 219610635, 219620244–219620287, 219620827–219620837, 21200020054–21200020070
Status: Unutilized
Reason: Secured Area (Most are within 2000 ft. of flammable or explosive material)
16 Bldgs., Red River Army Depot
Texarkana Co: Bowie TX 75507–5000
Landholding Agency: Army
Property Number: 219420315–219420327, 219430095–219430097
Status: Unutilized
Reason: Secured Area (Some are extensively deteriorated)
82 Bldgs. Fort Bliss
El Paso Co: El Paso TX 79916
Landholding Agency: Army
Property Number: 219730160–219730186, 219830161–219830197, 21200310044, 21200320079
Status: Unutilized
Reason: Extensive deterioration
Starr Ranch, Bldg. 703B
Longhorn Army Ammunition Plant
Karnack Co: Harrison TX 75661
Landholding Agency: Army
Property Number: 219640186, 219640494
Status: Unutilized
Reason: Floodway
Bldgs. D5028, D5036, D5039
Grand Prairie Reserve Complex
Grand Prairie Co: Tarrant TX 75050
Landholding Agency: Army
Property Number: 21200330101–21200330103
Status: Unutilized
Reason: Secured Area

Utah

Bldgs. 4555, 4554
Tooele Army Depot
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219012166, 219030366,
Status: Unutilized
Reason: Secured Area
Bldg. S–4301
Tooele Army Depot
Tooele Co: Tooele UT 84074–5008
Landholding Agency: Army
Property Number: 219012751
Status: Underutilized
Reason: Secured Area
3 Bldgs.
Dugway Proving Ground
Dugway Co: Toole UT 84022–
Landholding Agency: Army
Property Number: 219013997, 219130012, 21200120065
Status: Underutilized
Reason: Secured Area
51 Bldgs.
Dugway Proving Ground
Dugway Co: Toole UT 84022–
Landholding Agency: Army
Property Number: 219330181–219330182, 219330185, 219420328–219420329, 21199920091–21199920101
Status: Unutilized
Reason: Secured Area
Bldgs. 3102, 5145, 8030
Deseret Chemical Depot
Tooele UT 84074
Landholding Agency: Army
Property Number: 219820119–219820121
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Virginia

346 Bldgs.
Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141–
Landholding Agency: Army
Property Number: 219010833, 219010836, 219010839, 219010842, 219010844, 219010847–219010890, 219010892–219010912, 219011521–219011577, 219011581–219011583, 219011585, 219011588, 219011591, 219013559–219013570, 219110142–219110143, 219120071, 219140618–219140633,

219220210–219220218, 219230100–219230103, 219240324, 219440219–219440225, 219510031–219510033, 219520037, 219520052, 219530194, 219610607–219610608, 219830223–219830267, 21200020079–21200020081, 21200230030, 21200240071–21200240072
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area (Some are extensively deteriorated)

13 Bldgs.
Radford Army Ammunition Plant
Radford Co: Montgomery VA 24141–
Landholding Agency: Army
Property Number: 219010834–219010835, 219010837–219010838, 219010840–219010841, 219010843, 219010845–219010846, 219010891, 219011578–219011580
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area; Latrine, detached structure

34 Bldgs.
U.S. Army Combined Arms Support Command
Fort Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219240107, 219330210, 219330225–219330228, 219520062, 219610597, 219620497, 219620866–219620876, 219630115, 219740156, 219830208–219830210, 21199940129–21199940131, 21200030062, 21200040040, 21200110064, 21200120067, 21200230037, 21200240070
Status: Unutilized
Reason: Extensive deterioration (Some are in a secured area.)

56 Bldgs.
Red Water Field Office
Radford Army Ammunition Plant
Radford VA 24141
Landholding Agency: Army
Property Number: 219430341–219430396
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

45 Bldgs.
Fort A.P. Hill
Bowling Green Co: Caroline VA 22427
Landholding Agency: Army
Property Number: 21200110069, 21200240068–21200240069, 21200310045, 21200310058–21200310060
Status: Unutilized
Reason: Secured Area; Extensive deterioration

11 Bldgs.
Fort Belvoir
Ft. Belvoir Co: Fairfax VA 22060–5116
Landholding Agency: Army
Property Number: 21199910050–21199910051, 21199920102, 21199940117–21199940120, 21200030063–21200030064, 21200130075–21200130077
Status: Unutilized
Reason: Extensive deterioration

6 Bldgs., Fort Eustis
Ft. Eustis Co. VA 23604
Landholding Agency: Army
Property Number: 21200210025–21200210026
Status: Unutilized
Reason: Extensive deterioration

Bldg. 448, Fort Myer
Ft. Myer Co: Arlington VA 22211–1199
Landholding Agency: Army
Property Number: 21200010069
Status: Underutilized
Reason: Extensive deterioration

8 Bldgs.
Fort Monroe
Ft. Monroe Co: VA 23651
Landholding Agency: Army
Property Number: 21200220076–21200220079, 21200310047
Status: Excess
Reason: Extensive deterioration

51 Bldgs.
Fort Pickett
Blackstone Co: Nottoway VA 23824
Landholding Agency: Army
Property Number: 21200220087–21200220092, 21200320080–21200320087
Status: Unutilized
Reason: Extensive deterioration

Bldg. 00723, Fort Story
Ft. Story Co: Princess Ann VA 23459
Landholding Agency: Army
Property Number: 21200310046
Status: Unutilized
Reason: Extensive deterioration

Washington

665 Bldgs., Fort Lewis
Ft. Lewis Co: Pierce WA 98433–5000
Landholding Agency: Army
Property Number: 219610006, 219610009–219610010, 219610045–219610046, 219620512–219620517, 219640193, 219720142–219720151, 219810205–219810242, 219820132, 21199910063–21199910078, 21199920125–21199920174, 21199930080–21199930104, 21199940134, 21200120068, 21200140072–21200140073, 21200210075, 21200220097, 21200320091–21200320092, 21200330104–21200330106
Status: Unutilized
Reason: Secured Area; Extensive deterioration

Bldg. HBC07, Fort Lewis
Huckleberry Creek Mountain Training Site
Co: Pierce WA
Landholding Agency: Army
Property Number: 219740166
Status: Unutilized
Reason: Extensive deterioration

Bldg. 415, Fort Worden
Port Angeles Co: Clallam WA 98362
Landholding Agency: Army
Property Number: 21199910062
Status: Excess
Reason: Extensive deterioration

Bldg. U515A, Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Landholding Agency: Army
Property Number: 21199920124
Status: Excess
Reason: Gas chamber

Bldgs. 02401, 02402
Vancouver Barracks Cemetery
Vancouver Co: WA 98661
Landholding Agency: Army
Property Number: 21200310048
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs. Renton USARC
00460, 00485, 00480, 00411
Renton Co: WA 980058
Landholding Agency: Army
Property Number: 21200310049
Status: Unutilized
Reason: Extensive deterioration

Wisconsin

5 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219011209–219011212, 219011217
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Friable asbestos; Secured Area

153 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 219011104, 219011106, 219011108–219011113, 219011115–219011117, 219011119–219011120, 219011122–219011139, 219011141–219011142, 219011144, 219011148–219011208, 219011213–219011216, 219011218–219011234, 219011236, 219011238, 219011240, 219011242, 219011244, 219011247, 219011249, 219011251, 219011256, 219011259, 219011263, 219011265, 219011268, 219011270, 219011275, 219011277, 219011280, 219011282, 219011284, 219011286, 219011290, 219011293, 219011295, 219011297, 219011300, 219011302, 219011304–219011311, 219011317, 219011319–219011321, 219011323
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Friable asbestos; Secured Area

4 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013871–219013873, 219013875
Status: Underutilized
Reason: Secured Area

906 Bldgs.
Badger Army Ammunition Plant
Baraboo Co: Sauk WI
Landholding Agency: Army
Property Number: 219013876–219013878, 219210097–219210099, 219220295–219220311, 219510065, 219510067, 219510069–219510077, 219740184–219740271, 21200020083–21200020155, 21200240074–21200240080
Status: Unutilized
Reason: (Most are in a secured area) (Most are within 2000 ft. of flammable or explosive material (Some are extensively deteriorated)

Land (by State)

Indiana

Newport Army Ammunition Plant
East of 14th St. & North of S. Blvd.
Newport Co: Vermillion IN 47966–
Landholding Agency: Army
Property Number: 219012360
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

Maryland

Carroll Island, Graces Quarters
Aberdeen Proving Ground
Edgewood Area
Aberdeen City Co: Harford MD 21010–5425
Landholding Agency: Army
Property Number: 219012630, 219012632
Status: Underutilized
Reason: Floodway; Secured Area

Minnesota

Portion of R.R. Spur
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112–
Landholding Agency: Army
Property Number: 219620472
Status: Unutilized
Reason: Landlocked

New Jersey

Land
Armament Research Development & Eng. Center
Route 15 North
Picatinny Arsenal Co: Morris NJ 07806–
Landholding Agency: Army
Property Number: 219013788
Status: Unutilized
Reason: Secured Area

Spur Line/Right of Way
Armament Rsch., Dev., & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 219530143
Status: Unutilized
Reason: Floodway

2.0 Acres, Berkshire Trail
Armament Rsch., Dev., & Eng. Center
Picatinny Arsenal Co: Morris NJ 07806–5000
Landholding Agency: Army
Property Number: 21199910036
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Texas

Land—Approx. 50 acres
Lone Star Army Ammunition Plant
Texarkana Co: Bowie TX 75505–9100
Landholding Agency: Army
Property Number: 219420308
Status: Unutilized
Reason: Secured Area

Training Land (3.764 acres)
Camp Swift Military Rsv.
Bastrop Co: TX
Landholding Agency: Army
Property Number: 21200130073
Status: Unutilized
Reason: Secured Area

Wisconsin

Land
Badger Army Ammunition Plant
Baraboo Co: Sauk WI 53913–
Location: Vacant land within plant boundaries
Landholding Agency: Army
Property Number: 219013783
Status: Unutilized
Reason: Secured Area

[FR Doc. 03–19361 Filed 7–31–03; 8:45 am]
BILLING CODE 4210–29–P

Federal Register

Friday,
August 1, 2003

Part III

Department of Health and Human Services

Centers of Medicare & Medicaid Services

42 CFR Parts 412 and 413

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2004 Rates; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412 and 413

[CMS–1470–F]

RIN 0938–AL89

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2004 Rates

AGENCY: Centers for Medicare and Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: We are revising the Medicare hospital inpatient prospective payment systems (IPPS) for operating and capital costs to implement changes arising from our continuing experience with these systems. In addition, in the Addendum to this final rule, we are describing changes to the amounts and factors used to determine the rates for Medicare hospital inpatient services for operating costs and capital-related costs. These changes are applicable to discharges occurring on or after October 1, 2003. We also are setting forth rate-of-increase limits as well as policy changes for hospitals and hospital units excluded from the IPPS that are paid on a cost basis subject to these limits.

Among other changes that we are making are: changes to the classification of cases to the diagnosis-related groups (DRGS); changes to the long-term care (LTC)–DRGs and relative weights; the introduction of updated wage data used to compute the wage index; the approval of new technologies for add-on payments; changes to the policies governing postacute care transfers; payments to hospitals for the direct and indirect costs of graduate medical education; pass-through payments for nursing and allied health education programs; determination of hospital beds and patient days for payment adjustment purposes; and payments to critical access hospitals (CAHs).

EFFECTIVE DATES: The provisions of this final rule, except the provisions of § 412.230(e)(2)(ii)(A) (because it grants an exemption) and § 412.278(f)(2)(i), are effective on October 1, 2003. The provisions of § 412.230(e)(2)(ii)(A) and § 412.278(f)(2)(i) are effective on August 1, 2003. This rule is a major rule as defined in 5 U.S.C. 804(2). Pursuant to 5 U.S.C. 801(a)(1)(A), we are submitting a report to Congress on this rule on August 1, 2003.

FOR FURTHER INFORMATION CONTACT:

Stephen Phillips, (410) 786–4548, Operating Prospective Payment, Diagnosis-Related Groups (DRGs), Wage Index, New Medical Services and Technology, Patient Transfers, Counting Beds and Patient Days, and Hospital Geographic Reclassifications Issues.

Tzvi Hefter, (410) 786–4487, Capital Prospective Payment, Excluded Hospitals, Nursing and Allied Health Education, Graduate Medical Education, and Critical Access Hospital Issues, and Long-Term Care (LTC)–DRGs.

Sandra Hetrick, (410) 786–4542, RCE Limits.

SUPPLEMENTARY INFORMATION:

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Acronyms

AHIMA American Health Information Management Association
AHA American Hospital Association
CAH Critical access hospital
CBSAs Core Based Statistical Areas
CC Complication or comorbidity
CMS Centers for Medicare & Medicaid Services
CMSA Consolidated Metropolitan Statistical Areas
COBRA Consolidated Omnibus Reconciliation Act of 1985, Pub. L. 99–272
CPI Consumer Price Index
CRNA Certified registered nurse anesthetist
DRG Diagnosis-related group
DSH Disproportionate share hospital
FDA Food and Drug Administration
FQHC Federally qualified health center
FTE Full-time equivalent
FY Federal fiscal year
GME Graduate medical education
HIPC Health Information Policy Council
HIPAA Health Insurance Portability and Accountability Act, Pub. L. 104–191
HHA Home health agency
ICD–9–CM International Classification of Diseases, Ninth Revision, and Clinical Modification
ICD–10–PCS International Classification of Diseases Tenth Edition, and Procedure Coding System
IME Indirect medical education
IPPS Acute care hospital inpatient prospective payment system
IRF Inpatient Rehabilitation Facility
LDP Labor, delivery, and postpartum
LTC–DRG Long-term care diagnosis-related group
LTCH Long-term care hospital
MCE Medicare Code Editor
MDC Major diagnostic category
MDH Medicare-dependent small rural hospital
MedPAC Medicare Payment Advisory Commission
MedPAR Medicare Provider Analysis and Review File
MEI Medicare Economic Index
MGCRB Medicare Geographic Classification Review Board
MPFS Medicare Physician Fee Schedule
MSA Metropolitan Statistical Area
NECMA New England County Metropolitan Areas
NCHS National Center for Health Statistics
NCVHS National Committee on Vital and Health Statistics
O.R. Operating room
PPS Prospective payment system
PRA Per resident amount
ProPAC Prospective Payment Assessment Commission
PRRB Provider Reimbursement Review Board
RCE Reasonable compensation equivalent

RHC Rural health center
RRC Rural referral center
SCH Sole community hospital
SNF Skilled nursing facility
TEFRA Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248
UHDDS Uniform Hospital Discharge Data Set

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I. Background

A. Summary

1. Acute Care Hospital Inpatient Prospective Payment System (IPPS)

Section 1886(d) of the Social Security Act (the Act) sets forth a system of payment for the operating costs of acute care hospital inpatient stays under Medicare Part A (Hospital Insurance) based on prospectively set rates. Section 1886(g) of the Act requires the Secretary to pay for the capital-related costs of hospital inpatient stays under a prospective payment system (PPS). Under these PPSs, Medicare payment for hospital inpatient operating and capital-related costs is made at predetermined, specific rates for each hospital discharge. Discharges are classified according to a list of diagnosis-related groups (DRGs).

The base payment rate is comprised of a standardized amount that is divided into a labor-related share and a nonlabor-related share. The labor-related share is adjusted by the wage index applicable to the area where the hospital is located; and if the hospital is located in Alaska or Hawaii, the nonlabor-related share is adjusted by a cost-of-living adjustment factor. This base payment rate is multiplied by the DRG relative weight.

If the hospital treats a high percentage of low-income patients, it receives a percentage add-on payment applied to the DRG-adjusted base payment rate. This add-on payment, known as the disproportionate share hospital (DSH) adjustment, provides for a percentage increase in Medicare payments to hospitals that qualify under either of two statutory formulas designed to identify hospitals that serve a disproportionate share of low-income patients. For qualifying hospitals, the amount of this adjustment may vary based on the outcome of the statutory calculations.

If the hospital is an approved teaching hospital, it receives a percentage add-on payment for each case paid under the IPPS (known as the indirect medical education (IME) adjustment). This percentage varies, depending on the ratio of residents to beds.

Additional payments may be made for cases that involve new technologies that have been approved for special add-on payments. To qualify, a new technology must demonstrate that it is a substantial clinical improvement over technologies otherwise available, and that, absent an add-on payment, it would be inadequately paid under the regular DRG payment.

The costs incurred by the hospital for a case are evaluated to determine whether the hospital is eligible for an additional payment as an outlier case. This additional payment is designed to protect the hospital from large financial losses due to unusually expensive cases. Any outlier payment due is added to the DRG-adjusted base payment rate, plus any DSH, IME, and new technology add-on adjustments.

Although payments to most hospitals under the IPPS are made on the basis of the standardized amounts, some categories of hospitals are paid the higher of a hospital-specific rate based on their costs in a base year (the higher of FY 1982, FY 1987, or FY 1996) or the IPPS rate based on the standardized amount. For example, sole community hospitals (SCHs) are the sole source of care in their areas, and Medicare-dependent, small rural hospitals (MDHs) are a major source of care for Medicare beneficiaries in their areas. Both of these categories of hospitals are afforded this special payment protection in order to maintain access to services for beneficiaries (although MDHs receive only 50 percent of the difference between the IPPS rate and their hospital-specific rates if the hospital-specific rate is higher than the IPPS rate).

Section 1886(g) of the Act requires the Secretary to pay for the capital-related costs of inpatient hospital services "in accordance with a prospective payment system established by the Secretary." The basic methodology for determining capital prospective payments is set forth in our regulations at 42 CFR 412.308 and 412.312. Under the capital PPS, payments are adjusted by the same DRG for the case as they are under the operating IPPS. Similar adjustments are also made for IME and DSH as under the operating IPPS. In addition, hospitals may receive an outlier payment for those cases that have unusually high costs.

The existing regulations governing payments to hospitals under the IPPS are located in 42 CFR part 412, Subparts A through M.

2. Hospitals and Hospital Units Excluded From the IPPS

Under section 1886(d)(1)(B) of the Act, as amended, certain specialty hospitals and hospital units are excluded from the IPPS. These hospitals and units are: psychiatric hospitals and units, rehabilitation hospitals and units; long-term care hospitals (LTCHs); children's hospitals; and cancer hospitals. Various sections of the Balanced Budget Act of 1997 (Pub. L. 105–33), the Medicare, Medicaid and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999 (Pub. L. 106–113), and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (Pub. L. 106–554) provide for the implementation of PPSs for rehabilitation hospitals and units (referred to as inpatient rehabilitation facilities (IRFs)), psychiatric hospitals and units, and LTCHs, as discussed below. Children's hospitals and cancer hospitals continue to be paid under reasonable cost-based reimbursement.

The existing regulations governing payments to excluded hospitals and hospital units are located in 42 CFR parts 412 and 413.

a. Inpatient Rehabilitation Facilities

Under section 1886(j) of the Act, as amended, rehabilitation hospitals and units (IRFs) have been transitioned from payment based on a blend of reasonable cost reimbursement subject to a hospital-specific annual limit under section 1886(b) of the Act and prospective payments for cost reporting periods beginning January 1, 2002 through September 30, 2002, to payment on a full prospective payment system basis effective for cost reporting periods beginning on or after October 1, 2002 (66 FR 41316, August 7, 2001 and 67 FR 49982, August 1, 2002). The existing regulations governing payments under the IRF PPS are located in 42 CFR part 412, subpart P.

b. LTCHs

Under the authority of sections 123(a) and (c) of Public Law 106–113 and section 307(b)(1) of Public Law 106–554, LTCHs are being transitioned from being paid for inpatient hospital services based on a blend of reasonable cost-based reimbursement under section 1886(b) of the Act to fully Federal prospective rates during a 5-year period, beginning with cost reporting periods that start on or after October 1, 2002. For cost reporting periods beginning on or after October 1, 2006, LTCHs will be paid under the fully Federal prospective payment rate (the June 6, 2003 LTCH PPS final rule (68 FR 34122)). LTCHs may elect to be paid based on full PPS payments instead of a blended payment in any year during the 5-year transition period. The existing regulations governing payment under the LTCH PPS are located in 42 CFR part 412, subpart O.

c. Psychiatric Hospitals and Units

Sections 124(a) and (c) of Public Law 106–113 provide for the development of a per diem PPS for payment for inpatient hospital services furnished in psychiatric hospitals and units under the Medicare program, effective for cost reporting periods beginning on or after October 1, 2002. This system must include an adequate patient classification system that reflects the differences in patient resource use and costs among these hospitals and maintain budget neutrality. We are in the process of developing a proposed rule, to be followed by a final rule, to implement the PPS for psychiatric hospitals and units (referred to as inpatient psychiatric facilities (IPFs).

3. Critical Access Hospitals

Under sections 1814, 1820, and 1834(g) of the Act, payments are made to critical access hospitals (CAHs) (that is, rural hospitals or facilities that meet certain statutory requirements) for inpatient and outpatient services on a reasonable cost basis. Reasonable cost is determined under the provisions of section 1861(v)(1)(A) of the Act and existing regulations under 42 CFR parts 413 and 415.

4. Payments for Graduate Medical Education

Under section 1886(a)(4) of the Act, costs of approved educational activities are excluded from the operating costs of inpatient hospital services. Hospitals with approved graduate medical education (GME) programs are paid for the direct costs of GME in accordance with section 1886(h) of the Act; the amount of payment for direct GME costs for a cost reporting period is based on the hospital's number of residents in that period and the hospital's costs per resident in a base year. The existing regulations governing payments to the various types of hospitals are located in 42 CFR part 413.

B. Summary of the Provisions of the May 19, 2003 Proposed Rule

On May 19, 2003, we published a proposed rule in the **Federal Register** (68 FR 27154) that set forth proposed changes to the Medicare IPPS for operating costs and for capital-related costs in FY 2004. We also set forth proposed changes relating *to* payments for GME costs, payments to CAHs, and payments to providers classified as psychiatric hospitals and units that continue to be excluded from the IPPS and paid on a reasonable cost basis. These changes were proposed to be effective for discharges occurring on or after October 1, 2003.

The following is a summary of the major changes that we proposed and the issues we addressed in the May 19, 2003 proposed rule:

1. Changes to the DRG Reclassifications and Recalibrations of Relative Weights

As required by section 1886(d)(4)(C) of the Act, we proposed annual adjustments to the DRG classifications and relative weights. Based on analyses of Medicare claims data, we proposed to establish a number of new DRGs and make changes to the designation of diagnosis and procedure codes under other existing DRGs.

Among the proposed changes discussed were:

- Expansion of the number of DRGs that are split on the basis of the presence or absence of complications or comorbidities (CCs). The DRGs we proposed to split were: DRG 4 (Spinal Procedures) into proposed new DRGs 531 and 532 (Spinal Procedures With and Without CC, respectively); DRG 5 (Extracranial Vascular Procedures) into proposed new DRGs 533 and 534 (Extracranial Vascular Procedures With and Without CC, respectively); DRG 231 (Local Excision and Removal of Internal Fixation Devices Except Hip and Femur) into proposed new DRGs 537 and 538 (Local Excision and Removal of Internal Fixation Devices Except Hip and Femur With and Without CC, respectively); and DRG 400 (Lymphoma and Leukemia With Major O.R. Procedure) into proposed new DRGs 539 and 540 (Lymphoma and Leukemia With Major O.R. Procedure With and Without CC, respectively).
- Creation of a new DRG for patients with an intracranial vascular procedure and an intracranial hemorrhage. The DRG we proposed to create was DRG 528 (Intracranial Vascular Procedure With a Principal Diagnosis of Hemorrhage).
- Creation of two new DRGs, differentiated on the basis of the presence or absence of a CC, for craniotomy patients with only a vascular shunt procedure. The DRGs we proposed to create were DRGs 529 and 530 (Ventricular Shunt Procedure With CC and Without CC, respectively).
- Creation of two new DRGs to differentiate current DRG 514 (Cardiac Defibrillator Implant With Cardiac Catheterization) on the basis of whether the patient does or does not experience any of the following symptoms: acute myocardial infarction, heart failure, or shock. The new DRGs we proposed were DRG 535 (Cardiac Defibrillator Implant With Cardiac Catheterization and With Acute Myocardial Infarction, Heart Failure, or Shock) and DRG 536 (Cardiac Defibrillator Implant With Cardiac Catheterization and Without Acute Myocardial Infarction, Heart Failure, or Shock)
- Changes in the DRG assignment of certain congenital anomalies that currently result in patients being assigned to newborn DRGs even when the patient is actually an adult. We also proposed adding to the list of major problems in newborns that affect DRG assignment.
- Modification of DRG 492 (Chemotherapy With Acute Leukemia as

Secondary Diagnosis) to include in this DRG cases receiving high-dose Interleukin-2 (IL–2) chemotherapy for patients with advanced renal cell cancer and advanced melanoma.

We also presented our analysis of applicants for add-on payments for high-cost new medical technologies and proposed a revision to the high-cost threshold for a new technology or medical service to qualify for add-on payments.

- We proposed to continue to make add-on payments for Xigris.
- We discussed new applications for add-on payments for FY 2004.
- We proposed to reduce the high-cost threshold for a new technology or medical service to qualify for add-on payments from 1 standard deviation above the geometric mean standardized charge for cases in the DRGs to which the new technology is assigned to 75 percent of 1 standard deviation.

2. Changes to the Hospital Wage Index

We proposed revisions to the wage index and the annual update of the wage data. Specific issues addressed in this section included the following:

- The FY 2004 wage index update, using wage data from cost reporting periods that began during FY 2000.
- Exclusion of the wage data for rural health centers (RHCs) and Federally qualified health centers (FQHCs) from the calculation of the FY 2004 wage index.
- Exclusion of paid hours associated with military and jury duty leave from the wage index calculation, and request for comments on possible exclusion of paid lunch or meal break hours.
- Revisions to the wage index based on hospital redesignations and reclassifications.
- Amendments to the timetable for reviewing and verifying the wage data that will be in effect for the FY 2005 wage index.

3. Other Decisions and Changes to the PPS for Inpatient Operating and GME Costs

In the proposed rule, we discussed several provisions of the regulations in 42 CFR Parts 412 and 413 and set forth certain proposed changes concerning the following:

- Expansion of the current postacute transfer policy to 19 additional DRGs.
- Clarification of our policies that would be applied to counting hospital beds and patient days, in particular with regard to the treatment of swing-beds and observation beds, for purposes of the IME and DSH adjustments.
- Changes in our policy relating to nursing and allied health education payments to wholly owned subsidiary educational institutions of hospitals.
- Clarification of our policy relating to application of redistribution of costs and community support funds in determining a hospital's resident training costs.
- A change in the amount of rural training time required for an urban hospital to qualify for an increase in the rural track FTE limitation.
- Inclusion of FTE residents training in rural tracks in a hospital's rolling average calculation.

4. PPS for Capital-Related Costs

We discussed the payment requirements for capital-related costs. We did not propose any changes to the policies on payments to hospitals for capital-related costs.

5. Changes for Hospitals and Hospital Units Excluded From the IPPS

We discussed the following proposed revisions and clarifications concerning excluded hospitals and hospital units and CAHs:

- Revisions to the operation of excluded grandfathered hospitals-within-hospitals in effect on September 30, 1999.
- Clarification of the classification criteria for LTCHs.
- Clarification of the policy on payments for laboratory services provided by a CAH to patients outside a CAH.

6. Determining Prospective Payment Operating and Capital Rates and Rate-of-Increase Limits

In the Addendum to the May 19, 2003 proposed rule, we proposed changes to the amounts and factors for determining the FY 2004 prospective payment rates for operating costs and capital-related costs. We also established the proposed threshold amounts for outlier cases. In addition, we addressed update factors for determining the rate-of-increase limits for cost reporting periods beginning in FY 2004 for hospitals and hospital units excluded from the PPS.

7. Impact Analysis

In Appendix A of the proposed rule, we set forth an analysis of the impact that the proposed changes would have on affected hospitals.

8. Recommendation of Update Factor for Hospital Inpatient Operating Costs

In Appendix B of the proposed rule, as required by sections 1886(e)(4) and (e)(5) of the Act, we provided our recommendations of the appropriate percentage changes for FY 2004 for the following:

- Large urban area and other area average standardized amounts (and hospital-specific rates applicable to SCHs and MDHs) for hospital inpatient services paid under the IPPS for operating costs.
- Target rate-of-increase limits to the allowable operating costs of hospital inpatient services furnished by hospitals and hospital units excluded from the IPPS.

9. Discussion of Medicare Payment Advisory Commission Recommendations

Under section 1805(b) of the Act, the Medicare Payment Advisory Commission (MedPAC) is required to submit a report to Congress, no later than March 1 of each year, that reviews and makes recommendations on Medicare payment policies. In the proposed rule, we discussed the MedPAC recommendations concerning hospital inpatient payment policies and presented our response to those recommendations. For further information relating specifically to the MedPAC March 1 report or to obtain a copy of the report, contact MedPAC at (202) 220–3700 or visit MedPAC's Web site at: *http://www.medpac.gov*.

C. Public Comments Received in Response to the May 19, 2003 IPPS Proposed Rule

We received approximately 4,200 timely items of correspondence containing multiple comments on the May 19, 2003 proposed rule. Summaries of the public comments and our responses to those comments are set forth below under the appropriate heading.

II. Changes to DRG Classifications and Relative Weights

A. Background

Section 1886(d) of the Act specifies that the Secretary shall establish a classification system (referred to as DRGs) for inpatient discharges and adjust payments under the IPPS based on appropriate weighting factors assigned to each DRG. Therefore, under the IPPS, we pay for inpatient hospital services on a rate per discharge basis that varies according to the DRG to which a beneficiary's stay is assigned. The formula used to calculate payment for a specific case multiplies an individual hospital's payment rate per case by the weight of the DRG to which the case is assigned. Each DRG weight represents the average resources required to care for cases in that particular DRG, relative to the average resources used to treat cases in all DRGS.

Congress recognized that it would be necessary to recalculate the DRG relative weights periodically to account for changes in resource consumption. Accordingly, section 1886(d)(4)(C) of the Act requires that the Secretary adjust the DRG classifications and relative weights at least annually. These adjustments are made to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources. Changes to the DRG classification system and the recalibration of the DRG weights for discharges occurring on or after October 1, 2003 are discussed below.

B. DRG Reclassification

1. General

Cases are classified into DRGs for payment under the IPPS based on the principal diagnosis, up to eight additional diagnoses, and up to six procedures performed during the stay. In a small number of DRGs, classification is also based on the age, sex, and discharge status of the patient. The diagnosis and procedure information is reported by the hospital using codes from the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM).

For FY 2003, cases are assigned to one of 510 DRGs in 25 major diagnostic categories (MDCs). Most MDCs are based on a particular organ system of the body. For example, MDC 6 is Diseases and Disorders of the Digestive System. This approach is used because clinical care is generally organized in accordance with the organ system affected. However, some MDCs are not constructed on this basis because they involve multiple organ systems (for example, MDC 22 (Burns)). The table below lists the 25 MDCs.

	Major diagnostic categories
1	Diseases and Disorders of the Nervous System.
2	Diseases and Disorders of the Eye.
3	Diseases and Disorders of the Ear, Nose, Mouth, and Throat.
4	Diseases and Disorders of the Respiratory System.
5	Diseases and Disorders of the Circulatory System
6	Diseases and Disorders of the Digestive System.
7	Diseases and Disorders of the Hepatobiliary System and Pancreas.
8	Diseases and Disorders of the Musculoskeletal System and Connective Tissue.
9	Diseases and Disorders of the Skin, Subcutaneous Tissue and Breast.
10	Endocrine, Nutritional and Metabolic Diseases and Disorders.
11	Diseases and Disorders of the Kidney and Urinary Tract.
12	Diseases and Disorders of the Male Reproductive System.
13	Diseases and Disorders of the Female Reproductive System.
14	Pregnancy, Childbirth, and the Puerperium.
15	Newborns and Other Neonates with Conditions Originating in the Perinatal Period.
16	Diseases and Disorders of the Blood and Blood Forming Organs and Immunological Disorders.
17	Myeloproliferative Diseases and Disorders and Poorly Differentiated Neoplasms.
18	Infectious and Parasitic Diseases (Systemic or Unspecified Sites).
19	Mental Diseases and Disorders.
20	Alcohol/Drug Use and Alcohol/Drug Induced Organic Mental Disorders.
21	Injuries, Poisonings, and Toxic Effects of Drugs.
22	Burns.
23	Factors Influencing Health Status and Other Contacts with Health Services.
24	Multiple Significant Trauma.
25	Human Immunodeficiency Virus Infections.

In general, cases are assigned to an MDC based on the patient's principal diagnosis before assignment to a DRG. However, for FY 2003, there are eight DRGs to which cases are directly assigned on the basis of ICD–9–CM procedure codes. These DRGs are for heart, liver, bone marrow, lung, simultaneous pancreas/kidney, and pancreas transplants (DRGs 103, 480, 481, 495, 512, and 513, respectively) and for tracheostomies (DRGs 482 and 483). Cases are assigned to these DRGs before they are classified to an MDC.

Within most MDCs, cases are then divided into surgical DRGs and medical DRGs. Surgical DRGs are based on a hierarchy that orders operating room (O.R.) procedures or groups of O.R. procedures by resource intensity. Medical DRGs generally are differentiated on the basis of diagnosis and age (less than or greater than 17 years of age). Some surgical and medical DRGs are further differentiated based on the presence or absence of a complication or a comorbidity (CC).

Generally, nonsurgical procedures and minor surgical procedures that are not usually performed in an operating room are not treated as O.R. procedures. However, there are a few non-O.R. procedures that do affect DRG assignment for certain principal diagnoses, for example, extracorporeal shock wave lithotripsy for patients with a principal diagnosis of having urinary stones.

Patient's diagnosis, procedure, discharge status, and demographic information is fed into the Medicare claims processing systems and subjected to a series of automated screens called the Medicare Code Editor (MCE). The MCE screens are designed to identify cases that require further review before classification into a DRG.

After patient information is screened through the MCE and any further development of the claim is conducted, cases are classified into the appropriate DRG by the Medicare GROUPER software program. The GROUPER program was developed as a means of classifying each case into a DRG on the basis of the diagnosis and procedure codes and, for a limited number of DRGs, demographic information (that is, sex, age, and discharge status).

After cases are screened through the MCE and assigned to a DRG by the GROUPER, a base DRG payment is calculated by the PRICER software. The PRICER calculates the payments for each case covered by the IPPS based on the DRG relative weight and additional factors associated with each hospital, such as IME and DSH adjustments. These additional factors increase the payment amount to hospitals above the base DRG payment.

The records for all Medicare hospital inpatient discharges are maintained in the Medicare Provider Analysis and Review (MedPAR) file. The data in this file are used to evaluate possible DRG classification changes and to recalibrate the DRG weights. However, in the July 30, 1999 IPPS final rule (64 FR 41500), we discussed a process for considering non-MedPAR data in the recalibration process. In order for us to consider the feasibility of using particular non-MedPAR data, we must have sufficient time to evaluate and test the data. The time necessary to do so depends upon the nature and quality of the non-MedPAR data submitted. Generally, however, a significant sample of the non-MedPAR data should be submitted by mid-October for consideration in conjunction with the next year's proposed rule. This allows us time to test the data and make a preliminary assessment as to the feasibility of using the data. Subsequently, a complete database should be submitted by early December for consideration in conjunction with the next year's proposed rule.

Many of the changes to the DRG classifications are the result of specific issues brought to our attention by interested parties. We encourage individuals with concerns about DRG classifications to bring those concerns to our attention in a timely manner so they can be carefully considered for possible inclusion in the next proposed rule and so any proposed changes may be subjected to public review and comment. Therefore, similar to the timetable for interested parties to submit non-MedPAR data for consideration in the DRG recalibration process, concerns about DRG classification issues should be brought to our attention no later than early December in order to be considered and possibly included in the next annual proposed rule updating the IPPS.

In the May 19, 2003 proposed rule, we proposed numerous changes to the DRG classification system for FY 2004. The changes we proposed to the DRG classification system for FY 2004, the public comments we received concerning the proposed changes, the final DRG changes, and the methodology used to recalibrate the DRG weights are set forth below. The changes we are implementing in this final rule will be reflected in the revised FY 2004 GROUPER version 21.0 and effective for discharges occurring on or after October 1, 2003. Unless otherwise noted in this final rule, our DRG analysis is based on data from the March 2002 update of the FY 2002 MedPAR file, which contains hospital bills received through March 31, 2002, for discharges in FY 2002.

2. Review of DRGs for a Split Based on Presence or Absence of a CC

In an effort to improve the clinical and cost cohesiveness of the DRG classification system, we have evaluated whether additional DRGs should be split based on the presence or absence of a CC. There are currently 116-paired DRGs that reflect a split based on the presence or absence of a CC. We last performed a systematic evaluation and considered changes to the DRGs to recognize the within-DRG cost differences based on the presence or absence of CCs in 1994 (May 27, 1994 IPPS proposed rule, 59 FR 27715). In the May 27, 1994 IPPS proposed rule, we described a refined DRG system based on a list of secondary diagnoses that have a major effect on the resources that hospitals use to treat patients across DRGs. We analyzed how the presence of the secondary diagnosis affected resource use compared to other secondary diagnoses, and classified these secondary diagnoses as non-CC, CC, or major CC. After finalizing the classification of secondary diagnoses, we evaluated which collapsed DRGs should be split based on the presence of a major CC, other CC, or both.[1] However, we did not implement this refined system because we did not believe it would be prudent policy to make changes for which we could not predict the effect on the case-mix (the average DRG relative weight for all cases) and, thus, payments (60 FR 29209). We were concerned that we would be unable to fulfill the requirement of section 1886(d)(4)(C)(iii) of the Act that aggregate payments may not be affected by DRG reclassification and recalibration of weighting factors. That is, our experience has been that hospitals respond to major changes to the DRGs by changing their coding practices in ways that increase total payments (for example, by beginning to include ICD–9–CM codes that previously did not affect payment for a case). Because changes in coding behavior do not represent a real increase in the severity of the overall mix of cases, total payments should not increase. We believe that the only way to ensure this behavioral response does not lead to higher total payments is to make an offsetting adjustment to the system in advance of the fiscal year for which the changes are effective.

Section 301(e) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (Pub. L. 106–554) authorized the Secretary to make such a prospective adjustment to the average standardized amounts for discharges occurring on or after October 1, 2001, to ensure the total payment impacts of changes to the DRGs do not result in any more or less total spending than would otherwise occur without the changes (budget neutrality).

We are not proceeding with implementing a refined DRG system at this time, pending a decision whether to replace the ICD–9–CM coding system with another classification system. The refined DRG system discussed in the May 1994 IPPS proposed rule involved a complete and thorough assessment of all of the ICD–9–CM diagnosis codes in order to establish an illness severity level associated with each code. Rather than undertaking the time-consuming process of establishing illness severity levels for all ICD–9–CM codes at this time, we believe the more prudent course would be to delay this evaluation pending the potential replacement of ICD–9–CM. For example, the National Committee on Health and Vital Statistics (NCHVS) is considering making a recommendation to the Secretary on whether to recommend the adoption of the ICD–10–CM and the ICD–10—Procedure Coding System (PCS) as the national uniform standard coding system for inpatient reporting.

In the meantime, we have undertaken an effort to identify additional DRGs where a CC split appears most justified. Our analysis identified existing DRGs that meet the following criteria: a reduction in variance in charges within the DRG of at least 4 percent; fewer than 75 percent of all patients in the current DRG would be assigned to the with-CC DRG; and the overall payment impact (higher payments for cases in the with-CC DRG offset by lower payments for cases in the without-CC DRG) is at least $40 million.

The following four DRGs meet these criteria: DRG 4 (Spinal Procedures) and DRG 5 (Extracranial Vascular Procedures) in MDC 1 (Diseases and Disorders of the Nervous System); DRG 231 (Local Excision and Removal of Internal Fixation Devices Except Hip and Femur) in MDC 8 (Diseases and Disorders of the Musculoskeletal and Connective Tissue); and DRG 400 (Lymphoma and Leukemia with Major O.R. Procedure) in MDC 17 (Myeloproliferative Diseases and Disorders and Poorly Differentiated Neoplasms).

The following data indicate that the presence or absence of a CC was found to have a significant impact on patient charges and on average lengths of stay in these four DRGs.

DRG	Number of cases	Average charges	Average length of stay
DRG 4 (Current)	4,488	$35,074	7.3
With CC	2,514	46,071	10.0
Without CC	1,974	21,070	3.9
DRG 5 (Current)	64,942	18,613	2.9
With CC	29,296	23,213	4.1
Without CC	35,646	14,833	2.0
DRG 231 (Current)	8,971	20,147	4.9
With CC	4,565	25,948	6.9
Without CC	4,406	14,136	2.9
DRG 400 (Current)	4,275	39,953	9.0
With CC	2,990	49,044	11.2
Without CC	1,285	18,799	4.0

Therefore, we proposed to establish the following new DRGs: proposed DRG 531 (Spinal Procedures With CC) and proposed DRC 532 (Spinal Procedures Without CC) in MDC 1; proposed DRG 533 (Extracranial Procedures With CC) (the proposed rule incorrectly included "Vascular" in the title) and proposed DRG 534 (Extracranial Procedures Without CC) (the proposed rule incorrectly included "Vascular" in the title) in MDC 1; proposed DRG 537 (Local Excision and Removal of Internal Fixation Devices Except Hip and Femur With CC) and proposed DRG 538 (Local Excision and Removal of Internal Fixation Devices Except Hip and Femur Without CC) in MDC 8; and proposed DRG 539 (Lymphoma and Leukemia With Major O.R. Procedure With CC) and DRG 540 (Lymphoma and Leukemia With Major O.R. Procedure Without CC) in MDC 17. We proposed that DRGs 4, 5, 231, and 400 would become invalid.

Comment: Seven commenters supported the proposed expansion of the number of DRGs related to spinal procedures and extracranial vascular procedures and the removal of internal fixation devices. One commenter commended CMS for the proposed change to payments for implanting spinal code stimulation devices. Referring to proposed new DRGs 531 and 532, the commenter stated that most inpatients receiving a spinal cord stimulator implant have a comorbid condition, which adds significantly to the cost of care and can serve as a barrier to patient access. Another commenter specifically supported the new DRGs 533 and 534 for extracranial vascular procedures.

One commenter expressed support for CMS' recognition of cost differences within a given DRG based on the presence or absence of a CC and encouraged CMS to continue to consider secondary diagnoses that can have a substantial effect on hospital resources when restructuring DRGs based on cost considerations.

Response: We appreciate the support for these proposals and are adopting them as final without further modification.

We are establishing new DRGs 531, 532, 533, 534, 537, 538, 539, and 540, effective for discharges occurring on or after October 1, 2003. As a result of establishing these new DRGS, DRGs 4, 5, 231, and 400 are invalid, effective October 1, 2003. We will continue to monitor whether additional DRGs should be split based on the presence or absence of a CC.

3. MDC 1 (Diseases and Disorders of the Nervous System)

a. Revisions of DRGs 1 and 2

In the FY 2003 IPPS final rule, we split DRGs 1 and 2 (Craniotomy Age > 17 With and Without CC, respectively) based on the presence or absence of a CC (67 FR 49986). We have received several proposals related to devices or procedures that are used in a small subset of cases from these DRGS. These proposals argue that the current payment for these devices or procedures under DRGs 1 and 2 is inadequate.

Therefore, we conducted an analysis of the charges for various procedures and diagnoses within DRGs 1 and 2 to assess whether further changes to these DRGs may be warranted. Currently, the average charges for cases assigned to DRGs 1 and 2 are approximately $55,000 and $30,000, respectively. In the May 19, 2003 proposed rule, we proposed to create two separate new DRGs for: (1) cases with an intracranial vascular procedure and a principal diagnosis of an intracranial hemorrhage; and (2) craniotomy cases with a ventricular shunt procedure (absent another procedure). The former set of cases are much more expensive than those presently in DRGs 1 and 2; the latter set of cases are much less expensive.

(1) Intracranial Vascular Procedures

Our analysis indicated that patients with an intracranial vascular procedure and a principal diagnosis of an intracranial hemorrhage were significantly more costly than other cases in DRGS 1 and 2. These patients have an acute condition with a high severity of illness and risk of mortality. There were 917 cases in DRGs 1 and 2 with an intracranial vascular procedure and a principal diagnosis of hemorrhage with average charges of approximately $113,884, which are much higher than the average charges of DRGS 1 and 2 noted above.

We also found 890 cases that had an intracranial vascular procedure without a principal diagnosis of hemorrhage (for example, nonruptured aneurysms). These cases are generally less acutely ill than those involving ruptured aneurysms, and have a lower risk of mortality. Among these 890 cases, the average charges were approximately $52,756, which are much more similar to the average charges for all cases in DRGs 1 and 2.

[1] The complete description of the analysis was published in the *Health Care Financing Review* (Edwards, N., Honemann, D., Burley, D., Navarro, M., "Refinement of the Medicare Diagnosis-Related Groups to Incorporate a Measure of Severity," *Health Care Financing Review*, Winter 1994, Vol. 16, No. 2; p. 45).

Based on this analysis, we proposed to create new DRG 528 (Intracranial Vascular Procedure With a Principal Diagnosis of Hemorrhage) for patients with an intracranial vascular procedure and an intracranial hemorrhage. We proposed that cases involving intracranial vascular procedures without a principal diagnosis of hemorrhage would remain in DRGs 1 and 2.

We indicated that proposed new DRG 528 would have the following principal diagnoses:

- 094.87, Syphilitic ruptured cerebral aneurysm
- 430, Subarachnoid hemorrhage
- 431, Intracerebral hemorrhage
- 432.0, Nontraumatic extradural hemorrhage
- 432.1, Subdural hemorrhage
- 432.9, Unspecified intracranial hemorrhage

And operating room procedures:

- 02.13, Ligation of meningeal vessel
- 38.01, Incision of vessel, intracranial vessels
- 38.11, Endarterectomy, intracranial vessels
- 38.31, Resection of vessel with anastomosis, intracranial vessels
- 38.41, Resection of vessel with replacement, intracranial vessels
- 38.51, Ligation and stripping of varicose veins, intracranial vessels
- 38.61, Other excision of vessels, intracranial vessels
- 38.81, Other surgical occlusion of vessels, intracranial vessels
- 39.28, Extracranial-intracranial (EC–IC) vascular bypass
- 39.51, Clipping of aneurysm
- 39.52, Other repair of aneurysm
- 39.53, Repair of arteriovenous fistula
- 39.72, Endovascular repair or occlusion of head and neck vessels
- 39.79, Other endovascular repair of aneurysm of other vessels

(2) Ventricular Shunt Procedures

We also found that craniotomy patients who had a ventricular shunt procedure (absent another procedure) were significantly less costly than other craniotomy patients in DRGs 1 and 2. Ventricular shunts are normally performed for draining intracranial fluid. A ventricular shunt is a less extensive procedure than the other intracranial procedures in DRGs 1 and 2. As a result, if a ventricular shunt is the only intracranial procedure performed, these cases will typically be less costly.

There were 4,373 cases in which only ventricular shunt procedures were performed. These cases had average charges of approximately $27,188. However, the presence or absence of a CC had a significant impact on patient charges and lengths of stay. There were 2,533 cases with CC, with average charges of approximately $33,907 and an average length of stay of 8.2 days. In contrast, there were 1,840 cases without CC, with average charges of approximately $17,939 and an average length of stay of 3.7 days.

Therefore, we proposed to create two new DRGs, splitting with CC and without CC, for patients with only a vascular shunt procedure: proposed new DRG 529 (Ventricular Shunt Procedures With CC) and proposed new DRG 530 (Ventricular Shunt Procedures Without CC).

We indicated that proposed new DRG 529 would consist of any principal diagnosis in MDC 1 (erroneously cited as MDC 5 in the proposed rule), with the presence of a CC and one of the following operating room procedures:

- 02.31, Ventricular shunt to structure in head and neck
- 02.32, Ventricular shunt to circulatory system
- 02.33, Ventricular shunt to thoracic cavity
- 02.34, Ventricular shunt to abdominal cavity and organs
- 02.35, Ventricular shunt to urinary system
- 02.39, Other operations to establish drainage of ventricle
- 02.42, Replacement of ventricular shunt
- 02.43, Removal of ventricular shunt

We proposed that the proposed new DRG 530 would consist of any principal diagnosis in MDC 1 (erroneously cited as MDC 5 in the proposed rule) with one of the operating room procedures listed above for the proposed new DRG 529, but without the presence of a CC.

Comment: Four commenters supported the proposed creation of two DRGs to capture ventricular shunt procedures. Ten commenters supported the proposed creation of new DRG 528 for an intracranial vascular procedure with a principal diagnosis of hemorrhage.

Two commenters requested that CMS verify its GROUPER analysis and clarify in the final rule the estimated number of cases that will be assigned to DRG 528. One commenter also believed that CMS is underestimating the volume of hemorrhagic cases that would be assigned to this new DRG. The commenter indicated that its analysis of MedPAR 2001 data demonstrated 1,550 cases.

Response: We conducted an analysis based on later available MedPAR data and found 1,596 cases that would be assigned to DRG 528 (based on a full year of MedPAR data). This volume is consistent with the commenter's analysis, although different MedPAR files were used in the analysis. In the proposed rule (68 FR 27161), we reported 917 cases based on preliminary data (6 months' worth of cases) that we analyzed when we considered the proposed change in the DRG classification. There were actually 1,354 cases grouped to the proposed new DRG 528 for the proposed rule.

Comment: One commenter suggested the creation of a new companion DRG to DRG 528 for intracranial vascular procedures for unruptured cerebral aneurysms. The commenter was concerned that the charges for endovascular repair of unruptured aneurysms is higher than other procedures currently assigned to DRG 2.

Response: The average charges for unruptured aneurysm cases varied according to the DRG to which the cases were assigned. The average charges for these cases in DRG 1 were slightly higher than the overall charges for that DRG, of approximately $69,682 and $54,900, respectively. However, we found that these charges are consistent with the variation of charges within this DRG and, therefore, did not propose a change in the DRG reclassification. Similarly, for cases assigned to DRG 2, we found the average charges of approximately $36,077 are consistent with the overall average charges of that DRG of approximately $32,000. We will continue to monitor these cases.

Comment: Three commenters requested a change to the DRG assignment of cases involving implantation of GLIADEL® chemotherapy wafers to treat brain tumors.[2] One of the commenters offered two options: create a new DRG or reassign these cases to DRG 484 (Craniotomy for Multiple Significant Trauma). The commenter cited an example in which CMS has in the past grouped together in the same DRG cases that are clinically dissimilar but similar in resource intensity when there were no other options available. For FY 1998 (62 FR 45974), coronary stent cases were moved from DRG 112 (Percutaneous Cardiovascular Procedures) to DRG 116 (Other Permanent Cardiac Pacemaker Implant or PTCA with Coronary Artery Stent Implant). In that instance, CMS concluded that, although coronary artery stent cases are not clinically similar to the pacemaker cases in DRG 116, the resource consumption of these

[2] We also discuss this issue later in this preamble under section II.E.3.b. relative to the application for new technology add-on payments for the GLIADEL® wafer.

cases is very similar. The commenter contended that, absent another appropriate craniotomy DRG, the same argument could be applied to assigning cases with GLIADEL® wafer to DRG 484.

In a comment on the proposed rule, the manufacturer of this implant provided estimated FY 2003 average costs and charges for these cases. Its report indicated that the costs of the cases of $24,280 would be the same for cases assigned to DRG 1 and DRG 2, and the charges of the cases of $50,394 would be the same for both DRGs. The manufacturer requested that we analyze the available data in the FY 2003 MedPAR file to identify GLIADEL® cases. The manufacturer believed these data support the need for a DRG change.

One commenter agreed with our determination that this technology is currently reflected within the DRG weights and does not meet the definition of a new technology.

Response: In our analysis of the data from the March 2003 update of the FY 2003 MedPAR file, we found a total of 61 cases in which the ICD–9–CM procedure code 00.10 (Implantation of a chemotherapeutic agent) was reported for cases assigned to DRGs 1 and 2. There were 38 cases assigned to DRG 1 and 23 cases assigned to DRG 2. Consistent with the GROUPER logic for these DRGs that splits cases based on the presence or absence of CCs, we found that the average standardized charges in DRGs 1 and 2 were approximately $64,864 and $42,624, respectively. We believe that while the charges for GLIADEL® wafer cases may be higher than the average standardized charges for DRG 2, they are within the normal variation of the overall charges within each DRG.

We note that the DRGs are a system of averages, and there is expected to be variation in the average charges for different procedures and services across all DRGs. Hospitals are expected to be able to finance some higher cost procedures with lower cost procedures within the same DRG as well as across DRGs. Although the average charges of the cases we identified in our analysis are somewhat higher than the average charges of all cases in these DRGs, they are within the range of other procedures included in these DRGs. By way of comparison, we are creating a new DRG for cases with an intracranial vascular procedure and a principal diagnosis of an intracranial hemorrhage on the basis of our analysis that showed the average charges for these cases were $113,884. This is approximately $59,000 more than the average charges in DRG 1 (more than the total charges for the GLIADEL® cases reported by the commenter) and approximately $84,000 more than the average charges in DRG 2.

We also are concerned that there may be insufficient volume of cases to warrant the establishment of a new DRG for this technology. Thus, before considering the creation of a new DRG for these cases, we would like to review a full year of data, as well as consider alternative options if they appear warranted. It would also be necessary to provide opportunity for public comment on any potential changes to the DRG assignment of these cases before proceeding with a final change.

Currently, DRG 484 includes complex, multiple significant trauma cases; that is, patients with a principal diagnosis of trauma and at least two significant trauma diagnosis codes (either as principal or secondary diagnosis) from different body site categories. While this DRG includes craniotomy, it is assigned to MDC 24 (Multiple Significant Trauma). While the treatment for glioblastoma multiforme is significant, we do not believe these cases are clinically similar to other cases currently assigned to DRG 484.

We also are concerned that there may be insufficient volume to warrant the establishment of a new DRG for this technology, and we would like to review a full year of data, as well as consider alternative options if they appear warranted. It would be necessary to provide opportunity for public comment on any potential changes before proceeding with a final change.

Comment: Two commenters pointed out a typographical error in our proposal. The commenters indicated that we proposed new DRGs 529 and 530 for placement in MDC 5; the correct MDC should have been MDC 1.

Response: We agree with the commenters and have corrected this placement, as indicated in the discussion above.

After consideration of the comments received, we are adopting as final the three new proposed DRGs 528, 529, and 530. These DRGS will be effective for discharges occurring on or after October 1, 2003.

b. DRG 23 (Nontraumatic Stupor and Coma)

In DRG 23 (Nontraumatic Stupor and Coma), there are currently six principal diagnoses identified by the following ICD–9–CM diagnosis codes: 348.4, Compression of the brain; 348.5, Cerebral edema; 780.01, Coma; 780.02, Transient alteration of awareness; 780.03, Persistent vegetative state; and 780.09, Other alteration of consciousness. Code 780.02 is often used to describe the diagnosis of psychiatric patients rather than the diagnosis of patients with severe neurological disorders. The treatment plan for a patient with "transient alteration of awareness" is clinically very different from the treatment plan for a coma patient. Furthermore, many patients with this diagnosis are treated in psychiatric facilities rather than in acute care hospitals.

Although there are neurological patients who present with the complaint of "transient alteration of awareness," the cause of this alteration of consciousness is commonly identified, and the principal diagnosis for the hospital admission is the etiology of the alteration of consciousness rather than the symptom itself. For the few remaining neurological patients for whom the cause is not identified and for whom code 780.02 is assigned as the principal diagnosis, we believe that the care of these patients is different than the care of patients with coma or cerebral edema.

Because we believe the patients with a principal diagnosis of "transient alteration of consciousness" are more clinically related to the patients in DRG 429 (Organic Disturbances and Mental Retardation) in MDC 19 (Mental Diseases and Disorders), we proposed that patients who are assigned a principal diagnosis of code 780.02 would be assigned to DRG 429 instead of DRG 23. DRG 429 also contains similar diagnoses, such as code 293.81, Organic delusional syndrome and code 293.82, Organic hallucinosis syndrome. (We note that the charges for the patient cases in DRGs 23 and 429 are very similar ($11,559 and $11,713, respectively), so the proposed movement of code 780.02 from DRG 23 to DRG 429 would have minimal payment impact.) Moving this diagnosis code as proposed would also consolidate diagnoses treated frequently in psychiatric hospitals in those DRGs that are likely to be a part of the upcoming proposed Medicare psychiatric facility PPS.

Comment: An organization representing hospitals supported our proposed change, while other commenters opposed the change. The commenters who opposed the change stated that code 780.02 is included in the ICD–9–CM chapter for signs and symptoms of ill-defined conditions. The commenters believed that since this code is included in a chapter with ill-defined conditions, it would be inappropriate to move the code to DRG 429. The commenters stated that this

code does not describe a mental disorder; and disagreed with our statement in the proposed rule that code 780.02 was similar to codes 293.81 and 293.82. The commenters further stated that they disagreed with our assertion that many patients with a diagnosis of transient alteration of awareness are treated in psychiatric facilities.

Response: Our review of claims data indicates that code 780.02 is a frequent diagnosis for patients admitted to psychiatric hospitals. Many patients are likely to present with transient alteration of awareness at the time of admission to a psychiatric hospital. The cause of this transient alteration is likely to be diagnosed during the stay, leading to the assignment of another, more specific principal diagnosis.

However, in many patients, this is not the case, and no underlying cause for the transient alteration of awareness is determined. When a more definitive diagnosis cannot be made, the patient is left with the diagnosis of alteration of awareness. We recognize the difficulty in assigning symptoms such as these to the most appropriate DRG. However, we will note that the average charges for DRG 23 (where the code is currently assigned) and DRG 429 are similar.

Therefore, we are proceeding with the assignment of code 780.02 to DRG 429 based on a review of psychiatric hospital data as well as a clinical comparison of cases already assigned to DRG 429.

4. MDC 5 (Diseases and Disorders of the Circulatory System)

a. DRG 478 (Other Vascular Procedures With CC) and DRG 479 (Other Vascular Procedures Without CC)

Code 37.64 (Removal of heart assist system) in DRGs 478 and 479 describes the operative, as opposed to bedside, removal of a heart assist system. Based on comments we received suggesting that code 37.64 was inappropriately assigned to DRGs 478 and 479, we reviewed the MedPAR data for both DRGs 478 and 479 and DRG 110 (Major Cardiovascular Procedures With CC) and DRG 111 (Major Cardiovascular Procedures Without CC) to assess the appropriate assignment of code 37.64.

We found that there were only 17 cases of code 37.64 in DRGs 478 and 479, with an average length of stay of 14.1 days and average charges of $105,153. There were a total of 90,591 cases in DRGs 478 and 479 that did not contain code 37.64. These cases had an average length of stay of 6.6 days and average charges of $31,879. In DRGs 110 and 111, we found an average length of stay of 8.1 days, with average charges of $54,653.

We proposed to remove code 37.64 from DRGs 478 and 479 and reassign it to DRGs 110 and 111. The surgical removal of a heart assist system is a major cardiovascular procedure and, therefore, more appropriately assigned to DRGs 110 and 111. Accordingly, we believe this DRG assignment for this procedure is more clinically and financially appropriate.

We received two comments in support of this change. Therefore, we are adopting as final our proposal to remove code 37.64 from DRGs 478 and 479 and assign it to DRGs 110 and 111.

b. DRGs 514 (Cardiac Defibrillator Implant With Cardiac Catheterization) and 515 (Cardiac Defibrillator Implant Without Cardiac Catheterization)

(1) Cardiac Defibrillator Implant With Cardiac Catheterization With Acute Myocardial Infarction

Prior to the publication of the proposed rule, we received a recommendation to modify DRG 514 (Cardiac Defibrillator Implant With Cardiac Catheterization) and DRG 515 (Cardiac Defibrillator Implant Without Cardiac Catheterization) so that these DRGs are split based on the presence or absence of acute myocardial infarction, heart failure, or shock as a principal diagnosis. We note that the increased cost of treating cardiac patients with acute myocardial infarction, heart failure, or shock is recognized in the payment logic for pacemaker implants (DRG 115 (Permanent Cardiac Pacemaker Implant With Acute Myocardial Infarction, Heart Failure or Shock, or AICD Lead or Generator) and DRG 116 (Other Permanent Cardiac Pacemaker Implant)).

We examined FY 2002 MedPAR data regarding the number of cases and the average charges for DRGs 514 and 515. The results of our examination are summarized in the following table.

DRG	Number of cases	Average charges	With AMI, heart failure, or shock count	Average charges
514	16,743	$97,133	3,623	$120,852
515	4,674	76,537	935	84,140

A cardiac catheterization is generally performed to establish the nature of the patient's cardiac problem and determine if implantation of a cardiac defibrillator is appropriate. Generally, the cardiac catheterization can be done on an outpatient basis. Patients who are admitted with acute myocardial infarction, heart failure, or shock and have a cardiac catheterization are generally acute patients who require emergency implantation of the defibrillator. Thus, there are very high costs associated with these patients.

We found that the average charges for patients with cardiac catheterizations who also were admitted with acute myocardial infarction, heart failure, or shock were $120,852, compared to the average charges for all DRG 514 cases of $97,133. Therefore, we proposed to split DRG 514 and create a new DRG for patients receiving a cardiac defibrillator implant with cardiac catheterization and with a principal diagnosis of acute myocardial infarction, heart failure, or shock.

Patients without cardiac catheterization generally have had the need for the defibrillator established on an outpatient basis prior to admission. We found 935 cases with acute myocardial infarction, heart failure, or shock, with average charges of $84,140. The average charges for all cases in DRG 515 were $76,537. Because of the relatively small number of patients and the less-than-10-percent charge difference for patients in DRG 515 who have acute myocardial infarction, heart failure, or shock, we did not propose to create a separate DRG for patients with a cardiac defibrillator implant without cardiac catheterization with acute myocardial infarction, heart failure, or shock.

Specifically, we proposed to create two new DRGs that would replace the current DRG 514. We indicated that the two proposed new DRGs would have the same procedures currently listed for DRG 514, but would be split based on the presence or absence of acute myocardial infarction, heart failure, or shock as a principal diagnosis. We proposed to establish new DRG 535 (Cardiac Defibrillator Implant With Cardiac Catheterization and With Acute Myocardial Infarction, Heart Failure, or Shock) and new DRG 536 (Cardiac Defibrillator Implant With Cardiac Catheterization and Without Acute Myocardial Infarction, Heart Failure, or Shock). Proposed new DRG 536 would exclude the following principal diagnosis codes from MDC 5 associated with acute myocardial infarction, heart failure, or shock.

- 398.91, Rheumatic heart failure
- 402.01, Malignant hypertensive heart disease with heart failure
- 402.11, Benign hypertensive heart disease with heart failure
- 402.91, Hypertensive heart disease not otherwise specified with heart failure
- 404.01, Malignant hypertensive heart and renal disease with heart failure
- 404.03, Malignant hypertensive heart and renal disease with heart failure and renal failure
- 404.11, Benign hypertensive heart and renal disease with heart failure
- 404.13, Benign hypertensive heart and renal disease with heart failure and renal failure
- 404.91, Hypertensive heart and renal disease not otherwise specified with heart failure
- 404.93, Hypertensive heart and renal disease not otherwise specified with heart failure and renal failure
- 410.01, AMI anterolateral, initial
- 410.11, AMI anterior wall, initial
- 410.21, AMI inferolateral, initial
- 410.31, AMI inferopost, initial
- 410.41, AMI inferior wall, initial
- 410.51, AMI lateral not elsewhere classified, initial
- 410.61, True posterior infarction, initial
- 410.71, Subendocardial infarction, initial
- 410.81, AMI not elsewhere classified, initial
- 410.91, AMI not otherwise specified, initial
- 428.0, Congestive heart failure, not otherwise specified
- 428.1, Left heart failure
- 428.20, Systolic heart failure, not otherwise specified
- 428.21, Acute systolic heart failure
- 428.22, Chronic systolic heart failure
- 428.23, Acute on chronic systolic heart failure
- 428.30, Diastolic heart failure, not otherwise specified
- 428.31, Acute diastolic heart failure
- 428.32, Chronic diastolic heart failure
- 428.33, Acute on chronic diastolic heart failure
- 428.40, Combined systolic and diastolic heart failure not otherwise specified
- 428.41, Acquired combined systolic and diastolic heart failure
- 428.42, Chronic combined systolic and diastolic heart failure
- 428.43, Acute on chronic combined systolic and diastolic heart failure
- 428.9, Heart failure, not otherwise specified
- 785.50, Shock, not otherwise specified
- 785.51, Cardiogenic shock

(2) Cardiac Resynchronization Therapy (CRT)

Prior to the publication of the proposed rule, we received a comment from a provider who pointed out that we did not include the following combination of codes under the list of procedure combinations that would lead to an assignment of DRG 514 or DRG 515:

- 37.95, Implantation of automatic cardioverter/defibrillator lead(s) only
- 00.54, Implantation or replacement of cardiac resynchronization defibrillator, pulse generator device only [CRT–D]

The commenter pointed out that cases are assigned to DRGs 514 and 515 when a total cardiodefibrillator or CRT–D system is implanted. In addition, cases are assigned to DRGs 514 and 515 when implantation of a variety of combinations of defibrillator leads and device combinations is reported. The commenter indicated that a total defibrillator and CRT–D system may be replaced with a completely new system or all new devices and leads, and added that it is also possible to replace a generator, a lead, or a combination of generators and up to three leads.

When the CRT–D generator (code 00.54) and one of the cardioverter/defibrillator leads are replaced, the case currently is assigned to DRG 115 (Permanent Cardiac Pacemaker Implant with AMI, Heart Failure, or Shock or AICD Lead or Generator Procedure). The commenter recommended that we include the combination of codes 37.95 and 00.54 as a combination that would result in assignment to DRG 514 or DRG 515, as do other combinations of generators and leads. Our medical advisors agree with this recommendation. As discussed previously, we proposed to delete DRG 514 and replace it with proposed new DRGs 535 and 536. Therefore, we proposed to add codes 37.95 and 00.54 to the list of procedure combinations that would result in assignment to DRG 515 or new proposed DRGs 535 and 536.

Comment: Several commenters supported our proposed revision to DRG 514 so that it would be split based on the presence or absence of a principal diagnosis of acute myocardial infarction, heart failure, or shock.

One commenter pointed out a typographical error in the proposed rule in the code number cited for the procedure, Implantation of automatic cardioverter/defibrillator lead(s) only. The code number should have been 37.95 instead of 39.75.

Response: We appreciate the support for our proposed revision of DRG 514. We have corrected the code number for Implantation of automatic cadioverter/defibrillator lead(s) only to 37.95 in the description of this issue above.

Comment: Several commenters supported the addition of codes 37.95 and 00.54 to the list of procedure combinations that would lead to an assignment of DRG 515 and new DRGs 535 and 536. However, one commenter suggested that, in addition to this combination, codes 37.97 (Replacement of automatic cardioverter/defibrillator lead(s) only and 00.54 also should be added to the procedure combination list under DRG 515 and new DRGs 535 and 536. The commenter pointed out that both procedures would involve the insertion of a pulse generator and a lead so that resources required are equivalent to those for a total system implant.

Response: We agree with the commenter that the combination of codes 37.97 and 00.54 also would involve the implantation of a pulse generator and a lead. Therefore, in this final rule, we are adding the combination of procedure codes 37.97 and 00.54 to the list of procedure combinations that will lead to assignment to DRG 515 and new DRGs 535 and 536.

Comment: One commenter recommended that CMS also consider modifying DRGs 115 and 116 to recognize more combination groups of devices and leads. Specifically, the commenter recommended adding the following combination of codes to the list of procedure combinations under DRGs 115 and 116:

- 00.53, Implantation or replacement of CRT–P pulse generator only
- 37.74, Implantation or replacement of epicardial pacemaker lead.

Response: DRGs 115 and 116 have one of the most complex assignment structures of all the DRGs. The DRG logic for DRGs 115 and 116 involves three separate combinations of code groups that can possibly lead to these DRG assignments. Before making a

modification to one of the combination groups (particularly the procedure combinations), we believe we should analyze the impact of a modification to the currently existing types of device, lead, and diagnosis combinations. In the future, we will undertake a close review of DRGs 115 and 116 to determine if additional modifications, such as the one suggested, are needed.

Comment: Two commenters supported the proposal to restructure DRG 514 through the creation of new DRGs 535 and 536. One of the commenters supported the division of these new DRGs based on the presence or absence of acute myocardial infarction, heart failure, or shock. However, the commenter believed that this new structure would lead to significant confusion among hospital coders with respect to the coding of CRT–Ds. The commenter stated that hospital coders may be confused when a patient is admitted with one diagnosis, but then develops an acute myocardial infarction, heart failure, or shock after the admission but prior to discharge. In these cases, the acute myocardial infarction, heart failure, or shock would be a secondary diagnosis. The split of DRGs 535 and 536 is based on these conditions when they are the principal diagnosis (reason for the hospital admission). To eliminate the potential for misunderstanding, the commenter requested that the definition of DRG 535 be modified so that patients who receive CRT–D devices are assigned to DRG 535 when an ICD–9–CM diagnosis code for heart failure is present as either a principal or secondary diagnosis.

Response: We appreciate the support from the commenters for our proposal to modify DRG 514 through the creation of new DRGs 535 and 536. We note that the issue of coding the implantation of CRT–Ds has been covered through extensive articles in the American Hospital Association's *Coding Clinic for ICD–9–CM*. In the past, the coding of cases with acute myocardial infarction, heart failure, or shock has not been problematic for hospital coding specialists. However, should the DRG modifications lead to coding questions on CRT–D cases, we will ask the American Hospital Association to provide additional guidance in its *Coding Clinic for ICD–9–CM*. Furthermore, the DRG splits for an acute myocardial infarction, heart failure, or shock, which currently are included in DRGs 115 and 116, are based on these conditions being the principal diagnosis. As a result, this is a longstanding DRG logic precedent. We do not believe that replicating the logic used for splitting DRGs 115 and 116 and using it for DRGs 535 and 536 would create confusion for hospital coders. Rather, we believe hospital coders would easily recognize this type of longstanding DRG logic.

Comment: Another commenter supported the proposal to split DRG 514 into DRGs 535 and 536 based on the presence or absence of acute myocardial infarction, heart failure, or shock. The commenter stated that this split would ensure greater consistency within the DRG system and ensure adequate payment to hospitals for the higher costs patients receiving implantable cardioverter-defibrillator implants. However, the commenter recommended that DRG 515 undergo a similar split based on the presence or absence of acute myocardial infarction, heart failure, or shock. The commenter stated that the creation of these additional new DRGs would fully align payment logic across all pacemaker and implantable cardioverter-defibrillator implant devices. The manufacturer also believed that differences between average charges and average length of stay for these cases within DRG 515 would warrant this additional splitting of the DRG.

Response: We appreciate the support for the revisions involving DRGs 514, 535, and 536. However, when we examined the data for DRGs 514 and 515, we found that there were almost three times as many cases with an acute myocardial infarction, heart failure, or shock cases in DRG 515 as in DRG 514. Those cases in DRG 514 with a principal diagnosis of an acute myocardial infarction, heart failure, or shock, had average charges approximately 20 percent greater than the average charges for all cases in DRG 514. However, cases with a principal diagnosis of an acute myocardial infarction, heart failure, or shock in DRG 515 had average charges that were only about 10 percent greater than all cases in this DRG. Therefore, there is a significantly greater need for the DRG split for DRG 514. We will continue to examine cases within this area, and specifically DRG 515, to determine if additional DRG refinements are needed in the future.

Comment: One commenter, who supported the revisions to DRG 514 through the new DRGs 535 and 536, expressed concern about our coverage decisions on automatic implantable cardioverter-defibrillators. The commenter believed the coverage was extremely restricted.

Response: We appreciate the support of the commenter for new DRGs 535 and 536. We will share the concerns relating to coverage decisions on automatic implantable cardioverter-defibrillators with our coverage staff.

5. MDC 8 (Diseases and Disorders of the Musculoskeletal System and Connective Tissue)

Prior to the issuance of the proposed rule, we received a comment that two codes for cervical fusion of the spine are not included within DRG 519 (Cervical Spinal Fusion With CC) and DRG 520 (Cervical Spinal Fusion Without CC). The two cervical fusion codes are:

- 81.01, Atlas-axis spinal fusion
- 81.31, Refusion of atlas-axis

The atlas-axis includes the first two vertebrae of the cervical spine (C1 and C2). These two cervical fusion codes are currently assigned to DRG 497 (Spinal Fusion Except Cervical With CC) and DRG 498 (Spinal Fusion Except Cervical Without CC). Because codes 81.01 and 81.31 involve the cervical spine, we proposed to remove these codes from DRGs 497 and 498 and reassign them to DRGs 519 and 520.

We did not receive any comments on this proposal. Therefore, we are adopting as final our proposal to remove codes 81.01 and 81.31 from DRGs 497 and 498 and reassign them to DRGs 519 and 520, effective for FY 2004.

6. MDC 15 (Newborns and Other Neonates With Conditions Originating in the Perinatal Period)

a. Nonneonate Diagnoses

As indicated earlier, ICD–9–CM diagnosis codes are assigned to MDCs based on 25 groupings corresponding to a single organ system or etiology and, in general, are associated with a particular medical specialty. MDC 15 is comprised of diagnoses that relate to newborns and other neonates with conditions originating in the perinatal period. Some of the codes included in MDC 15 consist of conditions that originate in the neonatal period but can persist throughout life. These conditions are referred to as congenital anomalies. When an older (not neonate) population is treated for a congenital anomaly, DRG assignment problems can arise. For instance, if a patient is over 65 years old and is admitted with a congenital anomaly, it is not appropriate to assign the patient to a newborn DRG. This situation occurs when a congenital anomaly code is classified within MDC 15.

Prior to the publication of the proposed rule, we received a recommendation to move the following congenital anomaly codes from MDC 15 and reassign them to other appropriate MDCs based on the body system being treated:

- 758.9, Chromosome anomaly, not otherwise specified
- 759.4, Conjoined twins
- 759.7, Multiple congenital anomalies, not elsewhere classified
- 759.81, Prader-Willi syndrome
- 759.83, Fragile X syndrome
- 759.89, Specified congenital anomalies, not elsewhere classified
- 759.9, Congenital anomaly, not otherwise specified
- 779.7, Periventricular leukomalacia
- 795.2, Abnormal chromosomal analysis

Each of the congenital anomaly diagnosis codes recommended for reassignment represents a condition that is frequently addressed beyond the neonatal period. In addition, the assignment of these congenital anomaly codes as principal diagnosis currently results in assignment to MDC 15.

We evaluated the recommendation and agreed that each of the identified codes represents a condition that is frequently addressed beyond the neonate period and should therefore be removed from the list of principal diagnoses that result in assignment to MDC 15. Therefore, we proposed to change the MDC and DRG assignments of the congenital anomaly codes as specified in the following table. The table shows the principal diagnosis code for the congenital anomaly and the proposed MDC and DRG to which the code would be assigned.

Principal diagnosis code in MDC 15	Code title	Proposed MDC assignment	Proposed DRG assignment
758.9	Chromosome anomaly, not otherwise specified	23	467 (Other Factors Influencing Health Status).
759.4	Conjoined twins	6	188, 189, and 190 (Other Digestive System Diagnoses, Age >17 with CC, Age >17 without CC, and Age 0–17, respectively).
759.7	Multiple congenital anomalies, not elsewhere classified.	8	256 (Other Musculoskeletal System and Connective Tissue Diagnoses).
759.81	Prader-Willi syndrome	8	256 (Other Musculoskeletal System and Connective Tissue Diagnoses).
759.83	Fragile X syndrome	19	429 (Organic Disturbances and Mental Retardation).
759.89	Specified congenital anomalies, not elsewhere classified.	8	256 (Other Musculoskeletal System and Connective Tissue Diagnoses).
759.9	Congenital anomaly, not otherwise specified	23	467 (Other Factors Influencing Health Status).
779.7	Periventricular leukomalacia	1	34 and 35 (Other Disorders of Nervous System with CC, and without CC, respectively).
795.2	Abnormal chromosomal analysis	23	467 (Other Factors Influencing Health Status).

Comment: Several commenters supported all of the proposed changes relating to congenital anomalies. One commenter supported the changes in general, but mentioned several concerns. While this commenter agreed that it was feasible to move these congenital conditions out of MDC 15, the commenter suggested that those patients who are still in the neonatal period (first 28 days of life) when admitted should continue to be classified to MDC 15.

In addition, this commenter questioned whether the proposed DRG assignments were correct for codes 759.4 (Conjoined twins), code 759.7 (Multiple congenital anomalies, not elsewhere classified), and 759.89 (Specified congenital anomalies, not elsewhere classified). The commenter stated that although the proposed DRG assignments for these three DRGs may be appropriate based on the body system being treated for most cases, these DRGs do not necessarily reflect the body system affected or being treated. The commenter did not suggest alternative DRG assignments.

Response: We acknowledge the commenter's point that, for a minority of cases, the admission will, in fact, be in the neonatal period. However, the majority of cases will continue to be patients well beyond the neonatal period. The proposed DRG modifications will correct the majority of inappropriate DRG assignments that occur when adults are assigned to MDC 15 (Newborns and Other Neonates with Conditions Originating in the Perinatal Period). In the future, we will examine other means to further refine this area, such as making new DRG assignments for congenital anomalies based on the age of the patient. However, at this point, we are attempting to resolve the problems created for the majority of patients.

Regarding the commenter's concern that codes 759.4, 759.7, and 759.89 may not always be appropriately assigned according to our proposal, the commenter did not suggest an alternative. The commenter agreed that many cases with these three codes will be assigned to the appropriate body system by using our proposed DRG assignments. We recognize that reassignment of these codes will not resolve all problems, and some cases may be assigned to the wrong body system based on the patient's actual condition. However, we note that these three codes are vague and do not specify a precise congenital anomaly by body system. Therefore, we had to rely on our medical advisors to determine the most appropriate DRG for the majority of cases. Our main concern was to correct the DRG assignment that resulted in adults being assigned to a neonatal DRG when they had a congenital anomaly. We will continue to examine the data for these cases to determine if additional modifications are needed in the future.

Therefore, we are adopting the proposed revisions as final without modification.

b. Heart Failure Codes for Newborns and Neonates

Under MDC 15, cases of newborns and neonates with major problems may be assigned to DRG 387 (Prematurity With Major Problems) or DRG 389 (Full-Term Neonate With Major Problems). Existing DRG 387 has three components: (1) Principal or secondary diagnosis of prematurity; (2) principal or secondary diagnosis of major problem (these are the diagnoses that define MDC 15); or (3) secondary diagnosis of major problem (these are diagnoses that do not define MDC 15, so they will only be secondary diagnosis codes for patients assigned to MDC 15). To be assigned to DRG 389, the neonate must have one of the principal or secondary diagnoses listed under the DRG.

Prior to the publication of the proposed rule, we received correspondence suggesting that the following diagnosis codes for heart failure, which are currently in MDC 5, be added to the list of secondary diagnosis of major problems for neonates under MDC 15.

Diagnosis code	Title
428.20	Systolic heart failure, not otherwise specified.
428.21	Acute systolic heart failure.
428.22	Chronic systolic heart failure.
428.23	Acute on chronic systolic heart failure.
428.30	Diastolic heart failure, not otherwise specified.
428.31	Acute diastolic heart failure.
428.32	Chronic diastolic heart failure.
428.33	Acute on chronic diastolic heart failure.
428.40	Systolic/diastolic heart failure, not otherwise specified.
428.41	Acute systolic/diastolic heart failure.
428.42	Chronic systolic/diastolic heart failure.
428.43	Acute on chronic systolic/diastolic heart failure.

These heart failure-related diagnosis codes were new codes as of October 1, 2002. They were an expansion of the previous 4-digit codes for heart failure and provided additional detail about the specific type of heart failure. The codes for heart failure that existed prior to October 1, 2002, are classified as secondary diagnoses of major problems within MDC 15 and are currently assigned to DRGs 387 and DRG 389. We stated in the proposed rule that these other heart failure diagnosis codes should be included as principal diagnosis of major problem codes within MDC 15. However, these heart failure codes are currently listed in the secondary, not principal, diagnoses of major problems within MDC 15.

We agree that diagnosis codes 428.20 through 428.43 listed in the chart above should be included as secondary diagnosis of major problem codes within MDC 15, as are the other heart failure codes. Therefore, we proposed to add them to DRG 387 and 389.

Comment: Several commenters supported the proposal to add codes 428.20 through 428.43 (codes for heart failure that became effective October 1, 2002, listed in the chart above) to DRGs 387 and 389. The commenters agreed that the heart failure codes created on October 1, 2002, should be assigned to DRGs 387 and 389 in the same fashion as were those heart failure codes created prior to October 1, 2002.

One commenter indicated that we incorrectly described the addition of diagnosis codes 428.20 through 428.43 listed in the chart to the list of "principal" diagnosis of major problem codes. The commenter stated that we should have indicated that these codes would be added to the list of "secondary" diagnoses of major problem codes because this category is where the other heart failure codes are currently assigned.

Response: We agree that the codes should have been described as an addition to the list of secondary diagnoses of major problem codes within DRGs 387 and 389. We have clarified this point in the description above.

Comment: One commenter who supported the addition of the heart failure-related diagnosis codes (428.20 through 428.43) to DRGs 387 and 389, asked for clarification of how diagnoses for combined codes that include congestive heart failure will be handled. The commenter mentioned code 402.91 (Hypertensive heart disease with heart failure, unspecified benign or malignant) as an example.

Response: We will conduct an additional review of DRGs 387 and 389 to determine if additional codes should be added to the list of secondary diagnoses of major problems for FY 2005. We encourage commenters to send their recommendations to us to assist in this review.

We are adopting our proposal as final, with the clarification that the major problem codes are secondary, not principal, codes. Accordingly, we are adding codes 428.20 through 428.43 listed above to the list of secondary diagnoses of major problem codes within DRGs 387 and 389.

7. MDC 17 (Myeloproliferative Diseases and Disorders and Poorly Differentiated Neoplasms)

High-dose Interleukin-2 (IL–2) Chemotherapy is a hospital inpatient-based regimen requiring administration by experienced oncology professionals. It is used for the treatment of patients with advanced renal cell cancer and advanced melanoma. Unlike traditional cytotoxic chemotherapies that attack cancer cells themselves, Interleukin-2 is designed to enhance the body's defenses by mimicking the way natural IL–2 activates the immune system and stimulates the growth and activity of cancer-killing cells. The Food and Drug Administration (FDA) approved the IL–2 product on the market for use in 1992.

High-dose IL–2 therapy is performed only in very specialized treatment settings, such as an intensive care unit or a bone marrow transplant unit. This therapy requires oversight by oncology health care professionals experienced in the administration and management of patients undergoing this intensive treatment because of the severity of the side effects. Unlike most cancer therapies, high-dose IL–2 therapy is associated with predictable toxicities that require extensive monitoring. Often patients require one-on-one nursing or physician care for extended portions of their stay.

High-dose IL–2 therapy is significantly different from conventional chemotherapy in terms of the resources required to administer it. Conventional chemotherapy may be given to patients either on an outpatient basis or through a series of short (that is, 1 to 3 day) inpatient stays.

High-dose IL–2 therapy is given during two separate hospital admissions. For the first cycle, the IL–2 is administered every 8 hours over 5 days. Patients are then discharged to rest at home for several days and are admitted for the second cycle of therapy during which the same regimen and dosing is repeated. The two cycles complete the first course of high-dose IL–2 therapy. This regimen may be repeated at 8 to 12 weeks if the patient is responding. The maximum number of courses for any one patient is predicted to be five courses.

Not all patients with end-stage renal cell carcinoma or end-stage melanoma are appropriate candidates for high-dose IL–2 chemotherapy. It is estimated that there are between 15,000 and 20,000 patients in the United States who have one of these two types of cancer. However, only 20 percent of those patients will be appropriate candidates for the rigors of the treatment regimen. It is further estimated that, annually, approximately 1,300 of these patients will be Medicare beneficiaries. However, we have been informed by industry sources that, allegedly due to the level of payment for the DRGs to which these cases are currently assigned, only 100 to 200 Medicare patients receive the treatment each year. According to these industry sources, several treatment centers have had to discontinue their high-dose IL–2 therapy programs for end-stage renal cell carcinoma or end-stage melanoma because of the low Medicare payment.

According to industry sources, the wholesale cost of IL–2 is approximately $700 per vial. Dosages range between 15 and 20 vials per treatment, or between $10,500 and $14,000 per patient, per cycle, for the cost of the IL–2 drug alone. There is no ICD–9–CM procedure code that currently identifies patients receiving this therapy. Therefore, it is not possible to identify directly these cases in the MedPAR data. Currently, this therapy is coded using the more general ICD–9–CM code 99.28 (Injection or infusion of biologic response modifier). When we addressed this issue previously in the August 1, 2000 IPPS final rule (65 FR 47067) by examining cases for which procedure code 99.28

was present, our analysis was inconclusive due to the wide range of cases identified (1,179 cases across in 136 DRGs). However, recent data collected by the industry on 30 Medicare beneficiaries who received high-dose IL–2 therapy during FY 2002 show average charges for these cases of approximately $54,000.

Depending on the principal diagnosis reported, patients receiving high-dose IL–2 therapy may be assigned to one of the following five DRGs: DRG 272 (Major Skin Disorder With CC) and DRG 273 (Major Skin Disorder Without CC) in MDC 9; DRG 318 (Kidney and Urinary Tract Neoplasms With CC) and DRG 319 (Kidney and Urinary Tract Neoplasms Without CC) in MDC 11; and DRG 410 (Chemotherapy Without Leukemia as Secondary Diagnosis) in MDC 17. The following table illustrates the average charges for patients in these DRGs.

DRG	Average charges
272	$14,997
273	9,128
318	16,892
319	9,583
410	16,103

Because of the need to identify the subset of patients receiving this type of treatment, the ICD–9–CM Coordination and Maintenance Committee determined, based on its consideration at the December 6, 2002 public meeting, that a new code for high-dose IL–2 therapy was warranted. Therefore, a new code has been created in the 00 Chapter of ICD–9–CM (Procedures and Interventions, Not Elsewhere Classified), in category 00.1 (Pharmaceuticals) at 00.15 (High-dose infusion Interleukin-2 (IL–2)). The code is effective for cases discharged on or after October 1, 2003.

We believe patients receiving high-dose IL–2 therapy are clinically similar to other cases currently assigned to DRG 492 (Chemotherapy With Acute Leukemia as Secondary Diagnosis) in MDC 17. The average charge for patients currently assigned to DRG 492 is $55,581. Currently, DRG 492 requires one of the following two principal diagnoses:

- V58.1, Encounter for chemotherapy
- V67.2, Followup examination following chemotherapy

And one of the following secondary diagnoses:

- 204.00, Acute lymphoid leukemia without mention of remission
- 204.01, Acute lymphoid leukemia with remission
- 205.00, Acute myeloid leukemia without mention of remission
- 205.01, Acute myeloid leukemia with remission
- 206.00, Acute monocytic leukemia without mention of remission
- 206.01, Acute monocytic leukemia with remission
- 207.00, Acute erythremia and erythroleukemia without mention of remission
- 207.01, Acute erythremia and erythroleukemia with remission
- 208.00, Acute leukemia of unspecified cell type without mention of remission
- 208.01, Acute leukemia of unspecified cell type without mention of remission

We proposed to modify DRG 492 by adding new procedure code 00.15 to the logic. We indicated that assignment to this DRG would require the same two V-code principal diagnosis codes listed above (V58.1 and V67.2), but would require either one of the leukemia codes listed as a secondary diagnosis, or would require the procedure code 00.15. In addition, we proposed to change the title of DRG 492 to "Chemotherapy With Acute Leukemia or With Use of High Dose Chemotherapy Agent".

In the proposed rule, we indicated that we would monitor cases with procedure code 00.15 as these data became available, and consider potential further refinements to DRG 492 as necessary.

Comment: Five commenters supported our proposed change. One commenter who opposed the proposed change believed that classifying high-dose IL–2 therapy as chemotherapy would be a violation of coding advice published in the American Hospital Association's coding publication, *Coding Clinic for ICD–9–CM*, because IL–2 therapy is a biologic response modifier and is considered immunotherapy, not chemotherapy. Therefore, the commenter asserted that the use of either V58.1 or V67.2 as principal diagnosis codes for these cases would result in erroneous coding advice. The commenter added that *Coding Clinic, Fourth Quarter*, page 51, indicates that when a patient is admitted for immunotherapy, the code for the neoplasm should be assigned as the principal diagnosis.

Response: We acknowledge the commenter's points concerning correct selection of principal diagnosis, as well as the advice published previously in *Coding Clinic*. However, the discussion of this topic has raised some concerns among the Cooperating Parties of AHA's Editorial Advisory Board. The advice given in the Fourth Quarter 1994 *Coding Clinic* predates the new treatment technology now available, which calls into question the correctness of the published advice. Therefore, this topic will be included on the agenda of an upcoming AHA Editorial Advisory Board meeting for further discussion and clarification. It is likely that new instructions will be issued in the next several months to clarify these coding instructions.

Therefore, in anticipation of this clarification, we are adopting as final the proposed changes to DRG 492. We will continue to monitor this DRG for shifts in resource consumption and validity of DRG assignment, and will specifically monitor code 00.15 for appropriate placement in DRG 492.

8. MDC 23 (Factors Influencing Health Status and Other Contacts With Health Services)

a. Implantable Devices

Prior to the publication of the proposed rule, we received a comment regarding three ICD–9–CM diagnosis codes that are currently assigned to MDC 23: V53.01 (Fitting and adjustment of cerebral ventricular (communicating) shunt); V53.02 (Neuropacemaker (brain) (peripheral nerve) (spinal cord)); and V53.09 (Fitting and adjustment of other devices related to nervous system and special senses). The commenter suggested that we move these three codes from MDC 23 to MDC 1 (Diseases and Disorders of the Nervous System) because these codes are used as the principal diagnosis for admissions involving removal, replacement, and reprogramming of devices such as cerebral ventricular shunts, neurostimulators, intrathecal infusion pumps and thalamic stimulators.

Currently, if these diagnosis codes are reported alone without an O.R. procedure, the case would be assigned to DRG 467 (Other Factors Influencing Health Status). However, if an O.R. procedure is reported with the principal diagnosis of V53.01, V53.02, or V53.09, the case would be assigned to DRG 461 (O.R. Procedure with Diagnoses of Other Contact with Health Services).

In our analysis of the MedPAR data, we found 30 cases assigned to DRG 467 and 179 cases assigned to DRG 461 with one of these codes as principal diagnosis. We found that the procedures reported with one of these diagnosis codes were procedures in MDC 1. The most frequent procedure was 86.06 (Insertion of totally implantable infusion pump).

Because the procedures that are routinely used with these codes are in MDC 1, we believe it would be

appropriate to assign these diagnosis codes to MDC 1. As the commenter also stated, this assignment would be consistent with how fitting and adjustments of devices are handled within other MDCs, such as in MDC 5 (Diseases and Disorders of the Circulatory System) and MDC 11 (Diseases and Disorders of the Kidney and Urinary Tract). Diagnosis codes V53.31 (Cardiac pacemaker), V53.32 (Automatic implantable cardiac defibrillator), and V53.39 (Other cardiac device) are used for fitting and adjustment of cardiac devices and are assigned to MDC 5. Diagnosis code V53.6 (Urinary devices) is used for fitting and adjustment of urinary devices and is assigned to MDC 11.

Therefore, we proposed to move V53.01, V53.02, and V53.09 from MDC 23 to MDC 1 when an O.R. procedure is performed. If no O.R. procedure is performed, these diagnosis codes would be assigned to DRG 34 (Other Disorders of Nervous System With CC) or DRG 35 (Other Disorders of Nervous System Without CC). If an O.R. procedure is performed on a patient assigned with one of these codes as the principal diagnosis, the case would be assigned to the DRG in MDC 1 to which the O.R. procedure is assigned.

We received three comments that supported our proposal to move diagnosis codes V53.01, V53.02, and V53.09 from MDC 23 to MDC 1. Accordingly, we are adopting as final the proposed reassignment, effective for discharges occurring on or after October 1, 2003.

b. Malignancy Codes

Prior to the issuance of the proposed rule, we received correspondence that indicated that when we recognized code V10.48 (History of malignancy, epididymis) as a new code for FY 2002, we did not include the code as a history of malignancy code in DRG 465 (Aftercare with History of Malignancy as Secondary Diagnosis). All other history of malignancy codes were included in DRG 465.

We agree that code V10.48 should have been included in the list of history of malignancy codes within DRG 465. Therefore, we proposed to add it to the list of secondary diagnoses in DRG 465.

We received several comments that supported this DRG modification. Accordingly, we are adopting the proposal as final without modification.

9. Medicare Code Editor (MCE) Change

As explained under section II.B.1. of this preamble, the MCE is a software program that detects and reports errors in the coding of Medicare claims data.

We received a request to examine the MCE edit "Adult Diagnosis—Age Greater than 14" because currently the edit rejects claims for patients under age 15 who are being treated for gall bladder disease. We reviewed this issue with our pediatric consultants and determined that, although incidence is rare, gallbladder disease does occur in patients under age 15. Therefore, in the May 19, 2003 proposed rule, we proposed to modify the MCE by removing the following codes from the edit "Adult Diagnosis—Age Greater Than 14":

- 574.00, Calculus of gallbladder with acute cholecystitis without mention of obstruction
- 574.01, Calculus of gallbladder with acute cholecystitis with obstruction
- 574.10, Calculus of gallbladder with other cholecystitis without mention of obstruction
- 574.11, Calculus of gallbladder with other cholecystitis with obstruction
- 574.20, Calculus of gallbladder without mention of cholecystitis without mention of obstruction
- 574.21, Calculus of gallbladder without mention of cholecystitis with obstruction
- 574.30, Calculus of bile duct with acute cholecystitis without mention of obstruction
- 574.31, Calculus of bile duct with acute cholecystitis with obstruction
- 574.40, Calculus of bile duct with other cholecystitis without mention of obstruction
- 574.41, Calculus of bile duct with other cholecystitis with obstruction
- 574.50, Calculus of bile duct without mention of cholecystitis without mention of obstruction
- 574.51, Calculus of bile duct without mention of cholecystitis with obstruction
- 574.60, Calculus of gallbladder and bile duct with acute cholecystitis without mention of obstruction
- 574.61, Calculus of gallbladder and bile duct with acute cholecystitis with obstruction)
- 574.70, Calculus of gallbladder and bile duct with other cholecystitis without mention of obstruction
- 574.71, Calculus of gallbladder and bile duct with other cholecystitis with obstruction
- 574.80, Calculus of gallbladder and bile duct with acute and chronic cholecystitis without mention of obstruction
- 574.81, Calculus of gallbladder and bile duct with acute and chronic cholecystitis with obstruction
- 574.90, Calculus of gallbladder and bile duct without cholecystitis without mention of obstruction
- 574.91, Calculus of gallbladder and bile duct without cholecystitis with obstruction
- 575.0, Acute cholecystitis
- 575.10, Cholecystitis, not otherwise specified
- 575.11, Chronic cholecystitis
- 575.12, Acute and chronic cholecystitis
- 575.2, Obstruction of gallbladder
- 575.3, Hydrops of gallbladder
- 576.0, Postcholecystectomy syndrome
- 577.1, Chronic pancreatitis

Comment: Four commenters agreed in general with our decision to remove the above listed codes from the MCE in the edit "Adult Diagnosis—Age Greater than 14." However, one commenter recommended that all ICD–9–CM codes in the 575 through 577 range be removed from the edit and listed several codes that appeared to be missing from our list. These codes were 575.4 (Perforation of gallbladder), 577.0 (Acute pancreatitis), and 577.1 (Chronic pancreatitis). In addition, three commenters pointed out that code 574.90 had been erroneously listed twice with different narrative descriptions.

Response: We appreciate the commenters' interest in the correctness of the MCE. We also have received many telephone calls and e-mails concerning the typographical error with code 574.90. We have corrected the list above to reflect the correct code number, 574.91. As noted, the second narrative listing in the proposed rule correctly described code 574.91, not 574.90 (68 FR 27166).

With regard to the comment concerning the absence of codes 575.4 and 577.0 from the above list, we note that these codes are not included in the MCE edit. That is, these codes were never part of the MCE edit. With regard to code 577.1, this code is the last one on the list and was printed correctly in the proposed rule (68 FR 27166, third column).

Accordingly, we are adopting as final the proposal to remove the listed codes from the MCE edit "Adult Diagnosis—Age Greater than 14," with the correction of the fifth digit of code 574.91 (Calculus of gallbladder and bile duct without cholecystitis with obstruction).

10. Surgical Hierarchies

Some inpatient stays entail multiple surgical procedures, each one of which, occurring by itself, could result in assignment of the case to a different DRG within the MDC to which the principal diagnosis is assigned. Therefore, it is necessary to have a decision rule within the GROUPER by which these cases are assigned to a single DRG. The surgical hierarchy, an ordering of surgical classes from most resource-intensive to least resource-intensive, performs that function. Application of this hierarchy ensures that cases involving multiple surgical procedures are assigned to the DRG associated with the most resource-intensive surgical class.

Because the relative resource intensity of surgical classes can shift as a function of DRG reclassification and recalibrations, we reviewed the surgical hierarchy of each MDC, as we have for previous reclassifications and recalibrations, to determine if the ordering of classes coincides with the intensity of resource utilization.

A surgical class can be composed of one or more DRGs. For example, in MDC 11, the surgical class "kidney transplant" consists of a single DRG (DRG 302) and the class "kidney, ureter and major bladder procedures" consists of three DRGs (DRGs 303, 304, and 305). Consequently, in many cases, the surgical hierarchy has an impact on more than one DRG. The methodology for determining the most resource-intensive surgical class involves weighting the average resources for each DRG by frequency to determine the weighted average resources for each surgical class. For example, assume surgical class A includes DRGs 1 and 2 and surgical class B includes DRGs 3, 4, and 5. Assume also that the average charge of DRG 1 is higher than that of DRG 3, but the average charges of DRGs 4 and 5 are higher than the average charge of DRG 2. To determine whether surgical class A should be higher or lower than surgical class B in the surgical hierarchy, we would weight the average charge of each DRG in the class by frequency (that is, by the number of cases in the DRG) to determine average resource consumption for the surgical class. The surgical classes would then be ordered from the class with the highest average resource utilization to that with the lowest, with the exception of "other O.R. procedures" as discussed below.

This methodology may occasionally result in assignment of a case involving multiple procedures to the lower-weighted DRG (in the highest, most resource-intensive surgical class) of the available alternatives. However, given that the logic underlying the surgical hierarchy provides that the GROUPER search for the procedure in the most resource-intensive surgical class, this result is unavoidable.

We note that, notwithstanding the foregoing discussion, there are a few instances when a surgical class with a lower average charge is ordered above a surgical class with a higher average charge. For example, the "other O.R. procedures" surgical class is uniformly ordered last in the surgical hierarchy of each MDC in which it occurs, regardless of the fact that the average charge for the DRG or DRGs in that surgical class may be higher than that for other surgical classes in the MDC. The "other O.R. procedures" class is a group of procedures that are only infrequently related to the diagnoses in the MDC but are still occasionally performed on patients in the MDC with these diagnoses. Therefore, assignment to these surgical classes should only occur if no other surgical class more closely related to the diagnoses in the MDC is appropriate.

A second example occurs when the difference between the average charges for two surgical classes is very small. We have found that small differences generally do not warrant reordering of the hierarchy because, as a result of reassigning cases on the basis of the hierarchy change, the average charges are likely to shift such that the higher-ordered surgical class has a lower average charge than the class ordered below it.

Based on the preliminary recalibration of the DRGs, in the May 19, 2003 proposed rule, we proposed modifications of the surgical hierarchy as set forth below.

We proposed to revise the surgical hierarchy for the pre-MDC DRGs, MDC 1 (Diseases and Disorders of the Nervous System), MDC 5 (Diseases and Disorders of the Circulatory System), MDC 8 (Diseases and Disorders of the Musculoskeletal System and Connective Tissue), and MDC 17 (Myeloproliferative Disease and Disorders, Poorly Differentiated Neoplasms for Lymphoma and Leukemia) as follows:

- In the pre-MDC DRGs, we proposed to reorder DRG 513 (Pancreas Transplant) above DRG 512 (Simultaneous Pancreas/Kidney Transplant).
- In MDC 1, we proposed to reorder DRG 3 (Craniotomy Age 0–17) above DRG 528 (Intracranial Vascular Procedures with Principal Diagnosis Hemorrhage); DRG 528 above DRGs 1 and 2 (Craniotomy Age >17 With and Without CC, respectively); DRGs 1 and 2 above DRGs 529 and 530 (Ventricular Shunt Procedures With and Without CC, respectively); DRGs 529 and 530 above DRGs 531 and 532 (Spinal Procedures With and Without CC, respectively); DRGs 531 and 532 above DRGs 533 and 534 (Extracranial Procedures With and Without CC, respectively); and DRGs 533 and 534 above DRG 6 (Carpal Tunnel Release).
- In MDC 5, we proposed to reorder DRG 535 (Cardiac Defibrillator Implant With Cardiac Catheterization With AMI, Heart Failure, or Shock) above DRG 536 (Cardiac Defibrillator Implant With Cardiac Catheterization Without AMI, Heart Failure, or Shock), and DRG 536 above DRG 515 (Cardiac Defibrillator Implant Without Cardiac Catheterization).
- In MDC 8, we proposed to reorder DRGs 537 and 538 (Local Excision and Removal of Internal Fixation Devices Except Hip and Femur With and Without CC, respectively) above DRG 230 (Local Excision and Removal of Internal Fixation Devices of Hip and Femur).
- In MDC 17, we proposed to reorder DRGs 539 and 540 (Lymphoma and Leukemia With Major O.R. Procedure With and Without CC, respectively) above DRGs 401 and 402 (Lymphoma and Non-Acute Leukemia With Other O.R. Procedures With and Without CC, respectively).

In the proposed rule, we were unable to test the effects of the proposed revisions to the surgical hierarchy and reflect these changes in the proposed relative weights because the revised GROUPER software was unavailable at the time the proposed rule was published. Rather, we simulated most major classification changes to approximate the placement of cases under the proposed reclassification, and then determined the average charge for each DRG. These average charges served as our best estimate of relative resources used for each surgical class. We have now tested the proposed surgical hierarchy changes using the revised GROUPER software, and are reflecting the final changes in the DRG relative weights in this final rule. Further, as discussed in section II.C. of the preamble of this final rule, the final recalibrated weights are different from the proposed weights because they were based on more complete data.

Based on a test of the proposed revisions using the March 2003 update of the FY 2002 MedPAR file and the revised GROUPER software, we have found that the proposed change in the pre-MDC DRGs to reorder DRG 513 (Pancreas Transplant) above DRG 12 (Simultaneous Pancreas/Kidney Transplant) was not supported by the data. If this proposal were finalized, no cases would be assigned to DRG 512. The other proposed revisions are still supported by the data.

Comment: Two commenters expressed support for the proposed

change in the surgical hierarchy. Another commenter requested a change in the surgical hierarchy for a case in which a spinal fusion with subsequent debridement is performed during the same admission. This case is assigned to DRG 217 (Wound Debridement and Skin Graft Except Hand, for Musculoskeletal and Connective Tissue Disease). The commenter requested that this case be reassigned to DRG 497 (Spinal Fusion Except Cervical With CC) because it has a higher DRG weight than DRG 217.

Response: The surgical hierarchy places a patient with multiple procedures in the most resource intensive class, but this does not necessarily mean that the patient is assigned to the most resource intensive DRG. In this scenario, one surgical class is actually one DRG, and another surgical class is back and neck procedures. These classes encompass 7 DRGs (DRGs 496–500 and DRGs 519 and 520). The average charges for DRG 217 are approximately $15,000 more than the back and neck procedures class. DRG 217 is hierarchically ordered higher in the surgical group than DRG 497, which is the reason the case is assigned to DRG 217.

Therefore, we are adopting the proposed changes in MDCs 1, 5, 8, and 17 as final. We are not making any changes in the pre-MDC DRGs.

11. Refinement of Complications and Comorbidities (CC) List

In the September 1, 1987 final notice (52 FR 33143) concerning changes to the DRG classification system, we modified the GROUPER logic so that certain diagnoses included on the standard list of CCs would not be considered valid CCs in combination with a particular principal diagnosis. We created the CC Exclusions List for the following reasons: (1) To preclude coding of CCs for closely related conditions; (2) to preclude duplicative or inconsistent coding from being treated as CCs; and (3) to ensure that cases are appropriately classified between the complicated and uncomplicated DRGs in a pair. We developed this list of diagnoses, using physician panels, to include those diagnoses that, when present as a secondary condition, would be considered a substantial complication or comorbidity. In previous years, we have made changes to the list of CCs, either by adding new CCs or deleting CCs already on the list. As we proposed in the May 19, 2003 proposed rule, we are not deleting any of the diagnosis codes on the CC list.

As explained in the May 19, 1989 proposed rule (52 FR 18877) and the September 1, 1987 final notice (52 FR 33154), the excluded secondary diagnoses were established using the following five principles:

- Chronic and acute manifestations of the same condition should not be considered CCs for one another.
- Specific and nonspecific (that is, not otherwise specified (NOS)) diagnosis codes for the same condition should not be considered CCs for one another.
- Codes for the same condition that cannot coexist, such as partial/total, unilateral/bilateral, obstructed/unobstructed, and benign/malignant, should not be considered CCs for one another.
- Codes for the same condition in anatomically proximal sites should not be considered CCs for one another.
- Closely related conditions should not be considered CCs for one another.

The creation of the CC Exclusions List was a major project involving hundreds of codes. We have continued to review the remaining CCs to identify additional exclusions and to remove diagnoses from the master list that have been shown not to meet the definition of a CC.[3]

We proposed a limited revision of the CC Exclusions List to take into account the proposed changes that will be made in the ICD–9–CM diagnosis coding system effective October 1, 2003. (See section II.B.13. of this preamble for a discussion of ICD–9–CM changes.) We proposed these changes in accordance with the principles established when we created the CC Exclusions List in 1987.

Tables 6G and 6H in the Addendum to this final rule contain the revisions to the 13 CC Exclusions List that will be effective for discharges occurring on or after October 1, 2003. Each table shows the principal diagnoses with changes to the excluded CCs. Each of these principal diagnoses is shown with an asterisk, and the additions or deletions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

CCs that are added to the list are in Table 6G—Additions to the CC Exclusions List. Beginning with discharges on or after October 1, 2003, the indented diagnoses will not be recognized by the GROUPER as valid CCs for the asterisked principal diagnosis.

CCs that are deleted from the list are in Table 6H—Deletions from the CC Exclusions List. Beginning with discharges on or after October 1, 2003, the indented diagnoses will be recognized by the GROUPER as valid CCs for the asterisked principal diagnosis.

Comment: One commenter indicated that it was unable to provide meaningful comments on Tables 6G and 6H because of formatting errors in the printed tables. In addition, the commenter suggested that the changes in the tables should not be effective until a revised version was made available for public comment.

Response: We apologize for the errors in the format of the tables, which were printer's errors. However, we note that the tables did contain the correct codes, even though the format of the columns was distorted. Therefore, we do not believe a delay in the effective date of the changes is warranted.

Copies of the original CC Exclusions List applicable to FY 1988 can be obtained from the National Technical Information Service (NTIS) of the Department of Commerce. It is available in hard copy for $133.00 plus shipping and handling. A request for the FY 1988 CC Exclusions List (which should include the identification accession number (PB) 88–133970) should be made to the following address: National Technical Information Service, United States Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161; or by calling (800) 553–6847.

Users should be aware of the fact that all revisions to the CC Exclusions List (FYs 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2002, and 2003) and those in Tables 6G and 6H of this final rule for FY 2004 must be incorporated into the list purchased from NTIS in order to obtain the CC Exclusions List applicable for discharges occurring on or after October 1, 2003. (**Note:** There was no CC Exclusions List in FY 2001 because we did not make changes to the ICD–9–CM codes for FY 2001.)

Alternatively, the complete documentation of the GROUPER logic, including the current CC Exclusions List, is available from 3M/Health Information Systems (HIS), which, under contract with CMS, is responsible for updating and maintaining the GROUPER program. The current DRG Definitions Manual, Version 20.0, is available for $225.00, which includes $15.00 for shipping and handling. Version 21.0 of this manual, which includes the final FY 2004 DRG changes, is available for $225.00. These manuals may be obtained by writing 3M/HIS at the following address: 100 Barnes Road, Wallingford, CT 06492; or by calling (203) 949–0303. Please specify the revision or revisions requested.

[3] See the September 30, 1988 final rule (53 FR 38485) for the revision made for the discharges occurring in FY 1989; the September 1, 1989 final rule (54 FR 36552) for the FY 1990 revision; the September 4, 1990 final rule (55 FR 36126) for the FY 1991 revision; the August 30, 1991 final rule (56 FR 43209) for the FY 1992 revision; the September 1, 1992 final rule (57 FR 39753) for the FY 1993 revision; the September 1, 1993 final rule (58 FR 46278) for the FY 1994 revisions; the September 1, 1994 final rule (59 FR 45334) for the FY 1995 revisions; the September 1, 1995 final rule (60 FR 45782) for the FY 1996 revisions; the August 30, 1996 final rule (61 FR 46171) for the FY 1997 revisions; the August 29, 1997 final rule (62 FR 45966) for the FY 1998 revisions; the July 31, 1998 final rule (63 FR 40954) for the FY 1999 revisions, the August 1, 2000 final rule (65 FR 47064) for the FY 2001 revisions; the August 1, 2001 final rule (66 FR 39851) for the FY 2002 revisions; and the August 1, 2002 final rule (67 FR 49998) for the FY 2003 revisions.) In the July 30, 1999 final rule (64 FR 41490), we did not modify the CC Exclusions List for FY 2000 because we did not make any changes to the ICD–9–CM codes for FY 2000.

12. Review of Procedure Codes in DRGs 468, 476, and 477

Each year, we review cases assigned to DRG 468 (Extensive O.R. Procedure Unrelated to Principal Diagnosis), DRG 476 (Prostatic O.R. Procedure Unrelated to Principal Diagnosis), and DRG 477 (Nonextensive O.R. Procedure Unrelated to Principal Diagnosis) to determine whether it would be appropriate to change the procedures assigned among these DRGs.

DRGs 468, 476, and 477 are reserved for those cases in which none of the O.R. procedures performed are related to the principal diagnosis. These DRGs are intended to capture atypical cases, that is, those cases not occurring with sufficient frequency to represent a distinct, recognizable clinical group. DRG 476 is assigned to those discharges in which one or more of the following prostatic procedures are performed and are unrelated to the principal diagnosis:

- 60.0 Incision of prostate
- 60.12 Open biopsy of prostate
- 60.15 Biopsy of periprostatic tissue
- 60.18 Other diagnostic procedures on prostate and periprostatic tissue
- 60.21 Transurethral prostatectomy
- 60.29 Other transurethral prostatectomy
- 60.61 Local excision of lesion of prostate
- 60.69 Prostatectomy, not elsewhere classified
- 60.81 Incision of periprostatic tissue
- 60.82 Excision of periprostatic tissue
- 60.93 Repair of prostate
- 60.94 Control of (postoperative) hemorrhage of prostate
- 60.95 Transurethral balloon dilation of the prostatic urethra
- 60.99 Other operations on prostate

All remaining O.R. procedures are assigned to DRGs 468 and 477, with DRG 477 assigned to those discharges in which the only procedures performed are nonextensive procedures that are unrelated to the principal diagnosis. The original list of the ICD–9–CM procedure codes for the procedures we consider nonextensive procedures, if performed with an unrelated principal diagnosis, was published in Table 6C in section IV. of the Addendum to the September 30, 1988 final rule (53 FR 38591). As part of the final rules published on September 4, 1990 (55 FR 36135), August 30, 1991 (56 FR 43212), September 1, 1992 (57 FR 23625), September 1, 1993 (58 FR 46279), September 1, 1994 (59 FR 45336), September 1, 1995 (60 FR 45783), August 30, 1996 (61 FR 46173), and August 29, 1997 (62 FR 45981), we moved several other procedures From DRG 468 to DRG 477, and some procedures from DRG 477 to DRG 468. No procedures were moved in FY 1999, as noted in the July 31, 1998 final rule (63 FR 40962); in FY 2000, as noted in the July 30, 1999 final rule (64 FR 41496); in FY 2001, as noted in the August 1, 2000 final rule (65 FR 47064); or in FY 2002, as noted in the August 1, 2001 final rule (66 FR 39852). In the August 1, 2002 final rule (67 FR 49999), we did not move any procedures from DRG 477. However, we did move procedures codes from DRG 468 and placed them in more clinically coherent DRGs.

a. Moving Procedure Codes From DRG 468 or DRG 477 to MDCs

We annually conduct a review of procedures producing assignment to DRG 468 or DRG 477 on the basis of volume, by procedure, to see if it would be appropriate to move procedure codes out of these DRGs into one of the surgical DRGs for the MDC into which the principal diagnosis falls. The data are arrayed two ways for comparison purposes. We look at a frequency count of each major operative procedure code. We also compare procedures across MDCs by volume of procedure codes within each MDC.

We identify those procedures occurring in conjunction with certain principal diagnoses with sufficient frequency to justify adding them to one of the surgical DRGs for the MDC in which the diagnosis falls. Based on this year's review, we did not identify any necessary changes in procedures under DRG 477. Therefore, we did not propose moving any procedures from DRG 477 to one of the surgical DRGs in this final rule.

However, in the proposed rule, we identified a necessary proposed change under DRG 468 relating to code 50.29 (Other destruction of lesion of liver). We were contacted by a hospital about the fact that code 50.29 is not currently included in MDC 6 (Diseases and Disorders of the Digestive System). The hospital pointed out that it is not uncommon for patients to have procedures performed on the liver when they are admitted for a condition that is classified in MDC 6. For example, DRGs 170 and 171 (Other Digestive System O.R. Procedures With and Without CC, respectively) in MDC 6 currently include liver procedures such as biopsy of the liver. The hospital disagreed with the assignment of code 50.29 to DRG 468 when performed on a patient with a principal diagnosis in MDC 6. We believe that the commenter is correct. Therefore, we proposed to assign code 50.29 to DRGs 170 and 171 in MDC 6.

We received several comments of support for our proposal to assign code 50.29 to DRGs 170 and 171 in MDC 6. Therefore, we are adopting the proposal as final without modification. As a result, code 50.29 will not result in assignment to DRG 468 when this procedure is performed on patient with a principal diagnosis in MDC 6.

b. Reassignment of Procedures Among DRGs 468, 476, and 477

We also annually review the list of ICD–9–CM procedures that, when in combination with their principal diagnosis code, result in assignment to DRGs 468, 476, and 477, to ascertain if any of those procedures should be reassigned from one of these three DRGs to another of the three DRGs based on average charges and the length of stay. We look at the data for trends such as shifts in treatment practice or reporting practice that would make the resulting DRG assignment illogical. If we find these shifts, we would propose to move cases to keep the DRGs clinically similar or to provide payment for the cases in a similar manner. Generally, we move only those procedures for which we have an adequate number of discharges to analyze the data. Based on our review this year, we did not propose moving any procedures from DRG 476 to DRGs 468 or 477, or from DRG 477 to DRGs 468 or 476.

However, in the proposed rule, we identified several procedures that we proposed to move from DRG 468 and add to DRGs 476 and 477 because the procedures are nonextensive:

- 38.21, Biopsy of blood vessel
- 77.42, Biopsy of scapula, clavicle and thorax (ribs and sternum)
- 77.43, Biopsy of radius and ulna
- 77.44, Biopsy of carpals and metacarpals
- 77.45, Biopsy of femur
- 77.46, Biopsy of patella

- 77.47, Biopsy of tibia and fibula
- 77.48, Biopsy of tarsals and metatarsals
- 77.49, Biopsy of other bones
- 92.27, Implantation or insertion of radioactive elements

We note that the above codes being moved from DRG 468 to DRGs 476 and 477 were erroneously listed in the May 19, 2003 proposed rule under section II.B.12.c., which related to adding diagnosis or procedure codes to MDCs, instead of section II.B.12.b., which discussed the reassignment of procedures among DRGs 468, 476, and 477. We regret any inconvenience this inadvertent listing may have caused.

Comment: One commenter asked us to consider moving procedure code 51.23, Laparoscopic cholecystectomy, from DRG 468 and adding it to DRG 477. The commenter indicated that this procedure is often performed in the outpatient setting.

Response: We believe that the commenter's request has merit. We will perform the necessary data analysis and will consider proposing this change in next fiscal year's rule if we find that the data support this change.

c. Adding Diagnosis or Procedure Codes to MDCs

Based on our review this year, we did not propose adding any diagnosis codes to MDCs in this final rule. We did not receive any comments on the proposal.

13. Changes to the ICD–9–CM Coding System

As described in section II.B.1. of this preamble, the ICD–9–CM is a coding system that is used for the reporting of diagnoses and procedures performed on a patient. In September 1985, the ICD–9–CM Coordination and Maintenance Committee was formed. This is a Federal interdepartmental committee, co-chaired by the National Center for Health Statistics (NCHS) and CMS, charged with maintaining and updating the ICD–9–CM system. The Committee is jointly responsible for approving coding changes, and developing errata, addenda, and other modifications to the ICD–9–CM to reflect newly developed procedures and technologies and newly identified diseases. The Committee is also responsible for promoting the use of Federal and non-Federal educational programs and other communication techniques with a view toward standardizing coding applications and upgrading the quality of the classification system.

The ICD–9–CM Manual contains the list of valid diagnosis and procedure codes. (The ICD–9–CM Manual is available from the Government Printing Office on CD–ROM for $23.00 by calling (202) 512–1800.) The NCHS has lead responsibility for the ICD–9–CM diagnosis codes included in the Tabular List and Alphabetic Index for Diseases, while CMS has lead responsibility for the ICD–9–CM procedure codes included in the Tabular List and Alphabetic Index for Procedures.

The Committee encourages participation in the above process by health-related organizations. In this regard, the Committee holds public meetings for discussion of educational issues and proposed coding changes. These meetings provide an opportunity for representatives of recognized organizations in the coding field, such as the American Health Information Management Association (AHIMA), the American Hospital Association (AHA), and various physician specialty groups, as well as individual physicians, medical record administrators, health information management professionals, and other members of the public, to contribute ideas on coding matters. After considering the opinions expressed at the public meetings and in writing, the Committee formulates recommendations, which then must be approved by the agencies.

The Committee presented proposals for coding changes for implementation in FY 2004 at a public meeting held on December 6, 2002, and finalized the coding changes after consideration of comments received at the meetings and in writing by January 10, 2003. Those coding changes are announced in Tables 6A and 6B of this final rule. Copies of the minutes of the procedure codes discussions at the Committee's 2002 meetings can be obtained from the CMS Web site: *http://www.cms.gov/paymentsystems/icd9/*. The minutes of the diagnoses codes discussions at the 2002 meetings are found at: *http://www.cdc.gov/nchs/icd9.htm*. Paper copies of these minutes are no longer available and the mailing list has been discontinued.

The first of the 2003 public meetings was held on April 3, 2003. In the September 7, 2001 final rule implementing the IPPS new technology add-on payments (66 FR 46906), we indicated we would attempt to include all proposals discussed and approved at the April meeting as part of the code revisions effective the following October. Because the proposed rule was published after the April meeting, we were able to include all new procedure codes that were approved subsequent to that meeting in Table 6B of the Addendum to the proposed rule, including the DRG assignments. However, the National Center for Health Statistics (NCHS) created and finalized three new severe acute respiratory syndrome (SARS) related codes after the proposed rule was published. These new codes, which were not listed in Table 6A of the Addendum to the proposed rule, have been included in Table 6A of the Addendum to this final rule. The new codes are as follows:

- 079.82, SARS-associated coronavirus
- 480.3, Pneumonia due to SARS-associated coronavirus
- V01.82, Exposure to SARA-associated coronavirus

These new codes have been identified with a footnote (1) in Table 6A of the Addendum to this final rule.

For a report of procedure topics discussed at the April 2003 meeting, see the Summary Report at: *http://www.cms.hhs.gov/paymentsystems/icd9/*. For a report of the diagnosis topics discussed at the April 2003 meeting, see the Summary Report at: *http://www.cdc.gov/nchs/icd9.htm*.

We encourage commenters to address suggestions on coding issues involving diagnosis codes to: Donna Pickett, Co-Chairperson; ICD–9–CM Coordination and Maintenance Committee; NCHS; Room 2404, 3311 Toledo Road, Hyattsville, MD 20782. Comments may be sent by E-mail to: *dfp4@cdc.gov*.

Questions and comments concerning the procedure codes should be addressed to: Patricia E. Brooks, Co-Chairperson; ICD–9–CM Coordination and Maintenance Committee; CMS, Center for Medicare Management, Hospital and Ambulatory Policy Group, Division of Acute Care; C4–08–06; 7500 Security Boulevard; Baltimore, MD 21244–1850. Comments may be sent by E-mail to: *pbrooks1@cms.hhs.gov*.

The ICD–9–CM code changes that have been approved will become effective October 1, 2003. The new ICD–9–CM codes are listed, along with their DRG classifications, in Tables 6A and 6B (New Diagnosis Codes and New Procedure Codes, respectively) in the Addendum to this final rule. As we stated above, the code numbers and their titles were presented for public comment at the ICD–9–CM Coordination and Maintenance Committee meetings. Both oral and written comments were considered before the codes were approved. Accordingly, in the May 19, 2003 proposed rule, we only solicited comments on the proposed DRG classification of these new codes.

Comment: One commenter expressed concern about the MDC and DRG designations for new diagnosis code 752.89 (Other specified anomalies of genital organs) that was included in Table 6A of the Addendum to the proposed rule. We had proposed assigning this new code to MDC 12 (Diseases and Disorders of the Male Reproductive System), and DRG 352 (Other Male Reproductive System Diagnoses). The commenter pointed out that this new code could apply to both males and females. Its predecessor code was assigned to MDC 12, DRG 352, as well as to MDC 13 (Diseases and Disorders of the Female Reproductive System) and DRGs 358 (Uterine and Adnexa Procedure for Non-Malignancy with CC), 359 (Uterine and Adnexa Procedure for Non-Malignancy without CC), and 369 (Menstrual and Other Female Reproductive System Disorders).

Response: The commenter is correct. Diagnosis code 752.89 would apply to both males and females and should have been included in both MDC 12 and MDC 13. In this final rule, we are assigning diagnosis code 752.89 to MDC 13 under DRGs 358, 359, and 369 and have modified Table 6A of the Addendum to this final rule accordingly.

Comment: One commenter pointed out a typographical error for the code title for V15.87. The commenter indicated that the word "membrance" should be changed to "membrane"; that is, the title should read "History of Extracorporeal Membrane Oxygenation (ECMO)."

Response: We agree with the commenter and have corrected the title in Table 6A of the Addendum to this final rule.

For codes that have been replaced by new or expanded codes, the corresponding new or expanded diagnosis codes are included in Table 6A. New procedure codes are shown in Table 6B. Diagnosis codes that have been replaced by expanded codes or other codes or have been deleted are in Table 6C (Invalid Diagnosis Codes). These invalid diagnosis codes will not be recognized by the GROUPER beginning with discharges occurring on or after October 1, 2003. Table 6D contains invalid procedure codes. Revisions to diagnosis code titles are in Table 6E (Revised Diagnosis Code Titles), which also includes the DRG assignments for these revised codes. Table 6F includes revised procedure code titles for FY 2004.

The Department of Health and Human Services has been actively working on the development of new coding systems to replace the ICD–9–CM. In December 1990, the National Committee on Vital and Health Statistics (NCVHS) issued a report noting that, while the ICD–9–CM classification system had been responsive to changing technologies and identifying new diseases, there was concern that the ICD classification might be stressed to a point where the quality of the system would soon be compromised. The ICD–10–CM (for diagnoses) and the ICD–10–PCS (for procedures) were developed in response to these concerns. These efforts have become increasingly important because of the growing number of problems with the ICD–9–CM, which was implemented 24 years ago.

Implementing ICD–10–PCS as a national standard was discussed at the December 6, 2002, ICD–9–CM Coordination and Maintenance Committee meeting. A complete report of the meeting, including examples of letters supporting and opposing ICD–10–PCS, can be found at the CMS Web site: *http://www.cms.hhs.gov/paymentsystems/icd9/*. Also, the Secretary has asked the NCVHS to recommend whether or not the country should replace ICD–9–CM as a national coding standard with ICD–10–CM and ICD–10–PCS. A complete report on the activities of this committee can be found at: *http://www.ncvhs.hhs.gov*.

Comment: Several commenters supported the move to ICD–10–CM and ICD–10–PCS as national coding standards. One commenter representing hospitals supported moving to these systems expeditiously. The commenter stated that ICD–10–CM and ICD–10–PCS are a vast improvement over ICD–9–CM and would provide greater specificity and detail in coding. Another commenter believed that the new systems would offer immediate and long-term benefits for specifying illness severity and accommodating a diverse array of new technologies that warrant expedited assignment under the DRG system.

Response: We appreciate the support from many in the health care industry for ICD–10–CM and ICD–10–PCS. We agree with the importance of having and maintaining medical coding systems that accurately capture the patient's conditions and medical procedures. We also agree that ICD–9–CM is seriously constrained because of its structure and space limitations. We recognize that over 30 countries have implemented ICD–10 to better capture medical conditions. Countries such as Canada and Australia have successfully implemented ICD–10 without serious ramifications to their data or reimbursement systems. We agree that it is important to capture information on new technologies. It is becoming increasingly difficult to do so using ICD–9–CM. We will continue working with NCVHS and the health care industry to determine if these new systems should be named as national coding standards.

14. Other Issues

In addition to the specific topics discussed in section II.B.1. through 13. of this preamble, we considered a number of other DRG-related issues in the May 19, 2003 proposed rule. Below is a summary of the issues that were addressed.

a. Cochlear Implants

Cochlear implants were first covered by Medicare in 1986 and were assigned to DRG 49 (Major Head and Neck Procedures) in MDC 3 (Diseases and Disorders of the Ear, Nose, Mouth, and Throat). This is the highest weighted surgical DRG in MDC 3. However, prior to the publication of the proposed rule, commenters contended that this DRG assignment is clinically and economically inappropriate for cochlear implants and requested a more specific DRG. The commenters contend that, like heart assist systems (for which we created a new DRG last year, DRG 525 (Heart Assist System Implant) in MDC 5), cochlear implants are low incidence procedures with disproportionately high costs compared to other procedures within DRG 49.

As we stated in the FY 2003 final rule in our discussion regarding the creation of DRG 525 (67 FR 49989), we found 185 heart assist system cases in DRG 104 (Cardiac Valve and Other Major Cardiothoracic Procedures with Cardiac Catheterization) and 90 cases in DRG 105 (Cardiac Valve and Other Major Cardiothoracic Procedures without Cardiac Catheterization). The average charges for these cases were approximately $36,000 and $85,000 higher than the average charges for cases in DRGS 104 and 105, respectively. However, these cases represented only a small fraction of all cases in these DRGs (1.3 percent and 0.5 percent, respectively). Therefore, despite the drastically higher average charges for heart assist systems, the relative volume was insufficient to affect the DRG weight to any great degree.

In our analysis of the FY 2002 MedPAR file, we found 134 cochlear implant cases out of 1,637 cases assigned to DRG 49, which represent more than 8 percent of the total cases in DRG 49. Compared to the situation with the heart assist system implant cases in DRGs 104 and 105, cochlear implants do have a greater effect on the relative weight for DRG 49. Also, while average charges for cochlear implant cases are significantly more than other cases in DRG 49 (average charges for cochlear implant cases were $51,549 compared to

$25,052 for noncochlear implant cases), this difference is much less than the $36,000 and $85,000 differences for heart assist systems cited above.

Although we are concerned about the disparity between the average costs and payments for cochlear implant patients, we also have concerns about establishing a separate DRG for these cases. Doing so could create an incentive for some of these procedures to be shifted from outpatient settings, where most are currently performed. Even among current cochlear implant cases, our analysis found the average length of stay for Medicare patients receiving this procedure in the inpatient setting was just over 1 day, indicating minimal inpatient care is necessary for these cases. It is unclear whether a shift toward more inpatient stays would be appropriate.

We also are concerned whether the volume of cochlear implant cases across all hospitals performing this procedure warrants establishing a new DRG. The DRG relative weights reflect an average cost per case, with the costs of some procedures above the DRG mean costs and some below the mean. It is expected that hospitals will offset losses for certain procedures with payment gains for other procedures, while responding to incentives to maintain efficient operations. An excessive proliferation of new DRGs for specific technologies would fundamentally alter this averaging concept.

Accordingly, for the reasons cited above, we did not propose to change the DRG assignment of cochlear implants in the May 19, 2003 proposed rule. However, we did encourage public comments as to whether a new DRG for cochlear implants (or some other solution) is warranted.

Comment: Several commenters urged CMS to reassign cochlear implantation procedures to a DRG that has a weight appropriate to reflect the costs of cochlear implantation. The commenters stated that while a hospital's acquisition cost of the device itself averages approximately $23,800, the proposed payment for FY 2004 is approximately $8,233. While most cochlear implants have been and will continue to be performed on an outpatient basis, a small, but significant portion, particularly for Medicare beneficiaries, need to be conducted as an inpatient procedure. The commenters stated that the low volume of inpatient cases is a direct result of the inadequate payment rate.

The commenters stated that cochlear implantation is clinically incongruent and economically inconsistent with the other procedures in DRG 49. The commenters believed that cochlear implants do not meaningfully affect the weighting of DRG 49 and proposed two options: Create a new DRG specifically for cochlear implants, or reassign cochlear implants cases to DRG 482 (Tracheostomy for Face, Mouth, and Neck Diagnoses).

Response: We requested public input on possible solutions for these cases because we recognize the data indicate the charges for these cases are much higher than for other cases in DRG 49. However, we are concerned that the options suggested by commenters are not workable solutions. As we alluded to in the proposed rule, we have concerns about creating a new DRG for this procedure. We appreciate the point made by commenters that only those patients requiring inpatient care would receive the procedure in an inpatient setting, even if the DRG payment were increased. However, as we have stated previously, we are reluctant to create new DRGs for specific, low-volume procedures. Doing so would create a proliferation of DRGs and a loss of some of the efficiency incentives inherent in the current system. Hospitals are generally able to offset any losses on such procedures through corresponding payment advantages from other, less expensive procedures.

The second option suggested, to reassign these cases to DRG 482, is inconsistent with the structure of that DRG, which requires that a tracheostomy be performed in order to be assigned to this DRG. Assigning cochlear implants to this DRG would fundamentally alter its structure, which could not be done without first proposing such a change for public review and comment.

However, as we indicated above, we recognize the disparity in average charges for these cases compared to other cases in DRG 49, and will continue to evaluate possible reclassification options for FY 2005.

b. Burn Patients on Mechanical Ventilation

Prior to the publication of the proposed rule, concerns were raised by hospitals treating burn patients that the current DRG payment for burn patients on mechanical ventilation is not adequate. The DRG assignment for these cases depends on whether the hospital performed the tracheostomy, or the tracheostomy was performed prior to transfer to the hospital. If the hospital does not actually perform the tracheostomy, the case is assigned to one of the burn DRGs in MDC 22 (Burns). If the hospital performs a tracheostomy, the case is assigned to DRG 482 (Tracheostomy for Face, Mouth, and Neck Diagnoses) or DRG 483 (Tracheostomy with Mechanical Ventilation 96 + Hours, Except Face, Mouth and Neck Diagnoses).

In the August 1, 2002 final rule, we modified DRGs 482 and 483 to recognize code 96.72 (Continuous mechanical ventilation for 96 consecutive hours or more) for the first time in the DRG assignment (67 FR 49996). We noted that many patients assigned to DRG 483 did not have code 96.72 recorded. We believed this was due, in part, to the limited number of procedure codes (six) that can be submitted on the current billing form, and the fact that code 96.72 did not affect the DRG assignment (prior to FY 2003). We stated that we would give future consideration to further modifying DRGs 482 and 483 based on the presence of code 96.72. We anticipate that cases of patients receiving 96 or more hours of continuous mechanical ventilation are more expensive than other tracheostomy patients. Once code 96.72 is reported more frequently, we will be better able to assess the need for future revisions to DRGs 482 and 483.

To assess the payment for burn patients on mechanical ventilation when the hospital did not perform the tracheostomy, we analyzed data on cases reporting both code 96.72 and diagnosis code V44.0 (Tracheostomy status). We had hoped that these cases would show patients on long-term ventilation who were admitted to the hospital with a tracheostomy in place. Our data did not include any cases reported in any of the burn DRGs with codes 96.72 and V44.0. We then analyzed data on the frequency of cases reporting code 96.72 along with diagnosis code V46.1 (Respirator dependence). We found only 5 of these cases in the burn DRGs. With so few cases reporting code 96.72, it is difficult for us to determine the effect of long-term ventilation on reimbursement for burn cases.

All hospitals, including those that treat burn patients, are encouraged to increase the reporting of code 96.72 for patients who are on continuous mechanical ventilation for 96 or more hours. With better data, we would be able to determine how best to make any future DRG modification for all patients on long-term mechanical ventilation.

We received one comment from an organization representing coders that agreed with the importance of reporting code 96.72 and the need for further education on this issue. We will continue to monitor our data to assess the payment for burn patients on mechanical ventilation in the future.

c. Multiple Level Spinal Fusion

Prior to the publication of the proposed rule, we received a comment recommending the establishment of new DRGs that would differentiate between the number of levels of vertebrae involved in a spinal fusion procedure. The commenter noted that the ICD–9–CM Coordination and Maintenance Committee discussed adding a new series of codes to identify multiple levels of spinal fusions at its December 6, 2002 meeting.

The following codes were approved by the Committee, effective for October 1, 2003, and are listed in Table 6B in the Addendum to this final rule:

- 81.62, Fusion or refusion of 2–3 vertebrae
- 81.63, Fusion or refusion of 4–8 vertebrae
- 81.64, Fusion or refusion of 9 or more vertebrae

The commenter conducted an analysis to support redefining the spinal fusion DRGs using these new ICD–9–CM codes. Using the CMS FY 2001 Standard Analytical File data for physicians and hospitals as the basis for its analysis, the commenter linked a 5-percent sample of hospital spinal fusion cases with the corresponding physician claims. Because there were no ICD–9–CM codes to identify multiple level fusions in 2001, multiple level fusions were identified using Current Procedural Terminology (CPT) codes on the physician claims.

The analysis found that increasing the levels fused from 1 to 2 levels to 3 or more levels increased the mean standardized charges by 38 percent for lumbar/thoracic fusions, and by 47 percent for cervical fusions. The commenter then recommended redefining the spinal fusion DRGs to differentiate between 1 to 2 level spinal fusions and multilevel spinal fusions.

The following current spinal fusion DRGs separate cases based on whether or not a CC is present: DRG 497 (Spinal Fusion Except Cervical With CC) and DRG 498 (Spinal Fusion Except Cervical Without CC); and DRG 519 (Cervical Spinal Fusion With CC) and DRG 520 (Cervical Spinal Fusion Without CC). The difference in charges associated with the current CC split is only slightly greater than the difference attributable to the number of levels fused as found by the commenter's analysis. Therefore, in the May 19, 2003 proposed rule, we did not propose to redefine these DRGs to differentiate on the basis of the number of levels fused.

We note that adopting the commenter's recommendation would necessitate adjusting the DRG relative weights using non-MedPAR data, because Medicare claims data with the new ICD–9–CM codes will not be available until the FY 2003 MedPAR file. Although we considered this possibility, we believe the more prudent course, given that the current DRG structure actually appears to differentiate appropriately among these cases, is to wait until sufficient data with the new multilevel spinal fusion codes are available before making a final determination on whether multilevel spinal fusions should be incorporated into the DRG structure.

Comment: Several commenters supported our proposal to wait for data using the new ICD–9–CM procedure codes for multiple level spinal fusions prior to making revisions to the spinal fusion DRGs. One commenter representing hospitals supported our proposal to continue with the current DRG classification system until sufficient data are available to evaluate a potential DRG change. Several commenters expressed their appreciation for the creation of the new codes for multiple level spinal fusion. They recognized the difficult challenge that was involved in developing this new classification system as part of ICD–9–CM.

One commenter requested us to proceed with a DRG revision for multiple level spinal fusion without waiting for data using the new codes. This commenter stated that there are significant costs involved with increased instrumentation and hardware when multiple level spinal fusions are performed, and requested that we consider using non-MedPAR data to establish relative weights for new DRGs based on the levels of vertebrae involved. In addition, the commenter stated that there is a need to distinguish between fusions and refusions within the DRGs. The commenter stated that refusions vary significantly due to the existence of scar tissue and implants that need to be removed and replaced. Further, the commenter recommended that we split DRG 496 Combined anterior/posterior spinal fusion based on the presence or absence of a complication or comorbidity.

Response: We appreciate the support of commenters that we wait for data from the reporting of the new codes for multiple level spinal fusion prior to proposing revisions to the spinal DRGs (rather than using non-MedPAR data prior to the availability of data using the new codes). We also appreciate the comments concerning the extensive effort it took on our part to develop a set of ICD–9–CM codes that could capture this type of information. We believe it is important to carefully examine hospital data prior to making any revisions for multiple level spinal fusions. Therefore, we will look at this data as we receive it and evaluate any need for DRG revisions. We will consider all the points raised by the commenters as we consider additional DRG revisions for spinal fusions in the future.

d. Heart Assist System Implant

During the comment period for the FY 2003 IPPS proposed rule on which the FY 2003 IPPS final rule was based, we received a suggestion from a commenter that we develop a new heart transplant DRG entitled "Heart Transplant with Left Ventricular Assist Device (LVAD)." The commenter stated that, because a great number of LVAD cases remain inpatients until heart transplant occurs, there is a disparity in costs between heart transplant patients who receive LVADs during the stay and those who do not. Cases in which heart transplantation occurs during the hospitalization are assigned to DRG 103 (Heart Transplant). Therefore, the costs of these LVAD cases where a heart transplant is also performed during the same hospitalization are included in the DRG relative weight for DRG 103. Accordingly, we did not create a new DRG for these cases. However, we noted that we would continue to monitor these types of cases.

When we reviewed the FY 2002 MedPAR data, we identified only 21 cases in DRG 103 that listed a procedure code indicating the use of any heart assist system. We do not believe that 21 cases is a sufficient number of cases to support creation of an additional DRG. Therefore, in the May 19, 2003 proposed rule, we did not propose a change to the structure of either DRG 103 or DRG 525.

Comment: Two commenters argued that procedure code 37.66 (Implant of an implantable, pulsatile heart assist system) does not fit clinically or financially with the following other procedure codes in DRG 525:

- 37.62, Implant of other heart assist system,
- 37.63, Replacement and repair of heart assist system,
- 37.65, Implant of an external, pulsatile heart assist system
- 37.66, Implant of an implantable, pulsatile heart assist system.

One commenter indicated that, according to an analysis that it performed, Medicare data on procedure code 37.66 demonstrates that average charges ($342,725) and length of stay

(40.1 days) are significantly higher than data on all other procedures in DRG 525 (average charges ranging from $112,748 to $190,672) and (average length of stay ranging from 10.9 to 16.7). According to the commenter, the implantable pulsatile technology represents a different class of device and procedure (long-term support) compared to the less resource intensive, short-term devices used in other procedures in DRG 525.

The commenters requested three possible alternatives for the reclassification of procedure code 37.66: (1) Create a unique DRG for this procedure; (2) add this procedure code to DRG 103 (Heart Transplant); or (3) add a new technology add-on payment for code 37.66 to DRG 525.

Response: In response to comments we received on the creation of new DRG 525 last year, we noted that these four codes represent the most expensive cases in MDC 5 (67 FR 49991). However, the specific point made by the commenters this year, that procedure code 37.66 is significantly different in terms of clinical procedures and resource utilization from the other procedures in DRG 525, was not raised prior to this year's proposed rule.

While we recognize the significant disparities referenced by the commenter warrant further consideration, the potential solutions suggested by the commenter are significant changes to the DRG system that warrant public comment. In particular, the reassignment of code 37.66 to DRG 103 would result in inclusion of nontransplant cases in this existing single-procedure DRG. Therefore, in light of the significant impacts of each of the commenters' suggestions on the structure of the DRGs involved and the need to submit any such significant impacts to public review and comment, we are not changing DRG 525 for FY 2004. We appreciate the commenter bringing this issue to our attention. We will evaluate whether to make further changes to DRG 525 in light of the information that there is significant disparity in the costs of the different procedures included in the DRG. We note that the outlier payment policy will help to offset extraordinarily expensive costs.

Furthermore, the volume and mix of cases in this DRG is likely to change over the next year. Currently, CMS has approved the use of LVADs in two instances. They can be used as either a bridge to heart transplant or for support of blood circulation postcardiotomy (the period following open-heart surgery). In these two applications, the LVAD is used as temporary mechanical circulatory support. CMS is currently reviewing a request for expanded coverage for these devices as destination (or permanent) therapy for end-stage heart failure patients who are not candidates for heart transplantation. Destination therapy means that the patient will use the LVAD for the remainder of his or her life.

We believe it will be helpful to have data on the resources and volume associated with any potential destination therapy cases prior to revising DRG 525.

e. Drug-Eluting Stents

In the August 1, 2002 final rule, we created two new temporary DRGs to reflect cases involving the insertion of a drug-eluting coronary artery stent as signified by the presence of code 36.07 (Insertion of drug-eluting coronary artery stent): DRG 526 (Percutaneous Cardiovascular Procedure With Drug-Eluting Stent With AMI); and DRG 527 (Percutaneous Cardiovascular Procedure With Drug-Eluting Stent Without AMI). We expect that when claims data are available that reflect the use of these stents, we will combine drug-eluting stent cases with other cases in DRGs 516 and 517.

In the absence of MedPAR data reflecting the use of drug-eluting stents, it was necessary to undertake several calculations to establish the FY 2003 DRG relative weights for these two new DRGs. First, based on prices in countries where drug-eluting stents were already being used compared to the average price of nondrug-eluting stents in those countries, we calculated a price differential of approximately $1,200. When we apply average overall hospital charge markups to this technology (based on weighted average cost-to-charge ratios), we estimated that the charge differential between nondrug-eluting and drug-eluting stents would be approximately $2,664 per stent. However, we recognize that some cases involve more than one stent. Using an average of 1.5 stents per procedure, we estimated that the net incremental charge for cases that would receive drug-eluting stents is $3,996.

In order to determine accurately the DRG relative weights for these two new DRGs relative to all other DRGs, we also must estimate the volume of drug-eluting stent cases likely to occur. We used the manufacturer's estimate that as many as 43 percent of current stent patients will receive drug-eluting stents during FY 2003 to calculate the FY 2003 DRG relative weights, although we prorated this percentage since the new DRGs did not become active until April 1, 2003.[4]

In determining the FY 2004 DRG relative weights for DRGs 526 and 527, we assumed that 43 percent of coronary stent cases (those with code 36.06 (Insertion of nondrug-eluting coronary artery stent)) from DRGs 516 and 517 would be reassigned to new DRGs 526 and 527 (with code 36.07), and the charges for these cases would be increased $3,996 per case, to approximate the higher charges associated with the drug-eluting stents in DRGs 526 and 527. The relative weights for DRGs 516 and 517 are calculated based on the charges of the cases estimated to remain in these two DRGs.

Comment: In response to our statement in the proposed rule that we would use the best available data to establish the FY 2004 relative weights for DRGs 526 and 527, one commenter (the manufacturer of the only FDA-approved drug-eluting stents at this time) commissioned an independent accounting firm to collect costs, charges, and utilization data from hospitals on drug-eluting and nondrug-eluting stents.

The data were collected from a randomized, statistically significant sample of United States hospitals with interventional cardiac catherization laboratories. First, the firm identified those hospitals that performed coronary angioplasty on Medicare beneficiaries. The method used to identify these hospitals was first to review MedPAR data to isolate those hospitals with average volume in DRGs with a placement of coronary artery stent, ICD–9–CM procedure code (36.06). From this list of hospitals, it was necessary to eliminate those that appeared to have quality issues with the data. This resulted in a list of 1,033 hospitals for the "population" group from which the sample was drawn.

A sample size sufficient to achieve a confidence level of 95 percent that the results would be within 5 percent of the actual distribution (assuming a normal distribution) was then determined, and a randomized selection within each state identified 279 hospitals. An additional 30 hospitals from a preliminary phase of the study were added because these hospitals had already supplied nondrug-eluting stent data and had committed to supply drug-eluting stent data. Therefore, the total sample size for the survey instrument was 309 hospitals.

[4] Even though the DRG became active on April 1, 2003, we expect that hospitals did not use this technology before FDA approval. (We intend to identify and review any cases with the code 36.07 that occurred prior to FDA approval.) Therefore, no payments are expected to have been made under these DRGs for cases occurring before FDA approval.

At the time of the survey, 83 of the selected hospitals had not yet received shipments of the drug-eluting stents and, hence, were not able to complete the survey because they had no cost or charge data for drug-eluting stents. The final number of completed surveys was 119 (or 53 percent of the sample).

The survey was designed to collect data regarding costs, charges, and utilization for drug-eluting stents at three different points in time: currently; October 1, 2003; and at full-maturity (defined as that point in time in which the hospital has achieved a stable and consistent usage of the drug-eluting stent). The data were submitted (including a sample of invoices) under a request for confidential treatment under the Freedom of Information Act.

Based on the data collected, the commenter recommended that CMS increase the harge differential between nondrug-eluting and drug-eluting stents to create a payment differential of $3,024. This represents the cost per case differential between nondrug-eluting stent and drug-eluting stent cases anticipated by surveyed hospitals on October 1, 2003. The current cost differential reported by the sample of hospitals was $2,721. The commenter estimated that our proposed methodology results in a payment differential of $1,451 and $1,495 between DRGs 516 and 526, and DRGs 517 and 527, respectively. The surveyed hospitals reported average current and anticipated stents used per case of 1.4 and 1.5, respectively. Average projected utilization of drug-eluting stents relative to all stents was reported in the survey to currently be 33 percent, and by October 1, 2003, utilization is projected to be 69 percent.

Another commenter noted that the actual cost per stents is 59 percent higher than our projection of $1,200. The commenter also noted that most cases use 2 stents instead of the projected 1.5 stents, and, therefore, the net incremental charge difference should be $5,554 instead of the $3,996 projected by CMS.

Response: The data submitted was extensively detailed and helped us better understand the costs, charges, and utilization for all types of stents. As noted above, we stated in the proposed rule that we would use the best available data at the time of the final rule to establish the FY 2004 relative weights for DRGs 526 and 527, and these data are much more detailed and current than any other sources available to us at this time. These data are extremely useful to assess the appropriateness of our proposed methodology to determine the relative weights for DRGs 526 and 527.

The commenter recommended that CMS establish a payment differential between DRGs for nondrug-eluting stents and drug-eluting stents of $3,024 to account for the estimated cost difference between the two types of stents. However, the DRG relative weights are established using the average charges per case of each DRG relative to the national average. Therefore, we examined the charge per case data from the sample.

The commenter referred to a mean charge differential per case of $5,721, based on anticipated costs per drug-eluting stent on October 1, 2003. However, we do not believe it is appropriate to use anticipated October 1, 2003 charges for several reasons. First, these data cannot be substantiated. As noted above, we received a sampling of current invoices that allowed us to verify the current costs per drug-eluting stent. These invoices cannot verify the $300 average per stent cost increase that reportedly will occur between the time the survey was conducted and October 1, 2003. Second, for all other DRGs, we are using charge data reflective of FY 2002 charges. Although we are establishing the FY 2004 relative weights in this final rule, using anticipated FY 2004 charge data would result in 2-year later charge data being used to establish the DRG 526 and 527 relative weights, while FY 2002 charge data are used to establish all other relative weights. Therefore, we believe the current data more closely approximate the data used to determine the FY 2004 relative weights for the remainder of the DRGs. Finally, hospitals must rely upon the manufacturer of the only currently available drug-eluting stents for information on future pricing. We believe this raises questions as to the validity of the data due to the lack of independently verifiable pricing data for the future.

Therefore, we are basing our evaluation of our proposed methodology on the sample data from the current period. The commenter reported a mean differential in charges per case of $4,859 for the current period. However, we are concerned that the mean differential in charges per case is unduly influenced by extraordinarily high charge markups reported on the part of some hospitals. For example, one hospital reported charging $28,000 per drug-eluting stent, while its costs per stent were only $3,023. This same hospital reported charges of $9,500 for nondrug-eluting stents, with costs per stent of $1,010. To control the distorting impact such a hospital would have on the mean charge differential, we examined the geometric mean charge differential based on current charges per case.

The survey data showed that, for seven hospitals, the charge per case was higher for nondrug-eluting stent cases. In order to calculate the geometric mean differential charge per case, it was necessary to remove these seven negative differentials. The result was a current geometric mean differential charge per case of $4,186. As an alternative to removing these seven negative numbers, we set them to a $1 differential, and calculated a geometric mean differential charge per case of $2,291. Based on the range of these results, we believe our proposed charge differential of $3,996 represents a reasonable approximation of the differential in charges per case, and we are proceeding to establish the DRG relative weights for DRGs 526 and 527 for FY 2004 using this amount.

We note that there is a difference between CMS and the commenter on the current cost difference between drug-eluting stents and nondrug-eluting stents (our estimate began with a $1,200 per stent differential, while the survey found a $2,721 current differential). It appears that the reason our charges per case for drug-eluting stents and nondrug-eluting stents are not substantially different from the charges in the survey data, despite the discrepancy in the cost differential, is due to the fact that hospitals are not marking up drug-eluting stents by the same proportion as nondrug-eluting stents. From the data submitted by the commenter, we found the average charge increase for nondrug-eluting stents is 183 percent. The average charge increase for drug-eluting stents is 124 percent. This lower markup reduces the differential in charges relative to the actual costs hospitals may incur.

Based on data submitted to us last year by the commenter, we proposed that 43 percent of stent cases from DRGs 516 and 517 would be reassigned to DRGs 526 and 527. However, based on the survey data, for FY 2004 we are changing our estimate to assume that 69 percent of coronary stent cases will be reassigned from DRGs 516 and 517 to DRGs 526 and 527, respectively. We note that, although this percentage is based on anticipated utilization on October 1, 2003, it is not based on data that is only available from the manufacturer. We are continuing to assume a utilization rate of 1.5 stents per case.

Comment: Many commenters argued that the proposed payment for drug-eluting stents is inadequate and asked that CMS consider the data it has received to date from hospital claims to determine whether the proposed FY 2004 payment rate for drug-eluting stents is adequate. Other commenters requested that CMS use the most current United States data available (as opposed to data from the United Kingdom) to establish the DRG weights for FY 2004.

Some commenters noted that current DRG weights account for 1.5 stents per case, but that the number of stents per case is expected to rise because the insertion of drug-eluting stents is more technically challenging in comparison to competitive products. The commenters also noted that because drug-eluting stents are able to treat smaller vessels, more diffuse disease in diabetics, and longer lesions, a rise is expected in the stent per patient ratio. The commenters asked that CMS adjust its ratio of 1.5 stents per case to an amount closer to 2 stents per case when recalibrating the DRG weights. Another commenter explained that, based on their analysis, an average of 1.7 drug-eluting stents is used per procedure and the average cost per drug-eluting stent is $3,195. The commenter requested that these amounts be used to compute the relative weights for DRGs 526 and 527. The commenter also noted that the payment rates for FY 2003 are higher than the payment rates for FY 2004 due to the decline in the DRG relative weights.

One commenter suggested as an alternative to increasing the weights for drug-eluting stents that payment be contingent on the type and number of stents used per procedure. The commenter recommended that CMS set up revenue codes to indicate the type and number of stents used per case and make payment approximately $1,000 above the cost per stent.

Another commenter also noted that the demand from hospitals for drug-eluting stents is much higher than the projected 43 percent of coronary artery stent cases. The commenter estimated that 85 to 90 percent of all stent cases should be reassigned from DRGs 516 and 517 to DRGs 526 and 527. Another commenter explained that drug-eluting stents, compared with nondrug-eluting stents, have already been shown to decrease angiographic restenosis in coronary arteries by more than half, which should reduce the need for repeat procedure rates from 20 percent of cases to less than 5 percent. As a result, demand for drug-eluting stents is expected to increase and the commenter estimated that 70 percent of all coronary artery stent cases will involve the use of drug-eluting stents. Therefore, 70 percent of all stent cases should be moved to DRGs 526 and 527 to account for drug-eluting stents instead of the 43 percent proposed by CMS.

One commenter explained that there are many added costs of using drug-eluting stents, such as that the area of blockage to be treated is to be predilated with an angioplasty balloon before and after implanting the stent, the use of intravascular ultrasound to ensure proper positioning and deployment of stents in certain cases, and increased length of time a patient spends in the cardiac catheterization laboratory. The commenter also added that percutaneous transluminal coronary angioplasty volume is expected to increase due to obesity, smoking, sedentary lifestyle, and diabetes. Therefore, the commenter recommended that CMS ensure that drug-eluting stents are adequately paid.

Response: As described above, we used data submitted to us from a survey of U.S. hospitals to evaluate our proposed methodology. Our analysis indicates that the proposed charge differential and the number of stents per procedure in our methodology are appropriate. However, we have increased our assumed utilization rate of drug-eluting stents to 69 percent from 43 percent, based on these data.

With respect to the decline in the proposed FY 2004 DRG relative weights compared to FY 2003, every year we recalibrate the DRG weights comparing the average charge per DRG to all other DRGs. The weights of one DRG can change for numerous reasons (for example, increase or decrease in total cases or increase or decrease in charges) and cause weights from other DRGs to increase or decrease due to budget neutrality.

As we proposed, we are maintaining DRGs 526 and 527 for FY 2004, and adopting the same methodology to establish the relative weights as we used for FY 2003. We have used the best available data to establish the final FY 2004 relative weights for DRGs 526 and 527 included in this final rule. We will continue to evaluate the appropriate assignment of these cases in the future.

Comment: One commenter recommended that CMS move drug-eluting stents to DRGs 516 and 517 and adjust the weights, because CMS should not provide a financial incentive for hospitals to favor one therapy when other alternatives with equal or better outcomes are available. The commenter stated further that CMS should not create an incentive that promotes a more expensive treatment for which risks and benefits are not yet completely known. Another commenter suggested that drug-eluting stents should receive add-on payments for new technology instead of receiving their own DRG payment.

Response: We explained our rationale for creating new DRGs 525 and 526 (instead of assigning these cases to DRGs 516 or 517 or approving a new technology add-on) in the August 1, 2002 IPPS final rule (67 FR 50005) and refer the commenters to that rule for our response. We appreciate the commenter's continual input and interest in these issues.

f. Artificial Anal Sphincter

The ICD–9–CM Coordination and Maintenance Committee created two new codes to describe procedures involving an artificial anal sphincter for use for discharges occurring on or after October 1, 2002. One code (49.75, Implantation or revision of artificial anal sphincter) is used to identify cases involving implantation or revision of an artificial anal sphincter. The second code (49.76, Removal of artificial anal sphincter) is used to identify cases involving the removal of the device. In Table 6B of the August 1, 2002 IPPS final rule (67 FR 50242), we assigned both codes to one of four MDCs based on principal diagnosis, and to one of six DRGs within those MDCs as follows: MDC 6 (Diseases and Disorders of the Digestive System), DRG 157 (Anal and Stomal Procedures With CC) and DRG 158 (Anal and Stomal Procedures Without CC); MDC 9 (Diseases and Disorders of the Skin, Subcutaneous Tissue and Breast), DRG 267 (Perianal and Pilonidal Procedures); MDC 21 (Injuries, Poisonings, and Toxic Effect of Drugs), DRG 442 (Other O.R. Procedures for Injuries With CC) and DRG 443 (Other O.R. Procedures for Injuries Without CC); and MDC 24 (Multiple Significant Trauma), DRG 486 (Other O.R. Procedures for Multiple Significant Trauma).

Prior to the publication of the proposed rule, we received a request that we review these DRG assignments. According to the requester, the artificial anal sphincter procedures are expensive and the payment does not adequately cover a hospital's costs in the most likely occurring DRGs: DRG 157 and DRG 158. The requester submitted data showing cases involving artificial anal sphincters with average charges of $44,000, and suggested that we assign codes 49.75 and 49.76 in MDC 6 to DRG 170 (Other Digestive System O.R. Procedures With CC) and DRG 171 (Other Digestive System O.R. Procedures Without CC) because DRG 170 and DRG 171 are higher weighted than DRGs 157 and 158.

In the May 19, 2003 proposed rule, we did not propose to assign these cases to DRGs 170 and 171. Although we recognized that the data submitted by the commenter appear to show this procedure is associated with above average costs in the DRGs to which these cases are assigned, we stated that we believe the current assignment is the most clinically appropriate at this time. As noted above, the procedure codes to identify the implantation, revision, or removal of these devices were effective beginning on October 1, 2002. Therefore, we proposed to monitor the costs of these cases using actual Medicare cases with these codes included from the FY 2003 MedPAR that will be used for the FY 2004 DRG relative weights.

Comment: Two commenters expressed concern that the procedures for insertion and removal of an artificial anal sphincter are assigned to DRG groupings that do not cover the cost of the device. In addition, one commenter stated that, as the surgeon must operate on two distinct areas of the patient's body, these procedures are more resource-intensive and, therefore, are not clinically coherent with other procedures of low complexity in DRGs 157 and 158.

Response: As noted above, the codes describing the implantation, revision, or removal of artificial anal sphincters were created for use beginning on October 1, 2002. Therefore, we do not have data on cases assigned to codes 49.75 and 49.76. Accordingly, we are not making any changes to the DRG assignments of these codes at this time. However, we will continue to monitor this procedure in the upcoming MedPAR data and will, in the future, consider modifications relating to DRG assignment(s) if warranted.

C. Recalibration of DRG Weights

As we proposed, in this final rule we used the same basic methodology for the FY 2004 recalibration as we did for FY 2003 (August 1, 2002 IPPS final rule (67 FR 50008). That is, we recalibrated the DRG weights based on charge data for Medicare discharges using the most current charge information available (the FY 2002 MedPAR file).

The MedPAR file is based on fully coded diagnostic and procedure data for all Medicare inpatient hospital bills. The FY 2002 MedPAR data used in this final rule include discharges occurring between October 1, 2001 and September 30, 2002, based on bills received by CMS through March 31, 2003, from all hospitals subject to the IPPS and short-term acute care hospitals in Maryland (which is under a waiver from the IPPS under section 1814(b)(3) of the Act). The FY 2002 MedPAR file includes data for approximately 11,496,239 Medicare discharges. Discharges for Medicare beneficiaries enrolled in a Medicare+Choice managed care plan are excluded from this analysis. The data excludes CAHs, including hospitals that subsequently became CAHs after the period from which the data were taken. This is a change from the recalibration methodology in the proposed rule, where hospitals that subsequently became CAHs were included in the data. In this final rule, we changed the recalibration methodology for consistency with our change that excluded these CAHs from the data used to construct the wage index.

The methodology used to calculate the DRG relative weights from the FY 2002 MedPAR file is as follows:

- To the extent possible, all the claims were regrouped using the DRG classification revisions discussed in section II.B. of this preamble.
- The transplant cases that were used to establish the relative weight for heart and heart-lung, liver, and lung transplants (DRGs 103, 480, and 495) were limited to those Medicare-approved transplant centers that have cases in the FY 2000 MedPAR file. (Medicare coverage for heart, heart-lung, liver, and lung transplants is limited to those facilities that have received approval from CMS as transplant centers.)
- Organ acquisition costs for kidney, heart, heart-lung, liver, lung, pancreas, and intestinal (or multivisceral organs) transplants continue to be paid on a reasonable cost basis. Because these acquisition costs are paid separately from the prospective payment rate, it is necessary to subtract the acquisition charges from the total charges on each transplant bill that showed acquisition charges before computing the average charge for the DRG and before eliminating statistical outliers.
- Charges were standardized to remove the effects of differences in area wage levels, indirect medical education and disproportionate share payments, and, for hospitals in Alaska and Hawaii, the applicable cost-of-living adjustment.
- The average standardized charge per DRG was calculated by summing the standardized charges for all cases in the DRG and dividing that amount by the number of cases classified in the DRG. A transfer case is counted as a fraction of a case based on the ratio of its transfer payment under the per diem payment methodology to the full DRG payment for nontransfer cases. That is, a transfer case receiving payment under the transfer methodology equal to half of what the case would receive as a nontransfer would be counted as 0.5 of a total case.
- Statistical outliers were eliminated by removing all cases that are beyond 3.0 standard deviations from the mean of the log distribution of both the charges per case and the charges per day for each DRG.
- The average charge for each DRG was then recomputed (excluding the statistical outliers) and divided by the national average standardized charge per case to determine the relative weight.

The new weights are normalized by an adjustment factor (1.45726) so that the average case weight after recalibration is equal to the average case weight before recalibration. This adjustment is intended to ensure that recalibration by itself neither increases nor decreases total payments under the IPPS.

As noted below in section IV.A.2. of the preamble of this final rule, we are expanding the transfer policy applicable to postacute care transfers to a total of 29 DRGs (the current 10 DRGs, minus 2, plus 21 additional DRGs), beginning in FY 2004. Because we count a transfer case as a fraction of a case as described above in the recalibration process, the expansion of the postacute care transfer policy to additional DRGs affects the relative weights for those DRGs. Therefore, we calculated the final FY 2004 normalization factor comparing: the case-mix using the final FY 2004 DRG relative weights in which we treated postacute care transfer cases in the additional DRGs for the postacute transfer policy for FY 2004 as a fraction of a case with the case-mix using the FY 2003 DRG relative weights without treating cases in these additional DRGs as transfer cases.

When we recalibrated the DRG weights for previous years, we set a threshold of 10 cases as the minimum number of cases required to compute a reasonable weight. We used that same case threshold in recalibrating the final DRG weights for FY 2004. Using the FY 2002 MedPAR data set, there are 42 DRGs that contain fewer than 10 cases. We computed the weights for these low-volume DRGs by adjusting the FY 2003 weights of these DRGs by the percentage change in the average weight of the cases in the other DRGs.

Comment: Commenters questioned the fact that the proposed weights for several DRGs declined from the prior fiscal year.

Response: As described above, the relative weight for each DRG is

calculated by comparing the average charge for cases within each DRG (after removing statistical outliers) with the national average charge per case. Therefore, there are several factors that can cause a shift in the relative weight of a DRG from one fiscal year to the next. For example, even though the average charges of cases within a particular DRG may have increased, if they did not increase by an equal or greater percentage than the national average, the DRG relative weight would decline. In this final rule, the weights for 223 DRGs for FY 2004 decline from those for FY 2003 (all but 38 DRGs by less than 5 percent), while the weights for 299 DRGs for FY 2004 increased from those for FY 2003 (all but 39 DRGs by less than 5 percent).

Section 1886(d)(4)(C)(iii) of the Act requires that, beginning with FY 1991, reclassification and recalibration changes be made in a manner that assures that the aggregate payments are neither greater than nor less than the aggregate payments that would have been made without the changes. Although normalization is intended to achieve this effect, equating the average case weight after recalibration to the average case weight before recalibration does not necessarily achieve budget neutrality with respect to aggregate payments to hospitals because payments to hospitals are affected by factors other than average case weight. Therefore, as we have done in past years and as discussed in section II.A.4.a. of the Addendum to this final rule, we are making a budget neutrality adjustment to ensure that the requirement of section 1886(d)(4)(C)(iii) of the Act is met.

Comment: One commenter expressed concern that the impact of the proposed DRG recalibration is a $3 million decrease in payments to its hospitals. The commenter was hopeful that the budget neutrality adjustment to ensure that the normalization of DRG weights is achieved will somehow restore the estimated negative impact.

Response: As explained above and in the proposed rule, section 1886(d)(4)(C)(iii) of the Act requires that the changes made through DRG reclassification and recalibration be made in a manner that assures that the aggregate payments are neither greater than nor less than the aggregate payment that would have been made without the changes. However, this requirement refers to aggregate national payments. Therefore, for individual hospitals, the impacts of these changes may be either positive or negative.

D. LTC–DRG Reclassifications and Relative Weights for LTCHs for FY 2004

1. Background

In the June 6, 2003 LTCH PPS final rule (68 FR 34122) we changed the LTCH PPS annual payment rate update cycle to be effective July 1 through June 30 instead of October 1 through September 30. In addition, since the patient classification system utilized under the LTCH PPS is based directly on the DRGs used under the IPPS for acute care hospitals, in that same final rule, we explained that the annual update of the long-term care diagnosis-related group (LTC–DRG) classifications and relative weights will continue to remain linked to the annual reclassification and recalibration of the CMS–DRGs under the IPPS.

The annual update to the IPPS DRGs is based on the annual revisions to the ICD–9–CM codes and is effective each October 1. In the health care industry, annual changes to the ICD–9–CM codes are effective for discharges occurring on or after October 1 each year. The use of the ICD–9–CM coding system is also compliant with the requirements of the Health Insurance Portability and Accountability Act (HIPAA), Pub. L. 104–191, under 45 CFR parts 160 and 162. Therefore, the manual and electronic versions of the GROUPER software, which are based on the ICD–9–CM codes, are also revised annually and effective for discharges occurring on or after October 1 each year. Because the LTC–DRGs are based on the patient classification system used under the IPPS (CMS–DRGs), which is updated annually and effective for discharges occurring on or after October 1 through September 30 each year, in the June 6, 2003 LTCH PPS final rule (68 FR 34128), we specified that we will continue to update the LTC–DRG classifications and relative weights to be effective for discharges occurring on or after October 1 through September 30 each year. Furthermore, we stated that we will publish the annual update of the LTC–DRGs in the proposed and final rules for the IPPS.

As we explained in the May 19, 2003 IPPS proposed rule (68 FR 27173), we proposed revisions to the LTC–DRG classifications and relative weights and indicated that we would finalize them in the IPPS final rule, to be effective October 1, 2003 through September 30, 2004. The final LTC–DRGs and relative weights for FY 2004 in this final rule are based on the IPPS DRGs (GROUPER version 21.0) discussed in section II. of this final rule.

2. Changes in the LTC–DRG Classifications

a. Background

Section 123 of Pub. L. 106–113 specifically requires that the PPS for LTCHs be a per discharge system with a DRG-based patient classification system reflecting the differences in patient resources and costs in LTCHs while maintaining budget neutrality. Section 307(b)(1) of Pub. L. 106–554 modified the requirements of section 123 of Pub. L. 106–113 by specifically requiring that the Secretary examine "the feasibility and the impact of basing payment under such a system [the LTCH PPS] on the use of existing (or refined) hospital diagnosis-related groups (DRGs) that have been modified to account for different resource use of long-term care hospital patients as well as the use of the most recently available hospital discharge data."

In accordance with section 307(b)(1) of Pub. L. 106–554 and § 412.515 of our existing regulations, the LTCH PPS uses information from LTCH patient records to classify patient cases into distinct LTC–DRGs based on clinical characteristics and expected resource needs. The LTC–DRGs used as the patient classification component of the LTCH PPS correspond to the DRGs under the IPPS for acute care hospitals. Thus, under this final rule, we will use the IPPS version 21.0 GROUPER for FY 2004 to process LTCH PPS claims. The changes to the IPPS DRG classification system for FY 2004 (Grouper 21.0) are discussed in section II.B. of this preamble.

Under the LTCH PPS, we determine relative weights for each of the IPPS DRGs to account for the difference in resource use by patients exhibiting the case complexity and multiple medical problems characteristic of LTCH patients. In a departure from the IPPS, as we discussed in both the May 19, 2003 proposed rule (68 FR 27174) and the June 6, 2003 LTCH PPS final rule (68 FR 34132), we use low volume quintiles in determining the LTC–DRG weights for LTC–DRGs with less than 25 LTCH cases, since LTCHs do not typically treat the full range of diagnoses as do acute care hospitals. In order to deal with the large number of low volume LTC–DRGs (LTC–DRGs with fewer than 25 cases), as we discussed in the May 19, 2003 proposed rule (68 FR 27176), we group those low volume LTC–DRGs into 5 quintiles based on average charge per discharge. (A listing of the composition of low volume quintiles for the FY 2004 LTC–DRGs (based on FY 2002 MedPAR data) appears in section II.D.3. of this final rule.) We also adjust for cases in which the stay at the LTCH is less than or equal to five-sixths of the geometric average length of stay; that is, short-stay outlier cases (§ 412.529), as discussed in section II.D.4. of this preamble.

b. Patient Classifications Into DRGs

Generally, under the LTCH PPS, Medicare payment is made at a predetermined specific rate for each discharge; that is, payment varies by the LTC–DRG to which a beneficiary's stay is assigned. Similar to case classification for acute care hospitals under the IPPS (see section II.B. of this preamble), cases are classified into LTC–DRGs for payment under the LTCH PPS based on the principal diagnosis, up to eight additional diagnoses, and up to six procedures performed during the stay, as well as age, sex, and discharge status of the patient. The diagnosis and procedure information is reported by the hospital using codes from the ICD–9–CM.

As discussed above in section II.B. of this preamble, the DRGs are organized into 25 major diagnostic categories (MDCs), most of which are based on a particular organ system of the body; the remainder involve multiple organ systems (such as MDC 22, Burns). Accordingly, the principal diagnosis determines MDC assignment. Within most MDCs, cases are then divided into surgical DRGs and medical DRGs. Some surgical and medical DRGs are further differentiated based on the presence or absence of CCs. (See section II.B. of this preamble for further discussion of surgical DRGs and medical DRGs.)

Because the assignment of a case to a particular LTC–DRG will help determine the amount that is paid for the case, it is important that the coding is accurate. As used under the IPPS, classifications and terminology used under the LTCH PPS are consistent with the ICD–9–CM and the Uniform Hospital Discharge Data Set (UHDDS), as recommended to the Secretary by the National Committee on Vital and Health Statistics ("Uniform Hospital Discharge Data: Minimum Data Set, National Center for Health Statistics, April 1980") and as revised in 1984 by the Health Information Policy Council (HIPC) of the U.S. Department of Health and Human Services. We wish to point out again that the ICD–9–CM coding terminology and the definitions of principal and other diagnoses of the UHDDS are consistent with the requirements of the Administrative Simplification Act of 1996 of the HIPAA (45 CFR Parts 160 and 162).

The emphasis on the need for proper coding cannot be overstated. Inappropriate coding of cases can adversely affect the uniformity of cases in each LTC–DRG and produce inappropriate weighting factors at recalibration and result in inappropriate payments under the LTCH PPS. LTCHs are to follow the same coding guidelines used by the acute care hospitals to ensure accuracy and consistency in coding practices. There will be only one LTC–DRG assigned per long-term care hospitalization; it will be assigned at the discharge. Therefore, it is mandatory that the coders continue to report the same principal diagnosis on all claims and include all diagnostic codes that coexist at the time of admission, that are subsequently developed, or that affect the treatment received. Similarly, all procedures performed during that stay are to be reported on each claim.

Upon the discharge of the patient from a LTCH, the LTCH must assign appropriate diagnosis and procedure codes from the ICD–9–CM. As of October 16, 2002, a LTCH that was required to comply with the HIPAA Administrative Simplification Standards and that had not obtained an extension in compliance with the Administrative Compliance Act (Pub. L. 107–105) is obligated to comply with the standards at 45 CFR 162.1002 and 45 CFR 162.1102. Completed claim forms are to be submitted to the LTCH's Medicare fiscal intermediary.

Medicare fiscal intermediaries enter the clinical and demographic information into their claims processing systems and subject this information to a series of automated screening processes called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before assignment into a LTC–DRG can be made.

After screening through the MCE, each LTCH claim will be classified into the appropriate LTC–DRG by the Medicare LTCH GROUPER. The LTCH GROUPER is specialized computer software based on the same GROUPER used under the IPPS. After the LTC–DRG is assigned, the Medicare fiscal intermediary determines the prospective payment by using the Medicare PRICER program, which accounts for LTCH hospital-specific adjustments. As provided for under the IPPS, we provide an opportunity for the LTCH to review the LTC–DRG assignments made by the fiscal intermediary and to submit additional information within a specified timeframe (§ 412.513(c)).

The GROUPER is used both to classify past cases in order to measure relative hospital resource consumption to establish the LTC–DRG weights and to classify current cases for purposes of determining payment. The records for all Medicare hospital inpatient discharges are maintained in the MedPAR file. The data in this file are used to evaluate possible DRG classification changes and to recalibrate the DRG weights during our annual update (as discussed in section II. of this preamble). The LTC–DRG weights are based on data for the population of LTCH discharges, reflecting the fact that LTCH patients represent a different patient mix than patients in short-term acute care hospitals.

3. Development of the FY 2004 LTC–DRG Relative Weights

a. General Overview of Development of the LTC–DRG Relative Weights

As we stated in the August 30, 2002 LTCH PPS final rule (67 FR 55981), one of the primary goals for the implementation of the LTCH PPS is to pay each LTCH an appropriate amount for the efficient delivery of care to Medicare patients. The system must be able to account adequately for each LTCH's case-mix in order to ensure both fair distribution of Medicare payments and access to adequate care for those Medicare patients whose care is more costly. To accomplish these goals, we adjust the LTCH PPS standard Federal prospective payment system rate by the LTC–DRG relative weights in determining payment to LTCHs for each case.

Under the LTCH PPS, relative weights for each LTC–DRG are a primary element used to account for the variations in cost per discharge and resource utilization among the payment groups (§ 412.515). To ensure that Medicare patients classified to each LTC–DRG have access to an appropriate level of services and to encourage efficiency, we calculate a relative weight for each LTC–DRG that represents the resources needed by an average inpatient LTCH case in that LTC–DRG. For example, cases in a LTC–DRG with a relative weight of 2 will, on average, cost twice as much as cases in a LTC–DRG with a weight of 1.

b. Data

To calculate the LTC–DRG relative weights for FY 2004 in this final rule, we obtained total Medicare allowable charges from FY 2002 Medicare hospital bill data from the December 2002 update of the MedPAR file, and we used Version 21.0 of the CMS GROUPER for IPPS, as discussed in section II.B. of this preamble, to classify cases. Consistent with the methodology under the IPPS, we recalculated the FY 2004 LTC–DRG

relative weights based on the best available data for this final rule.

As we discussed in the May 19, 2003 proposed rule (68 FR 27151), we have excluded the data from LTCHs that are all-inclusive rate providers and LTCHs that are reimbursed in accordance with demonstration projects authorized under section 402(a) of Pub. L. 90–248 (42 U.S.C. 1395b–1) or section 222(a) of Pub. L. 92–603 (42 U.S.C. 1395b–1). Therefore, in the development of the FY 2004 LTC–DRG relative weights, we have excluded the data of the 22 all-inclusive rate providers and the 3 LTCHs that are paid in accordance with demonstration projects.

In addition, as we discussed in that same proposed rule, a data problem regarding the proposed FY 2003 LTC–DRG relative weight values that were determined using MedPAR (claims) data for FYs 2000 and 2001 was brought to our attention. Following notification of this problem, we researched the commenter's claims and determined that, given the long stays at LTCHs, some providers had submitted multiple bills for payment under the reasonable cost-based reimbursement system for the same stay. Based upon our research, we became aware of the following situation: In certain LTCHs, hospital personnel apparently reported a different principal diagnosis on each bill since, under the reasonable cost-based reimbursement system, payment was not dependent upon principal diagnosis, as it is under a DRG-based system. These claims from the MedPAR file were run through the LTCH GROUPER and used in determining the proposed FY 2003 relative weights for each LTC–DRG.

After this issue was brought to our attention, we discovered that only data from the final bills were being extracted for the MedPAR file. Therefore, it was possible that the original MedPAR file was not receiving the correct principal diagnosis. In the August 30, 2002 final rule (67 FR 55989), we addressed the problem by identifying all LTCH cases in the FY 2001 MedPAR file for which multiple bills were submitted. For each of these cases, beginning with the first bill and moving forward consecutively through subsequent bills for that stay, we recorded the first unique diagnosis codes up to 10 and the first unique procedure codes up to 10. We then used these codes to appropriately group each LTCH case to a LTC–DRG for FY 2003.

As we noted above, we are using LTCH claims data from the FY 2002 MedPAR file for the determination of the FY 2004 LTC–DRG relative weights. Since at the time (FY 2002) LTCHs were still reimbursed under the reasonable cost-based system, some LTCHs also had submitted multiple bills for Medicare payment for the same stay. Thus, in certain LTCHs, hospital personnel were apparently still reporting a different principal diagnosis on each bill since, under the reasonable cost-based reimbursement system in FY 2002, payment was not dependent upon principal diagnosis as it is under a DRG-based system. Therefore, as we explained in the May 19, 2003 proposed rule (68 FR 27151), we are following the same methodology outlined above to determine the appropriate diagnosis and procedure codes for those multiple bill LTCH cases in the FY 2002 MedPAR files, and we are using these codes to group each LTCH case to a LTC–DRG for FY 2004. Since the LTCH PPS was implemented for cost reporting periods beginning on or after October 1, 2002 (FY 2003), we believe that this problem will be self-correcting as LTCHs submit more completely coded data in the future.

c. Hospital-Specific Relative Value Methodology

By nature LTCHs often specialize in certain areas, such as ventilator-dependent patients and rehabilitation and wound care. Some case types (DRGs) may be treated, to a large extent, in hospitals that have, from a perspective of charges, relatively high (or low) charges. Such nonarbitrary distribution of cases with relatively high (or low) charges in specific LTC–DRGs has the potential to inappropriately distort the measure of average charges. To account for the fact that cases may not be randomly distributed across LTCHs, we use a hospital-specific relative value method to calculate the LTC–DRG relative weights instead of the methodology used to determine the DRG relative weights under the IPPS described above in section II.C. of this preamble. We believe this method will remove this hospital-specific source of bias in measuring LTCH average charges. Specifically, we reduce the impact of the variation in charges across providers on any particular LTC–DRG relative weight by converting each LTCH's charge for a case to a relative value based on that LTCH's average charge.

Under the hospital-specific relative value method, we standardize charges for each LTCH by converting its charges for each case to hospital-specific relative charge values and then adjusting those values for the LTCH's case-mix. The adjustment for case-mix is needed to rescale the hospital-specific relative charge values (which, by definition, averages 1.0 for each LTCH). The average relative weight for a LTCH is its case-mix, so it is reasonable to scale each LTCH's average relative charge value by its case-mix. In this way, each LTCH's relative charge value is adjusted by its case-mix to an average that reflects the complexity of the cases it treats relative to the complexity of the cases treated by all other LTCHs (the average case-mix of all LTCHs).

In accordance with the methodology established under § 412.523, we standardize charges for each case by first dividing the adjusted charge for the case (adjusted for short-stay outliers under § 412.529 as described in section II.D.4. (step 3) of this preamble) by the average adjusted charge for all cases at the LTCH in which the case was treated. Short-stay outliers under § 412.529 are cases with a length of stay that is less than or equal to five-sixths the average length of stay of the LTC–DRG. The average adjusted charge reflects the average intensity of the health care services delivered by a particular LTCH and the average cost level of that LTCH. The resulting ratio is multiplied by that LTCH's case-mix index to determine the standardized charge for the case.

Multiplying by the LTCH's case-mix index accounts for the fact that the same relative charges are given greater weight in a LTCH with higher average costs than they would at a LTCH with low average costs which is needed to adjust each LTCH's relative charge value to reflect its case-mix relative to the average case-mix for all LTCHs. Because we standardize charges in this manner, we count charges for a Medicare patient at a LTCH with high average charges as less resource intensive than they would be at a LTCH with low average charges. For example, a $10,000 charge for a case in a LTCH with an average adjusted charge of $17,500 reflects a higher level of relative resource use than a $10,000 charge for a case in a LTCH with the same case-mix, but an average adjusted charge of $35,000. We believe that the adjusted charge of an individual case more accurately reflects actual resource use for an individual LTCH because the variation in charges due to systematic differences in the markup of charges among LTCHs is taken into account.

d. Low Volume LTC–DRGs

In order to account for LTC–DRGs with low volume (that is, with fewer than 25 LTCH cases), in accordance with the methodology discussed in the May 19, 2003 proposed rule (68 FR 27176), we group those low volume LTC–DRGs into one of five categories (quintiles) based on average charges, for the purposes of determining relative weights. For this final rule, using LTCH cases from the FY 2002 MedPAR file, we identified 173 LTC–DRGs that contained between 1 and 24 cases. This list of LTC–DRGs was then divided into one of the five low volume quintiles, each containing a minimum of 34 LTC–DRGs (173/5 = 34 with 3 LTC–DRGs as the remainder). For FY 2004, as we described in that same proposed rule, we are making an assignment to a specific low volume quintile by sorting the 173 low volume LTC–DRGs in ascending order by average charge. Since the number of LTC–DRGs with less than 25 LTCH cases is not evenly divisible by five, the average charge of the low volume LTC–DRG was used to determine which low volume quintile received the additional LTC–DRG. After sorting the 173 low volume LTC–DRGs in ascending order, we grouped the first fifth (34) of low volume LTC–DRGs with the lowest average charge into Quintile 1. The highest average charge cases are grouped into Quintile 5. Since the average charge of the 69th LTC–DRG in the sorted list is closer to the previous LTC–DRG's average charge (assigned to Quintile 2) than to the average charge of the 70th LTC–DRG in the sorted list (to be assigned to Quintile 3), we placed it into Quintile 2. This process was repeated through the remaining low volume LTC–DRGs so that 3 low volume quintiles contain 35 LTC–DRGs and 2 low volume quintiles contain 34 LTC–DRGs.

In order to determine the relative weights for the LTC–DRGs with low volume for FY 2004, in accordance with the methodology described in the May 19, 2003 proposed rule (68 FR 27176), we used the five low volume quintiles described above. The composition of each of the five low volume quintiles shown below in Table 1 is used in determining the LTC–DRG relative weights for FY 2004. We determine a relative weight and (geometric) average length of stay for each of the five low volume quintiles using the formula that we apply to the regular LTC–DRGs (25 or more cases), as described below in section II.D.4. of this preamble. We assign the same relative weight and average length of stay to each of the LTC–DRGs that make up that low volume quintile. We note that as this system is dynamic, it is possible that the number and specific type of LTC–DRGs with a low volume of LTCH cases will vary in the future. We use the best available claims data in the MedPAR file to identify low volume LTC–DRGs and to calculate the relative weights based on our methodology.

TABLE 1.—COMPOSITION OF LOW VOLUME QUINTILES

LTC-DRG	Description
	Quintile 1
44	ACUTE MAJOR EYE INFECTIONS.
46	OTHER DISORDERS OF THE EYE AGE >17 W CC.
47	OTHER DISORDERS OF THE EYE AGE >17 W/O CC.
65	DYSEQUILIBRIUM.
66	EPISTAXIS.
69	OTITIS MEDIA & URI AGE >17 W/O CC.
93	INTERSTITIAL LUNG DISEASE W/O CC.
95	PNEUMOTHORAX W/O CC.
149	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC.
178	UNCOMPLICATED PEPTIC ULCER W/O CC.
192	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC.
273	MAJOR SKIN DISORDERS W/O CC.
276	NON-MALIGANT BREAST DISORDERS.
284	MINOR SKIN DISORDERS W/O CC.
305	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON–NEOPL W/O CC.
311	TRANSURETHRAL PROCEDURES W/O CC.
319	KIDNEY & URINARY TRACT NEOPLASMS W/O CC.
326	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC.
342	CIRCUMCISION AGE >17.
344	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY.
348	BENIGN PROSTATIC HYPERTROPHY W CC.
349	BENIGN PROSTATIC HYPERTROPHY W/O CC.
367	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC.
376	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE.
399	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC.
414	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC.
428	DISORDERS OF PERSONALITY & IMPULSE CONTROL.
431	CHILDHOOD MENTAL DISORDERS.
432	OTHER MENTAL DISORDER DIAGNOSES.
433	ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA.
467	OTHER FACTORS INFLUENCING HEALTH STATUS.
511	NON-EXTENSIVE BURNS W/O CC OR SIGNIFICANT TRAUMA.
538	LOCAL EXCISION AND REMOVAL OF INTERNAL FIXATION DEVICES EXCEPT HIP AND FEMUR WITHOUT CC.
540	LYMPHOMA AND LEUKEMIA WITH MAJOR O.R. PROCEDURE WITHOUT CC.
	Quintile 2
21	VIRAL MENINGITIS.
22	HYPERTENSIVE ENCEPHALOPATHY.
31**	CONCUSSION AGE >17 W CC.
53	SINUS & MASTOID PROCEDURES AGE >17.
61	MYRINGOTOMY W TUBE INSERTION AGE >17.
72	NASAL TRAUMA & DEFORMITY.
84	MAJOR CHEST TRAUMA W/O CC.
128	DEEP VEIN THROMBOPHLEBITIS.

TABLE 1.—COMPOSITION OF LOW VOLUME QUINTILES—Continued

LTC-DRG	Description
177	UNCOMPLICATED PEPTIC ULCER W CC.
185	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17.
193	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC.
194*	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC.
200	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY.
206***	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC.
208***	DISORDERS OF THE BILIARY TRACT W/O CC.
211	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC.
232	ARTHROSCOPY.
237	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH.
275	MALIGNANT BREAST DISORDERS W/O CC.
301	ENDOCRINE DISORDERS W/O CC.
309	MINOR BLADDER PROCEDURES W/O CC.
323	URINARY STONES W CC, &/OR ESW LITHOTRIPSY.
324	URINARY STONES W/O CC.
339	TESTES PROCEDURES, NON-MALIGNANCY AGE 17.
341	PENIS PROCEDURES.
420	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC.
421	VIRAL ILLNESS AGE >17.
454	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC.
455	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC.
465	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS.
502	KNEE PROCEDURES W PDX OF INFECTION W/O CC.
506	FULL THICKNESS BURN W SKIN GRAFT OR INHAL INJ W CC OR SIG TRAUMA.
507*	FULL THICKNESS BURN W SKIN GRAFT OR INHAL INJ W/O CC OR SIG TRAUMA.
508	FULL THICKNESS BURN W/O SKIN GRAFT OR INHAL INJ W CC OR SIG TRAUMA.
509	FULL THICKNESS BURN W/O SKIN GRAFT OR INH INJ W/O CC OR SIG TRAUMA.
510	NON-EXTENSIVE BURNS W CC OR SIGNIFICANT TRAUMA.
529	VENTRICULAR SHUNT PROCEDURES WITH CC.
	QUINTILE 3
31*	CONCUSSION AGE >17 W CC.
32*	CONCUSSION AGE >17 W/O CC.
63	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES.
83	MAJOR CHEST TRAUMA W CC.
117	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT.
129	CARDIAC ARREST, UNEXPLAINED.
158	ANAL & STOMAL PROCEDURES W/O CC.
194**	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC.
197	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC.
218	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W CC.
223	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC.
225	FOOT PROCEDURES.
226**	SOFT TISSUE PROCEDURES W CC.
233	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC.
234	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC.
257	TOTAL MASTECTOMY FOR MALIGNANCY W CC.
262	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY.
295	DIABETES AGE 0–35.
299	INBORN ERRORS OF METABOLISM.
317	ADMIT FOR RENAL DIALYSIS.
325	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC.
347***	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC.
352	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES.
369	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS.
394	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS.
402	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC.
408	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R. PROC.
410	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS.
419	FEVER OF UNKNOWN ORIGIN AGE >17 W CC.
447	ALLERGIC REACTIONS AGE >17.
449	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC.
450*	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC.
473	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17.
497	SPINAL FUSION W CC.
498*	SPINAL FUSION W/O CC.
503	KNEE PROCEDURES W/O PDX OF INFECTION.
507**	FULL THICKNESS BURN W SKIN GRFT OR INHAL INJ W/O CC OR SIG TRAUMA.
518	PERCUTANEOUS CARDIVASCULAR PROC W/O CORONARY ARTERY STENT OR AMI.
532	SPINAL PROCEDURES WITHOUT CC.

TABLE 1.—COMPOSITION OF LOW VOLUME QUINTILES—Continued

LTC-DRG	Description
	QUINTILE 4
119	VEIN LIGATION & STRIPPING.
124	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG.
125	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG.
150	PERITONEAL ADHESIOLYSIS W CC.
152	MINOR SMALL & LARGE BOWEL PROCEDURES W CC.
157	ANAL & STOMAL PROCEDURES W CC.
161	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >7 W CC.
171	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC.
191	PANCREAS, LIVER & SHUNT PROCEDURES W CC.
195	CHOLECYSTECTOMY W C.D.E. W CC.
209	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY.
210	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE>17 W CC.
216	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE.
226*	SOFT TISSUE PROCEDURES W CC.
227	SOFT TISSUE PROCEDURES W/O CC.
228	MAJOR THUMB OR JOINT PROC,OR OTH HAND OR WRIST PROC W CC.
230	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR.
266***	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC.
292	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC.
308	MINOR BLADDER PROCEDURES W CC.
310	TRANSURETHRAL PROCEDURES W CC.
312	URETHRAL PROCEDURES, AGE >17 W CC.
360	VAGINA, CERVIX & VULVA PROCEDURES.
424	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS.
427	NEUROSES EXCEPT DEPRESSIVE.
443	OTHER O.R. PROCEDURES FOR INJURIES W/O CC.
479***	OTHER VASCULAR PROCEDURES W/O CC.
486	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA.
493	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC.
494*	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC.
498**	SPINAL FUSION W/O CC.
500	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W/O CC.
505	EXTENSIVE 3RD DEGREE BURNS W/O SKIN GRAFT.
517	PERCUTANEOUS CARDIVASCULAR PROC W NON-DRUG ELUTING STENT W/O AMI.
519	CERVICAL SPINAL FUSION W CC.
531	SPINAL PROCEDURES WITH CC.
537	LOCAL EXCISION AND REMOVAL OF INTERNAL FIXATION DEVICES EXCEPT HIP AND FEMUR WITH CC.
	QUINTILE 5
1	CRANIOTOMY AGE >17 W CC.
8***	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC.
32**	CONCUSSION AGE >17 W/O CC.
40	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17.
75	MAJOR CHEST PROCEDURES.
77	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC.
108	OTHER CARDIOTHORACIC PROCEDURES.
110	MAJOR CARDIOVASCULAR PROCEDURES W CC.
115	PRM CARD PACEM IMPL W AMI, HRT FAIL OR SHK, OR AICD LEAD OR GNRTR P.
116	OTH PERM CARD PACEMAK IMPL OR PTCA W CORONARY ARTERY STENT IMPLNT.
118	CARDIAC PACEMAKER DEVICE REPLACEMENT.
148	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC.
154	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC.
168	MOUTH PROCEDURES W CC.
201	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES.
261	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION.
268	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES.
288	O.R. PROCEDURES FOR OBESITY.
304	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC.
345	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY.
365	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES.
401	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC.
406	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC.
441	HAND PROCEDURES FOR INJURIES.
450**	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC.
471	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY.
482	TRACHEOSTOMY FOR FACE, MOUTH & NECK DIAGNOSES.
488	HIV W EXTENSIVE O.R. PROCEDURE.
494**	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC.
499	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W CC.

TABLE 1.—COMPOSITION OF LOW VOLUME QUINTILES—Continued

LTC-DRG	Description
501	KNEE PROCEDURES W PDX OF INFECTION W CC.
515	CARDIAC DEFIBRILATOR IMPLANT W/O CARDIAC CATH.
533	EXTRACRANIAL VASCULAR PROCEDURES WITH CC.
536	CARDIAC DEFIB IMPLANT WITH CARDIAC CATH WITHOUT AMI/HF/SHOCK.

* One of the original 173 low volume LTC–DRGs initially assigned to a different low volume quintile; reassigned to this low volume quintile in addressing nonmonotonicity (*see* step 5 below).
** One of the original 173 low volume LTC–DRGs initially assigned to this low volume quintile; reassigned to a different low volume quintile in addressing nonmonotonicity (*see* step 5 below).
*** One of the original 173 low volume LTC–DRGs initially assigned to this low volume quintile; removed from the low volume quintiles in addressing nonmonotonicity (*see* step 5 below).

4. Steps for Determining the FY 2004 LTC–DRG Relative Weights

As we noted previously, the FY 2004 LTC–DRG relative weights are determined in accordance with the methodology described in the May 19, 2003 proposed rule (68 FR 27179). In summary, LTCH cases must be grouped in the appropriate LTC–DRG, while taking into account the low volume LTC–DRGs as described above, before the FY 2004 LTC–DRG relative weights can be determined. After grouping the cases in the appropriate LTC–DRG, we calculate the relative weights for FY 2004 in this final rule by first removing statistical outliers and cases with a length of stay of 7 days or less. Next, we adjust the number of cases in each LTC–DRG for the effect of short-stay outlier cases under § 412.529. The short-stay adjusted discharges and corresponding charges are used to calculate "relative adjusted weights" in each LTC–DRG using the hospital-specific relative value method described above.

Below we discuss in detail the steps for calculating the FY 2004 LTC–DRG relative weights.

Step 1—Remove Statistical Outliers

The first step in the calculation of the FY 2004 LTC–DRG relative weights is to remove statistical outlier cases. As we discussed in the May 19, 2003 proposed rule (68 FR 27179), we define statistical outliers as cases that are outside of 3.0 standard deviations from the mean of the log distribution of both charges per case and the charges per day for each LTC–DRG. These statistical outliers are removed prior to calculating the relative weights. We believe that they may represent aberrations in the data that distort the measure of average resource use. Including those LTCH cases in the calculation of the relative weights could result in an inaccurate relative weight that does not truly reflect relative resource use among the LTC–DRGs.

Step 2—Remove Cases With a Length of Stay of 7 Days or Less

The FY 2004 LTC–DRG relative weights reflect the average of resources used on representative cases of a specific type. Generally, as we discussed in the May 19, 2003 proposed rule (68 FR 27179), cases with a length of stay 7 days or less do not belong in a LTCH because such stays do not fully receive or benefit from treatment that is typical in a LTCH stay, and full resources are often not used in the earlier stages of admission to a LTCH. If we were to include stays of 7 days or less in the computation of the FY 2004 LTC–DRG relative weights, the value of many relative weights would decrease and, therefore, payments would decrease to a level that may no longer be appropriate.

We do not believe that it would be appropriate to compromise the integrity of the payment determination for those LTCH cases that actually benefit from and receive a full course of treatment at a LTCH, in order to include data from these very short-stays. Thus, in determining the FY 2004 LTC–DRG relative weights, we remove LTCH cases with a length of stay of 7 days or less.

Step 3—Adjust Charges for the Effects of Short-Stay Outliers

The third step in the calculation of the FY 2004 LTC–DRG relative weights is to adjust each LTCH's charges per discharge for short-stay outlier cases (that is, a patient with a length of stay that is less than or equal to five-sixths the average length of stay of the LTC–DRG).

As we discussed in the May 19, 2003 proposed rule (68 FR 27179), we make this adjustment by counting a short-stay outlier as a fraction of a discharge based on the ratio of the length of stay of the case to the average length of stay for the LTC–DRG for nonshort-stay outlier cases. This has the effect of proportionately reducing the impact of the lower charges for the short-stay outlier cases in calculating the average charge for the LTC–DRG. This process produces the same result as if the actual charges per discharge of a short-stay outlier case were adjusted to what they would have been had the patient's length of stay been equal to the average length of stay of the LTC–DRG.

As we explained in that same proposed rule, counting short-stay outlier cases as full discharges with no adjustment in determining the LTC–DRG relative weights would lower the LTC–DRG relative weight for affected LTC–DRGs because the relatively lower charges of the short-stay outlier cases would bring down the average charge for all cases within a LTC–DRG. This would result in an "underpayment" to nonshort-stay outlier cases and an "overpayment" to short-stay outlier cases. Therefore, in this final rule, we adjust for short-stay outlier cases under § 412.529 in this manner since it results in more appropriate payments for all LTCH cases.

Step 4—Calculate the FY 2004 LTC–DRG Relative Weights on an Iterative Basis

As we discussed in the May 19, 2003 proposed rule (68 FR 27180), the process of calculating the LTC-DRG relative weights using the hospital specific relative value methodology is iterative. First, for each LTCH case, we calculate a hospital-specific relative charge value by dividing the short-stay outlier adjusted charge per discharge (*see* step 3) of the LTCH case (after removing the statistical outliers (*see* step 1)) and LTCH cases with a length of stay of 7 days or less (*see* step 2) by the average charge per discharge for the LTCH in which the case occurred. The resulting ratio is then multiplied by the LTCH's case-mix index to produce an adjusted hospital-specific relative charge value for the case. An initial case-mix index value of 1.0 is used for each LTCH.

For each LTC–DRG, the FY 2004 LTC–DRG relative weight is calculated by dividing the average of the adjusted hospital-specific relative charge values (from above) for the LTC–DRG by the overall average hospital-specific relative charge value across all cases for all LTCHs. Using these recalculated LTC–DRG relative weights, each LTCH's average relative weight for all of its cases (case-mix) is calculated by dividing the sum of all the LTCH's LTC–DRG relative weights by its total number of cases. The LTCHs' hospital-specific relative charge values above are multiplied by these hospital specific case-mix indexes. These hospital-specific case-mix adjusted relative charge values are then used to calculate a new set of LTC–DRG relative weights across all LTCHs. In this final rule, this iterative process is continued until there is convergence between the weights produced at adjacent steps, for example, when the maximum difference is less than 0.0001.

Step 5—Adjust the FY 2004 LTC–DRG Relative Weights to Account for Nonmonotonically Increasing Relative Weights

As explained in section II.B. of this preamble, the FY 2004 CMS DRGs, upon which the FY 2004 LTC–DRGs are based, contain "pairs" that are differentiated based on the presence or absence of CCs. The LTC–DRGs with CCs are defined by certain secondary diagnoses not related to or inherently a part of the disease process identified by the principal diagnosis, but the presence of additional diagnoses does not automatically generate a CC. As we discussed in the May 19, 2003 proposed rule (68 FR 27180), the value of monotonically increasing relative weights rises as the resource use increases (for example, from uncomplicated to more complicated). The presence of CCs in a LTC–DRG means that cases classified into a "without CC" LTC–DRG are expected to have lower resource use (and lower costs). In other words, resource use (and costs) are expected to decrease across "with CC"/"without CC" pairs of LTC–DRGs.

For a case to be assigned to a LTC–DRG with CCs, more coded information is called for (that is, at least one relevant secondary diagnosis), than for a case to be assigned to a LTC–DRG "without CCs" (which is based on only one principal diagnosis and no relevant secondary diagnoses). Currently, the LTCH claims data include both accurately coded cases without complications and cases that have complications (and cost more) but were not coded completely. Both types of cases are grouped to a LTC–DRG "without CCs" since only one principal diagnosis was coded. Since LTCHs were previously paid under cost-based reimbursement, which is not based on patient diagnoses, coding by LTCHs for these cases may not have been as detailed as possible.

Thus, in developing the FY 2003 LTC–DRG relative weights for the LTCH PPS based on FY 2001 claims data, as we discussed in the August 30, 2002 LTCH PPS final rule (67 FR 55990), we found on occasion that the data suggested that cases classified to the LTC–DRG "with CCs" of a "with CC"/"without CC" pair had a lower average charge than the corresponding LTC–DRG "without CCs." Similarly, based on FY 2002 claims data, we also found on occasion that the data suggested that cases classified to the LTC–DRG "with CCs" of a "with CC"/"without CC" pair have a lower average charge than the corresponding LTC–DRG "without CCs" for FY 2004.

We believe this anomaly may be due to coding that may not have fully reflected all comorbidities that were present. Specifically, LTCHs may have failed to code relevant secondary diagnoses, which resulted in cases that actually had CCs being classified into a "without CC" LTC–DRG. It would not be appropriate to pay a lower amount for the "with CC" LTC–DRG. Therefore, as we discussed in the May 19, 2003 proposed rule (68 FR 27180), we grouped both the cases "with CCs" and "without CCs" together for the purpose of calculating the FY 2004 LTC–DRG relative weights in this final rule. We continue to employ this methodology to account for nonmonotonically increasing relative weights until we have adequate data to calculate appropriate separate weights for these anomalous LTC–DRG pairs. We expect that, as was the case when we first implemented the IPPS, this problem will be self-correcting, as LTCHs submit more completely coded data in the future.

There are three types of "with CC" and "without CC" pairs that could be nonmonotonic, that is, where the "without CC" LTC–DRG would have a higher average charge than the "with CC" LTC–DRG. For this final rule, using the LTCH cases in the December 2002 update of the FY 2002 MedPAR file, we identified three of the types of nonmonotonic LTC–DRG pairs.

The first category of nonmonotonically increasing relative weights for FY 2004 LTC–DRG pairs "with and without CCs" contains 1 pair of LTC–DRGs in which both the LTC–DRG "with CCs" and the LTC–DRG "without CCs" had 25 or more LTCH cases and, therefore, did not fall into one of the 5 low volume quintiles. For that type of nonmonotonic LTC–DRG pair, as discussed in the May 19, 2003 proposed rule (68 FR 27180), we combine the LTCH cases and compute a new relative weight based on the case-weighted average of the combined LTCH cases of the LTC–DRGs. The case-weighted average charge is determined by dividing the total charges for all LTCH cases by the total number of LTCH cases for the combined LTC–DRG. This new relative weight is then assigned to both of the LTC–DRGs in the pair. In this final rule, for FY 2004, LTC–DRGs 180 and 181 are in this category.

The second category of nonmonotonically increasing relative weights for LTC–DRG pairs with and without CCs consists of 7 pairs of LTC–DRGs that has fewer than 25 cases, and each LTC–DRG is grouped to different low volume quintiles in which the "without CC" LTC–DRG is in a higher-weighted low volume quintile than the "with CC" LTC–DRG. For those pairs, as we discussed in the May 19, 2003 proposed rule (68 FR 27181), we combine the LTCH cases and determine the case-weighted average charge for all LTCH cases. The case-weighted average charge is determined by dividing the total charges for all LTCH cases by the total number of LTCH cases for the combined LTC–DRG. Based on the case-weighted average LTCH charge, we determine which low volume quintile the "combined LTC–DRG" is grouped. Both LTC–DRGs in the pair are then grouped into the same low volume quintile, and thus would have the same relative weight. For FY 2004, in this final rule, the following LTC–DRGs are in this category: LTC–DRGs 31 and 32 (low volume quintile 3); LTC–DRGs 193 and 194 (low volume quintile 2); LTC–DRGs 226 and 227 (low volume quintile 4); LTC–DRGs 449 and 450 (low volume quintile 3); LTC–DRGs 493 and 494 (low volume quintile 4); LTC–DRGs 497 and 498 (low volume quintile 3); and LTC–DRGs 506 and 507 (low volume quintile 2).

The third category of nonmonotonically increasing relative weights for LTC–DRG pairs with and without CCs consists of 6 pairs of LTC–DRGs where one of the LTC–DRGs has fewer than 25 LTCH cases and is grouped to a low volume quintile and the other LTC–DRG has 25 or more LTCH cases and has its own LTC–DRG relative weight, and the LTC–DRG "without CCs" has the higher relative weight. As we discussed in the May 19, 2003 proposed rule (68 FR 27181), we remove the low volume LTC–DRG from the low volume quintile and combine it with the other LTC–DRG for the computation of a new relative weight for

each of these LTC–DRGs. This new relative weight is assigned to both LTC–DRGs, so they each have the same relative weight. For FY 2004, in this final rule, the following LTC–DRGs are in this category: LTC–DRGs 7 and 8; LTC–DRGs 205 and 206; LTC–DRGs 207 and 208; LTC–DRGs 265 and 266; LTC–DRGs 346 and 347; and LTC–DRGs 478 and 479.

Step 6—Determine a FY 2004 LTC–DRG Relative Weight for LTC–DRGs With No LTCH Cases

As we stated above, we determine the relative weight for each LTC–DRG using charges reported in the December 2002 update of the FY 2002 MedPAR file. Of the 518 LTC–DRGs for FY 2004, we identified 167 LTC–DRGs for which there were no LTCH cases in the database. That is, based on data from the FY 2002 MedPAR file used in this final rule, no patients who would have been classified to those LTC–DRGs were treated in LTCHs during FY 2002 and, therefore, no charge data were reported for those LTC–DRGs. Thus, in the process of determining the LTC–DRG relative weights, we are unable to determine weights for these 167 LTC–DRGs using the methodology described in steps 1 through 5 above. However, since patients with a number of the diagnoses under these LTC–DRGs may be treated at LTCHs beginning in FY 2004, we assign relative weights to each of the 167 "no volume" LTC–DRGs based on clinical similarity and relative costliness to one of the remaining 354 (518 − 167 = 351) LTC–DRGs for which we are able to determine relative weights, based on FY 2002 claims data.

As there are currently no LTCH cases in these "no volume" LTC–DRGs, as we discussed in the May 19, 2003 proposed rule (68 FR 27181), we determine relative weights for the 167 LTC–DRGs with no LTCH cases in the FY 2002 MedPAR file used in this final rule by grouping them to the appropriate low volume quintile. This methodology is consistent with our methodology used in determining relative weights to account for the low volume LTC–DRGs described above.

Our methodology for determining relative weights for the "no volume" LTC–DRGs is as follows: First, we crosswalk the no volume LTC–DRGs by matching them to other similar LTC–DRGs for which there were LTCH cases in the FY 2002 MedPAR file based on clinical similarity and intensity of use of resources as determined by care provided during the period of time surrounding surgery, surgical approach (if applicable), length of time of surgical procedure, post-operative care, and length of stay. We assign the relative weight for the applicable low volume quintile to the no volume LTC–DRG if the LTC–DRG to which it is crosswalked is grouped to one of the low volume quintiles. If the LTC–DRG to which the no volume LTC–DRG is crosswalked is not one of the LTC–DRGs to be grouped to one of the low volume quintiles, we compare the relative weight of the LTC–DRG to which the no volume LTC–DRG is crosswalked to the relative weights of each of the five quintiles and we assign the no volume LTC–DRG the relative weight of the low volume quintile with the closest weight. For this final rule, a list of the no volume FY 2004 LTC–DRGs and the FY 2004 LTC–DRG to which it is crosswalked in order to determine the appropriate low volume quintile for the assignment of a relative weight for FY 2004 is shown below in Table 2:

TABLE 2.—NO VOLUME LTC-DRG CROSSWALK AND QUINTILE ASSIGNMENT FOR FY 2004

LTC-DRG	Description	Cross-walked LTC-DRG	Low volume quintile assigned
2	CRANIOTOMY AGE > 17 W/O CC	1	Quintile 5
3	CRANIOTOMY AGE 0–17	1	Quintile 5
6	CARPAL TUNNEL RELEASE	251	Quintile 1
26	SEIZURE & HEADACHE AGE 0–17	25	Quintile 2
30	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0–17	29	Quintile 3
33	CONCUSSION AGE 0–17	25	Quintile 2
36	RETINAL PROCEDURES	47	Quintile 1
37	ORBITAL PROCEDURES	47	Quintile 1
38	PRIMARY IRIS PROCEDURES	47	Quintile 1
39	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	47	Quintile 1
41	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0–17	47	Quintile 1
42	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	47	Quintile 1
43	HYPHEMA	47	Quintile 1
45	NEUROLOGICAL EYE DISORDERS	46	Quintile 1
48	OTHER DISORDERS OF THE EYE AGE 0–17	47	Quintile 1
49	MAJOR HEAD & NECK PROCEDURES	64	Quintile 4
50	SIALOADENECTOMY	63	Quintile 3
51	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	63	Quintile 3
52	CLEFT LIP & PALATE REPAIR	63	Quintile 3
54	SINUS & MASTOID PROCEDURES AGE 0–17	63	Quintile 3
55	MISCELLANEOUS EAR, NOSE, MOUTH & THROAD PROCEDURES	63	Quintile 3
56	RHINOPLASTY	72	Quintile 2
57	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	63	Quintile 3
58	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17	63	Quintile 3
59	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	63	Quintile 3
60	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17	63	Quintile 3
62	MYRINGOTOMY W TUBE INSERTION AGE 0–17	63	Quintile 3
67	EPIGLOTTITIS	63	Quintile 3
70	OTITIS MEDIA & URI AGE 0–17	63	Quintile 3
71	LARYNGOTRACHEITIS	85	Quintile 1
74	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0–17	97	Quintile 1
81	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0–17	69	Quintile 1
91	SIMPLE PNEUMONIA & PLEURISY AGE 0–17	69	Quintile 1
98	BRONCHITIS & ASTHMA AGE 0–17	90	Quintile 2
104	CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W CARDIAC CATH	97	Quintile 1
105	CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W/O CARDIAC CATH	110	Quintile 5
106	CORONARY BYPASS W PTCA	110	Quintile 5
107	CORONARY BYPASS W CARDIAC CATH	110	Quintile 5
109	CORONARY BYPASS W/O PTCA OR CARDIAC CATH	110	Quintile 5
111	MAJOR CARDIOVASCULAR PROCEDURES W/O CC	136	Quintile 2
137	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0–17	148	Quintile 5
146	RECTAL RESECTION W CC	148	Quintile 5
147	RECTAL RESECTION W/O CC	150	Quintile 4
151	PERITONEAL ADHESIOLYSIS W/O CC	152	Quintile 4
153	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC 155 STOMACH, ESOPHAGEAL & DUODENAL.	171	Quintile 4
155	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC	171	Quintile 4
156	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0–17	161	Quintile 4
159	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC	161	Quintile 4
160	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC	178	Quintile 1
162	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	178	Quintile 1
163	HERNIA PROCEDURES AGE 0–17	148	Quintile 5
164	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	149	Quintile 1
165	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	148	Quintile 5
166	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	149	Quintile 1
167	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	72	Quintile 2
169	MOUTH PROCEDURES W/O CC	183	Quintile 2
184	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0–17	185	Quintile 2
186	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0–17	185	Quintile 2
187	DENTAL EXTRACTIONS & RESTORATIONS	189	Quintile 2
190	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0–17	197	Quintile 3
196	CHOLECYSTECTOMY W C.D.E. W/O CC	197	Quintile 3
198	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC	200	Quintile 2
199	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	211	Quintile 2
212	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0–17	218	Quintile 3
219	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W/O CC	218	Quintile 3
220	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE 0–17	234	Quintile 3
224	SHOULDER, ELBOW OR FOREARM PROC, EXC MAJOR JOINT PROC, W/O CC	234	Quintile 3
229	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	234	Quintile 3
252	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0–17	234	Quintile 3
255	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE 0–17	257	Quintile 3
258	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	257	Quintile 3
259	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	257	Quintile 3
260	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	158	Quintile 3
267	PERIANAL & PILONIDAL PROCEDURES	78	Quintile 3
279	CELLULITIS AGE 0–17	281	Quintile 2
282	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0–17	53	Quintile 2
286	ADRENAL & PITUITARY PROCEDURES	53	Quintile 2
289	PARATHYROID PROCEDURES	53	Quintile 2
290	THYROID PROCEDURES	53	Quintile 2
291	THYROGLOSSAL PROCEDURES	63	Quintile 3
293	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC	297	Quintile 2
298	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0–17	304	Quintile 5
303	KIDNEY, URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM	310	Quintile 4
306	PROSTATECTOMY W CC	310	Quintile 4
307	PROSTATECTOMY W/O CC	311	Quintile 1
313	URETHRAL PROCEDURES, AGE >17 W/O CC	311	Quintile 1
314	URETHRAL PROCEDURES, AGE 0–17	326	Quintile 1
322	KIDNEY & URINARY TRACT INFECTIONS AGE 0–17	326	Quintile 1
327	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0–17	311	Quintile 1
328	URETHRAL STRICTURE AGE >17 W CC	311	Quintile 1
329	URETHRAL STRICTURE AGE >17 W/O CC	311	Quintile 1
330	URETHRAL STRICTURE AGE 0–17	332	Quintile 1
333	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0–17	345	Quintile 5
334	MAJOR MALE PELVIC PROCEDURES W CC	345	Quintile 5
335	MAJOR MALE PELVIC PROCEDURES W/O CC	341	Quintile 2
336	TRANSURETHRAL PROSTATECTOMY W CC	341	Quintile 2
337	TRANSURETHRAL PROSTATECTOMY W/O CC	339	Quintile 2
338	TESTES PROCEDURES, FOR MALIGNANCY	339	Quintile 2
340	TESTES PROCEDURES, NON-MALIGNANCY AGE 0–17	339	Quintile 2
343	CIRCUMCISION AGE 0–17	339	Quintile 2
351	STERILIZATION, MALE	365	Quintile 5
353	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY	365	Quintile 5
354	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC	365	Quintile 5
355	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC	360	Quintile 4
356	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	360	Quintile 4
357	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY		

TABLE 2.—NO VOLUME LTC-DRG CROSSWALK AND QUINTILE ASSIGNMENT FOR FY 2004—Continued

LTC-DRG	Description	Cross-walked LTC-DRG	Low volume quintile assigned
358	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC	360	Quintile 4
359	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	360	Quintile 4
361	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	149	Quintile 1
362	ENDOSCOPIC TUBAL INTERRUPTION	149	Quintile 1
363	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	367	Quintile 1
364	D&C, CONIZATION EXCEPT FOR MALIGNANCY	367	Quintile 1
370	CESAREAN SECTION W CC	369	Quintile 3
371	CESAREAN SECTION W/O CC	367	Quintile 1
372	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	367	Quintile 1
373	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	367	Quintile 1
374	VAGINAL DELIVERY W STERILIZATION &/OR D&C	367	Quintile 1
375	VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	367	Quintile 1
377	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	367	Quintile 1
378	ECTOPIC PREGNANCY	369	Quintile 3
379	THREATENED ABORTION	376	Quintile 1
380	ABORTION W/O D&C	376	Quintile 1
381	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	376	Quintile 1
382	FALSE LABOR	376	Quintile 1
383	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	376	Quintile 1
384	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	376	Quintile 1
385	NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	367	Quintile 1
386	EXTREME IMMATURITY	367	Quintile 1
387	PREMATURITY W MAJOR PROBLEMS	367	Quintile 1
388	PREMATURITY W/O MAJOR PROBLEMS	367	Quintile 1
389	FULL TERM NEONATE W MAJOR PROBLEMS	367	Quintile 1
390	NEONATE W OTHER SIGNIFICANT PROBLEMS	367	Quintile 1
391	NORMAL NEWBORN	376	Quintile 1
392	SPLENECTOMY AGE >17	194	Quintile 2
393	SPLENECTOMY AGE 0–17	194	Quintile 2
396	RED BLOOD CELL DISORDERS AGE 0–17	399	Quintile 1
405	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0–17	404	Quintile 2
407	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R. PROC W/O CC	408	Quintile 3
411	HISTORY OF MALIGNANCY W/O ENDOSCOPY	367	Quintile 1
412	HISTORY OF MALIGNANCY W ENDOSCOPY	367	Quintile 1
417	SEPTICEMIA AGE 0–17	416	Quintile 3
422	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0–17	420	Quintile 2
446	TRAUMATIC INJURY AGE 0–17	445	Quintile 2
448	ALLERGIC REACTIONS AGE 0–17	455	Quintile 2
451	POISONING & TOXIC EFFECTS OF DRUGS AGE 0–17	455	Quintile 2
481	BONE MARROW TRANSPLANT	394	Quintile 3
484	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	1	Quintile 5
485	LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT TR	209	Quintile 4
491	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY	209	Quintile 4
492	CHEMOTHERAPY W ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS	410	Quintile 3
496	COMBINED ANTERIOR/POSTERIOR SPINAL FUSION	210	Quintile 4
504	EXTENSIVE 3RD DEGREE BURNS W SKIN GRAFT	468	Quintile 5
516	PERCUTANEOUS CARDIOVASCULAR PROCEDURE W AMI	518	Quintile 3
520	CERVICAL SPINAL FUSION W/O CC	498	Quintile 3
525	HEART ASSIST SYSTEM IMPLANT	468	Quintile 5
526	PERCUTANEOUS CARDIOVASCULAR PROC W DRUG-ELUTING STENT W AMI	517	Quintile 4
527	PERCUTANEOUS CARVIOVASCULAR PROC W DRUG-ELUTING STENT W/O AMI	517	Quintile 4
528	INTRACRANIAL VASCULAR PROCEDURES WITH PDX HEMORRHAGE	1	Quintile 5
530	VENTRICULAR SHUNT PROCEDURES WITHOUT CC	529	Quintile 2
534	EXTRACRANIAL VASCULAR PROCEDURES WITHOUT CC	500	Quintile 4
535	CARDIAC DEFIB IMPLANT WITH CARDIAC CATH WITH AMI/HF/SHOCK	515	Quintile 5
539	LYMPHOMA AND LEUKEMIA WITH MAJOR O.R. PROCEDURE WITH CC	401	Quintile 5

To illustrate this methodology for determining the relative weights for the 164 LTC–DRGs with no LTCH cases, we are providing the following examples, which refer to the no volume LTC–DRGs crosswalk information for FY 2004 provided above in Table 2:

Example 1: There were no cases in the FY 2002 MedPAR file used for this final rule for LTC–DRG 163 (Hernia Procedures Age 0–17). Since the procedure is similar in resource use and the length and complexity of the procedures and the length of stay are similar, we determined that LTC–DRG 178 (Uncomplicated Peptic Ulcer Without CC), which is assigned to low volume quintile 1 for the purpose of determining the FY 2004 relative weights, would display similar clinical and resource use. Therefore, we assign the same relative weight of LTC–DRG 178 of 0.4964 (Quintile 1) for FY 2004 (Table 11 in the Addendum to this final rule) to LTC–DRG 163.

Example 2: There were no LTCH cases in the FY 2002 MedPAR file used in this final rule for LTC–DRG 91 (Simple Pneumonia and Pleurisy Age 0–17). Since the severity of illness in patients with bronchitis and asthma is similar in patients regardless of age, we determined that LTC–DRG 90 (Simple Pneumonia and Pleurisy Age >17 Without CC) would display similar clinical and resource use characteristics and have a similar length of stay to LTC–DRG 91. There were over 25 cases in LTC–DRG 90. Therefore, it would not be assigned to a low volume quintile for the purpose of determining the LTC–DRG relative weights. However, under our established methodology, LTC–DRG 91, with no LTCH cases, would need to be grouped to a low volume quintile. We identified that the low volume quintile with the closest weight to LTC–DRG 90 (0.7318; *see* Table 11 in the Addendum to this final rule) would be low volume quintile 2 (0.7372; *see* Table 11 in the Addendum to this final rule). Therefore, we assign LTC–DRG 91 a relative weight of 0.7372 for FY 2004.

Furthermore, we are providing LTC–DRG relative weights of 0.0000 for heart, kidney, liver, lung, pancreas, and simultaneous pancreas/kidney transplants (LTC–DRGs 103, 302, 480, 495, 512, and 513, respectively) for FY 2004 because Medicare will only cover these procedures if they are performed at a hospital that has been certified for the specific procedures by Medicare and presently no LTCH has been so certified.

Based on our research, we found that most LTCHs only perform minor surgeries, such as minor small and large bowel procedures, to the extent any surgeries are performed at all. Given the extensive criteria that must be met to become certified as a transplant center for Medicare, we believe it is unlikely that any LTCHs would become certified as a transplant center. In fact, in the nearly 20 years since the implementation of the IPPS, there has never been a LTCH that even expressed an interest in becoming a transplant center.

However, if in the future a LTCH applies for certification as a Medicare-approved transplant center, we believe that the application and approval procedure would allow sufficient time for us to determine appropriate weights for the LTC–DRGs affected. At the present time, we are only including these six transplant LTC–DRGs in the GROUPER program for administrative purposes. Since we use the same GROUPER program for LTCHs as is used under the IPPS, removing these LTC–DRGs would be administratively burdensome.

Again, we note that as this system is dynamic, it is entirely possible that the number of LTC–DRGs with a zero volume of LTCH cases based on the system will vary in the future. We used the best most recent available claims data in the MedPAR file to identify zero volume LTC–DRGs and to determine the relative weights in this final rule.

Table 11 in the Addendum to this final rule lists the LTC–DRGs and their respective relative weights, geometric mean length of stay, and five-sixths of the geometric mean length of stay (to assist in the determination of short-stay outlier payments under § 412.529) for FY 2004.

E. Add-On Payments for New Services and Technologies

1. Background

Sections 1886(d)(5)(K) and (L) of the Act establish a process of identifying and ensuring adequate payment for new medical services and technologies under the IPPS. Section 1886(d)(5)(K)(ii)(I) of the Act specifies that the process must apply to a new medical service or technology if, "based on the estimated costs incurred with respect to discharges involving such service or technology, the DRG prospective payment rate otherwise applicable to such discharges under this subsection is inadequate." Section 1886(d)(5)(K)(vi) of the Act specifies that a medical service or technology will be considered "new" if it meets criteria established by the Secretary after notice and opportunity for public comment.

Section 412.87(b)(1) of our existing regulations provides that a new technology will be an appropriate candidate for an additional payment when it represents an advance in medical technology that substantially improves, relative to technologies previously available, the diagnosis or treatment of Medicare beneficiaries (*see* the September 7, 2001 final rule (66 FR 46902)). Section 412.87(b)(3) provides that, to receive special payment treatment, new technologies meeting this clinical definition must be demonstrated to be inadequately paid otherwise under the DRG system. As discussed below, for applicants for new technology add-on payments for FY 2005, we are establishing the criteria that will be applied to assess whether technologies would be inadequately paid under the DRGs 75 percent of 1 standard deviation (based on the logarithmic values of the charges and transformed back to charges) beyond the geometric mean standardized charge for all cases in the DRGs to which the new technology is assigned (or the case-weighted average of all relevant DRGs, if the new technology occurs in many different DRGs). Table 10 in the Addendum to this final rule lists the qualifying criteria by DRG, based on the discharge data that we used to calculate the FY 2004 DRG weights. The thresholds that are published in this final rule for FY 2004 will be used to evaluate applicants for new technology add-on payments during FY 2005.

In addition to the clinical and cost criteria, we established that, in order to qualify for the new technology add-on payments, a specific technology must be "new" under the requirements of § 412.87(b)(2) of our regulations. The statutory provision contemplated the special payment treatment for new technologies until such time as data are available to reflect the cost of the technology in the DRG weights through recalibration (no less than 2 years and no more than 3 years). There is a lag of 2 to 3 years from the point a new technology is first introduced on the market and when data reflecting the use of the technology are used to calculate the DRG weights. For example, data from discharges occurring during FY 2002 are used to calculate the FY 2004 DRG weights in this final rule.

Technology may be considered "new" for purposes of this provision within 2 or 3 years after the point at which data begin to become available reflecting the costs of the technology. After we have recalibrated the DRGs to reflect the costs of an otherwise new technology, the special add-on payment for new technology will cease (§ 412.87(b)(2)). For example, an approved new technology that received FDA approval in October 2002 would be eligible to receive add-on payments as a new technology at least until FY 2005 (discharges occurring before October 1, 2004), when data reflecting the costs of the technology would be used to recalibrate the DRG weights. Because the FY 2005 DRG weights will be calculated using FY 2003 MedPAR data, the costs of such a new technology would likely be reflected in the FY 2005 DRG weights.

Similar to the timetable for applying for new technology add-on payments during FY 2004, applicants for FY 2005 must submit a formal request, including a full description of the clinical applications of the technology and the results of any clinical evaluations demonstrating that the new technology represents a substantial clinical improvement, along with a significant sample of data to demonstrate the technology meets the high-cost threshold, no later than early October 2003. Applicants must submit a complete database no later than mid-December 2003. Complete application information is available at our Web site at: *http://www.cms.hhs.gov/providers/hipps/default.asp*. To allow interested parties to identify the technologies under review before the publication of

the annual proposed rule, the Web site also lists the tracking forms completed by each applicant.

The new technology add-on payment policy provides additional payments for cases with high costs involving eligible new technologies while preserving some of the incentives under the average-based payment system. The payment mechanism is based on the cost to hospitals for the new technology. Under § 412.88, Medicare pays a marginal cost factor of 50 percent for the costs of the new technology in excess of the full DRG payment. If the actual costs of a new technology case exceed the DRG payment by more than the estimated costs of the new technology, Medicare payment is limited to the DRG payment plus 50 percent of the estimated costs of the new technology.

The report language accompanying section 533 of Pub. L. 106–554 indicated Congressional intent that the Secretary implement the new mechanism on a budget neutral basis (H.R. Conf. Rep. No. 106–1033, 106th Cong., 2nd Sess. at 897 (2000)). Section 1886(d)(4)(C)(iii) of the Act requires that the adjustments to annual DRG classifications and relative weights must be made in a manner that ensures that aggregate payments to hospitals are not affected. Therefore, we account for projected payments under the new technology provision during the upcoming fiscal year at the same time we estimate the payment effect of changes to the DRG classifications and recalibration. The impact of additional payments under this provision would then be included in the budget neutrality factor, which is applied to the standardized amounts and the hospital-specific amounts.

Because any additional payments directed toward new technology under this provision must be offset to ensure budget neutrality, it is important to consider carefully the extent of this provision and ensure that only technologies representing substantial advances are recognized for additional payments. In that regard, we indicated that we would discuss in the annual proposed and final rules those technologies that were considered under this provision; our determination as to whether a particular technology meets our criteria to be considered new; whether it is determined further that cases involving the new technology would be inadequately paid under the existing DRG payment; and any assumptions that went into the budget neutrality calculations related to additional payments for that new technology, including the expected number, distribution, and costs of these cases.

To balance appropriately the Congress' intent to increase Medicare's payments for eligible new technologies with concern that the total size of those payments not result in significantly reduced payments for other cases, we set a target limit for estimated add-on payments for new technology under the provisions of sections 1886(d)(5)(K) and (L) of the Act at 1.0 percent of estimated total operating prospective payments.

If the target limit is exceeded, we would reduce the level of payments for approved technologies across the board, to ensure estimated payments do not exceed the limit. Using this approach, all cases involving approved new technologies that would otherwise receive additional payments would still receive special payments, albeit at a reduced amount. Although the marginal payment rate for individual technologies would be reduced, this reduction would be offset by large overall payments to hospitals for new technologies under this provision.

Comment: Some commenters asked that CMS ensure that the necessary software changes be made to accommodate newly approved technologies so that hospitals experience no delay in receiving add-on payments for new technologies. Commenters noted that, at the time they prepared their comments, it was unclear whether hospitals were receiving any new technology add-on payments for FY 2003. Given that $74.8 million was carved out of the FY 2003 standardized amount, it is critical that a reliable system be put in place to ensure that hospitals receive these add-on payments.

Response: We regret the delay any hospital may be experiencing in receiving add-on payments for FY 2003. On December 13, 2002, we issued Program Memorandum A–02–124 that requested fiscal intermediaries to implement the new technology payment mechanism into the claims processing system by April 1, 2003. The changes outlined in this program memorandum were delayed until July 16, 2003, in order to ensure that the claims processing system could properly process these add-on payments.

Comment: Several commenters pointed out that new ICD–9–CM codes are being created for procedures that were not typically captured and reported using ICD–9–CM coding. The commenters specifically mentioned the creation of new codes for types of drugs. Commenters are concerned about the types of medical record documentation that may be required for the administration of these drugs to be assigned an ICD–9–CM code. They asked if a physician order for a drug and a notation on a medical sheet that a nurse had in fact injected the drug were sufficient documentation. The commenters indicated that further guidance is needed regarding documentation requirements for ICD–9–CM codes for new services and technologies that have not traditionally been reported through the use of ICD–9–CM coding.

One commenter recommended that the approval process for new technologies be revised to include a requirement that the applicant must barcode such item with appropriate detailed information. The commenter stated that the use of barcoding would reduce medical errors. The commenter also was concerned that the limit of 6 procedure codes that can be reported on the billing form may become problematic as more new technologies are approved in the future.

Response: We have asked the AHA to schedule this topic for discussion by the Cooperating Parties for ICD–9–CM and the Editorial Advisory Board for Coding Clinic for ICD–9–CM. AHA agrees that this is a timely topic and has scheduled it for discussion in one of its upcoming ICD–9–CM meetings.

We would like to explore further the commenter's suggestion to require applicants for new technology add-on payments to barcode the technology. We recognize the potential limitations of the current claims form, as well as the overall limitations of ICD–9–CM. As we have stated previously, we believe ICD–10–PCS offers great potential improvement for more specific coding that may limit the use of multiple ICD–9–CM codes to identify certain classes of patients.

Comment: Commenters asked that CMS present a full and clear accounting for estimated and actual new technology add-on payments and their impact on the DRG base rate in each proposed and final rule in order to ensure that hospitals receive these add-on payments in full. Another commenter recommended that, similar to outlier payments, CMS should report every year on the extent to which the actual add-on payments per case exceeded or were lower than the amount removed from the standardized amounts.

One commenter was concerned that additional payments might be carved out of the standardized amount for new technologies to ensure budget neutrality, and those payments might not be made because CMS' projection of spending for the add-on payments was too high or because hospitals failed to bill properly for add-on payments. The commenter recommended that CMS split the budget neutrality adjustment for DRG reclassification and recalibration into two components in order to isolate the reduction associated with add-on payments for new technologies.

Commenters did not agree that add-on payments for new technology should be budget neutral, and explained that the purpose of having additional payments for high-cost items was to compensate a hospital for its unrecovered cost. Because of budget neutrality, these high-cost items are not being properly paid. The commenter also noted that these high-cost items are also the cause of a higher than expected outlier payment.

One commenter recommended that CMS develop a separate pool of money to fund new technology and remove it from the budget neutrality calculation. The commenter explained that, while the technology is new, there should be money set aside and accessed only by those hospitals utilizing that technology.

Response: When we approve a new technology for add-on payments, we conduct an analysis based on the latest data available to estimate the total add-on payments that will be made for the new technology during the upcoming fiscal year and include the results in the annual proposed and final rules. Analyses of technologies approved for add-on payments for FY 2004 are presented below. These analyses include our analysis of available FY 2003 MedPAR data on the utilization of Xigris® and the basis for our estimated payments for new technologies approved for FY 2004. We also discuss this analysis in our description of budget neutrality in section II.A.4.a. of the Addendum to this final rule. We note that, based on our analysis, we have reduced considerably our estimate of add-on payments for Xigris® from the FY 2003 level, which led to a smaller budget neutrality offset to the standardized amounts.

As we stated above, the Congressional Report language accompanying section 533 of Pub. L. 106–554 clearly indicated Congress' intent that this provision be implemented in a budget neutral manner. Therefore, Congress is the appropriate body to consider concerns about the budget neutrality of this provision.

We do not believe it necessary to establish a separate budget neutrality calculation or pool for these payments. The amount of the payments is clearly identified in the final rule. Like all of the budget neutrality calculations, it is a prospective estimate.

Comment: Commenters recommended that CMS eliminate the use of case-weighted averages in the calculation of the cost threshold for technologies that occur in more than one DRG. The commenter believed that the goal of add-on payments is to provide adequate payment for new technologies in the DRGs in which the technology is used. The commenter added that the use of a case-weighted average biases the cost threshold against technologies that occur in more than one DRG and places hospitals at a disadvantage in DRGs where the threshold would otherwise be met except for application of the case-weighted average.

Commenters argued that our criteria for what is considered a new technology is not consistent with section 1886(d)(5)(K)(ii)(II) of the Act. The commenter stated that this provision was intended to provide for the collection of data with respect to the costs of a new medical service or technology for a period of not less than 2 years and not more than 3 years, "beginning on the date on which an inpatient hospital code is issued with respect to the service or technology." Therefore, the commenter recommended that, instead of no longer considering technologies new because the related charges are already captured in the MedPAR data, CMS should only view a technology as ineligible on the grounds that it is no longer new if the agency can specifically identify a significant sample of cases involving use of the technology in the MedPAR data. One commenter noted that sufficient charge data to assess whether the new technology meets the cost threshold criterion are often only available through the MedPAR data after the new ICD–9–CM code becomes effective. Some commenters also recommended that CMS raise the add-on payment amount from 50 percent of the cost of the new technology to an 80-percent or 100-percent marginal cost factor.

Another commenter asked CMS to provide established clinical requirements or criteria that would control substantial clinical improvement determinations.

One commenter recommended that CMS deem products that fall within one of the following categories designated by the FDA to have met the substantial clinical improvement criterion: Drugs or biologicals that obtain fast track or accelerated approval; and drugs or biologicals approved after priority review or approved for orphan indication. The commenter recommended that CMS defer to the clinical expertise of the FDA with respect to these products and find that any product falling in the above categories satisfy the substantial clinical improvement criterion without further CMS analysis.

In addition, many commenters addressed the proposed change to the cost threshold criterion. (We are addressing these comments in our discussion of specific proposals later in this section of the preamble.)

Response: We appreciate the interest of the many stakeholders in ensuring that Medicare beneficiaries have full access to improvements in medical technology. We have previously discussed our position on each of the issues raised by the commenters on the proposed rule in detail in the September 7, 2001 final rule (66 FR 46905) and the August 1, 2002 final rule (67 FR 50009). Our rationales for these policies have not changed since we discussed them in those final rules, and we did not propose changes to these policies in the May 19, 2003 proposed rule. Therefore, readers are referred to the September 7, 2001 final rule and the August 1, 2002 final rule for our responses to these comments. However, we will continue to assess each of these policies and would appreciate the commenters' continued input on these issues.

Comment: One commenter suggested that CMS conduct a historical review of technologies that would have likely met the "new" and substantial improvement criteria and determine the relationship between the costs of those items and the new technology cost threshold. The commenter noted that such an analysis might provide useful insights as to whether a more flexible cost criterion is needed.

Response: We will take this suggestion under consideration.

2. FY 2004 Status of Technology Approved for FY 2003 Add-On Payments: Drotrecogin Alfa (Activated)—Xigris®

In the August 1, 2002 IPPS final rule, we stated that cases involving the administration of Xigris® (a biotechnology product that is a recombinant version of naturally occurring Activated Protein C (APC)) as identified by the presence of code 00.11 (Infusion of drotrecogin alfa (activated)) are eligible for additional payments of up to $3,400 (50 percent of the average cost of the drug) (67 FR 50013). (The August 1, 2002 final rule contains a detailed discussion of this technology.) Although Xigris® was approved by the FDA in November 2001, it did not qualify for add-on payments until discharges on or after October 1, 2002. Consequently, FY 2002 discharges (between October 1, 2001 and September 30, 2002) may not reflect full

utilization of the technology due to the absence of the add-on payment.

Therefore, for FY 2004, we will continue to make add-on payments for cases involving the administration of Xigris® as identified by the presence of code 00.11. Based on preliminary analysis of the incidence of Xigris® in the first quarter FY 2003 MedPAR file, in the May 19, 2003 proposed rule, we proposed to revise downward our estimate of total add-on payments for Xigris®. For FY 2003, we estimated that total add-on payments would be approximately $74.8 million (22,000 Medicare patients who would be eligible for a $3,400 add-on payment). For FY 2004, we estimated in the proposed rule the total add-on payments would be approximately $50 million (based on 14,000 Medicare patients who would be eligible for a $3,400 add-on payment). We indicated that this proposed additional payment would be included in the DRG reclassification and recalibration budget neutrality factor, which is applied to the standardized amounts and the hospital-specific amounts. However, we indicated that, before the publication of the FY 2004 IPPS final rule, we would reevaluate our assumptions regarding this estimate based on preliminary claims data from the FY 2003 MedPAR file.

We have analyzed the claims from the March 2003 update to the FY 2003 MedPAR file. We identified claims that had received Xigris® based on the inclusion of procedure code 00.11. We identified only 1,500 claims from this file. Although the March 2003 update of the FY 2003 MedPAR probably only realistically includes about 5 months' worth of claims, it appears that a lower than expected number of cases are receiving this new technology at the present time.

Therefore, in this final rule for FY 2004, we are lowering the total payments in proportion to the cases that have actually received this drug. We are doubling the number of cases in our March 2003 MedPAR update to an estimated 3,000 cases that will receive Xigris® in FY 2003. We recognize there may actually be more cases than this by the end of the year, as only about 5 months of data are accounted for in our analysis. Also, this estimate does not account for future increased use of the drug. However, these potential underestimates are offset by the fact that we are assuming all cases will qualify for the full $3,400 add-on payment. We believe these effects will largely offset one another. Therefore, the final projected costs for add-on payments are estimated to be $10 million. We will use this estimate in our budget neutrality calculations.

Comment: One commenter supported our decision to continue paying add on payments for Xigris®, but disagreed with the proposed estimated decline in add-on payments in FY 2004 from $74.8 million to $50 million. The commenter explained that this conclusion was made using only first quarter FY 2003 MedPAR data and, since this technology is still in its infancy, the commenter believed FY 2003 MedPAR data will reflect an upward trend in its use and overall availability.

Some commenters were concerned that first year utilization of any new technology is an inappropriate measure for CMS to rely on in determining the full extent of use of a new technology. They asserted that the gradual adoption of new technology and the time required for hospitals to adapt their coding and charge structures to new technologies make it difficult to base projections of the ultimate utilization and costs of new technology immediately following its introduction. In addition, one commenter explained that CMS' system delays in processing claims have led to a negative impact on both uptake of the technology and the data collection associated with its use.

Also, the commenter explained that Congress required data relating to the cost of the technology be collected for not less than 2 years and not more than 3 years after an appropriate inpatient hospital service code is established. The commenter added that, because CMS publishes its proposed and final rules before the completion of a fiscal year, CMS would make its decision for FY 2005 with less than 2 full year's worth of data. As a result, the commenters recommended that CMS make additional payments for the full 3 years so when it moves a new technology into a DRG, it does so based on accurate and reliable information about its cost and clinical use.

Response: Before each fiscal year, we use the latest available data to determine if we should continue to pay add-on payments for approved new technologies. As stated above, we are continuing to pay for Xigris® for FY 2004 because FY 2002 discharges may not reflect full utilization of the technology. Based on the March update of the FY 2003 MedPAR file, we lowered our cost estimates from the proposed rule because a lower than projected number of cases is receiving this technology at the present time. Before FY 2005, we will again use the latest available data to determine whether we would propose to continue to make add-on payments for Xigris® for FY 2005.

3. FY 2004 Applicants for New Technology Add-On Payments

We received two applications for new technologies to be designated eligible for inpatient add-on payments for new technology for FY 2004. A discussion of these applications and our determinations appear below.

a. Bone Morphogenetic Proteins (BMPs) for Spinal Fusions

An application was submitted for the InFUSE™ Bone Graft/LT–CAGE™ Lumbar Tapered Fusion Device (InFUSE™) for approval as a new technology eligible for add-on payments. A similar application was submitted last year. However, we denied it because, based on the available data, the technology did not exceed the 1 standard deviation threshold above the average charges for the DRGs to which the technology is assigned.

The product is applied through use of an absorbable collagen sponge and an interbody fusion device, which is then implanted at the fusion site. The patient undergoes a spinal fusion, and the product is placed at the fusion site to promote bone growth. This procedure is done in place of the more traditional use of autogenous iliac crest bone graft. For a more detailed discussion about InFUSE™, see the August 1, 2002 IPPS final rule (67 FR 50016).

On July 2, 2002, the FDA approved InFUSE™ for spinal fusion procedures in skeletally mature patients at one level. Therefore, based on the FDA's approval, multilevel use of this technology would be off-label. In the August 1, 2002 IPPS final rule (67 FR 50017), we stated this technology would meet the cost threshold only if the added costs of multilevel fusions were taken into account. Because the FDA had not approved this technology for multilevel fusions, and the applicant had not submitted data to demonstrate this technology is a substantial clinical improvement for multilevel fusions (the clinical trial upon which the application was based was a single-level fusion trial), we could not issue a substantial clinical improvement determination for multilevel fusions and, consequently, did not consider the costs associated with multilevel fusions in our analysis of whether this technology met the cost threshold. Therefore, because the average charges for this new technology, when used for single-level spinal fusions, did not exceed the threshold to qualify for new technology add-on payment, we denied this application for

add-on payments for FY 2003. For similar reasons, we did not consider data on the charges for multilevel fusions in our analysis of whether this technology meets the cost threshold for FY 2004.

In its application for add-on payments for FY 2004, the applicant used data from the CMS FY 2001 Standard Analytical File for physicians and hospitals. The analysis linked a 5-percent sample of hospital spinal fusions cases with the corresponding physician claims. Because there were no ICD–9–CM codes to identify multilevel fusions in 2001, multilevel fusions were identified using CPT codes on the physician claims. Average charges were taken from actual cases used in clinical trials.

After grouping these cases into one, two, and three or more levels fused in DRGs 497 and 498 (Spinal Fusion Except Cervical With and Without CC, respectively), the applicant then calculated average charges assuming the use of the InFUSE™ for these cases. For DRG 497, the estimated single-level fusion average charge was $41,321; for DRG 498, the estimated single-level fusion average charge was $37,200. Because these DRGs are not currently split for different numbers of fusion levels involved, Medtronic has calculated its own standard deviation of average charges to determine the threshold for these DRGs using the 5-percent sample data. For DRG 497, the threshold (calculated by Medtronic) was $45,646, which is greater than the estimated average charge of $41,321 for single-level fusions noted above. For DRG 498, the threshold (calculated by Medtronic) was $36,935, which is less than the average charges for single-level fusions in this DRG as noted above.

However, we note the thresholds to qualify for the new technology add-on payments for FY 2003 published in Table 10 of the August 1, 2002 IPPS final rule for DRGs 497 and 498 were $58,040 and $41,923, respectively. These thresholds were computed based on all cases assigned to these DRGs, and do not differentiate between the number of spinal levels fused. Because we are not redefining these DRGs to differentiate cases on the basis of the number of levels of the spine fused in the manner suggested by the applicant's analysis, the thresholds published in last year's final rule are applicable for a new technology to qualify for add-on payments in these DRGs for FY 2004. Therefore, because the averages calculated by the applicant for single-level fusions do not exceed the published thresholds, as proposed, we did not approve this technology on the basis of this analysis.

The applicant also submitted data from actual cases involving the InFUSE™ with single level fusions only. The data submitted included 31 claims from 4 hospitals (only one Medicare patient was included in the sample). All 31 cases were from DRG 498. The average standardized charge for these cases was $47,172. Based on these data, the average standardized charge exceeds the threshold for DRG 498. However, we note that this limited sample excludes any cases from DRG 497.

For discharges occurring on or after October 1, 2002, ICD–9–CM codes 84.51 (Insertion of interbody spinal fusion device) and 84.52 (Insertion of recombinant bone morphogenetic protein) are effective to identify cases involving this technology. Therefore, in an effort to resolve the difficulties in obtaining sufficient data upon which to determine whether this technology exceeds the applicable threshold in the May 19, 2003 proposed rule, we stated our intention to review available MedPAR data for the first several months of FY 2003 to identify these cases and calculate their average standardized charges to compare with the thresholds. We noted that some of these cases would involve multilevel spinal fusions, and that it would be necessary to adjust for those cases in order to remove them from the calculation of the average charges.

We have analyzed data from the March update of FY 2003 MedPAR, containing claims data for the first 6 months of FY 2003. As discussed above, accounting for a lag time in claims processing, we are assuming that this data accounts for approximately 5 months of FY 2003 discharges. We identified InFUSE™ cases by the presence of the two new ICD–9–CM codes 84.51 and 84.52, used in combination with each other. We identified 117 and 88 cases in the March 2003 MedPAR data for DRGs 497 and 498, respectively.

We standardized the charges to remove the effects of differences in area wage levels, indirect medical education and disproportionate share payments, and, for hospitals in Alaska and Hawaii, the applicable cost-of-living adjustment, and calculated an average standardized charge of $64,931 for the 117 cases in DRG 497. For DRG 498, the average standardized charge was $58,266 for the 88 cases in our data. The average standardized charge across both DRGs was $62,752. As we noted in the proposed rule, we anticipate that some of these cases will involve multilevel spinal fusions. Based on the applicant's analysis of FY 2001 Standard Analytical File data in which they were able to distinguish between one, two, and three or more levels fused by using CPT codes on the physician claims, we determined that the average charges of single level fusions were about 78 percent of the average charges across all spinal fusions in the analysis. (It was not possible to independently match records from the Standard Analytical File in the time available after we attained the March 2003 MedPAR data.) However, as noted above, these data are from FY 2001 and did not include any cases involving InFUSE™. Therefore, we anticipate more of the cases in our data will be single-fusion cases, consistent with the FDA approval, and that the total charges in our data for single-level fusion cases will be higher than 78 percent of the average for all InFUSE™ cases in our data. Given the relatively recent approval by the FDA of this product, we anticipate the majority of uses are in accordance with the FDA's approval criteria. Therefore, to estimate the average standardized charges of the single-level spinal fusion cases in our data, we estimated 90 percent of the average standardized charges of all the InFUSE™ cases in our data would approximate the charges for single-level cases.

Finally, because these were FY 2003 cases compared to FY 2002 thresholds (based on FY 2001 cases), we adjusted the average charges (by the market basket) to be consistent with the FY 2002 thresholds. The resulting average standardized charge for the cases from our FY 2003 MedPAR data for all InFUSE™ cases across both DRGs 497 and 498 was $53,376.

We then calculated the case-weighted threshold amount across DRGs 497 and 498 based on the proportion of cases in our data in each DRG. Since 57 percent of the cases we identified in our database were in DRG 497, we applied this percentage to the threshold amount for DRG 497 of $58,040. We then added this amount to 43 percent of the threshold amount for DRG 498, for a combined threshold amount of $51,121. Because our data indicates that the average standardized charge for single-level InFUSE™ cases exceeds this threshold amount, this technology has met the cost criteria to qualify for new technology add-on payments.

Because the technology meets the cost threshold based on the MedPAR data, we evaluated whether it qualifies as a substantial clinical improvement. According to the applicant:

"InFUSE™ Bone Graft is more appropriate to use and has been proven

more effective in its use than autogenous iliac crest bone graft, when either is placed in the LT-Cage™ Lumbar Tapered Fusion Device for anterior lumbar interbody fusion. Use of InFUSE™ Bone Graft instead of autogenous iliac crest bone graft:

- Obviates iliac crest bone graft donor site morbidity.
- Reduces operative time, blood loss and hospitalization.
- Results in greater fusion success.
- We found that the Oswestry Low Back Pain Disability score and SF–36 Physical Component and Pain Index score were consistently 10 percent better in the InFUSE™ Bone Graft group than the autogenous iliac bone graft group.
- Enables earlier return to work."

As indicated in the May 19, 2003 proposed rule, among the issues we planned to consider were: does avoiding the complications associated with the iliac crest bone harvesting procedure constitute a substantial clinical improvement; and, with the increased rate of osteoarthritis and osteoporosis in the Medicare population, is there evidence that the technology represents a substantial clinical improvement in spinal fusions among this population? In the May 19, 2003 proposed rule, we indicated we were particularly interested in data on the results of aged Medicare patients who have been treated with BMP, and any basic biology bench data on the results of using BMP in osteoporotic bones.

Since the May 19, 2003 proposed rule, we received from the sponsor of this application an analysis, prepared by an orthopedic surgeon, that showed limited evidence of results in a series of patients older than 65, all with good or better fusion results than the younger age group. That analysis presented evidence that older patients typically have better results than younger patients in the standard iliac crest bone harvesting fusion procedure. Finally, it included the results of bench testing of mesenchymal and osteoblastic cells that demonstrated response to rhBMP–2, including cells from elderly patients.

The sum of this evidence does not preclude generalizing the results of InFUSE™ trials to Medicare aged beneficiaries. In addition, the small series of Medicare-aged patients treated with InFUSE™ technology, as well as the bench science on the response of elderly mesenchymal cells to rhBMP–2, do provide some positive, though limited, evidence for generalizability. These results, combined with the benefits of the elimination of the need to harvest bone from the iliac crest (and the associated complications), lead us to conclude that InFUSE™ does meet the substantial improvement criteria. Therefore, we are approving InFUSE™ for add-on payments under § 412.88, to be effective for FY 2004.

This approval is on the basis of using InFUSE™ for a single-level, lumbar spinal fusions, consistent with the FDA's approval and the data presented to us by the applicant. Therefore, we intend to limit the add-on payment to cases using this technology for anterior lumbar fusions in DRGs 497 and 498. Cases involving InFUSE™ that are eligible for the new technology add-on payment will be identified by assignment to DRGs 497 or 498 as a lumbar spinal fusion, with the combination of ICD–9–CM procedure codes 84.51 and 84.52.

As explained above, we are limiting our approval of this technology to uses consistent with our substantial clinical improvement decision. Therefore, add-on payments are only available for use of the technology at a single-level. The average cost of the InFUSE™ is reported to be $8,900, and a single level fusion requires two of the products. Therefore, the total cost for the InFUSE™ for a single-level fusion is expected to be $17,800. Under § 412.88(a)(2), new technology add-on payments are limited to the lesser of 50 percent of the average cost of the device or 50 percent of the costs in excess of the DRG payment for the case. As a result, the maximum add-on payment for a case involving the InFUSE™ is $8,900.

For purposes of budget neutrality, it is necessary to estimate the additional payments that would be made under this provision during FY 2004. We identified 205 cases in DRGs 497 and 498 in the March 2003 update of the FY 2003 MedPAR data. For our FY 2004 budget neutrality estimate, we are projecting this number will grow to 500. Given this estimate and the maximum add-on payment of $8,900, we estimate the total amount of the add-on payments for the InFUSE™ for FY 2004 will be $4.4 million dollars.

Comment: One commenter asked that CMS reconsider the decision to exclude multilevel fusions with InFUSE™ from the cost threshold calculation. The commenter noted that excluding multilevel fusions with InFUSE™ is inconsistent with FDA guidance, clinical practice and other CMS payment decisions for new technologies (notably the creation of DRGs for drug-eluting stents based on the presence of a condition not indicated on the product label, that is, acute myocardial infarction).

Response: As stated previously, because the FDA has not approved this technology for multilevel fusions and the applicant has not submitted data to demonstrate this technology is a substantial clinical improvement for multilevel fusions, we cannot issue a substantial clinical improvement for multilevel fusions. In the September 7, 2001 final rule implementing this provision (66 FR 46913), we stated our position that the special payments under this provision should be limited to those new technologies that have been demonstrated to represent a substantial improvement in caring for Medicare beneficiaries. Where such an improvement is not demonstrated, we continue to believe the incentives of the DRG system provide a useful balance to the introduction of new technologies, and no new technology add-on payment is necessary.

Comment: In the proposed rule, we stated that, if InFUSE™ meet the cost threshold, we would evaluate whether it qualifies as a substantial clinical improvement. One commenter noted that, assuming InFUSE™ does meet the cost threshold, CMS would make a determination on whether the technology meets the substantial clinical improvement criterion without public input or the opportunity to address concerns that CMS may have. The commenter noted that these actions are inconsistent with the Administrative Procedure Act and CMS's pledge to be more open in its policy making.

Response: Because of the many questions that remained at the time of the proposed rule, we were unable to determine if InFUSE™ qualified as a substantial clinical improvement. However, in order to receive comments on this determination, we indicated certain issues we would consider when determining if InFUSE™ qualifies as a substantial clinical improvement. As noted above, we received additional information that enabled us to approve this technology as a substantial clinical improvement. Therefore, we believe interested parties had sufficient information to provide informed comments.

Comment: One commenter, a designer, manufacturer, and supplier of orthopedic devices and supplies, explained that the applicant's analysis probably includes cases for both posterior approaches or posterior instrumentation, or both, which are considered off-label uses from the indications approved by the FDA. Therefore, the commenter requested that cases that do not meet FDA approved indications, once identified, be eliminated from the analysis.

The commenter also noted that once claims of InFUSE™ can be identified

with MedPAR data, DRG weights become eligible for recalibration in order to reflect the appropriate payment within the assigned DRG. Once the weights of a DRG can be evaluated, a technology should no longer be classified as new. Also, the commenter stated that clinical trial results counter the claim of significant improvement, because information presented at the FDA Orthopedics and Rehabilitation Devices Panel public meeting on January 20, 2002, indicated that the InFUSE™ product resulted in an equivalency to that of traditional bone grafting techniques. Although there was a decrease in donor site pain in a small number of subjects in the BMP group, compared with the control group, the commenter questioned whether this factor meets the criteria of substantial clinical improvement. The commenter also questioned the results of a published article on this technology.

Response: One of the criteria for a substantial clinical improvement classification is avoidance of surgery. CMS determined that InFUSE™ should be classified as a substantial improvement if the results of the clinical trials demonstrated outcomes at least equivalent to bone grafting, and the bone harvesting procedure was avoided. CMS clinical staff reviewed the literature and concluded that the current evidence did support grafting equivalence for the FDA approved indications and, therefore, InFUSE™ met the substantial improvement standard. As described above, we did not rely on the applicant's analysis to determine the technology met the high-cost threshold, but conducted direct analysis of available FY 2003 MedPAR data.

b. GLIADEL® Wafer

Glioblastoma Multiforme (GBM) is the most common and most aggressive of the primary brain tumors. Standard care for patients diagnosed with GBM is surgical resection and radiation. According to the manufacturer, the GLIADEL® Wafer is indicated for use as an adjunct to surgery to prolong survival in patients with recurrent GBM. Implanted directly into the cavity that is created when a brain tumor is surgically removed, GLIADEL® delivers chemotherapy directly to the site where tumors are most likely to recur.

The FDA approved GLIADEL® Wafer on September 23, 1996, for use as an adjunct to surgery to prolong survival in patients with recurrent GBM for whom surgical resection is indicated. In announcing its approval, the FDA indicated that GLIADEL® was approved: "* * * based on the results of a multi-center placebo controlled study in 222 patients who had recurrent malignant glioma after initial treatment with surgery and radiation therapy. Following surgery to remove the tumor, half of the patients were treated with GLIADEL® implants and half with placebo. In patients with glioblastoma multiforme, the 6-month survival rate increased from 36 percent with placebo to 56 percent with GLIADEL® Median survival increased from 20 weeks with placebo to 28 weeks with GLIADEL®. In patients with pathologic diagnoses other than glioblastoma multiforme, GLIADEL® had no effect on survival."

Guilford Pharmaceuticals has requested that GLIADEL® still be considered new because, until a new ICD–9–CM code (00.10 Implementation of Chemotherapeutic Agent) was established on October 1, 2002, it was not possible to identify specifically these cases in the MedPAR data. However, as noted previously, technology will no longer be considered new after the costs of the technology are reflected in the DRG weights. Because the costs of GLIADEL® are currently reflected in the DRG weights (despite the absence of a specific code), GLIADEL® does not meet our criterion that a medical service or technology be "new". That is, FY 2002 MedPAR data used to calculate the DRG weights for FY 2004 in this final rule include cases where GLIADEL® was administered (and the corresponding charges of these cases include charges associated with GLIADEL®). On February 26, 2003, the FDA approved GLIADEL® for use in newly diagnosed patients with high-grade malignant glioma as an adjunct to surgery and radiation. However, our understanding is that many newly diagnosed patients were already receiving this therapy. To the extent this is true, the charges associated with this use of GLIADEL® are also reflected in the DRG relative weights.

According to Guilford's application, the current average wholesale price of GLIADEL® is $10,985. Guilford submitted charge data for 23 Medicare patients at 7 hospitals from FY 2000. The charges were then standardized and adjusted for inflation using the hospital market basket inflation factor (from 2000 to 2003) in order to determine an inflated average standardized charge of $33,002. Guilford points out that this charge narrowly misses the DRG 2 threshold published in Table 10 of the August 1, 2002 IPPS final rule of $34,673. However, we note that, according to the manufacturer, as many as 60 percent of current GLIADEL® cases may be assigned to DRG 1 based on the presence of CCs. Based on this assumption; the qualifying threshold for GLIADEL® would be $54,312 (60 percent of the DRG 1 threshold of $67,404, and 40 percent of the DRG 2 threshold of $34,673).

As mentioned in section II.B.3.a of the May 19, 2003 proposed rule and above in this final rule, we examined the definitions of DRGs 1 and 2 to determine whether they could be improved. As proposed, we are creating a new DRG for patients with an intracranial vascular procedure and an intracranial hemorrhage and two new DRGs for patients with only a vascular shunt procedure (splitting on the presence or absence of a CC). We also compared the data submitted in the application for add-payments regarding the charges for GLIADEL® cases with the charges of other procedures in DRGs 1 and 2. We found that, although the $33,002 average standardized charge reported is just below the qualifying threshold in DRG 2, it is actually well below the mean average standardized charge for DRG 1 ($42,092). As noted previously, as many as 60 percent of current GLIADEL® cases may be assigned to DRG 1 based on the presence of CCs. Therefore, we do not believe that any change to the DRG assignment of cases receiving GLIADEL® is warranted at this time. However, we will continue to monitor our data to determine whether a change is warranted in the future.

Comment: One commenter supported CMS' determination that this technology is currently reflected within the DRG weights and does not meet the criteria of being called "new." Another commenter commented that CMS' interpretation of whether a technology is "new" is inconsistent with the current statute. The commenter explained that section 1886 (d)(5)(K)(ii)(II) of Act states that CMS should collect data on new technologies "for a period of not less than 2 years and not more than 3 years beginning on the date on which an inpatient hospital code is issued for the technology." Accordingly, the commenter believed it is inconsistent with the intent of Congress to deny new technology status to a product that has been on the market but for which there is no unique ICD–9 code that allows CMS to track the costs of cases in which it is utilized. The commenter urged CMS to reconsider its interpretation of the statute and approve GLIADEL® as a new technology, making clear that a technology will be considered new for 2 to 3 years from the date that an ICD–9–CM code, specific to the technology, becomes available.

Response: As stated above, we discussed our position on this issue in detail in the September 7, 2001 final rule (66 FR 46905). Our rationale for this policy has not changed since we discussed it in that final rule, and we did not propose changes to this policy in the May 19, 2003 proposed rule. Therefore, we are denying this application for add-on payments for FY 2004.

4. Review of the High-Cost Threshold

The current cost threshold for a new technology to qualify for add-on payments is that the average standardized charges of cases involving the new technology must be demonstrated to exceed 1 standard deviation beyond the geometric mean of the standardized charges of the DRG to which the new technology will be assigned. If the new technology is assigned to more than one DRG, the qualifying threshold is equal to the case-weighted (based on the proportion of cases involving the new technology estimated to be assigned to each DRG) average threshold across all relevant DRGs. When we established this threshold in the September 7, 2001 final rule, we expressed our belief that it is important to establish a threshold that recognizes the variability in costs per case within DRGs and maintains the fundamental financial incentives of the IPPS (66 FR 46917).

In commenting on this approach, MedPAC and some hospital associations supported the 1 standard deviation threshold. However, others, particularly representatives of the manufacturers of new technology, have argued this threshold is too high, and that virtually no new technology would qualify for the special payment provision.

We are concerned that establishing higher payments for a great number of new technologies may be inflationary because the add-on payments reduce the efficiency incentives hospitals face when new technologies must otherwise be financed out of current payments for similar cases. Traditionally, under the IPPS, new technologies were required to compete with existing treatment methods on clinical and cost criteria. Add-on payments are intended to give new technologies a competitive boost relative to existing treatment methods with the goal of encouraging faster and more widespread adoption of new technologies.

Much of the current variation around the mean within any particular DRG is due to the range of procedures contained within each DRG. Generally, some of these procedures will be more expensive than the mean and some will be less expensive. The threshold should be set high enough to ensure that it identifies truly high-cost technologies. If the threshold were set too low (for example, at $2,500, as some have suggested), additional technologies may qualify merely by association with a procedure only slightly more costly than the mean for the DRG.

For example, consider a DRG with five different procedures and mean charges of $15,000. The mean charges for each procedure are distributed around $15,000, as illustrated in the following table. A qualifying threshold of $2,500 would result in any new technology that is only used for the fifth procedure automatically qualifying for new technology add-on payments (unless the new technology had the unlikely effect of lowering the mean cost for cases with this procedure by at least $2,500). This is because the average charge of $20,000 for cases in this procedure already exceeds the mean charges for the DRG plus $2,500.

Procedure	Mean charge
1	$10,000
2	12,000
3	15,000
4	17,000
5	20,000

At the same time, we recognize that the very limited number of applications that have been submitted the past 2 years (five for FY 2003; two for FY 2004) may indicate that only a very small number of the new technologies that come onto the market every year are costly enough even to apply for new technology add-on payments. Therefore, for FY 2005 and subsequent fiscal years, in the May 19, 2003 proposed rule, we proposed to reduce the threshold to 75 percent of 1 standard deviation beyond the geometric mean standardized charge for all cases in the DRG to which the new medical service or technology is assigned (§ 412.87(b)(3)).

Based on our analysis of the thresholds for FY 2004, this proposed change would reduce the average threshold across all DRGs to qualify for the add-on payments from approximately $9,900 above the mean standardized charges for each DRG to approximately $7,400. This reduction would maintain the averaging principles of the IPPS while easing the requirement somewhat to allow more technologies to qualify. Furthermore, the situation illustrated above, where a technology qualifies on the basis of its association with a high cost procedure, is much less likely to occur as a result of this reduction than if the threshold were reduced dramatically.

Comment: Some commenters were concerned that the revised threshold of 75 percent of the standard deviation remains too high. The commenters noted that even with the revised cost threshold, few technologies would qualify for add-on payments.

On the assumption that the vast majority of technologies that would qualify for add-on payments would be identified by a new ICD–9–CM procedure code, one commenter identified a total of 26 ICD–9–CM procedure codes issued between the years of 1998 and 2001. The commenter then analyzed 2001 MedPAR data and found that only 2 of the 26 procedures will exceed either the current 1 standard deviation threshold, and 4 would exceed the a threshold at 75 percent of 1 standard deviation. The commenter also explained that the proposed reduction of the threshold is only an 8-percent reduction, and continues to block eligibility for add-on-payments for important new technologies, even where costs increase by 70 percent. The commenter recommended that CMS use a threshold based upon 75 percent of the standardized amount inflated to charges, plus the geometric mean charges for the DRG. The commenter identified 13 of the 26 procedures that would qualify using this threshold.

Another commenter asked that CMS consider adopting separate criteria for biologics and devices, because they have different price levels and pricing patterns relative to drugs and relative to DRG standardized amounts. Other commenters recommended a threshold where the cost of the technology must exceed the cost of existing technologies by at least 50 percent of the DRG standardized amount, multiplied by the DRG weight, but not to exceed $7,500.

One commenter was concerned that, because of budget neutrality, any reduction to the threshold for new technologies would allow more technologies to qualify for add-on payments and would therefore reduce payments for all other hospital inpatient services. The commenter explained that shifting money within the IPPS leaves some hospitals without additional money they need to ensure beneficiaries have access to the newest medical tests and treatments. Therefore, the commenter recommended that add-on payments continue to be limited to new, cutting-edge, breakthrough technologies with significant cost implications.

Response: As stated in the August 1, 2002 final rule (67 FR 50011), it is our intention to implement this provision without fundamentally disrupting the IPPS. A substantial number of cases receiving extra cost-based payments (or substantial disaggregation of the DRGs into smaller units of payment) would undermine the efficiency incentives of the DRG payment system. Also, we continue to believe a threshold based on the standard deviation is appropriate for this purpose. (For further reading on this, see the September 7, 2001 final rule (66 FR 46917).)

The DRG system is an average-based system under which hospitals expect to finance costly cases through less costly cases. We believe the add-on policy envisioned by some commenter, that would reduce the maximum threshold across all DRGs to 75 percent of the standardized amount (approximately $3,300) adjusted to charges, would significantly disrupt the averaging principles of the IPPS. By assuming only 26 new technologies over a 4-year span, the analysis presented by the commenter dramatically underestimates the annual volume of new technologies that would be likely to meet such a reduced threshold. Industry sources cite over 1,000 companies producing medical devices, diagnostic products, and medical information systems in the U.S., producing over $70 billion worth of products annually. A very limited number of these products receive specific ICD–9–CM procedure codes, particularly in years prior to the establishment of the IPPS new technology add-on policy. A more accurate estimate of the number of technologies likely to be approved under this revised threshold could be attained by listing the technologies approved during that period with the average wholesale price.

As stated above, we recognize the limited number of applications for add-on payments that have been submitted in the past 2 years and, therefore, we are lowering the threshold. We believe this new threshold is a fair balance that maintains the averaging principles of the IPPS while easing the qualifying requirement. Therefore, for FY 2005 and subsequent fiscal years, we are reducing the threshold to 75 percent of 1 standard deviation (based on the logarithmic values of the charges) beyond the geometric mean standardized charges for all cases in the DRG to which the new medical service or technology is assigned, transformed back to charges.

We disagree with the commenter's suggestion that we establish separate thresholds for biologics and devices. We believe the IPPS is intended to pay hospitals for their costs to treat patients, and physicians select from a range of options based on the medical needs of the patients. The payment system should be neutral with respect to those options. We are concerned that establishing separate thresholds for biologics and devices would indicate an inappropriate payment preference for one or the other option.

Comment: Other commenters representing hospitals approved of the threshold proposed by CMS. One commenter explained that a threshold that limits the number of new technologies is necessary, as the administrative burden for hospitals and the program is significant for each additional item qualifying. Given the finite pool of funds, an abundance of qualifying technologies could result in prorata reductions, such as those that were experienced under the outpatient prospective payment system. With that in mind, the commenter asked that CMS look at other approval mechanisms that would direct the funds to be focused on significantly expensive new technologies that also have significant volumes nationally. For example, national expenditures projected by CMS for each technology seeking approval should exceed $30 million. Assuming national total expenditures of $75 billion with a 1 percent set aside at $750 million, and a marginal cost at 50 percent, 25 technologies could be approved by CMS.

As an alternative, the commenter recommended that CMS incorporate new technologies into the appropriate DRG without having to specifically code the new technology. The DRG weights would then be adjusted to reflect the increased costs associated with such new technologies rather than making a separate add-on payment. The commenter believed this would be a reasonable compromise between the need to incorporate new technologies into the DRGs, while avoiding an unduly burdensome coding and billing process.

Response: We believe the incremental costs to hospitals associated with this provision should be minimal. Specifically, the additional payments are triggered by the presence of an ICD–9–CM code on the bill, information already required to process the claim for normal DRG payments. Accordingly, there should be little need for training or other operational changes in response to the approval of a new technology for add-on payments.

Also, adding further criteria as suggested by the commenter would make it even more difficult for new technologies to qualify for add-on payments. In this final rule, it is our intention to lower the threshold in order to increase the number of applications we receive each year for add-on payments. With respect to the commenter's suggestion to incorporate a new technology in a DRG and raise the weight of the DRG based on the increased cost of the new technology, we are concerned that this suggestion would have the potential to create possibly large imbalances in the DRG weights if the predicted volume of a particular technology turns out to be inaccurate. We believe an add-on payment is the most appropriate methodology to provide additional payments for qualifying high cost new technologies, while still maintaining the overall integrity of the DRG system.

5. Technical Changes

Subpart H of part 412 describes payments to hospitals under IPPS. We have become aware of references to the calculation of IPPS payments in this subpart that inadvertently omit references to new technology add-on payments. For example, § 412.112(c) describes the basis for per case payments. This section refers to outlier payments under subpart F, but was not revised to reflect the implementation of the new technology add-on payments. Therefore, in the May 19, 2003 proposed rule, we proposed to amend § 412.112(c) to add a new paragraph (d) to include a reference to additional payments for new medical services or technologies under subpart F.

We did not receive any comments on this proposal and, therefore, are adopting it as final.

Section 412.116(e) currently states that payments for outlier cases are not made on an interim basis. That is, for hospitals receiving payments under a biweekly, lump-sum payment methodology, outlier payments are not included in the calculation of the lump-sum payment amounts. Rather, outlier payments are calculated on a case-by-case basis. Similarly, due to the unique nature of the new technology add-on payments, in the May 19, 2003 proposed rule, we proposed that they would also be calculated on a case-by-case basis rather than included in the calculation of interim payment amounts. Therefore, we proposed to revise § 412.116(e) to include this policy.

We did not receive any comments on this proposal. Therefore, in this final rule, we are adopting the proposal as final without modification.

III. Changes to the Hospital Wage Index

A. Background

Section 1886(d)(3)(E) of the Act requires that, as part of the methodology for determining prospective payments to hospitals, the Secretary must adjust the

standardized amounts "for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level." In accordance with the broad discretion conferred under the Act, we currently define hospital labor market areas based on the definitions of Metropolitan Statistical Areas (MSAs), Primary MSAs (PMSAs), and New England County Metropolitan Areas (NECMAs) issued by the Office of Management and Budget (OMB). OMB also designates Consolidated MSAs (CMSAs). A CMSA is a metropolitan area with a population of one million or more, comprising two or more PMSAs (identified by their separate economic and social character). For purposes of the hospital wage index, we use the PMSAs rather than CMSAs because they allow a more precise breakdown of labor costs. If a metropolitan area is not designated as part of a PMSA, we use the applicable MSA. For purposes of the IPPS wage index, rural areas are counties outside a designated MSA, PMSA, or NECMA. For purposes of the wage index, we combine all of the rural counties in a State to calculate a rural wage index for that State.

We note that, effective April 1, 1990, the term Metropolitan Area (MA) replaced the term MSA (which had been used since June 30, 1983) to describe the set of metropolitan areas consisting of MSAs, PMSAs, and CMSAs. The terminology was changed by OMB in the March 30, 1990 **Federal Register** to distinguish between the individual metropolitan areas known as MSAs and the set of all metropolitan areas (MSAs, PMSAs, and CMSAs) (55 FR 12154). For purposes of the IPPS, we continue to refer to these areas as MSAs.

Under section 1886(d)(8)(B) of the Act, hospitals in certain rural counties adjacent to one or more MSAs are considered to be located in one of the adjacent MSAs if certain standards are met. Under section 1886(d)(10) of the Act, the Medicare Geographic Classification Review Board (MGCRB) considers applications from hospitals for geographic reclassification from a rural area to a MSA, from one rural area to another rural area, or from one MSA to another MSA for purposes of payment under the IPPS.

On June 6, 2003, the Office of Management and Budget (OMB) issued OMB Bulletin No. 03–04, announcing revised definitions of Metropolitan Statistical Areas and new definitions of Micropolitan Statistical Areas and Combined Statistical Areas. A copy of the bulletin may be obtained at the following Internet address: *http://www.whitehouse.gov/omb/bulletins/b03–04.html.* According to OMB, "(t)his bulletin provides the definitions of all Metropolitan Statistical Areas, Metropolitan Divisions, Micropolitan Statistical Areas, Combined Statistical Areas, and New England City and Town Areas in the United States and Puerto Rico based on the standards published on December 27, 2000, in the **Federal Register** (65 FR 82228–82238) and Census 2000 data."

In the proposed rule, we stated that we would evaluate the new area designations and their possible effects on the Medicare hospital wage index. In addition, we proposed that the earliest usage of these new definitions would be the FY 2005 wage index.

The new definitions recognize 49 new Metropolitan Statistical Areas and 565 new Micropolitan Statistical Areas, as well as extensively revising the construct of many of the existing Metropolitan Areas. For example, according to OMB's previous definition of the Asheville, NC MSA, this Metropolitan Statistical Area was comprised of Buncombe and Madison counties. When we apply the new definitions, Asheville's Metropolitan Statistical Area includes both Buncombe and Madison counties, as well as Henderson and Haywood counties. An example of a Micropolitan Statistical Area is that of Elizabeth City, NC which includes Camden, Pasquotank, and Perquimans counties. These were non-Metropolitan Statistical Area counties in previous OMB definitions.

In order to implement these changes for the IPPS, it is necessary to identify the new area designation for each county and hospital in the country. Because this process will have to be extensively reviewed and verified, we are unable to undertake it before publication of this final rule. In addition, because we wish to engage in notice and comment rulemaking, prior to adopting these changes, it would be impractical to have done so prior to this final rule. (We note that the OMB Bulletin was issued during the comment period and we did not receive any comments regarding whether the new definitions should be applied to the FY 2004 wage index or objecting to our proposed policy of implementing the changes in FY 2005 at the earliest.)

Finally, geographic reclassification decisions for FY 2004 have already been made based on the previous Metropolitan Statistical Area definitions. These decisions would have to be individually reevaluated if we were to adopt the new OMB definitions for FY 2004. This would not be possible to accomplish while complying with the requirement of section 1886(d)(6) of the Act to publish this annual IPPS update final rule by August 1. For these reasons, at this time, we are not applying these new definitions to the FY 2004 wage index.

Comment: Several commenters recommended that when CMS does implement OMB's new definitions, it should adopt the new 49 MSAs as outlined in the OMB Bulletin. However, the commenters mentioned that the adoption of the MSAs for FY 2004 would be premature, given the magnitude of the policy change. One commenter encouraged CMS to issue a rule or to elaborate on plans for the new Metropolitan and Micropolitan Statistical Area definition changes as soon as possible to allow time for impact analysis, as well as public comments and input. One commenter raised concerns with respect to the criteria that OMB used to define the new MSAs.

Response: We indicated in the proposed IPPS rule that we would need to assess these new definitions before adopting them. In order to implement such a change, it will be necessary to identify the new area designation for each county and hospital in the country, requiring extensive review and verification. We will undertake this analysis as soon as possible. We intend to move very deliberately and expeditiously regarding these potentially vast changes. Any changes would be made through notice and comment rulemaking. Therefore, we are not addressing technical comments relating to the new MSAs in this document.

Beginning October 1, 1993, section 1886(d)(3)(E) of the Act requires that we update the wage index annually. Furthermore, this section provides that the Secretary base the update on a survey of wages and wage-related costs of short-term, acute care hospitals. The survey should measure, to the extent feasible, the earnings and paid hours of employment by occupational category, and must exclude the wages and wage-related costs incurred in furnishing skilled nursing services. This provision also requires us to make any updates or adjustments to the wage index in a manner that ensures that aggregate payments to hospitals are not affected by the change in the wage index. This adjustment is discussed in section II.4.a. of the Addendum to this final rule.

As discussed below in section III.F. of this preamble, we also take into account the geographic reclassification of

hospitals in accordance with sections 1886(d)(8)(B) and 1886(d)(10) of the Act when calculating the wage index. Under section 1886(d)(8)(D) of the Act, the Secretary is required to adjust the standardized amounts so as to ensure that aggregate payments under the IPPS after implementation of the provisions of sections 1886(d)(8)(B) and (C) and 1886(d)(10) of the Act are equal to the aggregate prospective payments that would have been made absent these provisions. This adjustment is discussed in section II.4.b. of the Addendum to this final rule.

Section 1886(d)(3)(E) of the Act also provides for the collection of data every 3 years on the occupational mix of employees for each short-term, acute care hospital participating in the Medicare program, in order to construct an occupational mix adjustment to the wage index. The initial collection of these data must be completed by September 30, 2003, for application beginning October 1, 2004 (the FY 2005 wage index). In the April 4, 2003 **Federal Register** (68 FR 16516), we published a notice of intent to collect calendar year 2002 data from hospitals.

Many commenters on the April 4, 2003 notice requested that CMS publish a more detailed proposed methodology, illustrating how the occupational mix index will be calculated and how it will be used to adjust the overall wage index. Other comments on the April 4, 2003 notice included: CMS should develop or expand more categories to include all hospital employees; CMS should develop and publish a more reasonable timeframe for the hospitals to complete the survey, and a more reasonable timeframe for fiscal intermediaries to audit the occupational mix survey; CMS should clarify the relationship between the current annual cost report wage index schedule and the proposed occupational mix survey.

We plan to publish a final notice of intent in the **Federal Register**, with a 30-day comment period. The notice will include any revisions to the survey published on April 4, 2003 based on the comments we received, a detailed timetable, and all audit guidelines. Subsequent to that, we plan to send the surveys to all IPPS hospitals (and hospitals in Maryland that are under a waiver from the IPPS) through the fiscal intermediaries, with the intent to collect these data to be incorporated in the FY 2005 wage index.

Comment: In response to the May 19, 2003 IPPS proposed rule, commenters requested that we publish a detailed proposed methodology, for comment, illustrating how the occupational mix index will be calculated and how it will be used to adjust the overall wage index.

Response: Although our approach will not be finalized until publication of the FY 2005 rule, one possible approach to computing an occupational mix adjusted index is to first calculate, based on the hours collected for each occupational category from all hospitals nationally, a national average percentage attributable to each occupational category. Next, for each hospital, the total dollars and hours for each category would be summed, and an average hourly wage would be determined for each category by dividing dollars by hours. Each hospital's occupational mix adjusted average hourly wage would be calculated by multiplying each category's average hourly wage by the applicable weighting factors and then summing the results across all categories. Similar calculations would then be performed at the labor market level and the national level to construct an index.

We intend to analyze the impacts of implementing an occupational mix adjusted index in the proposed rule for FY 2005. Based on the estimated impacts, we will also evaluate at that time the possibilities for blending such an index with the FY 2005 wage index calculated using our current methodology based on data from the Worksheet S–3, Part II of the Medicare cost report.

B. FY 2004 Wage Index Update

The FY 2004 wage index values (effective for hospital discharges occurring on or after October 1, 2003 and before October 1, 2004) in section VI. of the Addendum to this final rule are based on the data collected from the Medicare cost reports submitted by hospitals for cost reporting periods beginning in FY 2000 (the FY 2003 wage index was based on FY 1999 wage data).

The data for the FY 2004 wage index were obtained from Worksheet S–3, Parts II and III of the FY 2000 Medicare cost reports. Instructions for completing the Worksheet S–3, Parts II and III are in the Provider Reimbursement Manual, Part I, sections 3605.2 and 3605.3. The FY 2004 wage index includes the following categories of data associated with costs paid under the IPPS (as well as outpatient costs), which were also included in the FY 2003 wage index:

- Salaries and hours from short-term, acute care hospitals.
- Home office costs and hours.
- Certain contract labor costs and hours (includes direct patient care, certain top management, pharmacy, laboratory, and nonteaching physician Part A services).
- Wage-related costs (The September 1, 1994 **Federal Register** included a list of core wage-related costs that are included in the wage index, and discussed criteria for including other wage-related costs (59 FR 45356)).

Consistent with the wage index methodology for FY 2003, the wage index for FY 2004 also excludes the direct and overhead salaries and hours for services not subject to IPPS payment, such as skilled nursing facility (SNF) services, home health services, costs related to GME (teaching physicians and residents) and certified registered nurse anesthetists (CRNAs), and other subprovider components that are not paid under the IPPS.

These wage data are also currently used to calculate wage indexes applicable to other providers, such as SNFs, home health agencies, and hospices. They are also used for prospective payments to rehabilitation and long-term care hospitals, and for hospital outpatient services.

C. FY 2004 IPPS Wage Index

1. Elimination of Wage Costs Associated With Rural Health Clinics and Federally Qualified Health Centers

In the FY 2001 IPPS final rule, we discussed removing from the wage index the salaries, hours, and wage-related costs of hospital-based rural health clinics (RHCs) and Federally qualified health centers (FQHCs) because Medicare pays for these costs outside of the IPPS (65 FR 47074). We noted that because RHC and FQHC costs were not previously separately reported on Worksheet S–3 of the Medicare cost report, we could not exclude these costs from the prior wage indexes. We further noted that we would evaluate the exclusion of RHC and FQHC wage data in developing the FY 2004 wage index.

We revised the FY 2000 Worksheet S–3 so that it now allows for the separate reporting of RHC and FQHC wage costs and hours. In the May 19, 2003 proposed rule, we proposed to exclude the wage and hours data for RHCs and FQHCs from the hospital wage index calculation beginning with the FY 2004 wage index.

We received several comments, all supporting this proposal. Therefore, beginning with the FY 2004 wage index, we are excluding the salaries, hours and wage-related costs associated with RHCs and FQHCs. This change is consistent with others we have implemented in our continuous effort to limit the wage index as much as possible to costs for which hospitals receive payment under

IPPS. An analysis of the effects of this change is included in the Appendix A of this final rule.

2. Paid Hours

It has been the longstanding policy of CMS to calculate the wage index using paid hours rather than hours worked (*see* the September 1, 1993 **Federal Register**, 58 FR 46299). This policy reflects our belief that paid hours more appropriately reflect a hospital's total wage costs, which include amounts paid for actual time worked and for covered leave periods (for example, annual, sick, and holiday leave). Therefore, the inclusion of paid lunch hours in the wage index is consistent with our inclusion of other paid nonworking hours.

Several hospitals have requested that we exclude paid lunch or meal break hours from the wage index calculation. At these hospitals, the typical workday is 7½ working hours, plus a ½ hour paid meal break, for a total of 8 paid hours. These hospitals, some of which are municipal-owned and required by their overarching union contracts to provide paid lunch hours, believe they are disadvantaged by a wage index policy that requires paid lunch hours to be included in calculating the wage index.

The hospitals argue that their practice of paying employees for meal breaks is not substantially different, in practice, from other hospitals whose employees do not receive paid lunch hours but who are on call during their lunch periods. These hospitals further argue that this policy causes them, in some cases due to union contracts beyond their control, to be the only hospitals with this category of nonproductive hours included in their wage index.

In the May 19, 2003 proposed rule, we solicited comments on our policy that paid lunch hours should be excluded from the wage index. Specifically, we were interested in a broader understanding of the issue of whether some hospitals may, in fact, be truly disadvantaged by this policy through no fault of their own. We indicated that any change in our policy would not be implemented until, at the earliest, the FY 2005 wage index.

Some hospitals and associations have also recommended that we exclude the paid hours associated with military and jury duty leave from the wage index calculation. They state that, unlike other paid leave categories for which workers are usually paid at their full hourly rates (for example, annual, sick, and holiday), hospitals typically pay employees on military or jury duty only a fraction of their normal pay. The amount that the hospital pays is intended to only supplement the earnings that the employee receives from the government so that, while performing military or civic duties, the employee can continue to be paid the same salary level, as if he or she were still working at the hospital.

The hospitals and associations believe that including lower pay rates associated with employees' military and jury duty leave unfairly decreases a hospital's average hourly wage and, therefore, its wage index value. Therefore, we proposed to exclude from the wage index the paid hours associated with military and jury duty leave, beginning with the FY 2005 wage index. We also proposed that the associated salaries would continue to be reported on Worksheet S–3, Part II, Line 1 of the Medicare cost report.

Comment: A few commenters agreed that paid lunch hours and hours associated with military and jury duty leave should be removed from the wage index. Many more commenters, including some national and state hospital associations and Medicare fiscal intermediaries, opposed or expressed concern about whether excluding paid lunch hours and hours associated with military and jury duty leave would result in a more accurate wage index.

Those commenters who opposed the proposal to exclude paid lunch hours and hours associated with military and jury duty leave expressed concern that these changes would further complicate the wage index and that the additional data collection effort for providers might outweigh any benefits achieved through these changes. Further, the commenters believed that paid lunch hours, military, and jury leave affect all providers in the same way, so the changes would likely be immaterial. One commenter also expressed concern that excluding paid hours could cause hospitals to rewrite existing contracts to raise their wage index. In addition, some commenters cautioned that excluding these paid hours would be difficult for intermediaries to apply consistently; excluding these hours would require estimations because most payroll systems do not capture this data. Many commenters indicated that CMS had not published data to provide support that these changes are warranted.

One commenter suggested that, if CMS excludes paid lunch hours, CMS should set a standard for hospitals to qualify for excluding the hours, such as the Fair Labor Standards Act requirements for payment. Another suggested that the determination of excluded paid lunch hours should be based on whether lunch is included for the purpose of computing the hourly wage rate used to pay for overtime. If paid lunch hours are included in the overtime payment computation, and excluding them would result in an hourly rate that is higher than what is usually used for overtime, the paid lunch hours should be excluded. If the paid lunch hours are not included in computing the hourly wage for overtime, and excluding them would result in the correct hourly wage rate that should be used for overtime, the lunch hours should be excluded. Two commenters recommended that the wage index should also exclude time associated with paid breaks from the wage index, but acknowledged that paid breaks are not usually tracked in payroll systems. One commenter recommended that CMS allow all hospitals in an area to include paid hours on a standard basis in order to eliminate differences that are more a matter of how hours are reported rather than actual difference in wages.

Those commenters who opposed the exclusion of paid lunch hours were generally concerned that hospitals do not currently track paid lunch hours. They indicated that it would be a major burden for hospitals to change their systems to accommodate reporting the hours and the benefits are likely to be minimum.

A few commenters suggested that, if a hospital pays its employees at the full rate for military and jury duty leave, the full associated hours should be included. However, they added that if a hospital pays its employees at a reduced rate for these leave categories, the hospital should exclude hours based on the fraction of the salary that is not paid. If the hospital does not pay for any military or jury duty leave, all of the associated hours should be excluded. The commenters believed that this treatment would be consistent with our longstanding policy to include hours associated with paid time off, while a hospital's average hourly rate would not be negatively impacted by the reduced rates that some hospitals pay for military and jury duty leave. One commenter recommended that CMS permit hospitals to exclude the hours, but not require such reporting.

Several commenters opposed excluding paid hours associated with military and jury duty because they believe that military and jury duty leave affect all providers in the same way. Therefore, they believed that any changes in the wage index would likely be immaterial. Two commenters expressed concern that, if paid hours are excluded and wages are not, the wage index would be overstated. The commenters recommended that, if CMS excludes paid hours associated with military and jury duty leave, for consistency, CMS should also exclude the related wages. Alternatively, the commenters recommended that CMS collect data on the wages and hours associated with military and jury duty first, so that the impact of excluding the hours can be determined before the policy is implemented. One commenter believed that CMS should only include in the wage index, hours associated with regular hours, overtime, and sick leave, because these paid leave or paid time off categories are consistently offered among hospitals. The commenter also believed other paid leave or paid time off categories such as vacation hours, maternity leave, bereavement leave, and vacation hours should be excluded because they are not consistently offered among hospitals. In addition, the commenter believed that when hospitals are competing for employees in the labor market, if offered, these paid leave or paid time off hours could vary from hospital to hospital. For example, hospital A will only pay 2 weeks for paid vacation leave, while hospital B will pay 4 weeks for paid vacation leave. Therefore, the commenter believed these other paid leave or paid time off leave hours should be excluded from the wage index.

Response: As we stated above and in the proposed rule, it has been our longstanding policy to include paid hours in the calculation of the wage index because they more appropriately reflect a hospital's total wage costs. We solicited comments on the possible exclusion of paid lunch hours and proposed to exclude the paid hours associated with military and jury duty hours because of our concern that there were significant issues with the consistent treatment of these issues across hospitals that may impact the validity of the wage index. However, the comments indicate to us there is substantial disagreement with respect to whether either category of paid hours should be excluded from the wage index calculation. Therefore, we are not proceeding with either change at this time. We intend to explore a more comprehensive assessment of the use of paid hours in a future rule. For the FY 2005 final wage index, we are including paid lunch hours, and hours associated with military leave and jury duty.

D. Verification of Wage Data From the Medicare Cost Reports

The data file used to construct the wage index includes FY 2000 data submitted to us as of June 27, 2003. As in past years, we performed an intensive review of the wage data, mostly through the use of edits designed to identify aberrant data.

We constructed the proposed FY 2004 wage index based on the wage data for facilities that were IPPS hospitals in FY 2000, even for those facilities that have terminated their participation in the program as hospitals or have since been designated as a critical access hospital (CAH), as long as those data do not fail any of our edits for reasonableness. We stated that including the wage data for these hospitals is, in general, appropriate to reflect the economic conditions in the various labor market areas during the relevant past period.

Prior to the proposed rule, we had received correspondence suggesting that the wage data for hospitals that have subsequently been redesignated as CAHs should be removed from the wage index calculation because CAHs are a separate provider type and are unique compared to other short-term, acute care hospitals. CAHs are limited to only 15 acute care beds. An additional 10 beds may be designated as swing-beds, but only 15 beds can be used at one time to serve acute care patients. CAHs tend to be located in isolated, rural areas. In the May 19, 2003 proposed rule, we solicited comments on whether we should exclude wage data from such hospitals from the wage index calculation. However, we included the data for current CAHs in the proposed FY 2004 wage index if the CAH was paid under the IPPS during FY 2000 as an acute care hospital.

Comment: Commenters, including national hospital associations, generally supported the removal of CAH wage data from the wage index. One commenter agreed that CAHs are dissimilar to IPPS hospitals and described a situation in which including a CAH has a negative impact on the other hospitals' wage index. One commenter agreed that CMS should exclude the costs, but expressed concern about the immediate financial impact that excluding CAHs might have on all hospitals in FY 2004. The commenter recommended that CMS examine the impact of removing CAH wage data from the wage index and make this analysis available for public comment. Another commenter recommended that CMS establish a date prior to the release of the wage index public use file that the facility must be certified as a CAH to be excluded from the wage index calculation.

Several commenters opposed excluding CAH data from the wage index. Some commenters indicated that CMS does not exclude hospitals that converted to CAH status subsequent to the year used to derive DRG weights. Another commenter opposed excluding CAHs from the wage index because the commenter believed that the wage index should reflect conditions of a labor market at a specific point in time. The commenter believed that other conditions, such as closures, mergers, or expansions, are analogous circumstances and warned that excluding these hospitals would also distort the wage index. Another commenter recommended that CMS apply a hold-harmless policy.

Response: CAHs represent a substantial number of hospitals with significantly different labor costs in many labor market areas where they exist. Using data collected for the proposed FY 2004 wage index, we found that, in 89 percent of all labor market areas with hospitals that converted to CAH status some time after FY 2000, the average hourly wage for CAHs is lower than the average hourly wage for other short-term hospitals in the area. In 79 percent of the labor market areas with CAHs, the average hourly wage for CAHs is lower than the average hourly wage for other short-term hospitals by 5 percent or greater. These results suggest that the wage data for CAHs, in general, are significantly different from other short-term hospitals.

Further, we found that removing CAHs from the wage index would have a minimal redistributive effect on Medicare payments to hospitals. The majority of the labor market areas would decrease by only 0.30 percent in their wage index value. The actual payment impact would be even smaller because the wage index is applied to only the labor-related portion of the average standardized amount. Only 10 areas would experience a decrease in their wage index values greater than 0.30 percent. The greatest negative impact is 9.57 percent. Meanwhile, positive impacts occur in 48 areas, 30 of which are in rural areas. Overall, removing CAHs from the wage index would have a minimal redistributive effect on Medicare payments to hospitals.

We believe that removing CAHs from the wage index is prudent policy, given the substantial negative impact these hospitals have on the wage indexes in the areas where they are located and the minimal impact they have on the wage indexes of other areas. We note that we would continue to include the wage data for other terminating or converting hospitals for the period preceding their change in Medicare provider status, as long as those data do not fail any of our edits for reasonableness. This is because

we continue to believe that the wage data for these hospitals, unlike CAHs, are not necessarily unique compared to other short-term hospitals, and these terminating or converting hospitals provide an accurate reflection of the labor market area during the relevant past period.

Therefore, beginning with the FY 2004 wage index, we are excluding from the wage index the wages and hours for all hospitals that are currently designated as a CAH, even if the hospital was paid under the IPPS during the cost reporting period used in calculating the wage index. We believe that this change improves the overall equity of the wage index. Therefore, it is important to proceed with this change for FY 2004. Consistent with our general approach to wage index changes, we are not holding other hospitals' payments harmless for this change.

As recommended, any hospital that is designated as a CAH by 7 days prior to the publication of the preliminary wage index public use file are excluded from the calculation of the wage index. Hospitals receiving designation after this date will remain in the wage index calculation.

We asked our fiscal intermediaries to revise or verify data elements that resulted in specific edit failures. The unresolved data elements that were included in the calculation of the proposed FY 2004 wage index have been resolved and are reflected in the calculation of the final FY 2004 wage index. For the final FY 2004 wage index in this final rule, we removed data for 23 hospitals that failed edits. For 9 of these hospitals, we were unable to obtain sufficient documentation to verify or revise the data because the hospitals are no longer participating in the Medicare program, are under new ownership, or are in bankruptcy status, and supporting documentation is no longer available. We identified 14 hospitals with incomplete or inaccurate data resulting in zero or negative, or otherwise aberrant, average hourly wages. Therefore, these hospitals were removed from the calculation. As a result, the final FY 2004 wage index is calculated based on FY 2000 wage data for 4,087 hospitals.

E. Computation of the FY 2004 Wage Index

The method used to compute the FY 2004 wage index follows:

Step 1—As noted above, we based the FY 2004 wage index on wage data reported on the FY 2000 Medicare cost reports. We gathered data from each of the non-Federal, short-term, acute care hospitals for which data were reported on the Worksheet S–3, Parts II and III of the Medicare cost report for the hospital's cost reporting period beginning on or after October 1, 1999 and before October 1, 2000. In addition, we included data from some hospitals that had cost reporting periods beginning before October 1999 and reported a cost reporting period covering all of FY 2000. These data were included because no other data from these hospitals are available for the cost reporting period described above, and because particular labor market areas might be affected due to the omission of these hospitals. However, we generally describe these wage data as FY 2000 data. We note that, if a hospital had more than one cost reporting period beginning during FY 2000 (for example, a hospital had two short cost reporting periods beginning on or after October 1, 1999 and before October 1, 2000), we included wage data from only one of the cost reporting periods, the longer, in the wage index calculation. If there was more than one cost reporting period and the periods were equal in length, we included the wage data from the later period in the wage index calculation.

Step 2—Salaries—The method used to compute a hospital's average hourly wage excludes certain costs that are not paid under the IPPS. In calculating a hospital's average salaries plus wage-related costs, we subtracted from Line 1 (total salaries) the GME and CRNA costs reported on lines 2, 4.01, and 6, the Part B salaries reported on Lines 3, 5 and 5.01, home office salaries reported on Line 7, and excluded salaries reported on Lines 8 and 8.01 (that is, direct salaries attributable to SNF services, home health services, and other subprovider components not subject to the IPPS). We also subtracted from Line 1 the salaries for which no hours were reported. To determine total salaries plus wage-related costs, we added to the net hospital salaries the costs of contract labor for direct patient care, certain top management, pharmacy, laboratory, and nonteaching physician Part A services (Lines 9, 9.01, 9.02, and 10), home office salaries and wage-related costs reported by the hospital on Lines 11 and 12, and nonexcluded area wage-related costs (Lines 13, 14, and 18).

We note that contract labor and home office salaries for which no corresponding hours are reported were not included. In addition, wage-related costs for nonteaching physician Part A employees (Line 18) are excluded if no corresponding salaries are reported for those employees on Line 4.

Step 3—Hours—With the exception of wage-related costs, for which there are no associated hours, we computed total hours using the same methods as described for salaries in Step 2.

Step 4—For each hospital reporting both total overhead salaries and total overhead hours greater than zero, we then allocated overhead costs to areas of the hospital excluded from the wage index calculation. First, we determined the ratio of excluded area hours (sum of Lines 8 and 8.01 of Worksheet S–3, Part II) to revised total hours (Line 1 minus the sum of Part II, Lines 2, 3, 4.01, 5, 5.01, 6, 7, and Part III, Line 13 of Worksheet S–3). We then computed the amounts of overhead salaries and hours to be allocated to excluded areas by multiplying the above ratio by the total overhead salaries and hours reported on Line 13 of Worksheet S–3, Part III. Next, we computed the amounts of overhead wage-related costs to be allocated to excluded areas using three steps: (1) we determined the ratio of overhead hours (Part III, Line 13) to revised hours (Line 1 minus the sum of Lines 2, 3, 4.01, 5, 5.01, 6, and 7); (2) we computed overhead wage-related costs by multiplying the overhead hours ratio by wage-related costs reported on Part II, Lines 13, 14, and 18; and (3) we multiplied the computed overhead wage-related costs by the above excluded area hours ratio. Finally, we subtracted the computed overhead salaries, wage-related costs, and hours associated with excluded areas from the total salaries (plus wage-related costs) and hours derived in Steps 2 and 3.

Step 5—For each hospital, we adjusted the total salaries plus wage-related costs to a common period to determine total adjusted salaries plus wage-related costs. To make the wage adjustment, we estimated the percentage change in the employment cost index (ECI) for compensation for each 30-day increment from October 14, 1999 through April 15, 2001 for private industry hospital workers from the Bureau of Labor Statistics' *Compensation and Working Conditions*. We use the ECI because it reflects the price increase associated with total compensation (salaries plus fringes) rather than just the increase in salaries. In addition, the ECI includes managers as well as other hospital workers. This methodology to compute the monthly update factors uses actual quarterly ECI data and assures that the update factors match the actual quarterly and annual percent changes. The factors used to adjust the hospital's data were based on the midpoint of the cost reporting period, as indicated below.

MIDPOINT OF COST REPORTING PERIOD

After	Before	Adjustment factor
10/14/1999	11/15/1999	1.06794
11/14/1999	12/15/1999	1.06447
12/14/1999	01/15/2000	1.06083
01/14/2000	02/15/2000	1.05713
02/14/2000	03/15/2000	1.05335
03/14/2000	04/15/2000	1.04954
04/14/2000	05/15/2000	1.04571
05/14/2000	06/15/2000	1.04186
06/14/2000	07/15/2000	1.03786
07/14/2000	08/15/2000	1.03356
08/14/2000	09/15/2000	1.02898
09/14/2000	10/15/2000	1.02425
10/14/2000	11/15/2000	1.01953
11/14/2000	12/15/2000	1.01482
12/14/2000	01/15/2001	1.01004
01/14/2001	02/15/2001	1.00509
02/14/2001	03/15/2001	1.00000
03/14/2001	04/15/2001	0.99491

For example, the midpoint of a cost reporting period beginning January 1, 2000 and ending December 31, 2000 is June 30, 2000. An adjustment factor of 1.03786 would be applied to the wages of a hospital with such a cost reporting period. In addition, for the data for any cost reporting period that began in FY 2000 and covered a period of less than 360 days or more than 370 days, we annualized the data to reflect a 1-year cost report. Annualization is accomplished by dividing the data by the number of days in the cost report and then multiplying the results by 365.

Step 6—Each hospital was assigned to its appropriate urban or rural labor market area before any reclassifications under section 1886(d)(8)(B) or section 1886(d)(10) of the Act. Within each urban or rural labor market area, we added the total adjusted salaries plus wage-related costs obtained in Step 5 for all hospitals in that area to determine the total adjusted salaries plus wage-related costs for the labor market area.

Step 7—We divided the total adjusted salaries plus wage-related costs obtained under both methods in Step 6 by the sum of the corresponding total hours (from Step 4) for all hospitals in each labor market area to determine an average hourly wage for the area.

Step 8—We added the total adjusted salaries plus wage-related costs obtained in Step 5 for all hospitals in the nation and then divided the sum by the national sum of total hours from Step 4 to arrive at a national average hourly wage. Using the data as described above, the national average hourly wage is $24.8076.

Step 9—For each urban or rural labor market area, we calculated the hospital wage index value by dividing the area average hourly wage obtained in Step 7 by the national average hourly wage computed in Step 8.

Step 10—Following the process set forth above, we developed a separate Puerto Rico-specific wage index for purposes of adjusting the Puerto Rico standardized amounts. (The national Puerto Rico standardized amount is adjusted by a wage index calculated for all Puerto Rico labor market areas based on the national average hourly wage as described above.) We added the total adjusted salaries plus wage-related costs (as calculated in Step 5) for all hospitals in Puerto Rico and divided the sum by the total hours for Puerto Rico (as calculated in Step 4) to arrive at an overall average hourly wage of $11.5905 for Puerto Rico. For each labor market area in Puerto Rico, we calculated the Puerto Rico-specific wage index value by dividing the area average hourly wage (as calculated in Step 7) by the overall Puerto Rico average hourly wage.

Step 11—Section 4410 of Public Law 105–33 provides that, for discharges on or after October 1, 1997, the area wage index applicable to any hospital that is located in an urban area of a State may not be less than the area wage index applicable to hospitals located in rural areas in that State. Furthermore, this wage index floor is to be implemented in such a manner as to ensure that aggregate IPPS payments are not greater or less than those that would have been made in the year if this section did not apply. For FY 2004, this change affects 150 hospitals in 49 MSAs. The MSAs affected by this provision are identified by a footnote in Table 4A in the Addendum of this final rule.

Comment: One commenter indicated that there are serious deficiencies in the payment rates to Iowa hospitals under IPPS because of the development and application of the wage index, and, accordingly, CMS must make revisions to the wage index in this final rule. The comment suggested that CMS should: reduce the labor-related portion of the standardized amount to which the wage index is applied; adjust the wage index upward to account for low Medicare payments; or utilize a wage index floor or compress the wage index.

Response: We appreciate the concerns expressed by this commenter about the impact of the wage index upon Iowa's hospitals. We strive each year to ensure the wage index accurately reflects the relative wage differences across labor market areas. Further, the methodology we use to compute the wage index values is the same for all urban and rural hospitals. Therefore, the wage index values we include in the proposed and final rules for Iowa hospitals reflect the actual wage costs that are reported by these hospitals relative to those reported by hospitals across the nation.

With respect to the commenter's specific recommendations, we address comments related to the labor-related portion of the standardized amounts in section VII. of the preamble of this final rule. With respect to the other recommendations raised, these were not proposed and, therefore, we do not wish to implement them in this final rule. We are willing to explore these and other options in the future and to work with the commenter to address the concerns expressed.

Comment: One commenter indicated that we failed to address the problem associated with the exclusion of indirect patient care contract labor in the proposed rule. The commenter indicated that we recognized this problem in the FY 2002 final rule (67 FR 50022), but failed to carry out our commitment to address it.

Response: We indicated last year it would be necessary to revise the cost report form and instructions in order to collect the data necessary to separately identify the costs and hours associated with the following contracted overhead services: administrative and general; housekeeping; and dietary. In Transmittal Number 10 of the Medicare cost report, we revised Worksheet S–3, Part II to collect contract labor costs associated with these services, effective with cost reporting periods beginning on or after October 1, 2003.

We also indicated our final decision on whether to include contract indirect patient care labor costs in our calculation of the wage index will depend on the outcome of our analyses of the data collected and public comments.

F. Revisions to the Wage Index Based on Hospital Redesignation

1. General

Under section 1886(d)(10) of the Act, the Medicare Geographic Classification Review Board (MGCRB) considers applications by hospitals for geographic reclassification for purposes of payment under the IPPS. Hospitals can elect to reclassify for the wage index or the standardized amount, or both, and as individual hospitals or as rural groups. Generally, hospitals must be proximate to the labor market area to which they are seeking reclassification and must demonstrate characteristics similar to hospitals located in that area. Hospitals must apply for reclassification to the MGCRB. The MGCRB issues its decisions by the end of February for

reclassification to become effective for the following fiscal year (beginning October 1). The regulations applicable to reclassifications by the MGCRB are located in §§ 412.230 through 412.280.

Section 1886(d)(10)(D)(v) of the Act provides that, beginning with FY 2001, a MGCRB decision on a hospital reclassification for purposes of the wage index is effective for 3 fiscal years, unless the hospital elects to terminate the reclassification. Section 1886(d)(10)(D)(vi) of the Act provides that the MGCRB must use the 3 most recent years' average hourly wage data in evaluating a hospital's reclassification application for FY 2003 and any succeeding fiscal year.

Section 304(b) of Pub. L. 106–554 provides that the Secretary must establish a mechanism under which a statewide entity may apply to have all of the geographic areas in the State treated as a single geographic area for purposes of computing and applying a single wage index, for reclassifications beginning in FY 2003. The implementing regulations for this provision are located at § 412.235.

Section 1886(d)(8)(B) of the Act permits a hospital located in a rural county adjacent to one or more urban areas to be designated as being located in the MSA to which the greatest number of workers in the county commute (1) if the rural county would otherwise be considered part of an urban area under the standards published in the **Federal Register** for designating MSAs (and for designating NECMAs), and (2) if the commuting rates used in determining outlying counties (or, for New England, similar recognized areas) were determined on the basis of the aggregate number of resident workers who commute to (and, if applicable under the standards, from) the central county or counties of all contiguous MSAs (or NECMAs). Hospitals that meet these criteria are deemed urban for purposes of the standardized amounts and for purposes of assigning the wage index.

Revised MSA standards were published in the December 27, 2000 **Federal Register** (65 FR 82228). We are working with the Census Bureau to compile a list of hospitals that meet the new standards based on the 2000 census data; however, that work was not yet complete at the time of publication of the proposed rule.

As noted above, OMB announced the new Metropolitan and Micropolitan Statistical Area designations and definitions on June 6, 2003. These new designations have extensively revised the construct of many of the existing Metropolitan Areas and created many new designated areas. In order to implement these changes, we need to carefully evaluate the implications of these changes for each county and hospital nationwide. As a result, we are unable to incorporate these new standards for redesignating hospitals and, therefore, we are not implementing the new standards for purposes of redesignation for FY 2004 under section 1886(d)(8)(B) of the Act. As a result, to qualify for redesignation under this section in FY 2004, hospitals must be located in counties that meet the 1990 standards.

2. Effects of Reclassification

The methodology for determining the wage index values for redesignated hospitals is applied jointly to the hospitals located in those rural counties that were deemed urban under section 1886(d)(8)(B) of the Act and those hospitals that were reclassified as a result of the MGCRB decisions under section 1886(d)(10) of the Act. Section 1886(d)(8)(C) of the Act provides that the application of the wage index to redesignated hospitals is dependent on the hypothetical impact that the wage data from these hospitals would have on the wage index value for the area to which they have been redesignated. Therefore, as provided in section 1886(d)(8)(C) of the Act,[5] the wage index values were determined by considering the following:

- If including the wage data for the redesignated hospitals would reduce the age index value for the area to which the hospitals are redesignated by 1 percentage point or less, the area wage index value determined exclusive of the wage data for the redesignated hospitals applies to the redesignated hospitals.
- If including the wage data for the redesignated hospitals reduces the wage index value for the area to which the hospitals are redesignated by more than 1 percentage point, the area wage index determined inclusive of the wage data for the redesignated hospitals (the combined wage index value) applies to the redesignated hospitals.
- If including the wage data for the redesignated hospitals increases the wage index value for the urban area to which the hospitals are redesignated, both the area and the redesignated hospitals receive the combined wage index value. Otherwise, the hospitals located in the urban area receive a wage index excluding the wage data of hospitals redesignated into the area.
- The wage data for a reclassified urban hospital is included in both the wage index calculation of the area to which the hospital is reclassified (subject to the rules described above) and the wage index calculation of the urban area where the hospital is physically located.
- Rural areas whose wage index values would be reduced by excluding the wage data for hospitals that have been redesignated to another area continue to have their wage index values calculated as if no redesignation had occurred (otherwise, redesignated rural hospitals are excluded from the calculation of the rural wage index).
- The wage index value for a redesignated rural hospital cannot be reduced below the wage index value for the rural areas of the State in which the hospital is located.

The wage index values for FY 2004 are shown in Tables 4A, 4B, 4C, and 4F in the Addendum to this final rule. Hospitals that are redesignated must use the wage index values shown in Table 4C. Areas in Table 4C may have more than one wage index value because the wage index value for a redesignated urban or rural hospital cannot be reduced below the wage index value for the rural areas of the State in which the hospital is located. Therefore, those areas with more than one wage index shown have hospitals from more than one State reclassified into them, and the rural wage index for a State in which at least one hospital is physically located is higher than the wage index for the area to which the hospital is reclassified.

Tables 3A and 3B in the Addendum of this final rule list the 3-year average hourly wage for each labor market area before the redesignation of hospitals, based on FYs 1998, 1999, and 2000 cost reporting periods. Table 3A lists these data for urban areas and Table 3B lists these data for rural areas. In addition, Table 2 in the Addendum to this final rule includes the adjusted average hourly wage for each hospital from the FY 1998 and FY 1999 cost reporting periods, as well as the FY 2000 period used to calculate the final FY 2004 wage index. The 3-year averages are calculated by dividing the sum of the dollars (adjusted to a common reporting period using the method described previously) across all 3 years, by the sum of the hours. If a hospital is missing data for any of the previous years, its average hourly wage for the 3-year period is calculated based on the data available during that period.

Table 9 in the Addendum of this final rule shows hospitals that have been reclassified under either section 1886(d)(8) or section 1886(d)(10)(D) of the Act. This table includes hospitals reclassified for FY 2004 by the MGCRB (68 for wage index, 31 for the standardized amount, and 34 for both the wage index and the standardized amount), as well as hospitals that were reclassified for the wage index in either FY 2002 (451) or FY 2003 (55) and are, therefore, in either the second or third year of their 3-year reclassification. In addition, it includes rural hospitals redesignated to an urban area under section 1886(d)(8)(B) of the Act for purposes of the standardized amount and the wage index (42). Since publication of the May 19 proposed rule, the number of reclassifications has changed because some MGCRB decisions were still under review by the Administrator and because some hospitals decided to withdraw their requests for reclassification.

Changes to the wage index that result from withdrawals of requests for reclassification, wage index corrections, appeals, and the Administrator's review process have been incorporated into the wage index values published in this final rule. The changes may affect not only the wage index value for specific geographic areas, but also the wage index value redesignated hospitals receive; that is, whether they receive the wage index value that includes the data for both the hospitals already in the area and the redesignated hospitals. Further, the wage index value for the area from which the hospitals are redesignated may be affected.

Applications for FY 2005 reclassifications are due to the MCGRB by September 2, 2003. We note that this is also the deadline for canceling a previous wage index reclassification withdrawal or termination under § 412.273(d). Applications and other information about MCGRB reclassifications may be obtained via the CMS Internet Web site at *http://cms.hhs.gov/providers/prrb/mgcinfo.asp*, or by calling the MCGRB at (410) 786–1174. The mailing address of the MCGRB is: 2520 Lord Baltimore Drive, Suite L, Baltimore, MD 21244–2670.

As noted previously, OMB announced its new Metropolitan and Micropolitan Statistical Area definitions on June 6, 2003. However, as noted previously as well as in the proposed rule, in order to implement these changes for the IPPS, it is necessary to identify the new area designations for each county and hospital in the country. This is not possible by the September 2, 2003 deadline for reclassification by the MCGRB for FY 2005. Therefore, hospitals submitting applications for reclassification by the MCGRB for FY 2005 should base those applications on the current MSAs. We plan to move deliberately in determining the implications the new definitions will have on hospitals' reclassification requests, and we are considering addressing these implications in the FY 2005 proposed rule.

G. Requests for Wage Data Corrections

In the May 19, 2003 proposed rule, we described the process for hospitals to review and revise their FY 2000 wage data. The preliminary wage data file was made available on January 10, 2003 (and subsequently on February 4, 2003), through the Internet on CMS's Web site at: *http://www.cms.hhs.gov/providers/hipps/default.asp*. At that time, we also made available, at the same Internet address, a file showing each MSA's and rural areas's FY 2004 average hourly wage based on data then available compared to its FY 2003 average hourly wage. In a memorandum dated December 31, 2002, we instructed all Medicare fiscal intermediaries to inform the IPPS hospitals they service of the availability of the wage data file and the process and timeframe for requesting revisions (including the specific deadlines listed below). We also instructed the fiscal intermediaries to advise hospitals that these data are made available directly through their representative hospital organizations.

If a hospital wished to request a change to its data as shown in that wage data file, the hospital was to submit corrections along with complete, detailed supporting documentation to its intermediary by February 17, 2003 (this deadline was initially announced as February 10, 2003, but was changed due to the need to repost some of the data). Hospitals were notified of this deadline and of all other possible deadlines and requirements, including the requirement to review and verify their data as posted on the preliminary wage data file on the Internet, through the December 31, 2002 memorandum referenced above.

After reviewing requested changes submitted by hospitals, fiscal intermediaries transmitted any revised cost reports to CMS and forwarded a copy of the revised Worksheet S–3, Parts II and III to the hospitals by April 4, 2003. In addition, fiscal intermediaries were to notify hospitals of the changes or the reasons that changes were not accepted. These deadlines were necessary to allow sufficient time to review and process the data so that the final wage index calculation could be completed for the development of the final FY 2004 prospective payment rates to be published by August 1, 2003.

If a hospital disagreed with the fiscal intermediary's resolution of a policy issue (for example, whether a general category of cost is allowable in the wage data), the hospital could have contacted CMS in an effort to resolve the issue. We note that the April 4, 2003 deadline also applied to these requests. Requests were required to be sent to CMS at the address below (with a copy to the hospital's fiscal intermediary). The request must have fully documented all attempts by the hospital to resolve the dispute through the process described above, including copies of relevant correspondence between the hospital and the fiscal intermediary. During review, we do not consider issues such as the adequacy of a hospital's supporting documentation, as we believe that fiscal intermediaries are generally in the best position to make evaluations regarding the appropriateness of these types of issues (which should have been resolved earlier in the process).

The final wage data public use file was released in May 2003. Hospitals had an opportunity to examine both Table 2 of the proposed rule and the May 2003 final public use wage data file (which reflected revisions to the data used to calculate the values in Table 2) to verify the data CMS used to calculate the wage index.

As with the file made available in January 2003, we made the final wage data released in May 2003 available to hospital associations and the public on the internet. However, the May 2003 public use file was made available solely for the limited purpose of identifying any potential errors made by CMS or the fiscal intermediary in the entry of the final wage data that result from the correction process described above (with the February 2003 deadline). Hospitals were encouraged to review their hospital wage data promptly after the release of the May 2003 file. Data presented at that time could not be used by hospitals to initiate new wage data correction requests.

If, after reviewing the May 2003 final file, a hospital believed that its wage data were incorrect due to a fiscal

[5] Although section 1886(d)(8)(C)(iv)(I) of the Act also provides that the wage index for an urban area may not decrease as a result of redesignated hospitals if the urban area wage index is below the wage index for rural areas in the State in which the urban area is located, this was effectively made moot by section 4410 of Public Law 105–33, which provides that the area wage index applicable to any hospital that is located in an urban areas of a State may not be less than the area wage index applicable to hospitals located in rural areas in that State.

Also, section 1886(d)(8)(C)(iv)(II) of the Act provides that an urban area's wage index may not decrease as a result of redesignated hospitals if the urban area is located in a State that is composed of a single urban area.

intermediary or CMS error in the entry or tabulation of the final wage data, it was provided an opportunity to send a letter to both its fiscal intermediary and CMS that outlined why the hospital believed an error existed and provided all supporting information, including relevant dates (for example, when it first became aware of the error). These requests had to be received by CMS and the fiscal intermediaries no later than June 6, 2003.

Changes to the hospital wage data were only made in those very limited situations involving an error by the intermediary or CMS that the hospital could not have known about before its review of the final wage data file. Specifically, at this stage of the process, neither the intermediary nor CMS accepted the following types of requests:

- Requests for wage data corrections that were submitted too late to be included in the data transmitted to CMS by fiscal intermediaries on or before April 4, 2003.
- Requests for correction of errors that were not, but could have been, identified during the hospital's review of the January 2003 wage data file.
- Requests to revisit factual determinations or policy interpretations made by the intermediary or CMS during the wage data correction process.

Verified corrections to the wage index received timely (that is, by June 6, 2003) are incorporated into the final wage index in the final rule to be published by August 1, 2003, and to be effective October 1, 2003.

We have created the process described above to resolve all substantive wage data correction disputes before we finalize the wage data for the FY 2004 payment rates. Accordingly, hospitals that did not meet the procedural deadlines set forth above will not be afforded a later opportunity to submit wage data corrections or to dispute the intermediary's decision with respect to requested changes. Specifically, our policy is that hospitals that do not meet the procedural deadlines set forth above will not be permitted to challenge later, before the Provider Reimbursement Review Board, the failure of CMS to make a requested data revision (*See W. A. Foote Memorial Hospital v. Shalala*, No. 99–CV–75202–DT (E.D. Mich. 2001), also *Palisades General Hospital* v. *Thompson*, No. 99–1230 (D.D.C. 2003)).

Again, we believe the wage data correction process described above provides hospitals with sufficient opportunity to bring errors in their wage data to the fiscal intermediaries' attention. Moreover, because hospitals had access to the final wage data by early May 2003, they had the opportunity to detect any data entry or tabulation errors made by the fiscal intermediary or CMS before the development and publication of the FY 2004 wage index in this final rule, and the implementation of the FY 2004 wage index on October 1, 2003. If hospitals avail themselves of this opportunity, the wage index implemented on October 1 should be accurate. Nevertheless, in the event that errors are identified after publication in the final rule, we retain the right to make midyear changes to the wage index under very limited circumstances.

Specifically, in accordance with § 412.63(x)(2) of our existing regulations, we make midyear corrections to the wage index only in those limited circumstances in which a requesting hospital can show: (1) that the intermediary or CMS made an error in tabulating its data; and (2) that the requesting hospital could not have known about the error or did not have an opportunity to correct the error, before the beginning of FY 2004 (that is, by the June 6, 2003 deadline.) This provision is not available to a hospital seeking to revise another hospital's data that may be affecting the requesting hospital's wage index. As indicated earlier, since a hospital had the opportunity to verify its data, and the fiscal intermediary notified the hospital of any changes, we do not expect that midyear corrections would be necessary. However, if the correction of a data error changes the wage index value for an area, the revised wage index value will be effective prospectively from the date the correction is approved.

Comment: One commenter requested that CMS release all of the assumptions used in developing the MSA average hourly wage file posted on the Internet, including the midpoint of cost reporting period adjustment factors. The commenter also requested that CMS release a file with the average hourly wage by hospital prior to the proposed rule. The commenter believed that this information would facilitate a hospital's review of its wage data.

Response: We agree that providing all of the assumptions used in calculating the wage index would be useful for hospitals and other interested parties. This year, we added to our Web site a spreadsheet that can be used to calculate a hospital's average hourly wage. Beginning with the release of the FY 2005 wage index, we will also publish on our Web site the midpoint of cost reporting period adjustment factors and a file that includes the average hourly wage for each hospital.

Comment: One commenter recommended that CMS establish a wage index list server similar to those available for the various open door forums. The list server would allow CMS to e-mail interested parties when items, such as the wage index PUF and program memoranda, are released.

Response: We currently notify all hospitals, through the fiscal intermediaries, regarding all public use files and program memorandum releases pertaining to the wage index. We also post this information on the IPPS Web site (*http://cms.hhs.gov/providers/hipps/ippswage.asp*). In addition, we make announcements regarding the wage index at the hospital open door forums. To supplement these efforts, we will also begin announcing the availability of wage index files and new program memoranda on the hospital open door forum Web site, at *http://www.cms.hhs.gov/opendoor/*. Those registered with the hospital open door forum list server will be automatically notified when there are announcements at this site pertaining to the wage index. Information on registering with the hospital open door forum list server is located at the open door forum Web site.

Comment: One commenter expressed concern regarding the average hourly wage calculator available on the Internet, stating that they were unable to replicate the average hourly wage published in the proposed rule for its area hospitals using the May public use file data and the online calculator.

Response: The average hourly wage values printed in the proposed rule, published on May 19, 2003 in the **Federal Register**, reflect the data saved in our database as of February 17, 2003. Alternatively, the May public use file was updated based on data collected through May 5, 2003. Therefore, calculating an average hourly wage using the May data could yield discrepancies between the value published in the proposed rule and the number generated by the online calculator.

H. Modification of the Process and Timetable for Updating the Wage Index

In the May 19, 2003 proposed rule, we stated that although the wage data correction process described in section III.G. of the preamble of this final rule has proven successful in the past for ensuring that the wage data used each year to calculate the wage indexes are generally reliable and accurate, we continue to be concerned about the growing volume of wage data revisions initiated by hospitals after the release of the first public use file in February. This issue has been discussed previously in

the FY 1998 IPPS proposed rule (62 FR 29918) and in the FY 2002 IPPS proposed rule (66 FR 22682). In each discussion, we described the increasing number of revisions to wage data between the proposed rule and the final rule.

Currently, the fiscal intermediaries are required to conduct initial desk reviews on or before November 15 in advance of the preparation of the preliminary wage data public use file in early January (see Program Memorandum A–02–94, October 4, 2002). Furthermore, fiscal intermediaries are required to explain and attempt to resolve items that fall outside the established thresholds. This may involve further review of the supplementary documentation or contacting the hospital for additional documentation. In addition, fiscal intermediaries are required to notify State hospital associations regarding hospitals that fail to respond to issues raised during the desk review. These actions are to be completed in advance of sending the data to CMS to prepare the preliminary wage data public use file in early January. However, as we have indicated in prior **Federal Register**s, nearly 30 percent of hospitals subsequently request revisions to their data after the preliminary wage data file is made available.

This high volume of revisions results in an additional workload for the fiscal intermediaries. In particular, much of a fiscal intermediary's efforts prior to submitting the data to prepare the preliminary public use file may be in vain if the hospital subsequently revises all of its data prior to the early February deadline (which is the hospital's right at that point). Therefore, in the May 19 proposed rule, we proposed to modify the process to release the preliminary wage data file prior to requiring the fiscal intermediaries to conduct their initial desk reviews on the data. We proposed that this unaudited data would be available on the Internet by early October rather than early January. Hospitals would review this file to ensure it contains their correct data as submitted on their cost reports and request any changes by early November. At that time, the fiscal intermediaries would review the revised requests and conduct desk reviews of the data including all approved changes.

Under the proposed revised timetable, the fiscal intermediaries would notify the hospitals in early February of any changes to the wage data as a result of the desk reviews and the resolution of the hospitals' early November change requests. The fiscal intermediaries would also submit the revisions to CMS in early February. Hospitals would then have until early March to submit requests to the fiscal intermediaries for reconsideration of adjustments made by the fiscal intermediaries as a result of the desk review. Other than requesting reconsideration of desk review adjustments, hospitals would not be able to submit new requests for additional changes that were not submitted by early November. By early April, the fiscal intermediaries would notify all hospitals of their decisions regarding the hospitals' requests to reconsider desk review adjustments and submit all of the revised wage data to CMS. From this point (early April) until the publication of the final rule, the process would be identical to the current timetable. Similar to the current timetable, hospitals would also have the opportunity in early April to request CMS consideration of policy disputes.

Therefore, we proposed to revise the schedule to improve the quality of the wage index by initiating hospitals' review of their data sooner and allowing the fiscal intermediaries to focus their reviews on the final data submitted by hospitals to be included in the wage index. In addition, we would receive the revised data in time to incorporate them into the wage indexes published in the proposed rule, resulting in fewer changes from the proposed rule to the final rule. This will improve the ability of hospitals to assess whether they should request a withdrawal from a MGCRB reclassification. Because the decision of whether to withdraw a wage index reclassification must be made prior to publication of the final rule, the proposed schedule should decrease the likelihood that the final wage index will be dramatically different from the proposed wage index.

Comment: Commenters stated their appreciation of the desire to expedite the process and reduce the workload of its fiscal intermediaries, but some were concerned about the additional workload these timeframes would place on hospitals.

Some commenters were concerned about the 30-day review period for the hospitals, stating it would not be enough time to conduct a thorough and complete review of the detailed data, adding that a 45-day comment period should be the minimum review time for providers. Commenters also stated their concerns about adjusting to a new timetable while also collecting and submitting occupational mix data, and the possible adoption of the new MSA definitions for the FY 2005 wage index. They believe any changes to the timeline should be postponed until the FY 2006 wage index.

Other commenters were concerned about the additional workloads for hospitals whose fiscal year ends on June 30. These hospitals would most likely be preparing cost reports for the fiscal year just ended and this would be an additional burden. Another commenter expressed concern that the proposed rule did not mention the State hospital association notification for hospitals failing desk review edits and that the new deadlines would not afford hospitals any recourse to ensure accurate data. One commenter cited the major role its fiscal intermediary played in the delay of revisions to its wage index.

Several other commenters generally supported the proposal to modify the wage index timetable, but with some modification. The commenters asked that hospitals have 75 days from the proposed October release of the public use file to submit revised data to the fiscal intermediaries and that CMS finalize the timetable in June rather than waiting until the final rule is published. The commenters believed this would allow virtually all hospitals the time they need to do a thorough and complete review to determine the accuracy of the detail data needed to compute an accurate wage index. Commenters also believed this would give fiscal intermediaries time to respond to hospital issues raised during the desk review period.

Finally, other commenters expressed support for the timetable changes. These commenters believed the hospitals will have more time to review their wage data and there will be less of an administrative burden on fiscal intermediaries. Another commenter believed auditors' and hospitals' resources will be better utilized and this could help eliminate the problem of reauditing wage index data after revisions are submitted. Another commenter added that hospitals would be able to better determine how they compare to other hospitals and whether a reclassification would be appropriate using much more accurate data. Also, aberrant data would become more apparent earlier in the process.

Response: Although hospitals will be required to review the data sooner, they are not being asked to perform any more reviews or work than currently. Therefore, we do not believe this change will be burdensome to hospitals. Hospitals will still have sufficient time to complete a thorough review of the data, because the data for the FY 2005 wage index values will be taken from cost reporting periods beginning during FY 2001. These cost reports should have already been thoroughly reviewed

before being submitted to their fiscal intermediary and sent to CMS earlier this year.

Further, since the ultimate goal is improvement of the wage index, we believe this will be achieved with a more streamlined process in which fiscal intermediary work is not duplicated and is instead focused on the final data submitted by hospitals instead of preliminary data, of which nearly 40 percent ends up being revised under the current timetable. As noted above, these revisions under the current process often nullify the desk reviews performed by the fiscal intermediary.

We recognize the commenters' concern with respect to the interaction of this process with the collection of occupational mix data and the potential adoption of OMB's new MSA definitions. As we proceed with developing the details of the occupational mix data collection for the FY 2005 wage index, we intend to schedule that collection effort in a way that accommodates this revised timetable. The details of that schedule will be forthcoming shortly.

Finally, as previously discussed, the ability of hospitals to assess whether they should request a withdrawal from a MGCRB reclassification will also be improved, thereby decreasing the likelihood that the final wage index will be dramatically different from the proposed wage index. For these reasons, we are adopting as final the proposed revisions to the wage data development timeline and will use the revised timeline for the development of the FY 2005 wage index.

However, in order to address commenter concerns about the 30-day review period being too short, we are modifying the timetable to have the preliminary public use file on the CMS Web site in mid-September, thereby giving hospitals approximately 45 days instead of 30 days to review the preliminary wage data. Further instructions and a detailed timeline will be released in the form of a Program Memorandum.

The following table illustrates the timetable that will be applicable for the development of the FY 2005 wage index:

Timeframe	Steps in wage index development process
Mid-September	Preliminary and unaudited wage data file published as a public use file (PUF) on CMS Web site.
Mid-November	Deadline for hospitals to send requests for revisions to their fiscal intermediaries.
Early February	Fiscal intermediaries review revisions and desk review wage data; notify hospitals of changes and resolution of revision requests; and submit preliminary revised data to CMS.
Early March	Deadline for hospitals to request wage data reconsideration of desk review adjustments and provide adequate documentation to support the request.
Early April	Deadline for the fiscal intermediaries to submit additional revisions resulting from the hospitals' reconsideration requests. This is also the deadline for hospitals to request CMS intervention in cases where the hospital disagrees with the fiscal intermediary's policy interpretations.
Early May*	Release of final wage data PUF on CMS Web site.
Early June*	Deadline for hospitals to submit correction requests, to both CMS and their fiscal intermediary, for errors due to the mishandling of the final wage data by CMS or the fiscal intermediary.
August 1*	Publication of the final rule.
October 1*	Effective date of updated wage index.

*Indicates no change from prior years.

IV. Other Decisions and Changes to the IPPS for Operating Costs and GME Costs

A. Transfer Payment Policy (§ 412.4)

Existing regulations at § 412.4(a) define discharges under the IPPS as situations in which a patient is formally released from an acute care hospital or dies in the hospital. Section 412.4(b) defines transfers from one acute care hospital to another, and § 412.4(c) defines transfers to certain postacute care providers. Our policy provides that, in transfer situations, full payment is made to the final discharging hospital and each transferring hospital is paid a per diem rate for each day of the stay, not to exceed the full DRG payment that would have been made if the patient had been discharged without being transferred.

The per diem rate paid to a transferring hospital is calculated by dividing the full DRG payment by the geometric mean length of stay for the DRG. Based on an analysis that showed that the first day of hospitalization is the most expensive (60 FR 45804), our policy provides for payment that is double the per diem amount for the first day (§ 412.4(f)(1)). Transfer cases are also eligible for outlier payments. The outlier threshold for transfer cases is equal to the fixed-loss outlier threshold for nontransfer cases, divided by the geometric mean length of stay for the DRG, multiplied by the length of stay for the case, plus one day.

1. Transfers to Another Acute Care Hospital (§ 412.4(b))

Medicare adopted its IPPS transfer policy because, if we were to pay the full DRG payment regardless of whether a patient is transferred or discharged, there would be a strong incentive for hospitals to transfer patients to another IPPS hospital early in their stay in order to minimize costs while still receiving the full DRG payment. The transfer policy adjusts the payments to approximate the reduced costs of transfer cases.

Currently, when a patient chooses to depart from a hospital against the medical opinion of treating physicians, the case is treated as a left against medical advice (LAMA) discharge and coded as discharge status "07-Left Against Medical Advice (LAMA)" on the inpatient billing claim form. Because, by definition, LAMA discharges are assumed not to involve the active participation of the hospital administration, our policy has been to treat LAMA cases as discharges. This policy applies even if the patient is admitted to another hospital on the date of the LAMA discharge. Consequently, we currently make a full DRG payment for any discharge coded as a LAMA case.

However, we are concerned that some hospitals may be incorrectly coding transfers as LAMA cases. The Office of Inspector General (OIG) issued a report in March 2002 (A–06–99–00045), asserting that of the approximately 60,000 LAMA discharges annually, 1,500 patients were subsequently admitted to another IPPS hospital the same day. The OIG performed a detailed review of the medical records at selected hospitals and found evidence that the hospitals actively participated in transferring the patients to a different IPPS hospital, yet the hospital coded the claim as a LAMA. OIG cited several examples of these cases:

"In the first example, the transferring hospital did not have an inpatient room available for the patient, who had been in the emergency room for 24 hours. The medical record showed that the treating physician contacted another PPS hospital to determine whether the hospital could accept the patient. Specifically, the medical record stated: 'Upon request of the patient, [hospital name] was contacted since there is a good possibility of transferring patient to [name of hospital]. At present, he has been in emergency room for 24 hours waiting for a bed.'"

In this example, despite the overt participation of the physician in securing the admission to the other IPPS hospital and the fact that the transferring hospital did not have an inpatient room available for the patient, the claim was submitted as a LAMA discharge, rather than as a transfer to another IPPS hospital.

"In the second example, the patient was brought to the first hospital by ambulance. Subsequently, the patient's family indicated that they wanted a neurologist at another hospital to render the treatment needed by the patient. The attending physician contacted the neurologist in order to determine if the neurologist would accept, admit, and treat the patient. The medical record contained ample evidence of knowledge and participation of the transferring hospital, and the discharge should have been reported as a PPS transfer. Specifically, the medical record stated: 'Patient's family wanted to sign the patient out against medical advice and take her to [name of hospital]. The physician spoke with the neurologist at [name of hospital], who agreed to accept the patient. The patient's family signed the patient discharged against medical advice. All the risks of self-discharge were explained.'"

In this case, although the medical record indicated the patient wanted to leave against medical advice, there is also evidence that the patient's attending physician at the hospital participated in the transfer to another IPPS hospital. While we do not wish to discourage such participation and cooperation in cases where a transfer occurs, this situation would seem almost indistinguishable from other transfer situations. For instance, we have long recognized situations where patients are transferred from a rural hospital to an urban hospital for a surgical procedure, then back to the rural hospital to complete the recuperative care, as appropriate transfer situations as long as the transfers are medically appropriate. In such a case, the rural hospital would receive a payment under the transfer policy for the first portion of the stay, the urban hospital would also receive payment under the transfer policy for the care it provided, and the rural hospital would receive a full DRG payment as the discharging hospital for the recuperative care it provided upon the patient's return from the urban hospital. In such situations, each portion of the stay may be assigned a different DRG.

Therefore, in the May 19, 2003 proposed rule, we proposed to expand our definition of a transfer under § 412.4(b) to include all patients who are admitted to another IPPS hospital on the same day that the patient is discharged from an IPPS hospital, unless the first (transferring) hospital can demonstrate that the patient's treatment was completed at the time of discharge from that hospital. In other words, unless the same-day readmission is to treat a condition that is unrelated to the condition treated during the original admission (for example, the beneficiary is in a car accident later that day), any situation where the beneficiary is admitted to another IPPS hospital on the same date that he or she is discharged from an IPPS hospital would be considered a transfer, even if the patient left against medical advice from the first hospital.

Although we considered proposing a policy that would be based on whether the hospital actively participated in the transfer, and exempting from the transfer definition cases where the hospital had absolutely no knowledge that the patient intended to go to another hospital, we did not propose such a policy for two reasons. First, it would be difficult to administer equitably a policy that required a determination as to whether the hospital or the physician had knowledge of the patient's intentions. Such a policy would require fiscal intermediaries to make a difficult judgment call in many cases. Second, if we were to base the determination of whether a case is a transfer on the level of involvement of the hospital and the physician caring for the patient, we would be creating a financial disincentive to hospitals for ensuring an efficient and cooperative transfer once a decision has been made by the patient or the patient's family to leave the hospital.

We recognize that, in some cases, a hospital cannot know the patient will go to another hospital. However, we note the claims processing system can identify cases coded as discharges where the date of discharge matches the admission date at another hospital. In these cases, the fiscal intermediary will notify the hospital of the need to submit an adjustment claim. However, if the hospital can present documentation showing that the patient's care associated with the admission to the hospital was completed before discharge, consistent with our current policy, the transfer policy will not be applied.

Comment: Commenters opposed the proposed expansion of the transfer policy to include all patients who are admitted to another IPPS hospital on the same day that the patient is discharged from an IPPS hospital. They argued that situations in which a limited number of hospitals are abusing the payment rules should be handled by review of those hospitals' claims, and not through a policy change that will place additional burdens on all hospitals.

Response: We disagree that this policy expansion would create an additional burden on all hospitals. We note that it is our current policy to consider patients discharged from one IPPS hospital and admitted to another IPPS hospital on the same day as a transfer in all situations except LAMA situations, unless the original discharging hospital can document that the discharge was appropriate and unrelated to the subsequent same-day admission. We understand from the OIG that these situations are extremely rare, and in the vast majority of cases, same-day readmissions to another hospital are, in fact, transfers.

Our proposal would merely extend this current policy to LAMA situations. As is the case under our present policy, we believe it will be exceedingly rare that a patient leaves one hospital in LAMA status, and is readmitted to a second hospital on the same day for an unrelated purpose. Because the need for a hospital to supply documentation would only arise in these rare situations, we do not believe this policy change creates an additional burden for hospitals.

In relation to the appropriateness of a general policy expansion as opposed to a review and adjustment of individual hospital's claims, we believe a general policy expansion is necessary in this circumstance. As described in the proposed rule and above in this final rule, we considered proposing a policy that would be based on whether the hospital actively participated in the transfer and that would exempt from the transfer definition cases in which the hospital had absolutely no knowledge that the patient intended to go to another hospital. However, we did not propose such a policy because it would require a determination as to whether the hospital or the physician had

knowledge of the patient's intentions. We believed that if we adopted such a policy, we would be creating a financial disincentive to hospitals for ensuring an efficient and cooperative transfer once a decision has been made by the patient or the patient's family to leave the hospital.

Comment: Several commenters wrote that CMS was overreacting to anecdotal examples and that the proposed policy was "not sustainable under any application of reasonableness." They suggested that, rather than put the burden on all hospitals due to the abuse from these isolated incidents, hospitals should be evaluated from the frequency of LAMA discharges. Those that fall outside of the "norm" could be investigated, similar to the outlier studies.

Response: We agree that the problems uncovered in the OIG's report on transfers reported as LAMAs are relatively small within the overall scope of the IPPS. In fact, we made the point to OIG in our comments on a draft of its report that their findings equated with one inappropriate LAMA discharge per hospital per year. However, the OIG found this problem was not spread equally across all hospitals, but occurred disproportionately in a small number of hospitals.

We believe we are establishing clear and unequivocal policies for handling those situations that do occur and that this policy change will have a minimal impact on the majority of hospitals nationwide. Consequently, we are finalizing the change to our regulations to expand our definition of a transfer under § 412.4(b) to include all patients who are admitted to another IPPS hospital on the same day that the patient is discharged from an IPPS hospital, unless the first (transferring) hospital can demonstrate that the patient's treatment was completed at the time of discharge from that hospital, effective for discharges occurring on or after October 1, 2003.

Comment: Commenters stated that the proposed expanded definition of a transfer provides no guidance to hospitals as to what would be acceptable documentation that the patient's treatment was completed at the time of discharge. Some commenters asked whether an exact match of the principal diagnoses codes for the two admissions would be used to determine that the same-day readmission was related to the prior discharge. One commenter suggested that it would be more appropriate for the fiscal intermediary to request medical documentation from both hospitals involved in the transfer in order to determine whether a transfer payment should be made to the transferring hospital, rather than solely requesting documentation from the transferring hospital.

Another commenter asserted that CMS is placing the burden of correcting this situation on all hospitals rather than directing fiscal intermediaries to develop screens to identify these cases. In addition, they noted possible conflicts of sharing information between hospitals regarding patient care due to new HIPAA requirements.

Response: We anticipate the documentation necessary to establish that the readmission was unrelated to the prior, same-day discharge would be similar to the type of documentation relied upon by fiscal intermediaries and Quality Improvement Organizations (QIOs) to evaluate whether patients were discharged prematurely. (For example, section 4135 of the Peer Review Manual discusses discharge review.) That is, there are existing practices for determining that patients were medically unstable at discharge or the discharge was inconsistent with the patient's need for continued acute inpatient hospitalization. Therefore, there should be no breach in HIPAA disclosure requirements.

We are developing claims processing systems edits to more accurately identify transfers that are inappropriately coded as discharges. These edits identify claims that are entered with inappropriate discharge codes and will prevent payment to the second hospital if there is already a discharge from another hospital in the system for the same beneficiary on the same day. If this situation occurs, the claim from the first hospital is sent back to the hospital for correction, and the second claim is paid. We expect a similar edit that identifies same-day readmissions following a LAMA discharge would be added to the claims processing system edits.

Comment: One commenter requested clarification as to the appropriate discharge destination code in those situations when a patient left the first hospital against medical advice and the fiscal intermediary notifies this hospital of a subsequent same-day admission to another hospital.

Response: This situation is similar to those situations in which a hospital believes and intends to discharge a patient to home, but is subsequently notified that the discharge qualifies under the postacute care transfer policy because the patient received qualifying postacute care. The hospital would submit an amended bill coded to reflect the fact that the hospital now has information that the patient received subsequent care.

2. Technical Correction

Section 412.4(b)(2) defines a discharge from one inpatient area of the hospital to another area of the hospital as a transfer. Although this situation may be viewed as an intrahospital transfer, it does not implicate the transfer policy under the IPPS. In the May 19, 2003 proposed rule, to avoid confusion and to be consistent with the changes to § 412.4(b) described at section IV.A.3. of this preamble, we proposed to delete existing § 412.4(b)(2) from the definition of a transfer. We did not receive any comments on this proposal. Therefore, we are deleting existing § 412.4(b)(2) from the definition of a transfer.

3. Expanding the Postacute Care Transfer Policy to Additional DRGs (§§ 412.4(c) and (d))

Under section 1886(d)(5)(J) of the Act, a "qualified discharge" from one of 10 DRGs selected by the Secretary, to a postacute care provider is treated as a transfer case beginning with discharges on or after October 1, 1998. This section requires the Secretary to define and pay as transfers all cases assigned to one of 10 DRGs selected by the Secretary, if the individuals are discharged to one of the following postacute care settings:

- A hospital or hospital unit that is not a subsection 1886(d) hospital. (Section 1886(d)(1)(B) of the Act identifies the hospitals and hospital units that are excluded from the term "subsection (d) hospital" as psychiatric hospitals and units, rehabilitation hospitals and units, children's hospitals, long-term care hospitals, and cancer hospitals.)
- A SNF (as defined at section 1819(a) of the Act).
- Home health services provided by a home health agency, if the services relate to the condition or diagnosis for which the individual received inpatient hospital services, and if the home health services are provided within an appropriate period (as determined by the Secretary).

In the July 31, 1998 IPPS final rule (63 FR 40975 through 40976), we specified the appropriate time period during which we would consider a discharge to postacute home health services to constitute a transfer as within 3 days after the date of discharge. Also, in the July 31, 1998 final rule, we did not include in the definition of postacute care transfer cases patients transferred to a swing-bed for skilled nursing care (63 FR 40977).

Section 1886(d)(5)(J) of the Act directed the Secretary to select 10 DRGs based upon a high volume of discharges to postacute care and a disproportionate use of postacute care services. As discussed in the July 31, 1998 final rule, these 10 DRGs were selected in 1998 based on the MedPAR data from FY 1996. Using that information, we identified and selected the first 20 DRGs that had the largest proportion of discharges to postacute care (and at least 14,000 such transfer cases). In order to select 10 DRGs from the 20 DRGs on our list, we considered the volume and percentage of discharges to postacute care that occurred before the mean length of stay and whether the discharges occurring early in the stay were more likely to receive postacute care. We identified the following DRGs to be subject to the special 10 DRG transfer rule:

- DRG 14 (Intracranial Hemorrhage and Stroke with Infarction (formerly "Specific Cerebrovascular Disorders Except Transient Ischemic Attack"));
- DRG 113 (Amputation for Circulatory System Disorders Except Upper Limb and Toe);
- DRG 209 (Major Joint Limb Reattachment Procedures of Lower Extremity);
- DRG 210 (Hip and Femur Procedures Except Major Joint Procedures Age ≤17 With CC);
- DRG 211 (Hip and Femur Procedures Except Major Joint Procedures Age ≤17 Without CC);
- DRG 236 (Fractures of Hip and Pelvis);
- DRG 263 (Skin Graft and/or Debridement for Skin Ulcer or Cellulitis With CC);
- DRG 264 (Skin Graft and/or Debridement for Skin Ulcer or Cellulitis Without CC);
- DRG 429 (Organic Disturbances and Mental Retardation); and
- DRG 483 (Tracheostomy With Mechanical Ventiliation 96 + Hours or Principal Diagnosis Except Face, Mouth, and Neck Diagnoses (formerly "Tracheostomy Except for Face, Mouth, and Neck Diagnoses")).

Similar to the policy for transfers between two acute care hospitals, the transferring hospital in a postacute care transfer for 7 of the 10 DRGs receives twice the per diem rate the first day and the per diem rate for each following day of the stay before the transfer, up to the full DRG payment. However, 3 of the 10 DRGs exhibit a disproportionate share of costs very early in the hospital stay in postacute care transfer situations. For these 3 DRGs, hospitals receive 50 percent of the full DRG payment plus the single per diem (rather than double the per diem) for the first day of the stay and 50 percent of the per diem for the remaining days of the stay, up to the full DRG payment. This is consistent with section 1886(d)(5)(J)(i) of the Act, which recognizes that in some cases "a substantial portion of the costs of care are incurred in the early days of the inpatient stay."

Section 1886(d)(5)(J)(iv) of the Act authorizes the Secretary to expand the postacute care transfer policy beyond 10 DRGs. In the May 9, 2002 IPPS proposed rule, we discussed the possibility of expanding this policy to either all DRGs or a subset of additional DRGs (we identified 13 additional DRGs in that proposed rule) (67 FR 31455). However, as discussed further in the August 1, 2002 final rule (65 FR 50048), we did not expand the postacute care transfer provision to additional DRGs for FY 2003. The commenters on the options in the May 9, 2002 proposed rule raised many issues regarding the impact of expanding this policy that we needed to consider further before proceeding. In particular, due to the limited time between the close of the comment period and the required publication date of August 1, we were unable to completely analyze and respond to all of the points that were raised. We indicated that we would continue to conduct research to assess whether further expansion of this policy may be warranted and, if so, how to design any such refinements.

Many commenters on the May 9, 2002 proposed rule argued that, in a system based on averages, expansion of the postacute care transfer policy negatively influences, and in fact penalizes, hospitals for efficient care. They claimed that this policy indiscriminately penalizes hospitals for efficient treatment and for ensuring that patients receive the right care at the right time in the right place. They believed that the postacute care transfer provision creates an inappropriate incentive for hospitals to keep patients longer.

Commenters also expressed concern that the expansion of the transfer provision violates the fundamental principle of the IPPS. The DRG system is based on payments that will, on average, be adequate. These commenters argued that expansion of the postacute care transfer policy would give the IPPS a per-diem focus and would mean that hospitals would be paid less for shorter than average lengths of stay, although they would not be paid more for the cases that are longer than average (except for outlier cases).

We agree that the transfer policy should not hamper the provision of effective patient care. We also agree that any future expansion must consider both the need to reduce payments to reflect cost-shifting out of the acute care setting due to reductions in length of stay attributable to early transfers to postacute care and the need to ensure that payments, on average, remain adequate to ensure effective patient care. Therefore, we have assessed the extent to which the current postacute care transfer policy balances these objectives.

The table below displays the results of our analysis. We first examined whether the 10 DRGs included in the policy continue to exhibit a relatively high percentage of cases transferred to postacute care settings, particularly among cases with lengths of stay shorter than the geometric mean for the DRG (these cases would be affected by the reduced payments for transfers). The table shows that these DRGs continue to contain high percentages of cases transferred to postacute care settings similar to those we reported in the FY 1999 final rule (63 FR 40975). These results would appear to demonstrate that the postacute care transfer policy has not greatly altered hospitals' treatment patterns for these cases.

This similarity in treatment patterns is further evidenced by the fact that, for 6 of the 10 DRGs, the geometric mean length of stay has continued to decline in the 5 years since the policy was implemented. Accordingly, hospitals have continued to transfer many patients in these DRGs before the mean length of stay, despite the transfer policy. As we stated in the July 31, 1998 final rule, the transfer provision adjusts payments to hospitals to reflect the reduced lengths of stay arising from the shift of patient care from the acute care setting to the postacute care setting (63 FR 40977). This policy does not require a change in physician clinical decisionmaking nor in the manner in which physicians and hospitals practice medicine: It simply addresses the appropriate level of payments once those decisions have been made.

With respect to whether this policy alters the fundamental averaging principles of the IPPS, we believe the current policy, which targets specific DRGs where evidence shows hospitals have aggressively moved care to postacute care settings, does not alter the averaging principles of the system. In fact, it could be said to enhance those principles because a transfer case is counted as only a fraction of a case toward DRG recalibration based on the ratio of its transfer payment to the full DRG payment for nontransfer cases. This methodology ensures the DRG

weight calculation is consistent with the payment policy for transfer cases. The last column of the table below indicates that all but three of these DRGs have experienced increases in DRG weights since the policy was implemented. By reducing the contribution of transfer cases to the calculation of the DRG average charge, the relative weights (the result of dividing the DRG average charge by the national average charge per case) are higher than they would otherwise be. This is because transfers, particularly short-stay transfers, have lower total charges, on average.

DRG	DRG title	All transfer cases	Percent of all cases transferred to postacute care setting	Percent of all cases transferred prior to mean length of stay	Percent change in mean length of stay FYs 1992–1998	Percent change in mean length of stay FYs 1998–2003	Percent change in DRG relative weight FYs 1998–2003
14	Intracranial Hemorrhage and Stroke with Infarction.	143,649	48.88	11.74	−29.17	−5.88	8.53
113	Amputation for Circulatory System Disorders Except Upper Limb and Toe.	24,470	66.57	30.12	−32.17	7.22	9.21
209	Major Joint and Limb Reattachment Procedures of Lower Extremity.	244,969	66.66	19.76	−47.52	−15.09	−8.09
210	Hip and Femur Procedures Except Major Joint Age >17 With CC.	87,253	76.26	35.67	−42.98	−6.15	0.1
211	Hip and Femur Procedures Except Major Joint Age >17 Without CC.	20,239	72.38	15.89	−44.44	−8.00	1.39
236	Fractures of Hip and Pelvis	26,583	69.86	11.20	−34.85	−6.98	−1.43
263	Skin Graft and/or Debridement for Skin Ulcer or Cellulitis with CC.	13,158	62.00	31.35	−41.45	4.49	9.36
264	Skin Graft and/or Debridement for Skin Ulcer or Cellulitis Without CC.	1,759	49.97	18.81	−37.21	1.85	5.36
429	Organic Disturbances and Mental Retardation.	30,349	53.25	15.22	−28.95	−12.96	−5.27
483	Tracheostomy With Mechanical Ventilation 96 + Hours or Principal Diagnosis Except Face, Mouth, and Neck Diagnoses.	21,818	52.93	27.34	−15.29	2.37	1.38

We indicated in the proposed rule that we believe the current 10 DRG postacute care transfer policy appears to be appropriately balancing the objectives to reduce payments to reflect cost-shifting due to reductions in length of stay attributable to early postacute care transfers and to ensure that payments, on average, remain adequate to ensure effective patient care. Therefore, we once again undertook the analysis to identify additional DRGs to which the policy might be expanded.

However, we did not propose to expand the policy to all DRGs. Although we indicated that expanding the postacute care transfer policy to all DRGs might be the most equitable approach because a policy that is limited to certain DRGs may result in disparate payment treatment across hospitals, at this time, we believe an incremental expansion is appropriate. That is, we believe further analysis is necessary to assess whether it would be appropriate to apply a reduced payment for postacute care transfers across all DRGs. In particular, it is important to attempt to distinguish between DRGs where the care is increasingly being shifted to postacute care sites versus DRGs where some patients have always been discharged to postacute care early in the stay. It may not be appropriate to reduce payment for these latter DRGs if the base payment already reflects a similar postacute care utilization rate (for example, in these cases there would be no cost shifting).

As described below, we proposed an additional 19 DRGs, based on declining mean lengths of stay and high percentages of postacute transfers, for which an expansion of the current policy appeared warranted.

We also noted that MedPAC has conducted analysis on the current postacute care transfer policy. Most recently, in its March 2003 Report to Congress, MedPAC recommended adding 13 additional DRGs to the 10 DRGs covered under the current policy (page 46). The 13 DRGs were the same DRGs included in one of our proposals to expand the postacute care transfer policy in last year's IPPS proposed rule. MedPAC did not recommend expanding the policy to include all DRGs at this time, noting that this expansion might reduce payments to some hospitals by as much as 4 percent. Rather, it suggested evaluating the impact of a limited expansion before extending the policy to more DRGs.

MedPAC's report cites several reasons for expanding the postacute care transfer policy beyond the current 10 DRGs. First, it notes the continuing shifts in services from the acute care setting to the postacute care setting. Second, the report points to different postacute care utilization for different hospitals, particularly based on geographic location. Third, the report states: "the expanded transfer policy provides a better set of incentives to protect beneficiaries from potential premature discharge to postacute care." Fourth, MedPAC notes that the policy improves payment equity across hospitals by: reducing payments to hospitals that transfer patients to postacute care while making full payments to hospitals that provide all of the acute inpatient services in an acute care setting; and maintaining more accurate DRG weights that reflect the true resource utilization required to provide the full course of acute inpatient care, as distinguished from the partial services provided to patients who are transferred to postacute care.

Since the publication of last year's rule, we have conducted an extensive analysis to identify the best method by which to expand the postacute care transfer policy. Similar to the analysis used to identify the current 10 DRGs, in the May 19, 2003 proposed rule, we proposed to identify DRGs with high postacute care transfer rates and at least 14,000 transfer cases. However, rather than ranking DRGs on the basis of the percentage of all postacute care transfers, we proposed to rank DRGs on the basis of the percentage of postacute care transfers occurring before the DRG geometric mean length of stay. This is because only transfers that occur before the geometric mean length of stay, minus one day due to the policy that hospitals receive double the per diem for the first day, are impacted by the transfer policy. In order to focus on those DRGs where this policy would have the most impact, we proposed to include only DRGs where at least 10 percent of all cases were transferred to postacute care before the geometric mean length of stay. (We note that preceding sentence was stated incorrectly in the proposed rule. The criterion should have read "at least 10 percent of all cases that were transferred to postacute care were transferred before the geometric mean length of stay.") The next proposed criterion is to identify DRGs with at least a 7-percent decline in length of stay over the past 5 years (from FY 1998 to FY 2003). This criterion would focus on those DRGs for which hospitals have been most aggressively discharging patients sooner into postacute care settings. Finally, we proposed to include only DRGs with a geometric mean length of stay of at least 3 days because the full payment is reached on the second day for a DRG with a 3-day length of stay.

Using these criteria, we proposed 19 additional DRGs to include in the postacute care transfer policy. However, some of the 13 DRGs proposed last year (and included in MedPAC's proposed expansion) were not included in the May 19, 2003 proposed rule. For example, DRGs 79 and 80 (Respiratory Infections and Inflammations Age >17 With and Without CC, respectively) were included in last year's proposed expansion but were not included in the proposed rule for FY 2004. DRGs 79 and 80 were excluded from the proposed rule because they did not exhibit a decline in length of stay of at least 7 percent over the past 5 years.

We noted that 7 of the proposed 19 DRGs are paired DRGs (that is, they contain a CC and no-CC split). Because these DRGs are paired DRGs (that is, the only difference in the cases assigned to DRG 130, for example, as opposed to DRG 131 is that the patient has a complicating or comorbid condition), we proposed to include both DRGs under this expanded policy. If we were to include only DRG 130 in the transfer policy, we believed there would be an incentive for hospitals not to include any code that would identify a complicating or comorbid condition, so that a transfer case would be assigned to DRG 131 instead of DRG 130.

Using the selection criteria described above, we proposed the following 19 DRGs to include under the postacute care transfer policy (in addition to the 10 DRGs already subject to the policy).

DRG	DRG title	All transfer cases	Percent of all cases transferred to postacute care setting	Percent of all cases transferred prior to mean length of stay	Percent change in mean length of stay FYs 1992–1998	Percent change in mean length of stay FYs 1998–2003
12	Degenerative Nervous System Disorders	39,034	54.13	13.10	−21.74	−12.00
24	Seizure and Headache Age >17 With CC	19,239	35.67	11.63	−20.75	−7.69
25	Seizure and Headache Age >17 Without CC	4,738	19.15	2.15	−14.29	−10.71
89	Simple Pneumonia and Pleurisy Age > 17 With CC.	175,441	34.86	11.37	−18.31	−11.11
90	Simple Pneumonia and Pleurisy Age >17 Without CC.	9,544	20.86	2.82	−20.37	−15.00
121	Circulatory Disorders With AMI and Major Complication, Discharged Alive.	79,242	52.52	20.46	−21.95	−11.67
122	Circulatory Disorders With AMI Without Major Complications Discharged Alive.	33,028	48.91	24.09	−26.67	−23.08
130	Peripheral Vascular Disorders With CC	31,106	37.78	14.27	−13.11	−11.76
131	Peripheral Vascular Disorders Without CC	5,723	23.08	5.42	−4.44	−19.51
239	Pathological Fractures and Musculoskeletal and Connective Tissue Malignancy.	23,188	53.54	21.96	−22.67	−7.55
243	Medical Back Problems	36,772	41.49	13.61	−14.00	−7.50
277	Cellulitis Age >17 With CC	35,015	37.77	14.03	−21.43	−7.84
278	Cellulitis Age >17 Without CC	6,526	22.05	3.11	−18.87	−10.00
296	Nutritional and Miscellaneous Metabolic Disorders Age >17 With CC.	104,216	40.05	11.88	−21.67	−9.30
297	Nutritional and Miscellaneous Metabolic Disorders Age >17 Without CC.	12,649	28.03	2.17	−17.50	−10.00
320	Kidney and Urinary Tract Infectious Age >17 With CC.	77,669	44.64	12.40	−23.88	−8.51
321	Kidney and Urinary Tract Infections Age >17 Without CC.	8,610	29.90	5.67	−20.41	−13.89
462	Rehabilitation	147,211	56.59	22.69	−22.54	−11.43
468	Extensive O.R. Procedure Unrelated to Principal Diagnosis.	24,783	44.51	18.53	−20.30	−7.07

We proposed to revise § 412.4(d) to incorporate these additional 19 DRGs as qualifying DRGs for transfer payments and to make a conforming change to § 412.4(c).

We also examined whether any of these DRGs would qualify for the alternative payment methodology of 50

percent of the full DRG payment plus the per diem for the first day of the stay, and 50 percent of the per diem for the remaining days of the stay, up to the full DRG payment specified in existing regulations under § 412.4(f). To identify the DRGs that might qualify, we compared the average charges for all cases with a length of stay of 1 day to the average charges of all cases in a particular DRG. To qualify for the alternative methodology, we indicated that the average charges of 1-day discharge cases must be at least 50 percent of the average charges for all cases in the DRG.

Based on this analysis, we determined that 5 out of the proposed 19 DRGs would qualify for this payment method (DRGs 25, 122, 131, 297, and 321). However, the fact that the average charges of 1-day stays equal at least 50 percent of the average charges for all cases in these DRGs is due to the very short lengths of stay for these DRGs. Therefore, we did not propose to include them in the alternative payment methodology. For example, for a DRG with a 3-day geometric mean length of stay, full DRG payment will be made on the second day of the stay, regardless of which payment methodology is used. Therefore, in the May 19, 2003 proposed rule, we proposed that none of the 19 additional DRGs that we were proposing to add to the postacute care transfer policy would be paid under the alternative payment methodology.

We also analyzed the 10 DRGs that are currently subject to the postacute care transfer policy. Of the three DRGs that are receiving payments under the special payment (transfers after 1 day incur charges equal to at least 50 percent of the average charges for all cases). Unlike the five DRGs that would otherwise meet this criterion, the geometric mean length of stay of both DRG 209 and 211 is over 4 days. In addition, DRG 210 is currently paid under the special payment methodology, but our current analysis indicates average charges for 1-day stays are less than 50 percent of the average charges for all cases in the DRG. Nonetheless, DRG 210 is paired with DRG 211, which meets the criteria. Therefore, we proposed that DRG 210 would continue to be paid under the special payment methodology. Similar to our rationale for including both paired DRGs when one qualifies for inclusion in the postacute care transfer policy, we proposed to include both DRGs in this pair under the special payment methodology. Accordingly, we proposed that only DRGs 209, 210, and 211 that are currently paid under the alternative transfer payment methodology would continue to be paid under this methodology.

Finally, we noted that the OIG has prepared several reports that examined hospitals' compliance with proper coding of patients' discharge status as transferred under our guidelines, and has found substantial noncompliance leading to excessive payments.[6] Specifically, the OIG found hospitals submitting claims indicating the patient had been discharged when, in fact, the patient was transferred to a postacute care setting. As we indicated in the May 8, 1998 **Federal Register** (63 FR 25593), hospitals found to be intentionally engaging in such practices may be investigated for fraudulent or abusive billing practices. We intend to work with the OIG to develop the most appropriate response to ensure all hospitals are compliant with our guidelines.

Comment: Many commenters argued that any expansion of the postacute care transfer policy, and even the policy itself, undermines clinical decisionmaking and penalizes hospitals for providing the right care at the right time and in the right setting. Commenters further argued that the policy itself violates the original premise of the IPPS, because it makes it difficult or impossible for hospitals to break-even on patients who receive postacute care after discharge. One commenter argued that hospitals lose if patients are discharged prior to the mean length of stay, and they lose if patients are discharged after the mean length of stay.

Commenters also argued the postacute care transfer policy is not good policy because it may create a perverse incentive for hospitals to increase patients' lengths of stay. One commenter expressed concern that longer lengths of stay would result from a shift in focus from per-case cost control to per-day cost control. The commenter suggested that this policy sends a conflicting message to hospital administrators who have taken steps recently to reduce their hospitals' average lengths of stay.

Some commenters pointed out that the postacute care transfer policy fails to acknowledge or recognize that, for many patients, postacute care is already reflected in the IPPS base payment rate for many DRGs. In particular, hospitals in certain regions of the country have historically had lower average lengths of stay, and therefore, these hospitals are disproportionately impacted by this policy.

Other commenters suggested the DRG relative weights are self-adjusting, and as patients spend less time in the acute care setting and costs decrease, the DRG relative weights will begin to fall. Therefore, there is no need for a postacute care transfer policy.

Commenters also noted the increasing costs of dealing with these higher cost cases, and that transfer payments do not adequately cover the costs of the newer and better treatment that is resulting in shorter lengths of stay. Commenters objected to the expansion of the policy due to the current financial pressure that many hospitals are currently under because of nursing shortages, inadequate Medicare payment for services they provide, and increasing costs associated with malpractice and insurance costs and increasing costs of pharmaceuticals and equipment. They also noted the financial burden in preparing to treat the aging "baby boomer" generation and costs associated with emergency management preparation.

Commenters argued that many hospitals are suffering as a result of not receiving the full market basket update (accounting for inflation each year), and further expansion of the postacute care transfer policy will further limit their resources. In addition, they argued, Congress already addresses the issues of shorter lengths of stay when it determines the market basket update each year. In effect, they claimed, hospitals whose lengths of stay decline significantly are not praised, but penalized—twice—for their efforts to provide better care. One commenter wrote to "respectfully submit that to deal with fraudulent providers in this sweeping manner is inconsistent and inappropriate."

Response: We disagree that the postacute care transfer policy is contrary to the fundamental theory of the IPPS. Concern that hospitals would shift a portion of the acute care services to other providers in response to the incentives of the IPPS has been an ongoing concern. In fact, in response to a comment during the first year of the IPPS on the hospital-to-hospital transfer policy, we stated that "(t)he rationale for per diem payments as part of our transfer policy is that the transferring hospital generally provides only a limited amount of treatment. Therefore, payment of the full prospective payment rate would be unwarranted" (49 FR 244). We also note that in its earliest update recommendations, the Prospective Payment Assessment Commission (a predecessor to MedPAC) included what it called a site-of-service substitution adjustment to account for the shifting of portions of inpatient care to other settings.

We disagree that the postacute care transfer policy creates a perverse incentive to keep patients in the hospital longer than necessary. Our view is the policy simply responds to changing medical practice and addresses the appropriate level of payment once clinical decisions about the most appropriate care in the most appropriate setting have been made. The validity of this position is substantiated by the finding that the geometric mean length of stay for 6 of the 10 DRGs currently included in the policy have continued to fall since the policy was implemented.

In regard to the comment that the policy fails to recognize that the DRG base payments reflect some degree of postacute care, we note that the policy is intended to recognize that, since the implementation of the IPPS, the use of postacute care has generally increased. For many DRGs, the use of postacute care continues to increase at a high rate. However, an increase in the frequency of the use of postacute care does not, by itself, necessitate a policy response. If patients continue to receive the full course of acute care in the IPPS setting prior to transfer, a full DRG payment is warranted. However, if patients begin to be transferred to postacute care settings to receive care that, during the IPPS base period, was provided in the IPPS setting, paying a full DRG would not be appropriate because some of the care on which the full DRG payment is based is now being provided in the postacute care setting.

This shift in the setting where care is provided is not accounted for through DRG recalibration. During recalibration, reductions in the relative weights of certain DRGs result in increases in the weights of other DRGs. Therefore, there is no net reduction in the IPPS payments to hospitals, even though some of the care that used to be provided in the acute inpatient setting is now provided elsewhere.

Comment: Commenters took issue with our evaluation of the impact of the postacute care transfer policy on the averaging aspects of the IPPS if the policy were expanded. Pointing to our statement in the August 1, 2002 **Federal Register** that we intended to undertake a more comprehensive analysis of this issue, some commenters stated that we did not provide such a comprehensive analysis or include a discussion of the topic in the proposed rule.

However, other commenters expressed appreciation for our analysis of the impacts of the existing policy in the proposed rule. One commenter noted that we had made some interesting and potentially valid points that an expanded transfer policy would eliminate or reduce some of the problems caused by making national average payments to all hospitals, regardless of treatment patterns and patient-mix within specific DRGs (although this commenter suggested that we address the payment inequities caused by expensive short-stay cases, or "inliers").

Several commenters noted that the recalculation of weights in the affected DRGs is unfair because, in the system of averages, transfers are accounted for as only partial cases but the remaining cases are not adjusted upward. The commenter wrote: "[i]f a DRG's length of stay is declining, doesn't that suggest recalibration of the relative weight?" The commenter believed inclusion of reduction in length of stay criteria "begs the question of what is the true average length of stay for these particular DRGs. If these DRGs are experiencing a large percentage of cases transferred prior to the average length of stay, it logically follows that the average length of stay would be less."

Response: We regret that commenters perceived that we neglected to address this important issue. Our point in evaluating the DRG relative weights for the 10 DRGs that are currently included in the policy was to make the point that reducing the contribution of transfer cases in the DRG relative weight recalibration enhances the averaging mechanism for these DRGs. By treating transfer cases as less than a full discharge (reducing the denominator), we effectively inflate the charges (the numerator) to reflect the higher charges that would have occurred if the patient had been transferred. This increases, rather than decreases, the average charges (and thus the relative weights) for the affected DRGs.

For example, the DRG weights for each of these 10 DRGs declined over the 5-year period (FYs 1993 through 1998) immediately preceding the implementation of this policy. However, as shown in the table above, the DRG weights for all but three of these DRGs have increased during the 5-years since implementation of this policy. Payments for all cases in these DRGs were declining as the number of cases being transferred to postacute care increased and the average length of the inpatient acute stay decreased. However, since implementation of the policy, payments for the cases that are not implicated under this policy are rising in most of the 10 DRGs. In those DRGs where the relative weight has declined in over the 5-year period since implementation of this policy, the geometric mean length of stay has continued to decline.

As discussed above, the premise of the postacute care transfer policy is that hospitals have shifted some of the acute care formerly provided in the hospital into the postacute care setting. This distorts the averaging principle of the IPPS because the average case is now less expensive without a corresponding adjustment to the base rate. However, a high percentage of postacute care utilization by cases in a particular DRG does not, by itself, create a distortion, if the high postacute care utilization was also reflected in the calculation of the base rate.

Therefore, to ensure that any proposed expansion of the postacute care transfer policy did not improperly distort the averaging principles of the IPPS, we evaluated the change in the mean lengths of stay for the DRGs we proposed to add to the policy to identify those in which the high postacute care utilization is resulting in shorter lengths of stay and lower costs. These shorter stays represent a shift in the site (and costs) of care relative to the base period, and, thus, a distortion in the averaging principle of the IPPS.

Comment: Several commenters argued that the postacute care transfer policy is no longer necessary, as lengths of stay have stabilized and Medicare spending on postacute care has slowed. In particular, commenters pointed to the transition of postacute care provider types to prospective payment systems, which reduces the incentives for postacute care providers to agree to admit very sick patients from an acute care hospital. One commenter argued that the concept of duplicate payment for the same care is a misconception when both the acute and the postacute care providers are paid under a prospective payment system.

Commenters claimed the policy puts an undue burden on them to be required to track patients after they are discharged to another setting. They claimed this creates an "unworkable" situation for them by making hospitals track patients and requiring frequent payment and claim readjustments. They noted the relatively small payment impact for all hospitals (only 0.2 percent) compared to the administrative burden hospitals will incur to administer the expansion of the policy.

Response: We agree that postacute care providers are likely to be less willing to admit very sick patients under prospective payment systems than they were under cost reimbursement payment methodologies.

[6] The OIG report identification numbers are: A–04–00–02162, A–04–00–01210, A–04–0122, and A–04–02–07005.

However, the incentives for acute care hospitals to reduce costs by transferring patients to a postacute care setting remain as strong as ever. Furthermore, duplicate payments would still exist if the acute care hospital is shifting costs for which it is paid under the IPPS to a postacute care provider; that is, receiving payment for the care under a prospective payment system (potentially at a rate even higher than its costs). Therefore, we believe there is still a need for the postacute care transfer policy, despite the adoption of prospective payment systems for most postacute care providers under Medicare. Similarly, it is appropriate to evaluate the need to expand the policy.

Comment: Commenters suggested that, under our proposed criterion for selecting additional DRGs to cover under the policy, we should apply the same criteria to the existing postacute care transfer DRGs as to the new proposed DRGs. These commenters pointed out that 7 of the 10 DRGs would not qualify under these criteria, and should no longer be included in the policy.

One commenter argued that DRG 209 should be removed from the current list of DRGs subject to the postacute care transfer policy because the rate of decline in the average length of stay for this DRG had fallen dramatically since its inclusion in the postacute care transfer policy.

In addition, one commenter applied the proposed criteria to more recent data and determined some of the DRGs proposed to be included in the policy no longer met all the criteria. Specifically, the commenter found that 11 of the 19 DRGs proposed to be included in the transfer policy fail to meet the criterion that at least 10 percent of the postacute care transfer cases occur prior to the geometric mean length of stay.

Several commenters also noted that it appears our analysis identifying the 19 DRGs that were proposed to be added to the list included transfers from IPPS-exempt units. The commenters added that these units are not subject to the postacute care transfer policy and should not have been included in the analysis. The commenters pointed out that DRG 462 (Rehabilitation) only qualifies as a result of the inclusion of transfers from IPPS-exempt units in the analysis.

Response: We do not believe it is necessary to evaluate whether the lengths of stay for the DRGs currently included in the policy are declining. One would expect that, to the extent patients were being transferred early in the episode of care to a postacute care setting in order to minimize costs to the acute care hospital (as opposed to a general shift in the clinical care for particular cases, which is more likely to result in a continued drop in the length of stay despite the inclusion of the DRG in the transfer policy), inclusion of a particular DRG in the postacute care transfer policy would be likely to stabilize the mean length of stay for the DRG. Therefore, we did not evaluate the current DRGs included in the policy to the 7-percent decline in the length of stay criterion.

We also note that included in the commenter's list of 11 DRGs that it claim did not meet the new criteria, 6 of these DRGs are paired DRGs and were not selected based on meeting the criteria, but rather were included due to the paired nature of the DRG.

We have analyzed the remaining 5 DRGs the commenter identified as having not met the criteria that at least 10 percent of all postacute care transfer cases occur before the geometric mean length of stay. However, it appears the commenter divided the total number of transfer cases by the total number of cases in the DRG, rather than dividing by the number of postacute care transfer cases. Using the data the commenter provided to us, we found that all but 1 DRG met the 10 percent short-stay transfer definition we had proposed, with one DRG being a pair to another DRG that does meet the criterion.

However, we do agree with the notion that, to be included in the postacute care transfer policy, DRGs currently included in the policy should continue to meet all of the other applicable criteria. In addition, concerns from the commenters encouraged us evaluate whether the variation from year to year might also needs to be accounted for in our new criteria. Therefore, in order to improve the year-to-year stability of all the DRGs included in the policy, in this final rule, we are adding the requirement that the criteria must be met during both of the 2 most recent years for which data are available. That is, to be included in the policy, a DRG must have, for both of the 2 most recent years for which data are available:

- At least 14,000 cases postacute care transfer cases;
- At least 10 percent of its postacute care transfers occurring before the geometric mean length of stay;
- A geometric mean length of stay of at least 3 days; and
- If a DRG is not already included in the policy, a decline in its geometric mean length of stay during the most recent 5 year period of at least 7 percent.

Applying these criteria, we determined that DRG 263 no longer qualifies (there were only 13,588 postacute care transfer cases in this DRG during FY 2002). In addition, this is a paired DRG with DRG 264. Therefore, for FY 2004, we are no longer including DRGs 263 and 264 in the postacute care transfer policy.

We also corrected the programming error noted by the commenters that allowed IPPS-exempt units to be included in the analysis. Removing these units from the analysis resulted in the exclusion of some DRGs that were proposed to be included in the policy, and the inclusion of some new DRGs. The table below displays all the DRGs that met the criteria during both of the 2 most recent years available (FYs 2001 and 2002), as well as their paired-DRG if one of the DRGs meeting the criteria includes a CC/no-CC split.

DRG	DRG title	DRG title care transfer cases	Percent of all cases transferred prior to mean length of stay	Percent change in mean length of stay FYs 1998–2003
12	Degenerative Nervous System Disorders	28,103	31.42	−12.00
14	Intracranial Hemorrhage and Stroke with Infarction	138,636	22.84	−5.88
24	Seizure and Headache Age >17 With CC	19,306	15.85	−7.69
25	Seizure and Headache Age >17 Without CC	4,695	10.46	−10.71
88	Chronic Obstructive Pulmonary Disease	95,249	24.88	−10.87
89	Simple Pneumonia nad Pleurisy Age >17 With CC	175,526	31.83	−11.11
90	Simple Pneumonia and Pleurisy Age >17 Without CC	47,987	12.51	−15.00
113	Amputation for Circulatory System Disorders Except Upper Limb and Toe	24,810	45.31	7.22
121	Circulatory Disorders With AMI and Major Complication, Discharged Alive	55,629	22.42	−11.67
122	Circulatory Disorders With AMI Without Major Complications Discharged Alive.	71,838	10.53	−23.08

DRG	DRG title	DRG title care transfer cases	Percent of all cases transferred prior to mean length of stay	Percent change in mean length of stay FYs 1998–2003
127	Heart Failure & Shock	196,581	24.18	8.89
130	Peripheral Vascular Disorders With CC	29,859	21.92	−11.76
131	Peripheral Vascular Disorders Without CC	26,455	20.16	−19.51
209	Major Joint and Limb Reattachment Procedures of Lower Extremity	247,513	29.20	−15.09
210	Hip and Femur Procedures Except Major Joint Age >17 With CC	89,612	46.77	−6.15
211	Hip and Femur Procedures Except Major Joint Age >17 Without CC	20,584	21.89	−8.00
236	Fractures of Hip and Pelvis	24,633	11.26	−6.98
239	Pathological Fractures and Musculoskeletal and Connective Tissue Malignancy.	23,184	40.44	−7.55
277	Cellulitis Age >17 With CC	35,873	36.56	−7.84
278	Cellulitis Age >17 Without CC	31,857	13.24	−10.00
294	Diabetes Age >35	29,608	17.65	−15.00
296	Nutritional and Miscellaneous Metabolic Disorders Age >17 With CC	106,923	29.26	−9.30
297	Nutritional and Miscellaneous Metabolic Disorders Age >17 Without CC	48,116	7.25	−10.00
320	Kidney and Urinary Tract Infections Age >17 With CC	80,717	27.38	−8.51
321	Kidney and Urinary Tract Infections Age >17 Without CC	30,934	18.34	−13.89
395	Red Blood Cell Disorders Age >17	23,053	25.27	−11.11
429	Organic Disturbances and Mental Retardation	14,731	46.30	−12.96
468	Extensive O.R. Procedure Unrelated to Principal Diagnosis	25,114	41.26	7.07
483	Tracheotomy With Mechanical Ventilation 96 + Hours or Principal Diagnosis Except Face, Mouth, and Neck Diagnoses.	20,034	49.56	2.37

Transfers to postacute care from the DRGs listed in the above table will be included under this policy, effective for discharges occurring on or after October 1, 2003. As a result of our analysis in which we applied the new qualifying criteria, we removed DRG 263 and DRG 264 from the current list of 10 DRGs, and we removed DRG 243 and DRG 462 from the proposed list of additional 19 DRGs. However, we added four new DRGs (that were not included in our proposal) to the policy based on this analysis: DRG 88 (Chronic Obstructive Pulmonary Disease); DRG 127 (Heart Failure and Shock); DRG 294 (Diabetes Age >35); and DRG 395 (Red Blood Cell Disorders, Age >17). We will review and update this list periodically to assess whether additional DRGs should be added or existing DRGs should be removed.

Comment: One commenter contested the automatic inclusion of both DRGs in a paired-DRG combination. The commenter believed any incentive for hospitals not to include a code that would identify a complicating or comorbid condition would be very limited and would have negligible effect on hospital behavior. However, the commenter asserted that if CMS is going to include both DRGs in a paired-DRG combination, CMS must combine the data for the two DRGs when applying the selection criteria.

Response: We include both DRGs from a paired-DRG combination because if we were to include only the "with CC" DRG from a "with/without CC" DRG combination in the transfer policy, there would be an incentive for hospitals not to include any code that would identify a complicating or comorbid condition. We believe our approach of identifying either DRG from a paired-DRG combination individually for inclusion in the policy is appropriate.

Comment: One commenter argued that DRG 468 should not be included in the policy because of the variation in the types of cases included in this DRG. The commenter pointed out that the cases in the DRG are, by definition, atypical, and the average lengths of stay for procedures included in this DRG vary widely. The commenter noted that "every year CMS makes changes to the list of procedures that are assigned to this DRG. Therefore, a comparison of length of stay over time is not valid because the types of cases in the DRG change every year. The criterion that length of stay must have decreased by 7 percent compared to 1998 cannot be applied to DRG 468." The commenter added that application of a per diem payment based on a mean length of stay to a DRG that contains such a wide variety of different types of cases will result in extreme inequities.

One commenter argued for the exclusion of DRG 483 from the policy. The commenter argued that due to the large variation of lengths of stay for treatments in this DRG, the transfer policy has a very significant impact on payment for these cases that is unrelated to the use of postacute care.

Response: We disagree that DRG 468 should be excluded from the policy because of the variation in the types of cases within this DRG. Over 40 percent of transfers to postacute care within this DRG occurred before the geometric mean length of stay. Although it is true the nature of this DRG makes it difficult to assess whether there is a trend to shift care out of the acute care setting into the postacute care setting or there is just a different mix of cases being assigned to this DRG, we believe it is equitable to adjust payments for short-stay cases transferred to postacute care within this DRG. As noted above, application of this policy in the DRG recalibration process results in an overall increase in the payments for other cases in the DRG. Given the heterogeneous nature of this DRG, we believe this is appropriate.

We have addressed similar concerns in the past with respect to the inclusion of DRG 483 in this policy.

Comment: One comment noted that DRGs 121 and 122 should be included in the special payment provision due to the fact that "these cases receive the most resource intensive services within the first day of the stay due to the acute nature of a myocardial infarction * * * [including care in] intensive care units, costly IV drug infusions, and multiple tests and monitoring."

Response: Based on the revised list of DRGs that meet the criteria as described above, we analyzed which of these DRGs qualified for the special payment methodology. The only DRGs that had charges for short-stay transfer cases on the first day of stay that were greater than 50 percent of the average charges of all cases across the DRG were DRGs 209 and 211 (71 percent and 57 percent, respectively). Because DRG 211 is paired with DRG 210, we included DRG 210 in the payment policy as well (our analysis showed that short-stay transfer cases had 40 percent of costs on the first

day of the stay compared to costs for all cases across the DRG). However, DRGs 121 and 122 did not meet the 50 percent threshold.

Comment: Commenters again noted their objection to the expansion of the policy to all DRGs, even though we did not propose to expand the policy to all DRGs at this time. They refer to the language in section 1886(d)(J) of the Act that states that only those DRGs that have a "high volume of discharges" and "disproportionate use of post discharge services" could be included in an expanded postacute care transfer policy. Since this language would not apply to many DRGs, it makes this possibility "implausible."

Commenters also argue that, since we admit we need to do further analysis before expanding the policy to all DRGs, it is unclear why we do not need to conduct further analysis to make an incremental expansion.

Response: As noted previously, we did not propose to expand this policy to all DRGs because, for some DRGs, it may not be appropriate to reduce payment for these DRGs if the base payment already reflects a similar postacute care utilization rate. For the 29 DRGs included in the policy effective October 1, 2003, we have determined the data indicate there is substantial utilization of postacute care early in the stay, leading to decreasing lengths of stay.

Comment: Other commenters noted that, if we were focusing our efforts on analyzing lengths of stay in this manner, we should redirect our focus instead on a more thorough analysis of length of stay in particular regions to determine if changes are being adequately reflected in the yearly updates.

Response: We recognize that lengths of stay have tended to vary by region, and that regions with shorter lengths of stay tend to also have lower average costs due to the fewer number of days that patient spend in the hospitals. One of the reasons for the variation is the greater reliance on postacute care earlier in the stay in those areas with lower average lengths of stay.

We do not believe it would be appropriate to base the transfer payment methodology on regional average lengths of stay. The national standardized amounts, which apply across all regions, reflect costs and lengths of stay across all regions. To the extent hospitals in one area of the country are transferring patients early in the course of their treatment while hospitals in another part of the country are providing the entire treatment in the acute care hospital, adjusting payments for those hospitals transferring patients early in the stay and reflecting this in the process of recalibration maintains full DRG payments for hospitals in areas of the country providing the full course of treatment in the acute care hospital.

B. Rural Referral Centers (§ 412.96)

Under the authority of section 1886(d)(5)(C)(i) of the Act, the regulations at § 412.96 set forth the criteria that a hospital must meet in order to qualify under the IPPS as a rural referral center. For discharges occurring before October 1, 1994, rural referral centers received the benefit of payment based on the other urban amount rather than the rural standardized amount. Although the other urban and rural standardized amounts are the same for discharges beginning with that date, rural referral centers continue to receive special treatment under both the DSH payment adjustment and the criteria for geographic reclassification.

Rural referral centers with a disproportionate share percentage of at least 30 percent are not subject to the 5.25 percent cap on DSH payments that is applicable to other rural hospitals (with the exception of rural hospitals with 500 or more beds). Rural referral centers are not subject to the proximity criteria when applying for geographic reclassification, and they do not have to meet the requirement that a hospital's average hourly wage must exceed 106 percent of the average hourly wage of the labor market area where the hospital is located.

As discussed in **Federal Register** documents at 62 FR 45999 and 63 FR 26325, under section 4202 of Pub. L. 105–33, a hospital that was classified as a rural referral center for FY 1991 is to be considered as a rural referral center for FY 1998 and later years so long as that hospital continues to be located in a rural area and does not voluntarily terminate its rural referral center status. Effective October 1, 2000, if a hospital located in what is now an urban area was ever a rural referral center, it is reinstated to rural referral center status (65 FR 47089). Otherwise, a hospital seeking rural referral center status must satisfy the applicable criteria.

One of the criteria under which a hospital may qualify as a rural referral center is to have 275 or more beds available for use (§ 412.96(b)(1)(ii)). A rural hospital that does not meet the bed size requirement can qualify as a rural referral center if the hospital meets two mandatory prerequisites (a minimum case-mix index and a minimum number of discharges) and at least one of three optional criteria (relating to specialty composition of medical staff, source of inpatients, or referral volume) (§ 412.96(c)(1) through (c)(5)). (See also the September 30, 1988 **Federal Register** (53 FR 38513).) With respect to the two mandatory prerequisites, a hospital may be classified as a rural referral center if—

- The hospital's case-mix index is at least equal to the lower of the median case-mix index for urban hospitals in its census region, excluding hospitals with approved teaching programs, or the median case-mix index for all urban hospitals nationally; and
- The hospital's number of discharges is at least 5,000 per year, or, if fewer, the median number of discharges for urban hospitals in the census region in which the hospital is located. (The number of discharges criterion for an osteopathic hospital is at least 3,000 discharges per year, as specified in section 1886(d)(5)(C)(i) of the Act.)

1. Case-Mix Index

Section 412.96(c)(1) provides that CMS will establish updated national and regional case-mix index values in each year's annual notice of prospective payment rates for purposes of determining rural referral center status. The methodology we use to determine the proposed national and regional case-mix index values is set forth in regulations at § 412.96(c)(1)(ii). The proposed national mean case-mix index value for FY 2004 in the May 19, 2003 proposed rule included all urban hospitals nationwide, and the proposed regional values for FY 2004 were the median values of urban hospitals within each census region, excluding those hospitals with approved teaching programs (that is, those hospitals receiving indirect medical education payments as provided in § 412.105). These proposed values were based on discharges occurring during FY 2002 (October 1, 2001 through September 30, 2002) and included bills posted to CMS' records through December 2002.

In the May 19, 2003 proposed rule, we proposed that, in addition to meeting other criteria, if they are to qualify for initial rural referral center status for cost reporting periods beginning on or after October 1, 2003, rural hospitals with fewer than 275 beds must have a case-mix index value for FY 2002 that is at least—

- 1.3374; or
- The median case-mix index value (not transfer-adjusted) for urban hospitals (excluding hospitals with approved teaching programs as identified in § 412.105) calculated by CMS for the census region in which the hospital is located. (See the table set forth in the May 19, 2003 proposed rule at 68 FR 27201.)

Based on the latest data available (FY 2002 bills received through March 2003), in addition to meeting other criteria, hospitals with fewer than 275 beds, if they are to qualify for initial rural referral center status for cost reporting periods beginning on or after October 1, 2003, must have a case-mix index value for FY 2003 that is at least—

- 1.3373; or
- The median case-mix index value (not transfer-adjusted) for urban hospitals (excluding hospitals with approved teaching programs as identified in § 412.105) calculated by CMS for the census region in which the hospital is located. The final median case-mix index values by region are set forth in the following table:

Region	Case-Mix index value
1. New England (CT, ME, MA, NH, RI, VT)	1.2245
2. Middle Atlantic (PA, NJ, NY)	1.2262
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	1.3146
4. East North Central (IL, IN, MI, OH, WI)	1.2489
5. East South Central (AL, KY, MS, TN)	1.2511
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	1.1841
7. West South Central (AR, LA, OK, TX)	1.2705
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	1.3482
9. Pacific (AK, CA, HI, OR, WA)	1.2845

Hospitals seeking to qualify as rural referral centers or those wishing to know how their case-mix index value compares to the criteria should obtain hospital-specific case-mix index values (not transfer-adjusted) from their fiscal intermediaries. Data are available on the Provider Statistical and Reimbursement (PS&R) System. In keeping with our policy on discharges, these case-mix index values are computed based on all Medicare patient discharges subject to DRG-based payment.

2. Discharges

Section 412.96(c)(2)(i) provides that CMS will set forth the national and regional numbers of discharges in each year's annual notice of prospective payment rates for purposes of determining rural referral center status. As specified in section 1886(d)(5)(C)(ii) of the Act, the national standard is set at 5,000 discharges. In the May 19, 2003 proposed rule, we proposed to update the regional standards based on discharges for urban hospitals' cost reporting periods that began during FY 2002 (that is, October 1, 2001 through September 30, 2002).

Therefore, in the May 19, 2003 proposed rule, we proposed that, in addition to meeting other criteria, a hospital, if it is to qualify for initial rural referral center status for cost reporting periods beginning on or after October 1, 2003, must have as the number of discharges for its cost reporting period that began during FY 2002 a figure that is at least—

- 5,000 (3,000 for an osteopathic hospital); or
- The median number of discharges for urban hospitals in the census region in which the hospital is located. (See the table set forth in the May 19, 2003 proposed rule at 68 FR 27201.)

Based on the latest discharge data available for FY 2002, the final median number of discharges for urban hospitals by census region area are as follows:

Region	Number of discharges
1. New England (CT, ME, MA, NH, RI, VT)	7,476
2. Middle Atlantic (PA, NJ, NY)	8,906
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	9,497
4. East North Central (IL, IN, MI, OH, WI)	8,439
5. East South Central (AL, KY, MS, TN)	6,894
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	3,991
7. West South Central (AR, LA, OK, TX)	7,629
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	8,908
9. Pacific (AK, CA, HI, OR, WA)	7,021

We reiterate that if an osteopathic hospital is to qualify for rural referral center status for cost reporting periods beginning on or after October 1, 2003, the hospital must have at least 3,000 discharges for its cost reporting period that began during FY 2002.

We did not receive any comments on the criteria for rural referral centers.

C. Indirect Medical Education (IME) Adjustment (§ 412.105) and Disproportionate Share Hospital (DSH) Adjustment (§ 412.105)

1. Available Beds and Patient Days: Background (§ 412.105(b) and § 412.106(a)(1)(ii))

Section 1886(d)(5)(B) of the Act provides that subsection (d) hospitals that have residents in approved graduate medical education (GME) programs receive an additional payment for each discharge of Medicare beneficiaries to reflect the higher indirect patient care costs of teaching hospitals relative to nonteaching hospitals. The existing regulations regarding the calculation of this additional payment, known as the indirect medical education (IME) adjustment, are located at § 412.105. The additional payment is based on the IME adjustment factor, calculated using hospitals' ratios of residents to beds. The determination of the number of beds, based on available bed days, is specified at § 412.105(b). This determination of the number of available beds is also applicable for other purposes, including the level of the disproportionate share hospital (DSH) adjustment payments under § 412.106(a)(1)(i).

Section 1886(d)(5)(F) of the Act specifies two methods for a hospital to qualify for the Medicare DSH adjustment. The primary method, which is a subject of this final rule, is for a hospital to qualify based on a complex statutory formula under which payment adjustments are based on the level of the DSH patient percentage. The first computation includes the number of patient days that are furnished to patients who were entitled to both Medicare Part A and Supplemental Security Income (SSI) benefits. This number is divided by the total number of patient days that are associated with patients entitled to benefits under Medicare Part A. The second computation includes hospital patient days that are furnished to patients who, for those days, were eligible for Medicaid but were not entitled to benefits under Medicare Part A. This number is divided by the number of total hospital inpatient days in the same period.

Hospitals whose DSH patient percentage exceeds 15 percent are eligible for a DSH payment adjustment (prior to April 1, 2001, the qualifying DSH patient percentage varied, in part, by the number of beds (66 FR 39882)). The DSH payment adjustment may vary based on the DSH patient percentage and the type of hospital: the statute provides for different adjustments for urban hospitals with 100 or more beds and rural hospitals with 500 or more beds, hospitals that qualify as rural referral centers or SCHs, and other hospitals.

As described in the May 19, 2003 proposed rule, we are combining in this final rule our discussion of changes to the policies for counting beds and patient days, in relation to the calculations at §§ 412.105(b) and 412.106(a)(1) because the underlying concepts are similar, and we believe they should generally be interpreted in a consistent manner for both purposes. Specifically, we proposed to clarify that

beds and patient days that are counted for these purposes should be limited to beds or patient days in hospital units or wards that would be directly included in determining the allowable costs of inpatient hospital care payable under the IPPS on the Medicare cost reports. As a preliminary matter, beds, and patient days associated with these beds, that are located in units or wards that are excluded from the IPPS (for example, psychiatric or rehabilitation units), and thus from the determination of allowable costs of inpatient hospital care under the IPPS on the Medicare cost report, are not to be counted for purposes of §§ 412.105(b) and 412.106(a)(1).

The remainder of this discussion pertains to beds and patient days in units or wards that are not excluded from the IPPS and for which costs are included in determining the allowable costs of inpatient hospital care under the IPPS on the Medicare cost report. For example, neonatal intensive care unit beds are included in the determination of available beds because the costs and patient days associated with these beds are directly included in the determination of the allowable costs of inpatient hospital care under the IPPS. In contrast, beds, and patient days associated with the beds, that are located in excluded distinct-part psychiatric or rehabilitation units would not be counted for purposes of §§ 412.105(b) and 412.106(a)(1) under any circumstances, because the costs associated with those units or wards are excluded from the determination of the costs of allowable inpatient care under IPPS.

This policy has been upheld in the past by various courts. (*See*, for example, *Little Co. of Mary Hospital and Health Care Centers* v. *Shalala*, 165 F.3d 1162 (7th Cir. 1999; *Grant Medical Center* v. *Shalala*, 905 F. Supp. 460 (S.D. Ohio 1995); *Sioux Valley Hospital* v. *Shalala*, No. 93–3741SD, 1994 U.S. App. LEXIS 17759 (8th Cir. July 20, 1996) (unpublished table decision); *Amisub* v. *Shalala*, No. 94–1883 (TFH) (D.D.C. December 4, 1995) (mem.).) In these cases, the courts agreed with the Secretary's position distinguishing between the treatment of neonatal intensive care unit beds and well-baby nursery beds based on the longstanding policy of CMS that neonatal intensive care unit days are considered intensive care days (part of inpatient routine care) rather than nursery days.

Our policies on counting beds are applied consistently for both IME and DSH although the incentives for hospitals can be different for IME and DSH. For purposes of IME, teaching hospitals have an incentive to minimize their number of available beds in order to increase the resident-to-bed ratio and maximize the IME adjustment. On the other hand, for DSH purposes, urban hospitals with under 100 beds and rural hospitals with under 500 beds may have an incentive to increase their bed count in order to qualify for the higher DSH payments for urban hospitals with over 100 beds or rural hospitals with over 500 beds.

However, some courts have applied our current rules in a manner that is inconsistent with our current policy and that would result in inconsistent treatment of beds, patient days, and costs. For example, in *Clark Regional Medical Center* v. *United States Department of Health & Human Services*, 314 F.3d 241 (6th Cir. 2002), the court upheld the district court's ruling that all bed types not specifically excluded from the definition of available bed days in the regulations must be included in the count of available bed days. Similarly, in a recent decision in the Ninth Circuit Court of Appeals (*Alhambra* v. *Thompson*, 259 F.3d 1071 (Ninth Cir. 2001), the court ruled that days attributable to groups of beds that are not separately certified as distinct part beds (that is, nonacute care beds in which care provided is at a level below the level of routine inpatient acute care) but are adjacent to or in an acute care "area" are included in the "areas of the hospital that are subject to the prospective payment system" and should be counted in calculating the Medicare DSH patient percentage.

These courts considered subregulatory guidance (program instructions) in formulating their decisions. Although this final rule clarifies the underlying principles for our bed and patient days counting policies and amends the relevant regulations to be consistent with these clarifications, we recognize the need to revise some of our program instructions to make them fully consistent with these clarifications and will act to do so as soon as possible.

While some of the topics discussed below pertain only to counting available beds (unoccupied beds) and some only to counting patient days (section 1115 waiver days, dual-eligible days, and Medicare+Choice days), several important topics are applicable to both bed-counting and day-counting policies (nonacute care beds and days, observation beds and days, and swing-beds and days). Therefore, for ease of discussion, we have combined all topics pertaining to counting available beds and patient days together in the following discussion.

Comment: One commenter expressed concern about our policy to use the same definition of beds for IME and DSH. The commenter argued that Congress used different terminology to define the types of beds that should be used for these two payment adjustments. Section 1886(d)(5)(B)(vi)(I) of the Act indicates the IME adjustment is to be based on "the hospital's available beds (as defined by the Secretary)." For purposes of the DSH adjustment, section 1886(d)(5)(F)(v) of the Act simply refers to the number of "beds" in the hospital. The commenter believed that, because the Act does not narrow the bed count for DSH purposes to those that are available, it is unlawful and inappropriate for CMS to use the available bed definition for DSH purposes.

Response: We believe both statutory references cited by the commenter provide the Secretary with administrative discretion to define beds, one explicitly and one implicitly. In light of this discretion, we strongly believe it is important to apply a consistent definition for purposes of both IME and DSH adjustments, particularly because many hospitals receive both types of adjustments. We note that we have used available beds for purposes of determining whether hospitals qualify for DSH payments Congress directed us to make this adjustment in 1988. Since that time, Congress has amended the DSH provisions in the Act on numerous occasions, and certainly could have made clear its intention that we not use available beds for DSH purposes if that was its intent. Therefore, we disagree with this comment.

2. Unoccupied Beds

We are still reviewing the large number of comments on our proposal on unoccupied beds in the May 19, 2003 proposed rule. Due to the number and nature of the comments we received on our proposed policy, we are addressing the public comments in a separate document. We refer individuals who are interested in reviewing the background information and discussion of the proposed policy to the May 19, 2003 proposed rule (68 FR 37202 through 37204).

3. Nonacute Care Beds and Days

As noted above, our policies for counting beds are generally consistent with the method of reporting patient days for the purpose of calculating the costs of hospital inpatient care in individual cost centers on the Medicare cost report. Furthermore, since the IME and DSH adjustments are part of the IPPS, we read the statutory references to beds and days to apply only to inpatient beds and days.

Under the existing provisions of § 412.105(b), the regulations specifically exclude beds or bassinets in the healthy newborn nursery, custodial care beds, or beds in excluded distinct part hospital units as types of beds excluded from the count of available beds.

Existing regulations at § 412.106(a)(1)(ii) state that the number of patient days used in the DSH percentage calculation includes only those days attributable to areas of the hospital that are subject to the IPPS and excludes all others. This regulation was added after being proposed in the March 22, 1988 **Federal Register** (53 FR 9339), and made final in the September 30, 1988 **Federal Register** (53 FR 38479). At that time, we indicated that, "based on a reading of the language in section 1886(d)(5)(F) of the Act, which implements the disproportionate share provision, we are in fact required to consider only those inpatient days to which the prospective payment system applies in determining a prospective payment hospital's eligibility for a disproportionate share adjustment." Using this reasoning, we stated that the DSH patient percentage calculation should only include patient days associated with the types of services paid under the IPPS.

As noted previously, a recent decision in the Ninth Circuit Court of Appeals (*Alhambra* v. *Thompson*) ruled that days attributable to groups of beds that are not separately certified as distinct part beds (that is, nonacute care beds in which care provided is generally at a level below the level of routine inpatient acute care), but are adjacent to or in an acute care "area," are included in the "areas of the hospital that are subject to the prospective payment system" and should be counted in calculating the Medicare DSH patient percentage.

In light of the Ninth Circuit decision that our rules were not sufficiently clear to permit exclusion of bed days based on the area where the care is provided, in the May 19, 2003 proposed rule, we proposed to revise our regulations to be more specific. Therefore, we proposed to clarify that beds and patient days are excluded from the calculations at § 412.105(b) and § 412.106(a)(1)(ii) if the nature of the care provided in the unit or ward is inconsistent with what is typically furnished to acute care patients, regardless of whether these units or wards are separately certified or are located in the same general area of the hospital as a unit or ward used to provide an acute level of care. Although the intensity of care may vary within a particular unit, such that some patients may be acute patients while others are nonacute, believe that a patient-by-patient, day-by-day review of whether the care received would be paid under the IPPS would be unduly burdensome. Therefore, we believe it is more practical to apply this principle (that is, that we should consider only the inpatient days to which the IPPS applies) by using a proxy measure that is based upon the location at which the services were furnished.

In particular, we proposed to revise our regulations to clarify that the beds and patient days attributable to a nonacute care unit or ward should not be included in the calculations at § 412.105(b) and § 412.106(a)(1)(ii), even if the unit is not separately certified by Medicare as a distinct-part unit and even if the unit or ward is within the same general location of the hospital as areas that are subject to the IPPS (that is, a unit that provides an IPPS level of care is on the same floor of the hospital as a subacute care unit that does not provide an IPPS level of care).

Exceptions to this policy to use the level of care generally provided in a unit or ward as proxy for the level of care provided to a particular patient on a particular day are outpatient observation bed days and swing-bed days, which are excluded from the count of available bed days even if the care is provided in an acute care unit. Our policies pertaining to these beds and days are discussed further below. Another exception is healthy newborn nursery days. The costs, days, and beds associated with a healthy newborn nursery are excluded from inpatient calculations for Medicare purposes. Meanwhile, for the purpose of computing the Medicaid patient share computation of the DSH patient percentages, these days are included both as Medicaid patient days and as total patient days. Newborn nursery costs, days, and beds are treated this way because the costs are not directly included in calculating Medicare hospital inpatient care costs because Medicare does not generally cover services for infants. However, Medicaid does offer extensive coverage to infants, and nursery costs would be directly included in calculating Medicaid hospital inpatient care costs. Therefore, these costs, days, and beds are excluded for Medicare purposes, but included for determining the Medicaid DSH percentage. (This policy was previously communicated through a memorandum to CMS Regional Offices on February 27, 1997.)

Generally, as discussed previously, if the nature of the care provided in the unit or ward is consistent with what is typically furnished to acute care patients, and, therefore, would be characteristic of services paid under the IPPS, the patient days, beds, and costs of that unit or ward would be classified as inpatient acute care (except for observation bed days and swing bed days, as discussed later in this preamble). Conversely, if the intensity and type of care provided in the unit or ward are not typical of a service that would be paid under the IPPS (for example, nonacute care), we proposed that the beds and patient days attributable to a nonacute care unit or ward should not be included in the calculations of beds and patient days at § 412.105(b) and § 412.106(a)(1)(ii).

The proposed policy is not intended to focus on the level or type of care provided to individual patients in a unit, but rather on the level and type of care provided in the unit as a whole. For example, the bed days for a patient participating in an experimental procedure that is not covered under the IPPS should be counted as long as the patient is treated in a unit of the hospital that generally provides acute inpatient care normally payable under the IPPS. The expectation is that a patient located in an acute care unit or ward of the hospital is receiving a level of care that is consistent with what would be payable under the IPPS.

There are instances where services that are provided in units excluded from the IPPS (such as rehabilitation and psychiatric distinct-part units) are also consistent with the level of care that would qualify for payment under the IPPS. However, §§ 412.105(b) and 412.106(a)(1)(ii) specifically exclude the beds and patient days associated with these excluded units. That exclusion is because the costs of care provided in these units are paid outside the IPPS, even though some of the care provided may be of a type that would be payable under the IPPS if the care was provided in an IPPS unit.

We proposed to revise § 412.105(b) to clarify that beds in units or wards established or used to provide a level of care that is not consistent with care that would be payable under the IPPS cannot be counted. We also proposed to revise the DSH regulations at § 412.106(a)(1)(ii) to clarify that the number of patient days includes only those attributable to patients that receive care in units or wards that generally furnish a level of care that would generally be payable under the IPPS.

We note the proposed revisions were clarifications of our regulations to

reflect our longstanding interpretation of the statutory intent, especially relating to the calculation of the Medicare DSH patient percentage.

Comment: Several commenters objected to our proposal and indicated that we were attempting to codify the Secretary's litigation position in *Alhambra* and administratively overrule the Ninth Circuit's decision in that case. Commenters asserted that the flaw in the proposal is that it is inconsistent with the Act to base the Medicaid days calculation of the DSH patient percentage on whether or not Medicare pays for the services that are generally provided within a unit. Specifically, commenters believed the proposal would restrict the definition of patient days in a way that is not authorized by the Act.

Response: We disagree that our proposed clarification is inconsistent with the statute. First, the clarification is merely a codification of the Secretary's longstanding policy. In addition, we believe that interpreting the statute as we have historically done is reasonable and permissible. Section 1886(d)(5)(F)(vi)(II) of the Act governs the portion of the disproportionate share percentage made up of the percentage of patient days used by patients eligible for medical assistance under a title XIX State plan. Specifically, section 1886(d)(5)(F)(vi)(II) of the Act states that the numerator of such fraction equals the "number of the hospital's patient days for such period which consist of patients who (for such days) were eligible for medical assistance under a State plan approved under title XIX, but who were not entitled to benefits under part A of this title." The statute does not define the term "hospital's patient days." Thus, the statute is ambiguous, and the Secretary has the authority to reasonably interpret that term.

We note that although the calculation performed under section 1886(d)(5)(F)(vi)(II) of the Act includes a count of patient days used by Medicaid-eligible individuals, the calculation actually is used to determine how much additional payment the hospital should receive under Medicare for the higher Medicare costs associated with treating a disproportionate share of low-income individuals. This point is demonstrated in the rationale for establishing the DSH adjustment as described in the Committee Report accompanying Pub. L. 99–272: "Hospitals that serve a disproportionate share of low-income patients have higher Medicare costs per case" (H. Rept. No. 99–242(I), 99th Cong., 2d Sess., (1985), p. 16).

Furthermore, we view section 1886(d)(5)(F)(vi)(II) of the Act as purely a Medicare, inpatient hospital provision, given that there already exists a distinct formula for computing DSH payments under title XIX—the Medicaid title. Because the DSH formula in title XVIII of the Act is intended to provide an add-on payment to inpatient hospitals for additional amounts they incur in treating low-income, Medicare patients, we believe it is reasonable to count only those days spent in wards or units that would generally provide an acute level of care.

We believe it is reasonable to interpret the phrase, "hospital's patient days," to mean only the hospital's inpatient days at a level of care that would be covered under the IPPS as a means to determine an IPPS payment adjustment. Further, we believe that it is administratively inefficient and impracticable to calculate a hospital's inpatient days based on a determination, on a day-by-day basis, of whether a particular patient in a particular inpatient bed is receiving a level of care that would be covered under the IPPS. Therefore, we proposed to use, as a proxy, the level of care that is generally provided in particular units or wards, and to exclude patient days attributable to units or wards in which care delivered is not generally of a type that would be covered under the IPPS.

We also do not believe that by placing our longstanding interpretation of our rules in regulations we are unlawfully overruling or nullifying the decision by the Ninth Circuit in *Alhambra Hospital* v. *Thompson*, 259 F.3d 1071 (9th Cir. 2001). The Ninth Circuit decision focused on an interpretation of CMS' previous regulation at § 412.106(a)(1)(ii)—not on an interpretation of the statute. (For example, when the court stated the "Standard of Review" it would use to decide the case, it referred only to "[o]ur review of an agency's interpretation of its own regulations." *Alhambra* at 1074). Although we respectfully disagree with the Ninth Circuits interpretation of the existing regulations, we are nonetheless amending them, through notice and comment rulemaking to ensure that going forward the regulations clearly reflect our longstanding position. Therefore, we do not agree with the commenter's assertion that our proposed policy is an illegal attempt to administratively overrule the Ninth Circuit's decision in *Alhambra*. Therefore, going forward, we plan to apply the clarified regulation to hospitals in all U.S. jurisdictions, including hospitals in the Ninth Circuit.

4. Observation Beds and Swing-Beds

Observation services are those services furnished by a hospital on the hospital's premises that include use of a bed and periodic monitoring by a hospital's nursing or other staff in order to evaluate an outpatient's condition or to determine the need for a possible admission to the hospital as an inpatient. When a hospital places a patient under observation but has not formally admitted him or her as an inpatient, the patient initially is treated as an outpatient. Consequently, the observation bed days are not recognized under the IPPS as part of the inpatient operating costs of the hospital.

Observation services may be provided in a distinct observation bed area, but they may also be provided in a routine inpatient care unit or ward. In either case, our policy is the bed days attributable to beds used for observation services are excluded from the counts of available bed days and patient days at §§ 412.105(b) and 412.106(a)(1)(ii). This policy was clarified in a memorandum that was sent to all CMS Regional Offices (for distribution to fiscal intermediaries) dated February 27, 1997, which stated that if a hospital provides observation services in beds that are generally used to provide hospital inpatient services, the days that those beds are used for observation services should be excluded from the available bed day count (even if the patient is ultimately admitted as an acute inpatient).

A swing-bed is a bed that is otherwise available for use to provide acute inpatient care and is also occasionally used to provide SNF-level care. The criteria for a hospital to meet the requirements to be granted an approval from CMS to provide posthospital extended care services are located under § 482.66, and for a swing-bed CAH under § 485.645. Under § 413.114(a)(1), payment for posthospital SNF care furnished in swing-beds is in accordance with the provisions of the prospective payment system for SNF care (effective for services furnished in cost reporting periods beginning on and after July 1, 2002). Similar to observation beds and patient days, swing-beds and patient days are excluded from the counts of available bed days and patient days at §§ 412.105(b) and 412.106(a)(1)(ii) when the swing-bed is used to furnish SNF care.[7]

Observation beds and swing-beds are both special, frequently temporary, alternative uses of acute inpatient care

[7] Ibid.

beds. That is, only the days an acute inpatient care unit or ward bed is used to provide outpatient observation services are to be deducted from the available bed count under § 412.105(b). Otherwise, the bed is considered available for acute care services (as long as it otherwise meets the criteria to be considered available). This same policy applies for swing-beds. The policies to exclude observation bed days and swing-bed days as described above stem from the fact that these days are not payable under the IPPS.

Some hospitals have contested our policy excluding swing-beds and patient days and observation beds and patient days under existing §§ 412.105(b) and 412.106(a)(1)(ii). For example, in *Clark Regional Medical Center* v. *United States Department of Health & Human Services*, 314 F.3d 241 (6th Cir. 2002), the court upheld the district court's ruling that all bed types not specifically excluded from the definition of available bed days in the regulations must be included in the count of available bed days. The hospitals involved in this decision wanted to include observation and swing-bed days in their bed count calculation in order to qualify for higher DSH payments as available to hospitals with more than 100 beds. The Court found that "the listing of beds to be excluded from the count restricts the class of excluded beds only to those specifically listed." Because observation beds and swing-beds are not currently specifically mentioned in § 412.105(b) as being excluded from the bed count, the Court ruled that these beds must be included in the count.

The list of the types of beds excluded from the count under existing § 412.105(b) was never intended to be an exhaustive list of all of the types of beds to be excluded from the bed count under this provision. In fact, over the years, specific bed types have been added to the list as clarifications of the types of beds to be excluded, not as new exclusions (see the September 1, 1994 **Federal Register** (59 FR 45373) and September 1, 1995 **Federal Register** (60 FR 45810), where we clarified exclusions under our policy that were not previously separately identified in the regulation text).

Although the Court in *Clark* found that Congress had not explicitly "addressed the question of whether swing and observation beds should be included in the count of beds in determining whether a hospital qualifies for the DSH adjustment," Clark, 314 F.3d at 245, the Court found that observation and swing-bed days were included under the "plain meaning" of the regulation text at § 412.106(a)(1)(ii), which reads: "The number of patient days includes only those days attributable to areas of the hospital that are subject to the prospective payment system and excludes all others." However, the preamble language of the rule that promulgated the regulatory provision at § 412.106(a)(1)(ii) clarified its meaning (53 FR 38480, September 30, 1988):

"Although previously the Medicare regulations did not specifically define the inpatient days for use in the computation of a hospital's disproportionate share patient percentage, we believe that, based on a reading of the language in section 1886(d)(5)(F) of the Act, which implements the disproportionate share provision, we are in fact required to consider only those inpatient days to which the prospective payment system applies in determining a prospective payment hospital's eligibility for a disproportionate share adjustment."

Our policy excluding outpatient observation and swing-bed days is consistent with this regulatory interpretation of days to be counted under § 412.106(a)(1)(ii). That is, the services provided in these beds are not payable under the IPPS (unless the patient is admitted, in the case of observation bed days).

As outlined previously, our consistent and longstanding policy, which has been reviewed and upheld previously by several courts, including the United States District Court for the District of Columbia in *Amisub* v. *Shalala*, is based on the principle of counting beds in generally the same manner as the patient days and costs are counted. Our policy to exclude observation and swing-bed days under the regulations at § 412.105(b) and § 412.106(a)(1) stems from this policy.

In the May 19, 2003 proposed rule, although we reiterated our longstanding policy that observation beds and swing bed days generally are excluded, we proposed to amend our policy with respect to observation bed days of patients who ultimately are admitted. We are still in the process of reviewing the comments and defer action until a later rule with respect this issue—for example, patients in observation beds who are ultimately admitted to the hospital.

Comment: Some commenters objected to the exclusion of observation bed days from the available bed days count on the grounds that it is a flawed premise that the size of a hospital's bed complement should be impacted by the payment policy classification of the services provided to the patient. That is, a bed should not be excluded from the available bed day count because it is used to provide services not payable under the IPPS on a particular day.

Response: When the application of IPPS payment policy is dependent on a determination of a hospital's number of beds, it seems reasonable to base that determination on the portion of the hospital that generates the costs that relate to those IPPS payments. As stated above, our bed counting policies start with the premise that the treatment of beds should be consistent with the treatment of the patient days and the costs of those days on the Medicare cost report. Therefore, we continue to believe it is appropriate to exclude outpatient observation bed days, even when the beds used to provide that service is located in a routine inpatient care unit or ward.

5. Labor, Delivery, and Postpartum Beds and Days

Prior to December 1991, Medicare's policy on counting days for maternity patients was to count an inpatient day for an admitted maternity patient in the labor/delivery room at the census taking hour. This is consistent with Medicare policy for counting days for admitted patients in any other ancillary department at the census-taking hour. However, based on decisions adverse to the government regarding this policy in a number of Federal courts of appeal, including the United States Court of Appeals for the District of Columbia Circuit, the policy regarding the counting of inpatient days for maternity patients was revised to reflect our current policy.

Our current policy regarding the treatment of labor and delivery bed days is described in Section 2205.2 of the PRM, which states that a maternity inpatient in the labor/delivery room at midnight is not included in the census of inpatient routine care if the patient has not occupied an inpatient routine bed at some time since admission. For example, if a Medicaid patient is in the labor room at the census and has not yet occupied a routine inpatient bed, the bed day is not counted as a routine bed day of care in Medicaid or total days and, therefore, is not included in the counts under existing §§ 412.105(b) and 412.106(a)(1)(ii). If the patient is in the labor room at the census but had first occupied a routine bed, a routine inpatient bed day is counted, in Medicaid and total days, for DSH purposes and for apportioning the cost of routine care on the cost report (consistent with our longstanding policy to treat days, costs, and beds similarly).

Increasingly, hospitals are redesigning their maternity areas from separate labor and delivery rooms, and postpartum rooms, to single multipurpose labor, delivery, and postpartum (LDP) rooms. In order to appropriately track the days and costs associated with LDP rooms, it is necessary to apportion them between the labor and delivery cost center, which is an ancillary cost center and the routine adults and pediatrics cost center. This is done under our policy by determining the proportion of the patient's stay in the LDP room that the patient was receiving ancillary services (labor and delivery) as opposed to routine adult and pediatric services (postpartum).

An example of this would be if 25 percent of the patient's time in the LDP room was for labor/delivery services and 75 percent for routine care, over the course of a 4-day stay in the LDP room. In that case, 75 percent of the time the patient spent in the LDP room is applied to the routine inpatient bed days and costs (resulting in 3 routine adults and pediatrics bed days for this patient, 75 percent of 4 total days). For purposes of determining the hospital bed count, the time that the beds are unoccupied should be counted as available bed days using an average percentage (for example, 75 percent adults and pediatrics and 25 percent ancillary) based on all patients. In other words, in this example, 75 percent of the days the bed is unoccupied would be counted in the available bed count.

We realize that it may be burdensome for a hospital to determine for each patient in this type of room the amount of time spent in labor/delivery and the amount of time spent receiving routine care. Alternatively, the hospital could calculate an average percentage of time patients receive ancillary services, as opposed to routine inpatient care in the LDP room(s) during a typical month, and apply that percentage through the rest of the year.

Comment: Some commenters stated that the LDP days that patients spend in routine inpatient wards of hospitals prior to the day those patients give birth are in areas of the hospital where routine inpatient beds are located, and they are not excluded from the IPPS. Therefore, the commenters asserted that these days should be counted in the patient days and available bed days counts. Commenters also pointed out the LDP days are in licensed beds, and argued that these days should be counted in their entirety.

Other commenters supported our proposal to allow calculation of an average percentage of time LDP patients spend in labor/delivery compared to postpartum to be used to apportion LDP days. Commenters commended CMS for recognizing the cumbersome recordkeeping and reporting that would otherwise be required.

One commenter suggested that it is not necessary for our policy applicable to counting patient days for purposes of the DSH computation to comply with other Medicare cost reporting policies, such as the need to separately allocate the ancillary costs associated with LDP rooms. The commenter cited prior PRRB appeals in which CMS took this position.

Response: As we previously stated above and in the proposed rule, initially, Medicare's policy did count an inpatient day for an admitted maternity patient even if the patient was in the labor/delivery room at the census-taking hour. However, based on adverse court decisions, the policy was revised to state that the patient must first occupy an inpatient routine bed before being counted as an inpatient. With the development of LDP rooms, we found it necessary to apply this policy consistently in those settings, in order to appropriately apportion the costs between labor and delivery ancillary services and routine inpatient care.

Although we have not previously formally specified in guidance or regulations the methodology for applying this policy to LDP rooms, this is not a new policy. However, as suggested by the commenters, we believe this policy may not have been applied consistently. Therefore, we believe it is important to clarify the policy as part of our discussion of our policies pertaining to counting patient bed days.

We continue to believe the LDP apportionment described above is an appropriate policy and does not, in fact, impose a significant additional burden because hospitals are already required to allocate cost on the cost report between ancillary and routine costs. In addition, this allocation is already required to be consistent with our treatment of costs, days, and beds and is consistent with our other patient bed day policies. Therefore, this policy will be applied to all currently open and future cost reports. However, it is not necessary to reopen previously settled cost reports to apply this policy.

6. Days Associated With Demonstration Projects Under Section 1115 of the Act

Some States extend medical benefits to a given population that could not have been made eligible for Medicaid under a State plan amendment under section 1902(r)(2) or section 1931(b) of the Act under a section 1115(a)(2) demonstration project (also referred to as a section 1115 waiver). These populations are specific, finite populations identifiable in the award letters and special terms and conditions apply to the demonstrations.

On January 20, 2000, we issued an interim final rule with comment period (65 FR 3136), followed by a final rule issued on August 1, 2000 (65 FR 47086 through 47087), to allow hospitals to include the patient days of all populations that receive benefits under a section 1115 demonstration project in calculating the Medicare DSH adjustment. Previously, hospitals were to include only those days for populations under the section 1115 demonstration project who were, or could have been made, eligible under a State plan. Patient days of those expansion waiver groups who could not be made eligible for medical assistance under the State plan were not to be included for determining Medicaid patient days in calculating the Medicare DSH patient percentage. Under the January 20, 2000 interim final rule with comment period (65 FR 3137), hospitals could include in the numerator of the Medicaid fraction those patient days for individuals who receive benefits under a section 1115 expansion waiver demonstration project (effective with discharges occurring on or after January 20, 2000).

In the January 20, 2000 interim final rule with comment period, we explained that including the section 1115 expansion populations "in the Medicare DSH calculation is fully consistent with the Congressional goals of the Medicare DSH adjustment to recognize the higher costs to hospitals of treating low-income individuals covered under Medicaid."

Since that revision, we have become aware that there are certain section 1115 demonstration projects that serve expansion populations with benefit packages so limited that the benefits are not similar to the medical assistance available under a Medicaid State plan. These section 1115 demonstration projects extend coverage only for specific services and do not include inpatient care in the hospital. Because of the limited nature of the coverage offered, the population involved may have a significantly higher income than traditional Medicaid beneficiaries.

In allowing hospitals to include patient days related to section 1115 expansion waiver populations, our intention was to include patient days of section 1115 expansion waiver populations who receive benefits under the demonstration project that are similar to those available to traditional Medicaid beneficiaries, including inpatient benefits. Because of the differences between expansion populations in these limited benefit demonstrations and traditional Medicaid beneficiaries, in the May 19, 2003 proposed rule, we proposed that the Medicare DSH calculation should exclude from treatment as Medicaid patient days those patient days attributable to limited benefit section 1115 expansion waiver populations (proposed § 412.106(b)(4)(i)).

For example, a State may extend a family planning benefit to an individual for 2 years after she has received the 60-day postpartum benefit under Medicaid, or a State may choose to provide a family planning benefit to all individuals below a certain income level, regardless of having previously received the Medicaid postpartum benefit. This is a limited, temporary benefit that is generally administered in a clinic setting (see section 1905(a)(4)(C) of the Act). Also, a number of States are developing demonstrations that are limited to providing beneficiaries an outpatient prescription drug benefit. Generally, these limited benefits under a demonstration project do not include inpatient benefits. If a hospital were to include the days attributable to patients receiving benefits under such a limited benefit, the hospital would be able to receive higher DSH payments, perhaps substantially, for patients who may otherwise be insured for inpatient care. For example, these limited demonstrations provide benefits that may be needed to supplement private insurance coverage for individuals who do not have incomes low enough to qualify for Medicaid under the State plan. We do not believe such patients should be counted in the DSH patient percentage as eligible for title XIX.

As we have noted previously, at the time the Congress enacted the Medicare DSH adjustment provision (which was added to the law by section 9105 of COBRA and was effective for discharges occurring on or after May 1, 1986), there were no approved section 1115 demonstration projects involving expansion populations and the statute does not address the treatment of these days. Although we did not initially include patient days for individuals who receive extended benefits only under a section 1115 demonstration project, we nevertheless expanded our policy in the January 20, 2000 revision to these rules to include such patient days. We now believe that this reading is warranted only to the extent that those individuals receive inpatient benefits under the section 1115 demonstration project.

Therefore, we proposed to revise § 412.106(b)(4)(i) to clarify that patients must be eligible for medical assistance inpatient hospital benefits under an approved State Medicaid plan (or similar benefits, including inpatient hospital benefits, under a section 1115 demonstration project) in order for their hospital inpatient days to be counted as Medicaid days in the calculation of a hospital's DSH patient percentage. Under the proposed clarification, hospital inpatient days attributed to patients who do not receive coverage for inpatient hospital benefits either under the approved State plan or through a section 1115 demonstration would not be counted in the calculation of Medicaid days for purposes of determining a hospital's DSH patient percentage.

Under this reading, in the examples given above, the days associated with a hospital inpatient who receives coverage of prescription drugs or family planning services on an outpatient basis, but no inpatient hospital coverage, through either a Medicaid State plan or a section 1115 demonstration, would not be counted as Medicaid days for purposes of determining the DSH patient percentage.

The proposed revision addressed an unintended potential consequence of our interpretation that hospitals may include in the DSH calculation patient days associated with section 1115 demonstration populations (65 FR 3136). As discussed above, that interpretation was based on our finding that individuals receiving a comprehensive benefit package under a section 1115 demonstration project could appropriately be included in the numerator of the Medicaid fraction (even though the statute does not require such an inclusion), but did not address individuals who were receiving limited benefit packages under a section 1115 demonstration project.

Comment: Some commenters questioned our authority to require a patient obtain to covered inpatient benefits under either a Medicaid State plan or a section 1115 demonstration, in order to be included in the numerator of the Medicaid ratio for the DSH computation. One commenter pointed out that there are many circumstances under which an individual may have income low enough to qualify for Medicaid but still not qualify due to other qualifying criteria, and requested that all patient days of such individuals be counted as Medicaid-eligible.

Response: As stated above and in the proposed rule, we do not believe patients covered under limited-benefit section 1115 demonstration projects that are so limited that they are not similar to the medical assistance available under a Medicaid State plan should not be included in the count of Medicaid-eligible patients.

Under a traditional State Medicaid program, States are required to offer inpatient benefits to all eligible beneficiaries (see section 1902(a)(10)(A) of the Act). However, under the 1115 demonstration authority, the Secretary has permitted coverage for a limited set of services, such as pharmaceuticals or family planning services, and thus inpatient hospital services may be excluded for expansion populations under some of the section 1115 demonstration programs.

Our intention in allowing hospitals to include patient days related to section 1115 expansion waiver populations was to include patient days of demonstration populations who receive benefits under the demonstration project that are similar to traditional Medicaid beneficiaries, including inpatient benefits.

Comment: One commenter requested that the effective date of the proposed change be delayed until January 1, 2004, to allow fiscal intermediaries to contact States and identify specific coverage for their various section 1115 waiver populations.

Response: Because the DSH adjustment is reconciled when hospitals' cost reports are settled, we do not believe it is necessary to delay the implementation of this policy until January 1, 2004. Furthermore, although we believe it would have been reasonable for hospitals or fiscal intermediaries to have applied this interpretation of our policy regarding the inclusion of section 1115 waiver days prior to this clarification, we recognize that there may be situations in which this policy was not already applied. Therefore, we are making this change and the regulation at § 412.106(b)(4)(i) will be effective for discharges occurring on or after October 1, 2003.

7. Dual-Eligible Patient Days

We are still reviewing the large number of comments received on the proposed provision relating to dual-eligible patient days in the May 19, 2003. Due to the number and nature of the comments we received on our proposed policies, we are addressing the public comments in a separate document. We refer individuals who are interested in reviewing the background information and discussions regarding this policy to the May 19, 2003 proposed rule (68 FR 27207–27208).

8. Medicare+Choice (M+C) Days

We are still reviewing the large number of comments we received on the proposed provision relating to the counting of Medicare+Choice days for purposes of the IME and DSH adjustments. Due to the number and nature of the comments we received on our proposed policies, we are addressing the public comments in a separate document. We refer individuals interested in reviewing the background information and the discussion regarding these policies to the May 19, 2003 proposed rule (68 FR 27208).

D. Medicare Geographic Classification Review Board (MGCRB) Reclassification Process (§ 412.230)

With the creation of the MGCRB, beginning in FY 1991, under section 1886(d)(10) of the Act, hospitals could request reclassification from one geographic location to another for the purpose of using the other area's standardized amount for inpatient operating costs or the wage index value, or both (September 6, 1990 interim final rule with comment period (55 FR 36754), June 4, 1991 final rule with comment period (56 FR 25458), and June 4, 1992 proposed rule (57 FR 23631)). Implementing regulations in Subpart L of Part 412 (§§ 412.230 *et seq.*) set forth criteria and conditions for redesignations for purposes of the wage index or the average standardized amount, or both, from rural to urban, rural to rural, or from an urban area to another urban area, with special rules for SCHs and rural referral centers.

Effective with reclassifications for FY 2003, section 1886(d)(10)(D)(vi)(II) of the Act provides that the MGCRB must use the average of the 3 years of hourly wage data from the most recently published data for the hospital when evaluating a hospital's request for reclassification. The regulations at § 412.230(e)(2)(ii) stipulate that the wage data are taken from the CMS hospital wage survey used to construct the wage index in effect for prospective payment purposes. To evaluate applications for wage index reclassifications for FY 2004, the MGCRB used the 3-year average hourly wages published in Table 2 of the August 1, 2002 IPPS final rule (67 FR 50135). These average hourly wages are taken from data used to calculate the wage indexes for FY 2001, FY 2002, and FY 2003, based on cost reporting periods beginning during FY 1997, FY 1998, and FY 1999, respectively.

Last year, we received a comment suggesting that we allow for the correction of inaccurate data from prior years as part of a hospital's bid for geographic reclassification (67 FR 50027). The commenter suggested that not to allow corrections to the data results in inequities in the calculation in the average hourly wage for purposes of reclassification. In the August 1, 2002 IPPS final rule, we responded:

"Hospitals have ample opportunity to verify the accuracy of the wage data used to calculate their wage index and to request revisions, but must do so within the prescribed timelines. We consistently instruct hospitals that they are responsible for reviewing their data and availing themselves to the opportunity to correct their wage data within the prescribed timeframes. Once the data are finalized and the wage indexes published in the final rule, they may not be revised, except through the mid-year correction process set forth in the regulations at § 412.63(x)(2). Accordingly, it has been our consistent policy that if a hospital does not request corrections within the prescribed timeframes for the development of the wage index, the hospital may not later seek to revise its data in an attempt to qualify for MGCRB reclassification.

"Allowing hospitals the opportunity to revise their data beyond the timelines required to finalize the data used to calculate the wage index each year would lessen the importance of complying with those deadlines. The likely result would be that the data used to compute the wage index would not be as carefully scrutinized because hospitals would know they may change it later, leading to inaccuracy in the data and less stability in the wage indexes from year to year."

Since responding to this comment in the FY 2003 IPPS final rule, we have become aware of a situation in which a hospital does not meet the criteria to reclassify because its wage data were erroneous in prior years, and these data are now being used to evaluate its reclassification application. In addition, in this situation, the hospital's wage index was subject to the rural floor because the hospital was located in an urban area with an actual wage index below the statewide rural wage index for the State, and it was for a time period preceding the requirement for using 3 years of data. Therefore, the hospital contends, it had no incentive to ensure its wage data were completely accurate. (However, we would point out that hospitals are required to certify that their cost reports submitted to CMS are complete and accurate. Furthermore, inaccurate or incomplete reporting may have other payment implications beyond the wage index.)

We now more fully understand this particular hospital's situation and we have the administrative authority to establish a policy allowing corrections for this particular set of circumstances, in the proposed rule, we solicited comments on whether it may be appropriate to establish a policy whereby, for the limited purpose of qualifying for reclassification based on data from years preceding the establishment of the 3-year requirement (that is, cost reporting years beginning before FY 2000), a hospital in an urban area that was subject to the rural floor for the period during which the wage data the hospital wishes to revise were used to calculate the wage index, a hospital may request that its wage data be revised.

Comment: One commenter supported the proposed establishment of the exception. However, the commenter recommended that CMS consider allowing all hospitals to make corrections to the data that is used in reclassification determinations.

Response: We continue to believe that requiring wage data corrections by specified deadlines is essential to ensuring that wage data is finalized in an efficient manner. We also continue to believe that final wage data published in the annual IPPS final rules should be as complete and accurate as possible. However, we believe that, in the limited circumstances raised in our proposed rule where the hospital could not have foreseen that its wage data would later be used in a 3-year average, and the hospital was subject to the rural floor, it is feasible to permit a limited exception. Therefore, in this final rule, we are amending § 412.230(e)(2)(ii)(A) to allow, for the limited purpose of qualifying for geographic reclassification, hospitals demonstrating that they meet the limited circumstances described in the amended regulation be considered for reclassification after taking into account revisions subsequent to its use to construct the wage index for IPPS payment purposes. We are not adopting a broader exception, because we continue to believe it is important to ensure that final wage data published in the annual IPPS final rule are complete and accurate. Creating a broad exception to allow for corrections of prior years' data would affect the accuracy and stability in the wage indices from year to year. Therefore, we will continue to require hospitals—other than hospitals meeting the limited exception described in § 412.230(e)(2)(ii)(A)—to ensure that their wage data are correct by applicable deadlines and will not allow for wage data corrections after such deadlines.

Comment: Several hospitals who were interested in reclassifying, as a group, for purposes of the wage index, commented that their efforts to reclassify as an urban group have been unsuccessful primarily because they fail to meet the established requirement set forth in § 412.234(c)(2) that the requesting hospitals must demonstrate that their costs exceed their current payments by 75 percent of the additional payments they would receive through reclassification. The commenters submitted several recommendations for our consideration to clarify or improve our policies and regulations. They recommended that we consider:

- Allowing hospital groups to seek geographic reclassification for purposes of the wage index or standardized amount;
- Allowing hospital groups seeking geographic reclassification to areas where the reclassification would not result in a different standardized amount to seek reclassification for purposes of the wage index without having to satisfy the criteria applicable to hospitals seeking reclassification for purposes of the standardized amount;
- Allowing hospitals in NECMAs to seek reclassification to another MSA under the alternative criteria at § 412.236(c);
- Lowering the cost-to-payment threshold used to evaluate group reclassification applications; or
- In order to evaluate the interrelationship between the area where the hospitals are located and the target area in which they are seeking to reclassify, replacing the cost comparison criteria used to evaluate reclassification eligibility for purposes of the standardized amount with a better indicator of the connection such as, census commuting patterns.

Response: We appreciate the comments and recommendations presented by the hospitals and the importance of this issue. We note that, in developing the proposed rule, we did consider including a proposal to allow urban hospitals to reclassify as a group either for wage index or the standardized amount, or both. However, we did not go forward with the proposal because, upon further review, the criterion that hospitals demonstrate that their costs are in excess of their payments seemed appropriate. We will consider the commenters' recommendations in the future.

Comment: One commenter recommended that CMS consider lowering the applicable qualifying thresholds at § 412.230(c)(1)(iii) and (iv) for urban hospitals seeking reclassification for purposes of the wage index. The commenter specifically suggested that the threshold be lowered from 108 percent of the average hourly wage of hospitals in the area in which the hospital is located, and 84 percent of the average hourly wage of hospitals in the area to which the hospital seeks reclassification, to 106 percent and 82 percent, respectively, for urban hospitals. The commenter further recommended that, if the lower thresholds cannot be reduced for all urban hospitals, CMS consider implementing the lower thresholds for urban hospitals in areas where they are paid as if they are rural.

Response: As pointed out by the commenter, this issue was discussed, in detail, in the August 1, 2000 **Federal Register** (65 FR 47089 through 47090). While we will consider the recommendations for possible inclusion in a future proposed rule, we did not propose any changes or clarifications to the existing policy. Therefore, we are not adopting this comment.

E. Costs of Approved Nursing and Allied Health Education Activities (§ 413.85)

1. Background

Medicare has historically paid providers for the program's share of the costs that providers incur in connection with approved educational activities. The activities may be divided into the following three general categories to which different payment policies apply:

- Approved graduate medical education (GME) programs in medicine, osteopathy, dentistry, and podiatry. Medicare makes direct and indirect medical education payments to hospitals for residents training in these programs. Existing policy on direct GME payment is found at 42 CFR 413.86, and for indirect GME payment at 42 CFR 412.105.
- Approved nursing and allied health education programs operated by the provider. The costs of these programs are excluded from the definition of inpatient hospital operating costs and are not included in the calculation of payment rates for hospitals paid under the IPPS or in the calculation of payments to hospitals and hospital units excluded from the IPPS that are subject to the rate-of-increase ceiling. These costs are separately identified and "passed through" (that is, paid separately on a reasonable cost basis). Existing regulations on nursing and allied health education program costs are located at 42 CFR 413.85.
- All other costs that can be categorized as educational programs and activities are considered to be part of normal operating costs and are included in the per discharge amount for hospitals subject to the IPPS, or are included as reasonable costs that are subject to the rate-of-increase limits for hospitals and hospital units excluded from the IPPS.

In the May 19, 2003 proposed rule, we proposed to clarify our policy governing payments to hospitals for provider-operated nursing and allied health education programs. Under the regulations at § 413.85 ("Cost of approved nursing and allied health educational activities"), Medicare makes reasonable cost payment to hospitals for provider-operated nursing and allied health education programs. A program is considered to be provider-operated if the hospital meets the criteria specified in § 413.85(f), which means the hospital directly incurs the training costs, controls the curriculum and the administration of the program, employs the teaching staff, and provides and controls both clinical training and classroom instruction (where applicable) of a nursing or allied health education program.

In the January 12; 2001 **Federal Register** (66 FR 3358), we published a final rule that clarified the policy for payments for approved nursing and allied health education activities in response to section 6205(b)(2) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) and sections 4004(b)(1) and (2) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508).

Section 6205(b)(2) of Pub. L. 101–239 directed the Secretary to publish regulations clarifying the rules governing allowable costs of approved educational activities. The Secretary was directed to publish regulations to specify the conditions under which those costs are eligible for pass-through, including the requirement that there be a relationship between the approved nursing or allied health education program and the hospital. Section 4004(b)(1) of Pub. L. 101–508 provides an exception to the requirement that programs be provider-operated to receive pass-through payments. The section provides that, effective for cost reporting periods beginning on or after October 1, 1990, if certain conditions are met, the costs incurred by a hospital (or by an educational institution related to the hospital by common ownership or control) for clinical training (as defined by the Secretary) conducted on the premises of the hospital under an approved nursing or allied health education program that is *not* operated by the hospital are treated as pass-through costs and paid on the basis of

reasonable cost. Section 4004(b)(2) of Pub. L. 101–508 sets forth the conditions that a hospital must meet to receive payment on a reasonable cost basis under section 4004(b)(1).

2. Continuing Education Issue for Nursing and Allied Health Education

Since publication of the January 12, 2001 final rule on nursing and allied health education, we have encountered questions concerning the substantive difference between provider-operated *continuing education* programs for nursing and allied health education (which would *not* be reimbursable under Medicare on a reasonable cost basis) and provider-operated approved programs that are eligible to receive Medicare reasonable cost payment. In that final rule, we stated that Medicare would generally provide reasonable cost payment for "programs of long duration designed to develop trained practitioners in a nursing or allied health discipline, such as professional nursing or occupational therapy. This is contrasted with a continuing education program of a month to a year in duration in which a practitioner, such as a registered nurse, receives training in a specialized skill such as enterostomal therapy. While such training is undoubtedly valuable in enabling the nurse to treat patients with special needs and in improving the level of patient care in a provider, the nurse, upon completion of the program, continues to function as a registered nurse, albeit one with special skills. Further distinction can be drawn between this situation and one in which a registered nurse undergoes years of training to become a CRNA. For these reasons, the costs of continuing education training programs are not classified as costs of approved educational activities that are passed-through and paid on a reasonable cost basis. Rather, they are classified as normal operating costs covered by the prospective payment rate or, for providers excluded from the IPPS, as costs subject to the target rate-of-increase limits" (66 FR 3370).

Accordingly, upon publication of the final rule, we revised § 413.85(h)(3) to include continuing education programs in the same category as "educational seminars and workshops that increase the quality of medical care or operating efficiency of the provider." Costs associated with continuing education programs, as stated above, are recognized as normal operating costs and are paid in accordance with applicable principles.

Prior to the issuance of the May 19, 2003 proposed rule, we received an inquiry requesting further clarification on what is meant by continuing education. It is our belief that provider-operated programs that do not lead to any specific certification in a specialty would be classified as continuing education. In the proposed rule (68 FR 27210), we stated that our use of the term "certification" does not mean certification in a specific skill, such as when an individual is certified to use a specific piece of machinery or perform a specific procedure. Rather, we stated that we believe certification means the ability to perform in the specialty as a whole.

Although, in the past, we believe we have allowed hospitals to be paid for operating a pharmacy "residency" program, in the May 19, 2003 proposed rule, we stated that it has come to our attention that those programs do not meet the criteria for approval as a certified program. Once individuals have finished their undergraduate degree in pharmacy, there are *some* individuals who go on to participate in 1-year hospital-operated postundergraduate programs. It is our understanding that many individuals complete the 1-year postundergraduate program practice pharmacy inside the hospital setting. However, we also understand that there are pharmacists who *do not* complete the 1-year postundergraduate program, but have received the undergraduate degree in pharmacy, who also practice pharmacy inside the hospital setting. Because pharmacy students need not complete the 1-year residency program to be eligible to practice pharmacy in the hospital setting, the 1-year programs that presently are operated by hospitals would be considered continuing education, and therefore, would be ineligible for pass-through reasonable cost payment.

We stated that we understood that *all* individuals who wish to be nurses practicing in a hospital must either complete a 4-year degree program in a university setting, a 2-year associate degree in a community or junior college setting, or a diploma program traditionally offered in a hospital setting. Since participants that complete a provider-operated diploma nursing program could not practice as nurses without that training, the diploma nursing programs are *not* continuing education programs and, therefore, may be eligible for pass-through treatment.

Because of the apparent confusion concerning the distinction between continuing education programs and approved education programs in the context of reasonable cost pass-through payments for nursing and allied health education activities, in the May 19, 2003 proposed rule, we proposed to revise § 413.85(h)(3) to state that educational seminars, workshops, and continuing education programs in which the employees participate that enhance the quality of medical care or operating efficiency of the provider and, effective October 1, 2003, do not lead to certification required to practice or begin employment in a nursing or allied health specialty, would be treated as educational activities that are part of normal operating costs. We also proposed to add a conforming definition of "certification" for purposes of nursing and allied health education under § 413.85(c) to mean "the ability to practice or begin employment in a specialty as a whole."

Comment: A large number of commenters responded to our proposal to clarify that, effective October 1, 2003, activities that do not lead to certification required to practice or begin employment in a nursing or allied health specialty would be treated as educational activities (continuing education) that are part of normal operating costs, and not as approved programs that are eligible for reasonable cost reimbursement. Many commenters strongly disagreed with the section of the proposed rule that included clinical pastoral education (CPE) as continuing education and stated that CMS must have been badly misinformed when writing the proposed rule. The commenters argued that CPE is a rigorous and structured education program accredited by the Association for Clinical Pastoral Education, Inc. (ACPE). The commenters stressed that, in varying amounts, CPE is a requirement for graduation for the master of divinity degree and for professional certification by the Association of Professional Chaplains (APC) as a health care chaplain, or as a CPE supervisor. Many commenters also noted prior Provider Reimbursement Review Board (PRRB) rulings that recognized chaplaincy as an allied health discipline, and asserted that hospitals that receive Medicare reasonable cost pass-through payment for CPE do so for the purpose of their professional CPE programs, not as continuing education for individuals already qualified to practice in hospital chaplaincy. Many commenters mentioned that the Joint Commission on Accreditation of Healthcare Organizations also recognizes chaplains as allied health professionals and considers them "primary care providers." Similarly, commenters referred to various studies that have shown the positive spiritual and therapeutic benefits of pastoral care. The commenters warned that removal of funding for CPE would represent a huge step backward for American health care. The commenters urged CMS to ensure continuing pass-through payments for CPE.

Response: In the May 19, 2003 proposed rule (68 FR 27210), we stated that we received an inquiry requesting further clarification of what is meant by continuing education. We proceeded to explain what constitutes "continuing education" for the purpose of determining whether a nursing or allied health education activity would or would not qualify for Medicare reasonable cost pass-through payments. We acknowledge that the definition of "continuing education" for Medicare payment purposes may differ from the academic view of what, in general, constitutes such activities. In the proposed rule, we stated that we believed that provider-operated programs that do not lead to any specific certification or the ability to perform in the specialty would be classified as "continuing education."

Our intent is to ensure that Medicare pass-through payments are only provided for programs that enable an individual to be employed in a capacity that he or she could not have been employed without having first completed a particular education program. We believe that, *for Medicare purposes,* training that enhances an individual's competencies, but does not permit that individual to be employed in a new capacity in which he or she could not have been employed without completing the additional training, would not qualify for Medicare reasonable cost pass-through payment. Medicare provides payments for such educational activities, but only under the methodology applicable to payment of normal operating costs. Our intent was simply to provide clarification for the purpose of distinguishing between those educational programs that qualify for reasonable cost pass-through payment (that is, programs that enable an individual to begin employment in a specialty as a whole) and those programs that should be paid as normal operating costs (that is, activities that are intended to enhance the current skill set of an individual's profession or advance an individual's professional career).

Since publication of the proposed rule, we have learned from information provided by the ACPE and the APC that there are several levels of CPE. Specifically, the ACPE accredits three different levels of CPE. The first level of CPE is generally geared to interns and beginning residents. The second level of CPE is generally geared to residents doing specialization and preparation for chaplaincy certification. The third level is supervisory training, which is geared toward preparation for certification by the ACPE as a CPE supervisor.

We understand that, as a part of the requirements for a master of divinity degree, many theological schools and seminaries require or strongly recommend completion of an internship, or 1 unit of CPE for graduation. A unit of CPE is 400+ hours of supervised CPE in a health care or institutional setting. Students taking either 1 or 2 units of CPE are generally referred to as interns. In addition, many faith groups require, at their national or regional levels, that individuals complete at least 1 unit of CPE in order for them to be ordained into professional ministry. Theological schools that offer doctoral degrees (for example, a doctor of philosophy, a doctor of ministry, or a doctor of theology) with specialties in pastoral counseling and related fields also generally require some amount of CPE as a part of those degree programs. Upon completion of a CPE internship, the health care institution typically reports to the theological school in which the student is enrolled that the student has successfully completed the internship, and the theological school subsequently awards credit for the training. Based upon information received from the commenters, we understand that completion of only an internship, or 400+ hours of CPE, would not qualify an individual for employment as a chaplain in a hospital setting.

In contrast to CPE internships, CPE residents generally participate in a 1-year, or occasionally a 2-year, full-time CPE program. A 1-year residency typically consists of 4 units of postgraduate CPE (that is, 1,600+ hours of supervised CPE), in a health care or institutional setting. Generally, individuals who undertake 1,600 hours of CPE do so in order to become a board-certified chaplain. The ACPE has established 4 units, or 1,600 hours of supervised CPE, as the national minimum amount of CPE that is required to become a board-certified chaplain. However, some certifying boards or particular programs may require some additional hours of CPE for board certification. We note that, in instances where academic credit is granted for completion of 1 unit, or 400 hours, of CPE prior to receipt of a degree, an individual seeking to become a board-certified chaplain generally must complete an additional 1,600 hours of CPE training.

The board certification of chaplains is carried out by nationally recognized organizations that are part of the Commission on Ministry in Specialized Settings (COMISS), an umbrella network for pastoral care organizations that share the same standards of educational preparation and clinical training. These organizations include the Association of Professional Chaplains (APC), the National Association of Catholic Chaplains (NACC), the National Association of Jewish Chaplains (NAJC), and the Canadian Association for Pastoral Practice and Education (CAPPE). The ACPE accredits CPE training for all of these certifying organizations.

Based on information received from the commenters, we understand that most health care organizations that are accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) advertise for and recruit only board-certified chaplains, which means that qualified applicants for employment as hospital chaplains will usually have completed at least 1,600 hours of CPE.

Individuals who seek to develop a health care chaplaincy specialization (for example, hospice, pediatrics, cardiology, rehabilitation, neurology) may undertake a second year of CPE residency. A second year of residency consists of an additional 4 units of CPE (or 1,600+ hours of supervised CPE). However, there is currently no established board certification process for residents completing a second year of CPE residency training.

To be eligible to apply for supervisory CPE training, an individual must have completed at least 4 units (1 year) of CPE training. Upon completion of supervisory training, an individual becomes certified by the ACPE as a CPE supervisor and is qualified to develop and conduct CPE training for all ACPE-accredited programs.

Based on information submitted by the commenters on the different levels of CPE training, two important points relative to Medicare reimbursement have become clear to us. First, in instances where internship training is completed as a prerequisite for a degree granted by an educational institution other than a hospital, such training is *not* provider-operated, and, therefore, does *not* qualify for Medicare reasonable cost pass-through payment under § 413.85. Under § 413.85(f), a program is considered to be provider-operated only if the hospital directly incurs the training costs, directly controls the curriculum and the administration of

the program, employs the teaching staff, and provides and controls both clinical training and classroom instruction (where applicable). While a hospital may serve as the site for a CPE internship, such training is provided to satisfy curriculum requirements of a theological school, which grants the master degree upon completion of the internship. While the hospital might incur training costs and employ the supervising faculty, it would not ordinarily meet the other "provider-operated" criteria concerning controlling the curriculum and providing both the didactic and clinical training necessary for the degree. Thus, a CPE internship, or any other CPE training that is a requirement for a degree, whether it is undergraduate, graduate, or doctoral, is not eligible for Medicare reasonable cost pass-through payment.

Secondly, a CPE residency consisting of 1,600 hours of training could be a provider-operated program and could also lead to certification and the ability to be employed in a new or different capacity. Specifically, a CPE residency consisting of approximately 1,600 hours of training leads to board certification in chaplaincy, and, as we understand it, most JCAHO-accredited hospitals generally only employ board-certified chaplains. In consideration of these facts, the costs of CPE training programs that meet the requirements under § 413.85, including accreditation by a nationally recognized accrediting body, direct operation by a provider, and lead to certification that is generally a requirement for employment in a particular specialty, may be eligible for Medicare reasonable cost pass-through payment.

In the May 19, 2003 proposed rule (68 FR 27210), we proposed to revise the regulations at § 413.85(h)(3) to state that activities treated as normal operating costs include "Educational seminars, workshops, and continuing education programs in which the employees participate that enhance the quality of medical care or operating efficiency of the provider and, effective October 1, 2003, do not lead to certification required to practice or begin employment in a nursing or allied health specialty." We proposed to add a conforming definition of "certification" for purposes of nursing and allied health education under § 413.85(c) to mean "the ability to practice or begin employment in a specialty as a whole." However, it is apparent from the comments we received that our proposed definition of "certification" was not clear. Some commenters believed we intended, through the proposed definition, to allow pass-through payments for the costs of a program that would only enhance an individual's set of skills. However, that was not our intent. We believe it would have been more appropriate to use the word "and" instead of the word "or", to further emphasize that pass-through payment would only apply to activities that enable an individual to practice *and* begin employment in a specialty, but would *not* apply to activities that serve to add to or to enhance an individual's current skill set.

In addition, based on the comments received, we understand that there may be several distinct levels of training in a given health profession, and each level of training may be a requirement in order for an individual to work in a new capacity or "specialty" in that profession, but *not* a requirement to practice or begin employment in the specialty "as a whole." Since a second level of training is not required to begin practicing in a profession, under the proposed definition, we would not have been able to allow for pass-through payments for a second (or potentially a third) level of training. Therefore, we understand that inclusion of the words "as a whole" in the proposed definition of "certification" was misleading. Consequently, where a subsequent level of training is a requirement to practice in a new specialty in a given profession, pass-through payment may be made for the subsequent level of training.

Finally, we have concluded that it is not necessary to include a specific definition of "certification" at § 413.85. In this final rule, we are deleting the proposed definition of "certification" from § 413.85(c), and amending § 413.85(h)(3) by removing the words "certification required" and inserting the words "the ability." We are also changing the word "or" to "and". Specifically, we are amending the proposed regulations at § 413.85(h)(3) to state that activities treated as normal operating costs include "Educational seminars, workshops, and continuing education programs in which the employees participate that enhance the quality of medical care or operating efficiency of the provider and, effective October 1, 2003, do not lead to the ability to practice and begin employment in a nursing or allied health specialty."

Our view of a "specialty" in the nursing and allied health education context is based on what the industry views as the standard of practice in a specific area within a profession. The training required to allow a person to serve in the "specialty" is tailored to the skill level and context that an individual is expected to use in that "specialty."

Consistent with what we stated in the proposed rule, Medicare reasonable cost pass-through payments are only provided for programs that, according to industry norms, qualify an individual to be employed in a specialty in which the individual could not have been employed before completing a particular education program. Given the confusion expressed by commenters, we recognize the need to specify how we will determine whether completion of a particular education program enables an individual to be employed in a specialty. We will use "industry norms" as the standard to determine whether participation in a specialty enables an individual to be employed in a capacity that he or she could not have been employed without having first completed a particular education program. We are defining "industry norm" to mean that more than 50 percent of hospitals in a random, statistically valid sample require the completion of a particular training program before an individual may be employed in a specialty. (We understand that, in some instances, due to the unique staffing circumstances faced by many smaller hospitals, inclusion of small hospitals in the sample would introduce factors that are not typically representative of the industry as a whole and would skew the results inappropriately. In such a case, if appropriate, we would consider excluding hospitals with less than 100 beds, which would still retain over 75 percent of all hospitals in the universe).

Based on comments received, we believe that it is the "industry norm" to require a CPE residency and board certification for employment as a hospital chaplain. Since it is currently the "industry norm" for hospitals to employ only board-certified chaplains, and since completion of approximately 1,600 hours of CPE training is a requirement to practice and begin employment in hospital chaplaincy, we view hospital chaplaincy as a "specialty" of pastoral counseling. Consequently, a hospital that operates a CPE residency may be eligible for reasonable cost pass-through payment.

Specifically, assuming all requirements under § 413.85 are met, Medicare reasonable cost pass-through payments may only be made to hospitals for CPE hours that are *not* prerequisites for *any* academic degree, *and* are provided to students in order to obtain board certification in hospital chaplaincy. A hospital may not receive reasonable cost payment for any costs incurred in connection with providing CPE that is undertaken to meet the requirements of an academic degree. In addition, since generally a minimum of approximately 1,600 hours of CPE is required to become a board-certified chaplain, any costs incurred for an individual participating in CPE training that exceeds the minimum number of hours required to obtain board certification would not be eligible to be paid on a reasonable cost basis.

However, we note that we do not completely defer to the information provided by industry representatives in order to determine the "industry norm." Rather, if at any time we obtain information that calls our view of industry norms into question, we may make our own determination based on a random sample of hospitals. Therefore, assuming all other requirements under § 413.85 are met, a hospital may receive reasonable cost pass-through payment for the hours of CPE for which academic credit is *not* granted (since *those* CPE hours are not generally provider-operated), and for the hours of CPE that may be used to satisfy training requirements for board certification. We will continue to allow reasonable cost payment for CPE that leads to board certification as long as we do *not* have evidence indicating that, based on a statistically valid, random sample, the "industry norm" is *not* to require board certification for chaplains that are employed by hospitals.

We also recognize that industry norms are susceptible to change over time. Therefore, although it may not currently be the "industry norm" to require completion of a particular nursing or allied health education program in order to practice and begin employment in a particular specialty, it may become the "industry norm" in the future. If we find that it has become the "industry norm," we may allow the hospitals operating those programs (and meeting the requirements at § 413.85) to be paid for the costs of those programs on a reasonable cost basis.

In relation to the commenters' recommendation that reasonable cost reimbursement should be provided for CPE supervisory training, we understand that, essentially, the purpose of the supervisory training is to prepare a chaplain to develop CPE programs and to teach interns and residents. We believe that CPE supervisors are practicing in the teaching profession, not within a nursing or allied health discipline. Furthermore, we do not believe that Congress intended to provide for reasonable cost pass-through payments for programs that are intended to produce instructors or teachers. While we recognize that CPE supervisors are necessary to train and prepare individuals for hospital chaplaincy, we believe that it is appropriate for the costs of supervisory programs in general to be treated as normal operating costs and paid accordingly.

Comment: One commenter stated that our proposed definition of provider-operated programs intended to exclude programs "that do not lead to certification required to practice or begin employment in a nursing or allied health specialty * * *" is not appropriate in light of the growing number of skills that require intensive clinical experiences. Another commenter stated that this proposal will seriously hinder reversal of the nursing shortage across the nation and, as a result, will have an adverse impact on the quality and safety of care provided in hospitals. The commenters used the example of nurse residencies, which a number of hospitals across the country are hosting for registered nurses. The commenters explained that these residencies, which are postgraduate and typically last 1 year, are designed to equip the newly licensed nurse with the skills to care for patients who require the most complex and sophisticated diagnostic and therapeutic services, and to prepare the nurses for leadership roles earlier in their careers and give them the tools to improve the quality of care and reduce medical errors. The commenters claimed that the Federal Government has thus far provided minimal funding to help ameliorate the nursing shortage and, therefore, the proposed rule is particularly distressing. They urged CMS to include criteria in the final rule for pass-through payment of nurse residencies.

Response: First, we do not believe that nurse residencies, which are intended to help integrate newly licensed nurses into complex acute care environments by enhancing their competencies and skills, are programs that qualify these nurses to be employed in a new specialty. Accordingly, it is more appropriate to treat such activities as normal operating costs. As we stated above, Medicare reasonable cost pass-through payment will only be provided for programs that, according to industry norms, qualify an individual to be employed in a specialty in which the individual could not have been employed prior to completing a particular education program. Second, we note that nurse residencies do not qualify for reasonable cost payment because they also do not meet the requirement for accreditation by a national approving body under § 413.85(d)(1)(i)(A). Therefore, while we are sympathetic to the commenters' concerns, we do not believe that it is appropriate at the present time to allow for pass-through payment to be made under the Medicare program for nurse residencies.

Comment: Some commenters stated that CMS was "entirely correct" in identifying CPE as continuing education and concurred with our proposal to discontinue pass-through payments for CPE. One commenter contended that ACPE-accredited training is not primarily used to prepare students to be health care chaplains. Rather, CPE is primarily ministry training, and there are various ways that one can choose to use CPE. One commenter added that very few individuals who train in CPE, including those individuals in 1-year residencies, become employed as health care chaplains. The commenter further stated that CPE is "properly a funding responsibility of the church rather than the government". The commenters argued that Medicare should not be supporting continuing education for religious care providers whose primary base and certifying group is their denomination or faith group.

Another commenter presented a similar argument concerning pharmacy residencies and questioned why Medicare (that is, taxpayers) should subsidize these residency programs. The commenter claimed that hospitals "use government monies in order to hire these 'residents,' utilize them in 'clinical' positions under the guise of postgraduate training, thereby bypassing having to use FTEs in the hospital pharmacy budget." The commentator believed that if hospitals and pharmacists were truly concerned with improving patient care, hospital pharmacy departments would train their own staff pharmacists to perform the clinical aspects themselves, rather than having taxpayers provide the funding.

Response: We are sympathetic to the commenters' concerns. However, we understand that many CPE programs do occur in hospitals, and that, while there may be various kinds of CPE training, generally, completion of approximately 1,600 hours of CPE training is required for board certification and employment by a hospital. Therefore, we believe that CPE residencies that lead to board certification generally would not be considered continuing education.

In response to the commenters' concerns about the taxpayers, through the Medicare program, providing support for CPE and pharmacy residencies, we note Medicare payment for these and other similar programs are made in accordance with the Medicare

statute. Under section 1861(v) of the Act, Congress provides for Medicare payments to be made in support of certain medical education activities. Currently, if a program meets the regulatory requirements under § 413.85, which were specified earlier in this preamble, a hospital operating that program may qualify for Medicare reasonable cost pass-through payment.

Comment: One commenter explained that a dietetic internship is a post-baccalaureate program that is one of the requirements for practicing as a registered dietitian. The commenter pointed out that the Commission on Accreditation of Dietetic Education (CADE) of the American Dietetic Association accredits these internships and the interns contribute directly to patient care in a hospital. The commenter urged us to continue to pay health care organizations for dietetic internships.

Response: We appreciate the comment and note that, as long as a dietetic internship meets the requirements under § 413.85 (and we do not find that it is not the industry norm to require this training to be employed as a registered dietitian), the hospital operating the internship may qualify for Medicare reasonable cost pass-through payment.

Comment: A large number of commenters responded to our proposal to clarify that, effective October 1, 2003, training that does not lead to certification required to practice or begin employment in a nursing or allied health specialty would be treated as educational activities (continuing education) that are part of normal operating costs, and not as approved programs that are eligible for reasonable cost pass-through payments. Many commenters strongly disagreed with our proposal that included pharmacy residencies in the type of training that is considered continuing education and claimed that the proposed rule reflected a fundamental misunderstanding of pharmacy education. The commenters stated that educational seminars, workshops, and continuing education programs are generally performed outside the provider setting, and in most instances do not exceed 40 hours per year, whereas a pharmacy residency is a full-time commitment that lasts for 1 year. The commenters emphasized that the pharmacy residencies are structured, intensive programs that incorporate direct patient care experience where residents work as part of a clinical team and are required to complete a comprehensive project. The commenters contended that residency experience provides focused, invaluable training that yields proven positive clinical and financial outcomes. The commenters also noted that, while residencies are not a requirement for all hospital pharmacy positions, they are a requirement for most clinical specialist positions. The commenters maintained that residencies would be a more universal hiring requirement were it not for the current shortage of pharmacists and residency programs. The commenters stressed the benefits of clinical pharmacist involvement in patient care and cautioned that CMS' attempt at short-term cost savings will result in significant long-term cost of care increases. The commenters urged CMS to ensure continuing reasonable cost pass-through payments for pharmacy residencies.

Response: As we stated above in response to the comments received from the clinical pastoral counseling community, in the May 19, 2003 proposed rule (68 FR 27210), we explained what constitutes "continuing education" for the purpose of determining whether a nursing or allied health education activity would or would not qualify for Medicare reasonable cost pass-through payments. We acknowledge that the definition of "continuing education" for Medicare payment purposes may differ from the academic view of what, in general, constitutes such activities. As we stated earlier, we believe that provider-operated programs that do not lead to any specific certification, or the ability to perform in the specialty, would be classified as "continuing education."

Our intent is to ensure that Medicare reasonable cost pass-through payments are only provided for programs that enable an individual to be employed in a capacity that he or she could not have been employed without having first completed a particular education program. We believe that, *for Medicare purposes*, training that enhances an individual's competencies, but does not permit that individual to be employed in a new specialty in which he or she could not have been employed without completing the additional training, would not qualify for Medicare reasonable cost pass-through payment. Medicare provides payment for such educational activities, but only under the methodology applicable to payments for normal operating costs. Our intent was to provide clarification for the purpose of distinguishing between those educational programs that qualify for reasonable cost pass-through payment (that is, programs that enable an individual to begin employment in a specialty), and those programs that should be paid as normal operating costs (that is, activities that are intended to enhance the current skill set of an individual for a profession or advance an individual's professional career).

Since publication of the proposed rule, we have learned from information provided by the commenters that there are two categories of pharmacy residencies—pharmacy practice residencies and specialized pharmacy residencies, both of which are accredited by the American Society of Health-System Pharmacists (ASHP). If a pharmacist chooses to participate in residency training, he or she would generally do so after completion of an undergraduate bachelor of science degree or a doctor of pharmacy degree. (In some cases, residencies are offered as a part of a postgraduate degree (a master of science or a doctor of pharmacy). However, these programs would *not* meet our provider-operated criteria.) A pharmacy practice residency is typically a 1-year, organized, directed, postgraduate training program in a defined area of pharmacy practice that may take place in a variety of settings, including hospitals. For those seeking additional skills in a focused area of pharmacy practice (for example, oncology), an individual may choose to complete a second year of specialized pharmacy residency. Currently, ASHP, in partnerships with other professional organizations, accredits 17 second-year pharmacy residencies, in areas such as cardiology, geriatrics, infectious diseases, and oncology.

Of the 17 second-year pharmacy residencies, only 5 of these residencies currently lead to board certification. The Board of Pharmaceutical Specialties (BPS) is the organization that administers the certifying examinations after completion of each of these five residencies. Upon completion of a residency in 1 of the other 12 second-year residencies, the hospital in which the resident has trained issues a certificate to the pharmacist.

We understand that many employers, including hospitals, increasingly are requiring completion of an ASHP-accredited first year pharmacy practice residency as a condition for employment as a clinical ("on the floor") or direct patient care pharmacist. While a licensed pharmacist who has not completed a pharmacy practice residency might be hired by a hospital as a staff or distribution pharmacist, a hospital typically would only hire an individual who has completed at least a 1-year pharmacy practice residency to fill a position that requires direct work with hospital patients. Some hospitals may even require their pharmacists to have completed a second-year specialized residency before allowing those pharmacists to specialize on a particular group or type of patients. For example, before a pharmacist may work exclusively to design, implement, and monitor a course of treatment for oncology patients, some hospitals require that the pharmacist complete a residency in oncology pharmacy. However, many hospitals may employ pharmacists who have only completed a pharmacy practice residency to treat these groups or types of patients, including oncology patients.

As we explained above in response to the comments on CPE, in the May 19, 2003 proposed rule (68 FR 27210), we proposed to revise the regulations at § 413.85(h)(3) to state that activities treated as normal operating costs include "Educational seminars, workshops, and continuing education programs in which the employees participate that enhance the quality of medical care or operating efficiency of the provider and, effective October 1, 2003, do not lead to certification required to practice or begin employment in a nursing or allied health specialty." We proposed to add a conforming definition of "certification" for purposes of nursing and allied health education under § 413.85(c) to mean "the ability to practice or begin employment in a specialty as a whole." However, it is apparent from the comments we received that our proposed definition of "certification" was not clear. Some commenters believed we intended, through the proposed definition, to allow pass-through payments for the costs of a program that would only enhance an individual's set of skills. However, that was not our intent. We believe it would have been more appropriate to use the word "and" instead of the word "or" to further emphasize that pass-through payment would only apply to activities that enable an individual to practice *and* begin employment in a specialty, but would *not* apply to activities that serve to add to or to enhance an individual's current skill set.

In addition, based on the comments received, we understand that there may be several distinct levels of training in a given health profession, and each level of training may be a requirement in order for an individual to work in a new capacity or "specialty" in that profession, but *not* a requirement to practice or begin employment in the specialty "as a whole." Since a second level of training is not required to begin practicing in a profession, under the proposed definition, we would not have been able to allow for pass-through payments for a second (or potentially a third) level of training. Therefore, we understand that inclusion of the words "as a whole" in the proposed definition of "certification" was misleading. Consequently, where a subsequent level of training is a requirement to practice in a new specialty in a given profession, pass-through payment may be made for the subsequent level of training.

Finally, we have concluded that it is not necessary to include a specific definition of "certification" in the regulations at § 413.85. In this final rule, we are deleting the proposed definition of "certification" from § 413.85(c), and amending § 413.85(h)(3) by removing the words "certification required" and inserting the words "the ability." We are also changing the word "or" to "and". Specifically, we are amending the proposed § 413.85(h)(3) to state that activities treated as normal operating costs include "Educational seminars, workshops, and continuing education programs in which the employees participate that enhance the quality of medical care or operating efficiency of the provider and, effective October 1, 2003, do not lead to the ability to practice and begin employment in a nursing or allied health specialty."

As we stated above in response to the comments concerning CPE, our view of a "specialty" in the nursing and allied health education context is based on what the health care industry views as the standard of practice in a specific area within a profession. We are defining "industry norm" to mean that more than 50 percent of hospitals in a random, statistically valid sample require the completion of a particular training program before an individual may be employed in a specialty. (We understand that, in some instances, due to the unique staffing circumstances faced by many smaller hospitals, inclusion of small hospitals in the sample would introduce factors that are not typically representative of the industry as a whole and would skew the results inappropriately. In such cases, we would consider excluding hospitals with less than 100 beds, which would still retain over 75 percent of all hospitals in the sample universe.)

Based on comments received, we believe that it is currently the "industry norm" for hospitals to generally hire only pharmacists who have completed a pharmacy practice residency to work directly in patient care. Specifically, without having completed a pharmacy practice residency, a pharmacist would typically be employed by a hospital as a staff or distribution pharmacist, but not as a clinical pharmacist who works directly with patients to develop treatment plans. Since completion of a pharmacy practice residency has become a requirement by hospitals to practice or begin employment in a position that involves direct patient care, we would view "hospital pharmacy" as a "specialty" of the pharmacy profession. Accordingly, pharmacy practice residency training programs that meet the requirements under § 413.85, including accreditation by a nationally recognized accrediting body, direct operation by a provider, and lead to certification that is a requirement for employment, may be eligible for Medicare reasonable cost pass-through payment.

However, it is apparent from the comments that it is *not* unusual for a hospital to employ a pharmacist that has only completed a pharmacy practice residency in an area in which an accredited second-year program exists (that is, geriatrics, cardiology, or oncology), without requiring the pharmacist to first complete that second-year residency program. For example, we would view further training in oncology pharmacy or cardiology pharmacy as specializations within the pharmacy field under the policy in this final rule. However, these second-year residencies would *not* qualify for reasonable cost pass-through payment because, based on information received from commenters, it is not currently the "industry norm" to require completion of these programs before beginning work in these specialties. If we find in the future that it has become the "industry norm" for hospitals to require second-year pharmacy residencies, we may allow the hospitals operating those programs to be reimbursed for the costs of those programs on a reasonable cost basis.

3. Programs Operated by Wholly-Owned Subsidiary Educational Institutions of Hospitals

Another matter that has come to our attention since publication of the January 12, 2001 final rule (66 FR 3363) on nursing and allied health education concerns the preamble language of the rule, which states:

"Concerning those hospitals that have established their own educational institution to meet accrediting standards, we believe that, in some cases, these providers can be eligible to receive payment for the classroom and clinical training of students in approved programs. If the provider demonstrates that the educational institution it has established is wholly within the provider's control and ownership and that the provider continues to incur the costs of both the classroom and clinical

training portions of the program, the costs would continue to be paid on a reasonable cost basis. An independent college would not meet these criteria.

"An example of a program that could be considered provider-operated would be one in which the hospital is the sole corporate member of the college, elects the board of trustees, has board members in common, employs the faculty and pays the salaries, controls the administration of the program and the curriculum, and provides the site for the clinical and classroom training on the premises of the hospital. We believe that, in these situations, the community has not undertaken to finance the training of health professionals; the provider has merely restructured its provider-operated program to meet certain State or accrediting requirements. In most cases, providers have aligned themselves with already established educational institutions. We note that a program operated by an educational institution that is related to the provider through common ownership or control would not be considered to meet the criteria for provider operated." (66 FR 3363)

We have received a question from a hospital that pertains to the cited preamble language in the narrow circumstance where the hospital previously received Medicare reasonable cost payment for direct operation of nursing or allied health education programs and then established its own wholly owned subsidiary college to operate the programs, in order to meet accreditation standards. The hospital has continued to receive Medicare payments after the hospital moved operation of the programs to the wholly owned subsidiary college. The hospital believes that, based on the cited preamble language regarding wholly owned subsidiary colleges and the lack of prior specific guidance on this particular organizational structure (as well as its continued receipt of pass-through payments) and because the hospital continues to pay all of the costs of the nursing and allied health education programs, the hospital is still the direct operator of the programs and should continue to receive pass-through treatment. However, we believe that once the hospital moved the direct operation of its nursing and allied health education programs to the college, the programs no longer met our provider-operated criteria at § 413.85(f). At the very least, it appears that the hospital did not hire the faculty for the program(s) and did not have direct control of the curriculum of the program(s) after operation was transferred to the wholly owned subsidiary college. As we stated in the preamble language quoted above: "a program operated by an educational institution that is related to the provider through common ownership or control would not be considered to meet the criteria for provider operated" (66 FR 3363).

However, we understand that some hospitals, including this hospital, may have interpreted the preamble language that stated, "if the provider demonstrates that the educational institution it has established is wholly within the provider's control and ownership and that the provider continues to incur the costs of both the classroom and clinical training portions of the program, the costs would continue to be paid on a reasonable cost basis" (*Ibid.*), to mean that hospitals that establish wholly owned subsidiary colleges or educational institutions would continue to receive Medicare reasonable cost payment if the hospitals incur the costs of the classroom instruction and clinical training. In the May 19, 2003 proposed rule, we proposed to clarify that transferring operation of previously provider-operated programs to educational institutions, even if the institutions are wholly owned by the hospital, does *not* necessarily mean that the programs continue to meet our provider-operated criteria under § 413.85(f). In order to remain provider operated, the hospital must have *direct control* of the program; the hospital itself must employ the teaching staff, have direct control of the program curriculum, and meet other requirements, as stated at § 413.85(f).

While we proposed to clarify that merely operating programs through a wholly owned subsidiary college does not constitute direct operation of nursing or allied health education programs unless the hospital itself meets the requirements of the regulations at § 413.85(f), we believe it would be unfair to recoup Medicare payments that have already been made to hospitals that meet this very narrow fact pattern. Therefore, we proposed that Medicare would not recoup reasonable cost payment from hospitals that have received pass-through payments for portions of cost reporting periods occurring before October 1, 2003 for the nursing or allied health education program(s) where the program(s) had originally been operated by the hospital, and then operation of the program(s) had been transferred by the hospital to a wholly owned subsidiary educational institution in order to meet accreditation standards prior to October 1, 2003, and where the hospital had continuously incurred the costs of both the classroom and clinical training portions of the programs at the educational institution.

In addition, we proposed that, for portions of cost reporting periods occurring on or after October 1, 2003, such a hospital would continue to receive reasonable cost payments for the clinical training costs incurred by the hospital for the program(s) described above that were previously provider operated. However, we further proposed that, with respect to classroom costs, only those classroom costs incurred by the hospital for the courses that were paid by Medicare on a reasonable cost basis and included in the hospital's provider-operated program(s) could continue to be reimbursed on a reasonable cost basis. That is, Medicare would pay on a reasonable cost basis for the classroom costs associated with the courses provided as part of the nursing and allied health education programs (for example, the courses relating to the theory and practice of the particular nursing and allied health discipline(s)) that were offered by the hospital when the hospital was the direct operator of the program(s).

We believe the proposed policy is appropriate since continued pass-through payment will allow these hospitals to maintain equal footing with other hospitals that receive pass-through payments and have maintained their provider-operated programs. In addition, it would not be equitable to discontinue longstanding Medicare pass-through payment to these hospitals (in fact, reasonable cost payment to at least one of these hospitals for nonprovider-operated programs preceded the publication of the January 12, 2001 final rule on nursing and allied health education payments by many years) that restructured operation of their nursing and allied health education program(s) as wholly owned subsidiaries in order to meet accreditation standards while relying on their understanding of CMS' prior expressions of provider-operated requirements and the recent preamble language. If these providers were now forced to restructure in order to meet the requirements of § 413.85(f), they would not be able to maintain their accreditation.

We note that Congress has specifically expressed its intent that providers that have restructured their programs to be operated by a wholly owned subsidiary educational institution in order to meet accreditation standards should continue to receive Medicare reasonable cost payment. In the conference report accompanying the Consolidated Appropriations Resolution for FY 2003, Congress stated:

"The conferees are particularly concerned about nursing and allied health educational programs that cannot meet the regulations set forth at 42 CFR 413.85(f) solely as a result of regional educational accrediting criteria. Given the shortage of nursing and allied health professionals, the conferees support the payment of costs on a reasonable cost basis for a hospital that has historically been the operator of nursing and allied health education programs(s) that qualified for Medicare payments under 42 CFR 413.85, but, solely in order to meet educational standards, subsequently relinquishes some control over the program(s) to an educational institution, which meets regional accrediting standards; is wholly owned by the provider; and is supported by the hospital, that is, the hospital is incurring the costs of both the classroom and clinical training of the program." (H.R. Rep. No. 108–10, 108th Cong., 1st Sess., 1115 (2003).)

However, we note that the proposed policy would not allow these hospitals to be paid for additional classroom costs, for courses that were not paid on a reasonable cost basis to the hospitals in conjunction with their provider-operated programs (for example, additional classes needed to meet degree requirements). We believe that to allow pass-through payment for those additional costs would provide these hospitals with an unfair advantage over other hospitals with provider-operated programs.

We note that any hospital that chooses to restructure its programs to be operated by a wholly-owned subsidiary educational institution on or after the effective date of this proposal when finalized (October 1, 2003) would not be eligible for pass-through payments under the proposed provision unless the hospital continues to meet the requirements of § 413.85(f). We believe it is appropriate to limit the proposed payments to hospitals that restructured before October 1, 2003 because our policy with respect to programs by a wholly-owned subsidiary of a hospital will have been clarified by that date (the date that this final rule is effective).

We proposed to revise § 413.85 by adding new paragraphs (d)(1)(iii) and (g)(3) to reflect the proposed payment policy.

Comment: Several comments supported our proposal. Specifically, the commenters believed that the proposed rule is consistent with the recent expressions of Congressional intent reflected in the conference report to the 2003 Consolidated Appropriations Resolution, which recognize that there is a shortage of nursing and allied health professionals, and that payments made for programs that are operated by wholly-owned subsidiary educational institutions of hospitals should not be retrospectively recouped and may continue in the future.

However, several commenters disagreed with the proposal under proposed § 413.85(g)(3)(iii) that, effective for portions of cost reporting periods occurring on or after October 1, 2003, eligible hospitals could receive payment for the clinical training costs and for the classroom costs, but only those classroom costs incurred by the hospital for the courses that were included in the program(s) that had originally been provider-operated before transfer of operation of the program(s) to a wholly owned subsidiary educational institution. One commenter stated that such criteria regarding reimbursement of classroom costs appears to presume that while a hospital was operating its own program before transferring the operation of the program to a wholly-owned subsidiary, the hospital must have offered fewer or different programs. The commenter believed that our example in the preamble of the proposed rule seems to suggest that "noncore" or nonnursing related classes would be excluded from reasonable cost reimbursement, effective October 1, 2003. The commenter contended that we have incorrectly assumed that diploma programs include only nursing courses because, in fact, such diploma programs typically included general courses for English, basic science, math, and similar subjects. The commenter asked that we revise the preamble to clarify that courses for which costs were historically reimbursed would continue to qualify for reasonable cost payment without regard to whether they are "core" or "noncore" nursing courses.

Other commenters argued that restricting reimbursement to courses originally offered by the provider-operated program would discourage providers from ensuring that training of health care professionals is kept up to date and would not allow providers to meet evolving requirements of accrediting organizations. One commenter noted that the conference report accompanying the Consolidated Appropriations Resolution for FY 2003 states that "* * * the conferees support the payment of costs on a reasonable cost basis for a *hospital* that has historically been the operator of nursing and allied health education program(s) * * *" (Emphasis added) (H.R. Rept. No. 108–10, 108th Cong., 1st Sess., 1115 (2003)). The commenter believed this language indicates that Congress intended that schools should be reimbursed, not particular courses.

In addition, commenters expressed concern that capping reimbursement for educational programs effective October 1, 2003, would further aggravate the existing shortage of appropriately trained healthcare workers. Finally, commenters suggested that the October 1, 2003 effective date be postponed because this date will cause hardship for institutions currently in the process of creating educational organizations for the purpose of transitioning their programs to those educational organizations.

Response: We acknowledge the commenters' general support of the proposed changes. In response to the commenters who disagreed with our proposal for limiting payment to certain classroom costs, as we stated in the preamble to the proposed rule (68 FR 27210), this proposed exception to the reasonable cost payment policy for programs operated by wholly-owned subsidiary educational institutions was based on a question that we received from a hospital pertaining to the language in the January 12, 2001 **Federal Register** (66 FR 3363) concerning hospitals that established their own educational institutions to meet accreditation standards. Specifically, the hospital that raised the issue previously received Medicare reasonable cost payment for the direct operation of nursing and allied health education programs and then established its own wholly-owned subsidiary college to operate the programs, in order to meet accreditation standards. The hospital in question has continued to receive Medicare payments after the hospital moved operation of the programs to the wholly-owned subsidiary college. The hospital believed that, based on the cited preamble language in the January 12, 2001 **Federal Register** regarding wholly owned subsidiary colleges and the lack of prior specific guidance on this particular organizational structure (as well as its continued receipt of pass-through payments) and because the hospital continues to pay all of the costs of the nursing and allied health education programs, that it is still the direct operator of the programs and should continue to receive pass-through treatment.

As we stated in the proposed rule, we believe that once the hospital moved the direct operation of its nursing and allied health education programs to the college, the programs no longer met our provider-operated criteria at § 413.85(f).

As we stated in the preamble language quoted above: "a program operated by an educational institution that is related to the provider through common ownership or control would not be considered to meet the criteria for provider operated" (66 FR 3363).

We explained that we understood that some hospitals may have interpreted the preamble language that stated, "if the provider demonstrates that the educational institution it has established is wholly within the provider's control and ownership and that the provider continues to incur the costs of both the classroom and clinical training portions of the program, the costs would continue to be paid on a reasonable cost basis' (*Ibid.*), to mean that hospitals that establish wholly owned subsidiary colleges or educational institutions would continue to receive Medicare reasonable cost payment if the hospitals incur the costs of the classroom instruction and clinical training. Accordingly, although we proposed to clarify in the proposed rule that, in general transferring operation of previously provider-operated programs to educational institutions, even if the institutions are wholly owned by the hospital, does not necessarily mean that the programs continue to meet our provider-operated criteria under § 413.85(f), we believed it would be unfair to recoup Medicare payments that have already been made to such a hospital that meets *this very narrow fact pattern*. Therefore, we proposed to add a *limited* exception to § 413.85 to reflect the unique circumstances of such a hospital.

First, we proposed that, for portions of cost reporting periods occurring on or before October 1, 2003, Medicare would not recoup reasonable cost payment from such a hospital that has received pass-through payments for the nursing or allied health education program(s) where the program(s) had originally been operated by the hospital, and then operation of the program(s) had been transferred by the hospital to a wholly owned subsidiary educational institution in order to meet accreditation standards prior to October 1, 2003, and where the hospital had continuously incurred the costs of both the classroom and clinical training portions of the programs at the educational institution.

Second, since we believed that such a hospital's programs were no longer provider-operated, and therefore, should not continue in the future to receive *full* reasonable cost payments for the clinical and classroom costs of programs that are now operated by the wholly owned subsidiary educational institution, we proposed that, for portions of cost reporting periods occurring on or after October 1, 2003, such a hospital would continue to receive reasonable cost payments for the clinical training costs incurred by the hospital for the program(s) described above that were previously provider operated. However, we further proposed that, with respect to classroom costs, only those classroom costs incurred by the hospital for the courses that were paid by Medicare on a reasonable cost basis and were included in the hospital's provider-operated program(s) could continue to be reimbursed on a reasonable cost basis. That is, we proposed that Medicare would pay on a reasonable cost basis for the classroom costs associated with the courses provided as part of the nursing and allied health education programs (for example, the courses relating to the theory and practice of the particular nursing and allied health discipline(s)) that were offered by the hospital when the hospital was the direct operator of the program(s).

In proposing that, effective for portions of cost reporting periods occurring on or after October 1, 2003, we would only continue to pay on a reasonable cost basis for classroom costs associated with the courses that relate to the theory and practice of the particular nursing or allied health discipline(s) that were offered by the hospital when the hospital was the direct operator of the program(s), and *not* for additional classes needed to meet degree requirements provided as part of the nursing or allied health education programs, we did assume, as a commenter suggested, that diploma nursing programs typically only include courses related to the theory and practice of nursing. However, regardless of whether diploma programs include additional general courses other than "core" nursing courses, we continue to believe it is more appropriate to pay a hospital that meets the limited exception that allows continued payment for only those costs associated with courses included in the program(s) when the hospital was still the direct operator of the program(s). If, in fact, a hospital that meets the limited exception currently offers the same courses that it had offered when it was still the direct operator of the programs, we would continue to pay for the classroom costs associated with those courses, even if those courses do not relate directly to the theory and practice of the nursing or allied health program(s). However, if new courses, whether or not they are nursing-related or allied health-related course, have been added after the operation of the program(s) was transferred to a wholly owned subsidiary educational institution, we would not pay on a reasonable cost basis for the classroom costs associated with those new courses, effective October 1, 2003. If the courses offered currently are the same as the courses offered prior to transfer of the programs to the wholly owned subsidiary, but, for example, the names of the courses have changed, or there have been course substitutions, we would evaluate each course on an individual basis to determine whether we would continue to allow reasonable cost payment for those courses. All other things being equal (that is, after adjusting for inflation and changes in enrollment), our intent is not to pay more on a reasonable cost basis as of October 1, 2003, for classroom costs to such a hospital than we had paid to the hospital when the hospital was still the direct operator of the program(s).

In response to the comments we received that urged us not to restrict the number of courses for which we would provide reasonable cost reimbursement due to concerns about evolving accreditation requirements and the existing nursing shortage, we emphasize again that this proposal is not at all broad in scope. Rather, based on the information we currently have available to us, we believe this provision would have a limited application.. Therefore, we do not believe that our proposal will aggravate the nursing shortage or adversely affect hospitals that otherwise meet the requirements for reasonable cost payment under § 413.85 but add courses to their programs. Similarly, we do not believe that the effective date of October 1, 2003, will cause hardship to other providers that are currently in the process of transitioning their programs to educational organizations, since the proposed changes would only apply to a provider that had *already* created its own educational institution. We also note that, as indicated above, programs that transition in some respect to educational institutions created by providers could possibly be considered "provider-operated" under § 413.85(f) and, if all other requirements are met, could qualify to receive reasonable cost reimbursement.

Comment: One commenter disagreed with our statement in the proposed rule (68 FR 27211) that "* * * transferring operation of previously provider-operated programs to educational institutions, even if the institutions are wholly owned by the hospital, does not necessarily mean that the programs continue to meet our provider-operated criteria under § 413.85(f)." Rather, the commenter believed that programs that are wholly owned or wholly controlled by a hospital are provider-operated programs. The commenter asserted that CMS" distinction between provider-operated programs and wholly owned programs conflicts with CMS" regulations at § 413.17(c)(2) which state that "If the provider obtains items of services, facilities, or supplies from an organization, even though it is a separate legal entity, and the organization is owned or controlled by the owner(s) of the provider, in effect the items are obtained from itself." The commenter also referenced § 412.2(c)(5)(i) concerning the DRG 3-day payment window that applies to services provided by a hospital or by an entity wholly owned or operated by the hospital, and asserted that there is "no rational basis" for treating wholly owned or wholly controlled affiliates differently for purposes of pass-through payment.

Response: The commenter is incorrect in stating that, in the proposed rule, we indicated that wholly owned (or wholly controlled) programs by definition cannot meet the provider-operated criteria and, therefore, would not qualify for reasonable cost pass-through payments. In fact, as we have stated in the January 12, 2001 final rule (66 FR 3363), and reiterated in the preamble to the proposed rule, if the hospital that wholly owns the educational institution meets the provider-operated criteria, the hospital would qualify to receive reasonable cost pass-through payment. Specifically, we stated in the proposed rule (68 FR 27210) that "Concerning those hospitals that have established their own educational institution to meet accrediting standards, we believe that, in some cases, these providers can be eligible to receive payment for the classroom and clinical training of students in approved programs. * * * An example of a program that *could be considered provider-operated* would be one in which the hospital is the sole corporate member of the college, elects the board of trustees, has board members in common, employs the faculty and pays the salaries, controls the administration of the program and the curriculum, and provides the site for the premises of the hospital (emphasis added). Thus, while we still believe that transferring operation of previously provider-operated programs to educational institutions, even if the institutions are wholly owned by the hospital, does not necessarily mean that the programs continue to meet our provider-operated criteria under § 413.85(f) (68 FR 27211), we reiterate that only in instances where the hospital continues to meet the provider-operated criteria under § 413.85(f) would the hospital continue to qualify for reasonable cost pass-through payments, as it did prior to transferring operation of a provider-operated program(s) to a wholly owned educational institution.

The commenter also mentioned the generally applicable "related-entity" rules, and suggested that a wholly owned school would be a related entity that should be treated as if it is the provider. Thus, a wholly owned educational institution would remain provider-operated. However, we note that, for purposes of nursing or allied health education payment under § 413.85, it is not sufficient for a program to be operated by a related entity. Rather, the "related entity" principles do not apply under the agency's nursing and allied health education payment policy because, as indicated in previous rulemakings, that policy requires that a program be directly operated by the provider itself. Requiring direct operation of a program by the provider ensures that, under § 413.85(c), costs borne by related organizations (that is, the community) are not redistributed to the hospital and claimed as a pass-through under the Medicare program.

Comment: Commenters requested clarification on whether the proposed change regarding providers that created wholly owned subsidiary educational institutions to meet accreditation requirements would have any effect on provider-operated nursing or allied health programs that have entered into written contracts with colleges or universities to award their degrees.

Response: As we have explained in response to a previous comment, the proposed change was extremely limited in scope and only relates to hospitals with a unique set of circumstances surrounding operation of their programs by a wholly owned subsidiary educational institution. Therefore, the proposed changes do not have any impact on existing policy related to hospitals that enter into contracts with academic institutions to award their degrees. However, we stress that, in the instance where an academic institution other than the hospital grants the final certificate or degree upon completion of the program, the burden of proof is on the hospital to demonstrate that it, in fact, meets the "provider-operated" criteria under § 413.85(f) before reasonable cost payment may be made to that hospital.

Comment: One commenter believed that it is inappropriate to use the term "wholly owned" in reference to entities that, in many cases, are nonprofit institutions because, technically, nonprofit organizations are public trusts. The commenter suggested that it would be more accurate to refer to "wholly owned" or "wholly controlled" educational institutions.

Response: We believe that, for purposes of payment under § 413.85, it is appropriate to use the term "wholly owned." Although we recognize that nonprofit entities would not technically be "wholly owned" since they do not issue stock, we do not agree with the commenter that "wholly controlled" is an appropriate alternative because of the potential for confusion over issues relating to "control" and "provider operation." Further, we believe that the term "wholly owned" is commonly used in the context of nonprofit entities, and implies the kind of relationship we intend—where there is a single founder or member. Therefore, we will continue to use the term "wholly owned subsidiary" in the context of payment under § 413.85.

We are finalizing the two proposals associated with programs operated by wholly owned subsidiary educational institutions of hospitals. Specifically, we are finalizing the proposal under new § 413.85(g)(3) that, effective for portions of cost reporting periods occurring on or after October 1, 2003, a provider that incurs costs for a nursing or allied health education program(s) where those program(s) had originally been provider-operated, and then operation of the programs) was transferred to a wholly owned subsidiary educational institution in order to meet accreditation standards prior to October 1, 2003, and where the provider has continuously incurred the costs of both the classroom and clinical training portions of the program(s) at the educational institution, may receive reasonable cost payment for such a program(s). Further, reasonable cost payment will be made if a provider received reasonable cost payment for those nursing and allied health education program(s) both prior and subsequent to the date the provider transferred operation of the program(s) to this wholly owned subsidiary educational institution (and ceased to be provider-operated program(s)). Such a provider would receive reasonable cost payments for: (a) The clinical training costs incurred for the program(s), and (b) classroom costs, but only those classroom costs incurred by the provider for the courses that were included in the programs that were

originally provider-operated prior to the transfer to a wholly owned subsidiary educational institution. That is, Medicare would pay on a reasonable cost basis for the classroom costs associated with the courses provided as part of the nursing or allied health education programs that were offered by the hospital when the hospital was the direct operator of the program(s). We would not allow such a hospital to be paid for additional classroom costs for courses that were not paid on a reasonable cost basis to the hospital in conjunction with its provider-operated programs.

F. Payment for Direct Costs of Graduate Medical Education (§ 413.86)

1. Background

Under section 1886(h) of the Act, Medicare pays hospitals for the direct costs of graduate medical education (GME). The payments are based in part on the number of residents trained by the hospital. Section 1886(h)(4)(F) of the Act caps the number of allopathic and osteopathic residents that hospitals may count for direct GME.

Section 1886(h) of the Act, as added by section 9202 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (Pub. L. 99–272) and implemented in regulations at § 413.86(e), establishes a methodology for determining payments to hospitals for the costs of approved GME programs. Section 1886(h)(2) of the Act, as added by COBRA, sets forth a payment methodology for the determination of a hospital-specific, base-period per resident amount (PRA) that is calculated by dividing a hospital's allowable costs of GME for a base period by its number of residents in the base period. The base period is, for most hospitals, the hospital's cost reporting period beginning in FY 1984 (that is, the period of October 1, 1983 through September 30, 1984). The PRA is multiplied by the weighted number of full-time equivalent (FTE) residents working in all areas of the hospital complex (or nonhospital sites, when applicable), and the hospital's Medicare share of total inpatient days to determine Medicare's direct GME payments.

Existing regulations at § 413.86(e)(4) specify the methodology for calculating each hospital's weighted average PRA and the steps for determining whether a hospital's PRA will be revised.

2. Prohibition Against Counting Residents Where Other Entities First Incur the Training Costs

a. General Background on Methodology for Determining FTE Resident Count

As we explain earlier in this preamble, Medicare makes both direct and indirect GME payments to hospitals for the training of residents. Direct GME payments are reimbursed in accordance with section 1886(h) of the Act, based generally on hospital-specific PRAs, the number of FTE residents a hospital trains, and the hospital's Medicare patient share. The indirect costs of GME are reimbursed in accordance with section 1886(d)(5)(B) of the Act, based generally on the ratio of the hospital's FTE residents to the number of hospital beds. It is well-established that the calculation of both direct GME and IME payments is affected by the number of FTE residents that a hospital is allowed to count; generally, the greater the number of FTE residents a hospital counts, the greater the amount of Medicare direct GME and IME payments the hospital will receive. In an attempt to end the implicit incentive for hospitals to increase the number of FTE residents, Congress instituted a cap on the number of allopathic and osteopathic residents a hospital is allowed to count for direct GME and IME purposes under the provisions of section 1886(h)(4)(F) (direct GME) and section 1886(d)(5)(B)(v) (IME) of the Act. Dental and podiatric residents were not included in this statutorily mandated cap.

With respect to reimbursement of direct GME costs, since July 1, 1987, hospitals have been allowed to count the time residents spend training in sites that are not part of the hospital (referred to as "nonprovider" or "nonhospital sites") under certain conditions. Section 1886(h)(4)(E) of the Act requires that the Secretary's rules concerning computation of FTE residents for purposes of separate reimbursement of direct GME costs "provide that only time spent in activities relating to patient care shall be counted and that all the time so spent by a resident under an approved medical residency training program shall be counted towards the determination of full-time equivalency, without regard to the setting in which the activities are performed, if the hospital incurs all, or substantially all, of the costs for the training program in that setting." (Section 1886(h)(4)(E) of the Act, as added by section of 9314 of the Omnibus Budget Reconciliation Act of 1986, Pub. L. 99–509.)

Regulations on time spent by residents training in nonhospital sites for purposes of direct GME payment were first implemented in the September 29, 1989 final rule (54 FR 40286). We stated in that rule (under § 413.86(f)(3)) that a hospital may count the time residents spend in nonprovider settings for purposes of direct GME payment if the residents spend their time in patient care activities and there is a written agreement between the hospital and the nonprovider entity stating that the hospital will incur all or substantially all of the costs of the program. The regulations at that time defined "all or substantially all" of the costs to include the residents' compensation for the time spent at the nonprovider setting.

Prior to October 1, 1997, for IME payment purposes, hospitals could only count the time residents spend training in areas subject to the IPPS and outpatient areas of the hospital. Section 4621(b)(2) of the Balanced Budget Act of 1997 (Pub. L. 105–33) revised section 1886(d)(5)(B) of the Act to allow providers to count time residents spend training in nonprovider sites for IME purposes, effective for discharges occurring on or after October 1, 1997. Specifically, section 1886(d)(5)(B)(iv) of the Act was amended to provide that "all the time spent by an intern or resident in patient care activities under an approved medical residency program at an entity in a non-hospital setting shall be counted towards the determination of full-time equivalency if the hospital incurs all, or substantially all, of the costs for the training program in that setting."

In the regulations at §§ 412.105(f)(1)(ii)(C) and 413.86(f)(4) (as issued in the July 31, 1998 **Federal Register**), we specify the requirements a hospital must meet in order to include a resident training in a nonhospital site in its FTE count for Medicare reimbursement for portions of cost reporting periods occurring on or after January 1, 1999 for both direct GME and for IME payments. The regulations at § 413.86(b) redefine "all or substantially all of the costs for the training program in the nonhospital setting" as the residents' salaries and fringe benefits (including travel and lodging where applicable), and the portion of the cost of teaching physicians' salaries and fringe benefits attributable to direct GME. A written agreement between the hospital and the nonhospital site is required before the hospital may begin to count residents training at the nonhospital site; the agreement must provide that the hospital will incur the costs of the resident's salary and fringe benefits while the resident is training in the nonhospital site. The hospital must also provide reasonable compensation to the nonhospital site for supervisory teaching activities, and the written agreement must specify that compensation amount.

b. Inappropriate Counting of FTE Residents

As we stated above, dental residents, along with podiatric residents, are excepted from the statutory cap on the count of FTE residents for both direct GME and IME payment purposes. We have become aware of a practice pertaining to the counting of FTE residents at a nonhospital site, particularly dental residents, that we see as inappropriate under Medicare policy. Most often, the situation involves dental schools that, for a number of years, have been training dental residents in programs at the dental schools of universities affiliated with teaching hospitals, and the schools have been directly incurring the costs of the dental residents training at the dental schools (for example, the teaching faculty costs, the resident salary costs, the office space costs, and any overhead expenses of the programs). We also understand that there are dental clinics at these dental schools that treat patients (that is, are involved in "patient care activities").

As a result of the provisions that Congress added to allow hospitals to count FTE residents and receive IME payment, as well as direct GME payment, if the hospital incurs "all or substantially all" the costs of training residents in nonhospital settings, a significant number of dental schools are shifting the resident training costs of the dental programs from the schools to the hospital, and thus to the Medicare program, when the hospitals count the FTE dental residents training in these dental schools (that is, "nonhospital sites") under the regulations at § 413.86(f)(4). Furthermore, in the case of training dentists at dental school clinics, as a result of this cost-shifting and because dental residents are excepted from the cap, hospitals are receiving significant amounts of Medicare direct GME and IME payments when they have incurred relatively small costs of the residents training in a dental school.

The following actual situations are illustrative of the inappropriate application of Medicare direct GME and IME policy that we have found:

- An academic medical center hospital associated with a university has been training allopathic residents for at least 20 years. Prior to 1999, the university's affiliated dental school had always incurred the costs of dental residency programs at the dental school. Beginning with the hospital's cost report for its fiscal year ending in 1999, for the first time ever, the hospital has requested direct GME and IME payment for an additional 67 FTE residents because the hospital claims it has begun to incur "all or substantially all" of the costs of the dental residents training in the university's affiliated dental school, in accordance with the regulations at § 413.86(f)(4).
- A university dental school in one State has been incurring the costs of dental residency programs at its dental school for several years. Beginning in FY 1999, a teaching hospital in a neighboring State decided to begin incurring all or substantially all of the costs of the dental residents training in the dental clinics in the program (which is located in a different State from the hospital) in order to receive Medicare direct GME and IME payment for an additional 60 FTE residents.
- In another situation, a teaching hospital on the East Coast of the United States has requested direct GME and IME payment for an additional 60 FTE dental residents, some of whom are training in dental programs at nonhospital sites located in Hawaii, New Mexico, and the Netherlands, because it has begun to incur "all or substantially all" of the costs of dental residents training in those remote "nonhospital sites". Prior to 1999, the costs for these dental programs were funded by nonhospital sources.

We note that such inappropriate cost-shifting practices are by no means limited to the dental-school context. Indeed, we understand that there are some hospitals with resident counts below their direct GME and IME FTE resident caps that have recently (as of October 1, 1997, when it became possible to receive significant IME payments under the amendment made by Pub. L. 105–33) started to incur "all or substantially all" of the costs of residents who had been training at sites outside of the hospital without any financial assistance from the hospital, in order for the hospital to count those FTE residents and receive Medicare direct GME and IME payments for the additional residents. The actual costs of the programs that are being shifted from nonhospital entities to hospitals are relatively small, compared to the direct GME and IME payments that hospitals receive as a result of incurring "all or substantially all" of the training costs.

- In another example, an academic medical center hospital in one State asked Medicare to allow it to count an additional 10 FTEs for both direct GME and IME payment, beginning with its fiscal year ending 1999 cost report, because the hospital claims it is incurring all or substantially all of the costs of training osteopathic family practice residents in a walk-in clinic. The osteopathic family practice residency program had previously been sponsored by this clinic for several years and the residents do not participate in any training at the hospital.

c. Congressional Intent

Congress has delegated broad authority to the Secretary to implement a policy on the count of FTE residents for purposes of calculating direct GME and IME payments. For IME payment, section 1886(d)(5)(B) of the Act simply states that "the Secretary shall provide for an additional payment amount" which includes "the ratio of the hospital's full-time equivalent interns and residents to beds." The methodology to compute the count of FTE residents for IME is not established in the statute. Similarly, for direct GME, section 1886(h)(4)(A) of the Act states that "the Secretary shall establish rules consistent with this paragraph for the computation of the number of full-time equivalent residents in an approved medical residency training program."

Although not in the context of the general rules for counting FTE residents, Congress similarly acknowledged its intent to defer to the Secretary with respect to the rules for implementing "limits" or caps on the number of FTE residents hospitals may count for purposes of direct GME and IME payment. The conference agreement that accompanied Pub. L. 105–33, which established a cap on the number of allopathic and osteopathic residents a hospital may count, states—

"[T]he Conferees recognize that such limits raise complex issues, and provide for specific authority for the Secretary to promulgate regulations to address the implementation of this provision. The Conferees believe that rulemaking by the Secretary would allow careful but timely consideration of this matter, and that the record of the Secretary's rulemaking would be valuable when Congress revisits this provision." (H.R. Conf. Rep. No. 105–217, 105th Cong., 1st Sess., 821 (1997).

The absence of statutory specificity on determining FTE counts in these situations and the declared Congressional delegations of authority to the Secretary on the subject are clear indications that Congress has given the Secretary broad discretion to promulgate reasonable regulations in order to implement the policy on the

counting of residents for direct GME and IME payments.

When Congress enacted the nonhospital site provisions for both direct GME and IME, Congress intended to address application of the FTE count policy to situations where the training site had been the hospital. The intent was to create incentives for hospitals to move resident training from the hospital to nonhospital settings. We believe that Congress did not intend for hospitals to be able to add to their FTE counts residents that had historically trained outside the hospital in other settings. Training in those nonhospital settings had historically occurred without Congress offering any financial incentive to hospitals to move the training out of the hospital.

This Congressional intent is evident in the legislative history of both the direct GME and the IME provisions on nonhospital settings. First, legislative history associated with passage of the direct GME provision (as part of Pub. L. 99–509) indicates that Congress intended to broaden the scope of settings in which a hospital could train its residents and still receive separate direct GME cost reimbursement, and to provide incentives to hospitals for training residents in primary care programs. The Conference committee report indicates that "[s]ince it is difficult to find sufficient other sources of funding [than hospitals and Medicare] for the costs of such training, [that is, training in freestanding primary care settings such as family practice clinics or ambulatory surgery centers] *assignments to these settings* are discouraged. It is the Committee's view that training in these settings is desirable, because of the growing trend to treat more patients *out of the inpatient hospital setting* and because of the encouragement it gives to primary care." (Emphasis added.) (H.R. Rep. No. 99–727, 99th Cong., 1st Sess., 70 (1986).)

Thus, from the start of the policy allowing payment for training in nonprovider sites, we believe Congress intended to create a monetary incentive for hospitals to rotate residents from the hospital to the nonhospital settings. We believe Congress did not intend for hospitals to be paid for residents who had previously been training at nonhospital sites without hospital funding.

Further, in the Conference committee report accompanying the provision of Pub. L. 105–33 on IME payment for training in nonhospital settings, Congress stated that "[t]he conference agreement includes new permission for *hospitals to rotate residents through nonhospital settings*, without reduction in indirect medical education funds." (Emphasis added.) (H.R. Conf. Rep. No. 105–217, 105th Cong., 1st Sess., 817 (1997).)

We note that, prior to enactment of Pub. L. 105–33, if a hospital rotated a resident to train at a nonhospital site, the hospital could not count the time the resident spent at the nonhospital site for purposes of Medicare IME payments. As a result, the lack of IME payments acted as a disincentive and discouraged hospitals from rotating residents out of the hospital. Therefore, Congress authorized hospitals to count residents in nonhospital sites for IME purposes as a specific incentive to encourage hospitals to rotate their residents to nonhospital sites (and not to encourage hospitals to incur the costs of a program at a nonhospital site that had already been funded by other sources). This legislative intent becomes more apparent when the nature of the Medicare IME payment is considered. The Medicare IME payment is inherently a payment that reflects the increased operating costs of treating inpatients as a result of the hospital having a residency program. For example, as explained in the September 29, 1989 final rule (54 FR 40286), the indirect costs of medical education might include added costs resulting from an increased number of tests ordered by residents as compared to the number of tests normally ordered by more experienced physicians.

The IME payment is an adjustment that is made for each Medicare discharge from the areas subject to the IPPS in a teaching hospital. The authorization by Congress for IME payments relating to nonhospital services while residents are training at nonhospital sites would be absurd if not viewed as an incentive to transfer existing residency training from the hospital to the nonhospital setting. We do not believe Congress intended to permit such IME payments to be allowable to the hospital that is incurring "all or substantially all the costs" of residents training in nonhospital sites except in the situation where the hospital rotated residents from the hospital to the nonhospital settings. The illustrative situations described above in which nonhospital sites, such as dental schools, are shifting the costs of existing programs to the hospitals are not consistent with the intent of Congress to encourage hospitals to rotate residents from the hospital setting to nonhospital sites.

Thus, we believe Congress intended both cited provisions of the Act on counting residents in nonhospital sites for purposes of direct GME and IME payments to be limited to situations in which hospitals rotate residents from the hospital to the nonhospital settings, and not situations in which nonhospital sites transfer the costs of an existing program at a nonhospital site to the hospital.

d. Medicare Principles on Redistribution of Costs and Community Support

It is longstanding Medicare policy that if the community has undertaken to bear the costs of medical education, these costs are not to be assumed by the Medicare program. In addition, medical education costs that have been incurred by an educational institution may not be redistributed to the Medicare program. Indeed, these concepts, community support and redistribution of costs, have been a part of Medicare GME payment policy since the inception of the Medicare program. Both the House and Senate Committee reports accompanying Pub. L. 89–97 (the authorizing Medicare statute) indicate that Congress intended Medicare to share in the costs of medical education only in situations in which the community has not stepped in to incur them:

"Many hospitals engage in substantial education activities, including the training of medical students, internship and residency programs, the training of nurses and the training of various paramedical personnel. Educational activities enhance the quality of care in an institution and it is intended, *until the community undertakes to bear such education costs in some other away*, that a part of the net cost of such activities * * * should be considered as an element in the cost of patient care, to be borne to an appropriate extent by the hospital insurance program. (Emphasis added.) (S. Rep. No. 404, 89th Cong., 1st Sess., 36 (1965); H.R. Rep. No. 213, 89th Cong., 1st Sess., 32 (1965).)

The principle behind the congressional committee report language for Pub. L. 89–97 that Medicare would share in the costs of educational activities until communities bore them in some other way has guided Medicare policy on educational activities from the inception of the Medicare program. The principles of community support and redistribution of costs associated with payment for GME have been continually reiterated in various regulations, manual provisions, and implementing instructions to fiscal intermediaries. As recently as the final rule published in the **Federal Register** on January 12, 2001, we stated:

"We note that the proposed revisions in the proposed rule inadvertently did not include community support as the basis for an offset from the allowed cost of a GME or nursing and allied health program. In this final rule, we restate our longstanding policy that Medicare will share in the costs of educational activities of providers where communities have not assumed responsibility for financing these programs. Medicare's policy is to offset from otherwise allowable education costs, community funding for these activities." (66 FR 3368)

We note the instructions that CMS (then HCFA) gave to its Regional Offices in the 1990 audit instructions for purposes of calculating the direct GME base period PRA specifically addressed redistribution of costs and community support in the GME context:

"Where costs for services related to medical education activities have historically been borne by the university, it is assumed the community has undertaken to support these activities, and subsequent allocation of these costs to a hospital constitutes a redistribution of costs from an educational institution to a patient care institution. In such a situation, these costs are not allowable under the Medicare program. (See 42 CFR 413.85(c) and HCFA Pub. 15–1, § 406). For example, if in the past the hospital did not identify and claim costs attributable to the time teaching physicians spent supervising I&Rs [interns and residents] working at the hospital, it is assumed that these costs were borne by the university. Therefore, the hospital may not claim these costs in subsequent cost reports." (Instructions for Implementing Program Payments for Graduate Medical Education to ARAs for Medicare, Director of Office of Financial Operations of the Health Care Financing Administration, BPO–F12, February 12, 1990.)

Furthermore, the regulation at § 413.85(c) that was originally issued in the **Federal Register** on September 30, 1986 (51 FR 34793) (which was further refined, but conceptually left unchanged, as of March 12, 2001) addressed the Congressional intent not to increase program costs, as well. That paragraph (c) stated:

> *Educational Activities.* Many providers engage in education activities including training programs for nurses, medical students, interns and residents, and various paramedical specialties.* * * Although the intent of the program is to share in the support of educational activities customarily or traditionally carried on by providers in conjunction with operations, it is not intended that this program should participate in increased costs resulting from redistribution of costs from educational institutions or units to patient care institutions or units.

The Secretary of Health and Human Services interpreted this provision to deny reimbursement of educational costs that were borne in prior years by a hospital's affiliated medical school. The U.S. Supreme Court affirmed the Secretary's interpretation of the redistribution of costs regulation in *Thomas Jefferson University* v. *Shalala ("Thomas Jefferson")*, 512 U.S. 504 (1994). The Court found of § 413.85(c) that:

"The regulation provides, *in unambiguous terms*, that the 'costs' of these educational activities will not be reimbursed when they are the result of a 'redistribution,' or shift, of costs of an 'educational' facility to a 'patient care' facility." (Emphasis added.) (Thomas Jefferson, 512 U.S. at 514). Thus, the Supreme Court in *Thomas Jefferson* held that it is well within the Secretary's discretion to interpret the language at § 413.85(c), which was specifically derived from the legislative history of the original enacting Medicare legislation quoted above, to impose a substantive limitation on medical education payment.

The Supreme Court's opinion in *Thomas Jefferson* lends substantial support and credibility to CMS" longstanding policy on community support and redistribution of costs in the GME context.

e. Application of Redistribution of Costs and Community Support Principles.

As we have described above, we have discovered an inappropriate application of Medicare direct GME and IME payment policies relating to the counting of FTE residents in nonhospital settings. As stated previously, we believe that: (1) Congress has given the Secretary broad discretion to implement policy on FTE resident counts; (2) Congress intended that the nonhospital site policy for both direct GME and IME would encourage hospitals to move resident training from the hospital to nonhospital settings, not to enable nonhospital sites to shift the costs of already established residency programs in the nonhospital site to the hospital; and (3) since the inception of the Medicare program, CMS" policy has been consistent with the intent of Congress that Medicare would only share in the costs of medical education until the community assumes the costs. The Supreme Court has specifically found that CMS" implementation of the redistribution of costs and community support principles is "reasonable." (*Thomas Jefferson*, 512 U.S. at 514.)

Accordingly, in the May 19, 2003 proposed rule, we proposed that residents training at nonhospital sites may be counted in a hospital's FTE resident count only where the principles of redistribution of costs and community support are not violated. We proposed this policy to address the inappropriate practice of nonhospital sites shifting costs to hospitals solely to allow the hospitals to count residents training in the nonhospital sites. However, we believe the concepts of redistribution of costs and community support are equally relevant to the counting of FTEs residents by a hospital in general.

We note again that the Medicare program has a long tradition of applying redistribution of costs and community support principles to medical education payments. As we have stated above, both the House and Senate Committee reports accompanying Pub. L. 89–97 (the 1965 authorizing Medicare statute) indicate that Congress intended Medicare to share in the costs of medical education only where the community has not stepped in to incur them.

We believe it is appropriate to employ the principles of redistribution of costs and community support to specifically address the inappropriate scenarios described above whereby hospitals attempt to inflate their FTE resident counts by assuming payment of training costs for residents in nonhospital sites that were previously funded by a nonhospital entity. Therefore, we proposed to specify the application of the redistribution of costs and community support principles by adopting the definitions (with some modification to reflect the methodology for counting FTE residents applicable to GME) of "community support" and "redistribution of costs" at § 413.85(c), which relate to nursing and health education program costs, for use at § 413.86(b), which relates to GME. In addition, we proposed a general rule at proposed § 413.86(i) on the application of community support and redistribution of costs principles to the counting of FTE residents for GME. We proposed to (1) make the provisions under § 413.86(f) relating to determining the number of FTE residents subject to the provisions of the proposed § 413.86(i); (2) add a proposed § 413.86(f)(4) in order to clarify that the principles of redistribution of costs and community support are applicable to the counting of FTE residents, including when the residents are training in nonhospital settings; and (3) making the

provisions of the proposed § 413.86(i) specifically applicable to determining the number of FTE residents under § 413.86(g)(4) through (6) and (g)(12).

The general rule at proposed § 413.86(i) contained two provisions. Proposed § 413.86(i)(1) stated the principles of community support and redistribution of costs: In relation to community support, we proposed that if the community has undertaken to bear the costs of medical education through community support, the training costs of residents that are paid through community support are not considered GME costs to the hospital for purposes of Medicare payment. In relation to redistribution of costs, we are proposing that the costs of training residents that constitute a redistribution of costs from an educational institution to the hospital are not considered GME costs to the hospital for purposes of Medicare payment.

In applying the redistribution of costs and community support principles, we proposed under § 413.86(i)(2) to state that a hospital must continuously incur direct GME costs of residents training in a particular program at a training site since the date the residents first began training in that site in order for the hospital to count the FTE residents in accordance with the provisions of paragraphs (f) and (g)(4) through (g)(6), and (g)(12) of § 413.86.

We note that our reasons for specifically referencing the applicability of the principles of community support and redistribution of costs at § 413.86(f)(4), the paragraph concerning counting residents training in nonhospital settings for direct GME purposes, are twofold. First, although we already proposed to make the proposed § 413.86(i) applicable to § 413.86(f), which would make the principles applicable to each paragraph under § 413.86(f), in consideration of the inappropriate applications we have identified of the GME FTE-counting policy with respect to counting residents in nonhospital sites, we believe it is appropriate to also specifically address the applicability of the redistribution of costs and community support principles to § 413.86(f)(4). In addition, we note that the proposed reference at § 413.86(f)(4) has implications for IME payment as well, as explained below.

Under existing § 412.105(f)(1)(ii)(C), the rule for the counting of FTE residents training in nonhospital settings for IME payment, there is a specific reference indicating that the criteria set forth in § 413.86(f)(4) must be met in order for a hospital to count the FTE residents training in nonhospital settings for purposes of IME payments. Thus, if under proposed § 413.86(f)(4)(iv) (the paragraph making redistribution of costs and community support principles applicable) a hospital is not permitted to count the FTE residents training in a nonhospital site because of redistribution of costs or community support, the hospital would not be permitted to count the FTE residents for purposes of IME payment as well, because the IME regulation at § 412.105(f)(1)(ii)(C) requires the criteria under § 413.86(f)(4) to be met.

As we have stated above, payment for IME is based on the concept that, as a direct result of the hospital's resident training program, the costs the hospital incurs for patient care are increased. When Congress included section 1886(d)(5)(B)(iv) of the Act as part of Pub. L. 105–33, the statute expanded the circumstances under which IME payments to a hospital could be made by allowing the hospital to count the number of residents training outside the hospital setting under certain conditions. Even though it is clear that those residents training outside the hospital cannot have any impact on patient care costs to the hospital, Congress nevertheless allowed the hospital to receive IME payments when the hospital counts FTE residents training in a nonhospital setting in accordance with section 1886(d)(5)(B)(iv) of the Act, where those residents would otherwise have trained in the hospital setting. As we have stated, Congress created an incentive (or removed a disincentive) with the provisions of Pub. L. 105–33 for hospitals to rotate residents to nonhospital settings by allowing hospitals to continue to receive IME payment as if the residents continued to train in the hospital setting. If there is a redistribution of costs or community support, we believe IME payment to the hospital would be contrary to Congressional intent to encourage the hospital to rotate residents from the hospital to the nonhospital site.

In addition, when Congress included section 1886(d)(5)(B)(iv) of the Act as part of Pub. L. 105–33, the statutory authority for IME payment was premised on the hospital incurring the direct GME costs of the residents: "all the time spent by an intern or resident in patient care activities under an approved medical residency program at an entity in a nonhospital setting shall be counted towards the determination of full-time equivalency *if the hospital incurs all, or substantially all, of the costs for the training program* in that setting." (Emphasis added.) (Section 4621(b)(2) of Pub. L. 105–33; section 1886(d)(5)(B)(iv) of the Act.) We believe Congress intended the hospital to incur direct GME costs of the program in the nonhospital site in order to count the FTE residents training in nonhospital settings for purposes of IME payment. Thus, in the situation where a hospital incurred direct GME costs but there was redistribution of costs or community support, a disallowance of direct GME payments as well as a disallowance of IME payments is appropriate.

Although we are stating generally that the principles of community support and redistribution of cost have applied since the inception of Medicare to graduate medical education payment, as we have stated above, we have identified relatively recent inappropriate application of the nonhospital site policy for counting FTE residents. Therefore, we believed it was appropriate to propose to identify January 1, 1999 as the date our fiscal intermediaries should use to determine whether a hospital or another entity has been incurring the costs of training in a particular program at a training setting for purposes of determining whether there has been a redistribution of costs or community support. We proposed that January 1, 1999 be used as the date the fiscal intermediaries should use for determinations, since it may be difficult for our fiscal intermediaries to obtain from hospitals contemporaneous documentation that the hospitals have appropriately been incurring the direct GME costs in earlier fiscal years. We believe the January 1, 1999 date should simplify confirmation by our fiscal intermediaries and hospitals of whether the hospital or another entity had been incurring the costs of the program in particular training settings and whether redistribution of costs or community support had occurred. We have chosen the January 1, 1999 date because of administrative convenience and feasibility, so that necessary data are both valid and available, and in recognition of the fact that our fiscal intermediaries must prioritize their limited audit resources. While we are not requiring our fiscal intermediaries to determine whether a hospital had been incurring the training costs of a program prior to the January 1, 1999 date, if the fiscal intermediaries determine that there is a redistribution of costs or community support exists with respect to certain residents prior to January 1, 1999, a disallowance of direct GME and IME payments with respect to those FTE residents would certainly be required.

Since calculation of a hospital's FTE resident count is dependent upon whether the hospital incurred the training costs, we proposed to require each teaching hospital and its fiscal intermediary to determine which entity had been incurring the training costs at least since January 1, 1999. For example, if a nonhospital entity, such as a school of medicine or dentistry, had incurred the costs of training the residents anytime on or after January 1, 1999, and a hospital subsequently begins to incur direct GME costs of training those FTE residents, the hospital would not qualify to count those FTE residents for purposes of direct GME and IME payments.

We note that the proposal stated that a hospital must have been *continuously* incurring the costs of the training since the date the residents first began training in that program. Accordingly, if a hospital had at one time incurred the costs of training residents in a particular program, whether at the hospital or in a nonhospital setting, but a nonhospital institution later assumed the costs of training in that setting, even if the hospital assumed payment for the training costs again, the hospital could not then count those residents for purposes of direct GME and IME payments.

We note that if a hospital incurs the direct GME costs, whether training takes place inside the hospital or in a nonhospital setting, in a new residency program, the hospital may be eligible to count the FTE residents as specified by the regulations under § 413.86(g)(6).

Consistent with the policy on redistribution of costs and community support discussed above, if a hospital incurs the direct GME costs of *additional* FTE residents training in an existing program in a hospital setting where the costs of the existing program had been incurred by a nonhospital entity and the hospital has continuously funded the *additional* residents in the existing program in the hospital setting since the date the residents first began training there, the redistribution of costs or community support principles would not prohibit the hospital from counting the additional FTE residents for purposes of direct GME and IME payments.

We note that, under existing policy, to count residents in a nonhospital setting, a hospital is required to incur for "all or substantially all of the costs of the *program*" in that setting. In other words, a hospital is required to assume financial responsibility for the *full* complement of residents training in a nonhospital site in a particular program in order to count any FTE residents training there for purposes of IME payment. A hospital cannot count any FTE residents if it incurs "all or substantially all of the costs" for only a portion of the FTE residents in that program training setting. This policy is derived from the language of the IME and direct GME provisions of the statute on counting residents in nonhospital settings; both sections 1886(d)(5)(B)(iv) and 1886(h)(4)(E) of the Act state that the hospital must incur "all, or substantially all, of the costs for the training *program* in that setting." (Emphasis added.) In contrast, as explained earlier, it is permissible under the proposed policy on the application of the redistribution of costs and community support principles for the hospital to count FTE residents where the hospital incurs direct GME costs of FTE residents that are *added* to an existing program, even though the hospital may not count the existing FTE residents due to the application of the redistribution of costs or community support rules. In the nonhospital setting, as a result of the interaction of these two separate FTE counting requirements—(1) that the hospital must not violate the redistribution of costs and the community support principles in order to count the resident FTEs in the nonhospital settings, and (2) that the hospital must incur "all or substantially all" of the costs for the training program in that setting—a hospital would be prohibited from counting FTE residents added to an existing program at a nonhospital site unless the hospital incurs all or substantially all of the costs of training *all* of the residents in that program at that setting. That is, even if the hospital incurs all or substantially all of the costs for all of the training program at the nonhospital site, the hospital would only be able to count the additional FTE residents who were not excluded by application of the redistribution of costs or community support principles.

For example, training in a general dentistry program with 10 FTE residents has taken place at a school of dentistry for 20 years. The school of dentistry has been incurring the training costs of the general dentistry residents since the inception of the program. Beginning in 2003, the school of dentistry has decided to add an additional 5 FTE residents to the program, and Hospital A decides to incur "all or substantially all" the costs of those 5 additional FTE residents only. Applying the policy concerning redistribution of costs and community support in combination with the policy on incurring all or substantially all of the costs, the hospital could not count the additional 5 FTE residents in the dental school since it is not paying for all or substantially all of the costs of the program. Even if the hospital were to incur all or substantially all of the costs for the training program for all 15 FTE residents, the hospital could not count the 10 FTEs that were part of the existing general dentistry program because of the redistribution of costs and community support principles; it would be a redistribution of costs for the hospital to begin to incur direct GME costs of the 10 FTE residents when the dental school had previously been incurring those costs.

We note that such a result does not occur when a *new program* is established in the nonhospital site. If, from the outset of the program, the hospital incurs direct GME costs and also incurs "all or substantially all" of the costs for the training program for all the new residents training at the site, there would be no redistribution of costs or community support, and the hospital could count all of those residents in the new program in its FTE count (subject, of course, to the hospital's 1996 FTE resident cap).

We also note that the interaction of the two provisions discussed above—redistribution of costs and community support, and "all or substantially all"—does not occur when counting FTE residents training inside the hospital, since a hospital is not required to incur "all or substantially all" of the costs for the training program inside the hospital.

Furthermore, if one hospital had incurred the direct GME costs of training residents in a particular program in a nonhospital site from one point in time, for example, 1995 through 1999, and then another hospital consecutively incurs the costs from 2000 and thereafter, the second hospital may be eligible to receive direct GME and IME payments for training the FTE residents from the point in time where the second hospital incurred the direct GME costs, and the redistribution and community support exclusions would not apply. The second hospital may be eligible to receive Medicare direct GME and IME payments because the costs were incurred previously by a hospital, and not either the community or the university. Therefore, there was neither community support nor redistribution of costs.

The following are some examples to clarify how the proposed policies would be implemented:

Example 1

Since 1995, 10 FTE residents in an internal medicine program have been training in the Community Clinic. In accordance with the current provisions of § 413.86(f), Hospital A has incurred all or substantially all of the costs of

training the 10 FTE residents since 1995. Assuming the current provisions of the regulations at §§ 412.105(f)(1)(ii)(C) and 413.86(f)(3) and (f)(4) are met, Hospital A may continue to receive IME and direct GME payments for 10 FTE residents because Hospital A had incurred direct GME costs continuously (as evidenced by contemporaneous documentation since January 1, 1999), as specified in our proposed regulation.

Beginning July 1, 2004, in addition to continuing to incur all or substantially all of the costs of the first 10 FTE internal medicine residents training in the nonhospital site, Hospital A also incurs all or substantially all of the costs of training an additional 3 FTE internal medicine residents at that site. Accordingly, beginning July 1, 2004, Hospital A may count all 13 FTE residents training in the Community Clinic for purposes of direct GME and IME payments, assuming Hospital A does not exceed its FTE cap for IME and direct GME.

Example 2

Since 1995, 2.25 dental FTE residents in a dental school program were training in a dental clinic at the dental school. While the 2.25 FTEs were training at the clinic, the dental school paid for all of the costs of the dental program. Prior to July 1, 2000, Hospital A signed a written agreement with the clinic to incur all or substantially all of the costs of training the 2.25 FTE residents, from July 1, 2000 and onward. Thus, beginning with July 1, 2000, the dental school no longer incurred the costs of the program at this nonhospital site. In this scenario (even if Hospital A inappropriately received direct GME and IME payments for the 2.25 FTEs since July 1, 2000), Hospital A may not receive direct GME or IME payment for the 2.25 FTE residents training in the clinic because there would have been a redistribution of costs associated with training these 2.25 FTE residents from the dental school to the hospital.

Example 3

Since 1995, 2.25 FTE residents in a family practice program were training in a physicians' group practice. While the 2.25 FTEs were training at the physicians' practice, a school of medicine paid for the costs of the family practice residency program. Prior to July 1, 2000, Hospital A signed a written agreement with the physicians' practice to send 1 additional family practice FTE resident to the physicians' practice and to incur all or substantially all of the costs of training the original 2.25 FTE residents *and* the 1 additional FTE, from July 1, 2000 and onward. Thus, beginning with July 1, 2000, the school of medicine no longer incurred the costs of the program at this nonhospital site. Hospital A may not count the 2.25 FTE residents that had been training since 1995 in that physicians' practice for purposes of direct GME and IME payments because the training costs were shifted from the school of medicine to the hospital. However, Hospital A may count the 1 FTE resident the hospital began to rotate for training in the physicians' practice because there was no cost-shifting for that resident and Hospital A incurred "all or substantially all" of the costs of the entire family practice program in the physicians' office setting.

Example 4

Residents in a surgery program have been rotating from a hospital to two nonhospital clinics, Clinic A and Clinic B, since 1996. The training of the surgery residents in Clinic A has been supported by a nonhospital institution since 1996, while the hospital has incurred all or substantially all of the costs of the surgery residents in Clinic B since 1996. The hospital cannot count the surgery FTE residents training in Clinic A, even if it begins to pay for all of the costs of the program at that site, since a nonhospital institution had supported the training in Clinic A since 1996 (in other words, the redistribution of costs and community support principles would prohibit the hospital from counting these FTE residents). However, if the hospital continues to incur all or substantially all of the costs of the surgery residents in Clinic B, the hospital may count the FTE residents training in Clinic B for purposes of direct GME and IME payments because there would be no cost-shifting to the hospital for these residents and the hospital would incur all or substantially all of the costs for the training program in that setting.

We received a large number of comments from the public on this proposal. Following is a summary of these comments and our responses:

Comment: Some commenters supported our proposed application of redistribution of cost and community support to direct GME. One commenter stated: "We believe that the proposed changes * * * will result in more accurate and consistent reimbursement to providers. The changes provide more definitive guidance to providers and to intermediaries in applying the regulations. In addition, the changes will more closely match Medicare reimbursement with actual IPPS-type services. This is especially true in the case of dental residents, who typically spend little or no time caring for patients receiving IPPS type services."

Response: We agree with the commenters' assertions and appreciate the commenters' support of our proposals on redistribution of costs and community support.

Comment: Many commenters disagreed with our proposed application of redistribution of cost and community support to direct GME. In general, they believed they did not receive proper notice of the application of the principles. One commenter stated: "[t]he proposed change to the rules midstream, and only with respect to subsequent payment years, distorts the balance on which the established payment formula depends." Other commenters believed that, in the past, CMS has never suggested that incurring the costs of offsite training in the then-current year would be a condition to hospitals' claiming those costs in future years. The commenters contended that nowhere in the regulations promulgated has CMS stated that, in order to receive GME and IME payments, a hospital must meet an additional requirement of incurring the training costs since the inception of the training program. The commenters believed it is inequitable to impose such a "retroactive requirement."

The commenters stated that many hospitals that were contemplating whether to initiate a training program in a nonhospital setting, notified CMS in advance of establishing such a program, and requested CMS's approval. One commenter stated that, in numerous cases, "including some of the cases discussed in the regulatory preamble, CMS issued a written approval of the proposed training program. In such approval letters, CMS never mentioned the redistribution of costs and community support principles."

Finally, another commenter stated that there is nothing in the direct GME and IME statutes that supports CMS' decision to apply redistribution of costs and community support principles.

Response: The principles of redistribution of cost and community support associated with Medicare's payments for GME have been in existence for over 35 years, that is, since the inception of the Medicare program in 1965. The principles have been continually reiterated in various regulations, manual provisions, and implementing instructions to fiscal intermediaries. We do not believe we have given the public any reason to conclude that the principles would not continue to be applicable. Several examples of our views on the principles of redistribution of cost and community support were mentioned in the proposed rule. These included:

Both the House and Senate Committee reports accompanying Pub. L. 89–97 (the authorizing Medicare statute) indicate that Congress intended Medicare to share in the costs of medical education *only* in situations in which the community has not stepped in to incur them:

"Many hospitals engage in substantial education activities, including the training of medical students, internship and residency programs, the training of nurses and the training of various paramedical personnel. Educational activities enhance the quality of care in an institution and it is intended, *until the community undertakes to bear such education costs in some other away*, that a part of the net cost of such activities * * * should be considered as an element in the cost of patient care, to be borne to an appropriate extent by the hospital insurance program." (Emphasis added.) (S. Rept. No. 404, 89th Cong., 1st Sess., 36 (1965); H.R. Rept. No. 213, 89th Cong., 1st Sess., 32 (1965).)

The principle behind the congressional committee report language for Pub. L. 89–97 that Medicare would share in the costs of educational activities until communities bore them in some other way has guided Medicare policy on educational activities from the inception of the Medicare program.

The regulations that evolved from the authorizing legislation, first published on November 22, 1966 (31 FR 14814), as well as Chapter 4 of the Provider Reimbursement Manual in 1971, echoed the congressional committee report language from 1965 that Medicare would share in the costs of educational activities until communities bore them in some other way.

As recently as the final rule published in the **Federal Register** on January 12, 2001, we stated:

"We note that the proposed revisions in the proposed rule inadvertently did not include community support as the basis for an offset from the allowed cost of a GME or nursing and allied health program. In this final rule, we restate our longstanding policy that Medicare will share in the costs of educational activities of providers where communities have not assumed responsibility for financing these programs. Medicare's policy is to offset from otherwise allowable education costs, community funding for these activities." (66 FR 3368)

Although the above language was written in the context of a regulation that clarified Medicare policy for provider (hospital) operated nursing and allied health education programs, we note that GME and nursing and allied health education programs were historically paid under the same regulations (the latest of which was codified at § 413.85) and the same cost principles. The quoted language is indicative of this relationship and the Agency's mindset that, while direct GME may have changed in the method of payment to a prospective payment, some principles, such as redistribution of cost and community support, continue to apply as they do with nursing and allied health education at § 413.85(c). Further evidence of continued application is at existing § 413.85(c) in the definition of "redistribution of cost": "* * * costs for a school of nursing or allied health education or a medical school that were incurred by an educational institution and were not allowable to the provider [hospital] in its prospective payment or a rate-of-increase limit base year cost report, or graduate medical education per resident amount calculated under § 413.86, *are not allowable costs in subsequent fiscal years.*" (Emphasis added.) Therefore, even codified in regulations now is a policy that applies the principle of redistribution of cost to direct GME payments *in subsequent years.*

Furthermore, § 413.85(c), which was a codification of longstanding Medicare policy, was originally issued in the **Federal Register** on September 30, 1986 (51 FR 34793) and was further refined, but conceptually left unchanged, as of March 12, 2001 (*see* 66 FR 3358). Section 413.85(c) addressed the Congressional intent not to increase program costs resulting from redistribution of costs, as well. That paragraph (c) stated:

"*Educational Activities.* Many providers engage in education activities including training programs for nurses, medical students, interns and residents, and various paramedical specialties. * * * Although the intent of the program is to share in the support of educational activities customarily or traditionally carried on by providers in conjunction with operations, it is not intended that this program should participate in increased costs resulting from redistribution of costs from educational institutions or units to patient care institutions or units."

We note that the guidance that CMS (then HCFA) gave to its Regional Offices in the 1990 audit instructions for purposes of calculating the direct GME base period PRA specifically addressed redistribution of costs and community support in the GME context:

"Where costs for services related to medical education activities have historically been borne by the university, it is assumed the community has undertaken to support these activities, and subsequent allocation of these costs to a hospital constitutes a redistribution of costs from an educational institution to a patient care institution. In such a situation, these costs are not allowable under the Medicare program. (*See* 42 CFR 413.85(c) and HCFA Pub. 15–1, section 406). For example, if in the past the hospital did not identify and claim costs attributable to the time teaching physicians spent supervising I&Rs [interns and residents] working at the hospital, it is assumed that these costs were borne by the university. Therefore, the hospital may not claim these costs in subsequent cost reports." (Instructions for Implementing Program Payments for Graduate Medical Education to ARAs for Medicare, Director of Office of Financial Operations of the Health Care Financing Administration, BPO–F12, February 12, 1990.)

We believe we have continually put the public on notice that the Medicare program has applied and continues to apply the principles of redistribution of costs and community support to payments for education costs, including direct GME payments to hospitals. Therefore, we *do not* believe that we have proposed changes to the rules "in midstream" as one commenter suggested. Nor do we believe, as the commenters suggested, that we have proposed a "retroactive requirement." We have never disavowed the principles of redistribution of cost and community support. Rather, we have continually promulgated rules and program guidance on the application of the principles since the inception of the Medicare program.

We again point to the Supreme Court case, *Thomas Jefferson*, to demonstrate CMS' *longstanding* policy on community support and redistribution of costs in the GME context. In *Thomas Jefferson*, the Secretary of Health and Human Services interpreted the regulation at § 413.85(c) to deny reimbursement of educational costs that were borne in prior years by a hospital's affiliated medical school for purposes of calculating the direct GME base year allowable cost for the PRA. The U.S. Supreme Court affirmed the Secretary's interpretation of the redistribution of costs regulation. The Court found that:

"The regulation [at § 413.85(c)] provides, *in unambiguous terms*, that the 'costs' of these educational activities will not be reimbursed when they are

the result of a 'redistribution,' or shift, of costs of an 'educational' facility to a 'patient care' facility." (Emphasis added.) (*Thomas Jefferson*, 512 U.S. at 514).

In addition, in response to the argument by the provider that CMS (then HCFA) had been silent in internal operating instructions in a 1978 operating memorandum on the policies of redistribution and community support, as well as in another exchange of memoranda in 1982 and other agency documentation, the Court stated that the omission in these documents of discussion of redistribution and community support is not indicative of a contrary policy on GME reimbursement: "* * * the mere failure to address [the redistribution principle in an intermediary letter] hardly establishes an inconsistent policy on the part of the Secretary." *Thomas Jefferson*, 512 U.S. at 516.

Thus, the Supreme Court in *Thomas Jefferson* held that it is well within the Secretary's discretion to interpret the language at § 413.85(c), which was specifically derived from the legislative history of the original legislation that enacted Medicare, to impose a substantive limitation on medical education payment, even in the arguably novel context of calculating a hospital's GME costs for purposes of the base year PRA.

To address the commenters' point that CMS "never mentioned the redistribution of costs and community support principles" in CMS "approval letters" to hospitals that requested "approval" from CMS in advance of establishing a relationship with a nonhospital site in order to count the residents training in that setting, we note that when the letters were written to CMS in fiscal year end 1999–2002, it was not clear at all from the incoming correspondence that hospitals were not, in fact, rotating the hospital-based residents to the nonhospital setting in accordance with statutory intent. In other words, it was not clear from the incoming correspondence that a redistribution of costs was being contemplated by the hospitals. In addition, the letters did not explicitly mention that the costs of the program were currently being borne by the community in the contemplated arrangements. In the last 2 or 3 years, when hospitals met with or wrote to CMS for guidance on the nonhospital site policy under § 413.86(f)(4), we provided responses that were limited to the scope of the inquiries. We answered questions about the requirements of § 413.86(f)(4). It did not seem necessary to bring up the issue of "redistribution" or "community support" because it was not apparent that the community had previously incurred the direct GME costs. It was not until the relatively recent audits by our fiscal intermediaries of the fiscal year ending 1998 and 1999 cost reports of certain hospitals that CMS became aware that cost shifting was occurring. With this awareness came the necessity to explicitly reassert and explain the application of the longstanding Medicare principles of redistribution of costs and community support.

Comment: Several commenters have stated that the principles of redistribution of cost and community support do not apply in determination of a hospital's FTE resident count for direct GME. One commenter argued, in part relying on a Federal district court case, *Episcopal Hospital* v. *Shalala*, 1997 U.S. Dist. Lexis 8701 (E.Da.Pa. 1997), to state: "* * * CMS has argued, and the courts have agreed, that Medicare cost principles have no effect with respect to the direct GME payment method prescribed by section 1886(h) of the Act * * * these principles implement the statutory provision in section 1861(v) of the [Social Security] Act for payment of reasonable cost." This commenter also quoted extensively from the September 29, 1989 final rule to argue that the GME regulation "construes the GME statute so as to preclude consideration of allowable costs incurred in connection with a resident's training."

Similarly, another commenter believed that Congress "replaced the old reasonable cost payment system" with a prospective payment methodology, and that those principles that formed the basis for reasonable cost payments for GME were no longer relevant. The commenter believed the redistribution of costs and community support principles have no application to the current payment methodology, which relies on FTEs and PRAs.

Several commenters also disputed our citation to the *Thomas Jefferson* case for application of the principles to FTE counts. The commenters believed that CMS should not use this case in support of our policy because the case did not discuss applying the principles to the counting of residents. In addition, they believe the case was "very limited" and "only discussed the establishment of base year resident costs, which were used in developing base payment rates."

Response: We disagree with the commenters that the principles of redistribution of costs and community support do not apply in determination of a hospital's FTE resident count for direct GME. When Congress enacted section 1886(h) of the Act as part of section 9202 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 (Pub. L. 99–272) on April 7, 1986, it did not altogether "preclude" consideration of allowable costs in connection with a resident's training, as the first commenter suggests. Upon enactment of the new legislation, CMS (then HCFA) considered a hospital's allowable reasonable costs, and applied reasonable cost principles (*including* redistribution of costs and community support, as we have explained) to calculate a hospital's direct GME costs and FTE resident count in order to determine hospital-specific PRAs in the base year. Although in cost reporting years after the PRA base year, the applicable PRAs are largely determined by the statute, we believe that *costs* continue to be a factor in determining the number of FTE residents that may be counted by a hospital. For example, a hospital may only count FTE residents training *at the hospital* for which, as repeatedly described in the September 29, 1989 final rule, the hospital almost necessarily incurs *some* direct GME costs. Hospitals may also count FTE residents training in nonhospital sites *only if* the hospital incurs all or substantially all the training *costs* of the program at that site (and meets other regulatory requirements.) Thus, it cannot be said that our view of the statute "precludes" consideration of allowable costs associated with training residents.

Although Congress did implement a prospective payment system for direct GME costs by enacting section 902 of COBRA 1985, we do not believe this means that all reasonable cost principles are no longer applicable under the revised system. Section 1886(h)(1) of the Act provides that: "[n]ot withstanding section 1861(v) [defining reasonable cost], instead of any amounts that are otherwise payable under this title with respect to the reasonable costs of hospitals for direct graduate medical education costs, the Secretary shall provide for payments for such costs in accordance with paragraph (3) of this subsection." The statute literally provides that the reasonable cost payment method in section 1861(v) of the Act does not apply to section 1886(h)(3) of the Act (but those principles do apply to the remainder of section 1886(h) of the Act), which is the paragraph that specifies the general prospective payment formula for direct GME (the direct GME PRA). Thus, section 1886(h)(1) of the Act does not, as the commenter suggested, preclude any consideration of reasonable costs associated with the training of residents. Indeed, section 1886(h)(1) of the Act provides that, instead of payment under section 1861(v) of the Act, "the Secretary shall provide for payment for *such* costs", which refers back to "the reasonable costs of hospitals for direct graduate medical education costs." Thus, the statutory provisions governing direct GME payments continue to contemplate that Medicare payments to hospitals will be made for reasonable costs even under the prospective payment that is based on direct GME PRAs and FTE residents. Therefore, we do not believe the statute precludes application of reasonable cost principles, including the principles of redistribution of costs and community support.

Although we do recognize that certain reasonable cost principles are inherently contrary to a prospective payment system, others are compatible and may continue to be relevant, even upon implementation of the prospective payment. For example, in the case cited by the commenter, the Secretary and the court acknowledged that the principle of "cross-subsidization" found in section 1861(v)(1)(A) of the Act does not apply under a prospective payment context. The cross-subsidization provision requires that, in determining the reasonable costs of services, the Medicare program must ensure that it bears fully, but exclusively, "the necessary costs of efficiently delivering covered services" to Medicare beneficiaries. Simply put, the provision requires the Medicare program to pay for all the costs associated with care for its beneficiaries, and no more, so that other parties are not subsidizing care provided to Medicare beneficiaries, and Medicare is not subsidizing care provided to non-Medicare beneficiaries. However, when Medicare payments are determined prospectively, the Medicare program necessarily ceases to be concerned about whether cross-subsidization occurs—in other words, it is expected that a particular provider's costs may be higher or lower than the prospectively-determined payment (hence, the underlying premise that prospective payment systems create incentives for providers to control costs and operate efficiently).

In contrast, the principles of redistribution of costs and community support are completely congruent with the prospective payment system under section 1886(h) of the Act. Redistribution of costs and community support principles derive from legislative intent that was expressed at the enactment of the Medicare program, that the program should not assume payment for education costs that were previously funded by other sources. There is no reason to conclude that this intent changed with the enactment of the prospective payment methodology in section 1886(h) of the Act, with the addition of the FTE caps specified in section 1886(h)(4)(e) of the Act, or with the amendments that allow hospitals to count residents training in nonhospital sites for purposes of direct GME and IME payments. We do not believe that Congress intended by any of these enactments to enable an expansion in Medicare direct (or indirect) GME payments that result from cost shifting to hospitals. Rather, we believe section 1886(h) of the Act and later amendments were primarily directed toward limiting expansion of Medicare direct GME and IME payments. Therefore, we believe that the principles of redistribution of costs and community support are consistent with, and continue to be applicable under, the current direct GME payment system.

We also believe it is appropriate to cite the Supreme Court in the *Thomas Jefferson* case. The commenters believed that the scope of the Supreme Court's opinion that supported the agency's application of the principles of redistribution of costs and community support is limited to the calculation of hospitals' reasonable costs of GME for the purpose of determining the base period PRA. However, as we stated above, the statutory provisions governing direct GME payments continue to contemplate that Medicare payments to hospitals will be made for "such costs" even under the prospective payment methodology specified in section 1886(h) of the Act. In calculating the base year PRAs, the Agency allowed hospitals to count FTE residents where the hospitals were incurring direct GME costs associated with training those residents. This policy was clearly consistent with the principles of redistribution of costs and community support because the calculation of base year PRAs was dependent on the proper counting of FTE residents. Any opinion from the Court on the application of the principles to the base year costs would equally apply to FTE resident counts. Therefore, we believe the relevance of the *Thomas Jefferson* case is not limited to the establishment of base year costs, as the commenters suggested. Rather, the Court's opinion recognized that the principles of redistribution of costs and community support legitimately continue to apply under section 1886(h) of the Act. The Supreme Court's opinion is entirely relevant to the calculation of direct GME payments to hospitals in cost reporting periods on or after the PRA base year.

Finally, to address the commenters' reference to the 1989 final rule to support the argument that CMS interpreted the statute to preclude consideration of costs in connection with counting FTE residents, we note that the cited rule is *replete* with suggestions that CMS expected hospitals to continue to incur some level of direct GME costs for training residents, even under the direct GME PRA-based payment methodology. For example, the final rule at 54 FR 40298 states:

"Nothing in section 1886(h) of the Act indicates that the bearing of costs in connection with particular residents is a factor in determining who should be counted. The law simply requires the Secretary to determine the average amount incurred to train residents during the specified base period and to make GME payments for the residents in the hospital's programs thereafter on that basis. There was no authorization to establish a two-tiered system to account both for residents whom the hospital incurs full training costs and for residents whom hospitals incur only supervisory and overhead costs because the residents' salaries are paid by another entity." (*Ibid.*)

We believe the language quoted above from the 1989 rule is exemplary of the Agency's mindset (as well as of the mindset of the commenter in that rule) that the question of whether costs were incurred by the hospital was, and would continue to be, a consideration for purposes of direct GME payment.

Comment: One commenter appeared to agree with what we stated in the proposed preamble at 68 FR 27216 that because IME regulations on counting residents at nonhospital sites cross-reference the direct GME nonhospital provisions, the provisions on redistribution of costs and community support would equally apply to IME FTE counts, as well as direct GME FTE counts, when counting residents in nonhospital settings. However, the commenter requested clarification on the issue of whether IME FTE residents counts in hospital settings would be subject to the community support and redistribution of costs provisions.

Another commenter argued that the redistribution of costs and community support principles do not apply to FTE counts for purposes of IME payment. This commenter argues that there is no evidence indicating that a teaching hospital's operating costs bear any relation to past or present sources of funding for residents' training.

Response: In response to the commenters' concerns regarding the application of the redistribution of costs principles and community support to counting residents for purposes of determining payments for IME for training in hospital settings, we agree with the commenters; the redistribution of costs and community support principles do not apply to FTE counts for residents training in *hospital settings* for purposes of IME payment. As we have explained in several regulations, the object of IME payments associated with resident training in hospital settings is to address the additional indirect operating costs that teaching hospitals incur in furnishing patient care (see 66 FR 39896 or 54 FR 40286). Even if the redistribution of costs and community support principles could theoretically apply to training inside the hospital, we do not know how *all* of these additional indirect operating costs incurred by a hospital could be "redistributed" to a nonhospital entity or could be borne by the community. As long as the hospital had consistently incurred at least some of those indirect costs, there could be no violation of redistribution of costs and community support principles, and no resulting disallowance of FTEs in calculating the hospital's IME adjustment. In any event, as stated above, we agree with the commenters because we believe the legislative history that gave rise to the principles of redistribution of costs and community support was focused on Medicare payments for direct GME.

However, we note that, for training that occurs in nonhospital settings, the application of the principles of redistribution of costs and community support to direct GME FTE counts does have implications for IME payment for residency training in nonhospital settings. Under existing § 412.105(f)(1)(ii)(C), which is the rule for the counting of FTE residents training in nonhospital settings for IME payment, there is a specific reference indicating that the criteria set forth in § 413.86(f)(4) must be met in order for a hospital to count the FTE residents training in nonhospital settings for purposes of IME payments. Thus, if under § 413.86(f)(4)(iv) (the paragraph that specifically applies redistribution of costs and community support principles to FTE counts for purposes of direct GME) a hospital is not permitted to count the FTE residents training in a nonhospital site because of redistribution of costs or community support, the hospital would not be permitted to count the FTE residents for purposes of IME payment as well, because the IME regulation at § 412.105(f)(1)(ii)(C) requires the criteria under § 413.86(f)(4) to be met.

As we have stated above, IME payments are based on the concept that, as a direct result of the hospital's resident training program, the hospital incurs increased indirect costs for patient care. When Congress added section 1886(d)(5)(B)(iv) of the Act as part of Pub. L. 105–33, the circumstances under which IME payments to a hospital could be made were broadened to allow the hospital to count the number of residents training outside the hospital setting under certain conditions, even though it is clear residents training outside the hospital cannot have any impact on the hospital's indirect patient care costs. Nevertheless, Congress authorized hospitals to receive IME payments by allowing hospitals to count FTE residents training in a nonhospital setting in accordance with section 1886(d)(5)(B)(iv) of the Act. As we have stated, we believe Congress intended the provisions of Pub. L. 105–33 to create an incentive (or remove a disincentive), for hospitals to rotate residents to nonhospital settings by allowing hospitals to continue to receive IME payment as if the residents continued to train in the hospital setting. However, we believe IME payment to the hospital would be contrary to Congressional intent if there is a redistribution of costs or community support associated with residents training in a nonhospital site. We also believe the IME payment to the hospital was only intended by Congress to encourage the hospital to rotate residents from the hospital to the nonhospital site, not to encourage (or enable) existing training programs to transfer their costs to the hospital and thereby expand the hospitals Medicare IME payments.

In addition, when Congress added section 1886(d)(5)(B)(iv) to the Act as part of Pub. L. 105–33, the statutory authority for IME payment for residents training at a nonhospital site was premised on the hospital incurring the direct GME costs of the residents: "all the time spent by an intern or resident in patient care activities under an approved medical residency program at an entity in a nonhospital setting shall be counted towards the determination of full-time equivalency *if the hospital incurs all, or substantially all, of the costs for the training program* in that setting." (Emphasis added.) (Section 4621(b)(2) of Pub. L. 105–33; section 1886(d)(5)(B)(iv) of the Act.) The statute requires a hospital to incur "all or substantially all of the costs for the training program" in the nonhospital setting in order to count FTE residents training there for purposes of both direct GME and IME payment. The link between the IME regulation at existing § 412.105(f)(1)(ii)(c) and direct GME regulations at § 413.86(f)(4) implement this shared statutory requirement. As we have stated, we believe Congress intended hospitals to facilitate training in nonhospital sites that would not have occurred without the hospital's sponsorship, and for the hospital also to incur direct GME costs of the program in the nonhospital site as a precondition to counting the FTE residents training in nonhospital settings for purposes of IME payment. Thus, in the situation where a hospital currently is incurring direct GME costs at the nonhospital site but there has been a redistribution of costs or community support, a disallowance of direct GME payments, as well as a disallowance of IME payments, is appropriate.

Comment: One commenter noted that proposed § 413.86(i) (redistribution of costs and community support provision) applies not only to subparagraph (f)(4), the nonhospital site provision, but also to the remaining provisions of paragraph (f) and also to paragraphs (g)(4) through (g)(6). The commenter requested that CMS specify that the principles affect only the counting of residents in nonhospital sites and not the count of residents being trained in hospitals, both the inpatient and outpatient settings. In addition, this commenter believes such a clarification would also be consistent with other Medicare policy on counting FTE residents, such as the policy detailed in the August 1, 2002 final rule (67 FR 50077) concerning when residents rotate to other hospitals: "which entity may count the residents for IME and Direct GME payments is based on where the actual training occurs, not which hospital is incurring the costs."

Response: While the primary reason we proposed to make the principles of redistribution of costs and community support explicit in the direct GME regulations was to specifically address the inappropriate scenarios described in the proposed rule whereby hospitals increase their FTE resident counts by assuming payment of training costs for residents in nonhospital sites that were previously funded by a nonhospital entity, we do not believe the principles are applicable in only this circumstance. In other words, the principles of community support and redistribution of costs apply generally to direct GME FTE counts, as we have explained. This holds true whether the counts relate to residents training in nonhospital sites (where we have seen the most inappropriate counting), or to residents training *inside* the hospital—inpatient or outpatient. Thus, it *is* technically possible to have a redistribution of direct GME costs for the training of residents inside the hospital setting (as well as in the nonhospital setting). Therefore, we are not adopting the commenter's suggestion to limit application of the principles to § 413.86(f)(4) (the nonhospital site provision). However, we note that we believe a redistribution of *all* of the direct GME costs for training that occurs in a hospital setting would be rare. *All* of the direct costs of the program—resident salaries, teaching physician salaries, overhead expenses, etc., would need to be redistributed to an outside entity in order for there to be a disallowance of direct GME FTE residents for training inside the hospital due to redistribution of costs or community support.

We contrast this application of the principles of redistribution of costs and community support in the current prospective payment system that depends upon PRA and FTE resident counts to application of the principles in the previous reasonable cost payment methodology that was based on cost finding and cost allocations. Under the former reasonable cost methodology, a hospital was eligible to receive direct GME payment for those direct GME costs that it incurred; however, any direct GME costs that were redistributed to the hospital were not allowable. We note that the instructions that CMS (then HCFA) gave to its Regional Offices in the 1990 audit instructions for purposes of calculating the direct GME base period PRA specifically addressed redistribution of costs and community support in the GME context:

> Where costs for services related to medical education activities have historically been borne by the university, it is assumed the community has undertaken to support these activities, and subsequent allocation of these costs to a hospital constitutes a redistribution of costs from an educational institution to a patient care institution. In such a situation, these costs are not allowable under the Medicare program. (See 42 CFR 413.85(c) and HCFA Pub. 15–1, § 406). For example, if in the past the hospital did not identify and claim costs attributable to the time teaching physicians spent supervising I&Rs (interns and residents) working at the hospital, it is assumed that these costs were borne by the university. Therefore, the hospital may not claim these costs in subsequent cost reports. (Instructions for Implementing Program Payments for Graduate Medical Education to ARAs for Medicare, Director of Office of Financial Operations of the Health Care Financing Administration, BPO–F12, February 12, 1990.)

Thus, under the previous cost payment scheme, the principles of redistribution of costs and community support were applied to direct GME reasonable cost payment using a cost finding methodology. In contrast, in the current context where payment is no longer based solely on reasonable costs incurred, but on PRA and FTE resident counts, if the hospital can demonstrate that it has continuously incurred *some* of the direct GME costs of training the residents since the inception of the residency program at a training site, then no redistribution of costs or community support has taken place. As noted, current direct GME payments are no longer based on detailed cost finding of allowable costs of hospitals. Therefore, we believe it is appropriate to require that a hospital demonstrate that there has been no redistribution of costs or community support by proving that the hospital has incurred *some* of the direct GME costs of the program continuously since the inception of the program. Finally, contrary to the commenter's assertion, we believe we have been consistent with the other Medicare policies on counting residents, including the policy cited by the commenter concerning the prohibition on counting residents training at other hospitals. (See the August 1, 2002 final rule (67 FR 60077). As stated above, there would be no redistribution of costs or community support if a hospital counts a resident when another hospital incurs the resident's salary, as long as the first hospital still incurs other direct GME costs associated with the training of that resident. In any case, as we explained above and also in the proposed rule, the principles of redistribution of costs and community support are not applicable to cost shifted between the hospitals, only costs shifted between a hospital and educational institutions or other organizations that are not Medicare providers.

Comment: One commenter stated that a hospital was "required" to include in the calculation of its average per resident amount, time spent in the hospital by residents who were paid by "other entities." This commenter quoted the September 29, 1989 final rule: "the 1989 GME rule was modified after publication of the proposed rule in order 'to *require* Medicare hospitals to count residents who are working in their facility even if the residents' salaries are fully paid by other entities, either Federal or non-Federal. This revised policy will *apply to both GME base period and cost reporting periods subject to the new payment methodology.*' 54 FR 40299 (emphasis added)."

Response: We believe the language quoted above by the commenter from the 1989 final rule has been taken out of context. In essence, the commenter has generalized from the language selectively quoted above to support an argument that Medicare would have required a hospital to count resident time when the residents were "paid by other entities," thereby supporting the commenter's argument that Medicare not only condones redistribution of costs but, in fact, would seem to "require" them. However, we believe the language quoted by the commenter from a particular comment and response in the 1989 rule, if quoted in its full context, actually supports the CMS policy on the application of the principles of redistribution of costs and community support that as long as the hospital has continuously incurred at least some of the direct GME cost of the residency program since the inception of the program, there has been no redistribution of costs or community support and the hospital may count the FTE residents. Specifically, the commenters in that rule at 54 FR 40298 asked in relevant part: "A particular problem referred to was the treatment of residents who are paid by medical schools, faculty practice plans, and others rather than by hospitals that participate in Medicare. It was pointed out that teaching hospitals incur other costs such as teaching physicians' salaries and overhead costs in connection with these residents, and it would be unfair not to count these residents for payment purposes." In our response to this comment, we stated, also in relevant part on 54 FR 40299: "we note that some of the comments have led us to believe that, in addition to Federally-employed residents (for example, residents in Veterans Administration or Department of Defense programs), a significant number of residents are paid a salary by non-Federal, nonprovider entities (for example, medical schools or philanthropic agencies). As noted by the commenters, although no hospital participating in Medicare incurs salary costs for these residents, *hospitals do incur other substantial GME costs associated with these residents.* Therefore, we are modifying our proposed rule to require Medicare hospitals to count residents who are working in their facility even if the residents' salaries are fully paid by other entities, either Federal or nonfederal." (Emphasis added). It becomes apparent when the language quoted by the

commenter on this final rule is read in context that, even as far as back as the 1989 final rule, we acknowledged that hospitals may count the FTE residents where other entities may have incurred the residents' salaries, but where the hospitals still "incur other substantial GME costs associated with these residents." This view is entirely consistent with the CMS application of redistribution of costs and community support. In a scenario where a nonhospital entity, such as a medical school, incurs the residents' salaries, we continue to believe that the hospital may count the FTE residents if the hospital can demonstrate that it has incurred other direct GME costs, such as the supervisory physician salaries, since the inception of the program.

Comment: One commenter argued that when we explained our policy in the July 31, 1998 **Federal Register** (63 FR 40954) to require a written agreement indicating that the hospital must provide reasonable compensation for physicians' supervision of residents' training in the nonhospital setting, "nothing was said about an additional requirement that a hospital must have continuously incurred this additional cost, as well as the residents' compensation required under the prior regulations, since the inception of the training program." This commenter further makes the point that in the final rule at 63 FR 40986, in response to a comment that hospitals did not compensate nonhospital sites for supervisory teaching physician costs and it would not be fair to shift these costs to teaching hospitals, CMS responded:

> Hospitals and nonhospital sites will have 5 months following publication of this final rule to negotiate agreements that will allow hospitals to continue counting residents training in nonhospital sites for indirect and direct GME. These arrangements are related solely to financial arrangements for training in nonhospital sites. We do not believe that the agreements regarding these financial transactions will necessitate changes in the placement and training of residents.
>
> In response to the comment that it is unfair to shift costs to the hospital, we believe that it is appropriate to include supervisory costs in the nonhospital site as part of "all or substantially all" of the costs that hospitals must incur to count the resident. Currently, the hospital is able to count the resident even though the costs for that resident may be lower during the time when the resident trains outside the hospital. At the same time, the nonhospital site may have incurred costs for which it received no compensation. We believe that requiring the hospital to incur the costs associated with training in the nonhospital site is equitable to both the hospital and the nonhospital site and is consistent with the statutory requirement that the hospital must incur "all or substantially all" of the costs.
>
> (63 FR 40995 (emphasis added by commenter).)

The commenter believed that this explanation of the changes to the GME and IME rules, effective January 1, 1999, "belies CMS' current assertion of a longstanding policy of applying the redistribution of costs and community support principles in the determination of the resident counts used to compute payment for GME and IME."

Response: The commenter has used the language quoted above from the 1998 final rule to argue that when CMS (then HCFA) described the policy on counting residents in nonhospital sites for IME, "nothing was said about an additional requirement that a hospital must have continuously incurred this additional cost * * * since the inception of the training program." The commenter has inferred from the language quoted above that CMS has *not* had a longstanding policy of applying the redistribution of costs and community support principles. However, we believe the language actually *supports* the longstanding existence of our policy in two ways. First, the quoted language demonstrates the agency's view that the nonhospital site policy was written from the standpoint of addressing the counting of residents when hospitals *rotate* residents from the hospital to the nonhospital site. Second, the quoted language is also indicative of the Agency's policy that as long as the hospital has continuously incurred at least some of the direct GME cost of the residency program since the inception of the program, there has been no redistribution of costs or community support and the hospital may count the FTE residents (assuming that other requirements are met).

Specifically, the comment relating to the portion of the 1998 final rule quoted above stated at 63 FR 40994, in relevant part: "One commenter noted that some arrangements between hospitals and nonhospital settings for the training of residents predate the GME base year. This commenter stated that hospitals did not compensate nonhospital sites for supervisory teaching physician costs and it would not be fair to shift these costs to teaching hospitals. *The commenter also stated that teaching hospitals have already entered into written agreements with nonhospital sites under the existing rules.*" (Emphasis added.) In addition, as quoted above in the comment, we responded, in relevant part at 63 FR 40995 (with different emphasis):

> * * * hospitals and nonhospital sites will have 5 months following publication of this final rule to negotiate agreements that will allow hospitals to *continue counting residents* training in nonhospital sites for indirect and direct GME. These arrangements are related solely to financial arrangements for training in nonhospital sites. We do not believe that the agreements regarding these financial transactions will necessitate changes in the placement and training of residents.
>
> In response to the comment that it is unfair to shift costs to the hospital, we believe that it is appropriate to include supervisory costs in the nonhospital site as part of "all or substantially all" of the costs that hospitals must incur to count the resident. Currently, the hospital is able to count the resident even though the costs for that resident may be lower *during the time when the resident trains outside the hospital.* At the same time, the nonhospital site may have incurred costs for which it received no compensation. We believe that requiring the hospital to incur the costs associated with training in the nonhospital site is equitable to both the hospital and the nonhospital site and is consistent with the statutory requirement that the hospital must incur "all or substantially all" of the costs. *Ibid.*

We believe the quoted comment and response from the 1998 rule paint a picture of a hospital that has had a pre-existing relationship with a nonhospital site involving *rotation of residents from the hospital to the nonhospital site for a period of time* during the residency program. The language we emphasized in the response—that the hospital may "*continue to count* residents" when they train in the nonhospital sites, and that the hospital "may count the resident even though the costs for the resident may be lower *during the time* when the resident trains outside the hospital"—clearly refers to a rotational arrangement between the hospital and the nonhospital site. In addition, according to the circumstances described by the commenter in the 1998 rule, the hospitals had been incurring the residents' salaries, a direct GME cost, because they had formerly complied with the earlier regulation requiring that hospitals incur residents' salaries for purposes of meeting "all or substantially all of the costs" under § 413.86(f)(3). We had no reason to believe that the hospitals had not incurred at least the residents' salaries since the inception of the training program (the commenters state that the arrangements "predate the GME base year"). In that event, the counting of residents in the nonhospital sites would not result in a redistribution of costs if, as of January 1, 1999, the hospital was required to incur the additional direct GME cost for supervisory physician costs while the residents rotate to the nonhospital site. We believe that the commenter in the 1998 rule simply did not agree with the additional regulatory requirement finalized in the 1998 final rule that the hospital must also incur the supervisory physician costs for purposes of incurring "all or substantially all of the costs," and hoped to label this new regulatory requirement as a "cost shift" in order to avoid it. As we have explained, it appears that there has been no redistribution in the case described by the 1998 final rule commenter because it can be inferred that the hospital had incurred at least some of the direct GME costs (the residents' salaries) since the inception of the program.

Therefore, we believe the language the commenter quotes from the 1998 rule is consistent with our clarifications in this final rule on redistribution of costs and community support. In addition, the language cited by the commenter supports our interpretation of the policy on counting residents in nonhospital sites that it was intended to address the situation when hospitals rotate residents from the hospital to the nonhospital site.

Comment: Some commenters disputed the CMS interpretation of Congressional intent as discussed in the preamble of the proposed rule (see 68 FR 27213). One commenter stated: "there is no support in the legislative history of the non-provider setting amendments [the 1986 and 1997 amendments of the Act] for the Secretary's view that these changes were not intended to shift new costs to hospitals in support of on-going training in non-provider settings * * * it can be reasonably inferred that Congress was aware, and even intended, that some costs of existing residency training programs in non-provider settings would be shifted to hospitals in order for the hospitals to qualify for direct GME and IME funding under the 1986 and 1997 amendments of the Act." Similarly, another commenter stated that the Secretary "must look elsewhere to the statute [other than section 1886(h)(4) of the Act] for support for his proposed rule; he cannot simply create out of whole cloth an interpretation that is inconsistent with the amendment's other provisions."

Response: The commenters would have us interpret and implement policy in a statutory vacuum. We believe we have reasonably discerned Congressional intent by interpreting the plain language of the statute at sections 1886(d)(5)(B) and 1886(h) of the Act *in conjunction with* the accompanying legislative history of these sections.

As we stated in the preamble to the proposed rule, Congress has delegated broad authority to the Secretary to implement a policy on the count of FTE residents for purposes of calculating direct GME and IME payments. In section 1886(d)(5)(B) of the Act (IME), the statute does not specify at all how FTE counts should be determined, and the plain language in the statute under section 1886 (h)(4) of the Act (direct GME) indicates that the Secretary "shall establish rules" for direct GME consistent with the statute. We also considered the deference expressed in the conference agreement that accompanied Pub. L. 105–33, which established a cap on the number of allopathic and osteopathic residents a hospital may count—"[T]he Conferees recognize that such limits raise complex issues, and provide for specific authority for the Secretary to promulgate regulations to address the implementation of this provision."(H.R. Conf. Rep. No. 105–217, 105th Cong., 1st Sess., 821 (1997).

Thus, in the absence of statutory specificity on determining FTE counts and the declared Congressional delegation of authority to the Secretary on the subject are *clear* indications that Congress has given the Secretary broad discretion to promulgate reasonable regulations in order to implement the policy on the counting of residents for direct GME and IME payments.

In addition, we have *not*, as the second commenter suggests, "created out of whole cloth" an interpretation of the policy concerning counting residents in nonhospital settings that is "inconsistent with the amendment's other provisions," nor do we at all believe that "it can be reasonably inferred that Congress was aware, and even intended, that some costs of existing residency training programs in non-provider settings would be shifted to hospitals in order for the hospitals to qualify for direct GME and IME funding under the 1986 and 1997 amendments of the Act," as the first commenter suggests. Rather, as we have stated, we believe that when Congress created the provisions on counting resident FTEs in nonhospital settings, it was creating a monetary incentive for hospitals to rotate residents *from* the hospital *to* nonhospital settings. We have drawn this conclusion, as we explained, from the legislative history of both the direct GME and IME provisions authorizing payments to hospitals for training in nonhospital settings. First, legislative history associated with passage of the direct GME provision (as part of Pub. L. 99–509) indicates that Congress intended to broaden the scope of settings in which a hospital could train its residents and still receive separate direct GME cost reimbursement, and to provide incentives to hospitals for training residents in primary care programs. The Conference committee report indicates that "[s]ince it is difficult to find sufficient other sources of funding [than hospitals and Medicare] for the costs of such training, [that is, training in freestanding primary care settings such as family practice clinics or ambulatory surgery centers] *assignments to these settings* are discouraged. It is the Committee's view that training in these settings is desirable, because of the growing trend to treat more patients *out of the inpatient hospital setting* and because of the encouragement it gives to primary care." (Emphasis added.) (H.R. Rep. No. 99–727, 99th Cong., 1st Sess., 70 (1986).)

Thus, from the inception of the policy allowing payment for training in nonprovider sites, we believe Congress intended to create a monetary incentive for hospitals to rotate residents from the hospital to the nonhospital settings. We do not believe Congress intended for hospitals to be paid for residents who had previously been training at nonhospital sites without hospital funding.

Further, in the Conference committee report accompanying the provision of Pub. L. 105–33 that authorizes IME payment for training in nonhospital settings, Congress stated that "[t]he conference agreement includes new permission for *hospitals to rotate residents through nonhospital settings*, without reduction in indirect medical education funds." (Emphasis added.) (H.R. Conf. Rep. No. 105–217, 105th Cong., 1st Sess., 817 (1997).)

We note that, prior to enactment of Pub. L. 105–33, if a hospital rotated a resident from the hospital to train at a nonhospital site, the hospital could not count the time the resident spent at the nonhospital site for purposes of Medicare IME payments. As a result, the "loss" of IME payments acted as a disincentive and discouraged hospitals from rotating residents out of the hospital. It appears from the legislative history that Congress authorized hospitals to count residents in nonhospital sites for IME purposes as a specific incentive to encourage hospitals to rotate their residents to nonhospital sites (and not to encourage hospitals to incur the costs of a program at a nonhospital site that had already been funded by other sources). This legislative intent becomes more apparent when the nature of the Medicare IME payment is considered.

The Medicare IME payment is inherently a payment that reflects the increased operating costs of treating inpatients as a result of the hospital having a residency program. For example, as explained in the September 29, 1989 final rule (54 FR 40286), the indirect costs of medical education might include added costs resulting from an increased number of tests ordered by residents as compared to the number of tests normally ordered by more experienced physicians.

The IME payment is an "add-on" adjustment that is made for each Medicare discharge from the areas subject to the IPPS in a teaching hospital. The authorization by Congress for IME payments relating to nonhospital services while residents are training at nonhospital sites would be absurd if not viewed as an incentive to transfer existing residency training from the hospital to the nonhospital setting. We do not believe Congress intended to permit IME payments to be allowable to the hospital that is incurring "all or substantially all the costs" of residents training in nonhospital sites except in the situations where either the hospital rotated residents from the hospital to the nonhospital settings or where the hospital started new programs in the nonhospital settings (and incurred the direct GME costs from the programs' inception). The illustrative situations described above and in the proposed rule in which nonhospital sites, such as dental schools, are shifting the costs of existing programs to the hospitals are not consistent with the intent of Congress to encourage hospitals to rotate residents from the hospital setting to nonhospital sites.

Thus, we believe Congress intended both cited provisions of the Act on counting residents in nonhospital sites for purposes of direct GME and IME payments to be limited to situations in which hospitals rotate residents from the hospital to the nonhospital settings, and *not* situations in which nonhospital sites transfer the costs of an existing program at a nonhospital site to the hospital.

Comment: One commenter cited section 1886(h)(5)(J) of the Act to support the general argument that CMS lacks the authority under the statute to "impose additional conditions" on counting FTE residents training in nonhospital sites—that is, the principles of redistribution of costs and community support. The commenter stated:

> This conclusion is further supported by Congress' treatment of family practice residency programs. In 42 U.S.C. § 1395ww(h)(5)(J), Congress provided a special payment provision for family practice residency programs. Specifically, Congress authorized hospitals to claim costs related to such programs even if, during the GME prospective payment base year—a year reimbursed under the reasonable cost system and a year to which the community support principle applied—the cost of such programs had been paid by the United States, a State, a political subdivision of the State, or an instrumentality of the State or political subdivision. Congress also provided that, in the event that such program payments were part of the PRA calculation during the GME base year, the payment in future years would be reduced "in an amount equal to the proportion of such program funds received during the cost reporting period involved * * *." Thus, Congress has spoken to the issue of whether hospitals may claim costs in the current year if those costs have been paid in the past by third parties, and it has allowed reduction in current-year payments only if: (1) During the GME PPS base year, a third party had paid for the cost of the hospital's family practice residency program; and (2) as a result, the hospital had received a PRA that included an "estimate of the amount that would have been recognized as reasonable * * * if the hospital had not received such funds." 42 U.S.C. § 1395ww(h)(5)(J)(i). In all other situations, I submit, Congress does not permit the Secretary to reduce payments in the current year simply because, in the past, some third party may have paid the cost.

Response: We disagree with the commenter that section 1886(h)(5)(J) of the Act supports the assertion that "Congress has spoken to the issue" of whether a hospital may claim third party costs and has allowed reductions in direct GME reimbursement resulting from redistribution of costs or community support in only the very limited circumstance of that exception in the Act. Generally, section 1886(h)(5)(J) of the Act did two things: first, in subparagraph (J)(i)(1), Congress specifically allowed a hospital that *only* has an approved training program in family medicine and received a PRA in the base year of less than $10,000 for its family practice program, to receive a revised PRA that reflects the inclusion of "funds from the United States, a State, or a political subdivision of a State * * *" for the hospital's family practice program. Thus, the provision recognizes that ordinarily such funds would not be included in the hospital's base year per resident amount (because they were not incurred by the hospital in the base year). However, Congress explicitly created a narrow exception to the "cost finding" principles to allow such a hospital to include Federal, State, or local government grants to be included in the hospital's PRA base year calculation. Second, subparagraph (J)(i)(2) requires that direct GME payment to such a hospital that received a revised PRA amount under subparagraph (J)(i)(1) must also be reduced in subsequent cost reporting periods by the proportionate amount of funding the hospital receives from Federal, State, or local government payments. In other words, what subparagraph (J)(i)(2) does is to prohibit this hospital from receiving duplicative payments for the same GME program—both through the adjusted PRA and through continued Federal, State, and local government funding.

The commenter argues that subparagraph (J)(i)(2) is the "only" situation where Congress has "spoken" about reductions in current year payment because of third party reimbursement. However, as we stated above, we believe the effect of subparagraph (J)(i)(2) is to prevent of duplicative payments for the same program that could otherwise occur in the narrow circumstances of the exception provided by section 1886(h)(5)(J), and has nothing to do with the continued applicability of the principles of redistribution of costs and community support. To the contrary, as we have stated, we believe that subparagraph (J)(i)(1) addresses a limited theoretical "retroactive redistribution" of costs and community support to allow a very narrow *exception* of allowing costs to be included in direct GME payment. Thus, we believe section 1886(h)(5)(J) of the Act would support our assertion that Congress intends application of redistribution of costs and community support to direct GME payment (except in the narrow circumstance of the type of hospital described in that section), rather than support the commenter's contrary assertion that the section is inconsistent with our proposal on application of the principles.

Comment: One commenter suggested that the redistribution of costs and community support principles at nonhospital sites should apply on a "year-by-year basis," such that if another entity funds a training program during a particular fiscal year, the hospital would not be allowed to include the residents in its count for that fiscal year.

Response: We believe the commenter's suggestion of a "year-by-year basis" policy is, in effect, already in place under existing Medicare policy without reference to the redistribution of costs or community support principles. Under the existing policy, where another entity funds a training program in a particular year while the residents are training at a nonhospital site—that is, incurs the residents' salaries and fringes, and the supervisory physician costs ("all or substantially all of the costs"), the hospital may not include the residents in its FTE count for that fiscal year. This requirement, of course, is independent of the redistribution of costs and community support policy. It is based on the statutory requirement that allows a hospital to count residents training at nonhospital sites only if the hospital has incurred for all or substantially all of the costs of the program at that site during the hospital's fiscal year.

Comment: One commenter stated that the 1989 final rule made clear that a hospital's resident count may also include residents for whom "community support was received" through a State or local grant. Similarly, another commenter stated "certain family medicine training programs that may have received outside funds, for example, State dollars, at any time in the past will be prohibited [by the hospital we proposed] from receiving GME reimbursement."

Similarly, another commenter stated that "it is axiomatic" that State-supported and public teaching hospitals receive State appropriations to support their residency programs. The commenter urged CMS to clarify that the application of the redistribution of costs and community support principles would not apply to State or local appropriations to public hospitals, with respect to the counting of FTE residents in either the hospital or the nonhospital setting.

Response: As we explained in the 1989 final rule (54 FR 40302), grants that were restricted (those grants that were designated by the donor to pay for certain specified provider costs) or unrestricted were considered allowable costs of the hospital (including direct GME costs) when Medicare paid hospitals on a reasonable cost basis. The policy allowing payment to hospitals for costs that had been funded by grants was authorized by section 901 of the Omnibus Budget Reconciliation Act (OBRA) of 1980 (Pub. L. 96–499), which added section 1134 of the Act. Section 1134 of the Act applies to "the reasonable costs of services provided by nonprofit hospitals or critical access hospitals." Section 1134(1) of the Act specifies that a "grant, gift or endowment or income therefrom which is to or for such a hospital * * *" may not be deducted from the operating costs of such hospitals that are paid on a reasonable cost basis. Therefore, when hospitals were paid on a reasonable cost basis for direct GME costs, the "community support" that came from "grants, gifts, or endowments" was allowable under Medicare. We are clarifying in this final rule, that under the direct GME prospective payment methodology under section 1886(h) of the Act, if a hospital had received a grant, gift or endowment to subsidize its residency programs at the hospital, and the hospital requested direct GME payment for training the residents, it would not be considered community support. Under section 1134 of the Act, it is as if the hospital had itself incurred the cost for which it had received the grant subsidy. For example, if in 2003 a hospital received a State grant to fund its family practice program at the hospital, the grant would not be considered community support under our regulation. This is because we would treat the hospital as if itself incurred the costs for the family practice program, instead of the State grant.

However, we note that this policy would *not* include ordinary State and local appropriations. As we mentioned in the January 12, 2001 final rule at 66 FR 3367, "In administrative, legal and policy matters, we have consistently maintained that State appropriations for the cost of medical education activities constitute community support that is to be offset from a provider's allowable costs." Therefore, if a program were entirely funded by State or local appropriations, an inappropriate redistribution of costs would occur if the hospital subsequently begin to incur the costs of the residency program—for training inside or outside the hospital. Although, for most hospitals that receive State and local appropriations for their residency programs, the hospitals continuously incur (since the inception of the programs) some direct GME costs, there would be no disallowance of FTEs due to community support.

We contrast the situation of a grant to a hospital with the situation of a grant to a nonhospital site. If, hypothetically, nonhospital sites were reimbursed by Medicare on a reasonable cost basis, and the nonhospital site had received grants to subsidize all of the direct GME costs for the residency program there, under section 1134 of the Act, we would treat the costs the grant subsidized as if they were costs of the nonhospital site. If a hospital then tried to incur the direct GME costs, this *could* be a redistribution of costs or community support issue, since the hospital would be claiming FTE residents who had historically trained at the nonhospital site for whom the community had assumed the cost of that training, as described in the scenarios at 68 FR 27213.

Comment: Several commenters objected to the sentence in the preamble to the proposed rule that stated: "* * * a hospital is required to assume financial responsibility for the full complement of residents training in a nonhospital site in a particular program in order to count any FTE residents training there for purposes of IME." One commenter explained that there are a number of situations where a hospital is truly incurring the cost of having a resident at a site, but the hospital is not incurring the cost of the entire complement of residents. "For example, if two different hospital programs each elect to send residents to the same clinic, under the interpretation in the [proposed rule], neither of the two hospitals would be able to count any of the residents because neither of the two programs would incur the cost of the full complement of residents." Another commenter believed that "this change" runs contrary to other current Medicare policies that focus on the resident rather than the program. The commenter believed that both the direct GME and IME regulations "are replete with references to 'resident' rather than 'program'." The commenter believed that "residency program" is referenced only in the context of the requirement that, for residents to be counted for direct GME and IME payments, they must be part of an "approved program" (§ 413.86(f)(1)).

Response: We understand the concerns of the commenters about the requirement for a hospital to incur "all or substantially all of the cost" of training residents in a training *program* at a nonhospital site. However, we *do not* believe this is a *change* in policy. We believe that the policy that requires a hospital to incur the cost of "the program" in the nonhospital site has existed since the passage of the direct GME provisions, section 9314 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99–509), and the passage of the IME provision, section 4621(b)(2) of the Balanced Budget Act of 1997 (Pub. L. 105–33), that permitted hospitals to continue to count residents in nonhospital sites, for purposes of direct GME and IME payment, if the hospital incurred "all or substantially all of the cost" of residents training in the program.

As we explained in the proposed rule, this policy is derived from the language of the IME and direct GME provisions of the statute on counting residents in nonhospital settings; *both* sections 1886(d)(5)(B)(iv) and 1886(h)(4)(E) of the Act state that the hospital must incur "all, or substantially all, of the costs for the training *program* in that setting." (Emphasis added.) Therefore, we believe a better reading of this language is that hospitals must incur all

or substantially all of the cost for the full complement of residents in the training program at the nonhospital site.

We note that the policy that requires the hospital to incur the cost of the *program does* appear to be somewhat of a departure from other current Medicare policies on graduate medical education that focus on the resident rather than the program, as the commenter suggests. However, we believe the statutory provisions cited above require hospitals to assume the cost of the full complement of residents training in the program at the nonhospital sites in order to count any FTE residents training at that site.

In addition, as we noted at 68 FR 27217 of the proposed rule, and also above, under policy on the application of the redistribution of costs and community support principles, it is permissible for the hospital to count FTE residents where the hospital incurs direct GME costs of FTE residents that are *added* to an existing program, even though the hospital is not permitted to count the existing FTE residents due to the application of the redistribution of costs or community support rules. In the nonhospital setting, as a result of the interaction of these two separate FTE-counting requirements—(1) that the hospital must not violate the redistribution of costs and the community support principles in order to count the resident FTEs in the nonhospital settings; and (2) that the hospital must incur "all or substantially all" of the costs for the training program in that setting—a hospital would be prohibited from counting FTE residents added to an existing program at a nonhospital site unless the hospital incurs all or substantially all of the costs of training *all* of the residents in that program at that setting. That is, even if the hospital incurs all or substantially of the costs for all of the training program at the nonhospital site, the hospital would only be able to count the additional FTE residents who were not excluded by application of the redistribution of costs or community support principles.

Comment: Several comments cited a letter from CMS (then the Health Care Finance Administration, or "HCFA") dated March 30, 1999 to C. Scott Litch of the American Association of Dental Schools (now the American Dental Education Association). Specifically, these commenters cited a sentence in the letter to Mr. Litch which stated: "If a hospital establishes a new relationship with a dental clinic and meets the conditions for counting residents training outside the hospital, the hospital may count more residents currently for indirect and direct graduate medical education than were counted in 1996 if those residents are dental residents." One commenter stated that the "new relationship" referred to in the letter from CMS presupposes the existence of an ongoing program whose costs presumably had been met by means other than the hospital before the affiliation with a nonhospital dental clinic began. This commenter believed that this letter provided assurance to many hospitals that new affiliations with preexisting dental programs were permissible.

Response: We do not agree with the commenter that the sentence in the letter to Mr. Litch "presupposes the existence of an ongoing program" where the costs of such a program "had been met by means other than the hospital". Rather, we believe the "new relationship" between the hospital and the dental clinic could be reconciled with application of the principles of redistribution of costs and community support and characterized by two possible interpretations, both of which would allow for the counting of residents in nonhospital sites—(1) where the hospital would rotate residents from the hospital to the nonhospital site; or (2) where the hospital would fund new training slots at the nonhospital site (the dental clinic referred to in the Mr. Litch's letter). Such assignments from the hospital to the dental clinic, or new residency training slots, would be the "new relationship," but in either case, no redistribution would occur. Therefore, we do not believe the letter from 1999 is necessarily inconsistent with the principles of redistribution of costs and community support described in the proposed rule.

Comment: Many commenters, while remaining generally opposed to application of redistribution of costs and community support principles, requested that if CMS were to finalize the proposed rule, CMS apply the principles prospectively. One commenter, a dental school, explained that it had just admitted a new class of residents, many of whom will not complete their programs until 2006. The commenter believed that, in the application of the principles, CMS seeks to remove all Medicare funding for these residents retroactively. Along a similar vein, another commenter pointed out in support of the suggestion to apply the principles only prospectively, that the implementation of the proposed regulation would result in "substantial dislocation and hardship to hospitals, dental and other schools, and the residents themselves." Therefore, the commenter believed CMS should indicate specifically in the final rule that such changes will only be applied to a provider's cost reporting period beginning on or after October 1, 2003, and CMS should not apply its final GME policy on redistribution of costs and community support to any prior cost reporting periods that remain open or unsettled, or are settled but potentially subject to reopening under the Medicare rules.

In addition, several commenters requested clarification regarding the effective date for the proposed application of the principles of redistribution of costs and community support to FTE counts. Specifically, the commenters point to the following language in the proposed rule:

- "A hospital must continuously incur direct GME costs of residents training in a particular program at a training site since the date the residents first began training in that site in order for the hospital to count the FTE residents." (68 FR 27215)
- "We propose * * * to identify January 1, 1999, as the date our fiscal intermediaries should use to determine whether a hospital or another entity has been incurring the costs of training in a particular program at a training setting." (68 FR 27216)
- "[i]f the fiscal intermediaries determine that there is a redistribution of costs or community support exists with respect to certain residents prior to January 1, 1999, a disallowance of direct GME and IME payment with respect to those FTE residents would certainly be required." (68 FR 27216)
- "We are proposing that, effective October 1, 2003, in order for a hospital to receive IME and direct GME payment, the hospital must have been continuously incurring the direct GME cost of residents training in a particular program since the date the residents first began training in the program in order for the hospital to count the FTE residents." (68 FR 27417)

Response: We have stated that we believe the principles of redistribution of costs and community support are *longstanding* Medicare policy. While we have reminded the public of the continuing application of the principles in various regulations and program guidance, we also recognize that CMS has not had occasion to invoke them in Agency policy expressions relating specifically to direct GME payments since the direct GME PRA base year.

As we have stated, we believe redistributions would occur only in rare circumstances for residency training inside the hospital. Between 1987 and 1997 when hospitals could count FTE residents training in nonhospital sites for purposes of direct GME payments, but not IME payments, we did not observe the kinds of inappropriate counting of FTE residents we described in our proposed rule. It is only since hospitals have been allowed to count FTE residents training in nonhospital sites for purposes of IME payment, that CMS has become aware that cost shifting has become prevalent in the hospital industry, which has implicated the principles of redistribution of costs and community support. Therefore, in general, we are implementing a prospective effective date of October 1, 2003, for purposes of payment. That is, for direct GME, effective for portions of cost reporting periods beginning with October 1, 2003, and for IME, effective for discharges occurring on or after October 1, 2003, a hospital must have been continuously incurring direct GME costs of residents training in a particular program since the date the residents first began training in the program in order for the hospital to count the FTE residents. We note that the effective dates apply only as they relate to disallowances of FTEs and bear no relation to determinations of redistributions or community support. Therefore, in general, a fiscal intermediary that determines that a redistribution of costs has taken place for a particular hospital prior to October 1, 2003, may disallow FTEs based on that determination beginning with October 1, 2003. For example, if a fiscal intermediary determines that a redistribution of costs has occurred that affected 10 FTEs for direct GME and IME during the hospital's cost report ending in fiscal year ending in 1999, the fiscal intermediary would take disallowances for those 10 FTEs, but not until October 1, 2003, for purposes of direct GME and IME payment.

In addition, because we have received a large number of public comments expressing surprise and confusion regarding our policy on these principles, we are grandfathering residents who began training in a program on or before October 1, 2003. That is, an FTE resident who began training in a residency program on or before October 1, 2003 (the effective date of this final rule), and with respect to whom there has been a redistribution or community support, may continue to be counted by a hospital for purposes of direct GME and IME payments after October 1, 2003, until the resident has completed training in that program, or until 3 years after the date the resident began training in that program, whichever comes first. We believe continued direct GME and IME payments to the hospital while the "redistributed" residents finish their training for up to 3 years is appropriate to address many situations in which nonhospital sites have made arrangements with hospitals to shift the costs of training those residents. We understand that, in nonhospital sites, virtually all dental residency programs are of a duration of 3 years in length or less. This policy addresses the situation pointed out by the dental school commenter and other commenters that a school may have just admitted a new class of residents, many of whom will not complete 3-year programs until 2006.

We note that this prospective "grandfather" policy *does not* apply to resident FTEs with respect to whom there has been a redistribution of costs or community support, and who begin training after October 1, 2003. In addition, those residents described above who began training in a program on or before October 1, 2003, may be counted until those particular residents finish their training in that program (or 3 years, whichever comes first). In order to count such residents, we are requiring that hospitals identify those residents (by social security number) to their fiscal intermediary and specify the length of time the hospital will be counting these FTE residents for direct GME and IME payment purposes.

We note that the policy described above that effectively "grandfathers" residents who began their training on or before October 1, 2003, applies only as it relates to payments to hospitals for those specified FTE residents, and bears no relation to determinations of whether a redistribution of costs or community support has taken place. Therefore, if a fiscal intermediary determines that a redistribution of costs has taken place with respect to residents counted by a particular hospital even prior to October 1, 2003, the intermediary will disallow any FTEs based on that determination, beginning October 1, 2003, except for the "grandfathered" residents. Hospitals that continue to count grandfathered FTE residents (where the costs of whom had been redistributed) may only do so until those residents finish their training in the specific program they were training in on or before or to October 1, 2003 (which would be no later than September 30, 2006, 3 years after October 1, 2003).

For example, a fiscal intermediary determines for a hospital's FYE December 31, 2003 cost report that a redistribution of costs has taken place with respect to certain FTEs the hospital counted for direct GME and IME (that is, the costs of training residents at a nonhospital site were incurred by a university from 1990 through 1999). Assume that 5 FTEs began training in a 2-year orthodontics program in a dental school on July 1, 2003, and another 5 residents begin their training in the same program on July 1, 2004. The 5 FTEs who began training on July 1, 2003, are "grandfathered," and, therefore, the fiscal intermediary would not disallow these 5 FTEs as of October 1, 2003. The hospital may continue to count these 5 FTEs that began training on July 1, 2003 through June 30, 2005, when they finish the 2-year orthodontics program. We note that subsequent to completion of the 2-year orthodontics program on June 30, 2005, if any of these 5 FTEs participate in additional GME training programs, the fiscal intermediary would disallow these FTEs because disallowances for redistribution of costs and community support relate to FTE slots and not specific residents.

However, the 5 FTEs that began training in the 2-year orthodontics program on July 1, 2004 are not "grandfathered," and, therefore, beginning July 1, 2004 of the hospital's December 31, 2004 cost report, the fiscal intermediary will disallow IME and direct GME payment associated with these 5 FTE slots.

Comment: Commenters disputed the situations we cited in the preamble to the proposed rule that were supposed to be illustrative of what we believe to be inappropriate application of Medicare direct GME and IME policy at 68 FR 27213. One commenter, in particular, requested information on the identity of programs cited in the examples.

Response: We do not believe it is appropriate to disclose the identities of those cited in the examples. Therefore, we are unable to respond to the commenters' points on the matter, except to state that the situations in the examples represent what we believed are the more "egregious" scenarios involving redistribution of costs and community support principles and inappropriate counting of FTE residents, we note that the same issues arise, and the same principles apply, whether the counting of residents relates to training that is taking place in another country, another State, or on the same hospital campus, as the hospital.

Comment: One commenter believed that CMS's policy on the application of the redistribution of costs and community support will lead to considerable, "but needless," litigation over what it means to "incur" the costs of off-site training.

Response: We disagree with the commenter and see no reason to be

concerned that these clarifications would result in any more litigation than other Medicare payment policies that are conditioned on whether a provider incurs costs. For example, for several decades, Medicare policy required that hospitals "incur" costs in order to receive payment from Medicare. The Medicare statute and regulations currently require that a hospital incur certain costs in order to count FTE residents training in nonhospital sites for purposes of direct GME and IME payments. We are unsure why the requirement under the policy on redistribution of costs and community support that a hospital "incur" the direct GME cost continuously for a residency program at a training site is any more complex than other cost requirements under Medicare.

Comment: One commenter suggested that we craft a narrower solution to the issue of inappropriate counting of FTE residents in nonhospital sites by focusing the language on salary and benefits for residents. The commenter believed that CMS could state that, unless the hospital in 1999 had incurred the costs of salary and benefits for FTE residents who were training in offsite locations, the hospital may not receive direct GME and IME payment for training those FTE residents at the nonhospital sites today.

Response: We do not believe a policy such as the one the commenter suggested—determining redistribution of costs based upon whether a hospital continuously incurs the residents' salaries and benefits during training in the nonhospital site— is necessary or appropriate. This is because, under the policy on redistribution of costs and community support we describe in the proposed rule and in this final rule, a hospital that continuously incurs the residents' salaries and benefits (from 1999 or before) while the residents train in the nonhospital site, or even inside the hospital, would *not* be redistributing costs if the nonhospital site later incurs the other direct GME costs (such as supervisory physician salaries) in the nonhospital site. There would be no redistribution of costs because the hospital would have continuously incurred at least some of the direct GME costs (the residents' salaries and benefits) since the inception of the program. However, we note that even if there has not been a redistribution of costs or community support with FTE residents training in a nonhospital site in such a scenario, the hospital would still need to meet the requirements in the existing regulations (at § 413.86(f) and § 412.105(1)(ii)(c)) in order to count those FTE residents for purposes of direct GME and IME payment.

For example, Hospital A has had a family practice program with 10 FTE residents for about 20 years, for which the hospital has incurred the residents' salaries and fringes and some other (but not all) direct GME costs for the program. For the first time, in fiscal year ending 2003, Hospital A rotates 2 FTE residents to an ambulatory clinic (a nonhospital site), and fulfills the requirements at § 413.86(f)(4), including incurring "all or substantially all of the costs" of the training program in the nonhospital site. There is no redistribution of costs with respect to these 2 FTE residents because Hospital A has continuously incurred some of the direct GME costs of the program—the residents' salaries—and therefore it may count the 2 FTE residents training at the clinic (up to the hospital's FTE cap), since it also has complied with the requirements at § 413.86(f)(4).

Comment: Some commenters suggested that the application of redistribution of costs and community support principles would impose large administrative burdens on hospitals to demonstrate which entity has been "continuously incurring" the costs of the residency training. One commenter stated: "[t]his burden would be additive to a policy that already is fraught with excessive administrative requirements."

One commenter asked if hospitals would be required to document responsibility for the costs of training residents prior to January 1, 1999.

Response: If the hospital has continuously been incurring at least some of the direct GME costs (for example, resident salaries or supervisory physician salaries) since the inception of the residency program, we do not believe any additional documentation is necessary beyond which hospitals are already required to maintain. If resident or supervisory physician salaries, for instance, are paid through the hospital payroll, the hospital will have kept documentation of such costs for Federal tax purposes.

In response to the second comment, we stated in the proposed rule that January 1, 1999 should be used by our fiscal intermediaries as the date for determinations of whether a hospital or another entity has been incurring the costs of a training in a particular program at a training site for purposes of determining whether there has been a redistribution of costs or community support. This date was chosen as an administrative convenience because we believe it could otherwise be difficult for our fiscal intermediaries to obtain contemporaneous documentation that the hospitals have appropriately been incurring costs in earlier years. Therefore, we believe that, for purposes of determining redistribution of costs or community support, most hospitals would only be required to maintain appropriate documentation to demonstrate that they have continuously been incurring the direct GME costs from January 1, 1999 forward. However, as we mentioned in the proposed rule, if the fiscal intermediaries determine that there was a redistribution of costs or community support for a fiscal year ending for a cost report for a particular hospital prior to January 1, 1999, the hospital would be required to show contemporaneous documentation to prove otherwise.

Comment: One commenter stated that it may be difficult to track residents that have been funded by some type of community support. The commenter described a scenario where a program at a hospital has four internal medicine residents and one is covered by some type of community support for a 3-year period. The commenter stated that it may be difficult to track that slot over the next 5, 10, or 20 years to avoid submitting it for future direct GME or IME payments.

Response: As we stated above, we understand there may be administrative issues that hospitals must confront in their efforts to comply with the principles of redistribution of costs and community support. However, we do not believe it would very difficult to track the FTEs in a program that receives community support. Once the FTE residents for which community support is received have been identified, the hospital will know the number of FTE residents to remove from the count that is submitted in future cost reports (all of which will be subject to audit by our fiscal intermediaries). Using the commenter's example, if direct GME costs for one out of four FTEs in an internal medicine program is identified as being entirely subsidized by community support for three years (the duration of an internal medicine program), the hospital would know to refrain from counting one FTE in future cost reports, even after the 3 years of training for a particular resident has passed. This is because, as the commenter seemed to understand, the redistribution of costs and community support principles are applied to the FTE resident training slots of a hospital; the principles are not associated with a particular resident, to which the principles could apply differently from year to year.

Comment: One commenter disagreed with the choice of words used in the proposed definition of "redistribution of costs" at proposed § 413.86(b). As proposed, the definition states: "*Redistribution of costs* means an attempt by a hospital to increase the amount it is allowed to receive from Medicare under this section by counting FTE residents who were in medical residency programs where the costs of the programs had previously been incurred by the educational institution." In particular, the commenter objected to the first part of the definition: "an *attempt* by a hospital to increase the amount it is allowed to receive from Medicare." The commenter believed that the phrase was unnecessary to the definition and should be deleted.

Response: We understand the concern of the commenter. However, we have used "the attempt" language at § 413.86(b) for the proposed definition of "redistribution of costs" primarily because we have adopted the language of the existing regulation at § 413.85(c) that defines "redistribution of costs" (now applicable to costs of approved nursing and allied health education activities). The language was not intended to be offensive. Rather, we meant it to be descriptive of a possible motive for a redistribution of costs. In light of the commenter's suggestion, we are revising the language to be purely descriptive of the scenario of the redistribution and not reflect a possible motive. Accordingly, we are revising the language at § 413.86(b) to state: "Redistribution of costs" occurs when a hospital counts FTE residents in medical residency programs and the costs of the programs had previously been incurred by an educational institution. In the future, we will consider conforming changes to the definition of "redistribution of costs" at § 413.85(c) as well.

Comment: Some commenters believed that, through the enactment of the 1996 cap on the count of allopathic and osteopathic residents, Congress has already dealt with the problem that CMS is attempting to revisit with the proposed rule. The commenters believed that when Congress exempted the dental residents from the caps, it intended to create hospital incentives for dental training. The commenters believed that the CMS redistribution of costs and community support policy contradicts this Congressional intent.

Response: We do not believe that when Congress instituted the caps on the count of residents with the Balanced Budget Act of 1997, it was aware that inappropriate counting of FTE residents could occur through redistribution of costs. CMS, itself, did not become aware that many hospitals were engaging in these cost shifting arrangements, very often involving dental residents since at least October 1, 1997, when hospitals were authorized to count FTE residents for purposes of IME payments, as well as direct GME payments, for training in nonhospital sites. As we stated above, it is only since the audits by our fiscal intermediaries of the fiscal year ending 1998 and 1998 cost reports that have occurred within the last 2 years that CMS became aware that significant cost shifting was taking place. Therefore, we do not believe Congress would have been in a position to consider whether to authorize cost shifting in its 1997 legislation. Thus, we do not believe, as the commenters do, that Congress expected, or tacitly condone, cost shifting to dental residents as a result of exempting the dental residents from the 1996 caps. Rather, we believe that when Congress exempted dental residents from the 1996 caps, it intended to allow more dental training to occur in the hospital, not to authorize cost shifting from dental schools to hospitals and to the Medicare program.

Comment: One commenter asked what types of costs the hospital is required to incur for training in nonhospital sites in order for there to be no redistribution of costs or community support. Specifically, the commenter described a scenario under which a teaching hospital and a medical school are related parties and asked whether the teaching hospital is required to pay for the teaching physician services relating to offsite rotations at a medical school clinic before the FTE residents participating in the rotation can be counted for purposes of IME or direct GME payment.

Response: We understand from the scenario described by the commenter that hospital-based residents are being rotated to the medical school clinic. As such, we assume that the hospital is already incurring at least the residents' salary and fringe benefits. Therefore, when rotating the residents to the clinic, the hospital is incurring at least some of the direct GME costs of training the residents. Under these circumstances, a redistribution of costs has not taken place. However, according to the requirements for counting FTE residents in nonhospital settings under § 413.86(f)(4), among other requirements, the hospital is required to incur the portion of the teaching physicians' salaries and fringe benefits attributable to direct GME (by the term "related party," we are assuming that the medical school clinic is not provider-based as specified under § 413.65, and therefore, is not considered part of the hospital). Thus, under the commenter's scenario, the hospital may be prohibited from counting the FTE residents, not because of redistribution of costs but because of failure to incur "all or substantially all of the cost" under § 413.86(f)(4) if the hospital is not incurring the supervisory physician's salary attributable to direct GME.

Comment: A number of commenters argued that the proposed application of the redistribution of costs and community support principles is bad public policy from the perspective of access, quality and cost-effectiveness of oral health care.

Response: We understand that dental training programs provide much needed oral health care to the American public and did not intentionally target them with our policy on redistribution of costs and community support. However, we believe much of the inappropriate cost sifting to hospitals and to the Medicare program is related to dental residency programs—which is probably due to the fact that dental residents are exempted from the statutory 1996 FTE caps. Although we regret that publication of this rule may upset some newly formed relationships between hospitals and dental schools, we continue to believe that the Medicare program should not pay for nonhospital dental residency training that had previously been funded by other sources, without any sponsorship by hospitals or the Medicare program.

Comment: One commenter stated that by establishing a PRA floor equal to 85 percent of the locality-adjusted national average PRA, Congress created an exception to the principles of community support and redistribution of costs. The commenter noted that this floor increased reimbursement to a number of teaching hospitals around the country whose own PRAs were low "precisely" because the community or another educational institution had been bearing the training costs in the GME PRA base year. Therefore, the commenter argued, the PRA floor "picked up" some of those disallowed costs, and that Medicare is, in effect, currently paying for those costs in the PRAs that were raised to the floor.

Response: The commenter is referring to section 311 of the Balanced Budget Refinement Act (BBRA) of 1999 (Pub. L. 106–113), which, for FY 2001, established a floor PRA at 70 percent of the locality-adjusted national average PRA, and to section 511 of the Benefits Improvement and Protection Act (BIPA) of 2000 (Pub. L. 106–554), which, for FY 2002, established a floor PRA at 85 percent of the locality-adjusted national average PRA. Regulations concerning

these provisions are implemented at § 413.86(e)(4). These provisions were intended, in part, to narrow the disparities (both high and low) in direct GME payments to teaching hospitals across the country. One of the reasons a number of hospitals had low base year PRAs is because a significant amount of their GME costs in the PRA base year was incurred by another entity (that is, the "community"). (Variations in base year PRAs were otherwise due to differences in hospital-specific accounting practices and differences in reimbursement methods for supervising physician and resident salaries.) By providing for increased GME payments to certain hospitals with low PRAs, we do not believe Congress implicitly condoned, or made an exception to, the redistribution of costs and community support principles. We note that Congress provided for an increase to the floor PRA for *all* hospitals that had PRAs below the floor, *not* just to hospitals that, in the base year, did not incur certain GME costs. Rather, we believe Congress intended to provide increased GME payments to hospitals with low PRAs, regardless of the reasons those particular hospitals may have had low PRAs, in an attempt to even out some of the disparity in PRAs, nationally.

Comment: A commenter noted that the among the examples cited in the proposed rule at 68 FR 27213 as illustrative of inappropriate application of Medicare IME and direct GME policy, we described a situation where a hospital on the East Coast of the United States is counting dental residents training in nonhospital sites in Hawaii. The commenter believed that we have incorrect information regarding this program, and that there is, in fact, no redistribution of costs from the community to the Medicare program with respect to the program in Hawaii. Specifically, the commenter explained that in August 2002, a hospital in New York placed one dental resident in a clinic located in Honolulu. The New York hospital pays the costs of the resident's stipend and the supervising faculty's salary, and there is a written agreement between the hospital and the clinic. The commenter stated that in the future, the program anticipates placing additional residents at other nonhospital sites in Hawaii.

Response: As we stated in the preambles to the proposed rule and this final rule, there would be no redistribution of costs or community support if, from the outset of the program, a hospital incurs direct GME costs. Therefore, if, in fact, a hospital in New York has been incurring direct GME costs for a training program located in a clinic in Hawaii since the program's inception, then there would be no redistribution of costs or community support. The hospital in New York could count FTE residents training in the nonhospital site as long as the applicable requirements are met.

Comment: One commenter that described a scenario in which a university funded a family practice program for many years. However, in 2000, a Federally Qualified Health Center (FQHC) entered into a written agreement with the university and began reimbursing the university for "all or substantially all" of the costs of the program. The FQHC has been receiving Medicare direct GME payments since that time. The commenter stated that under the terms of the proposed rule, this FQHC would be ineligible for receipt of GME payments, since, prior to 2000, the program was funded exclusively by the university.

Response: The commenter raised the point that the redistribution of costs and community support principles are applicable to providers other than hospitals that may receive Medicare payments for residency training. Specifically, FQHCs and RHCs under § 405.2468, CAHs under § 413.70, and Medicare+Choice organizations (MCO) under § 422.270 may qualify to receive payments for direct GME costs. We note that the existing regulations at § 405.2468(f)(6) for FQHCs and RHCs, and at § 422.270(c) for MCOs, already clearly state that the allowable direct GME costs of these entities are subject to the redistribution of costs and community support principles in § 413.85(c). We agree with the commenter and are also clarifying the regulations at § 413.86(i) to clearly state that the principles of redistribution of costs and community support apply equally to hospitals, FQHCs, RHCs, CAHs, and MCOs. Therefore, we agree that, in the situation described by the commenter the FQHC would *not* be eligible for Medicare direct GME payments since the family practice program represents a redistribution of costs from the community (that is, the university) to the Medicare program (that is, the FQHC through direct GME payments).

3. Rural Track FTE Limitation for Purposes of Direct GME and IME for Urban Hospitals That Establish Separately Accredited Approved Medical Programs in a Rural Area (§§ 412.105(f)(1)(x) and 413.86(g)(12))

a. Change in the Amount of Rural Training Time Required for an Urban Hospital To Qualify for an Increase in the Rural Track FTE Limitation

To encourage the training of physicians in rural areas, section 407(c) of Pub. L. 106–113 amended sections 1886(d)(5)(B) and 1886(h)(4)(H) of the Act to add a provision that, in the case of an urban hospital that establishes separately accredited approved medical residency training programs (or rural tracks) in a rural area or has an accredited training program with an integrated rural track, an adjustment shall be made to the urban hospital's cap on the number of residents. For direct GME, the amendment applies to payments to hospitals for cost reporting periods beginning on or after April 1, 2000; for IME, the amendment applies to discharges occurring on or after April 1, 2000.

Section 407(c) of Pub. L. 106–113 did not define a "rural track" or an "integrated rural track," nor are these terms defined elsewhere in the Act or in any applicable regulations.

Currently, there are a number of accredited 3-year primary care residency programs in which residents train for 1 year of the program at an urban hospital and are then rotated for training for the other 2 years of the 3-year program to a rural facility(ies). These separately accredited "rural track" programs are recognized by the Accreditation Council of Graduate Medical Education (ACGME) as "1–2" rural track programs. As far as CMS is able to determine, ACGME is the only accrediting body to "separately accredit" rural track residency programs, a requirement specified in Pub. L. 106–113.

We implemented the rural track program provisions of section 1886(d)(5)(B) and 1886(h)(4)(H) of the Act to address these "1–2" programs and to account for other programs that are not specifically "1–2" programs but that include rural training components. As stated above, since there is no existing definition of "rural track" or "integrated rural track," we define at § 413.86(b) a "rural track" and an "integrated rural track" as an approved medical residency training program established by an urban hospital in which residents train for a portion of the program at the urban hospital and then rotate for a portion of the program to a rural hospital(s) or to a rural nonhospital site(s). We have previously noted that the terms "rural track" and "integrated rural track," for purposes of this definition, are synonymous.

To implement these provisions, we revised § 413.86 to add paragraph (g)(11) (since redesignated as (g)(12)), and § 412.105 to add paragraph (f)(1)(x) to specify that, for direct GME, for cost reporting periods beginning on or after April 1, 2000, or, for IME, for discharges occurring on or after April 1, 2000, an urban hospital that establishes a new residency program, or has an existing residency program, with a rural track (or an integrated rural track) may, under certain circumstances, include in its FTE count residents in those rural tracks, in addition to the residents subject to the FTE cap at § 413.86(g)(4). (See the August 1, 2000 interim final rule with comment period (65 FR 47033) and the August 1, 2001 IPPS final rule (66 FR 39902)). These regulations specify that an urban hospital may count the residents in the rural track in excess of the hospital's FTE cap up to a "rural track FTE limitation" for that hospital. We defined this rural track FTE limitation at § 413.86(b) as the maximum number of residents (as specified in § 413.86(g)(12)) training in a rural track residency program that an urban hospital may include in its FTE count, in addition to the number of FTE residents already included in the hospital's FTE cap.

Generally, the rural track policy is divided into two categories: Rural track programs in which residents are rotated to a rural area for at least two-thirds of the duration of the program; and rural track programs in which residents are rotated to a rural area for less than two-thirds of the duration of the program. Currently, family practice is the only specialty that has separately accredited rural track programs. As previously noted, to account for other specialties that have program lengths greater than or less than 3 years, or that are not "1–2" programs, but may establish separately accredited rural track residency programs that are longer than 3 years, our regulations specify that residents must train in the rural area for "two-thirds of the duration of the program," rather than "2 out of 3 program years," in order for the urban hospital to count FTEs in the rural track (up to the rural track FTE limitation) in addition to the residents included in the hospital's FTE limitation. Thus, for example, under current policy, if a surgery program, which is a 5-year program, were to establish a separately accredited rural track, the urban hospital must rotate the surgery residents to the rural area for at least two-thirds of the duration of the 5-year program in order to qualify to count those FTEs in excess of the hospital's FTE cap, as provided in § 413.86(g)(12) and § 412.105(f)(1)(x).

Accordingly, our policy for determining whether an urban hospital qualifies for an adjustment to the FTE cap for training residents in rural areas is dependent upon the proportion of time the residents spend training in the rural areas. If the time spent training in rural areas (either at a rural hospital or a rural nonhospital site) constitutes *at least two-thirds* of the duration of the program, then the urban hospital may include the time the residents train *at that urban hospital* in determining GME payments. However, if the urban hospital rotates residents to rural areas for a period of time that is *less than two-thirds* of the duration of the program, although the rural hospital may count the time the residents train at the rural hospital if the program is new, the urban hospital may not include the time the residents train at the urban hospital for GME payment purposes (unless it can do so within the hospital's FTE cap).

When we first implemented this policy on rural tracks, it was consistent with our understanding of how the ACGME accredits rural track "1–2" programs, in which residents train for 1 year of the program at an urban hospital and are then rotated for training years 2 and 3 to a rural facility. We believed that the ACGME did not separately accredit an approved program as a rural track program unless it met this "1–2" condition; that is, the residents were spending one-third of program training in the urban area and two-thirds of the program training in the rural area. However, we have recently learned that there are a few rural track programs that are separately accredited by the ACGME as "1–2" rural track programs, but the residents in these programs are not training in rural areas for at least two-thirds of the duration of the program. We understand that in certain instances in which the case-mix of the rural facilities might not be sufficiently broad to provide the residents with an acceptable range of training opportunities, the ACGME allows the residents in program years 2 and 3 to return to the urban hospital for some training in both years. However, because the training in years 2 and 3 is predominantly occurring at the rural locations, the ACGME still separately accredits the urban and rural portions as a "1–2" program.

The existing regulations at §§ 412.105(f)(1)(x) and 413.86(g)(12) specify two main criteria for an urban hospital to count the time spent by residents training in a rural track while at the urban hospital in excess of the hospital's FTE limitation: (1) the program must be separately accredited by the ACGME; *and* (2) the time spent training in rural areas (either at a rural hospital or a rural nonhospital site) must constitute *at least two-thirds* of the duration of the program.

We believe that an urban hospital that operates a program that is separately accredited by the ACGME as a "1–2" program, but in which residents train in rural areas for more than half but less than two-thirds of the duration of the program, should still be allowed to count those FTE residents for GME payment purposes. Therefore, to be consistent with the ACGME accreditation practices, in the May 19, 2003 proposed rule, we proposed to revise our regulations. Proposed § 413.86(g)(12) still addressed our policy that an urban hospital qualifies for an adjustment to the FTE cap for training in rural areas based upon the proportion of time the residents spend training in the rural areas. However, instead of using "two-thirds" as the criterion to specify the amount of time residents training in the rural areas under regulations at §§ 413.86(g)(12)(i) through (iv) and 412.105(f)(1)(x), as under current policy, the proposal would use "one-half" as the criterion. This proposal addressed the limited cases where ACGME separately accredits programs as "1–2" rural tracks but residents in those programs train in the rural areas less than two-thirds of the time, although greater than one-half of the time. Specifically, we proposed at § 413.86(g)(12) to state:

- If an urban hospital rotates residents to a separately accredited rural track program at a rural hospital(s) for at least two-thirds of the duration of the program for cost reporting periods beginning on or after April 1, 2000 and before October 1, 2003, or for more than one-half of the duration of the program for cost reporting periods beginning on or after October 1, 2003, the urban hospital may include those residents in its FTE count for the time the rural track residents spend at the urban hospital.
- If an urban hospital rotates residents to a separately accredited rural track program at a rural nonhospital site(s) for at least two-thirds of the duration of the program for cost reporting periods beginning on or after April 1, 2000, and before October 1, 2003, or for more than one-half of the duration of the program for cost

reporting periods beginning on or after October 1, 2003, the urban hospital may include those residents in its FTE count, subject to the requirements under § 413.86(f)(4).

• If an urban hospital rotates residents in the rural track program to a rural hospital(s) for less than two-thirds of the duration of the program for cost reporting periods beginning on or after April 1, 2002, and before October 1, 2003, or for one-half or less than one-half of the duration of the program for cost reporting periods beginning on or after October 1, 2003, the rural hospital may not include those residents in its FTE count (if the rural track is not a new program under § 413.86(g)(6)(iii), or if the rural hospital's FTE count exceeds that hospital's FTE cap), nor may the urban hospital include those residents when calculating its rural track FTE limitation.

• If an urban hospital rotates residents in the rural track program to a rural nonhospital site(s) for a period of time that is less than two-thirds of the duration of the program for cost reporting periods beginning on or after April 1, 2002, and before October 1, 2003, or for one-half or less than one-half of the duration of the program for cost reporting periods beginning on or after October 1, 2003, the urban hospital may include those residents in its FTE count, subject to the requirements under § 413.86(f)(4).

We also proposed to make a conforming change to § 412.105(f)(1)(x) to make these proposed provisions applicable to IME payments for discharges occurring on or after October 1, 2003.

We believe the proposal produces a more equitable result than the existing policy; the proposal encompasses what we believe to be all situations in which the ACGME separately accredits rural track programs and in which residents in the programs spend a majority of the time training in rural settings, fulfilling the intent of Congress for Medicare to provide GME payments for significant rural residency training.

Comment: Several commenters supported our proposal that, effective for cost reporting periods beginning on or after October 1, 2003, an urban hospital would be allowed to include residents in its FTE count above its FTE cap for the time that the residents train at the urban hospital, if the residents rotate to a separately accredited rural track program in a rural area for more than one-half of the duration of the program. The commenters believed that this proposed policy better reflects Congressional intent to encourage training in rural areas, while allowing residency programs the flexibility to rotate residents back to urban areas for needed clinical experiences that are not available in the rural setting.

One commenter recommended that the proposal should reduce the required rural training time even further, since research suggests that more than 50 percent of family practice residents who spend as little as 3 months training in rural areas end up practicing in rural settings.

Response: We agree with the commenters that an urban hospital that operates a program that is separately accredited by the ACGME as a "1–2" program, but in which residents train in rural areas for more than half but less than two-thirds of the duration of the program, should still be allowed to count those FTE residents for GME payment purposes. However, we do not agree that urban hospitals should be allowed to receive an increase in their FTE caps to include residents in its FTE count for the time that the residents train at the urban hospital, if the residents rotate to a rural area for one-half or less than one-half of the duration of the program. As we stated in the August 1, 2001 **Federal Register** (66 FR 39904–39905), we interpret section 1886(h)(4)(H)(iv) of the Act as only allowing for an urban hospital to receive an adjustment under the rural track provision if the rural track program is "*separately accredited.*" In order to be separately accredited as a rural track, the program must meet the ACGME's "1–2" criteria; that is, the residents are typically spending approximately two-thirds of the duration of the program in the rural area. We also explained that while we agree that post-residency retention in rural areas is important, we also believe it is important to prevent hospitals from receiving adjustments to their FTE caps in situations when only a nominal amount of training occurs in the rural area. Therefore, we are not adopting the commenter's request to allow an urban hospital to receive an increase in its FTE caps to include residents in its FTE count for the time that the residents train at the urban hospital, if the residents rotate to a rural area for one-half or less than one-half of the duration of the program.

Comment: One commenter that works for a community health center (CHC) that treats a high percentage of patients below the poverty line expressed concern about the detrimental effects that shrinking hospital revenues are having on the training of family practice residents at the CHC and at other rural and community-based settings. The commenter noted that doubling the number of CHCs is a goal of the President, and urged that, if there should be further "restraint" on teaching programs, programs that expand into CHCs should be exempt from such restrictions.

Response: We appreciate the comment. However, we note that since we did not specifically make any proposals related to residency training in community health centers, this comment is outside the scope of this final rule. Therefore, we are not responding to it at this time.

b. Inclusion of Rural Track FTE Residents in the Rolling Average Calculation

Section 1886(h)(4)(G) of the Act, as added by section 4623 of Pub. L. 105–33, provides that, for a hospital's first cost reporting period beginning on or after October 1, 1997, the hospital's FTE resident count for direct GME payment purposes equals the average of the actual FTE resident count for that cost reporting period and the preceding cost reporting period. Section 1886(h)(4)(G) of the Act requires that, for cost reporting periods beginning on or after October 1, 1998, a hospital's FTE resident count for direct GME payment purposes equals the average of the actual FTE resident count for the cost reporting period and the preceding two cost reporting periods (that is, a 3-year rolling average). This provision phases in over a 3-year period any reduction in direct GME payments to hospitals that results from a reduction in the number of FTE residents below the number allowed by the FTE cap. We first implemented this provision in the August 29, 1997 final rule with comment period (62 FR 46004) and revised § 413.86(g)(5) accordingly. Because hospitals may have two PRAs, one for residents in primary care and obstetrics and gynecology (the "primary care PRA"), and a lower PRA for nonprimary care residents, we revised our policy for computing the rolling average for direct GME payment purposes (*not* for IME) in the August 1, 2001 final rule (66 FR 39893) to create two separate rolling averages, one for primary care and obstetrics and gynecology residents (the "primary care rolling average"), and one for nonprimary care residents. Effective for cost reporting periods beginning on or after October 1, 2001, direct GME payments are calculated based on the sum of: (1) the product of the primary care PRA and the primary care rolling average; and (2) the product of the nonprimary care PRA and the nonprimary care FTE rolling average. (This sum is then multiplied by the Medicare patient load to determine Medicare direct GME payments).

Section 407(c) of Pub. L. 106–113, which amended sections 1886(d)(5)(B) and 1886(h)(4)(H) of the Act to create the rural track provision, provided that, in the case of an urban hospital that establishes a separately accredited rural track, "* * * the Secretary shall *adjust the limitation under subparagraph (F)* in an appropriate manner insofar as it applies to such programs in such rural areas in order to encourage the training of physicians in rural areas" (emphasis added). Subparagraph (F) of the Act is the provision that establishes a cap on the number of allopathic and osteopathic FTE residents that may be counted at each hospital for Medicare direct GME payment purposes. Thus, the provision authorizes the Secretary to allow for an increase to an urban hospital's FTE cap on allopathic and osteopathic residents in certain instances when an urban hospital establishes a rural track program. Although the rural track provision effectively allows an increase to the urban hospital's FTE cap by adjusting the FTE limitation under subparagraph (F), the statute makes no reference to subparagraph (G), the provision concerning the rolling average count of residents. That is, the statute does not provide for an exclusion from the rolling average for the urban hospital for those FTE residents training in a rural track.

Since we implemented this rural track provision in the August 1, 2000 interim final rule with comment period (65 FR 47033), we have interpreted this provision to mean that, except for new rural track programs begun by urban teaching hospitals that are establishing an FTE cap for the first time under § 413.86(g)(6)(i), when an urban hospital establishes a new rural track program or expands an existing rural track program, FTE residents in the rural track that are counted by the urban hospital are included in the hospital's rolling average calculation immediately. Although we have not specified in the regulations that rural track FTE residents counted by an urban hospital are included in the hospital's rolling average FTE resident count, this has been our policy. The Medicare cost report, Form CMS–2552–96 (line 3.05 on Worksheet E, Part A, for IME payments, and on line 3.02 on Worksheet E–3, Part IV, for direct GME payments), reflects this policy. Accordingly, FTE residents in a rural track program are to be included in the urban hospital's rolling average count for IME and direct GME for cost reporting periods beginning on or after April 1, 2000.

In the May 19, 2003 proposed rule, we proposed to revise the regulations at § 413.86(g)(5) to add a new paragraph (vii) to clarify that, subject to regulations at § 413.86(g)(12), except for new rural track programs begun by urban hospitals that are first establishing an FTE cap under § 413.86(g)(6)(i), when an urban hospital with an existing FTE cap establishes a new program with a rural track (or an integrated rural track), or expands an existing rural track (or an integrated rural track) program, the FTE residents in that program that are counted by the urban hospital are included in the urban hospital's rolling average FTE resident count immediately. We also proposed to revise §§ 413.86(g)(12)(i)(A), (g)(12)(ii)(B), and (g)(12)(iv)(A) to indicate that for the first 3 years of the rural track's existence, the rural track FTE limitation for each urban hospital will be the actual number of FTE residents, subject to the rolling average, training in the rural track at the urban hospital.

Comment: Commenters supported our proposal to revise § 413.86(g)(5) to clarify that the FTE residents in that program that are counted by the urban hospital are included in the urban hospital's rolling average FTE resident count immediately. The commenters stated that allowing immediate inclusion of rural track resident counts will serve to assist urban hospitals in their development of educational partnerships with rural hospitals.

Response: We appreciate the commenters support and, as explained below, are adopting revisions to the regulations concerning inclusion of rural track residents in the rolling average count of urban hospitals as final.

Except for new rural track programs begun by urban hospitals that are first establishing an FTE cap under § 413.86(g)(6)(i), or for rural hospitals that are establishing new rural track programs under § 413.86(g)(6)(iii), we are implementing sections 1886(d)(5)(B) and 1886(h)(4)(H) of the Act to require that FTE residents that are counted by an urban hospital based on the residents' participation in a rural track are included in the rolling average calculation. Accordingly, for IME and direct GME purposes, unless the rural track program is a new program under § 413.86(g)(13) and qualifies for a cap adjustment under § 413.86(g)(6)(i) or (g)(6)(iii), in instances where an urban hospital increases the number of residents it trains due to the establishment of a new or an expansion of an existing rural track program, the additional FTE residents in the rural track program are only gradually included (over a 3-year period) in the urban hospital's FTE count, since they are immediately included in the rolling average calculation of the urban hospital.

The following is an example of how residents in a rural track would be included in the rolling average calculation:

Assume that urban Hospital A, with a fiscal year end (FYE) date of June 30, had 10 unweighted FTE residents training in its cost reporting period ending June 30, 1996, thereby establishing an FTE cap of 10. Hospital A only trains primary care residents. In its cost reporting periods ending on June 30, 2002, and June 30, 2001, Hospital A again trained 10 FTE residents. However, in July 2002, Hospital A starts a rural training track program, adding 2 FTE residents. Since the additional rural track residents are included immediately in the rolling average, in FYE June 30, 2003, Hospital A's FTE residents for payment purposes equal 10.67 FTEs (12 + 10 + 10 / 3) and not 12 FTEs [(10 + 10 + 10 / 3) + 2], which would be the FTE count if FTEs in a rural track program were not subject to the rolling average calculation.

We are finalizing our proposed revision of § 413.86(g)(5) to add a new paragraph (vii) as explained above. In addition, we are finalizing our revision of §§ 413.86(g)(12)(i)(A), (g)(12)(ii)(B), and (g)(12)(iv)(A) to indicate that for the first 3 years of the rural track's existence, the rural track FTE limitation for the urban hospital will be the actual number of FTE residents, subject to the rolling average, training in the rural track at the urban hospital.

4. Technical Change Relating to Affiliated Groups and Affiliation Agreements

Section 1886(h)(4)(H)(ii) of the Act permits, but does not require, the Secretary to prescribe rules that allow institutions that are members of the same affiliated group (as defined by the Secretary) to elect to apply the FTE resident limit on an aggregate basis. This provision allows the Secretary to give hospitals flexibility in structuring rotations within a combined cap when they share a resident's time. Consistent with the broad authority conferred by the statute, we established criteria for defining an "affiliated group" and an "affiliation agreement" in both the August 29, 1997 final rule (62 FR 45965) and the May 12, 1998 final rule (63 FR 26317). We further clarified our policy concerning affiliation agreements in the August 1, 2002 final rule (67 FR 50069).

We are aware that there has been some confusion at times among members of the provider community when using the term "affiliation agreement," since the term is used in contexts other than for Medicare GME payment purposes. For example, an "affiliation agreement" is a term historically used in the academic community that generally relates to agreements made between hospitals and medical schools or among sponsors of medical residency education programs. To help prevent further confusion, in the May 19, 2003 proposed rule, we proposed to change the term in the regulations to "Medicare GME affiliation agreement." We believe this will help to distinguish these agreements used for purposes of GME payments from agreements used for other purposes in the provider community. We proposed to revise the regulations at § 413.86(b) to state "Medicare GME affiliated group," and "Medicare GME affiliation agreement". We proposed to make similar revisions to § 413.86(g)(4)(iv), (g)(7)(i) through (v), and § 412.105(f)(1)(vi) for IME payment purposes.

Comment: Commenters supported our proposal to change the terms "affiliated group" and "affiliation agreement", as defined in § 413.86(b), to "Medicare GME affiliated group" and "Medicare GME affiliation agreement", respectively. The commenters believed that the changes in terminology will help distinguish these terms from other affiliation agreements that are entered into by hospitals, medical schools, and other institutions that sponsor residency training.

Response: We agree with the commenters and are adopting as final the proposed changes throughout § 412.105 for IME and § 413.86 for direct GME.

Out of Scope Comments Relating to GME

Comment: Several comments addressed miscellaneous IME and direct GME issues, including the initial residency period (IRP) and volunteer physicians.

Response: Because we did not propose any changes in policy concerning these issues, we are unable to respond to these comments at this time. We will consider them for purposes of future rulemaking.

G. Updates to the Reasonable Compensation Equivalent (RCE) Limits (§ 415.70)

1. Background

Under the Medicare program, payment for services furnished by a physician is made under either the Hospital Insurance Program (Part A) or the Supplementary Medical Insurance Program (Part B), depending on the type of services furnished. In accordance with section 1848 of the Act, physicians' charges for medical or surgical services to individual Medicare patients generally are covered under Part B on a fee-for-service basis under the Medicare physician fee schedule. The compensation that physicians receive from or through a provider for services that benefit patients generally (for example, administrative services, committee work, teaching, and supervision) can be covered under Part A or Part B, depending on the provider's setting.

As required by section 1887(a)(2)(B) of the Act, allowable compensation for services furnished by physicians to providers that are paid by Medicare on a reasonable cost basis is subject to reasonable compensation equivalent (RCE) limits. Under these limits, payment is determined based on the lower of the actual cost of the services to the provider (that is, any form of compensation to the physician) or a reasonable compensation equivalent. For purposes of applying the RCE limits, physician compensation costs means monetary payments, fringe benefits, deferred compensation and any other items of value (excluding office space or billing and collection services) that a provider or other organization furnishes a physician in return for the physician's services.

The RCE limits do not apply to the costs of physician compensation that are attributable to furnishing inpatient hospital services paid under the IPPS or as GME costs. In addition, RCE limits do not apply to the costs CAHs incur in compensating physicians for services. Furthermore, compensation that a physician receives for activities that may not be paid under either Part A or Part B is not considered in applying the RCE limits.

The limits apply equally to all physician services to providers that are payable on a reasonable cost basis under Medicare. If a physician receives any compensation from a provider for his or her physician services to the provider (that is, those services that benefit patients generally), payment to those affected providers for the costs of such compensation is subject to the RCE limits. The RCE limits are not applied to payment for services that are identifiable medical or surgical services to individual patients and paid under the physician fee schedule, even if the physician agrees to accept compensation (for example, from a hospital) for those services. (However, payments to teaching hospitals that have elected to be paid for these services on a reasonable cost basis in accordance with section 1861(b)(7) of the Act are subject to the limits.)

Section 415.70(b) of the regulations specifies the methodology for determining annual RCE limits, considering average physician incomes by specialty and type of location, to the extent possible using the best available data. On October 31, 1997, the revised RCE limits update methodology was published in the **Federal Register** (62 FR 59075). For cost reporting periods beginning on or after January 1, 1998, updates to the RCE limits are calculated using the Medicare Economic Index (MEI). The inflation factor used to develop the initial RCE limits and, subsequently, to update those limits to reflect increases in net physician compensation was the Consumer Price Index for All Urban Consumers (CPI–U). In 1998, we revised the update methodology for the RCE limits by replacing the CPI–U with the inflation factor for the physician fee schedule (the MEI) to achieve a measure of consistency in the methodologies employed to determine reasonable payments to physicians for direct medical and surgical services furnished to individual patients and reasonable compensation levels for physicians' services that benefit provider patients generally.

2. Updated RCE Limits

In the May 19, 2003 proposed rule, we indicated our intent to publish updated payment limits on the amount of allowable compensation for services furnished by physicians to providers in this FY 2004 IPPS final rule. These revised RCE limits are based on updated economic index data and replace the limits that were published in the **Federal Register** on May 5, 1997 (62 FR 24483). We calculated the revised RCE limits by using the methodology published in the **Federal Register** on October 31, 1997 (62 FR 59075). These limits are specified in the chart below and are effective for cost reporting periods beginning on or after January 1, 2004.

The revised RCE limits are mere updates that have been calculated by applying the most recent economic index data. In the proposed rule, we did not propose to change the methodology used to determine the limits. We indicated that, in accordance with § 415.70(f), we are allowed to publish the revised RCE limits in a final rule without prior publication of a proposed rule for public comment. Furthermore, indicated our belief that publication of the revised RCE limits in a proposed rule with opportunity for public comment was unnecessary, and that we found good cause to waive the procedure.

Comment: One commenter was encouraged to learn of our proposal to publish updated RCE limits and suggested that these updates occur on an annual basis.

Response: We will continue to review the RCE limits on a regular basis by applying the most recent economic index data and publish updates as necessary.

3. Application of RCE Limits

This section, as well as the two following sections, is not describing new policy, but rather is simply a discussion of a continuation of the existing policies with respect to the application of and exceptions to the RCE limits and the geographic area classifications used for purposes of establishing the RCE limits. We will continue to use the RCE limits to compute Medicare payments when a physician is compensated by a provider that is subject to the RCE limits in some or all of its areas. We also will use these limits when the physician is compensated by any other related organization for physician administrative, supervisory, and other provider services paid under Medicare. In applying the RCE limits, the intermediary will assign each compensated physician to the most appropriate specialty category. If no specialty category is appropriate (for example, in determining the reasonable cost for an emergency room physician), the fiscal intermediary will use the RCE level for the "Total" category, which is based on income data for all physicians. The fiscal intermediary will determine the appropriate geographic area classification given in Table 9 of the addendum of this final rule.

If the physician's contractual compensation covers all duties, activities, and services furnished to the provider and to its patients and the physician is employed full-time, the appropriate specialty compensation limit will be used and adjusted by the physician's allocation agreement to arrive at the program's share of allowable costs as physician compensation costs. In the absence of an allocation agreement, we generally will assume that 100 percent of the compensation was related to services paid under the physician fee schedule and that there are no allowable costs for the physician's services to the provider.

If a physician's compensation from the provider represents payment only for services that benefit patients generally (that is, the physician bills fees for all services furnished to individual patients), the appropriate specialty compensation limit will be used. If a physician is employed by a provider to furnish services of general benefit to patients on other than a full-time basis, the RCE amount will be adjusted upward or downward to reflect the percentage of time his or her actual hours related to a full work year of 2,080 hours.

4. Exceptions to the RCE Limits

Some providers, particularly but not exclusively small or rural hospitals, may be unable to recruit or maintain an adequate number of physicians at a compensation level within the prescribed limits. In accordance with section 1887(a)(2)(C) of the Act, if a provider is able to demonstrate to the intermediary its inability to recruit or maintain physicians at a compensation level allowable under the RCE limits (as documented, for example, by unsuccessful advertising through national medical or health care publications), the intermediary may grant an exception to the RCE limits established under these rules.

5. Geographic Area Classifications for RCE Limits

We adjust the RCE limits to account for differences in salary levels by location as well as by specialty. Under our methodology for establishing limits, and in the limits set forth below, we have classified geographic areas into three types: nonmetropolitan areas, metropolitan areas less than 1 million, and metropolitan areas greater than 1 million.

As we do for purposes of the IPPS and the physician fee schedule, we use the most current MSA designations for purposes of establishing the RCE limits. In New England, we use the NECMAs for this purpose. Tables 4A and 4B of the Addendum to this final rule includes information that identifies, by type of location (urban and rural), the geographic areas affected; that is, they list all MSAs and their constituent counties and identifies whether their population are classified as large urban. Any county not listed in the tables and all other affected U.S. possessions and territories not part of a State are considered rural areas. This information will enable providers, physicians, Medicare fiscal intermediaries, and other members of the public to determine which RCE limit level will apply in specific areas.

ESTIMATES OF FTE ANNUAL AVERAGE NET COMPENSATION LEVELS FOR COST REPORTING PERIODS BEGINNING ON OR AFTER JANUARY 1, 2004 *

Specialty	Nonmetropolitan areas	Metropolitan areas less than one million	Metropolitan areas greater than one million
Total	159,800	171,400	177,200
General/Family Practice	142,500	136,700	138,700
Internal Medicine	150,200	154,100	165,600
Surgery	182,900	204,100	208,000
Pediatrics	130,900	152,100	140,600
OB/GYN	200,300	194,500	196,400
Radiology	217,600	231,100	225,300
Psychiatry	138,700	142,500	154,100
Anesthesiology	167,500	200,300	200,300
Pathology	208,000	219,500	215,700

*All figures are rounded to the nearest $100.

V. PPS for Capital-Related Costs

In the May 19, 2003 proposed rule, we did not propose any changes in the policies governing the determination of the payment rates for capital-related costs for short-term acute care hospitals under the IPPS. However, for the readers' benefit, in this section of this final rule, we are providing a summary of the statutory basis for the PPS for hospital capital-related costs, the methodology used to determine capital-related payments to hospitals, and a brief description of the payment policies under the PPS for capital-related costs for new hospitals, extraordinary circumstances, and exception (regular and special) payments. (Refer to the August 1, 2001 IPPS final rule (66 FR 39910) for a more detailed discussion of the statutory basis for the system, the development and evolution of the system, the methodology used to determine capital-related payments to hospitals both during and after the transition period, and the policy for providing regular and special exceptions payments.)

Section 1886(g) of the Act requires the Secretary to pay for the capital-related costs of inpatient hospital services "in accordance with a PPS established by the Secretary." Under the statute, the Secretary has broad authority in establishing and implementing the PPS for capital related costs. We initially implemented the capital PPS in the August 30, 1991 IPPS final rule (56 FR 43358), in which we established a 10-year transition period to change the payment methodology for Medicare hospital inpatient capital-related costs from a reasonable cost-based methodology to a prospective methodology (based fully on the Federal rate).

Federal fiscal year (FY) 2001 was the last year of the 10-year transition period established to phase in the PPS for hospital inpatient capital-related costs. Beginning in FY 2002, capital PPS payments are based solely on the Federal rate for the vast majority of hospitals. The basic methodology for determining capital prospective payments based on the Federal rate is set forth in § 412.312. For the purpose of calculating payments for each discharge, the standard Federal rate is adjusted as follows: (Standard Federal Rate) × (DRG Weight) × (Geographic Adjustment Factor (GAF)) × (Large Urban Add-on, if applicable) × (COLA Adjustment for hospitals located in Alaska and Hawaii) × (1 + DSH Adjustment Factor + IME Adjustment Factor, if applicable) Hospitals also may receive outlier payments for those cases that qualify under the thresholds established for each fiscal year that are specified in § 412.312(c) of existing regulations.

During the 10-year transition period, a new hospital (as defined at 412.300(b)) was exempt from the capital PPS for its first 2 years of operation and was paid 85 percent of its reasonable costs during that period. Originally, this provision was effective only through the transition period and, therefore, ended with cost reporting periods beginning in FY 2002. As we discussed in the August 1, 2002 final rule (67 FR 50101), this payment provision was implemented to provide special protection to new hospitals during the transition period in response to concerns that prospective payments under a DRG system may not be adequate initially to cover the capital costs of newly built hospitals. Therefore, we believe that the rationale for this policy applies to new hospitals after the transition period as well, and in that same final rule, we established regulations under § 412.304(c)(2) that provide the same special payment to new hospitals for cost reporting periods beginning on or after October 1, 2002. Therefore, a new hospital, defined under § 412.300(b), is paid 85 percent of its allowable Medicare inpatient hospital capital-related costs through its first 2 years of operation unless the new hospital elects to receive fully prospective payment based on 100 percent of the Federal rate. (For more detailed information regarding this policy, see the August 1, 2002 IPPS final rule (67 FR 50101).)

Regulations at § 412.348(f) provide that a hospital may request an additional payment if the hospital incurs unanticipated capital expenditures in excess of $5 million due to extraordinary circumstances beyond the hospital's control. This policy was established for hospitals during the 10-year transition period, but we established regulations at § 412.312(e) to specify that payments for extraordinary circumstances are also made for cost reporting periods after the transition period (that is, cost reporting periods beginning on or after October 1, 2001). (For more detailed information regarding this policy, refer to the August 1, 2002 **Federal Register** (67 FR 50102).)

During the transition period, under §§ 412.348(b) through (e), eligible hospitals could receive regular exception payments. These exception payments guaranteed a hospital a minimum payment of a percentage of its Medicare allowable capital-related costs depending on the class of hospital (§ 412.348(c)). However, after the end of the transition period, eligible hospitals can receive additional payments under the special exceptions provisions at § 412.348(g), which guarantees an eligible hospital a minimum payment of 70 percent of its Medicare allowable capital-related costs. Special exceptions payments may be made only for the 10 years after the cost reporting year in which the hospital completes its qualifying project, which can be no later than the hospital's cost reporting period beginning before October 1, 2001. Thus, an eligible hospital may receive special exceptions payments for up to 10 years beyond the end of the capital PPS transition period. Hospitals eligible for special exceptions payments were required to submit documentation to the intermediary indicating the completion date of their project. (For more detailed information regarding the special exceptions policy under § 412.348(g), refer to the August 1, 2001 IPPS final rule (66 FR 39911 through 39914) and the August 1, 2002 IPPS final rule (67 FR 50102).)

VI. Changes for Hospitals and Hospital Units Excluded From the IPPS

A. Payments to Excluded Hospitals and Hospital Units (§§ 413.40(c), (d), and (f))

1. Payments to Existing Excluded Hospitals and Hospital Units

Section 1886(b)(3)(H) of the Act (as amended by section 4414 of Pub. L. 105–33) established caps on the target amounts for certain existing hospitals and hospital units excluded from the IPPS for cost reporting periods beginning on or after October 1, 1997 through September 30, 2002. For this period, the caps on the target amounts apply to the following three classes of excluded hospitals or units: psychiatric hospitals and units, rehabilitation hospitals and units, and LTCHs.

In accordance with section 1886(b)(3)(H)(i) of the Act and effective for cost reporting periods beginning on or after October 1, 2002, payments to these classes of existing excluded hospitals or hospital units are no longer subject to caps on the target amounts. In accordance with existing §§ 413.40(c)(4)(ii) and (d)(1)(i) and (ii), where applicable, excluded psychiatric hospitals and units continue to be paid on a reasonable cost basis, and payments are based on their Medicare inpatient operating costs, not to exceed the ceiling. The ceiling would be computed using the hospital's or unit's target amount from the previous cost reporting period, updated by the rate-of-increase specified in § 413.40(c)(3)(viii) of the regulations, and then multiplying this figure by the number of Medicare discharges. Effective for cost reporting periods beginning on or after October 1, 2002, rehabilitation hospitals and units are paid 100 percent of the Federal rate. Effective for cost reporting periods beginning on or after October 1, 2002, LTCHs also are no longer paid on a reasonable cost basis but are paid under a DRG-based PPS. As part of the PPS for LTCHs, we established a 5-year transition period from reasonable cost-based reimbursement to a fully Federal PPS. However, a LTCH, subject to the blend methodology, may elect to be paid based on a 100 percent of the Federal prospective rate. (Sections VI.A.3. and 4. of this preamble contain a more detailed discussion of the IRF PPS and the LTCH PPS.)

2. Updated Caps for New Excluded Hospitals and Units

Section 1886(b)(7) of the Act establishes a payment limitation for new psychiatric hospitals and units, new rehabilitation hospitals and units, and new LTCHs. A discussion of how the payment limitation was calculated can be found in the August 29, 1997 final rule with comment period (62 FR 46019); the May 12, 1998 final rule (63 FR 26344); the July 31, 1998 final rule (63 FR 41000); and the July 30, 1999 final rule (64 FR 41529). Under the statute, a "new" hospital or unit is a hospital or unit that falls within one of the three classes of hospitals or units (psychiatric, rehabilitation or long-term care) that first receives payment as a hospital or unit excluded from the IPPS on or after October 1, 1997.

The amount of payment for a "new" psychiatric hospital or unit would be determined as follows:

- Under existing § 413.40(f)(2)(ii), for the first two 12-month cost reporting periods, the amount of payment is the lesser of: (1) the operating costs per case; or (2) 110 percent of the national median (as estimated by the Secretary) of the target amounts for the same class of hospital or unit for cost reporting periods ending during FY 1996, updated by the hospital market basket increase percentage to the fiscal year in which the hospital or unit first receives payments under section 1886 of the Act, as adjusted for differences in area wage levels.
- Under existing § 413.40(c)(4)(v), for cost reporting periods following the hospital's or unit's first two 12-month cost reporting periods, the target amount is equal to the amount determined under section 1886(b)(7)(A)(i) of the Act for the third period, updated by the applicable hospital market basket increase percentage.

The amounts included in the following table reflect the updated 110 percent of the national median target amounts of new excluded psychiatric hospitals and units for cost reporting periods beginning during FY 2004. These figures are updated with the most recent data available to reflect the projected market basket increase percentage of 3.4 percent. This percentage change in the market basket reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient hospital services (as projected by the Office of the Actuary of CMS based on its historical experience with the IPPS). For a new provider, the labor-related share of the target amount is multiplied by the appropriate geographic area wage index, without regard to IPPS reclassifications, and added to the nonlabor-related share in order to determine the per case limit on payment under the statutory payment methodology for new providers.

Class of excluded hospital or unit	FY 2004 labor-related share	FY 2004 nonlabor-related share
Psychiatric	$7,294	$2,899

Effective for cost reporting periods beginning on or after October 1, 2002, this payment limitation is no longer applicable to new LTCHs because they are paid 100 percent of the Federal rate. Under the LTCH PPS, a new LTCH is defined as a provider of inpatient hospital services that meets the qualifying criteria for LTCHs specified under § 412.23(e)(1) and (e)(2) and whose first cost reporting period as a LTCH begins on or after October 1, 2002 (§ 412.23(e)(4)). (We note that this definition of new LTCHs should not be confused with those LTCHs first paid under the TEFRA payment system for discharges occurring on or after October 1, 1997, and before October 1, 2002.) New LTCHs are paid based on 100 percent of the fully Federal prospective rate (they may not participate in the 5-year transition from cost-based reimbursement to prospective payment). In contrast, those "new" LTCHs that meet the definition of "new" under § 413.40(f)(2)(ii) and that have their first cost reporting periods beginning on or after October 1, 1997, and before October 1, 2002, may be paid under the LTCH PPS transition methodology. Since those hospitals by definition would have been considered new before October 1, 2002, they would have been subject to the updated payment limitation on new hospitals that was published in the FY 2003 IPPS final rule (67 FR 50103). Under § 413.40(f)(2)(ii), the "new" hospital would be subject to the same cap in its second cost reporting period; this cap would not be updated for the new hospital's second cost reporting year. Thus, because the same cap is to be used for the new LTCH's first two cost reporting periods, it is no longer necessary to publish an updated cap for new LTCHs.

Effective for cost reporting periods beginning on or after October 1, 2002, this payment limitation is no longer applicable to new rehabilitation hospitals and units because they are paid 100 percent of the Federal prospective payment rather than the IRF PPS. Therefore, it is also no longer necessary to update the payment limitation for new rehabilitation hospitals or units.

3. Implementation of a PPS for IRFs

Section 1886(j) of the Act, as added by section 4421(a) of Pub. L. 105–33, provided the phase-in of a case-mix adjusted PPS for inpatient hospital services furnished by a rehabilitation hospital or a rehabilitation hospital unit (referred to in the statute as rehabilitation facilities) for cost reporting periods beginning on or after October 1, 2000, and before October 1, 2002, with a fully implemented PPS for cost reporting periods beginning on or after October 1, 2002. Section 1886(j) of the Act was amended by section 125 of Pub. L. 106–113 to require the Secretary to use a discharge as the payment unit under the PPS for inpatient hospital services furnished by rehabilitation facilities and to establish classes of patient discharges by functional-related groups. Section 305 of Pub. L. 106–554 further amended section 1886(j) of the Act to allow rehabilitation facilities, subject to the blend methodology, to elect to be paid the full Federal prospective payment rather than the transitional period payments specified in the Act.

On August 7, 2001, we issued a final rule in the **Federal Register** (66 FR 41316) establishing the PPS for inpatient rehabilitation facilities, effective for cost reporting periods beginning on or after January 1, 2002. Under the IRF PPS, for cost reporting periods beginning on or after January 1, 2002, and before October 1, 2002, payment consisted of 33⅓ percent of the facility-specific payment amount (based on the reasonable cost-based reimbursement methodology) and 66⅔ percent of the adjusted Federal prospective payment. For cost reporting periods beginning on or after October 1, 2002, payments are based entirely on the Federal prospective payment rate determined under the IRF PPS. We plan to issue in the **Federal Register** by

August 1, 2003 a final rule that will update the payment rates under the IRF PPS for FY 2004, to be effective for discharges occurring on or after October 1, 2003 and before October 1, 2004.

4. Development of a PPS for Inpatient Psychiatric Facilities

We are in the process of developing a proposed rule that would establish a per diem PPS for inpatient psychiatric facilities (IPFs) (previously referred to as psychiatric hospitals and units) that is required under the provisions of section 124 of Pub. L. 106.113.

5. Implementation of a PPS for LTCHs

In accordance with the requirements of section 123 of Pub. L. 106–113, as modified by section 307(b) of Pub. L. 106–554, we established a per discharge, DRG-based PPS for LTCHs as described in section 1886(d)(1)(B)(iv) of the Act for cost reporting periods beginning on or after October 1, 2002, in a final rule issued on August 30, 2002 (67 FR 55954). The LTCH PPS uses information from LTCH hospital patient records to classify patients into distinct LTC–DRGs based on clinical characteristics and expected resource needs. Separate payments are calculated for each LTC–DRG with additional adjustments applied.

As part of the implementation of the system, we established a 5-year transition period from reasonable cost-based reimbursement to the fully Federal prospective rate. A blend of the reasonable cost-based reimbursement percentage and the prospective payment Federal rate percentage would be used to determine a LTCH's total payment under the LTCH PPS during the transition period. Certain LTCHs may elect to be paid based on 100 percent of the Federal prospective rate. All LTCHs will be paid under the fully Federal prospective rate for cost reporting periods beginning on or after October 1, 2006.

We published in the **Federal Register** on June 6, 2003 a final rule (68 FR 34122) that updated the payment rates for the LTCH PPS and made policy changes effective for a new LTCH PPS rate year of July 1, 2003 through June 30, 2004.

6. Report of Adjustment (Exception) Payments

Section 4419(b) of Pub. L. 105–33 requires the Secretary to publish annually in the **Federal Register** a report describing the total amount of adjustment (exception) payments made to excluded hospitals and units, by reason of section 1886(b)(4) of the Act, during the previous fiscal year. However, the data on adjustment payments made during the previous fiscal year are not available in time to publish a report describing the total amount of adjustment payments made to all excluded hospitals and units.

The process of requesting, adjudicating, and awarding an adjustment payment is likely to occur over a 2-year period or longer. First, an excluded hospital or unit must file its cost report for a fiscal year with its intermediary within 5 months after the close of its cost reporting period. The fiscal intermediary then reviews the cost report and issues a Notice of Program Reimbursement (NPR) within approximately 2 months after the filing of the cost report. If the hospital's operating costs are in excess of the ceiling, the hospital may file a request for an adjustment payment within 6 months from the date of the NPR. The intermediary, or CMS, depending on the type of adjustment requested, then reviews the request and determines if an adjustment payment is warranted. This determination is often not made until more than 6 months after the date the request is filed. Therefore, it is not possible to provide data in this final rule. However, in an attempt to provide interested parties with data on the most recent adjustments for which we do have data, we are publishing data on adjustments that were processed by the fiscal intermediary or CMS during FY 2002.

The table below includes the most recent data available from the fiscal intermediaries and CMS on adjustment payments that were adjudicated during FY 2002. As indicated above, the adjustments made during FY 2002 only pertain to cost reporting periods ending in years prior to FY 2001. Total adjustment payments awarded to excluded hospitals and units during FY 2002 are $8,541,349. The table depicts for each class of hospital, in the aggregate, the number of adjustment requests adjudicated, the excess operating cost over ceiling, and the amount of the adjustment payment.

Class of hospital	Number	Excess cost over ceiling	Adjustment payments
Rehabilitation	14	$6,330,380	$1,058,646
Psychiatric	7	7,524,434	3,717,465
Long-Term Care	2	23,462,335	1,713,364
Children's	4	3,336,306	997,269
Cancer	1	70,078,995	1,018,919
Christian Science	2	113,304	35,686

B. Payment for Services Furnished at Hospitals-Within-Hospitals and Satellite Facilities

Existing regulations at § 412.22(e) define a hospital-within-a-hospital as a hospital that occupies space in the same building as another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital. Moreover, existing § 412.22(f) provides for the grandfathering of hospitals-within-hospitals that were in existence on or before September 30, 1995.

Sections 412.22(h) and 412.25(e), relating to satellites of hospitals and hospital units, respectively, excluded from the IPPS, define a satellite facility as a part of a hospital or unit that provides inpatient services in a building also used by another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital. Sections 412.22(h)(3) and 412.25(e)(3) provide for the grandfathering of excluded hospitals and units that were structured as satellite facilities on September 30, 1999, to the extent they operate under the same terms and conditions in effect on that date.

In providing for the grandfathering of satellite facilities of hospitals and hospital units, we believed it was appropriate to require that the satellite facilities operate under the same terms and conditions that were in effect on September 30, 1999. There are similarities between the definition of satellite facilities and the definition of hospitals-within-hospitals (that is, hospitals-within-hospitals and satellite facilities are both physically located in acute care hospitals that are paid for their inpatient services on a prospective payment basis). Also, satellite facilities of both excluded hospitals and hospital units and hospitals-within-hospitals provide inpatient hospital services that are paid at a higher rate than would apply if the facilities were treated by Medicare as part of an acute care hospital.

In the May 19, 2003 proposed rule, we proposed to revise § 412.22(f) to specify that, effective with cost reporting periods beginning on or after October 1, 2003, a hospital operating as a hospital-within-a-hospital on or before September 30, 1995, is exempt from the criteria in § 412.22(e)(1) through (e)(5) only if the hospital-within-a-hospital continues to operate under the same terms and conditions in effect as of September 30, 1995. The intent of the grandfathering provision was to ensure that hospitals that had been in existence prior to the effective date of our hospital-within-hospital requirements should not be adversely affected by those requirements. To the extent hospitals were already operating as hospitals-within-hospitals without meeting those requirements, we believe it is appropriate to limit the grandfathering provision to those hospitals that continue to operate in the same manner as they had operated prior to the effective date of those rules. However, if a hospital changes the way it operates (for example, adds more beds) subsequent to the effective date of the new rules, it should no longer receive the benefit of the grandfathering provision.

Under § 412.22(e), we specify the criteria that a hospital-within-a-hospital is required to meet in order to be excluded from the IPPS. One of these criteria, under § 412.22(e)(5)(i), requires that a hospital-within-a-hospital is able to perform basic hospital functions (for example, medical record services and nursing services) that are presently included in the Medicare hospital conditions of participation under Part 482 of the Medicare regulations. These requirements were first included in Part 412 in response to hospitals organizing themselves as what is referred to as the hospital-within-a-hospital model. Thus, to avoid recognizing nominal hospitals, while allowing hospitals adequate flexibility and opportunity for legitimate networking and sharing of services, we included, by reference, certain hospital conditions of participation as additional criteria in Part 412 for hospitals-within-hospitals that request exclusion from the IPPS. (Further discussion can be found in a final rule published in the **Federal Register** on September 1, 1994 (59 FR 45389).) Modifications to the conditions of participation have been made since the publication of that September 1, 1994 final rule. Thus, we need to update the references to the conditions of participation in § 412.22(e)(5)(i) to make them consistent with existing provisions under the basic hospital conditions of participation. Therefore, we also proposed to amend § 412.22(e)(5)(i) to add references to § 482.43 (discharge planning) and § 482.45 (organ, tissue, and eye procurement) as basic hospital functions that a hospital-within-a-hospital would also be required to meet.

Comment: Several commenters disagreed with our proposal to require grandfathered hospitals-within-hospitals to continue to operate under the same terms and conditions that were in place on September 30, 1995 (for example, adding beds). These commenters believed that the adoption of this proposal could result in a decertification of a number of LTCHs, thus depriving Medicare beneficiaries of specialized services and unique programs. They asserted that CMS is requiring these grandfathered hospitals-within-hospitals to either reverse their previously approved changes or lose their certification, which would retroactively reverse prior governmental approvals of LTCH changes. The commenters further asserted that there is no good reason to treat these hospitals any differently from other providers participating in the Medicare program, a practice that the commenters believed would result in inequitable treatment of patients as well as employees. Furthermore, the commenters expressed concern that the proposed effective date timeframe for implementation (that is, 60 days) is too short for purposes of implementing this proposed change because it would not allow adequate time for providers to undo previous changes.

Response: We have reviewed the commenters' concerns with regard to our proposal to require "grandfathered" hospitals-within-hospitals to continue to operate under the same terms and conditions that were in place on September 30, 1995. We understand the commenters' concern that adoption of this change as proposed could adversely impact some grandfathered hospitals-within-hospitals that, over the years, have made changes to the terms and conditions under which they operate.

After careful consideration of the comments, we have decided to revise § 412.22(f) to state that if a hospital-within-a-hospital was excluded from the IPPS under the provisions of § 412.22(f) on or before September 30, 1995, and at that time occupied space in a building also used by another hospital or in one or more buildings located on the same campus as buildings used by another hospital, the provisions of § 412.22(e) do not apply to the hospital as long as the hospital meets either of two conditions: First, under § 412.22(f)(1), the hospital continues to operate under the same terms and conditions, including the number of beds and square footage considered to be part of the hospital for purposes of Medicare participation and payment, in effect on September 30, 1995. Second, under § 412.22(f)(2) a hospital that changed the terms and conditions under which it operates after September 30, 1995 but before October 1, 2003, may continue in its grandfathered status if it continues to operate under the same terms and conditions, including the number of beds and square footage considered to be part of the hospital for purposes of Medicare participation and payment, in effect on September 30, 2003. The second condition was added in recognition of commenters who suggested that hospitals be held harmless for past changes in their terms and conditions of operation. We note that any changes occurring on or after October 1, 2003, including changes in number of beds or square footage, could lead to a loss of grandfathered status.

We want to reiterate that, in establishing grandfathering provisions, our general intent has been to protect existing hospitals from the potentially adverse impact of recent, more specific regulations that we now believe to be essential to the goals of the Medicare program. However, a hospital that continues to be excluded from the IPPS through grandfathered status may wish to alter the terms and conditions that were in effect either on September 30, 1995, or after October 1, 2003, as provided in revised § 412.22(h). In that circumstance, in order to continue being paid as a hospital excluded from the IPPS, the hospital would need to comply with the general hospital-within-a-hospital requirements set forth in § 412.22(e).

We plan to review the issue of whether further revisions to this regulation should be made to allow more changes in operation by grandfathered hospital-within-hospitals, and welcome specific suggestions on this issue.

C. Clarification of Classification Requirements for LTCHs

Under § 412.23(e)(2), to qualify to be excluded from the IPPS as a LTCH and to be paid under the LTCH PPS, a hospital must have an average Medicare length of stay of greater than 25 days (which includes all covered and

noncovered days of stay for Medicare patients) as calculated under the criteria of § 412.23(e)(3). In calculating this average Medicare inpatient length of stay, data from the hospital's most recently filed cost report are used to make this determination. However, if the hospital has not yet filed a cost report or if there is an indication that the most recently filed cost report does not accurately reflect the hospital's current Medicare average length of stay, data from the most recent 6-month period are used.

Our interpretation of § 412.23(e)(3)(ii) and (e)(3)(iii) was to allow hospitals that submit data for purposes of exclusion from the IPPS to use a period of at least 5 months of the most recent data from the preceding 6-month period. This longstanding policy interpretation was necessary in order to comply with the time requirement in § 412.22(d) that specifies that, for purposes of the IPPS, status is determined at the beginning of each cost reporting period and is effective for the entire cost reporting period. Therefore, in the May 19, 2003 proposed rule, we proposed to revise §§ 412.23(e)(3)(ii) and (iii) to reflect our longstanding interpretation of the regulations.

Comment: One commenter suggested that we clarify the source of our data for computing the average length of stay for purposes of designation as a LTCH.

Response: Although we did not propose any policy change regarding the average length of stay calculation, we did describe the data source for this calculation, which is set forth at § 412.23(e)(3). Therefore, we will take this opportunity to correct an inadvertent misstatement of the data source for this calculation and clarify present data collection procedures. In the proposed rule, we stated that we relied on data from a ". . . hospital's most recently filed cost report . . ." for determining whether it qualified as a LTCH. However, the regulation does not specify or require that the hospital's cost report (Hospital and Hospital Health Care Complex Cost Report, CMS Form 2552–96) be the source of these data used in the determination for LTCH classification. Specifically, the regulation only notes that the calculation requires dividing the total Medicare inpatient days by the total number of Medicare discharges occurring for the *hospital's most recent complete cost reporting period* (§ 412.23(e)(3)). (A detailed description of the designation process is included in the August 30, 2002 IPPS final rule (67 FR 55970 through 55974).)

Prior to the October 1, 2002 implementation of the LTCH prospective payment system, we did rely on data from the most recently *submitted* cost report for this purpose. In addition, the calculation, for purposes of qualifying as a LTCH, was based on total days and discharges for all LTCH inpatients. However, with the implementation of the LTCH PPS, we revised § 412.23(e)(3)(i) to only count total days and discharges for Medicare inpatients (67 FR 55970, August 30, 2002). Presently, we are unable to capture these data on our present cost reporting forms. Therefore, until the cost reporting form is revised, for purposes of the average length of stay calculation, we will be relying upon patient census data extracted from MedPAR files that reflect each LTCH's cost reporting period. Fiscal intermediaries and LTCHs have been informed of this course of action through official agency transmittals, but we want to emphasize that this temporary shift in data sources should have no effect on the evaluation policy set forth in regulations at §§ 412.22(d) and 412.23(e)(3) and the procedures described in the August 30, 2002 final rule.

D. Criteria for Payment on a Reasonable Cost Basis for Clinical Diagnostic Laboratory Services Performed by CAHs

Section 1820 of the Act provides for the establishment of Medicare Rural Hospital Flexibility Programs, under which individual States may designate certain facilities as critical access hospitals (CAHs). Facilities that are so designated and meet the CAH conditions of participation in 42 CFR Part 485, Subpart F, will be certified as CAHs by CMS. Section 1834(g) of the Act states that the amount of payment for outpatient services furnished by a CAH will be the reasonable costs of the CAH in providing these services.

Regulations implementing section 1834(g) of the Act are set forth at § 413.70. These regulations state, in paragraph (b)(2)(iii), that payment to a CAH for outpatient clinical diagnostic laboratory tests will be made on a reasonable cost basis only if the individuals for whom the tests are performed are outpatients of the CAH, as defined in § 410.2, at the time the specimens are collected. The regulations also state that clinical diagnostic laboratory tests for persons who are not patients of the CAH at the time the specimens are collected will be paid for in accordance with the provisions of sections 1833(a)(1)(D) and 1833(a)(2)(D) of the Act. These provisions, which also are the basis for payment for clinical diagnostic laboratory tests performed by independent laboratories and by hospitals on specimens drawn at other locations, set payment at the least of: (1) charges determined under the fee schedule as set forth in section 1833(h)(1) or section 1834(d)(1) of the Act; (2) the limitation amount for that test determined under section 1833(h)(4)(B) of the Act; or (3) a negotiated rate established under section 1833(h)(6) of the Act. Payments determined under this methodology are typically referred to as "fee schedule payments," and are so described here both for ease of reference and to differentiate them from payments determined on a reasonable cost basis.

The definition of an "outpatient" in § 410.2 states that an outpatient means a person who has not been admitted as an inpatient but who is registered on hospital or CAH records as an outpatient and receives services (rather than supplies alone) directly from the hospital or CAH.

Recently, we have received numerous questions about how Medicare pays for laboratory services that a CAH may furnish to Medicare beneficiaries in various settings other than the CAH. Specifically, the questioners have asked whether a CAH may obtain reasonable cost payment for such services to individuals in other locations by sending a CAH employee into the setting and registering the individual as a CAH patient while the blood is drawn or other specimen collection is accomplished. The settings that have been referred to most frequently are: (1) a rural health clinic (RHC), especially one that is provider-based with respect to the CAH; (2) the individual's home; and (3) an SNF.

We have considered these suggestions and understand the position taken by those who believe that nominal compliance with the requirements for outpatient status should be enough to warrant reasonable cost payment for clinical diagnostic laboratory tests for individuals at locations outside the CAH. However, we do not agree that providing reasonable cost payment under these circumstances would be appropriate. On the contrary, we believe that extending reasonable cost payment for services furnished to individuals who are not at the CAH when the specimen is drawn would duplicate existing coverage, create confusion for beneficiaries and others by blurring the distinction between CAHs and other providers, such as SNFs and HHAs, and increase the costs of care to Medicare patients without enhancing either the quality or the availability of that care.

To clarify our policies in this area and avoid possible misunderstandings about the scope of the CAH benefit, in the May 19, 2003 proposed rule, we proposed to revise § 413.70(b)(2)(iii) to state that payment to a CAH for outpatient clinical diagnostic laboratory tests will be made on a reasonable cost basis only if the individuals for whom the tests are performed are outpatients of the CAH, as defined in § 410.2, "and are physically present in the CAH" at the time the specimens are collected. (We note that, in some cases, the CAH outpatients from whom specimens are collected at the CAH may include individuals referred to the CAH from RHCs or other facilities to receive the tests.) We proposed to further revise this paragraph to state that clinical diagnostic laboratory tests for individuals who do not meet these criteria but meet other applicable requirements will be paid for only in accordance with the provisions of sections 1833(a)(1)(D) and 1833(a)(2)(D) of the Act, that is, payment will be made only on a fee schedule basis. We emphasize that the second proposal does not mean that no payment would be made for clinical diagnostic laboratory tests performed by CAHs that do not meet the revised criteria. On the contrary, such tests would be paid, but on a fee schedule basis. We believe these clarifications are appropriate, as the CAH is not providing CAH services but is acting as an independent laboratory in providing these clinical diagnostic laboratory tests.

Comment: Some commenters stated that a major goal of the Medicare Rural Hospital Flexibility Program, under which reasonable cost payment to CAHs is authorized, is to ensure that isolated rural hospitals have access to critical health care services. The commenters believed that our proposal would undermine that goal by paying less than reasonable cost amounts for certain services. These commenters stated that, in some rural communities, there may be few, or no, reasonable alternatives to having laboratory tests performed by a CAH. Because of this, the commenters believed reasonable cost payment for CAH-performed laboratory tests is warranted, even when specimens are collected in settings other than the CAH from patients who are being registered as CAH patients for the sole purpose of generating higher Medicare payment for the tests.

Response: We agree that an important goal of the CAH legislation is to pay on a reasonable cost basis for services that CAHs provide in their facilities to their inpatients and outpatients. However, we do not believe that legislation can or should be read so broadly as to authorize payment on a reasonable cost basis for laboratory services to patients who do not come to the CAH for those services, but receive them in other settings, including settings in which coverage for the services is available. We also do not agree that because the CAH may be one of only a few sources of laboratory services that the CAH should therefore be paid a higher amount for those services than would otherwise be the case. Therefore, we are not making any change to our proposal based on this comment.

Comment: Several commenters stated that even when a sample is collected outside a CAH, the cost of processing in a CAH laboratory is incurred by the CAH. Because of this circumstance, the commenters recommended that payment be based on the payment method applicable to the site where the processing is done, so that payment for laboratory tests processed at a CAH would be paid on a reasonable cost basis, not under the fee schedule.

Response: We believe the approach recommended by these commenters could create an inappropriate incentive to CAHs to expand their testing activities far beyond their normal service areas, in order to gain cost reimbursement for patients who have no other connection with the CAH other than having a specimen processed by the CAH. In some cases, this could result in payment being made on a cost basis for laboratory services to patients residing in suburban or even urban areas where there is no shortage of qualified laboratories. Such a result would only inappropriately increase payment to CAHs and create market distortions, because non-CAH laboratories performing exactly the same services may be paid substantially less for them. Therefore, we are not adopting this recommendation.

Comment: One commenter agreed with our proposal as it applies to laboratory specimens drawn in health care providers or suppliers other than CAHs, such as SNFs or RHCs, but recommended that we allow reasonable cost payment for clinical diagnostic laboratory tests on specimens drawn in physician clinics that are located in close proximity to the CAH, if the CAH owns the clinic and supplies the personnel who collect the specimens.

Response: While we considered this suggestion, we are not adopting it. A clinic of the type described by the commenter is not a part of the CAH, but is a physician office. We see no basis for treating such a non-CAH setting differently from other non-CAH facilities (such as RHCs) that are similarly owned and located. In the case of an ambulatory patient being seen in a physician office located in close proximity to the CAH, we do not believe it is unreasonable to expect the patient to go to the CAH for the laboratory service as he or she would for therapy or any other CAH outpatient service. Alternatively, the specimen may be collected during the physician visit and payment could be made to the CAH under the laboratory benefit, generally on a fee schedule basis.

Comment: Some commenters stated that the proposed revision is not a clarification but a change from past policy.

Response: We disagree with the commenter, but we do recognize from the questions raised on the issue that there has been some confusion about the policy among rural facilities. To clarify the agency policy in this area and ensure that all relevant issues are publicly noted, we set forth the clarification through notice and comment rulemaking procedures rather than through other processes, such as a program memorandum, a set of responses to "frequently asked questions," or other document

Comment: One commenter stated that it is inappropriate for proposed changes to CAH payment to be published in the proposed IPPS regulation. The commenter recommended that if changes are to be made to the payment methodology for those facilities excluded from the IPPS rule, they should be published separately in the **Federal Register**, not in a proposed rule that would not normally be reviewed by officials associated with CAHs.

Response: The IPPS proposed and final rules are published on an established and regular annual cycle and have been read for many years by a large health care population, including national, State, and local hospital associations as well as individual hospitals, including hospitals paid under the reasonable cost payment system as well as those paid under the IPPS. Because we recognize this as an important tool for disseminating information, we have used the IPPS publication in order to implement several major payment issues relating to CAHs. For example, changes in the CAH payment rules in § 413.70 were included in the IPPS final rule published on August 1, 2002 (67 FR 49982) and the IPPS final rule published on August 1, 2001 (66 FR 39828). We believe this is an appropriate vehicle in providing the information necessary to allow the CAHs access to the information they need to continue to participate knowledgeably in the Medicare program. In fact, we received over 40 comments on the provision alone.

Comment: Some commenters recommended that we withdraw our proposal because reasonable cost payment for clinical diagnostic laboratory tests on specimens collected in non-CAH settings can be an important revenue source for CAHs and yet would generate only a small amount of additional cost to the Medicare program.

Response: For the reasons stated above and in the preamble to the proposed rule, we do not believe it is appropriate to pay on a reasonable cost basis for these laboratory tests. Moreover, doing so might create an unintended incentive for laboratories processing a substantial volume of tests to affiliate with CAHs, in order to obtain the higher level of payment for tests on individuals who are only nominally patients of the CAH. Therefore, we are not adopting this recommendation.

Comment: Some commenters stated that beneficiaries, particularly frail, elderly individuals residing in remote rural areas, could be inconvenienced by our proposed clarification because they would now be required to travel to the CAH to obtain laboratory services payable on a reasonable cost basis. These commenters expressed concern that frail, elderly patients confined to nursing homes could be required by this policy to travel to CAHs to obtain needed laboratory tests.

Response: Under our proposed clarification, Medicare would not deny payment for medically necessary clinical diagnostic laboratory tests that the CAH performs on specimens collected from patients in non-CAH locations. On the contrary, clinical diagnostic laboratory tests performed by CAHs on such specimens would be paid under the same conditions as would apply to such tests furnished by an independent laboratory. In such a case, a CAH would be providing independent laboratory services and generally would be paid under the laboratory fee schedule.

Regarding the concern about the difficulty of travel for some beneficiaries, we believe it is an incorrect assumption that beneficiaries in rural areas will not have specimens collected in their homes or other locations if the CAH is not paid on a cost basis for the collection and travel. If it is medically necessary for the specimen to be collected in the patient's home, the laboratory benefit under Medicare Part B will pay the specimen collection fee (currently $3 per specimen), plus a separate travel allowance (currently at least 75 cents per mile where the average round trip is more than 20 miles) for employees of independent, mobile or hospital-based laboratories to travel to the beneficiary's home. These payments are in addition to payment for performing the tests. (For further details on how specimen collection and travel fees are calculated, see CMS Transmittal AB–98–33, Change Request #526, dated July 1998; this transmittal is available on the CMS Web site at *www.cms.hhs.gov.*) In many cases, the laboratories collect blood specimens in batches or groups of beneficiaries residing in neighboring areas. This can make the technicians' trips to beneficiaries' residences more cost-effective.

In addition to laboratories, home health agencies that have laboratory provider numbers can perform blood draws at a beneficiary's residence and bill Medicare under the laboratory benefit, using the appropriate codes for specimen collection and travel. Agencies would be reimbursed the $3 specimen collection fee, plus travel costs determined by the Medicare contractor.

It is also important to note that home health agencies with laboratory provider numbers may conduct some of the less complex blood tests themselves, receive the collection and travel fee, and receive a fee through the laboratory benefit for performing the tests. These are called the Clinical Laboratory Improvement Amendments (CLIA)-waived tests, and, among others, include: glucose (blood sugar levels for diabetic patients), fructosamine (also checks blood sugar levels but over longer period of time), hemoglobin (tests hemoglobin levels for patients with anemia), urine dip stick (tests urine for a variety of diseases/infections), and cholesterol/triglyceride (checks for lipid levels for patients with cardiovascular disease) tests.

A variety of other providers can draw blood at a beneficiary's home, often in conjunction with other services necessitating the laboratory tests. For example, while a physician conducts a home visit for evaluation and management, the physician may also draw a blood specimen. If the physician meets applicable requirements under the laboratory benefit, he or she may receive an additional payment for the specimen collection.

The physician also can arrange for a nurse practitioner, physician assistant, or clinical nurse specialist to conduct a home visit and draw blood when they examine the beneficiary. These clinicians are reimbursed at a rate equal to 85 percent of the physician fee schedule for a home visit, and if all applicable billing requirements are met, they are also paid specimen collection and travel fees.

Regarding tests for nursing home patients, we note that if a CAH furnishes laboratory services to a beneficiary in an SNF stay covered by Part A, nonemergency diagnostic laboratory tests—regardless of whether furnished by the SNF directly or under an arrangement with the CAH—would be included within the SNF's bundled PPS per diem payment for the covered stay itself. If a CAH furnishes laboratory services to a beneficiary in an SNF stay not covered by Part A (for example, Part A benefits exhausted; no prior qualifying hospital stay; SNF level of care requirements not met), the SNF consolidated billing restrictions do not apply. However, if the SNF nonetheless elects to bill for such a beneficiary's laboratory services, section 1888(e)(9) of the Act provides that an SNF's Part B bills are to be paid in accordance with the fee schedule that applies to the particular item or service being billed.

In the case of beneficiaries in nursing homes, patients are already under the care of an institution staffed with registered nurses, licensed practical nurses, and nursing assistants, and other health care workers who are presumably well-trained in collecting specimens for analysis, and the nursing homes are already being paid, by Medicare, Medicaid, private insurers, or other means for caring for the patient. Under these circumstances, it would not seem unreasonable to expect the nursing home to take responsibility for collecting the specimens.

Because of the many ways in which specimen collection and travel are payable under Medicare, we do not expect beneficiaries to face reduced access to services under this proposal. We specifically reject the claims made by several commenters that beneficiaries would be able to obtain needed laboratory services only by traveling to the CAH to obtain them.

Comment: Some commenters took exception to the preamble statements that allowing cost reimbursement for laboratory tests on specimens obtained by CAH personnel in non-CAH settings would duplicate existing coverage, create confusion for beneficiaries, and add to the costs of care furnished to Medicare patients. Regarding the costs of care, the commenters stated that because clinical diagnostic laboratory tests are not subject to deductible or coinsurance liability under Medicare, there would be no increase in out-of-pocket costs for beneficiaries.

Response: Regarding duplication of coverage, we have explained in a response to an earlier comment the many ways in which Medicare now pays for specimen collection fees and travel costs. Given this payment provision, adding another, more expensive payment option for the services would duplicate existing coverage without providing any benefit to anyone other than the operators of the CAHs. Despite the commenters' claims to the contrary, we continue to believe patients under the care of one provider (such as a SNF or RHC) might have questions as to why personnel from another provider are coming in to perform functions that could be performed by staff of the facility in which they are being treated. Finally, while there is no deductible or coinsurance liability associated with laboratory services, paying for services on a reasonable cost basis rather than on a fee schedule basis will ultimately drive up the cost of laboratory care provided under Medicare, increasing costs for taxpayers and contributing to general health care cost increases. To the extent Medicare Part B premiums will increase in the future because of current spending rises, we believe adopting the policy recommended by commenters would increase out-of-pocket costs for beneficiaries as well as for all other taxpayers.

Comment: One commenter asked whether the proposed clarification of our policy on payment for clinical diagnostic laboratory tests would be applied prospectively only, or also retroactively.

Response: Although this proposal represents a clarification of policy, we recognize that this policy has not been well understood in all areas. Therefore, we do not plan to direct Medicare contractors to routinely reopen and review past claims for compliance.

After full consideration of public comments on these issues as summarized above, we are adopting our proposed changes to § 413.70 as final without change.

E. Technical Change

On July 30, 1999, we published in the **Federal Register** a final rule (64 FR 41532) that set forth criteria for a satellite facility of a hospital or hospital unit to be excluded from the IPPS under § 412.25. Section 412.25(e)(3) of the regulations specifies that any unit structured as a satellite facility on September 30, 1999, and excluded from the IPPS on that date, is grandfathered as an excluded hospital to the extent that the unit continues operating under the same terms and conditions, including the number of beds and square footage considered to be part of the unit, in effect on September 30, 1999, except as we specified in § 412.25(e)(4). When we specified the exception for the number of beds and square footage requirement under § 412.25(e)(4), we inadvertently referred to paragraph (e)(4) as being an exception to paragraph (h)(3). We should have specified that it was an exception to paragraph (e)(3). We proposed to correct this reference.

We did not receive any comments on this proposal and, therefore, are adopting the proposed technical change as final.

VII. MedPAC Recommendations

We are required by section 1886(e)(4)(B) of the Act to respond to MedPAC's IPPS recommendations in our annual IPPS rules. We have reviewed MedPAC's March 1, 2003 "Report to the Congress: Medicare Payment Policy" and have given it careful consideration in conjunction with the policies set forth in this document. For further information relating specifically to the MedPAC report or to obtain a copy of the report, contact MedPAC at (202) 653–7220, or visit MedPAC's Web site at: *http://www.medpac.gov.*

MedPAC's Recommendation 2A–6 concerning the update factor for inpatient hospital operating costs and for hospitals and distinct-part hospital units excluded from the IPPS is discussed in Appendix B to this final rule. MedPAC's other recommendations relating to payments for Medicare inpatient hospital services focused mainly on the expansion of DRGs subject to the postacute care transfer policy, a reevaluation of the labor-related share of the market basket used in determining the hospital wage index, an increase in the DSH adjustment, and payments to rural hospitals. These recommendations and our responses are set forth below:

Recommendation 2A–1: The Secretary should add 13 DRGs to the postacute transfer policy in FY 2004 and then evaluate the effects on hospitals and beneficiaries before proposing further expansions.

Response: After reevaluation of this recommendation, in this final rule we are expanding the postacute care transfer policy to include 21 additional DRGs for FY 2004, although we are removing 2 DRGs from the current list. A thorough discussion of this provision, including a summary of MedPAC's analysis, can be found at section IV.A.3. of this preamble.

Recommendation 2A–2: The Congress should enact a low-volume adjustment to the rates used in the inpatient PPS. This adjustment should apply only to hospitals that are more than 15 miles from another facility offering acute inpatient care.

Response: MedPAC's analysis "revealed that hospitals with a small volume of total discharges have higher costs per discharge than larger facilities, after controlling for the other cost-related factors recognized in the payment system." Although there are special payment protections for some rural hospitals such as CAHs, SCHs, and MDHs, MedPAC believes these provisions do not sufficiently target hospitals with low discharge volume.

This recommendation, which MedPAC estimates would increase Medicare payments to hospitals by less than $50 million in FY 2004, and others requiring Congressional action, should be considered in the context of larger discussions within Congress and between Congress and the Administration regarding Medicare reform and payment refinements. Therefore, we are not responding specifically to MedPAC's recommendation regarding a low-volume adjustment to the IPPS payments at this time.

Recommendation 2A–3: The Secretary should reevaluate the labor share used in the wage index system that geographically adjusts rates in the inpatient PPS, with any resulting change phased in over 2 years.

Response: We define the labor-related share to include costs that are likely related to, influenced by, or vary with local labor markets, even if they could be purchased in a national market. Since the implementation of the IPPS, the labor-related share has been determined by adding together the cost weights from categories in the hospital market basket that are influenced by local labor markets. When the hospital market basket weights are updated or rebased, the labor-related share is updated. The estimate of the labor-related share using the most recently revised and rebased hospital market basket (1997-based) is 72.495 percent.

In the August 1, 2002 IPPS final rule, we elected to continue to use 71.066 percent as the labor-related share applicable to the standardized amounts (67 FR 50041). At that time, we indicated that we would conduct further analysis to determine the most appropriate methodology for the labor-related share. Again, in the May 19, 2003 proposed rule, we did not propose to use the updated labor-related share for FY 2004 because we have not yet completed our research into the appropriateness of this updated measure. Specifically, we continue to review the labor-related share in two ways. First, we are performing

regression analysis with the expectation that it would help give an alternative indication of the labor-related share. Second, we continue to reevaluate the methodology we currently use for determining the labor-related share using the hospital market basket.

Our regression analysis is an attempt to explain the variation in operating cost per case for a given year using many different explanatory variables, such as case-mix, DSH status, and ownership type. We described this methodology and some of our initial results in the May 9, 2002 **Federal Register** (67 FR 31447–31479). However, the findings from the regressions continue to be both difficult to explain and inconsistent with the underlying cost data. Thus, we believe at this point that the regression results are not robust enough to support changing the current labor-related share measurement.

We also continue to explore all options for alternative data or methodology for determining the labor-related share using the hospital market basket. We have researched various alternative data sources for use in further breaking down the cost categories in the market basket and have evaluated alternative methodologies to determine the feasibility of separating the labor-related portion or the portion that varies with local labor markets from the portion that does not vary. While each of these alternatives has strengths and weaknesses, it is not clear at this point that any one alternative data source or methodology is superior to the current methodology. We will continue to research these alternatives.

Comment: Several commenters suggested the labor share should only be adjusted by those costs (wages and salaries and benefits) that are reflected in the wage index survey. Commenters suggested that CMS should consider reducing the labor-related share for rural hospitals or having different labor shares by geographic location.

Response: We define the labor-related share to include all costs that are likely related to, influenced by, or vary with local labor markets, even if they could be purchased in a national market. This differs from the hospital wage index survey, which only collects direct labor and patient-related contract costs. Using only those direct labor costs reflected in the wage index survey would mean redefining the term labor-related share and would likely leave out many of the other costs that do vary with the local labor market.

As indicated in prior rules, we continue to research alternative methodologies for determining the labor-related share, including reexamining the labor portion of each of the individual market basket categories. However, due to a lack of one definitive data source, our analysis is still preliminary and, therefore, we will continue to use 71.066 percent as the labor-related share applicable to the standardized amounts while we conduct further analysis to determine the most appropriate methodology for determining the labor-related share.

It is currently our policy to use a national labor-related share to apply to the national PPS standardized amounts. This policy has been in effect since the implementation of the IPPS in 1983. We will consider the commenters' recommended alternative approaches, such as different labor shares for urban and rural hospitals or labor shares that vary by more detailed geographic area, as part of our ongoing research efforts. However, until we have completed our research, we will continue to use only a national labor-related share, which is currently 71.066 percent and was calculated from the 1992-based market basket.

Comment: One commenter believed that we should examine each of the categories currently included in the labor share and determine which portion of that category was actually labor-related or varied with the local labor market.

Response: We agree with the commenter that it is important that the labor-related portion of the market basket include only those categories that are actually labor-related or vary with the local labor market. As we indicated in the May 19, 2003 rule, we are continuing to explore all options for accounting for the labor-related share, including reexamining each of the categories included in the current labor share (particularly professional fees, postage, and other labor-intensive services) to make sure the labor share represents only those costs that do vary with the local labor market. However, our preliminary research has indicated that much of the data needed to break out details from each of the current market basket categories into labor and nonlabor-related components are not readily available on a national basis. We will continue to research various data sources for this information and will update the labor share as needed once our research is complete.

Recommendation 2A–4: The Congress should raise the inpatient base rate for hospitals in rural and other urban areas to the level of the rate for those in large urban areas, phased in over 2 years.

Response: This recommendation, which MedPAC estimates would increase Medicare payments to hospitals by between $200 and $600 million in FY 2004, and others requiring Congressional action, should be considered in the context of larger discussions within Congress and between Congress and the Administration regarding Medicare reform and payment refinements. Therefore, we are not responding specifically to MedPAC's recommendation regarding raising the base rate for hospitals in rural and other urban areas at this time.

Recommendation 2A–5: The Congress should raise the cap on the disproportionate share add-on a hospital can receive in the inpatient PPS from 5.25 percent to 10 percent, phased in over 2 years.

Response: This recommendation, which MedPAC estimates would increase Medicare payments to hospitals by between $50 and $200 million in FY 2004, and others requiring Congressional action, should be considered in the context of larger discussions within Congress and between Congress and the Administration regarding Medicare reform and payment refinements. Therefore, we are not responding specifically to MedPAC's recommendation regarding raising the maximum DSH adjustments at this time.

VIII. Other Required Information

A. Requests for Data From the Public

In order to respond promptly to public requests for data related to the prospective payment system, we have established a process under which commenters can gain access to raw data on an expedited basis. Generally, the data are available in computer tape or cartridge format; however, some files are available on diskette as well as on the Internet at *http://www.hcfa.gov/stats/pufiles.htm*. In the May 19, 2003 proposed rule, we published a list of data files that are available for purchase from CMS or that may be downloaded from the Internet free of charge (68 FR 27226 through 27228).

B. Collection of Information Requirements

This final rule directly does not impose any collection and recordkeeping requirements. Consequently, it does not need to be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

List of Subjects

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble of this final rule, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

■ 1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. Section 412.4 is amended by—
■ A. Revising paragraphs (b), (c), and (d).
■ B. In paragraph (f)(1), revising the reference "paragraph (b)(1) or (c)" to read "paragraph (b) or (c)".

The revisions read as follows:

§ 412.4 Discharges and transfers.

* * * * *

(b) *Acute care transfers.* A discharge of a hospital inpatient is considered to be a transfer for purposes of payment under this part if the patient is readmitted the same day (unless the readmission is unrelated to the initial discharge) to another hospital that is—

(1) Paid under the prospective payment system described in subparts A through M of this part; or

(2) Excluded from being paid under the prospective payment system described in subparts A through M of this part because of participation in an approved statewide cost control program as described in subpart C of part 403 of this chapter.

(c) *Postacute care transfers.* A discharge of a hospital inpatient is considered to be a transfer for purposes of this part when the patient's discharge is assigned, as described in § 412.60(c), to one of the qualifying diagnosis-related groups (DRGs) listed in paragraph (d) of this section and the discharge is made under any of the following circumstances:

(1) To a hospital or distinct part hospital unit excluded from the prospective payment system described in subparts A through M of this part under subpart B of this part.

(2) To a skilled nursing facility.

(3) To home under a written plan of care for the provision of home health services from a home health agency and those services begin within 3 days after the date of discharge.

(d) *Qualifying DRGs.* For purposes of paragraph (c) of this section, the qualifying DRGs must meet the following criteria for both of the 2 most recent fiscal years for which data are available:

(1) The DRG must have a geometric mean length of stay of at least 3 days;

(2) The DRG must have at least 14,000 cases identified as postacute care transfer cases.

(3) The DRG must have at least 10 percent of the postacute care transfers occurring before the geometric mean length of stay for the DRG.

(4) If the DRG is one of a paired DRG based on the presence or absence of a comorbidity or complication, one of the DRGs meets the criteria under specified paragraphs (d)(1) through (d)(3) of this section.

(5) To initially qualify, the DRG meet the criteria specified in paragraphs (d)(1) through (d)(4) of this section and must have a decline in the geometric mean length of stay for the DRG during the most recent 5-year period of at least 7 percent. Once a DRG initially qualifies, the DRG is subject to the criteria specified under paragraphs (d)(1) through (d)(4) of this section for each subsequent fiscal year.

* * * * *

■ 3. Section 412.22 is amended by:
■ A. Republishing the introductory text of paragraph (e)(5) and revising the first sentence of paragraph (e)(5)(i).
■ B. Revising paragraph (f).

The revisions read as follows:

§ 412.22 Excluded hospitals and hospital units: General rules.

* * * * *

(e) * * *

(5) *Performance of basic hospital functions.* The hospital meets one of the following criteria:

(i) The hospital performs the basic functions specified in §§ 482.21 through 482.27, 482.30, 482.42, 482.43, and 482.45 of this chapter through the use of employees or under contracts or other agreements with entities other than the hospital occupying space in the same building or on the same campus, or a third entity that controls both hospitals.

* * *

(f) *Application for certain hospitals.* If a hospital was excluded from the prospective payment systems under the provisions of this section on or before September 30, 1995, and at that time occupied space in a building also used by another hospital, or in one or more buildings located on the same campus as buildings used by another hospital, the criteria in paragraph (e) of this section do not apply to the hospital as long as the hospital either—

(1) Continues to operate under the same terms and conditions, including the number of beds and square footage considered to be part of the hospital for purposes of Medicare participation and payment in effect on September 30, 1995; or

(2) In the case of a hospital that changes the terms and conditions under which it operates after September 30, 1995, but before October 1, 2003, continues to operate under the same terms and conditions, including the number of beds and square footage considered to be part of the hospital for purposes of Medicare participation and payment in effect on September 30, 2003.

* * * * *

■ 4. Section 412.23 is amended by revising paragraphs (e)(3)(ii) and (e)(3)(iii) to read as follows:

§ 412.23 Excluded hospitals: Classifications.

* * * * *

(e) *Long-term care hospitals.* * * *

(3) *Calculation of average length of stay.* * * *

(ii) If a change in the hospital's Medicare average length of stay is indicated, the calculation is made by the same method for the period of at least 5 months of the immediately preceding 6-month period.

(iii) If a hospital has undergone a change of ownership (as described in § 489.18 of this chapter) at the start of a cost reporting period or at any time within the period of at least 5 months of the preceding 6-month period, the hospital may be excluded from the prospective payment system as a long-term care hospital for a cost reporting period if, for the period of at least 5 months of the 6 months immediately preceding the start of the period (including time before the change of ownership), the hospital has the required Medicare average length of stay, continuously operated as a hospital, and continuously participated as a hospital in Medicare.

* * * * *

§ 412.25 [Amended]

■ 5. In § 412.25(e)(4), introductory text, the reference "paragraph (h)(3) of this section" is revised to read "paragraph (e)(3) of this section".

■ 6. Section 412.87 is amended by revising paragraph (b)(3) to read as follows:

§ 412.87 Additional payment for new medical services and technologies: General provisions.

* * * * *

(a) *Eligibility criteria.* * * *

(3) The DRG prospective payment rate otherwise applicable to discharges

involving the medical service or technology is determined to be inadequate, based on application of a threshold amount to estimated charges incurred with respect to such discharges. To determine whether the payment would be adequate, CMS will determine whether the charges of the cases involving a new medical service or technology will exceed a threshold amount set at 75 percent of one standard deviation beyond the geometric mean standardized charge for all cases in the DRG to which the new medical service or technology is assigned (or the case-weighted average of all relevant DRGs if the new medical service or technology occurs in many different DRGs). Standardized charges reflect the actual charges of a case adjusted by the prospective payment system payment factors applicable to an individual hospital, such as the wage index, the indirect medical education adjustment factor, and the disproportionate share adjustment factor.

■ 7. Section 412.105 is amended by—

■ A. In paragraph (a)(1), introductory text, revising the phrase "paragraph (f) of this section" to read "paragraphs (f) and (h) of this section".

■ B. In paragraph (a)(1)(i), revising the phrase "affiliated groups" to read "Medicare GME affiliated groups".

■ C. Revising paragraph (b).

■ D. Adding a sentence at the end of paragraph (f)(1)(v).

■ E. In paragraph (f)(1)(vi), revising the phrase "affiliated group" to read "Medicare GME affiliated group".

■ F. Revising paragraph (f)(1)(x).

The revisions and additions read as follows:

§ 412.105 Special treatment: Hospitals that incur indirect costs for graduate medical education programs.

* * * * *

(b) *Determination of number of beds.* For purposes of this section, the number of beds in a hospital is determined by counting the number of available bed days during the cost reporting period and dividing that number by the number of days in the cost reporting period. This count of available bed days excludes bed days associated with—

(1) Beds in any other units or wards where the level of care provided would not be payable under the acute care hospital inpatient prospective payment system;

(2) Beds in excluded distinct part hospital units;

(3) Beds otherwise countable under this section used for outpatient observation services, skilled nursing swing-bed services, or ancillary labor/delivery services;

(4) Beds or bassinets in the healthy newborn nursery; and

(5) Custodial care beds;

* * * * *

(f) *Determining the total number of full-time equivalent residents for cost reporting periods beginning on or after July 1, 1991.* (1) * * *

(v) * * * Subject to the provisions of paragraph (f)(1)(x) of this section, effective for cost reporting periods beginning on or after April 1, 2000, FTE residents at an urban hospital in a rural track program are included in the urban hospital's rolling average calculation described in this paragraph (f)(1)(v).

* * * * *

(x) An urban hospital that establishes a new residency program (as defined in § 413.86(g)(13) of this subchapter), or has an existing residency program, with a rural track (or an integrated rural track) may include in its FTE count residents in those rural tracks in accordance with the applicable provisions of § 413.86(g)(12) of this subchapter.

* * * * *

■ 7. Section 412.106 is amended by revising paragraphs (a)(1)(ii) and (b)(4)(i) to read as follows:

§ 412.106 Special treatment: Hospitals that serve a disproportionate share of low-income patients.

(a) General considerations. (1) * * *

(ii) For purposes of this section, the number of patient days in a hospital includes only those days attributable to units or wards of the hospital providing acute care services generally payable under the prospective payment system and excludes patient days associated with—

(A) Beds in excluded distinct part hospital units;

(B) Beds otherwise countable under this section used for outpatient observation services, skilled nursing swing-bed services, or ancillary labor/delivery services; and

(C) Beds in any other units or wards where the level of care provided would not be payable under the acute care hospital inpatient prospective payment system.

* * * * *

(b) *Determination of a hospital's disproportionate payment percentage.* * * *

(4) *Second computation.* * * *

(i) For purposes of this computation, a patient is deemed eligible for Medicaid on a given day only if the patient is eligible for inpatient hospital services under an approved State Medicaid plan or under a waiver authorized under section 1115(a)(2) of the Act on that day, regardless of whether particular items or services were covered or paid under the State plan or the authorized waiver.

* * * * *

■ 8. In § 412.112, the introductory text is republished and a new paragraph (d) is added to read as follows:

§ 412.112 Payments determined on a per case basis.

A hospital is paid the following amounts on a per case basis.

* * * * *

(d) Additional payments for new medical services and technologies determined under subpart F of this part.

■ 9. Section 412.116 is amended by revising paragraph (e) to read as follows:

§ 412.116 Method of payment.

* * * * *

(e) *Outlier payment and additional payments for new medical services and technologies.* Payments for outlier cases and additional payments for new medical services and technologies (described in subpart F of this part) are not made on an interim basis. These payments are made based on submitted bills and represent final payment.

* * * * *

■ 10. Section 412.230 is amended by—

■ A. Republishing paragraph (e)(2) introductory text.

■ B. Revising paragraph (e)(2)(ii)(A).

The revisions read as follows:

§ 412.230 Criteria for an individual hospital seeking redesignation to another rural area or an urban area.

* * * * *

(e) *Use of urban or other rural area's wage index.* * * *

(2) *Appropriate wage data.* For a wage index change, the hospital must submit appropriate wage data as follows:

* * * * *

(ii) * * *

(A) For hospital-specific data, the hospital must provide a weighted 3-year average of its average hourly wages using data from the CMS hospital wage survey used to construct the wage index in effect for prospective payment purposes. However, for the limited purpose of qualifying for geographic reclassification based on wage data from cost reporting periods beginning prior to FY 2000, a hospital may request that its wage data be revised if the hospital is in an urban area that was subject to the rural floor for the period during which the wage data the hospital wishes to revise were used to calculate its wage index.

* * * * *

■ 11. Section 412.278 is amended by revising paragraph (f)(2)(i) to read as follows:

§ 412.278 Administrator's review.

* * * * *

(f) * * *

(2) The Administrator issues a decision in writing to the party with a copy to CMS—

(i) Not later than 90 days following receipt of the party's request for review, except the Administrator may, at his or her discretion, for good cause shown, toll such 90 days; or

* * * * *

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

■ 1. The authority citation for part 413 is revised to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395hh, 1395rr, 1395tt, and 1395ww).

■ 2. Section 413.70 is amended by revising paragraph (b)(2)(iii), introductory text, to read as follows:

§ 413.70 Payment for services of a CAH.

* * * * *

(b) *Payment for outpatient services furnished by CAH.* * * *

(2) *Reasonable costs for facility services.* * * *

(iii) Payment for outpatient clinical diagnostic laboratory tests is not subject to the Medicare Part B deductible and coinsurance amounts. Payment to a CAH for clinical diagnostic laboratory tests will be made on a reasonable cost basis under this section only if the individuals are outpatients of the CAH, as defined in § 410.2 of this chapter, and are physically present in the CAH, at the time the specimens are collected. Clinical diagnostic laboratory tests performed for persons who are not physically present in the CAH when the specimens are collected will be made in accordance with the provisions of sections 1833(a)(1)(D) and 1833(a)(2)(D) of the Social Security Act.

* * * * *

■ 3. Section 413.85 is amended by—

■ A. Republishing the introductory text of paragraph (d)(1) and adding a new paragraph (d)(1)(iii).

■ B. Adding a new paragraph (g)(3).

■ C. Republishing the introductory text of paragraph (h) and revising paragraph (h)(3).

The addition and revision read as follows.

§ 413.85 Cost of approved nursing and allied health education activities.

* * * * *

(d) *General payment rules.* (1) Payment for a provider's net cost of nursing and allied health education activities is determined on a reasonable cost basis, subject to the following conditions and limitations:

* * * * *

(iii) The costs of certain nonprovider-operated programs at wholly owned subsidiary educational institutions are reimbursable on a reasonable cost basis if the provisions of paragraph (g)(3) of this section are met.

* * * * *

(g) *Payments for certain nonprovider-operated programs.* * * *

(3) *Special rule: Payment for certain nonprovider-operated programs at wholly owned subsidiary educational institutions.*

(i) Effective for portions of cost reporting periods occurring on or after October 1, 2003, a provider that incurs costs for a nursing or allied health education program(s) where those program(s) had originally been provider-operated according to the criteria at paragraph (f) of this section, and then operation of the program(s) was transferred to a wholly owned subsidiary educational institution in order to meet accreditation standards prior to October 1, 2003, and where the provider has continuously incurred the costs of both the classroom and clinical training portions of the program(s) at the educational institution, may receive reasonable cost payment for such a program(s) according to the specifications under paragraphs (g)(3)(ii) and (g)(3)(iii) of this section.

(ii) Payment for the incurred costs of educational activities identified in paragraph (g)(3)(i) of this section will be made on a reasonable cost basis if a provider, as described in paragraph (g)(3)(i) of this section, received Medicare reasonable cost payment for those nursing and allied health education program(s) both prior and subsequent to the date the provider transferred operation of the program(s) to its wholly owned subsidiary educational institution (and ceased to be a provider-operated program(s) according to the criteria under paragraph (f) of this section).

(iii) The provider that meets the requirements in paragraphs (g)(3)(i) and (g)(3)(ii) of this section will be eligible to receive payment under this paragraph for: (A) the clinical training costs incurred for the program(s) as described in paragraph (g)(3)(i) of this section; and (B) classroom costs, but only those costs incurred by the provider for the courses that were included in the programs.

(h) *Activities treated as normal operating costs.* The costs of the following educational activities incurred by a provider but not operated by that provider are recognized only as normal operating costs and paid in accordance with the reimbursement principles specified in part 412 of this subchapter. They include:

* * * * *

(3) Educational seminars, workshops, and continuing education programs in which the employees participate that enhance the quality of medical care or operating efficiency of the provider and, effective October 1, 2003, do not lead to the ability to practice and begin employment in a nursing or allied health specialty.

* * * * *

■ 4. Section 413.86 is amended by—

■ A. Under paragraph (b)—

■ (1) Removing the definitions of "Affiliated group" and "Affiliation agreement".

■ (2) Adding definitions of "Community support", "Medicare GME affiliated agreement", "Medicare GME affiliated group", and "Redistribution of costs" in alphabetical order.

■ (3) Under the definition of "Rural track FTE limitation", revising the phrase "paragraph (g)(11)" to read "paragraph (g)(12)".

■ B. Revising the introductory text of paragraph (f).

■ C. Adding a new paragraph (f)(4)(iv).

■ D. In paragraph (g)(1)(i), revising the reference "paragraphs (g)(1)(ii) and (g)(1)(iii)" to read "paragraphs (g)(1)(ii) through (g)(1)(iv)".

■ E. Revising the introductory text of paragraph (g)(4).

■ F. Revising paragraph (g)(4)(iv).

■ G. Revising the introductory text of paragraph (g)(5).

■ H. Adding a new paragraph (g)(5)(vii).

■ I. Revising paragraphs (g)(6)(i)(D) and (g)(6)(i)(E).

■ J. Revising paragraph (g)(7).

■ K. Revising the introductory text of paragraph (g)(12).

■ L. Revising paragraph (g)(12)(i).

■ M. Revising paragraph (g)(12)(ii), introductory text.

■ N. Revising paragraph (g)(12)(ii)(A).

■ O. Revising paragraph (g)(12)(ii)(B)(1)(i).

■ P. Revising paragraph (g)(12)(iii).

■ Q. Revising paragraph (g)(12)(iv), introductory text.

■ R. Revising paragraph (g)(12)(iv)(A).
■ S. Revising paragraph (g)(12)(iv)(B)(*1*).
■ T. Redesignating paragraphs (i) and (j) as paragraphs (j) and (k), respectively, and adding a new paragraph (i).

The additions and revisions read as follows:

§ 413.86 Direct graduate medical education payments.

* * * * *

(b) *Definitions.* * * *

"Community support" means funding that is provided by the community and generally includes all non-Medicare sources of funding (other than payments made for furnishing services to individual patients), including State and local government appropriations. Community support does not include grants, gifts, and endowments of the kind that are not to be offset in accordance with section 1134 of the Act.

* * * * *

"Medicare GME affiliated group" means—

(1) Two or more hospitals that are located in the same urban or rural area (as those terms are defined in § 412.62(f) of this subchapter) or in a contiguous area and meet the rotation requirements in paragraph (g)(7)(ii) of this section.

(2) Two or more hospitals that are not located in the same or in a contiguous urban or rural area, but meet the rotation requirement in paragraph (g)(7)(ii) of this section, and are jointly listed—

(i) As the sponsor, primary clinical site or major participating institution for one or more programs as these terms are used in the most current publication of the *Graduate Medical Education Directory;* or

(ii) As the sponsor or is listed under "affiliations and outside rotations" for one or more programs in operation in *Opportunities, Directory of Osteopathic Postdoctoral Education Programs.*

(3) Two or more hospitals that are under common ownership and, effective for all Medicare GME affiliation agreements beginning July 1, 2003, meet the rotation requirement in paragraph (g)(7)(ii) of this section.

"Medicare GME affiliation agreement" means a written, signed, and dated agreement by responsible representatives of each respective hospital in a Medicare GME affiliated group, as defined in this section, that specifies—

(1) The term of the Medicare GME affiliation agreement (which, at a minimum is one year), beginning on July 1 of a year;

(2) Each participating hospital's direct and indirect GME FTE caps in effect prior to the Medicare GME affiliation;

(3) The total adjustment to each hospital's FTE caps in each year that the Medicare GME affiliation agreement is in effect, for both direct GME and IME, that reflects a positive adjustment to one hospital's direct and indirect FTE caps that is offset by a negative adjustment to the other hospital's (or hospitals') direct and indirect FTE caps of at least the same amount;

(4) The adjustment to each participating hospital's FTE counts resulting from the FTE resident's (or residents") participation in a shared rotational arrangement at each hospital participating in the Medicare GME affiliated group for each year the Medicare GME affiliation agreement is in effect. This adjustment to each participating hospital's FTE count is also reflected in the total adjustment to each hospital's FTE caps (in accordance with paragraph (3) of this definition); and

(5) The names of the participating hospitals and their Medicare provider numbers.

* * * * *

"Redistribution of costs" occurs when a hospital counts FTE residents in medical residency programs and the costs of the program had previously been incurred by an educational institution.

* * * * *

(f) *Determining the total number of FTE residents.* Subject to the weighting factors in paragraphs (g) and (h) of this section, and subject to the provisions of paragraph (i) of this section, the count of FTE residents is determined as follows:

* * * * *

(4) * * *

(iv) The hospital is subject to the principles of community support and redistribution of costs as specified in the provisions of paragraph (i) of this section.

(g) *Determining the weighted number of FTE residents.* * * *

(4) Subject to the provisions of paragraph (i) of this section, for purposes of determining direct graduate medical education payment—

* * * * *

(iv) Hospitals that are part of the same Medicare GME affiliated group (as described under paragraph (b) of this section) may elect to apply the limit on an aggregate basis as described under paragraph (g)(7) of this section.

* * * * *

(5) Subject to the provisions of paragraph (i) of this section, for purposes of determining direct graduate medical education payment—

* * * * *

(vii) Subject to the provisions under paragraph (g)(12) of this section, effective for cost reporting periods beginning on or after April 1, 2000, FTE residents in a rural track program at an urban hospital are included in the urban hospital's rolling average calculation described in paragraph (g)(5) of this section.

* * * * *

(6) * * *

(i) * * *

(D) An urban hospital that qualifies for an adjustment to its FTE cap under paragraph (g)(6)(i) of this section is not permitted to be part of a Medicare GME affiliated group for purposes of establishing an aggregate FTE cap.

(E) A rural hospital that qualifies for an adjustment to its FTE cap under paragraph (g)(6)(i) of this section is permitted to be part of a Medicare GME affiliated group for purposes of establishing an aggregate FTE cap.

* * * * *

(7) A hospital may receive a temporary adjustment to its FTE cap, which is subject to the averaging rules under paragraph (g)(5)(iii) of this section, to reflect residents added or subtracted because the hospital is participating in a Medicare GME affiliated group (as defined under paragraph (b) of this section). Under this provision—

(i) Each hospital in the Medicare GME affiliated group must submit the Medicare GME affiliation agreement, as defined under paragraph (b) of this section, to the CMS fiscal intermediary servicing the hospital and send a copy to CMS's Central Office no later than July 1 of the residency program year during which the Medicare GME affiliation agreement will be in effect.

(ii) Each hospital in the Medicare GME affiliated group must have a shared rotational arrangement, as defined in paragraph (b) of this section, with at least one other hospital within the Medicare GME affiliated group, and all of the hospitals within the Medicare GME affiliated group must be connected by a series of such shared rotational arrangements.

(iii) During the shared rotational arrangements under a Medicare GME affiliation agreement, as defined in paragraph (b) of this section, more than one of the hospitals in the Medicare GME affiliated group must count the proportionate amount of the time spent by the resident(s) in its FTE resident counts. No resident may be counted in the aggregate as more than one FTE.

(iv) The net effect of the adjustments (positive or negative) on the Medicare GME affiliated hospitals' aggregate FTE cap for each Medicare GME affiliation agreement must not exceed zero.

(v) If the Medicare GME affiliation agreement terminates for any reason, the FTE cap of each hospital in the Medicare GME affiliated group will revert to the individual hospital's pre-affiliation FTE cap that is determined under the provisions of paragraph (g)(4) of this section.

* * * * *

(12) Subject to the provisions of (i) of this section, an urban hospital that establishes a new residency program, or has an existing residency program, with a rural track (or an integrated rural track) may include in its FTE count residents in those rural tracks, in addition to the residents subject to its FTE cap specified under paragraph (g)(4) of this section. An urban hospital with a rural track residency program may count residents in those rural tracks up to a rural track FTE limitation if the hospital complies with the conditions specified in paragraphs (g)(12)(i) through (g)(12)(vi) of this section.

(i) If an urban hospital rotates residents to a separately accredited rural track program at a rural hospital(s) for two-thirds of the duration of the program for cost reporting periods beginning on or after April 1, 2000 and before October 1, 2003, or for more than one-half of the duration of the program for cost reporting periods beginning on or after October 1, 2003, the urban hospital may include those residents in its FTE count for the time the rural track residents spend at the urban hospital. The urban hospital may include in its FTE count those residents in the rural track training at the urban hospital, not to exceed its rural track FTE limitation, determined as follows:

(A) For the first 3 years of the rural track's existence, the rural track FTE limitation for each urban hospital will be the actual number of FTE residents, subject to the rolling average at paragraph (g)(5)(vii) of this section, training in the rural track at the urban hospital.

(B) Beginning with the fourth year of the rural track's existence, the rural track FTE limitation is equal to the product of the highest number of residents, in any program year, who during the third year of the rural track's existence are training in the rural track at the urban hospital or the rural hospital(s) and are designated at the beginning of their training to be rotated to the rural hospital(s) for at least two-thirds of the duration of the program for cost reporting periods beginning on or after April 1, 2000 and before October 1, 2002, or for more than one-half of the duration of the program effective for cost reporting periods beginning on or after October 1, 2003, and the number of years those residents are training at the urban hospital.

(ii) If an urban hospital rotates residents to a separately accredited rural track program at a rural nonhospital site(s) for two-thirds of the duration of the program for cost reporting periods beginning on or after April 1, 2000 and before October 1, 2003, or for more than one-half of the duration of the program for cost reporting periods beginning on or after October 1, 2003, the urban hospital may include those residents in its FTE count, subject to the requirements under paragraph (f)(4) of this section. The urban hospital may include in its FTE count those residents in the rural track, not to exceed its rural track FTE limitation, determined as follows:

(A) For the first 3 years of the rural track's existence, the rural track FTE limitation for each urban hospital will be the actual number of FTE residents, subject to the rolling average specified in paragraph (g)(5)(vii) of this section, training in the rural track at the urban hospital and the rural nonhospital site(s).

(B) * * *

(*1*) * * *

(*i*) The urban hospital and are designated at the beginning of their training to be rotated to a rural nonhospital site(s) for at least two-thirds of the duration of the program for cost reporting periods beginning on or after April 1, 2000 and before October 1, 2003, or for more than one-half of the duration of the program for cost reporting periods beginning on or after October 1, 2003; and

* * * * *

(iii) If an urban hospital rotates residents in the rural track program to a rural hospital(s) for less than two-thirds of the duration of the program for cost reporting periods beginning on or after April 1, 2000 and before October 1, 2003, or for one-half or less than one-half of the duration of the program for cost reporting periods beginning on or after October 1, 2003, the rural hospital may not include those residents in its FTE count (if the rural track is not a new program under paragraph (g)(6)(iii) of this section, or if the rural hospital's FTE count exceeds that hospital's FTE cap), nor may the urban hospital include those residents when calculating its rural track FTE limitation.

(iv) If an urban hospital rotates residents in the rural track program to a rural nonhospital site(s) for period of time is less than two-thirds of the duration of the program for cost reporting periods beginning on or after April 1, 2000 and before October 1, 2003, or for one-half or less than one-half of the duration of the program for cost reporting periods beginning on or after October 1, 2003, the urban hospital may include those residents in its FTE count, subject to the requirements under paragraph (f)(4) of this section. The urban hospital may include in its FTE count those residents in the rural track, not to exceed its rural track limitation, determined as follows:

(A) For the first 3 years of the rural track's existence, the rural track FTE limitation for the urban hospital will be the actual number of FTE residents, subject to the rolling average specified in paragraph (g)(5)(vii) of this section, training in the rural track at the rural nonhospital site(s).

(B) * * *

(*1*) The highest number of residents in any program year who, during the third year of the rural track's existence, are training in the rural track at the rural nonhospital site(s) or are designated at the beginning of their training to be rotated to the rural nonhospital site(s) for a period that is less than two-thirds of the duration of the program for cost reporting periods beginning on or after April 1, 2002, and before October 1, 2003, or for one-half or less than one-half of the duration of the program for cost reporting periods beginning on or after October 1, 2003; and

* * * * *

(i) *Application of community support and redistribution of costs in determining FTE resident counts.*

(1) For purposes of determining direct graduate medical education payments, the following principles apply:

(i) *Community support.* If the community has undertaken to bear the costs of medical education through community support, the costs are not considered graduate medical education costs to the hospital for purposes of Medicare payment.

(ii) *Redistribution of costs.* The costs of training residents that constitute a redistribution of costs from an educational institution to the hospital are not considered graduate medical education costs to the hospital for purposes of Medicare payment.

(2) *Application.* A hospital must continuously incur costs of direct graduate medical education of residents training in a particular program at a training site since the date the residents first began training in that program in order for the hospital to count the FTE

residents in accordance with the provisions of paragraphs (f) and (g)(4) through (g)(6) and (g)(12) of this section. This rule also applies to providers that are paid for direct GME in accordance with § 405.2468 of this chapter, § 422.270 of this subchapter, and § 413.70.

(3)(i) *Effective date.* Subject to the provisions of paragraph (i)(3)(ii) of this section, payments made in accordance with determinations made under the provisions of paragraphs (i)(1) and (i)(2) of this section will be effective for portions of cost reporting periods occurring on or after October 1, 2003.

(ii) *Applicability for certain hospitals.* With respect to an FTE resident who begins training in a residency program on or before October 1, 2003, and with respect to whom there has been a redistribution of costs or community support determined under the provisions of paragraphs (i)(1) and (i)(2) of this section, the hospital may continue to count the FTE resident until the resident has completed training in that program, or until 3 years after the date the resident began training in that program, whichever comes first.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: July 23, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: July 24, 2003.

Tommy G. Thompson,

Secretary.

[Editorial Note: The following Addendum and appendices will not appear in the Code of Federal Regulations.]

Addendum—Schedule of Standardized Amounts Effective With Discharges Occurring on or After October 1, 2003 and Update Factors and Rate-of-Increase Percentages Effective With Cost Reporting Periods Beginning on or After October 1, 2003

I. Summary and Background

In this Addendum, we are setting forth the amounts and factors for determining prospective payment rates for Medicare hospital inpatient operating costs and Medicare hospital inpatient capital-related costs. We are also setting forth rate-of-increase percentages for updating the target amounts for hospitals and hospital units excluded from the IPPS.

For discharges occurring on or after October 1, 2003, except for SCHs, MDHs, and hospitals located in Puerto Rico, each hospital's payment per discharge under the IPPS will be based on 100 percent of the Federal national rate, which will be based on the national adjusted standardized amount. This amount reflects the national average hospital costs per case from a base year, updated for inflation.

SCHs are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal national rate; the updated hospital-specific rate based on FY 1982 costs per discharge; the updated hospital-specific rate based on FY 1987 costs per discharge; or the updated hospital-specific rate based on FY 1996 costs per discharge.

Under section 1886(d)(5)(G) of the Act, MDHs are paid based on the Federal national rate or, if higher, the Federal national rate plus 50 percent of the difference between the Federal national rate and the updated hospital-specific rate based on FY 1982 or FY 1987 costs per discharge, whichever is higher. MDHs do not have the option to use their FY 1996 hospital-specific rate.

For hospitals in Puerto Rico, the payment per discharge is based on the sum of 50 percent of a Puerto Rico rate that reflects base year average costs per case of Puerto Rico hospitals and 50 percent of a blended Federal national rate (a discharge-weighted average of the national large urban and other areas standardized amounts). (See section II.D.3. of this Addendum for a complete description.)

As discussed below in section II. of this Addendum, we are making changes in the determination of the prospective payment rates for Medicare inpatient operating costs for FY 2004. The changes, to be applied prospectively effective with discharges occurring on or after October 1, 2003, affect the calculation of the Federal rates. In section III. of this Addendum, we discuss our changes for determining the prospective payment rates for Medicare inpatient capital-related costs for FY 2004. Section IV. of this Addendum sets forth our changes for determining the rate-of-increase limits for hospitals excluded from the IPPS for FY 2004. Section V. of this Addendum sets forth policies on payment for blood clotting factor administered to hemophilia patients. The tables to which we refer in the preamble of this final rule are presented in section VI. of this Addendum.

II. Changes to Prospective Payment Rates for Hospital Inpatient Operating Costs for FY 2004

The basic methodology for determining prospective payment rates for hospital inpatient operating costs is set forth at § 412.63. The basic methodology for determining the prospective payment rates for hospitals located in Puerto Rico is set forth at §§ 412.210 and 412.212. Below, we discuss the factors used for determining the prospective payment rates.

In summary, the standardized amounts set forth in Tables 1A and 1C of section VI. of this Addendum reflect—

- Updates of 3.4 percent for all areas (that is, the full market basket percentage increase of 3.4 percent);
- An adjustment to ensure the proposed DRG recalibration and wage index update and changes, as well as the add-on payments for new technology, are budget neutral, as provided for under sections 1886(d)(4)(C)(iii) and (d)(3)(E) of the Act, by applying new budget neutrality adjustment factors to the large urban and other standardized amounts;
- An adjustment to ensure the effects of geographic reclassification are budget neutral, as provided for in section 1886(d)(8)(D) of the Act, by removing the FY 2003 budget neutrality factor and applying a revised factor;
- An adjustment to apply the new outlier offset by removing the FY 2003 outlier effsets and applying a new offset.

A. Calculation of Adjusted Standardized Amounts

1. Standardization of Base-Year Costs or Target Amounts

The national standardized amounts are based on per discharge averages of adjusted hospital costs from a base period (section 1886(d)(2)(A) of the Act) or, for Puerto Rico, adjusted target amounts from a base period (section 1886(d)(9)(B)(i) of the Act), updated and otherwise adjusted in accordance with the provisions of section 1886(d) of the Act. The preamble to the September 1, 1983 interim final rule (48 FR 39763) contained a detailed explanation of how base-year cost data (from cost reporting periods ending during FY 1981) were established in the initial development of standardized amounts for the IPPS. The September 1, 1987 final rule (52 FR 33043, 33066) contains a detailed explanation of how the target amounts were determined, and how they are used in computing the Puerto Rico rates.

Sections 1886(d)(2)(B) and (d)(2)(C) of the Act require us to update base-year per discharge costs for FY 1984 and then standardize the cost data in order to remove the effects of certain sources of cost variations among hospitals. These effects include case-mix, differences in area wage levels, cost-of-living adjustments for Alaska and Hawaii, indirect medical education costs, and costs to hospitals serving a disproportionate share of low-income patients.

Under sections 1886(d)(2)(H) and (d)(3)(E) of the Act, in determining payments under the IPPS, the Secretary estimates from time to time the proportion of costs that are wages and wage-related costs. Based on the estimated labor-related share, the standardized amounts are divided into labor-related and nonlabor-related amounts. As discussed in section IV. of the preamble to the August 1, 2002 IPPS final rule, when we revised the market basket in FY 2003, we did not revise the labor share of the standardized amount (the proportion adjusted by the wage index). We consider 71.1 percent of costs to be labor-related for purposes of the IPPS. The average labor share in Puerto Rico is 71.3 percent.

2. Computing Large Urban and Other Area Average Standardized Amounts

Sections 1886(d)(2)(D) and (d)(3) of the Act require the Secretary to compute two average standardized amounts for discharges occurring in a fiscal year: one for hospitals located in large urban areas and one for hospitals located in other areas. In addition, under sections 1886(d)(9)(B)(iii) and (d)(9)(C)(i) of the Act, the average standardized amount per discharge must be determined for hospitals located in large urban and other areas in Puerto Rico. In

accordance with section 1886(b)(3)(B)(i) of the Act, the large urban average standardized amount is 1.6 percent higher than the other area average standardized amount.

Section 402(b) of Pub. L. 108–7 required that, effective for discharges occurring on or after April 1, 2003, and before October 1, 2003, the Federal rate for all IPPS hospitals would be based on the large urban standardized amount. However, for discharges occurring on or after October 1, 2003, the Federal rate will again be calculated based on separate average standardized amounts for hospitals in large urban areas and for hospitals in other areas.

Section 1886(d)(2)(D) of the Act defines "urban area" as those areas within a Metropolitan Statistical Area (MSA). A "large urban area" is defined as an urban area with a population of more than 1 million. In addition, section 4009(i) of Pub. L. 100–203 provides that a New England County Metropolitan Area (NECMA) with a population of more than 970,000 is classified as a large urban area. As required by section 1886(d)(2)(D) of the Act, population size is determined by the Secretary based on the latest population data published by the Bureau of the Census. Urban areas that do not meet the definition of a "large urban area" are referred to as "other urban areas." Areas that are not included in MSAs are considered "rural areas" under section 1886(d)(2)(D) of the Act. Payment for discharges from hospitals located in large urban areas will be based on the large urban standardized amount. Payment for discharges from hospitals located in other urban and rural areas will be based on the other standardized amount.

As discussed previously, on June 6, 2003, OMB announced revised definitions of MSAs and new definitions of Micropolitan Statistical Areas and Combined Statistical Areas. In order to implement these changes for the IPPS, it is necessary to identify the new area designation for each county and hospital in the country. Because this process will have to be extensively reviewed and verified, we were unable to undertake it before publication of this final rule. Therefore, we are continuing to use MSAs based on OMB's definitions of MSAs prior to June 6, 2003. Based on those definitions, 63 areas meet the criteria to be defined as large urban areas for FY 2004. These areas are identified in Table 4A of section VI. of this Addendum.

3. Updating the Average Standardized Amounts

In accordance with section 1886(d)(3)(A)(iv) of the Act, we are updating the arge urban areas' and the other areas' average standardized amounts for FY 2004 by the full estimated market basket percentage increase for hospitals in all areas, as specified in section 1886(b)(3)(B)(i)(XIX) of the Act. The percentage change in the market basket reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient care. The most recent forecast of the hospital market basket increase for FY 2004 is 3.4 percent. Thus, for FY 2004, the update to the average standardized amounts equals 3.4 percent for hospitals in all areas.

Although the update factors for FY 2004 are set by law, we are required by section 1886(e)(3) of the Act to report to the Congress our initial recommendation of update factors for FY 2004 for both IPPS hospitals and hospitals excluded from the IPPS. Our recommendation on the update factors (which is required by sections 1886(e)(4)(A) and (e)(5)(A) of the Act) is set forth as Appendix B of this final rule.

Comment: One commenter recommended an increase to the market basket that would account for large increases in the costs of malpractice, pensions, health benefits, pharmaceuticals, and new technology that hospitals are facing.

Response: The hospital market basket is structured to measure the change in prices for an exhaustive list of inputs used by hospitals in providing services. The index measures the "pure" price change of those inputs and appropriately does not measure changes in quantity or intensity. These nonprice factors include shifts in the skill mix of employees, increased amounts of labor purchased, increased malpractice coverage, the increased use of pharmaceuticals and technology in providing care, and movements toward more or less intensive pharmaceuticals and technology. Nonprice factors such as these may be contributing to the increases in cost that hospitals are currently facing.

In addition, the most recent data available are used to forecast the market basket price changes and are intended to reflect conditions that hospitals will face in the upcoming fiscal year. As it is intended, the hospital market basket measures the national average price increase and will not reflect geographic differences from one geographic area to another. In other words, while one area may see a large surge in the prices of inputs, another area may actually be experiencing much smaller increases in the prices of these inputs. This may also be contributing to the increased costs to which the commenter referred. Therefore, we believe that the market basket is an accurate representation of the national average price increase facing hospitals in providing services, and the 3.4 percent increase for FY 2004 provides an adequate update to hospitals to account for the inflationary increase in costs.

4. Other Adjustments to the Average Standardized Amounts

As in the past, we adjust the FY 2004 standardized amounts to remove the effects of the FY 2003 geographic reclassifications and outlier payments before applying the FY 2004 updates. We then apply the new offsets to the standardized amounts for outliers and geographic reclassifications for FY 2004.

We do not remove the prior year's budget neutrality adjustments for reclassification and recalibration of the DRG weights and for updated wage data because, in accordance with section 1886(d)(4)(C)(iii) of the Act, estimated aggregate payments after the changes in the DRG relative weights and wage index should equal estimated aggregate payments prior to the changes. If we removed the prior year adjustment, we would not satisfy this condition.

Budget neutrality is determined by comparing aggregate IPPS payments before and after making the changes that are required to be budget neutral (for example, reclassifying and recalibrating the DRGs, updating the wage data, and geographic reclassifications). We include outlier payments in the payment simulations because outliers may be affected by changes in these payment parameters. Because the changes to the postacute care transfer policy discussed in section IV.A. of the preamble of this final rule are not budget neutral, we included the effects of expanding this policy to additional DRGs prior to estimating the payment effects of the DRG and wage data changes.

a. Recalibration of DRG Weights and Updated Wage Index—Budget Neutrality Adjustment.—Section 1886(d)(4)(C)(iii) of the Act specifies that, beginning in FY 1991, the annual DRG reclassification and recalibration of the relative weights must be made in a manner that ensures that aggregate payments to hospitals are not affected. As discussed in section II. of the preamble, we normalized the recalibrated DRG weights by an adjustment factor, so that the average case weight after recalibration is equal to the average case weight prior to recalibration. However, equating the average case weight after recalibration to the average case weight before recalibration does not necessarily achieve budget neutrality with respect to aggregate payments to hospitals because payments to hospitals are affected by factors other than average case weight. Therefore, as we have done in past years, we are making a budget neutrality adjustment to ensure that the requirement of section 1886(d)(4)(C)(iii) of the Act is met.

Section 1886(d)(3)(E) of the Act requires us to update the hospital wage index on an annual basis beginning October 1, 1993. This provision also requires us to make any updates or adjustments to the wage index in a manner that ensures that aggregate payments to hospitals are not affected by the change in the wage index.

Section 4410 of Pub. L. 105–33 provides that, for discharges on or after October 1, 1997, the area wage index applicable to any hospital that is not located in a rural area may not be less than the area wage index applicable to hospitals located in rural areas in that State. This provision is required by section 4410(b) of Pub. L. 105–33 to be budget neutral. Therefore, we include the effects of this provision in our calculation of the wage update budget neutrality factor.

In addition, we are required to ensure that any add-on payments for new technology under section 1886(d)(5)(K) of the Act are budget neutral. As discussed in section II.E. of this final rule, we are approving two new technologies for add-on payments in FY 2004. We estimate that the total add-on payments for these new technologies will be $14.4 million for FY 2004.

To comply with the requirement that DRG reclassification and recalibration of the relative weights be budget neutral, and the requirement that the updated wage index be budget neutral, we used FY 2002 discharge data to simulate payments and compared aggregate payments using the FY 2003

relative weights, wage index, and new technology add-on payments to aggregate payments using the FY 2004 relative weights and wage index, plus the add-on payments for new technology. The same methodology was used for the FY 2003 budget neutrality adjustment.

Based on this comparison, we computed a budget neutrality adjustment factor equal to 1.005522. We also adjust the Puerto Rico-specific standardized amounts for the effect of DRG reclassification and recalibration. We computed a budget neutrality adjustment factor for Puerto Rico-specific standardized amounts equal to 1.001661. These budget neutrality adjustment factors are applied to the standardized amounts without removing the effects of the FY 2003 budget neutrality adjustments.

In addition, we are applying these same adjustment factors to the hospital-specific rates that are effective for cost reporting periods beginning on or after October 1, 2003. (See the discussion in the September 4, 1990 final rule (55 FR 36073).)

b. Reclassified Hospitals—Budget Neutrality Adjustment.—Section 1886(d)(8)(B) of the Act provides that, effective with discharges occurring on or after October 1, 1988, certain rural hospitals are deemed urban. In addition, section 1886(d)(10) of the Act provides for the reclassification of hospitals based on determinations by the MGCRB. Under section 1886(d)(10) of the Act, a hospital may be reclassified for purposes of the standardized amount or the wage index, or both.

Under section 1886(d)(8)(D) of the Act, the Secretary is required to adjust the standardized amounts so as to ensure that aggregate payments under the IPPS after implementation of the provisions of sections 1886(d)(8)(B) and (C) and 1886(d)(10) of the Act are equal to the aggregate prospective payments that would have been made absent these provisions. To calculate this budget neutrality factor, we used FY 2002 discharge data to simulate payments, and compared total IPPS payments prior to any reclassifications to total IPPS payments after reclassifications. Based on these simulations, we are applying an adjustment factor of 0.992026 to ensure that the effects of reclassification are budget neutral.

The adjustment factor is applied to the standardized amounts after removing the effects of the FY 2003 budget neutrality adjustment factor. We note that the FY 2004 adjustment reflects FY 2004 wage index and standardized amount reclassifications approved by the MGCRB or the Administrator, and the effects of section 1886(d)(10)(D)(v) of the Act to extend wage index reclassifications for 3 years.

c. Outliers.—Section 1886(d)(5)(A) of the Act provides for payments in addition to the basic prospective payments, for "outlier" cases involving extraordinarily high costs. To qualify for outlier payments, a case must have costs above a fixed-loss cost threshold amount (a dollar amount by which the costs of a case must exceed payments in order to qualify for outlier payment). To determine whether the costs of a case exceed the fixed-loss threshold, a hospital's cost-to-charge ratio is applied to the total covered charges for the case to convert the charges to costs. Payments for eligible cases are then made based on a marginal cost factor, which is a percentage of the costs above the threshold.

Under section 1886(d)(5)(A)(iv) of the Act, outlier payments for any year must be projected to be not less than 5 percent nor more than 6 percent of total operating DRG payments plus outlier payments. Section 1886(d)(3)(B) of the Act requires the Secretary to reduce the average standardized amounts by a factor to account for the estimated proportion of total DRG payments made to outlier cases. Similarly, section 1886(d)(9)(B)(iv) of the Act requires the Secretary to reduce the average standardized amounts applicable to hospitals in Puerto Rico to account for the estimated proportion of total DRG payments made to outlier cases.

i. FY 2004 outlier fixed-loss cost threshold. In the August 1, 2002 IPPS final rule (67 FR 50124), we established a threshold for FY 2003 that was equal to the prospective payment rate for the DRG, plus any IME and DSH payments and any additional payments for new technology, plus $33,560. The marginal cost factor (the percent of costs paid after costs for the case exceed the threshold) was 80 percent.

In the May 19, 2003 proposed rule, we proposed to establish a fixed-loss cost outlier threshold equal to the prospective payment rate for the DRG plus any IME and DSH payments, and any add-on payments for new technology, plus $50,645. However, we also stated that the final FY 2004 threshold was likely to be different from that proposed threshold, as a result of any changes to outlier policy subsequent to a proposed rule published on March 5, 2003. Subsequently, we published three central changes to our outlier policy in a final rule on June 9, 2003.

The first of the changes was that fiscal intermediaries will use more up-to-date data when determining the cost-to-charge ratio for each hospital. Currently, fiscal intermediaries use the hospital's most recent settled cost report. We revised our regulations to specify that fiscal intermediaries will use either the most recent settled or the most recent tentative settled cost report, whichever is from the latest reporting period.

The second change removed the requirement in our regulations specifying that a fiscal intermediary will assign a hospital the statewide average cost-to-charge ratio when the hospital has a cost-to-charge ratio that falls below an established threshold (3 standard deviations below the national geometric mean cost-to-charge ratio). We specified that hospitals will receive their actual cost-to-charge ratios no matter how low their ratios actually fall.

The third change added a provision to our regulations to provide that the outlier payments for some hospitals will become subject to reconciliation when the hospitals' cost reports are settled. In addition, outlier payments will be subject to an adjustment to account for the time value of any outlier overpayments or underpayments that are ultimately reconciled.

To calculate the FY 2004 outlier thresholds, we simulated payments by applying FY 2004 rates and policies using cases from the FY 2002 MedPAR file. Therefore, in order to determine the appropriate FY 2004 threshold, it was necessary to inflate the charges on the MedPAR claims by 2 years, from FY 2002 to FY 2004.

As discussed in the August 1, 2002 IPPS final rule (67 FR 50124), rather than use the rate-of-cost increase from hospitals' FY 1998 and FY 1999 cost reports to project the rate-of-increase from FY 2001 to FY 2003, as had been done in prior years, we used a 2-year average annual rate of change in charges per case to calculate the FY 2003 outlier threshold.

We are continuing to use the 2-year average annual rate of change in charges per case to establish the FY 2004 threshold. The 2-year average annual rate of change in charges per case from FY 2000 to FY 2001, and from FY 2001 to FY 2002, was 12.5978 percent annually, or 26.8 percent over 2 years.

In the past, we used cost-to-charge ratios from the Provider Specific File, and multiplied these ratios by the charges for each case to estimate costs. After the changes in policy enacted by the final outlier rule this year, it is necessary to calculate more recent cost-to-charge ratios because fiscal intermediaries will now use the latest tentatively settled cost report instead of the latest settled cost report to determine a hospital's cost-to-charge ratio. Therefore, to approximate using the latest tentative settled cost reports in our estimate of the FY 2004 outlier threshold, we calculated updated cost-to-charge ratios using the following three steps: for each hospital, we matched charges-per-case to costs-per-case from the most recent cost reporting year; we then divided each hospital's costs by its charges to calculate the cost-to-charge ratio for each hospital; and we multiplied charges from each case in the FY 2002 MedPAR (inflated to FY 2004) by this cost-to-charge ratio to calculate the cost per case. The final outlier rule also established the policy that fiscal intermediaries are to reconcile outlier payments at the time of cost report final settlement if a hospital's actual operating or capital cost-to-charge ratios are found to be substantially different from the cost-to-charge ratios used during that time period to make outlier payments.

However, it is difficult to project which hospitals will be subject to reconciliation of their outlier payments using available data. For example, for most hospitals, the latest available cost data are from FY 2000. In addition, the amount of fiscal intermediary resources necessary to undertake reconciliation will ultimately influence the number of hospitals reconciled. Without actual experience with the reconciliation process, it is difficult to predict the number of hospitals that will be reconciled. However, as later data become available, particularly data reflecting hospital's latest tentative settled cost-to-charge ratios, we will be better able to assess the appropriate number of hospitals to be reconciled.

Based on our analysis of hospitals that have been consistently overpaid recently for outliers, we have identified approximately 50 hospitals we believe will be reconciled. Therefore, for these hospitals, to account for the fact that the reconciliation will result in different outlier payments than predicted using the cost-to-charge ratios calculated as described above, we attempted to project each hospital's cost-to-charge ratio based on its rate of increase in charges per case based on FY 2002 charges, compared to costs (inflated to FY 2002 using actual market basket increases).

Using this methodology, we are establishing a fixed-loss cost outlier threshold equal to the prospective payment rate for the DRG, plus any IME and DSH payments, and any add-on payments for new technology, plus $31,000.

This single threshold will be applicable to qualify for both operating and capital outlier payments. We also are maintaining the marginal cost factor for cost outliers at 80 percent.

Comment: One commenter supported our changes to the outlier payment methodology but asked that we reconsider and revise the outlier threshold to at least a level of increase consistent with prior years. Other commenters asked that we lower the threshold to reflect the financial impact of the new outlier policies, to allow deserving hospitals to qualify for outlier payments and to ensure that hospitals receive the statutory mandated level of 5 to 6 percent of total DRG payments set aside for outliers. Another commenter reasoned that hospitals that have had their outlier payments dwindle to record low amounts will have no incentive to treat high-cost cases; therefore, the outlier threshold must be lowered. Another commenter noted that the current proposed threshold makes it almost impossible for hospitals to qualify for outlier payments and will cause hospitals to lose an extraordinary amount of money before additional outlier payments become available.

Other commenters indicated that they had conducted research, using the 2001 MedPAR file, which showed that the threshold required to spend 5.1 percent of total DRG payments decreased by 45 percent when the cost-to-charge ratios used to estimate costs were updated from the latest final settled to the latest tentatively settled cost report. Based on this finding, the commenters recommended a 45-percent reduction to the proposed outlier threshold, which would yield a threshold less than $28,000.

Some commenters believed that, in light of the changes adopted this year, it is appropriate that CMS revert to using changes in hospital costs to set the charge inflation factor rather than changes in hospital charges. The commenters explained that the combination of the changes made to the outlier policy and a return to using a cost inflation factor would lead to a more accurate and lower threshold. Another commenter noted the previous problems using changes in costs and recommended that CMS use a blend of the rates-of-increases for costs and charges to establish the charge inflation factor.

One commenter recommended that CMS keep the outlier threshold at $33,560 until CMS can determine the impact of using the most current cost-to-charge ratio during a full fiscal year. Other commenters also recommended that CMS eliminate any increase in the outlier threshold because the new outlier regulations will have a significant impact on Medicare outlier payments for FY 2004.

One commenter requested that CMS factor in the calculation of the threshold the fact that certain hospitals have distorted their charges significantly.

One commenter submitted a model of the outlier threshold for FY 2004 that incorporated the changes from the June 9, 2003 final rule. The commenter estimated the fixed-loss threshold to be $25,375 under these assumptions. The commenter also noted that the reconciliation process will reduce outlier payments and, accordingly, CMS should model a reduction in the outlier threshold to account for reconciliation, which would further lower the outlier threshold.

One commenter suggested that CMS lower the outlier threshold because independent studies strongly suggest that final FY 2003 outlier payments will fall short of the legislative mandate of 5 to 6 percent. Another commenter suggested that the outlier threshold remain at its current level because outlier payments for the first 3 months of FY 2003 represent 5.5 percent of total payments and, as a result, there does not seem to be any justification for such an increase. Another commenter explained that the transfer policy already reduces the payment to hospitals for short-stay cases and any increase in the outlier threshold will further penalize hospitals for treating high cost, medically complex cases.

Response: As described above, we are reflecting the changes made to outliers from the June 9, 2003 final rule. These changes have resulted in a substantial reduction in the outlier threshold from the proposed level. We estimate the outlier threshold would be approximately $50,200 without accounting for the effects of these changes. Therefore, the final threshold is 37 percent lower due to the changes described above. This reduction in the outlier threshold will allow hospitals that have been negatively impacted by the increase in the FY 2003 threshold due to those hospitals that maximized their outlier payments by dramatically increasing charges to qualify for higher outlier payments due to the lower threshold.

We are concerned that the outlier policy maintains its original intent to ensure hospitals are not significantly disadvantaged by unpredictable extraordinarily costly cases, and, therefore, we acted to close the loopholes in our prior policy through the final outlier rule. As a result of those changes, the threshold has fallen significantly from the proposed threshold.

Comment: Another commenter asked that any final outlier threshold included in the final rule be subject to a 60-day review and comment period.

Response: In the proposed rule, we noted that we would incorporate any final outlier policy changes in this final rule. We received many comments in response to the proposed rule, and we have considered them thoroughly in undertaking our analysis. Therefore, we do not believe there is any need for an additional public comment period on the changes. Accordingly, a fixed-loss threshold of $31,000 will be applied to calculate outlier payments for discharges occurring on or after October 1, 2003.

Comment: One commenter asked that CMS implement a transition period to protect those hospitals harmed by the significant changes in the June 9, 2003 final outlier rule. The commenter explained that a transition period is justified and would be consistent with previous transition methodologies employed for CMS changes, such as those proposed.

One commenter stated that any reconciliation would be inconsistent with the prospective nature of the IPPS.

Response: We responded to similar comments in the June 9, 2003 final rule on outliers (68 FR 34494). Therefore, we refer the commenters to that final rule.

Comment: Two commenters stated that the criterion in the final rule on outliers that specifically addressed our policy on reconciliation (that if a hospital's cost-to-charge ratio changed by 10 or more percentage points, a hospital would be subject to reconciliation) is flawed. The commenters believed that the criterion would tolerate vastly different rates of charge growth among hospitals, and hospitals with the lowest charges in relation to cost would be inappropriately subject to the greatest restriction in charge growth. The commenters provided an example where a hospital with a cost-to-charge ratio of .30 could mark up its charges by 50 percent in a 2-year period without triggering reconciliation, while another hospital with a cost-to-charge ratio of .80 would trigger reconciliation if charges grew by only 14 percent. The commenters recommended that, because of this inequity in this criterion, CMS modify the trigger for outlier reconciliation by promulgating a scale of cost-to-charge ratios rather than a constant amount. The scale could be based upon a rate of tolerable charge growth, which CMS would choose.

Response: We appreciate the suggestion by the commenters and will carefully evaluate the information provided by them. We note that fiscal intermediaries have discretion under the reconciliation policy to reconcile additional hospitals' cost reports based on analysis that indicates the outlier payments made to those hospitals are significantly inaccurate.

Comment: One commenter explained that one health care system agreed to accept reduced outlier payments during FY 2003. The commenter asked that this reduction be accounted for in the calculation of the threshold.

Response: Our calculation of the outlier threshold reflects the application of the outlier policies implemented by the June 9, 2003 final rule. The agreement referred to by the commenter was based upon the application of policies prior to that final rule. Therefore, it has no bearing on the calculation of the FY 2004 threshold described in this final rule.

Comment: One commenter noted that outlier payments are increasing because DRG payments are not keeping pace with the high cost of treatment. The commenter added that adjusting the outlier threshold will only add to the problem of underfunded health care and, because health care is not a priority,

there will always be a struggle to pay for it. The commenter noted that there needs to be a determination of what care will be paid for, and then hospitals need to decide if they will provide the noncovered services.

Another commenter believed that the final rule on outliers would affect hospitals that have applied outlier payments appropriately. The commenter also believed that Medicare beneficiaries would be impacted as community hospitals shift care to more costly tertiary care facilities due to concerns about underpayment for potentially complex patient cases. The commenter explained that it is concerned that claims processing errors in the application of the outlier provision may result in underreporting of services provided, which will perpetuate underpayments to hospitals and lead to long-term ramifications on the integrity of the data generated by the IPPS.

Response: As discussed above, we lowered the outlier threshold in response to the new provisions on outliers. We anticipate that, as a result of the changes implemented by our June 5, 2003 final rule, outlier payments will be better targeted to truly high-cost cases. This will help alleviate the commenters' concerns.

ii. Other changes concerning outliers. As stated in the September 1, 1993 final rule (58 FR 46348), we establish outlier thresholds that are applicable to both hospital inpatient operating costs and hospital inpatient capital-related costs. When we modeled the combined operating and capital outlier payments, we found that using a common set of thresholds resulted in a higher percentage of outlier payments for capital-related costs than for operating costs. We project that the thresholds for FY 2004 will result in outlier payments equal to 5.1 percent of operating DRG payments and 4.8 percent of capital payments based on the Federal rate.

In accordance with section 1886(d)(3)(B), we reduced the FY 2004 standardized amounts by the same percentage to account for the projected proportion of payments paid to outliers. The outlier adjustment factors to be applied to the standardized amounts for FY 2004 are as follows:

	Operating standardized amounts	Capital federal rate
National	0.949236	0.952050
Puerto Rico	0.976658	0.993231

We apply the outlier adjustment factors after removing the effects of the FY 2003 outlier adjustment factors on the standardized amounts.

To determine whether a case qualifies for outlier payments, we apply hospital-specific cost-to-charge ratios to the total covered charges for the case. Operating and capital costs for the case are calculated separately by applying separate operating and capital cost-to-charge ratios. These costs are then combined and compared with the fixed-loss outlier threshold.

The June 9, 2003 final rule eliminated the application of the statewide average for hospitals whose cost-to-charge ratios fall below 3 standard deviations from the national mean cost-to-charge ratio. However, for those hospitals for which the fiscal intermediary computes operating cost-to-charge ratios greater than 1.203 or capital cost-to-charge ratios greater than 0.163, or hospitals for whom the fiscal intermediary is unable to calculate a cost-to-charge ratio (as described at § 412.84(i)(3)), we are still using statewide average ratios to calculate costs to determine whether a hospital qualifies for outlier payments.[8] Table 8A in section VI. of this Addendum contains the statewide average operating cost-to-charge ratios for urban hospitals and for rural hospitals for which the fiscal intermediary is unable to compute a hospital-specific cost-to-charge ratio within the above range. These statewide average ratios would replace the ratios published in the August 1, 2002 IPPS final rule (67 FR 50263). Table 8B in section VI. of this Addendum contains the comparable statewide average capital cost-to-charge ratios. Again, the cost-to-charge ratios in Tables 8A and 8B will be used during FY 2004 when hospital-specific cost-to-charge ratios based on the latest settled cost report are either not available or are outside the range noted above. iii. FY 2002 and FY 2003 outlier payments.

In the August 1, 2002 IPPS final rule (67 FR 50125), we stated that, based on available data, we estimated that actual FY 2002 outlier payments would be approximately 6.9 percent of actual total DRG payments. This estimate was computed based on simulations using the FY 2001 MedPAR file (discharge data for FY 2001 bills). That is, the estimate of actual outlier payments did not reflect actual FY 2002 bills but instead reflected the application of FY 2002 rates and policies to available FY 2001 bills.

Our current estimate, using available FY 2002 bills, is that actual outlier payments for FY 2002 were approximately 7.8 percent of actual total DRG payments. Thus, the data indicate that, for FY 2002, the percentage of actual outlier payments relative to actual total payments is higher than we projected before FY 2002 (and thus exceeds the percentage by which we reduced the standardized amounts for FY 2002). Nevertheless, consistent with the policy and statutory interpretation we have maintained since the inception of the IPPS, we do not plan to make retroactive adjustments to outlier payments to ensure that total outlier payments for FY 2002 are equal to 5.1 percent of total DRG payments.

We currently estimate that actual outlier payments for FY 2003 will be approximately 6.5 percent of actual total DRG payments, 1.4 percentage points higher than the 5.1 percent we projected in setting outlier policies for FY 2003. This estimate is based on simulations using the FY 2002 MedPAR file (discharge data for FY 2002 bills). We used these data to calculate an estimate of the actual outlier percentage for FY 2003 by applying FY 2003 rates and policies including an outlier threshold of $33,560 to available FY 2002 bills. This estimate does not reflect the outlier policy changes implemented in the June 9, 2003 final rule that will become effective on August 8, 2003. Due to the limited time remaining in FY 2003 during which these changes will be effective, we do not anticipate that these changes will substantially affect our estimate.

5. FY 2004 Standardized Amounts

The adjusted standardized amounts are divided into labor and nonlabor portions. Table 1A in section VI. of this Addendum contains the two national standardized amounts that we will be applying to all hospitals, except hospitals in Puerto Rico. As described in section II.A.1. of this Addendum, we are not revising the labor share of the national standardized amount from 71.1 percent.

The following table illustrates the changes from the FY 2003 national average standardized amounts. The first row in the table shows the updated (through FY 2003) average standardized amounts after restoring the FY 2003 offsets for outlier payments and geographic reclassification budget neutrality. The DRG reclassification and recalibration and wage index budget neutrality factor is cumulative. Therefore, the FY 2003 factor is not removed from the amounts in the table.

	Large urban	Other areas
FY 2003 Base Rate (after removing reclassification budget neutrality and outlier offset).	Labor: $3,213.66 Nonlabor: $1,306.26	Labor: $2,974.75 Nonlabor: $1,209.15
FY 2004 Update Factor	1.034	1.034
FY 2004 DRG Recalibrations and Wage Index Budget Neutrality Factor	1.005522	1.005522
FY 2004 Reclassification Budget Neutrality Factor	0.992026	0.992026
Adjusted for Blend of FY 2003 DRG Recalibration and Wage Index Budget Neutrality Factors (factor of 0.993209 effective October 1, 2002; factor of 0.993012 effective April 1, 2003).	Labor: $3,314.31 Nonlabor: $1,347.17	Labor: $3,261.83 Nonlabor: $1,325.84
FY 2004 Outlier Factor	0.949236	0.949236

[8] These figures represent 3.0 standard deviations from the mean of the log distribution of cost-to-charge ratios for all hospitals.

	Large urban	Other areas
Rate for FY 2004 (after multiplying FY 2003 base rate by above factors)	Labor: $3,146.06 Nonlabor: $1,278.780	Labor: $3,096.25 Nonlabor: $1,258.54

Under section 1886(d)(9)(A)(ii) of the Act, the Federal portion of the Puerto Rico payment rate is based on the discharge-weighted average of the national large urban standardized amount and the national other standardized amount (as set forth in Table 1A). The labor and nonlabor portions of the national average standardized amounts for Puerto Rico hospitals are set forth in Table 1C of section VI. of this Addendum: This table also includes the Puerto Rico standardized amounts. The labor share applied to the Puerto Rico standardized amount is 71.3 percent.

B. Adjustments for Area Wage Levels and Cost-of-Living

Tables 1A and 1C, as set forth in section VI. of this Addendum, contain the labor-related and nonlabor-related shares that we used to calculate the prospective payment rates for hospitals located in the 50 States, the District of Columbia, and Puerto Rico. This section addresses two types of adjustments to the standardized amounts that are made in determining the prospective payment rates as described in this Addendum.

1. Adjustment for Area Wage Levels

Sections 1886(d)(3)(E) and 1886(d)(9)(C)(iv) of the Act require that we make an adjustment to the labor-related portion of the national and Puerto Rico prospective payment rates, respectively, to account for area differences in hospital wage levels. This adjustment is made by multiplying the labor-related portion of the adjusted standardized amounts by the appropriate wage index for the area in which the hospital is located. In section III. of the preamble to this final rule, we discuss the data and methodology for the FY 2004 wage index. The FY 2004 wage index is set forth in Tables 4A, 4B, 4C, and 4F of section VI. of this Addendum.

2. Adjustment for Cost-of-Living in Alaska and Hawaii

Section 1886(d)(5)(H) of the Act authorizes an adjustment to take into account the unique circumstances of hospitals in Alaska and Hawaii. Higher labor-related costs for these two States are taken into account in the adjustment for area wages described above. For FY 2004, we are adjusting the payments for hospitals in Alaska and Hawaii by multiplying the nonlabor portion of the standardized amounts by the appropriate adjustment factor contained in the table below.

Area	Cost of living adjustment factor
Alaska: All areas	1.25
Hawaii:	
County of Honolulu	1.25
County of Hawaii	1.165
County of Kauai	1.2325
County of Maui	1.2375
County of Kalawao	1.2375

(The above factors are based on data obtained from the U.S. Office of Personnel Management.)

C. DRG Relative Weights

As discussed in section II. of the preamble, we have developed a classification system for all hospital discharges, assigning them into DRGs, and have developed relative weights for each DRG that reflect the resource utilization of cases in each DRG relative to Medicare cases in other DRGs. Table 5 of section VI. of this Addendum contains the relative weights that we are using for discharges occurring in FY 2004. These factors have been recalibrated as explained in section II. of the preamble of this final rule.

D. Calculation of Prospective Payment Rates for FY 2004

General Formula for Calculation of Prospective Payment Rates for FY 2004

The operating prospective payment rate for all hospitals paid under the IPPS located outside of Puerto Rico, except SCHs and MDHs, equals the Federal rate based on the amounts in Table 1A in section VI. of this Addendum.

The prospective payment rate for SCHs equals the higher of the applicable Federal rate from Table 1A or the hospital-specific rate as described below. The prospective payment rate for MDHs equals the higher of the Federal rate, or the Federal rate plus 50 percent of the difference between the Federal rate and the hospital-specific rate as described below. The prospective payment rate for Puerto Rico equals 50 percent of the Puerto Rico rate plus 50 percent of the national rate from Table 1C in section VI. of this Addendum.

1. Federal Rate

For discharges occurring on or after October 1, 2003 and before October 1, 2004, except for SCHs, MDHs, and hospitals in Puerto Rico, payment under the IPPS is based exclusively on the Federal rate.

The Federal rate is determined as follows:

Step 1—Select the appropriate average standardized amount considering the location of the hospital (large urban or other) (see Table 1A in section VI. of this Addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the applicable wage index for the geographic area in which the hospital is located or the area to which the hospital is reclassified (see Tables 4A, 4B, and 4C of section VI. of this Addendum).

Step 3—For hospitals in Alaska and Hawaii, multiply the nonlabor-related portion of the standardized amount by the appropriate cost-of-living adjustment factor.

Step 4—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount (adjusted, if appropriate, under Step 3).

Step 5—Multiply the final amount from Step 4 by the relative weight corresponding to the appropriate DRG (see Table 5 of section VI. of this Addendum).

The Federal rate as determined in Step 5 may then be further adjusted if the hospital qualifies for either the IME or DSH adjustment.

2. Hospital-Specific Rate (Applicable Only to SCHs and MDHs)

a. Calculation of Hospital-Specific Rate

Section 1886(b)(3)(C) of the Act provides that SCHs are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal rate; the updated hospital-specific rate based on FY 1982 costs per discharge; the updated hospital-specific rate based on FY 1987 costs per discharge; or the updated hospital-specific rate based on FY 1996 costs per discharge.

Section 1886(d)(5)(G) of the Act provides that MDHs are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal rate or the Federal rate plus 50 percent of the difference between the Federal rate and the greater of the updated hospital-specific rates based on either FY 1982 or FY 1987 costs per discharge. MDHs do not have the option to use their FY 1996 hospital-specific rate.

Hospital-specific rates have been determined for each of these hospitals based on either the FY 1982 costs per discharge, the FY 1987 costs per discharge or, for SCHs, the FY 1996 costs per discharge. For a more detailed discussion of the calculation of the hospital-specific rates, we refer the reader to the September 1, 1983 interim final rule (48 FR 39772); the April 20, 1990 final rule with comment (55 FR 15150); the September 4, 1990 final rule (55 FR 35994); and the August 1, 2000 final rule (65 FR 47082). In addition, for both SCHs and MDHs, the hospital-specific rate is adjusted by the budget neutrality adjustment factor (that is, by 1.005522) as discussed in section II.A.4.a. of this Addendum. The resulting rate was used in determining the payment rate an SCH or MDH will receive for its discharges beginning on or after October 1, 2003.

b. Updating the FY 1982, FY 1987, and FY 1996 Hospital-Specific Rates for FY 2004

We are increasing the hospital-specific rates by 3.4 percent (the hospital market basket percentage) for SCHs and MDHs for FY 2004. Section 1886(b)(3)(C)(iv) of the Act provides that the update factor applicable to the hospital-specific rates for SCHs is equal to the update factor provided under section 1886(b)(3)(B)(iv) of the Act, which, for SCHs in FY 2004, is the market basket rate of increase. Section 1886(b)(3)(D) of the Act

provides that the update factor applicable to the hospital-specific rates for MDHs also equals the update factor provided under section 1886(b)(3)(B)(iv) of the Act, which, for FY 2004, is the market basket rate.

3. General Formula for Calculation of Prospective Payment Rates for Hospitals Located in Puerto Rico Beginning on or After October 1, 2003 and Before October 1, 2004

a. Puerto Rico Rate

The Puerto Rico prospective payment rate is determined as follows:

Step 1—Select the appropriate adjusted average standardized amount considering the large urban or other designation of the hospital (see Table 1C of section VI. of the Addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the appropriate Puerto Rico-specific wage index (see Table 4F of section VI. of the Addendum).

Step 3—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount.

Step 4—Multiply the result in Step 3 by 50 percent.

Step 5—Multiply the amount from Step 4 by the appropriate DRG relative weight (see Table 5 of section VI. of the Addendum).

b. National Rate

The national prospective payment rate is determined as follows:

Step 1—Multiply the labor-related portion of the national average standardized amount (see Table 1C of section VI. of the Addendum) by the appropriate national wage index (see Tables 4A and 4B of section VI. of the Addendum).

Step 2—Add the amount from Step 1 and the nonlabor-related portion of the national average standardized amount.

Step 3—Multiply the result in Step 2 by 50 percent.

Step 4—Multiply the amount from Step 3 by the appropriate DRG relative weight (see Table 5 of section VI. of the Addendum).

The sum of the Puerto Rico rate and the national rate computed above equals the prospective payment for a given discharge for a hospital located in Puerto Rico. This rate may then be further adjusted if the hospital qualifies for either the IME or DSH adjustment.

III. Changes to Payment Rates for Acute Care Hospital Inpatient Capital-Related Costs for FY 2004

The PPS for acute care hospital inpatient capital-related costs was implemented for cost reporting periods beginning on or after October 1, 1991. Effective with that cost reporting period and during a 10-year transition period extending through FY 2001, acute care hospital inpatient capital-related costs were paid on the basis of an increasing proportion of the capital PPS Federal rate and a decreasing proportion of a hospital's historical costs for capital.

The basic methodology for determining Federal capital prospective rates is set forth in regulations at §§ 412.308 through 412.352. Below we discuss the factors that we used to determine the capital Federal rate for FY 2004, which will be effective for discharges occurring on or after October 1, 2003. The 10-year transition period ended with hospital cost reporting periods beginning on or after October 1, 2001 (FY 2002). Therefore, for cost reporting periods beginning in FY 2002, all hospitals (except "new" hospitals under §§ 412.304(c)(2) and 412.324(b)) are paid based on 100 percent of the capital Federal rate.

For FY 1992, we computed the standard Federal payment rate for capital-related costs under the IPPS by updating the FY 1989 Medicare inpatient capital cost per case by an actuarial estimate of the increase in Medicare inpatient capital costs per case. Each year after FY 1992, we update the capital standard Federal rate, as provided in § 412.308(c)(1), to account for capital input price increases and other factors. Section 412.308(c)(2) provides that the capital Federal rate is adjusted annually by a factor equal to the estimated proportion of outlier payments under the capital Federal rate to total capital payments under the capital Federal rate. In addition, § 412.308(c)(3) requires that the capital Federal rate be reduced by an adjustment factor equal to the estimated proportion of payments for (regular and special) exception under § 412.348. Section 412.308(c)(4)(ii) requires that the capital standard Federal rate be adjusted so that the annual DRG reclassification and the recalibration of DRG weights and changes in the geographic adjustment factor are budget neutral.

For FYs 1992 through 1995, § 412.352 required that the capital Federal rate also be adjusted by a budget neutrality factor so that aggregate payments for inpatient hospital capital costs were projected to equal 90 percent of the payments that would have been made for capital-related costs on a reasonable cost basis during the fiscal year. That provision expired in FY 1996. Section 412.308(b)(2) describes the 7.4 percent reduction to the capital rate that was made in FY 1994, and § 412.308(b)(3) describes the 0.28 percent reduction to the capital rate made in FY 1996 as a result of the revised policy of paying for transfers. In FY 1998, we implemented section 4402 of Pub. L. 105–33, which requires that, for discharges occurring on or after October 1, 1997, and before October 1, 2002, the unadjusted capital standard Federal rate is reduced by 17.78 percent. As we discussed in the August 1, 2002 IPPS final rule (67 FR 50102) and implemented in § 412.308(b)(6)), a small part of that reduction was restored effective October 1, 2002.

To determine the appropriate budget neutrality adjustment factor and the regular exceptions payment adjustment during the 10-year transition period, we developed a dynamic model of Medicare inpatient capital-related costs, that is, a model that projected changes in Medicare inpatient capital-related costs over time. With the expiration of the budget neutrality provision, the capital cost model was only used to estimate the regular exceptions payment adjustment and other factors during the transition period. As we explained in the August 1, 2001 IPPS final rule (66 FR 39911), beginning in FY 2003, an adjustment for regular exception payments is no longer necessary because regular exception payments were only made for cost reporting periods beginning on or after October 1, 1991, and before October 1, 2001 (see § 412.348(b)). Since payments are no longer being made under the regular exception policy in FY 2003 and after, we no longer use the capital cost model. The capital cost model and its application during the transition period are described in Appendix B of the August 1, 2001 IPPS final rule (66 FR 40099).

In accordance with section 1886(d)(9)(A) of the Act, under the IPPS for acute care hospital operating costs, hospitals located in Puerto Rico are paid for operating costs under a special payment formula. Prior to FY 1998, hospitals in Puerto Rico were paid a blended capital rate that consisted of 75 percent of the applicable standardized amount specific to Puerto Rico hospitals and 25 percent of the applicable national average standardized amount. However, effective October 1, 1997, as a result of section 4406 of Pub. L. 105–33, operating payments to hospitals in Puerto Rico are based on a blend of 50 percent of the applicable standardized amount specific to Puerto Rico hospitals and 50 percent of the applicable national average standardized amount. In conjunction with this change to the operating blend percentage, effective with discharges on or after October 1, 1997, we compute capital payments to hospitals in Puerto Rico based on a blend of 50 percent of the Puerto Rico capital rate and 50 percent of the capital Federal rate.

Section 412.374 provides for the use of this blended payment system for payments to Puerto Rico hospitals under the PPS for acute care hospital inpatient capital-related costs. Accordingly, for capital-related costs, we compute a separate payment rate specific to Puerto Rico hospitals using the same methodology used to compute the national Federal rate for capital.

A. Determination of Federal Hospital Inpatient Capital-Related Prospective Payment Rate Update

In the final IPPS rule published in the **Federal Register** on August 1, 2002 (67 FR 50127), we established a capital Federal rate of $407.01 for FY 2003. Section 402(b) of Pub. L. 108–7 requires that, effective for discharges occurring on or after April 1, 2003, and before October 1, 2003, the capital Federal rate for operating costs for all IPPS hospitals is based on the large urban standardized amount. However, under current law for discharges occurring on or after October 1, 2003, the capital Federal rate will again be calculated based on separate average standardized amounts for hospitals in large urban areas and for hospitals in other areas. In addition, a correction notice to the FY 2003 final IPPS rule issued in the **Federal Register** on April 25, 2003 (68 FR 22272) contains corrections and revisions to the wage index and geographic adjustment factor (GAF). In conjunction with the change to the operating PPS standardized amounts made by Pub. L. 108–7 and the wage index and GAF corrections, we have established a capital PPS standard Federal rate of $406.93 effective for discharges occurring on or after April 1, 2003 through September 30, 2003. As we discussed in the May 19, 2003 proposed rule (68 FR 27238), the capital rates effective for discharges occurring on or after April 1, 2003 through September 30, 2003, were used in determining the final FY 2004 capital rates. As a result of the changes to the factors used to establish the capital Federal rate that are explained in this Addendum, the FY 2004 capital standard Federal rate is $415.47.

In the discussion that follows, we explain the factors that were used to determine the FY 2004 capital Federal rate. In particular, we explain why the FY 2004 capital Federal rate has increased 2.10 percent compared to the FY 2003 capital Federal rate (effective for discharges occurring on or after April 1, 2003 through September 30, 2003). We also estimate aggregate capital payments will increase by 1.4 percent during this same period. This increase is primarily due to the increase in the number of hospital admissions and the increase in case-mix. This increase in capital payments is slightly less than last year (5.81 percent), mostly due to the restoration of the 2.1 percent reduction to the capital Federal rate in FY 2003 (§ 412.308(b)(6)) and the projected decrease in outlier payments as a result of the IPPS outlier policy established in the June 9, 2003 high-cost outlier final rule (68 FR 34494).

Total payments to hospitals under the IPPS are relatively unaffected by changes in the capital prospective payments. Since capital payments constitute about 10 percent of hospital payments, a 1-percent change in the capital Federal rate yields only about 0.1 percent change in actual payments to hospitals. Aggregate payments under the capital PPS are estimated to increase in FY 2004 compared to FY 2003.

1. Capital Standard Federal Rate Update

a. Description of the Update Framework

Under § 412.308(c)(1), the capital standard Federal rate is updated on the basis of an analytical framework that takes into account changes in a capital input price index (CIPI) and several other policy adjustment factors. Specifically, we have adjusted the projected CIPI rate of increase as appropriate each year for case-mix index-related changes, for intensity, and for errors in previous CIPI forecasts. In the May 19, 2003 proposed rule (68 FR 27239), we proposed an update factor of 0.7 for FY 2004 under that framework based on the best data available at that time. Under that same update framework based on more recent data, the final update factor for FY 2004 is 0.7 percent. This final update factor is based on a 0.7 percent increase in the CIPI, a 0.0 percent adjustment for intensity, a 0.0 percent adjustment for case-mix, a 0.0 percent adjustment for the FY 2002 DRG reclassification and recalibration, and a forecast error correction of 0.0 percent. We explain the basis for the FY 2004 CIPI projection in section III.C. of this Addendum. Below we describe the policy adjustments that have been applied.

The case-mix index is the measure of the average DRG weight for cases paid under the IPPS. Because the DRG weight determines the prospective payment for each case, any percentage increase in the case-mix index corresponds to an equal percentage increase in hospital payments.

The case-mix index can change for any of several reasons:

- The average resource use of Medicare patients changes ("real" case-mix change);
- Changes in hospital coding of patient records result in higher weight DRG assignments ("coding effects"); and
- The annual DRG reclassification and recalibration changes may not be budget neutral ("reclassification effect").

We define real case-mix change as actual changes in the mix (and resource requirements) of Medicare patients as opposed to changes in coding behavior that result in assignment of cases to higher weighted DRGs but do not reflect higher resource requirements. In the update framework for the PPS for operating costs, we adjust the update upwards to allow for real case-mix change, but remove the effects of coding changes on the case-mix index. We also remove the effect on total payments of prior year changes to the DRG classifications and relative weights, in order to retain budget neutrality for all case-mix index-related changes other than patient severity. (For example, we adjusted for the effects of the FY 2002 DRG reclassification and recalibration as part of our update for FY 2004.) We have adopted this case-mix index adjustment in the capital update framework as well.

For FY 2004, we are projecting a 1.0 percent total increase in the case-mix index. We estimate that real case-mix increase will equal 1.0 percent in FY 2004. Therefore, the net adjustment for case-mix change in FY 2004 is 0.0 percentage points.

We estimate that FY 2002 DRG reclassification and recalibration will result in a 0.0 percent change in the case-mix when compared with the case-mix index that would have resulted if we had not made the reclassification and recalibration changes to the DRGs. Therefore, we are making a 0.0 percent adjustment for DRG reclassification and recalibration in the update for FY 2004 to maintain budget neutrality.

The capital update framework contains an adjustment for forecast error. The input price index forecast is based on historical trends and relationships ascertainable at the time the update factor is established for the upcoming year. In any given year, there may be unanticipated price fluctuations that may result in differences between the actual increase in prices and the forecast used in calculating the update factors. In setting a prospective payment rate under the framework, we make an adjustment for forecast error only if our estimate of the change in the capital input price index for any year is off by 0.25 percentage points or more. There is a 2-year lag between the forecast and the measurement of the forecast error. A forecast error of 0.2 percentage points was calculated for the FY 2002 update. That is, current historical data indicate that the forecasted FY 2002 CIPI used in calculating the FY 2002 update factor (0.7 percent) overstated the actual realized price increases (0.5 percent) by 0.2 percentage points. This slight overprediction was mostly due to an underestimation of the interest rate cuts by the Federal Reserve Board in 2002, which impacted the interest component of the CIPI. However, since this estimation of the change in the CIPI is less than 0.25 percentage points, it is not reflected in the update recommended under this framework. Therefore, we are making a 0.0 percent adjustment for forecast error in the update for FY 2004.

Under the capital PPS system framework, we also make an adjustment for changes in intensity. We calculate this adjustment using the same methodology and data that are used in the framework for the operating PPS. The intensity factor for the operating update framework reflects how hospital services are utilized to produce the final product, that is, the discharge. This component accounts for changes in the use of quality-enhancing services, for changes in within-DRG severity, and for expected modification of practice patterns to remove noncost-effective services.

We calculate case-mix constant intensity as the change in total charges per admission, adjusted for price level changes (the CPI for hospital and related services) and changes in real case-mix. The use of total charges in the calculation of the intensity factor makes it a total intensity factor, that is, charges for capital services are already built into the calculation of the factor. Therefore, we have incorporated the intensity adjustment from the operating update framework into the capital update framework. Without reliable estimates of the proportions of the overall annual intensity increases that are due, respectively, to ineffective practice patterns and to the combination of quality-enhancing new technologies and within-DRG complexity, we assume, as in the operating update framework, that one-half of the annual increase is due to each of these factors. The capital update framework thus provides an add-on to the input price index rate of increase of one-half of the estimated annual increase in intensity, to allow for within-DRG severity increases and the adoption of quality-enhancing technology.

As we discussed in the May 19, 2003 proposed rule (68 FR 27239), we have developed a Medicare-specific intensity measure based on a 5-year average. Past studies of case-mix change by the RAND Corporation ("Has DRG Creep Crept Up? Decomposing the Case Mix Index Change Between 1987 and 1988" by G. M. Carter, J. P. Newhouse, and D. A. Relles, R–4098–HCFA/ProPAC (1991)) suggest that real case-mix change was not dependent on total change, but was usually a fairly steady 1.0 to 1.4 percent per year. We use 1.4 percent as the upper bound because the RAND study did not take into account that hospitals may have induced doctors to document medical records more completely in order to improve payment.

We calculate case-mix constant intensity as the change in total charges per admission, adjusted for price level changes (the CPI for hospital and related services), and changes in real case-mix. As we noted above, in accordance with § 412.308(c)(1)(ii), we began updating the capital standard Federal rate in FY 1996 using an update framework that takes into account, among other things, allowable changes in the intensity of hospital

services. For FYs 1996 through 2001, we found that case-mix constant intensity was declining and we established a 0.0 percent adjustment for intensity in each of those years. For FYs 2001 and 2002, we found that case-mix constant intensity was increasing and we established a 0.3 percent adjustment and 1.0 percent adjustment for intensity, respectively.

Using the methodology described above, as we discussed in the May 19, 2003 proposed rule (68 FR 27239), for FY 2004 we examined the change in total charges per admission, adjusted for price level changes (the CPI for hospital and related services), and changes in real case-mix for FYs 1998 though 2002. We found that, over this period and in particular the last 3 years of this period (FYs 2000 through 2002), the charge data appear to be skewed. More specifically, we found a dramatic increase in hospital charges for FYs 2000 through 2002 without a corresponding increase in hospital case-mix index. If hospitals were treating new or different types of cases, which would result in an appropriate increase in charges per discharge, then we would expect hospitals' case-mix to increase proportionally.

The timing of this increase in charge growth is consistent with the dramatic increase in charges that we discussed in the June 9, 2003 high-cost outlier final rule (68 FR 34494). As we discussed in that final rule, because hospitals have the ability to increase their outlier payments through dramatic charge increases, we have made several changes in our high-cost outlier policy at §§ 412.84(i) and (m) in order to prevent hospitals from taking advantage of our current outlier policy.

As discussed above, our intensity calculation relies heavily upon charge data and we believe that this charge data may be inappropriately skewed. Therefore, in the May 19, 2003 proposed rule (68 FR 22739), we proposed a 0.0 percent adjustment for intensity for FY 2004. As we explained in that same proposed rule, in past FYs (1996 through 2000) when we found intensity to be declining, we believed a zero (rather then negative) intensity adjustment was appropriate. Similarly, we believe that it is appropriate to apply a zero intensity adjustment for FY 2004 until we believe that any increase in charges can be tied to intensity rather then to attempts to maximize outlier payments. We received no comments on our proposed 0.0 percent adjustment for intensity. Therefore, in this final rule, we are making a 0.0 percent adjustment for intensity in the update for FY 2004.

Above we described the basis of the components used to develop the 0.7 percent final capital update factor for FY 2004 as shown in the table below.

CMS's FY 2004 Update Factor to the Capital Federal Rate

Capital Input Price Index	0.7
Intensity:	0.0
Case-Mix Adjustment Factors:	
Projected Case-Mix Change	−1.0
Real Across DRG Change	1.0
Subtotal	0.0
Effect of FY 2002 Reclassification and Recalibration	0.0
Forecast Error Correction	0.0
Total Update	0.7

b. Comparison of CMS and MedPAC Update Recommendation

In the past, MedPAC has included update recommendations for capital PPS in a Report to Congress. As we discussed in the May 19, 2003 proposed rule (68 FR 27240), in its March 2003 Report to Congress, MedPAC did not make an update recommendation for capital PPS payments. However, in that same report, MedPAC made an update recommendation for hospital inpatient and outpatient services (page 4). MedPAC stated that hospital inpatient and outpatient services should be considered together because they are so closely interrelated. Their recommendation is based on an assessment of whether payments are adequate to cover the costs of efficient providers, an estimate of input price inflation (measured by the market basket index), and an adjustment for technological charges, which is offset by reasonable expectations in productivity gains.

2. Outlier Payment Adjustment Factor

Section 412.312(c) establishes a unified outlier methodology for inpatient operating and inpatient capital-related costs. A single set of thresholds is used to identify outlier cases for both inpatient operating and inpatient capital-related payments. Section 412.308(c)(2) provides that the standard Federal rate for inpatient capital-related costs be reduced by an adjustment factor equal to the estimated proportion of capital related outlier payments to total inpatient capital-related PPS payments. The outlier thresholds are set so that operating outlier payments are projected to be 5.1 percent of total operating DRG payments.

In the August 1, 2002 IPPS final rule (67 FR 50129), we estimated that outlier payments for capital in FY 2003 would equal 5.31 percent of inpatient capital-related payments based on the FY 2003 capital Federal rate. Accordingly, we applied an outlier adjustment factor of 0.9469 to the FY 2003 capital Federal rate. Based on the thresholds as set forth in section II.A.4.c. of this Addendum, we estimate that outlier payments for capital will equal 4.79 percent of inpatient capital-related payments based on the capital Federal rate in FY 2004. Therefore, we are establishing an outlier adjustment factor of 0.9521 to the capital Federal rate. Thus, the percentage of capital outlier payments to total capital standard payments for FY 2004 is lower than the percentage for FY 2003. This projected decrease in capital outlier payments is mostly due to the changes in the IPPS outlier policy established in the June 9, 2003 high-cost outlier final rule (68 FR 34494).

The outlier reduction factors are not built permanently into the capital rates; that is, they are not applied cumulatively in determining the capital Federal rate. Therefore, the net change in the outlier adjustment to the capital Federal rate for FY 2004 is 1.0055 (0.9521/0.9469). The outlier adjustment increases the FY 2004 capital Federal rate by 0.55 percent compared with the FY 2003 outlier adjustment.

3. Budget Neutrality Adjustment Factor for Changes in DRG Classifications and Weights and the Geographic Adjustment Factor

Section 412.308(c)(4)(ii) requires that the capital Federal rate be adjusted so that aggregate payments for the fiscal year based on the capital Federal rate after any changes resulting from the annual DRG reclassification and recalibration and changes in the geographic adjustment factor (GAF) are projected to equal aggregate payments that would have been made on the basis of the capital Federal rate without such changes.

Since we implemented a separate geographic adjustment factor for Puerto Rico, we apply separate budget neutrality adjustments for the national geographic adjustment factor and the Puerto Rico geographic adjustment factor. We apply the same budget neutrality factor for DRG reclassifications and recalibration nationally and for Puerto Rico. Separate adjustments were unnecessary for FY 1998 and earlier since the geographic adjustment factor for Puerto Rico was implemented in FY 1998.

In the past, we used the actuarial capital cost model (described in Appendix B of the August 1, 2001 IPPS final rule (66 FR 40099)) to estimate the aggregate payments that would have been made on the basis of the capital Federal rate with and without changes in the DRG classifications and weights and in the GAF to compute the adjustment required to maintain budget neutrality for changes in DRG weights and in the GAF. During the transition period, the capital cost model was also used to estimate the regular exception payment adjustment factor. As we explain in section III.A.4. of this Addendum, beginning in FY 2003 an adjustment for regular exception payments is no longer necessary. Therefore, we are no longer using the capital cost model. Instead, we are using historical data based on hospitals' actual cost experiences to determine the exceptions payment adjustment factor for special exceptions payments.

To determine the factors for FY 2004, we compared (separately for the national capital rate and the Puerto Rico capital rate) estimated aggregate capital Federal rate payments based on the FY 2003 DRG relative weights and the FY 2003 GAF to estimated aggregate capital Federal rate payments based on the FY 2004 relative weights and the FY 2004 GAF. In the August 1, 2002 IPPS final rule (67 FR 50129) for FY 2003, the budget neutrality adjustment factors were 0.9885 for the national capital rate and 0.9963 for the Puerto Rico capital rate. As a result of the revisions to the GAF effective for discharges occurring on or after April 1, 2003 through September 30, 2003, the budget neutrality adjustment factor is 0.9983 for the national capital rate for discharges occurring on or before April 1, 2003 through September 30, 2003. The budget neutrality adjustment factor for the Puerto Rico capital rate remained unchanged (0.9963). As we noted above, the capital rates effective for discharges occurring on or after April 1, 2003 through September 30, 2003 were used in determining the FY 2004 capital rates. In making the comparison, we set the regular and special exceptions reduction factors to 1.00.

To achieve budget neutrality for the changes in the national GAF, based on calculations using updated data, we are applying an incremental budget neutrality adjustment of 1.0051 for FY 2004 to the previous cumulative FY 2003 adjustment (0.9883), yielding a cumulative adjustment of 0.9933 through FY 2004. For the Puerto Rico GAF, we are applying an incremental budget neutrality adjustment of 1.0002 for FY 2004 to the previous cumulative FY 2003 adjustment (0.9963), yielding a cumulative adjustment of 0.9965 through FY 2004.

We then compared estimated aggregate capital Federal rate payments based on the FY 2003 DRG relative weights and the FY 2003 GAF to estimated aggregate capital Federal rate payments based on the FY 2004 DRG relative weights and the FY 2004 GAF. The incremental adjustment for DRG classifications and changes in relative weights is 1.0008 both nationally and for Puerto Rico. The cumulative adjustments for DRG classifications and changes in relative weights and for changes in the GAF through FY 2004 are 0.9941 nationally and 0.9973 for Puerto Rico. The following table summarizes the adjustment factors for each fiscal year:

Budget Neutrality Adjustment for DRG Reclassifications and Recalibration and the Geographic Adjustment Factors

Fiscal year	National				Puerto Rico			
	Incremental adjustment			Cumulative	Incremental adjustment			Cumulative
	Geographic adjustment factor	DRG reclassifications and recalibration	Combined		Geographic adjustment factor	DRG Reclassifications and Recalibration	Combined	
1992	—	—	1.00000	—	—	—	—	—
1993	—	—	0.99800	0.99800	—	—	—	—
1994	—	—	1.00531	1.00330	—	—	—	—
1995	—	—	0.99980	1.00310	—	—	—	—
1996	—	—	0.99940	1.00250	—	—	—	—
1997	—	—	0.99873	1.00123	—	—	—	—
1998	—	—	0.99892	1.00015	—	—	—	1.00000
1999	0.99944	1.00335	1.00279	1.00294	0.99898	1.00335	1.00233	1.00233
2000	0.99857	0.99991	0.99848	1.00142	0.99910	0.99991	0.99901	1.00134
2001 [1]	0.99782	1.00009	0.99791	0.99933	1.00365	1.00009	1.00374	1.00508
2001 [2]	[3] 0.99771	[3] 1.00009	[3] 0.99780	0.99922	[3] 1.00365	[3] 1.00009	[3] 1.00374	1.00508
2002	[4] 0.99666	[4] 0.99668	[4] 0.99335	0.99268	[4] 0.98991	[4] 0.99668	[4] 0.99662	0.99164
2003 [5]	0.99915	0.99662	0.99577	0.98848	1.00809	0.99662	1.00468	0.99628
2003 [6]	[7] 0.99896	[7] 0.99662	[7] 0.99558	0.98830	[7] 1.00809	[7] 0.99662	[7] 1.00468	[7] 0.99628
2004	[8] 1.00510	1.00081	[8] 1.00591	0.99414	[8] 1.00023	[8] 1.00081	[8] 1.00104	0.99731

[1] Factors effective for the first half of FY 2001 (October 2000 through March 2001).
[2] Factors effective for the second half of FY 2001 (April 2001 through September 2001).
[3] Incremental factors are applied to FY 2000 cumulative factors.
[4] Incremental factors are applied to the cumulative factors for the first half of FY 2001.
[5] Factors effective for the first half of FY 2003 (October 2002 through March 2003).
[6] Factors effective for the second half of FY 2003 (April 2003 through September 2003).
[7] Incremental factors are applied to FY 2002 cumulative factors.
[8] Incremental factors are applied to the cumulative factors for the second half of FY 2003.

The methodology used to determine the recalibration and geographic (DRG/GAF) budget neutrality adjustment factor for FY 2004 is similar to that used in establishing budget neutrality adjustments under the PPS for operating costs. One difference is that, under the operating PPS, the budget neutrality adjustments for the effect of geographic reclassifications are determined separately from the effects of other changes in the hospital wage index and the DRG relative weights. Under the capital PPS, there is a single DRG/GAF budget neutrality adjustment factor (the national capital rate and the Puerto Rico capital rate are determined separately) for changes in the GAF (including geographic reclassification) and the DRG relative weights. In addition, there is no adjustment for the effects that geographic reclassification has on the other payment parameters, such as the payments for serving low-income patients, indirect medical education payments, or the large urban add-on payments.

In the August 1, 2002 IPPS final rule (67 FR 50129), we calculated a GAF/DRG budget neutrality factor of 0.9957 for FY 2003. As we noted above, as a result of the revisions to the GAF effective for discharges occurring on or after April 1, 2003 through September 30, 2003 published in the **Federal Register** on April 25, 2003 (68 FR 22272), we calculated a GAF/DRG budget neutrality factor of 0.9956 for discharges occurring on or after April 1, 2003 through September 30, 2003. Furthermore, as noted above, the capital rates effective for discharges occurring on or after April 1, 2003 through September 30, 2003 were used in determining the FY 2004 capital rates.

In the May 19, 2003 proposed rule (68 FR 27241), for FY 2004 we calculated a GAF/DRG budget neutrality factor of 1.0038. For this final rule, based on updated data, we are establishing a GAF/DRG budget neutrality factor of 1.0059 for FY 2004. The GAF/DRG budget neutrality factors are built permanently into the capital rates; that is, they are applied cumulatively in determining the capital Federal rate. This follows from the requirement that estimated aggregate payments each year be no more or less than they would have been in the absence of the annual DRG reclassification and recalibration and changes in the GAF. The incremental change in the adjustment from FY 2003 to FY 2004 is 1.0059. The cumulative change in the capital Federal rate due to this adjustment is 0.9941 (the product of the incremental factors for FY 1993, FY 1994, FY 1995, FY 1996, FY 1997, FY 1998, FY 1999, FY 2000, FY 2001, FY 2002, FY 2003, and the incremental factor for FY 2004: $0.9980 \times 1.0053 \times 0.9998 \times 0.9994 \times 0.9987 \times 0.9989 \times 1.0028 \times 0.9985 \times 0.9979 \times 0.9934 \times 0.9956 \times 1.0059 = 0.9941$).

This factor accounts for DRG reclassifications and recalibration and for changes in the GAF. It also incorporates the effects on the GAF of FY 2004 geographic reclassification decisions made by the MGCRB compared to FY 2003 decisions. However, it does not account for changes in payments due to changes in the DSH and IME adjustment factors or in the large urban add-on.

4. Exceptions Payment Adjustment Factor

Section 412.308(c)(3) requires that the capital standard Federal rate be reduced by an adjustment factor equal to the estimated proportion of additional payments for both regular exceptions and special exceptions under § 412.348 relative to total capital PPS payments. In estimating the proportion of regular exception payments to total capital PPS payments during the transition period, we used the actuarial capital cost model originally developed for determining budget neutrality (described in Appendix B of the August 1, 2001 IPPS final rule (66 FR 40099)) to determine the exceptions payment adjustment factor, which was applied to both the Federal and hospital-specific capital rates.

An adjustment for regular exception payments is no longer necessary in determining the FY 2004 capital Federal rate because, in accordance with § 412.348(b), regular exception payments were only made for cost reporting periods beginning on or after October 1, 1991 and before October 1, 2001. Accordingly, as we explained in the August 1, 2001 IPPS final rule (66 FR 39949), in FY 2003 and subsequent fiscal years, no payments will be made under the regular exceptions provision. However, in accordance with § 412.308(c), we still need to compute a budget neutrality adjustment for special exception payments under § 412.348(g). We describe our methodology for determining the special exceptions adjustment used in calculating the FY 2004 capital Federal rate below.

Under the special exceptions provision specified at § 412.348(g)(1), eligible hospitals include SCHs, urban hospitals with at least 100 beds that have a disproportionate share percentage of at least 20.2 percent or qualify for DSH payments under § 412.106(c)(2), and hospitals with a combined Medicare and Medicaid inpatient utilization of at least 70 percent. An eligible hospital may receive special exceptions payments if it meets (1) a project need requirement as described at § 412.348(g)(2), which, in the case of certain urban hospitals, includes an excess capacity test as described at § 412.348(g)(4); (2) an age of assets test as described at § 412.348(g)(3); and (3) a project size requirement as described at § 412.348(g)(5).

As we explained in the August 1, 2001 IPPS final rule (66 FR 39912–39914), in order to determine the estimated proportion of special exceptions payments to total capital payments, we attempted to identify the universe of eligible hospitals that may potentially qualify for special exceptions payments. First, we identified hospitals that met the eligibility requirements at § 412.348(g)(1). Then we determined each hospital's average fixed asset age in the earliest available cost report starting in FY 1992 and subsequent fiscal years. For each of those hospitals, we calculated the average fixed asset age by dividing the accumulated depreciation by the current year's depreciation. In accordance with § 412.348(g)(3), a hospital must have an average age of buildings and fixed assets above the 75th percentile of all hospitals in the first year of the capital PPS. In the September 1, 1994 final rule (59 FR 45385), we stated that, based on the June 1994 update of the cost report files in HCRIS, the 75th percentile for buildings and fixed assets for FY 1992 was 16.4 years. However, we noted that we would make a final determination of that value on the basis of more complete cost report information at a later date. In the August 29, 1997 final rule (62 FR 46012), based on the December 1996 update of HCRIS and the removal of outliers, we finalized the 75th percentile for buildings and fixed assets for FY 1992 as 15.4 years. Thus, we eliminated any hospitals from the potential universe of hospitals that may qualify for special exception payments if its average age of fixed assets did not exceed 15.4 years.

For the hospitals remaining in the potential universe, we estimated project-size by using the fixed capital acquisitions shown on Worksheet A7 from the following HCRIS cost reports updated through March 2003.

PPS year	Cost reporting periods beginning in—
IX	FY 1992
X	FY 1993
XI	FY 1994
XII	FY 1995
XIII	FY 1996
XIV	FY 1997
XV	FY 1998
XVI	FY 1999
XVII	FY 2000
XVIII	FY 2001

Because the project phase-in may overlap 2 cost reporting years, we added together the fixed acquisitions from sequential pairs of cost reports to determine project size. Under § 412.348(g)(5), the hospital's project cost must be at least $200 million or 100 percent of its operating cost during the first 12-month cost reporting period beginning on or after October 1, 1991. We calculated the operating costs from the earliest available cost report starting in FY 1992 and later by subtracting inpatient capital costs from inpatient costs (for all payers). We did not subtract the direct medical education costs as those costs are not available on every update of the HCRIS minimum data set. If the hospital met the project size requirement, we assumed that it also met the project need requirements at § 412.348(g)(2) and the excess capacity test for urban hospitals at § 412.348(g)(4).

Because we estimate that so few hospitals will qualify for special exceptions, projecting costs, payments, and margins would result in high statistical variance. Consequently, we decided to model the effects of special exceptions using historical data based on hospitals' actual cost experiences. If we determined that a hospital may qualify for special exceptions, we modeled special exceptions payments from the project start date through the last available cost report (FY 2001). While we have not yet received all of the FY 2001 cost reports, we do have a sufficient number of FY 2001 cost reports to model a preliminary estimate of special exception payments for FY 2004. For purposes of modeling, we used the cost and payment data on the cost reports from HCRIS assuming that special exceptions would begin at the start of the qualifying project. In other words, when modeling costs and payment data, we ignored any regular exception payments that these hospitals may otherwise have received as if there had not been regular exception provision during the transition period. In projecting an eligible hospital's special exception payment, we applied the 70-percent minimum payment level, the cumulative comparison of current year capital PPS payments and costs, and the cumulative operating margin offset (excluding 75 percent of operating DSH payments).

Our modeling of special exception payments for FY 2004 produced the following results:

Cost report	Number of hospitals eligible for special exceptions	Special exceptions as a fraction of capital payments to all hospitals
PPS IX	—	—
PPS X	—	—
PPS XI	2	—
PPS XII	5	—
PPS XIII	7	—
PPS XIV	13	0.0001
PPS XV	17	0.0001
PPS XVI	24	0.0001
PPS XVII	26	0.0001
PPS XVIII	29	*0.0004

*Preliminary estimate based on submission of cost reports available as of March 2003.

We note that hospitals must complete their projects by the end of PPS XVIII in order to be eligible for special exceptions payments. With complete submission of the PPS XVIII (FY 2001) cost reports, we estimate that about 30 hospitals may qualify for special exceptions payments. Thus, we project that special exception payments as a fraction of capital payments to all hospitals to be approximately 0.0005.

Because special exceptions are budget neutral, in the May 19, 2003 proposed rule, we proposed to offset the capital Federal rate by 0.05 percent for special exceptions payments for FY 2004. For this final rule, based on updated data, we are offsetting the capital Federal rate by 0.05 percent for special exceptions payments for FY 2004. Therefore, the exceptions adjustment factor is equal to 0.9995 (1 − 0.0005) to account for special exceptions payments in FY 2004.

In the August 1, 2002 IPPS final rule (67 FR 50131) for FY 2003, we estimated that total (special) exceptions payments would equal 0.30 percent of aggregate payments based on the capital Federal rate. Therefore, we applied an exceptions reduction factor of 0.9970 (1 − 0.0030) in determining the FY 2003 capital Federal rate. As we stated above, we estimate that exceptions payments in FY 2004 will equal 0.05 percent of aggregate payments based on the FY 2004 capital Federal rate. Therefore, we are applying an exceptions payment adjustment factor of 0.9995 (1 − 0.0005) to the capital Federal rate for FY 2004. The exceptions adjustment factor for FY 2004 is 0.25 percent higher than the factor for FY 2003 published in the August 1, 2002 IPPS final rule (67 FR 50131). This increase is primarily due to a refined analysis of more recent data.

The exceptions reduction factors are not built permanently into the capital rates; that is, the factors are not applied cumulatively in determining the capital Federal rate. Therefore, the net change in the exceptions adjustment factor used in determining the FY 2004 capital Federal rate is 0.9995/0.9970, or 1.0025.

5. Capital Standard Federal Rate for FY 2004

In the August 1, 2002 IPPS final rule (67 FR 50131) we established a capital Federal rate of $407.01 for FY 2003. As we noted above, as a result of the revisions to the GAF effective for discharges occurring on or after April 1, 2003 through September 30, 2003 published August 25, 2003 in the **Federal Register** (68 FR 22272), we have established a capital Federal rate of $406.93 for discharges occurring on or after April 1, 2003 through September 30, 2003. The capital rates effective for discharges occurring on or after April 1, 2003 through September 30, 2003, were used in determining the FY 2004 capital rates. In this final rule, we are establishing a capital Federal rate of $415.47 for FY 2004. The capital Federal rate for FY 2004 was calculated as follows:

- The FY 2004 update factor is 1.0070; that is, the update is 0.70 percent.
- The FY 2004 budget neutrality adjustment factor that is applied to the capital standard Federal payment rate for changes in the DRG relative weights and in the GAF is 1.0059.
- The FY 2004 outlier adjustment factor is 0.9521.
- The FY 2004 (special) exceptions payment adjustment factor is 0.9995.

Since the capital Federal rate has already been adjusted for differences in case-mix, wages, cost-of-living, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients, we are making no additional adjustments in the capital standard Federal rate for these factors, other than the budget neutrality factor for changes in the DRG relative weights and the GAF.

We are providing a chart that shows how each of the factors and adjustments for FY 2004 affected the computation of the FY 2004 capital Federal rate in comparison to the FY 2003 capital Federal rate. The FY 2004 update factor has the effect of increasing the capital Federal rate by 0.70 percent compared to the FY 2003 capital Federal rate, while the GAF/DRG budget neutrality factor has the effect of increasing the capital Federal rate by 0.59 percent. The FY 2004 outlier adjustment factor has the effect of increasing the capital Federal rate by 0.55 percent compared to the FY 2003 capital Federal rate. The FY 2004 exceptions payment adjustment factor has the effect of increasing the capital Federal rate by 0.25 percent compared to the exceptions payment adjustment factor for capital FY 2003. The combined effect of all the changes is to increase the capital Federal rate by 2.10 percent compared to the FY 2003 capital Federal rate.

COMPARISON OF FACTORS AND ADJUSTMENTS: FY 2003 CAPITAL FEDERAL RATE AND FY 2004 CAPITAL FEDERAL RATE

	FY 2003	FY 2004	Change	Percent change
Update factor[1]	1.0110	1.0070	1.0070	0.70
GAF/DRG Adjustment Factor[1]	0.9957	1.0059	1.0059	0.59
Outlier Adjustment Factor[2]	0.9469	0.9521	1.0055	0.55
Exceptions Adjustment Factor[2]	0.9970	0.9995	1.0025	0.25
Capital Federal Rate	$406.93	$415.47	[3]1.0210	[3]2.10

[1] The update factor and the GAF/DRG budget neutrality factors are built permanently into the capital rates. Thus, for example, the incremental change from FY 2003 to FY 2004 resulting from the application of the 1.0059 GAF/DRG budget neutrality factor for FY 2004 is 1.0059.
[2] The outlier reduction factor and the exceptions adjustment factor are not built permanently into the capital rates; that is, these factors are not applied cumulatively in determining the capital rates. Thus, for example, the net change resulting from the application of the FY 2004 outlier adjustment factor is 0.9521/0.9469, or 1.0055.
[3] The percent change in factors and adjustments may not sum due to rounding.

We are also providing a chart that shows how the final FY 2004 capital Federal rate differs from the proposed FY 2004 capital Federal rate.

COMPARISON OF FACTORS AND ADJUSTMENTS: FY 2004 PROPOSED CAPITAL FEDERAL RATE AND FY 2004 FINAL CAPITAL FEDERAL RATE

	Proposed FY 2004	Final FY 2004	Change	Percent change
Update factor	1.0070	1.0070	1.0000	0.00
GAF/DRG Adjustment Factor	1.0038	1.0059	1.0021	0.21
Outlier Adjustment Factor	0.9455	0.9521	1.0070	0.70
Exceptions Adjustment Factor	0.9995	0.9995	1.0000	0.00
Capital Federal Rate	$411.72	$415.47	1.0091	0.91

6. Special Capital Rate for Puerto Rico Hospitals

As explained at the beginning of section II.D. of this Addendum, hospitals in Puerto Rico are paid based on 50 percent of the Puerto Rico capital rate and 50 percent of the capital Federal rate. The Puerto Rico capital rate is derived from the costs of Puerto Rico hospitals only, while the capital Federal rate is derived from the costs of all acute care hospitals participating in the PPS (including Puerto Rico). To adjust hospitals' capital payments for geographic variations in capital costs, we apply a GAF to both portions of the blended capital rate. The GAF is calculated using the operating PPS wage index and varies, depending on the MSA or rural area in which the hospital is located. We use the Puerto Rico wage index to determine the GAF for the Puerto Rico part of the capital-blended rate and the national wage index to determine the GAF for the national part of the blended capital rate.

Because we implemented a separate GAF for Puerto Rico in FY 1998, we also apply separate budget neutrality adjustments for the national GAF and for the Puerto Rico GAF. However, we apply the same budget neutrality factor for DRG reclassifications and recalibration nationally and for Puerto Rico. As we stated in section III.A.4. of this Addendum, for Puerto Rico the GAF budget neutrality factor is 1.0002, while the DRG adjustment is 1.0008, for a combined cumulative adjustment of 0.9973.

In computing the payment for a particular Puerto Rico hospital, the Puerto Rico portion of the capital rate (50 percent) is multiplied by the Puerto Rico-specific GAF for the MSA in which the hospital is located, and the national portion of the capital rate (50 percent) is multiplied by the national GAF for the MSA in which the hospital is located (which is computed from national data for all hospitals in the United States and Puerto

Rico). In FY 1998, we implemented a 17.78 percent reduction to the Puerto Rico capital rate as a result of Pub. L. 105–33. In FY 2003, a small part of that reduction was restored.

For FY 2003, before application of the GAF, the special capital rate for Puerto Rico hospitals was $198.29. With the changes we proposed to the factors used to determine the capital rate, the proposed FY 2004 special capital rate for Puerto Rico was $201.26. For this final rule, based on the final factors, the FY 2004 capital rate for Puerto Rico is $203.15.

B. Calculation of Inpatient Capital-Related Prospective Payments for FY 2004

With the end of the capital PPS transition period in FY 2001, all hospitals (except "new" hospitals under § 412.324(b) and under § 412.304(c)(2)) are paid based on 100 percent of the capital Federal rate in FY 2004. The applicable capital Federal rate was determined by making adjustments as follows:

- For outliers, by dividing the capital standard Federal rate by the outlier reduction factor for that fiscal year; and
- For the payment adjustments applicable to the hospital, by multiplying the hospital's GAF, disproportionate share adjustment factor, and IME adjustment factor, when appropriate.

For purposes of calculating payments for each discharge during FY 2004, the capital standard Federal rate is adjusted as follows: (Standard Federal Rate) × (DRG weight) × (GAF) × (Large Urban Add-on, if applicable) × (COLA adjustment for hospitals located in Alaska and Hawaii) × (1 + Disproportionate Share Adjustment Factor + IME Adjustment Factor, if applicable). The result is the adjusted capital Federal rate.

Hospitals also may receive outlier payments for those cases that qualify under the thresholds established for each fiscal year. Section 412.312(c) provides for a single set of thresholds to identify outlier cases for both inpatient operating and inpatient capital-related payments. The outlier thresholds for FY 2004 are in section II.A.4.c. of this Addendum. For FY 2004, a case qualifies as a cost outlier if the cost for the case plus the IME and DSH payments is greater than the prospective payment rate for the DRG plus $31,000.

An eligible hospital may also qualify for a special exceptions payment under § 412.348(g) for up through the 10th year beyond the end of the capital transition period if it meets: (1) a project need requirement described at § 412.348(g)(2), which in the case of certain urban hospitals includes an excess capacity test as described at § 412.348(g)(4); and (2) a project size requirement as described at § 412.348(g)(5). Eligible hospitals include sole community hospitals, urban hospitals with at least 100 beds that have a DSH patient percentage of at least 20.2 percent or qualify for DSH payments under § 412.106(c)(2), and hospitals that have a combined Medicare and Medicaid inpatient utilization of at least 70 percent. Under § 412.348(g)(8), the amount of a special exceptions payment is determined by comparing the cumulative payments made to the hospital under the capital PPS to the cumulative minimum payment level. This amount is offset by: (1) any amount by which a hospital's cumulative capital payments exceed its cumulative minimum payment levels applicable under the regular exceptions process for cost reporting periods beginning during which the hospital has been subject to the capital PPS; and (2) any amount by which a hospital's current year operating and capital payments (excluding 75 percent of operating DSH payments) exceed its operating and capital costs. Under § 412.348(g)(6), the minimum payment level is 70 percent for all eligible hospitals.

During the transition period, new hospitals (as defined under § 412.300) were exempt from the capital PPS for their first 2 years of operation and were paid 85 percent of their reasonable costs during that period. Effective with the third year of operation through the remainder of the transition period, under § 412.324(b) we paid the hospital under the appropriate transition methodology. If the hold-harmless methodology was applicable, the hold-harmless payment for assets in use during the base period would extend for 8 years, even if the hold-harmless payments extend beyond the normal transition period. As discussed in section VI.A. of the preamble of this final rule, under § 412.304(c)(2), for cost reporting periods beginning on or after October 1, 2002, we pay a new hospital 85 percent of their reasonable costs during the first 2 years of operation unless it elects to receive payment based on 100 percent of the capital Federal rate. Effective with the third year of operation, we pay the hospital based on 100 percent of the capital Federal rate (that is, the same methodology used to pay all other hospitals subject to the capital PPS).

C. Capital Input Price Index

1. Background

Like the operating input price index, the capital input price index (CIPI) is a fixed-weight price index that measures the price changes associated with capital costs during a given year. The CIPI differs from the operating input price index in one important aspect—the CIPI reflects the vintage nature of capital, which is the acquisition and use of capital over time. Capital expenses in any given year are determined by the stock of capital in that year (that is, capital that remains on hand from all current and prior capital acquisitions). An index measuring capital price changes needs to reflect this vintage nature of capital. Therefore, the CIPI was developed to capture the vintage nature of capital by using a weighted-average of past capital purchase prices up to and including the current year.

We periodically update the base year for the operating and capital input prices to reflect the changing composition of inputs for operating and capital expenses. The CIPI was last rebased to FY 1997 in the August 1, 2002 final rule (67 FR 50044).

2. Forecast of the CIPI for Federal Fiscal Year 2004

Based on historical data available through the second quarter of 2003, we forecast the CIPI to increase 0.7 percent in FY 2004. This reflects a projected 1.2 percent increase in vintage-weighted depreciation prices (building and fixed equipment, and movable equipment) and a 3.8 percent increase in other capital expense prices in FY 2004, partially offset by a 2.6 percent decline in vintage-weighted interest expenses in FY 2004. The weighted average of these three factors produces the 0.7 percent increase for the CIPI as a whole in FY 2004.

IV. Changes to Payment Rates for Excluded Hospitals and Hospital Units: Rate-of-Increase Percentages

As discussed in section VI. of the preamble of this final rule, in accordance with section 1886(b)(3)(H)(i) of the Act and effective for cost reporting periods beginning on or after October 1, 2002, payments to existing psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals excluded from the IPPS are no longer subject to limits on a hospital-specific target amount (expressed in terms of the inpatient operating cost per discharge) that are set for each hospital, based on the hospital's own historical cost experience trended forward by the applicable rate-of-increase percentages (update factors).

Effective for cost reporting periods beginning on or after October 1, 2002, rehabilitation hospitals and units are no longer paid on a reasonable cost basis but are paid under the 100 percent of IRF PPS Federal rate. Effective for cost reporting periods beginning on or after October 1, 2002, LTCHs also are no longer paid on a reasonable cost basis but are paid under a LTCH DRG-based PPS. As part of the payment process for LTCHs, we established a 5-year transition period from reasonable cost-based reimbursement to a fully Federal PPS. However, a LTCH that is subject to the blend methodology may elect to be paid based on a 100 percent of the Federal prospective rate.

In accordance with existing § 413.40(c)(4)(ii) and (d)(1)(i) and (ii), where applicable, excluded psychiatric hospitals and units continue to be paid on a reasonable cost basis, and payments are based on their Medicare inpatient operating costs, not to exceed the ceiling (as defined in § 413.40(a)(3)). In addition, LTCHs that are paid under a blend methodology will have the TEFRA portion subject to the ceiling as well.

Section 1886(b)(7) of the Act had established a payment limitation for new hospitals and units excluded from the IPPS. While both rehabilitation hospitals and units and LTCHs are now paid under a PPS, psychiatric hospitals and units continue to be subject to the payment limitation. A discussion of how the payment limitation was calculated can be found in the August 29, 1997 final rule with comment period (62 FR 46019); the May 12, 1998 final rule (63 FR 26344); the July 31, 1998 final rule (63 FR 41000); and the July 30, 1999 final rule (64 FR 41529).

The amount of payment for a "new" psychiatric hospital or unit would be determined as follows:

- Under existing § 413.40(f)(2)(ii), for cost reporting periods beginning on or after October 1, 1997, the amount of payment for a new hospital or unit that was not paid as an excluded hospital or unit before October 1, 1997, is the lower of: (1) the hospital's net inpatient operating costs per case; or (2) 110 percent of the national median of the target amounts for the same class of excluded hospitals and units, adjusted for differences in wage levels and updated to the first cost reporting period in which the hospital receives payment. The second cost reporting period is subject to the same target amount applied to the first cost reporting period.
- In the case of a hospital that received payments under § 413.40(f)(2)(ii) as a newly created hospital or unit, to determine the hospital's or unit's target amount for the hospital's or unit's third 12-month cost reporting period, the payment amount determined under § 413.40(f)(2)(ii)(A) for the preceding cost reporting period is updated to the third cost reporting period.

The amounts included in the following table reflect the updated 110 percent of the national median target amounts of new excluded psychiatric hospitals and units for cost reporting periods beginning during FY 2004. These figures are updated with the most recent data available to reflect the market basket increase percentage of 3.4 percent. This percentage change in the market basket reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient hospital services (as projected by CMS' Office of the Actuary based on its historical experience with the IPPS). For a new provider, the labor-related share of the target amount is multiplied by the appropriate geographic area wage index, without regard to IPPS reclassifications, and added to the nonlabor-related share in order to determine the per case limit on payment under the statutory payment methodology for new providers.

Class of excluded hospital or unit	FY 2004 labor-related share	FY 2004 nonlabor-related share
Psychiatric	$7,294	$2,899

Effective for cost reporting periods beginning on or after October 1, 2002, this payment limitation is no longer applicable to new LTCHs since they will be paid 100 percent of the Federal rate. A new LTCH is a provider of inpatient hospital services that meets the qualifying criteria for LTCHs specified under § 412.23(e)(1) and (e)(2) and whose first cost reporting period as a LTCH begins on or after October 1, 2002 (§ 412.23(e)(4)). Under the LTCH PPS, new LTCHs are paid based on 100 percent of the fully Federal prospective rate (they may not participate in the 5-year transition from cost-based reimbursement to prospective payment). In contrast, those "new" LTCHs that meet the definition of "new" under § 413.40(f)(2)(ii) and that have their first cost reporting periods beginning on or after October 1, 1997, and before October 1, 2002, may be paid under the LTCH PPS transition methodology. Since those hospitals by definition would have been considered new before October 1, 2002, they would have been subject to the updated payment limitation on new hospitals that was published in the FY 2003 IPPS final rule (67 FR 50103). Under existing regulations at § 413.40(f)(2)(ii), the "new" hospital would be subject to the same cap in its second cost reporting period; this cap would not be updated for the new hospital's second cost reporting year. Thus, since the same cap is to be used for the "new" LTCH's first two cost reporting periods, it is no longer necessary to publish an updated cap.

We are in the process of developing a proposed rule that would establish a per diem PPS for inpatient psychiatric facilities (IPFs) (previously referred to as psychiatric hospitals and units) that is required under the provisions of section 124 of Pub. L. 106–113.

V. Payment for Blood Clotting Factor Administered to Hemophilia Inpatients

In December 2002, the Department implemented a policy that established the Single Drug Pricer (SDP) to correct identified discrepancies, further the legislative goal of establishing a uniform payment allowance as a reflection of the average wholesale price (AWP), and otherwise apply the existing stature and regulation more accurately and efficiently (CMS Program Memorandum AB–02–174, December 3, 2002, which can be accessed at: *http://www.cms.hhs.gov/manuals*). Under the SDP, CMS will establish prices centrally, thereby resulting in greater consistency in drug pricing nationally. The SDP instruction applies to blood clotting factors furnished to hospital inpatients. The payment allowance for the single national drug price for each Medicare covered drug is based on 95 percent of the AWP, except for drugs billed to durable medical equipment regional carriers (DMERCs) and hospital outpatient drugs billed to fiscal intermediaries. We are publishing this notice here because we previously have addressed the add-on payment for the costs of administering blood clotting factor in the IPPS annual rule (see the August 1, 2000 IPPS final rule (65 FR 47116).

On a quarterly basis, CMS will furnish three SDP files to all fiscal intermediaries. Each fiscal intermediary must accept the SDP files and process claims for any drug identified on the files on the basis of the price shown on the applicable file. Previously, the fiscal intermediary performed annual update calculations based on the most recent AWP data available to the carrier. The fiscal intermediary should use the SDP to price the blood clotting factors.

VI. Tables

This section contains the tables referred to throughout the preamble to this final rule and in this Addendum. For purposes of this final rule, and to avoid confusion, we have retained the designations of Tables 1 through 5 that were first used in the September 1, 1983 initial prospective payment final rule (48 FR 39844). Tables 1A, 1C, 1D, 2, 3A, 3B, 4A, 4B, 4C, 4F, 4G, 4H, 5, 6A, 6B, 6C, 6D, 6E, 6F, 6G, 6H, 7A, 7B, 8A, 8B, 9, 10, and 11 are presented below. The tables presented below are as follows:

Table 1A—National Adjusted Operating Standardized Amounts, Labor/Nonlabor
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Table 1D.—Capital Standard Federal Payment Rate
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Table 10.—Mean and .75 Standard Deviation by Diagnosis-Related Groups (DRGs)-July 2003
Table 11.—LTC-DRGs Relative Weights and Geometric and Five-Sixth of the Average Length of Stay-FY 2004

TABLE 1A.—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR

Large urban areas		Other areas	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
$3,145.06	$1,278.78	$3,095.27	$1,258.54

TABLE 1C.—ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR

	Large urban areas		Other areas	
	Labor	Nonlabor	Labor	Nonlabor
National	$3,119.61	$1,268.03	$3,119.61	$1,268.03
Puerto Rico	1,510.12	607.86	1,486.22	598.24

TABLE 1D.—CAPITAL STANDARD FEDERAL PAYMENT RATE

	Rate
National	$415.47
Puerto Rico	203.15

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
010001	17.4467	17.9841	19.4061	18.2955
010004	19.0010	20.1613	22.2673	20.4948
010005	18.6554	19.9733	19.6063	19.4156
010006	17.6115	18.3931	19.0976	18.4162
010007	15.6788	16.0781	17.5462	16.4299
010008	17.4728	19.0182	19.6573	18.7416
010009	18.4979	19.7272	20.4309	19.5485
010010	16.4664	17.7348	19.2644	17.7722
010011	22.4292	24.8922	25.8231	24.3180
010012	15.8686	20.3376	20.0896	18.5710
010015	19.1178	19.8205	18.8890	19.2826
010016	20.2198	20.3175	21.7918	20.8284
010018	18.9388	19.5519	19.2071	19.2353
010019	17.0856	17.6414	18.9177	17.8535
010021	15.1241	25.3335	17.7595	18.4456
010022	17.6435	22.1250	22.2266	20.3667
010023	16.3209	18.4567	20.4900	18.3307
010024	15.9034	17.3746	18.5942	17.2467
010025	15.1548	17.4702	19.3649	17.3268
010027	16.8595	16.5157	14.0974	15.7259
010029	18.3605	19.3393	20.9868	19.6276
010031	18.6402	19.2612	21.0176	19.6504
010032	15.3590	16.3967	16.4712	16.0937
010033	21.2986	21.9828	24.5088	22.5487
010034	15.3639	14.9379	14.9333	15.0828
010035	15.9439	20.7808	21.6182	19.2869
010036	17.7166	18.7158	19.2501	18.5418
010038	19.6098	19.6887	18.6578	19.2855
010039	20.3406	21.3550	23.0339	21.6158
010040	20.0983	20.4486	20.7779	20.4475
010043	18.6640	17.3567	19.9012	18.6528
010044	24.0265	23.4575	25.8561	24.4502
010045	17.0417	18.7569	22.7713	19.2947
010046	18.9737	18.8741	19.6754	19.1973
010047	15.4190	13.4130	16.1695	14.9341
010049	15.5246	16.3349	16.2973	16.0600
010050	17.9830	20.3028	20.7398	19.6262
010051	11.8108	12.3280	14.3007	12.8040

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
010052	18.0653	19.8289	11.9019	15.6329
010053	15.5649	15.4156	17.3238	16.1023
010054	19.4955	20.9656	20.6382	20.3799
010055	18.8590	19.5667	18.9664	19.1295
010056	19.6577	20.5645	21.1104	20.4208
010058	16.9715	16.1265	17.7800	16.9302
010059	18.8020	19.1270	20.5534	19.4928
010061	14.5003	18.5320	17.0447	16.6905
010062	12.3259	16.9721	17.1786	15.3820
010064	19.5256	20.5650	22.2280	20.6930
010065	16.8752	17.0557	17.2698	17.0733
010066	13.1559	14.8904	14.8696	14.3351
010068	18.6925	23.4322	18.3308	20.2712
010069	14.7211	15.4497	17.0957	15.7416
010072	16.2339	16.5652	18.8807	17.1920
010073	14.1273	13.5594	14.9826	14.2068
010078	18.1363	18.5127	20.1447	18.9315
010079	17.0648	17.1612	20.7401	18.2252
010081	17.2996	*	*	17.2996
010083	18.0312	18.4282	19.8525	18.7454
010084	18.7769	19.8773	21.6522	20.1274
010085	19.9023	21.5860	22.5282	21.3942
010086	16.5711	16.8886	18.0122	17.1417
010087	18.0567	18.7915	19.7620	18.8065
010089	17.7800	19.5241	19.5783	18.9652
010090	18.9445	19.5635	20.0287	19.5086
010091	17.0799	17.1775	17.4672	17.2432
010092	17.8144	18.5478	19.9351	18.7658
010095	12.2597	12.3064	12.5243	12.3676
010097	12.7286	14.2675	15.1593	14.0568
010098	14.0300	15.5763	15.1629	14.9158
010099	15.5619	15.9232	16.3307	15.9423
010100	17.9430	18.3755	19.8146	18.7658
010101	14.4625	18.9525	19.0718	17.2612
010102	13.8136	15.7777	16.4636	15.3148
010103	17.7242	22.0802	22.5709	20.6405
010104	16.8457	21.9457	20.9391	19.7211
010108	19.4617	19.1596	20.7787	19.7956
010109	14.6752	15.9627	18.2235	16.2157
010110	15.8283	15.5817	16.0015	15.8256
010112	16.8271	15.6041	17.9243	16.7545
010113	16.8936	18.2774	19.4106	18.1836
010114	17.0760	19.3772	20.1763	18.8237
010115	14.2261	15.3510	15.7873	15.0923
010118	17.0834	17.4620	19.5302	17.9294
010119	19.3942	19.5163	20.5245	19.8190
010120	18.2567	18.9975	19.4369	18.8719
010121	14.5262	15.2345	17.1640	15.7079
010123	19.2140	*	*	19.2141
010124	16.7465	*	*	16.7465
010125	16.0136	16.5117	16.8622	16.4618
010126	19.1065	19.5933	19.9647	19.5751
010127	18.2786	*	*	18.2786
010128	14.4322	16.6899	14.7646	15.2637
010129	16.1733	16.7609	16.4904	16.4644
010130	19.5573	17.4614	18.7190	18.5367
010131	20.1883	19.0492	22.9969	20.8110
010134	19.9856	18.5179	17.7717	18.7919
010137	20.5828	21.3573	28.9402	23.2122
010138	14.5254	14.1369	14.2024	14.2898
010139	20.4331	20.5708	22.8390	21.2553
010143	17.6212	18.9084	20.5639	19.0433
010144	18.2040	18.8272	19.1497	18.7345
010145	20.5895	20.8157	22.1394	21.2084

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
010146	19.1415	18.3666	21.3083	19.5948
010148	15.8349	18.4591	17.6830	17.3825
010149	18.0156	19.0199	21.0086	19.3661
010150	18.9359	19.4819	21.2360	19.9132
010152	18.7677	19.8990	21.6038	20.0519
010155	15.0689	13.6136	*	14.4394
010157	*	17.7372	19.6977	18.7304
010158	18.3957	18.6052	18.5464	18.5206
010159	*	19.3950	*	19.3950
020001	28.0394	28.6530	30.1452	28.9867
020002	25.1987	28.2759	*	26.6688
020004	25.4679	29.2351	27.3516	27.2833
020005	29.2378	35.0860	32.7936	32.3866
020006	28.1417	33.0843	31.2673	30.7745
020007	32.3852	27.7269	*	29.7080
020008	30.8691	31.8878	33.4543	32.1364
020009	18.4660	18.5594	*	18.5119
020010	22.7559	23.7275	20.7928	22.3051
020011	28.0658	27.5062	*	27.7745
020012	25.5320	26.7586	27.9955	26.7886
020013	28.1557	29.5646	30.6424	29.4993
020014	24.5875	27.7870	29.6806	27.4656
020017	28.0572	28.8752	30.3017	29.1234
020024	25.3205	25.5933	28.0930	26.3977
020025	20.2583	29.4375	*	24.0587
030001	21.7869	22.8996	25.7513	23.3305
030002	21.8375	23.1450	25.6038	23.5516
030003	22.6804	23.9849	22.1436	22.9249
030004	15.5478	13.8452	*	14.6087
030006	20.0273	20.5019	23.2881	21.1483
030007	21.5169	22.2473	26.1551	23.4298
030008	22.2190	*	*	22.2190
030009	18.7557	19.1258	19.9131	19.2261
030010	19.5123	19.8496	20.7204	20.0003
030011	19.4310	19.8141	21.0028	20.0690
030012	20.6585	21.1099	24.2366	22.1509
030013	20.0535	19.9517	21.9766	20.7166
030014	19.7966	20.3017	23.3663	21.1589
030016	19.4785	22.2526	24.3380	22.1886
030017	21.7938	23.1702	21.8792	22.2509
030018	20.8980	21.8067	24.9216	22.5811
030019	21.2540	22.0341	23.2973	22.2278
030022	19.5794	22.3351	24.9941	22.3479
030023	24.1678	25.4626	28.6628	26.2700
030024	23.6009	23.7663	26.7641	24.7020
030025	11.9894	20.2690	*	15.6341
030027	17.6555	18.5500	19.4583	18.5927
030030	21.6932	23.1280	25.2425	23.1970
030033	20.2820	20.3034	26.3814	22.2735
030034	20.8689	19.5578	*	20.1515
030035	20.0226	20.5339	*	20.2741
030036	21.6371	22.2690	24.9432	23.0233
030037	23.7615	23.7325	23.0542	23.5162
030038	22.9822	23.4477	25.2632	23.9087
030040	19.7636	19.3706	21.2717	20.1331
030041	18.8717	18.4750	*	18.6831
030043	20.5598	20.5653	23.5172	21.6042
030044	17.6575	18.6781	21.9503	19.2464
030047	21.4412	22.7385	*	22.1035
030049	19.3580	19.7315	*	19.5288
030054	15.0657	15.7973	*	15.4443
030055	20.2991	20.8373	22.8612	21.3919
030059	22.6279	27.3929	*	24.8227
030060	18.6313	19.5021	21.7685	19.9508

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
030061	19.9047	21.1013	22.9706	21.3676
030062	18.7172	19.2670	21.1639	19.7478
030064	20.3837	21.6435	22.8009	21.6120
030065	20.7838	22.2846	24.6064	22.6068
030067	17.2778	17.6414	18.4004	17.7581
030068	17.7208	18.9718	19.7097	18.8803
030069	21.0936	23.4902	24.5432	23.0752
030080	20.6581	21.2299	22.8953	21.6643
030083	23.5229	23.5049	24.3273	23.8162
030085	20.8690	21.6542	21.8196	21.4875
030087	21.9465	23.1339	25.6351	23.5333
030088	20.5340	21.4491	23.5761	21.9185
030089	20.9516	22.0850	24.5055	22.5911
030092	21.8308	19.6625	24.0515	21.9130
030093	20.4314	21.7195	23.2485	21.9062
030094	22.8123	21.8049	24.5992	23.0301
030095	13.7664	20.5222	*	16.1313
030099	18.2263	19.8092	20.3310	19.5882
030100	23.7609	23.5868	27.6299	25.3037
030101	19.2547	21.1029	23.7661	21.3217
030102	18.2413	21.5405	27.9419	22.5589
030103	*	28.9308	29.1105	29.0254
030104	*	32.8668	34.6026	33.8315
040001	16.9178	16.3882	18.7141	17.4255
040002	15.1107	16.1353	18.0776	16.4361
040003	15.5740	15.5186	16.3918	15.8349
040004	17.9034	19.0105	21.2335	19.4115
040005	11.1318	16.5465	*	13.6054
040007	18.6998	22.5319	23.3992	21.2518
040008	14.7985	20.2121	*	17.4031
040010	19.4913	19.8251	20.7114	20.0272
040011	16.0995	17.1337	18.8346	17.5256
040014	18.1434	19.3996	22.4970	19.9652
040015	15.5207	17.9602	18.8513	17.4824
040016	20.2321	19.8087	21.2198	20.4114
040017	15.4736	16.5648	17.7545	16.6023
040018	18.7463	18.8203	22.0408	19.7570
040019	23.4163	21.0465	21.1711	21.7572
040020	18.9844	17.6056	18.6419	18.3851
040021	19.6835	21.3321	23.5620	21.5681
040022	20.8281	19.2393	21.4194	20.3876
040024	17.6607	17.1507	17.5750	17.4623
040025	13.4705	14.8071	*	14.1228
040026	19.7924	21.0143	22.7699	21.2074
040027	17.4431	17.7161	19.3388	18.1973
040028	13.9946	15.2850	*	14.6625
040029	21.1370	22.5094	22.1882	21.9489
040030	11.2402	16.5488	*	13.2353
040032	13.2872	13.8013	16.2781	14.3506
040035	10.9569	11.0611	11.8237	11.2698
040036	20.2012	21.1066	21.6742	21.0202
040037	14.0941	15.4984	*	14.7246
040039	14.7177	15.2811	15.9673	15.3471
040040	19.1984	19.6704	*	19.4380
040041	16.4624	17.7783	20.4646	18.2091
040042	15.2057	16.6875	16.2285	16.0552
040044	13.3501	17.1869	*	15.1931
040045	16.2469	16.6648	19.5573	17.3603
040047	17.5336	18.6295	21.6323	19.2840
040050	14.0036	14.2087	15.1428	14.4627
040051	16.6039	18.2152	17.6964	17.5006
040053	15.0219	14.1508	19.2586	15.8377
040054	14.2577	16.5217	16.5573	15.7676
040055	18.0414	17.4236	19.7335	18.3506

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
040058	16.4278	19.3124	*	17.6419
040060	17.9805	15.4220	*	16.5871
040062	17.8902	19.4255	21.9336	19.7228
040064	11.5029	13.3479	*	12.3898
040066	19.7144	19.5619	21.7766	20.3116
040067	14.4741	15.0081	16.0516	15.1736
040069	17.0026	18.9754	20.5968	18.8667
040070	16.9700	18.6066	*	17.8568
040071	17.6144	18.4956	19.4324	18.4911
040072	17.4960	21.3320	19.3079	19.3210
040074	18.7542	20.8465	22.0800	20.5126
040075	14.0975	14.6681	15.7875	14.8313
040076	20.5840	21.8010	23.5948	21.9901
040077	13.9114	14.7230	16.7832	15.1038
040078	18.5821	19.6363	21.4854	19.9519
040080	19.3707	22.8153	18.4470	20.0143
040081	11.1332	12.4796	13.2797	12.2892
040082	15.1331	16.4840	*	15.7978
040084	17.7295	18.3410	20.1163	18.7753
040085	16.5216	14.1782	15.5811	15.3778
040088	17.1624	18.3159	20.0032	18.4492
040090	19.0824	16.6619	*	17.8591
040091	20.1378	20.2904	20.6688	20.3813
040093	13.9741	14.7132	*	14.3380
040100	15.6833	17.0271	17.8889	16.9700
040105	14.3896	14.8936	15.4697	14.9508
040106	18.1341	19.0936	*	18.6698
040107	17.8628	20.6852	17.6695	18.7676
040109	16.6278	16.2496	17.1706	16.6926
040114	21.1231	21.3826	21.6849	21.4003
040118	18.2123	19.6248	21.7913	19.9047
040119	16.9407	18.6028	19.9013	18.5380
040124	19.2889	*	*	19.2889
040126	11.6517	16.3391	13.3832	13.6732
040132	10.3875	24.6941	29.2337	17.5163
040134	19.0185	22.1291	24.4646	22.0021
040135	23.0084	*	*	23.0082
040136	*	21.4139	*	21.4138
040137	*	*	24.7813	24.7813
040138	*	*	22.3523	22.3523
050002	36.9630	30.2629	30.9729	32.2632
050006	18.2061	22.4890	25.4604	22.0357
050007	30.8676	31.6270	34.1406	32.1656
050008	26.3682	28.2021	32.4067	28.7024
050009	28.4734	28.3021	30.2740	29.0378
050013	28.0569	27.2552	29.8401	28.3575
050014	23.6745	25.1664	27.7646	25.5586
050015	27.7731	28.2204	27.5652	27.8552
050016	21.2045	22.7014	25.5508	23.2128
050017	25.6178	25.7403	28.4911	26.6066
050018	15.2903	16.5909	17.9621	16.7254
050022	24.5254	26.2574	28.1312	26.3930
050024	22.4274	21.5230	25.1425	23.0352
050025	24.8245	26.0161	29.8262	26.8932
050026	23.1904	23.4651	24.2564	23.6605
050028	17.6138	17.9421	18.7866	18.1131
050029	24.6839	26.6783	30.2538	27.1782
050030	21.5621	21.8639	21.9251	21.7896
050032	24.3598	24.4176	28.8046	25.7369
050033	32.0179	31.1768	*	31.6954
050036	21.8239	24.8017	25.3885	24.0459
050038	29.9698	32.1757	36.1619	32.5954
050039	22.8288	23.8478	26.8993	24.5711
050040	30.2607	30.1153	30.7426	30.3810

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
050042	24.5260	25.4903	27.6765	25.9508
050043	33.8255	38.8988	37.3217	36.6006
050045	21.1474	21.0356	22.1691	21.4359
050046	25.2005	25.3067	25.5490	25.3505
050047	29.9580	31.6959	34.4427	32.0849
050051	18.7809	17.9266	*	18.3161
050054	22.0982	19.2395	21.3495	20.8463
050055	29.2730	32.0923	36.1182	32.3322
050056	23.8396	24.7994	27.1458	25.3250
050057	20.7420	22.2584	24.2758	22.4840
050058	23.3009	24.8366	25.9389	24.7179
050060	20.5450	21.9971	22.9491	22.0213
050061	24.5488	23.9906	25.3042	24.6040
050063	25.7593	25.5798	28.6093	26.6450
050065	24.6290	27.6677	28.8369	27.0472
050066	16.1649	26.3920	*	19.8363
050067	25.8857	22.1250	27.8867	24.8006
050068	19.3615	19.2325	21.9031	19.5920
050069	24.6153	25.8560	27.2744	25.8994
050070	34.0721	36.4136	39.5178	36.7625
050071	34.4367	36.4834	40.1344	37.0182
050072	39.7321	36.1146	39.2529	38.3306
050073	32.8555	36.1054	38.6763	35.9238
050075	33.7160	37.8104	40.2265	37.4233
050076	33.9752	37.0415	40.8075	37.1398
050077	24.1404	25.3481	27.1234	25.5664
050078	24.3150	23.0613	24.1091	23.8126
050079	30.0167	36.5455	38.8981	35.1106
050082	23.7617	23.7718	27.5022	24.9190
050084	25.4517	25.1155	26.0607	25.5652
050088	24.9641	25.2282	27.1103	25.7384
050089	22.8450	23.4120	24.7857	23.6599
050090	24.6070	25.4545	27.4193	25.8348
050091	23.7713	26.6463	29.2522	26.4442
050092	17.1211	17.1883	*	17.1549
050093	25.6647	27.2048	29.2642	27.4393
050095	30.4847	29.2226	*	29.7245
050096	22.7394	22.5034	23.0526	22.7555
050097	22.5991	24.2548	24.6726	23.8591
050099	25.3722	26.2363	27.1282	26.2763
050100	25.2031	23.9877	25.6798	24.9469
050101	31.8957	33.1232	32.9866	32.6718
050102	24.0014	22.6741	25.5763	24.0204
050103	25.4133	23.5946	27.8079	25.5235
050104	26.9726	27.3260	26.1592	26.8000
050107	22.2019	22.2746	22.6900	22.4227
050108	25.1758	25.6983	28.5244	26.4357
050110	19.9589	21.3399	21.9296	21.1132
050111	20.7897	21.0813	23.7715	21.9292
050112	26.8182	29.1268	31.9797	29.3043
050113	28.5224	32.4493	32.6932	31.3678
050114	26.6757	27.6486	28.1938	27.5328
050115	23.0182	24.3748	24.1481	23.8529
050116	24.9196	27.0331	28.2924	26.6320
050117	22.2123	23.0697	24.7555	23.3917
050118	23.7129	24.9094	28.9358	25.8815
050121	18.7272	18.8430	25.0858	20.5240
050122	26.9546	26.9048	29.1534	27.6723
050124	24.5069	23.9379	23.0843	23.8087
050125	32.0230	33.3290	35.6572	33.6339
050126	24.6752	26.9718	27.7126	26.4996
050127	20.9027	20.5928	21.8719	21.1212
050128	26.6132	26.2519	28.7668	27.1805
050129	24.0108	23.7432	25.2780	24.3452

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
050131	32.5462	33.0980	37.7844	34.4656
050132	24.0173	24.1583	27.8805	25.3842
050133	23.2093	23.9479	25.1948	24.1576
050135	24.7157	23.2750	*	23.9658
050136	24.7280	28.0754	31.6146	27.9406
050137	32.9192	33.7489	35.0503	33.8818
050138	38.1584	40.8912	43.0858	40.6538
050139	31.4984	35.1492	33.8749	33.3407
050140	32.7609	36.7096	36.1708	35.1295
050144	27.4069	29.8983	30.3678	29.2851
050145	34.5185	37.5003	37.5722	36.5610
050148	20.0971	21.1622	17.3908	19.5271
050149	26.8674	25.8880	28.0501	26.8823
050150	24.6596	25.9494	26.7728	25.8255
050152	33.3305	34.5096	34.5694	34.1486
050153	32.3389	33.3333	34.5870	33.4428
050155	25.3354	23.2118	21.2069	23.1002
050158	28.6071	28.9764	30.6598	29.4328
050159	22.5313	26.6139	27.4051	24.9053
050167	21.8796	21.9596	23.2022	22.3516
050168	25.1937	27.1971	27.5313	26.5678
050169	24.8407	24.7737	25.6896	25.1108
050170	24.3654	27.7693	29.4075	26.9505
050172	19.6120	22.0400	24.5849	22.0737
050173	24.8694	*	27.7070	26.3141
050174	30.2775	31.6888	33.5204	31.9008
050175	24.7548	26.0146	26.9627	25.9076
050177	21.1396	22.5039	23.1575	22.2317
050179	23.8868	22.8941	23.0583	23.2574
050180	33.3257	34.0900	36.9905	34.8613
050186	23.6288	25.0791	27.6638	25.5202
050188	28.2364	30.6007	34.1503	31.0517
050189	27.4071	28.3295	32.3514	29.2097
050191	25.3516	29.4162	28.1689	27.6587
050192	14.1996	19.0400	19.5327	17.3659
050193	24.9444	25.5294	24.6307	25.0325
050194	29.5678	28.5389	28.1413	28.7132
050195	36.9068	39.1617	42.1735	39.4471
050196	18.2411	19.4304	20.7257	19.5002
050197	32.4030	34.6878	*	33.4489
050204	22.7099	23.0192	24.9458	23.5600
050205	24.1691	24.1275	25.2841	24.5169
050207	22.9941	23.7774	25.1863	23.9991
050211	31.7280	33.2481	34.3396	33.0898
050213	21.4951	*	*	21.4951
050214	24.0276	21.1480	22.4773	22.4934
050215	35.0459	31.6895	36.6063	34.4197
050217	20.2042	21.3026	22.2055	21.2565
050219	21.2458	21.7637	21.8649	21.6598
050222	23.3563	23.0670	25.2922	23.9448
050224	23.5101	24.8431	26.2108	24.9081
050225	21.6820	22.0981	25.0218	22.9304
050226	24.4443	26.1959	26.0826	25.7144
050228	34.2596	36.0632	38.6751	36.2629
050230	26.6291	26.7963	30.0380	27.8217
050231	26.7321	27.4697	27.8896	27.3721
050232	24.5245	25.8640	25.3439	25.2423
050234	24.6126	25.0104	24.0754	24.5126
050235	27.0922	26.0323	27.2838	26.7962
050236	25.9458	27.7406	27.0687	26.9151
050238	24.5823	25.1796	26.0312	25.2541
050239	23.2711	24.9469	27.0866	25.1260
050240	26.7620	28.8910	32.8542	29.7204
050241	29.8345	*	*	29.8345

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salanes and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
050242	32.0829	33.5646	34.4412	33.3749
050243	26.4627	26.0256	28.5626	27.0708
050245	23.2716	24.6092	25.7585	24.5579
050248	27.6457	28.4413	29.1192	28.4523
050251	23.6360	27.9531	24.4552	25.2214
050253	16.7540	21.0399	23.9247	20.2377
050254	20.1176	22.3414	23.3358	21.9420
050256	23.4835	25.1104	26.8618	25.3035
050257	17.2596	15.6379	17.4909	16.8191
050260	27.4234	30.1623	*	28.8055
050261	20.1040	19.4649	21.4693	20.3613
050262	29.5550	30.6866	33.0425	31.0973
050264	36.0331	33.2270	37.4741	35.5250
050267	26.0401	27.8393	26.6558	26.7955
050270	25.3757	26.4092	27.9871	26.6878
050272	23.0587	23.3443	24.0921	23.5076
050276	33.3302	34.0633	34.7422	34.0318
050277	26.0822	23.6065	35.6323	28.8604
050278	23.9289	24.9699	26.0331	24.9976
050279	21.8949	22.2776	23.5145	22.5756
050280	25.6651	26.3392	28.5504	26.8526
050281	24.2251	25.2699	25.7832	25.1246
050282	25.4428	26.4698	*	25.9126
050283	31.7669	32.3270	35.1831	33.1816
050286	19.4241	20.6191	19.7351	19.9268
050289	30.4750	32.2125	34.9646	32.5479
050290	29.6796	31.5000	31.9510	31.0288
050291	29.4029	30.9334	28.3451	29.5051
050292	20.8410	21.4357	27.6114	23.1188
050293	24.1875	17.1935	*	20.0134
050295	21.7883	25.4405	25.4332	24.2106
050296	28.3906	30.0984	33.5948	30.6658
050298	23.2006	22.4000	26.1707	23.8598
050299	25.5035	24.6751	26.9870	25.7710
050300	25.9228	26.0298	26.3182	26.1028
050301	21.1403	24.7987	25.7167	23.8557
050305	36.7908	36.6981	38.7597	37.4248
050308	28.9284	30.3887	31.6790	30.3648
050309	25.3515	25.5221	25.5367	25.4704
050312	26.0015	26.0172	28.2557	26.8194
050313	25.6827	28.9126	25.3372	26.5450
050315	22.7359	22.5906	23.6638	23.0139
050320	32.4809	31.6571	31.4570	31.8291
050324	25.3694	26.8313	28.4931	27.0063
050325	23.6327	22.6353	26.6326	24.1679
050327	25.6450	31.1527	33.0549	29.6283
050329	21.6984	24.2134	26.6341	24.1720
050331	25.0230	25.2110	21.5193	23.7909
050333	19.1449	14.1808	15.6929	16.0637
050334	34.2557	34.3956	37.2336	35.3386
050335	22.9926	22.9335	24.9274	23.6376
050336	21.3402	22.0203	23.2687	22.1975
050342	20.8255	22.4510	23.0282	22.0864
050348	25.1085	29.3364	28.9864	27.7954
050349	15.0667	15.4536	15.6042	15.3828
050350	26.4161	27.2368	27.2573	26.9829
050351	24.8121	25.2436	27.4042	25.8956
050352	26.4262	27.7489	32.6572	28.8606
050353	23.2699	24.1009	25.4309	24.2678
050355	21.0969	41.4710	*	27.5904
050357	24.5345	24.3540	25.2126	24.7119
050359	21.7548	19.7653	22.9175	21.4664
050360	31.7583	33.3592	35.9032	33.7039
050366	19.6823	22.0442	23.4696	21.8093

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
050367	30.7328	31.7487	32.6760	31.7233
050369	26.2234	26.6627	28.0909	27.0127
050373	27.8275	29.9749	30.7301	29.4528
050376	28.0990	28.4026	30.3530	28.9347
050377	17.0012	11.6463	14.3889	14.7469
050378	26.9101	27.8389	30.4937	28.3969
050379	18.4278	24.2408	27.5150	22.7721
050380	31.9578	31.5962	35.8014	33.0886
050382	25.9244	26.3968	26.8949	26.4027
050385	*	27.1692	*	27.1692
050388	22.0122	17.6762	*	19.7924
050390	24.2700	25.8556	25.7881	25.2656
050391	20.0615	19.0832	20.2887	19.7798
050392	22.9430	24.9003	21.8139	23.1475
050393	24.1981	25.4028	26.4918	25.4171
050394	23.1526	23.1641	25.1869	23.8865
050396	25.3729	25.7580	28.4161	26.5200
050397	20.6397	23.3212	24.7280	22.8187
050401	18.4593	*	*	18.4593
050404	15.9839	16.4845	*	16.2457
050406	17.8596	21.5282	*	19.5336
050407	30.8346	32.0753	33.2894	32.0587
050410	19.8508	17.1718	19.8436	18.9151
050411	33.1943	33.1718	35.5207	33.9577
050414	25.9723	24.5471	28.2381	26.2718
050417	23.3005	23.3862	24.5360	23.7554
050419	23.4936	25.1449	26.4357	25.0021
050420	23.5438	26.4201	26.7537	25.5652
050423	21.3552	24.8113	26.5188	24.3189
050424	24.0727	25.9378	27.5273	25.9000
050425	35.3712	33.7276	37.7347	35.6925
050426	29.0120	26.7941	30.9610	28.8680
050427	16.4330	31.4154	*	23.2879
050430	21.2275	25.2322	31.5171	24.6961
050432	24.5630	26.0686	28.1105	26.3124
050433	18.9021	17.7980	14.3846	17.2267
050434	*	24.0017	*	24.0017
050435	23.3426	22.5428	22.6618	22.8189
050438	23.2583	25.3763	26.5535	25.0490
050440	22.5400	25.4767	*	23.9820
050441	31.8774	33.4696	36.6680	33.8900
050443	17.2875	16.8897	*	17.0772
050444	22.4530	22.6469	23.5299	22.8500
050446	22.3422	20.3611	*	21.2838
050447	18.9851	24.4339	25.7274	23.3050
050448	21.7718	22.6612	26.6967	23.5469
050449	23.4614	*	*	23.4614
050454	30.0792	30.3063	34.4813	31.6390
050455	19.8577	20.5575	24.1694	21.4327
050456	18.1585	17.5846	23.7594	19.3948
050457	32.1910	34.2116	37.4570	34.4455
050464	25.7710	25.8092	31.4768	27.7900
050468	22.2926	22.9771	17.8128	20.5312
050469	24.5205	*	25.7995	25.2381
050470	16.0805	15.7765	21.6981	17.5845
050471	27.1597	29.4705	32.3570	29.6121
050476	24.0253	25.9458	26.0482	25.3722
050477	27.5819	30.8781	32.1676	30.2255
050478	26.3306	28.1829	28.3893	27.6685
050481	27.7973	28.5320	30.3890	28.9165
050482	16.0114	21.6091	*	18.2916
050485	24.6906	25.2723	27.1437	25.6725
050488	31.7481	33.8291	37.2438	34.4285
050491	27.4600	27.7412	29.2987	28.1988

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
050492	20.5030	23.4977	23.7383	22.6518
050494	29.1296	30.2875	30.8706	30.1345
050496	34.9704	32.7474	35.7115	34.4409
050497	15.4115	*	14.4481	14.9306
050498	26.1716	27.6099	28.2196	27.3481
050502	25.3701	27.2724	28.0102	26.8843
050503	23.3745	25.7668	26.7924	25.3905
050506	25.0333	27.1555	30.4731	27.5747
050510	33.7481	36.2548	39.6005	36.5514
050512	34.4368	36.0785	39.0767	36.6044
050515	33.7321	37.3440	36.3131	35.7452
050516	26.1969	25.3450	30.0985	27.0287
050517	22.0985	23.6067	23.4131	22.9981
050522	36.2127	37.0295	38.9158	36.9675
050523	31.2522	32.1272	33.8053	32.4311
050526	26.4014	26.8814	29.0004	27.4593
050528	18.9155	21.1741	23.9177	21.3604
050531	21.3948	*	22.7311	22.0660
050534	24.0001	24.4038	26.7941	25.0949
050535	26.8511	27.7626	29.7904	28.1965
050537	24.0354	26.2342	25.1292	25.1574
050539	23.3846	23.7778	25.3328	24.1813
050541	36.6149	37.0551	41.1980	38.3379
050542	17.7737	21.8129	21.2846	19.9901
050543	21.6795	22.4134	24.0333	22.7542
050545	31.7280	33.6302	33.4322	32.9305
050546	38.8087	39.4266	42.8053	40.3552
050547	37.7681	37.7633	40.6483	38.6518
050548	29.8516	30.3336	32.3944	30.8485
050549	28.9615	30.0948	31.8525	30.3559
050550	25.6588	26.5515	29.0938	27.1362
050551	24.8084	26.1042	28.6834	26.5676
050552	20.3239	20.6068	24.9755	21.7907
050557	22.2562	23.8340	25.8719	24.0562
050559	24.7866	26.3799	25.3299	25.4887
050561	33.4423	34.2065	35.9611	34.5098
050564	24.2091	*	*	24.2090
050565	20.8349	*	*	20.8349
050566	22.3448	21.7712	*	22.0475
050567	25.0787	26.2588	27.8475	26.4308
050568	20.5376	21.9313	20.8324	21.0880
050569	27.3429	27.3294	27.7955	27.4880
050570	25.8619	26.8965	29.9470	27.6972
050571	24.0154	26.2226	29.1716	26.5115
050573	25.6589	25.9380	27.2328	26.2959
050575	20.7090	27.8579	23.1358	23.6994
050577	23.5487	25.2861	26.4806	25.0050
050578	28.9009	32.0554	30.4934	30.4285
050579	29.9348	32.0245	34.9794	32.4397
050580	24.6962	22.7522	27.2431	24.7685
050581	24.9807	26.0580	28.9696	26.6705
050583	25.8800	26.2664	30.0427	27.5806
050584	19.5805	24.5294	24.5544	22.7601
050585	24.2824	26.4446	26.0595	25.5822
050586	23.1850	*	25.7172	24.5880
050588	24.5472	27.0506	30.5453	27.6351
050589	23.8880	23.7918	27.9845	25.1893
050590	24.4797	25.1100	27.0620	25.5289
050591	25.0209	26.7662	28.6151	26.8393
050592	22.1174	23.8267	25.9545	23.8223
050594	27.7002	28.7415	30.8029	29.1185
050597	23.3280	23.1209	24.5542	23.6763
050598	23.9202	25.1622	24.6875	24.6305
050599	26.0892	26.3782	27.7684	26.7559

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
050601	29.7417	29.7734	32.3033	30.6813
050603	21.7031	24.9032	25.0996	23.8892
050604	35.4034	36.4669	42.0018	37.9795
050608	18.1664	20.9171	20.7954	19.9529
050609	33.5028	34.8949	37.4563	35.1739
050613	30.2413	34.9768	*	32.5464
050615	27.5682	25.8698	29.4322	27.6985
050616	24.9843	25.0016	23.1748	24.3242
050618	21.4895	22.3548	22.3481	22.1206
050623	27.5832	28.6475	29.9553	28.6716
050624	26.4659	22.4030	23.3492	23.8718
050625	27.5816	29.3665	30.8013	29.3364
050630	24.2120	25.2915	27.7052	25.7731
050633	25.4283	27.8165	30.2883	27.9289
050636	23.5257	25.0214	23.2573	23.9123
050638	18.2159	15.6375	*	16.7440
050641	17.1258	17.9379	21.5030	19.2373
050644	22.1489	*	28.4054	25.2877
050662	35.0989	38.9592	40.9243	38.2885
050663	24.9110	22.7770	22.9161	23.2174
050667	27.5045	26.9236	31.4906	28.5908
050668	61.7751	57.8627	55.9594	58.7058
050670	24.6101	24.1626	*	24.3757
050674	32.4807	33.7845	36.8871	34.4747
050676	20.2087	16.3948	*	18.1923
050677	33.6070	34.0936	36.2702	34.6349
050678	22.7756	25.2143	27.1337	25.0885
050680	31.4839	31.9166	32.7065	32.0475
050682	17.3566	19.8107	23.0983	19.8665
050684	23.3697	24.2792	23.7443	23.7986
050685	35.1307	30.4194	*	32.6498
050686	33.4420	34.8278	37.3032	35.1892
050688	31.0648	34.9936	36.5555	34.8315
050689	30.9399	34.0571	37.5449	34.4378
050690	34.8112	36.7516	41.1385	37.6299
050693	25.5662	29.1213	32.6638	29.3244
050694	23.5572	25.1964	25.8299	24.8850
050695	24.4301	26.2838	27.8742	26.2576
050696	28.3291	29.6685	29.9410	29.3284
050697	18.2338	24.1116	18.6962	20.0478
050698	*	24.9559	*	24.9559
050699	17.5296	23.4611	26.0909	21.8689
050701	24.3055	26.4901	28.4650	26.3518
050704	22.7618	25.6565	24.6072	24.3668
050707	27.8958	28.2637	27.7366	27.9699
050708	24.8647	24.5606	22.1605	23.8703
050709	19.4977	21.8770	22.7897	21.4220
050710	27.5828	30.5918	33.7204	30.7878
050713	16.8538	18.2822	19.0071	18.0075
050714	30.1925	30.3290	30.3262	30.2901
050717	28.7973	31.5021	33.0719	31.0905
050718	18.0940	22.5989	21.7835	21.3483
050719	23.0833	*	22.0997	22.4754
050720	25.8677	*	26.1941	26.0295
050723	*	32.0291	33.0797	32.5951
050724	*	*	23.7567	23.7567
050725	*	*	20.6592	20.6592
050726	*	*	25.8742	25.8742
060001	21.1819	21.4562	23.1548	21.9595
060003	20.4682	21.9043	23.0807	21.8505
060004	21.4496	22.9265	25.0037	23.2681
060006	20.0213	21.0003	21.8609	21.0085
060007	18.2977	19.3071	21.4244	19.6205
060008	18.4590	18.7097	19.8803	19.0217

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
060009	22.7164	23.9272	24.7920	23.8281
060010	23.6827	24.2735	25.8475	24.6131
060011	22.3458	22.2058	25.8919	23.4930
060012	19.4932	21.2980	22.6374	21.1159
060013	19.1256	23.5248	23.3954	22.3367
060014	24.3210	25.7701	27.0326	25.7458
060015	23.2469	23.6015	27.6338	24.8106
060016	20.2408	20.2361	22.9300	21.1421
060018	21.5083	21.8478	21.0581	21.4599
060020	18.8985	19.7348	20.9025	19.8893
060022	21.0830	22.8059	24.7928	22.9453
060023	21.5475	22.4731	24.3749	22.8346
060024	22.9185	24.3658	25.2409	24.2358
060027	22.0713	22.1717	25.1480	23.2185
060028	23.1792	24.2985	27.1303	24.8437
060029	18.2938	19.8498	19.7379	19.2937
060030	20.3452	21.2612	22.8309	21.5553
060031	22.5067	23.3995	23.8781	23.2637
060032	22.8123	24.7678	27.1783	24.9890
060033	16.0760	17.8514	16.7266	16.8791
060034	23.2816	24.3652	26.1602	24.6636
060036	18.5988	18.6521	19.4144	18.9130
060037	15.4513	15.7495	*	15.6040
060035	14.3249	16.6525	*	15.6518
060041	19.1263	19.5872	20.8745	19.8909
060042	20.8597	19.3967	*	19.9173
060043	13.4443	15.4073	19.1085	15.9780
060044	20.8673	21.3102	25.6112	23.4887
060046	22.2699	22.6819	*	22.4792
060047	17.1534	17.9173	*	17.5379
060049	23.0613	25.9592	25.3425	24.9252
060050	19.0832	*	20.4386	19.8467
060052	14.8729	16.0543	*	15.4475
060053	18.0232	19.4746	*	18.7228
060054	20.4160	19.7753	21.1281	20.4312
060056	18.1263	21.9586	*	20.1887
060057	25.4185	24.6599	24.3982	24.8074
060058	13.8539	16.4504	*	15.1564
060060	15.6018	19.4418	*	17.3849
060062	16.8640	17.1032	*	16.9796
060064	22.7797	28.8746	29.1806	26.8320
060065	24.5572	24.4554	29.2377	26.0841
060066	17.2537	17.5556	*	17.3996
060070	18.8960	19.2220	22.6894	20.3042
060071	17.4068	17.6452	20.1385	18.3916
060073	17.0846	18.4971	*	17.7673
060075	23.8724	25.0552	27.7835	25.5595
060076	20.3265	22.9426	23.6266	22.3373
060085	14.3409	10.9724	*	12.5324
060088	13.7174	20.7211	*	16.8131
060090	16.3760	16.5321	*	16.4540
060095	20.8937	21.9951	26.4167	23.1494
060100	23.9305	24.8116	28.0561	25.6542
060103	23.5083	24.4962	26.6863	24.9275
060104	21.1820	24.4248	26.7682	23.9805
060107	21.9221	*	*	21.9222
060108	*	19.1327	19.0011	19.0448
060109	*	27.3180	*	27.3180
060110	*	*	29.8561	29.8561
070001	26.3596	27.7441	29.9592	27.9941
070002	26.1768	26.6881	28.1101	26.9593
070003	27.5200	28.1721	29.8684	28.5356
070004	24.2567	25.4310	25.7207	25.1218
070005	26.9151	27.6733	29.8173	28.0976

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage** (3yrs)
070006	28.6413	33.6291	33.3814	32.0737
070007	26.3313	28.0875	29.0336	27.8511
070008	24.2971	25.1362	24.3907	24.6106
070009	24.1871	24.9408	25.6072	24.9173
070010	29.2194	28.3168	30.4192	29.3329
070011	23.0883	24.8206	24.9457	24.2870
070012	28.8067	37.5917	34.9099	33.4527
070015	28.1204	29.2693	30.0614	29.1548
070016	24.4633	28.4833	29.7505	27.3887
070017	26.0424	27.5515	29.2978	27.4590
070018	30.6864	32.6301	33.8654	32.4296
070019	24.9249	26.2348	27.9838	26.4038
070020	25.9964	26.6203	28.4084	27.0418
070021	26.3043	29.4596	30.3254	28.7921
070022	26.9111	27.2423	29.7376	27.9567
070024	24.8948	26.3544	28.3460	26.5801
070025	25.4345	27.3592	28.3017	27.0096
070027	26.8450	25.9279	36.9699	29.0675
070028	25.7492	26.7286	28.2078	26.9036
070029	23.9682	23.8427	25.8107	24.5347
070030	22.1578	*	*	22.1578
070031	24.1198	25.6347	25.5880	25.0884
070033	31.4736	34.1591	34.3904	33.3381
070034	29.4916	30.0744	32.8074	30.7406
070035	24.1423	24.5996	26.1693	24.9143
070036	29.9470	31.2961	35.0701	32.0463
070038	*	26.3126	*	26.3126
070039	22.3356	*	32.6059	29.3416
080001	24.8833	26.8887	28.0859	26.6310
080002	20.1965	20.9385	23.7309	21.6786
080003	23.1275	24.8200	24.8199	24.2173
080004	22.9706	21.7344	24.2251	22.9785
080006	22.6671	20.9399	23.6838	22.4133
080007	21.3746	21.5415	23.4964	22.1696
090001	21.5751	23.0365	29.5432	24.4308
090002	21.5726	20.6550	23.5159	21.8418
090003	23.1268	27.1087	22.7014	24.0752
090004	25.5054	25.9717	28.7417	26.8011
090005	26.3074	26.8690	28.6142	27.2997
090006	22.0957	22.9658	23.7241	22.9485
090007	29.2840	24.6668	25.8430	26.6042
090008	25.2708	*	19.3212	22.1162
090010	23.6616	25.9373	*	24.7397
090011	26.6349	27.6038	31.7710	28.7553
100001	20.2157	22.0101	22.6150	21.6357
100002	21.0222	21.5772	22.5982	21.7602
100004	15.4149	16.1638	15.6306	15.7493
100006	21.2293	21.6922	23.3745	22.1765
100007	22.1590	22.5317	24.3305	23.0600
100008	20.8381	21.6416	22.7706	21.7804
100009	22.1741	22.6370	24.7811	23.2097
100010	23.0637	23.9582	25.5614	24.1330
100012	20.4659	22.0244	24.2602	22.3053
100014	19.5770	21.9875	21.7566	21.0988
100015	18.0654	18.9383	22.1272	19.7135
100017	19.8655	20.1417	21.1905	20.4341
100018	21.6388	22.6587	24.1885	22.8575
100019	23.5462	25.8297	24.2888	24.5531
100020	20.7816	21.7421	23.5303	22.0615
100022	26.5695	27.4235	27.9072	27.2953
100023	19.1787	20.2034	21.8111	20.3897
100024	22.1332	22.9872	24.4070	23.2018
100025	19.4529	20.1360	21.2568	20.2991
100026	20.9461	21.3742	20.1603	20.7988

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage** (3yrs)
100027	14.7916	20.5889	23.8982	18.2776
100028	19.3371	20.3751	21.8879	20.5632
100029	20.8950	22.2553	24.6814	22.4835
100030	20.5952	19.5604	21.8567	20.7315
100032	19.7451	20.6543	21.6415	20.6364
100034	19.5282	20.0099	23.1111	20.8438
100035	23.8117	21.3519	22.6349	22.5792
100038	24.5864	24.9548	25.7948	25.1579
100039	21.7861	23.3111	23.8060	22.9806
100040	18.6321	19.5154	22.4679	20.1990
100043	18.8206	20.7688	21.7738	20.4584
100044	22.7236	22.9474	23.9952	23.2248
100045	21.0228	22.8096	25.2285	22.9374
100046	21.3028	23.2027	24.2746	22.8753
100047	20.6068	21.4971	24.3522	22.2329
100048	15.7790	17.3663	17.5533	16.9309
100049	19.1025	20.9490	21.8679	20.6413
100050	17.9039	17.8960	20.0405	18.6106
100051	17.9453	19.3258	20.0231	19.1698
100052	18.1780	19.6620	20.5916	19.4656
100053	19.6800	21.6634	23.7837	21.6611
100054	21.1518	20.9612	22.0352	21.4046
100055	18.8760	19.1324	19.6350	19.2002
100056	21.8506	23.1737	25.9245	23.6383
100057	19.5319	22.3406	24.6417	22.0507
100060	23.5997	*	*	23.5997
100061	22.9176	24.5277	26.1273	24.5205
100062	21.4424	21.9054	24.9807	22.7317
100063	18.4642	19.2510	21.5620	19.9030
100067	18.4851	19.2168	23.8892	20.4263
100068	19.8308	19.9648	23.7840	21.3340
100069	17.3666	18.5789	19.6037	18.6041
100070	20.0381	20.9592	23.5524	21.5325
100071	17.7234	20.7461	21.7675	20.3419
100072	20.5968	22.0317	23.5362	22.1454
100073	22.2812	22.2425	23.5843	22.7262
100075	19.4480	20.4604	22.3890	20.7468
100076	17.8612	18.4815	19.6444	18.6617
100077	19.0640	20.9482	22.3755	20.8572
100078	19.2891	16.6003	*	17.8844
100080	22.7153	22.9720	22.8704	22.8570
100081	15.4253	16.5149	16.8087	16.2486
100084	22.7009	24.5682	24.1122	23.8713
100086	23.3718	24.3067	25.2375	24.3294
100087	23.6562	22.1764	26.5915	24.1164
100088	20.5566	20.6667	23.6270	21.6062
100090	19.7695	21.0431	22.5894	21.1520
100092	20.1760	21.4601	25.4630	22.1148
100093	16.8422	18.7153	20.2949	18.6499
100098	20.8315	21.1723	20.0639	20.7185
100099	15.7591	16.5271	18.5287	16.8485
100102	19.7673	19.0193	21.6772	20.1082
100103	18.7844	19.1222	20.3633	19.4145
100105	21.8268	22.7793	24.5464	23.0784
100106	17.4958	21.4342	20.3417	19.7704
100107	20.0719	21.7553	23.3789	21.7356
100108	20.1125	18.4127	14.8039	17.4685
100109	20.8370	20.6007	23.0779	21.5126
100110	20.1853	22.8127	24.4533	22.5939
100112	15.2128	16.2109	*	15.7583
100113	21.3489	23.3380	24.3614	22.9690
100114	22.8178	22.5326	25.3699	23.4663
100117	20.6962	21.3085	23.9133	21.9869
100118	20.7323	21.7067	24.1105	22.1068

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
100121	18.5842	19.9033	23.1100	20.5301
100122	19.2643	24.9765	24.1820	22.6871
100124	20.4022	20.0867	24.3048	21.5323
100125	19.6097	20.3232	22.4185	20.8356
100126	19.3103	21.4349	21.7977	20.8062
100127	19.2122	20.5153	21.0153	20.2670
100128	22.8826	23.5835	24.4104	23.6230
100130	20.0947	21.0023	20.2478	20.4482
100131	23.1622	24.6184	25.4811	24.4722
100132	18.7863	19.5259	21.1538	19.8114
100134	15.9733	16.9302	18.3392	17.1001
100135	19.1865	19.7675	20.4915	19.8235
100137	19.5562	20.9015	20.4007	20.3128
100138	14.9539	14.9760	*	14.9656
100139	15.2532	15.7378	18.2204	16.3584
100140	19.0584	20.2288	22.5124	20.6430
100142	18.4113	17.7250	20.0689	18.7079
100146	21.3359	20.8381	*	21.0641
100147	15.2348	17.1566	17.1045	16.4924
100150	21.5057	25.4269	22.9193	23.1341
100151	23.8489	26.6143	26.6470	25.8202
100154	20.4068	21.6715	23.0820	21.7335
100156	18.4779	20.0348	20.6929	19.7809
100157	22.6195	24.2188	23.1045	23.3126
100159	10.7818	15.0633	*	12.9868
100160	23.3121	22.6942	23.4877	23.1680
100161	22.3053	23.3612	24.6268	23.4502
100162	20.3110	24.2950	23.8001	22.8069
100165	22.6622	*	*	22.6623
100166	21.2309	22.2419	23.7419	22.3795
100167	23.2969	25.7676	26.4517	25.1920
100168	20.3167	23.0121	24.6276	22.6616
100169	20.3017	21.6397	23.4575	21.8200
100170	19.3005	21.2469	*	20.1922
100172	14.8826	15.7827	17.6051	16.0261
100173	17.1337	18.3828	19.7190	18.4365
100174	21.9807	*	*	21.9807
100175	20.5442	21.2532	21.0474	20.9357
100176	24.3089	24.6595	26.8740	25.2920
100177	24.4284	25.1037	24.5078	24.6849
100179	23.0849	23.9633	24.1801	23.7691
100180	21.5388	22.7781	24.9433	23.1701
100181	18.9510	17.9048	18.1320	18.3165
100183	23.0654	22.2063	24.4575	23.2115
100187	20.8535	21.4988	23.4760	21.9203
100189	26.5962	27.1295	26.6846	26.8004
100191	21.0647	22.0526	24.1911	22.4941
100200	23.8729	24.8878	24.8120	24.5400
100204	20.2193	21.1922	22.2613	21.2482
100206	20.1171	20.3436	22.8782	21.0874
100208	20.7029	20.4678	24.1482	21.8277
100209	23.3903	22.8236	23.8502	23.3700
100210	21.8545	23.0431	26.0933	23.6634
100211	20.7516	21.6367	24.3243	22.2366
100212	21.1263	21.7239	22.6584	21.8516
100213	21.1818	22.0176	24.4467	22.6180
100217	22.7335	22.7116	24.0291	23.1695
100220	21.8246	24.6233	24.9733	23.7248
100221	21.2321	23.2263	*	22.1854
100223	20.2233	21.8962	21.2434	21.1576
100224	21.8628	22.3567	23.0804	22.4588
100225	21.5059	22.4619	23.9971	22.6579
100226	21.8808	22.7301	23.8701	22.8717
100228	20.8810	24.9691	26.2593	24.0864

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
100229	18.2350	19.7259	21.0039	19.5689
100230	22.5650	23.4169	25.0518	23.8929
100231	18.7526	21.5712	23.5418	21.0310
100232	19.8002	20.1459	21.8105	20.6232
100234	21.6360	24.3355	24.9141	23.6582
100236	20.6942	21.7886	23.9781	22.1000
100237	23.2408	23.2712	26.7664	24.3476
100238	20.8252	23.3747	24.6513	22.9237
100239	19.4481	23.2242	25.0509	22.4527
100240	21.0606	21.3495	23.0650	21.8213
100241	17.1063	14.1059	*	15.6623
100242	18.6938	19.1097	20.4681	19.4815
100243	20.8041	22.4495	23.2812	22.2413
100244	20.5352	21.4386	23.4876	21.8968
100246	21.9247	23.5614	26.7630	24.0120
100248	21.2988	22.1553	23.8742	22.4825
100249	18.1397	18.4932	21.3942	19.2694
100252	19.8079	22.0976	22.6475	21.5855
100253	22.4778	22.6517	23.6939	22.9719
100254	19.5523	20.4410	23.2794	21.2417
100255	21.0284	20.7228	22.9793	21.5458
100256	21.2786	22.4844	24.1969	22.6427
100258	20.0300	22.0790	24.5699	22.2126
100259	21.1160	21.4991	24.1148	22.2915
100260	24.9183	21.2413	23.5164	23.1305
100262	21.0927	22.7137	23.8006	22.3809
100264	19.9491	21.7410	22.4800	21.4196
100265	18.2291	20.2664	21.0688	19.9095
100266	19.3623	20.2821	21.5258	20.4415
100267	21.7430	22.8054	23.3760	22.6752
100268	24.0538	23.5414	26.0297	24.5763
100269	22.5114	26.0271	24.9002	24.4895
100270	16.7148	20.8217	*	18.7430
100271	20.8695	21.9823	*	21.4488
100275	21.4904	23.2920	23.1419	22.6892
100276	24.1022	24.8251	25.4557	24.8136
100277	19.7241	14.9157	25.2985	18.4223
100279	22.5879	23.1776	24.8484	23.4843
100280	18.1972	19.0157	*	18.6075
100281	23.0142	23.4729	25.3382	24.0569
100282	18.4884	20.9256	*	19.7594
100284	18.9448	18.5716	22.3046	19.9187
110001	20.1150	22.4535	24.0561	22.2069
110002	19.5158	20.2149	20.4502	20.0753
110003	17.1450	18.2792	19.7061	18.4215
110004	19.7733	20.6096	21.8791	20.7777
110005	22.4568	21.8105	23.6147	22.7129
110006	21.0601	22.0325	23.8762	22.3201
110007	25.2523	25.9135	28.2025	26.4671
110008	18.5265	20.4972	22.6308	20.7088
110009	17.4306	16.6452	*	17.0362
110010	23.9104	25.1930	27.2029	25.4211
110011	18.9823	20.4028	23.2149	20.8820
110013	18.9160	16.7833	*	17.8487
110014	18.1787	18.4463	*	18.3068
110015	20.9926	21.2600	23.2279	21.9187
110016	14.2398	14.7571	18.8228	15.7864
110017	22.2537	21.2970	*	21.7842
110018	22.1480	23.0577	24.7007	23.3525
110020	19.4617	20.9687	23.3004	21.1787
110023	22.0546	21.6512	23.5673	22.4650
110024	20.7345	21.3945	22.1471	21.4330
110025	20.4232	20.2493	29.0965	22.6398
110026	16.2484	16.9161	19.3200	17.4907

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
110027	14.7081	19.8976	19.8351	18.0251
110028	29.1670	28.1695	25.9474	27.6479
110029	21.2150	21.3694	22.7981	21.8333
110030	19.6412	20.4656	22.2341	20.7841
110031	20.0553	20.9219	22.8695	21.3219
110032	18.2014	19.2685	18.0744	18.4929
110033	25.6335	23.1939	24.1447	24.2752
110034	19.5554	23.0724	24.0791	22.0313
110035	22.7950	21.8646	24.2581	22.9820
110036	24.9234	22.5481	24.4788	23.9524
110038	17.7396	18.4508	20.1710	18.7818
110039	20.4998	18.9817	17.0608	18.7776
110040	16.8083	17.7798	17.3095	17.2984
110041	20.2755	20.1398	20.8080	20.4113
110042	25.2331	25.0535	25.5588	25.2869
110043	20.6150	21.2714	22.7589	21.5611
110044	17.2087	17.5905	19.2562	17.9982
110045	21.3049	22.2424	19.7747	21.0415
110046	21.4905	22.8820	21.6201	22.0167
110048	15.6113	18.8751	*	17.1524
110049	16.8639	17.1396	18.9096	17.6498
110050	19.2291	18.9048	*	19.0644
110051	17.2292	17.2050	17.6816	17.3795
110054	20.0549	20.7825	20.5387	20.4734
110056	17.7959	17.9037	21.7607	19.3353
110059	16.7990	17.8076	19.9802	18.2059
110061	16.3557	17.4601	18.6696	17.5523
110062	17.0053	17.9421	*	17.4730
110063	18.5071	18.0256	25.0270	24.4605
110064	19.1203	18.8742	21.7636	19.8777
110065	16.3546	16.9829	*	16.6570
110066	22.4189	23.4554	*	22.9140
110069	20.9575	21.1513	21.0518	21.0559
110070	17.3438	19.6361	*	18.6196
110071	18.8321	21.5042	15.2336	18.3234
110072	12.7625	13.6626	*	13.1941
110073	16.4658	17 9372	15.2711	16.4347
110074	22.3769	24.4924	24.4094	23.8133
110075	20.1757	20.1604	20.4634	20.2673
110076	21.9798	23.6127	23.8211	23.1622
110078	24.0893	25.7416	28.2149	26.0373
110079	22.1070	22.3641	22.8017	22.4150
110080	19.1839	19.4635	24.1958	20.7509
110082	24.3140	22.7015	27.2931	24.6475
110083	23.1463	22.2609	24.6460	23.3708
110086	16.6374	19.0164	18.8751	18.1588
110087	22.7069	24.0994	25.7908	24.2653
110089	19.3855	19.0453	20.6757	19.7052
110091	21.5328	23.7110	24.3354	23.1945
110092	16.9725	15.9178	16.9116	16.5923
110093	16.9827	*	*	16.9827
110094	16.9503	16.8890	*	16.9211
110095	17.1195	18.9904	20.1024	18.8017
110096	17.4157	18.0418	18.5513	18.0235
110097	17.4558	17.8454	*	17.6373
110098	16.0597	16.7800	*	16.4502
110100	19.0764	18.6822	15.1316	17.6555
110101	18.8491	13.8787	13.3943	14.8763
110103	21.1837	21.5683	*	21.4221
110104	15.9431	16.6322	17.9805	16.8523
110105	16.7775	18.1306	19.2156	18.0663
110107	19.3897	21.2267	21.8167	20.8132
110108	25.2161	20.1140	*	22.2083
110109	16.4031	16.5977	18.7397	17.2348

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
110111	18.3951	18.4274	20.9536	19.3428
110112	19.8986	18.9574	20.4565	19.7953
110113	15.9532	16.0942	18.0770	16.7135
110114	16.4812	16.8297	*	16.6546
110115	22.5049	26.5759	26.3274	24.9969
110118	19.7509	17.5714	17.7344	18.2780
110120	17.7452	18.4738	20.3099	18.8660
110121	19.3643	18.8744	19.5230	19.2555
110122	21.1469	20.6070	20.4184	20.7024
110124	18.3366	19.4093	19.7005	19.1562
110125	18.0090	19.5666	19.8695	19.1558
110127	20.3765	16.1107	*	18.2840
110128	18.0835	20.3046	28.4942	21.9309
110129	19.0001	20.9442	21.8204	20.6124
110130	14.6011	16.6915	17.5272	16.2937
110132	16.3943	17.1820	17.2924	16.9658
110134	19.8639	19.0305	*	19.4185
110135	17.3504	15.6668	18.5125	17.0191
110136	16.9629	20.7827	21.1235	19.3927
110140	17.7915	*	*	17.7915
110141	14.4935	13.2710	*	13.8938
110142	13.9525	14.1203	16.3359	14.8326
110143	22.5926	22.4254	24.3898	23.1388
110144	17.5112	17.5678	*	17.5388
110146	17.1835	17.8499	17.2250	17.4052
110149	32.1975	25.2525	25.3618	27.1829
110150	21.2909	22.8322	22.7366	22.3193
110152	15.1324	16.3837	*	15.7696
110153	20.5068	20.6972	21.5300	20.9068
110154	17.3761	16.5286	*	16.9482
110155	16.5146	16.4756	16.1785	16.4073
110156	16.3876	16.0759	*	16.2355
110161	22.2861	24.5776	26.4200	24.5439
110163	18.6637	20.1183	21.9411	20.2136
110164	21.2160	22.6605	23.7801	22.5540
110165	20.8030	22.5604	23.4071	22.3021
110166	20.5049	22.3822	23.6665	22.0307
110168	21.8058	22.3181	23.3426	22.5338
110169	22.6648	23.3750	24.7083	23.5314
110171	25.5296	24.5313	32.6386	27.7697
110172	23.6803	24.7005	25.2396	24.5635
110174	14.6199	*	*	14.6199
110177	21.2796	22.7831	24.0700	22.7532
110179	22.0767	24.3673	26.0365	24.0945
110181	12.9798	13.9591	*	13.4445
110183	22.5148	24.2899	26.4248	24.4133
110184	22.1920	22.2761	24.3379	22.9563
110185	17.7925	17.3330	*	17.5916
110186	18.3178	19.7172	21.1176	19.7561
110187	19.8419	22.8248	23.2571	21.8964
110188	23.7032	22.0258	24.4785	23.4118
110189	20.8786	19.8454	21.4255	20.7155
110190	18.3649	20.7292	21.9009	20.2241
110191	21.4033	21.3404	24.0572	22.3044
110192	21.0486	22.9684	24.3823	22.8864
110193	20.7867	22.1477	25.1779	22.7067
110194	14.8115	15.8129	16.8075	15.8165
110195	12.7261	10.9444	*	11.8061
110198	24.8646	24.8275	28.0634	25.9885
110200	17.7744	17.9631	20.1816	18.6638
110201	20.9497	21.9313	24.1171	22.2994
110203	22.7453	24.2062	30.2609	25.5883
110204	30.7342	35.3699	*	32.7584
110205	21.3617	20.1405	23.1969	21.5575

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage** (3yrs)
110207	14.7154	14.6045	*	14.6569
110208	15.6161	15.0350	*	15.3251
110209	18.6404	20.0629	17.4145	18.6822
110211	26.9151	20.1024	*	22.9486
110212	14.3790	15.8420	18.7651	16.2466
110215	18.1539	21.0263	22.5679	20.7523
110216	27.1878	*	*	27.1877
120001	29.0427	29.4126	30.0871	29.5170
120002	25.2021	23.5667	24.2715	24.3269
120003	23.9115	24.6238	*	24.2718
120004	24.8632	26.1398	26.8010	25.9297
120005	24.1662	22.3213	23.0113	23.1311
120006	25.8943	26.6302	28.1562	26.8635
120007	22.8772	22.7179	27.8497	24.2388
120009	16.4485	16.7630	*	16.6019
120010	24.1923	24.9089	25.4050	24.8421
120011	37.2759	35.2051	30.9308	34.0921
120012	21.8507	22.0371	*	21.9472
120014	24.1208	25.3557	25.3682	24.9359
120015	42.6465	*	*	42.6472
120016	45.1899	43.5083	39.1160	42.7373
120018	31.1879	*	*	31.1877
120019	25.5659	23.8535	24.4036	24.5914
120021	23.1839	36.8286	*	27.8298
120022	19.2614	22.2781	22.4951	21.2033
120024	32.2514	21.9657	*	26.7529
120025	50.6376	40.1332	40.2485	43.1574
120026	25.1314	25.7023	26.3653	25.7684
120027	24.4535	23.1434	24.9464	24.1547
120028	27.0897	27.5365	29.5070	28.0817
130001	17.6306	19.6328	*	18.6568
130002	16.9867	18.5746	20.1143	18.6076
130003	22.3430	23.0994	23.9403	23.1432
130005	21.2386	22.6364	24.4844	22.7104
130006	20.4614	21.4640	22.8567	21.6494
130007	21.8107	22.0894	22.8475	22.2657
130008	13.6018	19.3392	*	16.1567
130009	15.9701	20.8748	*	18.2398
130010	17.5119	17.7826	*	17.6552
130011	20.1147	22.1125	23.1120	21.7785
130012	24.9976	24.2451	*	24.6140
130013	15.1129	22.6624	23.5316	20.2820
130014	19.2107	19.8240	21.6495	20.2756
130015	18.5913	16.4136	*	17.4135
130016	19.0516	20.1220	*	19.6075
130017	19.6875	19.9511	*	19.8231
130018	19.8425	20.0563	22.2249	20.7344
130019	19.1711	19.5147	*	19.3390
130021	15.6155	14.4430	18.0007	15.8914
130022	18.9127	19.7814	21.5602	20.1253
130024	19.0703	19.9934	22.1611	20.4440
130025	16.4627	17.5989	18.7814	17.6827
130026	21.8106	23.2093	24.4976	23.1615
130027	20.5344	20.6641	*	20.5964
130028	20.9674	21.2217	21.1492	21.1146
130029	18.7694	22.9243	*	20.4335
130030	17.5759	18.5827	*	18.0583
130031	16.7766	20.4146	*	18.2292
130034	18.9483	20.5802	*	19.7427
130035	20.7770	17.2864	*	19.1660
130036	13.6362	15.1590	18.5921	15.7605
130037	18.6856	19.2108	*	18.9656
130043	16.7904	17.6920	*	17.2343
130044	13.4513	18.7067	*	15.9723

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage** (3yrs)
130045	19.0208	17.5152	19.0271	18.5109
130048	16.7900	*	*	16.7900
130049	22.4440	22.0520	23.7212	22.7595
130054	17.7085	16.4675	*	17.0330
130056	20.9476	28.8008	*	24.4940
130060	22.7399	23.2512	24.6773	23.5532
130061	14.7394	*	*	14.7393
130062	19.8157	19.8264	24.0494	21.3157
130063	18.8024	18.4797	18.8782	18.7287
140001	17.7990	18.1511	20.0247	18.6600
140002	19.9284	20.9959	23.0207	21.2902
140003	17.8595	18.0163	19.2097	18.3647
140004	17.4574	18.9713	*	18.2174
140005	12.3002	12.4144	13.2365	12.6493
140007	23.8585	24.9847	25.1836	24.6934
140008	22.1111	24.2634	26.3287	24.2035
140010	28.5635	28.0863	29.0224	28.6047
140011	18.6164	18.4052	19.0903	18.7086
140012	21.4374	22.5885	24.4070	22.8406
140013	19.6722	20.3147	19.9800	19.9935
140014	21.4042	22.2944	*	21.8387
140015	17.6805	20.3540	21.4328	19.8233
140016	14.4938	15.4454	16.3417	15.3940
140018	22.4132	23.4062	24.3285	23.3864
140019	16.4254	16.1180	17.4206	16.6387
140024	15.3782	16.1032	15.6616	15.7091
140025	18.5135	21.7775	*	20.0183
140026	18.3220	19.7839	20.4084	19.5156
140027	19.2149	20.5980	20.9855	20.2413
140029	26.0833	28.5670	25.0485	26.4725
140030	23.1760	25.3715	26.5733	25.0959
140031	17.6067	16.9650	*	17.2985
140032	19.0383	19.8033	20.6273	19.8411
140033	25.1639	22.8705	23.4279	23.7474
140034	19.8792	19.7711	20.9635	20.1903
140035	15.5040	17.4514	*	16.4777
140036	19.1076	21.2366	*	20.1966
140037	14.1083	14.3082	15.5578	14.6732
140038	18.4948	19.8197	*	19.1560
140040	16.7450	18.0342	19.2160	18.0347
140041	18.5952	18.8042	*	18.7014
140042	15.8892	16.1157	*	16.0034
140043	20.1176	21.7356	23.3751	21.8035
140045	17.7799	17.4261	18.9587	18.0683
140046	18.6371	20.0859	21.7969	20.2134
140047	13.3610	16.6672	*	14.8654
140048	23.9545	23.8652	25.9122	24.5813
140049	26.9483	26.7160	21.9546	25.3052
140051	24.0796	24.7180	24.2472	24.3525
140052	17.9571	21.0450	21.8161	20.1407
140053	19.9620	20.9768	22.6099	21.1760
140054	23.1576	23.9459	35.5659	27.3968
140055	14.3603	15.8756	*	15.1297
140058	18.6861	19.1199	20.5089	19.4559
140059	*	18.2593	19.9777	19.0797
140061	18.2039	18.4264	22.7515	19.6171
140062	28.5304	28.6390	30.7005	29.3149
140063	29.1453	29.6998	30.5430	29.8595
140064	18.9379	19.6954	20.6505	19.7669
140065	25.3336	25.5939	26.3521	25.7796
140066	13.6491	15.4818	18.0915	15.5544
140067	19.5292	20.7511	21.9579	20.7435
140068	21.6188	22.3622	24.1316	22.6861
140069	17.3879	17.7785	*	17.5876

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage** (3yrs)
140070	22.7153	25.2646	25.2960	24.2944
140074	21.6052	22.2563	*	21.9232
140075	21.6434	21.8472	26.5350	22.9476
140077	17.3647	17.3236	18.0487	17.5877
140079	23.6928	22.7046	25.7090	24.0330
140080	22.1968	22.0682	24.4056	22.8890
140081	16.9808	18.1746	*	17.5725
140082	29.7262	26.5960	25.0474	26.9608
140083	21.0330	20.7704	23.2822	21.6156
140084	22.3467	23.0263	25.4818	23.6135
140086	19.1613	19.1815	*	19.1714
140087	17.1147	21.4593	*	19.1145
140088	25.4176	26.5258	28.4219	26.7393
140089	18.3157	19.3230	20.7632	19.4616
140090	26.9364	28.0530	35.0300	29.4280
140091	21.9322	23.5559	23.7560	23.1453
140093	20.1528	20.7564	21.5376	20.7969
140094	21.9383	22.8892	24.2166	23.0115
140095	24.2859	25.5716	24.7706	24.8985
140097	21.1719	21.8418	*	21.5268
140100	23.1399	23.8226	27.1868	24.8138
140101	21.4211	23.1418	24.6106	23.0966
140102	17.5729	18.6328	19.8678	18.6663
140103	18.1303	19.1834	21.2404	19.5117
140105	22.8944	23.8258	27.3323	24.5505
140107	11.8383	11.5827	*	11.7127
140108	26.9971	27.9140	*	27.4761
140109	14.5498	15.9178	16.4262	15.6166
140110	19.2888	20.9631	21.9880	20.7795
140112	17.6974	18.1119	*	17.9053
140113	19.5584	26.2393	25.6621	23.5275
140114	21.0976	23.0383	24.1926	22.8235
140115	21.0433	20.4587	25.3410	22.2094
140116	23.8993	25.5980	26.8924	25.5257
140117	21.4876	22.0889	23.3531	22.3481
140118	24.3260	25.3249	26.7350	25.4595
140119	27.9145	30.6468	31.3486	29.9292
140120	17.9716	17.7667	20.3237	18.6579
140121	16.6993	16.2607	17.6019	16.8238
140122	26.1270	26.7882	26.8595	26.5933
140124	27.9813	30.6820	30.9648	29.8366
140125	16.9516	17.8190	19.5359	18.0996
140127	20.0489	20.8397	21.3102	20.7463
140128	23.1327	23.5481	*	23.3351
140129	20.2868	21.6252	21.6495	21.1744
140130	23.4298	26.0464	25.7324	25.1138
140132	23.3054	23.7046	23.0595	23.3426
140133	21.4166	20.1740	24.0458	21.8049
140135	17.3985	18.2479	19.7919	18.5332
140137	18.6330	20.4807	21.6017	20.2583
140138	17.1968	14.5771	*	15.8048
140139	11.0397	*	*	11.0397
140140	17.6845	18.8185	19.1636	18.5459
140141	19.1097	20.2606	20.3707	19.9234
140143	19.0810	19.9885	22.0009	20.2373
140144	22.2864	24.8854	26.9259	24.6726
140145	18.1788	19.4509	19.6429	19.1056
140146	19.9704	19.4272	*	19.6862
140147	18.8049	17.1013	18.2691	18.0420
140148	18.7730	19.7630	21.5777	20.0626
140150	24.7976	28.9853	32.9291	28.5851
140151	20.0310	20.8820	21.5167	20.8051
140152	25.6011	28.3946	28.5468	27.5188
140155	20.2778	24.2907	25.2034	23.1447

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage** (3yrs)
140158	22.7988	23.7428	22.5638	23.0543
140160	17.7921	19.8825	20.9986	19.6014
140161	20.3799	21.2045	22.2191	21.3060
140162	20.3452	21.6901	22.6426	21.5722
140164	18.6589	19.8246	19.7774	19.4344
140165	14.7223	16.3700	17.0665	16.0112
140166	18.3833	19.3672	20.7849	19.4761
140167	17.6525	18.8532	19.5959	18.7351
140168	17.7453	18.2896	18.7503	18.2528
140170	16.4107	17.6901	17.0666	17.0536
140171	15.0237	15.2617	17.3214	15.8617
140172	23.6262	24.8587	27.3373	25.2144
140173	16.3924	16.0030	*	16.1514
140174	35.9320	22.0418	23.6893	25.2341
140176	24.5338	26.3468	25.6824	25.5437
140177	15.0827	20.3142	20.8526	18.2773
140179	21.9859	22.7345	24.1539	22.9472
140180	22.7996	22.7508	25.4022	23.6250
140181	21.9864	22.6643	23.7308	22.8340
140182	28.9515	25.1302	32.1969	28.8546
140184	17.2401	17.9169	20.6499	18.6226
140185	18.2867	18.8573	20.0903	19.0816
140186	23.5034	25.6807	26.0970	25.1056
140187	18.3331	19.4049	20.5829	19.4291
140188	16.1907	*	*	16.1907
140189	20.6627	21.1515	22.5875	21.4411
140190	17.5263	16.6673	17.9194	17.3611
140191	25.2628	27.4166	24.5446	25.6579
140193	17.4057	18.5651	20.5958	18.8417
140197	19.3774	19.9406	19.2979	19.5430
140199	18.0450	18.5409	19.7888	18.7992
140200	21.7680	22.4626	24.1358	22.8115
140202	23.7955	25.2777	26.2460	25.1620
140203	21.0848	24.8870	26.5789	24.2582
140205	20.0784	*	25.1010	22.9703
140206	22.5109	22.8223	24.7616	23.3613
140207	22.3905	25.4539	23.3197	23.6919
140208	26.2527	28.3112	27.4671	27.3501
140209	20.1557	20.2433	22.0813	20.8567
140210	14.8248	15.5345	15.5339	15.3158
140211	22.6265	22.8852	25.8556	23.8141
140213	24.9892	25.6839	27.4607	26.0827
140215	15.2893	18.5502	18.6962	17.4895
140217	25.7329	25.9030	24.7146	25.4260
140218	14.9851	17.4171	*	16.1590
140220	17.8450	19.3915	*	18.6260
140223	24.9017	26.2168	27.4355	26.1911
140224	32.8292	25.6766	27.1725	28.2184
140228	20.1688	21.8627	22.9899	21.6593
140230	18.2983	12.3494	*	14.8541
140231	24.5019	26.0208	25.5536	25.3988
140233	21.2333	24.4419	24.7103	23.5150
140234	*	19.7266	20.8676	20.3084
140236	12.9253	*	*	12.9252
140239	20.3745	21.6074	23.9205	21.9718
140240	24.6949	25.1418	25.0325	24.9609
140242	25.2317	26.1850	28.8686	26.8470
140245	14.2481	15.1320	15.2537	14.8687
140246	11.6267	15.0650	16.1305	14.1116
140250	23.6449	25.3410	25.5501	24.8622
140251	21.9435	23.5128	24.8256	23.4339
140252	25.0220	26.4715	28.3479	26.6235
140253	19.5858	18.4567	*	19.0172
140258	25.3622	25.0743	27.5741	26.0514

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
140271	12.0079	16.0350	17.5175	14.8913
140275	23.8171	22.9656	23.1871	23.2884
140276	25.3134	26.1713	25.3222	25.5791
140280	18.8300	20.0763	21.7004	20.2210
140281	25.2719	26.5197	27.9115	26.6261
140285	18.5916	15.7435	*	17.0403
140286	26.1290	24.0368	25.5805	25.1984
140288	24.4331	25.8717	26.3572	25.5938
140289	18.1747	17.7886	20.7506	18.9533
140290	22.8590	26.5055	29.9098	26.4896
140291	24.9537	26.8628	27.6675	26.5471
140292	21.9950	26.8610	26.4077	25.1307
140294	17.7301	19.4218	21.7473	19.5616
140300	27.8436	28.9830	30.5172	29.1412
150001	24.0620	22.6875	25.4897	24.1367
150002	20.7651	20.7353	22.3327	21.2734
150003	20.8636	21.4649	21.0944	21.1408
150004	21.2449	22.8060	23.6169	22.5090
150005	21.6806	22.8149	23.8818	22.8498
150006	20.6523	21.8435	23.1779	21.9153
150007	20.6635	21.2811	22.1098	21.3541
150008	21.8457	23.0208	23.8916	22.9022
150009	19.0030	19.5869	19.4763	19.3625
150010	20.5570	21.2466	22.5445	21.4807
150011	18.3275	19.9096	22.1559	20.1096
150012	22.1402	21.7903	23.1644	22.3790
150013	16.9327	17.5531	19.8564	18.1751
150014	21.5168	22.8402	24.3754	22.8817
150015	21.9037	24.2370	23.1616	23.0637
150017	19.5339	20.6758	22.7979	21.0370
150018	21.0496	22.8922	24.6138	22.9251
150019	17.8585	19.8341	17.3170	18.2548
150020	16.6600	15.9405	18.4688	17.0524
150021	21.5944	23.3800	24.3658	23.1607
150022	17.9222	18.7751	22.2973	19.8109
150023	19.3412	20.3015	20.6926	20.0896
150024	19.2295	19.8368	21.7593	20.1808
150025	20.2750	*	*	20.2750
150026	22.4978	21.9448	23.2169	22.5611
150027	18.0335	19.4238	21.5766	19.7256
150029	23.2454	24.8939	25.2067	24.4325
150030	19.2406	20.7256	23.0196	21.0229
150031	18.3463	21.3494	18.9179	19.4671
150033	22.6741	23.0756	24.1701	23.2959
150034	23.1533	23.3718	22.8812	23.1378
150035	21.2374	22.3779	23.5468	22.3841
150036	21.4567	22.1464	*	21.8009
150037	24.4611	22.3699	24.4997	23.7287
150038	22.0572	20.3454	21.6608	21.3217
150039	19.6215	16.0227	*	17.5902
150042	20.2221	18.0185	23.7838	20.4589
150043	20.1741	20.6301	*	20.4010
150044	19.1309	19.8951	20.5156	19.8505
150045	18.1670	20.6406	23.0361	20.5780
150046	18.2543	19.4146	20.3453	19.3721
150047	22.0145	21.9824	24.8786	22.8897
150048	19.1648	21.1441	22.5181	20.9965
150049	18.6451	21.6309	18.4942	19.5768
150050	17.7354	18.0411	*	17.8858
150051	19.7257	20.6895	21.4009	20.6516
150052	17.3750	18.8345	19.1070	18.4211
150053	18.8632	18.3493	*	18.6061
150054	18.3916	19.3424	*	18.8632
150056	21.5774	23.0603	24.7841	23.1287

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
150057	16.9736	17.4044	28.0884	20.1891
150058	22.1409	23.0273	24.9479	23.3727
150059	22.7360	23.1398	25.6737	23.8406
150060	18.6159	19.5011	19.8990	19.3356
150061	19.7968	19.4014	19.2826	19.4675
150062	20.8274	21.2608	22.9214	21.6432
150063	22.6525	24.8587	24.4091	23.9888
150064	20.3865	20.6232	21.2512	20.7527
150065	21.2153	21.4572	23.0636	21.9337
150066	19.5313	19.6845	*	19.6122
150067	18.8862	20.5000	21.4374	20.3431
150069	23.3969	23.5510	23.8353	23.5678
150070	18.0827	18.9332	20.7413	19.2893
150071	13.5111	16.4179	*	15.0051
150072	15.0765	18.5813	18.5447	17.3134
150073	*	19.8034	14.8287	16.6860
150074	20.2305	21.3500	22.9598	21.5274
150075	16.7532	17.2267	20.1119	17.8912
150076	22.6424	23.3724	25.4519	23.8726
150078	19.9668	20.2068	20.1260	20.1068
150079	18.2051	18.3668	19.3860	18.6860
150082	17.8381	19.6881	21.0651	19.5469
150084	24.3107	24.9529	27.8354	25.7663
150086	18.3838	19.7763	21.5815	19.9584
150088	20.3366	22.3055	22.2627	21.6628
150089	22.1725	21.5664	21.6806	21.8078
150090	21.0945	21.9803	24.9021	22.5584
150091	22.4640	26.5235	26.4248	25.0867
150092	16.9179	18.2592	*	17.6063
150094	17.5244	16.8351	*	17.1591
150095	19.2749	22.3214	*	20.8258
150096	20.8204	*	19.7975	20.2623
150097	19.7751	21.1462	22.4565	21.2367
150098	15.2829	16.4763	*	15.8733
150100	19.8066	18.7289	21.2980	19.8754
150101	20.6209	21.2025	26.1272	22.4675
150102	23.7180	20.8818	21.3313	21.8627
150103	18.7036	19.3653	*	19.0657
150104	20.0765	21.3141	21.0799	20.8409
150105	22.4412	21.6975	*	22.0619
150106	16.8714	18.7088	19.1976	18.3084
150109	19.9066	21.7870	21.3123	21.0077
150110	21.9336	*	*	21.9336
150111	19.2355	24.1559	*	21.5147
150112	20.5253	22.1939	23.5151	22.0747
150113	19.6603	20.5871	21.2412	20.5276
150114	17.9877	18.3097	*	18.1462
150115	18.4844	18.1308	20.3863	19.0118
150122	17.7867	20.7540	22.2752	20.2587
150123	14.0508	16.2898	15.5997	15.3438
150124	15.9487	16.2104	17.9062	16.6729
150125	21.3311	22.0299	23.1464	22.1849
150126	20.6857	24.0000	24.1917	22.8979
150127	17.0052	18.0532	*	17.5279
150128	19.5576	20.4742	20.9869	20.3528
150129	28.6211	29.9888	34.3166	30.8814
150130	18.4846	18.3852	18.5578	18.4750
150132	20.9443	21.2747	22.2707	21.4967
150133	18.4250	20.0320	21.8807	20.1148
150134	19.3632	20.2764	20.7680	20.1127
150136	21.8097	22.9091	25.8467	23.5584
150146	19.0204	*	25.1827	22.2199
150148	*	*	26.2190	26.2188
160001	19.0085	20.1699	22.8425	20.6574

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
160002	16.6003	17.6600	19.9607	18.0502
160003	16.2208	17.5429	17.5050	17.1062
160005	17.9405	19.3348	20.3313	19.1990
160007	15.1738	14.9137	*	15.0384
160008	16.6193	16.7863	17.9463	17.1044
160009	17.9886	19.0664	*	18.5265
160012	16.7112	17.9236	*	17.3007
160013	18.6304	20.3023	21.0541	20.0165
160014	16.7146	18.7253	18.3097	17.9036
160016	19.9747	21.6050	21.8400	21.1711
160018	15.6141	16.0793	*	15.8463
160020	15.5384	15.7960	16.6092	15.9961
160021	16.7617	16.7920	*	16.7772
160023	15.0099	15.3854	*	15.1953
160024	19.4764	20.5622	22.4256	20.7981
160026	19.5260	20.4567	22.8967	20.9474
160027	16.9417	18.2081	*	17.5712
160028	21.0000	22.9000	25.1998	22.9593
160029	21.3457	22.2106	23.7268	22.4567
160030	19.6182	21.6899	23.3687	21.5386
160031	16.1267	16.8957	17.8994	16.9687
160032	18.3168	19.2464	20.5024	19.3173
160033	18.8859	20.1916	22.2660	20.4096
160034	16.5957	17.3644	19.0684	17.6441
160035	16.3991	17.0165	*	16.6797
160036	17.4558	20.2598	*	18.9565
160037	19.5045	19.5067	*	19.5056
160039	17.8647	19.1998	19.8851	19.0101
160040	18.0667	19.6339	20.0567	19.2064
160041	17.4435	18.7943	*	18.1971
160043	14.8564	16.7841	15.5765	15.7233
160044	17.8323	19.5552	19.0956	18.8738
160045	20.0611	21.4757	22.1285	21.2575
160046	16.2737	16.8665	*	16.5694
160047	19.0787	20.4259	22.1550	20.6216
160048	15.6856	17.2709	18.1174	16.9461
160049	15.5673	15.3233	*	15.4375
160050	17.7878	21.1184	21.6247	20.1164
160051	16.4261	15.8213	*	16.1223
160052	21.7647	22.1933	*	21.9810
160054	16.1981	16.5258	*	16.3650
160055	15.1674	17.6177	*	16.3808
160056	17.0172	17.9534	*	17.4726
160057	19.1378	19.6802	20.8345	19.9113
160058	22.1061	22.2812	23.5663	22.6513
160060	17.2825	17.7489	*	17.5106
160061	17.0938	17.2064	*	17.1526
160062	17.4388	18.8163	*	18.1382
160063	16.3583	17.3771	*	16.8751
160064	22.2131	25.2962	23.8367	23.7172
160065	17.1043	17.0609	*	17.0808
160066	17.9971	19.3202	20.4609	19.2300
160067	16.7833	17.6602	19.9422	17.9572
160068	19.0572	20.5995	*	19.8512
160069	19.1640	20.5989	21.7197	20.4818
160070	18.4588	17.7855	*	18.1126
160072	14.4141	15.3384	15.8236	15.1936
160073	11.4997	15.5946	*	13.3036
160074	17.9513	18.4624	22.2989	19.4707
160075	18.4613	20.7842	*	19.5562
160076	17.8824	19.1590	20.1603	19.0456
160077	13.6658	15.0468	*	14.3610
160079	18.6333	20.5010	21.6562	20.2670
160080	19.4925	19.6680	21.1713	20.1081

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
160081	17.4466	19.1442	20.4415	18.9934
160082	19.5322	20.7306	21.6230	20.6308
160083	19.7542	21.3221	23.4670	21.4372
160085	21.2557	19.1929	*	20.1491
160086	17.5308	19.0477	*	18.2672
160088	22.3655	23.8098	*	23.1166
160089	17.3449	18.3526	19.9688	18.5909
160090	17.9614	18.4210	19.6767	18.6779
160091	14.2573	14.8904	16.1660	15.1176
160092	17.0633	17.9251	20.4731	18.4608
160093	18.5675	19.5732	22.8552	20.0542
160094	17.6094	18.7835	*	18.1925
160095	15.2722	16.4927	*	15.8700
160097	16.6790	17.7860	*	17.2349
160098	16.8670	16.8997	*	16.8833
160099	15.0880	16.0710	*	15.5905
160101	18.9788	19.6314	22.1741	20.2613
160102	20.1161	14.4837	*	17.0012
160103	18.2741	19.6168	*	18.9247
160104	17.4829	21.0060	23.2832	20.6810
160106	17.3474	19.4385	19.8906	18.8668
160107	18.0097	18.8936	19.5110	18.7905
160108	16.7779	17.7577	*	17.2637
160109	17.9873	18.2938	*	18.1453
160110	20.6215	20.9959	21.9299	21.2145
160111	14.9965	15.1104	*	15.0564
160112	17.2450	19.6950	20.4038	19.1223
160113	15.4834	14.9449	16.7574	15.7259
160114	16.5006	18.0532	19.1743	17.9155
160115	16.5654	16.9991	17.6815	17.0701
160116	16.6993	18.4261	19.6923	18.2708
160117 *	18.7615	20.1682	22.3228	20.3906
160118	19.4472	17.1480	16.9466	17.7185
160120	15.6789	15.0577	*	15.3496
160122	18.1469	18.8469	21.2843	19.4799
160124	19.1600	19.9144	21.2279	20.1448
160126	19.4903	17.8643	20.0149	19.0751
160129	17.2112	18.0113	*	17.6110
160130	15.6666	16.2628	*	15.9651
160131	16.0424	16.5397	18.0485	16.8699
160134	15.3012	14.6396	*	14.9483
160135	18.7711	18.3973	*	18.6129
160138	17.1491	18.3957	*	17.7222
160140	18.5630	19.6155	22.1666	20.1522
160142	18.1467	17.2792	*	17.6980
160143	17.4497	18.1287	19.0623	18.2106
160145	16.9092	17.8887	*	17.3945
160146	17.7010	19.0576	20.6638	19.0955
160147	19.4041	21.6062	22.7993	21.2446
160151	17.2177	18.3398	*	17.7679
160152	15.9500	17.0750	*	16.5042
160153	21.2085	22.7004	23.5212	22.4610
170001	17.9218	18.5120	19.8150	18.7852
170004	16.1442	17.2262	*	16.6775
170006	17.5982	19.1982	19.4488	18.7531
170008	16.8412	17.7061	18.2351	17.6303
170009	23.1349	25.0508	25.8246	24.6993
170010	19.4584	19.5990	20.6294	19.9051
170012	18.4432	20.2412	21.8587	20.2179
170013	19.4667	20.1852	21.4954	20.4080
170014	18.4931	19.6044	21.3416	19.7473
170015	17.1302	17.2443	18.0485	17.4844
170016	20.0675	22.1023	22.9479	21.7131
170017	19.5994	19.7908	21.6323	20.3473

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
170018	15.3237	14.8794	16.9170	15.7229
170019	16.9362	17.4699	18.7916	17.7083
170020	18.1325	19.1418	20.6658	9.3514
170022	19.1888	20.3269	21.1947	20.2097
170023	19.2441	19.6533	21.6273	20.2090
170024	14.3604	15.0081	16.1196	15.1666
170025	18.7182	19.1720	19.2124	19.0231
170026	14.8974	16.9094	17.0837	16.3226
170027	17.8690	18.4466	20.7776	19.0432
170030	15.9282	12.9413	*	14.2743
170031	14.2151	16.4660	*	15.2706
170032	16.3449	15.2207	*	15.7798
170033	19.1952	20.4533	20.0627	19.9270
170034	16.9586	17.8239	18.1073	17.6353
170035	17.0945	19.8334	*	18.4676
170038	13.8582	15.2505	*	14.5672
170039	17.0774	18.5780	18.4473	18.0348
170040	21.0617	23.1014	24.5234	22.7728
170041	12.4488	9.9263	13.9710	11.9108
170044	17.3254	*	*	17.3256
170045	25.8331	20.5454	*	22.7910
170049	20.7921	21.2917	22.9404	21.7361
170051	16.4851	16.9003	*	16.6903
170052	15.2283	16.0948	15.8809	15.7508
170053	14.6133	14.3628	*	14.4847
170054	14.6354	15.2814	18.5239	16.1318
170055	18.2607	18.1783	*	18.2208
170056	18.3550	19.7369	17.1872	18.5237
170058	19.5415	20.1090	23.0649	20.9522
170060	18.9853	17.5290	*	18.2470
170061	15.0258	15.6412	*	15.3202
170063	14.1185	13.7611	*	13.9331
170066	16.2891	16.8009	*	16.5466
170067	14.9921	20.7945	*	17.6559
170068	17.0022	19.2629	20.5512	18.8725
170070	14.0627	14.8348	15.0540	14.6220
170072	12.7709	*	*	12.7710
170073	17.7056	17.7586	*	17.7331
170074	17.3699	17.6543	18.5446	17.8791
170075	13.6816	14.4939	15.6809	14.6514
170076	14.6109	14.9392	*	14.7742
170077	13.9104	14.1376	14.6378	14.2439
170079	11.5902	16.7227	*	13.7740
170080	14.8293	13.6794	15.0079	14.4977
170081	14.6823	15.0840	*	14.8705
170082	13.7462	14.8154	15.9973	14.8264
170084	13.0519	13.6517	*	13.3503
170085	17.5422	21.8907	17.2585	18.9901
170086	19.7182	20.7298	22.1067	20.8528
170088	13.4860	*	*	13.4860
170089	15.4860	20.2263	*	18.1131
170090	10.9444	23.6837	16.3550	15.3916
170093	14.0276	14.7803	15.0308	14.6148
170094	21.2035	21.2484	20.1253	20.9151
170095	15.3532	16.1078	*	15.7358
170097	17.7540	18.6023	18.9865	18.4524
170098	16.6210	17.3480	18.6676	17.5026
170099	14.3370	16.5247	15.8118	15.5495
170101	18.0143	17.3381	17.9291	17.7556
170102	14.2447	14.4499	*	14.3487
170103	17.9530	18.6172	20.1264	18.9371
170104	21.0049	22.0671	23.6589	22.2552
170105	16.7403	18.2788	18.3824	17.8166
170106	17.7467	*	*	17.7468

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
170109	16.9782	18.3483	20.7581	18.8210
170110	18.5731	21.0637	16.5883	18.8196
170112	15.4049	15.8097	*	15.6012
170113	14.6486	16.4938	19.9957	16.7158
170114	16.2645	13.9726	17.4687	15.7793
170115	12.9216	13.0253	*	12.9743
170116	18.1830	19.4278	20.8800	19.4962
170117	16.8237	16.8301	*	16.8270
170119	15.2708	15.1982	*	15.2357
170120	17.4917	18.2832	18.5895	18.1013
170122	21.1769	21.4588	22.2681	21.6171
170123	23.6534	25.2122	25.0073	24.6043
170124	15.0596	16.3925	*	15.7353
170126	13.5736	14.5527	*	14.0496
170128	14.1676	17.6259	*	15.6677
170133	18.8119	19.9778	20.0593	19.6138
170134	14.6799	15.1932	*	14.9285
170137	19.3118	19.3344	21.4394	20.0379
170139	14.3001	14.8157	*	14.5522
170142	17.7134	19.0547	19.8269	18.8721
170143	16.0415	16.3258	18.0308	16.8248
170144	20.4392	20.8488	23.9179	21.2803
170145	19.0142	20.1494	20.5143	19.9005
170146	21.7919	25.2520	27.0312	24.7198
170147	17.6717	18.4634	18.2480	18.1292
170148	19.1942	24.4828	26.3491	22.6386
170150	15.9072	14.9718	16.3723	15.7462
170151	14.3668	14.5002	15.7242	14.8570
170152	15.6423	16.0930	*	15.8733
170160	14.4732	17.0629	*	15.6980
170164	17.4072	17.0791	*	17.2470
170166	12.7507	16.5113	17.8131	15.5313
170171	13.1792	14.7051	14.7251	14.2074
170175	20.1907	20.8671	22.5605	21.1305
170176	23.5043	23.5743	25.5404	24.2059
170180	8.6352	*	25.0933	14.1579
170182	21.3454	21.9797	23.2115	22.1999
170183	19.5182	16.6577	19.6919	18.5350
170185	*	26.8136	26.8307	26.8217
170186	*	33.2457	28.5602	30.5574
170187	*	*	20.8289	20.8289
170188	*	*	25.2504	25.2504
170189	*	*	28.1999	28.1996
180001	20.4885	20.8169	22.2674	21.1866
180002	17.5798	19.8195	20.5135	19.2747
180004	17.7149	18.0494	19.8552	18.5287
180005	22.4634	23.4941	22.6704	22.8061
180006	10.3400	11.2872	14.4066	11.8905
180007	17.9491	18.6823	21.3545	19.3281
180009	21.0608	21.7746	22.4450	21.7873
180010	19.6311	19.4210	22.6846	20.6134
180011	19.0526	22.6798	18.8056	20.1971
180012	19.0646	19.6614	20.2758	19.6759
180013	19.7418	20.0950	21.0512	20.3043
180014	21.3361	23.0067	*	22.1047
180016	21.1458	19.7242	20.5203	20.4674
180017	15.6583	16.7649	18.0329	16.8060
180018	15.4892	18.1529	17.5670	17.0578
180019	17.8285	19.5953	20.8416	19.3979
180020	18.0111	19.4391	20.9964	19.4334
180021	17.0618	16.5376	17.6330	17.0802
180023	17.4717	19.0574	*	18.2571
180024	16.5040	19.6313	22.3922	19.4653
180025	15.4180	17.1875	18.3306	16.9977

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage** (3yrs)
180026	15.0118	13.9959	15.5354	14.8403
180027	17.5286	19.6928	20.5017	19.2757
180028	15.7005	26.2220	20.6324	19.9445
180029	17.7248	20.0841	20.4262	19.4335
180030	17.9543	17.5043	*	17.7176
180031	13.1848	17.1003	*	14.6814
180032	17.2784	17.2362	*	17.2589
180033	15.4131	17.0498	*	16.2281
180034	16.3991	17.0349	*	16.7087
180035	21.3666	22.4651	24.3874	22.7541
180036	20.1860	20.6951	22.2389	21.0630
180037	21.2184	21.0177	22.7893	21.7251
180038	18.5923	19.3837	20.6888	19.5760
180040	21.2229	22.2270	23.2341	22.2487
180041	16.3699	17.5950	19.1325	17.6429
180042	17.1519	15.5660	*	16.2972
180043	14.6526	17.2414	20.6499	17.2898
180044	19.4984	21.1057	21.8163	20.8254
180045	20.8455	20.7498	22.1027	21.2441
180046	21.2080	21.6955	23.1139	22.0204
180047	18.6938	17.8625	17.8574	18.1198
180048	17.7816	18.3151	20.0114	18.6877
180049	16.5459	17.8418	18.5188	17.6210
180050	17.1493	19.4992	19.9082	18.8700
180051	17.5441	18.3028	18.8186	18.2489
180053	15.8994	17.3167	17.6239	16.9255
180054	20.0946	17.4354	19.1340	18.8876
180055	15.8422	16.6072	17.8704	16.7352
180056	17.5881	18.7038	19.4072	18.5962
180058	14.5355	14.8840	*	14.7232
180059	14.7032	17.2542	*	15.8589
180063	12.4448	14.7338	15.5077	14.2770
180064	15.5066	16.3894	21.1067	17.5598
180065	11.1934	11.0966	*	11.1508
180066	19.8956	20.7907	21.1883	20.6121
180067	20.1712	20.2762	22.0056	20.7541
180069	16.2916	19.0836	20.3982	18.5550
180070	15.9362	15.4643	16.9892	16.1274
180072	17.2347	17.0576	17.5411	17.2563
180078	21.7116	23.7765	23.4616	23.0019
180079	15.9048	18.1683	18.0472	17.3416
180080	16.6428	17.6735	18.9582	17.7773
180087	15.6089	16.2378	16.4726	16.1124
180088	22.1774	22.8908	23.7217	23.0858
180092	18.3597	18.8964	19.6790	18.9885
180093	17.8492	17.7592	18.8469	18.1473
180094	13.6233	14.3306	15.7641	14.5357
180095	13.9050	15.4478	15.9881	15.0485
180099	13.2991	14.0464	14.0115	13.7738
180101	*	21.0704	22.4094	21.7406
180102	18.5240	18.8169	20.1885	19.1448
180103	20.3490	20.9598	21.3867	20.8948
180104	19.3922	20.2731	21.3866	20.3724
180105	16.6997	18.2976	18.3521	17.7554
180106	15.2895	15.5278	15.4937	15.4371
180108	14.4740	14.8720	16.7327	15.3846
180115	16.9096	18.0951	19.2396	18.0795
180116	18.6077	19.2389	20.5453	19.4231
180117	23.0192	20.7961	17.7885	20.4030
180118	16.9250	17.9017	*	17.4046
180120	15.3115	16.4226	20.4507	17.0636
180121	20.0494	16.9570	16.9881	17.9386
180122	18.1930	18.7549	*	18.4837
180123	21.1067	21.5962	*	21.3452

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage** (3yrs)
180124	18.8487	19.7138	20.5369	19.6944
180125	14.9314	22.6609	*	17.5824
180126	14.3551	14.8501	14.5644	14.5905
180127	17.6365	18.0498	20.0059	18.6352
180128	18.2817	18.7194	19.8502	18.9725
180129	22.3536	15.6637	14.1861	16.9914
180130	20.6450	21.9413	23.4982	22.0567
180132	19.5884	19.8393	19.9358	19.7903
180133	21.7800	23.2679	*	22.4729
180134	14.5387	16.5901	*	15.5000
180138	20.2102	19.8524	23.0996	21.0830
180139	20.5350	20.3816	20.6287	20.5179
180140	15.2719	14.6466	*	14.9413
180141	23.8930	20.3404	22.6722	22.1534
180142	20.7510	*	*	20.7510
180143	*	21.3197	20.1309	20.7446
190001	18.1514	18.8583	20.4946	19.2128
190002	19.8834	20.6057	20.7172	20.4121
190003	19.9121	19.5115	20.7504	20.0615
190004	18.3620	19.6755	20.5272	19.5326
190005	17.5161	19.0994	20.0551	18.8486
190006	17.5911	17.7333	18.8115	18.0279
190007	14.4720	16.3633	17.9392	16.3508
190008	19.2456	22.4797	20.3278	20.6463
190009	15.9731	16.0395	17.5144	16.4753
190010	16.5020	17.7616	18.1797	17.4941
190011	15.6351	15.7319	15.4699	15.6120
190013	15.5019	16.7770	18.7538	16.9778
190014	17.8015	18.6929	17.0630	17.8584
190015	18.9896	19.7673	20.6167	19.7967
190017	17.5381	19.8449	18.3528	18.5693
190018	11.1898	13.1355	19.2055	14.0443
190019	18.3788	18.7344	20.8193	19.3423
190020	17.6840	18.7252	18.5659	18.3279
190025	16.8686	18.1892	19.9968	18.3102
190026	18.5015	19.0130	19.9229	19.1670
190027	17.4761	18.4070	19.4057	18.4089
190029	19.1967	18.7344	*	18.9666
190034	18.0754	19.2007	16.8439	18.0233
190036	20.0300	21.2960	23.3903	21.5497
190037	19.9878	14.1323	15.6062	16.9453
190039	19.0376	18.7625	20.4900	19.4221
190040	21.7376	23.1819	22.9262	22.6065
190041	17.9535	19.5511	21.9983	19.8665
190043	15.5618	15.5645	15.7333	15.6215
190044	17.4471	17.6788	17.7460	17.6341
190045	21.2853	22.0065	22.8709	22.1191
190046	20.4458	20.2414	21.1019	20.5823
190048	16.8136	16.6848	18.1698	17.2383
190049	17.7417	18.5902	19.3768	18.5593
190050	16.2854	16.9053	18.6663	17.3158
190053	13.0080	13.4768	13.8037	13.4554
190054	18.9059	17.7269	19.9370	18.8703
190059	15.8373	17.8651	18.3334	17.3742
190060	17.8443	19.9121	20.2207	19.3688
190064	18.2466	19.7215	21.1262	19.7488
190065	18.3091	18.3280	20.3583	19.0184
190071	16.4138	16.3822	*	16.3974
190077	16.5536	16.8829	17.0480	16.8252
190078	16.9383	19.5879	19.8607	18.8295
190079	17.9403	18.8187	20.5000	19.0592
190081	14.9707	14.7919	11.4756	13.7796
190083	18.4951	16.2970	18.4954	17.7997
190086	16.5074	17.6237	18.2005	17.4309

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
190088	19.9362	20.4725	18.6738	19.7186
190089	15.0395	15.2055	15.5151	15.2626
190090	16.2351	19.8201	19.0519	18.4143
190095	17.3258	17.3637	16.9519	17.2138
190098	21.0847	21.4328	20.7537	21.0874
190099	19.0635	19.0545	23.1606	20.4338
190102	20.7870	21.1614	22.0190	21.3440
190103	14.4158	15.6415	*	15.0851
190106	18.5908	19.9117	20.3114	19.6058
190109	15.8187	16.3641	16.6515	16.2945
190110	15.7313	15.2652	16.5007	15.8208
190111	20.6508	21.3622	24.4380	22.2154
190112	22.0741	24.2806	*	23.0835
190113	*	19.0411	*	19.0411
190114	13.9209	13.5044	13.6101	13.6758
190115	22.7583	24.0098	25.4984	24.0286
190116	17.3757	18.3223	17.8297	17.8503
190118	16.3776	17.8543	17.5060	17.2223
190120	17.2309	17.6708	*	17.4476
190122	15.3742	16.7189	17.7811	16.6133
190124	20.1206	22.8245	23.3859	22.1043
190125	19.8298	20.1401	21.5692	20.4994
190128	20.8770	21.5869	23.8786	22.1716
190130	14.0379	14.5586	15.2678	14.6311
190131	18.8958	19.7483	21.3154	20.0242
190133	15.1393	15.7834	13.4062	14.7514
190134	12.4507	*	*	12.4507
190135	21.3454	23.0213	24.4908	22.9222
190136	15.1662	15.6286	*	15.3892
190140	14.6829	14.8738	15.4029	14.9883
190142	16.2280	19.0464	*	17.6182
190144	18.4405	18.3513	21.3838	19.3822
190145	16.2505	16.4402	17.4407	16.7345
190146	21.9607	20.9312	22.1502	21.6747
190147	14.7202	15.2732	16.3596	15.4387
190148	15.5338	19.4518	19.3245	17.9652
190149	16.4722	16.5153	18.4197	17.1004
190151	15.5210	16.2783	17.3402	16.3739
190152	22.0319	22.7142	25.1136	23.3179
190156	16.0442	17.6573	18.0528	17.2654
190158	20.4078	21.6307	23.2361	21.7367
190160	18.4662	19.3139	19.8428	19.2603
190161	15.9280	15.7807	16.5322	16.0786
190162	20.1962	20.9645	20.7350	20.6423
190164	18.2379	19.0473	20.2791	19.2845
190167	17.7611	15.5795	17.2643	16.7861
190170	14.5222	16.2045	*	15.4153
190173	23.0934	*	*	23.0934
190175	20.4580	23.0144	22.7574	22.0818
190176	22.2316	21.7051	25.2536	23.0962
190177	19.7794	20.3679	22.3318	20.8422
190178	12.0372	*	*	12.0373
190182	20.7102	23.1997	23.6016	22.4491
190183	16.0752	16.7402	17.1805	16.6637
190184	19.8436	18.6583	20.6096	19.6762
190185	20.5852	20.7351	29.7870	23.2575
190186	17.4078	16.7272	*	17.0775
190190	15.8985	13.7951	16.2819	15.2413
190191	19.6911	19.7218	21.9141	20.4097
190196	18.6138	19.1961	20.7601	19.5709
190197	20.2082	20.9871	21.6908	21.0235
190199	15.3522	17.8288	19.7776	17.7558
190200	21.6852	22.3510	24.1667	22.7347
190201	19.7421	21.7185	21.4335	20.9991

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
190202	*	22.4701	22.4062	22.4391
190203	21.7931	23.0636	24.9518	23.3496
190204	20.5784	22.9134	26.1231	23.1780
190205	19.3737	18.8750	20.2374	19.4986
190206	21.3307	21.7867	24.2892	22.5212
190207	19.0216	20.7024	21.5325	20.4305
190208	16.9641	17.6834	23.0838	18.5667
190218	19.2992	20.7290	21.6207	20.5593
190231	17.7247	*	*	17.7247
190236	21.1982	22.5796	24.4661	22.8193
190238	20.6799	*	*	20.6799
190239	19.7601	*	*	19.7601
190240	14.3579	16.0658	15.4026	15.3226
190241	*	*	24.2462	24.2462
190242	*	*	18.6672	18.6672
200001	18.2513	19.7903	21.6050	19.8942
200002	22.3035	22.3145	22.0701	22.2222
200003	18.4141	18.5779	*	18.4971
200006	21.0922	18.9818	*	20.0361
200007	18.1681	19.0367	21.0603	19.3368
200008	21.5556	23.2883	25.1116	23.3957
200009	21.4763	23.3090	24.9041	23.2536
200012	19.1047	20.5141	21.8529	20.5012
200013	17.9378	20.3793	22.8909	20.4397
200016	17.1187	16.2939	*	16.7047
200018	17.8675	19.8848	21.1330	19.6434
200019	19.9245	21.1893	23.1114	21.4018
200020	22.3355	24.7433	27.0798	24.8624
200021	20.7361	22.0144	24.9925	22.6569
200023	20.2063	*	*	20.2063
200024	20.8336	21.0633	22.9698	21.5997
200025	20.4165	21.4247	22.9023	21.6004
200026	17.9021	18.1459	19.7172	18.5708
200027	19.4220	20.2100	21.0156	20.2414
200028	18.8763	19.8886	21.2180	20.0108
200031	16.1641	17.7875	18.8262	17.5634
200032	19.4613	20.9148	23.0487	21.1916
200033	22.4685	23.6298	25.1723	23.7287
200034	20.4941	21.8266	23.5414	22.0096
200037	20.3015	19.5004	22.6534	20.7355
200038	21.2632	22.9220	*	22.0751
200039	20.1508	21.5695	22.1333	21.2851
200040	18.9580	20.7744	21.8528	20.5334
200041	18.8131	20.2986	21.3816	20.1961
200043	19.4295	20.0280	*	19.7244
200050	20.2014	23.0314	23.4391	22.2180
200051	22.0712	*	*	22.0712
200052	17.6271	18.9290	19.0536	18.5591
200055	18.5983	19.4998	*	19.0402
200062	18.4279	18.0949	*	18.2587
200063	21.2121	22.5265	23.0135	22.2678
200066	17.0570	18.4281	19.5890	18.3751
210001	18.6617	21.5280	22.6614	20.9120
210002	23.5132	26.5907	25.6975	24.9889
210003	26.0447	22.3090	23.0790	23.7255
210004	24.9760	27.2278	29.4841	27.2832
210005	21.3829	22.5304	24.7185	22.9229
210006	19.3682	20.8607	24.7327	21.6597
210007	23.8840	23.4582	27.5104	24.9372
210008	21.2895	21.0767	24.6569	22.4641
210009	20.7479	20.8476	23.4889	21.7419
210010	19.5908	20.4097	23.7761	21.2714
210011	21.4043	20.4017	22.3262	21.3567
210012	21.3977	24.8430	25.2892	23.7249

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
210013	19.4505	23.1649	23.0151	21.9197
210015	18.7448	23.9651	23.8419	22.0261
210016	26.5193	24.7441	27.2632	26.1662
210017	18.5079	18.2963	19.0248	18.6083
210018	22.8553	23.6442	25.3112	23.9214
210019	20.6025	21.5429	23.5259	21.9407
210022	24.5744	25.6728	27.6680	25.9838
210023	22.9989	24.4815	26.7837	24.7914
210024	24.4280	24.7858	24.8939	24.7076
210025	21.2769	21.4910	22.8882	21.8653
210026	13.8668	20.7986	*	16.5220
210027	17.1060	16.2219	19.3517	17.5295
210028	19.4157	20.4027	22.4054	20.7783
210029	25.4939	24.7605	26.2082	25.5405
210030	20.9574	21.9547	20.7801	21.2193
210032	20.1955	20.0825	20.3407	20.2132
210033	23.7588	22.8303	25.0300	23.8986
210034	19.4144	22.6812	22.8827	21.5075
210035	20.8317	21.6662	21.6973	21.4040
210037	20.5528	21.1659	23.5536	21.8146
210038	24.9762	25.9701	26.5696	25.8902
210039	21.3559	23.3583	24.0987	22.9560
210040	23.4252	23.7067	25.4729	24.1964
210043	22.4000	22.9504	22.2177	22.5015
210044	23.0917	22.9540	23.8101	23.2851
210045	12.1467	13.5654	11.8350	12.5334
210048	24.6921	24.9381	24.4328	24.6715
210049	19.3022	21.1056	24.7148	21.8854
210051	23.6476	24.8949	25.7103	24.7772
210054	23.2730	25.1694	27.3551	25.2404
210055	26.5272	23.8025	27.4218	25.8633
210056	22.9593	22.6958	23.5881	23.1051
210057	26.0076	25.6142	27.3520	26.3322
210058	16.3191	17.4250	22.0351	18.6822
210059	25.6052	*	*	25.6053
210060	26.5846	26.4566	25.8377	26.3021
210061	16.1931	20.8975	22.5454	20.0819
220001	22.9064	23.4091	25.8030	24.0472
220002	24.5840	25.4158	26.3348	25.4205
220003	17.9319	17.6069	18.8150	18.0852
220006	22.6337	23.8920	27.1576	24.5485
220008	22.0796	24.2393	25.6647	24.0447
220010	22.0067	23.4009	24.5021	23.3133
220011	29.5290	20.6390	32.2266	26.8387
220012	31.2303	31.1041	32.0521	31.4899
220015	23.1893	24.1348	25.0272	24.1474
220016	23.0951	24.6149	25.7740	24.4672
220017	25.1568	25.9000	28.9024	26.5392
220019	19.8551	19.9268	21.6620	20.5000
220020	22.4295	22.5375	23.5737	22.8711
220024	21.9316	23.8620	24.1071	23.3004
220025	22.8593	22.0003	23.2374	22.6994
220028	21.0630	24.1251	31.4858	25.0402
220029	25.6560	25.7660	27.4792	26.3128
220030	18.7429	18.9012	20.0816	19.2486
220031	29.3091	28.3832	30.8324	29.5603
220033	20.3609	21.8156	25.4500	22.4846
220035	23.1892	25.7456	26.8486	25.2168
220036	24.4091	25.5771	28.2182	25.9570
220038	22.3162	22.9821	*	22.6423
220041	27.5034	28.6790	28.8184	28.3414
220042	26.0473	28.4675	*	27.2387
220046	23.3149	24.1931	26.1955	24.5514
220049	27.2689	25.4358	26.7688	26.4669

* Denotes wage [redacted] not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
220050	22.5265	23.3330	23.7326	23.2036
220051	21.7357	22.4826	22.2965	22.1608
220052	23.5225	25.4091	26.3043	25.1274
220057	25.8064	26.2945	*	26.0375
220058	26.8345	21.6814	22.4885	23.6768
220060	28.0794	28.3950	29.6960	28.7409
220062	20.2254	22.5567	22.6598	21.8448
220063	20.8079	21.8365	23.3704	22.0573
220064	22.7497	24.0982	*	23.3816
220065	20.1424	21.5657	22.4143	21.3853
220066	23.4477	24.5463	27.5575	25.2252
220067	27.5405	28.2685	22.4968	25.8119
220070	20.9128	23.9850	26.2697	24.8446
220071	27.4151	27.7679	27.7773	27.6608
220073	26.1328	27.4778	27.9309	27.1753
220074	24.3057	25.3331	25.7840	25.1801
220075	22.5329	24.6982	26.0527	24.4363
220076	23.2795	24.1224	24.8040	24.0785
220077	26.1545	27.1503	26.7020	26.6704
220079	22.0769	25.7305	*	23.1834
220080	22.1971	22.9911	24.7399	23.3385
220081	29.6682	31.1326	*	30.4202
220082	22.1453	23.2818	23.9542	23.1292
220083	22.5815	27.2605	28.3533	25.8389
220084	25.3761	26.0395	26.8596	26.1410
220086	26.7778	28.7324	29.4911	28.2821
220088	23.4258	25.0671	26.5849	25.0216
220089	25.4106	25.3521	28.9252	26.5987
220090	23.3049	26.0265	26.5552	25.3702
220092	24.7905	29.4173	*	26.0747
220095	21.7851	22.6828	23.7629	22.7845
220098	23.1547	24.7180	26.2287	24.7066
220100	27.5841	26.8001	27.0265	27.1375
220101	27.0711	28.0856	26.9992	27.3742
220104	28.7258	*	*	28.7258
220105	21.9185	25.5692	26.7570	24.9300
220106	25.9277	27.6812	*	26.8476
220108	23.4975	24.5939	26.0166	24.7052
220110	29.1648	30.6173	33.0445	30.9588
220111	24.7510	26.7573	27.7395	26.3905
220116	32.0049	28.5716	30.9871	30.4812
220119	23.8785	24.6344	25.9789	24.8166
220123	32.4678	29.6084	*	31.0767
220126	23.6045	23.8123	26.9853	24.8811
220133	29.3911	29.8366	33.0819	30.7739
220135	28.3648	29.6837	31.9159	30.1085
220154	21.1563	23.3590	25.6070	23.4930
220163	29.2299	29.3552	29.9312	29.6034
220171	24.9261	27.3487	27.2647	26.5898
230001	20.0438	23.3051	22.0875	21.7854
230002	23.0439	24.3115	23.7972	23.6903
230003	21.2215	21.6493	22.4322	21.7672
230004	20.5005	22.4538	23.0827	21.9931
230005	17.0943	20.5596	20.3750	19.2300
230006	20.4978	20.6985	22.0733	21.1112
230013	22.2211	20.0954	20.4633	20.9362
230015	20.6464	21.9499	21.7640	21.4230
230017	22.9755	25.7900	26.1609	24.9780
230019	23.6674	23.8779	24.7472	24.1266
230020	21.8526	28.8869	25.8267	25.0794
230021	19.8256	20.9145	22.0757	20.9148
230022	21.9129	21.8808	22.2179	22.0038
230024	24.9664	26.2155	24.7364	25.2298
230027	19.6393	22.5114	21.2223	21.0886

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
230029	22.1782	24.9754	26.7646	24.5358
230030	18.6406	19.2441	19.9853	19.3164
230031	19.9465	19.4676	22.1874	20.5558
230032	24.8930	22.8436	23.8366	23.8513
230034	19.4366	17.9276	18.5767	18.6094
230035	17.7490	20.5906	18.0735	18.7098
230036	23.8398	25.1507	25.9801	25.0254
230037	23.2751	22.7382	24.4115	23.4697
230038	21.9692	20.9389	23.4685	22.1152
230040	20.7841	20.2451	21.8062	20.9418
230041	21.7364	23.2870	24.2297	23.0470
230042	21.3870	20.7745	21.8240	21.3299
230046	25.3206	26.1787	28.2320	26.5218
230047	22.3595	23.7178	24.3622	23.4689
230053	26.8917	23.5702	26.1415	25.5713
230054	20.8014	22.2105	23.0818	21.9613
230055	20.8492	20.8930	20.9350	20.8938
230056	17.8091	17.3516	*	17.5708
230058	21.0303	21.6619	22.4516	21.7265
230059	20.7092	20.6540	21.2743	20.8742
230060	19.8987	20.5120	22.3513	20.9455
230062	18.8039	18.2283	*	18.4950
230065	22.7416	23.3414	26.3217	24.0577
230066	23.0475	23.2790	23.9696	23.4290
230069	24.2470	25.0212	26.0438	25.1015
230070	21.5666	21.2476	22.8588	21.8801
230071	23.1337	23.6398	23.6674	23.4732
230072	20.4456	22.6533	22.9626	22.0164
230075	22.5866	22.3632	22.6799	22.5400
230076	24.7010	26.9662	*	25.7305
230077	20.2823	22.6781	29.2041	23.7945
230078	17.9868	19.1638	20.5427	19.2537
230080	20.2104	19.1810	20.2405	19.8736
230081	19.0199	20.0464	20.4289	19.7958
230082	19.0419	18.2165	21.3101	19.3810
230085	23.4996	24.5765	24.2802	24.1339
230086	20.1730	20.1461	27.8923	22.4120
230087	19.9700	20.6619	22.2688	20.9389
230089	22.6994	23.1023	23.3847	23.0660
230092	20.7738	22.3437	22.3122	21.8236
230093	20.6314	21.0274	25.1213	22.3453
230095	17.6444	18.0582	19.1810	18.3175
230096	22.7785	24.3004	26.7156	24.6007
230097	21.1254	22.5006	22.9902	22.2246
230099	21.7513	22.3422	23.5490	22.5510
230100	17.3842	18.2477	19.8016	18.4668
230101	20.5315	22.5159	22.3310	21.7559
230103	11.3429	18.5254	19.4434	16.3738
230104	24.1238	25.5606	27.4119	25.7958
230105	22.6098	23.0086	23.9851	23.2114
230106	21.6825	22.9909	23.1961	22.6494
230107	17.1386	18.9985	*	18.1307
230108	20.3437	21.4592	19.9843	20.6199
230110	19.7262	21.0925	21.5523	20.7782
230115	19.6281	21.0361	*	20.3009
230116	14.5692	15.6064	*	15.0755
230117	25.6797	25.5154	28.1220	26.4781
230118	20.6797	20.2770	22.2209	21.0377
230119	22.6555	23.9898	25.3562	24.0351
230120	20.3306	20.6105	22.7243	21.0521
230121	21.3342	21.4615	22.3708	21.7224
230124	18.9981	20.9641	22.0096	20.6756
230128	24.0724	24.4952	*	24.2953
230130	22.1775	23.5123	23.7854	23.1764

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
230132	26.1946	27.3637	29.0292	27.5003
230133	17.1058	19.0770	20.4801	18.9081
230135	20.5637	18.4193	19.8290	19.6840
230141	22.4570	24.4560	23.9885	23.6151
230142	23.5621	25.0282	22.9036	23.7956
230143	16.7948	18.2700	19.5446	18.1583
230144	23.4237	23.3295	23.6959	23.4486
230145	19.2638	17.9811	15.8192	17.6120
230146	21.2260	22.3838	21.3539	21.6475
230147	23.2755	26.5260	*	24.7445
230149	18.8005	19.9577	20.8933	19.8319
230151	23.3967	24.3705	23.8527	23.8745
230153	18.7403	20.0098	22.8584	20.5717
230154	15.4362	16.7152	*	16.0814
230155	20.5409	20.7546	18.0743	19.8594
230156	25.6228	27.2254	27.7164	26.8324
230157	17.3571	*	*	17.3571
230162	21.7148	22.7984	*	22.2573
230165	23.8881	24.7959	25.9534	24.8621
230167	22.9745	24.1344	24.7935	23.9629
230169	24.3874	28.1039	24.9264	25.7012
230171	17.1282	16.1129	19.9097	17.6776
230172	21.4675	22.1709	23.0023	22.2346
230174	22.7304	23.5025	24.4671	23.5848
230175	*	14.4932	22.5965	17.8784
230176	23.8204	24.9032	24.6675	24.4504
230178	17.3030	17.3428	*	17.3243
230180	18.5744	19.6062	20.9832	19.7598
230184	19.7717	20.6406	21.4031	20.6108
230186	15.7837	19.1289	21.6148	18.4668
230188	16.2975	16.8687	18.8076	17.2358
230189	17.9218	19.1990	22.7783	19.9127
230190	26.4687	24.4643	27.3430	26.0988
230191	18.4861	20.6633	*	19.5216
230193	19.8287	21.5358	22.8917	21.3669
230195	22.9228	23.4647	25.3285	23.9218
230197	24.0854	25.5312	26.9840	25.4785
230199	20.6580	22.4592	*	21.5622
230201	18.0787	18.2486	*	18.1632
230204	23.4966	24.5127	24.4095	24.1113
230205	15.9314	18.1551	*	17.0325
230207	21.2483	20.9059	22.2848	21.4738
230208	16.7454	17.8118	20.3171	18.1693
230211	21.8581	21.1245	*	21.4701
230212	24.2611	24.6420	26.0656	24.9839
230213	15.5469	17.1062	*	16.3453
230216	21.0710	22.2137	23.4262	22.2338
230217	22.2698	24.1455	24.3649	23.6068
230219	20.0442	18.1277	*	19.1295
230222	21.9711	23.2545	24.6101	23.2761
230223	22.6887	25.2666	28.5549	25.4631
230227	22.3155	25.8826	27.7510	25.3402
230230	22.3097	22.1703	23.9568	22.8400
230235	17.7197	17.5940	19.9118	18.3853
230236	25.9676	25.3251	25.7463	25.6755
230239	17.8168	18.9790	19.8370	18.8918
230241	20.7297	21.8472	24.2063	22.3226
230244	22.2697	23.1175	23.9004	23.0804
230253	21.0433	22.7706	*	21.8858
230254	22.6335	23.3714	24.2594	23.4070
230257	21.3880	23.1794	24.8070	22.9716
230259	22.3969	23.1768	24.8598	23.5220
230264	17.4864	18.6598	17.4847	17.8541
230269	24.0992	24.3772	25.3368	24.6276

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
230270	22.5985	25.2665	22.8842	23.5619
230273	22.8715	24.1278	25.8466	24.2438
230275	20.8985	32.0037	29.4179	26.3638
230276	25.8709	22.3313	23.4929	23.8465
230277	23.9771	24.3351	25.3378	24.5551
230279	17.8074	18.3256	21.2467	19.1913
230280	18.3497	*	*	18.3498
230283	22.5082	*	25.0038	23.8515
230286	*	47.5925	*	47.5929
230287	*	22.5420	*	22.5420
230288	*	*	30.3423	30.3422
240001	25.6936	26.6372	28.2239	26.9164
240002	23.2307	24.2214	24.7674	24.0905
240004	24.4030	25.6238	26.8197	25.6037
240005	20.3193	20.2389	*	20.2771
240006	23.0715	25.7288	29.5789	26.1049
240007	19.0850	20.7189	21.4367	20.4240
240008	23.3783	22.7437	*	23.0360
240009	17.1187	17.4518	*	17.2880
240010	25.4752	28.3796	29.0955	27.6985
240011	21.5875	22.5188	24.0365	22.7468
240013	21.7544	25.1560	27.3855	24.7029
240014	24.2610	25.2306	26.5144	25.3969
240016	22.2011	23.3772	25.2629	23.6323
240017	18.9272	19.3431	21.6243	19.9559
240018	18.4268	23.6092	27.3634	22.7452
240019	23.1477	24.0613	25.1331	24.1004
240020	20.8849	20.6819	24.7516	21.9956
240021	20.1457	19.0469	23.9570	20.9424
240022	21.3234	23.0394	23.4702	22.5966
240023	22.8224	22.3002	*	22.5542
240025	20.0308	20.7672	21.2597	20.6915
240027	16.7758	18.3837	18.3340	17.8317
240028	25.1934	*	*	25.1933
240029	20.0164	23.0440	21.2343	21.3892
240030	20.1653	20.9799	22.0200	21.0838
240031	19.3983	21.7620	23.4390	21.5566
240036	22.1721	22.5436	23.4857	22.7589
240037	20.1195	21.4275	21.8392	21.1496
240038	24.3957	26.4513	28.9676	26.5881
240040	23.1352	22.8191	21.3870	22.2562
240041	21.8655	21.9054	*	21.8860
240043	16.9859	18.0186	19.5532	18.2400
240044	20.3339	22.5750	22.7482	21.8790
240045	24.1557	24.2936	25.9223	24.7977
240047	23.8098	25.3233	29.6184	26.0294
240050	21.6499	23.1109	24.7589	23.1788
240051	22.5855	23.2612	*	22.9217
240052	*	22.3485	23.5899	22.9828
240053	23.8693	24.4191	26.7122	25.0197
240056	23.7139	24.8549	28.5169	25.8728
240057	24.8686	25.3984	27.7600	26.0195
240058	18.4009	19.0506	*	18.6980
240059	23.7808	25.3847	27.0517	25.4242
240061	25.9951	27.9151	28.7372	27.5834
240063	24.4031	25.8594	26.7960	25.7034
240064	22.8578	24.6785	24.9928	24.2158
240065	14.8734	14.4623	*	14.6647
240066	24.1143	25.5163	27.4066	25.7241
240069	21.7991	23.3373	25.6943	23.6461
240071	21.2463	22.6332	24.8036	22.9056
240072	20.9529	21.5455	*	21.2512
240073	17.3559	17.9013	*	17.6278
240075	21.3357	21.9160	24.4084	22.5903

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
240076	22.3280	23.6159	26.7112	24.3211
240077	20.3445	22.1509	18.9735	20.4406
240078	25.1082	26.2576	27.5066	26.3275
240079	18.8345	18.2929	20.6644	19.2023
240080	25.5619	26.3071	27.8807	26.6115
240082	18.7995	20.2018	*	19.5072
240083	21.0317	22.3484	24.4352	22.5864
240084	21.7421	23.1951	23.9942	22.9738
240085	20.9778	20.7535	*	20.8640
240086	18.1401	18.1497	*	18.1450
240087	21.3323	21.2116	20.1003	20.8883
240088	23.1056	24.6260	25.5587	24.4549
240089	21.1989	21.3949	23.4029	21.9959
240090	19.2166	21.0856	*	20.2006
240093	20.2400	20.7138	22.3968	21.1802
240094	22.0247	22.5923	24.4166	23.1169
240096	21.0417	20.2992	*	20.6594
240097	27.9496	29.7597	34.2812	30.8115
240098	24.2296	23.9626	*	24.0891
240099	15.4964	18.8139	*	17.0132
240100	20.8325	24.1875	24.7500	23.2514
240101	19.9837	22.1329	24.3455	22.2487
240102	16.3659	15.5114	*	15.9578
240103	18.7510	21.0182	20.2325	19.9774
240104	23.5351	25.1139	27.4947	25.4150
240106	23.5005	23.9677	25.5890	24.4099
240107	20.9004	21.2163	24.5581	22.1688
240108	18.2427	17.6500	*	17.9383
240109	16.3216	15.1369	14.5891	15.2649
240110	21.0277	21.7340	*	21.3899
240111	17.8617	19.9712	*	18.9100
240112	16.6244	17.2437	*	16.9303
240114	17.3682	18.3415	*	17.8558
240115	23.8675	24.6529	27.0312	25.2010
240116	18.3520	17.3460	*	17.8140
240117	17.9941	18.6677	20.1436	18.9763
240119	21.8289	23.0230	*	22.4209
240121	22.2266	22.4858	24.5455	23.1566
240122	21.2876	20.7795	23.5331	21.8695
240123	18.3941	18.9494	20.0721	19.1239
240124	20.4728	21.2023	23.5138	21.7551
240125	14.9708	17.3846	*	16.1716
240127	17.9724	16.4294	19.3859	17.7982
240128	16.3608	17.5611	20.1960	17.9593
240129	16.5209	17.7242	*	17.1253
240130	16.4271	17.7634	*	17.0885
240132	23.1452	24.5633	26.7063	24.8516
240133	19.5293	20.8958	23.6068	21.3584
240135	15.7015	15.6298	17.8575	16.3349
240137	21.5073	21.6644	23.1752	22.1872
240138	16.7332	19.1676	*	17.8651
240139	20.5496	21.0163	22.4472	21.2707
240141	23.1009	23.6498	25.1597	24.0447
240142	29.2238	24.0719	*	26.3951
240143	20.4266	20.7307	18.9442	20.0050
240144	21.4469	23.1661	*	22.2972
240145	19.0689	17.6747	22.6062	19.4589
240146	16.5412	17.3275	*	16.9537
240148	19.5204	19.5372	*	19.5281
240150	20.8331	23.3857	*	21.8697
240152	22.4744	24.1818	25.4031	24.1733
240153	19.3336	18.6556	*	18.9785
240154	21.5052	21.5859	21.3809	21.4857
240155	20.9385	23.6944	*	22.3046

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
240157	13.7309	20.0571	*	16.8744
240160	15.9014	16.4990	*	16.1985
240161	16.8809	18.0542	*	17.5023
240162	19.1542	19.3296	20.4807	19.6719
240163	20.4760	22.2009	*	21.3326
240166	19.4131	19.4496	21.5002	20.1541
240169	16.3958	*	*	16.3959
240170	20.3779	21.5994	*	20.9960
240171	18.5172	19.6732	*	19.0959
240172	20.8606	20.3699	*	20.6109
240173	18.5187	18.3183	*	18.4146
240179	20.4004	17.7557	19.8250	19.2836
240184	16.8917	17.6979	*	17.2977
240187	21.2736	23.2471	24.8879	23.1462
240193	18.4664	26.6381	*	22.8029
240196	25.3479	26.2793	27.2901	26.3467
240200	14.9076	18.7517	*	16.6495
240207	25.2814	26.0927	27.4330	26.3128
240210	24.5664	25.6060	26.6545	25.6507
240211	30.6260	34.7849	32.8805	32.7909
240213	*	*	27.5104	27.5104
250001	19.2756	20.2019	20.9338	20.1232
250002	18.6938	19.6081	21.6643	20.0536
250003	16.7570	18.7331	*	17.7556
250004	18.3860	19.2913	20.9295	19.5583
250005	12.5834	13.7341	*	13.1962
250006	17.5192	19.4531	20.3061	19.0833
250007	19.7562	20.9757	21.2226	20.6508
250008	15.8506	15.8096	*	15.8287
250009	17.7283	18.0463	19.7610	18.4932
250010	14.6101	16.0233	17.6204	16.0381
250012	16.7579	17.4032	15.6117	16.4987
250015	11.7249	16.6522	19.3794	15.3452
250017	20.5976	18.8850	19.0435	19.5747
250018	13.1687	14.7291	16.8783	14.8458
250019	18.0956	19.9070	22.9085	20.3396
250020	16.2698	19.6575	19.1877	18.3910
250021	10.5844	12.7242	15.8485	12.9174
250023	12.3434	13.8210	14.7354	13.5480
250024	12.9899	14.8394	*	13.8135
250025	20.3625	21.9075	21.2651	21.1983
250027	14.5445	15.1790	17.5936	15.6987
250029	16.0682	14.8216	*	15.4307
250030	26.6173	25.5089	27.2140	26.4270
250031	18.3825	19.8779	21.0894	20.1840
250032	17.5957	*	*	17.5957
250033	15.0941	16.9132	*	15.9970
250034	17.0399	18.8231	20.3681	18.7749
250035	16.8349	18.3861	17.1071	17.4370
250036	16.1913	17.6247	17.0469	16.9644
250037	12.7156	14.3994	16.6348	14.4707
250038	17.7019	18.8434	16.8610	17.7868
250039	15.1409	16.4502	16.8729	16.1389
250040	18.3364	19.6513	20.8178	19.5733
250042	17.6531	18.3858	19.4367	18.4780
250043	16.6500	18.4025	17.7554	17.5544
250044	16.7321	19.0321	20.3711	18.6909
250045	21.8988	22.7225	25.3236	23.3569
250047	14.7461	16.0109	*	15.2694
250048	17.6649	19.4976	19.3636	18.8723
250049	12.1635	12.8275	13.4396	12.7838
250050	15.1159	16.0234	16.6723	15.9407
250051	10.4900	10.1212	10.5027	10.3736
250057	16.1838	16.6316	19.0571	17.2494

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
250058	15.7197	16.2623	16.5565	16.1875
250059	16.6494	17.9507	19.0733	17.8262
250060	16.1804	12.6893	14.0155	14.2269
250061	11.5108	12.0186	11.4573	11.6591
250063	13.3092	15.0894	*	14.1572
250065	13.6904	15.0507	16.2010	14.9097
250066	16.1742	17.2711	16.1044	16.5014
250067	16.8522	18.3773	20.0430	18.4322
250068	13.4127	13.2644	16.3759	14.2410
250069	16.8980	18.5782	21.2224	18.7343
250071	12.3488	13.1934	13.7056	13.0670
250072	18.9487	21.0602	20.7827	20.1324
250077	13.7404	13.9479	14.0318	13.8984
250078	15.9739	17.4118	17.5186	17.0110
250079	16.5835	16.1483	21.3505	18.0112
250081	19.0358	18.1848	20.4513	19.1805
250082	17.1427	17.3096	19.5962	18.0482
250083	16.6065	16.3054	19.5217	17.6288
250084	20.6429	21.0870	22.4632	21.3407
250085	15.4477	16.7377	18.0473	16.7196
250088	18.2736	19.3976	*	18.8261
250089	14.3027	15.0238	16.0202	15.0666
250093	16.1506	16.8647	17.4413	16.7983
250094	18.5063	18.9681	19.9619	19.1031
250095	17.4217	18.4944	18.6616	18.1868
250096	19.0584	19.3630	20.7246	19.7069
250097	15.5741	16.3328	18.8398	16.9174
250098	18.3874	18.8163	17.9562	18.4324
250099	15.1265	15.9867	18.2504	16.5120
250100	17.8688	19.7559	18.8877	18.8640
250101	17.7194	17.6704	*	17.6984
250102	18.9348	19.8487	21.3213	20.0396
250104	18.7651	19.0165	20.5035	19.4465
250105	15.5133	16.1480	17.0135	16.2367
250107	15.0737	16.5635	16.7104	16.0939
250109	21.3867	24.5760	*	22.9646
250112	16.3640	16.6447	16.8696	16.6208
250117	16.9787	15.9335	18.8863	17.1858
250119	16.1218	16.5700	17.1373	16.5802
250120	16.7182	18.1428	22.9071	18.9423
250122	19.2990	19.8033	19.7966	19.6361
250123	18.7863	22.1376	22.2184	21.1030
250124	13.2490	14.4008	15.6866	14.4505
250125	21.2660	21.9366	25.3415	22.8644
250126	21.9101	19.0168	20.1117	20.3133
250128	16.1418	15.9958	15.8352	15.9898
250131	12.4557	11.2470	11.5396	11.7049
250134	18.5142	21.4489	22.0310	20.5243
250136	21.3497	20.0333	21.9977	21.1329
250138	20.4550	19.3446	21.2490	20.3584
250141	19.6692	21.6835	22.5187	21.4042
250145	11.2120	11.2021	*	11.2080
250146	14.7781	15.4061	16.9341	15.6577
250148	19.4233	23.1459	*	21.1903
250149	15.2318	15.7537	16.4228	15.8106
250150	21.8599	*	*	21.8600
250151	*	*	20.4581	20.4581
260001	20.1560	20.9620	22.6646	21.2406
260002	21.6597	23.4259	24.6812	23.4142
260003	15.4482	16.2023	16.5931	16.0798
260004	13.7035	15.2735	16.4424	15.0947
260005	23.9681	22.5860	25.5927	24.0655
260006	20.0994	22.1692	24.1078	22.0536
260008	16.8893	18.2114	21.6256	18.7442

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
260009	18.2863	19.0654	20.1679	19.1754
260011	19.5059	20.3279	21.1624	20.3470
260012	17.1662	17.3810	17.7853	17.4521
260013	16.1825	17.3772	18.4857	17.3402
260015	17.8817	18.3849	21.7581	19.2237
260017	16.9914	17.9796	20.7837	18.6298
260018	12.5301	13.6120	14.3278	13.5417
260019	*	18.3629	*	18.3629
260020	20.2241	21.0314	22.4709	21.2482
260021	21.6237	23.3527	27.2478	23.9117
260022	17.7772	18.7707	20.5417	18.9739
260023	17.8649	18.5665	19.6324	18.6837
260024	15.7815	15.6095	16.9968	16.1784
260025	17.0965	18.2804	19.3535	18.2493
260027	22.0362	23.1505	22.9973	22.7247
260029	21.1858	20.1832	22.0390	21.1257
260030	11.9215	12.8349	*	12.3857
260031	19.7249	22.5379	24.3626	22.0014
260032	19.6728	20.3847	21.8830	20.6295
260034	20.4902	20.5439	21.6108	20.9281
260035	13.0071	15.1611	15.0468	14.4184
260036	18.8104	20.1242	19.4559	19.4803
260039	14.6644	15.9689	*	15.3281
260040	18.0140	18.5132	20.0422	18.9525
260042	18.7514	20.8821	*	19.9434
260044	15.9206	16.7879	18.2413	17.0028
260047	19.2247	20.2724	22.4585	20.5821
260048	21.0602	22.4800	26.6363	23.4107
260050	16.8520	17.8142	20.8510	18.4171
260052	18.0914	19.1044	21.1297	19.4548
260053	16.5166	17.4110	18.9606	17.6806
260054	20.6242	23.0188	*	21.7799
260055	15.4214	17.9547	*	16.6421
260057	19.7144	16.5704	15.8404	17.4526
260059	17.0546	16.2074	17.2807	16.8654
260061	15.7112	17.1343	18.7280	17.2320
260062	21.3138	22.0091	25.2958	22.8789
260063	18.8973	19.7231	21.1284	19.8962
260064	17.8033	18.3749	17.5188	17.8922
260065	20.0975	20.6671	22.0058	20.9509
260066	15.3460	15.3139	*	15.3302
260067	15.1837	14.5499	14.9791	14.8944
260068	19.4240	20.7947	22.0951	20.7923
260070	13.9510	18.7384	11.2251	14.4396
260073	15.9182	16.9496	17.8184	16.9459
260074	19.8915	20.4033	18.7639	19.6422
260077	19.4482	20.5830	21.9947	20.6796
260078	14.9463	16.0586	16.9217	15.9818
260079	16.1453	16.4816	*	16.3135
260080	14.6832	13.1617	13.6815	13.7659
260081	20.3053	20.2471	22.6627	21.1095
260082	15.9858	18.2853	*	17.1198
260085	20.7051	21.5137	22.7394	21.6591
260086	15.2927	16.7579	17.2049	16.4038
260091	21.5464	22.0772	23.9975	22.5709
260094	18.5395	19.7308	20.1043	19.4945
260095	20.7292	21.6999	22.8156	21.7294
260096	22.5972	22.8259	23.5009	22.9961
260097	19.0632	18.6965	19.6203	19.1454
260100	16.6523	16.5439	*	16.5979
260102	20.6361	21.2133	24.1041	22.0613
260103	19.7146	19.9144	21.6192	20.4243
260104	20.3176	21.6624	22.4769	21.5601
260105	24.8181	22.8005	24.6572	24.0540

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
260107	20.4269	22.5214	23.1564	21.9109
260108	20.0034	20.9029	22.7975	21.3006
260109	14.8181	15.9724	*	15.3919
260110	18.3227	19.5633	22.0026	19.9361
260113	16.2223	16.1346	16.3440	16.2356
260115	17.4698	19.3873	20.4880	19.0630
260116	14.9812	16.0187	16.9807	15.9921
260119	17.2942	18.0725	18.7958	18.0259
260120	16.4904	17.6811	18.7651	17.6553
260122	16.0931	16.3700	16.1637	16.2077
260123	14.6822	15.2926	17.7996	15.9122
260127	18.4026	18.1342	19.7946	18.7879
260128	12.6414	13.2942	*	12.9660
260131	18.4154	18.0395	*	18.2242
260134	17.5127	17.1341	18.4511	17.6303
260137	19.4697	19.5976	20.7638	19.9765
260138	23.2364	23.6502	25.6579	24.1474
260141	19.1893	19.0444	21.0771	19.7195
260142	17.3084	18.2023	18.6412	18.0732
260143	13.9040	15.4688	*	14.6858
260147	14.7769	15.8522	16.1172	15.5706
260148	11.3524	12.6651	*	11.9781
260158	12.7699	13.9790	*	13.3959
260159	19.7951	20.9636	23.1093	21.1490
260160	16.5792	18.4007	18.8723	17.9546
260162	21.4099	20.7331	22.5705	21.6084
260163	15.8593	16.8300	18.1311	16.9540
260164	15.1211	16.3874	16.9403	16.1072
260166	21.1224	22.4071	22.8409	22.1650
260172	16.0772	16.4854	17.1504	16.5822
260173	14.2090	15.5733	*	14.9505
260175	17.5625	18.3632	19.7939	18.5994
260176	21.6044	23.2414	25.7802	23.6435
260177	21.9014	22.9112	24.0550	23.0148
260178	20.2796	20.8189	21.7704	20.9701
260179	22.7185	21.4470	23.2824	22.4725
260180	18.9881	19.5983	21.8585	20.1342
260183	21.3175	23.7057	24.2330	23.0675
260186	19.6026	21.0675	21.6620	20.8448
260188	22.5060	23.7475	*	23.0915
260189	16.4233	*	*	16.4232
260190	19.3419	21.6994	24.5014	21.8167
260191	18.1604	19.6784	21.1331	19.7205
260193	20.2577	22.2030	22.9556	21.8741
260195	19.7068	*	20.0889	19.9145
260197	20.5453	*	*	20.5453
260198	19.7552	21.7926	25.3390	22.1557
260200	20.6888	21.7031	22.3912	21.7042
260207	*	*	18.5247	18.5247
260208	*	*	28.3159	28.3158
270002	19.2387	19.0221	19.7588	19.3381
270003	22.5019	20.7277	23.0396	22.0300
270004	19.4834	20.1821	21.5577	20.5193
270006	17.0715	15.1006	*	15.8776
270007	13.8824	15.5780	*	14.6202
270009	20.8238	20.7031	21.5655	21.0425
270011	21.1653	21.8086	21.4031	21.4583
270012	19.7878	20.7913	21.7634	20.7748
270014	19.9859	20.4321	20.3456	20.2664
270016	18.6149	17.9984	*	18.3149
270017	20.0152	22.1046	23.2320	21.7798
270019	15.4128	18.5111	*	16.8388
270021	16.9457	18.0515	21.1624	18.5631
270023	22.7181	22.7162	23.7486	23.1141

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
270026	18.0568	20.1673	*	19.1571
270027	17.2091	17.2005	*	17.2045
270028	19.1177	19.6212	*	19.3643
270029	17.3710	18.2097	*	17.8047
270032	18.7811	19.3937	20.1801	19.4478
270033	18.4876	20.7060	*	19.5715
270035	16.4302	17.9822	*	17.2166
270036	16.8552	16.1031	18.8787	17.3089
270039	19.6796	20.3800	*	20.0267
270040	20.1242	20.1887	20.7239	20.3415
270041	25.8153	*	*	25.8151
270044	17.5137	19.2939	*	18.3206
270048	18.0666	17.4506	*	17.7260
270049	22.2540	22.0263	22.9524	22.4171
270050	19.9356	19.6317	21.0901	20.2259
270051	20.1950	20.0386	22.2580	20.8285
270052	14.7009	17.1932	*	15.8725
270057	20.6714	20.1507	21.9997	20.9799
270058	16.1412	18.4780	*	17.1845
270059	19.1808	16.9303	*	17.9228
270060	20.4148	21.3776	*	20.7622
270063	15.1049	16.4553	*	15.7723
270073	16.1937	16.6083	*	16.4041
270079	16.7048	19.5493	*	18.0578
270080	15.0705	16.6010	*	15.8020
270081	16.7389	18.0543	15.6834	16.8629
270082	23.1245	23.3209	21.0150	22.5579
270083	17.8554	16.8420	*	17.3363
270084	16.2958	15.7062	19.6105	17.1115
280001	18.1831	18.7137	*	18.4397
280003	23.0213	23.6058	26.0937	24.2580
280005	23.6949	22.8981	23.9753	23.5311
280009	20.9643	23.2300	23.8046	22.6996
280010	20.0462	22.0137	23.8324	22.0012
280011	15.9614	16.2281	*	16.0965
280013	22.5163	24.0852	23.4920	23.3630
280014	16.8368	16.7109	*	16.7707
280015	16.6939	18.0207	*	17.3362
280017	13.9939	16.9884	*	15.5624
280018	15.4496	16.6439	*	16.0417
280020	21.2467	21.9587	23.4577	22.2709
280021	17.6345	19.1263	21.5215	19.4605
280022	16.8184	15.3785	*	16.0620
280023	22.3433	21.5761	19.6265	21.1633
280024	15.0380	15.8747	*	15.4523
280025	21.4764	22.2214	*	21.8488
280026	16.5851	18.7258	*	17.6496
280028	18.0793	19.1080	*	18.5723
280029	24.4359	17.1351	*	20.5379
280030	24.7723	26.3542	29.2221	26.6821
280031	9.6321	9.6951	*	9.6643
280032	19.1191	20.5246	21.5150	20.4101
280033	17.4745	17.9841	*	17.7291
280035	16.6872	18.6089	*	17.5717
280037	17.1064	14.8049	*	15.9325
280038	18.2503	18.9305	*	18.5950
280039	16.1587	17.0153	*	16.5923
280040	20.9896	21.5426	23.6597	22.1127
280041	16.5503	16.6889	*	16.6228
280042	16.6239	16.4684	*	16.5457
280043	17.5937	16.8186	*	17.2004
280045	15.7630	17.7408	*	16.6924
280046	17.3214	17.9752	*	17.6376
280047	17.4735	21.3143	19.5815	19.4044

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
280048	15.8100	17.9319	*	16.9007
280049	18.4365	19.4589	*	18.9514
280050	20.0379	*	*	20.0378
280051	17.1942	19.6206	*	18.3037
280052	14.1201	14.9903	*	14.5662
280054	18.7575	19.4049	23.1191	20.4732
280055	13.8129	14.2046	*	14.0093
280056	15.6135	15.6442	*	15.6285
280057	20.0686	21.4754	22.5480	21.4261
280058	21.4868	22.8105	*	22.1817
280060	20.7022	22.4677	23.1128	22.1022
280061	18.6370	20.2066	21.2901	20.0793
280062	15.6018	16.1708	*	15.8878
280064	16.8330	18.2196	*	17.5260
280065	20.7370	21.6999	23.8128	22.1199
280066	11.7207	12.2225	*	11.9695
280068	10.5987	10.5103	*	10.5519
280070	22.6201	18.7211	*	20.3601
280073	17.7698	18.3496	*	18.0596
280074	17.3143	13.6025	*	15.0619
280075	13.2230	13.3154	*	13.2730
280076	16.7488	16.1939	*	16.4635
280077	20.0148	21.1883	22.7244	21.3192
280079	16.6117	17.1519	*	16.8816
280080	16.9487	16.1902	*	16.5447
280081	20.9606	23.3805	24.3199	22.8549
280082	14.6173	15.4420	*	15.0337
280083	21.5336	20.8995	*	21.2308
280084	13.6536	13.2158	*	13.4147
280085	20.4825	20.8532	21.8473	21.1233
280089	18.9567	19.9003	*	19.4122
280090	15.1274	*	*	15.1274
280091	16.1866	16.3456	*	16.2669
280092	14.7912	13.3032	*	14.0640
280094	16.3474	16.9180	*	16.6358
280097	13.8223	14.1870	*	14.0071
280098	12.5875	12.4995	*	12.5457
280101	16.9973	10.5153	*	12.9714
280104	16.2167	15.5949	*	15.8820
280105	21.0735	23.7103	25.1401	23.2737
280106	16.0679	16.3564	*	16.2080
280107	14.4679	*	*	14.4678
280108	17.1961	18.5134	20.9016	18.8959
280109	12.4408	*	*	12.4408
280110	14.2136	13.0278	*	13.5867
280111	19.6283	19.7688	20.7398	20.0680
280114	17.3076	17.1154	*	17.2096
280115	18.1480	18.3464	*	18.2483
280117	18.8279	20.3819	20.5464	19.9214
280118	18.6524	17.8891	19.3465	18.6564
280123	11.8582	23.6682	24.3539	18.1396
280125	16.3944	17.2718	20.0643	17.8221
280126	*	*	33.8917	33.8918
290001	22.7450	24.3681	25.9590	24.4242
290002	16.5419	16.7948	16.8363	16.7261
290003	24.2175	25.4303	27.4732	25.7436
290005	21.9814	22.7804	24.6877	23.2224
290006	22.4063	22.4832	24.2211	23.1190
290007	30.9075	34.9911	35.1020	33.7290
290008	24.1255	26.9216	27.0115	25.8955
290009	23.9373	24.8816	26.9020	25.2711
290010	16.4476	20.8387	25.4598	20.8166
290011	21.1234	19.7410	*	20.4163
290012	25.0430	25.5647	25.8036	25.4802

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage** (3yrs)
290013	15.7932	20.2914	*	17.6683
290014	18.7829	20.2762	*	19.5633
290015	19.4504	20.2336	*	19.8204
290016	23.8656	21.8030	22.5111	22.7099
290019	22.2045	22.5584	25.1684	23.3359
290020	21.2380	19.5039	24.2374	21.4763
290021	22.9488	24.1397	26.2510	24.4455
290022	25.5011	25.3914	27.5364	26.1224
290027	13.3769	13.1463	13.5030	13.3422
290032	23.9504	26.9846	27.5425	26.3410
290036	12.9074	*	*	12.9073
290038	27.7030	26.0836	*	26.8185
290039	25.5024	26.6283	28.7598	27.0508
290041	25.9905	27.7740	28.6294	27.7224
290042	18.7527	18.7669	*	18.7611
290043	27.9053	*	*	27.9053
290045	*	*	26.5644	26.5644
300001	23.8567	25.7142	27.1312	25.6218
300003	24.1297	25.3252	26.7859	25.4284
300005	22.2858	22.3258	22.8163	22.4895
300006	18.9745	22.2642	22.0188	21.0625
300007	20.6325	21.3633	23.6919	21.9920
300008	19.6149	20.9207	*	20.2733
300009	20.0938	20.1486	*	20.1242
300010	20.2130	21.0316	24.6296	21.8421
300011	23.0279	23.8390	25.0979	24.0124
300012	24.5619	25.8581	26.3914	25.6783
300013	20.1669	20.0269	21.3396	20.4889
300014	20.1774	21.6705	23.7144	21.9343
300015	19.6627	22.8966	24.4870	22.4848
300016	17.8148	15.1311	18.9756	17.3711
300017	22.7191	23.9651	26.1105	24.3969
300018	21.6385	22.8379	25.7851	23.5726
300019	19.6728	20.5801	23.8076	21.3279
300020	22.6627	23.0806	24.8189	23.5472
300021	19.3101	20.2585	*	19.7842
300022	19.1875	20.1209	22.3918	20.6206
300023	22.7649	22.1896	24.9992	23.3536
300024	21.5842	22.2235	22.4882	22.1265
300028	20.0778	21.4207	*	20.7175
300029	22.6013	23.8415	24.5772	23.7645
300033	17.1632	17.4836	*	17.3175
300034	24.4975	25.2355	26.9093	25.5558
310001	27.4730	31.1568	30.1786	29.6321
310002	27.9728	28.7786	33.9058	30.2896
310003	27.5624	29.3522	30.4234	29.1284
310005	22.9712	23.9477	26.0227	24.3007
310006	22.0894	24.1538	25.9000	24.0238
310008	24.7618	26.4989	28.0970	26.4414
310009	21.7094	23.2420	24.6353	23.1866
310010	23.1060	24.5471	26.7889	24.8998
310011	24.2885	25.4900	26.1586	25.3131
310012	26.6772	28.1367	31.1705	28.7006
310013	22.5603	23.2424	25.0951	23.6575
310014	23.1956	31.0834	29.1931	27.3029
310015	27.9684	29.1340	30.1767	29.1087
310016	24.5206	26.0738	25.7368	25.3848
310017	24.5976	25.1634	25.2636	25.0211
310018	22.4779	24.1428	25.9108	24.1664
310019	24.9914	28.5952	26.8663	26.7986
310020	24.4152	25.0803	25.0147	24.8332
310021	25.4393	27.8958	29.4003	27.4884
310022	20.8258	23.3412	26.7487	23.5627
310024	24.9521	27.0459	26.9499	26.3252

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage** (3yrs)
310025	24.1812	25.5227	26.8719	25.4915
310026	22.1997	23.2895	24.6697	23.2693
310027	22.5696	24.4437	22.1935	23.0737
310028	23.9428	26.1931	25.7246	25.2908
310029	23.6610	24.4290	25.9606	24.6455
310031	26.6831	26.7174	29.5581	27.5915
310032	24.7404	24.9133	25.7088	25.2148
310034	24.1150	24.8567	26.5224	25.1396
310036	21.7187	23.0320	*	22.3716
310037	28.1289	28.7738	30.1264	29.0191
310038	28.4893	28.1756	32.3865	29.6794
310039	22.7317	23.6605	24.6045	23.6772
310040	26.3573	26.5769	27.4041	26.7680
310041	23.5559	23.8857	26.8145	24.8018
310042	24.7678	24.9702	26.9695	25.5501
310043	21.6128	24.0238	*	22.6515
310044	23.1549	23.1489	25.1618	23.8298
310045	28.9274	29.4877	31.7376	30.0182
310047	26.1921	25.9777	26.1353	26.1004
310048	25.2870	23.4189	27.4050	25.3502
310049	27.0842	25.6732	26.5332	26.4118
310050	24.7988	23.7735	25.3772	24.6345
310051	27.5378	28.6248	29.2386	28.4543
310052	23.3973	24.9773	27.0324	25.0131
310054	27.7376	27.6290	28.1880	27.8584
310057	22.2572	22.2630	26.3903	23.6641
310058	26.3765	25.3983	28.1753	26.6605
310060	20.0997	21.4455	22.1914	21.1757
310061	33.9582	23.4283	24.9678	26.7631
310063	22.1080	21.2619	25.9868	22.9697
310064	25.4822	25.9350	27.8388	26.4138
310067	23.9278	24.1943	26.3624	24.7328
310069	24.2329	25.3464	25.7690	25.1083
310070	28.2220	29.5101	30.1917	29.3042
310072	22.5611	24.4480	25.3145	24.0886
310073	26.2937	26.7954	28.8791	27.3211
310074	22.3588	24.2009	27.6789	24.7835
310075	24.4788	23.9771	25.7726	24.7214
310076	27.9918	29.6667	32.4533	30.0527
310077	26.1251	26.7092	28.7352	27.1831
310078	24.0587	24.5862	24.7753	24.4599
310081	22.4086	23.3310	24.6082	23.4635
310083	24.8204	25.0191	25.2465	25.0205
310084	24.6049	25.4946	27.3680	25.8446
310086	23.1719	23.4966	25.2751	23.9606
310087	21.1215	20.6847	*	20.9048
310088	23.1722	23.0610	23.7846	23.3408
310090	24.8986	23.6661	25.3640	24.6461
310091	23.2969	24.5357	25.6405	24.4610
310092	21.6964	22.9721	23.2226	22.6239
310093	23.7251	23.9404	24.6942	24.1032
310096	24.5759	26.6588	28.4705	26.4515
310105	26.2537	28.1317	28.7333	27.6263
310108	23.8308	25.1368	24.9090	24.6281
310110	23.2146	23.3461	26.4175	24.4668
310111	22.1151	23.3646	26.2496	23.9377
310112	24.7914	24.2999	27.8796	25.6804
310113	23.1961	24.2708	25.9143	24.5219
310115	21.1645	23.5148	24.5413	23.0976
310116	23.6366	24.2696	25.1189	24.3065
310118	26.1315	26.8760	28.0517	26.9540
310119	32.7858	29.1045	34.7468	32.0732
310120	23.3200	22.6526	24.7079	23.4981
320001	20.6225	21.5564	23.0290	21.8122

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage** (3yrs)
320002	23.0983	25.5144	26.7332	25.2033
320003	16.4642	16.4961	20.7939	17.8265
320004	19.6642	21.3681	19.4799	20.2196
320005	21.0411	22.4178	22.1677	21.9174
320006	20.3863	19.8672	21.1222	20.4529
320009	19.3500	20.3783	21.5870	20.3252
320011	18.5222	19.1476	20.7713	19.4939
320012	17.1764	17.1317	*	17.1558
320013	24.5543	25.5403	19.4487	22.2842
320014	16.8412	22.9026	19.7656	19.7876
320016	18.8519	18.8763	19.9326	19.2629
320017	19.4498	20.4390	22.5460	20.8081
320018	19.2336	20.3141	21.4650	20.3556
320019	26.9637	25.1210	26.6900	26.3394
320021	19.1265	20.0089	21.0913	20.0920
320022	18.0606	20.9797	20.7919	20.0415
320023	17.8419	*	*	17.8418
320030	18.6859	18.1556	16.8696	17.8853
320031	25.1715	18.2244	*	21.3628
320032	20.6871	21.4815	*	21.0803
320033	21.0621	21.9804	24.2703	22.4984
320035	15.0612	17.8058	*	16.5303
320037	17.8280	17.6724	19.6466	18.4044
320038	22.2664	23.1987	19.2962	21.6253
320046	18.9607	19.4732	21.5914	20.0169
320048	16.8769	*	*	16.8769
320063	17.9089	18.5600	20.7804	18.9108
320065	18.6525	22.5428	19.9012	20.1608
320067	15.3228	16.8015	13.9459	15.7173
320068	18.5103	15.6864	*	17.0317
320069	14.4212	15.7350	18.5375	16.2248
320074	20.2290	22.3403	28.3085	22.7142
320079	19.8555	20.2473	21.9090	20.6661
320083	*	*	20.6771	20.6771
330001	27.3996	28.6214	30.8509	29.0053
330002	26.9341	27.1811	28.0882	27.3842
330003	18.9211	19.3972	20.2744	19.5052
330004	20.9501	22.5082	24.3703	22.6203
330005	22.1957	22.6137	24.3578	23.0431
330006	25.8006	26.2970	28.3904	26.7950
330008	19.2341	19.6770	20.6816	19.8702
330009	31.3435	30.9087	33.3605	31.8514
330010	16.6508	17.8935	19.8211	18.0647
330011	18.6748	18.7995	19.8035	19.0860
330013	19.6269	19.0995	21.2063	19.9545
330014	36.8669	32.4496	32.0824	33.6237
330016	16.8016	18.7194	18.1603	17.8636
330019	33.5369	31.5927	31.9042	32.2626
330020	15.1142	16.6952	*	15.9156
330023	25.6512	26.6997	29.4538	27.3398
330024	37.3316	35.7485	35.3598	36.0893
330025	16.8687	17.6169	18.7663	17.7638
330027	35.5255	35.1046	34.1281	34.9304
330028	29.5294	31.7699	31.8452	31.1533
330029	17.0016	19.4377	18.4354	18.2976
330030	19.1085	18.0866	22.0574	20.0482
330033	17.4444	19.5836	18.6316	18.5329
330034	27.7738	38.2451	*	31.2246
330036	25.2820	25.5888	27.0970	25.9905
330037	16.4866	18.3260	18.3557	17.7256
330038	17.3429	16.2997	*	16.8497
330041	31.4871	29.5305	34.5461	31.7315
330043	27.4661	28.9622	31.7873	29.4079
330044	19.5219	19.9808	22.0465	20.8006

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage** (3yrs)
330045	27.9919	28.5267	30.9046	29.1458
330046	35.2703	38.1184	41.6759	38.2919
330047	18.5536	19.5561	20.1646	19.4202
330048	19.1093	19.6129	*	19.3678
330049	20.5731	22.1523	24.7766	22.4977
330053	17.8082	17.9161	18.1728	17.9636
330055	32.8910	34.2159	34.9709	34.0397
330056	30.0945	29.8377	32.0982	30.6226
330057	19.3643	20.0995	20.9282	20.1517
330058	17.7672	18.1007	19.2916	18.3759
330059	34.2426	35.0121	36.4176	35.2563
330061	25.4082	26.8580	28.6725	26.9280
330062	18.1318	18.4662	20.0222	18.7978
330064	33.6447	35.1422	36.0976	34.9476
330065	19.9305	20.1615	20.5958	20.2322
330066	18.8707	19.3644	20.9990	19.7359
330067	22.1065	23.6836	24.8927	23.5465
330072	30.4171	30.3737	32.9665	31.2232
330073	16.4518	16.5166	18.4162	17.3766
330074	17.7308	18.9326	21.7299	19.4328
330075	17.6385	19.2938	19.9781	18.9556
330078	18.7884	18.0362	20.8379	19.1917
330079	18.7622	18.9398	21.1153	19.6188
330080	31.4424	34.6880	33.5537	33.2193
330084	19.3216	19.0261	19.2135	19.1805
330085	20.6203	20.9332	21.8271	21.1349
330086	23.6496	26.2979	27.1585	25.5888
330088	25.7940	26.7583	29.5181	27.3384
330090	19.2112	20.1344	20.9327	20.1124
330091	19.7776	21.6004	22.9396	21.4093
330092	13.3723	17.2083	*	15.2706
330094	18.1582	18.8941	21.3659	19.4211
330095	21.1096	21.1809	28.9794	22.2151
330096	18.5149	20.0370	21.1648	19.9256
330097	16.4433	16.1945	18.6291	17.0573
330100	29.0916	28.9956	31.5775	29.8728
330101	31.5914	35.3618	38.4810	34.9116
330102	19.0058	21.0057	23.5253	21.0029
330103	16.8110	17.3511	17.9017	17.3639
330104	31.2074	31.9746	36.8451	33.4319
330106	35.3775	36.2526	38.7822	36.7882
330107	27.7797	28.9225	29.7378	29.5391
330108	18.0786	18.5849	20.2536	18.9350
330111	15.9321	13.3352	17.7020	15.4904
330114	17.0581	19.1162	19.2566	18.4674
330115	17.4684	18.5911	18.5544	18.2257
330116	14.9610	16.8567	*	15.8888
330119	33.1179	33.5653	34.6591	33.7652
330121	16.3385	17.1869	17.9757	17.1336
330122	20.2417	23.0384	25.6500	22.9753
330125	19.7638	20.5922	22.8078	20.9861
330126	23.8957	25.1175	27.7155	25.5857
330127	30.7356	40.0112	42.2836	37.9337
330128	30.8242	34.3468	32.7050	32.6252
330132	14.3673	14.8704	16.0311	15.1074
330133	35.3576	37.5192	35.9692	35.9945
330135	22.2670	23.5662	25.6504	23.7351
330136	20.1043	20.4124	21.4225	20.6554
330140	19.3615	21.1841	21.1787	20.5922
330141	26.7096	27.5960	29.3283	27.9225
330144	16.2517	17.1513	17.3920	16.9610
330148	16.2782	16.7251	17.6560	16.8727
330151	15.7594	15.2233	16.4028	15.7871
330152	30.8314	33.5587	32.9336	32.8160

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage** (3yrs)
330153	18.1776	19.4417	21.2843	19.6379
330157	22.3804	23.1743	23.5522	23.0369
330158	27.1228	29.3163	32.7159	29.6159
330159	19.4998	20.2753	22.5580	20.7593
330160	29.5885	30.7893	32.1266	30.7976
330162	27.6010	27.9705	29.6042	28.3718
330163	20.7456	21.4143	21.1517	21.0818
330164	20.9003	22.0699	23.5427	22.1914
330166	15.4420	17.0637	18.4262	17.0093
330167	30.2346	32.0541	30.9667	31.0372
330169	35.4794	36.3690	36.2725	36.0426
330171	24.8035	25.1567	25.9946	25.3030
330175	18.3116	18.8701	20.4628	19.1836
330177	16.3704	16.6059	19.0005	17.2818
330179	13.8953	16.0113	*	14.8822
330180	17.9877	19.2670	19.8951	19.0453
330181	33.0908	34.6065	37.1218	34.9071
330182	33.6531	33.3363	35.2415	34.0997
330183	20.6164	20.3520	*	20.4865
330184	31.3706	28.4726	30.7479	30.2392
330185	26.8612	27.8894	28.9787	27.9279
330188	18.8000	20.2849	21.1196	20.1045
330189	18.4498	23.5589	19.0726	20.2279
330191	19.0348	19.5623	20.9392	19.8520
330193	30.2260	32.5496	36.2427	32.8255
330194	35.2036	35.6486	38.5372	36.5109
330195	34.8966	34.4689	36.4249	35.2744
330196	30.5799	28.9488	31.1915	30.2340
330197	18.3527	19.2237	20.8386	19.4333
330198	24.8590	25.6669	25.3622	25.3000
330199	30.5409	28.0374	34.1354	30.7601
330201	28.7861	30.0524	29.3745	29.3679
330202	31.2575	35.4943	30.7990	32.6310
330203	25.0345	25.9211	24.7422	25.2170
330204	32.2005	31.1366	30.3699	31.2607
330205	22.3490	24.9040	29.0622	25.3829
330208	26.6682	27.3170	30.6158	28.1551
330209	25.1281	27.0257	27.7071	26.6630
330211	19.5405	20.0006	20.8224	20.1312
330212	24.7681	24.8554	24.9434	24.8488
330213	19.6796	20.1166	20.7967	20.2015
330214	32.4292	32.3130	32.7647	32.5110
330215	17.9863	19.0726	19.9226	18.9889
330218	21.1890	21.4747	20.6012	21.0785
330219	23.4310	25.1792	28.7448	25.6786
330221	33.3796	32.5044	34.9345	33.6092
330222	18.5571	19.3148	23.5491	20.4196
330223	17.8306	19.1604	18.8253	18.6087
330224	20.4309	20.5881	22.7847	21.2721
330225	27.0379	28.0523	29.1744	28.0410
330226	23.1859	21.6368	23.5405	22.8458
330229	17.5326	18.2554	18.5590	18.1157
330230	29.6283	30.6937	32.5997	30.9389
330231	32.7200	32.4163	30.2184	31.7719
330232	19.1787	20.0924	21.1277	20.1536
330233	44.1265	43.1186	39.5133	42.2764
330234	35.0720	35.8327	37.7135	36.1847
330235	19.5880	20.1255	21.4643	20.3704
330236	31.3463	32.1246	31.8491	31.7633
330238	17.3976	17.8867	18.3846	17.8977
330239	18.5079	18.9953	19.7561	19.0658
330240	30.7321	35.6576	37.3866	34.3729
330241	23.8638	24.7545	26.7598	25.1593
330242	27.6384	28.3561	30.5172	28.8163

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage** (3yrs)
330245	18.5161	20.7605	20.2037	19.8717
330246	28.1205	29.8777	31.8857	29.8369
330247	27.3937	32.5858	25.6063	28.6111
330249	17.1320	17.6846	19.1469	18.0226
330250	19.9619	20.8742	22.1272	21.0158
330254	15.9123	15.7864	*	15.8547
330258	31.8910	32.6745	*	32.2903
330259	25.9994	26.3620	27.4131	26.5822
330261	27.9766	30.0489	30.4771	29.5060
330263	18.7378	19.5057	20.0831	19.4473
330264	22.8099	24.9714	26.3652	24.7466
330265	17.6301	21.1215	18.2547	19.0141
330267	24.5939	27.8255	29.0499	27.1989
330268	15.9060	16.8358	18.7991	17.2148
330270	36.0824	33.0375	36.5976	35.2587
330273	26.0565	27.0454	28.8548	27.3093
330275	18.7268	*	*	18.7268
330276	19.0228	19.6572	20.7973	19.8310
330277	19.1761	20.7851	21.8865	20.6281
330279	20.7107	21.7827	23.8793	22.1432
330285	24.0491	24.5388	26.0446	24.8963
330286	27.7762	28.0994	31.1344	29.0184
330290	30.4706	34.3439	35.5617	33.3907
330293	16.9238	17.3180	17.6507	17.2993
330304	27.3562	29.2207	31.1146	29.2299
330306	29.5937	29.6641	30.4426	29.9146
330307	21.7257	23.2838	23.8583	22.9902
330314	25.9937	25.5405	26.2954	25.9412
330316	27.9543	27.9277	33.7857	29.8270
330327	20.3874	20.1705	19.3465	20.0015
330331	33.1276	32.3249	34.6302	33.3443
330332	25.3689	27.6955	30.5104	28.0245
330333	*	28.8819	29.7725	29.3003
330336	29.8294	27.9163	32.9548	30.2195
330338	21.2670	23.6142	25.4319	23.4256
330339	20.1028	20.2382	20.8423	20.3907
330340	28.4129	28.2732	29.8140	28.8238
330350	30.9763	33.5493	35.5656	33.4000
330353	34.2431	34.2260	35.6821	34.7146
330357	34.1846	36.8598	36.5461	35.8671
330372	33.3771	23.5381	28.2490	27.9598
330381	31.8602	*	*	31.8602
330385	33.2246	37.5523	44.3387	38.5414
330386	20.4231	21.4363	25.2063	22.3343
330389	37.3749	33.1192	32.2112	34.0979
330390	30.8744	31.7344	32.7450	31.7461
330393	27.8352	31.9272	33.0953	30.9212
330394	18.9343	19.6892	21.3678	19.9899
330395	32.7494	33.2318	32.1089	32.8033
330396	30.7961	32.8517	31.2429	31.6152
330397	32.6068	34.6435	40.0884	35.3787
330398	29.2872	*	*	29.2871
330399	33.3012	32.7149	32.1248	32.6847
330400	16.2707	16.8168	*	16.5566
330401	*	*	33.8633	33.8633
340001	19.7093	22.0257	21.6113	21.1407
340002	20.5253	22.9425	24.0145	22.6770
340003	19.5145	19.6545	20.8205	19.9936
340004	20.9863	23.0890	23.3756	22.5010
340005	16.7176	16.6909	20.8149	18.1113
340006	16.5709	16.1379	*	16.3589
340007	18.3399	18.3760	19.5208	18.7399
340008	20.4157	22.6570	22.7338	21.9732
340009	20.9178	20.6155	*	20.8194

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage** (3yrs)
340010	19.4302	20.6547	21.3024	20.4707
340011	14.4798	17.4534	18.1926	16.7010
340012	17.5112	19.3651	19.6350	18.7911
340013	19.4613	21.5130	21.0066	20.6934
340014	27.7888	21.9804	22.6757	23.7385
340015	19.4676	20.3493	24.3410	21.2831
340016	18.8958	19.4160	20.2859	19.5502
340017	20.2775	20.6263	21.7083	20.8968
340018	18.1751	16.4611	17.3480	17.2851
340019	15.2887	15.9037	16.7901	15.9850
340020	18.0897	19.2392	21.3385	19.6156
340021	20.5813	22.0220	22.9208	21.8064
340022	18.7714	20.6484	19.9078	19.7763
340023	19.3146	19.9023	22.3591	20.5625
340024	17.9130	19.1430	20.4906	19.1924
340025	18.4628	19.1770	20.2864	19.3249
340027	19.4548	19.4907	21.0975	19.9909
340028	19.9403	20.6496	22.2028	21.0172
340030	22.4709	23.9505	26.7753	24.2706
340031	14.6370	15.4935	*	15.0325
340032	20.7444	22.0245	23.2204	21.9802
340035	18.9930	18.5883	16.4821	17.7616
340036	17.7619	18.4203	20.8313	18.9871
340037	17.5829	18.3655	21.9524	19.3820
340038	18.1493	20.3091	13.9936	16.9604
340039	21.3711	22.4020	24.8246	22.8823
340040	20.7237	21.1397	22.4777	21.4396
340041	15.5873	16.3200	17.6319	16.5216
340042	17.0034	19.1386	21.1107	19.0690
340044	18.0863	18.9562	18.2154	18.4256
340045	13.6182	20.2641	17.4067	16.7851
340047	20.0744	21.5178	22.5199	21.3642
340049	19.5127	17.2986	21.2734	19.3901
340050	19.6726	20.6831	20.3262	20.2425
340051	19.3627	19.0282	20.3057	19.5812
340052	23.2134	26.2243	*	24.4619
340053	19.9915	23.2410	24.9768	22.5255
340054	15.5090	16.6208	*	15.9979
340055	19.4035	20.8253	23.2990	21.1986
340060	19.3410	20.8570	20.8076	20.3431
340061	22.1175	23.7173	25.1081	23.6221
340063	16.7377	26.4132	*	21.1044
340064	18.5069	17.6106	19.4523	18.4891
340065	17.3530	23.2606	20.3296	20.0017
340067	19.7187	22.4054	22.2565	21.2710
340068	17.8065	18.8758	19.4487	18.7043
340069	21.6728	22.5995	24.4650	22.9542
340070	20.6829	21.3511	22.2605	21.4483
340071	18.0767	19.3679	19.9561	19.1824
340072	17.7129	18.7920	19.2773	18.5813
340073	23.5832	24.0794	26.6829	24.9327
340075	20.0081	19.7450	23.2904	21.0501
340080	18.2061	*	*	18.2061
340084	19.0103	19.6087	20.8175	19.7922
340085	18.3179	20.3684	21.7112	20.1771
340087	18.2255	20.2445	17.8215	18.7854
340088	22.2322	22.6462	22.8687	22.5844
340089	15.4760	16.1321	*	15.8015
340090	18.5287	18.7701	20.3261	19.2336
340091	20.3861	21.2665	23.1430	21.6613
340093	16.8903	16.5452	*	16.7319
340094	*	21.0091	*	21.0091
340096	19.4696	20.9686	22.1174	20.8605
340097	18.2399	20.0302	20.8690	19.7362

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage** (3yrs)
340098	21.9578	23.4949	24.2262	23.3005
340099	15.3752	16.9979	17.5114	16.5762
340101	15.6509	20.7841	*	17.9177
340104	11.5169	12.1845	12.9949	12.2095
340106	18.1211	19.1147	20.1076	19.1527
340107	19.3197	20.7601	21.0960	20.4083
340109	19.0532	19.3357	20.4341	19.6192
340111	16.5976	17.2127	*	16.9155
340112	15.5142	16.9592	*	16.2328
340113	21.9883	24.4222	25.0729	23.8451
340114	20.7261	21.7750	19.9142	20.7205
340115	21.7586	24.7924	23.8284	23.3620
340116	20.6800	21.6744	23.9643	22.1286
340119	19.5827	20.5394	21.2239	20.4881
340120	15.8240	16.9847	19.9860	17.6157
340121	17.8771	19.0420	19.9409	18.9829
340123	18.9078	21.5041	22.3711	20.9859
340124	17.4185	17.5411	17.5691	17.5084
340125	20.2748	*	*	20.2748
340126	19.3734	21.2045	21.4271	20.6156
340127	19.3842	21.4797	22.9672	21.3229
340129	20.6521	21.0773	22.3260	21.4712
340130	19.8707	20.5851	22.7687	21.1316
340131	21.3849	23.2478	24.1370	22.9644
340132	17.5711	17.7110	17.8771	17.7237
340133	17.2138	17.5170	23.1444	19.0209
340137	31.7702	39.9826	33.1750	34.5096
340138	*	*	29.5285	29.5286
340141	21.4986	23.2961	24.2033	23.0468
340142	18.0766	18.1824	20.4320	18.9192
340143	24.4098	21.9304	23.0416	23.0758
340144	22.9183	22.8634	25.4597	23.8048
340145	19.9233	21.5958	21.8120	21.1598
340146	17.3051	19.1306	20.7252	19.1365
340147	20.5520	21.5912	22.6057	21.5761
340148	18.9912	20.6790	20.8156	20.1791
340151	18.4733	19.0779	19.2593	18.9459
340153	20.7533	21.7375	23.7426	22.0619
340155	23.1021	25.0965	26.3663	24.8240
340158	19.0843	20.0921	21.7489	20.4390
340159	19.0338	19.4992	21.2983	19.9832
340160	16.7170	17.1963	18.7569	17.6323
340164	21.5769	*	*	21.5769
340166	20.8270	22.0519	22.8349	21.9930
340168	15.6071	15.4250	16.8277	15.9431
340171	22.4779	22.7304	25.9603	23.8162
340173	21.0898	23.3690	23.7037	22.7805
340176	*	*	26.5277	26.5277
350001	16.6551	15.6193	*	16.1279
350002	18.3459	19.1931	20.4398	19.3340
350003	19.2840	20.0663	21.0585	20.1107
350004	23.7016	25.1976	28.3773	25.5370
350005	19.9156	20.7467	*	20.3296
350006	19.0343	19.1257	19.7577	19.2916
350007	13.8824	13.9966	*	13.9397
350008	22.3783	23.4052	*	22.8911
350009	18.3688	19.3668	20.2558	19.3312
350010	16.6272	16.7774	17.2489	16.8799
350011	19.1944	20.6809	21.9111	20.4046
350012	18.2524	16.0990	*	17.4568
350013	17.2596	17.8145	*	17.5341
350014	18.0999	18.6786	16.1719	17.7037
350015	17.1071	17.5658	18.5437	17.7151
350017	17.5124	18.0840	19.1952	18.2584

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage** (3yrs)
350018	16.4939	16.3210	*	16.4077
350019	20.1608	20.6743	21.3589	20.7389
350021	17.7123	16.3394	*	16.9912
350023	17.4983	18.3253	*	17.9246
350024	15.4788	15.7510	*	15.6148
350025	15.0469	14.6099	*	14.8289
350027	15.5178	17.5882	17.6730	16.8430
350029	14.6173	*	*	14.6173
350030	18.1131	18.7993	18.8822	18.5954
350033	16.0870	16.0903	*	16.0886
350034	19.6445	*	*	19.6446
350035	11.7675	12.6496	*	12.2147
350038	19.6854	19.5497	*	19.6189
350039	16.6278	14.8599	*	15.7361
350041	19.1341	23.1150	*	21.1445
350042	19.3309	19.3370	*	19.3339
350043	16.7433	17.6722	18.8378	17.7606
350044	11.0601	10.9690	*	11.0158
350047	18.0094	19.9749	*	18.9594
350049	18.1993	16.8322	*	17.5040
350050	12.2183	25.2747	*	15.7885
350051	17.0653	16.9201	*	16.9927
350053	15.9160	16.7456	*	16.3628
350055	15.7916	16.1691	*	15.9782
350056	15.0995	15.7752	*	15.4239
350058	16.7034	16.1013	15.0197	15.9830
350060	10.3076	10.5325	*	10.4159
350061	18.8790	19.6460	18.8494	19.1278
360001	19.6655	20.3515	22.2387	20.7565
360002	18.2613	19.6145	20.7586	19.4748
360003	22.7521	23.2905	24.4144	23.4719
360006	22.4436	22.6333	24.0814	23.0671
360007	14.8213	15.3656	19.1316	16.2099
360008	18.7961	19.8034	21.3795	20.0267
360009	18.9935	19.6277	22.4076	20.3429
360010	19.1852	20.5934	20.6291	20.1715
360011	21.3659	19.5383	21.4293	20.6951
360012	20.0525	23.0125	24.3618	22.5334
360013	21.3690	22.3407	24.4232	22.7482
360014	20.7419	22.9930	22.9372	22.2320
360016	21.2505	21.3967	22.8430	21.8319
360017	22.2740	22.7446	23.6181	22.8938
360018	24.6686	24.6694	29.9085	26.0220
360019	20.6480	21.4708	23.3006	21.7875
360020	22.1751	21.6607	21.5085	21.7901
360024	20.1352	20.9408	22.5356	21.2300
360025	20.2531	20.9266	21.6676	20.9599
360026	17.9523	18.6739	20.8825	19.1730
360027	21.7650	22.8098	23.5907	22.7203
360028	18.7174	*	*	18.7174
360029	19.2928	19.7466	20.4925	19.8555
360030	17.6058	19.0551	*	18.3339
360031	21.0687	21.0481	24.3482	22.0734
360032	19.8020	19.8367	21.1743	20.2841
360034	17.9594	19.4982	21.5621	19.7369
360035	21.0674	22.6982	24.2433	22.6934
360036	20.9916	21.4486	22.3567	21.6200
360037	23.1674	23.7504	32.6245	25.9190
360038	19.9415	21.4804	23.4855	21.6060
360039	19.0013	19.3703	23.4642	20.4568
360040	18.7425	19.9750	21.3307	20.0479
360041	19.7968	21.9093	22.1352	21.3781
360042	17.1952	19.3774	*	18.2267
360044	17.6882	17.8417	19.7212	18.4151

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage** (3yrs)
360045	22.4018	22.8112	*	22.5916
360046	20.4607	21.4292	22.8425	21.5814
360047	15.2922	15.8279	17.5885	16.2546
360048	22.4890	25.6259	24.7150	24.1596
360049	20.8393	*	22.4938	21.5834
360050	15.0568	15.6847	*	15.3748
360051	20.8757	21.2225	23.0658	21.7279
360052	18.7931	19.8037	22.5005	20.3830
360054	17.4911	17.5714	19.2884	18.1334
360055	21.4112	22.8755	23.5586	22.6117
360056	20.6968	23.4405	22.4475	22.2067
360057	15.8569	16.0395	*	15.9541
360058	19.3306	19.0440	21.0768	19.7927
360059	19.9304	23.2129	23.0775	22.0496
360062	21.9195	24.4898	24.5746	23.8212
360063	17.5108	20.2671	*	18.8180
360064	20.0615	20.7659	21.3424	20.7273
360065	19.6199	22.3443	22.9727	21.6463
360066	22.8175	24.1295	24.6806	23.9204
360067	14.2745	17.3734	*	15.7627
360068	22.6227	22.6027	22.1110	22.4481
360069	14.6597	18.5382	20.5349	17.7132
360070	18.8406	19.4700	21.8228	20.0184
360071	19.0302	19.6873	21.4478	20.0864
360072	19.0166	20.8819	21.3736	20.4643
360074	18.5889	19.9947	22.2368	20.2638
360075	26.0663	27.6992	23.8492	26.5296
360076	20.3317	21.0402	22.5863	21.3489
360077	21.5517	22.2964	23.3686	22.4049
360078	22.6490	22.7743	23.3799	22.9416
360079	21.6644	23.9491	25.9623	23.8072
360080	17.6369	18.0392	18.7213	18.1448
360081	20.4614	20.7477	22.1973	21.1275
360082	20.7610	22.9390	25.2254	23.0000
360084	22.0492	22.1699	23.3257	22.5390
360085	21.5151	24.8010	24.6618	23.5397
360086	19.3701	20.5858	21.5983	20.5220
360087	20.7969	21.1621	23.9638	22.0097
360088	24.0822	20.5703	*	22.1866
360089	18.1941	19.5260	21.0229	19.5818
360090	20.8971	21.2072	22.6236	21.6097
360091	21.8447	22.6510	23.5759	22.6962
360092	21.5073	20.9588	21.9732	21.4976
360093	19.0261	21.0134	21.4623	20.5059
360094	20.1227	21.1952	22.6440	21.2292
360095	19.8521	21.3505	23.6518	21.6069
360096	19.6726	20.9838	22.0673	20.9264
360098	19.8178	20.8049	22.7645	21.0895
360099	19.6241	20.8801	20.8524	20.4553
360100	18.0442	19.9768	21.5911	19.8051
360101	20.2635	24.1551	26.2875	23.5545
360102	18.5367	*	*	18.5367
360106	19.1778	18.9779	19.8658	19.3346
360107	22.1359	21.9939	23.6880	22.6413
360108	20.0681	19.0649	*	19.5523
360109	19.9237	17.3564	23.0178	19.9966
360112	24.6335	25.7920	25.5910	25.3189
360113	20.8154	22.8088	22.3348	21.9843
360114	18.7509	19.4212	*	19.0907
360115	20.7652	21.0104	22.3926	21.3952
360116	18.8319	20.1408	21.3809	20.0857
360118	19.9141	21.0235	*	20.4951
360121	22.2175	21.9111	23.2515	22.4617
360123	20.9792	21.9985	23.1310	22.1195

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage** (3yrs)
360125	20.5508	21.6675	21.1408	21.0968
360126	24.5387	*	22.2409	23.5396
360127	16.5559	18.2150	*	17.4089
360128	17.0515	17.5557	18.0355	17.5624
360129	16.6114	17.2309	17.9151	17.2650
360130	18.4539	19.8906	20.1257	19.4067
360131	18.4688	20.4123	21.7838	20.2068
360132	21.3493	21.0162	23.4179	21.9298
360133	20.2857	22.1957	22.0958	21.4858
360134	20.9564	21.6081	23.6817	22.0689
360136	18.2194	18.5687	*	18.3942
360137	22.3648	23.1867	23.8947	23.1248
360140	21.2881	18.3463	*	19.7842
360141	23.5343	23.5980	25.1442	24.0943
360142	18.3188	19.6189	20.6728	19.5866
360143	21.0336	20.9158	22.2275	21.3979
360144	20.9033	20.9386	24.7973	22.2165
360145	20.0513	21.2931	22.4813	21.2645
360147	17.6779	18.7258	20.0409	18.8813
360148	19.1393	20.3120	21.3211	20.2546
360150	22.3620	23.1858	24.8485	23.4439
360151	19.2788	20.5594	21.7215	20.4860
360152	21.6005	20.9704	22.9352	21.8108
360153	16.7399	16.1021	17.3367	16.7252
360154	14.3593	14.9606	16.2416	15.1371
360155	22.2112	22.3347	23.0020	22.5355
360156	18.9095	19.9382	21.2853	20.0637
360159	21.5695	22.7992	23.3359	22.5729
360161	20.6160	19.6266	21.5114	20.5834
360163	21.2689	22.1012	23.1500	22.1757
360165	18.2417	19.6205	*	18.9117
360170	20.4407	19.7980	22.2815	20.8462
360172	19.8809	22.3294	22.7104	21.5807
360174	20.5399	20.5874	21.7129	20.9378
360175	21.5450	22.0274	22.7887	22.1417
360176	16.6228	17.6743	*	17.1399
360177	18.9576	19.6992	20.8194	19.8306
360178	16.7962	18.0773	18.2393	17.6939
360179	20.7069	21.3520	23.0678	21.6241
360180	21.0146	22.9260	25.1499	22.9741
360185	19.4858	20.0848	21.1245	20.2540
360186	20.7572	18.1254	*	19.4292
360187	19.6535	20.8423	21.9499	20.7934
360188	18.3057	16.4329	*	17.4338
360189	18.5940	19.0481	20.0275	19.2171
360192	22.7846	23.9969	24.9995	23.9111
360194	17.6140	19.3901	20.3677	19.1372
360195	20.5828	21.2801	23.1897	21.7230
360197	20.5062	21.6110	23.1378	21.7597
360200	17.9623	19.5866	*	18.6858
360203	15.9609	17.9698	19.3642	17.7421
360210	21.8629	21.5961	25.0811	22.8213
360211	20.6081	22.0011	22.4529	21.6965
360212	20.6987	21.0632	22.8041	21.5064
360213	19.0584	20.5448	*	19.7786
360218	18.8204	20.7709	22.8059	20.8145
360230	20.8042	21.2417	24.7681	22.2381
360231	14.4168	12.7388	*	13.4906
360234	20.6131	21.0473	22.1787	21.3387
360236	21.4628	20.5683	22.8821	21.6382
360239	19.2375	20.9440	23.5802	21.2633
360241	25.3741	23.7679	23.4061	24.1565
360245	15.9782	16.7956	18.1015	16.9965
360247	17.0776	*	*	17.0775

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage** (3yrs)
360249	25.4331	*	*	25.4330
360250	*	50.5106	*	50.5105
360253	*	*	31.3006	31.3006
360254	*	*	30.0791	30.0792
360255	*	*	15.0964	15.0963
370001	24.1929	22.0586	25.5838	23.8868
370002	15.4333	16.1853	18.9544	16.8753
370004	18.5233	22.5027	21.5041	20.8266
370005	15.3881	*	*	15.3881
370006	16.4995	15.7367	15.6334	15.9348
370007	15.8312	14.4961	16.7597	15.6795
370008	17.5553	18.5253	22.1596	19.3861
370011	15.6178	16.1757	17.1458	16.3495
370012	12.4942	13.3824	*	12.9251
370013	18.9584	19.3237	21.1513	19.8462
370014	20.2858	22.7976	21.8473	21.6639
370015	20.8765	18.9169	20.3965	20.0611
370016	19.1613	20.0888	20.4407	19.8819
370017	13.6531	*	*	13.6531
370018	17.7054	18.7928	20.8357	19.1122
370019	14.6216	16.1367	18.1260	16.2132
370020	15.1035	15.6057	16.8631	15.8317
370021	12.9030	*	*	12.9030
370022	17.3724	18.2109	20.2432	18.6171
370023	17.5148	18.1255	19.3386	18.3281
370025	18.4815	19.1013	20.2845	19.2928
370026	18.0412	18.6982	21.9141	19.5712
370028	21.1292	22.1765	24.1009	22.4973
370029	18.2580	19.3285	19.5811	19.0934
370030	16.5803	18.4568	18.6541	17.9169
370032	18.1538	18.9050	20.0827	19.0803
370033	11.3210	15.3857	*	13.1697
370034	15.6288	16.2204	16.1541	15.9959
370036	12.4070	11.7667	16.5843	13.2363
370037	18.9556	20.6493	21.0719	20.2262
370038	13.0210	15.4551	*	14.1589
370039	19.4498	22.7015	20.3137	20.7707
370040	15.5109	16.8127	18.9981	17.0372
370041	16.2316	14.7346	19.0145	16.6419
370042	15.2764	15.9005	14.0899	15.1360
370043	17.0892	20.0991	20.2929	18.9889
370045	11.3560	11.6163	12.6613	11.8767
370047	17.8769	18.4743	19.4856	18.6175
370048	15.6803	17.0785	15.4768	16.0450
370049	19.4868	20.3405	20.4826	20.0887
370051	12.5171	11.4943	12.0397	11.9839
370054	18.0787	19.2294	20.3788	19.2048
370056	18.1432	19.2867	20.4872	19.2536
370057	15.1228	16.0301	17.3020	16.1401
370059	18.3314	21.3103	*	19.7652
370060	19.3051	17.9469	23.1897	20.1750
370063	16.7342	*	*	16.7342
370064	11.9954	11.6347	11.9044	11.8446
370065	18.1349	18.2406	18.3966	18.2581
370071	16.4567	*	*	16.4568
370072	13.6519	12.5765	12.5766	12.8934
370076	14.3555	15.4067	19.0231	16.2477
370078	19.2412	15.2513	22.2318	18.5140
370079	16.9201	17.5915	*	17.2356
370080	14.7323	14.3546	16.1445	15.0543
370082	15.0669	16.9715	12.6060	14.8254
370083	13.1810	15.6824	18.5669	15.6441
370084	13.1197	15.6184	16.1277	15.0212
370085	48.1271	13.7216	*	19.0856

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
370086	11.1900	*	*	11.1900
370089	17.2638	17.9243	18.0505	17.7472
370091	20.1822	20.8536	24.2117	21.6700
370092	15.7678	16.8432	*	16.3152
370093	19.7008	22.1966	23.5685	21.8046
370094	19.5462	19.5565	20.6507	19.9482
370095	13.4202	14.5909	14.3563	14.1246
370097	23.2056	19.3793	20.3218	20.7266
370099	19.4646	18.1467	20.2001	19.2453
370100	18.8274	12.9784	13.0682	14.6358
370103	18.2685	23.1347	15.6109	19.0349
370105	20.7890	25.1252	22.4493	22.5846
370106	20.3651	21.8937	24.1115	22.1312
370108	12.7470	14.0190	13.8170	13.5126
370112	15.3039	14.3384	16.5964	15.3556
370113	17.6107	20.3439	21.4267	19.8197
370114	17.8941	17.9757	19.4933	18.4780
370121	21.3099	20.5488	*	20.9192
370122	15.4375	*	*	15.4374
370123	19.0313	19.7958	20.5180	19.7729
370125	13.9436	14.4664	17.9240	15.3291
370126	15.8020	*	*	15.8021
370131	15.7261	*	*	15.7262
370133	12.9545	16.1855	*	14.6252
370138	17.5551	17.4574	19.0403	18.0470
370139	14.9964	16.0898	16.3223	15.8016
370140	17.1393	17.4950	*	17.3218
370141	20.7798	19.8606	24.7859	21.7383
370146	13.0399	13.9900	*	13.5128
370148	20.6612	22.6237	22.8526	22.0700
370149	17.0929	18.0699	18.2260	17.8047
370153	16.4669	16.5267	17.9692	16.9732
370154	15.6093	16.6687	17.4760	16.6039
370156	14.5696	15.4303	15.9647	15.3521
370158	15.6994	16.3637	17.3412	16.4535
370159	21.1267	25.5592	*	22.6485
370163	20.4217	*	*	20.4216
370165	13.0375	12.9569	*	12.9979
370166	21.0797	19.4219	21.3628	20.6200
370169	12.7138	14.8384	16.5607	14.5408
370176	18.9951	19.6537	22.1455	20.2849
370177	14.6481	14.1304	14.0279	14.2494
370178	11.6200	9.8655	12.9636	11.3085
370179	21.3002	23.8404	21.9673	22.2749
370183	16.9318	16.6061	17.9270	17.1700
370186	15.4533	16.3671	16.3879	16.0737
370190	19.3570	20.6398	22.3326	20.7903
370192	19.6967	21.8343	24.3832	21.9053
370196	*	*	23.6334	23.6334
370199	*	*	20.7075	20.7075
370200	22.5299	18.3941	16.7164	18.9908
370201	*	18.2548	18.9906	18.6571
370202	*	16.5384	24.0239	20.2030
370203	*	23.5454	19.8772	21.4569
370206	*	*	22.3471	22.3471
370207	*	*	26.3745	26.3746
380001	26.4822	25.1542	20.9585	23.8121
380002	21.9185	23.2479	25.2629	23.4657
380003	20.9007	23.8074	24.6377	23.1951
380004	23.3609	24.5418	27.5184	25.2584
380005	25.0750	24.7476	26.3472	25.4394
380006	21.3520	20.5914	24.7492	22.3626
380007	32.2678	25.9239	30.0497	29.1804
380008	22.3004	21.6133	24.6149	22.8464

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
380009	24.3851	25.1040	26.0012	25.1913
380010	22.7276	24.1931	25.5234	24.1293
380011	20.3357	20.6759	21.9382	20.9633
380013	19.8180	19.9606	24.1491	21.3157
380014	25.9828	26.6038	28.4536	27.0598
380017	25.3954	21.9236	29.2543	25.5247
380018	22.9822	24.8661	27.5171	25.1199
380019	20.8176	21.1743	*	20.9950
380020	22.9568	23.9978	23.7066	23.5720
380021	23.8499	24.4365	28.0334	25.5509
380022	24.5974	25.6255	26.4793	25.6210
380023	21.3831	23.4328	23.0079	22.7334
380025	26.9346	26.9398	28.8525	27.6239
380026	20.6972	22.7561	23.8666	22.4738
380027	21.5490	22.2573	21.5822	21.7906
380029	20.1471	22.0371	24.2939	22.3500
380031	20.3396	23.7634	*	22.1387
380033	27.1343	26.6899	30.4783	28.1499
380035	23.9719	25.6016	26.2434	25.3543
380036	27.2157	*	*	27.2157
380037	22.1774	23.4798	25.0199	23.6781
380038	26.7759	28.1436	29.1804	28.0609
380039	22.8048	25.7614	27.5115	25.2376
380040	22.5477	22.6412	21.5958	22.2243
380042	24.4172	21.6793	*	22.9706
380047	24.2524	25.2591	26.5017	25.3895
380048	18.3005	18.2773	*	18.2867
380050	20.3205	22.1089	23.1332	21.8624
380051	22.3207	24.4081	26.2384	24.3019
380052	18.6299	20.7431	21.2567	20.2520
380056	18.4961	20.7895	22.3571	20.6518
380060	24.2059	23.0106	27.8551	25.0526
380061	22.8781	24.1121	27.3827	24.9756
380062	18.2148	26.1370	*	22.4060
380064	22.9160	27.0627	*	25.0195
380065	22.9608	23.3146	*	23.1416
380066	23.2794	23.1175	23.3581	23.2487
380069	20.4882	21.2057	*	20.8487
380070	27.7790	29.9706	34.1038	30.4794
380071	25.1808	25.9113	27.9055	26.3468
380072	19.4346	20.6568	21.9516	20.7086
380075	22.4139	23.1910	25.1930	23.7443
380078	21.0903	22.6996	*	21.9036
380081	20.4082	22.9805	22.1822	21.8754
380082	22.9606	23.7927	28.0668	25.0482
380083	21.7431	22.4058	*	22.0627
380084	27.1689	31.0111	*	28.8040
380087	17.0380	21.3119	*	19.2714
380088	19.5346	24.8158	*	22.0237
380089	25.2908	26.1967	29.6989	27.0928
380090	24.9351	30.4223	31.8702	28.9771
380091	25.3062	28.7846	31.2807	28.6166
390001	19.6732	20.3350	21.5154	20.5284
390002	19.7833	20.8831	22.0646	20.9201
390003	18.1025	18.0436	19.1857	18.4384
390004	20.3204	20.0557	21.3475	20.5889
390005	16.9472	19.0218	19.0727	18.2821
390006	21.1786	21.7867	23.0378	22.0092
390007	21.3839	*	*	21.3839
390008	18.2743	19.5439	19.9417	19.2572
390009	20.6241	22.5580	21.9459	21.7141
390010	17.3335	18.1275	19.4377	18.3086
390011	18.3257	18.2751	18.6548	18.4184
390012	21.0610	22.2060	28.5114	23.7778

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage** (3yrs)
390013	19.6562	20.2186	22.1679	20.7339
390015	13.7352	14.3138	*	14.0190
390016	17.1133	17.4931	18.1536	17.5840
390017	18.6113	18.5869	19.1962	18.7750
390018	19.0279	20.0672	19.9117	19.6570
390019	17.7258	18.7609	21.2807	19.2350
390022	24.8468	25.2980	27.5504	25.9222
390023	22.1044	23.9246	25.3767	23.8310
390024	25.4606	27.7643	25.9806	26.4580
390025	15.5523	14.0077	14.8690	14.8024
390026	22.9718	23.6317	24.0326	23.5437
390027	29.5940	29.4334	33.2139	30.7948
390028	23.6571	22.7820	24.6796	23.7138
390029	21.2661	24.4753	*	22.6697
390030	18.6887	18.9121	20.0598	19.2297
390031	18.8162	19.2040	20.3568	19.4469
390032	21.5105	18.5545	20.8450	20.3351
390035	22.3591	21.9325	23.2173	22.4923
390036	19.7671	20.2103	20.5751	20.1842
390037	20.4263	19.9175	20.1665	20.1659
390039	17.5300	17.6181	18.4580	17.8792
390040	16.6876	17.4451	20.5371	18.2001
390041	20.4397	19.6159	21.0074	20.3638
390042	22.5775	22.0668	22.2351	22.2889
390043	17.4764	17.6739	19.8641	18.3598
390044	20.9831	21.3382	22.4235	21.5908
390045	19.4677	20.2107	20.2082	19.9676
390046	21.7445	21.3960	23.1271	22.1125
390047	26.9709	*	*	26.9709
390048	19.7992	18.9776	20.3523	19.7014
390049	22.1586	22.8196	24.0933	23.0206
390050	22.2639	24.9156	22.6951	23.1957
390051	28.1385	*	*	28.1385
390052	20.1195	21.2729	22.1380	21.1379
390054	18.4975	19.4686	19.8602	19.2479
390055	23.4017	25.7327	23.5292	24.2129
390056	19.3901	21.4121	21.4239	20.7360
390057	20.2395	21.6693	24.8235	22.2695
390058	20.3520	20.7930	22.0113	21.0507
390061	23.8722	22.8728	24.4550	23.7184
390062	17.3750	17.4710	17.6303	17.4968
390063	19.4965	20.1696	21.7120	20.4817
390065	20.0473	20.2930	23.1384	21.2152
390066	18.9296	19.0132	21.7717	19.8676
390067	20.8162	21.9885	23.5136	22.0765
390068	19.1109	21.6408	21.1177	20.4766
390070	21.8549	22.7909	24.4403	23.0308
390071	16.0100	18.9416	17.8117	17.5040
390072	16.9232	16.9445	20.0561	17.9031
390073	21.2623	22.2703	22.7073	22.0769
390074	18.3093	19.7446	21.8456	19.9484
390075	18.7695	19.5840	19.9774	19.3988
390076	21.3290	19.7719	21.2039	20.7327
390078	19.0156	20.6483	*	19.7928
390079	18.9269	19.5982	19.9169	19.5006
390080	21.4707	22.2449	23.3742	22.3584
390081	24.7461	25.6575	28.1056	26.2492
390083	*	26.1660	*	26.1660
390084	20.2529	17.0197	18.3551	18.4310
390086	18.3563	19.7645	19.6488	19.2797
390088	23.9506	*	*	23.9506
390090	21.3759	20.5433	22.4588	21.4690
390091	18.3770	19.0355	19.7361	19.0422
390093	18.4442	20.0135	19.9209	19.4590

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage** (3yrs)
390095	16.6930	17.9697	18.3939	17.6811
390096	22.4382	22.2974	22.9502	22.5646
390097	25.2845	24.7853	24.5304	24.8507
390100	20.9263	21.1186	23.4155	21.8409
390101	18.5039	19.0180	20.1271	19.2316
390102	21.5496	19.3111	20.9807	20.6410
390103	18.8667	20.4422	21.0637	20.0228
390104	16.3255	16.2440	16.5081	16.3661
390106	16.8439	17.4747	*	17.1489
390107	20.9841	20.6024	21.5852	21.0626
390108	21.3142	22.0444	23.7842	22.3277
390109	16.5299	17.4540	17.2667	17.0836
390110	21.6464	21.6005	22.3968	21.8598
390111	33.3971	27.1429	30.5814	30.4618
390112	15.0065	14.8634	15.6710	15.1640
390113	19.3634	19.9496	20.1160	19.8009
390114	20.9533	19.8004	23.6162	21.4379
390115	21.4287	22.3545	24.1951	22.7320
390116	21.3671	22.6783	24.9581	22.9637
390117	18.0769	18.9764	19.0983	18.7219
390118	18.9507	17.2668	17.8460	18.0300
390119	18.8815	19.3946	20.3034	19.5629
390121	19.1315	20.6253	20.8017	20.2031
390122	17.7734	15.5438	18.5130	17.2135
390123	21.3974	21.8897	23.2232	22.1599
390125	17.5446	17.0975	18.2411	17.6363
390127	22.4555	22.8787	25.0836	23.5152
390128	19.3165	19.9764	21.3668	20.1918
390130	18.3695	18.5519	19.4835	18.7830
390131	19.2096	19.1931	19.5296	19.3184
390132	22.8414	24.1878	24.6889	23.9106
390133	24.7561	24.1590	25.2110	24.7109
390135	22.1905	22.2501	24.0445	22.8305
390136	20.6286	16.8505	21.9531	19.6672
390137	18.5397	19.4769	19.5457	19.1463
390138	20.6936	20.7726	21.4705	20.9891
390139	23.9757	24.8347	26.3622	25.0742
390142	28.8877	28.4680	29.8874	29.0890
390145	20.4228	20.4964	20.6580	20.5260
390146	18.6505	20.1788	21.4580	20.0672
390147	21.2492	21.7600	22.3135	21.7727
390150	20.3155	20.8970	20.0261	20.3992
390151	22.5206	23.6072	24.7843	23.6769
390152	19.4017	20.2581	21.5474	20.4133
390153	22.9707	23.9039	25.3391	24.1056
390154	16.7052	17.8774	19.1300	17.9859
390156	22.6398	24.0034	25.0801	23.9044
390157	19.1783	20.2647	20.6933	20.0398
390160	19.4463	19.4793	19.3598	19.4262
390162	21.9188	21.3379	24.0291	22.4183
390163	17.7564	18.1831	18.8585	18.2862
390164	24.9750	26.1698	24.2334	25.0898
390166	19.7978	19.8899	19.8531	19.8460
390168	18.8863	19.6875	20.6777	19.7568
390169	22.0547	22.7920	22.7695	22.5431
390170	24.7973	*	*	24.7973
390173	18.6613	18.8265	20.6958	19.3949
390174	25.3307	26.3891	28.4490	26.7187
390176	20.8368	21.7650	18.0752	20.3817
390178	17.0534	17.1142	17.2384	17.1362
390179	21.8593	21.5792	24.0501	22.5243
390180	26.5541	26.7743	28.4842	27.3230
390181	19.3832	18.8681	*	19.1299
390183	17.9848	17.4535	21.6811	18.9628

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage** (3yrs)
390184	20.9349	21.1941	21.1962	21.1056
390185	20.3877	20.3301	20.4476	20.3876
390189	20.3338	19.6186	20.1365	20.0174
390191	17.2270*	17.1919	18.5972	17.6639
390192	17.6597	16.6469	19.1883	17.8533
390193	18.1209	17.3804	18.9764	18.1140
390194	21.2689	21.0549	21.5850	21.3104
390195	24.1793	24.2891	26.2024	24.9040
390197	20.7998	22.1974	22.8349	21.9546
390198	15.8833	16.6803	17.3937	16.6375
390199	17.3865	17.7782	18.9787	18.0590
390200	15.4012	18.2456	19.4471	17.7454
390201	20.3533	21.3291	22.7849	21.5155
390203	21.4989	22.4685	26.9436	23.7942
390204	22.9616	22.7282	23.9673	23.2268
390209	18.7059	16.8200	*	17.7119
390211	18.4213	19.4552	21.0450	19.6873
390213	19.1553	20.1152	*	19.6103
390215	21.2032	23.5953	25.2617	23.2887
390217	19.9837	19.7578	21.4058	20.3609
390219	19.6226	20.1311	20.0594	19.9347
390220	17.7916	22.7617	23.4385	21.1834
390222	22.1548	22.7491	24.9345	23.2935
390223	22.1775	18.9493	22.8725	21.2902
390224	13.7518	17.2173	16.1289	15.4447
390225	18.7290	19.0364	20.9232	19.6059
390226	21.8481	22.8588	25.6917	23.3415
390228	19.8180	19.6212	21.0164	20.1594
390231	19.4798	21.0757	24.7757	21.7340
390233	20.2309	20.5800	21.8043	20.8925
390235	21.4200	19.9925	23.7068	21.4467
390236	17.8735	19.1427	19.8687	18.9492
390237	22.3011	21.7847	23.2054	22.4279
390238	17.1055	18.1956	19.2170	18.1264
390244	15.6402	14.2136	*	14.8974
390245	24.5076	*	*	24.5076
390246	25.0556	22.3892	22.0687	23.0374
390247	21.2151	*	*	21.2151
390249	13.1657	14.1062	14.7215	14.0139
390256	22.2773	22.3540	22.6146	22.4202
390258	22.6852	23.8318	25.0634	23.8724
390260	21.5982	*	*	21.5982
390262	*	18.8942	21.3264	20.1664
390263	20.3796	20.6348	22.0008	21.0295
390265	20.4950	20.4760	20.5948	20.5230
390266	17.1966	17.6223	18.2424	17.6964
390267	19.2665	20.2424	21.4801	20.3933
390268	22.0909	22.2046	23.1124	22.4784
390270	19.2074	20.7957	22.5258	20.8233
390278	17.7176	18.5776	21.1387	19.0743
390279	14.8655	15.8080	16.0509	15.5561
390283	22.5490	*	*	22.5489
390284	34.3904	*	*	34.3902
390285	*	29.1270	30.6300	29.8499
390286	*	22.9746	25.4499	24.2027
390287	*	30.3252	32.9709	31.6159
390288	*	26.9662	28.0958	27.3905
390289	*	22.8963	25.1658	23.9733
390290	*	30.5037	31.0967	30.8194
390291	*	20.0272	21.0057	20.4818
390293	*	23.5285	*	23.5284
390294	*	*	33.3535	33.3537
390295	*	*	26.8863	26.8862
390296	*	*	25.6979	25.6981

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage** (3yrs)
390297	*	*	25.7318	25.7318
400001	10.5757	10.7531	11.7572	11.0430
400002	13.0494	13.3684	11.6804	12.6379
400003	12.4078	11.2726	10.5963	11.4141
400004	8.5648	9.0781	11.4041	9.6304
400005	7.7432	9.7802	10.5356	9.1053
400006	10.1048	10.4988	9.2852	9.9205
400007	8.0174	8.1974	8.6022	8.2631
400009	8.6650	8.7341	9.4413	9.0138
400010	10.8011	9.1359	9.2799	9.7479
400011	8.5426	8.6252	8.9111	8.6956
400012	8.4728	8.6538	9.0740	8.7216
400013	9.2624	9.8197	9.9905	9.7250
400014	9.4798	10.2712	11.4580	10.3309
400015	14.4076	15.5827	*	14.8835
400016	13.3922	13.7001	14.6491	13.9317
400017	9.2577	9.9167	10.7476	9.9817
400018	10.6208	10.5583	10.8254	10.6669
400019	10.8940	12.1251	13.6516	12.2168
400021	12.1434	12.7462	13.5224	12.8271
400022	12.2199	13.0915	15.2904	13.4548
400024	9.2409	9.0826	9.8650	9.4011
400026	5.8335	7.4280	5.9206	6.3365
400028	9.1794	8.9567	9.5266	9.2275
400032	10.0448	10.1898	10.7100	10.3326
400044	11.9486	12.8671	9.0275	11.6261
400048	15.1405	11.5104	10.8618	12.2444
400061	13.0988	10.3664	16.5895	12.9754
400079	9.7203	8.7218	8.7218	8.9772
400087	9.8534	8.6480	10.7118	9.8615
400094	7.9187	9.4600	9.2871	8.8796
400098	9.7791	10.4312	13.5901	11.0612
400102	9.9903	8.5290	10.9973	9.8471
400103	11.5359	11.8454	11.5797	11.6448
400104	10.7292	7.9552	7.1781	8.8476
400105	9.0556	10.6028	11.5608	10.1248
400106	9.2187	9.8694	10.1240	9.7589
400109	11.8760	12.2080	12.8886	12.3304
400110	10.5277	10.7228	12.0159	11.1009
400111	10.9665	12.3311	12.7701	12.0404
400112	10.8694	11.0634	12.2859	11.4080
400113	8.3168	9.3000	10.4416	9.6011
400114	7.0510	9.9477	9.7444	8.8440
400115	8.5487	7.2203	7.0411	7.5166
400117	10.8756	11.3351	9.7314	10.6287
400118	11.4051	11.4317	12.4590	11.7860
400120	10.6584	10.9315	11.8837	11.1482
400121	9.8322	8.7584	8.3575	8.9176
400122	7.6413	9.1638	9.6644	8.8133
400123	10.2367	10.9047	10.5643	10.5707
400124	12.2452	12.7323	14.1627	13.0714
400125	10.2056	10.5997	10.5811	10.4664
410001	23.1738	22.4972	24.0033	23.2235
410004	21.0638	23.5408	23.6409	22.7712
410005	22.7170	24.0086	24.6521	23.7686
410006	23.8700	22.8959	26.1372	24.3270
410007	23.1325	24.9846	27.7171	25.1159
410008	24.9726	24.4792	25.4183	24.9582
410009	24.3895	24.3760	26.9135	25.2049
410010	28.4589	29.7315	30.3860	29.5220
410011	26.1183	27.4880	29.7664	27.7381
410012	24.1695	26.4570	28.1791	26.2184
410013	24.8800	25.3688	28.9386	26.3621
420002	20.7804	22.6182	25.1067	22.8141

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
420004	20.9588	22.4680	23.4579	22.2290
420005	17.9694	17.8202	19.5521	18.4820
420006	19.1760	18.7153	22.7896	19.8079
420007	18.6456	19.0199	22.0228	19.8823
420009	19.9586	21.2566	18.6866	19.8536
420010	18.0252	19.3267	19.1746	18.8763
420011	18.0970	16.7523	17.7299	17.5010
420014	18.0519	19.0455	21.2046	19.4445
420015	20.1164	20.8736	23.1274	21.4737
420016	15.5485	16.6448	17.0051	16.4309
420018	21.8775	20.7779	20.4649	20.9903
420019	17.1726	19.0199	19.6836	18.6013
420020	20.3193	20.5801	22.1616	21.0728
420023	20.4053	20.8600	23.2568	21.5753
420026	21.8749	23.3072	23.7406	23.0011
420027	19.2594	19.7322	21.0637	20.0499
420030	20.6448	22.5159	22.6766	21.9685
420031	8.2516	15.3605	*	10.6827
420033	23.1303	23.7974	26.2710	24.4383
420036	21.3222	19.8285	20.6649	20.5448
420037	22.7099	23.5244	25.5492	24.0161
420038	18.6568	19.9829	21.6132	20.0798
420039	18.3017	18.0055	21.9737	19.2483
420043	19.7570	19.6834	21.8816	20.4303
420048	18.8070	20.5531	21.9517	20.4950
420049	19.4049	20.1765	21.2604	20.3295
420051	19.1555	19.8549	20.6629	19.9007
420053	18.1657	19.0780	19.9013	19.0557
420054	20.2574	20.2275	20.8471	20.4420
420055	16.8717	18.6782	19.6817	18.3873
420056	15.1835	16.5491	20.0527	17.2450
420057	20.5266	22.1312	17.6727	20.1808
420059	17.1483	18.2093	20.2917	18.4487
420061	17.3543	17.7047	19.9789	18.3969
420062	21.7469	20.9032	17.4764	19.8282
420064	16.0794	19.7067	20.9057	19.0582
420065	19.9435	19.2150	22.0784	20.4983
420066	18.0042	19.5366	20.7782	19.3987
420067	19.7824	20.8524	22.8104	21.1856
420068	18.5481	20.2580	21.7257	20.1957
420069	18.1298	18.9017	17.6291	18.2134
420070	17.3876	19.2186	20.3664	19.0084
420071	20.3902	20.1897	21.8579	20.8383
420072	15.0158	18.2531	16.2578	16.5142
420073	19.9986	20.2697	21.4718	20.6373
420074	18.0967	18.1839	18.7011	18.3051
420075	12.8158	15.0132	15.9890	14.6306
420078	21.9082	22.7156	24.3273	22.9650
420079	21.0874	21.3177	23.3992	21.9864
420080	21.9968	23.2871	26.7489	24.1988
420082	21.7210	22.8516	23.6936	22.7569
420083	22.6376	24.4499	24.8508	24.0155
420085	21.6791	22.0071	24.4040	22.7952
420086	20.2878	23.5303	24.5760	22.8222
420087	19.8388	20.8217	22.4526	21.0450
420088	19.9919	21.8979	23.5174	21.7712
420089	20.5360	21.3954	23.3240	21.8074
420091	20.3092	21.8367	23.7936	21.9046
420093	18.3902	19.1299	21.4678	19.5913
420095	*	33.4632	*	33.4634
420096	*	26.4863	*	26.4864
430004	19.6344	19.2737	*	19.4433
430005	16.4560	17.3400	18.2647	17.3726
430007	14.6331	15.1494	*	14.8985

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
430008	18.1323	18.5234	20.0124	18.8898
430010	19.8191	16.5750	*	17.9984
430011	17.4750	18.3648	19.9835	18.5721
430012	17.6997	19.2921	21.2588	19.3790
430013	18.4817	18.8978	21.3388	19.5495
430014	20.2387	20.9118	22.0285	21.0694
430015	18.2875	18.8998	20.5848	19.2456
430016	20.8850	22.7585	24.2450	22.6451
430018	16.2244	15.9424	17.9850	16.6387
430022	14.5118	14.0661	*	14.2905
430023	16.2164	16.7850	18.8816	17.1465
430024	16.1801	17.4816	18.8359	17.4068
430027	20.2591	20.8966	22.1807	21.1128
430028	17.1577	18.2829	*	17.7353
430029	17.6986	17.4932	18.9463	18.0331
430031	12.4660	13.2105	15.2322	13.5804
430033	17.3652	18.3978	21.6255	19.2950
430034	14.2491	13.8535	*	14.0594
430036	15.6258	16.7827	*	16.1636
430037	18.1293	18.7009	*	18.4202
430038	18.4078	*	*	18.4078
430040	14.4509	14.7860	*	14.6153
430041	14.8816	*	*	14.8815
430043	14.9949	17.0193	17.9673	16.5225
430044	21.0823	*	*	21.0824
430047	17.9823	17.5377	18.2773	17.9221
430048	18.7602	19.0261	20.0608	19.3158
430049	15.2237	14.9025	*	15.0665
430051	18.8070	18.8697	*	18.8400
430054	14.8003	15.0101	17.8870	15.8667
430056	10.3697	14.1914	*	12.0169
430057	17.2805	18.8777	*	18.0992
430060	10.0176	9.7678	10.6493	10.1353
430064	14.2184	13.8666	14.3407	14.1427
430066	15.6660	14.5957	*	15.1085
430073	15.3776	16.5112	*	15.9305
430076	13.9883	15.2453	*	14.6206
430077	19.8558	20.4361	21.6786	20.6834
430079	14.1815	14.4154	*	14.2974
430089	17.9790	17.5100	19.8572	18.4672
430090	21.5974	23.5180	25.6873	23.7486
430091	18.1567	21.6239	22.2824	21.1724
430092	21.3807	19.7644	19.7354	20.2342
430093	19.5013	23.3009	23.8820	22.1340
430094	*	*	20.8742	20.8743
440001	15.5897	17.2282	18.9833	17.1918
440002	20.3740	21.4299	22.0178	21.2905
440003	19.3042	20.3756	21.6336	20.4509
440006	21.4055	23.1483	24.3173	22.9919
440007	14.8959	14.0612	14.8015	14.5822
440008	18.8994	20.3303	20.9238	20.0515
440009	17.4831	18.4068	19.6564	18.5235
440010	16.3283	13.3692	16.7270	15.2992
440011	18.3375	19.3165	20.5036	19.4558
440012	19.5739	19.8949	21.1213	20.1775
440014	16.1143	15.0656	*	15.5948
440015	22.0659	21.6106	23.4485	22.3272
440016	16.2964	14.6142	20.1504	16.8295
440017	20.4563	20.4705	21.8033	20.8965
440018	17.4995	18.1620	21.2242	19.0126
440019	21.5402	22.8463	21.8854	22.0914
440020	17.8879	20.2189	21.1075	19.7440
440023	16.7837	15.6603	15.5410	15.9556
440024	18.4046	18.4276	19.9751	18.8456

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage** (3yrs)
440025	16.3140	17.0997	19.1478	17.5703
440026	23.2566	25.6490	25.1655	24.7161
440029	20.7050	22.2889	24.1379	22.4401
440030	16.9925	17.6297	19.9056	18.2332
440031	17.0211	17.2555	17.0289	17.1002
440032	13.8140	13.9784	14.7683	14.1838
440033	13.7328	16.4679	17.2637	15.8189
440034	20.0309	21.1672	22.2478	21.1521
440035	19.3034	20.4168	21.4990	20.4205
440039	21.6536	22.4158	25.0874	23.1050
440040	16.9275	17.6781	16.9886	17.1928
440041	14.9545	14.6684	15.5784	15.0621
440046	19.3229	20.5562	22.3380	20.6463
440047	17.8092	18.7469	18.7962	18.4413
440048	21.4993	21.6132	23.1553	22.1163
440049	18.7967	19.6920	21.1931	19.8880
440050	18.2511	19.7915	21.1397	19.7737
440051	16.0421	17.7067	19.0165	17.5455
440052	19.8075	18.6589	18.1935	18.8415
440053	19.6494	21.5253	22.0345	21.0746
440054	13.3967	15.2154	15.4208	14.7050
440056	16.2742	20.4903	19.3108	18.5997
440057	13.7257	14.4363	14.1477	14.1083
440058	19.1878	20.7722	21.7512	20.5453
440059	19.6018	20.8882	22.4248	21.0016
440060	19.7916	20.7628	20.2188	20.2562
440061	22.5525	16.9234	19.5458	19.4254
440063	19.8371	18.8072	19.7468	19.4529
440064	18.9809	18.2678	19.4020	18.8736
440065	18.8296	19.2282	19.9099	19.3487
440067	17.2397	18.2973	19.5643	18.4105
440068	19.3668	19.5428	20.9188	19.9728
440070	14.0437	18.0064	18.3717	16.8031
440071	19.7836	*	*	19.7836
440072	19.1522	20.0691	19.6579	19.6208
440073	19.5554	19.6290	20.7181	19.9917
440078	16.0188	17.1645	*	16.5456
440081	19.3454	17.2905	18.3142	18.2349
440082	22.6855	22.5590	26.1497	23.7116
440083	13.7423	13.7630	15.7015	14.3937
440084	13.7731	13.8085	15.0510	14.2295
440091	20.1065	20.1359	23.0296	21.0909
440100	14.7113	15.9969	*	15.3629
440102	14.5500	16.0783	16.6548	15.7421
440103	18.6990	*	*	18.6990
440104	22.6754	21.7135	21.9870	22.0956
440105	17.1172	18.1375	19.2902	18.1888
440109	17.7443	17.6399	17.3578	17.5716
440110	17.4816	18.4998	19.9715	18.7259
440111	23.2254	23.2111	24.9883	23.8046
440114	15.0036	18.5327	20.1152	17.9248
440115	18.5457	18.7054	18.5389	18.5956
440120	16.3115	19.8997	22.4031	19.5197
440125	19.4115	20.0599	21.1018	20.2091
440130	17.4857	19.0905	20.6364	19.0816
440131	16.1214	19.9883	21.0641	18.9957
440132	16.8871	17.9186	18.9580	17.9377
440133	23.0891	22.2257	23.3600	22.8900
440135	22.2005	22.5452	23.9749	22.9815
440137	15.0070	15.3530	16.5529	15.6758
440141	15.9429	17.6819	19.2607	17.4468
440142	16.8855	17.1483	17.7587	17.2159
440143	18.2061	18.6844	19.2978	18.7274
440144	18.3859	18.8127	19.7938	19.0189

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage** (3yrs)
440145	18.3948	18.3850	18.2020	18.3221
440147	26.1464	25.3766	25.0779	25.5115
440148	19.4598	19.3769	20.7693	19.8862
440149	18.4281	19.8304	18.1316	18.8060
440150	20.3006	21.2942	22.8733	21.5258
440151	18.3928	19.8977	21.1576	19.7369
440152	22.7664	21.7382	22.7498	22.4243
440153	16.5716	18.1781	19.9486	18.2431
440156	21.7577	21.9374	23.7799	22.5299
440157	18.4249	15.5316	*	17.0805
440159	20.9371	21.4914	20.5719	20.9737
440161	22.8816	23.6805	26.1354	24.2908
440162	15.5534	19.8075	20.3909	18.5104
440166	19.2159	19.6632	23.1692	20.6397
440168	19.1509	21.1947	21.2114	20.4537
440173	19.1812	21.0284	20.8442	20.3754
440174	18.0865	19.3966	19.2201	18.8962
440175	18.5186	19.9022	22.3331	20.2599
440176	19.2208	19.8448	20.4861	19.8829
440180	20.2184	20.2057	21.2398	20.5594
440181	17.7709	19.0915	19.6133	18.8053
440182	19.7094	18.1953	19.3928	19.0713
440183	21.3465	22.2401	24.9282	22.9040
440184	16.8880	18.6890	21.4484	18.5678
440185	21.2188	21.1226	22.1845	21.5612
440186	19.7983	20.8600	23.0193	21.1673
440187	17.5872	18.3729	19.9478	18.6211
440189	18.5252	22.2555	23.2866	21.3831
440192	19.1705	19.1976	21.3228	19.9395
440193	18.6999	19.9078	22.0345	20.2055
440194	22.4562	21.9609	24.4508	23.0024
440197	21.8503	22.5282	24.2660	22.9060
440200	19.8078	18.7302	16.7752	18.4446
440203	16.2861	16.9819	*	16.6264
440210	11.9815	12.7622	*	12.3704
440214	28.0285	*	*	28.0287
440215	22.2928	*	*	22.2928
440217	*	19.2834	23.3544	21.1703
440218	*	*	20.1377	20.1377
440220	*	*	21.9117	21.9117
450002	21.4836	21.5141	24.0411	22.4013
450004	16.7850	15.9452	*	16.4042
450005	16.6396	16.6354	21.7110	18.0529
450007	19.1910	18.0269	18.3737	18.5024
450008	17.6582	19.3745	20.1817	19.0466
450010	17.6677	19.8998	20.3023	19.2481
450011	20.8102	20.2963	22.1472	21.0609
450014	17.5815	19.8846	20.6936	19.3710
450015	21.6773	22.9820	23.9526	22.8711
450016	18.3456	19.1522	20.1232	19.2132
450018	23.2293	21.9921	22.9019	22.6021
450020	19.1153	18.4642	19.1087	18.9021
450021	23.3630	23.7663	25.0769	24.0893
450023	17.6360	19.2808	19.1645	18.7230
450024	18.5985	19.5584	20.7727	19.7057
450028	19.1658	19.5905	22.7775	20.4223
450029	17.7425	19.9505	19.9198	19.2371
450031	29.6945	29.6772	21.7621	26.1343
450032	14.6530	20.8525	20.5217	18.3019
450033	21.0222	21.3766	26.5990	22.8755
450034	18.8823	19.5233	21.6097	19.9960
450035	20.3599	20.3146	24.1860	21.4818
450037	19.9140	19.6532	23.1179	20.8871
450039	19.7176	20.4660	22.0058	20.7406

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage** (3yrs)
450040	19.6370	24.8621	21.2990	22.1496
450042	18.8357	20.6041	21.8886	20.4547
450044	21.0909	23.4476	24.1127	22.8038
450046	17.3631	20.2917	20.9239	20.0838
450047	16.9028	15.9525	21.8840	18.0090
450050	17.7209	19.1390	19.5171	18.7476
450051	21.1008	23.0010	24.5533	22.8745
450052	15.5890	20.3702	17.6543	17.8920
450053	17.2781	19.3347	18.6557	18.3562
450054	19.2431	25.3285	23.2915	22.8358
450055	15.8526	16.4789	18.2235	16.8274
450056	21.8605	22.5341	24.4197	22.9813
450058	18.6172	20.0424	22.0158	20.1655
450059	19.8240	21.4873	22.8792	21.4779
450063	12.7211	15.1779	*	13.6764
450064	19.7682	21.3929	19.1271	20.0460
450065	23.3797	23.8471	*	23.6194
450068	23.3495	22.5626	24.0925	23.3338
450072	18.0307	20.0134	20.3683	19.5324
450073	16.5942	23.7700	19.2398	20.0099
450078	13.2820	13.9324	14.8285	13.9373
450079	20.6483	22.0609	24.0085	22.2224
450080	18.6212	19.8414	21.0353	19.7911
450081	17.5737	19.0276	19.2632	18.6116
450082	16.8677	18.0688	16.6566	17.1967
450083	23.3754	20.7446	22.5063	22.1900
450085	20.0085	17.5001	18.1922	18.5095
450087	21.9320	23.4141	24.5976	23.4136
450090	15.5796	15.6090	17.1073	16.1114
450092	17.9520	17.2058	16.0199	17.0396
450094	23.2863	25.2158	25.8313	24.8017
450096	18.6802	19.4430	19.8012	19.3176
450097	19.7187	20.7653	22.2467	21.0001
450098	19.0454	19.8469	20.4795	19.8538
450099	20.4181	19.3493	21.4482	20.3831
450101	17.7928	17.6368	20.1473	18.5186
450102	19.8793	21.4361	20.9900	20.7697
450104	17.0821	17.8219	19.7126	18.2038
450107	24.1094	24.5034	23.2209	23.9133
450108	15.2797	17.9596	18.8084	17.4498
450109	10.5973	18.1085	15.1459	13.9232
450111	21.4908	*	*	21.4908
450112	18.1026	17.9624	20.2627	18.7413
450113	20.8306	20.7782	37.8953	21.1550
450119	20.2030	20.1436	20.8840	20.4169
450121	21.9198	22.0485	24.6090	22.7993
450123	14.1755	17.5051	17.8629	16.2415
450124	22.5208	22.9853	24.2788	23.3063
450126	21.4789	22.9423	24.1961	22.8519
450128	18.1446	18.7067	*	18.4296
450130	18.9211	20.2613	19.6199	19.6368
450131	17.4168	18.1401	20.0434	18.5074
450132	21.8089	20.8908	22.4680	21.7157
450133	26.0763	24.5319	25.3928	25.3029
450135	20.4068	21.7038	22.5673	21.5916
450137	23.4346	22.8653	24.9732	23.6854
450140	17.3370	19.6205	18.3835	18.4738
450143	15.0871	17.8206	18.4204	17.0420
450144	17.4309	21.9135	21.3896	20.1692
450145	16.1895	18.0437	*	17.1256
450146	15.5030	17.4391	16.6809	16.5128
450147	19.0477	20.3019	21.7248	20.3699
450148	20.4923	21.4982	22.1352	21.3649
450149	21.7219	22.6138	*	22.1667

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage** (3yrs)
450150	17.8612	17.8804	*	17.8714
450151	16.4209	16.3279	17.9127	16.8202
450152	17.7265	19.6105	20.0146	19.2384
450153	18.6514	20.9651	*	19.6822
450154	13.9119	16.8748	16.5204	15.7956
450155	13.3456	20.2582	18.4020	17.1145
450157	15.3083	16.8569	17.8764	16.7446
450160	10.6852	18.7780	20.7736	15.2692
450162	21.9218	20.5032	26.0570	22.6007
450163	17.8028	19.7675	19.8194	19.0677
450164	17.7180	18.7103	*	18.2191
450165	17.3283	16.1010	16.1632	16.4885
450166	11.0541	12.6627	*	11.8721
450170	14.3234	15.8525	*	15.0719
450176	17.2576	19.2397	19.1823	18.5579
450177	15.2419	16.4503	17.2637	16.3229
450178	16.0280	15.8597	19.1186	16.9564
450181	18.6936	18.3600	*	18.5293
450184	20.0821	22.7744	24.0596	22.3298
450185	11.5228	13.2015	14.3593	12.9076
450187	18.5053	20.8105	22.6275	20.5632
450188	15.1954	16.9800	17.6158	16.6235
450191	20.9512	20.5883	23.2261	21.6512
450192	21.2497	20.8315	20.1718	20.7147
450193	23.1639	25.1215	26.6580	25.0322
450194	20.7745	20.7152	22.7310	21.4587
450196	17.8993	21.1226	20.1938	19.6870
450200	19.2228	19.6496	20.4656	19.7649
450201	17.1463	18.0646	19.5908	18.2573
450203	19.3978	19.7978	22.9226	20.7388
450209	20.0140	21.3218	23.4794	21.6108
450210	16.3470	16.8532	16.7851	16.6843
450211	18.8114	18.7305	20.0280	19.2048
450213	19.0651	19.3440	21.1280	19.7979
450214	20.5070	21.3448	22.4543	21.4482
450217	12.7647	13.1840	*	12.9705
450219	17.6884	18.5534	21.0691	18.7782
450221	15.2120	16.2308	19.6778	16.9127
450222	19.8967	23.2779	23.5033	22.2859
450224	20.1579	20.1723	20.4453	20.2606
450229	16.7853	17.0346	17.9811	17.2535
450231	19.1746	20.7709	21.3086	20.4242
450234	16.3003	17.9478	22.3954	18.6856
450235	16.3115	17.0143	18.7028	17.2571
450236	16.4957	18.4551	17.7372	17.5626
450237	19.0325	21.6497	22.4477	21.0610
450239	17.8401	18.8416	19.3655	18.6917
450241	16.4240	16.6046	17.4151	16.8266
450243	13.6416	11.2035	13.0790	12.6321
450246	16.7959	22.7940	*	19.5014
450249	11.7658	10.6467	13.1223	11.8062
450250	13.6787	18.3361	13.3732	15.0054
450253	13.2177	14.5492	16.6523	14.6986
450258	16.7337	17.0724	*	16.8994
450264	14.5956	17.2825	13.5346	14.9127
450269	12.7717	12.2970	12.6907	12.5661
450270	14.4792	13.8881	13.9053	14.0814
450271	16.7831	17.9570	18.3659	17.7341
450272	18.4344	20.5888	21.4520	20.2033
450276	14.0745	14.0779	12.8895	13.6150
450278	15.2950	14.3931	*	14.7982
450280	22.2936	22.2648	23.1664	22.5953
450283	15.1950	15.8224	17.1014	16.1659
450288	18.8935	17.4817	*	18.1670

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
450289	20.3460	22.4656	23.7108	22.1634
450292	20.5335	21.1511	23.4257	21.6168
450293	16.2721	16.4077	17.7673	16.8504
450296	22.3430	21.5998	20.4483	21.4253
450299	*	21.2754	22.9849	22.1397
450303	12.8996	14.3353	16.1330	14.3646
450306	14.2047	13.6333	17.6820	14.6856
450307	17.0691	17.6757	*	17.3739
450309	13.3771	16.0363	*	14.6950
450315	21.4684	23.8151	26.4677	23.7712
450320	20.6596	24.8602	26.8089	24.0198
450321	14.7344	17.2289	*	15.8859
450322	29.1884	28.9834	*	29.0897
450324	19.1692	20.9081	23.8523	21.3049
450327	13.3639	11.0983	14.3848	12.7752
450330	19.8066	21.0921	22.9948	21.3142
450334	13.8392	13.9812	*	13.9103
450337	25.5708	*	*	25.5709
450340	*	19.2611	20.0622	19.6678
450341	*	20.8814	*	20.8814
450346	18.9475	19.2769	20.1921	19.5923
450347	19.3475	20.1899	21.7142	20.4550
450348	13.3585	15.0069	15.6324	14.6025
450351	19.3159	21.2842	22.2596	20.9600
450352	20.1871	21.2035	21.8138	21.1211
450353	16.0003	17.3274	19.5263	17.5681
450355	11.8933	12.8876	*	12.3798
450358	23.0206	25.5767	25.9105	24.7573
450362	18.1983	18.7687	20.6340	19.2155
450369	15.3122	16.0667	16.5636	15.9500
450370	16.1369	18.7539	19.0340	18.0704
450371	16.0236	17.7591	17.3415	16.8971
450372	22.0746	21.4050	22.9079	22.0659
450373	17.9554	18.5716	17.7955	18.1170
450374	15.1750	15.0146	15.0670	15.0810
450378	23.4599	24.4143	25.8048	24.6304
450379	22.8756	25.1931	29.0865	25.7747
450381	16.7112	16.7237	19.0584	17.6325
450388	19.7408	20.7989	22.4441	21.1047
450389	18.8448	19.3156	20.7160	19.6532
450393	22.4992	21.4405	23.8236	22.5782
450395	18.0024	17.5236	19.1938	18.2716
450399	15.3491	16.3333	19.1571	16.9654
450400	18.6668	19.1345	20.1376	19.3717
450403	22.8430	24.7657	24.6215	24.1271
450411	15.1121	15.9165	16.9559	15.9781
450417	15.3591	15.2713	16.1956	15.6177
450418	21.9690	22.2511	25.1306	23.1136
450419	23.2551	22.9522	26.7662	24.2202
450422	28.0257	28.0395	29.0032	28.3661
450424	18.7895	20.7634	22.0682	20.6438
450431	22.0361	22.6766	22.9545	22.5599
450438	15.4553	21.0474	19.2165	18.2799
450446	20.7592	13.8011	14.1684	15.5340
450447	18.0377	19.7532	21.0247	19.5725
450451	18.2988	18.9519	21.1046	19.4672
450457	19.6569	*	*	19.6569
450460	14.6523	15.9446	17.9487	16.1581
450462	22.1144	22.5413	24.0081	22.8970
450464	15.5908	15.8121	16.1987	15.8774
450465	15.4731	19.3928	19.4486	17.6468
450467	17.0004	18.9388	*	17.8588
450469	22.1930	22.0389	24.0794	22.8914
450473	19.7148	18.3813	18.6003	18.8420

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
450475	16.9269	19.0010	20.9443	18.9625
450484	18.9825	19.5505	23.2881	20.6738
450488	19.2173	22.0927	22.5650	21.2542
450489	16.3584	17.8779	18.5941	17.5105
450497	16.2997	15.9654	17.1327	16.4523
450498	14.4713	15.9479	19.2985	16.4927
450508	19.0991	19.3274	20.8183	19.8005
450514	20.0144	20.7064	21.0116	20.6054
450517	14.3191	17.6011	14.4247	15.4999
450518	21.4873	20.7355	21.1015	21.1171
450523	21.0393	23.8270	22.3034	22.4026
450530	21.1634	21.8988	23.3005	22.1616
450534	20.1520	19.7410	22.5156	20.7023
450535	21.0513	21.5449	23.7255	22.0993
450537	20.1161	20.8549	22.5972	21.2300
450539	18.7559	19.3681	18.4299	18.8532
450544	23.6652	22.7282	*	23.2148
450545	20.2823	21.0792	21.7762	21.0259
450547	18.1524	20.5049	22.6558	20.1983
450551	16.6237	16.1437	*	16.3738
450558	20.7404	21.3116	21.4201	21.1518
450563	22.0708	21.9935	27.5671	23.9083
450565	17.3803	17.8058	17.2171	17.4667
450570	19.0336	*	*	19.0336
450571	18.2784	19.5325	21.5688	19.7274
450573	17.3518	17.6157	18.6233	17.8792
450574	14.6128	14.8549	*	14.7345
450575	22.5621	24.0386	*	23.3408
450578	18.0925	17.2863	17.3010	17.5480
450580	16.7374	17.8224	18.5226	17.6863
450583	14.4411	15.9430	*	15.2044
450584	14.6735	14.9237	16.9020	15.4896
450586	13.8248	14.7433	14.9061	14.4503
450587	18.0219	18.0014	19.0648	18.3640
450591	17.7795	18.6714	19.6229	18.7114
450596	21.6729	21.9445	24.3714	22.6695
450597	17.6179	19.0641	19.9596	18.8329
450603	23.5572	23.4924	20.6138	22.5917
450604	17.6582	18.7465	19.5288	18.6690
450605	19.4580	19.7400	22.0210	20.3694
450609	17.0986	14.1776	16.6870	15.9595
450610	21.5191	23.5626	24.7706	23.4743
450614	16.5754	*	18.5895	17.6527
450615	15.2956	15.0621	17.2717	15.8832
450617	20.8919	21.5004	22.7514	21.7690
450620	16.0987	16.4330	17.1333	16.5680
450623	23.1270	25.1122	25.1400	24.4887
450626	18.4349	20.5225	17.7454	18.8435
450628	18.6093	20.0411	*	19.3786
450630	20.9605	23.1840	24.8096	23.0353
450631	21.6736	21.8940	22.8637	22.1659
450632	13.9147	15.1416	*	14.5084
450633	19.4949	*	*	19.4949
450634	22.9877	23.0470	24.8258	23.7101
450638	22.1704	23.8335	26.3653	24.1319
450639	21.6421	23.0496	24.2919	23.0328
450641	15.7578	15.3652	17.4072	16.1535
450643	16.8152	18.9088	20.2000	18.7134
450644	22.7721	24.5834	24.4574	24.0080
450646	19.1433	23.1240	21.8500	21.2678
450647	24.2763	25.0549	26.8276	25.4018
450648	15.0305	14.4884	17.3678	15.6152
450649	16.6577	16.8505	17.5760	17.0475
450651	22.7112	25.4679	26.9215	25.1260

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

	Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage** (3yrs)
450652		17.2445	*	*	17.2446
450653		19.2349	20.2436	22.7236	20.7352
450654		14.5423	15.5858	16.3057	15.4780
450656		18.2606	18.5874	20.7824	19.2080
450658		17.2630	19.4139	19.6855	18.7689
450659		23.0108	22.9344	26.0224	24.0406
450661		18.9071	19.5504	20.0716	19.5103
450662		19.3152	20.7973	26.3794	22.0858
450665		16.1319	14.5158	15.8571	15.5177
450666		20.2549	*	*	20.2549
450668		21.0972	21.2002	24.0081	22.0964
450669		21.6746	22.5150	25.0200	23.1112
450670		20.2632	19.7696	19.9621	19.9838
450672		21.4927	23.2623	25.3106	23.3562
450673		13.7005	14.9115	16.3319	15.0676
450674		22.2426	21.9624	24.8137	23.0636
450675		21.4479	23.3954	24.8661	23.3355
450677		20.6556	21.7366	22.9529	21.8092
450678		24.1301	25.1841	28.1917	25.8918
450683		22.8699	22.1965	24.5013	23.1739
450684		21.9962	22.2380	23.8945	22.7570
450686		16.4632	17.4746	17.9181	17.2988
450688		20.1831	21.7691	21.7922	21.3124
450690		22.4707	27.2399	33.1576	27.0095
450694		18.1872	18.5520	21.4785	19.2847
450697		19.4949	19.4424	20.8952	19.9640
450698		15.4750	16.5111	18.1764	16.7102
450700		15.9050	14.2055	17.3457	15.8451
450702		21.3739	19.8094	22.2953	21.1028
450704		20.7987	18.1835	*	19.2723
450705		22.1809	18.7138	*	20.2752
450706		22.0884	22.4329	*	22.2641
450709		22.1490	22.0123	23.4246	22.5690
450711		19.8581	20.8047	22.1489	20.9512
450712		15.9298	11.1086	18.4546	14.6487
450713		22.6986	23.6189	24.4002	23.6310
450715		22.5988	24.8068	*	23.7226
450716		20.9074	20.8913	24.8614	22.2839
450717		20.6551	22.0243	*	21.3435
450718		22.1765	23.0051	24.9162	23.5065
450723		20.8213	22.0633	24.1618	22.4391
450724		20.3706	23.3799	21.9630	21.8831
450727		17.9172	24.6125	16.0843	19.3135
450728		19.8879	14.9265	*	17.2495
450730		23.0054	24.5952	27.8476	25.3002
450733		20.2199	21.9921	23.8143	22.0738
45042		21.8392	22.8135	25.1295	23.3180
450743		19.6015	20.5017	23.7424	21.3472
450746		30.2657	14.6683	11.1672	15.8134
450747		20.3914	20.3870	21.5883	20.8604
450749		19.1678	18.7138	17.8696	18.5551
450750		13.8098	*	*	13.8098
450751		19.9995	19.8170	23.3152	20.7533
450754		16.7145	17.8497	19.2827	17.9575
450755		19.8743	20.0667	19.2768	19.7781
450757		14.9434	15.6425	*	15.2936
450758		19.0221	22.6196	22.8713	21.5676
450760		19.2225	20.4209	23.2959	20.7991
450761		15.7681	14.6511	15.5151	15.2848
450763		18.6092	18.9713	19.8939	19.1937
450766		23.3879	25.4057	27.2499	25.3311
450769		18.4163	17.9879	*	18.2056
450770		19.0183	20.0632	19.9412	19.7010
450771		21.8268	21.6946	25.0490	22.9471

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage** (3yrs)
450774	16.2948	*	21.7906	18.6936
450775	21.3504	22.6526	23.6621	22.5576
450776	14.1720	13.4263	14.6695	14.0866
450777	19.0380	18.3119	*	18.6460
450779	21.6642	22.6216	23.8882	22.7424
450780	19.0914	20.0824	21.9046	20.4076
450788	19.6469	19.9817	21.4467	20.3179
450795	22.5753	27.0250	19.1371	22.4874
450796	19.2059	26.8539	22.4973	23.7266
450797	16.4923	20.2356	18.6839	18.3681
450801	17.9548	18.0598	19.7790	18.5904
450802	17.1435	18.2460	*	17.6977
450803	21.6653	37.0925	23.8343	26.2012
450804	19.0893	20.5225	22.8275	20.8633
450806	*	20.7906	*	20.7906
450807	13.4306	18.4410	*	15.3677
450808	17.4917	18.1728	18.6555	18.1215
450809	19.7899	21.9845	23.8758	21.8428
450811	19.9168	21.6115	22.7583	21.5237
450813	14.5392	15.3780	21.7208	16.6296
450815	21.2741	*	*	21.2742
450817	*	*	28.4441	28.4441
450819	16.5521	*	*	16.5521
450820	26.8348	24.6542	26.9120	26.1797
450822	22.8556	24.8702	26.7821	24.9818
450823	*	17.9756	*	17.9757
450824	*	25.7488	24.5885	25.1472
450825	*	16.0793	18.8510	17.6091
450827	*	20.1310	29.5838	24.8201
450828	*	19.2902	20.9509	20.1462
450829	*	14.7121	14.4463	14.5541
450830	*	*	24.7835	24.7834
450832	*	*	24.8572	24.8572
450833	*	*	18.3195	18.3196
450834	*	*	21.7217	21.7217
450835	*	*	24.8374	24.8374
450837	*	*	24.2965	24.2964
460001	22.2735	23.5485	24.8844	23.5856
460003	22.6289	22.9549	26.5141	23.9755
460004	21.7234	23.1289	24.3409	23.0686
460005	22.5252	23.0189	25.0063	23.5075
460006	21.0700	22.1648	23.4200	22.2290
460007	21.1922	22.0409	23.3603	22.2561
460008	19.1153	22.6808	24.8233	22.3133
460009	22.5295	23.1933	24.5865	23.4290
460010	22.4948	24.0907	25.1240	23.9360
460011	19.7674	25.3818	21.2634	21.8917
460013	20.1936	21.2360	23.1467	21.5125
460014	18.5370	*	22.6125	20.9837
460015	21.0470	22.4872	23.1068	22.2481
460016	21.9105	19.0910	18.7453	19.8107
460017	18.9929	19.0724	20.7789	19.6010
460018	17.0063	17.0385	16.7143	16.9128
460019	17.8690	19.3442	18.1995	18.4514
460020	17.2663	18.1542	15.2162	16.7463
460021	21.5174	23.1368	23.8565	22.9024
460022	21.3614	20.7539	*	21.0221
460023	22.9265	24.1825	25.0874	24.0957
460025	17.3494	17.4070	22.3100	18.8099
460026	20.2576	21.1759	21.9316	21.1444
460027	22.2955	21.4833	*	21.8486
460029	20.8366	23.7148	24.4379	23.0146
460030	17.1383	18.7655	21.2546	18.9564
460032	21.4832	21.0286	21.2715	21.2538

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage** (3yrs)
460033	19.2664	20.2389	21.7215	20.4433
460035	16.1685	15.6979	16.9657	16.2272
460036	23.4573	24.2651	23.9909	23.9286
460037	17.7399	19.0115	20.0323	18.9515
460039	24.4808	24.5134	26.3795	25.1512
460041	20.2035	21.6676	23.5132	21.8727
460042	19.5662	19.7531	22.0844	20.5371
460043	23.2819	25.1366	26.0277	24.8166
460044	21.8485	23.6604	24.7139	23.4328
460047	22.7524	23.5447	24.9214	23.7640
460049	20.8283	21.5241	21.9358	21.5104
460051	22.1758	21.8950	22.7540	22.2835
460052	19.8961	20.1989	23.1718	21.0691
460053	*	*	23.2273	23.2274
470001	21.3817	21.7774	23.5882	22.3065
470003	22.0563	23.3612	24.1739	23.1995
470004	18.1879	17.3576	*	17.7382
470005	23.1808	22.6589	24.9625	23.6347
470006	20.2829	21.0835	21.6036	21.0098
470008	20.1969	20.3833	20.7659	20.4458
470010	21.0616	22.3913	23.2072	22.2567
470011	22.2415	24.1306	24.6034	23.6561
470012	18.9444	19.8831	20.5072	19.7941
470015	20.2125	21.8204	*	21.0240
470018	21.2406	24.8493	21.2904	22.3634
470020	21.5688	21.9911	*	21.7766
470023	21.7139	22.5334	24.1395	22.7760
470024	21.9807	23.2738	22.4659	22.5822
490001	20.0570	21.4952	22.3622	21.3461
490002	15.7365	16.5198	17.5098	16.5736
490003	20.3237	20.7688	20.9782	20.6753
490004	19.7074	20.7616	22.7154	21.0565
490005	21.3318	23.1708	25.2213	23.2687
490006	12.3253	19.8977	13.4277	15.2731
490007	19.8938	20.7896	22.2526	20.9740
490009	23.7659	24.7602	25.2181	24.6030
490011	19.8042	19.8179	20.0136	19.8803
490012	15.2965	16.0994	15.8346	15.7118
490013	18.2396	18.3901	19.5094	18.7096
490014	23.5266	27.8907	*	25.5759
490015	20.0667	21.4500	21.2557	20.9648
490017	19.3854	19.6594	20.7691	19.9104
490018	18.5508	19.8955	22.0810	20.2089
490019	21.0124	21.6790	23.3077	22.0282
490020	19.3424	20.9212	21.2094	20.4866
490021	20.0496	21.2263	22.2537	21.2008
490022	22.3380	24.3008	24.4682	23.7523
490023	21.5683	22.8400	24.9733	23.1948
490024	18.4314	19.7491	21.2619	19.8335
490027	16.7556	17.5178	20.3644	18.2452
490030	8.6446	*	*	8.6446
490031	16.0003	17.4262	18.4826	17.3314
490032	21.4037	22.2041	23.6489	22.3775
490033	19.2908	23.2088	24.4370	22.3633
490037	17.0113	17.2117	17.5103	17.2485
490038	17.6324	18.6012	18.1405	18.1142
490040	24.1266	25.5461	27.0513	25.6394
490041	18.7987	17.9942	19.9314	18.8986
490042	17.0972	18.1864	19.5127	18.3230
490043	22.1068	23.5367	25.4354	23.6479
490044	19.7842	18.4845	20.8739	19.7388
490045	20.5558	22.5238	24.7131	22.7244
490046	19.9102	19.8518	22.0040	20.5969
490047	18.7614	20.1660	19.8220	19.5730

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage** (3yrs)
490048	19.5417	20.9110	22.3138	20.9455
490050	23.3668	23.8519	26.1521	24.5290
490052	16.4787	18.5693	19.2480	18.1097
490053	16.8410	17.7363	18.6541	17.7531
490054	19.5780	22.5136	*	21.2010
490057	20.3160	21.1871	22.1612	21.2650
490059	21.4801	24.1516	23.3895	22.9645
490060	18.5917	19.3525	20.6028	19.5408
490063	26.1930	28.0906	31.0162	28.4308
490066	19.8352	21.5920	22.1034	21.2122
490067	17.8487	18.6469	20.4058	18.9938
490069	20.7582	18.8335	20.6957	20.1008
490071	23.3511	24.1882	25.4677	24.4329
490073	26.0957	*	27.6711	26.9865
490075	19.2156	20.5801	22.3229	20.7337
490077	22.6504	21.9175	22.2643	22.2859
490079	17.7016	17.5839	19.2196	18.1709
490084	18.0555	18.9679	19.8598	18.9692
490085	17.6158	19.4261	*	18.5291
490088	17.9141	19.1924	19.7549	18.9853
490089	18.2290	19.7936	21.1522	19.7626
490090	17.5799	19.2094	20.3015	19.0319
490091	25.0272	23.7493	*	24.4545
490092	16.4360	27.1805	23.8364	21.5291
490093	17.8275	19.1131	20.7388	19.2083
490094	22.3033	20.2020	21.9886	21.4787
490097	16.9518	16.6563	18.1022	17.2610
490098	16.0488	18.5133	19.7116	18.0649
490099	18.3985	19.2604	*	18.8235
490101	23.5553	25.7804	28.5200	26.0299
490104	40.2529	17.1683	28.0286	24.6486
490105	21.4428	28.7831	40.6822	26.6520
490106	26.3821	31.8566	31.6541	29.5471
490107	22.9283	23.9962	26.5312	24.6073
490108	24.1232	24.8596	28.7277	25.7440
490109	25.9475	23.0609	28.0978	25.5419
490110	18.1561	18.8042	23.6080	20.0833
490111	17.8510	19.9552	19.4041	19.0697
490112	22.1162	23.2843	23.6028	23.0255
490113	23.9043	26.1840	28.0893	26.0992
490114	18.0359	18.8920	19.9725	18.9850
490115	16.8537	18.4499	19.9150	18.4166
490116	17.2040	18.2935	19.7007	18.4196
490117	14.7944	17.1723	15.6078	15.8681
490118	23.2022	24.2668	25.2230	24.2345
490119	18.6046	18.9535	21.3883	19.5991
490120	20.5777	20.6828	22.2389	21.1886
490122	23.8198	26.6681	27.3509	25.9831
490123	19.3056	20.0920	20.9506	20.1282
490124	21.3818	23.6526	21.3713	22.1870
490126	20.4294	19.0782	20.4660	19.9498
490127	16.5993	17.6437	17.8070	17.3281
490129	28.6868	*	*	28.6863
490130	17.6943	18.6406	18.6038	18.3141
490132	18.4671	19.1742	19.5850	19.0428
500001	24.4829	25.3478	26.6420	25.5079
500002	19.8476	22.9942	24.0374	22.2651
500003	24.4333	25.1200	27.3435	25.6803
500005	24.3870	26.2066	28.9512	26.5073
500007	21.9911	24.7889	23.5774	23.3350
500008	26.1737	27.2852	28.9380	27.5261
500011	24.6554	25.7263	27.6762	26.0196
500012	24.2799	24.5450	26.2263	25.0463
500014	24.0990	25.0490	27.4248	25.5566

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
500015	24.9923	25.9465	27.3397	26.1168
500016	24.9439	25.1227	27.7863	25.9574
500019	23.2054	23.5730	25.7691	24.2429
500021	27.6490	25.9403	26.4648	26.6119
500023	27.1025	32.3079	23.9513	27.3082
500024	26.6452	26.2113	27.2967	26.7293
500025	24.4825	27.3697	29.0400	26.8639
500026	26.9884	26.6108	28.7532	27.4597
500027	25.1125	27.7429	30.6901	27.9493
500028	18.9556	19.0261	*	18.9904
500029	18.5042	19.3130	*	18.9280
500030	26.3828	28.5297	29.0487	28.0239
500031	23.6099	25.8542	26.0740	25.1801
500033	22.5462	23.8994	25.4345	23.9873
500036	23.6333	25.1255	25.4753	24.7809
500037	21.4059	22.1774	23.5414	22.3769
500039	24.0007	25.4225	26.1409	25.2258
500041	25.4376	24.7070	24.9005	25.0014
500043	22.0466	24.1745	*	23.1775
500044	24.2212	24.7816	27.0880	25.3901
500045	24.0526	24.6265	*	24.3304
500048	20.3207	20.6333	*	20.4821
500049	24.5997	26.5857	26.6407	25.8996
500050	22.6563	23.0804	25.0907	23.6590
500051	25.9447	26.7628	26.9538	26.5713
500053	22.8399	24.2492	26.0112	24.3887
500054	23.8089	25.7815	27.1965	25.6339
500055	23.8622	23.7988	25.3095	24.3502
500057	19.0479	20.5812	21.0357	20.2825
500058	24.1106	26.5679	27.3411	26.0709
500059	26.6270	25.3528	*	25.9254
500060	28.3655	29.6030	31.7480	29.9426
500061	20.8624	24.5908	*	22.7197
500062	19.0557	19.1685	*	19.1136
500064	26.7000	27.5791	29.2539	27.8671
500065	23.5671	24.0966	26.5881	24.7506
500068	19.2638	20.9278	*	20.1095
500069	21.4542	22.4158	*	21.9517
500071	19.1428	22.3253	23.2071	21.4408
500072	25.2001	25.7734	27.5706	26.2080
500073	21.7698	22.5222	*	22.1712
500074	19.5981	20.6120	21.9018	20.7646
500077	23.9410	24.5695	26.5692	25.0435
500079	23.1041	24.7946	27.1775	25.0691
500080	18.3883	18.8188	*	18.6306
500084	24.4044	25.0556	26.5864	25.4001
500085	20.4517	20.7422	*	20.5981
500086	22.8829	24.2556	25.9705	24.3779
500088	25.2478	26.4212	30.1689	27.0767
500089	19.7166	20.3478	*	20.0210
500090	20.4429	21.7716	*	21.0547
500092	19.2028	20.3058	20.8601	20.1437
500094	15.7866	17.6625	*	16.7064
500096	23.3564	25.1135	*	24.2745
500097	20.8774	21.4423	*	21.1473
500098	15.2040	17.8453	*	16.5267
500101	15.8000	19.8614	*	17.6277
500102	21.8963	23.1307	*	22.5307
500104	24.9389	24.7875	26.8007	25.5111
500106	19.1465	17.1066	*	18.1033
500107	17.9489	17.4641	*	17.7015
500108	28.6229	26.1609	27.4156	27.3893
500110	22.9775	23.5941	24.8448	23.8174
500118	24.8034	24.7875	26.1971	25.2739

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
500119	22.1192	23.9939	25.1576	23.7715
500122	23.5264	24.4462	26.9006	25.0168
500123	19.6646	21.7133	*	20.9232
500124	23.7742	24.6591	24.8357	24.4790
500125	14.7910	15.6304	*	15.2302
500129	25.4685	25.2082	27.8351	26.2009
500132	23.1822	21.9915	*	22.6185
500134	17.2430	15.9791	21.3919	17.5320
500139	22.3053	23.7993	27.7281	24.5780
500141	29.9695	28.1014	28.2968	28.7009
500143	18.2570	18.7523	19.0982	18.7216
510001	20.0429	20.2514	21.4247	20.5803
510002	17.6392	19.1517	20.9822	19.2895
510005	13.8621	13.8641	*	13.8631
510006	19.9609	19.9760	21.0214	20.3316
510007	21.6761	22.9326	23.4411	22.6998
510008	19.0513	19.9176	22.7595	20.6320
510012	15.6089	15.8596	16.7710	16.1127
510013	19.5798	18.3486	19.7937	19.2416
510015	16.7311	17.1595	17.9040	17.2636
510018	18.5358	18.3023	19.9490	18.9487
510020	14.1211	15.7512	*	14.9242
510022	21.5770	21.4336	22.7534	21.9321
510023	16.7777	17.6516	17.9267	17.4783
510024	18.7461	19.6521	21.3662	19.9294
510026	13.7952	14.8785	16.5389	14.9496
510027	18.5945	20.5222	*	19.5739
510028	19.9208	22.4826	24.6543	22.2359
510029	18.4668	18.9000	19.8202	19.0740
510030	17.7603	19.2558	19.8220	18.9626
510031	18.6341	19.3049	20.5742	19.5716
510033	18.4718	19.6900	19.6921	19.3132
510035	18.3164	21.8290	*	20.0924
510036	13.8786	15.0266	*	14.4439
510038	15.5576	15.9821	16.1016	15.8882
510039	17.1461	17.4002	17.6173	17.3850
510043	13.1308	14.4202	15.5857	14.3831
510046	18.5896	18.7424	19.2802	18.8707
510047	20.8101	21.2885	22.1953	21.4251
510048	17.1647	15.2886	16.3761	16.2789
510050	18.4036	18.3964	18.9990	18.5986
510053	17.5798	18.1046	18.1054	17.9357
510055	24.2133	25.6333	27.7422	25.8187
510058	18.4501	18.6025	20.1104	19.0814
510059	16.1044	17.3844	18.1544	17.1696
510061	14.1968	14.6774	14.8848	14.5883
510062	18.1588	19.7202	21.3404	19.7139
510067	17.3067	17.8816	18.0113	17.7501
510068	23.0452	19.4299	19.9056	20.6790
510070	18.7091	18.6226	20.0974	19.1353
510071	18.0278	18.8766	19.4029	18.7564
510072	15.9257	16.5279	18.4566	16.9820
510077	18.2947	20.4521	20.9153	19.8338
510080	16.3453	19.7131	*	17.8253
510081	11.9701	10.4972	*	11.2092
510082	13.5946	16.0014	17.2891	15.5840
510084	13.5339	14.9683	*	14.2476
510085	18.6227	19.0175	20.6364	19.4471
510086	14.2241	16.3413	16.3051	15.6167
510088	14.8854	16.2850	16.4373	15.8902
520002	19.6755	20.2891	22.0838	20.7249
520003	18.7956	18.7507	20.4234	19.3853
520004	20.4591	21.1549	22.8530	21.4781
520006	21.4884	22.4099	*	21.9357

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
520007	18.4629	18.3959	*	18.4330
520008	24.9395	24.4927	26.0931	25.2072
520009	21.4638	19.8142	21.5169	20.8888
520010	22.3311	25.5623	26.3964	24.7924
520011	21.5223	21.6945	22.7880	22.0154
520013	20.5944	22.1009	23.1173	21.9777
520014	18.0841	19.2760	20.4282	19.2712
520015	19.7672	21.0428	22.8094	21.2438
520016	18.4320	19.5656	*	18.9788
520017	19.4780	21.1409	21.7542	20.8166
520018	21.5279	22.1929	*	21.8799
520019	20.9164	21.8870	22.6895	21.8682
520021	21.9531	22.8484	24.1284	23.0293
520024	14.4750	16.4879	17.5368	16.1948
520025	20.3838	21.9529	*	21.1922
520026	20.8546	22.4779	25.0504	22.8714
520027	21.5868	22.1450	22.2089	21.9932
520028	22.5941	22.0333	24.3592	23.0143
520029	21.4197	21.5561	*	21.4863
520030	21.6311	22.7239	23.9474	22.8336
520031	20.9875	21.2809	*	21.1290
520032	21.1069	24.1092	22.7220	22.6429
520033	20.2520	21.0088	22.2650	21.1839
520034	20.4307	21.5275	22.6160	21.7180
520035	18.7135	19.8917	20.8563	19.8607
520037	21.6017	23.0801	25.0587	23.2977
520038	20.6130	21.4208	23.1036	21.7099
520039	23.3687	21.1719	*	22.1557
520040	21.2023	23.0710	21.5671	21.9307
520041	18.4117	18.2997	22.6216	19.7373
520042	19.5466	20.6354	21.9935	20.7535
520044	19.1877	21.4913	22.7626	21.1506
520045	21.2427	21.9812	24.1624	22.4304
520047	20.3487	21.0370	22.5686	21.3314
520048	19.8926	20.3488	20.5069	20.2455
520049	20.1667	21.8271	22.7424	21.6003
520051	24.0460	23.4366	27.6695	25.0213
520053	18.0851	18.9512	*	18.5170
520054	16.8363	16.6278	*	16.7267
520057	19.8492	20.6959	21.2729	20.6322
520058	21.2500	23.6794	23.2907	22.7126
520059	21.5796	22.1618	24.1863	22.6609
520060	18.8232	20.3357	21.1271	20.1183
520062	19.7038	21.2865	23.7166	21.6639
520063	20.5262	21.2774	23.3037	21.7486
520064	22.0917	23.8181	24.3043	23.3833
520066	24.0087	25.4528	23.9212	24.4126
520068	19.6855	20.6112	21.4413	20.5790
520069	20.1770	21.7233	32.6484	21.3815
520070	19.4261	20.0096	22.0590	20.5199
520071	19.9866	22.0066	23.4832	21.8338
520074	20.9007	21.6636	*	21.2683
520075	20.7301	22.1894	23.7322	22.2613
520076	19.5878	20.6155	22.2993	20.8518
520077	18.7119	18.1077	*	18.3984
520078	21.7545	21.7414	23.4414	22.2794
520083	23.5787	24.2401	25.7108	24.5108
520084	23.5446	21.8102	24.7909	23.3951
520087	20.7821	22.2579	22.8974	22.0182
520088	21.8931	22.3921	23.8938	22.6992
520089	22.1055	23.2335	24.4435	23.2707
520090	20.3645	20.9069	*	20.6378
520091	20.9440	22.2218	22.8914	22.0430
520092	18.6248	19.7181	21.8662	20.1341

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
520094	20.6179	21.3082	22.3925	21.4517
520095	18.6425	21.9177	25.1402	21.7601
520096	20.6668	21.6803	21.1759	21.1819
520097	20.8016	22.2375	23.6512	22.2609
520098	23.4707	25.0055	25.8184	24.7756
520100	19.4788	20.5366	21.7072	20.6024
520101	19.9875	20.0164	*	20.0019
520102	21.0138	22.3640	23.7739	22.4092
520103	20.1092	22.2765	23.5984	22.0082
520107	21.7907	23.8421	25.7379	23.7522
520109	19.7609	20.3208	20.6356	20.2580
520110	21.0055	22.3923	*	21.7201
520111	17.7673	18.2744	26.9667	20.3598
520112	18.9577	17.6226	19.1409	18.5293
520113	21.8852	23.1852	24.0822	23.0750
520114	17.8476	18.5767	21.9848	19.3865
520115	19.2248	21.4279	*	20.3524
520116	20.6922	22.2741	23.9066	22.2707
520117	18.3963	19.3653	*	19.9396
520118	14.8626	13.9920	*	14.4086
520121	20.8492	20.9422	*	20.8956
520122	16.9335	16.9905	*	16.9629
520123	17.7986	19.8134	21.2360	19.6609
520124	17.9205	19.2621	*	18.5941
520130	16.6873	18.8845	20.0277	18.5254
520131	20.2591	21.0400	*	20.6634
520132	18.1630	18.2634	19.5140	18.6382
520134	18.8150	19.6881	20.8502	19.7907
520135	17.3476	18.1026	18.8254	18.0936
520136	20.9050	21.3966	23.2573	21.8325
520138	22.5599	23.1498	25.1434	23.6620
520139	21.4042	22.8070	23.7727	22.6778
520140	22.3671	22.5459	23.9176	22.9362
520142	21.9432	21.4120	*	21.6717
520144	19.9120	20.5864	*	20.2475
520145	18.7958	20.3461	25.0771	20.8014
520146	18.2370	18.6337	*	18.4453
520148	19.1502	20.5075	22.4299	20.7682
520149	12.8928	13.8614	*	13.3481
520151	18.7070	19.3362	20.1995	19.4436
520152	22.5980	26.2402	22.5440	23.5479
520153	17.0863	18.5986	*	17.8517
520154	19.5994	21.0486	23.2635	21.3043
520156	20.9638	20.7808	23.7157	21.8343
520157	19.6008	21.6821	*	20.6349
520159	17.7649	21.8783	*	19.8043
520160	20.5154	21.5871	22.9475	21.7239
520161	20.1102	21.4038	22.1857	21.2456
520170	21.9857	23.0867	25.5470	23.5499
520171	18.0785	18.1844	*	18.1321
520173	20.9209	23.2955	24.4722	22.8643
520177	24.0139	25.0908	27.5560	25.5340
520178	20.9010	23.1509	22.3193	22.0890
520189	*	22.0889	23.1658	22.6212
520192	*	*	22.5643	22.5641
530002	21.0560	23.0582	23.8852	22.6216
530003	15.9523	17.1646	*	16.5866
530004	13.3788	17.4672	19.7857	16.7474
530005	15.3255	18.4391	*	16.9756
530006	19.1305	20.7661	21.3429	20.4783
530007	17.7897	18.5286	22.3309	19.6133
530008	19.0113	19.5386	21.8714	20.1106
530009	21.7795	23.5839	22.0451	22.4288
530010	13.9536	17.8687	21.4890	17.2328

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2002 (1998 WAGE DATA), 2003 (1999 WAGE DATA), AND 2004 (2000 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly wage FY 2004	Average hourly wage ** (3yrs)
530011	19.4606	19.9212	22.5720	20.6678
530012	21.1854	22.5084	22.4716	22.0976
530014	18.4900	20.0422	21.7314	20.1695
530015	23.4040	24.6527	25.3915	24.5334
530016	19.3205	20.3647	21.0666	20.2058
530017	17.7736	20.9408	19.5631	19.3707
530018	19.5986	20.1226	*	19.8663
530019	20.1097	18.1492	*	19.0248
530022	19.6136	19.7902	*	19.7065
530023	20.0677	21.6352	22.5534	21.5200
530025	22.0300	22.4816	25.4693	23.3672
530026	19.8969	20.9919	21.0733	20.6804
530027	25.5067	*	*	25.5069
530029	19.3361	20.3046	19.9692	19.8988
530031	20.1734	23.2766	16.8825	20.2555
530032	20.0132	20.9856	19.4450	20.0811

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2002, 2003, and 2004.

TABLE 3A.—FY 2004 AND 3-YEAR* AVERAGE HOURLY WAGE FOR URBAN AREAS

[*Based on the Sum of the Salaries and Hours Computed for Federal Fiscal Years 2002, 2003, and 2004]

Urban area	FY 2004 average hourly wage	3-Year average hourly wage
Abilene, TX	18.8450	18.2266
Aguadilla, PR	10.6399	10.5889
Akron, OH	22.8434	22.3877
Albany, GA	26.8394	25.0646
Albany-Schenectady-Troy, NY	20.9741	19.8010
Albuquerque, NM	22.9788	22.1382
Alexandria, LA	19.8135	18.6733
Allentown-Bethlehem-Easton, PA	24.0178	23.0413
Altoona, PA	21.7576	21.1859
Amarillo, TX	22.2017	20.8641
Anchorage, AK	30.1827	29.0196
Ann Arbor, MI	27.3610	25.9303
Anniston, AL	19.9890	19.0540
Appleton-Oshkosh-Neenah, WI	22.3237	21.2583
Arecibo, PR	10.2650	10.2305
Asheville, NC	24.0145	22.6770
Athens, GA	24.2576	23.3576
Atlanta, GA	25.0274	23.5635
Atlantic-Cape May, NJ	26.6718	25.8172
Auburn-Opelika, AL	20.9868	19.6276
Augusta-Aiken, GA-SC	23.7818	23.2814
Austin-San Marcos, TX	23.7418	22.5676
Bakersfield, CA	24.2375	22.8607
Baltimore, MD	24.5068	23.1821
Bangor, ME	24.4712	22.6991
Barnstable-Yarmouth, MA	32.0118	31.0786
Baton Rouge, LA	20.7683	19.4439

TABLE 3A.—FY 2004 AND 3-YEAR* AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

[*Based on the Sum of the Salaries and Hours Computed for Federal Fiscal Years 2002, 2003, and 2004]

Urban area	FY 2004 average hourly wage	3-Year average hourly wage
Beaumont-Port Arthur, TX	20.8140	19.6576
Bellingham, WA	29.0487	28.0239
Benton Harbor, MI	22.0757	20.9454
Bergen-Passaic, NJ	28.8869	27.7302
Billings, MT	22.1402	21.3587
Biloxi-Gulfport-Pascagoula, MS	22.3087	20.4967
Binghamton, NY	20.8245	19.6736
Birmingham, AL	22.7610	21.2316
Bismarck, ND	19.6799	18.6613
Bloomington,IN	21.4009	20.6516
Bloomington-Normal, IL	21.8206	21.0629
Boise City, ID	22.7531	21.5699
Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH	27.7541	26.4283
Boulder-Longmont, CO	24.8276	23.1313
Brazoria, TX	20.1054	19.4362
Bremerton, WA	26.1409	25.2258
Brownsville-Harlingen-San Benito, TX	25.4556	21.9472
Bryan-College Station, TX	22.2836	21.2298
Buffalo-Niagara Falls, NY	23.7287	22.1616
Burlington, VT	23.9756	23.1273
Caguas, PR	10.2735	10.3098
Canton-Massillon, OH	22.4122	21.0501
Casper, WY	22.4716	22.0976
Cedar Rapids, IA	21.9242	20.8155
Champaign-Urbana, IL	24.4767	23.3108

TABLE 3A.—FY 2004 AND 3-YEAR* AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

[*Based on the Sum of the Salaries and Hours Computed for Federal Fiscal Years 2002, 2003, and 2004]

Urban area	FY 2004 average hourly wage	3-Year average hourly wage
Charleston-North Charleston, SC	23.0562	21.6706
Charleston, WV	21.9412	21.1056
Charlotte-Gastonia-Rock Hill, NC-SC	24.0412	22.5876
Charlottesville, VA	24.7694	24.2141
Chattanooga, TN-GA	22.4487	21.4283
Cheyenne, WY	21.7314	20.1695
Chicago, IL	26.9106	25.7471
Chico-Paradise, CA	25.1840	23.2716
Cincinnati, OH-KY-IN	23.2565	22.0537
Clarksville-Hopkinsville, TN-KY	20.3697	19.5203
Cleveland-Lorain-Elyria, OH	23.8949	22.4359
Colorado Springs, CO	24.2952	23.0525
Columbia, MO	21.4825	20.1775
Columbia, SC	21.9947	21.6170
Columbus, GA-AL	21.4813	19.9213
Columbus, OH	23.8368	22.6103
Corpus Christi, TX	21.0529	20.0005
Corvallis, OR	28.4536	27.0598
Cumberland, MD-WV	20.2591	18.9863
Dallas, TX	24.6430	23.3642
Danville, VA	22.3229	20.7337
Davenport-Moline-Rock Island, IA-IL	22.2001	20.6175
Dayton-Springfield, OH	23.5163	21.8747
Daytona Beach, FL	22.3855	21.1832
Decatur, AL	21.8128	20.7814
Decatur, IL	20.1642	18.9150
Denver, CO	26.7753	24.8304
Des Moines, IA	22.4988	20.7693
Detroit, MI	24.9570	24.1824
Dothan, AL	19.1266	18.5999

TABLE 3A.—FY 2004 AND 3-YEAR* AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

[*Based on the Sum of the Salaries and Hours Computed for Federal Fiscal Years 2002, 2003, and 2004]

Urban area	FY 2004 average hourly wage	3-Year average hourly wage
Dover, DE	24.2251	22.9785
Dubuque, IA	21.9559	20.4460
Duluth-Superior, MN-WI	25.1306	24.0503
Dutchess County, NY	27.0153	25.1274
Eau Claire, WI	22.3936	21.0371
El Paso, TX	22.7218	21.6306
Elkhart-Goshen, IN	24.1721	22.8091
Elmira, NY	20.6973	19.6769
Enid, OK	21.1469	19.7375
Erie, PA	21.2504	20.4729
Eugene-Springfield, OR	28.3045	26.4658
Evansville, Henderson, IN-KY	20.8266	19.5719
Fargo-Moorhead, ND-MN	24.2066	22.2472
Fayetteville, NC	22.2028	21.0390
Fayetteville-Springdale-Rogers, AR	20.7450	19.4920
Flagstaff, AZ-UT	28.0003	25.5509
Flint, MI	26.8272	25.6484
Florence, AL	19.1407	18.2496
Florence, SC	21.5166	20.4519
Fort Collins-Loveland, CO	24.9739	23.6020
Fort Lauderdale, FL	25.1107	24.0387
Fort Myers-Cape Coral, FL	24.2518	22.5750
Fort Pierce-Port St. Lucie, FL	24.7279	23.4505
Fort Smith, AR-OK	20.8140	18.9811
Fort Walton Beach, FL	22.1527	21.6155
Fort Wayne, IN	23.6812	22.0804
Fort Worth-Arlington, TX	23.1224	22.0190
Fresno, CA	25.0577	23.7002
Gadsden, AL	20.2758	19.8948
Gainesville, FL	23.9479	22.6475
Galveston-Texas City, TX	22.9264	22.5715
Gary, IN	23.2496	22.2496
Glens Falls, NY	20.9392	19.5463
Goldsboro, NC	21.3024	20.4707
Grand Forks, ND-MN	21.3373	20.7295
Grand Junction, CO	23.8003	22.4013
Grand Rapids-Muskegon-Holland, MI	23.3944	22.6455
Great Falls, MT	21.7634	20.7748
Greeley, CO	23.1548	21.9595
Green Bay, WI	23.3746	22.0316
Greensboro-Winston-Salem-High Point, NC	22.6468	21.8467
Greenville, NC	22.4777	21.4396
Greenville-Spartanburg-Anderson, SC	23.0642	21.6183
Hagerstown, MD	22.6614	20.9120
Hamilton-Middletown, OH	22.7644	21.8133
Harrisburg-Lebanon-Carlisle, PA	22.6413	21.7012

TABLE 3A.—FY 2004 AND 3-YEAR* AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

[*Based on the Sum of the Salaries and Hours Computed for Federal Fiscal Years 2002, 2003, and 2004]

Urban area	FY 2004 average hourly wage	3-Year average hourly wage
Hartford, CT	28.5484	26.9960
Hattiesburg, MS	18.0540	17.5271
Hickory-Morganton-Lenoir, NC	22.8342	21.5753
Honolulu, HI	27.4202	26.5871
Houma, LA	19.2012	18.8317
Houston, TX	24.2970	22.9364
Huntington-Ashland, WV-KY-OH	23.7059	22.5222
Huntsville, AL	22.8430	21.1034
Indianapolis, IN	24.4986	22.9037
Iowa City, IA	23.5910	22.6224
Jackson, MI	22.2026	21.6786
Jackson, MS	20.6489	19.8519
Jackson, TN	22.1981	21.3037
Jacksonville, FL	23.5433	21.9817
Jacksonville, NC	21.1107	19.0690
Jamestown, NY	19.1768	18.5426
Janesville-Beloit, WI	22.9321	22.5285
Jersey City, NJ	27.4614	26.1004
Johnson City-Kingsport-Bristol, TN-VA	20.3906	19.6130
Johnstown, PA	20.1558	19.6398
Jonesboro, AR	19.2565	18.7034
Joplin, MO	21.4481	20.3222
Kalamazoo-Battlecreek, MI	25.9432	24.7762
Kankakee, IL	25.7423	24.2639
Kansas City, KS-MO	24.0023	22.6223
Kenosha, WI	24.1159	22.6827
Killeen-Temple, TX	22.6286	22.0631
Knoxville, TN	21.7911	20.8323
Kokomo, IN	22.3466	21.1444
La Crosse, WI-MN	22.8473	21.8008
Lafayette, LA	20.2761	19.6888
Lafayette, IN	21.2081	21.0348
Lake Charles, LA	19.3730	18.3946
Lakeland-Winter Haven, FL	21.7693	21.2439
Lancaster, PA	22.9333	21.5961
Lansing-East Lansing, MI	24.0008	22.7120
Laredo, TX	19.9917	19.1033
Las Cruces, NM	21.4650	20.3556
Las Vegas, NV-AZ	28.4828	26.7950
Lawrence, KS	[1]	[1]
Lawton, OK	20.4263	19.7110
Lewiston-Auburn, ME	23.1828	21.7433
Lexington, KY	21.4595	20.3189
Lima, OH	23.5255	22.2651
Lincoln, NE	24.7884	23.5189
Little Rock-North Little Rock, AR	22.0469	21.0421
Longview-Marshall, TX	22.5155	20.5262
Los Angeles-Long Beach, CA	29.1430	27.8976
Louisville, KY-IN	22.8350	21.8979
Lubbock, TX	20.4375	20.4762
Lynchburg, VA	22.5683	21.4474
Macon, GA	22.1194	21.1586
Madison, WI	25.3588	24.2523
Mansfield, OH	20.3677	20.0909
Mayaguez, PR	11.8482	11.3512

TABLE 3A.—FY 2004 AND 3-YEAR* AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

[*Based on the Sum of the Salaries and Hours Computed for Federal Fiscal Years 2002, 2003, and 2004]

Urban area	FY 2004 average hourly wage	3-Year average hourly wage
McAllen-Edinburg-Mission, TX	20.7063	19.5970
Medford-Ashland, OR	26.6156	24.7374
Melbourne-Titusville-Palm Bay, FL	24.1528	23.3952
Memphis, TN-AR-MS	22.2594	21.0284
Merced, CA	23.9460	22.9922
Miami, FL	24.4448	23.1253
Middlesex-Somerset-Hunterdon, NJ	28.0828	26.5600
Milwaukee-Waukesha, WI	24.6768	23.3099
Minneapolis-St. Paul, MN-WI	27.1814	25.6666
Missoula, MT	21.5392	21.2648
Mobile, AL	19.7516	18.8646
Modesto, CA	27.8581	25.5375
Monmouth-Ocean, NJ	27.0700	25.3662
Monroe, LA	19.5724	18.9404
Montgomery, AL	19.5356	17.8815
Muncie, IN	21.6806	21.8078
Myrtle Beach, SC	22.5122	21.0737
Naples, FL	24.1885	22.8575
Nashville, TN	24.3495	22.8046
Nassau-Suffolk, NY	32.0836	31.2325
New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	30.6008	28.8874
New London-Norwich, CT	28.7359	27.3016
New Orleans, LA	22.6662	21.2642
New York, NY	34.5159	33.4648
Newark, NJ	28.4574	26.9201
Newburgh, NY-PA	28.4349	26.5830
Norfolk-Virginia Beach-Newport News, VA-NC	21.2953	20.1214
Oakland, CA	36.8654	35.3917
Ocala, FL	24.0353	22.3921
Odessa-Midland, TX	23.0451	22.4675
Oklahoma City, OK	22.1973	20.7818
Olympia, WA	27.0877	25.9904
Omaha, NE-IA	24.0761	22.9780
Orange County, CA	28.0961	26.5056
Orlando, FL	23.8528	22.6357
Owensboro, KY	20.6888	19.5760
Panama City, FL	20.2643	20.3561
Parkersburg-Marietta, WV-OH	19.8623	19.0009
Pensacola, FL	21.6272	20.1029
Peoria-Pekin, IL	21.5796	20.4881
Philadelphia, PA-NJ	26.8898	25.3667
Phoenix-Mesa, AZ	25.0252	23.1478
Pine Bluff, AR	19.4324	18.4911
Pittsburgh, PA	21.9917	21.6912
Pittsfield, MA	25.3885	23.9758
Pocatello, ID	22.3412	21.7279
Ponce, PR	11.6330	11.7569
Portland, ME	24.5806	22.8110
Portland-Vancouver, OR-WA	27.7033	25.8270
Providence-Warwick, RI	27.1208	25.4419

TABLE 3A.—FY 2004 AND 3-YEAR* AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

[*Based on the Sum of the Salaries and Hours Computed for Federal Fiscal Years 2002, 2003, and 2004]

Urban area	FY 2004 average hourly wage	3-Year average hourly wage
Provo-Orem, UT	24.6487	23.2777
Pueblo, CO	21.6891	20.4756
Punta Gorda, FL	23.4973	21.6974
Racine, WI	21.7768	21.4720
Raleigh-Durham-Chapel Hill, NC	24.6061	23.2373
Rapid City, SD	21.7579	20.7364
Reading, PA	22.5640	21.8521
Redding, CA	28.0470	26.2716
Reno, NV	26.3924	24.8500
Richland-Kennewick-Pasco, WA	26.2126	25.7613
Richmond-Petersburg, VA	23.0989	22.2365
Riverside-San Bernardino, CA	28.0369	26.3968
Roanoke, VA	21.4945	20.0801
Rochester, MN	29.0034	27.6344
Rochester, NY	23.2999	21.7673
Rockford, IL	23.8812	22.2379
Rocky Mount, NC	22.4234	21.4021
Sacramento, CA	29.2650	27.4594
Saginaw-Bay City-Midland, MI	24.7875	22.8302
St. Cloud, MN	23.4868	22.6816
[1] St. Joseph, MO		
St. Louis, MO-IL	22.3172	20.9395
Salem, OR	25.8986	24.0695
Salinas, CA	35.4282	34.0968
Salt Lake City-Ogden, UT	24.4924	23.2233
San Angelo, TX	21.0874	19.7140
San Antonio, TX	21.9156	20.4598
San Diego, CA	27.5405	26.1970
San Francisco, CA	35.8606	33.3285
San Jose, CA	36.1362	33.5095
San Juan-Bayamon, PR	12.1065	11.2275
San Luis Obispo-Atascadero-Paso Robles, CA	28.2381	26.3416
Santa Barbara-Santa Maria-Lompoc, CA	25.7977	24.7645
Santa Cruz-Watsonville, CA	31.9761	31.6254
Santa Fe, NM	26.3197	24.7347
Santa Rosa, CA	31.8165	30.4128
Sarasota-Bradenton, FL	24.6181	23.0141
Savannah, GA	23.4019	22.5251
Scranton-Wilkes Barre-Hazleton, PA	20.7846	20.0327
Seattle-Bellevue-Everett, WA	28.5675	26.8843
Sharon, PA	19.1498	18.3866
Sheboygan, WI	21.3074	20.1274
Sherman-Denison, TX	23.9656	22.2184
Shreveport-Bossier City, LA	22.4424	21.1518
Sioux City, IA-NE	22.2184	20.9019
Sioux Falls, SD	22.9990	21.6460
South Bend, IN	24.2656	23.1221
Spokane, WA	26.9328	25.3371
Springfield, IL	22.0988	20.5053
Springfield, MO	20.8945	19.9103
Springfield, MA	25.8461	25.1765
State College, PA	21.5944	20.9171
Steubenville-Weirton, OH-WV	20.7491	20.1726
Stockton-Lodi, CA	25.7060	24.7659
Sumter, SC	20.3664	19.0084
Syracuse, NY	23.2541	22.4437
Tacoma, WA	27.4633	26.2816
Tallahassee, FL	21.0498	19.9557
Tampa-St. Petersburg-Clearwater, FL	22.4909	21.1327
Terre Haute, IN	20.5698	19.8370
Texarkana, AR-Texarkana, TX	20.1353	19.1483
Toledo, OH	23.1784	22.6054
Topeka, KS	22.5038	21.2556
Trenton, NJ	25.9846	24.5060
Tucson, AZ	22.1900	20.9404
Tulsa, OK	22.6934	20.5926
Tuscaloosa, AL	20.2900	19.1399
Tyler, TX	23.2339	22.2980
Utica-Rome, NY	20.7625	19.6938
Vallejo-Fairfield-Napa, CA	33.0511	31.4566
Ventura, CA	27.3366	25.8578
Victoria, TX	20.2203	19.7139
Vineland-Millville-Bridgeton, NJ	25.7088	24.0750
Visalia-Tulare-Portersville, CA	24.3519	22.5730
Waco, TX	20.7383	19.2135
Washington, DC-MD-VA-WV	26.9401	25.5595
Waterloo-Cedar Falls, IA	20.6706	19.0431
Wausau, WI	23.9474	22.8336
West Palm Beach-Boca Raton, FL	24.2086	23.0506
Wheeling, OH-WV	18.5167	18.0478
Wichita, KS	22.8238	22.1166
Wichita Falls, TX	20.6081	19.2867
Williamsport, PA	20.1552	19.7395
Wilmington-Newark, DE-MD	26.8874	25.7166
Wilmington, NC	23.6270	22.3947
Yakima, WA	25.6274	24.6154
Yolo, CA	22.7407	22.1146
York, PA	22.5293	21.5429
Youngstown-Warren, OH	22.7645	21.9498
Yuba City, CA	25.1911	24.0864
Yuma, AZ	21.9766	20.7166

[1] The MSA is empty for FY 2004. The hospital(s) in the MSA received rural status under Section 401 of the Balanced Budget Refinement Act of 1999 (P.L. 106–113). The MSA is assigned the statewide rural wage index (*see* Table 4B).

TABLE 3B.—FY 2004 AND 3-YEAR* AVERAGE HOURLY WAGE FOR RURAL AREAS

[*Based on the Sum of the Salaries and Hours Computed for Federal Fiscal Years 2002, 2003, and 2004]

Nonurban area	FY 2004 average hourly wage	3-Year average hourly wage
Alabama	18.5095	17.5501
Alaska	29.3667	28.1193
Arizona	22.9036	20.6368
Arkansas	19.1097	17.8462
California	24.6268	22.9807
Colorado	23.0480	21.2325
Connecticut	30.1004	28.6608
Delaware	23.6122	22.0986
Florida	21.8790	20.6381
Georgia	21.2360	19.6529
Hawaii	24.6034	24.3938
Idaho	22.1711	20.5606
Illinois	20.3932	19.0845
Indiana	21.8020	20.4901
Iowa	20.7936	19.3045
Kansas	19.9482	18.5189
Kentucky	19.6987	18.7214
Louisiana	18.4100	17.6401
Maine	21.7717	20.5721
Maryland	22.5448	21.0794
Massachusetts	25.7740	25.8569
Michigan	21.9324	20.9463
Minnesota	23.0526	21.4147
Mississippi	19.2177	17.9189
Missouri	19.9049	18.6897
Montana	21.7432	20.0906
Nebraska	21.7975	19.3637
Nevada	24.2285	22.6578
New Hampshire	24.7802	23.0565
New Jersey[1]		
New Mexico	20.4327	20.1351
New York	21.0650	19.9857
North Carolina	20.8923	20.0240
North Dakota	19.2168	18.1538
Ohio	21.7920	20.3411
Oklahoma	18.6216	17.6885
Oregon	24.6914	23.6590
Pennsylvania	20.6996	19.8537
Puerto Rico	9.9286	10.2348
Rhode Island[1]		
South Carolina	20.9969	20.0185
South Dakota	20.2488	18.5076
Tennessee	19.4835	18.4938
Texas	19.2213	18.1708
Utah	22.1713	21.3599
Vermont	22.9948	21.9226
Virginia	20.9960	19.7068
Washington	25.6670	23.9261
West Virginia	19.8114	18.7534
Wisconsin	22.9879	21.4434
Wyoming	22.5088	20.9256

[1] All counties within the State are classified as urban.

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS

Urban area (constituent counties)	Wage index	GAF
0040 [2] Abilene, TX	0.7748	0.8397
Taylor, TX		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
0060 Aguadilla, PR	0.4289	0.5601
Aguada, PR		
Aguadilla, PR		
Moca, PR		
0080 Akron, OH	0.9443	0.9615
Portage, OH		
Summit, OH		
0120 Albany, GA	1.0819	1.0554
Dougherty, GA		
Lee, GA		
0160 [2] Albany-Schenectady-Troy, NY	0.8491	0.8940
Albany, NY		
Montgomery, NY		
Rensselaer, NY		
Saratoga, NY		
Schenectady, NY		
Schoharie, NY		
0200 Albuquerque, NM	0.9263	0.9489
Bernalillo, NM		
Sandoval, NM		
Valencia, NM		
0220 Alexandria, LA	0.8004	0.8586
Rapides, LA		
0240 Allentown-Bethlehem-Easton, PA	0.9682	0.9781
Carbon, PA		
Lehigh, PA		
Northampton, PA		
0280 Altoona, PA	0.8792	0.9156
Blair, PA		
0320 Amarillo, TX	0.8950	0.9268
Potter, TX		
Randall, TX		
0380 Anchorage, AK	1.2301	1.1524
Anchorage, AK		
0440 Ann Arbor, MI	1.1029	1.0694
Lenawee, MI		
Livingston, MI		
Washtenaw, MI		
0450 Anniston, AL	0.8058	0.8626
Calhoun, AL		
0460 [2] Appleton-Oshkosh-Neenah, WI	0.9266	0.9491
Calumet, WI		
Outagamie, WI		
Winnebago, WI		
0470 Arecibo, PR	0.4138	0.5465
Arecibo, PR		
Camuy, PR		
Hatillo, PR		
0480 Asheville, NC	0.9680	0.9780
Buncombe, NC		
Madison, NC		
0500 Athens, GA	0.9778	0.9847
Clarke, GA		
Madison, GA		
Oconee, GA		
0520 [1] Atlanta, GA	1.0089	1.0061
Barrow, GA		
Bartow, GA		
Carroll, GA		
Cherokee, GA		
Clayton, GA		
Cobb, GA		
Coweta, GA		
DeKalb, GA		
Douglas, GA		
Fayette, GA		
Forsyth, GA		
Fulton, GA		
Gwinnett, GA		
Henry, GA		
Newton, GA		
Paulding, GA		
Pickens, GA		
Rockdale, GA		
Spalding, GA		
Walton, GA		
0560 Atlantic-Cape May, NJ	1.0751	1.0508
Atlantic, NJ		
Cape May, NJ		
0580 Auburn-Opelika, AL	0.8460	0.8918
Lee, AL		
0600 Augusta-Aiken, GA-SC	0.9587	0.9715
Columbia, GA		
McDuffie, GA		
Richmond, GA		
Aiken, SC		
Edgefield, SC		
0640 [1] Austin-San Marcos, TX	0.9570	0.9704
Bastrop, TX		
Caldwell, TX		
Hays, TX		
Travis, TX		
Williamson, TX		
0680 [2] Bakersfield, CA	0.9927	0.9950
Kern, CA		
0720 [1] Baltimore, MD	0.9879	0.9917
Anne Arundel, MD		
Baltimore, MD		
Baltimore City, MD		
Carroll, MD		
Harford, MD		
Howard, MD		
Queen Anne's, MD		
0733 Bangor, ME	0.9864	0.9907
Penobscot, ME		
0743 Barnstable-Yarmouth, MA	1.2904	1.1908
Barnstable, MA		
0760 Baton Rouge, LA	0.8372	0.8854
Ascension, LA		
East Baton Rouge, LA		
Livingston, LA		
West Baton Rouge, LA		
0840 Beaumont-Port Arthur, TX	0.8390	0.8867
Hardin, TX		
Jefferson, TX		
Orange, TX		
0860 Bellingham, WA	1.1710	1.1142
Whatcom, WA		
0870 Benton Harbor, MI	0.8899	0.9232
Berrien, MI		
0875 [1] Bergen-Passaic, NJ	1.1683	1.1124
Bergen, NJ		
Passaic, NJ		
0880 Billings, MT	0.8925	0.9251
Yellowstone, MT		
0920 Biloxi-Gulfport-Pascagoula, MS	0.8993	0.9299
Hancock, MS		
Harrison, MS		
Jackson, MS		
0960 [2] Binghamton, NY	0.8491	0.8940
Broome, NY		
Tioga, NY		
1000 Birmingham, AL	0.9175	0.9427
Blount, AL		
Jefferson, AL		
St. Clair, AL		
Shelby, AL		
1010 Bismarck, ND	0.8001	0.8584
Burleigh, ND		
Morton, ND		
1020 [2] Bloomington, IN	0.8788	0.9153
Monroe, IN		
1040 Bloomington-Normal, IL	0.8796	0.9159
McLean, IL		
1080 Boise City, ID	0.9195	0.9441
Ada, ID		
Canyon, ID		
1123 [1] Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH	1.1188	1.0799
Bristol, MA		
Essex, MA		
Middlesex, MA		
Norfolk, MA		
Plymouth, MA		
Suffolk, MA		
Worcester, MA		
Hillsborough, NH		
Merrimack, NH		
Rockingham, NH		
Strafford, NH		
1125 Boulder-Longmont, CO	1.0008	1.0005
Boulder, CO		
1145 Brazoria, TX	0.8105	0.8660
Brazoria, TX		
1150 Bremerton, WA	1.0537	1.0365
Kitsap, WA		
1240 Brownsville-Harlingen-San Benito, TX	1.0261	1.0178
Cameron, TX		
1260 Bryan-College Station, TX	0.8983	0.9292
Brazos, TX		
1280 [1] Buffalo-Niagara Falls, NY	0.9565	0.9700
Erie, NY		
Niagara, NY		
1303 Burlington, VT	0.9665	0.9769
Chittenden, VT		
Franklin, VT		
Grand Isle, VT		
1310 Caguas, PR	0.4184	0.5506

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
Caguas, PR Cayey, PR Cidra, PR Gurabo, PR San Lorenzo, PR		
1320 Canton-Massillon, OH Carroll, OH Stark, OH	0.9034	0.9328
1350 Casper, WY Natrona, WY	0.9171	0.9425
1360 Cedar Rapids, IA Linn, IA	0.8838	0.9189
1400 Champaign-Urbana, IL Champaign, IL	0.9867	0.9909
1440 Charleston-North Charleston, SC Berkeley, SC Charleston, SC Dorchester, SC	0.9294	0.9511
1480 Charleston, WV Kanawha, WV Putnam, WV	0.8845	0.9194
1520 [1] Charlotte-Gastonia-Rock Hill, NC-SC Cabarrus, NC Gaston, NC Lincoln, NC Mecklenburg, NC Rowan, NC Stanly, NC Union, NC York, SC	0.9691	0.9787
1540 Charlottesville, VA Albemarle, VA Charlottesville City, VA Fluvanna, VA Greene, VA	0.9985	0.9990
1560 Chattanooga, TN-GA Catoosa, GA Dade, GA Walker, GA Hamilton, TN Marion, TN	0.9049	0.9339
1580 [2] Cheyenne, WY Laramie, WY	0.9073	0.9356
1600 [1] Chicago, IL Cook, IL DeKalb, IL DuPage, IL Grundy, IL Kane, IL Kendall, IL Lake, IL McHenry, IL Will, IL	1.0848	1.0573
1620 Chico-Paradise, CA Butte, CA	1.0152	1.0104
1640 [1] Cincinnati, OH-KY-IN Dearborn, IN Ohio, IN Boone, KY Campbell, KY Gallatin, KY Grant, KY Kenton, KY Pendleton, KY Brown, OH Clermont, OH Hamilton, OH Warren, OH	0.9380	0.9571
1660 Clarksville-Hopkinsville, TN-KY Christian, KY Montgomery, TN	0.8320	0.8817
1680 [1] Cleveland-Lorain-Elyria, OH Ashtabula, OH Cuyahoga, OH Geauga, OH Lake, OH Lorain, OH Medina, OH	0.9632	0.9747
1720 Colorado Springs, CO El Paso, CO	0.9793	0.9858
1740 Columbia, MO Boone, MO	0.8660	0.9062
1760 Columbia, SC Lexington, SC Richland, SC	0.8866	0.9209
1800 Columbus, GA-AL Russell, AL Chattahoochee, GA Harris, GA Muscogee, GA	0.8659	0.9061
1840 [1] Columbus, OH Delaware, OH Fairfield, OH Franklin, OH Licking, OH Madison, OH Pickaway, OH	0.9609	0.9731
1880 Corpus Christi, TX Nueces, TX San Patricio, TX	0.8486	0.8937
1890 Corvallis, OR Benton, OR	1.1470	1.0985
1900 [2] Cumberland, MD-WV (MD Hospitals) Allegany, MD Mineral, WV	0.9088	0.9366
1900 Cumberland, MD-WV (WV Hospitals) Allegany, MD Mineral, WV	0.8166	0.8705
1920 [1] Dallas, TX Collin, TX Dallas, TX Denton, TX Ellis, TX Henderson, TX Hunt, TX Kaufman, TX Rockwall, TX	0.9934	0.9955
1950 Danville, VA Danville City, VA Pittsylvania, VA	0.8998	0.9302
1960 Davenport-Moline-Rock Island, IA-IL Scott, IA Henry, IL Rock Island, IL	0.8949	0.9268
2000 Dayton-Springfield, OH Clark, OH Greene, OH Miami, OH Montgomery, OH	0.9490	0.9648
2020 Daytona Beach, FL Flagler, FL Volusia, FL	0.9024	0.9321
2030 Decatur, AL Lawrence, AL Morgan, AL	0.8793	0.9157
2040 [2] Decatur, IL Macon, IL	0.8221	0.8745
2080 [1] Denver, CO Adams, CO Arapahoe, CO Broomfield, CO Denver, CO Douglas, CO Jefferson, CO	1.0793	1.0536
2120 Des Moines, IA Dallas, IA Polk, IA Warren, IA	0.9069	0.9353
2160 [1] Detroit, MI Lapeer, MI Macomb, MI Monroe, MI Oakland, MI St. Clair, MI Wayne, MI	1.0060	1.0041
2180 Dothan, AL Dale, AL Houston, AL	0.7734	0.8386
2190 Dover, DE Kent, DE	0.9765	0.9838
2200 Dubuque, IA Dubuque, IA	0.8850	0.9197
2240 Duluth-Superior, MN-WI St. Louis, MN Douglas, WI	1.0130	1.0089
2281 Dutchess County, NY Dutchess, NY	1.0890	1.0601
2290 [2] Eau Claire, WI Chippewa, WI Eau Claire, WI	0.9266	0.9491
2320 El Paso, TX El Paso, TX	0.9159	0.9416
2330 Elkhart-Goshen, IN Elkhart, IN	0.9744	0.9824
2335 [2] Elmira, NY Chemung, NY	0.8491	0.8940

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
2340 Enid, OK Garfield, OK	0.8524	0.8964
2360 Erie, PA Erie, PA	0.8566	0.8994
2400 Eugene-Springfield, OR Lane, OR	1.1410	1.0945
2440 [2] Evansville-Henderson, IN-KY (IN Hospitals) Posey, IN Vanderburgh, IN Warrick, IN Henderson, KY	0.8788	0.9153
2440 Evansville-Henderson, IN-KY (KY Hospitals) Posey, IN Vanderburgh, IN Warrick, IN Henderson, KY	0.8395	0.8871
2520 Fargo-Moorhead, ND-MN Clay, MN Cass, ND	0.9758	0.9834
2560 Fayetteville, NC Cumberland, NC	0.8950	0.9268
2580 Fayetteville-Springdale-Rogers, AR Benton, AR Washington, AR	0.8362	0.8847
2620 Flagstaff, AZ-UT Coconino, AZ Kane, UT	1.1287	1.0864
2640 Flint, MI Genesee, MI	1.0814	1.0551
2650 Florence, AL Colbert, AL Lauderdale, AL	0.7766	0.8410
2655 Florence, SC Florence, SC	0.8673	0.9071
2670 Fort Collins-Loveland, CO Larimer, CO	1.0096	1.0066
2680 [1] Ft. Lauderdale, FL Broward, FL	1.0436	1.0297
2700 Fort Myers-Cape Coral, FL Lee, FL	0.9776	0.9846
2710 Fort Pierce-Port St. Lucie, FL Martin, FL St. Lucie, FL	1.0083	1.0057
2720 Fort Smith, AR-OK Crawford, AR Sebastian, AR Sequoyah, OK	0.8390	0.8867
2750 Fort Walton Beach, FL Okaloosa, FL	0.8930	0.9254
2760 Fort Wayne, IN Adams, IN Allen, IN De Kalb, IN Huntington, IN Wells, IN Whitley, IN	0.9546	0.9687
2800 [1] Forth Worth-Arlington, TX Hood, TX Johnson, TX Parker, TX Tarrant, TX	0.9321	0.9530
2840 Fresno, CA Fresno, CA Madera, CA	1.0101	1.0069
2880 Gadsden, AL Etowah, AL	0.8195	0.8726
2900 Gainesville, FL Alachua, FL	0.9653	0.9761
2920 Galveston-Texas City, TX Galveston, TX	0.9242	0.9475
2960 Gary, IN Lake, IN Porter, IN	0.9372	0.9566
2975 [2] Glens Falls, NY Warren, NY Washington, NY	0.8491	0.8940
2980 Goldsboro, NC Wayne, NC	0.8587	0.9009
2985 Grand Forks, ND-MN (ND Hospitals) Polk, MN Grand Forks, ND	0.8601	0.9019
2985 [2] Grand Forks, ND-MN (MN Hospitals) Polk, MN Grand Forks, ND	0.9307	0.9520
2995 Grand Junction, CO Mesa, CO	0.9881	0.9918
3000 [1] Grand Rapids-Muskegon-Holland, MI Allegan, MI Kent, MI Muskegon, MI Ottawa, MI	0.9430	0.9606
3040 Great Falls, MT Cascade, MT	0.8882	0.9220
3060 Greeley, CO Weld, CO	0.9415	0.9596
3080 Green Bay, WI Brown, WI	0.9479	0.9640
3120 [1] Greensboro-Winston-Salem-High Point, NC Alamance, NC Davidson, NC Davie, NC Forsyth, NC Guilford, NC Randolph, NC Stokes, NC Yadkin, NC	0.9129	0.9395
3150 Greenville, NC Pitt, NC	0.9129	0.9395
3160 Greenville-Spartanburg-Anderson, SC Anderson, SC Cherokee, SC Greenville, SC Pickens, SC Spartanburg, SC	0.9297	0.9513
3180 Hagerstown, MD Washington, MD	0.9135	0.9399
3200 Hamilton-Middletown, OH Butler, OH	0.9176	0.9428
3240 Harrisburg-Lebanon-Carlisle, PA Cumberland, PA Dauphin, PA Lebanon, PA Perry, PA	0.9127	0.9394
3283 [1, 2] Hartford, CT Hartford, CT Litchfield, CT Middlesex, CT Tolland, CT	1.2134	1.1416
3285 [2] Hattiesburg, MS Forrest, MS Lamar, MS	0.7762	0.8407
3290 Hickory-Morganton-Lenoir, NC Alexander, NC Burke, NC Caldwell, NC Catawba, NC	0.9205	0.9449
3320 Honolulu, HI Honolulu, HI	1.1071	1.0722
3350 Houma, LA Lafourche, LA Terrebonne, LA	0.7740	0.8391
3360 [1] Houston, TX Chambers, TX Fort Bend, TX Harris, TX Liberty, TX Montgomery, TX Waller, TX	0.9794	0.9858
3400 Huntington-Ashland, WV-KY-OH Boyd, KY Carter, KY Greenup, KY Lawrence, OH Cabell, WV Wayne, WV	0.9556	0.9694
3440 Huntsville, AL Limestone, AL Madison, AL	0.9208	0.9451
3480 [1] Indianapolis, IN Boone, IN Hamilton, IN Hancock, IN Hendricks, IN Johnson, IN Madison, IN Marion, IN Morgan, IN Shelby, IN	0.9875	0.9914

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
3500 Iowa City, IA	0.9510	0.9662
Johnson, IA		
3520 Jackson, MI	0.8950	0.9268
Jackson, MI		
3560 Jackson, MS	0.8355	0.8842
Hinds, MS		
Madison, MS		
Rankin, MS		
3580 Jackson, TN	0.8948	0.9267
Madison, TN		
Chester, TN		
3600 [1] Jacksonville, FL	0.9490	0.9648
Clay, FL		
Duval, FL		
Nassau, FL		
St. Johns, FL		
3605 Jacksonville, NC	0.8510	0.8954
Onslow, NC		
3610 [2] Jamestown, NY	0.8491	0.8940
Chautauqua, NY		
3620 [2] Janesville-Beloit, WI	0.9266	0.9491
Rock, WI		
3640 Jersey City, NJ	1.1070	1.0721
Hudson, NJ		
3660 Johnson City-Kingsport-Bristol, TN-VA (TN Hospitals)	0.8223	0.8746
Carter, TN		
Hawkins, TN		
Sullivan, TN		
Unicoi, TN		
Washington, TN		
Bristol City, VA		
Scott, VA		
Washington, VA		
3660 [2] Johnson City-Kingsport-Bristol, TN-VA (VA Hospitals)	0.8464	0.8921
Carter, TN		
Hawkins, TN		
Sullivan, TN		
Unicoi, TN		
Washington, TN		
Bristol City, VA		
Scott, VA		
Washington, VA		
3680 [2] Johnstown, PA	0.8344	0.8834
Cambria, PA		
Somerset, PA		
3700 Jonesboro, AR	0.7777	0.8418
Craighead, AR		
3710 Joplin, MO	0.8646	0.9052
Jasper, MO		
Newton, MO		
3720 Kalamazoo-Battlecreek, MI	1.0458	1.0311
Calhoun, MI		
Kalamazoo, MI		
Van Buren, MI		
3740 Kankakee, IL	1.0377	1.0257
Kankakee, IL		
3760 [1] Kansas City, KS-MO	0.9675	0.9776
Johnson, KS		
Leavenworth, KS		
Miami, KS		
Wyandotte, KS		
Cass, MO		
Clay, MO		
Clinton, MO		
Jackson, MO		
Lafayette, MO		
Platte, MO		
Ray, MO		
3800 Kenosha, WI	0.9721	0.9808
Kenosha, WI		
3810 Killeen-Temple, TX	0.9122	0.9390
Bell, TX		
Coryell, TX		
3840 Knoxville, TN	0.8784	0.9150
Anderson, TN		
Blount, TN		
Knox, TN		
Loudon, TN		
Sevier, TN		
Union, TN		
3850 Kokomo, IN	0.9008	0.9310
Howard, IN		
Tipton, IN		
3870 [2] La Crosse, WI-MN	0.9266	0.9491
Houston, MN		
La Crosse, WI		
3880 Lafayette, LA	0.8191	0.8723
Acadia, LA		
Lafayette, LA		
St. Landry, LA		
St. Martin, LA		
3920 [2] Lafayette, IN	0.8788	0.9153
Clinton, IN		
Tippecanoe, IN		
3960 Lake Charles, LA	0.7809	0.8442
Calcasieu, LA		
3980 Lakeland-Winter Haven, FL	0.8823	0.9178
Polk, FL		
4000 Lancaster, PA	0.9244	0.9476
Lancaster, PA		
4040 Lansing-East Lansing, MI	0.9675	0.9776
Clinton, MI		
Eaton, MI		
Ingham, MI		
4080 Laredo, TX	0.8059	0.8626
Webb, TX		
4100 Las Cruces, NM	0.8653	0.9057
Dona Ana, NM		
4120 [1] Las Vegas, NV-AZ	1.1481	1.0992
Mohave, AZ		
Clark, NV		
Nye, NV		
4150 [2] Lawrence, KS	0.8041	0.8613
Douglas, KS		
4200 Lawton, OK	0.8234	0.8754
Comanche, OK		
4243 Lewiston-Auburn, ME	0.9345	0.9547
Androscoggin, ME		
4280 Lexington, KY	0.8650	0.9055
Bourbon, KY		
Clark, KY		
Fayette, KY		
Jessamine, KY		
Madison, KY		
Scott, KY		
Woodford, KY		
4320 Lima, OH	0.9483	0.9643
Allen, OH		
Auglaize, OH		
4360 Lincoln, NE	0.9992	0.9995
Lancaster, NE		
4400 Little Rock-North Little Rock, AR	0.8887	0.9224
Faulkner, AR		
Lonoke, AR		
Pulaski, AR		
Saline, AR		
4420 Longview-Marshall, TX	0.9076	0.9358
Gregg, TX		
Harrison, TX		
Upshur, TX		
4480 [1] Los Angeles-Long Beach, CA	1.1790	1.1194
Los Angeles, CA		
4520 [1] Louisville, KY-IN	0.9205	0.9449
Clark, IN		
Floyd, IN		
Harrison, IN		
Scott, IN		
Bullitt, KY		
Jefferson, KY		
Oldham, KY		
4600 Lubbock, TX	0.8238	0.8757
Lubbock, TX		
4640 Lynchburg, VA	0.9097	0.9372
Amherst, VA		
Bedford, VA		
Bedford City, VA		
Campbell, VA		
Lynchburg City, VA		
4680 Macon, GA	0.8939	0.9261
Bibb, GA		
Houston, GA		
Jones, GA		
Peach, GA		
Twiggs, GA		
4720 Madison, WI	1.0222	1.0151
Dane, WI		
4800 [2] Mansfield, OH	0.8784	0.9150
Crawford, OH		
Richland, OH		
4840 Mayaguez, PR	0.4776	0.6029
Anasco, PR		
Cabo Rojo, PR		
Hormigueros, PR		
Mayaguez, PR		
Sabana Grande, PR		
San German, PR		
4880 McAllen-Edinburg-Mission, TX	0.8347	0.8836
Hidalgo, TX		
4890 Medford-Ashland, OR	1.0729	1.0494
Jackson, OR		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
4900 Melbourne-Titusville-Palm Bay, FL	0.9736	0.9818
Brevard, FI		
4920 [1] Memphis, TN-AR-MS	0.8973	0.9285
Crittenden, AR		
DeSoto, MS		
Fayette, TN		
Shelby, TN		
Tipton, TN		
4940 [2] Merced, CA	0.9927	0.9950
Merced, CA		
5000 [1] Miami, FL	0.9854	0.9900
Dade, FL		
5015 [1] Middlesex-Somerset-Hunterdon, NJ	1.1320	1.0886
Hunterdon, NJ		
Middlesex, NJ		
Somerset, NJ		
5080 [1] Milwaukee-Waukesha, WI	0.9947	0.9964
Milwaukee, WI		
Ozaukee, WI		
Washington, WI		
Waukesha, WI		
5120 [1] Minneapolis-St. Paul, MN-WI	1.0957	1.0646
Anoka, MN		
Carver, MN		
Chisago, MN		
Dakota, MN		
Hennepin, MN		
Isanti, MN		
Ramsey, MN		
Scott, MN		
Sherburne, MN		
Washington, MN		
Wright, MN		
Pierce, WI		
St. Croix, WI		
5140 Missoula, MT	0.8848	0.9196
Missoula, MT		
5160 Mobile, AL	0.7962	0.8555
Baldwin, AL		
Mobile, AL		
5170 Modesto, CA	1.1230	1.0827
Stanislaus, CA		
5190 [1] Monmouth-Ocean, NJ	1.1038	1.0700
Monmouth, NJ		
Ocean, NJ		
5200 Monroe, LA	0.7890	0.8502
Ouachita, LA		
5240 Montgomery, AL	0.7875	0.8491
Autauga, AL		
Elmore, AL		
Montgomery, AL		
5280 [2] Muncie, IN	0.8788	0.9153
Delaware, IN		
5330 Myrtle Beach, SC	0.9075	0.9357
Horry, SC		
5345 Naples, FL	0.9750	0.9828
Collier, FL		
5360 [1] Nashville, TN	0.9815	0.9873
Cheatham, TN		
Davidson, TN		
Dickson, TN		
Robertson, TN		
Rutherford TN		
Sumner, TN		
Williamson, TN		
Wilson, TN		
5380 [1] Nassau-Suffolk, NY	1.2933	1.1926
Nassau, NY		
Suffolk, NY		
5483 [1] New Haven-Bridgeport-Stamford-Waterbury-	1.2418	1.1599
Danbury, CT		
Fairfield, CT		
New Haven, CT		
5523 [2] New London-Norwich, CT	1.2134	1.1416
New London, CT		
5560 [1] New Orleans, LA	0.9137	0.9401
Jefferson, LA		
Orleans, LA		
Plaquemines, LA		
St. Bernard, LA		
St. Charles, LA		
St. James, LA		
St. John The Baptist, LA		
St. Tammany, LA		
5600 [1] New York, NY	1.3913	1.2538
Bronx, NY		
Kings, NY		
New York, NY		
Putnam, NY		
Queens, NY		
Richmond, NY		
Rockland, NY		
Westchester, NY		
5640 [1] Newark, NJ	1.1471	1.0985
Essex, NJ		
Morris, NJ		
Sussex, NJ		
Union, NJ		
Warren, NJ		
5660 Newburgh, NY-PA	1.1462	1.0979
Orange, NY		
Pike, PA		
5720 [1] Norfolk-Virginia Beach-Newport News, VA-NC	0.8584	0.9007
Currituck, NC		
Chesapeake City, VA		
Gloucester, VA		
Hampton City, VA		
Isle of Wight, VA		
James City, VA		
Mathews, VA		
Newport News City, VA		
Norfolk City, VA		
Poquoson City, VA		
Portsmouth City, VA		
Suffolk City, VA		
Virginia Beach City VA		
Williamsburg City, VA		
York, VA		
5775 [1] Oakland, CA	1.5058	1.3235
Alameda, CA		
Contra Costa, CA		
5790 Ocala, FL	0.9689	0.9786
Marion, FL		
5800 Odessa-Midland, TX	0.9290	0.9508
Ector, TX		
Midland, TX		
5880 [1] Oklahoma City, OK	0.8948	0.9267
Canadian, OK		
Cleveland, OK		
Logan, OK		
McClain, OK		
Oklahoma, OK		
Pottawatomie, OK		
5910 Olympia, WA	1.0919	1.0621
Thurston, WA		
5920 Omaha, NE-IA	0.9705	0.9797
Pottawattamie, IA		
Cass, NE		
Douglas, NE		
Sarpy, NE		
Washington, NE		
5945 [1] Orange County, CA	1.1445	1.0968
Orange, CA		
5960 [1] Orlando, FL	0.9615	0.9735
Lake, FL		
Orange, FL		
Osceola, FL		
Seminole, FL		
5990 Owensboro, KY	0.8340	0.8831
Daviess, KY		
6015 [2] Panama City, FL	0.8819	0.9175
Bay, FL		
6020 Parkersburg-Marietta, WV-OH (WV Hospitals)	0.8007	0.8588
Washington, OH		
Wood, WV		
6020 [2] Parkersburg-Marietta, WV-OH (OH Hospitals)	0.8784	0.9150
Washington, OH		
Wood, WV		
6080 [2] Pensacola, FL	0.8819	0.9175
Escambia, FL		
Santa Rosa, FL		
6120 Peoria-Pekin, IL	0.8699	0.9090
Peoria, IL		
Tazewell, IL		
Woodford, IL		
6160 [1] Philadelphia, PA-NJ	1.0839	1.0567
Burlington, NJ		
Camden, NJ		
Gloucester, NJ		
Salem, NJ		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
Bucks, PA Chester, PA Delaware, PA Montgomery, PA Philadelphia, PA		
6200 [1] Phoenix-Mesa, AZ Maricopa, AZ Pinal, AZ	1.0088	1.0060
6240 Pine Bluff, AR Jefferson, AR	0.7855	0.8476
6280 [1] Pittsburgh, PA Allegheny, PA Beaver, PA Butler, PA Fayette, PA Washington, PA Westmoreland, PA	0.8865	0.9208
6323 [2] Pittsfield, MA Berkshire, MA	1.0390	1.0265
6340 Pocatello, ID Bannock, ID	0.9212	0.9453
6360 Ponce, PR Guayanilla, PR Juana Diaz, PR Penuelas, PR Ponce, PR Villalba, PR Yauco, PR	0.4689	0.5953
6403 Portland, ME Cumberland, ME Sagadahoc, ME York, ME	0.9909	0.9938
6440 [1] Portland-Vancouver, OR-WA Clackamas, OR Columbia, OR Multnomah, OR Washington, OR Yamhill, OR Clark, WA	1.1167	1.0785
6483 [1] Providence-Warwick-Pawtucket, RI Bristol, RI Kent, RI Newport, RI Providence, RI Washington, RI	1.0932	1.0629
6520 Provo-Orem, UT Utah, UT	0.9936	0.9956
6560 [2] Pueblo, CO Pueblo, CO	0.9291	0.9509
6580 Punta Gorda, FL Charlotte, FL	0.9472	0.9635
66004[2] Racine, WI Racine, WI	0.9266	0.9491
640 [1] Raleigh-Durham-Chapel Hill, NC Chatham, NC Durham, NC Franklin, NC Johnston, NC Orange, NC Wake, NC	0.9919	0.9944
6660 Rapid City, SD Pennington, SD	0.8771	0.9141
6680 Reading, PA Berks, PA	0.9096	0.9372
6690 Redding, CA Shasta, CA	1.1306	1.0877
6720 Reno, NV Washoe, NV	1.0639	1.0433
6740 Richland-Kennewick-Pasco, WA Benton, WA Franklin, WA	1.0566	1.0384
6760 Richmond-Petersburg, VA Charles City County, VA Chesterfield, VA Colonial Heights City, VA Dinwiddie, VA Goochland, VA Hanover, VA Henrico, VA Hopewell City, VA New Kent, VA Petersburg City, VA Powhatan, VA Prince George, VA Richmond City, VA	0.9311	0.9523
6780 [1] Riverside-San Bernardino, CA Riverside, CA San Bernardino, CA	1.1302	1.0874
6800 Roanoke, VA Botetourt, VA Roanoke, VA Roanoke City, VA Salem City, VA	0.8664	0.9065
6820 Rochester, MN Olmsted, MN	1.1691	1.1129
6840 [1] Rochester, NY Genesee, NY Livingston, NY Monroe, NY Ontario, NY Orleans, NY Wayne, NY	0.9392	0.9580
6880 Rockford, IL Boone, IL Ogle, IL Winnebago, IL	0.9627	0.9743
6895 Rocky Mount, NC Edgecombe, NC Nash, NC	0.9039	0.9331
6920 [1] Sacramento, CA El Dorado, CA Placer, CA Sacramento, CA	1.1797	1.1198
6960 Saginaw-Bay City-Midland, MI Bay, MI Midland, MI Saginaw, MI	0.9992	0.9995
6980 St. Cloud, MN Benton, MN Stearns, MN	0.9640	0.9752
7000 [2] St. Joseph, MO Andrew, MO Buchanan, MO	0.8024	0.8601
7040 [1] St. Louis, MO-IL Clinton, IL Jersey, IL Madison, IL Monroe, IL St. Clair, IL Franklin, MO Jefferson, MO Lincoln, MO St. Charles, MO St. Louis, MO St. Louis City, MO Warren, MO	0.8996	0.9301
7080 Salem, OR Marion, OR Polk, OR	1.0440	1.0299
7120 Salinas, CA Monterey, CA	1.4281	1.2764
7160 [1] Salt Lake City-Ogden, UT Davis, UT Salt Lake, UT Weber, UT	0.9873	0.9913
7200 San Angelo, TX Tom Green, TX	0.8500	0.8947
7240 [1] San Antonio, TX Bexar, TX Comal, TX Guadalupe, TX Wilson, TX	0.8834	0.9186
7320 [1] San Diego, CA San Diego, CA	1.1102	1.0742
7360 [1] San Francisco, CA Marin, CA San Francisco, CA San Mateo, CA	1.4455	1.2870
7400 [1] San Jose, CA Santa Clara, CA	1.4567	1.2938
7440 [1] San Juan-Bayamon, PR Aguas Buenas, PR Barceloneta, PR Bayamon, PR Canovanas, PR Carolina, PR Catano, PR Ceiba, PR Comerio, PR Corozal, PR Dorado, PR Fajardo, PR Florida, PR Guaynabo, PR Humacao, PR Juncos, PR Los Piedras, PR Loiza, PR Luguillo, PR Manati, PR Morovis, PR Naguabo, PR Naranjito, PR Rio Grande, PR San Juan, PR Toa Alta, PR Toa Baja, PR Trujillo Alto, PR Vega Alta, PR Vega Baja, PR Yabucoa, PR	0.4880	0.6118
7460 San Luis Obispo-Atascadero-Paso Robles, CA San Luis Obispo, CA	1.1383	1.0928
7480 Santa Barbara-Santa Maria-Lompoc, CA Santa Barbara, CA	1.0399	1.0272
7485 Santa Cruz-Watsonville, CA Santa Cruz, CA	1.2890	1.1899
7490 Santa Fe, NM Los Alamos, NM Santa Fe, NM	1.0610	1.0414
7500 Santa Rosa, CA Sonoma, CA	1.2825	1.1858
7510 Sarasota-Bradenton, FL Manatee, FL Sarasota, FL	0.9931	0.9953
7520 Savannah, GA Bryan, GA Chatham, GA Effingham, GA	0.9450	0.9620
7560 Scranton—Wilkes-Barre—Hazleton, PA Columbia, PA Lackawanna, PA Luzerne, PA Wyoming, PA	0.8378	0.8859
7600 [1] Seattle-Bellevue-Everett, WA Island, WA King, WA Snohomish, WA	1.1516	1.1015
7610 [2] Sharon, PA Mercer, PA	0.8344	0.8834
7620 [2] Sheboygan, WI Sheboygan, WI	0.9266	0.9491
7640 Sherman-Denison, TX Grayson, TX	0.9661	0.9767
7680 Shreveport-Bossier City, LA Bossier, LA Caddo, LA Webster, LA	0.9047	0.9337
7720 Sioux City, IA-NE Woodbury, IA Dakota, NE	0.8956	0.9273
7760 Sioux Falls, SD Lincoln, SD Minnehaha, SD	0.9271	0.9495
7800 South Bend, IN St. Joseph, IN	0.9782	0.9850
7840 Spokane, WA Spokane, WA	1.0857	1.0579
7880 Springfield, IL Menard, IL Sangamon, IL	0.8908	0.9239
7920 Springfield, MO Christian, MO Greene, MO Webster, MO	0.8423	0.8891
8003 Springfield, MA Hampden, MA Hampshire, MA	1.0419	1.0285
8050 State College, PA Centre, PA	0.8705	0.9094
8080 [2] Steubenville-Weirton, OH-WV (OH Hospitals) Jefferson, OH Brooke, WV Hancock, WV	0.8784	0.9150
8080 Steubenville-Weirton, OH-WV (WV Hospitals) Jefferson, OH Brooke, WV Hancock, WV	0.8364	0.8848
8120 Stockton-Lodi, CA San Joaquin, CA	1.0921	1.0622
8140 [2] Sumter, SC Sumter, SC	0.8464	0.8921
8160 Syracuse, NY Cayuga, NY Madison, NY Onondaga, NY Oswego, NY	0.9374	0.9567
8200 Tacoma, WA Pierce, WA	1.1071	1.0722
8240 [2] Tallahassee, FL Gadsden, FL Leon, FL	0.8819	0.9175
8280 [1] Tampa-St. Petersburg-Clearwater, FL Hernando, FL Hillsborough, FL Pasco, FL Pinellas, FL	0.9066	0.9351
8320 [2] Terre Haute, IN Clay, IN Vermillion, IN Vigo, IN	0.8788	0.9153
8360 Texarkana, AR-Texarkana, TX Miller, AR Bowie, TX	0.8117	0.8669
8400 Toledo, OH Fulton, OH Lucas, OH Wood, OH	0.9359	0.9556
8440 Topeka, KS Shawnee, KS	0.9071	0.9354
8480 Trenton, NJ Mercer, NJ	1.0474	1.0322
8520 [2] Tucson, AZ Pima, AZ	0.9233	0.9468
8560 Tulsa, OK Creek, OK Osage, OK Rogers, OK Tulsa, OK Wagoner, OK	0.9148	0.9408
8600 Tuscaloosa, AL Tuscaloosa, AL	0.8179	0.8714
8640 Tyler, TX Smith, TX	0.9366	0.9561
8680 [2] Utica-Rome, NY Herkimer, NY Oneida, NY	0.8491	0.8940
8720 Vallejo-Fairfield-Napa, CA Napa, CA Solano, CA	1.3371	1.2201
8735 Ventura, CA Ventura, CA	1.1019	1.0687
8750 Victoria, TX Victoria, TX	0.8151	0.8694
8760 Vineland-Millville-Bridgeton, NJ Cumberland, NJ	1.0363	1.0247
8780 [2] Visalia-Tulare-Porterville, CA Tulare, CA	0.9927	0.9950
8800 Waco, TX McLennan, TX	0.8360	0.8846
8840 [1] Washington, DC-MD-VA-WV District of Columbia, DC Calvert, MD Charles, MD Frederick, MD Montgomery, MD Prince Georges, MD Alexandria City, VA Arlington, VA Clarke, VA Culpeper, VA Fairfax, VA Fairfax City, VA Falls Church City, VA Fauquier, VA Fredericksburg City, VA King George, VA Loudoun, VA Manassas City, VA Manassas Park City, VA Prince William, VA Spotsylvania, VA Stafford, VA Warren, VA Berkeley, WV Jefferson, WV	1.0860	1.0581
8920 [2] Waterloo-Cedar Falls, IA Black Hawk, IA	0.8382	0.8862
8940 Wausau, WI Marathon, WI	0.9744	0.9824

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
8960 [1] West Palm Beach-Boca Raton, FL Palm Beach, FL	0.9759	0.9834
9000 [2] Wheeling, WV-OH (WV Hospitals) Belmont, OH Marshall, WV Ohio, WV	0.7986	0.8573
9000 [2] Wheeling, WV-OH (OH Hospitals) Belmont, OH Marshall, WV Ohio, WV	0.8784	0.9150
9040 Wichita, KS Butler, KS Harvey, KS Sedgwick, KS	0.9200	0.9445
9080 Wichita Falls, TX Archer, TX Wichita, TX	0.8307	0.8807
9140 [2] Williamsport, PA Lycoming, PA	0.8344	0.8834
9160 Wilmington-Newark, DE-MD New Castle, DE Cecil, MD	1.0838	1.0567
9200 Wilmington, NC New Hanover, NC Brunswick, NC	0.9524	0.9672
9260 [2] Yakima, WA Yakima, WA	1.0346	1.0236
9270 [2] Yolo, CA Yolo, CA	0.9927	0.9950
9280 York, PA York, PA	0.9106	0.9379
9320 Youngstown-Warren, OH Columbiana, OH Mahoning, OH Trumbull, OH	0.9176	0.9428
9340 Yuba City, CA Sutter, CA Yuba, CA	1.0155	1.0106
9360 [2] Yuma, AZ Yuma, AZ	0.9233	0.9468

[1] Large Urban Area

[2] Hospitals geographically located in the area are assigned the statewide rural wage index for FY 2004.

TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS

Nonurban area	Wage index	GAF
Alabama	0.7461	0.8183
Alaska	1.1838	1.1225
Arizona	0.9233	0.9468
Arkansas	0.7703	0.8363
California	0.9927	0.9950
Colorado	0.9291	0.9509
Connecticut	1.2134	1.1416

TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS—Continued

Nonurban area	Wage index	GAF
Delaware	0.9557	0.9694
Florida	0.8819	0.9175
Georgia	0.8586	0.9009
Hawaii	0.9918	0.9944
Idaho	0.8937	0.9259
Illinois	0.8221	0.8745
Indiana	0.8788	0.9153
Iowa	0.8382	0.8862
Kansas	0.8041	0.8613
Kentucky	0.7942	0.8540
Louisiana	0.7494	0.8207
Maine	0.8776	0.9145
Maryland	0.9088	0.9366
Massachusetts	1.0390	1.0265
Michigan	0.8851	0.9198
Minnesota	0.9307	0.9520
Mississippi	0.7762	0.8407
Missouri	0.8024	0.8601
Montana	0.8765	0.9137
Nebraska	0.8787	0.9153
Nevada	0.9767	0.9840
New Hampshire	0.9989	0.9992
New Jersey [1]		
New Mexico	0.8236	0.8756
New York	0.8491	0.8940
North Carolina	0.8422	0.8890
North Dakota	0.7746	0.8395
Ohio	0.8784	0.9150
Oklahoma	0.7506	0.8216
Oregon	0.9953	0.9968
Pennsylvania	0.8344	0.8834
Puerto Rico	0.4002	0.5341
Rhode Island [1]		
South Carolina	0.8464	0.8921
South Dakota	0.8162	0.8702
Tennessee	0.7854	0.8475
Texas	0.7748	0.8397
Utah	0.8937	0.9259
Vermont	0.9496	0.9652
Virginia	0.8464	0.8921
Washington	1.0346	1.0236
West Virginia	0.7986	0.8573
Wisconsin	0.9266	0.9491
Wyoming	0.9073	0.9356

[1] All counties within the State are classified as urban.

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED

Area	Wage index	GAF
Akron, OH	0.9443	0.9615
Albany, GA	1.0621	1.0421
Albuquerque, NM (NM hospitals)	0.9263	0.9489
Albuquerque, NM (CO hospitals)	0.9291	0.9509
Alexandria, LA	0.8004	0.8586
Allentown-Bethlehem-Easton, PA	0.9682	0.9781
Altoona, PA	0.8792	0.9156
Amarillo, TX	0.8822	0.9177

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area	Wage index	GAF
Anchorage, AK	1.2301	1.1524
Ann Arbor, MI	1.0802	1.0543
Anniston, AL	0.7943	0.8541
Asheville, NC	0.9439	0.9612
Athens, GA	0.9525	0.9672
Atlanta, GA	0.9955	0.9969
Atlantic-Cape May, NJ	1.0489	1.0332
Augusta-Aiken, GA–SC	0.9395	0.9582
Austin-San Marcos, TX	0.9570	0.9704
Bangor, ME	0.9864	0.9907
Barnstable-Yarmouth, MA	1.2669	1.1759
Baton Rouge, LA	0.8372	0.8854
Bellingham, WA	1.1358	1.0911
Benton Harbor, MI	0.8899	0.9232
Bergen-Passaic, NJ	1.1683	1.1124
Billings, MT	0.8925	0.9251
Biloxi-Gulfport-Pascagoula, MS	0.8373	0.8855
Binghamton, NY	0.8394	0.8870
Birmingham, AL	0.9175	0.9427
Bismarck, ND	0.8001	0.8584
Bloomington-Normal, IL	0.8796	0.9159
Boise City, ID	0.9195	0.9441
Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH	1.1188	1.0799
Burlington, VT	0.9294	0.9511
Caguas, PR	0.4184	0.5506
Casper, WY	0.9171	0.9425
Champaign-Urbana, IL	0.9422	0.9600
Charleston-North Charleston, SC	0.9294	0.9511
Charleston, WV (WV Hospitals)	0.8533	0.8971
Charleston, WV (OH Hospitals)	0.8784	0.9150
Charlotte-Gastonia-Rock Hill, NC–SC	0.9578	0.9709
Charlottesville, VA	0.9837	0.9888
Chattanooga, TN–GA	0 9049	0.9339
Chicago, IL	1.0719	1.0487
Cincinnati, OH–KY–IN	0.9380	0.9571
Clarksville-Hopkinsville, TN–KY	0.8320	0.8817
Cleveland-Lorain-Elyria, OH	0.9632	0.9747
Columbia, MO	0.8522	0.8963
Columbia, SC	0.8866	0.9209
Columbus, GA–AL (GA Hospitals)	0.8586	0.9009
Columbus, GA–AL (AL Hospitals)	0.8446	0.8908
Columbus, OH	0.9609	0.9731
Corpus Christi, TX	0.8486	0.8937
Corvallis, OR	1.1196	1.0804
Dallas, TX	0.9934	0.9955
Davenport-Moline-Rock Island, IA–IL	0.8949	0.9268
Dayton-Springfield, OH	0.9490	0.9648
Decatur, AL	0.8545	0.8979
Denver, CO	1.0617	1.0419
Des Moines, IA	0.9069	0.9353
Detroit, MI	1.0060	1.0041
Dothan, AL	0.7734	0.8386
Duluth-Superior, MN–WI	1.0130	1.0089
Dutchess County, NY	1.0687	1.0466

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area	Wage index	GAF
Elkhart-Goshen, IN	0.9515	0.9665
Erie, PA	0.8491	0.8940
Eugene-Springfield, OR	1.0932	1.0629
Fargo-Moorhead, ND–MN	0.9463	0.9629
Fayetteville, NC	0.8782	0.9149
Flagstaff, AZ–UT	1.1035	1.0698
Flint, MI	1.0659	1.0447
Florence, AL	0.7766	0.8410
Fort Collins-Loveland, CO	1.0096	1.0066
Ft. Lauderdale, FL	1.0436	1.0297
Fort Pierce-Port St. Lucie, FL	1.0083	1.0057
Fort Smith, AR–OK	0.8044	0.8615
Fort Walton Beach, FL	0.8768	0.9139
Forth Worth-Arlington, TX	0.9321	0.9530
Gadsden, AL	0.8195	0.8726
Grand Forks, ND–MN	0.8601	0.9019
Grand Junction, CO	0.9881	0.9918
Grand Rapids-Muskegon-Holland, MI	0.9430	0.9606
Great Falls, MT	0.8882	0.9220
Greeley, CO	0.9415	0.9596
Green Bay, WI	0.9479	0.9640
Greensboro-Winston-Salem-High Point, NC	0.9022	0.9319
Greenville, NC	0.9129	0.9395
Hamilton-Middletown, OH	0.9176	0.9428
Harrisburg-Lebanon-Carlisle, PA	0.9127	0.9394
Hartford, CT	1.1279	1.0859
Hickory-Morganton-Lenoir, NC	0.9076	0.9358
Honolulu, HI	1.1071	1.0722
Houston, TX	0.9794	0.9858
Huntington-Ashland, WV–KY–OH	0.9039	0.9331
Huntsville, AL	0.8979	0.9289
Indianapolis, IN	0.9875	0.9914
Iowa City, IA	0.9366	0.9561
Jackson, MS	0.8355	0.8842
Jackson, TN	0.8784	0.9150
Jacksonville, FL	0.9490	0.9648
Johnson City-Kingsport-Bristol, TN–VA (VA Hospitals)	0.8464	0.8921
Johnson City-Kingsport-Bristol, TN–VA (KY Hospitals)	0.8223	0.8746
Jonesboro, AR (AR Hospitals)	0.7777	0.8418
Jonesboro, AR (MO Hospitals)	0.8024	0.8601
Joplin, MO	0.8523	0.8963
Kalamazoo-Battlecreek, MI	1.0458	1.0311
Kansas City, KS–MO	0.9675	0.9776
Knoxville, TN	0.8784	0.9150
Kokomo, IN	0.9008	0.9310
Lafayette, LA	0.8191	0.8723
Lakeland-Winter Haven, FL	0.8823	0.9178
Las Vegas, NV–AZ	1.1355	1.0909
Lawton, OK	0.8107	0.8661
Lexington, KY	0.8441	0.8904
Lima, OH	0.9483	0.9643
Lincoln, NE	0.9559	0.9696

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area	Wage index	GAF
Little Rock-North Little Rock, AR	0.8887	0.9224
Longview-Marshall, TX	0.8906	0.9237
Los Angeles-Long Beach, CA	1.1790	1.1194
Louisville, KY–IN	0.9081	0.9361
Lubbock, TX	0.8238	0.8757
Lynchburg, VA	0.8905	0.9237
Macon, GA	0.8939	0.9261
Madison, WI	1.0076	1.0052
Medford-Ashland, OR	1.0383	1.0261
Memphis, TN–AR–MS	0.8751	0.9127
Miami, FL	0.9854	0.9900
Milwaukee-Waukesha, WI	0.9789	0.9855
Minneapolis-St. Paul, MN–WI	1.0957	1.0646
Missoula, MT	0.8848	0.9196
Mobile, AL	0.7962	0.8555
Modesto, CA	1.1103	1.0743
Monmouth-Ocean, NJ	1.1038	1.0700
Monroe, LA	0.7890	0.8502
Montgomery, AL	0.7875	0.8491
Nashville, TN	0.9552	0.9691
New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2418	1.1599
New Orleans, LA	0.9137	0.9401
New York, NY	1.3913	1.2538
Newark, NJ	1.1471	1.0985
Newburgh, NY–PA	1.1298	1.0872
Oakland, CA	1.5058	1.3235
Ocala, FL	0.9541	0.9683
Odessa-Midland, TX	0.9039	0.9331
Oklahoma City, OK	0.8948	0.9267
Olympia, WA	1.0919	1.0621
Omaha, NE–IA	0.9705	0.9797
Orange County, CA	1.1445	1.0968
Orlando, FL	0.9615	0.9735
Peoria-Pekin, IL	0.8699	0.9090
Philadelphia, PA–NJ	1.0839	1.0567
Phoenix-Mesa, AZ	1.0088	1.0060
Pine Bluff, AR	0.7855	0.8476
Pittsburgh, PA	0.8865	0.9208
Pittsfield, MA	0.9756	0.9832
Pocatello, ID	0.9212	0.9453
Portland, ME	0.9619	0.9737
Portland-Vancouver, OR–WA	1.1167	1.0785
Provo-Orem, UT	0.9811	0.9870
Raleigh-Durham-Chapel Hill, NC	0.9691	0.9787
Rapid City, SD	0.8771	0.9141
Reading, PA	0.8962	0.9277
Redding, CA	1.1306	1.0877
Reno, NV	1.0639	1.0433
Richland-Kennewick-Pasco, WA	1.0358	1.0244
Richmond-Petersburg, VA	0.9311	0.9523
Roanoke, VA	0.8664	0.9065
Rochester, MN	1.1691	1.1129
Rockford, IL	0.9402	0.9587
Sacramento, CA	1.1797	1.1198
Saginaw-Bay City-Midland, MI	0.9712	0.9802
St. Cloud, MN	0.9640	0.9752
St. Joseph, MO	0.8544	0.8978

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area	Wage index	GAF
St. Louis, MO–IL	0.8996	0.9301
Salinas, CA	1.4281	1.2764
Salt Lake City-Ogden, UT	0.9873	0.9913
San Antonio, TX	0.8834	0.9186
Santa Fe, NM	0.9486	0.9645
Santa Rosa, CA	1.2825	1.1858
Sarasota-Bradenton, FL	0.9931	0.9953
Savannah, GA	0.9450	0.9620
Seattle-Bellevue-Everett, WA	1.1516	1.1015
Sherman-Denison, TX	0.9166	0.9421
Shreveport-Bossier City, LA	0.9047	0.9337
Sioux City, IA–NE (NE Hospitals)	0.8787	0.9153
Sioux City, IA–NE (SD Hospitals)	0.8750	0.9126
Sioux Falls, SD	0.9147	0.9408
South Bend, IN	0.9676	0.9777
Spokane, WA	1.0673	1.0456
Springfield, IL	0.8908	0.9239
Springfield, MO	0.8225	0.8748
Stockton-Lodi, CA	1.0921	1.0622
Syracuse, NY	0.9374	0.9567
Tampa-St. Petersburg-Clearwater, FL	0.9066	0.9351
Texarkana, AR-Texarkana, TX	0.7937	0.8537
Toledo, OH	0.9359	0.9556
Topeka, KS	0.8869	0.9211
Tucson, AZ	0.9233	0.9468
Tulsa, OK	0.8902	0.9234
Tuscaloosa, AL	0.8068	0.8633
Tyler, TX	0.9118	0.9387
Vallejo-Fairfield-Napa, CA	1.3371	1.2201
Victoria, TX	0.8151	0.8694
Waco, TX	0.8360	0.8846
Washington, DC–MD–VA–WV	1.0860	1.0581
Waterloo-Cedar Falls, IA	0.8382	0.8862
Wausau, WI	0.9744	0.9824
West Palm Beach-Boca Raton, FL	0.9759	0.9834
Wichita, KS	0.8967	0.9281
Wichita Falls, TX	0.8307	0.8807
Wilmington-Newark, DE–MD	1.0667	1.0452
Wilmington, NC	0.9386	0.9575
York, PA	0.9106	0.9379
Youngstown-Warren, OH	0.9176	0.9428
Rural Florida	0.8663	0.9064
Rural Illinois (IA Hospitals)	0.8382	0.8862
Rural Illinois (MO Hospitals)	0.8221	0.8745
Rural Kentucky	0.7942	0.8540
Rural Louisiana	0.7494	0.8207
Rural Michigan	0.8851	0.9198
Rural Minnesota	0.9307	0.9520
Rural Mississippi	0.7762	0.8407
Rural Missouri	0.8024	0.8601
Rural Nebraska	0.8787	0.9153
Rural Nevada	0.9238	0.9472
Rural New Hampshire	0.9989	0.9992
Rural Texas	0.7748	0.8397
Rural Washington	1.0346	1.0236
Rural Wyoming	0.8947	0.9266

TABLE 4F.—PUERTO RICO WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF)

Area	Wage index	GAF	Wage index—reclass. hospitals	GAF—reclass. hospitals
Aguadilla, PR	0.9180	0.9431		
Arecibo, PR	0.8856	0.9202		
Caguas, PR	0.8956	0.9273	0.8956	0.9273
Mayaguez, PR	1.0222	1.0151		
Ponce, PR	1.0037	1.0025		
San Juan-Bayamon, PR	1.0445	1.0303		
Rural Puerto Rico	0.8566	0.8994		

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties)	Wage index
0040 Abilene, TX	0.7748
Taylor, TX	
0060 Aguadilla, PR	0.4289
Aguada, PR	
Aguadilla, PR	
Moca, PR	
0080 Akron, OH	0.9208
Portage, OH	
Summit, OH	
0120 Albany, GA	1.0819
Dougherty, GA	
Lee, GA	
0160 Albany-Schenectady-Troy, NY	0.8491
Albany, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Schoharie, NY	
0200 Albuquerque, NM	0.9263
Bernalillo, NM	
Sandoval, NM	
Valencia, NM	
0220 Alexandria, LA	0.7987
Rapides, LA	
0240 Allentown-Bethlehem-Easton, PA	0.9682
Carbon, PA	
Lehigh, PA	
Northampton, PA	
0280 Altoona, PA	0.8771
Blair, PA	
0320 Amarillo, TX	0.8950
Potter, TX	
Randall, TX	
0380 Anchorage, AK	1.2167
Anchorage, AK	
0440 Ann Arbor, MI	1.1029
Lenawee, MI	
Livingston, MI	
Washtenaw, MI	
0450 Anniston, AL	0.8058
Calhoun, AL	
0460 Appleton-Oshkosh-Neenah, WI	0.9266
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
0470 Arecibo, PR	0.4138
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
0480 Asheville, NC	0.9680
Buncombe, NC	
Madison, NC	
0500 Athens, GA	0.9778
Clarke, GA	
Madison, GA	
Oconee, GA	
0520 Atlanta, GA	1.0089
Barrow, GA	
Bartow, GA	
Carroll, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
DeKalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Pickens, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
0560 Atlantic-Cape May, NJ	1.0751
Atlantic, NJ	
Cape May, NJ	
0580 Auburn-Opelika, AL	0.8460
Lee, AL	
0600 Augusta-Aiken, GA-SC	0.9587
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Edgefield, SC	
0640 Austin-San Marcos, TX	0.9570
Bastrop, TX	
Caldwell, TX	
Hays, TX	
Travis, TX	
Williamson, TX	
0680 Bakersfield, CA	0.9927
Kern, CA	
0720 Baltimore, MD	0.9879
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Anne's, MD	
0733 Bangor, ME	0.9864
Penobscot, ME	
0743 Barnstable-Yarmouth, MA	1.2904
Barnstable, MA	
0760 Baton Rouge, LA	0.8372
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
0840 Beaumont-Port Arthur, TX	0.8390
Hardin, TX	
Jefferson, TX	
Orange, TX	
0860 Bellingham, WA	1.1710
Whatcom, WA	
0870 Benton Harbor, MI	0.8899
Berrien, MI	
0875 Bergen-Passaic, NJ	1.1644
Bergen, NJ	
Passaic, NJ	
0880 Billings, MT	0.8925
Yellowstone, MT	
0920 Biloxi-Gulfport-Pascagoula, MS	0.8993
Hancock, MS	
Harrison, MS	
Jackson, MS	
0960 Binghamton, NY	0.8491
Broome, NY	
Tioga, NY	
1000 Birmingham, AL	0.9175
Blount, AL	
Jefferson, AL	
St. Clair, AL	
Shelby, AL	
1010 Bismarck, ND	0.7933
Burleigh, ND	
Morton, ND	
1020 Bloomington, IN	0.8788
Monroe, IN	
1040 Bloomington-Normal, IL	0.8796
McLean, IL	
1080 Boise City, ID	0.9172
Ada, ID	
Canyon, ID	
1123 Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH (NH Hospitals)	1.1188
Bristol, MA	
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Worcester, MA	
Hillsborough, NH	
Merrimack, NH	

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
Rockingham, NH	
Strafford, NH	
1125 Boulder-Longmont, CO	1.0008
Boulder, CO	
1145 Brazoria, TX	0.8105
Brazoria, TX	
1150 Bremerton, WA	1.0537
Kitsap, WA	
1240 Brownsville-Harlingen-San Benito, TX	1.0261
Cameron, TX	
1260 Bryan-College Station, TX	0.8983
Brazos, TX	
1280 Buffalo-Niagara Falls, NY	0.9565
Erie, NY	
Niagara, NY	
1303 Burlington, VT	0.9665
Chittenden, VT	
Franklin, VT	
Grand Isle, VT	
1310 Caguas, PR	0.4141
Caguas, PR	
Cayey, PR	
Cidra, PR	
Gurabo, PR	
San Lorenzo, PR	
1320 Canton-Massillon, OH	0.9034
Carroll, OH	
Stark, OH	
1350 Casper, WY	0.9073
Natrona, WY	
1360 Cedar Rapids, IA	0.8838
Linn, IA	
1400 Champaign-Urbana, IL	0.9867
Champaign, IL	
1440 Charleston-North Charleston, SC	0.9294
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
1480 Charleston, WV	0.8845
Kanawha, WV	
Putnam, WV	
1520 Charlotte-Gastonia-Rock Hill, NC-SC	0.9691
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Stanly, NC	
Union, NC	
York, SC	
1540 Charlottesville, VA	0.9985
Albemarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
1560 Chattanooga, TN-GA	0.9049
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
1580 Cheyenne, WY	0.9073
Laramie, WY	
1600 Chicago, IL	1.0848
Cook, IL	
DeKalb, IL	
DuPage, IL	
Grundy, IL	
Kane, IL	
Kendall, IL	
Lake, IL	
McHenry, IL	
Will, IL	
1620 Chico-Paradise, CA	1.0152
Butte, CA	
1640 Cincinnati, OH-KY-IN	0.9375
Dearborn, IN	
Ohio, IN	
Boone, KY	
Campbell, KY	
Gallatin, KY	
Grant, KY	
Kenton, KY	
Pendleton, KY	
Brown, OH	
Clermont, OH	
Hamilton, OH	
Warren, OH	
1660 Clarksville-Hopkinsville, TN-KY	0.8211
Christian, KY	
Montgomery, TN	
1680 Cleveland-Lorain-Elyria, OH	0.9632
Ashtabula, OH	
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Lorain, OH	
Medina, OH	
1720 Colorado Springs, CO	0.9793
El Paso, CO	
1740 Columbia, MO	0.8660
Boone, MO	
1760 Columbia, SC	0.8866
Lexington, SC	
Richland, SC	
1800 Columbus, GA-AL	0.8659
Russell, AL	
Chattahoochee, GA	
Harris, GA	
Muscogee, GA	
1840 Columbus, OH	0.9609
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
1880 Corpus Christi, TX	0.8486
Nueces, TX	
San Patricio, TX	
1890 Corvallis, OR	1.1470
Benton, OR	
1900 Cumberland, MD-WV (WV Hospital)	0.8166
Allegany, MD	
Mineral, WV	
1920 Dallas, TX	0.9934
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Henderson, TX	
Hunt, TX	
Kaufman, TX	
Rockwall, TX	
1950 Danville, VA	0.8998
Danville City, VA	
Pittsylvania, VA	
1960 Davenport-Moline-Rock Island, IA-IL	0.8949
Scott, IA	
Henry, IL	
Rock Island, IL	
2000 Dayton-Springfield, OH	0.9479
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
2020 Daytona Beach, FL	0.9024
Flagler, FL	
Volusia, FL	
2030 Decatur, AL	0.8793
Lawrence, AL	
Morgan, AL	
2040 Decatur, IL	0.8221
Macon, IL	
2080 Denver, CO	1.0793
Adams, CO	
Arapahoe, CO	
Broomfield, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
2120 Des Moines, IA	0.9069
Dallas, IA	
Polk, IA	
Warren, IA	
2160 Detroit, MI	1.0060
Lapeer, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
St. Clair, MI	
Wayne, MI	
2180 Dothan, AL	0.7710
Dale, AL	
Houston, AL	
2190 Dover, DE	0.9765
Kent, DE	
2200 Dubuque, IA	0.8850
Dubuque, IA	
2240 Duluth-Superior, MN-WI	1.0130
St. Louis, MN	
Douglas, WI	
2281 Dutchess County, NY	1.0890
Dutchess, NY	
2290 Eau Claire, WI	0.9266
Chippewa, WI	
Eau Claire, WI	
2320 El Paso, TX	0.9159
El Paso, TX	
2330 Elkhart-Goshen, IN	0.9744
Elkhart, IN	
2335 Elmira, NY	0.8491
Chemung, NY	
2340 Enid, OK	0.8524
Garfield, OK	
2360 Erie, PA	0.8566
Erie, PA	
2400 Eugene-Springfield, OR	1.1410
Lane, OR	
2440 Evansville-Henderson, IN-KY (IN Hospitals)	0.8788
Posey, IN	
Vanderburgh, IN	
Warrick, IN	

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
Henderson, KY	
2520 Fargo-Moorhead, ND-MN	0.9758
Clay, MN	
Cass, ND	
2560 Fayetteville, NC	0.8950
Cumberland, NC	
2580 Fayetteville-Springdale-Rogers, AR	0.8362
Benton, AR	
Washington, AR	
2620 Flagstaff, AZ-UT	1.1287
Coconino, AZ	
Kane, UT	
2640 Flint, MI	1.0814
Genesee, MI	
2650 Florence, AL	0.7716
Colbert, AL	
Lauderdale, AL	
2655 Florence, SC	0.8673
Florence, SC	
2670 Fort Collins-Loveland, CO	1.0067
Larimer, CO	
2680 Ft. Lauderdale, FL	1.0122
Broward, FL	
2700 Fort Myers-Cape Coral, FL	0.9776
Lee, FL	
2710 Fort Pierce-Port St. Lucie, FL	0.9968
Martin, FL	
St. Lucie, FL	
2720 Fort Smith, AR-OK	0.8390
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
2750 Fort Walton Beach, FL	0.8930
Okaloosa, FL	
2760 Fort Wayne, IN	0.9546
Adams, IN	
Allen, IN	
De Kalb, IN	
Huntington, IN	
Wells, IN	
Whitley, IN	
2800 Forth Worth-Arlington, TX	0.9321
Hood, TX	
Johnson, TX	
Parker, TX	
Tarrant, TX	
2840 Fresno, CA	1.0101
Fresno, CA	
Madera, CA	
2880 Gadsden, AL	0.8173
Etowah, AL	
2900 Gainesville, FL	0.9653
Alachua, FL	
2920 Galveston-Texas City, TX	0.9242
Galveston, TX	
2960 Gary, IN	0.9372
Lake, IN	
Porter, IN	
2975 Glens Falls, NY	0.8491
Warren, NY	
Washington, NY	
2980 Goldsboro, NC	0.8587
Wayne, NC	
2985 Grand Forks, ND-MN	0.8601
Polk, MN	
Grand Forks, ND	
2995 Grand Junction, CO	0.9594
Mesa, CO	

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
3000 Grand Rapids-Muskegon-Holland, MI	0.9430
Allegan, MI	
Kent, MI	
Muskegon, MI	
Ottawa, MI	
3040 Great Falls, MT	0.8773
Cascade, MT	
3060 Greeley, CO	0.9334
Weld, CO	
3080 Green Bay, WI	0.9422
Brown, WI	
3120 Greensboro-Winston-Salem-High Point, NC	0.9129
Alamance, NC	
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
3150 Greenville, NC	0.9061
Pitt, NC	
3160 Greenville-Spartanburg-Anderson, SC	0.9297
Anderson, SC	
Cherokee, SC	
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
3180 Hagerstown, MD	0.9135
Washington, MD	
3200 Hamilton-Middletown, OH	0.9176
Butler, OH	
3240 Harrisburg-Lebanon-Carlisle, PA	0.9127
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
3283 Hartford, CT	1.2134
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
3285 Hattiesburg, MS	0.7747
Forrest, MS	
Lamar, MS	
3290 Hickory-Morganton-Lenoir, NC	0.9205
Alexander, NC	
Burke, NC	
Caldwell, NC	
Catawba, NC	
3320 Honolulu, HI	1.1053
Honolulu, HI	
3350 Houma, LA	0.7740
Lafourche, LA	
Terrebonne, LA	
3360 Houston, TX	0.9794
Chambers, TX	
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
3400 Huntington-Ashland, WV-KY-OH	0.9556
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
3440 Huntsville, AL	0.9208
Limestone, AL	
Madison, AL	
3480 Indianapolis, IN	0.9875
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Madison, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
3500 Iowa City, IA	0.9510
Johnson, IA	
3520 Jackson, MI	0.8950
Jackson, MI	
3560 Jackson, MS	0.8324
Hinds, MS	
Madison, MS	
Rankin, MS	
3580 Jackson, TN	0.8948
Madison, TN	
Chester, TN	
3600 Jacksonville, FL	0.9490
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
3605 Jacksonville, NC	0.8510
Onslow, NC	
3610 Jamestown, NY	0.8491
Chautauqua, NY	
3620 Janesville-Beloit, WI	0.9266
Rock, WI	
3640 Jersey City, NJ	1.1070
Hudson, NJ	
3660 Johnson City-Kingsport-Bristol, TN-VA	0.8220
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
3680 Johnstown, PA	0.8344
Cambria, PA	
Somerset, PA	
3700 Jonesboro, AR	0.7762
Craighead, AR	
3710 Joplin, MO	0.8646
Jasper, MO	
Newton, MO	
3720 Kalamazoo-Battlecreek, MI	1.0458
Calhoun, MI	
Kalamazoo, MI	
Van Buren, MI	
3740 Kankakee, IL	1.0377
Kankakee, IL	
3760 Kansas City, KS-MO	0.9675
Johnson, KS	
Leavenworth, KS	
Miami, KS	

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
Wyandotte, KS	
Cass, MO	
Clay, MO	
Clinton, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
3800 Kenosha, WI	0.9721
Kenosha, WI	
3810 Killeen-Temple, TX	0.9122
Bell, TX	
Coryell, TX	
3840 Knoxville, TN	0.8784
Anderson, TN	
Blount, TN	
Knox, TN	
Loudon, TN	
Sevier, TN	
Union, TN	
3850 Kokomo, IN	0.9008
Howard, IN	
Tipton, IN	
3870 La Crosse, WI-MN	0.9266
Houston, MN	
La Crosse, WI	
3880 Lafayette, LA	0.8173
Acadia, LA	
Lafayette, LA	
St. Landry, LA	
St. Martin, LA	
3920 Lafayette, IN	0.8788
Clinton, IN	
Tippecanoe, IN	
3960 Lake Charles, LA	0.7809
Calcasieu, LA	
3980 Lakeland-Winter Haven, FL	0.8819
Polk, FL	
4000 Lancaster, PA	0.9244
Lancaster, PA	
4040 Lansing-East Lansing, MI	0.9675
Clinton, MI	
Eaton, MI	
Ingham, MI	
4080 Laredo, TX	0.8059
Webb, TX	
4100 Las Cruces, NM	0.8653
Dona Ana, NM	
4120 Las Vegas, NV-AZ	1.1481
Mohave, AZ	
Clark, NV	
Nye, NV	
4150 Lawrence, KS	0.8041
Douglas, KS	
4200 Lawton, OK	0.8234
Comanche, OK	
4243 Lewiston-Auburn, ME	0.9345
Androscoggin, ME	
4280 Lexington, KY	0.8650
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Madison, KY	
Scott, KY	
Woodford, KY	
4320 Lima, OH	0.9483
Allen, OH	
Auglaize, OH	
4360 Lincoln, NE	0.9992
Lancaster, NE	
4400 Little Rock-North Little Rock, AR	0.8887
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
4420 Longview-Marshall, TX	0.9076
Gregg, TX	
Harrison, TX	
Upshur, TX	
4480 Los Angeles-Long Beach, CA	1.1748
Los Angeles, CA	
4520 Louisville, KY-IN	0.9205
Clark, IN	
Floyd, IN	
Harrison, IN	
Scott, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
4600 Lubbock, TX	0.8238
Lubbock, TX	
4640 Lynchburg, VA	0.9097
Amherst, VA	
Bedford, VA	
Bedford City, VA	
Campbell, VA	
Lynchburg City, VA	
4680 Macon, GA	0.8916
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Twiggs, GA	
4720 Madison, WI	1.0222
Dane, WI	
4800 Mansfield, OH	0.8784
Crawford, OH	
Richland, OH	
4840 Mayaguez, PR	0.4776
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
Sabana Grande, PR	
San German, PR	
4880 McAllen-Edinburg-Mission, TX	0.8347
Hidalgo, TX	
4890 Medford-Ashland, OR	1.0729
Jackson, OR	
4900 Melbourne-Titusville-Palm Bay, FL	0.9736
Brevard, FI	
4920 Memphis, TN-AR-MS	0.8973
Crittenden, AR	
DeSoto, MS	
Fayette, TN	
Shelby, TN	
Tipton, TN	
4940 Merced, CA	0.9927
Merced, CA	
5000 Miami, FL	0.9854
Dade, FL	
5015 Middlesex-Somerset-Hunterdon, NJ	1.1320
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
5080 Milwaukee-Waukesha, WI	0.9947
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
5120 Minneapolis-St. Paul, MN-WI	1.0957
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Sherburne, MN	
Washington, MN	
Wright, MN	
Pierce, WI	
St. Croix, WI	
5140 Missoula, MT	0.8765
Missoula, MT	
5160 Mobile, AL	0.7962
Baldwin, AL	
Mobile, AL	
5170 Modesto, CA	1.1230
Stanislaus, CA	
5190 Monmouth-Ocean, NJ	1.0912
Monmouth, NJ	
Ocean, NJ	
5200 Monroe, LA	0.7890
Ouachita, LA	
5240 Montgomery, AL	0.7875
Autauga, AL	
Elmore, AL	
Montgomery, AL	
5280 Muncie, IN	0.8788
Delaware, IN	
5330 Myrtle Beach, SC	0.9075
Horry, SC	
5345 Naples, FL	0.9750
Collier, FL	
5360 Nashville, TN	0.9815
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
5380 Nassau-Suffolk, NY	1.2933
Nassau, NY	
Suffolk, NY	
5483 New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2335
Fairfield, CT	
New Haven, CT	
5523 New London-Norwich, CT	1.2134
New London, CT	
5560 New Orleans, LA	0.9137
Jefferson, LA	
Orleans, LA	
Plaquemines, LA	
St. Bernard, LA	
St. Charles, LA	
St. James, LA	
St. John The Baptist, LA	

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
St. Tammany, LA	
5600 New York, NY	1.3913
Bronx, NY	
Kings, NY	
New York, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
5640 Newark, NJ	1.1471
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Warren, NJ	
5660 Newburgh, NY-PA	1.1462
Orange, NY	
Pike, PA	
5720 Norfolk-Virginia Beach-Newport News, VA-NC	0.8584
Currituck, NC	
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
Isle of Wight, VA	
James City, VA	
Mathews, VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson City, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City VA	
Williamsburg City, VA	
York, VA	
5775 Oakland, CA	1.4860
Alameda, CA	
Contra Costa, CA	
5790 Ocala, FL	0.9689
Marion, FL	
5800 Odessa-Midland, TX	0.9290
Ector, TX	
Midland, TX	
5880 Oklahoma City, OK	0.8948
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
5910 Olympia, WA	1.0919
Thurston, WA	
5920 Omaha, NE-IA	0.9705
Pottawattamie, IA	
Cass, NE	
Douglas, NE	
Sarpy, NE	
Washington, NE	
5945 Orange County, CA	1.1326
Orange, CA	
5960 Orlando, FL	0.9615
Lake, FL	
Orange, FL	
Osceola, FL	
Seminole, FL	
5990 Owensboro, KY	0.8340
Daviess, KY	
6015 Panama City, FL	0.8819
Bay, FL	
6020 Parkersburg-Marietta, WV-OH	0.8007
Washington, OH	
Wood, WV	
6080 Pensacola, FL	0.8819
Escambia, FL	
Santa Rosa, FL	
6120 Peoria-Pekin, IL	0.8699
Peoria, IL	
Tazewell, IL	
Woodford, IL	
6160 Philadelphia, PA-NJ	1.0839
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Salem, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
6200 Phoenix-Mesa, AZ	1.0088
Maricopa, AZ	
Pinal, AZ	
6240 Pine Bluff, AR	0.7833
Jefferson, AR	
6280 Pittsburgh, PA	0.8865
Allegheny, PA	
Beaver, PA	
Butler, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
6323 Pittsfield, MA	1.0390
Berkshire, MA	
6340 Pocatello, ID	0.9006
Bannock, ID	
6360 Ponce, PR	0.4689
Guayanilla, PR	
Juana Diaz, PR	
Penuelas, PR	
Ponce, PR	
Villalba, PR	
Yauco, PR	
6403 Portland, ME	0.9909
Cumberland, ME	
Sagadahoc, ME	
York, ME	
6440 Portland-Vancouver, OR-WA	1.1167
Clackamas, OR	
Columbia, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Clark, WA	
6483 Providence-Warwick-Pawtucket, RI	1.0932
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
6520 Provo-Orem, UT	0.9936
Utah, UT	
6560 Pueblo, CO	0.9291
Pueblo, CO	
6580 Punta Gorda, FL	0.9472
Charlotte, FL	
6600 Racine, WI	0.9266
Racine, WI	
6640 Raleigh-Durham-Chapel Hill, NC	0.9919
Chatham, NC	
Durham, NC	
Franklin, NC	
Johnston, NC	
Orange, NC	
Wake, NC	
6660 Rapid City, SD	0.8771
Pennington, SD	
6680 Reading, PA	0.9096
Berks, PA	
6690 Redding, CA	1.1306
Shasta, CA	
6720 Reno, NV	1.0639
Washoe, NV	
6740 Richland-Kennewick-Pasco, WA	1.0566
Benton, WA	
Franklin, WA	
6760 Richmond-Petersburg, VA	0.9311
Charles City County, VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
6780 Riverside-San Bernardino, CA	1.1302
Riverside, CA	
San Bernardino, CA	
6800 Roanoke, VA	0.8664
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
6820 Rochester, MN	1.1691
Olmsted, MN	
6840 Rochester, NY	0.9392
Genesee, NY	
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
6880 Rockford, IL	0.9627
Boone, IL	
Ogle, IL	
Winnebago, IL	
6895 Rocky Mount, NC	0.9039
Edgecombe, NC	
Nash, NC	
6920 Sacramento, CA	1.1797
El Dorado, CA	
Placer, CA	
Sacramento, CA	
6960 Saginaw-Bay City-Midland, MI	0.9992
Bay, MI	
Midland, MI	
Saginaw, MI	
6980 St. Cloud, MN	0.9468

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
Benton, MN	
Stearns, MN	
7000 St. Joseph, MO	0.8024
Andrew, MO	
Buchanan, MO	
7040 St. Louis, MO-IL	0.8996
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
Lincoln, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Warren, MO	
7080 Salem, OR	1.0440
Marion, OR	
Polk, OR	
7120 Salinas, CA	1.4281
Monterey, CA	
7160 Salt Lake City-Ogden, UT	0.9873
Davis, UT	
Salt Lake, UT	
Weber, UT	
7200 San Angelo, TX	0.8500
Tom Green, TX	
7240 San Antonio, TX	0.8834
Bexar, TX	
Comal, TX	
Guadalupe, TX	
Wilson, TX	
7320 San Diego, CA	1.1102
San Diego, CA	
7360 San Francisco, CA	1.4455
Marin, CA	
San Francisco, CA	
San Mateo, CA	
7400 San Jose, CA	1.4567
Santa Clara, CA	
7440 San Juan-Bayamon, PR	0.4880
Aguas Buenas, PR	
Barceloneta, PR	
Bayamon, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Ceiba, PR	
Comerio, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Morovis, PR	
Naguabo, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trujillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Yabucoa, PR	
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.1383
San Luis Obispo, CA	
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.0399
Santa Barbara, CA	
7485 Santa Cruz-Watsonville, CA	1.2890
Santa Cruz, CA	
7490 Santa Fe, NM	1.0610
Los Alamos, NM	
Santa Fe, NM	
7500 Santa Rosa, CA	1.2825
Sonoma, CA	
7510 Sarasota-Bradenton, FL	0.9924
Manatee, FL	
Sarasota, FL	
7520 Savannah, GA	0.9433
Bryan, GA	
Chatham, GA	
Effingham, GA	
7560 Scranton—Wilkes-Barre—Hazleton, PA	0.8378
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Wyoming, PA	
7600 Seattle-Bellevue-Everett, WA	1.1516
Island, WA	
King, WA	
Snohomish, WA	
7610 Sharon, PA	0.8344
Mercer, PA	
7620 Sheboygan, WI	0.9266
Sheboygan, WI	
7640 Sherman-Denison, TX	0.9661
Grayson, TX	
7680 Shreveport-Bossier City, LA	0.9047
Bossier, LA	
Caddo, LA	
Webster, LA	
7720 Sioux City, IA-NE	0.8956
Woodbury, IA	
Dakota, NE	
7760 Sioux Falls, SD	0.9271
Lincoln, SD	
Minnehaha, SD	
7800 South Bend, IN	0.9782
St. Joseph, IN	
7840 Spokane, WA	1.0857
Spokane, WA	
7880 Springfield, IL	0.8908
Menard, IL	
Sangamon, IL	
7920 Springfield, MO	0.8423
Christian, MO	
Greene, MO	
Webster, MO	
8003 Springfield, MA	1.0419
Hampden, MA	
Hampshire, MA	
8050 State College, PA	0.8705
Centre, PA	
8080 Steubenville-Weirton, OH-WV (WV Hospitals)	0.8364
Jefferson, OH	
Brooke, WV	
Hancock, WV	
8120 Stockton-Lodi, CA	1.0362
San Joaquin, CA	
8140 Sumter, SC	0.8464
Sumter, SC	
8160 Syracuse, NY	0.9374
Cayuga, NY	
Madison, NY	
Onondaga, NY	
Oswego, NY	
8200 Tacoma, WA	1.1071
Pierce, WA	
8240 Tallahassee, FL	0.8819
Gadsden, FL	
Leon, FL	
8280 Tampa-St. Petersburg-Clearwater, FL	0.9066
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
8320 Terre Haute, IN	0.8788
Clay, IN	
Vermillion, IN	
Vigo, IN	
8360 Texarkana, AR-Texarkana, TX	0.8117
Miller, AR	
Bowie, TX	
8400 Toledo, OH	0.9343
Fulton, OH	
Lucas, OH	
Wood, OH	
8440 Topeka, KS	0.9071
Shawnee, KS	
8480 Trenton, NJ	1.0474
Mercer, NJ	
8520 Tucson, AZ	0.9233
Pima, AZ	
8560 Tulsa, OK	0.9148
Creek, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
8600 Tuscaloosa, AL	0.8179
Tuscaloosa, AL	
8640 Tyler, TX	0.9366
Smith, TX	
8680 Utica-Rome, NY	0.8491
Herkimer, NY	
Oneida, NY	
8720 Vallejo-Fairfield-Napa, CA	1.3323
Napa, CA	
Solano, CA	
8735 Ventura, CA	1.1019
Ventura, CA	
8750 Victoria, TX	0.8151
Victoria, TX	
8760 Vineland-Millville-Bridgeton, NJ	1.0363
Cumberland, NJ	
8780 Visalia-Tulare-Porterville, CA	0.9927
Tulare, CA	
8800 Waco, TX	0.8360
McLennan, TX	
8840 Washington, DC-MD-VA-WV	1.0860
District of Columbia, DC	

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Clarke, VA	
Culpepper, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Fauquier, VA	
Fredericksburg City, VA	
King George, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Spotsylvania, VA	
Stafford, VA	
Warren, VA	
Berkeley, WV	
Jefferson, WV	
8920 Waterloo-Cedar Falls, IA	0.8382
Black Hawk, IA	
8940 Wausau, WI	0.9653
Marathon, WI	
8960 West Palm Beach-Boca Raton, FL	0.9759
Palm Beach, FL	
9000 Wheeling, WV-OH	0.7986
Belmont, OH	
Marshall, WV	
Ohio, WV	
9040 Wichita, KS	0.9200
Butler, KS	
Harvey, KS	
Sedgwick, KS	
9080 Wichita Falls, TX	0.8307
Archer, TX	
Wichita, TX	
9140 Williamsport, PA	0.8344
Lycoming, PA	
9160 Wilmington-Newark, DE-MD	1.0838
New Castle, DE	
Cecil, MD	
9200 Wilmington, NC	0.9524
New Hanover, NC	
Brunswick, NC	
9260 Yakima, WA	1.0346
Yakima, WA	
9270 Yolo, CA	0.9927
Yolo, CA	
9280 York, PA	0.9082
York, PA	
9320 Youngstown-Warren, OH	0.9176
Columbiana, OH	
Mahoning, OH	
Trumbull, OH	
9340 Yuba City, CA	1.0155
Sutter, CA	
Yuba, CA	
9360 Yuma, AZ	0.9233
Yuma, AZ	

TABLE 4H.—PRE-RECLASSIFIED WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage index
Alabama	0.7461
Alaska	1.1838
Arizona	0.9233
Arkansas	0.7703
California	0.9927
Colorado	0.9291
Connecticut	1.2134
Delaware	0.9518
Florida	0.8819
Georgia	0.8560
Hawaii	0.9918
Idaho	0.8937

TABLE 4H.—PRE-RECLASSIFIED WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Illinois	0.8221
Indiana	0.8788
Iowa	0.8382
Kansas	0.8041
Kentucky	0.7941
Louisiana	0.7421
Maine	0.8776
Maryland	0.9088
Massachusetts	1.0390
Michigan	0.8841
Minnesota	0.9293
Mississippi	0.7747
Missouri	0.8024
Montana	0.8765
Nebraska	0.8787
Nevada	0.9767
New Hampshire	0.9989
New Jersey [1]	
New Mexico	0.8236
New York	0.8491
North Carolina	0.8422
North Dakota	0.7746
Ohio	0.8784
Oklahoma	0.7506
Oregon	0.9953
Pennsylvania	0.8344
Puerto Rico	0.4002
Rhode Island [1]	
South Carolina	0.8464
South Dakota	0.8162
Tennessee	0.7854
Texas	0.7748
Utah	0.8937
Vermont	0.9269
Virginia	0.8464
Washington	1.0346
West Virginia	0.7986
Wisconsin	0.9266
Wyoming	0.9073

[1] All counties within the State are classified as urban.

TABLE 5.—LIST OF DIAGNOSIS-RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, AND GEOMETRIC AND ARTHIMETIC MEAN LENGTH OF STAY (LOS)

DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
1	01	SURG	CRANIOTOMY AGE >17 W CC	3.6186	8.00	10.90
2	01	SURG	CRANIOTOMY AGE >17 W/O CC	2.0850	4.10	5.30
3	01	SURG*	CRANIOTOMY AGE 0-17	1.9753	12.70	12.70
4	01	SURG	NO LONGER VALID	0.0000	0.00	0.00
5	01	SURG	NO LONGER VALID	0.0000	0.00	0.00
6	01	SURG	CARPAL TUNNEL RELEASE	0.8092	2.20	3.10
7	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC	2.6519	6.60	9.80
8	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC	1.5453	1.90	2.80
9	01	MED	SPINAL DISORDERS & INJURIES	1.4214	4.70	6.90
10	01	MED	NERVOUS SYSTEM NEOPLASMS W CC	1.2448	4.80	6.50
11	01	MED	NERVOUS SYSTEM NEOPLASMS W/O CC	0.8571	3.00	4.10
12	01	MED	DEGENERATIVE NERVOUS SYSTEM DISORDERS	0.9259	4.50	5.90
13	01	MED	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	0.8176	4.00	5.00
14	01	MED	INTRACRANIAL HEMORRHAGE & STROKE W INFARCT	1.2682	4.70	6.10
15	01	MED	NONSPECIFIC CVA & PRECEREBRAL OCCLUSION W/O INFARCT	0.9677	3.90	4.90

* Medicare data have been supplemented by data from 19 States for low volume DRGs.
** DRGs 469 and 470 contian cases that could be assigned to valid DRGs.
Note 1: Geometric mean is used only to determine payment for transfer cases.
Note 2: Arithmetic mean is presented for informational purposes only.
Note 3: Relative weights are based on Medicare patient data and may not be appropriate for other patients.

TABLE 5.—LIST OF DIAGNOSIS-RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, AND GEOMETRIC AND ARTHIMETIC MEAN LENGTH OF STAY (LOS)—Continued

DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
16	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	1.2618	4.80	6.40
17	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	0.6991	2.50	3.20
18	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	1.0026	4.20	5.50
19	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	0.7041	2.80	3.50
20	01	MED	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	2.7394	8.00	10.50
21	01	MED	VIRAL MENINGITIS	1.5138	5.00	6.60
22	01	MED	HYPERTENSIVE ENCEPHALOPATHY	1.0737	3.90	5.10
23	01	MED	NONTRAUMATIC STUPOR & COMA	0.8239	3.20	4.30
24	01	MED	SEIZURE & HEADACHE AGE >17 W CC	1.0121	3.70	5.00
25	01	MED	SEIZURE & HEADACHE AGE >17 W/O CC	0.6109	2.50	3.20
26	01	MED	SEIZURE & HEADACHE AGE 0-17	1.3730	2.20	4.10
27	01	MED	TRAUMATIC STUPOR & COMA, COMA >1 HR	1.3370	3.20	5.20
28	01	MED	TRAUMATIC STUPOR & COMA, COMA >1 HR AGE <17 W CC	1.3386	4.40	6.10
29	01	MED	TRAUMATIC STUPOR & COMA, COMA >1 HR AGE <17 W/O CC	0.7087	2.70	3.50
30	01	MED*	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0-17	0.3341	2.00	2.00
31	01	MED	CONCUSSION AGE >17 W CC	0.9117	3.10	4.10
32	01	MED	CONCUSSION AGE >17 W/O CC	0.5684	2.00	2.50
33	01	MED*	CONCUSSION AGE 0-17	0.2098	1.60	1.60
34	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM W CC	0.9931	3.70	5.00
35	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	0.6355	2.50	3.10
36	02	SURG	RETINAL PROCEDURES	0.6298	1.20	1.50
37	02	SURG	ORBITAL PROCEDURES	1.0575	2.50	3.80
38	02	SURG	PRIMARY IRIS PROCEDURES	0.4669	1.90	2.80
39	02	SURG	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	0.6285	1.50	2.10
40	02	SURG	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	0.8937	2.70	3.80
41	02	SURG*	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	0.3401	1.60	1.60
42	02	SURG	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	0.7064	1.90	2.70
43	02	MED	HYPHEMA	0.5382	2.40	3.40
44	02	MED	ACUTE MAJOR EYE INFECTIONS	0.6597	4.00	5.00
45	02	MED	NEUROLOGICAL EYE DISORDERS	0.7250	2.50	3.10
46	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W CC	0.7936	3.40	4.50
47	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	0.5317	2.40	3.10
48	02	MED*	OTHER DISORDERS OF THE EYE AGE 0-17	0.2996	2.90	2.90
49	03	SURG	MAJOR HEAD & NECK PROCEDURES	1.7277	3.20	4.50
50	03	SURG	SIALOADENECTOMY	0.8317	1.50	1.90
51	03	SURG	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	0.8410	1.90	2.80
52	03	SURG	CLEFT LIP & PALATE REPAIR	0.8018	1.40	1.80
53	03	SURG	SINUS & MASTOID PROCEDURES AGE >17	1.2520	2.20	3.60
54	03	SURG*	SINUS & MASTOID PROCEDURES AGE 0-17	0.4856	3.20	3.20
55	03	SURG	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES	0.9247	2.00	3.00
56	03	SURG	RHINOPLASTY	0.9233	1.90	2.90
57	03	SURG	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17.	1.1029	2.40	3.70
58	03	SURG*	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17.	0.2757	1.50	1.50
59	03	SURG	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	0.9557	1.90	2.70
60	03	SURG*	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	0.2099	1.50	1.50
61	03	SURG	MYRINGOTOMY W TUBE INSERTION AGE >17	1.2334	3.10	5.20
62	03	SURG*	MYRINGOTOMY W TUBE INSERTION AGE 0-17	0.2973	1.30	1.30
63	03	SURG	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES	1.3759	3.00	4.40
64	03	MED	EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.3089	4.30	6.50
65	03	MED	DYSEQUILIBRIUM	0.5748	2.30	2.80
66	03	MED	EPISTAXIS	0.5811	2.40	3.10
67	03	MED	EPIGLOTTITIS	0.7780	2.90	3.70
68	03	MED	OTITIS MEDIA & URI AGE >17 W CC	0.6531	3.10	3.90
69	03	MED	OTITIS MEDIA & URI AGE >17 W/O CC	0.4987	2.50	3.00
70	03	MED	OTITIS MEDIA & URI AGE 0-17	0.3188	2.00	2.40
71	03	MED	LARYNGOTRACHEITIS	0.7065	2.50	3.40
72	03	MED	NASAL TRAUMA & DEFORMITY	0.6954	2.60	3.40
73	03	MED	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	0.8184	3.30	4.50
74	03	MED*	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0-17	0.3380	2.10	2.10
75	04	SURG	MAJOR CHEST PROCEDURES	3.0437	7.70	10.00
76	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.8184	8.40	11.10
77	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.2378	3.50	4.80
78	04	MED	PULMONARY EMBOLISM	1.2731	5.60	6.60
79	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	1.5974	6.70	8.50

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TABLE 5.—LIST OF DIAGNOSIS-RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, AND GEOMETRIC AND ARTHIMETIC MEAN LENGTH OF STAY (LOS)—Continued

DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
80	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	0.8400	4.30	5.40
81	04	MED*	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0-17	1.5300	6.10	6.10
82	04	MED	RESPIRATORY NEOPLASMS	1.3724	5.10	6.90
83	04	MED	MAJOR CHEST TRAUMA W CC	0.9620	4.30	5.40
84	04	MED	MAJOR CHEST TRAUMA W/O CC	0.5371	2.60	3.30
85	04	MED	PLEURAL EFFUSION W CC	1.1927	4.80	6.30
86	04	MED	PLEURAL EFFUSION W/O CC	0.6864	2.80	3.60
87	04	MED	PULMONARY EDEMA & RESPIRATORY FAILURE	1.3430	4.80	6.40
88	04	MED	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	0.9031	4.10	5.10
89	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	1.0463	4.90	5.90
90	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	0.6147	3.40	4.00
91	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE 0-17	0.7408	3.10	5.10
92	04	MED	INTERSTITIAL LUNG DISEASE W CC	1.2024	5.00	6.30
93	04	MED	INTERSTITIAL LUNG DISEASE W/O CC	0.7176	3.30	4.00
94	04	MED	PNEUMOTHORAX W CC	1.1340	4.70	6.30
95	04	MED	PNEUMOTHORAX W/O CC	0.6166	3.00	3.80
96	04	MED	BRONCHITIS & ASTHMA AGE >17 W CC	0.7464	3.70	4.60
97	04	MED	BRONCHITIS & ASTHMA AGE >17 W/O CC	0.5505	2.90	3.50
98	04	MED*	BRONCHITIS & ASTHMA AGE 0-17	0.9662	3.70	3.70
99	04	MED	RESPIRATORY SIGNS & SYMPTOMS W CC	0.7032	2.40	3.20
100	04	MED	RESPIRATORY SIGNS & SYMPTOMS W/O CC	0.5222	1.80	2.10
101	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	0.8654	3.30	4.40
102	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	0.5437	2.10	2.60
103	PRE	SURG	HEART TRANSPLANT	18.6081	26.10	42.40
104	05	SURG	CARDIAC VALVE & OTH MAJOR CARDIOTHORACIC PROC W CARD CATH.	7.9351	12.20	14.40
105	05	SURG	CARDIAC VALVE & OTH MAJOR CARDIOTHORACIC PROC W/O CARD CATH.	5.7088	8.20	9.90
106	05	SURG	CORONARY BYPASS W PTCA	7.2936	9.60	11.40
107	05	SURG	CORONARY BYPASS W CARDIAC CATH	5.3751	9.20	10.40
108	05	SURG	OTHER CARDIOTHORACIC PROCEDURES	5.3656	7.30	9.80
109	05	SURG	CORONARY BYPASS W/O PTCA OR CARDIAC CATH	3.9401	6.70	7.70
110	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W CC	4.0492	6.20	8.90
111	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W/O CC	2.4797	3.20	4.10
112	05	SURG	NO LONGER VALID	0.0000	0.00	0.00
113	05	SURG	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE.	3.0106	10.40	13.30
114	05	SURG	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.6436	6.30	8.70
115	05	SURG	PRM CARD PACEM IMPL W AMI/HR/SHOCK OR AICD LEAD OR GNRTR.	3.5465	5.00	7.40
116	05	SURG	OTHER PERMANENT CARDIAC PACEMAKER IMPLANT	2.3590	3.10	4.40
117	05	SURG	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	1.3951	2.60	4.30
118	05	SURG	CARDIAC PACEMAKER DEVICE REPLACEMENT	1.6089	2.00	2.90
119	05	SURG	VEIN LIGATION & STRIPPING	1.3739	3.20	5.30
120	05	SURG	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	2.3164	5.60	9.00
121	05	MED	CIRCULATORY DISORDERS W AMI & MAJOR COMP, DISCHARGED ALIVE.	1.6169	5.30	6.60
122	05	MED	CIRCULATORY DISORDERS W AMI W/O MAJOR COMP, DISCHARGED ALIVE.	1.0297	2.90	3.70
123	05	MED	CIRCULATORY DISORDERS W AMI, EXPIRED	1.5645	2.90	4.80
124	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG.	1.4367	3.30	4.40
125	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG.	1.0947	2.20	2.80
126	05	MED	ACUTE & SUBACUTE ENDOCARDITIS	2.5418	9.20	11.80
127	05	MED	HEART FAILURE & SHOCK	1.0265	4.20	5.30
128	05	MED	DEEP VEIN THROMBOPHLEBITIS	0.7285	4.60	5.50
129	05	MED	CARDIAC ARREST, UNEXPLAINED	1.0229	1.70	2.60
130	05	MED	PERIPHERAL VASCULAR DISORDERS W CC	0.9505	4.50	5.70
131	05	MED	PERIPHERAL VASCULAR DISORDERS W/O CC	0.5676	3.30	4.10
132	05	MED	ATHEROSCLEROSIS W CC	0.6422	2.30	2.90
133	05	MED	ATHEROSCLEROSIS W/O CC	0.5559	1.80	2.30
134	05	MED	HYPERTENSION	0.5954	2.50	3.20
135	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC	0.9282	3.40	4.50
136	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC.	0.5740	2.20	2.70

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DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
137	05	MED*	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17	0.8243	3.30	3.30
138	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	0.8355	3.10	4.00
139	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	0.5160	2.00	2.50
140	05	MED	ANGINA PECTORIS	0.5305	2.00	2.50
141	05	MED	SYNCOPE & COLLAPSE W CC	0.7473	2.80	3.60
142	05	MED	SYNCOPE & COLLAPSE W/O CC	0.5761	2.10	2.60
143	05	MED	CHEST PAIN	0.5480	1.70	2.10
144	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	1.2260	3.90	5.60
145	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	0.5787	2.00	2.60
146	06	SURG	RECTAL RESECTION W CC	2.7376	8.80	10.20
147	06	SURG	RECTAL RESECTION W/O CC	1.5375	5.60	6.20
148	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	3.4025	10.10	12.30
149	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.4590	5.80	6.30
150	06	SURG	PERITONEAL ADHESIOLYSIS W CC	2.8711	9.20	11.30
151	06	SURG	PERITONEAL ADHESIOLYSIS W/O CC	1.3061	4.40	5.60
152	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W CC	1.9134	6.90	8.40
153	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.1310	4.70	5.30
154	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC.	4.0212	9.90	13.30
155	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC.	1.3043	3.00	4.10
156	06	SURG*	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17	0.8489	6.00	6.00
157	06	SURG	ANAL & STOMAL PROCEDURES W CC	1.3152	4.00	5.80
158	06	SURG	ANAL & STOMAL PROCEDURES W/O CC	0.6517	2.00	2.60
159	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC.	1.3744	3.80	5.10
160	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC.	0.8219	2.20	2.70
161	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC	1.1676	3.00	4.30
162	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	0.6446	1.60	1.90
163	06	SURG*	HERNIA PROCEDURES AGE 0-17	0.6965	2.10	2.10
164	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	2.3306	7.00	8.40
165	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	1.2302	3.90	4.50
166	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	1.4317	3.60	4.70
167	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	0.8889	2.00	2.40
168	03	SURG	MOUTH PROCEDURES W CC	1.3158	3.30	4.90
169	03	SURG	MOUTH PROCEDURES W/O CC	0.7525	1.80	2.40
170	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	2.8245	7.50	10.90
171	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	1.1912	3.30	4.30
172	06	MED	DIGESTIVE MALIGNANCY W CC	1.3670	5.20	7.00
173	06	MED	DIGESTIVE MALIGNANCY W/O CC	0.7528	2.80	3.80
174	06	MED	G.I. HEMORRHAGE W CC	1.0025	3.90	4.80
175	06	MED	G.I. HEMORRHAGE W/O CC	0.5587	2.50	2.90
176	06	MED	COMPLICATED PEPTIC ULCER	1.0998	4.10	5.20
177	06	MED	UNCOMPLICATED PEPTIC ULCER W CC	0.9259	3.70	4.60
178	06	MED	UNCOMPLICATED PEPTIC ULCER W/O CC	0.6940	2.60	3.10
179	06	MED	INFLAMMATORY BOWEL DISEASE	1.0885	4.60	6.00
180	06	MED	G.I. OBSTRUCTION W CC	0.9642	4.20	5.50
181	06	MED	G.I. OBSTRUCTION W/O CC	0.5376	2.80	3.40
182	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W CC.	0.8223	3.40	4.40
183	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC.	0.5759	2.30	2.90
184	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0-17	0.4813	2.40	3.30
185	03	MED	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17.	0.8685	3.30	4.70
186	03	MED*	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0-17.	0.3236	2.90	2.90
187	03	MED	DENTAL EXTRACTIONS & RESTORATIONS	0.7778	3.00	4.00
188	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC	1.1088	4.10	5.60
189	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	0.5987	2.40	3.10
190	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17	0.8104	3.70	5.20
191	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W CC	4.2787	9.80	13.80
192	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	1.8025	4.70	6.20
193	07	SURG	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC.	3.4211	10.40	12.80

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194	07	SURG	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC.	1.6030	5.70	6.70
195	07	SURG	CHOLECYSTECTOMY W C.D.E. W CC	3.0613	8.70	10.60
196	07	SURG	CHOLECYSTECTOMY W C.D.E. W/O CC	1.6117	4.80	5.60
197	07	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC.	2.5547	7.50	9.20
198	07	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC.	1.1831	3.80	4.40
199	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	2.3953	7.00	9.80
200	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY.	3.0415	6.70	10.50
201	07	SURG	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	3.6841	10.20	14.20
202	07	MED	CIRRHOSIS & ALCOHOLIC HEPATITIS	1.3120	4.80	6.40
203	07	MED	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	1.3482	5.00	6.70
204	07	MED	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.1675	4.40	5.80
205	07	MED	DISORDERS OF LIVER EXCEPT MALIG, CIRR, ALC HEPA W CC	1.2095	4.60	6.20
206	07	MED	DISORDERS OF LIVER EXCEPT MALIG, CIRR, ALC HEPA W/O CC	0.7071	2.90	3.80
207	07	MED	DISORDERS OF THE BILIARY TRACT W CC	1.1539	4.00	5.30
208	07	MED	DISORDERS OF THE BILIARY TRACT W/O CC	0.6601	2.30	2.90
209	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY.	2.0327	4.40	4.90
210	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC.	1.8477	6.10	7.00
211	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC.	1.2544	4.50	4.90
212	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	1.4152	3.20	6.40
213	08	SURG	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS.	1.8904	6.70	9.20
214	00	SURG	NO LONGER VALID	0.0000	0.00	0.00
215	08	SURG	NO LONGER VALID	0.0000	0.00	0.00
216	08	SURG	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE.	2.1107	5.00	8.00
217	08	SURG	WND DEBRID & SKN GRFT EXCEPT HAND, FOR MUSCSKELET & CONN TISS DIS.	3.0020	9.00	13.40
218	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W CC.	1.5750	4.30	5.50
219	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W/O CC.	1.0258	2.70	3.20
220	08	SURG*	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE 0-17.	0.5881	5.30	5.30
221	08	SURG	NO LONGER VALID	0.0000	0.00	0.00
222	08	SURG	NO LONGER VALID	0.0000	0.00	0.00
223	08	SURG	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC.	1.0573	2.20	3.00
224	08	SURG	SHOULDER, ELBOW OR FOREARM PROC, EXC MAJOR JOINT PROC, W/O CC.	0.7898	1.60	1.90
225	08	SURG	FOOT PROCEDURES	1.1704	3.60	5.30
226	08	SURG	SOFT TISSUE PROCEDURES W CC	1.5529	4.50	6.60
227	08	SURG	SOFT TISSUE PROCEDURES W/O CC	0.8190	2.10	2.60
228	08	SURG	MAJOR THUMB OR JOINT PROC, OR OTH HAND OR WRIST PROC W CC.	1.1639	2.70	4.20
229	08	SURG	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	0.7064	1.80	2.30
230	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR.	1.3147	3.60	5.60
231	08	SURG	NO LONGER VALID	0.0000	0.00	0.00
232	08	SURG	ARTHROSCOPY	0.9674	1.80	2.70
233	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC	2.0024	5.00	7.40
234	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC	1.1977	2.20	3.10
235	08	MED	FRACTURES OF FEMUR	0.7580	3.80	4.90
236	08	MED	FRACTURES OF HIP & PELVIS	0.7358	3.90	4.80
237	08	MED	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	0.5983	2.90	3.70
238	08	MED	OSTEOMYELITIS	1.3564	6.50	8.70
239	08	MED	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY.	1.0614	5.10	6.40
240	08	MED	CONNECTIVE TISSUE DISORDERS W CC	1.3153	4.90	6.70
241	08	MED	CONNECTIVE TISSUE DISORDERS W/O CC	0.6358	3.00	3.80

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TABLE 5.—LIST OF DIAGNOSIS-RELATED GROUPS (DRGs), RELATIVE WEIGHTING FACTORS, AND GEOMETRIC AND ARTHIMETIC MEAN LENGTH OF STAY (LOS)—Continued

DRG	MDC	Type	DRG title	Relafive weights	Geometric mean LOS	Arithmetic mean LOS
242	08	MED	SEPTIC ARTHRITIS	1.1695	5.30	6.90
243	08	MED	MEDICAL BACK PROBLEMS	0.7525	3.70	4.70
244	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	0.7155	3.70	4.70
245	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	0.4786	2.60	3.30
246	08	MED	NON-SPECIFIC ARTHROPATHIES	0.6063	3.00	3.80
247	08	MED	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE.	0.5724	2.60	3.30
248	08	MED	TENDONITIS, MYOSITIS & BURSITIS	0.8585	3.80	4.90
249	08	MED	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE.	0.6744	2.50	3.60
250	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC.	0.7091	3.20	4.10
251	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC.	0.4578	2.30	2.80
252	08	MED*	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0-17	0.2553	1.80	1.80
253	08	MED	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE >17 W CC.	0.7581	3.70	4.70
254	08	MED	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE >17 W/O CC.	0.4464	2.60	3.20
255	08	MED*	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE 0-17	0.2974	2.90	2.90
256	08	MED	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES.	0.8190	3.80	5.10
257	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W CC	0.8913	2.10	2.60
258	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	0.7018	1.60	1.80
259	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	0.9420	1.80	2.70
260	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	0.6854	1.20	1.40
261	09	SURG	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION.	0.8944	1.60	2.10
262	09	SURG	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	0.9533	2.90	4.30
263	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W CC	2.0556	8.30	11.50
264	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC.	1.0605	5.00	6.60
265	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC.	1.5984	4.20	6.60
266	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC.	0.8791	2.30	3.20
267	09	SURG	PERIANAL & PILONIDAL PROCEDURES	0.9574	2.90	4.50
268	09	SURG	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	1.1513	2.40	3.80
269	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	1.7747	6.00	8.50
270	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC	0.8129	2.50	3.60
271	09	MED	SKIN ULCERS	1.0280	5.60	7.20
272	09	MED	MAJOR SKIN DISORDERS W CC	1.0185	4.60	6.00
273	09	MED	MAJOR SKIN DISORDERS W/O CC	0.6192	3.00	3.90
274	09	MED	MALIGNANT BREAST DISORDERS W CC	1.1574	4.70	6.50
275	09	MED	MALIGNANT BREAST DISORDERS W/O CC	0.5729	2.40	3.40
276	09	MED	NON-MALIGANT BREAST DISORDERS	0.6471	3.50	4.50
277	09	MED	CELLULITIS AGE >17 W CC	0.8805	4.70	5.80
278	09	MED	CELLULITIS AGE >17 W/O CC	0.5432	3.50	4.20
279	09	MED	CELLULITIS AGE 0-17	0.7779	4.00	5.30
280	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC	0.7109	3.20	4.10
281	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	0.4866	2.30	2.90
282	09	MED*	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0-17	0.2586	2.20	2.20
283	09	MED	MINOR SKIN DISORDERS W CC	0.7322	3.50	4.70
284	09	MED	MINOR SKIN DISORDERS W/O CC	0.4215	2.30	2.90
285	10	SURG	AMPUTAT OF LOWER LIMB FOR ENDOCRINE, NUTRIT,& METABOL DISORDERS.	2.0825	7.90	10.60
286	10	SURG	ADRENAL & PITUITARY PROCEDURES	2.0342	4.40	5.90
287	10	SURG	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS.	1.8899	7.70	10.30
288	10	SURG	O.R. PROCEDURES FOR OBESITY	2.1498	3.90	5.00
289	10	SURG	PARATHYROID PROCEDURES	0.9441	1.80	2.70
290	10	SURG	THYROID PROCEDURES	0.8938	1.70	2.20
291	10	SURG	THYROGLOSSAL PROCEDURES	0.6468	1.40	1.60
292	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC	2.7336	7.30	10.60
293	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC	1.3896	3.20	4.70
294	10	MED	DIABETES AGE >35	0.7800	3.50	4.60

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** DRGs 469 and 470 contian cases that could be assigned to valid DRGs.
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TABLE 5.—LIST OF DIAGNOSIS-RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, AND GEOMETRIC AND ARTHIMETIC MEAN LENGTH OF STAY (LOS)—Continued

DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
295	10	MED	DIABETES AGE 0-35	0.7975	3.00	4.00
296	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC	0.8639	4.00	5.10
297	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	0.5085	2.70	3.30
298	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0-17	0.4537	2.40	3.10
299	10	MED	INBORN ERRORS OF METABOLISM	0.9466	3.80	5.50
300	10	MED	ENDOCRINE DISORDERS W CC	1.1001	4.70	6.20
301	10	MED	ENDOCRINE DISORDERS W/O CC	0.6158	2.80	3.60
302	11	SURG	KIDNEY TRANSPLANT	3.2343	7.20	8.50
303	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM.	2.3659	6.40	8.00
304	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC.	2.3856	6.20	8.90
305	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC.	1.1854	2.80	3.60
306	11	SURG	PROSTATECTOMY W CC	1.2257	3.50	5.40
307	11	SURG	PROSTATECTOMY W/O CC	0.6145	1.70	2.10
308	11	SURG	MINOR BLADDER PROCEDURES W CC	1.5993	4.00	6.20
309	11	SURG	MINOR BLADDER PROCEDURES W/O CC	0.8991	1.70	2.10
310	11	SURG	TRANSURETHRAL PROCEDURES W CC	1.1502	2.90	4.40
311	11	SURG	TRANSURETHRAL PROCEDURES W/O CC	0.6258	1.50	1.80
312	11	SURG	URETHRAL PROCEDURES, AGE >17 W CC	1.0841	3.00	4.50
313	11	SURG	URETHRAL PROCEDURES, AGE >17 W/O CC	0.6814	1.70	2.20
314	11	SURG*	URETHRAL PROCEDURES, AGE 0-17	0.4984	2.30	2.30
315	11	SURG	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	2.0796	3.70	7.00
316	11	MED	RENAL FAILURE	1.2987	4.90	6.60
317	11	MED	ADMIT FOR RENAL DIALYSIS	0.8503	2.40	3.60
318	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W CC	1.1871	4.40	6.10
319	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	0.6771	2.20	2.90
320	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	0.8853	4.30	5.40
321	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	0.5685	3.10	3.70
322	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE 0-17	0.4625	2.80	3.30
323	11	MED	URINARY STONES W CC, &/OR ESW LITHOTRIPSY	0.8088	2.40	3.20
324	11	MED	URINARY STONES W/O CC	0.4797	1.60	1.90
325	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC	0.6553	2.90	3.80
326	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC	0.4206	2.10	2.60
327	11	MED*	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0-17	0.3727	3.10	3.10
328	11	MED	URETHRAL STRICTURE AGE >17 W CC	0.7613	2.70	3.80
329	11	MED	URETHRAL STRICTURE AGE >17 W/O CC	0.5296	1.70	2.10
330	11	MED*	URETHRAL STRICTURE AGE 0-17	0.3210	1.60	1.60
331	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC	1.0618	4.20	5.60
332	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	0.5982	2.40	3.20
333	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0-17	0.9483	3.70	5.70
334	12	SURG	MAJOR MALE PELVIC PROCEDURES W CC	1.4810	3.90	4.60
335	12	SURG	MAJOR MALE PELVIC PROCEDURES W/O CC	1.0835	2.80	3.00
336	12	SURG	TRANSURETHRAL PROSTATECTOMY W CC	0.8595	2.60	3.40
337	12	SURG	TRANSURETHRAL PROSTATECTOMY W/O CC	0.5869	1.80	2.00
338	12	SURG	TESTES PROCEDURES, FOR MALIGNANCY	1.2316	3.50	5.50
339	12	SURG	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	1.1345	2.90	4.80
340	12	SURG*	TESTES PROCEDURES, NON-MALIGNANCY AGE 0-17	0.2853	2.40	2.40
341	12	SURG	PENIS PROCEDURES	1.2739	1.90	3.20
342	12	SURG	CIRCUMCISION AGE >17	0.7800	2.40	3.20
343	12	SURG*	CIRCUMCISION AGE 0-17	0.1551	1.70	1.70
344	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY.	1.3306	1.60	2.50
345	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY.	1.1671	3.00	4.90
346	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	1.0213	4.50	5.90
347	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	0.5417	2.20	3.00
348	12	MED	BENIGN PROSTATIC HYPERTROPHY W CC	0.7472	3.30	4.40
349	12	MED	BENIGN PROSTATIC HYPERTROPHY W/O CC	0.4608	2.00	2.50
350	12	MED	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	0.7370	3.60	4.50
351	12	MED*	STERILIZATION, MALE	0.2379	1.30	1.30
352	12	MED	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	0.7097	2.90	4.00
353	13	SURG	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY.	1.8390	4.90	6.50

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DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
354	13	SURG	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC.	1.4808	4.70	5.70
355	13	SURG	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC.	0.8912	3.00	3.20
356	13	SURG	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES.	0.7556	1.80	2.10
357	13	SURG	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY.	2.2737	6.70	8.40
358	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC	1.1807	3.40	4.20
359	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	0.8099	2.30	2.60
360	13	SURG	VAGINA, CERVIX & VULVA PROCEDURES	0.8661	2.20	2.80
361	13	SURG	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	1.0793	2.20	3.20
362	13	SURG*	ENDOSCOPIC TUBAL INTERRUPTION	0.3041	1.40	1.40
363	13	SURG	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	0.9374	2.60	3.60
364	13	SURG	D&C, CONIZATION EXCEPT FOR MALIGNANCY	0.9098	2.90	4.10
365	13	SURG	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	2.1284	5.30	8.20
366	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	1.2826	4.80	6.80
367	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	0.5588	2.30	3.10
368	13	MED	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	1.1657	5.10	6.70
369	13	MED	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS.	0.6065	2.40	3.30
370	14	SURG	CESAREAN SECTION W CC	1.0119	4.20	5.70
371	14	SURG	CESAREAN SECTION W/O CC	0.6317	3.20	3.50
372	14	MED	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	0.5520	2.70	3.50
373	14	MED	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	0.3856	2.00	2.30
374	14	SURG	VAGINAL DELIVERY W STERILIZATION &/OR D&C	0.7402	2.50	3.00
375	14	SURG*	VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	0.5806	4.40	4.40
376	14	MED	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE.	0.5693	2.50	3.40
377	14	SURG	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE.	1.0321	3.10	4.10
378	14	MED	ECTOPIC PREGNANCY	0.7950	2.00	2.60
379	14	MED	THREATENED ABORTION	0.3626	2.00	3.00
380	14	MED	ABORTION W/O D&C	0.4323	1.60	2.00
381	14	SURG	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	0.5257	1.50	1.90
382	14	MED	FALSE LABOR	0.2190	1.30	1.70
383	14	MED	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	0.5123	2.70	3.80
384	14	MED	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS.	0.3485	1.90	2.60
385	15	MED*	NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY.	1.3855	1.80	1.80
386	15	MED*	EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE.	4.5687	17.90	17.90
387	15	MED*	PREMATURITY W MAJOR PROBLEMS	3.1203	13.30	13.30
388	15	MED*	PREMATURITY W/O MAJOR PROBLEMS	1.8827	8.60	8.60
389	15	MED*	FULL TERM NEONATE W MAJOR PROBLEMS	3.2052	4.70	4.70
390	15	MED*	NEONATE W OTHER SIGNIFICANT PROBLEMS	1.1344	3.40	3.40
391	15	MED*	NORMAL NEWBORN	0.1536	3.10	3.10
392	16	SURG	SPLENECTOMY AGE >17	3.3164	7.10	9.70
393	16	SURG*	SPLENECTOMY AGE 0-17	1.3571	9.10	9.10
394	16	SURG	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS.	1.9338	4.70	7.60
395	16	MED	RED BLOOD CELL DISORDERS AGE >17	0.8307	3.20	4.40
396	16	MED	RED BLOOD CELL DISORDERS AGE 0-17	0.6986	2.90	4.20
397	16	MED	COAGULATION DISORDERS	1.2648	3.70	5.20
398	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	1.2360	4.50	5.90
399	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	0.6651	2.70	3.50
400	17	SURG	NO LONGER VALID	0.0000	0.00	0.00
401	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	2.8946	8.10	11.60
402	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC.	1.1430	2.70	4.00
403	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	1.8197	5.80	8.20
404	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	0.8658	3.00	4.10
405	17	MED*	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0-17	1.9241	4.90	4.90
406	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC.	2.7055	6.90	9.70

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DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
407	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC.	1.2410	3.20	4.10
408	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC.	2.1984	4.80	8.20
409	17	MED	RADIOTHERAPY	1.2439	4.60	6.10
410	17	MED	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS.	1.0633	3.20	4.10
411	17	MED *	HISTORY OF MALIGNANCY W/O ENDOSCOPY	0.3948	4.70	4.70
412	17	MED	HISTORY OF MALIGNANCY W ENDOSCOPY	0.5679	2.50	3.60
413	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC	1.3224	5.20	7.10
414	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC	0.7370	3.20	4.20
415	18	SURG	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	3.6276	10.40	14.40
416	18	MED	SEPTICEMIA AGE >17	1.5918	5.60	7.50
417	18	MED	SEPTICEMIA AGE 0-17	0.9612	4.40	5.70
418	18	MED	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	1.0672	4.80	6.30
419	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W CC	0.8476	3.60	4.60
420	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	0.6107	2.80	3.40
421	18	MED	VIRAL ILLNESS AGE >17	0.7464	3.10	4.10
422	18	MED	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0-17	0.7248	2.50	3.70
423	18	MED	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.8155	5.90	8.40
424	19	SURG	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS	2.4074	8.00	13.10
425	19	MED	ACUTE ADJUSTMENT REACTION & PSYCHOSOCIAL DYSFUNCTION.	0.6781	2.80	3.80
426	19	MED	DEPRESSIVE NEUROSES	0.5087	3.20	4.50
427	19	MED	NEUROSES EXCEPT DEPRESSIVE	0.5012	3.10	4.40
428	19	MED	DISORDERS OF PERSONALITY & IMPULSE CONTROL	0.7291	4.50	7.10
429	19	MED	ORGANIC DISTURBANCES & MENTAL RETARDATION	0.8291	4.50	6.10
430	19	MED	PSYCHOSES	0.6801	5.60	7.90
431	19	MED	CHILDHOOD MENTAL DISORDERS	0.6620	4.40	6.90
432	19	MED	OTHER MENTAL DISORDER DIAGNOSES	0.6513	2.90	4.00
433	20	MED	ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	0.2904	2.20	3.10
434	20	MED	NO LONGER VALID	0.0000	0.00	0.00
435	20	MED	NO LONGER VALID	0.0000	0.00	0.00
436	20	MED	NO LONGER VALID	0.0000	0.00	0.00
437	20	MED	NO LONGER VALID	0.0000	0.00	0.00
438	20		NO LONGER VALID	0.0000	0.00	0.00
439	21	SURG	SKIN GRAFTS FOR INJURIES	1.7547	5.20	8.20
440	21	SURG	WOUND DEBRIDEMENTS FOR INJURIES	1.8878	5.80	9.10
441	21	SURG	HAND PROCEDURES FOR INJURIES	0.9662	2.10	3.10
442	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W CC	2.4200	5.60	8.60
443	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	0.9787	2.50	3.40
444	21	MED	TRAUMATIC INJURY AGE >17 W CC	0.7475	3.20	4.20
445	21	MED	TRAUMATIC INJURY AGE >17 W/O CC	0.5015	2.30	2.90
446	21	MED *	TRAUMATIC INJURY AGE 0-17	0.2983	2.40	2.40
447	21	MED	ALLERGIC REACTIONS AGE >17	0.5238	1.90	2.50
448	21	MED *	ALLERGIC REACTIONS AGE 0-17	0.0981	2.90	2.90
449	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC	0.8352	2.60	3.70
450	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	0.4246	1.60	2.00
451	21	MED *	POISONING & TOXIC EFFECTS OF DRUGS AGE 0-17	0.2648	2.10	2.10
452	21	MED	COMPLICATIONS OF TREATMENT W CC	1.0455	3.50	4.90
453	21	MED	COMPLICATIONS OF TREATMENT W/O CC	0.5113	2.10	2.80
454	21	MED	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC	0.8153	3.00	4.20
455	21	MED	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC	0.4773	1.80	2.40
456	22		NO LONGER VALID	0.0000	0.00	0.00
457	22	MED	NO LONGER VALID	0.0000	0.00	0.00
458	22	SURG	NO LONGER VALID	0.0000	0.00	0.00
459	22	SURG	NO LONGER VALID	0.0000	0.00	0.00
460	22	MED	NO LONGER VALID	0.0000	0.00	0.00
461	23	SURG	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES.	1.1692	2.20	3.60
462	23	MED	REHABILITATION	0.9747	9.00	11.00
463	23	MED	SIGNS & SYMPTOMS W CC	0.6856	3.10	4.10
464	23	MED	SIGNS & SYMPTOMS W/O CC	0.4982	2.40	3.00
465	23	MED	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS.	0.8881	2.00	3.90

* Medicare data have been supplemented by data from 19 States for low volume DRGs.
** DRGs 469 and 470 contian cases that could be assigned to valid DRGs.
Note 1: Geometric mean is used only to determine payment for transfer cases.
Note 2: Arithmetic mean is presented for informational purposes only.
Note 3: Relative weights are based on Medicare patient data and may not be appropriate for other patients.

TABLE 5.—LIST OF DIAGNOSIS-RELATED GROUPS (DRGs), RELATIVE WEIGHTING FACTORS, AND GEOMETRIC AND ARTHIMETIC MEAN LENGTH OF STAY (LOS)—Continued

DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
466	23	MED	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS.	0.8088	2.20	3.90
467	23	MED	OTHER FACTORS INFLUENCING HEALTH STATUS	0.5274	1.90	3.70
468			EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	3.8454	9.40	13.10
469		**	PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS	0.0000	0.00	0.00
470		**	UNGROUPABLE	0.0000	0.00	0.00
471	08	SURG	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY.	3.0576	4.70	5.40
472	22	SURG	NO LONGER VALID	0.0000	0.00	0.00
473	17	MED	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	3.4885	7.40	12.70
474	04	SURG	NO LONGER VALID	0.0000	0.00	0.00
475	04	MED	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	3.6000	8.00	11.30
476		SURG	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	2.2477	8.00	11.10
477		SURG	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	1.8873	5.40	8.30
478	05	SURG	OTHER VASCULAR PROCEDURES W CC	2.3743	4.90	7.30
479	05	SURG	OTHER VASCULAR PROCEDURES W/O CC	1.4300	2.40	3.20
480	PRE	SURG	LIVER TRANSPLANT	9.7823	14.00	21.10
481	PRE	SURG	BONE MARROW TRANSPLANT	6.1074		
1	9.20	21.80				
482	PRE	SURG	TRACHEOSTOMY FOR FACE, MOUTH & NECK DIAGNOSES	3.4803	9.60	12.50
483	PRE	SURG	TRAC W MECH VENT 96+HRS OR PDX EXCEPT FACE, MOUTH & NECK DX OSES.	16.7762	34.20	41.60
484	24	SURG	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	5.4179	9.70	14.50
485	24	SURG	LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT TRA.	3.2121	7.90	10.00
486	24	SURG	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA	4.8793	8.70	12.90
487	24	MED	OTHER MULTIPLE SIGNIFICANT TRAUMA	2.0057	5.30	7.30
488	25	SURG	HIV W EXTENSIVE O.R. PROCEDURE	4.8118	11.70	17.00
489	25	MED	HIV W MAJOR RELATED CONDITION	1.8603	6.00	8.60
490	25	MED	HIV W OR W/O OTHER RELATED CONDITION	1.0512	3.90	5.50
491	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY.	1.7139	2.80	3.40
492	17	MED	CHEMOTHERAPY W ACUTE LEUKEMIA OR W USE OF HI DOSE CHEMOAGENT.	3.8371	9.30	14.90
493	07	SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC	1.8302	4.40	6.00
494	07	SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC	1.0034	2.00	2.50
495	PRE	SURG	LUNG TRANSPLANT	8.5551	13.40	16.20
496	08	SURG	COMBINED ANTERIOR/POSTERIOR SPINAL FUSION	5.6839	6.80	8.90
497	08	SURG	SPINAL FUSION EXCEPT CERVICAL W CC	3.4056	5.20	6.30
498	08	SURG	SPINAL FUSION EXCEPT CERVICAL W/O CC	2.5319	3.60	4.00
499	08	SURG	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W CC	1.4244	3.30	4.50
500	08	SURG	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W/O CC	0.9369	2.00	2.40
501	08	SURG	KNEE PROCEDURES W PDX OF INFECTION W CC	2.6393	8.30	10.70
502	08	SURG	KNEE PROCEDURES W PDX OF INFECTION W/O CC	1.4192	5.10	6.20
503	08	SURG	KNEE PROCEDURES W/O PDX OF INFECTION	1.2233	3.00	3.90
504	22	SURG	EXTENSIVE 3RD DEGREE BURNS W SKIN GRAFT	11.6215	0.30	8.00
505	22	MED	EXTENSIVE 3RD DEGREE BURNS W/O SKIN GRAFT	2.0006	2.30	5.60
506	22	SURG	FULL THICKNESS BURN W SKIN GRAFT OR INHAL INJ W CC OR SIG TRAUMA.	4.1070	12.10	16.90
507	22	SURG	FULL THICKNESS BURN W SKIN GRFT OR INHAL INJ W/O CC OR SIG TRAUMA.	1.8154	6.50	9.20
508	22	MED	FULL THICKNESS BURN W/O SKIN GRFT OR INHAL INJ W CC OR SIG TRAUMA.	1.3775	5.60	8.00
509	22	MED	FULL THICKNESS BURN W/O SKIN GRFT OR INH INJ W/O CC OR SIG TRAUMA.	0.6426	3.10	4.40
510	22	MED	NON-EXTENSIVE BURNS W CC OR SIGNIFICANT TRAUMA	1.1812	4.60	6.80
511	22	MED	NON-EXTENSIVE BURNS W/O CC OR SIGNIFICANT TRAUMA	0.6753	3.20	4.70
512	PRE	SURG	SIMULTANEOUS PANCREAS/KIDNEY TRANSPLANT	5.3405	11.10	13.20
513	PRE	SURG	PANCREAS TRANSPLANT	6.1594	8.70	10.00
514	05	SURG	NO LONGER VALID	0.0000	0.00	0.00
515	05	SURG	CARDIAC DEFIBRILLATOR IMPLANT W/O CARDIAC CATH	5.3366	3.00	5.20
516	05	SURG	PERCUTANEOUS CARDIOVASC PROC W AMI	2.6911	3.80	4.80
517	05	SURG	PERC CARDIO PROC W NON-DRUG ELUTING STENT W/O AMI	2.1598	1.80	2.50

* Medicare data have been supplemented by data from 19 States for low volume DRGs.
** DRGs 469 and 470 contian cases that could be assigned to valid DRGs.
Note 1: Geometric mean is used only to determine payment for transfer cases.
Note 2: Arithmetic mean is presented for informational purposes only.
Note 3: Relative weights are based on Medicare patient data and may not be appropriate for other patients.

TABLE 5.—LIST OF DIAGNOSIS-RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, AND GEOMETRIC AND ARTHIMETIC MEAN LENGTH OF STAY (LOS)—Continued

DRG	MDC	Type	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
518	05	SURG	PERC CARDIO PROC W/O CORONARY ARTERY STENT OR AMI	1.7494	2.30	3.40
519	08	SURG	CERVICAL SPINAL FUSION W CC	2.4266	3.20	5.10
520	08	SURG	CERVICAL SPINAL FUSION W/O CC	1.5780	1.70	2.10
521	20	MED	ALCOHOL/DRUG ABUSE OR DEPENDENCE W CC	0.7115	4.30	5.80
522	20	MED	ALC/DRUG ABUSE OR DEPEND W REHABILITATION THERAPY W/O CC.	0.5226	7.70	9.70
523	20	MED	ALC/DRUG ABUSE OR DEPEND W/O REHABILITATION THERAPY W/O CC.	0.3956	3.30	4.10
524	01	MED	TRANSIENT ISCHEMIA	0.7320	2.70	3.40
525	05	SURG	HEART ASSIST SYSTEM IMPLANT	11.4372	8.90	17.00
526	05	SURG	PERCUTNEOUS CARDIOVASULAR PROC W DRUG ELUTING STENT W AMI.	2.9891	3.60	4.50
527	05	SURG	PERCUTNEOUS CARDIOVASULAR PROC W DRUG ELUTING STENT W/O AMI.	2.4483	1.80	2.50
528	01	SURG	INTRACRANIAL VASCULAR PROC W PDX HEMORRHAGE	7.2205	14.20	17.50
529	01	SURG	VENTRICULAR SHUNT PROCEDURES W CC	2.2529	5.30	8.20
530	01	SURG	VENTRICULAR SHUNT PROCEDURES W/O CC	1.2017	2.80	3.60
531	01	SURG	SPINAL PROCEDURES W CC	3.0552	6.80	9.90
532	01	SURG	SPINAL PROCEDURES W/O CC	1.4482	2.90	4.00
533	01	SURG	EXTRACRANIAL PROCEDURES W CC	1.6678	2.70	4.10
534	01	SURG	EXTRACRANIAL PROCEDURES W/O CC	1.0748	1.60	2.00
535	05	SURG	CARDIAC DEFIB IMPLANT W CARDIAC CATH W AMI/HF/SHOCK	8.1560	8.10	11.00
536	05	SURG	CARDIAC DEFIB IMPLANT W CARDIAC CATH W/O AMI/HF/SHOCK ..	6.2775	3.90	5.80
537	08	SURG	LOCAL EXCIS & REMOV OF INT FIX DEV EXCEPT HIP & FEMUR W CC.	1.8185	4.70	7.00
538	08	SURG	LOCAL EXCIS & REMOV OF INT FIX DEV EXCEPT HIP & FEMUR W/O CC.	0.9919	2.10	2.90
539	17	SURG	LYMPHOMA & LEUKEMIA W MAJOR OR PROCEDURE W CC	3.3846	7.40	11.20
540	17	SURG	LYMPHOMA & LEUKEMIA W MAJOR OR PROCEDURE W/O CC	1.2891	2.90	4.00

* Medicare data have been supplemented by data from 19 States for low volume DRGs.
** DRGs 469 and 470 contian cases that could be assigned to valid DRGs.
Note 1: Geometric mean is used only to determine payment for transfer cases.
Note 2: Arithmetic mean is presented for informational purposes only.
Note 3: Relative weights are based on Medicare patient data and may not be appropriate for other patients.

TABLE 6A.—NEW DIAGNOSIS CODES

Diagnosis code	Description	CC	MDC	DRG
[1] 079.82	SARS-associated coronavirus	Y	15	390
			18	421, 422
255.10	Primary aldosteronism	N	10	300, 301
255.11	Glucocorticoid-remediable aldosteronism	N	10	300, 301
255.12	Conn's syndrome	N	10	300, 301
255.13	Bartter's syndrome	N	10	300, 301
255.14	Other secondary aldosteronism	N	10	300, 301
277.81	Primary carnitine deficiency	N	10	299
277.82	Carnitine deficiency due to inborn errors of metabolism	N	10	299
277.83	Iatrogenic carnitine deficiency	N	10	299
277.84	Other secondary carnitine deficiency	N	10	299
277.89	Other specified disorders of metabolism	N	10	299
282.41	Sickle-cell thalassemia without crisis	Y	15	387,[2] 389[2]
			16	395, 396
282.42	Sickle-cell thalassemia with crisis	Y	15	387,[2] 389[2]
			16	395, 396
282.49	Other thalassemia	Y	15	387,[2] 389[2]
			16	395, 396
282.64	Sickle-cell/Hb-C disease with crisis	Y	16	395, 396
282.68	Other sickle-cell disease without crisis	Y	16	395, 396
289.52	Splenic sequestration	N	16	398, 399
289.81	Primary hypercoagulable state	Y	16	398, 399
289.82	Secondary hypercoagulable state	Y	16	398, 399
289.89	Other specified diseases of blood and blood-forming organs	N	16	398, 399
331.11	Pick's disease	N	1	12
331.19	Other frontotemporal dementia	N	1	12
331.82	Dementia with Lewy bodies	N	1	12

TABLE 6A.—NEW DIAGNOSIS CODES—Continued

Diagnosis code	Description	CC	MDC	DRG
348.30	Encephalopathy, unspecified	N	1	16, 17
			25	489[3]
348.31	Metabolic encephalopathy	N	1	16, 17
			25	489[3]
348.39	Other encephalopathy	N	1	16, 17
			25	489[3]
358.00	Myasthenia gravis without (acute) exacerbation	Y	1	12
358.01	Myasthenia gravis with (acute) exacerbation	Y	1	12
414.07	Coronary atherosclerosis, of bypass graft (artery) (vein) of transplanted heart	N	5	132,133
458.21	Hypotension of hemodialysis	N	5	141, 142
458.29	Other iatrogenic hypotension	N	5	141,142
480.31	Pneumonia due to SARS-associated coronavirus	Y	4	89, 90, 91
			15	390
			25	489
493.81	Exercise induced bronchospasm	N	4	96, 97, 98
493.82	Cough variant asthma	N	4	96, 97, 98
[1] 517.3	Acute chest syndrome	N	4	92, 93
530.20	Ulcer of esophagus without bleeding	N	6	176
530.21	Ulcer of esophagus with bleeding	Y	6	176
530.85	Barrett's esophagus	N	6	176
600.00	Hypertrophy (benign) of prostate without urinary obstruction	N	12	348, 349
600.01	Hypertrophy (benign) of prostate with urinary obstruction	N	12	348, 349
600.10	Nodular prostate without urinary obstruction	N	12	348, 349
600.11	Nodular prostate with urinary obstruction	N	12	348, 349
600.20	Benign localized hyperplasia of prostate without urinary obstruction	N	12	348, 349
600.21	Benign localized hyperplasia of prostate with urinary obstruction	N	12	348, 349
600.90	Hyperplasia of prostate, unspecified, without urinary obstruction	N	12	348, 349
600.91	Hyperplasia of prostate, unspecified, with urinary obstruction	N	12	348, 349
607.85	Peyronie's disease	N	12	352
674.50	Peripartum cardiomyopathy, unspecified as to episode of care or not applicable.	Y	14	469
674.51	Peripartum cardiomyopathy, delivered, with or without mention of antepartum condition.	Y	14	370, 371, 372, 374, 375
674.52	Peripartum cardiomyopathy, delivered, with mention of postpartum condition ..	Y	14	370, 371, 372, 374, 375
674.53	Peripartum cardiomyopathy, antepartum condition or complication	Y	14	383, 384
674.54	Peripartum cardiomyopathy, postpartum condition or complication	Y	14	376, 377
719.7	Difficulty in walking	N	5	247
728.87	Muscle weakness	N	5	247
728.88	Rhabdomyolysis	Y	5	248
752.81	Scrotal transposition	N	12	352
752.89	Other specified anomalies of genital organs	N	12	352
			13	358, 359, 369
766.21	Post-term infant	N	15	391
766.22	Prolonged gestation of infant	N	15	391
767.11	Epicranial subaponeurotic hemorrhage (massive)	Y	15	389
767.19	Other injuries to scalp	N	15	391
779.83	Delayed separation of umbilical cord	N	15	391
780.93	Memory loss	N	23	463, 464
780.94	Early satiety	N	23	463, 464
781.94	Facial weakness	N	1	34, 35
785.52	Septic shock	Y	18	416, 417
788.63	Urgency of urination	N	11	325, 326, 327
790.21	Impaired fasting glucose	N	10	296, 297, 298
790.22	Impaired glucose tolerance test (oral)	N	10	296, 297, 298
790.29	Other abnormal glucose	N	10	296, 297, 298
799.81	Decreased libido	N	23	467
799.89	Other ill-defined conditions	N	23	467
850.11	Concussion, with loss of consciousness of 30 minutes or less	Y	1	31, 32, 33
			24	487
850.12	Concussion, with loss of consciousness from 31 to 59 minutes	Y	1	31, 32, 33
			24	487
959.11	Other injury of chest wall	N	21	444, 445, 446
			24	487

TABLE 6A.—NEW DIAGNOSIS CODES—Continued

Diagnosis code	Description	CC	MDC	DRG
959.12	Other injury of abdomen	N	21	444, 445, 446
			24	487
959.13	Fracture of corpus cavernosum penis	N	21	444, 445, 446
			24	487
959.14	Other injury of external genitals	N	21	444, 445, 446
			24	487
959.19	Other injury of other sites of trunk	N	21	444, 445, 446
			24	487
996.57	Complication, Due to insulin pump	Y	21	452, 453
[1] V01.82	Exposure to SARS-associated coronavirus	N	15	390
			23	467
V04.81	Need for prophylactic vaccination and inoculation, Influenza	N	23	467
V04.82	Need for prophylactic vaccination and inoculation, Respiratory synctial virus (RSV).	N	23	467
V04.89	Need for prophylactic vaccination and inoculation, Other viral diseases	N	23	467
V15.87	History of Extracorporeal Membrane Oxygenation (ECMO)	N	23	467
V25.03	Encounter for emergency contraceptive counseling and prescription	N	23	467
V43.21	Organ or tissue replaced by other means, Heart assist device	Y	5	144, 145
V43.22	Organ or tissue replaced by other means, Fully implantable artificial heart	Y	5	144, 145
V45.85	Insulin pump status	N	23	467
V53.90	Fitting and adjustment, Unspecified device	N	23	467
V53.91	Fitting and adjustment of insulin pump	N	23	467
V53.99	Fitting and adjustment, Other device	N	23	467
V54.01	Encounter for removal of internal fixation device	N	8	249
V54.02	Encounter for lengthening/adjustment of growth rod	N	8	249
V54.09	Other aftercare involving internal fixation device	N	8	249
V58.63	Long-term (current) use of antiplatelet/antithrombotic	N	23	465, 466
V58.64	Long-term (current) use of non-steroidal anti-inflammatories	N	23	465, 466
V58.65	Long-term (current) use of steroids	N	23	465, 466
V64.41	Laparoscopic surgical procedure converted to open procedure	N	23	467
V64.42	Thoracoscopic surgical procedure converted to open procedure	N	23	467
V64.43	Arthroscopic surgical procedure converted to open procedure	N	23	467
V65.11	Pediatric pre-birth visit for expectant mother	N	23	467
V65.19	Other person consulting on behalf of another person	N	23	467
V65.46	Encounter for insulin pump training	N	23	467

[1] The SARS-related codes were created after publication of the May 19, 2003 proposed rule.
[2] Classified as a Major Problem.
[3] Classified as a Major Related Condition.

TABLE 6B.—NEW PROCEDURE CODES

Procedure code	Description	OR	MDC	DRG
00.15	High-dose infusion interleukin-2 (IL–2)	N*	17	492
37.51	Heart transplantation	Y	PRE	103
37.52	Implantation of total replacement heart system	5	525	
37.53	Replacement or repair of thoracic unit of total replacement heart system	Y	5	525
37.54	Replacement or repair of other implantable component of total replacement heart system.	Y	5	525
68.31	Laparoscopic supracervical hysterectomy (LSH)	Y	13	354, 355, 357, 358, 359
			14	375
68.39	Other subtotal abdominal hysterectomy, NOS	Y	13	354, 355, 357, 358, 359
			14	375
81.62	Fusion or refusion of 2–3 vertebrae	N[1]		
81.63	Fusion or refusion of 4–8 vertebrae	N[1]		
81.64	Fusion or refusion of 9 or more vertebrae	N[1]		

*Nonoperating room procedure, but affects DRG.
[1] Nonoperating room procedure code. The DRG assignment is made based on the specific fusion or refusion (81.00–81.08, 81.30–81.39, 81.61).

TABLE 6C.—INVALID PROCEDURE CODES

Diagnosis code	Description	CC	MDC	DRG
255.1	Hyperaldosteronism	N	10	300, 301
277.8	Other specified disorders of metabolism	N	10	299

TABLE 6C.—INVALID PROCEDURE CODES—Continued

Diagnosis code	Description	CC	MDC	DRG
282.4	Thalassemias	Y	15	387,[1] 389[1]
			16	395, 396
289.8	Other specified diseases of blood and blood-forming organs	N	16	398, 399
331.1	Pick's disease	N	1	12
348.3	Encephalopathy, unspecified	N	1	16, 17
			25	489[2]
358.0	Myasthenia gravis	Y	1	12
458.2	Iatrogenic hypotension	N	5	141, 142
530.2	Ulcer of esophagus	N	6	176
600.0	Hypertrophy (benign) of prostate	N	12	348, 349
600.1	Nodular prostate	N	12	348, 349
600.2	Benign localized hyperplasia of prostate	N	12	348, 349
600.9	Hyperplasia of prostate, unspecified	N	12	348, 349
719.70	Difficulty in walking, site unspecified	N	8	247
719.75	Difficulty in walking, pelvic region and thigh	N	8	247
719.76	Difficulty in walking, lower leg	N	8	247
719.77	Difficulty in walking, ankle and foot	N	8	247
719.78	Difficulty in walking, other specified sites	N	8	247
719.79	Difficulty in walking, multiple sites	N	8	247
752.8	Other specified anomalies of genital organs	N	12	352
			13	358, 359, 369
766.2	Post term infant, not ≥heavy for dates≥	N	15	391
767.1	Injuries to scalp	N	15	391
790.2	Abnormal glucose tolerance test	N	10	296, 297, 298
799.8	Other ill-defined conditions	N	23	467
850.1	Concussion, with brief loss of consciousness	Y	1	31, 32, 33
			24	487
959.1	Injury, trunk	N	21	444, 445, 446
			24	487
V04.8	Need for prophylactic vaccination and inoculation against certain viral disease, Influenza.	N	23	467
V43.2	Organ or tissue replaced by other means, Heart	Y	5	144, 145
V53.9	Fitting and adjustment of other device, Other and unspecified device	N	23	467
V54.0	Aftercare involving removal of fracture plate or other internal fixation device	N	8	249
V64.4	Laparoscopic surgical procedure converted to open procedure	N	23	467
V65.1	Person consulting on behalf of another person	N	23	467

[1] Classified as a Major Problem.
[2] Classified as a Major Related Condition.

TABLE 6D.—INVALID PROCEDURE CODES

Procedure code	Description	OR	MDC	DRG
37.5	Heart transplantation	Y	PRE	103
68.3	Subtotal abdominal hysterectomy	Y	13	354, 355, 357, 358, 359
			14	375

TABLE 6E.—REVISED DIAGNOSIS CODE TITLES

Diagnosis code	Description	CC	MDC	DRG
282.60	Sickle-cell disease, unspecified	Y	16	395, 396
282.61	Hb-SS disease without crisis	Y	16	395, 396
282.62	Hb-SS disease with crisis	Y	16	395, 396
282.63	Sickle-cell/Hb-C disease without crisis	Y	16	395, 396
282.69	Other sickle-cell disease with crisis	Y	16	395, 396
414.06	Of native coronary artery of transplanted heart	N	5	132, 133
491.20	Obstructive chronic bronchitis, without exacerbation	Y	4	88
491.21	Obstructive chronic bronchitis, with (acute) exacerbation	Y	4	88
493.00	Extrinsic asthma, unspecified	N	4	96, 97, 98
493.02	Extrinsic asthma, with (acute) exacerbation	Y	4	96, 97, 98
493.10	Intrinsic asthma, unspecified	N	4	96, 97, 98
493.12	Intrinsic asthma, with (acute) exacerbation	Y	4	96, 97, 98
493.20	Chronic obstructive asthma, unspecified	Y	4	88
493.22	Chronic obstructive asthma, with (acute) exacerbation	Y	4	88
493.90	Asthma, unspecified	N	4	96, 97, 98
493.92	Asthma, unspecified, with (acute) exacerbation	Y	4	96, 97, 98

TABLE 6E.—REVISED DIAGNOSIS CODE TITLES—Continued

Diagnosis code	Description	CC	MDC	DRG
V06.1	Diphtheria-tetanus-pertussis, combined [DTP] [DtaP]	N	23	467
V06.5	Tetanus-diphtheria [Td][DT]	N	23	467

TABLE 6F.—REVISED PROCEDURE CODE TITLES

Procedure code	Description	OR	MDC	DRG
37.33	Excision or destruction of other lesion or tissue of heart, open approach	Y	5	108
37.34	Excision or destruction of other lesion or tissue of heart, other approach	Y	5	516, 517, 518
39.79	Other endovascular repair (of aneurysm) of other vessels	Y	1	1, 2, 3
			5	110, 111
			11	315
			21	442, 443
			24	486

TABLE 6G.--ADDITIONS TO THE CC EXCLUSIONS LIST

[CCs that are added to the list are in Table 6G-Additions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.]

*01100	07982	4803	*01170	07982	4803
07982	4803	*01145	07982	4803	*01215
4803	*01123	07982	4803	*01193	07982
*01101	07982	4803	*01171	07982	4803
07982	4803	*01146	07982	4803	*01216
4803	*01124	07982	4803	*01194	07982
*01102	07982	4803	*01172	07982	4803
07982	4803	*01150	07982	4803	*01280
4803	*01125	07982	4803	*01195	07982
*01103	07982	4803	*01173	07982	4803
07982	4803	*01151	07982	4803	*01281
4803	*01126	07982	4803	*01196	07982
*01104	07982	4803	*01174	07982	4803
07982	4803	*01152	07982	4803	*01282
4803	*01130	07982	4803	*01200	07982
*01105	07982	4803	*01175	07982	4803
07982	4803	*01153	07982	4803	*01283
4803	*01131	07982	4803	*01201	07982
*01106	07982	4803	*01176	07982	4803
07982	4803	*01154	07982	4803	*01284
4803	*01132	07982	4803	*01202	07982
*01110	07982	4803	*01180	07982	4803
07982	4803	*01155	07982	4803	*01285
4803	*01133	07982	4803	*01203	07982
*01111	07982	4803	*01181	07982	4803
07982	4803	*01156	07982	4803	*01286
4803	*01134	07982	4803	*01204	07982
*01112	07982	4803	*01182	07982	4803
07982	4803	*01160	07982	4803	*01790
4803	*01135	07982	4803	*01205	07982
*01113	07982	4803	*01183	07982	4803
07982	4803	*01161	07982	4803	*01791
4803	*01136	07982	4803	*01206	07982
*01114	07982	4803	*01184	07982	4803
07982	4803	*01162	07982	4803	*01792
4803	*01140	07982	4803	*01210	07982
*01115	07982	4803	*01185	07982	4803
07982	4803	*01163	07982	4803	*01793
4803	*01141	07982	4803	*01211	07982
*01116	07982	4803	*01186	07982	4803
07982	4803	*01164	07982	4803	*01794
4803	*01142	07982	4803	*01212	07982
*01120	07982	4803	*01190	07982	4803
07982	4803	*01165	07982	4803	*01795
4803	*01143	07982	4803	*01213	07982
*01121	07982	4803	*01191	07982	4803
07982	4803	*01166	07982	4803	*01796
4803	*01144	07982	4803	*01214	07982
*01122	07982	4803	*01192	07982	4803

*0212	35801	28249	*2821	2830	28249
07982	*25091	28264	28241	28310	28264
4803	35800	28268	28242	28311	28268
*0310	35801	*2809	28249	28319	*28263
07982	*25092	28241	28264	2832	28241
4803	35800	28242	28268	2839	28242
*0391	35801	28249	*2822	2840	28249
07982	*25093	28264	28241	2848	28264
4803	35800	28268	28242	2849	28268
*07982	35801	*2810	28249	2850	*28264
07982	*2515	28241	28264	2851	2800
*07989	53021	28242	28268	*28249	2814
07982	*25510	28249	*2823	2800	2818
*11505	2550	28264	28241	2814	28241
07982	2580	28268	28242	2818	28242
4803	2581	*2811	28249	28241	28249
*11515	2588	28241	28264	28242	28260
07982	2589	28242	28268	28249	28261
4803	*25511	28249	*28241	28260	28262
*11595	2550	28264	2800	28261	28263
07982	2580	28268	2814	28262	28264
4803	2581	*2812	2818	28263	28268
*1221	2588	28241	28241	28264	28269
07982	2589	28242	28242	28268	2830
4803	*25512	28249	28249	28269	28310
*1304	2550	28264	28260	2830	28311
07982	2580	28268	28261	28310	28319
4803	2581	*2813	28262	28311	2832
*1363	2588	28241	28263	28319	2839
07982	2589	28242	28264	2832	2840
4803	*25513	28249	28268	2839	2848
*25060	2550	28264	28269	2840	2849
35800	2580	28268	2830	2848	2850
35801	2581	*2814	28310	2849	2851
*25061	2588	28241	28311	2850	*28268
35800	2589	28242	28319	2851	2800
35801	*25514	28249	2832	*2825	2814
*25062	2550	28264	2839	28241	2818
35800	2580	28268	2840	28242	28241
35801	2581	*2818	2848	28249	28242
*25063	2588	28241	2849	28264	28249
35800	2589	28242	2850	28268	28260
35801	*2800	28249	2851	*28260	28261
*25080	28241	28264	*28242	28241	28262
35800	28242	28268	2800	28242	28263
35801	28249	*2819	2814	28249	28264
*25081	28264	28241	2818	28264	28268
35800	28268	28242	28241	28268	28269
35801	*2801	28249	28242	*28261	2830
*25082	28241	28264	28249	28241	28310
35800	28242	28268	28260	28242	28311
35801	28249	*2820	28261	28249	28319
*25083	28264	28241	28262	28264	2832
35800	28268	28242	28263	28268	2839
35801	*2808	28249	28264	*28262	2840
*25090	28241	28264	28268	28241	2848
35800	28242	28268	28269	28242	2849

2850	28241	28264	2866	2880	28982
2851	28242	28268	2867	2881	*33182
*28269	28249	*2859	2869	28981	3314
28241	28264	28241	2870	28982	*34830
28242	28268	28242	2871	*28989	34982
28249	*2840	28249	2872	2800	*34831
28264	28241	28264	2873	2814	34982
28268	28242	28268	2874	2818	*34839
*2827	28249	*2880	2875	28241	34982
28241	28264	28981	2878	28242	*34989
28242	28268	28982	2879	28249	35800
28249	*2848	*2881	2880	28260	35801
28264	28241	28981	2881	28261	*3499
28268	28242	28982	28981	28262	35800
*2828	28249	*2882	28982	28263	35801
28241	28264	28981	*28982	28264	*35800
28242	28268	28982	2800	28268	35800
28249	*2849	*2883	2814	28269	35801
28264	28241	28981	2818	2830	3581
28268	28242	28982	28241	28310	*35801
*2829	28249	*2888	28242	28311	35800
28241	28264	28981	28249	28319	35801
28242	28268	28982	28260	2832	3581
28249	*2850	*2889	28261	2839	*3581
28264	28241	28981	28262	2840	35800
28268	28242	28982	28263	2848	35801
*2830	28249	*28981	28264	2849	*4560
28241	28264	2800	28268	2850	53021
28242	28268	2814	28269	2851	*4800
28249	*2851	2818	2830	2860	07982
28264	28241	28241	28310	2861	4803
28268	28242	28242	28311	2862	*4801
*28310	28249	28249	28319	2863	07982
28241	28264	28260	2832	2864	4803
28242	28268	28261	2839	2865	*4802
28249	*28521	28262	2840	2866	07982
28264	28241	28263	2848	2867	4803
28268	28242	28264	2849	2869	*4803
*28311	28249	28268	2850	2870	4803
28241	28264	28269	2851	2871	*4808
28242	28268	2830	2860	2872	07982
28249	*28522	28310	2861	2873	4803
28264	28241	28311	2862	2874	*4809
28268	28242	28319	2863	2875	07982
*28319	28249	2832	2864	2878	4803
28241	28264	2839	2865	2879	*481
28242	28268	2840	2866	2880	07982
28249	*28529	2848	2867	2881	4803
28264	28241	2849	2869	28981	*4820
28268	28242	2850	2870	28982	07982
*2832	28249	2851	2871	*2899	4803
28241	28264	2860	2872	28241	*4821
28242	28268	2861	2873	28242	07982
28249	*2858	2862	2874	28249	4803
28264	28241	2863	2875	28264	*4822
28268	28242	2864	2878	28268	07982
*2839	28249	2865	2879	28981	4803

*48230	*4846	07982	07982	*5198	53401
07982	07982	4803	4803	07982	53410
4803	4803	*4954	*5070	4803	53411
*48231	*4847	07982	07982	*5199	53420
07982	07982	4803	4803	07982	53421
4803	4803	*4955	*5071	4803	53431
*48232	*4848	07982	07982	*53020	53440
07982	07982	4803	4803	4560	53441
4803	4803	*4956	*5078	53021	53450
*48239	*485	07982	07982	5307	53451
07982	07982	4803	4803	53082	53460
4803	4803	*4957	*5080	53100	53461
*48240	*486	07982	07982	53101	53471
07982	07982	4803	4803	53110	53491
4803	4803	*4958	*5081	53111	53501
*48241	*4870	07982	07982	53120	53511
07982	07982	4803	4803	53121	53521
4803	4803	*4959	*5088	53131	53531
*48249	*4871	07982	07982	53140	53541
07982	07982	4803	4803	53141	53551
4803	4803	*496	*5089	53150	53561
*48281	*49381	07982	07982	53151	53783
07982	49301	4803	4803	53160	53784
4803	49302	*500	*5171	53161	56202
*48282	49311	07982	07982	53171	56203
07982	49312	4803	4803	53191	56212
4803	49320	*501	*5173	53200	56213
*48283	49321	07982	2800	53201	5693
07982	49322	4803	2814	53210	56985
4803	49391	*502	2818	53211	56986
*48284	49392	07982	28241	53220	5780
07982	*49382	4803	28242	53221	5781
4803	49301	*503	28249	53231	5789
*48289	49302	07982	28260	53240	*53021
07982	49311	4803	28261	53241	4560
4803	49312	*504	28262	53250	53021
*4829	49320	07982	28263	53251	5307
07982	49321	4803	28264	53260	53082
4803	49322	*505	28268	53261	53100
*4830	49391	07982	28269	53271	53101
07982	49392	4803	2830	53291	53110
4803	*4940	*5060	28310	53300	53111
*4831	07982	07982	28311	53301	53120
07982	4803	4803	28319	53310	53121
4803	*4941	*5061	2832	53311	53131
*4838	07982	07982	2839	53320	53140
07982	4803	4803	2840	53321	53141
4803	*4950	*5062	2848	53331	53150
*4841	07982	07982	2849	53340	53151
07982	4803	4803	2850	53341	53160
4803	*4951	*5063	2851	53350	53161
*4843	07982	07982	*5178	53351	53171
07982	4803	4803	07982	53360	53191
4803	*4952	*5064	4803	53361	53200
*4845	07982	07982	*51889	53371	53201
07982	4803	4803	07982	53391	53210
4803	*4953	*5069	4803	53400	53211

53220	5780	53400	53021	*53320	53021
53221	5781	53401	*53160	53021	*53471
53231	5789	53410	53021	*53321	53021
53240	*5307	53411	*53161	53021	*53490
53241	53021	53420	53021	*53330	53021
53250	*53082	53421	*53170	53021	*53491
53251	53021	53431	53021	*53331	53021
53260	*53085	53440	*53171	53021	*53501
53261	4560	53441	53021	*53340	53021
53271	53021	53450	*53190	53021	*53511
53291	5307	53451	53021	*53341	53021
53300	53082	53460	*53191	53021	*53521
53301	53100	53461	53021	*53350	53021
53310	53101	53471	*53200	53021	*53531
53311	53110	53491	53021	*53351	53021
53320	53111	53501	*53201	53021	*53541
53321	53120	53511	53021	*53360	53021
53331	53121	53521	*53210	53021	*53551
53340	53131	53531	53021	*53361	53021
53341	53140	53541	*53211	53021	*53561
53350	53141	53551	53021	*53370	53021
53351	53150	53561	*53220	53021	*53783
53360	53151	53783	53021	*53371	53021
53361	53160	53784	*53221	53021	*53789
53371	53161	56202	53021	*53390	53021
53391	53171	56203	*53230	53021	*5379
53400	53191	56212	53021	*53391	53021
53401	53200	56213	*53231	53021	*56202
53410	53201	5693	53021	*53400	53021
53411	53210	56985	*53240	53021	*56203
53420	53211	56986	53021	*53401	53021
53421	53220	5780	*53241	53021	*56212
53431	53221	5781	53021	*53410	53021
53440	53231	5789	*53250	53021	*56213
53441	53240	*53100	53021	*53411	53021
53450	53241	53021	*53251	53021	*5693
53451	53250	*53101	53021	*53420	53021
53460	53251	53021	*53260	53021	*56985
53461	53260	*53110	53021	*53421	53021
53471	53261	53021	*53261	53021	*5780
53491	53271	*53111	53021	*53430	53021
53501	53291	53021	*53270	53021	*5781
53511	53300	*53120	53021	*53431	53021
53521	53301	53021	*53271	53021	*5789
53531	53310	*53121	53021	*53440	53021
53541	53311	53021	*53290	53021	*60000
53551	53320	*53130	53021	*53441	5960
53561	53321	53021	*53291	53021	5996
53783	53331	*53131	53021	*53450	6010
53784	53340	53021	*53300	53021	6012
56202	53341	*53140	53021	*53451	6013
56203	53350	53021	*53301	53021	6021
56212	53351	*53141	53021	*53460	78820
56213	53360	53021	*53310	53021	78829
5693	53361	*53150	53021	*53461	*60001
56985	53371	53021	*53311	53021	5960
56986	53391	*53151	53021	*53470	5996

6010	6021	67452	*66944	67452	67451
6012	78820	67453	67450	67453	67452
6013	78829	67454	67451	67454	67453
6021	*60785	*64891	67452	*66994	67454
78820	5970	67450	67453	67450	*67452
78829	5994	67451	67454	67451	67400
*60010	*64680	67452	*66980	67452	67401
5960	67450	67453	67450	67453	67402
5996	67451	67454	67451	67454	67403
6010	67452	*64892	67452	*67400	67404
6012	67453	67450	67453	67450	67450
6013	67454	67451	67454	67451	67451
6021	*64681	67452	*66981	67452	67452
78820	67450	67453	67450	67453	67453
78829	67451	67454	67451	67454	67454
*60011	67452	*64893	67452	*67401	*67453
5960	67453	67450	67453	67450	67400
5996	67454	67451	67454	67451	67401
6010	*64682	67452	*66982	67452	67402
6012	67450	67453	67450	67453	67403
6013	67451	67454	67451	67454	67404
6021	67452	*64894	67452	*67402	67450
78820	67453	67450	67453	67450	67451
78829	67454	67451	67454	67451	67452
*60020	*64683	67452	*66983	67452	67453
5960	67450	67453	67450	67453	67454
5996	67451	67454	67451	67454	*67454
6010	67452	*650	67452	*67403	67400
6012	67453	67450	67453	67450	67401
6013	67454	67451	67454	67451	67402
6021	*64684	67452	*66984	67452	67403
78820	67450	67453	67450	67453	67404
78829	67451	67454	67451	67454	67450
*60021	67452	*66940	67452	*67404	67451
5960	67453	67450	67453	67450	67452
5996	67454	67451	67454	67451	67453
6010	*64690	67452	*66990	67452	67454
6012	67450	67453	67450	67453	*7197
6013	67451	67454	67451	67454	6960
6021	67452	*66941	67452	*67450	71100
78820	67453	67450	67453	67400	71101
78829	67454	67451	67454	67401	71102
*60090	*64691	67452	*66991	67402	71103
5960	67450	67453	67450	67403	71104
5996	67451	67454	67451	67404	71105
6010	67452	*66942	67452	67450	71106
6012	67453	67450	67453	67451	71107
6013	67454	67451	67454	67452	71108
6021	*64693	67452	*66992	67453	71109
78820	67450	67453	67450	67454	71160
78829	67451	67454	67451	*67451	71161
*60091	67452	*66943	67452	67400	71162
5960	67453	67450	67453	67401	71163
5996	67454	67451	67454	67402	71164
6010	*64890	67452	*66993	67403	71165
6012	67450	67453	67450	67404	71166
6013	67451	67454	67451	67450	71167

71168	*7679	7754	78552	78003	85012
71169	76711	7755	78559	7801	*80015
7141	*77981	7756	7863	78031	85011
7142	76711	7757	78820	78039	85012
71430	*77982	7760	78829	7817	*80016
71431	76711	7761	7895	7854	85011
71432	*77983	7762	7907	78550	85012
71433	76501	7763	7911	78551	*80019
*7280	76502	7771	7913	78552	85011
72888	76503	7772	7991	78559	85012
*72811	76504	7775	7994	7863	*80020
72888	76505	7776	*78099	78820	85011
*72812	76506	7780	78552	78829	85012
72888	76507	7790	*78550	7895	*80021
*72813	76508	7791	78552	7907	85011
72888	7670	7797	*78551	7911	85012
*72819	76711	*77989	78552	7913	*80022
72888	7685	76711	*78552	7991	85011
*7282	769	*78091	04082	7994	85012
72888	7700	78552	78550	*80000	*80023
*7283	7701	*78092	78551	85011	85011
72888	7702	78552	78552	85012	85012
*72881	7703	*78093	78559	*80001	*80024
72888	7704	04082	*78559	85011	85011
*72886	7705	44024	78552	85012	85012
72888	7707	78001	*7859	*80002	*80025
*72888	77084	78003	78552	85011	85011
72888	7710	7801	*78863	85012	85012
*74861	7711	78031	78820	*80003	*80026
07982	7713	78039	78829	85011	85011
4803	77181	7817	*79981	85012	85012
*75281	77183	7854	04082	*80004	*80029
5970	77210	78550	44024	85011	85011
5994	77211	78551	78001	85012	85012
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85011	85011	85011	85011	85011	85011
85012	85012	85012	85012	85012	85012
*85169	*85192	*85215	*85241	*85304	*85409
85011	85011	85011	85011	85011	85011
85012	85012	85012	85012	85012	85012
*85170	*85193	*85216	*85242	*85305	*85410
85011	85011	85011	85011	85011	85011
85012	85012	85012	85012	85012	85012
*85171	*85194	*85219	*85243	*85306	*85411
85011	85011	85011	85011	85011	85011
85012	85012	85012	85012	85012	85012
*85172	*85195	*85221	*85244	*85309	*85412
85011	85011	85011	85011	85011	85011
85012	85012	85012	85012	85012	85012
*85173	*85196	*85222	*85245	*85310	*85413
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85012	85012	85012	85012	85012	85012

*85414	80508	80639	8052	80679	80602
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85012	80511	8065	8054	8069	80604
*85415	80512	80660	8055	95200	80605
85011	80513	80661	8056	95201	80606
85012	80514	80662	8057	95202	80607
*85416	80515	80669	8058	95203	80608
85011	80516	80670	8059	95204	80609
85012	80517	80671	80600	95205	80610
*85419	80518	80672	80601	95206	80611
85011	8052	80679	80602	95207	80612
85012	8053	8068	80603	95208	80613
*8738	8054	8069	80604	95209	80614
85011	8055	95200	80605	95210	80615
85012	8056	95201	80606	95211	80616
*8739	8057	95202	80607	95212	80617
85011	8058	95203	80608	95213	80618
85012	8059	95204	80609	95214	80619
*8798	80600	95205	80610	95215	80620
85011	80601	95206	80611	95216	80621
85012	80602	95207	80612	95217	80622
*8799	80603	95208	80613	95218	80623
85011	80604	95209	80614	95219	80624
85012	80605	95210	80615	9522	80625
*9050	80606	95211	80616	9523	80626
85011	80607	95212	80617	9524	80627
85012	80608	95213	80618	9528	80628
*9251	80609	95214	80619	9529	80629
85011	80610	95215	80620	*95913	80630
85012	80611	95216	80621	80500	80631
*9252	80612	95217	80622	80501	80632
85011	80613	95218	80623	80502	80633
85012	80614	95219	80624	80503	80634
*9290	80615	9522	80625	80504	80635
85011	80616	9523	80626	80505	80636
85012	80617	9524	80627	80506	80637
*9299	80618	9528	80628	80507	80638
85011	80619	9529	80629	80508	80639
85012	80620	*95912	80630	80510	8064
*9588	80621	80500	80631	80511	8065
85011	80622	80501	80632	80512	80660
85012	80623	80502	80633	80513	80661
*95901	80624	80503	80634	80514	80662
85011	80625	80504	80635	80515	80669
85012	80626	80505	80636	80516	80670
*95909	80627	80506	80637	80517	80671
85011	80628	80507	80638	80518	80672
85012	80629	80508	80639	8052	80679
*95911	80630	80510	8064	8053	8068
80500	80631	80511	8065	8054	8069
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80502	80633	80513	80661	8056	95201
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TABLE 6H.--DELETIONS TO THE CC EXCLUSIONS LIST

[CCs that are added to the list are in Table 6H-Deletions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.]*

*25060	2824	2824	2840	53141	53461
3580	*2819	*2830	2848	53150	53471
*25061	2824	2824	2849	53151	53491
3580	*2820	*28310	2850	53160	53501
*25062	2824	2824	2851	53161	53511
3580	*2821	*28311	2860	53171	53521
*25063	2824	2824	2861	53191	53531
3580	*2822	*28319	2862	53200	53541
*25080	2824	2824	2863	53201	53551
3580	*2823	*2832	2864	53210	53561
*25081	2824	2824	2865	53211	53783
3580	*2824	*2839	2866	53220	53784
*25082	2800	2824	2867	53221	56202
3580	2814	*2840	2869	53231	56203
*25083	2818	2824	2870	53240	56212
3580	2824	*2848	2871	53241	56213
*25090	28260	2824	2872	53250	5693
3580	28261	*2849	2873	53251	56985
*25091	28262	2824	2874	53260	56986
3580	28263	*2850	2875	53261	5780
*25092	28269	2824	2878	53271	5781
3580	2830	*2851	2879	53291	5789
*25093	28310	2824	2880	53300	*6000
3580	28311	*28521	2881	53301	5960
*2551	28319	2824	*2899	53310	5996
2550	2832	*28522	2824	53311	6010
2580	2839	2824	*3483	53320	6012
2581	2840	*28529	34982	53321	6013
2588	2848	2824	*34989	53331	6021
2589	2849	*2858	3580	53340	78820
*2800	2850	2824	*3499	53341	78829
2824	2851	*2859	3580	53350	*6001
*2801	*2825	2824	*3580	53351	5960
2824	2824	*2898	3580	53360	5996
*2808	*28260	2800	3581	53361	6010
2824	2824	2814	*3581	53371	6012
*2809	*28261	2818	3580	53391	6013
2824	2824	2824	*5302	53400	6021
*2810	*28262	28260	4560	53401	78820
2824	2824	28261	5307	53410	78829
*2811	*28263	28262	53082	53411	*6002
2824	2824	28263	53100	53420	5960
*2812	*28269	28269	53101	53421	5996
2824	2824	2830	53110	53431	6010
*2813	*2827	28310	53111	53440	6012
2824	2824	28311	53120	53441	6013
*2814	*2828	28319	53121	53450	6021
2824	2824	2832	53131	53451	78820
*2818	*2829	2839	53140	53460	78829

*6009	71108	6960	7991	8501	*80070
5960	71109	71100	7994	*80034	8501
5996	71160	71101	*80000	8501	*80071
6010	71166	71102	8501	*80035	8501
6012	71168	71103	*80001	8501	*80072
6013	71169	71104	8501	*80036	8501
6021	7141	71105	*80002	8501	*80073
78820	7142	71106	8501	*80039	8501
78829	71430	71107	*80003	8501	*80074
*71970	71431	71108	8501	*80040	8501
6960	71432	71109	*80004	8501	*80075
71100	71433	71160	8501	*80041	8501
71101	*71977	71161	*80005	8501	*80076
71102	6960	71162	8501	*80042	8501
71103	71100	71163	*80006	8501	*80079
71104	71107	71164	8501	*80043	8501
71105	71108	71165	*80009	8501	*80080
71106	71109	71166	8501	*80044	8501
71107	71160	71167	*80010	8501	*80081
71108	71167	71168	8501	*80045	8501
71109	71168	71169	*80011	8501	*80082
71160	71169	7141	8501	*80046	8501
71161	7141	7142	*80012	8501	*80083
71162	7142	71430	8501	*80049	8501
71163	71430	71431	*80013	8501	*80084
71164	71431	71432	8501	*80050	8501
71165	71432	71433	*80014	8501	*80085
71166	71433	*7528	8501	*80051	8501
71167	*71978	5970	*80015	8501	*80086
71168	6960	5994	8501	*80052	8501
71169	71100	6140	*80016	8501	*80089
7141	71101	6143	8501	*80053	8501
7142	71102	6145	*80019	8501	*80090
71430	71103	6150	8501	*80054	8501
71431	71104	6163	*80020	8501	*80091
71432	71105	6164	8501	*80055	8501
71433	71106	6207	*80021	8501	*80092
*71975	71107	*7998	8501	*80056	8501
6960	71108	04082	*80022	8501	*80093
71100	71109	44024	8501	*80059	8501
71105	71160	78001	*80023	8501	*80094
71108	71161	78003	8501	*80060	8501
71109	71162	7801	*80024	8501	*80095
71160	71163	78031	8501	*80061	8501
71165	71164	78039	*80025	8501	*80096
71168	71165	7817	8501	*80062	8501
71169	71166	7854	*80026	8501	*80099
7141	71167	78550	8501	*80063	8501
7142	71168	78551	*80029	8501	*80100
71430	71169	78559	8501	*80064	8501
71431	7141	7863	*80030	8501	*80101
71432	7142	78820	8501	*80065	8501
71433	71430	78829	*80031	8501	*80102
*71976	71431	7895	8501	*80066	8501
6960	71432	7907	*80032	8501	*80103
71100	71433	7911	8501	*80069	8501
71106	*71979	7913	*80033	8501	*80104

8501	*80141	8501	*80312	8501	*80383
*80105	8501	*80176	8501	*80349	8501
8501	*80142	8501	*80313	8501	*80384
*80106	8501	*80179	8501	*80350	8501
8501	*80143	8501	*80314	8501	*80385
*80109	8501	*80180	8501	*80351	8501
8501	*80144	8501	*80315	8501	*80386
*80110	8501	*80181	8501	*80352	8501
8501	*80145	8501	*80316	8501	*80389
*80111	8501	*80182	8501	*80353	8501
8501	*80146	8501	*80319	8501	*80390
*80112	8501	*80183	8501	*80354	8501
8501	*80149	8501	*80320	8501	*80391
*80113	8501	*80184	8501	*80355	8501
8501	*80150	8501	*80321	8501	*80392
*80114	8501	*80185	8501	*80356	8501
8501	*80151	8501	*80322	8501	*80393
*80115	8501	*80186	8501	*80359	8501
8501	*80152	8501	*80323	8501	*80394
*80116	8501	*80189	8501	*80360	8501
8501	*80153	8501	*80324	8501	*80395
*80119	8501	*80190	8501	*80361	8501
8501	*80154	8501	*80325	8501	*80396
*80120	8501	*80191	8501	*80362	8501
8501	*80155	8501	*80326	8501	*80399
*80121	8501	*80192	8501	*80363	8501
8501	*80156	8501	*80329	8501	*80400
*80122	8501	*80193	8501	*80364	8501
8501	*80159	8501	*80330	8501	*80401
*80123	8501	*80194	8501	*80365	8501
8501	*80160	8501	*80331	8501	*80402
*80124	8501	*80195	8501	*80366	8501
8501	*80161	8501	*80332	8501	*80403
*80125	8501	*80196	8501	*80369	8501
8501	*80162	8501	*80333	8501	*80404
*80126	8501	*80199	8501	*80370	8501
8501	*80163	8501	*80334	8501	*80405
*80129	8501	*80300	8501	*80371	8501
8501	*80164	8501	*80335	8501	*80406
*80130	8501	*80301	8501	*80372	8501
8501	*80165	8501	*80336	8501	*80409
*80131	8501	*80302	8501	*80373	8501
8501	*80166	8501	*80339	8501	*80410
*80132	8501	*80303	8501	*80374	8501
8501	*80169	8501	*80340	8501	*80411
*80133	8501	*80304	8501	*80375	8501
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*80134	8501	*80305	8501	*80376	8501
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*80135	8501	*80306	8501	*80379	8501
8501	*80172	8501	*80343	8501	*80414
*80136	8501	*80309	8501	*80380	8501
8501	*80173	8501	*80344	8501	*80415
*80139	8501	*80310	8501	*80381	8501
8501	*80174	8501	*80345	8501	*80416
*80140	8501	*80311	8501	*80382	8501
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*80420	8501	*80491	80041	80112	80183
8501	*80455	8501	80042	80113	80184
*80421	8501	*80492	80043	80114	80185
8501	*80456	8501	80044	80115	80186
*80422	8501	*80493	80045	80116	80189
8501	*80459	8501	80046	80119	80190
*80423	8501	*80494	80049	80120	80191
8501	*80460	8501	80050	80121	80192
*80424	8501	*80495	80051	80122	80193
8501	*80461	8501	80052	80123	80194
*80425	8501	*80496	80053	80124	80195
8501	*80462	8501	80054	80125	80196
*80426	8501	*80499	80055	80126	80199
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8501	*80464	8501	80060	80131	80221
*80430	8501	*8501	80061	80132	80222
8501	*80465	430	80062	80133	80223
*80431	8501	431	80063	80134	80224
8501	*80466	4320	80064	80135	80225
*80432	8501	4321	80065	80136	80226
8501	*80469	436	80066	80139	80227
*80433	8501	78001	80069	80140	80228
8501	*80470	78003	80070	80141	80229
*80434	8501	80000	80071	80142	80230
8501	*80471	80001	80072	80143	80231
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8501	*80472	80003	80074	80145	80233
*80436	8501	80004	80075	80146	80234
8501	*80473	80005	80076	80149	80235
*80439	8501	80006	80079	80150	80236
8501	*80474	80009	80080	80151	80237
*80440	8501	80010	80081	80152	80238
8501	*80475	80011	80082	80153	80239
*80441	8501	80012	80083	80154	8024
8501	*80476	80013	80084	80155	8025
*80442	8501	80014	80085	80156	8026
8501	*80479	80015	80086	80159	8027
*80443	8501	80016	80089	80160	8028
8501	*80480	80019	80090	80161	8029
*80444	8501	80020	80091	80162	80300
8501	*80481	80021	80092	80163	80301
*80445	8501	80022	80093	80164	80302
8501	*80482	80023	80094	80165	80303
*80446	8501	80024	80095	80166	80304
8501	*80483	80025	80096	80169	80305
*80449	8501	80026	80099	80170	80306
8501	*80484	80029	80100	80171	80309
*80450	8501	80030	80101	80172	80310
8501	*80485	80031	80102	80173	80311
*80451	8501	80032	80103	80174	80312
8501	*80486	80033	80104	80175	80313
*80452	8501	80034	80105	80176	80314
8501	*80489	80035	80106	80179	80315
*80453	8501	80036	80109	80180	80316
8501	*80490	80039	80110	80181	80319

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80321	80392	80463	85125	85196	85309
80322	80393	80464	85126	85199	85310
80323	80394	80465	85129	85200	85311
80324	80395	80466	85130	85201	85312
80325	80396	80469	85131	85202	85313
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80330	80401	80472	85134	85205	85316
80331	80402	80473	85135	85206	85319
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80333	80404	80475	85139	85210	85401
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80336	80409	80480	85142	85213	85404
80339	80410	80481	85143	85214	85405
80340	80411	80482	85144	85215	85406
80341	80412	80483	85145	85216	85409
80342	80413	80484	85146	85219	85410
80343	80414	80485	85149	85220	85411
80344	80415	80486	85150	85221	85412
80345	80416	80489	85151	85222	85413
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80350	80421	80492	85154	85225	85416
80351	80422	80493	85155	85226	85419
80352	80423	80494	85156	85229	*8502
80353	80424	80495	85159	85230	8501
80354	80425	80496	85160	85231	*8503
80355	80426	80499	85161	85232	8501
80356	80429	8500	85162	85233	*8504
80359	80430	8501	85163	85234	8501
80360	80431	8502	85164	85235	*8505
80361	80432	8503	85165	85236	8501
80362	80433	8504	85166	85239	*8509
80363	80434	8505	85169	85240	8501
80364	80435	8509	85170	85241	*85100
80365	80436	85100	85171	85242	8501
80366	80439	85101	85172	85243	*85101
80369	80440	85102	85173	85244	8501
80370	80441	85103	85174	85245	*85102
80371	80442	85104	85175	85246	8501
80372	80443	85105	85176	85249	*85103
80373	80444	85106	85179	85250	8501
80374	80445	85109	85180	85251	*85104
80375	80446	85110	85181	85252	8501
80376	80449	85111	85182	85253	*85105
80379	80450	85112	85183	85254	8501
80380	80451	85113	85184	85255	*85106
80381	80452	85114	85185	85256	8501
80382	80453	85115	85186	85259	*85109
80383	80454	85116	85189	85300	8501
80384	80455	85119	85190	85301	*85110
80385	80456	85120	85191	85302	8501
80386	80459	85121	85192	85303	*85111
80389	80460	85122	85193	85304	8501
80390	80461	85123	85194	85305	*85112

8501	*85149	8501	*85221	8501	*85412
*85113	8501	*85184	8501	*85256	8501
8501	*85150	8501	*85222	8501	*85413
*85114	8501	*85185	8501	*85259	8501
8501	*85151	8501	*85223	8501	*85414
*85115	8501	*85186	8501	*85300	8501
8501	*85152	8501	*85224	8501	*85415
*85116	8501	*85189	8501	*85301	8501
8501	*85153	8501	*85225	8501	*85416
*85119	8501	*85190	8501	*85302	8501
8501	*85154	8501	*85226	8501	*85419
*85120	8501	*85191	8501	*85303	8501
8501	*85155	8501	*85229	8501	*8738
*85121	8501	*85192	8501	*85304	8501
8501	*85156	8501	*85230	8501	*8739
*85122	8501	*85193	8501	*85305	8501
8501	*85159	8501	*85231	8501	*8798
*85123	8501	*85194	8501	*85306	8501
8501	*85160	8501	*85232	8501	*8799
*85124	8501	*85195	8501	*85309	8501
8501	*85161	8501	*85233	8501	*9050
*85125	8501	*85196	8501	*85310	8501
8501	*85162	8501	*85234	8501	*9251
*85126	8501	*85199	8501	*85311	8501
8501	*85163	8501	*85235	8501	*9252
*85129	8501	*85200	8501	*85312	8501
8501	*85164	8501	*85236	8501	*9290
*85130	8501	*85201	8501	*85313	8501
8501	*85165	8501	*85239	8501	*9299
*85131	8501	*85202	8501	*85314	8501
8501	*85166	8501	*85240	8501	*9588
*85132	8501	*85203	8501	*85315	8501
8501	*85169	8501	*85241	8501	*95901
*85133	8501	*85204	8501	*85316	8501
8501	*85170	8501	*85242	8501	*95909
*85134	8501	*85205	8501	*85319	8501
8501	*85171	8501	*85243	8501	*9591
*85135	8501	*85206	8501	*85400	80500
8501	*85172	8501	*85244	8501	80501
*85136	8501	*85209	8501	*85401	80502
8501	*85173	8501	*85245	8501	80503
*85139	8501	*85210	8501	*85402	80504
8501	*85174	8501	*85246	8501	80505
*85140	8501	*85211	8501	*85403	80506
8501	*85175	8501	*85249	8501	80507
*85141	8501	*85212	8501	*85404	80508
8501	*85176	8501	*85250	8501	80510
*85142	8501	*85213	8501	*85405	80511
8501	*85179	8501	*85251	8501	80512
*85143	8501	*85214	8501	*85406	80513
8501	*85180	8501	*85252	8501	80514
*85144	8501	*85215	8501	*85409	80515
8501	*85181	8501	*85253	8501	80516
*85145	8501	*85216	8501	*85410	80517
8501	*85182	8501	*85254	8501	80518
*85146	8501	*85219	8501	*85411	8052
8501	*85183	8501	*85255	8501	8053

8054	8069
8055	95200
8056	95201
8057	95202
8058	95203
8059	95204
80600	95205
80601	95206
80602	95207
80603	95208
80604	95209
80605	95210
80606	95211
80607	95212
80608	95213
80609	95214
80610	95215
80611	95216
80612	95217
80613	95218
80614	95219
80615	9522
80616	9523
80617	9524
80618	9528
80619	9529
80620	*9598
80621	8501
80622	*9599
80623	8501
80624	*99680
80625	V432
80626	*99683
80627	V432
80628	*99687
80629	V432
80630	*V421
80631	V432
80632	*V432
80633	V432
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TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY

[FY 2002 Medpar Update March 2003 Grouper V20.0]

DRG	Number of discharges	Arithmetic mean length of stay	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
1	29,410	10.9	3	5	6	14	22
2	14,837	5.1	1	2	4	7	10
3	3	6.0	1	1	4	13	13
4	6,793	7.3	1	2	5	8	16
5	95,905	3.0	1	1	2	3	7
6	360	3.0	1	1	2	4	7
7	14,744	9.9	2	4	7	12	20
8	4,140	2.8	1	1	1	3	7
9	1,741	6.7	1	3	5	8	12
10	18,736	6.4	2	3	5	8	13
11	3,312	4.0	1	2	3	5	8
12	52,693	5.8	2	3	4	7	11
13	7,144	5.0	2	3	4	6	9
14	237,827	5.9	2	3	5	7	11
15	94,552	4.9	2	3	4	6	9
16	9,982	6.3	2	3	5	8	12
17	2,757	3.2	1	1	2	4	6
18	29,858	5.5	2	3	4	7	10
19	8,583	3.5	1	2	3	5	7
20	6,244	10.2	3	5	8	13	20
21	1,894	6.6	2	3	5	8	13
22	2,794	5.1	2	2	4	6	10
23	12,654	4.2	1	2	3	5	8
24	59,420	4.9	1	2	4	6	10
25	27,639	3.2	1	2	3	4	6
26	20	4.1	1	1	2	3	4
27	4,470	5.2	1	1	3	7	11
28	14,063	6.0	1	3	5	8	12
29	5,344	3.5	1	2	3	4	7
30	3	5.7	2	2	4	11	11
31	3,976	4.0	1	2	3	5	8
32	1,932	2.5	1	1	2	3	5
34	23,918	4.9	1	2	4	6	9
35	7,483	3.1	1	1	3	4	6
36	2,125	1.5	1	1	1	1	2
37	1,392	3.8	1	1	2	5	8
38	98	2.8	1	1	1	4	5
39	563	2.1	1	1	1	2	4
40	1,555	3.8	1	1	3	5	7
42	1,592	2.7	1	1	1	3	6
43	95	3.4	1	1	3	4	6
44	1,231	5.0	2	3	4	6	9
45	2,690	3.1	1	2	3	4	6
46	3,495	4.5	1	2	3	6	8
47	1,415	3.1	1	1	2	4	6
49	2,392	4.5	1	2	3	6	9
50	2,439	1.9	1	1	1	2	3
51	243	2.8	1	1	1	3	6
52	224	1.8	1	1	1	2	3
53	2,485	3.6	1	1	2	4	8
55	1,489	2.9	1	1	1	3	7
56	476	2.9	1	1	1	3	6
57	715	3.7	1	1	2	4	8
58	1	2.0	2	2	2	2	2
59	117	2.7	1	1	1	3	6
60	1	3.0	3	3	3	3	3
61	255	5.2	1	1	3	7	11
62	2	7.0	1	1	13	13	13
63	3,038	4.4	1	2	3	5	9
64	3,149	6.5	1	2	4	8	13
65	40,527	2.8	1	1	2	4	5
66	7,876	3.1	1	1	2	4	7
67	387	3.6	1	2	3	5	7
68	11,695	3.9	1	2	3	5	7
69	3,782	3.0	1	2	3	4	5
70	32	2.4	1	1	2	3	4
71	80	3.4	1	1	2	4	6
72	972	3.4	1	1	3	4	6
73	7,740	4.4	1	2	3	5	8

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY 2002 Medpar Update March 2003 Grouper V20.0]

DRG	Number of discharges	Arithmetic mean length of stay	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
75	43,515	10.0	3	5	7	12	20
76	44,651	11.1	3	5	9	14	21
77	2,484	4.8	1	2	4	7	10
78	39,668	6.6	3	4	6	8	11
79	169,669	8.5	3	4	7	11	16
80	8,115	5.3	2	3	4	7	10
81	5	4.4	1	1	3	[illegible]	[illegible]
82	64,585	6.9	2	3	5	[illegible]	14
83	6,788	5.4	2	3	4	7	10
84	1,616	3.2	1	2	3	4	6
85	22,461	6.2	2	3	5	[illegible]	12
86	2,262	3.5	1	2	3	4	7
87	61,337	6.3	1	3	5	[illegible]	12
88	405,367	5.0	2	3	4	6	9
89	536,888	5.8	2	3	5	7	11
90	49,023	4.0	2	2	3	5	7
91	45	5.0	1	2	3	5	13
92	15,881	6.3	2	3	5	[illegible]	12
93	1,782	4.0	1	2	3	5	7
94	12,922	6.2	2	3	5	[illegible]	12
95	1,672	3.8	1	2	3	5	7
96	57,107	4.6	2	2	4	6	8
97	28,950	3.5	1	2	3	4	6
98	9	3.7	1	1	2	2	5
99	21,531	3.2	1	1	2	4	6
100	8,350	2.1	1	1	2	3	4
101	22,498	4.4	1	2	3	6	9
102	5,699	2.6	1	1	2	3	5
103	495	42.4	9	12	23	54	[illegible]
104	20,732	14.3	6	[illegible]	12	17	25
105	29,353	9.9	4	[illegible]	[illegible]	11	18
106	3,515	11.4	5	7	10	14	20
107	83,704	10.4	5	7	9	12	17
108	6,543	9.8	2	5	[illegible]	12	18
109	57,705	7.7	4	5	[illegible]	9	13
110	55,056	8.8	2	4	7	11	18
111	9,618	4.1	1	2	4	6	7
113	39,897	12.5	4	6	9	15	24
114	8,369	8.6	2	4	7	11	17
115	19,879	7.4	1	3	6	10	15
116	116,607	4.4	1	2	3	6	[illegible]
117	4,751	4.3	1	1	2	5	10
118	8,319	2.9	1	1	1	4	7
119	1,257	5.3	1	1	3	7	13
120	38,350	9.0	[illegible]	3	[illegible]	12	20
121	164,602	6.3	2	3	5	[illegible]	12
122	77,383	3.5	1	2	3	5	7
123	38,786	4.8	1	1	3	6	11
124	135,861	4.4	1	2	3	6	[illegible]
125	92,387	2.8	1	1	2	4	5
126	5,422	11.5	3	6	[illegible]	15	22
127	678,154	5.2	2	3	4	7	10
128	7,226	5.4	2	3	5	7	9
129	3,884	2.6	1	1	1	3	6
130	89,220	5.6	2	3	5	7	10
131	27,255	4.0	1	2	[illegible]	5	7
132	142,959	2.9	1	1	2	4	5
133	8,743	2.3	1	1	2	3	4
134	41,755	3.2	1	2	2	4	[illegible]
135	7,825	4.5	1	2	3	[illegible]	[illegible]
136	1,191	2.7	1	1	2	3	5
138	209,417	4.0	1	2	3	5	8
139	88,233	2.5	1	1	2	3	5
140	56,027	2.5	1	1	2	3	5
141	109,260	3.6	1	2	3	4	7
142	52,906	2.6	1	1	2	3	5
143	251,335	2.1	1	1	2	3	[illegible]
144	95,251	5.5	1	2	4	7	11
145	7,414	2.6	1	1	[illegible]	3	5

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY 2002 Medpar Update March 2003 Grouper V20.0]

DRG	Number of discharges	Arithmetic mean length of stay	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
146	10,813	10.2	5	6	8	12	17
147	2,649	6.2	3	5	6	8	9
148	134,602	12.3	5	7	10	15	22
149	20,279	6.3	4	5	6	7	9
150	21,258	11.3	4	6	9	14	20
151	5,171	5.6	2	3	5	7	10
152	4,594	8.4	3	5	7	10	15
153	2,069	5.2	3	4	5	7	8
154	28,481	13.2	3	7	10	17	26
155	6,654	4.1	1	2	3	6	8
156	4	2.5	1	1	1	3	5
157	8,336	5.7	1	2	4	7	12
158	4,379	2.6	1	1	2	3	5
159	18,211	5.1	1	2	4	7	10
160	12,263	2.7	1	1	2	3	5
161	10,838	4.3	1	1	3	6	9
162	6,447	1.9	1	1	1	2	4
163	[illegible]	3.3	1	1	2	3	6
164	5,432	8.4	3	5	7	10	15
165	2,351	4.5	2	3	4	6	7
166	4,228	4.7	1	2	4	6	9
167	4,121	2.4	1	1	2	3	4
168	1,437	4.8	1	2	3	6	10
169	811	2.4	1	1	2	3	5
170	15,746	10.8	2	4	8	14	22
171	1,535	4.3	1	2	4	6	9
172	31,608	7.0	2	3	5	9	14
173	2,503	3.8	1	2	3	5	8
174	253,175	4.8	2	3	4	6	9
175	35,116	2.9	1	2	3	4	5
176	13,542	5.2	2	3	4	6	10
177	9,121	4.6	2	2	4	6	[illegible]
178	3,396	3.1	1	2	3	4	6
179	13,263	5.9	2	3	5	7	11
180	91,043	5.4	2	3	4	7	10
181	27,384	3.4	1	2	3	4	[illegible]
182	274,383	4.4	1	2	3	5	[illegible]
183	91,766	2.9	1	1	2	4	[illegible]
184	75	3.3	1	1	2	4	7
185	5,415	4.7	1	2	3	6	10
186	[illegible]	6.7	2	3	3	10	10
187	637	4.1	1	2	3	6	[illegible]
188	84,442	5.6	1	2	4	7	11
189	13,179	3.1	1	1	2	4	[illegible]
190	76	5.1	1	2	4	6	10
191	9,576	13.8	3	6	10	17	28
192	1,322	6.2	1	3	6	8	11
193	4,844	12.7	5	7	10	16	23
194	651	6.7	2	4	6	8	12
195	4,041	10.5	4	6	9	13	19
196	1,007	5.6	2	3	5	7	10
197	18,401	9.2	3	5	7	11	17
198	5,446	4.4	2	3	3	6	7
199	1,644	9.8	2	4	7	13	21
200	1,082	10.5	2	3	7	14	23
201	2,146	14.2	4	6	10	18	29
202	26,905	6.4	2	3	5	8	13
203	30,167	6.7	2	3	5	9	13
204	65,940	5.7	2	3	4	7	11
205	27,684	6.2	2	3	5	[illegible]	12
206	2,079	3.8	1	2	3	5	[illegible]
207	33,045	5.2	1	2	4	7	10
208	10,244	2.9	1	1	2	4	[illegible]
209	401,363	4.9	3	3	4	5	[illegible]
210	123,436	6.9	3	4	6	8	11
211	30,259	4.8	3	4	4	6	7
212	10	6.4	1	1	3	5	7
213	10,018	9.2	2	4	7	12	18
216	8,808	8.0	1	2	[illegible]	11	17

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY 2002 Medpar Update March 2003 Grouper V20.0]

DRG	Number of discharges	Arithmetic mean length of stay	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
217	17,420	13.4	3	5	9	16	28
218	24,033	5.5	2	3	4	7	10
219	20,076	3.2	1	2	3	4	6
220	1	1.0	1	1	1	1	1
223	13,406	3.0	1	1	2	4	6
224	11,846	1.9	1	1	1	2	3
225	6,539	5.3	1	2	4	7	11
226	5,895	6.5	1	2	4	8	14
227	4,883	2.6	1	1	2	3	5
228	2,553	4.1	1	1	3	5	9
229	1,274	2.3	1	1	2	3	5
230	2,474	5.6	1	2	3	7	12
231	13,405	5.0	1	1	3	6	11
232	825	2.7	1	1	1	2	6
233	10,014	7.4	1	3	6	10	15
234	5,408	3.1	1	1	2	4	7
235	5,150	4.9	1	2	4	6	9
236	40,417	4.6	1	3	4	6	8
237	1,790	3.7	1	2	3	5	7
238	9,003	8.6	3	4	7	10	17
239	46,422	6.3	2	3	5	8	12
240	12,147	6.6	2	3	5	8	13
241	3,197	3.8	1	2	3	5	7
242	2,621	6.9	2	3	5	9	14
243	97,186	4.7	1	2	4	6	9
244	14,757	4.7	1	2	4	6	9
245	5,890	3.3	1	2	3	4	6
246	1,501	3.8	1	2	3	5	7
247	20,607	3.3	1	1	3	4	7
248	14,008	4.9	1	3	4	6	9
249	13,006	3.6	1	1	2	4	7
250	3,835	4.1	1	2	3	5	8
251	2,403	2.8	1	1	3	3	5
253	22,265	4.7	2	3	4	6	8
254	10,865	3.2	1	2	3	4	5
256	6,755	5.1	1	2	4	6	10
257	15,803	2.6	1	1	2	3	5
258	15,399	1.8	1	1	2	2	3
259	3,531	2.7	1	1	1	3	6
260	4,255	1.4	1	1	1	1	2
261	1,801	2.1	1	1	1	2	4
262	674	4.3	1	1	3	6	9
263	23,297	11.5	3	5	8	14	22
264	3,898	6.6	2	3	5	8	13
265	4,132	6.6	1	2	4	8	14
266	2,567	3.2	1	1	2	4	7
267	242	4.4	1	1	3	6	10
268	931	3.8	1	1	2	4	8
269	9,911	8.5	2	3	7	11	17
270	2,824	3.6	1	1	2	5	7
271	19,513	7.2	2	4	6	9	14
272	5,770	6.0	2	3	5	7	12
273	1,351	4.0	1	2	3	5	8
274	2,328	6.5	1	3	5	8	13
275	232	3.6	1	1	2	4	7
276	1,333	4.5	1	2	4	6	9
277	101,243	5.7	2	3	5	7	10
278	32,701	4.2	2	2	4	6	7
279	10	5.3	2	2	3	7	7
280	18,038	4.1	1	2	3	5	8
281	7,650	2.9	1	1	2	4	5
283	6,106	4.7	1	2	4	6	9
284	2,039	2.9	1	1	2	4	6
285	7,012	10.5	3	5	9	13	20
286	2,511	5.9	2	3	4	7	12
287	6,330	10.3	3	5	8	13	20
288	5,684	5.0	2	3	4	5	8
289	6,977	2.7	1	1	1	2	5
290	10,000	2.2	1	1	1	2	4

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY 2002 Medpar Update March 2003 Grouper V20.0]

DRG	Number of discharges	Arithmetic mean length of stay	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
291	50	1.6	1	1	1	2	3
292	6,576	10.5	2	4	8	14	21
293	368	4.7	1	1	3	6	9
294	99,279	4.5	1	2	3	6	9
295	3,603	4.0	1	2	3	5	7
296	281,526	5.1	1	2	4	6	10
297	48,952	3.3	1	2	3	4	6
298	117	3.1	1	1	2	4	6
299	1,291	5.5	1	2	4	7	11
300	18,877	6.1	2	3	5	8	12
301	3,649	3.6	1	2	3	4	7
302	8,941	8.5	4	5	6	9	15
303	21,890	8.0	3	4	6	9	15
304	12,646	8.9	2	4	6	11	18
305	3,058	3.5	1	2	3	4	7
306	7,087	5.4	1	2	3	7	12
307	2,041	2.1	1	1	2	2	3
308	7,321	6.2	1	2	4	8	14
309	4,198	2.1	1	1	1	2	4
310	24,966	4.4	1	1	3	6	10
311	7,518	1.8	1	1	1	2	3
312	1,532	4.6	1	1	3	6	10
313	558	2.3	1	1	1	3	5
314	2	40.5	1	1	30	80	80
315	34,371	7.0	1	1	4	9	16
316	120,183	6.5	2	3	5	8	13
317	2,045	3.6	1	1	2	4	7
318	5,811	6.1	1	3	5	8	12
319	416	2.9	1	1	2	4	6
320	188,879	5.3	2	3	4	6	10
321	31,494	3.7	1	2	3	5	7
322	55	3.3	1	2	3	4	5
323	20,049	3.2	1	1	2	4	6
324	7,086	1.9	1	1	1	2	4
325	9,360	3.8	1	2	3	5	7
326	2,755	2.6	1	1	2	3	5
327	7	2.6	1	1	2	3	4
328	748	3.7	1	1	3	5	8
329	92	2.1	1	1	1	3	5
331	51,750	5.6	1	3	4	7	11
332	5,046	3.2	1	1	2	4	6
333	269	5.7	1	2	3	7	11
334	10,565	4.6	2	3	4	5	8
335	12,782	3.0	2	2	3	4	5
336	36,048	3.4	1	2	2	4	7
337	29,654	2.0	1	1	2	2	3
338	941	5.5	1	2	3	7	13
339	1,491	4.8	1	1	3	8	11
340	1	2.0	2	2	2	2	2
341	3,599	3.2	1	1	2	3	7
342	694	3.2	1	1	2	4	7
344	3,598	2.5	1	1	1	2	5
345	1,376	4.9	1	1	3	6	11
346	4,919	5.9	2	3	5	8	12
347	318	3.0	1	1	2	4	8
348	3,416	4.3	1	2	3	5	8
349	619	2.5	1	1	2	3	5
350	6,778	4.5	2	2	4	6	9
352	958	4.0	1	2	3	5	8
353	2,585	6.5	2	3	5	7	12
354	7,455	5.7	3	3	4	6	10
355	5,602	3.2	2	2	3	4	5
356	26,093	2.1	1	1	2	3	5
357	5,648	8.4	3	4	6	10	16
358	21,749	4.2	2	2	3	5	7
359	32,221	2.6	1	2	2	3	4
360	15,906	2.8	1	1	2	3	4
361	348	3.2	1	1	2	3	7
362	5	1.4	1	1	1	2	2

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY 2002 Medpar Update March 2003 Grouper V20.0]

DRG	Number of discharges	Arithmetic mean length of stay	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
363	2,529	3.6	1	2	2	4	[illegible]
364	1,643	4.1	1	1	3	5	[illegible]
365	1,842	8.2	1	3	5	10	17
366	4,601	6.7	1	3	5	[illegible]	14
367	489	3.1	1	1	2	4	7
368	3,592	6.6	2	3	5	[illegible]	13
369	3,510	3.3	1	1	2	4	7
370	1,390	5.8	2	3	4	5	9
371	1,764	3.5	2	3	3	4	5
372	979	3.5	2	2	2	3	5
373	4,246	2.3	1	2	2	3	3
374	100	3.0	2	2	2	3	6
376	332	3.5	1	2	2	4	7
377	53	4.1	1	2	3	5	8
378	175	2.6	1	1	2	3	5
379	365	3.0	1	1	2	3	5
380	98	2.0	1	1	1	2	3
381	194	1.9	1	1	1	2	4
382	49	1.7	1	1	1	2	3
383	2,031	3.8	1	2	3	4	7
384	133	2.6	1	1	2	3	5
385	3	2.0	1	1	2	3	3
387	1	55.0	55	55	55	55	55
389	12	6.3	2	3	5	9	10
390	20	4.3	1	2	3	5	7
392	2,292	9.7	3	4	7	12	21
393	1	4.0	4	4	4	4	4
394	2,614	7.6	1	2	5	9	17
395	108,545	4.3	1	2	3	5	9
396	19	4.2	1	1	2	5	9
397	19,105	5.2	1	2	4	6	10
398	18,238	5.9	2	3	5	7	11
399	1,698	3.5	1	2	3	4	[illegible]
400	6,366	9.0	1	3	6	12	21
401	5,876	11.5	2	5	9	15	23
402	1,480	4.0	1	1	3	5	9
403	32,056	8.1	2	3	6	10	17
404	4,368	4.1	1	2	3	5	[illegible]
405	1	31.0	31	31	31	31	31
406	2,435	9.7	2	4	7	12	20
407	645	4.1	1	2	3	5	7
408	2,131	8.2	1	2	5	10	20
409	2,166	6.2	2	3	4	6	12
410	28,518	4.1	1	2	4	5	[illegible]
411	7	2.3	1	1	2	2	4
412	17	3.6	1	1	3	6	7
413	5,371	7.0	2	3	5	9	14
414	638	4.2	1	2	3	5	[illegible]
415	43,615	14.4	4	6	11	18	28
416	193,642	7.4	2	4	6	9	14
417	41	5.7	2	2	5	7	12
418	26,059	6.3	2	3	5	8	12
419	16,513	4.6	1	2	4	6	9
420	3,233	3.4	1	2	3	4	6
421	10,805	4.1	1	2	3	5	[illegible]
422	[illegible]	3.7	1	2	2	3	6
423	8,149	8.3	2	3	6	10	17
424	1,249	13.1	2	4	9	15	26
425	16,274	3.8	1	2	3	5	8
426	4,619	4.5	1	2	3	6	9
427	1,614	4.4	1	2	3	5	9
428	800	7.1	1	2	5	8	14
429	26,027	6.0	2	3	4	7	11
430	65,641	7.8	2	3	[illegible]	10	16
431	319	6.8	1	2	4	7	12
432	454	4.0	1	2	3	5	8
433	5,603	3.1	1	1	2	4	6
439	1,532	8.2	1	3	5	9	17
440	5,838	9.1	2	3	6	11	19

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY 2002 Medpar Update March 2003 Grouper V20.0]

DRG	Number of discharges	Arithmetic mean length of stay	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
441	690	3.1	1	1	2	4	6
442	17,683	8.5	1	3	6	10	18
443	3,949	3.4	1	1	3	4	7
444	5,831	4.2	1	2	3	5	8
445	2,592	2.9	1	1	2	4	5
447	6,551	2.5	1	1	2	3	5
448	1	1.0	1	1	1	1	1
449	33,429	3.7	1	1	3	4	7
450	7,534	2.0	1	1	1	2	4
451	1	1.0	1	1	1	1	1
452	25,827	4.9	1	2	3	6	10
453	5,733	2.8	1	1	2	3	5
454	4,822	4.2	1	2	3	5	[illegible]
455	1,086	2.4	1	1	2	3	5
461	5,281	3.6	1	1	2	4	[illegible]
462	9,763	10.9	4	6	9	14	19
463	27,225	4.0	1	2	3	5	8
464	7,273	3.0	1	1	2	4	6
465	203	3.9	1	1	1	3	6
466	1,761	4.0	1	1	2	4	7
467	1,167	3.6	1	1	2	3	6
468	52,616	12.8	3	6	10	16	25
471	13,425	5.4	3	3	4	6	8
473	8,123	12.4	2	3	7	17	32
475	110,111	11.2	2	5	9	15	22
476	3,675	11.1	2	5	10	15	21
477	25,578	8.2	1	3	6	11	17
478	108,616	7.3	1	3	5	9	16
479	24,164	3.2	1	1	2	4	7
480	627	21.1	6	8	12	22	47
481	867	21.8	13	17	20	24	33
482	5,312	12.5	4	6	9	15	24
483	45,887	39.5	15	22	33	49	70
484	346	14.5	2	6	11	21	30
485	3,279	9.9	4	5	7	12	19
486	2,225	12.8	1	6	10	17	26
487	3,908	7.2	1	3	6	9	15
488	777	17.0	4	7	13	22	36
489	13,457	8.6	2	3	6	10	18
490	5,499	5.5	1	2	4	7	11
491	15,451	3.4	1	2	3	4	6
492	3,115	14.9	3	5	7	25	33
493	59,856	6.0	1	3	5	8	11
494	29,005	2.5	1	1	[illegible]	3	5
495	200	16.1	7	9	12	19	30
496	2,506	8.9	3	4	6	11	18
497	22,601	6.4	3	4	5	7	11
498	16,204	4.0	2	3	4	5	[illegible]
499	34,803	4.5	1	2	3	6	[illegible]
500	50,192	2.4	1	1	2	3	4
501	2,615	10.6	4	5	8	13	20
502	784	6.2	3	4	5	7	11
503	6,020	3.9	1	2	3	5	7
504	128	28.0	7	13	21	38	55
505	136	5.6	1	1	1	4	10
506	926	16.9	4	7	13	21	35
507	346	9.1	2	4	7	13	19
508	634	7.8	2	3	5	10	17
509	161	4.3	1	2	3	5	[illegible]
510	1,660	6.7	1	3	5	8	15
511	592	4.7	1	1	3	6	10
512	505	13.2	6	[illegible]	10	15	23
513	215	10.0	5	6	[illegible]	10	16
514	26,940	6.9	1	2	5	9	15
515	8,312	5.2	1	1	3	7	12
516	52,442	4.6	2	2	4	5	[illegible]
517	119,770	2.5	1	1	1	3	5
518	49,376	3.4	1	1	2	4	7
519	8,549	4.9	1	1	3	6	11

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY 2002 Medpar Update March 2003 Grouper V20.0]

DRG	Number of discharges	Arithmetic mean length of stay	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
520	12,798	2.1	1	1	1	2	4
521	30,971	5.7	2	3	4	7	11
522	6,047	9.6	3	5	8	12	20
523	15,530	4.0	1	2	3	5	7
524	133,080	3.4	1	2	3	4	6
525	584	16.8	1	4	9	18	37
526	32,121	NA	NA	NA	NA	NA	NA
527	84,729	NA	NA	NA	NA	NA	NA
	11,761,542						

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY

[FY 2002 Medpar Update March 2003 Grouper V21.0]

DRG	Number of disharges	Arithmetic mean length of stay	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
1	24,378	10.8	3	5	[illegible]	14	21
2	11,909	5.3	1	3	4	7	10
3	3	6.0	1	1	4	13	13
6	360	3.0	1	[illegible]	2	4	7
7	14,886	9.8	2	4	7	12	20
8	4,213	2.8	1	1	1	3	7
9	1,741	6.7	1	3	5	8	12
10	18,736	6.4	2	3	5	8	13
11	3,312	4.0	1	2	3	5	[illegible]
12	52,693	5.8	2	3	4	7	11
13	7,144	5.0	2	3	4	6	9
14	237,827	5.9	2	3	5	7	11
15	94,552	4.9	2	3	4	6	9
16	9,982	6.3	2	3	5	8	12
17	2,757	3.2	1	1	2	4	[illegible]
18	29,858	5.5	2	3	4	7	10
19	8,583	3.5	1	2	3	5	7
20	6,244	10.2	3	5	8	13	20
21	1,894	6.6	2	3	5	[illegible]	13
22	2,794	5.1	2	2	4	6	10
23	11,327	4.3	1	2	3	5	[illegible]
24	59,420	4.9	1	2	4	6	10
25	27,639	3.2	1	2	3	4	6
26	20	4.1	1	1	2	3	4
27	4,470	5.2	1	1	3	7	11
28	14,063	6.0	1	3	5	8	12
29	5,344	3.5	1	2	3	4	7
30	3	5.7	2	2	4	11	11
31	3,976	4.0	1	2	3	5	[illegible]
32	1,932	2.5	1	1	2	3	5
34	23,938	4.9	1	2	4	6	9
35	7,506	3.1	1	1	3	4	[illegible]
36	2,125	1.5	1	1	1	1	2
37	1,392	3.8	1	1	2	5	8
38	[illegible]	2.8	1	1	1	4	5
39	563	2.1	1	1	1	2	4
40	1,555	3.8	1	1	3	5	7
42	1,592	2.7	1	1	1	3	[illegible]
43	95	3.4	1	1	3	4	[illegible]
44	1,231	5.0	2	3	4	[illegible]	9
45	2,690	3.1	1	2	3	4	[illegible]
46	3,495	4.5	1	2	3	[illegible]	8
47	1,415	3.1	1	1	2	4	[illegible]
49	2,392	4.5	1	2	3	[illegible]	9
50	2,439	1.9	1	1	1	2	3
51	243	2.8	1	1	1	3	[illegible]
52	224	1.8	1	1	1	2	3
53	2,485	3.6	1	1	2	4	[illegible]
55	1,489	2.9	1	1	1	3	7
56	476	2.9	1	1	1	3	[illegible]
57	715	3.7	1	1	2	4	[illegible]

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY 2002 Medpar Update March 2003 Grouper V21.0]

DRG	Number of disharges	Arithmetic mean length of stay	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
58	1	2.0	2	2	2	2	2
59	117	2.7	1	1	1	3	[illegible]
60	1	3.0	3	3	3	3	3
61	255	5.2	1	[illegible]	3	7	11
62	2	7.0	1	1	13	13	13
63	3,038	4.4	1	2	3	5	[illegible]
64	3,149	6.5	1	2	4	[illegible]	13
65	40,527	2.8	1	1	2	4	5
66	7,876	3.1	1	1	2	4	6
67	387	3.6	1	2	3	5	7
68	11,695	3.9	1	2	3	5	7
69	3,782	3.0	1	2	3	4	5
70	32	2.4	1	1	2	3	4
71	80	3.4	1	1	2	4	[illegible]
72	972	3.4	1	1	3	4	[illegible]
73	7,740	4.4	1	2	3	[illegible]	9
75	43,515	10.0	3	5	7	12	20
76	44,651	11.1	3	5	9	14	21
77	2,484	4.8	1	2	4	7	10
78	39,668	6.6	3	4	[illegible]	[illegible]	11
79	169,669	8.5	3	4	7	11	16
80	8,115	5.3	2	3	4	7	10
81	5	4.4	1	1	3	[illegible]	[illegible]
82	64,585	6.9	2	3	5	9	14
83	6,788	5.4	2	3	4	7	10
84	1,616	3.2	1	2	3	4	[illegible]
85	22,461	6.2	2	3	5	[illegible]	12
86	2,262	3.5	1	2	3	4	7
87	61,337	6.3	1	3	5	[illegible]	12
88	405,367	5.0	2	3	4	[illegible]	[illegible]
89	536,888	5.8	2	3	5	7	11
90	49,023	4.0	2	2	3	5	7
91	45	5.0	1	2	3	5	13
92	15,881	6.3	2	3	5	[illegible]	12
93	1,782	4.0	1	2	3	5	7
94	12,922	6.2	2	3	5	[illegible]	12
95	1,672	3.8	1	2	3	5	7
96	57,107	4.6	2	2	4	6	8
97	28,950	3.5	1	2	3	4	6
98	[illegible]	3.7	1	1	2	2	5
99	21,531	3.2	1	1	2	4	[illegible]
100	8,350	2.1	1	1	2	3	4
101	22,498	4.4	1	2	3	6	[illegible]
102	5,699	2.6	1	1	2	3	5
103	495	42.4	[illegible]	12	23	54	[illegible]
104	20,732	14.3	6	8	12	17	25
105	29,353	9.9	4	6	8	11	18
106	3,515	11.4	5	7	10	14	20
107	83,704	10.4	5	7	9	12	17
108	6,543	9.8	2	5	8	12	18
109	57,705	7.7	4	5	6	9	13
110	55,100	8.8	2	4	7	11	18
111	9,622	4.1	1	2	4	6	7
113	39,897	12.5	4	6	9	15	24
114	8,369	8.6	2	4	7	11	17
115	19,878	7.4	1	3	6	10	15
116	116,606	4.4	1	2	3	6	[illegible]
117	4,751	4.3	1	1	2	5	10
118	8,319	2.9	1	1	1	4	7
119	1,257	5.3	1	1	3	7	13
120	38,350	9.0	1	3	6	12	20
121	164,602	6.3	2	3	5	[illegible]	12
122	77,383	3.5	1	2	3	5	7
123	38,786	4.8	1	1	3	6	11
124	135,861	4.4	1	2	3	6	[illegible]
125	92,387	2.8	1	1	2	4	5
126	5,422	11.5	3	6	9	15	22
127	678,154	5.2	2	3	4	7	10
128	7,226	5.4	2	3	5	7	9
129	3,884	2.6	1	1	1	3	6

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY 2002 Medpar Update March 2003 Grouper V21.0]

DRG	Number of disharges	Arithmetic mean length of stay	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
130	89,220	5.6	2	3	5	7	10
131	27,255	4.0	1	2	4	5	7
132	142,959	2.9	1	1	2	4	5
133	8,743	2.3	1	1	2	3	4
134	41,755	3.2	1	2	2	4	6
135	7,825	4.5	1	2	3	5	8
136	1,191	2.7	1	1	2	3	5
138	209,417	4.0	1	2	3	5	[illegible]
139	88,233	2.5	1	1	2	3	5
140	56,027	2.5	1	1	2	3	5
141	109,260	3.6	1	2	3	4	7
142	52,906	2.6	1	1	2	3	5
143	251,335	2.1	1	1	2	3	4
144	95,251	5.5	1	2	4	7	11
145	7,414	2.6	1	1	2	3	5
146	10,813	10.2	5	6	8	12	17
147	2,649	6.2	3	5	6	8	9
148	134,602	12.3	5	7	10	15	22
149	20,279	6.3	4	5	6	7	9
150	21,258	11.3	4	6	9	14	20
151	5,171	5.6	2	3	5	7	10
152	4,594	8.4	3	5	7	10	15
153	2,069	5.2	3	4	5	7	8
154	28,481	13.2	3	7	10	17	26
155	6,654	4.1	1	2	3	6	8
156	4	2.5	1	1	1	3	5
157	8,336	5.7	1	2	4	7	12
158	4,379	2.6	1	1	2	3	5
159	18,211	5.1	1	2	4	7	10
160	12,263	2.7	1	1	2	3	5
161	10,838	4.3	1	1	3	6	9
162	6,447	1.9	1	1	1	2	4
163	[illegible]	3.3	1	1	2	3	6
164	5,432	8.4	3	5	7	10	15
165	2,351	4.5	2	3	4	6	7
166	4,228	4.7	1	2	4	6	9
167	4,121	2.4	1	1	2	3	4
168	1,437	4.8	1	2	3	6	10
169	811	2.4	1	1	2	3	5
170	15,751	10.8	2	4	8	14	22
171	1,538	4.3	1	2	4	6	9
172	31,608	7.0	2	3	5	9	14
173	2,503	3.8	1	2	3	5	8
174	253,175	4.8	2	3	4	6	9
175	35,116	2.9	1	2	3	4	5
176	13,542	5.2	2	3	4	6	10
177	9,121	4.6	2	2	4	6	[illegible]
178	3,396	3.1	1	2	3	4	6
179	13,263	5.9	2	3	5	7	11
180	91,043	5.4	2	3	4	7	10
181	27,384	3.4	1	2	3	4	[illegible]
182	274,383	4.4	1	2	3	5	8
183	91,766	2.9	1	1	2	4	5
184	75	3.3	1	1	2	4	7
185	5,415	4.7	1	2	3	6	10
186	6	6.7	2	3	3	10	10
187	637	4.1	1	2	3	6	[illegible]
188	84,442	5.6	1	2	4	7	11
189	13,179	3.1	1	1	2	4	6
190	76	5.1	1	2	4	6	10
191	9,576	13.8	3	6	10	17	28
192	1,322	6.2	1	3	6	[illegible]	11
193	4,844	12.7	5	7	10	16	23
194	651	6.7	2	4	6	[illegible]	12
195	4,041	10.5	4	6	9	13	19
196	1,007	5.6	2	3	5	7	10
197	18,401	9.2	3	5	7	11	17
198	5,446	4.4	2	3	4	6	7
199	1,644	9.8	2	4	7	13	21
200	1,082	10.5	2	3	7	14	23

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY 2002 Medpar Update March 2003 Grouper V21.0]

DRG	Number of disharges	Arithmetic mean length of stay	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
201	2,146	14.2	4	6	10	18	29
202	26,905	6.4	2	3	5	[illegible]	13
203	30,167	6.7	2	3	5	9	13
204	65,940	5.7	2	3	4	7	11
205	27,684	6.2	2	3	5	8	12
206	2,079	3.8	1	2	3	5	[illegible]
207	33,045	5.2	1	2	4	7	10
208	10,244	2.9	1	1	2	4	5
209	401,363	4.9	3	3	4	5	7
210	123,436	6.9	3	4	6	8	11
211	30,259	4.8	3	4	4	6	7
212	10	6.4	1	1	3	5	7
213	10,018	9.2	2	4	7	12	18
216	8,808	8.0	1	2	6	11	17
217	17,420	13.4	3	5	9	16	28
218	24,033	5.5	2	3	4	7	10
219	20,076	3.2	1	2	3	4	[illegible]
220	1	1.0	1	1	1	1	1
223	13,406	3.0	1	1	2	4	6
224	11,846	1.9	1	1	1	2	3
225	6,539	5.3	1	2	4	7	11
226	5,895	6.5	1	2	4	8	14
227	4,883	2.6	1	1	2	3	5
228	2,553	4.1	1	1	3	5	9
229	1,274	2.3	1	1	2	3	5
230	2,474	5.6	1	2	3	7	12
232	825	2.7	1	1	1	2	[illegible]
233	10,014	7.4	1	3	6	10	15
234	5,408	3.1	1	1	2	4	7
235	5,150	4.9	1	2	4	6	9
236	40,417	4.6	1	3	4	6	[illegible]
237	1,790	3.7	1	2	3	5	7
238	9,003	8.6	3	4	7	10	17
239	46,422	6.3	2	3	5	[illegible]	12
240	12,147	6.6	2	3	5	8	13
241	3,197	3.8	1	2	3	5	7
242	2,621	6.9	2	3	5	9	14
243	97,186	4.7	1	2	4	6	9
244	14,757	4.7	1	2	4	6	[illegible]
245	5,890	3.3	1	2	3	4	6
246	1,501	3.8	1	2	3	5	7
247	20,607	3.3	1	1	3	4	7
248	14,008	4.9	1	3	4	6	9
249	13,006	3.6	1	1	2	4	7
250	3,835	4.1	1	2	3	5	[illegible]
251	2,403	2.8	1	1	3	3	5
253	22,265	4.7	2	3	4	6	8
254	10,865	3.2	1	2	3	4	5
256	6,774	5.1	1	2	4	6	10
257	15,803	2.6	1	1	2	3	5
258	15,399	1.8	1	1	2	2	3
259	3,531	2.7	1	1	1	3	6
260	4,255	1.4	1	1	1	1	2
261	1,801	2.1	1	1	1	2	4
262	674	4.3	1	1	3	6	9
263	23,297	11.5	3	5	8	14	22
264	3,898	6.6	2	3	5	[illegible]	13
265	4,132	6.6	1	2	4	[illegible]	14
266	2,567	3.2	1	1	2	4	7
267	242	4.4	1	1	3	6	10
268	931	3.8	1	1	2	4	[illegible]
269	9,911	8.5	2	3	7	11	17
270	2,824	3.6	1	1	2	5	7
271	19,513	7.2	2	4	6	9	14
272	5,770	6.0	2	3	5	7	12
273	1,351	4.0	1	2	3	5	8
274	2,328	6.5	1	3	5	8	13
275	232	3.6	1	1	2	4	7
276	1,333	4.5	1	2	4	6	[illegible]
277	101,243	5.7	2	3	5	7	10

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY 2002 Medpar Update March 2003 Grouper V21.0]

DRG	Number of disharges	Arithmetic mean length of stay	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
278	32,701	4.2	2	2	4	5	7
279	10	5.3	2	2	3	7	7
280	18,038	4.1	1	2	3	5	8
281	7,650	2.9	1	1	2	4	5
283	6,106	4.7	1	2	4	6	9
284	2,039	2.9	1	1	2	4	6
285	7,012	10.5	3	5	8	13	20
286	2,511	5.9	2	3	4	7	12
287	6,330	10.3	3	5	[illegible]	13	20
288	5,684	5.0	2	3	4	5	[illegible]
289	6,977	2.7	1	1	1	2	6
290	10,000	2.2	1	1	1	2	4
291	60	1.6	1	1	1	2	3
292	6,576	10.5	2	4	8	14	21
293	368	4.7	1	1	3	6	9
294	99,279	4.5	1	2	3	6	9
295	3,603	4.0	1	2	3	5	7
296	281,526	5.1	1	2	4	6	10
297	48,952	3.3	1	2	3	4	6
298	117	3.1	1	1	2	4	6
299	1,291	5.5	1	2	4	7	11
300	18,877	6.1	2	3	5	8	12
301	3,649	3.6	1	2	3	4	7
302	8,941	8.5	4	5	6	9	15
303	21,890	8.0	3	4	6	9	15
304	12,646	8.9	2	4	6	11	18
305	3,058	3.5	1	2	3	4	7
306	7,087	5.4	1	2	3	7	12
307	2,041	2.1	1	1	2	2	3
308	7,321	6.2	1	2	4	8	14
309	4,198	2.1	1	1	1	2	4
310	24,966	4.4	1	1	3	6	10
311	7,518	1.8	1	1	1	2	3
312	1,532	4.6	1	1	3	6	10
313	558	2.3	1	1	1	3	5
314	2	40.5	1	1	80	80	80
315	34,371	7.0	1	1	4	9	16
316	120,183	6.5	2	3	5	8	13
317	2,045	3.6	1	1	2	4	7
318	5,811	6.1	1	3	5	[illegible]	12
319	416	2.9	1	1	2	4	6
320	188,879	5.3	2	3	4	6	10
321	31,494	3.7	1	2	3	5	7
322	55	3.3	1	2	3	4	5
323	20,049	3.2	1	1	2	4	6
324	7,086	1.9	1	1	1	2	4
325	9,360	3.8	1	2	3	5	7
326	2,755	2.6	1	1	2	3	5
327	7	2.6	1	1	2	3	4
328	748	3.7	1	1	3	5	[illegible]
329	92	2.1	1	1	1	3	5
331	51,750	5.6	1	3	4	7	11
332	5,046	3.2	1	1	2	4	[illegible]
333	269	5.7	1	2	3	7	11
334	10,565	4.6	2	3	4	5	[illegible]
335	12,782	3.0	2	2	3	4	5
336	36,048	3.4	1	2	2	4	7
337	29,654	2.0	1	1	2	2	3
338	941	5.5	1	2	3	7	13
339	1,491	4.8	1	1	3	6	11
340	1	2.0	2	2	2	2	2
341	3,599	3.2	1	1	2	3	7
342	694	3.2	1	1	2	4	7
344	3,598	2.5	1	1	1	2	5
345	1,376	4.9	1	1	3	6	11
346	4,919	5.9	2	3	5	[illegible]	12
347	318	3.0	1	1	2	4	[illegible]
348	3,416	4.3	1	2	3	5	[illegible]
349	619	2.5	1	1	2	3	5
350	6,778	4.5	2	2	4	6	[illegible]

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY 2002 Medpar Update March 2003 Grouper V21.0]

DRG	Number of disharges	Arithmetic mean length of stay	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
352	968	4.0	1	2	3	5	8
353	2,585	6.5	2	3	5	7	12
354	7,455	5.7	3	3	4	6	10
355	5,602	3.2	2	2	3	4	5
356	26,093	2.1	1	1	2	3	3
357	5,648	8.4	3	4	6	10	16
358	21,749	4.2	2	2	3	5	7
359	32,221	2.6	1	2	2	3	4
360	15,906	2.8	1	1	2	3	4
361	348	3.2	1	1	2	3	7
362	5	1.4	1	1	1	2	2
363	2,529	3.6	1	2	2	4	[illegible]
364	1,643	4.1	1	1	3	5	[illegible]
365	1,842	8.2	1	3	5	10	17
366	4,601	6.7	1	3	5	8	14
367	489	3.1	1	1	2	4	7
368	3,592	6.6	2	3	5	8	13
369	3,510	3.3	1	1	2	4	7
370	1,390	5.8	2	3	4	5	9
371	1,764	3.5	2	3	3	4	5
372	979	3.5	2	2	2	3	[illegible]
373	4,246	2.3	1	2	2	3	3
374	100	3.0	2	2	2	3	[illegible]
376	332	3.5	1	2	2	4	7
377	53	4.1	1	2	3	5	[illegible]
378	175	2.6	1	1	2	3	[illegible]
379	365	3.0	1	1	2	3	5
380	98	2.0	1	1	1	2	3
381	194	1.9	1	1	1	2	4
382	49	1.7	1	1	1	2	[illegible]
383	2,031	3.8	1	2	3	4	7
384	133	2.6	1	1	2	3	[illegible]
385	2	1.5	1	1	2	2	[illegible]
387	1	55.0	55	55	55	55	55
392	2,292	9.7	3	4	4	7	12
393	1	4.0	4	4	4	4	4
394	2,614	7.6	1	2	5	9	17
395	108,545	4.3	1	2	3	5	9
396	19	4.2	1	1	2	5	9
397	19,105	5.2	1	2	4	6	10
398	18,238	5.9	2	3	5	7	11
399	1,698	3.5	1	2	3	4	[illegible]
401	5,876	11.5	2	5	9	15	23
402	1,480	4.0	1	1	3	5	9
403	32,056	8.1	2	3	[illegible]	10	17
404	4,368	4.1	1	2	3	5	[illegible]
405	1	31.0	31	31	31	31	31
406	2,435	9.7	2	4	7	12	20
407	645	4.1	1	2	3	5	7
408	2,131	8.2	1	2	5	10	20
409	2,166	6.2	2	3	4	6	12
410	28,518	4.1	1	2	4	5	[illegible]
411	7	2.3	1	1	2	2	4
412	17	3.6	1	1	3	6	7
413	5,371	7.0	2	3	5	9	14
414	638	4.2	1	2	3	5	[illegible]
415	43,615	14.4	4	6	11	18	28
416	193,642	7.4	2	4	6	9	14
417	41	5.7	2	2	5	7	12
418	26,059	6.3	2	3	5	8	12
419	16,513	4.6	1	2	4	6	[illegible]
420	3,233	3.4	1	2	3	4	[illegible]
421	10,805	4.1	1	2	3	5	[illegible]
422	[illegible]	3.7	1	2	2	3	[illegible]
423	8,149	8.3	2	3	6	10	17
424	1,264	13.1	2	4	9	15	26
425	16,274	3.8	1	2	3	5	[illegible]
426	4,619	4.5	1	2	3	6	[illegible]
427	1,614	4.4	1	2	3	5	[illegible]
428	800	7.1	1	2	5	8	14

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY 2002 Medpar Update March 2003 Grouper V21.0]

DRG	Number of disharges	Arithmetic mean length of stay	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
429	27,358	5.9	2	3	4	7	11
430	65,641	7.8	2	3	6	10	16
431	319	6.8	1	2	4	7	12
432	454	4.0	1	2	3	5	[illegible]
433	5,603	3.1	1	1	2	4	6
439	1,532	8.2	1	3	5	9	17
440	5,838	9.1	2	3	6	11	19
441	690	3.1	1	1	2	4	[illegible]
442	17,683	8.5	1	3	6	10	18
443	3,949	3.4	1	1	3	4	7
444	5,831	4.2	1	2	3	5	[illegible]
445	2,592	2.9	1	1	2	4	5
447	6,551	2.5	1	1	2	3	5
448	1	1.0	1	1	1	1	1
449	33,429	3.7	1	1	3	4	7
450	7,534	2.0	1	1	1	2	4
451	1	1.0	1	1	1	1	1
452	25,827	4.9	1	2	3	6	10
453	5,733	2.8	1	1	2	3	5
454	4,822	4.2	1	2	3	5	[illegible]
455	1,086	2.4	1	1	2	3	5
461	5,012	3.7	1	1	2	4	[illegible]
462	9,763	10.9	4	6	9	14	19
463	27,225	4.0	1	2	3	5	8
464	7,273	3.0	1	1	2	4	6
465	203	3.9	1	1	1	3	6
466	1,761	4.0	1	1	2	4	7
467	1,126	3.6	1	1	2	3	6
468	51,697	12.8	3	6	10	16	25
471	13,425	5.4	3	3	4	[illegible]	[illegible]
473	8,123	12.4	2	3	7	17	32
475	110,111	11.2	2	5	9	15	22
476	3,674	11.1	2	5	10	15	21
477	26,494	8.3	1	3	6	11	17
478	108,594	7.3	1	3	5	9	15
479	24,163	3.2	1	1	2	4	7
480	627	21.1	6	8	12	22	47
481	867	21.8	13	17	20	24	33
482	5,312	12.5	4	6	9	15	24
483	45,887	39.5	15	22	33	49	70
484	346	14.5	2	6	11	21	30
485	3,279	9.9	4	5	7	12	19
486	2,225	12.8	1	6	10	17	26
487	3,908	7.2	1	3	6	9	15
488	756	17.0	4	7	13	22	36
489	13,475	8.6	2	3	6	10	18
490	5,502	5.5	1	2	4	7	11
491	15,451	3.4	1	2	3	4	[illegible]
492	3,115	14.9	3	5	7	25	33
493	59,856	6.0	1	3	5	[illegible]	11
494	29,005	2.5	1	1	2	3	5
495	200	16.1	7	9	12	19	30
496	2,506	8.9	3	[illegible]	[illegible]	11	18
497	22,093	6.3	3	4	5	7	11
498	15,887	4.0	2	3	4	5	6
499	34,803	4.5	1	2	3	6	[illegible]
500	50,192	2.4	1	1	2	3	4
501	2,615	10.6	4	5	[illegible]	13	20
502	784	6.2	3	4	5	7	11
503	6,020	3.9	1	2	3	5	7
504	128	28.0	7	13	21	38	55
505	136	5.6	1	1	1	4	10
506	926	16.9	4	7	13	21	35
507	346	9.1	2	4	7	13	19
508	634	7.8	2	3	5	10	17
509	161	4.3	1	2	3	5	9
510	1,660	6.7	1	3	5	[illegible]	15
511	592	4.7	1	1	3	6	10
512	505	13.2	6	[illegible]	10	15	23
513	215	10.0	5	6	8	10	16

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY 2002 Medpar Update March 2003 Grouper V21.0]

DRG	Number of disharges	Arithmetic mean length of stay	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
515	8,312	5.2	1	1	3	7	12
516	33,015	4.6	2	2	4	5	[illegible]
517	68,536	2.5	1	1	1	3	5
518	49,374	3.4	1	1	2	4	7
519	9,057	5.1	1	1	3	6	12
520	13,115	2.1	1	1	1	2	4
521	30,971	5.7	2	3	4	7	11
522	6,047	9.6	4	5	8	12	20
523	15,530	4.1	1	2	3	5	7
524	133,080	3.4	1	2	3	4	6
525	584	16.8	1	4	9	18	37
526	51,533	NA	NA	NA	NA	NA	NA
527	135,957	NA	NA	NA	NA	NA	NA
528	1,596	17.3	6	10	15	22	32
529	3,671	8.2	1	3	5	11	19
530	2,698	3.6	1	2	3	4	7
531	3,859	9.9	2	4	7	13	20
532	2,973	3.9	1	1	3	5	[illegible]
533	43,392	4.1	1	1	2	5	[illegible]
534	52,512	2.0	1	1	1	2	4
535	6,099	10.9	2	6	9	14	21
536	20,841	5.8	1	2	4	[illegible]	12
537	6,921	7.0	1	3	5	9	14
538	6,484	2.9	1	1	2	4	6
539	4,472	11.2	2	4	8	15	24
540	1,894	4.0	1	1	3	5	[illegible]
	11,761,542						

TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS—JULY 2003

State	Urban	Rural
Alabama	0.327	0.397
Alaska	0.402	0.662
Arizona	0.34	0.449
Arkansas	0.425	0.413
California	0.322	0.408
Colorado	0.394	0.532
Connecticut	0.504	0.542
Delaware	0.56	0.483
District of Columbia	0.38	.....
Florida	0.33	0.345
Georgia	0.449	0.444
Hawaii	0.402	0.447
Idaho	0.541	0.513
Illinois	0.383	0.475
Indiana	0.484	0.514
Iowa	0.456	0.583
Kansas	0.367	0.549
Kentucky	0.451	0.461
Louisiana	0.377	0.459
Maine	0.542	0.503
Maryland	0.76	0.82
Massachusetts	0.499	0.523
Michigan	0.437	0.534
Minnesota	0.461	0.614
Mississippi	0.432	0.418
Missouri	0.389	0.454
Montana	0.51	0.512
Nebraska	0.415	0.525
Nevada	0.284	0 461
New Hampshire	0.523	0.586
New Jersey	0.335	.....
New Mexico	0.474	0.477
New York	0.469	0.583

TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS—JULY 2003—Continued

State	Urban	Rural
North Carolina	0.503	0.468
North Dakota	0.64	0.619
Ohio	0.475	0.567
Oklahoma	0.371	0.467
Oregon	0.525	0.578
Pennsylvania	0.368	0.497
Puerto Rico	0.479	0.569
Rhode Island	0.484	.....
South Carolina	0.435	0.451
South Dakota	0.484	0.535
Tennessee	0.407	0.436
Texas	0.372	0.475
Utah	0.481	0.581
Vermont	0.522	0.596
Virginia	0.427	0.495
Washington	0.532	0.581
West Virginia	0.562	0.527
Wisconsin	0.505	0.581
Wyoming	0.442	0.618

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS—JULY 2003

State	Ratio
Alabama	0.040
Alaska	0.053
Arizona	0.034
Arkansas	0.042
California	0.031
Colorado	0.045

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS—JULY 2003—Continued

State	Ratio
Connecticut	0.036
Delaware	0.048
District of Columbia	0.027
Florida	0.038
Georgia	0.047
Hawaii	0.041
Idaho	0.046
Illinois	0.037
Indiana	0.050
Iowa	0.046
Kansas	0.045
Kentucky	0.045
Louisiana	0.043
Maine	0.036
Maryland	0.013
Massachusetts	0 049
Michigan	0.044
Minnesota	0.042
Mississippi	0.041
Missouri	0.040
Montana	0.049
Nebraska	0.047
Nevada	0.032
New Hampshire	0.058
New Jersey	0.030
New Mexico	0.044
New York	0.046
North Carolina	0.046
North Dakota	0.065
Ohio	0.044
Oklahoma	0.040
Oregon	0.043
Pennsylvania	0.035

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS—JULY 2003—Continued

State	Ratio
Puerto Rico	0.046
Rhode Island	0.029
South Carolina	0.046
South Dakota	0.051
Tennessee	0.046
Texas	0.043
Utah	0.045
Vermont	0.046
Virginia	0.048
Washington	0.052
West Virginia	0.044
Wisconsin	0.049
Wyoming	0.050

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY 2004

Provider No.	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
010005	01	3440	3440
010010	01	3440	3440
010012	01	2880	
010022	01	2880	
010035	01	1000	
010036	01	2750	
010043	01	1000	1000
010044	01	25	
010072	01	0450	0450
010089	01	1000	
010101	01	0450	0450
010118	01	5240	
010120	01	5160	
010121	01	5240	
010126	01	2180	
010150	01	5240	
010158	01	2030	
020008	02	0380	
030007	03	2620	
030012	03	6200	
030033	03	2620	
030043	03	8520	
040014	04	4400	
040017	04	26	
040019	04	4920	
040020	3700	4920	
040026	04	4400	
040027	04	7920	
040041	04	4400	
040066	04	4400	
040069	04	4920	
040072	04	4400	
040076	04	4400	
040078	04	4400	
040080	04	3700	
040088	04	7680	
040091	04	8360	
040107	04	8360	
040119	04	4400	
050042	05	6690	
050045	05		7320
050071	7400	5775	
050073	8720	5775	
050101	8720	5775	
050150	05	6920	
050174	7500	8720	
050228	7360	5775	
050230	5945	4480	
050236	8735	4480	4480
050251	05	6720	
050296	05	7120	
050325	05	5170	
050335	05	5170	
050419	05	6690	
050457	7360	5775	
050494	05	6920	
050510	7360	5775	
050541	7360	5775	

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY 2004—Continued

Provider No.	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
050549	8735	4480	
050569	05	7500	
050594	5945	4480	
050609	5945	4480	
050668	7360	5775	
050686	6780	5945	
060001	3060	2080	2080
060003	1125	2080	2080
060013	06	0200	
060023	2995	6520	
060027	1125	2080	2080
060049	06	2080	
060057	06	2995	
060075	06	2995	
060076	06	3060	
060096	06	2080	
060103	1125	2080	2080
070006	5483	5600	
070018	5483	5600	
070033	5483	5600	
070034	5483	5600	
080002	08		0720
080004	2190	9160	
080007	08	0560	
100022	5000	2680	
100023	10	5960	
100024	10	5000	
100045	2020		5960
100049	10	3980	
100098	10	8960	8960
100103	10	3600	3600
100105	10	2710	2710
100109	10	5960	
100150	10	5000	
100176	8960	2710	
100211	8280	3980	
100217	10	2710	2710
100232	10	5790	2900
100239	8280	7510	
100249	10	8280	
100268	8960	2680	
110001	11	0520	0520
110002	11	0520	
110003	11	3600	
110016	11	1800	
110023	11	0520	
110025	11	3600	3600
110029	11	0520	
110038	11	10	
110040	11	0500	0500
110041	11	0500	
110050	11	0520	
110054	11	0520	
110074	0500		0520
110075	11	7520	
110118	11	0120	
110122	11	10	
110150	11	4680	
110168	11	0520	
110187	11	0520	
110188	11	0520	
110189	11	0520	
110205	11	0520	
120028	12	3320	
130002	13	29	
130003	13	50	
130011	13	50	
130018	13	6340	
130026	13	6340	
130028	6340	7160	

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY 2004—Continued

Provider No.	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
130049	13	7840	
130060	13	1080	
140014	6120	1040	
140015	14	7040	
140027	14	1960	
140031	14	1400	
140032	14	7040	
140034	14	7040	7040
140040	14	6120	
140043	14	6880	
140046	14	7040	
140058	14	7880	
140064	14	1960	
140086	14	7040	7040
140093	14	1400	
140102	14	7880	7880
140110	14	6120	
140112	14	6120	6120
140141	14	7040	7040
140143	14	6120	
140160	14	6880	
140161	14	1600	
140164	14	7040	
140189	14	1400	
140230	14	1400	1400
140234	14	6120	
140245	14		7040
140271	14	7800	7800
150002	2960	1600	1600
150004	2960	1600	1600
150006	15	7800	
150008	2960	1600	1600
150011	15	3480	3480
150015	15	1600	1600
150027	15		3480
150030	15	3480	3480
150034	2960	1600	1600
150036	15	3850	
150048	15	3200	
150051	1020		3480
150062	15	3480	3480
150065	15	3480	
150067	15		3480
150069	15	1640	1640
150076	15	7800	
150090	2960	1600	1600
150096	15	2330	
150102	15	7800	
150105	15	3480	
150112	15	3480	3480
150125	2960	1600	1600
150126	2960	1600	1600
150132	2960	1600	1600
150133	15	2330	
150146	15	2330	
150147	2960	1600	1600
160001	16	2120	
160016	16	2120	
160026	16	2120	
160030	16	2120	
160037	16	24	
160057	16	3500	
160064	16	24	
160080	16	6880	
160088	16	2120	
160089	16	2120	
160094	16	8920	
160122	16	14	
170001	17	9040	
170006	17	3710	

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY 2004—Continued

Provider No.	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
170010	17	8560	
170012	17	9040	
170013	17	9040	
170014	17	3760	
170020	17	9040	
170022	17	7000	
170023	17	9040	
170025	17	9040	
170033	17	9040	
170045	17	8440	
170058	17	3710	
170060	17	28	
170089	17	0320	
170094	17	8440	
170120	17	3710	
170131	17	8440	8440
170145	17	8560	
170166	17	0320	
170175	17	9040	
180005	18	3400	
180011	18	4280	
180012	18	4520	
180013	18	5360	
180016	18	4520	
180018	18	4280	
180027	18	1660	
180028	18	3400	
180029	18	3660	
180044	18	3400	
180048	18	4280	
180054	18	1660	
180066	18	5360	
180069	18	3400	
180078	18	3400	
180102	18	1660	
180104	18	1660	
180116	18	1660	
180124	18	5360	
180125	18	3400	
180127	18	4520	
180132	18	4280	
180139	18	4280	
190001	19		5560
190003	19	3880	
190015	19	5560	
190025	19	3880	
190049	19		5560
190054	19	3880	
190083	19	5200	
190086	19	5200	
190099	19	3880	
190106	19	3880	
190131	19	5560	
190218	19	0220	
200002	20	6403	
200020	6403	1123	1123
200024	4243	6403	
200034	4243	6403	
200039	20	6403	
200040	6403		1123
200050	20	0733	
200063	20	6403	
220060	1123	0743	
220077	8003	3283	
220123	22	0743	
230022	23	0440	
230027	23	3000	3000
230030	23	6960	
230036	23	6960	
230037	23	0440	

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY 2004—Continued

Provider No.	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
230040	23	3720	3000
230054	23	3080	
230080	23	6960	
230096	23	3720	
230097	23	3000	
230105	23	6960	
230106	23	3000	
230121	23	2640	2640
230188	23	6960	6960
230199	23	0870	0870
230235	23	6960	6960
230253	23	2160	
240011	24	5120	5120
240013	24	5120	
240014	24	5120	
240016	24	2520	
240018	24		5120
240023	24	5120	
240045	24	2240	
240052	24	2520	
240064	24	2240	
240069	24	6820	
240071	24		5120
240072	24	2240	
240075	24	6980	
240088	24	6980	
240089	24	5120	
240119	24	2240	
240121	24	2240	
240139	24	5120	
240142	24	6980	
240152	24	5120	
240187	24	5120	
250002	25	2650	
250004	25	4920	
250009	25	3580	
250030	25	3560	
250031	25	3560	
250034	25	4920	
250042	25	4920	
250069	25	3560	
250078	3285	0920	
250081	25	3560	
250082	25	6420	
250088	25	0760	
250094	3285	0920	
250097	25	0760	
250100	25	8600	
250101	25	3560	
250104	25	3560	
250122	25	19	
250126	25	4920	
260009	26	3760	
260011	26	1740	
260015	26	3700	
260017	26	7040	
260022	26	1740	
260025	26	7040	
260034	26	3760	
260047	26	1740	
260064	26	1740	
260074	26	1740	
260078	26	7920	
260094	26	7920	
260110	26	7040	7040
260113	26	14	
260116	26	7040	
260119	26	3700	
260120	26	3700	
260127	26	7040	

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY 2004—Continued

Provider No.	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
260131	26	1740	
260164	26		7040
260183	26	7040	
260186	26	1740	
270002	27	0880	
270003	27	3040	
270011	27	3040	
270017	27	5140	
270051	27	5140	
270057	27	0880	
270082	27	3040	
280009	28	4360	
280023	28	4360	
280032	28	4360	
280054	28	4360	
280058	28	4360	
280061	28	53	
280065	28	3060	
280077	28	5920	
280111	28	5920	
280125	28	7720	
290006	29	6720	
290008	29	4120	
300003	30	1123	
300005	30	1123	
300019	30	1123	1123
300024	30		1123
310001	0875	5600	
310002	5640	5600	
310003	3640	5600	
310015	5640	0875	
310021	8480	5190	
310031	6160	5190	
310032	8760	6160	6160
310038	5015	5600	
310045	0875	5600	
310047	0560	6160	
310048	5015	5640	
310064	0560	6160	
310070	5015	5600	
310076	5640	5600	
310087	8760	6150	
310088	0560	6160	
310119	5640	5600	
320005	32	0200	
320006	32	7490	
320011	32	7490	
320013	32	7490	
320063	32	5800	
320065	32	5800	
330001	5660	0875	0875
330004	33	5660	
330023	2281	5660	5600
330027	5380	5600	
330084	33	1303	
330085	33	8160	
330103	33		1280
330106	5380	5600	
330126	5660	0875	0875
330135	5660	0875	0875
330136	33	8160	
330157	33	8160	
330181	5380	5600	
330182	5380	5600	
330205	5660	0875	0875
330209	5660	0875	0875
330224	33	3283	
330235	8160		6840
330239	3610	2360	
330250	33	1303	

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY 2004—Continued

Provider No.	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
330264	5660	0875	0875
330307	33	8160	
330386	33	5660	
340003	34	3120	
340008	34	2560	
340010	2980	6640	
340013	34	1520	
340017	34	0480	
340021	34	1520	
340023	34	0480	
340027	34	3150	
340039	34		1520
340050	34	2560	
340051	34	3290	
340052	3120	1520	
340064	34	3120	
340068	34	9200	
340071	34	6640	6640
340088	34	0480	
340109	34		5720
340115	34	6640	6640
340124	34	6640	6640
340126	34	6640	6640
340143	3290	1520	
340147	6895	6640	
350003	35	1010	
350005	35	2985	
350006	35	1010	
350009	35	2520	
360002	36		1680
360008	36	3400	
360010	36	0080	
360011	36	1840	1840
360013	36	2000	
360014	36	1840	
360024	36	1680	1680
360025	36	1680	1680
360036	36	0080	
360039	36	1840	1840
360046	3200		1640
360054	36	1480	
360065	36	1680	1680
360071	36	4320	4320
360076	3200		1640
360078	0080	1680	1680
360081	8400		2160
360084	1320	0080	
360088	36	1840	
360090	8400		2160
360092	36	1840	1840
360095	36	8400	
360107	36	8400	
360108	36	4800	4800
360109	36	1840	1840
360112	8400	0440	
360121	36	0440	
360132	3200		1640
360142	36		1640
360150	0080		1680
360159	36	1840	
360175	36	1840	
360197	36	1840	1840
360211	8080		6280
370004	37	3710	
370006	37	8560	
370014	37	7640	
370015	37	8560	
370018	37	8560	
370022	37	4200	
370023	37	4200	

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY 2004—Continued

Provider No.	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
370025	37	8560	
370034	37	2720	
370047	37	7640	
370048	37	8360	
370049	37	5880	
370054	37	5880	
370084	37	2720	
370103	37	45	
370153	37	4200	
370200	37	5880	
380001	38	6440	
380002	38	4890	
380006	38		6440
380022	38	1890	
380027	38	2400	
380040	38	2400	
380047	38	2400	
380050	38	4890	
380051	7080		6440
380065	38	2400	
380070	38	6440	
380084	7080	6440	
380090	38	2400	
390006	39	3240	
390008	39	6280	6280
390013	39	3240	
390016	39	6280	6280
390017	39	6280	6280
390030	39	0240	6680
390031	39	6580	6680
390048	39	3240	
390052	39	0280	
390065	39	8840	9280
390079	39	0960	
390091	39	6280	
390093	39	6280	
390110	3680	6280	
390113	39	9320	
390133	0240	6160	
390138	39	8840	
390150	39	6280	
390151	39	8840	
390163	39	6280	
390181	39	6680	6680
390183	39	6680	6680
390189	39	3240	
390197	0240	6160	
390201	39	5660	5640
390263	0240	6160	
400018	40	1310	
410001	6483	1123	1123
410004	6483	1123	1123
410005	6483	1123	1123
410006	6483	1123	1123
410007	6483	1123	1123
410008	6483	1123	1123
410009	6483	1123	1123
410010	6483	1123	1123
410011	6483	1123	1123
410012	6483	1123	1123
410013	6483	1123	1123
420020	42	1440	
420030	42	1440	
420036	42	1520	
420068	42	0600	
420070	8140	1760	
420071	42	0600	
420080	42	7520	
420085	5330	9200	
430004	43	6660	

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY 2004—Continued

Provider No.	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
430008	43	24	
430012	43	7760	
430013	43	7760	
430014	43	2520	
430015	43	6660	
430047	43	28	
430048	43	53	
430089	43	7720	
440008	44	3580	
440020	44	3440	
440024	44	1560	
440050	44	0480	
440058	44	1560	
440059	44	5360	
440060	44	3580	
440067	44	3840	
440068	44	3840	
440072	44	4920	
440073	44	5360	
440148	44	5360	
440175	44	3440	
440180	44	3840	
440185	44	1560	
440186	44	5360	
440187	44	18	
440192	44	5360	
440200	44	5360	
440203	44	1560	
450007	45	7240	
450014	45	8750	
450080	45	4420	
450085	45	9080	
450098	45	4420	
450099	45	0320	
450140	45	5800	
450144	45	5800	
450146	45	0320	
450163	45	1880	
450178	45	5800	
450187	45	3360	
450192	45	1920	
450194	45	1920	
450196	45	1920	
450211	45	3360	
450214	45	3360	
450224	45	8640	
450347	45	3360	
450351	45	2800	
450353	45	1880	
450373	45	4420	
450395	45	3360	
450400	45	8800	
450438	45	0640	
450447	45	1920	
450451	45	2800	
450484	45	3360	
450508	45	8640	
450534	45	0320	
450623	45	1920	
450626	45	8750	
450653	45	5800	
450656	45	8640	
450694	45	3360	
450747	45	1920	
450755	45	4600	
450763	45	0320	
450770	45	0640	
460011	46	6520	
460021	46	4120	
460027	46	6520	

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY 2004—Continued

Provider No.	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
460032	46	6520	
460036	46	6520	
460039	46	7160	
470001	47	30	
470011	47	1123	1123
470012	47	6323	
470018	47	1123	1123
490001	49	3660	
490004	49	1540	
490005	49	8840	
490013	49	4640	
490018	49	4640	
490038	49	3660	
490047	49	8840	
490066	5720	6760	
490079	49	3120	3120
490126	49	6800	
500002	50	6740	
500003	50	0860	
500007	50	0860	
500016	50	7600	
500031	50	5910	
500041	50	6440	
500059	50	7600	
500072	50	7600	
500079	8200		7600
510001	51	6280	
510002	51	6800	
510006	51	6280	
510024	51	6280	6280
510028	51	1480	
510046	51	1480	
510047	51	6280	
510048	51	3400	
510062	51	1480	
510070	51	1480	
510071	51	1480	
520002	52	8940	
520006	52	8940	
520018	52	5120	
520021	3800	1600	1600
520028	52	4720	
520032	52	4720	
520037	52	8940	
520059	6600	5080	5080
520066	3620	4720	
520071	52	5080	5080
520076	52	4720	
520084	52	4720	
520088	52	5080	
520094	6600	5080	5080
520096	6600	5080	5080
520102	52	5080	5080
520107	52	3080	
520113	52	3080	
520116	52	5080	5080
520152	52	3080	
520173	52	2240	
520189	3800	1600	1600
530002	53	1350	
530009	53	1350	
530015	53	6340	
530025	53	2670	
530032	53	7160	

TABLE 10.—MEAN AND .75 STANDARD DEVIATION BY DIAGNOSIS-RELATED GROUP (DRG)—JULY 2003

DRG	Cases	Mean + .75 standard deviation
1	23,157	$71,862
2	11,535	$41,916
3	3	$57,168
6	350	$15,743
7	14,489	$55,309
8	4,031	$33,403
9	1,677	$27,210
10	18,339	$25,124
11	3,244	$17,654
12	51,660	$17,776
13	6,919	$16,312
14	233,816	$24,738
15	92,167	$19,059
16	9,810	$25,016
17	2,700	$13,796
18	29,250	$20,071
19	8,385	$14,298
20	6,112	$57,114
21	1,869	$30,726
22	2,746	$21,754
23	11,062	$16,410
24	58,122	$19,963
25	26,945	$12,212
26	18	$22,836
27	4,348	$27,026
28	13,770	$26,999
29	5,226	$14,276
30	2	$19,365
31	3,834	$18,092
32	1,866	$11,256
34	23,474	$19,760
35	7,325	$12,760
36	2,079	$11,821
37	1,351	$21,123
38	94	$9,781
39	547	$12,494
40	1,508	$17,526
42	1,553	$14,008
43	93	$11,353
44	1,185	$13,306
45	2,622	$14,326
46	3,418	$16,038
47	1,373	$10,908
49	2,341	$34,744
50	2,385	$15,810
51	241	$16,991
52	216	$15,789
53	2,435	$23,943
55	1,458	$18,384
56	458	$16,976
57	700	$21,430
59	113	$16,063
61	249	$24,772
62	2	$20,652
63	2,964	$28,015
64	3,064	$27,189
65	39,700	$11,389
66	7,690	$11,535
67	379	$15,758
68	11,373	$12,869
69	3,665	$9,805
70	29	$6,582
71	79	$13,057
72	949	$13,674
73	7,561	$16,376
75	42,731	$60,129
76	43,909	$56,525
77	2,427	$23,987
78	38,870	$24,907
79	165,957	$32,680
80	7,866	$16,846
81	5	$20,229
82	63,317	$28,781
83	6,565	$19,177
84	1,552	$10,644
85	21,981	$24,242
86	2,201	$13,781
87	60,101	$27,456
88	396,200	$17,702
89	523,048	$20,511
90	47,344	$11,871
91	44	$14,737
92	15,549	$24,280
93	1,738	$14,448
94	12,597	$22,970
95	1,622	$12,263
96	55,628	$14,761
97	28,174	$10,803
98	9	$14,090
99	20,984	$13,983
100	8,129	$10,369
101	21,861	$17,290
102	5,503	$10,797
103	484	$378,244
104	20,223	$150,559
105	28,716	$108,046
106	3,432	$136,812
107	81,816	$99,133
108	6,341	$109,106
109	56,282	$73,253
110	53,777	$81,343
111	9,323	$49,746
113	39,244	$56,405
114	8,198	$33,220
115	19,499	$69,161
116	114,338	$44,903
117	4,622	$27,878
118	8,168	$31,457
119	1,211	$27,147
120	37,745	$46,550
121	161,616	$30,683
122	75,737	$19,715
123	38,021	$32,143
124	133,344	$27,371
125	90,371	$20,832
126	5,309	$51,405
127	663,251	$20,085
128	7,042	$14,239
129	3,774	$20,775
130	87,289	$18,660
131	26,583	$11,113
132	140,158	$12,462
133	8,475	$10,723
134	40,649	$11,970
135	7,697	$17,958
136	1,166	$11,432
138	204,872	$16,521
139	86,072	$10,173
140	54,193	$10,288
141	107,180	$14,813
142	51,782	$11,382
143	245,795	$10,741
144	93,108	$24,851
145	7,201	$11,714
146	10,627	$52,920
147	2,602	$29,373
148	132,078	$67,116
149	19,892	$27,061
150	20,888	$57,096
151	5,067	$25,243
152	4,490	$37,305
153	2,025	$21,509
154	27,969	$82,200
155	6,498	$25,001
156	4	$16,997
157	8,150	$25,875
158	4,273	$12,709
159	17,842	$26,972
160	11,973	$15,839
161	10,620	$22,659
162	6,290	$12,519
163	[redacted]	$9,397
164	5,322	$45,313
165	2,297	$22,967
166	4,142	$27,527
167	4,013	$16,618
168	1,406	$26,010
169	802	$14,782
170	15,473	$57,315
171	1,495	$23,568
172	30,878	$28,013
173	2,414	$15,971
174	247,933	$19,856
175	34,337	$11,032
176	13,301	$21,548
177	8,939	$18,108
178	3,315	$13,584
179	12,973	$21,773
180	88,999	$19,227
181	26,699	$10,651
182	268,140	$16,395
183	89,558	$11,492
184	69	$9,542
185	5,256	$17,532
186	6	$17,504
187	609	$15,462
188	82,829	$22,197
189	12,856	$12,176
190	75	$16,578
191	9,340	$88,382
192	1,299	$36,558
193	4,733	$68,254
194	638	$31,775
195	3,957	$59,356
196	969	$30,122
197	17,996	$50,435
198	5,289	$23,379
199	1,609	$48,963
200	1,069	$62,346
201	2,100	$75,551
202	26,307	$26,667
203	29,543	$28,095
204	64,510	$22,991
205	27,001	$24,271
206	2,015	$14,280
207	32,214	$22,980
208	9,967	$13,150
209	394,702	$35,979
210	121,348	$33,587
211	29,657	$22,493
212	[redacted]	$31,925
213	9,818	$37,689

TABLE 10.—MEAN AND .75 STANDARD DEVIATION BY DIAGNOSIS-RELATED GROUP (DRG)—JULY 2003—Continued

DRG	Cases	Mean + .75 standard deviation
216	8,691	$41,935
217	17,092	$61,011
218	23,524	$30,313
219	19,672	$19,359
223	13,125	$20,384
224	11,574	$14,926
225	6,390	$22,849
226	5,793	$30,350
227	4,783	$15,628
228	2,495	$22,908
229	1,245	$13,667
230	2,430	$25,765
232	809	$18,306
233	9,829	$40,036
234	5,300	$24,173
235	5,032	$14,695
236	39,468	$13,922
237	1,748	$11,857
238	8,729	$27,480
239	45,525	$20,661
240	11,846	$26,301
241	3,110	$12,646
242	2,542	$23,380
243	94,969	$15,031
244	14,423	$14,330
245	5,746	$9,757
246	1,473	$11,896
247	20,113	$11,410
248	13,674	$17,154
249	12,784	$13,336
250	3,727	$14,018
251	2,332	$9,097
253	21,753	$14,893
254	10,593	$8,759
256	6,586	$16,469
257	15,517	$16,712
258	15,055	$13,056
259	3,486	$17,996
260	4,160	$12,825
261	1,747	$17,565
262	653	$18,615
263	22,868	$41,675
264	3,819	$21,268
265	4,031	$31,156
266	2,516	$17,172
267	238	$20,021
268	895	$23,309
269	9,688	$35,630
270	2,743	$16,079
271	18,989	$20,610
272	5,658	$20,167
273	1,313	$12,601
274	2,264	$24,353
275	223	$12,616
276	1,304	$13,267
277	98,858	$17,235
278	31,750	$10,661
279	10	$15,979
280	17,551	$13,991
281	7,377	$9,589
283	5,976	$14,555
284	1,992	$8,504
285	6,869	$41,732
286	2,477	$39,318
287	6,166	$37,798
288	5,471	$41,746
289	6,830	$18,048
290	9,803	$16,847
291	58	$13,308
292	6,420	$55,995
293	356	$28,741
294	96,631	$15,356
295	3,475	$16,050
296	275,298	$17,000
297	47,552	$9,995
298	109	$9,503
299	1,253	$18,904
300	18,462	$22,372
301	3,554	$12,547
302	8,653	$61,825
303	21,521	$46,383
304	12,430	$47,807
305	3,009	$23,106
306	6,967	$24,014
307	1,983	$11,422
308	7,203	$31,717
309	4,094	$17,613
310	24,593	$22,507
311	7,407	$11,963
312	1,502	$21,429
313	547	$13,534
314	2	$815,660
315	33,535	$41,732
316	117,445	$26,424
317	1,994	$16,978
318	5,685	$24,541
319	403	$14,083
320	184,548	$17,149
321	30,606	$11,011
322	49	$9,127
323	19,641	$16,239
324	6,874	$9,611
325	9,136	$13,204
326	2,696	$8,569
327	7	$7,111
328	732	$15,295
329	93	$10,358
331	50,553	$21,469
332	4,905	$12,274
333	254	$19,142
334	10,300	$27,789
335	12,490	$19,981
336	35,495	$16,280
337	29,140	$10,776
338	929	$23,997
339	1,460	$22,362
341	3,545	$25,849
342	686	$14,916
344	3,549	$26,710
345	1,354	$22,352
346	4,775	$21,343
347	308	$11,845
348	3,361	$15,104
349	604	$9,831
350	6,602	$14,657
352	945	$14,499
353	2,491	$35,744
354	7,324	$28,230
355	5,481	$16,312
356	25,562	$14,230
357	5,570	$44,892
358	21,321	$22,339
359	31,420	$14,957
360	15,538	$16,445
361	339	$21,352
362	5	$16,578
363	2,471	$18,875
364	1,610	$18,054
365	1,815	$42,185
366	4,504	$25,764
367	477	$11,799
368	3,503	$23,599
369	3,419	$12,532
370	1,327	$18,299
371	1,662	$11,458
372	927	$10,237
373	4,076	$6,914
374	89	$13,913
376	316	$11,055
377	47	$21,747
378	171	$14,743
379	349	$7,238
380	98	$8,554
381	188	$10,611
382	48	$4,333
383	1,956	$10,030
384	129	$7,214
385	3	$34,210
389	12	$23,975
392	2,248	$66,268
394	2,567	$38,588
395	105,976	$16,486
396	17	$16,006
397	18,727	$25,519
398	17,860	$24,884
399	1,671	$13,548
401	5,768	$59,903
402	1,454	$22,863
403	31,365	$37,680
404	4,277	$18,437
406	2,391	$53,929
407	634	$24,003
408	2,081	$44,985
409	2,127	$25,574
410	28,001	$21,908
411	7	$7,483
412	15	$11,456
413	5,253	$27,415
414	622	$15,291
415	42,746	$75,112
416	189,451	$32,070
417	[redacted]	$22,076
418	25,456	$21,447
419	16,128	$17,016
420	3,139	$12,214
421	10,563	$14,503
422	66	$12,891
423	7,972	$36,726
424	1,224	$49,024
425	15,914	$13,506
426	4,462	$10,410
427	1,557	$10,483
428	782	$14,266
429	26,797	$15,953
430	64,123	$13,703
431	310	$12,670
432	443	$12,980
433	5,479	$5,805
439	1,493	$34,068
440	5,673	$36,892
441	658	$18,081

TABLE 10.—MEAN AND .75 STANDARD DEVIATION BY DIAGNOSIS-RELATED GROUP (DRG)—JULY 2003—Continued

DRG	Cases	Mean + .75 standard deviation
442	17,291	$48,763
443	3,848	$19,622
444	5,629	$14,813
445	2,485	$9,965
447	6,390	$10,119
449	32,589	$16,465
450	7,304	$8,328
452	25,308	$20,911
453	5,591	$10,522
454	4,691	$16,299
455	1,043	$9,576
461	5,133	$24,128
462	9,531	$19,503
463	26,512	$13,669
464	7,075	$9,864
465	192	$13,169
466	1,684	$14,122
467	1,106	$10,115
468	51,680	$77,692
470	52	$504,684
471	13,167	$54,184
473	7,976	$72,650
475	108,084	$75,747
476	3,608	$46,392
477	25,103	$37,665
478	106,238	$48,149
479	23,387	$27,938
480	610	$193,008
481	819	$122,102
482	5,175	$70,600

TABLE 10.—MEAN AND .75 STANDARD DEVIATION BY DIAGNOSIS-RELATED GROUP (DRG)—JULY 2003—Continued

DRG	Cases	Mean + .75 standard deviation
483	44,784	$328,441
484	334	$110,056
485	3,178	$61,849
486	2,077	$99,908
487	3,701	$40,225
488	760	$99,624
489	13,168	$37,620
490	5,356	$21,486
491	15,098	$31,213
492	3,052	$82,667
493	58,870	$35,610
494	28,431	$18,981
495	191	$165,379
496	2,444	$112,012
497	21,734	$66,414
498	15,556	$49,426
499	34,350	$27,633
500	49,302	$17,736
501	2,580	$51,260
502	761	$27,677
503	5,883	$24,011
504	125	$257,167
505	134	$36,044
506	916	$87,492
507	337	$37,309
508	612	$27,746
509	155	$13,241
510	1,625	$23,313
511	571	$13,248
512	481	$101,931

TABLE 10.—MEAN AND .75 STANDARD DEVIATION BY DIAGNOSIS-RELATED GROUP (DRG)—JULY 2003—Continued

DRG	Cases	Mean + .75 standard deviation
513	206	$107,611
515	8,028	$105,722
516	33,015	$45,394
517	68,536	$35,730
518	55,225	$36,574
519	8,892	$47,738
520	12,823	$29,760
521	30,454	$14,130
522	6,008	$10,049
523	15,103	$7,817
524	130,318	$14,293
525	562	$247,370
526	51,533	$42,080
527	135,957	$33,802
528	1,343	$140,528
529	4,633	$63,385
530	2,807	$24,282
531	3,766	$64,237
532	2,888	$30,290
533	42,601	$32,675
534	51,346	$20,340
535	5,896	$156,207
536	20,103	$118,567
537	6,765	$36,526
538	6,350	$19,355
539	4,388	$69,606
540	1,866	$25,633

TABLE 11.—FY 2004 LTC-DRGS, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY, AND 5/6TH OF THE AVERAGE LENGTH OF STAY

LTC–DRG	Description	Relative weight	Geometric average length of stay	5/6th of the average length of stay
1	[8] CRANIOTOMY AGE >17 W CC	2.0841	40.0	33.3
2	[8] CRANIOTOMY AGE > 17 W/O CC	2.0841	40.0	33.3
3	[8] CRANIOTOMY AGE 0-17	2.0841	40.0	33.3
5	[8] CARPAL TUNNEL RELEASE	0.4964	18.5	15.4
7	[7] PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC	1.5754	41.0	34.1
8	[7] PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC	1.5754	41.0	34.1
9	SPINAL DISORDERS & INJURIES	1.5025	32.9	27.4
10	NERVOUS SYSTEM NEOPLASMS W CC	0.7549	23.4	19.5
11	NERVOUS SYSTEM NEOPLASMS W/O CC	0.7281	22.0	18.3
12	DEGENERATIVE NERVOUS SYSTEM DISORDERS	0.7485	25.8	21.5
13	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	0.7530	25.9	21.5
14	INTRACRANIAL HEMORRHAGE & STROKE W INFARCT	0.9196	27.4	22.8
15	NONSPECIFIC CVA & PRECEREBRAL OCCULUSION W/O INFARCT	0.8714	28.8	24.0
16	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	0.9125	23.9	19.9
17	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	0.5262	20.4	17.0
18	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	0.8225	23.9	19.9
19	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	0.6236	22.7	18.9
20	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	1.0097	24.8	20.6
21	[2] VIRAL MENINGITIS	0.7372	23.5	19.5
22	[2] HYPERTENSIVE ENCEPHALOPATHY	0.7372	23.5	19.5
23	NONTRAUMATIC STUPOR & COMA	0.9033	28.8	24.0
24	SEIZURE & HEADACHE AGE >17 W CC	0.8527	26.2	21.8
25	SEIZURE & HEADACHE AGE >17 W/O CC	0.7727	24.1	20.0
26	[8] SEIZURE & HEADACHE AGE 0-17	0.7372	23.5	19.5
27	TRAUMATIC STUPOR & COMA, COMA >1 HR	1.1929	30.4	25.3
28	TRAUMATIC STUPOR & COMA, COMA >1 HR AGE ≤17 W CC	1.0211	29.0	24.1
29	TRAUMATIC STUPOR & COMA, COMA >1 HR AGE ≤17 W/O CC	0.9056	26.6	22.1
30	[8] TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0-17	0.9562	26.1	21.7
31	[7] CONCUSSION AGE >17 W CC	0.9562	26.1	21.7

TABLE 11.—FY 2004 LTC-DRGS, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY, AND 5/6TH OF THE AVERAGE LENGTH OF STAY—Continued

LTC–DRG	Description	Relative weight	Geometric average length of stay	5/6th of the average length of stay
32	[7] CONCUSSION AGE >17 W/O CC	0.9562	26.1	21.7
33	[8] CONCUSSION AGE 0-17	0.7372	23.5	19.5
34	OTHER DISORDERS OF NERVOUS SYSTEM W CC	0.9140	27.8	23.1
35	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	0.6651	24.5	20.4
36	[8] RETINAL PROCEDURES	0.4964	18.5	15.4
37	[8] ORBITAL PROCEDURES	0.4964	18.5	15.4
38	[8] PRIMARY IRIS PROCEDURES	0.4964	18.5	15.4
39	[8] LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	0.4964	18.5	15.4
40	[5] EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	2.0841	40.0	33.3
41	[8] EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	0.4964	18.5	15.4
42	[8] INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	0.4964	18.5	15.4
43	[8] HYPHEMA	0.4964	18.5	15.4
44	[1] ACUTE MAJOR EYE INFECTIONS	0.4964	18.5	15.4
45	[8] NEUROLOGICAL EYE DISORDERS	0.4964	18.5	15.4
46	[1] OTHER DISORDERS OF THE EYE AGE >17 W CC	0.4964	18.5	15.4
47	[1] OTHER DISORDERS OF THE EYE AGE >17 W/O CC	0.4964	18.5	15.4
48	[8] OTHER DISORDERS OF THE EYE AGE 0-17	0.4964	18.5	15.4
49	[8] MAJOR HEAD & NECK PROCEDURES	1.3569	32.5	27.0
50	[8] SIALOADENECTOMY	0.9562	26.1	21.7
51	[8] SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	0.9562	26.1	21.7
52	[8] CLEFT LIP & PALATE REPAIR	0.9562	26.1	21.7
53	[2] SINUS & MASTOID PROCEDURES AGE >17	0.7372	23.5	19.5
54	[8] SINUS & MASTOID PROCEDURES AGE 0-17	0.9562	26.1	21.7
55	[8] MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES	0.9562	26.1	21.7
56	[8] RHINOPLASTY	0.7372	23.5	19.5
57	[8] T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17.	0.9562	26.1	21.7
58	[8] T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17.	0.9562	26.1	21.7
59	[8] TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	0.9562	26.1	21.7
60	[8] TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	0.9562	26.1	21.7
61	[2] MYRINGOTOMY W TUBE INSERTION AGE >17	0.7372	23.5	19.5
62	[8] MYRINGOTOMY W TUBE INSERTION AGE 0-17	0.9562	26.1	21.7
63	[3] OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES	0.9562	26.1	21.7
64	EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.2540	27.5	22.9
65	[1] DYSEQUILIBRIUM	0.4964	18.5	15.4
66	[1] EPISTAXIS	0.4964	18.5	15.4
67	[8] EPIGLOTTITIS	0.9562	26.1	21.7
68	OTITIS MEDIA & URI AGE >17 W CC	0.8243	21.9	18.2
69	[1] OTITIS MEDIA & URI AGE >17 W/O CC	0.4964	18.5	15.4
70	[8] OTITIS MEDIA & URI AGE 0-17	0.4964	18.5	15.4
71	[8] LARYNGOTRACHEITIS	0.4964	18.5	15.4
72	[2] NASAL TRAUMA & DEFORMITY	0.7372	23.5	19.5
73	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	0.7215	20.3	16.9
74	[8] OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0-17	0.4964	18.5	15.4
75	[5] MAJOR CHEST PROCEDURES	2.0841	40.0	33.3
76	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.4382	43.9	36.5
77	[5] OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	2.0841	40.0	33.3
78	PULMONARY EMBOLISM	0.8896	24.2	20.1
79	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	0.8985	22.6	18.8
80	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	0.7645	22.3	18.5
81	[8] RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0-17	0.4964	18.5	15.4
82	RESPIRATORY NEOPLASMS	0.7480	20.3	16.9
83	[3] MAJOR CHEST TRAUMA W CC	0.9562	26.1	21.7
84	[2] MAJOR CHEST TRAUMA W/O CC	0.7372	23.5	19.5
85	PLEURAL EFFUSION W CC	0.8514	23.5	19.5
86	PLEURAL EFFUSION W/O CC	0.6540	22.4	18.6
87	PULMONARY EDEMA & RESPIRATORY FAILURE	1.6513	31.9	26.5
88	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	0.7653	20.7	17.2
89	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	0.8428	23.1	19.2
90	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	0.7318	21.7	18.0
91	[8] SIMPLE PNEUMONIA & PLEURISY AGE 0-17	0.7372	23.5	19.5
92	INTERSTITIAL LUNG DISEASE W CC	0.7702	20.4	17.0
93	[1] INTERSTITIAL LUNG DISEASE W/O CC	0.4964	18.5	15.4
94	PNEUMOTHORAX W CC	0.6571	18.9	15.7
95	[1] PNEUMOTHORAX W/O CC	0.4964	18.5	15.4
96	BRONCHITIS & ASTHMA AGE >17 W CC	0.7381	20.5	17.0
97	BRONCHITIS & ASTHMA AGE >17 W/O CC	0.5296	18.7	15.5
98	[8] BRONCHITIS & ASTHMA AGE 0-17	0.4964	18.5	15.4

TABLE 11.—FY 2004 LTC-DRGs, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY, AND 5/6TH OF THE AVERAGE LENGTH OF STAY—Continued

LTC–DRG	Description	Relative weight	Geometric average length of stay	5/6th of the average length of stay
99	RESPIRATORY SIGNS & SYMPTOMS W CC	1.0622	26.6	22.1
100	RESPIRATORY SIGNS & SYMPTOMS W/O CC	1.0579	26.1	21.7
101	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	0.9009	22.6	18.8
102	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	0.7011	21.0	17.5
103	[6]HEART TRANSPLANT	0.0000	0.0	0.0
104	[8]CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W CARDIAC CATH.	2.0841	40.0	33.3
105	[8]CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W/O CARDIAC CATH.	2.0841	40.0	33.3
106	[8]CORONARY BYPASS W PTCA	2.0841	40.0	33.3
107	[8]CORONARY BYPASS W CARDIAC CATH	2.0841	40.0	33.3
108	[5]OTHER CARDIOTHORACIC PROCEDURES	2.0841	40.0	33.3
109	[8]CORONARY BYPASS W/O PTCA OR CARDIAC CATH	2.0841	40.0	33.3
110	[5]MAJOR CARDIOVASCULAR PROCEDURES W CC	2.0841	40.0	33.3
111	[8]MAJOR CARDIOVASCULAR PROCEDURES W/O CC	2.0841	40.0	33.3
113	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	1.5629	38.7	32.2
114	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.3604	38.3	31.9
115	[5]PRM CARD PACEM IMPL W AMI,HRT FAIL OR SHK,OR AICD LEAD OR GNRTR P.	2.0841	40.0	33.3
116	[5]OTH PERM CARD PACEMAK IMPL OR PTCA W CORONARY ARTERY STENT IMPLNT.	2.0841	40.0	33.3
117	[3]CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	0.9562	26.1	21.7
118	[5]CARDIAC PACEMAKER DEVICE REPLACEMENT	2.0841	40.0	33.3
119	[4]VEIN LIGATION & STRIPPING	1.3569	32.5	27.0
120	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	1.2435	34.4	28.6
121	CIRCULATORY DISORDERS W AMI & MAJOR COMP. DISCHARGED ALIVE	0.7467	22.1	18.4
122	CIRCULATORY DISORDERS W AMI W/O MAJOR COMP. DISCHARGED ALIVE	0.6440	18.8	15.6
123	CIRCULATORY DISORDERS W AMI, EXPIRED	0.8527	18.8	15.6
124	[4]CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG	1.3569	32.5	27.0
125	[4]CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG.	1.3569	32.5	27.0
126	ACUTE & SUBACUTE ENDOCARDITIS	0.8706	25.6	21.3
127	HEART FAILURE & SHOCK	0.7719	22.1	18.4
128	[2]DEEP VEIN THROMBOPHLEBITIS	0.7372	23.5	19.5
129	[3]CARDIAC ARREST, UNEXPLAINED	0.9562	26.1	21.7
130	PERIPHERAL VASCULAR DISORDERS W CC	0.7712	24.4	20.3
131	PERIPHERAL VASCULAR DISORDERS W/O CC	0.6398	23.1	19.2
132	ATHEROSCLEROSIS W CC	0.8092	22.4	18.6
133	ATHEROSCLEROSIS W/O CC	0.7044	21.9	18.2
134	HYPERTENSION	0.9154	27.9	23.2
135	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC	0.9039	23.1	19.2
136	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC	0.7186	22.4	18.6
137	[8]CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17	0.7372	23.5	19.5
138	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	0.7430	22.7	18.9
139	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	0.6032	20.3	16.9
140	ANGINA PECTORIS	0.6094	19.3	16.0
141	SYNCOPE & COLLAPSE W CC	0.6453	22.9	19.0
142	SYNCOPE & COLLAPSE W/O CC	0.5041	20.3	16.9
143	CHEST PAIN	0.7314	21.8	18.1
144	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	0.7921	22.2	18.5
145	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	0.6983	20.7	17.2
146	[8]RECTAL RESECTION W CC	2.0841	40.0	33.3
147	[8]RECTAL RESECTION W/O CC	2.0841	40.0	33.3
148	[5]MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	2.0841	40.0	33.3
149	[1]MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	0.4964	18.5	15.4
150	[4]PERITONEAL ADHESIOLYSIS W CC	1.3569	32.5	27.0
151	[8]PERITONEAL ADHESIOLYSIS W/O CC	1.3569	32.5	27.0
152	[4]MINOR SMALL & LARGE BOWEL PROCEDURES W CC	1.3569	32.5	27.0
153	[8]MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.3569	32.5	27.0
154	[5]STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC	2.0841	40.0	33.3
155	[8]STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC	1.3569	32.5	27.0
156	[8]STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17	1.3569	32.5	27.0
157	[4]ANAL & STOMAL PROCEDURES W CC	1.3569	32.5	27.0
158	[3]ANAL & STOMAL PROCEDURES W/O CC	0.9562	26.1	21.7
159	[8]HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC	1.3569	32.5	27.0
160	[8]HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC	1.3569	32.5	27.0
161	[8]INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC	1.3569	32.5	27.0
162	[8]INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	0.4964	18.5	15.4
163	[8]HERNIA PROCEDURES AGE 0-17	0.4964	18.5	15.4

TABLE 11.—FY 2004 LTC-DRGs, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY, AND 5/6TH OF THE AVERAGE LENGTH OF STAY—Continued

LTC–DRG	Description	Relative weight	Geometric average length of stay	5/6th of the average length of stay
164	[8]APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	2.0841	40.0	33.3
165	[8]APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	0.4964	18.5	15.4
166	[8]APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	2.0841	40.0	33.3
167	[8]APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	0.4964	18.5	15.4
168	[5]MOUTH PROCEDURES W CC	2.0841	40.0	33.3
169	[8]MOUTH PROCEDURES W/O CC	0.7372	23.5	19.5
170	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	1.7006	40.3	33.5
171	[4]OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	1.3569	32.5	27.0
172	DIGESTIVE MALIGNANCY W CC	0.8702	22.5	18.7
173	DIGESTIVE MALIGNANCY W/O CC	0.7092	20.2	16.8
174	G.I. HEMORRHAGE W CC	0.7874	23.7	19.7
175	G.I. HEMORRHAGE W/O CC	0.6345	21.1	17.5
176	COMPLICATED PEPTIC ULCER	0.7728	21.2	17.6
177	[2]UNCOMPLICATED PEPTIC ULCER W CC	0.7372	23.5	19.5
178	[1]UNCOMPLICATED PEPTIC ULCER W/O CC	0.4964	18.5	15.4
179	INFLAMMATORY BOWEL DISEASE	1.0023	25.2	21.0
180	[7]G.I. OBSTRUCTION W CC	0.8222	22.9	19.0
181	[7]G.I. OBSTRUCTION W/O CC	0.8222	22.9	19.0
182	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W CC	0.8449	23.5	19.5
183	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC	0.6362	20.3	16.9
184	[8]ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0-17	0.7372	23.5	19.5
185	[2]DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17	0.7372	23.5	19.5
186	[8]DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0-17	0.7372	23.5	19.5
187	[8]DENTAL EXTRACTIONS & RESTORATIONS	0.7372	23.5	19.5
188	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC	1.0308	25.3	21.0
189	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	0.7826	21.8	18.1
190	[8]OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17	0.7372	23.5	19.5
191	[4]PANCREAS, LIVER & SHUNT PROCEDURES W CC	1.3569	32.5	27.0
192	[1]PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	0.4964	18.5	15.4
193	[2]BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC	0.7372	23.5	19.5
194	[3]BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC.	0.7372	23.5	19.5
195	[4]CHOLECYSTECTOMY W C.D.E. W CC	1.3569	32.5	27.0
196	[8]CHOLECYSTECTOMY W C.D.E. W/O CC	0.9562	26.1	21.7
197	[3]CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC	0.9562	26.1	21.7
198	[8]CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC	0.9562	26.1	21.7
199	[8]HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	0.7372	23.5	19.5
200	[2]HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	0.7372	23.5	19.5
201	[5]OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	2.0841	40.0	33.3
202	CIRRHOSIS & ALCOHOLIC HEPATITIS	0.7254	22.3	18.5
203	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	0.6758	18.9	15.7
204	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	0.9986	23.4	19.5
205	[7]DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W CC	0.7029	22.1	18.4
206	[7]DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC	0.7029	22.1	18.4
207	[7]DISORDERS OF THE BILIARY TRACT W CC	0.6671	20.5	17.0
208	[7]DISORDERS OF THE BILIARY TRACT W/O CC	0.6671	20.5	17.0
209	[4]MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY.	1.3569	32.5	27.0
210	[4]HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC	1.3569	32.5	27.0
211	[2]HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC	0.7372	23.5	19.5
212	[8]HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	0.7372	23.5	19.5
213	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS.	1.3851	33.8	28.1
216	[4]BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	1.3569	32.5	27.0
217	WND DEBRID & SKN GRFT EXCEPT HAND,FOR MUSCSKELET & CONN TISS DIS.	1.4038	39.3	32.7
218	[3]LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W CC.	0.9562	26.1	21.7
219	[8]LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W/O CC.	0.9562	26.1	21.7
220	[8]LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE 0-17	0.9562	26.1	21.7
223	[3]MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC.	0.9562	26.1	21.7
224	[8]SHOULDER,ELBOW OR FOREARM PROC,EXC MAJOR JOINT PROC, W/O CC	0.9562	26.1	21.7
225	[3]FOOT PROCEDURES	0.9562	26.1	21.7
226	[7]SOFT TISSUE PROCEDURES W CC	1.3569	32.5	27.0
227	[7]SOFT TISSUE PROCEDURES W/O CC	1.3569	32.5	27.0
228	[4]MAJOR THUMB OR JOINT PROC,OR OTH HAND OR WRIST PROC W CC	1.3569	32.5	27.0
229	[8]HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	0.9562	26.1	21.7

TABLE 11.—FY 2004 LTC-DRGs, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY, AND 5/6TH OF THE AVERAGE LENGTH OF STAY—Continued

LTC–DRG	Description	Relative weight	Geometric average length of stay	5/6th of the average length of stay
230	[4] LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR	1.3569	32.5	27.0
232	[2] ARTHROSCOPY	0.7372	23.5	19.5
233	[3] OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC	0.9562	26.1	21.7
234	[3] OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC	0.9562	26.1	21.7
235	FRACTURES OF FEMUR	0.8396	29.6	24.6
236	FRACTURES OF HIP & PELVIS	0.7368	27.1	22.5
237	[2] SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	0.7372	23.5	19.5
238	OSTEOMYELITIS	0.8432	27.9	23.2
239	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY.	0.6610	22.0	18.3
240	CONNECTIVE TISSUE DISORDERS W CC	0.6685	21.2	17.6
241	CONNECTIVE TISSUE DISORDERS W/O CC	0.4538	18.7	15.5
242	SEPTIC ARTHRITIS	0.7721	26.4	22.0
243	MEDICAL BACK PROBLEMS	0.6616	23.2	19.3
244	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	0.5563	20.0	16.6
245	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	0.4721	18.5	15.4
246	NON-SPECIFIC ARTHROPATHIES	0.5128	22.2	18.5
247	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE	0.5536	20.2	16.8
248	TENDONITIS, MYOSITIS & BURSITIS	0.7274	24.5	20.4
249	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	0.7829	27.0	22.5
250	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC	0.8206	29.9	24.9
251	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC	0.6009	27.3	22.7
252	[8] FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0-17	0.9562	26.1	21.7
253	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W CC	0.8176	27.6	23.0
254	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W/O CC	0.6691	25.1	20.9
255	[8] FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE 0-17	0.9562	26.1	21.7
256	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES	0.8294	25.9	21.5
257	[3] TOTAL MASTECTOMY FOR MALIGNANCY W CC	0.9562	26.1	21.7
258	[8] TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	0.9562	26.1	21.7
259	[8] SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	0.9562	26.1	21.7
260	[8] SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	0.9562	26.1	21.7
261	[5] BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION.	2.0841	40.0	33.3
262	[3] BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	0.9562	26.1	21.7
263	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W CC	1.4522	42.4	35.3
264	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC	1.2892	44.1	36.7
265	[7] SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC	1.2215	34.8	29.0
266	[7] SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC	1.2215	34.8	29.0
267	[8] PERIANAL & PILONIDAL PROCEDURES	0.9562	26.1	21.7
268	[5] SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	2.0841	40.0	33.3
269	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	1.4466	43.0	35.8
270	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC	0.9916	33.9	28.2
271	SKIN ULCERS	0.9620	30.4	25.3
272	MAJOR SKIN DISORDERS W CC	0.7121	22.8	19.0
273	[1] MAJOR SKIN DISORDERS W/O CC	0.4964	18.5	15.4
274	MALIGNANT BREAST DISORDERS W CC	0.9072	24.9	20.7
275	[2] MALIGNANT BREAST DISORDERS W/O CC	0.7372	23.5	19.5
276	[1] NON-MALIGANT BREAST DISORDERS	0.4964	18.5	15.4
277	CELLULITIS AGE >17 W CC	0.7409	23.6	19.6
278	CELLULITIS AGE >17 W/O CC	0.5982	20.7	17.2
279	[8] CELLULITIS AGE 0-17	0.9562	26.1	21.7
280	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC	0.9724	29.5	24.5
281	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	0.7386	26.4	22.0
282	[8] TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0-17	0.7372	23.5	19.5
283	MINOR SKIN DISORDERS W CC	0.6508	19.3	16.0
284	[1] MINOR SKIN DISORDERS W/O CC	0.4964	18.5	15.4
285	AMPUTAT OF LOWER LIMB FOR ENDOCRINE,NUTRIT,& METABOL DISORDERS.	1.5176	37.4	31.1
286	[8] ADRENAL & PITUITARY PROCEDURES	0.7372	23.5	19.5
287	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS.	1.3982	39.7	33.0
288	[5] O.R. PROCEDURES FOR OBESITY	2.0841	40.0	33.3
289	[8] PARATHYROID PROCEDURES	0.7372	23.5	19.5
290	[8] THYROID PROCEDURES	0.7372	23.5	19.5
291	[8] THYROGLOSSAL PROCEDURES	0.7372	23.5	19.5
292	[4] OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC	1.3569	32.5	27.0
293	[8] OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC	0.9562	26.1	21.7
294	DIABETES AGE >35	0.8061	25.9	21.5

TABLE 11.—FY 2004 LTC-DRGs, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY, AND 5/6TH OF THE AVERAGE LENGTH OF STAY—Continued

LTC–DRG	Description	Relative weight	Geometric average length of stay	5/6th of the average length of stay
295	[3] DIABETES AGE 0-35	0.9562	26.1	21.7
296	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC	0.8207	24.1	20.0
297	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	0.6524	24.5	20.4
298	[8] NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0-17	0.7372	23.5	19.5
299	[3] UNBORN ERRORS OF METABOLISM	0.9562	26.1	21.7
300	ENDOCRINE DISORDERS W CC	0.7704	22.3	18.5
301	[2] ENDOCRINE DISORDERS W/O CC	0.7372	23.5	19.5
302	[6] KIDNEY TRANSPLANT	0.0000	0.0	0.0
303	[8] KIDNEY,URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM	2.0841	40.0	33.3
304	[5] KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC	2.0841	40.0	33.3
305	[1] KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC	0.4964	18.5	15.4
306	[8] PROSTATECTOMY W CC	1.3569	32.5	27.0
307	[8] PROSTATECTOMY W/O CC	1.3569	32.5	27.0
308	[4] MINOR BLADDER PROCEDURES W CC	1.3569	32.5	27.0
309	[2] MINOR BLADDER PROCEDURES W/O CC	0.7372	23.5	19.5
310	[4] TRANSURETHRAL PROCEDURES W CC	1.3569	32.5	27.0
311	[1] TRANSURETHRAL PROCEDURES W/O CC	0.4964	18.5	15.4
312	[4] URETHRAL PROCEDURES, AGE >17 W CC	1.3569	32.5	27.0
313	[8] URETHRAL PROCEDURES, AGE >17 W/O CC	0.4964	18.5	15.4
314	[8] URETHRAL PROCEDURES, AGE 0-17	0.4964	18.5	15.4
315	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	1.5070	36.8	30.6
316	RENAL FAILURE	0.9214	23.8	19.8
317	[3] ADMIT FOR RENAL DIALYSIS	0.9562	26.1	21.7
318	KIDNEY & URINARY TRACT NEOPLASMS W CC	0.7048	21.1	17.5
319	[1] KIDNEY & URINARY TRACT NEOPLASMS W/O CC	0.4964	18.5	15.4
320	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	0.7223	23.0	19.1
321	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	0.6260	23.2	19.3
322	[8] KIDNEY & URINARY TRACT INFECTIONS AGE 0-17	0.4964	18.5	15.4
323	[2] URINARY STONES W CC, &/OR ESW LITHOTRIPSY	0.7372	23.5	19.5
324	[2] URINARY STONES W/O CC	0.7372	23.5	19.5
325	[3] KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC	0.9562	26.1	21.7
326	[1] KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC	0.4964	18.5	15.4
327	[8] KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0-17	0.4964	18.5	15.4
328	[8] URETHRAL STRICTURE AGE >17 W CC	0.4964	18.5	15.4
329	[8] URETHRAL STRICTURE AGE >17 W/O CC	0.4964	18.5	15.4
330	[8] URETHRAL STRICTURE AGE 0-17	0.4964	18.5	15.4
331	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC	0.8473	23.2	19.3
332	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	0.5722	21.1	17.5
333	[8] OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0-17	0.4964	18.5	15.4
334	[8] MAJOR MALE PELVIC PROCEDURES W CC	2.0841	40.0	33.3
335	[8] MAJOR MALE PELVIC PROCEDURES W/O CC	2.0841	40.0	33.3
336	[8] TRANSURETHRAL PROSTATECTOMY W CC	0.7372	23.5	19.5
337	[8] TRANSURETHRAL PROSTATECTOMY W/O CC	0.7372	23.5	19.5
338	[8] TESTES PROCEDURES, FOR MALIGNANCY	0.7372	23.5	19.5
339	[2] TESTES PROCEDURES, NON-MALIGNANCY AGE >17	0.7372	23.5	19.5
340	[8] TESTES PROCEDURES, NON-MALIGNANCY AGE 0-17	0.7372	23.5	19.5
341	[2] PENIS PROCEDURES	0.7372	23.5	19.5
342	[1] CIRCUMCISION AGE >17	0.4964	18.5	15.4
343	[8] CIRCUMCISION AGE 0-17	0.7372	23.5	19.5
344	[1] OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY.	0.4964	18.5	15.4
345	[5] OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY.	2.0841	40.0	33.3
346	[7] MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	0.7150	22.3	18.5
347	[7] MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	0.7150	22.3	18.5
348	[1] BENIGN PROSTATIC HYPERTROPHY W CC	0.4964	18.5	15.4
349	[1] BENIGN PROSTATIC HYPERTROPHY W/O CC	0.4964	18.5	15.4
350	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	1.1820	26.6	22.1
351	[8] STERILIZATION, MALE	0.7372	23.5	19.5
352	[3] OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	0.9562	26.1	21.7
353	[8] PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY.	2.0841	40.0	33.3
354	[8] UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC	2.0841	40.0	33.3
355	[8] UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC	2.0841	40.0	33.3
356	[8] FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	1.3569	32.5	27.0
357	[8] UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY	1.3569	32.5	27.0
358	[8] UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC	1.3569	32.5	27.0
359	[8] UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	1.3569	32.5	27.0
360	[4] VAGINA, CERVIX & VULVA PROCEDURES	1.3569	32.5	27.0

TABLE 11.—FY 2004 LTC-DRGS, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY, AND 5/6TH OF THE AVERAGE LENGTH OF STAY—Continued

LTC–DRG	Description	Relative weight	Geometric average length of stay	5/6th of the average length of stay
361	[8] LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	0.4964	18.5	15.4
362	[8] ENDOSCOPIC TUBAL INTERRUPTION	0.4964	18.5	15.4
363	[8] D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	0.4964	18.5	15.4
364	[8] D&C, CONIZATION EXCEPT FOR MALIGNANCY	0.4964	18.5	15.4
365	[5] OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	2.0841	40.0	33.3
366	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	0.8139	23.1	19.2
367	[1] MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	0.4964	18.5	15.4
368	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	0.6963	19.3	16.0
369	[3] MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	0.9562	26.1	21.7
370	[8] CESAREAN SECTION W CC	0.9562	26.1	21.7
371	[8] CESAREAN SECTION W/O CC	0.4964	18.5	15.4
372	[8] VAGINAL DELIVERY W COMPLICATING DIAGNOSES	0.4964	18.5	15.4
373	[8] VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	0.4964	18.5	15.4
374	[8] VAGINAL DELIVERY W STERILIZATION &/OR D&C	0.4964	18.5	15.4
375	[8] VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	0.4964	18.5	15.4
376	[1] POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE	0.4964	18.5	15.4
377	[8] POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	0.4964	18.5	15.4
378	[8] ECTOPIC PREGNANCY	0.9562	26.1	21.7
379	[8] THREATENED ABORTION	0.4964	18.5	15.4
380	[8] ABORTION W/O D&C	0.4964	18.5	15.4
381	[8] ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	0.4964	18.5	15.4
382	[8] FALSE LABOR	0.4964	18.5	15.4
383	[8] OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	0.4964	18.5	15.4
384	[8] OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	0.4964	18.5	15.4
385	[6] NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	0.4964	18.5	15.4
386	[8] EXTREME IMMATURITY	0.4964	18.5	15.4
387	[8] PREMATURITY W MAJOR PROBLEMS	0.4964	18.5	15.4
388	[8] PREMATURITY W/O MAJOR PROBLEMS	0.4964	18.5	15.4
389	[8] FULL TERM NEONATE W MAJOR PROBLEMS	0.4964	18.5	15.4
390	[8] NEONATE W OTHER SIGNIFICANT PROBLEMS	0.4964	18.5	15.4
391	[8] NORMAL NEWBORN	0.4964	18.5	15.4
392	[8] SPLENECTOMY AGE >17	0.7372	23.5	19.5
393	[8] SPLENECTOMY AGE 0-17	0.7372	23.5	19.5
394	[3] OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS.	0.9562	26.1	21.7
395	RED BLOOD CELL DISORDERS AGE >17	0.7782	24.0	20.0
396	[8] RED BLOOD CELL DISORDERS AGE 0-17	0.4964	18.5	15.4
397	COAGULATION DISORDERS	0.9454	23.5	19.5
398	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	0.8372	22.0	18.3
399	[1] RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	0.4964	18.5	15.4
401	[5] LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	2.0841	40.0	33.3
402	[3] LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC	0.9562	26.1	21.7
403	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	0.8941	22.4	18.6
404	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	0.7394	18.0	15.0
405	[8] ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0-17	0.7372	23.5	19.5
406	[5] MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC	2.0841	40.0	33.3
407	[8] MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC	0.9562	26 1	21.7
408	[3] MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC	0.9562	26.1	21.7
409	RADIOTHERAPY	0.8871	25.1	20.9
410	[3] CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS	0.9562	26.1	21.7
411	[8] HISTORY OF MALIGNANCY W/O ENDOSCOPY	0.4964	18.5	15.4
412	[8] HISTORY OF MALIGNANCY W ENDOSCOPY	0.4964	18.5	15.4
413	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC	0.9541	25.5	21.2
414	[1] OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC	0.4964	18.5	15.4
415	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	1.6849	40.1	33.4
416	SEPTICEMIA AGE >17	0.9191	24.9	20.7
417	[8] SEPTICEMIA AGE 0-17	0.9562	26.1	21.7
418	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	0.8304	25.2	21.0
419	[3] FEVER OF UNKNOWN ORIGIN AGE >17 W CC	0.9562	26.1	21.7
420	[2] FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	0.7372	23.5	19.5
421	[2] VIRAL ILLNESS AGE >17	0.7372	23.5	19.5
422	[8] VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0-17	0.7372	23.5	19.5
423	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	0.9024	23.1	19.2
424	[4] O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS	1.3569	32.5	27.0
425	ACUTE ADJUSTMENT REACTION & PSYCHOLOGICAL DYSFUNCTION	0.5981	27.5	22.9
426	DEPRESSIVE NEUROSES	0.4660	22.3	18.5
427	[8] NEUROSES EXCEPT DEPRESSIVE	1.3569	32.5	27.0
428	[1] DISORDERS OF PERSONALITY & IMPULSE CONTROL	0.4964	18.5	15.4
429	ORGANIC DISTURBANCES & MENTAL RETARDATION	0.6438	27.4	22.8

TABLE 11.—FY 2004 LTC-DRGS, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY, AND 5/6TH OF THE AVERAGE LENGTH OF STAY—Continued

LTC–DRG	Description	Relative weight	Geometric average length of stay	5/6th of the average length of stay
430	PSYCHOSES	0.4689	22.7	18.9
431	[1] CHILDHOOD MENTAL DISORDERS	0.4964	18.5	15.4
432	[1] OTHER MENTAL DISORDER DIAGNOSES	0.4964	18.5	15.4
433	[1] ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	0.4964	18.5	15.4
439	SKIN GRAFTS FOR INJURIES	1.3663	40.5	33.7
440	WOUND DEBRIDEMENTS FOR INJURIES	1.5854	40.0	33.3
441	[5] HAND PROCEDURES FOR INJURIES	2.0841	40.0	33.3
442	OTHER O.R. PROCEDURES FOR INJURIES W CC	1.4971	44.6	37.1
443	[4] OTHER O.R. PROCEDURES FOR INJURIES W/O CC	1.3569	32.5	27.0
444	TRAUMATIC INJURY AGE >17 W CC	0.9609	30.6	25.5
445	TRAUMATIC INJURY AGE >17 W/O CC	0.7552	26.6	22.1
446	[8] TRAUMATIC INJURY AGE 0-17	0.7372	23.5	19.5
447	[3] ALLERGIC REACTIONS AGE >17	0.9562	26.1	21.7
448	[8] ALLERGIC REACTIONS AGE 0-17	0.7372	23.5	19.5
449	[7] POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC	0.9562	26.1	21.7
450	[7] POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	0.9562	26.1	21.7
451	[8] POISONING & TOXIC EFFECTS OF DRUGS AGE 0-17	0.7372	23.5	19.5
452	COMPLICATIONS OF TREATMENT W CC	0.9692	24.9	20.7
453	COMPLICATIONS OF TREATMENT W/O CC	0.8633	24.2	20.1
454	[2] OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC	0.7372	23.5	19.5
455	[2] OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC	0.7372	23.5	19.5
461	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES	1.3216	36.5	30.4
462	REHABILITATION	0.6471	23.2	19.3
463	SIGNS & SYMPTOMS W CC	0.7541	26.8	22.3
464	SIGNS & SYMPTOMS W/O CC	0.6170	25.5	21.2
465	[2] AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	0.7372	23.5	19.5
466	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	0.7365	22.0	18.3
467	[1] OTHER FACTORS INFLUENCING HEALTH STATUS	0.4964	18.5	15.4
468	EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2.0686	42.5	35.4
469	[6] PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS	0.0000	0.0	0.0
470	[6] UNGROUPABLE	0.0000	0.0	0.0
471	[5] BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY	2.0841	40.0	33.3
473	[3] ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	0.9562	26.1	21.7
475	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	2.1358	35.2	29.3
476	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	1.0032	31.9	26.5
477	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	1.8998	40.0	33.3
478	[7] OTHER VASCULAR PROCEDURES W CC	1.2567	34.2	28.5
479	[7] OTHER VASCULAR PROCEDURES W/O CC	1.2567	34.2	28.5
480	[6] LIVER TRANSPLANT	0.0000	0.0	0.0
481	[8] BONE MARROW TRANSPLANT	0.9562	26.1	21.7
482	[5] TRACHEOSTOMY FOR FACE,MOUTH & NECK DIAGNOSES	2.0841	40.0	33.3
483	TRACH W MECH VENT 96+ HRS OR PDX EXCEPT FACE,MOUTH & NECK DIAG.	3.2131	55.7	46.4
484	[8] CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	2.0841	40.0	33.3
485	[8] LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT TR.	1.3569	32.5	27.0
486	[4] OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA	1.3569	32.5	27.0
487	OTHER MULTIPLE SIGNIFICANT TRAUMA	1.2484	32.7	27.2
488	[5] HIV W EXTENSIVE O.R. PROCEDURE	2.0841	40.0	33.3
489	HIV W MAJOR RELATED CONDITION	0.9254	21.3	17.7
490	HIV W OR W/O OTHER RELATED CONDITION	0.7361	19.6	16.3
491	[8] MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY.	1.3569	32.5	27.0
492	[8] CHEMOTHERAPY W ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS OR W USE HIGH DOSE CHEMOTHERAPY AGENT.	0.9562	26.1	21.7
493	[7] LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC	1.3569	32.5	27.0
494	[7] LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC	2.0841	40.0	33.3
495	[6] LUNG TRANSPLANT	0.0000	0.0	0.0
496	[8] COMBINED ANTERIOR/POSTERIOR SPINAL FUSION	1.3569	32.5	27.0
497	[7] SPINAL FUSION W CC	0.9562	26.1	21.7
498	[7] SPINAL FUSION W/O CC4	0.9562	26.1	21.7
499	[5] BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W CC	2.0841	40.0	33.3
500	[4] BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W/O CC	1.3569	32.5	27.0
501	[5] KNEE PROCEDURES W PDX OF INFECTION W CC	2.0841	40.0	33.3
502	[2] KNEE PROCEDURES W PDX OF INFECTION W/O CC	0.7372	23.5	19.5
503	[3] KNEE PROCEDURES W/O PDX OF INFECTION	0.9562	26-1	21.7
504	[8] EXTENSIVE 3RD DEGREE BURNS W SKIN GRAFT	2.0841	40.0	33.3
505	[4] EXTENSIVE 3RD DEGREE BURNS W/O SKIN GRAFT	1.3569	32.5	27.0

TABLE 11.—FY 2004 LTC-DRGs, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY, AND 5/6TH OF THE AVERAGE LENGTH OF STAY—Continued

LTC–DRG	Description	Relative weight	Geometric average length of stay	5/6th of the average length of stay
506	[7]FULL THICKNESS BURN W SKIN GRAFT OR INHAL INJ W CC OR SIG TRAUMA.	0.7372	23.5	19.5
507	[7]FULL THICKNESS BURN W SKIN GRFT OR INHAL INJ W/O CC OR SIG TRAUMA.	0.7372	23.5	19.5
508	[2]FULL THICKNESS BURN W/O SKIN GRFT OR INHAL INJ W CC OR SIG TRAUMA.	0.7372	23.5	19.5
509	[2]FULL THICKNESS BURN W/O SKIN GRFT OR INH INJ W/O CC OR SIG TRAUMA.	0.7372	23.5	19.5
510	[2]NON-EXTENSIVE BURNS W CC OR SIGNIFICANT TRAUMA	0.7372	23.5	19.5
511	[1]NON-EXTENSIVE BURNS W/O CC OR SIGNIFICANT TRAUMA	0.4964	18.5	15.4
512	[6]SIMULTANEOUS PANCREAS/KIDNEY TRANSPLANT	0.0000	0.0	0.0
513	[6]PANCREAS TRANSPLANT	0.0000	0.0	0.0
515	[5]CARDIAC DEFIBRILATOR IMPLANT W/O CARDIAC CATH	2.0841	40.0	33.3
516	[8]PERCUTANEOUS CARDIVASCULAR PROCEDURE W AMI	0.9562	26.1	21.7
517	[4]PERCUTANEOUS CARDIVASCULAR PROC W NON-DRUG ELUTING STENT W/O AMI.	1.3569	32.5	27.0
518	[3]PERCUTANEOUS CARDIVASCULAR PROC W/O CORONARY ARTERY STENT OR AMI.	0.9562	26.1	21.7
519	[4]CERVICAL SPINAL FUSION W CC	1.3569	32.5	27.0
520	[8]CERVICAL SPINAL FUSION W/O CC	0.9562	26.1	21.7
521	ALCOHOL/DRUG ABUSE OR DEPENDENCE W CC	0.4753	20.5	17.0
522	ALCOHOL/DRUG ABUSE OR DEPENDENCE W REHABILITATION THERAPY W/O CC.	0.4061	20.4	17.0
523	ALCOHOL/DRUG ABUSE OR DEPENDENCE W/O REHABILITATION THERAPY W/O CC.	0.4214	19.8	16.5
524	TRANSIENT ISCHEMIA	0.5885	22.9	19.0
525	[8]HEART ASSIST SYSTEM IMPLANT	2.0841	40.0	33.3
526	[8]PERCUTANEOUS CARVIOVASCULAR PROC W DRUG-ELUTING STENT W AMI.	1.3569	32.5	27.0
527	[8]PERCUTANEOUS CARVIOVASCULAR PROC W DRUG-ELUTING STENT W/O AMI.	1.3569	32.5	27.0
528	[8]INTRACRANIAL VASCLUAR PROCEDURES WITH PDX HEMORRHAGE	2.0841	40.0	33.3
529	[2]VENTRICULAR SHUNT PROCEDURES WITH CC	0.7372	23.5	19.5
530	[8]VENTRICULAR SHUNT PROCEDURES WITHOUT CC	0.7372	23.5	19.5
531	[4]SPINAL PROCEDURES WITH CC	1.3569	32.5	27.0
532	[3]SPINAL PROCEDURES WITHOUT CC	0.9562	26.1	21.7
533	[5]EXTRACRANIAL VASCULAR PROCEDURES WITH CC	2.0841	40.0	33.3
534	[8]EXTRACRANIAL VASCULAR PROCEDURES WITHOUT CC	1.3569	32.5	27.0
535	[8]CARDIAC DEFIB IMPLANT WITH CARDIAC CATH WITH AMI/HF/SHOCK	2.0841	40.0	33.3
536	[5]CARDIAC DEFIB IMPLANT WITH CARDIAC CATH WITHOUT AMI/HF/SHOCK	2.0841	40.0	33.3
537	[4]LOCAL EXCISION AND REMOVAL OF INTERNAL FIXATION DEVICES EXCEPT HIP AND FEMUR WITH CC.	1.3569	32.5	27.0
538	[1]LOCAL EXCISION AND REMOVAL OF INTERNAL FIXATION DEVICES EXCEPT HIP AND FEMUR WITHOUT CC.	0.4964	18.5	15.4
539	[8]LYMPHOMA AND LEUKEMIA WITH MAJOR O.R. PROCEDURE WITH CC	2.0841	40.0	33.3
540	[1]LYMPHOMA AND LEUKEMIA WITH MAJOR O.R. PROCEDURE WITHOUT CC	0.4964	18.5	15.4

[1] Relative weights for these LTC-DRGs were determined by assigning these cases to low volume quintile 1.
[2] Relative weights for these LTC-DRGs were determined by assigning these cases to low volume quintile 2.
[3] Relative weights for these LTC-DRGs were determined by assigning these cases to low volume quintile 3.
[4] Relative weights for these LTC-DRGs were determined by assigning these cases to low volume quintile 4.
[5] Relative weights for these LTC-DRGs were determined by assigning these cases to low volume quintile 5.
[6] Relative weights for these LTC-DRGs were assigned a value of 0.0000.
[7] Relative weights for these LTC-DRGs were determined after adjusting to account for nonmonotonicity (see step 5 above).
[8] Relative weights for these LTC-DRGs were determined by assigning these cases to the appropriate low volume quintile because they had no LTCH cases in the FY 2002 MedPAR.

Appendix A—Regulatory Analysis of Impacts

I. Background and Summary

We have examined the impacts of this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year).

We have determined that this final rule is a major rule as defined in 5 U.S.C. 804(2). Based on the overall percentage change in payments per case estimated using our payment simulation model (a 1.8 percent increase), we estimate that the total impact of these proposed changes for FY 2004 payments compared to FY 2003 payments to be approximately a $1.8 billion increase. This amount does not reflect changes in hospital admissions or case-mix intensity, which would also affect overall payment changes.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million to $25 million in any 1 year. For purposes of the RFA, all hospitals and other providers and suppliers are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds that is located outside of a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA). Section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21) designated hospitals in certain New England counties as belonging to the adjacent NECMA. Thus, for purposes of the IPPS, we classify these hospitals as urban hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) also requires that agencies assess anticipated costs and benefits before issuing a final rule that has been preceded by a proposed rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This final rule will not mandate any requirements for State, local, or tribal governments.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this final rule in light of Executive Order 13132 and have determined that it will not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

The following analysis, in conjunction with the remainder of this document, demonstrates that this final rule is consistent with the regulatory philosophy and principles identified in Executive Order 12866, the RFA, and section 1102(b) of the Act. The final rule will affect payments to a substantial number of small rural hospitals as well as other classes of hospitals, and the effects on some hospitals may be significant.

II. Objectives

The primary objective of the IPPS is to create incentives for hospitals to operate efficiently and minimize unnecessary costs while at the same time ensuring that payments are sufficient to adequately compensate hospitals for their legitimate costs. In addition, we share national goals of preserving the Medicare Trust Fund.

We believe the changes in this final rule will further each of these goals while maintaining the financial viability of the hospital industry and ensuring access to high quality health care for Medicare beneficiaries. We expect that these changes will ensure that the outcomes of this payment system are reasonable and equitable while avoiding or minimizing unintended adverse consequences.

III. Limitations of Our Analysis

The following quantitative analysis presents the projected effects of our policy changes, as well as statutory changes effective for FY 2004, on various hospital groups. We estimate the effects of individual policy changes by estimating payments per case while holding all other payment policies constant. We use the best data available, but we do not attempt to predict behavioral responses to our policy changes, and we do not make adjustments for future changes in such variables as admissions, lengths of stay, or case-mix. In the May 19, 2003 proposed rule, we solicited comments and information about the anticipated effects of the changes on hospitals that we had proposed and our methodology for estimating them. Any comments that we received in response to the proposed rule are addressed in the appropriate sections throughout this final rule.

IV. Hospitals Included in and Excluded From the IPPS

The prospective payment systems for hospital inpatient operating and capital-related costs encompass nearly all general short-term, acute care hospitals that participate in the Medicare program. There were 42 Indian Health Service hospitals in our database, which we excluded from the analysis due to the special characteristics of the prospective payment method for these hospitals. Among other short-term, acute care hospitals, only the 47 such hospitals in Maryland remain excluded from the IPPS under the waiver at section 1814(b)(3) of the Act.

There are approximately 768 critical access hospitals (CAHs). These small, limited service hospitals are paid on the basis of reasonable costs rather than under the IPPS. The remaining 20 percent are specialty hospitals that are excluded from the IPPS. These specialty hospitals include psychiatric hospitals and units, rehabilitation hospitals and units, long-term care hospitals, children's hospitals, and cancer hospitals. The impacts of our policy changes on these hospitals are discussed below.

Thus, as of April 2003, we have included 4,049 hospitals in our analysis. This represents about 80 percent of all Medicare-participating hospitals. The majority of this impact analysis focuses on this set of hospitals.

V. Impact on Excluded Hospitals and Hospital Units

As of July 2003, there were 1,086 specialty hospitals excluded from the IPPS that were paid instead on a reasonable cost basis subject to the rate-of-increase ceiling under § 413.40. Broken down by specialty, there were 478 psychiatric, 216 rehabilitation, 300 long-term care, 81 children's, and 11 cancer hospitals. In addition, there were 1,405 psychiatric units and 985 rehabilitation units in hospitals otherwise subject to the IPPS. Under § 413.40(a)(2)(i)(A), the rate-of-increase ceiling is not applicable to the 47 specialty hospitals and units in Maryland that are paid in accordance with the waiver at section 1814(b)(3) of the Act.

In the past, hospitals and units excluded from the IPPS have been paid based on their reasonable costs subject to limits as established by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). Hospitals that continue to be paid based on their reasonable costs are subject to TEFRA limits for FY 2004. For these hospitals, the update is the percentage increase in the excluded hospital market basket, 3.4 percent.

Inpatient rehabilitation facilities (IRFs) are paid under a prospective payment system (IRF PPS) for cost reporting periods beginning on or after January 1, 2002. For cost reporting periods beginning during FY 2004, the IRF PPS is based on 100 percent of the adjusted Federal IRF prospective payment amount, updated annually. Therefore, these hospitals are not impacted by this final rule.

Effective for cost reporting periods beginning on or after October 1, 2002, LTCHs are paid under a LTCH PPS, based on the adjusted Federal prospective payment amount, updated annually. LTCHs will receive a blended payment (Federal prospective payment and a reasonable cost-based payment) over a 5-year transition period. However, under the LTCH PPS, a LTCH may also elect to be paid at 100 percent of the Federal prospective rate at the beginning of any of its cost reporting periods during the 5-year transition period. For purposes of the update factor, the portion of the LTCH PPS transition blend payment based on reasonable costs for inpatient operating services would be determined by updating the LTCH's TEFRA limit by the excluded hospital market basket (or 3.4 percent).

The impact on excluded hospitals and hospital units of the update in the rate-of-increase limit depends on the cumulative cost increases experienced by each excluded hospital or unit since its applicable base period. For excluded hospitals and units that have maintained their cost increases at a level below the rate-of-increase limits since their base period, the major effect is on the level of incentive payments these hospitals and hospital units receive. Conversely, for excluded hospitals and hospital units with per-case cost increases above the cumulative update in their rate-of-increase limits, the major effect is the amount of excess costs that will not be reimbursed.

We note that, under § 413.40(d)(3), an excluded hospital or unit whose costs exceed 110 percent of its rate-of-increase limit receives its rate-of-increase limit plus 50 percent of the difference between its reasonable costs and 110 percent of the limit, not to exceed 110 percent of its limit. In

addition, under the various provisions set forth in § 413.40, certain excluded hospitals and hospital units can obtain payment adjustments for justifiable increases in operating costs that exceed the limit. At the same time, however, by generally limiting payment increases, we continue to provide an incentive for excluded hospitals and hospital units to restrain the growth in their spending for patient services.

VI. Quantitative Impact Analysis of the Policy Changes Under the IPPS for Operating Costs

A. Basis and Methodology of Estimates

In this final rule, we are announcing policy changes and payment rate updates for the IPPS for operating and capital-related costs. Based on the overall percentage change in payments per case estimated using our payment simulation model (a 1.8 percent increase), we estimate the total impact of these changes for FY 2004 payments compared to FY 2003 payments to be approximately a $1.8 billion increase. This amount does not reflect changes in hospital admissions or case-mix intensity, which would also affect overall payment changes.

We have prepared separate impact analyses of the changes to each system. This section deals with changes to the operating prospective payment system. Our payment simulation model relies on available data to enable us to estimate the impacts on payments per case of certain changes we are making in this final rule. However, there are other changes we have made, but for which we do not have data available that would allow us to estimate the payment impacts using this model. For those changes, we have attempted to predict the payment impacts of those changes based upon our experience and other more limited data.

The data used in developing the quantitative analyses of changes in payments per case presented below are taken from the FY 2002 MedPAR file and the most current Provider-Specific File that is used for payment purposes. Although the analyses of the changes to the operating PPS do not incorporate cost data, data from the most recently available hospital cost report were used to categorize hospitals. Our analysis has several qualifications. First, we do not make adjustments for behavioral changes that hospitals may adopt in response to these final policy changes, and we do not adjust for future changes in such variables as admissions, lengths of stay, or case-mix. Second, due to the interdependent nature of the IPPS payment components, it is very difficult to precisely quantify the impact associated with each change. Third, we draw upon various sources for the data used to categorize hospitals in the tables. In some cases, particularly the number of beds, there is a fair degree of variation in the data from different sources. We have attempted to construct these variables with the best available source overall. However, for individual hospitals, some miscategorizations are possible.

Using cases in the FY 2002 MedPAR file, we simulated payments under the operating IPPS given various combinations of payment parameters. Any short-term, acute care hospitals not paid under the IPPSs (Indian Health Service hospitals and hospitals in Maryland) were excluded from the simulations. The impact of payments under the capital IPPS, or the impact of payments for costs other than inpatient operating costs, are not analyzed in this section. Estimated payment impacts of final FY 2004 changes to the capital IPPS are discussed in section VIII. of this Appendix.

The final changes discussed separately below are the following:

- The effects of expanding the postacute care transfer policy to 21 additional DRGs.
- The effects of the annual reclassification of diagnoses and procedures and the recalibration of the DRG relative weights required by section 1886(d)(4)(C) of the Act.
- The effects of the final changes in hospitals' wage index values reflecting wage data from hospitals' cost reporting periods beginning during FY 2000, compared to the FY 1999 wage data, including the effects of removing wage data for Part B costs of RCHs and FQHCs.
- The effects of geographic reclassifications by the MGCRB that will be effective in FY 2004.
- The effects on FY 2004 outlier payments of the policy changes implemented in the June 9, 2003 final rule on high-cost outlier payments.
- The total change in payments based on final FY 2004 policies relative to payments based on FY 2003 policies.

To illustrate the impacts of the final FY 2004 changes, our analysis begins with a FY 2004 baseline simulation model using: the FY 2003 DRG GROUPER (version 20.0); the current postacute care transfer policy for 10 DRGs; the FY 2003 wage index; and no MGCRB reclassifications. Outlier payments are set at 5.1 percent of total operating DRG and outlier payments.

Each final and statutory policy change is then added incrementally to this baseline model, finally arriving at an FY 2004 model incorporating all of the final changes. This allows us to isolate the effects of each change.

Our final comparison illustrates the percent change in payments per case from FY 2003 to FY 2004. Five factors have significant impacts here. The first is the update to the standardized amounts. In accordance with section 1886(b)(3)(B)(i) of the Act, we have updated the large urban and the other areas average standardized amounts for FY 2004 using the most recently forecasted hospital market basket increase for FY 2004 of 3.4 percent. Under section 1886(b)(3)(B)(iv) of the Act, the updates to the hospital-specific amounts for sole community hospitals (SCHs) and for Medicare-dependent small rural hospitals (MDHs) are also equal to the market basket increase, or 3.4 percent.

A second significant factor that impacts changes in hospitals' payments per case from FY 2003 to FY 2004 is the change in MGCRB status from one year to the next. That is, hospitals reclassified in FY 2003 that are no longer reclassified in FY 2004 may have a negative payment impact going from FY 2003 to FY 2004; conversely, hospitals not reclassified in FY 2003 that are reclassified in FY 2004 may have a positive impact. In some cases, these impacts can be quite substantial, so if a relatively small number of hospitals in a particular category lose their reclassification status, the percentage change in payments for the category may be below the national mean. However, this effect is alleviated by section 1886(d)(10)(D)(v) of the Act, which provides that reclassifications for purposes of the wage index are for a 3-year period.

A third significant factor is that we currently estimate that actual outlier payments during FY 2003 will be 6.5 percent of total DRG payments. When the FY 2003 final rule was published, we projected FY 2003 outlier payments would be 5.1 percent of total DRG plus outlier payments; the average standardized amounts were offset correspondingly. The effects of the higher than expected outlier payments during FY 2003 (as discussed in the Addendum to this final rule) are reflected in the analyses below comparing our current estimates of FY 2003 payments per case to estimated FY 2004 payments per case.

Fourth, we have expanded the postacute care transfer policy to 21 additional DRGs and dropped 2 DRGs from the original policy. This makes a total of 29 DRGs that will be subject to the postacute care transfer policy. This expansion is estimated to result in Medicare savings of $205 million because we will no longer pay a full DRG payment for these cases. As a result, there will be a lower total increase in Medicare spending for FY 2004.

Fifth, section 402(b) of Pub. L. 108–7 provided that the large urban standardized amount of the Federal rate is applicable for all IPPS hospitals for discharges occurring on or after April 1, 2003, and before October 1, 2003. For discharges occurring on or after October 1, 2003, the Federal rate will again be based on separate average standardized amounts for hospitals in large urban areas and for hospitals in other areas. The effect is to reduce the percent increase in FY 2004 payments compared to those made in FY 2003.

B. Analysis of Table I

Table I demonstrates the results of our analysis. The table categorizes hospitals by various geographic and special payment consideration groups to illustrate the varying impacts on different types of hospitals. The top row of the table shows the overall impact on the 4,049 hospitals included in the analysis. This number is 181 fewer hospitals than were included in the impact analysis in the FY 2003 final rule (67 FR 50279). There are 98 new CAHs that were excluded from last year's analysis.

The next four rows of Table I contain hospitals categorized according to their geographic location: all urban, which is further divided into large urban and other urban; and rural. There are 2,564 hospitals located in urban areas (MSAs or NECMAs) included in our analysis. Among these, there are 1,488 hospitals located in large urban areas (populations over 1 million), and 1,076 hospitals in other urban areas (populations of 1 million or fewer). In addition, there are 1,485 hospitals in rural areas. The next two groupings are by bed-size categories, shown separately for urban and rural hospitals. The final groupings by geographic location are by census divisions, also shown separately for urban and rural hospitals.

The second part of Table I shows hospital groups based on hospitals' FY 2004 payment classifications, including any reclassifications under section 1886(d)(10) of the Act. For example, the rows labeled urban, large urban, other urban, and rural show that the number of hospitals paid based on these categorizations after consideration of geographic reclassifications are 2,605, 1,582, 1,023, and 1,444, respectively.

The next three groupings examine the impacts of the final changes on hospitals grouped by whether or not they have GME residency programs (teaching hospitals that receive an IME adjustment) or receive DSH payments, or some combination of these two adjustments. There are 2,932 nonteaching hospitals in our analysis, 880 teaching hospitals with fewer than 100 residents, and 237 teaching hospitals with 100 or more residents.

In the DSH categories, hospitals are grouped according to their DSH payment status, and whether they are considered urban or rural after MGCRB reclassifications. Therefore, hospitals in the rural DSH categories represent hospitals that were not reclassified for purposes of the standardized amount or for purposes of the DSH adjustment. (However, they may have been reclassified for purposes of the wage index.)

The next category groups hospitals considered urban after geographic reclassification, in terms of whether they receive the IME adjustment, the DSH adjustment, both, or neither.

The next five rows examine the impacts of the final changes on rural hospitals by special payment groups (SCHs, rural referral centers (RRCs), and MDHs), as well as rural hospitals not receiving a special payment designation. The RRCs (148), SCHs (497), MDHs (250), and hospitals that are both SCH and RRC (75) shown here were not reclassified for purposes of the standardized amount.

The next two groupings are based on type of ownership and the hospital's Medicare utilization expressed as a percent of total patient days. These data are taken primarily from the FY 2000 Medicare cost report files, if available (otherwise FY 1999 data are used). Data needed to determine ownership status were unavailable for 122 hospitals. Similarly, the data needed to determine Medicare utilization were unavailable for 106 hospitals.

The next series of groupings concern the geographic reclassification status of hospitals. The first grouping displays all hospitals that were reclassified by the MGCRB for FY 2004. The next two groupings separate the hospitals in the first group by urban and rural status. The final row in Table I contains hospitals located in rural counties but deemed to be urban under section 1886(d)(8)(B) of the Act.

TABLE I.—IMPACT ANALYSIS OF FINAL CHANGES FOR FY 2004 OPERATING PROSPECTIVE PAYMENT SYSTEM [PERCENT CHANGES IN PAYMENTS PER CASE]

	Number of hosps.[1]	Revised outlier policy[2]	Transfer changes[3]	New wage data[4]	New wage index without CAHS[5]	New wage index without CAHS & NPHYS, part B[6]	DRG Recal[7]	DRG & Wage index changes[8]	MGCRB reclassification[9]	All FY 2004 changes[10]	All FY 2004 changes w/o FY 2004 outliers[11]
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
By Geographic Location:											
All hospitals	4,049	0.0	−0.2	−0.3	−0.2	0.0	0.0	0.0	0.0	1.8	3.2
Urban hospitals	2,564	−0.1	−0.3	−0.3	−0.2	0.0	0.0	0.0	−0.3	1.2	2.9
Large urban areas (populations over 1 million)	1,488	−0.4	−0.3	−0.3	−0.2	0.0	0.0	0.0	−0.4	1.1	3.2
Other urban areas (populations of 1 million or fewer)	1,076	0.3	−0.2	−0.3	−0.2	0.0	0.0	0.0	−0.3	1.4	2.4
Rural hospitals	1,485	0.7	−0.2	−0.3	0.2	0.1	0.0	0.5	2.2	5.8	5.5
Bed Size (Urban):											
0–99 beds	614	−0.1	−0.4	0.0	−0.2	0.0	−0.1	0.5	−0.6	2.1	3.1
100–199 beds	914	−0.6	−0.5	−0.3	−0.2	0.0	0.0	0.1	−0.4	1.2	2.9
200–299 beds	506	0.0	−0.4	−0.3	−0.2	0.0	0.0	0.0	−0.3	1.4	2.9
300–499 beds	372	−0.5	−0.2	−0.1	−0.2	0.0	−0.1	0.2	−0.3	0.8	3.1
500 or more beds	156	0.5	0.0	−0.7	−0.2	0.0	0.1	−0.4	−0.4	1.4	2.6
Bed Size (Rural):											
0–49 beds	671	0.2	−0.3	−0.4	0.2	0.1	0.0	0.7	0.5	6.0	5.9
50–99 beds	474	0.4	−0.2	−0.3	0.1	0.0	0.0	0.4	0.9	6.2	6.1
100–149 beds	203	0.8	−0.2	−0.4	0.2	0.1	0.0	0.3	2.8	6.0	5.6
150–199 beds	70	1.1	0.0	−0.2	0.3	0.0	−0.1	0.6	4.2	4.4	3.9
200 or more beds	67	1.1	0.0	−0.1	0.1	0.0	−0.1	0.4	3.5	5.7	5.1
Urban by Region:											
New England	132	1.2	−0.4	−0.3	−0.6	0.0	0.0	0.5	0.1	2.8	2.5
Middle Atlantic	395	−3.1	−0.3	−0.9	−0.2	0.0	0.0	−0.6	0.2	−2.8	2.3
South Atlantic	370	1.1	−0.3	−0.1	−0.2	0.0	0.0	0.2	−0.5	2.7	3.0
East North Central	422	1.3	0.0	−0.6	−0.2	0.0	0.0	−0.3	−0.3	2.7	2.6
East South Central	154	1.0	0.0	0.1	−0.2	0.0	−0.1	0.3	−0.6	2.9	3.1
West North Central	175	1.6	−0.5	0.0	−0.2	0.0	−0.1	0.2	−0.7	3.1	2.9
West South Central	327	−0.1	−0.2	−0.1	−0.2	0.0	0.0	0.2	−0.6	1.6	3.2
Mountain	130	1.5	−0.2	0.5	0.0	0.0	−0.1	0.8	−0.5	4.4	4.1
Pacific	413	−2.0	−0.5	−0.1	−0.2	0.0	0.0	0.2	−0.4	−0.6	3.3
Puerto Rico	40	0.3	0.1	−0.3	−0.1	0.0	−0.2	−0.1	−0.7	2.8	2.9
Rural by Region:											
New England	37	0.7	−0.1	−0.2	0.1	0.0	−0.1	0.3	2.6	6.1	6.1
Middle Atlantic	96	0.7	−0.2	−0.4	0.0	0.0	0.0	0.1	2.6	4.1	3.6
South Atlantic	222	1.0	−0.2	−0.1	0.1	0.0	−0.1	0.5	2.3	5.3	4.8
East North Central	193	0.7	−0.2	0.1	0.2	0.0	−0.1	0.7	1.5	4.5	4.1
East South Central	231	0.7	−0.2	−0.4	0.0	0.0	0.0	0.2	2.6	4.7	4.4
West North Central	247	0.4	−0.1	−0.1	0.6	0.1	−0.1	0.9	1.3	7.9	7.8
West South Central	273	0.6	−0.2	−0.6	0.0	0.2	0.0	0.3	3.6	5.8	5.5
Mountain	121	0.3	0.0	−0.3	0.2	0.0	0.0	0.2	1.5	7.1	6.9
Pacific	90	0.7	−0.1	−0.6	0.3	0.1	0.0	0.2	2.3	8.7	8.4
Puerto Rico	5	0.1	−0.1	−4.2	−0.1	0.0	−0.1	−4.1	0.4	−0.3	−0.5
By Payment Classification:											
Urban hospitals	2,605	−0.1	−0.3	−0.3	−0.2	0.0	0.0	0.0	−0.3	1.2	2.9
Large urban areas (populations over 1 million)	1,582	−0.3	−0.3	−0.3	−0.2	0.0	0.0	0.0	−0.2	1.2	3.1
Other urban areas (populations of 1 million or fewer)	1,023	0.2	−0.2	−0.3	−0.2	0.0	0.0	0.0	−0.4	1.3	2.4
Rural areas	1,444	0.6	−0.2	−0.3	0.2	0.1	0.0	0.4	2.1	5.9	5.7
Teaching Status:											
Non-teaching	2,932	−0.1	−0.3	−0.2	−0.1	0.0	0.0	0.3	0.3	3.1	3.7
Fewer than 100 Residents	880	−0.2	−0.1	−0.2	−0.2	0.0	0.0	0.2	−0.2	1.3	3.1
100 or more Residents	237	0.4	−0.2	−0.7	−0.2	0.0	0.0	−0.4	−0.1	1.2	2.4
Urban DSH:											
Non-DSH	1,349	0.5	−0.2	−0.2	−0.1	0.0	0.0	0.2	0.0	2.5	3.3
100 or more beds	1,399	−0.3	−0.3	−0.4	−0.2	0.0	0.0	0.0	−0.3	0.9	2.1

TABLE I.—IMPACT ANALYSIS OF FINAL CHANGES FOR FY 2004 OPERATING PROSPECTIVE PAYMENT SYSTEM [PERCENT CHANGES IN PAYMENTS PER CASE]—Continued

	Number of hosps.[1]	Revised outlier policy[2]	Transfer changes[3]	New wage data[4]	New wage index without CAHS[5]	New wage index without CAHS & NPHYS. part B[6]	DRG Recal[7]	DRG & Wage index changes[8]	MCGRB reclassification[9]	All FY 2004 changes[10]	All FY 2004 changes w/o FY 2003 outliers[11]
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Less than 100 beds	652	−1.1	−0.5	−0.1	−0.2	0.0	−0.1	0.4	−0.5	0.9	3.1
Rural DSH:											
Sole Community (SCH)	493	0.2	−0.1	−0.2	0.1	0.0	0.0	0.5	0.3	10.0	9.9
Referral Center (RRC)	156	1.1	−0.1	−0.3	0.2	0.1	−0.1	0.4	4.5	4.5	4.0
Other Rural: 100 or more beds	71	0.9	−0.3	−0.7	0.0	0.1	0.0	0.0	1.3	2.5	2.0
Less than 100 beds	[redacted]	0.5	−0.4	−0.6	0.0	0.1	0.0	0.3	1.2	2.8	2.6
Urban teaching and DSH:											
DSH	775	−0.3	−0.2	−0.4	−0.2	0.0	0.0	−0.1	−0.3	0.9	2.8
Teaching and no DSH	274	0.8	−0.1	−0.3	−0.2	0.0	0.0	0.0	−0.2	2.1	2.9
No teaching and DSH	[redacted]	−0.6	−0.5	−0.3	−0.2	0.0	0.0	0.1	−0.3	1.0	2.8
No teaching and no DSH	650	0.2	−0.3	−0.1	−0.2	0.0	0.0	0.3	−0.3	1.8	3.1
Rural Hospital Types:											
Non special status hospitals	474	0.7	−0.4	−0.5	0.1	0.1	0.0	0.3	1.3	2.7	2.4
RRC	148	1.5	−0.2	−0.2	0.3	0.1	−0.1	0.6	5.8	3.5	2.9
SCH	497	0.1	−0.1	−0.1	0.1	0.0	0.0	0.5	0.2	10.8	10.8
Medicare-dependent hospitals (MDH)	250	0.3	−0.3	−0.5	0.3	0.1	−0.1	0.7	0.8	3.3	3.2
SCH and RRC	75	0.2	0.0	−0.2	0.1	0.0	0.0	0.2	1.2	7.4	7.3
Type of Ownership:											
Voluntary	2,411	0.4	−0.1	−0.3	−0.2	0.0	0.0	0.0	0.0	2.2	3.1
Proprietary	[redacted]	−3.7	−1.0	0.0	−0.2	0.0	−0.1	0.4	−0.1	−2.1	3.6
Government	818	1.2	−0.3	−0.4	−0.1	0.0	0.0	0.0	0.2	4.0	3.8
Unknown	122	2.4	0.0	−1.0	−0.1	0.0	0.1	−0.6	−0.4	3.5	2.2
Medicare Utilization as a Percent of Inpatient Days:											
0–25	[redacted]	0.5	0.0	0.1	−0.2	0.0	−0.1	0.3	−0.2	2.5	3.4
25–50	1,533	−0.2	−0.3	−0.4	−0.2	0.0	0.0	0.0	−0.2	1.2	3.0
50–65	1,651	0.4	−0.2	−0.3	−0.1	0.0	0.0	0.1	0.3	2.8	3.4
Over 65	456	−1.2	−0.2	−0.2	−0.1	0.0	0.0	0.4	0.7	1.1	3.6
Unknown	106	−0.6	−0.1	0.1	−0.2	0.0	−0.1	0.4	−0.6	1.7	3.4
Hospitals Reclassified by the Medicare Geographic Classification Review Board: FY 2004 Reclassifications:											
All Reclassified Hospitals	616	−0.7	−0.1	−0.3	0.0	0.0	0.0	0.3	4.3	2.6	4.3
Standardized Amount Only	22	0.9	0.0	−0.8	0.0	0.1	0.0	−0.1	3.4	5.4	5.6
Wage Index Only	554	−1.0	−0.1	−0.3	0.0	0.0	0.0	0.3	4.2	1.9	3.7
Both	[redacted]	1.7	0.1	−0.3	0.0	0.0	0.0	0.2	4.1	4.1	3.3
Nonreclassified Hospitals	3,407	0.1	−0.3	−0.3	−0.2	0.0	0.0	0.1	−0.6	1.8	3.2
All Reclassified Urban Hospitals	125	−3.3	−0.2	−0.3	−0.3	0.0	0.0	0.1	4.6	−1.8	3.0
Standardized Amount Only	15	2.5	−1.3	−0.9	−0.1	0.0	0.0	−0.6	0.8	−4.6	3.2
Wage Index Only	71	−5.4	0.0	−0.3	−0.4	0.0	0.0	0.0	5.1	−4.1	2.9
Both	[redacted]	1.8	−0.3	0.1	−0.2	0.0	−0.1	0.4	4.6	4.1	3.3
Urban Nonreclassified Hospitals	2,408	0.1	−0.3	−0.3	−0.2	0.0	0.0	0.0	−0.6	1.4	2.9
All Reclassified Rural Hospitals	491	0.9	−0.1	−0.2	0.2	0.1	−0.1	0.4	4.0	5.5	5.1
Standardized Amount Only	27	1.6	0.0	−0.1	0.2	0.0	−0.1	0.6	3.1	2.3	1.3
Wage Index Only	451	0.8	−0.1	−0.3	0.2	0.1	−0.1	0.4	4.0	5.7	5.4
Both	13	1.8	0.0	0.0	0.2	0.0	−0.1	0.8	7.1	5.4	4.6
Rural Nonreclassified Hospitals	[redacted]	0.3	−0.2	−0.3	0.1	0.1	0.0	0.5	−0.4	6.2	6.1
Other Reclassified Hospitals (Section 1886(D)(8)(B))	33	0.6	−0.2	0.0	−0.2	0.0	0.0	0.5	−1.5	3.0	2.8

[1] Because data necessary to classify some hospitals by category were missing, the total number of hospitals in each category may not equal the national total. Discharge data are from FY 2002, and hospital cost report data are from reporting periods beginning in FY 2000 and FY 1999.

[2] This column displays the payment impact of the outlier policy that were published in the June 9, 2003 **Federal Register**.

[3] This column displays the payment impact of the expanded postacute care transfer policy.

[4] This column displays the impact of updating the wage index with wage data from hospitals' FY 2000 cost reports.

[5] This column displays the impact of removing CAHs from the wage index.

[6] This column displays the impact of the revised wage data used to calculate the wage index from removal of nonphysician Part B costs and hours from cost report data (Worksheet S–3, Part II, Line 5.01).

[7] This column displays the payment impact of the recalibration of the DRG weights based on FY 2002 MedPAR data and the DRG reclassification changes, in accordance with section 1886(d)(4)(C) of the Act.

[8] This column shows the payment impact of the budget neutrality adjustment factor for DRG and wage index changes, in accordance with sections 1886(d)(4)(C)(iii) and 1886(d)(3)(E) of the Act. Thus, it represents the combined impacts shown in columns 4, 5, 6 and 7, and the final FY 2004 budget neutrality factor of 1.005522.

[9] Shown here are the effects of geographic reclassifications by the Medicare Geographic Classification Review Board (MGCRB). The effects demonstrate the FY 2004 payment impact of going from no reclassifications to the reclassifications scheduled to be in effect for FY 2004. Reclassification for prior years has no bearing on the payment impacts shown here.

[10] This column shows changes in payments from FY 2003 to FY 2004. It incorporates all of the changes displayed in columns 2, 3, and 8 (the changes displayed in columns 4, 5, and 6 are included in column 8). It also reflects the impact of the FY 2004 update, changes in hospitals' reclassification status in FY 2004 compared to FY 2003, and the difference in outlier payments from FY 2003 to FY 2004. The sum of these impacts may be different from the percentage changes shown here due to rounding and interactive effect.

[11] This column shows changes in payments from FY 2003 to FY 2004, similar to column 10. However, this simulation assumes FY 2003 outlier payments will be at the same percentage level as FY 2004. This effectively reduces FY 2003 outlier payments from 6.5 percent of total DRG payments to 5.1 percent of total DRG payments, thereby reducing FY 2003 payments and increasing the percent changes from FY 2003 to FY 2004.

C. Impact of the Changes to the Outlier Policy (Column 2)

In the proposed rule, we estimated the FY 2004 outlier threshold to be $50,645. We also noted that the final outlier threshold was likely to be different from the proposed threshold after taking into account changes implemented by the final outlier rule. Since the publication of the proposed IPPS rule, we published a final outlier rule on June 9, 2003 (68 FR 34494).

We published three central changes to our outlier policy in the June 9, 2003 final rule. First, fiscal intermediaries will use either the most recent settled or the most recent tentative settled cost report, whichever is from the latest reporting period when determining the cost-to-charge ratio for each hospital. Second, we removed the requirement in our regulations that specified that a fiscal intermediary will assign a hospital the statewide average cost-to-charge ratio when the hospital has a cost-to-charge ratio that falls below established thresholds. Third, outlier payments for some hospitals will become subject to reconciliation when the hospitals' cost reports are settled.

Column 2 shows the effects of these changes. This column displays the effects of moving from our policy prior to the changes in the June 9 final rule, that hospitals' cost-to-charge ratios are based on their latest settled cost reports, and if the ratio falls below 3 standard deviations from the mean, the statewide average is assigned, to the new policy where the cost-to-charge ratio is based on the latest tentatively settled cost report, there is no minimum ratio, and outlier payments may be subject to reconciliation when the cost report is settled. As a result of these changes, the outlier threshold falls from $50,200 (this represents what the FY 2004 threshold would be absent the policy changes to $31,000).

The top row in this column indicates these changes have no impact on overall spending. However, the changes among specific categories of hospitals are quite dramatic. Hospital categories negatively impacted in this column are those groups expected to have dramatic reduction in their cost-to-charge ratios as a result of the new policies. On the other hand, hospitals that are not expected to experience dramatic changes in their cost-to-charge ratios benefit from the decline in the threshold.

Rural hospitals overall experience a 0.7 percent increase in their outlier payments as a result of this change. On the other hand, urban hospitals in the Middle Atlantic census division experience a 3.1 percent decrease. The largest negative impacts are among proprietary hospitals, with a 3.7 percent decrease and among urban hospitals that reclassified for the purposes of wage index only, with a decrease of 5.4 percent.

D. Impact of the Changes to the Postacute Care Transfer Policy (Column 3)

In column 3 of Table I, we present the effects of the postacute care transfer policy expansion, as discussed in section IV.A. of the preamble to this final rule. We compared aggregate payments using the FY 2003 DRG relative weights (GROUPER version 21.0) with the expanded postacute care transfer policy to aggregate payments using the expanded postacute care transfer policy (with the additional 21 DRGs). The changes we are making are estimated to result in 0.2 percent lower payments to hospitals overall. We estimate the total savings at approximately $205 million.

To simulate the impact of this final policy, we calculated hospitals' transfer-adjusted discharges and case-mix index values, including the additional 21 DRGs, minus 2 of the current 10 DRGs. The transfer-adjusted discharge fraction is calculated in one of two ways, depending on the transfer payment methodology. Under our previous transfer payment methodology, for all but the three DRGs receiving special payment consideration (DRGs 209, 210, and 211), this adjustment is made by adding 1 to the length of stay and dividing that amount by the geometric mean length of stay for the DRG (with the resulting fraction not to exceed 1.0). For example, a transfer after 3 days from a DRG with a geometric mean length of stay of 6 days would have a transfer-adjusted discharge fraction of 0.667 ((3+1)/6).

For transfers from any one of the three DRGs receiving the alternative payment methodology, the transfer-adjusted discharge fraction is 0.5 (to reflect that these cases receive half the full DRG amount the first day), plus one half of the result of dividing 1 plus the length of stay prior to transfer by the geometric mean length of stay for the DRG. None of the 21 additional DRGs qualify to receive the alternative payment methodology. As with the above adjustment, the result is equal to the lesser of the transfer-adjusted discharge fraction or 1.

The transfer-adjusted case-mix index values are calculated by summing the transfer-adjusted DRG weights and dividing by the transfer-adjusted discharges. The transfer-adjusted DRG weights are calculated by multiplying the DRG weight by the lesser of 1 or the transfer-adjusted discharge fraction for the case, divided by the geometric mean length of stay for the DRG. In this way, simulated payments per case can be compared before and after the change to the transfer policy.

This expansion of the policy has a negative 0.2 percent payment impact overall among both urban and rural hospitals. There is very small variation among all of the hospital categories from this negative 0.2 percent impact. This outcome is different than the impacts exhibited when we implemented the postacute care transfer policy for the original 10 DRGs in the July 31, 1998 **Federal Register** (63 FR 41108). At that time, the impact of going from no postacute transfer policy to a postacute care transfer policy applicable to 10 DRGs was a 0.6 decrease in payments per case. In addition, at that time, the impact was greatest among urban hospitals (0.7 percent payment decrease, compared to 0.4 percent among rural hospitals).

The less dramatic impact observed for this proposed expansion to additional DRGs is not surprising. The movement to transfer more and more patients for postacute care sooner appears to have abated in recent years. While it does appear that many patients continue to be transferred for postacute care early in the course of their acute care treatment, the rapid expansion of this trend that was apparent during the mid-1990s appears to have subsided. To a large extent, this decline probably stems from the decreased payment incentives to transfer patients to postacute care settings as a result of the implementation of prospective payment systems for IRFs, SNFs, LTCHs, and HHAs.

E. Impact of Wage Index Changes (Columns 4, 5, and 6)

Section 1886(d)(3)(E) of the Act requires that, beginning October 1, 1993, we annually update the wage data used to calculate the wage index. In accordance with this requirement, the final wage index for FY 2004 is based on data submitted for hospital cost reporting periods beginning on or after October 1, 1999 and before October 1, 2000. The impact of the new data on hospital payments is isolated in column 4 by holding the other payment parameters constant in this simulation. That is, column 4 shows the percentage changes in payments when going from a model using the FY 2003 wage index, based on FY 1999 wage data, to a model using the FY 2004 pre-reclassification wage index, based on FY 2000 wage data).

The wage data collected on the FY 2000 cost reports are similar to the data used in the calculation of the FY 2003 wage index. Also, as described in section III.B of the preamble of this final rule, the final FY 2004 wage index is calculated by removing CAHs, shown in column 5, and the removal of nonphysician Part B costs and hours of RHCs and FQHCs, shown in column 6.

Column 4 shows the impacts of updating the wage data using FY 2000 cost reports. Overall, the new wage data would lead to a 0.3 percent reduction, but this reduction is offset by the budget neutrality factor. Urban hospitals' wage indexes would decline by 0.3 percent, and rural hospitals' wage indexes would decline by 0.3 percent. Among regions, the largest impact of updating the wage data is seen in rural Puerto Rico (a 4.2 percent decrease). Rural hospitals in the West South Central and Pacific regions would experience the next largest impact, with a 0.6 percent decrease for each. The rural East North Central region would experience an increase of 0.1.

The national average hourly wage increased 6.79 percent compared to last year. Therefore, the only manner in which to maintain or exceed the previous year's wage index was to match the national 6.79 increase in average hourly wage. Of the 4,018 hospitals with wage index values in both FYs 2003 and 2004, 1,753, or 43.6 percent, also experienced an average hourly wage increase of 6.79 percent or more.

In order to confirm the −0.3 percent, we compared FY 2003 prereclassified wage indexes to those of FY 2004, which yielded a percent change of −0.62 percent per MSA. We weighted this value based on the frequency of hospitals in each MSA, which produced an overall reduction of 0.4 percent. When we multiplied this value by the 71.1 percent labor share representing the proportion of IPPS payments affected by the wage index, we found that the overall wage index values dropped 0.29 percent, essentially equaling the overall change in column 4.

Among urban hospitals, the Middle Atlantic and East North Central regions would experience 0.9 and 0.6 percent decreases, respectively. These impacts result, respectively from a 4.9 percent fall in the FY 2004 final wage index for Pittsburgh, Pennsylvania, and a 5.7 percent decrease in Janesville-Beloit, Wisconsin, as well as a 5.4 percent decrease in the Muncie and Lafayette, Indiana wage indexes. The Mountain and East South Central regions would experience increases of 0.5 percent and 0.1 percent, respectively.

The next column (5) shows the impacts on the calculation of the FY 2004 wage index of removing CAHs. The effects of this change are relatively small with the exception of urban New England, which would experience a 0.6 percent decrease, due primarily to the Pittsfield, Springfield, and rural Massachusetts wage indexes, each falling 7.5 percent. The rural West North Central region would experience an increase of 0.6 percent.

Column 6 shows the impacts of removing nonphysician Part B costs for RHCs and FQHCs. The effects of this change are relatively small.

The following chart compares the shifts in wage index values for labor market areas for FY 2004 relative to FY 2003. This chart demonstrates the impact of the changes for

the final FY 2004 wage index, including updating to FY 2000 wage data. The majority of labor market areas (336) would experience less than a 5-percent change. A total of 9 labor market areas would experience an increase of more than 5 percent and less than 10 percent. One area would experience an increase greater than 10 percent. A total of 25 areas would experience decreases of more than 5 percent and less than 10 percent. Finally, 2 areas would experience declines of 10 percent or more.

Percentage change in area wage index values	Number of labor market areas	
	FY 2003	FY 2004
Increase more than 10 percent	3	1
Increase more than 5 percent and less than 10 percent	11	9
Increase or decrease less than 5 percent	343	336
Decrease more than 5 percent and less than 10 percent	15	25
Decrease more than 10 percent	1	2

Among urban hospitals, 35 would experience an increase of between 5 and 10 percent and 5 more than 10 percent. A total of 37 rural hospitals would experience increases greater than 5 percent, but none would experience increases of greater than 10 percent. On the negative side, 107 urban hospitals would experience decreases in their wage index values of at least 5 percent but less than 10 percent. Seven urban hospitals would experience decreases in their wage index values greater than 10 percent. There are 27 rural hospitals that would experience decreases in their wage index values of greater than 5 percent but less than 10 percent. The following chart shows the projected impact for urban and rural hospitals.

Percentage change in area wage index values	Number of hospitals	
	Urban	Rural
Increase more than 10 percent	5	0
Increase more than 5 percent and less than 10 percent	35	37
Increase or decrease less than 5 percent	2,443	1,754
Decrease more than 5 percent and less than 10 percent	107	27
Decrease more than 10 percent	7	0

F. Impact of the Changes to the DRG Reclassifications and Recalibration of Relative Weights (Column 7)

In column 7 of Table I, we present the combined effects of the DRG reclassifications and recalibration, as discussed in section II. of the preamble to this final rule. Section 1886(d)(4)(C)(i) of the Act requires us annually to make appropriate classification changes and to recalibrate the DRG weights in order to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources.

We compared aggregate payments using the FY 2003 DRG relative weights (GROUPER version 20.0) to aggregate payments using the final FY 2004 DRG relative weights (GROUPER version 21.0). Both simulations reflected the expansion of the postacute care transfer policy. We note that, consistent with section 1886(d)(4)(C)(iii) of the Act, we have applied a budget neutrality factor to ensure that the overall payment impact of the DRG changes (combined with the wage index changes) is budget neutral. This budget neutrality factor of 1.005522 is applied to payments in Column 8. Because this is a combined DRG reclassification and recalibration and wage index budget neutrality factor, it is not applied to payments in this column.

The major DRG classification changes are: creating additional DRGs that are split based on the presence or absence of CCs; creating a new DRG for cases with ruptured brain aneurysms; and creating a new DRG for cases involving the implantation of a cardiac defibrillator where the patient experiences acute myocardial infarction, heart failure, or shock. In the aggregate, these changes will result in 0.0 percent change in overall payments to hospitals. The impacts of these changes on any particular hospital group are very small.

G. Combined Impact of DRG and Wage Index Changes, Including Budget Neutrality Adjustment (Column 8)

The impact of the DRG reclassifications and recalibration on aggregate payments is required by section 1886(d)(4)(C)(iii) of the Act to be budget neutral. In addition, section 1886(d)(3)(E) of the Act specifies that any updates or adjustments to the wage index are to be budget neutral. As noted in the Addendum to this final rule, we compared simulated aggregate payments using the FY 2003 DRG relative weights and wage index to simulated aggregate payments using the FY 2004 DRG relative weights and blended wage index. In addition, we are required to ensure that any add-on payments for new technology under section 1886(d)(5)(K) of the Act are budget neutral. As discussed in section II.E. of the preamble of this final rule, we have maintained the new technology status of the drug Xigris® for the treatment of severe sepsis (approved in last year's final rule at 67 FR 50013). We estimate the total add-on payments for this new technology for FY 2004 will be $10 million.

We also approved a second new technology for add-on payments. For FY 2004, the InFUSE™ Bone Graft/LT–CAGE™ Lumbar Tapered Fusion Device for spinal fusions will be eligible to receive add-on payments. We estimate the total add-on payments associated with cases involving this new device for FY 2004 will be $4.4 million.

We computed a final wage and recalibration budget neutrality factor of 1.005522. The 0.0 percent impact for all hospitals demonstrates that these changes, in combination with the budget neutrality factor, are budget neutral. In Table I, the combined overall impacts of the effects of both the DRG reclassifications and recalibration and the updated wage index are shown in column 8. The changes in this column are the sum of the final changes in columns 4, 5, 6, and 7, combined with the budget neutrality factor and the wage index floor for urban areas required by section 4410 of Pub. L. 105–33 to be budget neutral. There also may be some variation of plus or minus 0.1 percentage point due to rounding.

H. Impact of MGCRB Reclassifications (Column 9)

Our impact analysis to this point has assumed hospitals are paid on the basis of their actual geographic location (with the exception of ongoing policies that provide that certain hospitals receive payments on bases other than where they are geographically located, such as hospitals in rural counties that are deemed urban under section 1886(d)(8)(B) of the Act). The changes in column 9 reflect the per case payment impact of moving from this baseline to a simulation incorporating the MGCRB decisions for FY 2004. These decisions affect hospitals' standardized amount and wage index area assignments.

By February 28 of each year, the MGCRB makes reclassification determinations that will be effective for the next fiscal year, which begins on October 1. The MGCRB may approve a hospital's reclassification request for the purpose of using another area's standardized amount, wage index value, or both. The final FY 2004 wage index values incorporate all of the MGCRB's reclassification decisions for FY 2004. The wage index values also reflect any decisions made by the CMS Administrator through the appeals and review process.

The overall effect of geographic reclassification is required by section 1886(d)(8)(D) of the Act to be budget neutral. Therefore, we applied an adjustment of 0.992026 to ensure that the effects of reclassification are budget neutral. (See section II.A.4.b. of the Addendum to this final rule.)

As a group, rural hospitals benefit from geographic reclassification. Their payments would rise 2.2 percent in column 9. Payments to urban hospitals would decline 0.3 percent. Hospitals in other urban areas would experience an overall decrease in payments of 0.3 percent, while large urban hospitals would lose 0.4 percent. Among urban hospital groups (that is, bed size, census division, and special payment status), payments generally would decline.

A positive impact is evident among most of the rural hospital groups. The smallest increases among the rural census divisions are 0.4 for Puerto Rico and 1.3 percent for the West North Central region. The largest increases are in the rural Middle Atlantic, New England, and East South Central with increases of 2.6 percent and in the West South Central region which would experience an increase of 3.6 percent.

Among all the hospitals that were reclassified for FY 2004 (including hospitals that received wage index reclassifications in FY 2002 or FY 2003 that extend for 3 years), the MGCRB changes are estimated to provide a 4.3 percent increase in payments. Urban hospitals reclassified for FY 2004 are expected to receive an increase of 4.6 percent, while rural reclassified hospitals are expected to benefit from the MGCRB changes with a 4.0 percent increase in payments. Overall, among hospitals that were reclassified for purposes of the standardized amount only, a payment increase of 3.4 percent is expected, while those reclassified for purposes of the wage index only show a 4.2 percent increase in payments. Payments to urban and rural hospitals that did not reclassify are expected to decrease slightly due to the MGCRB changes, decreasing by 0.6 percent for urban hospitals and 0.4 percent for rural hospitals.

I. All Changes (Columns 10 and 11)

Column 10 compares our estimate of payments per case, incorporating all changes reflected in this proposed rule for FY 2004 (including statutory changes), to our estimate of payments per case in FY 2003. This column includes all of the final policy changes. Because the reclassifications shown in column 9 do not reflect FY 2003 reclassifications, the impacts of FY 2004 reclassifications only affect the impacts from FY 2003 to FY 2004 if the reclassification impacts for any group of hospitals are different in FY 2004 compared to FY 2003.

Column 10 includes the effects of the 3.4 percent update to the standardized amounts and the hospital-specific rates for MDHs and SCHs. It also reflects the 1.4 percentage point difference between the projected outlier payments in FY 2003 (5.1 percent of total DRG payments) and the current estimate of the percentage of actual outlier payments in FY 2003 (6.5 percent), as described in the introduction to this Appendix and the Addendum to this final rule. As a result, payments are projected to be 1.4 percent higher in FY 2003 than originally estimated, resulting in a 1.4 percent smaller increase than would otherwise occur. (Column 11, as discussed below, displays the changes from FY 2003 to 2004 after adjusting for the higher than expected FY 2003 outlier payments.)

Section 213 of Pub. L. 106–554 provides that all SCHs may receive payment on the basis of their costs per case during their cost reporting period that began during 1996. For FY 2004, eligible SCHs receive 100 percent of their 1996 hospital-specific rate. The impact of this provision is modeled in column 10 as well.

The expansion of the postacute care transfer policy also reduces payments by paying for discharges to postacute care in 21 additional DRGs as transfers and dropping 2 DRGs from the original list of affected DRGs. Because FY 2003 payments reflect full DRG payments for all cases in these 29 DRGs, there is a negative impact due to the expansion of this policy compared to FY 2003. The net effect of this expanded policy, as displayed in column 3, is also seen in the lower overall percent change shown in column 10 comparing FY 2004 simulated payments per case to FY 2003 payments.

Another influence on the overall change reflected in this column is the requirement of section 402(b) of Pub. L. 108–7 that all hospitals receive the large urban standardized amount for all discharges occurring on or after April 1, 2003, and before October 1, 2003. For discharges occurring on or after October 1, 2003, the Federal rate will again be calculated based on separate average standardized amounts for hospitals in large urban areas and for hospitals in other areas. The effect is to reduce the percent increase reflected in the "all changes" column.

There might also be interactive effects among the various factors comprising the payment system that we are not able to isolate. For these reasons, the values in column 10 may not equal the sum of the changes described above.

The overall change in payments per case for hospitals in FY 2004 would increase by 1.8 percent. Hospitals in urban areas would experience a 1.2 percent increase in payments per case compared to FY 2003. Hospitals in rural areas, meanwhile, would experience a 5.8 percent payment increase. Hospitals in large urban areas would experience a 1.1 percent increase in payments.

Among urban census divisions, the largest payment increase was 4.4 percent in the Mountain region. Hospitals in the urban East South Central region and in Puerto Rico would experience an overall increase of 2.9 percent and 2.8 percent, respectively. The smallest increase would occur in the West South Central region, with an increase of 1.6 percent. These below average increases are primarily due to the inflated outlier payments for some of these hospitals during FY 2003 compared to FY 2004.

The effect of outlier payments is illustrated in column 11, which sets each hospital's outlier percentage equal to their projected percentage for FY 2004. In this way, we are able to model FY 2003 payments as if outlier payments were on a par with projected FY 2004 outlier payments. The results illustrate the dampening effect the high FY 2003 outliers have on column 10. After removing this effect, the impact for all hospitals in FY 2004 is a 3.2 percent increase, equal to the 3.4 percent update minus 0.2 percent for the impact of the expanded postacute transfer policy. For the most part (except for the 0.5 percent decrease in the rural Puerto Rico category), this reverses any negative overall impacts observed in column 10.

Among rural regions in column 10, the only hospital category that would experience overall payment decreases is Puerto Rico, where payments would decrease by 0.3 percent, largely due to the updated wage data. The West North Central and Pacific regions would benefit the most, with 7.9 and 8.7 percent increases, respectively.

Among special categories of rural hospitals in column 10, those hospitals receiving payment under the hospital-specific methodology (SCHs, MDHs, and SCH/RRCs) would experience payment increases of 10.8 percent, 3.3 percent, and 7.4 percent, respectively. This outcome is primarily related to the fact that, for hospitals receiving payments under the hospital-specific methodology, there are no outlier payments. Therefore, these hospitals would not experience negative payment impacts from the decline in outlier payments from FY 2003 to FY 2004 as would hospitals paid based on the national standardized amounts. The 10.8 percent increase for SCHs is due to the increase in percentage of the 1996 hospital-specific rate percentage from 75 percent in FY 3003 to 100 percent in FY 2004.

Hospitals that were reclassified for FY 2004 are estimated to receive a 2.6 percent increase in payments. Urban hospitals reclassified for FY 2004 are anticipated to receive a decrease of 1.8 percent, while rural reclassified hospitals are expected to benefit from reclassification with a 5.5 percent increase in payments. Overall, among hospitals reclassified for purposes of the standardized amount, a payment increase of 5.4 percent is expected, while those hospitals reclassified for purposes of the wage index only would show an expected 1.9 percent increase in payments. Those hospitals located in rural counties but deemed to be urban under section 1886(d)(8)(B) of the Act are expected to receive an increase in payments of 3.0 percent.

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 2004 OPERATING PROSPECTIVE PAYMENT SYSTEM (PAYMENTS PER CASE)

	Number of hospitals (1)	Average FY 2003 payment per case[1] (2)	Average FY 2004 payment per case[1] (3)	All FY 2004 changes (4)
By Geographic Location:				
All hospitals	4,049	7,512	7,651	1.8
Urban hospitals	2,564	7,976	8,073	1.2
Large urban areas (populations over 1 million)	1,488	8,466	8,557	1.1
Other urban areas (populations of 1 million or fewer)	1,076	7,324	7,429	1.4
Rural hospitals	1,485	5,506	5,825	5.8
Bed Size (Urban):				
0–99 beds	614	5,539	5,654	2.1
100–199 beds	914	6,691	6,772	1.2
200–299 beds	508	7,653	7,763	1.4
300–499 beds	372	8,568	8,635	0.8
500 or more beds	156	10,199	10,339	1.4
Bed Size (Rural):				
0–49 beds	671	4,526	4,796	6.0
50–99 beds	474	5,113	5,431	6.2
100–149 beds	203	5,519	5,851	6.0
150–199 beds	70	5,845	6,101	4.4
200 or more beds	67	7,051	7,453	5.7
Urban by Region:				
New England	132	8,390	8,623	2.8
Middle Atlantic	395	9,010	8,757	−2.8
South Atlantic	370	7,538	7,739	2.7
East North Central	422	7,509	7,708	2.7
East South Central	154	7,201	7,407	2.9
West North Central	175	7,639	7,877	3.1
West South Central	327	7,432	7,549	1.6
Mountain	130	7,770	8,110	4.4
Pacific	413	9,774	9,718	−0.6
Puerto Rico	46	3,346	3,438	2.8
Rural by Region:				
New England	37	6,932	7,404	6.8
Middle Atlantic	56	5,581	5,809	4.1
South Atlantic	222	5,596	5,890	5.3
East North Central	193	5,479	5,726	4.5
East South Central	231	4,957	5,191	4.7
West North Central	247	5,728	6,183	7.9
West South Central	273	4,733	5,005	5.8
Mountain	121	6,266	6,710	7.1
Pacific	90	7,231	7,861	8.7
Puerto Rico	5	2,621	2,613	−0.3
By Payment Classification:				
Urban hospitals	2,605	7,953	8,052	1.2
Large urban areas (populations over 1 million)	1,582	8,362	8,463	1.2
Other urban areas (populations of 1 million or fewer)	1,023	7,350	7,445	1.3
Rural areas	1,444	5,483	5,809	5.9
Teaching Status:				
Non-teaching	2,932	6,189	6,351	2.6
Fewer than 100 Residents	880	7,768	7,871	1.3
100 or more Residents	237	11,499	11,642	1.2
Urban DSH:				
Non-DSH	1,349	6,736	6,902	2.5
100 or more beds	1,399	8,575	8,656	0.9
Less than 100 beds	282	5,425	5,472	0.9
Rural DSH:				
Sole Community (SCH)	493	5,589	6,146	10.0
Referral Center (RRC)	156	6,053	6,326	4.5
Other Rural: 100 or more beds	71	4,647	4,762	2.5
Less than 100 beds	299	4,286	4,404	2.8
Urban teaching and DSH:				
Both teaching and DSH	775	9,435	9,523	0.9
Teaching and no DSH	274	7,704	7,865	2.1
No teaching and DSH	906	6,814	6,881	1.0
No teaching and no DSH	650	6,265	6,380	1.8
Rural Hospital Types:				
Non special status hospitals	474	4,441	4,559	2.7
RRC	148	5,868	6,072	3.5
SCH	497	6,022	6,673	10.8
Medicare-dependent hospitals (MDH)	250	4,162	4,301	3.3
SCH and RRC	75	6,805	7,312	7.4
Type of Ownership:				
Voluntary	2,411	7,617	7,784	2.2
Proprietary	698	7,189	7,035	−2.1
Government	618	7,264	7,557	4.0
Unknown	122	7,528	7,794	3.5
Medicare Utilization as a Percent of Inpatient Days:				
0–25	303	10,131	10,383	2.5
25–50	1,533	8,568	8,669	1.2
50–65	1,651	6,505	6,686	2.8
Over 65	456	5,824	5,891	1.1
Unknown	106	6,766	6,884	1.7
Hospitals Reclassified by the Medicare Geographic Classification Review Board: FY 2004 Reclassifications:				
All Reclassified Hospitals	616	6,892	7,071	2.6
Standardized Amount Only	22	5,672	5,980	5.4
Wage Index Only	554	6,952	7,082	1.9
Both	33	6,146	6,398	4.1
All Nonreclassified Hospitals	3,407	7,639	7,777	1.8
All Urban Reclassified Hospitals	125	8,779	8,619	−1.8
Urban Nonreclassified Hospitals	15	6,352	6,646	4.6
Standardized Amount Only	71	9,881	9,471	−4.1
Wage Index Only	39	7,018	7,304	4.1
Both	2,408	7,946	8,059	1.4
All Reclassified Rural Hospitals	491	6,040	6,372	5.5
Standardized Amount Only	27	6,218	6,363	2.3
Wage Index Only	451	6,047	6,393	5.7
Both	13	5,345	5,632	5.4
Rural Nonreclassified Hospitals	992	4,863	5,166	6.2
Other Reclassified Hospitals (Section 1886(d)(8)(B))	33	5,087	5,241	3.0

[1] These payment amounts per case do not reflect any estimates of annual case-mix increase.

Table II presents the projected impact of the final changes for FY 2004 for urban and rural hospitals and for the different categories of hospitals shown in Table I. It compares the estimated payments per case for FY 2003 with the average estimated per case payments for FY 2004, as calculated under our models. Thus, this table presents, in terms of the average dollar amounts paid per discharge, the combined effects of the changes presented in Table I. The percentage changes shown in the last column of Table II equal the percentage changes in average payments from column 10 of Table I.

VII. Impact of Other Policy Changes

In addition to those changes discussed above that we are able to model using our IPPS payment simulation model, we are implementing various other changes in this final rule. Generally, we have limited or no specific data available with which to estimate the impacts of these changes. Our estimates of the likely impacts associated with these other changes are discussed below.

A. Changes to Bed and Patient Day Counting Policies

1. Background

Under IPPS, both the IME and the DSH adjustments utilize statistics regarding the number of beds and patient days of a hospital to determine the level of the respective payment adjustment. For IME, hospitals receiving this adjustment want to minimize their numbers of beds in order to maximize their resident-to-bed ratio. For DSH, urban hospitals with 100 or more beds qualify for a higher payment adjustment, so some hospitals have an incentive to maximize their bed count to qualify for higher payments. Existing regulations specify that the number of beds is determined by counting the number of available bed days during the cost reporting period and dividing that number by the number of days in the cost reporting period.

2. Nonacute Care Beds and Days

The rule clarifies that days attributable to a nonacute care unit or ward, regardless of whether the unit or ward is separately certified by Medicare or is adjacent to a unit or ward used to provide an acute level of care, would not be included in the count of bed or patient days. In a recent decision by the Ninth Circuit Court of Appeals (*Alhambra Hosp.* v. *Thompson*, 259 F.3d 1017 (9th Cir. 2001)), the court found that our policy for counting patient days did not preclude a hospital from counting the patient days attributable to a nonacute care unit adjacent to an area of the hospital subject to the IPPS. Under this ruling, hospitals within the jurisdiction of the Ninth Circuit would be able to count those patient days.

Because the *Alhambra* decision was based on a regulatory interpretation, this final rule would supersede the *Alhambra* decision in the Ninth Circuit. We estimate that if all hospitals in the Ninth Circuit that could take advantage of this ruling were currently doing so, the impact of this provision would be $184 million in reduced Medicare program payments to the affected hospitals in FY 2004 for DSH. This estimate reflects the impact of adding all days of non-Medicare certified nursing facilities to the count of inpatient days for hospitals in the nine States under the jurisdiction of the Ninth Circuit. For example, in Alaska, nursing facility days constitute 11 percent of total Medicaid inpatient days. If all of these nursing facility days are currently included in the Medicaid inpatient days count, we estimate this provision would reduce Medicare DSH payments to Alaska's hospitals by $662,097.

We are unable to estimate the effect of this provision on specific hospitals because we are not aware of specific hospitals that are presently including those inpatient days in their calculation of Medicaid days for purposes of determining their Medicare DSH percentage. However, we expect the impact on any particular hospital would be minimal (with no impact on the level of beneficiary

services), because the days attributable to patients receiving these limited benefit programs should be only a small portion of the overall Medicaid days at any particular hospital. No other provider types would be affected. However, because our policy is to count patient days and beds consistently, inclusion of the days of postacute care units in the DSH calculation would lead to an offsetting negative payment impact for teaching hospitals. The inclusion of additional beds decreases the resident-to-bed ratios used to calculate the IME adjustments.

Therefore, the actual potential impact on hospitals of this policy clarification is likely to be significantly less than $184 million.

3. Observation and Swing-Beds

We are revising our regulations to clarify that swing-bed and observation bed days are to be excluded from the count of bed and patient days. Because this clarification reflects our current policy, despite the fact that there has been some confusion and we have had adverse court decisions, we do not anticipate this clarification would have a significant impact on payments. We do not have data available that would enable us to identify those hospitals that have not been applying this policy and, therefore, would be required to change their policy. Consequently, we are unable to quantify the impacts of this clarification.

4. Labor, Delivery, and Postpartum Beds and Days

Similarly, in the case of labor, delivery, and postpartum rooms, we are clarifying that it is necessary to apportion the days and costs of a patient stay between the labor/delivery ancillary cost centers and the routine adults and pediatrics cost center on the basis of the percentage of time during the entire stay associated with these various services. Because this is a clarification of existing policy, we do not anticipate this change will have a significant payment impact. However, we do not have data available to enable us to identify those hospitals that have not been applying this policy and, therefore, will be required to change their policy. Consequently, we are unable to quantify the impacts of this clarification.

5. Days Associated With Demonstration Projects Under Section 1115 of the Act

Some States have demonstration projects that provide family planning or outpatient drug benefits that are limited benefits that do not include Medicaid coverage for inpatient services. In this final rule, we also clarify that any hospital inpatient days attributed to a patient who is not eligible for Medicaid inpatient hospital benefits either under the approved State plan or through a section 1115 waiver must not be counted in the calculation of Medicaid days for purposes of determining a hospital's DSH percentage.

We estimated the potential impact of the clarification to our policy of excluding days associated with inpatients who are eligible only for Medicaid outpatient benefits. We identified the percentage of individuals receiving only outpatient family planning benefits under Medicaid compared to all Medicaid-eligible beneficiaries (this is currently the only outpatient-only category for which we have numbers of eligible beneficiaries). These percentages were calculated on a statewide basis for each State with a family planning benefit. Based on these percentages, assuming family planning beneficiaries use inpatient services at the same rate as all other Medicaid beneficiaries, we estimated the amount of total Medicare DSH payments for each State that may be attributable to family planning beneficiaries' use of inpatient services.

For example, in Alabama, total Medicare DSH payments in 1999 (the latest year for which a complete database of cost reports from all hospitals is available) were $97.1 million. Because the percentage of family planning beneficiaries to total Medicaid eligible beneficiaries is 11.24 percent, we estimated 11.24 percent of $97.1 million in Medicare DSH payments, or $10.9 million, is the maximum amount of Medicare DSH that may currently be attributable to the inclusion of inpatient days for individuals who are only eligible for outpatient family planning Medicaid benefits. Based on this analysis, we have identified the potential impact upon hospitals to be as much as $290 million in reduced DSH payments from the Medicare program to those hospitals in FY 2004. Of this amount, $176 million is attributable to California. This amount is not an impact on State programs nor does it require States to spend any additional money. We also note that we are not aware of any specific hospitals that are including inpatient days attributable to individuals with no inpatient Medicaid benefits. Therefore, this estimate reflects the maximum potential impact, but the actual impact is very likely to be much less.

We are unable to estimate the effect of this clarification on specific hospitals because we are not aware of specific hospitals that are presently including those inpatient days in their calculation of Medicaid days for purposes of determining their Medicare DSH percentage. However, we expect the impact on any particular hospital would be minimal (with no impact on the level of beneficiary services), because the days attributable to patients receiving these limited benefit programs should be only a small portion of the overall Medicaid days at any particular hospital. No other provider types would be affected.

B. Costs of Approved Nursing and Allied Health Education Activities

1. Continuing Education

In section IV.E. of the preamble of this final rule, we are clarifying further the distinction between continuing education, which is not eligible for pass-through payment, and approved educational programs, which are eligible for pass-through payment. An approved program that qualifies for pass-through payment is generally a program of long duration designed to develop trained practitioners in a nursing or allied health discipline, such as professional nursing, in which the individual learns "value-added" skills that enable him or her to work in a particular capacity upon completion of the program. Such a program is in contrast to a continuing education program in which a practitioner, such as a registered nurse, receives training in a specialized skill or a new technology. While such training is undoubtedly valuable in enabling the nurse to treat patients with special needs, the nurse, upon completion of the program, continues to function as a registered nurse, albeit one with an additional skill. Effective October 1, 2003, we are clarifying our policy concerning not allowing pass-through payment for continuing education because it has come to our attention that certain programs, which in our view constitute continuing education are inappropriately receiving pass-through payment.

To the extent that Medicare would no longer pay for such programs, Medicare payments would be reduced. We believe that these programs comprise a small fraction of the approximately $230 million that are paid for all nursing and allied health education programs under Medicare.

2. Nonprovider-Operated Nursing and Allied Health Education Programs With Wholly Owned Subsidiary Educational Institutions

As discussed in section IV.E.3. of this final rule, we are finalizing the proposal that Medicare would not recoup reasonable cost payment from hospitals that have received pass-through payment for portions of cost reporting periods occurring on or before October 1, 2003 for costs of nursing or allied health education program(s) where the program(s) had originally been operated by the hospital, and then operation of program(s) had been transferred by the hospital to a wholly owned subsidiary educational institution in order to meet accreditation standards prior to October 1, 2003, and where the hospital had continued to incur the costs of both the classroom and clinical training portions of the programs while the program(s) were operated by the educational institution. We estimate that the costs to the Medicare program of this proposal will be approximately $10 to $20 million. We do not believe many hospitals fit the criteria described above of previously receiving Medicare payment for direct operation of nursing or allied health education program(s) and then transferring operation of the program(s) to a wholly owned subsidiary educational institution, all the while incurring the classroom and clinical training costs of the program(s).

In addition, we are finalizing the proposal that, for portions of cost reporting periods beginning on or after October 1, 2003, a hospital that meets the criteria described above may continue to receive reasonable cost payments for clinical training costs incurred by the hospital for the nursing and allied health education program(s) that were operated by the hospital prior to the date the hospital transferred operation of the program(s) to its wholly owned subsidiary educational institution (and ceased to be a provider-operated program). We are also finalizing that, with respect to classroom costs, only those classroom costs incurred by the hospital for the courses that were paid by Medicare on a reasonable cost basis and included in the hospital's provider-operated program(s) could continue to be reimbursed on a reasonable cost basis. We estimate the costs to the Medicare program for this provision will be $1 to $2 million per year.

C. Prohibition Against Counting Residents Where Other Entities Have Previously Incurred the Training Costs

As we explain in section IV.F.2. of the preamble of this final rule, under section 1886(h) of the Act, hospitals may count the time that residents spend training in nonhospital sites if they meet certain conditions, including incurring "all or substantially all" of the costs of training at the nonhospital site. Legislative history indicates that the purpose of this provision is to encourage hospitals to provide more training outside the traditional hospital environment.

It has come to our attention that hospitals have been incurring the costs of and receiving direct GME and IME payment for residency training that had previously been occurring in nonhospital settings, without the financial support of the hospitals. We believe that where no new or additional training is provided in these nonhospital settings, the receipt of Medicare payment in such cases is contrary to Congressional intent and is, therefore, inappropriate. In addition, it violates Medicare's redistribution of costs and community support principles, which state that Medicare will not share in the costs of educational activities of a hospital that represent a redistribution of costs from a university or the community to the hospital. Accordingly, we are revising our policy concerning counting residents to ensure that, effective for portions of cost reporting periods occurring on or after October 1, 2003, Medicare GME payments are not made to hospitals for training that had already been in place in the absence of the hospital's financial support. However, we also are providing that, for an FTE resident who began training in a residency program on or before October 1, 2003, and with respect to whom there has been a redistribution of costs or community support, the resident may continue to be counted by a hospital as an FTE resident until the resident has completed training in that program, or until 3 years after the date the resident began training in that program, whichever comes first.

By prohibiting payment for residency training that had been previously supported by nonhospital institutions, this change will reduce the amount of direct GME and IME payments received by hospitals. Although we cannot estimate the impact on programs nationally, we are aware that two hospitals in New York were receiving over $10 million annually for payments for dental residents training in nonhospital sites. Another hospital in Boston was receiving over $2 million annually for dental residents training at a dental school.

D. Rural Track GME Training Programs

1. Reduction in the Time Required for Training Residents in a Rural Area

As explained in section IV.F.3. of the preamble of this final rule, under existing regulations, if an urban hospital rotates residents to a separately accredited rural track program in a rural area for two-thirds of the duration of the training program, the urban hospital may receive an increase in its FTE cap to reflect the time those residents train at the urban hospital. When we first implemented these regulations, we did so based on our understanding that the Accreditation Council for Graduate Medical Education (ACGME) requires that at least two-thirds of the duration of the program be spent in a rural area. However, it has come to our attention that, while the ACGME generally follows a one-third/two-thirds model for accreditation, the rural training requirement is actually somewhat less than two-thirds of the duration of the program. Therefore, we are revising the regulations to state that if an urban hospital rotates residents to a separately accredited rural track program in a rural area for more than 50 percent of the duration of the training program, the urban hospital may receive an increase in its FTE cap to reflect the time those residents train at the urban hospital. We estimate that this provision will only slightly increase Medicare payments for IME and direct GME costs.

2. Inclusion of Rural Track FTE Residents in the Rolling Average Calculation

As explained in section IV.F.4. of the preamble of this final rule, when we first issued the regulations concerning residents training in a rural track program, we inadvertently did not specify in regulations that these residents would be included in the hospital's rolling average count of FTE residents used for computing GME payment. We are making this technical clarification to the regulations. We believe that this provision will not have a budget impact because it is a clarification of existing policy.

D. Impact of Application of RCE Limits

As discussed in section IV.G. of this final rule, we are updating the RCE limits by applying the most recent economic index. In this final rule, we are announcing an update of the limits, as required by § 415.70(f)(3) and does not alter any regulations or policy. The RCE limits apply only to providers paid on a reasonable cost basis and to compensation a physician receives from a provider for services that benefit patients generally or otherwise but that are not eligible for payment under the physician fee schedule. Also, the limits do not apply to costs of physician compensation that are attributable to furnishing inpatient hospital services paid under the IPPS or that are attributable to GME costs. In addition, RCE limits do not apply to the costs CAHs incur in compensating physicians for services. As a result of the application of the RCE limits, we estimate the costs associated with the updated limits for calendar year 2004 to be approximately $11 million.

VIII. Impact of Changes in the Capital PPS

A. General Considerations

Fiscal year 2001 was the last year of the 10-year transition period established to phase in the PPS for hospital capital-related costs. During the transition period, hospitals were paid under one of two payment methodologies: fully prospective or hold harmless. Under the fully prospective methodology, hospitals were paid a blend of the capital Federal rate and their hospital-specific rate (see § 412.340). Under the hold-harmless methodology, unless a hospital elected payment based on 100 percent of the capital Federal rate, hospitals were paid 85 percent of reasonable costs for old capital costs (100 percent for SCHs) plus an amount for new capital costs based on a proportion of the capital Federal rate (see § 412.344). As we state in section V. of the preamble of this final rule, with the 10-year transition period ending with hospital cost reporting periods beginning on or after October 1, 2001 (FY 2002), beginning in FY 2004 capital prospective payment system payments for most hospitals are based solely on the capital Federal rate. Therefore, we no longer include information on obligated capital costs or projections of old capital costs and new capital costs, which were factors needed to calculate payments during the transition period, for our impact analysis.

In accordance with § 412.312, the basic methodology for determining a capital prospective payment system payment is:

(Standard Federal Rate) × (DRG weight) × (Geographic Adjustment Factor (GAF)) × (Large Urban Add-on, if applicable) × (COLA adjustment for hospitals located in Alaska and Hawaii) × (1 + Disproportionate Share (DSH) Adjustment Factor + Indirect Medical Education (IME) Adjustment Factor, if applicable).

In addition, hospitals may also receive outlier payments for those cases that qualify under the threshold established for each fiscal year.

The data used in developing the impact analysis presented below are taken from the March 2003 update of the FY 2002 MedPAR file and the March 2003 update of the Provider Specific File that is used for payment purposes. Although the analyses of the changes to the capital prospective payment system do not incorporate cost data, we used the December 2002 update of the most recently available hospital cost report data (FY 2001) to categorize hospitals. Our analysis has several qualifications. First, we do not make adjustments for behavioral changes that hospitals may adopt in response to policy changes. Second, due to the interdependent nature of the prospective payment system, it is very difficult to precisely quantify the impact associated with each change. Third, we draw upon various sources for the data used to categorize hospitals in the tables. In some cases (for instance, the number of beds), there is a fair degree of variation in the data from different sources. We have attempted to construct these variables with the best available sources overall. However, for individual hospitals, some miscategorizations are possible.

Using cases from the March 2003 update of the FY 2002 MedPAR file, we simulated payments under the capital prospective payment system for FY 2003 and FY 2004 for a comparison of total payments per case. Any short-term, acute care hospitals not paid under the general hospital inpatient prospective payment systems (Indian Health Service Hospitals and hospitals in Maryland) are excluded from the simulations.

As we explain in section III.A.4. of the Addendum of this final rule, payments will no longer be made under the regular exceptions provision under §§ 412.348(b) through (e). Therefore, we are no longer using the actuarial capital cost model (described in Appendix B of August 1, 2001 final rule (66 FR 40099)). We modeled payments for each hospital by multiplying the capital Federal rate by the GAF and the hospital's case-mix. We then added estimated payments for indirect medical education, disproportionate share, large urban add-on, and outliers, if applicable. For purposes of this impact analysis, the model includes the following assumptions:

- We estimate that the Medicare case-mix index would increase by 1.01 percent in both FY 2003 and FY 2004.
- We estimate that the Medicare discharges will be 14.3 million in FY 2003 and 14.5 million in FY 2004 for a 1.5 percent increase from FY 2003 to FY 2004.
- The capital Federal rate was updated beginning in FY 1996 by an analytical framework that considers changes in the prices associated with capital-related costs and adjustments to account for forecast error, changes in the case-mix index, allowable changes in intensity, and other factors. The FY 2004 update is 0.7 percent (see section III.A.1.a. of the Addendum to this final rule).
- In addition to the FY 2004 update factor, the FY 2004 capital Federal rate was calculated based on a GAF/DRG budget neutrality factor of 1.0059, an outlier adjustment factor of 0.9522, and a (special) exceptions adjustment factor of 0.9995.

2. Results

In the past, in this impact section we presented the redistributive effects that were expected to occur between "hold-harmless" hospitals and "fully prospective" hospitals and a cross-sectional summary of hospital groupings by the capital prospective payment system transition period payment methodology. We are no longer including this information since all hospitals (except new hospitals under § 412.324(b) and under § 412.304(c)(2)) are paid 100 percent of the capital Federal rate in FY 2004.

We used the actuarial model described above to estimate the potential impact of our changes for FY 2004 on total capital payments per case, using a universe of 3,929 hospitals. As described above, the individual hospital payment parameters are taken from the best available data, including the March 2003 update of the FY 2002 MedPAR file, the March 2003 update to the Provider-Specific File, and the most recent cost report data from the March 2003 update of HCRIS. In Table III, we present a comparison of total payments per case for FY 2003 compared to FY 2004 based on the FY 2004 payment policies. Column 2 shows estimates of payments per case under our model for FY 2003. Column 3 shows estimates of payments per case under our model for FY 2004. Column 4 shows the total percentage change in payments from FY 2003 to FY 2004. The change represented in Column 4 includes the 0.7 percent update to the capital Federal rate, a 1.01 percent increase in case-mix, changes in the adjustments to the capital Federal rate (for example, the effect of the new hospital wage index on the geographic adjustment factor), and reclassifications by the MGCRB, as well as changes in special exception payments. The comparisons are provided by: (1) geographic location; (2) region; and (3) payment classification.

The simulation results show that, on average, capital payments per case can be expected to decrease slightly −0.2 percent) in FY 2004. This projected decrease in capital payments per case is mostly due to the estimated decrease in outlier payments in FY 2004 as a result of the changes to the outlier policy established in the June 9, 2003 high-cost outlier final rule (68 FR 34494). Our comparison by geographic location shows that urban hospitals are expected to experience a slight decrease in capital payments per case (−0.6 percent), while rural hospitals are expected to experience an increase in capital payments per case (2.5 percent). This difference is mostly due to a projection that urban hospitals will experience a larger decrease in outlier payments from FY 2003 to FY 2004 due to the changes in the outlier policy established in the June 9, 2003 high-cost outlier final rule compared to rural hospitals.

Most regions are estimated to receive an increase in total capital payments per case. Changes by region vary from a maximum decrease of 4.1 percent (Middle Atlantic urban region) to a maximum increase of 3.3 percent (West North Central rural region). Hospitals located in Puerto Rico are expected to experience an increase in total capital payments per case of 0.4 percent.

By type of ownership, government hospitals are projected to have the largest rate of increase of total payment changes (2.0 percent). Similarly, payments to voluntary hospitals are expected to increase 0.7 percent, while payments to proprietary hospitals are expected to decrease 6.9 percent. As noted above, this projected decrease in capital payments per case for proprietary hospitals is mostly due to the estimated decrease in outlier payments in FY 2004 as a result of the changes to the outlier policy established in the June 9, 2003 high-cost outlier final rule.

Section 1886(d)(10) of the Act established the MGCRB. Hospitals may apply for reclassification for purposes of the standardized amount, wage index, or both. Although the capital Federal rate is not affected, a hospital's geographic classification for purposes of the operating standardized amount does affect a hospital's capital payments as a result of the large urban adjustment factor and the disproportionate share adjustment for urban hospitals with 100 or more beds. Reclassification for wage index purposes also affects the geographic adjustment factor, since that factor is constructed from the hospital wage index.

To present the effects of the hospitals being reclassified for FY 2004 compared to the effects of reclassification for FY 2003, we show the average payment percentage increase for hospitals reclassified in each fiscal year and in total. The reclassified groups are compared to all other nonreclassified hospitals. These categories are further identified by urban and rural designation.

Hospitals reclassified for FY 2004 as a whole are projected to experience a 0.3 percent increase in payments. Payments to nonreclassified hospitals in FY 2004 are expected to decrease 0.3 percent. Hospitals reclassified during both FY 2003 and FY 2004 are projected to experience a slight decrease in payments of 0.2 percent. Hospitals reclassified during FY 2004 only are projected to receive an increase in payments of 5.7 percent. This increase is primarily due to changes in the GAF (wage index).

TABLE III.—COMPARISON OF TOTAL PAYMENTS PER CASE (FY 2003 PAYMENTS COMPARED TO FY 2004 PAYMENTS)

	Number of hospitals	Average FY 2003 payments/case	Average FY 2004 payments/case	Change
By Geographic Location:				
All hospitals	3,929	715	714	−0.2
Large urban areas (populations over 1 million)	1,436	820	813	−0.8
Other urban areas (populations of 1 million of fewer)	1,035	703	701	−0.3
Rural areas	1,458	479	491	2.5
Urban hospitals	2,471	770	765	−0.6
0–99 beds	549	545	545	−0.1
100–199 beds	895	647	646	−0.1
200–299 beds	503	738	734	−0.6
300–499 beds	369	823	814	−1.0
500 or more beds	155	980	976	−0.5
Rural hospitals	1,458	479	491	2.5
0–49 beds	550	391	402	2.9
50–99 beds	468	442	453	2.5

TABLE III.—COMPARISON OF TOTAL PAYMENTS PER CASE (FY 2003 PAYMENTS COMPARED TO FY 2004 PAYMENTS)—Continued

	Number of hospitals	Average FY 2003 payments/case	Average FY 2004 payments/case	Change
100–149 beds	203	484	496	2.5
150–199 beds	70	526	538	2.3
200 or more beds	67	599	612	2.2
By Region:				
Urban by Region	2,471	770	765	−0.6
New England	129	816	827	1.4
Middle Atlantic	389	865	830	−4.1
South Atlantic	359	733	734	0.1
East North Central	403	736	748	1.6
East South Central	151	691	698	1.0
West North Central	168	754	761	0.9
West South Central	307	721	710	−1.5
Mountain	121	746	768	2.9
Pacific	400	907	886	−2.3
Puerto Rico	44	320	321	0.4
Rural by Region	1,458	479	491	2.5
New England	37	597	593	−0.6
Middle Atlantic	65	503	514	2.2
South Atlantic	220	492	504	2.4
East North Central	191	492	504	2.3
East South Central	228	437	448	2.5
West North Central	242	478	493	3.3
West South Central	268	426	439	3.1
Mountain	116	508	519	2.1
Pacific	56	566	580	2.5
By Payment Classification:				
All hospitals	3,929	715	714	−0.2
Large urban areas (populations over 1 million)	1,529	809	804	−0.6
Other urban areas (populations of 1 million of fewer)	983	705	702	−0.5
Rural areas	1,417	476	487	2.5
Teaching Status:				
Non-teaching	2,821	585	586	0.1
Fewer than 100 Residents	872	742	742	0.1
100 or more Residents	236	1,097	1,085	−1.1
Urban DSH:				
100 or more beds	1,383	809	804	−0.7
Less than 100 beds	269	530	518	−2.4
Rural DSH:				
Sole Community (SCH/EACH)	491	419	431	2.7
Referral Center (RRC/EACH)	156	544	557	2.4
Other Rural:				
100 or more beds	71	440	448	1.9
Less than 100 beds	291	407	417	2.4
Urban teaching and DSH:				
Both teaching and DSH	769	890	885	−0.6
Teaching and no DSH	271	774	775	0.1
No teaching and DSH	883	645	638	−1.1
No teaching and no DSH	589	639	637	−0.3
Rural Hospital Types:				
Non special status hospitals	453	425	435	2.3
RRC/EACH	148	556	570	2.4
SCH/EACH	492	441	453	2.6
Medicare-dependent hospitals (MDH)	249	395	406	2.9
SCH, RRC and EACH	75	542	555	2.5
Hospitals Reclassified by the Medicare Geographic Classification Review Board:				
Reclassification Status During FY2003 and FY2004:				
Reclassified During Both FY2003 and FY2004	556	628	626	−0.2
Reclassified During FY2004 Only	58	618	654	5.7
Reclassified During FY2003 Only	55	580	557	−4.1
FY2004 Reclassifications:				
All Reclassified Hospitals	614	627	629	0.3
All Nonreclassified Hospitals	3,283	732	730	−0.3
All Urban Reclassified Hospitals	124	815	811	−3.0
Urban Nonreclassified Hospitals	2,317	768	764	−0.4
All Reclassified Rural Hospitals	490	532	546	2.6
Rural Nonreclassified Hospitals	965	413	423	2.3
Other Reclassified Hospitals (Section 1886(D)(8)(B))	32	490	502	2.5
Type of Ownership:				
Voluntary	2,399	728	733	0.7

TABLE III.—COMPARISON OF TOTAL PAYMENTS PER CASE (FY 2003 PAYMENTS COMPARED TO FY 2004 PAYMENTS)—Continued

	Number of hospitals	Average FY 2003 payments/case	Average FY 2004 payments/case	Change
Proprietary	685	704	656	−6.9
Government	811	651	665	2.0
Medicare Utilization as a Percent of Inpatient Days:				
0–25	298	917	925	0.8
25–50	1,523	817	810	−0.9
50–65	1,641	619	624	0.8
Over 65	451	566	560	−1.1

Appendix B: Recommendation of Update Factors for Operating Cost Rates of Payment for Inpatient Hospital Services

I. Background

Section 1886(e)(4)(A) of the Act requires that the Secretary, taking into consideration the recommendations of the Medicare Payment Advisory Commission (MedPAC), recommend update factors for inpatient hospital services for each fiscal year that take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. Under section 1886(e)(5) of the Act, we are required to publish the final update factors recommended by the Secretary in the final rule. Accordingly, this Appendix provides the recommendations of appropriate update factors for the IPPS standardized amounts, the hospital-specific rates for SCHs and MDHs, and the rate-of-increase limits for hospitals and hospitals units excluded from the IPPS. We also discuss our update framework and respond to MedPAC's recommendations concerning the update factors.

II. Secretary's Final Recommendations for Updating the Prospective Payment System Standardized Amounts

In recommending an update, the Secretary takes into account the factors in the update framework, as well as other factors, such as the recommendations of MedPAC, the long-term solvency of the Medicare Trust Funds, and the capacity of the hospital industry to continually provide access to high quality care to Medicare beneficiaries through adequate payment to health care providers.

Comment: One commenter noted that overall Medicare payments are less than the costs associated with providing care to Medicare beneficiaries. The commenter indicated its organization will continue to urge Congress to provide adequate Medicare reimbursement to hospitals.

Response: As noted above, the Secretary's update recommendation for FY 2004 is consistent with current law. Therefore, Congress is the appropriate body to address the issue of adequate Medicare reimbursement that was raised by the commenter.

III. Secretary's Final Recommendation for Updating the Rate-of-Increase Limits for Excluded Hospitals and Hospital Units

We did not receive any comments concerning our proposed recommendation for updating the rate-of-increase for excluded hospitals and hospital units. Our final recommendation does not differ from the proposed recommendation. However, the second quarter forecast of the market basket percentage increase is 3.4 for excluded hospitals and hospital units (compared to the 3.5 percent estimated in the proposed rule). Thus, the policy finalized in this final rule is that the update for the remaining hospitals and hospital units excluded from the IPPS is 3.4 percent.

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Part IV

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 412

Medicare Program; Changes to the Inpatient Rehabilitation Facility Prospective Payment System and Fiscal Year 2004 Rates; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1474–F]

RIN 0938–AL95

Medicare Program; Changes to the Inpatient Rehabilitation Facility Prospective Payment System and Fiscal Year 2004 Rates

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: In this final rule, we are establishing the prospective payment rates for inpatient hospital services furnished under Medicare by inpatient rehabilitation facilities (IRFs) for Federal fiscal year (FY) 2004, as required under section 1886(j)(3)(C) of the Social Security Act (the Act). As required by law and regulations, we are specifying the classification and weighting factors for the IRF case-mix groups and providing a description of the methodology and data used in computing the prospective payment rates for FY 2004. These rates are applicable to discharges occurring on or after October 1, 2003 and before October 1, 2004.

In addition, we are revising and clarifying policies governing the payment for inpatient hospital services furnished by IRFs under the IRF PPS.

DATES: Effective: October 1, 2003. The updated IRF prospective payment rates are applicable for discharges on or after October 1, 2003 and on or before September 30, 2004 (FY 2004).

FOR FURTHER INFORMATION CONTACT: Robert Kuhl, (410) 786–4597 (General information) Pete Diaz (410) 786–1235 (Patient assessment instrument and other patient assessment issues); Nora Hoban, (410) 786–0675 (Payment system, calculation of IRF payment rates, update factors, relative weights/case-mix index, and payment adjustments).

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

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Acronyms

BBRA Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999, Public Law 106–113
CMGs Case-mix groups
CMI Case-mix index
CMP Competitive medical plan
CMS Centers for Medicare & Medicaid Services
FY Federal fiscal year
HIPAA Health Insurance Portability and Accountability Act of 1996, Pub. L. 104–191
HMO Health maintenance organization
IPPS Acute care hospital inpatient prospective payment system
IRF Inpatient rehabilitation facility
IRF PAI Inpatient rehabilitation patient assessment instrument
IRF PPS Inpatient rehabilitation facility prospective payment system
JCAH Joint Commission on Accreditation of Hospitals
JCAHO Joint Commission on Accreditation of Hospital Organizations
LTCH Long-term care hospital
MedPAR Medicare Provider Analysis and Review File
PPS Prospective payment system
RIC Rehabilitation impairment category
SNF Skilled nursing facility

I. Background

A. Overview of the Inpatient Rehabilitation Facility Prospective Payment System (IRF PPS)

Section 1886(j) of the Social Security Act (the Act) provides for the implementation of a prospective payment system under Medicare for inpatient hospital services furnished by a rehabilitation hospital or a rehabilitation unit of a hospital (referred to as an inpatient rehabilitation facility (IRF)). Sections 1886(d)(1)(B) and 1886(d)(1)(B)(ii) of the Act give the Secretary of Health and Human Services (the Secretary) discretion in defining a rehabilitation hospital and rehabilitation unit of a hospital. The regulations at 42 CFR 412.23(b), 412.25, and 412.29, specify the criteria for a hospital to be classified as a rehabilitation hospital or rehabilitation unit. Hospitals and units meeting such criteria are eligible to be paid on a prospective payment basis as an IRF under the IRF PPS.

Payments made under the IRF PPS cover inpatient operating and capital costs of furnishing covered rehabilitation services (that is, routine, ancillary, and capital costs), but not costs of approved educational activities, bad debts, and other services or items outside the scope of the IRF PPS. Covered rehabilitation services include services for which benefits are provided under Medicare Part A (Hospital Insurance).

Payments under the IRF PPS are made on a per discharge basis. A patient classification system is used to classify patients in IRFs into case-mix groups (CMGs). The IRF PPS uses Federal prospective payment rates across distinct CMGs. A majority of the CMGs are constructed using rehabilitation impairment categories (RICs), functional status (both motor and cognitive), and age (in some cases, cognitive status and age may not be a factor in defining a CMG). Special CMGs are constructed to account for very short stays, and for patients who expire in the IRF.

For each CMG, we develop relative weighting factors to account for a patient's clinical characteristics and expected resource needs. Thus, the weighting factors account for the relative difference in resource use across all CMGs. Within each CMG, the weighting factors are "tiered" based on the estimated effect that the existence of certain comorbidities have on resource use.

The Federal prospective payment rates are established using a standard payment amount (also referred to as the budget neutral conversion factor). For each of the tiers within a CMG, the relative weighting factors are applied to the budget neutral conversion factor to compute the unadjusted Federal prospective payment rates.

Adjustments that account for geographic variations in wages (wage index), for the percentage of low-income patients, and for facilities located in a rural area are applied to the unadjusted Federal prospective payment rates. In addition, adjustments are made for early transfers of patients, interrupted stays, and high-cost outliers (cases with unusually high costs).

(We note that, for cost reporting periods that began on or after January 1, 2002 and before October 1, 2002, IRFs either transitioned into the prospective payment system and received a "blended payment," or elected to be paid 100 percent of the Federal IRF PPS rate. For cost reporting periods beginning on or after October 1, 2002 (FY 2003), the transition methodology has expired and payments for all IRFs are now based on 100 percent of the adjusted Federal prospective payment under the IRF PPS.)

Implementing regulations for the IRF PPS are located in 42 CFR part 412, subpart P. Regulations governing the requirements for classification of hospitals as IRFs are located in 42 CFR 412.22, 412.23, 412.25 and 412.29.

A complete discussion of the development of the IRF PPS is included in the August 7, 2001 final rule (66 FR 41316). We also have established a CMS Web site that contains useful information regarding the IRF PPS. The Web site URL is *http://www.cms.hhs.gov/providers/irfpps/default.asp* and may be accessed to download or view publications, software, and other information pertinent to the IRF PPS.

B. Requirements for Updating the Prospective Payment Rates Under the IRF PPS

Section 412.628 of the regulations requires us to publish information pertaining to the IRF prospective payment rates in the **Federal Register**, on or before August 1 of the preceding fiscal year. We are required to include in the **Federal Register** document the classifications of the IRF case-mix groups (CMGs), the weighting factors that are applied to the CMG in determining the payment rate, and a description of the methodology and data used to compute the prospective payment rates for the applicable fiscal year.

The initial FY 2002 IRF prospective payment rates were established on August 7, 2001 in a final rule entitled "Medicare Program; Prospective Payment System for Inpatient Rehabilitation Facilities (CMS–1069–F)" in the **Federal Register** (66 FR 41316) and were effective for cost reporting periods beginning on or after January 1, 2002. On August 1, 2002, we published a notice in the **Federal Register** (67 FR 49928) that updated the IRF Federal prospective payment rates from FY 2002 to FY 2003 using the methodology specified in § 412.624 of the regulations. On July 1, 2002, we also published in the **Federal Register** (67 FR 44073) a correcting amendment to the August 1, 2001 final rule. Therefore, any reference in this final rule to the August 7, 2001 final rule includes the provisions effective in the correcting amendment.

As discussed in section II of this preamble, on May 16, 2003, we issued a proposed rule in the **Federal Register** (68 FR 26786) to update the IRF Federal prospective payment rates from FY 2003 to FY 2004, to be effective for discharges occurring on or after October 1, 2003 and before October 1, 2004. For the proposed FY 2004 updates, we used the same classifications and weighting factors that were used for the IRF CMGs set forth in the August 7, 2001 final rule to update the IRF Federal prospective payment rates from FY 2002 to FY 2003.

C. Operational Overview of the IRF PPS

In accordance with existing regulations at § 412.606, upon the admission and discharge of a Medicare Part A fee-for-service patient, the IRF is required to complete the appropriate sections of a patient assessment instrument. CMS has established the Inpatient Rehabilitation Facility—Patient Assessment Instrument (IRF-PAI) for this purpose. All required data must be electronically encoded into the IRF's PAI software product. Generally, the software product includes patient grouping programming called the GROUPER software. The GROUPER software uses specific PAI data elements to classify (or group) a patient into a distinct CMG and account for the existence of any relevant comorbidities. The GROUPER software produces a 5-digit CMG number. The first digit is an alpha-character that indicates the comorbidity tier. The last 4 digits represent the distinct CMG number. (Free downloads of the Inpatient Rehabilitation Validation and Entry (IRVEN) software product, including the GROUPER software, are available at the CMS Web site at *http://*

www.cms.hhs.gov/providers/irfpps/default.asp).

When a patient is discharged, the IRF completes the Medicare claim (UB–92 or its equivalent) using the 5-digit CMG number and sends it to the appropriate Medicare fiscal intermediary. (Claims submitted to Medicare must comply with the electronic claim requirements found at *http://www.cms.hhs.gov/providers/edi/default.asp.* All submitted claims must also be in compliance with the Health Insurance Portability and Accountability Act (HIPAA) program claim memoranda issued by us and also published at that website, and as listed in the addenda to the Medicare Intermediary Manual, Part 3, section 3600. Instructions for the limited number of claims submitted to Medicare on paper are located in Part 3 section 3604 of the Medicare Intermediary Manual.) The Medicare fiscal intermediary processes the claim through its software system. This software system includes pricing programming called the PRICER software. The PRICER software uses the CMG number, along with other specific claim data elements and provider-specific data, to adjust the IRF's prospective payment for interrupted stays, transfers, short stays, and deaths. The PRICER software also applies the applicable adjustments to account for the IRF's wage index, percentage of low-income patients, rural location, and outlier payments.

D. Issuance of Proposed Rule on the FY 2004 Updates

On May 16, 2003, we issued in the **Federal Register** (68 FR 26788) a proposed rule in which we proposed to update the Federal prospective payments rates under the IRF PPS and to make revisions and clarifying changes to the policies governing the implementation of the IRF PPS. A summary of our proposal follows:

We proposed to use FY 1999 acute care hospital wage data to compute the IRF wage indices for FY 2004. (For FY 2003, we used FY 1997 acute care hospital wage data to compute the IRF wage indices.) We believe that the FY 1999 acute care hospital data are the best available because they are currently the most recent complete final data. However, any adjustments or updates made under section 1886(j)(6) of the Act must be made in a budget neutral manner. Therefore, we proposed to apply the methodology to update the wage indices for FY 2004, using 1999 acute care hospital data in a budget neutral manner.

We also proposed to update the underlying data used to compute the IRF market basket index. As explained in Appendix D of the August 7, 2001 final rule, we used 1992 cost report data as the underlying data to develop the excluded hospital with capital market basket that formed the basis of the FY 2002 and FY 2003 IRF market basket index. We proposed to use 1997 cost report data, which are the most recent data available to form the basis of the FY 2004 IRF market basket index.

We further proposed to modify or clarify certain criteria for a hospital or a hospital unit to be classified as an IRF. As stated in the August 7, 2001 final rule, we did not change the survey and certification procedures applicable to entitled seeking classification as an IRF. Currently, to be paid under the IRF PPS, a hospital or unit of a hospital must first be deemed excluded from the diagnosis-related group (DRG)-based acute care hospital PPS (IPPS) under the general requirements in subpart B of part 412 of the regulations. Second, the excluded hospital or unit must meet the conditions for payment under the IRF PPS at § 412.604 of the regulations.

Lastly, we proposed to modify or clarify existing provisions of the IRF PPS relating to the patient assessment process and the transmission of patient data to CMS. However, we note that we did not propose any refinements or changes to the FY 2002 case-mix classification system (the CMGs and the corresponding relative weights) and the case-level and facility-level adjustments, due to the lack of available data to make such changes.

We received more than 6,900 timely items of correspondence containing multiple comments on the May 16, 2003 proposed rule. Major issues addressed by commenters included the following: enforcement of the 75 percent rule (as discussed below); definition of a discharge; waiver of the penalty for late transmission of the IRF-PAI; and changes to the outlier policies. Summaries of the public comments received and our responses to those comments are set forth below under the appropriate subject headings.

Many commenters did not agree with our stated intention to enforce the existing regulations at § 412.23(b) whereby at least 75 percent of an IRF's patient population must receive intensive rehabilitation services for treatment of one or more of ten conditions specified in regulations for the facility to be classified as an IRF (also known as the 75 percent rule). In addition, on May 19, 2003, we hosted an IRF Town Hall meeting in Baltimore, MD where patients, providers, and other interested parties presented their views on the May 16, 2003 proposed rule. We received numerous suggestions concerning changes to the 75 percent rule. Based on the level of public interest generated by this issue, we have decided to revisit our policies concerning the 75 percent rule. In the very near future, we will be issuing a proposed rule in the **Federal Register** that will contain a full discussion of our proposed changes to the existing 75 percent rule.

II. Requirements and Conditions for Payment Under the IRF PPS

A. Background

Existing regulations at § 412.604 describe the conditions that must be met for an IRF to be paid under the IRF PPS. Section 412.604(a) states the general requirements for payment to be made under the IRF PPS and the effects on Medicare payment if the conditions described the section are not met. Section 412.604(b) states the existing regulatory provisions that must be met for a hospital or unit of a hospital to be excluded from the IPPS and to be classified as an IRF. Section 412.604(c) requires an IRF to complete a patient assessment instrument for each Medicare Part A fee-for-service patient admitted. Section 412.604(d) describes the limitations on IRFs for charging beneficiaries who receive Medicare covered services. Section 412.604(e) describes the requirements associated with furnishing inpatient hospital services directly or under arrangement. Section 412.604(f) states the reporting and recordkeeping requirements that IRFs must meet.

B. Provisions of the May 16, 2003 Proposed Rule

In the May 16,2003 proposed rule, we described several proposed changes to the conditions or underlying requirements of § 412.604. Below we discuss the proposed change to the general conditions and requirements. The specific changes relating to classification criteria are addressed under section II.C. of this preamble.

As stated earlier, under § 412.604(a), we specify the general conditions for payment to be made under the IRF PPS and the effects on Medicare payment if the conditions are not met. We proposed to make a change in paragraph (a)(2) relating to the entity that takes the action if the IRF fails to comply with the conditions of the section; that is to withhold (in full or in part) or reduce Medicare payment to the IRF until the facility provides adequate assurances of compliance, or to classify the IRF as an inpatient hospital that is subject to the conditions of 42 CFR part 412, subpart C and is paid under the prospective payment systems specified in § 412.1(a)(1). We proposed to specify that either CMS or the Medicare fiscal intermediary may take such action, as appropriate.

Comment: We did not receive any comments concerning this proposed change.

Response: We are therefore adopting the proposed change to § 412.604(a)(2) to indicate that CMS or the Medicare fiscal intermediary may take actions if the IRF does not meet the conditions specified in the section.

C. Classification Criteria for IRFs Subject to the IRF PPS

Section 412.604(b) states that, subject to the special payment provisions of § 412.22(c), an IRF must meet the general criteria set forth in § 412.22 and the criteria to be classified as a rehabilitation hospital or rehabilitation unit set forth in § 412.23(b), § 412.25, and § 412.29 for exclusion from the IPPS specified in § 412.1(a)(1). These general criteria are located under 42 CFR part 412, subpart B of the regulations. In the August 7, 2001 final rule implementing the IRF PPS, we did not make any changes to the exclusion criteria and requirements to be classified as an IRF under subpart B of part 412. Since the implementation of the IRF PPS, a number of questions have been raised on the application of some of these requirements and the necessity of other criteria.

Below, we discuss each requirement as it relates to the classification of an IRF, the proposed changes, if any, included in the May 16, 2003 proposed rule, the public comments received, and the provisions of this final rule.

1. Relationship to IPPS

Section 1886 to the Act established a PPS for acute care inpatient hospital services for cost reporting periods beginning on or after October 1, 1983. Under section 1886(d)(1)(B) of the Act, several types of hospitals and units of hospitals are excluded from the IPPS. Sections 1886(d)(1)(B) and 1886(d)(1)(B)(ii) of the Act specify that rehabilitation hospitals and units (as defined by the Secretary) are excluded from the IPPS. The Secretary has defined rehabilitation hospitals and units in regulations at 42 CFR part 412 subpart B.

Extensive discussion and public comments on developing the criteria under which a hospital or unit of a hospital can be excluded from the IPPS as an IRF began with the September 1, 1983 publication of the interim final rule with comment period in the **Federal Register** (48 FR 39752). (That interim final rule discussed the provisions necessary to implement section 1886 of the Act.) On January 3, 1984, we published in the **Federal Register** a final rule (49 FR 234) that responded to public comments on the provisions of the September 1, 1983 interim final rule and established the initial set of criteria that must be met by a hospital or unit of a hospital seeking exclusion from the IPPS as an IRF. Since the publication of these earlier rules, the criteria to be an IRF have been revised and codified at 42 CFR part 412, subpart B of the existing Medicare regulations.

2. IRF Hospital Services Furnished to HMOs or CMP Enrollees

Section 412.20(b) of the existing regulations state that covered inpatient hospital services furnished to Medicare beneficiaries by a rehabilitation hospital or rehabilitation unit that meet the conditions of § 412.604 are paid under the IRF PPS described in subpart P of 42 CFR part 412.

In the May 16, 2003 proposed rule, we proposed to redesignate existing § 412.20(b) as § 412.20(b)(1) and add § 412.20(b)(2) to ensure that inpatient hospital services will not be paid under the IRF PPS if the services are paid by a health maintenance organization (HMO) or competitive medical plan (CMP) that elects not to have CMS make payments to an IRF for services, which are inpatient hospital services, furnished to the HMO's or CMP's Medicare enrollees under 42 CFR Part 417. This provision is similar to the provision at § 412.20(d)(3) that prohibits payments under the IPPS for similar HMO or CMP services.

Comment: We did not receive any comments concerning this proposed change.

Response: Therefore, we are adopting the proposed redesignation of existing § 412.20(b) as § 412.20(b)(1) and add § 412.20(b)(2) to ensure that inpatient hospital services will not be paid under the IRF PPS if the services are paid by a HMO or CMP that elects not to have CMS make payments to an IRF for services, which are inpatient hospital services, furnished to the HMO's or CMP's Medicare enrollees under 42 CFR part 417.

3. Bed-Number Criteria for Freestanding Satellite IRFs

Section 412.22(h) describes the requirements to be a satellite facility of a hospital that is excluded from the IPPS. The following describes our proposed changes in the May 16, 2003 proposed rule to eliminate the provision that limits the bed size of a satellite IRF.

In the July 30, 1999 **Federal Register** (64 FR 41540), we revised § 412.22(h) to require that in order to be excluded from the acute care hospital inpatient PPS, a satellite of a hospital: (1) Effective for cost reporting periods beginning on or after October 1, 2002, is not under the control of the governing body or chief executive officer of the hospital in which it is located, and furnishes inpatient care through the use of medical personnel who are not under the control of the medical staff or chief medical officer of the hospital in which it is located; (2) must maintain admission and discharge records that are separately identified from those of the hospital in which it is located and are readily available; (3) cannot commingle beds with beds of the hospital in which it is located; (4) must be serviced by the same FI as the hospital of which it is a part; (5) must be treated as a separate cost center of the hospital of which it is a part; (6) for cost reporting and apportionment purposes, must use an accounting system that properly allocates costs and maintains adequate data to support the basis of allocation; and (7) must report costs in the cost report of the hospital of which it is a part, covering the same fiscal period and using the same method of apportionment as the hospital of which it is a part. In addition, the satellite facility must independently comply with the qualifying criteria for exclusion from the IPPS. Lastly, the total number of State-licensed and Medicare-certified beds (including those of the satellite facility) for a hospital (other than a children's hospital) that was excluded from the IPPS for the most recent cost reporting period beginning before October 1, 1997, may not exceed the hospital's number of beds on the last day of that cost reporting period.

In § 412.22(h)(1), we define a satellite as "a part of a hospital that provides inpatient services in a building also used by another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital." Satellite arrangements exist when an existing hospital that is excluded from the IPPS and that is either a freestanding hospital or a hospital-within-a-hospital under § 412.22(e) shares space in a building or on a campus occupied by another hospital in order to establish an additional location for the excluded hospital. The July 30, 1999 IPPS final rule (64 FR 41532–41534) includes a detailed discussion of our policies regarding Medicare payments for satellite facilities of hospitals excluded from the IPPS.

In accordance with section 1886(b) of the Act, as amended by sections 4414 and 4416 of Pub. L. 105–33, we established two different target limits on payments to excluded hospitals, depending upon when the IRF was established. The target amount limit for an IRF with a cost reporting period beginning before October 1, 1997 was set at the 75th percentile of the target amounts of IRFs, as specified in § 413.40(c)(4)(iii), updated to the applicable cost reporting period. For IRFs with a cost reporting period beginning on or after October 1, 1997, under section 4416 of Pub. L. 105–33, the payment amount for the hospital's first two 12-month cost reporting periods, as specified at § 413.40(f)(2)(ii)(A) and (B), could not exceed 110 percent of the national median of target amounts of IRFs for cost reporting periods ending during FY 1996, updated by the hospital market basket increase percentage to the first cost reporting period in which the IRF receives payment.

Because we were concerned that a number of pre-1997 excluded hospitals (including IRFs), governed by § 413.40(c)(4)(iii), would seek to create satellite arrangements in order to avoid the effect of the lower payment caps that would apply to new hospitals under § 413.40(f)(2)(ii), we established rules regarding the exclusion of and payments to satellites of existing facilities. If the number of beds in the hospital or unit (including both the base hospital or unit and the satellite location) exceeds the number of State-licensed and Medicare-certified beds in the hospital or unit on the last day of the hospital's or unit's last cost reporting period beginning before October 1, 1997, the facility would be paid under the IPPS. Therefore, while an excluded hospital or unit could "transfer" bed capacity from a base facility to a satellite, if it increased total bed capacity beyond the level it had in the most recent cost reporting period before October 1, 1997 (*see* 64 FR 41532–41533, July 30, 1999), the hospital will not be paid as a hospital excluded from the IPPS. However, no similar limitation was imposed with respect to the number of total beds in excluded hospitals and units and satellite facilities of those excluded hospitals and units established after October 1, 1997, since those excluded hospitals and units were subject to the lower payment limits of section 4416 of Pub. L. 105–33, and would, therefore, not benefit from the higher payment cap on target amounts under § 413.40(c)(4) by creating a satellite facility.

On March 22, 2002, we published a proposed rule in the **Federal Register** (67 FR 13416) that set forth the proposed Medicare PPS for long-term care hospitals (LTCHs). Discussion of the comments received on that LTCH proposed rule and our responses were published in a final rule on August 30, 2002 **Federal Register** (67 FR 55954). Specific comments received were discussed on page 56013 of the LTCH final rule that urged us to eliminate the bed-number criteria in § 412.22(h)(2)(i) for pre-1997 IRFs since the applicable PPS is fully phased in. The rationale for the bed-number criteria provision at § 412.22(h)(2)(i) was the potential for circumventing the PPS by creating a satellite location that could have their payment based on a higher TEFRA target amount cap. However, once an IRF's payment under the IRF PPS does not include a TEFRA-based payment (referred to as the facility-specific payment under the transition period described in § 412.626) and is based on 100 percent of the Federal prospective payment rate, we believe that the need for the bed-number criteria does not exist because IRF prospective payments will be the same regardless of when the IRF was established. Because all IRFs now will be paid 100 percent of the Federal prospective payment rates, in the May 16, 2003 proposed rule, we proposed to eliminate the bed-number criteria by revising § 412.22(h) relating to freestanding satellite IRFs. We also proposed to eliminate the bed-number criteria for IRF satellite units of a hospital by revising § 412.25(e) to conform to the proposed change in § 412.22(h).

Comment: We received a number of comments in support of the proposed elimination of the bed-number criteria. However, one commenter was concerned with the increase in paperwork burden.

Response: We are adopting the proposed elimination of the bed-number criteria by revising § 412.22(h) for freestanding IRFs and § 412.25(e) for IRF units. The commenter was not specific on how this change would increase paperwork burden. We believe that this change makes the policy of creating a satellite IRF less restrictive and less burdensome to verify that the bed-number criteria were met. Accordingly, we do not believe that this change increases paperwork burden and, thus, we did not include an estimate of time associated with eliminating the bed-number criteria in the Collection of Information section of the May 16, 2003 proposed rule.

4. Technical Changes

a. *Excluded Rehabilitation Units:* Additional Requirements:

Under § 412.29(a), an IRF unit must have met either the requirements for new units or converted units under § 412.30. Section 412.29(a)(2) contains an incorrect reference to the requirements for converted units as "§ 412.30(b)." The correct reference to the requirements for converted units is § 412.30(c). Accordingly, we proposed to make a technical correction by changing the reference in § 412.29(a)(2) to state "Converted units under § 412.30(c)."

Comment: We did not receive any comments concerning this proposed technical correction.

Response: We are adopting the proposed technical correction to § 412.29(a)(2) to state "Converted units under § 412.30(c)."

b. *Exclusion of New Rehabilitation Units and Expansion of Units Already Excluded:*

Under § 412.30(b)(2), a hospital that seeks exclusion of a new IRF unit may provide written certification that the inpatient population the hospital intends the unit to serve meets the requirements of § 412.23(b)(2). Section 412.30(b)(3) contains an incorrect reference to the required written certification described in "paragraph (a)(2)" of this section. The correct reference to the written certification is described in paragraph (2) of § 412.30(b). Accordingly, we proposed to make a technical correction by changing the current reference to § 412.30(a)(2) in § 412.30(b)(3) to state "The written certification described in paragraph (b)(2) * * *." In the proposed rule, we incorrectly stated that the reference to § 412.23(a)(2) was in § 412.23(b)(3). It should have read that the reference to § 412.30(a)(2) was in § 412.30(b)(3).

Comment: We did not receive any comments concerning this proposed technical correction.

Response: We are adopting the proposed technical correction to § 412.30(b)(3) to state "The written certification described in paragraph (b)(2) * * *."

Section 412.30(d)(1) defines new bed capacity for the purposes of expanding an existing excluded IRF unit. Section § 412.30(d)(2)(i) contains an incorrect reference to the definition of new bed capacity under "paragraph (c)(1)" of this section. The correct reference to the definition of new bed capacity is paragraph (d)(1). Accordingly, we proposed a technical correction to change the current reference to paragraph (c)(1) under paragraph (d)(2)(i) to state "under paragraph (d)(1) of this section."

Comment: We did not receive any comments concerning this proposed technical correction.

Response: We are adopting the proposed technical correction to change the current reference to paragraph (c)(1) under paragraph (d)(2)(i) to state "under paragraph (d)(1) of this section."

III. Research To Support Case-Mix Refinements to the IRF PPS

A. Research on IRFs

As described in the August 7, 2001 final rule, we contracted with the RAND Corporation (RAND) to analyze IRF data to support our efforts in developing the CMG patient classification system and the IRF PPS. As discussed below, we are continuing our contract with RAND to support us in developing refinements to the classification and PPS, and in developing a system to monitor the effects of the IRF PPS. In addition, under a separate contract, we are developing and defining measures to monitor the quality of care and services provided to Medicare beneficiaries receiving care in an IRF.

B. RAND Research Background

In 1995, the RAND Corporation (RAND) began extensive CMS-sponsored research to assist us in developing a per discharge-based inpatient rehabilitation PPS model using the patient classification system known as Functional Independence Measures-Functional Related Groups (FIM–FRGs) using 1994 data. Initial results of RAND's earliest research were revealed in September 1997 and are contained in two reports available through the National Technical Information Service (NTIS). The reports are entitled "Classification System for Inpatient Rehabilitation Patients—A Review and Proposed Revisions to the Functional Independence Measure-Function Related Groups," NTIS order number PB98–105992INZ; and "Prospective Payment System for Inpatient Rehabilitation," NTIS order number PB98–106024INZ.

In summarizing these reports, RAND found in the research based on 1994 data that, with limitations, the FIM–FRGs were effective predictors of resource use based on the proxy measurement: length of stay. FRGs based upon FIM motor score, cognitive scores, and age remained stable over time. Researchers at RAND developed, examined, and evaluated a model payment system based upon FIM–FRG classifications that explains approximately 50 percent of patient costs and approximately 60 percent to 65 percent of the costs at the facility level. Based on this earlier analysis, RAND concluded that an IRF PPS using this model is feasible.

In July 1999, we contracted with RAND to update the earlier study. The update used their earlier research and included an analysis of FIM data, the FRGs, and the model rehabilitation PPS using more recent data from a greater number of IRFs. The purpose of updating the earlier research was to develop the underlying data necessary to support the Medicare IRF PPS based on case-mix groups for the original IRF PPS proposed rule. RAND expanded the scope of their earlier research to include the examination of several payment elements, such as comorbidities, facility-level adjustments, and implementation issues, including evaluation and monitoring. This research was used in our development of the IRF PPS. RAND issued a report on its research which can be found on our Web site at *http://cms.hhs.gov/providers/irfpps/research.asp.*

C. Continuing Research

RAND's data efforts over the past year were concentrated on archiving data from the first phase of the project, constructing the analytic files for monitoring special studies, and preparing for post-IRF PPS data that will be used for monitoring and for refinement. RAND's monitoring effort seeks to measure changes in IRF care, post-IRF care, and postacute care following implementation of the IRF PPS. The refinement effort necessitates that the methods used to create the initial set of CMGs weights and facility adjustments be applied to more recent IRF data.

Section 125(b) of the Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act (BBRA), Pub. L. 106–113, provides that the Secretary shall conduct a study of the impact on utilization and beneficiary access to services of the implementation of the IRF prospective payment system. A report on the study must be submitted to the Congress not later than 3 years after the date the IRF prospective payment system is first implemented. Accordingly, to continue RAND's research, data from other health care settings are needed to assess the impact on utilization and beneficiary access to services because the IRF PPS can have an impact among other settings that deliver rehabilitative services. If we only analyzed data from IRFs, our assessment of utilization and access would not be complete. In addition to the data obtained from the IRF Medicare claims, functional measures from the IRF PAI, and cost reports, other data are required to show the utilization and access of rehabilitative services delivered in other settings, such as SNFs, LTCHs, home health agencies, and outpatient rehabilitation facilities. Analysis of these data may show changes in utilization of inpatient rehabilitation services and if the types or severity of patients treated in IRFs differs significantly from the data used to create the CMGs, case-mix refinements may be needed.

In the next phase of their research, RAND will be developing and testing possible improvements to the payment system using existing data. This analysis will focus on potential improvements to the methods used to establish the CMGs, facility adjustments (such as, teaching, rural, and low-income adjustments), and comorbidities.

In constructing the CMGs for the IRF PPS, one of our primary goals was to develop a payment methodology that would match payment to resource use as closely as possible. It is important to continue to examine the IRF PPS to ensure that the system remains a good predictor of resource use over time. Further, more complete data will be available in which we can assess the reliability and validity of the IRF PPS. We also expect improvements with certain data elements. For example, prior to implementation of the IRF PPS, IRFs were not required to code comorbidities. As a result of implementing the IRF PPS, we expect that IRFs will improve coding comorbidities because collection of this information may affect their payment amount. These improved data will allow us to determine the effects various conditions have on the cost of a case.

RAND will use post-IRF PPS data when they become available, as well as existing data to support their research. RAND research includes: analyses of methodological improvements in the creation of CMGs, methodological improvements to the statistical approaches used to derive payment adjustments and characterizing IRFs into groups based on their case-mix. Currently, RAND does not have enough post-IRF PPS data to analyze potential modifications to the classification and payment systems. Further, we will need a sufficient amount of these data to be able to determine if future refinements are needed. Because IRFs began to be paid under the IRF PPS based on their cost report start date that occurred on or after January 1, 2002, sufficient data will not be available for those facilities

whose cost report start date occurs later in the calendar year. Therefore, in this final rule, we are not changing the CMG classification system or the facility-level and case-level adjustments, other than the wage adjustment. The adopted changes for the wage adjustment are discussed in detail in section VI. of this final rule.

D. Staff Time Measurement Data

As described in the August 7, 2001 final rule, we contracted with Aspen Systems Corporation (ASPEN) to collect actual resource use or staff time measurement (STM) data in a sample of IRFs. Data were collected using the MDS–PAC patient assessment instrument. FIM data were collected at the same time. We believe that these data, which measure actual nursing and therapy time spent on patient care, may be used to enhance our ability to refine the CMGs.

RAND received ASPEN's analytical database in early spring 2002. After a brief period of working with the data, RAND discovered that their study required details that were not in this summary database. Specifically, about half of the cases within the analytic database had data for only the first part of the patient's stay. RAND needed to have explicit data that tracked how staff time usage changed throughout a patient's stay and the analytic database contained only the averages of the observed portions of the patient's stay. RAND also needed data on patients during the second part of their stay.

In late July 2002, RAND received the backup data, but did not assess it until late August 2002. Further technical questions about the data still exist and must be answered before the modeling of the data can occur.

E. Monitoring

A greater part of the ongoing work to be performed by RAND is an analysis to develop a potential system of indicators to monitor the impact and performance of the IRF PPS. As part of their analysis, RAND will case-mix adjust these measures and distinguish between those that will track the direct impact of PPS on IRFs and IRF patients, and those that will track changes in the pool of potential IRF patients. We anticipate that RAND will develop a set of possible indicators needed to monitor the IRF PPS, develop potential access to care models and measures, and define a possible measure of outcomes.

F. Need To Develop Quality Indicators for IRFs

The IRF PAI is the data collection instrument for IRFs. It contains a blend of FIM items and quality and medical needs questions. The quality and medical needs questions (which are currently collected on a voluntary basis) may need to be modified to encapsulate those data necessary for calculation of a quality indicator in the future. One of the primary tasks of the RAND contract is to identify quality indicators pertinent to the inpatient rehabilitation setting and determine what information is necessary to calculate those quality indicators. These tasks include reviewing literature and other sources for existing rehabilitation quality indicators. It also involves identifying organizations involved in measuring or monitoring quality of care in the inpatient rehabilitation setting. RAND will convene a technical expert panel to identify a series of quality indicators that can be measured using the IRF–PAI. In addition, quality indicators and data elements must be developed for calculation as well as the independent testing of the developed indicators.

We note that the National Library of Medicine, which is part of the National Institutes of Health within the Department of Health and Human Services, has entered into an agreement with the College of American Pathologists to license the Systematized Nomenclature of Medicine—Clinical Terms (SNOMED CT). SNOMED CT provides a common language that enables a consistent way of capturing, sharing, and aggregating health care data across specialties and sites of care. If in the future, CMS makes changes to the IRF PAI, we will consider whether SNOMED CT includes IRF PAI data terminology and we will consider including SNOMED CT terms. For further information, please visit SNOMED's Web site at *http://www.snomed.org* or the National Library of Medicine Web site at *http://www.nlm.hih.gov*.

IV. The IRF PPS Patient Assessment Process

A. Background

In the August 7, 2001 IRF PPS final rule (66 FR 41316), we described how an IRF would use the IRF Patient Assessment Instrument (PAI) to assess an IRF patient. Training on the IRF–PAI assessment process was conducted in Baltimore, Maryland, Chicago, Illinois, San Francisco, California, and Atlanta, Georgia during the fall of 2001. We also created videotapes of the training that we made available to IRFs free of charge. IFRs were instructed to go to the CMS IRF PPS website to request copies of the videotapes and to access electronic copies of the IRF–PAI manual, which contained detailed instructions regarding the completion of the IRF–PAI.

B. Patient Rights

Section 412.608 of the existing regulations specifies that prior to performing the IRF–PAI assessment, and in order to receive payment from Medicare, the IRF must inform the patient of the rights contained in this section. These rights are as follows:

(1) The right to be informed of the purpose of the patient assessment data collection;

(2) The right to have the patient assessment information collected kept confidential and secure;

(3) The right to be informed that the patient assessment information will not be disclosed to others, except for legitimate purposes allowed by the Federal Privacy Act and Federal and State regulations;

(4) The right to refuse to answer patient assessment questions; and

(5) The right to see, review, and request changes on the patient assessment instrument.

In addition to the rights specified in § 412.608, a patient has privacy rights under the Privacy Act of 1974 (5 U.S.C 552a(e)(3)), and 45 CFR 5b.4(a)(3). We have elaborated on these privacy rights in this Preamble statement in order to avoid any confusion. The Privacy Act and 45 CFR 5b.4(a)(3) require that an individual be informed of the following: the authority by which individually identifiable information is being collected by a Federal agency and maintained in a system of records; whether providing the information is voluntary or mandatory; the principal purpose for collecting the information; the routine uses for release of the information; and the effect refusal to provide requested information may have on the individual. The Federal agency should be identified, as well as the location of the system of records. In order to ensure compliance with the Privacy Act of 1974 and 45 CFR 5b.4(a)(3), in the May 16, 2003 proposed rule, we proposed to revise § 412.608 to specify that, prior to performing the IRF–PAI assessment, an IRF clinician must give each Medicare inpatient specific privacy information forms.

We published these proposed privacy forms in Appendix B of the May 16, 2003 proposed rule (and are including them under the Appendix of this final rule). The first proposed form, entitled "Privacy Act Statement—Health Care Records," is a detailed description of the patient's privacy rights under the Privacy Act of 1974. The second proposed form, entitled "Data Collection Information Summary for Patients in Inpatient Rehabilitation Facilities" is the simplified plain language summary of the Privacy Act Statement—Health Care Records. We proposed to require that both of these forms be given to a patient before beginning the IRF–PAI assessment. These actions on the part of an IRF would fulfill the requirement that the patient be informed of the five rights specified in § 412.608. In addition, in this final rule, we have made technical changes to the proposed § 412.608. We have deleted proposed § 412.608(c) because it was redundant of proposed § 412.608(a)(2), and have redesignated proposed § 412.608(d) as § 412.608(c) and proposed § 412.608(e) as § 412.608(d). We note that when an IRF clinician gives a patient the forms entitled "Data Collection Information Summary for Patients in Inpatient Rehabilitation Facilities" and the "Privacy Act Statement-Health Care Records" prior to performing an assessment, these forms do not satisfy the privacy provisions contained in the HIPAA Privacy Rule (65 FR 82462 as modified by 67 FR 53182). For example, these forms do not meet the privacy notice requirements of the HIPAA Privacy Rule (*see* 45 CFR 164.520).

Health plans and health care providers must meet the notice requirements of the HIPAA Privacy Rule by giving a Notice of Privacy Practices to their patients. The Notice of Privacy Practices describes a health plan or health care provider's uses and disclosures of protected health information and the individual rights that patients have with respect to their protected health information.

Comment: One commenter suggested adding the text, "simplified plain language," to the subtitle of the form entitled "Data Collection Information Summary for Patients in Inpatient Rehabilitation Facilities."

Response: We agree with the commenter and have revised the title of the "Data Collection Information Summary for Patients in Inpatient Rehabilitation Facilities" to include the phrase "Simplified Plain Language" as a subtitle.

Comment: One commenter requested that the two patient rights forms be posted on the IRF PPS website and that they also be made available in Spanish.

Response: We agree with the commenter and will post the two privacy forms on the IRF PPS website and make them available in Spanish.

Comment: We received one comment concerning patients' rights. The commenter supported the proposed change, however, several members of the commenter's organization have raised concerns about an additional paperwork burden.

Response: We disagree with the commenter and estimate that it will take no more than one minute to document the fact that the IRF has given a patient a copy of his or her rights, even assuming that the rights statement is the only handout. We anticipate that the rights statement will be one of several handouts that a patient would receive and that as a matter of prudent business and medical procedures, facilities have a mechanism in place to document that patients have been given all the necessary paperwork.

C. When the IRF–PAI Must Be Completed

Under existing § 412.606(b), an IRF must use the IRF–PAI to assess Medicare Part A fee-for-service inpatients. Section 412.610(c)(1)(i)(A) specifies that the admission assessment covers the first 3 calendar days of the inpatient's current IRF Medicare Part A fee-for-service hospitalization. Section 412.610(c)(1)(i)(B) specifies that the admission assessment reference date is the third day of the 3-day admission assessment time period. Section 412.610(c)(1)(i)(C) specifies that the IRF–PAI for the admission assessment must be completed on the calendar day that follows the admission assessment reference day.

We are concerned that IRFs are interpreting § 412.610(c)(1)(i)(C) to mean that they may not start to record data on the IRF–PAI before the calendar day that follows the admission assessment reference day. This interpretation is not our intent. The "completion requirement" of the IRF–PAI indicates the date that the IRF's staff must have completed its recording on the IRF–PAI of the assessment data that the IRF's clinical staff obtained during an assessment of the inpatient that was performed during the admission assessment time period. In other words, the date when the IRF–PAI must be completed is the deadline date when the process of recording data on the IRF–PAI must be finished. The IRF's staff is permitted to enter assessment data on the IRF–PAI prior to the deadline date.

D. Recording IRF-Data Based on a Patient's Performance

How data are recorded on the IRF–PAI is specified in the IRF–PAI item-by-item guide, entitled the "IRF–PAI Training Manual Revised 01/16/02." The instructions contained in the IRF–PAI item-by-item guide are, when possible, very similar to the rules for coding the patient assessment instrument that we used as the model for the IRF–PAI. The model for the IRF–PAI was the patient assessment instrument published by Uniform Data System for Medical Rehabilitation (UDSmr).

The UDSmr rules for coding their assessment instrument specify that an item's score should reflect an inpatient's lowest level of functioning. Consequently, in order to be consistent with how an inpatient's functional performance was scored on the UDSmr patient assessment instrument, the IRF–PAI item-by-item guide, likewise, specifies that a patient's assessment must indicate the patient's lowest level of functioning.

During the admission assessment, an IRF clinician records different types of data on the IRF–PAI. We believe that the sources of the data recorded in the categories of the IRF–PAI entitled "Identification Information," "Admission Information," and "Payer Information" allows an IRF to quickly obtain and record these data. For these categories of data, the source of the data may be the patient, the patient's medical record, other patient documents, the patient's family, or a person that has personal knowledge of the patient.

In order to complete the data for the IRF–PAI categories entitled "Function Modifiers" and "FIM™ Instrument," the clinician observes the patient's functional performance over the admission assessment time period, and makes clinical judgments regarding the patient's performance. Consequently, due to how the data for the Function Modifiers and FIM™ categories are obtained, we believe it is the time span that it takes to assess the patient's functional performance that will usually determine how long it takes to complete the admission assessment.

Page III–3 of the IRF–PAI manual states that when determining the level of a patient's functional performance, the clinician is to "record the lowest (most dependent) score." We believe that the patient's functional performance improves in the time span between the patient's admission and discharge from the IRF. We also believe that on the patient's admission day and for the following next few days, a patient's functional performance is poor in comparison to functional performance on subsequent days of the patient's current IRF hospitalization. Therefore, during the part of the admission assessment that is the first or second day of the patient's current IRF hospitalization, we believe that a patient's functional performance will usually be scored as indicating the most

dependence on the lowest level of functioning.

As stated previously, the IRF's clinical staff is permitted to record assessment data on the IRF–PAI at any time during the admission assessment process. Also, as stated previously, we believe it is the scoring of a patient's functional performance that will determine how long it takes to complete the admission assessment. The combination of: (1) Being able to record assessment data at any time during the admission assessment, (2) the requirement that the lowest level of functional performance be recorded, and (3) the lowest level of functional performance that will usually occur on the first or second day of the admission assessment, makes it possible to finish obtaining and recording all the assessment data before the day that follows the admission assessment reference date. However, in accordance with § 412.610(c)(1)(i)(C), an IRF has until the day following the admission assessment reference day to complete the IRF–PAI.

In order to clarify that § 412.610(c)(1)(i)(C) does not prohibit the IRF from recording any or all of the data on the IRF–PAI before the day that follows the admission assessment reference day, in the May 16, 2003 proposed rule we proposed to revise § 412.610(c)(1)(i)(C) to indicate that the IRF–PAI must be completed by the calendar day that follows the admission assessment reference day.

Comment: A commenter expressed agreement with the proposed change.

Response: We are adopting the proposed change as final without modification.

E. Transmission of IRF–PAI Data

As specified in § 412.606(b), "Patient assessment instrument," an IRF must use the IRF–PAI to assess Medicare Part A fee-for-service inpatients. There are nine categories of IRF–PAI assessment data. The nine categories are entitled "identification information, admission information, payer information, medical information, medical needs, function modifiers, the FIM™ instrument, discharge information, and quality indicators". The data from some of these categories are used to classify a patient into a CMG.

It is the CMG classification code, not the IRF–PAI raw data itself, that is part of the claim data the IRF submits to its fiscal intermediary when the IRF submits data in order to be paid for the services it furnished to the inpatient. We believe that an IRF's clinical staff will initially use the paper version of the IRF–PAI to record its assessment data. In accordance with § 412.610(d), the IRF would use the data that it recorded on the paper version of the IRF–PAI to enter the IRF–PAI data into an electronic version of the document. The electronic version of the IRF–PAI uses the patient assessment data to classify a patient into a CMG. Under the IRF PPS, it is the CMG payment code, along with other information that the IRF submits to the fiscal intermediary that will determine the payment the IRF receives for the services the IRF furnished to a Medicare Part A fee-for-service beneficiary.

Section 412.614 specifies that an IRF must transmit to us the IRF–PAI assessment data for each Medicare Part A fee-for-service inpatient. It is the electronic version of the IRF–PAI that enables an IRF to transmit the IRF–PAI data to us. We require that IRFs transmit IRF–PAI data so that we have the IRF–PAI data that are associated with the CMG payment code that the IRF submitted to its fiscal intermediary.

In most cases, an IRF will submit claims data, including the patient's CMG, to the fiscal intermediary in order to be paid for the services it furnished to a Medicare Part A fee-for-service inpatient. However, there are situations when the IRF would submit claims data to its fiscal intermediary, but the submission of the claims data is not for the purpose of being paid for any of the services the IRF furnished to a Medicare Part A fee-for-service inpatient.

In these situations, Medicare operational procedures that were in effect before implementation of the IRF PPS require an IRF to send claims data to the FI. The purpose of the IRF sending claims data to the FI in these situations is to enable Medicare to monitor a beneficiary's period of entitlement. For instance, an IRF must still send the fiscal intermediary claims data even if the inpatient's non-Medicare primary payer paid for all of the IRF services that the IRF furnished to the Medicare Part A fee-for-service inpatient. Another instance when the IRF must still send the FI claims data is when an inpatient's non-Medicare primary payer does not pay for any of the services, and these services also do not qualify for payment under the IRF PPS.

We want to relieve the IRF of the burden of transmitting IRF–PAI data to us when the IRF is not requesting that Medicare pay for any of the services the IRF furnished to a Medicare Part A fee-for-service inpatient. Accordingly, in the May 16, 2003 proposed rule, we proposed to revise § 412.614 to specify that paragraph (a) is a general rule.

We also proposed to further revise § 412.614 by adding a new § 412.614(a)(3) to specify that the IRF is not required to, but may, transmit the IRF–PAI data for a Medicare Part A fee-for-service inpatient when Medicare will not be paying the IRF for any of the services the IRF furnished to that inpatient.

Comment: We received one public comment supporting the proposed change.

Response: We are adopting the proposed change as final without modification.

F. Revision of the Definition of Discharge

Existing § 412.602 specifies that a discharge has occurred when the patient has been formally released from the hospital, or has died in the hospital, or when the patient stops receiving Medicare-covered Part A inpatient rehabilitation services. Our intention in specifying this definition of when a discharge has occurred under the IRF PPS was to try to ensure that Medicare paid an IRF only for furnishing an IRF level of services to the Medicare Part A fee-for-service inpatient. However, in contrast to when a patient is formally released from the IRF or dies, the time when a patient stops receiving Medicare-covered Part A IRF services may be subject to different interpretations, resulting in different determinations of when a discharge has occurred.

Various determinations of when a discharge has occurred can lead to inconsistencies in determining the discharge date. In these situations, IRFs furnishing the same services for the same period of time may be paid differently, because the discharge date determines a patient's length-of-stay. The patient's length-of-stay is one of the factors that determines the amount of the CMG payment. For example, under § 412.624(f), a patient's length-of-stay as determined by the inpatient's discharge date may affect the amount of the IRF's CMG payment when a patient is transferred from an IRF to another site of care.

In addition, there may be cases when an IRF believes an inpatient no longer has a medical need for Medicare-covered Part A inpatient rehabilitation services, but the IRF believes that the inpatient has a medical need for an SNF level of services. However, due to circumstances beyond the IRF's control, the IRF is unable to formally release the patient, because the IRF cannot place the patient in an SNF setting. In that situation, according to section 1861(v)(1)(G)(i) of the Act and § 424.13(b), a physician may certify or recertify that the patient needs to continue to be hospitalized in the IRF. The effect of the physician's certification or recertification is that under Medicare the patient is not considered discharged until the patient is formally released from the IRF.

In consideration of what can occur when discharge is defined as being when the inpatient stops receiving Medicare-covered Part A inpatient rehabilitation services, in the May 16, 2003 proposed rule, we proposed to revise the definition of "discharge" under § 412.602 by removing the phrase "(2) The patient stops receiving Medicare-covered Part A inpatient rehabilitation services, unless the patient qualifies for continued hospitalization under § 424.13(b) of this chapter; or". Under the proposed revised definition, discharge would mean a Medicare patient in an inpatient rehabilitation facility is considered discharged when (1) the patient is formally released from the inpatient rehabilitation facility; or (2) the patient dies in the inpatient rehabilitation facility.

Comment: We received a comment requesting that CMS not revise the definition of discharge as specified in § 412.503 that applies to patients in an LTCH similar to how we are revising the definition of a discharge from an IRF.

Response: The commenter's concern did not relate to our proposed change to the definition of discharge in the IRF context and we are adopting the proposed change without modification.

G. Waiver of the Penalty for Late Transmittal of the IRF–PAI Data

Section 412.614(c), "transmission dates," states that the admission and discharge assessment data must be transmitted together. The discharge assessment is completed after the admission assessment has been completed. Therefore, the date when the IRF–PAI data must be transmitted is determined by when the IRF–PAI discharge assessment is completed.

Section 412.610(d) specifies that after the discharge assessment has been completed, the data must be entered into the electronic version of the IRF–PAI, a process which § 412.602 defines as encoding the data. Section 412.610(d) specifies that the IRF has 7 calendar days to encode the discharge assessment. Section 412.614(d)(2) specifies that, in order for the IRF–PAI data not to be considered as having been transmitted late, the IRF–PAI data must be transmitted to us no later than 10 calendar days from the date specified in § 412.614(c).

The date specified in § 412.614(c) is the 7th calendar day of the applicable encoding time period specified in § 412.610(d). The 7th calendar day of the applicable encoding date specified in § 412.610(d) is the end of the discharge assessment encoding time period because none of the data can be transmitted until the discharge assessment has been encoded. The following example, which is very similar to the Chart 3 on page 41332 of the August 7, 2001 final rule (66 FR 41316), is intended to clarify when CMS will determine that the IRF–PAI data were transmitted late.

CHART 1–2.—EXAMPLE OF APPLYING THE PATIENT ASSESSMENT INSTRUMENT DISCHARGE ASSESSMENT AND TRANSMISSION DATES

Assessment type	Discharge date	Assessment reference date	IRF–PAI completed by	IRF–PAI encoded by	IRF–PAI data transmitted by	Date when IRF–PAI data transmission is late
Discharge Assessment	10/16/03	10/16/03	10/20/03	10/26/03	11/01/03	11/12/03*

*Or any day after 11/12/03.

If IRF–PAI data are transmitted later than 10 calendar days from the transmission date specified in § 412.614(c), § 412.614(d)(2) specifies that we will assess a penalty by deducting 25 percent from the CMG payment that is associated with the IRF–PAI data that were transmitted late. However, we believe that an IRF may encounter an extraordinary situation, which is beyond its control, and that extraordinary situation could render the IRF unable to comply with § 412.614(c). The IRF must fully describe in the appropriate inpatient's clinical record, or by use of another documentation method as selected by the IRF, the extraordinary situation which the IRF encountered that resulted in the IRF being unable to comply with § 412.614(c). Although an IRF may believe that the facility has encountered an extraordinary situation, the IRF's belief does not mean that CMS is obligated to also automatically determine that the situation was of an extraordinary nature.

CMS has the discretion to determine whether the situation described by the IRF is extraordinary. An extraordinary situation may be, but does not have to be, due to the occurrence of an unusual event. Examples of unusual events include, but are not limited to, fire, flood, earthquake, or other similar incidents that inflict extensive damage to an IRF.

Another example of an extraordinary situation is the inability of an IRF to transmit any IRF–PAI data for an extended time period, because during that entire time period there was a problem with the data transmission system that was beyond the control of the IRF. An example of a data transmission system problem that is beyond the control of the IRF is the inability of an IRF to transmit its IRF–PAI data because the computer used by CMS to receive and process the data is malfunctioning.

A further example of a data transmission system problem that is beyond the control of the IRF is the existence of a flaw in the software that was distributed by CMS to IRFs, or a flaw in the software specifications made available by CMS to vendors that prevent the IRF from transmitting its IRF–PAI data. In addition, an extraordinary situation may include a situation in which a facility has correctly followed CMS policies and procedures in order to be classified as an IRF and obtain an IRF provider number, but has experienced a delay in attaining an IRF provider number.

In light of these possibilities, in the May 16, 2003 proposed rule, we proposed to add a new § 412.614(e) to specify that CMS may waive the penalty specified in § 412.614(d) when, due to an extraordinary situation that is beyond the control of an inpatient rehabilitation facility, the inpatient rehabilitation facility is unable to transmit the patient assessment data in accordance with § 412.614(c).

We also proposed that "only CMS can determine if a situation encountered by an IRF is extraordinary and qualifies as a situation for waiver of the penalty specified in § 412.614(d)(2) of this

section. An extraordinary situation may be due to, but is not limited to, fires, floods, earthquakes, or similar unusual events that inflict extensive damage to an inpatient rehabilitation facility. An extraordinary situation may be one that produces a data transmission problem that is beyond the control of the inpatient rehabilitation facility, as well as other situations determined by CMS to be beyond the control of the inpatient rehabilitation facility."

Lastly, we proposed that "an extraordinary situation must be fully documented by the inpatient rehabilitation facility."

Comment: The comments we received supported the proposed revision.

Response: We are adopting the proposed change as final without modification.

H. General Information Regarding the IRF–PAI Assessment Process

We have received many questions regarding the IRF–PAI assessment process policies. We have posted the answers to most of these questions on the IRF PPS Web site.

1. The IRF PPS Web Site Address

The current Internet address for the IRF PPS Web site is *http://www.cms.hhs.gov/providers/irfpps/*. Due to changes in CMS' Internet policies during 2002, the current website address is different from the one we published in the August 7, 2001 final rule.

2. Exceptions to the IRF–PAI Admission and Discharge Assessment Time Period General Rules

Section 412.610(c)(1)(i) states the general rule that the time span covered during the admission assessment is calendar days 1 through 3 of the patient's current Medicare Part A fee-for-service IRF hospitalization. Section 412.610(c)(2)(i) states the general rule that the discharge assessment time period is a span of time that covers 3 calendar days, which includes the inpatient's discharge date, which is the same date as the discharge assessment reference date, and the 2 calendar days before the discharge date. We want to remind IRFs that, as specified in § 412.610(c)(1)(ii) and § 412.610(c)(2)(ii), we may use the IRF–PAI item-by-item guide and other instructions to identify items that have a different admission or discharge assessment time period. We may specify different admission and discharge assessment time periods in order to capture patient information for payment and quality of care monitoring objectives appropriately.

Miscellaneous Comments: We received several comments regarding IRF PPS implementation operational issues. For example, some commenters requested that we post on the IRF PPS website the questions asked of the IRF PAI Help Desk and the associated answers. Some commenters requested that we revise the instructions in the IRF–PAI manual regarding the coding of the patient during the discharge assessment. Some commenters requested that CMS publish a list of all the ICD–9–CM codes associated with every impairment group. Some commenters requested that we synchronize the discharge codes used in IRF–PAI with the patient status codes used in the claim data. Some commenters requested that we synchronize the methodology used to determine the IRF–PAI etiologic diagnosis code with the methodology used to determine the principal or admitting diagnosis on the claim.

Response: These comments are related to functions that are administrative and operational and are not specifically related to our proposed changes to the IRF PPS. We will take these comments into consideration as we continue to refine implementation of the IRF PPS.

V. Patient Classification System for the IRF PPS

As previously stated, in this final rule we are adopting the same case-mix classification system that was set forth in the August 7, 2001 final rule. It is our intention to pursue the development of possible refinements to the case-mix classification system that will continue to improve the ability of the PPS to accurately pay IRFs. We have awarded a contract to the RAND Corporation (RAND) to conduct additional research that will, in the initial stages, provide us with the data necessary to address the feasibility of developing and proposing refinements. When the study has been completed, we plan to review various approaches so that we can propose an appropriate methodology to develop and apply refinements. Any specific refinement proposal resulting from this research will be published in the **Federal Register**.

Table 1.—Relative Weights for Case-Mix Groups (CMGs) in the Addendum to this final rule presents the CMGs, the comorbidity tiers, and the corresponding Federal relative weights. We also present the average length of stay for each CMG. As we discussed in the August 7, 2001 final rule (66 FR 41353), the average length of stay for each CMG, along with the discharge destination, is used to determine when an IRF discharge meets the definition of a transfer, which results in a per diem case level adjustment (66 FR 41354). Because these data elements are not changing as a result of this final rule, Table 1 in this final rule is identical to Table 1 that was published in the August 7, 2001 final rule (66 FR 41394 through 41396). The relative weights reflect the inclusion of cases with an interruption of stay (patient returns on day of discharge or either of the next 2 days). The methodology we used to construct the data elements in Table 1 is described in detail in the August 7, 2001 final rule (66 FR 41350 through 41353).

VI. Fiscal Year 2004 Federal Prospective Payment Rates

A. Expiration of the IRF PPS Transition Period

Section 1886(j)(1) of the Act and § 412.626 of the regulations provides that the transition period for IRFs expires for cost reporting periods beginning on or after October 1, 2002 (FY 2003 and beyond). Accordingly, the payment for discharges during FY 2004 will be based entirely on the adjusted FY 2004 IRF Federal PPS rates in this final rule.

B. Description of the IRF Standardized Payment Amount

In the August 7, 2001 final rule, we established a standard payment amount referred to as the budget neutral conversion factor under § 412.624(c). In accordance with the methodology described in § 412.624(c)(3)(i), the budget neutral conversion factor for FY 2002, as published in the August 7,2001 final rule, was $11,838.00. Under § 412.624(c)(3)(i), this amount reflects, as appropriate, any adjustments for outlier payments, budget neutrality, and coding and classification changes as described in § 412.624(d).

The budget neutral conversion factor is a standardized payment amount and the amount reflects the budget neutrality adjustment for FY 2002, as described in § 412.624(d)(2). The statute requires a budget neutrality adjustment only for FYs 2001 and 2002. Accordingly, we believe it is more consistent with the statute to refer to the standardized payment as the standardized payment conversion factor, rather than refer to it as a budget neutral conversion factor.

As we proposed in the May 16, 2003 proposed rule, after careful consideration, in this final rule we are changing all references to the budget neutral conversion factor in §§ 412.624(c) and 412.624(d) to the "standard payment conversion factor." We believe that the standard payment conversion factor better describes the standardized payment amount especially in those fiscal years where a budget neutrality adjustment is not made.

Under § 412.624(c)(3)(i), the standard payment conversion factor for FY 2002 of $11,838.00 reflected the budget neutrality adjustment described in § 412.624(d)(2). Under the then existing § 412.624(c)(3)(ii), we updated the FY 2002 standard payment conversion factor ($11,838.00) to FY 2003 by applying an increase factor (the IRF market basket index) of 3.0 percent, as described in the update notice published in the August 1, 2002 **Federal Register** (67 FR 49931). This yielded the FY 2003 standard payment conversion factor of $12,193.00 that was published in the August 1, 2002 update notice (67 FR 49931). The FY 2003 standard payment conversion factor is the basis of the updated FY 2004 standard payment conversion factor that also reflects the adjustments described below.

C. Adjustments To Determine the FY 2004 Standard Payment Conversion Factor

1. IRF Market Basket Index

Section 1886(j)(3)(C) of the Act requires the Secretary to establish an increase factor that reflects changes over time in the prices of an appropriate mix of goods and services included in IRF services paid for under the IRF PPS, which is referred to as the IRF market basket index. Accordingly, in updating the FY 2004 payment rates set forth in this final rule, we will apply an appropriate increase factor, that is equal to the IRF market basket, to the FY 2003 IRF standardized payment amount.

Beginning with the implementation of the IRF PPS in FY 2002 and with the FY 2003 IRF PPS update, the 1992-based excluded hospital with capital market basket has been used to determine the IRF market basket factor for updating payments to rehabilitation facilities. The 1992-based market basket reflected the distribution of costs in 1992 for Medicare-participating freestanding rehabilitation, long-term care, psychiatric, cancer, and children's hospitals. This information was derived from the 1992 Medicare cost reports. A full discussion of the methodology and data sources used to construct the 1992-based excluded hospital with capital market basket is available in Appendix D of the IRF PPS final rule published in the August 7, 2001 **Federal Register** (66 FR 41427).

2. The Excluded Hospital and the Capital Market Basket

In this final rule, we are revising and rebasing the excluded hospital with capital market basket to a 1997 base year. We believe that using 1997 data, rather than 1992 data, to construct the IRF market basket allows us to more appropriately estimate increases in the costs of IRF goods and services from year to year. We believe the use of more recent data will ensure that our estimates more closely approximate the current costs of goods and services provided in IRFs.

The operating portion of the 1997-based excluded hospital with capital market basket is derived from the 1997-based excluded hospital market basket. The methodology used to develop the excluded hospital market basket operating portion was described in the August 1, 2002 **Federal Register** (67 FR 50042–50044). In brief, the operating cost category weights in the 1997-based excluded market basket added to 100.0. These weights were determined from the Medicare cost reports, the 1997 Business Expenditure Survey from the Bureau of the Census, and the 1997 Annual Input-Output data from the Bureau of Economic Analysis. In using the 1997 data, we made two methodological revisions to the 1997-based excluded hospital market basket: (1) Changing the wage and benefit price proxies to use the Employment Cost Index (ECI) wage and benefit data for hospital workers, and (2) adding a cost category for blood and blood products.

Previously we used a combination of several occupational ECIs in the 1992-based index such as the professional and technical workers, service workers, etc. We believe the ECI for hospital workers better represents the movement of hospital wages, salaries, and benefits and it is more reflective of current labor market conditions. For the 1992-based market baskets we were unable to find an adequate data source for the blood cost category.

For the 1997-based excluded hospital market basket, we were able to obtain these data from Medicare cost reports. As discussed in the IPPS August 1, 2002 final rule (67 FR 50035), BIPA required that we adequately reflect the price of blood and blood products in the hospital market basket when it was rebased and revised, which was done for the FY 2003 IPPS payment rates. We believe this revision is also appropriate for the excluded hospital with capital market basket because it results in a more precise measure of the cost category for blood and blood products.

When we add the weight for capital costs to the excluded hospital market basket, the sum of the operating and capital weights must still equal 100.0. Because capital costs account for 8.968 percent of total costs for excluded hospitals in 1997, it holds that operating costs must account for 91.032 perceat. Each operating cost category weight from the August 1, 2002 **Federal Register** (67 FR 50442–50444) was rebased to the 1997-based excluded hospital with capital market basket by multiplying by 0.91032 to determine its weight in the 1997-based excluded hospital with capital market basket.

The aggregate capital component of the 1997-based excluded hospital market basket (8.968 percent) was determined from the same set of Medicare cost reports used to derive the operating component. The detailed capital cost categories of depreciation, interest, and other capital expenses were also determined using the Medicare cost reports. As explained below, two sets of weights for the capital portion of the revised and rebased market basket needed to be determined. The first set of weights identifies the proportion of capital expenditures attributable to each capital cost category, while the second set represents relative vintage weights for depreciation and interest. The vintage weights identify the proportion of capital expenditures that is attributable to each year over the useful life of capital assets within a cost category (see IPPS final rule published in the August 1, 2002 **Federal Register** (67 FR 50046–50047) for a discussion of how vintage weights are determined).

The cost categories, price proxies, and base-year FY 1992 and FY 1997 weights for the excluded hospital with capital market basket are presented in Chart 3 "Excluded Hospital With Capital Input Price Index (FY 1992 and FY 1997) Structure and Weights." Chart 4 "Excluded Hospital with Capital Input Price Index (FY 1997) Vintage Weights" presents the vintage weights for the 1997-based excluded hospital with capital market basket.

CHART 3.—EXCLUDED HOSPITAL WITH CAPITAL INPUT PRICE INDEX (FY 1992 AND FY 1997) STRUCTURE AND WEIGHTS [1, 2]

Cost category	Price wage variable	Weights (%) base-year 1992	Weights (%) base-year 1997
Total		100.000	100.000
Compensation		57.935	57.579
Wages and Salaries	ECI—Wages and Salaries, Civilian Hospital Workers	47.417	47.335
Employee Benefits	ECI—Benefits, Civilian Hospital Workers	10.519	10.244
Professional fees: Non-Medical	ECI—Compensation: Prof. & Technical	1.908	4.423
Utilities		1.524	1.180
Electricity	WPI—Commercial Electric Power	0.916	0.726
Fuel Oil, Coal, etc.	WPI—Commercial Natural Gas	0.365	0.248
Water and Sewerage	CPI–U—Water & Sewage	0.243	0.206
Professional Liability Insurance	HCFA—Professional Liability Premiums	0.983	0.733
All Other Products and Services		28.571	27.117
All Other Products		22.027	17.914
Pharmaceuticals	WPI—Prescription Drugs	2.791	6.318
Food: Direct Purchase	WPI—Processed Foods	2.155	1.122
Food: Contract Service	CPI–U—Food Away from Home	0.998	1.043
Chemicals	WPI—Industrial Chemicals	3.413	2.133
Blood and Blood Products	WPI—Blood and Derivatives		0.748
Medical Instruments	WPI—Med. Inst. & Equipment	2.868	1.795
Photographic Supplies	WPI—Photo Supplies	0.364	0.167
Rubber and Plastics	WPI—Rubber & Plastic Products	4.423	1.366
Paper Products	WPI—Convert. Paper and Paperboard	1.984	1.110
Apparel	WPI—Apparel	0.809	0.478
Machinery and Equipment	WPI—Machinery & Equipment	0.193	0.852
Miscellaneous Products	WPI—Finished Goods excluding Food and Energy	2.029	0.783
All Other Services		6.544	9.203
Telephone	CPI–U—Telephone Services	0.574	0.348
Postage	CPI–U—Postage	0.268	0.702
All Other: Labor	ECI—Compensation: Service Workers	4.945	4.453
All Other: Non-Labor Intensive	CPI–U—All Items (Urban)	0.757	3.700
Capital-Related Costs		9.080	8.968
Depreciation		5.611	5.586
Fixed Assets	Boeckh-Institutional Construction: 23 Year Useful Life	3.570	3.503
Movable Equipment	WPI—Machinery & Equipment: 11 Year Useful Life	2.041	2.083
Interest Costs		3.212	2.682
Non-profit	Avg. Yield Municipal Bonds: 23 Year Useful Life	2.730	2.280
For-profit	Avg. Yield AAA Bonds: 23 Year Useful Life	0.482	0.402
Other Capital-Related Costs	CPI–U—Residential Rent	0.257	0.699

[1] The operating cost category weights in the excluded hospital market basket described in the August 1, 2002 FEDERAL REGISTER (67 FR 50442 through 50444) add to 100.0.
[2] Due to rounding, weights sum to 1.000.

When we add an additional set of cost category weights (total capital weight = 8.968 percent) to this original group, the sum of the weights in the new index must still add to 100.0. Because capital costs account for 8.968 percent of the market basket, then operating costs account for 91.032 percent. Each weight in the 1997-based excluded hospital market basket from the IPPS final rule published in the August 1, 2002 **Federal Register** (67 FR 50442–50444) was multiplied by 0.91032 to determine its weight in the 1997-based excluded hospital with capital market basket.

CHART 4.—EXCLUDED HOSPITAL WITH CAPITAL INPUT PRICE INDEX (FY 1997) VINTAGE WEIGHTS

Year from farthest to most to most recent	Fixed assets (23-year weights)	Movable assets (11-year weights)	Interest: capital-related (23-year weights)
1	0.018	0.063	0.007
2	0.021	0.068	0.009
3	0.023	0.074	0.011
4	0.025	0.080	0.012
5	0.026	0.085	0.014
6	0.028	0.091	0.016
7	0.030	0.096	0.019
8	0.032	0.101	0.022
9	0.035	0.108	0.026
10	0.039	0.114	0.030
11	0.042	0.119	0.035
12	0.044		0.039
13	0.047		0.045

CHART 4.—EXCLUDED HOSPITAL WITH CAPITAL INPUT PRICE INDEX (FY 1997) VINTAGE WEIGHTS—Continued

Year from farthest to most to most recent	Fixed assets (23-year weights)	Movable assets (11-year weights)	Interest: capital-related (23-year weights)
14	0.049		0.049
15	0.051		0.053
16	0.053		0.059
17	0.057		0.065
18	0.060		0.072
19	0.062		0.077
20	0.063		0.081
21	0.065		0.085
22	0.064		0.087
23	0.065		0.090
Total*	1.0000	1.0000	1.0000

*Due to rounding, weights sum to 1.000.

Comment: One commenter asked about the derivation of the professional liability cost weight. The commenter believed the reduction in the professional liability weight (shown in Chart 3) from the 1992-based excluded with capital market basket (.983) to the 1997-based excluded with capital market basket (.733) was inconsistent with the trends in professional liability insurance.

Response: Recent trends show professional liability insurance growing faster than our market basket but in the post 1997 period. This growth is reflected in the movement of the professional liability insurance price proxy.

The professional liability cost weight used in the 1997-based excluded with capital market basket was derived from a survey conducted by ANASYS under contract to CMS (Contract Number 500–98–005). This survey attempted to estimate hospital malpractice insurance costs over time at the national level for years 1996 and 1997 using a statistical sample. The statistical sample was drawn from a population universe of non-Federal short-term, acute care prospective payment system hospitals. CMS applied the results—more specifically the relationship between professional liability and other hospital costs—to the excluded hospital with capital market basket. (More results about this survey are published in the May 9, 2002 IPPS Hospital Proposed Rule (90 FR 31440)).

We believe the reduction in the professional liability insurance weight from 1992 to 1997 does reflect the actual conditions facing hospitals at that time. The relevant professional liability insurance price proxy shows a decline in prices from 1990 to 1998 while the overall market basket shows an increase. In the most recent five years, the professional liability insurance price proxy has been accelerating, resulting in an increasing relative importance of its weight in the market basket. This is consistent with recent trends.

Chart 5 "Percent Changes in the 1992-based and 1997-based Excluded Hospital with Capital Market Baskets, FY 1999–2004" compares the 1992-based excluded hospital with capital market basket to the 1997-based excluded hospital with capital market basket. As is shown, the rebased and revised market basket grows slightly faster over the 1999–2001 period than the 1992-based market basket. The major reason for this was the switching of the previous wage and benefit proxies to the ECI for hospital workers from the previous occupational blend. We believe that the ECI is the best most appropriate price proxy for measuring changes in wage data facing IRFs. This wage series reflects actual wage data reported by civilian hospitals to the Bureau of Labor Statistics that is more reflective of current trends in hospitals than is the blended wage previously used. The ECIs are fixed-weight indexes and strictly measure the change in wage rates and employee benefits per hour. They are appropriately not affected by shifts in skill mix. This differs from the proxy used in the FY 1992-based index in which a blended occupational wage index was used. The blended occupational wage proxy used in the FY 1992-based index and the ECI for wages and salaries for hospitals both reflect a fixed distribution of occupations within a hospital. The major difference between the two proxies is in the treatment of professional and technical wages (legal, accounting, management, and consulting services from outside the facility). In the blended occupational wage proxy, the professional and technical category was blended evenly between the ECI for wages and salaries for hospitals and the ECI for wages and salaries for professional and technical occupations in the overall economy. The ECI for hospitals reflects, instead of hospital-specific occupations as reflected in the ECI for hospitals. This revision had a similar impact on the hospital PPS and excluded market baskets, as described in the IPPS final rule published in the August 1, 2001 **Federal Register**. The FY 2004 increase in the 1997-based excluded hospital with capital market basket is 3.2 percent.

CHART 5.—PERCENT CHANGES IN THE 1992-BASED AND 1997-BASED EXCLUDED HOSPITAL WITH CAPITAL MARKET BASKETS, FY 1999–2004

Fiscal year	Percent change, FY 1992-based market basket	Percent change, FY 1997-based market basket
Actual Historical % Increase (FY 1999–2002)		
1999	2.3	2.7

CHART 5.—PERCENT CHANGES IN THE 1992-BASED AND 1997-BASED EXCLUDED HOSPITAL WITH CAPITAL MARKET BASKETS, FY 1999–2004—Continued

Fiscal year	Percent change, FY 1992-based market basket	Percent change, FY 1997-based market basket
2000	3.4	3.1
2001	3.9	4.0
2002	2.7	3.6
Average historical	3.1	3.4
Forecasts (FY 2003–2004)		
2003	3.4	3.8
2004	2.9	3.2
Average forecast	3.2	3.5

Section 1886(j)(3)(c) requires that the increase in the IRF PPS payment rate be based on an "appropriate percentage increase in a market basket of goods and services comprising services for which payment is made under this subsection, which may be the market basket percentage increase described in subsection (b)(3)(B)(iii)." To date, we have used a market basket based on the cost structure of all excluded hospitals to satisfy this requirement, and have discussed in prior IRF rules why we feel this market basket provides a reasonable measure of the price changes facing exempt hospitals.

3. Research and Analysis

In its March 2002 Report, the Medicare Payment Advisory Commission (MedPAC) recommended the development of a market basket specific to IRF services. As we mentioned in the August 7, 2001 final rule, we researched the feasibility of developing such a market basket. This research included analyzing data sources for cost category weights, specifically the Medicare cost reports, and investigating other data sources on cost, expenditure, and price information specific to IRFs. As described in greater detail below, based on this research, we are not developing a market basket specific to IRF services at this time.

Our analysis of the Medicare cost reports indicates that the distribution of costs among major cost report categories (wages, pharmaceuticals, capital) for IRFs is not substantially different from the 1997-based excluded hospital with capital market basket we have used. In addition, the only data available to us were for these cost categories (wages, pharmaceuticals, and capital) presenting a potential problem since no other major cost category would be based on IRF data.

We conducted a sensitivity analysis of annual percent changes in the market basket when the IRF weights for wages, pharmaceuticals, and capital were substituted into the excluded hospital with capital market basket. Other cost categories were recalibrated using ratios available from the inpatient PPS hospital market basket. On average, between the years 1995 through 2002, the excluded hospital with capital market basket increased at essentially the same average annual rate (2.9 percent) as the market basket with IRF weights for wages, pharmaceuticals, and capital (2.8 percent). In addition, in almost any individual year the difference was 0.1 percentage point or less, which is less than the 0.25 percentage point criterion that is used under the IPPS update framework to determine whether a forecast error adjustment is warranted.

The 0.25 percentage point criterion that determines whether a forecast error adjustment is warranted has been used in the IPPS update framework since the implementation of the IPPS. It serves as a guideline for the level of forecast accuracy, since any forecast is likely to contain enough imprecision that differences of one tenth or two-tenths of a percentage point are not thought to be significant. Thus, in this case if the forecast error is not at least greater than two-tenths of a percentage point, it is thought to be similar enough to the actual data as not to warrant an adjustment.

Based on the analysis described above, we continue to believe that the excluded hospital with capital market basket is doing an adequate job of reflecting the price changes facing IRFs. As additional cost data are being collected under the IRF PPS we hope that we will eventually be able to develop a market basket derived specifically from IRF data.

As shown in Chart 5, for the payment rates set forth in this final rule, the FY 2004 IRF market basket increase factor using 1997 data is 3.2 percent. Thus, we apply the 3.2 percent increase, in addition to the budget neutral wage adjustment factor described below, to the FY 2003 standard payment conversion factor ($12,193.00) to determine the 2004 standard payment conversion factor.

4. Updated Labor-Related Share

In implementing the FY 2002 and FY 2003 IRF PPS, we used the 1992 market basket data to determine the labor-related share (72.395 percent). As stated above, we are updating the 1992 market basket data to 1997. Doing so allows us to use the 1997-based excluded hospital market basket with capital costs to determine the FY 2004 labor-related share.

We calculated the FY 2004 labor-related share as the sum of the weights for those cost categories contained in the 1997-based excluded hospital with capital market basket that are influenced by local labor markets. These cost categories include wages and salaries, employee benefits, professional fees, labor-intensive services and a 46 percent share of capital-related expenses. The labor-related share for FY 2004 is the sum of the FY 2004 relative importance of each labor-related cost category, and reflects the different rates of price change for these cost categories between the base year (FY 1997) and FY 2004. The sum of the relative importance for FY 2004 for operating costs (wages and salaries, employee benefits, professional fees, and labor-intensive services) is 69.028 percent, as shown in Chart 6 "FY 2004 Labor-Related Share Relative Importance." The portion of capital that is influenced by local labor markets is estimated to be 46 percent. Because the relative importance of capital is 7.604 percent of the 1997-based excluded hospital with capital market basket in FY 2004, we take 46 percent of 7.604 percent to determine the labor-related share of capital for FY 2004. The result is 3.498 percent, which we then add to the 69.028 percent calculated for operating costs to determine the total labor-related relative importance for FY 2004. The resulting labor-related share that we are using for IRFs in FY 2004 is 72.526 percent.

CHART 6.—FY 2004 LABOR-RELATED SHARE RELATIVE IMPORTANCE

Cost category	Relative importance 1992-based market basket FY 2004	Relative importance 1997-based market basket FY 2004
Wages and salaries	50.180	48.906
Employee benefits	11.980	11.081
Professional fees	2.041	4.500
Postage	0.257	
All other labor intensive services	5.214	4.541
Subtotal	69.672	69.028
Labor-related share of capital	3.370	3.498
Total	73.042	72.526

Chart 6 above shows that rebasing the excluded hospital with capital market basket lowers the increase in labor share that we used in FY 2004 relative to what it would have been had we not rebased the excluded hospital with capital market basket. As we previously stated, we are using a labor-related share of 72.526 percent for the FY 2004 IRF PPS payment rates set forth in this final rule.

5. Budget Neutral Wage Adjustment Update Methodology

As stated above, for FY 2004, we are updating the FY 2003 IRF wage indices by using FY 1999 acute care hospital wage data and updating the labor-related share by using the 1997 market basket data. Because any adjustment or updates to the IRF wage index made under section 1886(j)(6) of the Act must be made in a budget neutral manner as required by statute, we are amending the regulation at § 412.624(e)(1), as proposed, to reflect this requirement. We also determined a budget neutral wage adjustment factor based on an adjustment or update to the wage data to apply to the standard payment conversion factor.

In addition, as we proposed in the May 16, 2003 proposed rule, we use the following steps to ensure that the FY 2004 IRF standard payment conversion factor reflects the update to the wage indices and to the labor-related share in a budget neutral manner:

Step 1. We determine the total amount of the FY 2003 IRF PPS rates using the FY 2003 standardized payment amount and the labor-related share and the wage indices from FY 2003 (as published in the August 1, 2002 notice).

Step 2. We then calculate the total amount of IRF PPS payments using the FY 2003 standardized payment amount and the updated FY 2004 labor-related share and wage indices described above.

Step 3. We divide the amount calculated in step 1 by the amount calculated in step 2, which equals the FY 2004 budget neutral wage adjustment factor of 0.9954.

Step 4. We then apply the FY 2004 budget neutral wage adjustment factor from step 3 to the FY 2003 IRF PPS standard payment conversion factor after the application of the market basket update, described above, to determine the FY 2004 standardized payment amount.

Comment: A commenter noted that the update factor used to develop the FY 2003 IRF PPS payment rates should have been higher than 3 percent.

Response: In order to update the IRF PPS payment rates, section 1886(j)(3)(C) of the Act requires the Secretary to establish an increase factor that reflects changes over time in the prices of an appropriate mix of goods and services included in the covered IRF services, which is referred to as a market basket index.

Accordingly, in the November 2, 2000 proposed rule we described our proposed methodology for constructing an appropriate IRF market basket, the 1992-based excluded hospital with capital market basket. We invited comments on the proposed construction of this market basket and eventually adopted the proposed methodology in the August 7, 2001 final rule. At the time we proposed this methodology, we used the best data that were available. Further, in finalizing this method we also used the best data available at the time we developed the August 7, 2001 final rule.

In updating the FY 2003 IRF PPS payment rates, we issued a notice in the **Federal Register** using the methodology finalized in the August 7, 2001 final rule. Therefore, we used an appropriate update factor for the FY 2003 IRF PPS payment rates based on the best data available at the time the August 1, 2002 update notice was developed.

D. Update of Payment Rates Under the IRF PPS for FY 2004

Once we calculate the IRF market basket increase factor and determine the budget neutral wage adjustment factor, this calculation enables us to determine the updated Federal prospective payments for FY 2004. In this final rule, we apply the IRF market basket increase factor of 3.2 percent to the standard payment conversion factor for FY 2003 ($12,193) that equals $12,583. Then, we apply the budget neutral wage adjustment of 0.9954 to $12,583, which resulted in a final updated standard payment conversion factor for FY 2004 of $12,525.

Consistent with the proposed rule, this final rule provides that the FY 2004 standard payment conversion factor is applied to each CMG weight shown in Table 1 to compute the unadjusted IRF prospective payment rates for FY 2004 shown in Table 2.

Table 2.—FY 2004 Federal Prospective Payments for Case-Mix Groups (CMGs) for FY 2004 displays the CMGs, the comorbidity tiers, and the corresponding unadjusted IRF prospective payment rates for FY 2004.

E. Examples of Computing the Total Adjusted IRF Prospective Payments

In general, under § 412.624(e), we adjust the Federal prospective payment amount associated with a CMG, shown

in Table 2, to account for an IRF's geographic wage variation, low-income patients and, if applicable, location in a rural area.

The adjustment for an IRF's geographic wage variation includes the FY 2004 labor-related share adjustment of 72.526 percent and the FY 2004 IRF urban or rural wage indices in Tables 3A and 3B of the Addendum of this final rule, respectively.

The adjustment for low-income patients is based on the formula used to account for the cost of furnishing care to low-income patients as discussed in the August 7, 2001 IRF PPS final rule (67 FR 41360). The formula to calculate the low-income patient or LIP adjustment is as follows:

(1 + DSH) raised to the power of (.4838)

$$\text{Where DSH} = \frac{\text{Medicare SSI Days}}{\text{Total Medicare Days}} + \frac{\text{Medicaid, Non-Medicare Days}}{\text{Total Days}}$$

The adjustment for IRFs located in rural areas is an increase to the Federal prospective payment amount of 19.14 percent. This percentage increase is the same as the one described in the August 7, 2002 IRF PPS final rule (67 FR 41359).

To illustrate the methodology that we use to adjust the Federal prospective payments, we provide an example in Chart 7 below.

One beneficiary is in Facility A, an IRF located in rural Maryland, and another beneficiary is in Facility B, an IRF located in the New York City metropolitan statistical area (MSA). Facility A's disproportionate share hospital (DSH) adjustment is 5 percent, with a low-income patient adjustment of (1.0239) and a wage index of (0.8946), and the rural-area adjustment (19.14 percent) applies. Facility B's DSH is 15 percent, with a LIP adjustment of (1.0700) and a wage index of (1.4414).

Both Medicare beneficiaries are classified to CMG 0112 (without comorbidities). To calculate each IRF's total adjusted Federal prospective payment, we compute the wage-adjusted Federal prospective payment and multiply the result by the appropriate low-income patient adjustment and the rural adjustment (if applicable). Chart 7 illustrates the components of the adjusted payment calculation.

CHART 7.—EXAMPLE OF COMPUTING AN IRF'S FEDERAL PROSPECTIVE PAYMENT

	Facility A	Facility B
Federal Prospective Payment	$25,068.79	$25,068.79
Labor Share	×0.72526	×0.72526
Labor Portion of Federal Payment	18,181.39	18,181.39
Wage Index (shown in Tables 3A or 3B)	×0.8946	×1.4414
Wage-Adjusted Amount	=$16,265.07	=$26,206.65
Nonlabor Amount	+$6,887.40	+$6,887.40
Wage-Adjusted Federal Payment	=$23,152.47	=$33,094.05
Rural Adjustment	×1.1914	×1.0000
Subtotal	=$27,583.85	=$33,094.05
LIP Adjustment	×1.0239	×1.0700
Total FY 2004 Adjusted Federal Prospective Payment	=$28,243.11	=$35,410.64

Thus, the adjusted payment for facility A will be $28,243.11, and the adjusted payment for facility B will be $35,410.64.

F. Computing Total Payments Under the IRF PPS for the Transition Period

Under section 1886(j)(1) of the Act and § 412.626 of the regulations, payment for all IRFs with cost reporting periods beginning on or after October 1, 2002, will consist of 100 percent of the FY 2004 adjusted Federal prospective payment (plus any applicable outlier payments under § 412.624(e)(4)) and there will not be any blended payments. Accordingly, the FY 2004 IRF PPS rates set forth in this final rule will apply to all discharges on or after October 1, 2003 and before October 1, 2004.

G. IRF-Specific Wage Data

On page 41358 of the August 7, 2001 IRF PPS final rule, we responded to comments regarding the development of a separate wage index for IRFs. Our response indicated that we were unable to develop a separate wage index for rehabilitation facilities. Specifically, we responded to these comments as follows:

"At this time, we are unable to develop a separate wage index for rehabilitation facilities. There is a lack of specific IRF wage and staffing data necessary to develop a separate IRF wage index accurately. Further, in order to accumulate the data needed for such an effort, we would need to make modifications to the cost report. In the future, we will continue to research a wage index specific to IRF facilities. Because we do not have an IRF specific wage index that we can compare to the hospital wage index, we are unable to determine at this time the degree to which the acute care hospital data fully represent IRF wages. However, we believe that a wage index based on acute care hospital wage data is the best and most appropriate wage index to use in adjusting payments to IRFs, since both acute care hospitals and IRFs compete in the same labor markets."

At the current time, we still do not have any IRF-specific wage data to determine the feasibility of developing an IRF-specific wage index or of developing an adjustment to refine the acute care hospital wage data to reflect inpatient rehabilitation services. We continue to look into alternative ways to collect, analyze, develop, and audit IRF-specific wage data that would reflect the wages and wage-related costs attributable to rehabilitation facilities.

We believe that the best source to collect IRF-specific wage data is the Medicare cost report—the same source for the acute care hospital wage data. These data must be accurate and reliable; thus, collecting these data would increase the recordkeeping and reporting burden on IRFs. Initially, this burden would be imposed to collect data just to determine the feasibility of developing an IRF-specific wage index or development of an adjustment to the current IRF wage index.

In addition, as stated earlier in this section of this final rule, any adjustment or update to the wage index must be made in a budget neutral manner in accordance with section 1886(j)(6) of the Act. Thus, the PPS rates for any one IRF could be affected in a positive or negative direction, due to the application of the updates to the labor-related share and wage indices in a budget neutral manner. Accordingly, given the current trend of reducing the Medicare cost reporting burden of collecting data and given that any change to the wage index be budget neutral, in the May 16, 2003 proposed rule, we did not propose to require facilities to record additional information at this time, however we solicited comments on possible ways to adjust or refine the current IRF wage index, given those restraints.

Comment: One commenter offered to meet with us to discuss the feasibility and effort involved with developing an IRF-based wage index.

Response: We appreciate the commenter's willingness to meet and we will contact them to arrange a meeting in the future.

In this final rule, we are not imposing the burden of collecting these data and we will continue to explore options to adjust or refine the current IRF wage index, given the restraints previously discussed.

Since IRFs and hospitals compete in the same labor markets, we will continue to use the acute care hospital wage data to develop the IRF wage index as described earlier in this section of this final rule.

Comment: One commenter requested that we reconsider the decision in the August 7, 2001 final rule to use pre-reclassification wage data to determine a facilities wage adjustment and suggested the use of the post-reclassification wage index. The commenter asserted that using the pre-reclassification wage index disadvantages IRFs because they must compete in the same labor market as their affiliated acute care hospital for the same pool of highly trained personnel.

Response: In the November 2, 2000 proposed rule, we proposed to use the pre-reclassification wage index. In the August 7, 2001 final rule, we addressed comments that we received regarding the use of the post-reclassification wage index. In the August 7, 2001 final rule we stated that we believe the actual location of an IRF as opposed to the location of affiliated providers is most appropriate for determining the wage adjustment because the data support the premise that the prevailing wages in the area in which the facility is located influence the cost of a case. We also stated that IRFs provide services that are considered part of the post-acute continuum of care and in order to be consistent with the area wage adjustments made to other post-acute care providers (that is, under the existing SNF and HHA prospective payment systems), we are using the inpatient acute care hospital wage data without regard to any approved geographic reclassifications under section 1886(d)(8) or 1886(d)(10) of the Act. Therefore, for all of the reasons stated above, we will continue to use the pre-reclassification wage index to adjust an IRF's PPS payments and base this payment adjustment on the facility's actual location.

We would also like to point out that on June 6, 2003, the Office of Management and Budget (OMB) issued "OMB Bulletin No.03–04," announcing revised definitions of Metropolitan Statistical Areas, and new definitions of Micropolitan Statistical Areas and Combined Statistical Areas. A copy of the Bulletin may be obtained at the following Internet address: *http://www.whitehouse.gov/omb/bulletins/b03–04.html.* These new definitions will not be applied to the FY 2004 IRF wage index. However, we will be studying the new definitions and their impact and, if warranted, may adopt them at a later point in time using the appropriate administrative processes. To the extent these definitions are used, the concerns expressed by many for the use of a geographical reclassification system may be mitigated.

H. Adjustment for High-Cost Outliers Under the IRF PPS

In the May 16, 2003 proposed rule, we proposed changes to the methodology for determining IRF payments for high-cost outliers. The intent of the proposed changes was to ensure that outlier payments are paid only for truly high-cost cases. Further, we indicated that these proposed changes would allow us to create policies that are consistent among the various Medicare prospective payment systems when appropriate.

We have become aware that under the IPPS, some hospitals have taken advantage of two features in the IPPS outlier policy to maximize their outlier payments. The first is the time lag between the current charges on a submitted bill and the cost-to-charge ratio taken from the most recent settled cost report. Second, statewide average cost-to-charge ratios are used in those instances in which an acute care hospital's operating or capital cost-to-charge ratios fall outside reasonable parameters. We set forth these parameters and the statewide cost-to-charge ratios in the annual notices of prospective payment rates that are published by August 1 of each year in accordance with § 412.8(b). Currently, these parameters represent 3.0 standard deviations (plus or minus) from the geometric mean of cost-to-charge ratios for all hospitals. In some cases, hospitals may increase their charges so far above costs that their cost-to-charge ratios fall below 3 standard deviations from the geometric mean of the cost-to-charge ratio and a higher statewide average cost-to-charge ratio is applied to determine if the acute care hospital should receive an outlier payment. This disparity results in their cost-to-charge ratios being set too high, which in turn results in an overestimation of their current costs per case.

We believe the Congress intended that outlier payments under both the IPPS and the IRF PPS would be made only in situations where the cost of care is extraordinarily high in relation to the average cost of treating comparable conditions or illnesses. Under the IPPS outlier methodology, if hospitals' charges are not sufficiently comparable in magnitude to their costs, the legislative purpose underlying the outlier regulations is thwarted. Thus, on March 4, 2003, we published in the **Federal Register** a proposed rule "Proposed Changes in Methodology for Determining Payment for Extraordinarily High-Cost Cases (Cost Outliers) Under the Acute Care Hospital Inpatient Prospective Payment System" (68 FR 10420–10429) with an extensive discussion proposing new regulations to ensure outlier payments are paid for truly high-cost cases under the IPPS. This policy was finalized in a final regulation on June 9, 2003 (68 FR 34494), effective August 8, 2003.

We believe the use of these parameters is appropriate in determining cost-to-charge ratios to ensure these values are reasonable and outlier payments can be made in the most equitable manner possible.

Further, we believe the methodology of computing IRF outlier payments is susceptible to the same payment enhancement practices identified under the IPPS and, therefore, merit similar revisions. Accordingly, as discussed below, in this final rule we are making revisions as proposed in the May 16, 2003 proposed rule, to the IRF outlier payment methodology to be effective for discharges on or after October 1, 2003.

1. Current Outlier Payment Provision Under the IRF PPS

Section 1886(j)(4) of the Act provides the Secretary with the authority to make payments in addition to the basic IRF prospective payments for cases incurring extraordinarily high costs. In the August 7, 2001 IRF PPS final rule, we codified at § 412.624(e)(4) of the regulations the provision to make an adjustment for additional payments for outlier cases that have extraordinarily high costs relative to the costs of most discharges. Providing additional payments for outliers strongly improves the accuracy of the IRF PPS in determining resource costs at the patient and facility level. These additional payments reduce the financial losses that would otherwise be caused by treating patients who require more costly care and, therefore, reduce the incentives to underserve these patients.

Under § 412.624(e)(4), we make outlier payments for any discharges if the estimated cost of a case exceeds the adjusted IRF PPS payment for the CMG plus the adjusted threshold amount ($11,211 which is then adjusted for each IRF by the facilities wage adjustment, its low-income patient adjustment, and its rural adjustment, if applicable). We calculate the estimated cost of a case by multiplying the IRF's overall cost-to-charge ratio by the Medicare allowable covered charge. In accordance with § 412.624(e)(4), we pay outlier cases 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the adjusted IRF PPS payment for the CMG and the adjusted threshold amount).

On November 1, 2001, we published a Program Memorandum (Transmittal A–01–131) with detailed intermediary instructions for calculating the cost-to-charge ratios for the purposes of determining outlier payments under the IRF PPS. We stated the following:

"Intermediaries will use the latest available settled cost report and associated data in determining a facility's overall Medicare cost-to-charge ratio specific to freestanding IRFs and for IRFs that are distinct part units of acute care hospitals. Intermediaries will calculate updated ratios each time a subsequent cost report settlement is made. Further, retrospective adjustments to the data used in determining outlier payments will not be made. If the overall Medicare cost-to-charge ratio appears to be substantially out-of-line with similar facilities, the intermediary should ensure that the underlying costs and charges are properly reported. We are evaluating the use of upper and lower cost-to-charge ratio thresholds (similar with the outlier policy for acute care hospitals) in the future to ensure that the distribution of outlier payments remains equitable."

In the May 16, 2003 proposed rule, we proposed to continue to use the $11,211 threshold amount.

Comment: A commenter asserted that CMS should consider dropping the outlier threshold similar to the IPPS.

Response: As we stated in the May 16, 2003 proposed rule, the threshold amount was used in the FY 2003 IRF PPS payment rates and we believe that the threshold amount of $11,211 that was used remains appropriate because the data that was used to calculate this amount was not comprised of data that were inappropriately influenced by the incentives the current IRF PPS may create.

Specifically we used the IRF cost and charge data from the previous cost-based reimbursement system to establish the outlier threshold. These data were not inappropriately influenced by incentives to inflate charges that are created with the existence of an outlier policy. There is no need to inflate charges under cost-based reimbursement because a provider is paid their costs subject to certain applicable limits. This is unlike the outlier situation in IPPS, which used post-PPS data to update its annual threshold amount. The IPPS data reflected the practices that we believe erroneously created inappropriate outlier payments. Namely, that hospitals take advantage of the time lag between current charges on a submitted bill and the cost-to-charge ratio taken from the most recent settled cost report. Specifically, using historical cost-to-charge ratios may not reflect actual charges in the cost reporting period when the discharge occurred. This can result in an over-estimation of costs that in turn may result in inappropriate outlier payments. In addition to the time lag vulnerability, some hospitals increase their charges so far above costs that their cost-to-charge ratios fall below a floor resulting in an over-estimation of a hospital's cost per case. Again, this over-estimation of costs can possibly result in inappropriate outlier payments. As discussed in the November 3, 2000 proposed rule, the outlier threshold amount of $11,211 was calculated by simulating aggregate payments with and without an outlier policy, and applying an iterative process to determine a threshold that would result in outlier payments being projected to equal 3 percent of total payments under the simulation. Once we have adequate post-IRF PPS data, we will be able to examine whether the threshold amount needs to be updated. Specifically, we will assess the extent to which total estimated outlier payment approximates 3 percent of total payments and whether the threshold amount needs to be updated. As we previously stated, the data used to develop the IRF PPS outlier threshold amount were not inappropriately influenced by these incentives, therefore, we are adopting as final the continued use of the $11,211 threshold amount.

We will also continue to make outlier payments for any discharges if the estimated cost of a case exceeds the adjusted IRF PPS payment for the CMG plus the adjusted threshold amount ($11,211 which is then adjusted for each IRF by the facility's wage adjustment, its low-income patient adjustment, and its rural adjustment, if applicable). We will calculate the estimated cost of a case by multiplying an IRF's overall cost-to-charge ratio by the Medicare allowable covered charge. However, we are applying a ceiling to an IRF's cost-to-charge ratios, which is discussed below. In accordance with § 412.624(e)(4), we will continue to pay outlier cases at 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the adjusted IRF PPS payment for the CMG and the adjusted threshold amount). In addition, under the existing methodology described in the preamble to the August 7, 2001 IRF PPS final rule (66 FR 41363), we will continue to assign the applicable national average for new IRFs.

2. Changes to the IRF Outlier Payment Methodology

Statistical accuracy of cost-to-charge ratios. We believe that there is a need to ensure that the cost-to-charge ratio used to compute an IRF's estimated costs should be subject to a statistical measure of accuracy. Removing aberrant data from the calculation of outlier payments will allow us to enhance the extent to which outlier payments are equitably distributed and continue to reduce incentives for IRFs to underserve patients who require more costly care. Further, we stated in the May 16, 2003 IRF proposed rule that using a statistical measure of accuracy to address aberrant cost-to-charge ratios would also allow us to be consistent with the proposed outlier policy changes for the acute care hospital IPPS discussed in the March 4, 2003 Cost Outlier proposed rule, (68 FR 10420). In the May 16, 2003 proposed rule, we proposed the following:

(1) To apply a ceiling to IRF's cost-to-charge ratio if a facility's cost-to-charge ratio is above a ceiling. We would calculate two national ceilings, one for IRFs located in rural areas and one for facilities located in urban areas. We proposed to compute this ceiling by first calculating the national average and the standard deviation of the cost-to-charge ratio for both urban and rural IRFs. (Because of the small number of IRF's compared to the number of acute care hospitals, we believe that statewide averages for IRFs, as proposed and adopted as final under the IPPS, would not be statistically valid. Thus, we proposed to use national average cost-to-charge ratios in place of statewide averages.)

However, we believe that using only a national average may not adequately address the differences among the various types of IRFs, like the use of statewide averages would under the IPPS. Therefore, we believe using two national ceilings, one for IRFs in urban areas and one for IRFs in rural areas would be more appropriate than just using one national ceiling for IRFs. In the August 7, 2001 final rule, we discussed our policy to adjust IRF PPS payments to IRFs located in rural areas, in large part, because IRFs in rural areas have significantly higher costs than other facilities. Similarly, we believe using an average cost-to-charge ratio specifically targeted for rural facilities will allow us to more accurately estimate costs that are used to determine outlier payments for IRFs in rural areas. Therefore, we are adopting as final the use of two national ceilings, one for IRFs in urban areas and one for IRFs in rural areas.

To determine the rural and urban ceiling, we proposed to multiply each of the standard deviations by 3 and add the result to the appropriate national cost-to-charge ratio average (rural and urban). We believe this method results in statistically valid ceilings. If an IRF's cost-to-charge ratio is above the applicable ceiling it would be considered to be statistically inaccurate and we would assign the national (either rural or urban) average cost-to-charge ratio to the IRF. Cost-to-charge ratios above this ceiling are probably due to faulty data reporting or entry, and, therefore, should not be used to identify and make payments for outlier cases because such data are most likely erroneous and therefore should not be relied upon. We proposed to update the ceiling and averages using this methodology every year and indicated that we would publish these amounts in future program memoranda.

Comment: We received no comments on this proposal.

Response: We are adopting this proposed policy as final.

(2) Not assign the applicable national average cost-to-charge ratio when an IRF's cost-to-charge ratio falls below a floor. We proposed this policy because, as is the case for acute care hospitals, we believe IRFs could arbitrarily increase their charges in order to maximize outlier payments. Even though this arbitrary increase in charges should result in a lower cost-to-charge ratio in the future (due to the lag time in cost report settlement), if we use a floor, the IRF's cost-to-charge ratio would be raised to the applicable national average. This application of the national average could result in inappropriately higher outlier payments. Accordingly, we proposed to apply the IRF's actual cost-to-charge ratio to determine the cost of the case rather than creating and applying a floor. Applying an IRF's actual cost-to-charge ratio to charges in the future to determine the cost of a case will result in more appropriate outlier payments because it does not overstate the actual cost-to-charge ratio.

Comment: Some commenters disagreed with the proposal to assign a national ceiling and not a national floor when an IRF's own ratio falls below the floor. A commenter asserted that this did not seem equitable.

Response: We disagree with the commenters and believe the elimination of a floor while maintaining a ceiling is fair and appropriate. The proposed policy not to use a floor under the IRF PPS is appropriate because use of a floor results in cost-to-charge ratios being set too high relative to an IRF's own cost-to-charge ratio, which in turn results in an over-estimation of an IRF's current costs per case. We also note that not using a floor is consistent with the IPPS finalized outlier policies as discussed in the June 9, 2003 final rule. This policy was established in response to a specific problem associated with hospitals under the IPPS, with some hospitals intentionally taking advantage of our policy to assign cost-to-charge ratios when a hospital's own ratio fell below the floor. We are finalizing our decision not to use a floor in our outlier policy as it would aid in appropriately identifying those cases that warrant outlier payments. In addition, the proposed policy to maintain a ceiling under IRF PPS is fair because we believe that if an IRF has a cost-to-charge ratio above 3 standard deviations from the mean, then the cost-to-charge ratio is probably due to faulty data reporting or entry and should not be used to identify and pay for outliers.

3. Adjustment of IRF Outlier Payments

Under the existing methodology for computing IRF outlier payments as described in the preamble of the August 7, 2001 IRF PPS final rule (66 FR 41363) and in the November 1, 2001 Program Memorandum discussed above, we specify that the cost-to-charge ratio used to compute estimated costs are obtained from the most recent settled Medicare cost report. Further, we provided for no retroactive adjustment to the outlier payments to account for differences between the cost-to-charge ratio from the latest settled cost report and the actual cost-to-charge ratio for the cost reporting period in which the outlier payment is made. This policy is consistent with the existing outlier payment policy for acute care hospitals under the IPPS. However, as discussed in the IPPS March 4, 2003 Cost Outlier proposed rule (68 FR 10423), we proposed to revise the methodology for determining cost-to-charge ratios for acute care hospitals under the IPPS because we became aware that payment vulnerabilities exist in the current IPPS outlier policy. Because we believe the IRF outlier payment methodology is likewise susceptible to the same payment vulnerabilities, we proposed the following:

(1) As proposed for acute care hospitals under the IPPS at proposed § 412.84(i) in the March 4, 2003 proposed rule (68 FR 10420), we proposed under § 412.624(e)(4), by cross-referencing proposed § 412.84(i), that fiscal intermediaries would use more recent data when determining an IRF's cost-to-charge ratio. Specifically, under § 412.84(i), we proposed that fiscal intermediaries would use either the most recent settled IRF cost report or the most recent tentative settled IRF cost report (whichever is later) to obtain the applicable IRF cost-to-charge ratio. In addition, as proposed under § 412.84(i), any reconciliation of outlier payments would be based on a ratio of costs to charges computed from the relevant cost report and charge data determined at the time the cost report coinciding with the discharge is settled.

(2) As proposed for acute care hospitals under the IPPS at proposed § 412.84(m) in the March 4, 2003 proposed rule (68 FR 10420), we proposed under § 412.624(e)(4), by

cross-referencing proposed § 412.84(m), that IRF outlier payments may be adjusted to account for the time value of money which is the value of money during the time period it was inappropriately held by the IRF as an "overpayment." We also proposed to adjust outlier payments for the time value of money for cases that are "underpaid" to the IRF. In these cases, the adjustment would result in additional payments to the IRF. We proposed that any adjustment would be based upon a widely available index to be established in advance by the Secretary, and would be applied from the midpoint of the cost reporting period to the date of reconciliation.

Comment: A few commenters disagreed with the proposed policy to adjust outlier payments to account for the time value of money.

Response: Outlier payments are extremely susceptible to manipulation because hospitals set their own level of charges and are able to change their charges without notification to, or review by, their fiscal intermediary. Such changes by a hospital directly affect its level of outlier payments. Therefore, even though money may be recouped if the outlier payments are reconciled, the hospital would essentially be able to unilaterally increase its charges and acquire an interest-free loan in the meantime. For that reason, we believe it is appropriate and we are finalizing our policy to apply an adjustment for the time value of "overpayments" or "underpayments" identified at the cost report reconciliation.

Comment: Some commenters believe that the adjustment for the time value of money should be set at a point other than the midpoint of the cost reporting period

Response: We believe using the midpoint of the cost reporting year is an appropriate point to base an adjustment, as proposed, and results in an average "overpayment" or "underpayment" that would be fair to use as part of the adjustment calculation. Specifically, using the midpoint of the cost reporting period as the point to base an adjustment for all discharges that occur during a given cost reporting period is appropriate given that the midpoint is the median of the time period for all discharges. As we stated in the proposed rule, we proposed that IRF outlier payments may be adjusted to account for the time value of money which is the value of money during the time period it was inappropriately held by the IRF as an "overpayment." We also stated that we may adjust outlier payments for the time value of money for cases that are "underpaid" to the IRF. In these "underpayment" cases, the adjustment will result in additional payments to the IRF. Because this adjustment will be applicable to IRFs that were "overpaid," as well as those IRFs that were "underpaid," we believe applying adjustments from the midpoint of the cost reporting period to the date of reconciliation is reasonable. Further, this policy is consistent with the final outlier policy stated in the June 9, 2003 IPPS outlier final rule.

We proposed to add a provision to our regulations to provide that outlier payments would become subject to reconciliation when hospitals' cost reports are settled. Under this policy, outlier payments would be processed throughout the year using facility cost-to-charge ratios based on the best information available at that time. We proposed that when the cost report is settled, any reconciliation of outlier payments by fiscal intermediaries would be based on facility cost-to-charge ratios calculated on a ratio of costs to charges computed from the cost report and charge data determined at the time the cost report coinciding with the discharge is settled.

This process would require some degree of recalculating outlier payments for individual claims. It is not possible to distinguish, on an aggregate basis, how much a hospital's outlier payments would change due to a change in its cost-to-charge ratios. This is because, in the event of a decline in a cost-to-charge ratio, some cases may no longer qualify for any outlier payments while other cases may qualify for lower outlier payments. Therefore, the only way to determine accurately the net effect of a decrease in cost-to-charge ratios on a hospital's total outlier payments is to assess the impact on a claim-by-claim basis. Because under our proposal, outlier payments would be based on the relationship between the hospital's costs and charges at the time a discharge occurred, the proposed methodology would ensure that when the final outlier payments were made, they would reflect an accurate assessment of the actual costs the hospital incurred. Therefore, we are adopting this proposal as final.

4. Change to the Methodology for Calculating the Federal Prospective Payment Outlier Payment

Under § 412.624(e)(4), we provide for an additional payment to a facility if its estimated costs for a patient exceeds a fixed dollar amount (adjusted for area wage levels and factors to account for treating low-income patients and for rural locations) as specified by CMS. The additional payment equals 80 percent of the difference between the estimated cost of the patient and the sum of the adjusted Federal prospective payment computed under this section and the adjusted fixed dollar amount. Effective for discharges on or after October 1, 2003, additional payments made under this section will be subject to the adjustments at § 412.84(i) except that national averages will be used instead of statewide averages. Also effective for discharges on or after October 1, 2003, additional payments made under this section will also be subject to adjustments at § 412.84(m).

Comment: A commenter was concerned about the discretion given to the fiscal intermediaries that would allow them to reconcile a provider's outlier payments if they believe the outlier payments are significantly inaccurate.

Response: Although CMS understands the commenter's concerns about discretion given to the fiscal intermediaries, we believe that it is important for CMS to have the flexibility to respond appropriately in the future if unforeseen evidence of manipulation of other prospective payments similar to that of IPPS comes to light. Therefore, we will provide guidance to the fiscal intermediaries with respect to their scope of discretion, as well as, provide them with instructions to implement all revisions to the outlier policy contained in this final rule.

I. Miscellaneous Comment

Comment: We received a comment expressing a concern that some providers believe that recreational therapy services are not covered by Medicare and that the costs of providing recreational therapy services are not included in the IRF PPS rates.

Response: This comment is not specifically related to our proposed changes to the IRF PPS. We responded to similar comments in the IPPS January 3, 1984 final rule (49 FR 242) by stating that "Neither the implementation of the prospective payment system nor the criteria for excluding certain hospitals and units from it will prohibit the provision of recreational therapy services to hospital inpatients. In particular, the absence of these services from the list of rehabilitative services in rehabilitation hospitals and units does not indicate that Medicare will no longer pay for them in those hospitals and units that provide them. On the contrary, these services will continue to be covered to the same extent they always have been under the existing Medicare policies." Since the publication of the January 3, 1984 final rule, we have not made any changes to our policies that would preclude recreational therapy services from those covered by Medicare. In particular the introduction of the IRF PPS does not change this fact. Accordingly, since recreational therapy services were provided in the IRF base period, the costs of providing these covered services are included in standardized payment amount upon which the IRF PPS rates are based.

VII. Provisions of the Final Rule

The provisions of this final rule reflect the provisions of the May 16, 2003 proposed rule, except as noted elsewhere in this preamble. Following is a summary of the major changes that we have made in this final rule, either in consideration of public comments received or to more effectively implement the FY 2004 IRF PPS.

- In the proposed rule we proposed a market basket increase factor of 3.3 percent for FY 2004 IRF 1997 data. In this final rule, the payment rates set forth for the FY 2004 IRF market basket increase factor is 3.2 percent using 1997 data.
- As indicated in the May 16, 2003 proposed rule, in this final rule we are using updated FY 2004 IRF market basket index data from 1992 through 1997 and an updated FY 2004 IRF labor-related share and wage indices to update the IRF PPS rates to FY 2004. Because any adjustment or updates to the IRF wage index made under section 1886(j)(6) of the Act must be made in a budget neutral manner as required by statute, we amend our regulation at § 412.624(e)(1).
- As indicated in the May 16, 2003 proposed rule, we finalize changes to the methodology for determining IRF payments for high-cost outliers to conform our policies to other Medicare prospective payment systems as appropriate. In this final rule we revise the IRF outlier payment methodology effective for discharges on or after October 1, 2003 and adopt as final the continued use of the $11,211 threshold amount. However, a ceiling will be applied to an IRF's cost-to-charge ratios in accordance with § 412.624(e)(4). We will continue to pay outlier cases at 80 percent of the difference between the estimated cost of the case and the outlier threshold and assign the applicable national average for new IRFs.
- Under § 412.624(e)(4), we provide for an additional payment to a facility if its estimated costs for a patient exceeds a fixed dollar amount (adjusted for area wage levels and factors to account for treating low-income patients and for rural locations) as specified by us. Effective for discharges on or after October 1, 2003, additional payments made under this section will be subject to the adjustments at § 412.84(i) except that national averages will be used instead of statewide averages. Also effective for discharges on or after October 1, 2003, additional payments made under this section will also be subject to adjustments at § 412.84(m).

VIII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), agencies are required to provide a 30-day notice in the **Federal Register** and solicit public comment when a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comments on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are therefore soliciting public comment on each of these issues for the proposed information collection requirements discussed below.

Section 412.608 Patients' Rights Regarding the Collection of Patient Assessment Data

Under this section, before performing an assessment using the inpatient rehabilitation facility patient assessment instrument, a clinician of the inpatient rehabilitation facility must give a Medicare inpatient the form entitled "Privacy Act Statement—Health Care Records" and the simplified plain language description of the Privacy Act Statement—Health Care Records, which is a form entitled "Data Collection Information Summary for Patients in Inpatient Rehabilitation Facilities;" the inpatient rehabilitation facility must document in the Medicare inpatient's clinical record that the Medicare inpatient has been given the documents specified in this section.

The burden associated with this section is the time it will take to document that the patient has been given the requisite forms. We estimate that it will take no more than a minute per patient. There will be an estimated 390,000 admissions per year, for a total of 6,500 hours per year.

Section 412.614 Transmission of Patient Assessment Data

1. The inpatient rehabilitation facility must encode and transmit data for each Medicare Part A fee-for-service inpatient.

These information collection requirements associated with the IRF PPS are currently approved by OMB through July 31, 2005 under OMB number 0938–0842.

2. Under paragraph (e), *Exemption to being assessed a penalty for transmitting the IRF–PAI data late,* CMS may waive the penalty specified in paragraph (d) of this section. To assist CMS in determining if a waiver is appropriate the inpatient rehabilitation facility must fully document the circumstances surrounding the occurrence.

Given that it is estimated that fewer than 10 instances will occur on an annual basis to necessitate a waiver, this requirement is not subject to the PRA as stipulated under 5 CFR 1320.3(c).

We have submitted a copy of this final rule to OMB for its review of the information collection requirements in § 412.608 and § 412.614. These requirements are not effective until they have been approved by OMB.

If you have any comments on any of these information collection and record keeping requirements, please mail the original and 3 copies to CMS within 30 days of this publication date directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Office of Regulations Development and Issuances, Reports Clearance Officer, 7500 Security Boulevard, Baltimore, MD 21244–1850. Attn: Julie Brown, CMS–1474–P; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Brenda Aguilar, CMS Desk Officer.

Comments submitted to OMB may also be emailed to the following address: E-mail: *baguilar@omb.eop.gov;* or faxed to OMB at (202) 395–6974.

IX. Regulatory Impact Analysis

A. Introduction

The August 7, 2001 IRF PPS final rule (66 FR 41316) established the IRF PPS for the payment of inpatient hospital services furnished by a rehabilitation

hospital or rehabilitation unit of a hospital with cost reporting periods beginning on or after January 1, 2002. We incorporated a number of elements into the IRF PPS, such as case-level adjustments, a wage adjustment, an adjustment for the percentage of low-income patients, a rural adjustment, and outlier payments. The August 1, 2002 IRF PPS notice (67 FR 49928) set forth updates of the IRF PPS rates contained in the August 7, 2001 IRF PPS final rule. The purpose of the August 1, 2002 IRF PPS notice was only to provide an update to the IRF payment rates for discharges during FY 2003. This final rule provides updated IRF PPS rates for discharges that occur during FY 2004 as well as makes policy changes in the IRF PPS system.

In constructing these impacts, we do not attempt to predict behavioral responses, and we do not make adjustments for future changes in such variables as discharges or case-mix. We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, susceptible to forecasting errors due to other changes in the forecasted impact time period. Some examples of such possible events are newly legislated general Medicare program funding changes by the Congress, or changes specifically related to IRFs. In addition, changes to the Medicare program may continue to be made as a result of new statutory provisions. Although these changes may not be specific to the IRF PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon IRFs.

We have examined the impacts of this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA), (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

B. Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more).

In this final rule, we are using an updated FY 2004 IRF market basket index and an updated FY 2004 IRF labor-related share and wage indices to update the IRF PPS rates to FY 2004, as described in section VII. of this final rule. By updating the IRF PPS rates to FY 2004, we estimate that the overall cost to the Medicare program for IRF services in FY 2004 will increase by $187.3 million over FY 2003 levels. The updates to the IRF labor-related share and wage indices are made in a budget neutral manner. Thus, updating the IRF labor-related share and the wage indices to FY 2004 have no overall effect on estimated costs to the Medicare program. Therefore, this estimated cost to the Medicare program is due to the application of the updated IRF market basket of 3.2 percent. Because the combined distributional effects and the cost to the Medicare program are greater than $100 million, this final rule is considered a major rule as defined above.

C. Regulatory Flexibility Act (RFA) and Impact on Small Hospitals

The RFA requires agencies to analyze the economic impact of our regulations on small entities. If we determine that the regulation will impose a significant burden on a substantial number of small entities, we must examine options for reducing the burden. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and governmental agencies. Most hospitals are considered small entities, either by nonprofit status or by having receipts of $6 million to $29 million in any 1 year. (For details, see the Small Business Administration's regulation at 65 FR 69432 that set forth size standards for health care industries.) Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary IRFs. Therefore, we assume that all IRFs are considered small entities for the purpose of the analysis that follows. Medicare fiscal intermediaries and carriers are not considered to be small entities. Individuals and States are not included in the definition of a small entity.

The provisions of this final rule represent a 3.2 percent increase to the Federal PPS rates. We do not expect an incremental increase of 3.2 percent to the Medicare Federal rates to have a significant effect on the overall revenues of IRFs. Most IRFs are units of hospitals that provide many different types of services (for example, acute care, outpatient services) and the rehabilitation component of their business is relatively minor in comparison. In addition, IRFs provide services to (and generate revenues from) patients other than Medicare beneficiaries. Accordingly, we certify that this final rule will not have a significant impact on small entities.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any final rule that will have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area (MSA) and has fewer than 100 beds.

This final rule will not have a significant impact on the operations of small rural hospitals. As indicated above, the provisions of this final rule represent a 3.2 percent increase to the Federal PPS rates. In addition, we do not expect an incremental increase of 3.2 percent to the Federal rates to have a significant effect on overall revenues or operations since most rural hospitals provide many different types of services (for example, acute care, outpatient services) and the rehabilitation component of their business is relatively minor in comparison. Accordingly, we certify that this final rule will not have a significant impact on the operations of small rural hospitals.

D. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of at least $110 million. This final rule will not have a substantial effect on the governments mentioned nor will it affect private sector costs.

E. Executive Order 13132

We examined this final rule in accordance with Executive Order 13132 and determined that it will not have a substantial impact on the rights, roles, or responsibilities of State, local, or tribal governments.

F. Overall Impact

For the reasons stated above, we have not prepared an analysis under the RFA and section 1102(b) of the Act because we have determined that this final rule will not have a significant impact on small entities or the operations of small rural hospitals.

G. Anticipated Effects of the Final Rule

We discuss below the impacts of this final rule on the Federal budget and on IRFs.

1. Budgetary Impact

Section 1886(j)(3)(C) of the Act requires annual updates to the IRF PPS payment rates. Section 1886(j)(6) of the Act requires the Secretary to adjust or update the labor-related share and the wage indices or the labor-related share and the wage indices applicable to IRFs not later than October 1, 2001 and at least every 36 months thereafter. We project that updating the IRF PPS for discharges occurring on or after October 1, 2003 and before October 1, 2004, will cost the Medicare program $187.3 million. The updates to the IRF labor-related share and wage indices are made in a budget neutral manner. Thus, updating the IRF labor-related share and the wage indices to FY 2004 will have no overall effect on estimated costs to the Medicare program. Therefore, this estimated cost to the Medicare program is due to the application of the updated IRF market basket of 3.2 percent.

2. Impact on Providers

For the impact analyses shown in the August 7, 2001 IRF PPS final rule, we simulated payments for 1,024 facilities. To construct the impact analyses set forth in this final rule, we use the latest available data. For the most part, we used 1998 and 1999 Medicare claims and FIM data for the same facilities that were used in constructing the impact analyses provided in the August 7, 2001 IRF PPS final rule (66 FR 41364 through 41365, and 41372) which was effective for cost reporting periods beginning on or after January 1, 2002. We do not have enough post-IRF PPS data to develop the distributional impact on providers. Further, we will need a sufficient amount of these data to be able to rely on them as the basis for the impact analysis. Because IRFs began to be paid under the IRF PPS based on their cost report start date that occurred on or after January 1, 2002, sufficient Medicare claims data will not be available for those facilities whose cost report start date occurs later in the calendar year. The estimated distributional impacts among the various classifications of IRFs for discharges occurring on or after October 1, 2003 and before October 1, 2004 is reflected in Chart 8.—Projected Impact of FY 2004 Update—of this final rule. These impacts reflect the updated IRF wage adjustment and the application of the 3.2 percent IRF market basket increase.

3. Calculation of the Estimated FY 2003 IRF Prospective Payments

To estimate payments under the IRF PPS for FY 2003, we multiplied each facility's case-mix index by the facility's number of Medicare discharges, the FY 2003 standardized payment amount, the applicable FY 2003 labor-related share and wage indices, a low-income patient adjustment, and a rural adjustment (if applicable). The adjustments include the following:

The wage adjustment, calculated as follows:

(.27605 + (.72395 × FY 2003 Wage Index)).

The disproportionate share adjustment, calculated as follows:

(1 + Disproportionate Share Percentage) raised to the power of .4838).

The rural adjustment, if applicable, calculated by multiplying payments by 1.1914.

4. Calculation of the Proposed Estimated FY 2004 IRF Prospective Payments

To calculate FY 2004 payments, we use the payment rates described in this final rule that reflect the 3.2 percent market basket increase factor using the FY 2004 labor-related share and wage indices, a low-income patient adjustment, and a rural adjustment (if applicable). The adjustments include the following:

The wage adjustment, calculated as follows:

(.27474 + (.72526 × FY 2004 Wage Index)).

The disproportionate share adjustment, calculated as follows:

(1 + Disproportionate Share Percentage) raised to the power of .4838).

The rural adjustment, if applicable, calculated by multiplying payments by 1.1914.

Chart 8.—Projected Impact of FY 2004 Update illustrates the aggregate impact of the estimated FY 2004 updated payments among the various classifications of facilities compared to the estimated IRF PPS payment rates applicable for FY 2003. The first column, Facility Classification, identifies the type of facility. The second column identifies the number of facilities for each classification type, and the third column lists the number of cases. The fourth column indicates the impact of the budget neutral wage adjustment. The last column reflects the combined changes including the update to the FY 2003 payment rates by 3.2 percent and the budget neutral wage adjustment (including the FY 2004 labor-related share and the FY 2004 wage indices).

CHART 8.—PROJECTED IMPACT OF FY 2004 UPDATE

Facility classification	Number of facilities	Number of cases	Budget neutral wage adjustment (in percent)	Total change (in percent)
Total				
	1,024	347,809	0.0	3.2
Urban unit	725	206,926	−0.5	2.7
Rural unit	131	26,507	0.2	3.4
Urban hospital	156	109,691	0.9	4.2
Rural hospital	12	4,685	−1.3	1.8
Total urban	881	316,617	0.0	3.2
Total rural	143	31,192	0.0	3.1
Urban by Region				
New England	32	15,039	0.1	3.3
Middle Atlantic	133	64,042	−1.5	1.6
South Atlantic	112	52,980	0.5	3.7
East North Central	171	55,071	−0.5	2.6
East South Central	41	23,434	0.9	4.1

CHART 8.—PROJECTED IMPACT OF FY 2004 UPDATE—Continued

Facility classification	Number of facilities	Number of cases	Budget neutral wage adjustment (in percent)	Total change (in percent)
West North Central	70	18,087	0.6	3.8
West South Central	154	52,346	1.5	4.7
Mountain	56	14,655	1.1	4.3
Pacific	112	20,963	−0.7	2.5
Rural by Region				
New England	4	829	−0.2	3.0
Middle Atlantic	10	2,424	−1.3	1.8
South Atlantic	20	6,192	−0.8	2.4
East North Central	29	5,152	−0.5	2.7
East South Central	10	3,590	0.2	3.4
West North Central	22	3,820	1.7	4.9
West South Central	32	7,317	0.6	3.8
Mountain	9	1,042	−0.3	2.9
Pacific	7	826	−1.2	2.0

As Chart 8 illustrates, all IRFs are expected to benefit from the 3.2 percent market basket increase that will be applied to FY 2003 IRF PPS payment rates to develop the FY 2004 rates. However, there may be distributional impacts among various IRFs due to the application of the updates to the labor-related share and wage indices in a budget neutral manner.

To summarize, this final rule provides that all facilities will receive a 3.2 percent increase in their unadjusted IRF PPS payments. The estimated positive impact among all IRFs reflected in Chart 8 are due to the effect of the update to the IRF market basket index.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget (OMB).

List of Subjects in 42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV, part 412 as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

■ 1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Hospital Services Subject to and Excluded From the Prospective Payment Systems for Inpatient Operating Costs and Inpatient Capital-Related Costs

■ 2. In § 412.20, the following changes are made:
■ A. Redesignate paragraph (b) as paragraph (b)(1).
■ B. Add paragraph (b)(2) to read as follows:

§ 412.20 Hospital services subject to the prospective payment systems.

* * * * *

(b) * * *

(2) CMS will not pay for services under Subpart P of this part if the services are paid for by a health maintenance organization (HMO) or competitive medical plan (CMP) that elects not to have CMS make payments to an inpatient rehabilitation facility for services, which are inpatient hospital services, furnished to the HMO's or CMP's Medicare enrollees, as provided under part 417 of this chapter.

* * * * *

■ 3. In § 412.22, the following changes are made:
■ A. Revise paragraph (h)(2) introductory text.
■ B. Remove and reserve paragraph (h)(6).
■ C. Add paragraph (h)(7).

The revisions and addition read as follows:

§ 412.22 Excluded hospitals and hospital units: General rules.

* * * * *

(h) * * *

(2) Except as provided in paragraphs (h)(3), (h)(6), and (h)(7) of this section, effective for cost reporting periods beginning on or after October 1, 1999, a hospital that has a satellite facility must meet the following criteria in order to be excluded from the acute care hospital inpatient prospective payment systems for any period:

* * * * *

(6) [Reserved]

(7) The provisions of paragraph (h)(2)(i) of this section do not apply to any inpatient rehabilitation facility that is subject to the inpatient rehabilitation facility prospective payment system under subpart P of this part, effective for cost reporting periods beginning on or after October 1, 2003.

■ 4. In § 412.25, the following changes are matle:
■ A. Revise paragraph (e)(2) introductory text.
■ B. Add paragraph (e)(5).

The revision and addition read as follows:

§ 412.25 Excluded hospital units: Common requirements.

* * * * *

(e) * * *

(2) Except as provided in paragraphs (e)(3) and (e)(5) of this section, effective for cost reporting periods beginning on or after October 1, 1999, a hospital that has a satellite facility must meet the following criteria in order to be excluded from the acute care hospital inpatient prospective payment systems for any period:

* * * * *

(5) The provisions of paragraph (e)(2)(i) of this section do not apply to any inpatient rehabilitation facility that is subject to the inpatient rehabilitation facility prospective payment system under subpart P of this part, effective for cost reporting periods beginning on or after October 1, 2003.

* * * * *

■ 5. In § 412.29, revise paragraph (a)(2) to read as follows:

§ 412.29 Excluded rehabilitation units: Additional requirements.

(a) * * *

(2) Converted units under § 412.30(c).

* * * * *

■ 6. In § 412.30, the following changes are made:
■ A. Revise paragraph (b)(3).
■ B. Revise paragraph (d)(2)(i).

§ 412.30 Exclusion of new rehabilitation units and expansion of units already excluded.

(b) * * *

(3) The written certification described in paragraph (b)(2) of this section is effective for the first full cost reporting period during which the unit is used to provide hospital inpatient care.

* * * * *

(d) * * *

(2) *Conversion of existing bed capacity.*

(i) Bed capacity is considered to be existing bed capacity if it does not meet the definition of new bed capacity under paragraph (d)(1) of this section.

* * * * *

Subpart P—Prospective Payment for Inpatient Rehabilitation Hospitals and Rehabilitation Units

■ 7. In § 412.602, republish the introductory text and revise the definition of "Discharge" to read as follows:

§ 412.602 Definitions.

As used in this subpart—

* * * * *

Discharge. A Medicare patient in an inpatient rehabilitation facility is considered discharged when—

(1) The patient is formally released from the inpatient rehabilitation facility; or

(2) The patient dies in the inpatient rehabilitation facility.

* * * * *

■ 8. In § 412.604(a)(2), revise the introductory text to read as follows:

§ 412.604 General requirements.

(a) * * *

(2) If an inpatient rehabilitation facility fails to comply fully with these conditions with respect to inpatient hospital services furnished to one or more Medicare Part A fee-for-service beneficiaries, CMS or its Medicare fiscal intermediary may, as appropriate—

* * * * *

■ 9. Section 412.608 is revised to read as follows:

§ 412.608 Patients' rights regarding the collection of patient assessment data.

(a) Before performing an assessment using the inpatient rehabilitation facility patient assessment instrument, a clinician of the inpatient rehabilitation facility must give a Medicare inpatient—

(1) The form entitled "Privacy Act Statement—Health Care Records"; and

(2) The simplified plain language description of the Privacy Act Statement—Health Care Records which is a form entitled "Data Collection Information Summary for Patients in Inpatient Rehabilitation Facilities."

(b) The inpatient rehabilitation facility must document in the Medicare inpatient's clinical record that the Medicare inpatient has been given the documents specified in paragraph (a) of this section.

(c) By giving the Medicare inpatient the forms specified in paragraph (a) of this section the inpatient rehabilitation facility will inform the Medicare patient of—

(1) Their privacy rights under the Privacy Act of 1974 and 45 CFR 5b.4(a)(3); and

(2) The following rights:

(i) The right to be informed of the purpose of the collection of the patient assessment data;

(ii) The right to have the patient assessment information collected be kept confidential and secure;

(iii) The right to be informed that the patient assessment information will not be disclosed to others, except for legitimate purposes allowed by the Federal Privacy Act and Federal and State regulations;

(iv) The right to refuse to answer patient assessment questions; and

(v) The right to see, review, and request changes on his or her patient assessment.

(d) The patient rights specified in this section are in addition to the patient rights specified in § 82.13 of this chapter.

■ 10. In § 412.610, revise paragraph (c)(1)(i)(C) to read as follows:

§ 412.610 Assessment schedule.

* * * * *

(c) * * *
(1) * * *
(i) * * *

(C) Must be completed by the calendar day that follows the admission assessment reference day.

* * * * *

■ 11. In § 412.614, the following changes are made:
■ A. Revise the introductory text to paragraph (a).
■ B. Add a new paragraph (a)(3).
■ C. Add a new paragraph (e).

The revision and additions read as follows:

§ 412.614 Transmission of patient assessment data.

(a) *Data format. General rule.* The inpatient rehabilitation facility must encode and transmit data for each Medicare Part A fee-for-service inpatient—

* * * * *

(3) *Exception to the general rule.* When the inpatient rehabilitation facility does not submit claim data to Medicare in order to be paid for any of the services it furnished to a Medicare Part A fee-for-service inpatient, the inpatient rehabilitation facility is not required to, but may, transmit to Medicare the inpatient rehabilitation facility patient assessment data associated with the services furnished to that same Medicare Part A fee-for-service inpatient.

* * * * *

(e) *Exemption to being assessed a penalty for transmitting the IRF–PAI data late.* CMS may waive the penalty specified in paragraph (d) of this section when, due to an extraordinary situation that is beyond the control of an inpatient rehabilitation facility, the inpatient rehabilitation facility is unable to transmit the patient assessment data in accordance with paragraph (c) of this section. Only CMS can determine if a situation encountered by an inpatient rehabilitation facility is extraordinary and qualifies as a situation for waiver of the penalty specified in paragraph (d)(2) of this section. An extraordinary situation may be due to, but is not limited to, fires, floods, earthquakes, or similar unusual events that inflict extensive damage to an inpatient rehabilitation facility. An extraordinary situation may be one that produces a data transmission problem that is beyond the control of the inpatient rehabilitation facility, as well as other situations determined by CMS to be beyond the control of the inpatient rehabilitation facility. An extraordinary situation must be fully documented by the inpatient rehabilitation facility.

■ 12. In § 412.624, the following changes are made:
■ A. Revise paragraph (c).
■ B. Revise paragraph (d).
■ C. Revise paragraph (e)(1).
■ D. Revise paragraph (e)(4).

The revisions read as follows:

§ 412.624 Methodology for calculating the Federal prospective payment rates.

* * * * *

(c) *Determining the Federal prospective payment rates.* (1) *General.* The Federal prospective payment rates will be established using a standard payment amount referred to as the standard payment conversion factor. The standard payment conversion factor is a standardized payment amount based on average costs from a base year that reflects the combined aggregate effects of the weighting factors, various facility and case level adjustments, and other adjustments.

(2) *Update the cost per discharge.* CMS applies the increase factor described in paragraph (a)(3) of this section to the facility's cost per discharge determined under paragraph (b) of this section to compute the cost per discharge for fiscal year 2002. Based on the updated cost per discharge, CMS estimates the payments that would have been made to the facility for fiscal year 2002 under part 413 of this chapter without regard to the prospective payment system implemented under this subpart.

(3) *Computation of the standard payment conversion factor.* The standard payment conversion factor is computed as follows:

(i) *For fiscal year 2002.* Based on the updated costs per discharge and estimated payments for fiscal year 2002 determined in paragraph (c)(2) of this section, CMS computes a standard payment conversion factor for fiscal year 2002, as specified by CMS, that reflects, as appropriate, the adjustments described in paragraph (d) of this section.

(ii) *For fiscal years after 2002.* The standard payment conversion factor for fiscal years after 2002 will be the standardized payments for the previous fiscal year updated by the increase factor described in paragraph (a)(3) of this section, including adjustments described in paragraph (d) of this section as appropriate.

(4) *Determining the Federal prospective payment rate for each case-mix group.* The Federal prospective payment rates for each case-mix group is the product of the weighting factors described in § 412.620(b) and the standard payment conversion factor described in paragraph (c)(3) of this section.

(d) *Adjustments to the standard payment conversion factor.* The standard payment conversion factor described in paragraph (c)(3) of this section will be adjusted for the following:

(1) *Outlier payments.* CMS determines a reduction factor equal to the estimated proportion of additional outlier payments described in paragraph (e)(4) of this section.

(2) *Budget neutrality.* CMS adjusts the Federal prospective payment rates for fiscal year 2002 so that aggregate payments under the prospective payment system, excluding any additional payments associated with elections not to be paid under the transition period methodology under § 412.626(b), are estimated to equal the amount that would have been made to inpatient rehabilitation facilities under part 413 of this chapter without regard to the prospective payment system implemented under this subpart.

(3) *Coding and classification changes.* CMS adjusts the standard payment conversion factor for a given year if CMS determines that revisions in case-mix classifications or weighting factors for a previous fiscal year (or estimates that those revisions for a future fiscal year) did result in (or would otherwise result in) a change in aggregate payments that are a result of changes in the coding or classification of patients that do not reflect real changes in case-mix.

(e) *Calculation of the adjusted Federal prospective payment.*

(1) *Adjustment for area wage levels.* The labor portion of a facility's Federal prospective payment is adjusted to account for geographical differences in the area wage levels using an appropriate wage index. The application of the wage index is made on the basis of the location of the facility in an urban or rural area as defined in § 412.602. Adjustments or updates to the wage data used to adjust a facility's Federal prospective payment rate under paragraph (e)(1) of this section will be made in a budget neutral manner. CMS determines a budget neutral wage adjustment factor, based on any adjustment or update to the wage data, to apply to the standard payment conversion factor.

* * * * *

(4) *Adjustment for high-cost outliers.* CMS provides for an additional payment to an inpatient rehabilitation facility if its estimated costs for a patient exceeds a fixed dollar amount (adjusted for area wage levels and factors to account for treating low-income patients and for rural locations) as specified by CMS. The additional payment equals 80 percent of the difference between the estimated cost of the patient and the sum of the adjusted Federal prospective payment computed under this section and the adjusted fixed dollar amount. Effective for discharges occurring on or after October 1, 2003, additional payments made under this section will be subject to the adjustments at § 412.84(i), except that national averages will be used instead of statewide averages. Effective for discharges occurring on or after October 1, 2003, additional payments made under this section will also be subject to adjustments at § 412.84(m).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 16, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: July 22, 2003.

Tommy G. Thompson,

Secretary.

BILLING CODE 4120–01–P

PRIVACY ACT STATEMENT - HEALTH CARE RECORDS

THIS STATEMENT GIVES YOU NOTICE REQUIRED BY LAW (the Privacy Act of 1974).
THIS STATEMENT IS NOT A CONSENT FORM. IT WILL NOT BE USED TO RELEASE OR TO USE YOUR HEALTH CARE INFORMATION.

I. AUTHORITY FOR COLLECTION OF YOUR INFORMATION, INCLUDING YOUR SOCIAL SECURITY NUMBER, AND WHETHER OR NOT YOU ARE REQUIRED TO PROVIDE INFORMATION FOR THIS ASSESSMENT. Sections 1102(a), 1154, 1861(z), 1864, 1865, 1866, 1871, 1886(j) of the Social Security Act.

Medicare participating inpatient rehabilitation facilities must do a complete assessment that accurately reflects your current clinical status and includes information that can be used to show your progress toward your rehabilitation goals. The inpatient rehabilitation facility must use the Inpatient Rehabilitation Facility-Patient Assessment Instrument (IFR-PAI) as part of that assessment, when evaluating your clinical status. The IRF-PAI must be used to assess every Medicare Part A fee-for-service inpatient, and it may be used to assess other types of inpatients. This information will be used by the Centers for Medicare & Medicaid Services (CMS) to be sure that the inpatient rehabilitation facility is paid appropriately for the services that they furnish you, and to help evaluate that the inpatient rehabilitation facility meets quality standards and gives appropriate health care to its patients. You have the right to refuse to provide information to the inpatient rehabilitation facility for the assessment. Information provided to the federal government for this assessment is protected under the Federal Privacy Act of 1974 and the IRF-PAI System of Records. You have the right to see, copy, review, and request correction of inaccurate or missing personal health information in the IRF-PAI System of Records.

II. PRINCIPAL PURPOSES FOR WHICH YOUR INFORMATION IS INTENDED TO BE USED
The information collected will be entered into the IRF-PAI System No. 09-70-1518. Your health care information in the IRF-PAI System of Records will be used for the following purposes:

- support the IRF prospective payment system (PPS) for payment of the IRF Medicare Part A fee-for-services furnished by the IRF to Medicare beneficiaries;
- help validate and refine the Medicare IRF-PPS
- study and help ensure the quality of care provided by IRFs;
- enable CMS and its agents to provide IRFs with data for their quality assurance and ultimately quality improvement activities;
- support agencies of the State government , deeming organizations or accrediting agencies to determine, evaluate and assess overall effectiveness and quality of IRF services provided in the State;
- provide information to consumers to allow them to make better informed selections of providers;
- support regulatory and policy functions performed within the IRF or by a contractor or consultant;
- support constituent requests made to a Congressional representative;
- support litigation involving the facility;
- support research on the utilization and quality of inpatient rehabilitation services; as well as, evaluation, or epidemiological projects related to the prevention of disease or disability, or the restoration or maintenance of health for understanding and improving payment systems.

III. ROUTINE USES
These "routine uses" specify the circumstances when the Centers for Medicare & Medicaid Services may release your information from the IRF-PAI System of Records without your consent. Each prospective recipient must agree in writing to ensure the continuing confidentiality and security of your information. Disclosures of protected health information authorized by these routine uses may be made only if, and as, permitted or required by the 'Standards for Privacy of Individually Identifiable Health Information.' (45 CFR Parts 160 and 164). Disclosures of the information may be to:

1. To agency contractors or consultants who have been contracted by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity;
2. To a Peer Review Organization (PRO) in order to assist the PRO to perform Title XI and Title XVIII functions relating to assessing and improving IRF quality of care. PROs will work with IRFs to implement quality improvement programs, provide consultation to CMS, its contractors, and to State agencies;
3. To another Federal or State agency:
   a. To contribute to the accuracy of CMS's proper payment of Medicare benefits,
   b. To enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, or

c. To improve the state survey process for investigation of complains related to health and safety or quality of care and to implement a more outcome oriented survey and certification program.

4. To an individual or organization for a research, evaluation, or epidemiological projects related to the prevention of disease or disability, the restoration or maintenance of health epidemiological or for understanding and improving payment projects.
5. To a member of Congress or to a congressional staff member in response to a inquiry of the Congressional Office made at the written request of the constituent about whom the record is maintained.
6. To the Department of Justice (DOJ), court or adjudicatory body when:
   a. The agency or any component thereof; or
   b. Any employee of the agency in his or her official capacity; or
   c. Any employee of the agency in his or her individual capacity where the employee; or
   d. The United States Government; is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.
7. To a CMS contractor (including, but not necessarily limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.
8. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in whole or part by Federal funds, when disclosure is deemed reasonable necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat frauds or abuse in such programs;
9. To a national accrediting organization that has been approved for deeming authority for Medicare requirements for inpatient rehabilitation services (i.e., the Joint Commission for the Accreditation of Healthcare Organizations, the American Osteopathic Association and the Commission of Accreditation of Rehabilitation Facilities). Data will be released to these organizations only for those facilities that participate in Medicare by virtue of their accreditation status.
10. To insurance companies, third party administrators (TPA), employers, self-insurers, manage care organizations, other supplemental insurers, non-coordinating insurers, multiple employer trusts, group health plans (i.e., health maintenance organizations (HMO) or a competitive medical plan (CMP)) with a Medicare contract, or a Medicare-approved health care prepayment plan (HCPP), directly or through a contractor, and other groups providing protection for their enrollees. Information to be disclosed shall be limited to Medicare entitlement data. In order to receive the information, they must agree to:
    a. Certify that the individual about whom the information is being provided is one of its insured or employees, or is insured and/or employed by another entity for whom they serve as a third party administrator;
    b. Utilize the information solely for the purpose of processing the individual's insurance claims; and
    c. Safeguard the confidentiality of the data and prevent unauthorized access.

IV. EFFECT ON YOU IF YOU DO NOT PROVIDE INFORMATION

The inpatient rehabilitation facility needs the information contained in the IRF-PAI in order to comply with the Medicare regulations. Your inpatient rehabilitation facility will also use the IRF-PAI to assist in providing you with quality care. It is important that the information be correct. Incorrect information could result in payment errors. Incorrect information also could make it difficult to evaluate if the facility is giving you quality services. If you choose not to provide information, there is no federal requirement for the inpatient rehabilitation facility to refuse you services.

CONTACT INFORMATION

If you want to ask the Centers for Medicare & Medicaid Services to see, review, copy or request correction of inaccurate or missing personal health information which that Federal agency maintains in its IRF-PAI System of Records:
Call 1-800-MEDICARE, toll free, for assistance in contacting the IRF-PAI System of Records Manager.
TTY for the hearing and speech impaired: 1-800-820-1202

Data Collection Information Summary for Patients in Inpatient Rehabilitation Facilities

This notice is a simplified plain language summary of the information contained in the attached "Privacy Act Statement-Health Care Records"

As a hospital rehabilitation inpatient, you have the privacy rights listed below.

- **You have the right to know why we need to ask you questions.**
  - We are required by federal law to collect health information to make sure:
    1) you get quality health care, and
    2) payment for Medicare patients is correct.
- **You have the right to have your personal health care information kept confidential and secure.**
  - You will be asked to tell us information about yourself so that we can provide the most appropriate, comprehensive services for you.
  - We keep anything we learn about you confidential and secure. This means only those who are legally permitted to use or obtain the information collected during this assessment will see it.
- **You have the right to refuse to answer questions.**
  - You do not have to answer any questions to get services.
- **You have the right to look at your personal health information.**
  - We know how important it is that the information we collect about you is correct.
  - You may ask to review the information you provided. If you think we made a mistake, you can ask us to correct it.

In addition, you may ask the Centers for Medicare & Medicaid Services to see, review, copy or request correction of inaccurate or missing personal identifying health information which this Federal agency maintains in its IRF-PAI System of Records. For CONTACT INFORMATION or a detailed description of your privacy rights, refer to the attached PRIVACY ACT STATEMENT – HEALTH CARE RECORDS.
Note: The rights listed above are in concert with the rights listed in the hospital conditions of participation and the rights established under the Federal Privacy Rule.

This is a Medicare & Medicaid Approved Notice.

Table 1. – Relative Weights for Case-Mix Groups (CMGs)

CMG	CMG Description (M = motor, C = cognitive, A = age)	Relative Weights				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
0101	Stroke M=69-84 and C=23-35	0.4778	0.4279	0.4078	0.3859	10	9	6	8
0102	Stroke M=59-68 and C=23-35	0.6506	0.5827	0.5553	0.5255	11	12	10	10
0103	Stroke M=59-84 and C=5-22	0.8296	0.7430	0.7080	0.6700	14	12	12	12
0104	Stroke M=53-58	0.9007	0.8067	0.7687	0.7275	17	13	12	13
0105	Stroke M=47-52	1.1339	1.0155	0.9677	0.9158	16	17	15	15
0106	Stroke M=42-46	1.3951	1.2494	1.1905	1.1267	18	18	18	18
0107	Stroke M=39-41	1.6159	1.4472	1.3790	1.3050	17	20	21	21
0108	Stroke M=34-38 and A>=83	1.7477	1.5653	1.4915	1.4115	25	27	22	23
0109	Stroke M=34-38 and A<=82	1.8901	1.6928	1.6130	1.5265	24	24	22	24
0110	Stroke M=12-33 and A>=89	2.0275	1.8159	1.7303	1.6375	29	25	27	26
0111	Stroke M=27-33 and A=82-88	2.0889	1.8709	1.7827	1.6871	29	26	24	27
0112	Stroke M=12-26 and A=82-88	2.4782	2.2195	2.1149	2.0015	40	33	30	31
0113	Stroke M=27-33 and A<=81	2.2375	2.0040	1.9095	1.8071	30	27	27	28
0114	Stroke M=12-26 and A<=81	2.7302	2.4452	2.3300	2.2050	37	34	32	33
0201	Traumatic brain injury M=52-84 and C=24-35	0.7689	0.7276	0.6724	0.6170	13	14	14	11
0202	Traumatic brain injury M=40-51 and C=24-35	1.1181	1.0581	0.9778	0.8973	18	16	17	16
0203	Traumatic brain injury M=40-84 and C=5-23	1.3077	1.2375	1.1436	1.0495	19	20	19	18
0204	Traumatic brain injury M=30-39	1.6534	1.5646	1.4459	1.3269	24	23	22	22
0205	Traumatic brain injury M=12-29	2.5100	2.3752	2.1949	2.0143	44	36	35	31
0301	Non-traumatic brain injury M=51-84	0.9655	0.8239	0.7895	0.7195	14	14	12	13
0302	Non-traumatic brain injury M=41-50	1.3678	1.1672	1.1184	1.0194	19	17	17	16
0303	Non-traumatic brain injury M=25-40	1.8752	1.6002	1.5334	1.3976	23	23	22	22
0304	Non-traumatic brain injury M=12-24	2.7911	2.3817	2.2824	2.0801	44	32	34	31
0401	Traumatic spinal cord injury M=50-84	0.9282	0.8716	0.8222	0.6908	15	15	16	14
0402	Traumatic spinal cord injury M=36-49	1.4211	1.3344	1.2588	1.0576	21	18	22	19
0403	Traumatic spinal cord injury M=19-35	2.3485	2.2052	2.0802	1.7478	32	32	31	30

CMG	CMG Description (M = motor, C = cognitive, A = age)	Relative Weights				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
0404	Traumatic spinal cord injury M=12-18	3.5227	3.3078	3.1203	2.6216	46	43	62	40
0501	Non-traumatic spinal cord injury M=51-84 and C=30-35	0.7590	0.6975	0.6230	0.5363	12	13	10	10
0502	Non-traumatic spinal cord injury M=51-84 and C=5-29	0.9458	0.8691	0.7763	0.6683	15	17	10	12
0503	Non-traumatic spinal cord injury M=41-50	1.1613	1.0672	0.9533	0.8206	17	17	15	14
0504	Non-traumatic spinal cord injury M=34-40	1.6759	1.5400	1.3757	1.1842	23	21	21	19
0505	Non-traumatic spinal cord injury M=12-33	2.5314	2.3261	2.0778	1.7887	31	31	29	28
0601	Neurological M=56-84	0.8794	0.6750	0.6609	0.5949	14	13	12	12
0602	Neurological M=47-55	1.1979	0.9195	0.9003	0.8105	15	15	14	15
0603	Neurological M=36-46	1.5368	1.1796	1.1550	1.0397	21	18	18	18
0604	Neurological M=12-35	2.0045	1.5386	1.5065	1.3561	31	24	25	23
0701	Fracture of lower extremity M=52-84	0.7015	0.7006	0.6710	0.5960	13	13	12	11
0702	Fracture of lower extremity M=46-51	0.9264	0.9251	0.8861	0.7870	15	15	16	14
0703	Fracture of lower extremity M=42-45	1.0977	1.0962	1.0500	0.9326	18	17	17	16
0704	Fracture of lower extremity M=38-41	1.2488	1.2471	1.1945	1.0609	14	20	19	18
0705	Fracture of lower extremity M=12-37	1.4760	1.4740	1.4119	1.2540	20	22	22	21
0801	Replacement of lower extremity joint M=58-84	0.4909	0.4696	0.4518	0.3890	9	9	8	8
0802	Replacement of lower extremity joint M=55-57	0.5667	0.5421	0.5216	0.4490	10	10	9	9
0803	Replacement of lower extremity joint M=47-54	0.6956	0.6654	0.6402	0.5511	9	11	11	10
0804	Replacement of lower extremity joint M=12-46 and C=32-35	0.9284	0.8881	0.8545	0.7356	15	14	14	12
0805	Replacement of lower extremity joint M=40-46 and C=5-31	1.0027	0.9593	0.9229	0.7945	16	16	14	14
0806	Replacement of lower extremity joint M=12-39 and C=5-31	1.3681	1.3088	1.2592	1.0840	21	20	19	18
0901	Other orthopedic M=54-84	0.6988	0.6390	0.6025	0.5213	12	11	11	11
0902	Other orthopedic M=47-53	0.9496	0.8684	0.8187	0.7084	15	15	14	13

CMG	CMG Description (M = motor, C = cognitive, A = age)	Relative Weights				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
0903	Other orthopedic M=38-46	1.1987	1.0961	1.0334	0.8942	18	18	17	16
0904	Other orthopedic M=12-37	1.6272	1.4880	1.4029	1.2138	23	23	23	21
1001	Amputation, lower extremity M=61-84	0.7821	0.7821	0.7153	0.6523	13	13	12	13
1002	Amputation, lower extremity M=52-60	0.9998	0.9998	0.9144	0.8339	15	15	14	15
1003	Amputation, lower extremity M=46-51	1.2229	1.2229	1.1185	1.0200	18	17	17	18
1004	Amputation, lower extremity M=39-45	1.4264	1.4264	1.3046	1.1897	20	20	19	19
1005	Amputation, lower extremity M=12-38	1.7588	1.7588	1.6086	1.4670	21	25	23	23
1101	Amputation, non-lower extremity M=52-84	1.2621	0.7683	0.7149	0.6631	18	11	13	12
1102	Amputation, non-lower extremity M=38-51	1.9534	1.1892	1.1064	1.0263	25	18	17	18
1103	Amputation, non-lower extremity M=12-37	2.6543	1.6159	1.5034	1.3945	33	23	22	25
1201	Osteoarthritis M=55-84 and C=34-35	0.7219	0.5429	0.5103	0.4596	13	10	11	9
1202	Osteoarthritis M=55-84 and C=5-33	0.9284	0.6983	0.6563	0.5911	16	11	13	13
1203	Osteoarthritis M=48-54	1.0771	0.8101	0.7614	0.6858	18	15	14	13
1204	Osteoarthritis M=39-47	1.3950	1.0492	0.9861	0.8882	22	19	16	17
1205	Osteoarthritis M=12-38	1.7874	1.3443	1.2634	1.1380	27	21	21	20
1301	Rheumatoid, other arthritis M=54-84	0.7719	0.6522	0.6434	0.5566	13	14	13	11
1302	Rheumatoid, other arthritis M=47-53	0.9882	0.8349	0.8237	0.7126	16	14	14	14
1303	Rheumatoid, other arthritis M=36-46	1.3132	1.1095	1.0945	0.9469	20	18	16	17
1304	Rheumatoid, other arthritis M=12-35	1.8662	1.5768	1.5555	1.3457	25	25	29	22
1401	Cardiac M=56-84	0.7190	0.6433	0.5722	0.5156	15	12	11	11
1402	Cardiac M=48-55	0.9902	0.8858	0.7880	0.7101	13	15	13	13
1403	Cardiac M=38-47	1.2975	1.1608	1.0325	0.9305	21	19	16	16
1404	Cardiac M=12-37	1.8013	1.6115	1.4335	1.2918	30	24	21	20
1501	Pulmonary M=61-84	0.8032	0.7633	0.6926	0.6615	15	13	13	13
1502	Pulmonary M=48-60	1.0268	0.9758	0.8855	0.8457	17	17	14	15

CMG	CMG Description (M = motor, C = cognitive, A = age)	Relative Weights				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
1503	Pulmonary M=36-47	1.3242	1.2584	1.1419	1.0906	21	20	18	18
1504	Pulmonary M=12-35	2.0598	1.9575	1.7763	1.6965	30	28	30	26
1601	Pain syndrome M=45-84	0.8707	0.8327	0.7886	0.6603	15	14	13	13
1602	Pain syndrome M=12-44	1.3320	1.2739	1.2066	1.0103	21	20	20	18
1701	Major multiple trauma without brain or spinal cord injury M=46-84	0.9996	0.9022	0.8138	0.7205	16	14	11	13
1702	Major multiple trauma without brain or spinal cord injury M=33-45	1.4755	1.3317	1.2011	1.0634	21	21	20	18
1703	Major multiple trauma without brain or spinal cord injury M=12-32	2.1370	1.9288	1.7396	1.5402	33	28	27	24
1801	Major multiple trauma with brain or spinal cord injury M=45-84 and C=33-35	0.7445	0.7445	0.6862	0.6282	12	12	12	10
1802	Major multiple trauma with brain or spinal cord injury M=45-84 and C=5-32	1.0674	1.0674	0.9838	0.9007	16	16	16	16
1803	Major multiple trauma with brain or spinal cord injury M=26-44	1.6350	1.6350	1.5069	1.3797	22	25	20	22
1804	Major multiple trauma with brain or spinal cord injury M=12-25	2.9140	2.9140	2.6858	2.4589	41	29	40	40
1901	Guillian Barre M=47-84	1.1585	1.0002	0.9781	0.8876	15	15	16	15
1902	Guillian Barre M=31-46	2.1542	1.8598	1.8188	1.6505	27	27	27	24
1903	Guillian Barre M=12-30	3.1339	2.7056	2.6459	2.4011	41	35	30	40
2001	Miscellaneous M=54-84	0.8371	0.7195	0.6705	0.6029	12	13	11	12
2002	Miscellaneous M=45-53	1.1056	0.9502	0.8855	0.7962	15	15	14	14
2003	Miscellaneous M=33-44	1.4639	1.2581	1.1725	1.0543	20	18	18	18
2004	Miscellaneous M=12-32 and A>=82	1.7472	1.5017	1.3994	1.2583	30	22	21	22
2005	Miscellaneous M=12-32 and A<=81	2.0799	1.7876	1.6659	1.4979	33	25	24	24
2101	Burns M=46-84	1.0357	0.9425	0.8387	0.8387	18	18	15	16
2102	Burns M=12-45	2.2508	2.0482	1.8226	1.8226	31	26	26	29
5001	Short-stay cases, length of stay is 3 days or fewer				0.1651				3
5101	Expired, orthopedic, length of stay is 13 days or fewer				0.4279				8

CMG	CMG Description (M = motor, C = cognitive, A = age)	Relative Weights				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
5102	Expired, orthopedic, length of stay is 14 days or more				1.2390				23
5103	Expired, not orthopedic, length of stay is 15 days or fewer				0.5436				9
5104	Expired, not orthopedic, length of stay is 16 days or more				1.7100				28

TABLE 2.— Fiscal Year 2004 Federal Prospective Payments for Case-Mix Groups (CMGs)

CMG	Payment Rate Tier 1	Payment Rate Tier 2	Payment Rate Tier 3	Payment Rate No Comorbidities
0101	$5,984.45	$5,359.45	$5,107.70	$4,833.40
0102	8,148.77	7,298.32	6,955.13	6,581.89
0103	10,390.74	9,306.08	8,867.70	8,391.75
0104	11,281.27	10,103.92	9,627.97	9,111.94
0105	14,202.10	12,719.14	12,120.44	11,470.40
0106	17,473.63	15,648.74	14,911.01	14,111.92
0107	20,239.15	18,126.18	17,271.98	16,345.13
0108	21,889.94	19,605.38	18,681.04	17,679.04
0109	23,673.50	21,202.32	20,202.83	19,119.41
0110	25,394.44	22,744.15	21,672.01	20,509.69
0111	26,163.47	23,433.02	22,328.32	21,130.93
0112	31,039.46	27,799.24	26,489.12	25,068.79
0113	28,024.69	25,100.10	23,916.49	22,633.93
0114	34,195.76	30,626.13	29,183.25	27,617.63
0201	9,630.47	9,113.19	8,421.81	7,727.93
0202	14,004.20	13,252.70	12,246.95	11,238.68
0203	16,378.94	15,499.69	14,323.59	13,144.99
0204	20,708.84	19,596.62	18,109.90	16,619.42
0205	31,437.75	29,749.38	27,491.12	25,229.11
0301	12,092.89	10,319.35	9,888.49	9,011.74
0302	17,131.70	14,619.18	14,007.96	12,767.99
0303	23,486.88	20,042.51	19,205.84	17,504.94
0304	34,958.53	29,830.79	28,587.06	26,053.25
0401	11,625.71	10,916.79	10,298.06	8,652.27
0402	17,799.28	16,713.36	15,766.47	13,246.44
0403	29,414.96	27,620.13	26,054.51	21,891.20
0404	44,121.82	41,430.20	39,081.76	32,835.54

CMG	Payment Rate Tier 1	Payment Rate Tier 2	Payment Rate Tier 3	Payment Rate No Comorbidities
0501	9,506.48	8,736.19	7,803.08	6,717.16
0502	11,846.15	10,885.48	9,723.16	8,370.46
0503	14,545.28	13,366.68	11,940.08	10,278.02
0504	20,990.65	19,288.50	17,230.64	14,832.11
0505	31,705.79	29,134.40	26,024.45	22,403.47
0601	11,014.49	8,454.38	8,277.77	7,451.12
0602	15,003.70	11,516.74	11,276.26	10,151.51
0603	19,248.42	14,774.49	14,466.38	13,022.24
0604	25,106.36	19,270.97	18,868.91	16,985.15
0701	8,786.29	8,775.02	8,404.28	7,464.90
0702	11,603.16	11,586.88	11,098.40	9,857.18
0703	13,748.69	13,729.91	13,151.25	11,680.82
0704	15,641.22	15,619.93	14,961.11	13,287.77
0705	18,486.90	18,461.85	17,684.05	15,706.35
0801	6,148.52	5,881.74	5,658.80	4,872.23
0802	7,097.92	6,789.80	6,533.04	5,623.73
0803	8,712.39	8,334.14	8,018.51	6,902.53
0804	11,628.21	11,123.45	10,702.61	9,213.39
0805	12,558.82	12,015.23	11,559.32	9,951.11
0806	17,135.45	16,392.72	15,771.48	13,577.10
0901	8,752.47	8,003.48	7,546.31	6,529.28
0902	11,893.74	10,876.71	10,254.22	8,872.71
0903	15,013.72	13,728.65	12,943.34	11,199.86
0904	20,380.68	18,637.20	17,571.32	15,202.85
1001	9,795.80	9,795.80	8,959.13	8,170.06
1002	12,522.50	12,522.50	11,452.86	10,444.60
1003	15,316.82	15,316.82	14,009.21	12,775.50
1004	17,865.66	17,865.66	16,340.12	14,900.99
1005	22,028.97	22,028.97	20,147.72	18,374.18
1101	15,807.80	9,622.96	8,954.12	8,305.33
1102	24,466.34	14,894.73	13,857.66	12,854.41
1103	33,245.11	20,239.15	18,830.09	17,466.11
1201	9,041.80	6,799.82	6,391.51	5,756.49
1202	11,628.21	8,746.21	8,220.16	7,403.53
1203	13,490.68	10,146.50	9,536.54	8,589.65
1204	17,472.38	13,141.23	12,350.90	11,124.71
1205	22,387.19	16,837.36	15,824.09	14,253.45
1301	9,668.05	8,168.81	8,058.59	6,971.42
1302	12,377.21	10,457.12	10,316.84	8,925.32

CMG	Payment Rate Tier 1	Payment Rate Tier 2	Payment Rate Tier 3	Payment Rate No Comorbidities
1303	16,447.83	13,896.49	13,708.61	11,859.92
1304	23,374.16	19,749.42	19,482.64	16,854.89
1401	9,005.48	8,057.33	7,166.81	6,457.89
1402	12,402.26	11,094.65	9,869.70	8,894.00
1403	16,251.19	14,539.02	12,932.06	11,654.51
1404	22,561.28	20,184.04	17,954.59	16,179.80
1501	10,060.08	9,560.33	8,674.82	8,285.29
1502	12,860.67	12,221.90	11,090.89	10,592.39
1503	16,585.61	15,761.46	14,302.30	13,659.77
1504	25,799.00	24,517.69	22,248.16	21,248.66
1601	10,905.52	10,429.57	9,877.22	8,270.26
1602	16,683.30	15,955.60	15,112.67	12,654.01
1701	12,519.99	11,300.06	10,192.85	9,024.26
1702	18,480.64	16,679.54	15,043.78	13,319.09
1703	26,765.93	24,158.22	21,788.49	19,291.01
1801	9,324.86	9,324.86	8,594.66	7,868.21
1802	13,369.19	13,369.19	12,322.10	11,281.27
1803	20,478.38	20,478.38	18,873.92	17,280.74
1804	36,497.85	36,497.85	33,639.65	30,797.72
1901	14,510.21	12,527.51	12,250.70	11,117.19
1902	26,981.36	23,294.00	22,780.47	20,672.51
1903	39,252.10	33,887.64	33,139.90	30,073.78
2001	10,484.68	9,011.74	8,398.01	7,551.32
2002	13,847.64	11,901.26	11,090.89	9,972.41
2003	18,335.35	15,757.70	14,685.56	13,205.11
2004	21,883.68	18,808.79	17,527.49	15,760.21
2005	26,050.75	22,389.69	20,865.40	18,761.20
2101	12,972.14	11,804.81	10,504.72	10,504.72
2102	28,191.27	25,653.71	22,828.07	22,828.07
5001				2,067.88
5101				5,359.45
5102				15,518.48
5103				6,808.59
5104				21,417.75

BILLING CODE 4120-01-C

TABLE 3A.—URBAN WAGE INDEX

MSA	Urban area (constituent counties or county equivalents)	Wage index
0040	Abilene, TX	0.7792
	Taylor, TX	
0060	Aguadilla, PR	0.4587
	Aguada, PR	
	Aguadilla, PR	
	Moca, PR	
0080	Akron, OH	0.9600
	Portage, OH	
	Summit, OH	
0120	Albany, GA	1.0594
	Dougherty, GA	
	Lee, GA	
0160	Albany-Schenectady-Troy, NY	0.8384
	Albany, NY	
	Montgomery, NY	
	Rensselaer, NY	
	Saratoga, NY	
	Schenectady, NY	
	Schoharie, NY	
0200	Albuquerque, NM	0.9315
	Bernalillo, NM	
	Sandoval, NM	
	Valencia, NM	
0220	Alexandria, LA	0.7859
	Rapides, LA	
0240	Allentown-Bethlehem-Easton, PA	0.9735
	Carbon, PA	
	Lehigh, PA	
	Northampton, PA	
0280	Altoona, PA	0.9225
	Blair, PA	
0320	Amarillo, TX	0.9034
	Potter, TX	
	Randall, TX	
0380	Anchorage, AK	1.2358
	Anchorage, AK	
0440	Ann Arbor, MI	1.1103
	Lenawee, MI	
	Livingston, MI	
	Washtenaw, MI	
0450	Anniston, AL	0.8044
	Calhoun, AL	
0460	Appleton-Oshkosh-Neenah, WI	0.8997
	Calumet, WI	
	Outagamie, WI	
	Winnebago, WI	
0470	Arecibo, PR	0.4337
	Arecibo, PR	
	Camuy, PR	
	Hatillo, PR	
0480	Asheville, NC	0.9876
	Buncombe, NC	
	Madison, NC	
0500	Athens, GA	1.0211
	Clarke, GA	
	Madison, GA	
	Oconee, GA	
0520	Atlanta, GA	0.9991
	Barrow, GA	
	Bartow, GA	
	Carroll, GA	
	Cherokee, GA	
	Clayton, GA	
	Cobb, GA	
	Coweta, GA	
	De Kalb, GA	
	Douglas, GA	
	Fayette, GA	
	Forsyth, GA	
	Fulton, GA	

TABLE 3A.—URBAN WAGE INDEX—Continued

MSA	Urban area (constituent counties or county equivalents)	Wage index
	Gwinnett, GA	
	Henry, GA	
	Newton, GA	
	Paulding, GA	
	Pickens, GA	
	Rockdale, GA	
	Spalding, GA	
	Walton, GA	
0560	Atlantic City-Cape May, NJ	1.1017
	Atlantic City, NJ	
	Cape May, NJ	
0580	Auburn-Opelika, AL	0.8325
	Lee, AL	
0600	Augusta-Aiken, GA–SC	1.0264
	Columbia, GA	
	McDuffie, GA	
	Richmond, GA	
	Aiken, SC	
	Edgefield, SC	
0640	Austin-San Marcos, TX	0.9637
	Bastrop, TX	
	Caldwell, TX	
	Hays, TX	
	Travis, TX	
	Williamson, TX	
0680	Bakersfield, CA	0.9899
	Kern, CA	
0720	Baltimore, MD	0.9929
	Anne Arundel, MD	
	Baltimore, MD	
	Baltimore City, MD	
	Carroll, MD	
	Harford, MD	
	Howard, MD	
	Queen Annes, MD	
0733	Bangor, ME	0.9664
	Penobscot, ME	
0743	Barnstable-Yarmouth, MA	1.3202
	Barnstable, MA	
0760	Baton Rouge, LA	0.8294
	Ascension, LA	
	East Baton Rouge	
	Livingston, LA	
	West Baton Rouge, LA	
0840	Beaumont-Port Arthur, TX	0.8324
	Hardin, TX	
	Jefferson, TX	
	Orange, TX	
0860	Bellingham, WA	1.2282
	Whatcom, WA	
0870	Benton Harbor, MI	0.9042
	Berrien, MI	
0875	Bergen Passaic, NJ	1.2150
	Bergen, NJ	
	Passaic, NJ	
0880	Billings, MT	0.9022
	Yellowstone, MT	
0920	Biloxi-Gulfport-Pascagoula, MS	0.8757
	Hancock, MS	
	Harrison, MS	
	Jackson, MS	
0960	Binghamton, NY	0.8341
	Broome, NY	
	Tioga, NY	
1000	Birmingham, AL	0.9222
	Blount, AL	
	Jefferson, AL	
	St. Clair, AL	
	Shelby, AL	
1010	Bismarck, ND	0.7972

TABLE 3A.—URBAN WAGE INDEX—Continued

MSA	Urban area (constituent counties or county equivalents)	Wage index
	Burleigh, ND	
	Morton, ND	
1020	Bloomington, IN	0.8907
	Monroe, IN	
1040	Bloomington-Normal, IL	0.9109
	McLean, IL	
1080	Boise City, ID	0.9310
	Ada, ID	
	Canyon, ID	
1123	Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH	1.1235
	Bristol, MA	
	Essex, MA	
	Middlesex, MA	
	Norfolk, MA	
	Plymouth, MA	
	Suffolk, MA	
	Worcester, MA	
	Hillsborough, NH	
	Merrimack, NH	
	Rockingham, NH	
	Strafford, NH	
1125	Boulder-Longmont, CO	0.9689
	Boulder, CO	
1145	Brazoria, TX	0.8535
	Brazoria, TX	
1150	Bremerton, WA	1.0944
	Kitsap, WA	
1240	Brownsville-Harlingen-San Benito, TX	0.8880
	Cameron, TX	
1260	Bryan-College Station, TX	0.8821
	Brazos, TX	
1280	Buffalo-Niagara Falls, NY	0.9365
	Erie, NY	
	Niagara, NY	
1303	Burlington, VT	1.0052
	Chittenden, VT	
	Franklin, VT	
	Grand Isle, VT	
1310	Caguas, PR	0.4371
	Caguas, PR	
	Cayey, PR	
	Cidra, PR	
	Gurabo, PR	
	San Lorenzo, PR	
1320	Canton-Massillon, OH	0.8932
	Carroll, OH	
	Stark, OH	
1350	Casper, WY	0.9690
	Natrona, WY	
1360	Cedar Rapids, IA	0.9056
	Linn, IA	
1400	Champaign-Urbana, IL	1.0635
	Champaign, IL	
1440	Charleston-North Charleston, SC	0.9235
	Berkeley, SC	
	Charleston, SC	
	Dorchester, SC	
1480	Charleston, WV	0.8898
	Kanawha, WV	
	Putnam, WV	
1520	Charlotte-Gastonia-RockHill, NC–SC	0.9850
	Cabarrus, NC	
	Gaston, NC	
	Lincoln, NC	
	Mecklenburg, NC	
	Rowan, NC	
	Stanly, NC	
	Union, NC	
	York, SC	
1540	Charlottesville, VA	1.0438

TABLE 3A.—URBAN WAGE INDEX—Continued

MSA	Urban area (constituent counties or county equivalents)	Wage index
	Albemarle, VA	
	Charlottesville City, VA	
	Fluvanna, VA	
	Greene, VA	
1560	Chattanooga, TN–GA	0.8976
	Catoosa, GA	
	Dade, GA	
	Walker, GA	
	Hamilton, TN	
	Marion, TN	
1580	Cheyenne, WY	0.8628
	Laramie, WY	
1600	Chicago, IL	1.1044
	Cook, IL	
	DeKalb, IL	
	DuPage, IL	
	Grundy, IL	
	Kane, IL	
	Kendall, IL	
	Lake, IL	
	McHenry, IL	
	Will, IL	
1620	Chico-Paradise, CA	0.9745
	Butte, CA	
1640	Cincinnati, OH–KY–IN	0.9381
	Dearborn, IN	
	Ohio, IN	
	Boone, KY	
	Campbell, KY	
	Gallatin, KY	
	Grant, KY	
	Kenton, KY	
	Pendleton, KY	
	Brown, OH	
	Clermont, OH	
	Hamilton, OH	
	Warren, OH	
1660	Clarksville-Hopkinsville, TN–KY	0.8406
	Christian, KY	
	Montgomery, TN	
1680	Cleveland-Lorain-Elyria, OH	0.9670
	Ashtabula, OH	
	Geauga, OH	
	Cuyahoga, OH	
	Lake, OH	
	Lorain, OH	
	Medina, OH	
1720	Colorado Springs, CO	0.9916
	El Paso, CO	
1740	Columbia MO	0.8496
	Boone, MO	
1760	Columbia, SC	0.9307
	Lexington, SC	
	Richland, SC	
1800	Columbus, GA–AL	0.8374
	Russell, AL	
	Chattanoochee, GA	
	Harris, GA	
	Muscogee, GA	
1840	Columbus, OH	0.9751
	Delaware, OH	
	Fairfield, OH	
	Franklin, OH	
	Licking, OH	
	Madison, OH	
	Pickaway, OH	
1880	Corpus Christi, TX	0.8729
	Nueces, TX	
	San Patricio, TX	
1890	Corvallis, OR	1.1453

TABLE 3A.—URBAN WAGE INDEX—Continued

MSA	Urban area (constituent counties or county equivalents)	Wage index
	Benton, OR	
1900	Cumberland, MD–WV	0.7847
	Allegany, MD	
	Mineral, WV	
1920	Dallas, TX	0.9998
	Collin, TX	
	Dallas, TX	
	Denton, TX	
	Ellis, TX	
	Henderson, TX	
	Hunt, TX	
	Kaufman, TX	
	Rockwall, TX	
1950	Danville, VA	0.8859
	Danville City, VA	
	Pittsylvania, VA	
1960	Davenport-Moline-Rock Island, IA–IL	0.8835
	Scott, IA	
	Henry, IL	
	Rock Island, IL	
2000	Dayton-Springfield, OH	0.9282
	Clark, OH	
	Greene, OH	
	Miami, OH	
	Montgomery, OH	
2020	Daytona Beach, FL	0.9062
	Flagler, FL	
	Volusia, FL	
2030	Decatur, AL	0.8973
	Lawrence, AL	
	Morgan, AL	
2040	Decatur, IL	0.8055
	Macon, IL	
2080	Denver, CO	1.0601
	Adams, CO	
	Arapahoe, CO	
	Broomfield, CO	
	Denver, CO	
	Douglas, CO	
	Jefferson, CO	
2120	Des Moines, IA	0.8791
	Dallas, IA	
	Polk, IA	
	Warren, IA	
2160	Detroit, MI	1.0448
	Lapeer, MI	
	Macomb, MI	
	Monroe, MI	
	Oakland, MI	
	St. Clair, MI	
	Wayne, MI	
2180	Dothan, AL	0.8137
	Dale, AL	
	Houston, AL	
2190	Dover, DE	0.9356
	Kent, DE	
2200	Dubuque, IA	0.8795
	Dubuque, IA	
2240	Duluth-Superior, MN–WI	1.0368
	St. Louis, MN	
	Douglas, WI	
2281	Dutchess County, NY	1.0684
	Dutchess, NY	
2290	Eau Claire, WI	0.8952
	Chippewa, WI	
	Eau Claire, WI	
2320	El Paso, TX	0.9265
	El Paso, TX	
2330	Elkhart-Goshen, IN	0.9722
	Elkhart, IN	

TABLE 3A.—URBAN WAGE INDEX—Continued

MSA	Urban area (constituent counties or county equivalents)	Wage index
2335	Elmira, NY	0.8416
	Chemung, NY	
2340	Enid, OK	0.8376
	Garfield, OK	
2360	Erie, PA	0.8925
	Erie, PA	
2400	Eugene-Springfield, OR	1.0944
	Lane, OR	
2440	Evansville-Henderson, IN–KY	0.8177
	Posey, IN	
	Vanderburgh, IN	
	Warrick, IN	
	Henderson, KY	
2520	Fargo-Moorhead, ND–MN	0.9684
	Clay, MN	
	Cass, ND	
2560	Fayetteville, NC	0.8889
	Cumberland, NC	
2580	Fayetteville-Springdale-Rogers, AR	0.8100
	Benton, AR	
	Washington, AR	
2620	Flagstaff, AZ–UT	1.0682
	Coconino, AZ	
	Kane, UT	
2640	Flint, MI	1.1135
	Genesee, MI	
2650	Florence, AL	0.7792
	Colbert, AL	
	Lauderdale, AL	
2655	Florence, SC	0.8780
	Florence, SC	
2670	Fort Collins-Loveland, CO	1.0066
	Larimer, CO	
2680	Ft. Lauderdale, FL	1.0297
	Broward, FL	
2700	Fort Myers-Cape Coral, FL	0.9680
	Lee, FL	
2710	Fort Pierce Port-St. Lucie, FL	0.9823
	Martin, FL	
	St.Lucie, FL	
2720	Fort Smith, AR–OK	0.7895
	Crawford, AR	
	Sebastian, AR	
	Sequoyah, OK	
2750	Fort Walton Beach, FL	0.9693
	Okaloosa, FL	
2760	Fort Wayne, IN	0.9457
	Adams, IN	
	Allen, IN	
	DeKalb, IN	
	Huntington, IN	
	Wells, IN	
	Whitley, IN	
2800	Forth Worth-Arlington, TX	0.9446
	Hood, TX	
	Johnson, TX	
	Parker, TX	
	Tarrant, TX	
2840	Fresno, CA	1.0216
	Fresno, CA	
	Madera, CA	
2880	Gadsden, AL	0.8505
	Etowah, AL	
2900	Gainesville, FL	0.9871
	Alachua, FL	
2920	Galveston-Texas City, TX	0.9465
	Galveston, TX	
2960	Gary, IN	0.9584
	Lake, IN	
	Porter, IN	

TABLE 3A.—URBAN WAGE INDEX—Continued

MSA	Urban area (constituent counties or county equivalents)	Wage index
2975	Glens Falls, NY	0.8281
	Warren, NY	
	Washington, NY	
2980	Goldsboro, NC	0.8892
	Wayne, NC	
2985	Grand Forks, ND–MN	0.8897
	Polk, MN	
	Grand Forks, ND	
2995	Grand Junction, CO	0.9456
	Mesa, CO	
3000	Grand Rapids-Muskegon-Holland, MI	0.9525
	Allegan, MI	
	Kent, MI	
	Muskegon, MI	
	Ottawa, MI	
3040	Great Falls, MT	0.8950
	Cascade, MT	
3060	Greeley, CO	0.9237
	Weld, CO	
3080	Green Bay, WI	0.9502
	Brown, WI	
3120	Greensboro-Winston Salem-High Point, NC	0.9282
	Alamance, NC	
	Davidson, NC	
	Davie, NC	
	Forsyth, NC	
	Guilford, NC	
	Randolph, NC	
	Stokes, NC	
	Yadkin, NC	
3150	Greenville, NC	0.9100
	Pitt, NC	
3160	Greenville-Spartanburg-Anderson, SC	0.9122
	Anderson, SC	
	Cherokee, SC	
	Greenville, SC	
	Pickens, SC	
	Spartanburg, SC	
3180	Hagerstown, MD	0.9268
	Washington, MD	
3200	Hamilton-Middletown, OH	0.9418
	Butler, OH	
3240	Harrisburg-Lebanon-Carlisle, PA	0.9223
	Cumberland, PA	
	Dauphin, PA	
	Lebanon, PA	
	Perry, PA	
3283	Hartford, CT	1.1549
	Hartford, CT	
	Litchfield, CT	
	Middlesex, CT	
	Tolland, CT	
3285	Hattiesburg, MS	0.7659
	Forrest, MS	
	Lamar, MS	
3290	Hickory-Morganton-Lenoir, NC	0.9028
	Alexander, NC	
	Burke, NC	
	Caldwell, NC	
	Catawba, NC	
3320	Honolulu, HI	1.1457
	Honolulu, HI	
3350	Houma, LA	0.8385
	Lafourche, LA	
	Terrebonne, LA	
3360	Houston, TX	0.9892
	Chambers, TX	
	Fort Bend, TX	
	Harris, TX	
	Liberty, TX	

TABLE 3A.—URBAN WAGE INDEX—Continued

MSA	Urban area (constituent counties or county equivalents)	Wage index
	Montgomery, TX	
	Waller, TX	
3400	Huntington-Ashland, WV–KY–OH	0.9636
	Boyd, KY	
	Carter, KY	
	Greenup, KY	
	Lawrence, OH	
	Cabell, WV	
	Wayne, WV	
3440	Huntsville, AL	0.8903
	Limestone, AL	
	Madison, AL	
3480	Indianapolis, IN	0.9717
	Boone, IN	
	Hamilton, IN	
	Hancock, IN	
	Hendricks, IN	
	Johnson, IN	
	Madison, IN	
	Marion, IN	
	Morgan, IN	
	Shelby, IN	
3500	Iowa City, IA	0.9587
	Johnson, IA	
3520	Jackson, MI	0.9532
	Jackson, MI	
3560	Jackson, MS	0.8607
	Hinds, MS	
	Madison, MS	
	Rankin, MS	
3580	Jackson, TN	0.9275
	Chester, TN	
	Madison, TN	
3600	Jacksonville, FL	0.9381
	Clay, FL	
	Duval, FL	
	Nassau, FL	
	St. Johns, FL	
3605	Jacksonville, NC	0.8239
	Onslow, NC	
3610	Jamestown, NY	0.7976
	Chautaqua, NY	
3620	Janesville-Beloit, WI	0.9849
	Rock, WI	
3640	Jersey City, NJ	1.1190
	Hudson, NJ	
3660	Johnson City-Kingsport-Bristol, TN–VA	0.8268
	Carter, TN	
	Hawkins, TN	
	Sullivan, TN	
	Unicoi, TN	
	Washington, TN	
	Bristol City, VA	
	Scott, VA	
	Washington, VA	
3680	Johnstown, PA	0.8329
	Cambria, PA	
	Somerset, PA	
3700	Jonesboro, AR	0.7749
	Craighead, AR	
3710	Joplin, MO	0.8613
	Jasper, MO	
	Newton, MO	
3720	Kalamazoo-Battlecreek, MI	1.0595
	Calhoun, MI	
	Kalamazoo, MI	
	Van Buren, MI	
3740	Kankakee, IL	1.0790
	Kankakee, IL	
3760	Kansas City, KS–MO	0.9736

TABLE 3A.—URBAN WAGE INDEX—Continued

MSA	Urban area (constituent counties or county equivalents)	Wage index
	Johnson, KS	
	Leavenworth, KS	
	Miami, KS	
	Wyandotte, KS	
	Cass, MO	
	Clay, MO	
	Clinton, MO	
	Jackson, MO	
	Lafayette, MO	
	Platte, MO	
	Ray, MO	
3800	Kenosha, WI	0.9686
	Kenosha, WI	
3810	Killeen-Temple, TX	1.0399
	Bell, TX	
	Coryell, TX	
3840	Knoxville, TN	0.8970
	Anderson, TN	
	Blount, TN	
	Knox, TN	
	Loudon, TN	
	Sevier, TN	
	Union, TN	
3850	Kokomo, IN	0.8971
	Howard, IN	
	Tipton, IN	
3870	La Crosse, WI–MN	0.9400
	Houston, MN	
	La Crosse, WI	
3880	Lafayette, LA	0.8475
	Acadia, LA	
	Lafayette, LA	
	St. Landry, LA	
	St. Martin, LA	
3920	Lafayette, IN	0.9278
	Clinton, IN	
	Tippecanoe, IN	
3960	Lake Charles, LA	0.7965
	Calcasieu, LA	
3980	Lakeland-Winter Haven, FL	0.9357
	Polk, FL	
4000	Lancaster, PA	0.9078
	Lancaster, PA	
4040	Lansing-East Lansing, MI	0.9726
	Clinton, MI	
	Eaton, MI	
	Ingham, MI	
4080	Laredo, TX	0.8472
	Webb, TX	
4100	Las Cruces, NM	0.8745
	Dona Ana, NM	
4120	Las Vegas, NV–AZ	1.1521
	Mohave, AZ	
	Clark, NV	
	Nye, NV	
4150	Lawrence, KS	0.7923
	Douglas, KS	
4200	Lawton, OK	0.8315
	Comanche, OK	
4243	Lewiston-Auburn, ME	0.9179
	Androscoggin, ME	
4280	Lexington, KY	0.8581
	Bourbon, KY	
	Clark, KY	
	Fayette, KY	
	Jessamine, KY	
	Madison, KY	
	Scott, KY	
	Woodford, KY	
4320	Lima, OH	0.9483

TABLE 3A.—URBAN WAGE INDEX—Continued

MSA	Urban area (constituent counties or county equivalents)	Wage index
	Allen, OH	
	Auglaize, OH	
4360	Lincoln, NE	0.9892
	Lancaster, NE	
4400	Little Rock-North Little, AR	0.9097
	Faulkner, AR	
	Lonoke, AR	
	Pulaski, AR	
	Saline, AR	
4420	Longview-Marshall, TX	0.8629
	Gregg, TX	
	Harrison, TX	
	Upshur, TX	
4480	Los Angeles-Long Beach, CA	1.2001
	Los Angeles, CA	
4520	Louisville, KY–IN	0.9276
	Clark, IN	
	Floyd, IN	
	Harrison, IN	
	Scott, IN	
	Bullitt, KY	
	Jefferson, KY	
	Oldham, KY	
4600	Lubbock, TX	0.9646
	Lubbock, TX	
4640	Lynchburg, VA	0.9219
	Amherst, VA	
	Bedford City, VA	
	Bedford, VA	
	Campbell, VA	
	Lynchburg City, VA	
4680	Macon, GA	0.9204
	Bibb, GA	
	Houston, GA	
	Jones, GA	
	Peach, GA	
	Twiggs, GA	
4720	Madison, WI	1.0467
	Dane, WI	
4800	Mansfield, OH	0.8900
	Crawford, OH	
	Richland, OH	
4840	Mayaguez, PR	0.4914
	Anasco, PR	
	Cabo Rojo, PR	
	Hormigueros, PR	
	Mayaguez, PR	
	Sabana Grande, PR	
	San German, PR	
4880	McAllen-Edinburg-Mission, TX	0.8428
	Hidalgo, TX	
4890	Medford-Ashland, OR	1.0498
	Jackson, OR	
4900	Melbourne-Titusville-Palm Bay, FL	1.0253
	Brevard, FL	
4920	Memphis, TN–AR–MS	0.8920
	Crittenden, AR	
	De Soto, MS	
	Fayette, TN	
	Shelby, TN	
	Tipton, TN	
4940	Merced, CA	0.9837
	Merced, CA	
5000	Miami, FL	0.9802
	Dade, FL	
5015	Middlesex-Somerset-Hunterdon, NJ	1.1213
	Hunterdon, NJ	
	Middlesex, NJ	
	Somerset, NJ	
5080	Milwaukee-Waukesha, WI	0.9893

TABLE 3A.—URBAN WAGE INDEX—Continued

MSA	Urban area (constituent counties or county equivalents)	Wage index
	Milwaukee, WI	
	Ozaukee, WI	
	Washington, WI	
	Waukesha, WI	
5120	Minneapolis-St. Paul, MN–WI	1.0903
	Anoka, MN	
	Carver, MN	
	Chisago, MN	
	Dakota, MN	
	Hennepin, MN	
	Isanti, MN	
	Ramsey, MN	
	Scott, MN	
	Sherburne, MN	
	Washington, MN	
	Wright, MN	
	Pierce, WI	
	St. Croix, WI	
5140	Missoula, MT	0.9157
	Missoula, MT	
5160	Mobile, AL	0.8108
	Baldwin, AL	
	Mobile, AL	
5170	Modesto, CA	1.0498
	Stanislaus, CA	
5190	Monmouth-Ocean, NJ	1.0674
	Monmouth, NJ	
	Ocean, NJ	
5200	Monroe, LA	0.8137
	Ouachita, LA	
5240	Montgomery, AL	0.7734
	Autauga, AL	
	Elmore, AL	
	Montgomery, AL	
5280	Muncie, IN	0.9284
	Delaware, IN	
5330	Myrtle Beach, SC	0.8976
	Horry, SC	
5345	Naples, FL	0.9754
	Collier, FL	
5360	Nashville, TN	0.9578
	Cheatham, TN	
	Davidson, TN	
	Dickson, TN	
	Robertson, TN	
	Rutherford, TN	
	Sumner, TN	
	Williamson, TN	
	Wilson, TN	
5380	Nassau-Suffolk, NY	1.3357
	Nassau, NY	
	Suffolk, NY	
5483	New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2408
	Fairfield, CT	
	New Haven, CT	
5523	New London-Norwich, CT	1.1767
	New London, CT	
5560	New Orleans, LA	0.9046
	Jefferson, LA	
	Orleans, LA	
	Plaquemines, LA	
	St. Bernard, LA	
	St. Charles, LA	
	St. James, LA	
	St. John The Baptist, LA	
	St. Tammany, LA	
5600	New York, NY	1.4414
	Bronx, NY	
	Kings, NY	
	New York, NY	

TABLE 3A.—URBAN WAGE INDEX—Continued

MSA	Urban area (constituent counties or county equivalents)	Wage index
	Putnam, NY	
	Queens, NY	
	Richmond, NY	
	Rockland, NY	
	Westchester, NY	
5640	Newark, NJ	1.1381
	Essex, NJ	
	Morris, NJ	
	Sussex, NJ	
	Union, NJ	
	Warren, NJ	
5660	Newburgh, NY–PA	1.1387
	Orange, NY	
	Pike, PA	
5720	Norfolk-Virginia Beach-Newport News, VANC	0.8574
	Currituck, NC	
	Chesapeake City, VA	
	Gloucester, VA	
	Hampton City, VA	
	Isle of Wight, VA	
	James City, VA	
	Mathews, VA	
	Newport News City, VA	
	Norfolk City, VA	
	Poquoson City, VA	
	Portsmouth City, VA	
	Suffolk City, VA	
	Virginia Beach City, VA	
	Williamsburg City, VA	
	York, VA	
5775	Oakland, CA	1.5072
	Alameda, CA	
	Contra Costa, CA	
5790	Ocala, FL	0.9402
	Marion, FL	
5800	Odessa-Midland, TX	0.9397
	Ector, TX	
	Midland, TX	
5880	Oklahoma City, OK	0.8900
	Canadian, OK	
	Cleveland, OK	
	Logan, OK	
	McClain, OK	
	Oklahoma, OK	
	Pottawatomie, OK	
5910	Olympia, WA	1.0960
	Thurston, WA	
5920	Omaha, NE–IA	0.9978
	Pottawattamie, IA	
	Cass, NE	
	Douglas, NE	
	Sarpy, NE	
	Washington, NE	
5945	Orange County, CA	1.1474
	Orange, CA	
5960	Orlando, FL	0.9640
	Lake, FL	
	Orange, FL	
	Osceola, FL	
	Seminole, FL	
5990	Owensboro, KY	0.8344
	Daviess, KY	
6015	Panama City, FL	0.8865
	Bay, FL	
6020	Parkersburg-Marietta, WV–OH	0.8127
	Washington, OH	
	Wood, WV	
6080	Pensacola, FL	0.8645
	Escambia, FL	
	Santa Rosa, FL	

TABLE 3A.—URBAN WAGE INDEX—Continued

MSA	Urban area (constituent counties or county equivalents)	Wage index
6120	Peoria-Pekin, IL	0.8739
	Peoria, IL	
	Tazewell, IL	
	Woodford, IL	
6160	Philadelphia, PA–NJ	1.0713
	Burlington, NJ	
	Camden, NJ	
	Gloucester, NJ	
	Salem, NJ	
	Bucks, PA	
	Chester, PA	
	Delaware, PA	
	Montgomery, PA	
	Philadelphia, PA	
6200	Phoenix-Mesa, AZ	0.9820
	Maricopa, AZ	
	Pinal, AZ	
6240	Pine Bluff, AR	0.7962
	Jefferson, AR	
6280	Pittsburgh, PA	0.9365
	Allegheny, PA	
	Beaver, PA	
	Butler, PA	
	Fayette, PA	
	Washington, PA	
	Westmoreland, PA	
6323	Pittsfield, MA	1.0235
	Berkshire, MA	
6340	Pocatello, ID	0.9372
	Bannock, ID	
6360	Ponce, PR	0.5169
	Guayanilla, PR	
	Juana Diaz, PR	
	Penuelas, PR	
	Ponce, PR	
	Villalba, PR	
	Yauco, PR	
6403	Portland, ME	0.9794
	Cumberland, ME	
	Sagadahoc, ME	
	York, ME	
6440	Portland-Vancouver, OR–WA	1.0667
	Clackamas, OR	
	Columbia, OR	
	Multnomah, OR	
	Washington, OR	
	Yamhill, OR	
	Clark, WA	
6483	Providence-Warwick-Pawtucket, RI	1.0854
	Bristol, RI	
	Kent, RI	
	Newport, RI	
	Providence, RI	
	Washington, RI	
6520	Provo-Orem, UT	0.9984
	Utah, UT	
6560	Pueblo, CO	0.8820
	Pueblo, CO	
6580	Punta Gorda, FL	0.9218
	Charlotte, FL	
6600	Racine, WI	0.9334
	Racine, WI	
6640	Raleigh-Durham-Chapel Hill, NC	0.9990
	Chatham, NC	
	Durham, NC	
	Franklin, NC	
	Johnston, NC	
	Orange, NC	
	Wake, NC	
6660	Rapid City, SD	0.8846

TABLE 3A.—URBAN WAGE INDEX—Continued

MSA	Urban area (constituent counties or county equivalents)	Wage index
	Pennington, SD	
6680	Reading, PA	0.9295
	Berks, PA	
6690	Redding, CA	1.1135
	Shasta, CA	
6720	Reno, NV	1.0648
	Washoe, NV	
6740	Richland-Kennewick-Pasco, WA	1.1491
	Benton, WA	
	Franklin, WA	
6760	Richmond-Petersburg, VA	0.9477
	Charles City County, VA	
	Chesterfield, VA	
	Colonial Heights City, VA	
	Dinwiddie, VA	
	Goochland, VA	
	Hanover, VA	
	Henrico, VA	
	Hopewell City, VA	
	New Kent, VA	
	Petersburg City, VA	
	Powhatan, VA	
	Prince George, VA	
	Richmond City, VA	
6780	Riverside-San Bernardino, CA	1.1365
	Riverside, CA	
	San Bernardino, CA	
6800	Roanoke, VA	0.8614
	Botetourt, VA	
	Roanoke, VA	
	Roanoke City, VA	
	Salem City, VA	
6820	Rochester, MN	1.2139
	Olmsted, MN	
6840	Rochester, NY	0.9194
	Genesee, NY	
	Livingston, NY	
	Monroe, NY	
	Ontario, NY	
	Orleans, NY	
	Wayne, NY	
6880	Rockford, IL	0.9625
	Boone, IL	
	Ogle, IL	
	Winnebago, IL	
6895	Rocky Mount, NC	0.9228
	Edgecombe, NC	
	Nash, NC	
6920	Sacramento, CA	1.1500
	El Dorado, CA	
	Placer, CA	
	Sacramento, CA	
6960	Saginaw-Bay City-Midland, MI	0.9650
	Bay, MI	
	Midland, MI	
	Saginaw, MI	
6980	St. Cloud, MN	0.9700
	Benton, MN	
	Stearns, MN	
7000	St. Joseph, MO	0.8021
	Andrews, MO	
	Buchanan, MO	
7040	St. Louis, MO–IL	0.8855
	Clinton, IL	
	Jersey, IL	
	Madison, IL	
	Monroe, IL	
	St. Clair, IL	
	Franklin, MO	
	Jefferson, MO	

TABLE 3A.—URBAN WAGE INDEX—Continued

MSA	Urban area (constituent counties or county equivalents)	Wage index
	Lincoln, MO	
	St. Charles, MO	
	St. Louis, MO	
	St. Louis City, MO	
	Warren, MO	
	Sullivan City, MO	
7080	Salem, OR	1.0367
	Marion, OR	
	Polk, OR	
7120	Salinas, CA	1.4623
	Monterey, CA	
7160	Salt Lake City-Ogden, UT	0.9945
	Davis, UT	
	Salt Lake, UT	
	Weber, UT	
7200	San Angelo, TX	0.8374
	Tom Green, TX	
7240	San Antonio, TX	0.8753
	Bexar, TX	
	Comal, TX	
	Guadalupe, TX	
	Wilson, TX	
7320	San Diego, CA	1.1131
	San Diego, CA /	
7360	San Francisco, CA	1.4142
	Marin, CA	
	San Francisco, CA	
	San Mateo, CA	
7400	San Jose, CA	1.4145
	Santa Clara, CA	
7440	San Juan-Bayamon, PR	0.4741
	Aguas Buenas, PR	
	Barceloneta, PR	
	Bayamon, PR	
	Canovanas, PR	
	Carolina, PR	
	Catano, PR	
	Ceiba, PR	
	Comerio, PR	
	Corozal, PR	
	Dorado, PR	
	Fajardo, PR	
	Florida, PR	
	Guaynabo, PR	
	Humacao, PR	
	Juncos, PR	
	Los Piedras, PR	
	Loiza, PR	
	Luguillo, PR	
	Manati, PR	
	Morovis, PR	
	Naguabo, PR	
	Naranjito, PR	
	Rio Grande, PR	
	San Juan, PR	
	Toa Alta, PR	
	Toa Baja, PR	
	Trujillo Alto, PR	
	Vega Alta, PR	
	Vega Baja, PR	
	Yabucoa, PR	
7460	San Luis Obispo-Atascadero-Paso Robles, CA	1.1271
	San Luis Obispo, CA	
7480	Santa Barbara-Santa Maria-Lompoc, CA	1.0481
	Santa Barbara, CA	
7485	Santa Cruz-Watsonville, CA	1.3646
	Santa Cruz, CA	
7490	Santa Fe, NM	1.0712
	Los Alamos, NM	
	Santa Fe, NM	

TABLE 3A.—URBAN WAGE INDEX—Continued

MSA	Urban area (constituent counties or county equivalents)	Wage index
7500	Santa Rosa, CA	1.3046
	Sonoma, CA	
7510	Sarasota-Bradenton, FL	0.9425
	Manatee, FL	
	Sarasota, FL	
7520	Savannah, GA	0.9376
	Bryan, GA	
	Chatham, GA	
	Effingham, GA	
7560	Scranton-Wilkes Barre-Hazleton, PA	0.8599
	Columbia, PA	
	Lackawanna, PA	
	Luzerne, PA	
	Wyoming, PA	
7600	Seattle-Bellevue-Everett, WA	1.1474
	Island, WA	
	King, WA	
	Snohomish, WA	
7610	Sharon, PA	0.7869
	Mercer, PA	
7620	Sheboygan, WI	0.8697
	Sheboygan, WI	
7640	Sherman-Denison, TX	0.9255
	Grayson, TX	
7680	Shreveport-Bossier City, LA	0.8987
	Bossier, LA	
	Caddo, LA	
	Webster, LA	
7720	Sioux City, IA-NE	0.9046
	Woodbury, IA	
	Dakota, NE	
7760	Sioux Falls, SD	0.9257
	Lincoln, SD	
	Minnehaha, SD	
7800	South Bend, IN	0.9802
	St. Joseph, IN	
7840	Spokane, WA	1.0852
	Spokane, WA	
7880	Springfield, IL	0.8659
	Menard, IL	
	Sangamon, IL	
7920	Springfield, MO	0.8424
	Christian, MO	
	Greene, MO	
	Webster, MO	
8003	Springfield, MA	1.0927
	Hampden, MA	
	Hampshire, MA	
8050	State College, PA	0.8941
	Centre, PA	
8080	Steubenville-Weirton, OH–WV	0.8804
	Jefferson, OH	
	Brooke, WV	
	Hancock, WV	
8120	Stockton-Lodi, CA	1.0506
	San Joaquin, CA	
8140	Sumter, SC	0.8273
	Sumter, SC	
8160	Syracuse, NY	0.9714
	Cayuga, NY	
	Madison, NY	
	Onondaga, NY	
	Oswego, NY	
8200	Tacoma, WA	1.0940
	Pierce, WA	
8240	Tallahassee, FL	0.8504
	Gadsden, FL	
	Leon, FL	
8280	Tampa-St. Petersburg-Clearwater, FL	0.9065
	Hernando, FL	

TABLE 3A.—URBAN WAGE INDEX—Continued

MSA	Urban area (constituent counties or county equivalents)	Wage index
	Hillsborough, FL	
	Pasco, FL	
	Pinellas, FL	
8320	Terre Haute, IN	0.8599
	Clay, IN	
	Vermillion, IN	
	Vigo, IN	
8360	Texarkana, AR-Texarkana, TX	0.8088
	Miller, AR	
	Bowie, TX	
8400	Toledo, OH	0.9810
	Fulton, OH	
	Lucas, OH	
	Wood, OH	
8440	Topeka, KS	0.9199
	Shawnee, KS	
8480	Trenton, NJ	1.0432
	Mercer, NJ	
8520	Tucson, AZ	0.8911
	Pima, AZ	
8560	Tulsa, OK	0.8332
	Creek, OK	
	Osage, OK	
	Rogers, OK	
	Tulsa, OK	
	Wagoner, OK	
8600	Tuscaloosa, AL	0.8130
	Tuscaloosa, AL	
8640	Tyler, TX	0.9521
	Smith, TX	
8680	Utica-Rome, NY	0.8465
	Herkimer, NY	
	Oneida, NY	
8720	Vallejo-Fairfield-Napa, CA	1.3354
	Napa, CA	
	Solano, CA	
8735	Ventura, CA	1.1096
	Ventura, CA	
8750	Victoria, TX	0.8756
	Victoria, TX	
8760	Vineland-Millville-Bridgeton, NJ	1.0031
	Cumberland, NJ	
8780	Visalia-Tulare-Porterville, CA	0.9429
	Tulare, CA	
8800	Waco, TX	0.8073
	McLennan, TX	
8840	Washington, DC–MD–VA–WV	1.0851
	District of Columbia, DC	
	Calvert, MD	
	Charles, MD	
	Frederick, MD	
	Montgomery, MD	
	Prince Georges, MD	
	Alexandria City, VA	
	Arlington, VA	
	Clarke, VA	
	Culpepper, VA	
	Fairfax, VA	
	Fairfax City, VA	
	Falls Church City, VA	
	Fauquier, VA	
	Fredericksburg City, VA	
	King George, VA	
	Loudoun, VA	
	Manassas City, VA	
	Manassas Park City, VA	
	Prince William, VA	
	Spotsylvania, VA	
	Stafford, VA	
	Warren, VA	

TABLE 3A.—URBAN WAGE INDEX—Continued

MSA	Urban area (constituent counties or county equivalents)	Wage index
	Berkeley, WV	
	Jefferson, WV	
8920	Waterloo-Cedar Falls, IA	0.8069
	Black Hawk, IA	
8940	Wausau, WI	0.9782
	Marathon, WI	
8960	West Palm Beach-Boca Raton, FL	0.9939
	Palm Beach, FL	
9000	Wheeling, OH–WV	0.7670
	Belmont, OH	
	Marshall, WV	
	Ohio, WV	
9040	Wichita, KS	0.9520
	Butler, KS	
	Harvey, KS	
	Sedgwick, KS	
9080	Wichita Falls, TX	0.8498
	Archer, TX	
	Wichita, TX	
9140	Williamsport, PA	0.8544
	Lycoming, PA	
9160	Wilmington-Newark, DE–MD	1.1173
	New Castle, DE	
	Cecil, MD	
9200	Wilmington, NC	0.9640
	New Hanover, NC	
	Brunswick, NC	
9260	Yakima, WA	1.0569
	Yakima, WA	
9270	Yolo, CA	0.9434
	Yolo, CA	
9280	York, PA	0.9026
	York, PA	
9320	Youngstown-Warren, OH	0.9358
	Columbiana, OH	
	Mahoning, OH	
	Trumbull, OH	
9340	Yuba City, CA	1.0276
	Sutter, CA	
	Yuba, CA	
9360	Yuma, AZ	0.8589
	Yuma, AZ	

TABLE 3B.—RURAL WAGE INDEX

Nonurban area	Wage index
Alabama	0.7660
Alaska	1.2293
Arizona	0.8493
Arkansas	0.7666
California	0.9840
Colorado	0.9015
Connecticut	1.2394
Delaware	0.9128
Florida	0.8814
Georgia	0.8230
Guam	0.9611
Hawaii	1.0255
Idaho	0.8747
Illinois	0.8204
Indiana	0.8755
Iowa	0.8315
Kansas	0.7923
Kentucky	0.8079
Louisiana	0.7567
Maine	0.8874
Maryland	0.8946

TABLE 3B.—RURAL WAGE INDEX—Continued.

Nonurban area	Wage index
Massachusetts	1.1288
Michigan	0.9000
Minnesota	0.9151
Mississippi	0.7680
Missouri	0.8021
Montana	0.8481
Nebraska	0.8204
Nevada	0.9577
New Hampshire	0.9796
New Jersey [1]	
New Mexico	0.8872
New York	0.8542
North Carolina	0.8666
North Dakota	0.7788
Ohio	0.8613
Oklahoma	0.7590
Oregon	1.0303
Pennsylvania	0.8462
Puerto Rico	0.4356
Rhode Island [1]	

TABLE 3B.—RURAL WAGE INDEX—Continued

Nonurban area	Wage index
South Carolina	0.8607
South Dakota	0.7815
Tennessee	0.7877
Texas	0.7821
Utah	0.9312
Vermont	0.9345
Virginia	0.8504
Virgin Islands	0.7845*
Washington	1.0179
West Virginia	0.7975
Wisconsin	0.9162
Wyoming	0.9007

[1] All counties within the State are classified urban.

[FR Doc. 03–19540 Filed 7–31–03; 8:45 am]

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Federal Register

Friday,
August 1, 2003

Part V

Department of Housing and Urban Development

24 CFR Part 905

Public Housing Capital Fund Program Obligation and Expenditure of Funds; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 905

[Docket No. FR–4507–F–02]

RIN 2577–AC16

Public Housing Capital Fund Program Obligation and Expenditure of Funds

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule promulgates HUD's regulation for section 9(j) of the United States Housing Act of 1937, which deals with the obligation and expenditure of Capital Fund Program funds by public housing agencies, in accordance with congressional direction.

DATES: Effective Date: September 2, 2003.

FOR FURTHER INFORMATION CONTACT: William Thorson, Director, Office of Capital Improvements, Public and Indian Housing, Room 4134, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–5000; telephone (202) 708–1640, ext. 4999 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 519 of the Quality Housing and Work Responsibility Act of 1998 (Pub.L. 105–276, approved October 21, 1998) (QHWRA) amends section 9 of the United States Housing Act of 1937 (1937 Act) (42 U.S.C. 1437g) to provide a "Capital Fund," to be established by HUD for the purpose of making assistance available to public housing agencies (PHAs) to carry out capital and management improvement activities. Among other things, section 9 requires HUD to develop a formula for determining the amount of assistance provided on an annual basis to PHAs from the Capital Fund, including a mechanism to reward performance. The statute also requires the Capital Fund Formula (CFF) be developed through negotiated rulemaking procedures. The CFF is the subject of a separate final rule, published on March 16, 2000 (65 FR 14422), and amended on May 2, 2000 (65 FR 25446). HUD will also publish a proposed rule that would provide additional Capital Fund Program (CFP) requirements.

Section 9(j) of the 1937 Act establishes time limits for the obligation and expenditure of CFP funds, and penalties for violations of those limits. Under section 9(j), unless HUD grants an extension, a PHA has 24 months for obligation and four years for expenditure of CFP funds, which are received pursuant to section 9(d), before the statutory penalties may be imposed.

HUD's Fiscal Year 2003 Appropriations Act, Title II of Division K of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7, 117 Stat. 11, approved February 20, 2003) (FY 2003 Appropriations Act) includes a requirement "That the Secretary shall issue final regulations to carry out section 9(j) of the United States Housing Act of 1937 (42 U.S.C. 1437g(j)) not later than August 1, 2003." HUD is issuing this final rule to address that requirement. This rule places the obligation and expenditure requirements at 24 CFR 905.120 of HUD's regulations. The rule basically follows the statutory language of section 9(j) without addition except to conform the statutory language to a regulatory format as noted in this preamble.

The addition made by this rule consists of explicitly stating at § 905.120(b)(1) that a PHA may request an extension of the time period for obligation, as permitted under section 9(j)(2). Section 9(j)(2) permits HUD to grant an extension, and it follows that a PHA must be allowed to request an extension.

Findings and Certifications

Justification for Final Rulemaking

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with HUD's own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide for exceptions for that general rule where HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is determined to be "impracticable, unnecessary, or contrary to the public interest." HUD finds that good cause exists to publish this final rule for effect without first soliciting public comment in that prior public procedure would be unnecessary. Section 905.120 only repeats the statutory requirements of section 9(j) of the 1937 Act, which do not need rulemaking to be effective and which HUD may not, in any event, change through a regulation in response to public comment.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made for this rule in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0500.

Regulatory Planning and Review

The Office of Management and Budget (OMB) has reviewed this rule under Executive Order 12866 (Regulatory Planning and Review). OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not economically significant as provided in section 3(f)(1) of the Order). Any changes made to the rule as a result of that review are identified in the docket file, which is available for public inspection in the Regulations Division, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0500.

Regulatory Flexibility Act

The Secretary has reviewed this rule before publication and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this rule would not have a significant economic impact on a substantial number of small entities. The rule only includes statutory requirements that the Department may not alter by regulation and all entities are treated as required by the statute.

Executive Order 13132, Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either (1) imposes substantial direct compliance costs on state and local governments and is not required by statute, or (2) the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments within the meaning of Executive Order 13132.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and on the private sector.

This rule does not impose, within the meaning of the UMRA, any federal mandates on any state, local, or tribal governments or on the private sector.

List of Subjects in 24 CFR Part 905

Grant programs—housing and community development, Modernization, Public housing, Reporting and recordkeeping requirements.

Catalog

The Catalog of Federal Domestic Assistance number for the program affected by this rule is 14.850.

■ For the reasons discussed in the preamble, chapter IX of title 24 of the Code of Federal Regulations is amended as follows:

PART 905—THE PUBLIC HOUSING CAPITAL FUND PROGRAM

■ 1. The authority citation for 24 CFR part 905 continues to read as follows:

Authority: 42 U.S.C. 1437g and 3535(d).

■ 2. Add a new § 905.120 to read as follows:

§ 905.120 Penalties for slow obligation or expenditure of CFP assistance.

In addition to any other statutory, regulatory, or contractual sanctions available to HUD, the penalties for slow obligation or expenditure of CFP assistance will be applied as follows:

(a) *Obligation of amounts.* (1) Except as provided in paragraph (b) of this section, a PHA must obligate any assistance received under this part not later than 24 months after, as applicable:

(i) The date on which the funds become available to the PHA for obligation in the case of modernization; or

(ii) The date on which the PHA accumulates adequate funds to undertake modernization, substantial rehabilitation, or new construction of units.

(2) Notwithstanding paragraph (a)(1) of this section, any funds appropriated to a PHA for Fiscal Year 1997 or prior fiscal years shall be fully obligated by the PHA not later than September 30, 1999.

(b) *Exceptions to obligation requirement.* (1) *Extension before expiration of obligation period.* A PHA may request and HUD may approve a longer timeframe or HUD may, by prior approval granted before the expiration of the time period in paragraph (a) of this section, extend the time period under paragraph (a) of this section for an additional period not to exceed 12 months, based on:

(i) The size of the PHA;

(ii) The complexity of the capital program of the PHA;

(iii) Any limitation on the ability of the PHA to obligate the amounts allocated for the PHA from the Capital Fund in a timely manner as a result of state or local law; or

(iv) Such other factors as HUD determines to be relevant.

(2) *Extension of obligation period.* HUD may extend the time period under paragraph (a) of this section for a PHA, for such period as HUD determines to be necessary, if HUD determines that the failure of the agency to obligate assistance in a timely manner is attributable to:

(i) Litigation;

(ii) Obtaining approvals of the federal government or a state or local government;

(iii) Complying with environmental assessment and abatement requirements;

(iv) Relocating residents;

(v) An event beyond the control of the PHA; or

(vi) Any other reason established by HUD by notice published in the **Federal Register**.

(3) *Disregard of minimal unobligated amounts.* HUD will disregard the requirements of paragraph (a) of this section with respect to any unobligated amounts made available to a PHA, to the extent that the total of such amounts does not exceed 10 percent of the original amount made available to the PHA.

(c) *Effect of failure to comply.* (1) *Prohibition of new assistance.* A PHA will not be awarded CFP assistance for any month during any fiscal year in which the PHA has funds unobligated in violation of paragraph (a) or (b) of this section.

(2) *Withholding of assistance.* During any fiscal year described in paragraph (c)(1) of this section, HUD will withhold all assistance that would otherwise be provided to the PHA. If the PHA cures its failure to comply during the year, it shall be provided with the share attributable to the months remaining in the year.

(3) *Redistribution.* The total amount of any funds not provided PHAs by operation of this section shall be allocated for PHAs determined to be high-performing under the Public Housing Assessment System (at 24 CFR part 902) (or the applicable performance evaluation program for public housing).

(d) *Expenditure of amounts.* (1) *In general.* A PHA must spend any assistance received under this part not later than four years (plus the period of any extension approved by HUD under paragraph (b) of this section) after the date on which funds become available to the PHA for obligation.

(2) *Enforcement.* HUD will enforce the requirement of paragraph (d)(1) of this section through default remedies up to and including withdrawal of the CFP funding.

(e) *Right of recapture.* Any obligation entered into by a PHA is subject to the HUD's right to recapture the obligated amounts for violation by the PHA of the requirements of this section.

Dated: July 28, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–19613 Filed 7–31–03; 8:45 am].

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Federal Register

Friday,
August 1, 2003

Part VI

Department of Housing and Urban Development

24 CFR Part 960
PHA Discretion in Treatment of Over-Income Families; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 960

[Docket No. FR–4824–P–01]

RIN 2577–AC42

PHA Discretion in Treatment of Over-Income Families

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would give public housing agencies (PHAs) the discretion, in accordance with federal law and regulations, to evict public housing tenants who are over the income limit for eligibility to participate in public housing programs. PHAs may decide that such families should be able to find other housing and that public housing units should be made available for families with greater housing need.

DATES: Comments Due Date: September 30, 2003.

ADDRESSES: Interested persons are invited to submit written comments regarding this rule to the Regulations Division, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Facsimile (FAX) comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: Pat Arnaudo, Office of Public Housing Occupancy and Management, Department of Housing and Urban Development, Room 4116, 451 Seventh Street, SW., Washington, DC 20410–5000; telephone (202) 708–0744 (this is not a toll-free number). Hearing or speech impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

This rule proposes to amend 24 CFR 960.261, "Restrictions on evictions of families based upon income," which limits the authority of PHAs to evict families residing in public housing based on an increase in income unless: (1) The PHA has determined that there is other decent, safe, and sanitary housing available to the tenant at a rent not exceeding the then-current tenant rent; or (2) the PHA is required to evict the family by local law. Through this rule, HUD proposes that a PHA have the discretion to evict a family that is over the eligible income limit. HUD believes that public housing should be available to low-income families and that it is inappropriate to limit the ability of a PHA to move over-income families out of public housing to make room for low-income families on waiting lists.

The restriction on eviction provision is a regulatory requirement, not a statutory one. The CFR section has undergone some revision since its original promulgation; it was promulgated in its current form on March 29, 2000. (*See* 65 FR 16729.)

There are statutory provisions in the U.S. Housing Act of 1937, 42 U.S.C. 1437 *et seq.* (the 1937 Act) and policy considerations that affect the ability of PHAs to evict residents based on income changes in some specifically defined cases. These considerations relate to the two-year earned income disallowance in section 3(d) of the Act, 42 U.S.C. 1437a(d), and the Family Self-Sufficiency program under section 23 of the Act, 42 U.S.C. 1437u.

In order to create an incentive for public housing residents to find employment, the 1937 Act provides for a moratorium on increases in rent because of employment, under specified statutory criteria that ensure that over-income families remain in place for valid reasons. Section 3(d) of the 1937 Act (42 U.S.C. 1437a(d)), provides that for certain families who have a member who succeeds in becoming employed, rent is not increased at all for the 12-month period following the commencement of employment and is increased only in a 50 percent increment for the subsequent 12-month period. This temporary disallowance only applies to families who have a member: (1) Whose income increases as a result of employment if the member was previously unemployed for one or more years; (2) whose income increases because of participation in a local self-sufficiency program; or (3) who is or was within the previous 6 months assisted under a state program for temporary assistance to needy families (TANF). (*See* 42 U.S.C. 1437a(d).) This statute not only implies that such families should not be considered over-income until the period of rent moratorium expires, it is part of an important HUD policy to create incentives for self-sufficiency and employment that will ultimately enable families to leave public housing. HUD does not wish to undermine this policy, so this rule would exempt families eligible for the earned income disregard from those who may be immediately evicted when over income.

Similarly, the Family Self-Sufficiency (FSS) program under 42 U.S.C. 1437u, provides that families enter into contracts of participation with the PHA under which the head of the household is required to seek suitable employment during the term of the contract. The FSS program is an important policy initiative of the department to coordinate resources to enable public housing residents to achieve economic self-sufficiency. Allowing participants to be evicted during the term of the contract because they found employment, which is the object of the self-sufficiency contract, would undermine the program. Therefore, this proposed rule would exempt such families from eviction so long as they have a valid contract of participation in an FSS program under the statute and HUD's regulations.

II. This Proposed Rule

HUD believes that, except for the statutory special-case exemptions noted above in Section I of this preamble, PHAs should be free to make local decisions to serve low-income families. Those with incomes over 80 percent of the median—the upper limit for public housing admissions eligibility—should be able to find housing in the private market, and the PHA will therefore be able to focus its efforts on families with lower incomes. In the past, 24 CFR 960.261 and its predecessor sections have unduly limited the PHA's ability to respond to over-income families who choose to remain in public housing. HUD believes it is better policy to grant PHAs the ability to target scarce public resources to those most in need for housing. HUD, under its general regulatory authority provided in 42 U.S.C. 3535(d), which states that the Secretary may "make such regulations as may be necessary to carry out his functions, powers, and duties," is proposing to implement this policy by amending 24 CFR 960.261.

III. Findings and Certifications

Environmental Impact

This rule concerns a statutorily required and/or discretionary establishment and review of income limits and exclusions with regard to eligibility for or calculation of HUD housing assistance or rental assistance. As such, this rule is categorically excluded from the provisions of the National Environmental Policy Act, 42 U.S.C. 4332, under 24 CFR 50.19(c)(6) of HUD's regulations.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule and in so doing certifies that this rule would not have a significant economic impact on a substantial number of small entities.

This rule is concerned only with granting PHAs the discretion to evict over-income families. It does not mandate that any PHA take such action. Furthermore, the rule preserves the ability that small PHAs with fewer than 250 units have to admit over-income families in cases where there is no demand for a unit by an eligible family, thus preventing such small PHAs from having to support vacant units. Therefore, this rule would not have a significant economic impact on a substantial number of small entities.

Although HUD has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities, HUD welcomes comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This proposed rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of the UMRA.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this proposed rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the proposed rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410–0500.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number applicable to the program affected by this rule is 14.850.

List of Subjects in 24 CFR Part 960

Aged, Grant programs—housing and community development, Individuals with disabilities, Pets, Public housing.

For the reasons stated in the preamble, HUD proposes to amend 24 CFR part 960 as follows:

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

1. The authority citation for part 960 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437n, 1437z–3, and 3535(d).

* * * * *

Subpart C—Rent and Reexamination

2. Revise 24 CFR 960.261 to read as follows:

§ 960.261 Restriction on eviction of families based on income.

(a) PHAs may evict or terminate the tenancies of families who are over income, subject to paragraphs (b) and (c) of this section.

(b) Unless it is required to do so by local law, a PHA may not evict or terminate the tenancy of a family solely because the family is over income, if the family is entitled to the disallowance of earned income as provided at 42 U.S.C. 1437a(d), so long as that family or a member of that family meets the requirements of that section.

(c) Unless it is required to do so by local law, a PHA may not evict or terminate the tenancy of a family solely because the family is over income, if the family has a contract for participation in an FSS program under part 984 of this title.

Dated: July 2, 2003.

Michael M. Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–19623 Filed 7–31–03; 8:45 am]

BILLING CODE 4210–33–P

Federal Register

Friday,
August 1, 2003

Part VII

The President

Notice of July 31, 2003—Continuation of the National Emergency With Respect to Iraq

Federal Register
Vol. 68, No. 148
Friday, August 1, 2003

Presidential Documents

Title 3—

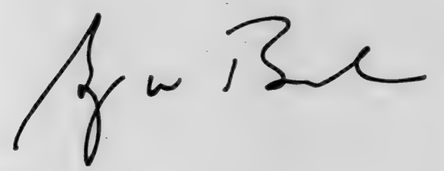
The President

Notice of July 31, 2003

Continuation of the National Emergency With Respect to Iraq

On August 2, 1990, by Executive Order 12722, President Bush declared a national emergency with respect to Iraq pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Iraq—the Saddam Hussein regime. By Executive Orders 12722 of August 2, 1990, and 12724 of August 9, 1990, the President imposed trade sanctions on Iraq and blocked Iraqi government assets. Additional measures were taken with respect to this national emergency by Executive Order 13290 of March 20, 2003. Because of the continued instability in Iraq, the United States and Coalition partners' role as the temporary authority in Iraq, and the need to ensure the establishment of a process leading to representative Iraqi self-rule, the national emergency declared on August 2, 1990, and the measures adopted on August 2 and August 9, 1990, and March 20, 2003, to deal with that emergency must continue in effect beyond August 2, 2003. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Iraq.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
July 31, 2003.

[FR Doc. 03–19890
Filed 7–31–03; 11:45 am]
Billing code 3195–01–P

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S. 246/P.L. 108–66

To provide that certain Bureau of Land Management land shall be held in trust for the Pueblo of Santa Clara and the Pueblo of San Ildefonso in the State of New Mexico. (July 30, 2003; 117 Stat. 876)

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108th Congress

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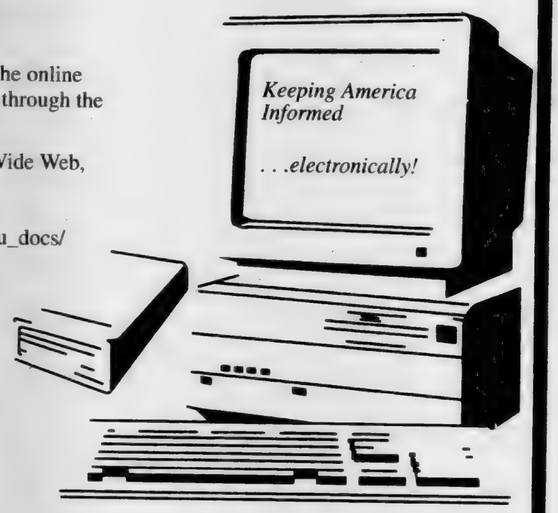
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 82

[Docket No. 02–117–9]

Exotic Newcastle Disease; Removal of Areas From Quarantine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the exotic Newcastle disease regulations by removing portions of Arizona, California, Nevada, and Texas from the list of quarantined areas. This action removes restrictions on the movement of birds, poultry, and certain other articles from those areas. With this action, there are no longer any areas in Arizona, Nevada, and Texas that are quarantined because of exotic Newcastle disease, and the size of the quarantined area in California is reduced.

DATES: This interim rule was effective July 30, 2003. We will consider all comments that we receive on or before October 3, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–117–9, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–117–9. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–117–9" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Aida Boghossian, Senior Staff Veterinarian, Emergency Programs Staff, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231; (301) 734–8073.

SUPPLEMENTARY INFORMATION:

Background

Exotic Newcastle disease (END) is a contagious and fatal viral disease affecting the respiratory, nervous, and digestive systems of birds and poultry. END is so virulent that many birds and poultry die without showing any clinical signs. A death rate of almost 100 percent can occur in unvaccinated poultry flocks. END can infect and cause death even in vaccinated poultry.

The regulations in "Subpart A—Exotic Newcastle Disease (END)" (9 CFR 82.1 through 82.16, referred to below as the regulations) were established to prevent the spread of END in the United States in the event of an outbreak. In § 82.3, paragraph (a) provides that any area where birds or poultry infected with END are located will be designated as a quarantined area, and that a quarantined area is any geographical area, which may be a premises or all or part of a State, deemed by epidemiological evaluation to be sufficient to contain all birds or poultry known to be infected with or exposed to END.

Prior to the effective date of this interim rule, portions of Arizona, California, Nevada, and Texas were designated as quarantined areas in § 82.3(c) of the regulations. As a result, the interstate movement from those quarantined areas of birds, poultry, products, and materials that could spread END was prohibited or restricted. Further, because the Secretary of Agriculture declared an extraordinary emergency because of END in those States, the intrastate movement from the quarantined areas of birds, poultry, products, and materials that could spread END was prohibited or restricted, as provided by the regulations in § 82.16.

Quarantine Actions in California

On October 1, 2002, END was confirmed in the State of California. The disease was confirmed in backyard poultry, which are raised on private premises for hobby, exhibition, and personal consumption. Consequently, in an interim rule effective on November 21, 2002, and published in the **Federal Register** on November 26, 2002 (67 FR 70674–70675, Docket No. 02–117–1), we amended the regulations in § 82.3(c) by designating Los Angeles County, CA, and portions of Riverside and San Bernardino Counties, CA, as quarantined areas.

Subsequent detections of END in backyard and commercial poultry on other premises in California led us to further amend § 82.3(c) in order to quarantine additional areas in that State. Specifically:

- In an interim rule effective on January 7, 2003, and published in the **Federal Register** on January 13, 2003 (68 FR 1515–1517, Docket No. 02–117–2), we added Imperial, Orange, San Diego, Santa Barbara, and Ventura Counties, CA, and the previously non-quarantined portions of Riverside and San Bernardino Counties, CA, to the list of quarantined areas.
- In an interim rule effective on May 13, 2003, and published in the **Federal Register** on May 19, 2003 (68 FR 26988–26990, Docket No. 02–117–7), we added a portion of Kern County, CA, to the list of quarantined areas.

As provided for by the regulations in § 82.3(a), these quarantined areas in California encompassed each area where poultry infected with END were located and a surrounding geographical area deemed by epidemiological evaluation to be sufficient to contain all birds or poultry known to be infected with or exposed to END.

Quarantine Actions in Arizona, Nevada, and Texas

In addition to the detections of END in California, the disease was also confirmed in backyard poultry on premises in three other States: In Nevada on January 16, 2003; in Arizona on February 4, 2003; and in Texas on April 9, 2003. Shortly after each of those confirmations, we responded by publishing an interim rule amending § 82.3(c) to designate areas surrounding the affected premises as quarantined areas. Specifically:

- In interim rule effective January 17, 2003, and published in the **Federal Register** on January 24, 2003 (68 FR 3375–3376, Docket No. 02–117–3), we designated all of Clark County, NV, and a portion of Nye County, NV, as a quarantined area;
- In an interim rule effective February 10, 2003, and published in the **Federal Register** on February 14, 2003 (68 FR 7412–7413, Docket No. 02–117–4), we designated La Paz and Yuma Counties, AZ, and a portion of Mohave County, AZ, as a quarantined area; and
- In an interim rule effective April 10, 2003, and published in the **Federal Register** on April 16, 2003 (68 FR 18531–18532, Docket No. 02–117–5), we designated El Paso and Hudspeth Counties, TX, and Dona Ana, Luna, and Otero Counties, NM, as a quarantined area.

As was the case with California, the areas Arizona, Nevada, and Texas that were quarantined in those interim rules encompassed each area where poultry infected with END were located and a surrounding geographical area deemed by epidemiological evaluation to be sufficient to contain all birds or poultry known to be infected with or exposed to END, as provided for by the regulations in § 82.3(a).

Previous Reductions in Quarantined Areas

After evaluating the results of extensive investigations conducted in Arizona, Nevada, New Mexico, and Texas, APHIS epidemiologists determined it was possible to reduce the size of the quarantined areas in those States by eliminating areas in which END had not been found. Thus, in an interim rule effective May 14, 2003, and published in the **Federal Register** on May 19, 2003 (69 FR 26986–26988, Docket No. 02–117–6), we amended the regulations in § 82.3(c) by reducing the size of the quarantined areas in Nevada and Arizona, leaving only portions of La Paz County, AZ, and Clark County, NV, as quarantined areas in those States. Similarly, in another interim rule effective June 5, 2003, and published in the **Federal Register** on June 11, 2003 (69 FR 34779–34781, Docket No. 02–117–8), we amended the regulations in § 82.3(c) by reducing the size of the quarantined areas in Texas and eliminating the quarantined areas in New Mexico, leaving only a portion of El Paso County, TX, as a quarantined area in that State.

Additional Reductions in Quarantined Areas

In this interim rule, we are reducing the size of the quarantined area in California and eliminating the last remaining quarantined areas in Arizona, Nevada, and Texas. Except for portions of San Diego County, the areas we are removing from quarantine in California are areas in which END has not been found after extensive surveillance. Our actions with respect to La Paz County, AZ, Clark County, NV, El Paso County, TX, and the remaining portions of San Diego County, CA—areas that had, at one time, contained infected premises—are based upon our determination that those areas meet the criteria contained in § 82.14 of the regulations for release from quarantine. Our basis for these actions is discussed in greater detail below.

Areas in Which END Has Not Been Found

No END-positive premises were detected in Imperial, Orange, or Santa Barbara Counties, CA, or in large areas of Kern, Los Angeles, Riverside, San Bernardino, San Diego, and Ventura Counties, CA. Large parts of these areas are made up of public lands or mountains, desert, or other largely uninhabited terrain. Intense surveillance and testing of both noncommercial and commercial poultry premises was carried out in these areas, also known as the surveillance zone, and resulted in no END-positive premises being detected.

Noncommercial premises. An inventory of at-risk noncommercial premises was developed for the areas targeted for quarantine release. In addition to information previously collected through eradication activities, sources of information included local animal control authorities, local law enforcement, county agricultural officials, extension personnel, and animal welfare workers.

Surveillance efforts were concentrated in areas that had at-risk premises. An at-risk premises was defined as a premises inhabited by poultry, ratites, or an aviary. Within this population, premises considered highest risk were targeted for sampling. High risk premises were defined as any premises with any galliform birds (chickens, turkeys, pheasant, quail, partridge, guinea fowl, pea fowl, *etc.*), columbiform birds (pigeons, doves), or anseriform birds (ducks, geese, swans). Other factors considered to indicate high risk were multiple owners on the same premises, premises with sick or dead birds, history of movement of birds, and possible contact with an infected premises.

The sampling period was concentrated from March through June 2003, but began as early as January 2003. All sampling of the surveillance zone was completed by early July 2003. At least 6,917 premises with birds were identified in the surveillance zone. The true total number of premises with birds in the surveillance zone is not known, but efforts were made to identify the areas most likely to have at-risk premises.

Overall, a total of 1,811 at-risk premises were sampled from a population of 3,386 at-risk premises in the surveillance zone. Over 23,600 birds were sampled and tested for END virus. None of the samples yielded a positive result.

TABLE 1.—AT-RISK NONCOMMERCIAL PREMISES SAMPLED BY COUNTY IN CALIFORNIA

County	Number of premises sampled	County	Number of premises sampled
Imperial	182	San Bernardino	124
Kern	15	San Diego	343
Los Angeles	39	Santa Barbara	349
Orange	256	Ventura	274
Riverside	229		

Commercial premises. Active weekly surveillance of commercial poultry premises in the surveillance zone began in January 2003. All commercial premises with chickens were under weekly active surveillance beginning April 10, 2003, or earlier. All commercial premises have a documented biosecurity protocol in place. Also, these premises must report any significant increase in death losses or the occurrences of clinical signs consistent with END.

A total of 29 commercial poultry premises were located in the surveillance zone in California, of which 17 premises had birds present. The total estimated number of commercial birds on the 17 premises was over 1 million. The other commercial premises were either egg processors, manure haulers, or were void of birds and therefore did not participate in active surveillance. A representative sampling of either live or dead birds from each poultry house was done weekly. Sample collection was done by either an accredited veterinarian or authorized company personnel. No END positive premises were found.

As noted previously, the regulations in § 82.3(a) provide that any area where birds or poultry infected with END are located will be designated as a quarantined area, and that a quarantined area is any geographical area, which may be a premises or all or part of a State, deemed by epidemiological evaluation to be sufficient to contain all birds or poultry known to be infected with or exposed to END.

Animal and Plant Health Inspection Service (APHIS) epidemiologists have evaluated the results of the investigations conducted in California and have determined that we may now reduce the size of the quarantined area in that State. This determination is based on, among other things, the demonstrated absence of birds or poultry infected with or exposed to END in specific areas. The regulations in § 82.14 provide requirements that must be met before an area may be removed from quarantine, but those requirements relate to measures taken with respect to END-infected or -exposed birds and poultry, their eggs and manure, and articles and premises with which such birds or their manure or litter have come in contact. As there were no END-infected or -exposed birds or poultry in Imperial, Orange,[1] and Santa Barbara Counties, CA, or in portions of Kern, Los Angeles, Riverside, San Bernardino, San Diego, and Ventura Counties, CA, there are no requirements under § 82.14 that need to be met before those areas can be removed from quarantine.

Areas That Contained Infected Premises

An area where END positive premises have been detected is known as an "infected area." The infected area in Arizona and in Texas each had one END positive premises. The infected area in Nevada had 10 positive premises detected. None of the infected premises in those three States were commercial poultry premises. The infected area of San Diego County, CA, had 20 infected premises, 7 of which were commercial poultry premises. All birds on all infected premises, and any premises exposed to those infected premises, were depopulated. The date of depopulation on the final END positive premises in each infected area was:

- Clark County, NV: January 29, 2003;
- La Paz County, AZ: February 7, 2003;
- El Paso County, TX: April 7, 2003; and
- San Diego County, CA: April 21, 2003.

Intensive surveillance and testing of both noncommercial and commercial poultry premises was carried out in the infected areas and resulted in no additional END positive premises being detected.

Noncommercial premises. An inventory of at-risk noncommercial premises was developed for the infected areas. Surveillance efforts were then concentrated in portions of the infected areas that had at-risk premises. An at-risk premises was defined as a premises inhabited by poultry, ratites, or an aviary. Within this population, premises considered highest risk were targeted for sampling.

Results of the surveillance conducted in the infected areas in Arizona, Nevada, and Texas were reported in our interim rules of May 19, 2003 (for Arizona and Nevada), and June 11, 2003 (for Texas), cited previously. None of the samples collected was positive for END virus.

In the infected area of San Diego County, CA, all of the sampling was conducted during the 6-week period from June 1 through July 12, 2003. The majority of the sampling of premises was conducted during a 2-week period from June 22 to July 5, 2003. At least 1,126 premises with birds were identified in the area. The true total number of premises with birds in the area is not known, but efforts were made to identify the areas most likely to have at-risk premises.

Overall, a total of 539 at-risk premises were sampled from a population of 701 at-risk premises in the infected area of San Diego County, CA. Over 5,100 birds were sampled and tested for END virus. None of the samples yielded a positive result.

Commercial premises. Active weekly surveillance of commercial poultry premises in the infected area of San Diego County, CA, began in February 2003. All commercial premises with birds have been under weekly active surveillance for at least 6 weeks and have a documented biosecurity protocol in place. Also, these premises must report any significant increase in death losses or the occurrences of clinical signs consistent with END.

A total of 30 commercial poultry premises are located in the infected area, of which 22 premises had birds present. The eight other commercial premises are egg processors and did not participate in active surveillance. Seven of the 22 premises with birds were found to be infected and were depopulated. Two other premises are now void of birds. A representative sampling of either live or dead birds from each poultry house on the remaining 13 premises with birds was performed weekly. Sample collection was done by either an accredited veterinarian or authorized company personnel. No END positive premises were found.

We have determined that all applicable requirements of § 82.14 to remove an area from quarantine have been met with respect to the remaining areas in La Paz County, AZ, San Diego County, CA, Clark County, NV, and El Paso County. Specifically, we have determined the following:

- All birds and poultry exposed to END have been found to be free of END;
- All birds and poultry infected with END have been euthanized;
- All parts of all birds and poultry that were euthanized or that died from any cause other than slaughter, all eggs produced by birds or poultry infected with or exposed to END, and all manure generated by and litter used by birds or poultry infected with or exposed to END have been buried at least 6 feet deep and covered at the time of burial with soil in a location within the quarantined area that meets all U.S. Environmental Protection Agency (EPA), State, and local requirements for landfills;
- All vehicles with which the birds or poultry infected with or exposed to END or their excrement or litter have had physical contact have been cleaned and

[1] Although there were no infected premises in Orange County, a portion of that county will remain as a quarantined area due to its proximity to areas in adjoining counties where infected premises were found.

disinfected in the manner prescribed in § 82.14(f);

- All cages, coops, containers, troughs, and other equipment used for birds or poultry infected with or exposed to END or their excrement or litter have been reduced to ashes by incineration or have been cleaned and disinfected in the manner prescribed in § 82.14(g); and
- The premises where birds or poultry infected with or exposed to END were located have been cleaned and disinfected in the manner prescribed in § 82.14(h).

Conclusion

Based on the information presented above, we are amending § 82.3(c) in this interim rule by removing Imperial and Santa Barbara Counties, CA, and portions of Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura Counties, CA, from the list of quarantined areas because the continued quarantine of these areas is no longer necessary to contain all birds and poultry infected with or exposed to END. Those portions of Kern, Los Angeles, Orange,[2] Riverside, San Bernardino, and Ventura Counties, CA, that will remain as quarantined areas, which are described in the amendments to § 82.3(c) at the end of this document, have been deemed by epidemiological evaluation to be sufficient to contain all birds or poultry known to be infected with or exposed to END. In addition, we are also amending the regulations in § 82.3(c) by removing the remaining portions of La Paz County, AZ, San Diego County, CA, Clark County, NV, and El Paso County, TX, from the list of quarantined areas based on our determination that the requirements of § 82.14 have been met with respect to those areas. With this action, there are no longer any areas in Arizona, Nevada, and Texas that are quarantined because of END, and the size of the quarantined area in California is reduced.

Immediate Action

Immediate action is warranted to relieve restrictions that are no longer necessary. We have determined that portions of Arizona, California, Nevada, and Texas may now be removed from the list of areas quarantined because of END. Therefore, immediate action is warranted to relieve the prohibitions or restrictions that have applied to the movement of birds, poultry, products, and other materials from those areas. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments that we receive during the comment period for this interim rule (*see* **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

[2] *See* footnote 1.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This rule amends the regulations by removing portions of Arizona, California, Nevada, and Texas from the list of quarantined areas. This action needs to be made effective immediately in order to remove restrictions on the movement of birds, poultry, and certain other articles from those areas that are no longer necessary.

This situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 82

Animal diseases, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, 9 CFR part 82 is amended as follows:

PART 82—EXOTIC NEWCASTLE DISEASE (END) AND CHLAMYDIOSIS

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 2. In § 82.3, paragraph (c), the entries for Arizona, Nevada, and Texas are removed and the entry for California is revised to read as follows:

§ 82.3 Quarantined areas.

* * * * *

(c) * * *

California

Kern County. That portion of the county bounded by a line drawn as follows: Beginning on the Kern/Los Angeles County line at the point where the county line is intersected by an imaginary line running northeast from the intersection of State Highway 126 and the Los Angeles/Ventura County line to the intersection of Tehachapi Willow Springs Road and West 100th Street in the city of Mojave; then northeast along that same imaginary line to the intersection of Tehachapi Willow Springs Road and West 100th Street in the city of Mojave; then north on West 100th Street to Laguna Street; then east on Laguna Street to West 90th Street; then north on West 90th Street to Oak Creek Road; then east on Oak Creek Road to State Highway 14; then south on State Highway 14 to State Highway 58; then east on State Highway 58 to East 30th Street in the city of Mojave; then southeast from that point along an imaginary line to the southeastern corner of Kern County; then west along the Kern/San Bernardino County line to the Kern/Los Angeles County line; then west along the Kern/Los Angeles County line to the point of beginning.

Los Angeles County. That portion of the county bounded by a line drawn as follows: Beginning at the intersection of the Los Angeles/Orange County line and East Willow Street in the city of Long Beach; then west along East Willow Street, West Willow Street, East Sepulveda Boulevard, West Sepulveda Boulevard, and Sepulveda Boulevard to Hawthorne Boulevard; then north on Hawthorne Boulevard to Manhattan Beach Boulevard; then west on Manhattan Beach Boulevard to the Manhattan Beach Pier (coast of the Pacific Ocean); then north and west along the coast of the Pacific Ocean to a point directly south of the intersection of Pacific Coast Highway (State Highway 1) and Malibu Canyon/Las Virgenes Road (County Highway N1); then north from that point to and on Malibu Canyon/Las Virgenes Road to Mulholland Drive; then west on Mulholland Drive to Kanan Road; then north on Kanan Road to U.S. Highway 101; then west on U.S. Highway 101 to the Los Angeles/Ventura County line; then northeast, east, north, east, and north along the Los Angeles/Ventura County line to State Highway 126; then northeast to the point where the Los Angeles/Kern County line is intersected by an imaginary line drawn between the intersection of the Los Angeles/Ventura County line and State Highway 126 and the intersection of Tehachapi Willow Springs Road and West 100th Street (the latter intersection is in the city of Mojave); then east along the Los Angeles/Kern County line to the Los Angeles/San Bernardino County line; then south along the Los Angeles/San Bernardino County line to the Los Angeles/Orange County line; then west, south, and southwest along the Los Angeles/Orange County line to the point of beginning.

Orange County. That portion of the county that lies north of a line drawn as follows: Beginning at the intersection of the Orange/Riverside County line and State Highway 91; then west on State Highway 91 to State Highway 90 (Imperial Highway); then northwest on State Highway 90 to State Highway 39 (Beach Boulevard); then south on State Highway 39 to Katella Avenue; then west on Katella Avenue to the Los Angeles/Orange County line.

Riverside County. That portion of the county bounded by a line drawn as follows: Beginning at the intersection of the San Bernardino County line and the eastern city limit of Cherry Valley; then south along the eastern city limit of Cherry Valley to Highland Springs Avenue; then south on Highland Springs Avenue to Interstate Highway 10; then west on Interstate Highway 10 to State Highway 79 (Lambs Canyon Road); then south on State Highway 79 to State Highway 74; then west on State Highway 74 to State Street in the city of Hemet; then south on State Street to Diamond Valley Road; then west on Diamond Valley Road to Palm Avenue; then south on Palm Avenue to De Portola Road; then south on De Portola Road to East Benton Road; then southeast from that point along an imaginary line to the intersection of Sage Road and State Highway 79; then east on State Highway 79 to State Highway 371; then southeast to the point where the Riverside/San Diego County line is intersected by an imaginary line drawn between the intersection of State Highway 79 and State Highway 371 and the intersection of State Highway 78 and West Side Road (the latter intersection is in San Diego County); then west along the Riverside/San Diego County line to the point where that line turns from northeast to due west; then northwest from that point along an imaginary line to the Riverside/Orange County line at the point where it turns from northeast to northwest (west of the city of Lake Elsinore); then northwest from that point along the Riverside/Orange County line to the Riverside/San Bernardino County line; then north and east along the Riverside/San Bernardino County line to the point of beginning.

San Bernardino County. That portion of the county that lies south and west of a line drawn as follows: Beginning at the Kern/San Bernardino County line at the southeastern corner of Kern County; then southeast from that point along an imaginary line to the intersection of Stoddard Wells Road and Dale Evans Parkway in the town of Apple Valley; then south on Dale Evans Parkway to Waalew Road; then east on Waalew Road to the Apple Valley town limit; then southeast from that point along an imaginary line to the intersection of State Highway 247 and Northside Road; then east on Northside Road to Meridian Road; then south on Meridian Road to Cambria Road; then east on Cambria Road to Post Office Road; then south on Post Office Road to State Highway 18; then southwest from that point along an imaginary line to the intersection of State Highway 18 and State Highway 38 (North Shore Drive) located west of the city of Big Bear Lake; then south from that point along an imaginary line to the San Bernardino/Riverside County line at the point where that county line turns from west to south just northwest of the city of Banning.

Ventura County. That portion of the county bounded by a line drawn as follows: Beginning at the intersection of the Ventura/Los Angeles County line and U.S. Highway 101; then west on U.S. Highway 101 to State Highway 34 (North Lewis Road); then north on State Highway 34 to State Highway 118; then northeast along an imaginary line to the intersection of Old Telegraph Road and State Highway 126; then east on State Highway 126 to the Ventura/Los Angeles County line; then south along the Ventura/Los Angeles County line to the point of beginning.

Done in Washington, DC, this 30th day of July 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–19695 Filed 8–1–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1

[TD 9083]

RIN 1545–AH49

Golden Parachute Payments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to golden parachute payments under section 280G of the Internal Revenue Code. These regulations incorporate changes and clarifications to reflect comments received concerning the proposed regulations primarily concerning the small corporation exemption, prepayment of the excise tax, and the definition of change in ownership or control.

DATES: *Effective Date:* August 4, 2003. These regulations apply to any payment that is contingent on a change in ownership or control if the change in ownership or control occurs on or after January 1, 2004.

Comments on the collection of information in § 1.280G–1, Q/A–7(a), should be received by October 3, 2003.

ADDRESSES: Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Erinn Madden at (202) 622–6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information in this final rule has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned control number 1545–1851.

The collection of information in this regulation is in § 1.280G–1, Q/A–7(a). This information is a brief description of all material facts concerning all payments which would be parachute payments (but for § 1.280G–1, Q/A–6). This information may be used by certain corporations with no readily tradeable stock (assuming certain shareholder approval requirements are also met) to determine if the payments to a disqualified individual are exempt from the definition of parachute payments. The collection of information is voluntary. The likely respondents are business or other for-profit institutions.

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by October 3, 2003. Comments are specifically requested concerning:

Whether the collection[s] of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

Estimated total annual reporting and/or recordkeeping burden: 12,000 hours.

Estimated average annual burden hours per respondent: 15 hours.

Estimated number of respondents and/or recordkeepers: 800

Estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to 26 CFR part 1 under section 280G of the Internal Revenue Code (Code). Sections 280G and 4999 of the Code were added to the Code by section 67 of the Deficit Reduction Act of 1984, Public Law 98–369 (98 Stat. 585). Section 280G was amended by section 1804(j) of the Tax Reform Act of 1986, Public Law 99–514 (100 Stat. 2807), section 1018(d) of the Technical and Miscellaneous Revenue Act of 1988, Public Law 100–647 (102 Stat. 3581) and section 1421 of the Small Business Job Protection Act of 1996, Public Law 104–188 (110 Stat. 1755).

Section 280G denies a deduction to a corporation for any excess parachute payment. Section 4999 imposes a 20-percent excise tax on the recipient of any excess parachute payment. Related provisions include section 275(a)(6), which denies the recipient a deduction for the section 4999 excise tax, and section 3121(v)(2)(A), which relates to the Federal Insurance Contributions Act.

On February 20, 2002, a notice of proposed rulemaking (REG–209114–90, 2002–2 I.R.B. 576), was published in the **Federal Register** at 67 FR 7630 (the 2002 proposed regulations) and corrected in the **Federal Register** at 67 FR 42210 on June 21, 2002. No hearing was requested or held. The IRS received written and electronic comments responding to the notice of proposed rulemaking. After consideration of the comments, the 2002 proposed regulations are adopted as amended by this Treasury decision. The significant revisions are discussed below.

Explanation of Provisions and Summary of Comments

Overview

Section 280G(b)(2)(A) defines a *parachute payment* as any payment that meets all of the following four conditions: (a) The payment is in the nature of compensation; (b) the payment is to, or for the benefit of, a disqualified individual; (c) the payment is contingent on a change in the ownership of a corporation, the effective control of a corporation, or the ownership of a substantial portion of the assets of a corporation (a change in ownership or control); and (d) the payment has (together with other payments described in (a), (b), and (c) of this paragraph with respect to the same individual) an aggregate present value of at least 3 times the individual's base amount. Section 280G(b)(2)(B) provides that the term *parachute payment* also includes any payment in the nature of compensation to, or for the benefit of, a disqualified individual if the payment is pursuant to an agreement that violates any generally enforced securities laws or regulations (securities violation parachute payment).

Section 280G(b)(1) defines the term *excess parachute payment* as an amount equal to the excess of any parachute payment over the portion of the disqualified individual's base amount that is allocated to such payment. For this purpose, the portion of the base amount allocated to a parachute payment is the amount that bears the same ratio to the base amount as the present value of the parachute payment bears to the aggregate present value of all such payments to the same disqualified individual.

Generally, excess parachute payments may be reduced by certain amounts of reasonable compensation. Section 280G(b)(4)(B) provides that, except in the case of securities violation parachute payments, the amount of an excess parachute payment is reduced by any portion of the payment that the taxpayer establishes by clear and convincing evidence is reasonable compensation for personal services actually rendered by the disqualified individual before the date of the change in ownership or control. Such reasonable compensation is first offset against the portion of the base amount allocated to the payment.

Exempt Payments

Section 280G specifically exempts from the definition of the term *parachute payment* several types of payments that would otherwise constitute parachute payments. Deductions for payments exempt from the definition of *parachute payment* are not disallowed by section 280G, and such exempt payments are not subject to the 20-percent excise tax of section 4999. In addition, such exempt payments are not taken into account in applying the 3-times-base-amount test of section 280G(b)(2)(A)(ii).

1. Tax-Exempt Entities

Q/A–6 of the 2002 proposed regulations provides that a payment with respect to a tax-exempt entity that would otherwise constitute a parachute payment is exempt from the definition of the term *parachute payment* if certain conditions are satisfied. First, the payment must be made by a corporation undergoing a change in ownership or control that is a *tax-exempt organization*. As defined in the 2002 proposed regulations, a *tax-exempt organization* is any organization described in section 501(c) that is subject to any express statutory prohibition against inurement of net earnings to the benefit of any private shareholder or individual, an organization described in sections 501(c)(1) or 501(c)(21), any religious or apostolic organization described in section 501(d), or any qualified tuition program described in section 529. Second, the organization must meet the definition of *tax-exempt organization*, as defined in the 2002 proposed regulations, both immediately before and immediately after the change in ownership or control.

One commentator requested the elimination of the requirement that the payment must be made by a tax-exempt organization. Instead, the commentator suggested that the regulations require only that the payment be approved by the tax-exempt organization. The exemption included in Q/A–6 of the 2002 proposed regulations for certain tax-exempt entities described in section 501(c) is premised on the fact that those entities are subject to a statutory prohibition on private inurement. Requiring merely the approval of a tax-exempt organization would allow corporations not subject to the inurement prohibition to make the payments and, thus, to avoid the application of section 280G. Thus, these regulations retain the requirements contained in the 2002 proposed regulations.

2. Small Corporation Exemption

Under section 280G and the 2002 proposed regulations, the term *parachute payment* does not include any payment to a disqualified individual with respect to a corporation which (immediately before the change in ownership or control) was a small business corporation (as defined in section 1361(b) but without regard to section 1361(b)(1)(C) thereof). *See also*, Q/A–6(a)(1).

Commentators indicated that the 2002 proposed regulations do not clearly address whether a corporation that does not elect to be treated as an S Corporation, but could make the election (because aside from the election the corporation otherwise meets the requirements to be treated as an S corporation), may use the exemption under Q/A–6(a)(1). These regulations clarify that a corporation that could elect to be treated as an S Corporation under the Code, but does not do so, may nevertheless use the exemption of Q/A–6(a)(1) for any payments to a disqualified individual.

In addition, commentators recommended that the final regulations provide that a corporation domiciled outside the United States can qualify for both the small business corporation exception and the shareholder approval exception. With respect to the small business corporation exception, Treasury and the IRS do not have the authority to expand this exception to include foreign corporations. Section 280G(b)(5)(A)(i) refers to "a small business corporation (as defined in section 1361(b) but without regard to paragraph (1)(C) thereof)." A small business corporation as defined in section 1361(b) must be a domestic corporation, and section 1361(b)(1)(C) merely addresses the existence of a nonresident alien as a shareholder. It is clear from the statute that the small business corporation exception cannot apply to a foreign corporation.

On the other hand, Treasury and the IRS believe that a foreign corporation may qualify for the shareholder approval exception, discussed below, if all of the applicable requirements are satisfied. Because the statute and regulations permit this result, it is not necessary to specify the treatment in the final regulations.

3. Shareholder Approval

Additionally, under section 280G and the 2002 proposed regulations, the term *parachute payment* does not include any payment to a disqualified individual with respect to a corporation if (i) immediately before the change in ownership or control, no stock in such corporation was readily tradeable on an established securities market or otherwise, and (ii) certain shareholder approval requirements are met.

Section 280G(b)(5)(B) provides that the shareholder approval requirements are met if two conditions are satisfied. First, the payment is approved by a vote of the persons who owned, immediately before the change in ownership or control, more than 75 percent of the voting power of all outstanding stock of the corporation. Second, there is adequate disclosure to shareholders of all material facts concerning all payments which (but for this rule) would be parachute payments with respect to a disqualified individual.

Q/A–7(b) of the 2002 proposed regulations provides rules to determine the shareholders who are entitled to vote. In response to comments, Q/A–7(b)(1) is revised to clarify that only stock that would otherwise be entitled to vote is considered outstanding and is entitled to vote for purposes of Q/A–7(b). Thus, for example, because an individual who only holds options generally would not be entitled to vote, such individual will not be considered to hold outstanding stock entitled to vote for purposes of Q/A–7.

Q/A–7(b)(2) of the 2002 proposed regulations includes a rule of administrative convenience allowing the corporation to identify shareholders eligible to vote for this purpose using the shareholders of record at the time of any vote taken in connection with a transaction or event giving rise to the change in ownership or control within the three-month period ending on the date of the change in ownership or control.

Several commentators suggested that the final regulations permit corporations to determine the shareholders of record at any time during the three months prior to the change in ownership or control. Other commentators requested that the time be expanded in the final regulations. In response to these comments, these regulations expand this rule to allow corporations to determine the shareholders of record on any day during the six-month period ending on the date of the change in ownership or control, regardless of whether there was a vote on that day.

Q/A–7(b)(4) is revised to clarify that stock held (directly or indirectly) by a disqualified individual who would receive a parachute payment if the shareholder approval requirements of Q/A–7 are not met is not entitled to vote with respect to a payment to be made to any disqualified individual. For example, assume E is a disqualified individual with respect to Corporation X. E's base amount is $100,000, and on a change in ownership or control of X, E will receive contingent payments of $295,000. Corporation X undergoes a change in ownership or control. In determining the persons who are entitled to vote under Q/A–7(b), any stock held by E is considered outstanding and E is entitled to vote. If E would receive contingent payments of $305,000 on the change in ownership or control, any stock held by E is not considered outstanding and is not entitled to vote under Q/A–7 with respect to payments to any disqualified individual.

An entity shareholder is not entitled to vote stock that it holds that is constructively owned by a disqualified person who would receive a parachute payment if the shareholder approval requirements of Q/A–7 are not met. Additionally, these regulations provide in Q/A–7(b)(4) that if the person authorized to vote the stock of an entity shareholder is a disqualified individual

who would receive a parachute payment if the requirements of Q/A–7 are not met, such person is not permitted to vote any of the shares held by the entity shareholder. However, the entity shareholder is permitted to authorize another equity interest holder in the entity shareholder to vote the otherwise eligible shares or, in the case of a trust, another person eligible to vote on behalf of the trust. Thus, for example, assume a partner owns one-third of a partnership; the partner is authorized to vote on behalf of the partnership; the partnership owns stock in a corporation; the partner is a disqualified individual with respect to the corporation; and the corporation undergoes a change in ownership or control. Under these circumstances, none of the stock held by the partnership is entitled to vote under Q/A–7. However, the partnership is permitted to appoint an equity interest holder in the entity shareholder (who is not a disqualified individual who would receive parachute payments if the shareholder approval requirements of Q/A–7 are not met) to vote two-thirds of the stock.

More generally, several commentators requested significant revisions to Q/A–7 to reflect certain business practices. The revisions suggested by commentators include, among other things, treating approval of a compensation agreement when the agreement is executed as sufficient for Q/A–7 or deeming shareholders who acquire stock after approval of any compensation agreements to consent to any parachute payments contained in these agreements. While the Treasury Department and IRS understand that the requirements of Q/A–7 may not coincide with certain business practices, the requirements of Q/A–7 are based on the statutory framework provided by Congress. The golden parachute provisions are intended to protect equity shareholders whose interest in the corporation could be impaired by parachute payments to disqualified individuals by discouraging these types of payments. The basic structure of section 280G does not permit any approval or shareholder vote for a publicly traded corporation. The exception for corporations that are not publicly traded is based on a vote of those persons who hold shares immediately before the change in ownership or control after adequate disclosure. The suggested revisions to the shareholder approval requirements are inconsistent with these requirements and, accordingly, no changes are made in these regulations.

Payment of the Excise Tax Under Section 4999

Q/A–11(c) of the 2002 proposed regulations provided a mechanism to allow a disqualified individual to prepay the excise tax under section 4999 in certain circumstances. Thus, the requirements of section 4999 may be satisfied in the year of the change in ownership or control (or the first year for which a payment contingent on a change in ownership or control is certain to be made) even though the payment is not yet includible in income (or otherwise received).

These regulations continue to allow the prepayment of the excise tax in the year of the change in ownership or control. These regulations also provide that a taxpayer may prepay the excise tax in a later year. For purposes of prepayment, these regulations require the payor and disqualified individual to treat the payment of the excise tax consistently and require the payor to satisfy its obligations under section 4999. These regulations clarify that the prepayment of the excise tax is based on the present value of the excise tax that would be due in the year the excess parachute payment would actually be paid. For purposes of determining the present value of the excise tax due, the discount rate is determined in accordance with Q/A–32.

Thus, for example, assume that E is a disqualified individual with respect to Corporation X, that X undergoes a change in ownership or control, and that E receives parachute payments, including a series of annual payments to be made for the next 10 years. Assume further that all other parachute payments to E are made in the year of the change in ownership or control (with payment of the excise tax and compliance by X with section 4999(c)). Under these regulations, if three years after a change in ownership or control, X and E agree that E will prepay the excise tax related to the remaining annual payments, and that X will satisfy its obligations under section 4999(c) related to these payments, E is permitted to prepay the excise tax with respect to the remaining payments.

The 2002 proposed regulations provided that the prepayment of the excise tax would not be available with respect to certain payments, including payments related to health benefits or coverage. Commenters requested that the prepayment option be expanded to include health benefits or coverage. Treasury and the IRS do not consider the available valuation methods sufficient to allow projections of individual payments related to health coverage or health benefits for this purpose. In the event that valuation methods change or there is otherwise greater certainty with respect to the valuation of such benefits, Treasury and the IRS may consider additional guidance that would make prepayment of the excise tax with respect to such benefits available.

Treatment of Options

Q/A–13 of the 2002 proposed regulations provides that the transfer of an option is treated as a payment when the option becomes substantially vested without regard to whether the option has an ascertainable fair market value under § 1.83–7(b) of the regulations. Thus, the vesting of an option is treated as a payment in the nature of compensation for purposes of section 280G. Vested is defined in these regulations as substantially vested within the meaning of § 1.83–3(b) and (j) or the right to the payment is not otherwise subject to a substantial risk of forfeiture within the meaning of section 83(c).

The 2002 proposed regulations, and the 1989 proposed regulations, provided that options must be valued under the facts and circumstances of a particular case. Factors relevant to the determination include, but are not limited to: The difference between the option's exercise price and the value of the option property, the probability of the value of the option property increasing or decreasing, and the length of the period during which the option can be exercised.

In coordination with the issuance of the 2002 proposed regulations, the Commissioner issued two revenue procedures under section 280G providing additional guidance on the valuation of options, Rev. Proc. 2002–13, 2002–8 I.R.B. 549, and Rev. Proc. 2002–45, 2002–27 I.R.B. 40. These revenue procedures provide guidance on the use of option valuation methods, and provide that using only the spread between the exercise price and the value of the option property is not an adequate method for valuing an option. The revenue procedures also provide a safe harbor method of valuation based on a table. Comments received in response to these revenue procedures raised issues related to the difficulty of valuing options in the context of a change in ownership or control, particularly with respect to assumptions regarding the term of the option and the volatility. In coordination with the issuance of these regulations, the IRS is issuing a revenue procedure restating the previous revenue procedures and addressing these comments.

Disqualified Individuals

The 2002 proposed regulations provide that an individual is a disqualified individual if, at any time during the disqualified individual determination period, the individual is an employee or independent contractor of the corporation and is, with respect to the corporation, a shareholder (*see* Q/A–17), an officer (*see* Q/A–18), or (3) a highly-compensated individual (*see* Q/A–19). The 2002 proposed regulations provide that whether an individual is an officer with respect to a corporation is determined based on all the facts and circumstances in the particular case (such as the source of the individual's authority, the term for which the individual is elected or appointed, and the nature and extent of the individual's duties).

These regulations retain this rule concerning officers. However, under Q/A–18 of these regulations any individual who has the title of officer is presumed to be an officer unless the facts and circumstances demonstrate that the individual does not have the authority of an officer. However, an individual who does not have the title of officer may nevertheless be considered an officer if the facts and circumstances demonstrate that the individual should be considered to be an officer.

Nonvested Payments Under Q/A–24

Under Q/A–24(c) of the 2002 proposed regulations, only a portion of certain nonvested payments is treated as contingent on a change in ownership or control. Specifically, Q/A–24(c) applies to a payment that becomes vested as a result of a change in ownership or control to the extent that (i) without regard to the change in ownership or control, the payment was contingent only on the continued performance of services for the corporation for a specified period of time; and (ii) the payment is attributable, at least in part, to the performance of services before the date the payment is made or becomes certain to be made.

These regulations retain these rules regarding the calculation of the amount of the payment that is considered contingent on a change in ownership or control, with one revision. Under the 2002 proposed regulations, the payment calculation under Q/A–24(c) could not exceed the amount of the accelerated payment. A portion of a payment is contingent on a change in ownership or control if there is accelerated vesting, even if there is no accelerated payment. In that case, the amount attributable to the lapse of the obligation to perform services is 1 percent of the present value of the future payment multiplied by the number of full months between the date that the individual's right to receive the payment is vested and the date that, absent the acceleration, the payment would have been vested. Under these final regulations, the total portion of such payment treated as contingent on the change in ownership or control cannot exceed the present value of the accelerated payment.

Change in Ownership or Control

A change in ownership or control is defined in Q/A–27, 28, and 29 of the 2002 proposed regulations. Under Q/A–27 of the 2002 proposed regulations, a change in control of a corporation occurs on the date that any one person (or persons acting as a group) acquires ownership or stock of the corporation that, together with stock held by such person or group, has more than 50 percent of the total fair market value or total voting power of the corporation.

Under Q/A–28 of the 2002 proposed regulations, a change in the effective control of a corporation is presumed to occur on the date that either (1) any one person (or more than one person acting as a group) acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) ownership of stock of the corporation possessing 20 percent or more of the total voting power of the stock of such corporation, or (2) a majority of members of the corporation's board of directors is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of the corporation's board of directors prior to the date of the appointment or election.

Under Q/A–29 of the 2002 proposed regulations, a change in the ownership of a substantial portion of a corporation's assets occurs on the date that any one person (or more than one person acting as a group) acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person) assets from the corporation that have a total gross fair market value equal to or more than one third of the total gross fair market value of all of the assets of the corporation immediately prior to such acquisition.

These regulations generally follow the same approach as the 2002 proposed regulations. Some commenters suggested that these three provisions explicitly address whether more than one change in ownership or control can occur in a single transaction. In response to these comments, these regulations explicitly adopt the "one change" rule that historically has been applied by the IRS. These regulations provide that if a corporation undergoes a change in ownership or control as described in either Q/A–27 or Q/A–29, the other corporation involved in the transaction does not undergo a change in ownership or control.[1] As these regulations apply, in any transaction involving two corporations, if one has a change in ownership or control under Q/A–27 or 29, the other corporation does not also have a change in ownership or control, under either Q/A–27 or 29. Under these regulations, Q/A–28, which relates to effective control, provides that there is no change in effective control of a corporation in a transaction in which the other corporation has a change of control under Q/A–27 or 29.

Commentators also requested that the final regulations define gross fair market value for purposes of Q/A–29. Under Q/A–29 of these regulations, *gross fair market value* is defined as the value of the assets of the corporation, or the value of the assets being disposed of, determined without regard to any liabilities associated with such assets. This definition is used throughout these regulations.

For purposes of determining whether there is a change in ownership or control under Q/A–27 through Q/A–29 of the 2002 proposed regulations, two or more persons may be considered as acting as a group. The 2002 proposed regulations provide that, for purposes of determining whether two or more persons are acting as a group, a person who owns stock in both corporations involved in a transaction (an overlapping shareholder) is treated as acting as a group with respect to the other shareholders in a corporation only to the extent of such person's ownership of stock in that corporation prior to the transaction, and not with respect to his or her ownership in the other corporation. This rule is consistent with the interpretation of the 1989 proposed regulations by the IRS.

Commentators suggested different alternatives to the overlapping shareholder rule of Q/A–27 through Q/A–29 of the 2002 proposed regulations. One commentator suggested eliminating the overlapping shareholder rule and instead relying on the presumption of Q/A–28 for all transactions. Under this approach it would be possible for a transaction to result in one, two, or no

[1] Because Q/A–46 provides that all members of an affiliated group are treated as one corporation, even transactions involving multiple entities generally are treated as only two corporations for purposes of section 280G.

change in ownership or control. Other commentators suggested replacing the overlapping shareholder rule of the 2002 proposed regulations with a new rule based on section 355 or 382. Finally, another commentator requested clarification of the application of the overlapping shareholder rule of the 2002 proposed regulations under the 1989 proposed regulations.

These regulations retain the overlapping shareholder rule of the 2002 proposed regulations. The group concepts in section 355 or 382 do not fit well with the overall purpose of section 280G. Finally, these regulations are effective with respect to changes in ownership or control that occur after January 1, 2004, and to payments that are contingent on such changes. These regulations do not provide any transitional rules for the application of the overlapping shareholder rules for prior periods both because these regulations are not effective for prior periods and because the positions set forth in 2002 proposed regulations are merely clarifications of the positions taken by the IRS under section 280G (illustrated by the 1989 proposed regulations).

International Issues

Commentators recommended that the final regulations provide that a disqualified individual who, during the disqualified individual determination period, was a nonresident alien and was not subject to income tax in the United States on wages earned from the affiliated group, not be subject to the excise tax. Treasury and the IRS do not believe that they have the authority to preclude application of the excise tax to a nonresident alien under these circumstances. Accordingly, the final regulations do not include any special rules for excess parachute payments received by nonresident aliens.

Commentators also requested clarification that, even though parachute payments made by a foreign subsidiary of a U.S. corporation may not be deductible, such payments reduce the foreign subsidiary's earnings and profits. Because this issue has implications beyond section 280G and foreign subsidiaries, it is not addressed in these regulations.

Effective Date and Reliance

These regulations apply to any payments that are contingent on a change in ownership or control if the change of ownership or control occurs on or after January 1, 2004.

Under the 2002 proposed regulations, taxpayers are permitted to rely on the 2002 proposed regulations until the effective date of the final regulations. Taxpayers are permitted to rely on the 1989 proposed regulations with respect to payments contingent on a change in ownership or control if that change occurs before January 1, 2004. A clarification in the 2002 proposed regulations does not support reliance on the 1989 proposed regulations for a position contrary to the provisions of the 1989 proposed regulations.

Taxpayers are permitted to rely on the 2002 proposed regulations, including for purposes of amended returns with respect to the following: (1) That a shareholder who owns stock with a fair market value of $1 million is not a disqualified individual and (2) that the base amount includes the amount of compensation included in gross income under section 83(b).

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Section 1.280G–1 of these proposed regulations provides for the collection of information. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that, as indicated in the Paperwork Reduction Act section earlier in the preamble, only 800 small entities are expected to be affected by the regulations annually, and it is unlikely that any small entity would be affected by these regulations more than once or twice in its existence. Therefore, an analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Erinn Madden, Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1986

■ **Paragraph 1.** The authority citation for part 1 is amended by adding the following entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.280G–1 also issued under 26 U.S.C. 280G(b) and (e). * * *

■ **Par. 2.** Section § 1.280G–1 is added to read as follows:

§ 1.280G–1 Golden parachute payments.

The following questions and answers relate to the treatment of golden parachute payments under section 280G of the Internal Revenue Code of 1986, as added by section 67 of the Tax Reform Act of 1984 (Pub. L. No. 98–369; 98 Stat. 585) and amended by section 1804(j) of the Tax Reform Act of 1986 (Pub. L. No. 99–514; 100 Stat. 2807), section 1018(d)(6)–(8) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100–647; 102 Stat. 3581), and section 1421 of the Small Business Job Protection Act of 1996 (Pub. L. No. 104–188; 110 Stat. 1755). The following is a table of subjects covered in this section:

Overview

Effect of section 280G—Q/A–1
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Three-times-base-amount test—Q/A–30
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Computation and Reduction of Excess Parachute Payments

Computation of excess parachute payments—Q/A–38
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Determination of Reasonable Compensation

General criteria for determining reasonable compensation—Q/A–40
Types of payments generally considered reasonable compensation—Q/A–41, 42, 43
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Miscellaneous Rules

Definition of corporation—Q/A–45
Treatment of affiliated group as one corporation—Q/A–46

Effective Date

General effective date of section 280G—Q/A–47
Effective date of regulations—Q/A–48

Overview

Q–1: What is the effect of Internal Revenue Code section 280G?

A–1: (a) Section 280G disallows a deduction for any excess parachute payment paid or accrued. For rules relating to the imposition of a nondeductible 20-percent excise tax on the recipient of any excess parachute payment, see Internal Revenue Code sections 4999, 275(a)(6), and 3121(v)(2)(A).

(b) The disallowance of a deduction under section 280G is not contingent on the imposition of the excise tax under section 4999. The imposition of the excise tax under section 4999 is not contingent on the disallowance of a deduction under section 280G. Thus, for example, because the imposition of the excise tax under section 4999 is not contingent on the disallowance of a deduction under section 280G, a payee may be subject to the 20-percent excise tax under section 4999 even though the disallowance of the deduction for the excess parachute payment may not directly affect the federal taxable income of the payor.

Q–2: What is a parachute payment for purposes of section 280G?

A–2: (a) The term *parachute payment* means any payment (other than an exempt payment described in Q/A–5) that—

(1) Is in the nature of compensation;

(2) Is made or is to be made to (or for the benefit of) a disqualified individual;

(3) Is contingent on a change—

(i) In the ownership of a corporation;

(ii) In the effective control of a corporation; or

(iii) In the ownership of a substantial portion of the assets of a corporation; and

(4) Has (together with other payments described in paragraphs (a)(1), (2), and (3) of this A–2 with respect to the same disqualified individual) an aggregate present value of at least 3 times the individual's base amount.

(b) Hereinafter, a change referred to in paragraph (a)(3) of this A–2 is generally referred to as a change in ownership or control. For a discussion of the application of paragraph (a)(1), *see* Q/A–11 through Q/A–14; paragraph (a)(2), Q/A–15 through Q/A–21; paragraph (a)(3), Q/A–22 through Q/A–29; and paragraph (a)(4), Q/A–30 through Q/A–36.

(c) The term *parachute payment* also includes any payment in the nature of compensation to (or for the benefit of) a disqualified individual that is pursuant to an agreement that violates a generally enforced securities law or regulation. This type of parachute payment is referred to in this section as a securities violation parachute payment. *See* Q/A–37 for the definition and treatment of securities violation parachute payments.

Q–3: What is an excess parachute payment for purposes of section 280G?

A–3: The term *excess parachute payment* means an amount equal to the excess of any parachute payment over the portion of the base amount allocated to such payment. Subject to certain exceptions and limitations, an excess parachute payment is reduced by any portion of the payment which the taxpayer establishes by clear and convincing evidence is reasonable compensation for personal services actually rendered by the disqualified individual before the date of the change in ownership or control. For a discussion of the nonreduction of a securities violation parachute payment by reasonable compensation, *see* Q/A–37. For a discussion of the computation of excess parachute payments and their reduction by reasonable compensation, *see* Q/A–38 through Q/A–44.

Q–4: What is the effective date of section 280G and this section?

A–4: In general, section 280G applies to payments under agreements entered into or renewed after June 14, 1984. Section 280G also applies to certain payments under agreements entered into on or before June 14, 1984, and amended or supplemented in significant relevant respect after that date. This section applies to any payment that is contingent on a change in ownership or control and the change in ownership or control occurs on or after January 1, 2004. For a discussion of the application of the effective date, *see* Q/A–47 and Q/A–48.

Exempt Payments

Q–5: Are some types of payments exempt from the definition of the term *parachute payment*?

A–5: (a) Yes, the following five types of payments are exempt from the definition of *parachute payment*—

(1) Payments with respect to a small business corporation (described in Q/A–6 of this section);

(2) Certain payments with respect to a corporation no stock in which is readily tradeable on an established securities market (or otherwise) (described in Q/A–6 of this section);

(3) Payments to or from a qualified plan (described in Q/A–8 of this section);

(4) Certain payments made by a corporation undergoing a change in ownership or control that is described in any of the following sections of the Internal Revenue Code: section 501(c) (but only if such organization is subject to an express statutory prohibition against inurement of net earnings to the benefit of any private shareholder or individual, or if the organization is described in section 501(c)(1) or section 501(c)(21)), section 501(d), or section 529, collectively referred to as *tax-exempt organizations* (described in Q/A–6 of this section); and

(5) Certain payments of reasonable compensation for services to be rendered on or after the change in ownership or control (described in Q/A–9 of this section).

(b) Deductions for payments exempt from the definition of *parachute payment* are not disallowed by section 280G, and such exempt payments are not subject to the 20-percent excise tax of section 4999. In addition, such

exempt payments are not taken into account in applying the 3-times-base-amount test of Q/A–30 of this section.

Q–6: Which payments with respect to a corporation referred to in paragraph (a)(1), (a)(2), or (a)(4) of Q/A–5 of this section are exempt from the definition of *parachute payment*?

A–6: (a) The term *parachute payment* does not include—

(1) Any payment to a disqualified individual with respect to a corporation which (immediately before the change in ownership or control) would qualify as a small business corporation (as defined in section 1361(b) but without regard to section 1361(b)(1)(C) thereof), without regard to whether the corporation had an election to be treated as a corporation under section 1361 in effect on the date of the change in ownership or control;

(2) Any payment to a disqualified individual with respect to a corporation (other than a small business corporation described in paragraph (a)(1) of this A–6) if—

(i) Immediately before the change in ownership or control, no stock in such corporation was readily tradeable on an established securities market or otherwise; and

(ii) The shareholder approval requirements described in Q/A–7 of this section are met with respect to such payment; or

(3) Any payment to a disqualified individual made by a corporation which is a tax-exempt organization (as defined in paragraph (a)(4) of Q/A–5 of this section), but only if the corporation meets the definition of a tax-exempt organization both immediately before and immediately after the change in ownership or control.

(b) For purposes of paragraph (a)(1) of this A–6, the members of an affiliated group are not treated as one corporation.

(c) The requirements of paragraph (a)(2)(i) of this A–6 are not met with respect to a corporation if a substantial portion of the assets of any entity consists (directly or indirectly) of stock in such corporation and any ownership interest in such entity is readily tradeable on an established securities market or otherwise. For this purpose, such stock constitutes a substantial portion of the assets of an entity if the total fair market value of the stock is equal to or exceeds one third of the total gross fair market value of all of the assets of the entity. For this purpose, *gross fair market value* means the value of the assets of the entity, determined without regard to any liabilities associated with such assets. If a corporation is a member of an affiliated group (which group is treated as one corporation under A–46 of this section), the requirements of paragraph (a)(2)(i) of this A–6 are not met if any stock in any member of such group is readily tradeable on an established securities market or otherwise.

(d) For purposes of paragraph (a)(2)(i) of this A–6, the term *stock* does not include stock described in section 1504(a)(4) if the payment does not adversely affect the redemption and liquidation rights of any shareholder owning such stock.

(e) For purposes of paragraph (a)(2)(i) of this A–6, stock is treated as readily tradeable if it is regularly quoted by brokers or dealers making a market in such stock.

(f) For purposes of paragraph (a)(2)(i) of this A–6, the term *established securities market* means an established securities market as defined in § 1.897–1(m).

(g) The following examples illustrate the application of this exemption:

Example 1. A small business corporation (within the meaning of paragraph (a)(1) of this A–6) operates two businesses. The corporation sells the assets of one of its businesses, and these assets represent a substantial portion of the assets of the corporation. Because of the sale, the corporation terminates its employment relationship with persons employed in the business the assets of which are sold. Several of these employees are highly-compensated individuals to whom the owners of the corporation make severance payments in excess of 3 times each employee's base amount. Since the corporation is a small business corporation immediately before the change in ownership or control, the payments are not parachute payments.

Example 2. Assume the same facts as in *Example 1*, except that the corporation is not a small business corporation within the meaning of paragraph (a)(1) of this A–6. If no stock in the corporation is readily tradeable on an established securities market (or otherwise) immediately before the change in ownership or control and the shareholder approval requirements described in Q/A–7 of this section are met, the payments are not parachute payments.

Example 3. Stock of Corporation S is owned by Corporation P, stock in which is readily tradeable on an established securities market. The Corporation S stock equals or exceeds one third of the total gross fair market value of the assets of Corporation P, and thus, represents a substantial portion of the assets of Corporation P. Corporation S makes severance payments to several of its highly-compensated individuals that are parachute payments under section 280G and Q/A–2 of this section. Because stock in Corporation P is readily tradeable on an established securities market, the payments are not exempt from the definition of *parachute payments* under this A–6.

Example 4. A is a corporation described in section 501(c)(3), and accordingly, its net earnings are prohibited from inuring to the benefit of any private shareholder or individual. A transfers substantially all of its assets to another corporation resulting in a change in ownership or control. Contingent on the change in ownership or control, A makes a payment that, but for the potential application of the exemption described in A–5(a)(4), would constitute a *parachute payment*. However, one or more aspects of the transaction that constitutes the change in ownership or control causes A to fail to be described in section 501(c)(3). Accordingly, A fails to meet the definition of a *tax-exempt organization* both immediately before and immediately after the change in ownership or control, as required by this A–6. As a result, the payment made by A that was contingent on the change in ownership or control is not exempt from the definition of parachute payment under this A–6.

Example 5. B is a corporation described in section 501(c)(15). B does not meet the definition of a *tax-exempt organization* because section 501(c)(15) does not expressly prohibit inurement of B's net earnings to the benefit of any private shareholder or individual. Accordingly, if B has a change in ownership or control and makes a payment that would otherwise meet the definition of a *parachute payment*, such payment is not exempt from the definition of the term *parachute payment* for purposes of this A–6.

Q–7: How are the shareholder approval requirements referred to in paragraph (a)(2)(ii) of Q/A–6 of this section met?

A–7: (a) *General rule.* The shareholder approval requirements referred to in paragraph (a)(2)(ii) of Q/A–6 of this section are met with respect to any payment if—

(1) Such payment is approved by more than 75 percent of the voting power of all outstanding stock of the corporation entitled to vote (as described in this A–7) immediately before the change in ownership or control; and

(2) Before the vote, there was adequate disclosure to all persons entitled to vote (as described in this A–7) of all material facts concerning all material payments which (but for Q/A–6 of this section) would be parachute payments with respect to a disqualified individual.

(b) *Voting requirements*—(1) *General rule.* The vote described in paragraph (a)(1) of this A–7 must determine the right of the disqualified individual to receive the payment, or, in the case of a payment made before the vote, the right of the disqualified individual to retain the payment. Except as otherwise provided in this A–7, the normal voting rules of the corporation are applicable. Thus, for example, an optionholder is generally not permitted to vote for purposes of this A–7. For purposes of this A–7, the vote can be on less than the full amount of the payment(s) to be made. Shareholder approval can be a single vote on all payments to any one disqualified individual, or on all payments to more than one disqualified individual. The total payment(s) submitted for shareholder approval, however, must be separately approved by the shareholders. The requirements of this paragraph (b)(1) are not satisfied if approval of the change in ownership or control is contingent, or otherwise conditioned, on the approval of any payment to a disqualified individual that would be a parachute payment but for Q/A–6 of this section.

(2) *Special rule.* A vote to approve the payment does not fail to be a vote of the outstanding stock of the corporation entitled to vote immediately before the change in ownership or control merely because the determination of the shareholders entitled to vote on the payment is based on the shareholders of record as of any day within the six-month period immediately prior to and ending on date of the change in ownership or control, provided the disclosure requirements described in paragraph (c) of this A–7 are met.

(3) *Entity shareholder.* (i) Approval of a payment by any shareholder that is not an individual (an entity shareholder) generally must be made by the person authorized by the entity shareholder to approve the payment. See paragraph (b)(4) of this A–7 if the person so authorized by the entity shareholder is a disqualified individual who would receive a parachute payment if the shareholder approval requirements of this A–7 are not met.

(ii) However, if a substantial portion of the assets of an entity shareholder consists (directly or indirectly) of stock in the corporation undergoing the change in ownership or control, approval of the payment by that entity shareholder must be made by a separate vote of the persons who hold, immediately before the change in ownership or control, more than 75 percent of the voting power of the entity shareholder entitled to vote. The preceding sentence does not apply if the value of the stock of the corporation owned, directly or indirectly, by or for the entity shareholder does not exceed 1 percent of the total value of the outstanding stock of the corporation undergoing a change in ownership or control. Where approval of a payment by an entity shareholder must be made by a separate vote of the owners of the entity shareholder, the normal voting rights of the entity shareholder determine which owners shall vote. For purposes of this (b)(3)(ii), stock represents a substantial portion of the assets of an entity shareholder if the total fair market value of the stock held by the entity shareholder in the corporation undergoing the change in ownership or control is equal to or exceeds one third of the total gross fair market value of all of the assets of the entity shareholder. For this purpose, *gross fair market value* means the value of the assets of the entity, determined without regard to any liabilities associated with such assets.

(4) *Disqualified individuals and attribution of stock ownership.* In determining the persons entitled to vote referred to in paragraph (a)(1) or (b)(3) of this A–7, stock that would otherwise be entitled to vote is not counted as outstanding stock and is not considered in determining whether the more than 75 percent vote has been obtained under this A–7 if the stock is actually owned or constructively owned under section 318(a) by or for a disqualified individual who receives (or is to receive) payments that would be parachute payments if the shareholder approval requirements described in paragraph (a) of this A–7 are not met. Likewise, stock is not counted as outstanding stock if the owner is considered under section 318(a) to own any part of the stock owned directly or indirectly by or for a disqualified individual described in the preceding sentence. In addition, if the person authorized to vote the stock of an entity shareholder is a disqualified individual who would receive a parachute payment if the shareholder approval requirements described in this A–7 are not met, such person is not permitted to vote such shares, but the entity shareholder is permitted to appoint an equity interest holder in the entity shareholder, or in the case of a trust another person eligible to vote on behalf of the trust, to vote the otherwise eligible shares. However, if all persons who hold voting power in the corporation undergoing the change in ownership or control are disqualified individuals or related persons described in this paragraph (b)(4), then such stock is counted as outstanding stock and votes by such persons are considered in determining whether the more than 75 percent vote has been obtained.

(c) *Adequate disclosure.* To be adequate disclosure for purposes of paragraph (a)(2) of this A–7, disclosure must be full and truthful disclosure of the material facts and such additional information as is necessary to make the disclosure not materially misleading at the time the disclosure is made. Disclosure of such information must be made to every shareholder of the corporation entitled to vote under this A–7. For each disqualified individual, material facts that must be disclosed include, but are not limited to, the event triggering the payment or payments, the total amount of the payments that would be parachute payments if the shareholder approval requirements described in paragraph (a) of this A–7 are not met, and a brief description of each payment (*e.g.*, accelerated vesting of options, bonus, or salary). An omitted fact is considered a material fact if there is a substantial likelihood that a reasonable shareholder would consider it important.

(d) *Corporation without shareholders.* If a corporation does not have shareholders, the exemption described in Q/A–6(a)(2) of this section and the shareholder approval requirements described in this A–7 do not apply. Solely for purposes of this paragraph (d), a shareholder does not include a member in an association, joint stock company, or insurance company.

(e) *Examples.* The following examples illustrate the application of this A–7:

Example 1. Corporation S has two shareholders—Corporation P, which owns 76 percent of the stock of Corporation S, and A, a disqualified individual who would receive a parachute payment if the shareholder approval requirements of this A–7 are not met. No stock of Corporation P or S is readily tradeable on an established securities market (or otherwise). The value of the stock of Corporation S equals or exceeds one third of the gross fair market value of the assets of Corporation P, and thus, represents a substantial portion of the assets of Corporation P. All of the stock of Corporation S is sold to Corporation M. Contingent on the change in ownership of Corporation S, severance payments are made to certain officers of Corporation S in excess of 3 times each officer's base amount. If the payments are approved by a separate vote of the persons who hold, immediately before the sale, more than 75 percent of the voting power of the outstanding stock entitled to vote of Corporation P and the disclosure rules of paragraph (a)(2) of this A–7 are complied with, the shareholder approval requirements of this A–7 are met, and the payments are exempt from the definition of *parachute payment* pursuant to A–6 of this section.

Example 2. (i) Stock of Corporation X, none of which is traded on an established market, is acquired by Corporation Y. In the voting ballot concerning the sale, the Corporation X shareholders are asked to vote either "yes" on the sale and "yes" to paying parachute payments to A, a disqualified individual with respect to Corporation A, or "no" on the sale and "no" to paying parachute payments to A.

(ii) Because the approval of the change in ownership or control is conditioned on the approval of the payments to A, the shareholder approval requirements of this A–7 are not satisfied. If the payments are made to A, the payments are not exempt from the definition of *parachute payment* pursuant to Q/A–6 of this section.

(iii) Assume the same facts as in paragraph (i) of this *Example 2*, except that the acquisition agreement between Corporation X and Corporation Y states that the acquisition is approved only if there are no parachute payments made to A. If the shareholder approval and the disclosure requirements described in this A–7 are met, the payments will not be parachute payments. Alternatively, if the shareholders do not approve the payments, the payments cannot be made (or retained). Thus, the transaction is not conditioned on the approval of the parachute payments. If the payments are made and the requirements of this A–7 are met, the payments are exempt from the definition of *parachute payment* pursuant to Q/A–6 of this section.

Example 3. Corporation M is wholly owned by Partnership P. No interest in either M or P is readily tradeable on an established securities market (or otherwise). The value of the stock of Corporation M equals or exceeds one third of the gross fair market value of the assets of Partnership P, and thus, represents a substantial portion of the assets of Partnership P. Corporation M undergoes a change in ownership or control. Partnership P has one general partner and 200 limited partners. The general partner is not a disqualified individual. None of the limited partners are entitled to vote on issues involving the management of the partnership investments. If the payments that would be parachute payments if the shareholder approval requirements of this A–7 are not met are approved by the general partner and the disclosure rules of paragraph (a)(2) of this A–7 are complied with, the shareholder approval requirements of this A–7 are met, and the payments are exempt from the definition of *parachute payment* pursuant to A–6 of this section.

Example 4. Corporation A has several shareholders including X and Y, who are disqualified individuals with respect to Corporation A and would receive parachute payments if the shareholder approval requirements of this A–7 are not met. No stock of Corporation A is readily tradeable on an established securities market (or otherwise). Corporation A undergoes a change in ownership or control. Contingent on the change in ownership or control, severance payments are payable to X and Y that are in excess of 3 times each individual's base amount. To determine whether the shareholder approval requirements of paragraph (a)(1) of this A–7 are satisfied regarding the payments to X and Y, the stock of X and Y is not considered outstanding, and X and Y are not entitled to vote.

Example 5. Assume the same facts as in *Example 4*, except that after adequate disclosure of all material facts (within the meaning of paragraph (a)(2) of this A–7) to all shareholders entitled to vote, 60 percent of the shareholders who are entitled to vote approve the payments to X and Y. Because more than 75 percent of the shareholders holding outstanding stock who were entitled to vote did not approve the payments to X and Y, the payments cannot be made.

Example 6. Assume the same facts as in *Example 4* except that disclosure of all the material facts (within the meaning of paragraph (a)(2) of this A–7) regarding the payments to X and Y is made to two of Corporation A's shareholders, who collectively own 80 percent of Corporation A's stock entitled to vote and approve the payment. Both shareholders approve the payments. Assume further that no adequate disclosure of the material facts regarding the payments to X and Y is made to other Corporation A shareholders who are entitled to vote within the meaning of this A–7. Notwithstanding that 80 percent of the shareholders entitled to vote approve the payments, because disclosure regarding the payments to X and Y is not made to all of Corporation A's shareholders who were entitled to vote, the disclosure requirements of paragraph (a)(2) of this A–7 are not met, and the payments are not exempt from the definition of *parachute payment* pursuant to Q/A–6.

Example 7. Corporation C has three shareholders—Partnership, which owns 20 percent of the stock of Corporation C; A, an individual who owns 60 percent of the stock of Corporation C; and B, an individual who owns 20 percent of Corporation C. Stock of Corporation C does not represent a substantial portion of the assets of Partnership. No interest in either Partnership or Corporation C is readily tradeable on an established securities market (or otherwise). P, a one-third partner in Partnership, is a disqualified individual with respect to Corporation C. Corporation C undergoes a change in ownership or control. Contingent on the change, a severance payment is payable to P in excess of 3 times P's base amount. To determine the persons who are entitled to vote referred to in paragraph (a)(1) of this A–7, one-third of the stock held by Partnership is not considered outstanding stock. If P is the person authorized by Partnership to approve the payment, none of the shares of Partnership are considered outstanding stock. However, Partnership is permitted to appoint an equity interest holder in Partnership (who is not a disqualified individual who would receive a parachute payment if the requirements of this A–7 are not met), to vote the two-thirds of the shares held by Partnership that are otherwise entitled to be voted.

Example 8. X, Y, and Z are all employees and disqualified individuals with respect to Corporation E. No stock in Corporation E is readily tradeable on an established securities market (or otherwise). Each individual has a base amount of $100,000. Corporation E undergoes a change in ownership or control. Contingent on the change, a severance payment of $400,000 is payable to X; $600,000 is payable to Y; and $1,000,000 is payable to Z. Corporation E provides each Corporation E shareholder entitled to vote (as determined under this A–7) with a ballot listing and describing the payments of $400,000 to X; $600,000 to Y; and $1,000,000 to Z and the triggering event that generated the payments. Next to each name and corresponding amount on the ballot, Corporation E requests approval (with a "yes" and "no" box) of each total payment to be made to each individual and states that if the payment is not approved the payment will not be made. Adequate disclosure, within the meaning of this A–7 is made to each shareholder entitled to vote under this A–7. More than 75 percent of the Corporation E shareholders who are entitled to vote under paragraph (a)(1) of this A–7 approve each payment to each individual. The shareholder approval requirements of this A–7 are met, and the payments are exempt from the definition of *parachute* payment pursuant to A–6 of this section.

Example 9. Assume the same facts as in Example 8 except that the ballot does not request approval of each total payment to each individual separately. Instead, the ballot states that $2,000,000 in payments will be made to X, Y, and Z and requests approval of the $2,000,000 payments. Assuming the triggering event and amount of the payments to X, Y, and Z are separately described to the shareholders entitled to vote under this A–7, the shareholder approval requirements of paragraph (a)(1) of this A–7 are met, and the payments are exempt from the definition of *parachute payment* pursuant to A–6 of this section.

Example 10. B, an employee of Corporation X, is a disqualified individual with respect to Corporation X. Stock of Corporation X is not readily tradeable on an established securities market (or otherwise). Corporation X undergoes a change in ownership or control. B's base amount is $205,000. Under B's employment agreement with Corporation X, in the event of a change in ownership or control, B's stock options will vest and B will receive severance and bonus payments. Contingent on the change in ownership or control, B's stock options with a fair market value of $500,000 immediately vest, $200,000 of which is contingent on the change, and B will receive a $200,000 bonus payment and a $400,000 severance payment. Corporation X distributes a ballot to every shareholder of Corporation X who immediately before the change is entitled to vote as described in this A–7. The ballot contains adequate disclosure of all material facts and lists the following payments to be made to B: The contingent payment of $200,000 attributable to options, a $200,000 bonus payment, and a $400,000 severance payment. The ballot requests shareholder approval of the $200,000 bonus payment to B and states that whether or not the $200,000 bonus payment is approved, B will receive $200,000 attributable to options and a $400,000 severance payment. More than 75 percent of the shareholders entitled to vote as described by this A–7 approve the $200,000 bonus payment to B. The shareholder approval requirements of this A–7 are met, and the $200,000 payment is exempt from the definition of *parachute payment* pursuant to A–6 of this section.

Q–8: Which payments under a qualified plan are exempt from the definition of *parachute payment*?

A–8: The term *parachute payment* does not include any payment to or from—

(a) A plan described in section 401(a) which includes a trust exempt from tax under section 501(a);

(b) An annuity plan described in section 403(a);

(c) A simplified employee pension (as defined in section 408(k)); or

(d) A simple retirement account (as defined in section 408(p)).

Q–9: Which payments of reasonable compensation are exempt from the definition of *parachute payment*?

A–9: Except in the case of securities violation *parachute payments*, the term parachute payment does not include any payment (or portion thereof) which the taxpayer establishes by clear and convincing evidence is reasonable compensation for personal services to be rendered by the disqualified individual on or after the date of the change in ownership or control. See Q/A–37 of this section for the definition and treatment of securities violation parachute payments. See Q/A–40 through Q/A–44 of this section for rules on determining amounts of reasonable compensation.

Payor of Parachute Payments

Q–10: Who may be the payor of parachute payments?

A–10: Parachute payments within the meaning of Q/A–2 of this section may be paid, directly or indirectly, by—

(i) The corporation referred to in paragraph (a)(3) of Q/A–2 of this section;

(ii) A person acquiring ownership or effective control of that corporation or ownership of a substantial portion of that corporation's assets; or

(iii) Any person whose relationship to such corporation or other person is such as to require attribution of stock ownership between the parties under section 318(a).

Payments in the Nature of Compensation

Q–11: What types of payments are in the nature of compensation?

A–11: (a) *General rule.* For purposes of this section, all payments—in whatever form—are payments in the nature of compensation if they arise out of an employment relationship or are associated with the performance of services. For this purpose, the performance of services includes holding oneself out as available to perform services and refraining from performing services (such as under a covenant not to compete or similar arrangement). Payments in the nature of compensation include (but are not limited to) wages and salary, bonuses, severance pay, fringe benefits, life insurance, pension benefits, and other deferred compensation (including any amount characterized by the parties as interest thereon). A payment in the nature of compensation also includes cash when paid, the value of the right to receive cash, or a transfer of property. However, payments in the nature of compensation do not include attorney's fees or court costs paid or incurred in connection with the payment of any amount described in paragraphs (a)(1), (2), and (3) of Q/A–2 of this section or a reasonable rate of interest accrued on any amount during the period the parties contest whether a payment will be made.

(b) *When payment is considered to be made.* Except as otherwise provided in A–11 through Q/A–13 of this section, a payment in the nature of compensation is considered made (and is subject to the excise tax under section 4999) in the taxable year in which it is includible in the disqualified individual's gross income or, in the case of fringe benefits and other benefits excludible from income, in the taxable year the benefits are received.

(c) *Prepayment rule.* Notwithstanding the general rule described in paragraph (b) of this A–11, a disqualified individual may, in the year of the change in ownership or control, or any later year, prepay the excise tax under section 4999, provided that the payor and disqualified individual treat the payment of the excise tax consistently and the payor satisfies its obligations under section 4999(c) in the year of prepayment. The prepayment of the excise tax for purposes of section 4999 must be based on the present value of the excise tax that would be due in the year the excess parachute payment would actually be paid (calculated using the discount rate equal to 120 percent of the applicable Federal rate (determined under section 1274(d) and regulations thereunder; *see* Q/A–32)). For purposes of projecting the future value of a payment that provides for interest to be credited at a variable interest rate, it is permissible to make a reasonable assumption regarding this variable rate. A disqualified individual is not required to adjust the excise tax paid under this paragraph (c) merely because the interest rates in the future are not the same as the rate used for purposes of projecting the future value of the payment. However, a disqualified individual may not apply this paragraph (c) of this A–11 to a payment to be made in cash if the present value of the payment would be considered not reasonably ascertainable under section 3121(v) and § 31.3121(v)(2)–1(e)(4) of this Chapter or to a payment related to health benefits or coverage. The Commissioner may provide additional guidance regarding the applicability of this paragraph (c) to certain payments in published guidance of general applicability under § 601.601(d)(2) of this Chapter.

(d) *Transfers of property.* Transfers of property are treated as payments for purposes of this A–11. See Q/A–12 of this section for rules on determining when such payments are considered made and the amount of such payments. *See* Q/A–13 of this section for special rules on transfers of stock options.

(e) The following example illustrates the principles of this A–11:

Example. D is a disqualified individual with respect to Corporation X. D has a base amount of $100,000 and is entitled to receive two parachute payments, one of $200,000 and the other of $400,000. A change in ownership or control of Corporation X occurs on May 1, 2005, and the $200,000 payment is made to D at the time of the change in ownership or control. The $400,000 payment is to be made on October 1, 2010. Corporation X and D agree that D will prepay the excise tax and X will satisfy its obligations under section 4999(c) with respect to the $400,000 payment. Using discount rate determined under Q/A–32, Corporation X and D determine that the present value of the $400,000 payment is $300,000 on the date of the change in ownership or control. The portions of the base amount allocated to these payments are $40,000 (($200,000/$500,000) × $100,000) and $60,000 (($300,000/$500,000 × $100,000), respectively. Thus, the amount of the first excess parachute payment is $160,000 ($200,000 − $40,000) and that of the second excess parachute payment is $340,000 ($400,000 − $60,000). The excise tax on the $400,000 payment is $68,000 ($340,000 × 20 percent). Assume the present value (calculated in accordance with paragraph (c) of this A–11) of $68,000 is $50,000. To prepay the excise tax due on the $400,000 payment, Corporation X must satisfy its obligations under section 4999 with respect to the $50,000, in addition to the $32,000 withholding required with respect to the $200,000 payment.

Q–12: If a property transfer to a disqualified individual is a payment in the nature of compensation, when is the payment considered made (or to be made), and how is the amount of the payment determined?

A–12: (a) Except as provided in this A–12 and Q/A–13 of this section, a transfer of property is considered a payment made (or to be made) in the taxable year in which the property transferred is includible in the gross income of the disqualified individual under section 83 and the regulations thereunder. Thus, in general, such a payment is considered made (or to be made) when the property is transferred (as defined in § 1.83–3(a)) to the disqualified individual and becomes substantially vested (as defined in § 1.83–3(b) and (j)) in such individual. The amount of the payment is

determined under section 83 and the regulations thereunder. Thus, in general, the amount of the payment is equal to the excess of the fair market value of the transferred property (determined without regard to any lapse restriction, as defined in § 1.83–3(i)) at the time that the property becomes substantially vested, over the amount (if any) paid for the property.

(b) An election made by a disqualified individual under section 83(b) with respect to transferred property will not apply for purposes of this A–12. Thus, even if such an election is made with respect to a property transfer that is a payment in the nature of compensation, for purposes of this section, the payment is generally considered made (or to be made) when the property is transferred to and becomes substantially vested in such individual.

(c) *See* Q/A–13 of this section for rules on applying this A–12 to transfers of stock options.

(d) The following example illustrates the principles of this A–12:

Example. On January 1, 2006, Corporation M gives to A, a disqualified individual, a bonus of 100 shares of Corporation M stock in connection with the performance of services to Corporation M. Under the terms of the bonus arrangement A is obligated to return the Corporation M stock to Corporation M unless the earnings of Corporation M double by January 1, 2009, or there is a change in ownership or control of Corporation M before that date. A's rights in the stock are treated as substantially nonvested (within the meaning of § 1.83–3(b)) during that period because A's rights in the stock are subject to a substantial risk of forfeiture (within the meaning of § 1.83–3(c)) and are nontransferable (within the meaning of § 1.83–3(d)). On January 1, 2008, a change in ownership or control of Corporation M occurs. On that day, the fair market value of the Corporation M stock is $250 per share. Because A's rights in the Corporation M stock become substantially vested (within the meaning of § 1.83–3(b)) on that day, the payment is considered made on that day, and the amount of the payment for purposes of this section is equal to $25,000 (100 × $250). *See* Q/A–38 through 41 for rules relating to the reduction of the excess parachute payment by the portion of the payment which is established to be reasonable compensation for personal services actually rendered before the date of a change in ownership or control.

Q–13: How are transfers of statutory and nonstatutory stock options treated?

A–13: (a) For purposes of this section, an option (including an option to which section 421 applies) is treated as property that is transferred when the option becomes vested (regardless of whether the option has a readily ascertainable fair market value as defined in § 1.83–7(b)). For purposes of this A–13, *vested* means substantially vested within the meaning of § 1.83–3(b) and (j) or the right to the payment is not otherwise subject to a substantial risk of forfeiture within the meaning of section 83(c). Thus, for purposes of this section, the vesting of such an option is treated as a payment in the nature of compensation. The value of an option at the time the option vests is determined under all the facts and circumstances in the particular case. Factors relevant to such a determination include, but are not limited to: The difference between the option's exercise price and the value of the property subject to the option at the time of vesting; the probability of the value of such property increasing or decreasing; and the length of the period during which the option can be exercised. Thus, an option is treated as a payment in the nature of compensation on the date of grant or vesting, as applicable, without regard to whether such option has an ascertainable fair market value. For purposes of this A–13, valuation may be determined by any method prescribed by the Commissioner in published guidance of general applicability under § 601.601(d)(2) of this Chapter.

(b) Any money or other property transferred to the disqualified individual on the exercise, or as consideration on the sale or other disposition, of an option described in paragraph (a) of this A–13 after the time such option vests is not treated as a payment in the nature of compensation to the disqualified individual under Q/A–11 of this section. Nonetheless, the amount of the otherwise allowable deduction under section 162 or 212 with respect to such transfer is reduced by the amount of the payment described in paragraph (a) of this A–13 treated as an excess parachute payment.

Q–14: Are payments in the nature of compensation reduced by consideration paid by the disqualified individual?

A–14: Yes, to the extent not otherwise taken into account under Q/A–12 and Q/A–13 of this section, the amount of any payment in the nature of compensation is reduced by the amount of any money or the fair market value of any property (owned by the disqualified individual without restriction) that is (or will be) transferred by the disqualified individual in exchange for the payment. For purposes of the preceding sentence, the fair market value of property is determined as of the date the property is transferred by the disqualified individual.

Disqualified Individuals

Q–15: Who is a disqualified individual?

A–15: (a) For purposes of this section, an individual is a disqualified individual with respect to a corporation if, at any time during the *disqualified individual determination period* (as defined in Q/A–20 of this section), the individual is an employee or independent contractor of the corporation and is, with respect to the corporation —

(1) A shareholder (but *see* Q/A–17 of this section);

(2) An officer (*see* Q/A–18 of this section); or

(3) A highly-compensated individual (*see* Q/A–19 of this section).

(b) For purposes of this A–15, a director is a disqualified individual with respect to a corporation if, at any time during the *disqualified individual determination period*, the director is, with respect to the corporation, a shareholder (*see* Q/A–17 of this section), an officer (*see* Q/A–18 of this section), or a highly-compensated individual (*see* Q/A–19 of this section).

(c) For purposes of this A–15, an individual who is an employee or independent contractor of a corporation other than the corporation undergoing a change in ownership or control is disregarded for purposes of determining who is a disqualified individual if such individual is employed by the corporation undergoing the change in ownership or control only on the last day of the disqualified individual determination period. Thus, for example, assume that E is an employee of Corporation X, that Y is acquired by Corporation X, and that Y undergoes a change in ownership or control. If E becomes an employee of Y on the date of the acquisition, in determining the disqualified individuals with respect to Y, E is disregarded under this paragraph (c).

Q–16: Is a personal service corporation treated as an individual?

A–16: (a) Yes. For purposes of this section, a personal service corporation (as defined in section 269A(b)(1)), or a noncorporate entity that would be a personal service corporation if it were a corporation, is treated as an individual.

(b) The following example illustrates the principles of this A–16:

Example. Corporation N, a personal service corporation (as defined in section 269A(b)(1)), has a single individual as its sole shareholder and employee. Corporation N performs personal services for Corporation M. The compensation paid to Corporation N by Corporation M puts Corporation N within the group of highly-compensated individuals of Corporation M as determined under A–19 of this section. Thus, Corporation N is treated as a highly-compensated individual with respect to Corporation M.

Q–17: Are all shareholders of a corporation considered shareholders for purposes of paragraphs (a)(1) and (b) of Q/A–15 of this section?

A–17: (a) No. Only an individual who owns stock of a corporation with a fair market value that exceeds 1 percent of the fair market value of the outstanding shares of all classes of the corporation's stock is treated as a disqualified individual with respect to the corporation by reason of stock ownership. An individual who owns a lesser amount of stock may, however, be a disqualified individual with respect to the corporation if such individual is an officer (*see* Q/A–18) or highly-compensated individual (see Q/A–19) with respect to the corporation.

(b) For purposes of determining the amount of stock owned by an individual for purposes of paragraph (a) of this A–17, the constructive ownership rules of section 318(a) apply. Stock underlying a vested option is considered owned by an individual who holds the vested option (and the stock underlying an unvested option is not considered owned by an individual who holds the unvested option). For purposes of the preceding sentence, however, if the option is exercisable for stock that is not substantially vested (as defined by §§ 1.83–3(b) and (j)), the stock underlying the option is not treated as owned by the individual who holds the option. Solely for purposes of determining the amount of stock owned by an individual for purposes of this A–17, mutual and cooperative corporations are treated as having stock.

(c) The following examples illustrates the principles of this A–17:

Example 1. E, an employee of Corporation A, received options under Corporation A's Stock Option Plan. E's stock options vest three years after the date of grant. E is not an officer or highly compensated individual during the disqualified individual determination period. E does not own, and is not considered to own under section 318, any other Corporation A stock. Two years after the options are granted to E, all of Corporation A's stock is acquired by Corporation B. Under Corporation A's Stock Option Plan, E's options are converted to Corporation E options and the vesting schedule remains the same. Under paragraph (b) of this A–17, the stock underlying the unvested options held by E on the date of the change in ownership or control is not considered owned by E. Because E is not considered to own Corporation A stock with a fair market value exceeding 1 percent of the total fair market value of all of the outstanding shares of all classes of Corporation A and E is not an officer or highly-compensated individual during the disqualified individual determination period, E is not a disqualified individual within the meaning of Q&A–15 of this section with respect to Corporation A.

Example 2. Assume the same facts as in *Example* 1, except that Corporation A's Stock Option Plan provides that all unvested options will vest immediately on a change in ownership or control. Under paragraph (b) of this A–17, the stock underlying the options that vest on the change in ownership or control is considered owned by E. If the stock considered owned by E exceeds 1 percent of the total fair market value of all of the outstanding shares of all classes of Corporation A stock (including for this purpose, all stock owned or constructively owned by all shareholders, provided that no share of stock is counted more than once), E is a disqualified individual within the meaning of Q/A–15 of this section with respect to Corporation A.

Example 3. Assume the same facts as in *Example 1* except that E received nonstatutory stock options that are exercisable for stock subject to a substantial risk of forfeiture under section 83. Assume further that under Corporation A's Stock Option Plan, the nonstatutory options will vest on a change in ownership or control. Under paragraph (b) of this A–17, E is not considered to own the stock underlying the options that vest on the change in ownership or control because the options are exercisable for stock subject to a substantial risk of forfeiture within the meaning of section 83. Because E is not considered to own Corporation A stock with a fair market value exceeding 1 percent of the total fair market value of all of the outstanding shares of all classes of Corporation A stock and E is not an officer or highly compensated individual during the disqualified individual determination period, E is not a disqualified individual within the meaning of Q/A–15 of this section with respect to Corporation A.

Q–18: Who is an officer?

A–18: (a) For purposes of this section, whether an individual is an officer with respect to a corporation is determined on the basis of all the facts and circumstances in the particular case (such as the source of the individual's authority, the term for which the individual is elected or appointed, and the nature and extent of the individual's duties). Any individual who has the title of officer is presumed to be an officer unless the facts and circumstances demonstrate that the individual does not have the authority of an officer. However, an individual who does not have the title of officer may nevertheless be considered an officer if the facts and circumstances demonstrate that the individual has the authority of an officer. Generally, the term officer means an administrative executive who is in regular and continued service. The term officer implies continuity of service and excludes those employed for a special and single transaction.

(b) An individual who is an officer with respect to any member of an affiliated group that is treated as one corporation pursuant to Q/A–46 of this section is treated as an officer of such one corporation.

(c) No more than 50 employees (or, if less, the greater of 3 employees, or 10 percent of the employees (rounded up to the nearest integer)) of the corporation (in the case of an affiliated group treated as one corporation, each member of the affiliated group) are treated as disqualified individuals with respect to a corporation by reason of being an officer of the corporation. For purposes of the preceding sentence, the number of employees of the corporation is the greatest number of employees the corporation has during the disqualified individual determination period (as defined in Q/A–20 of this section). If the number of officers of the corporation exceeds the number of employees who may be treated as officers under the first sentence of this paragraph (c), then the employees who are treated as officers for purposes of this section are the highest paid 50 employees (or, if less, the greater of 3 employees, or 10 percent of the employees (rounded up to the nearest integer)) of the corporation when ranked on the basis of compensation (as determined under Q/A–21 of this section) paid during the disqualified individual determination period.

(d) In determining the total number of employees of a corporation for purposes of this A–18, employees are not counted if they normally work less than 17½ hours per week (as defined in section 414(q)(5)(B) and the regulations thereunder) or if they normally work during not more than 6 months during any year (as defined in section 414(q)(5)(C) and the regulations thereunder). However, an employee who is not counted for purposes of the preceding sentence may still be an officer.

Q–19: Who is a highly-compensated individual?

A–19: (a) For purposes of this section, a highly-compensated individual with respect to a corporation is any individual who is, or would be if the individual were an employee, a member of the group consisting of the lesser of the highest paid 1 percent of the employees of the corporation (rounded up to the nearest integer), or the highest paid 250 employees of the corporation, when ranked on the basis of compensation (as determined under Q/A–21 of this section) earned during the disqualified individual determination period (as defined in Q/A–20 of this section). For purposes of the preceding

sentence, the number of employees of the corporation is the greatest number of employees the corporation has during the disqualified individual determination period (as defined in Q/A–20 of this section). However, no individual whose annualized compensation during the disqualified individual determination period is less than the amount described in section 414(q)(1)(B)(i) for the year in which the change in ownership or control occurs will be treated as a highly-compensated individual.

(b) An individual who is not an employee of the corporation is not treated as a highly-compensated individual with respect to the corporation on account of compensation received for performing services (such as brokerage, legal, or investment banking services) in connection with a change in ownership or control of the corporation, if the services are performed in the ordinary course of the individual's trade or business and the individual performs similar services for a significant number of clients unrelated to the corporation.

(c) The total number of employees of a corporation for purposes of this A–19 is determined in accordance with Q/A–18(d) of this section. However, an employee who is not counted for purposes of the preceding sentence may still be a highly-compensated individual.

Q–20: What is the disqualified individual determination period?

A–20: The disqualified individual determination period is the twelve-month period prior to and ending on the date of the change in ownership or control of the corporation.

Q–21: How is *compensation* defined for purposes of determining who is a disqualified individual?

A–21: (a) For purposes of determining who is a disqualified individual, the term *compensation* means the compensation which was earned by the individual for services performed for the corporation with respect to which the change in ownership or control occurs (changed corporation), for a predecessor entity, or for a related entity. Such compensation is determined without regard to sections 125, 132(f)(4), 402(e)(3), and 402(h)(1)(B). Thus, for example, compensation includes elective or salary reduction contributions to a cafeteria plan, cash or deferred arrangement or tax-sheltered annuity, and amounts credited under a nonqualified deferred compensation plan.

(b) For purposes of this A–21, a predecessor entity is any entity which, as a result of a merger, consolidation, purchase or acquisition of property or stock, corporate separation, or other similar business transaction transfers some or all of its employees to the changed corporation or to a related entity or to a predecessor entity of the changed corporation. The term *related entity* includes—

(1) All members of a controlled group of corporations (as defined in section 414(b)) that includes the changed corporation or a predecessor entity;

(2) All trades or businesses (whether or not incorporated) that are under common control (as defined in section 414(c)) if such group includes the changed corporation or a predecessor entity;

(3) All members of an affiliated service group (as defined in section 414(m)) that includes the changed corporation or a predecessor entity; and

(4) Any other entities required to be aggregated with the changed corporation or a predecessor entity pursuant to section 414(o) and the regulations thereunder (except leasing organizations as defined in section 414(n)).

(c) For purposes of Q/A–18 and Q/A–19 of this section, compensation that was contingent on the change in ownership or control and that was payable in the year of the change is not treated as compensation.

Contingent on Change in Ownership or Control

Q–22: When is a payment contingent on a change in ownership or control?

A–22: (a) In general, a payment is treated as contingent on a change in ownership or control if the payment would not, in fact, have been made had no change in ownership or control occurred, even if the payment is also conditioned on the occurrence of another event. A payment generally is treated as one which would not, in fact, have been made in the absence of a change in ownership or control unless it is substantially certain, at the time of the change, that the payment would have been made whether or not the change occurred. (But *see* Q/A–23 of this section regarding payments under agreements entered into after a change in ownership or control.) A payment that becomes vested as a result of a change in ownership or control is not treated as a payment which was substantially certain to have been made whether or not the change occurred. For purposes of this A–22, *vested* means the payment is substantially vested within the meaning of § 1.83–3(b) and (j) or the right to the payment is not otherwise subject to a substantial risk of forfeiture as defined by section 83(c).

(b)(1) For purposes of paragraph (a), a payment is treated as contingent on a change in ownership or control if—

(i) The payment is contingent on an event that is closely associated with a change in ownership or control;

(ii) A change in ownership or control actually occurs; and

(iii) The event is materially related to the change in ownership or control.

(2) For purposes of paragraph (b)(1)(i) of this A–22, a payment is treated as contingent on an event that is closely associated with a change in ownership or control unless it is substantially certain, at the time of the event, that the payment would have been made whether or not the event occurred. An event is considered closely associated with a change in ownership or control if the event is of a type often preliminary or subsequent to, or otherwise closely associated with, a change in ownership or control. For example, the following events are considered closely associated with a change in the ownership or control of a corporation: The onset of a tender offer with respect to the corporation; a substantial increase in the market price of the corporation's stock that occurs within a short period (but only if such increase occurs prior to a change in ownership or control); the cessation of the listing of the corporation's stock on an established securities market; the acquisition of more than 5 percent of the corporation's stock by a person (or more than one person acting as a group) not in control of the corporation; the voluntary or involuntary termination of the disqualified individual's employment; a significant reduction in the disqualified individual's job responsibilities; and a change in ownership or control as defined in the disqualified individual's employment agreement (or elsewhere) that does not meet the definition of a change in ownership or control described in Q/A–27, 28, or 29 of this section. Whether other events are treated as closely associated with a change in ownership or control is based on all the facts and circumstances of the particular case.

(3) For purposes of determining whether an event (as described in paragraph (b)(2) of this A–22) is materially related to a change in ownership or control, the event is presumed to be materially related to a change in ownership or control if such event occurs within the period beginning one year before and ending one year after the date of the change in ownership or control. If such event occurs outside of the period beginning one year before and ending one year after the date of change in ownership or control, the event is presumed not materially related to the change in ownership or control. A payment does not fail to be contingent on a change in ownership or control merely because it is also contingent on the occurrence of a second event (without regard to whether the second event is closely associated with or materially related to a change in ownership or control). Similarly, a payment that is treated as contingent on a change in ownership or control because it is contingent on a closely associated event does not fail to be treated as contingent on a change in ownership or control merely because it is also contingent on the occurrence of a second event (without regard to whether the second event is closely associated with or materially related to a change in ownership or control).

(c) A payment that would in fact have been made had no change in ownership or control occurred is treated as contingent on a change in ownership or control if the change in ownership or control (or the occurrence of an event that is closely associated with and materially related to a change in ownership or control within the meaning of paragraph (b)(1) of this A–22), accelerates the time at which the payment is made. Thus, for example, if a change in ownership or control accelerates the time of payment of deferred compensation that is vested without regard to the change in ownership or control, the payment may be treated as contingent on the change. *See* Q/A–24 of this section regarding the portion of a payment that is so treated. *See also* Q/A–8 of this section regarding the exemption for certain payments under qualified plans and Q/A–40 of this section regarding the treatment of a payment as reasonable compensation.

(d) A payment is treated as contingent on a change in ownership or control even if the employment or independent contractor relationship of the disqualified individual is not terminated (voluntarily or involuntarily) as a result of the change.

(e) The following examples illustrate the principles of this A–22:

Example 1. A corporation grants a stock appreciation right to a disqualified individual, A, more than one year before a change in ownership or control. After the stock appreciation right vests and becomes exercisable, a change in ownership or control of the corporation occurs, and A exercises the right. Assuming neither the granting nor the vesting of the stock appreciation right is contingent on a change in ownership or control, the payment made on exercise is not contingent on the change in ownership or control.

Example 2. A contract between a corporation and B, a disqualified individual, provides that a payment will be made to B if the corporation undergoes a change in ownership or control and B's employment with the corporation is terminated at any time over the succeeding 5 years. Eighteen months later, a change in the ownership of the corporation occurs. Two years after the change in ownership, B's employment is terminated and the payment is made to B. Because it was not substantially certain that the corporation would have made the payment to B on B's termination of employment if there had not been a change in ownership, the payment is treated as contingent on the change in ownership under paragraph (a) of this A–22. This is true even though B's termination of employment is presumed not to be, and in fact may not be, materially related to the change in ownership or control.

Example 3. A contract between a corporation and C, a disqualified individual, provides that a payment will be made to C if C's employment is terminated at any time over the succeeding 3 years (without regard to whether or not there is a change in ownership or control). Eighteen months after the contract is entered into, a change in the ownership or control of the corporation occurs. Six months after the change in ownership or control, C's employment is terminated and the payment is made to C. Termination of employment is considered an event closely associated with a change in ownership or control. Because the termination occurred within one year after the date of the change in ownership or control, the termination of C's employment is presumed to be materially related to the change in ownership or control under paragraph (b)(3) of this A–22. If this presumption is not successfully rebutted, the payment will be treated as contingent on the change in ownership or control under paragraph (b) of this A–22.

Example 4. A contract between a corporation and a disqualified individual, D, provides that a payment will be made to D upon the onset of a tender offer for shares of the corporation's stock. A tender offer is made on December 1, 2008, and the payment is made to D. Although the tender offer is unsuccessful, it leads to a negotiated merger with another entity on June 1, 2009, which results in a change in the ownership or control of the corporation. It was not substantially certain, at the time of the onset of the tender offer, that the payment would have been made had no tender offer taken place. The onset of a tender offer is considered closely associated with a change in ownership or control. Because the tender offer occurred within one year before the date of the change in ownership or control of the corporation, the onset of the tender offer is presumed to be materially related to the change in ownership or control. If this presumption is not rebutted, the payment will be treated as contingent on the change in ownership or control. If no change in ownership or control had occurred, the payment would not be treated as contingent on a change in ownership or control; however, the payment still could be a parachute payment under Q/A–37 of this section if the contract violated a generally enforced securities law or regulation.

Example 5. A contract between a corporation and a disqualified individual, E, provides that a payment will be made to E if the corporation's level of product sales or profits reaches a specified level. At the time the contract was entered into, the parties had no reason to believe that such an increase in the corporation's level of product sales or profits would be preliminary or subsequent to, or otherwise closely associated with, a change in ownership or control of the corporation. Eighteen months later, a change in the ownership or control of the corporation occurs and within one year after the date of the change of ownership or control, the corporation's level of product sales or profits reaches the specified level. Under these facts and circumstances (and in the absence of contradictory evidence), the increase in product sales or profits of the corporation is not an event closely associated with the change in ownership or control of the corporation. Accordingly, even if the increase is materially related to the change in ownership or control, the payment will not be treated as contingent on a change in ownership or control.

Q–23: May a payment be treated as contingent on a change in ownership or control if the payment is made under an agreement entered into after the change?

A–23: (a) No. Payments are not treated as contingent on a change in ownership or control if they are made (or are to be made) pursuant to an agreement entered into after the change (a post-change agreement). For this purpose, an agreement that is executed after a change in ownership or control pursuant to a legally enforceable agreement that was entered into before the change is considered to have been entered into before the change. (*See* Q/A–9 of this section regarding the exemption for reasonable compensation for services rendered on or after a change in ownership or control.) If an individual has a right to receive a payment that would be a parachute payment if made under an agreement entered into prior to a change in ownership or control (pre-change agreement) and gives up that right as bargained-for consideration for benefits under a post-change agreement, the agreement is treated as a post-change agreement only to the extent the value of the payments under the agreement exceed the value of the payments under the pre-change agreement. To the extent payments under the agreement have the same value as the payments under the pre-change agreement, such payments retain their character as parachute payments subject to this section.

(b) The following examples illustrate the principles of this A–23:

Example 1. Assume that a disqualified individual is an employee of a corporation. A change in ownership or control of the corporation occurs, and thereafter the

individual enters into an employment agreement with the acquiring company. Because the agreement is entered into after the change in ownership or control occurs, payments to be made under the agreement are not treated as contingent on the change.

Example 2. Assume the same facts as in *Example 1*, except that the agreement between the disqualified individual and the acquiring company is executed after the change in ownership or control, pursuant to a legally enforceable agreement entered into before the change. Payments to be made under the agreement may be treated as contingent on the change in ownership or control pursuant to Q/A–22 of this section. However, see Q/A–9 of this section regarding the exemption from the definition of parachute payment for certain amounts of reasonable compensation.

Example 3. Assume the same facts as in *Example 1*, except that prior to the change in ownership or control, the individual and corporation enter into an agreement under which the individual will receive parachute payments in the event of a change in ownership or control of the corporation. After the change, the individual agrees to give up the right to payments under the pre-change agreement that would be parachute payments if made, in exchange for compensation under a new agreement with the acquiring corporation. Because the individual gave up the right to parachute payments under the pre-change agreement in exchange for other payments under the post-change agreement, payments in an amount equal to the parachute payments under the pre-change agreement are treated as contingent on the change in ownership or control under this A–23. Because the post-change agreement was entered into after the change, payments in excess of this amount are not treated as parachute payments.

Q–24: If a payment is treated as contingent on a change in ownership or control, is the full amount of the payment so treated?

A–24: (a)(1) *General rule.* Yes. If the payment is a transfer of property, the amount of the payment is determined under Q/A–12 or Q/A–13 of this section. For all other payments, the amount of the payment is determined under Q/A–11 of this section. However, in certain circumstances, described in paragraphs (b) and (c) of this A–24, only a portion of the payment is treated as contingent on the change. Paragraph (b) of this A–24 applies to a payment that is vested, without regard to the change in ownership or control, and is treated as contingent on the change in ownership or control because the change accelerates the time at which the payment is made. Paragraph (c) of this A–24 applies to a payment that becomes vested as a result of the change in ownership or control if, without regard to the change in ownership or control, the payment was contingent only on the continued performance of services for the corporation for a specified period of time and if the payment is attributable, at least in part, to services performed before the date the payment becomes vested. Paragraph (b) or (c) does not apply to any payment (or portion thereof) if the payment is treated as contingent on the change in ownership or control pursuant to Q/A–25 of this section. For purposes of this A–24, vested has the same meaning as provided in Q/A–22(a).

(2) *Reduction by reasonable compensation.* The amount of a payment under paragraph (a)(1) of this A–24 is reduced by any portion of such payment that the taxpayer establishes by clear and convincing evidence is reasonable compensation for personal services rendered by the disqualified individual on or after the date of the change of control. *See* Q/A–9 and Q/A–38 through 44 of this section for rules concerning reasonable compensation. The portion of an amount treated as contingent under paragraph (b) or (c) of this A–24 may not be reduced by reasonable compensation.

(b) *Vested payments.* This paragraph (b) applies if a payment is vested, without regard to the change in ownership or control, and is treated as contingent on the change in ownership or control because the change accelerates the time at which the payment is made. In such a case, the portion of the payment, if any, that is treated as contingent on the change in ownership or control is the amount by which the amount of the accelerated payment exceeds the present value of the payment absent the acceleration. If the value of such a payment absent the acceleration is not reasonably ascertainable, and the acceleration of the payment does not significantly increase the present value of the payment absent the acceleration, the present value of the payment absent the acceleration is treated as equal to the amount of the accelerated payment. If the value of the payment absent the acceleration is not reasonably ascertainable, but the acceleration significantly increases the present value of the payment, the future value of such payment is treated as equal to the amount of the accelerated payment. For rules on determining present value, *see* paragraph (e) of this A–24, Q/A–32, and Q/A–33 of this section.

(c)(1) *Nonvested payments.* This paragraph (c) applies to a payment that becomes vested as a result of the change in ownership or control to the extent that—

(i) Without regard to the change in ownership or control, the payment was contingent only on the continued performance of services for the corporation for a specified period of time; and

(ii) The payment is attributable, at least in part, to the performance of services before the date the payment is made or becomes certain to be made.

(2) The portion of the payment subject to paragraph (c) of this A–24 that is treated as contingent on the change in ownership or control is the amount described in paragraph (b) of this A–24, plus an amount, as determined in paragraph (c)(4) of this A–24, to reflect the lapse of the obligation to continue to perform services. In no event can the portion of the payment treated as contingent on the change in ownership or control under this paragraph (c) exceed the amount of the accelerated payment, or, if the payment is not accelerated, the present value of the payment.

(3) For purposes of this paragraph (c) of this A–24, the acceleration of the vesting of a stock option or the lapse of a restriction on restricted stock is considered to significantly increase the value of a payment.

(4) The amount reflecting the lapse of the obligation to continue to perform services (described in paragraph (c)(2) of this A–24) is 1 percent of the amount of the accelerated payment multiplied by the number of full months between the date that the individual's right to receive the payment is vested and the date that, absent the acceleration, the payment would have been vested. This paragraph (c)(4) applies to the accelerated vesting of a payment in the nature of compensation even if the time at which the payment is made is not accelerated. In such a case, the amount reflecting the lapse of the obligation to continue to perform services is 1 percent of the present value of the future payment multiplied by the number of full months between the date that the individual's right to receive the payment is vested and the date that, absent the acceleration, the payment would have been vested.

(d) *Application of this A–24 to certain payments.*— (1) *Benefits under a nonqualified deferred compensation plan.* In the case of a payment of benefits under a nonqualified deferred compensation plan, paragraph (b) of this A–24 applies to the extent benefits under the plan are vested without regard to the change in ownership or control. Paragraph (c) of this A–24 applies to the extent benefits under the plan become vested as a result of the change in ownership or control and are attributable, at least in part, to the performance of services prior to vesting. Any other payment of benefits under a nonqualified deferred compensation plan is a payment in the nature of compensation subject to the general rule of paragraph (a) of this A–24 and the rules in Q/A–11 of this section.

(2) *Employment agreements.* The general rule of paragraph (a) of this A–24 (and not the rules in paragraphs (b) or (c)) applies to the payment of amounts due under an employment agreement on a termination of employment or a change in ownership or control that otherwise would be attributable to the performance of services (or refraining from the performance of services) during any period that begins after the date of termination of employment or change in ownership or control, as applicable. For purposes of this paragraph (d)(2) of this A–24, an employment agreement means an agreement between an employee or independent contractor and employer or service recipient which describes, among other things, the amount of compensation or remuneration payable to the employee or independent contractor. *See* Q/A–42(b) and 44 of this section for the treatment of the remaining amounts of salary under an employment agreement.

(3) *Vesting due to an event other than services.* Neither paragraph (b) nor (c) of this A–24 applies to a payment if (without regard to the change in ownership or control) vesting of the payment depends on an event other than the performance of services, such as the attainment of a performance goal, and the event does not occur prior to the change in ownership or control. In such circumstances, the full amount of the accelerated payment is treated as contingent on the change in ownership or control under paragraph (a) of this A–24. However, *see* Q/A–39 of this section for rules relating to the reduction of the excess parachute payment by the portion of the payment which is established to be reasonable compensation for personal services actually rendered before the date of a change in ownership or control.

(e) *Present value.* For purposes of this A–24, the present value of a payment is determined as of the date on which the accelerated payment is made.

(f) *Examples.* The following examples illustrate the principles of this A–24:

Example 1. (i) Corporation maintains a qualified plan and a nonqualified supplemental retirement plan (SERP) for its executives. Benefits under the SERP are not paid to participants until retirement. E, a disqualified individual with respect to Corporation, has a vested account balance of $500,000 under the SERP. A change in ownership or control of Corporation occurs. The SERP provides that in the event of a change in ownership or control, all vested accounts will be paid to SERP participants.

(ii) Because E was vested in $500,000 of benefits under the SERP prior to the change in ownership or control and the change merely accelerated the time at which the payment was made to E, only a portion of the payment, as determined under paragraph (b) of this A–24, is treated as contingent on the change. Thus, the portion of the payment that is treated as contingent on the change is the amount by which the amount of the accelerated payment ($500,000) exceeds the present value of the payment absent the acceleration.

(iii) Assume the same facts as in paragraph (i) of this *Example 1*, except that E's account balance of $500,000 is not vested. Instead, assume that E will vest in E's account balance of $500,000 in 2 years if E continues to perform services for the next 2 years. Assume further that the SERP provides that all unvested SERP benefits vest immediately on a change in ownership or control and are paid to the participants. Because the vesting of the SERP payment, without regard to the change, depends only on the performance of services for a specified period of time and the payment is attributable, in part, to the performance of services before the change in ownership or control, only a portion of the $500,000 payment, as determined under paragraph (c) of this A–24, is treated as contingent on the change. The portion of the payment that is treated as contingent on the change is the lesser of the amount of the accelerated payment or the amount by which the accelerated payment exceeds the present value of the payment absent the acceleration, plus an amount to reflect the lapse of the obligation to continue to perform services.

(iv) Assume the same facts as in paragraph (i) of this *Example 1*, except that in addition to the pay out of the vested account balance of $500,000 on the change in ownership or control, an additional $70,000 will be credited to E's account and included in the payment to E. Because the $500,000 was vested without regard to the change in ownership or control, paragraph (b) of this A–24 applies to the $500,000 payment. Because the $70,000 is not vested, without regard to the change, and is not attributable to the performance of services prior to the change, the entire $70,000 payment is contingent on the change in ownership or control under paragraph (a) of this A–24.

(v) Assume the same facts as in paragraph (i) of this *Example 1*, except that the benefit under the SERP is calculated using a percentage of final average compensation multiplied by years of service. If, contingent on the change in ownership or control, E is credited with additional years of service, an adjustment to final average compensation, or an increase in the applicable percentage, any increase in the benefit payable under the SERP is not attributable to the performance of services prior to the change, and the entire increase in the benefit is contingent on the change in ownership or control under paragraph (a) of this A–24.

Example 2. As a result of a change in the effective control of a corporation D, a disqualified individual with respect to the corporation, receives accelerated payment of D's vested account balance in a nonqualified deferred compensation account plan. Actual interest and other earnings on the plan assets are credited to each account as earned before distribution. Investment of the plan assets is not restricted in such a manner as would prevent the earning of a market rate of return on the plan assets. The date on which D would have received D's vested account balance absent the change in ownership or control is uncertain, and the rate of earnings on the plan assets is not fixed. Thus, the amount of the payment absent the acceleration is not reasonably ascertainable. Under these facts, acceleration of the payment does not significantly increase the present value of the payment absent the acceleration, and the present value of the payment absent the acceleration is treated as equal to the amount of the accelerated payment. Accordingly, no portion of the payment is treated as contingent on the change.

Example 3. (i) On January 15, 2006, a corporation and a disqualified individual, F, enter into a contract providing for a retention bonus of $500,000 to be paid to F on January 15, 2011. The payment of the bonus will be forfeited by F if F does not remain employed by the corporation for the entire 5-year period. However, the contract provides that the full amount of the payment will be made immediately on a change in ownership or control of the corporation during the 5-year period. On January 15, 2009, a change in ownership or control of the corporation occurs and the full amount of the payment ($500,000) is made on that date to F. Under these facts, the payment of $500,000 was contingent only on F's performance of services for a specified period and is attributable, in part, to the performance of services before the change in ownership or control. Therefore, only a portion of the payment, as determined under paragraph (c) of this A–24 is treated as contingent on the change. The portion of the payment that is treated as contingent on the change is the amount by which the amount of the accelerated payment (*i.e.*, $500,000, the amount paid to the individual because of the change in ownership) exceeds the present value of the payment that was expected to have been made absent the acceleration (*i.e.*, $406,838, the present value on January 15, 2009, of a $500,000 payment on January 15, 2011), plus $115,000 (1 percent × 23 months × $500,000) which is the amount reflecting the lapse of the obligation to continue to perform services. Accordingly, the amount of the payment treated as contingent on the change in ownership or control is $208,162, the sum of $93,162 ($500,000 − $406,838) + $115,000). This result does not change if F actually remains employed until the end of the 5-year period.

(ii) Assume the same facts as in paragraph (i) of this *Example 3*, except that the retention bonus will vest on the change in ownership or control, but will not be paid until January 15, 2011 (the original date in the contract). Because the payment of $500,000 was contingent only on F's performance of services for a specified period and is attributable, in part, to the performance of services before the change in ownership or

control, only a portion of the $500,000 payment is treated as contingent on the change in ownership or control as determined under paragraph (c) of this A–24. Because there is accelerated vesting of the bonus, the portion of the payment treated as contingent on the change is the amount described in paragraph (b) of this A–27, which is $0 under these facts, plus an amount reflecting the lapse of the obligation to continue to perform services which is $93,573 (1 percent × 23 months × $406,838 (the present value of a $500,000 payment).

Example 4. (i) On January 15, 2006, a corporation gives to a disqualified individual, in connection with her performance of services to the corporation, a bonus of 1,000 shares of the corporation's stock. Under the terms of the bonus arrangement, the individual is obligated to return the stock to the corporation if she terminates her employment for any reason prior to January 15, 2011. However, if there is a change in the ownership or effective control of the corporation prior to January 15, 2011, she ceases to be obligated to return the stock. The individual's rights in the stock are treated as substantially nonvested (within the meaning of § 1.83–3(b) and (j)) during that period. On January 15, 2009, a change in the ownership of the corporation occurs. On that day, the fair market value of the stock is $500,000.

(ii) Under these facts, the payment was contingent only on performance of services for a specified period and is attributable, in part, to the performance of services before the change in ownership or control. Thus, only a portion of the payment, as determined under paragraph (c) of this A–24, is treated as contingent on the change in ownership or control. The portion of the payment that is treated as contingent on the change is the amount by which the present value of the accelerated payment on January 15, 2009 ($500,000), exceeds the present value of the payment that was expected to have been made on January 15, 2011, plus an amount reflecting the lapse of the obligation to continue to perform services. At the time of the change, it cannot be reasonably ascertained what the value of the stock would have been on January 15, 2011. The acceleration of the lapse of a restriction on stock is treated as significantly increasing the value of the payment. Therefore, the value of such stock on January 15, 2011, is deemed to be $500,000, the amount of the accelerated payment. The present value on January 15, 2009, of a $500,000 payment to be made on January 15, 2011, is $406,838. Thus, the portion of the payment treated as contingent on the change is $208,162, the sum of $93,162 ($500,000 − $406,838), plus $115,000 (1 percent × 23 months × $500,000), the amount reflecting the lapse of the obligation to continue to perform services.

Example 5. (i) On January 15, 2006, a corporation grants to a disqualified individual nonqualified stock options to purchase 30,000 shares of the corporation's stock. The options will be forfeited by the individual if he fails to perform personal services for the corporation until January 15, 2009. The options will, however, vest in the individual at an earlier date if there is a change in ownership or control of the corporation. On January 16, 2008, a change in the ownership or control of the corporation occurs and the options become vested in the individual. The value of the options on January 16, 2008, determined in accordance with Q/A–13, is $600,000.

(ii) The payment of the options to purchase 30,000 shares was contingent only on performance of services for the corporation until January 15, 2009, and is attributable, in part, to the performance of services before the change in ownership or control. Therefore, only a portion of the payment is treated as contingent on the change. The portion of the payment that is treated as contingent on the change is the amount by which the accelerated payment on January 16, 2008 ($600,000) exceeds the present value on January 16, 2008, of the payment that was expected to have been made on January 15, 2009, absent the acceleration, plus an amount reflecting the lapse of the obligation to continue to perform services. At the time of the change, it cannot be reasonably ascertained what the value of the options would have been on January 15, 2009. The acceleration of vesting in the options is treated as significantly increasing the value of the payment. Therefore, the value of such options on January 15, 2009, is deemed to be $600,000, the amount of the accelerated payment. The present value on January 16, 2008, of a $600,000 payment to be made on January 15, 2009, is $549,964. Thus, the portion of the payment treated as contingent on the change is $116,036, the sum of $50,036 ($600,000 − $549,964), plus an amount reflecting the lapse of the obligation to continue to perform services which is $66,000 (1 percent × 11 months × $600,000).

Example 6. (i) Assume the same facts as in *Example 5*, except that the options become vested periodically (absent a change in ownership or control), with one-third of the options vesting on January 15, 2007, 2008, and 2009, respectively. Thus, options to purchase 20,000 shares vest independently of the January 16, 2008, change in ownership or control and the options to purchase the remaining 10,000 shares vest as a result of the change in ownership or control.

(ii) The payment of the options to purchase 10,000 shares was contingent only on performance of services for the corporation until January 15, 2009, and is attributable, in part, to the performance of services before the change in ownership or control. Therefore, only a portion of the payment as determined under paragraph (c) of this A–24 is treated as contingent on the change in ownership or control. The portion of the payment that is treated as contingent on the change in ownership or control is the amount by which the accelerated payment on January 16, 2008 ($200,000) exceeds the present value on January 16, 2008, of the payment that was expected to have been made on January 15, 2009, absent the acceleration, plus an amount reflecting the lapse of the obligation to perform services. At the time of the change in ownership or control, it cannot be reasonably ascertained what the value of the options would have been on January 15, 2009. The acceleration of vesting in the options is treated as significantly increasing the value of the payment. Therefore, the value of such options on January 15, 2009, is deemed to be $200,000, the amount of the accelerated payment. The present value on January 16, 2008, of a $200,000 payment to be made on January 15, 2009, is $183,328.38. Thus, the portion of the payment treated as contingent on the change is $38,671.62, the sum of $16,671.62 ($200,000 − $183,328.38), plus an amount reflecting the lapse of the obligation to continue to perform services which is $22,000 (1 percent × 11 months × $200,000).

Example 7. Assume the same facts as in *Example 5*, except that the option agreement provides that the options will vest either on the corporation's level of profits reaching a specified level, or if earlier, on the date on which there is a change in ownership or control of the corporation. The corporation's level of profits do not reach the specified level prior to January 16, 2008. In such case, the full amount of the payment, $600,000, is treated as contingent on the change in ownership or control under paragraph (a) of this A–24. Because the payment was not contingent only on the performance of services for the corporation for a specified period, the rules of paragraph (b) and (c) of this A–24 do not apply. See Q/A–39 of this section for rules relating to the reduction of the excess parachute payment by the portion of the payment which is established to be reasonable compensation for personal services actually rendered before the date of a change in ownership or control.

Example 8. On January 1, 2005, E, a disqualified individual with respect to Corporation X, enters into an employment agreement with Corporation X under which E will be paid wages of $200,000 each year during the 5-year employment agreement. The employment agreement provides that if a change in ownership or control of Corporation X occurs, E will be paid the present value of the remaining salary under the employment agreement. On January 1, 2006, a change in ownership or control of Corporation X occurs, E is terminated, and E receives a payment of the present value of $200,000 for each of the 4 years remaining under the employment agreement. Because the payment represents future salary under an employment agreement (*i.e.*, amounts otherwise attributable to the performance of services for periods that begin after the termination of employment), the general rule of paragraph (a) of this A–24 applies to the payment and not the rules of paragraphs (b) and (c) of this A–24. See Q/A–42(c) and 44 of this section for the treatment of the remaining payments under an employment agreement.

Presumption That Payment Is Contingent on Change

Q–25: Is there a presumption that certain payments are contingent on a change in ownership or control?

A–25: Yes, for purposes of this section, any payment is presumed to be contingent on such a change unless the contrary is established by clear and convincing evidence if the payment is made pursuant to—

(a) An agreement entered into within one year before the date of a change in ownership or control; or

(b) An amendment that modifies a previous agreement in any significant respect, if the amendment is made within one year before the date of a change in ownership or control. In the case of an amendment described in paragraph (b) of this A–25, only the portion of any payment that exceeds the amount of such payment that would have been made in the absence of the amendment is presumed, by reason of the amendment, to be contingent on the change in ownership or control.

Q–26: How may the presumption described in Q/A–25 of this section be rebutted?

A–26: (a) To rebut the presumption described in Q/A–25 of this section, the taxpayer must establish by clear and convincing evidence that the payment is not contingent on the change in ownership or control. Whether the payment is contingent on such change is determined on the basis of all the facts and circumstances of the particular case. Factors relevant to such a determination include, but are not limited to, the content of the agreement or amendment and the circumstances surrounding the execution of the agreement or amendment, such as whether it was entered into at a time when a takeover attempt had commenced and the degree of likelihood that a change in ownership or control would actually occur. However, even if the presumption is rebutted with respect to an agreement, some or all of the payments under the agreement may still be contingent on the change in ownership or control pursuant to Q/A–22 of this section.

(b) In the case of an agreement described in Q/A–25 of this section, clear and convincing evidence that the agreement is one of the three following types will generally rebut the presumption that payments under the agreement are contingent on the change in ownership or control—

(1) A *nondiscriminatory employee plan or program as defined* in paragraph (c) of this A–26;

(2) A contract between a corporation and an individual that replaces a prior contract entered into by the same parties more than one year before the change in ownership or control, if the new contract does not provide for increased payments (apart from normal increases attributable to increased responsibilities or cost of living adjustments), accelerate the payment of amounts due at a future time, or modify (to the individual's benefit) the terms or conditions under which payments will be made; or

(3) A contract between a corporation and an individual who did not perform services for the corporation prior to the one year period before the change in ownership or control occurs, if the contract does not provide for payments that are significantly different in amount, timing, terms, or conditions from those provided under contracts entered into by the corporation (other than contracts that themselves were entered into within one year before the change in ownership or control and in contemplation of the change) with individuals performing comparable services.

(c) For purposes of this section, the term *nondiscriminatory employee plan or program* means: a group term life insurance plan that meets the requirements of section 79(d); a self insured medical reimbursement plan that meets the requirements of section 105(h); a cafeteria plan (within the meaning of section 125); an educational assistance program (within the meaning of section 127); a dependent care assistance program (within the meaning of section 129); a no-additional-cost service (within the meaning of section 132(b)) or qualified employee discount (within the meaning of section 132(c)); a qualified retirement planning services program under section 132(m); an adoption assistance program (within the meaning of section 137); and such other items as provided by the Commissioner in published guidance of general applicability under § 601.601(d)(2). Payments under certain other plans are exempt from the definition of *parachute payment* under Q/A–8 of this section.

(d) The following examples illustrate the application of the presumption:

Example 1. A corporation and a disqualified individual who is an employee of the corporation enter into an employment contract. The contract replaces a prior contract entered into by the same parties more than one year before the change in ownership or control and the new contract does not provide for any increased payments other than a cost of living adjustment, does not accelerate the payment of amounts due at a future time, and does not modify (to the individual's benefit) the terms or conditions under which payments will be made. Clear and convincing evidence of these facts rebuts the presumption described in A–25 of this section. However, payments under the contract still may be contingent on the change in ownership or control pursuant to Q/A–22 of this section.

Example 2. Assume the same facts as in *Example 1*, except that the contract is entered into after a tender offer for the corporation's stock had commenced and it was likely that a change in ownership or control would occur and the contract provides for a substantial bonus payment to the individual upon his signing the contract. The individual has performed services for the corporation for many years, but previous employment contracts between the corporation and the individual did not provide for a similar signing bonus. One month after the contract is entered into, a change in the ownership or control of the corporation occurs. All payments under the contract are presumed to be contingent on the change in ownership or control even though the bonus payment would have been legally required even if no change had occurred. Clear and convincing evidence of these facts rebuts the presumption described in A–25 of this section with respect to all of the payments under the contract with the exception of the bonus payment (which is treated as contingent on the change). However, payments other than the bonus under the contract still may be contingent on the change in ownership or control pursuant to Q/A–22 of this section.

Example 3. A corporation and a disqualified individual, who is an employee of the corporation, enter into an employment contract within one year of a change in ownership or control of the corporation. Under the contract, in the event of a change in ownership or control and subsequent termination of employment, certain payments will be made to the individual. A change in ownership or control occurs, but the individual is not terminated until 2 years after the change in ownership or control. If clear and convincing evidence does not rebut the presumption described in A–25 of this section, because the payment is made pursuant to an agreement entered into within one year of the date of the change in ownership or control, the payment is presumed contingent on the change under A–25 of this section. This is true even though A's termination of employment is presumed not to be materially related to the change in ownership or control under Q/A–22 of this section.

Change in Ownership or Control

Q–27: When does a change in the ownership of a corporation occur?

A–27: (a) For purposes of this section, a change in the ownership of a corporation occurs on the date that any one person, or more than one person acting as a group (as defined in paragraph (b) of this A–27), acquires ownership of stock of the corporation that, together with stock held by such person or group, has more than 50 percent of the total fair market value or total voting power of the stock of such corporation. However, if any one person, or more than one person acting as a group, is considered to own more than 50 percent of the total fair market value or total voting power of the stock of a corporation, the acquisition of additional stock by the same person or persons is not considered to cause a

change in the ownership of the corporation (or to cause a change in the effective control of the corporation (within the meaning of Q/A–28 of this section)). An increase in the percentage of stock owned by any one person, or persons acting as a group, as a result of a transaction in which the corporation acquires its stock in exchange for property will be treated as an acquisition of stock for purposes of this section. This A–27 applies only when there is a transfer of stock of a corporation (or issuance of stock of a corporation) and stock in such corporation remains outstanding after the transaction. (*See* Q/A–29 for rules regarding the transfer of assets of a corporation).

(b) For purposes of paragraph (a) of this A–27, persons will not be considered to be acting as a group merely because they happen to purchase or own stock of the same corporation at the same time, or as a result of the same public offering. However, persons will be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase or acquisition of stock, or similar business transaction with the corporation. If a person, including an entity shareholder, owns stock in both corporations that enter into a merger, consolidation, purchase or acquisition of stock, or similar transaction, such shareholder is considered to be acting as a group with other shareholders in a corporation only with respect to the ownership in that corporation prior to the transaction giving rise to the change and not with respect to the ownership interest in the other corporation.

(c) For purposes of this A–27 (and Q/A–28 and 29), section 318(a) applies to determine stock ownership. Stock underlying a vested option is considered owned by the individual who holds the vested option (and the stock underlying an unvested option is not considered owned by the individual who holds the unvested option). For purposes of the preceding sentence, however, if the option is exercisable for stock that is not substantially vested (as defined by sections 1.83–3(b) and (j)), the stock underlying the option is not treated as owned by the individual who holds the option. In addition, mutual and cooperative corporations are treated as having stock for purposes of this A–27.

(d) The following examples illustrate the principles of this A–27:

Example 1. Corporation M has owned stock with a fair market value equal to 19 percent of the value of the stock of Corporation N (an otherwise unrelated corporation) for many years prior to 2006. Corporation M acquires additional stock with a fair market value equal to 15 percent of the value of the stock of Corporation N on January 1, 2006, and an additional 18 percent on February 21, 2007. As of February 21, 2007, Corporation M has acquired stock with a fair market value greater than 50 percent of the value of the stock of Corporation N. Thus, a change in the ownership of Corporation N is considered to occur on February 21, 2007 (assuming that Corporation M did not have effective control of Corporation N immediately prior to the acquisition on that date).

Example 2. All of the corporation's stock is owned by the founders of the corporation. The board of directors of the corporation decides to offer shares of the corporation to the public. After the public offering, the founders of the corporation own a total of 40 percent of the corporation's stock, and members of the public own 60 percent. If no one person (or more than one person acting as a group) owns more than 50 percent of the corporation's stock (by value or voting power) after the public offering, there is no change in the ownership of the corporation.

Example 3. Corporation P merges into Corporation O (a previously unrelated corporation). In the merger, the shareholders of Corporation P receive Corporation O stock in exchange for their Corporation P stock. Immediately after the merger, the former shareholders of Corporation P own stock with a fair market value equal to 60 percent of the value of the stock of Corporation O, and the former shareholders of Corporation O own stock with a fair market value equal to 40 percent of the value of the stock of Corporation O. The former shareholders of Corporation P will be treated as acting as a group in their acquisition of Corporation O stock. Thus, a change in the ownership of Corporation O occurs on the date of the merger. See Q/A–29, *Example 3*, regarding whether there is a change in ownership or control of P.

Example 4. Assume the same facts as in *Example 3*, except that immediately after the change, the former shareholders of Corporation P own stock with a fair market value of 51 percent of the value of Corporation O stock and the former shareholders of Corporation O own stock with a fair market value equal to 49 percent of the value of Corporation O stock. Assume further that prior to the merger several Corporation O shareholders also owned Corporation P stock (overlapping shareholders). In the merger, those O shareholders received additional O stock by virtue of their ownership of P stock with a fair market value of 5 percent of the value of Corporation O stock. Including the O stock attributable to the P shares, the O shareholders hold 54 percent of O after the transaction. However, those overlapping shareholders that owned both Corporation O stock and Corporation P stock prior to the merger are treated as acting as a group with the Corporation O shareholders only with respect to their ownership interest in Corporation O prior to the transaction. Therefore, because the Corporation O shareholders owned 49 percent of the value of Corporation O stock, a change in the ownership of Corporation O occurs on the date of the merger. See Q/A–29, *Example 3*, regarding whether there is a change in ownership or control of P.

Example 5. A, an individual, owns stock with a fair market value equal to 20 percent of the value of the stock of Corporation Q. On January 1, 2007, Corporation Q acquires in a redemption for cash all of the stock held by shareholders other than A. Thus, A is left as the sole shareholder of Corporation O. A change in ownership of Corporation O is considered to occur on January 1, 2007 (assuming that A did not have effective control of Corporation Q immediately prior to the redemption).

Example 6. Assume the same facts as in *Example 5*, except that A owns stock with a fair market value equal to 51 percent of the value of all the stock of Corporation Q immediately prior to the redemption. There is no change in the ownership of Corporation Q as a result of the redemption.

Q–28: When does a change in the effective control of a corporation occur?

A–28: (a) Notwithstanding that a corporation has not undergone a change in ownership under Q/A–27, for purposes of this section, a change in the effective control of a corporation is presumed to occur on the date that either—

(1) Any one person, or more than one person acting as a group (as determined under paragraph (e) of this A–28), acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) ownership of stock of the corporation possessing 20 percent or more of the total voting power of the stock of such corporation; or

(2) A majority of members of the corporation's board of directors is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of the corporation's board of directors prior to the date of the appointment or election.

(b) The presumption of paragraph (a) of this A–28 may be rebutted by establishing that such acquisition or acquisitions of the corporation's stock, or such replacement of the majority of the members of the corporation's board of directors, does not transfer the power to control (directly or indirectly) the management and policies of the corporation from any one person (or more than one person acting as a group) to another person (or group). For purposes of this section, in the absence of an event described in paragraph (a)(1) or (2) of this A–28, a change in the effective control of a corporation is presumed not to have occurred.

(c) In no event does a change in effective control under this A–28 occur in any transaction in which either of the two corporations involved in the transaction has a change in ownership or control under Q/A–27 or 29 of this section. Thus, for example, assume Corporation P transfers more than one-third of the total gross fair market value of its assets to Corporation O in exchange for 20 percent of O's stock. Because P has undergone a change in ownership of a substantial portion of its assets under Q/A–29 of this section, O does not have a change in effective control under Q/A–28.

(d) If any one person, or more than one person acting as a group, is considered to effectively control a corporation (within the meaning of this A–28), the acquisition of additional control of the corporation by the same person or persons is not considered to cause a change in the effective control of the corporation (or to cause a change in the ownership of the corporation within the meaning of Q/A–27 of this section).

(e) For purposes of this A–28, persons will not be considered to be acting as a group merely because they happen to purchase or own stock of the same corporation at the same time, or as a result of the same public offering. However, persons will be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase or acquisition of stock, or similar business transaction with the corporation. If a person, including an entity shareholder, owns stock in both corporations that enter into a merger, consolidation, purchase or acquisition of stock, or similar transaction, such shareholder is considered to be acting as a group with other shareholders in a corporation only with respect to the ownership in that corporation prior to the transaction giving rise to the change and not with respect to the ownership interest in the other corporation.

(f) For purposes of determining stock ownership, *see* Q/A–27(c).

(g) The following examples illustrate the principles of this A–28:

Example 1. Shareholder A acquired the following percentages of the voting stock of Corporation M (an otherwise unrelated corporation) on the following dates: 16 percent on January 1, 2005; 10 percent on January 10, 2006; 8 percent on February 10, 2006; 11 percent on March 1, 2007; and 8 percent on March 10, 2007. Thus, on March 10, 2007, A owns a total of 53 percent of M's voting stock. Because A did not acquire 20 percent or more of M's voting stock during any 12-month period, there is no presumption of a change in effective control pursuant to paragraph (a)(1) of this A–28. In addition, under these facts there is a presumption that no change in the effective control of Corporation M occurred. If this presumption is not rebutted (and thus no change in effective control of Corporation M is treated as occurring prior to March 10, 2007), a change in the ownership of Corporation M is treated as having occurred on March 10, 2007 (pursuant to Q/A–27 of this section) because A had acquired more than 50 percent of Corporation M's voting stock as of that date.

Example 2. A minority group of shareholders of a corporation opposes the practices and policies of the corporation's current board of directors. A proxy contest ensues. The minority group presents its own slate of candidates for the board at the next annual meeting of the corporation's shareholders, and candidates of the minority group are elected to replace a majority of the current members of the board. A change in the effective control of the corporation is presumed to have occurred on the date the election of the new board of directors becomes effective.

Q–29: When does a change in the ownership of a substantial portion of a corporation's assets occur?

A–29: (a) For purposes of this section, a change in the ownership of a substantial portion of a corporation's assets occurs on the date that any one person, or more than one person acting as a group (as determined in paragraph (c) of this A–29), acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) assets from the corporation that have a total gross fair market value equal to or more than one-third of the total gross fair market value of all of the assets of the corporation immediately prior to such acquisition or acquisitions. For this purpose, *gross fair market value* means the value of the assets of the corporation, or the value of the assets being disposed of, determined without regard to any liabilities associated with such assets. This A–29 applies in any situation other than one involving the transfer of stock (or issuance of stock) in a parent corporation and stock in such corporation remains outstanding after the transaction. Thus, this A–29 applies to the sale of stock in a subsidiary (when that subsidiary is treated as a single corporation with the parent pursuant to Q/A–46) and to mergers involving the creation of a new corporation or with respect to the corporation that is not surviving entity.

(b) (1) There is no change in ownership or control under this A–29 when there is a transfer to an entity that is controlled by the shareholders of the transferring corporation immediately after the transfer, as provided in this paragraph (b). A transfer of assets by a corporation is not treated as a change in the ownership of such assets if the assets are transferred to—

(i) A shareholder of the corporation (immediately before the asset transfer) in exchange for or with respect to its stock;

(ii) An entity, 50 percent or more of the total value or voting power of which is owned, directly or indirectly, by the corporation;

(iii) A person, or more than one person acting as a group, that owns, directly or indirectly, 50 percent or more of the total value or voting power of all the outstanding stock of the corporation; or

(iv) An entity, at least 50 percent of the total value or voting power is owned, directly or indirectly, by a person described in paragraph (b)(1)(iii) of this A–29.

(2) For purposes of paragraph (b) and except as otherwise provided, a person's status is determined immediately after the transfer of the assets. For example, a transfer to a corporation in which the transferor corporation has no ownership interest in before the transaction, but which is a majority-owned subsidiary of the transferor corporation after the transaction is not treated as a change in the ownership of the assets of the transferor corporation.

(c) For purposes of this A–29, persons will not be considered to be acting as a group merely because they happen to purchase assets of the same corporation at the same time, or as a result of the same public offering. However, persons will be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase or acquisition of assets, or similar business transaction with the corporation. If a person, including an entity shareholder, owns stock in both corporations that enter into a merger, consolidation, purchase or acquisition of stock, or similar transaction, such shareholder is considered to be acting as a group with other shareholders in a corporation only to the extent of the ownership in that corporation prior to the transaction giving rise to the change and not with respect to the ownership interest in the other corporation.

(d) For purposes of determining stock ownership, see Q/A–27(c).

(e) The following examples illustrate the principles of this A–29:

Example 1. Corporation M acquires assets having a gross fair market value of $500,000 from Corporation N (an unrelated corporation) on January 1, 2006. The total gross fair market value of Corporation N's assets immediately prior to the acquisition was $3 million. Since the value of the assets acquired by Corporation M is less than one-third of the total gross fair market value of Corporation N's total assets immediately prior to the acquisition, the acquisition does not represent a change in the ownership of

a substantial portion of Corporation N's assets.

Example 2. Assume the same facts as in *Example 1*. Also assume that on November 1, 2006, Corporation M acquires from Corporation N additional assets having a fair market value of $700,000. Thus, Corporation M has acquired from Corporation N assets worth a total of $1.2 million during the 12-month period ending on November 1, 2006. Since $1.2 million is more than one-third of the total gross fair market value of all of Corporation N's assets immediately prior to the earlier of these acquisitions ($3 million), a change in the ownership of a substantial portion of Corporation N's assets is considered to have occurred on November 1, 2006.

Example 3. (i) All of the assets of Corporation P are transferred to Corporation O (an unrelated corporation). In exchange, the shareholders of Corporation P receive Corporation O stock. Immediately after the transfer, the former shareholders of Corporation P own 60 percent of the fair market value of the outstanding stock of Corporation O and the former shareholders of Corporation O own 40 percent of the fair market value of the outstanding stock of Corporation O. Because Corporation O is an entity more than 50 percent of the fair market value of the outstanding stock of which is owned by the former shareholders of Corporation P (based on ownership of Corporation P prior the change), the transfer of assets is not treated as a change in ownership of a substantial portion of the assets of Corporation P. However, a change in the ownership (within the meaning of Q/A–27) of Corporation O occurs.

(ii) The result in paragraph (i) would be the same if immediately after the change, the former shareholders of Corporation P own stock with a fair market value of 51 percent of the value of Corporation O stock because Corporation O is an entity more than 50 percent of the fair market value of the outstanding stock of which is owned by the former shareholders of Corporation P. See Q/A–27, *Example 4*, regarding whether there is a change in ownership or control of O.

Example 4. Corporation P sells all of the stock of its wholly-owned subsidiary, S, to Corporation Y. The fair market value of the affiliated group, determined without regard to its liabilities, is $210 million. The fair market value of S, determined without regard to its liabilities, is $80 million. Because there is a change in more than one-third of the gross fair market value of the total assets of the affiliated group, there is a change in the ownership of a substantial portion of the assets of the affiliated group.

Three-Times-Base-Amount Test for Parachute Payments

Q–30: Are all payments that are in the nature of compensation, are made to a disqualified individual, and are contingent on a change in ownership or control, parachute payments?

A–30: (a) No. To determine whether such payments are parachute payments, they must be tested against the individual's *base amount* (as defined in Q/A–34 of this section). To do this, the aggregate present value of all payments in the nature of compensation that are made or to be made to (or for the benefit of) the same disqualified individual and are contingent on the change in ownership or control must be determined. If this aggregate present value equals or exceeds the amount equal to 3 times the individual's base amount, the payments are parachute payments. If this aggregate present value is less than the amount equal to 3 times the individual's base amount, no portion of the payment is a parachute payment. See Q/A–31, Q/A–32, and Q/A–33 of this section for rules on determining present value. Parachute payments that are securities violation parachute payments are not included in the foregoing computation if they are not contingent on a change in ownership or control. See Q/A–37 of this section for the definition and treatment of securities violation parachute payments.

(b) The following examples illustrate the principles of this A–30:

Example 1. A is a disqualified individual with respect to Corporation M. A's base amount is $100,000. Payments in the nature of compensation that are contingent on a change in the ownership or control of Corporation M totaling $400,000 are made to A on the date of the change in ownership or control. The payments are parachute payments because they have an aggregate present value at least equal to 3 times A's base amount of $100,000 (3 x $100,000 = $300,000).

Example 2. Assume the same facts as in *Example 1*, except that the payments contingent on the change in the ownership or control of Corporation M total $290,000. Because the payments do not have an aggregate present value at least equal to 3 times A's base amount, no portion of the payments is a parachute payment.

Q–31: As of what date is the present value of a payment determined?

A–31: (a) Except as provided in this section, the present value of a payment is determined as of the date on which the change in ownership or control occurs, or, if a payment is made prior to such date, the date on which the payment is made.

(b)(1) For purposes of determining whether a payment is a parachute payment, if a payment in the nature of compensation is the right to receive payments in a year (or years) subsequent to the year of the change in ownership or control, the value of the payment is the present value of such payment (or payments) calculated in accordance with Q/A–32 of this section and based on reasonable actuarial assumptions.

(2) If the payment in the nature of compensation is an obligation to provide health care, then for purposes of this A–31 and for applying the 3-times-base-amount test under Q/A–30 of this section, the present value of such obligation should be calculated in accordance with generally accepted accounting principles. For purposes of Q/A–30 and this A–31, the obligation to provide health care is permitted to be measured by projecting the cost of premiums for purchased health care insurance, even if no health care insurance is actually purchased. If the obligation to provide health care is made in coordination with a health care plan that the corporation makes available to a group, then the premiums used for this purpose may be group premiums.

Q–32: What discount rate is to be used to determine present value?

A–32: For purposes of this section, present value generally is determined by using a discount rate equal to 120 percent of the applicable Federal rate (determined under section 1274(d) and the regulations thereunder) compounded semiannually. The applicable Federal rate to be used for this purpose is the Federal rate that is in effect on the date as of which the present value is determined, using the period until the payment would have been made without regard to the change in ownership or control as the term of the debt instrument under section 1274(d). See Q/A–24 and 31 of this section. However, for any payment, the corporation and the disqualified individual may elect to use the applicable Federal rate that is in effect on the date that the contract which provides for the payment is entered into, if such election is made in the contract.

Q–33: If the present value of a payment to be made in the future is contingent on an uncertain future event or condition, how is the present value of the payment determined?

A–33: (a) In certain cases, it may be necessary to apply the 3-times-base-amount test of Q/A–30 of this section, or to allocate a portion of the base amount to a payment described in paragraphs (a)(1), (2), and (3) of Q/A–2 of this section, at a time when the aggregate present value of all such payments cannot be determined with certainty because the time, amount, or right to receive one or more such payments is contingent on the occurrence of an uncertain future event or condition. For example, a disqualified individual's right to receive a payment may be contingent on the involuntary termination of such individual's employment with the corporation. In such a case, it must be reasonably estimated whether the payment will be made. If it is reasonably estimated that there is a 50-percent or greater probability that the payment will be made, the full amount of the payment is considered for purposes of the 3-times-base-amount test and the allocation of the base amount. Conversely, if it is reasonably estimated that there is a less than 50-percent probability that the payment will be made, the payment is not considered for either purpose.

(b) If the estimate made under paragraph (a) of this A–33 is later determined to be incorrect, the 3-times-base-amount test described in Q/A–30 of this section must be reapplied (and the portion of the base amount allocated to previous payments must be reallocated (if necessary) to such payments) to reflect the actual time and amount of the payment. Whenever the 3-times-base-amount test is applied (or whenever the base amount is allocated), the aggregate present value of the payments received or to be received by the disqualified individual is redetermined as of the date described in A–31 of this section, using the discount rate described in A–32 of this section. This redetermination may affect the amount of any excess parachute payment for a prior taxable year. Alternatively, if, based on the application of the 3-times-base-amount test without regard to the payment described in paragraph (a) of this A–33, a disqualified individual is determined to have an excess parachute payment or payments, then the 3-times-base-amount test does not have to be reapplied when a payment described in paragraph (a) of this A–33 is made (or becomes certain to be made) if no base amount is allocated to such payment.

(c) To the extent provided in published guidance of general applicability under § 601.601(d)(2) of this Chapter, an initial estimate of the value of an option subject to Q/A–13 of this section is permitted to be made, with the valuation subsequently re-determined, and the 3-times-base-amount test reapplied.

(d) The following examples illustrate the principles of this A–33:

Example 1. A, a disqualified individual with respect to Corporation M, has a base amount of $100,000. Under A's employment agreement with Corporation M, A is entitled to receive a payment in the nature of compensation in the amount of $250,000 contingent on a change in ownership or control of Corporation M. In addition, the agreement provides that if A's employment is terminated within 1 year after the change in ownership or control, A will receive an additional payment in the nature of compensation in the amount of $150,000, payable 1 year after the date of the change in ownership or control. A change in ownership or control of Corporation M occurs and A receives the first payment of $250,000. Corporation M reasonably estimates that there is a 50-percent probability that, as a result of the change, A's employment will be terminated within 1 year of the date of the change. For purposes of applying the 3-times-base-amount test (and if the first payment is determined to be a parachute payment, for purposes of allocating a portion of A's base amount to that payment), because M reasonably estimates that there is a 50-percent or greater probability that, as a result of the change, A's employment will be terminated within 1 year of the date of the change, Corporation M must assume that the $150,000 payment will be made to A as a result of the change in ownership or control. The present value of the additional payment is determined under Q/A–31 and Q/A–32 of this section.

Example 2. Assume the same facts as in *Example 1*, except that Corporation M reasonably estimates that there is a less than 50-percent probability that, as a result of the change, A's employment will be terminated within 1 year of the date of the change. For purposes of applying the 3-times-base-amount test, because Corporation M reasonably estimates that there is a less than 50-percent probability that, as a result of the change, A's employment will be terminated within 1 year of the date of the change, Corporation M must assume that the $150,000 payment will not be made to A as a result of the change in ownership or control.

Example 3. B, a disqualified individual with respect to Corporation P, has a base amount of $200,000. Under B's employment agreement with Corporation P, if there is a change in ownership or control of Corporation P, B will receive a severance payment of $600,000 and a bonus payment of $400,000. In addition, the agreement provides that if B's employment is terminated within 1 year after the change, B will receive an additional payment in the nature of compensation of $500,000. A change in ownership or control of Corporation P occurs, and B receives the $600,000 and $400,000 payments. At the time of the change in ownership or control, Corporation P reasonably estimates that there is a less than 50-percent probability that B's employment will be terminated within 1 year of the change. For purposes of applying the 3-times-base-amount test, because Corporation P reasonably estimates that there is a less than 50-percent probability that B's employment will be terminated within 1 year of the date of the change, Corporation P assumes that the $500,000 payment will not be made to B. Eleven months after the change in ownership or control, B's employment is terminated, and the $500,000 payment is made to B. Because B was determined to have excess parachute payments without regard to the $500,000 payment, the 3-times-base-amount test is not reapplied and the base amount is not reallocated to include the $500,000 payment. The entire $500,000 payment is treated as an excess parachute payment.

Q–34: What is the base amount?

A–34: (a) The base amount of a disqualified individual is the average annual compensation for services performed for the corporation with respect to which the change in ownership or control occurs (or for a predecessor entity or a related entity as defined in Q/A–21 of this section) which was includible in the gross income of such individual for taxable years in the base period (including amounts that were excluded under section 911), or which would have been includible in such gross income if such person had been a United States citizen or resident. *See* Q/A–35 of this section for the definition of base period and for examples of base amount computations.

(b) If the base period of a disqualified individual includes a short taxable year or less than all of a taxable year, compensation for such short or incomplete taxable year must be annualized before determining the average annual compensation for the base period. In annualizing compensation, the frequency with which payments are expected to be made over an annual period must be taken into account. Thus, any amount of compensation for such a short or incomplete taxable year that represents a payment that will not be made more often than once per year is not annualized.

(c) Because the base amount includes only compensation that is includible in gross income, the base amount does not include certain items that constitute parachute payments. For example, payments in the form of excludible fringe benefits are not included in the base amount but may be treated as parachute payments.

(d) The base amount includes the amount of compensation included in income under section 83(b) during the base period. *See* Q/A–35 for the definition of base period.

(e) The following example illustrates the principles of this A–34:

Example. A disqualified individual, D, receives an annual salary of $500,000 per year during the 5-year base period. D defers $100,000 of D's salary each year under the corporation's nonqualified deferred compensation plan. D's base amount is $400,000 ($400,000 × (5/5)).

Q–35: What is the base period?

A–35: (a) The base period of a disqualified individual is the most recent 5 taxable years of the individual ending before the date of the change in

ownership or control. For this purpose, the date of the change in ownership or control is the date the corporation experiences one of the events described in Q/A–27, Q/A–28, or Q/A–29 of this section. However, if the disqualified individual was not an employee or independent contractor of the corporation with respect to which the change in ownership or control occurs (or a predecessor entity or a related entity as defined in Q/A–21 of this section) for this entire 5-year period, the individual's base period is the portion of such 5-year period during which the individual performed personal services for the corporation or predecessor entity or related entity.

(b) The following examples illustrate the principles of Q/A–34 of this section and this Q/A–35:

Example 1. A disqualified individual, D, was employed by a corporation for 2 years and 4 months preceding the taxable year in which a change in ownership or control of the corporation occurs. D's includible compensation income from the corporation was $30,000 for the 4-month period, $120,000 for the first full year, and $150,000 for the second full year. D's base amount is $120,000, ((3 × $30,000) + $120,000 + $150,000)/3.

Example 2. Assume the same facts as in *Example 1*, except that D also received a $60,000 signing bonus when D's employment with the corporation commenced at the beginning of the 4-month period. D's base amount is $140,000, (($60,000 + (3 × $30,000)) + $120,000 + $150,000) / 3. Since the bonus will not be paid more often than once per year, the amount of the bonus is not increased in annualizing D's compensation for the 4-month period.

Example 3. E is a disqualified individual with respect to Corporation X who was not an employee or independent contractor for the full 5-year base period. In 2004 and 2005, E is a director of X and receives $30,000 per year for E's services. In 2006, E becomes an officer of X. E's includible compensation from Corporation X is $250,000 for 2006 and 2007, and $300,000 for 2008. In 2008, X undergoes a change in ownership or control. E's base amount is $140,000 ((2 × $250,000) + (2 × $30,000))/4).

Q–36: How is the base amount determined in the case of a disqualified individual who did not perform services for the corporation (or a predecessor entity or a related entity as defined in Q/A–21 of this section), prior to the individual's taxable year in which the change in ownership or control occurs?

A–36: (a) In such a case, the individual's base amount is the annualized compensation for services performed for the corporation (or a predecessor entity or related entity) which—

(1) Was includible in the individual's gross income for that portion, prior to such change, of the individual's taxable year in which the change occurred (including amounts that were excluded under section 911), or would have been includible in such gross income if such person had been a United States citizen or resident;

(2) Was not contingent on the change in ownership or control; and

(3) Was not a securities violation parachute payment.

(b) The following examples illustrate the principles of this A–36:

Example 1. On January 1, 2006, A, an individual whose taxable year is the calendar year, enters into a 4-year employment contract with Corporation M as an officer of the corporation. A has not previously performed services for Corporation M (or any predecessor entity or related entity as defined in Q/A–21 of this section). Under the employment contract, A is to receive an annual salary of $120,000 for each of the 4 years that he remains employed by Corporation M with any remaining unpaid balance to be paid immediately in the event that A's employment is terminated without cause. On July 1, 2006, after A has received compensation of $60,000, a change in the ownership or control of Corporation M occurs. Because of the change, A's employment is terminated without cause, and he receives a payment of $420,000. It is established by clear and convincing evidence that the $60,000 in compensation is not contingent on the change in ownership or control, but the presumption that the $420,000 payment is contingent on the change is not rebutted. Thus, the payment of $420,000 is treated as contingent on the change in ownership or control of Corporation M. In this case, A's base amount is $120,000 (2 × $60,000). Since the present value of the payment which is contingent on the change in ownership of Corporation M ($420,000) is more than 3 times A's base amount of $120,000 (3 × $120,000 = $360,000), the payment is a parachute payment.

Example 2. Assume the same facts as in *Example 1*, except that A also receives a signing bonus of $50,000 from Corporation M on January 1, 2006. It is established by clear and convincing evidence that the bonus is not contingent on the change in ownership or control. When the change in ownership or control occurs on July 1, 2006, A has received compensation of $110,000 (the $50,000 bonus plus $60,000 in salary). In this case, A's base amount is $170,000 ($50,000 + (2 × $60,000)). Because the $50,000 bonus will not be paid more than once per year, the amount of the bonus is not increased in annualizing A's compensation. The present value of the potential parachute payment ($420,000) is less than 3 times A's base amount of $170,000 (3 × $170,000 = $510,000), and therefore no portion of the payment is a parachute payment.

Securities Violation Parachute Payments

Q–37: Must a payment be contingent on a change in ownership or control in order to be a parachute payment?

A–37: (a) No, the term *parachute payment* also includes any payment (other than a payment exempted under Q/A–6 or Q/A–8 of this section) that is in the nature of compensation and is to (or for the benefit of) a disqualified individual, if such payment is a securities violation payment. A securities violation payment is a payment made or to be made—

(1) Pursuant to an agreement that violates any generally enforced Federal or state securities laws or regulations; and

(2) In connection with a potential or actual change in ownership or control.

(b) A violation is not taken into account under paragraph (a)(1) of this A–37 if it is merely technical in character or is not materially prejudicial to shareholders or potential shareholders. Moreover, a violation will be presumed not to exist unless the existence of the violation has been determined or admitted in a civil or criminal action (or an administrative action by a regulatory body charged with enforcing the particular securities law or regulation) which has been resolved by adjudication or consent. Parachute payments described in this A–37 are referred to in this section as securities violation payments.

(c) Securities violation parachute payments that are not contingent on a change in ownership or control within the meaning of Q/A–22 of this section are not taken into account in applying the 3-times-base-amount test of Q/A–30 of this section. Such payments are considered parachute payments regardless of whether such test is met with respect to the disqualified individual (and are included in allocating base amount under Q/A–38 of this section). Moreover, the amount of a securities violation parachute payment treated as an excess parachute payment shall not be reduced by the portion of such payment that is reasonable compensation for personal services actually rendered before the date of a change in ownership or control if such payment is not contingent on such change. Likewise, the amount of a securities violation parachute payment includes the portion of such payment that is reasonable compensation for personal services to be rendered on or after the date of a change in ownership or control if such payment is not contingent on such change.

(d) The rules in paragraph (b) of this A–37 also apply to securities violation parachute payments that are contingent on a change in ownership or control if the application of these rules results in greater total excess parachute payments with respect to the disqualified individual than would result if the payments were treated simply as payments contingent on a change in ownership or control (and hence were taken into account in applying the 3-times-base-amount test and were reduced by, or did not include, any applicable amount of reasonable compensation).

(e) The following examples illustrate the principles of this A–37:

Example 1. A, a disqualified individual with respect to Corporation M, receives two payments in the nature of compensation that are contingent on a change in the ownership or control of Corporation M. The present value of the first payment is equal to A's base amount and is not a securities violation parachute payment. The present value of the second payment is equal to 1.5 times A's base amount and is a securities violation parachute payment. Neither payment includes any reasonable compensation. If the second payment is treated simply as a payment contingent on a change in ownership or control, the amount of A's total excess parachute payments is zero because the aggregate present value of the payments does not equal or exceed 3 times A's base amount. If the second payment is treated as a securities violation parachute payment subject to the rules of paragraph (b) of this A–37, the amount of A's total excess parachute payments is 0.5 times A's base amount. Thus, the second payment is treated as a securities violation parachute payment.

Example 2. Assume the same facts as in *Example 1*, except that the present value of the first payment is equal to 2 times A's base amount. If the second payment is treated simply as a payment contingent on a change in ownership or control, the total present value of the payments is 3.5 times A's base amount, and the amount of A's total excess parachute payments is 2.5 times A's base amount. If the second payment is treated as a securities violation parachute payment, the amount of A's total excess parachute payments is 0.5 times A's base amount. Thus, the second payment is treated simply as a payment contingent on a change in ownership or control.

Example 3. B, a disqualified individual with respect to Corporation N, receives two payments in the nature of compensation that are contingent on a change in the control of Corporation N. The present value of the first payment is equal to 4 times B's base amount and is a securities violation parachute payment. The present value of the second payment is equal to 2 times B's base amount and is not a securities violation parachute payment. B establishes by clear and convincing evidence that the entire amount of the first payment is reasonable compensation for personal services to be rendered after the change in ownership or control. If the first payment is treated simply as a payment contingent on a change in ownership or control, it is exempt from the definition of *parachute payment* pursuant to Q/A–9 of this section. Thus, the amount of B's total excess parachute payment is zero because the present value of the second payment does not equal or exceed 3 times B's base amount. However, if the first payment is treated as a securities violation parachute payment, the amount of B's total excess parachute payments is 3 times B's base amount. Thus, the first payment is treated as a securities violation parachute payment.

Example 4. Assume the same facts as in *Example 3*, except that B does not receive the second payment and B establishes by clear and convincing evidence that the first payment is reasonable compensation for services actually rendered before the change in the control of Corporation N. If the payment is treated simply as a payment contingent on a change in ownership or control, the amount of B's excess parachute payment is zero because the amount treated as an excess parachute payment is reduced by the amount that B establishes as reasonable compensation. However, if the payment is treated as a securities violation parachute payment, the amount of B's excess parachute payment is 3 times B's base amount. Thus, the payment is treated as a securities violation parachute payment.

Computation and Reduction of Excess Parachute Payments

Q–38: How is the amount of an excess parachute payment computed?

A–38: (a) The amount of an excess parachute payment is the excess of the amount of any parachute payment over the portion of the disqualified individual's base amount that is allocated to such payment. For this purpose, the portion of the base amount allocated to any parachute payment is the amount that bears the same ratio to the base amount as the present value of such parachute payment bears to the aggregate present value of all parachute payments made or to be made to (or for the benefit of) the same disqualified individual. Thus, the portion of the base amount allocated to any parachute payment is determined by multiplying the base amount by a fraction, the numerator of which is the present value of such parachute payment and the denominator of which is the aggregate present value of all such payments. *See* Q/A–31, Q/A–32, and Q/A–33 of this section for rules on determining present value and Q/A–34 of this section for the definition of *base amount*.

(b) The following example illustrates the principles of this A–38:

Example. An individual with a base amount of $100,000 is entitled to receive two parachute payments, one of $200,000 and the other of $400,000. The $200,000 payment is made at the time of the change in ownership or control, and the $400,000 payment is to be made at a future date. The present value of the $400,000 payment is $300,000 on the date of the change in ownership or control. The portions of the base amount allocated to these payments are $40,000 (($200,000/$500,000) × $100,000) and $60,000 (($300,000/$500,000) × $100,000), respectively. Thus, the amount of the first excess parachute payment is $160,000 ($200,000 − $40,000) and that of the second is $340,000 ($400,000 − $60,000).

Q–39: May the amount of an excess parachute payment be reduced by reasonable compensation for personal services actually rendered before the change in ownership or control?

A–39: (a) Generally, yes. Except in the case of payments treated as securities violation parachute payments or when the portion of a payment that is treated as contingent on the change in ownership or control is determined under paragraph (b) or (c) of Q/A–24 of this section, the amount of an excess parachute payment is reduced by any portion of the payment that the taxpayer establishes by clear and convincing evidence is reasonable compensation for personal services actually rendered by the disqualified individual before the date of the change in ownership or control. Services reasonably compensated for by payments that are not parachute payments (for example, because the payments are not contingent on a change in ownership or control and are not securities violation parachute payments, or because the payments are exempt from the definition of parachute payment under Q/A–6 through Q/A–9 of this section) are not taken into account for this purpose. The portion of any parachute payment that is established as reasonable compensation is first reduced by the portion of the disqualified individual's base amount that is allocated to such parachute payment; any remaining portion of the parachute payment established as reasonable compensation then reduces the excess parachute payment.

(b) The following examples illustrate the principles of this A–39:

Example 1. Assume that a parachute payment of $600,000 is made to a disqualified individual, and the portion of the individual's base amount that is allocated to the parachute payment is $100,000. Also assume that $300,000 of the $600,000 parachute payment is established as reasonable compensation for personal services actually rendered by the disqualified individual before the date of the change in ownership or control. Before the reasonable compensation is taken into account, the amount of the excess parachute payment is $500,000 ($600,000—$100,000). In reducing the excess parachute payment by reasonable compensation, the portion of the parachute payment that is established as reasonable compensation ($300,000) is first reduced by the portion of the disqualified individual's base amount that is allocated to the parachute payment ($100,000), and the remainder ($200,000) then reduces the excess parachute payment. Thus, in this case, the excess parachute payment of $500,000 is reduced by $200,000 of reasonable compensation.

Example 2. Assume the same facts as in *Example 1*, except that the full amount of the $600,000 parachute payment is established as reasonable compensation. In this case, the excess parachute payment of $500,000 is reduced to zero by $500,000 of reasonable compensation. As a result, no portion of any deduction for the payment is disallowed by section 280G, and no portion of the payment is subject to the 20-percent excise tax of section 4999.

Determination of Reasonable Compensation

Q–40: How is it determined whether payments are reasonable compensation?

A–40: (a) In general, whether payments are reasonable compensation for personal services actually rendered, or to be rendered, by the disqualified individual is determined on the basis of all the facts and circumstances of the particular case. Factors relevant to such a determination include, but are not limited to, the following—

(1) The nature of the services rendered or to be rendered;

(2) The individual's historic compensation for performing such services; and

(3) The compensation of individuals performing comparable services in situations where the compensation is not contingent on a change in ownership or control.

(b) For purposes of section 280G, reasonable compensation for personal services includes reasonable compensation for holding oneself out as available to perform services and refraining from performing services (such as under a covenant not to compete).

Q–41: Is any particular type of evidence generally considered clear and convincing evidence of reasonable compensation for personal services?

A–41: Yes. A showing that payments are made under a nondiscriminatory employee plan or program (as defined in Q/A–26 of this section) generally is considered to be clear and convincing evidence that the payments are reasonable compensation. This is true whether the personal services for which the payments are made are actually rendered before, or are to be rendered on or after, the date of the change in ownership or control. Q/A–46 of this section (relating to the treatment of an affiliated group as one corporation) does not apply for purposes of this A–41. No determination of reasonable compensation is needed for payments under qualified plans to be exempt from the definition of *parachute payment* under Q/A–8 of this section.

Q–42: Is any particular type of evidence generally considered clear and convincing evidence of reasonable compensation for personal services to be rendered on or after the date of a change in ownership or control?

A–42: (a) Yes, if payments are made or to be made to (or on behalf of) a disqualified individual for personal services to be rendered on or after the date of a change in ownership or control, a showing of the following generally is considered to be clear and convincing evidence that the payments are reasonable compensation for services to be rendered on or after the date of the change in ownership or control—

(1) The payments were made or are to be made only for the period the individual actually performs such personal services; and

(2) If the individual's duties and responsibilities are substantially the same after the change in ownership or control, the individual's annual compensation for such services is not significantly greater than such individual's annual compensation prior to the change in ownership or control, apart from normal increases attributable to increased responsibilities or cost of living adjustments. If the scope of the individual's duties and responsibilities are not substantially the same, the annual compensation after the change is not significantly greater than the annual compensation customarily paid by the employer or by comparable employers to persons performing comparable services. However, except as provided in paragraph (b) and (c) of this A–42, such clear and convincing evidence will not exist if the individual does not, in fact, perform the services contemplated in exchange for the compensation.

(b) Generally, an agreement under which the disqualified individual must refrain from performing services (*e.g.*, a covenant not to compete) is an agreement for the performance of personal services for purposes of this A–42 to the extent that it is demonstrated by clear and convincing evidence that the agreement substantially constrains the individual's ability to perform services and there is a reasonable likelihood that the agreement will be enforced against the individual. In the absence of clear and convincing evidence, payments under the agreement are treated as severance payments under Q/A–44 of this section.

(c) If the employment of a disqualified individual is involuntarily terminated before the end of a contract term and the individual is paid damages for breach of contract, a showing of the following factors generally is considered clear and convincing evidence that the payment is reasonable compensation for personal services to be rendered on or after the date of change in ownership or control—

(1) The contract was not entered into, amended, or renewed in contemplation of the change in ownership or control;

(2) The compensation the individual would have received under the contract would have qualified as reasonable compensation under section 162;

(3) The damages do not exceed the present value (determined as of the date of receipt) of the compensation the individual would have received under the contract if the individual had continued to perform services for the employer until the end of the contract term;

(4) The damages are received because an offer to provide personal services was made by the disqualified individual but was rejected by the employer (including involuntary termination or constructive discharge); and

(5) The damages are reduced by mitigation. Mitigation will be treated as occurring when such damages are reduced (or any payment of such damages is returned) to the extent of the disqualified individual's earned income (within the meaning of section 911(d)(2)(A)) during the remainder of the period in which the contract would have been in effect. See Q/A–44 of this section for rules regarding damages for a failure to make severance payments.

(d) The following examples illustrate the principles of this A–42:

Example 1. A, a disqualified individual, has a three-year employment contract with Corporation M, a publicly traded corporation. Under this contract, A is to receive a salary for $100,000 for the first year of the contract and, for each succeeding year, an annual salary that is 10 percent higher than the prior year's salary. During the third year of the contract, Corporation N acquires all the stock of Corporation M. Prior to the change in ownership, Corporation N arranges to retain A's services by entering into an employment contract with A that is essentially the same as A's contract with Corporation M. Under the new contract, Corporation N is to fulfill Corporation M's obligations for the third year of the old contract, and, for each of the succeeding years, pay A an annual salary that is 10 percent higher than A's prior year's salary. Amounts are payable under the new contract only for the portion of the contract term during which A remains employed by Corporation N. A showing of the facts described above (and in the absence of contradictory evidence) is regarded as clear and convincing evidence that all payments under the new contract are reasonable compensation for personal services to be rendered on or after the date of the change in ownership. Therefore, the payments under this agreement are exempt from the definition of *parachute payment* pursuant to Q/A–9 of this section.

Example 2. Assume the same facts as in *Example 1*, except that A does not perform the services described in the new contract, but receives payment under the new contract. Because services were not rendered after the change, the payments under this contract are not exempt from the definition of *parachute payment* pursuant to Q/A–9 of this section.

Example 3. Assume the same facts as in *Example 1*, except that under the new contract A agrees to perform consulting services to Corporation N, when and if Corporation N requires A's services. Assume further that when Corporation N does not require A's services, the contract provides that A must not perform services for any other competing company. Corporation N previously enforced similar contracts against former employees of Corporation N. Because A is substantially constrained under this contract and Corporation N is reasonably likely to enforce the contract against A, the agreement is an agreement for the performance of services under paragraph (b) of this A–42. Assuming the requirements of paragraph (a) of this A–42 are met and there is clear and convincing evidence that all payments under the new contract are reasonable compensation for personal services to be rendered on or after the date of the change in ownership, the payments under this contract are exempt from the definition of *parachute payment* pursuant to Q/A–9 of this section.

Example 4. Assume the same facts as in *Example 1*, except that instead of agreeing not to compete with Corporation N, under the new agreement A agrees not to disparage either Corporation M or Corporation N. Because the nondisparagement agreement does not substantially constrain A's ability to perform services, no amount of the payments under this contract are reasonable compensation for the nondisparagement agreement.

Example 5. Assume the same facts as in *Example 1*, except that the employment contract with Corporation N does not provide that amounts are payable under the contract only for the portion of the term for which A remains employed by Corporation N. Shortly after the change in ownership, and despite A's request to remain employed by Corporation N, A's employment with Corporation N is involuntarily terminated. Shortly thereafter, A obtains employment with Corporation O. A commences a civil action against Corporation N, alleging breach of the employment contract. In settlement of the litigation, A receives an amount equal to the present value of the compensation A would have received under the contract with Corporation N, reduced by the amount of compensation A otherwise receives from Corporation O during the period that the contract would have been in effect. A showing of the facts described above (and in the absence of contradictory evidence) is regarded as clear and convincing evidence that the amount A receives as damages is reasonable compensation for personal services to be rendered on or after the date of the change in ownership. Therefore, the amount received by A is exempt from the definition of *parachute payment* pursuant to Q/A–9 of this section.

Q–43: Is any particular type of payment generally considered reasonable compensation for personal services actually rendered before the date of a change in ownership or control?

A–43: Yes, payments of compensation earned before the date of a change in ownership or control generally are considered reasonable compensation for personal services actually rendered before the date of a change in ownership or control if they qualify as reasonable compensation under section 162.

Q–44: May severance payments be treated as reasonable compensation?

A–44: (a) No, severance payments are not treated as reasonable compensation for personal services actually rendered before, or to be rendered on or after, the date of a change in ownership or control. Moreover, any damages paid for a failure to make severance payments are not treated as reasonable compensation for personal services actually rendered before, or to be rendered on or after, the date of such change. For purposes of this section, the term *severance payment* means any payment that is made to (or for the benefit of) a disqualified individual on account of the termination of such individual's employment prior to the end of a contract term, but does not include any payment that otherwise would be made to (or for the benefit of) such individual on the termination of such individual's employment, whenever occurring.

(b) The following example illustrates the principles of this A–44:

Example. A, a disqualified individual, has a three-year employment contract with Corporation X. Under the contract, A will receive a salary of $200,000 for the first year of the contract, and for each succeeding year, an annual salary that is $100,000 higher than the previous year. In the event of A's termination of employment following a change in ownership or control, the contract provides that A will receive the remaining salary due under the employment contract. At the beginning of the second year of the contract, Corporation Y acquires all of the stock of Corporation X, A's employment is terminated, and A receives $700,000 ($300,000 for the second year of the contract plus $400,000 for the third year of the contract) representing the remaining salary due under the employment contract. Because the $700,000 payment is treated as a severance payment, it is not reasonable compensation for personal services on or after the date of the change in ownership or control. Thus, the full amount of the $700,000 is a parachute payment.

Miscellaneous Rules

Q–45: How is the term *corporation* defined?

A–45: For purposes of this section, the term *corporation* has the meaning prescribed by section 7701(a)(3) and § 301.7701–2(b) of this Chapter. For example, a *corporation*, for purposes of this section, includes a publicly traded partnership treated as a corporation under section 7704(a); an entity described in § 301.7701–3(c)(1)(v)(A) of this Chapter; a real estate investment trust under section 856(a); a corporation that has mutual or cooperative (rather than stock) ownership, such as a mutual insurance company, a mutual savings bank, or a cooperative bank (as defined in section 7701(a)(32)), and a foreign corporation as defined under section 7701(a)(5).

Q–46: How is an affiliated group treated?

A–46: For purposes of this section, and except as otherwise provided in this section, all members of the same affiliated group (as defined in section 1504, determined without regard to section 1504(b)) are treated as one corporation. Rules affected by this treatment of an affiliated group include (but are not limited to) rules relating to exempt payments of certain corporations (Q/A–6, Q/A–7 of this section (except as provided therein)), payor of parachute payments (Q/A–10 of this section), disqualified individuals (Q/A–15 through Q/A–21 of this section (except as provided therein)), rebuttal of the presumption that payments are contingent on a change (Q/A–26 of this section (except as provide therein)), change in ownership or control (Q/A–27, 28, and 29 of this section), and reasonable compensation (Q/A–42, 43, and 44 of this section).

Effective Date

Q–47: What is the general effective date of section 280G?

A–47: (a) Generally, section 280G applies to payments under agreements entered into or renewed after June 14, 1984. Any agreement that is entered into before June 15, 1984, and is renewed after June 14, 1984, is treated as a new contract entered into on the day the renewal takes effect.

(b) For purposes of paragraph (a) of this A–47, a contract that is terminable or cancellable unconditionally at will by either party to the contract without the consent of the other, or by both parties to the contract, is treated as a new contract entered into on the date any such termination or cancellation, if made, would be effective. However, a contract is not treated as so terminable or cancellable if it can be terminated or cancelled only by terminating the employment relationship or independent contractor relationship of the disqualified individual.

(c) Section 280G applies to payments under a contract entered into on or

before June 14, 1984, if the contract is amended or supplemented after June 14, 1984, in significant relevant respect. For this purpose, a *supplement* to a contract is defined as a new contract entered into after June 14, 1984, that affects the trigger, amount, or time of receipt of a payment under an existing contract.

(d)(1) Except as otherwise provided in paragraph (e) of this A–47, a contract is considered to be amended or supplemented in significant relevant respect if provisions for payments contingent on a change in ownership or control (parachute provisions), or provisions in the nature of parachute provisions, are added to the contract, or are amended or supplemented to provide significant additional benefits to the disqualified individual. Thus, for example, a contract generally is treated as amended or supplemented in significant relevant respect if it is amended or supplemented—

(i) To add or modify, to the disqualified individual's benefit, a change in ownership or control trigger;

(ii) To increase amounts payable that are contingent on a change in ownership or control (or, where payment is to be made under a formula, to modify the formula to the disqualified individual's advantage); or

(iii) To accelerate, in the event of a change in ownership or control, the payment of amounts otherwise payable at a later date.

(2) For purposes of paragraph (a) of this A–47, a payment is not treated as being accelerated in the event of a change in ownership or control if the acceleration does not increase the present value of the payment.

(e) A contract entered into on or before June 14, 1984, is not treated as amended or supplemented in significant relevant respect merely by reason of normal adjustments in the terms of employment relationship or independent contractor relationship of the disqualified individual. Whether an adjustment in the terms of such a relationship is considered normal for this purpose depends on all of the facts and circumstances of the particular case. Relevant factors include, but are not limited to, the following—

(1) The length of time between the adjustment and the change in ownership or control;

(2) The extent to which the corporation, at the time of the adjustment, viewed itself as a likely takeover candidate;

(3) A comparison of the adjustment with historical practices of the corporation;

(4) The extent of overlap between the group receiving the benefits of the adjustment and those members of that group who are the beneficiaries of pre-June 15, 1984, parachute contracts; and

(5) The size of the adjustment, both in absolute terms and in comparison with the benefits provided to other members of the group receiving the benefits of the adjustment.

Q–48: What is the effective date of this section?

A–48: This section applies to any payments that are contingent on a change in ownership or control if the change in ownership or control occurs on or after January 1, 2004.

■ **Par. 3.** In § 602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
. . . . .	
1.280G–1	1545–1851
. . . . .	

* * * * *

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

Approved: July 14, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–19274 Filed 8–1–03; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9085]

RIN 1545–AY12

Arbitrage and Private Activity Restrictions Applicable to Tax-exempt Bonds Issued by State and Local Governments; Investment-type Property (prepayment); Private Loan (prepayment)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations on the arbitrage and private activity restrictions applicable to tax-exempt bonds issued by State and local governments. These regulations affect issuers of tax-exempt bonds and provide guidance on the definitions of investment-type property and private loan to help issuers comply with the arbitrage and private activity restrictions.

DATES: *Effective Date:* These regulations are effective October 3, 2003.

Applicability Date: For dates of applicability, see §§ 1.141–15(b)(3) and 1.148–11(j) of these regulations.

FOR FURTHER INFORMATION CONTACT: Johanna Som de Cerff (202) 622–3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (26 CFR part 1) under sections 141 and 148 of the Internal Revenue Code by providing rules for determining whether a prepayment for property or services results in a private loan or investment-type property (the final regulations). On April 17, 2002, the IRS published in the **Federal Register** a notice of proposed rulemaking (REG–113526–98; REG–105369–00) (67 FR 18835) (the proposed regulations). The proposed regulations modify §§ 1.141–5(c)(2) and 1.148–1(e) of the Income Tax Regulations to establish which prepayments for property or services give rise to a private loan under section 141(c) or investment-type property under section 148(b)(2)(D). On September 25, 2002, the IRS held a public hearing on the proposed regulations. Written comments responding to the proposed regulations were also received. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision. The revisions are discussed below.

Explanation of Provisions

I. Investment-type Property

A. Existing Regulations

The existing regulations, at § 1.148–1(e)(2), contain rules for determining when a prepayment for property or services results in investment-type property. Under that provision, a prepayment generally gives rise to investment-type property if a principal purpose for prepaying is to receive an investment return from the time the prepayment is made until the time payment otherwise would be made. However, a prepayment does not give rise to investment-type property under the existing regulations if (1) it is made for a substantial business purpose other than investment return and the issuer has no commercially reasonable alternative to the prepayment (the business purpose exception); or (2) prepayments on substantially the same terms are made by a substantial

percentage of persons who are similarly situated to the issuer but who are not beneficiaries of tax-exempt financing (the customary exception).

B. Business Purpose Exception

The proposed regulations narrow the scope of the business purpose exception. Under the proposed regulations, a prepayment meets the business purpose exception only if the primary purpose for the prepayment is to accomplish one or more substantial business purposes that (1) are unrelated to any investment return based on the time value of money and (2) cannot be accomplished without the prepayment.

Commentators suggested that the business purpose exception in the proposed regulations would have limited usefulness and that the language in the existing regulations is superior. However, as discussed in the preamble to the proposed regulations, the business purpose exception in the existing regulations was intended to be a narrow exception and has raised difficult interpretive questions. For example, in many instances it may be unclear whether the alternatives available to the issuer are "commercially reasonable." The IRS and Treasury Department have considered all of the comments relating to the business purpose exception and have concluded that a standard that considers whether one or more business purposes and/or commercially reasonable alternatives exist is not an administrable test for determining whether prepayments give rise to investment-type property. Therefore, based on tax administration considerations and the broad scope of the investment-type property concept, the final regulations delete the business purpose exception. However, the final regulations provide that the Commissioner may, by published guidance, set forth additional circumstances in which a prepayment does not give rise to investment-type property.

C. Customary Exception

The proposed regulations retain the customary exception in its present form. Commentators expressed concern that the customary exception may be difficult to apply in some cases. They suggested that the regulations identify examples of prepayments that satisfy the exception. The final regulations retain the customary exception and indicate that it generally applies based on all the facts and circumstances. In addition, the final regulations contain a safe harbor under which a prepayment is deemed to satisfy the customary exception if: (1) The prepayment is made for maintenance, repair, or an extended warranty with respect to personal property (for example, automobiles or electronic equipment), or updates or maintenance or support services with respect to computer software; and (2) the same maintenance, repair, extended warranty, updates or maintenance or support services, as applicable, are regularly provided to nongovernmental persons on the same terms.

D. Certain Prepayments To Acquire a Supply of Natural Gas or Electricity

1. Prepayments for Natural Gas

The proposed regulations add an exception to the definition of investment-type property for certain natural gas prepayments that are made by or for one or more utilities that are owned by a governmental person, as defined in § 1.141–1(b) (for example, if a joint action agency acquires a natural gas supply for one or more municipal gas or electric utilities). The exception applies only if at least 95 percent of the natural gas purchased with the prepayment is to be consumed by retail customers in the service area of a municipal gas utility, or used to produce electricity that will be furnished to retail customers that a municipal electric utility is obligated to serve under state or Federal law (the *use requirement*). For this purpose, the service area of a municipal gas utility is defined as (1) any area throughout which the municipal utility provided (at all times during the five-year period ending on the issue date) gas transmission or distribution service, and any area that is contiguous to such an area, or (2) any area where the municipal utility is obligated under state or Federal law to provide gas distribution services as provided in such law.

Some commentators recommended that the 95 percent threshold be reduced to 85 percent. These commentators stated that various factors make it difficult for municipal gas utilities to determine in advance the precise quantity of gas supplies they will need to serve their customers during a given period. These factors include a limited capability to store gas and variations in demand due to circumstances beyond the utilities' control, such as economic conditions and the weather. In recognition of these unique factors, the final regulations reduce the 95 percent threshold to 90 percent.

Some commentators recommended that the use requirement apply based on the issuer's reasonable expectations as of the issue date. To ensure that the prepaid gas is consumed by retail customers in the service area of the municipal utility, the final regulations retain the requirement that the prepaid gas supply actually be used for a qualifying purpose.

Some commentators suggested that the use of natural gas to fuel the transportation of the prepaid gas supply on a pipeline should be a qualifying use under the natural gas exception. The final regulations adopt this comment. Under the final regulations, the use of gas to fuel the pipeline transportation of the prepaid gas supply is a qualifying use and is not pro-rated based on the amount of qualified and nonqualified use of the remaining prepaid gas.

Commentators indicated that most municipal gas and electric utilities do not have an obligation to serve that arises under state or Federal law. These commentators suggested replacing the "obligation to serve" requirement for municipal electric utilities with a service area rule that is similar to the rule for municipal gas utilities. The final regulations adopt this comment. Commentators also recommended that the definition of service area be expanded to include any area recognized as the service area of the municipal utility under state or Federal law. The final regulations adopt this comment.

Commentators requested clarification that sales to governmental persons are qualifying sales under the use test. Commentators also requested clarification that a retail customer of a municipal utility is a qualifying end-user even if the prepayment was made by or for another municipal utility. The final regulations do not provide that all sales to governmental persons, or to retail customers of a municipal utility, are qualifying sales. Rather, the final regulations clarify that, in the case of a natural gas prepayment by or for one or more municipal utilities (each, the issuing municipal utility), the use of prepaid gas is a qualifying use if the gas is: (1) Furnished to retail gas customers of the issuing municipal utility who are located in the natural gas service area of the issuing municipal utility (other than sales of gas to produce electricity for sale); (2) used by the issuing municipal utility to produce electricity that will be furnished to retail electric customers of the issuing municipal utility who are located in the electricity service area of the issuing municipal utility; (3) used by the issuing municipal utility to produce electricity that will be sold to a municipal utility and furnished to retail electric customers of the purchaser who are located in the

electricity service area of the purchaser; (4) sold to a municipal utility if the requirements of (1), (2) or (3) of this paragraph are satisfied by the purchaser (treating the purchaser as the issuing municipal utility); or (5) used to fuel the transportation of the prepaid gas supply on a pipeline. Thus, for example, the sale of gas or electricity by the issuing municipal utility directly to customers of another municipal utility is not a qualifying use.

Some commentators recommended that the final regulations define "retail customer" as a customer that is not purchasing for resale. The final regulations provide that a retail customer is a customer that purchases natural gas or electricity, as applicable, other than for resale. The final regulations also clarify that the consumption of natural gas by a nongovernmental person to produce electricity for sale is not a qualifying use of natural gas under the 90 percent use test.

Some commentators requested clarification of which "contiguous" areas may be treated as part of a municipal utility's service area. One commentator suggested that contiguous areas should not be considered part of the service area. To provide clarity, and in light of the expansion of the service area definition to include any area recognized as the service area under state or Federal law, the final regulations eliminate contiguous areas from the definition of service area.

Some commentators suggested that the definition of service area should be expanded to include any area "in which" (rather than "throughout which") the municipal utility provided service during the five-year period. To ensure that the gas or electricity is consumed by customers in an area recognized as the service area of a municipal utility under state or Federal law, or throughout which the municipal utility provided service during the five-year period, the final regulations do not adopt this comment.

2. Prepayments for Electricity

Some commentators suggested that the natural gas exception should be expanded to include prepayments for electricity. These commentators stated that the restructuring of the electric power industry has affected municipal electric utilities in a manner that is similar to the effect that deregulation of the natural gas industry had on municipal gas utilities. These commentators stated that restructuring has threatened the ability of municipal electric utilities to obtain a secure supply of electric power on commercially reasonable terms, and that electric power prepayment transactions are necessary to obtain a guaranteed supply of electric power on favorable terms in light of restructuring.

The final regulations add an exception to the definition of investment-type property for certain electricity prepayments that are made by or for one or more municipal utilities (for example, if a joint action agency acquires electricity for one or more municipal electric utilities). The exception applies only if at least 90 percent of the prepaid electricity financed by the issue is used for a qualifying use. For this purpose, electricity is used for a qualifying use if it is to be: (1) Furnished to retail electric customers of the issuing municipal utility who are located in the electricity service area of the issuing municipal utility; or (2) sold to a municipal utility and furnished to retail electric customers of the purchaser who are located in the electricity service area of the purchaser.

3. Remedial Actions

The preamble to the proposed regulations states that issuers may apply principles similar to the rules of § 1.141–12 to cure a violation of the use requirement. Commentators requested clarification regarding which remedies under § 1.141–12 are available for this purpose. The final regulations provide that issuers may apply principles similar to the rules of § 1.141–12 to cure a violation of the 90 percent use requirement, and that the "redemption or defeasance" remedy in § 1.141–12(d) and the "alternative use of disposition proceeds" remedy in § 1.141–12(e) are available for this purpose.

Some commentators requested clarification of the amount of nonqualified bonds that must be redeemed or defeased under the "redemption or defeasance" remedy. Under the final regulations, the amount of nonqualified bonds is determined in the same manner as for output contracts taken into account under the private business tests, including the principles of § 1.141–7(d), treating nonqualified sales of gas or electricity as satisfying the benefits and burdens test under § 1.141–7(c)(1). Commentators also suggested that the definition of "nonqualified bonds" under § 1.141–12 may require excessive amounts of bonds to be retired. The IRS and Treasury Department are considering this comment in connection with possible amendments to § 1.141–12.

4. Commodity Swap Contracts

The proposed regulations provide that a transaction will not fail to qualify for the natural gas exception by reason of any commodity swap contract that may be entered into between the issuer and an unrelated party (other than the gas supplier), or between the gas supplier and an unrelated party (other than the issuer), so long as each swap contract is an independent contract. For this purpose, the proposed regulations provide that a swap contract is an independent contract if the obligation of each party to perform under the swap contract is not dependent on performance by any person (other than the other party to the swap contract) under another contract (for example, a gas supply contract or another swap contract). Notice 2002–52 (2002–30 I.R.B. 187), provides that a natural gas commodity swap contract will not fail to be an independent contract solely because the swap contract may terminate in the event of a failure of a gas supplier to deliver gas for which the swap contract is a hedge.

Commentators generally agreed with the provision on swap contracts in the proposed regulations, as modified by Notice 2002–52. The final regulations retain the provision on commodity swap contracts for natural gas prepayments, as modified by Notice 2002–52, and expand it to apply to electricity prepayments.

E. De Minimis Prepayments

The proposed regulations add an exception for prepayments made within 90 days of the date of delivery of all the property or services to which the prepayment relates. Commentators recommended that the exception apply based on reasonable expectations. The final regulations adopt this comment. This change to a reasonable expectations standard is intended to permit a prepayment to qualify for the de minimis exception even if an unexpected event beyond the control of the issuer causes delivery of the property or services to be delayed beyond the 90-day period. The reasonable expectations standard does not, however, apply to any change to the terms of the prepayment other than an unexpected delay in delivery.

II. Private Loans

The existing regulations, at § 1.141–5(c)(2)(ii), provide rules for determining whether a prepayment for property or services is treated as a loan for purposes of the private loan financing test. The existing regulations for private loans are similar to the existing regulations in § 1.148–1(e)(2) for determining whether a prepayment gives rise to investment-type property, except that the private loan regulations focus on whether the prepayment provides a benefit of tax-exempt financing to the seller. The final regulations amend the private loan provisions of § 1.141–5(c)(2) to conform to the amendments to the definition of investment-type property in the final regulations.

III. Tables of Contents

The final regulations amend the tables of contents in §§ 1.141–0 and 1.148–0 to reflect the final regulations and certain previously issued regulations under sections 141 and 148.

Effective Dates

The final regulations apply to bonds sold on or after October 3, 2003. In addition, issuers may apply the final regulations to bonds sold before October 3, 2003 that are subject to §§ 1.141–5 and 1.148–1.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the rule does not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Drafting Information

The principal authors of these regulations are Rebecca L. Harrigal and Johanna Som de Cerff, Office of Chief Counsel (TE/GE), IRS, and Stephen J. Watson, Office of Tax Policy, Treasury Department. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.141–0 is amended by revising the entry for § 1.141–15(b) to read as follows:

§ 1.141–0 Table of contents.

* * * * *

§ 1.141–15 Effective dates.

(b) Effective dates.
(1) In general.
(2) Certain short-term arrangements.
(3) Certain prepayments.

* * * * *

■ **Par. 3.** In § 1.141–5, paragraph (c)(2)(ii) is revised and paragraphs (c)(2)(iii) and (c)(2)(iv) are added to read as follows:

§ 1.141–5 Private loan financing test.

* * * * *

(c) * * *

(2) * * *

(ii) *Certain prepayments treated as loans.* Except as otherwise provided, a prepayment for property or services, including a prepayment for property or services that is made after the date that the contract to buy the property or services is entered into, is treated as a loan for purposes of the private loan financing test if a principal purpose for prepaying is to provide a benefit of tax-exempt financing to the seller. A prepayment is not treated as a loan for purposes of the private loan financing test if—

(A) Prepayments on substantially the same terms are made by a substantial percentage of persons who are similarly situated to the issuer but who are not beneficiaries of tax-exempt financing;

(B) The prepayment is made within 90 days of the reasonably expected date of delivery to the issuer of all of the property or services for which the prepayment is made; or

(C) The prepayment meets the requirements of § 1.148–1(e)(2)(iii)(A) or (B) (relating to certain prepayments to acquire a supply of natural gas or electricity).

(iii) *Customary prepayments.* The determination of whether a prepayment satisfies paragraph (c)(2)(ii)(A) of this section is generally made based on all the facts and circumstances. In addition, a prepayment is deemed to satisfy paragraph (c)(2)(ii)(A) of this section if—

(A) The prepayment is made for—

(*1*) Maintenance, repair, or an extended warranty with respect to personal property (for example, automobiles or electronic equipment); or

(*2*) Updates or maintenance or support services with respect to computer software; and

(B) The same maintenance, repair, extended warranty, updates or maintenance or support services, as applicable, are regularly provided to nongovernmental persons on the same terms.

(iv) *Additional prepayments as permitted by the Commissioner.* The Commissioner may, by published guidance, set forth additional circumstances in which a prepayment is not treated as a loan for purposes of the private loan financing test.

* * * * *

■ **Par. 4.** Section 1.141–15 is amended by adding paragraph (b)(3) to read as follows:

§ 1.141–15 Effective dates.

* * * * *

(b) * * *

(3) *Certain prepayments.* Except as provided in paragraph (c) of this section, paragraphs (c)(2)(ii), (c)(2)(iii) and (c)(2)(iv) of § 1.141–5 apply to bonds sold on or after October 3, 2003. Issuers may apply paragraphs (c)(2)(ii), (c)(2)(iii) and (c)(2)(iv) of § 1.141–5, in whole but not in part, to bonds sold before October 3, 2003 that are subject to § 1.141–5.

■ **Par. 5.** Section 1.148–0 is amended by:

■ 1. Adding entries in paragraph (c) for § 1.148–1, paragraphs (e)(1) through (e)(3).

■ 2. Adding entries in paragraph (c) for § 1.148–11, paragraphs (b)(4), (h), (i) and (j).

The additions read as follows:

§ 1.148–0 Scope and table of contents.

* * * * *

(c) *Table of contents.*

* * * * *

§ 1.148–1 Definitions and elections.

* * * * *

(e) * * *

(1) In general.
(2) Prepayments.
(3) Certain hedges.

* * * * *

§ 1.148–11 Effective dates.

(b) * * *

(4) No elective retroactive application for safe harbor for establishing fair market value for guaranteed investment contracts and investments purchased for a yield restricted defeasance escrow.

* * * * *

(h) Safe harbor for establishing fair market value for guaranteed investment contracts and investments purchased for a yield restricted defeasance escrow.

(i) Special rule for investments purchased for a yield restricted defeasance escrow.

(j) Certain prepayments.

■ **Par. 6.** In § 1.148–1, paragraphs (e)(1) and (2) are revised to read as follows:

§ 1.148–1 Definitions and elections.

* * * * *

(e) *Investment-type property*—(1) *In general.* Investment-type property includes any property, other than property described in section 148(b)(2)(A), (B), (C) or (E), that is held principally as a passive vehicle for the production of income. For this purpose, production of income includes any benefit based on the time value of money.

(2) *Prepayments*—(i) *In general*—(A) *Generally.* Except as otherwise provided in this paragraph (e)(2), a prepayment for property or services, including a prepayment for property or services that is made after the date that the contract to buy the property or services is entered into, also gives rise to investment-type property if a principal purpose for prepaying is to receive an investment return from the time the prepayment is made until the time payment otherwise would be made. A prepayment does not give rise to investment-type property if—

(*1*) Prepayments on substantially the same terms are made by a substantial percentage of persons who are similarly situated to the issuer but who are not beneficiaries of tax-exempt financing;

(*2*) The prepayment is made within 90 days of the reasonably expected date of delivery to the issuer of all of the property or services for which the prepayment is made; or

(*3*) The prepayment meets the requirements of paragraph (e)(2)(iii)(A) or (B) of this section.

(B) *Example.* The following example illustrates an application of this paragraph (e)(2)(i):

Example. Prepayment after contract is executed. In 1998, City A enters into a ten-year contract with Company Y. Under the contract, Company Y is to provide services to City A over the term of the contract and in return City A will pay Company Y for its services as they are provided. In 2004, City A issues bonds to finance a lump sum payment to Company Y in satisfaction of City A's obligation to pay for Company Y's services to be provided over the remaining term of the contract. The use of bond proceeds to make the lump sum payment constitutes a prepayment for services under paragraph (e)(2)(i) of this section, even though the payment is made after the date that the contract is executed.

(ii) *Customary prepayments.* The determination of whether a prepayment satisfies paragraph (e)(2)(i)(A)(*1*) of this section is generally made based on all the facts and circumstances. In addition, a prepayment is deemed to satisfy paragraph (e)(2)(i)(A)(*1*) of this section if—

(A) The prepayment is made for—

(*1*) Maintenance, repair, or an extended warranty with respect to personal property (for example, automobiles or electronic equipment); or

(*2*) Updates or maintenance or support services with respect to computer software; and

(B) The same maintenance, repair, extended warranty, updates or maintenance or support services, as applicable, are regularly provided to nongovernmental persons on the same terms.

(iii) *Certain prepayments to acquire a supply of natural gas or electricity*—(A) *Natural gas prepayments.* A prepayment meets the requirements of this paragraph (e)(2)(iii)(A) if—

(*1*) It is made by or for one or more utilities that are owned by a governmental person, as defined in § 1.141–1(b) (each of which is referred to in this paragraph (e)(2)(iii)(A) as the issuing municipal utility), to purchase a supply of natural gas; and

(*2*) At least 90 percent of the prepaid natural gas financed by the issue is used for a qualifying use. Natural gas is used for a qualifying use if it is to be—

(*i*) Furnished to retail gas customers of the issuing municipal utility who are located in the natural gas service area of the issuing municipal utility, provided, however, that gas used to produce electricity for sale shall not be included under this paragraph (e)(2)(iii)(A)(*2*)(*i*);

(*ii*) Used by the issuing municipal utility to produce electricity that will be furnished to retail electric customers of the issuing municipal utility who are located in the electricity service area of the issuing municipal utility;

(*iii*) Used by the issuing municipal utility to produce electricity that will be sold to a utility that is owned by a governmental person and furnished to retail electric customers of the purchaser who are located in the electricity service area of the purchaser;

(*iv*) Sold to a utility that is owned by a governmental person if the requirements of paragraph (e)(2)(iii)(A)(*2*)(*i*), (*ii*) or (*iii*) of this section are satisfied by the purchaser (treating the purchaser as the issuing municipal utility); or

(*v*) Used to fuel the pipeline transportation of the prepaid gas supply acquired in accordance with this paragraph (e)(2)(iii)(A).

(B) *Electricity prepayments.* A prepayment meets the requirements of this paragraph (e)(2)(iii)(B) if—

(*1*) It is made by or for one or more utilities that are owned by a governmental person (each of which is referred to in this paragraph (e)(2)(iii)(B) as the issuing municipal utility) to purchase a supply of electricity; and

(*2*) At least 90 percent of the prepaid electricity financed by the issue is used for a qualifying use. Electricity is used for a qualifying use if it is to be—

(*i*) Furnished to retail electric customers of the issuing municipal utility who are located in the electricity service area of the issuing municipal utility; or

(*ii*) Sold to a utility that is owned by a governmental person and furnished to retail electric customers of the purchaser who are located in the electricity service area of the purchaser.

(C) *Service area.* For purposes of this paragraph (e)(2)(iii), the service area of a utility owned by a governmental person consists of—

(*1*) Any area throughout which the utility provided, at all times during the 5-year period ending on the issue date—

(*i*) In the case of a natural gas utility, natural gas transmission or distribution service; and

(*ii*) In the case of an electric utility, electricity distribution service; and

(*2*) Any area recognized as the service area of the utility under state or Federal law.

(D) *Retail customer.* For purposes of this paragraph (e)(2)(iii), a retail customer is a customer that purchases natural gas or electricity, as applicable, other than for resale.

(E) *Commodity swaps.* A prepayment does not fail to meet the requirements of this paragraph (e)(2)(iii) by reason of any commodity swap contract that may be entered into between the issuer and an unrelated party (other than the gas or electricity supplier), or between the gas or electricity supplier and an unrelated party (other than the issuer), so long as each swap contract is an independent contract. A swap contract is an independent contract if the obligation of each party to perform under the swap contract is not dependent on performance by any person (other than the other party to the swap contract) under another contract (for example, a gas or electricity supply contract or another swap contract); provided, however, that a commodity swap contract will not fail to be an independent contract solely because the swap contract may terminate in the event of a failure of a gas or electricity supplier to deliver gas or electricity for which the swap contract is a hedge.

(F) *Remedial action.* Issuers may apply principles similar to the rules of § 1.141–12, including § 1.141–12(d) (relating to redemption or defeasance of nonqualified bonds) and § 1.141–12(e) (relating to alternative use of disposition proceeds), to cure a violation of paragraph (e)(2)(iii)(A)(*2*) or (e)(2)(iii)(B)(*2*) of this section. For this purpose, the amount of nonqualified bonds is determined in the same manner as for output contracts taken into account under the private business tests, including the principles of § 1.141–7(d), treating nonqualified sales of gas or electricity under this paragraph (e)(2)(iii) as satisfying the benefits and burdens test under § 1.141–7(c)(1).

(iv) *Additional prepayments as permitted by the Commissioner.* The Commissioner may, by published guidance, set forth additional circumstances in which a prepayment does not give rise to investment-type property.

* * * * *

Par. 7. Section 1.148–11 is amended by adding paragraph (j) to read as follows:

§ 1.148–11 Effective dates.

* * * * *

(j) *Certain prepayments.* Section 1.148–1(e)(1) and (2) apply to bonds sold on or after October 3, 2003. Issuers may apply § 1.148–1(e)(1) and (2), in whole but not in part, to bonds sold before October 3, 2003 that are subject to § 1.148–1.

Dale F. Hart,

Acting Deputy Commissioner for Services and Enforcement.

Approved: July 25, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–19644 Filed 8–1–03; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 591 and 592

Rough Diamonds (Sierra Leone & Liberia) Sanctions Regulations; Rough Diamonds Control Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Interim final rule.

SUMMARY: The Office of Foreign Assets Control of the U.S. Department of the Treasury is amending and issuing regulations to carry out the purposes of Executive Order 13312 of July 29, 2003, which implemented the Clean Diamond Trade Act and the Kimberley Process Certification Scheme for rough diamonds and amended prior Executive orders that served as the bases for restricting or prohibiting the importation into the United States of rough diamonds from Sierra Leone or Liberia.

DATES: *Effective Date:* July 30, 2003.

Comments: Written comments must be received no later than October 3, 2003.

ADDRESSES: Comments may be submitted to the Chief of Records, ATTN: Request for Comments, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Alternatively, comments may be submitted via facsimile to the Chief of Records at 202/622–1657 or via OFAC's Web site (*http://www.treas.gov/offices/enforcement/ofac/comment.html*).

FOR FURTHER INFORMATION CONTACT: OFAC's Chief of Policy Planning and Program Management, tel.: 202/622–2500, or Chief Counsel, tel.: 202/622–2410.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This file is available for download without charge in ASCII and Adobe Acrobat readable (*.PDF) formats at GPO Access. GPO Access supports HTTP, FTP, and Telnet at *fedbbs.access.gpo.gov*. It may also be accessed by modem dialup at 202/512–1387 followed by typing "/GO/FAC." Paper copies of this document can be obtained by calling the Government Printing Office at 202–512–1530. Additional information concerning the programs of the Office of Foreign Assets Control is available for download from the Office's Internet Home Page at: *http://www.treas.gov/ofac* or via FTP at *ofacftp.treas.gov*. Facsimiles of information are available through the Office's 24-hour fax-on-demand service: call 202/622–0077 using a fax machine, a fax modem, or (within the United States) a touch-tone telephone.

Background

On July 29, 2003, the President issued Executive Order 13312, taking into account enactment of the Clean Diamond Trade Act (Pub. L. 108–19), which implements the multilateral Kimberley Process Certification Scheme for rough diamonds (KPCS), and recent developments in Sierra Leone and Liberia. The Clean Diamond Trade Act requires the President, subject to certain waiver authorities, to prohibit the importation into, and exportation from, the United States of any rough diamond not controlled through the KPCS. This means shipments of rough diamonds between the United States and non-Participants in the KPCS generally are prohibited, and shipments between the United States and Participants are permitted only if they are handled in accordance with the standards, practices, and procedures of the KPCS set out in these regulations. Executive Order 13312 implemented the Clean Diamond Trade Act and the KPCS and amended Executive Orders 13194 and 13213, which are described below.

On January 18, 2001, the President issued Executive Order 13194 (66 FR 7389, Jan. 23, 2001), taking into account United Nations Security Council Resolution (UNSCR) 1306 of July 5, 2000. This order declared a national emergency in response to the role played by the illicit trade in diamonds in fueling conflict and human rights violations in Sierra Leone (RUF) and prohibited the importation into the United States of rough diamonds from Sierra Leone that were not controlled by the Government of Sierra Leone through its Certificate of Origin regime.

On May 22, 2001, the President issued Executive Order 13213 (66 FR 28829, May 24, 2001), taking into account UNSCR 1343 of March 7, 2001. This order expanded the scope of the national emergency declared in Executive Order 13194 to respond to, among other things, the Government of Liberia's complicity in the illicit trade in rough diamonds through Liberia. Executive Order 13213 prohibited the direct or indirect importation into the United States of all rough diamonds from Liberia, whether or not such diamonds originated in Liberia.

The United Nations Security Council decided to allow the ban against the importation of rough diamonds from Sierra Leone without a certificate of origin to expire on June 4, 2003, taking into account the Government of Sierra Leone's increased efforts to control and manage its diamond industry and ensure proper control over diamond mining areas, as well as the Government's full participation in the KPCS. In addition, however, on May 6, 2003, the Security Council renewed for one year the absolute import ban on rough diamonds from Liberia based on evidence that the Government of Liberia continues to breach the measures imposed by UNSCR 1343 (2001).

Executive Order 13312 authorized the Secretary of the Treasury to promulgate rules and regulations as may be necessary to carry out the purposes of the order. To implement the order, the Office of Foreign Assets Control, acting pursuant to delegated authority, is issuing the Rough Diamonds Control Regulations and revising the Rough Diamonds (Sierra Leone & Liberia) Sanctions Regulations.

Amendments to Part 591—Rough Diamonds (Sierra Leone & Liberia) Sanctions Regulations

Section 591.201 of subpart B of the regulations, prohibiting the importation of rough diamonds from Sierra Leone and Liberia, is revised to implement section 3 of Executive Order 13312, which amended Executive Order 13194 to control rough diamonds from Sierra Leone through the KPCS and also amended Executive Order 13213 to remove licensing and other authorities with respect to rough diamonds from Liberia. As revised, the prohibition in § 591.201 is limited in scope to rough diamonds from Liberia and is not subject to possible licensing or other administrative action. A note is added to § 591.201 to refer the reader to new part 592, which now controls the importation into, and the exportation from, the United States of rough diamonds from Sierra Leone and other countries.

Section 591.301 of subpart C is removed to reflect the removal of Sierra Leonean rough diamonds from the scope of part 591 and the replacement of the certificate of origin regime of the Government of Sierra Leone with the KPCS in new part 592. Section 591.302, defining the term effective date, is revised to delete the reference to Sierra Leone. Section 591.306 is revised to reflect the KPCS definition of the term rough diamond. Section 591.308 is revised to delete the references to Sierra Leone in the term rough diamonds from Sierra Leone and Liberia. Section 591.309 is revised to conform the definition of the term "United States" to section 3(10) of the Clean Diamond Trade Act.

Section 591.404 of subpart D, relating to the transshipment or transit of rough diamonds through the United States, is revised to delete the reference to rough diamonds from Sierra Leone. Sections 591.405 and 591.406, relating to the direct or indirect importation of rough diamonds and the importation into and release from a bonded warehouse or foreign trade zone of rough diamonds are revised to delete the references to Sierra Leone.

New Part 592—Rough Diamonds Control Regulations

Section 592.201(a) of subpart B of the regulations implements section 1(a) of Executive Order 13312, which implements section 4(a) of the Clean Diamond Trade Act and the KPCS. Section 592.201(a) prohibits, subject to possible exceptions described below, the importation into, or exportation from, the United States of any rough diamond, from whatever source, on or after July 30, 2003, unless the rough diamond is controlled through the KPCS. Section 592.201(b) implements section 4(b) of the Clean Diamond Trade Act by excepting from the prohibitions of § 592.201(a) importations from, or exportations to, any country with respect to which the Secretary of State has waived the prohibitions pursuant to section 4(b) of the Clean Diamond Trade Act and section 2(a)(i) of Executive Order 13312.

Section 592.202 implements section 1(b) of Executive Order 13312 by prohibiting any transaction by a United States person or within the United States that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in section 1 of the order. Section 592.202 also implements section 1(c) of the order by prohibiting any conspiracy formed to violate any of the prohibitions of the order.

Subpart C of part 592 provides definitions of terms used in the regulations, including exporting authority, importing authority, Kimberley Process Certificate, Kimberley Process Certification Scheme, and rough diamond. Subpart D sets forth interpretive guidance with respect to the regulations. For example, §§ 592.403 and 592.404 provide guidance with respect to the transshipment or transit through the United States of rough diamonds and the importation into and release of rough diamonds from a bonded warehouse or foreign trade zone, respectively.

Subpart E of part 592 sets forth provisions relating to required records and reports. Penalties for violations of the regulations are described in subpart F of the regulations.

Request for Comments; Procedural Requirements

Because the regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) (the "APA") requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. However, because of the importance of the issues addressed in these regulations, this rule is being issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views. Comments may address the impact of the regulations on the submitter's activities, whether of a commercial, non-commercial or humanitarian nature, as well as changes that would improve the clarity and organization of the regulations.

The period for submission of comments will close October 3, 2003. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the submission be treated confidentially because of its business proprietary nature or for any other reason. The Department will return any such submission to the originator without considering it in the development of final regulations. In the interest of accuracy and completeness, the Department requires comments in written form.

All public comments on these regulations will be a matter of public record. Copies of the public record concerning these regulations will be made available not sooner than November 3, 2003 and will be obtainable from OFAC's Web site (*http://www.treas.gov/ofac*). If that service is unavailable, written requests for copies may be sent to: Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Ave., NW, Washington, DC 20220, Attn: Chief of Records Division.

Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the regulations are contained in 31 CFR part 501 (the "Reporting and Procedures Regulations"). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been previously approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects

31 CFR Part 591

Administrative practice and procedure, Blocking, Certificate of origin, Conflict diamonds, Diamonds, Exports, Exporting authority, Foreign trade, Importing authority, Imports, Kimberley Process, Liberia, Penalties, Reporting and recordkeeping requirements, Rough diamonds, Sierra Leone.

31 CFR Part 592

Administrative practice and procedure, Foreign trade, Exports, Imports, Kimberley Process, Penalties, Reporting and recordkeeping requirements, Rough diamond.

■ For the reasons set forth in the preamble, 31 CFR chapter V, part 591 is amended and part 592 is added as follows:

■ 1. The title for part 591 is revised to read as follows:

PART 591—ROUGH DIAMONDS (LIBERIA) SANCTIONS REGULATIONS

■ 2. The authority citation for part 591 is revised to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 22 U.S.C. 287c; 50 U.S.C. 1601–1641, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); E.O. 13194, 66 FR 7389 (January 23, 2001); E.O. 13213, 66 FR 28829 (May 24, 2001); E.O. 13312 (FR vol. 68, no. 147, July 31, 2003).

Subpart B—Prohibitions

■ 3. Section 591.201 is revised to read as follows:

§ 591.201 Prohibited importation of any rough diamond.

Notwithstanding the existence of any rights or obligations conferred or imposed by any contract entered into or any license or permit granted prior to the effective date, the direct or indirect importation into the United States, on or after the effective date, of any rough diamond from Liberia is prohibited.

Note to § 591.201. *See* part 592 of this chapter for additional regulations controlling the importation into the United States of any rough diamond from any country other than Liberia, as well as the exportation from the United States of any rough diamond from any source.

§ 591.202 [Removed and reserved]

■ 4. Section 591.202 is removed and reserved.

Subpart C—General Definitions

§ 591.301 [Removed and reserved]

■ 5. Section 591.301 is removed and reserved.

■ 6. Section 591.302 is revised to read as follows:

§ 591.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part, which is 12:01 a.m., eastern daylight time, May 23, 2001.

■ 7. Section 591.307 is revised to read as follows:

§ 591.307 Rough diamond.

The term *rough diamond* means any diamond that is unworked or simply sawn, cleaved, or bruted, and classifiable under subheading 7102.10, 7102.21, or 7102.31 of the Harmonized Tariff Schedule of the United States.

■ 8. Section 591.308 is revised to read as follows:

§ 591.308 Rough diamond from Liberia.

The term *rough diamond from Liberia* means any rough diamond extracted in Liberia and any rough diamond that has physically entered the territory of Liberia, regardless of where it had been extracted.

Subpart D—Interpretations

■ 9. Section 591.404 is revised to read as follows:

§ 591.404 Transshipment or transit through the United States prohibited.

The prohibition in § 591.201 applies to the importation into the United States, for transshipment or transit, of any rough diamond from Liberia that is intended or destined for any country other than the United States.

■ 10. Section 591.405 is revised to read as follows:

§ 591.405 Direct or indirect importation of any rough diamond from Liberia.

The prohibition in § 591.201 applies to the importation of any rough diamond from Liberia whether the rough diamond is being imported directly into the United States from Liberia, or indirectly through any other country.

■ 11. Section 591.406 is revised to read as follows:

§ 591.406 Importation into or release of any rough diamond from a bonded warehouse or foreign trade zone.

The prohibition in § 591.201 applies to the importation into or release of any rough diamond from a bonded warehouse or foreign trade zone of the United States. However, § 591.201 does not prohibit the release from a bonded warehouse or a foreign trade zone of any rough diamond from Liberia that was imported into the bonded warehouse or foreign trade zone prior to the effective date.

■ 12. Part 592 is added to 31 CFR Chapter V to read as follows:

PART 592—ROUGH DIAMONDS CONTROL REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
592.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions
592.201 Prohibited importation and exportation of any rough diamond; permitted importation and exportation of any rough diamond.
592.202 Evasions; attempts; conspiracies.

Subpart C—General Definitions
592.301 Controlled through the Kimberley Process Certification Scheme.
592.302 Effective date.
592.303 Entity.
592.304 Exporting authority.
592.305 Importation into the United States.
592.306 Importing authority.
592.307 Kimberley Process Certificate.
592.308 Participant.
592.309 Person.
592.310 Rough diamond.
592.311 United States.
592.312 United States person; U.S. person.

Subpart D—Interpretations
592.401 Reference to amended sections.
592.402 Effect of amendment.
592.403 Transshipment or transit through the United States.
592.404 Importation into or release from a bonded warehouse or foreign trade zone.

Subpart E—Records and Reports
592.501 Records and reports.

Subpart F—Penalties
592.601 Penalties.
592.602 Prepenalty notice.
592.603 Response to prepenalty notice; informal settlement.
592.604 Penalty imposition or withdrawal.
592.605 Administrative collection; referral to United States Department of Justice.

Subpart G—Procedures
592.701 Procedures.
592.702 Delegation by the Secretary of the Treasury.

Subpart H—Paperwork Reduction Act
592.801 Paperwork Reduction Act notice.

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 22 U.S.C. 287c; 50 U.S.C. 1601–1641, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 108–19; E.O. 12865, 58 FR 51005, 3 CFR, 1993 Comp., p. 636; E.O. 13098, 63 FR 44771, 3 CFR, 1998 Comp., p. 206; E.O. 13194, 66 FR 7389 (January 23, 2001); E.O. 13213, 66 FR 28829 (May 24, 2001); E.O. 13312 (FR vol. 68, no. 147, July 31, 2003).

Subpart A—Relation of This Part to Other Laws and Regulations

§ 592.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this

chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part.

Subpart B—Prohibitions

§ 592.201 Prohibited importation and exportation of any rough diamond; permitted importation or exportation of any rough diamond.

(a) Except to the extent provided in paragraph (b) of this section, and notwithstanding the existence of any rights or obligations conferred or imposed by any contract entered into or any license or permit granted prior to the effective date, the importation into, or exportation from, the United States on or after July 30, 2003, of any rough diamond, from whatever source, is prohibited, unless the rough diamond has been controlled through the Kimberley Process Certification Scheme.

(b) The prohibitions in paragraph (a) of this section regarding the importation into, or exportation from, the United States of any rough diamond not controlled through the Kimberley Process Certification Scheme do not apply to an importation from, or exportation to, any country with respect to which the Secretary of State has granted a waiver pursuant to section 4(b) of the Clean Diamond Trade Act (Pub. L. 108–19) and section 2(a)(1) of Executive Order 13312.

Note to § 592.201. An importation of any rough diamond from, or an exportation of any rough diamond to, a non-Participant is not controlled through the Kimberley Process Certification Scheme and thus is not permitted except in the following circumstance. The Secretary of State may, pursuant to section 4(b) of the Clean Diamond Trade Act, waive the prohibitions contained in section 4(a) of that Act with respect to a particular country for periods of not more than one year each. The Secretary of State will publish a notice in the **Federal Register** identifying any country with respect to which a waiver applies and specifying the relevant time period during which the waiver will apply.

§ 592.202 Evasions; attempts; conspiracies.

(a) Notwithstanding the existence of any rights or obligations conferred or imposed by any contract entered into or any license or permit granted prior to July 30, 2003, any transaction by a United States person anywhere, or any transaction that occurs in whole or in part within the United States, on or after the effective date that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this part is prohibited.

(b) Notwithstanding the existence of any rights or obligations conferred or imposed by any contract entered into or any license or permit granted prior to July 30, 2003, any conspiracy formed to violate any of the prohibitions of this part is prohibited.

Subpart C—General Definitions

§ 592.301 Controlled through the Kimberley Process Certification Scheme.

(a) Except as otherwise provided in paragraph (b) of this section, the term *controlled through the Kimberley Process Certification Scheme* refers to the following requirements that apply, as appropriate, to the importation into the United States from a Participant, or the exportation from the United States to a Participant, of any shipment including any rough diamond:

(1) *Kimberley Process Certificate.* A shipment of rough diamonds imported into, or exported from, the United States must be accompanied by a Kimberley Process Certificate. The certificate must be presented in connection with an importation or exportation of rough diamonds if demanded by Customs officials.

(2) *Tamper-Resistant Container.* A shipment of rough diamonds imported into, or exported, from the United States must be sealed in a tamper-resistant container;

(3) *Notification Requirements for Importations into the United States.* The importer of record in the United States must confirm receipt of a shipment of rough diamonds to the relevant foreign exporting authority. The confirmation must refer to the relevant Kimberley Process Certificate by serial number, the number of parcels, the carat weight, and the details of the importer and exporter; and

(4) *Validation of Kimberley Process Certificate for Exportations from the United States.* With respect to the exportation of rough diamonds from the United States and regardless of the destination, the Census Bureau requires the filing of export information through the Automated Export System. Submission of export information through the Automated Export System must be done in advance and must be confirmed by the return of an Internal Transaction Number. The return to the filer of the Internal Transaction Number shall constitute the validation of the Kimberley Process Certificate for an exportation of rough diamonds from the United States to a Participant. The exporter is required to report the Internal Transaction Number on the Kimberley Process Certificate accompanying any exportation from the United States. The Internal Transaction Number is a unique confirmation number generated by the Automated Export System to the filer who provides in a timely manner the complete commodity shipment data when such data have been accepted by the system.

(b) The Secretary of State, consistent with section 3(2)(b) of the Clean Diamond Trade Act (Pub. L. 108–19), may modify the requirements set forth in paragraph (a) of this section upon making a determination that a Participant has established an alternative system of control for rough diamonds that meets substantially the standards, practices, and procedures of the Kimberley Process Certification Scheme.

Note 1 to § 592.301. The Secretary of State will periodically publish in the **Federal Register** an up-to-date listing of all Participants. Where appropriate, such listing also will describe any modification of the requirements set forth in paragraph (a) of this section.

Note 2 to § 592.301. The recordkeeping and reporting requirements imposed by § 592.501 apply to all U.S. persons engaged in the importation into, or exportation from, the United States of any shipment of rough diamonds.

§ 592.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part, which is 12:01 a.m., eastern daylight time, July 30, 2003.

§ 592.303 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, or other organization.

§ 592.304 Exporting authority.

(a) The term *exporting authority* means one or more entities designated by a Participant from whose territory a shipment of rough diamonds is being exported as having the authority to validate the Kimberley Process Certificate.

(b) The exporting authority for the United States is the Bureau of the Census.

Note to § 592.304. The Secretary of State will periodically publish in the **Federal Register** an up-to-date listing of the exporting authorities of all Participants.

§ 592.305 Importation into the United States.

The term *importation into the United States* means the bringing of goods into the United States.

§ 592.306 Importing authority.

(a) The term *importing authority* means one or more entities designated by a Participant into whose territory a shipment of rough diamonds is being imported as having the authority to enforce the laws and regulations of the Participant regulating imports, including the verification of the Kimberley Process Certificate accompanying the shipment.

(b) The importing authorities for the United States are the United States Bureau of Customs and Border Protection or, in the case of a territory or possession of the United States with its own customs administration, analogous officials.

Note to § 592.306. The Secretary of State will periodically publish in the **Federal Register** an up-to-date listing of the importing authorities of all Participants.

§ 592.307 Kimberley Process Certificate.

The term *Kimberley Process Certificate* means a tamper- and forgery-resistant document that bears the following information in any language, provided that an English translation is incorporated:

(a) The title "Kimberley Process Certificate" and the statement: "The rough diamonds in this shipment have been handled in accordance with the provisions of the Kimberley Process Certification Scheme for rough diamonds";

(b) Country of origin for shipment of parcels of unmixed (*i.e.*, from the same) origin;

(c) Unique numbering with the Alpha 2 country code, according to ISO 3166–1;

(d) Date of issuance;

(e) Date of expiry;

(f) Name of issuing authority;

(g) Identification of exporter and importer;

(h) Carat weight/mass;

(i) Value in U.S. dollars;

(j) Number of parcels in the shipment;

(k) Relevant Harmonized Commodity Description and Coding System; and

(l) Validation by the exporting authority.

Note to § 592.307. *See* § 592.301(a)(4) for procedures governing the validation of the Kimberley Process Certificate when exporting from the United States.

§ 592.308 Participant.

The term *Participant* means a state, customs territory, or regional economic integration organization identified by the Secretary of State as one for which rough diamonds are controlled through the Kimberley Process Certification Scheme.

Note to § 592.308. The Secretary of State will periodically publish in the **Federal Register** an up-to-date listing of all Participants.

§ 592.309 Person.

The term *person* means an individual or entity.

§ 592.310 Rough diamond.

The term *rough diamond* means any diamond that is unworked or simply sawn, cleaved, or bruted and classifiable under subheading 7102.10, 7102.21, or 7102.31 of the Harmonized Tariff Schedule of the United States.

§ 592.311 United States.

The term *United States*, when used in the geographic sense, means the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

§ 592.312 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen; any alien admitted for permanent residence into the United States; any entity organized under the laws of the United States or any jurisdiction within the United States (including its foreign branches); or any person in the United States.

Subpart D—Interpretations

§ 592.401 Reference to amended sections.

Except as otherwise specified, reference to any provision in this part or chapter or to any other regulation refers to the same as currently amended.

§ 592.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, or instruction issued by or under the direction of the Director of the Office of Foreign Assets Control does not affect any act done or omitted, or any civil or criminal suit or proceeding commenced or pending prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, or instruction continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 592.403 Transshipment or transit through the United States.

The prohibitions in § 592.201 apply to the importation into, or exportation from, the United States, for transshipment or transit, of any rough diamond intended or destined for any country other than the United States unless the shipment is sealed in a tamper-resistant container, accompanied by a Kimberley Process Certificate, and leaves the United States in an identical state as it entered. The validation, recordkeeping, and confirmation procedures applicable to importations and exportations do not apply in this case.

§ 592.404 Importation into or release from a bonded warehouse or foreign trade zone.

The requirements of the Kimberley Process Certification Scheme apply to all imported shipments of a rough diamond, regardless of whether they are destined for entry into, or withdrawal from, a bonded warehouse or a foreign trade zone of the United States.

Subpart E—Records and Reports

§ 592.501 Records and reports.

(a) Any United States person seeking to export from or import into the United States any rough diamond shall keep a full record of, in the form of reports or otherwise, complete information relating to any act or transaction to which any prohibition imposed under § 592.201(a) applies. Such record shall be available for examination for at least 5 years after the date of such act or transaction.

(b) Every United States person is required to furnish under oath, in the form of reports or otherwise, from time to time and at any time as may be required by the Director, Office of Foreign Assets Control, complete information relative to any act or transaction subject to the provisions of this part. The Director may require that such reports include the production of books of account, records, contracts, letters, memoranda, or other papers in the custody or control of persons required to make such reports. Reports with respect to any acts or transactions may be required either before or after such acts or transactions are completed.

Subpart F—Penalties

§ 592.601 Penalties.

(a) Attention is directed to section 8 of the Clean Diamond Trade Act (the "Act") (Pub. L. 108–19), which provides that:

(1) A civil penalty not to exceed $10,000 per violation may be imposed on any person who violates, or attempts to violate, any order or regulation issued under the Act;

(2) Whoever willfully violates, or willfully attempts to violate, any order or regulation issued under this Act shall, upon conviction, be fined not more than $50,000, or, if a natural person, may be imprisoned for not more than 10 years, or both; and any officer, director, or agent of any corporation who willfully participates in such violation may be punished by a like fine, imprisonment, or both; and

(3) Those customs laws of the United States, both civil and criminal, including those laws relating to seizure and forfeiture, that apply to articles imported in violation of such laws shall apply with respect to any rough diamond imported in violation of the Act.

Note to paragraph (a). As reflected in paragraphs (a)(1) and (2) above, section 8(a) of the Clean Diamond Trade Act (Pub. L. 108–19) establishes penalties with respect to any violation of any regulation issued under the Act. OFAC prepenalty, penalty, and administrative collection procedures relating to such violations are set forth below in §§ 592.602 through 592.605. Section 8(c) of the Act also authorizes the United States Bureau of Customs and Border Protection and the United States Bureau of Immigration and Customs Enforcement, as appropriate, to enforce the penalty provisions set forth in paragraph (a) and to enforce the laws and regulations governing exports of rough diamonds, including with respect to the validation of the Kimberley Process Certificate by the Bureau of the Census. The OFAC civil penalty procedures set forth below are separate from, and independent of, any penalty procedures that may be followed by the United States Bureau of Customs and Border Protection and the United States Bureau of Immigration and Customs Enforcement in their exercise of the authorities set forth in section 8(c) of the Clean Diamond Trade Act.

(b) The criminal penalties provided in the Act are subject to increase pursuant to 18 U.S.C. 3571.

(c) Attention is also directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device, a material fact, or makes any materially false, fictitious, or fraudulent statement or representation or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry shall be fined under title 18, United States Code, or imprisoned not more than five years, or both.

(d) Violations of this part may also be subject to relevant provisions of other applicable laws.

§ 592.602 Prepenalty notice.

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any regulation or order issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Clean Diamond Trade Act, and the Director determines that further proceedings are warranted, the Director shall notify the alleged violator of the agency's intent to impose a monetary penalty by issuing a prepenalty notice. The prepenalty notice shall be in writing. The prepenalty notice may be issued whether or not another agency has taken any action with respect to the matter.

(b) *Contents of notice*—(1) *Facts of violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty.

(2) *Right to respond.* The prepenalty notice also shall inform the respondent of the respondent's right to make a written presentation within the applicable 30-day period set forth in § 592.703 as to why a monetary penalty should not be imposed or why, if imposed, the monetary penalty should be in a lesser amount than proposed.

(c) *Informal settlement prior to issuance of prepenalty notice.* At any time prior to the issuance of a prepenalty notice, an alleged violator may request in writing that, for a period not to exceed sixty (60) days, the agency withhold issuance of the prepenalty notice for the exclusive purpose of effecting settlement of the agency's potential civil monetary penalty claims. In the event the Director grants the request, under terms and conditions within his discretion, the Office of Foreign Assets Control will agree to withhold issuance of the prepenalty notice for a period not to exceed 60 days and will enter into settlement negotiations of the potential civil monetary penalty claim.

§ 592.603 Response to prepenalty notice; informal settlement.

(a) *Deadline for response.* The respondent may submit a response to the prepenalty notice within the applicable 30-day period set forth in this paragraph. The Director may grant, at his discretion, an extension of time in which to submit a response to the prepenalty notice. The failure to submit a response within the applicable time period set forth in this paragraph shall be deemed to be a waiver of the right to respond.

(1) *Computation of time for response.* A response to the prepenalty notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to OFAC by courier) on or before the 30th day after the postmark date on the envelope in which the prepenalty notice was mailed. If the respondent refused delivery or otherwise avoided receipt of the prepenalty notice, a response must be postmarked or date-stamped on or before the 30th day after the date on the stamped postal receipt maintained at the Office of Foreign Assets Control. If the prepenalty notice was personally delivered to the respondent by a non-U.S. Postal Service agent authorized by the Director, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(2) *Extensions of time for response.* If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the Director's discretion, only upon the respondent's specific request to the Office of Foreign Assets Control.

(b) *Form and method of response.* The response must be submitted in typewritten form and signed by the respondent or a representative thereof. The response need not be in any particular form. A copy of the response may be sent by facsimile, but the original also must be sent to the Office of Foreign Assets Control Civil Penalties Division by mail or courier and must be postmarked or date-stamped, in accordance with paragraph (a) of this section.

(c) *Contents of response.* A written response must contain information sufficient to indicate that it is in response to the prepenalty notice and must identify the Office of Foreign Assets Control identification number listed on the prepenalty notice.

(1) A written response must include the respondent's full name, address, telephone number, and facsimile number, if available, or those of the representative of the respondent.

(2) A written response should either admit or deny each specific violation alleged in the prepenalty notice and also state if the respondent has no knowledge of a particular violation. If the written response fails to address any specific violation alleged in the prepenalty notice, that alleged violation shall be deemed to be admitted.

(3) A written response should include any information in defense, evidence in support of an asserted defense, or other factors that the respondent requests the Office of Foreign Assets Control to consider. Any defense or explanation previously made to the Office of Foreign Assets Control or any other agency must be repeated in the written response. Any defense not raised in the written response will be considered waived. The written response also should set forth the reasons why the respondent believes the penalty should not be imposed or why, if imposed, it should be in a lesser amount than proposed.

(d) *Failure to respond.* Where OFAC receives no response to a prepenalty notice within the applicable time period set forth in paragraph (a) of this section, a penalty notice generally will be issued, taking into account the mitigating and/or aggravating factors present in the record. If there are no mitigating factors present in the record, or the record contains a preponderance of aggravating factors, the proposed prepenalty amount generally will be assessed as the final penalty.

(e) *Informal settlement.* In addition to or as an alternative to a written response to a prepenalty notice, the respondent or respondent's representative may contact the Office of Foreign Assets Control as advised in the prepenalty notice to propose the settlement of allegations contained in the prepenalty notice and related matters. However, the requirements set forth in paragraph (f) of this section as to oral communication by the representative must first be fulfilled. In the event of settlement at the prepenalty stage, the claim proposed in the prepenalty notice will be withdrawn, the respondent will not be required to take a written position on allegations contained in the prepenalty notice, and the Office of Foreign Assets Control will make no final determination as to whether a violation occurred. The amount accepted in settlement of allegations in a prepenalty notice may vary from the civil penalty that might finally be imposed in the event of a formal determination of violation. In the event no settlement is reached, the time limit specified in paragraph (a) of this section for written response to the prepenalty notice will remain in effect unless additional time is granted by the Office of Foreign Assets Control.

(f) *Representation.* A representative of the respondent may act on behalf of the respondent, but any oral communication with the Office of Foreign Assets Control prior to a written submission regarding the specific allegations contained in the prepenalty notice must be preceded by a written letter of representation, unless the prepenalty notice was served upon the respondent in care of the representative.

§ 592.604 Penalty imposition or withdrawal.

(a) *No violation.* If, after considering any response to the prepenalty notice and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was no violation by the respondent named in the prepenalty notice, the Director shall notify the respondent in writing of that determination and of the cancellation of the proposed monetary penalty.

(b) *Violation.* (1) If, after considering any written response to the prepenalty notice, or default in the submission of a written response, and any relevant facts, the Director of the Office of Foreign Assets Control determines that there was a violation by the respondent named in the prepenalty notice, the Director is authorized to issue a written penalty notice to the respondent of the determination of the violation and the imposition of the monetary penalty.

(2) The penalty notice shall inform the respondent that payment or arrangement for installment payment of the assessed penalty must be made within 30 days of the date of mailing of the penalty notice by the Office of Foreign Assets Control.

(3) The penalty notice shall inform the respondent of the requirement to furnish the respondent's taxpayer identification number pursuant to 31 U.S.C. 7701 and that such number will be used for purposes of collecting and reporting on any delinquent penalty amount.

(4) The issuance of the penalty notice finding a violation and imposing a monetary penalty shall constitute final agency action. The respondent has the right to seek judicial review of that final agency action in federal district court.

§ 592.605 Administrative collection; referral to United States Department of Justice.

In the event that the respondent does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Director of the Office of Foreign Assets Control within 30 days of the date of mailing of the penalty notice, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a federal district court.

Subpart G—Procedures

§ 592.701 Procedures.

For procedures relating to rulemaking and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), *see* part 501, subpart E, of this chapter.

§ 592.702 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to Executive Order 13312 (FR vol. 68, No. 147, July 31, 2003) and any further Executive orders relating to the Clean Diamond Trade Act (Pub. L. 108–19) may be taken by the Director of the Office of Foreign Assets Control or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart H—Paperwork Reduction Act

§ 592.801 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget ("OMB") under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements and other procedures, *see* § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Dated: July 30, 2003.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: July 30, 2003.

Juan C. Zarate,

Deputy Assistant Secretary (Terrorist Financing and Financial Crimes), Department of the Treasury.

[FR Doc. 03–19821 Filed 7–30–03; 4:19 pm]

BILLING CODE 4810–25–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07–03–129]

RIN 1625–AA09

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Mile 1060.5 at Fort Lauderdale, Broward County, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the regulations governing the operation of the Oakland Park Boulevard Bridge, mile 1060.5, Fort Lauderdale, Florida. Under this temporary rule, the Bridge need open only twice an hour. This temporary rule is required to allow the bridge owner to provide for worker safety while completing repairs to the bridge.

DATES: This rule is effective from 6 a.m. on July 28, 2003, to 8 p.m. on October 31, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD07–03–129 and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, FL 33131, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Project Officer, Seventh Coast Guard District, Bridge Branch, at (305) 415–6744.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07–03–129], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Regulatory Information

We did not publish a notice of proposed rulemaking (NRPM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM was impracticable and contrary to the public interest, because the rule was needed to allow the contractor to provide for worker safety while repairing the bridge. The emergency repair work is required before the winter season when there will be increased boating/vehicular traffic in the area. Also, since the temporary rule provides for regularly scheduled bridge openings, vessel traffic will not be unduly disrupted during the repair process.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after **Federal Register** publication. We received a request to change the bridge's operating schedule on June 10, 2003, to effect emergency repair work to the bridge before the busy winter season, and did not have sufficient time remaining to either publish an NPRM or delay the effective date of the rule. This temporary rule provides for scheduled bridge openings so as to allow the contractor to safely repair the bridge without disrupting vessel traffic.

Background and Purpose

The Oakland Park Boulevard Bridge, mile 1060.5 at Fort Lauderdale, Broward County, Florida, has a vertical clearance of 22 feet at mean high water and a horizontal clearance of 88 feet between the fender systems. The existing operating regulations in 33 CFR 117.261 require the bridge to open on signal from May 16 to November 14 and to open at regular intervals during the winter season.

PCL Contractors notified the Coast Guard on June 10, 2003, that work on the bascule leaves is scheduled from July 28, 2003, to October 31, 2003. For safety reasons, they request a 30-minute opening schedule during this repair period. This action is necessary to provide for worker safety during repairs to the bridge and does not significantly hinder navigation, as regularly scheduled openings will be provided.

Discussion of Rule

This temporary rule allows this bridge to open only on the quarter-hour and three-quarter hour from July 28, 2003, to October 31, 2003. This action is necessary for workers' safety during repairs to the bridge and does not significantly hinder navigation.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary, because the rule will affect only a small percentage of vessel traffic through this bridge, as it is not yet the winter season. The impact on vessel traffic will, at most, be a 30-minute waiting period. Regularly scheduled openings will allow vessel traffic to transit the area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this temporary rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this temporary rule would not have a significant economic impact on a substantial number of small entities, because the regulations will affect only a limited amount of marine traffic and will still provide for their navigation needs.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this temporary rule would have a significant economic impact on it, please submit a comment to the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this temporary rule so that they can better evaluate its effects on them and participate in the rulemaking. If this temporary rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in the preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order, because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); Section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. From 6 a.m. on July 28, 2003, until 8 p.m. on October 31, 2003, § 117.261, paragraph (ff), is suspended and new paragraph (uu) is added to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(uu) The Oakland Park Boulevard Bridge, mile 1060.5 at Fort Lauderdale, need open only on the quarter-hour and three-quarter-hour.

* * * * *

Dated: July 22, 2003.

H.E. Johnson, Jr.,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 03–19543 Filed 8–1–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 188

Harmonization With International Safety Standards

CFR Correction

In Title 46 of the Code of Federal Regulations, Parts 166 to 199, revised as of October 1, 2002, in part 188, on page 342, remove the second § 188.10–45.

[FR Doc. 03–55516 Filed 8–1–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 189

Frequency of Inspection

CFR Correction

In Title 46 of the Code of Federal Regulations, Parts 166 to 199, revised as of October 1, 2002, in part 189, on page 348, remove the second § 189.25–5.

[FR Doc. 03–55517 Filed 8–1–03; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

Radio Broadcasting Services; Marble Falls, TX

CFR Correction

In Title 47 of the Code of Federal Regulations, Parts 70 to 79, revised as of October 1, 2002, in § 73.202(b), in the Table of FM Allotments under Texas, add Marble Falls, Channel 285C2.

[FR Doc. 03–55518 Filed 8–1–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–3037–02; I.D. 072903A]

Fisheries of the Exclusive Economic Zone off Alaska; Species in the Rock Sole/Flathead Sole/"Other Flatfish" Fishery Category by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for species in the rock sole/flathead sole/"other flatfish" fishery category by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2003 halibut bycatch allowance specified for the trawl rock sole/flathead sole/"other flatfish" fishery category in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 31, 2003, through 1200 hrs, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

The 2003 halibut bycatch allowance specified for the trawl rock sole/flathead sole/"other flatfish" fishery category in the BSAI is 779 metric tons as established by the final 2003 harvest specifications for Groundfish of the BSAI (68 FR 9907, March 3, 2003).

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS, has determined that the 2003 halibut bycatch allowance specified for the trawl rock sole/flathead sole/"other flatfish" fishery category in the BSAI has been caught. Consequently, NMFS is closing directed fishing for species in the rock sole/flathead sole/"other flatfish" fishery category by vessels using trawl gear in the BSAI.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the 2003 halibut bycatch allowance, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: July 29, 2003.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–19756 Filed 7–30–03; 2:33 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 149
Monday, August 4, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 331

[Docket No. 03–070–2]

Public Meetings; Listing of Biological Agents and Toxins

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of cancellation of public meetings.

SUMMARY: We are advising individuals and entities possessing, using, or transferring biological agents and toxins listed in 7 CFR 331.3, as well as other interested parties, that the series of public meetings scheduled for August 2003 are canceled.

FOR FURTHER INFORMATION CONTACT: Dr. Michael J. Firko, Assistant Director, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–8758.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on July 24, 2003 (68 FR 43660–43661, Docket No. 03–070–1), we gave notice that we would be holding a series of public meetings in August 2003 to provide a forum for discussion of the criteria used to determine whether an agent has the potential to pose a severe threat to plant health or products. We are canceling the meetings that had been scheduled to be held on August 12, 2003 in Charlotte, NC; on August 19, 2003, in Riverdale, MD; and on August 21, 2003, in Sacramento, CA. We will explore alternative methods to consult with appropriate Federal departments and agencies and with scientific experts representing appropriate professional groups. We regret any inconvenience caused by this cancellation.

Done in Washington, DC, this 30th day of July 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–19694 Filed 8–1–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Ch. I

Meeting of the No Child Left Behind Negotiated Rulemaking Committee

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Announcement of negotiated rulemaking committee meeting.

SUMMARY: The Secretary of the Interior has established an advisory Committee to develop recommendations for proposed rules for Indian education under six sections of the No Child Left Behind Act of 2001. As required by the Federal Advisory Committee Act, we are announcing the date and location of the next meeting of the No Child Left Behind Negotiated Rulemaking Committee.

DATES: The Committee's next meeting will be held August 21–24, 2003. The meeting will begin at 8:30 a.m. (PDT) on Thursday, August 21, and end at noon (PDT) on Sunday, August 24.

ADDRESSES: The meeting will be held at the Grand Hyatt Hotel, 721 Pine Street, Seattle, WA 98101, telephone (206) 774–1234.

FOR FURTHER INFORMATION CONTACT: Barbara James or Shawna Smith, No Child Left Behind Negotiated Rulemaking Project Management Office, PO Box 1430, Albuquerque, NM 87103–1430; telephone (505) 248–7241; fax (505) 248–7242; e-mail *bjames@bia.edu* or *ssmith@bia.edu*. We will post additional information as it becomes available on the Office of Indian Education Programs Web site under "Negotiated Rulemaking" at *http//www.oiep.bia.edu*.

SUPPLEMENTARY INFORMATION: For more information on negotiated rulemaking under the No Child Left Behind Act, *see* the **Federal Register** notices published on December 10, 2002 (67 FR 75828) and May 5, 2003 (68 FR 23631) or the Web site at *http//www.oiep.bia.edu* under "Negotiated Rulemaking."

At the next meeting the Committee will divide into four work groups: Student Rights and Geographic Boundaries; Tribally Controlled Schools Act/Grants; Adequate Yearly Progress; and Funding and Distribution of Funds. The Committee will also meet in full session each day for work group reports and logistics. All meetings are open to the public. There is no requirement for advance registration for members of the public who wish to attend and observe the Committee meetings or the work group meetings or to make public comments. The agenda for the August 21–24, 2003, meeting is as follows:

Agenda for No Child Left Behind Negotiated Rulemaking Committee Meeting, August 21–24, 2003, Seattle, Washington

August 21
- Opening Remarks—8:30 a.m.
- Public comments (30 minutes).
- Introductions, Logistics, and Housekeeping.
- Plenary Committee considers proposals from Work Groups.
- Work Group meetings.

August 22
- Public comments—8:30–9 a.m.
- Plenary Committee considers proposals from Work Groups.
- Work Group meetings.
- Plenary Committee meeting considers proposals from Work Groups.

August 23
- Public comments—8:30 a.m.
- Work group meetings.
- Plenary Committee meeting hears Work Group reports.

August 24
- Public comments—8:30 a.m.
- Plenary Committee meeting sets agenda for next meeting.
- Closing Remarks.
- Work group meetings.
- Closing—noon.

Dated: July 28, 2003.

Aurene M. Martin,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 03–19678 Filed 8–1–03; 8:45 am]

BILLING CODE 4310–6W–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 19 and 27

[FRL–7539–3]

Civil Monetary Penalty Inflation Adjustment Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule; Technical Corrections.

SUMMARY: EPA is correcting the proposed rule that appeared in the July 3, 2003 **Federal Register** at (68 FR 39882), entitled "Civil Monetary Penalty Inflation Adjustment Rule," as mandated by the Debt Collection Improvement Act of 1996, to adjust EPA's civil monetary penalties for inflation on a periodic basis. This notice creates no new regulatory requirements. Rather, it corrects the effective date for the proposed rule which was mistakenly listed as July 3, 2003 in the **Federal Register** notice of the same date.

DATES: The comment period for the previously published proposal (68 FR 39882, July 3, 2003) ends on August 4, 2003.

ADDRESSES: Mail written comments to the Docket Office, Enforcement & Compliance Docket and Information Center (2201AT), Docket Number EC–2001–008, U.S. Environmental Protection Agency, EPA West, 1200 Pennsylvania Avenue, NW., Room B133, Washington, DC 20460 (in triplicate, if possible). Please use a font size no smaller than 12. Written comments may be delivered in person to: U.S. Environmental Protection Agency, EPA West, 1301 Constitution Avenue, NW., Room B133, Washington, DC 20460. Comments may also be submitted electronically to *docket.oeca@epa.gov* or faxed to (202) 566–1511. Attach electronic comments as an ASCii (text) file, and avoid the use of special characters and any form of encryption. Be sure to include the docket number, EC–2001–008, on your document. Public comments, if any, may be reviewed at the Enforcement and Compliance Docket Information Center, U.S. Environmental Protection Agency, EPA West, 1301 Constitution Avenue, NW., Room B133, Washington, DC 20460. Persons interested in reviewing this docket may do so by calling (202) 566–1512.

FOR FURTHER INFORMATION CONTACT: David Abdalla, Office of Regulatory Enforcement, Multimedia Enforcement Division, Mail Code 2248A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–2413.

SUPPLEMENTARY INFORMATION:

I. Reasons and Basis for Today's Notice

In its review of the July 3, 2003 proposed rule (68 FR 39882), issued pursuant to the Debt Collection Improvement Act of 1996 (Pub. L. 104–134, 110 Stat. 1321), EPA identified errors in certain sections of the regulatory language of the proposal referring to the effective date. Today's notice corrects these errors to reflect that the effective date of the final rule will be the date the final rule is published, and not July 3, 2003, the date on which the proposed rule was published.

II. Public Comment Period

Today's notice does not create any new regulatory requirement. EPA believes that the July 3, 2003 notice presented the substance of the proposed rule sufficiently to allow interested persons to understand all aspects of the proposed rule and to make comments. Consequently, EPA finds that it is not necessary to extend the comment period for the proposed rule. The comment period will still close on August 4, 2003.

Dated: July 29, 2003.

John Peter Suarez,

Assistant Administrator for Enforcement and Compliance Assurance.

The following corrections are made to FRL–7522–4 Civil Monetary Penalty Inflation Adjustment Rule; Proposed Rule, published in the **Federal Register** on July 3, 2003 (68 FR 39882):

1. In Section 19.2 of the regulatory text, change both references to the date "July 3, 2003" to "[date of publication of final rule]."

2. In footnote 1 to Section 27.3(a)(1)(iv) of the regulatory text, change the reference to the date "July 3, 2003" to "[date of publication of final rule]."

[FR Doc. 03–19738 Filed 8–1–03; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 68, No. 149

Monday, August 4, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 03–015N]

FSIS Safety and Security Guidelines for the Transportation and Distribution of Meat, Poultry, and Egg Products; Notice of Availability

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of Availability; Request for public comments and information.

SUMMARY: The Food Safety and Inspection Service is announcing the availability of the Agency's current safety and security guidelines for the transportation and distribution of meat, poultry, and egg products. These guidelines were developed to assist facilities and shippers of all sizes to improve food safety and security in the handling of FSIS-regulated products. These guidelines include measures to improve food security during the loading, transport, in-transit storage, and unloading of meat, poultry, and egg products. In these guidelines, FSIS strongly recommends that shippers and receivers, as well as transporters, of these products develop controls for ensuring the security of products through all phases of distribution. Such controls are necessary to protect the products from intentional, as well as unintentional, contamination.

The Agency has decided to collect and analyze data on these transportation guidelines, which include both food safety and food security components, and determine whether there is a need to adopt any of these guidelines as regulations. Consequently, in this notice, FSIS is asking a series of questions about the transportation guidelines to solicit information from interested parties.

DATES: Submit written comments on the transportation guidelines and answers to the questions to the FSIS Docket Room no later than October 3, 2003.

ADDRESSES: Submit one original and two copies of all written comments on the proposed transportation guidelines and responses to questions to: FSIS Docket Room, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, Washington, DC 20250–3700. All comments and responses received will be considered part of the public record and will be available for viewing in the Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Copies of the *FSIS Safety and Security Guidelines for the Transportation and Distribution of Meat, Poultry, and Egg Products* will also be available in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays and on the Internet at: *http://www.fsis.usda.gov/oa/topics/transportguide.htm*. Printed copies of the Guidelines may be requested from the USDA FSIS Office of Congressional and Public Affairs, 1400 Independence Avenue SW., Room 175, Washington, DC 20250–3700; telephone (202) 720–9113. These guidelines are available in both English and Spanish.

FOR FURTHER INFORMATION CONTACT: Dr. Perfecto Santiago, Assistant Deputy Administrator, Program Development Staff, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; telephone (202) 205–0699 or fax (202) 401–1760.

SUPPLEMENTARY INFORMATION:

Background

In May 2002, FSIS issued the *FSIS Security Guidelines for Food Processors* to assist Federal- and State-inspected meat, poultry, and egg product establishments in identifying ways to strengthen their food security protection. At that time, the Agency noted that it would continue to provide guidance to businesses engaged in the production and distribution of FSIS-regulated foods, and work with the Food and Drug Administration (FDA) and other agencies to provide guidance for the handling of meat, poultry and egg products during transportation, distribution, and storage.

FSIS recognizes that food producers, transporters, and distributors have a vested interest in making food security, as well as food safety, a top priority. FSIS will continue to seek input from stakeholders in developing guidance on food security and food safety matters. To ensure that the transporters and distributors of meat, poultry, and egg products have access to information to help them protect the food that they handle from threats, FSIS has developed the *FSIS Safety and Security Guidelines for the Transportation and Distribution of Meat, Poultry, and Egg Products*. These guidelines provide safety measures to prevent physical, chemical, or microbiological contamination of food products during transportation and storage, including measures that deal specifically with the prevention of intentional contamination due to criminal or terrorist acts.

Meat, poultry, and egg products are transported by air, sea, and land. Hazards may be present, or intentionally introduced, at any point during transportation and distribution, but are most likely to occur at changes between transportation modes and during loading and unloading. Meat, poultry, and egg products frequently are transported multiple times and often stored and further processed on their way to the consumer. These products could be exposed to hazards at each step in that process. For example, a product might be transported from a slaughter establishment to a raw-product processing establishment, next to a further processing plant, then to a distribution center, and finally to a retail market for purchase by the consumer.

The guidelines were developed to assist facilities and shippers of all sizes, as well as Federal, State, and local authorities, to improve food safety and security in the handling of FSIS-regulated products at every step in the transportation and distribution process.

While these guidelines are voluntary, and parties may choose to adopt measures suggested by many different sources, it is vital that all parties in the transportation and distribution process for meat, poultry, and egg products take steps to ensure the security of their operations, the integrity of their processes and products, and the continued safety of the products that they handle.

The first section of these guidelines provides food safety measures that are

designed to help prevent contamination of food products during transportation and storage. The second section of the guidelines deals specifically with food security measures that may be taken to prevent deliberate contamination as part of criminal or terrorist acts. Both sections apply to all points of shipment from the processor to final delivery at the retail store, restaurant, or other facility serving consumers, as well as at any intermediate stops (*i.e.*, intermediate warehouses, transfer, and handling facilities such as airports, break-bulk terminals, rail sidings, etc.) during shipment prior to final delivery. These guidelines are applicable whether the potential contamination occurs due to an intentional or unintentional act. Implementation of these guidelines will assist all participants in the transportation and distribution process in preventing such acts or in responding to them effectively should they occur.

The food safety section of the guidelines has a long history of development by FSIS. In February, 1995, the Pathogen Reduction/HACCP proposed rule (60 FR 6774) was published and in this proposal FSIS stated its commitment to develop standards to help ensure the safe handling of meat and poultry products during transportation and storage. A Technical Analysis Group (TAG) was used by FSIS and the Department of Transportation (DOT) in April 1995, to address the safety of food after it left the production facility and began to move through commerce. The TAG identified the primary hazards associated with the transport of perishable foods and recommended reasonable controls that might be employed by industry to ensure food safety.

Subsequent to the TAG report, FSIS and FDA issued an Advance Notice of Proposed Rulemaking (ANPR) on November 22, 1996 (61 FR 59372), seeking information and comments on approaches the agencies might take to foster food safety improvements that might be needed in the transportation and storage of foods. Responses to the TAG Report and the ANPR were used in the development of the food safety recommendations in the *FSIS Safety and Security Guidelines for the Transportation and Distribution of Meat, Poultry, and Egg Products* now being made available to the public.

The food security section of the guidelines addresses the possibility of deliberate attacks on the domestic food supply by individuals or groups and is a direct result of heightened concerns about homeland security that have resulted since the terrorist attacks on September 11, 2001.

Request for Comments and Information

FSIS has decided to collect and analyze more data on the possible impacts of these guidelines before deciding whether it should proceed with rulemaking. The Agency invites public comment on how to strengthen the safety and security of meat, poultry, and egg products during the transportation and distribution process. The Agency is especially interested in informed responses regarding both food safety and food security to the following questions:

- Are there problems regarding food safety and food security in the transportation, distribution, or storage processes that the guidelines fail to address; or if all issues are addressed, are there flaws in the approaches described in the guidelines?
- If the guidelines can be improved, how could they be improved?
- Will transporters, distributors, and storage facilities have difficulty complying with these guidelines? If so, what difficulties do the guidelines pose? Would the guidelines pose greater, or different, difficulties for small firms than for large firms?
- Should the Agency initiate rulemaking to adopt the guidelines as regulations or will the guidelines be sufficiently effective if they are only voluntary?
- Would mandatory implementation of these transportation guidelines have any unusual or particularly significant impacts on any portion of the food distribution chain? If so, who would be affected and how?
- Would mandating these guidelines by regulation increase costs to transportation, distribution, and storage facilities? If so, would this result in increased costs to the consumer as the end user?

FSIS will consider all relevant comments in deciding whether any of the transportation guidelines should be proposed as a regulation. Should the Agency decide to propose a rule, it will summarize all of the comments and information that it receives and include the summary in the proposed rule.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available online through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, industry recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the "Constituent Update" page on the FSIS Web site at *http://www.fsis.usda.gov/oa/update/update.htm*.

Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

Done in Washington, DC, on July 29, 2003.

Linda Swacina,

Acting Administrator.

[FR Doc. 03–19659 Filed 8–1–03; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Monthly Survey of Residential Alterations and Repairs.

Form Number(s): SORAR–705.

Agency Approval Number: 0607–0130.

Type of Request: Revision of a currently approved collection.

Burden: 8,400 hours.

Number of Respondents: 2,800.

Avg. Hours Per Response: 15 minutes.

Needs and Uses: The U.S. Census Bureau is requesting a revision of the currently approved collection for the Quarterly Survey of Residential Alterations and Repairs. The form used to collect this information is SORAR–705. The Census Bureau is responsible for preparing estimates of the

expenditures for residential improvement and repairs. This segment of the construction industry amounted to more than $170 billion in 2002. While the majority of the data are gathered from the Consumer Expenditure Survey, a portion of the data ($50 billion in 2002) are collected on the SORAR–705 form. This survey is mailed to a sample of owners of rental or vacant residential properties. Since residential improvement and repairs are a large and growing economic sector, any measure of the construction industry would be incomplete without the inclusion of these data.

In an effort to make our data dissemination more timely, the survey will begin monthly data collection for the January 2004 survey month. To improve the scope of the survey, we will begin to collect expenditures for wall-to-wall carpeting, kitchen appliances, manufactured housing, and rented condominiums that are excluded from the current data collection. To reduce the respondent burden of monthly data collection, we will decrease by 20% the number of improvement queries on the monthly form. For example, siding work done as an "alteration" and siding work done as a "major replacement" are now combined into one siding improvement. Also, we have removed one question from the form, "When was this building or complex originally built?"

The Census Bureau uses the information collected on the SORAR–705 form to publish improvement and repair expenditures for rental and vacant residential properties. Data on improvements and repairs to owner-occupied properties are collected in the Consumer Expenditure Survey. Combined published estimates are used by a variety of private businesses and trade associations for marketing studies, economic forecasts and assessments of the construction industry. They also provide all levels of Government with a tool to evaluate economic policy and measure progress toward established goals. For example, the Bureau of Economic Analysis (BEA) uses the Census Bureau's improvement statistics to develop the residential structures component of the gross private domestic investment in the national income and product accounts.

Affected Public: Individuals or households; business or other for-profit; State, local or Tribal government.

Frequency: Monthly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: July 29, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–19656 Filed 8–1–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis (BEA).

Title: Initial Report on a Foreign Person's Direct or Indirect Acquisition, Establishment, or Purchase of the Operating Assets, Including Real Estate, of a U.S. Business Enterprise.

Form Number(s): BE–13, BE–14, and BE–13 Supplement C (Exemption Claim).

Agency Approval Number: 0608–0035.

Type of Request: Extension of a currently approved collection.

Burden: 900 hours.

Number of Respondents: 600 annually.

Avg Hours Per Response: 1.5 hours.

Needs and Uses: The Initial Report on a Foreign Person's Direct or Indirect Acquisition, Establishment, or Purchase of the Operating Assets, of a U.S. Business Enterprise, Including Real Estate (Form BE–13) and the Report by a U.S. Person Who Assists or Intervenes in the Acquisition of a U.S. Business Enterprise by, or Who Enters Into a Joint Venture with, a Foreign Person (Form BE–14) obtain initial data on new foreign direct investment in the United States. Survey form BE–13 collects information on the cost of new foreign direct investment in the United States, the sources of funding (*i.e.*, the foreign parent group and/or existing U.S. affiliates of the foreign parent), and limited financial and operating data for the U.S. entity being established or acquired; the survey also collects identification information about the U.S. entity being established or acquired and about the new foreign owner. Survey form BE–14 collects information from U.S. persons who assist in an investment transaction, such as a real estate broker or attorney, or who enter into a U.S. joint venture with a foreign person. The primary purpose of this information collection is to identify new U.S. affiliates that should be included in BEA's estimates of foreign direct investment in the United States. The information is needed to update data on the universe of U.S. affiliates to ensure that it is complete, and to determine whether the new affiliates exceed the exemption criteria required for reporting in related benchmark, annual, and quarterly surveys of foreign direct investment conducted by BEA. The information is also used to improve the accuracy of universe estimates derived from the ongoing quarterly and annual surveys, which are sample surveys.

Many State and local governments have taken steps to attract new foreign direct investment to their localities. To make informed policy decisions concerning such investment, it is essential that government entities, including the U.S. Government, have the means to measure foreign direct investment in the United States, monitor changes in it, and assess its economic impact. Data from the survey are intended to be general purpose statistics on foreign direct investment that are readily available to answer any number of research and policy questions when they arise.

Affected Public: U.S. businesses or other for-profit institutions.

Frequency: One-time survey.

Respondent's Obligation: Mandatory.

Legal Authority: Title 22 U.S.C., Sections 3101–3108, as amended.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

You may obtain copies of the above information collection proposal by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, Office of the Chief Information Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230, or via the Internet at *dHynek@doc.gov*.

Send comments on the proposed information collection within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, via the Internet at

pbugg@omb.eop.gov, or by fax at (202) 395–7245.

Dated: July 29, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–19668 Filed 8–1–03; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms From the People's Republic of China: Intent To Rescind Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of intent to rescind antidumping duty new shipper review.

SUMMARY: In response to requests from Xiamen Zhongjia Imp. & Exp. Co., Ltd. and Zhangzhou Longhai Minhui Industry and Trade Co., Ltd., the Department of Commerce initiated a new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China. The period of review is February 1, 2002, through July 31, 2002.

For the reasons discussed below, we intend to rescind the new shipper review with respect to both companies listed above. We invite interested parties to comment on this intent to rescind.

EFFECTIVE DATE: August 4, 2003.

FOR FURTHER INFORMATION CONTACT: Brian C. Smith, Davina Hashmi, or James Mathews, Office of AD/CVD Enforcement 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone: (202) 482–1766, (202) 482–0984, and (202) 482–2778, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") initiated a new shipper review covering Xiamen Zhongjia Imp. & Exp. Co., Ltd. ("Zhongjia"), and Zhangzhou Longhai Minhui Industry and Trade Co., Ltd. ("Minhui"), on September 30, 2002. This initiation was based on, among other things, each company's certification that it was both the exporter and producer of the subject merchandise for which it requested a new shipper review. *See Certain Preserved Mushrooms from the People's Republic of China: Initiation of New Shipper Antidumping Duty Review*, 67 FR 62438 (October 7, 2002) ("*Initiation Notice*"). On October 8, 2002, the Department issued the antidumping duty questionnaire to both companies.

During the period December 2002 through July 2003, the Department received responses to sections A, C, and D of the Department's original and two supplemental questionnaires from Zhongjia and Minhui. In these responses, Zhongjia and Minhui revealed that they were not the producer of the subject merchandise they exported to the United States during the period of review ("POR").

Scope of the Order

The products covered by this order are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. "Preserved mushrooms" refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms"; (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified" or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.[1]

The merchandise subject to this order is classifiable under subheading: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153, and 0711.51.0000 of the Harmonized Tariff Schedule of the United States ("HTS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

[1] On June 19, 2000, the Department affirmed that "marinated," "acidified," or "pickled" mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. *See* "Recommendation Memorandum—Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China," dated June 19, 2000.

Intent To Rescind Review

For the reasons stated below, we intend to rescind the new shipper review with respect to Zhongjia and Minhui.

Specifically, we intend to rescind the new shipper review with respect to both companies because neither exporter provided us with the proper certification, pursuant to 19 CFR 351.214(b)(2)(ii)(B), for entitlement to a new shipper review.

In order to qualify for a new shipper review under 19 CFR 351.214(b)(2)(ii), a company which is an exporter but not the producer of the subject merchandise for which it requests such a review must provide, among other things, (1) a certification that it did not export subject merchandise to the United States during the period of investigation ("POI"), and (2) a certification from the person or company which produced or supplied the subject merchandise that the producer or supplier did not export the subject merchandise to the United States during the POI (*see* 19 CFR 351.214(2)(ii)(A) and (B)).

As the basis for initiating this new shipper review, both Zhongjia and Minhui each stated and certified in its request for review that it was the exporter and producer of the subject merchandise. Therefore, for purposes of initiating this review and based on the certifications provided by both Zhongjia and Minhui in accordance with 19 CFR 351.214(b)(2)(i), the Department was led to believe that both companies also produced the merchandise for which each requested a review (*see* page 1 of Zhongjia's August 30, 2002, submission and page 1 of Minhui's August 30, 2002, submission). Zhongjia and Minhui appeared to be in compliance with the certification requirements for a new shipper which was both an exporter and producer of the subject merchandise for which the new shipper review request had been filed, and it was on this basis the Department initiated a new shipper review for each company (*see* 19 CFR 351.214(b)(i) and *Initiation Notice*, 68 FR at 62439). Relying on the certification provided by each respondent, the Department issued instructions to the U.S. Bureau of Customs and Border Protection ("BCBP") in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended ("the Act"), which allowed, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise for which each respondent was both the producer and exporter (*see Initiation Notice*, 67 FR at 62439).

During the course of conducting this review and in response to the Department's original and supplemental questionnaires, however, both companies provided factors of production data which indicated that neither company was the producer of the subject merchandise it reported in its U.S. sales listing (*see* page 5 of Zhongjia's December 4, 2002, Section A questionnaire response, page 2 of Zhongjia's December 4, 2002, Section D questionnaire response, and pages 8 through 14 of Zhongjia's July 3, 2003, second supplemental questionnaire response; *see* page 5 of Minhui's December 4, 2002, Section A questionnaire response, page 2 of Minhui's December 4, 2002, Section D response, and pages 9 through 11 of Minhui's July 3, 2003, second supplemental questionnaire response). This data conflicted with each company's certification, for purposes of initiation, that it was both the exporter and producer of the merchandise subject to this review. Consequently, Zhongjia and Minhui misstated the facts when each claimed in its respective new shipper review request that it was both the exporter and producer of the merchandise subject to this review.

Because Zhongjia and Minhui did not provide a certification from the respective producers of the subject merchandise they sold or exported to the United States during the POR in accordance with 19 CFR 351.214(b)(2)(ii)(B), neither respondent met the minimum requirements for an entitlement to a new shipper review. Had we realized that these exporters were not also the producers of the merchandise for which they were requesting a new shipper review at the initiation stage, we would not have initiated this review. The certification omission is fundamental to the initiation decision, and the exporters' failure to provide the necessary certifications, in addition to their misleading statements contained within the submitted certifications that these exporters were also "producers" of subject merchandise, would have led the Department to determine not to initiate a new shipper review of these exporters.

Consequently, the Department determines that it should not conduct further a review that was initiated based on faulty data (*see, e.g., Fresh Garlic from the People's Republic of China: Partial Rescission of Antidumping Duty New Shipper Review*, 67 FR 65782 (October 28, 2002)). To do so permits manipulation of the new shipper review provision and allows parties, such as Zhongjia and Minhui, to reap the benefit of the new shipper bonding provision without meeting the minimal threshold requirements for entitlement to the new shipper review process (*see* Import Administration Policy Bulletin Number 03.2, entitled "Combination Rates in New Shipper Reviews," dated March 4, 2003). Indeed, if an exporter ships to the United States merchandise produced by another entity but, because of mis-certification, its importers receive the bond benefit for its self-produced merchandise during the new shipper review, then the wrong exporter/producer combination benefits from the bonding privilege as long as the new shipper review continues. Thus, rescission of the new shipper review rectifies this problem.

Because each respondent exporter's certification contained in its August 30, 2002, request for a new shipper review did not also contain a certification from the producer of the subject merchandise as required by 19 CFR 351.214(b)(2)(ii)(B), which each respondent was required to provide because neither company produced the merchandise subject to this review, as affirmed by the information contained in subsequent questionnaire responses, we find that there is a sufficient basis to rescind this new shipper review with respect to both companies for the reasons outlined above.

Comment Period

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held on September 10, 2003. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Issues raised in the hearing will be limited to those raised in case briefs and rebuttal briefs. Case briefs from interested parties may be submitted not later than August 27, 2003. Rebuttal briefs, limited to issues raised in the case briefs, will be due not later than September 3, 2003. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue its final decision, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 90 days after the date of issuance of this notice.

Notification

If we rescind this review, bonding will no longer be permitted to fulfill security requirements for shipments from Minhui or Zhongjia of certain preserved mushrooms from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final rescission notice. The cash deposit rate required for subject merchandise from the PRC NME entity (including Zhongjia and Minhui), entered or withdrawn from warehouse, for consumption on or after the publication of the final rescission notice will continue to be the PRC-wide rate of 198.63 percent. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This preliminary rescission notice is in accordance with sections 751(a)(2)(B) and 777(i) of the Act and 19 CFR 351.214.

Dated: July 28, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Grant Aldonas, Under Secretary.

[FR Doc. 03–19754 Filed 8–1–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar From India: Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Extension of time limit for preliminary results of antidumping duty administrative review

EFFECTIVE DATE: August 4, 2003.

FOR FURTHER INFORMATION CONTACT: Michael Strollo at (202) 482–0629, Office of AD/CVD Enforcement 2, Import Administration, International Trade Administration, U.S. Department

of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230.

SUPPLEMENTARY INFORMATION: On March 25, 2003, the Department of Commerce (the Department) published in the **Federal Register** a notice of initiation of administrative review of the antidumping duty order on stainless steel bar from India. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 14394 (March 25, 2003). The period of review is February 1, 2002, through March 31, 2003. The review covers seven exporters of the subject merchandise to the United States.

In accordance with section 751(a)(3)(A) of the Tarriff Act of 1930, as amended (the Act), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act provides further, however, that the Department may extend the 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. Due to the large number of respondents and the time required to review and analyze multiple supplemental responses, it is not practicable to complete this review within the time limit mandated by section 751(a)(3)(A) of the Act. Therefore, we have fully extended the deadline until February 28, 2004.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: July 29, 2003.

Laurie Parkhill,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–19755 Filed 8–1–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Millennium Pipeline From an Objection by the New York Department of State

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

ACTION: Notice of closure—administrative appeal decision record.

SUMMARY: This announcement provides notice that the decision record has been closed for an administrative appeal filed with the Department of Commerce by the Millennium Pipeline Company (Consistency Appeal of Millennium Pipeline Company, L.P.).

DATES: The decision record for the Millennium Pipeline Company's administrative appeal was closed on July 24, 2003.

ADDRESSES: Materials from the appeal record are available at the Internet site *http://www.orc.doc.gov/czma.htm* and at the Office of the General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Branden Blum, Senior Counselor, Office of the General Counsel for Ocean Services, via e-mail at *gcos.inquiries@noaa.gov*, or at 301–713–2967, extension 186.

SUPPLEMENTARY INFORMATION: In June 2002, the Millennium Pipeline Company, L.P. (Millennium or Appellant) filed a notice of appeal with the Secretary of Commerce (Secretary) pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended 16 U.S.C. 1451 *et seq.*, and the Department of Commerce's implementing regulations, 15 CFR part 930, subpart H, (revised, effective January 8, 2001). The appeal was taken from an objection by the New York Department of State (State) to Millennium's consistency certification for U.S. Army Corps of Engineers and Federal Energy Regulatory Commission permits to construct and operate a natural gas pipeline spanning approximately 420 miles from the U.S./Canada border to a terminus outside of New York City. The certification indicated that the project is a consistent with New York State's coastal management program. The project would traverse Lake Erie and cross the Hudson River, affecting the natural resources or land and water uses of New York's coastal zone.

The Appellant requested the Secretary to override the State's consistency objection for a procedural reason, concerning the timing of the State's objection to the Millennium project. The Appellant also requested an override of the State's objection on the two substantive grounds provided in the CZMA. The first ground requires the Secretary to determine that the proposed activity is "consistent with the objective" of the CZMA. The second substantive ground for overriding a State's objection considers whether the proposed activity is necessary in the interest of national security. Decisions for CZMA administrative appeals are based on information contained in a decision record. The Millennium appeal decision record includes materials submitted by the parties, the public and interested federal agencies, and was closed on July 24, 2003. It is expected that no further information, briefs or comments will be considered in deciding the appeal.

The CZMA requires that a notice be published in the **Federal Register** indicting the date on which the decision record has been closed. 16 U.S.C. 1465(a). A final decision of the Millennium appeal is to be issued no later than 90 days after the date of publication of this notice. 16 U.S.C. 1465(a). The deadline may be extended by publishing (within the 90-day period) a subsequent notice explaining why a decision cannot be issued within the time frame. In this event, a final decision is to be issued no later that 45 days after the date of publication of the subsequent notice. 16 U.S.C. 1465(b).

Additional information about the Millennium appeal and the CZMA appeals process is available from the Department of Commerce CZMA appeals Web site *http://www.ogc.doc.gov/czma.htm*.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.)

Dated: July 28, 2003.

James R. Walpole,

General Counsel.

[FR Doc. 03–19591 Filed 8–1–03; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072803A]

ICCAT Advisory Committee; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT), in conjunction with the International Fisheries Division of NMFS, announces a regional public meeting to be held in August in the U.S. Virgin Islands.

DATES: The meeting is scheduled for August 14, 2003, from 6 p.m. to 9 p.m.

ADDRESSES: The meeting will be held in St. Thomas, U.S. Virgin Islands at the Virgin Island Game Fishing Club at Red Hook, 6501 Red Hook Plaza, St. Thomas, V.I. 00802.

FOR FURTHER INFORMATION CONTACT: Erika Carlsen at (301) 713–2276.

SUPPLEMENTARY INFORMATION: The following topics may be presented to the public for discussion at the regional public meeting:

(1) Background on ICCAT

(2) Information on the Advisory Committee and Commissioners

(3) Status of Highly Migratory Species Managed by ICCAT

(4) Topics for the 2003 ICCAT Annual Meeting

Representatives from the Advisory Committee to the U.S. Section to ICCAT and NMFS will be in attendance at the regional public meeting. There will be an opportunity for public comment on each of these international issues. The length of the meeting may be adjusted based on the progress of the discussions.

Please be reminded that NMFS expects members of the public to conduct themselves appropriately for the duration of the meeting. At the beginning of the public comment session, an explanation of the ground rules will be provided (e.g., alcohol in the meeting room is prohibited, speakers will be called to give their comments in the order in which they registered to speak, each speaker will have an equal amount of time to speak, and speakers should not interrupt one another). The session will be structured so that all attending members of the public are able to comment, if they so choose, regardless of the degree of controversy of the subject(s). Those not respecting the ground rules will be asked to leave the meeting.

Special Accommodations

The meeting locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Erika Carlsen at (301) 713–2276 at least 5 days prior to the meeting date.

Dated: July 29, 2003.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–19702 Filed 8–1–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072903B]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) Marine Reserves Subcommittee will hold a work session, which is open to the public.

DATES: The work session will be Monday, August 18, 2003 from 10 a.m. to 5 p.m.; Tuesday, August 19, 2003 from 8 a.m to 5 p.m.; and Wednesday, August 20, 2003 from 8 a.m. until business for the day is completed.

ADDRESSES: The work session will be held at the Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220; telephone: (503) 820–2280, toll free: (866) 806–7204.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Waldeck, Pacific Fishery Management Council; telephone: (503) 820–2280, toll free: (866) 806–7204.

SUPPLEMENTARY INFORMATION: At this meeting, the SSC Marine Reserves Subcommittee will evaluate the implications of marine reserves for fishery management, taking into consideration (1) reserve objectives and (2) uncertainties associated with both reserves and traditional fishery management. Initial descriptions of SSC expectations of marine reserve proposals submitted to the Council in terms of "real world" considerations, including items (1) and (2) above, will also be discussed. The preliminary recommendations of the subcommittee will be reviewed by the SSC at the September 2003 Council meeting.

The proposed agenda is as follows:

1. Introductions
2. Discussion and Approval of Agenda
3. Interaction Between Reserves and Traditional Fishery Management

A. Reserves as an "insurance policy" against uncertainties/errors in traditional fishery management

B. Reserves as a source of fishery benefits

C. Reserves as a source of ecosystem benefits (e.g., enhance biodiversity, protect habitat)

D. Reserves as an opportunity to advance scientific knowledge (e.g., of ecological functions, environmental versus anthropomorphic influences)

4. SSC Expectations Regarding Marine Reserve Proposals

A. Defining the objective, including description of why status quo does not achieve the objective

B. Identifying variables that measure reserve effects

C. Providing a reasonable basis for reserve design/size/location

D. Developing data collections and analyses to monitor progress toward achieving the objective

E. Identifying full range of alternatives for meeting the objective

F. Analyzing alternatives

G. Other (including procedural requirements)?

5. Subcommittee Recommendations to the Council

6. Research and Data Needs (Time Permitting)

Although nonemergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: July 29, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–19701 Filed 8–1–03; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Submission for OMB Review; Comment Request—Flammability Standards for Clothing Textiles and Vinyl Plastic Film

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the **Federal Register** of May 23, 2003 (68 FR 28198), the Consumer Product Safety Commission published a notice in accordance with

provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) to announce the agency's intention to seek an extension of approval of a collection of information in regulations implementing the flammability standards for clothing textiles and vinyl plastic film. The regulations prescribe requirements for testing and recordkeeping by persons and firms issuing guaranties of garments, fabrics, and related materials subject to the Standard for the Flammability of Clothing Textiles (16 CFR part 1610) and the Standard for the Flammability of Vinyl Plastic Film (16 CFR part 1611). No comments were received in response to that notice. By publication of this notice, the Commission announces that it has submitted to the Office of Management and Budget (OMB) a request for an extension of approval of those collections of information without change for three years from the date of approval by OMB.

Additional Information About the Request for Extension of Approval of the Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Standard for the Flammability of Clothing Textiles, 16 CFR part 1610; Standard for the Flammability of Vinyl Plastic Film, 16 CFR part 1611.

Type of request: Extension of approval without change.

General description of respondents: Manufacturers and importers of garments, fabrics, and related materials subject to the flammability standards for clothing textiles and vinyl plastic film.

Estimated number of respondents: 1000.

Estimated average number of hours per respondent: 101.6 per year.

Estimated number of hours for all respondents: 101,600 per year.

Estimated cost of collection for all respondents: $2,688,336.

Comments: Comments on this request for extension of approval of information collection requirements should be submitted by September 3, 2003 to (1) The Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington DC 20503; telephone: (202) 395–7340, and (2) the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at *cpsc-os@cpsc.gov*.

Copies of this request for extension of the information collection requirements and supporting documentation are available from Linda Glatz, management and program analyst, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–7671.

Dated: July 24, 2003.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 03–19737 Filed 8–1–03; 8:45 am]

BILLING CODE 6355–01–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) meeting described below. The Board will also conduct a series of public hearings pursuant to 42 U.S.C. 2286b and invites any interested persons or groups to present any comments, technical information, or data concerning safety issues related to the matters to be considered.

TIME AND DATE OF MEETING: 9–12 a.m.; September 10, 2003.

PLACE: Defense Nuclear Facilities Safety Board, Public Hearing Room, 625 Indiana Avenue, NW., Suite 300, Washington, DC 20004–2001. Additionally, as a part of the Board's E-Government initiative, the meeting will be presented live through Internet video streaming. A link to this presentation will be available on the home page of the Board's Web site (*www.dnfsb.gov*).

STATUS: Open. While the Government in the Sunshine Act does not require that the scheduled discussion be conducted in a meeting, the Board has determined that an open meeting in this specific case furthers the public interests underlying both the Sunshine Act and the Board's enabling legislation.

MATTERS TO BE CONSIDERED: The Board is reviewing the Department of Energy's (DOE) current oversight and management of the contracts and contractors it relies upon to accomplish the mission assigned to DOE under the Atomic Energy Act of 1954, as amended. We will focus on what impact, if any, DOE's new initiatives may have upon assuring adequate protection of the health and safety of the public and workers at DOE's defense nuclear facilities. Over the next several months, we will conduct a series of public meetings to collect information needed to understand and address any health or safety concerns that may require Board Action. This will include, but is not limited to, presentations by DOE and the National Nuclear Security Administration (NNSA) to explain their contract management and oversight initiatives; presentations by federal and industry experts in contracting for essential and high risk government services; and possibly further presentations by DNFSB staff.

The Board has identified several key areas that will be better examined in a public meeting. In the September 10th meeting, the Board will hear from representatives from the Nuclear Regulatory Commission (NRC), the National Aeronautics and Space Administration (NASA), the commercial nuclear sector, and the aerospace industry. The information gathered at that time will explore federal contract management and oversight experience in various organizations and will provide relevant reference experience. In subsequent public meetings, the Board will explore in more depth federal management and oversight policies being developed by DOE and NNSA for defense nuclear facilities. DOE and NNSA will be invited to discuss their new approaches to contract reform, contractor self-assessment, and federal oversight. The public hearing portion is independently authorized by 42 U.S.C. 2286b.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION: Requests to speak at the hearing may be submitted in writing or by telephone. We ask that commentators describe the nature and scope of their oral presentation. Those who contact the Board prior to close of business on September 9, 2003, will be scheduled for time slots, beginning at approximately 11:30 a.m. The Board will post a schedule for those speakers who have contacted the Board before the hearing. The posting will be made at the entrance to the Public Hearing Room at the start of the 9 a.m. meeting.

Anyone who wishes to comment or provide technical information or data may do so in writing, either in lieu of, or in addition to, making an oral presentation. The Board Members may question presenters to the extent deemed appropriate. Documents will be accepted at the meeting or may be sent to the Defense Nuclear Facilities Safety Board's Washington, DC, office. The Board will hold the record open until October 10, 2003, for the receipt of additional materials. A transcript of the meeting will be made available by the Board for inspection by the public at the Defense Nuclear Facilities Safety Board's Washington office and at DOE's public reading room at the DOE Federal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

The Board specifically reserves its right to further schedule and otherwise regulate the course of the meeting and hearing, to recess, reconvene, postpone, or adjourn the meeting and hearing, conduct further reviews, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

John T. Conway,

Chairman.

[FR Doc. 03–19957 Filed 7–31–03; 3:54 pm]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 3, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Karen_F._Lee@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: July 29, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: New.

Title: National Assessment of Education Progress: 2004 Field Test and 2005 Full Scale Study, Math and Science.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 44,290.

Burden Hours: 11,144.

Abstract: In 2004, the National Assessment of Educational Progress will field test materials for the 2005 full-scale assessment on science. The materials contained in this clearance package are the questionnaires for students, teachers, and school administrators.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2281. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivan.Reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at her e-mail address *Katrina.Ingalls@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–19690 Filed 8–1–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Recognition of Accrediting Agencies, State Agencies for the Approval of Public Postsecondary Vocational Education, and State Agencies for the Approval of Nurse Education

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Department of Education (The Advisory Committee).

What Is the Purpose of This Notice?

The purpose of this notice is to invite written comments on accrediting agencies and State approval agencies whose applications to the Secretary for initial or renewed recognition or whose interim reports will be reviewed at the Advisory Committee meeting to be held on December 8–9, 2003.

Where Should I Submit My Comments?

Please submit your written comments by September 18, 2003 to Carol Griffiths, Chief, Accrediting Agency Evaluation, Accreditation and State Liaison. You may contact her at the U.S. Department of Education, room 7105, MS 8509, 1990 K Street, NW., Washington, DC 20006, telephone: (202) 219–7011. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339.

What Is the Authority for the Advisory Committee?

The National Advisory Committee on Institutional Quality and Integrity is established under Section 114 of the Higher Education Act (HEA), as amended, 20 U.S.C. 1011c. One of the purposes of the Advisory Committee is to advise the Secretary of Education on the recognition of accrediting agencies and State approval agencies.

Will This Be My Only Opportunity To Submit Written Comments?

Yes, this notice announces the only opportunity you will have to submit written comments. However, a subsequent **Federal Register** notice will announce the meeting and invite individuals and/or groups to submit requests to make oral presentations before the Advisory Committee on the agencies that the Committee will review. That notice, however, does not

offer a second opportunity to submit written comment.

What Happens to the Comments That I Submit?

We will review your comments, in response to this notice, as part of our evaluation of the agencies' compliance with the Secretary's Criteria for Recognition of Accrediting Agencies and State Approval Agencies. The Criteria are regulations found in 34 CFR Part 602 (for accrediting agencies) and in 34 CFR Part 603 (for State approval agencies) and are found at the following site: *http://www.ed.gov/offices/OPE/accreditation*.

We will also include your comments with the staff analyses we present to the Advisory Committee at its December 2003 meeting. Therefore, in order for us to give full consideration to your comments, it is important that we receive them by September 18, 2003. In all instances, your comments about agencies seeking initial or continued recognition must relate to the Criteria for Recognition. In addition, your comments for any agency whose interim report is scheduled for review must relate to the issues raised and the Criteria for Recognition cited in the Secretary's letter that requested the interim report.

What Happens to Comments Received After the Deadline?

We will review any comments received after the deadline. If such comments, upon investigation, reveal that the accrediting agency is not acting in accordance with the Criteria for Recognition, we will take action either before or after the meeting, as appropriate.

What Agencies Will the Advisory Committee Review at the Meeting?

The Secretary of Education recognizes accrediting agencies and State approval agencies for public postsecondary vocational education and nurse education if the Secretary determines that they meet the Criteria for Recognition. Recognition means that the Secretary considers the agency to be a reliable authority as to the quality of education offered by institutions or programs it accredits that are encompassed within the scope of recognition he grants to the agency. The following agencies will be reviewed during the December 2003 meeting of the Advisory Committee:

Nationally Recognized Accrediting Agencies

Petitions for Renewal of Recognition

1. Accrediting Bureau of Health Education Schools (Current scope of recognition: The accreditation of private, postsecondary allied health education institutions and institutions that offer predominantly allied health programs, private medical assistant programs, and public and private medical laboratory technician programs leading to the Associate of Applied Science and the Associate of Occupational Science degrees.)

Interim Reports (An interim report is a follow-up report on an accrediting agency's compliance with specific criteria for recognition that was requested by the Secretary when the Secretary granted renewed recognition to the agency.)

1. Accrediting Commission on Education for Health Services Administration
2. American Board of Funeral Service Education
3. Association of Advanced Rabbinical and Talmudic Schools
4. National Council for Accreditation of Teacher Education

Progress Reports

1. Southern Association of Colleges and Schools, Commission on Colleges (This is a report on the agency's implementation of its new standards).
2. Western Association of Schools and Colleges, Accrediting Commission for Schools (This is a report on the agency's action plan for coming into compliance with criteria for recognition).

State Agencies Recognized for the Approval of Public Postsecondary Vocational Education

Petitions for Renewal of Recognition

1. Missouri State Board of Education (Current scope of recognition: The approval of public, postsecondary vocational education in the state of Missouri)

At its June 2003 meeting, the Advisory Committee recommended that review of this agency's petition for continued recognition be deferred until the Committee's December 2003 meeting.

Interim Reports

2. New York Board of Regents (Public Postsecondary Vocational Education Unit)

State Agencies Recognized for the Approval of Nurse Education

Interim Reports

1. North Dakota Board of Nursing

Where Can I Inspect Petitions and Third-Party Comments Before and After the Meeting?

All petitions and those third-party comments received in advance of the meeting, will be available for public inspection and copying at the U.S. Department of Education, room 7105, MS 8509, 1990 K Street, NW., Washington, DC 20006, telephone (202) 219–7011 between the hours of 8 a.m. and 3 p.m., Monday through Friday, until November 14, 2003. They will be available again after the December 8–9 Advisory Committee meeting. An appointment must be made in advance of such inspection or copying.

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Authority: 5 U.S.C. Appendix 2.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 03–19723 Filed 8–1–03; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Bonneville Power Administration

Electrical Interconnection of the Summit/Westward Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD to offer contract terms for interconnection of the proposed Summit/Westward Project into the Federal Columbia River Transmission System at BPA's Allston Substation. This decision is consistent with BPA's Business Plan Final Environmental Impact Statement (DOE/EIS–0183, June 1995) and the Business Plan ROD (August 1995). The project is proposed by Westward Energy, LLC, and involves construction and operation of a 520-megawatt natural-gas-fired, combined-cycle generating facility to be located in Columbia County, Oregon, about 4.5 miles north of Clatskanie, Oregon.

ADDRESSES: Copies of the ROD and EIS may be obtained by calling BPA's toll-free document request line, 1–800–622–4520. The ROD and EIS Summary are also available on our Web site, *www.efw.bpa.gov*.

FOR FURTHER INFORMATION, CONTACT: Dawn Boorse, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon, 97208–3621; toll-free telephone number 1–800–282–3713; direct telephone number 503–230–5678; fax number 503–230–5699; or e-mail *drboorse@bpa.gov*.

Issued in Portland, Oregon, on July 25, 2003.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. 03–19709 Filed 8–1–03; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL02–111–000 and EL03–212–000]

Before Commissioners: Pat Wood III, Chairman; William L. Massey, and Nora Mead Brownell; Order on Initial Decision

Issued: July 23, 2003.

Midwest Independent Transmission System Operator, Inc.; PJM Interconnection, L.L.C. and all Transmission Owners (including the entities identified below); Union Electric Company; Central Illinois Public Service Company; Appalachian Power Company; Columbus Southern Power Company; Indiana Michigan Power Company; Kentucky Power Company; Kingsport Power Company; Ohio Power Company; Wheeling Power Company; Michigan Electric Transmission Company; Dayton Power and Light Company; Commonwealth Edison Company; Commonwealth Edison Company of Indiana, Inc.; American Transmission Systems, Inc.; Illinois Power Company; Northern Indiana Public Service Company; Virginia Electric and Power Company; IES Utilities, Inc.; Interstate Power Company; Aquila, Inc. (formerly UtiliCorp United, Inc.); PSI Energy, Inc.; Union Light Heat & Power Company; Dairyland Power Cooperative; Great River Energy; Hoosier Energy Rural Electric Cooperative; Indiana Municipal Power Agency; Indianapolis Power & Light Company; Louisville Gas & Electric Company; Kentucky Utilities Company; Lincoln Electric (Neb.) System; Minnesota Power, Inc. and its subsidiary Superior Water, Light & Power Company; Montana-Dakota Utilities; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Cooperative; Southern Minnesota Municipal Power Agency; Sunflower Electric Power Corporation; Wabash Valley Power Association, Inc.; Wolverine Power Supply Cooperative; International Transmission Company; Alliant Energy West; Xcel Energy Services, Inc.; MidAmerican Energy Company; Corn Belt Power Corporation; Allegheny Electric Cooperative, Inc.; Atlantic City Electric Company; Baltimore Gas & Electric Company; Delmarva Power & Light Company; Jersey Central Power & Light Company; Metropolitan Edison Company; PECO Energy Company; Pennsylvania Electric Company; PPL Electric Utilities Corporation; Potomac Electric Power Company; UGI Utilities, Inc.; Allegheny Power; Carolina Power & Light Company; Central Power & Light Company; Conectiv; Detroit Edison Company; Duke Power Company; Florida Power & Light Company; GPU Energy; Northeast Utilities Service Company; Old Dominion Electric Cooperative; Public Service Company of Colorado; Public Service Electric & Gas Company; Public Service Company of Oklahoma; Rockland Electric Company; South Carolina Electric & Gas Company; Southwestern Electric Power Company; Cincinnati Gas & Electric Company; Missouri Public Service; WestPlains Energy; Cleco Corporation; Kansas Power & Light Company; OG+E Electric Services; Southwestern Public Service Company; Empire District Electric Company; Western Resources; Kansas Gas & Electric Co.; Ameren Services Company on behalf of: Union Electric Company, Central Illinois Public Service Company; American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company; Dayton Power and Light Company; Exelon Corporation on behalf of: Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc.; FirstEnergy Corporation on behalf of: American Transmission Systems, Inc., Cleveland Electric Illuminating Power Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company; Illinois Power Company; and Northern Indiana Public Service Company.

1. This order addresses an initial decision issued in the above proceeding, where the Presiding Judge determined that he had no precedential authority that would permit him to eliminate the Regional Through and Out Rates (RTORs) between the expanded Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and expanded PJM Interconnection, L.L.C. (PJM) under the circumstances of this case. The order disagrees with the Presiding Judge's finding and concludes that the Midwest ISO and PJM RTORs, when applied to transactions sinking within the proposed Midwest ISO/PJM footprint, are unjust and unreasonable, and directs PJM and Midwest ISO to make a compliance filing within 30 days eliminating these RTORs effective November 1, 2003.

2. The order also finds that the through and out rates under the tariffs of certain individual former Alliance Companies may be unjust, unreasonable or unduly discriminatory or preferential and initiates an investigation and hearing in Docket No. EL03–212–000 under section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2000) regarding these rates. The Commission will conduct a "paper" hearing to determine whether such rates are just, reasonable and not unduly discriminatory or preferential and thus provides parties with an opportunity to explain why the rates are or are not unjust, unreasonable or unduly discriminatory or preferential on or before August 15, 2003.

3. The order also states that the Commission will entertain section 205 filings to establish transitional cost recovery mechanisms once the RTORs are eliminated, and provides guidance in this regard.

Background

July 31 Order

4. On July 31, 2002, the Commission issued an order [1] that conditionally accepted the compliance filings of the former Alliance Companies, under which they proposed to join either Midwest ISO or PJM, as consistent with Order No. 2000,[2] subject to satisfactory compliance with certain conditions, summarized as follows: (1) That a single market across the two Regional Transmission Organizations (RTO) must be implemented by October 1, 2004; (2) that National Grid USA (National Grid) participates in both Midwest ISO as GridAmerica and in PJM, and performs

[1] *See* Alliance Companies, *et al.*, 100 FERC ¶ 61,137 (2002) (July 31 Order).

[2] Regional Transmission Organizations, Order No. 2000, 65 FR 809 (January 6, 2000), FERC Stats. & Regs., Regulations Preambles July 1996–December 2000 ¶ 31,089 (1999), *order on reh'g*, Order No. 2000–A, 65 FR 12088 (March 8, 2000), FERC Stats. & Regs., Regulations Preambles July 1996–December 2000 ¶ 31,092 (2000), *affirmed sub nom. Public Utility District No. 1 Snohomish County Washington, et al.*, v. *FERC*, 272 F.3d 607 (D.C. Cir. 2002) (Order No. 2000).

the same functions, consistent with the allocation of functions to independent transmission companies (ITCs) provided in the April 25 Order [3] and *TRANSLink*,[4] in both RTOs for Day One operations; (3) that there be pro forma agreements under the respective tariffs of Midwest ISO and PJM that provide for participation of ITCs consistent with the delegation of functions provided for in the April 25 Order and *TRANSLink*; (4) that the agreement to form an ITC between National Grid, American Electric Power Service Corporation, on behalf of certain of its public utility affiliates [5] (collectively, AEP), Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. (collectively, ComEd), Dayton Power and Light Company (DP&L), and PJM must be filed within 30 days of the July 31 Order; (5) that the North American Electric Reliability Council (NERC) must approve the Reliability Plans pursuant to which PJM and Midwest ISO will coordinate their operations under the new configuration; (6) that a solution addressing the through and out rates between Midwest ISO and PJM must be developed; (7) that certain of the former Alliance Companies seeking to join PJM, along with PJM and Midwest ISO, provide a solution which will effectively hold utilities in Wisconsin and Michigan harmless from any loop flows or congestion that results from the proposed configuration; (8) that PJM and Midwest ISO must each file a statement agreeing to the conditions within 15 days of the July 31 Order, an implementation plan for achieving a common market by October 1, 2004, within 45 days, and frequent progress reports thereafter; and (9) that Commission Staff participate in the process.[6]

5. The Commission explained that the former Alliance Companies' choices, standing alone, appeared to produce unjust and unreasonable rates, terms and conditions for transmission services, but that these conditions would ensure just and reasonable rates, terms, and conditions for transmission services. The July 31 Order also noted that these conditions reflected areas which NERC concluded needed to be addressed, as well as commitments made by the parties in order to further the goal of reaching a region-wide common market as soon as possible.[7]

6. The Commission particularly found that one of the primary obstacles to RTO formation has been rate pancaking for transactions crossing RTO borders, and that both Midwest ISO and PJM agreed that this was an issue. The Commission stated that, in light of the former Alliance Companies' RTO choices and in view of the comments, the resolution of inter-RTO rates was fundamental to its decision to accept the choices of Illinois Power, ComEd, and AEP to join PJM, and that resolving inter-RTO rates was fundamental to establishing a single common market. Therefore, the July 31 Order also instituted an investigation and hearing of inter-RTO rates under Section 206 of the FPA before an administrative law judge in Docket No. EL02–111–000, with regard to the rates for through and out service in the Midwest ISO/PJM region and with respect to the protocols relating to the distribution of revenues associated with such through and out service.[8]

7. The Commission also stated that it was mindful that any solution may need to be revised once a common market across the Midwest ISO/PJM region is fully developed, and would be subject to the Commission's final determination on Standard Market Design in Docket No. RM01–12–000.[9] In addition, we stated that any such solution must result in rates that are designed in a reasonable fashion and do not favor participants in one RTO over those in the other. We noted that, while we were instituting a Section 206 proceeding, we nevertheless encouraged Midwest ISO and PJM to develop a solution to eliminate rate pancaking between the organizations on their own as expeditiously as possible, and we allowed them a period of time to do so.

Order on Rehearing of the July 31 Order

8. In the order on rehearing and clarification of the July 31 Order,[10] the Commission denied rehearing of the Commission's findings that the former Alliance Companies' RTO choices could not be accepted without the conditions set forth in the July 31 Order. The Commission stated that, given the record in this proceeding, without the conditions ordered the choices of some of the former Alliance Companies to join PJM would result in inappropriate RTO configuration. Moreover, the Commission found that, given the locations of the former Alliance Companies and their links with other neighboring utilities, outright acceptance of their RTO choices, without any conditions, would not have been just and reasonable. In this regard, the Commission stated that, for example, given the locations of the New PJM Companies [11] and Illinois Power [12] in the heart of the Midwest ISO region and the tight links between these companies and their neighboring utilities in the Midwest ISO region, we could not accept their joining PJM as just and reasonable without the conditions we adopted.[13]

9. The Commission disagreed with the parties' contention that the record did not support the July 31 Order's conditions. We stated that the record in this proceeding indicated that the RTO choices, as proposed (and as accepted albeit with conditions) were problematic when considered in light of Order No. 2000. The Commission found that the proposed RTO choices and

[3] Alliance Companies, *et al.*, 99 FERC ¶ 61,105 (2002) (April 25 Order).

[4] TRANSLink Transmission Company, L.L.C., *et al.*, 99 FERC ¶ 61,106 (2002) (*TRANSLink*).

[5] Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company.

[6] See July 31 Order at P 35–57.

[7] *Id.* at P 35–36.

[8] *Id.* at P 49–50.

[9] Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design, Notice of Proposed Rulemaking, FERC Stats & Regs. ¶ 32,563 (2002) (SMD NOPR).

[10] Alliance Companies, *et al.*, 103 FERC ¶ 61,274 (2003) (Rehearing Order).

[11] On December 11, 2002, in Docket No. ER03–262–000, AEP, ComEd, DP&L, and Virginia Electric Power Company (collectively, the New PJM Companies) and PJM filed an application under Section 205 of the FPA to include the New PJM Companies as transmission owners within PJM. On April 1, 2003, the Commission accepted the filing related to ComEd's and AEP's joining PJM, effective as of the date of the transfer of control of AEP's and ComEd's facilities to PJM. *See* American Electric Power Service Corporation, *et al.*, 103 FERC ¶ 61,008 (2003); *see also* American Electric Power Service Corporation, 103 FERC ¶ 61,009 (2003).

We also note that the Virginia Legislature recently passed a bill that prohibits Virginia utilities (which would include AEP) from joining an RTO before July 1, 2004, and requires them to obtain prior approval form the Virginia State Corporation Commission. In contrast, on March 14, 2003, the Pennsylvania Public Utility Commission, the Michigan Public Service Commission, and the Ohio Public Utilities Commission filed a motion in Docket No. EC98–40–000, *et al.*, requesting, among other things, that the Commission direct AEP to join an established RTO, as earlier required in that proceeding.

[12] In the Rehearing Order, we noted that, in an application pending before the Commission in Docket No. EC03–30–000, *et al.*, Illinois Power has proposed to transfer its transmission system to Illinois Electric Transmission Company, LLC (IETC), an indirect subsidiary of Trans-Elect, Inc. As part of that proposed transaction, IETC commits to make all of the necessary filings with the Commission to facilitate transfer of functional control of the transmission system to Midwest ISO. Such commitment is contingent on the sale to IETC, which has yet to be authorized by the Commission or consummated. We note that Illinois Power has terminated its Assgt Purchase Agreement with Trans-Elect, Inc and Illinois Electric Transmission Co., LLC. *See* Illinois Power's Company Filing (Form 8K) with the Securities and Exchange Commission (July 9, 2003), available at *http://www.sec.gov*.

[13] Rehearing Order at P 20–21.

resulting configuration, without conditions, would frustrate the realization of the goals of RTO formation such as resolution of loop flow issues, effective management of congestion, and enhanced reliability and efficiency.[14]

Initial Decision

10. On March 31, 2003, in *Midwest Independent System Operator, et al.*, 102 FERC ¶ 63,049 (2003) (Initial Decision), the Presiding Judge issued his Initial Decision. The Presiding Judge found no precedential authority that would permit him to eliminate the RTORs between Midwest ISO and PJM under the circumstances of this proceeding, and he declined to do so. The Presiding Judge added that if in a change in policy the Commission were to order it, he would recommend that the Commission adopt, without requiring the filing of new rate cases, a mechanism such as one of the Seams Elimination Charge/Cost Adjustment/Assignment (SECA) proposals by the parties to prevent cost shifting between customers of the two RTOs. Furthermore, the Presiding Judge stated that the Commission should decide whether to consider the impact and equities vis-a-vis retail rate caps when it fashions the SECA.[15]

11. The Presiding Judge found that eliminating the RTORs without a SECA will improperly shift costs from Midwest ISO's native load to PJM's native load.[16] The Presiding Judge also found that if the RTORs are eliminated, a SECA could prevent unwarranted cost shifts between the RTOs without violating any rules against retroactive ratemaking.[17]

12. The Presiding Judge also recommended that the SECA should not be phased out until another method is placed into effect to prevent cost shifting, and also stated that the Michigan and Wisconsin customers should be permitted to opt out of the SECA and continue to be subject to the PJM RTOR. In addition, the Presiding Judge stated that the SECA should be calculated using 2002 as the test year rather than 2001, and that the starting period for any SECA should be after a final Commission order, allowing enough time for the filing of compliance filings. The Presiding Judge added that the SECA should replace only through and out charges on transactions that sink in either the expanded PJM or the expanded Midwest ISO and either source in or wheel through the other RTO. Finally, the Presiding Judge stated that the Commission should decide, as a matter of policy, whether a SECA should be adopted for each pricing zone, or alternatively, whether there should be a sub-zone option that the entities within a pricing zone can choose.[18]

Discussion

Procedural Matter

13. On April 17, 2003, the Wisconsin Commission filed a motion to intervene out-of-time. The Wisconsin Commission states that, since it participated in the proceeding in Docket No. EL02–65–000, and the instant proceeding was instituted in Docket No. EL02–65–000, it assumed it was unnecessary to separately intervene in the instant proceeding. The Wisconsin Commission continues that, while it monitored the hearing in this proceeding and felt it unnecessary to actively participate, the Initial Decision raised issues that required the filing of a brief on exceptions in order to protect its regulatory interest in matters pertaining to Midwest ISO.

14. On May 7, 2003, the New PJM Companies and PECO filed an answer opposing the Wisconsin Commission's motion to intervene and asking that the Commission deny the Wisconsin Commission's request and strike its brief on exceptions. They contend that the Wisconsin Commission chose to "wait and see" what transpired in the hearing and the outcome of the Presiding Judge's decision before seeking intervention and filing a brief on exceptions, and that the Wisconsin Commission has not demonstrated good cause for its request and granting the intervention would unduly burden the parties.

15. On May 12, 2003, Detroit Edison Company (Detroit Edison) filed an answer opposing the New PJM Companies and PECO's motion to strike. Detroit Edison claims that no party is unduly prejudiced because parties will have an opportunity to respond to the Wisconsin Commission in briefs opposing exceptions. Detroit Edison also asserts that the Wisconsin Commission is the only party representing ratepayers in Wisconsin.

16. On May 13, 2003, the Wisconsin Public Service Corp. (WPSC) filed an answer opposing the New PJM Companies and PECO's motion to strike, arguing that the Wisconsin Commission has regulatory jurisdiction for the retail ratepayers of Wisconsin whose interests will be significantly impacted by the Commission's resolution of the issues in this proceeding.

17. On May 14, 2003, the Wisconsin Commission filed an answer to the New PJM Companies and PECO's motion to strike. The Wisconsin Commission asks that the Commission deny the motion because: (1) The Commission did not set a deadline for interventions; (2) the movants filed their answer and motion to strike out of time; (3) the Commission should construe the Wisconsin Commission's motion to intervene as a timely filed notice of intervention; and (4) the Commission should not strike its brief on exceptions because its motion to intervene satisfies the standards for late intervention.

18. Under Rule 214 of the Commission's Rules of Practice and Procedure,[19] we will deny the Wisconsin Commission's untimely, opposed motion to intervene. Under the facts presented, we do not believe that it would be in the public interest to permit the Wisconsin Commission's motion to intervene in this proceeding at this late date. We think, however, that participation as amicus curiae would serve the purposes of the Wisconsin Commission to carry out its responsibilities and would contribute to our consideration of the issues in this case. Therefore, we will deny the Wisconsin Commission's request for intervention but we will permit it to file its brief and deny New PJM Companies and PECO's motion to strike.[20]

The Justness and Reasonableness of the RTORs

Presiding Judge's Ruling

19. The Presiding Judge claimed that there was no precedential authority that would permit a finding, under the circumstances of this proceeding, that the RTORs between the expanded PJM and the expanded Midwest ISO are unjust and unreasonable. He concluded that, while the Commission has encouraged the elimination of rate pancaking between RTOs, it has never required it.

20. The Presiding Judge stated that, if the proposed incorporation of the New PJM Companies into PJM would create seams that result in islanding a significant portion of the Midwest ISO load so that it would have to pay pancaked rates to have power transmitted to it from generation

[14] Rehearing Order at P 24–30.

[15] Initial Decision at P 7, 101.

[16] Initial Decision at P 68–86.

[17] Initial Decision at P 87–90.

[18] Initial Decision at P 91–100.

[19] 18 CFR 385.713(d)(2) (2003).

[20] *See* Transwestern Pipeline Company, 35 FPC 334, 335 (1966); *see also* Transcontinental Gas Pipe Line, 88 FERC ¶ 61,155 at 61,521 (1999); Texas Eastern Transmission Corporation, 88 FERC ¶ 61,167 at 61,559 (1999).

elsewhere in Midwest ISO, then the RTORs would be unjust and unreasonable. However, the Presiding Judge found that the choices of the New PJM Companies to join PJM did not create any new seams because seams already exist between Midwest ISO and New PJM Companies; rate pancaking currently exists across the seams between the individual former Alliance Companies joining PJM and Midwest ISO because the Midwest ISO members are currently required to pay through and out rates to the individual New PJM Companies and Illinois Power under their individual-company OATTs. The Presiding Judge noted that, after these companies join PJM, the Midwest ISO members will pay the PJM RTOR instead of the individual-company through and out rates, and he found no evidence that replacing the individual-company through and out rates with the PJM RTOR was unjust and unreasonable.

21. However, while the Presiding Judge stated that he could not find the RTORs unjust and unreasonable under the circumstances, he did find that no credible evidence was presented that would suggest that rate pancaking across the proposed border is any less detrimental to short-term efficiency than rate pancaking in general (*i.e.*, rate pancaking within an RTO). He also rejected arguments that the RTORs were a reasonable basis for reflecting a distance factor in rates, so that long-term efficiency is enhanced. He found that the anomalous seam configuration that would exist between Midwest ISO and PJM argues very persuasively against that and suggested that, if a distance factor should be incorporated into transmission charges, it should be done directly, not imperfectly reflected in the seams charges.[21]

Briefs on Exceptions

22. Many parties except to the Presiding Judge's decision to not eliminate the existing RTORs due to a lack of precedential authority, and/or his conclusion that the choice of the New PJM Companies to join PJM did not create new and irrational seams.[22] They argue that the through and out rates are unjust and unreasonable and should be immediately eliminated. Many argue that there is, in fact, sufficient evidence and precedential authority to warrant the elimination of these through and out rates.

23. Several parties contend that the Commission has already decided the issue of the justness and reasonableness of the RTORs in the July 31 Order.[23] These parties argue that the Commission would not have set the through and out rates for hearing in the first place if it did not believe the Presiding Judge held the authority to find them unjust and unreasonable and order their elimination.

24. Several parties also except to the Presiding Judge's finding that the choices of the New PJM Companies and Illinois Power do not create irrational seams.[24] They contend that the choices of these companies to join PJM did in fact create the inter-RTO seam problem being addressed in this proceeding. The excepting parties assert that, since the irrational nature of this seam increases the number of transactions that must pay pancaked rates, the RTORs are unjust and unreasonable. Edison Mission argues that the sheer inefficiencies and market distortions that result from the RTORs are reason alone to warrant their elimination.[25] The Michigan Commission notes that the resulting "Swiss cheese" configuration leads to some members of PJM being west of certain of the Midwest ISO members, with some of these Midwest ISO members being in the inequitable position of having to pay RTORs to access their own generation.[26]

25. Some parties argue that the Presiding Judge erred by failing to eliminate the RTORs for other reasons. For example, the excepting parties claim that the Presiding Judge erroneously failed to eliminate the RTORs even after agreeing that they promote inefficiency and acknowledging that the unusual seam configuration will exacerbate the adverse impacts of the through and out rates.[27] They contend that the Presiding Judge has an inherent responsibility to promote the public interest, yet neglected to do so by failing to eliminate the RTORs.

Briefs Opposing Exceptions

26. A number of parties agree with the Presiding Judge that there is no precedent for eliminating the RTORs at this time.[28] They state that many parties excepting to the Presiding Judge on the issue of precedent do not provide any citations to cases in which the Commission determined that it was unjust and unreasonable to charge for through and out service. The New PJM Companies and Classic PJM companies contend that the July 31 Order did not require the elimination of the RTORs; otherwise a hearing would not have been needed.[29] The New PJM Companies and PECO argue that the Commission's April 28, 2003 White Paper in Docket No. RM01–12–000[30] would allow PJM transmission owners to recover contributions to their transmission cost of service from Midwest ISO through access fees or export fees because of notable imbalances in the exports and imports between the expanded PJM and the expanded Midwest ISO.[31]

27. Several parties question the benefits of eliminating the RTORs. JCA contends that evidence in the record indicates that there may be no overall efficiency gains from eliminating the RTORs, which it argues may increase constraints between the two RTOs and allow customers to hoard transmission capacity.[32] JCA also argues, as do the Classic PJM Companies, that elimination of the RTORs would remove the distance component from rates, which could distort the market.[33] The Classic PJM Companies admit that the inefficiencies associated with the RTORs are likely to be significant once the common market is operational. They argue that the inefficiencies associated with the RTORs are likely to be much less during the period before the common market is operational, and they maintain that the RTORs should not be eliminated before such time.[34]

[21] Initial Decision at P 62–63.

[22] *See, e.g.*, Trial Staff, Edison Mission, Consumers, Michigan Agencies, Michigan Commission, Ohio Commission, Wisconsin Commission, MidAmerican, WEPCO, WPSC/UPPC, Madison, GridAmerica, TRRG, Cinergy, Illinois Power, Midwest ISO.

[23] *See* Ohio Commission Brief on Exceptions at 2, Michigan Agencies Brief on Exceptions at 10, MidAmerican Brief on Exceptions at 9, Midwest ISO Brief on Exceptions at 4.

[24] *See, e.g.*, Trial Staff, Michigan Agencies, Michigan Commission, WEPCO, Cinergy, Illinois Power, and Midwest ISO.

[25] *See* Edison Mission Brief on Exceptions at 10.

[26] *See* Michigan Commission Brief on Exceptions at 6.

[27] *See, e.g.*, MidAmerican Brief on Exceptions at 14, stating that "the Initial Decision declines to eliminate seams charges for lack of perceived precedential authority, but it nonetheless identifies deficiencies with those seams charges as they now exist."

[28] *See e.g.*, Classic PJM Companies, JCA, Maryland and Pennsylvania Commissions, New PJM Companies and PECO.

[29] *See* New PJM Companies Brief Opposing Exceptions at 11, Classic PJM Companies Brief Opposing Exceptions at 5.

[30] *See* Wholesale Market Platform White Paper (White Paper), Appendix A at 6.

[31] *See* New PJM Companies and PECO Brief Opposing Exceptions at 5 and Classic PJM Companies Brief Opposing Exceptions at 5–6.

[32] *See* JCA Reply Brief on Exceptions at 11 (citing testimony of Rodney Frame. Classic PJM Companies witness). Mr. Frame testified that elimination of the RTOR charges could result in hoarding of capacity across the inter-ties since there would be no payment for use ofthis capacity. *Id.*

[33] *Id.*

[34] *See* Classic PJM Companies Brief Opposing Exceptions at 26.

Commission Decision

28. We disagree with the Presiding Judge's conclusion that he did not have the authority to find the through and out rates for transactions crossing the proposed RTO boundary unjust and unreasonable. We would not have instituted an investigation, and established hearing procedures, pursuant to section 206 of the FPA, if the Presiding Judge lacked the authority to conclude that the rates were unjust and unreasonable. Moreover, the RTORs in the Midwest ISO/PJM region perpetuate seams that prevent the realization of more efficient and competitive electricity markets in the region, and thus violate a central tenet of the Commission's RTO policy.

29. Although the Presiding Judge correctly stated that Order No. 2000 does not require the elimination of rate pancaking between RTOs, Order No. 2000 also requires that RTOs meet certain minimum characteristics, including proper scope and configuration. Order No. 2000 also requires that RTOs eliminate rate pancaking within a region of appropriate scope and configuration.[35] Order No. 2000 emphasizes that this is a central goal of the Commission's RTO policy because rate pancaking restricts the amount of generation that can be economically delivered to any customer, thereby frustrating the realization of competitive and efficient bulk power markets.[36] In addition, Order No. 2000 indicates that, among the factors that will be considered when determining appropriate RTO configuration, the Commission will consider the extent to which the proposal would encompass one contiguous area, encompass a highly interconnected portion of the grid, and recognize trading patterns.[37] When we find that a proposed RTO does not meet the scope and configuration requirements of Order No. 2000, as we did with respect to the organizations resulting from certain former Alliance Companies' decisions to join PJM, the Commission must impose conditions on its acceptance of those decisions, such as requiring inter-RTO coordination agreements and/or the elimination of inter-RTO rate pancaking, in order to mitigate otherwise inappropriate RTO configuration.[38] While the Commission has not required the elimination of inter-RTO rate pancaking before, the Commission has not had to address the issue before; the circumstances presented in this proceeding are unprecedented.

30. The former Alliance Companies are uniquely situated in relation to two operating regional transmission organizations such that elimination of the seam between Midwest ISO and PJM is necessary to promote more efficient and competitive electricity markets and to meet the requirements of Order No. 2000. Some of the former Alliance Companies, including Illinois Power and the New PJM Companies, are located in the heart of the Midwest ISO region and have close links with their neighboring utilities in Midwest ISO. The Commission recognized the critical position of these companies vis-a-vis Midwest ISO when it granted the Midwest ISO RTO status. Specifically, the Commission originally noted that Midwest ISO had a configuration on its eastern border that was inconsistent with the scope and configuration requirements of Order No. 2000, and found that the problem would be solved by successful integration of some or all of the former Alliance Companies into Midwest ISO.[39]

31. Correspondingly, other former Alliance Companies are located along the western border of PJM. In the Commission's initial order on PJM's RTO proposal, the Commission found that PJM exhibited insufficient scope to meet the requirements of Order No. 2000 and encouraged PJM to continue its efforts to expand in the region.[40]

32. Thus, by virtue of their location and ties to their neighbors, the former Alliance Companies, through their failure to join RTOs, and also through their proposed RTO choices, create a barrier that obstructs more efficient and competitive electricity markets and the realization of adequate RTO scope and configuration in the region, thereby denying the benefits of more efficient and competitive regional electricity markets to customers in 21 states and one Canadian province.

33. As noted in the July 31 Order and the Rehearing Order, the choice of Illinois Power and the New PJM Companies to join PJM results in a long and irregular RTO border that perpetuates Midwest ISO's configuration problems. Specifically, as we discussed in the Rehearing Order, evidence indicates that the proposed RTO configuration would divide a highly interconnected portion of the grid, leaving in place an elongated and irregular seam across which significant trading activity takes place.[41] For example, 10,700 MVA transfer capability exists between Midwest ISO and the New PJM Companies and Illinois Power, while only 3,300 MVA of transfer capability exists between PJM and New PJM Companies and Illinois Power. Additionally, there is 66,500 MVA of tie line capacity between Midwest ISO and the New PJM Companies and Illinois Power, while only 6,000 MVA of tie line capacity exists between PJM and New PJM Companies and Illinois Power.[42] Notwithstanding their closer ties to Midwest ISO, the New PJM Companies and Illinois Power have opted to join PJM. Further, during a one-year period commencing June 1, 2001, AEP received 4,400 requests for transmission service into the Midwest ISO footprint for a total of 48,800 MW-years of transmission service, while AEP received only 1,500 requests for transmission service into PJM for a total of 12,500 MW-years of transmission service.[43] Again, notwithstanding the close ties to Midwest ISO, AEP has opted to join PJM. Thus, accepting the former Alliance Companies' RTO choices unconditionally would result in fewer benefits from one-stop shopping or the elimination of rate pancaking than if, for example, AEP joined Midwest ISO.[44] Other evidence indicates that, due to the entry of the New PJM Companies and Illinois Power into PJM, Michigan and Wisconsin would remain only partially contiguous with the rest of Midwest ISO, and companies in Michigan and Wisconsin would be required to pay pancaked rates in order to wheel power through PJM from elsewhere in Midwest ISO.[45] In addition, the record indicates that various other market participants will be adversely affected by continued rate

[35] *See* Order No. 200 at 31, 173.

[36] *Id.*

[37] *Id.* at 31,082–84.

[38] *See* Order No. 2000 at 31,083; *see also* Rehearing Order at P 31. As we explained in the July 31 Order, the alternative to accepting the former Alliance Companies' compliance filings with conditions was rejecting them. *See* July 31 Order at P 38.

[39] Midwest Independent Transmission System Operator, Inc., 97 FERC ¶ 61,326 (2001). As explained in the Rehearing Order, our granting of RTO status to Midwest ISO, despite this configuration problem, was entirely consistent with Order No. 2000's provision that RTO status would not be categorically denied or RTO start-up delayed where transmission owners representing a large majority of the facilities in a region are ready to move forward, even though agreement by a few transmission owners in the region has yet to be obtained. *See* Rehearing Order at P 43 n.36, Order No. 2000 at 31,086.

[40] On rehearing, the Commission found that PJM's planned expansion to incorporate some of the former Alliance Companies, as conditionally accepted in the July 31 Order, alleviated concerns regarding the possible insufficient scope of PJM as an RTO. PJM Interconnection, LLC *et al.*, 96 FERC ¶ 61,061 (2001), *order on reh'g*, 101 FERC ¶ 61,345 (2002).

[41] Rehearing Order at P 26–30.

[42] *Id.* at P 29, n.27.

[43] *Id.* at P 27.

[44] *Id.* at P 28.

[45] *Id.* at P 28 & n.26.

pancaking across the proposed seam, effects that would be eliminated had certain of the former Alliance Companies joined Midwest ISO instead of PJM.[46]

34. These facts thus indicate that the proposed RTO configuration would: (1) Preserve an elongated and irregular seam that divides a highly interconnected portion of the grid and a natural market; (2) leave portions of Midwest ISO barely contiguous with the rest of the region; and (3) subject a significant number of transactions in the region to continued rate pancaking. In addition, as we noted in the July 31 Order, decisions as to which RTO to join may be affected by inter-RTO rate pancaking. That is, transmission owners may be driven by the interests of their merchant function, rather than motivated by a desire to achieve the most rational and efficient RTO configuration, resulting in inappropriate RTO configuration that places the transmission owner's merchant function at a competitive advantage relative to other similarly situated market participants. Indeed, in this proceeding, one transmission owner stated that Midwest ISO's through and out rate was a factor in its decision to join PJM,[47] and both Midwest ISO and PJM agreed that this is an issue.[48]

35. In sum, the choices of the former Alliance Companies as to which RTOs they join: (1) Exacerbate rate pancaking across the proposed seam for transactions sinking within the RTOs, thereby obstructing more efficient and competitive electricity markets in the region; (2) violate the fundamental requirement of Order No. 2000 that RTOs eliminate rate pancaking over a region of appropriate scope and configuration; and (3) result in unjust, unreasonable, unduly discriminatory or preferential RTO rates.[49] Indeed, given Order No. 2000's requirement that RTOs eliminate rate pancaking over a region of appropriate scope and configuration, rate pancaking across the proposed seam is incorrectly characterized as *inter*-RTO rate pancaking; rather, it constitutes intra-RTO rate pancaking which is unequivocally prohibited under Order No. 2000. The solution is to eliminate the RTORs, *i.e.*, eliminate the through and out rates that constitute the rate pancaking, and in a very real sense constitute the seam.

36. We disagree with the New PJM Companies and PECO that eliminating the RTORs is inconsistent with the Commission's recently-issued White Paper. As an initial matter, we note that parties to this proceeding are in agreement that the RTORs must be eliminated when the common market becomes operational, in order to realize the goal of truly efficient and competitive electricity markets in the region. (As discussed above, it is due to the proposed RTO configuration that the Commission finds that Midwest ISO and PJM RTORs are unjust and unreasonable and directs Midwest ISO and PJM to eliminate these charges.) Furthermore, we note that, while the White Paper contemplates use of an export fee in situations where there is an imbalance between imports to and exports from a region, the White Paper reaffirms the RTO scope and configuration requirements of Order No. 2000.[50] Indeed, the replacement of RTORs with inter-regional allocation of transmission revenue requirements is consistent with the transmission pricing concepts advanced in the SMD NOPR and the White Paper.[51]

37. We also disagree with arguments that rate pancaking across the proposed seam provides beneficial price signals by incorporating an element of distance into transmission rates.[52] As we explain above, rate pancaking across the proposed seam obstructs more efficient and competitive electricity markets and thus violates Order No. 2000's goal and requirement that RTOs eliminate rate pancaking within regions of appropriate scope and configuration. Moreover, in Order No. 2000, the Commission rejected similar arguments that the Commission allow rate pancaking within RTOs in order to reflect distance in rates. In doing so, the Commission essentially rejected rate pancaking based on corporate boundaries as a supportable distance-based rate methodology.[53] Rate pancaking across the proposed seam suffers from the same flaw.[54] Because the RTORs are based on embedded transmission costs, they can have a distorting effect on economic choices.[55] Thus, we disagree that the RTORs provide beneficial price signals. In this regard, we affirm the Presiding Judge's finding that the configuration of the seam argues against relying on rate pancaking across the seam to incorporate an element of distance in rates.[56]

38. With respect to the concerns expressed by JCA and the Classic PJM Companies that eliminating the RTORs may result in hoarding of capacity, we agree with Cinergy that there are other, better means to discourage hoarding of transmission capacity than to perpetuate unjust and unreasonable rates. We will direct the market monitors of PJM and Midwest ISO to assess the potential for, and to look for signs of, hoarding of transmission capacity. Should they detect any, they should notify us and their respective RTOs immediately, and the RTOs should promptly file a proposal to rectify the matter.

39. Accordingly, the Commission finds that the PJM and Midwest ISO RTORs, when applied to transactions sinking within the proposed Midwest ISO/PJM footprint, are unjust and unreasonable and must be eliminated. As discussed below, we will eliminate them effective November 1, 2003,[57] in order to provide sufficient time for the parties to prepare the appropriate filings and the Commission to review those filings.[58]

[46] *See, e.g.*, Exhibit No. CAS–1 at 13–18.

[47] June 26, 2002 Commission Meeting, Tr. at 321.

[48] July 17, 2002 Commission Meeting, Tr. at 176–77.

[49] We note that only four parties in this proceeding object to the elimination of the through and out rates (New PJM Companies and PECO, JCA, Classic PJM Companies, and the Maryland and Pennsylvania Commissions). However, even certain of these parties recognize inefficiencies related to the through and out rates and benefits of eliminating them. *See* Tr. at 185 (where a witness for the New PJM Companies recognizes that elimination of rate pancaking would represent an improvement); Exhibit No. Certain Classic PJM TOs–1 at 24 (recognizing that through and out rates are inefficient and should be eliminated when a common market is implemented).

[50] *See* White Paper, Appendix A at 3.

[51] *Id.* at 6; SMD NOPR at P 183–89.

[52] JCA Brief on Exceptions at 13.

[53] *See* Order No. 2000 at 31,174–75. However, the Commission clarified that it would be receptive to distance-sensitive rates that can be justified.

[54] Indeed, the record indicates that, due to the irregular contour of the proposed seam, rate pancaking across it does not accurately incorporate distance into rates. *See* Tr. at 212–14 (indicating that a hypothetical transaction sourcing in Richmond, Virginia and sinking in Chicago, Illinois would not be subject to pancaked rates, while a transaction sourcing in Gary, Indiana and sinking in Chicago would be subject to pancaked rates).

[55] *See* Exhibit No. CAS–1 at 9.

[56] Initial Decision at P 63.

[57] We disagree with the Classic PJM Companies that the Commission should not eliminate the RTORs before the common market is operational. As discussed above, the RTORs violate Order No. 2000 and are unjust and unreasonable. This is true regardless of whether the common market has become operational. While we expect the most benefits in terms of more efficient and competitive markets once the common market is operational, the elimination of the RTORs during the transition to a common market will accelerate the realization of those benefits.

[58] Further, we note that ComEd plans to be fully integrated into PJM on November 1, 2003. *See* Press Release, PJM Interconnection, Market Implementation Date for Northern Illinois Region Confirmed for November 1 (July 11, 2003), available at *http://www.pjm.com/contributions/news-releases*. On July 11, 2003, in a status report filed in Docket No. ER02–22–002, *et al.*, GridAmerica indicated that it is on schedule to become operational under the Midwest ISO as of October 1, 2003.

If GridAmerica and ComEd meet these targets, the individual-company tariffs of the individual GridAmerica Participants and ComEd will be superseded by the applicable RTO tariff, and rate

40. While we named the through and out rates under the Midwest ISO and PJM OATTs as the rates subject to investigation in Docket No. EL02–111–000, we expected that the inter-RTO seam would be the only seam remaining at the close of Docket No. EL02–111–000. When we conditionally accepted the former Alliance Companies' RTO choices a year ago, we relied upon their express intentions and commitments so that, by acting expeditiously in allowing each company to proceed to join the RTO of its choosing, those choices would be implemented, and the resulting benefits would be realized—quickly. The timely elimination of rate pancaking in this region of the country, which, as we discuss above, is critical to achieving competitive and efficient electric markets, was fundamental to our decision to accept the former Alliance Companies RTO choices.

41. Even with elimination of the Midwest ISO and PJM RTORs, in the near term the region will still be riddled with seams, with the through and out rates under the individual-company tariffs of AEP, Ameren Services Companies on behalf of certain public utility affiliates[59] (collectively, Ameren), ComEd, First Energy Corp. on behalf of certain public utility affiliates (collectively, First Energy),[60] Illinois Power, Northern Indiana Public Service Company (NIPSCO), and DP&L acting as toll gates that impede the realization of more efficient and competitive electricity markets in the region and that preserve a competitive advantage for the non-RTO participants' merchant functions. We find that the through and out rates under the tariffs of these individual former Alliance Companies,[61] for transactions sinking in the proposed Midwest ISO/PJM footprint, may be unjust, unreasonable, and unduly discriminatory or preferential, and, pursuant to section 206 of the FPA, we will initiate an investigation and hearing in Docket No. EL03–212–000. We will provide for a "paper" hearing [62] to determine whether the through and out rates contained in the tariffs of AEP, Ameren, ComEd, First Energy, Illinois Power, NIPSCO, and DP&L are just, reasonable, and not unduly discriminatory or preferential. Given our statutory responsibility to ensure these rates are just and reasonable, we believe that expeditious resolution of this proceeding is critical. Accordingly, the Commission will provide AEP, Ameren, ComEd, First Energy, Illinois Power, NIPSCO and DP&L, and interested parties, with an opportunity to file, explaining why the rates are or are not unjust, unreasonable or unduly discriminatory or preferential, on or before August 15, 2003.

42. Where, as here, the Commission initiates a section 206 investigation on its own motion, section 206(b) requires that the Commission establish a refund effective date anywhere from 60 days after publication in the **Federal Register** of notice of its initiation of a proceeding to five months after the expiration of the 60-day period. In order to give maximum protection to customers, and consistent with our precedent, we will establish the refund date at the earliest date allowed. This date will be 60 days from the date on which notice of the initiation of the investigation in Docket No. EL03–212–000 is published in the **Federal Register**.

43. Section 206(b) also requires that if no final decision is rendered in the Commission's investigation by the refund effective date or by the conclusion of the 180-day period commencing upon the initiation of a proceeding pursuant to section 206, whichever is earliest, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such a decision. The Commission expects to issue its final decision in Docket No. EL03–212–000 by October 31, 2003.

SECA Issue

Presiding Judge's Ruling

44. The Presiding Judge stated that if the Commission were to order the elimination of the RTORs, he would recommend that the Commission adopt, without requiring the filing of new rate cases, a mechanism such as one of the SECAs proposed by the parties to prevent cost shifting between customers of the two RTOs.[63] The various SECAs proposed by the parties are generally designed as non-by-passable surcharges to license plate zonal rates for delivery to load within the RTOs.[64] The Presiding Judge found that eliminating the RTORs without a SECA would improperly shift costs from Midwest ISO's native load to PJM's native load.[65] The Presiding Judge took the position that inappropriate cost shifting will occur if RTORs are eliminated absent a lost revenue recovery mechanism because "the through and out revenues are no longer credited against the cost of service and native load customers assume the burden previously carried by importing customers in the form of an increase in their own rates."[66]

Briefs on Exceptions

45. Many parties objecting to a lost revenue recovery mechanism challenge the Initial Decision's position that transmission owners are entitled to a specific amount of revenue related to through and out transactions.[67] The Michigan Agencies assert that the concept of "lost revenues" is also faulty since transmission owners are not legally guaranteed any particular stream of revenues. They note that the FPA only allows them to recover costs plus a reasonable return. WEPCO states that, if there is any question as to whether a transmission owner is over-recovering its revenue requirement, then the Commission should review the transmission owners' actual cost of service. WEPCO continues that a SECA-type mechanism would be appropriate for use (for a short period of time) only if the transmission owner can establish that it will be unable to recover its current cost of service without

pancaking over their transmission systems for transactions sinking within the proposed Midwest ISO/PJM footprint will be eliminated.

[59] Union Electric Co. and Central Illinois Public Service Co.

[60] American Transmission Systems, Inc., Cleveland Electric Illuminating Power Co., Ohio Edison Co., Pennsylvania Power Co., Toledo Edison Co.

[61] AEP, Ameren, ComEd, First Energy, Illinois Power, NIPSCO, and DP&L. *See supra* note 58.

[62] The use of a "paper" hearing, rather than a trial-type, evidentiary hearing, has been addressed in previous cases. *See, e.g.*, Public Service Company of Indiana, 49 FERC ¶ 61,346 (1989), *order on reh'g*, 50 FERC ¶ 61,186, *opinion issued*, Opinion 349, 51 FERC ¶ 61,367, *order on reh'g*, Opinion 349–A, 52 FERC ¶ 61,260, *clarified*, 53 FERC ¶ 61,131 (1990), *appeal dismissed*, *Northern Indiana Public Service Company v. FERC*, 954 F.2d 736 (DC Cir. 1992). As the Commission noted in Opinion No. 349, 51 FERC at 62,218–19 & n.67, while the FPA and the case law require that the Commission provide the parties with a meaningful opportunity for a hearing, the Commission is required to reach decisions on the basis of an oral, trial-type evidentiary record only if the material facts in dispute cannot be resolved on the basis of the written record, *i.e.*, where the written submissions do not provide an adequate basis for resolving disputes about material facts.

[63] Initial Decision at P 7.

[64] The proposed SECAs reflect the historical test-year transmission charges that customers in a given pricing zone in one RTO paid for transmission service over the facilities in the other RTO to serve load within the pricing zone, and are designed to collect revenue from each zone in proportion to the benefits that customers serving load within the zone will realize when they no longer pay pancaked rates for transmission service over the facilities in the other RTO.

Transactions under Grandfathered Agreements and transactions that sink outside the combined region are not included in these calculations.

NERC tag data would be used to identify the loads benefitting from particular through and out transactions, and lost through and out service revenues would be assigned to loads on the basis of such analysis.

[65] Initial Decision at P 82.

[66] Initial Decision at P 71.

[67] *See, e.g.*, Michigan Agencies, Michigan Commission, TRRG, WSPC and UPPC, Maryland and Pennsylvania Commissions.

increasing its zonal rates once the RTORs are eliminated.[68] TRRG similarly argues that before the Commission approves any lost revenue recovery, it must determine that each transmission owner requesting lost revenue recovery would otherwise be deprived of its ability to recover its costs and earn a reasonable return on its investment.[69] The Wisconsin Commission argues that the burden should be on the New PJM Companies to demonstrate that they would not over-recover their current cost of service with implementation of a transitional rate mechanism.[70]

46. TRRG states that a cost-based approach to mitigating cost-shifts and eliminating rate pancaking, namely license plate rates with no lost revenue adders, has been used by the Commission in approving rates for the New York Independent System Operator, Inc., ISO-New England and PJM. It suggests that, given the intertwined nature of PJM and Midwest ISO, the Commission should view elimination of the RTORs as involving the elimination of intra-regional rate pancaking, and follow those cases.[71]

47. The Michigan Commission claims that there are legitimate reasons for denying any recovery of lost revenues in this proceeding in light of the former Alliance Companies' RTO choices. The Michigan Commission notes that the former Alliance Companies have continued to charge through and out rates far beyond the seams elimination date prescribed in the Illinois Power Settlement.[72] They argue that this continued recovery of revenues under pancaked rates serves as enough of a transition period and mitigates the need for any further recovery of lost revenues.[73]

Briefs Opposing Exceptions

48. Several parties support the Presiding Judge's ruling that a lost revenue recovery mechanism is necessary in the event that the Commission decides to eliminate the pancaked rates.[74] GridAmerica Companies and the New PJM Companies agree that transmission owners should be entitled to collect any revenues lost from the elimination of rate pancaking, and further argue that a full cost of service analysis should not be a necessary prerequisite for such recovery. They argue that requiring such filings would be inconsistent with established Commission precedent.[75] Trial Staff also notes that the Commission has previously adopted proposals to collect lost revenues in an effort to remove disincentives to RTO membership without requiring a new, full cost of service.[76] The New PJM Companies argue that if the Commission eliminates the RTORs, then it is obligated under Section 206 of the FPA to establish a just and reasonable alternative.[77]

Commission Decision

49. In prior cases, the Commission has approved the elimination of rate pancaking with a transitional rate mechanism for the recovery of lost revenues when the parties experiencing such lost revenues requested a transitional rate mechanism and demonstrated that it was just and reasonable.[78] On the other hand, the Commission has also approved the elimination of rate pancaking without such transitional rate mechanisms for recovery of lost revenues in cases where parties did not propose them or adequately support them.[79] That is, the Commission is not bound to establish transitional rate mechanisms for recovery of lost revenues.

50. We believe that mechanisms such as the proposed SECAs, if properly structured, can serve as reasonable transition mechanisms to address revenue losses arising from the elimination of rate pancaking due to RTO formation. However, no party to the proceeding has yet made a rate filing under section 205 of the FPA, 16 U.S.C. 824d (2000), either to increase its rates or to adopt a transitional rate mechanism to recover lost revenues.[80] If parties desire to increase their rates or to utilize such a transitional rate mechanism to recover lost revenues, they should file pursuant to section 205 of the FPA. For those filings made prior to November 1, 2003, we will look favorably upon requests to waive the prior notice requirement to allow an effective date of November 1, 2003, the date that the through and out rates will be eliminated.

51. Some parties state that the proper benchmark to use to set rates is the cost of providing service, including expenses and a fair return on investment, not revenue levels under current rates. Consistent with prior rulings,[81] however, we will not require that RTO members file an updated complete cost-of-service in order to justify transitional surcharges to recover lost revenues arising from the elimination of rate pancaking due to RTO formation.[82] Such a requirement could create an unnecessary impediment to RTO formation. However, if customers feel that existing rates and revenues, upon which the transitional surcharges would be based, are no longer just and reasonable, they may file a complaint pursuant to section 206 of the FPA to seek a change in those rates and the corresponding transitional surcharges.[83]

Specific Attributes of the SECA

52. Two SECA proposals were sponsored by parties to the proceeding, one by GridAmerica and one by the Midwest ISO TOs. The Presiding Judge made certain recommendations regarding the specific attributes of the SECA. Specifically, the Presiding Judge recommended that: (1) Calender-year 2002 should be the test period; (2) there should be no phase-out of the SECA until another methodology is devised to ensure that there is no cost shifting to PJM's native load customers; (3) Michigan and Wisconsin customers should be able to opt out of the SECA and continue paying the RTORs; (4) the starting point for the elimination of the RTORs and implementation of any SECA should be after a final Commission order, allowing enough time for the filing of compliance filings containing the requisite calculations, and no refunds should be ordered; (5) the SECA should replace only charges for through and out service for transactions that sink in either the expanded Midwest ISO or the expanded PJM and source in or wheel through the other RTO; and (6) the Commission must decide as a matter of policy whether the SECA should be charged to the sink RTO as a whole or whether there should be a sub-zonal option.[84]

53. Most parties supported at least some of the Presiding Judge's recommendations while opposing the other recommendations.

Commission Decision

54. We cannot rule here on the Presiding Judge's recommendations or the parties' various concerns with the mechanics of the SECA. We will examine the specific attributes of any transitional cost recovery mechanisms when parties make section 205 filings, as discussed above.[85] However, based on our experience, we will provide the following guidance in this regard. As a general matter, we believe that any such filing should use NERC tag data and develop lost through and out revenues for the most recent twelve months, with adjustments for known and measurable differences, to most closely reflect future trading patterns. In addition, the transitional period for a SECA should be as short as possible, while allowing enough time for parties to develop a permanent solution to pricing transmission service between the regions. We believe that a two-year transition period for a transition cost recovery mechanism will provide sufficient time for the parties to find a permanent solution for pricing transmission service between regions in the Midwest ISO/PJM footprint. We will also permit charges on a sub-zonal basis, since sub-zonal charges best align the benefits of eliminating rate pancaking with the associated lost revenues. If transactions cannot be traced to load in various zones of the Classic PJM Companies' region, because of operation of the PJM spot market, Classic PJM Companies should address alternative methodologies for evaluating the relative benefits from import transactions between the various zones of the Classic PJM Companies' region.[86] Finally, we encourage those entities that intend to make Section 205 filings to consult with interested parties and each other, to seek creative solutions to the concerns raised in this proceeding and to resolve as many issues as possible prior to making their Section 205 filings.

55. The Presiding Judge explained that efficiencies could only be produced by eliminating rate pancaking after the Commission issues a final order since past behavior cannot be changed.[87] Therefore, he recommended that no refunds should be ordered for past through and out charges. The Presiding Judge also ruled that no refunds should be ordered because the SECA replaces the RTORs with charges of a different form, a non-by-passable surcharge to be added to existing license plate zonal transmission rates but in approximately the same magnitude and imposed on the same groups of ratepayers; customers are not entitled to refunds because they have not overpaid.[88]

56. Consumers argues that, because the Commission set a refund effective date, refunds should be available if the RTORs are found to be unjust and unreasonable. Midwest ISO TOs argue that, if the Commission requires elimination of the through-and-out rates, the elimination should be on a prospective basis, without refunds, and take effect simultaneous with the implementation of the SECA charge.

57. We affirm the Presiding Judge and will not order refunds here. Rather, as discussed above, we will make the elimination of the through and out rates effective on November 1, 2003. We direct PJM and Midwest ISO to make a compliance filing, within 30 days, eliminating the RTORs under their tariffs for transactions that sink in the Midwest ISO/PJM footprint into proposed RTOs, effective November 1, 2003.

The Commission orders:

(A) The Initial Decision is hereby affirmed in part, and reversed in part, as discussed in the body of this order. The through and out rates under the tariffs of Midwest ISO and PJM for transactions sinking within their combined region, are hereby eliminated effective November 1, 2003, as discussed in the body of this order.

(B) The Wisconsin Commission's motion to intervene is hereby denied, but the Wisconsin Commission is hereby granted permission to participate as amicus curiae, as discussed in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly Section Procedure and the 206 thereof, and pursuant to the Commission's Rules of Practice and regulations under the Federal Power Act (18 CFR chapter I), a public hearing shall be held in Docket No. EL03–212–000 concerning the justness and reasonableness of the through and out rates of AEP, Ameren, ComEd, First Energy, Illinois Power, NIPSCO, and DP&L, as discussed in the body of this order.

(D) AEP, Ameren, ComEd, First Energy, Illinois Power, NIPSCO and DP&L and other parties may submit to the Commission in Docket No. EL03–212–000 arguments and evidence, as outlined in the body of this order on or before August 15, 2003.

(E) Any interested person desiring to be heard in Docket No. EL03–212–000 should file a notice of intervention to intervene with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) on or before August 8, 2003.

(F) The Secretary shall promptly publish in the **Federal Register** a notice of the Commission's initiation of the proceeding in Docket No. EL03–212–000.

(G) The refund effective date established pursuant to section 206(b) of the FPA will be 60 days following publication in the **Federal Register** of the notice discussed in Ordering Paragraph (F) above.

(H) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Magalie R. Salas,

Secretary.

[68] WEPCO Brief on Exceptions at 27–30.

[69] TRRG Brief on Exceptions at 24.

[70] Wisconsin Commission Brief on Exceptions at 7.

[71] See TRRG Brief on Exceptions at 46.

[72] *See* Illinois Power Company, *et al.*, 95 FERC ¶ 61,183, *order denying reh'g*, 96 FERC ¶ 61,026 (2001).

[73] *See* Michigan Commission Brief on Exceptions at 16. WEPCO makes a similar argument in its Brief on Exceptions at 25.

[74] New PJM Companies and PECO, GridAmerica Companies, Ormet, Trial Staff, Illinois Power, the Midwest ISO TOs.

[75] *See also*, GridAmerica Companies Brief Opposing Exceptions at 19, New PJM Companies and PECO Brief Opposing Exceptions at 34.

[76] *See* Trial Staff Brief Opposing Exceptions at 11.

[77] New PJM Companies and PECO Brief Opposing Exceptions at 34.

[78] *See* Alliance Cos., *et al.*, 94 FERC ¶ 61,070 (2001); *see also* PJM Interconnection, LLC and Allegheny Power Co., *et al.*, 96 FERC ¶ 61,060 (2001).

[79] *See* PJM Interconnection, LLC, 81 FERC ¶ 61,257 (1997); *see also* Midwest Independent Transmission System Operator, Inc., *et al.*, Opinion No. 453, 97 FERC ¶ 61,033 (2001), *order on reh'g*, Opinion No. 453–A, 98 FERC ¶ 61,141 (2002).

[80] Likewise, no party to this proceeding has developed a record sufficient for us to order increased rates or to adopt a particular transitional rate mechanism for any party in this proceeding.

[81] *See* Alliance Companies, *et al.*, 94 FERC ¶ 61,070, *reh'g denied*, 95 FERC ¶ 61,182 (2001); April 25 Order at 61,446; PJM Interconnection L.L.C and Allegheny Power, 96 FERC ¶ 61,060 (2001).

[82] We do not address here whether this same approach, *i.e.*, not requiring an updated complete cost-of-service (as opposed to requiring such a cost-of-service with a demonstration that a party would otherwise be deprived of the ability to recover its cost-of-service due to the elimination of rate pancaking), would be appropriate for a public utility that has not yet joined an RTO.

[83] While parties to this proceeding presented evidence that they claimed demonstrated that the level of certain transmission owners' existing license plate rates was excessive, as the Presiding Judge correctly found, this analysis was hardly free from doubt and did not convincingly show that the existing rates were unjust and unreasonable. Initial Decision at P 74.

[84] Initial Decision at P 91–97.

[85] We note that, in the April 25 Order, while we found that a transitional rate mechanism appeared promising in concept, we stated that we would still need to evaluate the resulting rates to ensure that the mechanism produces a reasonable result. Consistent with the April 25 Order, we do not have actual rates before us here, and therefore, will not render a decision on any particular methodology.

[86] We remind the parties that such a methodology will likely be necessary, in any event, for a long-term solution to pricing transmission service between regions.

[87] Initial Decision at P 95.

[88] The Presiding Judge states that the parties which contested the RTOR are not contesting the level of the RTORs. Initial Decision at P 56.

APPENDIX

	Acronym
Cinergy Services, Inc., Cincinnati Gas and Electric Co., PSI Energy Inc., Union Light and Heat Co.	Cinergy.
Certain Classic PJM Transmission Owners	Classic PJM Companies.
Consumers Energy Company	Consumers.
Dairyland Power Cooperative	Dairyland Power.
Edison Mission Energy	Edison Mission.
Grid America Companies	GridAmerica.
Illinois Power Company	Illinois Power.
Joint Consumer Advocates	JCA.
Madison Gas and Electric Company	Madison.
Maryland Public Service Commission and Pennsylvania Public Utility Commission	Maryland and Pennsylvania Commissions.
Michigan Public Power Agency and Michigan South Central Power Agency	Michigan Agencies.
Michigan Public Service Commission and the State of Michigan	Michigan Commission.
MidAmerican Energy Company	MidAmerican.
Midwest Independent System Operator	the Midwest ISO.
Midwest ISO Transmission Owners	Midwest ISO TOs.
New PJM Companies and PECO Energy Company	New PJM Companies and PECO.
Public Utilities Commission of Ohio	Ohio Commission.
Ormet Primary Aluminum Corporation	Ormet.
Commission Trial Staff	Trial Staff.
Transmission Revenue Requirement Group	TRRG.
Wisconsin Electric Power Company	WEPCO.
Public Utilities Commission of Wisconsin	Wisconsin Commission.
Wisconsin Public Service Corporation and Upper Peninsula Power Company	WPSC/UPPC.

[FR Doc. 03–19796 Filed 8–1–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC03–58–000, et al.]

AEP Texas North Company, et al.; Electric Rate and Corporate Filings

July 25, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. AEP Texas North Company, Appalachian Power Company, Columbus Southern Power Company, Ohio Power Company, Southwestern Electric Power Company

[Docket No. AC03–58–000]

Take notice that on July 17, 2003, the AEP Texas North Company, Appalachian Power Company, Columbus Southern Power Company, Ohio Power Company and Southwestern Electric Power Company (the Companies) made a compliance filing pursuant to the accounting and reporting requirements set forth by the Commission in Order 631, Accounting, Financial Reporting, and Rate Filing Requirements for Asset Retirement Obligations. The Commission directed jurisdictional entities to file journal entries and supporting information for any adjustments made that affect net income as a result of implementing the accounting rules contained in Order 631.

Comment Date: August 7, 2003.

2. Armstrong Energy Limited Partnership, LLLP and Dominion Energy Marketing, Inc.

[Docket No. EC03–108–000]

Take notice that on July 18, 2003, Armstrong Energy Limited Partnership, LLLP (Armstrong) and Dominion Energy Marketing, Inc. (DEMI) filed an application for an order authorizing the proposed transfer of Armstrong's interest in a Master Power Purchase & Sale Agreement and the underlying Confirmation Letter with Constellation Power Source, Inc. to its affiliate, DEMI.

Comment Date: August 8, 2003.

3. Dominion Nuclear Marketing II, Inc. and Dominion Energy Marketing, Inc.

[Docket No. EC03–109–000]

Take notice that on July 18, 2003, Dominion Nuclear Marketing II, Inc. (DNM II) and Dominion Energy Marketing, Inc. (DEMI) filed an application for an order authorizing the proposed transfer of DNM II's interest in certain wholesale contracts with Constellation Power Source, Inc. to its affiliate, DEMI.

Comment Date: August 8, 2003.

4. Texas-New Mexico Power Company and Southern New Mexico Electric Company

[Docket No. EC03–110–000]

Take notice that on July 21, 2003,Texas-New Mexico Power Company and Southern New Mexico Electric Company (Applicants) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby Texas-New Mexico Power Company proposes to completely dispose of its jurisdictional facilities in New Mexico to Southern New Mexico Electric Company, a wholly owned subsidiary of Texas-New Mexico Power Company.

Comment Date: August 11, 2003.

5. Liberty Electric Power, LLC, Newco, LLC

[Docket Nos. EC03–111–000 and ER01–2398–005]

Take notice that on July 21, 2003, Newco, LLC (Applicant) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act and notice of change in status with respect to the transfer of 100 percent of the indirect upstream membership interests in Liberty Electric Power, LLC (Project Company) to Applicant, a newly created special purpose entity owned by a group of financial institutions. The Project Company owns a 567.7 MW combined cycle gas-fueled electric generating plant located in the Borough of Eddystone, Delaware County, Pennsylvania.

Comment Date: August 11, 2003.

6. Xcel Energy Inc. and NRG Energy, Inc., and its Public Utility Subsidiaries

[Docket No. EC03–112–000]

Take notice that on July 22, 2003, Xcel Energy Inc. (Xcel Energy) and NRG Energy, Inc. (on its behalf and behalf of its jurisdictional subsidiaries) (NRG) (collectively, Applicants) filed with the Federal Energy Regulatory Commission (Commission), an application pursuant to sections 203 and 204 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby Xcel Energy would dispose of its entire equity interest in NRG by implementing a proposed plan of reorganization (Reorganization Plan) filed in the bankruptcy proceedings in the United States Bankruptcy Court for the Southern District of New York (Bankruptcy Court). Under the proposed Reorganization Plan, NRG's Creditors would acquire the equity interest in NRG, and Xcel Energy would make payments to NRG and its Creditors of up to $752 million. Upon implementation of the Reorganization Plan, Xcel Energy's common equity interests in NRG and its public utility subsidiaries would be cancelled.

Comment Date: August 25, 2003.

7. Central Vermont Public Service Corporation and Green Mountain Power Corporation

[Docket No. EC03–113–000]

Take notice that on July 22, 2003, Central Vermont Public Service Corporation (Central Vermont) and Green Mountain Power Corporation (Green Mountain) filed with the Federal Energy Regulatory Commission (Commission), an application pursuant to Section 203 of the Federal Power Act for authorization to purchase certain shares of non-voting Class C Common Stock ($100 par value) issued by the Vermont Electric Power Company, Inc. (VELCO). The Vermont Public Service Board states that it has previously approved the issuance of the stock by VELCO. Central Vermont and Green Mountain request expedited approval to permit the rationalization of ownership of VELCO consistent with usage of the system and to allow VELCO to obtain needed capital for its operations.

Central Vermont and Green Mountain state that copies of the filing were served upon the Vermont Public Service Board and the Vermont Department of Public Service.

Comment Date: August 12, 2003.

8. Otter Tail Power Company

[Docket No. ER03–1097–000]

Take notice that on July 21, 2003, Otter Tail Power Company (Otter Tail) filed a Collector System and Substation Works Agreement by and between FPL Energy North Dakota Wind, LLC and Otter Tail (Agreement). Otter Tail requests an effective date of April 1, 2003 for the Agreement.

Comment Date: August 11, 2003.

9. Delmarva Power & Light Company

[Docket No. ER03–1098–000]

Take notice that on July 21, 2003, Delmarva Power & Light Company (Delmarva) tendered for filing revised rate schedule sheets (Revised Sheets) in its Second Revised Rate Schedule FERC No. 111 between Delmarva and the Town of Middletown, Delaware (Middletown). Delmarva states that the Revised Sheets reflect a new effective date commensurate with the commercial operations date of Middletown's recently constructed substation and associated facilities.

Delmarva requests that the Commission allow the Revised Sheets to become effective on June 24, 2003, the commercial operations date of Middletown's substation and associated facilities.

Delmarva states that copies of the filing were served upon Middletown and the Delaware Public Service Commission.

Comment Date: August 11, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19679 Filed 8–1–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–207–001, et al.]

PJM Interconnection, L.L.C., et al.; Electric Rate and Corporate Filings

July 24, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. PJM Interconnection, L.L.C.

[Docket No. EL03–207–001]

Take notice that on July 22, 2003, PJM Interconnection, LLC (PJM) tendered for filing with the Federal Energy Regulatory Commission (Commission) revised tariff sheets in compliance with the Commission's July 14, 2003 "Order on Complaint" issued in Outback Power Marketing, Inc. *v.* PJM Interconnection, L.L.C., 104 FERC ¶ 61,079 (2003), to incorporate its credit policy in its Tariff.

PJM states that the tariff sheets bear a July 14, 2003 effective date, consistent with the Commission's Order.

PJM states that copies of this filing have been served on all PJM members and utility regulatory commissions in the PJM region and on all parties listed on the official service list compiled by the Secretary in this proceeding.

Comment Date: August 12, 2003.

2. New York Independent System Operator, Inc.

[Docket No. ER03–766–001]

Take notice that on July 21, 2003, the New York Independent System Operator, Inc. (NYISO) filed compliance revisions to its Open Access Transmission Tariff and its Market Administration and Control Area Services Tariff pertaining to the mechanism by which the NYISO pricing rules will reflect actions taken by the NYISO to minimize or prevent an actual shortage condition to meet load and reserves.

The NYISO states it has served a copy of this filing to all persons on the official service list for Docket No. ER03–766–000. The NYISO states it has also

served copies of this filing upon all parties that have executed service agreements under the NYISO's Open Access Transmission Tariff or the Market Administration and Control Area Services Tariff and upon the New York State Public Service Commission.

Comment Date: August 11, 2003.

3. Illumina Energy Solutions, Inc.

[Docket No. ER03–876–000]

Take notice that on July 22, 2003, Illumina Energy Solutions, Inc. (Illumina Energy) submitted an amendment to its petition originally filed on May 27, 2003 for acceptance of Illumina Energy Solutions, Inc. FERC Electric Tariff Original Volume No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Illumina Energy states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. Illumina Energy also states that it is not in the business of generating or transmitting electric power.

Comment Date: August 12, 2003.

4. Puget Sound Energy, Inc.

[Docket No. ER03–919–001]

Take notice that on July 21, 2003, Puget Sound Energy, Inc. (Puget) tendered for filing an amendment to its filing of June 4, 2003 submitting Amendment No. 3 to the Exchange and Transfer Agreement between Puget and the City of Seattle, acting by and through its City Light Department (the City) Puget states that a copy of the filing was served upon the City.

Comment Date: August 11, 2003.

5. Puget Sound Energy, Inc.

[Docket No. ER03–921–001]

Take notice that on July 21, 2003, Puget Sound Energy, Inc. (Puget) tendered for filing an amendment to its filing of June 4, 2003 submitting an unsigned Interconnection Agreement Amendment between Puget and the City of Seattle, acting by and through its City Light Department (the City).

Puget states that a copy of the filing was served upon the City.

Comment Date: August 11, 2003.

6. New England Power Pool

[Docket No. ER03–1089–001]

Take notice that on July 21, 2003, the New England Power Pool (NEPOOL) amended its July 18, 2003 filing submitting the Ninety-Seventh Agreement Amending New England Power Pool Agreement, which NEPOOL states updates and corrects certain information in section 25D of the Restated NEPOOL Open Access Transmission Tariff and in Attachments G and G–1 and the accompanying Addendum of the NEPOOL Tariff. NEPOOL states that the amendment is being filed to include tariff sheets that were inadvertently omitted from their initial filing.

NEPOOL states that copies of these materials were sent to the NEPOOL Participants, Non-Participant Transmission Customers and the and the New England state governors and regulatory commissions.

Comment Date: August 11, 2003.

7. Pacific Gas and Electric Company

[Docket No. ER03–1091–000]

Take notice that on July 21, 2003, Pacific Gas and Electric Company (PG&E) tendered for filing Generator Special Facilities Agreements (GSFAs) and Generator Interconnection Agreements (GIAs) between PG&E and the following parties: Wellhead Power Panoche, LLC (Wellhead Panoche); Wellhead Power Gates, LLC (Wellhead Gates); CalPeak Power—Vaca Dixon, LLC (CalPeak Vaca Dixon); High Winds, LLC (High Winds); Energy Transfer—Hanover Ventures, LP (Hanover); and Duke Energy Morro Bay LLC (Duke Morro Bay) PG&E has requested certain waivers. PG&E states that copies of this filing have been served upon Wellhead Panoche, Wellhead Gates, CalPeak Vaca Dixon, High Winds, Hanover, Duke Morro Bay, the California Independent System Operator Corporation and the CPUC.

Comment Date: August 11, 2003.

8. Southern California Edison Company

[Docket No. ER03–1093–000]

Take notice that on July 21, 2003, Southern California Edison Company (SCE), tendered for filing a Service Agreement For Wholesale Distribution Service under SCE's Wholesale Distribution Access Tariff and an Interconnection Facilities Agreement (Agreements) between SCE and the City of Rancho Cucamonga (Rancho Cucamonga), California. SCE requests the Agreements become effective on July 22, 2003.

SCE states that the Agreements specify the terms and conditions under which SCE will provide wholesale Distribution Service from the California Independent System Operator Controlled Grid at the Etiwanda Generating Station 220 kV bus to a new 66 kV substation to be located at the northeast corner of Rochester Avenue and Stadium Parkway in the City of Rancho Cucamonga.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and Corona.

Comment Date: August 11, 2003.

9. Southern California Edison Company

[Docket Nos. ER03–1094–000 and EL03–214–000]

Take notice that on July 21, 2003, Southern California Edison Company (SCE) tendered for filing a Petition for Declaratory Order and Request for Expedited Treatment, or, in the Alternative, Filing a New Tariff for Scheduling Coordinator Service under section 205 of the Federal Power Act. SCE seeks a declaratory order from the Federal Energy Regulatory Commission (FERC) declaring that SCE is not obligated to serve as Scheduling Coordinator for Los Angeles Department of Water and Power (LADWP) under the Los Angeles-Edison Exchange Agreement. In the alternative, SCE requests that FERC accept, pursuant to section 205 of the Federal Power Act. the Southern California Edison Scheduling Coordinator Services Tariff filed concurrently. The tariff proposes to pass-through the ISO charges incurred in providing scheduling coordinator service under the tariff.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and LADWP.

Comment Date: August 11, 2003.

10. PacifiCorp

[Docket No. ER03–1095–000]

Take notice that on July 21, 2003, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, PacifiCorp's First Revised FERC Rate Schedule No. 306, the amended Long-Term Power Transactions Agreement between PacifiCorp and Arizona Public Service Company.

PacificCorp states that copies of this filing were supplied to the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

Comment Date: August 11, 2003.

11. Megawatt Marketing, LLC

[Docket No. ER03–1096–000]

Take notice that on July 21, 2003, Megawatt Marketing, LLC (Megawatt Marketing) submitted for filing a Notice of Cancellation of it market-based rate tariff.

Megawatt Marketing states that it has not used the market-based rate authority and does not foresee entering into contracts to sell power or engage in wholesale electric power and energy purchases and sales as a marketer.

Comment Date: August 11, 2003.

12. Northeast Utilities Service Company

[Docket No. ER01–1261–001]

Take notice that on July 21, 2003, the Northeast Utilities Service Company (NUSCO) on behalf of The Connecticut Light and Power Company (CL&P), filed for acceptance an executed Licensing, Engineering and Construction Agreement and an executed Interconnection and Operating Agreement between CL&P and Milford Power Company LLC (Milford), each relating to the interconnection of Milford's 560 MW combined cycle power plant to CL&P's transmission system (the Agreements).

NUSCO states that a copy of this filing has been mailed to Milford. NUSCO has requested a July 21, 2003 effective date for the Agreements, and has requested any waivers of the Commission's regulations that may be necessary to permit such an effective date.

Comment Date: August 11, 2003.

13. Fall River Rural Electric Cooperative, Inc.

[Docket No. ES03–40–000]

Take notice that on July 18, 2003, Fall River Rural Electric Cooperative, Inc. (Fall River) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to borrow no more than $13,769,232 under a master loan agreement with the National Rural Utilities Cooperative Finance Corporation.

Fall River also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: August 13, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19680 Filed 8–1–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–2001–000, et al.]

Electric Quarterly Reports et al.; Intent To Withdraw Market-Based Rate Authority

Issued July 28, 2003.

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell.

In the matter of: ER02–2001–000, ER95–1381–000, ER98–3451–000, ER94–1246–000, ER95–0878–000, ER97–1676–000, ER99–0581–000, ER97–4434–000, ER98–3934–000, ER99–1890–000, ER98–0102–000, ER99–2970–000, ER96–0924–000, ER02–0893–000, ER95–1399–000, ER96–0734–000, ER00–1530–000, ER96–1781–000, ER95–1752–000, ER01–2059–000, ER96–1631–000, ER97–3815–000, ER99–2540–000, ER96–1774–000, ER98–3006–000, ER97–3053–000, ER98–1221–000, ER01–1414–000, ER98–2232–000, ER97–4364–000, ER95–0751–000, ER98–3052–000, ER99–0823–000, ER97–4145–000, ER97–4680–000, ER97–1117–000, ER00–2535–000, ER98–2423–000, ER98–1297–000, ER96–2879–000: Electric Quarterly Reports, Alliance Strategies, American Premier Energy Corporation, Ashton Energy Corporation, Audit Pro Incorporated, Black Brook Energy Company, Business Discount Plan, Inc., Clean Air Capital Markets Corporation, Clinton Energy Management Services, Inc., Commodore Electric, Current Energy, Inc., Delta Energy Group, Direct Access Management, LP, Dorman Materials, Inc., Electech, Inc., Energy Marketing Services Inc., Energy & Steam Company, Inc., EnergyTek, Inc., Engineered Energy Systems Corporation, Enpower, Inc., Entrust Energy, LLC, Family Fiber Connection, Inc., Friendly Power Company, LLC, Full Power Corporation, Growth Unlimited Investments, Inc., K & K Resources, Inc., Keystone Energy Services, Inc., Micah Tech Industries, Inc., Northern Lights Power Company, People's Utility Corporation, PowerCom Energy & Communications Access, Inc., PowerGasSmart.com, Inc., PowerSource Corporation, River City Energy, Inc., Sigma Energy, Inc., Starghill Alternative Energy Corporation, TC Power Solutions, The New Power Company, The FURSTS Group, Inc., TransCurrent, LLC, US Energy, Inc.

1. Section 205 of the Federal Power Act (FPA), 16 U.S.C. 824d (2000); *accord* 18 CFR part 35 (2003), requires that all rates, terms and conditions of jurisdictional services be filed with the Commission. In Order No. 2001,[1] a final rule establishing revised public utility filing requirements for rates, terms and conditions of jurisdictional services,[2] the Commission required public utilities, including power marketers, to file, among other things, Electric Quarterly Reports summarizing the contractual terms and conditions in their agreements for all jurisdictional services (including market-based power sales, cost-based power sales, and transmission service) and transaction information (including rates) for short-term and long-term market-based power sales and cost-based power sales during the most recent calendar quarter. In Order No. 2001–C,[3] the Commission required utilities to file their Electric Quarterly Reports using software provided by the Commission. Commission staff review of the Electric Quarterly Report submittals has revealed that a number of utilities that previously had been granted authority to sell power at market-based rates have failed to file Electric Quarterly Reports. Accordingly, this order notifies those utilities that their market-based rate authorizations will be withdrawn unless they comply with the Commission's requirements.

2. In Order No. 2001, the Commission stated that, [i]f a public utility fails to file a[n] Electric Quarterly Report (without an appropriate request for extension), or fails to report an agreement in a report, that public utility may forfeit its market-based rate authority and may be required to file a new application for market-based rate authority if it wishes to resume making sales at market-based rates.[4]

[1] Revised Public Utility Filing Requirements, Order No. 2001, 67 FR 31043, FERC Stats. & Regs. ¶ 31,127 (April 25, 2002), *reh'g denied*, Order No. 2001–A, 100 FERC ¶ 61,074, *reconsideration and clarification denied*, Order No.2001–B, 100 FERC ¶ 61,342, *order directing filings*, Order No. 2001–C, 101 FERC ¶ 61,314 (2002).

[2] Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at P 11–12, 18–21.

[3] Order No. 2001–C, 101 FERC ¶ 61,314 at P 9.

[4] Order No. 2001, FERC Stats. & Regs. ¶ 31,127 at P 222.

3. The Commission further stated that, [t]he Electric Quarterly Reports are designed to satisfy the FPA section 205(c) requirements. For power marketers, the Electric Quarterly Report is intended to replace the current filing of Quarterly Transaction Reports summarizing their market-based rate transactions and the filing of long-term agreements. Electric Quarterly Reports are also intended to replace the Quarterly Transaction Reports and rate filings required of traditional utilities with market-based rate authority. Once this rule becomes effective, the requirement to comply with this rule will supersede the conditions in public utilities' market-based rate authorizations and failure to comply with the requirements of this rule will subject public utilities to the same consequences they would face for not satisfying the conditions in their rate authorizations, including possible revocation of their authority to make wholesale power sales at market-based rates.[5]

4. Commission staff has determined that a number of public utilities that had been granted market-based rate authority have failed to file their Electric Quarterly Reports.[6] Commission staff has made a concerted effort to contact non-filing utilities in writing and by phone to inform them of their regulatory obligation. Moreover, on April 24, 2003, the Secretary of the Commission sent letters to 423 companies reminding them that they were required to file the Electric Quarterly Report. The letters stated: [w]ithin thirty (30) days of the date of this letter, your company utility must file Electric Quarterly Reports for the 2nd, 3rd, and 4th Quarters of 2002 and the 1st Quarter of 2003. Failure to do so may result in the Commission's revocation of your market-based rate authority in accordance with Order No. 2001. * * * Please provide your immediate attention to this important compliance matter.[7]

5. Each of the public utilities listed in the caption of this order was sent this letter but none of them responded. In some cases, the letters were returned unopened. Commission staff called the contacts identified in its power marketer rolls and searched Commission records and the Internet to identify alternate addresses and contacts. Where an alternate address or contact could be identified, a second letter was sent. These letters also received no response.[8]

6. Notwithstanding efforts to find the non-filing public utilities listed in the caption of this order to remind them of their filing obligations, they have not complied with the requirement to file Electric Quarterly Reports.

7. Accordingly, the market-based rate authorizations for those utilities identified in the caption of this order will be withdrawn unless they comply with the Commission's requirements.

The Commission Orders

(A) Within 30 days of the date of issuance of this order, each public utility listed in the caption of this order shall file its Electric Quarterly Reports for the 2nd, 3rd, and 4th Quarters of 2002 and the 1st and 2nd Quarters of 2003. If no such filings are made, the Commission will withdraw the public utility's authority to sell power at market-based rates and terminate its electric market-based rate tariff.

(B) The Secretary is hereby directed to publish this order in the **Federal Register**.

By the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 03–19703 Filed 8–1–03; 8:45 am]

BILLING CODE 6717–01–P

[5] *Id.* at P 223.

[6] In many cases, the utilities had previously failed to file Power Marketer Quarterly Reports (the predecessor to the Electric Quarterly Reports).

[7] Letter informing Abacus Group Ltd, *et al.*, that to date their Electric Quarterly Reports had not been filed and requesting that the reports for the 2nd, 3rd, and 4th quarters of 2002, *et al.*, be filed within 30 days (April 24, 2003).

[8] These public utilities appear to have failed to update their addresses with the Secretary as required in the Commission's regulations, 18 CFR 385.2010(i)(2) (2003). In some cases, they may have gone out of business and failed to file a Notice of Cancellation of their electric market-based rate tariff with the Commission. *See* 18 CFR 35.15 (2003).

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0090; FRL–7539–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Secondary Aluminum Production (40 CFR Part 63, Subpart RRR), EPA ICR Number 1894.04, OMB Control Number 2060–0433

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on July 31, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 3, 2003.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2003–0090, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: María Malavé, Compliance Assessment and Media Programs Division (Mail Code 2223A), Office of Compliance, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7027; fax number: (202) 564–0050; e-mail address: *malave.maria@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 26, 2002 (67 FR 60672), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2003–0090, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW, Washington, D.C. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is: (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comment, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: NESHAP for Secondary Aluminum Production (40 CFR part 63, subpart RRR), EPA ICR Number 1894.04, OMB Control Number 2060–0433.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for the regulations published at 40 CFR part 63, subpart RRR, were proposed on February 11, 1999, promulgated on March 23, 2002, with final rule amendments published on December 30, 2002, which addressed concerns raised from two settlements and other amendments. These regulations apply to component processes at secondary aluminum production plants that are major sources and area sources including aluminum scrap shredders, thermal chip dryers, scrap dryers/delacquering kilns/decoating kilns, secondary aluminum processing units (SAPUs) composed of in-line fluxers and process furnaces (including both melting and holding furnaces of various configurations), sweat furnaces, dross-only furnaces, and rotary dross coolers, commencing construction, or reconstruction after the date of proposal. As a result of a rule amendment in 2002, owners and operators of certain aluminum die casting facilities, aluminum foundries, and aluminum extrusion facilities were excluded from the rule coverage. Respondents do not include the owner or operator of any facility that is not a major source of (Hazardous Air Pollutants) HAP emissions except for those that are area sources of dioxin/furan emissions.

In general, all NESHAP standards require initial notifications, performance tests, and periodic reports. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all sources subject to NESHAP.

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least five years following the date of such measurements, maintenance reports, and records. All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the United States Environmental Protection Agency (EPA) Regional Office.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 28 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Component processes at secondary aluminum production plants that are major sources and area sources including aluminum scrap shredders, thermal chip dryers, scrap dryers/delacquering kilns/decoating kilns, secondary aluminum processing units composed of in-line fluxers and process furnaces (including both melting and holding furnaces of various configurations), sweat furnaces, dross-only furnaces, and rotary dross coolers

Estimated Number of Respondents: 1,640.

Frequency of Response: initial, semiannual and on occasion.

Estimated Total Annual Hour Burden: 94,998 hours.

Estimated Total Capital and Operations & Maintenance (O & M) Annual Costs: $230,550 which includes $88,800 annualized capital/startup costs and $141,750 annual O&M costs.

Changes in the Estimates: There is a decrease of 25,230 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease in burden is due to a decrease in the number of existing major sources from 86 to 81 and the assumption that existing sources already comply with the initial requirements of the rule. In addition, although we expect an increase of approximately 5 percent in the number of new sweat furnaces (74) during the next three years, based on information from manufacturers, the burden associated with this increase will be offset by a decrease of approximately 10 percent in the number of existing sweat furnaces (149) which are anticipated to close due to no longer being economically viable. New sources (*i.e.*, sweat furnaces) will be subject only to the dioxins/furans requirements of the rule which also accounts for a reduction in the monitoring, recordkeeping and reporting requirements.

Dated: July 25, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–19742 Filed 8–1–03; 8:45 am]

BILLING CODE 6560–00–P

ENVIRONMENTAL PROTECTION AGENCY

[SFUND–2003–0004; FRL–7538–9]

Agency Information Collection Activities; Submission of EPA ICR No. 2104.01 to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Brownfields Program—Revitalization Grantee Reporting. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 3, 2003.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: James Maas, Office of Solid Waste and Emergency Response (OSWER), Office of Brownfields Cleanup and Redevelopment (OBCR) 5105T, U.S. EPA Headquarters, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 566–2778; fax number: (202) 566–2757; e-mail address: *maas.james@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On April 4, 2003, (68 FR 16508) EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received two comments in response to this notice. One comment addressed reporting provisions under the Agency's general assistance regulations at 40 CFR parts 30 and 31, and does not pertain to the reporting requirements under this ICR. The other comment stated that grantee burden would be reduced through electronic reporting. EPA agrees with the commenter and, as addressed in the supporting statement to the ICR, is planning to provide grantees the option of providing reports electronically. In addition, EPA has determined that information that was to be collected using the Brownfields Budget Profile Form will be collected on an existing, OMB-approved grants form; therefore, the Brownfields form and its associated burden have been eliminated from this ICR.

EPA has established a public docket for this ICR under Docket ID No. SFUND–2003–0004, which is available for public viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Superfund Docket is (202) 566–0276. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *superfund.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Superfund Docket, Mail Code: 5202T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket*.

Title: Brownfields Program—Revitalization Grantee Reporting, (EPA ICR Number 2104.01). This is a request for a new information collection. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The Small Business Liability Relief and Brownfields Revitalization Act (Pub. L. 107–118) ("the Brownfields Amendments") was signed into law on January 11, 2002. The Act amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, and authorizes EPA to award grants to states, tribes, local governments, and other eligible entities to assess and clean up brownfields sites. Under the Brownfields Amendments, a brownfields site means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. For grant funding purposes, EPA uses the term "brownfields property(ies)" synonymously with the term "brownfields sites." The Brownfields Amendments authorize EPA to award several types of grants to eligible entities on a competitive basis. Under subtitle A of the Small Business Liability Relief and Brownfields Revitalization Act, states, tribes, local governments, and other eligible entities can receive assessment grants to inventory, characterize, assess, and conduct planning and community involvement related to brownfields properties; cleanup grants to carry out cleanup activities at brownfields properties; grants to capitalize revolving loan funds and provide subgrants for cleanup activities; and job training grants to support the creation and implementation of environmental job training and placement programs.

Grant recipients have general reporting and record keeping requirements as a condition of their grant that result in burden. A portion of this reporting and record keeping burden is authorized under 40 CFR parts 30 and 31 and identified in the EPA's general grants ICR (OMB Control Number 2030–0020). EPA requires Brownfields program grant recipients to maintain and report additional information to EPA on the uses and accomplishments associated with the funded brownfields activities. EPA has prepared several forms to assist grantees in reporting the information and to ensure consistency of the information collected. EPA will use this information to meet Federal stewardship responsibilities to manage and track how program funds are being spent, to evaluate the performance of the Brownfields Cleanup and Redevelopment Program, to meet the Agency's reporting requirements under the Government Performance Results Act, and to report to Congress and other program stakeholders on the status and accomplishments of the grants program. This ICR addresses the burden imposed on grant recipients that are associated with those reporting and recordkeeping requirements that are specific to grants awarded under Subtitle A of the Small Business Liability Relief and Brownfields Revitalization Act. This ICR does not address the burden imposed on grant recipients who are awarded grants under Subtitle C of the Small Business Liability Relief and Brownfields Revitalization Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 5 hours per response for job training grant recipients, and 1.25 hours per response for assessment, cleanup, and revolving loan fund grant recipients. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are states, tribes, local governments, and certain non-governmental organizations that apply for and receive grants from EPA to support the cleanup and redevelopment of brownfields properties.

Estimated Number of Respondents: 203.

Frequency of Response: Quarterly.

Estimated Total Annual Hour Burden: 7,320.

Estimated Total Annual Capital and Operations and Maintenance Cost: $0.

Changes in the Estimates: This is a new ICR and the estimated burden represents an increase to the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: July 24, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–19743 Filed 8–1–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0145, FRL–7539–7]

Agency Information Collection Activities: Proposed Collection; Comment Request; Production Line Testing, In-use Testing, and Selective Enforcement Auditing Reporting and Recordkeeping Requirements for Manufacturers of Nonroad Spark Ignition Engines At or Below 19 Kilowatts, EPA ICR Number 1845.03, OMB Control Number 2060–0427

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on 10/31/2003. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 3, 2003.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2003–0145, to EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-docket@epamail.epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Ms. Nydia Y. Reyes-Morales, Mail Code 6403J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–9264; fax number: 202–565–2057; e-mail address: *reyes-morales.nydia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OAR–2003–0145, which is available for public viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Affected entities: Entities potentially affected by this action are manufacturers of spark-ignition engines rated at or below 19 kilowatts.

Title: Production Line Testing, In-use Testing, and Selective Enforcement Auditing Reporting and Recordkeeping Requirements for Manufacturers of Nonroad Spark Ignition Engines At or Below 19 Kilowatts.

Abstract: Title II of the Clean Air Act requires engine manufacturers to obtain a certificate of conformity with applicable emission standards for each engine prototype before they may legally introduced their products into commerce. The Act also mandates EPA to verify that manufacturers have successfully translated their certified engine prototypes into mass produced engines and that these engines comply with emission standards throughout their useful lives. Under the Production Line Testing (PLT) Program, manufacturers test a sample of engines as they leave the assembly line. This self-audit program allows manufacturers to monitor compliance with statistical certainty and minimize the cost of correcting errors through early detection. Under the Voluntary In-use Testing Program, manufacturers test engines after a number of years of use to verify that the engines comply with emission standards throughout their useful lives. Under the spark ignition engine emissions rule, codified at 40 CFR part 90, only Phase 2 SI engines are elegible to participate in the PLT and the In-use Programs. Engine manufacturers can choose to participate in either the PLT Program or the In-use Program.

Sections 206(b) and 213(d) of the Act also mandate that EPA conduct testing of a sample of certified engines to determine if these engines do in fact conform with the applicable emission regulations. Under the Selective Enforcement Audit (SEA) Program, EPA selects a number of engines to be taken directly from the assembly line and tested according to EPA specifications. These audits are performed to ensure that test data submitted by manufacturers is reliable and testing is performed according to EPA regulations. All SI engine manufacturers are subject to be audited. Participation in the SEA program is mandatory.

The information requested by this information collection is used to enforce different provisions of the Act and maintain the integrity of the overall emissions reduction program. Data generated through the PLT, In-use and SEA programs may be used to evaluate future applications for certification, to identify potential issues, and as basis to suspend or revoke the certificate of conformity of those engines that fail. There are recordkeeping requirements in all programs.

The information is collected by the Engine Programs Group, Certification and Compliance Division, Office of Transportation and Air Quality, Office of Air and Radiation. Confidentiality of proprietary information submitted by manufacturers is granted in accordance with the Freedom of Information Act, EPA regulations at 40 CFR part 2, and class determinations issued by EPA's Office of General Counsel. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

TABLE I.—BURDEN STATEMENT

	PLT	In-use	SEA
Estimated Total Burden Hours	6,709	1,410	1,056
Estimated Average Burden Hours/Response	1,677	705	528
Frequency of Response	Quarterly	On occasion	On occasion
Number of Respondents	5	2	2
Total Annual Cost (Industry-wide)	$1,129,021	$54,927	$36,907
Total Annual Capital and Start Up Cost	0	0	0
Total Annual Operation and Maintenance Costs	$14,170	$3,260	$480

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: July 23, 2003.

Robert Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 03–19747 Filed 8–1–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7538–7]

Advisory Committee for Regulatory Negotiation Concerning All Appropriate Inquiry; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency, as required by the Federal Advisory Committee Act (Pub. L. 92–463), is announcing the date and location of an upcoming meeting of the Negotiated Rulemaking Committee On All Appropriate Inquiry.

DATES: A meeting of the Federal Advisory Committee on Regulatory Negotiation for All Appropriate Inquiry is scheduled for September 9 and September 10, 2003. The meeting will take place at the EPA East Building, 1201 Constitution Avenue NW., Washington, DC 20460. The meeting is scheduled to begin at 8:30 a.m. and end at 4:30 p.m. on both days. Dates and locations of subsequent meetings will be announced in later notices.

FOR FURTHER INFORMATION CONTACT: Persons needing further information should contact Patricia Overmeyer of EPA's Office of Brownfields Cleanup and Redevelopment, 1200 Pennsylvania Ave., NW., Mailcode 5105T, Washington, DC 20460, (202) 566–2774, or *overmeyer.patricia@epa.gov*.

SUPPLEMENTARY INFORMATION: Under the Small Business Liability Relief and Brownfields Revitalization Act, EPA is required to develop standards and practices for carrying out all appropriate inquiry. The Federal Advisory Committee meeting is for the purpose of negotiating the contents of a proposed regulation setting federal standards and practices for conducting all appropriate inquiry. At its meeting on September 9 and 10, 2003, the Committee will continue substantive deliberations on the proposed rulemaking including discussion of the criteria established by Congress in the Small Business Liability Relief and Brownfields Revitalization Act amendments to CERCLA (101)(35)(B)(iii). On the morning of September 9, 2003, there will be a presentation to the Committee on the administrative and analytical requirements that must be completed by the Agency when developing a proposed rule.

All meetings of the Negotiated Rulemaking Committee are open to the public. There is no requirement for advance registration for members of the public who wish to attend or make comments at the meeting. Opportunity for the general public to address the Committee will be provided starting at 2:30 p.m. on both September 9 and September 10, 2003.

Dated: July 28, 2003.

Thomas P. Dunne,

Associate Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 03–19745 Filed 8–1–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7538–6]

Draft Brownfield Grants Guidelines

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency (EPA) is holding a public meeting to discuss EPA's draft of the fiscal year 2004 Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants (Brownfield Grants Guidelines). The purpose of the public meeting is for EPA's Office of Brownfields Cleanup and Redevelopment to listen to the views of public stakeholders on the Agency's draft Brownfield Grants Guidelines. During the public meeting, EPA officials will discuss the draft Guidelines. EPA will make the draft Brownfield Grants Guidelines available to the public on the Agency's Web site at *http://www.epa.gov/brownfields* on August 25, 2003. Interested stakeholders and the public are encouraged to download and review the draft guidelines prior to the public meeting.

DATES: The public meeting will be held from 10 a.m.–12 noon on September 8, 2003.

ADDRESSES: The public meeting will be held in Room 1153 EPA East Building at 1201 Constitution Avenue, NW, Washington, DC. Those parties that wish to submit written comments on the draft Brownfield Grants Guidelines must submit their comments to EPA no later than September 8, 2003. To ensure that EPA has adequate time to consider any written comments, the Agency encourages parties to submit their comments to the Agency in electronic format. Electronic comments may be submitted to EPA's Office of Brownfields Cleanup and Redevelopment at *bf.comments@epa.gov*. Parties wishing to submit their comments via the United States Postal Service should address their comments to: Ms. Becky Brooks, U.S. Environmental Protection Agency, Office of Brownfields Cleanup and Redevelopment, MC–5105T, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Hand deliveries should be sent to Ms. Becky Brooks, U.S. Environmental Protection Agency, Office of Brownfields Cleanup and Redevelopment, Room 2406, 1301 Constitution Avenue, NW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For additional information, contact EPA's Office of Brownfields Cleanup and Redevelopment at 202–566–2777.

SUPPLEMENTARY INFORMATION: The FY2004 Brownfield Grants Guidelines will be issued under section 104(k) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended by the Small Business Liability Relief and Brownfields Revitalization Act, Public Law 107–118 (SBLRBRA). Guidelines for grant programs are exempt from notice and comment requirements under 5 U.S.C. 553(a)(2). However, the Agency has decided that consultation with public stakeholders prior to issuing the final version of the Brownfield Grants Guidelines is an appropriate step in effectively implementing the Brownfields Law.

The meeting is open to the general public. Parties wishing to provide their views to EPA on the draft FY04 Guidelines, or to listen to the views of other parties, are strongly encouraged to attend the public meeting. Interested parties not able to attend the public meeting on September 8, 2003, may submit written comments to the Agency. All written comments must be received by the Agency no later than September 8, 2003. The Agency will carefully consider comments received during the public meeting, as well as written comments received on or before September 8, 2003, prior to issuing final Brownfield Grants Guidelines in September 2003. However, due to the need to provide the final Guidelines to potential applicants promptly, EPA does not plan to respond in writing to written comments.

Dated: July 28, 2003.

Linda Garczynski,

Director, Office of Brownfields Cleanup and Redevelopment.

[FR Doc. 03–19746 Filed 8–1–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7538–8]

Final Reissuance of the National Pollutant Discharge Elimination System (NPDES) Storm Water Construction General Permit for the Commonwealth of Massachusetts and Indian Country in Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final Reissuance of NPDES Storm Water Construction General Permits.

SUMMARY: This action provides notice of the reissuance of the Final National Pollutant Discharge Elimination System (NPDES) Storm Water Construction General Permit for the Commonwealth of Massachusetts and Indian country within the Commonwealth of Massachusetts.

DATES: Today's action shall be effective August 4, 2003. The permit will expire five years from the effective date.

ADDRESSES: The final permit is based on an administrative record. The administrative record for the final construction general permit is available for inspection and copying at the Water Docket, located at the EPA Docket Center in the basement of the EPA West

Building, Room B–102, at 1301 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the final permit, the permit's Notice of Intent (NOI), or the permit's Notice of Termination (NOT) is available on EPA's Web site at *http://www.epa.gov/npdes/stormwater/cgp.cfm* or from Thelma Murphy, Office of Ecosystem Protection, Environmental Protection Agency, 1 Congress Street, Suite 1100, Boston, MA 02114–2023; telephone: 617–918–1615; e-mail: *murphy.thelma@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

On July 1, 2003 (68 FR 39087), EPA published final NPDES construction general permits for large construction activity in Regions 1, 2, 3, 6, 7, 8, 9 and 10. Also on July 1, 2003 (68 FR 39087), EPA published final NPDES construction general permits for small construction activity in Regions 1, 2, 3, 5, 6, 7, 8, 9, and 10. At the time of publication, the State Coastal Zone Management Act certification for Massachusetts had not been received, therefore the neither the small or large construction activity general permits were issued in Massachusetts. EPA Region 1 received certification from the Office of Coastal Zone Management. The Office concurred with EPA's certification that the permit as proposed is consistent with the Coastal Zone Management enforceable program policies.

Today's action reissues EPA's NPDES General Permit for Storm Water Discharges from Construction Activities for the Commonwealth of Massachusetts and Indian country in Massachusetts. The permit's terms and conditions are those set forth in the Construction General Permit reissued on July 1, 2003 (68 FR 39087) and available at *http://www.epa.gov/npdes/stormwater/cgp*. The state specific requirements for the Commonwealth of Massachusetts, except Indian country, under section 401 of the Clean Water Act are found in part 9.A.1 of the construction general permit. The Office of Coastal Zone Management did not add any additional requirements to the permit.

Additional information regarding the statutory and regulatory history of the final permit and storm water program; significant changes to the permit; and a summary of the terms and conditions of the permit are found in the July 1, 2003 **Federal Register** and are not being repeated here.

II. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has exempted review of NPDES general permits under the terms of Executive Order 12866.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rule-making requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

Issuance of an NPDES general permit is not subject to rulemaking requirements, under APA section 553 or any other law, and is thus not subject to the RFA requirements. The APA defines two broad, mutually exclusive categories of agency action—"rules" and "orders." Its definition of "rule" encompasses "an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency * * *" APA section 551(4). Its definition of "order" is residual: "a final disposition * * * of an agency in a matter other than rule making but including licensing." APA section 551(6) (emphasis added). The APA defines "license" to "include * * * an agency permit * * *" APA section 551(8). The APA thus categorizes a permit as an order, which by the APA's definition is not a rule. Section 553 of the APA establishes "rule making" requirements. The APA defines "rule making" as "the agency process for formulating, amending, or repealing a rule." APA section 551(5). By its terms, then, section 553 applies only to "rules" and not also to "orders," which include permits.

IV. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their "regulatory actions" on State, local, and tribal governments and the private sector. UMRA uses the term "regulatory actions" to refer to regulations. (*See, e.g.*, UMRA section 201, "Each agency shall * * * assess the effects of Federal regulatory actions * * * (other than to the extent that such regulations incorporate requirements specifically set forth in law)" (emphasis added)). UMRA section 102 defines "regulation" by reference to 2 U.S.C. 658 which in turn defines "regulation" and "rule" by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines "rule" as "any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of [the Administrative Procedure Act (APA)], or any other law. * * *" As discussed in the RFA section of this notice, NPDES general permits are not "rules" under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide "an opportunity for a hearing." Thus, NPDES general permits are not "rules" for RFA or UMRA purposes.

V. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities resulting from the final construction general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements of the construction general permit for large construction activities have already been approved by the Office of Management and Budget (OMB) (OMB Control No. 2040–0188) in previous submissions made for the NPDES permit program under the provisions of the Clean Water Act. Information collection requirements of the construction general permit for small construction activities were submitted to OMB (OMB Control No. 2040–0211) for review and approval and will be published in a separate **Federal Register** Notice.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

- Dated: July 16, 2003.

Linda M. Murphy,

Director, Office of Ecosystem Protection.

[FR Doc. 03–19744 Filed 8–1–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7539–2]

Clean Water Act Section 303(d): Availability of 5 Total Maximum Daily Loads (TMDLs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability for comment of the administrative record file for 5 TMDLs and the calculations for these TMDLs prepared by EPA Region 6 for waters listed in the state of Arkansas under section 303(d) of the Clean Water Act (CWA). These TMDLs were completed in response to the lawsuit styled *Sierra Club, et al.* v. *Browner, et al.*, No. LR–C–99–114.

DATES: Comments must be submitted in writing to EPA on or before September 3, 2003.

ADDRESSES: Comments on the 5 TMDLs should be sent to Ellen Caldwell, Environmental Protection Specialist, Water Quality Protection Division, U.S. Environmental Protection Agency Region 6, 1445 Ross Ave., Dallas, TX 75202–2733, facsimile (214) 665–6490, or e-mail: *caldwell.ellen@epa.gov*. For further information, contact Ellen Caldwell at (214) 665–7513. Documents from the administrative record file for these TMDLs are available for public inspection at this address as well. Documents from the administrative record file may be viewed at *http://www.epa.gov/region6/water/artmdl.htm*, or obtained by calling or writing Ms. Caldwell at the above address. Please contact Ms. Caldwell to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Ellen Caldwell at (214) 665–7513.

SUPPLEMENTARY INFORMATION: In 1999, five Arkansas environmental groups, the Sierra Club, Federation of Fly Fishers, Crooked Creek Coalition, Arkansas Fly Fishers, and Save our Streams (plaintiffs), filed a lawsuit in Federal Court against the United States Environmental Protection Agency (EPA), styled *Sierra Club, et al.* v. *Browner, et al.*, No. LR–C–99–114. Among other claims, plaintiffs alleged that EPA failed to establish Arkansas TMDLs in a timely manner. EPA proposes these TMDLs pursuant to a consent decree entered in this lawsuit.

EPA Seeks Comment on 5 TMDLs

By this notice EPA is seeking comment on the following 5 TMDLs for waters located within the state of Arkansas:

Segment-reach	Waterbody name	Pollutant
08040201–706–16	Flat Creek	Chloride.
08040201–706–16	Flat Creek	Sulfate.
08040201–706–16	Flat Creek	TDS.
08040201–806–8	Salt Creek	Chloride.
08040201–806–8	Salt Creek	TDS.

EPA requests that the public provide to EPA any water quality related data and information that may be relevant to the calculations for these 5 TMDLs. EPA will review all data and information submitted during the public comment period and revise the TMDLs and determinations where appropriate. EPA will then forward the TMDLs to the Arkansas Department of Environmental Quality (ADEQ). The ADEQ will incorporate the TMDLs into its current water quality management plan. The EPA also will revise the Arkansas 303(d) list as appropriate.

Dated: July 24, 2003.

Miguel I. Flores,

Director, Water Quality Protection Division, Region 6.

[FR Doc. 03–19741 Filed 8–1–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket 98–67; DA 03–2409]

Notice of Certification of State Telecommunications Relay Service (TRS) Programs

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The purpose of this document is to notify state Telecommunications Relay Service (TRS) programs that certification of their program has been granted through July 26, 2008. Notice is hereby given that the applications for certification of state Telecommunications Relay Services (TRS) programs of the states listed below have been granted, subject to the condition described below, pursuant to Title IV of the Americans with Disabilities Act (ADA), 47 USC. 225 (f)(2), and § 64.605(b) of the Commission's rules, 47 CFR 64.605(b). On the basis of the state applications, the Commission has determined that: the TRS program of the states meet or exceed all operational, technical, and functional minimum standards contained in section 64.604 of the Commission's rules, 47 CFR 64.604; the TRS programs of the listed states make available adequate procedures and remedies for enforcing the requirements of the state program; and the TRS programs of the listed states in no way conflict with federal law.

DATES: This certification shall remain in effect for a five year period, beginning July 26, 2003, and ending July 25, 2008, pursuant to 47 CFR 64.605(c).

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Erica Myers, (202) 418–2429 (voice), (202) 418–0464 (TTY), or e-mail *Erica.Myers@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, DA 03–2409, CC Docket No. CC 98–67 released July 24, 2003. Copies of applications for certification are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The applications for certification are also available on the Commission's Web site at *http://www.fcc.gov/cgb/dro/trs_by_state.html*. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 44512th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call Consumer & Governmental Affairs Bureau, at (202) 418–0531 (voice), (202) 418–7365 9 (TTY). The *Public Notice* can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cgb/dro*.

Synopsis

The Commission also has determined that, where applicable, the intrastate funding mechanisms of the listed states are labeled in a manner that promotes

national understanding of TRS and does not offend the public, consistent with section 64.605(d) of the Commission's rules, 47 CFR 64.605 (d).

Because the Commission may adopt changes to the rules governing relay programs, including state relay programs, the certification granted herein is conditioned on a demonstration of compliance with the new rules adopted and any additional new rules that are adopted by the Commission. The Commission will provide guidance to the states on demonstrating compliance with such rule changes.

This certification, as conditioned herein, shall remain in effect for a five year period, beginning July 26, 2003, and ending July 25, 2008, pursuant to 47 CFR 64.605 (c). One year prior to the expiration of this certification, July 25, 2007, the states may apply for renewal of their TRS program certification by filing demonstration in accordance with the Commission's rules, pursuant to 47 CFR 64.605(a) and (b).

Third Group of States Approved for Certification

File No: TRS–54–02
Michigan Public Service Commission, State of Michigan
File No: TRS–28–02
Puerto Rico Telecommunications Regulatory Board, State of Puerto Rico

Federal Communications Commission.

Thomas Wyatt,

Deputy Bureau Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 03–19688 Filed 8–1–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

[Petition P3–03]

Petition of United Parcel Service, Inc. for Exemption Pursuant to Section 16 of the Shipping Act of 1984 to Permit Negotiation, Entry and Performance of Service Contracts; Notice of Filing

Notice is hereby given that United Parcel Service, Inc. ("Petitioner") has petitioned, pursuant to section 16 of the Shipping Act of 1984, 46 U.S.C. app. 1715, and 46 CFR 502.67, for an exemption from the Shipping Act, to permit it to negotiate, enter into and perform service contracts.

In order for the Commission to make a thorough evaluation of the Petition, interested persons are requested to submit views or arguments in reply to the Petition no later than August 22, 2003. Replies shall consist of an original and 15 copies, be directed to the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, and be served on Petitioner's counsels, J. Michael Cavanaugh, Esq., Holland & Knight LLP, 2099 Pennsylvania Avenue, NW., Suite 100, Washington, DC 20006–6801 and Charles L. Coleman, III, Esq., Holland & Knight LLP, 50 California Street, Suite 2800, San Francisco, California 94111. It is also requested that a copy of the reply be submitted in electronic form (WordPerfect, Word or ASCII) on diskette or e-mailed to *Secretary@fmc.gov*. Copies of the petition are available at the Office of the Secretary of the Commission, 800 N. Capitol Street, NW., Room 1046. A copy may also be obtained by sending a request to *secretary@fmc.gov* or by calling (202) 523–5725. Parties participating in this proceeding may elect to receive service of the Commission's issuances in this proceeding through email in lieu of service by U.S. mail. A party opting for electronic service shall advise the Office of the Secretary in writing and provide an email address where service can be made. Such request may be directed to *secretary@fmc.gov*.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–19653 Filed 8–1–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 18, 2003.

A. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. *Bank of Hawaii*, Honolulu, Hawaii; Bank of Hawaii Corporation, Honolulu, Hawaii; Chicago Equity Partners Corp., Chicago, Illinois; to engage *de novo* through a joint venture between Bank of Hawaii, Honolulu, and Chicago Equity Partners, Chicago, Illinois, to be known as Bankoh Investment Partners, LLC, Honolulu, Hawaii, in investment advisory activities, pursuant to section 225.28(b)(6)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, July 29, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc.03–19669 Filed 8–01–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Policy Statement on Monetary Equitable Remedies in Competition Cases

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice.

SUMMARY: The Commission has issued a policy statement on the use of disgorgement as a remedy for violations of the Hart-Scott-Rodino (HSR) Act, FTC Act and Clayton Act.

DATES: The Commission approved this policy statement on July 25, 2003.

FOR FURTHER INFORMATION CONTACT: John D. Graubert, Principal Deputy General Counsel, Office of General Counsel, FTC, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2186, *jgraubert@ftc.gov*.

SUPPLEMENTARY INFORMATION:

Policy Statement on Monetary Equitable Remedies in Competition Cases

In recent years the Commission has given considerable thought to the appropriate circumstances in which to seek, as a matter of prosecutorial discretion, monetary equitable remedies (particularly disgorgement or restitution) in competition cases brought pursuant to section 13(b) of the FTC Act.[1] In December 2001, the Commission issued a notice requesting comment on the issue,[2] and received six comments in response.[3] The agency has also reviewed relevant case law and literature, including a number of sources cited by commentors, as well as discussions in public fora and its own experience. The Commission may use all these resources to inform its decisions whether to seek monetary remedies in particular competition matters on a case by case basis. In addition, the Commission sets forth below some general observations on the use of disgorgement or restitution in competition cases.[4]

Disgorgement is an equitable monetary remedy "designed to deprived a wrongdoer of his unjust enrichment and to deter others" from future violations.[5] Depriving the violator of any of the benefits of illegal conduct has long been accepted as an appropriate, indeed necessary, element of antitrust remedies. *See, e.g., United States* v. *Grinnell Corp.*, 384 U.S. 563, 577 (1966); *Schine Chain Theatres, Inc.* v. *United States.*, 334 U.S. 110, 128 (1948). Restitution is also an equitable remedy, serving different but often complimentary purposes. Restitution is intended to restore the victims of a violation to the position they would have been in without the violation, often by refunding overpayments made as a result of the violation. The Commission has sought and obtained disgorgement or restitution in a number of competition cases over the last few decades,[6] most recently in the *Mylan*[7] and *Hearst*[8] matters. In exercising its prosecutorial discretion in the competition area, however, the Commission has moved cautiously and used its monetary remedial authority there sparingly. The Commission continues to believe that disgorgement and restitution can play a useful role in some competition cases, complementing more familiar remedies such as divestiture, conduct remedies, private damages, and civil or criminal penalties. The competition enforcement regime in the United States is multifaceted, and it is important and beneficial that there be a number of flexible tools, as well as a number of potential enforcers, available to address competitive problems in a particular case. Nonetheless, we do not view monetary disgorgement or restitution as routine remedies for antitrust cases. In general, we will continue to rely primarily on more familiar, prospective remedies, and seek disgorgement and restitution in exceptional cases.

As a general matter, the Commission will consider the following three factors in determining whether to seek disgorgement or restitution in a competition case. *First*, the Commission will ordinarily seek monetary relief only where the underlying violation is clear. *Second*, there must be a reasonable basis for calculating the amount of a remedial payment. *Third*, the Commission will consider the value of seeking monetary relief in light of any other remedies available in the matter, including private actions and criminal proceedings. A strong showing in one area may tip the decision whether to seek monetary remedies. For example, a particularly egregious violation may justify pursuit of these remedies even if there appears to be some likelihood of private actions. Moreover, the pendency of numerous private actions may tilt the balance the other way, even if the violation is clear.

Clear Violation

The Commission will ordinarily seek monetary disgorgement only when the violation is clear. A violation is "clear" for this purpose when, based on existing precedent, a reasonable party should expect that the conduct is issue would likely be found to be illegal. ("Clearness" is therefore measured *ex ante*, as of the time the act occurs, and not *ex post* with the benefit of hindsight.) In such cases, the use of disgorgement will serve an appropriate deterrence goal. One key purpose of the disgorgement remedy is to remove the incentive to commit violations by demonstrating to the potential violator that unlawful conduct will not be profitable. This purpose can best be served when the violator can determine in advance that its conduct would probably be considered illegal. Disgorgement might arguably serve useful purposes whether or not the violation was clear—for instance, by providing an example for future violators and restoring the relevant market to its pre-violation status (thereby removing any unfair advantages obtained by the violator). Overall, however, the Commission believes that the value of deterrence is reduced when the violator has no reasonable way of knowing in advance that its conduct is placing it in jeopardy of having to pay back all the potential gains.[9]

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[1] 15 U.S.C. 53(b).

[2] 66 FR 67254 (Dec. 28, 2001); also available on the Commission's web site at *http://www.ftc.gov/os/2001/12/disgorgefrn.htm*.

[3] The following filed comments: The Antitrust Section of the American Bar Association, the American Antitrust Institute, the American Enterprise Institute for Public Policy Research, James M. Spears, Stephen A. Stack, and Kenneth G. Starling. These comments are available at *http://www.ftc.gov/os/comments/disgorgement/index.htm*.

[4] This statement sets forth some observations and intentions of the Commission regarding its exercise of discretion in determining whether to seek monetary equitable remedies in competition cases. It does not create any right or obligation, impose any element of proof, or adjust the burden of proof or production of evidence on any particular issue, as those standards have been established by the courts. This statement of policy does not apply to consumer protection cases.

[5] *SEC* v. *First City Financial Corp.*, 890 F.2d 1215, 1230 (D.C. Cir. 1989).

[6] *See FTC* v. *College of Physicians-Surgeons of Puerto Rico*, Civ. No. 97–2466 HL (D.P.R. Oct. 2, 1997) (alleged price-fixing and boycott, under FTC Act sections 5(a) and 13(b); stipulated judgment included $300,000 restitution to Puerto Rico); *FTC* v. *Mead Johnson & Co.*, No. 92–1266 (D.D.C. June 11, 1992) (alleged bid-rigging, under FTC Act sections 5(a) and 13(b); stipulated judgment included restitution in kind to USDA); *FTC* v. *American Home Products Corp.*, Civ. No. 92–1367 (D.D.C. June 11, 1992) (same); *FTC* v. *Joseph Dixon Crucible Co.*, Civ. No. C80–700 (N.D. Ohio 1983) (alleged price-fixing, under Section 5(1) for violation of earlier order; stipulated judgment included $525,000 in consumer redress, plus $75,000 civil penalty); *Commonwealth Land Title Ins. Co.*, 126 F.T.C. 680, 688 (1998) (alleged price-fixing; consent order included refund of excess charges); *Binney & Smith Inc.*, 96 F.T.C. 625 (1980) (alleged price-fixing; consent order included $1 million in consumer redress); *Milton Bradley Co.*, 96 F.T.C. 638 (1980) (same; consent order included $200,000 in consumer redress); *American Art Clay Co.*, 96 F.T.C. 809 (1980) (same; consent order included $25,000 in consumer redress); *see also FTC* v. *Abbott Laboratories*, 1992–2 Trade Cas. (CCH) ¶ 69,996 (D.D.C. 1992) (Gesell, J.), *dismissed on other grounds*, 853 F. Supp. 526 (D.D.C. 1994) (holding that FTC Act section 13(b) permitted the FTC to seek permanent injunction ordering restitution in antitrust case); FTC press release, June 5, 1989, re: A&P/Waldbaums (noting position of Commissioner Strenio that Commission should have exercised its "authority to obtain full disgorgement of these ill-gotten gains").

[7] *FTC* v. *Mylan Labs. Inc.*, No. 1:98CV03114 (TFH) (D.D.C. Feb 9, 2001) (alleged monopolization; stipulated judgment included $100 million restitution); *see* Mem. Opinion, 62 F. Supp. 2d 25, 36–37 (D.D.C.), *revised and reaffirmed in pertinent part*, 99 F. Supp. 2d 1, 4–5 (D.D.C. 1999).

[8] *FTC* v. *The Hearst Trust*, No. 1:01CV00734 (TPJ) (D.D.C. Nov. 9, 2001) (alleged anticompetitive acquisition and violation of pre-merger filing requirements; stipulated judgment included $19 million disgorgement).

[9] The analysis may be slightly more complicated in cases in which the Commission is seeking restitution rather than disgorgement. Restitution focuses on the victim, not the violator, and is justified by the need to restore the victim to the status quo ante, not on ex ante deterrence of unlawful conduct by a defendant. Thus, for example, when significant consumer harm will not (for one reason or another) be redressed through a private action (see discussion of our third factor, below), the Commission might therefore consider

Continued

The Commission will assess whether a violation is "clear" by means of an objective, not a subjective, standard, *i.e.*, a reasonableness test. "Naked" restraints of trade, such as price-fixing or horizontal market division, are presumptively clear cases. The list of "clear" cases, however, goes beyond traditional per se violations. The *Hearst* and *Mylan* cases are themselves examples of easily condemned conduct that would not necessarily be described as a per se violation: In *Hearst*, merger to monopoly aided by withholding key documents from the FTC;[10] and in *Mylan*, conspiracy to obtain monopoly power through exclusive supply agreements (unsupported by any legitimate business purpose).[11]

Conversely, in the Commission's statement accompanying the issuance of its consent agreement in *Abbott Laboratories and Geneva Pharmaceuticals, Inc.*, File No. 981–0395 (March 16, 2000), the Commission noted that the case represented the first resolution of an antitrust challenge by the government to a private agreement whereby a brand name drug company paid the first generic company that sought FDA approval not to enter the market, and to retain its 180-day period of market exclusivity under the Hatch-Waxman Act. Because the behavior occurred in a complex regulatory context, and because this was the first government antitrust enforcement action in this area, the Commission believed the public interest was satisfied with orders that regulated future conduct by the parties, without further monetary relief. The Commission warned pharmaceutical firms that they "should now be on notice, however, that [such] arrangements * * * can raise serious antitrust issues," and that accordingly, "in the future, the Commission will consider its entire range of remedies in connection with enforcement actions against such arrangements, including possibly seeking disgorgement of illegally obtained profits."[12]

Reasonable Basis for Calculation of Remedy

The Commission will not seek a monetary equitable remedy when there is no reasonable basis for calculating the amount of the disgorgement or restitution to be ordered. Thus, the agency does not expect to seek disgorgement unless it can suggest to a court a reasonable means of calculating the gains or benefits from a violation, nor to seek restitution unless it can offer a reasonable gauge of the amount of injury from a violation. Nontheless, a reasonable basis for calculation does not require undue precision. *See, e.g., FTC* v. *Febre*, 128 F.3d 530, 535 (7th Cir. 1997); *see also SEC* v. *Bilzerian*, 29 F.3d 689 (D.C. Cir. 1994); *SEC* v. *First City Financial Corporation, Ltd.*, 890 F.2d 1215 (D.C. Cir. 1989).

Value Added by the Commission's Monetary Remedy

The Commission will consider monetary remedies when it anticipates that other remedies are likely to fail to accomplish fully the purposes of the antitrust laws or when such a monetary remedy may provide important additional benefits. When other remedies are brought to bear and are likely to result in complete relief, a Commission action for monetary equitable relief might well be an unnecessary and unwise expenditure of limited agency resources.[13]

Thus, for example, a case may be particularly appropriate for disgorgement when private actions likely will not remove the total unjust enrichment from a violation. If statutes of limitation for, or market disincentives to, private damage actions are likely to leave a violator with some or all of the fruits of its violation, we may seek disgorgement to prevent the violator from benefitting from the violation. Similarly, when practical or legal difficulties are likely to preclude compensation for those injured by a violation who in equity should be made whole, we may seek restitution for them.[14] Such situations can arise, for example, when significant aggregate consumer injury results from relatively small individual injuries not justifying the cost of a private lawsuit, or when direct purchasers do not sue (for a variety of possible reasons) and indirect purchasers are precluded from suit under section 4 of the Clayton Act.

Disgorgement can also be particularly valuable when the advantages a violator reaps from the violation greatly outweigh the specific penalties prescribed in applicable laws, and thereby overwhelm the significant disincentive to violating the law that such penalties otherwise provide.[15] The paramount purpose of disgorgement is to make sure that wrongdoers do not profit from their wrongdoing. *E.g., SEC* v. *First City Financial Corp., supra; SEC* v. *Tome*, 833 F.2d 1086 (2d Cir. 1987), *cert. denied*, 486 U.S. 1014–15 (1988); *see also FTC* v. *Gem Merchandising Corp.*, 87 F.3d 466, 470 (11th Cir. 1996).

The Commission is sensitive to the interest in avoiding duplicative recoveries by injured persons or "excessive" multiple payments by defendants for the same injury. Thus, although a particular illegal practice may give rise both to monetary equitable remedies and to damages under the antitrust laws, when an injured person obtains damages sufficient to erase an injury, we do not believe that equity warrants restitution to that person. We will take pains to ensure that injured persons who recover losses through private damage actions under the Clayton Act not recover doubly for the same losses via FTC-obtained restitution. Similarly, in cases involving both disgorgement and restitution, we would apply any available disgorged funds toward restitution and credit any funds paid for restitution against the amount of disgorgement.

We do not, however, consider it appropriate to offset a civil penalty assessment against disgorgement or restitution. As noted above, disgorgement is an equitable remedy whose purpose is simply to remove the unjust gain of the violator. Penalties are intended to punish the violator and reflect a different, additional calculation of the amount that will serve society's interest in optimal deterrence, retribution, and perhaps other interests. A penalty award would have no punitive effect if it were simply offset against these equitable remedies. It is no the Commission's intent, therefore, to allow its monetary relief proceedings to dilute the effectiveness of a civil penalty.

When the same conduct gives rise to two different causes of action, moreover, the imposition of remedies for each cause of action does not necessarily mean the resulting sanctions are "excessive." *See e.g., California* v. *ARC America Corp.*, 490 U.S. 93 (1989); *Loeb Industries, Inc.* v. *Sumitomo Corp.*, 306 F.3d 469, 492 (7th Cir. 2002), *cert. denied*, 123 S. Ct. 2247 (2003); *In Re Lorazepam & Clorazepate Antitrust Litigation*, MDL Dkt. No. 1290 (D.D.C.) (denial of motion to dismiss, July 2, 2001) Mem. Order at 15–16. Ultimately, we believe that courts considering equitable remedies have sufficient flexibility to craft orders to avoid unjust results.[16] We have not yet encountered any such complications.

As a procedural matter, in the Commission's two recent cases in which disgorgement was approved, claims administration procedures were being developed in parallel state and private litigation. To simplify the process and avoid any appearance of duplicative payments, in each of those cases the funds recovered by the Commission were combined with other recoveries and a single claims administration process handled the administration of all the funds. In future cases, the Commission could also consider the suggestion of several commentors to set up an escrow fund, to seek appointment of a special master or claims administrator to determine the appropriate allocation of funds collected, or to seek to coordinate parallel actions.

By direction of the Commision

Donal S. Clark,

Secretary.

[FR Doc. 03–19722 Filed 8–1–03; 8:45 am]

BILLING CODE 6750–01–M

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seeking restitution even if the conduct at issue does not otherwise meet our definition of a "clear" violation.

[10] Although there are some disagreement among the Commissioners in *Hearst* on whether seeking disgorgement resulted in the optimal payment from the defendants, there was general agreement that the conduct at issue was egregious. It is axiomatic that a merger of the only significant competitors in a market (absent unusual circumstances such as proof of the "failing firm" criteria of Section 5 of the Horizontal Merger Guidelines) violates the letter of the Clayton and Sherman Acts. *See United States* v. *Aluminum Co. of America*, 148 F.2d 416, 429 (2d Cir. 1945); Areeda, Hovenkamp & Solow, IV ANTITRUST LAW section 14.12 (2002 ed.). The case is further bolstered when, as in *Hearst*, such conduct is paired with evidence of specific intent to monopolize. *See United States* v. *Microsoft Corp.*, 253 F.3d 34, 59 (D.C. Cir.), (en banc), *cert. denied*, 534 U.S. 952 (2001); Statement of Chairman Pitofsky and Commissioners Anthony and Thompson (Apr. 2001) (available at *http://www.ftc.gov/os/2001/04/hearstpitantthom.htm).*

[11] According to the Commission's complaint in *Mylan*, the parties' exclusive arrangements covered 90% of the supply of the ingredient necessary to produce one of the drugs at issue, and 100% with respect to a second drug. The Commissioners all characterized the conduct alleged as "egregious," with one Commissioner observing that the facts alleged described "a clear cut antitrust violation." Statement of Commissioner Thomas B. Leary, Dissenting in Part and Concurring in Part (available at *http://www.ftc.gov/os/2000/11/mylanlearystatement.htm).*

[12] *See http://www.ftc.gov/opa/2000/03/hoechst.htm.*

[13] Several commentors suggested that the mere availability of treble damage actions or other avenues of relief will ordinarily render disgorgement unnecessary, implying that ultimately such other actions will have extracted the full amount of unjust enrichment from violators and will provide adequate deterrence against future violations. On the current state of the record we cannot share this confidence. We have not been directed to empirical evidence indicating that existing remedies routinely achieve these goals, let alone evidence that antitrust defendants have been subjected to excessive, "duplicative" damage awards. In fact it appears that the issue has been the subject of considerable debate. *See, e.g.*, Richard Posner, ANTITRUST LAW 47 (2d ed. 2001); John Lopatka & William Page, *Who Suffered Antitrust Injury in the Microsoft Case?*, 69 Geo. Wash. L. Rev. 829 (2001); Robert Lande, *Are Antitrust "Treble" Damages Really Single Damages?*, 54 Ohio St. L.J. 115 (1993); Steven Salop & Lawrence White, *Economic Analysis of Private Antitrust Litigation*, 74 GEO. L.J. 1001, 1033–39 (1986); Walter Erickson, *The Profitability of Violating the Antitrust Laws: Dissolution and Treble Damages in Private Antitrust*, 5:4 Antitrust L. & Econ. Rev. 101 (1972); Alfred Parker, *Treble Damage Action—A Financial Deterrent to Antitrust Violations?*, 16 Antitrust Bull. 483 (1971); *compare* Joseph Gallo *et al., Department of Justice Antitrust Enforcement, 1955–1997: An Empirical Study*, 17 Rev. Indus. Org. 75, 125–27 (2000). The Commission will therefore need to continue to evaluate this issue on a case-by-case basis.

[14] For example, *Hearst* presented the somewhat unusual case of a consummated merger that had passed through the HSR review process. Absent FTC action, private plaintiffs would have faced the possibly discouraging prospect of not only having to prove a violation of section 7 of the Clayton Act or section 2 of the Sherman Act, but also, as a practical matter, needing to show a violation of the Hart-Scott-Rodino premerger notification rules to explain why the FTC took no action with respect to the merger.

[15] Such a discrepancy could also be addressed by the Department of Justice in a criminal action seeking, among other remedies, the significant penalties under the alternative fines provisions of the Sentencing Reform Act. 18 U.S.C. 3571(d). When DOJ has initiated a criminal prosecution, however, under existing institutional arrangements the Commission ordinarily will defer to DOJ and not bring a separate action for monetary relief.

[16] Courts routinely allows "set-offs" and credits, for example, to avoid duplicative payments. *See, e.g., SEC* v. *First Jersey Sec., Inc.*, 101 F. 3d 1450, 1475 (2d Cir. 1996), *cert. denied*, 552 U.S. 812 (1997); *SEC* v. *Penn Cent. Co.*, 425 F. Supp. 593, 599 (E.D. Pa. 1976); *see also SEC* v. *Texas Gulf Sulphur Co.*, 446 F.2d 1301, 1307 (2d Cir.) (establishing escrow fund to prevent "double liability"), *cert denied*, 404 U.S. 1005 (1971).

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

Notice of Intent To Extend an Information Collection

AGENCY: Harry S. Truman Scholarship Foundation.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Harry S. TrumanScholarship Foundation [Foundation] will publish periodic summaries of proposed projects.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the forms of information technology.

DATES: Written comments on this notice must be received by October 3, 2003 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Contact Louis H. Blair, Executive Secretary, Harry S. Truman Scholarship Foundation, 712 Jackson Place, NW., Washington, DC 20006; telephone 202–395–4831; or send e-mail to *lblair@truman.gov*. You also may obtain a copy of the data collection instrument and instructions from Mr. Blair.

SUPPLEMENTARY INFORMATION:

Title of Collection: Truman Scholar Payment Request Form.

OMB Approval Number: 3200–0005.

Expiration Date of Approval: September 30, 2003.

Type of Request: Intent to seek approval to extend an information collection for three years.

Proposed Project: The Foundation has been providing scholarships since 1977 in compliance with Public Law 93–642. This data collection instrument is used to collect essential information to enable the Truman Scholarship Foundation to determine the amount of financial support to which each Truman Scholar is eligible and then to make the payment. A total response rate of 100% was provided by the 315 Truman Scholars who received support in FY 2002.

Estimate of Burden: The Foundation estimates that, on average, 0.5 hours per Scholar applying for funds will be required to complete the Payment Request Form, for a total annual burden of 157.5 hours for all applicants.

Respondents: Individuals.

Estimated Number of Responses: 315.

Estimated Total Annual Burden on Respondents: 157.5 hours.

Dated: July 30, 2003.

Louis H. Blair,

Executive Secretary.

[FR Doc. 03–19777 Filed 8–1–03; 8:45 am]

BILLING CODE 6820–AD–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–59–03]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and

Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Emergency Epidemic Investigations (0920–0008)—Extension—(Epidemiology Program Office, EPO)—One of the objectives of CDC's epidemic services is to provide for the prevention and control of epidemics and protect the population from public health crises such as man made or natural biological disasters and chemical emergencies. This is carried out, in part, by training investigators, maintaining laboratory capabilities for identifying potential problems, collecting and analyzing data, and recommending appropriate actions to protect the public's health. When state, local, or foreign health authorities request help in controlling an epidemic or solving other health problems, CDC dispatches skilled epidemiologists from the Epidemic Intelligence Service (EIS) to investigate and resolve the problem. Resolving public health problems rapidly ensures costs effective health care and enhances health promotion and disease prevention. Annually, the EIS Program coordinates 400 Epidemic Assistance Investigations (Epi-Aids) and state-based field investigations.

Epidemics are prevented and controlled by mobilizing and deploying CDC staff, primarily EIS officers to respond rapidly to disease outbreaks and disaster situations. At the request of public health officials—at the state, national, or international level—CDC provides assistance by participating in epidemiologic field investigations.

The purpose of the Emergency Epidemic Investigation surveillance is to collect data on the conditions surrounding and preceding the onset of a problem. The data must be collected in a timely fashion so that information can be used to develop prevention and control techniques, to interrupt disease transmission and to help identify the cause of an outbreak. Since the events necessitating the collections of information are of an emergency nature, most data collection is done by direct interview or written questionnaire and are one-time efforts related to a specific outbreak or circumstance. If during the emergency investigation, the need for further study is recognized, a project is designed and separate OMB clearance is required. Interviews are conducted to be as unobtrusive as possible and only the minimal information necessary is collected. The Emergency Epidemic Investigations is the principal source of data on outbreaks of infectious and noninfectious diseases, injuries, nutrition, environmental health and occupational problems.

Each investigation does contribute to the general knowledge about a particular type of problem or emergency, so that data collections are designed taking into account similar situations in the past. Some questionnaires have been standardized, such as investigations of outbreaks aboard aircraft or cruise vessels.

The Emergency Epidemic Investigations provides a range of data on the characteristics of outbreaks and those affected by them. Data collected include demographic characteristics, exposure to the causative agent(s), transmission patterns and severity of the outbreak on the affected population. These data, together with trend data, may be used to monitor the effects of change in the health care system, planning of health services, improving the availability of medical services and assessing the health status of the population.

Users of the Emergency Epidemic Investigations data include, but are not limited to EIS Officers in investigating the patterns of disease or injury, investigating the level of risky behaviors, identifying the causative agent and identifying the transmission of the condition and the impact of interventions.

It is difficult to predict the number of epidemic investigations which might occur in any given year. The previous three years' experience shows an annualized burden of 3,000 hours and respondent total of 12,000. For this clearance, we are requesting 3,750 total burden hours. This is due to the increase in the number of investigations performed over the past two years.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden per response (in hrs.)
Total Respondents	15,000	1	15/60

Dated: July 29, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–19585 Filed 8–1–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–55–03]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Congenital Syphilis (CS) Case Investigation and Report Form (OMB Control No. 0920–0128)—Revision—National Center for HIV, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC). CDC proposes to continue data collection for congenital syphilis case investigations under the "Congenital Syphilis Case Investigation and Report Form" (CDC73.126 REV 11–98); this form is currently approved under OMB No. 0920–0128. This request is for a 3-year extension of clearance. Reducing congenital syphilis is a national objective in the DHHS Report entitled Healthy People 2010 (Vol I and II). Objective 25–9 of this document states the goal: "Reduce congenital syphilis to 1 new case per 100,000 live births". In order to meet this national objective, an effective surveillance system for congenital syphilis must be continued to monitor current levels of disease and progress towards the year 2010 objective. This data will also be used to develop intervention strategies and to evaluate ongoing control efforts.

Respondent burden is approximately 15 minutes per reported case. The estimated annual number of cases expected to be reported using the current case definition is 500 or less. Therefore, the total number of hours for congenital syphilis reporting required will be approximately 130 hours per year.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)
State/Local Health Departments	65	8	15/60

Dated: July 29, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–19686 Filed 8–1–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Minority Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (HIV/AIDS) Research Initiative To Build Capacity in Black and Hispanic Communities and Among Researchers Who Conduct HIV/AIDS Epidemiologic and Prevention Research in These Communities, Program Announcement Number 03097

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Minority Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (HIV/AIDS) Research Initiative to Build Capacity in Black and Hispanic Communities and Among Researchers Who Conduct HIV/AIDS Epidemiologic and Prevention Research in these Communities, Program Announcement Number 03097.

Times and Dates: 8:30 a.m.–9 a.m., August 18, 2003 (Open). 9 a.m.–5 p.m., August 18, 2003 (Closed). 8:30 a.m.–5 p.m., August 19, 2003 (Closed).

Place: The Westin Hotel at Perimeter, 7 Concourse Parkway, Atlanta, GA 30328, Telephone 770.395.3900.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement Number 03097.

Note: Due to program oversight, this **Federal Register** Notice is being published less than 15 days before the date of the meeting.

FOR FURTHER INFORMATION CONTACT: Beth Wolfe, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, 1600 Clifton Road, NE., MS–E07, Atlanta, GA 30333, Telephone 404.639.8531.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 30, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–19829 Filed 7–31–03; 11:41 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–255, CMS–R–199]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (CMS)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Municipal Health Services Cost Report Form and supporting Regulations 42 CFR 405.2470; *Form No.:* CMS–255 (OMB# 0938–0155); *Use:* The Municipal Health Services Program Cost Report (CMS 255) is used by the participating clinics to report costs for health care services rendered to Medicare beneficiaries. It is

also used to gather data to properly evaluate the demonstration; *Frequency:* Annually; *Affected Public:* Not-for-profit institutions; *Number of Respondents:* 14; *Total Annual Responses:* 14; *Total Annual Hours:* 476.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicaid Report on Payables and Receivables; *Form No.:* CMS–R–199 (OMB# 0938–0697); *Use:* The Chief Financial Officers Act of 1990 requires government agencies to produce auditable financial statements. This form will collect accounting data from the States on Payables and Receivables; *Frequency:* Annually; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 57; *Total Annual Responses:* 57; *Total Annual Hours:* 342.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room: C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 28, 2003.

Julie Brown,

Acting CMS Reports Clearance Officer, Division of Regulations Development and Issuances, Office of Strategic Operations and Strategic Affairs.

[FR Doc. 03–19698 Filed 8–1–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–643, CMS–668B, CMS–10067]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (CMS)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved request; *Title of Information Collection:* Hospice Survey and Deficiencies Report Form and Supporting Regulations at 42 CFR part 488.26 and 4442.30; *Form No.:* CMS–643 (OMB# 0938–0379); *Use:* In order to participate in the Medicare program, a hospice must meet certain Federal health and safety conditions of participation. This form will be used by State surveyors to record data about a hospice's compliance with these conditions of participation in order to initiate the certification or recertification process; *Frequency:* On occasion; *Affected Public:* Not-for-profit institutions, Business or other for-profit; *Number of Respondents:* 2,339; *Total Annual Responses:* 475; *Total Annual Hours:* 238.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Post Laboratory Survey Questionnaire—Laboratory, and Supporting Regulations in 42 CFR 493.1771, 493.1773, and 493.1777; *Form No.:* CMS–668B (OMB# 0938–0653); *Use:* To provide an opportunity and a mechanism for CLIA laboratories surveyed by CMS or CMS' agent to express their satisfaction and concerns about the CLIA survey process; *Frequency:* Biennially; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 22,500; *Total Annual Responses:* 11,250; *Total Annual Hours:* 2,813.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Pharmacy Plus Template for Low Income Seniors under Medicaid; *Form No.:* CMS–10067 (OMB# 0938–0889); *Use:* The template for the Pharmacy Plus program for low income seniors under Medicaid will enable states to apply, via a standard format, to provide a drug benefit to elderly recipients; use of this format will expedite the process of obtaining CMS review and approval of an application; *Frequency: Other:* 3 years after initial submission for the 1915 (c) waiver; 5 years after initial submission for the 1115 demonstration; *Affected Public:* State Government; *Number of Respondents:* 51; *Total Annual Responses:* 25; *Total Annual Hours:* 115.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: July 28, 2003.

Julie Brown,

Acting, Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–19699 Filed 8–1–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003P–0313]

Canned Tuna Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Bumble Bee Seafoods, Inc., to market test a product designated as "Bumble Bee Chunk Light Tuna 'Touch of Lemon' in water, with natural lemon flavor" that deviates from the U.S. standard of identity for canned tuna. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product, identify mass production problems, and assess commercial feasibility.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than Novemeber 3, 2003.

FOR FURTHER INFORMATION CONTACT: Linda McCollum, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2371.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity issued under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Bumble Bee Seafoods, Inc., P.O. Box 85362, 9655 Granite Ridge Dr., suite 100, San Diego, CA 92123.

The permit covers limited interstate marketing tests of products identified as "Bumble Bee Chunk Light Tuna 'Touch of Lemon' in water, with natural lemon flavor" that deviate from the U.S. standard of identity for canned tuna (21 CFR 161.190) in that lemon juice and lemon oil will be used as flavoring ingredients instead of lemon oil and citric acid. Also, the product will be labeled "in water, with natural lemon flavor" rather than "lemon flavored chunk light tuna." In all other respects, the test product will conform to the standard for canned tuna. The purpose of this permit is to test the product throughout the United States.

This permit provides for the temporary marketing of approximately 20,000 tons (20,321,200 kilograms) of product packaged in 1.9 million cases. The test product will be manufactured by Bumble Bee Seafoods, Inc., 13100 Arctic Circle, Santa Fe Springs, CA 90670; and at Bumble Bee International, Inc., Malecon Industrial Zone, Jose Gonzalez Clemente Ave., Rd. 341 Km 4.5, Mayaguez, PR 00680. The product will be distributed throughout the United States.

The information panel of the labels will bear nutrition labeling in accordance with 21 CFR 101.9. Each of the ingredients used in the food must be declared on the labels as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than November 3, 2003.

Dated: July 21, 2003.

Christine Taylor,

Director, Office of Nutritional Products, Labeling and Dietary Supplements, Center for Food Safety and Applied Nutrition.

[FR Doc. 03–19658 Filed 8–1–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Peripheral and Central Nervous System Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Peripheral and Central Nervous System Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 24 and 25, 2003, from 8 a.m. to 5 p.m.

Location: Holiday Inn, Versailles Ballrooms, 8120 Wisconsin Ave., Bethesda MD, 301–652–2000.

Contact Person: Anuja Patel, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, or e-mail: *patelA@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12543. Please call the Information Line for up-to-date information on this meeting.

Agenda: On September 24, 2003, the committee will discuss new drug application (NDA) 21–487, memantine hydrochloride, Forest Laboratories, Inc., indicated for the treatment of moderate to severe dementia of the Alzheimer's type. On September 25, 2003, the committee will discuss NDA 20–717, Provigil (modafinil) Tablets, Cephalon, Inc., indicated for use to improve wakefulness in patients with excessive sleepiness associated with disorders of sleep and wakefulness.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 15, 2003. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on both days. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 15, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Angie Whitacre at 301–827–7001 at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 25, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–19657 Filed 8–1–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee G—Education.

Date: October 21–23, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Ilda M. McKenna, PhD, Scientific Review Administrator, Research Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard Room 8111, Bethesda, MD 20892, 301–496–7841, *mckennai@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 29, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–19767 Filed 8–1–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, Cranberry.

Date: September 11–12, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Carol Pontzer, PhD, Scientific Review Administrator, National Center for Complementary and Alternative Medicine, 6707 Democracy Blvd., Bethesda, MD 20892.

Dated: July 29, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–19771 Filed 8–1–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Research Resources Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Research Resources Council.

Date: September 10–11, 2003.

Open: September 10, 2003, 8:30 a.m. to 6 p.m.

Agenda: Updating NCRR's Strategic Plans.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

Open: September 11, 2003, 8:30 a.m. to 12:30 p.m.

Agenda: Updating NCRR's Strategic Plans.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

Closed: September 11, 2003, 12:30 p.m. to Adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Louise E. Ramm, Phd, Deputy Director, National Center for Research Resources, National Institutes of Health, Building 31, Room 3B11, Bethesda, MD 20892, 301–496–6023.

Information is also available on the Institute's/Center's home page: *www.ncrr.nih.gov/newspub/minutes.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: July 29, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–19772 Filed 8–1–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel Research Infrastructure.

Date: August 6, 2003.

Time: 3 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: One Democracy Plaza, Office of Review, 6701 Democracy Blvd., Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: William C. Angus, Ph.D., Health Scientist Administrator, Division of Research Infrastructure, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., MSC 4874, Room 926, Bethesda, MD 20892–4874, 301–451–4217, *angusw@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: July 29, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–19773 Filed 8–1–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel Comparative Medicine.

Date: September 3–4, 2003.

Time: September 3, 2003, 8 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Hillsboro Courtyard by Marriott, 3050 Stucki Place, Hillsboro, OR 97124.

Contact Person: Carol Lambert, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institute of Health, 6701 Democracy Boulevard, 1 Democracy Plaza, Room 1076, Bethesda, MD 20892–4874, (301) 435–0814, *lambert@mail.nih.gov*.

Name of Committee: Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities.

Date: October 6, 2003–8, 2004.

Open: October 6, 2003, 8 a.m. to 9 a.m.

Agenda: To discuss program planning and other issues.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Closed: October 6, 2003, 9 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: D.G. Patel, PhD, Scientific Review Administrator, National Institutes of Health, National Center For Research Resources, Office of Review, 6701 Democracy, Room 1070, MSC–4874, Bethesda, MD 20892, 301–435–0824, *pateldg@mail.nih.gov*.

Name of Committee: National Center for Research Resources Initial Review Group, Clinical Research Review Committee.

Date: October 8–9, 2003.

Open: October 8, 2003, 8 a.m. to 8:30 a.m.

Agenda: To discuss program planning and other issues.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Closed: October 8, 2003, 8:30 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Sheryl K. Brining, PhD, Acting Director, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Boulevard, 1 Democracy Plaza, Room 1074, Bethesda, MD 20892–4874, 301–435–0809, *sb44k@nih.gov*.

Name of Committee: National Center for Research Resources Special Emphasis Panel Biomedical Research Technology.

Date: October 15–16, 2003.

Time: October 15, 2003, 8 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Bo Hong, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, One Democracy Plaza, 6701 Democracy Blvd., Room 1078, Bethesda, MD 20892–7965, (301) 435–0813, *hongb@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: July 22, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–19774 Filed 8–1–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Career Enhancement Award for Stem Cell Research.

Date: August 27, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John F. Connaughton, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 757, 6707 Democracy Boulevard, Bethesda, MD 20892, (301) 594–7797, *connaughtonj@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–19760 Filed 8–1–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel "Quantitation of Drugs of Abuse by GC/MS".

Date: August 7, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1438.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: July 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–19761 Filed 8–1–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Review of K08 and R21 Application.

Date: July 28, 2003.

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Wilco Building, 6000 Executive Boulevard, Suite 409, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sean N. O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, AA–1 Conflict Special Emphasis Panel.

Date: August 7, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Wilco Building, 6000 Executive Boulevard, Suite 409, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute on Alcohol Abuse and Alcoholism, 6000 Executive Blvd, Suite 409, Bethesda, MD 20892–7003 (301) 443–2926 *skandasa@mail.niyh.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: August 29, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Wilco Building, 6000 Executive Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Eugene G. Hayunga, PhD, Chief, Extramural Project Review Branch, OSA, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Wilco Building, Suite 409, 6000 Executive Boulevard, MSC 7003, Bethesda, MD 20892–7003, 301–443–2860; *ehayunga@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians, 93.272, Alcohol National Research Service Awards for Research Training, 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: July 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–19762 Filed 8–1–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel Clinical Trial R01 Application.

Date: August 23, 2003.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place; National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–594–0635.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 29, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–19764 Filed 8–1–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Nursing Research Special Emphasis Panel, May 14, 2003, 10 a.m. to May 14, 2003, 12 p.m. National Institute of Nursing Research, 6701 Democracy Plaza, Bethesda, MD 20817 which was published in the **Federal Register** on May 15, 2003, FR 68, Pg 26324.

The meeting will be held on July 24, 2003 at 1 p.m. to 2 p.m. The meeting is closed to the public.

Dated: July 29, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–19766 Filed 8–1–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National institute of Mental Health Special Emphasis Panel, Ancillary Studies to NIMH Multi-Site Clinical Trials.

Date: August 4, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216, *hhaigler@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 29, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–19768 Filed 8–1–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, "Research Program Project: Biodefense and Emerging Infectious Diseases".

Date: September 4, 2003.

Time: 2:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Gregory P. Jarosik, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892, 301–496–2550, *gjarosik@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 29, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–19769 Filed 8–1–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Unsolicited Program Project Application.

Date: August 26, 2003.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health/NIAID, 6700B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Priti Mehrotra, PhD, Scientific Review Administrator, Division of

Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 6700–B Rockledge Drive, Room 2100, Bethesda, MD 20892–7616, 301–435–9369, *pm158b@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 29, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–19770 Filed 8–1–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the Board of Regents of the National Library of Medicine.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Regents of the National Library of Medicine, Extramural Programs Subcommittee.

Date: September 8, 2003.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 38A, HPCC B1N30, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg. 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine, Subcommittee on Outreach and Public Information.

Date: September 9, 2003.

Open: 7:30 a.m. to 8:45 a.m.

Agenda: Outreach Activities for the National Library of Medicine.

Place: National Institutes of Health, Building 38, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg. 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine.

Date: September 9–10, 2003.

Open: September 9, 2003, 9 a.m. to 4:30 p.m.

Agenda: Administrative Reports and Program Discussion.

Place: National Institutes of Health, Building 38, Board Room, 2E17, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: September 9, 2003, 4:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 38, Board Room, 2E17, 8600 Rockville Pike, Bethesda, MD 20894.

Open: September 10, 2003, 9 a.m. to 12 p.m.

Agenda: Administrative Reports and Program Discussion.

Place: National Institutes of Health, Building 38, Board Room, 2E17, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg. 38, Room 2E17B, Bethesda, MD 20894.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's Home page: *www.nlm.nih.gov/od/bor/bor.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: July 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–19763 Filed 8–1–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in secitons 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Immunology—Autoimmunity and Innate Immunity.

Date: July 31, 2003.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Samuel C. Edwards, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892, (301) 435–1152, *edwardss@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 MCHA (2).

Date: July 31, 2003.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert Lees, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7806, Bethesda, MD 20892, (301) 435–2684, *leesro@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Autoimmunity Innate and Adaptive Immune Responses.

Date: August 1, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Samuel C. Edwards, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892, (301) 435–1152, *edwardss@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, B Cell Epitope Mapping of Pathogens.

Date: August 4, 2003.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joanna M. Pyper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, (301) 435–1151, *pyperj@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Mammalian Double-Strand Break and Recombinational Repair.

Date: August 5, 2003.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed M. Quadri, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, (301) 435–1211.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Molecular Immunology—Class Switch Recombination.

Date: August 7, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Samuel C. Edwards, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892, (301) 435–1152, *edwardss@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Drug Development.

Date: August 7, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6206, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Escherichia coli Chemotaxis.

Date: August 8, 2003.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Melody Mills, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive MSC 7808, Room 3206, Bethesda, MD 20892, 301–435–0903.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 29, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–19765 Filed 8–1–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG 2003–15778]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers: 1625–0023 (Formerly 2115–0092), 1625–0017 (Formerly 2115–0056), 1625–0044 (Formerly 2115–0542) and 1625–0008 (Formerly 2115–0017)

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of four Information Collection Requests (ICRs). The ICRs comprise Barge Fleeting Facility Records, Various International Agreement Safety Certificates and Documents, and Outer Continental Shelf (OCS) Activities—Title 33 CFR Subchapter N and Regattas and Marine Parades. Before submitting the ICRs to OMB, the Coast Guard is inviting comments on them as described below.

DATES: Comments must reach the Coast Guard on or before October 3, 2003.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2003–15778] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov*.

(5) Electronically through Federal eRule Portal: *http://www.regulations.gov*.

The Facility maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

Copies of the complete ICRs are available through this docket on the Internet at *http://dms.dot.gov*, and also from Commandant (G–CIM–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street, SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; or Dorothy Beard, Chief, Documentary Services

Division, DOT, 202–366–5149, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this request for comment by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov*, and they will include any personal information you have provided. We have an agreement with DOT to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2003–15778], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES;** but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 [65 FR 19477], or you may visit *http://dms.dot.gov*.

Information Collection Requests

1. *Title:* Barge Fleeting Facility Records.

OMB Control Number: 1625–0023.

Summary: This collection of information requires the person-in-charge of a barge fleeting facility to keep records of twice daily inspections of barge moorings and movements of barges and hazardous cargo in and out of the facility.

Need: 33 CFR 165.803 requirements are intended to prevent barges from breaking away from a fleeting facility and drifting downstream out of control in the congested Lower Mississippi River waterway system.

Respondents: Operators of barge fleeting facilities.

Frequency: Daily.

Burden: The estimated burden is 32,092 hours a year.

2. *Title:* Various International Agreement Safety Certificates and Documents.

OMB Control Number: 1625–0017.

Summary: Eleven forms were created due to the adoption of the International Convention for Safety of Life at Sea, 1974 (SOLAS). The 11 forms are evidence of compliance with this convention for U.S. vessels on international voyages. Without the proper certificates or documents, a U.S. vessel could be detained in foreign ports.

Need: SOLAS applies to all mechanically propelled cargo vessels of 500 or more gross tons (GT), and to all mechanically propelled passenger vessels carrying more than 12 passengers that engage in international voyages. SOLAS and title 46 CFR 2.01–25 list certificates and documents that may be issued to vessels.

Respondents: Owners and operators of vessels.

Frequency: On occasion.

Burden: The estimated burden is 16 hours a year.

3. *Title:* Outer Continental Shelf (OCS) Activities—Title 33 CFR Subchapter N.

OMB Control Number: 1625–0044.

Summary: The Outer Continental Shelf Lands Act, as amended, authorizes the Coast Guard to promulgate and enforce regulations promoting the safety of life and property on OCS facilities. Title 33 Subchapter N promulgate the regulations.

Need: The information is needed to ensure compliance with the safety regulations related to OCS activities. The regulations include reporting and recordkeeping requirements for annual inspections of fixed OCS facilities, employee citizenship records, station bills, and emergency evacuation plans.

Respondents: Operators of facilities and vessels engaged in activities on the OCS.

Frequency: On occasion.

Burden: The estimated burden is 5,767 hours a year.

4. *Title:* Regattas and Marine Parades.

OMB Control Number: 1625–0008.

Summary: Title 46 U.S.C. 1233 authorizes the Coast Guard to issue regulations to promote the safety of life on navigable waters during regattas or marine parades. Title 33 CFR 100.15 promulgate the regulations for providing needed information for permitting regattas and marine parades to the Coast Guard.

Need: The Coast Guard needs to determine whether a marine event may present a substantial threat to the safety of human life on navigable waters and which measures are needed to ensure the safety of life during the events. The requirement for sponsors of these events to provide specific information on their events is an efficient means for the Coast Guard to learn of the events and to address environmental impacts of events requiring permits.

Respondents: Sponsors of marine events.

Frequency: On occasion.

Burden: The estimated burden is 3,000 hours a year.

Dated: July 29, 2003.

Clifford I. Pearson,

Director of Information and Technology.

[FR Doc. 03–19749 Filed 8–1–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–15779]

Towing Safety Advisory Committee and National Boating Safety Advisory Council

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Commercial/Recreational Boating Interface Working Group of the Towing Safety Advisory Committee (TSAC) will meet with representatives of the National Boating Safety Advisory Council to discuss issues relating to towboat/barge and recreational boat navigation lights and communications. The meeting will be open to the public.

DATES: The Working Group will meet on Tuesday, August 19, 2003, from 9 a.m. to 3 p.m. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before August 15, 2003. Requests to have a copy of your material distributed to each member of the Working Group should reach the Coast Guard on or before August 8, 2003.

ADDRESSES: The Working Group will meet in room 1303, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC. Send written material and requests to make oral presentations to Mr. Gerald Miante, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice and related documents are available on the Internet at *http://dms.dot.gov* under the docket number USCG–2003–15779.

FOR FURTHER INFORMATION CONTACT: Mr. Miante, Assistant Executive Director of TSAC, telephone 202–267–0214, fax 202–267–4570, or e-mail *gmiante@comdt.uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of the meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2 (Pub. L. 92–463, 86 Stat.770, as amended).

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Assistant Executive Director no later than August 15, 2003. Written material for distribution at the meeting should reach the Coast Guard no later than August 8, 2003.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Assistant Executive Director as soon as possible.

Dated: July 28, 2003.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 03–19753 Filed 8–1–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1477–DR]

Arizona; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arizona (FEMA–1477-DR), dated July 14, 2003, and related determinations.

EFFECTIVE DATE: July 15, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 15, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–19718 Filed 8–1–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1476–DR]

Indiana; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA–1476–DR), dated July 11, 2003, and related determinations.

EFFECTIVE DATE: July 28, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Indiana is hereby amended to include Public Assistance for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 11, 2003:

Adams, Allen, Carroll, Howard, Huntington, Jasper, Kosciusko, Miami, Newton, Parke, Tippecanoe, Warren, and Wells Counties for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–19717 Filed 8–1–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1475–DR]

Kentucky; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–1475–DR), dated July 2, 2003, and related determinations.

EFFECTIVE DATE: July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal

Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 2, 2003:

Knox County for Individual Assistance (already designated for Public Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program-Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–19720 Filed 8–1–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1471–DR]

Kentucky; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–1471–DR), dated June 3, 2003, and related determinations.

EFFECTIVE DATE: July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 3, 2003:

Knox County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program-Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–19721 Filed 8–1–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1480–DR]

Nebraska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Nebraska (FEMA–1480–DR), dated July 21, 2003, and related determinations.

EFFECTIVE DATE: July 21, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 21, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Nebraska, resulting from severe storms and tornadoes on June 9, 2003, through July 14, 2003, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Nebraska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Justin R. DeMello, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Nebraska to have been affected adversely by this declared major disaster:

Cedar, Douglas, Greeley, Howard, Jefferson, McPherson, Perkins, Platte, Stanton, and Thayer Counties for Public Assistance.

All counties within the State of Nebraska are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program-Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–19711 Filed 8–1–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1478–DR]

Ohio; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA–1478–DR), dated July 15, 2003, and related determinations.

EFFECTIVE DATE: July 11, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 11, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–19715 Filed 8–1–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1479–DR]

Texas; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–1479–DR), dated July 17, 2003, and related determinations.

EFFECTIVE DATE: July 28, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 17, 2003:

Atascosa and McMullen Counties for Public Assistance.

DeWitt, Frio, Karnes, Live Oak, and San Patricio Counties for Individual Assistance and Public Assistance.

Bee, Brazoria, Galveston, and Goliad Counties for Public Assistance (already designated for Individual Assistance.)

Calhoun, Jackson, Matagorda, Refugio, and Victoria Counties for Category A and Categories C through G under the Public Assistance Program (already designated for Category B under the Public Assistance program and Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program-Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–19712 Filed 8–1–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1479–DR]

Texas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–1479–DR), dated July 17, 2003, and related determinations.

EFFECTIVE DATE: July 23, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 17, 2003:

Bee, Brazoria, Galveston, and Goliad Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program-Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–19713 Filed 8–1–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1479–DR]

Texas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA–1479–DR), dated July 17, 2003, and related determinations.

EFFECTIVE DATE: July 28, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 28, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program—Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–19714 Filed 8–1–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1479–DR]

Texas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA–1479–DR), dated July 17, 2003, and related determinations.

EFFECTIVE DATE: July 17, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 17, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Texas, resulting from Hurricane Claudette on July 15, 2003, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of Texas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for emergency protective measures (Category B) under the Public Assistance program in the designated areas, and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Carlos Mitchell, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Texas to have been affected adversely by this declared major disaster:

Calhoun, Jackson, Matagorda, Refugio, and Victoria Counties for Individual Assistance.

Calhoun, Jackson, Matagorda, Refugio, and Victoria Counties for emergency protective measures (Category B) under the Public Assistance program.

All counties within the State of Texas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program-Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–19716 Filed 8–1–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1474–DR]

West Virginia; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–1474–DR), dated June 21, 2003, and related determinations.

EFFECTIVE DATE: July 21, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 21, 2003:

Preston County for Individual Assistance and Public Assistance.

Tucker County for Public Assistance.

Doddridge and Putnam Counties for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program-Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–19719 Filed 8–1–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Reports, Forms, and Record Keeping Requirements: Agency Information Collection Activity Under OMB Review; Aviation Security Customer Satisfaction Performance Measurement Passenger Survey

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: This notice announces that TSA has forwarded the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden on the public. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on May 23, 2003, 68 FR 28242.

DATES: Send your comments by September 3, 2003. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Comments may be faxed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: DHS–TSA Desk Officer, at (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Yani Collins; TSA–03, Office of Strategic Management & Analysis; Transportation Security Administration HQ, West Tower, Suite 1045N; 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–1620; facsimile (571) 227–1927; or e-mail *Yani.Collins@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Transportation Security Administration (TSA)

Title: Aviation Security Customer Satisfaction Performance Measurement Passenger Survey.

Type of Request: New collection.

OMB Control Number: Not yet assigned.

Forms: Aviation Security Customer Satisfaction Performance Measurement Passenger Survey Forms.

Affected Public: Up to 422,000 members of the flying public each year.

Abstract: TSA seeks to provide world-class customer service and world-class security. It also seeks to be a performance-based organization that evaluates its programs, measures its performance, and makes management decisions based on objective, credible data. In order to assess its success in providing world-class customer service, TSA intends to conduct a brief satisfaction survey of passengers at the airport. We will conduct two types of surveys: (1) A statistically-valid survey conducted periodically at groups of major airports each year in order to produce the Customer Satisfaction Index for Aviation Operations (CSI–A), a major agency-wide performance measure, and other system-wide performance measures for program evaluation and process improvement; and (2) targeted surveys conducted at individual airports in order to provide targeted performance measurements for use by TSA on-site management. Surveys will be voluntary and anonymous.

Number of Respondents: 422,000.

Estimated Annual Burden Hours: A cumulative maximum of 35,167 hours annually based on an estimated burden of five minutes per respondent.

TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Issued in Arlington, Virginia, on July 29, 2003.

Susan T. Tracey,

Deputy Chief Administrative Officer.

[FR Doc. 03–19775 Filed 8–1–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–32]

Notice of Proposed Information Collection: Comment Request; Utility Allowance Adjustments

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 3, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov*.

FOR FURTHER INFORMATION CONTACT: Beverly J. Miller, Director, Office of Multifamily Asset Management, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–3730 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to; (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Utility Allowance Adjustments.

OMB Control Number, if applicable: 2502–0352.

Description of the need for the information and proposed use: Multifamily project owners are required to advise the Secretary of the Department of Housing and Urban Development of the need for and request approval of a new utility allowance for tenants. This information is necessary for HUD's review and approval of utility

allowance increases of 10 percent or higher.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of burden hours needed to prepare the information collection is 600; the number of respondents is 1,200 generating approximately 1,200 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response is 30 minutes.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: July 29, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 03–19790 Filed 8–1–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No.FR–4815–N–50]

Notice of Submission of Proposed Information Collection to OMB: Report of Additional Classification and Wage Rate

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information collection facilitates the addition of needed work classifications and wage rates for employers engaged on HUD-assisted construction projects.

DATES: Comments Due Date: September 3, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2501–0011) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Report of Additional Classification and Wage Rate.

OMB Approval Number: 2501–0011.

Form Numbers: HUD–4230A and Instructions.

Description of the Need for the Information and its Proposed Use: This information collection facilitates the addition of needed work classifications and wage rates for employers engaged on HUD-assisted construction projects.

Respondents: Business or other for-profit, State, Local or Tribal Government.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	500	500		1		500

Total Estimated Burden Hours: 500.

Status: Reinstatement, with change, of previously approved collection for which approval has expired.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 29, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–19791 Filed 8–1–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–49]

Notice of Submission of Proposed Information Collection to OMB: Grant Application Standard Logic Model

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The submission is a request for extension of the current approval to collect information on baseline performance standards. This information replaced various reporting requirements and places greater emphasis on performance and results in grant programs.

The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 3, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2535–0114) and should be sent to: Wayne Eddins,

Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov.*

FOR FURTHER INFORMATION CONTACT: Barbara Dorf, Director Office of Grants Management and Oversight, AJT, or Dorthera M. Yorkshire, Program Analyst, Office of Grants Management and Oversight, AJT, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; e-mail *Barbara_Dorf@hud.gov*; or *Dorthera_Yorkshire@hud.gov*; telephone (202) 708–0667. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Yorkshire.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Grant Application Standard Logic Model.

OMB Approval Number: 2535–0114.

Form Numbers: Form HUD–96010.

Description of the Need for the Information and its Proposed Use: Applicants of HUD Federal Financial Assistance will be required to indicate intended results and impacts. Grant recipients must report against baseline performance standards. This standardizes grants progress reporting requirements and promotes greater emphasis on performance and results in grant programs.

Respondents: Individuals, Not-for-profit institutions, State, Local or Tribal Government, Business or other for-profit.

Frequency of Submission: On occasion.

Reporting Burden: This information collection is estimated to total one hour per submission. Of the estimated 11,000 grant applicant/recipients, approximately 6,600 report quarterly and 4,400 report annually. Total annual reporting burden is estimated to 30,800 hours.

Total Estimated Burden Hours: 30,800.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 29, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–19792 Filed 8–1–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4818–N–08]

Notice of Proposed Information Collection for Public Comment on the Quality Control for Rental Assistance Subsidy Determinations

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 3, 2003.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW., Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Joseph P. Riley, Director, Economic Market Analysis Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8222, Washington, DC 20410; telephone 202–708–9426, extension 5861 (This is not a toll-free number). Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Riley.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including if the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology that will reduce respondent burden (e.g., permitting electronic submission of responses).

This Notice also provides the following information:

Title of Proposal: Quality Control for Rental Assistance Subsidy Determinations.

Description of the Need for Information and Proposed Use: The Department is conducting under contract a study to update its estimates of the extent and type of errors associated with income, rent, and subsidy determinations for the 4.4 million households covered by Public Housing and Section 8 housing subsidies. The Quality Control process involves selecting a nationally representative sample of assisted households to measure the extent and types of errors in rent and income determinations, which in turn cause subsidy errors. On-site tenant interviews, file reviews, third-party income verifications, and income matching with other Federal data are conducted. The data obtained are used to identify the most serious problems and their associated costs. HUD program offices are then responsible for designing and implementing corrective actions. In addition to proviiding current estimates of error, results will be compared with those from the 2000 study. These comparisons will indicate whether corrective actions initiated since the 2000 study have been effective and if changes in priorities are needed.

The first QC study found that about one-half of the errors measured using

on-site tenant interviews and file reviews could not be detected with the 500\58/50059 form data collected by the Department, which is why HUD and other agencies with means-tested programs have determined that on-site reviews and interviews are an essential complement to remote monitoring measures. The 2000 study showed that the calculation errors detectable with 50058/50059 data had further decreased, probably because this data was increasingly subject to automated computational checks.

This study will provide current information on the quality of tenant interviewing (e.g., whether they are they being asked about all sources of income) and the reliability of eligibility determinations and income verification. Legislation passed in 2002 requires that the Department report on the error measurements annually. A 2003 study is being completed, and this proposed data collection approval is for the next three studies.

Members of the Affected Public: Recipients of Public Housing and Section 8 Housing Assistance subsidies.

Estimation of the Total Number of Houses Needed With Those Surveyed to Conduct the Information Collection, Including Number of Respondents, Frequency of Response, and Hours of Response: The researchers will survey approximately 550 PHA/program sponsor staff about (re)certification procedures, training, interview procedures, and problems encountered in conducting (re)certifications. Although more than one staff member may need to be contacted to obtain answers to all questions, the questionnaire will be administered once at each participating project and the interviews are expected to take less than 35 minutes. Researchers will survey approximately 3,000 program participants to obtain information on household composition, expenses, and income. the time required for these interviews will vary, but is estimated to require an average of about 50 minutes per interview.

The time estimates provided are based on the 2000 QC survey. This survey will again make use of Computer Assisted Interviewing (CAI) questionnaires and equipment, which are being used in part because they are known to reduce interview times. This software also provides for consistency checks and ensures that all needed data have been collected, thereby reducing the need for follow-up contacts.

Status of the Proposed information Collection: Pending OMB approval.

Authority: Section 3506 of the paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: July 29, 2003.

Alberto F. Treviño,

Assistant Secretary for Policy Development and Research.

[FR Doc. 03–19793 Filed 8–1–03; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4818–N–09]

Notice of Proposed Information Collection for Public Comment on the Notice of Funding Availability for Research Studies on Homeownership and Affordable Lending

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 3, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB approval number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: John L. Gardner, Director, Financial Institutions Regulation Division, Office of Policy Development and Research Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *John_L._Garner@HUD.gov;* telephone (202) 708–1464. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Gardner.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB, for processing, an information collection package with respect to funding research studies on homeownership and affordable lending. This research would fulfill the President's goal of an additional 5.5 million minority homeowners by the end of the decade.

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Notice of Funding Availability for Research Studies on Homeownership and Affordable Lending.

Description of Information Collection: A study of homeownership and affordable lending will aid in the formulation of policies in support of the President's goal of increasing the number of minority homeowners.

OMB Control Number: 2528–0228.

Agency Form Numbers: HUD 424, HUD 424–B, HUD 424 CB, HUD 424 CBW, SF LLL, HUD 2880 HUD 2993, HUD 2994, HUD 1044, SF 1199A, HUD 27053, HUD 27054, HUD 269.

Members of Affected Public: Not-for-profit institutions, State, Local or Tribal Government.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequent of responses, and hours of response: An estimation of the total number of hours needed to prepare the information collection is 1810, number of respondents is 40 for the award phase and 15 for the post-award phase, frequency of response is on occasion and quarterly, and the hours of response is 40 for applicants and an additional 14 for recipients.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: July 29, 2003.

Alberto F. Treveño,

Assistant Secretary for Policy Development and Research.

[FR Doc. 03–19794 Filed 8–1–03; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4818–N–10]

Notice of Proposed Information Collection for Public Comment on the Notice of Funding Availability for Research on the Socio-Economic Change in Cities

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 3, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB approval number) and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Alastair McFarlane, Economist, Economic Development and Public Finance Division, Office of Policy Development and Research Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Alastair_McFarlane@HUD.gov;* telephone (202) 708–0426. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McFarlane.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of Housing and Urban Development (HUD) has submitted to OMB, for processing, an information collection package with respect to funding research studies on Research on the Socio-Economic Change in Cities. This research would fulfill HUD's goal of improving community quality of life and economic vitality.

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Notice of Funding Availability for research on the Socio-Economic Change in Cities.

Description of Information Collection: A study of homeownership and affordable lending will aid in the formulation of policies in support of the President's goal of increasing the number of minority homeowners.

OMB Control Number: 2528–0227.

Agency Form Numbers: HUD 424, HUD 424–B, HUD 424 CB, HUD 424 CBW, SF LLL, HUD 2880 HUD 2993, HUD 2994, HUD 1044, SF 1199A, HUD 27053, HUD 27054, HUD 269.

Members of Affected Public: Not-for-profit institutions, State, Local or Tribal Government.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of response: An estimation of the total number of hours needed to prepare the information collection is 5,010, number of respondents is 120 for the award phase and 15 for the post-award Phase, frequency of response is on occasion and quarterly, and the hours of response is 40 for applicants and an additional 14 for recipients.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: July 29, 2003.

Alberto F. Treviño,

Assistant Secretary for Policy Development and Research.

[FR Doc. 03–19795 Filed 8–1–03; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4637–D–28]

Revocation and Redelegation of Authority Under Section 561 of the Housing and Community Development Act of 1987

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of revocation and redelegation of authority.

SUMMARY: The Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) revokes all prior redelegations of authority made within the office of the Assistant Secretary for FHEO under Section 561 of the Housing and Community Development Act of 1987, the Fair Housing Initiatives Program (FHIP), and redelegates this authority to FHEO headquarters and regional staff.

EFFECTIVE DATE: July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Myron P. Newry, Director: FHIP/FHAP Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5224, Washington, DC 20410–2000. Telephone: (202) 708–2288 Ext. 7095. (This is not a toll-free number.) Hearing- and speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Fair Housing Initiatives Program contained in the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 5, 1988) authorizes the Secretary to provide funding to state and local governments or their agencies, public or private non-profit organizations or other public or private entities formulating or carrying out programs to prevent or eliminate discriminatory housing practices. This enables the recipients to carry out activities designed to obtain enforcement of the rights granted by the federal Fair Housing Act or by substantially equivalent state or local fair housing laws. This also enables the recipients to carry out education and outreach activities designed to inform the public of their rights and obligations under such federal, state or local laws prohibiting discrimination. On May 21, 1988, the Secretary delegated to the Assistant Secretary for FHEO the authority to administer the Fair Housing Initiatives Program, pursuant to 24 CFR 125.104(a). (*See* 53 FR 25583, July 7, 1988.)

Through this notice, the Assistant Secretary for FHEO redelegates to the General Deputy Assistant Secretary for FHEO the authority, under Section 561 of the Housing and Community Act of 1987, to administer the Fair Housing Initiatives Program. The General Deputy Assistant Secretary for FHEO, in turn, redelegates this authority to the Deputy Assistant Secretary for Enforcement and Programs, to the Director of the Office of Enforcement and to the FHEO Hub Directors.

Accordingly, the Assistant Secretary for FHEO and the General Deputy

Assistant Secretary for FHEO redelegate authority as follows:

Section A. Authority Redelegated

The Assistant Secretary for FHEO redelegates to the General Deputy Assistant Secretary for FHEO the authority to act under Section 561 of the Housing and Community Act of 1987 (Pub. L. 100–242, February 5, 1988). The General Deputy Assistant Secretary for FHEO redelegates this authority to the Deputy Assistant Secretary for Enforcement and Programs, to the Director of the Office of Enforcement and to the FHEO Hub Directors.

Section B. Authority Excepted

The authority redelegated in this notice does not include the authority to issue or waive regulations. The authority redelegated to the General Deputy Assistant Secretary for FHEO does not include the authority to determine the appropriate reporting and record maintenance, as provided in 24 CFR 125.104(e), or the authority to waive requirements under 24 CFR part 125 not required by statute, as provided in 24 CFR 125.106.

Section C. Authority Revoked

All prior redelegations of authority made within the office of the Assistant Secretary for FHEO regarding section 561 of the Housing and Community Development Act of 1987, the Fair Housing Initiatives Program, are revoked.

Section D. Authority To Redelegate

The authority redelegated to the Deputy Assistant Secretary for Enforcement and Programs, to the Director of the Office of Enforcement and to the FHEO Hub Directors may not be further redelegated.

Authority: Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 25, 2003.

Carolyn Y. Peoples,

Assistant Secretary for Fair Housing and Equal Opportunity.

Floyd O. May,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 03–19781 Filed 8–1–03; 8:45 am]

BILLING CODE 4210–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–27]

Supersedure and Redelegations of Authority for the Civil Rights Related Program Requirements of HUD Programs

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of supersedure and redelegation of authority.

SUMMARY: In this notice, the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) and the General Deputy Assistant Secretary for FHEO redelegate the authority regarding civil rights related program requirements of HUD programs to FHEO staff. This notice supersedes all prior redelegations of this authority made within the Office of the Assistant Secretary for FHEO.

EFFECTIVE DATE: July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Pamela D. Walsh, Director of Program Standards Division, Office of Fair Housing and Equal Opportunity, Room 5224, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–2000, telephone (202) 708–2288. (This is not a toll-free number.) Hearing- and speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service number at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: In a notice published on March 16, 1995 (60 FR 14294), HUD issued delegations and redelegations regarding civil rights related program requirements of HUD programs. In that notice, HUD officials redelegated this authority to the Directors of the Program Operations and Compliance Centers (POCCs). However, FHEO has since been restructured and the position of POCC Director was eliminated. Through this notice, the Assistant Secretary for FHEO and the General Deputy Assistant Secretary for FHEO redelegate this authority to certain FHEO staff and to the FHEO Hub Directors.

Accordingly, the Assistant Secretary for FHEO and the General Deputy Assistant Secretary for FHEO redelegate authority as follows:

Section A. Authority Redelegated

The Assistant Secretary for FHEO redelegates to the General Deputy Assistant Secretary for FHEO the authority regarding civil rights related program requirements of HUD programs. The General Deputy Assistant Secretary for FHEO redelegates this authority to the Deputy Assistant Secretary for Enforcement and Programs, to the Director of the Office of Enforcement, and to the FHEO Hub Directors.

Section B. Authority Excepted

The authority redelegated in this notice does not include the authority to issue or to waive regulations.

Section C. Authority To Redelegate

The authority redelegated to the Deputy Assistant Secretary for Enforcement and Programs, to the Director of the Office of Programs, and to the FHEO Hub Directors may not be further redelegated.

Section D. Authority Superseded

All prior redelegations of authority regarding civil rights-related program requirements of HUD programs made within the office of the Assistant Secretary for FHEO to the Directors of POCCs are superseded, including a redelegation published on March 16, 1995 (60 FR 14294).

Authority: Section 7(d) of the Department of Housing and Urban Development (42 U.S.C. 3535(d)).

Dated: July 25, 2003.

Carolyn Y. Peoples,

Assistant Secretary for Fair Housing and Equal Opportunity.

Floyd O. May,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 03–19782 Filed 8–1–03; 8:45 am]

BILLING CODE 4210–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–26]

Revocation and Redelegation of Authority Under the Age Discrimination Act of 1975

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of revocation and redelegation of authority.

SUMMARY: The Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) revokes all prior redelegations of authority made within the Office of the Assistant Secretary for FHEO under the Age Discrimination Act of 1975, and redelegates this authority, with a noted exception, to the General Deputy Assistant Secretary for FHEO, who in turn redelegates certain authority to the Deputy Assistant Secretary for Enforcement and Programs, to the Director of the Office of Enforcement and to the FHEO Hub Directors.

Accordingly, the Assistant Secretary for FHEO and the General Deputy Assistant Secretary for FHEO redelegate authority as follows:

Section A. Authority Redelegated

The Assistant Secretary for FHEO redelegates to the General Deputy Assistant Secretary for FHEO the authority to act under the Age Discrimination Act of 1975. The General Deputy Assistant Secretary for FHEO redelegates this authority to the Deputy Assistant Secretary for Enforcement and Programs, to the Director of the Office of Enforcement, and to the FHEO Hub Directors.

Section B. Authority Excepted

The authority redelegated does not include the authority to issue or waive regulations.

Section C. Authority Revoked

All prior redelegations of authority made within the office of the Assistant Secretary for FHEO under the Age Discrimination Act of 1975 are revoked.

Section D. Authority To Redelegate

The authority redelegated to the Deputy Assistant Secretary for Enforcement and Programs, to the Director of the Office of Enforcement, and to the FHEO Hub Directors may not be further redelegated.

Authority: Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 25, 2003.

Carolyn Y. Peoples,

Assistant Secretary for Fair Housing and Equal Opportunity.

Floyd O. May,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 03–19783 Filed 8–1–03; 8:45 am]

BILLING CODE 4210–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–24]

Revocation and Redelegation of Authority Under Section 504 of the Rehabilitation Act of 1973

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of revocation and redelegation of authority.

SUMMARY: The Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) revokes all prior redelegations of authority made within the office of the Assistant Secretary for FHEO under section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations, and redelegates this authority, with noted exceptions, to the General Deputy Assistant Secretary for FHEO. The General Deputy Assistant Secretary for FHEO, in turn, redelegates certain authority to the Deputy Assistant Secretary for Enforcement and Programs to the Director of the Office of Enforcement and to the FHEO Hub Directors.

EFFECTIVE DATE: July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Milton Turner, Director of Compliance and Disability Rights Division, Office of Fair Housing and Equal Opportunity, Room 5240, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–2000. Telephone: (202) 708–2333. (This is not a toll-free number.) Hearing- and speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service number at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Secretary has delegated to the Assistant Secretary for FHEO the authority to act as "responsible civil rights official" and "reviewing civil rights official" under section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations in 24 CFR part 8. The Assistant Secretary for FHEO, through this notice, redelegates the authority to act as the "responsible civil rights official" to the General Deputy Assistant Secretary for FHEO, who in turn, redelegates this authority to the Deputy Assistant Secretary for Enforcement and Programs, to the Director of the Office of Enforcement and to the FHEO Hub Directors. The Assistant Secretary for FHEO also redelegates the authority to act as "reviewing civil rights official," in accordance with 24 CFR 8.56(h), to the General Deputy Assistant Secretary for FHEO, who in turn further redelegates this authority to the Deputy Assistant Secretary for Enforcement and Programs and to the Director of the Office of Enforcement.

Accordingly, the Assistant Secretary for FHEO and the General Deputy Assistant Secretary for FHEO delegate authority as follows:

Section A. Authority Redelegated

The Assistant Secretary for FHEO redelegates to the General Deputy Assistant Secretary for FHEO the authority to act as the "responsible civil rights official." The General Deputy Assistant Secretary for FHEO redelegates this authority to the Deputy Assistant Secretary for Enforcement and Programs, to the Director of the Office of Enforcement and to the FHEO Hub Directors.

The Assistant Secretary for FHEO redelegates to the General Deputy Assistant Secretary for FHEO authority to act as "reviewing civil rights official," in accordance with in 24 CFR 8.56(h). The General Deputy Assistant Secretary for FHEO redelegates this authority to the Deputy Assistant Secretary for Enforcement and Programs, and to the Director of the Office of Enforcement.

Section B. Authority Excepted

The authority redelegated from the Assistant Secretary for FHEO does not include the authority to issue or waive regulations.

The authority redelegated to the Director of the Office of Enforcement, and to the FHEO Hub Directors does not include the authority, under 24 CFR 8.57(a) and (e)(1), to determine that compliance cannot be effectuated through informal resolution.

The authority redelegated to the General Deputy Assistant Secretary for FHEO, to the Deputy Assistant Secretary for Enforcement and Program, to the Director of the Office of Enforcement, and to the FHEO Hub Directors does not include the authority, as set forth in 24 CFR 8.57(c), to terminate or refuse to grant or continue federal financial assistance for noncompliance.

Section C. Authority Revoked

All prior redelegations of authority made within the office of the Assistant Secretary for FHEO under section 504 of the Rehabilitation Act of 1973 are revoked, including, but not limited to, the redelegaton at 63 FR 11905 (March 11, 1998).

Authority: Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 25, 2003.

Carolyn Y. Peoples,

Assistant Secretary for Fair Housing and Equal Opportunity.

Floyd O. May,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 03–19784 Filed 8–1–03; 8:45 am]

BILLING CODE 4210–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–22]

Revocation and Redelegation of Fair Housing Assistance Program Authority

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of revocation and redelegation of authority.

SUMMARY: The Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) revokes all prior redelegations of authority made within the Office of the Assistant Secretary for FHEO under the Fair Housing Assistance Program. Within the exception of redelegation of authority to the FHEO Hub Directors, as set forth in the program regulations, the Assistant Secretary for FHEO redelegates this authority to the General Deputy Assistant Secretary.

EFFECTIVE DATE: July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Karen A. Newton, Deputy Assistant Secretary for Operations and Management, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5128, Washington, DC 20410–0001, telephone (202) 708–0768. (This is not a toll-free number.) Hearing- and speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service number at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Through regulation (24 CFR 115.101(a)), the Secretary delegated the authority and responsibility for administering the Fair Housing Assistance Program, as provided in 24 CFR part 115, to the Assistant Secretary for FHEO. Also through regulation (24 CFR 115.101(b)), the Assistant Secretary for FHEO redelegated this authority to each Director of a Fair Housing Enforcement Center (now FHEO Hub Directors). In this notice, the Assistant Secretary for FHEO redelegates this authority to the General Deputy Assistant Secretary for FHEO and clarifies the change in title from "Fair Housing Enforcement Center Directors" to "FHEO Hub Directors."

Section A. Authority Redelegated

The Assistant Secretary for FHEO redelegates the authority and responsibility for administering the Fair Housing Assistance Program, as provided in 24 CFR 115.101(b), to the General Deputy Assistant Secretary for FHEO and to the FHEO Hub Directors. The authority redelegated in this notice does not include the authority to make final decisions concerning the granting and maintenance of substantial equivalency certification and interim certification in accordance with 24 CFR 115.101(b). The authority redelegated in this notice also does not include the authority to issue or waive regulations.

Section B. Nomenclature Clarification

The redelegation of authority from the Assistant Secretary for FHEO to the Fair Housing Enforcement Center Directors remains intact, as set forth in 24 CFR 115.101(b), although the Fair Housing Enforcement Center Directors have been renamed FHEO Hub Directors. The FHEO Hub Directors have the same authority for the administration of the Fair Housing Assistance Program as the Fair Housing Enforcement Center Directors did when 24 CFR part 115 was published in 1996.

Section C. Authority Excepted

The authority redelegated in this notice does not include the authority to issue or waive regulations.

Section D. Authority To Further Redelegate

The General Deputy Assistant Secretary for FHEO may redelegate the authority provided in Section A of this notice. The FHEO Hub Directors may not redelegate the authority provided in 24 CFR 115.101(b).

Section C. Authority Revoked

All prior redelegations of authority made within the Office of the Assistant Secretary for FHEO to administer the Fair Housing Assistance Program are revoked, with the exception of the authority to the FHEO Hub Directors, as set forth in 24 CFR 115.101(b).

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 25, 2003.

Carolyn Y. Peoples,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 03–19785 Filed 8–1–03; 8:45 am]

BILLING CODE 4210–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–21]

Revocation and Redelegation of Fair Housing Act Complaint Processing Authority

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of Revocation and redelegation of authority.

SUMMARY: The Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) revokes all prior redelegations of authority for Fair Housing Act complaint processing made within the Office of the Assistant Secretary for FHEO under the Fair Housing Act and redelegates this authority to FHEO field and headquarters staff.

EFFECTIVE DATE: July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Karen A. Newton, Deputy Assistant Secretary for Operations and Management, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street SW., Room 5128, Washington, DC 20410–0001, telephone (202) 708–0768. (This is not a toll-free number.) Hearing- and speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: In a March 30, 1989, notice (54 FR 13121), the Secretary of HUD delegated the authority to enforce the Fair Housing Act to the Assistant Secretary for FHEO and the General Counsel, among other Department officials. Since 1989, the Assistant Secretary for FHEO has published several redelegations of Fair Housing Act complaint processing authority to staff. In this notice, the Assistant Secretary for FHEO revokes all prior redelegations of authority for Fair Housing Act complaint processing made by the Assistant Secretary for FHEO under the Fair Housing Act (42 U.S.C. 3601 *et seq.*), and redelegates this authority. Accordingly, the Assistant Secretary for FHEO redelegates this authority as provided in this notice.

Section A. Authority Redelegated

The Assistant Secretary for FHEO redelegates the authority for Fair Housing Act complaint processing, as provided in 24 CFR part 103, to the General Deputy Assistant Secretary for FHEO.

The General Deputy Assistant Secretary for FHEO further redelegates the authority under 24 CFR part 103, subparts A, B, D (with the exception of the filing of a Secretary-initiated complaint under 24 CFR 103.200(b) and 24 CFR 103.204(a)), E, and F, to the FHEO Hub Directors, to the Deputy Assistant Secretary for Enforcement and Programs, and to the Director of the Office of Enforcement.

The General Deputy Assistant Secretary for FHEO further redelegates the authority, under 24 CFR part 103, subpart C, to the FHEO Hub Directors, and the Deputy Assistant Secretary for Enforcement and Programs.

The General Deputy Assistant Secretary for FHEO further redelegates the authority under 24 CFR 103.510(a) and (d) to the FHEO Hub Directors, to the Deputy Assistant Secretary for Enforcement and Programs and to the Director of the Office of Enforcement, with the exception of pattern and practice referrals to the Attorney General, which are redelegated only to the Deputy Assistant Secretary for Enforcement and Programs, and to the Director of the Office of Enforcement.

The Assistant Secretary for FHEO redelegates to the General Deputy Assistant Secretary for FHEO the authority to reconsider no cause determinations. The General Deputy Assistant Secretary for FHEO further redelegates this authority to the Deputy Assistant Secretary for Enforcement and Programs, and to the Director of the Office of Enforcement.

The Assistant Secretary for FHEO redelegates to the General Deputy Assistant Secretary for FHEO the authority to issue subpoenas related to the *Young* v. *Martinez* litigation. The General Deputy Assistant Secretary for FHEO further redelegates this authority to the Deputy Assistant Secretary for Enforcement and Programs and to the Director of the *Young* Implementation Office.

Section B. Authority To Further Redelegate

The Deputy Assistant Secretary for Enforcement and Programs, the Director of the Office of Enforcement, the FHEO Hub Directors, and the Director of the *Young* Implementation Office may not redelegate the authorities provided in Section A of this notice.

Section C. Authority Revoked

All prior redelegations of authority for Fair Housing complaint processing made within the Office of the Assistant Secretary for FHEO are revoked.

Authority: Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 25, 2003.

Carolyn Y. Peoples,

Assistant Secretary for Fair Housing and Equal Opportunity.

Floyd O. May,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 03–19786 Filed 8–1–03; 8:45 am]

BILLING CODE 4210–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–20]

Revocation and Redelegation of Administrative Authority for Title VI of the Civil Rights Act of 1964

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of revocation and redelegation of authority.

SUMMARY: The Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) revokes all prior redelegations of authority under Title VI of the Civil Rights Act of 1964 made within the Office of Assistant Secretary for FHEO and redelegates this authority to act as the "responsible Department official," with noted exceptions, to the General Deputy Assistant Secretary, who in turn, redelegates certain authority to the Deputy Assistant Secretary for Enforcement and Programs, to the Director of the Office of Enforcement, and to the FHEO HUB Directors.

EFFECTIVE DATE: July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Karen A. Newton, Deputy Assistant Secretary for Operations and Management, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5128, Washington, DC 20410–0001, telephone (202) 708–0768. (This is not a toll-free number.) Hearing- and speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service number at (800) 877–8339.

SUPPLEMENTARY INFORMATION: By previous delegation (36 FR 8821, May 13, 1971), the Secretary of HUD delegated the Secretary's authority, with an exception for the authority in 24 CFR 1.4(b)(2)(ii), to act as the "responsible Department official" in all matters relating to carrying out the requirements under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), to the Assistant Secretary for Equal Opportunity (now the Assistant Secretary for FHEO).

The provisions of Title VI are implemented in the regulations in 24 CFR part 1. A new delegation of authority in which the Secretary delegates to the Assistant Secretary for FHEO authority, with noted exceptions, to act as the "responsible Department official" in matters relating to the carrying out of the requirements of Title VI of the 1964 Civil Rights Act, is being published concurrently with this redelegation of authority.

Accordingly, in this notice, the Assistant Secretary for FHEO redelegates the authority, with noted exceptions, to act as the "responsible Department official" under Title VI of the 1964 Civil Rights Act and its implementing regulations.

Section A. Authority Redelegated

With certain exceptions noted in Section B, the Assistant Secretary for FHEO redelegates to the General Deputy Assistant Secretary for FHEO the authority, under Title VI as provided in 24 CFR part 1, to act as the "responsible Department official" in matters delegated to the Assistant Secretary for FHEO. The General Deputy Assistant Secretary for FHEO further redelegates this authority, with noted exceptions noted in Section B, to the Deputy Assistant Secretary for Enforcement and Programs, to the Director of the Office of Enforcement, and to the FHEO Hub Directors.

Section B. Authority Excepted

The authority redelegated in this notice does not include the authority to issue or to waive regulations. The authority redelegated by the Assistant Secretary for FHEO to the General Deputy Assistant Secretary in this notice does not include the authority to terminate, refuse to grant, or refuse to continue federal financial assistance (see 24 CFR 1.8(c)). The authority redelegated by the General Deputy Assistant Secretary for FHEO to the FHEO Hub Directors does not include the authority under 24 CFR 1.8(a) and (d) to refer to the Department of Justice (DOJ) unresolved findings of non-compliance or to seek compliance through referral to DOJ or "other means authorized by law."

Section C. Delegations of Authority Revoked

All prior redelegations of authority under Title VI of the Civil Rights Act of 1964 made within the Office of the Assistant Secretary for FHEO are revoked, including the redelegation published on May 13, 1971 (36 FR 8821).

Authority: Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 25, 2003.

Carolyn Y. Peoples,

Assistant Secretary for Fair Housing and Equal Opportunity.

Floyd O. May,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 03–19787 Filed 8–1–03; 8:45 am]

BILLING CODE 4210–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–18]

Revocation and Redelegation of Administrative Authority for Title I, Section 109 of the Housing and Community Development Act of 1974

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of revocation and redelegation of authority.

SUMMARY: The Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) revokes all prior redelegations of authority made within the Office of the Assistant Secretary for FHEO under Title I, Section 109 of the Housing and Community Development Act of 1974, and redelegates certain authority to FHEO field and headquarters staff.

EFFECTIVE DATE: July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Karen A. Newton, Deputy Assistant Secretary for Operations and Management, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5128, Washington, DC 20410–0001, telephone (202) 708–0768. (This is not a toll-free number.) Hearing- and speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service number at (800) 877–8339.

SUPPLEMENTARY INFORMATION: By previous delegation, the Secretary of HUD delegated to the Assistant Secretary of FHEO, with certain exceptions, the authority to act as the "responsible Department official," under Title I, Section 109 of the Housing and Community Development Act of 1974 (42 U.S.C. 5309). (*See* 41 FR 15359, April 12, 1976) The provisions of Section 109 are implemented through HUD's regulations in 24 CFR part 6. (*See* also 24 CFR 6.3, in which the "responsible official" is defined as the Assistant Secretary for FHEO (or the Assistant Secretary's designee).) The Assistant Secretary redelegates the authority under Section 109 and its implementing regulations as provided in this notice.

Section A. Authority Redelegated

The Assistant Secretary for FHEO redelegates to the General Deputy Assistant Secretary for FHEO the authority under Section 109, as provided in 24 CFR 6.10 and 6.11. The General Deputy Assistant Secretary for FHEO further redelegates these authorities, with noted exceptions, to the Deputy Assistant Secretary for Enforcement and Programs to the Director of the Office of Enforcement, and to the FHEO Hub Directors.

Section B. Authority Excepted

The Assistant Secretary for FHEO does not redelegate the authority to notify a relevant Governor or Chief Executive Officer of findings that a recipient is in noncompliance as provided in 24 CFR 6.12.

The authority delegated by the General Deputy Assistant Secretary for FHEO to the FHEO Hub Directors does not include the authority under 24 CFR 6.11(c) to review letters of finding.

Section C. Delegations of Authority Revoked

All prior redelegations of authority made within the Office of the Assistant Secretary for FHEO under Section 109 of the Housing and Community Development Act of 1974 are revoked.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 25, 2003.

Carolyn Y. Peoples,

Assistant Secretary for Fair Housing and Equal Opportunity.

Floyd O. May,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 03–19788 Filed 8–1–03; 8:45 am]

BILLING CODE 4210–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–29]

Revocation and Redelegation of Authority Under Section 3 of the Housing and Urban Development Act of 1968

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of revocation and redelegation of authority.

SUMMARY: The Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) revokes all redelegations of authority made within the Office of the Assistant Secretary for FHEO under Section 3 of the Housing and Community Development Act of 1968. The Assistant Secretary for FHEO redelegates this authority to the General Deputy Assistant Secretary for FHEO.

EFFECTIVE DATE: July 25, 2003.

FOR FURTHER INFORMATION CONTACT: Linda Thompson, Acting Director, Office for Economic Opportunity, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 5234, Washington, DC 20410–2000; (202) 708–3685. (This is not a toll-free number.) Hearing- and speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service number at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On October 8, 1993 (58 FR 52534), the Department published a proposed rule that implemented Section 3 of the Housing and Urban Development Act of 1968 (Section 3) (12 U.S.C. 1701u), as amended by the Housing and Community Development Act of 1992 (1992 Act). Since its enactment, Section 3 has served as a statutory basis for promoting the award of jobs and contracts, generated from projects receiving HUD financial assistance, to, respectively, low-income residents and businesses of the areas where the projects to be assisted are located. The 1992 Act significantly revised Section 3, but did not alter the objective of Section 3, which is to provide economic opportunities to low-income persons. The 1992 Act strengthened the Section 3 mandate by clarifying the types of HUD financial assistance, activities, and recipients subject to the requirements of Section 3; identifying the specific individuals and businesses who are the intended beneficiaries of the economic opportunities generated from HUD-assisted activities; and establishing the order of priority in which these individuals and businesses should be recruited and solicited for the employment and other economic opportunities generated from HUD-assisted activities. On June 30, 1994 (59 FR 33866), when the interim rule was published, the functions and responsibilities of the Secretary under Section 3 were delegated to the Assistant Secretary for FHEO. (*See* 24 CFR 135.7.) The Assistant Secretary for FHEO was further authorized to redelegate these functions and responsibilities to other employees of HUD, except for the authority to issue rules and regulations under 24 CFR part 135.

Accordingly, the Assistant Secretary for FHEO redelegates authority as follows:

Section A. Authority Redelegated

The Assistant Secretary for FHEO redelegates to the General Deputy Assistant Secretary for FHEO all authority under Section 3 of the Housing and Urban Development Act of 1968, except for the authority to issue or waive regulations.

Section B. Authority Revoked

All prior redelegations of authority made within the Office of the Assistant Secretary for FHEO under Section 3 of the Housing and Community Development Act of 1968 are revoked.

Section C. Authority To Redelegate

The authority redelegated to the General Deputy Assistant Secretary may not be further redelegated.

Authority: Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 25, 2003.

Carolyn Y. Peoples,

Assistant Secretary for Fair Housing and Equal Opportunity.

Floyd O. May,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 03–19789 Filed 8–1–03; 8:45 am]

BILLING CODE 4210–28–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for Construction and Operation of a Residential Development on 78 Acres of the Greenshores Subdivision, Travis County, TX (PK–RE Development)

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: PK–RE Development Co., Inc. (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–074582–0. The requested permit, which is for a period of 30 years, would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*). The proposed take would occur as a result of the construction and operation of a residential development on portions of the 78-acre Greenshores Subdivision, Travis County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy or non-jeopardy to the species and a decision pursuant to the National Environmental Policy Act (NEPA) will not be made until at least 60 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before October 3, 2003.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, PO Box 1306, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by written or telephone request to Sybil Vosler, U.S. Fish and Wildlife Service, Ecological Services Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection, by written request or by appointment only, during normal business hours (8 a.m. to 4:30 p.m.) at the U.S. Fish and Wildlife Service Office, Austin, Texas. Data or comments concerning the application and EA/HCP should be submitted in writing to the Field Supervisor, U.S. Fish and Wildlife Service Office, Austin, Texas at 10711 Burnet Road, Suite 200, Austin, Texas 78758. Please refer to permit number TE–074582–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Sybil Vosler at the U.S. Fish and Wildlife Service, Ecological Services Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057).

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

APPLICANT: Russell Eppright Custom Homes plans to construct a residential development on portions of the 78-acre Greenshores Subdivision, City of Austin, Travis County, Texas. This action would eliminate approximately 21.7 acres of habitat and adversely affect 25.8 acres, resulting in take of the golden-cheeked warbler. The Applicant proposes to compensate for this incidental take of the golden-cheeked warbler by preserving 63.6 acres of habitat which will be managed in perpetuity for the benefit of the golden-cheeked warbler.

Bryan Arroyo,

Acting Regional Director, Southwest Region, Albuquerque, New Mexico.

[FR Doc. 03–19683 Filed 8–1–03; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Safe Harbor Agreement With Assurances and Receipt of Application for an Enhancement of Survival Permit for Activities on the Robert K. Long Ranch in Bastrop County, TX

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that Robert K. Long, Sr. (Applicant) has applied to the Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). The permit application includes a proposed Safe Harbor Agreement (SHA) for the endangered Houston toad (*Bufo houstonensis*) for a period of 10 years.

DATES: Written comments must be received within 30 days of the date of this publication.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Persons wishing to review the SHA may obtain a copy by contacting Paige Najvar, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512–490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and SHA should be submitted to the Supervisor, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas 78758 Austin, Texas. Please refer to permit number TE–074530–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Paige Najvar at 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512–490–0057; Fax 512–490–0974).

SUPPLEMENTARY INFORMATION: We (the Service) announce the opening of a 30-day comment period and request comments from the public on the Applicant's enhancement of survival permit application and the accompanying proposed SHA. All comments we receive, including names and addresses, will become part of the administrative record and may be released to the public.

Under a Safe Harbor Agreement, participating property owners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefitting species listed under the Act. Safe Harbor Agreements encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners they will not be subjected to increased property use restrictions due to their efforts to attract listed species to their property or increase the numbers or distribution of listed species already on their property. Application requirements and issuance criteria for enhancement of survival permits through Safe Harbor Agreements are found in 50 CFR 17.22 and 17.32.

The Service worked with the Applicant to design and implement conservation measures that are expected to provide a net conservation benefit to the Houston toad in Bastrop County, Texas. Conservation measures the Applicant will undertake according to the Agreement are: (1) Fence an existing pond and an ephemeral wetland so as to exclude cattle during the breeding season, (2) install fencing in a manner that protects important habitat areas and facilitates herd rotation, (3) create a shallow ephemeral pond designed to facilitate and enhance toad breeding success, (4) install alternative water sources for the cattle, (5) thin understory vegetation in woodlands and forests, (6) link ponds and woodlands through strategic location of brush piles and (where feasible) establishment of woodland corridors, (7) develop and implement a prescribed fire plan for the entire Ranch, (8) plant and protect native bunchgrasses, and (9) treat imported red fire ant mounds.

The incidental take of toads may occur from (1) habitat management actions conducted in accordance with the conservation measures in the Agreement, (2) ongoing ranch activities that may have an increased chance of taking a toad if toad numbers increase, as expected, and (3) removal of the improvements, at some point in the future, if the Applicant exercises his authorization to do so under the permit.

We provide this notice pursuant to section 10(c) of the Endangered Species Act and pursuant to implementing regulations for the National Environmental Policy Act (40 CFR 1506.6).

Dated: July 11, 2003.

Stuart C. Leon,

Acting Regional Director, Southwest Region, Albuquerque, New Mexico.

[FR Doc. 03–19684 Filed 8–1–03; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Preparation of an Environmental Impact Statement for Mount Diablo State Park, Contra Costa County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the Fish and Wildlife Service (Service) advises the public that we intend to gather information necessary to prepare, in coordination with the California Department of Parks and Recreations (State Parks), a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) on the impacts of the proposed Mount Diablo State Park Habitat Conservation Plan (Plan). The Plan is being prepared under section 10(a)(1)(B) of the Endangered Species Act (Act). The Plan proposes an 18,000-acre planning area covering the administrative area, including a 1-mile buffer, of Mount Diablo State Park, Contra Costa County, California. The State Parks intends to request an incidental take permit under the Act for two species federally listed as threatened and seven non-listed species that may become listed during the term of the permit. The permit is needed to authorize incidental take of listed species that could occur as a result of implementation activities covered under the Plan.

The Service provides this notice to: (1) Describe the proposed action and possible alternatives; (2) advise other Federal and State agencies, affected Tribes, and the public of our intent to prepare an EIS/EIR; (3) announce the initiation of a public scoping period; and (4) invite public participating in offering suggestions and information on the scope of issues to be included in the EIS/EIR.

DATES: Written comments should be received on or before September 3, 2003, and will be accepted at the public meeting. The meeting date is: Tuesday, August 19, 2003, 7 p.m. to 9 p.m., Walnut Creek, California.

ADDRESSES: Written comments or questions related to the preparation of the EIS/EIR and NEPA process should be submitted to Sheila Larsen, Conservation Planning, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California 95825; FAX (916) 414–6713. The meeting location is: Shadelands Art Center, 111 North Wiget Lane at Ygnacio Valley Road, Walnut Creek, California, 94596.

FOR FURTHER INFORMATION CONTACT: Sheila Larsen, Fish and Wildlife Biologist, Conservation Planning, at the Sacramento Fish and Wildlife Office at (916) 414–6600.

SUPPLEMENTARY INFORMATION:

Reasonable Accommodation

Persons needing reasonable accommodations in order to attend and participate in the public meeting should contact Sheila Larsen as soon as possible (*see* **FOR FURTHER INFORMATION CONTACT**). To allow sufficient time to process requests, please call no later than one week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

Background

Section 9 of the Act and its implementing Federal regulations prohibit the "take" of a species listed as endangered or threatened. Take is defined under the Act as including to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or to collect listed animal species, or to attempt to engage in such conduct (16 U.S.C. 1538). However, under section 10(a)(1)(B) of the Act, we may issue permits to authorize "incidental take" of listed species. "Incidental take" is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened and endangered species are found in the Code of Federal Regulations at 50 CFR 17.32, and 17.22.

Currently, two species federally listed as threatened, and seven species that are not listed, are proposed for coverage under the proposed Plan. The listed species are Alameda whipsnake (*Masticophis lateralis euryxanthus*) and California red-legged frog (*Rana aurora draytonii*). The non-listed species are: California tiger salamander (*Ambystoma californiense*), foothill yellow-legged frog (*Rana boylii*), Swainson's hawk (*Buteo swainsoni*), peregrine falcon (*Falco peregrinus anatum*), burrowing owl (*Athene cunicularia*), Mount Diablo bird's-beak (*Cordylanthus nidularius*), and rock sanicle (*Sanicula saxatilis*). Species may be added or deleted during the course of Plan development based on further analysis, new information, agency consultation, and public comment.

The proposed Plan area includes approximately 18,000 acres in west Contra Costa County. The boundaries of the Plan area are generally defined as a 1-mile buffer around Mount Diablo State Park, including the park.

Possible implementation activities that may be covered under the proposed Plan include road and trail development and maintenance, natural resource management, park facilities development and associated infrastructure, park operation and maintenance projects, and special events. For proposed road and trail development and maintenance, activities such as grading roads, repairs due to erosion, minor re-alignment of roads and trails, repaving of existing primary road system, and management of roadside and trail vegetation may occur. For proposed natural resource management, activities such as exotic plant and animal control, habitat restoration and enhancement, and cultural resource surveys and protection may occur. Proposed covered activities under park operation and maintenance projects may include construction or expansion of existing and new park facilities; repair and replacement of fences, water and sewer system; and normal park operation activities such as trash removal, hazard tree removal, maintaining fuel breaks, and snow plowing. Special event activities may include company picnics, stargazing, and athletic events. Under the proposed Plan, the effects of covered activities are expected to be minimized and mitigated through participation in a conservation program, which will be fully described in the Plan. The proposed need of a conservation program is to provide long-term protection of covered species by protecting biological communities in the Plan area.

Components of a proposed conservation program are now under consideration by the Service and State Parks. These components will likely include: Avoidance and minimization measures, monitoring, adaptive management, and mitigation measures consisting of preservation, restoration, and enhancement of habitat.

Environmental Impact Statement/ Report

State Parks has selected Shaw E&I, Inc. (Shaw), to prepare the Draft EIS/EIR. The joint document will be prepared in compliance with NEPA and the California Environmental Quality Act (CEQA). Although Shaw will prepare the EIS/EIR, the Service will be responsible for the scope and content of the document for NEPA purposes, and State Parks will be responsible for the scope and content of the document for CEQA purposes.

The EIS/EIR will consider a proposed action (issuance of section 10(a)(1)(B) permit), no action (no permit) alternative, and a reasonable range of other alternatives. A detailed description of the proposed action and other alternatives will be included in the EIS/EIR. It is anticipated that several alternatives will be developed during scoping, which may vary by the level of conservation, impacts caused by the proposed activities, permit area, covered species, or a combination of these factors.

The EIS/EIR will also identify potentially significant impacts on biological resources, land use, air quality, water quality, mineral resources, water resources, economics, and other environmental resource issues that could occur directly or indirectly with implementation of the proposed action and other alternatives. For all potentially significant impacts, the EIS/EIR will identify mitigation measures where feasible to reduce these impacts to a level below significance.

Environmental review of the EIS/EIR will be conducted in accordance with the requirements of NEPA (42 U.S.C. 4321 *et seq.*), its implementing regulations (40 CFR parts 1500–1508), other applicable regulations, and Service procedures for compliance with those regulations. We are publishing this notice in accordance with section 1501.7 of NEPA to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the EIS/EIR. More specifically, we provide this notice: (1) To describe the proposed action and possible alternatives; (2) to advise other Federal and State agencies, affected Tribes, and the public of our intent to prepare an EIS/EIR; (3) to announce the initiation of a public scoping period; and (4) to obtain suggestions and information on the scope of issues to be included in the EIS/EIR. The primary purpose of the scoping process is to identify, rather than to debate, significant issues related to the proposed action. We invite written comments from interested parties to ensure that the full range of issues related to the permit request are identified. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

Dated: July 29, 2003.

D. Kenneth McDermond,

Deputy Manager, Region 1, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 03–19776 Filed 8–1–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0088).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an Information Collection Request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR Part 227—Delegation to States. This notice also provides the public a second opportunity to comment on the

paperwork burden of these regulatory requirements. The ICR is titled "30 CFR Part 227—Delegation to States."

DATES: Submit written comments on or before September 3, 2003.

ADDRESSES: You may submit comments either by fax (202) 395–5806 or e-mail (*Ruth_Solomon@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0088). You may also mail or hand-carry your comments to Sharron L. Gebhardt, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. MMS is unable to accept electronic comments at this time. Therefore, fax your comments to Ms. Gebhardt at (303) 231–3781, include the title of the information collection and the OMB Control Number in your fax (*i.e.* Subject, Reply or Comments section), along with your name, return address and fax number. If you do not receive confirmation that we have received your fax, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211 or fax (303) 231–3781. You may also contact Ms. Gebhardt to obtain a copy at no cost of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 227, Delegation to States.

OMB Control Number: 1010–0088.

Bureau Form Number: None.

Abstract: The Secretary of the U.S. Department of the Interior (DOI) is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage mineral resources production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. MMS performs the royalty management functions and assists the Secretary in carrying out DOI's Indian trust responsibility.

The Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA), Public Law 104–185, as corrected by Public Law 104–200, amends the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1701 *et seq.* Prior to enactment of RSFA, section 205 of FOGRMA, 30 U.S.C. 1735, provided for the delegation of audits, inspections, and investigations to the States. RSFA amendments to section 205 of FOGRMA provided that other Federal royalty management functions also may be delegated to requesting States. RSFA authorized the following Federal royalty management functions to States:

a. Conducting audits and investigations;

b. Receiving and processing production and royalty reports;

c. Correcting erroneous report data;

d. Performing automated verification; and

e. Issuing demands, subpoenas (except for solid mineral and geothermal leases), orders to perform restructured accounting, and related tolling agreements and notices to lessees or their designees.

Currently, 10 States have delegation agreements to perform audits and investigations, which is the same function previously authorized under FOGRMA in 1982. Since the passage of RSFA and publication of the final rule on August 12, 1997, no States have proposed a delegation agreement to assume the four additional functions authorized by RSFA. When a State performs any of the delegated functions under the 30 CFR 227 regulations, the State also assumes the burden of providing various types of information to MMS. This information, provided to MMS in the course of performing the work of the delegated functions, is the focus of this information collection.

The requirement to respond is voluntary. If a State were to perform the function of processing royalty and production reports, that State would submit proprietary data to MMS, and both the State and MMS are required to safeguard and protect proprietary data. No items of a sensitive nature are collected.

Frequency of Response: Depending on the function being performed, information can be daily, monthly, quarterly, or annually.

Estimated Number and Description of Respondents: 10 States currently have delegation agreements to do audits and investigations. We estimate that one State per year may request to perform the four additional functions authorized by RSFA.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 4,179 hours.

The following chart shows the breakdown of the estimated burden hours by CFR section and paragraph:

STATE RESPONDENT ANNUAL BURDEN HOUR CHART

30 CFR section	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
227.103; 227.107; 227.109; 227.110(a), (b)(1) and (2), (c), (d), and (e); 227.111(a) and (b); 227.805.	If you want MMS to delegate royalty management functions to you, then you must submit a delegation proposal to the MMS Associate Director for Minerals Revenue Management. MMS may extend the 90-day period with your written consent. You may submit a new delegation proposal at any time following a denial * * * and upon request, [MMS] will send a copy of the delegation proposals to trade associations to distribute to their members * * * You may ask MMS to renew the delegation for an additional 3 years no less than 6 months before your 3-year delegation agreement expires. You must submit your renewal request to the MMS Associate Director for Minerals Revenue Management * * * You may submit a new renewal request any time after denial. After the 3-year renewal period for your delegation agreement ends, if you wish to continue performing one or more delegated functions, you must request a new delegation agreement from MMS * * * If you do not request a hearing * * * any other affected person may submit a written request for a hearing to the MMS Associate Director for Minerals Revenue Management. Before the agreement expires, if you wish to continue to perform one or more of the delegated functions you performed under the expired agreement, you must request a new delegation agreement meeting the requirements of this part and the applicable standards. If you want to perform royalty management functions in addition to those authorized under your existing agreement you must request a new delegation * * * After your delegation agreement is terminated, you may apply again for delegation by beginning with the proposal process * * *.	200	3	600
227.112(d) and (e)	At a minimum, you must provide vouchers detailing your expenditures quarterly during the fiscal year; You must maintain adequate books and records to support your vouchers.	4	80	320
227.200(a), (b)(1), (2), (3), (4), and (5); (c), and (d).	* * * You must seek information or guidance from MMS regarding new, complex, or unique issues. Provide complete disclosure of financial results of activities; Maintain correct and accurate records of all mineral-related transactions and accounts; Maintain effective controls and accountability; Maintain effective system of accounts * * *; Maintain adequate royalty and production information * * * Assist MMS in meeting the requirements of * * * GPRA; Maintain all records you obtain or create * * *.	200	10	2,000
227.200(e) and (h); 227.801(a); 227.804.	Provide reports to MMS about your activities under your delegated functions (progress reports) * * * you must provide periodic statistical reports to MMS summarizing the activities you carried out * * *; Help MMS respond to requests for information from other Federal agencies, Congress, and the public * * * You may ask MMS for an extension of time to comply with the notice. In your extension request you must explain why you need more time * * * You may request MMS to terminate your delegation at any time by submitting your written notice of intent 6 months prior to the date on which you want to terminate * * *.	3	80	240
227.200(f); 227.401(e); 227.601(d).	Assist MMS in maintaining adequate reference, royalty, and production databases; access well, lease, agreement, and reporter reference data from MMS, and provide updated information to MMS * * * Access well, lease, agreement, and production reporter or royalty reporter reference data from MMS and provide updated information to MMS * * *.	.5	250	125
227.200(g)	Develop annual work plans * * *	60	10	600
227.400(a) (4), (6); 227.401(d).	If you request delegation of either production report or royalty report processing functions, you must perform * * * timely transmitting production report or royalty report data to MMS and other affected Federal agencies; * * * Providing production data or royalty data to MMS and other affected Federal agencies * * * Timely transmit required production or royalty data to MMS and other affected Federal agencies * * *.	.5	250	125
227.400(c)	You must provide MMS with a copy of any exceptions from reporting and payment requirements for marginal properties and any alternative royalty and payment requirements for unit agreements and communitization agreements you approve.	20	1	20
227.501(c)	Submit accepted and corrected lines to MMS to allow processing in a timely manner * * *.	.5	250	125

STATE RESPONDENT ANNUAL BURDEN HOUR CHART—Continued

30 CFR section	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
227.601(c)	To perform automated verification or production reports or royalty reports, you must: Maintain all documentation and logging procedures * * *.	2	12	24
Total			946	4,179

Estimated Annual Reporting and Recordkeeping "Non-hour Cost" Burden: The non-hour cost burden for one State to assume the four additional functions authorized by RSFA is estimated at $60,000 for electronic processing and imaging capability. Annualized over 3 years, the cost is $20,000.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Comments: Section 3506(c)(2)(A) of the PRA requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a notice in the **Federal Register** on April 8, 2003, (68 FR 17073) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no comments in response to this notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by September 3, 2003.

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm*. We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: July 21, 2003.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 03–19651 Filed 8–1–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DVD Copy Control Association ("DVD CCA")

Notice is hereby given that, on July 2, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), DVD CCA has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, CIS Technology, Inc., Taipei Hsien, TAIWAN; DOCdata Benelux (OMM bv), Tilburg, THE NETHERLANDS; EMI Operations Italy S.p.A., Caronno Pertusella, ITALY; Humax Co., Ltd., Gyeonggi-Do, REPUBLIC OF KOREA; Lu Kee Electronic Co., Ltd., Hong Kong, HONG KONG-CHINA; ODS Optical Disc Service GmbH, Dassow, GERMANY; Shanghai HongSheng (Norcent) Technology Co., Ltd., Shanghai, PEOPLE'S REPUBLIC OF CHINA; TAKT Kwaitkowski & Miadzel Sp.J., Boleslaw, POLAND; Trident Microsystems, Inc., Sunnyvale, CA; Videon Central, Inc., State College, PA; and ZheJiang HuaHong Optoelectronics Group Co., Ltd., Hangzhou, PEOPLE'S REPUBLIC OF CHINA have been added as parties to this venture.

Also, Afreey Inc., Taipei, TAIWAN; Alphacast Co. Ltd., Seoul, REPUBLIC OF KOREA; Applied Research Corporation, Taiepei Hsien, TAIWAN; Esonic Technology Corporation, Taipei, TAIWAN; FM Com Corp., Kyungki-Do, REPUBLIC OF KOREA; Friendly CD-Tek Corporation, Taipei, TAIWAN; Goldteck International Inc., Taipei, TAIWAN; Great China Technology Inc., Taipei Hsien, TAIWAN; Gynco Electronics (H.K.) Ltd., Hong Kong, HONG KONG-CHINA; Hanbit System Co., Ltd., Kyonggi-do, REPUBLIC OF KOREA; Hermosa Cysware Ltd., Taipei, TAIWAN; Highlead Technology, Taipei Hsien, TAIWAN; Iavix Technology Co., Ltd., Taipei, TAIWAN; Iomega Corporation, Roy, UT; Jeu Hang Technology Co., Ltd., Taipei, TAIWAN; Jointeck (HK) Limited, Hong Kong, HONG KONG-CHINA; Linux Technology Ltd., Taipei, TAIWAN; Makidol Electronics Co., Ltd., Shenzhen, PEOPLE'S REPUBLIC OF CHINA; Maxwell Productions, LLC, Scottsdale, AZ; MbyN Inc., Kyungki-do, REPUBLIC OF KOREA; Media Dimensions, Inc., Austin, TX; Media Group, Inc., Fremont, CA: Megatron Co., Ltd., Seoul, REPUBLIC OF KOREA; Novac Co., Ltd., Tokyo, JAPAN; Optical Disc Stampers, Orange, CA; Shenzhen WED Development Co., Ltd., Guangdong, PEOPLE'S REPUBLIC OF CHINA; Shunde Xiongfend Electric Industrial Company, Guangdong, PEOPLE'S REPUBLIC OF CHINA; Takaya Corporation, Tokyo, JAPAN; Tanway Electronic Factory, Hong Kong, HONG KONG-CHINA; TVIA, Santa Clara, CA; Unidisc Technology Co., Ltd., Taipei Hsien, TAIWAN; Zen Research NV, Curacao, NETHERLANDS ANTILLES; and Zenix Electronics Limited, Hong Kong, HONG KONG-CHINA have been dropped as parties to this venture. In addition, Ravisent has changed its name to Sonic Solutions, Novato, CA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and DVD CCA intends to file additional written notification disclosing all changes in membership.

On April 11, 2001, DVD CCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on August 3, 2001 (66 FR 40727).

The last notification was filed with the Department on April 4, 2003. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 14, 2003 (68 fr 25905).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–19673 Filed 8–1–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Gaming Standards Association (GSA)

Notice is hereby given that, on July 8, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Gaming Standards Association ("GSA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Alliance Gaming Services, Amsterdam, HOLLAND; Australasian Gaming Machine Manufacturers Association (AGMMA), Crows Nest, New South Wales, AUSTRALIA; BMM North America, Las Vegas, NV; Cadillac Jack, Duluth, CA; Cirsa Interactive, Terrassa, SPAIN; Cyberview Technologies, Inc., Las Vegas, NV; GameTech International, Reno, NV; GGS–US LTD, Las Vegas, NV; Giesecke & Devrient, Dulles, VA; Glory USA, W. Caldwell, NJ; Isle of Capri Casinos, Inc., Biloxi, MS; MBDA, Miami, OK; OLGC, Toronto, Ontario, CANADA; and Soanar, Croydon, Victoria, AUSTRALIA have been added as parties to this venture. Also, IGT—International Game Technology, Reno, NV has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and GSA intends to file additional written notification disclosing all changes in membership.

On March 6, 2003, GSA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on April 1, 2003 (68 FR 15743).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–19672 Filed 8–01–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—SEMATECH, Inc. d/b/a International SEMATECH

Notice is hereby given that, on June 16, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), SEMATECH Inc. (which is doing business as International SEMATECH) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership and project status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

With respect to membership status, Hynix Semiconductor Inc. (formerly known as Hyundai Electronics Industries Company, Ltd.), Kyoungki-do, REPUBLIC OF KOREA; and STMicroelectronics, Geneva, SWITZERLAND have been dropped as parties to this venture.

The scope of the venture has expanded through a new program called the Research and Development (R&D) Foundry. The nature and objectives of the R&D Foundry are to make International SEMATECH's Advanced Technology Development Facility ("ATDF") available for customized programs and advanced R&D on fee-for-project basis. R&D Foundry customers can be International SEMATECH members, universities, equipment suppliers and other third parties in the industry (including non-member chip makers). Fees from R&D Foundry projects will be used to offset the expense of operating the ATDF. The R&D Foundry customer may be given exclusive access at certain times to tools in the ATDF and, depending on the nature of the project, may have a dedicated area in which to conduct ongoing research. Alternatively, International SEMATECH ATDF employees will perform the work for the R&D Foundry customer. International SEMATECH will provide personnel to manage the R&D Foundry projects. International SEMATECH personnel costs and other costs related to R&D Foundry activities will be separately accounted for. If an International SEMATECH member is also an R&D Foundry customer, its R&D Foundry fee will not be counted toward International SEMATECH membership dues. The R&D Foundry customer will have exclusive access to and ownership of most of the intellectual property ("IP") resulting from its project.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and International SEMATECH intends to file additional written notification disclosing all changes in membership.

On April 22, 1988, International SEMATECH filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 19, 1988 (53 FR 17987).

The last notification was filed with the Department on January 19, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 24, 2001 (66 FR 20686).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–19671 Filed 8–01–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: Compliance with the Statutory Eligibility Requirements of the Violence Against Women Act.

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 66, page 16832 on April 7, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 3, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to. (202)–395–7285.Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* Certification of Compliance with the Statutory Eligibility Requirements of the Violence Against Women Act.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* The Office of Management and Budget Number for the certification form is 1125/185. The Office on Violence Against Women, Office of Justice Programs, United States Department of Justice is sponsoring the collection.

(4) *Affected public who will be as or required to respond, as well as a brief abstract:* Primary: The affected public includes STOP formula grantees (50 states, the District of Columbia and five territories (Guam, Puerto Rico, American Samoa, Virgin Islands, Northern Mariana Islands)). The STOP Violence Against Women Formula Grant Program was authorized through the Violence Against Women Act of 1994 (VAWA 1994) and reauthorized and amended by the Violence Against Women Act of 2000 (VAWA 2000). Its purpose is to promote a coordinated, multi-disciplinary approach to improving the criminal justice system's response to violence against women. It envisions a partnership among law enforcement, prosecution, courts, and victim advocacy organizations to enhance victim safety and hold offenders accountable for their crimes of violence against women. The Department of Justice's Office on Violence Against Women (OVW) administers the STOP Formula Grant Program funds which must be distributed by STOP state administrators according to statutory formula (as amended by VAWA 2000).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take 56 respondents (STOP state administrators) less than one hour to complete the certification form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the certification form is less than 56 hours.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: July 30, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–19692 Filed 8–1–03; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed collection; comments requested

Action: 30-Day Notice of information collection under review: Certification of Compliance with the Statutory Eligibility Requirements for Tribal Governments.

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the FR Volume 68, Number 66, page 16832 on April 7, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 3, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* Certification of Compliance with the Statutory Eligibility Requirements for Tribal Governments.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* The Office of Management and Budget Number for the certification form is 1121/186. The Office on Violence Against Women, Office of Justice Programs, United States Department of Justice is sponsoring the collection.

(4) *Affected public who will be as or required to respond, as well as a brief abstract:* Primary: The affected public includes the approximately 100 grantees under the STOP Violence Against Indian Women Discretionary Grant Program. The STOP Violence Against Indian Women Discretionary Grants are designed to develop and strengthen tribal law enforcement and prosecutorial strategies to combat violent crimes against Indian women, as well as develop and strengthen victim services. The Violence Against Women Act of 1994 required that 4 percent of the amount appropriated each year for grants to combat violent crimes against women be made available for grants to Indian tribal governments. The Violence Against Women Act of 2000 increased this amount to 5 percent.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 100 grantees under the STOP Violence Against Indian Women Discretionary Grant Program less than one hour to complete the certification form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden to complete the certification form is less than 100 hours.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW, Washington, DC 20530.

Dated: July 30, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–19693 Filed 8–1–03; 8:45 am]

BILLING CODE 4410–18–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

July 23, 2003.

TIME AND DATE: 10 a.m., Thursday, July 24, 2003.

PLACE: Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *Black Butte Coal Co.*, Docket Nos. WEST 2001–166–RM and WEST 2002–223. (Issues include whether the Commission should grant interlocutory review on the question of whether the judge erred in denying the operator's motion to dismiss based upon the Secretary's delay in proposing a penalty assessment.)

No earlier announcement of the meeting was possible.

FOR FURTHER INFORMATION CONTACT: Jean Ellen, (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 03–19895 Filed 7–31–03; 12:20 am]

BILLING CODE 6735–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before September 18, 2003. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–837–3698 or by e-mail to *records.mgt@nara.gov*. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–3120. E-mail: *records.mgt@nara.gov*.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape,

and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Air Force, Agency-wide (N1–AFU–03–13, 5 items, 5 temporary items). Records relating to identifying and assisting family members of Air Force personnel who are in need of medical and/or early intervention services, including electronic copies of records created using electronic mail and word processing.

2. Department of the Army, Agency-wide (N1–AU–03–15, 3 items, 3 temporary items). Continuity of operations program records accumulated by offices other than the office with Army-wide responsibility. Included are plans, instructions, coordinating actions, initial and interim reports, and final emergency operations reports. Also included are electronic copies of documents created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

3. Department of the Army, Agency-wide (N1–AU–03–16, 3 items, 3 temporary items). Background materials used to prepare studies relating to unconventional warfare and psychological operations, including electronic copies of documents created using electronic mail and word processing. This schedule also authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium. Recordkeeping copies of the studies to which these files relate were previously approved for permanent retention.

4. Department of the Army, Agency-wide (N1–AU–03–20, 2 items, 2 temporary items). Records relating to Army National Guard and Army Reserve incentive programs involving such benefits as enlistment bonuses, educational assistance, and repayment of student loans. Records include determinations, legal opinions, statistics, and reports. Also included are electronic copies of documents created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

5. Department of the Army, Agency-wide (N1–AU–03–21, 3 items, 3 temporary items). Records relating to Army educational incentives and entitlements. Records include documentation on eligible participants and information related to inquiries and corrective actions to aid soldiers and veterans in obtaining educational benefits. Also included are electronic copies of documents created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

6. Department of Energy, Bonneville Power Administration (N1–305–03–3, 6 items, 6 temporary items). Records relating to procurement, materials management, and quality assurance, including such matters as the disposal of excess material and equipment, the agency's quality assurance program, and material specifications. Also included are electronic copies of records created using electronic mail and word processing. This schedule revises retention periods for these items, which were previously approved for disposal.

7. Department of Health and Human Services, Office of the Secretary (N1–468–03–2, 3 items, 3 temporary items). Records relating to weekly conference calls between headquarters and regional offices of the Office of General Counsel. Included are sound recordings, transcriptions, written summaries, and finding aids. Also included are electronic copies of records created using electronic mail and word processing.

8. Department of Homeland Security, Transportation Security Administration (N1–560–03–1, 20 items, 16 temporary items). Records of the Office of Chief Counsel, including such records as general legal files, personnel-related legal assistance files, protests to the Comptroller General, legal subject files, claim files, civil and criminal enforcement files, and international law files. Also proposed for disposal are electronic copies of documents created using word processing and electronic mail. Records proposed for permanent retention include recordkeeping copies of significant litigation files, enacted legislation files, significant regulation and rulemaking files, and formal legal opinion case files.

9. Department of Justice, Drug Enforcement Administration (N1–170–03–07, 6 items, 6 temporary items). Inputs, electronic data, outputs, and documentation associated with the Diversion Validation Tracking and Electronic Filing System, which tracks funding allocated to support the agency's diversion program. Also included are electronic copies of documents created using electronic mail and word processing.

10. Department of State, Office of War Crimes Issues (N1–59–02–2, 2 items, 1 temporary item). Electronic copies of records created using electronic mail and word processing associated with the office's program files. Recordkeeping copies of these records are proposed for permanent retention.

11. Department of the Treasury, Bureau of the Public Debt (N1–53–03–10, 1 item, 1 temporary item). Surveillance tapes of exterior building areas and interior entrance areas. This schedule authorizes the agency to destroy these records after a retention period that is shorter than the retention period included in General Records Schedule 21, Item 18.

12. Department of the Treasury, Bureau of the Public Debt (N1–53–03–11, 5 items, 5 temporary items). Forms, correspondence, and reports needed to process securities transactions and letters and reports relating to attempts to contact owners of unredeemed securities or owners with undeliverable securities or payments. Also included are electronic copies of documents created using electronic mail and word processing.

13. Department of the Treasury, U.S. Mint (N1–104–03–2, 2 items, 1 temporary item). Electronic copies of records created using electronic mail and word processing that are associated with financial operations reports. Recordkeeping copies of these files are proposed for permanent retention.

14. Department of the Treasury, U.S. Mint (N1–104–03–4), 2 items, 2 temporary items). Economic Crimes Unit investigative records. Records include original complaints, transmittal memorandums, and related documents. Also included are electronic copies or records created using electronic mail and word processing.

15. Peace Corps, Office of Overseas Posts (N1–490–02–2, 12 items, 8 temporary items). Records relating to post startup and closeout, funding and other financial matters, and volunteer living allowances and stipends. Also included are electronic copies of records created using word processing and electronic mail. Proposed for permanent retention are recordkeeping copies of briefing books, country welcome books, country graduation books, and legacy reports.

16. Tennessee Valley Authority, Fossil Power Group (N1–142–03–3, 8 items, 6 temporary items). Design and construction drawings documenting the layout of structures and equipment at fossil power plants that are lacking in historical value. Records are maintained in paper and microfilm and as scanned images. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are hard copy and electronic versions of drawings having historical value, such as site general plan drawings, drawings of structures, and switchyard drawings.

Dated: July 25, 2003.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 03–19652 Filed 8–1–03; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: National Labor Relations Board.

TIME AND DATE: 10 a.m., Tuesday, July 9, 2003.

PLACE: Board Conference Room, Eleventh Floor, 1099 Fourteenth St., NW., Washington, DC 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices, (6) (personal privacy), and (9)(B) (disclosure would significantly frustrate implementation of a proposed Agency action).

MATTERS TO BE CONSIDERED: Internal Administrative Matters.

CONTACT PERSON FOR MORE INFORMATION: Lester A. Heltzer, Executive Secretary, Washington, DC 20570, Telephone: (202) 273–1067.

Dated, Washington, DC, July 30, 2003.

By Direction of the Board.

Lester A. Heltzer,

Executive Secretary, National Labor Relations Board.

[FR Doc. 03–19881 Filed 7–31–03; 12:15 am]

BILLING CODE 7545–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–29288]

Notice of Consideration of License Renewal Request for Decommissioning the Quehanna Site in Karthaus, Pennsylvania and Opportunity To Provide Comments and Request a Hearing

ACTION: Notice of consideration of amendment request to renew license to authorize decommissioning, and opportunity to provide comments and to request a hearing.

FOR FURTHER INFORMATION CONTACT: James Kottan, Project Manager, Decommissioning and Laboratory Branch, Division of Nuclear Materials Safety, Region I, U.S. Nuclear Regulatory Commission, 475 Allendale Road, King of Prussia, PA 19406. Telephone: (610) 337–5214, fax number (610) 337–5269, and/or e-mail *jjk@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission is considering the renewal of By-Product Materials License No. 37–17860–02 (License No. 37–17860–02), issued to the Pennsylvania Department of Environmental Protection, Bureau of Radiation Protection, to authorize decommissioning of the Quehanna Site in Karthaus, Pennsylvania.

The licensee has been performing limited decommissioning of the hot cells at the Quehanna Site in accordance with the conditions described in License No. 37–17860–02. On February 26, 2003, the licensee submitted a license renewal application, including a revised Decommissioning Plan (DP) for the Quehanna Site, to the NRC for review that summarized the decommissioning activities that will be undertaken to remediate the hot cells and other building areas and any contaminated soil. Radioactive contamination at the licensee's Quehanna Site consists of contaminated process piping, soils, and building surfaces contaminated primarily with strontium-90 resulting from licensed operations that occurred from the late 1950s until 1967.

The NRC will require the licensee to remediate the Quehanna Site to meet the NRC's decommissioning criteria and, during decommissioning activities, to maintain effluents and doses within NRC requirements and as low as reasonably achievable.

Prior to approving the decommissioning plan, the NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. Renewal of the license, including approval of the Decommissioning Plan for the Quehanna Site, will be documented in an amendment to License No. 37–17860–02.

II. Opportunity To Provide Comments

In accordance with 10 CFR 20.1405, the NRC is providing notice to individuals in the vicinity of the site that the NRC is in receipt of a DP, and will accept comments concerning this decommissioning proposal and its associated environmental impacts. Comments with respect to this action should be provided in writing within 30 days of this notice and addressed to James Kottan, Project Manager, Decommissioning and Laboratory Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, PA 19406. Telephone: (610) 337–5214, fax number (610) 337–5269, and/or e-mail *jjk@nrc.gov.* Comments received after 30 days will be considered if practicable to do so, but only those comments received on or before the due date can be assured consideration.

III. Opportunity To Request a Hearing

NRC also provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Whether or not a person has or intends to provide comments as set out in section II. above, pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to Secretary, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 a.m. and 4:15 p.m., Federal workdays; or

2. By mail, telegram, or facsimile addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101, or by e-mail to *hearingdocket@nrc.gov*.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Pennsylvania Department of Environmental Protection, Bureau of Radiation Protection, Rachel Carson State Office Building, P.O. Box 2063, Harrisburg, Pennsylvania 17105–2063, Attention: David J. Allard, Bureau Director; and

2. The NRC staff, by delivery to the General Counsel, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 am and 4:15 p.m., Federal workdays, or by mail, addressed to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing be also transmitted to the Office of the General Counsel, either by means of facsimile transmission to (301) 415–3725, or by e-mail to *OGCMailCenter@nrc.gov*.

In addition to meeting other applicable requirements of 10 CFR part 2 of NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

IV. Further Information

Additional details with respect to this action, the renewal application, including the decommissioning plan, are available for inspection at the NRC's Public Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. [Accession Number: ML030800038]. These documents are also available for inspection and copying for a fee at the Region I Office, 475 Allendale Road, King of Prussia, Pennsylvania, 19406.

Dated at King of Prussia, Pennsylvania, this 24th day of July, 2003.

For the Nuclear Regulatory Commission.

Ronald Bellamy,

Chief, Decommissioning and Laboratory Branch, Division of Nuclear Materials Safety, RI.

[FR Doc. 03–19689 Filed 8–1–03; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of an Information Collection: Reemployment of Annuitants, 5 CFR 837.103

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for review of an expiring information collection. Section 837.103 of Title 5, Code of Federal Regulations, requires agencies to collect information from retirees who become employed in Government positions. Agencies need to collect timely information regarding the type and amount of annuity being received so the correct rate of pay can be determined. Agencies provide this information to OPM so a determination can be made whether the reemployed retiree's annuity must be terminated.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

We estimate 3,000 reemployed retirees are asked this information annually. It takes each reemployed retiree approximately 5 minutes to provide the information for an annual estimated burden of 250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Chief, Operations Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349A, Washington, DC 20415–3540.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Cyrus S. Benson, Team Leader, Publications Team, Support Group, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–19704 Filed 8–1–03; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of an Expiring Information Collection: Declaration for Federal Employment Optional Form 306

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget a request for clearance of an expiring information collection. The OF 306 is completed by applicants who are under serious consideration for employment. It is completed early enough in the employment process that if an agency encounters an applicant who did not register with the Selective Service, the agency would have sufficient time to determine if non-registration was done knowingly and willfully prior to making a final employment decision.

Comments are particularly invited on:

• Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management.

• Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

• Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

It is estimated that 474,000 individuals will respond annually. Each form takes approximately 15 minutes to complete. The annual estimated burden is 118,500 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, Fax (202) 418–3251 or e-mail to *mbtoomey@opm.gov*. Please be sure to include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to: Kathy L. Dillaman, Deputy Associate Director, Center for Investigations Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 5416, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Sherry G. Tate, Program Analyst, Program Services Group, Center for Investigations Services, (202) 606–0434.

Office of Personnel Management

Kay Coles James,

Director.

[FR Doc. 03–19705 Filed 8–1–03; 8:45 am]

BILLING CODE 6325–40–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension

Form T–6, OMB Control No. 3235–0391, SEC File No. 270–344

Form 11–K, OMB Control No. 3235–0082, SEC File No. 270–101

Form 144, OMB Control No. 3235–0101, SEC File No. 270–112

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management Budget for extension and approval.

Form T–6 (OMB Control No. 3235–0391, SEC File No. 270–344) is a statement of eligibility and qualification for a foreign corporate trustee under the Trust Indenture Act of 1939. Form T–6 provides the basis for determining if a trustee is qualified. Form T–6 takes approximately 17 burden hours to be prepared and is filed by 15 respondents. It is estimated that 25% of the 255 total burden hours (64 hours) is prepared by the filer. The remaining 75% of burden hours is prepared by outside counsel.

Form 11–K (OMB Control No. 3235–0082; SEC File No. 270–101) is the annual report designed for use by employee stock purchase, savings and similar plans to facilitate their compliance with the reporting requirement. The Form 11–K is necessary to provide employees with information, including financial information, with respect to the investment vehicle or plan itself. Also, Form 11–K provides employees with the necessary information to assess the performance of the investment vehicle in which their money is invested. Form 11–K takes approximately 30 burden hours to prepare and is filed by 2,300 respondents for total of 69,000 burden hours.

Form 144 (OMB 3235–0101; SEC File No. 270–112) is used to report the sale of securities during any three-month period that exceeds 500 shares or other units or has an aggregate sales price in excess of $10,000. Form 144 operates in conjunction with Rule 144. Form 144 takes approximately 2 burden hours to prepare and is filed by 18,096 respondents for a total of 36,192 total burden hours.

Written comments are invited on: (a) Whether these proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information collection information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: July 25, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–19725 Filed 8–1–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 5th Street, NW., Washington, DC 20549.

Extension:

Rule 44, SEC File No. 270–162, OMB Control No. 3235–0147.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 44, (17 CFR 250.44) under the Public Utility Holding Company Act of 1935, as amended ("Act"), 15 U.S.C. 79, *et seq.*, prohibits sales of utility assets and utility securities owned by public utility holding companies registered under the Act, except pursuant to a declaration filed with, and approved by, the Commission.

The Commission estimates that the total annual reporting burden of Rule 44 is 96 hours (4 responses × 24 hours = 96 hours).

The estimate of average burden hours is made for purposes of the Paperwork Reduction Act and is not derived from a comprehensive or representative survey or study of the costs of complying with the requirements of Commission rules and forms.

Written comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: July 24, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–19726 Filed 8–1–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17g–1 [17 CFR 270.17g–1], SEC File No. 270–208, OMB Control No. 3235–0213.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of approval of the previously approved collection of information discussed below.

Rule 17g–1 governs the fidelity bonding of officers and employees of registered management investment companies ("funds") and their advisers. Rule 17g–1 requires, in part, the following:

- *Independent Directors' Approval Requirements.* At least annually, the independent directors of a fund must approve the form and amount of the fund's fidelity bond. Rule 17g–1 provides a schedule of minimum amounts for fidelity bonds based on a fund's size. The independent directors also must approve the amount of any premium paid for any "joint bond" covering multiple funds or certain other affiliates of the fund.
- *Fidelity Bond Content Requirements.* The fidelity bond must provide that it shall not be cancelled, terminated or modified except upon 60-days written notice to the affected party and to the Commission. In the case of a joint bond, this 60-day notice also must be given to each fund and to the Commission. In addition, a joint bond must provide that the fidelity insurance company will provide all funds covered by the bond with (i) a copy of the bond and any amendments to the bond; (ii) a copy of any formal filing of a claim on the bond; and (iii) notification of the terms of the settlement on any claim prior to execution of that settlement.
- *Joint Bond Agreement Requirement.* A fund that is insured by a joint bond must enter into an agreement with all other parties insured by the joint bond regarding recovery under the joint bond.
- *Required Filings with the Commission.* Upon execution of a fidelity bond or any amendment thereto, a fund must file with the Commission a copy of: (i) The executed fidelity bond; (ii) the resolution of the fund's independent directors approving the fidelity bond; and (iii) a statement as to the period for which the fidelity bond premiums have been paid. In the case of a joint bond, a fund also must file a copy of: (i) A statement showing the amount of a single insured bond the fund would have maintained under the rule had it not been named under a joint bond; and (ii) each agreement between the fund and all other insured parties. A fund also must notify the Commission in writing within 5 days of any claim and settlement on a claim made under a fidelity bond.
- *Required Notices to Directors.* A fund must notify by registered mail each member of its board of directors of (i) any cancellation, termination or modification of the fidelity bond at least 45 days prior to the effective date; and (ii) the filing or settlement of any claim under the fidelity bond when the notification is filed with the Commission. Rule 17g–1's independent directors' annual review requirements, fidelity bond content requirements, joint bond agreement requirement and the required notices to directors are designed to ensure the safety of fund assets against losses due to the conduct of persons who may obtain access to those assets. These requirements also facilitate oversight of a fund's fidelity bond. The rule's required filings with the Commission are designed to assist the Commission in monitoring funds' compliance with the fidelity bond requirements.

The Commission staff estimates that approximately 4600 funds are subject to the requirements of rule 17g–1, and that on average a fund spends approximately one hour per year complying with the rule's paperwork requirements. The Commission staff therefore estimates the total annual burden of the rule's paperwork requirements to be 4600 hours.

These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of Commission rules. The collection of information required by rule 17g–1 is mandatory and will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the information above to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 22, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–19727 Filed 8–1–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 6c–7; SEC File No. 270–269; OMB Control No. 3235–0276.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 6c–7 [17 CFR 270.6c–7] under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) ("1940 Act") provides exemption from certain provisions of Sections 22(e) and 27 of the 1940 Act for registered separate accounts offering variable annuity contracts to certain employees of Texas institutions of higher education participating in the Texas Optional Retirement Program. There are approximately 80 registrants governed by Rule 6c–7. The burden of compliance with Rule 6c–7, in connection with the registrants obtaining from a purchaser, prior to or at the time of purchase, a signed document acknowledging the restrictions on redeemability imposed by Texas law, is estimated to be approximately 3 minutes of professional time per response for each of 2600 purchasers annually (at an estimated $70 per hour), for a total annual burden of 130 hours (at a total annual cost of $9,100).

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules or forms. The Commission does not include in the estimate of average burden hours the time preparing registration statements and sales literature disclosure regarding the restrictions on redeemability imposed by Texas law. The estimate of burden hours for completing the relevant registration statements are reported on the separate PRA submissions for those statements. (*See* the separate PRA submissions for Form N–3 [17 CFR 274.11b] and Form N–4 [17 CFR 274.11c].)

Complying with the collection of information requirements of the rules is necessary to obtain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549.

Dated: July 21, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–19728 Filed 8–1–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 11a–2; SEC File No. 270–267; OMB Control No. 3235–0272.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit to the Office of Management and Budget a request for an extension of the previously approved collection of information discussed below.

The title for the collection of information is "Rule 11a–2 Under the Investment Company Act of 1940: Offers of Exchange by Certain Registered Separate Accounts or Others the Terms of Which Do Not Require Prior Commission Approval."

Rule 11a–2 [17 CFR 270.11a–2] permits certain registered insurance company separate accounts, subject to certain conditions, to make exchange offers without prior approval by the Commission of the terms of those offers. Rule 11a–2 requires disclosure, in certain registration statements filed pursuant to the 1933 Act, of any administrative fee or sales load imposed in connection with an exchange offer.

There are currently 711 registrants governed by Rule 11a–2. The Commission includes the estimated burden of complying with the information collection required by Rule 11a–2 in the total number of burden hours estimated for completing the relevant registration statements and reports the burden of Rule 11a–2 in the separate PRA submissions for those registration statements (see the separate PRA submissions for Form N–3 [17 CFR 274.11b], Form N–4 [17 CFR 274.11c] and Form N–6 [17 CFR 274.11d]). The Commission is requesting a burden of one hour for Rule 11a–2 for administrative purposes.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules or forms. With regard to Rule 11a–2, the Commission includes the estimate of burden hours in the total number of burden hours estimated for completing the relevant registration statements and reported on the separate PRA submissions for those statements (*see* the separate PRA submissions for Form N–3, Form N–4 and Form N–6).

The information collection requirements imposed by Rule 11a–2 are mandatory. Responses to the collection of information will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate

Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: July 29, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–19729 Filed 8–1–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the Pacific Exchange, Inc. (Detwiler, Mitchell & Co., Common Stock, $.01 Par Value); File No. 1–10331

July 29, 2003.

Detwiler, Mitchell & Co., a Delaware corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value ("Security"), from listing and registration on the Pacific Exchange, Inc. ("PCX" or "Exchange").

The Board of Directors ("Board") of the Issuer approved resolutions on July 1, 2003 to withdraw its Security from listing on the Exchange. The Board states that the reasons it decided to delist the Security from the PCX are: (i) The Issuer has approximately 221 record holders of its Security making it eligible for deregistration under Section 12(g) of the Act; (ii) the Issuer estimated the potential cost savings from deregistration and delisting from the Nasdaq SmallCap Market and the PCX to be in the range of $125,000 to $200,000 annually; (iii) the Issuer would be relieved from the time-consuming burdens of compliance with the reporting and other requirements of the Act, which have become more burdensome because of the enactment of the Sarbanes-Oxley Act of 2002; relief from these burdens would represent a substantial benefit to the business and operations of the Issuer, which cannot be quantified in monetary terms and is not reflected in estimates of cash cost savings; (iv) the reactions of stockholders, employees and clients to the prospect of deregistration and delisting were almost universally favorable, and stockholders seem to be impressed by the potential for cost savings while understanding that the Issuer's Security will continue to be publicly traded on Pink Sheets LLC's quotations service ("pink sheets"); (v) the desultory trading market in the Security through its listing on the Nasdaq SmallCap market and PCX was no more beneficial to the stockholders, and does not provide them a better trading market, than would be available to them if the Security were deregistered and traded in the "pink sheets" market place; the Security trades less than 10,000 shares annually on the PCX; and (vi) the Issuer could continue to provide quarterly and (audited) annual financial statements and press releases to its stockholders containing substantially the same information about the financial condition and results of operations of the Issuer as have been provided to them in the past, and will continue to provide stockholders with reports of current developments as in the past so that registration will not substantially reduce the flow of useful information to the stockholders. The Issuer states that its Security has traded over-the-counter and has been quoted in the pink sheets since July 7, 2003.

The Issuer stated in its application that it has complied with the rules of the PCX that govern the removal of securities from listing and registration on the Exchange. The Issuer's application relates solely to the withdrawal of the Security from listing and registration on the PCX and from registration under Section 12(b)[3] of the Act and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before August 18, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–19664 Filed 8–1–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Dot Hill Systems Corp., Common Stock, $.001 par value); File No. 1–13317

July 29, 2003.

Dot Hill Systems Corp., a Delaware corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.001 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in the State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer stated that it is taking such action because the Issuer believes that listing on the Nasdaq National Market will provide superior trading and visibility in the investment community, among other advantages. The Issuer also stated that this is of particular importance as the Issuer anticipates pursuing a follow-on public offering in the near future.

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and from registration under Section 12(b) of the Act[3] shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before August 18, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–19665 Filed 8–1–03; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48236; File No. SR–NASD–2003–105]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. To Implement a Six-Month Pilot Program Establishing Fees for Written Interpretations of Nasdaq Listing Rules

July 28, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 3, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to implement a pilot program that establishes fees for written interpretations of Nasdaq listing rules. The text of the proposed rule change is below. Proposed new language is in *italics.*

* * * * *

4500. Issuer Listing Fees

4550. Written Interpretations of Nasdaq Listing Rules

(a) An issuer listed on The Nasdaq SmallCap Market or The Nasdaq National Market may request from Nasdaq a written interpretation of the Rules contained in the 4000 through 4500 Series. In connection with such a request, the issuer must submit to The Nasdaq Stock Market, Inc. a non-refundable fee of $2,000. A response to such a request generally will be provided within four weeks from the date Nasdaq receives all information necessary to respond to the request.

(b) Notwithstanding paragraph (a), an issuer may request a written interpretation of the Rules contained in the 4000 through 4500 Series by a specific date that is less than four weeks, but at least one week, after the date Nasdaq receives all information necessary to respond to the request. In connection with such a request for an expedited response, the issuer must submit to The Nasdaq Stock Market, Inc. a non-refundable fee of $10,000.

(c) An applicant to The Nasdaq Stock Market that has submitted the applicable entry fee under Rule 4510 or Rule 4520 will not also be required to submit a fee in connection with a request for a written interpretation involving the applicant's initial inclusion on Nasdaq. In addition, an issuer is not required to submit a fee in connection with a request for an exception from the Nasdaq shareholder approval rules pursuant to Rule 4350(i)(2).

(d) The Board of Directors of The Nasdaq Stock Market, Inc. or its designee may, in its discretion, defer or waive all or any part of the written interpretation fee prescribed herein.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to institute a six-month pilot program that establishes a fee for written interpretations of Nasdaq listing rules. Nasdaq proposes that this rule change become effective on October 1, 2003 or upon Commission approval, whichever date is later. Nasdaq will monitor the effect of this rule change on the listing rules interpretative process during this period. Prior to the completion of the pilot, Nasdaq will evaluate the impact of this rule and report its findings to the Commission, and thereafter, determine the appropriate course of action.

Currently, issuers may contact Nasdaq to request an interpretation regarding the application of Nasdaq's listing rules to a particular set of facts. For example, an issuer negotiating a private placement might want to ensure that the proposed transaction does not require shareholder approval under Nasdaq's rules. Alternatively, an issuer seeking to add a new director to its board of directors may inquire as to the impact of a prior relationship with that individual on the person's independence under Nasdaq rules.

Issuers can request formal interpretative guidance of Nasdaq's listing rules by submitting a letter that identifies the issuer and provides all relevant facts and circumstances surrounding the question. Staff of Nasdaq's Listing Qualifications Department will prepare a response letter, which the Nasdaq Office of General Counsel reviews prior to issuance. Written interpretations are binding on Nasdaq unless the issuer has made a material misstatement or omission, there is a subsequent change in the facts or circumstances that the issuer described in its letter, or there is a subsequent change in Nasdaq's listing requirements.[4] Since written interpretations are based on the specific facts and circumstances presented by an issuer, an issuer may not rely on a written interpretation that has been provided to another issuer. However, to provide transparency regarding our rules and policies, Nasdaq publishes anonymous summaries of these interpretative letters on its Web site, at *http://www.nasdaq.com/about/StaffInterpLetters.stm.*

Nasdaq currently provides written interpretations at no cost to issuers. In recent years, however, there has been an increase in the complexity of transactions for which issuers have sought interpretations. As a result, Nasdaq staff now spends an increasing amount of time on routine interpretation letters, with some interpretations

[5] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission revised text in the description of the proposed rule change to clarify certain terms of the pilot, and added a reference to its proposed start date, with the consent of Nasdaq. *See* e-mails from John Nachmann, Senior Attorney, Nasdaq, to Andrew Shipe, Special Counsel, and Leah Mesfin, Attorney, Division of Market Regulation, Commission, dated July 21 and July 22, 2003.

[4] Nasdaq also provides oral guidance regarding its listing rules. Issuers will often request such guidance on a "no names" basis, while they still are structuring a transaction or analyzing the impact of a proposed change. Since oral guidance may not be based on a complete review of all relevant facts and circumstances, it is not binding on Nasdaq.

requiring as much as 20 staff hours to complete.

In order to address, in part, the costs associated with the written interpretation process, Nasdaq is proposing to adopt a $2,000 fee for interpretation letters. Nasdaq will generally respond to such requests in the order received, and responses require approximately four weeks from the date that Nasdaq receives all information necessary to respond to the request. However, Nasdaq recognizes that, due to business exigencies or other reasons, an issuer may require an interpretation letter in a shorter period of time. In such situations, an issuer can request that an interpretation letter be processed by a specific date that is less than four weeks, but at least one week, after the date Nasdaq receives all information necessary to respond to the request. Nasdaq will make all reasonable efforts to meet the date specified by the issuer. Nasdaq is proposing to adopt a $10,000 fee for interpretation letters processed on an expedited basis.

Nasdaq will not assess fees for requests submitted by issuers with regard to initial listing on Nasdaq, because reviews of these matters are considered to be part of the processing of an issuer's application and a separate application fee is already charged in these situations. In addition, issuers will not be required to submit a fee in connection with requests for an exception from the Nasdaq shareholder approval rules pursuant to Rule 4350(i)(2), since requests for such exceptions involve issuers whose financial viability is in jeopardy. Lastly, in order to address other exceptional situations where the payment of a fee for an interpretation letter would be inequitable under the circumstances, Nasdaq is proposing to provide the Nasdaq Board of Directors or its designee the discretion to defer or waive all or any part of the written interpretation fee. Such discretion will not be used in generally applicable or frequently-replicated situations, but only in circumstances that are truly unique.[5]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[6] in general and with Section 15A(b)(5) of the Act,[7] in particular, in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Specifically, the proposed fees will be imposed equally on all listed issuers that request written interpretations of Nasdaq's listing rules and will relieve issuers not availing themselves of this process from subsidizing its cost.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–105 should be submitted by August 25, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–19666 Filed 8–1–03; 8:45 am]

BILLING CODE 8010–01–P

[5] See letter from Annette L. Nazareth, Director, Division of Market Regulation, Commission, to T. Grant Callery, Executive Vice President and General Counsel, NASD (March 27, 2003).

[6] 15 U.S.C. 78o–3.

[7] 15 U.S.C. 78o–3(b)(5).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48240; File No. SR–Amex–2003–67]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Extend the Suspension of Transaction Charges for Certain iShares Funds

July 28, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to extend until July 31, 2003 the suspension of Exchange transaction charges for specialist, Registered Trader, and broker-dealer orders for the iShares Lehman 1–3 year Treasury Bond Fund and the iShares Lehman 7–10 year Treasury Bond Fund. Proposed new language is *italicized*; proposed deletions are in [brackets].

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

AMEX EQUITY FEE SCHEDULE

I. Transaction Charges

No change.

II. Regulatory Fee

No Change.

Notes:

1. and 2. No change.

3. Customer transaction charges for the following Portfolio Depositary Receipts, Index Fund Shares, and Trust Issued Receipts have been suspended:

DIA–DIAMONDS®
QQQ—Nasdaq—100® Index Tracking Stock
SPY—SPDRs®
IVV—iShares S&P 500
MDY—MidCap SPDRs
XLY—Select Sector SPDR—Consumer Discretionary
XLP—Select Sector SPDR—Consumer Staples
XLE—Select Sector SPDR—Energy
XLF—Select Sector SPDR—Financial
XLV—Select Sector SPDR—Health Care
XLI—Select Sector SPDR—Industrial
XLB—Select Sector SPDR—Materials
XLK—Select Sector SPDR—Technology
XLU—Select Sector SPDR—Utilities
BHH—B2B Internet HOLDRs™.
BBH—Biotech HOLDRs.
BDH—Broadband HOLDRs.
EKH—Europe 2001 HOLDRs.
IAH—Internet Architecture HOLDRs.
HHH+Internet HOLDRs.
IIH—Internet Infrastructure HOLDRs.
MKH—Market 2000+ HOLDRs.
OIH—Oil Service HOLDRs.
PPH—Pharmaceutical HOLDRs.
RKH—Regional Bank HOLDRs.
RTH—Retail HOLDRs.
SMH—Semiconductor HOLDRs.
SWH—Software HOLDRs.
TTH—Telecom HOLDRs.
UTH—Utilities HOLDRs.
WMH—Wireless HOLDRs.
SHY—iShares Lehman 1—3 Year Treasury Bond Fund.
IEF—iShares Lehman 7—10 Year Treasury Bond Fund.
TLT—iShares Lehman 20+ Year Treasury Bond Fund.
LQD—iShares GS $ InvesTop Corporate Bond Fund.

Customer transaction charges for the iShares S&P 100 Index Fund are $.0015 per share ($.15 per 100 shares), capped at $100 per trade. Until [June 30] *July 31, 2003*, transaction charges also have been suspended in SHY and IEF for specialist, Registered Trader and broker dealer orders.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is extending until July 31, 2003 the suspension of transaction charges in iShares Lehman 1–3 year Treasury Bond Fund (Symbol: SHY) and iShares Lehman 7–10 year Treasury Bond Fund (Symbol: IEF) for specialist, Registered Trader and broker-dealer orders. The Exchange previously filed a suspension of such charges until November 30, 2002,[3] December 31, 2002,[4] January 31, 2003,[5] February 28, 2003,[6] March 31, 2003,[7] April 30, 2003,[8] May 31, 2003,[9] and June 30, 2003.[10]

The Exchange believes that a suspension of fees for the SHY and IEF is appropriate to enhance the competitiveness of executions in these securities on the Amex. The Exchange will reassess the fee suspension as appropriate, and will file any modification to the fee suspension with the Commission pursuant to section 19(b)(3)(A) of the 1934 Act.[11]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act [12] in general, and furthers the objectives of section 6(b)(4)[13] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

[3] See Securities Exchange Act Release No. 46765 (November 1, 2002), 67 FR 68893 (November 13, 2002) (SR–Amex–2002–91).

[4] See Securities Exchange Act Release No. 46996 (December 13, 2002), 67 FR 78264 (December 23, 2002) (SR–Amex–2002–98).

[5] See Securities Exchange Act Release No. 47141 (January 8, 2003), 68 FR 2090 (January 15, 2003) (SR–Amex–2002–115).

[6] See Securities Exchange Act Release No. 47361 (February 13, 2003), 68 FR 8534 (February 21, 2003) (SR–Amex–2003–04).

[7] See Securities Exchange Act Release No. 47455 (March 6, 2003), 68 FR 12111 (March 13, 2003) (SR–Amex–2003–15).

[8] See Securities Exchange Act Release No. 47668 (April 11, 2003), 68 FR 19241 (April 18, 2003) (SR–Amex–2003–22).

[9] See Securities Exchange Act Release No. 47858 (May 14, 2003), 68 FR 27872 (May 21, 2003) (SR–Amex–2003–40).

[10] See Securities Exchange Act Release No. 47974 (June 4, 2003), 68 FR 35030 (June 11, 2003) (SR–Amex–2003–57).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)[14] thereunder because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

The Amex has requested that the Commission waive the five-day pre-filing notice and the 30-day operative delay. The Commission believes that waiving the five-day pre-filing notice and the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that fee suspensions for the exchange-traded funds that are the subject of this filing have been previously filed with the Commission.[15] Further, extension of the fee suspension for specialist, Registered Trader, and broker-dealer orders will permit the fee suspensions to continue uninterrupted. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2003–57 and should be submitted by August 25, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–19661 Filed 8–1–03; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 240.19b–4(f)(6).

[15] *See supra* notes 3–10.

[16] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48243; File No. SR–Amex–2003–68]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC To Remove the Six-Month Limitation on the Waiver of Transaction Fees Related to Nasdaq UTP Securities and To Expand the Cap on the Amount of Transaction Fees To Cover All Transactions Related to Nasdaq UTP Securities

July 29, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 16, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Amex has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Exchange under section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2)[4] thereunder which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to remove the six-month limitation on the waiver of transaction fees related to Nasdaq securities admitted to dealings on an unlisted trading privileges basis ("Nasdaq UTP securities"), and to expand the scope of the cap on the dollar amount of transaction fees to cover all transactions related to Nasdaq UTP securities, and not solely cross trades. The text of the proposed rule change is available at the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex proposes to implement two changes to its transaction fees for Nasdaq UTP securities. First, the Amex proposes to eliminate the six-month limitation on the waiver of transaction fees for specialist principal trades by specialist firms that do not charge any commission to customers in Nasdaq UTP securities. Second, the Amex proposes to expand the scope of the cap on the dollar amount of transaction fees to cover all transactions related to Nasdaq UTP securities. Currently, the cap of $50 per side per trade only applies to cross trades. The Amex notes that the proposed fee changes are intended to reduce the cost of executing transactions on the Amex.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act[5] in general and furthers the objectives of section 6(b)(4) of the Act[6] in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Amex members and issuers and other persons using the Amex's facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[7] and subparagraph (f)(2) of Rule 19b-4 thereunder,[8] because it establishes or changes a due, fee, or other charge imposed by the Amex. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–Amex–2003–68 and should be submitted by August 25, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–19662 Filed 8–1–03; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48237; File No. SR–CBOE–2003–08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Establish a Limited Pilot Program Relating to Maximum Bid/Ask Differentials

July 28, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 27, 2003, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On July 25, 2003, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules to adopt a limited pilot program relating to maximum bid/ask differentials. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The Exchange is proposing to adopt, on a pilot basis, a limited exemption to the Market-Maker bid/ask differential requirements contained in CBOE Rule 8.7(b)(iv). More specifically, as part of accommodating compliance with the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage (the "Linkage Plan"),[4] the Exchange is introducing a new "autofade" functionality which will cause one side of CBOE's disseminated quote to move to an inferior price when the quote is required to fade pursuant to the terms of the Linkage Plan and/or when the size associated with the quote has been depleted by automatic executions (of both Linkage orders and non-Linkage orders).

Linkage orders are generally Immediate or Cancel limit orders priced at the National Best Bid or Offer ("NBBO") that must be acted upon within 15 seconds. The Linkage Plan provides several instances in which a Participant receiving a linkage order must fade its quote. For example, if a Participant receives a Principal Acting as Agent ("PA") order for a size greater than the Firm Customer Quote Size and does not execute the entirety of the PA Order within 15 seconds, the Participant is required to fade its quote. CBOE's autofade functionality will automate the fading process to ensure that members (and the Exchange) are in full compliance with this aspect of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Angelo Evangelou, Senior Attorney, Legal Division, CBOE, to Jennifer Colihan, Special Counsel, Division of Market Regulation, Commission, dated July 25, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange revised the proposed rule text to indicate that the pilot program would expire on January 30, 2004.

[4] The Linkage Plan was originally approved on July 28, 2000. See Securities Exchange Act Release No. 43086, 65 FR 48023 (August 4, 2000).

Linkage Plan. Autofade will move one side of CBOE's quote to a price that is 1-tick inferior to the NBBO.[5] This will ensure that the Exchange will not immediately receive additional linkage orders in order to allow the member to refresh the quote (either manually or through an autoquote update).

As mentioned above, autofade also would apply anytime an automatic execution of any order via the Exchange's Retail Automatic Execution System ("RAES") has depleted the size of CBOE's quote. On March 29, 2002, the Commission approved a CBOE proposal to implement a "quotes with size" system that would enable the Exchange to disseminate options quotations with a size that reflects previous executions (decrementing quotes).[6] A current feature of this functionality provides that when a quote is exhausted via automatic executions, the Exchange may disseminate a size of "1" for a specified "reroute" period during which time the Exchange's RAES system is disengaged.[7] Autofade would eliminate any need to disengage the RAES system and disseminate a size of 1 contract at the same price. Once a quote is exhausted, autofade would move one side of the quote to a price that is one tick inferior to the NBBO (as described above).

The Reason for this Rule Filing

CBOE anticipates that there may be limited instances where the autofade functionality moves the quote in a manner that causes the quote width to widen beyond the bid/ask parameters provided pursuant to CBOE Rule 8.7(b)(iv). Accordingly, CBOE seeks to adopt (on a pilot basis) a temporary exception to the requirements of CBOE Rule 8.7(b)(iv) in cases where the Exchange automatically adjusts one side of the disseminated quote to one minimum increment below (above) the NBBO bid (offer) and this cause the quote to exceed the quote width parameters of that rule. The proposed exemption period would last for 30 seconds after any given autofade that caused a wider quote than allowed under CBOE Rule 8.7(b)(iv). Thus, to the extent a quote remained outside of the maximum width after the 30-second time period, the responsible broker or dealer disseminating the quote would be deemed in violation of CBOE Rule 8.7(b)(iv) for regulatory purposes. CBOE proposes that the pilot run until January 30, 2004.

2. Statutory Basis

The proposed rule change will, among other things, allow the Exchange to comply more easily with the requirements of the Linkage Plan. Accordingly, the Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[8] in general and furthers the objectives of Section 6(b)(5)[9] in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–2003–08 and should be submitted by August 25, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–19663 Filed 8–1–03; 8:45 am]

BILLING CODE 8010–01–P

[5] The only exception is when CBOE's NBBO quote (or next best quote) is represented by a customer order in the book. In such cases, the Exchange would not fade a booked order (it would have to be traded).

[6] See Securities Exchange Act Release No. 45676, 67 FR 16478 (April 5, 2002).

[7] The reroute period can be set from 0 to 30 seconds.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48234; File No. SR–NASD–2003–93]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., To Increase the Trading Activity Fee

July 28, 2003.

I. Introduction

On June 11, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to increase its Trading Activity Fee ("TAF") by adjusting the rates for covered equity securities. The proposed rule change was published for notice and comment in the **Federal Register** on June 25, 2003.[3] The Commission received one comment letter on the proposal.[4] On July 23, 2003, the NASD filed its response to comments.[5] This order approves the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 48061 (June 19, 2003), 68 FR 37887.

[4] See July 17, 2003 letter from Jeffrey T. Brown, Senior Vice President and General Counsel, The Cincinnati Stock Exchange ("CSE") to Jonathan G. Katz, Secretary, SEC ("CSE Letter").

[5] See July 23, 2003 letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC ("NASD Response Letter").

II. Summary of Comments

The Commission received one comment letter on the NASD's proposal to increase the TAF.[6]

- *The CSE Letter*

The CSE disapproved of the proposed rule change, stating the proposal would "double the ill-defined TAF with no justification" and with "little check or recourse on the part of the non-NASD markets."[7] The CSE suggested that the Commission require the NASD to provide supporting documentation to explain the need for increasing the TAF before allowing the NASD to double the fee.[8] Additionally, the CSE stated that the NASD must delineate its responsibilities covered by the TAF, explain how those responsibilities are unique to the NASD, and provide a cost analysis that establishes a nexus between those responsibilities and the fees.[9]

The CSE also stated that the TAF, along with the NASD's Gross Income Assessment, allows "for the subsidization of NASD regulatory activities through the forced taxing of transactions occurring on other markets."[10] According to the CSE, the NASD is using the TAF and Gross Income Assessment, under the guise of revenue neutrality, to subsidize its regulatory activities with monies generated on other markets.[11]

The CSE asked for an accounting, and an explanation of why the NASD believes it is proper to limit this fee adjustment to the TAF, when the TAF is only one component of a fee structure that also includes the Gross Income Assessment ("GIA") and the Personnel Assessment ("PA").[12]

- *The NASD's Response to Comments*

The NASD filed the instant proposed rule change because revenue generated by the TAF at the original rate was lower than expected.[13] The NASD noted that it originally proposed a TAF rate of .0001 per share, but reduced the rate to 0.00005 "after informal feedback from the membership about the level of volume meeting the definition of 'covered equity security.'"[14] The NASD filed the instant proposed rule change to remedy a shortfall in revenue.[15]

With regard to the CSE's comments that (i) the NASD has not adequately defined its responsibilities, nor has it established a sufficient nexus between its responsibilities and fees; and (ii) where intermarket fees are being assessed, a higher standard of scrutiny should be applied, the NASD noted that the Commission addressed both of these issues in its order approving the TAF.[16]

Finally, the NASD explained that the TAF does not underwrite "the regulation of Nasdaq and the Alternative Display Facility" and that the TAF, GIA, and PA fund the NASD's member regulatory programs.[17]

III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change, the comment letter, and the NASD's response to the comments, and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[18] and, in particular, the requirements of section 15A(b)(5) of the Act.[19] Section 15A(b)(5) requires, among other things, that the rules of a national securities association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls. The Commission finds that the proposed increase in the rate for the TAF as described in the instant proposed rule change is consistent with section 15A(b)(5) of the Act, in that the proposal is reasonably designed to recover NASD costs related to regulation and oversight of its members.

The Commission believes the CSE Letter raises no novel issues that were not addressed in the Commission's original TAF approval order.[20] The Commission also believes that the NASD adequately responded to the issues the CSE raised in its letter.

The Commission expects that the NASD will continue to monitor the revenue generated by the TAF, as well as the revenue generated by the Gross Income Assessment and the Personnel Assessment, and will take whatever steps are necessary to ensure that the fees remain consistent with the mandate established in section 15A(b)(5) of the Act,[21] so that the fees remain equitable, as well as consistent with the NASD's expressed goal.

IV. Conclusion

It is therefore Ordered, pursuant to section 19(b)(2) of the Act[22], that the proposed rule change (SR–NASD–2003–93) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–19660 Filed 8–1–03; 8:45 am]

BILLING CODE 8010–01–P

[6] See footnote 4, *supra*.

[7] CSE Letter at 1.

[8] *Id.* at 2.

[9] *Id.*

[10] *Id.* at 3.

[11] *Id.*

[12] *Id.* at 4.

[13] NASD Response Letter at 1.

[14] *Id.* at 1–2.

[15] *Id.* at 2.

[16] *Id.*

[17] *Id.* at 3.

[18] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 15 U.S.C.78o–3(b)(5).

[20] See Securities Exchange Act Release No. 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003) (SR–NASD–2002–148)(approval order).

[21] 15 U.S.C. 78o–3(b)(5).

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48239; File No. SR–NASD–2003–98]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by National Association of Securities Dealers, Inc., Regarding Reporting of Transactions Conducted Through Electronic Communications Networks to the Automated Confirmation Transaction Service

July 28, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 19, 2003, National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Exchange submitted an amendment to the proposed rule change on January 27, 2003.[3] The Commission is publishing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Letter from John Yetter, Associate General Counsel, Nasdaq, to Kathy England, Assistant Director, Division of Market Regulation, Commission, dated July 10, 2003 ("Amendment No.

Continued

this notice, as amended, to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to clarify the reporting requirements applicable to transactions conducted through electronic communications networks ("ECNs") and reported to the Automated Confirmation Transaction Service ("ACT"). ECNs would be required to file Automated Confirmation Transaction Service ("ACT"). ECNs would be required to file notice of their methods for trade reporting under the proposed rule change within 30 calendar days after the date of Commission approval.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

5400. NASDAQ STOCK MARKET AND ALTERNATIVE DISPLAY FACILITY TRADE REPORTING

* * * * *

5430. Transaction Reporting

(a) No change.

(b) Which Party Reports Transaction and to Which Facility

(1) In transactions between two Registered Reporting Nasdaq Market Makers, the member representing the sell side shall report the trade using ACT.

(2) In transactions between a Registered Reporting Nasdaq Market Maker and a Non-Registered Reporting Member, the Registered Reporting Nasdaq Market Maker shall report the trade using ACT.

(3) In transactions between two Non-Registered Reporting Members, the member representing the sell side shall report the trade using ACT or TRACS.

(4) In transactions between a member and a customer, the member shall report as follows:

(A) A Registered Reporting Nasdaq Market Maker shall report the trade using ACT;

(B) A Registered Reporting ADF Market Maker shall report the trade using TRACS; and

(C) A Non-Registered Reporting Member shall report the trade using ACT or TRACS.

(5) In transactions between two Registered Reporting ADF Market Makers, the member representing the sell side shall report the trade using TRACS.

(6) In transactions between a Registered Reporting ADF Market Maker and a Non-Registered Reporting Member, the Registered Reporting ADF Market Maker shall report the trade using TRACS.

(7) In transactions between a Registered Reporting Nasdaq Market Maker and a Registered Reporting ADF Market Maker, the member representing the sell side shall report as follows:

(A) A Registered Reporting Nasdaq Market Maker shall report the trade using ACT; and

(B) A Registered Reporting ADF Market Maker shall report the trade using TRACS.

(8) If a member simultaneously is a Registered Reporting Nasdaq Market Maker and a Registered Reporting ADF Market Maker, and has the trade reporting obligation pursuant to paragraphs (1), (2), (4), (5), (6), or (7), the member can report the trade using either ACT or TRACS, unless the trade is executed using ACES; the Nasdaq National Market Execution System ("NNMS"); [the SelectNet Service; the SmallCap Small Order Execution System ("SOES");] or the Primex Auction System ("Primex"). A trade executed using ACES must be reported using ACT; and trades executed using NNMS[, SelectNet, SOES,] or Primex will be reported to ACT automatically.

(9) In transactions conducted through an ACT ECN (as defined in Rule 6110) that are reported to ACT, the ACT ECN shall ensure that transactions are reported in accordance with Rule 6130(c). If an ACT ECN is also a Registered Reporting ADF ECN (as defined in Rule 4200A), Rule 6130(c) shall apply only to transactions conducted through the ECN for which trade reports are submitted to ACT.

* * * * *

6100. AUTOMATED CONFIRMATION TRANSACTION SERVICE (ACT)

6110. Definitions

(a)–(p) No change.

(q) The term "ACT ECN" shall mean a member of the Association that is an electronic communications network that is a member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member, to the extent that transactions executed through it are reported to ACT.

* * * * *

6130. Trade Report Input

(a)–(b) No change.

(c) Which Party Inputs Trade Reports to ACT.

ACT Participants shall, subject to the input requirements below, either input trade reports into the ACT system or utilize the Browse feature to accept or decline a trade within the applicable time-frames as specified in paragraph (b) of this Rule. Trade data input obligations are as follows:

(1) in transactions between a Market Maker and an Order Entry Firm, the Market Maker shall be required to submit a trade report to ACT;

(2) in transactions between two Market Makers, the member representing the sell side shall be required to submit a trade report to ACT;

(3) in transactions between two Order Entry Firms, the member representing the sell side shall be required to submit a trade report to ACT[.];

(4) in transactions between a member and a customer, the member shall be required to submit a trade report to ACT;

(5) in transactions conducted through an ACT ECN that are reported to ACT, the ACT ECN shall ensure that transactions are reported in accordance with one of the following methods:

(A) the ACT ECN shall submit the trade reports to ACT and identify itself as the reporting party;

(B) the ACT ECN shall submit the trade reports to ACT on behalf of the reporting party and identify the reporting party in accordance with the rules for determining reporting parties reflected in paragraphs (1), (2), (3), and (4) above; or

(C) the ACT ECN shall require one of the parties, determined in accordance with the rules for determining reporting parties reflected in paragraphs (1), (2), (3), and (4) above, to submit the trade reports to ACT.

When an ACT ECN reports transactions in accordance with subparagraph (A), the ACT ECN shall be responsible for ensuring that the trade reports are accurate and contain all information required by subsection (d) of this rule for both the ACT ECN and the identified non-reporting party. When an ACT ECN reports transactions in accordance with subparagraph (B), both the ACT ECN and the party identified as the reporting party shall be responsible for ensuring that the trade reports are accurate and contain all information required by subsection (d) of this rule for both the ACT ECN and the identified reporting party. When an ACT ECN requires reporting of transactions in accordance with subparagraph (C), the reporting party shall be responsible for ensuring the accuracy and completeness of the trade report.

An ACT ECN shall provide written notice to the Association of the method of trade reporting used by the ACT ECN for each of its subscribers, and may change the method of trade reporting used for a subscriber by providing advance written notice of the change to the Association;

(6) in transactions conducted through two ACT ECNs or an ACT ECN and an ECN that is not an ACT ECN, an ACT ECN shall be responsible for complying with the requirements of paragraph (5) above for reporting a transaction executed through its facilities, and an ECN that routed an order to it for execution shall be deemed to be a Market Maker and a member for purposes of the rules for determining reporting parties reflected in paragraphs (1), (2), and (4) above; and

(7) in transactions conducted through an ACT ECN in which neither of the parties is a member, the ACT ECN shall report the transaction in accordance with the requirements of subparagraph (5)(A) above.

(d)–(e) No change.

* * * * *

6400. REPORTING TRANSACTIONS IN LISTED SECURITIES

* * * * *

6420. Transaction Reporting

(a) No change.

(b) Which Party Reports Transaction

(1) Transactions executed on an exchange are reported by the exchange and shall not be reported by members.

(2) In transactions between two Registered Reporting Members, only the member representing the sell side shall report.

(3) In transactions between a Registered Reporting Member and a Non-Registered Reporting Member, only the Registered Reporting Member shall report.

(4) In transactions between Non-Registered Reporting Members, only the member representing the sell side shall report.

(5) In transactions conducted through an ACT ECN (as defined in Rule 6110), the ACT ECN shall ensure that the transactions are reported in accordance with Rule 6130(c).

(c)–(e) No change.

IM–6420. Transactions in Eligible Securities

SUMMARY OF PROVISIONS GOVERNING MEMBERS' REQUIREMENTS TO REPORT TRANSACTIONS IN ELIGIBLE SECURITIES

CHART I.—GENERAL REPORTING REQUIREMENTS UNDER RULE 6420(B)

Member	Transaction	Member reports when contra-party is			
		[Designated] *Registered* Reporting Member	Non-[Designated] *Registered* Reporting Member	Exchange	Customer
[Designated] *Registered* Reporting Member	Buys from	No	Yes	No	Yes.
	Sells to	Yes	Yes	No.	Yes.
Non-[Designated]	Buys from	No	No	No	Yes.
Non-[Designated] *Registered* Reporting Member	Buys from customer and sells to.	No	Yes	No	Yes.
	Sells to customer and buys from.	No	No	No	Yes.
Registered Reporting Member	Sells to	No	Yes	No	Yes.
ACT ECN		*See 6130(c)*	*See 6130(c)*	*No*	*See 6130(c)*

CHART II.—REPORTING REQUIREMENTS FOR "RISKLESS" TRANSACTIONS AS DEFINED IN RULE 6420(D)(4)

Member	Transaction	Member Reports When Contra-Party Is			
		[Designated] *Registered* Reporting Member	Non-[Designated] *Registered* Reporting Member	Exchange	Customer
[Designated] *Registered* Reporting Member	Buys from customer and sells to	Yes	Yes	No	Yes.
	Sells to customer and buys from	No	Yes	No	Yes.

* * * * *

6600. REPORTING TRANSACTIONS IN OVER-THE-COUNTER SECURITIES

* * * * *

6620. Transaction Reporting

(a) No change.

(b) Which Party Reports Transaction

(1) In transactions between two OTC Market Makers, only the member representing the sell side shall report.

(2) In transactions between an OTC Market Maker and a Non-Market Maker, only the OTC Market Maker shall report.

(3) In transactions between two Non-Market Makers, only the member representing the sell side shall report.

(4) In transactions between a member and a customer, the member shall report.

(5) In transactions conducted through an ACT ECN (as defined in Rule 6110), the ACT ECN shall ensure that the transactions are reported in accordance with Rule 6130(c), and the term "Market Maker" as used in such rule shall be construed to include an OTC Market Maker.

(c)–(e) No change.

* * * * *

6900. REPORTING TRANSACTIONS IN DIRECT PARTICIPATION PROGRAMS

6920. Transaction Reporting

(a) No change.

(b) Which Party Reports Transactions

1"). Amendment No. 1 deletes the reference in NASD Rule 6130(c)(6) to subparagraph (3) because this provision would not apply to ECNs.

(1) In transactions between two members, only the member representing the sell side shall report.

(2) In transactions between a member and a customer, the member shall report.

(3) In transactions conducted through an ACT ECN (as defined in Rule 6110), the ACT ECN shall ensure that the transactions are reported in accordance with Rule 6130(c); provided that for purposes of Rule 6130(c)(5)(B) and (C), the party with the reporting obligation shall be as set forth in Rule 6130(c)(3) and the term "Order Entry Firm" as used in such rule shall be construed to refer to any member.

(c)–(e) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to adopt rules to define with greater clarity the reporting obligations applicable to transactions executed through ECNs that are reported to ACT. The proposal is based on Nasdaq's understanding of the different methods used by ECNs today to report trades, and in general, the rule filing is not intended to require ECNs to modify their current trade reporting practices. Rather, the purpose of the filing is to codify these practices in the form of clear, enforceable rules that will provide greater guidance to market participants.[4] The proposed rule change would apply to transactions in all securities that are executed through an ECN and reported to ACT.

Reporting of transactions executed through ECNs is complex because ECNs conduct transactions on an "agency" basis, with the ECN standing as a central contra party to two offsetting transactions with ECN subscribers. However, the substance of the transaction is the transference of shares from one ECN subscriber to another, and therefore only one transaction is reported to the tape for public dissemination.

Current practices of ECN trade reporting have developed over time in conjunction with the growth of the number of ECNs. As each new ECN entered the market, it registered with Nasdaq under NASD Rule 4623 and informed Nasdaq and NASD of its planned method for reporting transactions. Although Nasdaq believes that the use of different reporting methodologies by different ECNs has generally allowed ECNs to fulfill reporting obligations while tailoring their methodology to their own business needs and those of their subscribers, the absence of clearly defined rules has, in some circumstances, created confusion as to the trade reporting responsibilities of ECNs and their subscribers. Nasdaq believes that the proposed rule change will provide members greater certainty concerning their trade reporting responsibilities, while allowing ECNs to continue using the various methods of trade reporting that have developed over time.

The proposed rule change permits ECNs to use any of three methods for reporting transactions.[5] Each ECN would inform NASD which method it would use for reporting trades to ACT for each of its subscribers, but it could change its method at any time by providing advance notice to NASD.[6] First, an ECN may assume sole responsibility for reporting transactions executed through its facilities and identify itself as the reporting party. Second, an ECN may assume sole responsibility for transaction reporting, but identify a subscriber as the reporting party. In that case, the identified reporting party would be determined in accordance with the existing rules for allocating trade reporting responsibility. Thus, if the subscribers conducting a transaction through the ECN were both market makers or both order entry firms, the selling party would be identified as the reporting party; if the transaction were between a market maker and an order entry firm, the market maker would be identified as the reporting party; and if the transaction were between a member (*i.e.*, a broker-dealer) and a non-member (such as an institutional investor), the member would be identified as the reporting party.

Third, the ECN may impose some or all of the responsibility for reporting on its subscribers. In that case, the ECN would notify the appropriate reporting party, determined in accordance with the existing rules of priority for trade reporting, that it had an obligation to submit a report concerning the trade.

In each case, the party submitting a trade report is responsible for ensuring its accuracy and completeness.[7] In addition, when an ECN submits a trade report identifying another party as the reporting party, both the ECN and the identified reporting party are responsible for ensuring the accuracy and completeness of the report.

The proposed rule change also addresses procedures for reporting transactions in several unique circumstances associated with ECNs. First, the rule provides that when the parties to a transaction executed through an ECN are both non-members, the ECN must submit all required trade reports and identify itself as the reporting party. This is the case because as non-members, the parties to the transaction would not be eligible to report trades through ACT. Second, in circumstance where one ECN routes an order to another ECN that executes the order, the ECN that executes the order would be responsible for reporting the transaction, or requiring a subscriber to report the transaction, in accordance with one of the three basic methods for trade reporting described above. For purposes of the rules for allocating trade reporting responsibility between ECN subscribers, the routing ECN would be deemed to be a market maker. Thus, if the executing ECN uses the second method of trade reporting, and it receives an order from a routing ECN that is matched against the order of an order entry firm or a non-member customer, the routing ECN would be identified as the reporting party. If the executing ECN matched the routed order against the order of a market maker or another ECN, however, the sell side would be identified as the reporting party.

Finally, it should be noted that the proposed rule change applies only to transactions that are reported to ACT, since Nasdaq does not have authority to establish rules governing the reporting of trades to non-Nasdaq systems. Thus, in circumstances where an ECN has the option to report trades to ACT or to another trade reporting system, such as the NASD's TRACS system, the rule does not mandate that the ECN use ACT for trade reporting. However, to the extent that the ECN or its subscribers opt to use ACT to report a particular transaction, all provisions of the proposed rule change would apply to that transaction.[8] In addition to the above changes, Nasdaq is also removing references to "Select Net Service" and the "SmallCap Small Order Execution System" from NASD Rule 5430(b)(8) because these systems are no longer in place.[9]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[10] in general, and with section 15A(b)(6) of the Act,[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to protect investors and the public interest. Nasdaq purports that the proposed rule change will clarify the trade reporting obligations associated with transactions conducted through ECNs. Nasdaq believes that the adoption of clear, enforceable rules will provide guidance to market participants and thereby provide greater assurance of comprehensive reporting of ECN transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–98, and should be submitted by August 25, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–19724 Filed 8–1–03; 8:45 am]

BILLING CODE 8010–01–P

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[4] The proposed rules are intended to provide greater certainty while Nasdaq remains a subsidiary of the NASD, and do not impact the trade reporting rules filed by Nasdaq in its application to register as an exchange, which are different from the current proposal.

[5] As discussed earlier, the three methods are based on ECN trade reporting practices. Nasdaq also understands that, at any given time, an ECN may utilize more than one of these methods and the choice of the method varies depending on the needs of particular subscribers. For example, ECN A may use one method for subscriber B and another method for subscriber C. This proposal is not intended to limit this flexibility. Accordingly, an ECN will be permitted to use more than one of the methods described in Rule 6130(c), as long as it provides NASD written notice concerning the methods that it will use for each subscriber.

[6] Notices must be filed with Nasdaq's Market Watch Department and NASD's Market Regulation Department.

[7] Rule 6130(d) specifies the information that is required to be included in each ACT report.

[8] The proposed rule change also corrects several typographical errors in IM–6420.

[9] Telephone call between John Polise, Senior Special Counsel, Sonia Trocchio, Special Counsel, and Leah Mesfin, Attorney, Division, Commission, and John Yetter, Assistant General Counsel, and Peter Geraghty, Associated Vice President and Associate General Counsel, Office of the General Counsel, Nasdaq on July 9, 2003.

[10] 15 U.S.C. 78*o*–3.

[11] 15 U.S.C. 78*o*–3(6).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48252; File No. SR–NASD–2002–154; SR–NYSE–2002–49]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes by the New York Stock Exchange, Inc. Relating to Exchange Rules 344 ("Supervisory Analysts"), 345A ("Continuing Education for Registered Persons"), 351 ("Reporting Requirements") and 472 ("Communications with the Public") and by the National Association of Securities Dealers, Inc. Relating to Research Analyst Conflicts of Interest and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 to the Proposed Rule Change by the New York Stock Exchange, Inc. and Amendment No. 3 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Research Analyst Conflicts of Interest

July 29, 2003.

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act" or "Act"),[1] and Rule 19b–4 thereunder,[2] on October 9, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange"), and on October 25, 2002, the National Association of Securities Dealers ("NASD"), filed with the Securities and Exchange Commission ("SEC" or "Commission") proposed rule changes relating to research analyst conflicts of interest.

On December 4, 2002, NYSE submitted Amendment No. 1 to its proposed rule change[3] and on December 18, 2002, NASD submitted Amendment No. 1 to its proposed rule change.[4] The proposed rule changes, as

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Darla Stuckey, Corporate Secretary, NYSE, to James A. Brigagliano, Assistant Director, Division of Market Regulation ("Division"), Commission ("NYSE Amendment No. 1"). NYSE Amendment No. 1 conformed aspects of the proposed NYSE rules to those of NASD (*See* SR–NASD–2002–154), and proposed effective dates for the various rule provisions.

[4] *See* Letter from Philip Shaikun, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division, Commission ("NASD Amendment No. 1"). NASD Amendment No. 1 clarified that only research analysts who are directly responsible for the preparation of research reports would be required to register with NASD and pass a qualification examination (*See* proposed NASD Rule 1050). NASD Amendment No. 1 also conformed NASD's proposed research analyst compensation provisions to comparable NYSE provisions. NASD Amendment No. 1 also amended

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amended, were published for comment in the **Federal Register** on January 7, 2003.[5] The comment period expired on March 10, 2003. The Commission received 19 comment letters on the proposed rule changes from 18 different commenters in response to the Original Notice.[6]

On May 16, 2003, NYSE filed with the Commission Amendment No. 2 to its proposed rule change ("NYSE Amendment No. 2"), and on May 20, 2003, the NASD filed Amendment No. 2 to its proposed rule change ("NASD Amendment No. 2"). NYSE Amendment No. 2 and NASD Amendment No. 2 were published together in the **Federal Register** on May 29, 2003.[7] The comment period expired on June 19, 2003. The Commission received seven comment letters in response to the notice.[8] On July 29, 2003, the NASD submitted a letter responding to comments.[9] On July 29, 2003, NYSE filed Amendment No. 3 to its proposed rule change ("NYSE Amendment No. 3"), which included its response to comments. On July 29, 2003, NASD filed Amendment No. 3 to its proposed rule change ("NASD Amendment No. 3"). This order approves the proposed rule changes, as amended by NASD Amendment Nos. 1, 2, and 3, and by NYSE Amendment Nos. 1, 2, and 3. The Commission also seeks comment from interested persons on NYSE Amendment No. 3 and NASD Amendment No. 3.

II. Background

On May 10, 2002, the Commission approved rule changes filed by the NYSE and NASD (the "SROs") governing research analyst conflicts of interest.[10] Those rules took considerable steps towards promoting greater independence of research analysts and significantly enhanced the disclosure of actual and potential conflicts of interest to investors. In the Original Notice, the Commission published for comment a second set of proposed rules filed by the SROs to further address research analyst conflicts of interest. In its May 10, 2002 approval order of the first round of new analyst rules, the Commission asked the SROs to report on the operation and effectiveness of those rules on or before November 1, 2003. In light of the approval of these additional rules and the Global Settlement,[11] the Commission believes that a report at that time may be premature. Thus, the Commission will request a report from the SROs when it deems such report warranted. On July 30, 2002, President Bush signed into law the Sarbanes-Oxley Act of 2002 ("SOA"), which requires, among other things, that the Commission, or upon authorization and direction of the Commission, a registered securities association or national securities exchange, [12] adopt rules governing analyst conflicts.[13]

Certain of the SOA's mandates were satisfied by NASD and NYSE rule provisions existing at the time of the enactment of the SOA. Other of the SOA's mandates necessitated amendments to the existing rules. The SOA requires rules governing analyst conflicts of interest, including rules: limiting the supervision and compensatory evaluation of securities analysts to certain officials; defining periods in which brokers or dealers engaged in a public offering of a security as an underwriter or dealer may not publish research on such security; and requiring securities analysts and brokers or dealers to disclose specified conflicts of interest. The primary purposes of NASD Amendment No. 2 and NYSE Amendment No. 2 were to satisfy the remaining SOA requirements.

In February 2003, the Commission approved Regulation Analyst Certification ("Regulation AC"), which requires that broker-dealers (and certain associated persons) include in research reports a statement by the research analyst certifying that the views expressed in the research report accurately reflect his or her personal views; and a statement by the research analyst certifying either that no part of his or her compensation was, is, or will be directly or indirectly related to the specific recommendations or views contained in the research report; or that part or all of his or her compensation was, is, or will be directly or indirectly related to the specific recommendations or views contained in the research report.[14]

On April 28, 2003, the Commission, along with other regulators, announced a global settlement of enforcement actions against ten of the nation's largest investment firms that followed joint investigations by regulators of allegations of undue influence of investment banking interests on securities research at brokerage firms. [15]

A. Current NYSE and NASD Rules Governing Disclosure of Conflicts of Interest

In the May 2002 approval order, prior to the enactment of the SOA, the Commission approved rule changes filed by the SROs governing analyst conflicts of interest. Those rule changes were designed to address analyst conflicts of interest in connection with the preparation and publication of research reports and public appearances made on equity securities. The rules contain a number of elements, including:

- A prohibition on offering favorable research to induce investment banking business;
- Structural reforms to increase analyst independence, including a prohibition on investment banking personnel supervising analysts or approving research reports;
- A prohibition on tying analyst compensation to a specific investment banking services transaction;
- Increased disclosures of conflicts of interest in research reports and public appearances by analysts;
- Restrictions on personal trading by analysts; and
- Disclosure in research reports of data and price charts showing the firm's ratings track record.

B. Proposed Changes to NYSE and NASD Rules

The proposed SRO rule changes further address research analyst conflicts of interest in connection with equity research reports, and are designed to achieve full compliance with the mandates of the SOA. The Commission provides here a general overview of the proposed rule changes. The Commission notes, in particular, that while the NASD and NYSE rules may differ to some degree in their texts, the provisions are intended to operate in substantially the same way.[16]

First, the proposals further separate research analyst compensation from investment banking influence. Specifically, the proposals require that a compensation committee of the broker-dealer review and approve the compensation of its research analysts that are primarily responsible for the preparation of the substance of research reports. The committee would report to the Board of Directors and may not have representation from the firm's investment banking department. Among other things, the committee would consider the analyst's individual performance (*e.g.*, quality of research product); correlation between a research analyst's recommendations and stock prices; and overall ratings from various internal or external parties exclusive of the firm's investment banking personnel. The committee may not consider a research analyst's contribution to the firm's overall investment banking business. In addition, in order to comply with the SOA, the proposals prohibit investment banking personnel influence or control over the compensatory evaluation of research analysts.

Second, the proposed rules prohibit analysts from issuing positive research reports or reiterating a "buy" recommendation around the expiration of a lock-up agreement (sometimes called "booster shot" research reports). The proposals accomplish this by prohibiting the issuance of research reports by the manager or co-manager of a securities offering for fifteen days prior to and after the expiration of lock-up agreements.

Third, the amendments extend the current ten and forty-day quiet periods for the issuance of written research reports to communications in public appearances by managers and co-managers of initial and secondary offerings. The proposals also establish a 25-day quiet period during which broker-dealers who have agreed to participate (or who are participating) as underwriters or dealers (other than a manager or co-manager) of an issuer's initial public offering would be prohibited from publishing research reports and analysts would be prohibited from making public appearances regarding that issuer.

Fourth, the proposed rules further insulate research analysts from investment banking interests by prohibiting analysts from participating in "pitches" or other communications for the purpose of soliciting investment banking business.

Fifth, the proposed rules require that a member provide notice to customers that it is terminating research coverage of an issuer that is the subject of a research report ("subject company"). The final report must include a final recommendation or rating (unless it is impracticable to do so).

Sixth, the proposed SRO rule changes restrict the prepublication review and approval of research reports by persons not directly responsible for research. The rules also require that prepublication communications about the content of a research report between all non-research personnel and the research department be intermediated by legal or compliance staff.

Seventh, the proposals prohibit members engaged in investment banking activities from directly or indirectly retaliating, or threatening to retaliate, against a research analyst who publishes a research report or makes a public appearance that may adversely affect the member's present or prospective investment banking relationship. The SROs have clarified in the rules that the anti-retaliation provision would not preclude termination of a research analyst, in accordance with the member's policies and procedures, for causes unrelated to issuing or distributing such adverse research or for making an unfavorable public appearance regarding the member's current or potential investment-banking relationship with the issuer.

Eighth, the proposals expand on the current SRO compensation disclosure requirements by requiring disclosure by a member in research reports, to the extent the member knows or has reason to know, and by a research analyst in public appearances, to the extent the analyst knows or has reason to know, of whether the member, or any affiliate thereof (including the research analyst), received any compensation during the past twelve months from the issuer that is the subject of the report or public appearance. The rule changes further require disclosure of whether the subject company is, or has been during the previous year, a client of the member, and if so, the types of services provided to the issuer. The types of services provided to the subject company must be described as: (1) Investment banking services, (2) non-investment banking securities-related services, or (3) non-securities services. Both the compensation disclosure and the client services disclosure provisions provide for an exception in order to prevent the disclosure of material non-public information regarding specific potential future investment banking transactions of the issuer.

Ninth, the proposed SRO rule changes also create an exception from the existing "gatekeeper" provisions of the SRO rules for certain members that engage in limited underwriting activity.[17] The gatekeeper provisions prohibit a research analyst from being subject to the supervision or control of any employee of a member's investment banking department, and further require legal or compliance personnel to intermediate certain communications between research and investment banking personnel.

Tenth, the proposed rules require that legal or compliance personnel pre-approve all securities transactions of persons who oversee research analysts, including the members of a committee and certain others, that have direct influence or control with respect to the preparation of research reports or establishing or changing a rating or price target of a subject company's equity securities, to the extent that the transactions involve securities of subject

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the definition of "research report" to conform it to the definition in the Sarbanes-Oxley Act of 2002. NASD Amendment No. 1 also revised certain language that was contained in the discussion of the proposed amendment concerning print media interviews and articles.

[5] *See* Securities Exchange Act Release No. 47110 (December 31, 2002), 68 FR 826 ("Original Notice").

[6] *See* Letters to Jonathan G. Katz, Secretary, Commission, from: Adams, Harkness & Hill, Inc., AG Edwards, Keefe, Bruyette & Woods, Inc., Pacific Growth Equities, LLC, RBC Capital Markets, Stephens Inc., Stifel Nicolaus & Company, and William Blair & Company, dated March 10, 2003 ("Adams et al"); The Advest Group, Inc., dated April 28, 2003 ("Advest"); Association for Investment Management and Research, dated March 6, 2003 ("AIMR March 6th"); Bloomberg News, dated February 19, 2003 ("Bloomberg"); Charles Schwab Corporation, dated March 20, 2003 ("Schwab March 20th"); Credit Suisse First Boston, dated April 16, 2003 ("CSFB"); Gibson, Dunn & Crutcher LLP, dated March 10, 2003 ("Gibson"); Investment Company Institute, dated March 10, 2003 ("ICI March 10th"); Investorside Research Association, dated March 10, 2003 ("Investorside"); Vahan Janjigian, dated February 27, 2003; Robert Lin, dated November 17, 2002; Newspaper Association of America, dated March 10, 2003 ("NAA"); North American Securities Administrators Association, Inc., dated March 10, 2003 ("NASAA"); Securities Industry Association, letters dated March 10, 2003 ("SIA March 10th") and May 9, 2003 ("SIA May 9th"); Stifel, Nicolaus & Company, Incorporated, dated March 10, 2003 ("Stifel"); SunTrust Capital Markets, Inc., dated March 10, 2003 ("SunTrust"); Weiss Ratings, Inc., dated March 10, 2003 ("Weiss"); Wilmer Cutler & Pickering, dated March 11, 2003 ("Wilmer March 11th").

[7] *See* Securities Exchange Act Release No. 47912 (May 22, 2003), 68 FR 103 ("May 29th Notice").

[8] *See* Letters to Jonathan G. Katz, Secretary, Commission, from: Association for Investment Management and Research, dated July 15, 2003 ("AIMR July 15th"); Banc of America Securities LLC, dated June 26, 2003 ("BOA"); Charles Schwab Corporation, dated June 30, 2003 ("Schwab June 30th"); Investment Company Institute, dated June 19, 2003 ("ICI June 19th"); Investment Counsel Association of America, dated June 19, 2003 ("ICAA"); Securities Industry Association, dated June 26, 2003 ("SIA June 26th"); Sullivan & Cromwell LLP, dated June 19, 2003 ("Sullivan"); Wilmer Cutler & Pickering, dated June 25, 2003 ("Wilmer June 25th").

[9] *See* Letter from Philip A. Shaikun, Associate General Counsel, NASD to James A. Brigagliano, Assistant Director, Division, Commission (July 29, 2003) ("NASD Response to Comments").

[10] *See* Securities Exchange Act Release No. 45908, 67 FR 34968 (May 16, 2002) ("May 2002 approval order").

[11] *See* note 15 *infra*.

[12] *See* Letter from Annette Nazareth, Director, Division of Market Regulation, Commission, to Mary Schapiro, Vice Chairman and President, Regulatory Policy and Oversight, NASD, and Richard Grasso, Chairman and Chief Executive Officer, NYSE (March 13, 2003).

[13] *See* Pub. L. 107–204, 116 Stat. 745 (2002). The SOA amends the Exchange Act by adding new Section 15D. *See* 15 U.S.C. 78a *et seq.*; 15 U.S.C. 78o–6.

[14] *See* Securities Exchange Act Release No. 47384 (February 20, 2003), 68 FR 9482 (February 27, 2003).

[15] The terms of the settlement are available at *http://www.sec.gov/litigation/litreleases/finaljudgadda.pdf* ("Global Settlement").

[16] *See* NASD Amendment No. 3 and NYSE Amendment No. 3.

[17] *See* NYSE Rule 472(b)(1) and (3), and NASD Rule 2711(b)(1) and (3) ("gatekeeper" provisions).

companies covered by research analysts that they oversee.

Finally, the proposed rules impose additional registration, qualification, and continuing education requirements on research analysts. The proposed amendments would establish a new registration category and require a qualification examination for research analysts. The proposals would also impose requirements regarding the continuing education of certain registered persons consisting of a Regulatory Element and a Firm Element [18] to address applicable rules and regulations, ethics, and professional responsibility.

III. Discussion

The Commission received a total of 26 comment letters from 22 commenters on the proposed rule changes.[19] As discussed in detail below, although commenters generally supported the fundamental goals and objectives behind the proposed rule changes, many commenters also believed that certain of the initial proposals should be revised, and some suggested substantive changes. In response to various concerns and suggestions raised by commenters, the NYSE filed NYSE Amendment No. 3, and the NASD filed NASD Amendment No. 3, to their proposed rule changes.

After careful review, the Commission finds, as discussed more fully below, that the proposed rule changes, as amended, are consistent with the requirements of the Exchange Act and the regulations thereunder applicable to the NYSE and NASD.[20] In particular, the Commission believes that the proposals are consistent with Sections 6(b)(5) and 6(b)(8) of the Exchange Act,[21] Sections 15A(b)(6) and 15A(b)(9) of the Exchange Act,[22] and Section 15D of the Exchange Act, which was enacted as part of the SOA.

Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of free trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. Section 6(b)(5) also requires that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Exchange Act prohibits the rules of an exchange from imposing any burden on competition not necessary or appropriate in furtherance of the purposes of the statute.

Section 15A(b)(6) requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Section 15A(b)(9) requires that the rules of an association not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission also believes that the rules, as amended, fulfill the mandates of the SOA [23] that require that rules be implemented that are reasonably designed to address conflicts of interest that can arise when securities analysts recommend equity securities in research reports and public appearances, and to improve the objectivity of research, provide investors with more useful and reliable information, and to require disclosure in public appearances and research reports of conflicts of interest that are known or should have been known by the securities analyst or the broker-dealer to exist at the time of the appearance or the date of distribution of the report.

Section 3(f) of the Exchange Act directs the Commission to consider, in addition to the protection of investors, whether approval of a rule change will promote efficiency, competition, and capital formation.[24] In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation.

The Commission believes the rule changes, as amended, promote the independence of research analysts and the objectivity of research. The rule proposals are reasonably designed to require analysts to disclose in public appearances, and broker-dealers to disclose in research reports, conflicts of interest of which they know or should know to exist at the time of the appearance or the date of the report. As such, the rules should provide investors with more useful and reliable information and promote greater public confidence in securities research.

A. Solicitation of Investment Banking Business [NYSE Rule 472(b)(5) and NASD Rule 2711(c)(4)]

Under the initial proposals, a research analyst would have been prohibited from issuing research reports or making public appearances concerning a company if the analyst engaged in any communication with the company in "furtherance of obtaining investment banking business" prior to the time the company entered into a letter of intent or other written agreement that designated the analyst's firm as underwriter of the company's initial public offering.

Commenters expressed substantial concern regarding this provision, largely arguing that the phrase "in furtherance of obtaining investment banking business" was overly broad and several suggested alternative language.[25] They also expressed concern that the vagueness of the proposals would discourage analysts from visiting and communicating with private companies because firms would be unsure of what communications would, especially in hindsight, be considered "in furtherance of obtaining investment banking business." [26]

Commenters also requested clarification on whether the consequence of a research analyst's participation in a communication "in furtherance of obtaining investment banking business" would be a permanent ban on the analyst writing research reports on that issuer, even where the analyst was no longer employed by the same firm. Commenters argued for a time limit on the research ban, and against the retroactive application to communications made prior to the effective date of the rule or in cases where the research analyst is no longer employed by the same firm.[27]

Commenters also noted that the proposed provisions referred to the signing of a letter of intent, or other written agreement, in determining the date the firm received an investment-banking mandate. They argued that letters of intent are not common industry practice and, therefore, should not be used as evidence of the receipt of a mandate.[28]

The proposals also provided that the prohibition would not apply to "due diligence communications" between the research analyst and the subject company, the sole purpose of which is to analyze the financial condition and business operations of the subject company. Commenters requested clarification as to the meaning of "due diligence communications" and several suggested specific language or parameters.[29]

After considering commenters' concerns, the SROs modified their proposals in Amendment No. 3 to provide for an outright prohibition on research analyst participation in "pitches" for investment banking business or other communications with companies "for the purpose of soliciting investment banking business." [30] While the original proposals sought to provide a disincentive for analyst involvement in pitches by prohibiting an analyst from preparing research reports on issuers with whom the analyst engaged in a pitch, the amended proposals take the approach of prohibiting analyst involvement in pitches.

The NASD believes that this amendment will not only promote regulatory consistency, but will also further the goals of research objectivity and investor confidence by eliminating all participation by research analysts in solicitation efforts, which could suggest a promise of favorable research in exchange for underwriting business.[31] Because the SROs believe that the same potential conflicts exist with respect to solicitation of all investment banking business, the amendment is not limited to initial public offerings.[32]

The final amendments also address commenters' concerns regarding what communications are permissible for research analysts. The SROs note that certain activities are traditionally associated with research functions within a multi-service securities firm, and are separate from the solicitation activities of concern that analysts may have recently been called upon to engage in by their firms.[33] For example, the NASD notes that the proposed amendment would not curtail research analysts from performing activities traditionally associated with research functions that do not involve solicitation of investment banking business, such as helping to screen potential investment banking clients.[34] The NYSE also recognizes the need for critical financial analysis of a subject company, during the period after the receipt of an investment banking mandate by the member while an issuer is preparing to engage in a securities offering to the public.[35] By prohibiting analyst participation in pitches and other activities involving the solicitation of investment banking business, the final amendments also avoid the implementation issues associated with the initial proposals.

The amended proposals further insulate research analysts from investment banking interests, while addressing commenters' concerns regarding vagueness, by clarifying the parameters of the kind of activities the rule is designed to address. The SROs note that the prohibition on analysts' involvement in solicitations of investment banking business is intended to support the prohibition on promising favorable research as a marketing tool to prospective investment banking clients of members, and is designed to encourage issuers to choose an investment banking firm based on the merits of the firm's underwriting capabilities.[36]

In our view, it is appropriate for the SROs to prohibit analyst involvement in pitches or other communications by research analysts that are made for the purpose of soliciting investment banking business. The Commission believes that the rules address concerns regarding analyst objectivity and independence from investment banking interests while permitting research analysts to provide certain services to their firm that several commenters viewed as valuable. The Commission also finds that the rules relating to research analyst involvement in solicitations for investment banking business are consistent with the Exchange Act, particularly Sections 6(b)(5), 6(b)(8), 15A(b)(6), and 15A(b)(9).

B. Compensation of Research Analysts [NYSE Rule 472(h) and NASD Rule 2711(d)]

The rule proposals reinforce the separation of research analyst compensation from investment banking influence by requiring procedures for review and approval of a research analyst's compensation by a committee that reports to the Board of Directors or a senior executive of the broker-dealer. No employee of a member's investment banking department may participate in the committee. At a minimum, the committee must consider the following factors: the research analyst's individual performance (*e.g.*, quality of research product), the correlation between a research analyst's recommendations and stock prices, and overall ratings from various internal (other than investment banking) or external parties.

Further, in reviewing and approving an individual research analyst's compensation, the committee may not consider his or her direct contribution to the firm's overall investment banking business. The basis for a research analyst's compensation would have to be documented and the committee must provide an annual attestation to certify that the committee reviewed and approved the compensation of research analysts who are primarily responsible for the preparation of the substance of research reports [37] and documented the basis for such approval.

Several commenters expressed concern regarding the compensation committee provisions and suggested alternatives.[38] One commenter believed that the ban on consideration by a compensation review committee of contributions to the firm's investment banking business should not preclude considering contributions to the extent that they benefit investors.[39] Other commenters asked for clarification that a member's overall profitability may be considered in determining a research

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[18] The Firm Element requires broker-dealers to keep employee education current by means of a formal, ongoing training program. Broker-dealers must ensure that training is relevant to identified needs and that it is adequate to convey the desired information relating to products and job functions. The Regulatory Element requires that broker-dealers conduct an annual needs analysis and focuses on compliance, regulatory, ethical, and sales-practice standards. All registered persons must participate in a prescribed computer-based training session within 120 days of their second registration anniversary date, and every third year thereafter. *See generally Content Outline For The Regulatory Element*, Securities Industry/Regulatory Council on Continuing Education (December 2000).

[19] *See* notes 6 and 8 *supra*.

[20] *See* 15 U.S.C. 19(b)(2).

[21] 15 U.S.C. 78f(b)(5) and (8).

[22] 15 U.S.C. 78*o*–3(b)(6) and (9).

[23] *See* Exchange Act Section 15D, 15 U.S.C. 78*o*–6.

[24] 15 U.S.C. 78c(f).

[25] *See* Adams *et al.* letter; SIA March 10th letter; Stifel letter; SunTrust letter; and Wilmer March 11th letter.

[26] *See* SIA March 10th letter; Stifel letter; and SunTrust letter.

[27] *See* Adams *et al.* letter; SIA March 10th letter; SunTrust letter; and Wilmer March 11th letter.

[28] *See* SIA March 10th letter and Wilmer March 11th letter.

[29] *See* Adams *et al.* letter; SIA March 10th letter; Stifel letter; and Wilmer March 11th letter.

[30] The Global Settlement also prohibits research analyst involvement in "pitches."

[31] *See* NASD Response to Comments.

[32] *See* NASD Response to Comments and NYSE Amendment No. 3.

[33] *Id.*

[34] *See* NASD response to Comments.

[35] *See* NYSE Amendment No. 3.

[36] Promising favorable research to companies as an inducement for business is currently explicitly prohibited by NASD Rule 2711(e) and NYSE Rule 472(g). In addition, according to the SROs, promising favorable research to companies as an inducement for business would constitute a violation of just and equitable principles of trade. *See* Securities Exchange Act Release No. 45526 (March 8, 2002), 67 FR 11526 at 11539 (March 14, 2002) (Notice of SRO rules approved by the Commission in May 2002 approval order).

[37] The research analyst who is primarily responsible for the preparation of the substance of a research report is often referred to as the "lead" analyst. The Commission notes that a research report may have more than one lead analyst.

[38] *See* SIA March 10th letter, Stifel letter, and Weiss letter.

[39] *See* SIA March 10th letter.

analyst's compensation.[40] Others requested confirmation that a research analyst's compensation could be based not only on a member's overall profitability, but also on the profitability of a firm's capital markets division, investment banking department, or an industry group within an investment banking department, and requested that the SROs explicitly acknowledge certain additional permissible compensation factors set forth in the Global Settlement.[41]

The SROs agree that the general financial success of a member may be considered in determining analyst compensation.[42] NASD does not believe that it would be appropriate for a member to determine a research analyst's compensation based upon the profitability of the member's capital markets division, investment banking department, or some subgroup of such a division or department.[43] NASD acknowledges that several other factors may be appropriate to consider when determining compensation, the rules do not attempt to list all possible permissible considerations, and the NASD does not think it necessary to do so.[44]

Several commenters argued that the SRO rules should adopt the Global Settlement approach by applying obligations concerning how to calculate compensation only for the "lead analyst" (those analysts that are required to provide certifications under Regulation AC).[45] As such, commenters argued that the compensation committee provision should apply only to the compensation of analysts who are primarily responsible for a research report's substance.[46]

Upon consideration of commenters' concerns, the SROs agree that such a limitation on the scope of this provision is reasonable, and filed amendments to apply the compensation restrictions only to those research analysts who are primarily responsible for the preparation of the substance of a research report.[47] Thus, research analysts who are not primarily responsible for a research report's substance, such as junior analysts who report to the lead analyst, would not be covered by the compensation committee provision.

Commenters requested clarification on the intended role of the compensation committee and asserted that the proposed language was unclear as to whether the appropriate role of the committee was to "review and approve" research analyst compensation or to "determine" research analyst compensation; the commenter argued that the appropriate role for the committee should be to serve a review and approval function.[48]

The SROs amended the proposals to require that research analyst compensation be reviewed and approved by the compensation committee.[49] The amendments clarify that the committee must review and approve a research analyst's compensation. With the exception of the prohibitions of NYSE Rule 472(b)(1) and NASD Rule 2711(b)(1) on research analysts being subject to compensatory evaluation by investment banking personnel, the rules do not address who may initially determine that compensation.

The SOA requires that the "compensatory evaluation" of research analysts be limited to "officials employed by the broker or dealer who are not engaged in investment banking activities."[50] In order to satisfy the mandates of the SOA, the SROs have filed amendments to prohibit employees of the member's investment banking department from evaluating the compensation of research analysts.[51] As such, investment banking department personnel may not have input in determining research analyst compensation. Unlike the compensation committee provisions, this prohibition applies to the compensatory evaluation of all research analysts, and is not limited to those research analysts that are primarily responsible for the preparation of the substance of a research report.

The Commission notes that neither the current nor proposed SRO rules prohibit the consideration of the revenues or results of the firm as a whole in determining research analyst compensation.[52] The NASD has recognized that a research analyst, as part of his or her professional duties, may advise his or her firm's investment banking department concerning certain matters, such as whether a potential underwriting client is prepared for an initial public offering.[53] Therefore, for example, NASD has stated that such activities may be considered in determining an analyst's compensation; however, it may not be given undue weight relative to evaluating the quality of other research work product.[54]

The Commission believes that the proposed compensation committee amendments are consistent with the SOA and promote the alignment of investor interests with those of research analysts who are primarily responsible for the preparation of the content of research reports by requiring that the committee, in reviewing and approving research analyst compensation, consider the quality of the research product and the correlation between the research analyst's recommendations and the stock price performance. The Commission also believes that the proposed prohibition on investment banking input regarding the compensatory evaluation of all research analysts is an important restriction in reducing the influence of investment banking interests on research analysts, and satisfies the mandates of Section 15D of the Exchange Act. The Commission also finds that the amendments relating to research analyst compensation are consistent with the Exchange Act, including Sections 6(b)(5), 6(b)(8), 15A(b)(6), and 15A(b)(9).

C. Definition of "Research Report" [NYSE Rule 472.10(2) and NASD Rule 2711(a)(8)]

Several commenters expressed concern regarding the proposals' amended definitions of "research report."[55] The proposals adopt the SOA definition of "research report" by eliminating the current definitional requirement that a research report contain a "recommendation." The NASD Rule 2711 and NYSE Rule 472 contain substantially similar amended definitions of "research report," defining the term as a written or electronic communication that includes an analysis of equity securities of individual companies or industries, and provides information reasonably sufficient upon which to base an investment decision.

[40] *See* SIA May 9th letter and Sullivan letter.
[41] *Id.*
[42] *See* NYSE 472(b)(1) and NASD Response to Comments.
[43] *See* NASD Response to Comments.
[44] *Id.*
[45] *See* SIA May 9th letter and Sullivan letter.
[46] *See* SIA March 10th letter.
[47] *See* NASD Response to Comments and NYSE Amendment No. 3.
[48] *See* SIA March 10th letter.
[49] *See* NYSE Rule 472(h)(2) and NASD Rule 2711(d)(2).
[50] *See* 15 U.S.C. 78o–6(a)(1)(B).
[51] *See* Amendment No. 3.
[52] The SROs' rules permit consideration of firm revenues as a whole, so long as a research analyst's compensation is not based on a specific investment banking transaction, and so long as the member discloses in research reports if the research analyst received compensation that is based upon (among other factors) the member's investment banking revenues. *See* NYSE Rule 472(h)(1) and (2), and NASD Rule 2711(d)(2).
[53] *See* NASD Response to Comments.
[54] *Id.*
[55] *See* BOA letter, CSFB letter, Schwab March 20th letter, SIA March 10th letter, Stifel letter, Sullivan letter, and Wilmer March 11th letter.

While commenters acknowledge the SOA definition,[56] some nevertheless urge the SROs to interpret the SOA's definition to be a non-substantive change to the current NASD and NYSE definitions of "research report."[57] One commenter, for example, believes that the SROs should interpret the SOA definition effectively to continue to require a recommendation or a "subjective view or conclusion."[58] Commenters argued that, otherwise, the proposed definition would be over-inclusive, encompassing many types of communications that traditionally have not been classified as research reports, including those by individuals who are not typically considered research analysts.[59] Consequently, these commenters argue that the scope of the modified definition would result in unnecessary regulation and could constrict the free flow of information to the investing public.[60]

The SROs do not believe that the commenters' suggestions are consistent with the requirements of the SOA.[61] The NASD notes that Congress adopted a definition of "research report" that is very similar to the current definitions of "research report" in NASD Rule 2711, except for the deletion of the requirement that there be a recommendation.[62] The NASD believes that they must therefore recognize the import of that distinction.[63] As such, the NASD declines to interpret the definition in a way that they would consider to be rendering a conscious Congressional act to be superfluous.[64] In this regard, the NASD notes that the Commission adopted the SOA definition of "research report" in Regulation AC, and declined to incorporate interpretations suggested by commenters that would continue to require a recommendation or subjective conclusion.[65]

Commenters also suggested several other measures to narrow the scope of the proposed "research report" definition, such as limiting the definition of "research report" to communications "furnished by the firm to investors in the U.S."[66] The SROs believe that all research reports produced by members, irrespective of where or to whom they are distributed, should embody the same standards of integrity.[67] The NASD notes that some aspects of NASD 2711 may reflect a more restrictive policy than the terms agreed to by the many parties, including NASD, to the Global Settlement, because the purposes behind NASD Rule 2711 may differ from the objectives in seeking a resolution to an enforcement matter.[68] For this reason, the SROs decline to modify their proposals to apply only to research that relates either to a U.S. company or a non-U.S. company for which a U.S. market is the principal equity trading market as provided in the Global Settlement.[69]

Some commenters noted that Regulation AC applies only to "covered persons," generally exempting from the rule, among others, those affiliates of a broker or dealer that have no officers or employees in common with the broker or dealer.[70] Commenters also requested that the SROs narrow the scope of their rules to carve out "departments or divisions that have a sufficient level of independence from the member firm" and are not subject to pressure from investment banking.[71]

The NASD does not believe it necessary or appropriate to adopt a "covered persons" definition.[72] The NASD also notes that the Commission's jurisdiction is broader than the NASD, whose jurisdiction extends only to their members.[73] As such, research produced by non-member affiliates is already excluded from the scope of SRO analyst rules, except in cases where members distribute research produced by non-member affiliates. To the extent that commenters' concerns are more specifically about the application of the rules to investment advisers, the SROs note that the Joint Memorandum, which provides members with guidance regarding the operation of the analyst rules, explains that those advisers are excluded from the definition of "research analyst."[74]

Several commenters requested that the SROs restate their previous guidance set forth in their Joint Memorandum, which excluded certain communications from the definition of "research report."[75] Commenters requested that the SROs exclude from the definition certain additional communications excepted by Regulation AC or the Global Settlement.

The Commission understands that the SROs intend to review existing interpretive guidance for continued applicability, and note their belief that the guidance in the Joint Memorandum excluding certain communications from the definition of "research report" would remain effective.[76] Moreover, the SROs have indicated agreement that certain additional categories of communications, discussed in the release adopting Regulation AC, would not fall within the amended definition of "research report."[77] The SROs determined that an analysis prepared for a specific person or a limited group of fewer than fifteen persons; and periodic reports or other communications prepared for investment company shareholders or discretionary investment account clients discussing past performance or the basis for previously made discretionary investment decisions, would not fall within the definition of "research report."[78] The NASD continues to note that whether a particular communication falls within the definition of "research report" depends on specific facts and circumstances.[79]

Some commenters asserted that all "technical analysis" and "quantitative" research should be excluded from the definition of "research report."[80] However, the NASD does not agree that such exclusions are appropriate beyond current interpretations.[81] Neither NASD or NYSE modified their proposals in response to this comment. The NYSE did not further elaborate on its reasoning for this determination. The Joint Memorandum excludes from the definition of "research report"

[56] *See* 15 U.S.C. 78o–6(c)(2).
[57] *See* SIA March 10th letter.
[58] *See* Wilmer March 11th letter.
[59] For example, Wilmer's June 25th comment letter, Wilmer suggested that communications such as prospectuses, trading commentary or company profiles could be deemed research reports under the proposed definition.
[60] *See* ICI March 10th letter and Wilmer March 11th letter.
[61] *See* NASD Response to Comments and NYSE Amendment No. 3.
[62] *See* NASD Response to Comments.
[63] *Id.*
[64] *Id.*
[65] *Id.* Regulation AC defines "research report" as "a written communication (including an electronic communication) that includes an analysis of a security or an issuer and provides information reasonably sufficient upon which to base an investment decision." *See* Regulation AC.
[66] *See* Sullivan letter.
[67] *See* NASD Response to Comments and NYSE Amendment No. 3.
[68] *See* NASD Response to Comments.
[69] *See* NASD Response to Comments and NYSE Amendment No. 3.
[70] *See* Sullivan letter.
[71] *Id.*
[72] *See* NASD Response to Comments.
[73] *Id.*
[74] *See* NYSE Information Memorandum. No. 02–26 (June 26, 2002) and NASD Notice to Members 02–39 (July 2002) ("Joint Memorandum").
[75] *See* BOA letter, Schwab June 30th letter, SIA June 26th letter, and Sullivan letter (*e.g.*, research reports commenting on trading conditions).
[76] *See* NASD Response to Comments and NYSE Amendment No. 3.
[77] *Id.*; *See* note 14 *supra*.
[78] *See* NASD Response to Comments and NYSE Amendment No. 3.
[79] *See* NASD Response to Comments.
[80] *See* CSFB letter, Schwab March 20th letter, and SIA March 10th letter.
[81] *See* NASD Response to Comments.

communications of "technical analysis concerning the demand and supply for a sector, index or industry based on trading volume and price." The NASD does not believe it is consistent with the purposes of the rules to extend the exclusion to technical analysis of individual securities.[82] The NASD also notes that the Commission similarly excluded from the definition of "research report" in Regulation AC only sector, index, and industry technical analysis.[83] The Commission believes that the SROs' determination not to apply the exception to individual securities is reasonable.

Commenters argue that "quantitative" reports are based on objective criteria, such as mathematical models, and are therefore not subject to influence by virtue of a member's conflicts.[84] The NASD believes the term "quantitative," as applied to research, may be vague and open to many interpretations.[85] In fact, the NASD observes that many research reports typically labeled "quantitative" by members have raised conflicts concerns.[86] Further, the NASD does not agree that all mathematical models are inherently "objective."[87] Many such models are based on subjective formulas where a person or persons selects the inputs; for example, a particular performance ratio or consensus earnings estimates. The NASD believes that such mathematical models can be manipulated to produce a particular desired result, depending on, for example, the ratios or other criteria selected, the universe of securities, and the formula employed.[88]

Consequently, the NASD does not believe it appropriate or practicable to provide for a blanket exclusion of "quantitative research."[89] The NASD acknowledges the possibility that certain "quantitative models" devised by members may effectively eliminate the role of a "research analyst" and sufficiently guard against any potential conflicts of interest to render them outside the definition of a "research report;" however, the NASD believes that such facts and circumstances are best considered on a case-by-case basis.[90]

The Commission notes that the SROs have tailored their definitions of "research report" to the definition of "research report" in the SOA and have indicated that they intend to review the exceptions to the definition provided in the Global Settlement, in order to provide additional guidance on the rules' application where appropriate.[91]

The Commission believes that the SRO amendments to the definition of the term "research report" are consistent with Section 15D of the Exchange Act in that they do not require that there be a "recommendation." The Commission also finds that the rules relating to research analyst involvement in solicitations for investment banking business are consistent with the Exchange Act, particularly Sections 6(b)(5), 6(b)(8), 15A(b)(6), and 15A(b)(9).

D. Definition of "Public Appearance" [NYSE Rule 472.50 and NASD Rule 2711(a)(4)]

The SROs amended their definitions of "public appearance" to include print media appearances. Several commenters were critical of this provision in light of the SROs' guidance in the Joint Memorandum, which stated that research analysts should decline subsequent appearances with media outlets that previously edited out required analyst disclosures, absent assurances that the disclosures will no longer be edited out.[92] Commenters expressed concern that the rules infringed upon the editorial discretion of the media by directing analysts to decline appearances with media outlets that previously have not included the analyst disclosures.[93]

Commenters argued that the Joint Memorandum should be revised to reflect the NASD's updated guidance in the Original Notice that an analyst would not violate the rule if he or she makes the required disclosures to the print, radio or television media in good faith, even if the media outlet does not print or broadcast the information.[94] A commenter also recommended that the proposed rules be clarified to make explicit that print journalists may, in their editorial discretion, and without penalty to their publications or imposing restrictions upon access to a research analyst, decline to publish the conflict disclosures provided by the analyst.[95]

The SROs recognized that it is important that media audiences, as well as readers of research reports, receive disclosures of potential conflicts of interests.[96] In response to commenters' concerns, however, the SROs modified their guidance to state that an analyst would not violate the rule if the analyst continues to make appearances with a media outlet that has, in the past, not printed or broadcast the disclosures, so long as the analyst makes the required disclosures in good faith.[97]

In NYSE Amendment No. 2, the Exchange would require a research analyst that recommends securities in a print media interview, article prepared under his or her name, or broadcast, to prepare a record of such interview, article, or broadcast before the close of the next business day. Such record must contain pertinent information regarding the event and the required disclosures provided the media source. Further, such record must be made regardless of whether the media outlet publishes or broadcasts the required disclosures. In addition, the SROs require that the records of such interviews, articles, or broadcasts and the requisite disclosures must be maintained in a manner consistent with Rule 17a–4 of the Exchange Act.[98]

While commenters supported the NYSE's proposed interpretation, they were concerned that the new recordkeeping requirements for public appearances were impractical and failed to take into account the realties of research analysts' business and travel schedules.[99] According to the commenters, the difficulty in requiring that research analysts themselves make the required records before the close of the next business day, would result in a reduction in the number of public appearances.[100]

In response to commenters' concerns, the NYSE amended its proposal to require that the record be made within 48 hours of such interview, article or broadcast, and would permit such record to be prepared by the research analyst, legal or compliance personnel, or research department management.[101]

In Amendment No. 3, the NASD also amended its rule proposal to explicitly require that research analysts prepare a record of the disclosures made by the research analyst in a print or broadcast media interview, newspaper article, or other public appearance.[102] These records must be made regardless of whether the media source published or broadcast the disclosures and the record must be maintained for three years. NASD has not expressly included a required period of time regarding when the record must be made.

The Commission finds that the amendments to the definition of "public appearance" will provide media audiences, including the print media, with useful information to better evaluate the nature and extent of a firm's relationship with a subject company. The proposed amendments to the definition of "public appearance," along with the proposed recordkeeping requirements and the SROs' guidance regarding media appearances, strike an appropriate balance between addressing commenters' concerns and providing investors with important disclosure information.[103] The Commission believes that the proposed recordkeeping requirements will serve as a useful tool in promoting and monitoring the disclosure of potential conflicts of interests to investors. Therefore, the Commission finds that the proposed amendments are consistent with the Exchange Act, including Sections 6(b)(5), 6(b)(8), 15A(b)(6), and 15A(b)(9).

E. Supervisory Analyst Personal Trading Restrictions [NYSE Rule 472(e)(5) and NASD Rule 2711(g)(6)]

The original proposals would have extended the existing personal trading restrictions to include other persons: the director of research, supervisory analyst, or member of a committee who have direct influence or control with respect to the preparation of research reports or establishing or changing a rating or price target of a subject company's equity securities.

Commenters were generally critical of this proposal.[104] Commenters argued that many persons who supervise or oversee research analysts review a wide range of research reports, including, in some cases, reports on all of the subject companies covered by the member.[105] They argued that expansion of the personal trading restrictions to supervisory personnel would effectively prevent these persons from owning any equity securities except diversified investment companies. This, commenters argued, would discourage many qualified persons from acting in supervisory capacities because of the trading blackout provisions and the prohibitions on trading against current recommendations. Commenters recommended that the SROs adopt less restrictive provisions regarding supervisory personnel, such as having legal or compliance personnel review their securities holdings or pre-approve trades to ensure that there is no conflict of interest.[106] Commenters recommended that the proposals be replaced by a requirement that firms implement policies and procedures reasonably designed to ensure that the trading transactions of supervisory personnel, committee members, and others, do not create a conflict of interest between their professional responsibilities and personal trading activities.[107]

In response to commenters' concerns, the SROs modified their proposals in several respects. Rather than applying the same trading restrictions to supervisory personnel that apply to research analysts, the amended proposals would require a member's legal or compliance personnel to pre-approve all securities transactions of persons who supervise research analysts and other persons, such as the director of research or member of a committee who has direct influence or control with respect to the preparation of research reports or establishing or changing a rating or price target of a subject company's equity securities, to the extent that the transactions involve securities of subject companies covered by research analysts.[108]

The Commission believes it is appropriate for the SROs to require pre-approval of securities transactions by supervisory research analysts and certain others where the securities traded are those of companies covered by the research analysts that they supervise. The Commission believes that this approach addresses the concerns regarding a possible disincentive from holding supervisory analyst positions, while still providing for a means of monitoring the trading activity of those who have direct influence or control with respect to the preparation of the substance of research reports or the establishment or changing of a rating or price target of a company's equity securities. Therefore, the Commission finds that the proposed rules are consistent with the Exchange Act, particularly Sections 6(b)(5), 6(b)(8), 15A(b)(6), and 15A(b)(9).

F. Research Analyst Ownership Disclosure and Personal Trading Restrictions [NYSE Rule 472(k)(1)(iii)(b) and (k)(2)(i)(b) and 472(e) and NASD Rule 2711(h)(1)(A) and 2711(g)]

Commenters recommended that managed accounts not controlled by the account owner should be excepted from the trading restrictions placed on research analysts.[109] One commenter believed that NYSE Rule 472(e)(4)(v) currently seems to exempt such accounts from the trading restrictions for research analysts, while NASD Rule 2711(g)(5) does not.[110]

In several instances, both NASD and NYSE have interpreted these provisions to exclude from the personal trading restrictions so-called "blind trusts" of research analysts or their household members where the account owner is unaware of the account's holdings or transactions.[111] The SROs have proposed modifications to the rules in Amendment No. 3 to exclude "blind trust" accounts that are controlled by a person other than the research analyst or member of the research analyst's household and where neither the research analyst nor member of the research analyst's household knows of the account's investments or investment transactions.

Several commenters argued that research analysts who prepare technical and quantitative research should be treated differently under the rules because those models do not present the same conflicts concerns.[112] These commenters also asserted that the personal trading restrictions effectively bar many of these "technical" and "quantitative" research analysts from owning any stocks because the broad universe of securities they cover makes ownership impractical. As such, commenters suggested that the SROs either interpret the definition of "research report" to exclude "technical analysis" and "quantitative research," or amend the research analyst trading restriction provisions to require only

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82 *Id.*
83 *Id.*
84 *See* CSFB letter, Schwab March 20th letter, and SIA March 10th letter.
85 *See* NASD Response to Comments.
86 *Id.*
87 *Id.*
88 *Id.*
89 *Id.*
90 *Id.*
91 *See* NASD Response to Comments and NYSE Amendment No. 3.
92 *See* Gibson letter, NAA letter, and SIA March 10th letter.
93 *See* Bloomberg letter, Gibson letter, NAA letter, and SIA March 10th letter.
94 *See* Gibson letter, Schwab March 20th letter, and SIA March 10th letter. *See also* Original Notice at 836.
95 *See* Bloomberg letter.
96 *See* NASD Rule 2711(a)(4) and NYSE Rule 472.50.
97 *See* NASD Amendment No. 1 and NYSE Amendment No. 2.
98 Rule 17a–4 requires that records be preserved for a period of not less than three years, the first two in an easily accessible place. 17 CFR 240.17a–4.
99 *See* Schwab June 30th letter, SIA June 26th letter, and Wilmer June 25th letter.
100 *See* Wilmer June 25th letter.
101 *See* NYSE Rule 472(k)(1)/01.
102 *See* NASD Rule 2711(h)(12).
103 The Commission notes that Rule 17a–4(b)(4) requires that a broker-dealer shall preserve originals of all communications by the broker-dealer, including those subject to the rules of an SRO of which the broker-dealer is a member regarding communications with the public.
104 *See* Schwab March 20th letter, SIA March 10th letter, Stifel letter, and Wilmer March 11th letter.
105 *Id.*
106 *See* SIA March 10th letter.
107 *See* Schwab March 20th letter and SIA March 10th letter.
108 *See* NYSE Rule 472(e)(5) and NASD Rule 2711(g)(6).
109 *See* Schwab March 20th letter and SIA March 10th letter.
110 *See* SIA March 10th letter.
111 *See* NYSE Rule 472.40 and NASD Rule 2711(a)(6).
112 *See* Schwab March 20th letter and SIA March 10th letter.

pre-approval and disclosure requirements for such research analysts.[113]

The SROs do not believe that it is appropriate to provide exemptions from the trading limitations for a certain class of individuals who meet the definition of "research analyst."[114] The SROs further note that the current rules provide for exceptions to the trading restrictions for certain investment funds, including investments in registered diversified investment companies as defined in Section 5(b)(1) of the Investment Company Act of 1940.[115]

The SOA requires disclosure of the extent to which a research analyst has debt or equity investments in the issuer that is the subject of the research report or public appearance.[116] Current NASD Rule 2711(h)(1)(A) requires disclosure of whether the "research analyst or a member of the research analyst's household has a financial interest in the securities of the subject company, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position)."[117] The Commission believes that NASD Rule 2711(h)(2), and NYSE Rule 472(k)(1) and (2), as amended, satisfy the requirements of Exchange Act 15D(b)(1).[118]

The Commission believes that the modified rule proposals reflect an appropriate compromise between addressing commenters' concerns and mitigating conflicts of interest that can arise when an analyst invests in the securities of companies the analyst covers. The Commission finds that the proposals are consistent with the Exchange Act, particularly Sections 6(b)(5), 6(b)(8), 15A(b)(6), and 15A(b)(9).

G. Termination of Coverage [NYSE Rule 472(f)(5) and NASD Rule 2711(f)(6)]

The original proposals require notification to customers when a firm withdraws research coverage of a subject company, and distributions of a final research report that includes a final recommendation or rating. The proposed rules also would require that notice of this withdrawal must be made in the same manner as the initial research coverage provided by the broker-dealer.

Several commenters expressed support for requiring firms to publish notice of withdrawal of research coverage of a company.[119] However, commenters requested clarification with respect to the meaning of the term "withdrawal," and requested guidance regarding the requirement that notice of withdrawal must be made "in the same manner as when research coverage was first initiated by the member."[120]

After considering commenters' concerns, the SROs filed amendments to require notice of "termination" of research coverage, rather than withdrawal or discontinuation. The NASD intends to provide general guidance as to what constitutes "termination," and will also consider such scenarios on a case-by-case basis.[121]

The SROs also filed amendments to respond to commenters' concerns regarding the meaning of the requirement that the final notice must be "made in the same manner" as when research coverage was "first initiated by the member."[122] After considering comments, the SROs modified the proposals to require that the member make the final research report on the subject company available using means of dissemination equivalent to those it ordinarily uses to provide the customer with its research reports on that subject company. The SROs also require that the final report must be comparable in scope and detail to prior research reports.

The rule proposals continue to require that the final report include a final recommendation or rating. However, the SROs have specified that a final recommendation or rating will not be required in cases where it is impracticable for the member to produce a comparable report (*e.g.*, if the research analyst covering the subject company has left the member, or where the member has terminated coverage on an industry or sector). In such cases, the rationale for termination will be required.

The Commission finds that the proposed amendments requiring notice of termination of coverage will provide investors with important information to better evaluate the usefulness of research, including whether the firm is no longer covering the issuer. The public may not be fully informed where a firm terminates coverage of a company without disclosing the termination to customers, and without providing customers with a final rating or recommendation, even in cases where a ratings change may have been warranted. The Commission believes that the amendments requiring notice of "termination" respond to commenters' concerns regarding what would constitute "withdrawal," while providing investors with important information. Therefore, the Commission believes these proposals are consistent with the Exchange Act, including sections 6(b)(5), 6(b)(8), 15A(b)(6) and 15A(b)(9).

H. Quiet Periods on the Issuance of Research Reports [NYSE Rule 472(f) and NASD Rule 2711(f)]

The SOA requires establishment of periods during which brokers or dealers who have participated or are to participate in a securities offering as underwriters or dealers may not publish or otherwise distribute research reports related to such securities.[123] Current SRO rules impose quiet periods on underwriting managers and co-managers for 40 calendar days following an initial public offering and 10 calendar days following a secondary offering, but do not impose these restrictions on other members of the underwriting syndicate or selling group. In order to comply with the SOA, the SRO proposals establish a 25 calendar-day period after the "date of the offering" during which a member that has agreed to participate or is participating as an underwriter or dealer (other than as manager or co-manager) of an issuer's initial public offering may not publish or otherwise distribute a research report or make a public appearance regarding that issuer.[124]

Most commenters did not object to this proposed provision. One commenter, however, argued that the SOA does not require the SROs to apply the research blackout to every dealer that participates in the offering in any manner, including where the dealer has no agreement with the issuer or any underwriter to distribute the securities or to provide research about the issuer.[125]

The SROs have not modified this proposal. The NYSE notes that the 25-day prohibition effectively codifies quiet periods that exist because of the prospectus delivery requirements under Rule 174 under the Securities Act[126] pursuant to which brokers or dealers refrain from issuing research on exchange-listed or National Market System securities for 25 days after a registration statement becomes effective or bona fide public trading begins, to avoid the risk that such communications may be deemed prospectuses that do not meet the requirements of Section 10 of the Securities Act.[127]

The SRO proposals would amend the quiet period provisions in two other ways. First, the proposals would prohibit a member that has acted as a manager or co-manager of a securities offering from distributing a research report or making a public appearance concerning a subject company 15 days prior to and after the expiration, waiver, or termination of a lock-up agreement that restricts the sale of securities held by the subject company or its shareholders after the completion of a securities offering.

Commenters argued that this provision would raise difficult compliance issues, since co-managing underwriters often have no knowledge of a lead manager's waiver of a lock-up agreement.[128] Commenters also expressed concern that this provision could dissuade issuance of lock-up waivers prior to their normal expiration time.[129] One commenter suggested, as an alternative, that the SROs bar firms and their analysts from issuing research reports "for the purpose, in whole or in part, of affecting the price of the issuer's securities for the benefit of a selling shareholder."[130]

The SROs determined not to modify the proposals in this regard. The SROs believe that the concern regarding a co-managing underwriter's lack of knowledge of a lead manager's waiver of a lock-up agreement can be addressed through a provision in an underwriting agreement to require a lead or co-managing underwriter to notify the other managers or co-managers of its intention to grant such a waiver a specified number of days prior to doing so.[131] The SROs believe that such a notification would avoid the inadvertent issuance of research reports or making of public appearances within the blackout periods surrounding waivers of lock-up agreements.[132]

Several commenters requested that the blackout period regarding lock-up agreements not apply to the publication of research reports pursuant to Securities Act Rule 139[133] regarding a subject company with "actively traded securities," as defined in SEC Regulation M,[134] or to public appearances regarding such companies.[135] These commenters noted that, because the quiet period following secondary offerings does not apply to these types of companies, the quiet period surrounding waivers or expirations of a lock-up agreement also should not apply.

After consideration of commenters' concerns, the SROs modified their proposals to apply the exception for actively traded securities to the provisions prohibiting "booster shot" research reports. The SROs note that such an exception would not be appropriate in the context of an IPO, where there is not a developed secondary trading market or widespread research coverage.[136] The SROs agree that, for certain seasoned issuers and actively traded securities, the proposed blackout surrounding the expiration of lock-up agreements is not necessary.[137] Accordingly, the SROs have amended this provision to provide for such an exception.

Second, the SRO proposals also extend the current 40 and 10-day quiet period provisions to public appearances by research analysts regarding securities that are covered by a research report blackout during the same period of time.[138] Commenters did not oppose this proposal. The SRO amendments define "date of the offering" for all quiet period provisions to mean the later of the effective date of the registration statement or the first date on which the security was bona fide offered to public.[139]

The Commission believes that the SRO rules relating to quiet periods will encourage market forces to determine the price of the security in the aftermarket following an offering unaffected by research reports and public appearances by firms with the most substantial interest in the offering—those firms that are a part of the underwriting syndicate. The Commission believes that the SROs' proposals to extend the current quiet period provisions to cover public appearances is a reasonable extension of the prohibition on research reports during the same period of time.

The Commission believes that the proposed 25-day quiet period provisions satisfy the requirements of Section 15D(a)(2) of the Exchange Act because they are reasonably designed to "define periods during which brokers or dealers who have participated, or are to participate, in a public offering of securities as underwriters or dealers should not publish or otherwise distribute research reports relating to such securities or to the issuer of such securities." The Commission finds that the quiet period provisions are consistent with the Exchange Act, particularly Sections 6(b)(5), 6(b)(8), 15A(b)(6) and 15A(b)(9).

I. Disclosure of Compensation and Client Arrangements [NYSE Rule 472(k) and NASD Rule 2711(h)]

The SOA requires that rules be adopted reasonably designed to require that firms disclose in research reports and public appearances any compensation received by the broker-dealer or its affiliates from the subject company that is known or should have been known by the research analyst or broker-dealer at the time the research report is issued and at the time the public appearance is made.[140]

Current SRO rules require firms to disclose investment banking compensation received from a subject company or its affiliates in the past 12 months.[141] The SROs have not proposed to change this provision. However, in NASD Amendment No. 2 and in NYSE Amendment No. 2, the SROs proposed amendments to expand the required compensation disclosures to mandate disclosure in research reports and public appearances of any non-investment banking compensation received by a member or its affiliates from the subject company. In addition, the SRO amendments would require separate disclosure of investment banking compensation and non-investment banking compensation received from the subject company or its affiliates in research report disclosures.[142]

While the SOA does not specify a look-back period for the compensation disclosure provision, the SROs proposed a 12-month retrospective

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[113] *See* CSFB letter and Schwab March 20th letter.

[114] *See* NASD Response to Comments and NYSE Amendment No. 3.

[115] *See* NYSE Rule 472(e)(4)(v) and (vi), and NASD Rule 2711(g)(5)(A) and (B); 15 U.S.C. 80a–5(b)(1).

[116] *See* 15 U.S.C. 78*o*–6(b)(1).

[117] In NYSE Amendment No. 3, the Exchange proposed to amend NYSE Rule 472(k)(1)(iii)(b) in order to require disclosure of the nature of the analyst's financial interest.

[118] 15 U.S.C. 78*o*–6(b)(1).

[119] *See* AIMR March 6th letter; NASAA letter; and SIA March 10th letter.

[120] *See* Schwab March 20th letter and SIA March 10th letter.

[121] *See* NASD Response to Comments.

[122] *See* SIA March 10th letter.

[123] *See* 15 U.S.C. 78*o*–6(a)(2).

[124] *See* NYSE 472(f)(3) and NASD 2711(f)(2). The Commission notes that the SROs have not proposed to impose a quiet period on non-managers that participate in secondary offerings.

[125] *See* Sullivan letter.

[126] 17 CFR 230.174.

[127] 15 U.S.C. 77j.

[128] *See* SIA March 10th letter.

[129] *Id.*

[130] *Id.*

[131] *See* NASD Response to Comments and NYSE Amendment No. 3.

[132] *Id.*

[133] 17 CFR 230.139.

[134] 17 CFR 242.101(c)(1)

[135] *See* Sullivan letter.

[136] *See* NASD Response to Comments and NYSE Amendment No. 3.

[137] *Id.*

[138] *See* NYSE Rule 472(f)(1) and (2), and NASD Rule 2711(f)(1)(A) and (B).

[139] *See* NYSE Rule 472.120 and NASD Rule 2711(f)(3).

[140] *See* 15 U.S.C. 78*o*–6(b)(2).

[141] *See* NYSE Rule 472(k)(1)(i)(a)(2) and NASD Rule 2711(h)(2)(A)(ii)(b).

[142] *See* NYSE Rule 472(k)(1)(i)(a)(2) and (K)(1)(i)(d)(2), and NASD Rule 2711(h)(2)(A)(ii)(b) and (iii)(a).

period [143] to be consistent with the SOA's client disclosure provision,[144] which imposes this timeframe for disclosure of a client relationship with the subject company. In addition, the current requirement in the SRO rules for disclosure of investment banking compensation is also based on this timeframe.[145]

Several commenters were strongly critical of this proposed amendment.[146] In particular, these commenters asserted that requiring disclosure of non-investment banking compensation received by a member and its affiliates from the subject company would be extremely burdensome and complex, and therefore not in the public interest. Commenters expressed heightened concerns regarding the difficulties of tracking affiliate compensation received from the subject company. [147] They argued that real-time tracking of such compensation would be unduly burdensome and asserted that firms would be unable to implement a real-time tracking system capable of 100% accuracy with regard to disclosure of affiliate compensation.[148] Commenters argued that the SRO proposals did not give effect to the SOA requirements that the mandated rules be "reasonably designed to address conflicts of interest," and would provide little useful information to investors.[149] Commenters recommended that the SROs adopt a narrower version of this proposal that would tie disclosure of the receipt of compensation by a member or its affiliates from a subject company to the research analyst's knowledge of such compensation.[150]

As noted by commenters, the SOA mandates disclosure of conflicts of interests that are "known or should have been known" [151] by the analyst or broker or dealer, and the SROs agree that the proposals should be modified to reflect this qualification.[152] Accordingly, the SROs revised their proposals in several respects regarding the disclosure of non-investment banking compensation received by the member or affiliates from the subject company.

While the original proposals implied that "real-time" disclosure was required, the modified proposals provide for periodic disclosure in certain circumstances. For example, if the member received any non-investment banking compensation from the subject company, the proposals require disclosure as of the end of the month immediately preceding the date of publication of the research report. Real time disclosure would only be required if the analyst or an employee of the member with the ability to influence the substance of the research report ("influential employee") possesses actual knowledge of such member non investment banking compensation.[153]

The SROs revised their proposals to require disclosure in research reports of affiliate non-investment banking compensation of which the analyst or influential employee knows,[154] or of which the analyst or member or has reason to know.[155]

The modified SRO proposals respond to commenters' concerns by requiring disclosure in research reports of affiliate non-investment banking compensation of which the analyst or member "has reason to know."[156] The proposals create two mechanisms by which analysts and members may satisfy the disclosure requirements relating to what the analyst or member would have reason to know about affiliate non-investment banking compensation.[157]

The rules provide that this disclosure requirement will be deemed satisfied if the member has taken steps reasonably designed to identify affiliate non-investment banking compensation during that calendar quarter and discloses such in research reports within 30 days after completion of the last calendar quarter.[158] In the alternative, the proposals provide that a member and analyst would be presumed not to have a reason to know of affiliate non-investment banking compensation from the subject company, if the member maintains and enforces policies and procedures reasonably designed to prevent the analyst and any influential employee from, directly or indirectly, receiving information from the affiliate concerning whether the affiliate received such compensation.[159] If such procedures are maintained and enforced by the member, then the member and analyst would be presumed not to have reason to know of affiliate non-investment banking compensation. However, because this is a presumption of a lack of knowledge, to the extent that the research analyst or an employee of the member with the ability to influence the substance of a research report obtains actual knowledge of affiliate non-investment banking compensation, disclosure would be required under NASD Rule 2711(h)(2)(A)(iv) and NYSE Rule 472(k)(1)(ii)(b)(2).

Unlike the original proposals, which required absolute disclosure of any compensation received by the member and its affiliates, the revised proposals would limit certain of the disclosure requirements to the actual knowledge of research analysts and influential employees, and in cases where the analyst or member has reason to know. Thus, real-time tracking by the member non-investment banking compensation may not be necessary.

Commenters have argued that all of the compensation disclosure requirements should be tied to the knowledge of the research analyst or supervisor.[160] However, the SROs do not agree.[161] Certain of the disclosure requirements, such as the receipt of investment banking compensation to the member or its affiliates from the subject company, are not tied to the knowledge of specific individuals, but require that the firm track the receipt of such compensation sufficient to make affirmative disclosures where warranted.[162] The SOA also requires that disclosure of firm and affiliate compensation be made by research analysts in public appearances.[163] Therefore, the SRO proposals require the disclosure of any compensation

[143] *See* NYSE Rule 472(k)(1)(i)(d)(2) and NASD Rule 2711(h)(2)(A)(iii)(a).

[144] *See* 15 U.S.C. 78*o*–6(b)(3).

[145] *See* NYSE Rule 472(k)(1)(i)(a)(2) and NASD Rule 2711(h)(2)(A)(ii)(b).

[146] *See* BOA letter, Schwab June 30th letter, SIA June 26th letter, and Wilmer June 25th letter.

[147] *See* BOA letter and Wilmer June 25th letter.

[148] The Commission notes that, in requiring disclosure of any compensation, the SOA did not mandate, and the SRO proposals do not require, that broker-dealers disclose how much compensation was received, but rather requires affirmative disclosure (if such is the case) of whether any compensation has been received.

[149] *See* SIA June 26th letter and Wilmer June 25th letter.

[150] *Id.*

[151] The SROs use "have reason to know" in their proposals, because that language appears in other related rules. However, the SROs interpret "have reason to know" as having the same meaning as "should have been known" as used in the Section 501(b) of the SOA. 17 U.S.C. 78*o*–6(b). *See* NASD Response to Comments and NYSE Amendment No. 3.

[152] *See* NASD Response to Comments and NYSE Amendment No. 3.

[153] *See* NYSE Rule 472(k)(1)(i)(d)(2) and (k)(1)(ii)(b)(2), and NASD Rule 2711(h)(2)(A)(iii)(a).

[154] *See* NYSE Rule 472(k)(1)(ii)(b)(2) and NASD Rule 2711(h)(2)(A)(iv).

[155] *See* NYSE Rule 472(k)(1)(iii)(a) and NASD Rule 2711(h)(2)(A)(v).

[156] *See* NYSE Rule 472(k)(1)(ii)(b)(2) and NASD Rule 2711(h)(2)(A)(v).

[157] *See* NYSE Rule 472(k)(1)(iii)(a)(1) and (2), and NASD Rule 2711(h)(2)(a)(v)(a) and (b).

[158] *See* NYSE Rule 472(k)(1)(iii)(a)(1) and NASD Rule 2711(h)(2)(a)(v)(a).

[159] *See* NYSE Rule 472(k)(1)(iii)(a)(2) and NASD Rule 2711(h)(2)(a)(v)(b).

[160] *See* SIA June 26th letter and Wilmer June 25th letter.

[161] *See* NASD Response to Comments and NYSE Amendment No. 3.

[162] This requirement is part of the original amendments. *See* NYSE Rule 472(k)(1)(i)(a)(2) and (3), and NASD Rule 2711(h)(2)(A)(ii)(b) and (c).

[163] *See* 15 U.S.C. 78*o*–6(b).

received by the member and affiliates to be disclosed in public appearances, to the extent that the analyst knows or has reason to know of such compensation in the past 12 months.[164] This requirement, unlike current SRO rules, mandates disclosure of investment banking compensation in public appearances.[165]

The SOA mandates the establishment of rules that require disclosure of whether a subject company currently is, or was, a client of the broker or dealer during the 1-year period preceding the appearance or date of distribution of the research report, and if so, a statement of the type of services provided to the client.[166] This is broader than the current SRO rules which require a research analyst to disclose during a public appearance (when such research analyst knows or has reason to know) if the subject company is an investment banking services client of the member.[167]

In order to meet the mandates of the SOA, the proposed SRO amendments would provide for disclosure by a member in research reports, and by a research analyst during a public appearance (if the analyst knows or has reason to know), of whether a subject company is a client of the member and the types of services provided to the client.[168] The types of services have been categorized into: Investment banking services (which are required to be disclosed under current SRO rules); non-investment banking securities-related services; and non-securities services.[169]

Commenters expressed concerns regarding the client disclosure provisions that were similar to those noted above regarding the compensation disclosure provisions.[170] Commenters suggested that the client disclosure provision should be amended to require broker-dealers to disclose only those services most likely to present an actual or potential conflict of interest.[171]

Commenters also requested guidance as to what would constitute a client relationship.[172] In response to commenters' concerns, the SROs have clarified that a subject company is a client of the member if they have received compensation from the subject company, or if the member has entered into an agreement to provide services.[173]

Commenters argued that the proposals should be modified to require broker-dealers to provide disclosures regarding services provided to subject companies on an annual basis, and should be linked to the receipt of compensation for non-investment banking, securities-related, or non-securities services.[174]

NYSE believes that requiring disclosure of whether a subject company is a client and the types of services provided, including non-investment banking services, should provide investors with potentially more meaningful insight into the nature of the relationship between the subject company and the member and the potential conflicts attendant to such relationships.[175] NYSE, for example, observes that it might be more beneficial for an investor, in determining whether a firm has real conflicts of interest inherent in conducting investment banking on behalf of a subject company, to know that a member is also providing non-investment banking securities-related services to a subject company.[176]

While there is some overlap between disclosure of the receipt of compensation from a subject company and a client relationship, the SROs have declined to modify their proposals to link or merge the receipt of compensation provision to the client disclosure provision.

The SROs also modified their proposals to require disclosure of client relationships and types of services provided to the issuer, as of the end of the month immediately preceding the date of publication of the research report, or sooner, if the analyst or influential employee possess actual knowledge of such member non investment banking compensation.[177] The Commission believes this would provide firms with additional time to identify and aggregate the required information, while providing investors with relevant disclosure information and complying with the requirements of Section 15D of the Act.[178]

In requiring that firms and their research analysts identify the types of services provided to subject companies, the SROs recognize that there is a possibility that this could result in the dissemination of material non-public information.[179] This issue was raised when the Commission considered amendments to the NASD and NYSE's analyst rules in 2002.[180] The rules, approved by the Commission, require disclosure of prospective investment banking compensation.[181] In light of this concern, the SROs had structured the disclosure of information related to investment banking services to mitigate the possibility of disclosing material non-public information by requiring a general disclosure of investment banking compensation received from the subject company in the past 12 months, along with a three-month forward-looking investment banking compensation disclosure if the member "expects to receive or intends to seek" compensation for investment banking services from the subject company in the next three months.[182]

The SROs believe that they have also addressed concerns regarding the disclosure of material non-public information with the proposed new disclosure requirements.[183] The amendments provide for an exemption from the proposed compensation and client disclosure provisions to the extent that such disclosure would reveal material non-public information regarding specific potential future investment banking services transactions of the subject company.[184] The SOA explicitly authorized us to permit an exception for material non-public information regarding specific potential future investment banking services transactions of the subject company in the compensation disclosure provision.[185] The Commission notes that this exception applies only to *specific* potential *future* transactions of an *investment banking* nature and that relate to a particular issuer. The SROs have determined that such an exception should also apply to the client disclosure provision.[186] The Commission finds that providing for such an exception in the client disclosure provision is consistent with the SOA's compensation disclosure provision. Further, the exception as to

[164] *See* NYSE Rule 472(k)(2)(i)(c)(2) and NASD Rule 2711(h)(2)(B)(i).

[165] *Id.*

[166] *See* 15 U.S.C. 78*o*–6(b)(3).

[167] *See* NYSE Rule 472(k)(2)(i)(c)(1) and NASD Rule 2711(h)(2)(B)(iii).

[168] *See* NYSE Rule 472(k)(1)(i)(d)(1) and NASD Rule 2711(h)(2)(A)(iii)(b).

[169] *Id.*

[170] *See* SIA June 26th letter and Wilmer June 25th letter.

[171] *Id.*

[172] *See* Schwab June 30th letter and SIA June 26th letter.

[173] *See* NASD Response to Comments and NYSE Amendment No. 3.

[174] *Id.*

[175] *See* NYSE Amendment No. 3.

[176] *Id.*

[177] *See* NYSE Rule 472(k)(1)(i)(d)(1) and NASD Rule 2711(h)(2)(A)(iii)(b).

[178] *See* 15 U.S.C. 78*o*–6(b)(3).

[179] *See* NASD Response to Comments and NYSE Amendment No. 3.

[180] *See* May 2002 approval order.

[181] *Id.* at 34972.

[182] *See* NYSE Rule 472(k)(1)(i)(a)(2) and (3), and NASD Rule 2711(h)(2)(A)(ii)(b) and (c); *See also* May 2002 approval order.

[183] *See* NASD Response to Comments and NYSE Amendment No. 3.

[184] *See* NYSE Rule 472(k)(3)(i) and NASD Rule 2711(h)(2)(c).

[185] *See* 15 U.S.C. 78*o*–6(b)(2).

[186] *See* NASD Response to Comments and NYSE Amendment No. 3.

compensation is appropriate to address concerns regarding the dissemination of material non-public information regarding specific potential future investment banking services transactions of the subject company. Finally, the Commission believes that the SRO rules, by providing an exemption in the client disclosure provision fulfill the SOA mandate to adopt rules reasonably designed to provide disclosure of broker-dealers' clients and client services, while appropriately addressing concerns related to the potential dissemination of material non-public information.

In the Joint Memorandum, the SROs provided guidance that "knows or has reason to know" requires disclosure of such information of which the analyst has actual knowledge, as well as such information that should be reasonably discovered in the ordinary course of business. The SROs note that they expect that a research analyst would have reason to know of disclosures made in prior research reports.[187] In addition, a research analyst would have reason to know of such information by virtue of the steps taken by the member or member organization to identify compensation received by a client pursuant to proposed NYSE Rule 472(k)(1)(iii)(a)(1) and NASD Rule 2711(h)(2)(A)(v)(a).[188]

The SOA also mandates rules requiring disclosure of compensation received by a research analyst from the subject company.[189] Current SRO rules do not expressly require such disclosure. To the extent that receipt of such compensation constitutes an actual, material conflict of interest, the SROs believe that disclosure would be required under NASD Rule 2711(h)(1)(C) and NYSE Rule 472(k)(1)(iii)(d). The SROs proposed amendments specifically require disclosure of any compensation received by an analyst from the subject company in the past 12 months.[190]

The Commission believes that the proposed SRO compensation disclosure amendments are appropriate and satisfy the mandates of the SOA. Several commenters expressed concern regarding the difficulty of tracking non-investment banking compensation, especially that of member affiliates.[191] The Commission believes that the SROs have significantly modified the rule amendments from proposal in a manner that addresses commenters' concerns regarding the difficulties presented by real-time tracking of non-investment banking compensation, while meeting the requirements of the SOA. In summary, the Commission finds that the SRO rules relating to disclosure by the broker-dealer and research analyst in research reports and public appearances of broker-dealer, research analyst, and affiliate compensation from subject companies satisfy the requirements of Section 15D(b)(2) of the Exchange Act[192] in that they are reasonably designed to require each securities analyst to disclose in public appearances, and each registered broker or dealer to disclose in each research report whether any compensation has been received by the registered broker or dealer, or any affiliate thereof, including the analyst, from the issuer that is the subject of the appearance or research report, that are known or should have been known by the securities analyst or the broker or dealer, to exist at the time of the appearance or the date of distribution of the report.

The Commission also believes that the proposed provisions regarding disclosure of whether the subject company is a client of the broker-dealer and the services provided satisfy the requirements of the SOA. The Commission also finds that the proposals are consistent with the Exchange Act, including Sections 6(b)(5), 6(b)(8), 15A(b)(6) and 15A(b)(9).

J. Registration and Continuing Education Requirements [NYSE 344 and 345A; NASD 1050 and 1120]

The proposed amendments would mandate certain registration requirements for research analysts who are primarily responsible for the preparation of the substance of research reports. The proposals would impose both the regulatory element and the firm element of the continuing education requirements on research analysts.[193]

Commenters expressed several concerns with this proposal. First, commenters requested clarification that the registration and qualification requirements apply only to research analysts who are primarily responsible for the substance of a research report.[194] Second, commenters recommended that research analysts who have a certain level of industry experience, or who have already attained a commonly used industry qualification, be exempt from the qualification examinations.[195] Commenters also argued that research analysts who work for members that are not engaged in investment banking activities should be exempt from the proposed requirements.[196]

In response to these comments, the SROs modified their proposals so that the registration and qualification requirements apply only to research analysts who are primarily responsible for the preparation of the substance of research reports or whose name appears on research reports; therefore, junior analysts would not be required to register. The SROs are also considering whether there are certain classes of research analysts, who otherwise would be required to comply, that should be exempted from portions of the qualification requirements.[197] However, because the qualification examination will cover, in part, the provisions of NASD Rule 2711 and the research analyst provisions of NYSE Rule 472, the NASD has indicated that it is unlikely that any current research analysts will be wholly exempt from all parts of the qualification examination.[198] The SROs are also considering whether they will accept, as a substitute, other industry qualification exams in place of the new research analyst qualification exam.[199]

Commenters also noted that the NASD and the NYSE proposals differed as to whether the regulatory element component of their continuing education requirements applies to research analysts.[200] After further consideration, the SROs have agreed that research analysts should be required to complete both the regulatory element and the firm element of the continuing education requirements.[201] The NYSE has modified its proposals accordingly.

The Commission finds that these proposals are consistent with the Exchange Act, particularly Sections 6(b)(5), 6(b)(8), 15A(b)(6) and 15A(b)(9).

K. Retaliation [NYSE Rule 472(g)(2) and NASD Rule 2711(j)]

The SOA mandates the establishment of rules that prohibit broker-dealers engaged in investment banking activities from directly or indirectly retaliating, or threatening to retaliate, against a research analyst who publishes an adverse, negative, or otherwise unfavorable research report research report that may adversely affect the broker-dealer's present or prospective investment banking relationship.[202] The SOA specifies that the rules may not limit the authority of a broker-dealer to discipline an analyst for causes other than such research report in accordance with the policies and procedures of the firm. The SROs have extended the anti-retaliation provisions to cover public appearances and have clarified that the rule would not preclude termination of a research analyst for causes unrelated to issuing or distributing adverse research or for making an unfavorable public appearance regarding a current or potential investment-banking relationship.

Commenters did not oppose this provision. The Commission believes that the SRO proposals are designed to protect the objectivity and independence of research analysts, and meet the requirements of Section 15D of the Exchange Act, which requires that a rule be adopted that prohibits broker-dealers engaged in investment banking activities from, directly or indirectly retaliating or threatening to retaliate, against a research analyst who publishes a negative, adverse, or otherwise unfavorable research report that may adversely affect the broker-dealer's present or prospective investment banking relationship with an issuer. The Commission further believes that the SROs' determination to apply the retaliation provision to cover adverse statements made in public appearances is consistent with Sections 6(b)(5), 6(b)(8), 15A(b)(6) and 15A(b)(9).

L. Small Firm Exemption [NYSE Rule 472(m) and NASD Rule 2711(k)]

The SROs have proposed an exemption from certain of the requirements that legal or compliance personnel must act as intermediaries regarding communications for firms that engage in limited underwriting activity.[203] Current NASD Rule 2711(b)(1) and (3) and current NYSE Rule 472(b)(1) and (3), the gatekeeper provisions, prohibit a research analyst from being subject to the supervision or control of any employee of a member's investment banking department, and further require legal or compliance personnel to intermediate certain communications between the research department and non-research personnel.

As the Commission noted in the May 2002 approval order when the Commission approved these gatekeeper provisions, several commenters argued that they would impose significant costs, especially for smaller firms that would have to hire additional personnel. Commenters said that personnel in smaller firms often perform multiple functions, and therefore the separation rules impose a greater burden on these firms. These comments raised the prospect that the rules might force some firms to curtail their research, potentially reducing research coverage for smaller companies and companies of regional or local interest.

To temporarily address those concerns while the SROs considered whether an exemption was appropriate, the effectiveness of the gatekeeper provisions was delayed until July 30, 2003, or until a superseding permanent exemption is approved and becomes effective, for those members that over the previous three years, on average per year, have participated in 10 or fewer investment banking transactions or underwritings as manager or co-manager and generated $5 million or less in gross investment banking services revenues from those transactions ("small firms").[204] The rules approved today create a permanent exemption from the gatekeeper provisions for small firms, and supersede the temporary exemption filed by the SROs in May 2003.[205]

However, the permanent exemptions for small firms, unlike the temporary exemptions, do not apply to NASD Rule 2711(c) and NYSE Rule 472(b)(4), which restrict communications between the research department and the issuer, because the SROs do not believe that it would be appropriate to provide for a permanent exception from the gatekeeper provisions for the voluntary submission of sections of a draft research report to a subject company for the purpose of checking the factual accuracy of the draft report.[206] In addition, for the purposes of the small firm exception computations, the SROs have determined that "investment banking services" shall not include municipal securities transactions.[207]

The SRO proposals also require members that qualify for this exemption to maintain records for three years of any communication that otherwise would be subject to the review and monitoring provisions of NASD Rule 2711(b)(3) and NYSE Rule 472(b)(1), (2), and (3).

The Commission finds that the exceptions for small firms from certain of the rules addressing the relationships between research, investment banking, and companies that are the subject of research reports, are appropriate to address concerns unique to smaller firms who may share supervisory personnel across different offices or departments. The Commission finds that the proposals are consistent with the Exchange Act, particularly Sections 6(b)(5), 6(b)(8), 15A(b)(6), and 15A(b)(9).

M. Implementation

Commenters requested that the SROs coordinate the effective dates of their proposed changes and ensure that firms have adequate time to implement new rules.[208] In response to comments, the SROs decided upon the following implementation schedule for the proposed amendments (all time periods run from the date that the Commission approves the filings) in order to provide reasonable time periods for members and member organizations to develop and implement policies, procedures and systems to comply with the new requirements:

NYSE suggests the following effective dates for the provisions contained in SR–NYSE–2002–49:

Firm and Affiliate Compensation Disclosure Provisions—(NYSE Rules 472(k)(1)(i)a.2. and (k)(1)(iii)a.)—180 days, except upon written request to the Exchange for an extension of up to an additional 90 days thereafter.

Analyst and Firm Compensation Disclosure Provisions—(NYSE Rules 472(k)(1)(ii)a., (k)(1)(iii)a., (k)(2)(i)c.2. and f.)—180 days, except upon written request to the Exchange for an extension of up to an additional 90 days thereafter.

Client Disclosure Provisions—(NYSE Rules 472(k)(1)(i)d.1, (k)(1)(ii)b.1. and (K)(2)(1)c.1)—180 days, except upon written request to the Exchange for an extension of up to an additional 90 days thereafter.

Exceptions to Disclosures Required In Rule 472(k)(1) and (2)—(NYSE Rule 472(k)(3)(1)):

As applied to disclosures under Rule 472(k)(1)((ia.,2., and 3.; effective immediately.[209]

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[187] *Id.*

[188] *Id.*

[189] *See* 15 U.S.C. 78*o*–6(b)(2).

[190] *See* NYSE Rule 472(k)(2)(ii)(a)(1) and NASD Rule 2711(h)(2)(A)(i)(b).

[191] *See* BOA letter, SIA June 26th letter, and Wilmer June 25th letter.

[192] 15 U.S.C. 78*o*–6(b)(2).

[193] *See* note 15 supra.

[194] *See* SIA March 10th letter.

[195] *See* AIMR March 6th letter, Schwab March 20th letter, and SIA March 10th letter.

[196] *See* Investorside letter.

[197] *See* NASD Response to Comments and NYSE Amendment No. 3.

[198] *See* NASD Response to Comments.

[199] *See* NASD Response to Comments and NYSE Amendment No. 3.

[200] *See* SIA March 10th letter.

[201] *See* NASD Response to Comments and NYSE Amendment No. 3.

[202] *See* 15 U.S.C. 78*o*–6(1)(C).

[203] *See* NYSE Rule 472(b) and NASD Rule 2711(b).

[204] *See* Securities Exchange Act Release No. 47876 (May 15, 2003); *see also* Securities Exchange Act Release No. 46165 (July 3, 2002), 67 FR 46555 (July 15, 2002).

[205] *See* NYSE Rule 472(m) and NASD Rule 2711(k).

[206] *Id.*

[207] NYSE notes its belief that municipal securities underwritings are not subject to the same potential conflicts of interest as equity securities. *See* NYSE Amendment No. 3.

[208] *See* SIA March 10th letter.

[209] NYSE notes the disclosures required pursuant to Rule 472(k)(1) and (2), approved as part of the original amendments have been renumbered as part of Amendment No. 3 and remain in effect. *See* NYSE Amendment No. 3.

As applied to disclosures under Rules 472(k)(1)(i)d.1., (k)(1)(ii)b.1., and (k)(2)(i)c.—180 days.

Qualification, Examination, and Registration Requirement for Research Analysts (NYSE Rule 344)—365 days after the completion of Qualification Examination (180 days after approval to develop and implement examination).

Continuing Education Requirement for Research Analyst—(Exchange Rule 345A)—Firm Element—180 days. Regulatory Element—In accordance with industry rules and regulations upon registration/qualification of research analysts.

Compensation Committee Review/Procedures (NYSE Rule 472(h)(2)—90 days.

Anti-Retaliation and Small Firm Exemption Provisions—(NYSE Rules 472(g)(2) and 472(m))—effective immediately upon approval.

All other Rule provisions—60 days.

NASD suggests the following effective dates for the provisions contained in SR–NASD–2002–154:

Qualification, examination, registration and continuing education requirements for research analysts (proposed new Rule 1050 and proposed amendments to Rule 1120): 180 days or such longer period as determined by NASD.

New compensation and client disclosure provisions (proposed Rule 2711(h)(2)): 180 days, plus up to an additional 90 days as deemed appropriate on a case-by-case basis.

Rule 2711(h)(2)(C)—Exemption from Disclosure Requirements:

As applied to disclosures under Rules 2711(h)(2)(A)(ii)(a) and (b): Immediate upon SEC approval of the rule change

As applied to disclosures under Rule 2711(h)(2)(A)(ii)(b), (h)(2)(B)(i) and (iii): 180 days

Research analyst compensation review procedures (proposed Rule 2711(d)(2)): 90 days.

Prohibition against retaliation against research analysts (proposed Rule 2711(i)): immediately.

Exceptions for small firms (proposed Rule 2711(k)): immediately.

All other proposed rule changes: 60 days.

The Commission believes that the above implementation schedule suggested by the SROs is reasonable.

IV. Accelerated Approval of Amendments; Solicitation of Comments

The Commission find good cause to approve NYSE Amendment No. 3 and NASD Amendment No. 3 to the proposed rule changes prior to the thirtieth day after the date of publication of notice of filing of the amendments in the **Federal Register**. The original proposed rule changes and NASD Amendment No. 1 and Amendment No. 2 and NYSE Amendment No. 1 and Amendment No. 2 were published in the **Federal Register**.[210] The Commission believes that NYSE Amendment No. 3 and NASD Amendment No. 3 clarify the obligations of SRO members under the rules, refine the rules and make the NASD and NYSE proposals consistent with each other. The amendments do not contain major modifications from the scope and purpose of the rules as originally proposed, and were developed from the original proposal. Further, the majority of the modifications contained in the amendments submitted by the NASD and NYSE were made in response to comments received on the proposed rule changes. The Commission believes, moreover, that approving NYSE Amendment No. 3 and NASD Amendment No. 3 will provide greater clarity, thus furthering the public interest and the investor protection goals of the Exchange Act. Finally, the Commission also finds that it is in the public interest to approve the rules as soon as possible to expedite the implementation of the new and amended rules.

Accordingly, the Commission believes good cause exists, consistent with Sections 6(b)(5), 15A(b)(6) and 19(b) of the Exchange Act,[211] to approve NYSE Amendment No. 3 and NASD Amendment No. 3 to the proposed rule changes on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning NYSE Amendment No. 3 and NASD Amendment No. 3, including whether the amendments are consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed amendments that are filed with the Commission, and all written communications relating to the amendments between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the SROs.

All submissions should refer to File No. SR–NASD–2002–154 and SR–NYSE–2002–49 and should be submitted by September 3, 2003.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[212] that the proposed rule changes (SR–NASD–2002–154; SR–NYSE–2002–49), as amended, are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[213]

Margaret H. McFarland,

Deputy Secretary.

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[210] *See* notes 5 and 7 *supra.*

[211] 15 U.S.C. 78f(b)(5), 78o–3(b)(6), and 78s(b).

[212] 15 U.S.C. 78s(b)(2).

[213] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3520]

Commonwealth of Kentucky; Amendment #2

In accordance with the notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective July 25, 2003, the above numbered declaration is hereby amended to include Knox County in the Commonwealth of Kentucky as a disaster area due to damages caused by severe storms, flooding, mud and rock slides, and tornadoes beginning on June 14, 2003 and continuing through June 27, 2003.

In addition, applications for economic injury loans from small businesses located in the contiguous county of Whitley in the Commonwealth of Kentucky may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is September 2, 2003, and for economic injury the deadline is April 2, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 29, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–19734 Filed 8–1–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3508]

Commonwealth of Kentucky; Amendment #3

In accordance with the notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective July 25, 2003, the above numbered declaration is hereby amended to include Knox County in the Commonwealth of Kentucky as a disaster area due to damages caused by severe storms, flooding, mud and rock slides, and tornadoes occurring on May 4 through May 27, 2003.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Bell, Laurel and Whitley in the Commonwealth of Kentucky may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is August 4, 2003, and for economic injury the deadline is March 3, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 29, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–19735 Filed 8–1–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9W54]

State of Michigan

Marquette County and the contiguous counties of Alger, Baraga, Delta, Dickinson, Iron and Menominee in the State of Michigan constitute an economic injury disaster loan area as a result of heavy rainfall and flooding which occurred May 10 through 26, 2003. The heavy rainfall and flooding caused severe economic injury to dozens of small businesses in the City of Marquette and Marquette County. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on April 29, 2004 at the address listed below or other locally announced locations:

Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rate for eligible small businesses and small agricultural cooperatives is 2.953 percent.

The number assigned for economic injury for the State of Michigan is 9W5400.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: July 29, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–19736 Filed 8–1–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–44]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 25, 2003.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–200X–XXXXX] by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery : Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on July 29, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2003–14802.

Petitioner: Executive Airlines, Inc.

Section of 14 CFR Affected: 14 CFR 121.481, 121.487, 121.489, and 121.491.

Description of Relief Sought: To permit Executive Airlines, Inc., to conduct its operations out of San Juan, Puerto Rico, under part 121, subpart Q Flight Time Limitations and Rest Requirements: Domestic Operations (subpart Q), rather than under part 121, subpart R, Flight Time Limitations: Flag Operations (subpart R).

[FR Doc. 03–19751 Filed 8–1–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: 2003 15786]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel BETTY T.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build

requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15786 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before September 3, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15786.

Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel BETTY T. is:

Intended Use: "1–3 day upscale trawler/yacht tours of Islands off the Florida Keys."

Geographic Region: "Florida Keys and vicinity."

Dated: July 28, 2003.

By order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 03–19733 Filed 8–1–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003–15785]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel DREAM TIME.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15785 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before September 3, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15785.

Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel DREAM TIME is:

Intended Use: "Charters and Sail Training."

Geographic Region: "Florida and East Coast of the United States."

Dated: July 28, 2003.

By order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 03–19732 Filed 8–1–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition, DP03–005

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a petition submitted to NHTSA under 49 U.S.C. 30162, requesting that the agency investigate an alleged defect with respect to the brake rotors on model year (MY) 2002 Nissan Xterra vehicles. The petition is identified as DP03–005.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan White, Office of Defects Investigation (ODI), NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–5226.

SUPPLEMENTARY INFORMATION: Mr. Kent Jones of Kernersville, NC, submitted a petition to NHTSA by e-mail dated July 1, 2003, requesting NHTSA to investigate the brake rotors on MY 2002 Nissan Xterra vehicles. The petitioner alleged that the brake rotors in these vehicles overheat and warp from normal usage (alleged defect).

A review of ODI's database for complaints regarding MY 2001 through MY 2003 Nissan Xterra vehicles identified only two reports related to brake rotor warping; one for a MY 2001 and one for a MY 2002. The complaint for the MY 2002 Nissan Xterra was reported by the petitioner.

Brake rotor warping can result in brake pulsation and shaking when the brake is applied. Brake pulsation, tire or suspension vibration, and similar conditions, while an obvious annoyance to the driver, generally do not cause a driver to lose control of a vehicle. Furthermore, even if left uncorrected, any potential increase in stopping distance will be negligible. Therefore, this condition does not normally constitute a safety defect, even if it occurs with far more frequency.

In view of the foregoing, it is unlikely that NHTSA would issue an order for the notification and remedy of an alleged safety-related defect as defined by the petitioner in MY 2002 Nissan Xterra vehicles at the conclusion of an investigation. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Issued on: July 29, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–19750 Filed 8–1–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34374]

Union Pacific Railroad Company—Temporary Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

The Burlington Northern and Santa Fe Railway Company (BNSF), has agreed to grant temporary overhead trackage rights to Union Pacific Railroad Company (UP) over BNSF's rail lines between BNSF milepost 117.1 near Shawnee Jct., WY, and BNSF milepost 33.8 near Northport, NE, a distance of approximately 146.2 miles.[1]

The transaction was scheduled to be consummated on July 21, 2003,[2] and the authorization was expected to expire on or about July 28, 2003. The purpose of the temporary rights was to facilitate maintenance work on UP lines.

As a condition to this exemption, any employees affected by the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights–BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980), *aff'd sub nom. Railway Labor Executives' Ass'n v. United States,* 675 f.2d 1248 (D.C. Cir. 1982).

This notice is filed under 49 CFR 1180.2(d)(8).[3] If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34374, must be filed with the Surface Transportation Board, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert T. Opal, 1416 Dodge St., Room 830, Omaha NE 68179.

Board decisions and notices are available on our Web site at *"www.stb.dot.gov:"*

Decided: July 29, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–19778 Filed 8–1–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 25, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 3, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0217.

Form Number: IRS Form 5735 and Schedule P.

Type of Review: Revision.

Title: Possessions Corporation Tax Credit (Under Sections 936 and 30A) (5735); and Allocation of Income and Expenses Under Section 936(h)(5) (Schedule P).

Description: Form 5735 is used to compute the possessions tax credit under sections 936 & 30A. Schedule P is used by corporations that elect to share the income or expenses with their affiliates. Each form provides the IRS with information to determine if the corporations have correctly computed the tax credit and the cost-sharing or profit-split method.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 1,371.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 5735	Schedule P
Recordkeeping	20 hr., 5 min.	9 hr., 48 min.
Learning about the law or the form	4 hr., 48 min.	1 hr., 27 min.
Preparing the form	7 hr., 12 min.	2 hr., 36 min.
Copying, assembling, and sending the form to the IRS	32 min.	16 min.

[1] The trackage rights involve BNSF subdivisions with non-contiguous mileposts. Therefore, total mileage does not correspond to the milepost designations of the endpoints.

[2] The notice was filed with the Board on July 15, 2003. Accordingly, the earliest the transaction could be consummated was July 22, 2003 (7 days after filing under 49 CFR 1180.4(g)).

[3] The Board adopted a new class exemption for trackage rights that, by their terms, are for overhead operations only and expire on a date certain, not to exceed 1 year from the effective date of the exemption. *See Railroad Consolidation Procedures—Exemption for Temporary Trackage Rights,* STB Ex Parte No. 282 (Sub-No. 20) (STB served May 23, 2003).

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 33,818 hours.
Clearance Officer: Glenn Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,
Departmental Reports Management Officer.
[FR Doc. 03–19707 Filed 8–1–03; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Capital Asset Realignment for Enhanced Services (CARES) Commission; Notice of Public Hearings

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Capital Asset Realignment for Enhanced Services (CARES) Commission will be holding public hearings on the impact of the CARES draft national plan in the Veterans Integrated Services Networks (VISN) and Markets designated below. The hearings will be conducted at the locations, dates and times as follows:

Dates	VA sites	Hearing locations	Markets	VISN
August 12, 9:00 a.m.	Baltimore, MD	Marriott (Waterfront) Hotel, 700 Aliceanna Street, Baltimore, MD 21202.	All Markets	5
August 12, 9:00 a.m.	Cleveland, OH	Intercontinental Hotel and Conference Center, Amphitheatre A and B, 9801 Carnegie Avenue, Cleveland, OH 44106.	Eastern	10
August 18, 9:00 a.m.	Leavenworth, KS	Leavenworth VA Medical Center Theatre, 4101 4th Street Trafficway, Leavenworth, KS 64068.	Central West Central Western	15 10
August 19, 9:00 a.m.	Columbus, OH	Franklin County Veterans Memorial, 300 W. Broad Street, Auditorium, Columbus, OH 43215.	Indiana Central Illinois	11
August 20, 1:00 a.m.	Fort Wayne, IN	Indiana Wesleyan University Conference Center, 8211 Jefferson Boulevard, Ft. Wayne, IN 46804.	East	15
August 20, 9:00 a.m.	Poplar Bluff, MO	Black River Coliseum, 301 South 5th Street, Poplar Bluff, MO 63901.	Michigan	11
August 22, 9:00 a.m.	Detroit, MI	John D. Dingell VA Medical Center, 4646 John R Street, Room B–1290, Detroit, MI 48201.	Upper Western	16
August 22, 9:00 a.m.	Muskogee, OK	Muskogee VA Medical Center Auditorium, 1011 Honor Heights Drive, Muskogee, OK 74401.	All Markets	1
August 25, 10:00 a.m.	Bedford, MA	Wyndham Billerica Hotel, 270 Concord Road, Billerica, MA 01862.	Central Southern Eastern Southern Western	16 4
August 26, 10:00 a.m.	Biloxi, MS	Va Gulf Coast Veterans Health Care System, Recreation Hall Building 17, 400 Veterans Avenue, Biloxi, MS 39531.	Central Lower	16
August 27, 10:00 a.m.	Pittsburgh, PA	VA Pittsburgh Healthcare System, Highland Drive Division, 7180 Highland Drive, Pittsburgh, PA 15206.	Eastern	4
August 27, 1:00 p.m.	Shreveport, LA	Shreveport VA Medical Center, Education Center, 510 E. Stoner Avenue, Shreveport, LA 71101.	Alabama Georgia	7
August 28, 10:00 a.m.	Coatesville, PA	VA Medical Center, 1400 Blackhorse Hill Road, Coatesville, PA 19320.	Minnesota N. Dakota S. Dakota	23
August 28, 1:00 p.m.	Atlanta, GA	VA Medical Center, 1670 Clairmont Road, Pete Wheeler Auditorium, Room GA 104, Decatur, GA 30033.	Nebraska Iowa	23
September 3, 9:00 a.m.	Minneapolis, MN	VA Medical Center, One Veterans Drive, Building 70, Room Auditorium, 1S–126, Minneapolis, MN 55417.	South Carolina	7
September 4, 1:00 p.m.	Omaha, NE	Holiday Inn Central, 3321 S. 72nd Street, Palace G, Omaha, NE 68124.	Northern	23
September 8, 10:00 a.m.	Charleston, SC	Elks Lodge 242, 1113 Sam Rittenberg Boulevard, Charleston, SC 29407.	Central Eastern Western	7 9
September 8, 9:00 a.m.	Lexington, KY	Marriott Griffin Gate Resort, Grand Ball Room, 1800 Newtown Pike, Lexington, KY 40511.	All Markets	9
September 10, 9:00 a.m.	Nashville, TN	Nashville Convention Center, 601 Commerce Street, Hearing Room 108–109, Nashville, TN 37203.	All Markets	9
September 10, 9:00 a.m.	Orlando, FL	Adam's Mark Hotel, Florida Mall, 1500 Sand Lake Road, Orlando, FL 32809.	All Markets	8
September 12, 10:00 a.m.	Durham, NC	Durham Marriott at the Civic Center, 201 Foster Street, Durham, NC 27701.	All Markets	6
September 15, 1:00 p.m.	Lyons, NJ	VA New Jersey Healthcare System (Lyons Campus), Building 143—Multipurpose Room, 151 Knollcroft Road, Lyons, NJ 07939.	New Jersey	3
September 17, 1:00 p.m.	Bronx, NY	VA Medical Center, Main Hospital—Room 3D–22 (3rd Floor), 130 West Kingsbridge Road, Bronx, NY 10468.	Long Island Metro New York	3
September 18, 9:00 a.m.	El Paso, TX	El Paso VA Health Care System, Soldiers Hall, Building 2, Fort Bliss, TX 79916.	New Mexico/West Texas	18
September 19, 1:00 p.m.	Prescott, AZ	Northern Arizona VA Healthcare System, 500 Hwy 89N, Building 15 Theatre, Prescott, AZ 86313.	Arizona	18
September 19, 1:00 p.m.	Syracuse, NY	MARX Hotel & Conference Center, 701 East Genesee Street, Syracuse, NY 13210.	All Markets	2
September 22, 1:00 p.m.	Denver, CO	VA Medical Center, 1055 Clermont Street, Denver, CO 80220.	Western Rockies Grand Junction Eastern Rockies	19
September 24, 1:00 p.m.	Billings, MT	Holiday Inn Grand Montana, 5500 Midland Road, Billings MT 59101.	Montana Wyoming Sheridan	19

Dates	VA sites	Hearing locations	Markets	VISN
September 26, 10:00 a.m.	Las Vegas, NV	Hyatt Regency Lake Las Vegas, 101 Montelago Boulevard, Henderson, NV 89011.	Nevada (South Central)	22
September 26, 9:00 a.m.	Portland, OR	VA Medical Center, Vancouver Threatre Building C–6, 1601 E. Fourth Plain Boulevard, Vancouver, WA 98661.	So Cascade Inland South Alaska	20
September 29, 10:00 a.m.	Long Beach, CA	VA Long Beach Healthcare System, 5901 E. 7th Street, Long Beach, CA 90822.	California (Southern)	22
September 29, 9:00 a.m.	Walla Walla, WA	Jonathan M. Wainwright Memorial VA, Medical Center Theater, Building 78, 77 Wainwright Drive, Walla Walla, WA 99362.	W. Washington Inland North	20
October 1, 10:00 a.m.	Palo Alto, CA	Va Palo Alto Healthcare System, Auditorium, Building 101, 3801 Miranda Avenue, Palo Alto, CA 94304.	North Coast South Coast Pacific Island	21
October 1, 1:00 p.m.	San Antonio, TX	Henry B. Gonzales Convention Center, 200 E. Street, San Antonio, TX 78205.	South Valley Coastal Bend	17
October 2, 10:00 a.m.	Sacramento, CA	Garden Pavilion, Operated by LionsGate Hotel at McClellan Park, 5640 Dudley Boulevard, McClellan, CA 95652.	North Valley South Valley Sierra Nevada	21
October 3, 1:00 p.m.	Dallas, TX	Dallas VA Medical Center, Community Center, 4500 S. Lancaster Rd., Dallas, Texas 75216.	North Central	17

*Veterans Integrated Service Network.

The purpose of the Commission is to conduct an external assessment of VA's capital asset needs. The Commission will consider recommendations prepared for the CARES draft national plan, and the views and concerns of veterans service organizations, individual veterans, Congress, medical school affiliates, VA employees, local government entities, community groups and others. Following its assessment, the Commission will make specific recommendations to the Secretary of Veterans Affairs regarding the realignment and allocation of capital assets necessary to meet the demands for veterans health care.

Interested persons in the general public may observe the hearings and/or file written statements with the Commission regarding the impact of the draft national plan in the markets designated to be covered at each hearing. Written statements may be filed either before the hearing or within 7 days after the hearing. These statements may be addressed to Mr. Richard D. Larson, Executive Director, CARES Commission, (OOCARES), 810 Vermont Avenue, NW., Washington, DC 20480; or faxed to (202) 501–2196; or submitted electronically to *http://www.carescommission.va.gov*. Where applicable, written statements should indicate that they are submitted regarding a specific hearing. Such statements will be given a weight equal to testimony provided at the Commission hearings. Any member of the public wishing additional information should contact Ms. Janice Sloan at the Commission, at (202) 501–2000.

Dated: July 29, 2003.

By Direction of the Secretary.

E. Philip Riggin,
Committee Management Officer.
[FR Doc. 03–19759 Filed 8–1–03; 8:45 am]
BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Chiropractic Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Chiropractic Advisory Committee will meet Tuesday, September 16, 2003, from 8:30 a.m. until 5 p.m., and Wednesday, September 17, 2003, from 8:30 a.m. until 4 p.m., at the Department of Veterans Affairs, Tech World Room 1105, 8011 I St., NW., Washington, DC 20001. The meeting is open to the public.

The purpose of the Committee is to provide direct assistance and advice to the Secretary of Veterans Affairs in the development and implementation of the chiropractic health program. Matters on which the Committee shall assist and advise the Secretary include protocols governing referrals to chiropractors and direct access to chiropractic care, scope of practice of chiropractic practitioners, definitions of services to be provided and such other matters as the Secretary determines to be appropriate.

On September 16, the Committee will receive an update on the status of the chiropractic occupational study and discuss the draft recommendations to the Secretary. On September 17, the Committee will discuss the agenda for the next meeting and continue discussions on the recommendations.

Any member of the public wishing to attend the meeting is requested to contact Ms. Sara McVicker, RN, MN, Designated Federal Officer, at (202) 273–8558, no later than noon eastern time on Friday, September 12, 2003, in order to facilitate entry to the building. No time will be allocated at this meeting for receiving oral presentations from the public.

The draft recommendations to be discussed at the meeting will be posted not later than July 29, 2003, on the Committee Internet site at *www.va.gov/primary* and will be available upon request after that date from Ms. McVicker. The Committee will accept written comments on the draft recommendations from interested parties. It is preferred that such comments be transmitted electronically to the Committee at *sara.mcvicker@mail.va.gov*. Comments may be mailed to: Chiropractic Advisory Committee, Primary and Ambulatory Care SHG (112), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Items mailed via United States Postal Service require 7–10 days for delivery due to delays resulting from security measures. Comments received prior to August 22, 2003, will be compiled for Committee review prior to the meeting. Comments received after that date but prior to the meeting will be provided to Committee members at the meeting.

Dated: July 28, 2003.

By Direction of the Secretary.

E. Phillip Riggin,
Committee Management Officer.
[FR Doc. 03–19758 Filed 8–1–03; 8:45 am]
BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Rehabilitation (VACOR); Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Veterans' Advisory Committee on Rehabilitation (VACOR), will be held on September 10–12, 2003, at the Department of Veterans Affairs, Room C–7, 810 Vermont Avenue, NW., Washington, DC. The meeting sessions will begin at 8 a.m. each day and end at 4:30 p.m. on September 10 and 11 and at 12 Noon on September 12. The meeting is open to the public.

The purpose of the Committee is to provide advice to the Secretary of Veterans Affairs on the rehabilitation needs of disabled veterans and the administration of VA's rehabilitation programs.

Specifically, the Committee will be discussing the information gathered from three separate fact-finding site visits accomplished this spring to the following Department of Veterans Affairs Medical Centers: Palo Alto, California; Miami, Florida; and Dallas, Texas.

No time will be allocated at this meeting for receiving oral presentations from the public. Any member of the public wishing to attend the meeting is requested to contact Ms. Alison Rosen, Designated Federal Officer, at (202) 273–7208. The Committee will accept written comments, which should be addressed to Ms. Rosen at Department of Veterans Affairs, Veterans Benefits Administration (28), 810 Vermont Avenue, NW., Washington, DC 20420, or electronically to *VREAROSE@VBA.VA.GOV*. In their communications with the Committee, the writers must identify themselves and state the organizations, associations, or person(s) they represent.

Dated: July 28, 2003.
By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–19757 Filed 8–1–03; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 68, No. 149
Monday, August 4, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. NJ62–262, FRL–7535–4]

Approval and Promulgation of Implementation Plans; New Jersey; Revised Motor Vehicle Emissions Inventories for 1996, 2005, and 2007 and Motor Vehicle Emissions Budgets for 2005 and 2007 Using MOBILE6

Correction

In rule document 03–18853 beginning on page 43462 in the issue of Wednesday, July 23, 2003, make the following correction:

On page 43463, Table 1 is corrected as set forth below.

TABLE 1.—NEW JERSEY'S REVISED MOTOR VEHICLE EMISSIONS INVENTORIES

NAA area	2005		2007	
	VOC (tpd)	NO_X (tpd)	VOC (tpd)	NO_X (tpd)
Atlantic City	14.63	22.07	(1)	(1)
Northern New Jersey	156.37	237.17	134.00	186.93
Trenton	50.48	77.72	(1)	(1)
Allentown	5.59	12.89	4.77	10.25
State total	227.08	349.85	(1)	(1)

[1] Not applicable.

[FR Doc. C3–18853 Filed 8–1–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
August 4, 2003

Part II

Department of the Treasury

Office of the Comptroller of the Currency
12 CFR Part 3
Federal Reserve System
12 CFR Parts 208 and 225
Federal Deposit Insurance Corporation
12 CFR Part 325
Department of the Treasury
Office of Thrift Supervision
12 CFR Part 567

Risk-Based Capital Guidelines; Implementation of New Basel Capital Accord; Internal Ratings-Based Systems for Corporate Credit and Operational Risk Advanced Measurement Approaches for Regulatory Capital; Proposed Rule and Notice

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 03–14]

RIN Number 1557–AC48

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R–1154]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AC73

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[No. 2003–27]

RIN 1550–AB56

Risk-Based Capital Guidelines; Implementation of New Basel Capital Accord

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the Agencies) are setting forth for industry comment their current views on a proposed framework for implementing the New Basel Capital Accord in the United States. In particular, this advance notice of proposed rulemaking (ANPR) describes significant elements of the Advanced Internal Ratings-Based approach for credit risk and the Advanced Measurement Approaches for operational risk (together, the advanced approaches). The ANPR specifies criteria that would be used to determine banking organizations that would be required to use the advanced approaches, subject to meeting certain qualifying criteria, supervisory standards, and disclosure requirements. Other banking organizations that meet the criteria, standards, and requirements also would be eligible to use the advanced approaches. Under the advanced approaches, banking organizations would use internal estimates of certain risk components as key inputs in the determination of their regulatory capital requirements.

DATES: Comments must be received no later than November 3, 2003.

ADDRESSES: Comments should be directed to: *OCC:* Please direct your comments to: Office of the Comptroller of the Currency, 250 E Street, SW., Public Information Room, Mailstop 1–5, Washington, DC 20219, Attention: Docket No. 03–14; fax number (202) 874–4448; or Internet address: *regs.comments@occ.treas.gov*. Due to delays in paper mail delivery in the Washington area, we encourage the submission of comments by fax or e-mail whenever possible. Comments may be inspected and photocopied at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. You may make an appointment to inspect comments by calling (202) 874–5043.

Board: Comments should refer to Docket No. R–1154 and may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to *regs.comments@federalreserve.gov.*, or faxing them to the Office of the Secretary at (202) 452–3819 or (202) 452–3102. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays pursuant to § 261.12, except as provided by § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Commenters are encouraged to submit comments by facsimile transmission to (202) 898–3838 or by electronic mail to *Comments@FDIC.gov*. Comments also may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 8:30 a.m. and 5 p.m. Comments may be inspected and photocopied at the FDIC's Public Information Center, Room 100, 801 17th Street, NW., Washington, DC between 9 a.m. and 4:30 p.m. on business days.

OTS: Send comments to Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2003–27. Delivery: Hand deliver comments to the Guard's desk, east lobby entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2003–27. Facsimiles: Send facsimile transmissions to FAX Number (202) 906–6518, Attention: No. 2003–27. E-mail: Send e-mails to *regs.comments@ots.treas.gov*, Attention: No. 2003–27, and include your name and telephone number. Due to temporary disruptions in mail service in the Washington, DC area, commenters are encouraged to send comments by fax or e-mail, if possible.

FOR FURTHER INFORMATION CONTACT:

OCC: Roger Tufts, Senior Economic Advisor (202–874–4925 or *roger.tufts@occ.treas.gov*), Tanya Smith, Senior International Advisor (202–874–4735 or *tanya.smith@occ.treas.gov*), or Ron Shimabukuro, Counsel (202–874–5090 or *ron.shimabukuro@occ.treas.gov*).

Board: Barbara Bouchard, Assistant Director (202/452–3072 or *barbara.bouchard@frb.gov*), David Adkins, Supervisory Financial Analyst (202/452–5259 or *david.adkins@frb.gov*), Division of Banking Supervision and Regulation, or Mark Van Der Weide, Counsel (202/452–2263 or *mark.vanderweide@frb.gov*), Legal Division. For users of Telecommunications Device for the Deaf ("TDD") only, contact 202/263–4869.

FDIC: Keith Ligon, Chief (202/898–3618 or *kligon@fdic.gov*), Jason Cave, Chief (202/898–3548 or *jcave@fdic.gov*), Division of Supervision and Consumer Protection, or Michael Phillips, Counsel (202/898–3581 or *mphillips@fdic.gov*).

OTS: Michael D. Solomon, Senior Program Manager for Capital Policy (202/906–5654); David W. Riley, Project Manager (202/906–6669), Supervision Policy; or Teresa A. Scott, Counsel (Banking and Finance) (202/906–6478), Regulations and Legislation Division, Office of the Chief Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

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I. Executive Summary

A. Introduction

In the United States, banks, thrifts, and bank holding companies (banking organizations or institutions) are subject to minimum regulatory capital requirements. Specifically, U.S. banking organizations must maintain a minimum leverage ratio and two minimum risk-based ratios.[1] The current U.S. risk-based capital requirements are based on an internationally agreed framework for capital measurement that was developed by the Basel Committee on Banking Supervision (Basel Supervisors Committee or BSC) and endorsed by the G–10 Governors in 1988.[2] The international framework (1988 Accord) accomplished several important objectives. It strengthened capital levels at large, internationally active banks and fostered international consistency and coordination. The 1988 Accord also reduced disincentives for banks to hold liquid, low-risk assets. Moreover, by requiring banks to hold capital against off-balance-sheet exposures, the 1988 Accord represented a significant step forward for regulatory capital measurement.

Although the 1988 Accord has been a stabilizing force for the international banking system, the world financial system has become increasingly more complex over the past fifteen years. The BSC has been working for several years to develop a new regulatory capital framework that recognizes new developments in financial products, incorporates advances in risk measurement and management practices, and more precisely assesses capital charges in relation to risk. On April 29, 2003, the BSC released for public consultation a document entitled "The New Basel Capital Accord" (New Accord) that sets forth proposed revisions to the 1988 Accord. The BSC will accept industry comment on the New Accord through July 31, 2003 and expects to issue a final revised Accord by the end of 2003. The BSC expects that the New Accord would have an effective date for implementation of December 31, 2006.

Accordingly, the Agencies are soliciting comment on all aspects of this ANPR, which is based on certain proposals in the New Accord. Comments will assist the Agencies in reaching a determination on a number of issues related to how the New Accord would be proposed to be implemented in the United States. In addition, in light of the public comments submitted on the ANPR, the Agencies will seek appropriate modifications to the New Accord.

B. Overview of the New Accord

The New Accord encompasses three pillars: minimum regulatory capital requirements, supervisory review, and market discipline. Under the first pillar, a banking organization must calculate capital requirements for exposure to both credit risk and operational risk (and market risk for institutions with significant trading activity). The New Accord does not change the definition of what qualifies as regulatory capital, the minimum risk-based capital ratio, or the methodology for determining capital charges for market risk. The New Accord provides several methodologies for determining capital requirements for both credit and operational risk. For credit risk there are two general approaches; the standardized approach (essentially a package of modifications to the 1988 Accord) and the internal ratings-based (IRB) approach (which uses an institution's internal estimates of key risk drivers to derive capital requirements). Within the IRB approach there is a foundation methodology, in which certain risk component inputs are provided by supervisors and others are supplied by the institutions, and an advanced methodology (A–IRB), where institutions themselves provide more risk inputs.

The New Accord provides three methodologies for determining capital requirements for operational risk; the basic indicator approach, the standardized approach, and the advanced measurement approaches (AMA). Under the first two methodologies, capital requirements for operational risk are fixed percentages of specified, objective risk measures (for example, gross income). The AMA provides the flexibility for an institution to develop its own individualized approach for measuring operational risk, subject to supervisory oversight.

The second pillar of the New Accord, supervisory review, highlights the need for banking organizations to assess their capital adequacy positions relative to overall risk (rather than solely to the minimum capital requirement), and the need for supervisors to review and take appropriate actions in response to those assessments. The third pillar of the New Accord imposes public disclosure requirements on institutions that are intended to allow market participants to

[1] The leverage ratio measures regulatory capital as a percentage of total on-balance-sheet assets as reported in accordance with generally accepted accounting principles (GAAP) (with certain adjustments). The risk-based ratios measure regulatory capital as a percentage of both on- and off-balance-sheet credit exposures with some gross differentiation based on perceived credit risk. The Agencies' capital rules may be found at 12 CFR Part 3 (OCC), 12 CFR Parts 208 and 225 (Board), 12 CFR Part 325 (FDIC), and 12 CFR Part 567 (OTS).

[2] The BSC was established in 1974 by the central-bank governors of the Group of Ten (G–10) countries. Countries are represented on the BSC by their central bank and also by authorities with bank supervisory responsibilities. Current member countries are Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, the Netherlands, Spain, Sweden, Switzerland, the United Kingdom, and the United States. The 1988 Accord is described in a document entitled "International Convergence of Capital Measurement and Capital Standards." This document and other documents issued by the BSC are available through the Bank for International Settlements website at www.bis.org.

assess key information about an institution's risk profile and its associated level of capital.

The Agencies do not expect the implementation of the New Accord to result in a significant decrease in aggregate capital requirements for the U.S. banking system. Individual banking organizations may, however, face increases or decreases in their minimum risk-based capital requirements because the New Accord is more risk sensitive than the 1988 Accord and the Agencies' existing risk-based capital rules (general risk-based capital rules). The Agencies will continue to analyze the potential impact of the New Accord on both systemic and individual bank capital levels.

C. Overview of U.S. Implementation

The Agencies believe that the advanced risk and capital measurement methodologies of the New Accord are the most appropriate approaches for large, internationally active banking organizations. As a result, large, internationally active banking organizations in the United States would be required to use the A–IRB approach to credit risk and the AMA to operational risk. The Agencies are proposing to identify three types of banking organizations: institutions subject to the advanced approaches on a mandatory basis (core banks); institutions not subject to the advanced approaches on a mandatory basis, but that choose voluntarily to apply those approaches (opt-in banks); and institutions that are not mandatorily subject to and do not apply the advanced approaches (general banks). Core banks would be those with total banking (and thrift) assets of $250 billion or more or total on-balance-sheet foreign exposure of $10 billion or more. Both core banks and opt-in banks (advanced approach banks) would be required to meet certain infrastructure requirements (including complying with specified supervisory standards for credit risk and operational risk) and make specified public disclosures before being able to use the advanced approaches for risk-based regulatory capital calculation purposes.[3]

General banks would continue to apply the general risk-based capital rules. Because the general risk-based capital rules include a buffer for risks not easily quantified (for example, operational risk and concentration risk), general banks would not be subject to an additional direct capital charge for operational risk.

Under this proposal, some U.S. banking organizations would use the advanced approaches while others would apply the general risk-based capital rules. As a result, the United States would have a bifurcated regulatory capital framework. That is, U.S. capital rules would provide two distinct methodologies for institutions to calculate risk-weighted assets (the denominator of the risk-based capital ratios). Under the proposed framework, all U.S. institutions would continue to calculate regulatory capital, the numerator of the risk-based capital ratios, as they do now. Importantly, U.S. banking organizations would continue to be subject to a leverage ratio requirement under existing regulations, and Prompt Corrective Action (PCA) legislation and implementing regulations would remain in effect.[4] It is recognized that in some cases, under the proposed framework, the leverage ratio would serve as the most binding regulatory capital constraint.

Implementing the capital framework described in this ANPR would raise a number of significant practical and conceptual issues about the role of economic capital calculations relative to regulatory capital requirements. The capital formulas described in this ANPR, as well as the economic capital models used by banking organizations, assume the ability to assign precisely probabilities to future credit and operational losses that might occur. The term "economic capital" is often used to refer to the amount of capital that should be allocated to an activity according to the results of such an exercise. For example, a banking organization might compute the amount of income, reserves, and capital that it would need to cover the 99.9th percentile of possible credit losses associated with a given type of lending. The desired degree of certainty of covering losses is related to several factors including, for example, the banking organization's target credit rating. The higher the loss percentile the institution wishes to provide protection against, the less likely the capital held by the institution would be insufficient to cover losses, and the higher would be the institution's credit rating.

While the Agencies intend to move to a framework where regulatory capital is more closely aligned to economic capital, the Agencies do not intend to place sole reliance on the results of economic capital calculations for purposes of computing minimum regulatory capital requirements. Banking organizations face risks other than credit and operational risks, and the assumed loss distributions underlying banking organizations' economic capital calculations are subject to the risk of error. Consequently, the Agencies continue to view the leverage ratio tripwires contained in existing PCA and other regulations as important components of the regulatory capital framework.

The A–IRB Approach for Credit Risk

Under the A–IRB approach for credit risk, an institution's internal assessment of key risk drivers for a particular exposure (or pool of exposures) would serve as the primary inputs in the calculation of the institution's minimum risk-based capital requirements. Formulas, or risk weight functions, specified by supervisors would use the banking organization's estimated inputs to derive a specific dollar amount capital requirement for each exposure (or pool of exposures). This dollar capital requirement would be converted into a risk-weighted assets equivalent by multiplying the dollar amount of the capital requirement by 12.5—the reciprocal of the 8 percent minimum risk-based capital requirement. Generally, banking organizations using the A–IRB approach would assign assets and off-balance-sheet exposures into one of three portfolios: wholesale (corporate, interbank, and sovereign), retail (residential mortgage, qualifying revolving, and other), and equities. There also would be specific treatments for securitization exposures and purchased receivables. Certain assets that do not constitute a direct credit exposure (for example, premises, equipment, or mortgage servicing rights) would continue to be subject to the general risk-based capital rules and risk weighted at 100 percent. A brief overview of each A–IRB portfolio follows.

Wholesale (Corporate, Interbank, and Sovereign) Exposures

Wholesale credit exposures comprise three types of exposures: corporate, interbank, and sovereign. Generally, the meaning of interbank and sovereign would be consistent with the general risk-based capital rules. Corporate exposures are exposures to private-sector companies; interbank exposures are primarily exposures to banks and securities firms; and sovereign exposures are those to central governments, central banks, and certain other public-sector entities (PSEs). Within the wholesale exposure category, in addition to the treatment for general corporate lending, there would be four sub-categories of specialized lending (SL). These are project finance (PF), object finance (OF), commodities finance (CF), and commercial real estate (CRE). CRE is further subdivided into low-asset-correlation CRE, and high-volatility CRE (HVCRE).

For each wholesale exposure, an institution would assign four quantitative risk drivers (inputs): (1) Probability of default (PD), which measures the likelihood that the borrower will default over a given time horizon; (2) loss given default (LGD), which measures the proportion of the exposure that will be lost if a default occurs; (3) exposure at default (EAD), which is the estimated amount owed to the institution at the time of default; and (4) maturity (M), which measures the remaining economic maturity of the exposure. Institutions generally would be able to take into account credit risk mitigation techniques (CRM), such as collateral and guarantees (subject to certain criteria), by adjusting their estimates for PD or LGD. The wholesale A–IRB risk weight function would use all four risk inputs to produce a specific capital requirement for each wholesale exposure. There would be a separate, more conservative risk weight function for certain acquisition, development, and construction loans (ADC) in the HVCRE category.

Retail Exposures

Within the retail category, three distinct risk weight functions are proposed for three product areas that exhibit different historical loss experiences and different asset correlations.[5] The three retail sub-categories would be: (1) Exposures secured by residential mortgages and related exposures; (2) qualifying revolving exposures (QRE); and (3) other retail exposures. QRE would include unsecured revolving credits (such as credit cards and overdraft lines), and other retail would include most other types of exposures to individuals, as well as certain exposures to small businesses. The key inputs to the three retail risk weight functions would be a banking organization's estimates of PD, LGD, and EAD. There would be no explicit M component to the retail A–IRB risk weight functions. Unlike wholesale exposures, for retail exposures, an institution would assign a common set of inputs (PD, LGD, and EAD) to predetermined pools of exposures, which are typically referred to as segments, rather than to individual exposures.[6] The inputs would be used in the risk weight functions to produce a capital charge for the associated pool of exposures.

Equity Exposures

Banking organizations would use a market-based internal model for determining capital requirements for equity exposures in the banking book. The internal model approach would assess capital based on an estimate of loss under extreme market conditions. Some equity exposures, such as holdings in entities whose debt obligations qualify for a zero percent risk weight, would continue to receive a zero percent risk weight under the A–IRB approach to equities. Certain other equity exposures, such as those made through a small business investment company (SBIC) under the Small Business Investment Act or a community development corporation (CDC) or a community and economic development entity (CEDE), generally would be risk weighted at 100 percent under the A–IRB approach to equities. Banking organizations that are subject to the Agencies' market risk capital rules would continue to apply those rules to assess capital against equity positions held in the trading book.[7] Banking organizations that are not subject to the market risk capital rules would treat equity positions in the trading account as if they were in the banking book.

Securitization Exposures

Under the A–IRB treatment for securitization exposures, a banking organization that originates a securitization would first calculate the A–IRB capital charge that would have been assessed against the underlying exposures as if the exposures had not been securitized. This capital charge divided by the size of the exposure pool is referred to as KIRB. If an originating banking organization retains a position in a securitization that obligates the banking organization to absorb losses up to or less than KIRB, the banking organization would deduct the retained position from capital as is currently required under the general risk-based capital rules. The general risk-based capital rules, however, require a dollar-for-dollar risk-based capital deduction for certain residual interests retained by originating banking organizations in asset securitization transactions regardless of amount. The A–IRB framework would no longer require automatic deduction of such residual interests. The amount to be deducted would be capped at KIRB for most exposures. For a position in excess of the KIRB threshold, the originating banking organization would use an external-ratings-based approach (if the position has been rated by an external rating agency or a rating can be inferred) or a supervisory formula to determine the capital charge for the position.

Non-originating banking organizations that invest in a securitization exposure generally would use an external-ratings-based approach (if the exposure has been rated by an external rating agency or a rating can be inferred). For unrated liquidity facilities that banking organizations provide to securitizations, capital requirements would be based on several factors, including the asset quality of the underlying pool and the degree to which other credit enhancements are available. These factors would be used as inputs to a supervisory formula. Under the A–IRB approach to securitization exposures, banking organizations also would be required in some cases to hold regulatory capital against securitizations of revolving exposures that have early amortization features.

Purchased Receivables

Purchased receivables, that is, those that are purchased from another institution either through a one-off transaction or as part of an ongoing program, would be subject to a two-part capital charge: one part is for the credit risk arising from the underlying receivables and the second part is for dilution risk. Dilution risk refers to the possibility that contractual amounts payable by the underlying obligors on the receivables may be reduced through future cash payments or other credits to the accounts made by the seller of the receivables. The framework for determining the capital charge for credit risk permits a purchasing organization to use a top-down (pool) approach to estimating PDs and LGDs when the

[3] The Agencies continue to reserve the right to require higher minimum capital levels for individual institutions, on a case-by-case basis, if necessary to address particular circumstances.

[4] Thus, for example, to be in the well-capitalized PCA category a bank must have at least a 10 percent total risk-based capital ratio, a 6 percent Tier I risk-based capital ratio, and a 5 percent leverage ratio. The other PCA categories also would not change.

[5] Asset correlation is a measure of the tendency for the financial condition of a borrower in a banking organization's portfolio to improve or degrade at the same time as the financial condition of other borrowers in the portfolio improve or degrade.

[6] When the PD, LGD, and EAD parameters are assigned separately to individual exposures, it may be referred to as a "bottom-up" approach. When those parameters are assigned to predetermined sets of exposures (pools or segments), it may be referred to as a "top-down" approach.

[7] The market risk capital rules were implemented by the banking agencies in 1996. The market risk capital rules apply to any banking organization whose trading activity (on a consolidated worldwide basis) equals 10 percent or more of total assets, or $1 billion or more. The market risk capital rules are found at 12 CFR Part 3, Appendix B (OCC), 12 CFR Parts 208 and 225, Appendix E (Board), and 12 CFR Part 325, Appendix C (FDIC). The OTS, to date, has not adopted the market risk capital rules.

purchasing organization is unable to assign an internal risk rating to each of the purchased accounts. The capital charge for dilution risk would be calculated using the wholesale risk weight function with some additional specified risk inputs.

The AMA for Operational Risk

Under the A–IRB approach, capital charges for credit risk would be directly calibrated solely for such risk and, thus, unlike the 1988 Accord, would not implicitly include a charge for operational risk. As a result, the Agencies are proposing that banking organizations operating under the A–IRB approach also would have to hold regulatory capital for exposure to operational risk. The Agencies are proposing to define operational risk as the risk of losses resulting from inadequate or failed internal processes, people, and systems, or external events. Under the AMA, each banking organization would be able to use its own methodology for assessing exposure to operational risk, provided the methodology is comprehensive and results in a capital charge that is reflective of the operational risk experience of the organization. The operational risk exposure would be multiplied by 12.5 to determine a risk-weighted assets equivalent, which would be added to the comparable amounts for credit and market risk in the denominator of the risk-based capital ratios. The Agencies will be working closely with institutions over the next few years as operational risk measurement and management techniques continue to evolve.

Other Considerations

Boundary Issues

With the introduction of an explicit regulatory capital charge for operational risk, an issue arises about the proper treatment of losses that can be attributed to more than one risk factor. For example, where a loan defaults and the banking organization discovers that the collateral for the loan was not properly secured, the banking organization's resulting losses would be attributable to both credit and operational risk. The Agencies recognize that these types of boundary issues are important and have significant implications for how banking organizations would compile loss data sets and compute regulatory capital charges.

The Agencies are proposing the following standard to govern the boundary between credit and operational risk: A loss event that has characteristics of credit risk would be incorporated into the credit risk calculations for regulatory capital (and would not be incorporated into operational risk capital calculations). This would include credit-related fraud losses. Thus, in the above example, the loss from the loan would be attributed to credit risk (not operational risk) for regulatory capital purposes. This separation between credit and operational risk is supported by current U.S. accounting standards for the treatment of credit risks.

With regard to the boundary between the trading book and the banking book, for institutions subject to the market risk rules, positions currently subject to those rules include all positions held in the trading account consistent with GAAP. The New Accord proposed additional criteria for positions includable in the trading book for purposes of market risk capital requirements. The Agencies encourage comment on these additional criteria and whether the Agencies should consider adopting such criteria (in addition to the GAAP criteria) in defining the trading book under the Agencies' market risk capital rules. The Agencies are seeking comment on the proposed treatment of the boundaries between credit, operational, and market risk.

Supervisory Considerations

The advanced approaches introduce greater complexity to the regulatory capital framework and would require a high level of sophistication in the banking organizations that implement the advanced approaches. As a result, the Agencies propose to require core and opt-in banks to meet certain infrastructure requirements and comply with specific supervisory standards for credit risk and for operational risk. In addition, banking organizations would have to satisfy a set of public disclosure requirements as a prerequisite for approval to using the advanced approaches. Supervisory guidance for each credit risk portfolio type, as well as for operational risk, is being developed to ensure a sufficient degree of consistency within the supervisory framework, while also recognizing that internal systems will differ between banking organizations. The goal is to establish a supervisory framework within which all institutions must develop their internal systems, leaving exact details to each institution. In the case of operational risk in particular, the Agencies recognize that measurement methodologies are still evolving and flexibility is needed.

It is important to note that supervisors would not look at compliance with requirements, or standards alone. Supervisors also would evaluate whether the components of an institution's advanced approaches are consistent with the overall objective of sound risk management and measurement. An institution would have to use appropriately the advanced approaches across all material business lines, portfolios, and geographic regions. Exposures in non-significant business units as well as asset classes that are immaterial in terms of size and perceived risk profile may be exempted from the advanced approaches with supervisory approval. These immaterial portfolios would be subject to the general risk-based capital rules.

Proposed supervisory guidance for corporate credit exposures and for operational risk is provided separately from this ANPR in today's **Federal Register**. The draft supervisory guidance for corporate credit exposures is entitled "Supervisory Guidance on Internal-Ratings-Based Systems for Corporate Credit." The guidance includes specified supervisory standards that an institution's internal rating system for corporate exposures would have to satisfy for the institution to be eligible to use the A–IRB approach for credit risk. The draft operational risk guidance is entitled "Supervisory Guidance on Operational Risk Advanced Measurement Approaches for Regulatory Capital." The operational risk guidance includes identified supervisory standards for an institution's AMA framework for operational risk. The Agencies encourage commenters to review and comment on the draft guidance pieces in conjunction with this ANPR. The Agencies intend to issue for public comment supervisory guidance on retail credit exposures, equity exposures, and securitization exposures over the next several months.

Supervisory Review

As mentioned above, the second pillar of the New Accord focuses on supervisory review to ensure that an institution holds sufficient capital given its overall risk profile. The concepts of Pillar 2 are not new to U.S. banking organizations. U.S. institutions already are required to hold capital sufficient to meet their risk profiles, and supervisors may require that an institution hold more capital if its current levels are deficient or some element of its business practices suggest the need for more capital. The Agencies also have the right to intervene when capital levels fall to an unacceptable level. Given these long-standing elements of the U.S. supervisory framework, the Agencies are not proposing to introduce specific requirements or guidelines to implement Pillar 2. Instead, existing guidance, rules, and regulations would continue to be enforced and supplemented as necessary as part of this proposed new regulatory capital framework. However, all institutions operating under the advanced approaches would be expected by supervisors to address specific assumptions embedded in the advanced approaches (such as diversification in credit portfolios), and would be evaluated for their ability to account for deviations from the underlying assumptions in their own portfolios.

Disclosure

An integral part of the advanced approaches is enhanced public disclosure practices and improved transparency. Under the Agencies' proposal, specific disclosure requirements would be applicable to all institutions using the advanced approaches. These disclosure requirements would encompass capital, credit risk, equities, credit risk mitigation, securitization, market risk, operational risk, and interest rate risk in the banking book.

D. Competitive Considerations

It is essential that the Agencies gain a full appreciation of the possible competitive equity concerns that may be presented by the establishment of a new capital framework. The creation of a bifurcated capital framework in the United States—one set of capital standards applicable to large, internationally active banking organizations (and those that choose to apply the advanced approaches), and another set of standards applicable to all other institutions—has created concerns among some parties about the potential impact on competitive equity between the two sets of banking organizations. Similarly, differences in supervisory application of the advanced approaches (both within the United States and abroad) among large, internationally active institutions may pose competitive equity issues among such institutions.

The New Accord relies upon compliance with certain minimum operational and supervisory requirements to promote consistent interpretation and uniformity in application of the advanced approaches. Nevertheless, independent supervisory judgment will be applied on a case-by-case basis. These processes, albeit subject to detailed and explicit supervisory guidance, contain an inherent amount of subjectivity and must be assessed by supervisors on an ongoing basis. This supervisory assessment of the internal processes and controls leading to an institution's internal ratings and other estimates must maintain the high level of internal risk measurement and management processes contemplated in this ANPR.

The BSC's Accord Implementation Group (AIG), in which the Agencies play an active role, will seek to ensure that all jurisdictions uniformly apply the same high qualitative and quantitative standards to internationally active banking institutions. However, to the extent that different supervisory regimes implement these standards differently, there may be competitive dislocations. One concern is that the U.S. supervisory regime will impose greater scrutiny in its implementation standards, particularly given the extensive on-site presence of bank examiners in the United States.

Quite distinct from the need for a level playing field among internationally active institutions are the competitive concerns of those institutions that do not elect to adopt or may not qualify for the advanced approaches. Some banking organizations have expressed concerns that small or regional banks would become more likely to be acquired by larger organizations seeking to lever capital efficiencies. There also is a qualitative concern about the impact of being considered a "second tier" institution (one that does not implement the advanced approaches) by the market, rating agencies, or sophisticated customers such as government or municipal depositors and borrowers. Finally, there is the question of what, if any, competitive distortions might be introduced by differences in regulatory capital minimums between the advanced approaches and the general risk-based capital rules for loans or securities with otherwise similar risk characteristics, and the extent to which such distortions may be mitigated in an environment in which well-managed banking organizations continue to hold excess capital.[8]

Because the advanced framework described in this ANPR is more risk-sensitive than the 1988 Accord and the general risk-based capital rules, banking organizations under the advanced approaches would face increases in their minimum risk-based capital charges on some assets and decreases on others. The results of a Quantitative Impact Study (QIS3) the BSC conducted in late 2002 indicated the potential for the advanced approaches described in this document to produce significant changes in risk-based capital requirements for specific activities; the results also varied on an institution-by-institution basis. The results of QIS3 can be found at *http://www.bis.org* and various results of QIS3 are noted at pertinent places in this ANPR.

The Agencies do not believe the results of QIS3 are sufficiently reliable to form the basis of a competitive impact analysis, both because the inputs to the study were provided on a best-efforts basis and because the proposals in this ANPR are in some cases different than those that formed the basis of QIS3. The Agencies are nevertheless interested in views on how changes in regulatory capital (for the total of credit and operational risk) of the magnitude described in QIS3, if such changes were in fact realized, would affect the competitive landscape for domestic banking organizations.

The Agencies plan to conduct at least one more QIS, and potentially other economic impact analyses, to better understand the potential impact of the proposed framework on the capital requirements for individual U.S. banking organizations and U.S. banking organizations as a whole. This may affect the Agencies' further proposals through recalibrating the A–IRB risk weight formulas and making other modifications to the proposed approaches if the capital requirements do not seem consistent with the overall risk profiles of banking organizations or safe and sound banking practices.

If competitive effects of the New Accord are determined to be significant, the Agencies would need to consider potential ways to address those effects while continuing to seek to achieve the objectives of the current proposal. Alternatives could potentially include modifications to the proposed approaches, as well as fundamentally different approaches. The Agencies recognize that an optimal capital system must strike a balance between the objectives of simplicity and regulatory consistency across banking organizations on the one hand, and the degree of risk sensitivity of the regulation on the other. There are many criteria that must be evaluated in achieving this balance, including the resulting incentives for improving risk measurement and management practices, the ease of supervisory and regulatory enforcement, the degree to

[8] The Agencies note that under the general risk-based capital rules some institutions currently are able to hold less capital than others on some types of assets (for example, through innovative financing structures or use of credit risk mitigation techniques). In addition, some institutions may hold lower amounts of capital because the market perceives them as highly diversified, while others hold higher amounts of capital because of concentrations of credit risk or other factors.

which the overall level of regulatory capital in the banking system is broadly preserved, and the effects on domestic and international competition. The Agencies are interested in commenters' views on alternatives to the advanced approaches that could achieve this balance, and in particular on alternatives that could do so without a bifurcated approach.[9]

The Agencies are committed to investigate the full scope of possible competitive impact and welcome all comments in this regard. Some questions are suggested below that may serve to focus commenters' general reactions. More specific questions also are suggested throughout this ANPR. These questions should not be viewed as limiting the Agencies' areas of interest or commenters' submissions on the proposals. The Agencies encourage commenters to provide supporting data and analysis, if available.

What are commenters' views on the relative pros and cons of a bifurcated regulatory capital framework versus a single regulatory capital framework? Would a bifurcated approach lead to an increase in industry consolidation? Why or why not? What are the competitive implications for community and mid-size regional banks? Would institutions outside of the core group be compelled for competitive reasons to opt-in to the advanced approaches? Under what circumstances might this occur and what are the implications? What are the competitive implications of continuing to operate under a regulatory capital framework that is not risk sensitive?

If regulatory minimum capital requirements declined under the advanced approaches, would the dollar amount of capital held by advanced approach banking organizations also be expected to decline? To the extent that advanced approach institutions have lower capital charges on certain assets, how probable and significant are concerns that those institutions would realize competitive benefits in terms of pricing credit, enhanced returns on equity, and potentially higher risk-based capital ratios? To what extent do similar effects already exist under the current general risk-based capital rules (for example, through securitization or other techniques that lower relative capital charges on particular assets for only some institutions)? If they do exist now, what is the evidence of competitive harm?

Apart from the approaches described in this ANPR, are there other regulatory capital approaches that are capable of ameliorating competitive concerns while at the same time achieving the goal of better matching regulatory capital to economic risks? Are there specific modifications to the proposed approaches or to the general risk-based capital rules that the Agencies should consider?

[9] In this regard, alternative approaches would take time to develop, but might present fewer implementation challenges. Additional work would be necessary to advance the goal of competitive equity among internationally active banking organizations. If consensus on alternative approaches could not be reached at the BSC, a departure from the Basel framework also could raise significant international and domestic issues.

II. Application of the Advanced Approaches in the United States

By its terms, the 1988 Accord applied only to internationally active banks. Under the New Accord, the scope of application has been broadened also to encompass bank holding companies that are parents of internationally active "banking groups."

A. Threshold Criteria for Mandatory Advanced Approach Organizations

The Agencies believe that for large, internationally active U.S. institutions only the advanced approaches are appropriate. Accordingly, the Agencies intend to identify three groups of banking organizations: (1) Large, internationally active banking organizations that would be subject to the A–IRB approach and AMA on a mandatory basis (core banks); (2) organizations not subject to the advanced approaches on a mandatory basis, but that voluntarily choose to adopt those approaches (opt-in banks); and all remaining organizations that are not mandatorily subject to and do not apply the advanced approaches (general banks).

For purposes of identifying core banks, the Agencies are proposing a set of objective criteria for industry consideration. Specifically, the Agencies are proposing to treat as a core bank any banking organization that has (1) total commercial bank (and thrift) assets of $250 billion or more, as reported on year-end regulatory reports (with banking assets of consolidated groups aggregated at the U.S. bank holding company level); [10] or (2) total on-balance-sheet foreign exposure of $10 billion or more, as reported on the year-end Country Exposure Report (FFIEC 009) (with foreign exposure of consolidated groups aggregated at the U.S. bank holding company level). These threshold criteria are independent; meeting either condition would mean an institution is a core bank.

Once an institution becomes a core bank it would remain subject to the advanced approaches on a going forward basis. If, in subsequent years, such an institution were to drop below both threshold levels it would continue to be a core bank unless it could demonstrate to its primary Federal supervisor that it has substantially and permanently downsized and should no longer be a core bank. The Agencies are proposing an annual test for assessing banking organizations in reference to the threshold levels. However, as a banking organization approaches either of the threshold levels the Agencies would expect to have ongoing dialogue with that organization to ensure that appropriate practices are in place or are actively being developed to prepare the organization for implementation of the advanced approaches.

Institutions that by expansion or merger meet the threshold levels must qualify for use of the advanced approaches and would be subject to the same implementation plan requirements and minimum risk-based capital floors applicable to core and opt-in banks as described below. Institutions that seek to become opt-in banks would be expected to notify their primary Federal supervisors well in advance of the date by which they expect to qualify for the advanced approaches. Based on the aforementioned threshold levels, the Agencies anticipate at this time that approximately ten U.S. institutions would be core banks.

Application of Advanced Approaches at Individual Bank/Thrift Levels

The Agencies are aware that some institutions might, on a consolidated basis, exceed one of the threshold levels for mandatory application of the A–IRB approach and AMA and, yet, might be comprised of distinct bank and thrift charters whose respective sizes fall well below the thresholds. In those cases, the Agencies believe that all bank and thrift institutions that are members of a consolidated group that is itself a core bank or an opt-in bank should calculate and report their risk-based capital requirements under the advanced approaches. However, recognizing that separate bank and thrift charters may, to a large extent, be independently managed and have different systems and portfolios, the Agencies are interested in comment on the efficacy and burden of a framework that requires the advanced approaches to be implemented by (or pushed down to) each of the separate subsidiary banks and thrifts that make up the consolidated group.

U.S. Banking Subsidiaries of Foreign Banking Organizations

Any U.S. bank or thrift that is a subsidiary of a foreign bank would have to comply with the prevailing U.S. regulatory capital requirements applied to U.S. banks. Thus, if a U.S. bank or thrift that is owned by a foreign bank meets the threshold levels for mandatory application of the advanced approaches, the U.S. bank or thrift would be a core bank. If it does not meet those thresholds, it would have the choice to opt-in to the advanced approaches (and be subject to the same supervisory framework as other U.S. banking organizations) or to remain a general bank. A top-tier U.S. bank holding company that is owned by a foreign bank also would be subject to the same threshold levels for core bank determination and would be subject to the applicable U.S. bank holding company capital rules. However, Federal Reserve SR Letter 01–1 (January 5, 2001) would remain in effect. Thus, subject to the conditions in SR Letter 01–1, a top-tier U.S. bank holding company that is owned or controlled by a foreign bank that is a qualifying financial holding company generally would not be required to comply with the Board's capital adequacy guidelines.

The Agencies are interested in comment on the extent to which alternative approaches to regulatory capital that are implemented across national boundaries might create burdensome implementation costs for the U.S. subsidiaries of foreign banks.

[10] For banks this means the December Consolidated Report of Condition and Income (Call Report). For thrifts this means the December Thrift Financial Report.

B. Implementation for Advanced Approach Organizations

As noted earlier, U.S. banking organizations that apply the advanced approaches would be required to comply with supervisory standards prior to use.

The BSC has targeted December 31, 2006 as the effective date for the international capital rules based on the New Accord. The Agencies are proposing an implementation date of January 1, 2007. The establishment of a final effective date in the United States, however, would be contingent on the issuance for public comment of a Notice of Proposed Rulemaking, and subsequent finalization of any changes in capital regulations that the Agencies ultimately decide to adopt.

Because of the need to pre-qualify for the advanced approaches, banking organizations would need to take a number of steps upon the finalization of any changes to the capital regulations. These steps would include developing detailed written implementation plans for the A–IRB approach and the AMA and keeping their primary supervisors advised of these implementation plans and schedules. Implementation plans would need to address all supervisory standards for the A–IRB approach and the AMA, include objectively measurable milestones, and demonstrate that adequate resources would be realistically budgeted and made available. An institution's board of directors would need to approve its implementation plans.

The Agencies expect core banks to make every effort to meet the supervisory standards as soon as practicable. In this regard, it is possible that some core banks would not qualify to use the advanced approaches in time to meet the effective date that is ultimately established. For those banking organizations, the implementation plan would need to identify when the supervisory standards would be met and when the institution would be ready for implementation. The Agencies note that developing an appropriate infrastructure to support the advanced approaches for regulatory capital that fully complies with supervisory conditions and expectations and the associated supervisory guidance will be challenging. The Agencies believe, however, that institutions would need to be fully prepared before moving to the advanced approaches.

Use of the advanced approaches would require the primary Federal supervisor's approval. Core banks unable to qualify for the advanced approaches in time to meet the effective date would remain subject to the general risk-based capital rules existing at that time. The Agencies would consider the effort and progress made to meet the qualifying standards and would consider whether, under the circumstances, supervisory action should be taken against or penalties imposed on individual core banks that have not adhered to the schedule outlined in the implementation plan they submitted to their primary Federal supervisor.

Opt-in banks meeting the supervisory standards could seek to qualify for the advanced approaches in time to meet the ultimate final effective date or any time thereafter. Institutions contemplating opting-in to the advanced approaches would need to provide notice to, and submit an implementation plan and schedule to be approved by, their primary Federal supervisor. As is true of core banks, opt-in banks would need to allow ample time for developing and executing implementation plans.

An institution's primary Federal supervisor would have responsibility for determining the institution's readiness for an advanced approach and would be ultimately responsible, after consultation with other relevant supervisors, for determining whether the institution satisfies the supervisory expectations for the advanced approaches. The Agencies recognize that a consistent and transparent process to oversee implementation of the advanced approaches would be crucial. The Agencies intend to develop interagency validation standards and procedures to help ensure consistency. The Agencies would consult with each other on significant issues raised during the validation process and ongoing implementation.

C. Other Considerations

General Banks

The Agencies expect that the vast majority of U.S. institutions would be neither core banks nor opt-in banks. Most institutions would remain subject to the general risk-based capital rules. However, as has been the case since the 1988 Accord was initially implemented in the United States, the Agencies will continue to make necessary modifications to the general risk-based capital rules as appropriate. In the event changes are warranted, the Agencies could implement revisions through notice and comment procedures prior to the proposed effective date of the advanced approaches in 2007.

The Agencies seek comment on whether changes should be made to the existing general risk-based capital rules to enhance their risk-sensitivity or to reflect changes in the business lines or activities of banking organizations without imposing undue regulatory burden or complication. In particular, the Agencies seek comment on whether any changes to the general risk-based capital rules are necessary or warranted to address any competitive equity concerns associated with the bifurcated framework.

Majority-Owned or Controlled Subsidiaries

The New Accord generally applies to internationally active banking organizations on a fully consolidated basis. Thus, consistent with the Agencies' general risk-based capital rules, subsidiaries that are consolidated under U.S. generally accepted accounting principles (GAAP) typically should be consolidated for regulatory capital calculation purposes under the advanced approaches as well.[11] With regard to investments in consolidated insurance underwriting subsidiaries, the New Accord notes that deconsolidation of assets and deduction of capital is an

[11] One notable exception exists at the bank level where there is an investment in a financial subsidiary as defined in the Gramm-Leach-Bliley Act of 1999. For such a subsidiary, assets would continue to be deconsolidated from the bank's on-balance-sheet assets, and capital at the subsidiary level would be deducted from the bank's capital.

appropriate approach. The Federal Reserve is actively considering several approaches to the capital treatment for investments by bank holding companies in insurance underwriting subsidiaries. For example, the Federal Reserve is currently assessing the merits and weaknesses of an approach that would consolidate an insurance underwriting subsidiary's assets at the holding company level and permit excess capital of the subsidiary to be included in the consolidated regulatory capital of the holding company. A deduction would be required for capital that is not readily available at the holding company level for general use throughout the organization.

The Federal Reserve specifically seeks comment on the appropriate regulatory capital treatment for investments by bank holding companies in insurance underwriting subsidiaries as well as other nonbank subsidiaries that are subject to minimum regulatory capital requirements.

Transitional Arrangements

Core and opt-in banks would be required to calculate their capital ratios using the A-IRB and AMA methodologies, as well as the general risk-based capital rules, for one year prior to using the advanced approaches on a stand-alone basis. In order to begin this parallel-run year, however, the institution would have to demonstrate to its supervisor that it meets the supervisory standards. Therefore, banking organizations planning to meet the January 1, 2007 target effective date for implementation of the advanced approaches would have to receive approval from their primary Federal supervisor before year-end 2005. Banking organizations that later adopt the advanced approaches also would have a one-year dual calculation period prior to moving to stand-alone usage of the advanced approaches.

An institution would be subject to a minimum risk-based capital floor for two years following moving to the advanced approaches on a stand-alone basis. Specifically, in the first year of stand-alone usage of the advanced approaches, an institution's calculated risk-weighted assets could not be less than 90 percent of risk-weighted assets calculated under the general risk-based capital rules. In the following year, an institution's minimum calculated risk-weighted assets could not be less than 80 percent of risk-weighted assets calculated under the general risk-based capital rules.[12]

[12] The agencies note that the text above differs from the floor text in the New Accord, which is based on 90 and 80 percent of the minimum capital requirements under the 1988 Accord, rather than on risk-weighted assets. The Agencies expect that the final language of the New Accord would need to be consistent with this approach. The following example reflects how the floor in the first year would be applied by a U.S. banking organizaiton. If the banking organization's general risk-based capital calculation produced risk-weighted assets of $100 billion in its first year of implementation of the advanced approaches, then its risk weighted assets in that year could not be less than $90 billion. If the advanced approach calculation produced risk-weighted assets of $75 billion (a decrease of one quarter compared to the general risk-based capital rules), the organization would not calculate risk-based capital ratios on the basis of that $75 billion; rather, its risk-weighted assets would be $90 billion. Consequently, its minimum total risk-based capital charge would be $7.2 billion, and it would need $9 billion to satisfy PCA well-capitalized criteria.

As a consequence, advanced approach banking organizations would need to conduct two sets of capital calculations for at least three years. The pre-implementation calculation of A-IRB and AMA capital would not need to be made public, but the banking organization would be required to disclose risk-based capital ratios calculated under both advanced and general risk-based approaches during the two-year post-implementation period. The Agencies would not propose to eliminate the floors after the two-year transition period for any institution applying the advanced approaches until the Agencies are fully satisfied that the institution's systems are sound and accurately assess risk and that resulting capital levels are prudent.

These transitional arrangements and the floors established above relate only to risk-based capital ratios and do not affect the continued applicability to all advanced banking organizations of the leverage ratio and associated PCA regulations for banks and thrifts. Importantly, the minimum capital requirements and the PCA thresholds would not be changed. Furthermore, during the implementation period and before removal of the floors the Agencies intend to closely monitor the effect that the advanced approaches would have on capital levels at individual institutions and industry-wide capital levels. Once the results of this monitoring process are assessed, the Agencies may consider modifications to the advanced approaches to ensure that capital levels remain prudent.

Given the general principle that the advanced approaches are expected to be implemented at the same time across all material portfolios, business lines, and geographic regions, to what degree should the Agencies be concerned that, for example, data may not be available for key portfolios, business lines, or regions? Is there a need for further transitional arrangements? Please be specific, including suggested durations for such transitions.

Do the projected dates provide an adequate timeframe for core banks to be ready to implement the advanced approaches? What other options should the Agencies consider?

The Agencies seek comment on appropriate thresholds for determining whether a portfolio, business line, or geographic exposure would be material. Considerations should include relative asset size, percentages of capital, and associated levels of risk for a given portfolio, business line, or geographic region.

III. Advanced Internal Ratings-Based (A–IRB) Approach

This section describes the proposed A–IRB framework for the measurement of capital requirements for credit risk. Under this framework, banking organizations that meet the A–IRB infrastructure requirements and supervisory standards would incorporate internal estimates of risk inputs into supervisor-provided capital formulas for the various debt and equity portfolios to calculate the capital requirements for each portfolio. The discussion below provides background on the conceptual basis of the A–IRB approach and then describes the specific details of the capital formulas for two of the main exposure categories, wholesale and retail. Separate sections follow that describe the A–IRB treatments of loan loss reserves and partial charge-offs, the A–IRB treatment of purchased receivables, the A–IRB treatment of equity exposures, and the A–IRB treatment of securitization exposures. The A–IRB supervisory requirements and the A–IRB approach to credit risk mitigation techniques also are discussed in separate sections.

A. Conceptual Overview

The A–IRB framework has as its conceptual foundation the belief that any range of possible losses on a portfolio of credit exposures can be represented by a probability density function (PDF) of possible losses over a one-year time horizon. If known, the parameters of a PDF can be used to specify a particular level of capital that will lower the probability of the institution's insolvency due to adverse credit risk outcomes to a stated confidence level. With a known or estimated PDF, the probability of insolvency can be measured or estimated directly, based on the level of reserves and capital available to an institution.

The A–IRB framework builds off this concept and reflects an effort to develop a common set of risk-sensitive formulas for the calculation of required capital for credit risk. To a large extent, this framework resembles more systematic quantitative approaches to the measurement of credit risk that many banking organizations have been developing. These approaches being developed by banking organizations generally rely on a statistical or probability-based assessment of credit risk and use inputs broadly similar to those required under the A–IRB approach. Like the value-at-risk (VaR) model that forms the basis for the market risk capital rules, the output of these statistical approaches to credit risk is typically an estimate of loss threshold on a credit exposure or pool of credit exposures that is highly unlikely to be exceeded by actual credit-related losses on the exposure or pool.

Many banking organizations now use such a credit VaR amount as the basis for an internal assessment of the economic capital necessary to cover credit risk. In this context, it is common for banking organizations' internal credit risk models to consider a one-year loss horizon, and to focus on a high loss threshold confidence level (that is, a loss threshold that has a small probability of being exceeded), such as the 99.95th percentile. This is because banking organizations typically seek to hold an amount of economic capital for credit risk whose probability of being exceeded is broadly consistent with the institution's external credit rating and its associated default probability. For example, the one-year historical probability of default for AA-rated firms is less than 5 basis points (0.05 percent).

There is a great deal of variation across banking organizations in the specifics of their credit risk measurement approaches. It is important to recognize that the A–IRB approach is not intended to allow banking organizations to use all aspects of their own models to estimate regulatory capital for credit risk. The A–IRB approach has been developed as a single, common methodology that all advanced approach banking organizations would use, and consists of a set of formulas (or functions) and a single set of assumptions regarding critical parameters for the formulas. The A–IRB approach draws on the same conceptual underpinnings as the credit VaR approaches that banking organizations have developed individually, but likely differs in many specifics from the approach used by any individual institution.

The specific A–IRB formulas require the banking organization first to estimate certain risk inputs, which the organization may do using a variety of techniques. The formulas themselves, into which the estimated risk inputs are inserted, are broadly consistent with the most common statistical approaches for measuring credit risk, but also are more straightforward to calculate than those typically employed by banking organizations (which often require computer simulations). In particular, an important property of the A–IRB formulas is portfolio invariance. That is, the A–IRB capital requirement for a particular exposure generally does not depend on the other exposures held by the banking organization; as with the general risk-based capital rules, the total credit risk capital requirement for a banking organization is simply the sum of the credit risk capital requirements on individual exposures or pools of exposures.[13]

As with the existing credit VaR models, the output of the A–IRB formulas is an estimate of the amount of credit losses over a one-year period that would only be exceeded a small percentage of the time. In the case of the A–IRB formulas, this nominal confidence level is set to 99.9 percent. This means that within the context of the A–IRB modeling assumptions a banking organization's overall credit portfolio capital requirement can be thought of as an estimate of the 99.9th percentile of potential losses on that portfolio over a one-year period. In practice, however, this 99.9 percent nominal target likely overstates the actual level of confidence because the A–IRB framework does not explicitly address portfolio concentration issues or the possibility of errors in estimating PDs, LGDs, or EADs. The choice of the 99.9th percentile reflects a desire on the part of the Agencies to align the regulatory capital standard with the default probabilities typically associated with maintaining low investment grade ratings (that is, BBB) even in periods of economic adversity and to ensure neither a substantial increase or decrease in overall required capital levels among A–IRB banking organizations compared with the capital levels that would be required under the general risk-based capital rules. It also recognizes that the risk-based capital rules count a broader range of instruments as eligible capital (for example, certain subordinated debt) than do internal economic capital methodologies.

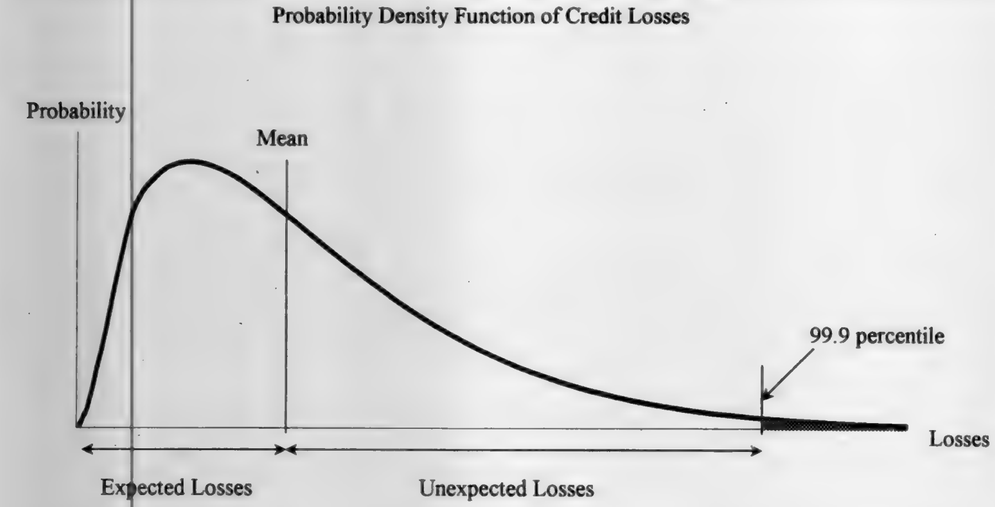
[13] The theoretical underpinnings for obtaining portfolio-invariant capital charges within credit VaR models are provided in the paper "A Risk-Factor Model Foundation for Ratings-Based Bank Capital Rules," by Michael Gordy, forthcoming in the *Journal of Financial Intermediation*. The A–IRB formulas are derived as an application of these results to a single-factor CreditMetrics-style mode. For mathematical details of this model, see M. Gordy, "A comparative Anatomy of Credit Risk Models." *Journal of Banking and Finance*, January 2000, or H.R. Koyluogu and A. Hickman, "Reconcilable Differences." *Risk*, October 1998.

Expected Losses Versus Unexpected Losses

The diagram below shows a hypothetical loss distribution for a portfolio of credit exposures over a one-year horizon. The loss distribution is represented by the curve, and is drawn in such a way that it depicts a higher proportion of losses falling below the mean value than falling above the mean. The average value of credit losses is referred to as expected loss (EL). The losses that exceed the expected level are labeled unexpected loss (UL). An overarching policy question concerns whether the proposed design of the A–IRB capital requirements should reflect an expectation that institutions would allocate capital to cover both EL and a substantial portion of the range of possible UL outcomes, or only the UL portion of the range of possible losses (that is, from the EL point out to the 99.9th percentile).

The Agencies recognize that some institutions, in their comment letters on earlier BSC proposals and in discussion with supervisory staffs, have highlighted the view that regulatory capital should not be allocated for EL. They emphasize that EL is normally incorporated into the interest rate and spreads charged on specific products, such that EL is covered by net interest margin and provisioning. The implication is that supervisors would review provisioning policies and the adequacy of reserves as part of a supervisory review, much as they do today, and would require additional reserves and/or regulatory capital for EL in cases where reserves were deemed insufficient. However, the Agencies are concerned that the accounting definition of general reserves differs significantly across countries, and that banking practices with respect to the recognition of impairment also are very different. Thus, the Agencies are proposing to include EL in the calibration of the risk weight functions.

The Agencies also note that the current regulatory definition of capital includes a portion of general reserves. That is, general reserves up to 1.25 percent of risk-weighted assets are included in the Tier 2 portion of total capital. If the risk weight functions were calibrated solely to UL, it could be argued that the definition of capital would also need to be revisited. In the United States, such a discussion would require a review of the provisioning practices of institutions under GAAP and of the distinctions drawn between specific and general provisions.



The framework described in this ANPR calibrates the risk-based capital requirements to the sum of EL plus UL, which raises significant calibration issues. Those calibration issues would be treated differently if the calibration were based only on the estimate of UL. That is, decisions with respect to significant policy variables that are described below hinge crucially on the initial decision to base the calibration on EL plus UL, rather than UL only. These issues include, for example, the appropriate mechanism for incorporating any future margin income (FMI) that is associated with particular business lines, as well as the appropriate method for incorporating general and specific reserves into the risk-based capital ratios.

A final overarching assumption of the A–IRB framework is the role of asset correlations. Within the A–IRB capital formulas (as in the credit VaR models of many banking organizations), asset correlation parameters provide a measure of the extent to which changes in the economic value of separate exposures are presumed to move together. A higher asset correlation between a particular asset and other assets in the same portfolio implies a greater likelihood that the asset will decline in value at the same time as the portfolio as a whole declines in value. Because this means a greater chance that the asset will be a contributor to high loss scenarios, its capital requirement under the A–IRB framework also is higher.

Specifically, the A–IRB capital formulas described in detail below are based on the assumption that correlation in defaults across borrowers is attributable to their common dependence on one or more systematic risk factors. The basis for this assumption is the observation that a banking organization's borrowers are generally susceptible to adverse changes in the global economy. These systematic factors are distinct from the borrower-specific, or idiosyncratic, risk factors that determine the probability that a specific loan will be repaid. Like other risk-factor models, the A–IRB framework assumes that these borrower-specific factors represent idiosyncratic sources of risk, and thus (unlike the systematic risk-factors) are diversified in a large lending portfolio.

The A–IRB approach allows for much improved sensitivity to many of the loan-level determinants of economic capital (such as PD and LGD), but does not explicitly address how an exposure's economic capital might vary with the degree of concentration in the overall portfolio to specific industries or regions, or even to specific borrowers. That is, it neither rewards nor penalizes differences across banking organizations in diversification or concentration across industry, geography, and names. To introduce such rewards and penalties in an appropriate manner would necessarily entail far greater operational complexity for both regulatory and financial institutions.

In contrast, the portfolio models of credit risk employed by many banking organizations are quite sensitive to all forms of diversification. That is, the economic capital charge assigned to a loan within such a model will depend on the portfolio as a whole. In order to apply a portfolio model to the calibration of A–IRB capital charges, it would be necessary to identify the assumptions needed so that a portfolio model would yield economic capital charges that do not depend on portfolio characteristics. Recent advances in the finance literature demonstrate that economic capital charges are portfolio-invariant if (and only if) two assumptions are imposed.[14] First, the portfolio must be infinitely fine-grained. Second, there must be only a single systematic risk factor.

Infinite granularity, while never literally attained, is satisfied in an approximate sense by the portfolios of large, internationally active banks. Analysis of data provided by such institutions shows that taking account of single-name concentrations in such portfolios would lead to only trivial changes in the total capital requirement. The single risk-factor assumption would appear, at first glance, more troublesome. As an empirical matter, there undoubtedly are distinct cyclical factors for different industries and different geographic regions. From a substantive perspective, however, the relevant question is whether portfolios at large financial institutions are diversified across the various sub-sectors of the economy in a reasonably similar manner. If so, then the portfolio can be modeled as if there were only a single factor, namely, the credit cycle as a whole.

[14] See forthcoming paper by M. Gordy referenced in footnot number 12 above.

The Agencies seek comment on the conceptual basis of the A–IRB approach, including all of the aspects just described. What are the advantages and disadvantages of the A–IRB approach relative to alternatives, including those that would allow greater flexibility to use internal models and those that would be more cautious in incorporating statistical techniques (such as greater use of credit ratings by external rating agencies)? The Agencies also encourage comment on the extent to which the necessary conditions of the conceptual justification for the A–IRB approach are reasonably met, and if not, what adjustments or alternative approach would be warranted.

Should the A–IRB capital regime be based on a framework that allocates capital to EL plus UL, or to UL only? Which approach would more closely align the regulatory framework to the internal capital allocation techniques currently used by large institutions? If the framework were recalibrated solely to UL, modifications to the rest of the A–IRB framework would be required. The Agencies seek commenters' views on issues that would arise as a result of such recalibration.

B. A–IRB Capital Calculations

A common characteristic of the A–IRB capital formulas is that they calculate the actual dollar value of the minimum capital requirement associated with an exposure (or, in the case of retail exposures, a pool of exposures). This capital requirement must be converted to an equivalent amount of risk-weighted assets in order to be inserted into the denominator of a banking organization's risk-based capital ratios. Because the minimum risk-based capital ratio in the United States is 8 percent, the minimum capital requirement on any asset would be equal to 8 percent of the risk-weighted asset amount associated with that asset. Therefore, in order to determine the amount of risk-weighted assets to associate with a given minimum capital requirement, it would be necessary to multiply the dollar capital requirement generated by the A–IRB formulas by the reciprocal of 8 percent, or 12.5.

The following subsections of the ANPR detail the specific features of the A–IRB capital formulas for two principal categories of credit exposure: wholesale and retail. Both of these subsections include a proposed definition of the exposure category, a description of the banking organization-estimated inputs required to complete the capital calculations, a description of the specific calculations required to determine the A–IRB capital requirement, and tables depicting a range of representative results.

Wholesale Exposures: Definitions and Inputs

The Agencies propose that a single credit exposure category—wholesale exposures—would encompass most non-retail credit exposures in the A–IRB framework. The wholesale category would include the sub-categories of corporate, sovereign, and interbank exposures as well as all types of specialized lending exposures. Wholesale exposures would include debt obligations of corporations, partnerships, limited liability companies, proprietorships, and special-purpose entities (including those created specifically to finance and/or operate physical assets). Wholesale exposures also would include debt obligations of banks and securities firms (interbank exposures), and debt obligations of central governments, central banks, and certain public-sector entities (sovereign exposures). The wholesale exposure category would not include securitization exposures, or certain small-business exposures that are eligible to be treated as retail exposures.

The Agencies propose that advanced approach banking organizations would use the same A–IRB capital formula to compute capital requirements on all wholesale exposures with two exceptions. First, wholesale exposures to small- and medium-sized enterprises (SMEs) would use a downward adjustment to the wholesale A–IRB capital formula typically based on borrower size. Second, the A–IRB capital formula for HVCRE loans (generally encompassing certain speculative ADC loans) would use a higher asset correlation assumption than other wholesale exposures.

The proposed A–IRB capital framework for wholesale exposures would require banking organizations to assign four key risk inputs for each individual wholesale exposure: (1) Probability of default (PD); (2) loss given default (LGD); (3) exposure at default (EAD); and (4) effective remaining maturity (M). In addition, to use the proposed downward adjustment for wholesale SMEs described in more detail below, banking organizations would be required to provide an additional input for borrower size (S).

Probability of Default

The first principal input to the wholesale A–IRB calculation is the measure of PD. Under the A–IRB approach, a banking organization would assign an internal rating to each of its wholesale obligors (or in other words, assign each wholesale exposure to an internal rating grade applicable to the obligor). The internal rating would have to be produced by a rating system that meets the A–IRB infrastructure requirements and supervisory standards for wholesale exposures, which are intended to ensure (among other things) that the rating system results in a meaningful differentiation of risk among exposures. For each internal rating, the banking organization must associate a specific one-year PD value. Various approaches may be used to develop estimates of PDs; however, regardless of the specific approach, banking organizations would be expected to satisfy the supervisory standards. The minimum PD that may be assigned to most wholesale exposures is 3 basis points (0.03 percent). Certain wholesale exposures are exempt from this floor, including exposures to sovereign governments, their central banks, the BIS, IMF, European Central Bank, and high quality multilateral development banks (MDBs) with strong shareholder support.

The Agencies intend to apply standards to the PD quantification process that are consistent with the broad guidance outlined in the New Accord. More detailed discussion of those points is provided in the draft supervisory guidance on IRB approaches for corporate exposures published elsewhere in today's **Federal Register**.

Loss Given Default

The second principal input to the A–IRB capital formula for wholesale exposures is LGD. Under the A–IRB approach, banking organizations would estimate an LGD for each wholesale exposure. An LGD estimate for a wholesale exposure should provide an assessment of the expected loss in the event of default of the obligor, expressed as a percentage of the institution's estimated total exposure at default. The LGD for a defaulted exposure would be estimated as the expected economic loss rate on that exposure taking into account, where appropriate, recoveries, workout costs, and the time value of money. Banking organizations would estimate LGDs as the loss severities expected to prevail when default rates are high, unless they have information indicating that recoveries on a particular

class of exposure are unlikely to be affected to an appreciable extent by cyclical factors. As with estimates of other A–IRB inputs, banking organizations would be expected to be conservative in assigning LGDs.

Although estimated LGDs should be grounded in historical recovery rates, the A–IRB approach is structured to allow banking organizations to assess the differential impact of various factors, including, for example, the presence of collateral or differences in loan terms and covenants. The Agencies expect to impose limitations on the use of guarantees and credit derivatives in a banking organization's LGD estimates. These limitations are discussed in the separate section of this ANPR on the A–IRB treatment of credit risk mitigation techniques.

Exposure at Default

The third principal input to the wholesale A–IRB capital formula is EAD. The Agencies are proposing that banking organizations would provide their own estimate of EAD for each exposure. The EAD for an exposure would be defined as the amount legally owed to the banking organization (net of any charge-offs) in the event that the borrower defaults on the exposure. For on-balance-sheet items, banking organizations would estimate EAD as no less than the current drawn amount. For off-balance-sheet items, except over-the-counter (OTC) derivative transactions, banking organizations would assign an EAD equal to an estimate of the long-run default-weighted average EAD for similar facilities and borrowers or, if EADs are highly cyclical, the EAD expected to prevail when default rates are high. The EAD associated with OTC derivative transactions would continue to be estimated using the "add-on" approach contained in the general risk-based capital rules.[15] In addition, there would be a specific EAD calculation for the recognition of collateral in the context of repo-style transactions subject to a master netting agreement, the features of which are outlined below in the section on the A–IRB treatment of credit risk mitigation techniques.[16]

[15] Under the add-on approach, an institution would determine its EAD for an OTC derivative contract by adding the current value of the contract (zero if the current value is negative) and an estimate of potential future exposure (PFE) on the contract. The estimated PFE would be equal to the notional amount of the derivative multiplied by a supervisor-provided add-on factor that takes into account the type of instrument and its maturity.

[16] Repo-style transactions include reverse repurchase agreements and repurchase agreements and securities lending and borrowing.

Definition of Default and Loss

A banking organization would estimate inputs relative to the following definition of default and loss. A default is considered to have occurred with respect to a particular borrower when either or both of the following two events has taken place: (1) The banking organization determines that the borrower is unlikely to pay its obligations to the organization in full, without recourse to actions by the organization such as the realization of collateral; or (2) the borrower is more than 90 days past due on principal or interest on *any* material obligation to the organization. The Agencies believe that the use of the concept of "unlikely to pay" is largely consistent with the practice of U.S. banking organizations in assessing whether a loan is on non-accrual status.

Maturity

The fourth principal input to the A–IRB capital formula is effective remaining maturity (M), measured in years. If a wholesale exposure is subject to a determinable cash flow schedule, the banking organization would calculate M as the weighted-average remaining maturity of the expected cash flows, using the amounts of the cash flows as the relevant weights. The banking organization also would be able to use the nominal remaining maturity of the exposure if the weighted-average remaining maturity of the exposure cannot be calculated. For OTC derivatives and repo-style transactions subject to master netting agreements, the institution would set M equal to the weighted-average remaining maturity of the individual transactions, using the notional amounts of the individual transactions as the relevant weights.

In all cases, M would be set no greater than five years and, with few exceptions, M would be set no lower than one year. The exceptions apply to certain transactions that are not part of a banking organization's ongoing financing of a borrower. For wholesale exposures that have an original maturity of less than three months—including repo-style transactions, money market transactions, trade finance-related transactions, and exposures arising from payment and settlement processes—M may be set as low as one day. For OTC derivatives and repo-style transactions subject to a master netting agreement, M would be set at no less than five days.

As with the assignment of PD estimates, the Agencies propose to apply supervisory standards for the estimation of LGD, EAD, and M that are consistent with the broad guidance contained in the New Accord. More detailed discussion of these issues is provided in the draft supervisory guidance on IRB approaches for corporate exposures published elsewhere in today's **Federal Register**.

The Agencies seek comment on the proposed definition of wholesale exposures and on the proposed inputs to the wholesale A–IRB capital formulas. What are views on the proposed definitions of default, PD, LGD, EAD, and M? Are there specific issues with the standards for the quantification of PD, LGD, EAD, or M on which the Agencies should focus?

Wholesale Exposures: Formulas

The calculation of the A–IRB capital requirement for a particular wholesale exposure would be accomplished in three steps:

(1) Calculation of the relevant asset correlation parameter, which would be a function of PD (as well as borrower size (S) for SMEs);

(2) Calculation of a preliminary capital requirement assuming a maturity of one year, which would be a function of PD, LGD, EAD, and the asset correlation parameter calculated in the first step; and

(3) Application of a maturity adjustment for differences between the actual effective remaining maturity of the exposure and the one-year maturity assumption in the second step, where the adjustment would be a function of both PD and M.

These calculations result in the A–IRB capital requirement, expressed in dollars, for a particular wholesale exposure. As noted earlier, this amount would be converted to a risk-weighted assets equivalent by multiplying the amount by 12.5, and the risk-weighted assets equivalent would be included in the denominator of the risk-based capital ratios.

Asset Correlation

The first step in the calculation of the A–IRB capital requirement for a wholesale exposure is the calculation of the asset correlation parameter, which is denoted by the letter "R" in the formulas below. This asset correlation parameter is not a fixed amount; rather, the parameter varies as an inverse function of PD. For all wholesale exposures except HVCRE exposures, the asset correlation parameter approaches an upper bound value of 24 percent for very low PD values and approaches a lower bound value of 12 percent for very high PD values. This reflects the Agencies' view that borrowers with lower credit quality (that is, higher PDs) are likely to be more idiosyncratic in the factors affecting their likelihood of default than borrowers with higher credit quality (lower PDs). Therefore, the higher PD borrowers are proportionately less influenced by systematic (sector-wide or economy-wide) factors common to all borrowers.[17]

An important practical impact of having asset correlation decline with increases in PD is to reduce the speed with which capital requirements increase as PDs increase, and to increase the speed with which EL dominates the total capital charge, thereby tending to reduce procyclicality in the application of the wholesale A–IRB capital formulas. The specific formula for determining the asset correlation parameter for all wholesale exposures except HVCRE exposures is as follows:

$$R = 0.12 * (1 - EXP(-50 * PD)) + 0.24 * [1 - (1 - EXP(-50 * PD))]$$

Where:

R denotes asset correlation;
EXP(x) denotes the natural exponential function; and
PD denotes probability of default.

[17] See Jose Lopez, "The Empirical Relationship between Average Asset Correlation, Firm Probability of Default, and Asset Size." Federal Reserve Bank of San Francisco Working Paper 02–05 (June 2002).

Capital Requirement With Assumed One-Year Maturity Adjustment

The second step in the calculation of the A–IRB capital requirement for a particular wholesale exposure is the calculation of the capital requirement that would apply to the exposure assuming a one-year effective remaining maturity. The specific formula to calculate this one-year-maturity capital requirement is as follows:

$$K_1 = EAD * LGD * N[(1 - R)\wedge -0.5 * G(PD) + (R/(1 - R))\wedge 0.5 * G(0.999)]$$

Where:

K_1 denotes the one-year-maturity capital requirement;
EAD denotes exposure at default;
LGD denotes loss given default;
N(x) denotes the standard normal cumulative distribution function;
R denotes asset correlation;
G(x) denotes the inverse of the standard normal cumulative distribution function; and [18]
PD denotes probability of default.

There are several important aspects of this formula. First, it rises in a straight-line fashion with increases in EAD, meaning that a doubling of the exposure amount would result in a doubling of the capital requirement. It also rises in a straight-line fashion with increases in LGD, which similarly implies that a loan with an LGD estimate twice that of an otherwise identical loan would have twice the capital requirement of the other loan. This also implies that as LGD or EAD estimates approach zero, the capital requirement would likewise approach zero. The remainder of the formula is a function of PD, asset correlation (R), which is itself a function of PD, and the target loss percentile amount of 99.9 percent discussed earlier.

Maturity Adjustment

The third stage in the calculation of the A–IRB capital requirement for a particular wholesale exposure is the application of a maturity adjustment to reflect the exposure's actual effective remaining maturity (M). The A–IRB maturity adjustment multiplies the one-year-maturity capital requirement (K_1) by a factor that depends on both M and PD. The fact that the A–IRB maturity adjustment depends on PD reflects the Agencies' view that there is a greater proportional need for maturity adjustments for high-quality exposures (those with low PDs) because there is a greater potential for such exposures to deteriorate in credit quality than for exposures whose credit quality is lower. The specific formula for applying the maturity adjustment and generating the A–IRB capital requirement is as follows:

$$K = K_1 * [1 + (M - 2.5) * b]/[(1 - 1.5 * b)], \text{ where } b = (0.08451 - 0.05898 * LN(PD))^2$$

and:

K denotes the A–IRB capital requirement;
K_1 denotes the one-year-maturity capital requirement;
M denotes effective remaining maturity;
LN(x) denotes the natural logarithm; and
PD denotes probability of default.

In this formula, the value "b" effectively determines the slope of the maturity adjustment and is itself a function of PD. Note that if M is set equal to one, the maturity adjustment also equals one and K will therefore equal K_1.

To provide a more concrete sense of the range of capital requirements under the wholesale A–IRB framework, the following table presents the A–IRB capital requirements (K) for a range of values of both PD and M. In this table LGD is assumed to equal 45 percent. For comparison purposes, the general risk-based capital rules assign a capital requirement of 8 percent for most commercial loans.

CAPITAL REQUIREMENTS
[In percentage points]

PD	Effective remaining maturity (M)			
	1 month	1 year	3 years	5 years
0.05 percent	0.50	0.92	1.83	2.74
0.10 percent	1.00	1.54	2.71	3.88
0.25 percent	2.17	2.89	4.44	5.99
0.50 percent	3.57	4.40	6.21	8.03
1.00 percent	5.41	6.31	8.29	10.27
2.00 percent	7.65	8.56	10.56	12.56
5.00 percent	11.91	12.80	14.75	16.69
10.00 percent	17.67	18.56	20.50	22.45
20.00 percent	26.01	26.84	28.65	30.47

The impact of the A–IRB capital formulas on minimum risk-based capital requirements for wholesale exposures would, of course, depend on the actual values of PD, LGD, EAD, and M that banking organizations would use as inputs to the wholesale formulas. Subject to the caveats noted earlier, evidence from QIS3 suggested an average reduction in credit risk capital requirements for corporate exposures of about 26 percent for twenty large U.S. banking organizations.

[18] The N(x) and G(x) functions are widely used in statistics and are commonly available in computer spreadsheet programs. A description of these functions may be found in the Help function of most spreadsheet programs or in basic statistical textbooks.

SME Adjustment

For loans to SMEs not eligible for retail A–IRB treatment, the proposed calculation of the A–IRB capital requirement has one additional element—a downward adjustment based on borrower size (S). This adjustment would effectively lower the A–IRB capital requirement on wholesale exposures to SMEs with annual sales (or total assets) of less than $50 million. The Agencies believe the measure of borrower size should be based on annual sales (rather than total assets), unless the banking organization can demonstrate that it would be more appropriate for the banking organization to use the total assets of the borrower as its measure of borrower size. The borrower size adjustment would be made to the asset correlation parameter (R), as shown in the following formula:

$$R_{SME} = R - 0.04 * [1 - (S - 5)/45]$$

Where

R_{SME} denotes the size-adjusted asset correlation;

R denotes asset correlation; and

S denotes borrower size (expressed in millions of dollars).

The maximum reduction in the asset correlation parameter based on this formula is 4 percent, and is achieved when borrower size is $5 million. For all borrower sizes below $5 million, borrower size would be set equal to $5 million. The adjustment shrinks to zero as borrower size approaches $50 million. The broad rationale for this adjustment is the view that the credit condition of SMEs will be influenced relatively more by idiosyncratic factors than is the case for larger firms, and, thus, SMEs would be less likely to deteriorate simultaneously with other exposures. This greater susceptibility to idiosyncratic factors would imply lower asset correlation. The evidence in favor of this view is mixed, particularly after considering that the A–IRB framework already incorporates a negative relationship between asset correlation and PD. The following table illustrates the practical effect of the SME adjustment by depicting the capital requirements (K) across a range of PDs and borrower sizes. As in the previous table, LGD is assumed to equal 45 percent. For this table, M is assumed to be equal to three years. Note that the last column is identical to the three-year maturity column in the preceding table because the SME adjustment is phased out for borrowers of $50 million or more in size.

CAPITAL REQUIREMENTS
[In percentage points]

PD	Borrower size (S)			
	$5 million	$20 million	$35 million	≥ $50 million
0.05 percent	1.44	1.57	1.70	1.83
0.10 percent	2.14	2.33	2.51	2.71
0.25 percent	3.54	3.83	4.13	4.44
0.50 percent	4.97	5.37	5.79	6.21
1.00 percent	6.63	7.17	7.72	8.29
2.00 percent	8.40	9.11	9.83	10.56
5.00 percent	11.70	12.73	13.74	14.75
10.00 percent	16.76	18.05	19.30	20.50
20.00 percent	24.67	26.08	27.40	28.65

Subject to the caveats mentioned above, evidence from QIS3 suggested an average reduction in credit risk-based capital requirements for corporate SME exposures of about 39 percent for twenty large U.S. banking organizations.

If the Agencies include a SME adjustment, are the $50 million threshold and the proposed approach to measurement of borrower size appropriate? What standards should be applied to the borrower size measurement (for example, frequency of measurement, use of size buckets rather than precise measurements)?

Does the proposed borrower size adjustment add a meaningful element of risk sensitivity sufficient to balance the costs associated with its computation? The Agencies are interested in comments on whether it is necessary to include an SME adjustment in the A–IRB approach. Data supporting views is encouraged.

Wholesale Exposures: Other Considerations

Specialized Lending

The specialized lending (SL) asset class encompasses exposures for which the primary source of repayment is the income generated by the specific asset(s) being financed, rather than the financial capacity of a broader commercial enterprise. The SL category encompasses four broad exposure types:

- *Project finance* (PF) exposures finance large, complex, expensive installations that produce goods or services for sale, such as power plants, chemical processing plants, mines, or transportation infrastructure, where the source of repayment is primarily the revenues generated by sale of the goods or services by the installations.
- *Object finance* (OF) exposures finance the acquisition of (typically moveable) physical assets, such as ships or aircraft, where the source of repayment is primarily the revenues generated by the assets being financed, often through rental or lease contracts with third parties.
- *Commodities finance* (CF) exposures are structured short-term financings of reserves, inventories, or receivables of exchange-traded commodities, such as crude oil, metals, or agricultural commodities, where the source of repayment is the proceeds of the sale of the commodity.
- *Commercial real estate* (CRE) exposures finance the construction or acquisition of real estate (including land as well as improvements) where the prospects for repayment and recovery depend primarily on the cash flows generated by the lease, rental, or sale of the real estate.[19] The broad CRE category is further divided into two groups: low-asset-correlation CRE and HVCRE.[20]

Most of the issues raised below for comment are described in substantially greater detail, in the context of CRE exposures, in a white paper entitled "Loss Characteristics of CRE Loan Portfolios," released by the Federal Reserve Board on June 10, 2003. Commenters are encouraged to read the white paper in conjunction with this section.

A defining characteristic of SL exposures (including CRE) is that the risk factors influencing actual default rates are likely to influence LGDs as well. This is because both the borrower's ability to repay an exposure *and* the banking organization's recovery on an exposure in the event of default are likely to depend on the same underlying factors, such as the net cash flows of the property being financed.

[19] CRE exposures are typically non-recourse exposures, often to special purpose vehicles, and are distinguishable from corporate exposures that are collateralized by real estate for which the prospects for repayment and recovery depend primarily on the financial performance of the broader commercial enterprise that is the obligor.

[20] To describe a loan portfolio as having a relatively high asset correlation means that any defaults that occur in that portfolio are relatively likely to occur at the same time, and for this reason the portfolio is likely to exhibit greater variability in aggregate default rates. For two portfolios with the same EL, the portfolio with more highly variable aggregate default rates warrants higher capital to cover UL ("bad-tail-events") with the same level of confidence. Describing a portfolio as having a relatively high asset correlation does *not* imply that loans in that portfolio have relatively high PD, LGD, or EL. In particular, loans in high asset correlation portfolios may well have very low PDs and LGDs and therefore ELs); conversely, loans in low asset correlation portfolios may have very high PDs and LGDs (and ELs). For any two loans from a portfolio with a given asset correlation (or from two different portfolios with the same asset correlation), the loan with the lower EL should be assigned a lower risk weight. For any two loans with the same EL, the loan from the portfolio with the lower asset correlation should incur a lower capital charge, because bad-tail events are less likely to occur in that portfolio.

This suggests a positive correlation between observed default frequencies and observed loss rates on defaulted loans, with both declining during periods of favorable economic conditions and both increasing during unfavorable economic periods. While cyclicality in LGDs may be significant for a number of lending activities, the Agencies believe that cyclicality is likely to be the norm for SL portfolios, and that a banking organization's procedures for estimating LGD inputs for SL exposures should assess and quantify this cyclicality in a comprehensive and systematic fashion.

The Agencies invite comment on ways to deal with cyclicality in LGDs. How can risk sensitivity be achieved without creating undue burden?

For core and opt-in banks that may not be able to provide sufficiently reliable estimates of PD, LGD, and M for each SL exposure, the New Accord offers a Supervisory Slotting Criteria (SSC) approach. Under this approach, rather than estimating the loan-level risk parameters, banking organizations would use slotting criteria to map their internal risk rating grades to one of five supervisory rating grades: Strong, Good, Satisfactory, Weak, and Default. In addition, supervisory risk weights would be assigned to each of these supervisory rating grades. To assist banking organizations in implementing these supervisory rating grades, for reference purposes the New Accord associates each with an explicit range of external rating grades. If the SSC approach were allowed in the United States, the Agencies would have to develop slotting criteria that would take into account factors such as market conditions; financial ratios such as debt service coverage or loan-to-value ratios; cash flow predictability; strength of sponsor or developer; and other factors likely to affect the PD and/or LGD of each loan.

The Agencies invite comment on the merits of the SSC approach in the United States. The Agencies also invite comment on the specific slotting criteria and associated risk weights that should be used by organizations to map their internal rating grades to supervisory rating grades if the SSC approach were to be adopted in the United States.

Under the A–IRB approach, a banking organization would estimate the risk inputs for each SL exposure and then calculate the A–IRB capital charge for the exposure by substituting the estimated PD, LGD, EAD, and M into one of two risk weight functions. The first risk weight function is the wholesale risk weight function and applies to all PF, OF, and CF exposures, as well as to all low-asset-correlation CRE exposures (including in-place commercial properties). The second risk weight function applies to all HVCRE exposures. It also is the same as the wholesale risk weight function, except that it incorporates a higher asset correlation parameter. The asset correlation equation for HVCRE is as follows:

$$R = 0.12 \times (1 - EXP(-50 \times PD)) + 0.30 \times [EXP(-50 \times PD)]$$

Where

R denotes asset correlation;

EXP denotes the natural exponential function; and

PD denotes probability of default.

The following table presents the A–IRB capital requirement (K) for a range of values of both PD and M. In this table, LGD is assumed to equal 45 percent. This LGD is used for consistency with the similar table above for wholesale exposures and should not be construed as an indication that 45 percent is a typical LGD for HVCRE exposures.

HVCRE CAPITAL REQUIREMENTS
[In percentage points]

PD	Effective remaining maturity		
	1 year	3 years	5 years
0.05 percent	1.24	2.46	3.68
0.10 percent	2.05	3.61	5.16
0.25 percent	3.74	5.76	7.77
0.50 percent	5.52	7.79	10.07
1.00 percent	7.53	9.89	12.25
2.00 percent	9.55	11.79	14.02
5.00 percent	13.12	15.12	17.11
10.00 percent	18.59	20.54	22.49
20.00 percent	26.84	28.65	30.47

All ADC loans would be treated as HVCRE exposures, unless the borrower has "substantial equity" at risk or the property is pre-sold or sufficiently pre-leased. In part, this reflects some empirical evidence suggesting that most ADC loans have relatively high asset correlations. It also, however, reflects a longstanding supervisory concern that CRE lending to finance speculative construction and development is vulnerable to, and may worsen, speculative swings in CRE markets, especially when there is little borrower equity at risk. Such lending was a major factor causing the stress experienced by many banks in the early 1990s, not only in the United States but in other countries as well.

Under the New Accord, SL loans financing the construction of one- to four-family residential properties (single or in subdivisions) are included with other ADC loans in the high asset correlation category. However, loans financing the construction of pre-sold one- to four-family residential properties would be eligible to be treated as low-asset-correlation CRE exposures. In some cases the loans may finance the construction of subdivisions or other groups of houses, some of which are pre-sold while others are not.

Under the New Accord, each national supervisory authority is directed to recognize and incorporate into its implementation of the New Accord the high asset correlation determinations of other national supervisory authorities for loans made in their respective jurisdictions. Thus, when the Agencies designate certain CRE properties as HVCRE, foreign banking organizations making extensions of credit to those properties also would be expected to treat them as HVCRE. Similarly, when non-U.S. supervisory authorities designate certain CRE as HVCRE, U.S. banking organizations that extend credit to those properties would be expected to treat them as HVCRE.

The Agencies invite the submission of empirical evidence regarding the (relative or absolute) asset correlations characterizing portfolios of ADC loans, as well as comments regarding the circumstances under which such loans would appropriately be categorized as HVCRE.

The Agencies also invite comment on the appropriateness of exempting from the high-asset-correlation category ADC loans with substantial equity or that are pre-sold or sufficiently pre-leased. The Agencies invite comment on what standard should be used in determining whether a property is sufficiently pre-leased when prevailing occupancy rates are unusually low.

The Agencies invite comment on whether high-asset-correlation treatment for one- to four-family residential construction loans is appropriate, or whether they should be included in the low-asset-correlation category. In cases where loans finance the construction of a subdivision or other group of houses, some of which are pre-sold while others are not, the Agencies invite comment regarding how the "pre-sold" exception should be interpreted.

The Agencies invite comment on the competitive impact of treating defined classes of CRE differently. What are commenters' views on an alternative approach where there is only one risk weight function for all CRE? If a single risk weight function for all CRE is considered, what would be the appropriate asset correlation to employ?

Lease Financings

Under the wholesale A–IRB framework, some lease financings require special consideration. A distinction is made for leases that expose the lessor to residual value risk, namely the risk of the fair value of the assets declining below the banking organization's estimate of residual risk at lease inception. If a banking organization has exposure to residual value risk, it would assign a 100 percent risk weight to the residual value amount and determine a risk-weighted asset equivalent for the lease's remaining net investment (net of residual value amount) using the same methodology as for any other wholesale exposure. The sum of these components would be the risk-weighted asset amount for a particular lease. Where a banking organization does not have exposure to residual value risk, the lease's net investment would be subject to a capital charge using the same methodology applied to any other wholesale exposure.

This approach would be used regardless of accounting classification as a direct finance, operating or leveraged lease. For leveraged leases, when the banking organization is the equity participant it would net the balance of the non-recourse debt against the discounted lease payment stream prior to applying the risk weight. If the banking organization is the debt participant, the exposure would be treated as any other wholesale exposure.

The Agencies are seeking comment on the wholesale A–IRB capital formulas and the resulting capital requirements. Would this approach provide a meaningful and appropriate increase in risk sensitivity in the sense that the results are consistent with alternative assessments of the credit risks associated with such exposures or the capital needed to support them? If not, where are there material inconsistencies?

Does the proposed A–IRB maturity adjustment appropriately address the risk differences between loans with differing maturities?

Retail Exposures: Definitions and Inputs

The second major exposure category in the A–IRB framework is the retail exposure category. This category encompasses the vast majority of credit exposures to individual consumers. The Agencies also are considering whether certain SME exposures should be eligible for retail A–IRB treatment. The retail exposure category has three distinct sub-categories: (1) Residential mortgages (and related exposures); (2) qualifying revolving exposures (QREs); and (3) other retail exposures. There are separate A–IRB capital formulas for each of these three sub-categories to reflect different levels of associated risk.

The Agencies propose that the residential mortgage exposure sub-category be defined to include loans secured by first or subsequent liens on one-to four-family residential properties, including term loans and revolving lines of credit secured by home equity. There would be no upper limit on the size of the exposure that could be included in the residential mortgage exposure sub-category, but the borrower would have to be an individual and the banking organization should generally manage the exposure as part of a pool of similar exposures. Residential mortgage exposures that are individually internally rated and managed similarly to commercial exposures, rather than managed and internally rated as pools, would be treated under the wholesale A–IRB framework.

The second sub-category of retail exposures is qualifying revolving exposures (QREs). The Agencies propose to define QREs as exposures to individuals that are revolving, unsecured, uncommitted, less than $100,000, and managed as part of a pool of similar exposures. In practice, QREs will include primarily exposures where customers' outstanding borrowings are permitted to fluctuate based on their own decisions to borrow and repay, up to a limit established by the banking organization. Most credit card exposures to individuals and overdraft lines on individual checking accounts would be QREs.

The third sub-category of retail exposures, other retail exposures, includes two types of exposures. First, it encompasses all exposures to individuals for non-business purposes that are generally managed as part of a pool of similar exposures and that do not meet the conditions for inclusion in the first two sub-categories of retail exposures. The Agencies are not proposing to establish a fixed upper limit on the size of exposures to individuals that are eligible for the other retail treatment. In addition, the Agencies are proposing that the other retail sub-category include certain SME exposures that are managed on a pool basis similar to retail exposures. These exposures could be to a company or to an individual. The Agencies are considering an individual borrower exposure threshold of $1 million for such exposures. For the purpose of assessing compliance with the individual borrower exposure threshold, the banking organization would aggregate all exposures to a particular borrower on a fully consolidated basis. Credit card accounts with balances between $100,000 and $1 million would be considered other retail exposures rather than QRE, even if the accounts are extended to or guaranteed by an individual and used exclusively for small business purposes.

The Agencies are interested in comment on whether the proposed $1 million threshold provides the appropriate dividing line between those SME exposures that banking organizations should be allowed to treat on a pooled basis under the retail A–IRB framework and those SME exposures that should be rated individually and treated under the wholesale A–IRB framework.

One of the most significant differences between the wholesale and retail A–IRB categories is that the risk inputs for retail exposures do not have to be assigned at the level of an individual exposure. The Agencies recognize that banking organizations typically manage retail exposures on a portfolio or pool basis, where each portfolio or pool contains exposures with similar risk characteristics. Therefore, a key characteristic of the retail A–IRB framework is that the risk inputs for retail exposures would be assigned to portfolios or pools of exposures rather than to individual exposures.

It is important to highlight that within each of the three sub-categories of retail exposures, the retail A–IRB framework is intended to provide banking organizations with substantial flexibility to use the retail portfolio segmentation that they believe is most appropriate for their activities. In determining how to group their retail exposures within each sub-category into portfolio segments for the purpose of assigning A–IRB risk inputs, the Agencies believe that banking organizations should use a segmentation approach that is consistent with their approach for internal risk assessment purposes and that classifies exposures according to predominant risk characteristics.

As general principles for segmentation, banking organizations should group exposures in each of the three retail sub-categories into portfolios or pools according to the sub-category's principal risk drivers, and would have to be able to demonstrate that the resultant segmentation effectively differentiates and rank orders risk and provides reasonably accurate and consistent quantitative estimates of PD, LGD, and EAD. With the exceptions noted below, the Agencies are not proposing that institutions must consider any particular risk drivers or employ any minimum number of portfolios or pools in any of the three retail sub-categories. The only specific limitations that the Agencies would propose in regard to the portfolio segmentation of retail exposures are (1) banking organizations generally would not be permitted to combine retail exposures from multiple countries into the same portfolio segment (because of differences in national legal systems and bankruptcy regimes), and (2) banking organizations would need to separately segment delinquent retail exposures.

The inputs to the retail A–IRB capital formulas differ slightly from the inputs to the wholesale A–IRB capital formulas. Measures of PD, LGD, and EAD remain important elements, but there is no M input to the retail A–IRB capital formulas. Rather, the retail A–IRB capital formulas implicitly incorporate average maturity effects in general, such as in the residential mortgage sub-category.

Aside from the applicable definition of default, discussed below, the definitions of PD, LGD, and EAD for retail exposures are generally equivalent to those for wholesale exposures. One additional element of potential flexibility for banking organizations in the retail context needs to be highlighted. The Agencies recognize that certain banking organizations that may qualify for the advanced approaches segment their retail portfolios for management purposes by EL, rather than by separately measuring PD and LGD, as required under the A–IRB framework. Therefore, the Agencies propose that banking organizations be permitted substantial flexibility in translating measures of EL into the requisite PD and LGD inputs. For non-revolving portfolio segments, EL generally would equal the product of PD and LGD, so that if a banking organization has an estimate of EL and either PD or LGD, it would be able to infer an estimate of the other required input.

In addition, the Agencies are proposing that if one or the other of PD and LGD did not tend to vary significantly across portfolio segments, the banking organization would be permitted to apply a general estimate of that input to multiple segments and to use that general estimate, together with segment-specific estimates of EL, to infer segment-specific estimates of the other required input. The Agencies note, however, that this proposal offers substantial flexibility to institutions and may, in fact, be overly flexible (for example, because LGDs on residential mortgages tend to be quite cyclical). For these loans, the above method of inferring PDs or LGDs from a long-run average EL would not necessarily result in PD being estimated as a long-run average, and LGD would not necessarily reflect the loss rate expected to prevail when default rates are high. Banking organizations using an EL approach to retail portfolio segmentation would have to ensure that the A–IRB capital requirement under this method is at least as conservative as a PD/LGD method in order to minimize any potential divergences between capital requirements computed under the PD/LGD approach versus an EL approach.

As in the wholesale A–IRB framework, a floor of 3 basis points (0.03 percent) applies to the PD estimates for all retail exposures (that is, the minimum PD is 3 basis points). In addition, for residential mortgage exposures other than those guaranteed by a sovereign government, a floor of 10 percent on the LGD estimate would apply, based on the view that LGDs during periods of high default rates are unlikely to fall below this level if measured appropriately. Along with the overall monitoring of the implementation of the advanced approaches and the determination whether to generally relax the floors established during the initial implementation phases (that is, the 90 and 80 percent floors discussed above), the Agencies intend to review the need to retain PD and LGD floors for retail exposures following the first two years of implementation of the A–IRB framework.

The Agencies are proposing the following data requirements for retail A–IRB. Banking organizations would have to have a minimum of five years of data history for PD, LGD, and EAD, and preferably longer periods so as to include a complete economic cycle. Banking organizations would not have to give equal weight to all historical factors if they can demonstrate that the more recent data are better predictors of the risk inputs. Also, banking organizations would have to have a minimum of three years of experience with their portfolio segmentation and risk management systems.

Definition of Default and Loss

The retail definition of default and loss being proposed by the Agencies differs significantly from that proposed for the wholesale portfolio. Specifically, the Agencies propose to use the definitions of loss recognition embodied in the Federal Financial Institutions Examination Council (FFIEC) Uniform Retail Credit Classification and Account Management Policy.[21] All residential mortgages and all revolving credits would be charged off, or charged down to the value of the property, after a maximum of 180 days past due; other credits would be charged off after a maximum of 120 days past due.

In addition, the Agencies are proposing to define a retail default to include the occurrence of any one of the three following events if it occurs prior to the respective 120- or 180-day FFIEC policy trigger: (1) A full or partial charge-off resulting from a significant decline in credit quality of the exposure; (2) a distressed restructuring or workout involving forbearance and loan modification; or (3) a notification that the obligor has sought or been placed in bankruptcy. Finally, for retail exposures (as opposed to wholesale exposures) the definition of default may be applied to a particular facility, rather than to the obligor. That is, default on one obligation would not require a banking organization to treat all other obligations of the same obligor as defaulted.

Undrawn Lines

The treatment of undrawn lines of credit, in particular those associated with credit cards, merits specific discussion. Banking organizations would be permitted to incorporate undrawn retail lines in one of two ways. First, banking organizations could

[21] The FFIEC Uniform Retail Credit Classification and Account Management Policy was issued on June 12, 2000. It is available on the FFIEC Web site at *www.FFIEC.gov*.

incorporate them into their EAD estimates directly, by assessing the likelihood that undrawn balances would be drawn at the time of an event of default. Second, banking organizations could incorporate them into LGD estimates by assessing the size of potential losses in default (including those arising from both currently drawn and undrawn balances) as a proportion of the current drawn balance. In the latter case, it is possible that the relevant LGD estimates would exceed 100 percent. While the proposed EAD approach for undrawn wholesale and retail lines is the same, the Agencies are aware that the sheer volume of credit card undrawn lines and the ratio of undrawn lines to outstanding balances create issues for undrawn retail lines that differ from undrawn wholesale lines not only in degree but also in kind.

An additional issue arises in connection with the undrawn lines associated with credit card accounts whose drawn balances (but not undrawn balances) have been securitized. To the extent that banking organizations remain exposed to the risk that such undrawn lines will be drawn, but such undrawn lines are not themselves securitized, then there is a need for institutions to hold regulatory capital against such undrawn lines. The Agencies propose that a banking organization would be required to hold capital against the full amount of any undrawn lines regardless of whether drawn amounts are securitized. This presumes that the institution itself is exposed to the credit risk associated with future draws.

The Agencies are interested in comments and specific proposals concerning methods for incorporating undrawn credit card lines that are consistent with the risk characteristics and loss and default histories of this line of business.

The Agencies are interested in further information on market practices in this regard, in particular the extent to which banking organizations remain exposed to risks associated with such accounts. More broadly, the Agencies recognize that undrawn credit card lines are significant in both of the contexts discussed above, and are particularly interested in views on the appropriate retail A–IRB treatment of such exposures.

Future Margin Income

In the New Accord, the retail A–IRB treatment of QREs includes a unique additional input that arises because of the large amount of expected losses typically associated with QREs. As noted above, the A–IRB approach would require banking organizations to hold regulatory capital against both EL and UL. Banking organizations typically seek to cover expected losses through interest income and fees for all of their business activities, and the Agencies recognize that this practice is a particularly important aspect of the business model for QREs.

The Agencies are including in this proposal, for the QRE sub-category only, that future margin income (FMI) be permitted to offset a portion of the A–IRB retail capital charge relating to EL. For this purpose, the Agencies propose to define the amount of eligible FMI for the QRE sub-category as the amount of income anticipated to be generated by the relevant exposures over the next twelve months that can reasonably be assumed to be available to cover potential credit losses on the exposures after covering expected business expenses, and after subtracting a cushion to account for potential volatility in credit losses (UL). FMI would not be permitted to include anticipated income from new accounts and would have to incorporate assumptions about income from existing accounts that are in line with the banking organization's historical experience. The amount of the cushion to account for potential volatility in credit losses would be set equal to two standard deviations of the banking organization's annualized loss rate on the exposures. The Agencies would expect banking organizations to be able to support their estimates of eligible FMI on the basis of historical data and would disallow the use of FMI in the QRE capital formula if this is not the case. The step needed to recognize eligible FMI is discussed below.

Permitting a FMI offset to the A–IRB capital requirement for QREs could have a significant impact on the level of minimum regulatory capital at institutions adopting the advanced approaches. The Agencies would need to fully assess and analyze the impact of such an FMI offset on institutions' risk-based capital ratios prior to final implementation of the A–IRB approach. Furthermore, the Agencies anticipate the need to issue additional guidance setting out more specific expectations in this regard.

For the QRE sub-category of retail exposures only, the Agencies are seeking comment on whether or not to allow banking organizations to offset a portion of the A–IRB capital requirement relating to EL by demonstrating that their anticipated FMI for this sub-category is likely to more than sufficiently cover EL over the next year.

The Agencies are seeking comment on the proposed definitions of the retail A–IRB exposure category and sub-categories. Do the proposed categories provide a reasonable balance between the need for differential treatment to achieve risk-sensitivity and the desire to avoid excessive complexity in the retail A–IRB framework? What are views on the proposed approach to inclusion of SMEs in the other retail category?

The Agencies are also seeking views on the proposed approach to defining the risk inputs for the retail A–IRB framework. Is the proposed degree of flexibility in their calculation, including the application of specific floors, appropriate? What are views on the issues associated with undrawn retail lines of credit described here and on the proposed incorporation of FMI in the QRE capital determination process?

The Agencies are seeking comment on the minimum time requirements for data history and experience with portfolio segmentation and risk management systems: Are these time requirements appropriate during the transition period? Describe any reasons for not being able to meet the time requirements.

Retail Exposures: Formulas

The retail A–IRB capital formulas are very similar to the wholesale A–IRB formulas, and are based on the same underlying concepts. However, because there is no M adjustment associated with the retail A–IRB framework, the retail A–IRB capital calculations generally involve fewer steps than the wholesale A–IRB capital calculations. As with the wholesale A–IRB framework, the output of the retail A–IRB formulas is a minimum capital requirement, expressed in dollars, for the relevant pool of exposures. The capital requirement would be converted into an equivalent amount of risk-weighted assets by multiplying the capital requirement by 12.5. The two key steps in implementing the retail A–IRB capital formulas are (1) assessing the relevant asset correlation parameter, and (2) calculating the minimum capital requirement for the relevant pool of exposures.

Residential Mortgages and Related Exposures

For residential mortgage and related exposures, the retail A–IRB capital formula requires only one step. This is because the asset correlation parameter for such exposures is fixed at 15 percent, regardless of the PD of any particular pool of exposures. The fixed asset correlation parameter reflects the Agencies' view that the arguments for linking the asset correlation to PD, as occurs in the wholesale A–IRB framework and in the other two sub-categories of retail exposures, are not as relevant for residential mortgage-related exposures, whose performance is significantly influenced by broader trends in the housing market for borrowers of all credit qualities. The assumed asset correlation of 15 percent also seeks implicitly to reflect the higher average maturity associated with residential mortgage exposures and is therefore higher than would likely be the case if a specific maturity adjustment were also included in the retail A–IRB framework. The proposed retail A–IRB capital formula for residential mortgage and related exposures is as follows:

$$K = EAD * LGD * N[1.08465 * G(PD) + 0.4201 * G(0.999)]$$

Where

K denotes the capital requirement;
EAD denotes exposure at default;
LGD denotes loss given default;
N(x) denotes the standard normal cumulative distribution function;
G(x) denotes the inverse of the standard normal cumulative distribution function; and
PD denotes probability of default.

The following table depicts a range of representative capital requirements (K) for residential mortgage and related exposures based on this formula. Three different illustrative LGD assumptions are shown: 15 percent, 35 percent, and 55 percent. For comparison purposes, the current capital requirement on most first mortgage loans is 4 percent and on most home equity loans is 8 percent.

CAPITAL REQUIREMENTS

[In percentage points]

PD	LGD		
	15 percent	35 percent	55 percent
0.05 percent	0.17	0.41	0.64
0.10 percent	0.30	0.70	1.10
0.25 percent	0.61	1.41	2.22
0.50 percent	1.01	2.36	3.70
1.00 percent	1.65	3.86	6.06
2.00 percent	2.64	6.17	9.70
5.00 percent	4.70	10.97	17.24
10.00 percent	6.95	16.22	25.49
20.00 percent	9.75	22.75	35.75

Subject to the caveats noted earlier, evidence from QIS3 suggested that advanced approach banking organizations would experience a reduction in credit risk capital requirements for residential mortgage exposures of about 56 percent.

Private Mortgage Insurance

The Agencies wish to highlight one issue associated with the A–IRB capital requirements for the residential mortgage sub-category relating to the treatment of private mortgage insurance (PMI). Most PMI arrangements effectively provide partial compensation to the banking organization in the event of a mortgage default. Accordingly, the Agencies consider that it may be appropriate for banking organizations to recognize such effects in the LGD estimates for individual mortgage portfolio segments, consistent with the historical loss experience on those segments during periods of high default rates. Such an approach would avoid requiring banking organizations to quantify specifically the effect of PMI on a loan-by-loan basis; rather, they could estimate the effect of PMI on an average basis for each segment. This approach effectively ignores the risk that the mortgage insurers themselves could default.

The Agencies seek comment on the competitive implications of allowing PMI recognition for banking organizations using the A–IRB approach but not allowing such recognition for general banks. In addition, the Agencies are interested in data on the relationship between PMI and LGD to help assess whether it may be appropriate to exclude residential mortgages covered by PMI from the proposed 10 percent LGD floor. The Agencies request comment on whether or the extent to which it might be appropriate to recognize PMI in LGD estimates.

More broadly, the Agencies are interested in information regarding the risks of each major type of residential mortgage exposure, including prime first mortgages, sub-prime mortgages, home equity term loans, and home equity lines of credit. The Agencies are aware of various views on the resulting capital requirements for several of these product areas, and wish to ensure that all appropriate evidence and views are considered in evaluating the A–IRB treatment of these important exposures.

The risk-based capital requirements for credit risk of prime mortgages could well be less than one percent of their face value under this proposal. The Agencies are interested in evidence on the capital required by private market participants to hold mortgages outside of the federally insured institution and GSE environment. The Agencies also are interested in views on whether the reductions in mortgage capital requirements on mortgage loans contemplated here would unduly extend the federal safety net and risk contributing to a credit-induced bubble in housing prices. In addition, the Agencies are also interested in views on whether there has been any shortage of mortgage credit under the general risk-based capital rules that would be alleviated by the proposed changes.

Qualifying Revolving Exposures

The second sub-category of retail exposures is QREs. The calculation of A–IRB capital requirements for QREs would require three steps: (1) Calculation of the relevant asset correlation parameter, (2) calculation of the minimum capital requirement assuming no offset for eligible FMI, and (3) application of the offset for eligible FMI. These steps would be performed for each QRE portfolio segment individually:

As in the case of wholesale exposures, it is assumed that the asset correlation for QREs declines as PD rises. This reflects the view that pools of borrowers with lower credit quality (higher PD) are less likely to experience simultaneous defaults than pools of higher credit quality (lower PD) borrowers, because with higher PD borrowers defaults are more likely to result from borrower-specific or idiosyncratic factors. In the case of QREs, the asset correlation approaches an upper bound value of 11 percent for very low PD values and approaches a lower bound value of 2 percent for very high PD values. The specific formula for determining the asset correlation parameter for QREs is as follows:

$$R = 0.02 * (1-EXP(-50 * PD)) + 0.11 * [1-(1-EXP(-50 * PD))]$$

Where

R denotes asset correlation;
EXP denotes the natural exponential function; and
PD denotes probability of default.

The second step in the A–IRB capital calculation for QREs would be the calculation of the capital requirement assuming no FMI offset. The specific formula to calculate this amount is as follows:

$K_{No\ FMI} = EAD * LGD * N[(1-R)\wedge -0.5 * G(PD) + (R/(1-R))\wedge 0.5 * G(0.999)]$

Where

$K_{No\ FMI}$ denotes the capital requirement assuming no FMI offset;
EAD denotes exposure at default;
LGD denotes loss given default;
N(x) denotes the standard normal cumulative distribution function;
R denotes asset correlation;
G(x) denotes the inverse of the standard normal cumulative distribution function; and
PD denotes probability of default.

Future Margin Income Adjustment

The result of this calculation effectively includes both an EL and a UL component. As already discussed, for QREs only, the Agencies are considering the possibility of allowing institutions to offset a portion of the EL portion of the capital requirement using eligible FMI. Up to 75 percent of the EL portion of the capital requirement could potentially be offset in this fashion. The specific calculation for determining the capital requirement (K) after application of the potential offset for eligible FMI is as follows.

$K = K_{No\ FMI}$ − eligible FMI offset

Where

K denotes the capital requirement after application of an offset for eligible FMI;
$K_{No\ FMI}$ denotes the capital requirement assuming no FMI offset;
Eligible FMI offset equals:
0.75 * EL if estimated FMI equals or exceeds the expected 12-month loss amount plus two standard deviations of the annualized loss rate, or zero otherwise;
EL denotes expected loss (EL = EAD * PD * LGD);
FMI denotes future margin income;
EAD denotes exposure at default;
PD denotes probability of default; and
LGD denotes loss given default.

If eligible FMI did not exceed the required minimum, then recognition of eligible FMI would be disallowed.

The Agencies are interested in views on whether partial recognition of FMI should be permitted in cases where the amount of eligible FMI fails to meet the required minimum. The Agencies also are interested in views on the level of portfolio segmentation at which it would be appropriate to perform the FMI calculation. Would a requirement that FMI eligibility calculations be performed separately for each portfolio segment effectively allow FMI to offset EL capital requirements for QREs?

The following table depicts a range of representative capital requirements (K) for QREs based on these formulas. In each case, it is assumed that the maximum offset for eligible FMI has been applied. The LGD is assumed to equal 90 percent, consistent with recovery rates for credit card portfolios. The table shows capital requirements with recognition of FMI and without recognition of FMI but using the same formula in other respects. As PDs increase, the proportion of total required capital held against EL after deducting the 75 percent offset rises at an increasing rate and the proportion held against UL declines at an increasing rate. Offsets from EL, as considered in this ANPR, would therefore have a proportionally greater impact on reducing required capital charges as default probabilities increase. For comparison purposes, the current capital requirement on drawn credit card exposures is 8 percent and is zero for undrawn credit lines.

CAPITAL REQUIREMENT

[In percentage points]

PD	With FMI capital 8%	Without FMI capital 8%
0.05	0.68	0.72
0.10	1.17	1.23
0.25	2.24	2.41
0.50	3.44	3.78
1.00	4.87	5.55
2.00	6.21	7.56
5.00	7.89	11.27
10.0	11.12	17.87
20.0	17.23	30.73

Subject to the same qualifications mentioned earlier, the QIS3 results estimated an increase in credit risk capital requirements for QREs of about 16 percent.

Other Retail Exposures

The third and final sub-category of retail A–IRB exposures is other retail exposures. This sub-category encompasses a wide variety of different exposures including auto loans, student loans, consumer installment loans, and some SME loans. Two steps would be required to calculate the A–IRB capital requirement for other retail exposures: (1) Calculating the relevant asset correlation parameter, and (2) calculating the capital requirement. Both of these steps would be done separately for each portfolio segment included within the other retail sub-category.

As for wholesale exposures and QREs, the asset correlation parameter for other retail exposures declines as PD rises. In the case of other retail exposures, the asset correlation parameter approaches an upper bound value of 17 percent for very low PD values and approaches a lower bound value of 2 percent for very high PD values. The specific formula for determining the asset correlation for other retail exposures is as follows:

$R = 0.02 * (1-EXP(-35 * PD)) + 0.17 * [1-(1-EXP(-35 * PD))]$

Where

R denotes asset correlation;
EXP denotes the natural exponential function; and
PD denotes probability of default.

The second step in the A–IRB capital calculation for other retail exposures would be the calculation of the capital requirement (K). The specific formula to calculate this amount is as follows:

$K = EAD * LGD * N[(1-R)\wedge -0.5 * G(PD) + (R/(1-R))\wedge 0.5 * G(0.999)]$

Where

K denotes the capital requirement;
EAD denotes exposure at default;
LGD denotes loss given default;
PD denotes probability of default;
N(x) denotes the standard normal cumulative distribution function;
G(x) denotes the inverse of the standard normal cumulative distribution function; and
R denotes asset correlation.

The following table depicts a range of representative capital requirements (K) for other retail exposures based on this formula. Three different LGD assumptions are shown—25 percent, 50 percent, and 75 percent—in order to depict a range of potential outcomes depending on the characteristics of the underlying retail exposure. For comparison purposes, the current capital requirement on most of the exposures likely to be included in the other retail sub-category is 8 percent.

CAPITAL REQUIREMENTS

[In percentage points]

PD	LGD		
	25 percent	50 percent	75 percent
0.05 percent	0.33	0.66	0.99

CAPITAL REQUIREMENTS—Continued

[In percentage points]

PD	LGD		
	25 percent	50 percent	75 percent
0.10 percent	0.56	1.11	1.67
0.25 percent	1.06	2.13	3.19
0.50 percent	1.64	3.28	4.92
1.00 percent	2.35	4.70	7.05
2.00 percent	3.08	6.15	9.23
5.00 percent	3.94	7.87	11.81
10.00 percent	5.24	10.48	15.73
20.00 percent	8.55	17.10	25.64

Subject to the qualifications described earlier, QIS3 estimated a 25 percent reduction in credit risk-based capital requirements for the other retail category.

The Agencies are seeking comment on the retail A–IRB capital formulas and the resulting capital requirements, including the specific issues mentioned. Are there particular retail product lines or retail activities for which the resulting A–IRB capital requirements would not be appropriate, either because of a misalignment with underlying risks or because of other potential consequences?

A–IRB: Other Considerations

As described earlier, the A–IRB capital requirement includes components to cover both EL and UL. Because banking organizations have resources other than capital to cover EL, the Agencies propose to recognize certain of these measures as potential offsets to the A–IRB capital requirement, subject to the limitations set forth below. The use of eligible FMI for QREs is one such potential mechanism that has already been discussed.

Loan Loss Reserves

A second important mechanism involves the allowance for loan and lease losses (ALLL), also referred to as general loan loss reserves. Under the general risk-based capital rules, an amount of the ALLL is eligible for inclusion as an element of Tier 2 capital, up to a limit equal to 1.25 percent of gross risk-weighted assets. Loan loss reserves above this limit are deducted from risk-weighted assets, on a dollar-for-dollar basis. The New Accord proposes to retain the 1.25 percent limit on the eligibility of loan loss reserves as an element of Tier 2 capital. However, the New Accord also contains, and the Agencies are proposing for comment, a feature that would allow the amount of the ALLL (net of associated deferred tax) above this 1.25 percent limit to be used to offset the EL portion of A–IRB capital requirements in certain circumstances.

The offset would be limited to that amount of EL that exceeds the 1.25 percent limit. For example, if the 1.25 percent limit equals $100, the ALLL equals $125, and the EL portion of the A–IRB capital requirement equals $110, then $10 of the capital requirement may be directly offset ($110 − $100). The additional amount of the ALLL not included in Tier 2 capital and not included as a direct offset against the A–IRB capital requirement ($125 − $110 = $15 in the example) would continue to be deducted from risk-weighted assets.

It is important to recognize that this treatment would likely result in a significantly more favorable treatment of such excess ALLL amounts than simply deducting them from risk-weighted assets. Under the proposal, banking organizations would be allowed to multiply the eligible excess ALLL by a factor of 12.5 because the minimum total capital requirement is 8 percent of risk-weighted assets. In effect, this treatment is 12.5 times more favorable than the treatment contained in the general risk-based capital rules, which allow only a deduction against risk-weighted assets on a dollar-for-dollar basis. In addition, it is important to note that a dollar-for-dollar offset against the A–IRB capital requirement is also more favorable than the inclusion of ALLL below the 1.25 percent limit in Tier 2 capital, because the latter has no impact on Tier 1 capital ratios, while the former does.

The Agencies recognize the existence of various issues in regard to the proposed treatment of ALLL amounts in excess of the 1.25 percent limit and are interested in views on these subjects, as well as related issues concerning the incorporation of expected losses in the A–IRB framework and the treatment of the ALLL generally. Specifically, the Agencies invite comment on the domestic competitive impact of the potential difference in the treatment of reserves described above.

Another issue the Agencies wish to highlight is the inclusion within the New Accord of the ability for banking organizations to make use of "general specific" provisions as a direct offset against EL capital requirements. Such provisions are not specific to particular exposures but are specific to particular categories of exposures and are not allowed as an element of Tier 2 capital. While several other countries make use of such provisions, the Agencies do not believe existing elements of the ALLL in the United States qualify for such treatment.

The Agencies seek views on this issue, including whether the proposed U.S. treatment has significant competitive implications. Feedback also is sought on whether there is an inconsistency in the treatment of general specific provisions (all of which may be used as an offset against the EL portion of the A–IRB capital requirement) in comparison to the treatment of the ALLL (for which only those amounts of general reserves exceeding the 1.25 percent limit may be used to offset the EL capital charge).

Charge-Offs

Another potential offset to the EL portion of the A–IRB capital requirements is the use of partial charge-offs, where a portion of an individual exposure is written off. Given the A–IRB definition of default, a partial charge-off would cause an exposure to be classified as a defaulted exposure (that is, PD=100%), in which case the A–IRB capital formulas ensure that the resulting capital requirement on the defaulted exposure is equal to EAD * LGD, where EAD is defined as the gross exposure amount prior to the partial charge-off. All of this capital requirement can be considered to be covering EL.

The New Accord proposes that for such partially charged-off exposures, the banking organization be allowed to use the amount of the partial charge-off to offset the EL component of that asset's capital charge on a dollar-for-dollar basis. In addition, to the extent that the

partial charge-off on a defaulted exposure exceeds the EL capital charge on that exposure, the amount of this surplus could be used to offset the EL capital charges on other defaulted assets in the same portfolio (for example, corporates, banks, residential mortgages, *etc.*), but not for any other purpose.

An implication of this aspect of the New Accord is that if a defaulted loan's charge-off were at least equal to its expected loss, no additional capital requirement would be incurred on that exposure. For example, consider a $100 defaulted exposure having an LGD of 40 percent, implying an expected loss of $40, equal to the IRB capital charge. If the charge-off were equal to $40, under the New Accord approach, there would be no additional capital required against the resultant $60 net position. The Agencies do not believe this is a prudent or acceptable outcome, since this position is not riskless and a banking organization could be forced to recognize additional charge-offs if the recoveries turn out to be less than expected.

To prevent this possibility, the Agencies propose that, for defaulted exposures, the A–IRB capital charge (inclusive of any EL offsets for charge-offs) be calculated as the sum of (a) EAD * LGD less any charge-offs and (b) 8 percent of the carrying value of the loan (that is, the gross exposure amount (EAD) less any charge-offs).

Also, the charged off amounts in excess of the EAD * LGD product would not be permitted to offset the EL capital requirements for other exposures. In effect, the proposed A–IRB capital charge on a defaulted exposure adds a buffer for defaulted assets and results in a floor equal to 8 percent of the remaining book value of the exposure if the banking organization has taken a charge-off equal to or greater than the EAD * LGD. Importantly, this treatment would not apply to a defaulted exposure that has been restructured and where the obligor has not yet defaulted on the restructured credit. Upon any restructuring, whether associated with a default or otherwise, the A–IRB capital charge would be based on the EAD, PD, LGD, and M applicable to the exposure after it has been restructured. The existence of any partial charge-offs associated with the pre-restructured credit would affect the A–IRB capital charge on the restructured exposure only through its impact on the post-restructured exposure's EAD, PD, and/or LGD.

Purchased Receivables

This section describes the A–IRB treatment for wholesale and retail credit exposures acquired from another institution (purchased receivables). The purchase of such receivables may expose the acquiring banking organization to potential losses from two sources: credit losses attributable to defaults by the underlying receivables obligors, and losses attributable to dilution of the underlying receivables.[22] The total A–IRB capital requirement for purchased receivables would be the sum of (a) a capital charge for credit risk, and (b) a separate capital charge for dilution risk, when dilution is a material factor.

Capital Charge for Credit Risk

The New Accord's proposed treatment of purchased loans would treat a purchase discount as equivalent to a partial charge-off, and for this reason it could imply a zero capital charge against certain exposures. In general, a zero capital charge would emerge whenever the difference between a loan's face value and purchase price (the purchase discount) was greater than or equal to its LGD, as might be the case with a secondary market purchase of deeply distressed debt. Again, the Agencies believe that a zero capital charge in such a circumstance is unwarranted because the position is not riskless.

The Agencies propose that for a credit exposure that is purchased or acquired from another party, the A–IRB capital charge would be calculated as if the exposure were a direct loan to the underlying obligor in the amount of the loan's carrying value to the purchasing banking organization with other attributes of the loan agreement (for example, maturity, collateral, covenants) and, hence, LGD, remaining unchanged. This treatment would apply regardless of whether the carrying value to the purchasing banking organization was less than, equal to, or greater than the underlying instrument's face value. Thus, if a loan having a principal amount equal to $100 and associated PD and LGD of 10 percent and 40 percent was purchased for $80, the capital charge against the purchased loan would be calculated as if that loan had an EAD equal to $80, PD equal to 10 percent, and LGD equal to 40 percent.

In general, the same treatment would apply to pools of purchased receivables. However, under the conditions detailed below, an alternative top-down approach (similar to that used for retail exposures) may be applied to pools of purchased receivables if the purchasing banking organization can only estimate inputs to the capital function (PD, LGD, EAD, and M) on a pool or aggregate basis.

Top-Down Method for Pools of Purchased Receivables

Under the top-down approach, required capital would be determined using the appropriate A–IRB capital formula (that is, for wholesale exposures, the wholesale capital function, and for retail exposures, the appropriate retail capital function) in combination with estimates of PD, LGD, EAD, and M developed for pools of receivables. In estimating the pool parameters, the banking organization first would determine EL for the purchased receivables pool, expressed (in decimal form) at an annual rate relative to the amount currently owed to the banking organization by the obligors in the receivables pool. The estimated EL would not take into account any assumptions of recourse or guarantees from the seller of the receivables or other parties. If the banking organization can decompose EL into PD and LGD components, then it would do so and use those components as inputs into the capital function. If the institution cannot decompose EL, then it would use the following split: PD would equal the estimated EL, and LGD would be 100 percent. Under the top-down approach, EAD would equal the carrying amount of the receivables and for wholesale exposures, M would equal the exposure-weighted average effective maturity of the receivables in the pool.[23]

Treatment of Undrawn Receivables Purchase Commitments

Capital charges against any undrawn portions of receivables purchase facilities ('undrawn purchase commitments') also would be calculated using the top-down methodology. The EL (and/or PD and LGD) parameters would be determined on the basis of the current pool of eligible receivables using the pool-level estimation methods described above. For undrawn commitments under revolving purchase facilities, the New Accord specifies that the EAD would be set at 75 percent of the undrawn line. This treatment reflects a concern that relevant historical data for estimating such EADs reliably is not available at many banking organizations. For other undrawn purchase commitments, EAD would be estimated by the banking organization providing the facility and would be subject to the same operational standards that are applicable to undrawn wholesale credit lines. The level of M associated with undrawn purchase commitments would be the average effective maturity of receivables eligible for purchase from that seller, so long as the facility contains effective arrangements for protecting the banking organization against an unanticipated deterioration. In the absence of such protections, the M for an undrawn commitment would be calculated as the sum of (a) the longest-dated potential receivable under the purchase agreement, and (b) the remaining maturity of the facility.

The Agencies seek comment on the proposed methods for calculating credit risk capital charges for purchased receivables. Are the proposals reasonable and practicable?

For committed revolving purchase facilities, is the assumption of a fixed 75 percent conversion factor for undrawn lines reasonable? Do banking organizations have the ability (including relevant data) to develop their own estimate of EADs for such facilities? Should banking organizations be permitted to employ their own estimated EADs, subject to supervisory approval?

A banking organization may only use the top-down approach with approval of its primary Federal supervisor. In addition, the purchased receivables would have to have been purchased from unrelated, third party sellers and the organization may not have originated the credit exposures either directly or indirectly. The receivables must have been generated on an arm's length basis between the seller and the obligor (intercompany accounts receivable and receivables subject to contra-accounts between firms that buy and sell to each other would not qualify). Also, the receivables may not have a remaining maturity of greater than one year, unless they are fully secured. The Agencies propose that the bottom-up method would have to be used for receivables to any single obligor, or to any group of related obligors, that aggregate to more than $1 million.

Capital Charge for Dilution Risk

When dilution is a material risk factor,[24] purchased receivables would be subject to a separate capital charge for that risk. The dilution capital charge may be calculated at the level of each individual receivable and then aggregated, or, for a pool of receivables, at the level of the pool as a whole. The capital charge for dilution risk would be calculated using the wholesale A–IRB formula and the following parameters: EAD would be equal to the gross amount of receivable(s) balance(s); LGD would be 100 percent; M would be the (exposure weighted-average) effective remaining maturity of the exposure(s); and PD would be the expected dilution loss rate, defined as total expected dilution losses over the remaining term of the receivable(s) divided by EAD.[25] Expected dilution losses would be computed on a stand-alone basis; that is, under the assumption of no recourse or other support from the seller or third-party guarantors.

The following table illustrates the dilution risk capital charges (per dollar of EAD) implied by this approach for a hypothetical pool of purchased receivables having a remaining maturity of one year or less. As can be seen, the proposal implies capital charges for dilution risk that are many multiples of expected dilution losses.

CAPITAL REQUIREMENTS

[In percentage points]

Expected dilution loss rate	Dilution risk capital charge (per dollar of EAD, percent)
0.05 percent	2.05
0.10 percent	3.42
0.25 percent	6.41
0.50 percent	9.77
1.00 percent	14.03
2.00 percent	19.03
5.00 percent	28.45
10.00 percent	41.24

The Agencies seek comment on the proposed methods for calculating dilution risk capital requirements. Does this methodology produce capital charges for dilution risk that seem reasonable in light of available historical evidence? Is the wholesale A–IRB capital formula appropriate for computing capital charges for dilution risk?

In particular, is it reasonable to attribute the same asset correlations to dilution risk as are used in quantifying the credit risks of wholesale exposures within the A–IRB framework? Are there alternative method(s) for determining capital charges for dilution risk that would be superior to that set forth above?

Minimum Requirements

The Agencies propose to apply standards for the estimation of risk inputs and expected dilution losses and for the control and risk management systems associated with purchased receivables programs that are consistent with the general guidance contained in the New Accord. These standards will aim to ensure that risk input and expected dilution loss estimates are reliable and consistent over time, and reflect all relevant information that is available to the acquiring banking organization. The minimum operational requirements are intended to ensure that the acquiring banking organization has a valid legal claim to cash proceeds generated by the receivables pool, that the pool and cash proceeds are closely monitored and controlled, and that systems are in place to identify and address seller, servicer, and other potential risks. A more detailed discussion of these requirements will be provided when the Agencies release draft examination guidance dealing with purchased receivables programs.

The Agencies seek comment on the appropriate eligibility requirements for using the top-down method. Are the proposed eligibility requirements, including the $1 million limit for any single obligor, reasonable and sufficient?

The Agencies seek comment on the appropriate requirements for estimating expected dilution losses. Is the guidance set forth in the New Accord reasonable and sufficient?

Risk Mitigation

For purposes of reducing the capital charges for credit risk or dilution risk with respect to purchased receivables, purchase discounts, guarantees, and other risk mitigants may be recognized through the same framework used elsewhere in the A–IRB approach.

Credit Risk Mitigation Techniques

The New Accord takes account of the risk-mitigating effects of both financial and nonfinancial collateral, as well as guarantees, including credit derivatives. For these risk mitigants to be recognized for regulatory capital purposes, the banking organization must have in place operational procedures and risk management processes that ensure that all documentation used in collateralizing or guaranteeing a transaction is binding on all parties and legally enforceable in all relevant jurisdictions. The banking organization must have conducted sufficient legal review to verify this conclusion, must have a well-founded legal basis for the conclusion, and must reconduct such a review as necessary to ensure continuing enforceability.

[22] Dilution refers to the possibility that the contractual amounts payable by the receivables obligors may be reduced through future cash or non-cash credits to the accounts of these obligors. Examples include offsets or allowances arising from returns of goods sold, disputes regarding product quality, possible debts of the originator/seller to a receivables obligor, and any payment or promotional discounts offered by the originator/seller (for example, a credit for cash payments within 30 days).

[23] If a banking organization can estimate the exposure-weighted average size of the pool it also would use the firm-size adjustment (S) in the wholesale framework.

[24] If dilution risk is immaterial there would be no additional capital charge.

[25] If the remaining term exceeds one year, the expected dilution loss rate would be specified at an annual rate.

Adjusting LGD for the Effects of Collateral

A banking organization would be able to take into account the risk-mitigating effect of collateral in its internal estimates of LGD, provided the organization has established internal requirements for collateral management, operational procedures, legal certainty, and risk management processes that ensure that:

(1) The legal mechanism under which the collateral is pledged or transferred ensures that the banking organization has the right to liquidate or take legal possession of the collateral in a timely manner in the event of the default, insolvency, or bankruptcy (or other defined credit event) of the obligor and, where applicable, the custodian holding the collateral;

(2) The banking organization has taken all steps necessary to fulfill legal requirements to secure the organization's interest in the collateral so that it has and maintains an enforceable security interest;

(3) The banking organization has clear and robust procedures for the timely liquidation of collateral to ensure observation of any legal conditions required for declaring the default of the borrower and prompt liquidation of the collateral in the event of default;

(4) The banking organization has established procedures and practices for (i) conservatively estimating, on a regular ongoing basis, the market value of the collateral, taking into account factors that could affect that value (for example, the liquidity of the market for the collateral and obsolescence or deterioration of the collateral), and (ii) where applicable, periodically verifying the collateral (for example, through physical inspection of collateral such as inventory and equipment); and

(5) The banking organization has in place systems for requesting and receiving promptly additional collateral for transactions whose terms require maintenance of collateral values at specified thresholds.

In reflecting collateral in the LGD estimate, the banking organization would need to consider the extent of any dependence between the risk of the borrower and that of the collateral or collateral provider. The banking organization's assessment of LGD would have to address in a conservative way any significant degrees of dependence, as well as any currency mismatch between the underlying obligation and the collateral. The LGD estimates would have to be grounded in historical recovery rates on the collateral and could not be based solely upon the collateral's estimated market value.

Repo-Style Transactions Subject to Master Netting Agreements

Repo-style transactions include reverse repurchase agreements and repurchase agreements and securities lending and borrowing transactions, including those executed on an indemnified agency basis.[26] Many of these transactions are conducted under a bilateral master netting agreement or equivalent arrangement. The effects of netting arrangements generally would be recognized where the banking organization takes into account the risk-mitigating effect of collateral through an adjustment to EAD. To qualify for the EAD adjustment treatment, the repo-style transaction would have to be marked-to-market daily and be subject to a daily margin maintenance requirement. Further, the repo-style transaction would have to be documented under a qualifying master netting agreement that would have to:

(1) Provide the non-defaulting party the right to terminate and close out promptly all transactions under the agreement upon an event of default, including in the event of insolvency or bankruptcy of the counterparty;

(2) Provide for the netting of gains and losses on transactions (including the value of any collateral) terminated and closed out under the agreement so that a single net amount is owed by one party to the other;

(3) Allow for the prompt liquidation or setoff of collateral upon the occurrence of an event of default; and

(4) Be, together with the rights arising from the provisions required in (1) to (3) above, legally enforceable in each relevant jurisdiction upon the occurrence of an event of default and regardless of the counterparty's insolvency or bankruptcy.

Where a banking organization's repo-style transactions do not meet these requirements, it would not be able to use the EAD adjustment method. Rather, for each individual repo-style transaction it would estimate an LGD that takes into account the collateral received. It would use the notional amount of the transaction for EAD; it would not take into account netting effects for purposes of determining either EAD or LGD.

[26] Some banking organizations, particularly those that are custodians, lend, as agent, their customers' securities on a collateralized basis. Typically, the agent banking organization indemnifies the customer againts risk of loss in the event the borrowing counterparty defaults. Where such indemnites are provided, the agent banking organization has the same risks it would have if it had entered into the transaction as principal.

The method for determining EAD for repo-style transactions, described below, is essentially the determination of an unsecured loan equivalent exposure amount to the counterparty. Thus, no collateral effects for these transactions would be recognized through LGD; rather, the applicable LGD would be the one the banking organization would estimate for an unsecured exposure to the counterparty.

To determine EAD, the banking organization would add together its current exposure to the counterparty under the master netting arrangement and a measure for PFE to the counterparty under the master netting arrangement. The current exposure would be the sum of the market values of all securities and cash lent, sold subject to repurchase, or pledged as collateral to the counterparty under the master netting agreement, less the sum of the market values of all securities and cash lent, sold subject to repurchase, or pledged as collateral by the counterparty. The PFE calculation would be based on the market price volatilities of the securities delivered to, and the securities received from, the counterparty, as well as any foreign exchange rate volatilities associated with any cash or securities delivered or received.

Banking organizations would use a VaR-type measure for determining PFE for repo-style transactions subject to master netting agreements. Banking organizations would be required to use a 99th percentile, one-tailed confidence interval for a five-day holding period using a minimum one-year historical observation period of price data. Banking organizations would have to update their data sets no less frequently than once every three months and reassess them whenever market prices are subject to material changes. The illiquidity of lower-quality instruments would have to be taken into account through an upward adjustment in the holding period where the five-day holding period would be inappropriate given the instrument's liquidity. No particular model would be prescribed for the VaR-based measure, but the model would have to capture all material risks for included transactions.

Banking organizations using a VaR-based approach to measuring PFE would be permitted to take into account correlations in the price volatilities among instruments delivered to the counterparty, among instruments received from the counterparty, as well as between the two sets of instruments. The VaR-based approach for calculating PFE for repo-style transactions would be available to all banking organizations that received supervisory approval for an internal market risk model under the market risk capital rules. Other banking organizations could apply separately for supervisory approval to use their internal VaR models for calculation of PFE for repo-style transactions.

A banking organization would use the following formula to determine EAD for each counterparty with which it has a master netting agreement for repo-style transactions.

EAD = max {0, [(Σ E − ΣC) + (VaR output from internal market risk model × multiplier)]}

Where:

E denotes the current value of the exposure (that is, all securities and cash delivered to the counterparty); and

C denotes the current value of the collateral received (that is, all securities and cash received from the counterparty).

The multiplier in the above formula would be determined based on the results of the banking organization's backtesting of the VaR output. To backtest the output, the banking organization would be required to identify on an annual basis twenty counterparties that include the ten largest as determined by the banking organization's own exposure measurement approach and ten others selected at random. For each day and for each of the twenty counterparties, the banking organization would compare the previous day's VaR estimate for the counterparty portfolio to the change in the current exposure of the previous day's portfolio. This change represents the difference between the net value of the previous day's portfolio using today's market prices and the net value of that portfolio using the previous day's market prices. Where this difference exceeds the previous day's VaR estimate, an exception would have occurred.

At the end of each quarter, the banking organization would identify the number of exceptions it has observed for its twenty counterparties over the most recent 250 business days, that is, the number of exceptions in the most recent 5000 observations. Depending on the number of exceptions, the output of the VaR model would be scaled up using a multiplier as provided in the table below.

Zone	Number of exceptions	Multiplier
Green Zone ...	0–99	None (=1)
Yellow Zone ..	100–119	2.0
	120–139	2.2
	140–159	2.4
	160–179	2.6
	180–199	2.8
Red Zone	200 or more ..	3.0

The Agencies seek comments on the methods set forth above for determining EAD, as well as on the proposed backtesting regime and possible alternatives banking organizations might find more consistent with their internal risk management processes for these transactions. The Agencies also request comment on whether banking organizations should be permitted to use the standard supervisory haircuts or own estimates haircuts methodologies that are proposed in the New Accord.

Guarantees and Credit Derivatives

The Agencies are proposing that banking organizations reflect the credit risk mitigating effects of guarantees and credit derivatives through adjusting the PD or the LGD estimate (but not both) of the underlying obligation that is protected. The banking organization would be required to assign the borrower and guarantor to an internal rating in accordance with the minimum requirements set out for unguaranteed (unhedged) exposures, both prior to the adjustments and on an ongoing basis. The organization also would be required to monitor regularly the guarantor's condition and ability and willingness to honor its obligation. For guarantees on retail exposures, these requirements would also apply to the assignment of an exposure to a pool and the estimation of the PD of the pool.

For purposes of reflecting the effect of guarantees in regulatory capital requirements, the Agencies are proposing that a banking organization have clearly specified criteria for adjusting internal ratings or LGD estimates—or, in the case of retail exposures, for allocating exposures to pools to reflect use of guarantees and credit derivatives—that take account of all relevant information. The adjustment criteria would have to require a banking organization to (i) meet all minimum requirements for an unhedged exposure when assigning borrower or facility ratings to guaranteed/hedged exposures; (ii) be plausible and intuitive; (iii) consider the guarantor's ability and willingness to perform under the guarantee; (iv) consider the extent to which the guarantor's ability and willingness to perform and the borrower's ability to repay may be correlated (that is, the degree of wrong-way risk); and (v) consider the payout structure of the credit protection and conservatively assess its effect on the level and timing of recoveries. The banking organization also would be required to consider any residual risk to the borrower that may remain—for example, a currency mismatch between the credit protection and the underlying exposure.

Banking organizations would be required to make adjustments to alter PD or LGD estimates in a consistent way for a given type of guarantee or credit derivative. In all cases, the adjusted risk weight for the hedged obligation could not be less than the risk weight associated with a comparable direct exposure on the protection provider. As a practical matter, this guarantor risk weight floor on the risk weight of the hedged obligation would require a banking organization first to determine the risk weight on the hedged obligation using the adjustment it has made to the PD or LGD estimate to reflect the hedge. The banking organization would then compare that risk weight to the risk weight assigned to a direct obligation of the guarantor. The higher of the two risk weights would then be used to determine the risk-weighted asset amount of the hedged obligation.

Notwithstanding the guarantor risk weight floor, the proposed approach gives institutions a great deal of flexibility in their methodology for recognizing the risk-reducing effects of guarantees and credit derivatives. At the same time, the approach does not differentiate between various types of guarantee structures, which may have widely varying characteristics, that a banking organization may use. For example, a company to company guarantee, such as a company's guarantee of an affiliate or a supplier, is fundamentally different from a guarantee obtained from an unrelated third party that is in the business of extending financial guarantees. Examples of the latter type of guarantee include standby letters of credit, financial guarantee insurance, and credit derivatives. These products tend to be standardized across institutions and, thus, arguably should be recognized for capital purposes in a consistent fashion across institutions. The problem of inconsistent treatment could be exacerbated in the case of protection in the form of credit derivatives, which are tradable and which further can be distinguished by their characteristic of allowing a banking organization to have a recovery claim on two parties, the obligor and the derivative counterparty, rather than just one.

Industry comment is sought on whether a more uniform method of adjusting PD or LGD estimates should be adopted for various types of guarantees to minimize inconsistencies in

treatment across institutions and, if so, views on what methods would best reflect industry practices. In this regard, the Agencies would be particularly interested in information on how banking organizations are currently treating various forms of guarantees within their economic capital allocation systems and the methods used to adjust PD, LGD, EAD, and any combination thereof.

Double Default Effects

The Agencies are proposing that neither the banking organization's criteria nor rating process for guaranteed/hedged exposures be allowed to take into account so-called "double default" effects—that is, the joint probability of default of the borrower and guarantor. As a result of not being able to recognize double default probabilities, the adjusted risk weight for the hedged obligation could not be less than the risk weight associated with a direct exposure on the protection provider. The Agencies are seeking comment on the proposed nonrecognition of double default effects. On June 10, 2003, the Federal Reserve released a white paper on this issue entitled, "Treatment of Double Default and Double Recovery Effects for Hedged Exposures Under Pillar I of the Proposed New Basel Capital Accord." Commenters are encouraged to take into account the white paper in formulating their responses to the ANPR.

The Agencies also are interested in obtaining commenters' views on alternative methods for giving recognition to double default effects in a manner that is operationally feasible and consistent with safety and soundness. With regard to the latter, commenters are requested to bear in mind the concerns outlined in the double default white paper, particularly in connection with concentrations, wrong-way risk (especially in stress periods), and the potential for regulatory capital arbitrage. In this regard, information is solicited on how banking organizations consider double default effects on credit protection arrangements in their economic capital calculations and for which types of credit protection arrangements they consider these effects.

Requirements for Recognized Guarantees and Credit Derivatives

The Agencies are not proposing any restrictions on the types of eligible guarantors or credit derivative providers. Rather, a banking organization would be required to have clearly specified criteria for those guarantors they will accept as eligible for regulatory capital purposes. It is proposed that guarantees and credit derivatives recognized for regulatory capital purposes: (1) Be required to represent a direct claim on the protection provider; (2) explicitly reference specific exposures or classes thereof; (3) be evidenced in writing through a contract that is irrevocable by the guarantor; (4) not have a clause that would (i) allow the protection provider unilaterally to cancel the credit protection (other than in the event of nonpayment or other default by the protection buying banking organization) or (ii) increase the effective cost of credit protection as the credit quality of the underlying obligor deteriorates; (5) be in force until the underlying obligation is satisfied in full (to the amount and tenor of the guarantee); and (6) be legally enforceable against the guarantor in a jurisdiction where the guarantor has assets to attach and enforce a judgment.

The Agencies view the risk mitigating benefits of conditional guarantees—that is, guarantees that prescribe certain conditions under which the guarantor would not be obliged to perform—as particularly difficult to quantify. The Agencies are proposing that as a general matter such guarantees would not be recognized under the A–IRB approach. In certain circumstances, however, conditional guarantees could be recognized where the banking organization can demonstrate that its assignment criteria fully reflect the reduction in credit risk mitigation arising from the conditionality and that the guarantee provides a meaningful degree of credit protection.

Additional Requirements for Recognized Credit Derivatives

The Agencies are proposing that credit derivatives, whether in the form of credit default swaps or total return swaps, recognized for A–IRB risk-based capital purposes meet additional criteria. The credit events specified by the contracting parties would be required to include at a minimum: (i) Failure to pay amounts due under the terms of the underlying obligation; (ii) bankruptcy, insolvency, or inability of the obligor to pay its debt; and (iii) restructuring of the underlying obligation that involves forgiveness or postponement of principal, interest, or fees that results in a credit loss.

With regard to restructuring events, the Agencies note that the New Accord suggests that a banking organization may not need to include restructuring credit events when it has complete control over the decision of whether or not there will be a restructuring of the underlying obligation. This would occur, for example, where the hedged obligation requires unanimous consent of the creditors for a restructuring. The Agencies have concerns that this approach could have the incidental effect of dictating terms in underlying obligations in ways that over time could diverge from creditors' business needs. The Agencies also question whether such clauses actually eliminate restructuring risk on the underlying obligation, particularly as many credit derivatives hedge only a small portion of a banking organization's exposure to the underlying obligation.

The Agencies invite comment on this issue, as well as consideration of an alternative approach whereby the notional amount of a credit derivative that does not include restructuring as a credit event would be discounted. Comment is sought on the appropriate level of discount and whether the level of discount should vary on the basis of, for example, whether the underlying obligor has publicly outstanding rated debt or whether the underlying obligor is an entity whose obligations have a relatively high likelihood of restructuring relative to default (for example, a sovereign or PSE). Another alternative that commenters may wish to discuss is elimination of the restructuring requirement for credit derivatives with a maturity that is considerably longer—for example, two years—than that of the hedged obligation.

Consistent with the New Accord, the Agencies are proposing not to recognize credit protection from total return swaps where the hedging banking organization records net payments received on the swap as net income, but does not record offsetting deterioration in the value of the hedged obligation either through reduction in fair value or by an addition to reserves. The Agencies are considering imposing similar non-recognition on credit default swaps where mark-to-market gains in value are recognized in income and, thus, in Tier 1 capital, but no offsetting deterioration in the hedged obligation is recorded. (This situation generally would not arise where both the hedged obligation and the credit default swap are recorded in the banking book because under GAAP increases in the swap's value are recorded in the Other Comprehensive Income account, which is not included in regulatory capital.)

Comment is sought on this matter, as well as on the possible alternative treatment of recognizing the hedge in these two cases for regulatory capital purposes but requiring that mark-to-market gains on the credit derivative that have been taken into income be deducted from Tier 1 capital.

Mismatches in Credit Derivatives Between Reference and Underlying Obligations

The Agencies are proposing to recognize credit derivative hedges for A–IRB capital purposes only where the reference obligation on which the protection is based is the same as the underlying obligation except where: (1) the reference obligation ranks *pari passu* with or is more junior than the underlying obligation, and (2) the underlying obligation and reference obligation share the same obligor and legally enforceable cross-default or cross-acceleration clauses are in place.

Treatment of Maturity Mismatch

The Agencies are proposing to recognize on a discounted basis guarantees and credit derivatives that have a shorter maturity than the hedged obligation. A guarantee or credit derivative with less than one-year remaining maturity that does not have a matching maturity to the underlying obligation, however, would not be recognized. The formula for discounting the amount of a maturity-mismatched hedge that is recognized is proposed as follows:

$Pa = P * t/T$

Where:

Pa denotes the value of the credit protection adjusted for maturity mismatch;

P denotes the amount of the credit protection;

t denotes the lesser of T and the remaining maturity of the hedge arrangement, expressed in years; and

T denotes the lesser of five and the remaining maturity of the underlying obligation, expressed in years.

The Agencies have concerns that the proposed formulation does not appropriately reflect distinctions between bullet and amortizing underlying obligations. Comment is sought on the best way of making such a distinction, as well as more generally on alternative methods for dealing with the reduced credit risk coverage that results from a maturity mismatch.

Treatment of Counterparty Risk for Credit Derivative Contracts

The Agencies are proposing that the EAD for derivative contracts included in either the banking book or trading book be determined in accordance with the rules for calculating the credit equivalent amount for such contracts set forth under the general risk-based capital rules. The Agencies are proposing to include in the types of derivative contracts covered under these rules credit derivative contracts recorded in the trading book. Accordingly, where a banking organization buys or sells a credit derivative through its trading book, a counterparty credit risk capital charge would be imposed based on the replacement cost plus the following add-on factors for PFE:

Total return or credit default swap	Protection buyer (percent)	Protection seller (percent)
Qualifying Reference Obligation*	5	**5
Non-Qualifying Reference Obligation*	10	**10

*The definition of qualifying would be the same as for the "qualifying" category for the treatment of specific risk for covered debt positions under the market risk capital rules.

**The protection seller of a credit default swap would only be subject to the add-on factor where the contract is subject to close-out upon the insolvency of the protection buyer while the underlying obligor is still solvent.

The Agencies also are considering applying a counterparty credit risk charge on all credit derivatives that are marked-to-market, including those recorded in the banking book. Such a treatment would promote consistency with other OTC derivatives, which are assessed the same counterparty credit risk charge regardless of where they are booked.

Further, the Agencies note that, if credit derivatives booked in the banking book are not assessed a counterparty credit risk charge, banking organizations would be required to exclude these derivatives from the net current exposure of their other derivative exposures to a counterparty for purposes of determining regulatory capital requirements. On balance, the Agencies believe a better approach would be to align the net derivative exposure used for capital purposes with that used for internal risk management purposes to manage counterparty risk exposure and collateralization thereof. This approach would suggest imposing a counterparty risk charge on all credit derivative exposures that are marked to market, regardless of where they are booked.

The Agencies are seeking industry views on the PFE add-ons proposed above and their applicability. Comment is also sought on whether different add-ons should apply for different remaining maturity buckets for credit derivatives and, if so, views on the appropriate percentage amounts for the add-ons in each bucket.

Equity Exposures

Banking organizations using the A–IRB approach for any credit exposure would be required to use an internal models market-based approach to calculate regulatory capital charges for equity exposures. Minimum quantitative and qualitative requirements for using an internal model would have to be met on an ongoing basis. An advanced approach banking organization that is transitioning into an internal models approach to equity exposures or that fails to demonstrate compliance with the minimum operational requirements for using an internal models approach to equity exposures would be required to develop a plan for compliance, obtain approval of the plan from its primary Federal supervisor, and implement the plan in a timely fashion. In addition, a banking organization's primary Federal supervisor would have the authority to impose additional operational requirements on a case-by-case basis. Until it is fully compliant with all applicable requirements, the banking organization would apply a minimum 300 percent risk weight to all publicly traded equity investments (that is, equity investments that are traded on a nationally recognized securities exchange) and a minimum 400 percent risk weight to all other equity investments.

Positions Covered

All equity exposures held in the banking book, along with any equity exposures in the trading book that are not currently subject to a market risk capital charge, would be subject to the A-IRB approach for equity exposures. In general, equity exposures are distinguished from other types of exposures based on the economic substance of the exposure. Equity exposures would include both direct and indirect ownership interests, whether voting or non-voting, in the assets or income of a commercial enterprise or financial institution that are not consolidated or deducted for regulatory capital purposes. Holdings in funds containing both equity investments and non-equity investments would be treated either as a single investment based on the majority of the fund's holdings or, where possible, as separate and distinct investments in the fund's component holdings based on a "look-through approach" (that is, based on the individual component holdings).

An instrument generally would be considered to be an equity exposure if it (1) would qualify as Tier 1 capital under the general risk-based capital rules if issued by a banking organization; (2) is irredeemable in the sense that the return of invested funds can be achieved only by the sale of the investment or sale of the rights to the investment or in the event of the liquidation of the issuer; (3) conveys a residual claim on the assets or income

of the issuer; and (4) does not embody an obligation on the part of the issuer.

An instrument that embodies an obligation on the part of the issuer would be considered an equity exposure if the instrument meets any of the following conditions: (1) The issuer may defer indefinitely the settlement of the obligation; (2) the obligation requires, or permits at the issuer's discretion, settlement by the issuance of a fixed number of the issuer's equity interests; (3) the obligation requires, or permits at the issuer's discretion, settlement by the issuance of a variable number of the issuer's equity interests, and all things being equal, any change in the value of the obligation is attributable to, comparable to, and in the same direction as, the change in value of a fixed number of the issuer's equity shares; or (4) the holder has the option to require that the obligation be settled by issuance of the issuer's equity interests, unless the banking organization's primary Federal supervisor has opined in writing that the instrument should be treated as a debt position.

Debt obligations and other securities, derivatives, or other instruments structured with the intent of conveying the economic substance of equity ownership would be considered equity exposures for purposes of the A-IRB capital requirements. For example, options and warrants on equities and short positions in equity securities would be characterized as equity exposures. If a debt instrument is convertible into equity at the option of the holder, it would be deemed equity upon conversion. If such debt is convertible at the option of the issuer or automatically by the terms of the instrument, it would be deemed equity from inception. In addition, instruments with a return directly linked to equities would be characterized as equity exposures under most circumstances. A banking organization's primary Federal supervisor would have the discretion to allow a debt characterization of such an equity-linked instrument, however, if the instrument is directly hedged by an equity holding such that the net position does not involve material equity risk to the holder. Equity instruments that are structured with the intent of conveying the economic substance of debt holdings, or securitization exposures would not be considered equity exposures. For example, some issuances of term preferred stock may be more appropriately characterized as debt.

In all cases, the banking organization's primary Federal supervisor would have the discretion to recharacterize debt holdings as equity exposures or equity holdings as debt or securitization exposures for regulatory capital purposes.

The Agencies encourage comment on whether the definition of an equity exposure is sufficiently clear to allow banking organizations to make an appropriate determination as to the characterization of their assets.

Materiality

As noted above, a banking organization that is required or elects to use the A–IRB approach for any credit portfolio would also generally be required to use the A–IRB approach for its equity exposures. However, if the aggregate equity holdings of a banking organization are not material in amount, the organization would not be required to use the A–IRB approach to equity exposures. For this purpose, a banking organization's equity exposures generally would be considered material if their aggregate carrying value, including holdings subject to exclusions and transitional provisions (as described below), exceeds 10 percent of the organization's Tier 1 and Tier 2 capital on average during the prior calendar year. To address concentration concerns, however, the materiality threshold would be lowered to 5 percent of the banking organization's Tier 1 and Tier 2 capital if the organization's equity portfolio consists of less than ten individual holdings. Banking organizations would risk weight at 100 percent equity exposures exempted from the A–IRB equity treatment under a materiality threshold.

Comment is sought on whether the materiality thresholds set forth above are appropriate. Exclusions from the A–IRB Equity Capital Charge

Zero and Low Risk Weight Investments

The New Accord provides that national supervisors may exclude from the A–IRB capital charge those equity exposures to entities whose debt obligations qualify for a zero risk weight under the New Accord's standardized approach for credit risk. Entities whose debt obligations qualify for a zero risk weight generally include (i) sovereigns rated AAA to AA–; (ii) the BIS; (iii) the IMF; (iv) the European Central Bank; (v) the European Community; and (vi) high-quality multilateral development banks (MDBs) with strong shareholder support.[27] The Agencies intend to exclude from the A-IRB equity capital charge equity investments in these entities. Instead, these investments would be risk weighted at zero percent under the A-IRB approach.

In addition, the Agencies are proposing to exempt from the A-IRB equity capital charge investments in non-central government public-sector entities (PSEs) that are not traded publicly and generally are held as a condition of membership. Examples of such holdings include stock of a Federal Home Loan Bank or a Federal Reserve Bank. These investments would be risk-weighted as they would be under the general risk-based capital rules—20 percent or zero percent, respectively, in the examples.

Comment is sought on whether other types of equity investments in PSEs should be exempted from the A–IRB capital charge on equity exposures, and if so, the appropriate criteria for determining which PSEs should be exempted.

Legislated Program Equity Exposures

Under the New Accord, national supervisors may exclude from the A–IRB capital charge on equity exposures certain equity exposures made under legislated programs that involve government oversight and restrictions on the types or amounts of investments that may be made (legislated program equity exposures). Under the New Accord, a banking organization would be able to exclude from the A–IRB capital charge on equity exposures legislated program equity exposures in an amount up to 10 percent of the banking organization's Tier 1 plus Tier 2 capital.

The Agencies propose that equity investments by a banking organization in a small business investment company (SBIC) under section 302(b) of the Small Business Investment Act of 1958 would be legislated program equity exposures eligible for the exclusion from the A–IRB equity capital charge in an amount up to 10 percent of the banking organization's Tier 1 plus Tier 2 capital. A banking organization would be required to risk weight at 100 percent any amounts of legislated program equity exposures that qualify for this exclusion from the A–IRB equity capital charge.

The Agencies seek comment on what conditions might be appropriate for this partial exclusion from the A–IRB equity capital charge. Such conditions could include limitations on the size and types of businesses in which the banking organization invests, geographical limitations, or limitations on the size of individual investments.

U.S. banking organizations also make investments in community development corporations (CDCs) or community and economic development entities (CEDEs) that promote the public welfare. These investments receive favorable tax treatment and investment subsidies that make their risk and return characteristics markedly different (and more favorable to investors) than equity investments in general. Recognizing this more favorable risk-return structure and the importance of these investments to promoting important public welfare goals, the Agencies are proposing the exclusion of all such investments from the A–IRB equity capital charge. Unlike the exclusion for SBIC exposures, the exclusion of CDC and CEDE investments would not be subject to a percentage of capital limit. All CDC and CEDE equity exposures would receive a 100 percent risk weight.

The Agencies seek comment on whether any conditions relating to the exclusion of CDC/CEDE investments from the A-IRB equity capital charge would be appropriate. These conditions could serve to limit the exclusion to investments in such entities that meet specific public welfare goals or to limit the amount of such investments that would qualify for the exclusion from the A–IRB equity capital charge. The Agencies also seek comment on whether any other classes of legislated program equity exposures should be excluded from the A–IRB equity capital charge.

Grandfathered Investments

Equity exposures held as of the date of adoption of the final A–IRB capital rule governing equity exposures would be exempt from the A–IRB equity capital charge for a period of ten years from that date. A banking organization would be required to risk weight these holdings during the ten-year period at 100 percent. The investments that would be considered grandfathered would be equal to the number of shares held as of the date of the final rule, plus any shares that the holder acquires directly as a result of owning those shares, provided that any additional shares do not increase the holder's proportional ownership share in the company.

For example, if a banking organization owned 100 shares of a company on the date of adoption of the final rule, and the issuer thereafter declared a pro rata stock dividend of 5 percent, the entire post-dividend holdings of 105 shares would be exempt from the A–IRB equity capital charge for a period of ten years from the date of the adoption of the final rule. However, if additional shares are acquired such that the holder's proportional share of ownership increases, the additional shares would not be grandfathered. Thus, if a banking organization owned 100 shares of a company on the date of adoption of the final rule and subsequently acquired an additional 50 shares, the original 100 shares would be exempt from the A–IRB equity capital charge for the ten-year period from the date of adoption of the final rule, but the additional 50 shares would be immediately subject to the A–IRB equity capital charge.

Description of Quantitative Principles

The primary focus of the A–IRB approach to equity exposures is to assess capital based on an internal estimate of loss under extreme market conditions on an institution's portfolio of equity holdings or, in simpler forms, its individual equity investments. The methodology or methodologies used to compute the banking organization's estimated loss should be those used by the institution for internal risk management purposes. The model should be fully integrated into the banking organization's risk management infrastructure.

A banking organization's use of internal models would be subject to supervisory approval and ongoing review by the institution's primary Federal supervisor. Given the unique nature of equity portfolios and differences in modeling techniques, the supervisory model review process would be, in many respects, institution-specific. The sophistication and nature of the modeling technique used for a particular type of equity exposure should correspond to the banking organization's exposure, concentration in individual equity issues of that type, and the particular risk of the holding (including any optionality). Institutions would have to use an internal model that is appropriate for the risk characteristics and complexity of their equity portfolios. The model would have to be able to capture adequately all of the material risks embodied in equity returns, including both general market risk and idiosyncratic (that is, specific) risk of the institution's equity portfolio.

In their evaluations of institutions' internal models, the Agencies would consider, among other factors, (a) the nature of equity holdings, including the number and types of equities (for example, public, private, long, short); (b) the risk characteristics and makeup of institutions' equity portfolio holdings, including the extent to which publicly available price information is obtainable on the exposures; and (c) the level and degree of concentration. Institutions with equity portfolios containing holdings with values that are highly nonlinear in nature (for example, equity derivatives or convertibles) would have to employ an internal model designed to appropriately capture the risks associated with these instruments.

The Agencies recognize that the type and sophistication of internal modeling systems will vary across institutions due to differences in the nature and complexity of business lines in general and equity exposures in particular. Although the Agencies intend to use a VaR methodology as a benchmark for the internal model approach, the Agencies recognize that some institutions employ models for internal risk management and capital allocation purposes that, given the nature of their equity holdings, can be more risk-sensitive than some VaR models. For example, some institutions employ rigorous historical scenario analysis and other techniques in assessing the risk of their equity portfolios. It is not the Agencies' intention to dictate the form or operational details of banking organizations' risk measurement and management practices for their equity exposures. Accordingly, the Agencies do not expect to prescribe any particular type of model for computing A-IRB capital charges for equity exposures.

For purposes of evaluating the A–IRB equity capital charges produced by a banking organization's selected methodology, the Agencies would expect to use as a benchmark a VaR methodology using a 99.0 percent (one-tailed) confidence level of estimated maximum loss over a quarterly time horizon using a long-term sample period. Moreover, A–IRB equity capital charges would have to produce risk weights for equity exposures that are at least equal to a 200 percent risk weight for publicly traded equity exposures, and a 300 percent risk weight for all other equity exposures.

VaR-based internal models must use a historical observation period that includes a sufficient amount of data points to ensure statistically reliable and robust loss estimates relevant to the long-term risk profile of the institution's specific holdings. The data used to represent return distributions should reflect the longest sample period for which data are available and should meaningfully represent the risk profile of the banking organization's specific equity holdings. The data sample should be long-term in nature and, at a minimum, should encompass at least one complete equity market cycle relevant to the institution's holdings,

[27] These are, at present, the World Bank group comprised of the International Bank for Reconstruction and Development and the International Finance Corporation, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank, the European Investment Bank, the Islamic Development Bank, the Nordic Investment Bank, the Caribbean Development Bank, and the Council of Europe Development Bank.

including both increases and decreases in relevant equity values over a long-term data period. The data used should be sufficient to provide conservative, statistically reliable, and robust loss estimates that are not based purely on subjective or judgmental considerations.

The parameters and assumptions used in a VaR model must be subject to a rigorous and comprehensive regime of stress-testing. Banking organizations utilizing VaR models would be required to subject their internal model and estimation procedures, including volatility computations, to either hypothetical or historical scenarios that reflect worst-case losses given underlying positions in both public and private equities. At a minimum, banking organizations that use a VaR model would be required to employ stress tests to provide information about the effect of tail events beyond the level of confidence assumed in the internal models approach.

Banking organizations using non-VaR internal models that are based on stress tests or scenario analyses would have to estimate losses under worst-case modeled scenarios. These scenarios would have to reflect the composition of the organization's equity portfolio and should produce capital charges at least as large as those that would be required to be held against a representative market index under a VaR approach. For example, for a portfolio consisting primarily of publicly held equity securities that are actively traded, capital charges produced using historical scenario analyses would have to be greater than or equal to capital charges produced by a baseline VaR approach for a major index that is representative of the institution's holdings.

The measure of an equity exposure on which A–IRB capital requirements would be based would be the value of the equity presented in a banking organization's financial statements. For investments held at fair value, the exposure amount would be equal to the fair value presented in the balance sheet. For investments held at the lower of cost or market value, the exposure amount would be equal to the cost or market value presented in the balance sheet.

The loss estimate derived from the internal model would constitute the A–IRB capital charge to be assessed against the equity exposure. The A–IRB equity capital charge would be incorporated into an institution's risk-based capital ratio through the calculation of risk-weighted equivalent assets. To convert the A–IRB equity capital charge into risk-weighted equivalent assets, a banking organization would multiply the capital charge by a factor of 12.5.

Consistent with the general risk-based capital rules, 45 percent of the positive change in value held in the tax-adjusted separate component of equity—that is, 45 percent of revaluation gains on available-for-sale (AFS) equity securities—would be includable in Tier 2 capital under the A–IRB framework.

Comment is specifically sought on whether the measure of an equity exposure under AFS accounting continues to be appropriate or whether a different rule for the inclusion of revaluation gains should be proposed.

C. Supervisory Assessment of A–IRB Framework

A banking organization would have to satisfy all the A–IRB infrastructure requirements and supervisory standards before it would be able to use the A–IRB approach for calculating capital requirements for credit risk. This section describes key elements of the framework on which the Agencies propose to base the A–IRB qualifying requirements for U.S. banking organizations. The Agencies intend to provide more detailed implementation guidance in regard to these issues for wholesale and retail exposures, as well as for equity and securitization exposures. As noted earlier, draft guidance for corporate exposures that identifies associated supervisory standards was published elsewhere in today's **Federal Register**.

Overview of Supervisory Framework

Many of the supervisory standards are focused on requirements for a banking organization's internal risk rating system. Emphasis is placed on a banking organization's ability to rank order and quantify risk in a consistent, reliable and valid manner. In sum, a banking organization's internal risk rating system would have to provide for a meaningful differentiation of the riskiness of borrowers, as well as the risks inherent in individual transactions. To ensure the reliability of these estimates, internal risk rating systems would need to be subject to review by independent control units. Data sources and estimation methods used by banking organizations would need to be sufficiently robust to support the production of consistent quantitative assessments of risk over time. Finally, to ensure that ratings are not derived solely for regulatory capital purposes, internal risk rating systems and quantification methods would need to form an integral part of the management of the institution, as outlined below.

It is important to emphasize that the Agencies believe that meeting the A–IRB infrastructure requirements and supervisory standards will require significant efforts by banking organizations. The A–IRB supervisory standards will effectively "raise the bar" in regard to sound credit risk management practices.

Rating System Design

The design of an internal risk rating system is key to its effectiveness. By definition, a rating system comprises all of the processes that support the assessment of credit risk, the assignment of internal risk ratings, and the quantification of default and loss estimates. Banking organizations would be able to rely on one or more systems for assessing their credit risk exposures. When this is the case, the banking organization would have to demonstrate that each system used for A–IRB capital purposes complies with the supervisory standards.

The Agencies believe that banking organizations' internal rating systems should accurately and consistently differentiate degrees of risk. For wholesale exposures, banking organizations would need to have a two-dimensional rating system that separately assesses the risk of borrower default, as well as transaction-specific factors that focus on the amount that would likely be collected in the event of default. Such factors may include whether an exposure is collateralized, its seniority, and the product type. In contrast to the individual evaluation required for wholesale exposures, retail exposures would be assessed on a pool basis. Banking organizations would need to group their retail exposures into portfolio segments based on the risk characteristics that they consider relevant—for example borrower characteristics such as credit scores or transaction characteristics such as product or collateral type. Delinquent or defaulted exposures would need to be separated from those that are current.

Banking organizations would be required to define clearly their wholesale rating categories and retail portfolio segments. The clarity and transparency of the ratings criteria are critical to ensuring that ratings are assigned in a consistent and reliable manner. The Agencies believe it is important for banking organizations to document the operating procedures for their internal risk rating system in writing. For example, the documentation should describe which parties within the organization would have the authority to approve exceptions. Further, the documentation would have to clearly specify the frequency of review, as well as describe the oversight to be provided by management of the ratings process.

Banking organizations using the A–IRB approach would need to be able to generate sound measurements of the key risk inputs to the A–IRB capital formulas. Banking organizations would be able to rely on data based either on internal experience or generated by an external source, as long as the banking organization can demonstrate the relevance of external data to its own experience.

In assigning a rating to an obligor, a banking organization must assess the risk of default, taking into account possible adverse events that might increase the obligor's likelihood of default. The A–IRB supervisory standards in the supervisory guidance provide banking organizations with a degree of flexibility in determining precisely how to reflect adverse events in obligor ratings. However, banking organizations are required to clearly articulate the approach chosen, and to articulate the implications for capital planning and for capital adequacy during times of systematic economic stress. The Agencies recognize that banking organizations' internal risk rating systems may include a range of statistical models or other methods to assign borrower or facility ratings or to estimate key inputs. The burden of proof would remain on the banking organization as to whether a specific model or procedure satisfies the supervisory standards.

Risk Rating System Operations

The risk rating system would have to form an integral part of the loan approval process wherein ratings are assigned to all borrowers, guarantors, or facilities depending upon whether the extension of credit is wholesale or retail in nature. Any deviations from policies that govern the assignment of ratings must be clearly documented and monitored.

Data maintenance is another key aspect of risk rating system operations. Banking organizations would be expected to collect and store data on key borrower and facility characteristics. The data would have to be sufficiently detailed to allow for future reconsideration of the way in which obligors and facilities have been allocated to grades. Furthermore, banking organizations would have to collect, retain, and disclose data on aspects of their internal ratings as described under the disclosure section of this proposal.

Banking organizations would be required to have in place sound stress testing processes for use in the assessment of capital adequacy. Stress testing would have to involve identifying possible events or future changes in economic conditions that could have unfavorable effects on a banking organization's credit exposures. Specifically, institutions would need to assess the effect of certain specific conditions on their A–IRB regulatory capital requirements. The choice of test to be employed would remain with the individual banking organization provided the method selected is meaningful and reasonably conservative.

Corporate Governance and Oversight

The Agencies view the involvement of the board of directors and management as critical to the successful implementation of the A–IRB approach. The board of directors and management would be responsible for maintaining effective internal controls over the banking organization's information systems and processes for assessing adequacy of regulatory capital and determining regulatory capital charges consistent with this ANPR. All significant aspects of the rating and estimation processes would have to be approved by the banking organization's board of directors or a designated committee thereof and senior management. These parties would need to be fully aware of whether the system complies with the supervisory standards, makes use of the necessary data, and produces reliable quantitative estimates. Ongoing management reports would have to accurately capture the performance of the rating system.

Oversight would also need to involve independent credit risk control units responsible for ensuring the performance of the rating system, the accuracy of the ratings and parameter estimates, and overall compliance with supervisory standards and capital regulations. The Agencies believe it is critical that such units remain functionally independent from the personnel and management responsible for originating credit exposures. Among other responsibilities, the control units should be charged with testing and monitoring the appropriateness of the rating scale, verifying the consistent use of ratings for a given exposure type across the organization, and reviewing and documenting any changes to be made to the system.

Use of Internal Ratings

To qualify to use the A–IRB framework, a banking organization's rating systems would have to form an integral part of its day-to-day credit risk management process. The Agencies expect that banking organizations would rely on their internal risk rating systems when making decisions about whether to extend credit as well as in their ongoing monitoring of credit exposures. For example, ratings information would have to be incorporated into other key processes, such as reserving determinations and when allocating economic capital internally.

Risk Quantification

Ratings quantification is the process of assigning values to the key risk components of the A–IRB approach: PD, LGD, EAD and M. With the exception of M, the risk components are unobservable and must be estimated. The estimates would have to be consistent with sound practice and supervisory standards. Banking organizations' rating system review and internal audit functions would need to serve as control mechanisms that ensure the process of rating assignments and quantification are functioning according to policy and that non-compliance or weaknesses are identified.

Validation of Internal Estimates

An equally important element would be a robust system for validating the accuracy and consistency of a banking organization's rating system, as well as the estimation of risk components. The standards in the supervisory guidance require that banking organizations use a broad range of validation tools, including evaluation of developmental evidence, ongoing monitoring of rating and quantification processes, benchmarking against alternative approaches, and comparison of outcomes with estimates. Details of the validation process would have to be consistent with the operation of the banking organization's rating system and data would have to be maintained and updated to support oversight and validation work. Banking organizations would have to have well-articulated standards for situations where deviations of realized values from expectations become significant enough to call the validity of the estimates into question. Rating systems with appropriate data and oversight feedback mechanisms should create an environment that promotes integrity and improvements in the rating system over time.

U.S. Supervisory Review

The primary Federal supervisor would be responsible for evaluating an institution's initial and ongoing

compliance with the infrastructure requirements and supervisory standards for approval to use the A-IRB approach for regulatory capital purposes. As noted, the Agencies will be developing and issuing specific implementation guidance describing the supervisory standards for wholesale, retail, equity and securitization exposures. The Agencies will issue the draft implementation guidance for each portfolio for public comment to ensure that there is an opportunity for banking organizations and others to provide feedback on the Agencies' expectations in regard to A-IRB systems.

The Agencies seek comment on the extent to which an appropriate balance has been struck between flexibility and comparability for the A-IRB requirements. If this balance is not appropriate, what are the specific areas of imbalance, and what is the potential impact of the identified imbalance? Are there alternatives that would provide greater flexibility, while meeting the overall objectives of producing accurate and consistent ratings?

The Agencies also seek comment on the supervisory standards contained in the draft guidance on internal ratings-based systems for corporate exposures. Do the standards cover all of the key elements of an A–IRB framework? Are there specific practices that appear to meet the objectives of accurate and consistent ratings but that would be ruled out by the supervisory standards related to controls and oversight? Are there particular elements from the corporate guidance that should be modified or reconsidered as the Agencies draft guidance for other types of credit?

In addition, the Agencies seek comment on the extent to which these proposed requirements are consistent with the ongoing improvements banking organizations are making in credit-risk management processes.

IV. Securitization

A. General Framework

This section describes the calculation of A–IRB capital requirements for securitization exposures. A securitization exposure is any on- or off-balance-sheet position created by aggregating and then tranching the risks of a pool of assets, commitments, or other instruments (underlying exposures) into multiple financial interests where, typically, the pooled risks are not shared *pro rata*. The pool may include one or more underlying exposures. Examples include all exposures arising from traditional and synthetic securitizations, as well as partial guarantee arrangements where credit losses are not divided proportionately among the parties (often referred to as tranched cover). Asset- and mortgage-backed securities (including those privately issued and those issued by GSEs such as Fannie Mae and Freddie Mac), credit enhancements, liquidity facilities, and credit derivatives that have the characteristics noted above would be considered securitization exposures.

With ongoing advances in financial engineering, the Agencies recognize that securitization exposures having similar risks can take different legal forms. For this reason, both the designation of positions as securitization exposures and the calculation of A–IRB capital requirements for securitization exposures would be guided by the economic substance of a given transaction, rather than by its legal form.

Operational Criteria

Banking organizations would have to satisfy certain operational criteria to be eligible to use the A–IRB approach to securitization exposures. Moreover, all banking organizations that use the A–IRB approach for the underlying exposures that have been securitized would have to apply the A–IRB treatment for securitization exposures. Minimum operational criteria would apply to traditional and synthetic securitizations. The Agencies propose to establish supervisory criteria for determining when, for risk-based capital purposes, a banking organization may treat exposures that it has originated directly or indirectly as having been securitized and, hence, not subject to the same capital charge as if the banking organization continued to hold the assets. The Agencies anticipate these supervisory criteria will be substantially equivalent to the criteria contained in the New Accord (paragraphs 516–520). Broadly, these criteria are intended to ensure that securitization transactions transfer significant credit risk to third parties and, in the case of traditional securitizations, that each transaction qualifies as a true sale under applicable accounting standards.

The supervisory criteria also would describe the types of clean-up calls that may be incorporated within transactions qualifying for the A–IRB securitization treatment.[28] Specifically, any clean-up call would have to meet the following conditions: (a) Its exercise is at the discretion of the originating banking organization; (b) it does not serve as a credit enhancement; and (c) it is only exercisable when 10 percent or less of the original underlying portfolio or reference portfolio value remains. If a clean-up call does not meet all of these criteria, the originating banking organization would have to treat the underlying exposures as if they had not been securitized.

The Agencies seek comment on the proposed operational requirements for securitizations. Are the proposed criteria for risk transference and clean-up calls consistent with existing market practices?

Differences Between General A–IRB Approach and the A–IRB Approach for Securitization Exposures

In contrast to the proposed A–IRB framework for traditional loans and commitments, the A–IRB securitization framework does not rely on a banking organization's own internal assessments of the PD and LGD of a securitization exposure. For securitization exposures backed by pools of multiple assets, such assessments require implicit or explicit estimates of correlations among the losses on those assets. Such correlations are extremely difficult to estimate and validate in an objective manner and on a going-forward basis. For this reason, the A–IRB framework generally would not permit a banking organization to use its internal risk assessments of PD or LGD when such assessments depend, implicitly or explicitly, on estimates of correlation effects. The A–IRB treatment of securitization exposures would rely principally on two sources of information, when available: (i) An assessment of the securitization exposure's credit risk made by an external rating agency; and (ii) the A–IRB capital charge that would have been assessed against the underlying exposures had the exposures not been securitized (the pool's A–IRB capital charge), along with other information about the transaction.

B. Determining Capital Requirements

General Considerations

Because the information available to a banking organization about a securitization exposure often reflects the organization's role in a securitization transaction, the Agencies are proposing that the method of calculating the A–IRB capital requirement for a securitization exposure may depend on whether a banking organization is an originator or a third-party investor in the securitization transaction. In general, a banking organization would be considered an originator of a securitization if the organization directly or indirectly originated the underlying exposures or serves as the sponsor of an asset-backed commercial paper (ABCP) conduit or similar program.[29] If a banking organization is not deemed an originator of a securitization transaction, then it would be considered an investor in the securitization.

There are several methods for determining the A–IRB capital requirement for a securitization exposure: the Ratings-Based Approach (RBA), the Alternative RBA, the Supervisory Formula Approach (SFA), the Look-Through Approach, deduction from Tier 1 capital, and deduction from total capital. The following table summarizes conditions under which a banking organization would apply each of these methods. In this table, KIRB denotes the ratio of (a) the pool's A–IRB capital charge to (b) the notional or loan equivalent amount of underlying exposures in the pool.

Steps for Determining A–IRB Capital Requirements for Securitization Exposures

For an investing banking organization:
1. Deduct from total capital any credit-enhancing interest-only strips
2. When an external or inferred rating exists, apply the RBA
3. When an external or inferred rating does not exist, do the following:
a. Subject to supervisory review and approval, if the investing banking organization can determine KIRB, then calculate required capital as would an originating banking organization using the steps described in 2.a. below
b. Otherwise, deduct the exposure from total capital

For an originating banking organization:*
1. Deduct from Tier 1 capital any increase in capital resulting from the securitization transaction and deduct from total capital any credit-enhancing interest-only strips (net of deductions from Tier 1 capital due to increases in capital)
2. When an A–IRB approach exists for the underlying exposures do the following:
a. If KIRB can be determined:
i. For a securitization exposure (or portion thereof) that is at or below KIRB, deduct the exposure from total capital
ii. For a securitization exposure (or portion thereof) that is above KIRB:
1. Apply the RBA whenever an external or inferred rating is available
2. Otherwise, apply the SFA
b. If KIRB cannot be determined:
i. Apply the Look-Through Approach if the exposure is an eligible liquidity facility, subject to supervisory approval
ii. Otherwise, deduct the exposure from total capital
3. When an A–IRB approach does not exist for the underlying exposures do the following:
a. Apply the Look-Through Approach if the exposure is an eligible liquidity facility, subject to supervisory approval
b. Otherwise, apply the Alternative RBA

Deductions of Gain-on-Sale or Other Accounting Elements That Result in Increases in Equity Capital

Any increase in equity capital resulting from a securitization transaction (for example, a gain resulting from FAS 140 accounting treatment of the sale of assets) would be deducted from Tier 1 capital. Such deductions are intended to offset any gain on sale or other accounting treatments ("gain on sale") that result in an increase in an originating banking organization's shareholders' equity and Tier 1 capital. Over time, as banking organizations, from an accounting perspective, realize the increase in equity that was booked at origination of a securitization transaction through actual receipt of cash flows, the amount of the required deduction would be reduced accordingly.

Banking organizations would have to deduct from total capital any on-balance-sheet credit-enhancing interest-only strips (net of any increase in the shareholders' equity deducted from Tier 1 capital as described in the previous paragraph).[30] Credit-enhancing interest-only strips are defined in the general risk-based capital rules and include items, such as excess spread, that represent subordinated cash flows of future margin income.

Maximum Capital Requirement

Where an A–IRB approach exists for the underlying exposures, an originating banking organization's total A–IRB capital charge for exposures associated with a given securitization transaction would be subject to a maximum or ceiling. This maximum A–IRB capital charge would equal the pool's A–IRB capital charge plus any required deductions, as described in the preceding paragraphs. The aim of this treatment is to ensure that an institution's effective A–IRB capital charge generally would not be greater after securitization than before, while also addressing the Agencies' safety and soundness concerns with respect to credit-enhancing interest-only strips and other capitalized assets.[31]

The proposed maximum A–IRB capital requirement effectively would reverse one aspect of the general risk-based capital rules for securitization exposures referred to as residual interests. Under the general risk-based capital rules, banking organizations are required to hold a dollar in capital for every dollar in residual interest, regardless of the capital requirement on the underlying exposures. One of the reasons the Agencies adopted the "dollar-for-dollar" capital treatment for residual interests is that in many instances the relative size of the exposure retained by the originating banking organization reveals additional market information about the quality of the underlying exposures and deal structure that may not have been captured in the capital requirement on the underlying exposures, had those exposures remained on the banking organization's balance sheet. The Agencies will continue to review the proposal for safety and soundness considerations and may consider retaining the current dollar-for-dollar capital treatment for residual interests, especially in those instances where an originator retains first loss and other deeply subordinated interests in amounts that significantly exceed the pool's A–IRB capital charge plus required deductions.

Comments are invited on the circumstances under which the retention of the treatment in the general risk-based capital rules for residual interests for banking organizations using the A–IRB approach to securitization would be appropriate.

Should the Agencies require originators to hold dollar-for-dollar capital against all retained securitization exposures, even if this treatment would result in an aggregate amount of capital required of the originator that exceeded the pool's A–IRB capital charge plus any applicable deductions? Please provide the underlying rationale.

Investors

Third-party investors generally do not have access to detailed, ongoing information about the credit quality of the underlying exposures in a securitization. In such cases, investors often rely upon credit assessments made by external rating agencies. For a securitization exposure held by an investing banking organization, and

[28] In general terms, a clean-up call is an option that permits an originating banking organization to call the securitization exposures (for example, asset- or mortgage-backed securities) before all of the underlying exposures have been repaid.

[29] A banking organization is generally considered a sponsor of an ABCP conduit or similar program if, in fact or in substance, it manages or advises the conduit program, places securities into the market for the program, or provides liquidity support or credit enhancements to the program.

* In addition to the capital treatments delineated, an originating banking organization's total A–IRB capital charge with regard to any single securitization transaction is subject to a maximum or ceiling, as described later in this section.

[30] Deductions other than of increases in equity capital are to be taken 50 percent from Tier 1 capital and 50 percent from Tier 2 capital.

[31] The maximum capital requirement also applies to investing banking organizations that receive approval to use the SFA.

where an A–IRB treatment for the underlying exposures exists, the institution would use the Ratings-Based Approach (RBA) described below if the securitization exposure is externally rated or if an inferred rating is available (as defined in the RBA discussion below). When neither an external rating nor an inferred rating is available, an investing banking organization would compute the A-IRB capital charge for the exposure using the methodology described below for originating institutions (subject to supervisory review and approval). Otherwise, the securitization exposure would be deducted 50 percent from Tier 1 capital and 50 percent from Tier 2 capital. The Agencies anticipate that investing banking organizations would apply the RBA in the vast majority of situations.

Originators

This section presumes that an A–IRB approach exists for the underlying exposures. If no A–IRB treatment exists for the underlying exposures, then an originating banking organization (originator) would use the Alternative RBA discussed below.

In contrast to third-party investors, banking organizations that originate securitizations are presumed to have much greater access to information about the current credit quality of the underlying exposures. In general, when an originator retains a securitization exposure, the A–IRB securitization framework would require the institution to calculate, on an ongoing basis, the underlying exposure pool's A–IRB capital requirement had the underlying exposures not been securitized (the pool's A–IRB capital charge), which would be based on the notional dollar amount of underlying exposures (the size of the pool). The pool's A–IRB capital charge would be calculated using the top-down or bottom-up method applicable to the type(s) of underlying exposure(s).[32] As noted above, the pool's A–IRB capital charge divided by the size of the pool is denoted KIRB.

An originator also would be expected to know: (a) Its retained securitization exposure's nominal size relative to the size of the pool (the exposure's "thickness," denoted T); and (b) the notional amount of all more junior securitization exposures relative to the size of the pool (the exposure's "credit enhancement level," denoted L). The retained securitization exposure's A–IRB capital requirement depends on the relationship between KIRB, T, and L. If an originator cannot determine KIRB, any retained securitization exposure would be deducted from capital. For eligible liquidity facilities (defined below in the Look Through Approach) provided to ABCP programs where a banking organization lacks the information necessary to calculate KIRB, the Look-Through Approach described below would be applied on a temporary basis and subject to supervisory approval.

Positions Below KIRB

An originating banking organization would deduct from capital any retained securitization exposure (or part thereof) that absorbs losses at or below the level of KIRB (that is, an exposure for which $L+T \leq KIRB$).[33] This means that an originating banking organization would be given no risk-based capital relief unless it sheds at least some exposures below KIRB. Deduction from capital would be required regardless of the securitization exposure's external rating. This deduction treatment is in contrast to the A–IRB capital treatment for investors, who would be able to look to the external (or inferred) rating of a securitization exposure regardless of whether the exposure was below KIRB.

While this disparate treatment of originators and investors may be viewed as inconsistent with the principle of equal capital for equal risk, the Agencies believe it is appropriate in order to provide incentives for originating banks to shed highly subordinated securitization exposures. Such exposures contain the greatest credit risks. Moreover, these risks are difficult to evaluate, and risk quantifications tend to be highly sensitive to modeling assumptions that are difficult to validate objectively. The proposal to prevent an originator from using the RBA for securitization exposures below KIRB reflects, in part, a concern by the Agencies that the market discipline underpinning an external credit rating may be less effective when the rating applies to a retained, non-traded securitization exposure and is sought by an originator primarily for regulatory capital purposes.

The Agencies note that the specific securitization exposures retained by an originator that are subject to deduction treatment could change over time in response to variations in the credit quality of the underlying exposures. For example, if the pool's A–IRB capital charge were to increase after the inception of a securitization, additional portions of securitization exposures held by an originator may fall below KIRB and, thus, become subject to deduction. Therefore, when an originator retains a first-loss securitization exposure well in excess of KIRB, the originator's A–IRB capital requirement on the exposure could climb rapidly in the event of any marked deterioration of the underlying exposures. In general, an originator could minimize variability in future capital charges by minimizing the size of any retained first-loss securitization exposures.

Positions Above KIRB

When an originating banking organization retains a securitization exposure, or part thereof, that absorbs losses above the KIRB amount (that is, an exposure for which $L + T > KIRB$) and the banking organization has not already met the maximum capital requirement for securitization exposures described previously, the A–IRB capital requirement for the exposure would be calculated as follows. For securitization exposures having an external or inferred rating, the organization would calculate its A–IRB capital requirement using the RBA. However, if neither an external rating nor an inferred rating is available, an originator would be able to use the SFA, subject to supervisory review and approval. Otherwise, the organization would deduct the securitization exposure from total capital.

The Agencies seek comment on the proposed treatment of securitization exposures held by originators. In particular, the Agencies seek comment on whether originating banking organizations should be permitted to calculate A–IRB capital charges for securitizations exposures below the KIRB threshold based on an external or inferred rating, when available.

The Agencies seek comment on whether deduction should be required for all non-rated positions above KIRB. What are the advantages and disadvantages of the SFA approach versus the deduction approach?

Capital Calculation Approaches

The Ratings-Based Approach (RBA)

The RBA builds upon the widespread acceptance of external ratings by third-party investors as objective assessments of a securitization exposure's stand-alone credit risk. Certain minimum requirements would have to be satisfied in order for a banking organization to rely on an external credit rating for determining its A–IRB capital charge for a securitization exposure. To be recognized for regulatory capital purposes, the external credit rating on a securitization exposure would have to be public and reflect the entire amount of credit risk exposure the banking organization has with regard to all payments owed to it under the exposure. In particular, if a banking organization is owed both principal and interest on a securitization exposure, the external rating on the exposure would have to fully reflect the credit risk associated with both payment streams. The Agencies propose to establish criteria to ensure the integrity of external ratings processes and banking organizations' use of these ratings under the RBA. These criteria are expected to be consistent with the proposed guidance provided in the New Accord (paragraph 525).

In certain circumstances, an "inferred rating" may be used for risk weighting a non-rated securitization exposure. Similar to the general risk-based capital rules, to qualify for use of an inferred rating, a non-rated securitization exposure would have to be senior in all respects to a subordinate rated position within the same securitization transaction. Further, the junior rated tranche would have to have an equivalent or longer remaining maturity than the non-rated exposure. Where these conditions are met, the non-rated exposure would be treated as if it had the same rating (an "inferred rating") as that of the junior rated tranche. External and inferred ratings would be treated equivalently.

Under the RBA, the capital charge per dollar of a securitization exposure would depend on: (i) The external rating (or inferred rating) of the exposure, (ii) whether the rating reflects a long-term or short-term assessment of the exposure's credit risk, and (iii) a measure of the effective number—or granularity—of the underlying exposures (N).[34] For a securitization exposure rated AA or AAA, the RBA capital charge also would depend on a measure of the exposure's relative seniority in the overall transaction (Q).[35]

Tables 1 and 2 below present the risk weights that would result from the RBA when a securitization exposure's external rating (or inferred rating) represents a long-term or short-term credit rating, respectively. In both tables, the risk weights in column 2 would apply to AA and AAA-rated securitization exposures when the effective number of exposures (N) is 100 or more, *and* the exposure's relative seniority (Q) is greater than or equal to $0.1 + 25/N$. If the underlying exposures are retail exposures, N would be treated as infinite and the minimum qualifying value of Q would be 0.10. The Agencies anticipate that these risk weights would apply to AA and AAA-rated tranches of most retail securitizations. Column 4 would apply only to securitizations involving non-retail exposures for which N is less than 6, and column 3 would apply in all other situations.

Within each table, risk weights increase as external rating grades decline. Under the Base Case (column 3), for example, the risk weights range from 12 percent for AAA-rated exposures to 650 percent for exposures rated BB–. This pattern of risk weights is broadly consistent with analyses employing standard credit risk models and a range of assumptions regarding correlation effects and the types of exposures being securitized.[36] These analyses imply that, compared with a corporate bond having a given level of stand-alone credit risk (for example, as measured by its expected loss rate), a securitization tranche having the same level of stand-alone risk—but backed by a reasonably granular and diversified pool—will tend to exhibit more systematic risk.[37] This effect is most pronounced for below-investment grade tranches, and is the primary reason why the RBA risk weights increase rapidly as ratings deteriorate over this range—much more rapidly than for similarly rated corporate bonds. Similarly, for highly granular pools, the risk weights expected to apply to most AA and AAA-rated securitization exposures (7 percent and 10 percent, respectively) decline steeply relative to the risk weight applicable to A-rated exposures (20 percent, column 3)—again, more so than might be the case for similarly rated corporate bonds. The decline in risk weights as ratings improve over the investment grade range is less pronounced for the Base Case and for tranches backed by non-granular pools (column 4).

For securitization exposures rated below BB–, the proposed A–IRB treatment—deduction from capital—would be somewhat more conservative than suggested by credit risk modeling analyses. However, the Agencies believe this more conservative treatment would be appropriate in light of modeling uncertainties and the tendency for securitization exposures in this range, at least at the inception of the securitization transaction, to be non-traded positions retained by an originator because they cannot be sold at a reasonable price.

TABLE 1.—ABS RISK WEIGHTS BASED ON LONG-TERM EXTERNAL CREDIT ASSESSMENTS

External rating (illustrative)	Thick tranches backed by highly granular pools	Base case	Tranches backed by non-granular pools
AAA	7%	12%	20%
AA	10%	15%	25%
A	N/A	20%	35%
BBB+	N/A	50%	50%
BBB	N/A	75%	75%
BBB–	N/A	100%	100%
BB+	N/A	250%	250%
BB	N/A	425%	425%
BB–	N/A	650%	650%
Below BB–	N/A	Deduction	Deduction

[32] For the purpose of determining the A–IRB capital requirement for a securitization exposure, the top-down method could be used regardless of the maturity of the underlying exposures, provided the other eligibility criteria for employing the top-down approach are satisfied.

[33] If an originator holds a securitization exposure that straddles KIRB, the exposure must be decomposed into two separate positions—one that is above KIRB and another that is at or below KIRB.

[34] N is defined more formally in the discussion below of the Supervisory Formula Approach.

[35] Q is defined as the total size of all securitization exposures rated at least AA– that are pari passu or junior to the exposure of interest, measured relative to the size of the pool and expressed as a decimal. Thus, for a securitization transaction having an AAA-rated tranche in the amount of 70 percent of the pool, an AAA-rated tranche of 10 percent, a BBB-rated tranche of 10 percent, and a non-rated tranche of 10 percent, the values of Q associated with these positions would be 0.80, 0.10, 0, and 0, respectively.

[36] See Vladislav Peretyatkin and William Perraudin, "Capital for Asset-Backed Securities," Bank of England, February 2003.

[37] See, for example, Michael Pykhtin and Ashish Dev, "Credit Risk in Asset Securitizations: Analytical Model," *Risk* (May 2002) S16–S20.

TABLE 2.—ABS RISK WEIGHTS BASED ON SHORT-TERM EXTERNAL CREDIT ASSESSMENTS

External rating (illustrative)	Thick tranches backed by highly granular pools	Base case	Tranches backed by non-granular pools
A–1/P–1	7%	12%	20%
A–2/P–2	N/A	20%	35%
A–3/P–3	N/A	75%	75%
All other ratings	N/A	Deduction	Deduction

The Agencies seek comment on the proposed treatment of securitization exposures under the RBA. For rated securitization exposures, is it appropriate to differentiate risk weights based on tranche thickness and pool granularity?

For non-retail securitizations, will investors generally have sufficient information to calculate the effective number of underlying exposures (N).

What are views on the thresholds, based on N and Q, for determining when the different risk weights apply in the RBA?

Are there concerns regarding the reliability of external ratings and their use in determining regulatory capital? How might the Agencies address any such potential concerns?

Unlike the A–IRB framework for wholesale exposures, there is no maturity adjustment within the proposed RBA. Is this reasonable in light of the criteria to assign external ratings?

The Supervisory Formula Approach (SFA)

As noted above, when an explicit A–IRB approach exists for the underlying exposures, originating and investing banking organizations would be able to apply the SFA to non-rated exposures above the KIRB threshold, subject to supervisory approval and review. The Agencies anticipate that, in addition to its application to liquidity facilities and to other traditional and synthetic securitization exposures, the SFA would be used when calculating A–IRB capital requirements for tranched guarantees (for example, a loan for which a guarantor assumes a first-loss position that is less than the full amount of the loan).

Under the SFA, the A–IRB capital charge for a securitization tranche would depend on six institution-supplied inputs:[38] the notional amount of underlying exposures that have been securitized (E), the A–IRB capital charge had the underlying exposures not been securitized (KIRB); the tranche's credit enhancement level (L); the tranche's thickness (T); the pool's effective number of exposures (N); and the pool's exposure-weighted average loss-given-default (LGD). In general, the estimates of N and LGD would be developed as a by-product of the process used to determine KIRB.

The SFA capital charge for a given securitization tranche would be calculated as the notional amount of underlying exposures that have been securitized (E), multiplied by the greater of: (i) 0.0056 * T or (ii) the following expression:[39]

$$K[L+T]-K[L]+\{(0.05 * d * KIRB * e^{-20(L-KIRB)/KIRB)} * (1-e^{-20T/KIRB})\},$$

where,[40]

$$h=(1-KIRB/LGD)^{N}$$

$$c=KIRB/(1-h)$$

$$v=\frac{(LGD-KIRB)\,KIRB+0.25\,(1-LGD)\,KIRB}{N}$$

$$f=\left(\frac{v+KIRB^{2}}{1-h}-c^{2}\right)+\frac{(1-KIRB)\,KIRB-v}{(1-h)*1000}$$

$$g=\frac{(1-c)\,c}{f}-1$$

$$a=g*c$$

$$b=g*(1-c)$$

$$d=1-(1-h)*(1-\text{Beta}[KIRB;a,b])$$

$$K[x]=(1-h)*\left(x*(1-\text{Beta}[x;a,b])+c*\text{Beta}[x;a+1,b]\right).$$

Although visually daunting, the above supervisory formula is easily programmable within standard spreadsheet packages, and its various components have intuitive interpretations.

Part (i), noted above, of the SFA effectively imposes a 56 basis point minimum or floor A–IRB capital charge per dollar of tranche exposure. While acknowledging that such a floor is not risk-sensitive, the Agencies believe that some minimum prudential capital charge is nevertheless appropriate. The floor has been proposed at 56 basis points partly on the basis of empirical analyses suggesting that, across a broad range of modeling assumptions and exposure types, this level provides a reasonable lower bound on the capital charges implied by standard credit risk models for securitization tranches meeting the standards for an external rating of AAA.[41] This floor also is consistent with the lowest capital charge available under the RBA.

Part (ii) of the SFA also is a blend of credit risk modeling results and supervisory judgment. The function denoted K[*x*] represents a pure model-based estimate of the pool's aggregate systematic or non-diversifiable credit risk that is attributable to a first-loss position covering pool losses up to and including *x*. Because the tranche of interest (defined in terms of a credit enhancement level L, and thickness T) covers losses between L and L+T, its total systematic risk can be represented as K[L + T] − K[L], which are the first two terms in (1). The term in braces within (1) represents a supervisory add-on to the pure model-based result. This add-on is intended primarily to avoid potential behavioral distortions associated with what would otherwise be a discontinuity in capital charges for relatively thin mezzanine tranches lying just below and just above KIRB: all tranches at or below KIRB would be deducted from capital, whereas a very thin tranche just above KIRB would incur a pure model-based capital charge that could vary between zero and one, depending upon the number of effective underlying exposures in the pool (N). The add-on would apply primarily to positions just above KIRB, and its quantitative effect would diminish rapidly as the distance from KIRB widens.

Most of the complexity of the supervisory formula is a consequence of attempting to make K[*x*] as consistent as possible with the parameters and assumptions of the A–IRB framework that would apply to the underlying exposures if held directly by a banking organization.[42] The specification of K[*x*] assumes that KIRB is an accurate measure of the pool's total systematic credit risk, and that a securitization merely redistributes this systematic risk among its various tranches. In this way, K[*x*] embodies precisely the same asset correlations as are assumed elsewhere within the A–IRB framework. In addition, this specification embodies the well-known result that a pool's total systematic risk (that is, KIRB) tends to be redistributed toward more senior tranches as the effective number of underlying exposures in the pool (N) declines.[43] The importance of pool granularity depends on the pool's average loss-rate-given-default, as increases in LGD also tend to shift systematic risk toward senior tranches when N is small. For highly granular pools, such as securitizations of retail exposures, LGD would have no influence on the SFA capital charge.

The Agencies propose to establish criteria for determining E, KIRB, L, T, N, and LGD that are consistent with those suggested in the New Accord. A summary of these requirements is presented below.

E. This input would be measured (in dollars) as the A–IRB estimate of the exposures in the underlying pool of securitized exposures, as if they were held directly by the banking organization, rather than securitized. This amount would reflect only those underlying exposures that have actually been securitized to date. Thus, for example, E would exclude undrawn lines associated with revolving credit facilities (for example, credit card accounts).

KIRB. This input would be measured (in decimal form) as the ratio of (a) the pool's A–IRB capital requirement to (b) the notional or loan equivalent amount of the underlying exposures in the pool (E). The pool's A–IRB capital requirement would be calculated in accordance with the applicable A–IRB standard for the type of underlying exposure. This calculation would incorporate the effect of any credit risk mitigant that is applied to the underlying exposures (either individually or to the entire pool), and hence benefits all of the securitization exposures. Consistent with the measurement of E, the estimate of KIRB would reflect only the underlying exposures that have been securitized. For example, KIRB generally would exclude the A–IRB capital charges against the undrawn portions of revolving credit facilities.

Credit enhancement level (L). This input would be measured (in decimal form) as the ratio of (a) the notional amount of all securitization exposures subordinate to the tranche of interest to (b) the notional or loan equivalent amount of underlying exposures in the pool (E). L would incorporate any funded reserve account (for example, spread account or overcollateralization) that provides credit enhancement to the tranche of interest. Credit-enhancing interest-only strips would not be included in the calculation of L.

Thickness (T). This input would be measured (in decimal form) as the ratio of (a) the notional amount of the tranche of interest to (b) the notional or loan equivalent amount of underlying exposures in the pool (E).

Effective number of exposures (N). This input would be calculated as

$$N=\frac{\left(\sum_{i}EAD_{i}\right)^{2}}{\sum_{i}EAD_{i}^{2}}$$

where EAD_i represents the exposure-at-default associated with the i-th underlying exposure in the pool. Multiple underlying exposures to the same obligor would be consolidated (that is, treated as a single exposure). If the pool contains any underlying exposures that are themselves securitization exposures (for example, one or more asset-backed securities), each of these would be treated as a single exposure for the purpose of measuring N.[44]

Exposure-weighted average LGD. This input would be calculated (in decimal form) as

$$LGD=\frac{\sum_{i}LGD_{i}\cdot EAD_{i}}{\sum_{i}EAD_{i}}$$

where LGD_i represents the average LGD associated with all underlying exposures to the i-th obligor. In the case of re-securitization (a securitization of securitization exposures), an LGD of 100 percent would be assumed for any underlying exposure that was itself a securitization exposure.[45]

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[38] When the banking organization holds only a proportional interest in the tranche, that position's A–IRB capital charge equals the prorated share of the capital charge for the entire tranche.

[39] The SFA applies only to exposures above KIRB. When a securitization tranche straddles KIRB, for the purpose of applying the SFA the tranche should be decomposed into a position at or below KIRB and another above KIRB. The latter would be the position to which the SFA is actually applied.

[40] In these expressions, Beta[X; a, b] refers to the cumulative beta distribution with parameters a and b evaluated at X. The cumulative beta distribution function is available in Excel as the function BETADIST.

[41] See Vladislav Peretyatkin and William Perraudin, "Capital for Asset-Backed Securities," Bank of England, February 2003.

[42] The conceptual basis for specification of K[*x*] is developed in Michael B. Gordy and David Jones, "Random Tranches," *Risk* (March 2003) 78–83.

[43] See Michael Pykhtin and Ashish Dev, "Coarse-granied CDOs," *Risk* (January 2003) 113–116.

[44] Within the supervisory formula, the probability distribution of credit losses associated with the pool of underlying exposures is approximated by treating the pool as if it consisted of N homogeneous exposures, each having an A–IRB capital charge of KIRB/N. The proposed treatment of N implies, for example, that a pool containing one ABS tranche backed by 1 million effective loans behaves more like a single loan having an A–IRB capital charge of KIRB than a pool of 1 million loans, each having an A–IRB capital charge of KIRB/1,000,000.

[45] As noted above, the A–IRB securitization framework does not permit banking organizations to use their own internal estimates of LGDs (and PDs) for securitization exposures because such quantification requires implicit or explicit estimates of loss correlations among the underlying exposures. Recall that LGDs should be measured as the loss rates expected to prevail when default rates are high. While setting LGDs equal to 100 percent is reasonable for certain types of ABSs, such as highly subordinated or thin tranches, this level of

Continued

Simplified method for computing N and LGD. Under the conditions provided below, banking organizations would be able to employ simplified methods for calculating N and the exposure-weighted average LGD. When the underlying exposures are retail exposures, the SFA may be implemented by setting h = 0 and v = 0, subject to supervisory approval and review. When the share of the pool associated with the largest exposure, C_1, is no more than 0.03 (or 3 percent of the pool), the banking organization would be able to set LGD = 0.50 and N equal to:

$$N = \left(C_1 C_m + \left(\frac{C_m - C_1}{m - 1} \right) \max\{1 - mC_1, 0\} \right)^{-1},$$

provided that the banking organization can measure C_m, which denotes the share of the pool corresponding to the largest "m" exposures (for example, a 15 percent share corresponds to a value of 0.15).[46] Alternatively, when only C_1 is available and this amount is no more than 0.03, then the banking organization would be able to set LGD = 0.50 and N = 1/ C_1.

The Agencies seek comment on the proposed SFA. How might it be simplified without sacrificing significant risk sensitivity? How useful are the alternative simplified computation methodologies for N and LGD

The Look-Through Approach for Eligible Liquidity Facilities

ABCP conduits and similar programs sponsored by U.S. banking organizations are major sources of funding for financial and non-financial companies. Liquidity facilities supporting these programs are considered to be securitization exposures of the banking organizations providing the liquidity, and generally would be treated under the rules proposed for originators. As a general matter, the Agencies expect that banking organizations using the A–IRB approach would apply the SFA when determining the A–IRB capital requirement for liquidity facilities provided to ABCP conduits and similar programs. However, if it would not be practical for a banking organization to calculate KIRB for the underlying exposures using a top-down or a bottom-up approach, the banking organization may be allowed to use the Look-Through Approach, described below, for determining the A–IRB capital requirement, subject to supervisory approval and only for a temporary period of time to be determined in consultation with the organization's primary Federal supervisor.

Because the Look-Through Approach has limited risk sensitivity, the Agencies propose that its applicability be restricted to liquidity facilities that are structured to minimize the extent to which the facilities provide credit support to the conduit. The Look-Through Approach would only be available to liquidity facilities that meet the following criteria:

(a) The facility documentation clearly identifies and limits the circumstances under which it may be drawn. In particular, the facility must not be able to cover losses already sustained by the pool of underlying exposures (for example, to acquire assets from the pool at above fair value) or be structured such that draw-down is highly probable (as indicated by regular or continuous draws);

(b) The facility is subject to an asset quality test that prevents it from being drawn to cover underlying exposures that are in default;

(c) The facility cannot be drawn after all applicable (specific and program-wide) credit enhancements from which the liquidity facility would benefit have been exhausted;

(d) Repayment of any draws on the facility (that is, assets acquired under a purchase agreement or loans made under a lending agreement) may not represent a subordinated obligation of the pool or be subject to deferral or waiver; and

(e) Reduction in the maximum drawn amount, or early termination of the facility, occurs if the quality of the pool falls below investment grade.

Under the Look-Through Approach, the liquidity facility's A–IRB capital charge would be computed as the product of (a) 8 percent, (b) the maximum potential drawdown under the facility, (c) the applicable credit conversion factor (CCF), and (d) the applicable risk weight. The CCF would be set at 50 percent if the liquidity facility's original maturity is one year or less, and at 100 percent if the original maturity is more than one year. The Agencies propose that the risk weight be set equal to the risk weight applicable under the general risk-based capital rules for banking organizations not using the A–IRB approach (that is, to the underlying assets or obligors after consideration of collateral or guarantees or, if applicable, external ratings).

The Agencies seek comment on the proposed treatment of eligible liquidity facilities, including the qualifying criteria for such facilities. Does the proposed Look-Through Approach—to be available as a temporary measure—satisfactorily address concerns that, in some cases, it may be impractical for providers of liquidity facilities to apply either the "bottom-up" or "top-down" approach for calculating KIRB? It would be helpful to understand the degree to which any potential obstacles are likely to persist.

Feedback also is sought on whether liquidity providers should be permitted to calculate A–IRB capital charges based on their internal risk ratings for such facilities in combination with the appropriate RBA risk weight. What are the advantages and disadvantages of such an approach, and how might the Agencies address concerns that the supervisory validation of such internal ratings would be difficult and burdensome? Under such an approach, would the lack of any maturity adjustment with the RBA be problematic for assigning reasonable risk weights to liquidity facilities backed by relatively short-term receivables, such as trade credit?

Other Considerations

Capital Treatment Absent an A–IRB Approach—The Alternative RBA

For originating banking organizations when there is not a specific A–IRB treatment for an underlying exposure or group of underlying exposures, the Agencies propose that a securitization exposure's A–IRB capital charge be based exclusively on the exposure's external or inferred credit rating using the Alternative RBA.[47] Under the Alternative RBA, a risk weight of 20 percent is applied to exposures rated AAA to AA–, 50 percent to exposures rated A+ to A–, and 100 percent to exposures rated BBB+ to BBB-. Securitization exposures having ratings below investment grade, or that are non-rated, would be deducted from risk-based capital on a dollar-for-dollar basis.

Should the A–IRB capital treatment for securitization exposures that do not have a specific A–IRB treatment be the same for investors and originators? If so, which treatment should be applied—that used for investors (the RBA) or originators (the Alternative RBA)? The rationale for the response would be helpful.

Structures With Early Amortization Provisions

Many securitizations of revolving credit facilities (for example, credit card accounts) contain provisions that call for the securitization to be wound down if the excess spread falls below a certain threshold.[48] This decrease in excess spread can, in some cases, be caused by deterioration in the credit quality of the underlying exposures. An early amortization event can increase a banking organization's capital needs if any new draws on the revolving facilities would need to be financed by the banking organization itself using on-balance-sheet sources of funding. The payment allocations used to distribute principal and finance charge collections during the amortization phase of these structures also can expose a banking organization to greater risk of loss than in other securitization structures. To account for the risks that early amortization structures pose to originating banking organizations, the capital treatment described below would apply to securitizations of revolving credit facilities containing such features.

In addition to the A–IRB capital charge an originating banking organization would incur on the securitization exposures it retains, an originator would be required to hold capital against all or a portion of the investors' interest in a securitization when (i) the organization sells exposures into a securitization that contains an early amortization feature, and (ii) the underlying exposures sold are of a revolving nature. The A–IRB capital charge attributed to the originator that is associated with the investors' interest is calculated as the product of (a) the A–IRB capital charge that would be imposed on the entire investors' interest if it were held by the originating banking organization, and (b) an applicable CCF.

In general, the CCF would depend on whether the early amortization feature repays investors through a controlled or non-controlled mechanism, and whether the underlying exposures represent uncommitted revolving retail facilities that are unconditionally cancellable without prior notice (for example, credit card receivables) or other credit lines (for example, revolving corporate facilities).

An early amortization provision would be considered controlled if, throughout the duration of the securitization transaction, including the amortization period, there is a pro rata sharing of interest, principal, expenses, losses, and recoveries based on the balances of receivables outstanding at the beginning of each month. Further, the pace of repayment may not be any more rapid than would be allowed through straight-line amortization over a period sufficient for 90 percent of the total debt outstanding at the beginning of the early amortization period to have been repaid or recognized as in default. In addition to these criteria, banking organizations with structures containing controlled early amortization features would also have to have appropriate plans in place to ensure that there is sufficient capital and liquidity available in the event of an early amortization. When these conditions are not met, the early amortization provision would be treated as non-controlled.

Determination of CCFs for Controlled Early Amortization Structures

The following method for determining CCFs applies to a securitization of revolving credit facilities containing a controlled early amortization mechanism. When the pool of underlying exposures includes uncommitted retail credit lines (for example, credit card receivables), an originator would first compare the securitization's three-month average excess spread against the following two reference levels:

A. The point at which the banking organization would be required to trap excess spread under the terms of the securitization; and

B. The excess spread level at which an early amortization would be triggered.

In cases where a transaction does not require excess spread to be trapped, the first trapping point would be deemed to be 4.5 percentage points greater than the excess spread level at which an early amortization is triggered.

The banking organization would divide the distance between the two points described above into four equal segments. For example if the spread trapping point is 4.5 percent and the early amortization trigger is zero percent, then 4.5 percent would be divided into four equal segments of 112.5 basis points each. The following conversion factors, based on illustrative segments, would apply to the investors' interest.

CONTROLLED EARLY AMORTIZATION OF UNCOMMITTED RETAIL CREDIT LINES

3-month average excess spread	Credit Conversion Factor (CCF) (percent)
450 basis points (bp) or more	0
Less than 450 bp to 337.5 bp	1
Less than 337.5 bp to 225 bp	2
Less than 225 bp to 112.5 bp	20
Less than 112.5 bp	40

All other securitizations of revolving facilities (that is, those containing underlying exposures that are committed or non-retail) having controlled early amortization features would be subject to a CCF of 90 percent.

Determination of CCFs for Non-Controlled Early Amortization Structures

The process for determining CCFs when a securitization of revolving credit facilities contains a non-controlled early amortization mechanism would be the same as that described above for controlled early amortization structures, except that different CCFs would apply to the various excess spread segments. For non-controlled structures, the following conversion factors, based on illustrative segments, would apply:

NON-CONTROLLED EARLY AMORTIZATION OF UNCOMMITTED RETAIL CREDIT LINES

3-month average excess spread	Credit Conversion Factor (CCF) (percent)
450 basis points (bp) or more	0
Less than 450 bp to 337.5 bp	5

LGD may be conservative for other types of ABSs. However, the Agencies believe that the complexity and burden associated with a more refined treatment of LGDs would outweigh any improvement in the overall risk sensitivity of A–IRB capital charges for originators, owing to the combined effects of (a) the dollar-for-dollar A–IRB capital charge on positions at or below KIRB, and (b) the maximum or cap on an originator's total A–IRB capital charge.

[46] The level of m is to be set by each banking organization.

[47] The Alternative RBA does not apply to eligible liquidity facilities, which may use the Look-Through Approach as described above. Additionally, the securitization exposures subject to the Alternative RBA are not limited by the maximum capital requirement discussed above.

[48] Excess spread is defined as gross finance charge collections and other income received by the trust or special purpose entity (SPE) minus certificate interest, servicing fees, charge-offs, and other senior trust or SPE expenses.

[29] A banking organization is generally considered a sponsor of an ABCP conduit or similar program if, in fact or in substance, it manages or advises the conduit program, places securities into the market for the program, or provides liquidity support or credit enhancements to the program.

NON-CONTROLLED EARLY AMORTIZATION OF UNCOMMITTED RETAIL CREDIT LINES—Continued

3-month average excess spread	Credit Conversion Factor (CCF) (percent)
Less than 337.5 bp to 225 bp ..	10
Less than 225 bp to 112.5 bp ..	50
Less than 112.5 bp	100

All other securitizations of revolving credit facilities (that is, those containing underlying exposures that are committed or non-retail) having non-controlled early amortization mechanisms would be subject to a CCF of 100 percent. In other words, no risk transference would be recognized for these structures; an originator's A–IRB capital charge would be the same as if the underlying exposures had not been securitized.

The Agencies seek comment on the proposed treatment of securitization of revolving credit facilities containing early amortization mechanisms. Does the proposal satisfactorily address the potential risks such transactions pose to originators?

Comments are invited on the interplay between the A–IRB capital charge for securitization structures containing early amortization features and that for undrawn lines that have not been securitized. Are there common elements that the Agencies should consider? Specific examples would be helpful.

Are proposed differences in CCFs for controlled and non-controlled amortization mechanisms appropriate? Are there other factors that the Agencies should consider?

Market-Disruption Eligible Liquidity Facilities

A banking organization would be able to apply a 20 percent CCF to an eligible liquidity facility that can be drawn only in the event of a general market disruption (that is, where a capital market instrument cannot be issued at any price), provided that any advance under the facility represents a senior secured claim on the assets in the pool. A banking organization using this treatment would recognize 20 percent of the A–IRB capital charge required for the facility through use of the SFA. If the market disruption eligible liquidity facility is externally rated, a banking organization would be able to rely on the external rating under the RBA for determining the A–IRB capital requirement provided the organization assigns a 100 percent CCF rather than a 20 percent CCF to the facility.

Overlapping Credit Enhancements or Liquidity Facilities

In some ABCP or similar programs, a banking organization may provide multiple facilities that may be drawn under varying circumstances. The Agencies do not intend that a banking organization incur duplicative capital requirements against these multiple exposures as long as, in the aggregate, multiple advances are not permitted against the same collateral. Rather, a banking organization would be required to hold capital only once for the exposure covered by the overlapping facilities (whether they are general liquidity facilities, eligible liquidity facilities, or the facilities serve as credit enhancements). Where the overlapping facilities are subject to different conversion factors, the banking organization would attribute the overlapping part to the facility with the highest conversion factor. However, if different banking organizations provide overlapping facilities, each institution would hold capital against the entire maximum amount of its facility. That is, there may be some duplication of capital charges for overlapping facilities provided by multiple banking organizations.

Servicer Cash Advances

Subject to supervisory approval, servicer cash advances that are recoverable would receive a zero percent CCF. This treatment would apply when servicers, as part of their contracts, may advance cash to the pool to ensure an uninterrupted flow of payments to investors, provided the servicer is entitled to full reimbursement and this right is senior to other claims on cash flows from the pool of underlying exposures.

When providing servicer cash advances, are banking organizations obligated to advance funds up to a specified recoverable amount? If so, does the practice differ by asset type? Please provide a rationale for the response given.

Credit Risk Mitigation

For securitization exposures covered by collateral or guarantees, the credit risk mitigation rules discussed earlier would apply. For example, a banking organization may reduce the A–IRB capital charge when a credit risk mitigant covers first losses or losses on a proportional basis. For all other cases, a banking organization would assume that the credit risk mitigant covers the most senior portion of the securitization exposure (that is, that the most junior portion of the securitization exposure is uncovered).

V. AMA Framework for Operational Risk

This section describes features of the proposed AMA framework for measuring the regulatory capital requirement for operational risk. Under this framework, a banking organization meeting the AMA supervisory standards would use its internal operational risk measurement system to calculate its regulatory capital requirement for operational risk. The discussion below provides background information on operational risk and the conceptual underpinnings of the AMA, followed by a discussion of the AMA supervisory standards.[49]

The Agencies' general risk-based capital rules do not currently include an explicit capital charge for operational risk, which is defined as the risk of loss resulting from inadequate or failed processes, people, and systems or from external events. When developing the general risk-based capital rules, the Agencies recognized that institutions were exposed to non-credit related risks, including operational risk. Consequently, the Agencies built a "buffer" into the general risk-based capital rules to implicitly cover other risks such as operational risk. With the introduction of the A–IRB framework for credit risk in this ANPR, which results in a more risk-sensitive treatment of credit risk, there is no longer an implicit capital buffer for other risks.

The Agencies recognize that operational risk is a key risk in financial institutions, and evidence indicates that a number of factors are driving increases in operational risk. These include the recent experience of a number of high-profile, high-severity losses across the banking industry highlighting operational risk as a major source of unexpected losses. Because the regulatory capital buffer for operational risk would be removed under the proposal, the Agencies are now seeking comment on a risk-sensitive capital framework for the largest, most complex institutions that would include an explicit risk-based capital requirement for operational risk. The Agencies propose to require banking organizations using the A–IRB approach for credit risk also to use the AMA to compute capital charges for operational risk.

[49] For a more detailed discussion of the concepts set forth in this ANPR and definitions of relevant terms, see the accompanying interagency "Supervisory Guidance on Operational Risk Advanced Measurement Approaches for Regulatory Capital" (supervisory guidance) published elsewhere in today's **Federal Register**.

The Agencies are proposing the AMA to address operational risk for regulatory capital purposes. The Agencies are interested, however, in possible alternatives. Are there alternative concepts or approaches that might be equally or more effective in addressing operational risk? If so, please provide some discussion on possible alternatives.

A. AMA Capital Calculation

The AMA capital requirement would be based on the measure of operational risk exposure generated by a banking organization's internal operational risk measurement system. In calculating the operational risk exposure, an AMA-qualified institution would be expected to estimate the aggregate operational risk loss that it faces over a one-year period at a soundness standard consistent with a 99.9 percent confidence level. The institution's AMA capital requirement for operational risk would be the sum of EL and UL, unless the institution can demonstrate that an EL offset would meet the supervisory standards for operational risk. The institution would have to use a combination of internal loss event data, relevant external loss event data, business environment and internal control factors, and scenario analysis in calculating its operational risk exposure. The institution also would be allowed to recognize the effect of risk dependency (for example, correlation) and, to a limited extent, the effect of insurance as a risk mitigant.

As with the proposed A–IRB capital requirement for credit risk, the operational risk exposure would be converted to an equivalent amount of risk-weighted assets for the calculation of an institution's risk-based capital ratios. An AMA-qualified institution would multiply the operational risk exposure generated by its analytical framework by a factor of 12.5 to convert the exposure to a risk-weighted assets equivalent. The resulting figure would be added to the comparable figures for credit and market risk in calculating the institution's risk-based capital denominator.

Does the broad structure that the Agencies have outlined incorporate all the key elements that should be factored into the operational risk framework for regulatory capital? If not, what other issues should be addressed? Are any elements included not directly relevant for operational risk measurement or management? The Agencies have not included indirect losses (for example, opportunity costs) in the definition of operational risk against which institutions would have to hold capital; because such losses can be substantial, should they be included in the definition of operational risk?

Overview of the Supervisory Criteria

Use of the AMA would be subject to supervisory approval. A banking organization would have to demonstrate that it has satisfied all supervisory standards before it would be able to use the AMA for risk-based capital purposes. The supervisory standards are briefly described below. Because an institution would have significant flexibility to develop its own methodology for calculating its risk-based capital requirement for operational risk, it would be necessary for supervisors to ensure that the institution's methodology is fundamentally sound. In addition, because different institutions may adopt different methodologies for assessing operational risk, the requirement to satisfy supervisory standards offers some assurance to institutions and their supervisors that all AMA-qualified institutions would be subject to a common set of standards.

While the supervisory standards are rigorous, institutions would have substantial flexibility in terms of how they satisfy the standards in practice. This flexibility is intended to encourage an institution to adopt a system that is responsive to its unique risk profile, foster improved risk management, and allow for future innovation. The Agencies recognize that operational risk measurement is evolving rapidly and wish to encourage continued evolution and innovation. Nevertheless, the Agencies also acknowledge that this flexibility would make cross-institution comparisons more difficult than if a single supervisory approach were to be mandated for all institutions. The supervisory standards outlined below are intended to allow flexibility while also being sufficiently objective to ensure consistent supervisory assessment and enforcement of standards across institutions.

The Agencies seek comment on the extent to which an appropriate balance has been struck between flexibility and comparability for the operational risk requirement. If this balance is not appropriate, what are the specific areas of imbalance and what is the potential impact of the identified imbalance?

The Agencies are considering additional measures to facilitate consistency in both the supervisory assessment of AMA frameworks and the enforcement of AMA standards across institutions. Specifically, the Agencies are considering enhancements to existing interagency operational and managerial standards to directly address operational risk and to articulate supervisory expectations for AMA frameworks. The Agencies seek comment on the need for and effectiveness of these additional measures.

The Agencies also seek comment on the supervisory standards. Do the standards cover the key elements of an operational risk framework?

An institution's operational risk framework would have to include an independent operational risk management function, line of business oversight, and independent testing and verification. Both the institution's board of directors and management would have to have responsibilities in establishing and overseeing this framework. The institution would have to have clear policies and procedures in place for identifying, measuring, monitoring, and controlling operational risk.

An institution would have to establish an analytical framework that incorporates internal operational loss event data, relevant external loss event data, assessments of the business environment and internal control factors, and scenario analysis. The institution would have to have standards in place to capture all of these elements. The combination of these elements would determine the institution's quantification of operational risk and related regulatory capital requirement.

The supervisory standards for the AMA have both quantitative and qualitative elements. Effective operational risk quantification is critical to the objective of a risk-sensitive capital requirement. Consequently, a number of the supervisory standards are aimed at ensuring the integrity of the process by which an institution arrives at its estimated operational risk exposure.

It is not sufficient, however, to focus solely on operational risk measurement. If the Agencies are to rely on institutions to determine their risk-based capital requirements for operational risk, there would have to be assurances that institutions have in place sound operational risk management infrastructures. In addition, risk management elements would be critical inputs into the quantification of operational risk exposure, that is, operational risk quantification would have to take into account such risk management elements as the quality of an institution's internal controls. Likewise, the AMA capital requirement derived from an institution's quantification methodology would need to offer incentives for an institution to improve its operational risk management practices. Ultimately, the Agencies believe that better operational risk management will enhance operational risk measurement, and vice versa.

Corporate Governance

An institution's operational risk framework would have to include an independent firm-wide operational risk management function, line of business management oversight, and independent testing and verification functions. While no specific management structure would be mandated, all three components would have to be evident.

The institution's board of directors would have to oversee the development of the firm-wide operational risk framework, as well as major changes to the framework. Management roles and accountability would have to be clearly established. The board and management would have to ensure that appropriate resources have been allocated to support the operational risk framework.

The independent firm-wide operational risk management function would be responsible for overseeing the operational risk framework at the firm level to ensure the development and consistent application of operational risk policies, processes, and procedures throughout the institution. This function would have to be independent from line of business management and the testing and verification functions. The firm-wide operational risk management function would have to ensure appropriate reporting of operational risk exposures and loss data to the board and management.

Lines of business would be responsible for the day-to-day management of operational risk within each business unit. Line of business management would have to ensure that internal controls and practices within their lines of business are consistent with firm-wide policies and procedures that support the management and measurement of the institution's operational risk.

The Agencies are introducing the concept of an operational risk management function, while emphasizing the importance of the roles played by the board, management, lines of business, and audit. Are the responsibilities delineated for each of these functions sufficiently clear and would they result in a satisfactory process for managing the operational risk framework?

Operational Risk Management Elements

An institution would have to have policies and procedures that clearly describe the major elements of its operational risk framework, including identifying, measuring, monitoring, and controlling operational risk. Management reports would need to be developed to address both firm-wide and line of business results. These reports would summarize operational risk exposure, operational loss experience, and relevant assessments of business environment and internal control factors, and would have to be produced at least quarterly. Operational risk reports, which summarize relevant firm-wide operational risk information, would also have to be provided periodically to senior management and the board. An institution's internal control system and practice would have to be adequate in view of the complexity and scope of its operations. In addition, an institution would be expected to meet or exceed minimum supervisory standards as set forth in the Agencies' supervisory policy statements and other guidance.

B. Elements of an AMA Framework

An institution would have to demonstrate that it has adequate internal loss event data, relevant external loss event data, assessments of business environments and internal control factors, and scenario analysis to support its operational risk management and quantification framework. These inputs would need to be consistent with the regulatory definition of operational risk. The institution would have to have clear standards for the collection and modification of operational risk inputs.

There are a number of standards that banking organizations would have to meet with respect to internal operational loss data. Institutions would have to have at least five years of internal operational risk loss data captured across all material business lines, events, product types, and geographic locations.[50] An institution would have to establish thresholds above which all internal operational losses would be captured. The New Accord introduces seven loss event type classifications; the Agencies are not proposing that an institution would be required to internally manage its operational risk according to these specific loss event type classifications, but nevertheless it would have to be able to map its internal loss data to these loss event categories. The institution would have to provide consistent treatment for the timing of reporting an operational loss in its internal data systems. As highlighted earlier in this ANPR, credit losses caused or exacerbated by operational risk events would be treated as credit losses for regulatory capital purposes; these would include fraud-related credit losses.

[50] With supervisory approval, a shorter initial observation period may be acceptable for institutions that are newly authorized to use an AMA methodology.

An institution would have to establish and adhere to policies and procedures that provide for the use of relevant external loss data in the operational risk framework. External data would be particularly relevant where an institution's internal loss history is not sufficient to generate an estimate of major unexpected losses. Management would have to systematically review external data to ensure an understanding of industry experience. The Agencies seek comment on the use of external data and its optimal function in the operational risk framework.

While internal and external data provide an important historic picture of an institution's operational risk profile, it is important that institutions take a forward-looking view as well. Consequently, an institution would have to incorporate assessments of the business environment and internal control factors (for example, audit scores, risk and control assessments, risk indicators, *etc.*) into its AMA capital assessment. In addition, an institution would have to periodically compare its assessment of these factors with actual operational loss experience.

Another element of the AMA framework is scenario analysis. Scenario analysis is a systematic process of obtaining expert opinions from business managers and risk management experts to derive reasoned assessments of the likelihood and impact of plausible operational losses consistent with the regulatory soundness standard. While scenario analysis may rely, to a large extent, on internal or, especially, external data (for example, where an institution looks to industry experience to generate plausible loss scenarios), it is particularly useful where internal and external data do not generate a sufficient assessment of the institution's operational risk profile.

An institution would be required to have a comprehensive analytical framework that provides an estimate of the aggregate operational loss that it faces over a one-year period at a soundness standard consistent with a 99.9 percent confidence level. The institution would have to document the rationale for all assumptions underpinning its chosen analytical framework, including the choice of inputs, distributional assumptions, and weighting of quantitative and qualitative elements. The institution would also have to document and justify any subsequent changes to these assumptions.

An institution's operational risk analytical framework would have to use a combination of internal operational loss event data, relevant external operational loss event data, business environment and control factors, as well as scenario analysis. The institution would have to combine these elements in the manner that most effectively enables it to quantify its operational risk exposure. The institution would have to develop an analytical framework that is appropriate to its business model and risk profile.

Regulatory capital for operational risk would be based on the sum of EL and UL. There may be instances where an EL offset could be recognized, but the Agencies believe that this is likely to be difficult given existing supervisory and accounting standards. The Agencies have considered both reserving and budgeting as potential mechanisms for EL offsets. The use of reserves may be hampered by accounting standards, while budgeting raises concerns about availability over a one-year time horizon to act as a capital replacement mechanism. The Agencies are interested in specific examples of how business practices might be used to offset EL in the operational risk framework.

An institution would have to document how its chosen analytical framework accounts for dependence (for example, correlation) among operational losses across and within business lines. The institution would have to demonstrate that its explicit and embedded dependence assumptions are appropriate, and where dependence assumptions are uncertain, the institution would have to use conservative estimates.

An institution would be able to reduce its operational risk exposure by no more than 20 percent to reflect the impact of risk mitigants such as insurance. Institutions would have to demonstrate that qualifying risk mitigants meet a series of criteria (described in the supervisory guidance) to assess whether the risk mitigants are sufficiently capital-like to warrant a reduction of the operational risk exposure.

The Agencies seek comment on the reasonableness of the criteria for recognition of risk mitigants in reducing an institution's operational risk exposure. In particular, do the criteria allow for recognition of common insurance policies? If not, what criteria are most binding against current insurance products? Other than insurance, are there additional risk mitigation products that should be considered for operational risk?

An institution using an AMA for regulatory capital purposes would have to use advanced data management practices to produce credible and reliable operational risk estimates. These practices are comparable to the data maintenance requirements set forth under the A–IRB approach for credit risk.

The institution would have to test and verify the accuracy and appropriateness of the operational risk framework and results. Testing and verification would have to be done independently of the firm-wide risk management function and the lines of business.

VI. Disclosure

Market discipline is a key component of the New Accord. The disclosure requirements summarized below seek to enhance the public disclosure practices, and thereby the transparency, of advanced approach organizations. Commenters are encouraged to consult the New Accord for specifics on the disclosure requirements under consideration. The Agencies view enhanced market discipline as an important complement to the advanced approaches to calculating minimum regulatory capital requirements, which would be heavily based on internal methodologies. Increased disclosures, especially regarding a banking organization's use of the A–IRB approach for credit risk and the AMA for operational risk, would allow a banking organization's private sector investors to more fully evaluate the institution's financial condition, risk profile, and capital adequacy. Given better information, private shareholders and debt holders can better influence the funding and capital costs of a banking organization. Such actions would enhance market discipline and supplement supervisory oversight of the organization's risk-taking and management.

A. Overview

Disclosure requirements would apply to the bank holding company representing the top consolidated level of the banking group. Individual banks within the holding company or consolidated group would not generally be required to fulfill the disclosure requirements set out below. An exception to the general rule would be that individual banks and thrifts within a group would still be required to disclose Tier 1 and total capital ratios and their components (that is, Tier 1, Tier 2, and Tier 3 capital), as is the case today. In addition, all banks and thrifts would continue to be required to submit appropriate information to regulatory authorities (for example, Report of Condition of Income (Call Reports) or Thrift Financial Reports).[51]

[51] In order to meet supervisory responsibilities, the Agencies plan to collect more detailed information through the supervisory process or regulatory reports. Much of this information may be proprietary and accordingly would not be made public.

The Agencies are proposing a set of disclosure requirements that would allow market participants to assess key pieces of information regarding a banking group's capital structure, risk exposures, risk assessment processes, and ultimately, the capital adequacy of the institution. Failure to meet these minimum disclosure requirements, if not corrected, would render a banking organization ineligible to use the advanced approaches or would otherwise cause the banking organization to forgo potential capital benefits arising from the advanced approaches. In addition, other supervisory measures may be taken if appropriate.

Management would have some discretion to determine the appropriate medium and location of the required disclosure. Disclosures made in public financial reports (for example, in financial statements or Management's Discussion and Analysis included in periodic reports or SEC filings) or other regulatory reports (for example, FR Y–9C Reports), could fulfill the applicable disclosure requirements and would not need to be repeated elsewhere. For those disclosures that are not made under accounting or other requirements, the Agencies are seeking comment on the appropriate means of providing this data to market participants. Institutions would be encouraged to provide all related information in one location; at a minimum, institutions would be required to provide a cross reference to the location of the required disclosures.

The Agencies intend to maximize a banking organization's flexibility regarding where to make the required disclosures while ensuring that the information is readily available to market participants without unnecessary burden. To balance these contrasting objectives, the Agencies are considering requiring banking organizations to provide a summary table on their public websites that indicate where all disclosures may be found. Such an approach also would allow institutions to cross-reference other web addresses (for example, those containing public financial reports or regulatory reports or other risk-oriented disclosures) where certain of the disclosures are located.

Given longstanding requirements for robust quarterly disclosure in the United States, and recognizing the potential for rapid change in risk profiles, the Agencies intend to require that the disclosures be made on a

quarterly basis. However, qualitative disclosures that provide a general summary of a banking organization's risk management objectives and policies, reporting system, and definitions would be able to be published on an annual basis, provided any significant changes to these are disclosed in the interim. When significant events occur, banking organizations would be required to publish material information as soon as practicable rather than at the end of the quarter.

The risks to which banking organizations are exposed and the techniques that they use to identify, measure, monitor, and control those risks are important factors that market participants consider in their assessment of an institution. Accordingly, banking organizations would be required to have a formal disclosure policy approved by the board of directors that addresses the institution's approach for determining the disclosures it will make. The policy also would have to address the associated internal controls and disclosure controls and procedures. The board of directors and senior management would have to ensure that appropriate verification of the disclosures takes place and that effective internal controls and disclosure controls and procedures are maintained.

Consistent with sections 302 and 404 of the Sarbanes-Oxley Act of 2002, management would have to certify to the effectiveness of internal controls over financial reporting and disclosure controls and procedures, and the banking organization's external auditor would have to attest to management's assertions with respect to internal controls over financial reporting. The scope of these reports would need to include all information included in regulatory reports and the disclosures outlined in this ANPR. Section 36 of the Federal Deposit Insurance Act has similar requirements. Accordingly, banking organizations would have to implement a process for assessing the appropriateness of their disclosures, including validation and frequency. Unless otherwise required by accounting or auditing standards, or by other regulatory authorities, the proposed requirements do not mandate that the new disclosures be audited by an external auditor for purposes of opining on whether the financial statements are presented in accordance with GAAP.

B. Disclosure Requirements

Banking organizations would be required to provide disclosures related to scope of application, capital structure, capital adequacy, credit risk, equities in the banking book, credit risk mitigation, asset securitization, market risk, operational risk and interest rate risk in the banking book. The disclosure requirements are summarized below.

The required disclosures pertaining to the scope of application of the advanced approaches would include a description of the entities found in the consolidated banking group. Additionally, banking organizations would be required to disclose the methods used to consolidate them, any major impediments on the transfer of funds or regulatory capital within the banking group, and specific disclosures related to insurance subsidiaries.

Capital structure disclosures would provide summary information on the terms and conditions of the main features of capital instruments issued by the banking organization, especially in the case of innovative, complex, or hybrid capital instruments. Quantitative disclosures include the amount of Tier 1, Tier 2, and Tier 3 capital, deductions from capital, and total eligible capital.

Capital adequacy disclosures would include a summary discussion of the banking organization's approach to assessing the adequacy of its capital to support current and future activities. These requirements also include a breakdown of the capital requirements for credit, equity, market, and operational risks. Banking organizations also would be required to disclose their Tier 1 and total capital ratios for the consolidated group, as well as those of significant bank or thrift subsidiaries.

For each separate risk area, a banking organization would describe its risk management objectives and policies. Such disclosures would include an explanation of the banking organization's strategies and processes; the structure and organization of the relevant risk management function; the scope and nature of risk reporting and/or measurement systems; and the policies for hedging and/or mitigating risk and strategies and processes for monitoring the continuing effectiveness of hedges/mitigants.

The credit risk disclosure regime is intended to enable market participants to assess the credit risk exposure of A–IRB banking organizations and the overall applicability of the A–IRB framework, without revealing proprietary information or duplicating the role of the supervisor in validating the framework the banking organization has put into place.

Credit risk disclosures would include breakdowns of the banking organization's exposures by type of credit exposure, geographic distribution, industry or counterparty type distribution, residual contractual maturity, amount and type of impaired and past due exposures, and reconciliation of changes in the allowances for exposure impairment.

Banking organizations would provide disclosures discussing the status of the regulatory acceptance process for the adoption of the A–IRB approach, including supervisory approval of such transition. The disclosures would provide an explanation and review of the structure of internal rating systems and relation between internal and external ratings; the use of internal estimates other than for A–IRB capital purposes; the process for managing and recognizing credit risk mitigation; and, the control mechanisms for the rating system including discussion of independence, accountability, and rating systems review. Required qualitative disclosures would include a description of the internal ratings process and separate disclosures pertaining to the banking organization's wholesale, retail and equity exposures.

There would be two categories of quantitative disclosures for credit risk: those that focus on the analysis of risk and those that focus on the actual results. Risk assessment disclosures would include the percentage of total credit exposures to which A–IRB disclosures relate. Also, for each portfolio except retail, the disclosures would have to provide (1) a presentation of exposures across a sufficient number of PD grades (including default) to allow for a meaningful differentiation of credit risk,[52] and (2) the default weighted-average LGD for each PD, and the amount of undrawn commitments and weighted average EAD.[53] For retail portfolios, banking organization would provide either[54] (a) disclosures outlined above on a pool basis (that is, the same as for non-retail portfolios), or (b) analysis of exposures on a pool basis against a sufficient number of EL grades to allow for a meaningful differentiation of credit risk.

Quantitative disclosures pertaining to historical results would include actual losses (for example, charge-offs and specific provisions) in the preceding period for each portfolio and how this differs from past experience and a discussion of the factors that affected the loss experience in the preceding period. In addition, disclosures would include banking organizations' estimates against actual outcomes over a longer period.[55] At a minimum, this would include information on estimates of losses against actual losses in each portfolio over a period sufficient to allow for a meaningful assessment of the performance of the internal rating processes. Banking organizations would further be expected to decompose this to provide analysis of PD, LGD and EAD estimates against estimates provided in the quantitative risk assessment disclosures above.[56]

Disclosures for banking book equity positions would include both balance sheet and fair values, and the types and nature of investments. The total cumulative realized gains or losses arising from sales and liquidations would be disclosed, together with total unrealized gains/losses and any amounts included in Tier 1 and/or Tier 2 capital. Details on the equity capital requirements would also be disclosed.

Disclosures relating to credit risk mitigation would include a description of the policies and processes for netting and collateral valuation and management, and the types of collateral accepted by the bank. Banking organizations would also be expected to include information about the main types of guarantor or credit derivative counterparties, and any risk concentrations arising from the use of a mitigation technique.

Securitization disclosures would summarize a banking organization's accounting policies for securitization activities and the current year's securitization activity. Further, banking organizations would be expected to disclose the names of the external credit rating providers used for securitizations. They would also provide details of the outstanding exposures securitized by the banking organization and subject to the securitization framework, including impairments and losses, exposures retained or purchased broken down into risk weight bands, and aggregate outstanding amounts of securitized revolving exposures.

Disclosures for market risk would include a description of the models, stress testing, and backtesting used in assessing market risk, as well as information on the scope of supervisory acceptance. Quantitative disclosures would include the aggregate VaR, the high, mean, and low VaR values over the reporting period, and a comparison of VaR estimates with actual outcomes.

A key disclosure under the operational risk framework would be a description of the AMA the banking organization uses, including a discussion of relevant internal and external factors considered in the banking organization's measurement approach. In addition, the banking organization would disclose the operational risk charge before and after any reduction in capital resulting from the use of insurance or other potential risk mitigants.

Finally, disclosures relating to interest rate risk in the banking book would include the nature of that risk, key assumptions made, and the frequency of risk measurement. They would also include the increase or decline in earnings or economic value for upward and downward rate shocks according to management's method for measuring interest rate risk in the banking book.

The Agencies seek comment on the feasibility of such an approach to the disclosure of pertinent information and also whether commenters have any other suggestions regarding how best to present the required disclosures.

Comments are requested on whether the Agencies' description of the required formal disclosure policy is adequate, or whether additional guidance would be useful.

Comments are requested regarding whether any of the information sought by the Agencies to be disclosed raises any particular concerns regarding the disclosure of proprietary or confidential information. If a commenter believes certain of the required information would be proprietary or confidential, the Agencies seek comment on why that is so and alternatives that would meet the objectives of the required disclosure.

The Agencies also seek comment regarding the most efficient means for institutions to meet the disclosure requirements. Specifically, the Agencies are interested in comments about the feasibility of requiring institutions to provide all requested information in one location and also whether commenters have other suggestions on how to ensure that the requested information is readily available to market participants.

VII. Regulatory Analysis

Federal agencies are required to consider the costs, benefits, or other effects of their regulations for various purposes described by statute or executive order. In particular, an executive order and several statutes may require the preparation of detailed analyses of the costs, benefits, or other effects of rules, depending on threshold determinations as to whether the rulemaking in question triggers the substantive requirements of the applicable statute or executive order.

For the reasons described above, the proposed and final rules that the Agencies may issue to implement the New Accord would represent a significant change to their current approach to the measurement of regulatory capital ratios, and the supervision of institutions' internal risk management processes with respect to capital allocations. First, in this ANPR, core and opt-in banks would rely on their own analyses to derive some of the principal inputs that would determine their regulatory capital requirements. Core and opt-in banks would incur new costs to create and refine their internal systems and to attract and train the staff expertise necessary to develop, oversee, manage and test those systems. Second, the measured regulatory capital ratios (although not the minimums) would likely change, perhaps substantially for core and opt-in banks. Third, the Agencies' approach to supervising capital adequacy would become bifurcated; that is, general banks would continue to use the general risk-based capital rules, either in their current form or as modified. As a result, there may be significant differences in the regulatory capital assigned to a particular type of asset depending on whether the bank is a core, opt-in, or general bank. To the extent that an institution's product mix would be directly affected by a change in the landscape of regulatory capital requirements, this might also affect the customers of those institutions due to

[52] Where banking organizations are aggregating PD grades for the purposes of disclosure, this would be a representative breakdown of the distribution of PD grades used in the A–IRB approach.

[53] Banking organizations need only provide one estimate of EAD for each portfolio. However, where banking organizations believe it is helpful, in order to give a more meaningful assessment of risk, they may also disclose EAD estimates across a number of EAD categories, against the undrawn exposures to which these relate.

[54] Banking organizations would normally be expected to follow the disclosures provided for the non-retail portfolios. However, banking organizations would be able to adopt EL grades at the basis of disclosure where they believe this can provide the reader with a meaningful differentiation of credit risk. Where banking organizations are aggregating internal grades (either PD/LGD or EL) for the purposes of disclosure, this should be a representative breakdown of the distribution of those grades used in the IRB approach.

[55] For banking organizations implementing the A–IRB and AMA in 2007, the disclosures would be required from year-end-2008; in the meantime, early adoption would be encouraged. The phased implementation is to allow banking organizations sufficient time to build up a longer run of data that will make these disclosures meaningful. For banking organizations that may adopt the advanced approaches at a later date, they would also be subject to a one-year phase in period after which the disclosures would be required.

[56] Banking organizations would have to provide this further decomposition where it would allow users greater insight into the reliability of the estimates provided in the quantitative disclosures: risk assessment. In particular, banking organizations should provide this information where there are material differences between the PD, LGD or EAD estimates given by banking organizations compared in actual outcomes over the long run. Banking organizations should also provide explanations for such differences.

the changes in pricing and market strategies.

The economic impact that would be created by these possibly unforeseen competitive effects is difficult to estimate, and the Agencies encourage comment. In particular, the Agencies are interested in comments on the competitive impact that a change in the regulatory capital regime applied to large institutions would have relative to the competitive position of smaller institutions that remain subject to the general risk-based capital rules. Conversely, if the regulatory burden of the more prescriptive A–IRB approach applied to core institutions were so large as to offset the potential for a lower measured capital requirement for certain exposures, then the competitive position of large institutions, with respect to both their domestic and international competitors, might be worsened. The Agencies are also interested in comments that address the competitive position of regulated institutions in the United States with respect to financial service providers, both domestic and foreign, that are not subject to the same degree of regulatory oversight.

None of the Agencies has yet made the threshold determinations required by executive order or statute with respect to this ANPR. Because the proposed approaches to assessing capital adequacy described in this ANPR are new, the Agencies currently lack information that is sufficiently specific or complete to permit those determinations to be made or to prepare any economic analysis that may ultimately be required. Therefore, this section of the ANPR describes the relevant executive order and statutes, and asks for comment and information that will assist in the determination of whether such analyses would be necessary before the Agencies published proposed or final rules.

Quantitative information would be the most useful to the Agencies. However, commenters may also provide estimates of costs, benefits, or other effects, or any other information they believe would be useful to the Agencies in making the determinations. In addition, commenters are asked to identify or estimate start-up, or non-recurring, costs separately from costs or effects they believe would be ongoing.

A. Executive Order 12866

Executive Order 12866 requires preparation of an economic analysis for agency actions that are "significant regulatory actions." "Significant regulatory actions" include, among other things, regulations that "have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. * * *"[57] Regulatory actions that satisfy one or more of these criteria are called "economically significant regulatory actions." E.O. 12866 applies to the OCC and the OTS, but not the Board or the FDIC. If the OCC or the OTS determines that the rules implementing the New Accord comprise an "economically significant regulatory action," then the agency making that determination would be required to prepare and submit to the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) an economic analysis that includes:

- A description of the need for the rules and an explanation of how they will meet the need;
- An assessment of the benefits anticipated from the rules (for example, the promotion of the efficient functioning of the economy and private markets) together with, to the extent feasible, a quantification of those benefits;
- An assessment of the costs anticipated from the rules (for example, the direct cost both to the government in administering the regulation and to businesses and others in complying with the regulation, and any adverse effects on the efficient functioning of the economy, private markets (including productivity, employment, and competitiveness)), together with, to the extent feasible, a quantification of those costs; and
- An assessment of the costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation (including improving the current regulation and reasonably viable nonregulatory actions), and an explanation why the planned regulatory action is preferable to the identified potential alternatives.[58]

For purposes of determining whether this rulemaking would constitute an "economically significant regulatory action," as defined by E.O. 12866, and to assist any economic analysis that E.O. 12866 may require, the OCC and the OTS encourage commenters to provide information about:

- The direct and indirect costs, for core banks and those banks who intend to qualify as opt-in banks, of compliance with the approach described in this ANPR and the related supervisory guidance;
- The costs, for general banks, of adopting the approach;
- The effects on regulatory capital requirements for core, opt-in, and general banks;
- The effects on competitiveness, in both domestic and international markets, for core, opt-in, and general banks. This would include the possible effects on the customers served by these U.S. institutions through changes in the mix of product offerings and prices;
- The economic benefits of the approach for core, opt-in, or general banks, as measured by lower regulatory capital ratios, and a potentially more efficient allocation of capital. This might also include estimates of savings associated with regulatory capital arbitrage transactions that are currently undertaken in order to optimize return on capital under the current capital regime. That is, what estimates might exist to quantify the improvements in market efficiency from no longer pursuing regulatory capital arbitrage transactions?
- The features of the A–IRB approach that provide an incentive for a bank to seek to qualify to use it, that is, to become an opt-in bank.

The OCC and the OTS also encourage comment on any alternatives to the regulatory approaches described in the ANPR that the Agencies should consider.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires agencies to prepare a "regulatory flexibility analysis" unless the head of the agency certifies that a regulation will not "have a significant economic impact on a substantial number of small entities."[59] The RFA applies to all of the Agencies.

The Agencies understand that the RFA has been construed to require consideration only of the direct impact on small entities.[60] The Small Business Administration (SBA) has said: "The courts have held that the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates them," that is, when it directly applies to them.[61] Since the proposed approach would directly apply to only a limited number of large banking organizations, it would appear that the Agencies may certify that the issuance of this ANPR would not have significant economic impact on a substantial number of small entities.

Do the potential advantages of the A–IRB approach, as measured by the specific capital requirements on lower-risk loans, create a competitive inequality for small institutions, which are effectively precluded from adopting the A–IRB due to stringent qualification standards? Conversely, would small institutions that remain on the general risk-based capital rules be at a competitive advantage from specific capital requirements on higher risk assets vis-à-vis advanced approach institutions? How might the Agencies estimate the effect on credit availability to small businesses or retail customers of general banks?

C. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) requires preparation of a written budgetary impact statement before promulgation of any rule likely to result in a "Federal mandate" that "may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year."[62] A "Federal mandate" includes any regulation "that would impose an enforceable duty upon the private sector. * * *" If a budgetary impact statement is required, the UMRA further requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule in question. The UMRA applies to the OCC and the OTS, but not the Board or the FDIC.

The OCC and the OTS have asked for comments and information from core and opt-in banks on compliance costs and, generally, on alternative regulatory approaches, for purposes of evaluating what actions they need to take in order to comply with E.O. 12866. That same information (with cost information adjusted annually for inflation) is relevant to those agencies' determination of whether a budgetary impact statement is necessary pursuant to the UMRA. Commenters are therefore asked to be mindful of the UMRA requirements when they provide information about compliance costs and in suggesting alternatives to the approach described in this ANPR.

D. Paperwork Reduction Act

Each of the Agencies is subject to the Paperwork Reduction Act of 1995 (PRA).[63] The PRA requires burden estimates that will likely be based on some of the same information that is necessary to prepare an economic analysis under E.O. 12866 or an estimate of private sector expenditures pursuant to the UMRA.

In particular, an agency may not "conduct or sponsor" a collection of information without conducting an analysis that includes an estimate of the "burden" imposed by the collection. A collection of information includes, essentially, the eliciting of identical information—whether through questions, recordkeeping requirements, or reporting requirements—from ten or more persons. "Burden" means the "time, effort, or financial resources expended by persons to generate, maintain, or provide information" to the agency. The rulemaking initiated by this ANPR will likely impose requirements, either in the regulations themselves or as part of interagency implementation guidance, that are covered by the PRA. In order to estimate burden, the Agencies will need to know, for example, the cost—in terms of time and money—that mandatory and opt-in banks would have to expend to develop and maintain the systems, procedures, and personnel that compliance with the rules would require. With this in mind, to assist in their analysis of the treatment of retail portfolios and other exposures, the Agencies intend to request from U.S. institutions additional quantitative data for which confidential treatment may be requested in accordance with the Agencies' applicable rules.

While it will be difficult to identify those requirements with precision before a proposed rule is issued, this notice and the draft supervisory guidance published elsewhere in today's **Federal Register** generally describes aspects of the Agencies' implementation of the New Accord where new reporting and recordkeeping requirements would be likely. Commenters are asked to provide any estimates they can reasonably derive about the time, effort, and financial resources that will be required to provide the Agencies with the requisite plans, reports, and records that are described in this notice and in the supervisory guidance. Commenters also are requested to identify any activities that will be conducted as a result from the capital and methodological standards in the framework presented in this ANPR that would impose new recordkeeping or reporting burden. Commenters should specify whether certain capital and methodological standards would necessitate the acquisition or development of new compliance/ information systems or the significant modification of existing compliance/information systems.

List of Acronyms

ABCP Asset-Backed Commercial Paper
ADC Acquisition, Development, and Construction
AFS Available-for-Sale (securities)
AIG Accord Implementation Group
A–IRB Advanced Internal Ratings-Based (approach for credit risk)
ALLL Allowance for Loan and Lease Losses
AMA Advanced Measurement Approach (for operational risk)
ANPR Advance Notice of Proposed Rulemaking
BIS Bank for International Settlements
BSC Basel Committee on Banking Supervision
CCF Credit Conversion Factor
CDC Community Development Corporations
CEDE Community and Economic Development Entity
CF Commodities Finance
CRE Commercial Real Estate
CRM Credit Risk Mitigation
EAD Exposure at Default
EL Expected Loss
FFIEC Federal Financial Institutions Examination Council
FMI Future Margin Income
GAAP Generally Accepted Accounting Principles
HVCRE High Volatility Commercial Real Estate
IMF International Monetary Fund

[57] Executive Order 12866 (Sept. 30, 1993), 58 FR 51735 (Oct. 4, 1993), as amended by Executive Order 13258, 67 FR 9385 (referred to hereafter as E.O. 12866). For the complete text of the definition of "significant regulatory action," see E.O. 12866 at § 3(f). A "regulatory action" is "any substantive action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking." E.O. 12866 at § (e).

[58] The components of the economic analysis are set forth in E.O. 12866 § 6(a)(3)(C)(i)–(iii). For a description of the methodology that OMB recommends for preparing an economic analysis, see Office of Management and Budget, "Economic Analysis of Federal Regulations Under Executive Order 12866" (January 11, 1996). This publication is available on OMB's Web site at *http://www.whitehouse.gov/omb/inforeg/riaguide.html*. OMB recently published revisions to this publication for comment. *See* 68 FR 5492 (February 3, 2003).

[59] The RFA is codified at 5 U.S.C. 601 *et seq.*

[60] With respect to banks, the Small Business Administration (SBA) has defined a small entity to be a bank with total assets of $150 million or less. 13 CFR § 121.201.

[61] SBA Office of Advocacy, A Guide for Government Agencies, "How to Comply with the Regulatory Flexibility Act (May 2003), at 20 (emphasis added). *See also Mid-Tex Electric Cooperative, Inc.* v. *FERC*, 773 F.2d 327, 340–43 (D.C. Cir. 1985) ("[W]e conclude that an agency may properly certify that no regulatory flexibility analysis is necessary when it determines that the rule will not have a significant economic impact on a substantial number of small entities *that are subject to the requirements of the rule.*") (emphasis added) (construing language in the RFA that was unchanged by subsequent statutory amendments).

[62] The Unfunded Mandates Reform Act is codified at 2 U.S.C. 1532 *et seq.*

[63] 44 U.S.C. § 3501 *et seq.*

IRB Internal Ratings-Based
KIRB Capital for Underlying Pool of Exposures (securitizations)
LGD Loss Given Default
M Maturity
MDB Multilateral Development Bank
OF Object Finance
OTC Over-the-Counter (derivatives)
PCA Prompt Corrective Action (regulation)
PD Probability of Default
PDF Probability Density Function
PF Project Finance
PFE Potential Future Exposure
PMI Private Mortgage Insurance
PRA Paperwork Reduction Act
PSE Public-Sector Entity
QIS3 Third Quantitative Impact Study
QRE Qualifying Revolving Exposures
R Asset Correlation
RBA Ratings-Based Approach (securitizations)
RFA Regulatory Flexibility Act
S Borrower-Size
SBIC Small Business Investment Company
SFA Supervisory Formula Approach (securitizations)
SL Specialized Lending
SME Small-to Medium-Sized Enterprise
SPE Special Purpose Entity
SSC Supervisory Slotting Criteria
UL Unexpected Loss
UMRA Unfunded Mandates Reform Act
VaR Value at Risk (model)

Dated: July 17, 2003.

John D. Hawke, Jr.,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, July 21, 2003.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 11th day of July, 2003.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: July 18, 2003.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 03–18977 Filed 8–1–03; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 03–15]

FEDERAL RESERVE SYSTEM

[Docket No. OP–1153]

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[No. 2003–28]

Internal Ratings-Based Systems for Corporate Credit and Operational Risk Advanced Measurement Approaches for Regulatory Capital

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Draft supervisory guidance with request for comment.

SUMMARY: The OCC, Board, FDIC, and OTS (the Agencies) are publishing for industry comment two documents that set forth draft supervisory guidance for implementing proposed revisions to the risk-based capital standards in the United States. These proposed revisions, which would implement the New Basel Capital Accord in the United States, are published as an advance notice of proposed rulemaking (ANPR) elsewhere in today's **Federal Register**. Under the advanced approaches for credit and operational risk described in the ANPR, banking organizations would use internal estimates of certain risk components as key inputs in the determination of their regulatory capital requirements. The Agencies believe that supervisory guidance is necessary to balance the flexibility inherent in the advanced approaches with high standards that promote safety and soundness and encourage comparability across institutions.

The first document sets forth Draft Supervisory Guidance on Internal Ratings-Based Systems for Corporate Credit (corporate IRB guidance). This document describes supervisory expectations for institutions that intend to adopt the advanced internal ratings-based approach (A–IRB) for credit risk as set forth in today's ANPR. The corporate IRB guidance is intended to provide supervisors and institutions with a clear description of the essential components and characteristics of an acceptable A–IRB framework. The guidance focuses specifically on corporate credit portfolios; further guidance is expected at a later date on other credit portfolios (including, for example, retail and commercial real estate portfolios).

The second document sets forth Draft Supervisory Guidance on Operational Risk Advanced Measurement Approaches for Operational Risk (AMA guidance). This document outlines supervisory expectations for institutions that intend to adopt an advanced measurement approach (AMA) for operational risk as set forth in today's ANPR.

The Agencies are seeking comments on the supervisory standards set forth in both documents. In addition to seeking comment on specific aspects of the supervisory guidance set forth in the documents, the Agencies are seeking comment on the extent to which the supervisory guidance strikes the appropriate balance between flexibility and specificity. Likewise, the Agencies are seeking comment on whether an appropriate balance has been struck between the regulatory requirements set forth in the ANPR and the supervisory standards set forth in these documents.

DATES: Comments must be received no later than November 3, 2003.

ADDRESSES: Comments should be directed to:

OCC: Please direct your comments to: Office of the Comptroller of the Currency, 250 E Street, SW., Public Information Room, Mailstop 1–5, Washington, DC 20219, Attention: Docket No. 03–15; fax number (202) 874–4448; or Internet address: *regs.comments@occ.treas.gov*. Due to delays in paper mail delivery in the Washington area, we encourage the submission of comments by fax or e-mail whenever possible. Comments may be inspected and photocopied at the OCC's Public Information Room, 250 E Street, SW., Washington, DC. You may make an appointment to inspect comments by calling (202) 874–5043.

Board: Comments should refer to Docket No. OP–1153 and may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC, 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at 202/452–3819 or 202/452–3102. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC, 20429. Commenters are encouraged to submit comments by facsimile transmission to (202) 898–3838 or by electronic mail to *Comments@FDIC.gov*. Comments also may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 8:30 a.m. and 5 p.m. Comments may be inspected and photocopied at the FDIC's Public Information Center, Room 100, 801 17th Street, NW., Washington, DC between 9 a.m. and 4:30 p.m. on business days.

OTS: Send comments to Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2003–28. Delivery: Hand deliver comments to the Guard's desk, east lobby entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2003–28. Facsimiles: Send facsimile transmissions to FAX Number (202) 906–6518, Attention: No 2003–28. e-mail: Send e-mails to *regs.comments@ots.treas.gov*, Attention: No. 2003–28, and include your name and telephone number. Due to temporary disruptions in mail service in the Washington, DC area, commenters are encouraged to send comments by fax or e-mail, if possible.

FOR FURTHER INFORMATION CONTACT:

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Document 1: Draft Supervisory Guidance on Internal Ratings-Based Systems for Corporate Credit

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I. Introduction

A. Purpose

This document describes supervisory expectations for banking organizations (institutions) adopting the advanced internal ratings-based approach (IRB) for the determination of minimum regulatory risk-based capital requirements. The focus of this guidance is corporate credit portfolios. Retail, commercial real estate, securitizations, and other portfolios will be the focus of later guidance. This draft guidance should be considered with the advance notice of proposed rulemaking (ANPR) on revisions to the risk-based capital standard published elsewhere in today's **Federal Register**.

The primary objective of IRB is to enhance the sensitivity of regulatory capital requirements to credit risk. To accomplish that objective, IRB harnesses a bank's own risk rating and quantification capabilities. In general, the IRB approach reflects and extends recent developments in risk management and banking supervision. However, the degree to which any individual bank will need to modify its own credit risk management practices to deliver accurate and consistent IRB risk parameters will vary from institution to institution.

This guidance is intended to provide supervisors and institutions with a clear description of the essential components and characteristics of an acceptable IRB framework. Toward that end, this document sets forth IRB system supervisory standards that are highlighted in bold and designated by the prefix "S." Whenever possible, these supervisory standards are principle-based to enable institutions to implement the framework flexibly. However, when prudential concerns or the need for standardization override the desire for flexibility, the supervisory standards are more detailed. Ultimately, institutions must have credit risk management practices that are consistent with the substance and spirit of the standards in this guidance.

The IRB conceptual framework outlined in this document is intended neither to dictate the precise manner by which institutions should seek to meet supervisory expectations, nor to provide technical guidance on how to develop such a framework. As institutions develop their IRB systems in anticipation of adopting them for regulatory capital purposes, supervisors will be evaluating, on an individual bank basis, the extent to which institutions meet the standards outlined in this document. In evaluating institutions, supervisors will rely on this supervisory guidance as well as examination procedures, which will be developed separately. This document assumes that readers are familiar with the proposed IRB approach to calculating minimum regulatory capital articulated in the ANPR.

B. Overview of Supervisory Expectations

Rigorous credit risk measurement is a necessary element of advanced risk management. Qualifying institutions will use their internal rating systems to associate a probability of default (PD) with each obligor grade, as well as a loss given default (LGD) with each credit facility. In addition, institutions will estimate exposure at default (EAD) and will calculate the effective remaining maturity (M) of credit facilities.

Qualifying institutions will be expected to have an IRB system consisting of four interdependent components:

- A system that assigns ratings and validates their accuracy (Chapter 1),
- A quantification process that translates risk ratings into IRB parameters (Chapter 2),
- A data maintenance system that supports the IRB system (Chapter 3), and,
- Oversight and control mechanisms that ensure the system is functioning as intended and producing accurate ratings (Chapter 4).

Together these rating, quantification, data, and oversight mechanisms present a framework for defining and improving the evaluation of credit risk.

It is expected that rating systems will operate dynamically. As ratings are assigned, quantified and used, estimates will be compared with actual results and data will be maintained and updated to support oversight and validation efforts and to better inform future estimates. The rating system review and internal audit functions will serve as control mechanisms that ensure that the process of ratings assignment and quantification function according to policy and design and that noncompliance and weaknesses are identified, communicated to senior management and the board, and addressed. Rating systems with appropriate data and oversight feedback mechanisms foster a learning environment that promotes integrity in the rating system and continuing refinement.

IRB systems need the support and oversight of the board and senior management to ensure that the various components fit together seamlessly and that incentives to make the system rigorous extend across line, risk management, and other control groups. Without strong board and senior management support and involvement, rating systems are unlikely to provide accurate and consistent risk estimates during both good and bad times.

The new regulatory minimum capital requirement is predicated on an institution's internal systems being sufficiently advanced to allow a full and accurate assessment of its risk exposures. Under the new framework, an institution could experience a considerable capital shortfall in the most difficult of times if its risk estimates are materially understated. Consequently, the IRB framework demands a greater level of validation work and controls than supervisors have required in the past. When properly implemented, the new framework holds the potential for better aligning minimum capital requirements with the risk taken, pushing capital requirements higher for institutions that specialize in riskier types of lending, and lower for those that specialize in safer risk exposures.

Supervisors will evaluate compliance with the supervisory standards for each of the four components of an IRB system. However, evaluating compliance with each of the standards individually will not be sufficient to determine an institution's overall compliance. Rather, supervisors and institutions must also evaluate how well the various components of an institution's IRB system complement and reinforce one another to achieve the overall objective of accurate measures of risk. In performing their evaluation, supervisors will need to exercise considerable supervisory judgment, both in evaluating the individual components and the overall IRB framework. A summary of the key supervisory expectations for each of the IRB components follows.

Ratings Assignment

The first component of an IRB system involves the assignment and validation of ratings (see Chapter 1). Ratings must be accurately and consistently applied to all corporate credit exposures and be subject to initial and ongoing validation. Institutions will have latitude in designing and operating IRB rating systems subject to five broad standards:

Two-dimensional risk-rating system—IRB institutions must be able to make meaningful and consistent differentiations among credit exposures along two dimensions—obligor default risk and loss severity in the event of a default.

Rank order risks—IRB institutions must rank obligors by their likelihood of default, and facilities by the loss severity expected in default.

Calibration—IRB obligor ratings must be calibrated to values of the probability of default (PD) parameter and loss severity ratings must be calibrated to values of the loss given default (LGD) parameter.

Accuracy—Actual long-run actual default frequencies for obligor rating grades must closely approximate the PDs assigned to those grades and realized loss rates on loss severity grades must closely approximate the LGDs assigned to those grades.

Validation process—IRB institutions must have ongoing validation processes for rating systems that include the evaluation of developmental evidence, process verification, benchmarking, and the comparison of predicted parameter values to actual outcomes (back-testing).

Quantification

The second component of an IRB system is a quantification process (see Chapter 2). Since obligor and facility ratings may be assigned separately from the quantification of the associated PD and LGD parameters, quantification is addressed as a separate process. The quantification process must produce values not only for PD and LGD but also for EAD and for the effective remaining maturity (M). The quantification of those four parameters is expected to be the result of a disciplined process. The key considerations for effective quantification are as follows:

Process—IRB institutions must have a fully specified process covering all aspects of quantification (reference data, estimation, mapping, and application).

Documentation—The quantification process, including the role and scope of expert judgment, must be fully documented and updated periodically.

Updating—Parameter estimates and related documentation must be updated regularly.

Review—A bank must subject all aspects of the quantification process, including design and implementation, to an appropriate degree of independent review and validation.

Constraints on Judgment—Judgmental adjustments may be an appropriate part of the quantification process, but must not be biased toward lower risk estimates.

Conservatism—Parameter estimates must incorporate a degree of conservatism that is appropriate for the overall robustness of the quantification process.

Data Maintenance

The third component of an IRB system is an advanced data management system that produces credible and reliable risk estimates (see Chapter 3). The broad standard governing an IRB data maintenance system is that it supports the requirements for the other IRB system components, as well as the institution's broader risk management and reporting needs. Institutions will have latitude in managing their data, subject to the following key data maintenance standards:

Life Cycle Tracking—Institutions must collect, maintain, and analyze essential data for obligors and facilities throughout the life and disposition of the credit exposure.

Rating Assignment Data—Institutions must capture all significant quantitative and qualitative factors used to assign the obligor and loss severity rating.

Support of IRB System—Data collected by institutions must be of sufficient depth, scope, and reliability to:

- Validate IRB system processes,
- Validate parameters,
- Refine the IRB system,
- Develop internal parameter estimates,
- Apply improvements historically,
- Calculate capital ratios,
- Produce internal and public reports, and

- Support risk management.

Control and Oversight Mechanisms

The fourth component of an IRB system is comprised of control and oversight mechanisms that ensure that the various components of the IRB system are functioning as intended (see Chapter 4). Given the various uses of internal risk ratings, including their direct link to regulatory capital requirements, there is enormous, sometimes conflicting, pressure on banks' internal rating systems. Control structures are subject to the following broad standards:

Interdependent System of Controls—IRB institutions must implement a system of interdependent controls that include the following elements:

- Independence,
- Transparency,
- Accountability,
- Use of ratings,
- Rating system review,
- Internal audit, and
- Board and senior management oversight.

Checks and Balances—Institutions must combine the various control mechanisms in a way that provides checks and balances for ensuring IRB system integrity.

The system of oversight and controls required for an effective IRB system may operate in various ways within individual institutions. This guidance does not prescribe any particular organizational structure for IRB oversight and control mechanisms. Banks have broad latitude to implement structures that are most effective for their individual circumstances, as long as those structures support and enhance the institution's ability to satisfy the supervisory standards expressed in this document.

C. Scope of Guidance

This draft guidance reflects work performed by supervisors to evaluate and compare current practices at institutions with the concepts and requirements for an IRB framework. For instances in which a range of practice was observable, examples are provided on how certain practices may or may not qualify. However, in many other instances, practices were at such an early stage of development that it was not feasible to describe specific examples. In those cases, requirements tend to be principle-based and without examples. Given that institutions are still in the early stages of developing qualifying IRB systems, it is expected that this guidance will evolve over time to more explicitly take into account new and improving practices.

D. Timing

S. An IRB system must be operating fully at least one year prior to the institution's intended start date for the advanced approach.

As noted in the ANPR, the significant challenge of implementing a fully complying IRB system requires that institutions and supervisors have sufficient time to observe whether the IRB system is delivering risk-based capital figures with a high level of integrity. The ability to observe the institution's ratings architecture, validation, data maintenance and control functions in a fully operating environment prior to implementation will help identify how well the IRB system design functions in practice. This will be particularly important given that in the first year of implementation institutions will not only be subject to the new minimum capital requirements, but will also be disclosing risk-based capital ratios for the public to rely upon in the assessment of the institution's financial health.

II. Ratings for IRB Systems

A. Overview

This chapter describes the design and operation of risk-rating systems that will be acceptable in an internal ratings-based (IRB) framework. Banks will have latitude in designing and operating IRB rating systems, subject to five broad standards:

Two-dimensional risk-rating system—IRB institutions must be able to make meaningful and consistent differentiations among credit exposures along two dimensions—obligor default risk and loss severity in the event of a default.

Rank order risks—IRB institutions must rank obligors by their likelihood of default, and facilities by the loss severity expected in default.

Calibration—IRB obligor ratings must be calibrated to values of the probability of default (PD) parameter and loss severity ratings must be calibrated to values of the loss given default (LGD) parameter.

Accuracy—Actual long-run actual default frequencies for obligor rating grades must closely approximate the PDs assigned to those grades and actual loss rates on loss severity grades must closely approximate the LGDs assigned to those grades.

Validation process—IRB institutions must have ongoing validation processes for rating systems that include the evaluation of developmental evidence, process verification, benchmarking, and the comparison of predicted parameter values to actual outcomes (back-testing).

B. Credit Ratings

In general, a credit rating is a summary indicator of the relative risk on a credit exposure. Credit ratings can take many forms. The most widely known credit ratings are the public agency ratings, which are expressed as letters; bank internal ratings tend to be expressed as whole numbers—for example, 1 through 10. Some rating model outputs are expressed in terms of probability of default or expected default frequency, in which case they may be more than relative measures of risk. Regardless of the form, meaningful credit ratings share two characteristics:

- They group credits to discriminate among possible outcomes.
- They rank the perceived levels of credit risk.

Banks have used credit ratings of various types for a variety of purposes. Some ratings are intended to rank obligors by risk of default and some are intended to rank facilities[1] by expected loss, which incorporates risk of default and loss severity. Bank rating systems that are geared solely to expected loss will need to be amended to meet the two-dimensional requirements of the IRB approach.

Rating Assignment Techniques

Banks use different techniques, such as expert judgment and models, to assign credit risk ratings. For banks using the IRB approach, how ratings are assigned is important because different techniques will require different validation processes and control mechanisms to ensure the integrity of the rating system. To assist the discussion of rating architecture requirements, described below are some of the current rating assignment techniques. Any of these techniques—expert judgment, models, constrained judgment, or a combination thereof—could be acceptable within an IRB system, provided the bank meets the standards outlined in this document.

Expert Judgment

Historically, banks have used expert judgment to assign ratings to commercial credits. With this technique, an individual weighs relevant information and reaches a conclusion about the appropriate risk rating. Presumably, the rater makes informed judgments based on knowledge gained through experience and training.

[1] Facilities—loans, lines, or other separate extensions of credit to an obligor.

The key feature of expert-judgment systems is flexibility. The prevalence of judgmental rating systems reflects the view that the determinants of default are too complicated to be captured by a single quantitative model. The quality of management is often cited as an example of a risk determinant that is difficult to assess through a quantitative model. In order to foster internal consistency, banks employing expert judgment rating systems typically provide narrative guidelines that set out ratings criteria. However, the expert must decide how narrative guidelines apply to a given set of circumstances.

The flexibility possible in the assignment of judgmental ratings has implications for the types of ratings review that are feasible. As part of the ratings validation process, banks will attempt to confirm that raters follow bank policy. However, two individuals exercising judgment can use the same information to support different ratings. Thus, the review of an expert judgment rating system will require an expert who can identify the impact of policy and the impact of judgment on a rating.

Models

In recent years, models have been developed for use in rating commercial credits. In a model-based approach, inputs are numeric and provide quantitative and qualitative information about an obligor. The inputs are combined using mathematical equations to produce a number that is translated into a categorical rating. An important feature of models is that the rating is perfectly replicable by another party, given the same inputs.

The models used in credit rating can be distinguished by the techniques used to develop them. Some models may rely on statistical techniques while others rely on expert-judgment techniques.

Statistical models. Statistically developed models are the result of statistical optimization, in which well-defined mathematical criteria are used to choose the model that has the closest fit to the observed data. Numerous techniques can be used to build statistical models; regression is one widely recognized example. Regardless of the specific statistical technique, a knowledgeable independent reviewer will have to exercise judgment in evaluating the reasonableness of a model's development, including its underlying logic, the techniques used to handle the data, and the statistical model building techniques.

Expert-derived models.[2] Several banks have built rating models by asking their experts to decide what weights to assign to critical variables in the models. Drawing on their experience, the experts first identify the observable variables that affect the likelihood of default. They then reach agreement on the weights to be assigned to each of the variables. Unlike statistical optimization, the experts are not necessarily using clear, consistent criteria to select the weights attached to the variables. Indeed, expert-judgment model building is often a practical choice when there is not enough data to support a statistical model building. Despite its dependence on expert judgment, this method can be called model-based as long as the result—the equation, most likely with linear weights—is used as the basis to rate the credits. Once the equation is set, the model shares the feature of replicability with statistically derived models. Generally, independent credit experts use judgment to evaluate the reasonableness of the development of these models.

Constrained Judgment

The alternatives just described present the extremes, but in practice, many banks use rating systems that combine models with judgment. Two approaches are common.

Judgmental systems with quantitative guidelines or model results as inputs. Historically, the most common approach to rating has involved individuals exercising judgment about risks, subject to policy guidelines containing quantitative criteria such as minimum values for particular financial ratios. Banks develop quantitative criteria to guide individuals in assigning ratings, but often believe that those criteria do not adequately reflect the information needed to assign a rating.

One version of this constrained judgment approach features a model output as one among several criteria that an individual may consider in assigning ratings. The individual assigning the rating is responsible for prioritizing the criteria, reconciling conflicts between criteria, and if warranted, overriding some criteria. Even if individuals incorporate model results as one of the factors in their ratings, they will exercise judgment in deciding what weight to attach to the model result. The appeal of this approach is that the model combines many pieces of information into a single output, which simplifies analysis, while the rater retains flexibility regarding the use of the model output.

Model-based ratings with judgmental overrides. When banks use rating models, individuals are generally permitted to override the results under certain conditions and within tolerance levels for frequency. Credit-rating systems in which individuals can override models raise many of the same issues presented separately by pure judgment and model-based systems. If overrides are rare, the system can be evaluated largely as if it is a model-based system. If, however, overrides are prevalent, the system will be evaluated more like a judgmental system.

Since constrained judgment systems combine features of both expert judgment and model-based systems, their evaluation will require the skills required to evaluate both of these other systems.

C. IRB Ratings System Architecture

Two-Dimensional Rating System

S. IRB risk rating systems must have two rating dimensions—obligor and loss severity ratings.

S. IRB obligor and loss severity ratings must be calibrated to values of the probability of default (PD) and the loss given default (LGD), respectively.

Regardless of the type of rating system(s) used by an institution, the IRB approach imposes some specific requirements. The first requirement is that an IRB rating system must be two-dimensional. Banks will assign obligor ratings, which will be associated with a PD. They will also either assign a loss severity rating, which will be associated with LGD values, or directly assign LGD values to each facility. The process of assigning the obligor and loss severity ratings—hereafter referred to as the rating system—is discussed below, and the process of calibrating obligor and loss severity ratings to PD and LGD parameters is discussed in Chapter 2.

S. Banks must record obligor defaults in accordance with the IRB definition of default.

Definition of Default

The consistent identification of defaults is fundamental to any IRB rating system. For IRB purposes, a default is considered to have occurred with regard to a particular obligor when either or both of the two following events have taken place:

- The obligor is past due more than 90 days on any material credit

[2] Some banks have developed credit rating models that they refer to as "scorecards," but they have used expert judgment to derive the weights. While they are models, they are not scoring models in the now conventional use of the term. In its conventional use, the term scoring model is reserved for a rating model derived using statistical techniques.

obligation to the banking group. Overdrafts will be considered as being past due once the customer has breached an advised limit or been advised of a limit smaller than current outstandings.

- The bank considers that the obligor is unlikely to pay its credit obligations to the banking group in full, without recourse by the bank to actions such as liquidating collateral (if held).

Any obligor (or its underlying credit facilities) that meets one or more of the following conditions is considered unlikely to pay and therefore in default:

- The bank puts the credit obligation on non-accrual status.
- The bank makes a charge-off or account-specific provision resulting from a significant perceived decline in credit quality subsequent to the bank taking on the exposure.
- The bank sells the credit obligation at a material credit-related economic loss.
- The bank consents to a distressed restructuring of the credit obligation where this is likely to result in a diminished financial obligation caused by the material forgiveness, or postponement, of principal, interest or (where relevant) fees.
- The bank has filed for the obligor's bankruptcy or a similar order in respect of the obligor's credit obligation to the banking group.
- The obligor has sought or has been placed in bankruptcy or similar protection where this would avoid or delay repayment of the credit obligation to the banking group.

While most conditions of default currently are identified by bank reporting systems, institutions will need to augment data capture systems to collect those default circumstances that may not have been traditionally identified. These include facilities that are current and still accruing but where the obligor declared or was placed in bankruptcy. They must also capture so called "silent defaults"—defaults when the loss on a facility was avoided by liquidating collateral.

Loan sales on which a bank experiences a material loss due to credit deterioration are considered a default. Material credit related losses are defined as XX. (The agencies seek comment on how to define "material" loss in the case of loans sold at a discount). Banks should ensure that they have adequate systems to identify such transactions and to maintain adequate records so that reviewers can assess the adequacy of the institution's decision-making process in this area.

Obligor Ratings

S. Banks must assign discrete obligor grades.

While banks may use models to estimate probabilities of default for individual obligors, the IRB approach requires banks to group the obligors into discrete grades. Each obligor grade, in turn, must be associated with a single PD.

S. The obligor-rating system must result in a ranking of obligors by likelihood of default.

The proper operation of the obligor-rating system will feature a ranking of obligors by likelihood of default. For example, if a bank uses a rating system based on a 10-point scale, with 1 representing obligors of highest financial strength and 10 representing defaulted obligors, grades 2 through 9 should represent groups of ever-increasing risk. In a rating system in which risk increases with the grade, an obligor with a grade 4 is riskier than an obligor with a grade 2, but need not be twice as risky.

S. Separate exposures to the same obligor must be assigned to the same obligor rating grade.

As noted above, the IRB framework requires that the obligor rating be distinct from the loss severity rating, which is assigned to the facility. Collateral and other facility characteristics should not influence the obligor rating. For example, in a 1-to-10 rating system, where risk increases with the number grade, a defaulted borrower with a fully cash-secured transaction should be rated a 10—defaulted—regardless of the remote expectation of loss. Likewise, a borrower whose financial condition warrants the highest investment grade rating should be rated a 1 even if the bank's transactions are subordinate to other creditors and unsecured. Since the rating is assigned to the obligor and not the facility, separate exposures to the same obligor must be assigned to the same obligor rating grade.

At the bottom of any IRB system rating scale is a default grade. Once an obligor is considered to be in default for IRB purposes, that obligor must be assigned a default grade until such time as its financial condition and performance improve sufficiently to clearly meet the bank's internal rating definition for one of its non-default grades. Once an obligor is in default on any material credit obligation to the subject bank, all of its facilities at that institution are considered to be in default.

S. In assigning an obligor to a rating category, the bank must assess the risk of obligor default over a period of at least one year.

S. Obligor ratings must reflect the impact of financial distress.

In assigning an obligor to a rating category, the bank must assess the risk of obligor default over a period of at least one year. This use of a one-year assessment horizon does not mean that a bank should limit its consideration to outcomes for that obligor that are most likely over that year; the rating must take into account possible adverse events that might increase an obligor's likelihood of default.

Rating Philosophy—Decisions Underlying Ratings Architecture

S. Banks must adopt a ratings philosophy. Policy guidelines should describe the ratings philosophy, particularly how quickly ratings are expected to migrate in response to economic cycles.

S. A bank's capital management policy must be consistent with its ratings philosophy in order to avoid capital shortfalls in times of systematic economic stress.

In the IRB framework, banks assign obligors to groups that are expected to share common default frequencies. That general description, however, still leaves open different possible implementations, depending on how the bank defines the set of possible adverse events that the obligor might face. A bank must decide whether obligors are grouped by expected common default frequency over the next year (a so-called point-in-time rating system) or by an expected common default frequency over a wider range of possible stress outcomes (a so-called through-the-cycle rating system). Choosing between a point-in-time system and a through-the-cycle system yields a rating philosophy.

In point in time rating systems, obligors are assigned to groups that are expected to share a common default frequency in a particular year. Point-in-time ratings change from year to year as borrowers' circumstances change, including changes due to the economic possibilities faced by the borrowers. Since the economic circumstances of many borrowers reflect the common impact of the general economic environment, the transitions in point-in-time ratings will reflect that systematic influence. A Merton-style probability of default prediction model is commonly believed to be an example of a point-in-time approach to rating (although that may depend on the specific implementation of the model).

Through-the-cycle rating systems do not ask the question, what is the probability of default over the next year.

Instead, they assign obligors to groups that would be expected to share a common default frequency if the borrowers in them were to experience distress, regardless of whether that distress is in the next year. Thus, as the descriptive title suggests, this rating philosophy abstracts from the near-term economic possibilities and considers a richer assessment of the possibilities. Like point-in-time ratings, through the cycle ratings will change from year to year due to changes in borrower circumstance. However, since this rating philosophy abstracts from the immediate economic circumstance and considers the implications of hypothetical stress circumstances, year to year transitions in ratings will be less influenced by changes in the actual economic environment. The ratings agencies are commonly believed to use through-the-cycle rating approaches.

Current practice in many banks in the U.S. is to rate obligors using an approach that combines aspects of both point-in-time and through the cycle approaches. The explanation provided by banks that combine those approaches is that they want rating transitions to reflect the directional impact of changes in the economic environment, but that they do not want all of the volatility in ratings associated with a point-in-time approach.

Regardless of which ratings philosophy a bank chooses, an IRB bank must articulate clearly its approach and the implications of that choice. As part of the choice of rating philosophy, the bank must decide whether the same ratings philosophy will be employed for all of the bank's portfolios. And management must articulate the implications that the bank's ratings philosophy has on the bank's capital planning process. If a bank chooses a ratings philosophy that is likely to result in ratings transitions that reflect the impact of the economic cycle, its capital management policy must be designed to avoid capital shortfalls in times of systematic economic stress.

Obligor-Rating Granularity

S. An institution must have at least seven obligor grades that contain only non-defaulted borrowers and at least one grade to which only defaulted borrowers are assigned.

The number of grades used in a rating system should be sufficient to reasonably ensure that management can meaningfully differentiate risk in the portfolio, without being so large that it limits the practical use of the rating system. To determine the appropriate number of grades beyond the minimum seven non-default grades, each institution must perform its own internal analysis.

S. An institution must justify the number of obligor grades used in its rating system and the distribution of obligors across those grades.

The mere existence of an exposure concentration in a grade (or grades) does not, by itself, reflect weakness in a rating system. For example, banks may focus on a particular type of lending, such as asset-based lending, in which the borrowers may have similar default risk. Banks with such focused lending activities may use close to the minimum number of obligor grades, while banks with a broad range of lending activities should have more grades. However, banks with a high concentration of obligors in a particular grade are expected to perform a thorough analysis that supports such a concentration.

A significant concentration within an obligor grade may be suspected if the financial strength of the borrowers within that grade varies considerably. If obligors seem unduly concentrated, then management should ask themselves the following questions:

- Are the criteria for each grade clear? Those rating criteria may be too vague to allow raters to make clear distinctions. Ambiguity may be an issue throughout the rating scale or it may be limited to the most commonly used ratings.
- How diverse are the obligors? That is how many market segments (for example, large commercial, middle market, private banking, small business, geography, etc.) are significantly represented in the bank's borrower population? If a bank's commercial loan portfolio is not concentrated in one market segment, its risk rating distribution is not likely to be concentrated.
- How broad are the bank's internal rating categories compared to those of other lenders? The bank may be able to learn enough from publicly available information to adjust its rating criteria.

Some banks use "modifiers" to provide more risk differentiation to a given rating system. A risk rating modified with a plus, minus or other indicator does not constitute a separate grade unless the bank has developed a distinct rating definition and criteria for the modified grade. In the absence of such distinctions, grades such as 5, 5+, and 5− are viewed as a single grade for regulatory capital purposes regardless of the existence of the modifiers.

Loss Severity Ratings

S. Banks must rank facilities by the expected severity of the loss upon default.

The second dimension of an IRB system is the loss severity rating, which is calibrated to LGD. A facility's LGD estimate is the loss the bank is likely to incur in the event that the obligor defaults, and is expressed as a percentage of exposure at the time of default. LGD estimates can be assigned either through the use of a loss severity rating system or they can be directly assigned to each facility.

LGD analysis is still in very early stages of development relative to default risk modeling. Academic research in this area is relatively sparse, data are not abundant, and industry practice is still widely varying and evolving. Given the lack of data and the lack of research into LGD modeling, some banks are likely, as a first step, to segment their portfolios by a handful of available characteristics and determine the appropriate LGDs for those segments. Over time, banks' LGD methodologies are expected to evolve. Long-standing banking experience and existing research on LGD, while preliminary, suggests that collateral values, seniority, industry, etc. are predictive of loss severity.

S. Banks must have empirical support for LGD rating systems regardless of whether they use an LGD grading system or directly assign LGD estimates.

Whether a bank chooses to assign LGD values directly or, alternatively, to rate facilities and then quantify the LGD for the rating grades, the key requirement is that it will need to identify facility characteristics that influence LGD. Each of the loss severity rating categories must be associated with an empirically supported LGD estimate. In much the same way an obligor-rating system ranks exposures by the probability of default, a facility rating system must rank facilities by the likely loss severity.

Regardless of the method used to assign LGDs (loss severity grades or direct LGD estimation), data used to support the methodology must be gathered systematically. For many banks, the quality and quantity of data available to support the LGD estimation process will have an influence on the method they choose.

Stress Condition LGDs

S. Loss severity ratings must reflect losses expected during periods with a relatively high number of defaults.

Like obligor ratings, which group obligors by expected default frequency, loss severity ratings assign facilities to groups that are expected to experience a common loss severity. However, the different treatment accorded to PD and LGD in the model used to calculate IRB capital requirements mandates an

asymmetric treatment of obligor and loss severity ratings. Obligor ratings assign obligors to groups that are expected to experience common default frequencies across a number of years, some of which are years of general economic stress and some of which are not. In contrast, loss severity ratings (or estimates) must pertain to losses expected during periods with a high number of defaults—particular years that can be called stress conditions. For cases in which loss severities do not have a material degree of cyclical variability, use of a long-run default weighted average is appropriate, although stress condition LGD generally exceeds these averages.

Loss Severity Rating/LGD Granularity

S. Banks must have a sufficiently fine loss severity grading system or prediction model to avoid grouping facilities with widely varying LGDs together.

While there is no stated minimum number of loss severity grades, the systems that provide LGD estimates must be flexible enough to adequately segment facilities with significantly varying LGDs. Banks should have a sufficiently fine LGD grading system or LGD prediction model to avoid grouping facilities with widely varying LGDs together. For example, a bank using a loss severity rating-scale approach that has credit products with a variety of collateral packages or financing structures would be expected to have more LGD grades than those institutions with fewer options in their credit products.

Other Considerations of IRB Rating System Architecture

Timeliness of Ratings

S. All risk ratings must be updated whenever new relevant information is received, but must be updated at least annually.

A bank must have a policy that requires a dynamic ratings approach ensuring that obligor and loss severity ratings reflect current information. That policy must also specify minimum financial reporting and collateral valuation requirements. For example, at the time of servicing events, banks typically receive updated financial information on obligors. For cases in which loss severity grades or estimates are dependent on collateral values or other factors that change periodically, that policy must take into account the need to update these factors.

Banks' policies may include an alternative rating update timetable for exposures below a *de minimus* amount that is justified by the lack of materiality of the potential impact on capital. For example, some banks use triggering events to prompt an update of their ratings on *de minimus* exposures rather than adhering to a specific timetable.

Multiple Ratings Systems

Some banks may develop one risk-rating system that can be used across the entire commercial loan portfolio. However, a bank can choose to deploy any number of rating systems as long as all exposures are assigned PD and LGD values. A different rating system could be used for each business line and each rating system could use a different rating scale. A bank could also use a different rating system for each business line with each system using a common rating scale. Rating models could be used for some portfolios and expert judgment systems for others. An institution's complexity and sophistication, as well as the size and range of products offered, will affect the types and numbers of rating systems employed.

While using a number of rating systems is feasible, such a practice might make it more difficult to meet supervisory standards. Each rating system must conform to the standards in this guidance and must be validated for accuracy and consistency. The requirement that each rating systems be calibrated to parameter values imposes the ultimate constraint, which is that ratings be applied consistently.

Recognition of the Risk Mitigation Benefits of Guarantees

S. Banks reflecting the risk-mitigating effect of guarantees must do so by either adjusting PDs or LGDs, but not both.

S. To recognize the risk-mitigating effects of guarantees, institutions must ensure that the written guarantee is evidenced by an unconditional and legally enforceable commitment to pay that remains in force until the debt is satisfied in full.

Adjustments for guarantees must be made in accordance with specific criteria contained in the bank's credit policy. The criteria should be plausible and intuitive, and should address the guarantor's ability and willingness to meet its obligations. Banks are expected to gather evidence that confirms the risk-mitigating effect of guarantees.

Other forms of written third-party support (for example, comfort letters or letters of awareness) that are not legally binding should not be used to adjust PD or LGD unless a bank can demonstrate through analysis of internal data the risk-mitigating effect of such support. Banks may not adjust PDs or LGDs to reflect implied support or verbal assurances.

Regardless of the method used to recognize the risk-mitigating effects of guarantees, a bank must adopt an approach that is applied consistently over time and across the portfolio. Moreover, the onus is on the bank to demonstrate that its approach is supported by logic and empirical results. While guarantees may provide grounds for adjusting PD or LGD, they cannot result in a lower risk weight than that assigned to a similar direct obligation of the guarantor.[3]

Validation Process

S. IRB rating system architecture must be designed to ensure rating system accuracy.

As part of their IRB rating system architecture, banks must implement a process to ensure the accuracy of their rating systems. Rating system accuracy is defined as the combination of the following outcomes:

- The actual long-run average default frequency for each rating grade is not significantly greater than the PD assigned to that grade.
- The actual stress-condition loss rates experienced on defaulted facilities are not significantly greater than the LGD estimates assigned to those facilities.

Some differences across individual grades between observed outcomes and the estimated parameter inputs to the IRB equations can be expected. But if systematic differences suggest a bias toward lowering regulatory capital requirements, the integrity of the rating system (of either the PD or LGD dimensions or of both) becomes suspect. Validation is the set of activities designed to give the greatest possible assurances of ratings system accuracy.

S. Banks must have ongoing validation processes that include the review of developmental evidence, ongoing monitoring, and the comparison of predicted parameter values to actual outcomes (back-testing).

Validation is an integral part of the rating system architecture. Banks must have processes designed to give reasonable assurances of their rating systems' accuracy. The ongoing process to confirm and ensure rating system accuracy consists of:

- The evaluation of developmental evidence,
- Ongoing monitoring of system implementation and reasonableness (verification and benchmarking), and
- Back-testing (comparing actual to predicted outcomes).

IRB institutions are expected to employ all of the components of this process. However, the data to perform comprehensive back-testing will not be available in the early stages of implementing an IRB rating system. Therefore, banks will have to rely more heavily on developmental evidence, quality control tests, and benchmarking to assure themselves and other interested parties that their rating systems are likely to be accurate. Since the time delay before rating systems can be back-tested is likely to be an important issue—because of the rarity of defaults in most years and the bunching of defaults in a few years—the other parts of the validation process will assume greater importance. If rating processes are developed in a learning environment in which banks attempt to change and improve ratings, back testing may be delayed even further. Validation in its early stages will depend on bank management's exercising informed judgment about the likelihood of the rating system working—not simply on empirical tests.

Ratings System Developmental Evidence

The first source of support for the validity of a bank's rating system is developmental evidence. Evaluating developmental evidence involves making a reasonable assessment of the quality of the rating system by analyzing its design and construction. Developmental evidence is intended to answer the question, Could the rating system be expected to work reasonably if it is implemented as designed? That evidence will have to be revisited whenever the bank makes a change to its rating system. If a bank adopts a rating system and does not make changes, this step will not have to be revisited. However, since rating systems are likely to change over time as the bank learns about the effectiveness of the system and incorporates the results of those analyses, the evaluation of developmental evidence is likely to be an ongoing part of the process. The particular steps taken in evaluating developmental evidence will depend on the type of rating system.

Generally, the evaluation of developmental evidence will include a body of expert opinion. For example, developmental evidence in support of a statistical rating model must include information on the logic that supports the model and an analysis of the statistical model-building techniques. In contrast, developmental evidence in support of a constrained-judgment system that features guidance values of financial ratios might include a description of the logic and evidence relating the values of the ratios to past default and loss outcomes.

Regardless of the type of rating system, the developmental evidence will be more persuasive when it includes empirical evidence on how well the ratings might have worked in the past. This evidence should be available for a statistical model since such models are chosen to maximize the fit to outcomes in the development sample. In addition, statistical models should be supported by evidence that they work well outside the development sample. Use of "holdout" sample evidence is a good model-building practice to ensure that the model is not merely a statistical quirk of the particular data set used to build the model.

Empirical developmental evidence of rating effectiveness will be more difficult to produce for a judgmental rating system. Such evidence would require asking raters how they would have rated past credits for which they did not know the outcomes. Those retrospective ratings could then be compared to the outcomes to determine whether the ratings were correct on average. Conducting such tests, however, will be difficult because historical data sets may not include all of the information that an individual would have actually used in making a judgment about a rating.

The sufficiency of the developmental evidence will itself be a matter of informed expert opinion. Even if the rating system is model-based, an evaluation of developmental evidence will entail judging the merits of the model-building technique. Although no bright line tests are feasible because expert judgment is essential to the evaluation of rating system development, experts will be able to draw conclusions about whether a well-implemented system would be likely to perform satisfactorily.

Ratings System Ongoing Validation

The second source of analytical support for the validity of a bank rating system is the ongoing analysis intended to confirm that the rating system is being implemented and continues to perform as intended. Such analysis involves process verification and benchmarking.

Process Verification

Verification activities address the question, Are the ratings being assigned as intended? Specific verification activities will depend on the rating approach. If a model is used for rating, verification analysis begins by confirming that the computer code used to deploy the model is correct. The computer code can be verified in a number of established ways. For example, a qualified expert can duplicate the code or check the code line by line. Process verification for a model will also include confirmation that the correct data are being used in the model.

For expert-judgment and constrained-judgment systems, verification requires other individual reviewers to evaluate whether the rater followed rating policy. The primary requirements for verification of ratings assigned by individuals are:

- A transparent rating process,
- A database with information used by the rater, and
- Documentation of how the decisions were made.

The specific steps will depend on how much the process incorporates specific guidelines and how much the exercise of judgment is allowed. As the dependence on specific guidelines increases, other individuals can more easily confirm that guidelines were followed by reference to sufficient documentation. As the dependence on judgment rises, the ratings review function will have to be staffed increasingly by experts with appropriate skills and knowledge about the rating policies of the bank.

Ratings process verification also includes override monitoring. If individuals have the ability to override either models or policies in a constrained-judgment system, the bank should have both a policy stating the tolerance for overrides and a monitoring system for identifying the occurrence of overrides. A reporting system capturing data on reasons for overrides will facilitate learning about whether overrides improve accuracy.

Benchmarking

S. Banks must benchmark their internal ratings against internal, market and other third-party ratings.

Benchmarking is the set of activities that uses alternative tools to draw inferences about the correctness of ratings before outcomes are actually

[3] The probability that an obligor and a guarantor (who supports the obligor's debt) will both default on a debt is lower than the probability that either the obligor or the guarantor will default. This favorable risk-mitigation effect is known as the reduced likelihood of "double default." In determining their rating criteria and procedures, banks are not permitted to consider possible favorable effects of imperfect expected correlation between default events for the borrower and guarantor for purposes of regulatory capital requirements. Thus, the adjusted risk weight cannot reflect the risk mitigation of double default. The ANPR solicits public comment on the double-default issues.

known. The most important type of benchmarking of a rating system is to ask whether another rater or rating method attaches the same rating to a particular obligor or facility. Regardless of the rating approach, the benchmark can be either a judgmental or a model-based rating. Examples of such benchmarking include:

- Ratings reviewers who completely re-rate a sample of credits rated by individuals in a judgmental system.
- An internally developed model is used to rate credits rated earlier in a judgmental system.
- Individuals rate a sample of credits rated by a model.
- Internal ratings are compared against results from external agencies or external models.

Because it will take considerable time before outcomes will be available, using alternative ratings as benchmarks will be a very important validation device. Such benchmarking must be applied to all rating approaches, and the benchmark can be either a model or judgment. At a minimum, banks must establish a process in which a representative sample of its internal ratings is compared to third-party ratings (*e.g.*, independent internal raters, external rating agencies, models, or other market data sources) of the same credits.

Benchmarking also includes activities designed to draw broader inferences about whether the rating system—as opposed to individual ratings—is working as expected. The bank can look for consistency in ranking or consistency in the values of rating characteristics for similarly rated credits. Examples of such benchmarking activities include:

- Analyzing the characteristics of obligors that have received common ratings.
- Monitoring changes in the distribution of ratings over time.
- Calculating a transition matrix calculated from changes in ratings in a bank's portfolio and comparing it to historical transition matrices from internal bank data or publicly available ratings.

While benchmarking activities allow for inferences about the correctness of the ratings system, they are the not same thing as back-testing. The benchmark itself is a prediction and may be in error. If benchmarking evidence suggests a pattern of rating differences, it should lead the bank to investigate the source of the differences. Thus, the benchmarking process illustrates the possibility of feedback from ongoing validation to model development, underscoring the characterization of validation as a process.

Back Testing

S. Banks must develop statistical tests to back-test their IRB rating systems.

S. Banks must establish internal tolerance limits for differences between expected and actual outcomes.

S. Banks must have a policy that requires remedial actions be taken when policy tolerances are exceeded.

The third component of a validation process is back-testing, which is the comparison of predictions with actual outcomes. Back-testing of IRB systems is the empirical test of the accuracy of the parameter values, PD and LGD, associated with obligor and loss severity ratings, respectively. For IRB rating systems, back-testing addresses the combined effectiveness of the assignment of obligor and loss severity ratings and the calibration of the parameters PD and LGD attached to those ratings.

At this time, there is no generally agreed-upon statistical test of the accuracy of IRB systems. Banks must develop statistical tests to back-test their IRB rating systems. In addition, banks must have a policy that specifies internal tolerance limits for comparing back-testing results. Importantly, that policy must outline the actions that would be taken whenever policy limits are exceeded.

As a combined test of ratings effectiveness, back-testing is a conceptual bridge between the ratings system architecture discussed in this chapter and the quantification of parameters, discussed in Chapter 2. The final section of Chapter 2 discusses back-testing as one type of quantitative test required to validate the quantification of parameter values.

III. Quantification of IRB Systems

Ratings quantification is the process of assigning numerical values to the four key components for internal ratings-based assessments of credit-risk capital: probability of default (PD), the expected loss given default (LGD), the expected exposure at default (EAD), and maturity (M). Section I establishes an organizing framework for considering IRB quantification and develops general principles that apply to the entire process. Sections II through IV cover specific principles or supervisory standards that apply to PD, LGD, and EAD respectively. The maturity component, which is much less dependent on statistical estimates and the use of data, receives somewhat different treatment in section V. Validation of the quantification process is covered in section VI.

A. Introduction

Stages of the Quantification Process

With the exception of maturity, the risk components are unobservable and must be estimated. The estimation must be consistent with sound practice and supervisory standards. In addition, a bank must have processes to ensure that these estimates remain valid.

Calculation of risk components for IRB involves two sets of data: the bank's actual portfolio data, consisting of current credit exposures assigned to internal grades, and a "reference data set," consisting of a set of defaulted credits (in the case of LGD and EAD estimation) or both defaulted and non-defaulted credits (in the case of PD estimation). The bank estimates a relationship between the reference data set and probability of default, loss severity, or exposure; then this estimated relationship is applied to the actual portfolio data for which capital is being assessed.

Quantification proceeds through four logical stages: obtaining reference data; estimating the reference data's relationship to the parameters; mapping the correspondence between the reference data and the portfolio's data; and applying the relationship between reference data and parameters to the portfolio's data. (Readers may find it helpful to refer to the appendix to this chapter, which illustrates how this four-stage framework can be applied to ratings quantification approaches in practice.) An evaluation of any bank's IRB quantification process focuses on understanding how the bank implements each stage for each of the key parameters, and on assessing the adequacy of the bank's approach.

Data—First, the bank constructs a reference data set, or source of data, from which parameters can be estimated.

Reference data sets include internal data, external data, and pooled internal/external data. Important considerations include the comparability of the reference data to the current credit portfolio, whether the sample period "appropriately" includes periods of stress, and the definition of default used in the reference data. The reference data must be described using a set of observed characteristics; consequently, the data set must contain variables that can be used for this characterization. Relevant characteristics might include external debt ratings, financial measures, geographic regions, or any other factors that are believed to be related in some way to PD, LGD, or EAD. More than one reference data set may be used.

Estimation—Second, the bank applies statistical techniques to the reference data to determine a relationship between characteristics of the reference data and the parameters (PD, LGD, or EAD).

The result of this step is a model that ties descriptive characteristics of the obligor or facility in the reference data set to PD, LGD, or EAD estimates. In this context, the term 'models' is used in the most general sense; a model may be simple, such as the calculation of averages, or more complicated, such as an approach based on advanced regression techniques. This step may include adjustments for differences between the IRB definition of default and the default definition in the reference data set, or adjustments for data limitations. More than one estimation technique may be used to generate estimates of the risk components, especially if there are multiple sets of reference data or multiple sample periods.

Mapping—Third, the bank creates a link between its portfolio data and the reference data based on common characteristics.

Variables or characteristics that are available for the current portfolio must be mapped to the variables used in the default, loss-severity, or exposure model. (In some cases, the bank constructs the link for a representative exposure in each internal grade, and the mapping is then applied to all credits within a grade.) An important element of mapping is making adjustments for differences between reference data sets and the bank's portfolio. The bank must create a mapping for each reference data set and for each combination of variables used in any estimation model.

Application—Fourth, the bank applies the relationship estimated for the reference data to the actual portfolio data.

The ultimate aim of quantification is to attribute a PD, LGD, or EAD to each exposure within the portfolio, or to each internal grade if the mapping was done at the grade level. This step may include adjustments to default frequencies or loss rates to "smooth" the final parameter estimates. If the estimates are applied to individual transactions, the bank must in some way aggregate the estimates at the grade level. In addition, if multiple data sets or estimation methods are used, the bank must adopt a means of combining the various estimates.

A number of examples are given in this chapter to aid exposition and interpretation. None of the examples is sufficiently detailed to incorporate all the considerations discussed in this chapter. Moreover, technical progress in the area of quantification is rapid. Thus, banks should not interpret an example that is consistent with the standard being discussed, and that resembles the bank's current practice, as creation of a "safe harbor" or as an indication that the bank's practice will be approved as-is. Banks should consider this guidance in its entirety when determining whether systems and practices are adequate.

General Principles for Sound IRB Quantification

Several core principles apply to all elements of the overall ratings quantification process; those general principles are discussed in this introductory section. Each of these principles is, in effect, a supervisory standard for IRB systems. Other supervisory standards, specific to particular elements or parameters, are discussed in the relevant sections.

Supervisory evaluation of IRB quantification requires consideration of all of these principles and standards, both general and specific. Particular practical approaches to ratings quantification may be highly consistent with some standards, and less so with others. In any particular case, an ultimate assessment relies on the judgment of supervisors to weigh the strengths and weaknesses of a bank's chosen approach, using these supervisory standards as a guide.

S. IRB institutions must have a fully specified process covering all aspects of quantification (reference data, estimation, mapping, and application). The quantification process, including the role and scope of expert judgment, must be fully documented and updated periodically.

A fully specified quantification process must describe how all four stages (data, estimation, mapping, and application) are implemented for each parameter. Documentation promotes consistency and allows third parties to review and replicate the entire process. Examples of third parties that might use the documentation include rating-system reviewers, auditors, and bank supervisors. Periodic updates to the process must be conducted to ensure that new data, analytical techniques, and evolving industry practice are incorporated into the quantification process.

S. Parameter estimates and related documentation must be updated regularly.

The parameter estimates must be updated at least annually, and the process for doing so must be documented in bank policy. The update should also evaluate the judgmental adjustments embedded in the estimates; new data or techniques may suggest a need to modify those adjustments. Particular attention should be given to new business lines or portfolios in which the mix of obligors is believed to have changed substantially. A material merger, acquisition, divestiture, or exit clearly raises questions about the continued applicability of the process and should trigger an intensive review and updating.

The updating process is particularly relevant for the reference data stage because new data become available all the time. New data must be incorporated, into the PD, LGD, and EAD estimates, using a well-defined process.

S. A bank must subject all aspects of the quantification process, including design and implementation, to an appropriate degree of independent review and validation.

An independent review is an assessment conducted by persons not accountable for the work being reviewed. The reviewers may be either internal or external parties. The review serves as a check that the quantification process is sound and works as intended; it should be broad-based, and must include all of the elements of the quantification process that lead to the ultimate estimates of PD, LGD, and EAD. The review must cover the full scope of validation: evaluation of the integrity of data inputs, analysis of the internal logic and consistency of the process, comparison with relevant benchmarks, and appropriate back-testing based on actual outcomes.

S. Judgmental adjustments may be an appropriate part of the quantification process, but must not be biased toward lower estimates of risk.

Judgment will inevitably play a role in the quantification process and may materially affect the estimates. Judgmental adjustments to estimates are often necessary because of some limitations on available reference data or because of inherent differences between the reference data and the bank's portfolio data. The bank must ensure that adjustments are not biased toward optimistically low parameter estimates for PD, LGD, and EAD. Individual assumptions are less important than broad patterns; consistent signs of judgmental decisions that lower parameter estimates materially may be evidence of bias.

The reasoning and empirical support for any adjustments, as well as the mechanics of the calculation, must be documented. The bank should conduct sensitivity analysis to demonstrate that the adjustment procedure is not biased toward reducing capital requirements. The analysis must consider the impact of any judgmental adjustments on estimates and risk weights, and must be fully documented.

S. Parameter estimates must incorporate a degree of conservatism that is appropriate for the overall robustness of the quantification process.

In estimating values of PD, LGD, and EAD should be as precise and accurate as possible. However, estimates of PD, LGD and EAD are statistics, and thus inherently subject to uncertainty and potential error. It is often possible to be reasonably confident that a risk component or other parameter lies within a particular range, but greater precision is difficult to achieve. Aspects of the ratings quantification process that are apt to introduce uncertainty and potential error include the following:

The estimation of coefficients of particular variables in a regression-based statistical default or severity model.

• The calculation of average default or loss rates for particular categories of credits in external default databases.

• The mapping between portfolio obligors or facilities and reference data when the set of common characteristics does not align exactly.

A general principle of the IRB approach is that a bank must adjust estimates conservatively in the presence of uncertainty or potential error. In many cases this corresponds to assigning a final parameter estimate that increases required capital relative to the best estimate produced through sound-practice estimation techniques. The extent of this conservative adjustment should be related to factors such as the relevance of the reference data, the quality of the mapping, the precision of the statistical estimates, and the amount of judgment used throughout the process. Margins of conservatism need not be added at each step; indeed, that could produce an excessively conservative result. The overall margin of conservatism should adequately account for all uncertainties and weaknesses; this is the general interpretation of requirements to incorporate appropriate degrees of conservatism. Improvements in the quantification process (use of better data, estimation techniques, and so on) may reduce the appropriate degree of conservatism over time.

Estimates of PD, LGD, EAD, or other parameters or coefficients should be presented with an accompanying sense of the statistical precision of the estimates; this facilitates an assessment of the appropriate degree of conservatism.

B. Probability of Default (PD)

Data

To estimate PD accurately, a bank must have a comprehensive reference data set with observations that are comparable to the bank's current portfolio of obligors. Clearly, the data set used for estimation should be similar to the portfolio to which such estimates will be applied. The same comparability standard applies to both internal and external data sets.

To ensure ongoing applicability of the reference data, a bank must assess the characteristics of its current obligors relative to the characteristics of obligors in the reference data. Such variables might include qualitative and quantitative obligor information, internal and external rating, rating dates, and line of business or geography. To this end, a bank must maintain documentation that fully describes all explanatory variables in the data set, including any changes to those variables over time. A well-defined and documented process must be in place to ensure that the reference data are updated as frequently as is practical, as fresh data become available or portfolio changes make necessary.

S. The sample for the reference data must be at least five years, and must include periods of economic stress during which default rates were relatively high.

To foster more robust estimation, banks should use longer time series when more than five years of data are available. However, the benefits of using a longer time series (longer than five years) may have to be weighed against a possible loss of data comparability. The older the reference data, the less similar they are likely to be to the bank's current portfolio; striking the correct balance is a matter of judgment. Reference obligors must not differ from the current portfolio obligors systematically in ways that seem likely to be related to obligor default risk. Otherwise, the derived PD estimates may not be applicable to the current portfolio.

Note that this principle does not simply restate the requirement for five years of data: periods of stress during which default rates are relatively high must be included in the data sample. Exclusion of such periods biases PD estimates downward and unjustifiably lowers regulatory capital requirements.

Example. A bank's reference data set covers the years 1987 through 2001. Each year includes identical data elements, and each year is similarly populated. For its grade PD estimates, the bank relies upon data from a sub-sample covering 1992 through 2001. The bank provides no justification for dropping the years from 1987 through 1991. The bank contends that it is not necessary to include those data, as the reference sample they use for estimation satisfies the five-year requirement. This practice is not consistent with the standard because the bank has not supported its decision to ignore available data. The fact that the excluded years include a recession would raise particular concerns.

S. The definition of default within the reference data must be reasonably consistent with the IRB definition of default.

Regardless of the source of the reference data, a bank must apply the same default definition throughout the quantification processes. This fosters consistent estimation across parameters and reduces the potential for undesired bias. In addition, consistent application of the same definition across banks will permit true horizontal analysis by supervisors and engaged market participants.

This standard applies to both internal and external reference data. For internal data, a bank's default definition is expected to be consistent with the IRB definition going forward. Banks will be expected to make appropriate adjustments to their data systems such that all defaults as defined for IRB are captured by the time a bank fully implements its IRB system. For any historical or external data that do not fully comply with the IRB definition of default, a bank must make conservative adjustments to reflect such discrepancies. Larger discrepancies require larger adjustments for conservatism.

Example. To identify defaults in its historical data, a bank applies a consistent definition of "placed on nonaccrual." This definition is used in the bank's quantification exercises to estimate PD, LGD, and EAD. The bank recognizes that use of the nonaccrual definition fails to capture certain defaults as identified in the IRB rules. Specifically, the bank indicates that the following kinds of defaulted facilities would not have been placed on nonaccrual: (1) Credit obligations that were sold at a material credit-related economic loss, and (2) distressed restructurings. To be consistent with the standard, the bank must make a well-supported adjustment to its grade PD estimates to reflect the difference in the default definitions.

Estimation

Estimation of PD is the process by which characteristics of the reference data are related to default frequencies.[4] The relevant characteristics that help to determine the likelihood of default are referred to as "drivers of default". Drivers might include variables such as financial ratios, management expertise, industry, and geography.

S. Estimates of default rates must be empirically based and must represent a long-run average.

Estimates must capture average default experience over a reasonable mix of high-default and low-default years of the economic cycle. The average is labeled "long-run" because a long observation period would span both peaks and valleys of the economic cycle. The emphasis should not be on time-span; the long-run average concept captures the breadth, not the length, of experience.

If the reference data are characterized by internal or external rating grades, one estimation approach is to calculate the mean of one-year realized default rates for each grade, giving equal weight to each year's realized default rate. PD estimates generally should be calculated in this manner.

Another approach is to pool obligors in a given grade over a number of years and then calculate the mean default rate. In this case, each year's default rate is weighted by the number of obligors. This approach may underestimate default rates. For example, if lending declines in recessions so that obligors are fewer in those years than in others, weighting by number of obligors would dilute the effect of the recession year on the overall mean. The obligor-weighted calculation, or another approach, will be allowed only if the bank can demonstrate that this approach provides a better estimate of the long-run average PD. At a minimum, this would involve comparing the results of both methods.

Statistical default prediction models may also play a role in PD estimation. For example, the characteristics of the reference data might include financial ratios or a distance-to-default measure, as defined by a specific implementation of a Merton-style structural model.

For a model-based approach to meet the requirement that ultimate grade PD estimates be long-run averages, the reference data used in the default model must meet the long-run requirement. For example, a model can be used to relate financial ratios to likelihood of default based on the outcome for the firms—default or non-default. Such a model must be calibrated to capture the default experience over a reasonable mix of good and bad years of the economic cycle. The same requirement would hold for a structural model; distance to default must be calibrated to default frequency using long-run experience. This applies to both internal and vendor models, and a bank must verify that this requirement is met.

Example 1. A bank uses external data from a rating agency to estimate PD. The PD estimate for each agency grade is calculated as the mean of yearly realized default rates over a time period (1980 through 2001) that includes several recessions and high-default years. The bank provides support that this time period adequately represents long-run experience. This illustrates an estimation method that is consistent with the standard.

Example 2a. Like the institution in example 1, a bank maps internal ratings to agency grades. The estimates for the agency grades are set indirectly, using the default probabilities from a default prediction model. The bank does so because although it links internal and agency grades, the bank views the default model's results as more predictive than the historical agency default experience. For each agency grade, the bank calculates a PD estimate as the mean of the model-based default probabilities for the agency-rated obligors. In order to meet the long-run requirement, the bank calculates the estimates over the seven years from 1995 through 2001. The bank demonstrates that this time period includes a reasonable mix of high-default and low-default experience. This estimation method is consistent with the standard.

Example 2b. In a variant of example 2a, a bank uses the mean default frequency per agency rating grade for a single year, such as 2001. Empirical evidence shows that the mean default frequency for agency grades varies substantially from year to year. A single year thus does not reflect the full range of experience, because a long-run average should be relatively stable year to year. Such instability makes this estimation method unacceptable.

Example 2c. Another bank calculates the agency grade PD estimates as the median default probability of companies in that grade. The bank does so without demonstrating that the median is a better statistical estimator than the mean. This estimation method is not consistent with the standard. A median gives less weight to obligors with high estimated default probabilities than a simple mean does. The difference between mean and median can be material because distributions of credits within grades often are substantially skewed toward higher default probabilities: the riskier obligors within a grade tend to have individual default probabilities that are substantially worse than the median, while the least risky have default probabilities only somewhat better than the median.

S. Judgmental adjustments may play an appropriate role in PD estimation, but must not be biased toward lower estimates.

The following examples illustrate how supervisors will evaluate adjustments:

Example 1. A bank uses the last five years of internal default history to estimate grade PDs. However, they recognize that the internal experience does not include any high-default years. In order to remedy this and still take advantage of its experience, the bank uses external agency data to adjust the estimates upward. Using the agency data, the bank calculates the ratio between the long-run average and the mean default rate per grade over the last five years. The bank assumes that the relationship observed in the agency data applies to its portfolio, and adjusts the estimates for the internal data accordingly. This practice is consistent with the standard.

Example 2. A bank uses internal default experience to estimate grade PDs. However, the bank has historically failed to recognize defaults when the loss on the default obligation was avoided by seizing collateral. The bank makes no adjustment for such missing defaults. The realized default rate using the more inclusive definition would be higher than that observed by the bank (and loss severity rates would be correspondingly lower). This practice would not be consistent with the standard, unless the bank demonstrates that the necessary adjustment is immaterial.

Mapping

Mapping is the process of establishing a correspondence between the bank's current obligors and the reference obligor data used in the default model. Hence, mapping involves identifying how default-related characteristics of the current portfolio correspond to the characteristics of reference obligors. Such characteristics might include financial and nonfinancial variables, and assigned ratings or grades.

Mapping can be thought of as taking each obligor in the bank's portfolio and characterizing it as if it were part of the reference data. There are two broad approaches to the mapping process:

Obligor mapping: Each portfolio obligor is mapped to the reference data based on its individual characteristics. For example, if a bank applies a default model, a default probability will be generated for each obligor. That individual default probability is then used to assign each obligor to a particular internal grade, based on the bank's established criteria. To obtain a final estimate of the grade PD in the subsequent application stage, the bank averages the default probabilities of individual obligors within each grade.

Grade mapping: Characteristics of the obligors within an internal grade are

[4] The New Basel Capital Accord produced by the Basel Committee on Banking Supervision discusses three techniques for PD estimation. IRB banks are not constrained to select from among these three techniques; they have broad flexibility to implement appropriate approaches to quantification. The three Basel techniques are best regarded not as a complete taxonomy of the possible approaches to PD estimation, but rather as illustrations of a few of the many possible approaches.

averaged or otherwise summarized to construct a "typical" or representative obligor for each grade. Then, the bank maps that representative obligor to the reference data. For example, if the bank uses a default model, the default probability associated with that typical obligor will serve as the grade PD in the application stage. Alternatively, the bank may map the typical obligor to a particular external rating grade based on quantitative and qualitative characteristics, and assign the long-run default rate for that rating to the internal grade in the application stage.

Either grade mapping or obligor mapping can be part of the quantification process; either method can produce a single PD estimate for each grade in the application stage. However, in the absence of other compelling considerations, banks should use obligor mapping for two reasons:

- First, default probabilities are nonlinear under many estimation approaches. As a result, the default probability of the typical obligor—the result of a grade mapping approach—is often lower than the mean of the individual obligor default probabilities from the obligor mapping approach. For example, consider a bank that maps to the S&P scale and uses historical S&P bond default rates. For ease of illustration, suppose that one internal grade contains only three obligors that individually map to BB, BB−, and B+. The historical default rates for these three grades are 1.07, 1.76, and 3.24 percent, respectively (based on 1981–2001 data). Using obligor mapping, those rates would be assigned directly to the three obligors, yielding a mean PD of 2.02 percent for the grade. Using grade mapping, the grade PD would be only 1.76, because the grade's typical obligor is rated BB−.
- Second, a hypothetical obligor with a grade's average characteristics may not represent well the risks presented by the grade's typical obligor. For example, a bank might observe that obligors with high leverage and low earnings variability have about the same default risk as obligors with low leverage and high earnings variability. These two types of obligors might both end up in the same grade, for example, Grade 6. If so, the typical obligor in Grade 6 would have moderate leverage and moderate earnings variability—a combination that might fail to reflect any of the individual obligors in Grade 6, and that could easily result in a PD for the grade that is too low.

A bank electing to use grade mapping instead of obligor mapping should be especially careful in choosing a "typical" obligor for each grade. Doing so typically requires that the bank examine the actual distribution of obligors within each grade, as well as the characteristics of those obligors. Banks should be aware that different measures of central tendency (such as mean, median, or mode) will give different results, and that these different results may have a material effect on a grade's PD; they must be able to justify their choice of a measure. Banks must have a clear and consistent policy toward the calculation.

S. The mapping must be based on a robust comparison of available data elements that are common to the portfolio and the reference data.

Sound mapping practice uses all common elements that are available in the data as the basis for mapping. If a bank chooses to ignore certain common variables or to weight some variables more heavily than others, those choices must be supported. Mapping should also take into account differences in rating philosophy (for example, point-in-time or through-the-cycle) between any ratings embedded in the reference data set and the bank's own rating regime.

A mapping should be plausible, and should be consistent with the rating philosophy established by the bank as part of its obligor rating policy. For a bank that uses grade mapping, levels and ranges of key variables within each internal grade should be close to values of similar variables for corresponding obligors within the reference data.

The standard allows for use of a limited set of common variables that are predictive of default risk, in part to permit flexibility in early years when data may be far from ideal. Nevertheless, banks will eventually be expected to use variables that are widely recognized as the most reliable predictors of default risk in mapping exercises. In the meantime, banks relying on data elements that are weak predictors must compensate by making their estimates more conservative. For example, leverage and cash flow are widely recognized to be reliable predictors of corporate default risk. Borrower size is also predictive, but less so. A mapping based solely on size is by nature less reliable than one based on leverage, cash flow, and size.

Example 1. In estimating PD, a bank relies on observed default rates on bonds in various agency grades for PD quantification. To map its internal grades to the agency grades, the bank identifies variables that together explain much of the rating variation in the bond sample. The bank then conducts a statistical analysis of those same variables within its portfolio of obligors, using a multivariate distance calculation to assign each portfolio obligor to the external rating whose characteristics it matches most closely (for example, assigning obligors to ratings so that the sum of squared differences between the external grade averages and the obligor's characteristics is minimized). This practice is broadly consistent with the standard.

Example 2. A bank uses grade mapping to link portfolio obligors to the reference data set described by agency ratings. The bank looks at publicly rated portfolio obligors within an internal grade to determine the most common external rating, does the same for all grades, and creates a correspondence between internal and external ratings. The strength of the correspondence is a function of the number of externally rated obligors within each grade, the distribution of those external ratings within each grade and the similarity of externally rated obligors in the grade to those not externally rated. This practice is broadly consistent with this standard, but would require a comparison of rating philosophies and may require adjustments and the addition of margins of conservatism.

S. A mapping process must be established for each reference data set and for each estimation model.

Banks should never assume that a mapping is self-evident. Even a rating system that has been explicitly designed to replicate external agency ratings may or may not be effective in producing a replica; formal mapping is still necessary. Indeed, in such a system the kind of analysis involved in mapping may help identify inconsistencies in the rating process itself.

A mapping process is needed even where the reference obligors come from internal historical experience. Banks must not assume that internal data do not require mapping, because changes in bank strategy or external economic forces may alter the composition of internal grades or the nature of the obligors in those grades over time. Mappings must be reaffirmed regardless of whether rating criteria or other aspects of the ratings system have undergone explicit changes during the period covered by the reference data set.

Banks often use multiple reference data sets, and then combine the resulting estimates to get a grade PD. A bank that does that must conduct a rigorous mapping process for each data set.

Supervisors expect all meaningful characteristics of obligors to be factored directly into the rating process; this should include characteristics like the obligor's industry or physical location. But in some circumstances, certain effects related to industry, geography, or other factors are not reflected in rating assignments or default estimates. In such cases, it may be appropriate for banks to capture the impact of the omissions by using different mappings for different business lines or types of obligors. Supervisors expect this practice to be transitional; banks will eventually be required to incorporate the omitted effects into the rating system and the estimation process as they are uncovered and documented, rather than adjusting the mapping.

Example 1. The bank maps its internal grades carefully to one rating agency, and then assumes a correspondence to another agency's scale despite known differences in the rating methods of the two agencies. The bank then applies a mean of the grade default rates from these two public debt-rating agencies to its internal grades. This practice is not consistent with the standard, because the bank should map to each agency's scale separately.

Example 2. A bank uses internal historical data as its reference data. The bank computes a mean default rate for each grade as the grade PD for capital purposes, and asserts that mapping is unnecessary because "its strong credit culture ensures that a 4 is always a 4." This practice is not consistent with the standard, because no mapping has been done; there is no assurance that a representative obligor in a grade today is comparable to an obligor in that same grade in the past.

S. The mapping must be updated and independently validated regularly.

The appropriate mapping between a bank's portfolio and the reference data may change over time. For example, relationships between internal grades and external agency grades may change during the economic cycle because of differences in rating philosophy. Similarly, distance-to-default measures for obligors in a given grade may not be constant over time. These likely changes make it imperative that the bank update all mappings regularly.

Sound validation practices may include tests for internal consistency such as "reverse mapping." Using this technique, a bank evaluates obligors from the reference data set as if they were subject to the bank's rating system (that is, part of the bank's current portfolio). The bank's mapping is then applied to these reverse-mapped obligors to see whether the mapped characterization of the reference obligor is consistent with that of the initial evaluation.[5] Another valuable technique is to apply different mapping methods and compare the results. For example, mappings based on financial ratio comparisons can be rechecked using mappings based on available external ratings.

Example. A bank mapped its internal grades to the rating scale of one public debt-rating agency in 1992. Since then, the bank has completed a major acquisition of another large bank and significantly changed its business mix in other ways. The bank continues to use the same mapping, without reassessing its validity. This practice is not consistent with the standard.

[5] For example, suppose a bank asserts that its Grade 3 corresponds to an S&P rating of A. Applying reverse mapping, the bank would take a sample of A-rated obligors from the reference data, run them through the bank's rating process (perhaps a simplified version), and check to see that those obligors usually receive a grade of 3 on the bank's internal scale.

Application

In the application stage, the bank applies the PD estimation method to the current portfolio of obligors using the mapping process. It obtains final PD estimates for each rating grade, which will be used to calculate minimum regulatory capital. To arrive at those estimates, a bank may adjust the raw results derived from the estimation stage. For example, it might aggregate individual obligor default probabilities to the rating grade level, or smooth results because a rating grade's PD estimate was higher than a lower quality grade. The bank must explain and support all adjustments when documenting its quantification process.

Example. A bank uses external data to estimate long-run average PDs for each grade. The resulting PD estimate for Grade 2 is slightly higher than the estimate for Grade 3, even though Grade 2 is supposedly of higher credit quality. The bank uses statistics to demonstrate that this anomaly occurred because defaults are rare in the highest quality rating grades. The bank judgmentally adjusts the PD estimates for grades 2 and 3 to preserve the expected relationship between obligor grade and PD, but requires that total risk-weighted assets across both grades using the adjusted PD estimates be no less than total risk-weighted assets based on the unadjusted estimates, using a typical distribution of obligors across the two grades. Such an adjustment during the application stage is consistent with this guidance.

S. IRB institutions that aggregate the default probabilities of individual portfolio obligors when calculating PD estimates for internal grades must have a clear policy governing the aggregation process.

As noted above, mapping may be grade-based or obligor-based. Grade-based mappings naturally provide a single PD per grade, because the estimated default model is applied to the representative obligor for each grade. In contrast, obligor-based mappings must aggregate in some manner the individual PD estimates to the grade level. The expectation is that the grade PD estimate will be calculated as the mean. The bank will be allowed to calculate this estimate differently only if it can demonstrate that the alternative method provides a better estimate of the long-run average PD. To obtain this evidence, the bank must at least compare the results of both methods.

S. IRB institutions that combine estimates from multiple sets of reference data must have a clear policy governing the combination process, and must examine the sensitivity of the results to alternative combinations.

Because a bank should make use of as much information as possible when mapping, it will usually use multiple data sets. The manner in which the data or the estimates from those multiple data sets are combined is extremely important. A bank must document its justification for the particular combination methods selected. Those methods must be subject to appropriate approval and oversight.

The data may come from the same basic data source but from different time periods or from different data sources altogether. For example, banks often combine internal data with external data, use external data from different sample periods, or combine results from corporate-bond default databases with results from equity-based models of obligor default. Different combinations will produce different PD estimates. The bank should investigate alternative combinations and document the impact on the estimates. When ultimate results are highly sensitive to how estimates from different data sources are combined, the bank must choose among the alternatives conservatively.

C. Loss Given Default (LGD)

The LGD estimation process is similar to the PD estimation process. The bank identifies a reference data set of defaulted credits and relevant descriptive characteristics. Once the bank obtains these data sets (with the facility characteristics), it must select a technique to estimate the economic loss per dollar of exposure at default, for a defaulted exposure with a given array of characteristics. The bank's portfolio must then be mapped, so that the model can be applied to generate an estimate of LGD for each portfolio transaction or severity grade.

Data

Unlike reference data sets used for PD estimation, data sets for severity estimation contain only exposures to defaulting obligors. At least two broad categories of data are necessary to produce LGD estimates.

First, data must be available to calculate the actual economic loss experienced for each defaulted facility. Such data may include the market value of the facility at default, which can be

used to proxy a recovery rate. Alternatively, economic loss may be calculated using the exposure at the time of default, loss of principal, interest, and fees, the present value of subsequent recoveries and related expenses (or the costs as calculated using an approved allocation method), and the appropriate discount rate.

Second, factors must be available to group the defaulted facilities in meaningful ways. Characteristics that are likely to be important in predicting loss rates include whether or not the facility is secured and the type and coverage of collateral if the facility is secured, seniority of the claim, general economic conditions, and obligor's industry. Although these factors have been found to be significant in existing academic and industry studies, a bank's quantification of LGD certainly need not be limited to these variables. For example, a bank might expand its loss severity research by examining many other potential drivers of severity (characteristics of an obligor that might help the bank predict the severity of a loss), including obligor size, line of business, geographic location, facility type, obligor ratings (internal or external), historical internal severity grade, or tenor of the relationship.

A bank must ensure that the reference data remains applicable to its current portfolio of facilities. It must implement established processes to ensure that reference data sets are updated when new data become available. All data sources, variables, and the overall processes concerning data collection and maintenance must be fully documented, and that documentation should be readily available for review.

S. The sample period for the reference data must be at least seven years, and must include periods of economic stress during which defaults were relatively high.

Seven years is the minimum sample period for the LGD reference data. A longer sample period is desirable, because more default observations will be available for analysis and may serve to refine severity estimates. In any case, a bank must select a sample period that includes episodes of economic stress, which are defined as periods with a relatively high number of defaults. Inclusion of stress periods increases the size and potentially the breadth of the reference data set. According to some empirical studies, the average loss rate is higher during periods of stress.

Example. A bank intends to rely primarily on internal data when quantifying all parameter estimates, including LGD. Its internal data cover the period 1994 through 2000. The bank will continue to extend its data set as time progresses. Its current policy mandates that credits be resolved within two years of default, and the data set contains the most recent data available. Although the current data set satisfies the seven-year requirement, the bank is aware that it does not include stress periods. In comparing its loss estimates with rates published in external studies for similarly stratified data, the bank observes that its estimates are systematically lower. To be consistent with the standard, the bank must take steps to include stress periods in its estimates.

S. The definition of default within the reference data must be reasonably consistent with the IRB definition of default.

This standard parallels a similar standard in the section on PD. The following examples illustrate how it applies in the case of LGD.

Example 1. For LGD estimation, a bank includes in its default data base only defaulted facilities that actually experience a loss, and excludes credits for which no loss was recorded because liquidated collateral covered the loss (effectively applying a "loss given loss" concept). This practice is not consistent with the standard because the bank's default definition for LGD is narrower than the IRB definition.

Example 2. A bank relies on external data sources to estimate LGD because it lacks sufficient internal data. One source uses "bankruptcy filing" to indicate default while another uses "missed principal or interest payment," and the two sources result in significantly different loss estimates for the severity grades defined by the bank. The bank's practice is not consistent with the standard, and the bank should determine whether the definitions used in the reference data sets differ substantially from the IRB definition. If so, and the differences are difficult to quantify, the bank should seek other sources of reference data. For more minor differences, the bank may be able to make appropriate adjustments during the estimation stage.

Estimation

Estimation of LGD is the process by which characteristics of the reference data are related to loss severity. The relevant characteristics that help explain how severe losses tend to be upon default might include variables such as seniority, collateral, facility type, or business line.

S. The estimates of loss severity must be empirically based and must reflect the concept of "economic loss."

Loss severity is defined as economic loss, which is different from accounting measures of loss. Economic loss captures the value of recoveries and direct and indirect costs discounted to the time of default, and it should be measured for each defaulted facility. The scope of the cash flows included in recoveries and costs is meant to be broad. Workout costs that can be clearly attributed to certain facilities or types of facilities must be reflected in the bank's LGD assignments for those exposures. When such allocation is not practical, the bank may assign those costs using factors based on broad averages.

A bank must establish a discount rate that reflects the time value of money and the opportunity cost of funds to apply to recoveries and costs. The discount rate must be no less than the contract interest rate on new originations of a type similar to the transaction in question, for the lowest-quality grade in which a bank originates such transactions.[6] Where possible, the rate should reflect the fixed rate on newly originated exposures with term corresponding to the average resolution period of defaulting assets.

Ideally, severity should be measured once all recoveries and costs have been realized. However, a bank may not resolve a defaulted obligation for many years following default. For practical purposes, banks may choose to close the period of observation before this final resolution occurs—that is, at a point in time when most costs have been incurred and when recoveries are substantially complete. Banks that do so should estimate the additional costs and recoveries that would likely occur beyond this period and include them in the LGD estimates. A bank must document its choice of the period of observation, and how it estimated additional costs and recoveries beyond this period.

LGD for each type of exposure must be the loss per default (expressed as a percentage of exposure at default) expected during periods when default rates are relatively high. This expected loss rate is referred to as "stress-condition LGD." For cases in which loss severities do not have a material degree of cyclical variability, use of the long-run default-weighted average is appropriate, although stress-condition LGD generally exceeds this average.

The drivers of severity can be linked to loss estimates in a number of ways. One approach is to segment the reference defaults into groups that do not overlap. For example, defaults could be grouped by business line, predominant collateral type, and loan-to-value coverage. The LGD estimate for each category is the mean loss calculated over the category's defaulted facilities. Loss must be calculated as the default-weighted average (where individual defaults receive equal weight) rather than the average of

[6] The appropriate discount rate for IRB purposes may differ from the contract rate required under FAS 114 for accounting purposes.

annual loss rates, and must be based on results from periods during which default rates were relatively numerous if loss rates are materially cyclical.

Banks can also draw estimates of LGD from a statistical model. For example, they can build a regression model of severity using data on loss severity and some quantitative measures of the loss drivers. Any model must meet the requirements for model validation discussed in Chapter 1. Other methods for computing LGD could also be appropriate.

Example 1. A bank has internal data on defaulted facilities, including information on business line, facility type, seniority, and predominant collateral type (if the facility is secured). The data allow for a reasonable calculation of economic loss. The data span eight years and include three years that can be termed high-default years. After analyzing the economic cycle using internal and external data, the bank concludes that the data show no evidence of material cyclical variability in loss severities, and that the default data span enough experience to allow estimation of a long-run average. On the basis of preliminary analysis, the bank determines that the drivers of loss severity for large corporate facilities are similar to those for middle-market loans, and that the two groups can be estimated as a pool. Again on the basis of preliminary analysis, the bank segments this pool by seniority and by six collateral groupings, including unsecured. These groupings contain enough defaults to allow reasonably precise estimates. The loss severity estimates are then calculated by averaging loss rates within each segment. This practice is consistent with the standard.

Example 2. A bank uses internal data in which information on security and seniority is lacking. The bank groups corporate and middle-market defaulted facilities into a single pool and calculates the LGD estimate as the mean loss rate. No adjustments for the lack of data are made in the estimation or application steps. This practice is unacceptable because there is ample external evidence that security and seniority matter in these segments. A bank with such limited internal default data must incorporate external or pooled data into the estimation.

Example 3. A bank determines that a business unit—for example, a unit dedicated to a particular type of asset-based lending—forms a homogeneous pool for the purposes of estimating loss severity. That is, although the facilities in this pool may differ in some respects, the bank determines that they share a similar loss experience in default. The bank must provide reasonable support for this pooling through analysis of lending practices and available internal and external data. In this example, the mean of a single segment is consistent with the standard.

S. Judgmental adjustments may play an appropriate role in LGD estimation, but must not be biased toward lower estimates.

It is difficult to make general statements about good and bad practices in this area, because adjustments can take many different forms. The following examples illustrate how supervisors would be likely to evaluate particular adjustments observed in practice.

Example 1. A bank divides observed defaults into segments according to collateral type. One of the segments has too few observations to produce a reliable estimate. Relying on external data and judgment, the bank determines that the segment's estimated severity of loss falls somewhere between the estimates for two other categories. This segment's severity is set judgmentally to be the mean of the estimates for the other segments. This practice is consistent with the standard.

Example 2. A bank does not know when recoveries (and related costs) occurred in a portfolio segment; therefore, it cannot properly discount the segment's cash flows. However, the bank has sufficient internal data to calculate economic loss for defaulted facilities in another portfolio segment. The bank can support the assumption that the timing of cash flows for the two segments is comparable. Using the available data and informed judgment, the bank estimates that the measured loss without discounting should be grossed up to account for the time value of money and the opportunity cost of funds. This practice is consistent with the standard.

Example 3. A bank segments internal defaults in a business unit by some factors, including collateral. Although the available internal and external evidence indicates a higher LGD, the bank judgmentally assigns a loss estimate of 2 percent for facilities secured by cash collateral. The basis for this adjustment is that the lower estimate is justified by the expectation that the bank would do a better job of following policies for monitoring cash collateral in the future. Such an adjustment is generally not appropriate because it is based on projections of future performance rather than realized experience. This practice is not consistent with the standard.

Mapping

LGD mapping follows the same general principles that PD mapping does. A mapping must be plausible and must be based on a comparison of severity-related data elements common to both the reference data and the current portfolio. The mapping approach is expected to be unbiased, such that the exercise of judgment does not consistently lower LGD estimates. The default definitions in the reference data and the current portfolio of obligors should be comparable. The mapping process must be updated regularly, well-documented, and independently reviewed.

S. A bank must conduct a robust comparison of available common elements in the reference data and the portfolio.

Mapping involves matching facility-specific data elements available in the current portfolio to the factors in the reference data set used to estimate expected loss severity rates. Examples of factors that influence loss rates include collateral type and coverage, seniority, industry, and location.

At least three kinds of mapping challenges may arise. First, even if similarly named variables are available in the reference data and portfolio data, they may not be directly comparable. For example, the definition of particular collateral types, or the meaning of "secured," may vary from one application to another. Hence, a bank must ensure that linked variables are truly similar. Although adjustments to enhance comparability can be appropriate, they must be rigorously developed and documented. Second, levels of aggregation may vary. For example, the reference data may only broadly identify collateral types, such as financial and nonfinancial. The bank's information systems for its portfolio might supply more detail, with a wide variety of collateral type identifiers. To apply the estimates derived from the reference data, the internal data must be regrouped to match the coarser level of aggregation in the reference data. Third, reference data often do not include workout costs and will often use different discounting. Judgmental adjustments for such problems must be well-documented and, as much as possible, empirically based.

S. A mapping process must be established for each reference data set and for each estimation model.

Mapping is never self-evident. Even when reference data are drawn from internal default experience, a bank must still link the characteristics of the reference data with those of the current portfolio.

Different data sets and different approaches to severity estimation may be entirely appropriate, especially for different business segments or product lines. Each mapping process must be specified and documented.

Application

At the application stage, banks apply the LGD estimation framework to their current portfolio of credit exposures. Doing so might require them to aggregate individual LGD estimates into broader averages (for example, into discrete severity grades) or to combine estimates in various ways.

The inherent variability of recovery, due in part to unanticipated circumstances, demonstrates that no facility type is wholly risk-free, regardless of structure, collateral type, or collateral coverage. The existence of

recovery risk dictates that application of a zero percent LGD is not acceptable.

S. IRB institutions that aggregate LGD estimates for severity grades from individual exposures within those grades must have a clear policy governing the aggregation process.

Banks with discrete severity grades compute a single estimate of LGD for a representative exposure within each of those grades. If a bank with a discrete scale of severity grades maps those grades to the reference data using grade mapping, there will be a single estimate of LGD for each grade, and the bank does not need to aggregate further. However, if the bank maps at the individual transaction level, the bank may then choose to aggregate those individual LGD estimates to the grade level and use the grade LGD in capital calculations. Because different methods of aggregation are possible, a bank must have a clear policy regarding how aggregation should be accomplished; in general, simple averaging is preferred. (This standard is irrelevant for banks that choose to assign LGD estimates directly to individual exposures rather than grades, because aggregation is not required in that case.)

S. An IRB institution must have a policy describing how it combines multiple sets of reference data.

Multiple data sets may produce superior estimates of loss severity, if the results are appropriately combined. Combining such sets differently usually produces different estimates of LGD. As a matter of internal policy, a bank should investigate alternative combinations, and document the impact on the estimates. If the results are highly sensitive to the manner in which different data sources are combined, the bank must choose conservatively among the alternatives.

D. Exposure at Default (EAD)

Compared with PD and LGD quantification, EAD quantification is less advanced. As such, it is addressed in somewhat less detail in this guidance than are PD and LGD quantification. Banks should continue to innovate in the area EAD estimation, refining and improving practices in EAD measurement and prediction. Additional supervisory guidance will be provided as more data become available and estimation techniques evolve.

A bank must provide an estimate of expected EAD for each facility in its portfolio. EAD is defined as the bank's expected gross dollar exposure of the facility upon the obligor's default. For fixed exposures like term loans, EAD is equal to the current amount outstanding. For variable exposures such as loan commitments or lines of credit, exposure is equal to current outstandings plus an estimate of additional drawings up to the time of default. This additional drawdown, identified as loan equivalent exposure (LEQ) in many institutions, is typically expressed as a percentage of the current total committed but undrawn amount. EAD can thus be represented as:

EAD = current outstanding + LEQ × (total committed − current outstanding)

As it is the LEQ that must be estimated, LEQ is the focus of this guidance.

Even though EAD estimation is less sophisticated than PD and LGD estimation, a bank still develops EAD estimates by working through the four stages that produce the other types of quantification: The bank must use a reference data set; it must apply an estimation technique to produce an expected total dollar exposure at default for a facility with a given array of characteristics; it must map its current portfolio to the reference data; and, by applying the estimation model, it must generate an EAD estimate for each portfolio facility or facility-type, as the case may be.

Data

Like reference data sets used for LGD estimation, LEQ data sets contain only exposures to defaulting obligors. In many cases, the same reference data may be used for both LGD and LEQ. In addition to relevant descriptive characteristics (referred to as "drivers") that can be used in estimation, the reference data must include historical information on the exposure (both drawn and undrawn amounts) as of some date prior to default, as well as the drawn exposure at the date of default.

As discussed below under "Estimation," LEQ estimates may be developed using either a cohort method or a fixed-horizon method. The bank's reference data set must be structured so that it is consistent with the estimation method the bank applies. Thus, the data must include information on the total commitment, the undrawn amount, and the exposure drivers for each defaulted facility, either at fixed calendar dates for the cohort method or at a fixed interval prior to the default date for the fixed-horizon method.

The reference data must contain variables that enable the bank to group the exposures to defaulted obligors in meaningful ways. Obligor and facility risk ratings are commonly believed to be significant characteristics for predicting additional drawdown. Since less empirical research has been done on EAD estimation, little is known about other potential drivers of EAD. Among the many possibilities, banks may consider time from origination, time to expiration or renewal, economic conditions, risk rating changes, or certain types of covenants. Some potential drivers may be linked to a bank's credit risk management skills, while others may be exogenous. Industry practice is likely to improve as banks extend their research to identify other meaningful drivers of EAD.

A bank must ensure continued applicability of the reference data to its current portfolio of facilities. The reference data must include the types of variable exposures found in a bank's current portfolio. The definitions of default and exposure in the reference data should be consistent with the IRB definition of default, and consistent with the definitions used for PD and LGD quantification. Established processes must be in place to ensure that reference data sets are updated when new data are available. All data sources, variables, and the overall processes governing data collection and maintenance must be fully documented, and that documentation should be readily available for review.

Seven years of data are required for EAD (or LEQ) estimation. The sample should include periods during which default rates were relatively high, and ideally cover a complete economic cycle.

Estimation

To derive LEQ estimates, characteristics of the reference data are related to additional drawings preceding a default event. The estimation process must be capable of producing a plausible estimate of LEQ to support the EAD calculation for each facility. Two broad types of estimation methods are used in practice, the cohort method and the fixed-horizon method.

Under the cohort method, a bank groups defaults into discrete calendar periods (such as a year or a quarter). The bank then estimates the relationship between the drivers as of the start of that calendar period, and EAD or LEQ for each exposure to a defaulter. For each exposure category (that is, for each combination of exposure drivers identified by the bank), the LEQ estimate is calculated as the mean additional drawing for facilities in that category. To combine results for multiple periods into a single long-run average, the period-by-period means should be weighted by the proportion of defaults occurring in each period.

Under the fixed-horizon method, for each exposure to a defaulted obligor the bank compares additional drawdowns to the total commitment but undrawn amount that existed at the start of a fixed interval prior to the date of the default (the horizon). For example, the bank might base its estimates on a reference data set that supplies the actual exposure at default along with the drawn and undrawn amounts (as well as relevant drivers) at a date a fixed number of months prior to the date of each default, regardless of the actual calendar date on which the default occurred. Estimates of LEQ are computed from the average drawdowns that occur over the fixed-horizon interval, for whatever combinations of the driving variables the bank has determined are relevant for explaining and predicting exposure at default.

Evidence may indicate that LEQ estimates are positively correlated with economic downturns; that is, it may be that LEQs increase during high-default periods. If so, the higher drawdowns that occur during high-default periods are denoted "stress-condition LEQs," analogous to the "stress-condition LGDs" discussed earlier in this chapter. For any exposure type whose LEQ estimates exhibit material cyclicality, a bank must use the stress-condition LEQ for purposes of calculating EAD.

In general, all available data should be used; particular observations or time periods should not be excluded from the data sample. Any adjustments a bank makes to the estimation results should be justified and fully documented. The analysis should be refreshed periodically as new data become available, and a bank should have a process in place to ensure that advances in analytical techniques and industry practice are considered as they emerge and are incorporated as appropriate. LEQ estimates should be updated at least annually. Detailed documentation, ongoing validation, and adequate oversight are fundamental controls that support a sound estimation process.

Mapping

If the same variables that drive exposure in the reference data are also available for facilities in the portfolio, mapping may be relatively easy. However, the bank must still review the definitions to ensure that variables that seem to be the same actually are. If the relevant variables are not available in a bank's current portfolio information system, the bank will encounter the same mapping complexities that it does when mapping for PD and LGD in similar circumstances. A bank should have well-documented policies that govern the mapping. Any exceptions to mapping policy should be reviewed, justified and fully documented. Mapping may be done for each exposure or for broad categories of exposure; the latter would be analogous to the "grade mapping" discussed earlier in this chapter.

Application

In the application stage, the estimated relationship between drivers and LEQ is applied to the bank's actual portfolio. To ensure that estimated EAD is at least as large as the currently drawn amount for all exposures, LEQs must not be negative. Multiple reference data sets may be used for LEQ estimation and combined at the application stage; those combinations should be rigorously developed, approved, and documented. Any smoothing or use of expert judgment to adjust the results should be well-justified and clearly documented. This includes any adjustment for definitions of default that do not meet the supervisory standards. The less robust the process, the more conservative the result should be.

Some facility types may be treated as exceptions, and assigned an LEQ that does not vary with characteristics such as line of business or risk rating. Such exceptional treatment should be clearly justified, and the justification should be fully documented.

EAD may be particularly sensitive to changes in the way banks manage individual credits. For example, a change in policy regarding covenants may have a significant impact on LEQ. When such changes take place, the bank should consider them when making its estimates—and it should do so from a conservative point of view. Policy changes likely to significantly increase LEQ should prompt immediate increases in LEQ estimates. If a bank's policy changes seem likely to reduce LEQ, estimates should be reduced only after the bank accumulates a significant amount of actual experience under the new policy to support the reductions.

E. Maturity (M)

A bank must assign a value of effective remaining maturity (M) to each credit exposure in its portfolio. In general, M is the weighted-average number of years to receipt of the cash flows the bank expects under the contractual terms of the exposure, where the weights are equal to the fraction of the total undiscounted cash flow to be received at each date. Mathematically, M is given by:

$$M = \sum_t t \times w_t$$

where w_t is the fraction of the total cash flow received at time t, that is:

$$w_t = C_t / \sum_t C_t$$

C_t is the undiscounted cash flow received at time t, with t measured in years from the date of the calculation of M.

Effective maturity, sometimes referred to as "average life," need not be a whole number, and often is not. For example, if 33 percent of the cash flow is expected at the end of one year (t=1) and the other 67 percent two years from today (t=2), then M is calculated as:

$M = (1 \times 0.33) + (2 \times 0.67) = 1.67$

for an effective maturity of 1.67 years. This value of M would be used in the IRB capital calculation.

The relevant cash flows are the future payments the bank expects to receive from the obligor, regardless of form; they may include payments of interest or fees, principal repayments, or other types of payments depending on the structure of the transaction. For exposures whose cash flow schedule is virtually predetermined unless the obligors defaults (fixed-rate loans, for example), the calculation of the weighted-average remaining maturity is straightforward, using the scheduled timing and amounts of the individual undiscounted cash flows. These cash flows should be the contractually expected payments; the bank should not take into account the possibility of delayed or reduced cash flows due to potential future default.

Cash flows associated with other types of credit exposures may be somewhat less certain. In such cases, the bank must establish a method of projecting expected cash flows. In general, the method used for any exposure should be the same as the one used by the bank for purposes of valuation or risk management. The method must be well-documented and subject to independent review and approval. A bank must demonstrate that the method used is standard industry practice, that it is widely used within the bank for purposes other than regulatory capital calculations, or both.

To be conservative, a bank may set M equal to the maximum number of years the obligor could take to fully discharge the contractual obligation (provided that the maximum is not longer than five years, as noted below). In many cases, this maximum will correspond to the stated or nominal maturity of the instrument. Banks must make this conservative choice (maximum nominal maturity) if the timing and amounts of

the cash flows on the exposure cannot be projected with a reasonable degree of confidence.

Certain over-the-counter derivatives contracts and repurchase transactions may be subject to master netting agreements. In such cases, the bank may compute a single value of M for the transactions as a group by weighting each individual transaction's effective maturity by that transaction's share of the total notional value subject to the netting agreement, and summing the result across all of the transactions.

For IRB capital calculations, the value of M for any exposure is subject to certain upper and lower limits, regardless of the actual effective maturity of the exposure. In all cases, the value of M should be no greater than 5 years. If an exposure clearly has an effective maturity that exceeds this upper limit, the bank may simply use a value of M=5 rather than calculating the actual effective maturity.

For most exposures, the value of M must be no less than one year. For certain short-term exposures (repo-style transactions, money market transactions, trade finance-related transactions, and exposures arising from payment and settlement processes) that are not part of a bank's ongoing financing of a borrower and that have an original maturity of less than three months, M may be set as low as one day. For over-the-counter derivative and repurchase-style transactions subject to a master netting agreement, weighted average maturity must be set at no less than five days.

F. Validation

Values of PD, LGD, and EAD are estimates with implications for credit risk and the future performance of a bank's credit portfolio under IRB; in essence, they are forecasts. "Validation" of these estimates describes the full range of activities used to assess their quality as forecasts of default rates, loss severity rates, and exposures at default. Chapter 1 discusses validation of IRB systems in general; this section focuses specifically on ratings quantification, which includes the assignment of PD to obligor grades and the assignment of LGD, EAD, and M to exposures.

S. A validation process must cover all aspects of IRB quantification.

Banks must have a process for validating IRB quantification; their policies must state who is accountable for validation, and describe the actions that will proceed from the different possible results. Validation should focus on the three estimated IRB parameters (PD, LGD, and EAD). Although the established validation process should result in an overall assessment of IRB quantification for each parameter, it also must cover each of the four stages of the quantification process as described in preceding sections of this chapter (data, estimation, mapping, and application). The validation process must be fully documented, and must be approved by appropriate levels of the bank's senior management. The process must be updated periodically to incorporate new developments in validation practices and to ensure that validation methods remain appropriate; documentation must be updated whenever validation methods change.

Banks should use a variety of validation approaches or tools; no single validation tool can completely and conclusively assess IRB quantification. Three broad types of tools that are useful in this regard are evaluation of the conceptual soundness of the approach to quantification (evaluation of logic), comparison to other sources of data or estimates (benchmarking), and comparisons of actual outcomes to predictions (back-testing). Each of these types of tools has a role to play in validation, although the role varies across the four stages of quantification.

Evaluation of logic is essential in validating all stages of the quantification process. The quantification process requires banks to adopt methods, choose variables, and make adjustments; each of these actions requires an exercise of judgment. Validation should ensure that these judgments are plausible and informed.

A bank should also validate estimates by comparing them with relevant external sources, a process broadly described as benchmarking. "External" in this context refers to anything other than the specific reference data, estimation approach, or mapping under consideration. Reference data can be compared with other data sources; choices of variables can be compared with similar choices made by others; estimation results can be compared with the results of alternative estimation methods using the same reference data. Other data sources may show that default and severity rates across the economy or the banking system are high or low relative to other periods, or may reveal unusual effects in parts of the quality spectrum.

Effective validation must compare actual results with predictions. Such comparisons, often referred to as "back-testing," are valuable comprehensive tests of the rating system and its quantification. However, they are only one element of the broader validation regime, and should not be a bank's only method of validation. Because they test the results of the rating system as a whole, they are unlikely to identify specific reasons for any divergence between expectations and realizations. Rather they will indicate only that further investigation is necessary.

By applying back-testing to the reference data set as it is updated with new data, a bank can improve the estimation process. To further improve the process, a bank must regularly compare realized default rates, loss severities, and exposure-at-default experience from its portfolio with the PD, LGD, and EAD estimates on which capital calculations are based. Realizations should be compared with expected ranges based on the estimates. These expected ranges should take into account the bank's rating philosophy (the relative weight given to current and stress conditions in assigning ratings). Depending on that philosophy, year-by-year realized default rates and loss severities may be expected to differ significantly from the long-run average. If a bank adjusts final estimates to be conservative, it should likely do its back-testing on the unadjusted estimates.

A bank's quantitative testing methods and other validation techniques should be robust to economic cycles. A sound validation process should take business cycles into account, and any adjustments for stages of the cycle should be clearly specified in advance and fully documented as part of the validation policy. The fact that a year has been "unusual" should not be taken as a reason to abandon the bank's standard validation practices.

S. A bank must comprehensively validate parameter estimates at least annually, must document the results, and must report these results to senior management.

A full and comprehensive annual validation is a minimum for effective risk management under IRB. More frequent validation may be appropriate for certain parts of the IRB system and in certain circumstances; for example, during high-default periods, banks should compute realized default and loss severity rates more frequently, perhaps quarterly. They must document the results of validation, and must report them to appropriate levels of senior risk management.

S. The validation policy must outline appropriate remedial responses to the results of parameter validation.

The goal of validation should be to continually improve the rating process and its quantification. To this end, the bank should establish thresholds or accuracy tolerances for validation results. Results that breach thresholds should bring an appropriate response; that response should depend on the results and should not necessarily be to adjust the parameter estimates. When realized default, severity, or exposures rates diverge from expected ranges, those divergences may point to issues in the estimation or mapping elements of quantification. They may also indicate potential problems in other parts of the ratings assignment process. The bank's validation policy must describe (at least in broad terms) the types of responses that should be considered when relevant action thresholds are crossed.

Appendix to Part III: Illustrations of the Quantification Process

This appendix provides examples to show how the logical framework described in this guidance, with its four stages (data, estimation, mapping, and application), applies when analyzing typical current bank practices. The framework is broadly applicable—for PD or LGD or EAD; using internal, external, or pooled reference data; for simple or complex estimation methods—although the issues and concerns that arise at each stage depend on a bank's approach. These examples are intended only to illustrate the logic of the four-stage IRB quantification framework, and should not be taken to endorse the particular techniques presented in the examples. In fact, certain aspects of the examples are not consistent with the standards outlined in this guidance.

Example 1: PD Estimation From Bond Data

- A bank establishes a correspondence between its internal grades and external rating agency grades; the bank has determined that its Grade 4 is equivalent to ¾ BB and ¼ B on the Standard and Poor's scale.
- The bank regularly obtains published estimates of mean default frequencies for publicly rated BB and B obligors in North America from 1970 through 2002.
- The BB and B historical default frequencies are weighted 75/25, and the result is a preliminary PD for the bank's internal Grade 4 credits.
- However, the bank then increases the PD by 10 percent to account for the fact that the S&P definition of default is more lenient than the IRB definition.
- The bank makes a further adjustment to ensure that the resulting grade PD is greater than the PD attributed to Grade 3 and less than the PD attributed to Grade 5.
- The result is the final PD estimate for Grade 4.

Process Analysis for Example 1

Data—The reference data set consists of issuers of publicly rated debt in North America over the period 1970 through 2002. The data description is very basic: each issuer in the reference data is described only by its rating (such as AAA, AA, A, BBB, and so on).

Estimation—The bank could have estimated default rates itself using a database purchased from Standard and Poor's, but since these estimates would just be the mean default rates per year for each grade, the bank could just as well (and in this example does) use the published historical default rates from S&P; in essence, the estimation step has been outsourced to S&P. The 10 percent adjustment of PD is part of the estimation process in this case because the adjustment was made prior to the application of the agency default rates to the internal portfolio data.

Mapping—The bank's mapping is an example of a grade mapping; internal Grade 4 is linked to the 75/25 mix of BB and B. Based on the limited information presented in the example, this step should be explored further. Specifically, how did the bank determine the 75/25 mix?

Application—Although the application step is relatively straightforward in this case, the bank does make the adjustment of the Grade 4 PD estimate to give it the desired relationship to the adjacent grades. This adjustment is part of the application stage because it is made after the adjusted agency default rates are applied to the internal grades.

Example 2: PD Estimation Using a Merton-Type Equity-Based Model

- A bank obtains a 20-year database of North American firms with publicly traded equity, some of which defaulted during the 20-year period.
- The bank uses the Merton approach to modeling equity in these firms as a contingent claim, constructing an estimate of each firm's distance-to-default at the start of each year in the database. The bank then ranks the firm-years within the database by distance-to-default, divides the ordered observations into 20 equal groups or buckets, and computes a mean historical one-year default frequency for each bucket. That default frequency is taken as an estimate of the applicable PD for any obligor within the range of distance-to-default values represented by each of the 20 buckets.
- The bank next looks at all obligors with publicly traded shares within each of its internal grades, applies the same Merton-type model to compute distance-to-default at quarter-end, sorts these observations into the 20 buckets from the previous step, and assigns the corresponding PD estimate.
- For each internal grade, the bank computes the mean of the individual obligor default probabilities and uses that average as the grade PD.

Process Analysis for Example 2

Data—The reference data set consists of the North American firms with publicly traded equity in the acquired database. The reference data are described in this case by a single variable, specifically an identifier of the specific distance-to-default range from the Merton model (one of the 20 possible in this case) into which a firm falls in any year.

Estimation—The estimation step is simple: the average default rate is calculated for each distance-to-default bucket. Since the data cover 20 years and a wide range of economic conditions, the resulting estimates satisfy the long-run average requirement.

Mapping—The bank maps selected portfolio obligors to the reference data set using the distance-to-default generated by the Merton model. However, not all obligors can be mapped, since not all have traded equity. This introduces an element of uncertainty into the mapping that requires additional analysis by the bank: were the mapped obligors representative of other obligors in the same grade? The bank would need to demonstrate comparability between the publicly traded portfolio obligors and those not publicly traded. It may be appropriate for the bank to make conservative adjustments to its ultimate PD estimates to compensate for the uncertainty in the mapping. The bank also would need further analysis to demonstrate that the implied distance-to-default for each internal grade represented long-run expectations for obligors assigned to that grade; this could involve computing the Merton model for portfolio obligors over several years of relevant history that span a wide range of credit conditions.

Application—The final step is aggregation of individual obligors to the grade level through calculation of the mean for each grade, and application of this grade PD to all obligors in the grade. The bank might also choose to modify PD assignments further at this stage, combining PD estimates derived from other sources, applying adjustments for cyclicality, introducing an appropriate degree of conservatism, or making other adjustments.

Example 3: LGD Estimation From Internal Default Data

- For each loan in its portfolio, a bank records collateral coverage as a percentage, as well as which of four types of collateral applies.
- A bank has retained data on all defaulted loans since 1995. For each defaulted loan in the database, the bank has a record of the collateral type within the same four broad categories. However, collateral coverage is only recorded at three levels (low, moderate, or high, depending on the ratio of collateral to exposure at default).
- The bank also records the timing and discounted value of recoveries net of workout costs for each defaulted loan in the database. Cash flows are tracked from the date of default to a "resolution date," defined as the point at which the remaining balance is less than 5 percent of the exposure at the time of default. A recovery percentage is computed, equal to the value of recoveries discounted to the date of default, divided by the exposure at default.
- For each cell (each of the 12 combinations of collateral type and coverage), the bank computes a simple mean LGD percentage as the mean of one minus the recovery percentage. One of the categories has a mean LGD of less than zero (recoveries have exceeded exposure on average), so the bank sets the LGD at zero to be conservative.
- The bank assigns an estimate of expected LGD to each loan in the current portfolio by using collateral information to slot it into one of the 12 cells. The bank then applies the mean historical LGD for that cell and adjusts the result upward by 10 percent to compensate for the fact that the loss data come from a period believed to be unusually good economic performance.

Process Analysis for Example 3

Data—The reference data is the collection of historical defaults with the loss amounts from the bank's historical portfolio. The reference data are described by the two categorical variables (levels of collateral coverage and types of collateral). It would be important to determine whether the defaults over the past few years are comparable to defaults from the current portfolio. One would also want to ask why the bank ignores potentially valuable information by converting the continuous data on collateral coverage into a trimodal categorical variable.

Estimation—Conceptually, the bank is using a "loss severity model" in which 12 binary variables, one for each loan coverage/type combination, explain the percentage loss. The coefficients on the variables are just the mean loss figures from the reference data.

Mapping—Mapping in this case is fairly straightforward, since all of the relevant characteristics of the reference data are also in the loan system for the current portfolio. However, the bank should determine whether the variables are being recorded in the same way (for example, the same definitions of collateral types), otherwise some adjustment might be needed.

Application—The bank is able to apply the loss model by simply plugging in the relevant values for the current portfolio (or what amounts to the same thing, looking up the cell mean). The bank's assignment of zero LGD for one of the cells merits special attention; while the bank represented this assignment as conservative, the adjustment does not satisfy the supervisory requirement that LGD must exceed zero. A larger upward adjustment is necessary. Finally, the upward adjustment of the LGD numbers to account for the benign environment in which the reference data were generated presents one additional wrinkle. The bank must provide a well-documented, empirically based analysis of why a 10 percent upward adjustment is sufficient.

IV. Data Maintenance

A. Overview

Institutions using the IRB approach for regulatory capital purposes will need advanced data management practices to produce credible and reliable risk estimates. The guiding principle governing an IRB data maintenance system is that it must support the requirements for the quantification, validation, control and oversight mechanisms described in this guidance, as well as the institution's broader risk management and reporting needs. The precise data elements to be collected will be dictated by the features and methodology of the IRB system employed by the institution. The necessary data elements will therefore vary by institution and even among business lines within an institution.

Institutions will have latitude in managing their data, subject to the following key data maintenance standards:

Life Cycle Tracking—institutions must collect, maintain, and analyze essential data for obligors and facilities throughout the life and disposition of the credit exposure.

Rating Assignment Data—institutions must capture all significant quantitative and qualitative factors used to assign the obligor and loss severity ratings.

Support of IRB System—data collected by institutions must be of sufficient depth, scope, and reliability to:

- Validate IRB system processes;
- Validate parameters,
- Refine the IRB system,
- Develop internal parameter estimates,
- Apply improvements historically,
- Calculate capital ratios,
- Produce internal and public reports, and
- Support risk management.

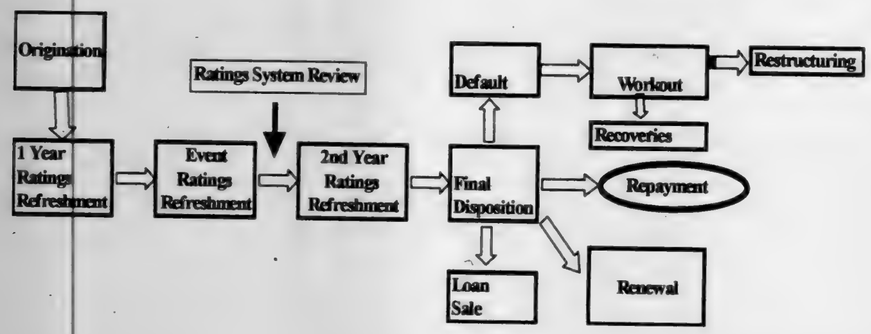
This chapter covers the requirements for maintaining internal data. Reference data sets used for estimating IRB parameters are discussed in Chapter 2.

B. Data Maintenance Framework

Life Cycle Tracking

S. Institutions must collect, maintain, and analyze essential data for obligors and facilities throughout the life and disposition of the credit exposure.

Using a life cycle or "cradle to grave" concept for each obligor and facility supports front-end validation, back-testing, system refinements and risk parameter estimates. A depiction of life-cycle tracking follows:



Data elements must be recorded at origination and whenever the rating is reviewed, regardless of whether the rating is actually changed. Data elements associated with current and past ratings must be retained and include the following:

- Key borrower and facility characteristics,
- Ratings for obligor and loss severity grades,
- Key factors used to assign the ratings,
- Person or model responsible for assigning the rating,
- Date rating assigned, and
- Overrides to the rating and authorizing individual.

At disposition, data elements must include:

- Nature of disposition: renewal, repayment, loan sale, default, restructuring,
- For defaults: exposure, actual recoveries, source of recoveries, costs of workouts and timing,
- Guarantor support,
- Sale price for loans sold, and
- Other key elements that the bank deems necessary.

Rating Assignment Data

S. Institutions must capture all significant quantitative and qualitative factors used to assign the obligor and loss severity rating.

Assigning a rating to an obligor requires the systematic collection of various borrower characteristics as these factors are critical to validating the rating system. Obligors are rated using various methods, as discussed in Chapter 1. Each of these methods presents different challenges for input collection. For example, in judgmental rating systems, the factors used in the ratings decision have not traditionally been explicitly recorded. For purposes of an IRB approach, institutions that use expert and constrained judgment must record these factors and deliver them to the data warehouse.

For loss severity estimates, institutions must record the basic structural characteristics of facilities and the factors used in developing the facility rating or LGD estimate. These often include the seniority of the credit, the amount and type of collateral, the most recent collateral valuation date and its fair value.

Institutions must also track any overrides of the obligor or loss severity rating. Tracking overrides separately allows risk managers to identify whether the outcome of such overrides suggests either problems with rating criteria, or an improper level of discretion in adjusting the ratings.

Example Data Elements

For illustrative purposes, the following section provides examples of the kinds of data elements institutions will collect under an IRB data maintenance framework.

General descriptive obligor and facility data

The data below could be contained within a loan record or derived from various sources within the data warehouse. Guarantor data requirements are the same as for the obligor.

Obligor/Guarantor Data

- General data: name, address, industry
- ID number (unique for all related parent/sub relationships)
- Rating, date, and rater
- PD percentage corresponding to rating

General Facility Characteristics

- Facility amounts: committed, outstanding
- Facility type: Term, revolver, bullet, amortizing, etc.
- Purpose: acquisition, expansion, liquidity, inventory, working capital
- Covenants
- Facility ID number
- Origination and maturity dates
- Last renewal date
- Obligor ID link
- Rating, date and rater
- LGD dollar amount or percentage
- EAD dollar amount or percentage

Rating Assignment Data

The data below provide an example of the categories and types of data that institutions must retain in order to continually validate and improve rating systems. These data items should tie directly to the documented criteria that the institution employs in assigning ratings, both qualitative and quantitative. For example, rating criteria often include ranges of leverage or cash flow for a particular obligor rating. In addition, qualitative factors, such as management effectiveness can be recorded in numeric form. For example, a 1 may equate to exceptionally strong management, and a 5 to very weak. The rating data elements collected should be complete enough so that others can review the relevant factors driving the rating decisions.

Quantitative Factors in Obligor Ratings

- Asset and sale size
- Key ratios used within rating criteria:

—profitability,
—cash flow,
—leverage,
—liquidity, and
—other relevant factors.

Qualitative Factors in Obligor Ratings

- Quality of earnings and cash flow
- Management effectiveness, reliability
- Strategic direction, industry outlook, position
- Country factors and political risk
- Other relevant factors

External Factors in Obligor Ratings

- Public debt rating and trend
- External credit model score and trend

Rating Notations

- Flag for overrides or exceptions
- Authorized individual for changing rating

Key Facility Factors in LGD Ratings

- Seniority
- Collateral type: (cash, marketable securities, AR, stock, RE, etc.)
- Collateral value and valuation date
- Advance rates, LTV
- Industry
- Geography

Rating Notations

- Flag for overrides or exceptions
- Authorized individual for changing rating

Final Disposition Data

Only recently have institutions begun to collect more complete data about a loan's disposition. Many institutions maintain subsidiary systems for their problem credits with details recorded, at times manually, on systems that were not linked with the institution's central loan or risk management systems. The unlinked data are a significant hindrance in developing reliable PD, LGD, and EAD estimates.

In advanced systems, the "grave" portion of obligor and exposure tracking is an essential component for producing and validating risk estimates and is an important feedback mechanism for adjusting and improving risk estimates over time. Essential data elements are outlined below.

Obligor/Guarantor

- Default date
- Circumstances of default (for example, nonaccrual, bankruptcy chapters 7–11, nonpayment)

Facility

- Outstandings at default
- Amounts undrawn and outstanding plus time series prior to and through default

Disposition

- Amounts recovered and dates (including source: cash, collateral, guarantor, etc.)
- Collection cost and dates
- Discount factors to determine economic cost of collection
- Final disposition (for example, restructuring or sale)
- Sales price, if applicable
- Accounting items (charge-offs to date, purchased discounts)

C. Data Element Functions

S. Data elements must be of sufficient depth, scope, and reliability to:

- Validate IRB system processes,
- Validate parameters,
- Refine the IRB system,
- Develop internal parameter estimates,
- Apply improvements historically,
- Calculate capital ratios,
- Produce internal and public reports, and
- Support risk management.

Validation and Refinement

The data elements collected by institutions must be capable of meeting

the validation requirements described in Chapters 1 and 2. These requirements include validating the institution's IRB system processes, including the "front end" aspects such as assigning ratings so that any issues can be identified early. The data must support efforts to identify whether raters and models are following rating criteria and policies and whether ratings are consistent across portfolios. In addition, data must support the validation of parameters, particularly the comparison of realized outcomes with estimates. Thorough data on default and disposition characteristics are of paramount importance for parameter back-testing.

A rich source of data for validation efforts provides insights on the performance of the IRB system, and contributes to a learning environment in which refinements can be made to the system. These potential refinements include enhancements to rating assignment controls, processes, criteria or model coefficients, rating system architecture and parameter estimates.

Developing Parameter Estimates

As detailed in Chapter 2, institutions will be developing their PD, LGD, and EAD parameter estimates using reference data sets comprised of internal, pooled, and external data. Institutions are expected to work toward eventually using as much of their own experience as possible in their reference data sets.

Applying Rating System Improvements Historically

For loss severity estimates, institutions must record the basic structural characteristics of facilities and the factors used in developing the facility rating or LGD estimate. These often include the seniority of the credit, the amount and type of collateral, the most recent collateral valuation date and its fair value.

To maintain a consistent series of information for credit risk monitoring and validation purposes, institutions need to be able to apply historically improvements they make to their rating systems. In the example below, a bank experiences unexpected and rapid migrations and defaults in its grade 4 category during 2006. Analysis of the actual financial condition of borrowers that defaulted compared with those that did not suggests the debt-to-EBITDA range for its expert judgment criteria of 3.0 to 5.5 is too broad. Research indicates that grade 4 should be redefined to include only borrowers with debt-to-EBITDA ratios of 3.0–4.5 and grade 5 as 4.5–6.5. In 2007, the change is initiated, but prior years' numbers are not recast (see Exhibit A). Consequently, a break in the series prevents the bank from evaluating credit quality changes over several years and from identifying whether applying the new rating criteria historically provides reasonable results.

Exhibit A (Revision of Grades 4 and 5 in 2007)

	Distribution of Obligor Risk Grades (%)					Change
	2004	2005	2006	2007	2008	04-'08
1	1	1.1	1.2	1.2	1.3	0.3
2	10	11	12	13	13	3.0
3	22	23	24	26	25	3.0
4	*30*	*30*	*32*	16	17	(13.0)
5	*20*	*21*	*19*	33	34	14.0
6	8	7	7	7	6	(2.0)
7	4	4	3	2	1	(3.0)
D	5	2.9	1.8	1.8	2.7	(2.3)
Total	100	100	100	100	100	0

Recognizing the need to provide senior managers and board members with a consistent risk trend, the new criteria are applied historically to obligors in grades 4 and 5 as reflected in Exhibit B. The original ratings assigned to the grades are maintained along with notations describing what the grade would be under the new rating criteria. If the precise weight an expert has given one of the redefined criteria is unknown, institutions are expected to make estimates on a best efforts basis. After the retroactive reallocation process, the bank observes that the mix of obligors in grade 5 declined somewhat over the past several years while the mix in grade 4 increased slightly. This contrasts with the trend identified before the retroactive reallocation. The result is that the multiyear transition statistics for grades 4 and 5 provide risk managers a clearer picture of risk.

Exhibit B (After Recasting 2004-06)

	Distribution of Obligor Risk Grades (%)					Change
	2004	2005	2006	2007	2008	04-'08
1	1	1.1	1.2	1.2	1.3	0.3
2	10	11	12	13	13	3.0
3	22	23	24	26	25	3.0
4	*16*	*15*	*16*	16	17	1.0
5	*35*	*36*	*35*	33	34	(1.0)
6	8	7	7	7	6	(2.0)
7	4	4	3	2	1	(3.0)
D	4	2.9	1.8	1.8	2.7	(1.3)
Total	100	100	100	100	100	0

This example is based on applying ratings historically using data already collected by the bank. However, for some rating system refinements, institutions may identify in the future drivers of default or loss that might not have been collected for borrowers or facilities in the past. That is why institutions are encouraged to collect data that they believe may serve as a stronger predictor of default in the future. For example, certain elements of a borrower's cash flow might currently be suspected to overstate actual operational health for a particular industry. In the future, should an institution decide to deduct this item from cash flow with a resulting downgrade of many obligor ratings, the institution that collected these data could apply this rating change for prior years. This would provide the benefit of providing a consistent picture of risk over time and also present opportunities to validate the new criteria using historical data. Recognizing that institutions will not be able to anticipate fully the data they might find useful in the future, institutions are expected to reallocate grades on a best efforts basis when practical.

Calculating Capital Ratios and Reporting to the Public

Data retained by the bank will be essential for regulatory risk-based capital calculations and public reporting under the Pillar 3 disclosures. These uses underscore the need for a well-defined data maintenance framework and strong controls over data integrity. Control processes and data elements themselves should also be subject to periodic verification and testing by internal and external auditors. Supervisors will rely on these processes and also perform testing as circumstances warrant.

Supporting Risk Management

The information that can be gleaned from more extensive data collection will support a broad range of risk management activities. Risk management functions will rely on accurate and timely data to track credit quality, make informed portfolio risk mitigation decisions, and perform portfolio stress tests. Trends developed from obligor and facility risk rating data will be used to support internal capital allocation models, pricing models, ALLL calculations, and performance management measures, among others. Summaries of these are included in reports to institutions' boards of directors, regulators, and in public disclosures.

D. Managing Data Quality and Integrity

Because data are collected at so many different stages involving a variety of groups and individuals, there are numerous challenges to ensuring the quality of the data. For example:

- Data will be retained over long timeframes,
- Qualitative risk-rating variables will have subjective elements and will be open to interpretation, and
- Exposures will be acquired through mergers and purchases, but without an adequate and easily retrievable institutional rating history.

Documentation and Definitions

S. Institutions must document the process for delivering, retaining and updating inputs to the data warehouse and ensuring data integrity.

Given the many challenges presented by data for an IRB system, the management of data must be formalized. Fully documenting how the institution's flow of data is managed provides a means for evaluating whether the data maintenance framework is functioning as intended. Moreover, institutions must be able to communicate to individuals developing or delivering various data the precise definition of the items intended to be collected. Consequently, a "data dictionary" is necessary to ensure consistent inputs from individuals and data vendors and to allow third parties (such as the rating system review function, auditors, or bank supervisors) to evaluate data quality and integrity.

S. Institutions must develop comprehensive definitions for the data elements used within each credit group or business line (a "data dictionary").

Electronic Storage

S. Institutions must store data in electronic format to allow timely retrieval for analysis, validation of risk rating systems, and required disclosures.

To meet the significant data management challenges presented by the validation and control features of an IRB system, institutions will need to store their data electronically. Institutions will have a variety of storage techniques and potentially a variety of systems to create their data

warehouses. IRB data requirements can be achieved by melding together existing accounting, servicing, processing, workout and risk management systems, provided the linkages among these systems are well documented and include sufficient edit and integrity checks to ensure the data can be used reliably.

Institutions without electronic databases would need to resort to manual reviews of paper files for ongoing back-testing and ad hoc "forensic" data mining and would be unable to perform that work in the timely and comprehensive manner required of IRB systems. Forensic mining of paper files to build an initial data warehouse from the institution's credit history is encouraged. In some instances, paper research may be necessary to identify data elements or factors not originally considered significant in estimating the risk of a particular class of obligor or facility.

Data Gaps

Rating histories are often lost or are irretrievable for loans acquired through mergers, acquisitions, or portfolio purchases. Institutions are encouraged wherever practical to collect any missing historical rating assignment driver data and to re-grade the acquired obligors and facilities for prior periods. In cases where retrieving historical data is not practical, institutions may attempt to create a rating history through a careful mapping of the legacy system and the new rating structure. Mapped ratings should be reviewed thoroughly for accuracy. The level of effort placed on filling data gaps should be commensurate with the size of the new exposures to be newly incorporated into the institution's IRB system.

V. Control and Oversight Mechanisms

A. Overview

Banks' internal rating systems are the foundation for credit-risk management practices and play an important role in pricing, reserving, portfolio management, performance measurement, economic capital modeling, and long-term capital planning. Banks adopting the IRB approach will also use their credit-risk ratings to determine regulatory capital levels. The pivotal and varied uses of such risk ratings put enormous, sometimes conflicting, pressure on banks' internal rating systems. The consequences of inaccurate ratings and their associated estimates are significant, particularly as they affect minimum regulatory capital requirements.

As risk ratings and their related parameters become better integrated in institutions' decision making, conflicting incentives arise that, if not well managed, can lead to overly optimistic or biased ratings. For example, sales and marketing staff (relationship managers or RMs) are typically compensated according to the volume of business they generate. That may predispose the RMs to assign more favorable ratings in order to achieve rate-of-return and sales objectives. More favorable ratings may create the appearance of higher risk-adjusted returns and business line profitability. Banks need to be aware of the full range of incentive conflicts that arise, and must develop effective controls to keep these incentive conflicts in check.

Banks will have latitude in designing and implementing their control structures subject to the following principle:

IRB institutions must implement a system of controls that includes the following elements: independence, transparency, accountability, use of ratings, rating system review, internal audit, and board and senior management oversight. While banks will have flexibility in how these elements are combined, they must incorporate sufficient checks and balances to ensure that the credit risk management system is functioning properly.

Banks additionally will want to embody the following more generic principles in their control system: separation of duties, balancing incentives, and layers of review. Table 4.1 lists the key components of an IRB control and oversight system. How these control mechanisms can best be combined to reinforce one another is a key challenge for banks implementing IRB systems:

Table 4.1 Control and Oversight Mechanisms

Independence	The parties responsible for approving ratings and transactions should be separate from the sales and marketing staff and be principally compensated on risk-rating accuracy.
Transparency	The rating system and ratings should be sufficiently transparent to enable third parties, such as rating system reviewers, auditors and supervisors, the ability to understand the operations of the rating system and the rating rationale.
Accountability	Accountability is holding people responsible for their actions and establishing adverse consequences for inaccurate ratings.
Use of Ratings	Ratings should be used to guide day-to-day risk management activities.
Rating System Review	Ratings and rating system performance should be evaluated by an area independent of those responsible for assigning and approving ratings.
Internal Audit	Responsibility for ensuring the adequacy of control and oversight mechanisms and overall compliance with the IRB standards should rest with the internal audit function.
Board and Senior Management Oversight	Ultimate responsibility for the performance of the rating system rests with senior management and the board.

As the following examples indicate, how a bank conducts its business will influence how it designs its control structure. A bank using an expert-judgment system will likely establish a different set of controls than a bank using mainly models. Recognizing that its expert-judgment system is less than fully transparent, a bank could offset this vulnerability by opting for complete independence in the rating approval process and an enhanced rating system review.

Other considerations would influence the choice of controls when banks use models to assign ratings. While the ratings produced by models are transparent, a model's performance depends on how well the model was developed, the model's logic, and the quality of the data used to implement the model. Banks that use models to assign ratings must implement a system of controls that addresses model development, testing and implementation, data integrity and overrides. These activities would be covered by a comprehensive and independent rating system review and by ongoing spot checks on the accuracy of model inputs. Other control mechanisms such as accountability and audit would also be required.

B. Independence in the Rating Approval Process

An independent rating process is one in which the parties responsible for approving ratings and transactions are separate from sales and marketing and in which the persons approving ratings are principally compensated on risk-rating accuracy. As relative independence increases, the likelihood of accurate ratings assignments grows markedly.

S. Ratings must be subject to independent approval or review.

One way institutions can better achieve objective and accurate risk ratings is by ensuring that its rating approval process is independent. Institutions that firmly separate sales/marketing from credit are better able to manage the conflict between the goal of high sales volume and the need for good credit quality. An institution whose rating process is less independent must compensate by strengthening other control and oversight mechanisms. A significant factor in the evaluation of the rating system will be the assessment of whether such compensating controls are sufficient to offset a less-than-independent ratings process. While the overriding objective is to achieve independence in the rating approval process, in some instances, the relative materiality of a portfolio and cost/benefit trade-offs may support a less rigorous control process.

The degree of independence achieved in the rating process depends on how an institution is organized and how it conducts its lending activities.

Rating Approval Processes

Responsibility for recommending and approving ratings varies by institution and, quite often, by portfolio.[7] At some institutions, ratings are assigned and approved by relationship managers (RMs); at others, deal teams assign ratings that are later approved by credit officers. Still other institutions have independent credit officers assign and approve ratings. The culture of an institution and its business mix generally determine whether the business line or credit function is ultimately responsible for ratings.

The subsections that follow describe various rating assignment and approval structures used by banking organizations and the challenges that emerge in ensuring objective and consistent ratings. Any of the following structures can work as long as ratings are subject to an independent approval or review process, and are not unduly influenced by the line of business:

Relationship Managers. As noted earlier, relationship managers are primarily responsible for marketing the bank's products and services, and their compensation is tied to the volume of business they generate. When RMs also have responsibility for assigning and approving ratings, there is an inherent conflict of interest. Credit quality and the ability to produce timely and accurate risk ratings are generally not major factors in an RM's compensation, even when he or she has responsibility for assigning and approving ratings. In addition, RMs also may become too close to the borrower to maintain their objectivity and remain unbiased. When banks delegate rating responsibility to RMs, they must offset the lack of independence with rigorous controls to prevent bias from affecting the rating process. Such controls must operate in practice, not just on paper, and would include, at a minimum, a comprehensive, independent post-closing review of ratings by a rating system review function.

Deal Team. Some major banks employ a "deal-team" structure for credit origination and rating assignment. Using this approach, all members of the team—credit officers, investment bankers, underwriters, and others—contribute to analyzing creditworthiness, underwriting the deal, and assigning ratings.

On the one hand, deal teams increase the access of credit officers to information on obligors and transactions early in the underwriting process, enabling them to make more informed credit decisions and to influence facility structure to address obligors' weaknesses. On the other hand, participation in the deal team could compromise the credit officer's objectivity. While credit officers typically report to an independent credit-risk-management function, they also have allegiance to the deal team that reports to executives within the sales and marketing line of business. In addition, credit officers may defer to the members of the team whose compensation is based on the revenue and sales volume they generate for the bank. Banks that maintain deal teams must ensure that the credit officer's independence is safeguarded through independent reporting lines and well-defined performance measures (*e.g.*, adherence to policy, rating accuracy and timeliness).

Credit Officers. Some banks give sole responsibility for assigning and approving ratings to credit officers who report to an independent credit function. In addition to assigning and approving and assigning initial ratings, credit officers regularly monitor the condition of obligors and refresh ratings as necessary. The potential downside of this structure is that these credit officers may have limited access to borrower information. Those credit officers that have a separate reporting line and whose compensation is principally based on their risk-rating accuracy are typically more independent than RMs or deal teams.

Models. At some institutions, models assign ratings directly; at other institutions, models and judgment are combined to rate credits. Models introduce a high degree of independence to the rating process, but they too require human oversight and controls. Banks that use models must incorporate an independent judgmental review of the rating assignments to ensure that all relevant information is considered and to identify potential rating errors. Judgmental reviews are also needed when model outputs are

[7] Rating processes vary by institution but generally involve an "assignor" and an "approver." For instance, at many organizations the rating assignor is the person who "owns" the relationship (such as a "relationship manager") and the rating approver is an individual with credit authority (a "credit risk manager"). In some cases, the rating assignor and approver are the same. Banks that separate the rating assignment and approval processes do so in order to minimize potential conflicts of interest and the potential for rating errors.

overridden. In addition, controls are needed to ensure accuracy of data inputs. When a bank uses a model to assign risk ratings, an individual obligor's rating is "transparent." However, the model itself is not "transparent" without a great deal of effort to document how the model functions.

C. Transparency

Transparency is the ability of a third party, such as rating system reviewers, auditors or bank supervisors, to observe how the rating system operates and to understand the pertinent characteristics of individual ratings.

S. IRB institutions must have a transparent rating system.

Transparency in a rating system is achieved through documentation that covers the following:

- The rating system's design, purpose, performance horizon, and performance standards;
- The rating assignment process, including procedures for adjustments and overrides;
- Rating definitions and criteria, scorecard criteria, and model specifications;
- Parameter estimates and the process for their estimation;
- Definition of the data elements to be warehoused to support controls, oversight, validation, and parameter estimation; and
- Specific responsibilities of, and performance standards for, individuals and units involved in the rating system and its oversight.

Transparency allows third parties (such as rating system review, auditors, or supervisors) to evaluate whether the rating system is performing as intended. Without transparency, it is difficult to hold people accountable for ratings errors and to validate the performance of the system.

S. Rating criteria must be clear and specific and must include qualitative and quantitative factors.

To produce transparent individual ratings, a bank's policies must contain clear, detailed ratings definitions. Banks should specify criteria for each factor that raters must consider, which may require unique rating definitions for certain industries. Banks should consider criteria for factors such as liquidity, sales and profitability, debt service and fixed charge coverage, minimum equity support, position within the industry, strength of management. A rating system with vague criteria or one merely defined by PDs or LGDs is not transparent. For example, the following rating definitions are not transparent because they require the rater to do too much interpreting:

Borrower exhibits satisfactory quality and demonstrates acceptable principal and interest repayment capacity in the near term.

Lower tier company in a cyclical industry. Unbalanced position with tight liquidity and high leverage. Declining or erratic profitability and marginal debt service capacity. Management is untested.

D. Accountability

"Accountability" is holding people responsible for their actions and establishing adverse consequences for inaccurate ratings.

S. Policies must identify the parties responsible for rating accuracy and rating system performance.

For accountability to be effective, it should be both observable and ingrained in the culture. Persons who assign and approve rate credits, derive parameter estimates, or oversee rating systems must be held accountable for complying with rating system policies and ensuring that aspects of the rating system within their control are as unbiased and accurate as possible. These persons must have the tools and resources necessary to carry out their responsibilities, and their performance should be evaluated against clear and specific objectives documented in policy.

Responsibility for Assigning Ratings

S. Individuals must be held accountable for complying with rating system policies and for assigning accurate ratings, and their performance and compensation must be linked to well-defined measurable performance standards.

Responsibilities of raters should be clear, and performance should be measured against specific objectives. Performance evaluation and incentive compensation should be tied to performance goals. Examples of performance measures include:

- Number and frequency of rating errors,
- Significance of errors (for example, multiple downgrades), and
- Proper and consistent application of criteria, including override criteria.

Responsibility for Rating System Performance

Just as individuals will be held accountable for the accuracy of ratings, an individual must be held responsible for the overall performance of the rating system. This individual must ensure that the rating system and all of its component parts—rating assignments, parameter estimation, data collection, control and oversight mechanisms—are functioning as intended. While these components often are housed within separate units of the organization, an individual must be responsible for ensuring that the parts work together effectively and efficiently.

E. Use of Ratings

S. Ratings used for regulatory capital must be the same ratings used to guide day-to-day credit risk management activities.

The different uses and applications of the risk-rating system's outputs should promote greater accuracy and consistency of credit-risk evaluations across an organization. Ratings and the associated default, loss, and EAD estimates need to be incorporated within the credit-risk management, internal capital allocation, and corporate governance functions of IRB banks.

S. Banks that use parameter estimates for risk management that are different from those used for regulatory capital must provide a well-documented rationale for the differences.

PD and LGD parameters used for regulatory capital purposes may not be appropriate for other uses purposes. For example, PD estimates used to estimate reserve needs could reflect current economic conditions that are different from the longer term view appropriate to calculations of regulatory capital. When banks employ different estimates, those parameters must be defensible and supported by the following:

- Qualitative and quantitative analysis of the logic and rationale for the difference(s); and
- Senior management approval of the difference(s).

F. Rating System Review (RSR)

S. Banks must have a comprehensive, coordinated, independent review process to ensure that ratings are accurate and that the rating system is performing as intended.

Rating system review (RSR) ensures that the rating system as a whole is functioning as intended. A broad range of responsibilities come under RSR's purview, as outlined in Table 4.2:

TABLE 4.2.—RESPONSIBILITIES OF RATING SYSTEM REVIEW

Scope of Review:
Design of the rating system.
Compliance with policies and procedures, including application of criteria.
Check of all risk-rating grades for accuracy.
Consistency across industries/portfolios/geographies.
Model development.
Model use, including inputs and outputs.
Overrides and policy exceptions.
Quantification process.
Back-testing (perform or review).
Actual and predicted ratings transitions.
Benchmarking against third-party data sources (perform or review).
Adequacy of data maintenance.
Analysis and Reporting:
Identify errors and flaws.
Recommend corrective action.

TABLE 4.2.—RESPONSIBILITIES OF RATING SYSTEM REVIEW—Continued

Model development.
Model use, including inputs and outputs.
Overrides and policy exceptions.
Quantification process.
Back-testing (perform or review).
Actual and predicted ratings transitions.
Benchmarking against third-party data sources (perform or review).
Adequacy of data maintenance.
Analysis and Reporting:
Identify errors and flaws.
Recommend corrective action.

For each of these responsibilities, RSR is largely checking and confirming the work of others and ensuring that the rating system's components work well together. RSR's testing and review should identify current and potential weaknesses and should lead to recommendations and corrective action such as

- Adjusting policies and procedures,
- Requiring additional training of staff,
- Investing in infrastructure improvements,
- Adjusting rating criteria, and
- Adjusting parameter estimates.

S. Rating system review must report significant findings to senior management and the board quarterly.

RSR's role is to identify issues and areas of concern and report findings to the area that is accountable. When issues are systematic, RSR should bring them to the attention of senior management and the board.

The activities of this function could be distributed across multiple areas or housed within one unit. Organizations will choose a structure that fits within their management and oversight framework. These units must always have high standing within the organization and should be staffed by individuals possessing the requisite stature, skills, and experience.

Like internal audit, RSR must be independent from all in-house designers and developers (that is, system and model designers) and raters (that is, ratings and parameter assigners) in the risk-rating process. RSR's independence eliminates potential conflicts of interest and gives the group credibility when it reports findings and conclusions to the board and senior management.

G. Internal Audit

S. An independent internal audit function must determine whether rating system controls function as intended.

S. Internal audit must evaluate annually whether the bank is in compliance with the risk-based capital regulation and supervisory guidance.

Internal audit determines whether the bank's system of controls over internal ratings and the related parameters is robust. In its evaluation of controls, internal audit must consider any trade-offs made between the various mechanisms and confirm their continued appropriateness and relevance. As part of its review of control mechanisms, audit will evaluate the depth, scope, and quality of RSR's work and will conduct limited testing to ensure that their conclusions are well founded. The amount of testing will depend on whether audit is the primary or secondary reviewer of that work.

Internal audit will report to the board and management on whether the bank is in compliance with the IRB standards. This report will allow the board and management to disclose that its rating processes and the controls surrounding these processes are in compliance with the IRB standards. This will be critical for public disclosure and ongoing work of supervisors.

External Audit

As part of the process of certifying financial statements, external auditors will confirm that the institution's capital position is fairly presented. To verify that actual capital exceeds regulatory minimums and to confirm compliance with the IRB rules, the external auditors must ascertain that the IRB system is rating credit risk appropriately and linking these ratings to appropriate estimates. Auditors must evaluate the bank's internal control functions and its compliance with the risk-based capital regulation and supervisory guidance.

H. Corporate Oversight

S. The full board or a committee of the board must approve key elements of the IRB system.

Consistent with sound practice, bank management must ensure that a corporate culture exists in which institutional needs are readily identified and appropriate resources are brought to bear to rectify shortcomings. In the IRB context, senior management and the board of directors must ensure the objectivity and accuracy of the bank's credit-risk management systems and approach.

Either the full board or a committee of the board should approve key elements of the risk-rating system. Information provided to the board should be sufficiently detailed to allow directors to confirm the continuing appropriateness of the institution's rating approach and to verify the adequacy of the controls supporting the rating system.

S. Senior management must ensure that all components of the IRB system, including controls, are functioning as intended and comply with the risk-based capital regulation and supervisory guidance.

Senior management's oversight should be even more active than that of the board of directors. Senior management should articulate what it expects of the technical and operational units of the risk-rating system, as well as what it expects of the units that manage the system's controls. To oversee the risk-rating system, senior management must have an extensive understanding of credit policies, underwriting standards, lending practices, and collection and recovery practices, and must be able to understand how these factors affect default and loss estimates. Senior management should not only oversee the controls process (its traditional role) but also should periodically meet with raters and validators to discuss the rating system's performance, areas needing improvement, and the status of efforts to improve previously identified deficiencies.

The depth and frequency of information provided to the board and senior management must be commensurate with their oversight responsibilities and the condition of the institution. These reports should include the following information:

- Risk profile by grade,
- Risk rating migration across grades with emphasis on unexpected results,
- Changes in parameter estimates by grade,
- Comparison of realized PD, LGD, and EAD rates against expectations,
- Reports measuring changes in regulatory and economic capital,
- Results of capital stress testing, and
- Reports generated by rating system review, audit, and other control units.

Although all of an institution's controls must function smoothly, independently, and in concert with the others, the direction and oversight provided by the board and senior management are perhaps most important to ensure that the IRB system is functioning properly.

Document 2: Draft Supervisory Guidance on Operational Risk Advanced Measurement Approaches for Regulatory Capital

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Appendix A: Supervisory Standards for the AMA

I. Purpose

The purpose of this guidance is to set forth the expectations of the U.S. banking agencies for banking institutions that use Advanced Measurement Approaches (AMA) for calculating the operational risk capital charge under the new capital regulation. Institutions using the AMA will have considerable flexibility to develop operational risk measurement systems appropriate to the nature of their activities, business environment, and internal controls. An institution's operational risk regulatory capital requirement will be calculated as the amount needed to cover its operational risk at a level of confidence determined by the supervisors, as discussed below. Use of an AMA is subject to supervisory approval.

This draft guidance should be considered with the advance notice of proposed rulemaking (ANPR) on revisions to the risk-based capital standard published elsewhere in today's **Federal Register**. As with the ANPR, the Agencies are seeking industry comment on this draft guidance. In addition to seeking comment on all specific aspects of this supervisory guidance, the Agencies are seeking comment on the extent to which the supervisory guidance strikes the appropriate balance between flexibility and specificity. Likewise, the Agencies are seeking comment on whether an appropriate balance has been struck between the regulatory requirements set forth in the ANPR and the supervisory standards set forth in this guidance.

II. Background

Effective management of operational risk is integral to the business of banking and to institutions' roles as financial intermediaries. Although operational risk is not a new risk, deregulation and globalization of financial services, together with the growing sophistication of financial technology, new business activities and delivery channels, are making institutions' operational risk profiles (*i.e.*, the level of operational risk across an institution's activities and risk categories) more complex.

This guidance identifies the supervisory standards (S) that institutions must meet and maintain to use an AMA for the regulatory capital charge for operational risk. The purpose of the standards is to provide the foundation for a sound operational risk framework, while allowing institutions to identify the most appropriate mechanisms to meet AMA requirements. Each institution will need to consider its complexity, range of products and services, organizational structure, and risk management culture as it develops its AMA. Operational risk governance processes need to be established on a firm-wide basis to identify, measure, monitor, and control operational risk in a manner comparable with the treatment of credit, interest rate, and market risks.

Institutions will be expected to develop a framework that measures and quantifies operational risk for regulatory capital purposes. To do this, institutions will need a systematic process for collecting operational risk loss data, assessing the risks within the institution, and adopting an analytical framework that translates the data and risk assessments into an operational risk exposure (see definition below). The analytical framework must incorporate a degree of conservatism that is appropriate for the overall robustness of the quantification process. Because institutions will be permitted to calculate their minimum regulatory capital on the basis of internal processes, the requirements for data capture, risk assessment, and the analytical framework described below are detailed and specific.

Effective operational risk measurement systems are built on both quantitative and qualitative risk assessment techniques. While the output of the regulatory framework for operational risk is a measure of exposure resulting in a capital number, the integrity of that estimate depends not only on the soundness of the measurement model, but also on the robustness of the institution's underlying risk management processes. In addition, supervisors view the introduction of the AMA as an important tool to further promote improvements in operational risk management and controls at large banking institutions.

This document provides both AMA supervisory standards and a discussion of how those standards should be incorporated into an operational risk framework. The relevant supervisory standards are listed at the beginning of each section and a full compilation of the standards is provided in Appendix A. Not every section has specific supervisory standards. When spanning more than one section, supervisory standards are listed only once.

Institutions will be required to meet, and remain in compliance with, all the supervisory standards to use an AMA framework. However, evaluating an institution's qualification with each of the individual supervisory standards will not be sufficient to determine an institution's overall readiness for AMA. Instead, supervisors and institutions must also evaluate how well the various components of an institution's AMA framework complement and reinforce one another to achieve the overall objectives of an accurate measure and effective management of operational risk. In performing their evaluation, supervisors will exercise considerable supervisory judgment, both in evaluating the individual components and the overall operational risk framework.

An institution's AMA methodology will be assessed as part of the ongoing supervision process. This will allow supervisors to incorporate existing supervisory efforts as much as possible into the AMA assessments. Some elements of operational risk (*e.g.*, internal controls and information technology) have long been subject to examination by supervisors. Where this is the case, supervisors will make every effort to leverage off these examination activities to assess the effectiveness of the AMA process. Substantive weaknesses identified in an examination will be factored into the AMA qualification process.

III. Definitions

There are important definitions that institutions must incorporate into an AMA framework. They are:

- *Operational risk:* The risk of loss resulting from inadequate or failed internal processes, people and systems, or from external events. The definition includes legal risk, which is the risk of loss resulting from failure to comply with laws as well as prudent ethical standards and contractual obligations. It also includes the exposure to litigation from all aspects of an institution's activities. The definition does not include strategic or reputational risks.[8]
- *Operational risk loss:* The financial impact associated with an operational event that is recorded in the institution's financial statements consistent with Generally Accepted Accounting Principles (GAAP). Financial impact includes all out-of-pocket expenses associated with an operational event but does not include opportunity costs, foregone revenue, or costs related to investment programs implemented to prevent subsequent operational risk losses. Operational risk losses are characterized by seven event factors associated with:

i. *Internal fraud:* An act of a type intended to defraud, misappropriate property or circumvent regulations, the law or company policy, excluding diversity/discrimination events, which involve at least one internal party.

ii. *External fraud:* An act of a type intended to defraud, misappropriate property or circumvent the law, by a third party.

iii. *Employment practices and workplace safety:* An act inconsistent with employment, health or safety laws or agreements, from payment of personal injury claims, or from diversity/discrimination events.

iv. *Clients, products, and business practices:* An unintentional or negligent failure to meet a professional obligation to specific clients (including fiduciary and suitability requirements), or from the nature or design of a product.

v. *Damage to physical assets:* The loss or damage to physical assets from natural disaster or other events.

vi. *Business disruption and system failures:* Disruption of business or system failures.

vii. *Execution, delivery, and process management:* Failed transaction processing or process management, from relations with trade counterparties and vendors.

- *Operational risk exposure:* An estimate of the potential operational losses that the banking institution faces at a soundness standard consistent with a 99.9 per cent confidence level over a one-year period. The institution will multiply the exposure by 12.5 to obtain risk-weighted assets for operational risk; this is added to the risk-weighted assets for credit and market risk to arrive at the denominator of the regulatory capital ratio.
- *Business environment and internal control factor assessments:* The range of tools that provide a meaningful assessment of the level and trends in operational risk across the institution. While the institution may use multiple tools in an AMA framework, they must all have the same objective of identifying key risks. There are a number of existing tools, such as audit scores and performance indicators that may be acceptable under this definition.

[8] An institution's definition of risk may encompass other risk elements as long as the supervisory definition is met.

IV. Banking Activities and Operational Risk

The above definition of operational risk gives a sense of the breadth of exposure to operational risk that exists in banking today as well as the many interdependencies among risk factors that may result in an operational risk loss. Indeed, operational risk can occur in any activity, function, or unit of the institution.

The definition of operational risk incorporates the risks stemming from people, processes, systems and external events. People risk refers to the risk of management failure, organizational structure or other human resource failures. These risks may be exacerbated by poor training, inadequate controls, poor staffing resources, or other factors. The risk from processes stem from breakdowns in established processes, failure to follow processes, or inadequate process mapping within business lines. System risk covers instances of both disruption and outright system failures in both internal and outsourced operations. Finally, external events can include natural disasters, terrorism, and vandalism.

There are a number of areas where operational risks are emerging. These include:

- Greater use of automated technology has the potential to transform risks from manual processing errors to system failure risks, as greater reliance is placed on globally integrated systems;
- Proliferation of new and highly complex products;
- Growth of e-banking transactions and related business applications expose an institution to potential new risks (*e.g.*, internal and external fraud and system security issues);
- Large-scale acquisitions, mergers, and consolidations test the viability of new or newly integrated systems;
- Emergence of institutions acting as large-volume service providers create the need for continual maintenance of high-grade internal controls and back-up systems;
- Development and use of risk mitigation techniques (*e.g.*, collateral, insurance, credit derivatives, netting arrangements and asset securitizations) optimize an institution's exposure to market risk and credit risk, but potentially create other forms of risk (*e.g.*, legal risk); and
- Greater use of outsourcing arrangements and participation in clearing and settlement systems mitigate some risks while increasing others.

The range of banking activities and areas affected by operational risk must be fully identified and considered in the development of the institution's risk management and measurement plans. Since operational risk is not confined to particular business lines [9], product types, or organizational units, it should be managed in a consistent and comprehensive manner across the institution. Consequently, risk management mechanisms must encompass the full range of risks, as well as strategies that help to identify, measure, monitor and control those risks.

V. Corporate Governance

Supervisory Standards

S 1. The institution's operational risk framework must include an independent firm-wide operational risk management function, line of business management oversight, and independent testing and verification functions.

The management structure underlying an AMA operational risk framework may vary between institutions. However, within all AMA institutions, there are three key components that must be evident—the firm-wide operational risk management function, lines of business management, and the testing and verification function. These three elements are functionally independent [10] organizational components, but should work in cooperation to ensure a robust operational risk framework.

A. Board and Management Oversight

Supervisory Standards

S 2. The board of directors must oversee the development of the firm-wide operational risk framework, as

[9] Throughout this guidance, terms such as "business units" and "business lines" are used interchangeably and refer not only to an institution's revenue-generating businesses, but also to corporate staff functions such as human resources or information technology.

[10] For the purposes of AMA, "functional independence" is defined as the ability to carry out work freely and objectively and render impartial and unbiased judgments. There should be appropriate independence between the firm-wide operational risk management functions, line of business management and staff and the testing/verification functions. Supervisory assessments of independence issues will rely upon existing regulatory guidance (*e.g.* audit, internal control systems, board of directors/management, etc.)

well as major changes to the framework. Management roles and accountability must be clearly established.

S 3. The board of directors and management must ensure that appropriate resources are allocated to support the operational risk framework.

The board is responsible for overseeing the establishment of the operational risk framework, but may delegate the responsibility for implementing the framework to management with the authority necessary to allow for its effective implementation. Other key responsibilities of the board include:

- Ensuring appropriate management responsibility, accountability and reporting;
- Understanding the major aspects of the institution's operational risk as a distinct risk category that should be managed;
- Reviewing periodic high-level reports on the institution's overall operational risk profile, which identify material risks and strategic implications for the institution;
- Overseeing significant changes to the operational risk framework; and
- Ensuring compliance with regulatory disclosure requirements.

Effective board and management oversight forms the cornerstone of an effective operational risk management process. The board and management have several broad responsibilities with respect to operational risk:

- To establish a framework for assessing operational risk exposure and identify the institution's tolerance for operational risk;
- To identify the senior managers who have the authority for managing operational risk;
- To monitor the institution's performance and overall operational risk profile, ensuring that it is maintained at prudent levels and is supported by adequate capital;
- To implement sound fundamental risk governance principles that facilitate the identification, measurement, monitoring, and control of operational risk;
- To devote adequate human and technical resources to operational risk management; and
- To institute remuneration policies that are consistent with the institution's appetite for risk and are sufficient to attract qualified operational risk management and staff.

Management should translate the operational risk management framework into specific policies, processes and procedures that can be implemented and verified within the institution's different business units. Communication of these elements will be essential to the understanding and consistent treatment of operational risk across the institution. While each level of management is responsible for effectively implementing the policies and procedures within its purview, senior management should clearly assign authority, responsibilities, and reporting relationships to encourage and maintain this accountability and ensure that the necessary resources are available to manage operational risk. Moreover, management should assess the appropriateness of the operational risk management oversight process in light of the risks inherent in a business unit's activities. The testing and verification function is responsible for completing timely and comprehensive assessments of the effectiveness of implementation of the institution's operational risk framework at the line of business and firm-wide levels.

Management collectively is also responsible for ensuring that the institution has qualified staff and sufficient resources to carry out the operational risk functions outlined in the operational risk framework. Additionally, management must communicate operational risk issues to appropriate staff that may not be directly involved in its management. Key management responsibilities include ensuring that:

- Operational risk management activities are conducted by qualified staff with the necessary experience, technical capabilities and access to adequate resources;
- Sufficient resources have been allocated to operational risk management, in the business lines as well as the independent firm-wide operational risk management function and verification areas, so as to sufficiently monitor and enforce compliance with the institution's operational risk policy and procedures; and
- Operational risk issues are effectively communicated with staff responsible for managing credit, market and other risks, as well as those responsible for purchasing insurance and managing third-party outsourcing arrangements.

B. Independent Firm-Wide Risk Management Function

Supervisory Standards

S 4. The institution must have an independent operational risk management function that is responsible for overseeing the operational risk framework at the firm level to ensure the development and consistent application of operational risk policies, processes, and procedures throughout the institution.

S 5. The firm-wide operational risk management function must ensure appropriate reporting of operational risk exposures and loss data to the board of directors and senior management.

The institution must have an independent firm-wide operational risk management function. The roles and responsibilities of the function will vary between institutions, but must be clearly documented. The independent firm-wide operational risk function should have organizational stature commensurate with the institution's operational risk profile, while remaining independent of the lines of business and the testing and verification function. At a minimum, the institution's independent firm-wide operational risk management function should ensure the development of policies, processes, and procedures that explicitly manage operational risk as a distinct risk to the institution's safety and soundness. These policies, processes and procedures should include principles for how operational risk is to be identified, measured, monitored, and controlled across the organization. Additionally, they should provide for the collection of the data needed to calculate the institution's operational risk exposure.

Additional responsibilities of the independent firm-wide operational risk management function include:

- Assisting in the implementation of the overall firm-wide operational risk framework;
- Reviewing the institution's progress towards stated operational risk objectives, goals and risk tolerances;
- Periodically reviewing the institution's operational risk framework to consider the loss experience, effects of external market changes, other environmental factors, and the potential for new or changing operational risks associated with new products, activities or systems. This review process should include an assessment of industry best practices for the institution's activities, systems and processes;
- Reviewing and analyzing operational risk data and reports; and
- Ensuring appropriate reporting to senior management and the board.

C. Line of Business Management

Supervisory Standards

S 6. Line of business management is responsible for the day-to-day management of operational risk within each business unit.

S 7. Line of business management must ensure that internal controls and practices within their line of business are consistent with firm-wide policies and procedures to support the management and measurement of the institution's operational risk.

Line of business management is responsible for both managing operational risk within the business lines and ensuring that policies and procedures are consistent with and support the firm-wide operational risk framework. Management should ensure that business-specific policies, processes, procedures and staff are in place to manage operational risk for all material products, activities, and processes. Implementation of the operational risk framework within each line of business should reflect the scope of that business and its inherent operational complexity and operational risk profile. Line of business management must be independent of both the firm-wide operational risk management and the testing and verification functions.

VI. Operational Risk Management Elements

The operational risk management framework provides the overall operational risk strategic direction and ensures that an effective operational risk management and measurement process is adopted throughout the institution. The framework should provide for the consistent application of operational risk policies and procedures throughout the institution and address the roles of both the independent firm-wide operational risk management function and the lines of business. The framework should also provide for the consistent and comprehensive capture of data elements needed to measure and verify the institution's operational risk exposure, as well as appropriate operational risk analytical frameworks, reporting systems, and mitigation strategies. The framework must also include independent testing and verification to assess the effectiveness of implementation of the institution's operational risk framework, including compliance with policies, processes, and procedures.

In practice, an institution's operational risk framework must reflect the scope and complexity of business lines, as well as the corporate organizational structure. Each institution's operational risk profile is unique and requires a tailored risk management approach appropriate for the scale and materiality of the risks present, and the size of the institution. There is no single framework that would suit every institution; different approaches will be needed for different institutions. In fact, many operational risk management techniques continue to evolve rapidly to keep pace with new technologies, business models and applications.

The key elements in the operational risk management process include:

- Appropriate policies and procedures;
- Efforts to identify and measure operational risk;
- Effective monitoring and reporting;
- A sound system of internal controls; and
- Appropriate testing and verification of the operational risk framework.

A. Operational Risk Policies and Procedures

Supervisory Standards

S 8. The institution must have policies and procedures that clearly describe the major elements of the operational risk management framework, including identifying, measuring, monitoring, and controlling operational risk.

Operational risk management policies, processes, and procedures should be documented and communicated to appropriate staff. The policies and procedures should outline all aspects of the institution's operational risk management framework, including:

- The roles and responsibilities of the independent firm-wide operational risk management function and line of business management;
- A definition for operational risk, including the loss event types that will be monitored;
- The capture and use of internal and external operational risk loss data, including large potential events (including the use of scenario analysis);
- The development and incorporation of business environment and internal control factor assessments into the operational risk framework;
- A description of the internally derived analytical framework that quantifies the operational risk exposure of the institution;
- An outline of the reporting framework and the type of data/information to be included in line of business and firm-wide reporting;
- A discussion of qualitative factors and risk mitigants and how they are incorporated into the operational risk framework;
- A discussion of the testing and verification processes and procedures;
- A discussion of other factors that affect the measurement of operational risk; and
- Provisions for the review and approval of significant policy and procedural exceptions.

B. Identification and Measurement of Operational Risk

The result of a comprehensive program to identify and measure operational risk is an assessment of the institution's operational risk exposure. Management must establish a process that identifies the nature and types of operational risk and their causes and resulting effects on the institution. Proper operational risk identification supports the reporting and maintenance of capital for operational risk exposure and events, facilitates the establishment of mechanisms to mitigate or control the risks, and ensures that management is fully aware of the sources of emerging operational risk loss events.

C. Monitoring and Reporting

Supervisory Standards

S 9. Operational risk management reports must address both firm-wide and line of business results. These reports must summarize operational risk exposure, loss experience, relevant business environment and internal control assessments, and must be produced no less often than quarterly.

S 10. Operational risk reports must also be provided periodically to senior management and the board of directors, summarizing relevant firm-wide operational risk information.

Ongoing monitoring of operational risk exposures is a key aspect of an effective operational risk framework. To facilitate monitoring of operational risk, results from the measurement system should be summarized in reports that can be used by the firm-wide operational risk and line of business management functions to understand, manage, and control operational risk and losses. These reports should serve as a basis for assessing operational risk and related mitigation strategies and creating incentives to improve operational risk management throughout the institution.

Operational risk management reports should summarize:

- Operational risk loss experience on an institution, line of business, and event-type basis;
- Operational risk exposure;
- Changes in relevant risk and control assessments;
- Management assessment of early warning factors signaling an increased risk of future losses;
- Trend analysis, allowing line of business and independent firm-wide operational risk management to assess

and manage operational risk exposures, systemic line of business risk issues, and other corporate risk issues;

- Exception reporting; and
- To the extent developed, operational risk causal factors.

High-level operational risk reports must also be produced periodically for the board and senior management. These reports must provide information regarding the operational risk profile of the institution, including the sources of material risk both from a firm-wide and line of business perspective, versus established management expectations.

D. Internal Control Environment

Supervisory Standards

S 11. An institution's internal control structure must meet or exceed minimum regulatory standards established by the Agencies.

Sound internal controls are essential to an institution's management of operational risk and are one of the foundations of safe and sound banking. When properly designed and consistently enforced, a sound system of internal controls will help management safeguard the institution's resources, produce reliable financial reports, and comply with laws and regulations. Sound internal controls will also reduce the possibility of significant human errors and irregularities in internal processes and systems, and will assist in their timely detection when they do occur.

The Agencies are not introducing any new internal control standards, but rather emphasizing the importance of meeting existing standards. There is a recognition that internal control systems will differ among institutions due to the nature and complexity of an institution's products and services, organizational structure, and risk management culture. The AMA standards allows for these differences, while also establishing a baseline standard for the quality of the internal control structure. Institutions will be expected to at least meet the minimum interagency standards[11] relating to internal controls as a criterion for AMA qualification.

[11] There are a number of interagency standards that cover topics relevant to the internal control structure. These include, for example, the Interagency Policy Statement on the Internal Audit Function and Its Outsourcing (March 2003), the Federal Financial Institution's Examination Council's (FFIEC's) Business Continuity Planning Booklet (May 2003), the FFIEC's Information Security Booklet (January 2003). In addition, each Agency has extensive guidance on corporate governance, internal controls, and monitoring and reporting in its respective examination policies and procedures.

The extent to which an institution meets or exceeds the minimum standards will primarily be assessed through current and ongoing supervisory processes. As noted earlier, the Agencies will leverage off existing examination processes, to avoid duplication in assessing an institution's implementation of an AMA framework. Assessing the internal control environment is clearly an area where the supervisory authorities already focus considerable attention.

VII. Elements of an AMA Framework

Supervisory Standards

S 12. The institution must demonstrate that it has appropriate internal loss event data, relevant external loss event data, assessments of business environment and internal controls factors, and results from scenario analysis to support its operational risk management and measurement framework.

S 13. The institution must include the regulatory definition of operational risk as the baseline for capturing the elements of the AMA framework and determining its operational risk exposure.

S 14. The institution must have clear standards for the collection and modification of the elements of the operational risk AMA framework.

Operational risk inputs play a significant role in both the management and measurement of operational risk. Necessary elements of an institution's AMA framework include internal loss event data, relevant external loss event data, results of scenario analysis, and assessments of the institution's business environment and internal controls. Operational risk inputs aid the institution in identifying the level and trend of operational risk, determining the effectiveness of risk management and control efforts, highlighting opportunities to better mitigate operational risk, and assessing operational risk on a forward-looking basis.

To use its AMA framework, an institution must demonstrate that it has established a consistent and comprehensive process for the capture of all elements of the AMA framework. The institution must also demonstrate that it has clear standards for the collection and modification of all AMA inputs. While the analytical framework will generally combine these inputs to develop the operational risk exposure, supervisors must have the capacity to review the individual inputs as well; specifically, supervisors will need to review the loss information that is being provided to the analytical framework that stems from internal loss event data, versus the loss event information provided by external loss event data capture, scenario analysis, or the assessments of the business environment and internal control factors.

The capture systems must cover all material business lines, business activities and corporate functions that could generate operational risk. The institution must have a defined process that establishes responsibilities over the systems developed to capture the AMA elements. In particular, the issue of overriding the data capture systems must be addressed. Any overrides should be tracked separately and documented. Tracking overrides separately allows management and supervisors to identify the nature and rationale, including whether they stem from simple input errors or, more importantly, from exclusion because a loss event was not pertinent for the quantitative measurement. Management should have clear standards for addressing overrides and should clearly delineate who has authority to override the data systems and under what circumstances.

As noted earlier, for AMA qualification purposes, an institution's operational risk framework must, at a minimum, use the definition of operational risk that is provided in paragraph 10 when capturing the elements of the AMA framework. Institutions may use an expanded definition if considered more appropriate for risk management and measurement efforts. However, for the quantification of operational risk exposure for regulatory capital purposes, an institution must demonstrate that the AMA elements are captured so as to meet the baseline definition.

A. Internal Operational Risk Loss Event Data

Supervisory Standards

S 15. The institution must have at least five years of internal operational risk loss data[12] captured across all material business lines, events, product types, and geographic locations.

S 16. The institution must be able to map internal operational risk losses to the seven loss-event type categories.

S 17. The institution must have a policy that identifies when an operational risk loss becomes a loss event and must be added to the loss

[12] With supervisory approval, a shorter initial historical observation period is acceptable for banks newly authorized to use an AMA methodology.

event database. The policy must provide for consistent treatment across the institution.

S 18. The institution must establish appropriate operational risk data thresholds.

S 19. Losses that have any characteristics of credit risk, including fraud-related credit losses, must be treated as credit risk for regulatory capital purposes. The institution must have a clear policy that allows for the consistent treatment of loss event classifications (*e.g.*, credit, market, or operational risk) across the organization.

The key to internal data integrity is the consistency and completeness with which loss event data capture processes are implemented across the institution. Management must ensure that operational risk loss event information captured is consistent across the business lines and incorporates any corporate functions that may also experience operational risk events. Policies and procedures should be addressed to the appropriate staff to ensure that there is satisfactory understanding of operational risk and the data capture requirements under the operational risk framework. Further, the independent operational risk management function must ensure that the loss data is captured across all material business lines, products types, event types, and from all significant geographic locations. The institution must be able to capture and aggregate internal losses that cross multiple business lines or event types. If data is not captured across all business lines or from all geographic locations, the institution must document and explain the exceptions.

AMA institutions must be able to map operational risk losses into the seven loss event categories defined in paragraph 10. Institutions will not be required to produce reports or perform analysis for internal purposes on the basis of the loss event categories, but will be expected to use the information about the event-type categories as a check on the comprehensiveness of the institution's data set.

The institution must have five years of internal loss data, although a shorter range of historical data may be allowed, subject to supervisory approval. The extent to which an institution collects operational risk loss event data will, in part, be dependent upon the data thresholds that the institution establishes. There are a number of standards that an institution may use to establish the thresholds. They may be based on product types, business lines; geographic location, or other appropriate factors. The Agencies will allow flexibility in this area, provided the institution can demonstrate that the thresholds are reasonable, do not exclude important loss events, and capture a significant proportion of the institution's operational risk losses.

The institution must capture comprehensive data on all loss events above its established threshold level. Aside from information on the gross loss amount, the institution should collect information about the date of the event, any recoveries, and descriptive information about the drivers or causes of the loss event. The level of detail of any descriptive information should be commensurate with the size of the gross loss amount. Examples of the type of information collected include:

- Loss amount;
- Description of loss event;
- Where the loss is reported and expensed;
- Loss event type category;
- Date of the loss;
- Discovery date of the loss;
- Event end date;
- Management actions;
- Insurance recoveries;
- Other recoveries; and
- Adjustments to the loss estimate.

There are a number of additional data elements that may be captured. It may be appropriate, for example, to capture data on "near miss" events, where no financial loss was incurred. These near misses will not factor into the regulatory capital calculation, but may be useful for the operational risk management process.

Institutions will also be permitted and encouraged to capture loss events in their operational risk databases that are treated as credit risk for regulatory capital purposes, but have an underlying element of operational risk failure. These types of events, while not incorporated into the regulatory capital calculation, may have implications for operational risk management. It will be essential for institutions that capture loss events that are treated differently for regulatory capital and management purposes to demonstrate that (1) loss events are being captured consistently across the institution; (2) the data systems are sufficiently advanced to allow for this differential treatment of loss events; and (3) credit, market, and operational risk losses are being appropriated in the correct manner for regulatory capital purposes.

The Agencies have established a clear boundary between credit and operational risks for regulatory capital purposes. If a loss event has any element of credit risk, it must be treated as credit risk for regulatory capital purposes. This would include all credit-related fraud losses. In addition, operational risk losses with credit risk characteristics that have historically been included in institutions' credit risk databases will continue to be treated as credit risk for the purposes of calculating minimum regulatory capital.

The accounting guidance for credit losses provides that creditors recognize credit losses when it is probable that they will be unable to collect all amounts due according to the contractual terms of a loan agreement. Credit losses may result from the creditor's own underwriting, processing, servicing or administrative activities along with the borrower's failure to pay according to the terms of the loan agreement. While the creditor's personnel, systems, policies or procedures may affect the timing or magnitude of a credit loss, they do not change its character from credit to operational risk loss for regulatory capital purposes. Losses that arise from a contractual relationship between a creditor and a borrower are credit losses whereas losses that arise outside of a relationship between a creditor and a borrower are operational losses.

B. External Data

Supervisory Standards

S 20. The institution must have policies and procedures that provide for the use of external loss data in the operational risk framework.

S 21. Management must systematically review external data to ensure an understanding of industry experience.

External data may serve a number of different purposes in the operational risk framework. Where internal loss data is limited, external data may be a useful input in determining the institution's level of operational risk exposure. Even where external loss data is not an explicit input to an institution's data set, such data provides a means for the institution to understand industry experience, and in turn, provides a means for assessing the adequacy of its internal data. External data may also prove useful to inform scenario analysis, fit severity distributions, or benchmark the overall operational risk exposure results.

To incorporate external loss information into an institution's framework, the institution should collect the following information:

- External loss amount;
- External loss description;
- Loss event type category;
- External loss event date;
- Adjustments to the loss amount (*i.e.*, recoveries, insurance settlements,

etc) to the extent that they are known; and

• Sufficient information about the reporting institution to facilitate comparison to its own organization.

Institutions may obtain external loss data in any reasonable manner. There are many ways to do so; some institutions are using data acquired through membership with industry consortia while other institutions are using data obtained from vendor databases or public sources such as court records or media reports. In all cases, management will need to carefully evaluate the data source to ensure that they are comfortable that the information being reported is relevant and reasonably accurate.

C. Business Environment and Internal Control Factor Assessments

Supervisory Standards

S 22. The institution must have a system to identify and assess business environment and internal control factors.

S 23. Management must periodically compare the results of their business environment and internal control factor assessments against actual operational risk loss experience.

While internal and external loss data provide a historical perspective on operational risk, it is also important that institutions incorporate a forward-looking element to the operational risk measure. In principle, an institution with strong internal controls in a stable business environment will have less exposure to operational risk than an institution with internal control weaknesses that is growing rapidly or introducing new products. In this regard, institutions will be required to identify the level and trends in operational risk in the institution. These assessments must be current, comprehensive across the institution, and identify the critical operational risks facing the institution.

The business environment and internal control factor assessments should reflect both the positive and negative trends in risk management within the institution as well as changes in an institution's business activities that increase or decrease risk. Because the results of the risk assessment are part of the capital methodology, management must ensure that the risk assessments are done appropriately and reflect the risks of the institution. Periodic comparisons should be made between actual loss exposure and the assessment results.

The framework established to maintain the risk assessments must be sufficiently flexible to encompass an institution's increased complexity of activities, new activities, changes in internal control systems, or an increased volume of information.

D. Scenario Analysis

Supervisory Standards

S 24. Management must have policies and procedures that identify how scenario analysis will be incorporated into the operational risk framework.

Scenario analysis is a systematic process of obtaining expert opinions from business managers and risk management experts to derive reasoned assessments of the likelihood and impact of plausible operational losses consistent with the regulatory soundness standard. Within an institution's operational risk framework, scenario analysis may be used as an input or may, as discussed below, form the basis of an operational risk analytical framework.

As an input to the institution's framework, scenario analysis is especially relevant for business lines or loss event types where internal data, external data, and assessments of the business environment and internal control factors do not provide a sufficiently robust estimate of the institution's exposure to operational risk. In some cases, an institution's internal loss history may be sufficient to provide a reasonable estimate of exposure to future operational losses. In other cases, the use of well-reasoned, scaled external data may itself be a form of scenario analysis.

The institution must have policies and procedures that define scenario analysis and identify its role in the operational risk framework. The policy should cover key elements of scenario analysis, such as the manner in which the scenarios are generated, the frequency with which they are updated, and the scope and coverage of operational loss events they are intended to reflect.

VIII. Risk Quantification

A. Analytical Framework

Supervisory Standards

S 25. The institution must have a comprehensive operational risk analytical framework that provides an estimate of the institution's operational risk exposure, which is the aggregate operational loss that it faces over a one-year period at a soundness standard consistent with a 99.9 per cent confidence level.

S 26. Management must document the rationale for all assumptions underpinning its chosen analytical framework, including the choice of inputs, distributional assumptions, and the weighting across qualitative and quantitative elements. Management must also document and justify any subsequent changes to these assumptions.

S 27. The institution's operational risk analytical framework must use a combination of internal operational loss event data, relevant external operational loss event data, business environment and internal control factor assessments, and scenario analysis. The institution must combine these elements in a manner that most effectively enables it to quantify its operational risk exposure. The institution can choose the analytical framework that is most appropriate to its business model.

S 28. The institution's capital requirement for operational risk will be the sum of expected and unexpected losses unless the institution can demonstrate, consistent with supervisory standards, the expected loss offset.

The industry has made significant progress in recent years in developing analytical frameworks to quantify operational risk. The analytical frameworks, which are a part of the overall operational risk framework, are based on various combinations of an institution's own operational loss experience, the industry's operational loss experience, the size and scope of the institution's activities, the quality of the institution's control environment, and management's expert judgment. Because these models capture specific characteristics of each institution, such models yield unique risk-sensitive estimates of the institutions' operational risk exposures.

While the Agencies are not specifying the exact methodology that an institution should use to determine its operational risk exposure, minimum supervisory standards for acceptable approaches have been developed. These standards have been set so as to assure that the regulation can accommodate continued evolution of operational risk quantification techniques, yet remain amenable to consistent application and enforcement across institutions. The Agencies will require that the institution have a comprehensive analytical framework that provides an estimate of the aggregate operational loss that it faces over a one-year period at a soundness standard consistent with a 99.9 percent confidence level, referred to as the institution's operational risk exposure. The institution will multiply the exposure estimate by 12.5 to obtain risk weighted assets for operational risk, and add this figure to risk-weighted assets for credit and market risk to obtain total risk-weighted assets. The final minimum regulatory capital number will be 8 percent of total risk-weighted assets.

The Agencies expect that there will be significant variation in analytical frameworks across institutions, with each institution tailoring its framework to leverage existing technology platforms and risk management procedures. These approaches may only be used, provided they meet the supervisory standards and include, as inputs, internal operational loss event data, relevant external operational loss event data, assessments of business environment and internal control factors, and scenario analysis. The Agencies do expect that there will be some uncertainty and potential error in the analytical frameworks because of the evolving nature of operational risk measurement and data capture. Therefore, a degree of conservatism will need to be built into the analytical frameworks to reflect the evolutionary status of operational risk and its impact on data capture and analytical modeling.

A diversity of analytical approaches is emerging in the industry, combining and weighting these inputs in different ways. Most current approaches seek to estimate loss frequency and loss severity to arrive at an aggregate loss distribution. Institutions then use the aggregate loss distribution to determine the appropriate amount of capital to hold for a given soundness standard. Scenario analysis is also being used by many institutions, albeit to significantly varying degrees. Some institutions are using scenario analysis as the basis for their analytical framework, while others are incorporating scenarios as a means for considering the possible impact of significant operational losses on their overall operational risk exposure.

The primary differences among approaches being used today relate to the weight that institutions place on each input. For example, institutions with comprehensive internal data may place less emphasis on external data or scenario analysis. Another example is that some institutions estimate a unique loss distribution for each business line/loss type combination (bottom-up approach) while others estimate a loss distribution on a firm-wide basis and then use an allocation methodology to assign capital to business lines (top-down approach).

The Agencies expect internal loss event data to play an important role in the institution's analytical framework, hence the requirement for five years of internal operational risk loss data. However, as footnote 5 makes clear, five years of data is not always required for the analytical framework. For example, if a bank exited a business line, the institution would not be expected to make use of that business unit's loss experience unless it had relevance for other activities of the institution. Another example would be where a bank has made a recent acquisition where the acquired firm does not have internal loss event data. In these cases, the Agencies expect the institution to make use of the loss data available at the acquired institution and any internal loss data from operations similar to that of the acquired firm, but the institution will likely have to place more weight relevant external loss event data, results from scenario analysis, and factors reflecting assessments of the business environment and internal controls.

Whatever analytical approach an institution chooses, it must document and provide the rationale for all assumptions embedded in its chosen analytical framework, including the choice of inputs, distributional assumptions, and the weighting of qualitative and quantitative elements. Management must also document and justify any subsequent changes to these assumptions. This documentation should:

• Clearly identify how the different inputs are combined and weighted to arrive at the overall operational risk exposure so that the analytical framework is transparent. The documentation should demonstrate that the analytical framework is comprehensive and internally consistent. Comprehensiveness means that all required inputs are incorporated and appropriately weighted. At the same time, there should not be overlaps or double counting.

• Clearly identify the quantitative assumptions embedded in the methodology and provide explanation for the choice of these assumptions. Examples of quantitative assumptions include distributional assumptions about frequency and severity, the methodology for combining frequency and severity to arrive at the overall loss distribution, and dependence assumptions between operational losses across and within business lines.

• Clearly identify the qualitative assumptions embedded in the methodology and provide explanations for the choice of these assumptions. Examples of qualitative assumptions include the use of business environment and control factors as well as scenario analysis in the approach.

• Where feasible, provide results based purely on quantitative methods separately from results that incorporate qualitative factors. This will provide a transparent means of determining the relative importance of quantitative versus qualitative inputs.

• Where feasible, provide results based on alternative quantitative and qualitative assumptions to gauge the overall model's sensitivity to these assumptions.

• Provide a comparison of the operational risk exposure estimate generated by the analytical framework with actual loss experience over time, to assess the reasonable of the framework's outputs.

• Clearly identify all changes to assumptions, and provide explanations for such changes.

• Clearly identify the results of an independent verification of the analytical framework.

The regulatory capital charge for operational risk will include both expected losses (EL) and unexpected losses (UL). The Agencies have considered two approaches that might allow for some recognition of EL; these approaches are reserving and budgeting. However, both approaches raise questions about their ability to act as an EL offset for regulatory capital purposes. The current U.S. GAAP treatment for reserves (or liabilities) is based on an incurred-loss (liability) model. Given that EL is looking beyond current losses to losses that will be incurred in the future, establishing a reserve for operational risk EL is not likely to meet U.S. accounting standards. While reserves are specific allocations for incurred losses, budgeting is a process of generally allocating future income for loss contingencies, including losses resulting from operational risk. Institutions will be required to demonstrate that budgeted funds are sufficiently capital-like and remain available to cover EL over the next year. In addition, an institution will not be permitted to recognize EL offsets on budgeted loss contingencies that fall below the established data thresholds; this is relevant as many institutions currently budget for low severity, high frequency events that are more likely to fall below most institutions' thresholds.

An institution's analytical framework complements but does not substitute for prudent controls. Rather, with improved risk measurement, institutions are finding that they can make better-informed strategic decisions regarding enhancements to controls and processes, the desired scale and scope of the operations, and how insurance and

other risk mitigation tools can be used to offset operational risk exposure.

B. Accounting for Dependence

Supervisory Standards

S 29. Management must document how its chosen analytical framework accounts for dependence (*e.g.*, correlations) among operational losses across and within business lines. The institution must demonstrate that its explicit and embedded dependence assumptions are appropriate, and where dependence assumptions are uncertain, the institution must use conservative estimates.

Management must document how its chosen analytical framework accounts for dependence (*e.g.*, correlation) between operational losses across and within business lines. The issue of dependence is closely related to the choice between a bottom-up or a top-down modeling approach. Under a bottom-up approach, explicit assumptions regarding cross-event dependence are required to estimate operational risk exposure at the firm-wide level. Management must demonstrate that these assumptions are appropriate and reflect the institution's current environment. If the dependence assumptions are uncertain, the institution must choose conservative estimates. In so doing, the institution should consider the possibility that cross-event dependence may not be constant, and may increase during stress environments.

Under a top-down approach, an explicit assumption regarding dependence is not required. However, a parametric distribution for loss severity may be more difficult to specify under the top-down approach, as it is a statistical mixture of (potentially) heterogeneous business line and event type distributions. Institutions must carefully consider the conditions necessary for the validity of top-down approaches, and whether these conditions are met in their particular circumstances. Similar to bottom-up approaches, institutions using top-down approaches must ensure that implicit dependence assumptions are appropriate and reflect the institution's current environment. If historic dependence assumptions embedded in top-down approaches are uncertain, the institution must be conservative and implement a qualitative adjustment to the analysis.

IX. Risk Mitigation

Supervisory Standards

S 30. Institutions may reduce their operational risk exposure results by no more than 20% to reflect the impact of risk mitigants. Institutions must demonstrate that mitigation products are sufficiently capital-like to warrant inclusion in the adjustment to the operational risk exposure.

There are many mechanisms to manage operational risk, including risk transfer through risk mitigation products. Because risk mitigation can be an important element in limiting or reducing operational risk exposure in an institution, an adjustment is being permitted that will directly impact the amount of regulatory capital that is held for operational risk. The adjustment is limited to 20% of the overall operational risk exposure result determined by the institution using its loss data, qualitative factors, and quantitative framework.

Currently, the primary risk mitigant used for operational risk is insurance. There has been discussion that some securities products may be developed to provide risk mitigation benefits; however, to date, no specific products have emerged that have characteristics sufficient to be considered capital-replacement for operational risk. As a result, securities products and other capital market instruments may not be factored in to the regulatory capital risk mitigation adjustment at this time.

For an institution that wishes to adjust its regulatory capital requirement as a result of the risk mitigating impact of insurance, management must demonstrate that the insurance policy is sufficiently capital-like to provide the cushion that is necessary. A product that would fall in this category must have the following characteristics:

- The policy is provided through a third party [13] that has a minimum claims paying ability rating of A; [14]
- The policy has an initial term of one year; [15]
- The policy has no exclusions or limitations based upon regulatory action or for the receiver or liquidator of a failed bank;
- The policy has clear cancellation and non-renewal notice periods; and
- The policy coverage has been explicitly mapped to actual operational risk exposure of the institution.

Insurance policies that meet these standards may be incorporated into an institution's adjustment for risk mitigation. An institution should be conservative in its recognition of such policies, for example, the institution must also demonstrate that insurance policies used as the basis for the adjustment have a history of timely payouts. If claims have not been paid on a timely basis, the institution must exclude that policy from the operational risk capital adjustment. In addition, the institution must be able to show that the policy would actually be used in the event of a loss situation; that is, the deductible may not be set so high that no loss would ever conceivably exceed the deductible threshold.

The Agencies will not specify how institutions should calculate the risk mitigation adjustment. Nevertheless, institutions are expected to use conservative assumptions when calculating adjustments. An institution should discount (*i.e.*, apply its own estimates of haircuts) the impact of insurance coverage to take into account factors, which may limit the likelihood or size of claims payouts. Among these factors are the remaining terms of a policy, especially when it is less than a year, the willingness and ability of the insurer to pay on a claim in a timely manner, the legal risk that a claim may be disputed, and the possibility that a policy can be cancelled before the contractual expiration.

X. Data Maintenance

Supervisory Standards

S 31. Institutions using the AMA approach for regulatory capital purposes must use advanced data management practices to produce credible and reliable operational risk estimates.

Data maintenance is a critical factor in an institution's operational risk framework. Institutions with advanced data management practices should be able to track operational risk loss events from initial discovery through final resolution. These institutions should also be able to make appropriate adjustments to the data and use the data to identify trends, track problem areas, and identify areas of future risk. Such data should include not only operational risk loss event information, but also information on risk assessments, which are factored into the operational risk exposure calculation. In general, institutions using the AMA should have the same data maintenance standards for operational risk as those set forth for A–IRB institutions under the credit risk guidance.

Operational risk data elements captured by the institution must be of sufficient depth, scope, and reliability to:

- Track and identify operational risk loss events across all business lines, including when a loss event impacts multiple business lines.
- Calculate capital ratios based on operational risk exposure results. The institution must also be able to factor in adjustments related to risk mitigation, correlations, and risk assessments.
- Produce internal and public reports on operational risk measurement and management results, including trends revealed by loss data and/or risk assessments. The institution must also have sufficient data to produce exception reports for management.
- Support risk management activities.

The data warehouse [16] 16 must contain the key data elements needed for operational risk measurement, management, and verification. The precise data elements may vary by institution and also among business lines within an institution. An important element of ensuring consistent reporting of the data elements is to develop comprehensive definitions for each data element used by the institution for reporting operational risk loss events or for the risk assessment inputs. The data must be stored in an electronic format to allow for timely retrieval for analysis, verification and testing of the operational risk framework, and required disclosures.

Management will need to identify those responsible for maintaining the data warehouse. In particular, policies and processes will need to be developed for delivering, storing, retaining, and updating the data warehouse. Policies and procedures must also cover the edit checks for data input functions, as well as the requirements for the testing and verification function to verify data integrity. Like other areas of the operational risk framework, it is critical that management ensure accountability for ongoing data maintenance, as this will impact operational risk management and measurement efforts.

XI. Testing and Verification

Supervisory Standards

S 32. The institution must test and verify the accuracy and appropriateness of the operational risk framework and results.

S 33. Testing and verification must be done independently of the firm-wide operational risk management function and the institution's lines of business.

The operational risk framework must provide for regular and independent testing and verification of operational risk management policies, processes and measurement systems, as well as operational risk data capture systems. For most institutions, operational risk verification and testing will primarily be done by the audit function. Internal and external audits can provide an independent assessment of the quality and effectiveness of the control systems' design and performance. However, institutions may use other independent internal units (*e.g.* quality assurance) or third parties. The testing and verification function, whether internally or externally performed, should be staffed by qualified individuals who are independent from the firm-wide operational risk management function and the institution's lines of business.

The verification of the operational risk measurement system should include the testing of:

- Key operational risk processes and systems;
- Data feeds and processes associated with the operational risk measurement system;
- Adjustments to empirical operational risk capital estimates, including operational risk exposure;
- Periodic certification of operational risk models used and their underlying assumptions; and
- Assumptions underlying operational risk exposure, data decision models, and operational risk capital charge.

The operational risk reporting processes should be periodically reviewed for scope and effectiveness. The institution should have independent verification processes to ensure the timeliness, accuracy, and comprehensiveness of operational risk reporting systems, both at the firm-wide and the line of business levels.

Independent verification and testing should be done to ensure the integrity and applicability of the operational risk framework, operational risk exposure/loss data, and the underlying assumptions driving the regulatory capital measurement process. Appropriate reports, summarizing operational risk verification and testing findings for both the independent firm-wide risk management function and lines of business should be provided to appropriate management and the board of directors or a designated board committee.

Appendix A: Supervisory Standards for the AMA

S 1. The institution's operational risk framework must include an independent firm-wide operational risk management function, line of business management oversight, and independent testing and verification functions.

S 2. The board of directors must oversee the development of the firm-wide operational risk framework, as well as major changes to the framework. Management roles and accountability must be clearly established.

S 3. The board of directors and management must ensure that appropriate resources are allocated to support the operational risk framework.

S 4. The institution must have an independent operational risk management function that is responsible for overseeing the operational risk framework at the firm level to ensure the development and consistent application of operational risk policies, processes, and procedures throughout the institution.

S 5. The firm-wide operational risk management function must ensure appropriate reporting of operational risk exposures and loss data to the board of directors and senior management.

S 6. Line of business management is responsible for the day-to-day management of operational risk within each business unit.

S 7. Line of business management must ensure that internal controls and practices within their line of business are consistent with firm-wide policies and procedures to support the management and measurement of the institution's operational risk.

S 8. The institution must have policies and procedures that clearly describe the major elements of the operational risk management framework, including identifying, measuring, monitoring, and controlling operational risk.

S 9. Operational risk management reports must address both firm-wide and line of business results. These reports must summarize operational risk exposure, loss experience, relevant business environment and internal control assessments, and must be produced no less often than quarterly.

S 10. Operational risk reports must also be provided periodically to senior management and the board of directors, summarizing relevant firm-wide operational risk information.

S 11. An institution's internal control structure must meet or exceed minimum regulatory standards established by the Agencies.

S 12. The institution must demonstrate that it has appropriate internal loss event data, relevant external loss event data, assessments of business environment and internal controls factors, and results from scenario analysis to support its operational risk management and measurement framework.

S 13. The institution must include the regulatory definition of operational risk as the baseline for capturing the elements of the

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[13] Where operational risk is transferred to a captive or an affiliated insurer such that risk is retained withih the group structure, recognition of such risk transfer will only be allowed for regulatory capital purposes where the risk has been transferred to a third party (*e.g.*, an unaffiliated reinsurer) that meets the standards set forth in this section.

[14] Rating agencies may use slightly different rating scales.For the purpose of this supervisory guidance, the insurer must have a rating that is at least the equivalent of A under Standard and Poor's Insurer Financial Strength Ratings or an A2 under Moody's Insurance Financial Strength Ratings.

[15] Institutions must decrease the amount of the adjustment if the remaining term is less than one year. The institution must have a clear policy in place that links the remaining term to the adjustment factor.

[16] In this document, the terms "database" and "data warehouse" are used interchangeably to refer to a collection of data arranged for easy retrieval using computer technology.

AMA framework and determining its operational risk exposure.

S 14. The institution must have clear standards for the collection and modification of the elements of the operational risk AMA framework.

S 15. The institution must have at least five years of internal operational risk loss data [17] captured across all material business lines, events, product types, and geographic locations.

S 16. The institution must be able to map internal operational risk losses to the seven loss-event type categories.

S 17. The institution must have a policy that identifies when an operational risk loss becomes a loss event and must be added to the loss event database. The policy must provide for consistent treatment across the institution.

S 18. The institution must establish appropriate operational risk data thresholds.

S 19. Losses that have any characteristics of credit risk, including fraud-related credit losses, must be treated as credit risk for regulatory capital purposes. The institution must have a clear policy that allows for the consistent treatment of loss event classifications (*e.g.*, credit, market, or operational risk) across the organization.

S 20. The institution must have policies and procedures that provide for the use of external loss data in the operational risk framework.

S 21. Management must systematically review external data to ensure an understanding of industry experience.

S 22. The institution must have a system to identify and assess business environment and internal control factors.

S 23. Management must periodically compare the results of their business environment and internal control factor assessments against actual operational risk loss experience.

S 24. Management must have policies and procedures that identify how scenario analysis will be incorporated into the operational risk framework.

S 25. The institution must have a comprehensive operational risk analytical framework that provides an estimate of the institution's operational risk exposure, which is the aggregate operational loss that it faces over a one-year period at a soundness standard consistent with a 99.9 per cent confidence level.

S 26. Management must document the rationale for all assumptions underpinning its chosen analytical framework, including the choice of inputs, distributional assumptions, and the weighting across qualitative and quantitative elements. Management must also document and justify any subsequent changes to these assumptions.

S 27. The institution's operational risk analytical framework must use a combination of internal operational loss event data, relevant external operational loss event data, business environment and internal control factor assessments, and scenario analysis. The institution must combine these elements in a manner that most effectively enables it to quantify its operational risk exposure. The institution can choose the analytical framework that is most appropriate to its business model.

S 28. The institution's capital requirement for operational risk will be the sum of expected and unexpected losses unless the institution can demonstrate, consistent with supervisory standards, the expected loss offset.

S 29. Management must document how its chosen analytical framework accounts for dependence (e.g., correlations) among operational losses across and within business lines. The institution must demonstrate that its explicit and embedded dependence assumptions are appropriate, and where dependence assumptions are uncertain, the institution must use conservative estimates.

S 30. Institutions may reduce their operational risk exposure results by no more than 20% to reflect the impact of risk mitigants. Institutions must demonstrate that mitigation products are sufficiently capital-like to warrant inclusion in the adjustment to the operational risk exposure.

S 31. Institutions using the AMA approach for regulatory capital purposes must use advanced data management practices to produce credible and reliable operational risk estimates.

S 32. The institution must test and verify the accuracy and appropriateness of the operational risk framework and results.

S 33. Testing and verification must be done independently of the firm-wide operational risk management function and the institution's lines of business.

Dated: July 17, 2003.

John D. Hawke, Jr.,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, July 21, 2003.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 11th day of July, 2003.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: July 18, 2003.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 03–18976 Filed 8–1–03; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

[17] With supervisory approval, a shorter initial historical observation period is acceptable for banks newly authorized to use an AMA methodology.

Federal Register

Monday,
August 4, 2003

Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 983

Pistachios Grown in California; Recommended Decision and Opportunity To File Written Exceptions to Proposed Marketing Agreement and Order No. 983; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 983

[Docket No. AO–F&V–983–2; FV02–983–01]

Pistachios Grown in California; Recommended Decision and Opportunity To File Written Exceptions to Proposed Marketing Agreement and Order No. 983

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This recommended decision proposes the issuance of a marketing agreement and order (order) for pistachios grown in California. The proposed order would set standards for the quality of pistachios produced and handled in California by establishing a maximum aflatoxin tolerance level, maximum limits for defects, a minimum size requirement, and mandatory inspection and certification. An eleven-member committee, consisting of eight producers, two handlers, and one public member, would locally administer the program. The program would be financed by assessments on handlers of pistachios grown in the production area. The objective of the program would be to enhance grower returns through the delivery of higher-quality pistachios to consumers. This rule also announces the Agricultural Marketing Service's intention to request approval by the Office of Management and Budget of new information collection requirements to implement this program.

DATES: Written exceptions must be filed by September 3, 2003. Pursuant to the Paperwork Reduction Act, comments on the information collection burden must be received by October 3, 2003.

ADDRESS: Four copies of all written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, room 1081–S, Washington, DC 20250–9200, Facsimile number (202) 720–9776. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments will be made available for public inspection in the Office of the Hearing Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Post Office Box 1035, Moab, UT 84532, telephone: (435) 259–7988, fax: (435) 259–4945; or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, fax: (202) 720–8938. Small businesses may request information on this proceeding by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, fax: (202) 720–8938.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on June 19, 2002, and published in the June 26, 2002, issue of the **Federal Register** (67 FR 43045).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed marketing agreement and order regulating the handling of pistachios grown in California, and the opportunity to file written exceptions thereto. Copies of this decision can be obtained from Melissa Schmaedick, whose address is listed above.

This recommended decision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The proposed marketing agreement and order are based on the record of a public hearing held July 23–25, 2002, in Fresno, California. The hearing was held to receive evidence on the proposed marketing order from producers, handlers, and other interested parties located throughout the proposed production area. Notice of this hearing was published in the **Federal Register** on June 26, 2002.

This proposal is the result of nearly three years of efforts undertaken by the Proponents Committee (proponents), a group representing the majority of producers and handlers of pistachios in California. The Proponents Committee was established in 2000 as a result of renewed industry interest in a Federal marketing order.

An earlier attempt to establish a Federal marketing order in 1996 on behalf of the pistachio industry by the California Pistachio Commission (CPC or Commission) and the Western Pistachio Association (Association) was terminated in 2000 due to a lack of industry support for certain proposed provisions. The current proposal is different from that which was previously proposed since many controversial issues have either been removed or resolved through more exacting specifications in the proposed order. The Proponents Committee is independent of the Commission and the Association.

Witnesses at the hearing explained that the provisions of this proposal aim to provide the California pistachio industry with a tool to regulate the quality of pistachios handled in California. This would include preventing pistachios containing aflatoxin above the proposed permitted maximum tolerance level of 15 parts per billion (ppb) from entering the market place. The proposed order would also preclude defective and small pistachios from being sold. Under the proposed order, testing and certification of pistachios for quality (including aflatoxin) would be mandatory. A mandatory regulatory program would provide the industry with an effective means of ensuring product quality, thereby enhancing customer satisfaction.

At the conclusion of the hearing, the Administrative Law Judge fixed September 23, 2002, as the final date for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing. One brief was filed on behalf of the Proponents Committee in support of the proposed program and its provisions. The brief also recommended certain changes in the regulatory text of the proposed order as a result of the public hearing held in Fresno, California from July 25 through July 27, 2002. These changes are discussed as appropriate later in this document.

Material Issues

The material issues presented on the record of hearing are as follows:

1. Whether the handling of pistachios produced in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce;

2. Whether the economic and marketing conditions are such that they justify a need for a Federal marketing agreement and order which would tend to effectuate the declared policy of the Act;

3. What the definition of the production area and the commodity to be covered by the order should be;

4. What the identity of the persons and the marketing transactions to be regulated should be;

5. What the specific terms and provisions of the order should be, including:

(a) The definitions of terms used therein which are necessary and incidental to attain the declared objectives and policy of the Act and order;

(b) The establishment, composition, maintenance, procedures, powers and duties of an administrative committee for pistachios that would be the local administrative agency for assisting USDA in the administration of the order;

(c) The authority to incur expenses and the procedure to levy assessments on handlers to obtain revenue for paying such expenses;

(d) The establishment of mandatory inspection and certification for aflatoxin, quality and size requirements for California pistachios;

(e) The establishment of requirements for handler reporting and recordkeeping;

(f) The requirement for compliance with all provisions of the order and with any regulations issued under it;

(g) The requirement for periodic continuance referenda;

(h) An exemption for handlers of non-commercial quantities of pistachios;

(i) Coordination of administration with the California Pistachio Commission program;

(j) Additional terms and conditions as set forth in § 983.59 through § 983.69 of the Notice of Hearing published in the **Federal Register** of June 26, 2002, which are common to all marketing agreements and orders, and other terms and conditions published at § 983.90 through § 983.92 that are common to marketing agreements only; and

6. Whether the proposed marketing order and its provisions, if approved in grower referendum, should be implemented in two phases.

Findings and Conclusions

The following findings and conclusions on the material issues are based on the record of the hearing.

Material Issue Number 1—Whether the Handling of California Pistachios is in the Current of Interstate or Foreign Commerce

The record indicates that the handling of pistachios grown in California is in the current of interstate or foreign commerce or directly burdens, obstructs or affects such commerce.

Witnesses testifying at the hearing stated that over 97 percent of the pistachios produced in the United States are grown in California orchards. There are minor amounts of commercial plantings in eastern Arizona and New Mexico. However, it is estimated that these States account for only 2 and less than 1 percent of national production, respectively.

The record shows that domestic consumption of California pistachios is well established, with the U.S. market representing an estimated 70 percent of total production distributed in 1999–2000. Pistachios grown in the proposed production area are shipped throughout the United States, and the California industry, through the Commission, conducts a national promotion program for its product.

The record also shows that export markets are increasingly important to California producers and handlers. About 30 percent of the crop is sold in foreign markets in more than 40 countries. According to the 2000–2001 CPC Annual Report, Germany, Japan, Canada and Hong Kong are California's largest pistachio export destinations. Exports to Germany alone accounted for 20 percent of total inshell pistachio exports in 1999–2000.

Evidence presented at the hearing confirmed that any handling of California pistachios in market channels, including intrastate shipments, exerts an influence on all other handling of such pistachios. Thus, it is concluded that the handling of pistachios grown in the proposed production area is in the current of interstate and foreign commerce and directly affects such commerce.

Material Issue Number 2—The Need for a Pistachio Marketing Order

The record evidence demonstrates that there is a need for a marketing order for California pistachios.

Farming pistachios is a costly investment with a significant delay in benefits and an unreliable crop yield. Increasing yields have led to an increasing overall value of California pistachio production. However, to remain economically viable, producers must maintain a level of return per pound harvested that covers their cost of production. Witnesses of the proposed order assert that maintaining a high level of quality product in the market will lead to increasing consumer demand and stability in producer returns.

Poor quality pistachios impact demand, and the potential growth of demand, for pistachios. Characteristics routinely deemed as "poor quality" by customers of the California pistachio industry include small size, and excessive internal and external blemishes. Market studies and references to customer comment databases presented by witnesses at the hearing demonstrate that the presence of poor quality pistachios in the marketplace significantly impacts demand in a negative way.

According to record evidence, minimizing the level of aflatoxin in California pistachios is another significant quality factor, since aflatoxin is a known carcinogenic. Consumer concerns over aflatoxin can impact their perception of the quality of pistachios, and therefore negatively impact demand. Moreover, any market disturbances related to aflatoxin in pistachios, regardless of the origin of those pistachios, could have a detrimental effect on the California pistachio industry. A regulatory program limiting the amount of aflatoxin tolerated in pistachios would be useful to bolster consumer confidence in the quality of California pistachios.

Pistachio acreage has consistently increased in California, from just over 20,000 bearing acres in 1979 to 78,000 bearing acres in 2001. The number of non-bearing acres (*i.e.*, acres less than 7 years old, not yet in full production) has also shown consistent growth, increasing from 17,062 acres in 1997 to 23,500 acres in 2001. Yield per acre has also been steadily rising. Over the 1976–1980 period, average yield per bearing acre measured 1,097 pounds; by 1996–2000, this average increased to 2,418 pounds.

Higher yields and increasing acreage have resulted in increasing production. According to information submitted by the California Pistachio Commission, production in 2000 totaled 242 million pounds, a 64 percent increase over 1995 production, which totaled 148 million pounds. Moreover, witnesses at the hearing indicated that maturing acreage, absent any additional new plantings, will likely result in a 60 percent increase in California pistachio production over the coming years.

Several witnesses at the hearing testified that, in light of increasing production, future stability of market returns is reliant on continually increasing consumer demand for pistachios. These witnesses stated that strong consumer demand, which is ultimately related to consumer perceptions of product quality, is

essential to the continued economic well-being of the California pistachio industry. Moreover, witnesses discussed the importance of implementing a marketing order program that would provide a regulatory structure to monitor and ensure that minimum quality standards are not compromised as production of California pistachios increases. One of the most important quality characteristics cited by witnesses is the regulation of aflatoxins as these carcinogenic molds can be found in improperly handled pistachios.

The proposed order would set quality standards for pistachios produced and handled in California by establishing a maximum aflatoxin tolerance level, maximum limits for defects, a minimum size requirement, and mandatory inspection and certification. Witnesses of the proposed marketing order argued that this regulatory program would bolster consumer demand for pistachios.

The relationship among product quality, consumer demand, and producer returns in the pistachio industry was demonstrated at the hearing. Pistachio production is not only costly in terms of initial investment and cultural costs, but it is highly unpredictable in terms of returns. Between the initial processes of cleaning, hulling, sorting and drying, a significant portion of the initial volume harvested is reduced. This volume is further reduced as the handling process reaches its final stages of further sorting for quality and final preparation for market. As such, witnesses explained that ultimate pistachio sales are based on approximately 30 percent of the volume initially harvested from the field. Because of this, witnesses stated that the process of extracting the highest quality portion of the harvest, and ensuring consumer satisfaction with that product, is crucial to determining the value of the crop.

Pistachio production is similar to other nut crops in that yield and total production are impacted by the alternate bearing nature of pistachio trees (meaning cyclical high and low production years). In addition, producer returns and total crop value are dependent on the overall quality of the crop. One example is the percentage of harvest that is either "open shell" or "closed shell." Each harvest yields a certain percentage of nuts that have not naturally opened prior to harvest. These nuts are classified as "closed shell," "shelling stock" or "non-splits," and have a lower market value than those nuts that are naturally split, or "open shell." As the percentage of open-shells varies, the total value of production can change significantly from one year to the next.

Total value and value per acre are generally higher in high yielding years. An economic analysis of the California pistachio industry presented at the hearing by Dr. Dan Sumner of the University of California, Davis, indicates that trends for total crop value and value per bearing acre have been increasing over the past 20 years. In 1980, the total value of the pistachio crop in California was $55.8 million. By 2000, total crop value had increased more than four-fold, reaching $236.72 million. These gains are attributed to increases in both total pistachio producing acreage and yield per acre. Average value per bearing acre increased from $1,642 per acre in 1980–1984 to $2,658 per acre in 1996–2000.

Conversely, grower return per pound is generally higher in low yielding years. According to CPC historical price data, price per pound has gradually decreased over the past 20 years, ranging from a high of $2.05 per pound in 1980 to a low of $0.98 per pound in 2000. Thus, in terms of current producer ability to reconcile production costs with receipts, yield per acre must be sufficiently high to compensate for low returns in price per pound. According to the record, the proposed order would assist in stabilizing, if not increasing, producer returns for pistachios. The quality requirements proposed herein would not only assist in fortifying consumer demand by ensuring consumer satisfaction with product quality, but mandatory quality standards would also boost domestic prices by culling poor product, which tends to have price-depressing effects, from the market.

The record evidence is that total costs of production can be divided into three categories: the costs of orchard establishment, cultural costs and administrative costs. Establishment costs, or the overall cost to develop an acre of pistachios until revenues exceed growing expenses, are estimated at between $10,000 and $15,000, with an average tree maturation period of 7 years. In order to recover these investment costs, the hearing record indicates that producers generally target an 11 per cent return on investment, estimated at between $1,100 and $1,650 per acre. Annual per acre cultural costs average between $1,100 and $1,600, once the trees are productive. Administrative costs include the cost of farm management and crop financing, and range from $150 to $200 per acre.

Given the cost estimates above, a producer would need to harvest an average of 2,000 pounds per acre to cover total production costs. This calculation assumes an average field price of $1.25 per pound, which is based on 24 years of CPC crop value statistics. For example, minimum estimated cultural costs plus administrative costs and an 11 percent return on investment results in a minimum total production cost of $2,350 per acre per year. Total production costs less the targeted 11 percent return on investment equals $1,250 per acre, or an average harvest of 1,000 pounds per acre to cover production costs without a return on investment.

While the CPC 2002 Annual Report indicates a State average of $2,619 per acre in gross receipts over the last four years, 1998–2001 CPC yield per acre information reveals that only 6 out of 26 California counties with pistachio production yield on average more than 2,000 pounds per acre. These counties include Colusa, Sutter, Madera, Fresno, Kings and Kern, and together represent over 88 percent of total California pistachio production between the years 1998 to 2001. Glenn, Butte, Placer, Yolo, Contra Costa, San Joaquin, Calaveras, Stanislaus, Merced, Tulare and Santa Barbara counties yield on average between 1,000 to 2,000 pounds per acre and represent roughly 12 percent of total State production. Shasta, Tehama, Yuba, Solano, Sacramento, San Luis Obispo, Los Angeles, San Bernardino and Riverside counties yield on average less than 1,000 pounds per acre and represent less than one percent of California pistachio production.

Given the assumptions made above, approximately 88 percent of the industry is covering total costs of production. Conversely, roughly 12 percent of the industry is currently covering cultural costs but not generating a return on their investment.

In 1996, high levels of aflatoxin were detected in foreign pistachios imported into the European Union (EU). Publicity about the presence of aflatoxin at high levels first led to a total ban on imports and has since reduced the number of pistachios imported from all sources into the EU by 45 percent. In Germany the drop was 60 percent, and by 2000 imports were still only 53 percent of 1997 levels.

Witnesses testifying at the hearing used this case of pistachios contaminated with aflatoxin, and the subsequent damage to consumer confidence and demand for pistachios in the EU, to demonstrate the industry's need to safeguard against similar findings in California pistachios. According to those who testified, mandatory inspection and certification against high levels of aflatoxin would be the most effective means of preventing such an event with pistachios handled in California.

Similarly, witnesses stressed the need to have a mandatory regulatory system in place in the event that aflatoxin were found in non-California pistachios, but were to universally impact the demand of all pistachios, regardless of origin. If such an event were to occur, witnesses of the order stressed the usefulness of having a federally regulated program for aflatoxin in order to maintain consumer confidence with regard to California pistachios.

Evidence presented at the hearing supports a Federal marketing order for pistachios grown in California. In view of the foregoing, and based on the record of the proceeding, it is concluded that current economic and marketing conditions justify a need for a marketing order for California pistachios. The order would meet many needs of the industry and would tend to effectuate the declared policy of the Act.

Material Issue Number 3—Definition of Pistachio and Production Area

Definitions of the terms "pistachio" and "production area" should be included in the order to delineate the commodity and the area that would be regulated under the provisions of the proposed program.

"Pistachio" should be defined to mean the nut or nuts of the pistachio tree, genus Pistacia Vera. The term "pistachio" would cover all fruits of the Pistcaia Vera grown in the production area, whether inshell or shelled. Pistachios grown outside the production area would not be covered by the proposed order.

Record evidence explains that the pistachio nut is the seed of a semidry drupaceous fruit, or stone fruit, much like peaches and mangos. However, while peach flesh is eaten and the seed discarded, the opposite is true of the pistachio; the flesh or "hull" is discarded and the seed, once it has been freed from protection of the thin, bony shell, is eaten.

Pistachio development starts with a seedling being grown in a pot in a nursery for nearly two years. The seedlings are then transplanted into the field at a rate of 130 to 160 seedlings per acre, usually in January or February when the seedlings are dormant. Toward the end of the first growing season these seedlings are then grafted or budded in the field to Pistacia Vera, both male and female. The pistachio tree is dioecious, meaning there are both "male" and "female" trees, and is pollinated by the wind. The typical California pistachio orchard requires one male tree for every 8–24 females.

Pistachio trees typically require six years of maturation after budding to produce a commercial crop. During the maturation period, young trees require considerable care, including yearly pruning, irrigation, fertilizer application and pest control, thus contributing to the considerable investment costs of establishing a pistachio orchard. Harvest of a tree's first commercial-sized crop typically occurs in the tree's seventh year. The crop and tree continue to grow in size for another seven to eight years until the tree is considered fully mature and has reached a height of approximately 25 to 30 feet.

Pistachio trees require a significant dormant period, currently estimated to be 800 hours below 45°F, followed by long, hot, dry summers. The trees are pruned during dormancy, and once they bloom, in late March or early April, they need to be irrigated, fertilized and treated for various pests during the rest of the year. The major input is usually water, as each acre requires approximately 36" of water to be applied during the growing season if the trees are to produce a full crop.

Currently there is no consensus as to the useful commercial life of a tree. Pistachio trees in the Middle East have lived for thousands of years. Trees appear to be long lived in California, although producers must replace 2 to 3 percent of their trees that die from disease or other causes every year. The overall cost to develop an acre of pistachios until revenues exceed growing expenses is between $10,000 and $15,000 per acre, and does not differ significantly due to the size of the planting.

The term "production area" should be defined to mean the State of California. The record shows that the production area defined in the proposed order is the major pistachio producing area in the United States.

Witnesses testifying at the hearing stated that over 97 percent of the pistachios produced in the United States are grown in California orchards. Production is concentrated in six counties in the San Joaquin Valley, in the central part of the State. However, commercial production is reported in an additional 20 counties throughout California. While there are some counties in the State in which no pistachios are currently produced, witnesses testified that the production area should be defined to allow for coverage of any new pistachio development outside current plantings within California.

Witnesses also proposed coverage of the entire State because the industry (through the California Pistachio Commission) finances national and international promotion programs to expand demand for California pistachios. Thus, buyers of California pistachios consider the entire State to be the pistachio producing area.

While the proposed Federal order and the State commission would operate independently of each other, witnesses testified that the quality assurance standards implemented under the proposed order would complement the promotion activities undertaken by the Commission. Thus, they believed that having the two programs would benefit the California pistachio industry.

Record evidence indicates that there are minor amounts of commercial plantings in eastern Arizona and New Mexico. However, it is estimated that these states produce only 2 and less than one percent of national production, respectively.

Witnesses explained that Arizona and New Mexico had been considered as part of the production area during the initial stages of drafting the proposed order. According to record testimony, although there is some interest in the proposed marketing order among Arizona and New Mexico pistachio producers, support in those States is not strong enough to warrant including them in the proposed production area.

Record evidence also indicates that pistachios produced in Arizona and New Mexico are mainly consumed within the respective State boundaries and have a relatively limited presence in national and international markets. Moreover, acreage in both States is neither increasing, nor is it expected to increase in the future, as climate factors limit the growth potential of existing pistachio orchards. Pistachio production from these States is not considered to represent a significant portion of total domestic production. It is also unlikely that Arizona and New Mexico pistachios will hold a significant presence in domestic and international markets in the future.

Lastly, information presented at the hearing indicates that California nurserymen have sold a limited amount of pistachio trees into other western states, such as Nevada, Utah and Texas, but there is no known significant commercial production in these States. Production from these States is not believed to enter into the current of interstate commerce.

The Act requires that marketing orders be limited in their application to the smallest regional production area found practicable. For the reasons given

above, it is concluded that covering pistachios grown in California (and not those grown in other States) under the proposed order is consistent with carrying out the declared policy of the Act and, therefore, the production area should be defined as hereinafter set forth.

Material Issue Number 4—Definition of Handler and Handle

The term "handler" should be defined to identify the persons who would be subject to regulation under the order. Such term should apply to any person who handles pistachios within the production area, or places pistachios in the current of commerce within the production area, or in the current of commerce between the production area and any point outside thereof. A handler could be an individual, a joint venture, partnership, corporation, or other business entity.

The definition of "handler" identifies persons who would be responsible for meeting the requirements of the order, including paying assessments, complying with testing and certification provisions of the order, and submitting reports and other information required for the administration of the proposed program. The term is also used to identify those persons who are eligible to vote for, and serve as, handler members and alternate members on the committee.

The term "handle" should be defined in the order to establish the specific functions that would place pistachios in the current of commerce within the production area, or between the production area and any point outside thereof, and to provide a basis for determining which functions are subject to regulation under the authority of the proposed marketing order.

"Handle" should be defined to mean engaging in: (a) Receiving pistachios, (b) hulling and drying pistachios, (c) further preparing pistachios by sorting, sizing, shelling, roasting, cleaning, salting, and/or packaging for marketing in or transporting to any and all markets in interstate or foreign commerce, and (d) placing pistachios into the current of commerce between the production area and any point outside that area.

The record evidence is that the handling of pistachios is a multi-step process. Witnesses described the harvest and initial processing (hulling and drying) of pistachios as an intense period of activity, typically beginning in early September, when the pistachio nuts are mature, and lasting for a period of 20 to 30 days.

The trees are deemed ready for harvest when the "hull" slips on the shell when pressure is applied. By this time, approximately 75 percent of the nuts have naturally "split," meaning that the shell has naturally opened to give its characteristic "open mouth" appearance. This splitting of the shell typically will not be apparent, as the hull or outer layer remains intact, protecting the kernel from fungal infection and insect infestation. The hulls of some pistachios, however, may split, thereby revealing the tender pistachio nut inside. These pistachios, referred to as "early splits," are more prone to mold or insect infestation.

The balance of the pistachio harvest has not naturally opened. These are referred to as "closed shell" or "non-split" pistachios.

According to record testimony, pistachios must be rapidly harvested when mature in order to prevent insect infestation and staining of the shell, and to avoid difficulty of handling an overripe product. During the harvest process, each tree is mechanically shaken to cause the pistachio nuts to fall into a catching frame. This method of harvesting allows the California pistachio industry to harvest pistachios without the nuts having to touch the ground, thereby avoiding possible contamination from soil-borne molds or insects. The nuts are then dumped from the catching frames into bins or trucks and readied for transport to the handler.

The nuts, which contain a significant amount of moisture when harvested, must arrive at the handling facility as soon as possible after harvest. If the nuts are not hulled within 24 hours of their removal from the tree, staining of the outer shell occurs, and this is considered detrimental in the marketplace. Due to the short harvest period and the significant investment in equipment at the handling facility, witnesses explained that pistachio harvest will typically take place 24 hours a day 7 days a week until harvest is complete.

At the handling facility, the nuts are weighed and emptied from the trailers. As the emptying of bins or trucks takes place, usually through bottom dump trailers into a pit, the nuts are sampled. This sampling of wet product is used to determine the quality and payable weight of the nuts being delivered.

Once the nuts have been sampled and the trash (*i.e.*, leaves, twigs, *etc.*) has been removed, the hull or the outer layer covering the shell is removed by equipment that resembles large potato peelers. Once hulled, the pistachios are then moved through various dewatering devices prior to entering a dryer. Some handlers do some initial quality sorting between hulling and drying, but this is not universal. The nuts are then dried in high-powered dryers to about 14 percent moisture. After drying, they are placed in storage in containers that vary from 500-pound bins to 1,000,000-pound silos. During the initial phase of storage, the nuts continue to be dried by air circulation, to get them down to a safe, long-term storage moisture content of around 6 percent. At this stage, the nuts are stable and can remain in storage for up to two years.

The sample taken at delivery is processed like the rest of the nuts, *i.e.*, the trash is removed and the nuts in the sample are hulled and then dried before sorting. An assessment of the quality of the sample is then made. The assessment may include such things as a determination of the percentage of naturally split nuts, the color of the shells, and the amount of insect infestation (if any). This delivery sample may be used to determine payment to the producer, and to give the handler some idea of the characteristics of the crop he or she has to process.

The record shows that producers often commit their nuts to more than one handler. The normal practice in the industry is to have contracts between producers and handlers, many of them multi-year and often with premiums for quality. Many of the contracts also have minimum prices. Apart from this minimum price, the producer often does not know what final price he/she will receive for the pistachios. The handler makes interim payments throughout the year culminating in a final payment, usually in August following the previous September's harvest. The amount paid by the handler will depend in large part on the price that he or she obtained for the processed crop, and the costs of handling the pistachios.

When the nuts are removed from storage, the nuts are sorted, sized, graded and mechanically separated into open and closed shell product. These activities can take place in different sequences and the process varies among handling facilities. As part of this process, a considerable amount of trash, bad nuts, loose shells, etc., are removed from the product stream. At this stage, the nuts may be ready for market. However, some California pistachios are then roasted and salted by the handler prior to being placed in consumer or industrial size packages to be marketed.

Once the nuts have been roasted and salted, their shelf life is reduced as they can become rancid or stale, and they need to be stored at temperatures approximating 35 degrees Fahrenheit in order to remain completely stable. If they are not placed in cold storage, they have a shelf life of approximately nine months.

The record shows that all of these activities, from initial receipt of the pistachios at the handling facility, to final packaging of the product, should be included in the definition of "handle." These activities were identified as those necessary to prepare pistachios for entering the stream of commerce and, as such, should be included in the definition of the process which makes a person a "handler," and, thus, subject to regulation under the proposed order.

In addition, the hearing record indicates that placing California pistachios into the current of commerce from within the production area to points outside thereof for the purpose of hulling and drying, or further processing would also constitute handling. In such cases, the individual responsible for placing California pistachios into the current of commerce would be considered a handler and would be subject to the provisions of the proposed order.

USDA recommends adding a paragraph (d) to § 983.14 of the proposed order as it appeared in the Notice of Hearing. To clarify the definition of "handle," the following language is proposed to be added: "Placing California pistachios into the current of commerce from within the production area to points outside thereof."

According to the record, the acts of transporting pistachios from a producer's orchard to a processing plant within the production area and of transporting pistachios between handlers within the production area should be excluded from the definition of "handle."

The transportation of pistachios from the orchard to the handling facility is typically either performed by the producer him or her self, or contracted out to third parties. Given that neither the producer nor the contract hauler would be engaged in the process of preparing pistachios for market in this capacity, their activities should be excluded from those considered as part of "handling."

Similarly, witnesses stated that pistachios are customarily traded among handlers, and that this activity should not be considered part of the definition of "handling." Trade among handlers predominantly occurs as a means for individual handlers to buy or sell surplus pistachios and to meet the demands of their respective customers. Witnesses also explained that some handlers are better equipped to handle pistachios that present processing problems. For example, pistachios requiring re-working to meet industry quality standards may be transferred from one handler to another for more efficient processing.

The record evidence is that most producers do not handle their own pistachios. However, a producer would become a handler if the producer performs any handling functions. For example, a producer that hulls and dries pistachios before shipment for further preparation for marketing would be considered a handler. Once a producer becomes a handler, he or she would be subject to the proposed order provisions.

Material Issue Number 5(a)—Other Definitions

(a) Certain terms should be defined for the purpose of specifically designating their applicability and limitations whenever they are used in the order.

"Accredited laboratory" should be defined to mean a USDA laboratory or any other laboratory that has been approved or accredited by the U.S. Department of Agriculture for testing aflatoxin in pistachios. Witnesses testified that the aflatoxin testing and certification provisions of the proposed order are key components of the quality control program deemed necessary by the California pistachio industry. In order for the testing and certification process to be credible, the order should provide that the laboratories performing these functions must be accredited or approved by USDA.

"Act" should be defined as the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This is the statute under which the proposed regulatory program would be operative, and this definition avoids the need to refer to the citation throughout the order.

According to record evidence, "affiliation" should be defined, as it is important within the context of proposed eligibility requirements for committee members and their alternates. Witnesses testified that "affiliation" should be defined to mean a person who is: (1) A producer or handler that directly or indirectly, through one or more intermediaries, owns or controls, or is controlled by or is under common control with the producer or handler specified; or, (2) a producer or handler who directly or indirectly through one or more intermediaries, is connected in a proprietary capacity or shares the ownership or control of the specified producer or handler with one or more other producers or handlers.

According to the hearing record, the term "control" should be further defined to mean "the possession, direct or indirect, of the power to direct or cause the direction of the management of policies of a handler or a producer whether through voting securities, membership in a cooperative, by contract or otherwise."

Witnesses explained that this definition of "affiliation" is proposed to ensure that persons who are in business together as handlers or producers are limited in their representation on the administrative committee. Further discussion of affiliation and its intended use under the provisions of the proposed order appears under material issue 5(b), the establishment of an agency to locally administer the order.

"Aflatoxin" should be defined as one of the several carcinogenic mycotoxins produced by naturally occurring molds. Aflatoxin can be found, and can spread, in improperly processed and stored nuts, dried fruits and grains. According to information presented at the hearing, this group of fungal toxins is produced by the molds Aspergillus flavus and Aspergillus parasiticus. Aflatoxin is a known carcinogen and potential contaminant for pistachios.

Proposed § 983.38 sets forth a maximum aflatoxin level of 15 parts per billion (ppb) for California pistachios. This threshold was substantiated by testimony from experts in the field of aflatoxin and food contaminants, and is further discussed under material issue 5(d).

"Aflatoxin inspection certificate" should be defined to mean a certificate issued by a laboratory that is accredited or approved by USDA to indicate that a lot of pistachios was tested for and met the aflatoxin quality requirements proposed in this order. In particular, an "aflatoxin inspection certificate" would indicate that the pistachios have been tested for aflatoxin and the aflatoxin in the nuts, if any, did not exceed a level of 15 ppb. Under the provisions of this proposed order, no handler could ship pistachios for domestic human consumption that exceed an aflatoxin level of 15 ppb. Witnesses explained that any handler placing California pistachios into the stream of domestic commerce for the purpose of human consumption would be required to obtain an aflatoxin inspection certificate for each lot of pistachios handled. Aflatoxin certificates would also be important for committee record-keeping and auditing responsibilities with regard to local administration of the order.

"Assessed weight" should be defined to mean the weight of all pistachios,

clear of debris, hulled and measured at 5 percent moisture, that are received for processing by a handler within each production year. Calculation of the assessed weight would be based on the weight of the pistachios received from the field. As the handler receives pistachios, a delivery sample would be taken, and the nuts in that sample cleaned, hulled and dried to 5 percent moisture content. The actual weight of the pistachios received would then be adjusted to reflect the characteristics of the delivery sample and its final weight when dried to 5 percent moisture content. According to the record, the 5 percent moisture content is an industry standard used by all handlers.

In calculating the "assessed weight" for loose kernels, witnesses explained that the calculation method proposed in the order reflects current industry practices. To determine the weight of the kernels without shells, the weight of the kernel would be multiplied by two as it is generally accepted that the shell accounts for approximately half of the weight of a whole pistachio nut.

Witnesses also explained that assessments placed on pistachio handlers would be based on the volume of pistachios received by each handler for processing during a production year. Hence, the term "assessed weight" is essential to the committee's assessment collection. This term is further discussed in connection with proposed § 983.53, "Assessments."

The definition contained in the Notice of Hearing defined assessed weight as "* * * edible inshell pistachios received for processing by a handler * * *." USDA recommends deleting the word "edible" from the definition. This would correct a conflict between the Notice of Hearing definition of "assessed weight" and the proposed definition of "edible pistachios," § 983.13. The definition proposed under § 983.13, discussed later in this document, states that edible pistachios are pistachios that do not exceed aflatoxin and other quality provisions of the order described under §§ 983.38 and 983.39. Pistachios received from the field for processing by the handler have yet to be tested and certified as having met the proposed provisions of §§ 983.38 and 983.39. Therefore, USDA recommends the modified definition described above.

According to the hearing record, the definition of assessed weight could be modified based on a recommendation of the committee and approval by the Department through the public rulemaking process. Witnesses supported this authority so the industry would be able to take advantage of any better standard developed to determine the assessable weight of pistachios received by handlers.

"Certified pistachios" should be defined to mean those pistachios for which aflatoxin inspection certificates and minimum quality certificates have been issued. Under the provisions of the proposed order, California pistachios shipped for domestic human consumption would be required to be certified. The definition of "certified pistachios" is further discussed under material issue 5(d) related to proposed quality (including aflatoxin) requirements.

"Committee" should be defined to mean the administrative committee, which would be established pursuant to the proposed provisions of § 983.32. The Act authorizes USDA to appoint an agency or agencies to assist in the administration of a marketing order program. This definition would identify the agency to locally administer the proposed pistachio order. The committee would be comprised of eight pistachio producers, two handlers, and one public member. The establishment of a committee would be important to ensure representation of the industry and consumers to USDA.

"Confidential data or information" should be defined to mean reports and records furnished or submitted by handlers to the committee which include data or information constituting trade secrets or disclosing the trade position, financial condition, or business operations of a particular handler or its customers. This term is relevant to proposed § 983.48 pertaining to disclosure of handler information. The confidentiality requirements in that provision of the order, discussed under material issue 5(e) are consistent with those contained in the Act.

"Department" or "USDA" should be defined to mean the United States Department of Agriculture, which is the governmental body responsible for oversight of Federal marketing orders and agreements. This definition allows the usage of the USDA acronym, or reference to the USDA as the Department throughout the language of the proposed order.

"District" should be defined to mean each geographic subdivision of the proposed production area described in the marketing order. The district delineations defined would be important for the purposes of committee nominations and producer representation of the regional areas of the production area.

The record supports dividing the production area into three districts. District 1 would consist of 11 counties in Southern California (Tulare, Kern, San Bernardino, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, Riverside, San Diego, and Imperial Counties). District 2 would be comprised of four counties in Central California where pistachio production is most highly concentrated (Kings, Fresno, Madera, and Merced Counties). District 3 would consist of the remaining 43 California counties, primarily in the Northern portion of the State. The record shows that dividing the production area into these three districts would provide for adequate producer representation on the committee.

Allocation of producer membership among the districts would be based, in large part, on the relative levels of acreage and production among the districts, as well as the number of producers in each of the districts. Allocation of producer membership among the districts is discussed further under material issue 5(b).

Testimony indicated that authority should be provided to allow the committee to recommend to USDA the re-establishment of district boundaries and reapportionment of producer membership among the districts. This would allow changes in producer representation on the committee to reflect any future shifts in pistachio acreage and production within the production area.

Witnesses also stated that district changes under the California Pistachio Commission should be a criterion used in adjusting the district boundaries under the proposed order. It may be reasonable to assume that changes in the distribution of pistachio producers, acreage and production would justify district reestablishment under both the State and Federal programs. However, any recommended change in the district boundaries under the order would be evaluated on its own merits.

The definition of "district" contains authority to reestablish district boundaries. Redistricting would require a recommendation of the committee and approval by USDA through the rulemaking process. Authority for reallocation of producer membership among the districts is contained in proposed § 983.32 and is discussed later in this document.

"Domestic shipments" should be defined to mean shipments to the 50 United States and to the territories of the United States. This term is important as the proposed quality requirements (including those pertaining to aflatoxin and size) would only apply to domestic shipments. The proposed quality requirements would not apply to exports. The regulatory text of proposed § 983.12 is recommended to be modified from what appeared in the Notice of Hearing to include shipments to the District of Columbia as domestic shipments. Omission of Washington, DC as a domestic market was an oversight on the part of the proponent group, and its inclusion in the order is consistent with the record evidence.

"Edible pistachios" should be defined to mean pistachios that meet the quality requirements (including those pertaining to aflatoxin and size) set forth under the proposed provisions of § 983.38, "Aflatoxin levels," and § 983.39, "Minimum quality and size levels." In particular, edible pistachios are pistachios that have been certified that they do not exceed the maximum level for aflatoxin and that they meet the minimum requirements for shell and kernel quality (including those relating to size).

"Inshell pistachios" should be defined to mean pistachios that have a shell that has not been removed. This is to distinguish an inshell pistachio from a pistachio kernel or shelled pistachio. This term is further discussed in the context of proposed order provisions relating to quality standards under material issue 5(d).

"Inspector" should be defined to mean any inspector authorized or approved by the USDA to inspect pistachios. This term is used in connection with the quality requirements proposed to be included in the order. An inspector, for example, would pull samples for aflatoxin testing by accredited laboratories. Inspectors would also be responsible for inspecting and certifying that pistachios meet the other quality requirements of the order.

The record shows that the Federal or Federal-State Inspection Service would be designated as the agency responsible for conducting these activities. To provide maximum flexibility, however, the order should provide that any inspector so authorized or approved by the Department may perform these functions.

"Lot" should be defined to mean any quantity of pistachios that is submitted for testing for certification under the minimum quality requirements (including aflatoxin and size) of this proposed order. Specifically, a "lot" would be an identifiable quantity of pistachios handled by a handler at one time. A lot could have common characteristics, such as origin, type of packing, packer, consignor, or markings.

The record shows that the definition of lot is important in the context of traceability, as each lot tested would be issued a unique identification number. Traceability would allow handlers to respond to any sub-quality or aflatoxin issues that would necessitate preventing pistachios from entering the stream of commerce. The definition of "lot" is further discussed under material issue 5(d) in connection with the testing and certification provisions contained in proposed §§ 983.38 and 983.39.

"Minimum quality requirements" should be defined to mean those requirements specified under the proposed provisions of § 983.39, which prescribe the permissible maximum defects and minimum size for inshell pistachios and pistachio kernels handled and shipped from and within the proposed production area. Regulation of quality is central to the proposed marketing order. This term is further discussed under material issue 5(d).

In conjunction with the definition of minimum quality requirements given above, "minimum quality certificate" should be defined to mean a certificate issued by an inspector that would indicate that a lot of pistachios was tested for the quality requirements proposed in this order and whether it met those requirements. Under the provisions of this program, no handler could ship pistachios for domestic human consumption that exceeded the percentage of defects or small-sized nuts allowed under § 983.39. Witnesses explained that any handler placing California pistachios into the stream of domestic commerce for the purpose of human consumption would be required to obtain a minimum quality certificate to this effect. Therefore, minimum quality certificates are also important to the committee record-keeping and auditing responsibilities.

"Part" should be defined to mean the order regulating the handling of pistachios grown in the State of California, and all rules and regulations issued under the order. The order itself would be defined as a subpart of the part, as would individual rules and regulations.

According to record evidence "person" should be defined to mean an individual, partnership, limited liability corporation, corporation, trust, association, or any other business unit. This definition is consistent with the definition contained in the Act.

"Processing" should be defined to mean hulling and drying of pistachios grown in the production area in preparation for market. This term covers the first steps of the handling process that occurs after the pistachios are harvested.

Witnesses describing the assessment collection aspects of the proposed order explained that handler assessments would be based on the volume of pistachios initially received from the field. Record evidence suggests that it is important to differentiate between processing activities and further preparing pistachios for market, as different handlers may perform these different functions. That is, one handler may perform the initial handling function of processing (hulling and drying), while another handler performs the remaining steps in the handling process.

Witnesses stated that only those handlers conducting the initial processing activities would be responsible for paying assessments to the committee. This would preclude the same pistachios from being assessed more than once. This term is included in the discussion of proposed § 983.53, "Assessments" which appears under material issue 5(c).

"Producer" should be defined to identify those persons who are eligible to vote for, and serve as, producer members and alternate members of the committee, and those who are eligible to vote in any referendum. The term should mean any person engaged within the production area in a proprietary capacity in the production or growing of pistachios for sale.

Each business unit (such as a corporation or partnership) should be considered a single grower and should have a single vote in nomination proceedings and referenda. The term "producer" should include any person who owns or shares in the ownership of pistachios. For example, a person who rents land and produces pistachios resulting in that person's ownership of all or part of the pistachios produced on that land would be considered a producer.

Also, any person who owns land, which that person does not farm, but as rental for such land obtains ownership of a portion of the pistachios produced thereon, should be regarded as a producer for that portion of the pistachios received as rent. The tenant on such land should be regarded as a producer for the remaining portion produced on such land.

A joint venture is one whereby several persons contribute resources to a single endeavor to produce and market a pistachio crop. In such venture, one party may be the farmer who contributes one or more factors such as labor, time, production facilities or cultural skills, and the other party may be a handler who contributes money and cultural, harvesting, and marketing supervision. Normally, a husband and wife operation would be considered a partnership. Any

individual, partnership, family enterprise, organization, estate, or other business unit currently engaged in the production of pistachios for market would be considered a producer under the order, and would be entitled to vote in referenda and committee nominations. Each party would have to have title to at least part of the crop produced, electing its disposition, and receiving the proceeds there from. This control would come from owning and farming land producing pistachios, payment for farming services performed, or a landlord's share of the crop for the use of the producing land. A landlord who only receives cash for the land would not be eligible to vote. A business unit would be able to cast only one vote regardless of the number and location of its orchards, but each legal entity would be entitled to vote.

"Production year" should be defined to mean the period beginning on September 1st and ending on August 31st of each year, or such other period as may be recommended by the committee and approved by the Department. This period starts with the typical beginning of the harvest season for pistachios and would prescribe a period of conduct for the committee's administrative activities, such as preparing an annual budget of expenses and accounting for receipts and expenditures of funds. Thus, the term "production year" would be synonymous with the term "fiscal period."

Witnesses at the hearing also supported the September 1 through August 31 period because it coincides with the California Pistachio Commission's accounting year. Having the same fiscal periods could facilitate the joint management of the two programs, which could yield administrative efficiencies to the industry's benefit.

As discussed under material issue 5(c), assessments would be based on the volume of pistachios received by a handler in each production year. Witnesses at the hearing stated that, although rare, there are some instances when pistachio harvest begins earlier than September 1. Record evidence suggests that this has happened in 2 out of the past 10 production years. In an effort to reconcile potential accounting differences within the context of the proposed Federal program, witnesses suggested that any pistachios harvested as much as four weeks earlier than the beginning of September be attributed to the new year's production total. Thus, this definition would also state that pistachios harvested and received in August of any year would be counted as part of the subsequent production year for assessment and other marketing order purposes. The inclusion of pistachios harvested and received within four weeks prior to September 1 represents a modification of the order language contained in the Notice of Hearing.

"Proprietary Capacity" should be defined to mean the capacity or interest of a producer or handler that, either directly or through an intermediary, is a property owner together with the rights of an owner including the right to vote the interest in that capacity as an individual, shareholder, member of a cooperative, partner, trustee, or in any other capacity with respect to any other business unit.

Witnesses explained that this term is important to the proposed order and its provisions in that this language would make persons who are sharing ownership of a common business entity "affiliated" (see previous definition) for purposes of eligibility to serve on the committee. The term "proprietary capacity" is intended to imply ownership of a business as compared to an employee status only.

"Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture who is, or who may hereafter be, authorized to act in the Secretary's stead. The term includes any other officer or employee of the United States Department of Agriculture who has been delegated or who may be delegated the authority to act on behalf of the Secretary.

"Shelled pistachio" should be defined to mean a pistachio kernel or part thereof and is distinct from an "inshell pistachio." This term is relevant to the discussion of quality requirements set forth in proposed §§ 983.38 and 983.39, "Aflatoxin levels" and "Minimum quality levels," and proposed §§ 983.40 and 983.43, "Failed lots/rework procedures" and "Reinspection."

"Substandard pistachios" should be defined to mean shelled or inshell pistachios that do not meet the proposed quality requirements (including those related to size and aflatoxin) of the proposed order. According to the record, substandard pistachios should not be marketed for domestic human consumption. The proposed order contains specific provisions regarding the disposition of substandard pistachios. These provisions appear in proposed §§ 983.40 and 983.43, "Failed lots/rework procedures" and "Reinspection," and are discussed under material issue 5(d).

Material Issue Number 5(b)—Administrative Committee

Pursuant to the Act, it is necessary to establish an agency to administer the order locally and to provide for effective and efficient operation of the order. The establishment and membership of an administrative committee is addressed in §§ 983.32 and 983.33 of the proposed order.

The hearing record shows that the committee should consist of 11 members. Eight members should be producers, two members should be handlers, and one member should be selected from the general public. Each member should have an alternate member who, possessing the same qualifications as the member, could serve in that member's place and stead in the event that the committee member could not fulfill his or her duties.

Allocation of Producer Membership

For the purpose of producer representation, the proposed order provides that the production area be divided into three districts. District 1 would consist of Tulare, Kern, San Bernardino, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, Riverside, San Diego and Imperial Counties. District 2 would consist of Kings, Fresno, Madera, and Merced Counties. District 3 would consist of all other Counties in California not included in Districts 1 and 2.

As mentioned previously, the record indicates that producer representation from each district should be based, in large part, on the relative number of producers, bearing acreage, and volume of production in each district. According to record evidence, District 1 had 227 producers, 38,396 acres, and production totaling 95,889,846 pounds in 2001. This represents 35 percent of the total number of California pistachio producers (647), 49 percent of the State's bearing acreage (78,000) and 60 percent of total production in 2001 (160,295,282 pounds). District 2 had 358 producers (55 percent) and 36,330 acres (47 percent), and produced a total of 57,453,864 pounds (36 percent) in 2001. District 3 had 62 producers (10 percent), 3,274 acres (4 percent) and 6,951,572 pounds of production (4 percent).

Given the relative volumes and to ensure that each district's producers are represented on the committee, witnesses testified that of the eight producer members, four should be from District 1, three should represent District 2, and one should be a pistachio grower in District 3.

As discussed under material issue 5(a), § 983.11 of the proposed order (which defines the three districts) should contain authority for the reestablishment of those districts. This would enable producer representation on the committee to reflect any future shifts in pistachio production among the districts.

The record also supports authority for reapportionment of producer membership among the districts. This authority would complement the authority to reestablish districts, and would serve to allow for changes in representation in producer membership on the committee. Producer membership could be reapportioned whether or not the districts were reestablished. The record supports allowing producer membership to be reapportioned among the districts upon a two-thirds recommendation of the committee and approval of the Department (through the rulemaking process).

While the record supports the ability to reapportion producer membership, the proposed order as it appeared in the Notice of Hearing did not contain such a provision. USDA recommends adding language to § 983.32(b) of the proposed order to provide authority to reapportion producer membership among the districts.

Allocation of Handler Membership

While the record shows that producer representation on the committee should be allocated among geographic districts, such allocation is not needed for the two handler members on the committee. The two handler members would represent the production area-at-large. For one of the handler members, each pistachio handler would be entitled to cast one vote in the nomination process. For the second handler member, each pistachio handler would be entitled to cast one vote for each ton of assessed weight of pistachios processed by that handler during the two production years preceding the year in which nominations are made.

The record shows that there are 19 pistachio handlers in California, and that 1 of these handlers accounts for more than half of the volume of pistachios processed in California each year. Under the proposed provisions of the order, one of the handler members would likely represent the largest handler in the industry, since voting in the nomination process for that member would be weighted by volume. All remaining handlers would then nominate the other handler member, since any one handling entity would not be eligible to fill both handler member positions. (This limitation is discussed below.) Witnesses supported this method of allocating handler membership as adequate to ensure appropriate representation of the interests of California pistachio handlers in committee deliberations.

In weighting the nomination votes for one of the handler members, the record shows that each handler would be entitled to cast one vote for each ton (or portion thereof) of assessed weight of pistachios processed by that handler during the two production years preceding the production year in which nominations are made. Calculating the assessed weight based on two years of production is intended to take into account the alternate bearing nature of pistachio trees. Furthermore, the assessed weight of pistachios would be credited to the handler responsible under the order for the payment of the assessments. This provision would address the fact that pistachios are often traded or sold by one handler to another after they are harvested. Attributing the volume of pistachios to the first handler of those pistachios would preclude double counting of nuts that are transferred from one handler to another. It would also provide the most accurate measure of the relative volumes of pistachios handled by each handler.

Witnesses at the hearing testified that all handlers currently process (hull and dry) pistachios. Thus, all handlers would be able to participate in the nomination of both handler members on the committee.

The record supports authority in the proposed order to revise handler representation on the committee to ensure that industry representation remains appropriate. This provision would allow for flexibility in the order to accommodate for future changes in industry structure. For example, if a significant number of handlers in the industry ceased to process pistachios, it could be appropriate to weight their votes in the nomination process on some other basis than the assessed weight of pistachios. Any change in handler representation would require a recommendation by the committee and approval by USDA through the rulemaking process.

Committee Member Affiliations

The order should provide that not more than two members of the committee, and not more than two alternate members, could be employed by or affiliated with the same handler and/or producer. Additionally, only one producer member and alternate in any one district and only one handler member and alternate could be affiliated.

The record evidence is that the membership of the committee should be representative of the industry as a whole. No one group of people who share common business interests should be able to gain control of committee decision making. To accomplish this goal, the order should limit the number of positions the members of any one affiliated group could hold.

As previously mentioned, one handler in the industry accounts for more than half of the California pistachios handled annually. The record shows that the two-member limitation is in large part intended to prevent any entity, and its many affiliates, from dominating committee actions. The limitation is designed to assure fair representation on the committee, given the current nature and structure of the California pistachio industry.

As discussed under Material Issue 5(a), the term "affiliation" should be defined broadly so that it encompasses the many different relationships through which people have common business interests.

Witnesses at the hearing gave several examples to illustrate their view of how this limitation on committee membership should work. In the case of a corporate handler, all of its shareholders should be considered an affiliated group because they would be connected in a proprietary capacity and share in the ownership and control of the corporate handler. In this scenario, the shareholders and employees of the corporation would be limited to one handler member on the committee; they could not hold both handler member positions. If the corporation was also a pistachio producer, a producer member could also represent the affiliated group. In no case could more than two committee members represent that affiliated group.

Another example offered by witnesses described one corporation owned by one set of shareholders and a second corporation with a separate set of shareholders that jointly own a handling entity. In this case, the employees of the handling entity and both of the corporations, and both sets of shareholders, would be considered as one affiliated group. As such, this combination of two corporations and one handler would be limited to a maximum of two committee positions.

A third scenario described by witnesses entailed a corporation, owned by its shareholders, and a producer cooperative that jointly own a handling entity. The cooperative was comprised of producer members who grow pistachios and share in the proceeds of the sale of all of the pistachios of the

members pooled together. In this case, the corporation (owned by its shareholders) and the cooperative (owned by its members) would be affiliated through their common control of the handler. Therefore, this combination of corporate employees and shareholders, cooperative employees and members, and handler employees, would constitute a single affiliated group. The entire group would be entitled to no more than two representatives on the committee.

Witnesses also testified about a producer who sells pistachios to a handler for cash or a fixed price plus bonuses but has no ownership or proprietary interest in that handler. In such a case, the producer would not be affiliated with that handler for purposes of committee membership.

In a final illustration, if a producer is a shareholder or a member of, or directly or indirectly owns a handler, that producer would be considered a part of the handler's affiliated group. This would be true even if that producer sells part of his or her crop to another handler that is not part of the affiliated group.

Cooperative Affiliation

As discussed above, members of a producer cooperative would constitute an affiliated group for purposes of committee membership. The record shows that the order should contain a provision to clarify when a person ceases to be affiliated with a cooperative for those purposes.

As explained for the record, cooperatives usually retain from their profits, which would otherwise be paid pro rata to its members, such amount as is needed for its capital needs and reserves. These "retains" are allocated and then paid pro rata to each member whenever the capital needs change or are replaced by new retains in subsequent years. This is known as "revolving capital."

Paragraph (f) of proposed § 983.33 should provide that a producer who has not marketed pistachios through a cooperative during the current and one preceding production year would no longer be considered "affiliated" with that cooperative. This would be true even if the cooperative continued to hold that producer's retains. If the cooperative holds none of the producer's retains, that producer would become unaffiliated with that cooperative at the time his or her membership is terminated.

The record supports an additional clarification concerning producer cooperatives. There may be an occasion where a producer cooperative has, as a member, another producer cooperative that handles pistachios. While the members of both cooperatives would be considered affiliated, the producer cooperatives would still qualify as producers for purposes of voting for producer members on the committee.

Qualifications of the Public Member

At the hearing, witnesses supported having a public member on the committee. The appointment of a public member would offer many advantages. One such advantage would be that the committee would have an impartial individual, having no economic interest in the pistachio industry, with whom to discuss industry problems and concerns. Such a person could offer a unique perspective in committee deliberations.

As such, witnesses recommended that the public member and alternate public member should not be permitted to have a financial interest in the production, processing, financing, buying, packing, or marketing of pistachios, except as a consumer. This member and his or her alternate would also be precluded from being a director, officer, employee or affiliate of any firm or business entity engaged in the pistachio industry. The public member should be willing to devote sufficient time to regularly attend committee meetings and become familiar with the background and economics of the industry, as well as the provisions of the proposed order. Testimony indicated that the committee could be able to establish (with the approval of USDA) further qualifications the public member and alternate member should possess, if deemed necessary.

Nominations

For the proposed committee to function, a mechanism is required by which members and alternate members would be nominated by their peers, and selected and appointed by the Department. Nomination procedures are set forth in the proposed provisions of §§ 983.32 and 983.33.

The order should provide that USDA would conduct nominations for initial producer and handler members of the committee. Such nominations could be made either at industry meetings, or by mail. The provisions also state that the first nominees must meet the same qualifications as required for their successors. While the Department would have discretion in determining a reasonable process to conduct initial committee nominations, the committee should be established as provided in § 983.22 of the proposed order.

A revision in paragraph (a) of § 983.33 is recommended. This revision would clarify that USDA would conduct the initial nominations of producer and handler members and alternates only. The initial public member and alternate would be nominated by the industry members of the committee, as described later in this document.

Successor Producer and Handler Members

The record evidence is that the committee staff should conduct subsequent nominations for producer and handler members of the committee. To facilitate maximum participation in the process, nominations would be conducted by mail ballot.

The record evidence shows that producer and handler member nominations would entail several steps. First, individuals seeking nomination would be required to establish their qualifications to serve as a California pistachio producer or handler, and to identify the district (for producer seats) they are seeking to represent. Candidates would also be required to identify whether they intend to seek nomination as a producer or handler member. Considering that many pistachio handlers are also producers, witnesses recommended that individuals be limited to seeking nomination as one or the other. In other words, the same individual would not be allowed to simultaneously seek a producer and a handler seat; his or her name could only appear on the producer or the handler ballot, not both.

The record shows that individuals seeking to fill member seats would need to submit notice of their intent to run as a nominee to the committee in advance of nominations. This would allow the committee staff adequate time to determine a candidate's eligibility in advance of issuing nomination ballots, and would allow for any questions or informational needs to be addressed in advance of voting for nominees.

Once qualified candidates are identified, ballots containing the names of those individuals and additional space for write-in candidates would be prepared. The ballots, together with voting instructions, would be mailed to all producers and handlers who are on record with the committee. The committee staff would tally the votes and submit its nomination report to USDA for selection.

The hearing record supports the same general approach for nominations of both producer and handler members. However, the language contained in the Notice of Hearing did not include provisions specific to successor handler nominations. USDA is suggesting that proposed § 983.33(b) be modified accordingly.

The record shows that the committee should have authority (with USDA approval) to establish additional rules and regulations governing the nomination process, if deemed necessary. This authority would apply to both producer and handler member nominations.

Producer Members

Witnesses explained that individuals seeking candidacy for nomination to a producer seat would be required to designate the district in which they seek election and substantiate their qualification as a producer, or designated representative of a producer, in that district. However, testimony also clarified that the order would not require that the candidate be a resident of that district. Witnesses explained that it would not be reasonable to impose such a requirement since not all producers live in the same district in which they produce pistachios. Such a residency requirement would, therefore, preclude a number of pistachio producers from being able to serve on the committee.

Record evidence states that only producers would be qualified to serve as producer members and to participate in the nomination of producer members and their alternates. Producers can be corporations, partnerships, limited liability companies, trusts or other legal entities, as well as a sole proprietorship owned by an individual. The owners of the pistachio groves could designate an officer or employee to seek membership and to cast the votes on their behalf. As proposed, officers and employees would not include professional farm managers who perform farm management services for a number of different producers without being an employee or an officer of the producer. The intent is to limit those eligible to serve as producer members to persons who are involved, either as a producer with a proprietary interest in the pistachio industry or an employee working in the industry for a producer.

Each producer would be entitled to cast one vote, either in person or through an authorized officer or employee, for each producer member position to be filled in his or her district. Witnesses suggested that rules and regulations could be recommended by the committee and approved by the Department that would require such authorization to be in writing and to be addressed to the committee. A producer would only be able to cast his or her vote in the district in which that producer produces pistachios. If the producer were engaged in producing pistachios in more than one district, then the producer would need to select a district in which to participate as a nominee and/or as a voter. A producer would not be allowed to vote for candidates in more than one district.

Producers receiving the highest number of votes in each district would be designated nominees for their respective districts. Alternates for each nominee would be the candidates receiving the second highest number of votes in the same district. In the case of a tie, witnesses recommended that final nominees and their alternates be selected by a drawing.

Handler Members

Handler nominees would be selected for the production area as a whole, and final candidates would be determined based on those two individuals receiving (1) The most votes representing handlers by number, and (2) the most votes representing handlers by volume. Alternates would be designated as those individuals receiving the second highest vote in each respective category. Handler voting procedures are further described below.

Record evidence specifies that only handlers could participate in the nomination of the handler members and their alternates. Handlers would include the duly authorized officers or employees of handlers. Since many of the handlers are incorporated, a corporation or other business entity would be required to designate its representative. Individuals could also designate an employee to act on behalf of the proprietorship through a written designation signed by the owner.

As indicated above, handler representation would be divided into two categories, with one member nominated by a number vote and the other member nominated by a volume vote. The former would be nominated by receiving the highest number of votes placed by voting handlers, with each handler having one vote. That member's alternate would be the candidate receiving the second highest number of votes.

The provisions of the proposed order provide that if a person were both a producer and a handler of pistachios, that person would be able to participate in both the producer and handler nominations. While a single individual may not hold more than one seat on the committee, a producer who is also a handler could designate an officer or employee as a handler nominee, and another representative as a producer nominee. The affiliation provisions described above would apply.

Members of the committee, at the time of their selection and during their term of office, must be pistachio producers or handlers, or officers or employees of a producer or handler. If that relationship should terminate during their term as a committee member or alternate, that person would become disqualified to serve further, and the position would be deemed vacant.

Public Member

The provisions proposed under § 983.32(c) would govern nomination and selection of the public member and alternate member. According to the record, the public member, who would be neither a pistachio producer nor a handler, would have all the rights and responsibilities of any other member of the committee. The record evidence is that the producer and handler members of the committee should nominate the public member. Witnesses explained that industry committee members would be in the best position to identify individuals who are qualified and willing to serve. Once the committee identified possible public member and alternate public member candidates, the committee would make a recommendation to USDA for final approval and selection by the Department.

Alternate Members

The order should provide for the nomination and selection of an alternate member for each committee member. Alternates would be subject to the same eligibility requirements as committee members. They would act in the place and stead of the committee members they are alternates for when the committee members cannot fulfill their committee obligations. Alternates would provide continuity and stability to committee operations by ensuring full representation of the industry, including their particular district and group (producers or handlers).

Alternate members would be nominated in the same manner as committee members, except that the recommended alternate(s) would be the individual(s) receiving the next highest votes to the nominee(s) receiving the highest number of votes. If a person were selected as an alternate from the same district as a member and both are employed by or connected in a proprietary capacity with the same business entity, the alternate would serve as the alternate to that member.

When serving in the place and stead of their committee members, alternate members would be able to exercise all

of the rights, duties and powers of those members as though they were serving as full members of the committee. Alternate members would only be allowed to vote in the absence of those members for whom they are alternates, or when they succeed to those members' positions.

Record evidence also shows that an alternate member should succeed his or her member in the event of that member's death, removal, resignation or disqualification. The alternate would then serve until a successor was selected and qualified.

Selection by USDA

Record evidence states that once the nomination process for producer and handler members is completed, and the industry has voted on committee member and alternate candidates, nomination reports or committee minutes would be prepared by the committee staff and sent to the USDA. This should be done at least 60 days prior to the beginning of each two-year term of office (or by May 1). The Department, after determining that the conditions and qualifications of each nominee have been met, would then select the 10 producer and handler members of the committee and an alternate for each of those members based upon the nominations.

As previously mentioned, the newly appointed industry members of the committee would nominate the public member and alternate member. USDA would also be responsible for selecting the public member and alternate.

Nominees would be required to indicate in advance of their selection that they are willing to accept the position for which they were nominated. Agreeing in advance to serve as a committee member or alternate would avoid possible delays in the appointment of the committee.

In the event that nominations are not made within the time and manner specified in the order, the USDA could appoint members and alternates without regard to nominations. Those appointments would be made on the basis of representation provided in proposed §§ 983.32 and 983.33.

Term of Office

Record evidence suggests that the term of office should begin on July 1 and last for 2 years. The month of July represents a natural break in the California pistachio production cycle, with each new harvest beginning typically in September, or at the earliest in August. Moreover, witnesses indicated that this time frame would allow adequate time for committee members and staff to prepare an annual budget, develop a marketing policy for the upcoming production year, and make any recommendations to the Department for any needed regulatory changes prior to harvest activities.

In addition, witnesses at the hearing indicated that terms should be staggered so that approximately half of the committee members' positions would be filled each year. This provision would ensure that continuity in experience among committee members was maintained, yet provide for new members with new ideas and fresh perspectives to participate in the administration of the order. To initiate this process, witnesses recommended that the first committee members nominated would be divided into two groups by a drawing to determine whether they would be seated for initial terms of one year or two years. Four producer members, one handler member and their alternates would serve an initial term of about one year. Remaining industry members and the public member (and their alternates) would serve an initial term of about 2 years.

The regulatory text contained in the Notice of Hearing failed to specify that the term of office should apply to all committee members and their alternates. Paragraph (k) of proposed § 983.33 has been revised to correct this.

Term Limits

Record evidence supports term limits to spread the involvement of the pistachio producers and handlers, and increase industry participation in administering the marketing order. Term limits should apply to all committee members and alternates, including those representing the public. The maximum number of terms that an individual would be allowed to serve for would be four consecutive two-year terms of office, or a maximum of eight consecutive years on the committee. The tenure requirements would apply to both committee members and alternate members. Once a person has served as a member and/or alternate for 8 years, that person would not be eligible for renomination. He or she would be eligible to serve again after 12 consecutive months out of office.

Vacancies

Any vacancy on the committee would be filled by a majority vote of the committee members remaining for the remaining unexpired term of the vacant position. This authority appears in paragraph (j) of proposed § 983.33. The replacement must fulfill all of the qualifications set forth as required for any other nominee for the position, and that person's qualifications would have to be certified to USDA. The Department could then appoint the nominee to serve the balance of the term.

This procedure would eliminate the need to conduct a special nomination to fill a vacancy for the balance of a term, which would be less than two years in any case. It would also serve to address situations in which a member's position is vacant and the alternate declines the position or is not available to fill the vacancy, as provided in proposed § 983.33(g). The authority could also be used to fill a vacancy for an alternate member.

Proposed Quorum and Voting Provisions

The record evidence is that once the committee is appointed, a quorum of the committee would consist of seven committee members. This would include handlers, producers and the public member. Except as discussed below, any action of the committee would require the concurring vote of a majority of the committee members present. An alternate could serve as a member for purposes of constituting a quorum and voting if the member is absent.

Record evidence indicated, however, that certain issues are of sufficient significance to the industry that action should require a greater degree of consensus than a simple majority vote would demonstrate. Witnesses testified that there are four areas that should require at least seven concurring votes, prior to any recommendation being made to the USDA. The first involves any modifications of the minimum quality levels set forth in proposed § 983.39. The second entails any change in the aflatoxin levels prescribed in § 983.38 of the proposed order. Adjustments in the sampling and inspection requirements included in the order with respect to minimum quality (including aflatoxin) requirements is another area that should require seven concurring votes. And, finally, the record indicates that recommendations related to changes in committee representation (including qualifications and affiliation issues) should require a higher level of committee member agreement.

As such, this proposal provides that any recommended change or modification to the issues outlined above would require at least seven concurring votes. Any other actions by the committee could be determined by a simple majority of those voting.

The record shows that at committee meetings, members could cast their vote by voice or in writing. Participation by telephone would be permitted as long as the equipment used would allow all meeting participants to hear and communicate with each other. Telephone or similar communication equipment could include conference call equipment and/or audio-visual equipment that would allow all members to participate in a meeting simultaneously.

If for some reason an action must be taken without a meeting, record evidence indicates that such action would require a unanimous vote of the committee, and the votes would have to be in writing. Witnesses testifying at the hearing stated that the types of committee actions contemplated without a meeting would be limited to issues of routine business or those of relatively minor importance, such as approval of meeting minutes. Such matters would not merit the time and expense of holding an assembled meeting. This proposed provision is common to several existing marketing orders and would enhance the committee's decision-making abilities on simple administrative matters.

Compensation

While testimony supported reimbursement of necessary expenses incurred by committee members attending meetings, witnesses testified that no compensation should be made to pistachio producers and handlers for their service on the committee. To the extent the committee requested the attendance of alternate members, those alternates would also be entitled to reimbursement of their expenses.

Record evidence did support compensation, in addition to the necessary expenses, of the public member. In order to get the level of experience and background required to serve as a qualified, effective public member, witnesses stated that it might be necessary to compensate that person for his or her time. Compensation would need to be set at a reasonable level, and should be consistent with that person's experience and background.

Committee Powers and Duties

The committee, under proposed § 983.35, should be given those specific powers that are set forth in section 608c(7)(C) of the Act. Such powers are necessary for an administrative agency, such as the proposed committee, to carry out its proper functions. According to record evidence, the committee would have four general powers under the proposed provisions of this order:

(1) To administer the provisions of the order;

(2) To adopt by-laws, rules, and regulations for the implementation of the order with the approval of the Department;

(3) To receive, investigate, and report to the Department complaints regarding violations of the order; and

(4) To recommend marketing order amendments to the Department.

These powers are necessary to carry out the committee's functions under both the proposed order and the Act. Witnesses indicated that these powers would enable the committee to make recommendations to the Department that reflect the conditions in the industry from their knowledge and experience.

The specific duties of the committee as set forth in § 983.36 of the proposed order are necessary for the discharge of its responsibilities. These duties are similar to those typically specified for administrative agencies under other marketing order programs. They pertain to specific activities authorized under the order, such as investigating and compiling information regarding California pistachio marketing conditions, and to the general administration of the program including hiring employees, appointing officers, and keeping records of all committee transactions. The proposed order delineates the committee's duties as follows:

(1) The committee should adopt bylaws and rules for the conduct of its meetings and for such other purposes as it deems necessary. The committee should also select such officers from among its membership, including a chairperson and vice-chairperson, as may be necessary, and define the duties of such officers.

(2) The committee should employ such persons as it deems necessary to effectively and efficiently operate the program. The committee could enter into contracts or agreements with such persons, determine their duties, and establish appropriate levels of compensation. Such contracts or agreements would pertain to the provision of services required by the order and for the payment of the cost of such services with funds collected under the order.

(3) The committee should select such subcommittees as may be necessary.

(4) The committee should submit to the USDA a budget for each fiscal period, prior to the beginning of such period. The budget submission should include a report explaining the budget items and the committee's recommendation as to the rate of assessments for the fiscal period.

(5) The committee should be required to keep minutes, books, and records that reflect all of the acts and transactions of the committee. Such records would be subject to examination by the Department.

(6) The committee should prepare periodic statements of the financial operations of the committee and make copies of each statement available to producers and handlers for examination at the office of the committee.

(7) The committee should be required to have its financial statements audited by a certified public accountant at least once each fiscal year and at such times as the USDA may request. Such audits should include an examination of the receipt of assessments and the disbursement of all funds. The committee should provide USDA with a copy of all audit reports and should make copies of such audits, after the removal of any confidential individual or handler information that may be contained in them, available for examination at the committee's office.

(8) The committee should act as an intermediary between USDA and any pistachio producer or handler with respect to the operations of the order.

(9) The committee should investigate and assemble data on the growing, handling, shipping and marketing conditions with respect to pistachios.

(10) The committee should be required to apprise the Department of all committee meetings in a timely manner.

(11) The committee should be required to submit to USDA such available information as the Department may request.

(12) The committee should have the duty to investigate compliance with the provisions of the order.

(13) The committee should provide, through communication to producers and handlers, information regarding the activities of the committee. The committee should also respond to industry inquiries about committee activities.

(14) The committee should oversee the collection of assessments levied under the order.

(15) Finally, the committee should have the authority to borrow such funds as may be necessary to fulfill its responsibilities and obligations. Any loan would be subject to USDA approval and could not exceed the expected expenses of one fiscal year.

Witnesses explained that the above-outlined duties are important to the efficient and functional operation of the committee.

Material Issue Number 5(c)—Expenses and Assessments

The committee should be required to prepare a budget showing estimates of income and expenditures necessary for the administration of the marketing order during each fiscal year. The budget, including an analysis of its component parts, should be submitted to USDA sufficiently in advance of each fiscal period to provide for USDA's review and approval. The budget should also include a recommendation to USDA of a rate of assessment designed to secure income required for such fiscal year.

The committee should be authorized under § 983.52 of the proposed order to incur such expenses as the Department finds are reasonable and likely to be incurred during each fiscal, or production, year. Such a provision is necessary to assure the maintenance and functioning of the committee, and to enable the committee to perform its duties in accordance with the provisions of the order.

The record states that funds to cover the committee's expenses would be obtained through the collection of assessments from handlers who process pistachios in the proposed production area. These assessments are intended to reflect each handler's proportional share of the committee's expenses. As such, assessments would be based on the total amount of pistachios processed by each handler relative to the total amount of pistachios processed by the industry as a whole during a given production year.

Witnesses explained that since pistachios are often transferred between handlers for further preparation or packaging for market, it would be appropriate to apply assessment calculations to the handler who first handles a particular lot of pistachios. By assessing the handler who initially receives a lot of pistachios, the industry intends to prevent having assessments paid more than once for the same pistachios. The previous discussion of the definition of "assessed weight" further clarifies this calculation.

Testimony in support of proposed § 983.52 covering committee expenses indicates that prior to the beginning of each production year, and as may be necessary thereafter, the committee should prepare an estimated budget of expenses necessary for its effective administration of the order. Based upon this estimate, the committee would calculate and recommend to the Department a rate of assessment that would provide adequate funds to cover the cost of projected expenditures. Preparing a budget for the committee prior to the beginning of each fiscal period is reasonable. A budget is necessary to provide the committee and the Department with a basis for determining the assessment necessary to cover the cost of operation.

The committee would present its annual budget to USDA for review and approval. Accompanying the budget would be a report showing the basis for its calculations, an explanation of each line item, and any proposed year-over-year increases or decreases.

Assessments would be levied at the rates established by USDA. Establishment of such assessment rates would be accomplished through the informal rulemaking process. Such rates would be established on the basis of the committee's recommendations or other available information.

Witnesses stated that any assessment rate recommended to the Department should be limited to a maximum rate of one half of 1 percent of the industry's previous production year's average producer price. The average producer price would be calculated by the committee and would be based on the previous year's average grower receipt per pound of pistachios.

The record shows that recent producer prices for pistachios were around $1.10 per pound. If the average producer price calculated by the committee for the previous year was $1.10 per pound, the maximum assessment rate for the current year's crop would be $0.0055, or approximately one half a cent per pound. Applying this rate to 2001 production of about 160 million pounds would yield a maximum assessment income of $880,000. Witnesses testified that this should be sufficient to operate the proposed program.

The intent of the maximum limit on the assessment rate is to assure pistachio producers and handlers that program expenses would be kept within specified limits, and that no projects requiring extraordinary expenditures would be undertaken. The proposed limit appears reasonable for the administration of a program of this nature.

Witnesses reasoned that there could be times during a fiscal period when it would become necessary to revise the budget and/or increase the assessment. Such instances could include situations where actual harvest is lower than anticipated or the committee incurs unforeseen expenses. In this regard, witnesses stated that the assessment rate should not be increased without the committee first making a recommendation and securing approval of the Department to do so. Such recommendation would also need to be made prior the issuance of that production year's final handler assessment bill. Any assessment increase would be applicable to all pistachios received and processed by handlers within the proposed production area for that production year.

During the hearing, questions were raised regarding proposed order language contained in the Notice of Hearing. Language in the Notice provided that any change to the assessment rate would be required to be recommended and approved before October 1 of any production year and before the date established for payment of the assessment. Discussion at the hearing resulted in witnesses acknowledging that situations could arise where these deadlines would be too restrictive, and would prevent the committee from being able to address unforeseen shortfalls in assessment income.

Accordingly, witnesses recommended that the committee, as necessary, be permitted to adjust the rate of assessment (with USDA's approval) at any time before the final billing is made for the assessment. Section 983.53(b) should therefore be modified by removing the October 1 deadline and clarifying language that would allow the committee to recommend changes to the assessment rate before the issuance of the last handler assessment billing statement.

Record evidence in support of proposed § 983.55 indicates that if assessments are not paid within the time prescribed by the committee, the handler would be required to pay to the committee a late payment charge of 10 percent of the amount of the assessment determined to be past due and, in addition, interest on the unpaid balance at the rate of 1½ percent per month. Late payment charges and interest on unpaid balances are reasonable in encouraging timely payment of assessments and compensating the committee for expenses incurred in collecting unpaid assessments.

While supporters of this proposal indicated that any assessments imposed under the program would be quite modest, timely collection of those assessments would be important in order to efficiently and effectively administer the provisions of this proposed program. Moreover, they indicated that if one handler were to become delinquent in paying his or her assessments, this could serve as an incentive for others to also become delinquent. Witnesses felt that the proposed late payment and interest

charges would help to ensure stability in the flow of committee funds collected through assessments.

The record evidence is that the committee should have the authority to recommend other rates for late payment and interest charges, as may be appropriate. Section 983.55 is being modified to clarify this point. Any change in these rates would require approval of the Department through the informal rulemaking process.

The Department is recommending several additional modifications in proposed § 983.55. The language contained in the hearing notice provided that in addition to delinquent assessments, late charges and interest would be imposed on handlers who fail to file required reports under the order. Since (in the case of unfiled reports) there would be no monetary value upon which to impose these charges, this provision is found unworkable and is therefore deleted.

Witnesses also supported a provision that if a handler is delinquent in paying his or her assessments for more than 60 days, the committee could request that the USDA stop providing aflatoxin and grade and size inspections to the delinquent handler. Witnesses also suggested that the committee could require any handler who fails to pay an assessment or related charge to furnish and maintain a surety bond in a form and amount, and for a period of time, specified by the committee. These provisions are not typical in relation to delinquent assessments under a marketing order program. Thus, these provisions are being deleted from § 983.55 of the proposed order. The Department would work with the committee staff in determining an appropriate course of action relating to violations of the proposed order, including nonpayment of assessments.

Under the proposed order, the committee would be allowed to accept voluntary contributions. Contributions could only be used to pay for authorized committee expenses. The committee may accept contributions, for example, to fund the operations of the order during the first part of a production year, before sufficient income is available from assessments on the current year's pistachios.

A section on accounting is necessary to assure handlers and the industry that funds would only be used for the purposes intended, that there would be a proper disposition of excess funds, and that a detailed accounting would be made of such disposition. Under the order, the committee would only be authorized to incur such expenses as USDA finds are reasonable and likely to be incurred by it during each production year for its maintenance and functioning, and for such other purposes as the Department may determine to be appropriate.

Paragraph (a) of proposed § 983.56 provides for situations where, at the end of the fiscal period, the assessments collected may be in excess of expenses incurred. According to record evidence, the provisions under this section would allow the committee, with the approval of the Department, to establish an operating monetary reserve. This would allow the committee to carry over to subsequent production years any excess funds in a reserve, provided that funds already in the reserve do not exceed approximately two years' expenses. If reserve funds do exceed that amount, the assessment rate should be reduced to bring the reserves to a more reasonable level. These reserve funds could be used to defray expenses during any production year before assessment income is sufficient to cover such expenses; to cover deficits incurred during any fiscal period when assessment income is less than expenses; to defray expenses incurred during any period when any or all provisions of the order were suspended or inoperative; and, to cover necessary expenses of liquidation in the event of termination of the program.

If any excess funds were not retained in a reserve, each handler who paid assessments would be entitled to a proportionate refund of the excess assessments collected. If excess assessments remained at the end of a given production year, the committee could apply each handler's excess as a credit for handlers towards the next production year's operating costs, or the committee could refund such funds to the handlers.

Testimony states that all funds received by the committee pursuant to the provisions of the proposed order would be used solely for the purposes specified in the order. Moreover, § 983.56 would authorize the Department at any time to require the committee and its members to account for all receipts, disbursements, funds, property or records for which they are responsible. This authority is necessary to ensure that proper accounting procedures are followed at all times.

Whenever any person ceases to be a member of the committee, that individual should be required to account for all receipts and disbursements for which he or she was responsible. That person should also be required to deliver all property and funds in such person's possession to the committee. Finally, that person would execute such assignments and other instruments as might be necessary or appropriate to vest in the committee full title of all committee property and funds.

In the event the proposed order were to be terminated or become inoperative, the committee, with the approval of USDA, would appoint one or more trustees for holding records, funds or other property of the committee. Any funds not required to defray the necessary expenses of liquidation would be returned, to the extent practicable, pro rata to the handlers from whom such funds were collected. Distribution of those funds would be carried out in a way that the Department deems appropriate.

Material Issue Number 5(d)—Quality and Inspection Requirements

According to record evidence, provisions regarding maximum aflatoxin levels, minimum quality levels (including size requirements), and testing and certification procedures should be included in the proposed order. These provisions are captured under the proposed §§ 983.38 through 983.46.

Presently, certain pistachio quality controls are in place under the California Pistachio Marketing Agreement (agreement). The agreement is effective under the California Marketing Act (Chapter 1, Part 2, Division 21 of the Food and Agricultural Code of the State of California). The regulations in effect under the agreement prohibit the blending of naturally and artificially opened pistachios; ban the practice of bleaching pistachios; and require mandatory aflatoxin testing for shipments to specified export markets. These regulations are voluntary in that they apply only to handlers who choose to sign the agreement. The record evidence is that signatories to the agreement current account for 82 percent of the pistachios produced in California.

The proposed Federal order would establish mandatory testing and certification requirements for California pistachios distributed for domestic human consumption. The order would include requirements that set maximum tolerance levels for aflatoxin and defects, and a minimum allowable size. The requirements under the proposed order would not duplicate or contradict the regulations under the State agreement.

According to the record, in preparation for this proposal, the California pistachio industry initiated a study group on pistachio quality assurance issues in May 2000. The

purpose of this study group was to identify areas of quality regulation that would elicit consensus and support among industry producers and handlers. Record evidence also states that the proposed regulatory provisions are based on current industry practices and are substantiated by a wide body of scientific research and data.

Record testimony ties the industry's concern over the regulation of aflatoxin in pistachios to the protection of consumer interests by preventing the sale of contaminated nuts. Witnesses repeatedly cited evidence demonstrating consumers' reluctance to buying defective or damaged pistachios contaminated with mold. Consumer concerns about the presence or threat of aflatoxin in pistachios makes the regulation of aflatoxin bearing molds important.

Moreover, witnesses testified that if there were an outbreak of aflatoxin contamination in pistachios, widespread consumer reluctance to buy pistachios could result, even if the contamination was limited and quickly remedied. Witnesses feared that a single occurrence of aflatoxin contamination in pistachios could devastate the California pistachio industry and create effects that could take years and substantial financial resources to overcome.

Record evidence demonstrates the importance of regulating quality (including size) in tandem with aflatoxin, as research suggests a strong correlation between some sub-quality characteristics (for example, "early-split" pistachio nuts) and the propensity for aflatoxin contamination.

Evidence presented at the hearing suggests that aflatoxin contamination first occurs in the field and can continue to occur until pistachios are dried to a level where mold cannot grow. Industry research shows that most of the aflatoxin occurs in early split nuts or pistachios where the hull is damaged prior to harvest. A high percentage of small pistachios have a tendency to split early compared to larger pistachios. Accordingly, witnesses explained that there is a strong correlation between smaller, lighter pistachios with staining on the shell and the presence of aflatoxin.

Record evidence presented on the basis of research conducted by Mark A. Doster and Themis J. Michailides ("Characteristics of Pistachio Nuts with Aspergillus Molds," 1991) delineates a positive correlation between early split pistachios and aflatoxin. A witness citing this study quoted, "Early splits (ES) are pistachio nuts that have both hull and shell split and frequently have moldy and/or insect-infested kernels. The hulls of ES nuts split over a several week period prior to harvest. Those ES that split earlier than two weeks before harvest had four times greater Aspergillus mold contamination compared with ES that split within two weeks of harvest. Both older ES and ES with moldy kernels had very different physical characteristics compared to normal nuts: fruits and kernels weighed less, hulls were more shriveled, and shells were smaller and stained * * *. In a typical orchard approximately 1 to 4% of the nuts are ES at harvest time. Molds in the genus Aspergillus are frequently found in ES nuts."

According to other studies cited at the hearing, 90 percent of aflatoxin is contained in 4.6 percent of low-quality pistachios. Witnesses citing these studies further stated that removal of low-quality product, defined as smaller, lighter, stained-shell nuts typically found in "early splits", would reduce the average presence of aflatoxin in pistachios from 1.2 to 0.12 nano-grams/gram (ng/g) for all product sold for human consumption.

Furthermore, drawing from a study on the distribution of aflatoxin in processed and unprocessed pistachios, witnesses cited the study's conclusion that, "all aflatoxin found here arises in the orchard; none is produced under normal processing conditions."

Record evidence demonstrated that aflatoxin occurs rarely in a very small number of nuts, it originates in the field, and it is predominantly found in early split or damaged pistachios which have very different physical characteristics than higher quality pistachios.

Due to the exceptional physical characteristics of the infected nuts, witnesses explained that these nuts should be removed as part of the industry's handling procedures. As such, witnesses advocated the implementation of mandatory regulations that would not only set a maximum level of aflatoxin, but also, through quality and size specifications, encourage the removal of those nuts that both have the least consumer acceptance and are most likely to harbor aflatoxin.

Marketing Policy

Proposed § 983.37 would require that the committee prepare and submit to USDA prior to August 1st of each year an annual marketing policy. The marketing policy would serve as the basis for any committee recommendations for revisions in quality regulations for the upcoming crop year. Record evidence explained that in developing its marketing policy, the committee should consider production, harvesting, processing and storage conditions, as well as current and prospective prices.

Proposed Aflatoxin Provisions

According to testimony presented by Dr. Al Eaton, Director of the Center for Ecogenetics and Environmental Health, and the Department of Environmental Health, School of Public Health and Community Medicine, both of the University of Washington, aflatoxin is a known contaminant in pistachios. Dr. Eaton's testimony outlined the scientific arguments behind regulating aflatoxin as a known human carcinogen. Other witnesses argued that regulation of aflatoxin is an important factor contributing to the quality of pistachios. Witnesses testified that regulation of aflatoxin is crucial to positive acceptance of pistachios among consumers and growth of consumer demand.

As stated by Dr. Eaton, the U.S. and international scientific communities have reviewed the significance of aflatoxin in human food and animal feed extensively. Dr. Eaton referred to studies by Eaton and Groopman, 1994, as well as the Food and Agriculture Organization and World Health Organization's Joint Expert Committee on Food Additives (JECFA), 1998. Dr. Eaton stated that limiting aflatoxin in affected commodities is important in regard to these concerns.

Proposed § 983.38(a) would provide for a maximum aflatoxin level for pistachios shipped for domestic human consumption. The level supported by record evidence is 15 parts per billion (ppb). Under this provision, no pistachios with an aflatoxin level greater than 15 ppb could be shipped for domestic human consumption. Witnesses testifying at the hearing stated that the 15 ppb threshold is an appropriate level to ensure the quality of pistachios. Witnesses also explained that 15 ppb is the maximum level of aflatoxin allowed in peanuts, another commodity known to be affected by aflatoxin-bearing molds (7 CFR part 996).

The United States Food and Drug Administration (FDA) currently employs an aflatoxin tolerance level in pistachios of 20 ppb. Thus, this proposal would be more restrictive than what is currently accepted by the FDA. Witnesses explained that the 15 ppb was selected as the proposed maximum threshold to ensure that sampling procedures would result in aflatoxin tolerances below the current FDA level.

Proposed § 983.38(a) also provides that an aflatoxin inspection certificate must cover all shipments for domestic human consumption. Further, any pistachios that fail to meet the aflatoxin requirement must be disposed of in certain ways. The inspection and substandard pistachio disposition procedures are discussed in detail later in this document.

At the hearing, witnesses recommended eliminating the decimal point and the zero from all references to "15.0" ppb. The maximum aflatoxin threshold should read "15" ppb. Witnesses explained that current testing techniques available to the industry are only accurate to one part per billion. As such, requiring testing beyond the one part per billion would not be compatible with current industry testing abilities. Similarly, references to "5.0" ppb and "10.0" ppb should be changed to "5" ppb and "10" ppb in all corresponding descriptions of aflatoxin test sampling procedures. These changes are reflected in the proposed order language contained in this Recommended Decision.

Witnesses testified that a considerable amount of concern and debate over the proposed aflatoxin and other quality requirements resulted in the details of those proposed requirements being included in the proposed order language. According to the record, industry discussions favored including specific regulatory language in the order over establishing committee authority to recommend such regulations. Witnesses explained that the former would allow industry participants to know, prior to voting on the proposed order in referendum, what specific requirements would be imposed on the industry. Thus, producers would be able to make a more informed decision as to whether they favor the program.

Witnesses testified that the committee should have the authority to make recommendations to the Department to change the specified maximum aflatoxin level of 15 ppb. Paragraph (b) of proposed § 983.38 therefore provides authority for changing the allowable level of aflatoxin in the event that industry conditions change or research shows that a change in the aflatoxin level would be appropriate. As previously discussed under Material Issue 5(b), such a recommendation would require the concurring votes of at least seven committee members.

Transfer Between Handlers

Paragraph (c) of § 983.38 would provide that transfers of pistachios between handlers within the production area are exempt from the aflatoxin requirement.

Record evidence indicates that pistachios are customarily traded among handlers. Trade among handlers predominantly occurs as a means for individual handlers to buy or sell pistachios to meet the specific needs of their respective customers. Witnesses also explained that some handlers are better equipped than others to handle pistachios that present processing problems. As such, pistachios requiring re-working to meet industry quality standards are often transferred from one handler to another for more efficient handling.

An example of an inter-handler transfer presented at the hearing described a handler who is unable to ship pistachios because they have too much dark stain on the shells, and are deemed to be unmarketable in that state. However, another handler is able to paint the shells with a red food grade colorant that covers the dark stain, making the pistachios acceptable to consumers. Transferring the pistachios from the first handler to the second handler could benefit both parties.

Proposed § 983.38(c) would facilitate transfers of pistachios between handlers, which would allow for the highest use of the pistachios. While pistachios could be transferred from one handler to another without first being tested and certified as meeting the aflatoxin requirement, those pistachios would have to meet that requirement prior to entering the market for domestic human consumption. If the pistachios had been tested and certified as meeting the aflatoxin requirement by the first handler, those pistachios would not have to be tested and certified a second time. This would be true only if the lot's identity had been preserved, as discussed in the discussion below relative to "Traceability."

Traceability

Proposed § 983.38(d) would require that each lot of pistachios inspected for aflatoxin be uniquely identified and traceable from the point of testing through shipment by the handler. This is necessary because the handling of pistachios consists of a number of different steps that occur over a period of time.

Witnesses stated that identification of individual lots would be necessary in order to distinguish one lot from another for aflatoxin certification purposes. Unique identification and traceability of lots would be necessary to ensure handler compliance with the provisions of the order. Further, in the event that sub-quality or aflatoxin contamination was found by a handler or his or her customers, traceability would allow for expeditious response on the part of that handler to remove such product from the production line or market.

Traceability would be accomplished through the maintenance of each lot's identity as that lot proceeds through a handling facility. A lot could be in a handler's storage bins when a sample is taken for aflatoxin testing and certification purposes. The pistachios could be run through a roasting line later that day, and packaged on a subsequent day. In this example, witnesses explained that the handler would assign a unique number to the lot when the sample is taken, and the pistachios in the lot would be identified by that number through the entire handling process. This issue is further discussed in relation to proposed § 983.44, "Inspection, certification and identification."

Sampling

Proposed § 983.38(d)(1) and (d)(2) outline sampling procedures for testing for aflatoxin and other quality requirements. The samples would be drawn by an inspector or under the supervision of an inspector.

Witnesses explained that each sample drawn would need to be sufficient to meet testing procedure requirements under proposed § § 983.38 (Aflatoxin levels) and 983.39 (Minimum quality levels). The record shows that having one sample drawn to serve both purposes would make the testing procedures more efficient and cost effective, as the process of drawing samples for each certification process would be condensed into one. Witnesses explained that this would help minimize inspection fees, as less sampling time would be needed. Sampling procedures for aflatoxin and minimum quality (including size) certification are described below, and under the discussion of proposed § 983.39.

Aflatoxin Sampling Procedures

As previously discussed, the record is that aflatoxin typically presents itself in high concentrations in very few nuts. Witnesses recommended a sampling system rooted in statistical calculations of aflatoxin per lot based on varying sample sizes calibrated to lot weight. The recommended sampling protocol would rely on established statistical sampling methodologies.

As there is not an internationally agreed upon procedure for aflatoxin sampling of pistachios, the proposed sampling regimen is based upon sequential sampling procedures used in the U.S. peanut industry; sampling

parameters identified by experts in the field; and sampling protocols currently used by the European Union.

Record evidence stated that each lot sample for inshell and kernel pistachio aflatoxin testing must be made up of a prescribed number of incremental samples. Incremental sampling would be accomplished with an automatic sampling device or with a sampling probe.

Witnesses explained that automatic samplers are devices that extract random samples from a stream of pistachios while the nuts are processed in the handler's plant. Sampling probes are tubes, with 5 to 10 ports, that are pushed down into bins of bulk pistachios. The probe extracts pistachios from the bin at different levels of the bin ensuring that a cross sample of the pistachios in the bin are taken for testing and facilitates the collection of the required incremental samples. Probing devices are widely used in the sampling of other food products with similar physical characteristics.

According to record evidence, the number of incremental samples and the total weight of the lot sample would be dependent on the size of the lot. As shown in the table below, a small lot of inshell pistachios weighing 220 pounds or less would require 10 incremental samples, resulting in a total lot sample weighing 3 kilograms. For a larger lot of inshell pistachios weighing 22,001 pounds to 150,000 pounds, a lot sample of 30 kilograms would consist of 100 incremental samples. As discussed later, the total lot sample would then be divided into three test samples. The fourth column of the table shows the weight of each of the test samples.

INSHELL PISTACHIO LOT SAMPLING INCREMENTS FOR AFLATOXIN CERTIFICATION

Lot weight (lbs.)	Number of incremental samples for the lot sample	Total weight of lot sample (kilograms)	Weight of test sample (kilograms)
220 or less	10	3.0	1.0
221–440	15	4.5	1.5
441–1100	20	6.0	2.0
1101–2200	30	9.0	3.0
2201–4400	40	12.0	4.0
4401–11,000	60	18.0	6.0
11,001–22,000	80	24.0	8.0
22,001–150,000	100	30.0	10.0

For aflatoxin testing of pistachio kernels, the proposed incremental sampling requirements would follow the same methodology. The number of incremental samples would depend on the size of the lot, and would equal the number required for inshell lots of pistachios. However, the lot samples for kernel testing would be half the weight of the lot samples for inshell pistachio testing. This is because, as the record shows, half of the weight of inshell pistachios is made up of the shell, and only the kernels are tested for aflatoxin.

According to the below table, a lot sample for a lot of 220 pounds or less of kernels would equal 1.5 kilograms and consist of 10 incremental samples. A lot sample for a lot of 22,001 pounds to 150,000 pounds of kernels would equal 15 kilograms and would consist of 100 incremental samples.

PISTACHIO KERNEL LOT SAMPLING INCREMENTS FOR AFLATOXIN CERTIFICATION

Lot weight (lbs.)	Number of incremental samples for the lot sample	Total weight of lot sample (kilograms)	Weight of test sample (kilograms)
220 or less	10	1.5	.5
220–440	15	2.3	.75
441–1100	20	3.0	1.0
1101–2200	30	4.5	1.5
2201–4400	40	6.0	2.0
4401–11,000	60	9.0	3.0
11,001–22,000	80	12.0	4.0
22,001–150,000	100	15.0	5.0

The above tables provide for lot sizes up to 150,000 pounds. The record shows that this reflects current industry practice. That is, handlers do not handle lots in excess of that amount. However, in the event that these practices change, proposed section 983.46 would allow the proposed sampling methodology to accommodate the change. Any change in sampling procedures would require a recommendation of the committee and approval of the Department. Proposed § 983.46 is discussed further under "Modification or suspension of regulations."

The record evidence is that the next step in the sampling process should be that the lot samples for inshell and kernel aflatoxin testing be divided into 3 equal test samples. The dividing of the lot sample would be conducted by, or under the supervision of, an inspector with the Federal or Federal-State Inspection Service (Inspection Service). Witnesses testified that any inspection process in use by the Inspection Service should be available to pistachio handlers under the proposed order. Inspection programs that could be used include the "Partners In Quality" program and the "Customer Assisted Inspection Program."

Aflatoxin Testing Procedures

As provided in § 983.38(d)(2), lot samples intended for aflatoxin testing and certification would be submitted to a laboratory that has been approved or accredited for aflatoxin analysis by the USDA. Witnesses explained that such a laboratory could be a third-party laboratory or a laboratory run by an individual handler. In any case, witnesses stated that any laboratory conducting aflatoxin testing for certification under the provisions of the proposed order would be required to be approved or accredited by the USDA.

The test samples would be processed according to the provisions proposed under § 983.38(d)(3). The laboratory would record the receipt of each test sample. The test samples would then be prepared and chemically analyzed according to established testing procedures prescribed under the High Pressure Liquid Chromatograph (HPLC) or Vicam (Aflatest) aflatoxin testing methodologies, or any other method recommended by at least seven members of the committee and approved by USDA.

The language authorizing the use of additional testing methods represents a departure from the language contained in the Notice of Hearing. The revised language was proposed by proponents of the marketing order and would provide the committee with additional flexibility in identifying acceptable methods of testing. The authority to review and recommend alternative methods of aflatoxin testing for approval by the Department would allow for the accommodation of advances in aflatoxin technology.

Proposed § 983.38(d)(4) sets forth the process by which the test samples would be analyzed in order to determine whether a lot met the maximum aflatoxin threshold of 15 ppb.

As previously mentioned, each lot sample would be divided into three test samples. If the first sample tested, test sample 1, had an aflatoxin level at or below 5 ppb, the lot would be certified as negative to aflatoxin. No analysis of the other two test samples would be necessary. If test sample 1 were to test at or above 25 ppb, the lot would fail and the accredited laboratory would fill out a failed lot notification report as specified in § 938.40, described below.

If test sample 1 were to test above 5 ppb and below 25 ppb, the handler could either elect to continue the testing process or voluntarily re-work the lot. If the lot is re-worked, it would be subject to sampling and testing as if it were a new lot altogether.

If the handler elects not to re-work the lot and go forward with the testing, the accredited laboratory would analyze test sample 2, and the results of test samples 1 and 2 would be averaged. The lot would be certified as negative to aflatoxin if the laboratory determines that the averaged result for test samples 1 and 2 is at or below 10 ppb. If the averaged result of test samples 1 and 2 is at or above 20 ppb, the lot would fail and the laboratory would fill out a failed lot notification report. If the averaged aflatoxin level of test samples 1 and 2 is above 10 ppb and below 20 ppb, the handler could withdraw the lot from testing and re-work it. Thereafter, the handler could resubmit the lot for sampling and testing under proposed § 983.38(d).

If the handler elected to continue with the testing, the laboratory would analyze test sample 3, and the results of test samples 1, 2 and 3 would be averaged. A lot would be certified as negative to aflatoxin and the laboratory would issue an aflatoxin inspection certificate if the averaged result of test samples 1, 2 and 3 is at or below 15 ppb. If the averaged aflatoxin level of test samples 1, 2 and 3 is above 15 ppb, the lot would fail and the laboratory would fill out a failed lot form as required by proposed § 983.40, "Failed lots/re-work procedures."

If a lot failed to test below the maximum threshold for aflatoxin, the laboratory would send a copy of the Failed Lots/Re-Work Procedure form to the committee and to the failed lot's owner within 10 working days of failure.

If an aflatoxin inspection certificate were issued certifying that a lot is negative to aflatoxin at any stage of the sequential testing, meaning the lot's aflatoxin content is below the maximum threshold, the certification would identify the lot by weight, grade and date. The certification would expire after 12 months.

The recommendation at the hearing that a handler may withdraw his or her lot from testing at any stage in the testing and certification process represents a change to the proposed order language contained in the Notice of Hearing. Witnesses recommended this modification so that if a handler was not satisfied with an early aflatoxin content result, he or she could elect to rework the lot before the expense of completing the testing protocol.

Proposed § 983.38(d)(5) provides that accredited laboratories perform aflatoxin tests. Each lot shipped for domestic human consumption would be required to be tested and certified by a laboratory that it meets the aflatoxin requirement. The records of each test and of the final shipping disposition would be required to be kept by the handler. The records would be required to be maintained for 3 years and would be subject to audit by the Department or the committee at any time. The maintenance of the records and the audit provisions are to enable the committee to determine handler compliance with the aflatoxin level requirements, and are discussed further under Material Issue 5(e).

Pistachios that fail to meet the aflatoxin requirement would be required to be reworked or disposed of. Witnesses stated that a rework option is important as the cultivation of pistachios requires a substantial investment, and maximizing saleable usage of each harvest is crucial to the economic well being of both producers and handlers. Equally important are disposal requirements for pistachios failing to be certified as negative to aflatoxin. Disposal procedures would be important in assuring industry and consumers that failed product does not enter the stream of domestic commerce. Requirements for disposal of failed lots are discussed later under proposed § § 983.40, "Failed lots/rework procedures" and 983.45 "Substandard pistachios."

Proposed § 983.38(d)(6) provides that if test samples 2 or 3 are not used for testing and certification purposes, the handler could request the laboratory to return those samples to him or her. This would allow handlers to sell the pistachios that comprise test samples 2 and 3 for domestic human consumption if the lot is shown to comply with the aflatoxin regulation with the testing of sample 1. For example, with larger lots of 22,001 to 150,000 pounds, this would allow the handler to sell an additional 44 pounds of pistachios for human consumption.

Proposed Minimum Quality Levels

The record supports minimum quality requirements for pistachios being included in the proposed order. These requirements, set forth in proposed § 983.39, would establish maximum tolerances for certain internal and external defects, and a minimum size specification.

The record shows that elimination of shell defects, bad tasting, insect-infested and closed pistachios would not only increase consumer satisfaction but also reduce the incidence of aflatoxin. Moreover, witnesses stated that, based on industry experience, most consumers prefer large pistachios. Because many consumers do not find smaller pistachios desirable, these pistachios sell for lower prices. Quality and size specifications would help improve grower returns by ensuring that California pistachios sold in the domestic market are of the quality that consumers prefer. Enhancing consumer demand by assuring acceptable quality (including the absence of aflatoxin) is necessary for the industry to market

increasing supplies of California pistachios.

The record shows that the defects listed in proposed § 983.39 are generally accepted by the industry as those that reduce the marketability and consumer acceptance of pistachios. Handlers currently eliminate defective nuts in their normal operations to pack a product that meets their customers' expectations.

Four categories of defects are proposed. The first is external shell defects, which includes non-splits (shells that are not open), adhering hull material, dark stain, and other damage that materially detracts from the appearance of the shell. Next are internal defects, which include immature kernels, kernel spotting, insect damage, mold, rancidity, and decay. The third class of "other defects" includes shell pieces and blanks, foreign material, particles and dust, and loose kernels. The final category is in shell pistachios that are below the specified minimum size.

The proposed minimum quality requirements provide a maximum tolerance level for each type of defect. This is to recognize that in normal handling operations, it is impossible to eliminate every single defective nut from a lot. As an example, up to 5 percent (by weight) of the inshell pistachios in a lot may be below the minimum permissible size. The following table contains the proposed defects and tolerances.

MAXIMUM DEFECT AND MINIMUM SIZE LEVELS

Factor	Maximum permissible defects (percent by weight)	
	Inshell	Kernels
EXTERNAL (SHELL) DEFECTS		
a. Non-splits & not split on suture	10.0	
(1) Maximum non-splits allowed	4.0	
b. Adhering hull material	2.0	
c. Dark stain	3.0	
d. Damage by other means, other than a, b and c above, which materially detracts from the appearance or the edible or marketing quality of the individual shell or the lot	10.0	
INTERNAL (KERNEL) DEFECTS		
a. Damage: Immature kernel (Fills <75% – >50% of the shell), Kernel spotting (Affects ⅛ aggregate surface)	6.0	3.0
b. Serious damage—Minor insect or vertebrate injury/insect damage, insect evidence, mold, rancidity, decay	4.0	2.5
(1) Maximum insect damage allowed	2.0	0.5
Total external or internal defects allowed	9.0	
OTHER DEFECTS		
a. Shell pieces and blanks (Fills <50% of the shell)	2.0	
(1) Maximum blanks allowed	1.0	
b. Foreign material—No glass, metal or live insects permitted	0.25	0.1
3. Particles and dust	0.25	
4. Loose kernels	6.0	
	Minimum permissible defects (percent by weight)	
Maximum allowable inshell pistachios that will pass through a 30/64ths inch round hole screen	5.0	

Witnesses testified that about 90 percent of the pistachios produced in California are packed to higher quality standards than those being proposed in the order. Thus, imposition of these quality requirements should have a minimal impact on handlers, while ensuring that the pistachios available to U.S. consumers are of acceptable quality.

The terms used in the above table are defined in further detail under § 983.39(b) of the proposed order. These terms would clarify permissible maximum defects for inshell pistachios and pistachio kernels.

One of the terms defined in paragraph (b) of proposed § 983.39 is "dark stain," an external defect. The definition of that term included in this Recommended Decision differs from that in the Notice of Hearing. In the Notice, dark stain was defined to mean an aggregate amount of discoloration affecting more than one-eighth of the shell surface or, on dyed nuts, when readily noticeable. Testimony at the hearing indicated that the last portion of that definition would have adversely impacted handlers who dye or color their nuts to remove cosmetic shell defects. Thus, this provision has been modified to exempt dyed or colored nuts from the dark stain requirements. This exemption is intended to allow handlers to improve the marketability of pistachios containing dark stain by covering that defect with a dye or color coat.

Witnesses stated that each shipment of California pistachios intended for domestic human consumption would require a minimum quality certificate. As previously discussed, this certificate would be issued by an inspector and would certify that the pistachios contained in that lot meet the established minimum quality requirements. Pistachios that fail to meet the minimum quality specifications would be disposed of in such manner as described in proposed § 983.40.

The record also states that under proposed § 983.39 (d), transfers between handlers within the production area would be exempt from minimum quality and size regulation. This exemption, as with a similar exemption for aflatoxin certificates, is designed to allow transfer of product between handlers. It would allow handlers to sell and trade pistachios of varying qualities among themselves, and would allow for efficiencies within the industry due to different handlers' abilities to prepare pistachios for market. All pistachios would have to be inspected and certified as meeting minimum quality requirements before being shipped for domestic human consumption.

As with aflatoxin testing, provisions for minimum quality and size testing under the order would require that lot samples consisting of a minimum number of incremental samples be drawn. A minimum number of incremental samples would be required to protect the statistical validity of the testing process and to ensure that the test sample is representative of the quality of the entire lot of pistachios from which it was drawn.

As shown in the table below, the number of incremental samples per lot sample would be the same under the aflatoxin testing as under the minimum quality and size testing requirements. This would allow the handler to pull one set of samples for both tests, as previously explained. The sample would be drawn by, or under the supervision of, an inspector.

INSHELL AND KERNEL PISTACHIO LOT SAMPLING INCREMENTS FOR MINIMUM QUALITY CERTIFICATION

Lot weight (lbs.)	Number of incremental samples for the lot sample	Total weight of lot sample (grams)	Weight of inshell and kernel test sample (grams)
220 or less	10	500	500
221–440	15	500	500
441–1100	20	600	500
1101–2200	30	900	500
2201–4400	40	1200	500
4401–11,000	60	1800	500
11,001–22,000	80	2400	1000
22,001–150,000	100	3000	1000

According to witness testimony, a lot of inshell pistachios weighing 220 pounds or less would require a lot sample weighing a total of 500 grams. This lot sample would consist of 10 incremental samples collected throughout the lot. Alternatively, a lot weighing 22,001 pounds to 150,000 pounds would require a lot sample equal to 3,000 grams and would consist of 100 incremental samples.

A test sample would then be taken from the lot sample. For lots up to 11,000 pounds, the test sample would equal 500 grams. For any lot in excess of 11,000 pounds, the test sample would be 1,000 grams.

The test sample sizes for minimum quality requirements differ from those for aflatoxin testing. Under the aflatoxin testing system, the lot sample drawn would be divided into three equal test samples, with each sample being used progressively depending on the aflatoxin content of each test sample. Under the sampling and testing procedures for the proposed minimum quality requirements, the test sample would be used in its entirety. Inspectors would assess the quality of the test sample for external and internal defects.

Table 4 in proposed § 983.39(e)(1) has been revised from that included in the Notice of Hearing. An additional column entitled "Weight of kernel test sample (grams)" has been eliminated, and the column previously entitled "Weight of inshell test sample (grams)" has been re-titled to "Weight of inshell and kernel test sample (grams)." These changes are based on witness testimony that the test sample sizes for inshell and kernel testing should be the same.

Proposed Minimum Quality Testing Procedures

Witnesses stated that the test samples should be analyzed in accordance with USDA inspection procedures. This would ensure that the pistachios do not contain in excess of the maximum permissible defects and that they meet the minimum size level.

Under the USDA inspection procedures, the inspector would analyze the test sample for external, internal, and other defects. The nuts would be shelled for further analysis of internal kernel defects if the pistachios exhibited dark stain, adhering hull, or other external defects, or if, in the inspector's opinion, they had possible internal defects.

Witnesses explained the importance of this requirement as studies have shown that nuts with external defects have a higher probability of kernel defects. These studies, discussed earlier in this document, linked certain quality defects with the incidence of aflatoxin. Nuts with unblemished shells would be subject to internal kernel analysis at the discretion of the inspector. After testing, inspectors would certify that the lot had met the minimum quality levels.

The record states that handlers would be required to keep testing and certification records, along with records of final shipping disposition, for three years after the crop year in which the pistachios were shipped. These records would be subject to audit by the committee at any time. These requirements would be important in allowing the committee and the USDA to ensure that pistachio handlers comply with the proposed provisions of the order. As stated in the discussion of proposed aflatoxin testing procedures, each lot tested for minimum quality and size certification would also be required to be uniquely identified to ensure traceability.

Substandard Pistachios

Proposed § 983.40 addresses procedures recommended by the witnesses for reworking or disposing of substandard pistachios. Substandard pistachios are pistachios that fail to test below the maximum aflatoxin tolerance level or do not meet minimum quality (including size) requirements.

According to record testimony, handlers would have different options available for managing substandard pistachios. The first of these would allow a handler to rework a lot of pistachios until that lot met the aflatoxin and quality requirements proposed under the order. If, after being reworked, the pistachios met the aflatoxin and minimum quality levels, those pistachios could be shipped for domestic human consumption.

If a handler chose not to rework a lot of substandard pistachios, then the handler would be required to either dispose of those nuts or use them for non-human consumption. These pistachios could also be exported if they met the requirements of the receiving country.

Proposed § 983.45 would prevent substandard pistachios from entering the stream of domestic human consumption. Under the provisions of this section, reporting and disposition procedures for substandard pistachios would be implemented by USDA (upon recommendation of the committee) through informal rulemaking.

Failed Lot Reporting

According to record evidence, § 983.40(b) would establish reporting requirements for lots failing to meet aflatoxin or minimum quality requirements of the proposed order. Reports of failing lots would have to be filed with the committee within 10 working days of the test failure. Reports regarding lots exceeding the maximum aflatoxin tolerance level would be sent by the accredited laboratory directly to the committee. Reporting of lots exceeding the maximum aflatoxin requirements directly by the laboratory rather than the handler would expedite and increase the efficiency of the committee's ability to locally oversee industry compliance to the proposed aflatoxin provisions. Reports concerning lots failing to meet the minimum quality requirements would be filed by the handler with the committee, as minimum quality testing would be conducted at the handler's facility and not at a laboratory.

Establishing reporting procedures for lots failing to meet the requirements of the order would assist the committee in ensuring that only certified lots are used for domestic human consumption. This would help ensure that poor quality pistachios are either re-worked to requisite quality and aflatoxin levels, or properly disposed of. In this context, witnesses stated that failed lots reporting would be essential to supporting the committee's oversight and auditing responsibilities. Failed lot reporting would also present the committee with an important information-gathering tool, as it would allow the compilation of industry quality statistics.

Rework Procedures

Notification of a failed lot, either with regard to aflatoxin or quality, would alert the committee to the possible reworking of pistachios for reinspection, or to the disposal of those pistachios. Witnesses expressed the importance of establishing rework procedures in order to allow handlers the opportunity to separate acceptable quality pistachios from inferior ones. Witnesses explained that while reworking and reinspection would not be required under the order, rework would provide handlers with an opportunity to secure a better return for their pistachios. Rework and reinspection procedures should therefore benefit both handlers and producers.

Witnesses expanded on the importance of safeguarding against the negative effect of poor quality pistachios in the marketplace by explaining that lots failing to meet aflatoxin requirements would be subject to a different set of rework procedures than those failing quality requirements.

Rework procedures for inshell pistachios failing to meet aflatoxin requirements would require handlers to remove 100 percent of the failing lot from its bulk or retail packaging. These pistachios would be required to pass through the sorting stages of the handling process in order to remove from the lot those nuts having the characteristics most susceptible to harboring aflatoxin. Witnesses stated that after reworking the lot, the weight of the total accepted and rejected product would be reported to the committee. The acceptable portion of the reworked lot would again be sampled and tested for aflatoxin, as proposed under § 983.38, Aflatoxin levels, with one exception. In the case of a reworked lot, the lot sample size and the test sample size would be doubled from that specified in Table 1 of proposed § 983.38. In addition to being tested for aflatoxin content, the reworked lot would also be sampled and tested for minimum quality.

If, after having been reworked, the lot fails aflatoxin testing for a second time, the lot could be shelled and the kernels reworked, sampled and tested in the manner required for an original lot of pistachio kernels. If the handler decided not to pursue further reworking of the failed lot, those pistachios would be prohibited from entering the stream of commerce for domestic human consumption. That lot would be required to be disposed of, sold for domestic non-human consumption purposes, or exported in compliance with the receiving country's requirements.

Rework procedures proposed for pistachio kernels failing to test negative to aflatoxin would also require a re-processing of 100 percent of the volume of the failing lot. After reworking, witnesses stated that the total weight of the accepted product and the total weight of the rejected product would be reported to the committee for verification purposes. The reworked lot of kernels would be sampled and reinspected for aflatoxin as specified in the aflatoxin requirements of the order.

According to record evidence, handlers should also be able to rework lots that fail to meet the minimum quality requirements proposed in § 983.39 of the order. As in the case of pistachios failing aflatoxin requirements, handlers would need to remove from packaging and rework 100 percent of the product within that lot. Reworking would be completed by standard sorting techniques, including mechanical, electronic or manual procedures normally used in the handling of pistachios.

The reworked lot would be sampled and tested as required under proposed § 983.39, "Minimum quality levels." There would be no limit to the number of times a lot could be reworked for minimum quality levels.

Testing of Minimal Quantities

The record supports simplified aflatoxin testing requirements for handlers who handle less than one million pounds of assessed weight of pistachios a year. Additionally, such handlers should qualify for an exemption from minimum quality inspection and certification requirements under certain circumstances. Including these provisions in the proposed order would reduce costs for the smallest handlers, while maintaining the industry objective of having all pistachios used for domestic human consumption meet certain quality (including aflatoxin) levels.

Section 983.41 of the proposed order, Testing of minimal quantities, would provide that aflatoxin testing for handlers of minimal quantities (less than a million pounds per year) could be accomplished in two ways. The first option would allow a handler to have an inspector sample and test all the handler's hulled and dried pistachios for aflatoxin certification prior to further processing. If the pistachios meet the proposed aflatoxin requirement, an aflatoxin certificate would be issued to cover the handler's total inventory. The handler would not then have to comply with the traceability procedures set forth in paragraph (d) of proposed § 983.38.

If the pistachios did not meet the aflatoxin requirements, the handler could subdivide his or her inventory into smaller lots and have each individual lot sampled and tested for aflatoxin. Any lots found to be above the maximum aflatoxin threshold could be reworked and would then be subject to the testing procedures specified in § 983.38.

Witnesses testifying at the hearing stated that small handlers should be allowed to test all of their hulled and dried pistachios before the pistachios are further processed for quality and size. The language of proposed § 983.41(a) has been so clarified.

Witnesses also testified that handlers of minimal quantities could apply to the committee for an exemption from inspection with respect to the minimum quality requirements set forth in proposed § 983.39 of the order. If the exemption were granted, the handler would be required to pull and retain (for 90 days) samples from each lot shipped. The samples would be required to be made available for review by the committee.

Witnesses explained that if it was determined that an exempt handler were shipping substandard pistachios, the committee should be able to revoke the handler's exemption. The handler in question would then be subject to minimum quality and size inspections until further determination by the committee. The record indicates that implementing regulations should be effectuated to establish the specific procedures for such exemptions.

Commingling

Witnesses recommended under proposed § 983.42 that after a lot were issued an aflatoxin inspection certificate and minimum quality certificate, it could be commingled with other certified lots and maintain its aflatoxin and minimum quality certifications. However, handlers would be required to comply with paragraph (d) of proposed § 983.38 which provides that each certified lot be identified and traceable from testing through shipment. Thus, if pistachios were transferred between handlers prior to certification, those pistachios would be required to meet the certification provisions of this proposed order prior to being commingled with other certified lots. In the case of the exemption from minimum quality certification for handlers handling less than 1 million pounds, any pistachios transferred from an exempt handler to a non-exempt handler would be subject to minimum quality certification.

Reinspection

Witnesses supported authority for the committee to reject an inspection certificate and request reinspection of a lot whenever it has reason to believe that pistachios may have been damaged or deteriorated while in storage. That lot would be prevented from entering the marketplace for domestic human consumption until a new certification was obtained.

USDA would not allow invalidation of a certificate that has been issued by an inspector. However, there may be circumstances that warrant a requirement that a lot be subject to a second inspection. Thus, proposed § 983.43, Reinspection, is modified to provide that the Department, upon recommendation of the committee, may establish rules and regulations to establish conditions under which pistachios would be subject to reinspection.

Inspection, Certification and Identification

The record indicates that all pistachios shipped for domestic human consumption should be required to be inspected and certified as meeting the order's quality requirements (including those pertaining to aflatoxin levels). If deemed necessary, lots of pistachios could be required to be identified by appropriate seals, stamps, tags, or other identification affixed to the containers by the handler. All inspections would be at the expense of the handler.

Witnesses testified that not all handlers would have their pistachios tested or inspected at the same point in the handling process. The proposed order is intended to be flexible, as it was explained by witnesses that inspection could be appropriate for certain handlers at one stage in the process while being appropriate for other handlers at another stage. Witnesses stated that differences in inspection timing throughout different handlers' processing systems would not pose a compliance problem as long as lot identity was required and maintained.

Several handler witnesses testified that they have already implemented traceability systems in their plants. Currently, several different systems for tracking lots of pistachios exist in the industry. Record testimony indicates that some handlers identify lots by date and shift. These lots are then traced by written records maintained by the handler's staff. Other handlers mark the containers with a code using crayons or markers. Yet other handlers use bar codes.

The record indicates that current handling practices relating to the tracking of lots may be adequate for compliance purposes under the order. However, if deemed necessary, the USDA, upon recommendation of the committee, could issue rules to specify that handlers be required to affix some standardized type of identification to the containers in a lot.

The record shows that the responsibility for affixing such identification could be given to the handlers without requiring it be done under the direction or supervision of an inspector. This represents a departure from the regulatory text of proposed § 983.44 contained in the Notice of Hearing. Originally, affixing of identification would have been required under the supervision of an inspector. Witnesses explained that giving handlers the responsibility to maintain pistachio identity could result in more flexibility in handlers' operations and lower costs. Section 983.44 has been modified accordingly.

Substandard Pistachios

Record evidence indicates that the committee should have the authority to establish reporting and disposition requirements as it deems necessary to ensure that pistachios which do not meet the aflatoxin and minimum quality requirements prescribed by § 983.38 and § .39 are not shipped for domestic human consumption. This authority would appear in § 983.45 of the proposed order, and would require approval by the Department through the informal rulemaking process.

Witnesses opined that much of the information the committee and the Department would need to administer the order has been covered by reporting requirements set forth elsewhere in the proposed order. For example, reports would be required when pistachio lots fail testing for the aflatoxin tolerance or fail inspections for minimum quality and size specifications. However, in the course of administering the order, the committee may determine that further reports are necessary. This section gives the committee the authority to establish further reporting requirements, subject to the approval of the Department.

The committee should also be authorized to recommend other rules (aside from those relating to reporting requirements) needed to ensure appropriate disposition of substandard pistachios. For example, handlers could be required to dispose of substandard pistachios under the supervision of the committee staff or an inspector. Again, such rules would need to be approved by USDA.

In the Notice of Hearing, reference to § 983.38 was inadvertently omitted from § 983.45 of the proposed order. This oversight is corrected in this document.

Modification or Suspension of Regulations

According to record evidence, proposed § 983.46 should allow for modification, suspension, or termination of the requirements in § § 983.38 through 983.45 of the order. These sections of the proposed order relate to aflatoxin and minimum quality requirements.

The record shows that the quality and aflatoxin requirements specified in the proposed order are reasonable and appropriate at the current time. However, if the committee were to determine by reasons of changed industry conditions (such as development of new technology) that certain provisions of the order need to

be modified, suspended or terminated, the committee should have the authority to make those recommendations. All such recommendations would require seven concurring votes by the committee and would be subject to review and approval of USDA through the rulemaking process.

Additionally, the record shows that the committee should have the authority to recommend any rules necessary for the implementation of the provisions of §§ 983.38 through 983.45 of the proposed order. Again, any such recommendation would require USDA approval. It is recommended that a new paragraph (c) be added to proposed § 983.46 to add this authority to the order.

Material Issue Number 5(e)—Reporting and Recordkeeping

The record evidence is that the committee should have the authority, with the approval of the Department, to require handlers to submit such reports and information as the committee may need to perform its functions and fulfill its responsibilities under the order. The committee would need to collect information for such purposes as collecting assessments, compiling statistical data for use in market evaluation, and determining whether handlers are complying with order requirements. The types of information that could be collected to fill these reporting needs include but are not limited to production, sales and inventory data, and information pertaining to transfers of pistachios between handlers.

Additionally, under proposed § 983.49, each handler would be required to maintain records with respect to pistachios acquired, processed, further handled, sold, or otherwise disposed of, as would be necessary to verify the reports that the handler submits to the committee. All such records would be required to be maintained for at least 3 years after the end of the fiscal year in which the transaction occurred.

Witnesses also stated that the order should provide the authority for USDA and authorized employees of the committee to examine those records pertaining to matters within the purview of the order. This provision would enable verification of compliance with requirements of the proposed order.

All reports and records submitted to the committee by handlers would be required to remain confidential and be disclosed only as authorized by USDA in accordance with the Act. However, the committee would be authorized to release composite information from any or all reports. Such composite information could not disclose the identity of the persons furnishing the information or any person's individual operation.

The record shows that industry handlers already collect and maintain much of the information contemplated to be reported and retained under the proposed order provisions. Thus, compliance with the provisions of the order with regard to reporting and recordkeeping would entail minimal handler costs.

Material Issue Number 5(f)—Compliance

No handler should be permitted to handle pistachios except in conformity with the provisions of the order, as set forth in proposed § 983.58. If the program is to be effective, compliance with its requirements is essential.

Material Issue Number 5(g)—Continuance Referenda

In accordance with proposed § 983.67(d), the order should provide that the Department conduct periodic continuance referenda every 6 years. The initial continuance referendum should be conducted within 6 years of the effective date of the marketing order.

USDA has determined that continuance referenda are an effective means for ascertaining whether producers favor continuance of marketing order programs. As such, the proposed marketed order should include a provision for continuance referenda.

The Act provides that in the promulgation of a marketing order, at least two-thirds of the producers voting, by number or by volume represented in the referendum, must favor the issuance if the order. Continuance referenda should be based on the same standard of industry support. This requirement is considered adequate to measure producers' support to continue the marketing order.

The Department would consider termination of the order if less than two-thirds of the producers voting in the referendum and producers of less than two-thirds of the volume of pistachios represented in the referendum favor continuance. In evaluating the merits of continuance versus termination, USDA would not only consider the results of the referendum. The Department would also consider all other relevant information concerning the operation of the order and its relative benefits and disadvantages in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act.

The Department's "Guidelines for Fruit, Vegetable and Specialty Crop Marketing Orders" provide for periodic referenda to allow producers the opportunity to indicate their support for or rejection of a marketing order. It is the position of the Department that periodic referenda ensure that marketing order programs continue to be accountable to producers, obligate producers to evaluate their programs periodically, and involve them more closely in their operation. The record evidence supports these goals.

In any event, section 608(C)(16)(B) of the Act requires the Department to terminate the order whenever the Department finds that the majority of all producers favor termination, and that such majority produced more than 50 percent of the commodity for market.

Material Issue Number 5(h)—Exemption for Small Quantities

Proposed § 983.69, "Exemption," states that any handler who handles 1,000 dried pounds of pistachios or less during any year may handle pistachios free of the regulatory and assessment provisions of the proposed order.

The record shows that the purpose of this provision is to provide an exemption from the proposed requirements of the order for small quantities of pistachios, such as those that are grown for home or personal use. This section may be changed, as recommended by the committee and approved by the Department. For example, the committee may recommend that the 1,000-pound threshold be revised.

Additionally, implementing rules and regulations may be deemed necessary to ensure that handlers claiming this minimum exemption are not selling pistachios in domestic human consumption outlets that are not in compliance with the minimum quality requirements of the order. Such rules and regulations could be implemented under the authority in proposed § 983.45 of the order.

Material Issue Number 5(i)—California Pistachio Commission

Proposed § 983.70, "Relationship with the California Pistachio Commission," is supported by witness testimony that the committee have authority to deliberate, consult, cooperate and exchange information with the California Pistachio Commission (CPC). Any sharing of information between the two organizations would be kept confidential in accordance with the provisions of section 10(i) of the Act.

Testimony offered by the Chief Executive Officer of the CPC further clarifies the potential efficiencies to be gained through cooperation of the CPC and the committee. As stated by the witness, the industry is already familiar with the structure and protocols of the Commission. Joint management of the two programs could reduce added paperwork, costs and duplication of efforts.

In terms of proposed regulation, witnesses stated that the two programs would be complimentary, as the provisions of each program would not overlap. The proposed provisions of the Federal program pertain to mandatory testing and certification for aflatoxin, quality and size. The CPC does not administer such regulation but rather focuses on promotion and research activities. The CPC does oversee the California Pistachio Marketing Agreement, but this is a voluntary agreement among handlers, and the quality parameters under the agreement do not include those addressed in the proposed order.

Witnesses speaking in support of § 983.71 explained that, when the Agreement was formulated, it was the intention of the participants to pattern the administrative and organizational structure of the Agreement after the Commission for the purpose of minimizing administrative costs and avoiding the duplication of efforts as much as possible. According to record testimony, this goal has been obtained and has allowed the Agreement signatories the ability to maintain a very low administrative overhead with a minimum of added paperwork. Witnesses stated that, if the Federal program is approved, it is their intention to capture similar benefits.

Material Issue Number 5(j)—Common Terms

The provisions of proposed §§ 983.59 through 983.69 and §§ 983.90 through 983.92 are common to marketing agreements and orders now operating. All such provisions are necessary to effectuate the other provisions of the marketing order and marketing agreement and to effectuate the declared policy of the Act. The record evidence supports inclusion of each provision. These provisions, which are applicable to both the marketing agreement and the marketing order, are identified by section number and heading as follows: § 983.59 Rights of the Secretary; § 983.60 Personal Liability; § 983.61 Separability; § 983.62 Derogation; § 983.63 Duration of immunities; § 983.64 Agents; § 983.65 Effective time; § 983.66 Suspension or termination; § 983.67 Termination; § 983.68 Procedure upon termination; and § 983.69 Effect of termination or amendment. Those provisions applicable to the marketing agreement only are: § 983.90 Counterparts; § 983.91 Additional parties; and, § 983.92 Order with marketing agreement.

Material Issue Number 6—Implementation of Proposed Order

Based on a review of the hearing record, USDA recommends that if California pistachio producers were to vote in favor of promulgating the proposed marketing order, the provisions of this program be implemented in two phases. This recommendation addresses the need to establish administrative procedures, guidelines and forms, some of which would require USDA rulemaking and OMB approval, for the mandatory inspection and certification provisions of the proposed program to function effectively.

The first phase would allow for the nomination and seating of an initial administrative committee, and the recommendation and implementation of administrative rules, including reporting and recordkeeping requirements, under which the program would operate. These activities include, but are not limited to, nominations of producer and handler members and alternate members of the committee, the selection of that committee by the Department, and holding committee meetings to select a staff, draft operating procedures, recommend a budget and assessment rate for the first fiscal period under the proposed order, and make other recommendations necessary to implement order authorities. Some of the committee recommendations would require rulemaking by the Department and approval of new information collection requirements by the Office of Management and Budget (OMB).

The second phase would allow for the implementation of the regulatory provisions proposed under this program and necessary procedures to effectively administer them. This would include the mandatory testing and certification provisions for maximum aflatoxin and minimum quality levels of California pistachios, and failed lot rework provisions under §§ 983.38 through 983.46 of the proposed order. USDA recommends that these provisions become effective on August 1, 2004.

This recommendation reflects the fact that, if the order were to be approved through a producer referendum and implemented in its entirety, the immediate effectiveness of regulatory provisions without adequate administrative procedures to support them could obstruct the flow of California pistachios to the marketplace. USDA believes that while the intended effect of the proposed order is to ensure the delivery of high quality California pistachios to consumers, implementation of the regulatory provisions proposed herein without adequate implementation of industry administrative procedures could result in the unintended disruption of California pistachio shipments.

Small Business Consideration

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $750,000. Small agricultural service firms, which include handlers that would be regulated under the proposed pistachio order, are defined as those with annual receipts of less than $5,000,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed pistachio marketing order program on small businesses. The record evidence is that while the program would impose some costs on the regulated parties, those costs would be outweighed by the benefits expected to accrue to the U. S. pistachio industry.

The record indicates that there are approximately 647 pistachio producers, which includes the members of the one existing pistachio producer cooperative. There are about 19 handlers who process pistachios in the production area proposed to be regulated.

Statistics prepared by the California Pistachio Commission and submitted as evidence at the hearing show that 445 California pistachio producers (69% of the total) produce less than 100,000 pounds per year; 100 producers (15%) produce more than 100,000 and less than 250,000 pounds; 43 producers (7%) produce more than 250,000 and less than 500,000 pounds; and 59 producers (9%) grow more than 500,000 pounds.

Using an average grower price of $1.10 per pound, 9 percent of the

California pistachio producers receive more than $550,000 annually. Only a portion of these producers would meet SBA's definition of a small agricultural producer.

The record shows that 12 California pistachio handlers (63 percent of the total) handle less than 1,000,000 pounds per year; 4 handlers (21%) handle between 1,000,000 and 10,000,000 pounds; and 3 handlers (16%) handle more than 10,000,000 pounds annually. The largest handler processes over 50 percent of industry production.

Using an average handler price of $1.80 per pound, 63 percent of the pistachio handlers would receive annual receipts of less than $1.8 million, 2 percent would receive between $1.8 and $18.0 million, and 16 percent would receive more than $18.0 million. At least 12 of the pistachio handlers (or 63 percent of the total) could be considered small businesses under SBA's definition.

Record evidence concerning pistachio production and handling costs provide an understanding of the California pistachio industry and potential impacts of implementing the proposed order. Farming pistachios is a costly investment with a significant delay in benefits and an unreliable crop yield.

Although increasing yields have led to an increasing overall value of California pistachio production, producers must maintain a level of return per pound harvested that covers the cost of production in order for their pistachio operations to remain economically viable. Witnesses testified that maintaining a high level of quality product in the market would lead to increasing consumer demand and greater stability in producer returns.

Evidence suggests that poor quality pistachios impact the demand, and the potential growth of demand, for pistachios. Characteristics routinely deemed as "poor quality" by customers of the California pistachio industry include small size, and excessive internal and external blemishes. Market studies and customer comments presented by handler witnesses demonstrate that the presence of poor quality pistachios in the marketplace significantly impacts demand in a negative way.

Minimizing the level of aflatoxin in California pistachios is another significant quality factor, as aflatoxin is a known carcinogen. Consumer concerns over aflatoxin can affect their perception of pistachio quality, and therefore negatively impact demand. Moreover, any market disturbances related to aflatoxin in pistachios, regardless of the geographic origin of those pistachios, could have a detrimental effect on the California pistachio industry. A regulatory program limiting the amount of aflatoxin in pistachios could be useful in bolstering consumer confidence in the quality of California pistachios.

Pistachio acreage has been consistently increasing in California, from just over 20,000 bearing acres in 1979 to 78,000 bearing acres in 2001. The number of non-bearing acres (*i.e.* acres less than 7 years old, not yet in full production) has also shown consistent growth in recent years, rising from 13,400 acres in 1995 to 23,500 acres in 2001, a 75 percent increase. Yield per acre has also been steadily rising. Over the 1976–1980 period, average yield per bearing acre measured 1,110 pounds; by 1996–2000, this average had increased to 2,512 pounds.

Higher yields and increasing acreage has resulted in increasing production. According to information submitted by the CPC, production in 2000 totaled 242 million pounds, a 64-percent increase over 1995 production, which totaled 148 million pounds. Moreover, witnesses at the hearing indicated that maturing acreage, absent any additional new plantings, will likely result in a 60-percent increase in California pistachio production over the coming years.

Several witnesses at the hearing testified that, in light of increasing production, future stability of market returns is reliant on continually increasing consumer demand for pistachios. These witnesses stated that strong consumer demand, which is ultimately related to consumer perceptions of product quality, is essential to the continued economic well being of the California pistachio industry. Moreover, witnesses discussed the importance of implementing a marketing order program that would provide them with a regulatory structure to monitor and assure that minimum quality standards are not compromised as production of California pistachios increases.

The relationship between product quality, consumer demand and producer returns in the pistachio industry was demonstrated at the hearing. Pistachio production is not only costly in terms of initial investment and cultural costs, but it is highly unpredictable in terms of producer returns. Between the initial processes of cleaning, hulling, sorting and drying, a significant portion of the initial volume harvested is reduced. This volume is further reduced as the handling process reaches its final stages of sorting for quality and final preparation for market. Witnesses explained that ultimate pistachio sales are based on approximately 30 percent of the volume initially harvested from the field. Because of this, witnesses stated that the process of extracting the highest quality portion of the harvest, and ensuring consumer satisfaction with that product, is crucial to determining the value of the crop.

Pistachio production is similar to other nut crops in that yield and total production vary substantially from year to year because of the alternate bearing nature of pistachio trees resulting in cyclical high and low production years. Total value and value per acre are generally higher in higher yielding years. Conversely, grower return per pound is generally higher in low yielding years.

Producer returns and total crop value are also dependent on the percentage of harvest that is either "open shell" or "closed shell." Each harvest yields a certain percentage of nuts that have not naturally opened prior to cultivation. These nuts are classified as "closed shell," "shelling stock" or "non-splits," and have a lower market value than those nuts that are naturally split, or "open shell." The proportion of open-shells is a key factor in year-to-year changes in the total value of production.

Economic evidence presented at the hearing, based on data from the National Agricultural Statistics Service (NASS) and the CPC, indicates that trends for total crop value and value per bearing acre have been increasing over the past 20 years. In 1980, the pistachio crop in California was valued at $55.8 million. By 2000, total crop value had increased more than four-fold, reaching $245 million. These gains are attributed to increases in both total pistachio producing acreage and yield per acre. Average value per bearing acre increased from $1,642 per acre in 1980–1984 to $2,665 per acre in 1996–2000.

According to CPC historical price data, price per pound has gradually decreased over the past 20 years, ranging from a high of $2.05 per pound in 1980 to a low of $0.99 per pound in 2001. According to the record, the proposed order would assist in improving producer returns for pistachios. The proposed order would not only assist in fortifying consumer demand by ensuring consumer satisfaction with product quality, but mandatory quality and aflatoxin requirements are also likely to boost domestic prices by culling lower quality pistachios, which tend to have price-depressing effects, from the market.

A University of California Cooperative Extension study presented as part of record evidence estimates total cost of production in 2001 at $2,643 per acre. According to industry data, the average grower return (value per bearing acre) for 1998–2001 was $2,619. This average revenue estimate is just below the Extension study's $2,643 estimate of typical cost. Record evidence indicates that over that 4-year period, the lowest value per bearing acre was $2,137 in 2001 and the highest was $3,207 in 2000.

Witnesses supplied an additional set of cost estimates, which ranged from a low-cost operation of $2,350 per acre to a high of $3,400 per acre. In their testimony, total costs of production were divided into three categories: the costs of orchard establishment, cultural costs and administrative costs. Establishment costs, or the overall cost to develop an acre of pistachios until revenues exceed growing expenses, were estimated at between $10,000 and $15,000, with an average tree maturation period of 7 years. In order to recover these investment costs, the hearing record states that producers generally target an 11% return on investment, estimated at between $1,100 and $1,650 per acre. Annual per acre cultural costs average between $1,100 and $1,600, once the trees are productive. Administrative costs include the cost of farm management and crop financing, and can vary between $150 and $200 per acre. The sum of cultural and administrative costs therefore range from $1,250 to $1,800.

Grower price per pound averaged approximately $1.10 between 1997 and 2001. Given that $1.10 average grower price and the cost estimates above, a producer would need to harvest an average of at least 2,000 pounds per acre to cover total production costs for the low-cost operation ($2,350 per acre). A producer would need to harvest at least 1,136 pounds per acre to cover the cultural and administrative costs of $1,250 per acre (not including a return on investment).

The CPC Annual Report for Crop Year 2001–2002 reveals that 6 out of 26 California counties with pistachio production yielded on average more than 2,000 pounds per acre between 1998 and 2001. These six counties, which together represented over 88 percent of total California pistachio production in 2000, are Colusa, Sutter, Madera, Fresno, Kings and Kern. Glenn, Butte, Placer, Yolo, Contra Costa, San Joaquin, Calaveras, Stanislaus, Merced, Tulare and Santa Barbara counties yield on average between 1,000 to 2,000 pounds per acre and represent roughly 12 percent of total state production. Shasta, Tehama, Yuba, Solano, Sacramento, San Luis Obispo, Los Angeles, San Bernardino and Riverside counties yield on average less than 1,000 pounds per acre and represent less than one percent of California pistachio production.

Given the assumptions made above, approximately 88 percent of the industry is covering total costs of production. Conversely, roughly 12 percent of the industry is currently covering cultural costs but not generating a return on their investment.

Simulation Model

Record evidence includes an economic analysis presented by Dr. Daniel Sumner, University of California-Davis on the potential impacts of the proposed marketing order provisions if the program were implemented. Dr. Sumner presented a cost-benefit analysis based on a simulation model, the purpose of which was to provide a framework for comparing costs of compliance to the benefits of improved quality through implementation of the standards.

Cost Estimates

Dr. Sumner's presentation focused on the regulatory features of the proposed marketing order: (1) Mandatory testing of pistachios for the presence of aflatoxin, with a maximum allowable tolerance of 15 ppb; and (2) mandatory minimum quality standards. The quality standards would specify minimum size and maximum allowable defects.

According to record testimony, the major costs associated with these features are the cost of aflatoxin testing and the cost of USDA presence in the handlers' plant to inspect and sample lots of pistachios. Expected benefits identified by the witnesses would be the increase in consumer confidence in pistachios as a result of aflatoxin regulation, and the combined increases in consumer demand for pistachios due to mandatory USDA regulation and stringent quality standards.

Dr. Sumner's analysis took into account many of the variables presented in testimony by other witnesses describing typical production and processing costs, and presented a weighted average cost computation for marketing order compliance. The average cost of compliance, as identified by several witnesses and reiterated in Dr. Sumner's analysis, is approximately one half cent per pound of domestic pistachio production, or $0.00525 per pound.

Record evidence suggests that the cost of having a USDA inspector in the plant, including mileage plus the standard fee per hour, is approximately $291 per day for the largest plants (which process about 80 percent of total production). Total production for the domestic market that would be processed by the largest plants (those that process over 10 million pounds annually) is estimated at 136 million pounds. If an average lot is 40,000 pounds (the most-common lot size for testing cited by the largest handlers), then 3,400 lots would need to be tested to account for all 136 million pounds (166.67 million pounds times 80 per cent). If a USDA official were to test 5.5 lots per day, then 618 person-days would be needed to test all of the lots. Multiplying $291 per day times 618 person-days yields an annual cost of $180,000 for testing 136 million pounds. Dividing the $180,000 annual cost by 136 million pounds yields an estimated cost per pound of $0.0013 for having USDA personnel in the plant to sample and certify that the pistachios meet minimum quality standards. Testimony suggests that this cost estimate is on the high side, since many handlers would already have USDA personnel in their plants to perform other grading services besides certification of lots for minimum quality.

The cost of aflatoxin testing in the witnesses' simulation analysis is estimated at the current rate charged by a private laboratory ($75 per test). Given this rate information, the aflatoxin testing cost per pound would be $0.0019 ($75 divided by the average lot size of 40,000 pounds).

For the largest handlers, the combined cost of aflatoxin testing and paying for the USDA presence in the plants would be equal to the sum of the quality and aflatoxin cost figures outlined above ($0.0013 + $0.0019), or $0.0032 per pound. To account for imprecision of data and other incidental costs, Dr. Sumner's analysis employs a median cost per pound for marketing order compliance, which is slightly higher, or $0.005 per pound. The analysis further assumes that per unit costs are somewhat higher for smaller plants. Thus, median costs for two categories of smaller plants are estimated at $0.006 and $0.007.

Weighting these cost figures for the three different size categories of plants yields an overall median estimated cost per pound for compliance of $0.00525. In terms of economic theory, this cost increase is represented by a vertical shift in the supply curve of about one-half cent, as measured along the vertical axis in a supply-demand graph. The total direct cost of compliance is estimated at $875,000 in the median scenario ($0.00525 times 166.67 million pounds in the domestic market).

Benefit Estimates

The witness's economic analysis takes into account three separate demand benefits, which he considers distinct. The first, and largest, of the demand benefits is higher expected long run average demand due to the reduced chance of an aflatoxin event that would cause a major negative shock to demand. The mandatory aflatoxin testing under the marketing order would reduce the chance of a demand-decreasing market disturbance in the U.S.

Witnesses cited a 1996 pistachio aflatoxin case which occurred in Germany as an example of what could befall the U.S. pistachio industry if aflatoxin were not properly regulated. Widespread negative publicity about aflatoxin in foreign pistachios exported to Germany caused sales revenue to decline by 50 percent for a duration of three years or more. Witnesses estimate that a similar event in the United States could cost the industry over $300 million in gross revenue. Witnesses also pointed out that there were significant additional repercussions on pistachio sales worldwide as word of the German aflatoxin incident spread through the media of other nations, especially in Europe, affecting pistachio sales in those countries.

The witness's analysis assumes that an aflatoxin related market disturbance would cause a more moderate decrease, represented in the median simulation case as a 10 percent decline (18 cents) from the $1.80 per pound typical base price at the handler level.

By requiring aflatoxin testing for all pistachios destined for the domestic market, the marketing order would make the probability of an aflatoxin event less likely. As a starting point, witnesses argued that without mandatory aflatoxin testing through the proposed marketing order, there is a 5-percent annual probability of an aflatoxin related market disturbance. If such an incident were to occur, witnesses estimated that its impact would last for 3 years. Implementation of mandatory testing is then assumed to reduce the probability to 1 percent, a decline of 4 percentage points.

Mandatory testing under the marketing order therefore increases expected demand, or willingness to pay for pistachios, by $0.0216 per pound (4 per cent decline in probability times 18 cents times 3 years).

The witness's analysis includes two additional demand-side benefits. The witness asserts that USDA requirements convey a positive benefit in the market as reflected by the use of this claim in product promotion, labels, and displays. A median increase of $0.0025 in willingness to pay reflects a reasonably conservative estimate of the higher buyer confidence in pistachios due solely to USDA participation in the pistachio quality testing and certification process. The certification gives additional confidence in the quality of the product.

The third demand benefit is higher buyer perception of quality due to minimum standards. Witnesses assume a similarly small magnitude for this estimated increase in willingness to pay ($0.003 per pound).

Summing the median parameters for each of these three demand impacts, the increase in willingness to pay for pistachios supplied to the domestic market is a little under 3 cents per pound ($0.0271). In terms of economic theory, this figure represents an upward shift in the demand curve of nearly 3 cents, as measured along the vertical axis in a supply-demand graph. Most of the impact is from the first benefit, the reduced probability of aflatoxin being found in California pistachios.

Thus the median benefit in terms of increased per unit demand (willingness to pay) is estimated to be substantially larger than the estimated median per unit direct cost of marketing order compliance ($0.0271 versus $0.00525). Expected or average demand is higher, reflecting the lower probability of an aflatoxin event and the average quality and certification effects in the domestic market. Handlers would face higher costs to comply with the proposed requirements.

Simulation Results

These figures for increased cost and increased willingness to pay were combined with different demand and supply elasticities in the simulation model developed by Dr. Sumner to assess the net economic impact of marketing order implementation. The median elasticities used were unitary (−1.0 for demand and 1.0 for supply). The supply response that is modeled is a long run supply response (additional planting) due to the permanent change in market conditions resulting from the marketing order. These assumed elasticities are based on other prior econometric estimates for pistachios and other tree nuts. Witnesses cited a 1999 report by Lucinda Lewis of Competition Economics, Inc., "Charting a Direction for the U.S. Pistachio Industry," which found a −1.14 demand elasticity for pistachios. According to the record testimony, the range of elasticities used in the simulation scenarios are consistent with published economic studies of supply and demand for pistachios and other tree nuts.

The simulation model solves a system of supply and demand equations for a new set of industry prices and quantities from marketing order implementation. As stated above, the total direct cost of compliance is $875,000. In the simulation, there is an upward shift in the market supply curve, representing increased costs to firms in the pistachio market. The magnitude of the price and quantity change from the shift in the supply curve is determined by the higher cost of production (compliance cost) and the elasticity of supply. The resulting computed (simulated) loss to the handler segment of the industry from higher expenses for marketing order compliance is $490,000.

This $490,000 differs from the previously stated $875,000 cost of compliance figure by the amount of an implied price increase and the small equalization effect on the smaller handlers that process 20 percent of the product.

The witness's analysis assumes that with minimum quality requirements the relative position of the smaller firms would improve to match those of other handlers. This is because prior to the new mandatory requirements, these firms are assumed to have fewer quality controls than most other firms, and thus end up selling nuts to the part of the market that buys lower quality nuts at lower prices. The equalization effect resulting from uniform minimum quality specifications is a small positive benefit that offsets some of the cost of compliance for the smaller firms.

On the demand side, the higher willingness to pay is $0.0216 per pound for the reduced probability of aflatoxin in California pistachios, and $0.0055 for the two additional demand-side benefits (higher buyer confidence from USDA certification and higher buyer perception of quality). The magnitude of the price and quantity change from the shift in the demand curve is determined by the higher willingness to pay and the elasticity of demand.

In the median simulation, the amount sold in the domestic market rises by 1.6 million pounds. The benefit to industry participants is the total value of this increase in domestic sales which is the 1.6 million pound increase in quantity sold multiplied by the higher expected price level resulting from the shifting of the supply and demand curves in the simulation of marketing order impacts.

Using the median supply and demand elasticities in the simulation model, and the median compliance cost and willingness to pay figures, the computed benefit to the handler portion of the market from the reduced chance of an aflatoxin market disturbance is $1.545 million dollars. The value of the two additional demand-side benefits is $.392 million dollars. The total benefit to handlers is thus $1.938 million dollars.

When the loss due to compliance-related expenses ($490,000) is factored in, the resulting net benefit to pistachio handlers from the marketing order is $1.448 million dollars. This $1.448 million dollar estimate of net benefit to handlers is the key result from the witness's cost-benefit analysis.

In economic theory terminology, this part of the simulation is measuring the change in producer surplus. Viewed in terms of a supply-demand graph, producer surplus is the area under the cost and above the supply curve. The $1.448 million dollar estimate of net benefit is a measure of the difference between producer surplus at the initial equilibrium (*e.g.* $1.80 average price at the handler level, or $1.10 at the grower level) and the new higher price and quantity after the supply and demand curves have been shifted to represent the median changes in cost (supply) and willingness to pay (demand).

TABLE 1.—SIMULATION OF PISTACHIO MARKETING ORDER IMPACTS ON PRODUCERS/HANDLERS

[Annual Net Costs and Benefits with Median Parameter Values]

Benefit 1: Reduced chance of aflatoxin event	$1,545,000
Benefit 2: USDA certification	178,000
Benefit 3:	
Improved quality perception	214,000
Total benefit	1,938,000
Impact of cost of compliance	−490,000
Net total	1,448,000

It should be noted that although the witness asserts that Benefit 2 and Benefit 3 are conceptually distinct, one could argue that there is significant overlap between the value of USDA certification and improved quality perception on the part of pistachio buyers and consumers. However, the assumed benefits are small in both cases, and if either of the benefit figures is eliminated, net estimated benefits to handlers still exceed one million dollars.

Cost-benefit studies which use economic welfare analysis also typically include consumer impacts, and the witness's economic analysis includes a parallel set of computations for the buyer/consumer segment of the pistachio industry. The largest demand-side benefit, the reduced chance of an aflatoxin event, is estimated at $2.586 million. The combined value of the two additional demand-side benefits is $.655 million, yielding a total benefit estimate of $3.241 million. Subtracting the estimated impact on buyers/consumers of introducing added costs of marketing order compliance ($245,000) yields a buyer/consumer net benefit estimate of $2.996 million. A key aspect of this economic analysis is that consumer willingness to pay for pistachios rises as consumer confidence improves from the higher quality standards imposed by the order. With the demand and supply elasticities used in the analysis, the benefits to the domestic buyers/consumers in this simulation are larger than benefits to the handler side of the market.

In economic theory terminology, this part of the simulation is measuring the change in consumer surplus. Viewed in terms of a supply-demand graph, consumer surplus is the area above the price and below the demand curve. The $2.996 million dollar estimate of net benefit is a measure of the difference between consumer surplus at the initial equilibrium and the new price and quantity after the supply and demand curves have been shifted to represent the median changes in cost (supply) and willingness to pay (demand).

Summing the producer/handler and buyer/consumer net benefits ($2.996 + $1.448) yields a $4.444 million median estimated value of the marketing order to the economy.

Estimated Impacts on Small Producers

The proposed marketing order would not impose any direct compliance costs on producers. The direct impact is on the handlers who would be required to pay for testing and inspection. Producers would be affected to the extent that they may have to discard more low quality nuts than previously, if they produce quantities of nuts below the proposed size and quality standard. Witnesses stated there is no evidence that the proportion of low quality nuts is correlated with farm size.

Additionally, the record shows that handler costs of compliance are typically reflected in handler payments to producers. Witnesses stated that the anticipated benefit derived from increased consumer demand would offset the cost of compliance to producers.

Witnesses stated that most producers sell to large handlers (which handle 80 percent of production). Distinguishing among handlers by size does not indicate different economic impacts on individual farms, which are distributed broadly across handlers.

Witnesses also pointed out that there is substantial inter-handler competition in the pistachio industry, with at least 10 handlers out of 19 competing for producers' pistachios (with the remainder presumably processing for their own account). Given the distribution of producers across processing firms and the level of competition, the overall cost-benefit results may be taken as the impact on the full size range of producers.

Based on a farm price of $1.10 and a handler price of $1.80, producers receive about 60 percent of the revenue in the industry, and are likely (given certain supply elasticities) to receive more than 60 percent of the estimated handler net benefits. Producer total gain (out of the estimated $1.448 million in net benefits to the handler segment) is thus at least $870,000 per year ($1.448 million times 0.60). This is distributed across producers in proportion to output, with no differential impact on smaller or larger producers.

Based on the hearing record, AMS therefore concludes that pistachio producers would benefit from implementation of the proposed order. Further, there is no evidence of differing economic impacts between small and large producers.

Estimated Impact on Small Handlers

Most compliance costs are uniform across handlers, but some differences could be correlated with the size of a handler's operation. Two relevant points are the number of lots ready to be tested per day and the lot size to be tested. Larger firms, which are more likely to have larger lot sizes for testing and to have more lots ready per day (up to about 5), may experience some savings relative to firms with smaller lot sizes and fewer lots to be tested at one time.

The proposed marketing order includes provisions to reduce compliance costs for small handlers. Firms that handle less than 1,000,000 pounds per year would be subject to simplified aflatoxin testing procedures. Additionally, they would be exempt from testing for remaining minimum quality requirements. This should reduce the expenses for smaller handlers.

Some other handlers, which process substantially more, may face somewhat higher costs for at least part of their production. Those handlers are likely, however, to have more than $5 million in total revenue, and would thus not be classified as small business entities.

Table 2 shows that the compliance costs and net economic impacts for different sizes of handlers. A positive net economic impact would exist for all handler groups.

TABLE 2.—DISTRIBUTION OF ECONOMIC EFFECTS ACROSS HANDLERS OF DIFFERENT SIZES

[Pistachio Marketing Order Simulation Results With Median Parameter Values]

Handler group*	Direct compliance cost	Net economic impact
Higher Volume/Lower Compliance Costs	−$667,000	$1,178,000
Medium Volume/Compliance Costs	−150,000	208,000
Lower Volume/Higher Compliance Costs	58,000	61,000
Total	875,000	1,447,000

*80%, 15%, and 5%, respectively, of total quantity of pistachios marketed annually.

The above table shows that the net economic impact is in direct proportion to the volume of pistachios handled by each handler group. For example, the largest handler group, accounting for 80 percent of the pistachios marketed, would reap about 81 percent of the benefits of the program. AMS therefore concludes that the program would not have a disproportionate impact on small entities.

The cost and benefit estimates presented above focus on a single set of results using median parameter values. The witness's economic analysis involved simulating a number of scenarios, using alternative values for compliance costs, benefits, and elasticities of supply and demand. All scenarios, even the low benefit, high cost scenarios, indicated positive net economic impacts.

The witness's analysis concludes that the proposed marketing order would require minimal adjustments in current processing activities and would yield large estimated benefits. The simulation results indicate that costs of compliance are small relative to benefits for all firms, and that both small and large entities are likely to benefit significantly. Producers are likely to share net producer benefits in proportion to production. Large and small handlers both gain from the marketing order, also in proportion to the volumes handled. Some of the smallest handlers could have larger net benefits per unit because of the provision allowing special lower-cost testing arrangements.

The witness's net benefit analysis represents a reasonable, plausible set of estimates of the economic impact of mandatory aflatoxin testing and minimum quality standards through promulgation of a Federal marketing order. The median cost and benefit figures explained during the hearing are considered to adequately represent estimates of the economic impact of implementation of the proposed program and its regulatory provisions.

The proposed order would impose some reporting and recordkeeping requirements on handlers. However, handler testimony indicated that the expected burden that would be imposed with respect to these requirements would be negligible. Most of the information that would be reported to the committee is already compiled by handlers for other uses and is readily available. Reporting and recordkeeping requirements issued under the peanut aflatoxin certification program (7 CFR part 996) impose an average annual burden on each regulated handler and importer of about 8 hours. It is reasonable to expect that a similar burden may be imposed under this proposed marketing order on the estimated 19 handlers of pistachios in California.

The Act requires that, prior to the issuance of a marketing order, a referendum be conducted among the affected producers to determine if they favor issuance of the order. The ballot material that would be used in conducting the referendum would be submitted to and approved by OMB before it is used. It is estimated that it would take an average of 10 minutes for each of the approximately 647 pistachio producers in California to complete the ballot. Additionally, it has been estimated that it would take approximately 10 minutes for each handler to complete the marketing agreement.

Therefore, in compliance with OMB regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements that may be imposed by this order would be submitted to OMB for approval. Those requirements would not become effective prior to OMB review. Any recordkeeping and reporting requirements imposed would be evaluated against the potential benefits to be derived and it is expected that any added burden resulting from increased reporting and recordkeeping would not be significant when compared to those anticipated benefits derived from administration of the order.

The record evidence also indicates that the benefits to small as well as large handlers are likely to be greater than would accrue under the alternatives to the order proposed herein, namely no marketing order, or an order without the proposed combination of quality, size and aflatoxin regulation.

In determining that the proposed order and its provisions would not have a disproportionate economic on a substantial number of small entities, all of the issues discussed above were considered. Based on hearing record evidence and USDA's analysis of the economic information provided, the proposed order provisions have been carefully reviewed to ensure that every effort has been made to eliminate any unnecessary costs or requirements.

Although the proposed order may impose some additional costs and requirements on handlers, it is anticipated that the order will help to strengthen demand for California pistachios. Therefore, any additional costs would be offset by the benefits derived from expanded sales benefiting handlers and producers alike. Accordingly, it is determined that the proposed order would not have a disproportionate economic impact on a substantial number of small handlers or producers.

A 30-day comment period is provided to allow interested persons to respond to this proposed decision to effectuate a marketing order. Thirty days is deemed appropriate so that any marketing order resulting from this rulemaking process may be implemented as soon as possible at the beginning of the nearest marketing year. A 60-day comment period on the information collection burden is deemed appropriate as any paperwork burden imposed by this action will not become effective until the process is finalized. All written exceptions and comments timely received will be considered and a grower referendum will be conducted before these proposals are implemented.

Civil Justice Reform

The marketing agreement and order proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed order would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposal.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Department a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted there from. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Department's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), AMS announces its intention to request an approval of a new information collection for the marketing order regulating pistachios grown in California.

Title: Pistachios Grown in California.

OMB Number: 0581–NEW.

Expiration Date of Approval: To be assigned by OMB.

Type of Request: Intent to establish a new information collection.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the California pistachio marketing order program.

The California pistachio marketing order would authorize standards for quality of pistachios produced and handled in California by establishing a maximum aflatoxin tolerance level, maximum limits for defects, a minimum size requirement, and mandatory inspection and certification. AMS is the agency that would provide oversight of the order, and any administrative rules and regulations issued under the program.

The Department must determine if sufficient producer support exists within the industry to initially establish the proposed marketing order. If the order were established, the USDA could also, given recommendation by the committee and adequate support by the industry, implement formal rulemaking to amend the order. Further, a continuance referendum would be conducted every 6 years to determine ongoing industry support for the order. In all of these instances, ballot information would be collected from producers and compiled in aggregate for purposes of determining producer support for the order (or any amendment to the order).

Upon implementation of the order or during amendatory proceedings, handlers would be asked to sign a marketing agreement to indicate their willingness to comply with the provisions of the new or amended order. AMS would also provide a certificate of resolution for each handler organization to sign, documenting the handler's support of the marketing agreement and order.

If the proposed order is established, handler and producer nomination forms, ballots, and confidential qualification and acceptance statements will be used to nominate and appoint the committee members.

California pistachio producers and handlers would be nominated by their peers to serve as representatives on the committee. Each producer and handler would have the opportunity to submit a nomination form with the names of individuals to be considered for nomination.

Individuals who are nominated and wish to stand for election would be required to complete a confidential qualification and acceptance statement before the election. If qualified, the nominees would be placed on a nomination ballot.

Producers and handlers would vote for the candidate(s) of their choice using the producer and handler nomination ballots. Names of candidates receiving the most votes would be submitted to AMS for appointment as committee members and alternate members. The producer and handler members of the committee would nominate a public member and alternate public member. Each would complete qualification and acceptance statement before being recommended to AMS for appointment.

The forms covered under this information collection request submission of minimum information necessary to ascertain producer support for implementing the proposed order and to appoint initial committee members. Additional reporting and recordkeeping requirements may subsequently be recommended by the committee for its use in administering the order. The burden imposed by any additional requirements would be submitted for approval by the OMB.

The information collected would be used only by authorized representatives of USDA, including AMS, Fruit and Vegetable Programs regional and headquarters' staff, and authorized employees of the committee, if established. Section 608(d)(2) of the Act provides that all information would be kept confidential.

Total Annual Estimated Burden

The total burden for the proposed information collection under the order is as follows:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Estimated Number of Respondents: 668 (647 producers, 19 handlers and the public member and alternate nominee).

Estimated Number of Responses per Respondent: .77

Estimated Total Annual Burden on Respondents: 133 hours.

Estimated Annual Burden for Each Form

For each new form, the proposed request for approval of new information collections under the order are as follows:

FV–240 Producer's Referendum Ballot (promulgation and continuance). Producers would use this ballot to vote whether they favor establishment of the order and, once every 6 years, whether they want the order to continue in effect. For the purpose of this calculation, it is estimated that 450 pistachio producers (75 percent of the total) would vote in the promulgation referendum and in the continuance referenda.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 minutes per response.

Respondents: California pistachio producers.

Estimated Number of Respondents: 450.

Estimated Number of Responses per Respondent: Once every 6 years.

Estimated Total Annual Burden on Respondents: 25 hours.

FV–241 Cooperative Association of Producers Referendum Ballot (promulgation and continuance). This ballot would be used to register the cooperative's vote on promulgation or continuance of the marketing order. At the time of this promulgation proceeding, there is only 1 pistachio cooperative registered in the production area.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 minutes per response.

Respondents: California pistachio cooperative.

Estimated Number of Respondents: 1.

Estimated Number of Responses per Respondent: Once every 6 years.

Estimated Total Annual Burden on Respondents: 3 minutes.

FV–242 Marketing Agreement. Handlers would use this form to indicate their willingness to comply with the provisions of the order. The Marketing Agreement would be completed if the proposed order is implemented and in any future amendment of the order.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.

Respondents: California pistachio handlers.

Estimated Number of Respondents: 19.

Estimated Number of Responses per Respondent: Once every 6 years.

Estimated Total Annual Burden on Respondents: 16 minutes.

FV–242A Certificate of Resolution. This would document corporate handlers' support for the order and marketing agreement. The Marketing Agreement would be completed if the proposed order is implemented and in any future amendment of the order.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.

Respondents: Incorporated pistachio handlers.

Estimated Number of Respondents: 19.

Estimated Number of Responses per Respondent: Once every 6 years.

Estimated Total Annual Burden on Respondents: 16 minutes.

FV–243 Administrative Committee for Pistachios Confidential Producer/Handler and Public Member Qualification and Acceptance Statement. There are 11 members and 11 alternate members on the committee. Each year after the initial committee is seated, half of the 22 members would be replaced with new members. This form would be used by candidates for nomination to provide their qualifications to serve on the committee. For the purpose of this calculation, it is estimated that 30 individuals will agree to be candidates to serve on the committee.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 10 minutes per response.

Respondents: California pistachio producers, handlers and public member nominees.

Estimated Number of Respondents: 30.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 5 hours.

FV–244 Handler Members and Alternate Handler Members' Ballot. Each handler would use the ballot to vote on handler member nominees to serve on the committee.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 5 minutes per response.

Respondents: California pistachio handlers.

Estimated Number of Respondents: 19.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1.5 hours.

FV–245 Producer Members and Alternate Producer Members Nomination Form. Pistachio producers would use this form to nominate themselves or other producers to serve on the committee. For the purpose of this calculation, it is estimated that 50 producers will offer nominations.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 minutes per response.

Respondents: California pistachio producers.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 17 hours.

FV–245A Handler Members and Alternate Handler Members' Nomination Form. Pistachio handlers would use this form to nominate themselves or other handlers to serve on the committee. For the purpose of this calculation, it is estimated that 10 handlers will offer nominations.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 minutes per response.

Respondents: California pistachio handlers.

Estimated Number of Respondents: 10.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 3.3 hours.

FV–246 Producer Member and Alternate Producer Member Ballot. Pistachio producers would use this ballot to vote on their choice of nominees to serve on the committee. For the purpose of this calculation, it is estimated that 325 producers (50 percent of all producers) will vote in nomination elections.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: California pistachio producers.

Estimated Number of Respondents: 325.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 81 hours.

If this marketing order program is approved by producers in referendum and established by USDA, the committee could recommend to the Department other forms (such as monthly handler reports of acquisitions or dispositions of substandard pistachios) which would be needed to administer the order. All such forms would be subject to USDA and OMB review and approval.

Comments: Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information would have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–NEW and the California pistachio marketing order, and be sent to USDA in care of the Docket Clerk at the previously mentioned address. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval of the above-described forms. All comments will become a matter of public record.

Rulings on Proposed Findings and Conclusions

Briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth in this recommended decision. To the extent that the suggested findings and conclusions filed by interested persons are inconsistent with the findings and conclusions of this recommended decision, the requests to make such findings or to reach such conclusions are denied.

General Findings

(1) The proposed marketing agreement and order and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The proposed marketing agreement and order regulate the handling of pistachios in California in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(3) The proposed marketing agreement and order are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivision of the production area would not effectively carry out the declared policy of the Act;

(4) The proposed marketing agreement and order prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of pistachios grown in the production area; and

(5) All handling of pistachios grown in California as defined in the proposed marketing agreement and order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Provisions of the proposed marketing agreement and order follow. Those sections identified with an asterisk (*) apply only to the proposed marketing agreement.

List of Subjects in 7 CFR Part 983

Marketing agreements, Pistachios, Reporting and recordkeeping requirements.

Title 7, chapter IX is proposed to be amended by adding part 983 to read as follows:

PART 983—PISTACHIOS GROWN IN CALIFORNIA

Subpart—Order Regulating Handling

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983.4 Aflatoxin.
983.5 Aflatoxin inspection certificate.
983.6 Assessed weight.
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983.28 Proprietary capacity.
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983.37 Marketing policy.

Regulation

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983.58 Compliance.
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983.68 Procedure upon termination.
983.69 Effect of termination or amendment.
983.70 Exemption.
983.71 Relationship with the California Pistachio Commission.
* 983.90 Counterparts.
* 983.91 Additional parties.
* 983.92 Order with marketing agreement.

*Sections identified with an asterisk (*) apply only to the proposed marketing agreement.

Authority: 7 U.S.C. 601–674.

Subpart—Order Regulating Handling

Definitions

§ 983.1 Accredited laboratory.

An *accredited laboratory* is a laboratory that has been approved or accredited by the U.S. Department of Agriculture for testing aflatoxin.

§ 983.2 Act.

Act means Public Act No. 10, 73rd Congress (May 12, 1933), as amended and as re-enacted and amended by the Agricultural Marketing Order Act of 1937, as amended (48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

§ 983.3 Affiliation.

Affiliation. This term normally appears as "affiliate of", or "affiliated with", and means a person such as a producer or handler who is: a producer or handler that directly, or indirectly through one or more intermediaries, owns or controls, or is controlled by, or is under common control with the producer or handler specified; or a producer or handler that directly, or indirectly through one or more intermediaries, is connected in a proprietary capacity, or shares the ownership or control of the specified producer or handler with one or more other producers or handlers. As used in this part, the term *control* (including the terms *controlling, controlled by,* and *under the common control with*) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a handler or a producer, whether through voting securities, membership in a cooperative, by contract or otherwise.

§ 983.4 Aflatoxin.

Aflatoxin is one of a group of mycotoxins produced by the molds *Aspergillus flavus* and *Aspergillus parasiticus.* Aflatoxins are naturally occurring compounds produced by molds, which can be spread in improperly processed and stored nuts, dried fruits and grains.

§ 983.5 Aflatoxin inspection certificate.

Aflatoxin inspection certificate is a certificate issued by an accredited laboratory or by a USDA laboratory.

§ 983.6 Assessed weight.

Assessed weight means pounds of pistachios, with the weight computed at 5 percent moisture, received for processing by a handler within each production year: *Provided,* That for loose kernels, the actual weight shall be multiplied by two to obtain an inshell weight; or based on such other elements as may be recommended by the committee and approved by the Secretary.

§ 983.7 Certified pistachios.

Certified pistachios are those for which aflatoxin inspection and minimum quality certificates have been issued.

§ 983.8 Committee.

Committee means the administrative committee for pistachios established pursuant to § 983.32.

§ 983.9 Confidential data or information.

Confidential data or information submitted to the committee consists of data or information constituting a trade secret or disclosure of the trade position, financial condition, or business operations of a particular entity or its customers.

§ 983.10 Department or USDA.

Department or USDA means the United States Department of Agriculture.

§ 983.11 Districts.

(a) *Districts* shall consist of the following:

(1) *District 1* consists of Tulare, Kern, San Bernardino, San Luis Obispo, Santa Barbara, Ventura, Los Angeles, Orange, Riverside, San Diego, and Imperial Counties of California.

(2) *District 2* consists of Kings, Fresno, Madera, and Merced Counties of California.

(3) *District 3* consists of all counties in California where pistachios are produced that are not included in Districts 1 and 2.

(b) With the approval of the Secretary, the boundaries of any district may be changed by the committee, to ensure proper representation. The boundaries need not coincide with county lines. In addition, the boundaries in the production area may be adjusted to conform to changes to the boundaries of the districts established for those of the California Pistachio Commission upon the recommendation of the committee and approval of the Secretary.

§ 983.12 Domestic shipments.

Domestic shipments means shipments to the fifty states of the United States or to territories of the United States and the District of Columbia.

§ 983.13 Edible pistachios.

Edible pistachios are those that do not exceed the level of defects under § 983.38 and § 983.39.

§ 983.14 Handle.

Handle means to engage in:

(a) Receiving pistachios;

(b) Hulling and drying pistachios;

(c) Further preparing pistachios by sorting, sizing, shelling, roasting, cleaning, salting, and/or packaging for marketing in or transporting to any and all markets in the current of interstate or foreign commerce; and/or

(d) Placing pistachios into the current of commerce from within the production area to points outside thereof: *Provided,* however, that transportation within the production area between handlers and from the orchard to the processing facility is not handling.

§ 983.15 Handler.

Handler means any person who handles pistachios.

§ 983.16 Inshell pistachios.

Inshell pistachios means pistachios that have a shell that has not been removed.

§ 983.17 Inspector.

Inspector means any inspector authorized by the USDA to inspect pistachios.

§ 983.18 Lot.

Lot means any quantity of pistachios that is submitted for testing purposes under this part.

§ 983.19 Minimum quality requirements.

Minimum quality requirements are permissible maximum defects and minimum size levels for inshell pistachios and kernels specified in § 983.39.

§ 983.20 Minimum quality certificate.

Minimum quality certificate is a certificate issued by the USDA or Federal/State Inspection Service.

§ 983.21 Part and subpart.

Part means the order regulating the handling of pistachios grown in the State of California, and all rules, regulations and supplementary orders issued there under. The aforesaid order regulating the handling of pistachios grown in California shall be a subpart of such part.

§ 983.22 Person.

Person means an individual, partnership, limited liability corporation, corporation, trust, association, or any other business unit.

§ 983.23 Pistachios.

Pistachios means the nuts of the pistachio tree of the genus *Pistacia vera* grown in the production area whether inshell or shelled.

§ 983.24 Processing.

Processing means hulling and drying pistachios in preparation for market.

§ 983.25 Producer.

Producer means any person engaged within the production area in a proprietary capacity in the production of pistachios for sale.

§ 983.26 Production area.

Production area means the State of California.

§ 983.27 Production year.

Production year is synonymous with "fiscal period" and means the period beginning on September 1 and ending on August 31 of each year or such other period as may be recommended by the committee and approved by the Secretary. Pistachios harvested and received in August of any year shall be applied to the subsequent production year for marketing order purposes.

§ 983.28 Proprietary capacity.

Proprietary capacity means the capacity or interest of a producer or handler that, either directly or through one or more intermediaries, is a property owner together with all the appurtenant rights of an owner including the right to vote the interest in that capacity as an individual, a shareholder, member of a cooperative, partner, trustee or in any other capacity with respect to any other business unit.

§ 983.29 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture who is, or who may hereafter be, authorized to act in his/her stead.

§ 983.30 Shelled pistachios.

Shelled pistachios means pistachio kernels, or portions of kernels, after the pistachio shells have been removed.

§ 983.31 Substandard pistachios.

Substandard pistachios means pistachios, inshell or shelled, which do not comply with the maximum aflatoxin and/or minimum quality regulations of this part.

Administrative Committee

§ 983.32 Establishment and membership.

There is hereby established an administrative committee for pistachios to administer the terms and provisions of this part. This committee, consisting of eleven (11) member positions, each of whom shall have an alternate, shall be allocated as follows:

(a) *Handlers.* Two of the members shall represent handlers, as follows:

(1) One handler member nominated by one vote for each handler; and

(2) One handler member nominated by voting based on each handler casting one vote for each ton (or portion thereof) of the assessed weight of pistachios processed by such handler during the two production years preceding the production year in which the nominations are made.

(b) *Producers.* Eight members shall represent producers. Producers within the respective districts shall nominate four producers from District 1, three producers from District 2 and one producer from District 3. The Secretary, upon recommendation of the committee, may reapportion producer membership among the districts to ensure proper representation.

(c) *Public member.* One member shall be a public member who is neither a producer nor a handler and shall have all the powers, rights and privileges of any other member of the committee. The public member and alternate public member shall be nominated by the committee and selected by the Secretary.

§ 983.33 Initial members and nomination of successor members.

Nomination of committee members and alternates shall follow the procedure set forth in this section or as may be changed as recommended by the committee and approved by the Secretary.

(a) *Initial members.* Nominations for initial grower and handler members shall be conducted by the Secretary by either holding meetings of handlers and producers, or by mail.

(b) *Successor members.* Subsequent to the first nomination of committee members under this part, persons to be nominated to serve on the committee as producer or handler members shall be selected pursuant to nomination procedures that shall be established by the committee with the approval of the Secretary: *Provided,* That:

(1) Any qualified individuals who seek nomination as a producer member shall submit to the committee an intent to seek office in one designated district on such form and with such information as the committee shall designate; ballots, accompanied by the names of all such candidates, with spaces to indicate voters' choices and spaces for write-in candidates, together with voting instructions, shall be mailed to all producers who are on record with the committee within the respective districts; the person(s) receiving the highest number of votes shall be the member nominee(s) for that district, and the person(s) receiving the second highest number of votes shall be the alternate member nominee(s). In case of a tie vote, the nominee shall be selected by a drawing.

(2) Any qualified individuals who seek nomination as a handler member shall submit to the committee an intent to seek office with such information as the committee shall designate: ballots, accompanied by the names of all such candidates, with spaces to indicate voters' choices and spaces for write-in candidates, together with voting instructions, shall be mailed to all handlers who are on record with the committee. For the first handler member seat, the person receiving the highest number of votes shall be the handler member nominee for that seat, and the person receiving the second highest number of votes shall be the alternate member nominee. For the second handler member seat, the person receiving the highest number of votes representing handler volume shall be the handler member nominee for that seat, and the person receiving the second highest number of votes representing handler volume shall be the alternate member nominee. In case of a tie vote, the nominee shall be selected by a drawing.

(c) *Handlers.* Only handlers, including duly authorized officers or employees of handlers, may participate in the nomination of the two handler member nominees and their alternates. Nomination of the two handler members and their alternates shall be as follows:

(1) For one handler member nomination, each handler entity shall be entitled to one vote;

(2) For the second handler member nomination, each handler entity shall be entitled to cast one vote respectively for each ton of assessed weight of pistachios processed by that handler during the two production years preceding the production year in which the nominations are made. For the purposes of nominating handler members and alternates by volume, the assessed weight of pistachios shall be credited to the handler responsible under the order for the payment of assessments of those pistachios. The committee with the approval of the Secretary, may revise the handler representation on the committee if the committee ceases to be representative of the industry.

(d) *Producers.* Only producers, including duly authorized officers or employees of producers, may participate in the nomination of nominees for producer members and their alternates. Each producer shall be entitled to cast only one vote, whether directly or through an authorized officer or employee, for each position to be filled in the district in which the producer produces pistachios. If a producer is engaged in producing pistachios in more than one district, such producer shall select the district in which to participate in the nomination. If a person is both a producer and a handler of pistachios, such person may participate in both producer and

handler nominations, provided, however, that a single member may not hold concurrent seats as both a producer and handler.

(e) *Member's affiliation.* Not more than two members and not more than two alternate members shall be persons employed by or affiliated with producers or handlers that are affiliated with the same handler and/or producer. Additionally, only one member and one alternate in any one district representing producers and only one member and one alternate representing handlers shall be employed by, or affiliated with the same handler and/or producer. No handler, and all of its affiliated handlers, can be represented by more than one handler member.

(f) *Cooperative affiliation.* In the case of a producer cooperative, a producer shall not be deemed to be connected in a proprietary capacity with the cooperative notwithstanding any outstanding retains, contributions or financial indebtedness owed by the cooperative to a producer if the producer has not marketed pistachios through the cooperative during the current and one preceding production year. A cooperative that has as its members one or more other cooperatives that are handlers shall not be considered as a handler for the purpose of nominating or voting under this part.

(g) *Alternate members.* Each member of the committee shall have an alternate member to be nominated in the same manner as the member. Any alternate serving in the same district as a member where both are employed by, or connected in a proprietary capacity with the same corporation, firm, partnership, association, or business organization, shall serve as the alternate to that member. An alternate member, in the absence of the member for whom that alternate is selected shall serve in place of that member on the committee, and shall have and be able to exercise all the rights, privileges, and powers of the member when serving on the committee. In the event of death, removal, resignation, or the disqualification of a member, the alternate shall act as a member on the committee until a successor member is selected and has been qualified.

(h) *Selection by Secretary.* Nominations under paragraph (g) of this section received by the committee for all handler and producer members and alternate member positions shall be certified and sent to the Secretary at least 60 days prior to the beginning of each two-year term of office, together with all necessary data and other information deemed by the committee to be pertinent or requested by the Secretary. From those nominations, the Secretary shall select the ten producer and handler members of the committee and an alternate for each member.

(i) *Acceptance.* Each person to be selected by the Secretary as a member or as an alternate member of the committee shall, prior to such selection, qualify by advising the Secretary that if selected, such person agrees to serve in the position for which that nomination has been made.

(j) *Failure to nominate.* If nominations are not made within the time and manner specified in this part, the Secretary may, without regard to nominations, select the committee members and alternates qualified to serve on the basis of the representation provided for in § 983.32.

(k) *Term of office.* Selected members and alternate members of the committee shall serve for terms of two years: *Provided,* That four of the initially selected producer members and one handler member and their alternates shall, by a drawing, be seated for terms of one year so that approximately half of the memberships' terms expire each year. Each member and alternate member shall continue to serve until a successor is selected and has qualified. The term of office shall begin on July 1st of each year. Committee members and alternates may serve up to four consecutive, two-year terms of office. In no event shall any member or alternate serve more than eight consecutive years on the committee. For purposes of determining when a member or alternate has served four consecutive terms, the accrual of terms shall begin following any period of at least twelve consecutive months out of office.

(l) *Qualifications.* (1) Each producer member and alternate shall be, at the time of selection and during the term of office, a producer or an officer, or employee, of a producer in the district for which nominated.

(2) Each handler member and alternate shall be, at the time of selection and during the term of office, a handler or an officer or employee of a handler.

(3) Any member or alternate member who at the time of selection was employed by or affiliated with the person who is nominated, that member shall, upon termination of that relationship, become disqualified to serve further as a member and that position shall be deemed vacant.

(4) No person nominated to serve as a public member or alternate public member shall have a financial interest in any pistachio growing or handling operation.

(m) *Vacancy.* Any vacancy on the committee occurring by the failure of any person selected to the committee to qualify as a member or alternate member due to a change in status making the member ineligible to serve, or due to death, removal, or resignation, shall be filled, by a majority vote of the committee for the unexpired portion of the term. However, that person shall fulfill all the qualifications set forth in this part as required for the member whose office that person is to fill. The qualifications of any person to fill a vacancy on the committee shall be certified in writing to the Secretary. The Secretary shall notify the committee if the Secretary determines that any such person is not qualified.

(n) The committee, with the approval of the Secretary, may issue rules and regulations implementing §§ 983.32, 983.33 and 983.34.

§ 983.34 Procedure.

(a) *Quorum.* A quorum of the committee shall be any seven voting committee members. The vote of a majority of members present at a meeting at which there is a quorum shall constitute the act of the committee: *Provided,* That actions of the committee with respect to the following issues shall require at least seven concurring votes of the voting members regarding any recommendation to the Secretary for adoption or change in:

(1) Minimum quality levels;

(2) Aflatoxin levels;

(3) Inspection programs;

(4) The establishment of the committee.

(b) *Voting.* Members of the committee may participate in a meeting by attendance in person or through the use of a conference telephone or similar communication equipment, as long as all members participating in such a meeting can communicate with one another. An action required or permitted to be taken by the committee may be taken without a meeting, if all members of the committee shall consent in writing to that action.

(c) *Compensation.* The members of the committee and their alternates shall serve without compensation, but members and alternates acting as members shall be allowed their necessary expenses: *Provided,* That the committee may request the attendance of one or more alternates not acting as members at any meeting of the committee, and such alternates may be allowed their necessary expenses; and, *Provided further,* That the public member and the alternate for the public member may be paid reasonable compensation in addition to necessary expenses.

§ 983.35 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make and adopt bylaws, rules and regulations to effectuate the terms and provisions of this part with the approval of the Secretary;

(c) To receive, investigate, and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 983.36 Duties.

The committee shall have, among others, the following duties:

(a) To adopt bylaws and rules for the conduct of its meetings and the selection of such officers from among its membership, including a chairperson and vice-chairperson, as may be necessary, and define the duties of such officers; and adopt such other bylaws, regulations and rules as may be necessary to accomplish the purposes of the Act and the efficient administration of this part;

(b) To employ or contract with such persons or agents as the committee deems necessary and to determine the duties and compensation of such persons or agents;

(c) To select such subcommittees as may be necessary;

(d) To submit to the Secretary a budget for each fiscal period, prior to the beginning of such period, including a report explaining the items appearing therein and a recommendation as to the rate of assessments for such period;

(e) To keep minutes, books, and records which will reflect all of the acts and transactions of the committee and which shall be subject to examination by the Secretary;

(f) To prepare periodic statements of the financial operations of the committee and to make copies of each statement available to producers and handlers for examination at the office of the committee;

(g) To cause its financial statements to be audited by a certified public accountant at least once each fiscal year and at such times as the Secretary may request. Such audit shall include an examination of the receipt of assessments and the disbursement of all funds. The committee shall provide the Secretary with a copy of all audits and shall make copies of such audits, after the removal of any confidential individual or handler information that may be contained in them, available for examination at the offices of the committee;

(h) To act as intermediary between the Secretary and any producer or handler with respect to the operations of this part;

(i) To investigate and assemble data on the growing, handling, shipping and marketing conditions with respect to pistachios;

(j) To apprise the Secretary of all committee meetings in a timely manner;

(k) To submit to the Secretary such available information as the Secretary may request;

(l) To investigate compliance with the provisions of this part;

(m) To provide, through communication to producers and handlers, information regarding the activities of the committee and to respond to industry inquiries about committee activities;

(n) To oversee the collection of assessments levied under this part;

(o) To borrow such funds, subject to the approval of the Secretary and not to exceed the expected expenses of one fiscal year, as are necessary for administering its responsibilities and obligations under this part.

Marketing Policy

§ 983.37 Marketing policy.

Prior to August 1st each year, the committee shall prepare and submit to the Secretary a report setting forth its recommended marketing policy covering quality regulations for the pending crop. In the event it becomes advisable to modify such policy, because of changed crop conditions, the committee shall formulate a new policy and shall submit a report thereon to the Secretary. In developing the marketing policy, the committee shall give consideration to the production, harvesting, processing and storage conditions of that crop. The committee may also give consideration to current prices being received and the probable general level of prices to be received for pistachios by producers and handlers. Notice of the committee's marketing policy, and of any modifications thereof, shall be given promptly by reasonable publicity, to producers and handlers.

Regulations

§ 983.38 Aflatoxin levels.

(a) *Maximum level.* No handler shall ship for domestic human consumption, pistachios that exceed an aflatoxin level of more than 15 ppb. All shipments must also be covered by an aflatoxin inspection certificate. Pistachios that fail to meet the aflatoxin requirements shall be disposed in such manner as described in Failed lots/rework procedure of this part.

(b) *Change in level.* The committee may recommend to the Secretary changes in the aflatoxin level specified in this section. If the Secretary finds on the basis of such recommendation or other information that such an adjustment of the aflatoxin level would tend to effectuate the declared policy of the Act, such change shall be made accordingly.

(c) *Transfers between handlers.* Transfers between handlers within the production area are exempt from the aflatoxin regulation of this section.

(d) *Aflatoxin testing procedures.* To obtain an aflatoxin inspection certificate, each lot to be certified shall be uniquely identified, be traceable from testing through shipment by the handler and be subjected to the following:

(1) *Samples for testing.* Prior to testing, a sample shall be drawn from each lot and divided between those pistachios for aflatoxin testing and those for minimum quality testing ("lot samples") in sufficient weight to comply with Table 1, Table 2 and Table 4 of this part.

(2) *Test samples for aflatoxin.* Prior to submission of samples to an accredited laboratory for aflatoxin analysis, three samples shall be created equally from the pistachios designated for aflatoxin testing in compliance with the requirements of Tables 1 and 2 of this paragraph (d)(2) ("test samples"). The test samples shall be prepared by, or under the supervision of, an inspector, or as approved under an alternative USDA-recognized inspection program. The test samples shall be designated by an inspector as Test Sample #1, Test Sample #2, and Test Sample #3. Each sample shall be placed in a suitable container, with the lot number clearly identified, and then submitted to an accredited laboratory. The gross weight of the inshell lot sample for aflatoxin testing and the number of samplings required are shown in Table 1 of this paragraph (d)(2). The gross weight of the kernel lot sample for aflatoxin testing and the number of incremental samples required is shown in Table 2 of this paragraph (d)(2).

TABLE 1.—INSHELL PISTACHIO LOT SAMPLING INCREMENTS FOR AFLATOXIN CERTIFICATION

Lot weight (lbs.)	Number of incremental samples for the lot sample	Total weight of lot sample (kilograms)	Weight of test sample (kilograms)
220 or less	10	3.0	1.0
221–440	15	4.5	1.5
441–1100	20	6.0	2.0
1101–2200	30	9.0	3.0
2201–4400	40	12.0	4.0
4401–11,000	60	18.0	6.0
11,001–22,000	80	24.0	8.0
22,001–150,000	100	30.0	10.0

TABLE 2.—SHELLED PISTACHIO KERNEL LOT SAMPLING INCREMENTS FOR AFLATOXIN CERTIFICATION

Lot weight (lbs.)	Number of incremental samples for the lot sample	Total weight of lot sample (kilograms)	Weight of test sample (kilograms)
220 or less	10	1.5	.5
221–440	15	2.3	.75
441–1100	20	3.0	1.0
1101–2200	30	4.5	1.5
2201–4400	40	6.0	2.0
4401–11,000	60	9.0	3.0
11,001–22,000	80	12.0	4.0
22,001–150,000	100	15.0	5.0

(3) *Testing of pistachios.* Test samples shall be received and logged by an accredited laboratory and each test sample shall be prepared and analyzed using High Pressure Liquid Chromatograph (HPLC) and Vicam Method (Aflatest) or other methods as recommended by not less than seven members of the committee and approved by the Secretary. The aflatoxin level shall be calculated on a kernel weight basis.

(4) *Certification of lots "negative" as to aflatoxin.* Lots will be certified as "negative" on the aflatoxin inspection certificate if Test Sample #1 has an aflatoxin level at or below 5 ppb. If the aflatoxin level of Test Sample #1 is above 25 ppb, the lot fails and the accredited laboratory shall fill out a failed lot notification report as specified in § 983.40. If the aflatoxin level of Test Sample #1 is above 5 ppb and below 25 ppb, the accredited laboratory may at the handler's discretion analyze Test Sample #2 and the test results of Test Samples #1 and #2 will be averaged. Alternatively, the handler may elect to withdraw the lot from testing, rework the lot, and re-submit it for testing after re-working. If the handler directs the laboratory to proceed with the analysis of Test Sample #2, a lot will be certified as negative to aflatoxin and the laboratory shall issue an aflatoxin inspection certificate if the averaged results of Test Samples #1 and Test Sample #2 is at or below 10 ppb. If the averaged aflatoxin level of the Test Samples #1 and #2 is at or above 20 ppb, the lot fails and the accredited laboratory shall fill out a failed lot notification report as specified in § 983.40. If the averaged aflatoxin level of Test Samples #1 and #2 is above 10 ppb and below 20 ppb, the accredited laboratory may, at the handler's discretion, analyze Test Sample #3 and the results of Test Samples #1, #2 and #3 will be averaged. Alternatively, the handler may elect to withdraw the lot from testing, re-work the lot, and re-submit it for testing after a re-working. If the handler directs the laboratory to proceed with the analysis of Test Sample #3, a lot will be certified as negative to aflatoxin and the laboratory shall issue an aflatoxin inspection certificate if the averaged results of Test Samples #1, #2 and #3 is at or below 15 ppb. If the averaged aflatoxin results of Test Samples #1, #2 and #3 is above 15 ppb, the lot fails and the accredited laboratory shall fill out a failed lot notification report as specified in § 983.40. The accreditation laboratory shall send a copy of the failed lot notification report to the committee and to the failed lot's owner within 10 working days of any failure described in this section. If the lot is certified as negative as described in this section, the aflatoxin inspection certificate shall certify the lot using a certification form identifying each lot by weight, grade and date. The certification expires for the lot or remainder of the lot after 12 months.

(5) *Certification of aflatoxin levels.* Each accredited laboratory shall complete aflatoxin testing and reporting and shall certify that every lot of California pistachios shipped domestically does not exceed the aflatoxin levels as required in § 983.38(d)(4). Each handler shall keep a record of each test, along with a record of final shipping disposition. These records must be maintained for three years beyond the crop year of their applicability, and are subject to audit by the Secretary or the committee at any time.

(6) *Test samples that are not used for analysis.* If a handler does not elect to use Test Samples #2 or #3 for certification purposes the handler may request the laboratory to return them to the handler.

§ 983.39 Minimum quality levels.

(a) *Maximum defect and minimum size.* No handler shall ship for domestic human consumption, pistachios that exceed permissible maximum defect and minimum size levels shown in the following Table 3.

TABLE 3.—MAXIMUM DEFECT AND MINIMUM SIZE LEVELS

Factor	Maximum permissible defects (percent by weight)	
	Inshell	Kernels
External (Shell) Defects		
1. Non-splits & not split on suture	10.0	
(i) Maximum non-splits allowed	4.0	
2. Adhering hull material	2.0	
3. Dark stain	3.0	
4. Damage by other means, other than paragraphs 1, 2 and 3, which materially detracts from the appearance or the edible or marketing quality of the individual shell or the lot	10.0	
Internal (Kernel) Deffects		
1. Damage	6.0	3.0
Immature kernel (Fills <75%–<50% of the shell)		
Kernel spotting (Affects ⅛ aggregate surface)		
2. Serious damage	4.0	2.5
Minor insect or vertebrate injury/insect damage, insect evidence, mold, rancidity, decay		
(i) Maximum insect damage allowed	2.0	0.5
Total external or internal defects allowed	9.0	
Other Defects		
1. Shell pieces and blanks (Fills <50% of the shell)	2.0	
(i) Maximum blanks allowed	1.0	
2. Foreign material	0.25	0.1
No glass, metal or live insects permitted		
3. Particles and dust	0.25	
4. Loose kernels	6.0	
	Minimum permissible defects (percent by weight)	
Maximum allowable inshell pistachios that will pass through a 30/64ths inch round hole screen	5.0	

(b) *Definitions applicable to permissible maximum defect and minimum size levels:* The following definitions shall apply to inshell pistachio and pistachio kernel maximum defect and minimum size:

(1) *Loose kernels* means edible kernels or kernel portions that are out of the shell and which cannot be considered particles and dust.

(2) *External (shell) defects* means any abnormal condition affecting the hard covering around the kernel. Such defects include, but are not limited to, non-split shells, shells not split on suture, adhering hull material or dark stains.

(3) *Damage by external (shell) defects* shall also include any specific defect described in paragraphs (b)(3)(i) through (iv) of this section or an equally objectionable variation of any one of these defects, any other defect or any combination of defects which materially detracts from the appearance or the edibility or the marketing quality of the individual shell or the lot.

(i) *Non-split shells* means shells are not opened or are partially opened and will not allow an 18/1000 (.018) inch thick by ¼ (.25) inch wide gauge to slip into the opening.

(ii) *Not split on suture* means shells are split other than on the suture and will allow an 18/1000 (.018) inch thick by ¼ (.25) inch wide gauge to slip into the opening.

(iii) *Adhering hull material* means an aggregate amount of hull covers more than one-eighth (⅛) of the total shell surface, or when readily noticeable on dyed shells.

(iv) *Dark stain* on raw or roasted nuts means an aggregate amount of dark brown, dark gray or black discoloration that affects more than one-eighth of the total shell surface. Pistachios that are dyed or color-coated to improve their marketing quality are not subject to the maximum permissible defects for dark stain. Speckled discoloration on the stem end, bottom quarter of the nut is not considered damage.

(4) *Internal (kernel) defects* means any damage affecting the kernel. Such damage includes, but is not limited to evidence of insects, immature kernels, rancid kernels, mold or decay.

(i) *Damage by internal (kernel) defects* shall also include any specific defect described in paragraphs (b)(4)(i)(A) and (B) of this section, or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance or the edibility or the marketing quality of the individual kernel or of the lot.

(A) *Immature kernels* in inshell are excessively thin kernels, or when a kernel fills less than three-fourths, but not less than one-half of the shell cavity. "Immature kernels" in shelled pistachios are excessively thin kernels and can have black, brown or gray surface with a dark interior color and the immaturity has adversely affected the flavor of the kernel.

(B) *Kernel spotting* refers to dark brown or dark gray spots aggregating more than one-eighth of the surface of the kernel.

(ii) *Serious damage* by internal (kernel) defects means any specific defect described in paragraphs (b)(4)(ii)(A) through (E) of this section, or an equally objectionable variation of any one of these defects, which seriously detracts from the appearance or the edibility or the marketing quality of the individual kernel or of the lot.

(A) *Minor insect or vertebrate injury* means the kernel shows conspicuous evidence of feeding.

(B) *Insect damage* means an insect, insect fragment, web or frass attached to the kernel. No live insects shall be permitted.

(C) *Mold* that is readily visible on the shell or kernel.

(D) Rancidity means the kernel is distinctly rancid to taste. Staleness of flavor shall not be classed as rancidity.

(E) *Decay* means 1/16th or more of the kernel surface is decomposed.

(5) *Other defects* means defects that cannot be considered internal defects or external defects. Such defects include, but are not limited to shell pieces, blanks, foreign materials or particles and dust. The following shall be considered other defects:

(i) *Shell pieces* means open inshell without a kernel, half shells or pieces of shell which are loose in the sample.

(ii) *Blanks* means a non-split shell not containing a kernel or containing a kernel that fills less than one-half of the shell cavity.

(iii) *Foreign material* means leaves, sticks, loose hulls or hull pieces, dirt, rocks, insects or insect fragments not attached to nuts, or any substance other than pistachio shells or kernels. Glass, metal or live insects shall not be permitted.

(iv) *Particles and dust* means pieces of nut kernels that will pass through 5/64 inch round opening.

(v) *Undersized* means inshell pistachios that fall through a 30/64-inch round hole screen.

(c) *Minimum quality certificate.* Each shipment for domestic human consumption must be covered by a USDA certificate certifying a minimum quality or higher. Pistachios that fail to meet the minimum quality specifications shall be disposed of in such manner as described in § 983.40.

(d) *Transfers between handlers.* Transfers between handlers within the production area are exempt from the minimum quality regulation of this section.

(e) *Minimum quality testing procedures.* To obtain a minimum quality certificate, each lot to be certified shall be uniquely identified, shall be traceable from testing through shipment by the handler and shall be subjected to the following procedure:

(1) *Sampling of pistachios for maximum defects and minimum size.* The gross weight of the inshell and kernel sample, and number of samplings required to meet the minimum quality regulation, is shown in Table 4 of this paragraph (e)(1). These samples shall be drawn from the lot that is to be certified pursuant to § 983.38(d)(1) under the supervision of an inspector or as approved under an alternative USDA recognized inspection program.

TABLE 4.—INSHELL AND KERNEL PISTACHIO LOT SAMPLING INCREMENTS FOR MINIMUM QUALITY CERTIFICATION

Lot weight (lbs.)	Number of incremental samples for the lot sample	Total weight of lot sample (grams)	Weight of inshell and kernel test sample (grams)
220 or less	10	500	500
221–440	15	500	500
441–1100	20	600	500
1101–2200	30	900	500
2201–4400	40	1200	500
4401–11,000	60	1800	500
11,001–22,000	80	2400	1000
22,001–150,000	100	3000	1000

(2) *Testing of pistachios for maximum defect and minimum size.* The sample shall be analyzed according to USDA protocol, current or as subsequently revised, to insure that the lot does not exceed maximum defects and meets at least the minimum size levels as specified in Table 3 of paragraph (a) of this section. For inshell pistachios, those nuts with dark stain, adhering hull, and those exhibiting apparent serious defects shall be shelled for internal kernel analysis. The USDA protocol currently appears in USDA inspection instruction manual "Pistachios in the Shell, Shipping Point and Market Inspection Instructions," June 1994: revised September 1994, HU–125–9(b). Copies may be obtained from the Fresh Products Branch, Agricultural Marketing Service, USDA. Contact information may be found at *http://www.ams.usda.gov/fv/fvstand.htm.*

(f) *Certification of minimum quality.* Each inspector shall complete minimum quality testing and reporting and shall certify that every lot of California pistachios or portion thereof shipped domestically meets minimum quality levels. A record of each test, along with a record of final shipping disposition, shall be kept by each handler. These records must be maintained for three years following the production year in which the pistachios were shipped, and are subject to audit by the committee at any time.

§ 983.40 Failed lots/rework procedure.

(a) *Substandard pistachios.* Each lot of substandard pistachios may be reworked to meet minimum quality requirements.

(b) *Failed lot reporting.* If a lot fails to meet the aflatoxin and/or the minimum quality requirements of this part, a failed lot notification report shall be completed and sent to the committee within 10 working days of the test failure. This form must be completed and submitted to the committee each time a lot fails either aflatoxin or the minimum quality testing. The accredited laboratories shall send the failed lot notification reports for aflatoxin tests to the committee, and the handler, under the supervision of an inspector, shall send the failed lot notification reports for the lots that do not meet the minimum quality requirements to the committee.

(c) *Inshell rework procedure for aflatoxin.* If inshell rework is selected as a remedy to meet the aflatoxin requirements of this part, then 100% of the product within that lot shall be removed from the bulk and/or retail packaging containers and reworked to remove the portion of the lot that caused the failure. Reworking shall consist of mechanical, electronic or manual procedures normally used in the handling of pistachios. After the rework procedure has been completed the total weight of the accepted product and the total weight of the rejected product shall be reported to the committee. The reworked lot shall be sampled and tested for aflatoxin as specified in § 983.38.

(d) *Kernel rework procedure for aflatoxin.* If pistachio kernel rework is selected as a remedy to meet the aflatoxin requirements of § 983.38, then 100% of the product within that lot shall be removed from the bulk and/or retail packaging containers and reworked to remove the portion of the lot that caused the failure. Reworking shall consist of mechanical, electronic or manual procedures normally used in the handling of pistachios. After the rework procedure has been completed the total weight of the accepted product and the total weight of the rejected product shall be reported to the committee. The reworked lot shall be sampled and tested for aflatoxin as specified in § 983.38.

(e) *Minimum quality rework procedure for inshell pistachios and kernels.* If rework is selected as a remedy to meet the minimum quality requirements of § 983.39, then 100% of the product within that lot shall be removed from the bulk and/or retail packaging containers and processed to remove the portion of the lot that caused the failure. Reworking shall consist of mechanical, electronic or manual procedures normally used in the handling of pistachios. The reworked lot shall be sampled and tested for the minimum quality requirements as specified in the minimum quality regulations of § 983.39.

§ 983.41 Testing of minimal quantities.

(a) *Aflatoxin.* Handlers who handle less than 1 million pounds of assessed weight per year, have the option of utilizing both of the following methods for testing for aflatoxin:

(1) The handler may have an inspector sample and test his or her entire inventory of hulled and dried pistachios for the aflatoxin certification before further processing.

(2) The handler may segregate receipts into various lots at the handler's discretion and have an inspector sample and test each specific lot. Any lots that have less than 15 ppb aflatoxin can be certified by an inspector to be negative as to aflatoxin. Any lots that are found to be above 15 ppb may be tested after reworking in the same manner as specified in § 983.38.

(b) *Minimum quality.* Handlers who handle less than 1 million pounds of assessed weight can apply to the committee for an exemption from minimum quality testing. If the committee grants an exemption, then the handler must pull and retain samples of the lots and make samples available for review by the committee. The handler shall maintain the samples for 90 days.

§ 983.42 Commingling.

After a lot is issued an aflatoxin inspection certificate and minimum quality certificate, it may be commingled with other certified lots.

§ 983.43 Reinspection.

The Secretary, upon recommendation of the committee, may establish rules and regulations to establish conditions under which pistachios would be subject to reinspection.

§ 983.44 Inspection, certification and identification.

Upon recommendation of the committee and approval of the Secretary, all pistachios that are required to be inspected and certified in accordance with this part, shall be identified by appropriate seals, stamps, tags, or other identification to be affixed to the containers by the handler. All inspections shall be at the expense of the handler.

§ 983.45 Substandard pistachios.

The committee shall, with the approval of the Secretary, establish such reporting and disposition procedures as it deems necessary to ensure that pistachios which do not meet the outgoing maximum aflatoxin tolerance and minimum quality requirements prescribed by §§ 983.38 and 983.39 shall not be shipped for domestic human consumption.

§ 983.46 Modification or suspension of regulations.

(a) In the event that the committee, at any time, finds that, by reason of changed conditions, the order provisions contained in § 983.38 through § 983.45 should be modified or suspended, it shall by vote of at least seven concurring members, so recommend to the Secretary.

(b) Whenever the Secretary finds from the recommendations and information submitted by the committee or from other available information, that the aflatoxin or minimum quality provisions in § 983.38 and § 983.39 should be modified, suspended, or terminated with respect to any or all shipments of pistachios in order to effectuate the declared policy of the Act, the Secretary shall modify or suspend such provisions. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the Act, the Secretary shall suspend or terminate such regulation.

(c) The committee, with the approval of the Secretary, may issue rules and regulations implementing §§ 983.38 through 983.45.

Reports, Books and Records

§ 983.47 Reports.

Upon the request of the committee, with the approval of the Secretary, each handler shall furnish such reports and information on such forms as are needed to enable the Secretary and the committee to perform their functions and enforce the regulations under this part. The committee shall provide a uniform report format for the handlers.

§ 983.48 Confidential information.

All reports and records furnished or submitted by handlers to the committee which include confidential data or information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular handler or their customers shall be received by, and at all times kept in the custody and under the control of, one or more employees of the committee, who shall disclose such data and information to no person except the Secretary. However, such data or information may be disclosed only with the approval of the Secretary, to the committee when reasonably necessary to enable the committee to carry out its functions under this part.

§ 983.49 Records.

Records of pistachios received, held and shipped by him, as will substantiate any required reports and will show performance under this part will be maintained by each handler for at least three years beyond the crop year of their applicability.

§ 983.50 Random verification audits.

(a) All handlers' pistachio inventory shall be subject to random verification audits by the committee to ensure compliance with the terms of the order, and regulations adopted pursuant thereto.

(b) Committee staff or agents of the committee, based on information from the industry or knowledge of possible violations, may make buys of handler product in retail locations. If it is determined that violations of the order have occurred as a result of the buys, the matter will be referred to the Secretary for appropriate action.

§ 983.51 Verification of reports.

For the purpose of checking and verifying reports filed by handlers or the operation of handlers under the provisions of this part, the Secretary and the committee, through their duly authorized agents, shall have access to any premises where pistachios and records relating thereto may be held by any handler and at any time during reasonable business hours, shall be permitted to inspect any pistachios so held by such handler and any and all records of such handler with respect to the acquisition, holding, or disposition of all pistachios which may be held or

which may have been shipped by him/her.

Expenses and Assessments

§ 983.52 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each production year for the maintenance and functioning of the committee and for such other purposes as the Secretary may, pursuant to the provisions of this part, determine to be appropriate.

§ 983.53 Assessments.

(a) Each handler who receives pistachios for processing in each production year shall pay the committee on demand, an assessment based on the pro rata share of the expenses authorized by the Secretary for that year attributable to the assessed weight of pistachios received by that handler in that year.

(b) The committee, prior to the beginning of each production year, shall recommend and the Secretary shall set the assessment for the following production year, which shall not exceed one-half of one percent of the average price received by producers in the preceding production year. The committee, with the approval of the Secretary, may revise the assessment if it determines, based on information including crop size and value, that the action is necessary, and if the revision does not exceed the assessment limitation specified in this section and is made prior to the final billing of the assessment.

§ 983.54 Contributions.

The committee may accept voluntary contributions but these shall only be used to pay for committee expenses.

§ 983.55 Delinquent assessments.

Any handler who fails to pay any assessment within the time required by the committee, shall pay to the committee a late payment charge of 10 percent of the amount of the assessment determined to be past due and, in addition, interest on the unpaid balance at the rate of one and one-half percent per month. The late payment and interest charges may be modified by the Secretary upon recommendation of the committee.

§ 983.56 Accounting.

(a) If, at the end of a production year, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (a)(2) of this section, it shall be refunded proportionately to the persons from whom it was collected in accordance with § 983.53: *Provided,* That any sum paid by a person in excess of his/her pro rata share of the expenses during any production year may be applied by the committee at the end of such production year as credit for such person, toward the committee's fiscal operations of the following production year;

(2) The committee, with the approval of the Secretary, may carry over such excess into subsequent production years as a reserve: *Provided,* That funds already in the reserve do not exceed approximately two production years' budgeted expenses. In the event that funds exceed two production years' budgeted expenses, future assessments will be reduced to bring the reserves to an amount that is less than or equal to two production years' budgeted expenses. Such reserve funds may be used:

(i) To defray expenses, during any production year, prior to the time assessment income is sufficient to cover such expenses;

(ii) To cover deficits incurred during any production year when assessment income is less than expenses;

(iii) To defray expenses incurred during any period when any or all provisions of this part are suspended; and

(iv) To cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements for which that member was personally responsible, deliver all committee property and funds in the possession of such member to the committee, and execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the committee property, funds, and claims vested in such member pursuant to this part.

§ 983.57 Implementation and amendments.

The Secretary, upon the recommendation of a majority of the committee, may issue rules and regulations implementing or modifying § 983.47 through § 983.56, inclusive.

Miscellaneous Provisions

§ 983.58 Compliance.

Except as provided in this part, no handler shall handle pistachios, the handling of which has been prohibited or otherwise limited by the Secretary in accordance with provisions of this part; and no handler shall handle pistachios except in conformity to the provision of this part.

§ 983.59 Rights of the Secretary.

The members of the committee (including successors or alternates) and any agent or employee appointed or employed by the committee, shall be subject to removal or suspension at the discretion of the Secretary, at any time. Each and every decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and upon such disapproval, shall be deemed null and void.

§ 983.60 Personal liability.

No member or alternate member of the committee, nor any employee, representative, or agent of the committee shall be held personally responsible to any handler, either individually, or jointly with others, in any way whatsoever, to any person, for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, employee, representative, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 983.61 Separability.

If any provision of this part is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder, or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

§ 983.62 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 983.63 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence thereof.

§ 983.64 Agents.

The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any service, division or branch in the United States Department of Agriculture, to act as agent or representative of the Secretary in connection with any of the provisions of this part.

§ 983.65 Effective time.

The provisions of this part, as well as any amendments, shall become effective at such time as the Secretary may declare, and shall continue in force until terminated or suspended in one of the ways specified in § 983.66 or § 983.67.

§ 983.66 Suspension or termination.

The Secretary shall terminate or suspend the operation of any or all of the provisions of this part, whenever he/she finds that such provisions do not tend to effectuate the declared policy of the Act.

§ 983.67 Termination.

(a) The Secretary may at any time terminate the provisions of this part.

(b) The Secretary shall terminate or suspend the operations of any or all of the provisions of this part whenever it is found that such provisions do not tend to effectuate the declared policy of the Act.

(c) The Secretary shall terminate the provisions of this part at the end of any fiscal period whenever it is found that such termination is favored by a majority of producers who, during a representative period, have been engaged in the production of pistachios: *Provided,* That such majority has, during such representative period, produced for market more than fifty percent of the volume of such pistachios produced for market, but such termination shall be announced at least 90 days before the end of the current fiscal period.

(d) Within six years of the effective date of this part the Secretary shall conduct a referendum to ascertain whether continuance of this part is favored by producers. Subsequent referenda to ascertain continuance shall be conducted every six years thereafter. The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance of this part is not favored by a two thirds (⅔) majority of voting producers, or a two thirds (⅔) majority of volume represented thereby, who, during a representative period determined by the Secretary, have been engaged in the production for market of pistachios in the production area. Such termination shall be announced on or before the end of the production year.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the Act authorizing them cease.

§ 983.68 Procedure upon termination.

Upon the termination of this part, the members of the committee then functioning shall continue as joint trustees, for the purpose of liquidating the affairs of the committee. Action by such trustees shall require the concurrence of a majority of said trustees. Such trustees shall continue in such capacity until discharged by the Secretary, and shall account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and the joint trustees, to such persons as the Secretary may direct; and shall upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all the funds, properties, and claims vested in the committee or the joint trustees, pursuant to this part. Any person to whom funds, property, or claims have been transferred or delivered by the committee or the joint trustees, pursuant to this section, shall be subject to the same obligations imposed upon the members of said committee and upon said joint trustees.

§ 983.69 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise, in connection with any provisions of this part or any regulation issued there under,

(b) Release or extinguish any violation of this part or any regulation issued there under, or

(c) Affect or impair any rights or remedies of the Secretary, or of any other persons, with respect to such violation.

§ 983.70 Exemption.

Any handler may handle pistachios within the production area free of the requirements in §§ 983.38 through 983.45 and 983.53 if such pistachios are handled in quantities not exceeding 1,000 dried pounds during any marketing year. This subpart may be changed as recommended by the committee and approved by the Secretary.

§ 983.71 Relationship with the California Pistachio Commission.

In conducting committee activities and other objectives under this part, the committee may deliberate, consult, cooperate and exchange information with the California Pistachio Commission. Any sharing of information gathered under this subpart shall be kept confidential in accordance with provisions under section 10(i) of the Act.

***§ 983.90 Counterparts.**

Handlers may sign an agreement with the Secretary indicating their support for this marketing order. This agreement may be executed in multiple counterparts by each handler. If more than fifty percent of the handlers, weighted by the volume of pistachios handled during a representative period, enter into such an agreement, then a marketing agreement shall exist for the pistachio marketing order. This marketing agreement shall not alter the terms of this part. Upon the termination of this part, the marketing agreement has no further force or effect.

***§ 983.91 Additional parties.**

After this part becomes effective, any handler may become a party to the marketing agreement if a counterpart is executed by the handler and delivered to the Secretary.

***§ 983.92 Order with marketing agreement.**

Each signatory handler hereby requests the Secretary to issue, pursuant to the Act, an order for regulating the handling of pistachios in the same manner as is provided for in this agreement.

Dated: July 23, 2003.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–19123 Filed 8–1–03; 8:45 am]

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Federal Register

Monday,
August 4, 2003

Part IV

Department of Health and Human Services

Centers for Medicare & Medicaid Services

41 CFR Parts 409, 411, et al.

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 409, 411, 413, 440, 483, 488, and 489

[CMS–1469–F]

RIN 0938–AL90

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule updates the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs), for fiscal year (FY) 2004. Annual updates to the PPS rates are required by section 1888(e) of the Social Security Act (the Act), as amended by the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA), and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), relating to Medicare payments and consolidated billing for SNFs.

DATES: *Effective Date:* This regulation becomes effective on October 1, 2003.

FOR FURTHER INFORMATION CONTACT: John Davis, (410) 786–0008 (for information related to the Wage Index, and for information related to swing-bed providers).

Ellen Gay, (410) 786–4528 (for information related to the case-mix classification methodology, and for information related to swing-bed providers).

Sheila Lambowitz, (410) 786–7605 (for information related to the SNF Market Basket Index and forecast error).

Bill Ullman, (410) 786–5667 (for information related to level of care determinations, consolidated billing, and general information).

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To assist readers in referencing sections contained in this document, we are providing the following Table of Contents.

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Regulation Text

In addition, because of the many terms to which we refer by abbreviation in this final rule, we are listing these abbreviations and their corresponding terms in alphabetical order below:

AHE Average Hourly Earnings
ARD Assessment Reference Date
BBA Balanced Budget Act of 1997 (Pub. L. 105–33)
BBRA Medicare, Medicaid and SCHIP Balanced Budget Refinement Act of 1999 (Pub. L. 106–113)
BIPA Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (Pub. L. 106–554)
CAH Critical Access Hospital
CFR Code of Federal Regulations
CMS Centers for Medicare & Medicaid Services
ECEC Employer Cost for Employee Compensation
ECI Employment Cost Index
FI Fiscal Intermediary
FR Federal Register
FY Fiscal Year
GAO General Accounting Office
HCPCS Healthcare Common Procedure Coding System
IFC Interim Final Rule with Comment Period
MDS Minimum Data Set
MedPAC Medicare Payment Advisory Commission
MEDPAR Medicare Provider Analysis and Review File
MSA Metropolitan Statistical Area
NF Nursing Facility
PPI Producer Price Indices
PPS Prospective Payment System
QIO Quality Improvement Organization
RAVEN Resident Assessment Validation Entry
RFA Regulatory Flexibility Act (Pub. L. 96–354)
RIA Regulatory Impact Analysis
RUG Resource Utilization Groups
SCHIP State Children's Health Insurance Program
SNF Skilled Nursing Facility
UMRA Unfunded Mandates Reform Act (Pub. L. 104–4)

I. Background

On May 16, 2003, we published a proposed rule (hereinafter referred to as the "proposed rule") in the **Federal Register** (68 FR 26758), setting forth the proposed updates to the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs), for FY 2004. Annual updates to the PPS rates are required by section 1888(e) of the Social Security Act (the Act), as amended by the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (Pub. L. 106–113) (the BBRA) and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (Pub. L. 106–554) (the BIPA), relating to Medicare payments and consolidated billing for SNFs. In the proposed rule, we invited public comments on a number of proposed revisions and technical corrections to the associated regulations. Following the publication of that proposed rule, we then published a supplemental proposed rule (hereinafter referred to as the "supplemental proposed rule") on June 10, 2003 (68 FR 34768), in which we invited public comments on possibly revising the annual update methodology by establishing an adjustment to account for forecast error. In addition, we also invited comments on ways to ensure that additional payments that could result from such an adjustment would be used to promote quality of care in the SNF setting (including direct care services to residents).

A. Current System for Payment of SNF Services Under Part A of the Medicare Program

Section 4432 of the Balanced Budget Act of 1997 (Pub. L. 105–33) (the BBA) amended section 1888 of the Act to provide for the implementation of a per diem PPS for SNFs, covering all costs (routine, ancillary, and capital-related) of covered SNF services furnished to beneficiaries under Part A of the Medicare program, effective for cost reporting periods beginning on or after July 1, 1998. We are updating the per diem payment rates for SNFs for FY 2004. Major elements of the SNF PPS include:

- *Rates.* Per diem Federal rates were established for urban and rural areas using allowable costs from FY 1995 cost reports. These rates also included an estimate of the cost of services that, before July 1, 1998, were paid under Part B but furnished to Medicare beneficiaries in a SNF during a Part A covered stay. The rates were adjusted annually using a SNF market basket index. Rates were case-mix adjusted using a classification system (Resource Utilization Groups, version III (RUG–III)) based on beneficiary assessments (using the Minimum Data Set (MDS) 2.0). The rates were also adjusted by the hospital wage index to account for geographic variation in wages. (In section III.C of this final rule, we discuss the wage index adjustment in detail.) A correction notice was published on December 27, 2002 (67 FR 79123) that announced corrections to several of the wage factors. Additionally, as noted in the July 31, 2002 update notice (67 FR 49798), section 101 of the BBRA and certain sections of the BIPA also affect the payment rate.
- *Transition.* The SNF PPS included an initial 3-year, phased transition that blended a facility-specific payment rate with the Federal case-mix adjusted rate. For each cost reporting period after a facility migrated to the new system, the facility-specific portion of the blend decreased and the Federal portion increased in 25 percentage point increments. For most facilities, the facility-specific rate was based on allowable costs from FY 1995; however, since the last year of the transition was FY 2001, all facilities were paid at the full Federal rate by the following fiscal year (FY 2002). Therefore, we are no longer including adjustment factors related to facility-specific rates for the coming fiscal year.
- *Coverage.* The establishment of the SNF PPS did not change Medicare's fundamental requirements for SNF coverage. However, because the RUG–III classification is based, in part, on the beneficiary's need for skilled nursing care and therapy, we have attempted, where possible, to coordinate claims review procedures involving level of care determinations with the outputs of beneficiary assessment and RUG–III classifying activities. We discuss this coordination in greater detail in section III.E of this final rule. Another SNF benefit requirement is that the SNF must be certified by Medicare as meeting the requirements for program participation contained in section 1819 of the Act. This provision of the law defines a SNF as "* * * an institution (or a distinct part of an institution). * * *" In section III.K of this final rule, we discuss a clarification that we are making in defining the term "distinct part" with respect to SNFs.
- *Consolidated Billing.* The SNF PPS includes a consolidated billing provision that requires a SNF to submit consolidated Medicare bills for almost all of the services that the resident receives during the course of a covered Part A stay. (In addition, this provision places with the SNF the Medicare billing responsibility for physical, occupational, and speech-language therapy that the resident receives during a noncovered stay.) The statute excludes from the consolidated billing provision a few services—primarily those of physicians and certain other types of practitioners—which remain separately billable to Part B by the outside entity that furnishes them. We discuss this provision in greater detail in section III.I of this final rule.
- *Application of the SNF PPS to SNF services furnished by swing-bed hospitals.* Section 1883 of the Act permits certain small, rural hospitals to enter into a Medicare swing-bed agreement, under which the hospital can use its beds to provide either acute or SNF care, as needed. For critical access hospitals (CAHs), Part A pays on a reasonable cost basis for SNF services furnished under a swing-bed agreement. However, in accordance with section 1888(e)(7) of the Act, these services furnished by non-CAH rural hospitals are paid under the SNF PPS, effective with cost reporting periods beginning on or after July 1, 2002. A more detailed discussion of this provision appears in section III.J of this final rule.
- *Technical corrections.* We are also taking this opportunity to make a number of technical corrections in the text of the regulations, as discussed in greater detail in section IV of this final rule.

B. Requirements of the Balanced Budget Act of 1997 (the BBA) for Updating the SNF PPS

Section 1888(e)(4)(H) of the Act requires that we publish in the **Federal Register:**

1. The unadjusted Federal per diem rates to be applied to days of covered SNF services furnished during the fiscal year.
2. The case-mix classification system to be applied with respect to these services during the fiscal year.
3. The factors to be applied in making the area wage adjustment with respect to these services.

In the July 30, 1999 final rule (64 FR 41670), we indicated that we would announce any changes to the guidelines for Medicare level of care determinations related to modifications in the RUG–III classification structure (*see* section III.E of this final rule).

C. The Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (the BBRA)

There were several provisions in the BBRA that resulted in adjustments to the SNF PPS. These provisions were described in detail in the final rule that we published in the **Federal Register** on July 31, 2000 (65 FR 46770). In particular, section 101 of the BBRA provided for a temporary 20 percent increase in the per diem adjusted payment rates for 15 specified RUG–III groups (SE3, SE2, SE1, SSC, SSB, SSA, CC2, CC1, CB2, CB1, CA2, CA1, RHC, RMC, and RMB). Under the statute, this temporary increase remains in effect

until the later of October 1, 2000, or the implementation of case-mix refinements in the PPS. Section 101 also included a 4 percent across-the-board increase in the adjusted Federal per diem payment rates each year for FYs 2001 and 2002, exclusive of the 20 percent increase. Accordingly, this 4 percent temporary increase has now expired.

We included further information on all of the provisions of the BBRA that affect the SNF PPS in Program Memoranda A–99–53 and A–99–61 (December 1999), and Program Memorandum AB–00–18 (March 2000). In addition, for swing-bed hospitals with more than 49 (but less than 100) beds, section 408 of the BBRA provided for the repeal of certain statutory restrictions on length of stay and aggregate payment for patient days, effective with the end of the SNF PPS transition period described in section 1888(e)(2)(E) of the Act. In the July 31, 2001 final rule (66 FR 39562), we made conforming changes to the regulations in § 413.114(d), effective for services furnished in cost reporting periods beginning on or after July 1, 2002 to reflect section 408 of the BBRA.

D. The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (the BIPA)

The BIPA included several provisions that resulted in adjustments to the PPS for SNFs. These provisions were described in detail in the final rule that we published in the **Federal Register** on July 31, 2001 (66 FR 39562) as follows:

- Section 203 of the BIPA exempted critical access hospital (CAH) swing-beds from the SNF PPS; we included further information on this provision in Program Memorandum A–01–09 (January 16, 2001).
- Section 311 of the BIPA eliminated the one percent reduction in the SNF market basket that the statutory update formula had previously specified for FY 2001, and changed the one percent reduction specified for FYs 2002 and 2003 to a 0.5 percent reduction. This section also required us to conduct a study of alternative case-mix classification systems for the SNF PPS, and to submit a report to the Congress by January 1, 2005.
- Section 312 of the BIPA provided for a temporary 16.66 percent increase in the nursing component of the case-mix adjusted Federal rate for services furnished on or after April 1, 2001, and before October 1, 2002. Accordingly, this temporary increase has now expired.
- Section 313 of the BIPA repealed the consolidated billing requirement for services (other than physical, occupational, and speech-language therapy) furnished to SNF residents during noncovered stays, effective January 1, 2001. This provision also specified that consolidated billing applies only to services furnished to those individuals residing in an institution (or portion of an institution) that is actually certified by Medicare as a SNF.
- Section 314 of the BIPA adjusted the payment rates for all of the rehabilitation RUGs to correct an anomaly under which the existing payment rates for the RHC, RMC, and RMB rehabilitation groups were higher than the rates for some other, more intensive rehabilitation RUGs.
- Section 315 of the BIPA authorized us to establish a geographic reclassification procedure that is specific to SNFs, but only after collecting the data necessary to establish a SNF wage index that is based on wage data from nursing homes.

We included further information on several of these provisions in Program Memorandum A–01–08 (January 16, 2001).

E. General Overview of the SNF PPS

We implemented the Medicare SNF PPS for cost reporting periods beginning on or after July 1, 1998. Under the PPS, we pay SNFs through prospective, case-mix adjusted per diem payment rates applicable to all covered SNF services. These payment rates cover all the costs of furnishing covered skilled nursing services (routine, ancillary, and capital-related costs) other than costs associated with approved educational activities. Covered SNF services include post-hospital services for which benefits are provided under Part A and all items and services that, before July 1, 1998, had been paid under Part B (other than physician and certain other services specifically excluded under the BBA) but furnished to Medicare beneficiaries in a SNF during a covered Part A stay. A complete discussion of these provisions appears in the May 12, 1998 interim final rule (63 FR 26252).

1. Payment Provisions—Federal Rate

The PPS uses per diem Federal payment rates based on mean SNF costs in a base year updated for inflation to the first effective period of the PPS. We developed the Federal payment rates using allowable costs from hospital-based and freestanding SNF cost reports for reporting periods beginning in FY 1995. The data used in developing the Federal rates also incorporated an estimate of the amounts that would be payable under Part B for covered SNF services furnished to individuals during the course of a covered Part A stay in a SNF.

In developing the rates for the initial period, we updated costs to the first effective year of PPS (the 15-month period beginning July 1, 1998) using a SNF market basket, and then standardized for the costs of facility differences in case-mix and for geographic variations in wages. The database used to compute the Federal payment rates excluded providers that received new provider exemptions from the routine cost limits, as well as costs related to payments for exceptions to the routine cost limits. In accordance with the formula prescribed in the BBA, we set the Federal rates at a level equal to the weighted mean of freestanding costs plus 50 percent of the difference between the freestanding mean and weighted mean of all SNF costs (hospital-based and freestanding) combined. We computed and applied separately the payment rates for facilities located in urban and rural areas. In addition, we adjusted the portion of the Federal rate attributable to wage-related costs by a wage index.

The Federal rate also incorporates adjustments to account for facility case-mix, using a classification system that accounts for the relative resource utilization of different patient types. This classification system, Resource Utilization Groups, version III (RUG-III), uses beneficiary assessment data from the Minimum Data Set (MDS) completed by SNFs to assign beneficiaries to one of 44 RUG-III groups. The May 12, 1998 interim final rule (63 FR 26252) included a complete and detailed description of the RUG-III classification system, and a further discussion appears in section III.B of this final rule.

The Federal rates in this final rule reflect an update to the rates that we published in the July 31, 2002 **Federal Register** (67 FR 49798) equal to the full change in the SNF market basket index. According to section 1888(e)(4)(E)(ii)(IV) of the Act, for FY 2004, we have adjusted the current rates by the full SNF market basket index. In addition, the FY 2004 rates will be adjusted by an additional 3.26 percent to reflect the cumulative forecast error since the start of the SNF PPS on July 1, 1998.

2. Payment Provisions—Initial Transition Period

The SNF PPS included an initial, phased transition from a facility-specific rate (which reflected the individual facility's historical cost experience) to the Federal case-mix adjusted rate. The transition extended through the

facility's first three cost reporting periods under the PPS, up to, and potentially including, the one that began in FY 2001. Furthermore, according to section 102 of BBRA, a facility could nonetheless elect to be paid entirely under the Federal rates. Accordingly, starting with cost reporting periods beginning in FY 2002, we base payments entirely on the Federal rates and, as mentioned previously in this final rule, we no longer include adjustment factors related to facility-specific rates for the coming fiscal year.

F. Use of the SNF Market Basket Index

Section 1888(e)(5) of the Act requires us to establish a SNF market basket index that reflects changes over time in the prices of an appropriate mix of goods and services included in the covered SNF services. The SNF market basket index is used to update the Federal rates on an annual basis, and is discussed in greater detail in section III.H of this final rule.

II. Provisions of the Proposed Rule and the Supplemental Proposed Rule

The proposed rule that we published in the **Federal Register** on May 16, 2003 (68 FR 26758) included proposed FY 2004 updates to the Federal payment rates used under the SNF PPS. In accordance with section 1888(e)(4)(E)(ii)(IV) of the Act, the updates reflect the full SNF market basket percentage change for the fiscal year. The proposed rule also proposed introducing a one-year lag in the wage index data, similar to the PPS methodologies already being used for home health and inpatient rehabilitation facility services. This one-year lag would avoid the problems associated with multiple mid-year corrections in the hospital wage data. We also proposed clarifying the distinct part criteria to be used, in part, to help identify those SNFs that are hospital-based rather than freestanding. Further, we invited public comments on additional HCPCS codes that could represent the type of "high-cost, low probability" services within certain service categories (that is, chemotherapy and its administration, radioisotope services, and customized prosthetic devices) that section 103 of the BBRA has authorized us to exclude from the SNF consolidated billing provision.

In addition to discussing these general issues in the proposed rule, we also proposed making the following specific revisions to the existing text of the regulations:

- In § 409.20, we would make a technical correction to the cross-reference in paragraph (c).
- We would revise § 483.5 to include specific definitions of the terms "distinct part" and "composite distinct part." This revision would also involve making conforming changes elsewhere in subpart B of part 483 of the regulations, as well as in parts 413 and 440. In addition, we proposed correcting a typographical error that currently appears in the regulations text at § 483.20(k)(1).

In the supplemental proposed rule that we published in the **Federal Register** on June 10, 2003 (68 FR 34768), we invited public comments on the advisability of amending the regulations text at § 413.337(d)(2), to include an adjustment to the annual update of the previous fiscal year's rate that would account for forecast error in the SNF market basket, beginning with FY 2004. In addition, we also invited comments on methods for ensuring that additional payments that could result from that adjustment would be used to promote quality of care in the SNF setting (including direct care services to residents). We also proposed to make a technical correction to the second sentence of the regulations text in § 413.345, in order to correct the spelling of the word "standardized."

More detailed information on each of these issues, to the extent that we received public comments on them, appears in the discussion contained in the following section of this preamble.

III. Analysis of and Responses to Public Comments

In response to the publication of the proposed rule on May 16, 2003 (68 FR 26758) and the supplemental proposed rule on June 10, 2003 (68 FR 34768), we received over 400 comments. Many consisted of form letters, in which we received multiple copies of an identically worded letter that had been signed and submitted by different individuals. Further, we received numerous comments from various trade associations and major organizations. Comments originated from nursing homes, hospitals, and other providers, suppliers, and practitioners, nursing home resident advocacy groups, health care consulting firms and private citizens. The following discussion, arranged by subject area, includes a description of the comments that we received, along with our responses.

Comment: A few commenters expressed concern about the abbreviated comment periods available for the proposed rule and the supplemental proposed rule. They asserted that the shorter timeframes were burdensome, and affected their ability to furnish comprehensive responses. They asked us to provide the full 60-day comment period in the future.

Response: While the proposed rule was not actually published until May 16, 2003, we note that this document went on public display at the Office of the Federal Register several days earlier, on May 10, 2003. Accordingly, the contents of the proposed rule were, in fact, publicly available for the full 60-day comment period. Further, we note that in contrast to the proposed rule, the supplemental proposed rule did not attempt to address the SNF PPS in a comprehensive manner, but instead focused exclusively on a single issue—the possibility of introducing an adjustment to account for forecast error. As noted in the preamble to the supplemental proposed rule (68 FR 34772), given the extremely narrow scope of this document, we believe that even a comment period of less than 60 days provided interested parties with sufficient opportunity to comment adequately on it.

A. Update of Federal Payment Rates Under the SNF PPS

This final rule sets forth a schedule of Federal prospective payment rates applicable to Medicare Part A SNF services beginning October 1, 2003. The schedule incorporates per diem Federal rates that provide Part A payment for all costs of services furnished to a beneficiary in a SNF during a Medicare-covered stay.

1. Costs and Services Covered by the Federal Rates

The Federal rates apply to all costs (routine, ancillary, and capital-related costs) of covered SNF services other than costs associated with approved educational activities as defined in § 413.85. Under section 1888(e)(2) of the Act, covered SNF services include post-hospital SNF services for which benefits are provided under Part A (the hospital insurance program), as well as all items and services (other than those services excluded by statute) that, before July 1, 1998, were paid under Part B (the supplementary medical insurance program) but furnished to Medicare beneficiaries in a SNF during a Part A covered stay. (These excluded service categories are discussed in greater detail in section V.B.2 of the May 12, 1998 interim final rule (63 FR 26295 through 26297)).

2. Methodology Used for the Calculation of the Federal Rates

The FY 2004 rates reflect an update using the full amount of the latest market basket index. The FY 2004 market basket increase factor is 3.0

percent. A complete description of the multi-step process is delineated in the May 12, 1998 interim final rule (63 FR 26252). We note that in accordance with section 101(a) of the BBRA and section 314 of the BIPA, the existing, temporary increase in the per diem adjusted payment rates of 20 percent for certain specified RUGs (and 6.7 percent for certain others) remains in effect until the implementation of case-mix refinements. As we discuss elsewhere in this final rule, while we are proceeding with our ongoing research in this area, we are not implementing case-mix refinements in this final rule.

We used the SNF market basket to adjust each per diem component of the Federal rates forward to reflect cost increases occurring between the midpoint of the Federal fiscal year beginning October 1, 2002, and ending September 30, 2003, and the midpoint of the Federal fiscal year beginning October 1, 2003, and ending September 30, 2004, to which the payment rates apply. In accordance with section 1888(e)(4)(E)(ii)(IV) of the Act, the payment rates for FY 2004 are updated by a factor equal to the full market basket index percentage increase to determine the payment rates for FY 2004. In addition, the FY 2004 rates will be adjusted by an additional 3.26 percent to reflect the cumulative forecast error since the start of the SNF PPS on July 1, 1998. The rates are further adjusted by a wage index budget neutrality factor, described later in this section. Tables 1 and 2 reflect the updated components of the unadjusted Federal rates for FY 2004.

TABLE 1.—FY 2004 UNADJUSTED FEDERAL RATE PER DIEM URBAN

Rate component	Nursing—case-mix	Therapy—case-mix	Therapy—non-case-mix	Non-case-mix
Per Diem Amount	$129.96	$97.89	$12.89	$66.32

TABLE 2.—FY 2004 UNADJUSTED FEDERAL RATE PER DIEM RURAL

Rate component	Nursing—case-mix	Therapy—case-mix	Therapy—non-case-mix	Non-case-mix
Per Diem Amount	$124.16	$112.89	$13.77	$67.55

B. Case-Mix Adjustment

Under the BBA, we must publish the SNF PPS case-mix classification methodology applicable for the next Federal fiscal year before August 1 of each year. As noted in the following discussion, we are proceeding with our ongoing research regarding possible refinements in the existing case-mix classification system, but we are not implementing the refinements in this final rule.

As discussed previously in this final rule, section 101(a) of the BBRA provided for a temporary 20 percent increase in the per diem adjusted payment rates for 15 specified RUG–III groups. This legislation specified that the 20 percent increase would be effective for SNF services furnished on or after April 1, 2000, and would continue until the later of: (1) October 1, 2000, or (2) implementation of a refined case-mix classification system under section 1888(e)(4)(G)(i) of the Act that would better account for medically complex patients.

In the SNF PPS proposed rule for FY 2001 (65 FR 19190, April 10, 2000), we proposed making an extensive, comprehensive set of refinements to the existing case-mix classification system that collectively would have significantly expanded the existing 44-group structure. However, when our subsequent validation analyses indicated that the refinements would afford only a limited degree of improvement in explaining resource utilization relative to the significant increase in complexity that they would entail, we decided not to implement them at that time (see the FY 2001 final rule published July 31, 2000 (65 FR 46773)). Nevertheless, since the BBRA provision had demonstrated a Congressional interest in improving the ability of the payment system to account for the care furnished to medically complex patients in SNFs, we continued to conduct research in this area.

The Congress subsequently enacted section 311(e) of the BIPA, which directed us to conduct a study of the different systems for categorizing patients in Medicare SNFs in a manner that accounts for the relative resource utilization of different patient types, and to issue a report with any appropriate recommendations to the Congress by January 1, 2005. The extended timeframe for conducting the study, and the broad mandate in the BIPA to consider various classification systems and the full range of patient types, stood in sharp contrast to the BBRA language regarding more incremental refinements to the existing case-mix classification system under section 1888(e)(4)(G)(i) of the Act. This underscored the fact that implementing the latter type of refinements to the existing system in order to better account for medically complex patients need not await the completion of the more comprehensive changes envisioned in the BIPA. Accordingly, we considered the possibility of including these refinements as part of last year's annual update of the SNF payment rates.

However, in the July 31, 2002 update notice (67 FR 49801), we determined that the research was not sufficiently advanced to implement any case-mix refinements at that time, thus leaving the current classification system in place. This also left in place the temporary add-on payments enacted in section 101(a) of the BBRA. Further, while we have continued with our ongoing research regarding possible refinements in the existing case-mix classification system, this research has not yet provided the basis for proceeding with those refinements. Accordingly, we are not implementing case-mix refinements in this final rule.

As a result, the payment rates set forth in this final rule reflect the continued use of the 44-group RUG–III classification system discussed in the May 12, 1998 interim final rule (63 FR 26252). We are also maintaining the add-ons to the Federal rates for the specified RUG–III groups required by section 101(a) of the BBRA and subsequently modified by section 314 of the BIPA. The case-mix adjusted payment rates are listed separately for urban and rural SNFs in Tables 3 and 4, with the corresponding case-mix

values. These tables do not reflect the temporary add-on to the specified RUG–III groups provided in the BBRA, which is applied only after all other adjustments (wage and case-mix) have been made.

Meanwhile, we are continuing to explore both short-term and longer-range revisions to our case-mix classification methodology. In July 2001, we awarded a contract to the Urban Institute for research to aid us in making incremental refinements to the case-mix classification system under section 1888(e)(4)(G)(i) of the Act and to begin the case-mix study mandated by section 311(e) of the BIPA. The results of our current research will be included in the report to the Congress that section 311(e) of the BIPA requires us to submit by January 1, 2005. As we noted in the May 10, 2001 proposed rule (66 FR 23990), this research may also support a longer term goal of developing more integrated approaches for the payment and delivery system for Medicare post acute services in general. This broader, ongoing research project will pursue several avenues in studying various case-mix classification systems. Our preliminary research has focused on incorporating comorbidities and complications into the classification strategy, and we will thoroughly explore and evaluate this approach and other approaches (including procedures that might account more accurately for ancillary services) in our ongoing work.

Comment: Several commenters commended our decision not to implement case-mix refinements in FY 2004. They expressed the belief that incremental refinements may only represent "patches" on a system that needs a more comprehensive redesign, and could destabilize an already vulnerable health care industry. Other commenters urged us to move quickly to identify and implement short-term incremental improvements to provide more appropriate reimbursement for patients with heavy non-therapy ancillary needs.

Response: As discussed in the proposed rule, we continue to explore both short-term case-mix refinements and longer-range redesign of the SNF PPS methodology. Our primary goal is to enhance the accuracy of our reimbursement system by more closely matching payment with resource utilization, particularly in the utilization of non-therapy ancillaries. We have made this issue a research priority to ensure continued access to quality care for this very vulnerable heavy care population. However, we are cautious about premature implementation of any policy that has not been thoroughly analyzed to allocate payment dollars more accurately. Therefore, we have decided not to implement case-mix refinements for FY 2004. However, we are proceeding with our research and plan to evaluate the feasibility of implementing refinements again next year.

Comment: Several commenters agreed with the need for short-term action to stabilize the SNF PPS and suggested some alternative methodologies for achieving these goals, including more frequent updating of the SNF market basket and the development of an outlier pool that could address beneficiaries with heavy non-therapy ancillary needs. A few commenters suggested addressing the non-therapy ancillary needs by seeking a legislative change to redirect the 6.7 percent add-on payments for the 14 RUG–III therapy groups to those RUG–III groups used for beneficiaries with complex medical conditions and high utilization of non-therapy ancillary services.

Response: Each of the suggestions discussed above would require statutory authority that does not currently exist. However, we will carefully consider the comments that we received and use these comments to assist us in exploring potential solutions. While we will continue to focus on the needs of those beneficiaries who require an unusually heavy combination of clinical care, rehabilitation services, and ancillary utilization, we will also continue to consider a broad range of potential changes. We expect to discuss our research findings by January 1, 2005, in the report to the Congress that is required under section 311(e) of the BIPA.

Comment: Most of the commenters supported the continuation of our long-term research efforts designed to identify possible alternatives to the existing SNF PPS. Many commenters suggested expanding communications with providers and other interest groups in a manner similar to the approach that we have adopted for Open Door meetings. Most commenters recommended that we also enhance communications by sharing our research findings, and by including a detailed analysis in the 2005 report to the Congress.

Response: We appreciate the interest shown by providers and other stakeholders in our continuing research. We plan to consider all of the comments that we have received regarding potential changes to the classification system, as well as to other components of the SNF PPS, as we continue our analysis and prepare the required report to the Congress. As we pursue our research effort and evaluate our options, we will seek appropriate means to establish ongoing communication with, and input from, all stakeholder groups.

Comment: Most commenters urged us to minimize provider burden by providing adequate lead time for comment and for implementation of any significant changes. One commenter also suggested that we improve our coordination of related projects such as the Minimum Data Set (MDS) 3.0 implementation and the SNF PPS redesign, so that providers can incorporate changes smoothly and provide necessary staff training with minimal disruption to staff and patients.

Response: We recognize the inherent difficulties in coordinating potential changes to the MDS with potential changes to the SNF PPS. In fact, our staff in the payment, quality monitoring, and survey and certification areas have addressed this issue by establishing an in-house work group to share information and coordinate activities. By working together, we believe that we enhance our effectiveness and can introduce changes with minimal disruption and burden to providers. In addition, the introduction of the MDS 3.0 and any case-mix refinement changes to the SNF PPS would be accomplished through established administrative processes that will solicit stakeholder input. Finally, we fully agree that providers and other stakeholders will need adequate lead time to implement significant policy and operational changes.

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Table 3
CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDICES
URBAN

RUG-III Category	Nursing Index	Therapy Index	Nursing Compo-nent	Therapy Compo-nent	Non-case Mix Therapy Comp	Non-case Mix Compo-nent	Total Rate
RUC	1.30	2.25	168.95	220.25		66.32	455.52
RUB	0.95	2.25	123.46	220.25		66.32	410.03
RUA	0.78	2.25	101.37	220.25		66.32	387.94
RVC	1.13	1.41	146.85	138.02		66.32	351.19
RVB	1.04	1.41	135.16	138.02		66.32	339.50
RVA	0.81	1.41	105.27	138.02		66.32	309.61
RHC	1.26	0.94	163.75	92.02		66.32	322.09
RHB	1.06	0.94	137.76	92.02		66.32	296.10
RHA	0.87	0.94	113.07	92.02		66.32	271.41
RMC	1.35	0.77	175.45	75.38		66.32	317.15
RMB	1.09	0.77	141.66	75.38		66.32	283.36
RMA	0.96	0.77	124.76	75.38		66.32	266.46
RLB	1.11	0.43	144.26	42.09		66.32	252.67
RLA	0.80	0.43	103.97	42.09		66.32	212.38
SE3	1.70		220.93		12.89	66.32	300.14
SE2	1.39		180.64		12.89	66.32	259.85
SE1	1.17		152.05		12.89	66.32	231.26
SSC	1.13		146.85		12.89	66.32	226.06
SSB	1.05		136.46		12.89	66.32	215.67
SSA	1.01		131.26		12.89	66.32	210.47
CC2	1.12		145.56		12.89	66.32	224.77
CC1	0.99		128.66		12.89	66.32	207.87
CB2	0.91		118.26		12.89	66.32	197.47
CB1	0.84		109.17		12.89	66.32	188.38
CA2	0.83		107.87		12.89	66.32	187.08
CA1	0.75		97.47		12.89	66.32	176.68
IB2	0.69		89.67		12.89	66.32	168.88
IB1	0.67		87.07		12.89	66.32	166.28
IA2	0.57		74.08		12.89	66.32	153.29
IA1	0.53		68.88		12.89	66.32	148.09
BB2	0.68		88.37		12.89	66.32	167.58
BB1	0.65		84.47		12.89	66.32	163.68
BA2	0.56		72.78		12.89	66.32	151.99
BA1	0.48		62.38		12.89	66.32	141.59
PE2	0.79		102.67		12.89	66.32	181.88
PE1	0.77		100.07		12.89	66.32	179.28
PD2	0.72		93.57		12.89	66.32	172.78
PD1	0.70		90.97		12.89	66.32	170.18
PC2	0.65		84.47		12.89	66.32	163.68
PC1	0.64		83.17		12.89	66.32	162.38
PB2	0.51		66.28		12.89	66.32	145.49
PB1	0.50		64.98		12.89	66.32	144.19
PA2	0.49		63.68		12.89	66.32	142.89
PA1	0.46		59.78		12.89	66.32	138.99

Table 4
CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDICES
RURAL

RUG-III Category	Nursing Index	Therapy Index	Nursing Component	Therapy Component	Non-case Mix Therapy Comp	Non-case Mix Component	Total Rate
RUC	1.30	2.25	161.41	254.00		67.55	482.96
RUB	0.95	2.25	117.95	254.00		67.55	439.50
RUA	0.78	2.25	96.84	254.00		67.55	418.39
RVC	1.13	1.41	140.30	159.17		67.55	367.02
RVB	1.04	1.41	129.13	159.17		67.55	355.85
RVA	0.81	1.41	100.57	159.17		67.55	327.29
RHC	1.26	0.94	156.44	106.12		67.55	330.11
RHB	1.06	0.94	131.61	106.12		67.55	305.28
RHA	0.87	0.94	108.02	106.12		67.55	281.69
RMC	1.35	0.77	167.62	86.93		67.55	322.10
RMB	1.09	0.77	135.33	86.93		67.55	289.81
RMA	0.96	0.77	119.19	86.93		67.55	273.67
RLB	1.11	0.43	137.82	48.54		67.55	253.91
RLA	0.80	0.43	99.33	48.54		67.55	215.42
SE3	1.70		211.07		13.77	67.55	292.39
SE2	1.39		172.58		13.77	67.55	253.90
SE1	1.17		145.27		13.77	67.55	226.59
SSC	1.13		140.30		13.77	67.55	221.62
SSB	1.05		130.37		13.77	67.55	211.69
SSA	1.01		125.40		13.77	67.55	206.72
CC2	1.12		139.06		13.77	67.55	220.38
CC1	0.99		122.92		13.77	67.55	204.24
CB2	0.91		112.99		13.77	67.55	194.31
CB1	0.84		104.29		13.77	67.55	185.61
CA2	0.83		103.05		13.77	67.55	184.37
CA1	0.75		93.12		13.77	67.55	174.44
IB2	0.69		85.67		13.77	67.55	166.99
IB1	0.67		83.19		13.77	67.55	164.51
IA2	0.57		70.77		13.77	67.55	152.09
IA1	0.53		65.80		13.77	67.55	147.12
BB2	0.68		84.43		13.77	67.55	165.75
BB1	0.65		80.70		13.77	67.55	162.02
BA2	0.56		69.53		13.77	67.55	150.85
BA1	0.48		59.60		13.77	67.55	140.92
PE2	0.79		98.09		13.77	67.55	179.41
PE1	0.77		95.60		13.77	67.55	176.92
PD2	0.72		89.40		13.77	67.55	170.72
PD1	0.70		86.91		13.77	67.55	168.23
PC2	0.65		80.70		13.77	67.55	162.02
PC1	0.64		79.46		13.77	67.55	160.78
PB2	0.51		63.32		13.77	67.55	144.64
PB1	0.50		62.08		13.77	67.55	143.40
PA2	0.49		60.84		13.77	67.55	142.16
PA1	0.46		57.11		13.77	67.55	138.43

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C. Wage Index Adjustment to Federal Rates

Section 1888(e)(4)(G)(ii) of the Act requires that we adjust the Federal rates to account for differences in area wage levels, using a wage index that we find appropriate. Since the inception of a PPS for SNFs, we have used hospital wage data in developing a wage index to be applied to SNFs. We are continuing that practice for FY 2004.

Section 315 of the BIPA authorizes us to establish a reclassification system for SNFs, similar to the hospital methodology. This geographic reclassification system cannot be implemented until we have collected the data necessary to establish an area wage index for SNFs based on SNF wage data. We presented a comprehensive discussion of this wage data in the May 10, 2001 proposed rule (66 FR 23984) and the July 31, 2001 final rule (66 FR 39562).

1. Selecting the Most Appropriate Wage Index

In the May 10, 2001 proposed rule, we published a wage index prototype based on SNF data, along with the wage index based on the hospital wage data that were used in the preceding year's final rule (July 31, 2000, 65 FR 46770). In addition, we included a discussion of the wage index computations for the SNF prototype. We also indicated our concern about the reliability of the existing data used in establishing a SNF wage index, in view of the significant variations in the SNF-specific wage data and the large number of SNFs that are unable to provide adequate wage and hourly data. Accordingly, we expressed the belief that a wage index based on hospital wage data remains the best and most appropriate to use in adjusting payments to SNFs, since both hospitals and SNFs compete in the same labor markets.

In the July 31, 2001 final rule (66 FR 39579), we indicated that we had decided not to adopt the SNF-specific wage index prototype from the proposed rule, citing concerns such as the significant amount of volatility in the data. In addition, while we acknowledged that auditing all SNFs would provide more accurate and reliable data, we observed that this would place a burden on providers in terms of recordkeeping and completion of the cost report worksheet. We also noted that adopting such an approach would require a significant commitment of resources by us and by our contractors.

As we noted in the May 16, 2003 proposed rule (68 FR 26767), while we continue to believe that the development of a SNF-specific wage index potentially could improve the accuracy of SNF payments, we do not regard an undertaking of this magnitude as being feasible within the current level of programmatic resources. However, we remain willing to consider the adoption of a SNF-specific wage index should sufficient staffing and budgetary resources to support it become available in the future.

In the May 16, 2003 rule, we proposed continuing to use the final FY 2003 hospital wage index to adjust SNF PPS payments beginning October 1, 2003. Then, for future rate years, we proposed continuing to use the most recently published wage index values (that is, the final FY 2003 wage index data) final wage index values rather than following our current practice of using the most recent available data. The impact of this change would have been to establish a one-year lag between the wage index values used in the hospital PPS (that is, FY 2004 wage index) and the data used in the SNF PPS. As explained in our responses to the comments shown later in this section, we have decided not to implement this one-year lag. Therefore, the wage index values in Tables 7 and 8 reflect the most recent available data; that is, the same FY 2004 wage data that will be used for the FY 2004 inpatient hospital PPS rates.

Comment: A substantial number of commenters expressed concern about the appropriateness of using the most recently published wage index values to adjust the payments for SNFs, when more recent data are available. Many asked that we use the more recent data, even if they are more vulnerable to errors requiring mid-year correction. They pointed out that the most recently published wage index values are already several years old, since the data have to be reviewed and audited before use in a wage index. These commenters argued that imposing an additional 1-year lag on wage data ignores the current trends in the labor markets, fails to recognize fully those areas where severe nursing shortages necessitate paying a higher rate to attract nurses, and results in a less accurate reimbursement rate. In addition, a few commenters were concerned about the burden on hospital-based providers that would have to maintain two wage index systems, one for the hospital and another for the SNF.

Response: Based on our review of the comments, we have determined to continue using the most current available wage index data in determining the SNF payment rates, and we are not adopting the position taken in the May 16, 2003 proposed rule.

Comment: A few commenters, while opposing the use of the most recently published wage index values, urged us to make a retroactive wage index adjustment to account for errors in a prior year's reporting of hospital wage

data that lowered payments to SNFs located in the Baltimore MSA.

Response: The SNF PPS does not include a methodology for retroactive adjustments to the wage index. The payment rates and wage indices are applied prospectively. Similarly, any corrections to the wage indices are also applied prospectively. We rely on the best available data reported by hospitals and audited by our fiscal intermediaries. Clearly, retroactive application of these wage index changes would jeopardize the prospective nature of the system and introduce an even higher level of instability.

The commenters cited § 412.63(x)(2) of the regulations to support their request for this retroactive adjustment. However, this section applies solely to mid-year corrections of the wage index for inpatient hospitals and applies only in cases where the FI or CMS made an error in tabulating the hospital data. In this case, the error was made by the providers and not by either the FI or by CMS. Moreover, the errors in the as-reported data were subject to public review and comment before adoption under the SNF PPS. In fact, this public process has facilitated correction of the data going forward. Unfortunately, the errors in this case were not identified until the data were audited. By that time, it was too late to make a mid-year rate correction. While we regret the impact on Maryland providers, we note that this situation is inherent in a system that uses more recent data. Under a policy of using the most recently published wage index values, the correction to the Baltimore MSA could have been incorporated in the published wage index and resulted in revised reimbursement to providers in the Baltimore MSA.

Comment: Several commenters expressed concern that we may have discarded the SNF-specific wage index without further work or development to ensure its accuracy. Another pointed out that we already have the legal authority to develop and collect data necessary to establish an SNF wage index through the Social Security Act Amendments of 1994 (Pub. L. 103–432). These commenters urged us to work with the industry to educate SNF providers, improve the cost reporting tools we use to collect the data, and immediately seek funding for the full-scale auditing of SNF data that would be needed to create and validate an SNF-specific wage index. A few commenters suggested that we should commit the resources required to implement an SNF-specific wage index not later than FY 2006. One commenter expressed concern that the SNF community does not participate in the hospital wage data collection process. However, a few commenters cautioned us against a precipitous conversion until we are sure that the SNF-specific wage index has been tested to ensure a high level of stability and accuracy.

Response: As we discussed in the May 10, 2001 proposed rule (66 FR 24010 through 24011), there is a great deal of volatility in the SNF-specific wage index prototype—not only between it and the hospital wage data, but also between the 2 years of data that we used in developing the SNF-specific wage index prototype. As many commenters suggested, the data could be improved if we were to establish better controls, edits, and screens of the data, and insist that more of the provider's data be audited to ensure its accuracy. We are committed to a process to ensure the accuracy of the data and have already implemented several edits and screens to improve the quality of data reported. We have made several corrections and changes to the cost reports/edits/screens as a result of consultation with industry representatives. However, these changes were made prospectively, and the full year's data needed to evaluate these efforts are not yet available. Moreover, while we are proceeding with our analysis, we still have concerns about the accuracy of the data being reported. Hospitals have been reporting wage and hourly data for years, yet the FIs and providers must still spend a considerable amount of time resolving problems and changes to the data to derive the published hospital wage index. The problem experienced by Maryland providers in FY 2001 illustrates the difficulty of timely verification of wage data, which often results in changes being made to the wage index even after the update regulations are published.

We agree that auditing all SNFs would provide more accurate and reliable data; however, this approach involves a significant commitment of our resources and our contractors and may place a significant recordkeeping and reporting burden on providers. Developing a desk review and audit program similar to what is required in the hospital setting would, at a minimum, require significant resources. The FIs that are involved in preparing the hospital wage data currently spend considerable resources to ensure the accuracy of the wage data submitted by approximately 6,000 hospitals. As we noted in the July 31, 2001 final rule (66 FR 39579), this process involves editing, reviewing, auditing, and performing desk reviews of the data. Requiring FIs to do the same for the approximately 14,000 SNFs would nearly triple the contractors' workload and budgets in this area. While we have noted the industry concerns and funding needs, there are no funds currently available to develop this system to the point where we could rely on the data that any such system would produce. We are committed to continuing our investigation of an SNF-specific wage index that would enhance our current payment methodology.

However, we do not expect to propose a SNF-specific wage index until we can demonstrate that it would significantly improve our ability to determine payments for facilities, and justify the resources required to collect the data, as well as the increased burden on providers. We also want to point out that the development of the hospital wage data can also be scrutinized and evaluated by the SNF industry when commenting on the hospital proposed rule that is published each spring. Therefore, because of the problems associated with the current SNF-specific data, and our inability to demonstrate that an SNF-specific wage index would be more reflective of the wages and salaries paid in a specific area, we continue to believe that hospital wage data are the most appropriate data for adjusting payments made to SNFs.

Comment: A small number of commenters suggested that if SNFs are going to use the hospital wage index, several components of the hospital PPS should be immediately applied to SNFs. For example, one commenter suggested that we ensure that no MSA wage index value is lower than the State-wide rural wage index. Other commenters recommended an immediate change in SNF PPS methodology to allow provider reclassification.

Response: As discussed above, the calculation of the wage indices must be made in a budget neutral manner. If we adopted this hospital PPS provision and established a wage index floor, there would be no change in the aggregate reimbursement for SNFs. While we are not convinced a state-wide floor would provide a more accurate wage index, we encourage input from the industry on why this could provide a more accurate wage index, noting that the redistribution of funds would reduce payments to some providers while it increased payments to others.

Under section 315 of the BIPA, the Congress authorized the use of a reclassification methodology in the SNF PPS that would allow providers to seek geographic reclassification. However, the statute specifically noted that such reclassification could not be implemented until we have collected the data necessary to establish an SNF-specific wage index. Accordingly, under the current legislative authority, we are prohibited from implementing an SNF reclassification system until reliable data in this area become available.

We would also like to point out on June 6, 2003, the Office of Management and Budget (OMB) issued OMB Bulletin No. 03–04, announcing revised definitions of Metropolitan Statistical Areas, and new definitions of Micropolitan Statistical Areas and Combined Statistical Areas. A copy of the bulletin may be attained at the following Internet address: *http://www.whitehouse.gov/omb/bulletins/b03–04.html.*

These new definitions will not be applied to the FY 2004 wage index. However, we will be studying the new definitions and their impact and, if warranted, may adopt them in the future, using appropriate administrative processes. To the extent these definitions are used, the concerns expressed by many for the use of a geographical reclassification system may be mitigated.

2. Determining the Labor-Related Portion of the SNF PPS Rate

The wage index adjustment is applied to the labor-related portion of the Federal rate, which in FY 2004 is 76.372 percent of the total rate. This percentage reflects the labor-related relative importance for FY 2004. The labor-related relative importance is calculated from the SNF market basket, and approximates the labor-related portion of the total costs after taking into account historical and projected price changes between the base year and FY 2004. The price proxies that move the different cost categories in the market basket do not necessarily change at the same rate, and the relative importance captures these changes. Accordingly, the relative importance figure more closely reflects the cost share weights for FY 2004 than the base year weights from the SNF market basket.

We calculate the labor-related relative importance for FY 2004 in four steps. First, we compute the FY 2004 price index level for the total market basket and each cost category of the market basket. Second, we calculate a ratio for each cost category by dividing the FY 2004 price index level for that cost category by the total market basket price index level. Third, we determine the FY 2004 relative importance for each cost category by multiplying this ratio by the base year (FY 1997) weight. Finally, we sum the FY 2004 relative importance for each of the labor-related cost categories (wages and salaries, employee benefits, nonmedical professional fees, labor-intensive services, and capital-related expenses) to produce the FY 2004 labor-related relative importance. Tables 5 and 6 show the Federal rates by labor-related and non-labor-related components.

3. Calculating the Budget Neutrality Factor

Section 1888(e)(4)(G)(ii) of the Act also requires that we apply this wage index in a manner that does not result in aggregate payments that are greater or lesser than would otherwise be made in the absence of the wage adjustment. In this sixth PPS year (Federal rates effective October 1, 2003), we are applying the wage index applicable to SNF payments using the most recent hospital wage data applicable to FY 2004 payments (as discussed in the following comments), and applying an adjustment to fulfill the budget neutrality requirement. This requirement is met by multiplying each of the components of the unadjusted Federal rates by a factor equal to the ratio of the volume weighted mean wage adjustment factor (using the wage index from the previous year) to the volume weighted mean wage adjustment factor, using the wage index for the fiscal year beginning October 1, 2003. The same volume weights are used in both the numerator and denominator and will be derived from 1997 Medicare Provider Analysis and Review File (MEDPAR) data. The wage adjustment factor used in this calculation is defined as the labor share of the rate component multiplied by the wage index plus the non-labor share. The budget neutrality factor for this year is 1.005. In order to give the public a sense of the magnitude of this adjustment, last year's factor was 0.9997.

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Table 5
Case-Mix Adjusted Federal Rates for Urban SNFs
By Labor and Non-Labor Component

RUG III Category	Total Rate	Labor Portion	Non-Labor Portion
RUC	455.52	347.89	107.63
RUB	410.03	313.15	96.88
RUA	387.94	296.28	91.66
RVC	351.19	268.21	82.98
RVB	339.50	259.28	80.22
RVA	309.61	236.46	73.15
RHC	322.09	245.99	76.10
RHB	296.10	226.14	69.96
RHA	271.41	207.28	64.13
RMC	317.15	242.21	74.94
RMB	283.36	216.41	66.95
RMA	266.46	203.50	62.96
RLB	252.67	192.97	59.70
RLA	212.38	162.20	50.18
SE3	300.14	229.22	70.92
SE2	259.85	198.45	61.40
SE1	231.26	176.62	54.64
SSC	226.06	172.65	53.41
SSB	215.67	164.71	50.96
SSA	210.47	160.74	49.73
CC2	224.77	171.66	53.11
CC1	207.87	158.75	49.12
CB2	197.47	150.81	46.66
CB1	188.38	143.87	44.51
CA2	187.08	142.88	44.20
CA1	176.68	134.93	41.75
IB2	168.88	128.98	39.90
IB1	166.28	126.99	39.29
IA2	153.29	117.07	36.22
IA1	148.09	113.10	34.99
BB2	167.58	127.98	39.60
BB1	163.68	125.01	38.67
BA2	151.99	116.08	35.91
BA1	141.59	108.14	33.45
PE2	181.88	138.91	42.97
PE1	179.28	136.92	42.36
PD2	172.78	131.96	40.82
PD1	170.18	129.97	40.21
PC2	163.68	125.01	38.67
PC1	162.38	124.01	38.37
PB2	145.49	111.11	34.38
PB1	144.19	110.12	34.07
PA2	142.89	109.13	33.76
PA1	138.99	106.15	32.84

Table 6
Case-Mix Adjusted Federal Rates for Rural SNFs
by Labor and Non-Labor Component

RUG III Category	Total Rate	Labor Portion	Non-Labor Portion
RUC	482.96	368.85	114.11
RUB	439.50	335.65	103.85
RUA	418.39	319.53	98.86
RVC	367.02	280.30	86.72
RVB	355.85	271.77	84.08
RVA	327.29	249.96	77.33
RHC	330.11	252.11	78.00
RHB	305.28	233.15	72.13
RHA	281.69	215.13	66.56
RMC	322.10	245.99	76.11
RMB	289.81	221.33	68.48
RMA	273.67	209.01	64.66
RLB	253.91	193.92	59.99
RLA	215.42	164.52	50.90
SE3	292.39	223.30	69.09
SE2	253.90	193.91	59.99
SE1	226.59	173.05	53.54
SSC	221.62	169.26	52.36
SSB	211.69	161.67	50.02
SSA	206.72	157.88	48.84
CC2	220.38	168.31	52.07
CC1	204.24	155.98	48.26
CB2	194.31	148.40	45.91
CB1	185.61	141.75	43.86
CA2	184.37	140.81	43.56
CA1	174.44	133.22	41.22
IB2	166.99	127.53	39.46
IB1	164.51	125.64	38.87
IA2	152.09	116.15	35.94
IA1	147.12	112.36	34.76
BB2	165.75	126.59	39.16
BB1	162.02	123.74	38.28
BA2	150.85	115.21	35.64
BA1	140.92	107.62	33.30
PE2	179.41	137.02	42.39
PE1	176.92	135.12	41.80
PD2	170.72	130.38	40.34
PD1	168.23	128.48	39.75
PC2	162.02	123.74	38.28
PC1	160.78	122.79	37.99
PB2	144.64	110.46	34.18
PB1	143.40	109.52	33.88
PA2	142.16	108.57	33.59
PA1	138.43	105.72	32.71

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TABLE 7.—WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Wage index
0040 Abilene, TX	0.7596
Taylor, TX	
0060 Aguadilla, PR	0.4289
Aguada, PR	
Aguadilla, PR	
Moca, PR	
0080 Akron, OH	0.9208
Portage, OH	
Summit, OH	
0120 Albany, GA	1.0819
Dougherty, GA	
Lee, GA	
0160 Albany-Schenectady-Troy, NY	0.8455
Albany, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Schoharie, NY	
0200 Albuquerque, NM	0.9263
Bernalillo, NM	
Sandoval, NM	
Valencia, NM	
0220 Alexandria, LA	0.7987
Rapides, LA	
0240 Allentown-Bethlehem-Easton, PA	0.9682
Carbon, PA	
Lehigh, PA	
Northampton, PA	
0280 Altoona, PA	0.8771
Blair, PA	
0320 Amarillo, TX	0.8950
Potter, TX	
Randall, TX	
0380 Anchorage, AK	1.2167
Anchorage, AK	
0440 Ann Arbor, MI	1.1029
Lenawee, MI	
Livingston, MI	
Washtenaw, MI	
0450 Anniston, AL	0.8058
Calhoun, AL	
0460 Appleton-Oshkosh-Neenah, WI	0.8999
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
0470 Arecibo, PR	0.4138
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
0480 Asheville, NC	0.9680
Buncombe, NC	
Madison, NC	
0500 Athens, GA	0.9778
Clarke, GA	
Madison, GA	
Oconee, GA	
0520 Atlanta, GA	1.0089
Barrow, GA	
Bartow, GA	
Carroll, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Pickens, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
0560 Atlantic City-Cape May, NJ	1.0751
Atlantic City, NJ	
Cape May, NJ	
0580 Auburn-Opelika, AL	0.8460
Lee, AL	
0600 Augusta-Aiken, GA-SC	0.9587
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Edgefield, SC	
0640 Austin-San Marcos, TX	0.9570
Bastrop, TX	
Caldwell, TX	
Hays, TX	
Travis, TX	
Williamson, TX	
0680 Bakersfield, CA	0.9770
Kern, CA	
0720 Baltimore, MD	0.9879
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
0733 Bangor, ME	0.9864
Penobscot, ME	
0743 Barnstable-Yarmouth, MA	1.2904
Barnstable, MA	
0760 Baton Rouge, LA	0.8372
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
0840 Beaumont-Port Arthur, TX	0.8390
Hardin, TX	
Jefferson, TX	
Orange, TX	
0860 Bellingham, WA	1.1710
Whatcom, WA	
0870 Benton Harbor, MI	0.8835
Berrien, MI	
0875 Bergen-Passaic, NJ	1.1644
Bergen, NJ	
Passaic, NJ	
0880 Billings, MT	0.8925
Yellowstone, MT	
0920 Biloxi-Gulfport-Pascagoula, MS	0.8993
Hancock, MS	
Harrison, MS	
Jackson, MS	
0960 Binghamton, NY	0.8394
Broome, NY	
Tioga, NY	
1000 Birmingham, AL	0.9175
Blount, AL	
Jefferson, AL	
St. Clair, AL	
Shelby, AL	
1010 Bismarck, ND	0.7933
Burleigh, ND	
Morton, ND	
1020 Bloomington, IN	0.8627
Monroe, IN	
1040 Bloomington-Normal, IL	0.8796
McLean, IL	
1080 Boise City, ID	0.9172
Ada, ID	
Canyon, ID	
1123 Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH	1.1188
Bristol, MA	
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Worcester, MA	
Hillsborough, NH	
Merrimack, NH	
Rockingham, NH	
Strafford, NH	
1125 Boulder-Longmont, CO	1.0008
Boulder, CO	
1145 Brazoria, TX	0.8105
Brazoria, TX	
1150 Bremerton, WA	1.0537
Kitsap, WA	
1240 Brownsville-Harlingen-San Benito, TX	1.0261
Cameron, TX	
1260 Bryan-College Station, TX	0.8983
Brazos, TX	
1280 Buffalo-Niagara Falls, NY	0.9565
Erie, NY	
Niagara, NY	
1303 Burlington, VT	0.9665
Chittenden, VT	
Franklin, VT	
Grand Isle, VT	
1310 Caguas, PR	0.4141
Caguas, PR	
Cayey, PR	
Cidra, PR	
Gurabo, PR	
San Lorenzo, PR	
1320 Canton-Massillon, OH	0.9034
Carroll, OH	
Stark, OH	
1350 Casper, WY	0.9058
Natrona, WY	
1360 Cedar Rapids, IA	0.8838
Linn, IA	
1400 Champaign-Urbana, IL	0.9867
Champaign, IL	
1440 Charleston-North Charleston, SC	0.9294
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
1480 Charleston, WV	0.8845
Kanawha, WV	
Putnam, WV	
1520 Charlotte-Gastonia-Rock Hill, NC-SC	0.9721
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Stanly, NC	
Union, NC	
York, SC	
1540 Charlottesville, VA	0.9985
Albemarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
1560 Chattanooga, TN-GA	0.9049
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
1580 Cheyenne, WY	0.8760
Laramie, WY	
1600 Chicago, IL	1.0848
Cook, IL	
De Kalb, IL	
Du Page, IL	
Grundy, IL	
Kane, IL	
Kendall, IL	
Lake, IL	
McHenry, IL	
Will, IL	
1620 Chico-Paradise, CA	1.0152
Butte, CA	
1640 Cincinnati, OH-KY-IN	0.9375
Dearborn, IN	
Ohio, IN	
Boone, KY	
Campbell, KY	
Gallatin, KY	
Grant, KY	
Kenton, KY	
Pendleton, KY	
Brown, OH	
Clermont, OH	
Hamilton, OH	
Warren, OH	
1660 Clarksville-Hopkinsville, TN-KY	0.8211
Christian, KY	
Montgomery, TN	
1680 Cleveland-Lorain-Elyria, OH	0.9632
Ashtabula, OH	
Geauga, OH	
Cuyahoga, OH	
Lake, OH	
Lorain, OH	
Medina, OH	
1720 Colorado Springs, CO	0.9793
El Paso, CO	
1740 Columbia, MO	0.8660
Boone, MO	
1760 Columbia, SC	0.8866
Lexington, SC	
Richland, SC	
1800 Columbus, GA-AL	0.8659
Russell, AL	
Chattanoochee, GA	
Harris, GA	
Muscogee, GA	
1840 Columbus, OH	0.9609
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
1880 Corpus Christi, TX	0.8486
Nueces, TX	
San Patricio, TX	
1890 Corvallis, OR	1.1470
Benton, OR	
1900 Cumberland, MD-WV	0.8166
Allegany, MD	
Mineral, WV	
1920 Dallas, TX	0.9934
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Henderson, TX	
Hunt, TX	
Kaufman, TX	
Rockwall, TX	
1950 Danville, VA	0.8998
Danville City, VA	
Pittsylvania, VA	
1960 Davenport-Moline-Rock Island, IA-IL	0.8949
Scott, IA	
Henry, IL	
Rock Island, IL	
2000 Dayton-Springfield, OH	0.9479
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
2020 Daytona Beach, FL	0.9042
Flagler, FL	
Volusia, FL	
2030 Decatur, AL	0.8793
Lawrence, AL	
Morgan, AL	
2040 Decatur, IL	0.8128
Macon, IL	
2080 Denver, CO	1.0793
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
2120 Des Moines, IA	0.9069
Dallas, IA	
Polk, IA	
Warren, IA	
2160 Detroit, MI	1.0060
Lapeer, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
St. Clair, MI	
Wayne, MI	
2180 Dothan, AL	0.7710
Dale, AL	
Houston, AL	
2190 Dover, DE	0.9765
Kent, DE	
2200 Dubuque, IA	0.8850
Dubuque, IA	
2240 Duluth-Superior, MN-WI	1.0136
St. Louis, MN	
Douglas, WI	
2281 Dutchess County, NY	1.0890
Dutchess, NY	
2290 Eau Claire, WI	0.9027
Chippewa, WI	
Eau Claire, WI	
2320 El Paso, TX	0.9159
El Paso, TX	
2330 Elkhart-Goshen, IN	0.9744
Elkhart, IN	
2335 Elmira, NY	0.8343
Chemung, NY	
2340 Enid, OK	0.8524
Garfield, OK	
2360 Erie, PA	0.8566
Erie, PA	
2400 Eugene-Springfield, OR	1.1410
Lane, OR	
2440 Evansville-Henderson, IN-KY	0.8395
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
2520 Fargo-Moorhead, ND-MN	0.9758
Clay, MN	
Cass, ND	
2560 Fayetteville, NC	0.8950
Cumberland, NC	
2580 Fayetteville-Springdale-Rogers, AR	0.8362
Benton, AR	
Washington, AR	
2620 Flagstaff, AZ-UT	1.1287
Coconino, AZ	
Kane, UT	
2640 Flint, MI	1.0814
Genesee, MI	
2650 Florence, AL	0.7716
Colbert, AL	
Lauderdale, AL	
2655 Florence, SC	0.8673
Florence, SC	
2670 Fort Collins-Loveland, CO	1.0067
Larimer, CO	
2680 Ft. Lauderdale, FL	1.0122
Broward, FL	
2700 Fort Myers-Cape Coral, FL	0.9776
Lee, FL	
2710 Fort Pierce-Port St. Lucie, FL	0.9968
Martin, FL	
St. Lucie, FL	
2720 Fort Smith, AR-OK	0.8390
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
2750 Fort Walton Beach, FL	0.8930
Okaloosa, FL	
2760 Fort Wayne, IN	0.9546
Adams, IN	
Allen, IN	
De Kalb, IN	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Huntington, IN	
Wells, IN	
Whitley, IN	
2800 Fort Worth-Arlington, TX	0.9321
Hood, TX	
Johnson, TX	
Parker, TX	
Tarrant, TX	
2840 Fresno, CA	1.0053
Fresno, CA	
Madera, CA	
2880 Gadsden, AL	0.8173
Etowah, AL	
2900 Gainesville, FL	0.9653
Alachua, FL	
2920 Galveston-Texas City, TX	0.9242
Galveston, TX	
2960 Gary, IN	0.9372
Lake, IN	
Porter, IN	
2975 Glens Falls, NY	0.8441
Warren, NY	
Washington, NY	
2980 Goldsboro, NC	0.8587
Wayne, NC	
2985 Grand Forks, ND-MN	0.8601
Polk, MN	
Grand Forks, ND	
2995 Grand Junction, CO	0.9594
Mesa, CO	
3000 Grand Rapids-Muskegon-Holland, MI	0.9430
Allegan, MI	
Kent, MI	
Muskegon, MI	
Ottawa, MI	
3040 Great Falls, MT	0.8773
Cascade, MT	
3060 Greeley, CO	0.9334
Weld, CO	
3080 Green Bay, WI	0.9422
Brown, WI	
3120 Greensboro-Winston-Salem-High Point, NC	0.9129
Alamance, NC	
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
3150 Greenville, NC	0.9061
Pitt, NC	
3160 Greenville-Spartanburg-Anderson, SC	0.9297
Anderson, SC	
Cherokee, SC	
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
3180 Hagerstown, MD	0.9135
Washington, MD	
3200 Hamilton-Middletown, OH	0.9176
Butler, OH	
3240 Harrisburg-Lebanon-Carlisle, PA	0.9127
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
3283 Hartford, CT	1.1508
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
3285 Hattiesburg, MS	0.7278
Forrest, MS	
Lamar, MS	
3290 Hickory-Morganton-Lenoir, NC	0.9205
Alexander, NC	
Burke, NC	
Caldwell, NC	
Catawba, NC	
3320 Honolulu, HI	1.1053
Honolulu, HI	
3350 Houma, LA	0.7717
Lafourche, LA	
Terrebonne, LA	
3360 Houston, TX	0.9794
Chambers, TX	
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
3400 Huntington-Ashland, WV-KY-OH	0.9556
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
3440 Huntsville, AL	0.9208
Limestone, AL	
Madison, AL	
3480 Indianapolis, IN	0.9875
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Madison, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
3500 Iowa City, IA	0.9510
Johnson, IA	
3520 Jackson, MI	0.8950
Jackson, MI	
3560 Jackson, MS	0.8324
Hinds, MS	
Madison, MS	
Rankin, MS	
3580 Jackson, TN	0.8948
Chester, TN	
Madison, TN	
3600 Jacksonville, FL	0.9490
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
3605 Jacksonville, NC	0.8510
Onslow, NC	
3610 Jamestown, NY	0.7730
Chautauqua, NY	
3620 Janesville-Beloit, WI	0.9244
Rock, WI	
3640 Jersey City, NJ	1.1070
Hudson, NJ	
3660 Johnson City-Kingsport-Bristol, TN-VA	0.8220
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
3680 Johnstown, PA	0.8125
Cambria, PA	
Somerset, PA	
3700 Jonesboro, AR	0.7762
Craighead, AR	
3710 Joplin, MO	0.8646
Jasper, MO	
Newton, MO	
3720 Kalamazoo-Battle Creek, MI	1.0458
Calhoun, MI	
Kalamazoo, MI	
Van Buren, MI	
3740 Kankakee, IL	1.0377
Kankakee, IL	
3760 Kansas City, KS-MO	0.9675
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Clinton, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
3800 Kenosha, WI	0.9721
Kenosha, WI	
3810 Killeen-Temple, TX	0.9122
Coryell, TX	
3840 Knoxville, TN	0.8784
Anderson, TN	
Blount, TN	
Knox, TN	
Loudon, TN	
Sevier, TN	
Union, TN	
3850 Kokomo, IN	0.9008
Howard, IN	
Tipton, IN	
3870 La Crosse, WI-MN	0.9210
Houston, MN	
La Crosse, WI	
3880 Lafayette, LA	0.8156
Acadia, LA	
Lafayette, LA	
St. Landry, LA	
St. Martin, LA	
3920 Lafayette, IN	0.8549
Clinton, IN	
Tippecanoe, IN	
3960 Lake Charles, LA	0.7809
Calcasieu, LA	
3980 Lakeland-Winter Haven, FL	0.8775
Polk, FL	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
4000 Lancaster, PA	0.9244
Lancaster, PA	
4040 Lansing-East Lansing, MI	0.9675
Clinton, MI	
Eaton, MI	
Ingham, MI	
4080 Laredo, TX	0.8059
Webb, TX	
4100 Las Cruces, NM	0.8653
Dona Ana, NM	
4120 Las Vegas, NV-AZ	1.1481
Mohave, AZ	
Clark, NV	
Nye, NV	
4150 Lawrence, KS	0.8642
Douglas, KS	
4200 Lawton, OK	0.8234
Comanche, OK	
4243 Lewiston-Auburn, ME	0.9345
Androscoggin, ME	
4280 Lexington, KY	0.8650
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Madison, KY	
Scott, KY	
Woodford, KY	
4320 Lima, OH	0.9483
Allen, OH	
Auglaize, OH	
4360 Lincoln, NE	0.9992
Lancaster, NE	
4400 Little Rock-North Little Rock, AR	0.8887
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
4420 Longview-Marshall, TX	0.9076
Gregg, TX	
Harrison, TX	
Upshur, TX	
4480 Los Angeles-Long Beach, CA	1.1748
Los Angeles, CA	
4520 Louisville, KY-IN	0.9205
Clark, IN	
Floyd, IN	
Harrison, IN	
Scott, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
4600 Lubbock, TX	0.8238
Lubbock, TX	
4640 Lynchburg, VA	0.9097
Amherst, VA	
Bedford City, VA	
Bedford, VA	
Campbell, VA	
Lynchburg City, VA	
4680 Macon, GA	0.8916
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Twiggs, GA	
4720 Madison, WI	1.0222
Dane, WI	
4800 Mansfield, OH	0.8210
Crawford, OH	
Richland, OH	
4840 Mayaguez, PR	0.4776
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
Sabana Grande, PR	
San German, PR	
4880 McAllen-Edinburg-Mission, TX	0.8347
Hidalgo, TX	
4890 Medford-Ashland, OR	1.0729
Jackson, OR	
4900 Melbourne-Titusville-Palm Bay, FL	0.9736
Brevard, Fl	
4920 Memphis, TN-AR-MS	0.8973
Crittenden, AR	
De Soto, MS	
Fayette, TN	
Shelby, TN	
Tipton, TN	
4940 Merced, CA	0.9651
Merced, CA	
5000 Miami, FL	0.9854
Dade, FL	
5015 Middlesex-Somerset-Hunterdon, NJ	1.1320
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
5080 Milwaukee-Waukesha, WI	0.9947
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
5120 Minneapolis-St Paul, MN-WI	1.0957
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Sherburne, MN	
Washington, MN	
Wright, MN	
Pierce, WI	
St. Croix, WI	
5140 Missoula, MT	0.8683
Missoula, MT	
5160 Mobile, AL	0.7962
Baldwin, AL	
Mobile, AL	
5170 Modesto, CA	1.1230
Stanislaus, CA	
5190 Monmouth-Ocean, NJ	1.0912
Monmouth, NJ	
Ocean, NJ	
5200 Monroe, LA	0.7890
Ouachita, LA	
5240 Montgomery, AL	0.7875
Autauga, AL	
Elmore, AL	
Montgomery, AL	
5280 Muncie, IN	0.8739
Delaware, IN	
5330 Myrtle Beach, SC	0.9075
Horry, SC	
5345 Naples, FL	0.9750
Collier, FL	
5360 Nashville, TN	0.9815
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
5380 Nassau-Suffolk, NY	1.2933
Nassau, NY	
Suffolk, NY	
5483 New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2335
Fairfield, CT	
New Haven, CT	
5523 New London-Norwich, CT	1.1584
New London, CT	
5560 New Orleans, LA	0.9137
Jefferson, LA	
Orleans, LA	
Plaquemines, LA	
St. Bernard, LA	
St. Charles, LA	
St. James, LA	
St. John The Baptist, LA	
St. Tammany, LA	
5600 New York, NY	1.3913
Bronx, NY	
Kings, NY	
New York, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
5640 Newark, NJ	1.1471
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Warren, NJ	
5660 Newburgh, NY-PA	1.1462
Orange, NY	
Pike, PA	
5720 Norfolk-Virginia Beach-Newport News, VA-NC	0.8584
Currituck, NC	
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
Isle of Wight, VA	
James City, VA	
Mathews, VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson City, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
5775 Oakland, CA	1.4860
Alameda, CA	
Contra Costa, CA	
5790 Ocala, FL	0.9689
Marion, FL	
5800 Odessa-Midland, TX	0.9290
Ector, TX	
Midland, TX	
5880 Oklahoma City, OK	0.8948
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
5910 Olympia, WA	1.0919
Thurston, WA	
5920 Omaha, NE-IA	0.9705
Pottawattamie, IA	
Cass, NE	
Douglas, NE	
Sarpy, NE	
Washington, NE	
5945 Orange County, CA	1.1326
Orange, CA	
5960 Orlando, FL	0.9615
Lake, FL	
Orange, FL	
Osceola, FL	
Seminole, FL	
5990 Owensboro, KY	0.8340
Daviess, KY	
6015 Panama City, FL	0.8169
Bay, FL	
6020 Parkersburg-Marietta, WV-OH	0.8007
Washington, OH	
Wood, WV	
6080 Pensacola, FL	0.8672
Escambia, FL	
Santa Rosa, FL	
6120 Peoria-Pekin, IL	0.8699
Peoria, IL	
Tazewell, IL	
Woodford, IL	
6160 Philadelphia, PA-NJ	1.0839
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Salem, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
6200 Phoenix-Mesa, AZ	1.0088
Maricopa, AZ	
Pinal, AZ	
6240 Pine Bluff, AR	0.7833
Jefferson, AR	
6280 Pittsburgh, PA	0.8865
Alleghany, PA	
Beaver, PA	
Butler, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
6323 Pittsfield, MA	1.0234
Berkshire, MA	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
6340 Pocatello, ID	0.9006
Bannock, ID	
6360 Ponce, PR	0.4689
Guayanilla, PR	
Juana Diaz, PR	
Penuelas, PR	
Ponce, PR	
Villalba, PR	
Yauco, PR	
6403 Portland, ME	0.9909
Cumberland, ME	
Sagadahoc, ME	
York, ME	
6440 Portland-Vancouver, OR-WA	1.1167
Clackamas, OR	
Columbia, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Clark, WA	
6483 Providence-Warwick-Pawtucket, RI	1.0932
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
6520 Provo-Orem, UT	0.9936
Utah, UT	
6560 Pueblo, CO	0.8743
Pueblo, CO	
6580 Punta Gorda, FL	0.9472
Charlotte, FL	
6600 Racine, WI	0.8778
Racine, WI	
6640 Raleigh-Durham-Chapel Hill, NC	0.9919
Chatham, NC	
Durham, NC	
Franklin, NC	
Johnston, NC	
Orange, NC	
Wake, NC	
6660 Rapid City, SD	0.8771
Pennington, SD	
6680 Reading, PA	0.9096
Berks, PA	
6690 Redding, CA	1.1306
Shasta, CA	
6720 Reno, NV	1.0639
Washoe, NV	
6740 Richland-Kennewick-Pasco, WA	1.0566
Benton, WA	
Franklin, WA	
6760 Richmond-Petersburg, VA	0.9311
Charles City County, VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Richmond City, VA	
6780 Riverside-San Bernardino, CA	1.1296
Riverside, CA	
San Bernardino, CA	
6800 Roanoke, VA	0.8664
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
6820 Rochester, MN	1.1691
Olmsted, MN	
6840 Rochester, NY	0.9392
Genesee, NY	
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
6880 Rockford, IL	0.9627
Boone, IL	
Ogle, IL	
Winnebago, IL	
6895 Rocky Mount, NC	0.9039
Edgecombe, NC	
Nash, NC	
6920 Sacramento, CA	1.1797
El Dorado, CA	
Placer, CA	
Sacramento, CA	
A6960 Saginaw-Bay City-Midland, MI	0.9992
Bay, MI	
Midland, MI	
Saginaw, MI	
6980 St. Cloud, MN	0.9468
Benton, MN	
Stearns, MN	
7000 St. Joseph, MO	0.9718
Andrews, MO	
Buchanan, MO	
7040 St. Louis, MO-IL	0.8996
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
Lincoln, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Warren, MO	
Sullivan City, MO	
7080 Salem, OR	1.0440
Marion, OR	
Polk, OR	
7120 Salinas, CA	1.4281
Monterey, CA	
7160 Salt Lake City-Ogden, UT	0.9873
Davis, UT	
Salt Lake, UT	
Weber, UT	
7200 San Angelo, TX	0.8500
Tom Green, TX	
7240 San Antonio, TX	0.8834
Bexar, TX	
Comal, TX	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Guadalupe, TX	
Wilson, TX	
7320 San Diego, CA	1.1102
San Diego, CA	
7360 San Francisco, CA	1.4455
Marin, CA	
San Francisco, CA	
San Mateo, CA	
7400 San Jose, CA	1.4567
Santa Clara, CA	
7440 San Juan-Bayamon, PR	0.4880
Aguas Buenas, PR	
Barceloneta, PR	
Bayamon, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Ceiba, PR	
Comerio, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Morovis, PR	
Naguabo, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trujillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Yabucoa, PR	
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.1383
San Luis Obispo, CA	
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.0399
Santa Barbara, CA	
7485 Santa Cruz-Watsonville, CA	1.2890
Santa Cruz, CA	
7490 Santa Fe, NM	1.0610
Los Alamos, NM	
Santa Fe, NM	
7500 Santa Rosa, CA	1.2825
Sonoma, CA	
7510 Sarasota-Bradenton, FL	0.9924
Manatee, FL	
Sarasota, FL	
7520 Savannah, GA	0.9433
Bryan, GA	
Chatham, GA	
Effingham, GA	
7560 Scranton—Wilkes-Barre—Hazleton, PA	0.8378
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Wyoming, PA	
7600 Seattle-Bellevue-Everett, WA	1.1516

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Island, WA	
King, WA	
Snohomish, WA	
7610 Sharon, PA	0.7719
Mercer, PA	
7620 Sheboygan, WI	0.8589
Sheboygan, WI	
7640 Sherman-Denison, TX	0.9661
Grayson, TX	
7680 Shreveport-Bossier City, LA	0.9047
Bossier, LA	
Caddo, LA	
Webster, LA	
7720 Sioux City, IA-NE	0.8956
Woodbury, IA	
Dakota, NE	
7760 Sioux Falls, SD	0.9271
Lincoln, SD	
Minnehaha, SD	
7800 South Bend, IN	0.9782
St. Joseph, IN	
7840 Spokane, WA	1.0857
Spokane, WA	
7880 Springfield, IL	0.8908
Menard, IL	
Sangamon, IL	
7920 Springfield, MO	0.8423
Christian, MO	
Greene, MO	
Webster, MO	
8003 Springfield, MA	1.0419
Hampden, MA	
Hampshire, MA	
8050 State College, PA	0.8705
Centre, PA	
8080 Steubenville-Weirton, OH-WV	0.8364
Jefferson, OH	
Brooke, WV	
Hancock, WV	
8120 Stockton-Lodi, CA	1.0362
San Joaquin, CA	
8140 Sumter, SC	0.8210
Sumter, SC	
8160 Syracuse, NY	0.9374
Cayuga, NY	
Madison, NY	
Onondaga, NY	
Oswego, NY	
8200 Tacoma, WA	1.1071
Pierce, WA	
8240 Tallahassee, FL	0.8485
Gadsden, FL	
Leon, FL	
8280 Tampa-St. Petersburg-Clearwater, FL	0.9066
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
8320 Terre Haute, IN	0.8292
Clay, IN	
Vermillion, IN	
Vigo, IN	
8360 Texarkana, AR-Texarkana, TX	0.8117
Miller, AR	
Bowie, TX	
8400 Toledo, OH	0.9343

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Fulton, OH	
Lucas, OH	
Wood, OH	
8440 Topeka, KS	0.9071
Shawnee, KS	
8480 Trenton, NJ	1.0474
Mercer, NJ	
8520 Tucson, AZ	0.8945
Pima, AZ	
8560 Tulsa, OK	0.9148
Creek, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
8600 Tuscaloosa, AL	0.8179
Tuscaloosa, AL	
8640 Tyler, TX	0.9366
Smith, TX	
8680 Utica-Rome, NY	0.8369
Herkimer, NY	
Oneida, NY	
8720 Vallejo-Fairfield-Napa, CA	1.3323
Napa, CA	
Solano, CA	
8735 Ventura, CA	1.1019
Ventura, CA	
8750 Victoria, TX	0.8151
Victoria, TX	
8760 Vineland-Millville-Bridgeton, NJ	1.0363
Cumberland, NJ	
8780 Visalia-Tulare-Porterville, CA	0.9755
Tulare, CA	
8800 Waco, TX	0.8360
McLennan, TX	
8840 Washington, DC-MD-VA-WV	1.0860
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Clarke, VA	
Culpepper, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Fauquier, VA	
Fredericksburg City, VA	
King George, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Spotsylvania, VA	
Stafford, VA	
Warren, VA	
Berkeley, WV	
Jefferson, WV	
8920 Waterloo-Cedar Falls, IA	0.8332
Black Hawk, IA	
8940 Wausau, WI	0.9653
Marathon, WI	

TABLE 7.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
8960 West Palm Beach-Boca Raton, FL	0.9759
Palm Beach, FL	
9000 Wheeling, OH-WV	0.7464
Belmont, OH	
Marshall, WV	
Ohio, WV	
9040 Wichita, KS	0.9200
Butler, KS	
Harvey, KS	
Sedgwick, KS	
9080 Wichita Falls, TX	0.8307
Archer, TX	
Wichita, TX	
9140 Williamsport, PA	0.8125
Lycoming, PA	
9160 Wilmington-Newark, DE-MD	1.0838
New Castle, DE	
Cecil, MD	
9200 Wilmington, NC	0.9524
New Hanover, NC	
Brunswick, NC	
9260 Yakima, WA	1.0330
Yakima, WA	
9270 Yolo, CA	0.9167
Yolo, CA	
9280 York, PA	0.9082
York, PA	
9320 Youngstown-Warren, OH	0.9176
Columbiana, OH	
Mahoning, OH	
Trumbull, OH	
9340 Yuba City, CA	1.0155
Sutter, CA	
Yuba, CA	
9360 Yuma, AZ	0.8859
Yuma, AZ	

TABLE 8.—WAGE INDEX FOR RURAL AREAS

Rural area	Wage index
Alabama	0.7461
Alaska	1.1838
Arizona	0.9233
Arkansas	0.7703
California	0.9987
Colorado	0.9291
Connecticut	1.2134
Delaware	0.9518
Florida	0.8834
Georgia	0.8560
Guam	0.9611
Hawaii	0.9918
Idaho	0.8937
Illinois	0.8221
Indiana	0.8788
Iowa	0.8382
Kansas	0.8002
Kentucky	0.7941
Louisiana	0.7428
Maine	0.8776
Maryland	0.9088
Massachusetts	1.0390
Michigan	0.8848
Minnesota	0.9293

TABLE 8.—WAGE INDEX FOR RURAL AREAS—Continued

Rural area	Wage index
Mississippi	0.7747
Missouri	0.7860
Montana	0.8765
Nebraska	0.8787
Nevada	0.9767
New Hampshire	0.9989
New Jersey [1]	
New Mexico	0.8236
New York	0.8491
North Carolina	0.8424
North Dakota	0.7746
Ohio	0.8784
Oklahoma	0.7506
Oregon	0.9953
Pennsylvania	0.8344
Puerto Rico	0.4002
Rhode Island [1]	
South Carolina	0.8464
South Dakota	0.8162
Tennessee	0.7854
Texas	0.7748
Utah	0.8937
Vermont	0.9269
Virginia	0.8464
Virgin Islands	0.7166
Washington	1.0346
West Virginia	0.7986
Wisconsin	0.9266
Wyoming	0.9073

[1] All counties within the State are classified urban.

D. Publication of Updates to the Federal Rates

In accordance with section 1888(e)(4)(E) of the Act, the final payment rates listed here reflect an update equal to the full SNF market basket, which equals 3.0 percent. In addition, the FY 2004 rates will be adjusted by an additional 3.26 percent to reflect the cumulative forecast error since the start of the SNF PPS on July 1, 1998. We will continue to publish the rates, wage index, and case-mix classification methodology in the **Federal Register** before August 1 preceding the start of each succeeding fiscal year. Along with a number of other revisions discussed elsewhere in this preamble, this final rule provides the annual updates to the Federal rates as mandated by the Act.

E. Relationship of RUG–III Classification System to Existing SNF Level-of-Care Criteria

As discussed in § 413.345, we include in each update of the Federal payment rates in the **Federal Register** the designation of those specific RUGs under the classification system that represent the required SNF level of care, as provided in § 409.30. This designation reflects an administrative presumption under the current 44-group RUG–III classification system. Our presumption is that any beneficiary who is correctly assigned to one of the upper 26 RUG–III groups in the initial 5-day, Medicare-required assessment is automatically classified as meeting the SNF level of care definition up to the assessment reference date (ARD) for that assessment.

Any beneficiary assigned to any of the lower 18 groups is not automatically classified as either meeting or not meeting the definition, but instead receives an individual level of care determination using the existing administrative criteria. This presumption recognizes the strong likelihood that beneficiaries assigned to one of the upper 26 groups during the immediate post-hospital period require a covered level of care, which would be significantly less likely for those beneficiaries assigned to one of the lower 18 groups.

In this final rule, we are continuing the existing designation of the upper 26 RUG–III groups for purposes of this administrative presumption. Accordingly, we are designating the following RUG–III classifications:

- All groups within the Ultra High Rehabilitation category;
- All groups within the Very High Rehabilitation category;
- All groups within the High Rehabilitation category;
- All groups within the Medium Rehabilitation category;
- All groups within the Low Rehabilitation category;
- All groups within the Extensive Services category;
- All groups within the Special Care category; and
- All groups within the Clinically Complex category.

Comment: One commenter supported the continuation of our presumption policy based on accurate classification into one of the upper 26 RUG–III groups.

Response: We agree that this policy should be retained.

F. Expiration of Initial Three-Year Transition Period

As noted previously in sections I.A and I.E.2 of this final rule, the initial three-year transition period from facility-specific to Federal rates under the SNF PPS has expired. Therefore, payment now equals 100 percent of the adjusted Federal per diem rate.

G. Example of Computation of Adjusted PPS Rates and SNF Payment

Using the XYZ SNF described in Table 9, the following shows the adjustments made to the Federal per diem rate to compute the provider's actual per diem PPS payment. XYZ's 12-month cost reporting period begins October 1, 2004. XYZ's total PPS payment would equal $20,379. The Labor and Non-labor columns are derived from Table 5. In addition, the adjustments for certain specified RUG–III groups enacted in section 101(a) of the BBRA (as amended by section 314 of the BIPA) remain in effect, and are reflected in Table 9.

TABLE 9.—SNF XYZ: LOCATED IN STATE COLLEGE, PA

[Wage Index: 0.8705]

RUG group	Labor	Wage index	Adj. labor	Non-labor	Adj. rate	Percent adjustment	Medicare days	Payment
RVC	$268.21	0.8705	$233.48	$82.98	$316.46	$337.66*	14	$4,727
RHA	207.28	0.8705	180.44	64.13	244.57	260.96*	16	4,175
SSC	172.65	0.8705	150.29	53.41	203.70	244.44**	30	7,333
IA2	117.07	0.8705	101.91	36.22	138.13	138.13	30	4,144
Total							90	20,379

* Reflects a 6.7 percent adjustment from section 314 of the BIPA.
** Reflects a 20 percent adjustment from section 101(a) of the BBRA.

H. SNF Market Basket Index

1. Background

Section 1888(e)(5)(A) of the Act requires us to establish a SNF market basket index (input price index) that reflects changes over time in the prices of an appropriate mix of goods and services included in the SNF PPS. This final rule incorporates the latest available projections of the SNF market basket index. Accordingly, we have developed a SNF market basket index that encompasses the most commonly used cost categories for SNF routine services, ancillary services, and capital-related expenses. In the July 31, 2001 **Federal Register** (66 FR 39562), we included a complete discussion on the rebasing of the SNF market basket to FY 1997. There are 21 separate cost categories and respective price proxies. These cost categories were illustrated in Table 10.A, Table 10.B, and Appendix A, along with other relevant information, in the July 31, 2001 **Federal Register**.

Each year, we calculate a revised labor-related share based on the relative importance of labor-related cost categories in the input price index. Table 10 summarizes the updated labor-related share for FY 2004.

TABLE 10.—FY 2004 LABOR-RELATED SHARE

Cost category	FY 2003 Relative importance	FY 2004 Relative importance
Wages and Salaries	54.796	55.115
Employee Benefits	11.232	11.304
Nonmedical Professional Fees	2.652	2.651
Labor-Intensive Services	4.124	4.130
Capital-Related	3.324	3.172
Total	76.128	76.372

Source: (Table 10) Global Insights, Inc., DRI–WEFA, 4th Quarter, 2002.

2. Use of the SNF Market Basket Percentage

Section 1888(e)(5)(B) of the Act defines the SNF market basket percentage as the percentage change in the SNF market basket index, as described in the previous section, from the average index level of the prior fiscal year to the average index level of the current fiscal year. For the Federal rates established in this final rule, this percentage increase in the SNF market basket index is used to compute the update factor occurring between FY 2003 and FY 2004. We used the Global Insights, Inc. (formerly DRI–WEFA), 4th quarter 2002 forecasted percentage increase in the FY 1997-based SNF market basket index for routine, ancillary, and capital-related expenses, described in the previous section, to compute the update factor.

3. Market Basket Forecast Error Adjustment

In the supplemental proposed rule, we discussed the possibility of developing a market basket forecast adjustment to the rates. We solicited comments on—

- The appropriateness of making a cumulative market basket forecast adjustment reflecting underforecasts since the start of the SNF PPS;
- The continued use of this forecast error adjustment in future rate years;
- The appropriateness of applying a threshold to these annual rate adjustments; and
- Ways that we could use our authority to encourage industry innovation and monitor efforts to further promote quality improvement efforts among SNFs (see section III.L).

4. Federal Rate Update Factor

Section 1888(e)(4)(E)(ii)(IV) of the Act requires that the update factor used to establish the FY 2004 Federal rates be at a level equal to the full market basket percentage change. Accordingly, to establish the update factor, we determined the total growth from the average market basket level for the period of October 1, 2002 through September 30, 2003 to the average market basket level for the period of October 1, 2003 through September 30, 2004. Using this process, the market basket update factor for FY 2004 SNF Federal rates is 3.0 percent. In addition, as noted in the comments and responses shown below, the rates were adjusted by 3.26 percent to reflect the difference between the market basket forecast and the actual market basket increase from the start of the SNF PPS in July 1998.

We used this revised update factor to compute the Federal portion of the SNF PPS rate shown in Tables 1 and 2.

Comment: The majority of commenters strongly supported the proposed rule's provision for a full market basket adjustment for FY 2004. However, a few commenters cited a MedPAC analysis indicating that an across-the-board update may not be appropriate. These commenters recommended either a zero update or an update targeted to specific types of providers, such as hospital-based SNFs.

Response: We are required by statute to implement a full market basket adjustment for FY 2004. In the proposed rule, we published a preliminary market basket factor of 2.9 percent, based on the Global Insights Inc., DRI-WEFA, 4th Quarter, 2002 update. For this final rule, we are using an updated market basket forecast amount of 3.0 percent, based on the Global Insights Inc., DRI-WEFA, 2nd Quarter, 2003 update, which is the most recent data available.

Comment: The vast majority of commenters supported our proposal in the supplemental proposed rule to incorporate a market basket forecast error adjustment into the SNF PPS rate-setting system. These commenters urged us to implement the 3.26 percent cumulative market basket adjustment for the FY 2004 rates. They indicated that the cumulative adjustment is a necessary stabilizing factor, and reflects actual market conditions. A few commenters questioned the necessity of this cumulative adjustment, and suggested that the money could be used more effectively if targeted to specific programs. However, all commenters agreed that, if we proceeded with the cumulative market basket forecast error adjustment, we should apply the forecast error adjustment in subsequent rate years, even in situations where an overstatement of the forecasted market basket adjustment could result in a later downward adjustment.

Response: We carefully considered the implications of adopting this market basket forecast error adjustment. We concluded that, in making the 3.26 percent adjustment, we are not providing a source of new industry funding. Instead, we are correcting an underforecast of pricing levels that resulted in lower payments than we would otherwise have made if actual, instead of forecast, data were used. To a great extent, this underforecast reflects the faster-than-expected growth in wages and benefits for nursing home workers since the start of the SNF PPS, as a result of continued rapid growth in the health sector and the shortage of nurses. As a result of these market conditions, SNFs have already incurred expenses at a higher-than-forecasted level. Our overarching Medicare integrity goal is to pay the appropriate amount, to the correct provider, for the proper service, at the right time. Adjusting for this difference between the forecasted and actual market basket values is consistent with that goal. Therefore, we will implement the 3.26 percent cumulative adjustment for FY 2004. For future years, as actual market basket data become available, we will apply the forecast error adjustment to subsequent rate years. As explained in our supplemental proposed rule, this annual adjustment will be applied on a two-year lag basis (that is, the time period for obtaining final market basket data), and will reflect both upward and downward adjustments, as appropriate.

Comment: Several commenters expressed concern about the proposed use of a 0.25 percentage point threshold for application of the annual forecast adjustments. Some commenters maintained that every forecast error, however small, should be corrected, and that the use of a threshold would build over time, resulting in increasing inaccuracies in the rates. Other commenters said that the adjustment should be meaningful, and that the 0.25 percent threshold was consistent with similar CMS rate-setting provisions. A few commenters suggested increasing the threshold.

Response: In the supplemental proposed rule, we discussed establishing an adjustment for forecast error that would take account annually a forecast error that was at least 0.25 percentage points above or below the actual market basket performance. For the capital PPS update and in the hospital PPS update framework, a forecast error adjustment is reflected only when the forecast and actual market basket percent changes differ by more than 0.25 percentage points. To apply this methodology to the SNF PPS would follow an established practice. In addition, our experience with those PPS frameworks suggests that the forecast errors are relatively small, and generally clustered around zero, so we do not anticipate an accumulation that would significantly affect the rates over time. We are more concerned that the forecast error in any given year is large enough that the SNF PPS base payment rate does not adequately reflect the historical price changes faced by SNFs. Therefore, we will use the 0.25 percentage point threshold to determine whether a forecast error adjustment is appropriate.

Comment: A few commenters expressed concern about the market basket and its methodology and urged us to institute a thorough review of all of the weight and price proxy components in the market basket, particularly wages, capital, and malpractice insurance. These commenters proposed a collaborative effort between the Federal government and private industry to review the market basket methodology.

Response: We agree that it is important to review the market basket weights and price proxies regularly to ensure that they adequately reflect the requirements of section 1888(e)(5) of the Act. It has always been our policy to regularly revise and update the market basket when appropriate, and we did so most recently in 2001, when we rebased the market basket to reflect 1997 cost data. In addition, we have discussed issues related to the market basket with interested parties since the implementation of the SNF PPS, and continue to do so in order to have a technically and conceptually sound market basket that satisfies the legislative requirement explained in section 1888(e)(5) of the Act.

In the July 31, 2001 final rule introducing the 1997-based market basket, we fully explained our criteria for choosing price proxies for market basket cost categories. We use four criteria for this process: timeliness (published and available on a regular basis, preferably at least quarterly, with little lag), reliability (consistent historical time-series as well as being technically and methodologically sound), representativeness (reflecting or proxying actual provider experience), and relevance (holding non-price factors constant, such as skill mix and quality shifts). The current price proxy for wages and salaries, the Employment Cost Index (ECI) for nursing home workers, meets all four of these criteria. We believe that the ECI better meets our criteria than the two other government statistics for nursing home wages, the Average Hourly Earnings (AHE) for nonsupervisory workers in nursing homes and the Employer Cost for Employee Compensation (ECEC) for workers in nursing homes. Although the ECI represents total nursing home wages and salaries, SNFs comprise over 75 percent both of employment and payroll totals for the nursing home industry and, with this representation, SNF wages and salaries are the drivers for changes in the ECI for nursing home wages and salaries. Thus, given available data, we continue to believe that the ECI for nursing home workers is the most appropriate price proxy for growth in wages in SNFs, and we will continue to use it in the SNF market basket. It should be noted that the use of this wage proxy should not be confused with the forecast error correction, which is only the difference between the actual and forecasted percent change in the "same" market basket.

These commenters disagreed with the use of the average yield for AAA bonds as the price proxy for interest costs of for-profit nursing homes, rather than the average yield for BAA or lower rated bonds. In the SNF market basket, the change in the average yield for AAA bonds is used in calculating the SNF market basket price change of the debt held by for-profit SNFs. The amount of the bonds issued, the average term of these bonds, and the mix of bond ratings issued should all be held constant in a fixed-weight Laspeyres price index, such as the SNF market basket. The price change of interest costs associated with corporate bonds should reflect the change in interest rates (yield) for the mix of differently rated corporate bonds held in the base period. Our price proxy should represent the change in the interest rates associated with this fixed mix.

We have conducted sensitivity analyses of the market basket using the change in the yield for different bond ratings, and the change in the long-run yields of AAA, AA, A, and BAA bonds were all very similar. The use of any of these bond yields would produce essentially similar results. For simplicity, both in the maintenance of the index and in the availability of forecasted data, we have chosen to use Moody's AAA corporate bonds. Had we used BAA corporate bonds, the resulting SNF market basket increases would have been identical.

We believe that the current method for reflecting corporate bond prices in the SNF market basket is appropriate because it keeps the mix of corporate bonds issued constant at the base period proportions and captures the associated price change in this mix without having to reflect the rating on each separately issued bond, since they move similarly over time. While we understand the commenter's concern, our research and analysis indicate that our method of accounting for change in bond prices for for-profit SNFs in the market basket is appropriate.

These commenters noted that the current price proxies for interest costs do not reflect the short-term nature of the debt funding currently available to the industry or the fluctuations in rate changes in the leasing marketplace. These are important issues and we will continue to conduct the necessary research on these topics to ensure that they are adequately considered in the market basket. Since we currently use a similar debt life for SNFs and hospitals when vintage weighting the capital components of the market basket, a movement towards shorter average debt terms for SNFs should be considered. (Vintage weighting is the process of weighting together the price changes of current and prior capital purchases (or debt held) based on the average historical acquisition pattern over the useful life of the asset or debt instrument.) We will review available data sources on this information and make a change if appropriate. While we currently believe that leasing costs are appropriately accounted for in the market basket, we will also review this issue more fully to ensure that this is both theoretically and empirically the case.

When we rebased the SNF market basket in 2001, we reviewed Medicare cost report data on professional liability insurance, and found that the vast majority of SNFs did not enter their data into this section of the cost reports (only about 20 SNFs provided that information in 1997). We also looked at Department of Commerce Input-Output data for 1997, and found that insurance was less than 0.2 percent of total SNF expenses. Because the SNF market basket is currently based on the cost structure facing SNFs in 1997, it appears that professional liability costs are a very small portion of total costs and, thus, would likely not have a significant impact on the market basket percentage change. However, we also understand the emerging importance of this issue to SNFs and will continue to review the Medicare cost report data, as well as any other data sources that commenters can recommend to us that would meet our criteria, with the hope that we may possibly incorporate this information into the market basket structure when appropriate.

Comment: A commenter stated that we should reconsider the necessity of a two-year forecast error correction lag if, over time, data become available on a more timely basis.

Response: It is our policy when determining the forecast error correction to use the most recent data available. Currently, this would mean a two-year lag on the correction is necessary, since historical data for the current fiscal year are not available until after the following year's update is determined. Should the data become available on a quicker basis, we would investigate the continued need for a two-year lag. However, a change in availability of data is unlikely, since these data (primarily from Federal government databases) are published on pre-determined schedules. Producer Price Indices (PPI), for instance, are not final until five months after the reference month, and Employment Cost Indices (ECI) only become available in the quarter following the reference quarter. Based on these schedules, for example, a determination of the actual market basket change for FY 2004 would not be available until March 2005. Therefore, it would be impossible to incorporate this information any earlier than the FY 2006 update, creating an unavoidable two-year lag.

I. Consolidated Billing

As established by section 4432(b) of the BBA, the consolidated billing requirement places with the SNF the Medicare billing responsibility for virtually all of the services that the SNF's residents receive, except for a small number of services that the statute specifically identifies as being excluded from this provision. Section 103 of the BBRA amended this provision by further excluding a number of high-cost, low probability services (identified by Healthcare Common Procedure Coding System (HCPCS) codes) within several broader categories that otherwise remained subject to the provision. Section 313 of the BIPA further amended this provision by repealing its Part B aspect, that is, its applicability to services furnished to a resident during a SNF stay that Medicare does not cover. (However, physical, occupational, and speech-language therapy remain subject to consolidated billing, regardless of whether the resident who receives these services is in a covered Part A stay.) In addition, section 313 of the BIPA specified that consolidated billing applies only to services furnished to those individuals residing in an institution (or portion of an institution) that is actually certified by Medicare as a SNF.

To date, the Congress has enacted no further legislation affecting the consolidated billing provision. However, as we noted in the April 10, 2000 proposed rule (65 FR 19232), section 1888(e)(2)(A)(iii) of the Act, as added by section 103 of the BBRA, not only identified for exclusion from this provision a number of particular service codes within four specified categories (that is, chemotherapy items, chemotherapy administration services, radioisotope services, and customized prosthetic devices), but "* * * also gives the Secretary the authority to designate additional, individual services for exclusion within each of the specified service categories." In the FY 2001 proposed rule, we also noted that the BBRA Conference Report (H.R. Conf.

Rep. No. 106-479 at 854) characterizes the individual services that this legislation targets for exclusion as "* * * high-cost, low probability events that could have devastating financial impacts because their costs far exceed the payment [SNFs] receive under the prospective payment system * * *." According to the conferees, section 103(a) "is an attempt to exclude from the PPS certain services and costly items that are provided infrequently in SNFs * * *." By contrast, we noted that the Congress declined to designate for exclusion any of the remaining services within those four categories (thus leaving all of those services subject to SNF consolidated billing), because they are relatively inexpensive and are furnished routinely in SNFs.

As we further explained in the July 31, 2000 final rule (65 FR 46790), any additional service codes that we might designate for exclusion under our discretionary authority must meet the same criteria that the Congress used in identifying the original codes excluded from consolidated billing under section 103(a) of the BBRA: they must fall within one of the four service categories specified in the BBRA, and they also must meet the same standards of high cost and low probability in the SNF setting. Accordingly, we characterized this statutory authority to identify additional service codes for exclusion "* * * as essentially affording the flexibility to revise the list of excluded codes in response to changes of major significance that may occur over time (for example, the development of new medical technologies or other advances in the state of medical practice)" (65 FR 46791). In view of the amount of time that has elapsed since we made that statement, we invited public comments in the May 16, 2003 proposed rule (68 FR 26776) on codes in any of these four service categories which represent recent medical advances that might meet the BBRA criteria for exclusion from SNF consolidated billing.

Comment: Although the proposed rule specifically invited comments on possible exclusions within the specific service categories identified in the BBRA legislation, a number of commenters took this opportunity to reiterate concerns about other aspects of consolidated billing. For example, we received a number of comments concerning the possible exclusion of additional categories of services from SNF consolidated billing, beyond those specified in the BBRA. The commenters identified services such as modified barium swallows, stress tests, hyperbaric oxygen treatments, doppler studies, and nuclear medicine scans as appropriate candidates for exclusion. In addition, a number of commenters recommended a further set of services for exclusion. These additional services are durable medical equipment (including, but not limited to, ventilators, speech devices, specialty beds, wheelchairs, wound care devices and diabetic shoes), antibiotics, TPN, and diagnostic tests.

Response: As enacted by section 4432(b) of the BBA, the original set of consolidated billing exclusions at section 1888(e)(2)(A)(ii) of the Act broadly excluded entire categories of services from consolidated billing (primarily, those of physicians and certain other types of medical practitioners). By contrast, the set of statutory exclusions at section 1888(e)(2)(A)(iii) of the Act, as subsequently enacted by section 103 of the BBRA, was more specifically targeted within a number of broader service categories. In the proposed rule, we noted that the original BBRA legislation (as well as the implementing regulations) provides the Secretary the authority to designate additional, individual services for exclusion within each of the BBRA-specified service categories. However, the statute does not provide the Secretary the authority to create additional categories of excluded services beyond those specified in the law. Therefore, based on the statute, we cannot exclude services and items from consolidated billing unless they fall into the categories of services provided in the statute and addressed in the BBRA.

Comment: Several commenters recommended that we exclude a variety of additional chemotherapy agents and radioisotopes used for cancer treatment. One commenter specifically recommended that we exclude Zevalin which is used in the treatment of non-Hodgkins lymphoma.

Response: The BBRA specified that certain chemotherapy drugs and radioisotope services (sections 1888(e)(2)(A)(iii)(II) and (IV) of the Act) be excluded from the SNF PPS payments. Specific chemotherapy drugs and radioisotope services were then identified by HCPCS code in the statute. The BBRA authorized us to update the list of excluded services to reflect advances in technology and medical practice.

We note that most of the chemotherapy drugs and radioisotope services mentioned by commenters were considered for exclusion under the BBRA, but were not adopted by the Congress in the BBRA list of excluded items and services.

However, we did identify a new radiopharmaceutical (that is, radiotherapeutic substance linked to a radioisotope administered to deliver therapeutic radioactivity), Zevalin, which combines elements of both the chemotherapy and radioisotope categories excluded under the BBRA. This radiopharmaceutical links monoclonal antibodies with a radioisotope. In the case of Zevalin, the monoclonal antibody it uses is a chemotherapy drug that is already excluded from the SNF PPS payments. In addition, the Food and Drug Administration (FDA) has recently approved Bexxar, a radiopharmaceutical equivalent to Zevalin. We believe that these two radiopharmaceutical agents meet the criteria that were used to create the original lists of items to be excluded, because they are high-cost services that are unlikely to be used in the SNF setting, and that could not have been reflected in the base year costs for the SNF PPS (since neither of these products were available at that time).

Accordingly, we will add Zevalin (HCPCS codes A9522 and A9523) and Bexxar (HCPCS code not yet available) to the list of items excluded from consolidated billing. These exclusions will appear in the Consolidated Billing Annual Update Program Memorandum that we will issue at the end of CY 2003, and will be effective as of January 1, 2004.

In excluding the additional services from consolidated billing and the SNF PPS (and, thus, qualifying them for separate payment under Part B), section 103 of the BBRA also mandated a corresponding proportional reduction in Part A SNF payments, beginning with FY 2001. Specifically, section 1888(e)(4)(G)(iii) of the Act provides that the Secretary "* * * shall provide for an appropriate proportional reduction in payments" so that the *aggregate* reduction in Part A payments is equal to the *aggregate* increase in Part B payments attributable to the exclusions provided under section 1888(e)(2)(A)(iii) of the Act. This requirement applies not only to the original legislation, but to the BBRA-authorized update process. Thus, the actual result of this provision's mandatory Part A payment reduction is to take the expense of the excluded items (which could be financially devastating to an individual SNF that actually incurs it, if borne solely by that particular facility) and effectively redistribute it over the entire universe of providers. As we noted in the July 31, 2000 final rule (65 FR 46792), in much the same way that an insurance pool reduces the degree of financial risk to an individual member of the pool in the event of a catastrophic loss, effectively spreading the expense of the excluded items over such a large provider population helps minimize the potential financial liability that any individual provider might otherwise incur.

The consolidated billing exclusions addressed under the BBRA were items and services that had been in use for many years. We had data for the SNF PPS base year that were used to determine utilization of these services and make the appropriate adjustment. In our July 31, 2001 final rule, we implemented a $.05 reduction in the SNF PPS rate to reflect this proportional adjustment.

The situation is slightly different when applied to these new consolidated billing exclusions. Since these two radiopharmaceuticals were not in existence during the SNF PPS base year, we cannot rely on historical utilization data to develop an appropriate reduction. In addition, as a new class of treatment, there may not be a relationship between the use of these radiopharmaceuticals and the use of other chemotherapy agents or radioisotopes used during the SNF PPS base year.

In light of these considerations, we have developed the following approach. We estimate the combined utilization of these two radiopharmaceuticals to be approximately 25 doses per year, which most closely equates to a $.01 reduction to the unadjusted urban and rural SNF PPS per diem rates to reflect the FY 2004 revision of the consolidated billing exclusions. (For comparison purposes, as stated above, the offset used to adjust for the complete list of BBRA exclusions was a negative $.05 adjustment.) Once we have collected actual utilization data on the use of these new radiopharmaceuticals (as well as on changes in utilization in other chemotherapy and radioisotope agents), we will reassess whether the $.01 offset most accurately represents an "appropriate proportional reduction" in Part A SNF payments under section 1888(e)(4)(G)(iii) of the Act, and will make any appropriate adjustments in the amount of that offset. This aggregate adjustment could involve either an increase or decrease in the interim $.01 offset amount applied for FY 2004, in order to ensure that the final adjustment most accurately reflects the "appropriate proportional reduction" required under section 1888(e)(4)(G)(iii) of the Act.

Comment: Some commenters cited the existing list of exclusions (in § 411.15(p)(3)(iii)) for certain high-intensity outpatient hospital services; and expressed the view that these exclusions should not be limited to only those services that actually require the intensity of a hospital setting, but rather, should also encompass services furnished in other, nonhospital settings as well. As an example, they cited services such as magnetic resonance imaging (MRIs) furnished in freestanding imaging centers and radiation therapy furnished in freestanding oncology centers, both of which may be cheaper and more accessible in certain particular localities than those furnished by hospitals.

Response: As we noted in the May 12, 1998 interim final rule (63 FR 26298), and again in the July 31, 2000 final rule (65 FR 46790 through 46791), the exclusion of certain outpatient hospital services (in § 411.15(p)(3)(iii)) is targeted specifically at those services "* * * that, under commonly accepted standards of medical practice, lie *exclusively* within the purview of hospitals * * *" (emphasis added); that is, services which generally require the intensity of the hospital setting in order to be furnished safely and effectively. Basically, we determined that this high level of outpatient hospital care is beyond the scope of SNF comprehensive care plans and should be excluded from consolidated billing. The intensive outpatient hospital services identified under this exclusion were not subject to consolidated billing. However, this exclusion does not encompass services furnished in any other health care setting. Thus, to the extent that advances in medical practice over time may make it feasible to perform such a service more widely in a less intensive, nonhospital setting, this would not argue in favor of unbundling the nonhospital performance of the service under these regulations, but rather, of considering whether to rebundle the service entirely back to the SNF. In addition, we note that unlike the outpatient hospital exclusions in § 411.15(p)(3)(iii), the statutory exclusions enacted by the BBRA for certain chemotherapy and other services apply regardless of the setting (hospital versus freestanding) in which the services are furnished. Adding services such as MRIs and radiation therapy to the existing statutory list of exclusions would require legislation by the Congress to amend the law itself.

Comment: One commenter requested the exclusion of specific speech-language pathology evaluations and treatments.

Response: As we noted in the FY 2002 proposed rule (66 FR 24020), we regard the provision of therapy services as an inherent and integral function of an SNF, and we believe that the statutory provisions on consolidated billing clearly reflect this position. Section 1888(e)(2)(A)(ii) of the Act provides that physical, occupational, and speech-language therapy services are subject to consolidated billing, even when performed by a type of practitioner (for example, a physician) whose services would otherwise be excluded. In addition, section 1862(a)(18) of the Act specifies that consolidated billing applies to these services when furnished to *any* resident of an SNF, even if Part A does not cover the resident's stay. Accordingly, all physical, occupational, and speech-language therapy services furnished to SNF residents are subject to consolidated billing, and any changes to this aspect of the provision would require legislation by the Congress to amend the law.

Comment: Several commenters also proposed expanding the list of excluded services by redefining categories of service that are currently excluded from consolidated billing. For example, while the BBRA excludes specific chemotherapy services by HCPCS codes, these commenters recommended not only adding to the list of excluded chemotherapy pharmaceuticals, but expanding the exclusion to encompass all related services associated with a chemotherapy treatment, such as supplies and other pharmaceuticals used to treat side effects. In addition, several commenters recommended exclusion of oral chemotherapy agents that are not separately billable to Medicare Part B for any beneficiary, and are currently covered only as part of the overall package of services furnished under the Part A inpatient hospital or SNF benefits.

Response: In the proposed rule, we noted that the BBRA's list of services excluded by HCPCS code is a targeted list, narrowly carving out only certain individual "high-cost, low probability" services *within* a number of broader service categories—such as chemotherapy services—that otherwise remained subject to consolidated billing. As we noted in the proposed rule (68 FR 26776), the BBRA provides the Secretary the authority to designate additional, individual services for exclusion within each of the service categories that it specifies. However, the statute does not provide authority to exclude other services that, while related, fall outside of the specified service categories themselves. For example, although anti-nausea drugs are commonly used *in conjunction with* chemotherapy, they are not in themselves chemotherapeutic agents and, consequently, do not fall within

one of the excluded categories designated in the BBRA. Further, we believe that the Congress was clear in its intent regarding the particular items and services to be excluded from consolidated billing, by use of the HCPCS codes specified in the Act. Regarding the suggestion to exclude from consolidated billing those oral chemotherapy agents that are not separately billable to Part B (and are currently covered only under the Part A inpatient hospital and SNF benefits), we note that expanding the existing drug coverage available under Part B to include those drugs is not within our authority. Implementing this change would require legislation by the Congress to amend the law.

We note that some chemotherapy pharmaceuticals that commenters proposed for exclusion have already been included in the list of HCPCS codes excluded from the consolidated billing provisions. The most recent annual update regarding HCPCS exclusions from consolidating billing can be found in Program Memorandum A–02–118 (Change Request (CR) #2459), published November 8, 2002.

Comment: Two commenters requested an expansion of the dialysis exclusion to encompass dialysis services furnished directly by the SNF. In addition, several commenters noted that erythropoietin (EPO) currently is excluded from consolidated billing only when furnished in conjunction with the Part B dialysis benefit, and they recommended expanding this exclusion to encompass its use in connection with other, non-dialysis forms of treatment (such as chemotherapy).

Response: Under section 1888(e)(2)(A)(ii) of the Act, the exclusion of dialysis services from consolidated billing applies only to those services that meet the requirements for coverage under the separate Part B dialysis benefit at section 1861(s)(2)(F) of the Act. The Part B benefit allows for home dialysis and dialysis performed on the premises of a certified dialysis facility. By contrast, if the SNF itself elects to furnish dialysis services to a resident during a covered Part A stay (either directly with its own resources, or under an "arrangement" with a certified dialysis facility in which the SNF itself does the billing), the services are no longer considered Part B dialysis services, but rather, are Part A SNF services. Accordingly, they would no longer qualify for the statutory exclusion of Part B dialysis services from consolidated billing, and would instead be bundled into the comprehensive PPS per diem payment that the SNF receives for the package of services that it furnishes during the resident's covered Part A stay. Any change in the scope of the dialysis exclusion from consolidated billing would require legislation by the Congress to amend the law. We note that we are proactively monitoring the impact of the SNF PPS to ensure that beneficiary access is not compromised. To that end, we have requested that the Office of the Inspector General (OIG) specifically examine the effect of the PPS on SNF residents' access to dialysis treatment. We will continue to gather extensive information from around the country with respect to SNF PPS implementation and will look to a variety of sources for objective information and evidence of the impact of this policy on access to quality care.

Similarly, under section 1888(e)(2)(A)(ii) of the Act, the exclusion of EPO from consolidated billing applies only to those services that meet the requirements for coverage under the separate Part B EPO benefit at section 1861(s)(2)(O) of the Act. Section 1861(s)(2)(O) of the Act permits coverage of EPO and items related to its administration for those dialysis patients who can self-administer the drug, subject to methods and standards established by the Secretary for its safe and effective use (as described in § 405.2163(g) and (h)). Since EPO that is used for non-dialysis patients does not fall within the scope of section 1861(s)(2)(O) of the Act, that usage does not fall within the scope of the EPO exclusion from consolidated billing.

Comment: One commenter requested that we "develop a system to eliminate the billing of SNFs for extraneous physician visits."

Response: Under section 1888(e)(2)(A)(ii) of the Act and § 411.15(p)(2)(i) of the regulations, physician services that meet the criteria for payment on a fee schedule basis are excluded from consolidated billing and, accordingly, can already be billed directly to the Part B carrier by physicians themselves.

Comment: A few commenters recommended expanding the consolidated billing exclusions to provide short-term relief pending the implementation of SNF PPS refinements. They urged this course of action as a way of ensuring continued access to SNF care for beneficiaries with heavy non-therapy ancillary needs.

Response: We agree that the SNF PPS needs to identify more accurately those beneficiaries with high pharmaceutical and other non-therapy ancillary needs, and we are actively conducting research designed to address these issues. However, we do not have the authority, nor do we believe it is appropriate, to expand the consolidated billing exclusions as a substitute for actual refinements. As we noted in the July 31, 2001 final rule (66 FR 39588) in response to similar comments,

> * * * we do not share the view of those commenters who suggested that the creation of additional exclusions from consolidated billing could serve, in effect, as an interim substitute for implementing case-mix refinements. We believe that payment adjustments relating to case-mix would best be accomplished directly through refinements in the case-mix classification system. Further, we note that the Congress has already provided an interim adjustment until the refinements can be implemented, in the form of the temporary rate increases for certain specified RUG–III groups [enacted by section 101(a) of the BBRA, as amended by section 314 of the BIPA].

J. Application of the SNF PPS to SNF Services Furnished by Swing-Bed Hospitals

In the July 31, 2001 final rule (66 FR 39562), we announced the conversion of swing-bed hospitals to the SNF PPS, effective with the start of the provider's first cost reporting period beginning on or after July 1, 2002. We selected this date consistent with the statutory provision to integrate swing-bed hospitals into the SNF PPS by the end of the SNF transition period, that is, June 30, 2002.

As of July 31, 2003, the SNF PPS covers all swing-bed rural hospitals (as noted previously in section I.D of this final rule, section 203 of the BIPA exempted critical access hospital (CAH) swing-beds from the SNF PPS). Therefore, all rates and wage indices outlined in earlier sections of this final rule for SNF PPS also apply to all swing-bed hospitals. A complete discussion of assessment schedules, the MDS and the transmission software, Raven-SB for Swing Beds, can be found in the July 31, 2001 final rule (66 FR 39562). The latest changes in the MDS for swing-bed hospitals are listed on our SNF PPS Web site, *http://www.cms.hhs.gov/providers/snfpps/snfpps_mds.asp*.

K. Distinct Part Definition

In the May 16, 2003 proposed rule (68 FR 26777), we noted that while some SNFs function as separate, independent entities, we have recognized since the inception of the Medicare program that it is also possible for a SNF to operate as a component, or "distinct part" of a larger organization. However, there was no precise definition of a "distinct part." In this final rule, we are clarifying the definition of a distinct part, by adopting a set of criteria that provides more precise guidance to providers and State licensure and certification agencies. This guidance will assist providers in understanding the criteria that govern the financial and organizational structure of these entities to facilitate the Medicare and Medicaid approval process.

Further, we proposed adopting certain additional criteria that would apply specifically to what we define in the rule as a composite distinct part SNF and/or NF. Under these criteria, a composite distinct part would be treated as a single distinct part of the institution of which it is a distinct part, and, as such, would operate under a single provider agreement with a single provider number. Further, to ensure quality of care and quality of life for all residents, we proposed that the composite distinct part would be required to meet all of the participation requirements set forth in subpart B of part 483 independently in each location. We also proposed amending § 483.10 and § 483.12 to afford certain protections and rights to residents located in a composite distinct part SNF and/or NF.

Comment: A commenter believed that the new criteria for distinct part certification were intended to determine if a facility was provider-based and a distinct part of a larger facility. Several other commenters believe that if a SNF meets the requirements of § 413.65 (provider-based), it is automatically considered a distinct part of the hospital to which it claims to be based.

Response: The distinct part certification requirements set forth in § 483.5 are separate and apart from the requirements to be considered "provider based" as set forth in § 413.65. Indeed, SNFs are no longer required to request or be approved for provider-based status and are not subject to the provider-based regulations in § 413.65. Moreover, simply meeting the provider-based requirements, which, as we have previously stated do not apply to SNFs, does not translate to automatically meeting the distinct part requirements. Accordingly, we will evaluate each request for approval of a distinct part SNF or NF against the criteria outlined in § 483.5.

Comment: Several facilities have questioned whether the receipt of a higher rate of Medicaid reimbursement is a justifiable reason for us to determine that a particular nursing facility is a part of a distinct part composite.

Response: We do not consider it an efficient use of public monies to approve a composite distinct part or, for that matter, a distinct part for the sole purpose of enhancing its Medicaid payment.

Comment: Several commenters recommend that we eliminate the condition that beds cannot be scattered throughout the facility.

Response: The Committee Report that accompanied the original Medicare legislation (Sen. Fin. Comm. Rep. No. 404, 89th Congress, 1st Session 31–32 (1965)) stated that a posthospital extended care facility could be an institution such as a skilled nursing home or a distinct part of an institution, such as a ward or wing of a hospital or a section of a facility another part of which might serve as an old age home. The regulations at 42 CFR 440.155 describe a distinct part as "* * * an identifiable unit such as an entire ward or contiguous ward, a wing, floor or building." Thus, we believe that there is no legal basis for permitting the scattering of beneficiaries throughout the institution's physical plant. Also, the scattering of beneficiaries throughout the physical plant would make the survey and certification of SNFs and NFs a much more burdensome and complicated process. Finally, it would mean that we would be applying our rules to residents or beds *per se* rather than to providers. We apply our requirements to facilities, not beds or residents. Thus, the institution must clearly designate the area that is the proposed distinct part SNF and/or NF.

Comment: Several commenters suggested that we allow facilities to designate the number of beds to be approved and to identify those beds anywhere within the facility for cost accounting or survey purposes. The commenters add that in the approval process of a SNF distinct part, the facility would demonstrate to us the cost accounting methodology for a Medicare distinct part. Regulations for cost accounting for a Medicaid distinct part would be at the discretion of the State. The commenters indicate that, during the onsite survey, the facility would disclose the beds/rooms that the facility has designated as comprising the SNF or NF distinct part.

Response: We agree that an institution or institutional complex should be allowed to identify the number of beds to be approved in accordance with our policy. We also agree that an institution or institutional complex be allowed to identify the building(s) or identify parts of building(s) (that is wings, wards, or floors) where the distinct part is located as long as the location comports with the distinct part rules. However, for both cost accounting and survey and certification purposes, we must know in advance of the initial or recertification surveys, the number of beds in the distinct part and the location of the distinct part with respect to the entire complex. This assures that the surveying entity, either the State survey agency or our regional office, can allocate adequate resources to conduct the survey and then proceed directly to the distinct part to begin the survey. It also provides for adequate cost information from the provider's records to support payments made for services furnished to beneficiaries. If there are changes in the number of distinct part beds and/or their location in an approved distinct part facility, we must approve those changes in accordance with established policy.

Comment: One commenter states that we are forcing nursing homes to transfer residents to different rooms based on the certification of beds.

Response: We disagree with the commenter. It is the nursing home, not the Medicare or Medicaid program, that decides in which room an individual will be placed. As noted previously, facilities are certified, not beds. An individual, in selecting a nursing home for Medicare or Medicaid purposes, may choose any facility he/she likes provided the selected facility chooses to accept him or her. If a nursing home wants to place a person anywhere in the home, the facility could choose to have the entire nursing home participate in both Medicare and Medicaid.

Comment: Several commenters expressed concern with the "close proximity" requirements set forth in the definition of a distinct part relating to location. Another commenter even recommended that the definition of a distinct part exclude reference to location. Instead, the commenter suggested that the definition be revised to include being adjacent to, on the same campus of, or on multiple campuses of an institution that meets all the criteria of ownership and management control mentioned in § 483.5(b)(2). Yet another commenter believes that the requirements for location required that the distinct part be located strictly in the main building and not be allowed to exist at another location that is part of the institution's campus.

Response: In the definition of a distinct part set forth in the proposed rule of May 16, 2003 (68 FR 26758), we stated that an SNF or NF distinct part may be comprised of one or more buildings or designated parts of buildings (that is, wings, wards, or floors) that are—

- In the same physical area immediately adjacent to the institution's main buildings;
- Other areas and structures that are not strictly contiguous to the main buildings but are located within close proximity of the main buildings; and
- Any other areas that we determine on an individual basis, to be part of the institution's campus.

While we understand the concerns expressed by these commenters, we are retaining the language in the proposed rule regarding location and close proximity to afford flexibility in our determinations. It is our view that, in order to meet the requirements for supervision and control, and to function as an integral and subordinate part of the institution, with significant common resource usage of buildings, equipment, personnel and services, a distinct part would need to be located in close proximity to the institution of which it is a part. However, to clarify and address some of the commenters' concerns, we are revising § 483.5(b)(1) by clarifying that a distinct part SNF or NF is "physically distinguishable from the larger institution" rather than "a physically identifiable component." As for concerns with respect to locations outside the institution's main building, we believe the definition provides flexibility to recognize distinct part SNFs or NFs that are not co-located at the institution's main building and, in conformity with the regulations as finalized, will continue to do so by making such determinations on an individual basis.

Comment: A commenter suggested that, instead of creating the term "composite distinct part," we broaden the definition of distinct part, thus negating the necessity to make composite distinct part a separate term.

Response: Although we certainly want to keep our definitions of terms as simple and as realistic as possible, we are retaining our definition of a composite distinct part because the term best describes the situations we have encountered that were not previously addressed in regulations.

Comment: Several commenters recommended that existing SNFs and NFs that are a physically identifiable component of an institution be grandfathered as appropriate as a distinct part of that institution without having to submit a written request to us. Another commenter encouraged us to provide a transition period before implementation of the distinct part definition and composite distinct part definition to allow providers time to come into compliance with the accompanying requirements.

Response: We do not agree that existing distinct part SNFs and NFs should be grandfathered. All proposed and existing distinct parts must submit a written request to us as set forth at § 483.5(b)(2)(vi). At a minimum, an SNF and/or NF must demonstrate in writing how it meets the definition of a distinct part or composite distinct part. This definition has been discussed in detail in both the proposed rule and in this final rule, and provides extensive guidance to providers on compliance with these requirements.

The effective date of this final rule is October 1, 2003. However, in response to these comments, we will disseminate administrative guidance to implement the regulation with minimal burden to providers and States, in accordance with the requirement at § 483.5(b)(2)(vi).

Comment: A commenter suggested that we allow the approval to be a distinct part to be made on a retroactive basis.

Response: We disagree. The purpose of this regulation is to codify existing criteria for approval of distinct parts. For most facilities, the impact of this regulation will be that the criteria are easier to understand and can be more readily used by facility staff to monitor continued compliance. For those entities requesting initial Medicare and/or Medicaid approval, there is no reason that the SNF or NF could not be in compliance with the criteria at the time approval is requested. Indeed, we are requiring that a request for a distinct part be part of the Medicare and/or Medicaid approval process. The same is true in situations where there is a change of ownership or a change in bed size of an existing facility. When a provider is contemplating a change of ownership, the provider must notify us in advance; thus, we are requiring that a request for distinct part approval be included as part of its notification to us. In those instances where an existing SNF or NF requests a change in bed size, that request must be filed 45 days in advance of the change as stated in established policy; therefore, we are requiring that the request for distinct part approval be included in the request for a change in bed size.

Comment: There were a number of comments regarding specific administrative procedures, such as those relating to the process for requesting a distinct part approval and the appeal of a denial of a request.

Response: We believe that the detailed distinct part criteria set forth in the regulations, as discussed further in the proposed rule and in this final rule, already provide extensive guidance to providers on compliance with these requirements. However, as we noted in the July 31, 2000 final rule (65 FR 46791), and again in the July 31, 2001 final rule (66 FR 39588), specific operational instructions are beyond the scope of the SNF PPS final rule, and are addressed instead through program issuances.

Comment: A commenter had several questions regarding the term "composite distinct part." The commenter asked whether an institution may operate two or more physically separate locations all of which would qualify as SNFs, and whether we will treat them as if they are a single SNF. On the other hand, if an institution operates a SNF at two locations, will only one location qualify as a SNF and the other will qualify as a NF? The commenter also asked whether all of the various locations comprise a single composite distinct part or whether each location itself qualifies as a composite distinct part.

Response: By definition, a composite distinct part is a combination of two or more physically separate locations where SNF and/or NF services are provided, all of which operate under a single Medicare or Medicaid provider agreement, constituting a single distinct part SNF and/or a single distinct part NF.

Comment: A commenter requested that we further explain the administrative implications relating to a composite distinct part SNF or NF. The commenter specifically asked for guidance with respect to the filing of the Medicare cost report, the selection of a cost reporting period, the issuance of a provider number, the selection of a fiscal intermediary, and any additional administrative requirements.

Response: As we have stated above, a composite distinct part is in fact a combination of two or more physically separated locations where SNF and/or NF services are provided, all of which operate under a single Medicare or Medicaid provider agreement, constituting a single distinct part SNF and/or a single distinct part NF. Therefore, a composite distinct part SNF must file a single Medicare cost report, use the same cost reporting period selected by the institution of which it is a distinct part, use a single provider number and the same fiscal intermediary as that selected by the institution of which it is a distinct part. The composite distinct part is subject to the change in bed size policies that we establish for all SNFs and NFs.

Comment: Several commenters were unclear as to the reason why we were creating the term "composite distinct part."

Response: As we stated in the proposed rule of May 16, 2003 (68 FR 26758), the growing frequency of hospital mergers (in which each of the merging hospitals brings its own distinct part SNF and/or NF into the merger) has created situations where the newly merged hospital entity includes multiple physical plants in which SNF and/or NF services are provided in different physical locations: that is, the creation of a composite distinct part SNF and/or NF. Moreover, that hospital might additionally purchase a freestanding SNF and/or NF for use in placing those of its inpatients who are ready for hospital discharge. Existing guidance on what constitutes a distinct part does not address these types of situations. Thus, we have established these criteria in an effort to reduce uncertainty and to allow providers to make informed decisions. This rule also establishes protections for beneficiaries who reside in composite distinct parts.

Comment: A commenter questioned if States would be required to apply the same definition in determining distinct part approval for purposes of State licensing and Medicaid reimbursement laws.

Response: The criteria and definitions set forth in this rule apply to SNFs and NFs that are approved to participate in either the Medicare program or the State Medicaid program (or both). As such, for participation in the Medicare and/or Medicaid programs, the criteria in this rule must be met.

Comment: A commenter stated that we should consider CMS staff time that will be required to approve mergers.

Response: Providers who are participating in the Medicare and/or Medicaid program are required to notify us of any proposed change of ownership before the effective date of the transaction, since these transactions directly affect the provider agreement. Reviewing these transactions is a function that our Regional Offices are currently performing and will not require additional CMS staff time.

In the proposed § 483.5(c)(2)(iii), we inadvertently used the term "hospitals" rather than "institutions" in our discussion of changes of ownership. We are revising § 483.5(c)(2)(iii) by replacing the word "hospitals" with "institutions," since this provision is meant to apply more generally to institutions, which could include, but are not limited to, hospitals. We are also replacing the word "merged" with "change of ownership" throughout the regulations text since this provision more accurately applies in all cases where there is a change of ownership. For the same reason, we are deleting the examples referencing hospitals at § 483.5(b)(1).

Comment: A commenter stated that our policy of allowing only one distinct part SNF and/or one distinct part NF is problematic as it could jeopardize the funding for certain programs that are predicated on specific State program requirements.

Response: It has been our longstanding policy that an institution or institutional complex only be allowed to have one distinct part SNF and/or one distinct part NF. Moreover, our policy is based on sections 1819(a) and 1919(a) of the Act, which define a SNF and a NF, respectively, as "an institution (or a distinct part of an institution). * * *" It is our view that this reference to the singular, that is, "a" distinct part indicates that the Congress did not contemplate permitting the establishment of more than one distinct part SNF or NF in any given institution. This language is also reflected in the Committee Report accompanying the original Medicare legislation previously discussed in the May 16, 2003 proposed rule (68 R 26777).

Comment: Several commenters suggested the term "distinct part" be defined using language that had previously appeared in the State Operations Manual § 2110, "The term 'distinct part' denotes that the unit is organized and operated to give a distinct type of care within a larger organization which otherwise renders other types or levels of care. * * *"

Response: We are not making the revision, as suggested by the commenters, because this would necessitate a change in the statute.

Comment: Two commenters expressed a concern that the restrictions on room changes made within the locations of the composite distinct part would affect the transfer of residents between levels of care (that is, skilled nursing facility services are provided in one location of the composite distinct part and nursing facility services are provided in another location of the composite distinct part.)

Response: We do not consider the resident protections in newly added § 483.12(a)(8) that apply to room changes to have any impact on residents transferring between different levels of care within a composite distinct part. There is a distinction between room changes and transfers. Room changes occur within the same certified facility, such as within a composite distinct part. Section 483.12(a)(1) defines transfers and discharges as, "* * * movement of a resident to a bed outside of the certified facility whether that bed is in the same physical plant or not. Transfer and discharge does not refer to the movement of a resident within the same certified facility."

Comment: The commenter urged us to implement the definitions for distinct parts and composite distinct parts in a manner that neither adds administrative burden on SNFs or NFs, nor adversely affects their quality of care or financial status. The commenter stated further that State Medicaid programs and other payers should not be required to use the new definitions, and that the creation of the definitions should not hamper their ability to use the previous definitions.

Response: It is not our intent in defining the terms distinct part and composite distinct part to add to a SNF's or NF's administrative burdens or to adversely affect the quality of care provided to the residents, or to affect the SNF's or NF's financial status. We believe that our definitions of these terms should be clearly stated in regulations in order to reduce uncertainty and allow providers to make informed decisions and enhance the survey and certification process.

We do expect that the distinct part regulations be applied to SNFs participating in the Medicare program and NFs participating in the Medicaid program in exactly the same manner. As we have discussed previously, the statutory definitions of a SNF and a NF that appear in sections 1819(a) and 1919(a) of the Act, respectively, use identical language, "an institution (or a distinct part of an institution)" and thus are not intended to be treated differently. Moreover, § 440.155 and the Medicare guidelines concerning distinct parts have always correlated, and we believe that to allow different distinct part rules for the two programs would only create confusion and would not be consistent with the intent of the Congress. We are also making editorial technical changes to § 440.40(a)(1)(ii)(A), § 483.5(b)(1), § 483.5(b)(2), § 483.5(c), and § 483.10(b)(12). These were made solely to clarify and make more understandable the regulations text.

L. Quality of Care Efforts Under the SNF PPS

In the supplemental proposed rule (68 FR 34772), we expressed our expectation that the majority of any additional payments that might result from the introduction of a forecast error adjustment (as discussed previously in section III.H.3 of this final rule) would be used for direct care services to nursing home residents and quality improvement activities and programs. We also solicited comments on how SNFs could account for these direct care

funds, and on how we can further promote quality improvement efforts among SNFs.

Comment: A number of commenters pointed out that a primary objective of any prospective payment system is to allow providers the flexibility to manage their facilities effectively and to allocate their funding to best serve the needs of their patients. These commenters generally agreed that providers should use this flexibility to develop innovative programs to ensure high quality care, but generally did not support targeting funding to a specific service or rate component. Several commenters referenced several locally-developed programs focusing on quality improvement and customer satisfaction as examples of provider initiatives in a PPS environment. On the other hand, a few commenters took a more positive view of targeted payment rates, and recommended that we consider recent State initiatives that incorporate quality incentives or establish mandatory SNF staffing ratios.

Response: In considering the adoption of a market basket forecast error adjustment, we carefully evaluated industry comments for the implications of targeting this additional funding to quality improvements. While generally positive about the need to maintain and enhance direct care services, many commenters strongly urged us to maintain the integrity of the PPS as the best means of achieving improved patient care. These commenters maintained that the most effective way to manage operations and improve quality is to allow managers the flexibility they need to address the needs of their patients quickly. They expressed concern that earmarking funds for a specific care component (such as nurse staffing or pharmaceuticals) would restrict rather than enhance this flexibility, and could result in a negative, rather than a positive impact on patient care. While we strongly support the development of quality incentives within the structure of our payment systems, we agree that any such initiatives will need to be carefully designed and tested to ensure an appropriate and beneficial effect on direct care and patient outcomes.

A few commenters recommended that we establish specific quality and/or staffing standards. Although we do have research data that links staffing levels and patient outcomes, these research projects have not provided us with the specific analyses (including the trade off between cost and quality) that we would need to establish either minimum or recommended staffing levels, or to adjust those staffing levels for specific acuity or functional limitation populations. Therefore, it became apparent that we do not currently have a clear way to target payments to quality improvements in a uniform manner that will benefit the Medicare program in general. However, we want to reiterate our expectation that this additional funding be used to improve direct care. We strongly encourage providers to continue their efforts to develop and expand programs such as the grass roots initiatives discussed later in this preamble that promote high quality care.

We are also continuing to explore a variety of quality initiatives, including the relationship between staffing and quality outcomes. We have recently awarded a contract to generate an informed set of CMS options for establishing a system of public reporting of nursing home staffing information. The report will detail a set of options for us to consider with respect to which data elements to collect, and how those data elements can best be transmitted, audited, and displayed on our Web site along with other consumer information. The data obtained with this contract will be used in continuing analysis of staffing levels and resident outcomes. We are also in the process of awarding another contract that will expand on the current nurse staffing study. This contract will examine staffing in general in an attempt to develop a quality measure(s) for reporting as part of the Nursing Home Quality Initiative (NHQI) effort.

Finally, the Department has recently completed, under contract, a study of State-initiated nursing home quality programs and will soon be completing another contracted study on State-initiated nursing home nurse staffing ratios. We plan to further investigate various State initiatives designed to integrate quality incentives into their payment systems. For example, some States already tie direct care reimbursement to actual direct care staffing expenditures. In addition, other States are looking at a variety of best practice standards that could be monitored and recognized through incentive payments. We plan to incorporate any promising State initiatives into our ongoing research efforts, which could serve as the basis for future recommendations.

Comment: Several commenters pointed out that the national nursing facility trade associations and their State affiliates are already strongly committed to enhancing quality, and described a number of grass roots initiatives, including State-wide customer service and public reporting programs, State-association-run quality monitoring and early warning systems, and a variety of programs to train staff, provide career ladders, and increase retention. These commenters pointed out that the national nursing facility trade associations have strongly supported the development of our quality measures, and are working in partnership with us on a number of other quality initiatives. Other commenters cited industry interest in and support for a number of initiatives, including the Eden Alternative, Wellspring, and the Pioneer Network, which have demonstrated the ability to attract and retain high quality staff.

Response: We have focused significant resources in the past two years on improving the quality of health care provided by Medicare providers. Our efforts with respect to nursing home quality have been particularly intensive. We recognize that several national organizations and their members have worked with us on several quality initiatives, including the Nursing Home Quality Initiative (NHQI). The NHQI is a four-prong effort that consists of—

- Regulation and enforcement efforts conducted by State survey agencies and by us;
- Improved consumer information on the quality of care in nursing homes;
- Continual, community-based quality improvement programs designed to help nursing homes improve their quality of care; and
- Collaboration and partnership to utilize available knowledge and resources effectively.

We are pleased that several commenters shared their efforts to have a positive impact on beneficiaries' outcomes. A variety of programs have been designed on the State or organization level to improve staff knowledge and expertise by providing unique training and educational opportunities. In addition, many providers are participating in several new and innovative programs that explore different ways to better serve patients. For example, the Pioneer Network, Eden Alternative, and Wellspring programs are designed to impart a culture change that positively influences the aging population. Providers involved in these three programs report improvements in staff retention, staff morale, and resident outcomes, including decreased pharmaceutical utilization and improved mobility. These improvements have also been associated with more positive patient outcomes, as evidenced by the results of State surveys.

We encourage the national associations and their affiliates to communicate information on these innovative programs to their entire membership, and to encourage expansion of these innovative programs across the country. We also encourage the development of partnerships among nursing homes, CMS, the State agencies, Quality Improvement Organizations (QIOs), consumers, and other stakeholders in developing and promoting programs designed to maintain and enhance high quality care. We also encourage the national organizations to continue to share information on potential quality initiatives with and between their State affiliates and providers. Finally, we encourage these stakeholders to work with us to design Federal demonstration projects to examine more fully a variety of quality models, including the development of payment systems with integrated quality incentives.

IV. Provisions of the Final Rule

The provisions of this final rule are as follows:

- We are revising § 411.15(p)(2)(xii) to incorporate additional chemotherapy service exclusions from SNF consolidated billing, as well as a conforming revision in the regulations at § 489.20(s)(12).
- We are revising § 413.337(d) by adding a new paragraph (2), which establishes an adjustment to the annual increase in the SNF market basket index amount to account for forecast error.
- We are revising § 483.5 to include specific definitions of the terms "distinct part" and "composite distinct part." We are also making conforming changes in subpart B of part 483 of the regulations, as well as in parts 413 and 440.

In addition, we are making the following technical corrections in the regulations text, as discussed in the proposed rule:

- We are revising a cross-reference that appears in § 409.20(c) of the regulations. Section 409.20 provides a general introduction to the subsequent sections (§ 409.21 through § 409.36) that set forth the specific requirements pertaining to the SNF benefit. However, in referring to the sections that follow, the cross-reference in § 409.20(c) concerning terminology inadvertently omits a reference to § 409.21, and we are now correcting that omission by revising the cross-reference to read "§ 409.21 through § 409.36".
- We are correcting the spelling of the word "describe" as it appears in the second sentence of the regulations text at § 483.20(k)(1).

Also, as discussed in the supplemental proposed rule, we are correcting the spelling of the word "standardized" in the second sentence of § 413.345 of the regulations. Further, we are taking this opportunity to make the following additional technical corrections:

- We are restoring a portion of the regulations text that was inadvertently deleted from § 488.438(d), dealing with civil money penalties. As originally published in the **Federal Register** on November 10, 1994 (59 FR 56248), paragraph (d) of § 88.438 contained three numbered paragraphs. However, when this section of the regulations was republished on March 18, 1999 (64 FR 13361), paragraph (3) was inadvertently omitted. Accordingly, we are now restoring this portion of the regulations text, which reads as follows: "(3) Repeated deficiencies are deficiencies in the same regulatory grouping of requirements found at the last survey, subsequently corrected, and found again at the next survey."
- In paragraph (d) of § 489.22, which deals with prepayment requirements in providers, we are correcting the phrase "covered impatient services" to read "covered inpatient services".

V. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of the technical corrections included in this final rule take effect. We can waive this procedure, however, if we find good cause that a notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and its reasons in the notice issued.

We find it unnecessary to undertake notice and comment rulemaking as to these technical changes as they merely provide technical corrections to the regulations and do not make any substantive changes to the regulations. Therefore, for good cause, we waive notice and comment procedures.

VI. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act (the Act), the Unfunded Mandates Reform Act of 1995 (UMRA), (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely assigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This final rule is a major rule, as defined in Title 5, United States Code, section 804(2), because we estimate the impact of the standard update will increase payments to SNFs by approximately $400 million. In addition, we have adjusted the FY 2004 rates to reflect the 3.26 percent cumulative forecast error since the start of the SNF PPS on July 1, 1998. This adjustment increases payments to SNFs by an additional $450 million, for an aggregate increase in payments of $850 million.

The update set forth in this final rule applies to payments in FY 2004. Accordingly, the analysis that follows describes the impact of this one fiscal year only. In accordance with the requirements of the Act, we will publish a notice for each subsequent fiscal year that will provide for an update to the payment rates and that will include an associated impact analysis.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most SNFs and most other providers and suppliers are small entities, either by their nonprofit status or by having revenues of $11.5 million or less in any 1 year. For purposes of the RFA, approximately 53 percent of SNFs are considered small businesses according to the Small Business Administration's latest size standards with total revenues of $11.5 million or less in any 1 year (for further information, see 65 FR 69432, November 17, 2000). Individuals and

States are not included in the definition of a small entity.

This final rule updates the SNF PPS rates published in the July 31, 2002 update notice (67 FR 49798), thereby increasing aggregate payments by an estimated $850 million. As indicated in Table 11, the effect on facilities will be an aggregate positive impact of 6.4 percent. We note that some individual providers may experience larger increases in payments than others due to the distributional impact of the FY 2004 wage indices and the degree of Medicare utilization. While this final rule is a major rule, its overall impact is extremely small; that is, less than 3 percent of total SNF revenues from all payor sources. Since the overall impact is positive on the industry as a whole, and on small entities specifically, it is not necessary to consider regulatory alternatives.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. For a final rule, this analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. Because the payment rates set forth in this final rule also affect rural hospital swing-bed services, we believe that this final rule will have a positive fiscal impact on small rural hospitals. However, because this incremental increase in payments for Medicare swing-bed services is relatively minor in comparison to overall rural hospital revenues, this final rule will not have a significant impact on the overall operations of these small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million or more. This final rule will increase payments to SNFs by over 6 percent, but will have no other substantial effect on State, local, or tribal governments. Again, we believe that the aggregate impact of this major rule is positive, and does not meet the significance thresholds for determining added costs under the Unfunded Mandates Reform Act.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. As stated above, this final rule will have no substantial effect on State and local governments.

The purpose of this final rule is not to initiate significant policy changes with regard to the SNF PPS; rather, it is to provide an update to the rates for FY 2004 and to address a number of policy issues related to the PPS. We believe that the revisions and clarifications mentioned elsewhere in this final rule (for example, with respect to determining distinct part status) will have, at most, only a negligible overall effect upon the regulatory impact estimate specified in the rule. As such, these revisions will not represent an additional burden to the industry.

B. Anticipated Effects

This final rule sets forth updates of the SNF PPS rates contained in the July 31, 2002 update (67 FR 49798). The impact analysis of this final rule represents the projected effects of the changes in the SNF PPS from FY 2003 to FY 2004. We estimate the effects by estimating payments while holding all other payment variables constant. We use the best data available, but we do not attempt to predict behavioral responses to these changes, and we do not make adjustments for future changes in such variables as days or case-mix.

This analysis incorporates the latest estimates of growth in service use and payments under the Medicare SNF benefit, based on the latest available Medicare claims from 2001. We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, very susceptible to forecasting errors due to other changes in the forecasted impact time period. Some examples of such possible events are newly-legislated general Medicare program funding changes by the Congress, or changes specifically related to SNFs. In addition, changes to the Medicare program may continue to be made as a result of the BBA, the BBRA, the BIPA, or new statutory provisions. Although these changes may not be specific to the SNF PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon SNFs.

In accordance with section 1888(e)(4)(E) of the Act, the payment rates for FY 2004 are updated by a factor equal to the market basket index percentage increase to determine the payment rates for FY 2004. We note that in accordance with section 101(a) of the BBRA and section 314 of the BIPA, the existing, temporary increase in the per diem adjusted payment rates of 20 percent for certain specified RUGs (and 6.7 percent for certain others) remains in effect until the implementation of case-mix refinements. In updating the rates for FY 2004, we made a number of standard annual revisions and clarifications mentioned elsewhere in this notice (for example, the update to the wage and market basket indices used for adjusting the Federal rates). These revisions will increase payments to SNFs by approximately $400 million. In addition, we have adjusted the FY 2004 rates to reflect the 3.26 percent cumulative forecast error since the start of the SNF PPS on July 1, 1998. This adjustment increases payments to SNFs by an additional $450 million, for an aggregate increase in payments of $850 million.

The impacts are shown in Table 11. The breakdown of the various categories of data in the table follows.

The first column shows the breakdown of all SNFs by urban or rural status, hospital-based or freestanding status, and census region.

The first row of figures in the first column describes the estimated effects of the various changes on all facilities. The next six rows show the effects on facilities split by hospital-based, freestanding, urban, and rural categories. The next twenty rows show the effects on urban versus rural status by census region. The final four rows show the effects on facilities by ownership type.

The second column in the table shows the number of facilities in the impact database.

The third column of the table shows the effect of the annual update to the wage index. The total impact of this change is zero percent; however, there are distributional effects of the change.

The fourth column of the table shows the effect of all of the changes on the FY 2003 payments. The market basket increase of 3.0 percentage points is constant for all providers and, though not shown individually, is included in the total column. Similarly, the 3.26 percent forecast error adjustment is included in the fourth column and is constant for all providers. It is projected that aggregate payments will increase by 6.4 percent in total, assuming facilities do not change their care delivery and billing practices in response.

As can be seen from this table, the combined effects of all of the changes vary by specific types of providers and by location.

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Table 11

Projected Impact of FY 2004 Update to the SNF PPS

	Number of facilities	Wage Index Change	Total FY 2004 change
Total	13,944	0.0%	6.4%
Urban	9,485	-0.1%	6.3%
Rural	4,459	0.5%	6.9%
Hospital based urban	1,049	-0.1%	6.3%
Freestanding urban	7,885	-0.1%	6.3%
Hospital based rural	660	0.5%	6.9%
Freestanding rural	3,500	0.5%	6.9%
Urban by region			
New England	911	0.1%	6.5%
Middle Atlantic	1,469	-0.7%	5.6%
South Atlantic	1,522	0.2%	6.6%
East North Central	1,823	-0.5%	5.8%
East South Central	410	0.4%	6.8%
West North Central	662	0.4%	6.8%
West South Central	847	0.2%	6.6%
Mountain	413	0.8%	7.2%
Pacific	1,422	0.1%	6.5%
Rural by region			
New England	129	-0.2%	6.1%
Middle Atlantic	238	-0.4%	5.9%
South Atlantic	627	0.3%	6.7%
East North Central	845	0.9%	7.3%
East South Central	479	-0.2%	6.1%
West North Central	1,045	1.7%	8.2%
West South Central	605	-0.1%	6.3%
Mountain	303	1.3%	7.7%
Pacific	188	0.4%	6.8%
Ownership			
Government	701	0.0%	6.4%
Proprietary	8,839	0.0%	6.4%
Voluntary	3,514	-0.1%	6.3%

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C. Alternatives Considered

Section 1888(e) of the Act establishes the SNF PPS for the payment of Medicare SNF services for cost reporting periods beginning on or after July 1, 1998. This section of the statute

prescribes a detailed formula for calculating payment rates under the SNF PPS, and does not provide for the use of any alternative methodology. It specifies that the base year cost data to be used for computing the RUG-III payment rates must be from FY 1995 (October 1, 1994, through September 30, 1995.) In accordance with the statute, we also incorporated a number of elements into the SNF PPS, such as case-mix classification methodology, the MDS assessment schedule, a market basket index, a wage index, and the urban and rural distinction used in the development or adjustment of the Federal rates. Further, section 1888(e)(4)(H) of the Act specifically requires us to publish the payment rates for each new fiscal year in the **Federal Register**, and to do so before the August 1 that precedes the start of the new fiscal year. Accordingly, we are not pursuing alternatives.

D. Conclusion

For the reasons set forth in the preceding discussion, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined that this final rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

Finally, in accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 411

Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 440

Grants programs—health, Medicaid.

42 CFR Part 483

Grants programs-health, Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 488

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as follows:

PART 409—HOSPITAL INSURANCE BENEFITS

■ 1. The authority citation for part 409 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart C—Posthospital SNF Care

■ 2. In § 409.20, the introductory text to paragraph (c) is revised to read as follows:

§ 409.20 Coverage of services.

* * * * *

(c) *Services not generally provided by (or under arrangements made by) SNFs.* In § 409.21 through § 409.36—

* * * * *

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

■ 1. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart A—General Exclusions and Exclusion of Particular Services

■ 2. Section 411.15 is amended by:

■ A. Republishing the introductory text to the section and the paragraph (p)(2) introductory text.

■ B. Revising paragraph (p)(2)(xii).

§ 411.15 Particular services excluded from coverage.

The following services are excluded from coverage.

* * * * *

(p) *Services furnished to SNF residents.* * * *

(2) *Exceptions.* The following services are not excluded from coverage, provided that the claim for payment includes the SNF's Medicare provider number in accordance with § 424.32(a)(5) of this chapter:

* * * * *

(xii) Those chemotherapy items identified, as of July 1, 1999, by HCPCS codes J9000–J9020; J9040–J9151; J9170–J9185; J9200–J9201; J9206–J9208; J9211; J9230–J9245; and J9265–J9600; and, as of January 1, 2004, by HCPCS codes A9522 and A9523.

* * * * *

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

■ 1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i) and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

Subpart E—Payments to Providers

■ 2. In § 413.65, paragraph (a)(1)(ii)(D) is revised to read as follows:

§ 413.65 Requirements for a determination that a facility or an organization has provider-based status.

(a) *Scope and definitions.* (1) *Scope.*

* * *

(ii) * * *

(D) Skilled nursing facilities (SNFs) (determinations for SNFs are made in accordance with the criteria set forth in § 483.5 of this chapter).

* * * * *

Subpart J—Prospective Payment for Skilled Nursing Facilities

■ 3. In § 413.337, paragraph (d)(2) is revised to read as follows:

§ 413.337 Methodology for calculating the prospective payment rates.

* * * * *

(d) *Annual updates of Federal unadjusted payment rates.*

(2) For subsequent fiscal years, the unadjusted Federal rate is equal to the rate for the previous fiscal year increased by the applicable SNF market basket index amount. Beginning with fiscal year 2004, an adjustment to the annual update of the previous fiscal year's rate will be computed to account for forecast error. The initial adjustment (in fiscal year 2004) to the update of the previous fiscal year's rate will take into account the cumulative forecast error between fiscal years 2000 and 2002. Subsequent adjustments in succeeding fiscal years will take into account the forecast error from the most recently available fiscal year for which there is final data.

* * * * *

§ 413.345 [Amended]

4. In the second sentence of § 413.345, the word "tandardized" is removed and the word "standardized" is added in its place.

PART 440—SERVICES: GENERAL PROVISIONS

■ 1. The authority citation for part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart A—Definitions

■ 2. In § 440.40, paragraph (a)(1)(ii)(A) is revised to read as follows:

§ 440.40 Nursing facility services for individuals age 21 or older (other than services in an institution for mental disease), EPSDT, and family planning services and supplies.

(a) * * *

(1) * * *

(ii) * * *

(A) A facility or distinct part (as defined in § 483.5(b) of this chapter) that meets the requirements for participation under subpart B of part 483 of this chapter, as evidenced by a valid agreement between the Medicaid agency and the facility for providing nursing facility services and making payments for services under the plan; or

* * * * *

■ 2a. In § 440.155, the introductory text to paragraph (c) is revised to read as follows:

§ 440.155 Nursing facility services, other than in institutions for mental diseases.

* * * * *

(c)"Nursing facility services" may include services provided in a distinct part (as defined in § 483.5(b) of this chapter) of a facility other than a nursing facility if the distinct part (as defined in § 483.5(b) of this chapter)—

* * * * *

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

■ 1. The authority citation for part 483 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Requirements for Long Term Care Facilities

■ 2. Section 483.5 is revised to read as follows:

§ 483.5 Definitions.

(a) *Facility defined.* For purposes of this subpart, *facility* means a skilled nursing facility (SNF) that meets the requirements of sections 1819(a), (b), (c), and (d) of the Act, or a nursing facility (NF) that meets the requirements of sections 1919(a), (b), (c), and (d) of the Act. "Facility" may include a distinct part of an institution (as defined in paragraph (b) of this section and specified in § 440.40 and § 440.155 of this chapter), but does not include an institution for the mentally retarded or persons with related conditions described in § 440.150 of this chapter. For Medicare and Medicaid purposes (including eligibility, coverage, certification, and payment), the "facility" is always the entity that participates in the program, whether that entity is comprised of all of, or a distinct part of, a larger institution. For Medicare, an SNF (*see* section 1819(a)(1) of the Act), and for Medicaid, an NF (*see* section 1919(a)(1) of the Act) may not be an institution for mental diseases as defined in § 435.1009 of this chapter.

(b) *Distinct part*—(1) *Definition.* A distinct part SNF or NF is physically distinguishable from the larger institution or institutional complex that houses it, meets the requirements of this paragraph and of paragraph (b)(2) of this section, and meets the applicable statutory requirements for SNFs or NFs in sections 1819 or 1919 of the Act, respectively. A distinct part SNF or NF may be comprised of one or more buildings or designated parts of buildings (that is, wings, wards, or floors) that are: In the same physical area immediately adjacent to the institution's main buildings; other areas and structures that are not strictly contiguous to the main buildings but are located within close proximity of the main buildings; and any other areas that CMS determines on an individual basis, to be part of the institution's campus. A distinct part must include all of the beds within the designated area, and cannot consist of a random collection of individual rooms or beds that are scattered throughout the physical plant. The term "distinct part" also includes a composite distinct part that meets the additional requirements of paragraph (c) of this section.

(2) *Requirements.* In addition to meeting the participation requirements for long-term care facilities set forth elsewhere in this subpart, a distinct part SNF or NF must meet all of the following requirements:

(i) The SNF or NF must be operated under common ownership and control (that is, common governance) by the institution of which it is a distinct part, as evidenced by the following:

(A) The SNF or NF is wholly owned by the institution of which it is a distinct part.

(B) The SNF or NF is subject to the by-laws and operating decisions of a common governing body.

(C) The institution of which the SNF or NF is a distinct part has final responsibility for the distinct part's administrative decisions and personnel policies, and final approval for the distinct part's personnel actions.

(D) The SNF or NF functions as an integral and subordinate part of the institution of which it is a distinct part, with significant common resource usage of buildings, equipment, personnel, and services.

(ii) The administrator of the SNF or NF reports to and is directly accountable to the management of the institution of which the SNF or NF is a distinct part.

(iii) The SNF or NF must have a designated medical director who is responsible for implementing care policies and coordinating medical care, and who is directly accountable to the management of the institution of which it is a distinct part.

(iv) The SNF or NF is financially integrated with the institution of which it is a distinct part, as evidenced by the sharing of income and expenses with that institution, and the reporting of its costs on that institution's cost report.

(v) A single institution can have a maximum of only one distinct part SNF and one distinct part NF.

(vi) (A) An institution cannot designate a distinct part SNF or NF, but instead must submit a written request with documentation that demonstrates it meets the criteria set forth above to CMS to determine if it may be considered a distinct part.

(B) The effective date of approval of a distinct part is the date that CMS determines all requirements (including enrollment with the fiscal intermediary (FI)) are met for approval, and cannot be made retroactive.

(C) The institution must request approval from CMS for all proposed changes in the number of beds in the approved distinct part.

(c) *Composite distinct part*—(1) *Definition.* A composite distinct part is a distinct part consisting of two or more noncontiguous components that are not located within the same campus, as defined in § 413.65(a)(2) of this chapter.

(2) *Requirements.* In addition to meeting the requirements of paragraph (b) of this section, a composite distinct part must meet all of the following requirements:

(i) A SNF or NF that is a composite of more than one location will be treated

as a single distinct part of the institution of which it is a distinct part. As such, the composite distinct part will have only one provider agreement and only one provider number.

(ii) If two or more institutions (each with a distinct part SNF or NF) undergo a change of ownership, CMS must approve the existing SNFs or NFs as meeting the requirements before they are considered a composite distinct part of a single institution. In making such a determination, CMS considers whether its approval or disapproval of a composite distinct part promotes the effective and efficient use of public monies without sacrificing the quality of care.

(iii) If there is a change of ownership of a composite distinct part SNF or NF, the assignment of the provider agreement to the new owner will apply to all of the approved locations that comprise the composite distinct part SNF or NF.

(iv) To ensure quality of care and quality of life for all residents, the various components of a composite distinct part must meet all of the requirements for participation independently in each location.

■ 3. In § 483.10, the following new paragraph (b)(12) is added to read as follows:

§ 483.10 Resident rights.

* * * * *

(b) * * *

(12) *Admission to a composite distinct part.* A facility that is a composite distinct part (as defined in § 483.5(c) of this subpart) must disclose in its admission agreement its physical configuration, including the various locations that comprise the composite distinct part, and must specify the policies that apply to room changes between its different locations under § 483.12(a)(8).

* * * * *

■ 4. In § 483.12, the following changes are made:

■ A. A new paragraph (a)(8) is added.

■ B. A new paragraph (b)(4) is added.

The additions read as follows:

§ 483.12 Admission, transfer, and discharge rights.

(a) * * *

(8) *Room changes in a composite distinct part.* Room changes in a facility that is a composite distinct part (as defined in § 483.5(c)) must be limited to moves within the particular building in which the resident resides, unless the resident voluntarily agrees to move to another of the composite distinct part's locations.

* * * * *

(b) * * *

(4) *Readmission to a composite distinct part.* When the nursing facility to which a resident is readmitted is a composite distinct part (as defined in § 483.5(c) of this subpart), the resident must be permitted to return to an available bed in the particular location of the composite distinct part in which he or she resided previously. If a bed is not available in that location at the time of readmission, the resident must be given the option to return to that location upon the first availability of a bed there.

* * * * *

§ 483.20 [Amended]

■ 3. In § 483.20(k)(1), the word "describer" is revised to read "describe".

PART 488—SURVEY, CERTIFICATION, AND ENFORCEMENT PROCEDURES

■ 1. The authority citation for part 488 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. In § 488.438, a new paragraph (d)(3) is added to read as follows:

§ 488.438 Civil money penalties: Amount of penalty.

* * * * *

(d) * * *

(3) Repeated deficiencies are deficiencies in the same regulatory grouping of requirements found at the last survey, subsequently corrected, and found again at the next survey.

* * * * *

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

■ 1. The authority citation for part 489 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Essentials of Provider Agreements

■ 2. Section 489.20 is amended by:

■ A. Republishing the introductory text and paragraph (s) introductory text.

■ B. Revising paragraph (s)(12).

§ 489.20 Basic commitments.

The provider agrees to the following:

* * * * *

(s) In the case of an SNF, either to furnish directly or make arrangements (as defined in § 409.3 of this chapter) for all Medicare-covered services furnished to a resident (as defined in § 411.15(p)(3) of this chapter) of the SNF, except the following:

* * * * *

(12) Those chemotherapy items identified, as of July 1, 1999, by HCPCS codes J9000–J9020; J9040–J9151; J9170–J9185; J9200–J9201; J9206–J9208; J9211; J9230–J9245; and J9265–J9600; and, as of January 1, 2004, by HCPCS codes A9522 and A9523.

§ 489.22 [Amended]

■ 3. In § 489.22(d), the word "impatient" is removed, and the word "inpatient" is added in its place.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare-Hospital Insurance Program; and No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: July 10, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: July 25, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–19677 Filed 7–31–03; 8:45 am]

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H.R. 74/P.L. 108–67

To direct the Secretary of Agriculture to convey certain land in the Lake Tahoe Basin Management Unit, Nevada, to the Secretary of the Interior, in trust for the Washoe Indian Tribe of Nevada and California. (Aug. 1, 2003; 117 Stat. 880)

S. 1280/P.L. 108–68

To amend the PROTECT Act to clarify certain volunteer liability. (Aug. 1, 2003; 117 Stat. 883)

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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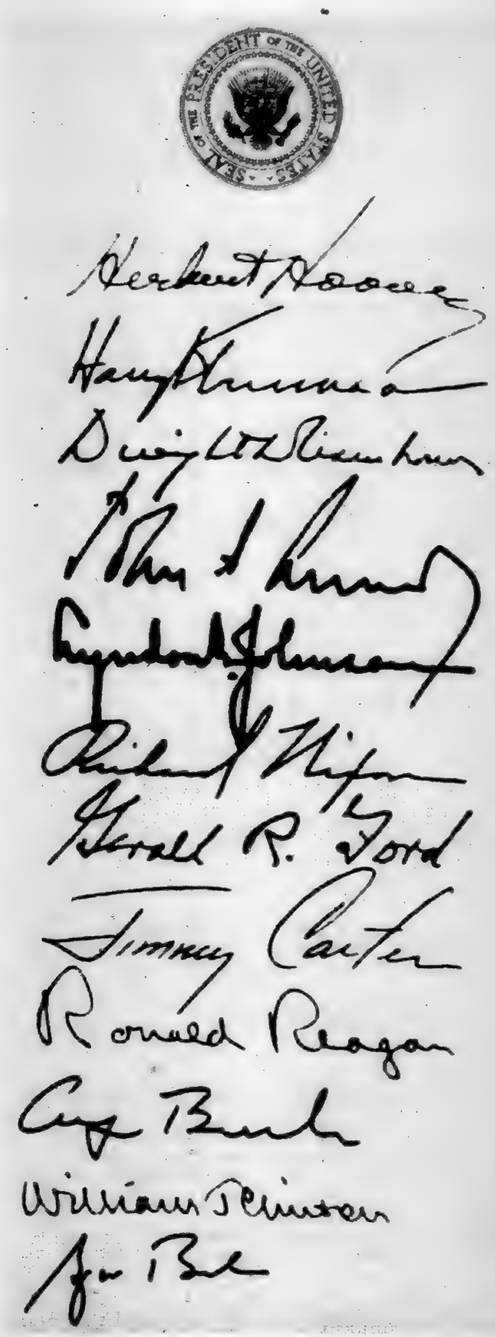
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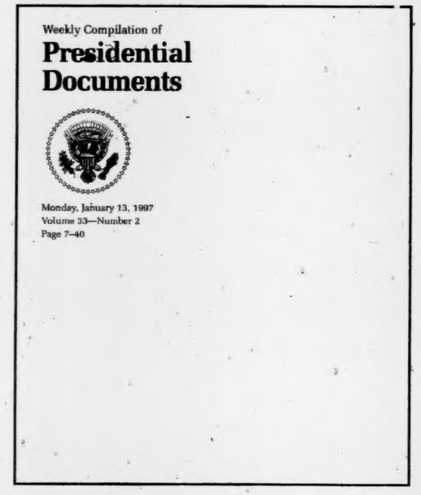
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